

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Richland County

Honorable Clifton Newman, Circuit Court Judge

ORIGINAL

THE STATE,

RESPONDENT,

V.

WESLEY LAMONTE GIVENS,

APPELLANT

APPELLATE CASE NO 2018-001920

RECORD ON APPEAL

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SC Court of Appeals

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1 STATE OF SOUTH CAROLINA)

2 COUNTY OF RICHLAND)

COURT OF GENERAL SESSIONS

4 STATE OF SOUTH CAROLINA,)

5 PLAINTIFF,)

6 vs.)

7 WESLEY LAMONTE GIVENS,)

8 DEFENDANT.)

TRANSCRIPT

OF

RECORD

2017-GS-40-2223 - 2225

2018-GS-40-1094

10 October 16th, 17th, and 18th, 2018
11 Columbia, South Carolina

13 B E F O R E:

14 THE HONORABLE CLIFTON NEWMAN, Judge; and a jury.

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

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17 ASSISTANT SOLICITORS
18 Attorneys for the State

19 WILLIAM HODGE
20 ESQ.
21 Attorney for the Defendant

22 DIGITAL COURTROOM RECORDER PROJECT
23 ON OCTOBER 16th, 17th, AND THE AFTERNOON
24 OF OCTOBER 18th, 2018

25 PAMELA E. GREEN
Circuit Court Reporter
Seventh Judicial Circuit
For the morning of October 18th, 2018

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P R O C E E D I N G S

(WHEREUPON, the following takes place outside the presence of the entire jury panel.)

THE COURT: Good morning.

SOLICITOR CAVANAUGH: Good morning.

THE COURT: Ms. Cavanaugh, Mr. Cathcart, Mr. Hodge, what's up, and, Mr. Givens, how y'all doing?

THE DEFENDANT: How you doing, sir?

THE COURT: Good.

What's -- Ms. Cavanaugh.

SOLICITOR CAVANAUGH: Your Honor, Mr. Wesley Lamonte Givens is currently charged with four -- well, we're proceeding on four indictments. Those are domestic violence of a high and aggravated nature, 2018-GS-40-01094, kidnapping under Indictment Number 2017-GS-40-0223, armed robbery under Indictment Number 2017---

THE COURT: Hold up. Just a moment.

So, so, we have a court monitor, and this will be, I guess, the first in the history of Richland, Richland County of a -- of doing a jury trial with a -- without a court reporter through a court monitor, and he's hooking something up it appears.

SOLICITOR CAVANAUGH: Okay.

THE COURT: So, let's make sure he gets all hooked up.

1 (Pause.)
2 THE COURT: So, we can be off -- just talking
3 off-the-record while he gets ready.
4 (Pause.)
5 THE COURT: Mr. Hodge, how you doing this morning?
6 MR. HODGE: I'm okay, judge.
7 Just for some clarification on, on Mr. Givens situation
8 here, he does not wish to dress out. Says he is going to
9 wear what he has on. I would request that he -- his arms be
10 unshackled so that he at least be able to take notes, and
11 write, and sort through papers and whatnot---
12 THE COURT: All right.
13 MR. HODGE: ---as he assists me in his defense.
14 THE COURT: well, y'all having something on his legs,
15 and arms, and all over?
16 So, he -- how -- so, I bank on Officer Cooper there.
17 He's the, he's the lead man.
18 What, what can you -- what can you unhook, unhook on
19 him?
20 THE OFFICER: well, Judge, we definitely gonna keep --
21 we'd like to keep the leg irons.
22 THE COURT: All right.
23 THE OFFICER: Okay with you or not?
24 THE COURT: Okay. we'll unhook his hands, his arms,
25 and---

1 THE OFFICER: So---

2 THE COURT: ---so he can maneuver those papers.

3 THE DEFENDANT: I only really need one arm though.

4 THE COURT: Just need one?

5 THE DEFENDANT: Yes.

6 THE COURT: All right. Well, okay.

7 (Pause.)

8 THE COURT: So, we're gonna put this on the record,
9 but, Mr. Givens, you want the jury to know that you're in
10 jail?

11 THE DEFENDANT: Yes.

12 THE COURT: You know, most times the -- most people
13 believe that, if a juror -- if the jury sees someone already
14 locked up, they think that they must be guilty because
15 they're locked up. So, we, therefore, like to have people
16 in court, and the jury doesn't know whether they're
17 guilty -- I'm sorry. The jury doesn't know whether they're
18 in jail or out of jail. As far as the jury would know,
19 you're coming straight off the streets, and they're not
20 gonna look at you as a prisoner. They're gonna look at you
21 as a regular citizen.

22 So, that's why people usually, 95 times out of a
23 hundred, they want to be in civilian clothes. Not jail
24 clothes.

25 Now, we might get five out of 100, or maybe one out of

1 100, who would say no, I want to be in my jail clothes. And
2 you might be one of those one out of a hundred or five out
3 of a hundred. But 95 out of a hundred weren't -- wouldn't
4 want the jury to, to know that the, that, that the person
5 was in jail.

6 So, therefore, they're, they're all dressed up.

7 THE DEFENDANT: Yes, sir.

8 THE COURT: You know, looking, you know, whatever they
9 wear. They still, you know, in some places we go, they have
10 tables instead of desks, and we have to hide their feet.
11 The jurors -- the jury doesn't know that they have chains
12 around their ankles. Some places they just -- they don't
13 have anything except a -- one of those stun belts. You
14 know, belt around your waist, and they don't even have your
15 feet chained or anything.

16 But if, but if you make the wrong move, he'll push a
17 button and it will freeze you up, you know. So, they have,
18 have all kind of systems designed so that a person can be in
19 court, and the jury would not know that that person is in
20 jail.

21 Now, Mr. Hodge says you want them to know that you're
22 in jail for some strange reason. Maybe you do or maybe you
23 haven't thought about it.

24 THE DEFENDANT: I have, Your Honor. Basically, I mean
25 it's no secret as to why I'm here is to prove my innocence.

1 I mean, when I come out in street clothes, I'll still be
2 restrained regardless because I am in jail. I mean, like I
3 said, it's---

4 THE COURT: You'll be restrained. The police will know
5 it, and we'll know it, but the jury won't know it.

6 THE DEFENDANT: Well, I mean---

7 THE COURT: They'll have no idea. They'll say they're
8 a nice young, handsome fellow sitting over there, and I
9 wonder what kind of work he does. He looks like he might be
10 a barber or he might be a, a deliveryman or maybe a mailman.
11 They wouldn't know what, what kind of fellow he is.

12 But if they see him sitting over there in an orange
13 jumpsuit, they'll say well, whatever kind of fellow he is,
14 he needs -- he's locked up. And so, if he's locked up, he
15 probably did what he's accused of doing. That's why most
16 people don't want to be in jail clothes. They want to be in
17 regular clothes.

18 So, especially while -- you got it hooked up yet?

19 THE COURT MONITOR: It's good, yes, sir.

20 THE COURT: So, he's good to go, yeah.

21 So, we can just continue talking. So, you've said
22 that -- Mr. Hodge says you don't want to put on civilian
23 clothes. We are -- we're not gonna force you to do anything
24 is -- if you, you want to look that way, that's up to you.
25 But I've told you that 95 out of a hundred people want to be

1 in regular clothes.

2 well, sometimes we're scrambling around trying to find
3 something for the people to put on, and it might not be your
4 size. Might be my size, and, you know, but -- do you have
5 clothes for him some place?

6 MR. HODGE: Your Honor, I could step down easily to the
7 Public Defender's Office, which is where they have their
8 giant closet.

9 THE COURT: Yeah, we have to scrounge around and get
10 you some---

11 MR. HODGE: Yes, sir.

12 THE COURT: ---get you some clothes that will look
13 normal. You don't want to be dressed up in a suit and tie
14 like everybody else, most likely, but they'll -- you won't
15 look like you don't have on a jumpsuit.

16 So, what you think about it?

17 THE DEFENDANT: I'm stay as is, sir. Only God knows.

18 THE COURT: Pardon?

19 THE DEFENDANT: I say I'm gonna stay as is. Only God
20 knows the truth.

21 THE COURT: All right. well, only God knows, but the
22 jury's gonna be called upon to make a choice as well. But,
23 you know, you -- if, if you want to be in jail clothes,
24 then, Mr. Hodge, you've spoken with him about it?

25 MR. HODGE: Yes, sir, Your Honor.

1 THE COURT: what did you tell him about it?

2 MR. HODGE: I told him that I'd provide him some. His
3 family's trying to bring some for him in the morning, but I
4 told him that I would have some for him this morning if he
5 would like some. And he told me that he did not, did not
6 wish to have it.

7 THE COURT: Yeah.

8 MR. HODGE: Said the jury knows that he's locked up.
9 No point in hiding it.

10 THE COURT: The jury does not know that you're locked
11 up. That's what -- you're, you're starting off with a
12 very -- the very first thing in your mind is wrong.

13 You say the jury knows that you're locked up?

14 THE DEFENDANT: That's pretty much it.

15 THE COURT: No, they don't know. They're not in here.
16 You see -- look behind you.

17 THE DEFENDANT: Got it.

18 THE COURT: You see a jury behind you?

19 They, they don't know that you're locked up. They're
20 gonna come in those back doors in a few minutes, and you --
21 they'll know that you're locked up if you have on that
22 orange jumpsuit. But, if you have on regular clothes,
23 they'll have no idea about whether you're locked up or not.

24 You know, we spend a lot of time making sure that the
25 jury does not know that the person is locked up, and they'll

1 never see you or chains or anything.

2 So, you, you know, and even when you -- if you testify
3 or when -- if the State presents witnesses, none of the
4 witnesses can say that you're locked up.

5 Now, if you've made some phone calls on the jail, and
6 they have them recorded saying where you've said certain
7 things that the State wants the jury to know like I did it,
8 they'll, you know, they'll know that you made a call from
9 the jail if that is admitted into evidence.

10 Any jail phone calls involved?

11 SOLICITOR CAVANAUGH: Your Honor, I've -- for the, for
12 the majority -- since Mr. Givens arrest, he was at the
13 Department of Corrections until August 24th of this year
14 for unrelated charges or convictions. And since he's been
15 at Alvin S. Glenn, there's been -- there's one phone call
16 that I've turned over to Mr. Hodge where he admits -- he
17 refers to the victim as his spouse, and he also states that
18 he has no issue beating a correctional -- a female
19 correctional officer if he sees her outside of the jail.

20 Those are the -- that is the only phone call that I
21 would intend to use up to this point if the opportunity
22 arises, and I've turned that over to Mr. Hodge.

23 THE COURT: All right. Now, is there a contest as to
24 the admissibility of that?

25 MR. HODGE: Well, Judge, I, honestly, just got it

1 yesterday I believe. I have not had a chance to review it
2 with Mr. Givens as to make sure that that's him using his,
3 his voice and all that sort of thing.

4 THE COURT: All right. So, there may or may be or may
5 or may not be a jail phone call.

6 MR. HODGE: Yes, sir.

7 THE COURT: But you're -- you've had time to think
8 about it. We've had time to talk about it.

9 Do you want to be in regular clothes or jail clothes?

10 THE DEFENDANT: I'm gonna go with you, Mr. Newman,
11 Judge, Your Honor, you know. I'm gonna go with the regular
12 clothes.

13 THE COURT: Go with the regular clothes.

14 All right. So, we'll have to go find some regular
15 clothes. Mr. Hodge is gonna go through the Public
16 Defender's Office, and---

17 MR. HODGE: Okay.

18 THE COURT: ---pick out your size.

19 what size do you wear?

20 Small, medium, or large?

21 THE DEFENDANT: Large.

22 THE COURT: Okay. So, we'll -- he'll have someone
23 trying to find some clothes, and we'll do all that before
24 the jury comes. So, we'll just hold off with the jury until
25 we can get him dressed out right.

1 THE OFFICER: What size you want?

2 THE COURT: What size?

3 Mr. Hodge is gonna tell you right there.

4 So, we'll continue dealing with whatever we need to
5 deal with or talk about the -- with the jury not being in
6 here.

7 So, we're gonna go back to Ms. Cavanaugh because she
8 was -- you were telling me about the charges.

9 SOLICITOR CAVANAUGH: Yes, Your Honor. I'll start at,
10 at the beginning.

11 He is currently indicted, and we're proceeding on
12 domestic violence of a high and aggravated nature. That's
13 2018-GS-40-01094, as well as -- and that is an amended
14 indictment, Your Honor. Kidnapping under Indictment Number
15 2017-GS-40-02223. Armed robbery, 2017-GS-40-02224 as well
16 as possession of a weapon during the commission of a violent
17 crime. Indictment Number 2017-GS-40-02225.

18 Mr. Givens was also indicted for assault and battery in
19 the first degree under Indictment Number 2017-GS-40-02226.
20 However, because we are proceeding on the direct presentment
21 of domestic violence of a high and aggravated nature, we
22 will not be proceeding, proceeding on the assault and
23 battery in the first degree as I believe those crimes
24 certainly overlap each other, if, if it's not a lesser
25 included, Your Honor.

1 THE COURT: So, what is it that he supposedly did?

2 SOLICITOR CAVANAUGH: Your Honor, on
3 September 28th of 2016, he asked his ex-girlfriend,
4 Tiffany Green, whom he -- who's present in the courtroom
5 right here, Your Honor, whom he cohabited with for
6 approximately three years, to give him a ride to Columbia.
7 They both resided in separate -- at the time, they both
8 resided in separate residences in Orangeburg.

9 Ms. Green works at the Murphy's Gas Station as a
10 manager on Two Notch Road in Columbia, South Carolina, and
11 he needed a ride for a Court hearing that afternoon. He
12 promised her that he would leave her alone, because he
13 wasn't accepting the breakup that had occurred a month
14 prior, he promised that he would leave her alone if she
15 would take him to Columbia this one last time.

16 He promised her that, once she took him to---

17 THE COURT: To Columbia from what town?

18 SOLICITOR CAVANAUGH: Orangeburg.

19 THE COURT: That sounds like a -- did I do -- I must of
20 done a bond hearing on this case or something.

21 Some -- have we been in Court together before?

22 THE DEFENDANT: No, sir. Actually I was never present
23 at my bond hearing. It was denied---

24 THE COURT: Okay.

25 THE DEFENDANT: ---in my absence.

1 THE COURT: All right. Well, I thought -- I've heard a
2 similar type case. Maybe it's just a different case.

3 Okay.

4 SOLICITOR CAVANAUGH: Your Honor, the understanding
5 was, once Ms. Green took him -- once the victim took him to
6 the area of her workplace, his brother was suppose to take
7 him wherever he needed to go for his Court hearing. He
8 brought a folder that looked similar to this of his
9 belongings with him at the time.

10 On the way to Columbia, he immediately began arguing,
11 arguing with her, and began punching her while she was
12 driving a motor vehicle. When she -- part of her job, as
13 the manager of the gas station, is to make daily bank
14 deposits of cash where there's a withdrawal slip that's
15 (sic) meticulously has each bill, and the amount that's
16 being deposited.

17 when she came out around 10:30, 11:00AM to make that
18 deposit, and was walking towards her car, she noticed that
19 he was still there when he was not suppose to be there.
20 when she approached him -- when she approached her vehicle,
21 he said plans have changed. You are taking me -- I'm
22 getting in your car. At that point, he took out what she
23 believed to be a weapon. It turned out it was a fillet
24 knife out of his packet of belongings, and started walking
25 towards her using it in a threatening manner as he was

1 stating I'm getting in your car.

2 THE COURT: And this is -- this is at what location?

3 SOLICITOR CAVANAUGH: This is at the Murphy's -- this
4 is outside of the Murphy's Gas Station on Two Notch Road.

5 THE COURT: I can't, I can't think of a Murphy's on Two
6 Notch Road.

7 So, what location?

8 SOLICITOR CAVANAUGH: It's in the 10,000 block.
9 There's an -- it's a big strip mall that has an Office
10 Depot. A Lowe's is across Two Notch. Murphy's is a small
11 gas station. On one side of the parking lot---

12 THE COURT: I mean Northeast Columbia?
13 where?

14 SOLICITOR CAVANAUGH: It's a Wal-Mart -- there's a
15 Wal-Mart close by. The Murphy's I believe is in---

16 THE COURT: Oh, okay.

17 SOLICITOR CAVANAUGH: ---the Wal-Mart Gas Station.

18 THE COURT: Okay.

19 SOLICITOR CAVANAUGH: I mean the Wal-Mart parking lot.

20 THE COURT: Okay. All the way out Two Notch?

21 SOLICITOR CAVANAUGH: Yes, sir.

22 THE COURT: Okay. I know. Across from Lowe's, Office
23 Depot, Magnolia's Buffet that just opened.

24 SOLICITOR CAVANAUGH: Yes.

25 THE COURT: Okay.

1 SOLICITOR CAVANAUGH: what use to be a closed---

2 THE COURT: Ryan's.

3 SOLICITOR CAVANAUGH: ---Ryan's Steakhouse.

4 THE COURT: Yeah, I know---

5 SOLICITOR CAVANAUGH: Yes, sir.

6 THE COURT: ---all about it.

7 Okay.

8 SOLICITOR CAVANAUGH: Yes, sir.

9 So, because he threatened her with that knife, and she
10 felt in fear for her safety, in fear -- not knowing what he
11 was going to do with that knife, she allowed him to get in
12 the vehicle.

13 As soon as he got in her vehicle, she was driving, he
14 started questioning her about certain texts that he found on
15 her phone. He became angry at her based on her answers
16 regarding those texts, and he began punching her with a
17 closed fist in here jaw area while she was operating the
18 motor vehicle.

19 He also began to reach for the moneybag, ripping it
20 open, and this went on for over an hour.

21 THE COURT: How much money was in there?

22 SOLICITOR CAVANAUGH: Approximately \$5,170.00 was on
23 the deposit slip. However, it was determined later that
24 there was an additional \$400.00 cash that was not included
25 on the deposit slip because of the -- they break dollar

1 bills for change.

2 THE COURT: All right.

3 SOLICITOR CAVANAUGH: Or they break bills for change.
4 So, that additional \$400.00 had to be determined from the
5 safe calculation.

6 THE COURT: So, did he take all of Murphy's money?

7 SOLICITOR CAVANAUGH: He took a little less. It was a
8 little less than \$2,000. A little over \$3,000 remained in
9 the vehicle.

10 She would -- because he was beating her, her car was
11 driving -- she was driving her car erratically, swerving all
12 over the place, on public roadways, and in parking lots.
13 She was hoping that law enforcement would see them cause
14 this occurred in the middle of the day. However, no one --
15 apparently law enforcement did not observe that day.

16 She decided the only way to end this was to actually
17 try to run her car into that closed Ryan's Steakhouse.

18 THE COURT: All right.

19 SOLICITOR CAVANAUGH: Once he realized what she was
20 doing, he ripped the keys out of the ignition. Her car came
21 very close to the building, but did not actually hit it.

22 At this point, a witness that was leaving the Office
23 Depot, which is across the street from the Ryan's parking
24 lots, actually saw the car driving erratically, observed Mr.
25 Givens punching her while she was driving, and proceeded to

1 call 9-1-1. She also saw the car almost crash into the
2 building.

3 Once the car came to a stop, Ms., Ms. Green, the
4 victim, was terrified that, if he took the money, she would
5 lose her job. So even though he was assaulting her for over
6 an hour, she was still trying to keep him from leaving with
7 that money.

8 He drove -- once the car stopped, he drug her -- he
9 drug her over the center console to where she was hanging
10 out of the passenger side of the vehicle still continuing to
11 punch her in her jaw with the closed fist. The witness also
12 observed that.

13 Once he observed a witness was on the phone in her
14 vehicle very close to where they were, he fled the scene.
15 He fled across Two Notch Road with about \$1,900.00.

16 THE COURT: Across the railroad tracks?

17 SOLICITOR CAVANAUGH: No, Your Honor. I did not see
18 any railroad tracks.

19 THE COURT: Oh, yeah, there's railroad tracks running
20 right along -- right by there.

21 SOLICITOR CAVANAUGH: He -- the witness just saw him go
22 towards Lowe's.

23 THE COURT: Well, you said across Two Notch. So, the
24 only thing across Two Notch is the railroad tracks --

25 SOLICITOR CAVANAUGH: I believe---

1 THE COURT: -- in that area anyway.

2 SOLICITOR CAVANAUGH: There was---

3 THE COURT: And Thompson's Rental, and, yeah, that's my
4 neighborhood. I'm --.

5 SOLICITOR CAVANAUGH: He was able to get away with less
6 than \$2,000.00, right at \$1,900.00..

7 The -- law enforcement arrived and EMS. She was
8 transported to -- the victim was transported to Richland
9 Northeast. She did not have any broken bones, but there was
10 visible swelling noted. She was bleeding from her mouth.
11 There was blood all over her pants, and she was in
12 tremendous pain because of this assault.

13 She -- he left his wallet behind, which the deputy
14 observed on the ground. So, the deputy was able to collect
15 that wallet. Ms., Ms. Green, the victim, did not realize
16 that he'd also left that packet of belongings that contained
17 the knife in her car. So, she did not inform the deputy
18 about the knife because she was in such shock, and distress
19 that she overlooked that fact since he brought it out at the
20 very beginning. And, as I stated, the assault, while she
21 was driving her vehicle, occurred for over an hour.

22 When she went -- but she did observe that he had left
23 those belongings, including the knife, in that folder that
24 night after she was driving her car back to Orangeburg. She
25 put it in her trunk, and knew that she would be going to

1 give a statement to Investigator Gonzales. A week later,
2 when she gave her statement to Investigator Gonzales, she
3 turned over that folder that contained his belongings
4 including the knife that he used to threaten her. His DNA
5 is on that knife handle.

6 He was not served with his warrant. He was arrested in
7 October of two -- about a month later he was arrested for
8 some Orangeburg charges, and then he was not served with his
9 Richland County warrants until he was at the Department of
10 Corrections, which was January 17th, 2017. He did not
11 give any statements to law enforcement.

12 Your Honor, those are -- that's the summary of what we
13 would present at trial. At the appropriate time, I would
14 just like to go over the history of his offers, and what
15 he's refused at this point.

16 THE COURT: well, that's -- this is the appropriate
17 time.

18 SOLICITOR CAVANAUGH: He was originally represented by
19 the Public Defender's Office, Tracy Pinnock. When she
20 represented him, his offer was, and this was last year into
21 earlier this year, assault and battery first, and strong
22 armed robbery with a cap of six years as long as he agreed
23 to a personal -- a permanent restraining order of 50 years.

24 Ms. Pinnock informed me that he refused that offer.
25 would only plead to assault and battery second for time

1 served.

2 Ms. Pinnock was relieved. I was not a part of that
3 hearing. So, I'm not sure what, you know, was, was stated
4 to the judge at that time. However, Mr. Hodge was appointed
5 around April of this year. I relayed an offer of domestic
6 violence in the -- at that point in time, the domestic
7 violence of a high and aggravated nature had already been
8 indicted by the Grand Jury. That occurred in April of this
9 year.

10 I offered the Defendant a plea of domestic violence in
11 the first degree, and strong armed robbery, which he
12 refused. And so, as we are headed into trial, and, and
13 currently his offer is domestic violence of a high and
14 aggravated nature with a cap of ten years, which, my
15 understanding is, he's refused. And, of course, each of
16 these plea offers include the permanent restraining order as
17 well.

18 THE COURT: All right. Mr., Mr. Hodge, have you
19 communicated the offers that she just mentioned to
20 Mr. Givens?

21 MR. HODGE: I have, Your Honor.

22 THE COURT: And, Mr. Givens, are you interested in
23 pleading guilty or you want a trial?

24 THE DEFENDANT: To be honest, I really don't know, sir,
25 because this, this case comes from 2016 in which, you know,

1 I was locked up. U.S. Marshals picked me up on this case,
2 and I was arrested, and sent to Broad River Correctional
3 Institution. And I spoke with Ms. Pinnock several times,
4 and she's, she's correct that she came with an offer of zero
5 to six years, and I told her no, that I didn't want that
6 offer. And I haven't spoken with no one up until August,
7 which was Mr. Hodge, about this case.

8 Once I maxed out from the -- Judge Lee gave specific
9 orders for them to have this case resolved back in
10 January 29th, 2018, and it states that, you know, per
11 my -- based on my opinion that first degree assault or
12 second degree assault be with the evidence that they do have
13 with the case, should be an offer. Then they had several
14 problems with getting in contact with the victim from
15 October -- I mean, excuse me, January 22nd of 2018,
16 January 25th of 2018, February 2nd, 2018, and that was
17 the last time I had any type of offers or heard anything up
18 until August 24th from Mr. Hodge, which was my first time
19 speaking to him, which is the offer -- the same offer, which
20 is zero to six years with, you know, the same restraining
21 order.

22 And, you know, I told him that I don't feel comfortable
23 with pleaing to something that I know I didn't do, but the
24 assault, probably yes, cause I, I admit to assaulting her.
25 But, anything else, no, I'm not pleading to it.

1 THE COURT: Well, of course, you understand, with
2 the -- with armed robbery, there's a minimum sentence of ten
3 years, a maximum sentence of 30 years, and it's a most
4 serious offense. And kidnapping is zero to thirty. It's a
5 most serious offense.

6 If you get another most serious offense, and I don't
7 know if you have, if you have one on your record or not, but
8 you can be sentenced to life without parole if you get
9 another most serious offense if the jury finds you guilty of
10 those.

11 And domestic violence of a high and aggravated nature,
12 is that ten years or---

13 MR. HODGE: Twenty years.

14 THE COURT: ---twenty years?

15 MR. HODGE: Twenty is the max, Your Honor.

16 THE COURT: How much?

17 MR. HODGE: Twenty. Twenty.

18 THE COURT: Twenty years. Domestic violence of a high
19 and aggravated nature, and possession of a weapon during a
20 violent crime is five years. And all of these could be
21 concurrent or could be consecutive.

22 So, you, obviously, have a pretty difficult decision to
23 make concerning all of these things, but I need -- you know,
24 have to give you an opportunity to make a decision before
25 the jury comes in, and we have a trial. And it's -- so, the

1 State's current offer is what again?

2 SOLICITOR CAVANAUGH: Domestic violence of a high and
3 aggravated nature. Cap of, cap of ten years.

4 THE COURT: All right.

5 SOLICITOR CAVANAUGH: And the permanent restraining
6 order for a period of 50 years.

7 THE COURT: With, with the State dropping the robbery
8 and---

9 SOLICITOR CAVANAUGH: We would be dismissing---

10 THE COURT: ---all this other---

11 SOLICITOR CAVANAUGH: ---the armed robbery, the
12 kidnapping, and the possession of a weapon during a violent
13 crime.

14 THE COURT: All right.

15 SOLICITOR CAVANAUGH: As well as the assault and
16 battery.

17 THE COURT: So, that's their offer, and it's up to, up
18 to ten years, and a restraining order. And was up to ten
19 years, that means it's up to me what you would get sentence
20 wise.

21 Is there a recommendation---

22 SOLICITOR CAVANAUGH: No, Your Honor.

23 THE COURT: ---or negotiation?

24 SOLICITOR CAVANAUGH: We would be asking for the full
25 ten. It's, it, it is an 85 percent crime, and it's

1 considered a violent---

2 THE COURT: So---

3 SOLICITOR CAVANAUGH: ---most serious offense.

4 THE COURT: So, there's not a recommendation?

5 SOLICITOR CAVANAUGH: No, ma'am. No. I'm sorry.

6 THE COURT: It's negotiated---

7 SOLICITOR CAVANAUGH: No, sir.

8 THE COURT: ---negotiated sentence?

9 SOLICITOR CAVANAUGH: Right. Yes, Your Honor, of a
10 cap.

11 THE COURT: Whenever you use the word cap, that means
12 maximum. That's not -- a cap is -- a cap is up to ten
13 years. You may ask for ten years, but, if it's a cap, then
14 the sentence is up to me up to ten years.

15 SOLICITOR CAVANAUGH: Yes, Your Honor.

16 THE COURT: Okay. All right. Just want to be sure
17 we're saying the same thing.

18 And so that's what the current offer is, and, you know,
19 you need to fully understand, and think about what you want
20 to do. And the jury may find you guilty or not guilty of
21 the whole range of things. Of course, even on some of
22 these, I -- assuming that the -- all of these make it to the
23 jury, I don't know if they'll make it to the jury or not,
24 you know, the -- and one of the charges with domestic
25 violence, I've heard the solicitor say that you-all use to

1 live together, and whether that qualifies as domestic
2 violence, I don't know. If you use to live together or you
3 have a common child together or some -- something that makes
4 it -- comes within that statute is what?

5 SOLICITOR CAVANAUGH: Your Honor, a household member.
6 One of the definitions of a household member is former
7 cohabitation. He's also pled guilty to domestic violence
8 second degree -- two counts of domestic violence second
9 degree where Ms. Green---

10 THE COURT: Okay.

11 SOLICITOR CAVANAUGH: ---is also the victim.

12 THE COURT: So, so, she use to live together, it's
13 domestic violence?

14 SOLICITOR CAVANAUGH: Yes, Your Honor.

15 THE COURT: All right.

16 SOLICITOR CAVANAUGH: It qualifies under the statute.

17 THE COURT: Okay. All right. So, y'all find those
18 clothes yet or you still looking for them?

19 MR. HODGE: We have them, Judge.

20 THE COURT: Oh, got them right there.

21 Okay. So, where do we stand, Mr. Givens?

22 Mr. Hodge?

23 MR. HODGE: Judge, he, he is indicating to me, at this
24 point, it's the first time that this conversation has been
25 had was when we were standing here, is he, he may wish to

1 actually have a bench trial instead of a jury trial.

2 THE COURT: A bench trial?

3 THE DEFENDANT: Yes, sir.

4 THE COURT: Well, in South Carolina, everyone, you
5 know, both the State and the defense has to agree that the
6 judge decides and not the jury.

7 THE DEFENDANT: This is actual not just---

8 THE COURT: It's not just where one side wants it. It
9 has to be where both sides wants it.

10 (Pause.)

11 SOLICITOR CAVANAUGH: Your Honor, the State wishes to
12 proceed in front of a jury.

13 THE COURT: All right. So, it can't be a bench trial
14 if the State wants a jury trial.

15 MR. HODGE: Thank you, Your Honor.

16 THE COURT: So, you know, whether -- you know, I spent
17 a lot of time trying to be fair and smiling and, and all
18 that. So then a defendant sometimes think I'm, I don't
19 know, I think I'll take my chances with him, you know, which
20 is, I think, is a great position to take cause, you know,
21 I'm gonna be fair and impartial before a jury or a -- or me.
22 So, but the -- now, in some states, and I went to school in
23 Ohio, and, in Ohio, if a defendant wanted a -- the defendant
24 had the right to waive a jury trial, and have a trial before
25 a judge.

1 South Carolina is a different kind of state when it
2 comes to that. I don't know how many others are like that.

3 So, we have to have a jury trial, but, aside from that,
4 are you-all ready to proceed to trial or, or, or no?

5 MR. HODGE: I think we certainly have some preliminary
6 matters to take up at the appropriate time, but, other than
7 that, and, and him getting dressed out.

8 THE COURT: All right. What are those preliminary
9 matters?

10 MR. HODGE: Well, I have a couple, Judge, a couple of
11 motion that I think may, may come up. One of them is
12 regarding the latest indictment, the criminal domestic
13 violence high and aggravated nature, that was just served on
14 him. We would make a motion to quash that indictment. I
15 don't know if you want to hear full argument on it now or
16 not. I'm not sure how you want to handle it, but that, that
17 would be one, one issue, and then there's a couple
18 evidentiary issues that, that we have. I think there's only
19 a couple pieces of evidence in this case. So, it's not a
20 very---

21 THE COURT: All right.

22 MR. HODGE: ---lengthy---

23 THE COURT: I'm just trying to, you know, understand
24 whether we need -- anything that needs to be taken up before
25 the jury is selected.

1 MR. HODGE: Yes, sir, I, I don't -- you know, I think
2 either one of those motions can be handled however you would
3 like to.

4 THE COURT: All right. Well, we'll -- what was the
5 previous indictment?

6 MR. HODGE: Assault and battery first.

7 THE COURT: And it's now been upgraded to --?

8 MR. HODGE: Criminal---

9 THE COURT: -- criminal domestic violence high and
10 aggravated?

11 MR. HODGE: Yes, sir, that's correct.

12 THE COURT: And you received notice of it --?

13 MR. HODGE: I think she had told me about it in July, I
14 believe, or something. She had told me that it had been
15 indicted cause I think that's when it was indicted was in
16 July. So, she informed me that it was there. Mr. Givens,
17 obviously, was in SCDC, but then was served -- I guess he
18 was served on the record last week I believe in front of
19 Your Honor.

20 THE COURT: Okay. Well, we can discuss all that later.

21 MR. HODGE: Yes, sir.

22 THE COURT: That -- we'll indicate it as being properly
23 made before trial.

24 MR. HODGE: Yes, Your Honor.

25 THE COURT: So, we need to have -- what else?

1 And then the other preliminary matters we can deal
2 with.

3 MR. HODGE: Yes, Your Honor.

4 THE COURT: So, we're gonna take a break, and have Mr.
5 Givens get dressed, and then we'll have the jury come up.

6 (Pause.)

7 THE COURT: Yes, sir.

8 MR. HODGE: Judge, Mr. Givens just informed me that
9 there is one matter that he believes should be taken up
10 before the jury comes up.

11 THE COURT: All right.

12 MR. HODGE: He also believes that it would be
13 appropriate to take it up outside the presence of
14 prosecution. My inkling is that it has to do with his and
15 our relationship. So, I just wanted to bring that to your
16 attention if you wanted to handle that now before he goes
17 downstairs.

18 THE COURT: All right.

19 THE DEFENDANT: Excuse me?

20 THE COURT: Yes.

21 THE DEFENDANT: It's actually one before that she needs
22 to be present with, and there's one after.

23 THE COURT: Okay. Well, the one that she needs to be
24 present with, what's, what's that?

25 THE DEFENDANT: Okay. It's about, about me writing

1 several motions, and I just received, upon questioning
2 today, the indictment was filed in front of me -- actually,
3 in front of you that day. Last week, Monday. That
4 indictment was filed. I asked Mr. Hodge and I wrote
5 several -- that is a motion myself. And I never received
6 any response back, and it's well over 30 days.

7 I, I do know, if I'm correct, that you have 30 days to
8 take action on a motion.

9 Am I correct?

10 From the day it's filed.

11 THE COURT: Well, the, the State is suppose to respond
12 to discovery requests within 30 days, and, if they don't,
13 then the party can seek to force the State, and to do
14 something -- to respond. A motion to compel discovery.

15 THE DEFENDANT: All right. This was just filed.
16 Actually it was from September the 8th, but it was filed
17 October 8th, 2018. It's the same day that I asked
18 Mr. Hodge, and he went and spoke to Ms. Kathryn Cavanaugh, I
19 think?

20 Cavanaugh.

21 I wrote to the Honorable, to the Honorable Judge Clerk
22 of Court, William B. Hodge. My reason for writing this to
23 request a motion of dismissal on Case Numbers
24 2017-GS-40-02223, 2017-GS-40-02224, 2017-GS-40-02225,
25 2017-GS-40-202226 (sic) indicted by Dan Johnson, Solicitor

1 of South Carolina, who is charged with misconduct with
2 office and embezzlement.

3 Under Fifth Amendment, due pros, due process of law has
4 been violated from the beginning. Case was documented
5 October 19th, 2016, in which, under Rule 3(a), 3(e) under
6 South Carolina Codes of Law we have certain rules to follow.
7 I requested a motion for default, motion for bond. However,
8 these motions was answered to a hearing. To this case is
9 over two years old.

10 I was indicted nine months later in which an act of
11 perjury was performed to obtain that indictments. I was
12 given a resolution of attorney due to the several difficults
13 (sic) in the case.

14 Judge Lee gave Ms. Pinnock and Ms. Cavanaugh 90 days to
15 resolve the case, but, due to the problems with her and the
16 judicial system, Ms. Pringle assigned it to William B.
17 Hodge, and that was March, 2018. I met him August, 2018.
18 Nothing has been done as of yet. I request something to be
19 done.

20 I don't understand Prison Industries of being down the
21 industry in South Carolina, but to have an innocent man
22 sitting to obtain funds, especially under the indictment
23 solicitor produced to the Grand Jury under false pretense,
24 cruel and unusual punishment. I like to file the civil and
25 criminal charges against Dan Johnston, Investigator

1 Gonzales, and Richland County Sheriff's Department for
2 perjury, 17-19-60, 19-5-610, 19-5-510, 19-5-520, 14-9-210,
3 for misconduct in office, and while under oath to citizens
4 of South Carolina, and it's never responded back to. I just
5 received this like Friday.

6 THE COURT: You, you received what on Friday?

7 THE DEFENDANT: The notification from the Clerk of
8 Court who just sent it I guess after Mr. Hodge asked Ms.,
9 Ms. Cavanaugh about she said that she had it, and she
10 apparently sent the copies over.

11 THE COURT: Copies of discovery is---

12 THE DEFENDANT: Copies of the motion.

13 THE COURT: Of the motion.

14 All right. Mr. Hodge, did you want to add anything to
15 that before Ms. Cavanaugh responds?

16 MR. HODGE: No, sir, Your Honor. Just to say that I
17 did not receive a copy of those motions until I asked, and
18 Ms. Cavanaugh actually, according to our conversation,
19 had -- also had not received a copy, and I think that's how
20 they ended up getting sent was she approached him, but I'll
21 let her address that.

22 THE COURT: Copies of the motion that he just read?

23 MR. HODGE: Yes, sir, he sent it directly to the Clerk
24 of Court, and, and I'm not sure where it went from there.
25 But it never -- as far as I know, it never made it to me.

1 until I got it from Ms. Cavanaugh.

2 THE COURT: All right. Ms. Cavanaugh.

3 SOLICITOR CAVANAUGH: Your Honor, the Clerk's Office
4 produced a cover sheet that said that they, even though Mr.
5 Givens states, and his, and his motion is dated
6 September 27th, 2018, even though his motion is dated in
7 September, the Clerk's Office did not receive it -- until
8 ten, or at least the date that they say that they received
9 it is October 8th, 2018. So, that would of been last week,
10 and I forwarded a copy to Mr. Hodge since they forwarded a
11 copy to the Public Defender's Office and myself.

12 As far as responding to his motion, obviously there's a
13 lot contained in that motion, and I'm not exactly sure how
14 to respond to, to most of his request. In addition,
15 Mr. Hodge is his attorney of record, and if Mr. Hodge had
16 filed motions, then, you know, we would address those in
17 pretrial today, but Mr. Givens is, is not the lawyer in this
18 case. And he, and he's the one who filed this motion that I
19 am having a hard time following exactly what he's
20 requesting.

21 But I did receive those last week because the Clerk's
22 Office received those last week. I'll be happy to provide
23 you with a copy if, if you want a copy, Your Honor.

24 THE COURT: And, Mr. Hodge, you've been representing
25 Mr. Givens since when?

1 MR. HODGE: Your Honor, I'm not sure of my exact
2 appointment date. I think it was in July of this year. It
3 was -- it was late June or, or mid July, sometime around in
4 there, during which time he was incarcerated at SCDC. He
5 was suppose to be transported -- my understanding was he was
6 gonna be transported to Alvin S. Glenn some time in July.

7 Somehow, I had actually scheduled a visit, and then was
8 told that he would be sent to Alvin S. Glenn. So, I
9 canceled my visit cause I didn't want to go out there if I
10 didn't have to. Then he ended up not getting sent.
11 Something got miscalculated or calculated differently,
12 however the case may be. So, he did get transported to
13 Alvin S. Glenn in August instead of July, and I, I think I
14 met with him shortly thereafter after he was transferred,
15 which I think was near the end of August, Judge, is when I
16 first actually met with him.

17 I had talked to him on the phone I believe on one
18 occasion, maybe two, but it was at least one occasion that I
19 talked to him on the phone while he was at SCDC, and then
20 met him in person as soon as he arrived at, at Alvin S.
21 Glenn.

22 THE COURT: All right. Well, typically, in the Courts
23 in this state, there's no right to what's referred to as
24 hybrid representation. That is, though the, the
25 Constitution of the State provides that anyone accused of a

1 crime has a right to represent himself or be represented by
2 counsel or by both. The Court, Court, in case decisions,
3 have established that, once a person is represented by
4 counsel, then the person does not have the right to file
5 substantive documents on their own behalf, which is that, if
6 the defendant has a lawyer representing him, then all the
7 papers and documents filed by the defendant has to be filed
8 by the lawyer, and not directly by the defendant.

9 So, the, the -- it appears the Solicitor's Office did
10 the right thing in that, if Mr. Givens filed these things
11 claiming these rights, and while, at the same time having a
12 lawyer, then the best the State can do is send those things
13 to, to the lawyer, and let the lawyer respond or agree or
14 disagree with them. I'm not sure the circumstances under
15 which Mr. Givens came to us before me last week was because
16 he wrote us or something.

17 why did, why did we schedule something last week?

18 MR. HODGE: It was just to serve that indictment on the
19 record. The, the new CDVHAN indictment on the record,
20 Judge.

21 THE COURT: All right.

22 SOLICITOR CAVANAUGH: Your Honor, may I add something
23 along those lines?

24 we had brought him over the week prior, October 1st,
25 to be served with that indictment by the, by my

1 investigators, just going to hand it to him, and sign the
2 Affidavit of Service. Mr. Givens refused to accept service
3 at that time, and so my investigator read the indictment to
4 him, and placed it with his belongings.

5 Prior to Mr. Hodge being appointed as his lawyer, I
6 attempted to bring him over in April, when Tracy Pinnock
7 was -- when Ms. Pinnock was his lawyer to serve him with
8 that domestic violence of a high and aggravated nature
9 indictment, but, before -- but because he was banging on the
10 holding cell causing an interruption in the Register of
11 Deeds Office, they transported him back to the Department of
12 Corrections before I even had an opportunity to bring him
13 up, without notifying me that they were going to do that.

14 So, we did make -- I, I submit to the Court that, that,
15 when he was served October 1st, that that constituted proper
16 service. I served his lawyer in July with that indictment.
17 And, as I stated, I did make an attempt in April. However,
18 he caused a scene, and had to be transported back before I
19 had an opportunity. I just wanted to, to clarify that, that
20 service and attempted service was done well before last
21 week.

22 THE COURT: All right. Well, in Mr. Givens reading,
23 he's raised the issue that Former Solicitor Dan Johnson has
24 been charged with various crimes, that the -- that, that
25 somehow or another ties in with his, his case, and his

1 constitutional rights. And he also complains about
2 discovery not being provided him, but all of these -- well,
3 first of all, the issue regarding the former solicitor has
4 no bearing on this particular case. This case is being
5 handled by two other solicitors who have the same authority
6 to prosecute a criminal case.

7 The -- this is not an instance where an indictment was
8 just presented to the Grand Jury. I notice that it was
9 presented to the Grand Jury in April, and the circumstances
10 under, under which the late service was given has been
11 explained. It does not change the substantive facts.
12 They're no new allegations contained in the -- these
13 indictments. Just they may be framed as a, as a -- new
14 offenses, but it all stems from the original incident date
15 of September 20th, 2016.

16 So, all the motions to dismiss the case, based on late
17 indictments and all that, those motions are denied at this
18 time.

19 So, what do we need to do outside the solicitor's
20 presence?

21 Y'all ready to do that?

22 MR. HODGE: I, I think so, Your Honor.

23 THE COURT: All right. So, we're gonna have everyone
24 except law enforcement and Court personnel to leave for a
25 few minutes.

1 (WHEREUPON, the following takes place outside the
2 presence of all members of the Solicitor's Office.)

3 THE COURT: All right. Yes, sir.

4 THE DEFENDANT: Okay. How you doing?

5 THE COURT: Fine.

6 THE DEFENDANT: If it, if it pleases -- excuse me. If
7 it pleases this Honorable Court.

8 I would like to place on record a verbal request to
9 relieve Attorney William B. Hodge of his reputation (sic) of
10 defending me in a criminal proceeding due to the following
11 reasons:

12 Mr. Hodge tried to deceive me believing that, if I go
13 to trial, I have no chance for a not guilty verdict. He
14 stated, once an indictment is true billed, that all evidence
15 needed as far as conviction, which is incorrect. I asked
16 that -- which is incorrect. I ask that, that he challenge
17 the indictment due to Title 17, criminal procedures
18 violations, 17-19-90, 17-19-100, Joseph versus State of
19 South Carolina, 2002, 351 S.C. 551, 571 S.E.2d 280, criminal
20 law, State versus Guthrie, South Carolina, 2002, 352 S.C.
21 103, 572 S.E.2d 309, 71.2, State versus Buckner, South
22 Carolina, 1982, to prepare, to prepare indictment in time to
23 prepare case by defense.

24 My indictments have been true billed under acts of
25 perjury at its fullest. Ms. Kathryn Cavanaugh knows this,

1 and, due to the fact I refuse a ten year sentence because it
2 was later found out the knife was added into evidence for
3 vindictive prosecutor, she later indicted me with the direct
4 indictment, and enhance (sic) of domestic violence of a high
5 and aggravated nature in which dated April term, 2018, but
6 true billed, true billed July 18, 2018. Served
7 October 8th, 2018, under Dan Johnson, who has been charged
8 with, and licensed (sic) suspended for misconduct in office,
9 and embezzlement.

10 Also, kidnapping, possession of a weapon during the
11 commission of a violent crime, assault and battery first
12 degree, armed robbery, all under Dan Johnson, but matter of
13 the issue I have. Tracy Pinnock and I never went in front
14 of judge to have her dismissed, and as of why she was
15 dismissed. I had complaints to as of why I had never had a
16 private investigator, why the tape, excuse me, excuse me,
17 why the evidence subpoena was never turned over, and things
18 of that nature to prove my innocence. And, as of the
19 witness to be speaking to that, I ask public defenders on
20 several different occasions to speak for that.

21 I spoke to Ms. Pringle, who was filling in for Douglas
22 Strikler, who passed away. Last letter I received was dated
23 January 29th, 2018, from Ms. Pinnock stating Judge Lee's
24 orders, which has not been fulfilled as of yet, I haven't
25 spoken to anyone until August 24th, 2018, which was

1 Mr. William B. Hodge, requesting a bond I never receive.
2 Never was present to a bond hearing.

3 The warrants have two different people's names on them,
4 and never served to me. Never present at the bond hearing.
5 Stat preliminary counsel two times, indicted the third time,
6 and I have no notice of why the continuance have happened as
7 of yet. My Fifth and Eighth Amendments were violated, and
8 that is our rule were destroyed, and not filed.

9 I just filed several motions just received due to the
10 fact that any motion that I asked of Mr. Hodge he don't
11 bring forward or has filed. I ask Mr. Hodge to take
12 pictures, and he haven't taken any pictures, and I honestly
13 believe that he's working with the prosecution. Everything
14 that I present to him, he comes back with basically if -- I,
15 I gave him some questions to ask Ms. Cavanaugh where that I
16 wanted him to ask in open court, and he came back -- and I
17 would like to have those back, those questions that I have.
18 He came back in open, open Court with things that he saying
19 that they would be asking just like a, a counter which I
20 really don't trust that.

21 But to continue with going on about this, Mr. Hodge, he
22 takes Ms. Kathryn Cavanaugh statements, and bring them back
23 to me asking me do I have them knowing that I haven't
24 received them cause they was just given to him last week,
25 10/8/2018, to, to redirect me.

1 Next approach. My main problem is him stating you
2 should plead after I told him no trial several times. To
3 put the icing on the cake, he stated we going in front of a
4 judge who loves to speaks (sic) about slavery. I'll bring
5 that up once we -- you are being sentenced basically stating
6 that I don't even have a chance in this case.

7 That's deception prejudice him being biased and very
8 much ineffective. I fear for my freedom with him. I don't
9 have confidence in him. I believe he's working with the
10 State solicitors to obtain an unjust conviction. These
11 things would placed at adversarial process given to a
12 criminal defendant moot before a judicial tribunal
13 (phonetic).

14 For those reasons, I respectfully ask the Court to
15 relieve counsel William B. Hodge. I mean everything I ask
16 of him, Your Honor, is -- he haven't done. It's---

17 THE COURT: So you want to handle it yourself?

18 THE DEFENDANT: If that's the only way I have -- I can.
19 I, I mean this---

20 THE COURT: well, you had Tracy Pinnock, and you didn't
21 like her.

22 THE DEFENDANT: No.

23 THE COURT: And then you got---

24 THE DEFENDANT: Excuse me. Not to cut you off.

25 THE COURT: All right.

1 THE DEFENDANT: It's not that I didn't like her. I
2 asked her one question. See, she made me one offer. She
3 was -- she just up and disappear on her own. I don't even
4 know as of why -- as of yet. I'm still trying to figure
5 why.

6 I asked her why they don't have the funds to obtain a
7 private investigator to ask my witnesses questions, to
8 obtain video camera images, all of, all of the things of
9 that nature. And Ms. Pringle came and speak to me one day.
10 And, next thing I know -- this is beginning of 2018. Next
11 thing I know, I'm trying to steadily get in contact, and I'm
12 writing, and I never received any response back.

13 And my grandmother told me saying that you have a new
14 attorney, which is William B. Hodge. So, I looked him up
15 and it states that he's, on the record, he's a five star
16 attorney. So, I'm like, okay, well, maybe this is pretty
17 good. Then Ms. -- I received a letter from Ms. Pringle
18 stating---

19 THE COURT: Who -- who's a five star attorney,
20 Mr. Hodge?

21 THE DEFENDANT: Yes, Mr. Hodge.

22 THE COURT: Okay.

23 THE DEFENDANT: But he don't do five star work. He
24 hasn't done anything that I asked of him. He actually, in
25 my, my law -- my basic knowledge of law, if you obtain

1 attorney or even if he's given to you, he works for you.
2 The things that you ask, he's there to assist you with. He
3 has his knowledge of it because he went (sic) to school
4 with it, of course. But if I come out here, and let's say
5 well, I think if you speak to Judge Newman about this, this
6 can help, I think, in my innocence -- proving my innocence,
7 and you never go do that to help me, that's a problem.
8 That's a conflict for me.

9 THE COURT: All right.

10 THE DEFENDANT: You know, I don't feel that you have my
11 best interest at heart, and just like everything that I give
12 you, you will take -- I mean you'll come back the next day,
13 and you'll say I was given this yesterday.

14 Like Monday, he was off. Say the trial start Tuesday.
15 He said that he had to go down to Charleston. You gave him
16 time to go down to Charleston, and he caught another piece
17 of paper. It's like everyday pieces of evidence being add
18 on, add on, add on right before trial.

19 I -- this is a case that's been going on since 2016.
20 I've been locked up since 2016 about this same case. So,
21 nothing have changed in the case, but, all of a sudden, you
22 come with a new indictment, which has the term, April term,
23 July 18th, 2018, but it's true billed July 18th, 2018.

24 Okay. I haven't dated Ms. Green in two months. We
25 haven't been -- we haven't dated in two months, but you, you

1 know, if you upset that I don't take an, an -- a plea that I
2 knew I'm not guilty of, basically for vindictive
3 prosecution, and you enhanced an indictment.

4 So, when I bring to Mr. Hodge attention, he -- well,
5 judge is not gonna dismiss that. I'm not asking to dismiss.
6 I'm asking you to challenge it. At least give me a fair
7 chance cause I know, I know this is wrong. I know perjury
8 has been committed.

9 For one, the State's, in the statement here, as far as
10 me not telling you that Ms. Green turned in the knife, and
11 envelope, I did not know. The reports that we were provided
12 do have any mention of Ms. Green bringing in those items at
13 a later date. You will not heard -- the investigator's
14 testimony at the same time during this Schmerber hearing.

15 THE COURT: It's kind of hard, when you're reading, I'm
16 trying to hear -- understand what you're saying, but you're
17 reading, and kind of -- going kind of fast.

18 So, what is it you're saying right there?

19 THE DEFENDANT: This is the -- basically for the, the
20 indictments.

21 THE COURT: Right.

22 THE DEFENDANT: Okay. The statement from Ms. Pinnock
23 stating that Investigator Gonzales turned---

24 THE COURT: Is that the guy who was sitting there?

25 THE DEFENDANT: No, sir, he actually works with

1 Richland County.

2 THE COURT: Okay.

3 THE DEFENDANT: He's an investigator for them. For
4 robbery department I think. He stated, during the Schmerber
5 hearing in 2016, excuse me, 2017, October 2nd, that Ms.
6 Green -- that he had knowledge of Ms. Green bringing in the
7 weapon, and turning it in eight days after the incident.

8 THE COURT: All right.

9 THE DEFENDANT: Okay. But Ms. Cavanaugh, she, the
10 Solicitor, Ms. Cavanaugh, she found out and she knows this.
11 She knows this. And instead of you rectifying the
12 situation, you continue to produce indictments to a Grand
13 Jury to have them true billed.

14 THE COURT: Well, she, she said this morning that the
15 lady turned the things over the next week. When she got up
16 and was telling me what the case is, she said that---

17 THE DEFENDANT: No, this is something different, Your
18 Honor. This is -- this is way before. This is when the
19 first four indictments came out. It's -- cause I didn't get
20 indicted until -- I got locked up January the 16th, 2016.

21 Okay. Bond hearing was 2017. I got indicted August,
22 2017.

23 THE COURT: All right.

24 THE DEFENDANT: Okay. This -- the, the warrants is
25 from October. So, the investigator basically stating

1 investigator statements that, on one report, that the knife
2 was turned over, and found during the scene -- it was found
3 during the scene -- crime of the scene of the crime.

4 Okay.

5 THE COURT: All right.

6 THE DEFENDANT: Now, her, as the solicitor and
7 basically investigator, she sees this.

8 Okay. But then you have the investigator who comes and
9 testified during the Schmerber hearing, I think it was in
10 front of Newman, Judge Newman if, if I'm not -- if I'm
11 correct, that they and Ms. Pinnock asking when was the knife
12 turned over, and he testified and said the knife was turned
13 in October 6th, 2016, which was eight days later. That it
14 was not found on the crime scene.

15 So, if you notice, that's an act of perjury when you
16 produce it to -- cause you testified under oath that this is
17 true, this is true facts, and you producing it to be true
18 billed to the Grand Jury, but---

19 THE COURT: well, it wouldn't be perjury by the
20 solicitor. You mean perjury by the person who's testifying.

21 THE DEFENDANT: Yeah, the investigator and---

22 THE COURT: The investigator.

23 THE DEFENDANT: ---actually the victim. The victim and
24 the investigator.

25 THE COURT: The victim testified at the same hearing?

1 THE DEFENDANT: She testified during one hearing that I
2 asked Mr. Hodge to get for impeachment that I should have
3 received that yet either during the restraining order
4 hearing of April of this year that she never received the
5 knife, and that I never had a knife. She did testify that.
6 And that was -- that's a, that's another problem I have.

7 So, in all, in honesty, this case is not prepared for
8 trial, but I mean if I'm being forced to go forth because --
9 you're suppose to be innocent until proven, until proven
10 guilty, but, in this state, I often see a lot of times you
11 guilty until proven innocent. And I feel it's unjust and
12 unfair.

13 THE COURT: Well, all those contradictions that you're
14 mentioning, all of that can be used through
15 cross-examination in the presence of the jury.

16 THE DEFENDANT: Yes, I do know and understand that,
17 sir.

18 THE COURT: The, the question is whether or not you're
19 gonna do that cross-examination or Mr. Hodge is gonna do
20 that cross-examination.

21 THE DEFENDANT: I want Ms. Pinnock back cause I never
22 actually wanted her to be dismissed, that I don't see how,
23 why she---

24 THE COURT: Well, she might of fired you.

25 THE DEFENDANT: I -- so, why didn't I go in front of a

1 judge or have that heard on record---

2 THE COURT: I don't---

3 THE DEFENDANT: ---or receive any notifications?

4 THE COURT: ---what happened to her. I don't know.

5 Do we have orders concerning Ms. Pinnock being
6 relieved, Madam Clerk?

7 Do you have a file -- any papers on this case?

8 THE DEFENDANT: See, it's a---

9 THE COURT: Is there a Court file?

10 THE CLERK: In criminal records, Your Honor.

11 THE COURT: It should be with the -- the Clerk's Office
12 should bring us a file. We shouldn't find files.

13 (Pause.)

14 THE COURT: We need the Court's file, the Clerk's file.

15 THE CLERK: I'll get it.

16 THE COURT: Whenever there's a trial, it should be the
17 Clerk's file, which should contain the indictments against
18 people. You know, they shouldn't come from the solicitors.
19 The clerk keeps that. Otherwise, what's the function they
20 serve. Nothing. They're just here. Just sitting here
21 doing nothing.

22 Mr. Hodge, anything you want to respond concerning any
23 of this?

24 MR. HODGE: Certainly, Your Honor. I'll try to go
25 piece-by-piece. I didn't -- it's hard to keep up with the

1 letter.

2 But as far as working for the prosecution, I certainly
3 do not. Currently -- I have in my previous career, eight,
4 nine years ago, but I do not now. I have not done anything
5 in the better interest of them.

6 I have certainly talked to Wesley on a number of
7 occasions about this case, and about what he's facing. We
8 talked about the facts that are up -- that he is up against.
9 We talked about the plea offers that have been made, and,
10 and how they would provide of benefit had he -- if he
11 accepts them versus if he is convicted of what he's charged
12 and indicted for going forward to trial.

13 I have told him that it was his decision from the
14 beginning. I have certainly given him my opinion on, on the
15 situation. I told him that he is capping his, his possible
16 sentence versus, you know, nine versus ten is a huge
17 difference. So, we've certainly talked about that.

18 I don't, I don't think that I have deceived him, and
19 certainly not intentionally deceived him in any way. The,
20 the comment that he made regarding me saying something about
21 that will happen at the sentencing, that, that I certainly
22 did say yesterday. What I said was he wanted me to attack
23 or use the previous offers in open court, and I told him
24 that that's not something that we address in front of a
25 jury, but it is certainly something that can be brought up

1 at sentencing.

2 I didn't mean if you -- I didn't mean he was gonna be
3 convicted and be sentenced. I meant if he was convicted,
4 and we had a sentencing hearing, that, at sentencing, that's
5 when I would be able to provide any information, any
6 mitigating factors, that may affect Your Honor's decision on
7 what sentence to give him if he was convicted.

8 we have certainly talked about the complications in the
9 case. I've certainly -- you know, there are issues, and I
10 think I mentioned that I have a couple of motions. The
11 knife that he's mentioned is one of those motions. There
12 was DNA obtained from the knife. That's another part of
13 that motion to suppress those two things based on the chain
14 and other things.

15 I also have the motion to quash the indictment for the
16 improper dates that are on there, for the untimely fashion
17 of it, along with the fact that it -- and, Judge, I don't
18 say this lightly, and I've actually -- I, I gave Ms.
19 Cavanaugh a heads up that it may be at least mentioned or
20 brought up cause I wasn't sure how the hearing would go, but
21 it, it can appear sort of malicious or, or I don't want to
22 say vindictive, but in response to the rejection of an offer
23 because this indictment came in April. He rejected the six
24 years in February, and then, all of a sudden, now he's hit
25 with another violent, most serious CDVHAN that could of been

1 indicted any time over the last 18 months, and it was -- or
2 20 months, and it wasn't.

3 So, that, that was certainly part of what I was -- what
4 my plans to argue were. And I, you -- again, I, I hate to
5 make those accusations. That being a defense lawyer and
6 having to work with that side all the time, I certainly
7 don't like to accuse anyone of doing anything unethical.
8 And I'm sure she would have a very vocal response as to my,
9 my argument. But that was certainly two of the things that
10 I was gonna bring up.

11 THE COURT: The original indictment was for assault and
12 not -- assault and battery third?

13 MR. HODGE: Assault and battery first degree.

14 THE COURT: First degree.

15 MR. HODGE: Yes, sir.

16 THE COURT: Which carries up to --?

17 MR. HODGE: Ten.

18 THE COURT: Ten years.

19 MR. HODGE: Yes, sir, and it's not an 85 percent. So
20 --.

21 THE COURT: And, and it's -- which means that judge --
22 as if they're strangers, and he assaulted. Not strangers,
23 but not---

24 MR. HODGE: Non---

25 THE COURT: Based on them having lived together.

1 MR. HODGE: Yes, sir.

2 THE COURT: So, the fact of them having lived together
3 increases the possibility -- well, not only that, it makes
4 it a domestic violence, but it also -- the; the offense from
5 being a regular assault to being a high and aggravated
6 assault.

7 MR. HODGE: Correct.

8 THE COURT: Of course, in the end, when the jury
9 deliberates, they typically will have the option of choosing
10 which one it is.

11 MR. HODGE: Yes, sir.

12 THE COURT: I mean the, the jury might decide it's as
13 low as assault third degree depending on -- which is a 30
14 day assault. Depending on the extent of the injuries.

15 So, all of that is a -- on the level of assault, the
16 indictment is one thing, but that doesn't eliminate, in most
17 instances, the jury from considering a lower level of
18 assault. Now, the -- as far as the high and aggravated
19 nature, nature part of it because the jury -- of course, I
20 think, and, and the statute does have some confusion between
21 criminal domestic violence high and aggravated nature, and
22 assault and battery first degree.

23 Is that where we were looking at last?

24 The same language in the statute?

25 (Pause.)

1 THE COURT: Yeah. Yeah, assault and battery high and
2 aggravated nature versus assault and battery first degree.
3 The language of the statute seems to be about the same. And
4 so it's -- there's some, some -- it's a confusing statute,
5 needless to say, but, typically, when they're different
6 levels of assault, the jury is generally given the option of
7 deciding what assault was it if he's guilty of any kind of
8 assault.

9 So---

10 THE DEFENDANT: I, I have a question for that, Your
11 Honor.

12 THE COURT: Yes, sir.

13 THE DEFENDANT: Okay. Well, if, if you're willing to
14 drop the possession of a weapon with intent to violent
15 crime, why would you come back with the same domestic
16 violence of a high and aggravated nature, and said that the
17 defendant did use a deadly weapon, the same weapon?

18 That's contradiction itself.

19 I mean that's -- who does that?

20 THE COURT: Well, the jury has to evaluate every charge
21 separately, and they cannot find you guilty of possession of
22 a weapon during a violent crime unless they find you guilty
23 of a violent crime. And, of course, they're a number of
24 violent crimes that you're charged with including kidnapping
25 --.

1 THE DEFENDANT: Armed robbery.

2 THE COURT: The armed robbery.

3 THE DEFENDANT: First degree assault and battery.

4 THE COURT: Yeah, criminal domestic---

5 THE DEFENDANT: Criminal domestic violence.

6 THE COURT: ---violence high and aggravated. Any of
7 those are violent crimes. Assault and battery first degree,
8 I don't -- is that a violent crime?

9 I don't know if that's a violent crime or not.

10 THE DEFENDANT: It is violent.

11 THE COURT: It is a violent crime?

12 THE DEFENDANT: Yes, sir.

13 MR. HODGE: It's not an eighty percent---

14 THE COURT: Okay. Okay. Yeah, but, you know, you make
15 some interesting points. I'm not here to defend the
16 Solicitor's Office, or the way they decide to prosecute any
17 cases, and, and maybe some of the issues you raise, and some
18 of the issues Mr. Hodge raises may be valid. It's,
19 obviously, should be frustrating to anyone accused if, if,
20 if they keep changing the charges. Particularly leading up
21 to a trial.

22 The whole issue, you know, is whether or not -- I mean
23 you're -- you have accusations against the Solicitor's
24 Office, and that you believe that Mr. Hodge should be able
25 to solve all the problems that you have.

1 THE DEFENDANT: You say that he will?

2 THE COURT: Pardon?

3 THE DEFENDANT: Excuse me. You say that he would be
4 able to?

5 THE COURT: No, it's as if your expectation is that he
6 should be able to solve all your problems.

7 THE DEFENDANT: No, I expected him to do the work.

8 THE COURT: That's not the role of a lawyer. I mean
9 the lawyer -- he, he may be as frustrated as you are with
10 trying to deal with these issues. I'm sure he would love
11 the solicitor to offer you something better than they're or
12 less than they're offering. I'm sure he will be happy to
13 earn his five star rating by, by the end result of this case
14 being that you go home rather than going to prison, but it's
15 not -- all these things are not within his control.

16 He -- he's, he's, he's hamstrung to a certain degree
17 just as you are. That is he can plead your case. He can
18 try to help you. But many results he doesn't control. He's
19 a lawyer, but he, he, he -- it's not -- you know, that's the
20 nature of the process. He's sitting there helping you, and
21 you have the whole other side of the table against you.

22 So, you know, I see a lot of frustrated defendants
23 thinking that the lawyers are suppose to really work magic
24 on their behalf. And they want to -- I'd, I'd say 50
25 percent of the cases we do in here, we have these kind of

1 hearings where the defendant says well, my lawyer should of
2 been able to do this. My lawyer wasn't able to do that. My
3 lawyer should of been able to work this out for me, and
4 they're sort of upset with the lawyer because the lawyer
5 hasn't been able to do that.

6 So, in about 50 percent of the cases we have these same
7 kind of hearings before trial, and, in some of them, the
8 people end up representing themselves. I think the last two
9 trials I had here were defendants who ended up representing
10 themselves. One guy convicted of raping an 85-year old
11 lady, and he got -- how much -- how many years I gave him?

12 THE LAW CLERK: Life without parole.

13 THE COURT: Life without parole, and we had the man
14 last week.

15 THE DEFENDANT: Eighty years old?

16 THE COURT: He paid a hundred thousand dollars to the
17 lawyers, and fired the lawyers. Said I'm not satisfied. I
18 called their office, and they won't talk to me. They put me
19 on hold. They won't take my calls. They won't come and see
20 me. So, he fired those lawyers after he paid them \$100,000,
21 and he ended up with 80 years in prison. And he's 66, and
22 got to do 80 years.

23 So, you know -- so, we deal with this all the time,
24 and, in most instances, it -- those two people, I'm sure, if
25 they had the chance to turn back the hands of time---

1 THE DEFENDANT: They would.

2 THE COURT: ---they would. They'd say I sure would of
3 kept that lawyer cause I really messed that up myself. I
4 got life in the one, and I got 80 years in the other. And,
5 you know, it's a tough choice. But you have a
6 Constitutional right to represent yourself. But you have to
7 understand the dangers of self-representation to understand
8 that a lot of stuff that you think you know you really don't
9 know that Mr. Hodge knows. He didn't get that gold star or
10 five star rating for nothing, you know, and I've dealt with
11 him over the years, and he's done a good job.

12 THE DEFENDANT: Then I---

13 THE COURT: He's a, he's a quiet and calm lawyer.
14 Sometimes people want lawyers to make a lot of noise, and
15 put on a show for them. I -- you know, and, and the end
16 results may be the same. I don't know. I don't know what
17 the end result will be in your case.

18 I know that you're charged with robbing a girlfriend or
19 ex-girlfriend of the proceeds from Murphy's Gas Station,
20 and, you know, I had no clue what you were accused of doing.
21 I go to that -- well, I don't go to that gas station cause
22 we have a Sam's further up, and the gas is a little cheaper,
23 but I went to that Magnolia's Buffet just the other day just
24 to see what the food was like.

25 And they have a sushi bar, and they even have a -- have

1 it where you can pick a few meats and -- meat and vegetable.
2 Then you put them in the two separate pans, and give them to
3 the chef, and they give you -- come out with a stir fried
4 dish. I didn't get that the other day.

5 So, I know -- I know the area that you're talking
6 about. I know -- I been in that station many, many times.

7 THE DEFENDANT: Yes, sir.

8 THE COURT: And, and, you know, you're charged --
9 you're accused of taking the money, taking Wal-Mart's money,
10 Murphy's Oil money from the girlfriend, and the jury will be
11 very curious about what really happened on that day. They
12 may believe her. They may believe you. But it'd be their
13 choice. And we're waiting for them to come fill those seats
14 so you-all can pick 12 people, and believe you me, these
15 jurors look very closely at these cases.

16 We had a case yesterday where the guy was accused of --
17 we didn't have the case. Judge Curtis. He was accused of
18 kidnapping his girlfriend, and raping his girlfriend. He
19 said it was consensual. First the jury -- the judge threw
20 out the kidnapping, and the judge reduced the first degree
21 sexual assault to third degree. And they, they were here
22 all last week, except for Thursday when we were closed, and
23 the jury finished up yesterday. Found him not guilty. He
24 was facing 30 years on kidnapping, thirty years on rape.
25 The jury found him not guilty.

1 So, the jury, the jury will listen to this case, and
2 they have to be convinced, beyond a reasonable doubt, that
3 you're guilty. Otherwise, they have to find you not guilty.

4 THE DEFENDANT: I understand that---

5 THE COURT: And, and---

6 THE DEFENDANT: ---Your Honor.

7 THE COURT: And I'm saying it now. But, as I told that
8 fellow last week who was standing right there where you are,
9 who wanted to fire those lawyers, I asked him what he --
10 whether he heard about what Abraham Lincoln said.

11 You, you, you know the saying Abraham Lincoln said a
12 person who represents themselves has a blank for a lawyer?

13 That's a saying that goes way, way back. Now, you're a
14 young fellow. So, you might not of heard of it.

15 THE DEFENDANT: I have epilepsy. I'm 37. I'm not that
16 young, sir.

17 THE COURT: Oh, you're still, you're still a young
18 fellow at 37. A person who represents himself has,
19 Abraham -- this is Abraham Lincoln. A person who represents
20 himself has a fool for a lawyer. That's a well, well known
21 saying.

22 Now, that doesn't mean that you don't have the right to
23 represent yourself because you do, but people have lawyers
24 for a reason. And, as I said, rarely do I have anyone
25 coming in here says I love my lawyer, I'm totally satisfied,

1 because you're in a stressful situation. You're locked up.
2 You been locked up. You thought you were gonna get out, but
3 didn't get out. Now you're facing all this other time.

4 So, I know you're stressed out. You know, got a lot of
5 stress on you, and suspicious and everything of a lot of
6 people. Dan Johnson, the solicitors, the clerks, everybody,
7 the juries. You think they already decided you're guilty.

8 THE DEFENDANT: No, sir.

9 THE COURT: So, you know, you're under a lot of stress,
10 but, you know, you're at a moment in time right now where
11 you have a free lawyer, Mr. Hodge, and he's here to help
12 you. You will still be participating by trying to get him
13 to ask people this, and do this, and do that, but he's here
14 to assist you. You're like his overseer. You're his
15 foreman, his ramrod, his whatever.

16 I mean he might do some of what you want him to do or,
17 or he might tell you to shut up. I don't know what he might
18 tell you. But, if you don't want him, he'll be happy to go.

19 THE DEFENDANT: I'm sure he will. My frustration is---

20 THE COURT: He'll---

21 THE DEFENDANT: ---nothing in life is free for one.

22 Second of all, what's ordained -- preordained to you is
23 gonna come to you anyway. And for me to be happening, just
24 find out piece-by-piece on a day-by-day time, is not giving
25 me proper preparation for a trial that's scheduled. As I

1 stated before, like this last indictment just came on the
2 8th. From last week until today, it's not enough time to
3 prepare for trial especially---

4 THE COURT: That may be a very valid point. I'm sure
5 Mr. Hodge, he has that same point. I mean that's a
6 different issue. That's not being ready for trial is one
7 issue. Firing the lawyer is another issue.

8 You know, you mentioned that Judge Lee told them to try
9 the case, and to press on and ahead, and, you know, by a
10 certain day. I don't -- yeah, they're -- there's no --
11 nothing in the file here cause I guess that could of been a
12 verbal order or something, but nothing in the court file
13 that speaks to what you said that Judge Lee said, but I
14 assume -- you know, I accept that as being true and that---

15 THE DEFENDANT: I have it written right here, sir.

16 THE COURT: well, is that a letter---

17 THE DEFENDANT: That's---

18 THE COURT: ---from the judge?

19 THE DEFENDANT: That's from the -- Ms. Pinnock actually
20 from Judge Lee's order, stating Judge Lee's order.

21 I mean me just finding out that he was a, a prosecutor,
22 could I just ask him how long was he a lawyer to be a
23 prosecutor nine years, and then formerly be a lawyer?

24 Like, wow, that's another low blow.

25 THE COURT: well, guess how long -- how many years I

1 was a prosecutor?

2 THE DEFENDANT: How many?

3 THE COURT: Seventeen. I was a defense lawyer five
4 years, a prosecutor 17 years.

5 THE DEFENDANT: Before you become a judge?

6 THE COURT: And then became a judge for 17 years.

7 So, you know, what you use to be has no bearing on what
8 you currently are.

9 Okay. This is from Tracy Pinnock. Per Judge Lee's
10 order today in court, I'm writing to let you know that I've
11 spoken to the solicitor on you (sic) case about a possible
12 resolution regarding the assault. I spoke with her on
13 January 9th, 2018, and expressed to her that it was my
14 opinion, based on the evidence in your case, that the best
15 resolution would be either assault and battery first degree
16 or second degree.

17 At that time, she informed me she would make an
18 appointment to meet with Ms. Green, and get back to me on
19 whether my proposition would be something she would be
20 willing to do. I checked in with your solicitor on
21 January 22nd to see when the meeting with Ms. Green would
22 be taking place because I needed to make an appointment time
23 to come see and update you. I was initially told that Ms.
24 Green was scheduled to come on January 25th, 2018, at
25 1:00PM. However, I received a second email from the

1 solicitor letting me know that Ms. Green, Green had a
2 scheduling conflict, and that the meeting would take place
3 on February 2nd, 2018.

4 After I am updated by the assistant solicitor on your
5 case, following Ms. Green's meeting, I will set up -- set an
6 appointment to come and update you as soon as my schedule
7 allows. I'm also emailing requesting an approximation on
8 the status of the DNA results. I have been told that we
9 should hopefully have the results from the testing in two to
10 three weeks. If there's anything else that you have a
11 question about between now and when I get down there to
12 speak with you, please let me know.

13 So, that's her letter. So now they're offering, again
14 at this time, assault and battery first degree. So, so,
15 she's back to what Ms. Pinnock was trying to get her to
16 offer, which is assault and battery first degree.

17 THE DEFENDANT: See, but I come with -- they have the
18 indictment of criminal domestic indictment she just -- of
19 violence she just served me last week.

20 THE COURT: Yeah. Well, that's -- I understand, but,
21 you know, we can't discuss the merits of that without the
22 solicitors present, but this is not specifically referenced
23 a -- what Judge Lee's order was, and, you know, we, quite
24 often, say well, you must try the case within 90 days or the
25 defendant has a right to a bond or something like that or he

1 can get out on a PR bond if it's not tried.

2 Are you still in prison because of this case or --?

3 THE DEFENDANT: I'm actually be -- my prison time was
4 maxed out June 24 of this year, but I'm in Alvin S. Glenn
5 Detention Center with -- my bond was denied initially from
6 the start for this charge that I was never present. But
7 every time I asked for a bond, I never went up. I asked
8 plenty of motions to go up. I never had one. So, I'm
9 still---

10 THE COURT: Okay.

11 THE DEFENDANT: ---in the county jail, yes, due to this
12 charge.

13 THE COURT: All right. So, so, you know, if you're not
14 guilty, and we have this trial, you'd be home by the
15 weekend. You, you'll be -- you'll be got -- you'll be at
16 home by the weekend if we have a trial, and you're found not
17 guilty.

18 THE DEFENDANT: Yes, sir.

19 THE COURT: But if you're not ready for a trial, and
20 you're trying to get it postponed, the State is ready --
21 they're ready to go right now, and that -- you know, we have
22 a jury list right here. They're ready to come in for us to
23 deal with this case. If, if, you know, if you-all trying to
24 get it postponed because the information is late coming in,
25 I'll have to have the solicitors come in, and hear, and hear

1 what everyone has to say on that issue as to whether the
2 case should not go forward today.

3 But on the issue of, of whether or not Mr. Hodge is
4 gonna represent you, where do you stand on that at this
5 moment, Mr. Givens?

6 Now, my advice to you, you listened to me the first
7 time, is that you keep the lawyer, and let him, let him
8 represent you. Have him assist you. That's my advice
9 because he is in a much better case to -- situation to
10 represent you then you are to represent yourself because the
11 first thing I hear people who represent themselves do is
12 that, as soon as you go to ask the first person a question,
13 you'll say now, now I'm in the jail, and, if I wasn't in the
14 jail, you know, such and such or, or you had me locked up,
15 and you know I've been in prison. And, you, you know, you
16 bring your -- you bring your character in evidence, and the
17 jury starts saying what kind of guy is this, you know.

18 So, a -- the reason you have lawyers is to protect you
19 from your character being made an issue in the case, and
20 that's one of the benefits of a lawyer. And the other is
21 that he, he'd tell the jury that there's no evidence that
22 you're guilty, and that they should find you not guilty.
23 You have a handsome fellow there speaking up for you saying
24 you-all should find him not guilty. So, you have someone
25 vouching for you, your lawyer, rather than you trying to do

1 it yourself, but it's up to you.

2 THE DEFENDANT: Well, let's proceed, Your Honor.

3 THE COURT: All right. You gonna keep him?

4 THE DEFENDANT: Yes, sir.

5 THE COURT: All right. Very good. So, you're still in
6 the case, Mr. Hodge.

7 MR. HODGE: Yes, sir.

8 THE COURT: All right. So, we need those solicitors
9 back in here now.

10 (WHEREUPON, the following takes place within the
11 presence of the solicitors.)

12 THE COURT: Mr. Hodge, do you know how you ended up
13 replacing Tracy Pinnock?

14 MR. HODGE: Your Honor, from what I can tell is that
15 this isn't, this isn't the first time it's been done this
16 way. But I think Mr. Givens and Ms. Pinnock may of had a
17 disagreement, and they essentially just put it in the
18 conflict pile, and contacted me. May -- there's no
19 codefendant or anything. So, obviously, there's no---

20 THE COURT: But---

21 MR. HODGE: ---conflict that way. So, I assume that's
22 the only way that I got it was cause I, I know the motion to
23 relieve was not -- I don't believe one was filed. I don't
24 know that for facts. It's -- sometimes I'm not privy to
25 that, but---

1 THE COURT: All right.

2 MR. HODGE: ---my understanding is it was a
3 misunderstanding or disagreement, and---

4 THE COURT: Yeah, sometimes everyone's under stress,
5 including the lawyers.

6 THE DEFENDANT: A motion was filed, but it was filed by
7 me, sir. It had---

8 MR. HODGE: Okay.

9 THE DEFENDANT: ---cited no merit.

10 THE COURT: Okay. I've got you.

11 All right. So, Mr. Hodge is still on the case, and
12 we're ready to press on. There's -- and Mr. Hodge has
13 raised an issue regarding the lateness of this new charge,
14 and, and an issue with dates regarding this domestic
15 violence of a high and aggravated nature indictment.

16 The indictment says the Grand Jury convened April
17 10th. Grand Jury convened April 10th. And, on the
18 back, says Court of General Sessions, April time, 2018, and
19 then it indicates the true bill of the indictment on July
20 the 18th.

21 It's -- Mr. Hodge.

22 MR. HODGE: Your Honor, and that, that's really the
23 date issue obviously. I'm not sure -- and I know that this
24 is an -- amended. So, I don't know if the original was
25 presented in April, and then she made changes and

1 resubmitted it in July. But I know that this is the copy
2 that was served on us last week, and the copy was in the
3 Clerk's folder. And it has April term of Grand sess --
4 Grand Jury session, and then July true billed.

5 I assume they didn't deliberate for two months on, or
6 three months, on, on the -- what was presented to them in
7 April. But, again, that's, that's---

8 THE COURT: Was the same ground---

9 MR. HODGE: ---that's the date issue.

10 THE COURT: Was is it the same Grand Jury?

11 MR. HODGE: I assume so. I think -- I guess they don't
12 change until January, I believe.

13 THE COURT: well, I don't know. Richland---

14 MR. HODGE: But I don't know that. They may not of all
15 been there.

16 THE COURT: Richland has, Richland has so many cases.
17 I believe they switch out after six months.

18 MR. HODGE: I'm, I'm, honestly, not familiar enough
19 with how, how it's done over here.

20 THE COURT: well, Mr. -- I'll just -- just to find out,
21 Mr. Truett, the, the Grand Jury, how long do they serve in
22 this county?

23 THE CLERK: Six months, Your Honor. Except for the
24 holdovers. So, it's not -- some of the holdovers do a year.
25 Most of them do only six months.

1 THE COURT: And they start in January to June?

2 THE CLERK: Yes, Your Honor.

3 THE COURT: All right. Thank you.

4 All right.

5 MR. HODGE: So, it would of been obviously two
6 different Grand Juries if one was then presented in April
7 versus presented in July I guess. I just don't know.
8 That's my, that's my question. That's one that Mr. Givens
9 had, and I couldn't answer it for him that why it says April
10 term, and has April 10th when it's presented, but then was
11 true billed July.

12 THE COURT: All right. Ms. Cavanaugh.

13 SOLICITOR CAVANAUGH: Your Honor, as I stated at the
14 beginning, this is -- the domestic violence of a high and
15 aggravated nature was originally presented to the Grand Jury
16 in the April term. April, 2018 term. I amended it to
17 include an additional element of domestic violence of a high
18 and aggravated nature, which is that, during the commission
19 of the domestic violence, there was an Order of Protection
20 in place because he did have there -- while I determined,
21 later, he did not have an Order of Protection in place
22 directed towards the victim, of course, the language reads
23 or as -- so, it's not -- it's just one of the elements.

24 THE COURT: So, you have two indictments for criminal
25 domestic violence of a high and aggravated nature?

1 SOLICITOR CAVANAUGH: Yes, Your Honor. And one was
2 amended, and it was amended at the July, 2018 Grand Jury.

3 THE COURT: Of course, it doesn't, it doesn't say
4 amended indictment. It --.

5 SOLICITOR CAVANAUGH: Well, Your Honor, at, at the very
6 top of the front page under the indictment number, it does
7 read amended.

8 THE COURT: Oh, yeah, I'm sorry. It does say that.
9 I'm sorry.

10 SOLICITOR CAVANAUGH: So, I made sure, when I, when I
11 served the Defendant both times, in October -- on
12 October 1st, and October the 8th, and when I emailed
13 Mr. Hodge the indictment before then, I, I did attach the
14 amended indictment, and---

15 THE COURT: well, did, did he have the original
16 indictment for domestic violence high and aggravated nature?

17 SOLICITOR CAVANAUGH: Yes, Your Honor. I do have a, a
18 copy of it.

19 THE COURT: All right. Just -- I have the amended one.
20 So, this one.

21 All right. well, these are two separate acts by the
22 Grand Jury. One where the Foreperson Wages signed the true
23 bill on April 10th, 2018, and it's -- and then that
24 indictment was amended on July 18th, 2018. Signed by a
25 separate, a different foreperson, Allen. So, so, we, we

1 have a, an indictment that was amended.

2 So, the State has explained what happened with respect
3 to those -- one indictment being amended at a separate term.
4 That clarifies it at least as to me.

5 Yes, sir.

6 MR. HODGE: Yes, sir, that certainly explains why the
7 April term was left on the amended indictment. I, I did not
8 see the original indictment, I guess, until today because
9 the one that was presented in April, and true billed in
10 April, I didn't realize that it had been true billed twice.

11 I guess my question would be, and I only bring this up
12 because it has become a hot button issue, is was it
13 re-presented to a, a new Grand Jury, and they gave their own
14 determination of the true billed, or was it simply taken in,
15 and said we added this, and, and stamped true billed with
16 the new signature on it?

17 But that's obviously my, my concern with it---

18 THE COURT: Yeah.

19 MR. HODGE: ---is, is how is that, how is that process
20 handled, and if I say I, I don't know that, I have a record
21 of that question. But that would be my concern on that.

22 THE COURT: Yes, ma'am.

23 SOLICITOR CAVANAUGH: And, Your Honor, Investigator
24 Gonzales went into the Grand Jury, and presented the
25 indictment, the, the original indictment that was presented

1 in April, and then the amended indictment that was presented
2 in July. He went in to the Grand Jury, and gave the
3 probable cause both times.

4 THE COURT: Is this Investigator Gonzales here?

5 SOLICITOR CAVANAUGH: Yes, Your Honor.

6 INVESTIGATOR GONZALES: Yes, Your Honor.

7 THE COURT: All right.

8 SOLICITOR CAVANAUGH: Resulting in the true bill
9 indictment.

10 THE COURT: All right. Well, I see the two. One is --
11 the second one references that there was an Order of
12 Protection in existence. It said this occurred in the
13 process of violating an Order of Protection.

14 SOLICITOR CAVANAUGH: And, Your Honor, just to clarify,
15 I just wanted to make sure the entire language of the
16 statute was included in the indictment. That was the
17 purpose for the amendment. There is an or separating each
18 element. It was determined that, even though he had -- even
19 though he was wanted on domestic violence charges in
20 Orangeburg, they weren't served on him until after this
21 incident.

22 THE COURT: Yeah, and the Defendant's complaint is that
23 he was arrested in September of 2016, and here, two years
24 later, this is still being presented to the Grand Jury, and
25 last minute, and he got a copy of it last week even though

1 he refused to accept it, according to the State, earlier.
2 well, in April, but it was changed anyway in July.

3 So, the, the question is whether that justifies a
4 continuance or whether everybody's ready to go.

5 MR. HODGE: And, Your Honor, I don't know if this is
6 the appropriate time to bring up the other conversation that
7 we've had regarding this indictment, which is a more
8 serious, more violent crime, carries up to 20 years versus
9 the original A&B first, which carries up to ten, that was
10 what was indicted in August of 2017. So, some nine months,
11 I guess, or, my math is terrible, nine months roughly after
12 the original indictments, and after Mr. Givens had rejected
13 a plea offer on the original indictments, a much more
14 serious, another most serious violent crime was added as a
15 direct presented indictment some nine months after -- I
16 guess 18 months after the actual incident. Nine months
17 after the original indictments.

18 So, that was an -- that was another concern that, that
19 we had regarding the indictment was just the timing of it I
20 guess.

21 THE COURT: Yeah, Former Chief Justice Toal had that
22 same concern about retaliatory indictments, which she
23 addressed in one of her -- one of the cases pending here.

24 Any issue on that, Ms. -- response on any of that, Ms.
25 Cavanaugh?

1 SOLICITOR CAVANAUGH: Well, Your Honor, there is a, a
2 slight difference in those two circumstances, which I'll get
3 to. The reason that we -- Investigator Gonzales originally
4 charged him, along with armed robbery, kidnapping,
5 possession of a weapon during a violent crime, he charged
6 him with assault and battery in the first degree because of
7 the fact that an assault occurred during a robbery. A
8 criminal domestic violence statement from the victim was
9 done on scene.

10 when I met with the victim, I realized that they had
11 cohabited for several years. So, clearly this qualifies as
12 a domestic violence situation. When it was apparent that we
13 were not going to be able to resolve this via plea, I wanted
14 to make sure that, when we went to trial, that the
15 appropriate charges would be presented to the jury, which is
16 why the criminal domestic violence of a high and aggravated
17 nature, which always fit the circumstances of this case, was
18 presented.

19 In a -- the distinction between the situation that you
20 just referenced with Judge Toal, and the case that was
21 pending in our office last year is that Mr. Givens, in this
22 case, was already facing most serious violent crimes. He
23 was already facing a mandatory minimum of ten for armed
24 robbery, and up -- which carries up to 30, as well as
25 kidnapping, which also carries up to 30.

1 So, domestic violence of a high and, high and
2 aggravated nature carries up to anywhere from zero to 20
3 years. He was already facing that penalty with what he was
4 originally arrested and indicted for.

5 THE COURT: All right.

6 SOLICITOR CAVANAUGH: So --

7 THE COURT: Well, I find no new circumstances are
8 presented. The same factual scenario existed now that
9 existed on September 28th, 2016. So, I deny the motion to
10 quash the indictment based on it, it late amended.

11 MR. HODGE: Thank you, Your Honor.

12 THE COURT: All right. Anything else before the jury
13 comes?

14 MR. HODGE: Your Honor, I will just -- I will, after
15 talking with my client after we had our closed door
16 discussion, and addressing some of these issues, and hearing
17 some of the issues he has with me, I believe I, I would be
18 remiss. He is asked me to request a continuance for more
19 time to discuss this matter with me, and to review, you
20 know, on the, the new indictment, and any evidence that has
21 been turned over during the preparation for trial.

22 Some of the statements I think that, that he, he was,
23 was referring to earlier are the statements or, or
24 investigative notes, for lack of a better term, preparing
25 for trial that Mr. Cavanaugh has provided to me regarding

1 expected witness testimony, and things like that.

2 There is the jail call that she referenced earlier that
3 was not brought to my attention, and I may -- I don't think
4 I have those on a disk, but that one was brought to my
5 attention yesterday, and have not had a chance to review
6 that with Mr. Givens. There was -- I'm trying to remember
7 if there was any new -- I think there may of been an amended
8 CAD report from the 9-1-1 calls and all that stuff.

9 All those things have obviously come in preparation for
10 this trial. I will just say, Judge, that, you know, this
11 trial date was not something that, that was a date certain
12 or something that we had agreed upon in advance. I was
13 essentially notified the week of the, the 20th,
14 September 20th, or the week before that it was gonna be
15 tried on October 8th. And then, before I could even
16 respond or get anything worked out with Ms. Cavanaugh, she
17 then told me it was gonna be October 15th, and that was
18 the date that, that we have been operating on.

19 Obviously, they brought him over on the 1st to serve.
20 He claims, obviously, you know, ineffective service, but
21 we've already addressed the indictment issue. So, that --
22 under those circumstances and based on what I've been
23 hearing today, I feel like I, at least, need to ask the
24 Judge for some more time to review this case with my client,
25 and to prepare him and me to make sure that we're on the

1 same page when it comes to trial.

2 As you're well -- I mean, as you know, Judge, as you've
3 gone over with him, he is facing some very, very serious
4 charges, and I want there to be no doubt in his mind that he
5 is ready, and that I am ready to go forward with this free
6 of mistakes.

7 So, based on all that, Judge, I would, I would make
8 that motion.

9 THE COURT: All right. By the State.

10 (WHEREUPON, no response was given at this time.)

11 THE COURT: Response by the State.

12 SOLICITOR CAVANAUGH: Your Honor, I think adequate
13 notice of trial was, was given. The discovery that -- I
14 mean, as he stated, I relayed to him that I was gonna call
15 this case in October, in September. That's well within --
16 well before ten days before the trial.

17 As I have prepared for trial, I have turned over minor
18 discovery that, that I've become aware of as I prepared,
19 which includes any sort of statement that -- any witness
20 statement that has not give (sic) a, a written statement,
21 I've provided a summary of what I expect them to testify to.
22 There were additional 9-1-1 calls that the, the incident
23 reports were turned over to us, not the audio, that were
24 found. Those were two more, but they didn't contain any
25 sort of new information outside of the fact that a witness

1 observed a struggle, and someone running away from the
2 scene.

3 I don't think that anything that Mr. Hodge has stated
4 is grounds for a continuance. We're ready, Your Honor.

5 THE COURT: All right. We're gonna select the jury
6 today, and give -- this morning, and give counsel the rest
7 of the day to prepare, and we'll start with testimony first
8 thing in the morning.

9 MR. HODGE: Is that opening and everything in the
10 morning or do you just want to---

11 THE COURT: Yes, sir.

12 MR. HODGE: Okay.

13 THE COURT: We'll start with everything tomorrow
14 morning.

15 MR. HODGE: Yes, sir.

16 THE COURT: You'll have the rest of the day to prepare,
17 and we're ready for the jury.

18 SOLICITOR CATHCART: State's ready, Your Honor.

19 THE COURT: All right.

20 MR. HODGE: Judge?

21 Judge, he needs to change real quick.

22 THE COURT: Oh, I'm sorry.

23 MR. HODGE: Sorry.

24 THE COURT: Change clothes.

25 We'll take five minutes.

1 MR. HODGE: Thank you.

2 (WHEREUPON, a short recess was taken at this time.)

3 THE COURT: Ready for the jury.

4 It's five and ten.

5 SOLICITOR CATHCART: Your Honor?

6 THE COURT: Yes, sir.

7 SOLICITOR CATHCART: I'm sorry. If I may?

8 You asked that we submit jury voir dire.

9 THE COURT: Yes, sir.

10 SOLICITOR CATHCART: And I've -- I'm not sure if we
11 were gonna go ahead and do -- go over that before --.

12 THE COURT: Well, do you have any -- did I -- did we
13 get any requests from anyone?

14 Do you have some?

15 SOLICITOR CATHCART: Yes. At least from us. But we
16 have not seen --.

17 SOLICITOR CAVANAUGH: Yeah. well, Mr. Hodge did---

18 SOLICITOR CATHCART: Oh, yeah. Let me -- I'm sorry.

19 SOLICITOR CAVANAUGH: ---forward---

20 SOLICITOR CATHCART: I did -- I haven't -- I have---

21 MR. HODGE: They have them.

22 SOLICITOR CAVANAUGH: I have a hard copy, Your Honor.

23 MR. HODGE: Yeah, I did. Mine's not stapled, but --.

24 THE COURT: Any objection to anyone's request?

25 SOLICITOR CAVANAUGH: I reviewed -- just give me one

1 second, Your Honor.

2 (Pause.)

3 SOLICITOR CAVANAUGH: Your Honor, I reviewed these last
4 night and, and just now. I have no objection to the
5 Defendant's request.

6 MR. HODGE: We have no objection either.

7 THE COURT: All right.

8 (WHEREUPON, the following takes place within the
9 presence of the entire jury panel.)

10 THE BAILIFF: The jury's seated, Your Honor.

11 THE COURT: Good morning.

12 Now, ladies and gentlemen, my name is Clifton Newman,
13 and I am presiding in this courtroom. Next to me is my law
14 clerk, Kelly Reid, and my intern, Nadine Martin, and you-all
15 have been sent here for jury selection in our next case.

16 State may call the next case.

17 SOLICITOR CAVANAUGH: Thank you, Your Honor.

18 At this time, the State calls Wesley Givens.

19 THE COURT: All right. Ladies and gentlemen, the State
20 has called for trial the case of the State versus Wesley
21 Givens. This case comes into Court as a result of a series
22 of indictments returned by the Grand jury of Richland County
23 charging Mr. Givens with domestic violence of a high and
24 aggravated nature, kidnapping, armed robbery, and possession
25 of a weapon during the commission of a violent crime.

1 Mr. Givens has pled not guilty to each and every one of
2 these charges. He is presumed to be not guilty of each and
3 every one of these charges. He can not be found guilty
4 unless the State presents evidence which convinces a jury of
5 his guilt beyond a reasonable doubt, and that is the purpose
6 of a trial, to determine whether the State can meet that
7 burden of proof.

8 Mr. Wesley Givens, if you will stand and face the jury
9 panel.

10 (WHEREUPON, the Defendant complies.)

11 THE COURT: Along with counsel, and, counsel, if you'll
12 introduce yourself.

13 MR. HODGE: My name is William Hodge. I practice here
14 in Richland County. This is my client, Wesley Givens.

15 THE COURT: All right. Thank you.

16 The State is represented through the Fifth Circuit
17 Solicitor's Office, and if you will stand and introduce
18 yourselves.

19 SOLICITOR CAVANAUGH: Thank you, Your Honor. Thank
20 you.

21 THE COURT: And anyone else you want to introduce,
22 introduce.

23 SOLICITOR CAVANAUGH: My name is Kathryn Cavanaugh.
24 I'm Assistant Solicitor in Richland County. Standing beside
25 me is Investigator William Gonzales with the Richland County

1 Sheriff's Department.

2 SOLICITOR CATHCART: And I'm Richard Cathcart with
3 Richland County Solicitor's Office.

4 THE COURT: All right. And the alleged victim in this
5 case is Tiffany Green.

6 Ms. Green, if you'll stand.

7 (WHEREUPON, Ms. Green complies.)

8 THE COURT: Standing right there. Thank you.

9 If any member of the jury panel knows any of these
10 folks, if you know any of them, friend, relative, associate,
11 enemy, acquaintance, if you know any of them, please stand.

12 (No response.)

13 THE COURT: All right. No one knows any of the folks
14 who just stood.

15 The incidents alleged in this indictment occurred on or
16 about September 28th, 2016, at around or in the area of
17 the Murphy Gas Station, Wal-Mart, up on Two Notch and
18 Northeast Columbia on the incident dates.

19 If any of you have heard anything about this case,
20 please stand.

21 (No response.)

22 THE COURT: The following people may testify as
23 witnesses in this case.

24 In addition to Ms. Green, Chris Overton.

25 Linda Roush, R-O-U-S-H.

1 Brandon Brumley.

2 Tamela Ingram Morris.

3 Jacquelyn E. Richburg from 9-1-1.

4 Lieutenant Robert Waters from the Alvin S. Glenn
5 Detention Center.

6 Travis Butler.

7 Kaitlyn Griffin. They work for EMS.

8 Doctor Lorone Washington.

9 Mykenzi Alexis Gibbs.

10 Deputies Lakeisha West, Melvin Brown, Investigator
11 William Gonzales.

12 Officers from the Richland County Sheriff Department,
13 Jennifer Martin, John Barron, Ashleigh Dixon, Howard Kleber,
14 Kleber, Melonie Galinski, Frieda Wyatt, Captain Isaac Romey,
15 Lieutenant Beverly Bracey, and Vernetha Gadson-Glenn from
16 the Orangeburg County Clerk of Court's Office.

17 If any member of the jury panel is a friend, relative,
18 associate, acquaintance, if you know any of them, please
19 stand.

20 (No response.)

21 THE COURT: All right. Ladies and gentlemen, I want to
22 remind you, when you were sworn as jurors, you took an oath
23 to give complete and truthful responses to all questions
24 that you're asked during the process. So, it's very unusual
25 to call out 40 or 50 names in Columbia and no one knows

1 anybody. Friend, relative, associate, acquaintance of
2 anyone.

3 So, I say that to say that it's not optional for you to
4 stand or not stand. If a question applies to you, you're
5 required to stand and provide complete and truthful
6 information under your oath as a juror.

7 So, we'll come back to all of those questions before in
8 the event that you decide later on that you think you know a
9 person or you think this might apply to you because you must
10 stand and give complete and truthful information if it
11 applies to you, and particularly to the following questions
12 as well.

13 Has any member of the jury panel or any member of your
14 immediate family ever been accused, arrested, or convicted
15 of a crime of violence, if so, please stand.

16 And crimes of violence are typically referred to as
17 rape, robbery, burglary, or murder, or attempted murder.

18 If any of you or any member of your immediate family
19 has ever been arrested or convicted of a crime of violence,
20 please stand, and tell me your juror number, and why you're
21 standing.

22 (WHEREUPON, jurors respond at this time.)

23 THE JUROR: My name is Marcus Careek Powell. Juror
24 Number 206. I have a brother-in-law possibly doing some
25 time right now in a penitentiary.

1 THE COURT: For what kind of crime?

2 THE JUROR: A criminal domestic violence.

3 THE COURT: Domestic violence.

4 THE JUROR: Attempted murder too.

5 THE COURT: All right. Attempted murder and domestic
6 violence?

7 THE JUROR: Yes, sir.

8 THE COURT: All right. Thank you.

9 Yes, sir, you may be seated.

10 Yes, ma'am.

11 THE JUROR: I'm Juror 13, and I have a son that was
12 charged with domestic violence.

13 THE COURT: All right. Thank you.

14 Yes, ma'am.

15 THE JUROR: Number 42, Erica Calley, and my ex-husband,
16 domestic violence.

17 THE COURT: All right. Thank you.

18 THE JUROR: Stanley Bailey, Juror 301. I've got a
19 cousin with the same, same crime. So, he's doing time right
20 now for about 25 years.

21 THE COURT: All right. Thank you.

22 Yes, sir.

23 THE JUROR: Darryl Bell. I had an uncle committed
24 murder, and I have a CDV, but it's expunged it.

25 THE COURT: All right. What's your juror number?

1 THE JUROR: Nineteen.

2 THE COURT: Nineteen. Thank you, sir.

3 And the next question or the crime of violence may or
4 may not be or domestic violence may or may not be a crime of
5 violence depending on the degree.

6 But the next question is have any of you or any member
7 of your immediate family ever been accused, arrested, or
8 convicted of the crime of domestic violence, and I'm gonna
9 expand that to say domestic violence, robbery, larceny, or
10 kidnapping, any of those, if so, please stand.

11 You or any member of your immediate family ever been
12 accused, arrested, or convicted of any -- of domestic
13 violence, robbery, larceny, or kidnapping.

14 (WHEREUPON, jurors respond at this time.)

15 THE COURT: All right. Yes, ma'am.

16 THE JUROR: Do I need to repeat or it's, it's the same?

17 THE COURT: And you just stood earlier---

18 THE JUROR: Right.

19 THE COURT: ---concerning your ex-husband I think?

20 THE JUROR: Right.

21 THE COURT: Yes, ma'am.

22 Juror number?

23 THE JUROR: Forty-two.

24 THE COURT: Forty-two. Thank you.

25 Yes, ma'am.

1 THE JUROR: Number 51, and my son, domestic violence.

2 THE COURT: All right.

3 THE JUROR: Thank you.

4 THE COURT: Thank you.

5 THE JUROR: Juror Number 76. My husband was accused of
6 domestic violence, but he was acquitted.

7 THE COURT: All right. Thank you.

8 Yes, sir.

9 THE JUROR: Nineteen. Darryl---

10 THE COURT: All right. Thank you. You told us a
11 little earlier.

12 THE JUROR: Yes, sir.

13 THE COURT: If you've ever been represented by the
14 Solicitor's Office, Ms. Cavanaugh, Mr. Cathcart, or any
15 employee of the Solicitor's Office, friend, relative, or
16 associate of anyone who works in law enforcement, or ever
17 been represented by Mr. Cavanaugh, I'm sorry, Mr. Hodge, if
18 so, please stand.

19 (WHEREUPON, jurors respond at this time.)

20 THE COURT: Yes, ma'am, juror number?

21 THE JUROR: 236. I have a cousin in law enforcement.

22 THE COURT: All right. Thank you.

23 Yes, ma'am.

24 THE JUROR: Catrina Goggins, Juror 12. My husband
25 works for the Richland County Sheriff's Department.

1 THE COURT: All right. Thank you.

2 THE JUROR: Juror 255, Steven Stutuski (phonetic). I
3 have an ex-brother-in-law who's a good friend who's the
4 director of the South Carolina Law Enforcement Officers
5 Association.

6 THE COURT: Thank you.

7 THE JUROR: Juror Number 69. Chris Duncan. My
8 brother-in-law is a police officer with Richland County.

9 THE COURT: Thank you.

10 THE JUROR: Seventy-six. My cousin's husband was a
11 part of the New York Patrol. He's patrol. But now he's
12 with the Department of Immigration.

13 THE COURT: All right. Thank you.

14 Yes, sir.

15 THE JUROR: Jeff Lawrence, Juror Number 26. Former law
16 enforcement officer. Deputy sheriff. North Carolina.

17 THE COURT: All right. Thank you.

18 With regard to any of the responses you've given to
19 this, to this point, if it would affect your ability to be a
20 fair and impartial juror in this case, please stand.

21 Being accused of domestic violence, victim of domestic
22 violence, having a friend or associate been accused or
23 convicted or victim of, if any of that would affect your
24 ability to be a fair and impartial juror, please stand.

25 (WHEREUPON, jurors respond at this time.)

1 THE COURT: All right. And your juror number?

2 THE JUROR: Twenty-six.

3 THE COURT: Twenty-six.

4 You do not believe you can be fair and impartial based
5 on your -- I'm not asking you why. I'm just wanting---

6 THE JUROR: Yes, sir, I can tell you why, sir.

7 THE COURT: No, I'm not asking why. Just --.

8 THE JUROR: Yes, sir.

9 THE COURT: All right. Thank you.
10 Number 26?

11 THE JUROR: Yes, sir.

12 THE COURT: All right. He'll not be considered.
13 Yes, sir, juror number.

14 THE JUROR: 301.

15 THE COURT: 301 will not be considered.

16 All right. Thank you.

17 If you've ever been the victim of domestic violence,
18 please stand.

19 If you've been the victim of domestic violence, please
20 stand.

21 (WHEREUPON, jurors respond at this time.)

22 THE COURT: All right. Your number.

23 THE JUROR: Forty-two.

24 THE COURT: Forty-two.

25 Juror number?

1 THE JUROR: Seventy-six.

2 THE COURT: Seventy-six.

3 All right. Thank you.

4 THE JUROR: All right.

5 THE COURT: Let's see. If you or any member of your
6 immediate family contribute to any organization that
7 supports prisoner's rights, or rights of the accused, or law
8 enforcement promotion such as ACLU, C -- CAVE, Mothers
9 Against Drunk Drivers, Students Against Drunk Drivers,
10 CAD -- CADRE, what is that?

11 What does mean that, C-A-D-R-E?

12 well, that organization, if so, please stand.

13 (No response.)

14 THE COURT: All right. If you ever testified in a case
15 for the State or the defense, please stand.

16 If you've ever testified in a case for the State or the
17 defense, please stand.

18 (No response.)

19 THE COURT: All right. And we've eliminated you
20 already, Number 26. So, you're good to go.

21 Juror number?

22 THE JUROR: Seventy-six.

23 THE COURT: You testified for --?

24 THE JUROR: A, a---

25 THE COURT: As a victim?

1 THE JUROR: My husband.

2 THE COURT: Against your husband?

3 THE JUROR: No, for him.

4 THE COURT: For your husband.

5 THE JUROR: My husband.

6 THE COURT: All right.

7 THE JUROR: Because he was found not guilty.

8 THE COURT: Oh, that's right.

9 Okay. I understand. Thank you.

10 Yes, sir.

11 THE JUROR: Juror Number 243. One, I'd like to
12 apologize to the Court. I was a police officer back in 1980
13 to 1987.

14 THE COURT: All right.

15 THE JUROR: And I testified for the State, not as a
16 police officer, within the last ten years.

17 THE COURT: All right. Thank you, sir.

18 Yes, ma'am.

19 Ma'am?

20 THE JUROR: Yes, I testified for, for a guy -- it's a
21 good friend, twenty years ago. Myron Goodwin. Myron
22 Goodwin.

23 THE COURT: Okay. What's your juror number?

24 THE JUROR: Oh, 13. I'm sorry.

25 THE COURT: Thirteen. All right. Thank you.

1 Yes, sir.

2 THE JUROR: I'm Robert Hobbs, Number 305. I was a
3 witness for my mother for her divorce.

4 THE COURT: All right. Well, that's not the State or
5 the defense, and not a criminal case, but thank you.

6 Yes, sir.

7 THE JUROR: Juror 98, Wayne Graham. I testified on
8 behalf of the State right at the Department of Correction.

9 THE COURT: All right. Thank you.

10 If you did not respond to any question that you think
11 might of, might of applied to you, please stand and respond
12 at this time.

13 (No response.)

14 THE COURT: If you know of any reason whatsoever why
15 you should not be taken -- be put over there as a juror on
16 this case, and we have you out there, but that's -- the
17 jury's gonna sit over there, if you know of any reason
18 whatsoever why you should not be selected as a jury -- juror
19 in this case, please stand.

20 Any reason in the world why you should not be selected.
21 we've already eliminated you, Number -- Mr. Bailey.

22 Yes, sir.

23 THE JUROR: Juror, Juror Number 40.

24 THE COURT: All right.

25 THE JUROR: Sorry to say this. It sounds so little

1 after all this, but I'm a ballet dancer with Columbia City
2 Ballet, and I have a prior engagement as a performer for
3 them, and that's as---

4 THE COURT: Today, tomorrow, all days?

5 THE JUROR: All days.

6 THE COURT: All right. Juror number?

7 THE JUROR: Forty.

8 THE COURT: Forty.

9 All right. We'll not consider Number 40.

10 Yes, ma'am.

11 THE JUROR: I'm Juror Number 68, and I pick up my kids
12 from school.

13 THE COURT: What time?

14 THE JUROR: 2:30.

15 THE COURT: Oh, we'll be busy then.

16 2:30, how old are your kids?

17 THE JUROR: Three and nine.

18 THE COURT: All right. So, you -- you're entitled to
19 an exemption from jury service. You, you didn't have to
20 stay. You didn't have to serve. You -- you're entitled to
21 an exemption.

22 You didn't tell the judge that?

23 THE JUROR: No, because he said that you couldn't be
24 working outside the home. So, I figured I worked.

25 THE COURT: Well, who picks up your children normally?

1 THE JUROR: Me. I get off work, pick them up, and take
2 them back to work with me.

3 THE COURT: Yeah.

4 All right. You -- so, you don't have to serve.

5 THE JUROR: Okay.

6 THE COURT: You -- thanks for staying as long as you
7 have.

8 Yes, ma'am.

9 THE JUROR: I'm Juror Number 216. My uncle is also my
10 child's godfather was accused of sexual assault, and the guy
11 who actually did the crime got found, and he served about
12 two years of, of his life in prison. And so I didn't think
13 it fit any of the other ones except for --.

14 THE COURT: All right. You believe that would affect
15 your ability to be a fair and impartial juror?

16 (WHEREUPON, no audible response was given at this
17 time.)

18 THE COURT: All right. We will not select you.

19 THE CLERK: Judge, can I have her number---

20 THE COURT: Thank you.

21 THE CLERK: ---number again please?

22 THE JUROR: 216.

23 THE COURT: Yeah, 216.

24 THE CLERK: Thank you.

25 THE COURT: Yes, ma'am.

1 THE JUROR: And I'm not sure. I would hope that I
2 would be unswayed, but I'm just not sure.

3 THE COURT: Not sure.

4 All right. Well, they can choose you or not choose
5 you. They have that choice.

6 But unless the State or the defense wants her excused
7 for cause?

8 SOLICITOR CAVANAUGH: Yes, Your Honor. If she can't be
9 sure of it, ask that she be excused now.

10 THE COURT: Okay. We will not consider her.
11 Any objection to that, Mr. Hodge?

12 MR. HODGE: No, sir, Your Honor.

13 THE COURT: All right. We'll not consider her for
14 selection.

15 THE CLERK: I'm sorry.

16 Can I have your number, ma'am?

17 THE COURT: Seventy---

18 THE JUROR: Seventy-six.

19 THE COURT: ---six.

20 THE CLERK: Thank you.

21 THE COURT: All right. Any additional questions by the
22 State or the defense?

23 (No response.)

24 THE COURT: All right. Well, let's select the jury.

25 THE CLERK: Ladies and gentlemen of the jury, I'm gonna

1 call your numbers out. When I do, I need you to come down
2 and stand right here, face the State and the defense, and
3 give us your occupation. Bring all your belongings with you
4 when I call your name out.

5 All right?

6 THE COURT: Strikes are five and ten.

7 (WHEREUPON, the jury panel was selected at this time.)

8 THE COURT: All right. We need two alternates. Two
9 additional jurors.

10 (WHEREUPON, one alternate juror was selected at this
11 time.)

12 THE COURT: Strikes are one and two as to each
13 alternate.

14 (WHEREUPON, the following takes place during the
15 selection of the final alternate juror.)

16 THE CLERK: Number 42.

17 THE JUROR: Erica Calley. Physical therapist.

18 THE CLERK: What says the State?

19 SOLICITOR CAVANAUGH: Please present this juror.

20 THE CLERK: Does the Defense challenge for cause?

21 MR. HODGE: I think I got confused on how many strikes.
22 I asked, I asked how many, and you said two. I thought that
23 meant I had two left. That is my---

24 THE COURT: Strikes are one and two as to each
25 alternate.

1 THE CLERK: One and two, and you struck Number 203 and
2 243.

3 MR. HODGE: Well then---

4 THE CLERK: As to the selected alternate?

5 MR. HODGE: I think we would, would, would strike for
6 cause.

7 THE COURT: All right. If counsel will approach.

8 (WHEREUPON, a bench conference was held out of the
9 hearing of the jury at this time.)

10 THE COURT: All right. Motion is denied or challenge
11 is denied.

12 SOLICITOR CAVANAUGH: And, Your Honor, we'd ask that
13 she be seated as a juror.

14 THE COURT: All right.

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

16 THE COURT: Are there any matters of law regarding the
17 jury selection other than a challenge for cause?

18 SOLICITOR CAVANAUGH: None from the State, Your Honor.

19 MR. HODGE: Nothing else from me.

20 THE COURT: All right. Very good.

21 Ladies and gentlemen, you-all have been selected to be
22 the jury in the trial of this case, and, once you're
23 selected, your (sic) can no -- cannot discuss the case in
24 any form or fashion. I'm gonna ask you to go to the jury
25 room for a short period of time, and we'll bring you out

1 with further instructions in a few minutes.

2 So, if you will go that way with the bailiff.

3 (WHEREUPON, the following takes place outside the
4 presence of the jury.)

5 THE COURT: All right. With regard to the motion to
6 strike the last juror for cause, anything you want to put on
7 the record, Mr. Hodge?

8 MR. HODGE: Your Honor, I will just put on the record
9 I -- the number of strikes was a misunderstanding on my
10 part. I'd ask how many. I thought she said I had two left.
11 I would of struck that juror. Therefore, I made the strike
12 for cause---

13 THE COURT: All right.

14 MR. HODGE: ---in an effort to, to make that strike.

15 THE COURT: Okay. Of course, the Court earlier,
16 earlier indicated that the strikes are one and two as to
17 each alternate.

18 MR. HODGE: Yes, sir, and I -- and, again, I just asked
19 and misunderstood. That was my fault.

20 THE COURT: All right. Well, the juror indicates she
21 could -- indicated that she could be fair and impartial
22 despite the fact that she was a victim of domestic violence.

23 Is that it?

24 MR. HODGE: Yes, sir.

25 THE COURT: And that's a test of whether or not the

1 juror can be seated. Each juror has a Constitutional right
2 to serve and not to be discriminated against in any form or
3 fashion. And she says she can be fair and impartial. So,
4 that's not a basis for cause, your miscalculation on the
5 number of strikes.

6 MR. HODGE: Yes, sir.

7 THE COURT: All right. Yes, sir. Thank you.

8 MR. HODGE: Thank you.

9 THE COURT: All right.

10 (WHEREUPON, the remaining jurors were dismissed at this
11 time.)

12 THE COURT: All right. Well, we're gonna bring the
13 jury back, and we're gonna start at nine o'clock tomorrow
14 morning, and we're gonna roll with this case. We're gonna,
15 you know, we're gonna plow ahead.

16 So, any other issues that will delay the trial we can
17 take up today despite not starting the trial beyond this
18 today cause we're gonna start at 9:00 tomorrow morning, and
19 order lunch for the jury, and plow right on through as some
20 people say.

21 So, let's bring the jury in. We'll let them go.

22 (WHEREUPON, the following takes place within the
23 presence of the jury.)

24 THE BAILIFF: The jury's present, Your Honor.

25 THE COURT: All right. Thank you.

1 Ladies and gentlemen, we're not going to start with
2 testimony today. We're gonna start at nine o'clock tomorrow
3 morning. So, we are through with you-all for this day.

4 As I stated to you briefly, once you are selected on a
5 case, you're not to become private investigators to go and
6 see what you can find out about the case. You're not to
7 search the web to see what you can, can find out. You're to
8 decide a case solely based on the testimony that is
9 presented in the courtroom along with the jury instructions
10 that I give you, and arguments of counsel, and from -- and
11 exhibits presented during the course of the case, and
12 nothing else.

13 So, you're not to discuss the case or allow anyone to
14 discuss it with you or in your presence, and we're gonna
15 start back at nine o'clock tomorrow morning. If you get up
16 whatever directions you'll need from the bailiffs as to
17 coming into the jury room. Do not come through the
18 courtroom, and we'll see you-all tomorrow morning at nine
19 o'clock.

20 Anyone can't be here on time tomorrow morning at nine
21 o'clock?

22 (No response.)

23 THE COURT: Because you live out on 26, and think it's
24 gonna be a lot traffic coming in to Columbia on 26 or 20
25 or -- so, you need to plan accordingly.

1 we had someone stuck on 26 last week that we had to
2 wait for about a half an hour for that juror, and everyone
3 else was here except that one person who said the traffic
4 was busy on 26. So, that's -- and that's the situation
5 every morning, isn't it?

6 So, we need you here at nine o'clock tomorrow morning.
7 Have a good evening.

8 (WHEREUPON, the following takes place outside the
9 presence of the jury.)

10 THE COURT: Anything else we can talk about today?

11 SOLICITOR CAVANAUGH: Your Honor, the only -- the State
12 did not have many, if any, pretrial motions. There is a
13 photo -- I just want to put this on the record. There is a
14 photo lineup identification from the victim of the
15 Defendant. They'd been in a relationship for over three
16 years. So, she was very familiar with what he looked like.

17 We did confer with Mr. Hodge. I don't believe he's
18 requesting a Neil v. Biggers hearing. I just wanted to make
19 sure that that was addressed this afternoon.

20 THE COURT: Is that right, Mr. Hodge?

21 MR. HODGE: That's right, Your Honor. It is.

22 THE COURT: All right. And she knows him?
23 She knows his picture?

24 MR. HODGE: Yes, sir, that's correct.

25 THE COURT: All right. Okay.

1 SOLICITOR CAVANAUGH: And we don't have any other
2 matters, Your Honor.

3 THE COURT: All right. From the defense.

4 MR. HODGE: Your Honor, we've already addressed the
5 indictment issue that I mentioned earlier.

6 The only other motions that I, that I personally saw
7 coming in was a motion to suppress evidence that I
8 anticipate the Government introducing. Namely a knife, and
9 DNA from that knife. And I don't know if -- I don't know if
10 you want to put it on now or if you want to wait till they
11 go to introduce it, and then have you decide---

12 THE COURT: Well, we can deal with it right now.

13 MR. HODGE: Okay.

14 THE COURT: It doesn't sound like it's that overly
15 complicated.

16 MR. HODGE: No, sir, it's, it's not, and you've heard
17 some of it just through the conversations that you've had
18 this morning with me and my client.

19 As far as the knife goes, Judge, we would, we would
20 make an argument that the chain of custody is, is not
21 properly established in this case. The, the standard is
22 basically from the time that they have control of the
23 evidence through the time that it is tested.

24 In this case, law enforcement arrived, and, and came on
25 the scene where the victim, Ms. Green's, car was. And

1 allegedly, supposedly, in that car was this knife, and other
2 documents that would be evidence -- that are evidence that
3 are trying to be introduced as evidence in this case. I
4 think they found the wallet on the scene.

5 Those items were not -- while her car, and the scene,
6 the crime scene, and all things related to this incident
7 were under their direct control at the time of the initial
8 call out, 9-1-1 and, and arrival, there; there was nothing
9 taken from the scene that day other than this wallet. Some
10 eight days later, when Ms. Green goes in to her interview
11 with, with Mr. Gonzales, she, she then brings in a black
12 plastic bag with a, a knife that was supposedly in the car
13 that also just happened to have Mr. Givens DNA on it. She
14 also brought in some documents, and other paperwork that --
15 well, you know, were apparently in the car at the time of,
16 of the actual incident itself. None of which were taken
17 into property -- proper custody by law enforcement during
18 their investigation.

19 I don't think these things were hidden. I think it
20 says, in, in one of her statements, that it fell out of the
21 seat or maybe that was what I was recently told. But these
22 things were in their control. They left their control
23 whenever they had her car towed, and then allowed her to
24 then take her car back to Orangeburg on her own. And no
25 follow-up was done. No reports of a knife were even made.

1 In the initial incident report, there's not even a mention
2 of a knife, and then, eight days later, a statement is taken
3 from Ms. Green in which she then brings up a knife, mentions
4 the black plastic bag in which it was contained in, and
5 provides it to the Sheriff's Department for -- or to the
6 investigator at that, at that stage of the game. And then
7 they do DNA testing.

8 Now, it's obvious they have clearly lived together at
9 some point. It -- it's not a far stretch whatsoever that
10 Mr. Givens DNA would be on a number of items that were under
11 the control of Ms. Green at her house or otherwise, and
12 this, this could easily have been one of them. So, the fact
13 that it wasn't taken during the investigation, the fact it
14 wasn't properly documented that there was even a knife
15 reported, used at all upon the initial investigative report,
16 to come back eight days later and say oh, here's the knife
17 that was used, even though I didn't tell you about it, and
18 now we're gonna introduce it for evidence -- for DNA.

19 THE COURT: Yes, sir.

20 MR. HODGE: So, that's my objection to both the knife
21 and the---

22 THE COURT: Is that---

23 MR. HODGE: ---DNA coming from it.

24 THE COURT: So, the, the DNA established that
25 Mr. Givens' DNA was on the knife -- on it?

1 MR. HODGE: There's not even a -- I believe, and I'm --
2 I am, by no means, a DNA expert, Judge. But there is not a
3 match for Mr. Givens. There is simply a probability of
4 ruling out I think, for lack of a better term. I mean
5 it's -- I think the wording is 3.7 million chance that it's
6 not a coincidence that it's his DNA.

7 But the point of that is that there's probably a number
8 of things in Ms. Givens' (sic) household that would of
9 had -- I mean in Ms. Green's household that would of had Mr.
10 Givens DNA on it being that they had lived together up until
11 a month---

12 THE COURT: Yeah.

13 So, why is that an issue, if he, you know, if someone
14 got a knife from my house, my DNA would be on it likely or
15 --.

16 MR. HODGE: Well---

17 THE COURT: -- any other place I've spent some time.

18 MR. HODGE: Certainly.

19 THE COURT: And I only mention it in connection with
20 your -- you said chain of custody, and chain of custody only
21 is, only is required for fungible items. Blood samples,
22 something that could be easily tampered with, but if you're
23 dealing with something that's non-fungible, you know, such
24 as this book right here, I mean it's -- we wouldn't have to
25 establish chain of custody for this book. The same would be

1 the same situation with a knife because it's, it's
2 non-fungible. It can't---

3 MR. HODGE: Yes, sir.

4 THE COURT: It can't be tampered with whether or not --
5 so --.

6 MR. HODGE: And, and I guess that's why I bring up the
7 knife is to -- essentially the argument is against DNA. I
8 believe the knife is an unreliable piece of evidence, and
9 was not properly maintained or controlled, which affects the
10 DNA results that have been obtained from the knife. She
11 could of gone home and gotten the knife from her household
12 that had his DNA on it, and brought it in eight days later,
13 and turned it in, and said this is a knife that was used.

14 THE COURT: Yeah.

15 MR. HODGE: That---

16 THE COURT: Well, that may be true, and that would be a
17 good question -- I mean that's a good argument and
18 everything else, but you, you raise it in the -- in
19 connection with the motion to suppress based on chain of
20 custody.

21 MR. HODGE: The DNA on the chain custody and the knife
22 itself because the DNA comes from the knife, but the, the
23 knife itself also on reliability of, of the evidence. The
24 fact that they, they had it in their control. There was no
25 knife mentioned. They didn't take anything out of that car,

1 and then, eight days later, we find out that oh, there was a
2 knife, and here it is, and this is where it was, which was
3 in plain view in the automobile that law enforcement, I
4 assumes (sic), should of searched, didn't search. I don't
5 know.

6 And I agree that I'm, I'm -- again, I agree with you
7 that these are questions that could be brought up in cross,
8 but I felt that it should be mentioned here at least because
9 I, I don't think it's very reliable, and I certainly don't
10 think the DNA results should be.

11 THE COURT: All right. What says the State?

12 SOLICITOR CAVANAUGH: Your Honor, the knife, the knife
13 wasn't actually in law enforcement's control until they
14 became aware that a knife was used in the crime. Ms.
15 Green -- the knife was brought out at the very beginning of
16 the incident. Ms. Green -- and then put back in his folder
17 after he was allowed in the car through the use of the
18 threat of the knife. She didn't realize that he had left
19 that particular folder behind her car, which contained the
20 knife.

21 THE COURT: I mean the legal argument in response to
22 his motion.

23 SOLICITOR CAVANAUGH: The legal argument---

24 THE COURT: Not the factual.

25 SOLICITOR CAVANAUGH: ---Your Honor, I would agree this

1 is a non-fungible item that was not in the police custody
2 until eight days later when it was brought to their
3 attention.

4 The chain, according to State v. Glenn, as well as
5 State v. Rogers, for non-fungible items, does not, does not
6 have to be proven. Once you became -- once a knife was
7 turned in to law enforcement a week later when she gave her
8 statement, it was properly preserved through their normal
9 protocol, and the DNA taken from the swab taken from that
10 handle, there is chain of custody.

11 THE COURT: Is DNA fungible or non-fungible?

12 SOLICITOR CAVANAUGH: DNA is, is fungible, and we can
13 prove a strict chain of custody for Mr. Givens Buccal swab,
14 and for the swab that came from the knife itself.

15 THE COURT: The DNA is fungible, but the knife is
16 non-fungible?

17 SOLICITOR CAVANAUGH: Yes, Your Honor, because it's an
18 identifiable and distinguishable item that was used during
19 this -- the crime, the crime, and, since it's non-fungible,
20 strict chain of custody is, is not required.

21 THE COURT: well, in response to the motion, what do
22 you want me to do?

23 SOLICITOR CAVANAUGH: Your Honor, I think we should be
24 able -- I think, as you stated to Mr. Hodge, those are
25 items -- those are topics that he can cross-examine the

1 appropriate witnesses on, but I think the admissibility of
2 the knife is proper based on it being a non-fungible item
3 once we're able to lay the foundation of how the knife was
4 used, and what she did once she realized it was still in her
5 vehicle. And his arguments go towards more the weight of
6 the evidence versus the admissibility of the evidence.

7 THE COURT: Is the knife here now?

8 SOLICITOR CAVANAUGH: Yes, Your Honor.

9 THE COURT: And you have your witness here now?

10 SOLICITOR CAVANAUGH: Yes, Your Honor.

11 THE COURT: On the issue of the knife?

12 On the issue of how the knife got from the crime scene
13 to, to here today?

14 SOLICITOR CAVANAUGH: Yes, Your Honor. Ms., Ms. Green
15 is present, and then the -- how it was transferred from Ms.
16 Green to Investigator Gonzales, both witnesses are present
17 --

18 THE COURT: All right.

19 SOLICITOR CAVANAUGH: -- for that issue.

20 (Pause.)

21 THE COURT: All right. Anything further on this issue?

22 MR. HODGE: I, I don't think so on my -- on this issue.

23 THE COURT: All right. Well, the, the knife is
24 non-fungible. So, the motion is -- to suppress is -- to
25 suppress a non-fungible item based on chain of custody, and

1 there is no requirement to establish chain of custody on, on
2 such an item as a knife. The challenge seemed to be the DNA
3 on the knife.

4 The -- on October 2nd, 2017, Judge Robert E. Hood
5 ordered that a saliva test be taken under -- pursuant to
6 Schmerber v. California. So, the issue of collection of
7 sample for the DNA was done through an order by the Court.
8 So, the protection had been -- of the Defendant has been
9 established through that procedure with regard to the taking
10 of the DNA. The knife is non-fungible. So, there's no
11 basis to, I guess, entertain a suppression motion assuming
12 the State can establish sufficient foundation for the
13 admissibility of the item. So, I deny the motion to
14 suppress on the basis given.

15 All right. Anything else today?

16 THE DEFENDANT: Yes. Perjury, sir.

17 Could you define perjury for me -- give me the statutes
18 and basis of perjury to me please?

19 THE COURT: I can, but I'm not gonna get into -- I mean
20 we're -- it's not a law course. It's, you know, perjury is
21 somebody lying under oath. After they've been sworn to tell
22 the truth, they lie.

23 THE DEFENDANT: Are written, written documents also for
24 courts basically like the trial reports, police reports?

25 THE COURT: I know that -- now, I'm not -- for your

1 edification, we're gonna look up a definition of perjury.

2 Tell me what it is.

3 Perjury. It's unlawful for a person to willfully give
4 false, misleading, or incomplete information on a document,
5 report, or form required by the laws of this state. That's
6 perjury or subordination of perjury --

7 THE DEFENDANT: Yes, sir.

8 THE COURT: -- which could apply to testimony and/or
9 documents.

10 THE DEFENDANT: Testimony and documents?

11 THE COURT: Could apply to testimony or information on
12 a document.

13 THE DEFENDANT: That's a felony or a misdemeanor?

14 THE COURT: Let's see. It all depends. A person who
15 violates -- who gives false and misleading or incomplete
16 testimony in court is guilty of a felony, and, upon
17 conviction, must be fined in the discretion of the Court or
18 imprisoned not more than five years or both. That's under
19 one provision of perjury, and suborn -- subordination of
20 perjury.

21 THE DEFENDANT: Yes, sir, and last but not least so we
22 can get out of here cause I know you have better things to
23 do.

24 THE COURT: well, just lunch --

25 THE DEFENDANT: Okay.

1 THE COURT: -- right now.

2 THE DEFENDANT: As far as perjury, when you -- how do
3 you prove perjury, and how do you go about actually getting
4 charged actually obtained on a person?

5 THE COURT: How do you prove perjury?

6 THE DEFENDANT: Yes, I mean it's easy to be proven---

7 THE COURT: Yeah.

8 THE DEFENDANT: ---in any case, but I'm talking about
9 how---

10 THE COURT: You, you got to consult with the solicitors
11 on how to prove cases. That's their job.

12 THE DEFENDANT: No, I'm saying how do you actually go
13 about actually getting it placed --.

14 THE COURT: The Grand Jury indicts anyone within the
15 county of committing any and all crimes that call for
16 sentence of over a year or certain other crimes within the
17 jurisdiction of the General Sessions Court. It's all
18 through an arrest warrant being issued by law enforcement or
19 indictments or magistrates or indictment, indictments
20 that -- issued by the Grand Jury. The same process through
21 which you got charged is a, is a process through which
22 someone would get -- could get charged for perjury.

23 THE DEFENDANT: So, I can speak to an investigator or
24 officer today basically?

25 THE COURT: well, the, the -- I don't know. I don't

1 know---

2 THE DEFENDANT: That's what I would like to do, sir.

3 THE COURT: I don't have any advice. I'm concentrating
4 on your trial. Not on a new charge, new case, new
5 possibilities right now. So, I'm not sure.

6 THE DEFENDANT: Well, I'd like to speak to an officer
7 today about that, sir, and that will be it. I'd like to
8 file a report on that today.

9 THE COURT: All right. Well, you're surrounded by
10 officers. I mean we got one, two, three -- two, four --

11 THE DEFENDANT: To Officer Cooper.

12 THE COURT: -- five. We got five of them in here, and
13 plenty at the jail.

14 THE DEFENDANT: I'm gonna talk to Officer Cooper.

15 THE COURT: Six of them in here.

16 But on, on this trial, in preparation for it, or is
17 there -- are there any other issues cause, when we get here
18 at 9:00 tomorrow, I'm gonna be ready to roll?

19 THE DEFENDANT: No, sir.

20 THE COURT: All right.

21 MR. HODGE: I don't think so, Judge. Not from me.

22 THE COURT: All right. Well, very good.

23 We'll be in recess till then, and we have other things
24 set at two o'clock today as well.

25 All right. Okay.

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(WHEREUPON, this case was in recess for the evening.)

1 wednesday, October 18th, 2018

2
3 (WHEREUPON, State's Exhibit Nos. 1 through 23 were
4 marked for identification purposes only at this time.)

5 THE COURT: All right. Good morning.

6 MR. HODGE: Good morning.

7 SOLICITOR CAVANAUGH: Good morning.

8 THE COURT: Any matters before the jury comes in?

9 MR. HODGE: Two things, Your Honor.

10 One is I sent an email last night about a new witness
11 that I was able to speak to yesterday. Did not anticipate
12 any, anything coming out of that based on just the three
13 little bullet points I had prior to that from her
14 conversation. However, after speaking to her at length
15 yesterday afternoon, I do think we would anticipate calling
16 her as a witness in this case.

17 THE COURT: Okay.

18 MR. HODGE: And she was not -- you know, the jury was
19 not polled to see if they knew her or had any relationship
20 to her.

21 THE COURT: Well, the defense is not required to
22 disclose a witness list absent an order from the Court.

23 MR. HODGE: Yes, sir, and I just wanted to bring it to
24 the Court's -- I didn't want you to think I was surprising
25 the Court with anything. I wanted to be up front with that.

1 THE COURT: Yes, sir.

2 MR. HODGE: Also, Judge, my client's zipper is busted
3 when he went to put on his pants this morning, and he is --
4 he says that the same shirt that he had on yesterday---

5 THE DEFENDANT: Same outfit period.

6 MR. HODGE: He would like a, a new, a new shirt at
7 least.

8 THE COURT: All right. Don't, don't you have family
9 and clothes somewhere?

10 You from Columbia?

11 THE DEFENDANT: Orangeburg.

12 MR. HODGE: Orangeburg. And I've spoken to his
13 grandmother and his mother, Judge.

14 THE COURT: All right.

15 MR. HODGE: And I believe his grandmother---

16 THE COURT: Then---

17 MR. HODGE: ---they're, they're here, but they were
18 unable to bring him---

19 THE COURT: Did y'all bring him some clothes?

20 (WHEREUPON, no audible response was given.)

21 THE COURT: Does he have any clothes?

22 UNIDENTIFIED PERSON: Yes.

23 THE COURT: All right. You know, we all have to get
24 dressed everyday, and, you know, so.

25 MR. HODGE: I can certainly get him another shirt in,

1 in under two minutes, but I wanted to -- I didn't know that
2 it was an issue until I---

3 THE COURT: In under two minutes.

4 Okay. Let's see. It's 9:20.

5 MR. HODGE: I can run downstairs and grab one, Judge.

6 THE COURT: All right.

7 MR. HODGE: But I don't know if you want him to change
8 in here or in the, in the back back there where he did
9 yesterday.

10 THE COURT: Hey, we'll work it out if you have---

11 MR. HODGE: Okay.

12 THE COURT: ---if you have it here. We'll work out him
13 putting it on. Of course, the -- he said something about a
14 zipper.

15 THE DEFENDANT: Yes, sir.

16 THE COURT: That, that relates to pants, right?

17 THE DEFENDANT: Yes, sir.

18 THE COURT: Okay. You'll work that part out for the
19 time being.

20 (Pause.)

21 THE COURT: So, we need to have him go up there
22 somewhere.

23 You don't want it?

24 (WHEREUPON, no audible response was given.)

25 THE COURT: All right. Okay. Well, we're ready for

1 the jury.

2 Anything else?

3 SOLICITOR CAVANAUGH: Yes, Your Honor. There is one
4 more matter that the State --

5 THE COURT: One more matter, yes, ma'am.

6 SOLICITOR CAVANAUGH: -- that the State would like to
7 take up.

8 I anticipate that a lesser included of domestic
9 violence high and aggravated nature will be charged to the
10 jury at the close of the case. One of the elements of
11 domestic violence in the first degree, which is codified as
12 a lesser included of domestic violence high and aggravated
13 nature, is that the defendant has two or more convictions of
14 domestic violence, which he does. Similar to the logic
15 under State v. Benton, State v. Hamilton, as well as State
16 v. Cheatham, relating to the burglary first statute, where
17 one of the elements of burglary first is that he has two --
18 is that the defendant has two prior convictions for burglary
19 or house breaking, our Courts have allowed the convictions
20 to come in order to -- for the State to prove part -- the
21 elements of the offense.

22 Your Honor, the Courts have ruled that this does not
23 constitute as undue prejudice against the defendant under
24 Rule 404, but it is something that the State has to prove as
25 part of their case, Your Honor.

1 So, I just wanted to make sure to, to bring that to the
2 Court's attention that we would be requesting certified
3 copies of his convictions for domestic violence in the
4 second degree from Orangeburg County be introduced as
5 evidence in this case as I anticipate the lesser included
6 being charged to the jury.

7 THE COURT: Yes, sir.

8 MR. HODGE: Your Honor, the pleas happened on the same
9 day. So, the conviction occurred on the same day.

10 My understanding is, and I'll just be honest, I'm -- my
11 understanding of the law is that if the incidents are not on
12 the same day, but the convictions are, it can still be
13 classified as two different convictions. Mr. Givens reads
14 the law different. So, at this time, I would say, you know,
15 we're not gonna stipulate to it. I'm gonna do my due
16 diligence with him, go through that, but we understand that,
17 that, if we don't stipulate to it, that that is expected to,
18 to be an issue.

19 THE COURT: Are you planning to tell the jury about
20 this in opening statement?

21 SOLICITOR CAVANAUGH: Your Honor, because -- yes, I do.

22 THE COURT: Okay. Well, I'm not gonna allow you to
23 introduce that in opening statement, and we'll delve into
24 the issue.

25 MR. HODGE: Thank you, Your Honor.

1 SOLICITOR CAVANAUGH: Thank you, Your Honor.

2 THE COURT: Let's bring the jury.

3 If you can give me whatever authority you have on the
4 issue because it, it may be a sentencing issue versus an
5 evidentiary issue. But, whatever authority you want me to
6 review, I'll be happy to review it.

7 (WHEREUPON, the following takes place within the
8 presence of the jury.)

9 THE BAILIFF: The jury is seated, Your Honor.

10 THE COURT: All right. Morning. Welcome back.
11 Madam Clerk, if you'll swear the jury.

12 (WHEREUPON, the jury was placed under oath at this
13 time.)

14 THE COURT: All right. Ladies and gentlemen, we're
15 ready to get going now with this trial, the trial of The
16 State versus Wesley Lamonte Givens.

17 As I indicated yesterday, this case comes into Court as
18 a result of an indictment returned or a series of
19 indictments returned by the Grand Jury of Richland County
20 charging Mr. Givens with four different offenses, domestic
21 violence of a high and aggravated nature, kidnapping, armed
22 robbery, and possession of a weapon during the commission of
23 a violent crime. The indictment is simply the document
24 which gives the Court jurisdiction, which brings a case into
25 Court. It's not evidence in any way.

1 The Defendant has pled not guilty to each of these
2 charges, and he's presumed to be not guilty. He cannot be
3 found guilty unless the State convinces a jury, you-all, the
4 jury, unless the State convinces you of his guilt beyond a
5 reasonable doubt. And that's the purpose of the trial, to
6 determine whether the State can meet that burden of proof as
7 to each of these charges. Each of which you will consider
8 separately and during your deliberations.

9 Obviously, you-all play a very critical and important
10 role in our judicial system. You play perhaps the most
11 important role in our judicial system because it will, it
12 will be entirely up to you to determine whether the
13 Defendant is guilty or not guilty. And not only must you
14 make that determination individually, you must make that
15 determination collectively because your verdict must be
16 unanimous. All of you must agree on a verdict as to each
17 charge.

18 Now, out of all the folks who showed up here yesterday,
19 out of all the people who were summoned for jury duty, only
20 the 12 of you who will deliberate can determine the facts of
21 this case. And you-all will be called upon to, to determine
22 those facts from the evidence that's presented from this
23 witness stand, and from exhibits that may be offered into
24 Court. You-all are -- you-all are the sole judges of the
25 facts of this case.

1 Now, just as only you can determine the facts of this
2 case, as the presiding judge, I am the sole judge of the law
3 of this case, and you must accept as correct the law as I
4 state it to you at this time during the trial, and in, and
5 in greater detail at the end of the trial.

6 As I mentioned to you yesterday, you're not to discuss
7 the case with each other, allow anyone to discuss it with
8 you, or in your presence because, under our system, you
9 listen to the entire case. You take it all in. You don't
10 fall asleep. You pay attention. You listen to the entire
11 case. You listen to the arguments of the lawyers, and you
12 listen to the instructions of law. Then you deliberate, and
13 decide the case.

14 Now, later in the process, I will appoint one of you --
15 let's see. Now nothing moves when the judge, judge talks.

16 Madam Clerk?

17 Madam Clerk, nothing moves when the judge is addressing
18 the jury.

19 THE CLERK: I'm so sorry, Judge.

20 THE COURT: Nothing moves because, as soon as it moves,
21 the jury's focus shifts from the judge to that moving part,
22 and bailiffs should be at all these doors to make sure that
23 nothing, nothing moves when the judge, judge talks.

24 Later in this process, I will appoint one of you to
25 serve as the foreperson of the jury. The foreperson will

1 serve as the spokesperson of the jury, and will have the
2 responsibility of presiding over the jury deliberations, and
3 completing the verdict form representing the unanimous
4 verdict of the jury.

5 Now, just as I said, nothing moves when a judge is
6 talking, I don't want you-all to be distracted in any way
7 because this is an important matter. It's important for the
8 State, important for the defense, and it requires your
9 undivided attention.

10 I look forward to working with you through this case,
11 and getting it to you as expeditiously as possible.

12 We'll now move to opening statements.

13 First by the State.

14 SOLICITOR CAVANAUGH: May it please the Court?

15 THE COURT: Yes.

16 SOLICITOR CAVANAUGH: I'll leave you alone if you just
17 take me to Columbia. Just one day. That was a promise that
18 Ms. Green's ex-boyfriend, the Defendant, made to her in
19 order to get her to take him from his residence in
20 Orangeburg to Columbia on September 28th of 2016.

21 The plan, at least, the lie---

22 THE COURT: Ms., Ms. Cavanaugh, I'm sorry. You're
23 still at the beginning, but I need you-all to approach for a
24 moment.

25 (WHEREUPON, a bench conference was held out of the

1 hearing of the jury at this time.)

2 THE COURT: Thank you.

3 SOLICITOR CAVANAUGH: Technical issues.

4 AS I was stating, the plan, at least the lie that the
5 Defendant told Ms. Green in order to get him -- get her to
6 take him from Orangeburg to Columbia, on September 28th,
7 2016, was that, as long as she took him to Columbia, he
8 would leave her alone. Unbeknownst to Ms. Green, the
9 Defendant had different plans that day.

10 On September 28th, 2016, she picked him up from his
11 residence in Orangeburg, drove him to her job where she's
12 worked as the manager at Murphy's Gas Station for over five
13 years on Two Notch Road in Columbia. The job that she still
14 has. She was going to take him there, and it was up to him
15 to get a ride from there to whatever hearing he needed to go
16 to later in that day.

17 what actually occurred that morning was that he, once
18 he got to her job, he refused to leave. He continued to
19 hang around the parking lot, bothering her, coming up to the
20 window, and would not leave. There was a period of time
21 that went by where Ms. Green did not see him. Part of her
22 duties, as a manager at the gas station, is to take the
23 store's cash, count it meticulously, fill out the deposit
24 slip, put it in a sealed plastic bag, and put it in her
25 satchel to take to the bank to deposit. He knew that those

1 were one of her daily duties because they were in a
2 relationship for over four years living together for the
3 majority of that time.

4 Once again, she thought he was gone. She walks out to
5 her vehicle with over \$5,000.00 of cash in that bag, sealed
6 in her satchel, and, low and behold, the Defendant is still
7 at the vehicle. What are you doing here? You're suppose to
8 be gone.

9 He takes, out of his folder of paperwork that he
10 brought with him to -- from Orangeburg, a knife wrapped in
11 plastic, and approaches Ms. Green around the hood of that
12 vehicle. Plans have changed. I'm getting in your car with
13 you or without you. Do not cause a scene. Ms. Green, not
14 knowing if that was a gun, not knowing if that was a knife,
15 was in fear for her life. So, yes, she let him get in her
16 vehicle.

17 He immediately confronted her on the text that he's
18 found in her phone, and starts questioning her on those
19 texts. He has not accepted that their relationship is over.
20 They broke up a month prior. She packed up his belongings,
21 took them to his grandmother's house where he lived. She
22 was done with the Defendant. However, he would not accept
23 no for an answer. So, he did not like the answers that she
24 was giving him about those texts.

25 He begins to punch her in the jaw with a closed fist

1 while she is operating a motor vehicle on public roadways
2 putting her life in danger. He also reaches for that
3 satchel, which is by Ms. Green's left leg, tries to rip it
4 over her body, and take it. This also causes her to swerve
5 into the middle lane on Two Notch Road.

6 She's able to grab it back from him. He continues to
7 grab it eventually causing that plastic bag to rip open. He
8 holds on to that cash wrapped in the rubber band, and
9 refuses to get out of that vehicle.

10 Now, Ms. Green, even though he's beating her like a man
11 while she is driving a vehicle, is scared to death that,
12 because of his actions, she's gonna lose her job. She's had
13 that job for over five years. She supports her three
14 children that live in her home, and her two grandchildren.
15 She is not gonna lose her job over this Defendant.

16 He wants her to get out of that car while he keeps the
17 cash. She knows, of course, he's going to run away with
18 that cash as soon as she gets out of the car. She refuses
19 to leave even though he's continually beating her.

20 This is gone on for about an hour. She's hoping that,
21 because her vehicle is in the middle of the road, swerving
22 in the road, that law enforcement, and this is at 10:30,
23 eleven o'clock during the day, she's hoping that law
24 enforcement will see, pull her over, and make this ordeal
25 stop, or somebody will call 9-1-1 to make this stop.

1 However, it doesn't happen. She's unlucky on that
2 particular morning.

3 She makes a decision to drive her vehicle into the
4 Ryan's Steakhouse, which she knows is a closed business, so
5 nobody's around, just to get this man to stop, and to get
6 out of her car. Thankfully, at this point in time, a
7 witness, who is leaving the Office Depot across the parking
8 lot from the Ryan's Steakhouse, has seen Ms. Green's car
9 driving erratically, has seen the person in her passenger
10 seat punching her as she's operating this car. She sees the
11 car almost hit the building. She stops very close to where
12 the car ends up right by the building and calls 9-1-1.

13 At this point in time, Mr. Green, excuse me, the
14 Defendant has tried to flee the vehicle with as much cash as
15 he can possibly take. Ms. Green, still scared she's gonna
16 lose her job, reaches for him. He drags her over the center
17 console to where she is hanging out of the passenger side
18 vehicle, and continues to punch her in her face.

19 He sees the witness parked close by on her phone, flees
20 the scene, taking a little less than \$2,000.00. When Ms.
21 Roush and law enforcement arrive, Ms. Green is just so
22 distraught. She thinks her jaw is broken because he's
23 punched her so hard. She's bleeding from her mouth onto her
24 pants. She's got grass stains all over her pants from where
25 he drug her out of the vehicle on the ground, and cash --

1 and she's still scared that she's losing her job because she
2 knows he took off with the cash.

3 They help her collect the money that he left behind,
4 which is a little over \$3,000.00. He took off with
5 approximately two. And get her the help that she needs for
6 her injuries, and she's transported to the hospital.

7 Deputy West, who comes to the scene first, sees that
8 he's dropped his wallet on the ground. She collects that
9 from the scene.

10 Now, Ms. Green is so distraught that she doesn't
11 realize that that weapon, the knife that was wrapped in
12 plastic that he took out of his belongings, was left behind
13 in that folder. She sees it on her way home from the
14 hospital that day in her vehicle. She knows that she's
15 gonna meet with an investigator to give a statement about
16 what happened that day. So, she packs it up in the
17 envelope, puts it in the trunk of her vehicle. And, when
18 she goes to give her statement to Investigator Gonzales a
19 week later, she says here this is what he left behind in my
20 car. Low and behold, the Defendant's DNA is on that knife
21 handle. Keep in mind they haven't lived together for over a
22 month at this point in time.

23 Now, ladies and gentlemen, as a result of the
24 Defendant's actions that day, he is charged and indicted and
25 on trial for four crimes. Domestic violence of a high and

1 aggravated nature for beating Ms. Green in that vehicle as
2 she's operating it on public roadways, putting her life in
3 danger.

4 He's charged with domestic violence of a high and
5 aggravated nature because, during that beating, he also
6 committed a robbery or a theft by taking that money that
7 certainly didn't belong to him during the process of the
8 domestic violence.

9 He's charged with armed robbery for taking Murphy's Gas
10 Station's money from the presence of Ms. Green while using
11 that deadly weapon in the process. He's charged with
12 kidnapping for confining Ms. Green against her will for that
13 period of time that this was occurring. And, again, he's
14 charged with possession of a deadly weapon during the
15 commission of a violent crime for having that knife while he
16 was committing all three of those offenses I just went over.

17 Now, ladies and gentlemen, my name is Kathryn
18 Cavanaugh, and my co-counsel and I, Richard Cathcart, want
19 to thank you, from the outset, for your time, and your
20 attention throughout this trial. It is our job, as we do in
21 every criminal prosecution, to prove the Defendant's guilt
22 beyond a reasonable doubt. It is your job, as jurors, to
23 reach a verdict.

24 Now, how do you come to that verdict?

25 well, we're gonna present evidence in two forms. Sworn

1 testimony from this witness stand from the witnesses that
2 either experienced this crime, Ms. Green, observed some of
3 this crime, or played a role in the investigation that led
4 to this Defendant's arrest.

5 We're also gonna present evidence in the form of
6 exhibits. Those would be photographs of the scene that day,
7 photographs of Ms. Green that day, evidence collected from
8 this crime such as the knife, the wallet he left behind, the
9 paperwork that he left behind.

10 And, after you go into that -- at the end of this
11 trial, when you go into that jury room to deliberate, I ask
12 you to find the Defendant guilty of domestic violence of a
13 high and aggravated nature for beating Ms. Green, someone he
14 lived with for over three years, while she was operating a
15 motor vehicle putting her life in danger, and also, during
16 that process, for taking that money that belonged to
17 Murphy's U.S.A. Gas Station through the use of a deadly
18 weapon, or simply just taking it. That qualifies as
19 domestic violence of a high and aggravated nature. Also ask
20 you to find him guilty of armed robbery for taking that
21 money from Ms. Green, did not belong to him, through the use
22 of a deadly weapon. Ask you to find him guilty of
23 kidnapping for confining her against her will for that time,
24 and possession of a deadly weapon during the commission of
25 those violent crimes for having that knife during the

1 process.

2 Thank you.

3 THE COURT: By the defense.

4 MR. HODGE: Thank you, Your Honor.

5 Morning, ladies and gentlemen.

6 As you heard, this incident happened September
7 28th of 2016. That's roughly 749 days ago that this case
8 happened, that this incident allegedly occurred.

9 Since this incident, and these statements were taken
10 749, 750 days ago, there have been multi versions of this
11 story, multiple versions of what occurred during this time.
12 I compared it the other day, when I was sitting here trying
13 to think of what it relates to and how I could give you an
14 example, to one of those pick your path books that you get
15 as a little kid. They always have sort of the same
16 beginning, and you get to a certain point, and then the
17 story changes, and I think it depends on who the reader is
18 in that case as to which, which route you want to take,
19 which version you want to read, which ending you want to
20 seek.

21 In this case, obviously it's a lot more serious than a
22 pick your path book, but I think you have the same sort of
23 idea.

24 You will find out, through testimony, that initially,
25 the day of this incident, 749 days ago, Ms. Green talked to

1 a law enforcement officer on the scene that day. And I want
2 you to listen closely to what that officer says was told to
3 her. And I want you to listen closely to what she found or
4 saw while she was on the scene.

5 There is no mention of a knife whatsoever 749 days ago.
6 No mention that Mr. Givens forced her into a car using a
7 knife, took money using a knife, or that a knife was ever
8 even present during any of this. No knife is taken from the
9 scene. No knife is taken from her car and she leaves.

10 She gets her car after it's checked, and everything is
11 working. She drives her car home. Eight days later,
12 roughly eight days later, she goes for an interview with an
13 investigator. Well now she knows she's talking to an
14 investigator. So, her story gets a little deeper, adds a
15 little more.

16 Now there's a knife. She brings the knife to the
17 investigator, and said it just fell out in her car. Said
18 that she was threatened with that knife. The investigator
19 then goes and does his investigative report. You'll hear
20 from him as well. And puts that the knife and the other
21 times were found on the scene.

22 That's not true. They weren't found on the scene. The
23 wallet is the only thing that we know was found on the
24 scene.

25 The version you heard today was a different version.

1 Now, and this, this version was just relayed recently, is
2 that not only was she threatened with a knife to get in the
3 car, not only did he reach across and try to steal this
4 money, but he also beat her on the way to Columbia. That
5 was never mentioned to the investigator in her initial
6 statement giving 740 days ago. She didn't say anything
7 about him punching her or beating her as she was driving to
8 Columbia.

9 This is not an easy case to listen to. I understand
10 that. These facts or these, these -- this testimony that
11 you're gonna hear is gonna, at times, sound disturbing, but
12 I ask you, as a jury, because it's your job to come to a
13 verdict in this case, I ask you to investigate along with
14 us. I ask you to think, when you're listening to this
15 testimony, what's believable and what's not, what has
16 changed and what has not, what was true then versus what is
17 true now.

18 I also want you to look at what was done or was not
19 done. No evidence was taken from the scene. No knife was
20 found on the scene, but it appeared eight days later, and it
21 just happened to have my client's DNA on it. Supposed their
22 DNA. We'll hear from the DNA expert as well. She'll
23 confuse you with that.

24 I also ask you to, to think about what's missing.
25 what could we have today because this was 749 days ago

1 or 750 days ago?

2 I want you to ask yourself what could we use today that
3 could of been taken then to help. All gas stations have
4 surveillance cameras. All gas stations have multiple
5 surveillance cameras cause they don't want anybody stealing
6 their gas. That's a high commodity.

7 You just heard from the State that, that my client was
8 hanging out in the gas station all day, that he was
9 bothering her all day or all morning I guess.

10 where's the video?

11 where's the evidence showing that he was bothering her,
12 that an argument ensued in the parking lot, that he
13 threatened with her with a knife?

14 where are those videos?

15 Now, they're gonna have a guy from Murphy's get up here
16 and tell you that the cameras only point to the gas pumps.
17 well, you'll see in the pictures, this is a very small gas
18 station. It's one of those wal-Mart Gas Stations, you know,
19 where they have like a little walk up to get your drinks
20 while it's outside. They're always sweating because it's
21 hot and cold.

22 So, I want you to look at that, and think reasonably,
23 if what she is telling you is the truth, why wouldn't there
24 be a video of Mr. Givens being around this location, and
25 bothering this victim?

1 You're also gonna hear another version of what
2 originally occurred, and how Mr. Green -- I mean Mr. Givens
3 ended up in Ms. Green's car. You're gonna hear that, that
4 they were in a relationship or that they were trying to work
5 out a relationship. You're gonna hear that she let him in
6 the car, that she put him in the car, against policy, while
7 she was going to make a deposit. He didn't threaten her to
8 get in that car. She let him into that car.

9 As Mr. Givens sits there today, he is innocent. No
10 ifs, ands, buts about it. He's innocent. That's the great
11 thing about our justice system as many of you know from
12 watching TV and the news. That's the great thing about it.
13 He is innocent and he is innocent until the State proves him
14 otherwise, and you're gonna hear a lot about proof and
15 reasonable doubt. The Judge will charge you on all of that.
16 I'm sure you've heard it a number of times.

17 But I believe that, using your common sense, hearing
18 what comes out of that witness stand, and asking the
19 questions that I've encouraged you to ask questions, along
20 with other questions that you will come up with on your own,
21 I believe the jury will find they haven't met that burden.
22 I believe you're gonna find that they didn't do their job,
23 that there are things you wish they would of done better,
24 but they didn't.

25 And I think, when all of that is done, and you are back

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by Sol. Cathcart

1 there deliberating and thinking on what the truth is cause
2 that's what a verdict is, it's to render the truth, when
3 you're back there thinking about what the truth is, you're
4 not gonna be able to say that he's guilty. You're gonna
5 have no choice but to say Mr. Givens is not guilty.

6 Thank you.

7 THE COURT: Okay. Call your first witness.

8 SOLICITOR CATHCART: Please the Court, Your Honor.

9 THE COURT: Yes, sir.

10 SOLICITOR CATHCART: At this time the State calls
11 Lakeisha West. Back in the -- Lakeisha West.

12 LAKEISHA WEST, being first duly
13 sworn, testified as follows:

14 THE CLERK: Thank you. Have a seat in the witness
15 stand please.

16 (Witness complies.)

17 THE CLERK: State your name for the record.

18 THE WITNESS: Senior Deputy Lakeisha West.

19 DIRECT EXAMINATION

20 BY SOLICITOR CATHCART:

21 Q Deputy West, where are you employed?

22 A Richland County Sheriff's Department.

23 Q How long you been there?

24 A Four -- it will be four years in October.

25 Q And what do you do there?

1 A I'm a patrol deputy.

2 Q Can you kind of describe to the jury basically what
3 your duties are as a patrol deputy?

4 A Basically I take calls on a day-to-day basis. If
5 anybody has any incidents going on they want to report, I
6 take reports for them.

7 Q Okay. And so this woman calls 9-1-1, that could --
8 goes to dispatch, and then you go to where they tell you to
9 go?

10 A Yes, sir.

11 Q So, some, some -- something happens you're -- are --
12 you are the first people on the scene?

13 A Yes, sir.

14 Q Where did you work before you were at the Sheriff's
15 Department?

16 A Alvin S. Glenn Detention Center.

17 Q What were you doing there?

18 A Detention officer.

19 Q Okay. And were you a deputy back on September
20 28th of 2016?

21 A Yes, sir.

22 Q And, on that date, were you called to an incident which
23 occurred on Two Notch Road, 1,000, excuse me, 10,052 Two
24 Notch Road?

25 A Yes, sir.

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by Sol. Cathcart

1 Q Do you recall what that location is?

2 A It was the old Ryan's.

3 Q Old Ryan's?

4 Use to be a Ryan's?

5 A Yes, sir.

6 Q And was it's a Ryan's at that point in time?

7 A No.

8 Q It just -- was it any business working there at that---

9 A No, sir, it's actually vacant.

10 Q Okay. And what -- did you write a report of what you
11 did and why you were there?

12 A Yes, sir, I did.

13 Q Okay. This occurred back in, as I stated, September
14 28th, 2016, correct?

15 A Yes, sir.

16 Q Would having a copy of that report help refresh your
17 memory as to the facts of this case?

18 A Yes, sir.

19 SOLICITOR CATHCART: Your Honor, may my -- never mind.
20 I'm sorry, Your Honor. Unless there's any objection from
21 defense counsel.

22 MR. HODGE: No objection.

23 SOLICITOR CATHCART: Thank you.

24 Is that a copy of your report?

25 A Yes, sir.

1 Q What time were you dispatched out to that location?

2 A 12:30PM.

3 Q And that was when they -- the call came in from the
4 radio, right?

5 A Yes, sir.

6 Q What time did you arrive?

7 A 12:35.

8 Q Okay. And, when you got there, who did you speak to?

9 A I spoke to a witness, a Ms. Roush, and Ms. Tiffany
10 Green.

11 Q Okay. And you indicated Ms. Roush was a witness?

12 A Yes.

13 Q And Ms. Green was what?

14 A The victim.

15 Q The victim.

16 Okay. And, when you arrived at that scene, what did
17 you observe?

18 A I, I saw Ms. Green's car very, very close stuck in --
19 by the door of the old Ryan's, and Ms. Roush was kind of
20 like across the street from the incident location.

21 Q Okay. And, when you say the car was close to the
22 Ryan's, was it in the parking space?

23 A No, it kind of was over a parking space in the bushes
24 really close to the building.

25 Q Let me show you what's been marked State's Exhibit No.

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by Sol. Cathcart

1 13, and could you describe what that is?

2 A That's a -- Ms. Green's car in the bushes close to the
3 building.

4 Q Is that a photograph that was taken when you were -- I
5 mean during the investigation of this incident?

6 A Yes.

7 Q Close in time when you were there?

8 A Yes, sir.

9 SOLICITOR CATHCART: Okay. At this time, the State
10 seeks to introduce State's Exhibit No. 13, Your Honor.

11 THE COURT: Any objection?

12 MR. HODGE: No objection.

13 THE COURT: It's admitted.

14 SOLICITOR CATHCART: Thank you, Your Honor.

15 (WHEREUPON, State's Exhibit No. 13 was received into
16 evidence at this time.)

17 SOLICITOR CATHCART: May I publish it to the jury as
18 well?

19 THE COURT: Yes, sir.

20 SOLICITOR CATHCART: Thank you.

21 would y'all pass that around please?

22 where was Ms. Green and -- when you arrived?

23 A She was out of the car at the time.

24 Q Okay. Can you describe how she appeared to you?

25 A She kind of had dirt on her everywhere. She was very

1 disheveled. Looked very concerned.

2 Q What was her emotional state?

3 A She was -- she seemed more like she was in shock. Kind
4 of flushing (sic) of what was going on.

5 Q And did she describe to you what, what occurred to her?

6 A Yes, she did.

7 Q Okay. And, in your report, did you indicate any
8 physical characteristics that you observed that you thought
9 were important to write down?

10 A Yes, I did notice that the side of her face was
11 swollen. She had some scratches on her. Also she had like
12 some blood on it -- on her mouth.

13 Q So, she was bleeding from the mouth?

14 A It was more of like dried blood.

15 Q Okay. So, it wasn't obviously bleeding at that point?

16 A No.

17 Q But just dried blood on her mouth?

18 A Yes.

19 Q And was her face swollen?

20 A Yes, it was.

21 Q Okay. And did you have, have an opportunity to observe
22 the vehicle as well?

23 A Yes.

24 Q Okay. And what -- well, actually let me go back to --
25 were you the only one called out to that scene?

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by Sol. Cathcart

1 A No, I wasn't. It was myself, Deputy Brown, and there
2 were some other officers that were patrolling the area.

3 Q What about medical personnel?

4 Were any medical personal also called?

5 A Yes, EMS was called out to the scene as well.

6 Q Okay. And did -- was she treated by EMS?

7 A Yes.

8 Q And did she drive away in her car?

9 A No, EMS transported her.

10 Q Transported her where?

11 Well, did -- all you know is they transported her?

12 A Yeah, I, I just know that they transported her.

13 Q Okay. And did you have a camera or did y'all take
14 pictures of the scene, you and the other officers?

15 A Deputy Brown took photographs of the scene for me.

16 Q Okay. And that was under your direction?

17 A Yes.

18 Q And you were there when he was taking this or they were
19 taking this (sic) pictures?

20 A Yeah -- yes, sir. Bless you.

21 Q Show you what's been marked as State's Exhibit No. 1,
22 2, 3, and 4.

23 A Okay.

24 Q And could you take a look at those and describe what
25 these are -- those are?

1 A This is a picture of Ms. Green while she was in the, in
2 the ambulance of her face, mouth, clothes.

3 Q Okay. And you -- and y'all -- you -- those pictures
4 were taken under your direction?

5 A Yes.

6 Q For the purposes of what?

7 A To basically have evidence of her physical demeanor.

8 Q Okay.

9 SOLICITOR CATHCART: Your Honor, at this time, the
10 State seeks to introduce State's Exhibit No. 1, 2, 3, and 4.

11 THE COURT: Any objection?

12 MR. HODGE: No objection.

13 THE COURT: They're admitted.

14 SOLICITOR CATHCART: Thank you.

15 (WHEREUPON, State's Exhibit Nos. 1 through 4 were
16 received into evidence at this time.)

17 Q When you arrived there, and it was described to you
18 what occurred, was the Defendant there?

19 A No, he was not.

20 Q Okay. Did y'all attempt to locate where the person --
21 the Defendant, the person described as correct -- that's
22 committing this assault and robbery occurred?

23 Do you know -- did y'all try to look for him?

24 A Yes, I stayed -- me and Deputy Brown stayed on scene
25 while other officers patrolled the area.

Lakeisha West - Direct examination
by Sol. Cathcart

1 Q Did y'all -- were y'all able -- did the -- were you,
2 given a name of the person to look for?

3 A Yes, I was given a name.

4 Q Were you given a description --

5 A Yes.

6 Q -- of what to look for?

7 That description came from the witnesses and the
8 victim?

9 A Yes.

10 Q Okay. And do you recall what you told as a description
11 or what you put out as a name and description of that person
12 to dispatch for people to look out for?

13 A When we initially got on, we gave out the description
14 of what, what was told to us to what he had on. So, we had,
15 like I say, we had other deputies looking for basically the
16 clothing items that he had on.

17 Q Okay. And how did y'all describe him?
18 what did you -- how did you describe that?

19 A Like a burgundy polka dot shorts, green shirt, light
20 skin black male, short hair.

21 Q Burgundy polka dot shorts, green what?

22 A Pants.

23 Q Pants.

24 Okay. I'm sorry.

25 Light skinned, short hair, and also put out his name as

1 the person to look for?

2 A Yes.

3 Q Okay. And did you have an opportunity to observe the
4 vehicle as well?

5 A Yes.

6 Q Did you -- what did, if anything, did you observe in
7 the vehicle that was out of the ordinary?

8 A One, it was stuck in the, in the bushes --

9 Q Okay.

10 A -- by the building. I, I found his wallet around the
11 passenger side of the vehicle.

12 Q How did you know it's his wallet?

13 A When I opened it, it had his ID in it.

14 Q Okay. Let me show you what's been marked as State's
15 Exhibit No. 18.

16 Did you take that wallet into evidence?

17 A Yes.

18 Q Did you put it to the evidence custodian at the
19 Sheriff's Department?

20 A Yes, sir.

21 Q I, I show you what's been marked State's Exhibit No.
22 18.

23 Can you describe what that is?

24 A This is a black wallet with, with Lamonte Givens South
25 Carolina identification card, and three cards, and a

Lakeisha West - Direct examination
by Sol. Cathcart

1 5-dollar bill.

2 Q Okay. And that was the wallet that you collected?

3 A Yes, sir.

4 SOLICITOR CATHCART: Your Honor, at this time, the
5 State seeks to introduce State's Exhibit No. 18.

6 THE COURT: Any objection?

7 MR. HODGE: No objection.

8 THE COURT: It's in.

9 (WHEREUPON, State's Exhibit No. 18 was received into
10 evidence at this time.)

11 Q The -- did you notice any money in the car?

12 A Yes, it was the torn deposit slip, and bag where the
13 deposit goes in.

14 Q Uh-huh. (Affirmative).

15 A It was inside of the car.

16 Q And it was -- the slip was torn or the bag was torn?

17 A The bag was torn.

18 Q Okay. And was there money just still in the bag or was
19 the money -- how was the money involved?

20 A The -- at the time, the money was in, in the bag. I
21 believe they had collected it, most of it, while we were
22 there. Well, prior to our arrival.

23 Q Okay. So, other people got there ever before you did?

24 A No, I'm saying Ms. Green and I -- Ms. Green, that I
25 know for sure, collected as much as she could.

1 Q Okay. And she was still there with the money that she
2 collected?

3 A Yes.

4 Q Okay. I show you what's been marked State's Exhibit
5 No. 5.

6 A Okay.

7 Q And No. 6.

8 Can you describe what these are?

9 A That's the deposit bag with the money inside, and then
10 that's a deposit slip of the total amount of money that
11 should of been in the deposit bag.

12 Q And when we say No. 5 is the deposit bag?

13 A Yes.

14 Q And six being the deposit slip?

15 A Yes.

16 SOLICITOR CATHCART: Your Honor, at this time, the
17 State seeks to introduce No. -- State's Exhibit No. 5 and 6.

18 MR. HODGE: No objection.

19 THE COURT: It's admitted.

20 (WHEREUPON, State's Exhibit No. 5 and 6 were received
21 into evidence at this time.)

22 Q Were y'all able to determine how much money was found
23 in the car?

24 A Yes, sir, her manager came, and they were able to, him
25 and Deputy Brown, counted the money, and he gave us a total

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by Sol. Cathcart

1 of how much was actually collected that was left.

2 Q Okay. How much was collected?

3 Do -- you refer to your report.

4 A Total, \$3,714.00 was recovered.

5 Q Okay. And, according to the deposit slip, and from the
6 test -- from what they told you -- from basically from the
7 deposit -- bank bag, deposit slip, how much money was
8 missing from that deposit?

9 What was taken?

10 A Approximately \$1,456.00.

11 Q How long were you able to speak with Ms. Green?

12 A Approximately about -- I believe I was there for like
13 an hour and a half, but the whole hour and a half, it wasn't
14 just speaking to her. So --.

15 Q She was under the care of the medical personnel---

16 A Yes.

17 Q ---while you're talking to her?

18 She was upset---

19 A Yes.

20 Q ---as you indicated?

21 And they took her to the hospital, correct?

22 A Yes.

23 Q And you forwarded all the information you had to where?

24 A Investigations.

25 Q To investigations?

1 A Yes, sir.

2 Q So, your job in this case is gathering what you can,
3 correct?

4 A Correct.

5 Q But are you the investigator in this case?

6 A No, I'm not.

7 Q Did you take a written statement from the victim?

8 A No, I did not.

9 Q Did you take a written statement from the witness?

10 A No, I did not.

11 Q Okay. That's somebody else's job, right?

12 A It's part of the duties of investigations, yes.

13 Q Someone with a high pay grade I guess?

14 A Yes, sir.

15 Q Okay. Did you go and search the car for any evidence?

16 A No, I did not. As far as -- I collected what I saw at
17 the time --

18 Q You didn't do any---

19 A -- what was, what was, what was there in front of me.

20 Q In plain sight?

21 A Yes, sir.

22 SOLICITOR CATHCART: Beg the Court's indulgence.

23 (Pause.)

24 Q As part of y'all's investigation, did y'all have the
25 victim fill out a form?

Lakeisha West - Direct examination
by Sol. Cathcart

1 You -- let's see. I show you what's been marked
2 State's Exhibit No. 21.

3 A This is a domestic violence supplemental incident
4 report.

5 Q And what is the purpose of that?

6 A Basically when you have a, a domestic couple in, in a
7 situation basically it was is violence that occurs, we fill
8 out this report to, to get basic information as far as their
9 relationship, any children in common, if they have any,
10 their basic information, date of birth, height, weight, all
11 that information, any -- if any injuries, if they were
12 transported to the hospital if need be.

13 Q And y'all did that in this case?

14 A Yes, sir.

15 Q Okay. And in looking at the report, did y'all indicate
16 where the injuries were on her body?

17 A Yes.

18 Q Did y'all indicate what type of injuries that she had
19 occurred -- that she had?

20 A Yes.

21 Q Y'all indicated what was the injury that you had --
22 that she had?

23 A That her lip was busted and a swollen jaw.

24 Q Okay. You, you also indicate -- check off any other
25 injuries to her?

1 A Basically that she complained -- she had complaints of
2 pain, some bruising, lacerations, and some, and some cuts
3 also.

4 Q I believe y'all checked -- did you also check off
5 some---

6 A Is that she had difficulty swallowing.

7 Q All right. And the cuts were indicated where?

8 A The cuts was -- the cuts were on the elbow that I
9 noticed that I wrote in the accident report.

10 Q And did you -- did you also indicate that y'all took
11 pictures?

12 A Yes.

13 Q And pictures of what?

14 A Her injuries.

15 Q Injuries being the victim's?

16 A Yes.

17 SOLICITOR CATHCART: Your Honor, at this time, the
18 State seeks to introduce State's Exhibit No., excuse me, 21.

19 THE COURT: What says the defense?

20 MR. HODGE: No objection.

21 THE COURT: It's admitted.

22 SOLICITOR CATHCART: Thank you.

23 (WHEREUPON, State's Exhibit No. 21 was received into
24 evidence at this time.)

25 SOLICITOR CATHCART: Your Honor, may I borrow your

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by Sol. Cathcart

1 stapler?

2 THE COURT: Yes. There's none up there. We don't have
3 any.

4 which number is that again?

5 SOLICITOR CATHCART: This is State's Exhibit No. 21,
6 Your Honor.

7 THE COURT: Okay.

8 SOLICITOR CATHCART: If I may approach?

9 THE COURT: Yes, sir.

10 Q It's a copy of it. 2000 -- in -- 52 Two Notch Road,
11 the old Ryan's?

12 A Yes, sir.

13 Q Have you been by there lately?

14 A Yes.

15 Q Is it open?

16 Is that building open now?

17 A Yes, it is.

18 Q Do you recall what it's called?

19 A Magnolia Something Buffet. I'm, I'm not---

20 Q So, it's---

21 A ---familiar with the, the full title.

22 Q kind of ball park on what it's used for?

23 A I'm not sure if they sell the same items or not, but
24 it -- I mean same place. It's just called Magnolia
25 Something Buffet.

1 Q Something or another.

2 Okay. Show you what's been marked State's Exhibit No.

3 7.

4 A Yes.

5 Q Do recognize what that is?

6 A Yes.

7 Q Is that the business as it is today?

8 A Yes.

9 SOLICITOR CATHCART: Your Honor, at it -- at this time,
10 the State seeks to introduce State's Exhibit No. 7.

11 THE COURT: Any objection?

12 MR. HODGE: No objection Your Honor.

13 THE COURT: Seven is in.

14 (WHEREUPON, State's Exhibit No. 7 was received into
15 evidence at this time.)

16 Q I show you what's been marked State's Exhibit No. 14.

17 A All right.

18 Q Can you describe what that is?

19 A The back of Ms. Green's car.

20 Q Is that as it was when you found it?

21 A Yes.

22 Q State's Exhibit No. 12.

23 A The front of Ms. Green's car.

24 Q Again, as it was that day?

25 A Yes.

Lakeisha West - Direct examination
by Sol. Cathcart

1 Q And State's Exhibit No. 11.

2 A The front of Ms. Green's car.

3 Q And does that -- the building to it that's right in
4 front of it, is that the Ryan's we're talking about?

5 A Yes, that's the Ryan's.

6 Q Now Magnolia's?

7 A Yes.

8 SOLICITOR CATHCART: Your Honor, at this time, State
9 seeks introduce State's 11, 12, and 14.

10 MR. HODGE: No objection.

11 THE COURT: They're admitted.

12 (WHEREUPON, State's Exhibit Nos. 11, 12, and 14 were
13 received into evidence at this time.)

14 Q That Ryan's, now Magnolia's?

15 A Yes.

16 Q Is it in Richland County?

17 A Yes, sir.

18 Q And where the witness and the victim indicated that
19 this occurred, all that was in Richland County?

20 A Yes, sir.

21 Q Please answer any questions from the defense counsel.

22 A Okay.

23 THE COURT: Cross-examination.

24 MR. HODGE: Thank you, Your Honor.

25 CROSS-EXAMINATION

1 BY MR. HODGE:

2 Q Morning, Deputy West.

3 A Good morning.

4 Q My name is William Hodge. I represent Wesley Givens in
5 this case.

6 You were the, the main officer that was called out to
7 the scene.

8 Is that correct?

9 A Yes.

10 Q So, you headed up everything from the time you got
11 there, giving statements, and all that stuff, right?

12 A Yes.

13 Q And all of that, everything that you were told and
14 everything that you observed, is, is written down in this
15 incident report that we have here.

16 Is that right?

17 A Yes.

18 Q When did you write this incident report?

19 A That day.

20 Q That day?

21 A Uh-huh. (Affirmative.)

22 Q Like on the scene or --

23 A No.

24 Q -- at a later time?

25 A It, it was a later time that day.

Lakeisha West - Cross-examination
by Mr. Hodge

1 Q Okay. The reason I ask is cause it, in this incident
2 report in which you are talking about Ms. Roush, do you
3 remember Ms. Roush?

4 A Yes.

5 Q In this incident report, you said that she was driving
6 by, and she saw Wesley Givens.

7 Did Ms. Roush tell you she saw Wesley Givens?

8 A She told me -- she told me the description of the guy,
9 and it was the same description that Ms. Green gave me, that
10 Ms. Green told me that was Mr. Givens. So, that's why I put
11 that name.

12 Q Right.

13 But Ms. Roush never said Wesley Givens, right?

14 A No, sir.

15 Q She didn't give you the name of your suspect right
16 away, right?

17 A No, sir.

18 Q Ms. Roush had no knowledge of who it was.

19 Isn't that correct?

20 A That's correct.

21 Q Okay. Now, you then, after talking to Ms. Roush, you
22 made contact with Ms. Tiffany Green.

23 Is that right?

24 A Yes, sir.

25 Q And, and these notes that you have and this incident

1 report reflect exactly what was told to you or a summary of
2 what was told to you by Ms. Green?

3 A Yes, sir.

4 Q where, in this incident report, does Ms. Green refer to
5 a knife?

6 A There's not one.

7 Q where, in this incident report that you took on the day
8 of the incident and that you just said you wrote that day,
9 where, on this report, does it discuss a knife at all?

10 A It's not one.

11 Q And this was everything that was told to you by Ms.
12 Green that morning?

13 A Yes.

14 Q Correct?

15 A Yes, sir.

16 Q There was also -- I believe you were handed up the
17 exhibits making it's way around somewhere with the picture
18 of the human body here.

19 Is that right?

20 A Yes, sir.

21 Q And that's where you filled this victim supplemental
22 incident report out, correct?

23 A Yes.

24 Q And I'm not sure who has it. I'm just gonna hand you
25 my copy if that's okay. I think it's the same thing.

1 Does that look like the same thing that you just had
2 and they put that in at the time, and maybe some notes that
3 I have written, but as far as the markings themselves?

4 A Yes.

5 Q Okay. That -- this second picture over here where it
6 has the, the X on the elbow, what does that---

7 A That's a---

8 Q ---that title up there at the top right above where
9 that body is shown, whose injuries does that say those are?

10 A Subject.

11 Q Those are the subject -- the suspect's injury, correct?

12 A Yes.

13 Q But you didn't make contact with any suspect that day,
14 correct?

15 A No, I did not.

16 Q So, you just -- you marked Ms. Green's injuries on the
17 suspect's side accidentally?

18 A Yes, sir.

19 Q would that -- all right. On this second page here
20 there is a couple of boxes.

21 A Okay.

22 Q First box says weapons.

23 Do you see that there?

24 A Yes.

25 Q Are there any items checked in that weapons box?

- 1 A Let me see if I can see. Yes, where it says personal.
- 2 Q What does that -- what does personal mean?
- 3 A Hands, head, feet.
- 4 Q The next, the next box over here, the one that says
- 5 cutting instrument, is that box checked?
- 6 A No, sir.
- 7 Q If you were told that a knife had been used, would you
- 8 have checked that box?
- 9 A Yes.
- 10 Q The third box down, risk factors with lethality
- 11 assessment.
- 12 What does that mean?
- 13 Lethality or leath, leath -- I guess it's lethality. I
- 14 don't know how to pronounce that word, but lethal
- 15 assessment.
- 16 That would be assessing how likely death would occur,
- 17 right?
- 18 A Yes.
- 19 Q Okay. They're a few boxes checked on this document.
- 20 Suspect abuses alcohol or other drugs. Suspect accuses
- 21 victim of cheating. Suspect attempts to control partner's
- 22 daily activities. But I want you to look at the second box
- 23 that is circled on here. My notes. Not on yours.
- 24 A Okay.
- 25 Q Is that box checked?

Lakeisha West - Cross-examination
by Mr. Hodge

1 A No, sir.

2 Q And what does that box say?

3 A Suspect has used or threatened to use a weapon.

4 Q And that box is not checked?

5 A No, sir, it's not.

6 Q And if someone had told you that they had just been
7 threatened with a weapon, you would of checked that box,
8 correct?

9 A Yes.

10 Q Now, I think you testified that you were on the scene
11 for about an hour and a half, right?

12 A Yes, sir.

13 Q what were you originally called out for?

14 Do you remember what the original call was for?

15 A I, I believe it came out as a robbery.

16 Q Okay. When you arrived on the scene, and throughout
17 that hour and a half, did you ever look into Ms. Green's
18 car?

19 A Just for a -- on the passenger side.

20 Q On the passenger side, which is, I believe, where
21 Mr. Givens would of been riding according to the, the story
22 presented to the jury.

23 Is that right?

24 A Correct.

25 Q Did you see anything in plain sight that day?

- 1 A The, the torn deposit bag.
- 2 Q Did you see a knife in the car?
- 3 A I did not.
- 4 Q Did you take a knife out of the car?
- 5 A I did not.
- 6 Q Now, I think your -- the testimony and the pictures
7 that are going around with that five -- that said that there
8 was five thousand and one hundred and some odd dollars to be
9 deposited, right?
- 10 A Yes, sir.
- 11 Q And they recovered \$3,714.00, correct?
- 12 A Correct.
- 13 Q So, I think your math is right. I haven't gone back
14 and double-checked it, but I think your math is right---
- 15 A Okay.
- 16 Q ---in that the approximate amount taken, at that point
17 on the date of the incident, was \$1,456.00.
- 18 Is that right?
- 19 A Correct.
- 20 Q But you didn't count that?
- 21 A No, I didn't.
- 22 Q But you trusted the word of, I believe, it was Chris
23 Overton?
- 24 Is that right?
- 25 A The general manager over her as well as another deputy.

Lakeisha West - Cross-examination
by Mr. Hodge

1 Q Okay. But they counted that money together that day?

2 A Yes, sir.

3 Q And that's the number that they came up with on that?

4 A Yes, sir.

5 MR. HODGE: Can I have just a moment, Your Honor?

6 (Pause.)

7 Q One -- I think I just have one more question for you.

8 You took the picture of -- maybe a couple of questions. You

9 took a picture of that moneybag, that deposit bag.

10 Correct?

11 A Yes, I, I had Deputy Brown -- well, I had Deputy

12 Brown---

13 Q Okay.

14 A ---take a picture.

15 Q But somebody took a picture of that?

16 A Yes, sir.

17 Q Okay. Was that taken into evidence?

18 A The bag, no, sir.

19 Q Is it possible that it could of had fingerprints on
20 that bag?

21 A Yes, sir.

22 Q But it wasn't taken into evidence?

23 A No, sir, it wasn't.

24 Q All right. I think that's all the questions I have.

25 Thank you, Deputy.

1 THE COURT: Redirect.

2 SOLICITOR CATHCART: Thank you, Your Honor.

3 REDIRECT EXAMINATION

4 BY SOLICITOR CATHCART:

5 Q Murphy's Gas Station's manager came out to the scene,
6 correct?

7 A Yes.

8 Q And y'all give him the moneybag, correct?

9 A Yes.

10 Q It's their money?

11 A Yes.

12 Q Right?

13 It was -- you were dispatched out to a robbery,
14 correct?

15 That's what you heard the dispatch said, robbery in
16 progress?

17 A I believe that's what it came out as.

18 Q And the person who made -- called dispatch was who?

19 A Ms. Roush.

20 Q Ms. Roush, who doesn't know the Defendant's name,
21 correct?

22 A Correct.

23 Q Doesn't know their relationship cause she doesn't know
24 them, correct?

25 A That's correct.

1 Q All she saw is what -- she did tell you what she was
2 what---

3 A What she saw was going on at the time.

4 Q In fact, in your report, she indicated that she was
5 dropping by and saw what?

6 The second line of your report.

7 A Saw that Mr. -- saw Mr. Givens punching Ms. Green while
8 Green was on the ground, and, when she pulled up, Mr. Givens
9 ran off from the backside of the location.

10 Q And she lost sight of him?

11 A Yes.

12 Q And, as the defense attorney pointed out, she just said
13 that guy or pointed?

14 She didn't know Mr.--

15 A Yeah, she doesn't---

16 Q ---Givens name at that time?

17 A She doesn't know him at all.

18 Q You put his name in there yourself, correct?

19 A Yes.

20 Q Of course, we're talking about who?

21 A The, the suspect.

22 Q And---

23 A Mr., Mr. Givens.

24 Q ---you know the name of the suspect, right?

25 A Yes, I know the name of the suspect.

- 1 Q That was given to you?
- 2 A Yes.
- 3 Q In fact, you got his ID, correct?
- 4 A That's correct.
- 5 Q Found in the car?
- 6 A Yes, sir.
- 7 Q Ms. Green, when she talked to you about on this
- 8 report---
- 9 A Yes.
- 10 Q ---y'all were looking at her physical injuries,
- 11 correct?
- 12 A That's correct.
- 13 Q What did she say made her lip busted?
- 14 A That she got hit, that she got punched in the face.
- 15 Q That's what caused her injury to her jaws as well?
- 16 A Yes.
- 17 Q Punching her?
- 18 A Yes.
- 19 Q Is this a robbery report?
- 20 A No.
- 21 Q Is this to look into the injuries of the victim of that
- 22 CDV?
- 23 A To look into the injuries of the victim of the CDV.
- 24 Q And what Ms. Green, what Ms. Roush told you, and what
- 25 you observed at the scene, was all that consistent to each

Lakeisha West - Redirect examination
by Solicitor Cathcart

1 other?

2 A Yes.

3 Q No further questions. Thank you so much.

4 A Thank you.

5 THE COURT: Further cross-examination?

6 MR. HODGE: Just a real, real quick, Judge.

7 RECROSS EXAMINATION

8 BY MR. HODGE:

9 Q When talking with Ms. Roush, did she say anything about
10 the suspect grabbing money or anything as he ran away or
11 scooping up money or anything like that?

12 Did Ms. Roush mention anything about him taking money?

13 A No, sir.

14 MR. HODGE: That's it, Your Honor. Thank you.

15 THE COURT: All right. Thank you. You may step down.

16 And, ladies and gentlemen, we'll take a few minutes
17 break. Please do not discuss the case. If you'll go to the
18 jury room.

19 (WHEREUPON, the following takes place outside the
20 presence of the jury.)

21 THE COURT: Let's see now. When you-all call
22 witnesses, do you-all have them -- give them any
23 instructions about talking directly into the mic or
24 anything?

25 I hear a lot of mumbling quite often, and I can't make

1 out what people are saying. I know I'm a little bit older
2 then a lot of you.

3 which one of those mics should they -- people talk
4 into?

5 SOLICITOR CATHCART: My understanding, Your Honor, is
6 they both amplify. The one that they need is that one.

7 THE COURT: All right.

8 SOLICITOR CATHCART: But I think they both---

9 THE COURT: There's something -- so, we have two mics.
10 So, we should be able to hear and understand what people say
11 if they speak into the mic.

12 SOLICITOR CAVANAUGH: I'll---

13 THE COURT: But they just, you know, people get up as
14 if they're just having a casual conversation, and I can't
15 make out what they're saying quite often.

16 SOLICITOR CATHCART: I'll try to get them to speak up
17 for Your Honor.

18 THE COURT: All right. Good deal.

19 So, we're gonna take a few minutes. You -- I want to
20 review whatever law you have---

21 SOLICITOR CAVANAUGH: Oh.

22 THE COURT: ---on this enhancement issue.

23 SOLICITOR CAVANAUGH: Yes, Your Honor.

24 THE COURT: And we'll take about eight minutes.

25 SOLICITOR CAVANAUGH: Your Honor, I'll hand up State v.

1 Benton, State v. Hamilton, and State v. Cheatham, which all
2 explains why prior convictions are admissible.

3 THE COURT: Now, we know about burglary, but I'm
4 gonna -- I'm -- that, that's the law that exists since they
5 passed the new domestic violence law in 2015.

6 SOLICITOR CAVANAUGH: Well, Your Honor, there -- I'm
7 not aware of any case on point from the new domestic
8 violence law, but it would flow into the same logic since
9 it---

10 THE COURT: well, I'll hear the arguments later, but I
11 want to see the law---

12 SOLICITOR CAVANAUGH: I'll hand it up.

13 THE COURT: ---that you, you have.

14 SOLICITOR CATHCART: With the law -- would you care for
15 the -- I mean the law that she's gonna hand up is the
16 burglary law.

17 THE COURT: Yeah, I -- well---

18 SOLICITOR CAVANAUGH: Your Honor, I'll also hand up---

19 THE COURT: We know basic burglary law, but, you know,
20 and the judge has to weigh the, the probative value versus
21 prejudicial effect, and all that on all of it. But I want
22 to study it. Then we'll talk about it.

23 SOLICITOR CATHCART: Yes, sir.

24 SOLICITOR CAVANAUGH: Yes, Your Honor. I'll also hand
25 up the domestic violence statute, which shows that two prior

1 convictions---

2 THE COURT: I have the---

3 SOLICITOR CAVANAUGH: ---element of---

4 THE COURT: Yeah, the law is---

5 (WHEREUPON, the court monitoring system quit recording
6 at this time.)

7 THE COURT: All right. We're ready?

8 Ready for the jury?

9 SOLICITOR CAVANAUGH: Yes, Your Honor.

10 THE COURT: All right. Let's bring them on.

11 As, as they're coming, I want to ask you a question.

12 If the jury were to find him guilty of domestic
13 violence third degree, the most minimal domestic violence,
14 what sentence would he face?

15 SOLICITOR CAVANAUGH: Thirty days. Thirty days.

16 THE COURT: Even though he has two prior offenses?

17 SOLICITOR CAVANAUGH: Well --.

18 THE COURT: Well, think about it.

19 SOLICITOR CAVANAUGH: Well, you, you asked if they were
20 to find---

21 THE COURT: Yeah.

22 SOLICITOR CAVANAUGH: ---him guilty of -- the penalty
23 for that is 30 days.

24 THE COURT: I know that. Well, even though he has two
25 prior?

1 SOLICITOR CAVANAUGH: Yes.

2 THE COURT: Okay.

3 SOLICITOR CATHCART: I think so.

4 (WHEREUPON, the following takes place within the
5 presence of the jury.)

6 THE BAILIFF: The jury is seated, Your Honor.

7 THE COURT: All right. Welcome back.

8 Next witness.

9 SOLICITOR CAVANAUGH: State calls Jackie Richburg.

10 JACQUELYN RICHBURG, being first
11 duly sworn, testified as follows:

12 THE CLERK: Thank you. Have a seat in the witness
13 stand please.

14 (Witness complies.)

15 THE CLERK: State your name for the record.

16 THE WITNESS: Jacquelyn Richburg.

17 DIRECT EXAMINATION

18 BY SOLICITOR CAVANAUGH:

19 Q Ms. Richburg, where are you employed?

20 A City of Columbia 9-1-1 communications.

21 Q And what is your -- what is your role at the 9-1-1
22 communications?

23 A Right now I'm the interim director, and I also oversee
24 the FOIA requests for recordings.

25 Q And when you say 9-1-1 communications, what exactly is

1 that agency?

2 A We process and handle all calls for Richland County
3 Sheriff's Department, City of Columbia Police, the fire
4 department, and the ambulance service.

5 Q So, when someone calls 9-1-1, they are directed towards
6 your agency?

7 A Yes.

8 Q And when someone calls 9-1-1 to report an incident,
9 how, how are those records actually kept in the regular
10 course of business?

11 A The -- all of our phone calls and radio traffic
12 information is attached to our recording system, and it's
13 stored on there for 90 days.

14 Q You said stored on there for 90 days?

15 A Yes.

16 Q So -- and the audio -- what is stored for 90 days?

17 A The phone calls, and the radio traffic.

18 Q But the actual closed incident reports where the
19 dictation of what was relayed to 9-1-1, is that stored for
20 more than 90 days?

21 A Yes, that's -- we keep that information for five years.

22 Q And, on September 28th of 2016, were there several
23 calls that came in relation to an incident that occurred in
24 the 10,000 block of Two Notch Road?

25 A Yes.

Jacquelyn Richburg - Direct examination
by Sol. Cavanaugh

1 Q And how many 9-1-1 calls were you able to determine
2 came in regarding that location?

3 A Three.

4 Q And when did -- what time did the first call come in?

5 A It came in at 12:28:21.

6 Q And was that particular caller -- did that particular
7 caller give her name?

8 A Yes.

9 Q And what was written down as her name?

10 A Cammie Morris.

11 Q And, from this particular call, what did she relay to
12 the 9-1-1 dispatcher?

13 A She relayed that law enforcement was needed at Ryan's
14 in the area of the Wal-Mart in reference to unknown if it's
15 two females/male. The subjects were fist fighting possibly
16 in reference to a road rage in the parking lot.

17 Q And that's just from her viewpoint from wherever she
18 was when she observed this, right?

19 A Yeah, that -- I mean there's some -- the second line I
20 didn't get to read.

21 Did you want me to read that?

22 Q We get -- yes, continue. I apologize for interrupting
23 you.

24 A Okay. At least one female involved wearing a royal
25 blue shirt and khaki pants, and then there's a gold possibly

1 Crown Victoria that's still on the scene against the wall of
2 the Ryan's.

3 If you want me to keep going?

4 Q Where -- when Ms. Morris is reporting this to the, to
5 the dispatcher, does she indicate where she is from what
6 she's observing?

7 Is that on the first page?

8 A Yes, it says Walden's Book Store.

9 Q Okay. So, she wasn't at the Ryan's Steakhouse if she's
10 calling 9-1-1?

11 A Right.

12 Q And then, as far as the, the continuation of the
13 report, does it flow into other phone calls that have come
14 in?

15 A Yes. So --.

16 Q What was, what was the second phone call that came in?

17 A The second phone call came in at 12:28:31. So, it's
18 like ten seconds different from the first one.

19 Q Okay. And where was this person located when she -- he
20 or she called 9-1-1?

21 A It says at the Ryan's Grill & Buffet.

22 Q And what number -- is there a name associated with this
23 caller?

24 A No.

25 Q What number does she actually call from, he or she?

Jacquelyn Richburg - Direct examination
by Sol. Cavanaugh

1 A (803) [REDACTED].

2 Q And what does this caller relay as to what she
3 observed?

4 A The caller states that the subject has the store key,
5 and the subject is wearing khaki pants, plaid shirt, black
6 male, 180 pounds. The subjects (sic) is on foot on Two
7 Notch Road towards the Lowe's, and the caller states the
8 victim is bleeding in the face. The caller states that the
9 victim's vehicle ran into Ryan's building, and the subject
10 was hitting the victim as she was driving, and that's what
11 it says.

12 Q So, that is the information that was related by that
13 particular caller?

14 A Yes.

15 Q And then was there a phone message, a third call, that
16 came into 9-1-1 to report what they observed related to this
17 incident?

18 A Yes, that call was received at 12:28:38.

19 Q So, about nine seconds later?

20 A Yes.

21 Q And where was that person calling from?

22 A From Dollar Tree.

23 Q Did that person give their name?

24 A No.

25 Q And can you relay to us what that caller told the 9-1-1

1 dispatcher?

2 A A black male wearing plaid shirt with khaki pants
3 across from this location, and a black female sitting in a
4 gold unknown model vehicle is parked in Ryan's parking lot.
5 States the male just walked off from the female, but was
6 hitting on her. This is a third party caller from the
7 Dollar Tree.

8 Q And---

9 A That's it.

10 Q That's it?

11 A Uh-huh. (Affirmative).

12 Q Okay. And so as these reports -- several pages of
13 these reports, as they continue, I think I asked you this
14 earlier, does the information lead into the same report
15 because it's coming from the same incident?

16 A Yes, the calls are linked. Once you put in the first
17 call, and you see that's another call in the close
18 proximity, then the employees are trained to look in that
19 call to see if it's possibly the same call. And, once they
20 review that incident, they link them together.

21 Q And then what type of information is contained in the
22 following pages of these reports later on in the call logs?

23 Is it the information that law enforcement, and the
24 other first responders are relaying to the dispatchers?

25 A Yes, some of it is what the responders are giving the

Jacquelyn Richburg - Direct examination
by Sol. Cavanaugh

1 dispatchers, and -- yeah, and it's just a continuation of
2 what the other callers gave, but a lot of -- the rest of it
3 is pretty much what the units, when they arrived on the
4 scene, the information that they gave the dispatcher.

5 Q And the information is being updated as law enforcement
6 remains on scene, and, and more information is gathered
7 about what's going on?

8 A Yes.

9 SOLICITOR CAVANAUGH: Beg the Court's indulgence.

10 (Pause.)

11 Q Thank you, Ms. Richburg. Please answer any questions
12 for the defense counsel.

13 A Thank you.

14 THE COURT: Mr. Hodge.

15 MR. HODGE: Thank you, Your Honor.

16 CROSS-EXAMINATION

17 BY MR. HODGE:

18 Q Good morning, ma'am.

19 A Good morning.

20 Q My name is William Hodge, and I represent Mr. Givens in
21 this case. I just really have a couple of questions for
22 you.

23 Do you still have that report in front of you, I
24 assume?

25 A Yes.

1 Q Okay. I think there was one, and I'm only gonna focus
2 really on one, one call in particular, and then ask a couple
3 questions about the other.

4 But the call that was from the unknown number, can you
5 tell me what initials are next to that response as if in
6 who -- which dispatcher's talking to that person?

7 A I'm sorry, which --?

8 Q The unknown number. The, the number that -- not the
9 865 number, but the other number that was actually redacted
10 on my version of it. She told you which one it was. I
11 believe you, you listed it as call number two.

12 A So, the 403 number?

13 Q I believe that's it, yes, ma'am.

14 A Okay. I'm sorry. What was the question again?

15 Q Which initials -- which dispatcher's initials are next
16 to, to those statements taken from that person?

17 A It's Meredith Horry, and her initials are M.F.H.

18 Q Okay. So, I'm gonna, right now just to keep my mind
19 straight, I'm gonna focus on M.F.H.?

20 A Okay.

21 Q And I, I believe I have the same report you have, but
22 M.F.H. takes this response -- this call from someone saying
23 that she works for Murphy's, correct?

24 And I'm, I'm actually looking at your report from
25 Meredith I believe that states that callers -- states she

Jacquelyn Richburg - Cross-examination
by Mr. Hodge

1 works for Murphy's.

2 Do you see that?

3 A Yeah, the---

4 Q 12:31:35. The next line says caller states he took
5 money from her store deposit.

6 Do you see that?

7 A 12:31:35?

8 Q 12:31:35 with M.F.H.

9 A Okay. Hold on. That's not on---

10 Q And 12:31:48.

11 A Okay. That's the third report.

12 Okay. Yes, 12:31:35.

13 Q Yes, ma'am.

14 A Okay. Yeah, caller states she works for Murphy's.

15 Q Okay. And do you see, staying with the M.F.H.
16 initials, she gives a description of what this suspect was
17 wearing.

18 Do you see that at 12:32:51?

19 A Yes, subject wearing khaki pants, plaid shirt, black
20 male, 180 pounds.

21 Q Do you see on down where it says subject was hitting
22 victim as she was driving?

23 That was taken by M.F.H. 12:35:46.

24 Do you see that?

25 A 12:35:46. Yes, subject was hitting the victim as she

1 was driving.

2 Q As you're reviewing that report for M.F.H., just the
3 initials M.F.H.---

4 A Yes.

5 Q ---do you see any mention of a weapon?

6 A No.

7 Q Do you see any mention of a knife?

8 A From M.F.---

9 Q From M.F.H.

10 A ---H?

11 Q Yes, only M.F.H. records.

12 A Okay. No.

13 Q I want to go to the other report from the 865-6922
14 number.

15 A Okay. That's the report I was on.

16 Q All right. And the operator who took that report, can
17 you tell me her initials?

18 A Careen McDon, and her initials would be C.D.M.

19 Q Okay. And I believe there's only three entries at
20 least that I see right away from C.D.M.

21 Do you see those three from 12:30:07, 12:30:29, and
22 12:30:46?

23 Do you see those?

24 A Yes.

25 Q Okay. In those three, do you see any mention of a

Jacquelyn Richburg - Cross-examination
by Mr. Hodge

1 weapon or not?

2 A No.

3 Q Okay. Do you see any mention of seeing someone take
4 money, run off with any money?

5 A Not with those initials.

6 Q Right. With C.D.M. only. That's what I'm focusing on.

7 A Okay. No.

8 Q If you go to that incident detail report, and I believe
9 it's on all three of them, if you look at the top of the
10 page where it says probable, it's in the second column,
11 second word down.

12 Do you see that?

13 A I'm sorry.

14 On which page?

15 Q The first page. Page 1 --

16 A Okay.

17 Q -- where it says incident detail report on the front.

18 A Okay. And, I'm sorry, what am I looking for again?

19 Q The word problem. It's in the second column.

20 A Yes.

21 Q Second word down.

22 what does it say the problem is?

23 A Fight just occurred.

24 Q I want you to go to the next one, the 403 number, the
25 one that I didn't know the number for earlier. The Meredith

1 Horry report.

2 Do you see that?

3 A Yes.

4 Q What does it say the problem was?

5 A Domestic in progress.

6 Q Do either one of those problems say anything about a
7 robbery?

8 A No, not the call for service, no.

9 MR. HODGE: May I have a moment?

10 (Pause.)

11 MR. HODGE: No further questions.

12 Thank you.

13 REDIRECT EXAMINATION

14 BY SOLICITOR CAVANAUGH:

15 Q Ms. Richburg, he just asked specifically about the, the
16 initials M.F.H that would of been one of the dispatchers
17 that took the calls, correct?

18 A Yes.

19 Q Under the line 12:31:48, does it indicate that money
20 was taken from the store deposits by M.F.H.'s initials?

21 A Yes, it's says caller states he took money from her
22 store deposit.

23 Q And then he indicated about weapons being mentioned.

24 Under A.J.H.'s initials, a little further down, at
25 12:33:26, that particular caller says it's unknown if

Jacquelyn Richburg - Redirect examination
by Sol. Cavanaugh

1 weapons are involved at that time?

2 A That's correct.

3 Q And, again, these are witnesses that called 9-1-1 from
4 areas that at least most of them are away from the Ryan's
5 Steakhouse where the incident was being reported, correct?

6 A Correct.

7 Q And some of these witnesses have limited information
8 based on what they're able to observe?

9 A Correct.

10 Q Thank you.

11 THE COURT: Anything else?

12 MR. HODGE: Nothing further.

13 THE COURT: All right. Thank you. You may step down.

14 THE WITNESS: Thank you.

15 THE COURT: Next witness.

16 SOLICITOR CAVANAUGH: State calls Captain Isaac Romey.

17 ISSAC ROMEY, being first duly
18 sworn, testified as follows:

19 THE CLERK: Thank you. Have a seat in the witness
20 stand please.

21 (Witness complies.)

22 THE CLERK: State your name for the record.

23 THE WITNESS: Isaac Romey.

24 DIRECT EXAMINATION

25 BY SOLICITOR CAVANAUGH:

- 1 Q Good morning, Mr. Romey?
- 2 A Good morning.
- 3 Q Where are you employed?
- 4 A The City of Columbia Fire Department.
- 5 Q And what is your position at the fire department?
- 6 A I'm a captain of an engine company.
- 7 Q So, Captain Romey?
- 8 A Yes, ma'am.
- 9 Q And how long have you worked at the fire department?
- 10 A Twenty-two years.
- 11 Q And what are some of your duties as the captain of the
- 12 Columbia -- as a captain in the Columbia Fire Department?
- 13 A I'm responsible for a crew of three personnel at any
- 14 time. I'm responsible for managing them on scenes, and
- 15 around the station, and control of any scenes that we are
- 16 dispatched to.
- 17 Q And what type of scenes is the Columbia Fire Department
- 18 dispatched to?
- 19 A It's a variety of calls. Anytime anyone calls in 9-1-1
- 20 for any type emergency, most likely the fire department is
- 21 asked to respond also to, to respond.
- 22 Q So even in circumstances where there's not an active
- 23 fire occurring?
- 24 A Yes, ma'am.
- 25 Q And can you explain why the fire department would occur

Issac Romey - Direct examination
by Solicitor Cavanaugh

1 (sic) if any other incidences that don't involve a fire?

2 A For one, we do respond to medical calls as first
3 responders. The reason why we do that is because we're
4 centrally located in areas, and get on scene a lot quicker
5 sometimes then EMT to help facilitate any emergency that be
6 going on, medical or otherwise, to help minimize the
7 severeness, severeness of it.

8 Q And do you recall whether you were dispatched and
9 responded to a scene on September 28th of 2016 around
10 12:35 in the afternoon?

11 A Yes, ma'am.

12 Q And, and this was two years ago.

13 Did you create a report related to the basic summary of
14 what was done that day?

15 A Yes, ma'am.

16 Q And would a report help you refresh your memory as far
17 as times and what was done?

18 A Yes, ma'am.

19 Q At this time, I'd hand you a copy of your report.

20 Do you recognize that document?

21 A Yes, ma'am.

22 Q And what is that?

23 A This is my incident report. Each call that we receive
24 at the fire department, once we get back, have to do a
25 report on it.

1 Q Okay. And, on September 28th, 2016, did you respond
2 to the 10,000 block of Two Notch Road?

3 A Yes, ma'am.

4 Q And what location was that?

5 A There at the Ryan's Restaurant.

6 Q What time did you receive -- did your station receive
7 the call?

8 A We received the call at 12:34:02.

9 Q Okay. And what time did you and your crew actually
10 arrive?

11 A 12:40:04.

12 Q Okay. And how long did you stay on the scene?

13 A We stayed on the scene until 13:09:16.

14 Q I'm gonna show you some photographs that have been
15 admitted into evidence.

16 Do you recognize what's been marked as State's Exhibit
17 12 and 14?

18 A Yes, ma'am.

19 Q And what do those -- what do those pictures depict?

20 A Picture of a vehicle up on the curve close to a
21 building, the restaurant, Ryan's Restaurant.

22 Q Okay. And when you arrived on scene, is that what you
23 observed that day?

24 A Yes, ma'am.

25 Q Did you observe anyone around that vehicle?

Issac Romey - Direct examination
by Solicitor Cavanaugh

1 A No, ma'am, not at that time.

2 Q Okay. Was the, the victim, Ms. Green, was she actually
3 on scene?

4 A Yes, ma'am. When we arrived on scene, she was still
5 talking with Richland County Sheriff's Department officer.

6 Q And, at some point, did the -- did EMS arrive as well?

7 A Yes, ma'am.

8 Q Did you interact with Ms. Green in anyway?

9 A No, ma'am, I did not.

10 Q Okay. Who did you actually speak to on scene in order
11 to find out what was needed from your unit?

12 A One of the officers that was on scene, ma'am.

13 Q And what did they indicate to you as, as what your unit
14 could do to help assist them?

15 A Normally what we do, after we talk with the officer,
16 find out what's going on in that situation. We take a look
17 at the victim if they need any medical attention, anything
18 like that. Then we'll go around and look at the vehicle to
19 see if anything can be stabilized in any kind of way or
20 anything.

21 Q And were you needed to actually assist with the victim
22 that particular afternoon?

23 A I delegated, delegated that to one of my fire fighters.
24 They're normally in charge of handling first responder
25 medical calls on the scene at the time.

1 Q Okay. But did EMS take over most of the
2 responsibilities for the care of the victim?

3 A Yes, ma'am.

4 Q Okay. And what else were you asked to do on that
5 particular afternoon?

6 A We try to get the vehicle off of the curb, keep from
7 making that difficult for the person maybe. Sometime have
8 to call a tow truck, spend money, get the vehicle off. So,
9 if we can help them out like that, we can try to get the
10 vehicle, vehicle off, we normally try to do that as well
11 also too for them.

12 Q And did you do that in this particular case?

13 A We tried to several -- we tried several things, try to
14 get it off the curb, but we was unsuccessful getting it off
15 the curb.

16 Q I'm gonna show you what's marked and been entered as
17 State's Exhibit 13, which depicts the vehicle that day.
18 There's a door mat underneath that tire.

19 A Yes, ma'am.

20 Q Is that something that, that your unit did to help move
21 the car, to try to move the car?

22 A Yes, ma'am, we looked around the area to see if we
23 could get anything to put down for some traction cause, when
24 we got there, you could see where the wheels already dug
25 down in. So, we try to look around for any wood or anything

Issac Romey - Direct examination
by Solicitor Cavanaugh

1 that maybe give us some traction to help get the car from up
2 out the dirt like that.

3 Q And do you recall where the doormat actually came from?

4 A Somewhere around the building. We just took a look
5 around the building to find anything that we could use
6 possibly.

7 Q And actually that -- I say doormat. That really just
8 looks like a piece of carpet or, or something like that.

9 Correct?

10 A Yes, ma'am.

11 Q Okay. Were you also asked to see if you could locate
12 any money that might have been blown around in the area?

13 A Yes, ma'am, we were.

14 Q Okay. And do you remember -- did you do that?

15 A Yes, ma'am, we did.

16 Q And the rest of your unit as well?

17 A Yes, ma'am.

18 Q And, and where did you walk around to see if there was
19 any money being blown around?

20 A We walked around the whole restaurant on the outside,
21 the perimeter of Ryan's Restaurant.

22 Q And did---

23 A From -- we didn't find anything.

24 Q Okay.

25 A No, ma'am.

1 Q Okay. And, based on your report, you stayed on scene
2 for about -- a little under 30 minutes.

3 Is that right?

4 A Yes, ma'am.

5 Q And you described what all you did within that 30
6 minutes?

7 A Yes, ma'am.

8 SOLICITOR CAVANAUGH: Beg the Court's indulgence.

9 (Pause.)

10 Q Thank you, Captain Romey.

11 A Oh, thank you.

12 Q Please answer any questions from the defense.

13 A Okay.

14 MR. HODGE: No questions, Your Honor.

15 THE COURT: All right. Thank you, sir.

16 Next witness.

17 SOLICITOR CATHCART: State calls Travis Butler.

18 TRAVIS BUTLER, being first duly
19 sworn, testified as follows:

20 THE CLERK: Thank you. Have a seat in the witness
21 stand please.

22 (Witness complies.)

23 THE CLERK: State your name for the record.

24 THE WITNESS: Travis Butler.

25 DIRECT EXAMINATION

Travis Butler - Direct examination
by Solicitor Cathcart

1 BY SOLICITOR CATHCART:

2 Q Mr. Butler, where are you employed?

3 A Richland County EMS as a paramedic.

4 Q How long you been there?

5 A Three and a half years.

6 Q Could you please describe for the jury basically what
7 your duties are with EMS?

8 A Transport sick people, people to the hospital that have
9 been hurt, injured. We provide advance life support and
10 basic life, life support measures.

11 Q And were you a member of the EMS back on September,
12 September the 28th, 2016?

13 A Yes.

14 Q Were you on-duty that day?

15 A Yes, sir.

16 Q Did you write reports on anything that you did that --
17 on that day?

18 A I'm sure we had probably ten, twelve reports or calls
19 from that day.

20 Q Do you recall specifically everything that you did on
21 that day?

22 A If you give me a run sheet, I probably could.

23 Q Basically having a report would help refresh your
24 memory?

25 A Yes, sir.

1 Q Is that a copy of your report?

2 A Yes, sir.

3 Q Okay. What were you called out on this report, this
4 one I handed up to you, as to what occurred on 10,050 Two
5 Notch Road'ish?

6 A I put that---

7 Q Let me ask you.

8 Who did you go see?

9 A I went and saw a, a Tiffany Green that was the victim
10 of an assault in Ryan's---

11 Q Do you recall---

12 A ---parking lot.

13 Q ---what you observed when you got there?

14 A I recall a white female in emotional distress that was
15 crying, very upset about something. I noticed some injuries
16 on her.

17 Q Okay. When you say injuries, what injuries did you
18 observe?

19 A I noticed some bleeding and swelling around the face,
20 and then she had an abrasion to the, the -- one of her arms.
21 I'm trying to find it on here. To the -- to one of her
22 arms. I can't remember which one. That's in here somewhere
23 I know.

24 Q What was her main chief complaint?

25 A Pain.

Travis Butler - Direct examination
by Solicitor Cathcart

1 Q Okay. And what was her secondary complaint?

2 A Abrasion of the right elbow. Okay.

3 Q Okay. So, it's the right elbow.

4 She had an abrasion to that?

5 A Correct.

6 Q And when you said chief complaint, pain -- pain of
7 what?

8 what was pain?

9 what pain?

10 A Pain of the face and right, right elbow due to being
11 assaulted with a closed fist.

12 Q Okay. Did you note any evidence of what was causing
13 the pain?

14 A A closed fist.

15 Q well, what did you observe about a person that
16 corresponded or corroborated with the pain she said---

17 A Swelling noted to the left and ride sides of the jaw.

18 Q So, she was swollen from both the right and left jaw?

19 A Correct.

20 Q Okay. And how -- did she describe anything else as to
21 the pain to her face?

22 well, let me ask you this.

23 How did you treat the pain that she --?

24 A I provided ice packs for her face to reduce the
25 swelling.

1 Q Okay. Did you check and make sure neck and everything
2 else was stabilized?

3 A Correct.

4 Q What basically -- could you just tell the jury what
5 treatment you gave her?

6 A I'll do a hands-on assessment. I'll check for neck and
7 back injuries. Make sure that there was no sort of spinal
8 cord compromise. Then, once I take care of, you know,
9 the -- what could hurt the patient the most, I will take
10 care of the obvious injuries like bandaging, you know, maybe
11 her abrasion or providing an ice pack to her face to make
12 sure that the swelling doesn't get too bad.

13 Q Okay.

14 A And then we transport to the hospital.

15 Q And y'all transported her to the hospital because why?

16 A Because, you know, just preventative, make sure nothing
17 else was broken. You know, in an ambulance, we can't check
18 everything. We don't have x-ray capabilities. So, we
19 always recommend people that are, you know, could be
20 seriously injured be checked out.

21 Q And did she complain about her jaw?

22 A Correct.

23 Q And did she -- what did she feel happened to her jaw?
24 Do you recall?

25 A I can't recall what she said but just---

Travis Butler - Direct examination
by Solicitor Cathcart

1 Q Okay.

2 A ---what, you know, had happened as far as why it hurt,
3 which was being punched in the face.

4 Q Okay. Let me show you what's been marked State's
5 Exhibit No. 13.

6 Do you recognize what that is?

7 A Yes, sir.

8 Q What is that?

9 A That's a Sedan that's ran---

10 Q What---

11 A ---into a Ryan's.

12 Q Have you seen the Sedan at, at a Ryan's before?

13 A Correct. On this very call.

14 Q Okay. This---

15 A This is the -- this is the car.

16 Q And State's Exhibit No. 4, do you recognize what that
17 is?

18 A That's the patient I transported.

19 Q Okay. And is that the ambulance that you transported
20 her in?

21 A That's correct.

22 Q Were you there to assess anything other than her
23 injuries?

24 A Negative.

25 Q Okay. So, on the injuries that you observed, you put

Travis Butler - Direct examination
by Solicitor Cathcart

1 down in your report?

2 A Correct.

3 Q And that was the pain and the swelling of her face, and
4 the abrasion to her right elbow, correct?

5 A That's correct.

6 SOLICITOR CATHCART: Okay. Beg the Court's indulgence.

7 (Pause.)

8 Q No further questions. Please answer any questions from
9 defense counsel.

10 CROSS-EXAMINATION

11 BY MR. HODGE:

12 Q Good morning, Mr. Butler.

13 A Good morning.

14 Q My name's William Hodge. You and I have never met. I
15 represent Wesley Givens in this case. I just have a couple
16 questions for you. You say you've been on this EMS unit for
17 three and a half years.

18 What did you do before that?

19 A I was a medic in the Army.

20 Q Okay. And being a medic in the Army, I assume you've
21 treated pretty serious injuries, correct?

22 A More than I care to talk about.

23 Q Yes, sir.

24 These, these injuries that you observed that day, you,
25 you described them as swelling to the left and right jaw.

Travis Butler - Cross-examination
by Mr. Hodge

1 Is that correct?

2 A That's correct.

3 Q Okay. Did you note any cuts or anything on the face?

4 A Negative.

5 Q When you're asking her -- Ms. Green being her. Sorry.

6 When you're asking Ms. Green what happened and what her
7 injuries are, you're jotting all that stuff down in this
8 report that you're making, correct?

9 A Correct.

10 Q Okay. Did she, during her relay of what happened and
11 how these injuries occurred, mention anything about a weapon
12 to you?

13 A Negative.

14 Q Okay. Did these, these injuries require any immediate
15 medical attention from you?

16 A Just to put ice packs on her face, but nothing---

17 Q No sutures---

18 A No.

19 Q ---or anything like that?

20 A No, we don't, we don't do that.

21 Q No compression, no bleeding?

22 A No, bleeding was controlled.

23 Q Okay. These weren't -- these wouldn't be classified,
24 in your line of work, as severe injuries.

25 Am I correct?

1 A They were not life threatening.

2 MR. HODGE: Okay. Can I have just a moment?

3 (Pause.)

4 Q Mr. Butler, thank you for your service, and thank you
5 for your testimony on it.

6 No more questions, Your Honor.

7 THE COURT: Anything else of this witness?

8 REDIRECT EXAMINATION

9 BY SOLICITOR CATHCART:

10 Q The injuries you observed you saw after the assault
11 occurred, correct?

12 A Correct.

13 Q You don't know how or where it happened, correct?

14 A I know how it happened by what the patient stated as
15 far as, you know, being punched in the face.

16 Q Okay. But do you know -- you didn't see it happen---

17 A Correct.

18 Q ---obviously?

19 A I did not see it happen.

20 Q You don't know the circumstances of whether or not it
21 was life threatening as to an assault or not, correct?

22 You just saw the consequences of the assault?

23 A Just the consequences.

24 Q Okay. The car was wrecked into the -- on the side of
25 the building, correct?

Travis Butler - Redirect examination
by Sol. Cathcart

1 A That's correct.

2 Q And she indicated that was part of the being punched in
3 the face?

4 A That's correct.

5 SOLICITOR CATHCART: No further questions. Thank you.

6 THE COURT: Anything else?

7 MR. HODGE: No, Your Honor.

8 THE COURT: All right. Thank you, sir.

9 Next witness.

10 SOLICITOR CATHCART: Your Honor, the State calls Pamela
11 (sic) Morris.

12 TAMELA MORRIS, being first duly
13 sworn, testified as follows:

14 THE CLERK: Thank you. Have a seat in the witness
15 stand please.

16 (Witness complies.)

17 THE CLERK: State your name for the record.

18 THE WITNESS: Tammy Morris.

19 DIRECT EXAMINATION

20 BY SOLICITOR CATHCART:

21 Q Ms. Morris, do you recall calling 9-1-1 about two years
22 ago?

23 A I do.

24 Q Do you recall where you were when you called 9-1-1?

25 A I do.

1 Q where was that?

2 A I was in the parking lot in front of the Dollar Tree,
3 which is located on Two Notch Road in front of Wal-Mart.

4 Q What caused you to call 9-1-1?

5 A I was about to get out of my car to go into the Dollar
6 Tree, and a car came from somewhere headed towards Two Notch
7 Road.s The car was being driven very erratically.

8 Q Let me ask you this. I'm sorry to interrupt you.

9 But where did you see the car driving?

10 A In front of the Dollar Tree?

11 Q So, in the parking lot?

12 A In the parking lot like it's going out of the parking
13 lot with incoming traffic coming towards it.

14 Q Okay.

15 A The car was not driving straight towards Two Notch. It
16 was very erratic. I feared that possibly another car may
17 get hit. I saw then that the car did not go all the way to
18 Two Notch. The car turned right, and ran into the side of
19 the Ryan's Restaurant, which was in front of me basically.

20 Q And what did you observe after that?

21 A Two people exited the car. There -- it was a four door
22 car. It was a large car. They, they got out of the car,
23 and they were fighting. They began to fight.

24 Q Okay. Let me let you see what's been marked State's
25 Exhibit No. 13.

Tamela Morris - Direct examination
by Sol. Cathcart

1 Is that the car as it appeared?

2 A Yes.

3 Q And you called 9-1-1 and -- because of the driving?

4 Were you already on the phone with 9-1-1 when --

5 because of the driving---

6 A Yes.

7 Q ---or because of the---

8 A I called 9-1-1 when I saw the car driving as it was.

9 Q Okay.

10 A Yes.

11 Q And did you see -- how long did the fight that you

12 heard take place?

13 A It was not -- it was a short time.

14 Q Okay. And then what happened?

15 A One of the two persons fled the scene.

16 Q Ran off?

17 A Yes.

18 Q And did the police and EMS come?

19 A Yes, the -- I stayed in my car. Did not get out until

20 I made sure a deputy arrived on scene, and I could see all

21 of this occurring. And then I went into where head --

22 going.

23 Q Okay. And the Dollar Tree or where you were in your

24 car, was this right beside Ryan's?

25 How far away were you when y'all could see this going

1 on?

2 A I'm not sure distance, but I mean I was pretty much in
3 the middle of the parking lot because I had not parked close
4 to the Dollar Tree. I parked out so that I could just drive
5 out straight and not have to back up to drive out. So, I'm
6 facing Two Notch. So, I'm facing the restaurant at the
7 time.

8 Q Okay.

9 A Dollar Tree's to my left.

10 Q Could you see everybody's faces clearly---

11 A No.

12 Q ---that close?

13 A I could not.

14 SOLICITOR CATHCART: Beg the Court's indulgence.

15 (Pause.)

16 Q Now, you called 9-1-1, and the main thing that first
17 caught your eye is the erratic driving?

18 A Yes.

19 Q When you say erratic, can you describe -- were they
20 speeding?

21 A Going too fast for a parking lot.

22 Q Uh-huh. (Affirmative).

23 A And not going in like a straight direction. Just
24 basically veering maybe even right and left. I was afraid
25 they were going to hit someone incoming.

Tamela Morris - Cross-examination
by Mr. Hodge

1 Q So, swerving?

2 A Yes.

3 Q Thank you. Please answer any questions from defense
4 counsel.

5 A Okay. Thank you.

6 CROSS-EXAMINATION

7 BY MR. HODGE:

8 Q Good morning, Ms. Morris.

9 A Good morning.

10 Q I just have a couple questions for you. You were
11 saying you were in the middle of the parking lot, and Ryan's
12 is up here. How -- you may of done this already, but I was
13 trying to keep up, and write notes.

14 How far of a distance would you say, roughly, that is?

15 A I'm not good with distances.

16 Q would 15 yards sound about right?

17 About half a football field?

18 A Possibly.

19 Q Okay. I don't know either. I'm just throwing that out
20 there.

21 A Possibly.

22 Q It could be that's how my eyes gauged it.

23 You say the vehicle itself was being driven erratically
24 in the parking lot, but it never made it onto Two Notch
25 Road, correct?

1 A It did not.

2 Q So, you never saw it driving on the roadway. You just
3 saw all of this take place in that parking lot.

4 Correct?

5 A Yes, it was in the parking lot, but it was in where the
6 traffic comes in and out. Not where the parking spaces are.
7 It was right in front of the strip mall.

8 Q Right.

9 Okay. But it was still maintained in the parking lot.
10 In other words, they never -- you said they never made
11 it to Two Notch Road?

12 A Correct.

13 Q Okay. Now, I think you testified that you called
14 9-1-1.

15 Is that correct?

16 A That is correct.

17 Q Did you tell 9-1-1 that there were two individuals fist
18 fighting?

19 A I'm sure I did.

20 Q Okay. And that's what you observed was two individuals
21 fighting?

22 A Fighting. I, I probably said fighting. I don't know
23 that I said fist fighting.

24 Q Okay.

25 A But I said fighting.

Tamela Morris - Cross-examination
by Mr. Hodge

1 Q But you saw a combat of some sort between two
2 individuals?

3 A Absolutely.

4 Q Okay. Did you see any money flying around that day?

5 A I did not.

6 MR. HODGE: Okay. One moment, Your Honor.

7 (Pause.)

8 Q No more questions. Thank you.

9 A Thank you.

10 REDIRECT EXAMINATION

11 BY SOLICITOR CATHCART:

12 Q So, the first time they caught your attention until
13 they wrecked into the Ryan's, is that more than just a few
14 seconds?

15 A It was very quick. Probably not more than a few
16 seconds, no.

17 Q But that's the first time you saw that car?

18 A Yes.

19 Q And this drew your attention just right before it hit
20 Ryan's?

21 A Exactly. That they would -- they drove down. They
22 passed the next store down, and they turned right into
23 Ryan's.

24 Q You didn't see them five minutes before that?

25 A No.

1 Q Not an hour before that?

2 A No.

3 Q It's just that last little bit?

4 A Yes.

5 Q And what you see from your vantage point was a -- what
6 appeared to be a fight, correct?

7 A Yes.

8 Q And, after that, that -- how long -- the fight was very
9 short?

10 A Very short.

11 Q And then one of those people ran away?

12 A Yes.

13 Q Did the other person chase after them?

14 A No.

15 Q That other person stayed with the car?

16 A Yes.

17 Q Until the police arrived?

18 A That's correct.

19 Q Thank you.

20 No further questions.

21 THE COURT: Anything else?

22 MR. HODGE: No, Your Honor. That's all. Thank you.

23 THE COURT: Thank you.

24 Next witness.

25 SOLICITOR CAVANAUGH: State calls Linda Roush.

Linda Roush - Direct examination
by Sol. Cavanaugh

1 LINDA ROUSH, being first duly
2 sworn, testified as follows:

3 THE CLERK: Thank you. Have a seat in the witness
4 stand please.

5 (Witness complies.)

6 THE CLERK: State your name for the record.

7 THE WITNESS: Linda Roush.

8 DIRECT EXAMINATION

9 BY SOLICITOR CAVANAUGH:

10 Q Good morning, Ms. Roush.

11 A Good morning.

12 Q Do you live in Columbia, South Carolina?

13 A I do.

14 Q How long have you lived in Columbia, South Carolina?

15 A It's, it's been intervals because my husband was
16 military. So, we were here from '94 to '97, and then he
17 retired, and we moved back here in 2005, and I've been here
18 since.

19 Q And do you leave -- live in the area of the, the
20 northeast section---

21 A I do.

22 Q ---of Richland County?

23 A Yes, ma'am.

24 Q Is that near Two Notch Road?

25 A It is. Well, yes, yes, yeah.

1 Q And what, what -- are you currently employed?

2 A No, I have not been employed since 2015.

3 Q Okay. And what did you do prior to 2015?

4 A I was a registered nurse.

5 Q And how long were you a registered nurse?

6 A Since 1989.

7 Q And when you -- where -- your, your last period of
8 employment, where were you -- where did -- were you a nurse?

9 A I was a nurse at Palmetto-Health Richland. I worked in
10 the PACU.

11 Q The PACU?

12 A Yes.

13 Q What does that stand for?

14 A Post Anesthesia Care Unit, and we addressed the care
15 needs of patients who are coming immediately out of surgery.
16 Also responsible for holding patients that are needing ICU
17 beds and are none available. So, we have to be able to care
18 for critical patients from all different areas. Children
19 through adults.

20 Q And you stated you were in that profession -- did you
21 say 1989?

22 A I, I had been -- we moved various places, but I --
23 primarily I have worked as a PACU nurse or an OR nurse or a
24 day surgery nurse at -- since that time, yes.

25 Q 1989?

Linda Roush - Direct examination
by Sol. Cavanaugh

1 A Uh-huh. (Affirmative).

2 Q I'm gonna bring your attention to September 28th of
3 2016.

4 Where were you around 12:30 in the afternoon that day?

5 A There was an office store right in front of Ryan's, and
6 I had gone in there to purchase a few things. And I was in
7 the parking lot and getting ready to get out of the parking
8 lot to turn toward Ryan's to catch that side road to go to
9 Two Notch.

10 SOLICITOR CAVANAUGH: Okay. Beg the Court's
11 indulgence.

12 (Pause.)

13 Q You stated an office store.

14 Is, is it -- what, what is the specific name of that
15 store?

16 A Oh, boy.

17 Q Is it Office Depot?

18 A Yes, I believe so.

19 Q And is that particular store located in a large parking
20 lot?

21 A Yes.

22 Q I'm gonna show you what's marked as State's Exhibit 8
23 at this point.

24 A Yes, ma'am.

25 Q Is that the Office Depot that you were at on

1 September 28th, 2016?

2 A At Two Notch, yes, ma'am.

3 SOLICITOR CAVANAUGH: Okay. Your Honor, at this time,
4 I'd ask to introduce State's Exhibit 8.

5 THE COURT: Any objection?

6 MR. HODGE: No objection.

7 THE COURT: It's admitted.

8 (WHEREUPON, State's Exhibit No. 8 was received into
9 evidence at this time.)

10 Q Okay. As you were coming out of Office Depot that
11 afternoon, did anything catch your attention?

12 A Yes, I was parked so I could just pull straight out,
13 and into the correct line of direction for travel. And I
14 noticed it's a, a vehicle was coming up to my left that was
15 going in the incorrect direction of travel, and it was
16 driving erratically. Speeding up, slowing down. And, as it
17 passed me, I slowed down because I wasn't sure what they
18 were doing. I could see the passenger pummeling the driver.

19 Q And this is as the vehicle is moving?

20 A As the vehicle is moving, yes, ma'am.

21 Q Could you tell at that point -- I mean was the driver
22 sitting up driving the vehicle?

23 what was she doing as that was happening?

24 A She was reacting to the punches, and, and the pummeling
25 that was going on physically.

Linda Roush - Direct examination
by Sol. Cavanaugh

1 Q Okay. How did you feel when you saw that situation?

2 A Very concerned because, when I saw where they were
3 going, they were going straight into the building, and I was
4 worried that there was gonna be injuries. And so I turned
5 my car so I wouldn't be blocking traffic, but I stopped
6 close enough so that I could help.

7 Q I'm gonna show you what's been admitted as State's
8 Exhibit 7. This is now a Magnolia Buffet.

9 A Yes, ma'am.

10 Q But it use to be the Ryan's Steakhouse.

11 A Yes.

12 Q Where did you park your car when you -- did you park
13 your car right here?

14 A I'm trying to picture. I don't know that that's the
15 prospective that the car went.

16 Q well, I'll show you a photograph of the back of the
17 vehicle.

18 A Uh-huh. (Affirmative).

19 Q Exhibit No. 15.

20 A Uh-huh. (Affirmative).

21 Q Is that what you saw---

22 A Yes.

23 Q ---once the car actually---

24 A Yes.

25 Q ---went towards the building?

1 A It is.

2 Q Okay. And about how far would you say you were from
3 where the car ended up?

4 A From probably my vantage point here to your desk there.

5 Q Okay. What -- did you call 9-1-1?

6 A I did.

7 Q At what point did you call 9-1-1?

8 A As soon as I got my car safely turned and stopped, and
9 I called 9-1-1. And, when I had looked down to call 9-1-1,
10 I looked back up and I saw an individual, male,
11 African-American, who was beating a woman about the head
12 full -- close fist. And, as hard as he could throw
13 punches, he was throwing punches.

14 Q And, again, at this point in time, you're from where
15 you're sitting, and that car is approximately right where
16 our table is?

17 A Yes.

18 Q How would -- at the point in time where you saw the
19 female being punched, how was her -- how is her body at that
20 point in time?

21 How was she located?

22 Was she on the ground from what you could see?

23 A From what I could see on the ground at that time. I
24 had looked down to the phone. So, I don't know what
25 transpired from the time I looked down to call to when I

Linda Roush - Direct examination
by Sol. Cavanaugh

1 looked up and the individual, the male, was beating on her.

2 Q Okay. Did you -- when you saw him hitting her like
3 that, your experience as a nurse, what was your concern?

4 A I wanted to go help her. She needed -- I was, I was
5 afraid that she could end up with facial injuries, a head,
6 head injury. Either of which would of been bad. I knew I
7 had activated 9-1-1. So, somebody would come and respond,
8 and then I wanted to go make sure she was okay.

9 Q Did you -- did that male that you saw punching the
10 female, did he stay on scene?

11 A when he -- well, he looked at me. And, I think, when
12 he saw me on the phone was when he decided he needed to
13 leave. And he took off toward the end of the building and
14 left, which would of been in the general direction of the
15 Lowe's parking lot.

16 Q Okay.

17 A I did not follow him because I was more concerned with
18 her medical condition then I was trying to follow him.

19 Q All right. And the Lowe's that you referred to, was
20 that across a street?

21 A It is.

22 Q Okay. In a different area of, of where the Office
23 Depot and the Ryan's is---

24 A Correct.

25 Q ---is located?

- 1 A Correct.
- 2 Q Did you -- did you get out of your vehicle?
- 3 A I did.
- 4 Q Okay. At what---
- 5 A I did.
- 6 Q ---point did you get out of your vehicle?
- 7 A Just as soon as I got 9-1-1 on the line. I couldn't
- 8 transfer it back over to my phone cause I had it on my car.
- 9 And so I went -- I told her I had 9-1-1 on the line. I need
- 10 you to come to my car so you can give them more information.
- 11 So, 9-1-1 operator started to talk to her for a bit, and
- 12 then, when 9-1-1 got off the line, she went back to the
- 13 vehicle.
- 14 Q How did she appear to you when you first saw her?
- 15 A Very upset, in pain, bloody. She was concerned about
- 16 the money that was flying out of the car, and she went from
- 17 finishing the call with 9-1-1 to go back to her vehicle, and
- 18 she trying to gather up money as it was blowing in the wind.
- 19 Q Did she indicate to you how that money -- why that
- 20 money was in the vehicle?
- 21 A She did not to me.
- 22 Q Okay. Okay. Did you go over to the vehicle, her
- 23 vehicle, with her?
- 24 A I did.
- 25 Q Okay. And what did you do when you got there?

Linda Roush - Direct examination
by Sol. Cavanaugh

1 A I helped her to gather up some of the money, and handed
2 it to her, and I stayed with her until somebody came that
3 could help.

4 Q And do you remember -- was the money pretty much
5 contained to that area of the vehicle?

6 A Pretty much to the passenger side. Like it was
7 fluttering around on the grass, and in, in some of the
8 bushes and stuff. But she was gathering it, and I gathered
9 a little bit too.

10 Q And, once it was being gathered, where was it placed?

11 A I don't, I don't remember where -- I, I handed it to
12 her.

13 Q Okay. You stated, at the very beginning, that you
14 retired in 2015 from your nursing career.

15 A Yes.

16 Q Okay. Is there -- did you suffer a particular very
17 serious health issue after you retired from your nursing
18 career?

19 A I have -- what caused me to initially stop my career
20 was, I had two family members, both went on Hospice at the
21 same time, and both died within six months of each other. A
22 month after my sister died, I developed an infection around
23 my eye, and they scanned it to make sure that it didn't
24 involve the retina. In the scan, they happened to find
25 meningioma, a growth on my brain. And because of the

1 location of the meningioma, it was near where it would of
2 affected my vision, and there was a major blood vessel
3 there. So, it could of affected the circulation to my
4 brain. So, it needed to be addressed.

5 I was asymptomatic. I had no symptoms at the time. I
6 ended up going for surgery in January '17, and had
7 complications from that, developed seizures, got an
8 infection. I had to go back for a second surgery and a wash
9 out. They had to remove part of my skull because it had
10 become infected. And so I went back six weeks later, after
11 some IV antibiotics, and they replaced that portion of my
12 skull.

13 Q And because of -- does that procedure that you just
14 described, has that affected your memory in any way as it
15 relates to what you observed two years ago?

16 A Hu huh. (Negative). No, not, not as much. Some short
17 term, but not, not significant as far as long term memory
18 goes. And this incident stayed very clear in my mind just
19 because of the fact that she was being beaten as severely as
20 she was.

21 Q So, you have issues with -- some issues with short term
22 memory---

23 A Uh-huh. (Affirmative).

24 Q ---but it has not affected your long term memory?

25 A No.

Linda Roush - Direct examination
by Sol. Cavanaugh

1 Q And, in fact, you relayed what you just relayed to the
2 investigator---

3 A Yes.

4 Q ---Investigator Gonzales at the time---

5 A Yes.

6 Q ---that he contacted you?

7 A Absolutely.

8 Q And you relayed a briefer version to 9-1-1?

9 A Uh-huh. (Affirmative).

10 Q And then provided some information to the deputy on
11 scene that day as well?

12 A Yes.

13 SOLICITOR CAVANAUGH: Beg the Court's indulgence.

14 (Pause.)

15 Q Thank you, Mr. Roush. Please answer any questions from
16 defense.

17 A I will.

18 THE COURT: Yes, sir.

19 MR. HODGE: Thank you, Your Honor.

20 CROSS-EXAMINATION

21 BY MR. HODGE:

22 Q Good morning, Ms. Roush.

23 A Good morning.

24 Q I'm gonna ask you just a few pointed questions with
25 directed questions regarding the incident date two, two

1 years ago, a little over two years ago. I think -- well,
2 let me start.

3 So, the first person that you had contact with, and
4 gave a statement to or whatever you had was Deputy West.

5 Is that correct?

6 A A female who had responded initially to the scene, yes,
7 sir.

8 Q Yes, ma'am, a female deputy.

9 Okay. And when you relayed that information to Ms.
10 West, you didn't make any reference of seeing the driver
11 pummeling or the passenger pummeling the driver, didn't you?

12 A That he was hitting her while she was trying to drive
13 the car, yes.

14 Q So, your testimony is that you told Ms., Ms. West, the
15 deputy that day---

16 A Yes.

17 Q ---that you saw the passenger pummeling the driver
18 while she was driving the vehicle?

19 A Yes.

20 Q What you told Ms. West that day was that, when you
21 pulled up, that he was -- that an individual was hitting a
22 female on the ground?

23 A Yes.

24 Q Okay. But your testimony today is that you told her,
25 at that time, that you saw the passenger pummeling the

1 driver?

2 A while she was driving the car, and they had gone by is
3 when I could see through the back window of the vehicle. I
4 couldn't see that---

5 Q Okay.

6 A ---happening.

7 Q Okay. You then gave another version of the facts or
8 gave -- or another, not another version I guess, but you
9 spoke to an Investigator Gonzales.

10 Do you remember that?

11 A Yes.

12 Q Okay. Have you ever met Investigator Gonzales?

13 A I have not.

14 Q So, did you speak to him on the phone or is that---

15 A On the phone.

16 Q ---when that this conversation---

17 A It was telephonic.

18 Q Okay. You never told Investigator Gonzales that you
19 witnessed the passenger pummeling the driver while she was
20 driving, didn't you?

21 A I do not recall.

22 Q You did tell him that you saw a black male punching a
23 female?

24 Do you recall that?

25 A Yes.

1 Q Did you tell Investigator Gonzales that you saw the
2 male drag the victim out of the car?

3 A I do not recall.

4 Q Okay. So, you don't recall telling him that you saw
5 her being drug or dragged out of the driver's side of the
6 vehicle?

7 You don't recall that?

8 A I don't recall.

9 Q I'm gonna show what the State has entered as Exhibits
10 12 and 13.

11 Do you recognize -- I think she may have shown you
12 these, but do you recognize that vehicle?

13 A I do.

14 Q And is that the vehicle that you saw driving
15 erratically in the parking lot that day?

16 A Yes.

17 Q What do you notice about the windows of that vehicle?

18 A They are tinted.

19 Q Are they slightly tinted?

20 They're pretty dark, right?

21 A They, they are dark.

22 Q Okay. Now, I think you said that you, you went up to
23 help Ms. Green collect the money.

24 Is that correct?

25 A I did.

Linda Roush - Cross-examination
by Mr. Hodge

1 Q And you said the majority of the money was in the car?

2 A The majority was. There were -- there was a few bills
3 that were starting to fly out the car.

4 Q Okay. And were you helping her collect the money in
5 the car---

6 A At---

7 Q ---and put it all back into a pile?

8 A Not in the car. The, the stuff that was flying out of
9 the car, and I gave her the bills that I had gathered up.

10 Q Okay. But you, you saw the money in the car?

11 A I saw the money flying out of the car.

12 Q Okay.

13 A Let's, let's put it that way.

14 Q Okay. All right. So, you did not see the majority of
15 the money sitting in the passenger seat?

16 A No.

17 Q Okay. And you, you testified that you called 9-1-1.
18 Is that correct?

19 A I did.

20 Q Okay. And, in your report to 9-1-1, you never
21 mentioned seeing the passenger pummeling the driver as she
22 was driving the car, did you?

23 A I do not recall, but -- I do not recall.

24 MR. HODGE: Can I have just a moment, Your Honor?

25 (Pause.)

1 Q No further questions. Thank you, Ms. Roush.

2 A Thank you.

3 THE COURT: Anything further?

4 REDIRECT EXAMINATION

5 BY SOLICITOR CAVANAUGH:

6 Q Ms. Roush, do you---

7 A Yes, ma'am.

8 Q Do you know the victim, Tiffany Green?

9 A I do not.

10 Q Had you ever met her before?

11 A No.

12 Q Do you know the Defendant, Wesley Givens?

13 A I do not.

14 Q Do you have any idea how much money was in that vehicle
15 originally?

16 A None.

17 Q Mr. Hodge asked you about whether you relayed to 9-1-1
18 whether you observed the victim being hit by the subject as
19 she was driving?

20 A Yes.

21 Q Is your telephone number [REDACTED]?

22 A Yes.

23 Q Like to point to this line right here. Please read
24 that line.

25 A Subject was hitting -- I'm sorry. The victim was

Linda Roush - Redirect examination
by Sol. Cavanaugh

1 driving.

2 Q So, in fact, you did tell the 9-1-1---

3 A Yes.

4 Q ---dispatcher that you saw him hitting her as she was
5 driving?

6 A Yes, sir. Yes, ma'am. I'm sorry.

7 Q And describe how he was hitting her again?

8 A Pummeling.

9 Q And what do you mean by that?

10 A Taking a fist and just straight up hitting her hard.

11 Q Thank you.

12 MR. HODGE: Okay. Can I borrow that just to make sure?

13 RECROSS EXAMINATION

14 BY MR. HODGE:

15 Q Ms. Roush, your testimony earlier was that you allowed
16 Ms. Green to use your phone.

17 Is that correct?

18 A I had her come to the car because I could not get it to
19 switch over to the phone.

20 Q Now, we've had some discussions with the 9-1-1 lady
21 earlier today.

22 A Uh-huh. (Affirmative).

23 Q And, and Meredith Horry is who took the phone call from
24 your telephone number?

25 A Okay.

1 Q Okay. Her initials are M.F.H. I'm gonna show you this
2 line here. M.F.H.

3 what does that say?

4 A M.F.H. Caller states subject has store key. And that
5 was when -- that had to have been when she was speaking to
6 9-1-1 because I did not have knowledge of that.

7 Q Right.

8 So, that's Ms. Green using your phone?

9 A Yes.

10 Q So, the statement that was shown to you earlier that
11 you said you couldn't recall whether you told 9-1-1 could of
12 been made by Ms. Green and just recorded on here as from
13 your number, correct?

14 A No, because I was with her while she was using my
15 phone.

16 Q well, I understand that, but she could of used your
17 phone, and said those words to 9-1-1, correct?

18 A I disagree.

19 MR. HODGE: Okay. That's all the questions I have.

20 THE COURT: You may step down.

21 Your next witness.

22 SOLICITOR CAVANAUGH: Your Honor, the next witness is
23 Ms. Green, the victim in this case. I anticipate she'll be
24 on the stand for a long period of time. I know it's getting
25 close to the lunch hour.

1 THE COURT: Okay. Five to 12:00. It's, it's close,
2 yeah. We plan to break at 12:30 for lunch.

3 Let's just take a few minutes and unwind, and then
4 we'll have you-all come back in a few minutes.

5 THE CLERK: Lunch is here.

6 THE COURT: Oh, lunch is here. Maybe we'll do an early
7 lunch.

8 Y'all passed it out yet?

9 THE CLERK: No, sir.

10 THE COURT: Okay.

11 THE CLERK: He's getting it ready.

12 THE COURT: All right.

13 (WHEREUPON, the following takes place outside the
14 presence of the jury.)

15 THE COURT: So, we've ordered lunch for the jury, and
16 court folks helping the jury, and it's here already. I
17 thought we'd break between 12:30 and 1:30, but we can break
18 between 12:00 and 1:00 if y'all want to do that.

19 SOLICITOR CAVANAUGH: That works for us, Your Honor.

20 MR. HODGE: Yes, sir, that's fine.

21 THE COURT: All right. Let's give them a -- I'm gonna
22 have them come back in, and then we'll tell them what's
23 going on. Just let them have a moment.

24 (WHEREUPON, a short recess was taken at this time.)

25 SOLICITOR CAVANAUGH: Your Honor?

1 THE COURT: All right.

2 SOLICITOR CAVANAUGH: The second to last.

3 THE COURT: One of the jurors says she knows her.

4 They, they attend church together.

5 SOLICITOR CAVANAUGH: She was included -- I know you
6 know this, Your Honor, but she was included on our witness
7 list.

8 MR. HODGE: And it's---

9 SOLICITOR CATHCART: I go to church with a lot of
10 different people. That's not the question that was asked to
11 the jurors.

12 THE COURT: We asked did you know any of these people,
13 and, of course, just calling out a random list of names
14 without the people being here, many people don't know if
15 they know the person or not or they may know the person by
16 another name.

17 But what do you want me to do?

18 what says the State?

19 SOLICITOR CAVANAUGH: Your Honor, I would ask that you
20 ask that particular juror whether knowing her from church
21 would affect whether she could be fair and impartial in this
22 case.

23 THE COURT: All right.

24 MR. HODGE: I'm okay with that, Judge.

25 THE COURT: All right. Well, if you can -- you got

1 some in the restroom. See if you can get that one to come
2 out. Number 79.

3 THE BAILIFF: which one?

4 THE COURT: Seventy-nine.

5 (WHEREUPON, Juror Number 79 comes into the courtroom at
6 this time.)

7 THE COURT: Hello there, Ms. Juror Number 79.

8 THE JUROR: Yes.

9 THE COURT: You can stand up please.

10 You sent a note saying that you attend church with
11 Tammy Morris?

12 THE JUROR: Right.

13 THE COURT: All right. would that fact affect your
14 ability to be fair and impartial as a juror?

15 THE JUROR: No.

16 THE COURT: All right. Thank you.

17 (WHEREUPON, the following takes place outside the
18 presence of Juror Number 79.)

19 THE COURT: Anything else on that issue?

20 SOLICITOR CAVANAUGH: No, Your Honor.

21 THE COURT: Okay. She's good to go.

22 We're ready for all of them to come on. So, we're
23 gonna mark this as a Court's Exhibit.

24 You know how to do that?

25 THE COURT MONITOR: Yes, sir.

1 (WHEREUPON, the note from the juror was marked as
2 Court's Exhibit No. 1 for identification purposes only at
3 this time.)

4 THE COURT: Oh, okay. How did you learn how to do
5 that?

6 They taught you how to do that?

7 THE COURT MONITOR: Yes, sir.

8 (WHEREUPON, the following takes place within the
9 presence of the jury.)

10 THE BAILIFF: The jury's seated, Your Honor.

11 THE COURT: All right. Very good.

12 Ladies and gentlemen, we're gonna break for lunch for
13 one hour. Your lunch is here. It doesn't mean that you
14 have to stay in the jury room, but we go to great pains to
15 make sure that jurors don't mingle with the general public.
16 Particularly people may have, may have something to do with
17 the case. So, at no time would we want you to mingle around
18 the front area of the courtroom, but you do not have to stay
19 in the jury room for the entire hour.

20 What are you gonna tell them about where they can go?

21 THE BAILIFF: Jury assembly room.

22 THE COURT: Jury assembly room or outside or wherever.

23 THE BAILIFF: Yes, sir.

24 THE COURT: Okay. Other than outside the door there,
25 yeah.

1 Okay. Now, we'll reconvene in at -- in an hour. And
2 when we come back, Mr. Moats, I'm appointing you to be the
3 foreperson of the jury. As the foreperson, you will serve
4 as the spokesperson for the jury, preside over the jury
5 deliberations, and complete the verdict form representing
6 the unanimous verdict of the jury.)

7 How about that?

8 All right. Now you're it.

9 THE JUROR: Really?

10 THE COURT: Okay. And you'll take the foreperson's
11 seat on the front row in that corner right there.

12 All right. Very good. We'll see you-all at one
13 o'clock.

14 (WHEREUPON, the following takes place outside the
15 presence of the jury.)

16 THE COURT: All right. We're down for an hour.

17 Yes, ma'am.

18 SOLICITOR CAVANAUGH: Your Honor, what time would you
19 like to hear arguments related to whether his prior
20 convictions come in?

21 THE COURT: His prior convictions. We can do it right
22 now if you want to.

23 SOLICITOR CAVANAUGH: Okay. Thank you, Your Honor.

24 As I stated, if the jury is given the lesser included,
25 which is codified under Statute 16-25-20, domestic violence

1 in the first degree, one of the elements of domestic
2 violence in the first degree is that, under Subsection 3,
3 has two or more prior convictions of domestic violence
4 within ten years of the current offense.

5 THE COURT: I've reviewed that, and I agree with you
6 that that's an element of the offense.

7 SOLICITOR CAVANAUGH: Thank you, Your Honor.

8 Since this particular statute was enacted in 2015, I
9 cannot find any case law as it relates to those prior
10 convictions coming in for the purpose of proving one, one of
11 the elements of domestic violence in the first degree.
12 However, I would argue that the similar logic applies in the
13 cases of burglary in the first degree where one of the
14 elements of burglary in the first degree is that the
15 defendant has two or more prior convictions for burglary or
16 house breaking.

17 State v. Benton, State v. Hamilton, as well as State v.
18 Cheatham all explain why the prior -- two prior convictions
19 are admissible because it's part of the State's burden to
20 prove the defendant guilty beyond a reasonable doubt. And
21 they've also decided that, under the---

22 THE COURT: Yes, I've said I -- I've just said I agree
23 with you that it's an elements of the offense.

24 SOLICITOR CAVANAUGH: Okay. Yes, Your Honor, and
25 also---

1 THE COURT: I just need to hear the other side of the
2 argument, but---

3 SOLICITOR CAVANAUGH: Well, Your Honor, also those
4 cases also say that, that the defendant can -- may not just
5 stipulate to the fact that he has been convicted. That
6 since it's the State's burden, we have to show proof
7 through---

8 THE COURT: Right.

9 SOLICITOR CAVANAUGH: ---Rule 902, which is the actual
10 certified convictions indicating that he's, in fact, been
11 convicted of two offenses of domestic violence.

12 I'll be -- if, if, if that's all -- this is -- we
13 are -- we -- the State does not believe that this is a
14 sentencing issue since it's cat, since it's categorized as
15 an element of domestic violence in the first degree, which
16 is codified as a lesser included of domestic violence high
17 and aggravated nature. The defense has repeatedly
18 cross-examined multiple witnesses on the extent of her
19 injuries. And so we believe that there has been evidence
20 produced that would allow you to charge the jury on the
21 lesser included of domestic violence in the first degree,
22 which is why we believe that these certified convictions
23 should be admitted to show that he does have two prior
24 convictions for domestic violence, which---

25 THE COURT: All right.

1 SOLICITOR CAVANAUGH: ---is one of the elements under
2 domestic violence first degree.

3 THE COURT: All right. What says the defense?

4 MR. HODGE: Your Honor, I -- first, I only recall
5 asking one witness about the severity of her injuries, and
6 it was the EMS guy, but---

7 THE COURT: No, I think that part is immaterial, and I
8 attempted to not hear all that, but the solicitor kept
9 having more to say cause I'd already made my conclusion.
10 But it is a -- it's a material element---

11 MR. HODGE: The question that I have---

12 THE COURT: ---two prior offenses.

13 Yes, sir.

14 MR. HODGE: The only question that I had, the thing
15 that I'm honestly dumb about, is he was convicted of the two
16 CDVs on the same day. He -- it was a plea deal in which he
17 was convicted of multiple things on the same day.

18 THE COURT: So, that's a separate issue whether---

19 MR. HODGE: Right, and that's my issue.

20 THE COURT: Right.

21 MR. HODGE: I, I understand that they -- that it is an
22 element -- I mean I've read the statute. I understand that
23 if there's two prior convictions it can be used to enhance
24 to a D -- a DV first. I understand that completely.

25 My question is when, when does it become two separate

1 convictions. Even though they are two separate incidents,
2 he pled on the same day. I mean, like drug dealers, you
3 know, you wouldn't be able to have 15 drug transactions on
4 the same day, and it be multiple convictions.

5 THE COURT: Right.

6 MR. HODGE: I mean it's one conviction.

7 THE COURT: Well, I -- I've agreed it's a material
8 element. The Solicitor says she has certified copies of
9 something. I don't know what it is she has, and I don't
10 know whether it qualifies as two prior convictions or,
11 because it happened on the same day, it should be treated as
12 one. So --.

13 MR. HODGE: Yes, sir.

14 THE COURT: I haven't shown -- nothing has been
15 presented on that issue other than---

16 MR. HODGE: Yes, sir.

17 THE COURT: ---what you've just mentioned.

18 MR. HODGE: That's right, Judge, and that's -- I
19 honestly, getting ready for all this, have not had a chance
20 to research that issue. I didn't know that that was an
21 issue until me and, me and Wesley started talking about it.
22 So, I, I would request just an opportunity to, during this
23 hour if nothing else, find out whether they would be
24 classified as one conviction or two. That's all I would
25 ask.

1 I mean if I -- if they're -- if the law says they're
2 counted as two, then that's fine. I mean I understand that.

3 THE COURT: We, we have an issue on prior drug
4 convictions. You know, someone comes in and pleads guilty
5 to three counts of distribution, even though -- well, I
6 don't know whether the distributions happened on other days,
7 but it's typically, if it's one setting where they plead
8 guilty, that's considered one offense.

9 MR. HODGE: Yes, sir.

10 THE COURT: So, so, we have to hear the details of
11 what, what the State contends, and what the law says on that
12 portion of the issue.

13 MR. HODGE: Yes, sir, and I, and I think---

14 THE COURT: But we know that he has at least one. So,
15 the question is whether he has one or two.

16 MR. HODGE: One or two, yes, sir, that is the question
17 cause it -- the -- I believe the State has certified
18 sentencing sheets that were signed, and pled to on the same
19 day in Orangeburg. So, then that's the question that I have
20 is -- because I've dealt with this in Federal Court, and
21 it's a, it's a tricky subject. So, that's why I don't know.
22 To be honest with you, I don't know the answer to it --

23 THE COURT: All right.

24 MR. HODGE: -- in this situation.

25 THE COURT: Ms. Cavanaugh has the answer.

1 Yes, ma'am.

2 SOLICITOR CAVANAUGH: Your Honor, I have the certified
3 copies of the indictment that for -- corresponds with each
4 sentencing seat -- sheet. I'll be happy to provide you with
5 a copy.

6 One incident occurred on April 28th of 2016, and one
7 occurred on August 28th of 2016. According to the
8 definitions as what constitutes a prior conviction of
9 domestic violence, Section 25-16-2510, under Subsection
10 Number 5, it states that prior convictions of domestic
11 violence includes conviction of any crime in any state
12 containing, among its elements, those enumerated or
13 substantially similar, similar to those enumerated under
14 Section 16-25-20(a), which is all of the definitions for
15 domestic violence, excuse me, all of the statutes regarding
16 domestic violence so that is committed against a household
17 member within the ten years prior to the incident date of
18 the current offense.

19 So, the key word in that particular definition is that
20 is committed. Not conviction date.

21 So, we would argue that, per the definition, a prior
22 conviction, because these incidents occurred because he
23 committed the offenses on different dates, even though he
24 pled under -- on the same date, it qualifies as two priors.

25 THE COURT: Because of the word committed---

1 SOLICITOR CAVANAUGH: Yes, Your Honor.

2 THE COURT: ---in the statute?

3 SOLICITOR CAVANAUGH: Yes, Your Honor. Not convicted.

4 THE COURT: It's the definition of prior convictions.
5 Not prior committed.

6 SOLICITOR CAVANAUGH: Your Honor, the definition just
7 reads that the -- a definition of prior conviction of
8 domestic violence is when it is committed against a
9 household member.

10 THE COURT: Well---

11 SOLICITOR CAVANAUGH: Not---

12 THE COURT: What the Court did, did it -- did -- are
13 these convictions from?

14 SOLICITOR CAVANAUGH: The Orangeburg General Sessions
15 Court.

16 THE COURT: It's---

17 SOLICITOR CAVANAUGH: Two separate counts.

18 THE COURT: I mean it comes up where people plead
19 guilty to multiple offenses on a single day, and then they
20 later on commit another crime whether or not the -- those
21 multiple offenses that are pled on specific days constitute
22 one offense for enhancement or prior conviction purposes or
23 more than one. So, they have -- cases, cases are on that.

24 So, we have to -- got to give me some law rather than
25 an analysis of what these words mean in the statute. So,

1 let's research that, and see what you come up with---

2 MR. HODGE: Thank you, Your Honor.

3 THE COURT: ---on that issue, and we'll talk about it
4 more after one o'clock.

5 MR. HODGE: Yes, sir.

6 SOLICITOR CAVANAUGH: Thank you, Your Honor.

7 THE COURT: All right.

8 (WHEREUPON, Court was in recess for the lunch hour.)

9 THE COURT: All right. Anything before the jury comes
10 in?

11 SOLICITOR CAVANAUGH: Your Honor, can we revisit the
12 rest of our argument on the burglary or, excuse me, on the
13 prior convictions --

14 THE COURT: Okay.

15 SOLICITOR CAVANAUGH: -- at a later time?

16 THE COURT: At a later time, yes. Perfect.

17 SOLICITOR CAVANAUGH: Great.

18 THE COURT: You ready to revisit it now or a later time
19 is good?

20 MR. HODGE: Later time is fine.

21 THE COURT: Okay. Good. But the time, the time we
22 hear from you-all, we have the answers. So, we're -- I have
23 a crack pot clerk here---

24 SOLICITOR CAVANAUGH: I can tell.

25 THE COURT: ---simultaneously researching.

1 SOLICITOR CATHCART: westlaw password was missing from
2 my computer.

3 THE COURT: Okay.

4 SOLICITOR CATHCART: I had a -- it took me half the
5 time to get that going again.

6 THE COURT: All right. Well, let's see if we can get
7 the jury to come back.

8 THE BAILIFF: All right.

9 (WHEREUPON, the following takes place within the
10 presence of the jury.)

11 THE BAILIFF: The jury is seated, Your Honor.

12 THE COURT: All right. Very good.

13 So, Mr. Foreman, how's the jury doing?

14 THE FOREMAN: Doing pretty good.

15 THE COURT: Okay. Very good.

16 All right. You may call your next witness.

17 SOLICITOR CAVANAUGH: Thank you, Your Honor.

18 The State calls Melody Galinski.

19 MELODY GALINSKI, being first duly
20 sworn, testified as follows:

21 THE CLERK: Thank you. Have a seat in the witness
22 stand please.

23 (Witness complies.)

24 THE CLERK: State your name for the record.

25 THE WITNESS: Melody Galinski.

Melody Galinski - Direct examination
by Sol. Cavanaugh

1 DIRECT EXAMINATION

2 BY SOLICITOR CAVANAUGH:

3 Q Good afternoon.

4 where do you work, Ms. Galinski?

5 A Richland County Sheriff's Department.

6 Q And what is your role at the Sheriff's Department?

7 A I'm the property and evidence custodian.

8 Q And as the property -- are you one of several property
9 and evidence custodians?

10 A The custodian is the technical leader/supervisor.

11 Q Okay. And that's your role?

12 A Yes.

13 Q what, what are your duties at -- in that role?

14 A In that role, we intake and process the property as it
15 comes in, and also assist in the training of employees.

16 Q And, as far as in -- the intake of the property, you're
17 referring to property that's collected during
18 investigations?

19 A Yes.

20 Q And, when property is turned into the evidence room,
21 can you describe that process?

22 A we'll either take it out of a locked locker or drop box
23 or we take it directly from the investigator or deputy.

24 And, when we get that, we ensure that it is properly sealed,
25 and then we input it into the system.

1 Q Are -- for each individual cases, is there a case
2 number that's assigned to that particular case?

3 A Yes, anything that comes through our system or our
4 room, every case has an individual case number.

5 Q And then, corresponding with that case number, is the
6 name of the suspect associated with that case number?

7 A Yes, ma'am.

8 Q Okay. And related to -- it -- for the Richland County
9 Sheriff's Department Case Number 1609016828, were you
10 involved in that chain of custody as far as handling
11 evidence that was turned in related to the investigation?

12 A Yes, ma'am.

13 Q Okay. I'm gonna show you what's been marked State's
14 Exhibit No. 20, which is -- can you read what the
15 description of that particular item is?

16 A It's two Buccal swabs of Wesley Givens.

17 Q Okay. And is that item -- for your chain of custody,
18 is that Item Number 4?

19 A Yes, ma'am.

20 Q And when did you receive that item that is the -- those
21 Buccal swabs?

22 A It was submitted to property and evidence on 10/2/2017.

23 Q Okay. And it -- who was it submitted by?

24 A William Gonzales.

25 Q And it was submitted to what individual -- which

Melody Galinski - Direct examination
by Sol. Cavanaugh

1 individual?

2 A Howard Kleber.

3 Q And does he also -- does he also work in the evidence
4 room?

5 A Yes, he's an evidence technician.

6 Q And when did you come into contact with the Defendant's
7 Buccal swab?

8 A On 11/21/2017 I checked out the DNA swab to Jennifer
9 Martin.

10 Q And when you checked out the DNA swab to Jennifer
11 Martin, was it packaged in the box?

12 A Yes, ma'am.

13 Q In the bag?

14 A Yes, ma'am.

15 Q Was it tampered with in any way?

16 A No, ma'am.

17 Q Did it appear tampered with in any way?

18 A No, ma'am.

19 Q And Jennifer Martin works in what area of the Sheriff's
20 Department?

21 A DNA.

22 Q Thank you. No further questions from me. Please
23 answer any questions from the defense.

24 MR. HODGE: No questions.

25 THE COURT: Thank you. You may step down.

1 Next witness.

2 SOLICITOR CAVANAUGH: Thank you, Your Honor.

3 The State calls Howard Kleber.

4 HOWARD KLEBER, being first duly
5 sworn, testified as follows:

6 THE CLERK: Thank you. Have a seat in the witness
7 stand please.

8 (Witness complies.)

9 THE CLERK: State your name for the record.

10 THE WITNESS: My name is Howard Kleber.

11 DIRECT EXAMINATION

12 BY SOLICITOR CAVANAUGH:

13 Q Mr. Kleber, where are you employed?

14 A Richland County Sheriff's Department.

15 Q And what is your role at the Richland County Sheriff's
16 Department?

17 A The evidence and property technician.

18 Q Did you come into contact with any evidence that was
19 submitted in Case Number 1609016828?

20 A Yes, I did.

21 Q I'm gonna show you what's been marked as State's,
22 State's Exhibit 20.

23 Can you read what's on that bag?

24 A Two Buccal swabs of Wesley Givens.

25 Q And does that correspond with Item Number 4 under this

Howard Kleber - Direct examination
by Solicitor Cavanaugh

1 particular case number?

2 A Yes, it does.

3 Q And when did you come in -- did you come into contact
4 with that particular piece of evidence?

5 A I did.

6 Q And when was that?

7 A I logged it in as an additional item on 10/2/2017 at
8 10:54AM.

9 Q And when you logged in it, how was it packaged?

10 A It was inside of the evidence bag sealed.

11 Q And with the box sealed as well?

12 A Yes, ma'am.

13 Q Did it appear tampered with in any way?

14 A No, ma'am.

15 Q And who, who actually checked that item in to you?

16 A William Gonzales.

17 Q And then the next person that had any contact with that
18 item was Ms. Galinski who just testified.

19 Is that correct?

20 A Correct.

21 Q I'm gonna move to Item Number 2 under that same case
22 number. I show you what's marked as State's Exhibit 19.

23 Can you read the description for that particular item?

24 A Long blade knife with black handle found at the crime
25 scene.

1 Q Okay. And did you come in contact with that item of
2 evidence on July 17th of 2017?

3 A I did.

4 Q Okay. And did you check that item out to Ashleigh
5 Dixon?

6 A Yes, I did.

7 Q And who is she at the Sheriff's Department?

8 A She works in the DNA lab.

9 Q Okay. And when you -- when it was checked out when you
10 came into contact with it, did it appear tampered with in
11 any way?

12 A No, ma'am.

13 Q Was it in that box?

14 A Yes, it was.

15 SOLICITOR CAVANAUGH: I have no further questions.

16 THE COURT: By the defense.

17 MR. HODGE: Maybe just one or two, Judge.

18 CROSS-EXAMINATION

19 BY MR. HODGE:

20 Q I believe she asked you that description is right there
21 on that box.

22 what does that mean?

23 A Long fillet knife with black handle found at the crime
24 scene.

25 Q Found at the crime scene?

Howard Kleber - Redirect examination
by Solicitor Cavanaugh

1 A Yes, sir.

2 MR. HODGE: Okay. No further questions.

3 THE COURT: Redirect?

4 SOLICITOR CAVANAUGH: One quick question.

5 REDIRECT EXAMINATION

6 BY SOLICITOR CAVANAUGH:

7 Q You didn't actually write that on the box, did you?

8 A No, ma'am, I did not.

9 THE COURT: Anything else?

10 (No audible response.)

11 THE COURT: You may step down.

12 Next witness.

13 SOLICITOR CAVANAUGH: State calls Tiffany Green.

14 TIFFANY GREEN, being first duly
15 sworn, testified as follows:

16 THE CLERK: Thank you. Have a seat in the witness
17 stand please.

18 (Witness complies.)

19 THE CLERK: State your name for the record.

20 THE WITNESS: Tiffany Green.

21 DIRECT EXAMINATION

22 BY SOLICITOR CAVANAUGH:

23 Q Ms. Green, I'm gonna get these out of your way.
24 would you like some water?

25 A No, I'm fine.

1 Q Okay. And, Ms. Green, remember, when you speak, speak
2 into those microphones loud enough for the Court system to
3 be able to take you down what you're saying.

4 Okay?

5 A Okay.

6 Q Ms. Green, where are you from?

7 A Orangeburg, South Carolina.

8 Q And were you born in Orangeburg, South Carolina?

9 A Yes, ma'am.

10 Q How far away is that from Columbia approximately?

11 A From the side of town I live on now, it's like 45
12 minutes.

13 Q And also just speak slowly. I know---

14 A I'm sorry.

15 Q That's okay.

16 THE COURT: Excuse me.

17 Speak into both mics. If you get both of them hooked
18 up---

19 THE WITNESS: Okay.

20 THE COURT: Help her out there, Mr. Bailiff.

21 THE WITNESS: Okay.

22 THE COURT: All right.

23 Q And where do you currently live?

24 A In Columbia, South Carolina.

25 Q When did you move to Columbia?

Tiffany Green - Direct examination
by Sol. Cavanaugh

1 A I moved back to Columbia in 2016.

2 Q And you said back to Columbia.

3 was there a previous time that you lived in Columbia?

4 A Yes.

5 Q Okay. And when would that have been?

6 A I want to say 2015 I think. 2015.

7 Q And between the periods that you lived in Columbia,
8 where did you live?

9 A I -- the first time, it was in The Summit, and then I
10 moved from The Summit to Parklane Apartments.

11 Q And that's where you are now?

12 A No, I'm not.

13 Q Okay. what I meant is in-between the two periods of
14 living in Columbia, did you go back to Orangeburg---

15 A I---

16 Q ---to live?

17 A I did.

18 Q So, in September, September 28th, 2016, were you
19 living in Orangeburg?

20 A I was.

21 Q where do you work?

22 A At Murphy U.S.A.

23 Q what is Murphy's U.S.A.?

24 A It's a gas station. Corporate owned.

25 Q okay. what location do you work at?

1 A The one on Two Notch.

2 Q Is that the location that you've always worked?

3 A Yes, ma'am.

4 Q When did you start?

5 A I started working at Murphy in 2010.

6 Q What is your -- what is your position currently at
7 Murphy's?

8 A As store manager.

9 Q And how long have you been a store manager?

10 A I think a little over five years.

11 Q And, as a store manager, what are your duties, and
12 responsibilities, and what do those entail?

13 A Cash control, audits, getting things fixed, taking care
14 of the customers, overall, the staffing, hiring, firing.
15 Anything like that.

16 Q Do one of your responsibilities include making daily
17 deposits at the bank?

18 A Yes, ma'am.

19 Q And can you describe that process as far as where
20 you're getting the money from, how it's counted?

21 A Uh-huh. (Affirmative).

22 We get the money from our safe. When the cashiers or I
23 feed the money into the safe, the safe counts the money
24 itself. Our job is to take the money out the safe, place it
25 in the bag, and seal it.

Tiffany Green - Direct examination
by Sol. Cavanaugh

1 Q And the money that's included, is it -- how do you know
2 how much money is actually deposited on a particular day?

3 A It's a Z-tape that comes printed out. It's a report
4 printed out every morning from the safe and called the
5 Z-tape. The Z-tape breaks down how many twenties you have,
6 ones you have, hundreds you have. Any bill you have is
7 counted.

8 Q And then you use to call -- are you calling it a
9 Z-tape?

10 A That's what we call it, the Z-tape.

11 Q Is that then transferred to a deposit slip?

12 A Yes, ma'am.

13 Q And who does that?

14 A I do, or the assistant manager.

15 Q So, on this -- on September 28th, 2016, I show you
16 what's marked as State's Exhibit 6.

17 Does that correspond with the deposit slip from that
18 particular day?

19 A Yes, ma'am.

20 Q And are you the person who wrote the deposit slip that
21 day?

22 A Yes, ma'am.

23 Q Is there money that's included in that deposit bag
24 that's not included on this withdrawal slip?

25 For instance, what's considered change?

- 1 A Can you repeat that?
- 2 Q Is there also money that's not on that deposit slip
- 3 that's considered store change where you're to the bank to
- 4 get change for certain bills?
- 5 A That's if I need it. Not on that deposit slip.
- 6 Q When do you usually make the daily deposits?
- 7 A You make deposits daily. Make -- it's never at the
- 8 same time.
- 9 Q Backing up just a little bit.
- 10 Do you have any children?
- 11 A I have three.
- 12 Q And are any of those with the Defendant?
- 13 A No, ma'am.
- 14 Q What are their current ages?
- 15 A Twenty-one, fourteen, and twelve.
- 16 Q And do they live with you?
- 17 A Yes, ma'am.
- 18 Q Do you have any grandchildren that live with you?
- 19 A I have two.
- 20 Q And how old are they?
- 21 A Eleven month old and two.
- 22 Q Is it fair to say that you're the primary supporter of
- 23 your household?
- 24 A I am.
- 25 Q And was that the case in September of 2016?

Tiffany Green - Direct examination
by Sol. Cavanaugh

1 A Yes, ma'am.

2 Q Do you know the Defendant, Wesley Givens?

3 A Yes, ma'am.

4 Q When did you first meet Mr. Givens?

5 A I know Wesley since we was little kids. We started,
6 started dating -- my cousin got killed, and we started
7 talking then. I want to say it's like four -- well, it's
8 not four years ago. A little bit longer than that now. In
9 2016. It was like four years ago.

10 Q So, approximately the year 2012 is when y'all began
11 dating?

12 A Yes, ma'am.

13 Q Did you live together during that period of time?

14 A Yes, ma'am.

15 Q Approximately how long did you live together?

16 A This year -- off and cause me and Wesley use to get
17 into it. It use to be an altercation, and he'll go back to
18 his grandma house, but we always -- she (sic) always come
19 back.

20 Q And so about how long total -- I mean I know there's
21 some separations, but how long total was he living with you?
22 The whole four years of y'all's relationship?

23 A It can't -- if he was in any trouble, yes, ma'am.

24 Q Okay. Did he live with you?

25 Was it your house or your apartment that he moved into?

- 1 A Yes, ma'am.
- 2 Q Were these in both Columbia and Orangeburg?
- 3 A Yes, ma'am.
- 4 Q Did you and the Defendant's relationship end for good
- 5 around August 28th of 2016?
- 6 A Yes, ma'am.
- 7 Q And, at that point, did he move out of your house for
- 8 good?
- 9 A Yes, ma'am.
- 10 Q What type of belongings did he have that he took with
- 11 him?
- 12 A I took, I took them to his grandma house. His clothes
- 13 and his shoes.
- 14 Q When you broke up in August of 20 -- 2016, and -- was
- 15 that your decision?
- 16 A Yes, ma'am.
- 17 Q Okay. Did he continue to communicate with you?
- 18 A Yes, ma'am.
- 19 Q And what method of communication?
- 20 Did he, did he call you?
- 21 A He called every day several times a day and texts.
- 22 Q Okay. Call your cell phone?
- 23 A Yes, ma'am.
- 24 Q Did he call your job?
- 25 A Yes, ma'am.

Tiffany Green - Direct examination
by Sol. Cavanaugh

1 Q And you said he sent you texts as well?

2 A Yes, ma'am.

3 Q What would your responses be to him?

4 A When he do my cell -- when he call my cell phone and
5 texts, I wouldn't answer if he called my cell phone or reply
6 back to texts. But when he called the job, I have no choice
7 but to answer because it's my job. You can't see who's
8 calling or anything. You have to pick up.

9 Q So, in other words, you weren't trying to communicate
10 back with him?

11 A Correct.

12 Q I'm gonna bring your attention again to
13 September 28th of 2016.

14 Did you come into contact with him on that day?

15 A Yes, I did.

16 Q And the specific reason -- when did he reach out to you
17 for that contact to occur?

18 Did he call you the day before?

19 A He, he contacted me every day. He, he texts me that --
20 day before, and he asked me could I bring him to Columbia.
21 He promised he won't bother me no more after that. He
22 won't, he won't -- he'll leave me alone.

23 Q And did you hope that was gonna be the case?

24 A Yes, ma'am.

25 Q Is that why you agreed to bring him to Columbia that

1 day?

2 A Yes, ma'am.

3 Q And your understanding of the reason he needed to get
4 to Columbia was why?

5 A He had a hearing for his arm cause he, he got
6 disability. He have epilepsy, high blood pressure, and a
7 bad heart.

8 Q So, it was some type of hearing related to that?

9 A Yes, ma'am.

10 Q Okay. What time do you usually have to get to work on
11 Murphy's -- at Murphy's?

12 A By 5:15.

13 Q Is that every day?

14 A In the morning, yes, ma'am, except for on Saturdays and
15 Sundays. It's 5:45.

16 Q How many hours a week do you work at Murphy's?

17 A Fifty hours or more.

18 Q On September 28th of 2016, what time did you have to
19 get to the store?

20 A 5:15.

21 Q So, did you pick up -- what's -- about what time did
22 you pick up Wesley, the Defendant, that day?

23 A I picked Wesley up around 4:00 something in the
24 morning. Around 4:00. A little -- no, it had to be like
25 4:00 or 3:50, somewhere around there cause I try to get on

Tiffany Green - Direct examination
by Sol. Cavanaugh

1 the road before, you know, in case, if something happens, I
2 have enough time to still get to work.

3 Q when you -- where did you pick him up?

4 A From his grandma house.

5 Q when you picked him up, did he have any -- anything
6 with him?

7 A He had the manila folder with him. That's what I seen.
8 He brought it in the car.

9 Q Okay. Beg the -- well, I'll get to that in a second.
10 Can you about describe the size of the folder?

11 A It's about this long. It got all his paperwork in it
12 from, you know, for his -- for why he's sick.

13 Q Okay. But so you observed that when he first got in
14 your vehicle?

15 A Yes, ma'am.

16 Q what was your understanding, as far as once he arrived
17 in Columbia, were, were you going to take him to that
18 appointment with you?

19 A No, his brother was suppose to pick him up.

20 Q And that's what he told you?

21 A Yes.

22 Q what happened in the car on the way from Orangeburg to
23 Columbia?

24 A well, when we got on the back road, cause his grandma
25 live in the country, and it's the back road to the

1 interstate, when we got on the back road, wesley snatched my
2 phone, and he punched me in my face. And he was fighting me
3 all the way from Orangeburg to, to, to Columbia.

4 Q And when you say fighting you, are -- what are you
5 referring to?

6 A He just constantly punching me. He's asking me
7 questions, calling me names, punching me.

8 Q At some point on the trip to Columbia, did you have to
9 stop your vehicle because of this?

10 A I stopped my vehicle in the middle of 26. I also --
11 when he hit me on the back road, I went to the truck stop
12 cause usually it's a police out there, and that morning
13 there was no police out there.

14 Q And you stated he also had your phone?

15 A Yes.

16 Q And what was he doing with your phone?

17 A Going through my phone.

18 Q Did you eventually arrive at, at Murphy's?

19 A Yes, I did.

20 Q And what happened once you got to your, your---

21 A To the job?

22 Q ---to the gas station?

23 A I pull up to the job that I usually do by the door, and
24 I got out---

25 Q Go ahead.

Tiffany Green - Direct examination
by Sol. Cavanaugh

1 A I got out the car, and went inside the store.

2 Q Okay. I'm gonna show you what's marked as State's
3 Exhibit 15 and 16.

4 Do you recognize what's contained in those photographs?

5 A Yeah, my job.

6 Q And, and speak up.

7 Is that the Murphy's that you work at on Two Notch
8 Road?

9 A Yes, ma'am.

10 SOLICITOR CAVANAUGH: Okay. Your Honor, at this time
11 I'd ask to admit State's Exhibit 15 and 16.

12 MR. HODGE: No objection.

13 THE COURT: They're in.

14 (WHEREUPON, State's Exhibit Nos. 15 and 16 were
15 received into evidence at this time.)

16 Q And can you describe -- this is not your -- do you need
17 some water?

18 A No, I just burp. I say excuse me.

19 Q Okay. Is, is Murphy's the type of convenience store
20 where the customers can walk in and out?

21 A They cannot come inside the store.

22 Q And so it's a fairly -- were you -- the area that you
23 work, is it fairly small?

24 A Yes.

25 Q And so when customers want to actually purchase an item

1 or make a transaction, they have to come to the window?

2 A Yes, ma'am.

3 Q Okay. And, and that's where you are?

4 A Yes, ma'am.

5 Q All right. And so, when you arrived at Murphy's that
6 day, you were saying that you parked your car by the door?

7 A Yes, ma'am.

8 Q And that's -- when you referred to the door, that means
9 the door that you enter---

10 A Yes, ma'am.

11 Q ---the store?

12 Is that close to the window where the, the transactions
13 occur as well?

14 A well, it's on the side.

15 Q Okay.

16 A It's on the -- the door is on the side of the building.
17 The window -- the window's in front of the building.

18 Q Okay. And did your -- did you keep -- is, is that
19 where you normally park when you arrive in the morning?

20 A Yes, ma'am.

21 Q Okay. And how long is your car parked at the door
22 usually?

23 A It's usually to it's daylight. You leave the car
24 there or sometimes you move it earlier. But usually, nine
25 times out of ten, it's daylight when you move your car.

Tiffany Green - Direct examination
by Sol. Cavanaugh

1 Q And speak clearly and a little bit slower.

2 A Okay. Usually it's daylight when they want you to move
3 your car, but sometime it get moved early.

4 Q And what's the purpose of actually moving it from the
5 door to the outskirts of the parking lot?

6 A So the customer could have access to the pump cause
7 we're -- actually we pull up to -- that's Pump Number 4.
8 They can still pump from that pump.

9 Q So, the door's too close to where customers need to
10 park?

11 A Correct.

12 Q When you arrived to the store that morning, what, what
13 did wesley do like as far as within the timeframe of, of
14 5:15 on until---

15 A Um.

16 Q ---for that period of time?

17 A wesley hang around the store for a little bit. He, he
18 was into my phone a lot. I went to the front of the store
19 to open, sorry, to open the shutter, and, when I turn
20 around, Mr. Givens slapped me. It was a point where he got
21 locked out the phone. He told me to open the door. I
22 need to -- he need to get my phone back open. He want me to
23 put the code back in.

24 I opened the door, cracked it open, and was putting the
25 phone in. He grabbed the door and barge his way inside the,

1 the store. I asked Mr. Givens to get out the store because
2 I can get fired. I tell him to get out the store. He
3 stayed in there maybe two, three minutes, and then he left
4 out.

5 Q Okay. Was anybody else working with you on this
6 particular morning?

7 A At ten o'clock, Antria came to work.

8 Q Ten o'clock?

9 A Uh-huh. (Affirmative).

10 Q So, you were the only one there---

11 A From 5:00---

12 Q ---from when you arrived until ten o'clock?

13 A Yes, ma'am.

14 Q Besides --?

15 A Mr. Givens.

16 Q -- Mr. Givens?

17 A Uh-huh. (Affirmative).

18 Q What time does the store open for business?

19 A 5:30.

20 Q Okay. So, you just described when, when he was still
21 around your area?

22 A Uh-huh. (Affirmative).

23 Q Was there a certain time where you thought he had left?

24 A Yeah, cause he was gone for a while.

25 Q Okay.

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1 A He was gone for---

2 Q As far as you knew?

3 A Yeah.

4 Q What time did you move -- I'm gonna show you, again,
5 State's Exhibit 15.

6 Can, can you see the Office Depot in the background?

7 A Yeah.

8 Q Okay. Actually, I'm gonna show you what's marked as
9 State's Exhibit 22.

10 Does that depict an overhead view of where your store
11 is---

12 A Uh-huh. (Affirmative).

13 Q ---in relation to the Ryan's Steakhouse and Two Notch
14 Road?

15 A Yes, ma'am.

16 Q Okay. And you're familiar with that area?

17 A Yes, ma'am.

18 SOLICITOR CAVANAUGH: Your Honor, at this time, I'd
19 like to admit State's Exhibit 22 into evidence.

20 THE COURT: Any objection?

21 MR. HODGE: No objection, Your Honor.

22 THE COURT: It's admitted.

23 (WHEREUPON, State's Exhibit No. 22 was received into
24 evidence at this time.)

25 Q Now, that's the -- that's your---

- 1 A Store.
- 2 Q ---gas station, correct?
- 3 A Yes, ma'am.
- 4 Q Okay. And this is a, a closer view of Exhibit No. 15.
- 5 when you moved your car, where -- do you usually move
- 6 it to the same location?
- 7 A Yeah, behind -- it's behind the store into the parking
- 8 lot. It's right there behind the store. Right here by this
- 9 little tree.
- 10 Q Okay. Are you familiar with where cameras are in -- at
- 11 the Murphy's Gas Station?
- 12 A Yes, ma'am.
- 13 Q Okay. would it cover the area of where you parked your
- 14 car?
- 15 A No, ma'am.
- 16 Q So, we were talking about how you thought he had left
- 17 your store.
- 18 A Uh-huh. (Affirmative).
- 19 THE COURT: All right, ma'am. Use---
- 20 THE WITNESS: I'm sorry.
- 21 THE COURT: Use words.
- 22 THE WITNESS: Yes. Yes, ma'am.
- 23 Q And about what time -- on this particular day, is this
- 24 the day that you made a daily deposit to the bank---
- 25 A Yeah.

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1 Q ---or tried to at least?

2 A Yes, ma'am.

3 Q Okay. And do you remember about what time you walked
4 out of the store?

5 A It had to be at like, like a little bit after 10:00.
6 It was after -- way after 10:00. Almost 11:00. I'm not
7 sure.

8 Q So, some time between 10:00 and 11:00AM?

9 A Yes, ma'am.

10 Q And, once again, go through how the money is kept when
11 you're taking that deposit to your car before you take it to
12 the bank?

13 A I had the money inside the bank bag, and I put the bank
14 bag inside my -- well, I call it a satchel. It's a little
15 like a big -- it's a big book bag or whatever, and it throw
16 across my shoulders.

17 Q And the, the -- what you refer to as the moneybag,
18 State's Exhibit No. 5, is that---

19 A Yes, ma'am.

20 Q ---the type of moneybag that you used?

21 A Yes, ma'am.

22 Q What happened once you walked out of the store?

23 A I walked out the store going towards my car, which is
24 on the -- it's the -- in the parking lot behind the store.
25 Mr. Givens was standing by my car in the passenger side.

- 1 Q were you surprised to see him?
- 2 A Yes.
- 3 Q what -- did you continue to go towards your car?
- 4 A Yes, I did.
- 5 Q And what happened once you got to your vehicle?
- 6 what -- did you say anything to him?
- 7 A Yeah, I asked him what he was doing by my car.
- 8 Q Okay. Remember to slow down --
- 9 A I'm sorry.
- 10 Q -- and speak up.
- 11 A I asked him what he was doing by my car.
- 12 Q And what did he tell you?
- 13 A He told me it was a change of plans, that I had to take
- 14 him. I told him no, he wasn't getting in my car.
- 15 Q And when he said take him, did he refer where he was --
- 16 where you're suppose to take him or do you---
- 17 A I guess to the hearing thing he had. The thing he had
- 18 with his disability.
- 19 Q Okay. But he didn't elaborate when he said take him?
- 20 A Yeah.
- 21 Q Did he have anything in his hands?
- 22 A He had his manila folder.
- 23 Q Okay. And what happened with that manila folder?
- 24 A He pull out something in a plastic bag, walked around
- 25 to it. He said he's going -- I'm taking him -- he's getting

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1 in my car with or without me, and he started walking towards
2 in front of my car. And I tell him just -- I told him okay.

3 Q Okay. So, he had something in a plastic bag?

4 A Yeah, it was wrapped.

5 Q Okay. How was it wrapped?

6 was it wrapped tightly?

7 A Yeah, it was just wrapped.

8 Q Okay. And---

9 A It was---

10 Q ---what did you think that was?

11 A I didn't know what it was, but it looked like a weapon.

12 Q And how did you feel as he's saying those things
13 holding that weapon?

14 A I was scared cause Mr. Givens is unpredictable.

15 Q Okay. And once he -- again, what did he say?

16 A He's getting in the car with or without me.

17 Q As he's holding what looks like a weapon wrapped in
18 that plastic---

19 A Correct.

20 Q ---white plastic bag?

21 A Yes, ma'am.

22 Q So, did you allow him to get in the vehicle?

23 A Yes, ma'am.

24 Q And why -- you were scared -- was it fair to say that
25 you were scared for your safety at that point?

1 A Yes, ma'am.

2 Q Once he got in the car, what occurred?

3 A We pulled off going down -- I, I don't know the name of
4 that road right there in front of my store, but I got in the
5 car. I put the satchel on the driver's side door, and we
6 pull off going down the road. Then, when we got down Two
7 Notch, Mr. Givens snatched the bag. I press on the brakes,
8 and I turn my car sideways into the road either -- trying to
9 make a, a scenes (sic). Either the police have seen me or
10 somebody would call 9-1-1. Mr. Givens laughed. Let go of
11 the bag.

12 I took the bag and set it back on the side of the door.
13 This time, as I kept proceeding down Two Notch, he snatched
14 the bag again for the second time. I did the same thing
15 again. I put my car, you know, halfway into -- between both
16 of the lanes. Nobody did anything. Everybody just kept
17 going around. This time he did not let the bag go.

18 He ripped my satchel that reach, reach his hand inside,
19 grabbed the bank bag, and I'm trying to grab the moneybag
20 from him at the same time, and he took the money and grab it
21 out the bag. He ripped the bank deposit bag taking the
22 money out.

23 Q So, that, that is how the---

24 A The bag got ripped.

25 Q How the bag got ripped?

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1 A Yes, ma'am.

2 Q Okay. Back up just a second.

3 what -- the weapon that he threatened you with
4 initially --

5 A Oh, excuse me. Uh-huh. (Affirmative).

6 Yes, ma'am.

7 Q -- what was -- where did he put that after he used it
8 outside of your vehicle?

9 A In his folder. In that manila folder that he had all
10 his stuff in.

11 Q So, he -- once he got in the car after he threatened
12 you with that weapon, did he take it back out?

13 A No, ma'am.

14 Q So, he was -- was he arguing with you also about -- did
15 he still have your phone at that time?

16 A Yes, ma'am.

17 Q And was he still arguing with you about whatever he saw
18 in your phone?

19 A Yes, ma'am.

20 Q Aside from grabbing that -- the moneybag, eventually
21 causing it to rip open, what else was he doing while you
22 were in the vehicle?

23 A When he grabbed the money or just period?

24 Q When -- you can finish about what happened when he
25 grabbed -- once the bag ripped open, what occurred?

1 A After the bag ripped open, he took the money and he sit
2 it on the side of him. I asked Wesley to give me the money
3 back cause he's playing with my job. Only thing he told me
4 to drive, and I told him I need the money back. I said
5 Wesley, give me the money back. You're playing with my job.
6 I'm gonna get fired.

7 So, as I proceed down Two Notch, I turn into where Bank
8 of America is. That's where we do your deposit. I couldn't
9 take the money in there like that because they said the
10 money would of been tampered with. You can't take the money
11 in opened.

12 So, I -- after I turn in there, I went back down, I
13 went back towards Murphy. I pull up in Murphy parking lot,
14 which is right there beside the store. I asked Wesley to
15 give me the money back again. Wesley would not do it.
16 Wesley said go ahead and get the bank bag. I was not
17 leaving that car cause the only thing I felt like, if I
18 would of left the car, he would of got out the car, and
19 walked off with the money, and I was not doing that.

20 Q So, he was telling you to leave the vehicle, to go get
21 another moneybag for the bank deposit?

22 A Correct.

23 Q As it was ripped open like that, would you have been
24 able to make the deposit?

25 A No.

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1 Q The money that's contained in that bag, is it in a
2 envelope?

3 Is it in a rubber band?

4 How is it?

5 A I place it in a rubber band.

6 Q Okay. And you stated he had that entire rubber band by
7 his side?

8 A Yes, ma'am.

9 Q Were there certain periods where your car was just
10 stopped?

11 A Yeah, I stop it at Murphy's, and I stop it at Sonic.

12 Q Why Sonic?

13 A Because I was not leaving that shopping vicinity.
14 Sonic's right there behind Office Depot or beside it,
15 whatever. And I pull into Sonic trying to reason with
16 Wesley, but it's no reasoning with him. He was hitting me
17 at the same time, calling me names, and I was just telling
18 him I didn't want to be with him no more. You know, I asked
19 him to give me the money back. He wouldn't do it.

20 Q So, in addition to him having the money after grabbing
21 it from you, he's also still arguing with you about y'all's
22 relationship?

23 A We ain't had no relation at that time.

24 Q But -- I understand.

25 But he is arguing with you about your current status?

- 1 A Yeah, what I'm doing.
- 2 Q Okay. Throughout this period, was he, was he still
- 3 assaulting you?
- 4 A Yes, ma'am.
- 5 Q Okay. And, and how was he doing that?
- 6 A He's punching me in my face.
- 7 Q When, when he was punching -- was -- is that with a
- 8 closed fist?
- 9 A Yes, ma'am.
- 10 Q Did that hurt?
- 11 A Yes, ma'am.
- 12 Q Did that affect your ability to operate the motor
- 13 vehicle that you were driving?
- 14 A Yeah, it made me swerve a little bit.
- 15 Q And were there times that he was doing this when you
- 16 were outside of the parking lot area?
- 17 A You mean riding down Two --?
- 18 Q Like, for instance, were there times that, that you
- 19 were actually in a roadway?
- 20 A Yes, ma'am.
- 21 Q When he was doing this?
- 22 A Yes, ma'am.
- 23 Q Could it have caused you to, to hit another moving
- 24 vehicle?
- 25 A Yes, ma'am---

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1 MR. HODGE: Objection, Your Honor.

2 A ---it could.

3 MR. HODGE: She's just constantly leading the witness.

4 THE COURT: I agree. The objection is sustained.

5 MR. HODGE: Thank you.

6 THE COURT: You're not allowed to lead the witness.

7 Let the witness testify.

8 SOLICITOR CAVANAUGH: Yes, Your Honor.

9 Did, did law enforcement ever -- before your -- did law
10 enforcement ever pull your car over?

11 A They did not.

12 Q What were you hoping as this event was occurring?

13 A That somebody would see what was going on or see
14 that -- if I was, you know, got the car in the middle of the
15 road, somebody would call the police or somebody would get
16 to help me see what was going on.

17 Q And did---

18 A No.

19 Q ---did that happen?

20 A No, ma'am.

21 Q What -- how did you eventually come to a stop?

22 A I got tired of Mr. Givens just hitting me. I'm not
23 gonna lie. At that point I didn't care. I took -- I
24 floored the car, went round the shopping center, and I came
25 on around by -- where the shopping center -- Dollar Tree, Al

1 Barber Shop, and all that is, and I came on around at a high
2 speed. Mr. Givens was hitting me. I still floored the car.
3 He snatched the keys out my ignition I guess as he see I was
4 about to go into the Ryan's wall, whatever. He snatched the
5 keys out the ignition.

6 He was trying to jump out the car with the money. I
7 pull him back in, and I just let the car go. I didn't care
8 if it was gonna hit the wall or not.

9 Q Okay. And, before that, why did you not choose to
10 leave the vehicle?

11 Explain that in, in your own words.

12 A Because, if I would leave that vehicle, Wesley would
13 took off with that money, and that was my job. My job is,
14 is how me and my kids eat.

15 Q I'm gonna show you what's marked as State's Exhibit 11
16 and 13.

17 Does that depict your vehicle that afternoon?

18 A Yes, ma'am.

19 Q And would you have been able to get out of the driver's
20 side?

21 A I could not get out the driver's side.

22 Q And why?

23 A Because the bushes is right there. I was not able to
24 get out there.

25 Q Once your vehicle came to a stop, what happened?

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1 A Wesley opened the car door, tried to get out. I
2 grabbed hold of him from the driver's side. Wesley pulled
3 me from the driver's side to the passenger side, and he
4 start punching me cause I wouldn't let go of him.

5 Q And why wouldn't you let go of him?

6 A Cause he had the money.

7 Q And how was your body positioned when he drug you out
8 of the vehicle?

9 A I was -- when he drug me, I was -- well, my body was
10 hanging out the car. I'm sorry. My body was hanging out
11 the car, and, I guess, when he was punching me, I was
12 looking up at him, and he just had -- was punching me.

13 Q How did -- did someone come to your aid?

14 A Yes, I don't know the lady, Ms. Rossey (sic). She
15 pulled up. Once she pulled up, and he saw her -- I don't
16 know how it happened, but somehow I knocked the money out
17 his hand. Ms. Rossey (sic) pulled up. Wesley saw the lady,
18 and he took off running.

19 Q Do you know whether he got away with some of that cash?

20 A He got away with some of that money.

21 Q Okay. And, and how do you know that?

22 A Because, when he ran behind me, he scooped it. It's
23 like he scooped the money up and took off running.

24 Q At that point, was it still wrapped up in that rubber
25 band?

- 1 A No, ma'am, it was knocked over the ground.
- 2 Q Did law enforcement eventually come to your aid?
- 3 A Yes, ma'am, after Ms. Rossey (sic) called the police.
- 4 Q Speaking of, of Ms. Roush calling the police, do you
- 5 remember whether you got on the phone with 9-1-1?
- 6 A I remember cause I was -- I thought he had my store
- 7 keys. Well, my keys -- my store keys and my car keys are
- 8 connected. So, I thought he had my keys cause he snatch
- 9 them out the ignition.
- 10 Q So, that is what you believed initially?
- 11 A Exactly.
- 12 Q Did you find out later that, in fact, he -- the car
- 13 keys were left behind?
- 14 A Yes.
- 15 Q Including your store key?
- 16 A Yes.
- 17 Q How -- after he fled the scene, how were you feeling?
- 18 A My job was in jeopardy. I was scared I was gonna lose
- 19 my job.
- 20 Q Any -- were you suffering from any physical pain?
- 21 A Yes, my jaw was throbbing. I thought my jaw was broke.
- 22 I was -- started spitting out blood all over the ground.
- 23 Some got on my pants, but it was throbbing. I thought my
- 24 jaw was broke.
- 25 Q I'm gonna show you what's marked as State's Exhibit 1.

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1 Is that -- what is that a picture of?

2 A Me.

3 Q Is that when you were already in the ambulance?

4 A Yes, ma'am.

5 Q Does it -- did the bleeding eventually stop?

6 A Yes, ma'am.

7 Q Okay. Had it stopped at this point?

8 A Yes, ma'am.

9 Q And then what, what -- I'm showing you what's marked as
10 State's Exhibit 3.

11 Are those your legs?

12 A Yes, ma'am.

13 Q And these spots, was that on your pants when you got
14 dressed for work?

15 A No, ma'am.

16 Q Okay. Where is -- where are those spots from?

17 A From when Wesley had drug me out the car, and I end up
18 on the ground.

19 Q And were you also bleeding on your pants as well?

20 A Yes, ma'am.

21 Q There was mention earlier about you -- did you have any
22 other bruises or cuts on you that, that you were aware of?

23 A My arm. My elbow like. That was it.

24 Q And do you know how you received that injury?

25 A I guess when I got drug out the car. The scraping.

1 Q Okay. When law enforcement was on scene, were you --
2 did a deputy ask you a series of questions?

3 A Yes.

4 Q I'm gonna show you what's marked as State's Exhibit 21.
5 Is this the statement that they completed on your
6 behalf?

7 A Yes.

8 Q When you described what was used, did you tell the, the
9 deputy then whether he had a knife?

10 A No, he asked me what was used, and I told him his
11 fists.

12 Q And when -- what did you think he was referring to at
13 that time?

14 A Like my injuries.

15 Q Because, once again, when was the knife or when was the
16 weapon that was wrapped in black plastic brought out?

17 A When he was trying to get in the car.

18 Q And that was at the very beginning?

19 A Yes, ma'am.

20 Q Did you go -- do you know -- at that point in time, did
21 you know what he had left behind?

22 A No, ma'am.

23 Q Did you tell Deputy West or Deputy Brown about the
24 knife?

25 Do you remember whether you told him about that knife?

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1 A No, ma'am, I didn't.

2 Q Okay. And describe how you overlooked that?

3 A Because, when they came in -- when they came on the
4 scene, I was throwing the money back into the car on the
5 passenger side trying to secure the money, and they was
6 asking me questions, but, at the same time, my jaw was
7 throbbing. That's when they had took me to the hospital.

8 Q Did you realize that he had left that envelope behind?

9 A I did not.

10 Q What -- do you remember what hospital you went to?

11 A I think Providence on Farrow Road.

12 Q And were you treated for your injuries?

13 A Yes, ma'am.

14 Q Okay. Do you remember about -- well, do you know about
15 how long you were at the hospital?

16 A Maybe -- I think about two hours maybe, if that. My DM
17 came, and picked me up.

18 Q Your who?

19 A My D -- my district manager.

20 Q What's his name?

21 A Chris Overton.

22 Q And where was your vehicle during all this?

23 A I left it where it was at Ryan's.

24 Q After you were discharged from the hospital, did it
25 turn out that your jaw had been broken?

1 A Say that one more time. I'm sorry. I didn't hear it.

2 Q Did it -- was your jaw actually broken?

3 A No, it was not broken.

4 Q Okay. Were you given prescription medicine to deal
5 with that pain?

6 A Yes, ma'am.

7 Q And did they perform tests while you were at the
8 hospital?

9 A They did x-rays on my jaw.

10 Q About how long -- did your jaw continue to hurt after
11 that?

12 A Yeah, it was sore for about maybe four or five days.
13 It was sore.

14 Q Once you were discharged from the hospital, where did
15 you go?

16 A My DM picked me up. We went back to where Murphy was.
17 By the time that they had my -- got my car out of the --
18 well, AAA came and got -- they had to use a jack then to get
19 my car out and set it put. We went back to Murphy and we
20 count the money, what was left.

21 Q Okay. Did, did you continue to work that day?

22 A After we count the money I left.

23 Q And how -- where did you go?

24 A Headed back to Orangeburg.

25 Q All right. You stated earlier that a lady by the name

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1 of Anitra was working with you?

2 A Yes, ma'am.

3 Q Is she still an employee at Murphy's?

4 A No, ma'am.

5 Q What time did she get to work that day?

6 A 10:00AM.

7 Q Okay. Did she ever work under you like with you?

8 A She had worked with me.

9 Q Okay. Approximately how many times?

10 A Maybe 15, 20. She transferred from another store.

11 Q And you said that -- well, do you know why she's no
12 longer an employee?

13 A She, she resigned.

14 Q As the -- a manager of Murphy's, do you have any direct
15 knowledge about why she resigned?

16 A She said I -- my -- I got -- my demands -- she can't
17 meet my demands as an assistant.

18 Q And what type of tasks would you have -- what type of
19 demands could -- did she -- could she not comply with?

20 A She couldn't come -- it would take her eight hours to
21 do---

22 MR. HODGE: Objection, Your Honor. This, this is all
23 hearsay. It's something that she's being told by this
24 employee that works at Murphy's.

25 THE COURT: All right. What was the question?

1 SOLICITOR CAVANAUGH: She's the manager of---

2 THE COURT: I know she's the manager.

3 what was the question?

4 SOLICITOR CAVANAUGH: I asked her if she had any direct
5 knowledge about why Anitra Smith resigned.

6 THE COURT: well, she's answered that question. She
7 said she couldn't meet her demands.

8 what was the last question?

9 SOLICITOR CAVANAUGH: I just asked her to describe what
10 type of demands she meant.

11 THE COURT: And the objection is?

12 MR. HODGE: The objection is that any demands that she
13 would not have been met are demands that she has told her
14 she wasn't able to meet and resigned. She wasn't fired.

15 THE COURT: All right. And what's the relevance of
16 that?

17 MR. HODGE: well, I agree with that, but hearsay in
18 general and relevancy, Judge, is what I would---

19 THE COURT: Okay.

20 MR. HODGE: But I would say hearsay because she's gonna
21 testify to what this other employee said to her, but I also
22 would like to make relevancy.

23 THE COURT: All right. Do you want to be heard on
24 that?

25 SOLICITOR CAVANAUGH: well, it's relevant because

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1 Mr. Hodge brought this particular co-worker up in his
2 opening, and he also indicated that he was possibly gonna
3 call her as a witness in his opening. So, her -- the
4 reasons, at least what Ms. Green's knowledge is as to why
5 she resigned, is relevant---

6 THE COURT: So, the person is a prospective witness---

7 SOLICITOR CAVANAUGH: Yes, Your Honor.

8 THE COURT: ---is the, is the issue?

9 All right. All right. why -- is she, she no longer
10 working there?

11 THE WITNESS: She said she could not -- my demands --
12 she could not meet my demands meaning that, when it was
13 time -- we have a certain amount of time to complete our
14 reports. It's use to take her eight hours to finish the
15 report.

16 SOLICITOR CAVANAUGH: That's all, Your Honor.

17 THE WITNESS: It---

18 THE COURT: All right.

19 Q When you -- okay. So, we were discussing whether you
20 continued to worked that afternoon.

21 A Uh-huh. (Affirmative).

22 Q Did you?

23 A No, I didn't. After me and Chris counted the bank
24 deposit, what was left, I left.

25 Q Okay. And when did you next go back to work?

1 A Probably a week later cause Murphy had to do their
2 investigation they self.

3 Q Okay. And, and who, who did you say has to do their
4 investigation?

5 A Murphy.

6 Q And so you went back a week later?

7 A Yes.

8 Q And are you still employed at Murphy's?

9 A Yes, ma'am.

10 Q In your same capacity as --

11 A Say---

12 Q -- as a manager?

13 A Yes, ma'am.

14 Q Did you meet with an investigator?

15 A Yes.

16 Q When did he first contact -- well, was it several days
17 that went by before you spoke to him?

18 A Yes, when I got back to Murphy on the first day, the --
19 Detective Gonzales called me.

20 Q And did you meet with him?

21 A Yes, I did.

22 Q Where did you meet with him?

23 A At Richland County Sheriff's Department.

24 Q And, at that time, what, what did you -- did you give
25 him a statement?

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1 A I gave him the statement, and also I tell him about the
2 knife in the folder.

3 Q Okay. And, at that point in time -- well, let's back
4 up a little bit.

5 A Okay.

6 Q When did you first realize -- you just mentioned the
7 knife and folder.

8 A Uh-huh. (Affirmative).

9 Q When did you first realize that that was still in your
10 vehicle?

11 A When I was driving down 26, and I had to stop on my
12 brakes, the folder slide, and the knife slid out. That,
13 when I looked down on the passenger side, it was sitting
14 right there still.

15 Q And how, how was the knife?

16 was it, was it still in that plastic like---

17 A It's still wrapped up in the plastic.

18 Q Okay. So, once you saw what you -- you just said you
19 saw the knife slid out.

20 A Uh-huh. (Affirmative).

21 Yes, ma'am. Sorry.

22 Q So, it's actually the plastic wrapping that slid out?

23 A Yes.

24 Q And when did you realize -- when did you come to
25 realize it was an actual knife?

1 A When I got to my sister house, and I had picked it up,
2 and I unwrapped it. And I saw it was the knife, and I
3 wrapped it back up, and I took the folder, and I sit it in
4 my trunk.

5 SOLICITOR CAVANAUGH: Beg the Court's indulgence, Your
6 Honor. I'm trying to move this screen over.

7 (Pause.)

8 THE COURT: while they're doing that, I'll give y'all a
9 chance to go to the jury room for a few minutes. Please do
10 not discuss the case.

11 (WHEREUPON, the following takes place outside the
12 presence of the jury.)

13 THE WITNESS: Excuse me? Please.

14 THE COURT: we'll take about five minutes, and while
15 you-all hook that up, and we'll bring them back in about
16 five minutes.

17 MR. HODGE: Thank you, Your Honor.

18 (WHEREUPON, a short recess was taken at this time.)

19 THE COURT: Okay. Ready, ready for the jury?

20 SOLICITOR CAVANAUGH: Yes, Your Honor.

21 THE COURT: Another juror sent a note. Juror 122. My
22 husband worked as an investigator with the Richland County
23 Sheriff's Department. He is now a captain, but may have
24 worked with Investigator Gonzales. He (sic) name sounds
25 familiar along with the name Frieda, another officer. This

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1 does not impair my ability as a juror.

2 Now, that's Juror Number 122, and, during
3 qualification, she said her husband works for the Sheriff's
4 Department, and any issue with that juror?

5 SOLICITOR CAVANAUGH: And, Your Honor, just to clarify,
6 her husband had no involvement in this particular case, but
7 I---

8 THE COURT: All right.

9 SOLICITOR CAVANAUGH: The State has no issue with
10 keeping her on the jury since she indicated she could be
11 fair and impartial.

12 THE COURT: All right. Anything from the defense?

13 MR. HODGE: The same.

14 THE COURT: All right. Very good.

15 Let's bring, bring the jury.

16 (WHEREUPON, the following takes place within the
17 presence of the jury.)

18 THE BAILIFF: Your Honor, the jury is present and
19 seated.

20 THE COURT: You may proceed.

21 CONTINUED DIRECT EXAMINATION

22 BY SOLICITOR CAVANAUGH:

23 Q Ms. Green, did you go to the Sheriff's Department, and
24 give a statement?

25 A Yes, ma'am.

- 1 Q And who did you meet with?
- 2 A Detective Gonzales.
- 3 Q Did you tell him what had occurred that day?
- 4 A Yes, ma'am.
- 5 Q Did he -- what was he doing as you were telling him
- 6 what occurred?
- 7 A He was writing down my statement.
- 8 Q Did he eventually type the statement?
- 9 A Yes, ma'am.
- 10 Q And before he asked you to find it, did you have an
- 11 opportunity to review it?
- 12 A He read it back to him (sic).
- 13 Q And after he read it back to you, did you sign your
- 14 statement?
- 15 A Yes, ma'am.
- 16 Q While you were at the Sheriff's Department, did you
- 17 tell him about the items the Defendant left behind in your
- 18 car?
- 19 A Yes, ma'am.
- 20 Q Okay. And, again, what were those items?
- 21 what was the item?
- 22 A It was his manila folder with the knife inside of it.
- 23 Q Okay. I'm gonna show you what's marked as State's
- 24 Exhibit 23.
- 25 Do you recognize those items?

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1 A Yes, ma'am.

2 Q And what are those items?

3 A It's the manila folder with the knife.

4 SOLICITOR CAVANAUGH: Your Honor, I ask that State's
5 Exhibit No. 23 be admitted into evidence.

6 THE COURT: Is there any objection?

7 MR. HODGE: Judge, I just want to be clear on the
8 record for purposes of the jury, who took the pictures.

9 Did Ms. Green take these pictures?

10 I understand that she may of seen these items before,
11 but the photos, I think, are what they're trying to enter
12 into evidence.

13 THE COURT: Will you examine her for foundation
14 regarding this again?

15 MR. HODGE: Thank you.

16 Q Ms. Green, did you actually take these photographs?

17 A No, ma'am.

18 Q Who took these photographs?

19 A I guess Detective Gonzales.

20 Q And is that when -- then he's the investigator---

21 A Of the case.

22 Q ---you met with that day?

23 A Yes, ma'am.

24 Q And, and he took those -- did he take these once you
25 told him that you still had the belongings in your vehicle?

1 A Yes, cause he came out and took the picture of the
2 folder, and he unwrapped the knife, the plastic bag,
3 whatever, and took the picture of the knife.

4 SOLICITOR CAVANAUGH: Okay. Your Honor, I believe
5 she's laid the proper foundation for State's Exhibit 23 to
6 be entered into evidence at this time.

7 THE COURT: Is this a fair and accurate depiction of
8 what, of what he took?

9 THE WITNESS: Yes, sir.

10 THE COURT: Did he take it in your presence or---

11 THE WITNESS: Yes, sir.

12 THE COURT: All right. Any further questions regarding
13 that?

14 MR. HODGE: No, Your Honor. Thank you.

15 THE COURT: All right. It's admitted.

16 (WHEREUPON, State's Exhibit No. 23 was received into
17 evidence at this time.)

18 Q Ms. Green, can you see the screen from where you are?

19 A Yes, ma'am.

20 Q And is this just a bigger version of the picture that I
21 just showed you?

22 A Yes, ma'am.

23 Q Where was -- how was the knife -- and where was the
24 knife before this photograph was taken?

25 A It was wrapped up in that black bag inside the manila

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1 folder.

2 Q Okay. And who unwrapped that plastic bag?

3 A Detective Gonzales.

4 Q Okay. Ms. Green, after that knife was photographed,
5 did you turn over -- what, what happened with that paperwork
6 and the knife?

7 A I turned everything over to, to Detective Gonzales.

8 Q I'm gonna show you what's marked State's Exhibit 19,
9 what's inside of this box.

10 Is this the knife --

11 A Yes, ma'am.

12 Q -- that you turned over to Investigator Gonzales?

13 A Yes, ma'am.

14 SOLICITOR CAVANAUGH: Your Honor, at this time, I'd ask
15 that State's Exhibit 19 be admitted into evidence.

16 THE COURT: Any objection?

17 MR. HODGE: No objection.

18 THE COURT: It's admitted.

19 (WHEREUPON, State's Exhibit No. 19 was received into
20 evidence at this time.)

21 MR. HODGE: Your Honor, just over our previous
22 objections is what I would---

23 THE COURT: Yes, sir.

24 MR. HODGE: A little caveat.

25 THE COURT: Yes, sir.

1 Q And when he presented this, this to you on September
2 28th, 2016, what was this -- how was it presented to you
3 again?

4 A It was wrapped in the black bag.

5 Q The black bag that's in that picture?

6 A Yes, ma'am.

7 Q And when you saw it wrapped in that black bag, what did
8 you think?

9 A It was a weapon.

10 Q What was contained in that envelope?

11 A Other than a knife, it's his medical -- all his medical
12 paperwork.

13 Q And did you also turn that paperwork over to the
14 investigator who---

15 A I did.

16 Q Do you see the person who did this to you on September
17 28th, 2016, in the courtroom?

18 A Yes, ma'am.

19 Q And can you identify him?

20 A Wesley Lamonte Givens.

21 Q Where is Mr. -- where is Mr. Givens seated?

22 A Right there in the blue shirt.

23 Q Okay. And what is he wearing?

24 A The blue shirt.

25 SOLICITOR CAVANAUGH: Your Honor, I'd like the record

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1 to reflect that she has identified the Defendant.

2 THE COURT: It does.

3 Q Thank you, Ms. Green. Please answer any questions from
4 the defense.

5 A Okay.

6 CROSS-EXAMINATION

7 BY MR. HODGE:

8 Q Good afternoon, Ms. Green. My name is William Hodge,
9 and I represent Wesley Givens in this case, and I've got a
10 few questions for you that -- today regarding, regarding
11 what happened.

12 How long did you say you and Wesley had, had been
13 together?

14 A It's like four years. Maybe a little over four.

15 Q And I think you said that it ended for good on
16 August 28th, 2016.

17 Is that right?

18 A Say August what?

19 Q August 28th or around there is when it ended for
20 good?

21 A Yeah, the last altercation we had.

22 Q Okay. And he -- you said that he continued to call and
23 text you.

24 Is that right?

25 A That's correct.

1 Q But you, you said you ignored those, and didn't respond
2 to any of those.

3 Is that right?

4 A No, I ignored the calls and texts on my cell phone, but
5 he called my job phone.

6 Q Right.

7 So, your cell phone, texts, and phone calls, you just
8 ignored all of them?

9 A Correct.

10 Q You never called him or tried to text him or get back
11 together with him?

12 A No, I did not.

13 Q But you said that, on this day, you took a different
14 approach, correct?

15 A What day?

16 Q The day in question, on September 28th, 2016, you,
17 you, you went about it differently, didn't you?

18 A Yes, I did.

19 Q And you responded, right?

20 A Not on September 28th. The day before.

21 Q Okay.

22 A Yep.

23 Q So, you responded?

24 A Yeah, after he say he'll leave me alone.

25 Q Okay. And you believed him?

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1 A I did. I told him I didn't trust him either.

2 Q Okay. And so, after ignoring him for a month, you then
3 decide that you're gonna give him a ride from Orangeburg to
4 Columbia, right?

5 A I did.

6 Q Okay. And so you voluntarily went, and picked him up
7 from his grandmother's house?

8 A I did.

9 Q And you let him get in your car at that point?

10 A I did.

11 Q And you drove him some 45 minutes to an hour from
12 Orangeburg to the Murphy's in Columbia.

13 Is that right?

14 A I did.

15 Q Okay. And you said, when he got in the car, you had
16 a -- just a regular old manila folder, right?

17 A He did.

18 Q I believe your testimony is that, that you were just
19 taking him to Murphy's, and that was the end of the road for
20 you, right?

21 A That was the deal.

22 Q Right.

23 And then he was gonna have his brother, I think, come
24 pick him up?

25 A Correct.

1 Q Okay. And I think your, your testimony today is that,
2 essentially, from the minute that you picked him up till the
3 time that you got to Murphy's, he was assaulting you or, or
4 beating you---

5 A That's true.

6 Q ---or punching you?

7 Okay. And he took your phone, and then he continued to
8 hit on you the whole way down the highway.

9 Is that right?

10 A That is true.

11 Q And when you got to Murphy's that morning, it was
12 roughly 5:15, the time you're suppose to be there, right?

13 A Correct.

14 Q Now, does Murphy's have surveillance cameras?

15 A They do.

16 Q And do you know if they were operational at the time?

17 A They was.

18 Q And I think you testified that, that they had -- that
19 you pulled up to the door.

20 Is that correct?

21 A Correct.

22 Q Oh, here they are. I'm sorry. I was looking for
23 these.

24 And this Murphy's -- these pictures here that have
25 already been entered as evidence, these are the Murphy's Gas

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1 Station that you worked at or worked at -- work at now,
2 correct?

3 A Correct. Excuse me.

4 Q And, honestly, these are only two angles, but I can see
5 at least one.

6 Do you see surveillance cameras in, in those pictures?

7 A You can't see the surveillance camera all the way over
8 here.

9 Q Can you see a surveillance camera?

10 A Yeah, right here.

11 Q Okay. And you pulled up to the, to the door of that
12 facility.

13 Is that right?

14 A Correct.

15 (WHEREUPON, two photographs were marked as Defendant's
16 Exhibit Nos. 1 and 2 for identification purposes only at
17 this time.)

18 Q Now, Ms. Green, those pictures are obviously of a wide
19 angle. I personally went out to this Murphy's earlier and
20 took some pictures, and I'm gonna hand you what's been
21 marked as Defense 1 and 2 just for ID purposes.

22 Do you recognize the location of those two pictures?

23 A Yep, this is Pump 4, and this over here on Pump 5 and
24 6.

25 Q Okay. And, and, here, can you see the surveillance

1 cameras---

2 A Yes, sir.

3 Q ---that are in place.

4 Now, looking at these pictures here---

5 A That's going beside Pump 5 and 6.

6 Q This is five and six here.

7 This is gonna be --?

8 A The same side.

9 Q The same.

10 So, this is the only picture that we have of Pump 4,
11 right?

12 A Correct.

13 Q And that's where you say that you parked your car is
14 right there at Pump 4 when you pull in first thing that
15 morning, correct?

16 A Correct.

17 Q And, and that was after wesley was stealing your car
18 when you pull up to the front of that building to the door
19 right there?

20 A Correct.

21 Q And if those cameras were working, there should of
22 been, would of been surveillance footage of you pulling up
23 to that door with wesley in your car?

24 A Correct.

25 Q I think you said then that you generally move your car

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1 at daylight.

2 Is that right?

3 A Yes, you suppose to move your car when it get daylight.

4 Sometime we move it before then.

5 Q So, when you went out to move your car at daylight, was
6 Wesley still in your car?

7 A No, he was not.

8 Q Okay. Where was Wesley at that point?

9 A Wesley, when I move my car, I think it was still a
10 little bit dark, Wesley was by the building.

11 Q He was by the building?

12 A He was by the building when I moved my car.

13 Q Are you saying behind the building?

14 A No, he was by the building.

15 Q By the building.

16 Okay. And so if he would of been by the building,
17 based on where those surveillance cameras are, we would of
18 seen him on those cameras.

19 Is that right?

20 A You would have seen him on the camera.

21 Q Okay. Now, when you walked in first thing that morning
22 at 5:15 after getting to work on time, and left Wesley in
23 the car, you say you walk into like a small, small, I don't
24 want to call it an office, but you -- the building's very
25 small, correct?

- 1 A It's a kiosk.
- 2 Q A kiosk. And it's -- so, it's a one room deal.
- 3 Is that right?
- 4 A Yeah.
- 5 Q Okay. And does the door lock behind you?
- 6 A Yes.
- 7 Q So, when you walked into that kiosk, were you secured
- 8 behind a locked door?
- 9 A Yes.
- 10 Q But you didn't call law enforcement, did you?
- 11 A I did not call the law enforcement.
- 12 Q But you had just been beaten an entire 45 minutes, but
- 13 you didn't call law enforcement at that point?
- 14 A Correct.
- 15 Q Okay. Now, I think, at one point, you said that, while
- 16 Wesley was hanging around, that he came to the door.
- 17 Is that right?
- 18 A He did.
- 19 Q And how did he get the door opened?
- 20 A Cause I unlocked the door, and I crooked the door.
- 21 Q Okay. So, you opened the door for him?
- 22 A Yes.
- 23 Q Okay. And then he opens the door or barges in I think
- 24 you said.
- 25 Is that right?

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by Mr. Hodge

1 A He -- yes.

2 Q And if the surveillance cameras were working that day,
3 then that would of been caught on camera, correct?

4 A Yes.

5 Q You said he was there for only two to three minutes and
6 then left?

7 A Inside the store.

8 Q Right. Inside the store.

9 Did Wesley ever take your car anywhere?

10 A He didn't take my car I don't think.

11 Q So---

12 A I don't remember.

13 Q He---

14 A I don't recall.

15 Q He didn't drive your car and get breakfast or anything?

16 A I don't recall that.

17 Q Okay. You said he was gone for a while though, right?

18 A He wasn't around the building, no.

19 Q Do you know where he went?

20 A No, I don't.

21 Q You know how he got there?

22 A How he got where?

23 Q Wherever he went.

24 A No.

25 Q Now, at some point, I guess daylight hours, you move

1 your car to -- you said -- I think you said the parking lot
2 adjacent to the Murphy's?

3 Is that where you are?

4 A Say it one more time for me.

5 Q When you moved your car at daylight---

6 A Uh-huh. (Affirmative).

7 Q ---where do you move it to?

8 A Behind the parking -- behind the building in the next
9 parking lot.

10 Q And I'm gonna use State's Exhibit 22 map. I'm gonna
11 try to get the jury an idea here just so I can figure it
12 out.

13 So, you're originally parked up under here, right?

14 Right here at the door?

15 A (No audible response.)

16 Q When you move your car at daylight, where do you pull
17 it?

18 You pull here?

19 A Yes.

20 Q So, into the other parking lot?

21 A Correct.

22 Q And I guess is that -- is that a---

23 A That's a shopping center parking lot.

24 Q That's the whole shopping center parking.

25 Okay. Now, when you pulled your car into the parking

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1 lot, was wesley in your car when you moved it?

2 A No, he wasn't.

3 Q But he was just -- he was around the building at that
4 time, right?

5 A Yes.

6 Q Now, when you -- well, you said, you said someone else
7 was working that day. It was Anita Smith.

8 Is that right?

9 A Correct.

10 Q That's who was working with you. You said she got
11 there at ten o'clock I believe.

12 Is that right?

13 A 10:00AM.

14 Q 10:00AM.

15 Okay. Had he already barged into the office---

16 A He did.

17 Q ---at that point?

18 So, that would of been before she got there?

19 A Correct.

20 Q So, the only two people there were you and him?

21 A Correct.

22 Q Now, I think you said, as you -- if you're back there,
23 you walk out of the door, and you, you see wesley still
24 standing at your car, right?

25 A when I was leaving?

1 Q Yes, ma'am.

2 A Yes, sir.

3 Q After you -- I guess you were going to make the deposit
4 at this time. You saw him standing at your car.

5 A Correct.

6 Q So, you had the bag with the money in your hand?

7 A No, I did not have the money in my hand.

8 Q Okay. So, you went to the car first without getting --
9 before you got the deposit out, you went to get your car?

10 A Excuse -- say that again.

11 Q Okay. So, you're going to make the deposit.

12 A Uh-huh. (Affirmative).

13 Q And your car is parked in that parking lot that we just
14 said.

15 A Uh-huh. (Affirmative).

16 Q As you're walking to your car at that point, do you
17 already have the deposit money in hand?

18 A Yeah, it's in my bag.

19 Q Okay. So, you have that money, 5,000 plus dollars, in
20 your possession walking from the store to your car in the
21 parking lot behind the store?

22 A Correct.

23 Q Okay. And you see, as you leave the store, wesley
24 still hanging around your car?

25 A Correct.

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1 Q But you didn't go back inside at that point and call
2 law enforcement, did you?

3 A I did not.

4 Q Now, you say that you approached your car, and Wesley's
5 standing there, and he tells you that he's getting in your
6 car one way or the other.

7 Is that right?

8 A Correct.

9 Q And you -- who had the keys to your car at that point?

10 A I think I had my keys.

11 Q Okay. And when you tell him you're not giving him a
12 ride, you said that's when he pulls out a black plastic bag,
13 and walks towards you in a threatening manner, right?

14 A Yes.

15 Q And you assume that there was something in that bag?
16 You didn't know what, right?

17 A Correct.

18 Q Now, as you're driving down Two Notch now, you say that
19 he snatched the moneybag out of your or snatched the book
20 bag that had the moneybag in it from your side of the car,
21 right?

22 A Correct.

23 Q And you slammed on the brakes in the middle of the
24 road?

25 A I swerved the car.

- 1 Q Okay. Did you have your cell phone at this time?
- 2 A No, I did not.
- 3 Q So, he still had your cell phone?
- 4 A Yes, he did.
- 5 Q Okay. And you said, at that point, he gave you the
- 6 moneybag?
- 7 A He let go of the bag.
- 8 Q The first time. He gave you the bag.
- 9 A Yeah.
- 10 Q Now, I think you, you said, the second time, you said
- 11 he grabbed it, and that's when the bag ripped.
- 12 Is that right?
- 13 A He ripped the, the satchel. Then he grabbed the money
- 14 back.
- 15 Q Okay. But then he tells you, after he takes the bag
- 16 and it rips, he doesn't try to jump out of the car and run,
- 17 does he?
- 18 A No, he don't.
- 19 Q Okay. And you don't try to get out of the car at any
- 20 point, right?
- 21 A Correct.
- 22 Q You then go back to the store?
- 23 A Correct.
- 24 Q Where did you pull when you went back to the store?
- 25 A Right there when you -- on the curve.

1 Q Up front?

2 A Of Murphy. On the side. On the curve. When you pull
3 in, it's a curve right there.

4 Q Uh-huh. (Affirmative).

5 Okay. Is that area visible?

6 A To cameras?

7 Q To video.

8 A Yes.

9 Q Okay. But you didn't get out?

10 A I did not.

11 Q You told -- I think you told the jury that he told you
12 to go inside, and get another deposit bag, right?

13 A He did.

14 Q So, at that point, you're free to leave the vehicle.
15 Is that right?

16 A Correct.

17 Q And you chose not to leave that vehicle?

18 A Correct.

19 Q And I think you said you were afraid he was gonna get
20 out and walk away with the money?

21 A Correct.

22 Q So, you refused to get out, and get another bag, and
23 then you drove to a Sonic, right?

24 A Correct.

25 Q Did you order anything at Sonic?

1 A No, I did not.

2 Q So, y'all didn't have any food or drinks or anything at
3 Sonic?

4 A No, I did not.

5 Q Okay. But you say you parked in the parking lot, and
6 then you -- assaulted you again, is that, or, or hit you
7 again?

8 Is that what you---

9 A He did.

10 Q Okay. At any point during, during all of this, when
11 he's got the money or you could of gotten out of the car but
12 didn't or anything else, did he ever pull a knife out on
13 you?

14 A He didn't pull the knife out anymore.

15 Q Do you know where he put it?

16 Did you see where he put it?

17 A In the envelope.

18 Q Now, at some point you end up in the parking lot.

19 You're tired of getting hit, and you say you were just gonna
20 drive into Ryan's Steakhouse.

21 Right?

22 A Correct.

23 Q What was your intentions of driving into the Ryan's
24 Steakhouse?

25 A I was tired. It's gonna be -- it probably be both of

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1 us or just me. I was just tired of him hitting me. I was
2 tired of Wesley period.

3 Q So, your goal was to, if you're gonna be hurt, he's
4 gonna be hurt with you?

5 That was your, that was your idea of running into
6 Ryan's?

7 A To stop what he was doing.

8 Q But he actually stopped you from running into the
9 Ryan's by jerking the keys out, right?

10 A Taking the keys out the ignition.

11 Q Now, once the car was stopped, I think that's when
12 Mr. Givens tried to get out of the car according to your
13 testimony today.

14 Is that right?

15 A Correct.

16 Q And you said you couldn't get out on your side?

17 A I couldn't.

18 Q So, you leaned over and grabbed him?

19 A I did.

20 Q Were you hitting him?

21 A No, I wasn't.

22 Q Did you scratch him?

23 A No, I didn't.

24 Q Did you rip his clothes?

25 A I probably think I ripped his chain.

1 Q Okay. But you were grabbing him---

2 A Or pop his chain. Not rip his chain. Sorry.

3 Q You were grabbing him so that he wouldn't run off with
4 the money?

5 A Correct.

6 Q You were more concerned about Murphy's money, I guess,
7 than, than your own safety?

8 A I was trying -- my job is important to me.

9 Q Did you think you were gonna lose your job if you got
10 robbed?

11 A Yes.

12 Q why?

13 A Because that's my personal life coming into my work
14 life.

15 Q Okay. Are you suppose to have someone in the car with
16 you when you make deposits?

17 A No, we're not.

18 Q Okay. Now, it was asked earlier. You gave a, a, for
19 lack of a better term, a statement or a version of, of the
20 facts on, on the scene that day, right?

21 You remember that?

22 A Yes.

23 Q You talked to a Deputy west, correct?

24 A Yes.

25 Q The female investigators or deputy that was in here

1 earlier, correct?

2 A Yes.

3 Q Okay. When you were talking to, to Investigator West
4 or to Deputy West, I'm sorry, didn't mention anything about
5 the knife, right?

6 A I did not.

7 Q You didn't mention anything about being forced into
8 your car, right?

9 A I did not.

10 Q I think you even tell her that you're the one who
11 ripped the cash deposit bag trying to get it back from him
12 --

13 A I---

14 Q -- from Wesley?

15 A No, I did not.

16 Q Okay. And it's your testimony that you did not
17 voluntarily let Wesley Givens into your car that morning
18 after you were at the store?

19 A Correct.

20 Q Because, if you would have, that's a violation of store
21 policy, right?

22 A Correct.

23 Q And you would lose your job for that, right?

24 A Correct.

25 Q Now, I think you, you went and met with the

1 investigator in this case on October 6th, 2016. So,
2 roughly eight days later I guess.

3 Right?

4 A Correct.

5 Q And in-between September 28th, and I think you said
6 maybe the afternoon of September 28th, and the time you go
7 to meet with Investigator Gonzales, you found that manila
8 envelope, right?

9 A Correct.

10 Q Did you look in it?

11 A I didn't look in it, but I know he had his medical
12 work, and like I tell you when I stopped on the -- when I
13 was riding down 26, and I stamp (sic) on the breaks for
14 traffic, that's when it slide out.

15 Q That's when what slid out?

16 A The black bag.

17 Q Okay. Did you ever open that black bag?

18 A I opened it. When I got to my sister house, I opened
19 it.

20 Q Okay. So, you opened the black bag at your sister's
21 house?

22 A Correct?

23 Q Did you take it out of your car?

24 A What do you mean take it out my car?

25 Q Well, I mean you say you opened it.

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1 Did you open it while you're sitting in your car or did
2 you---

3 A Yes.

4 Q ---take it out of your car?

5 A I unwrapped it, and I wrapped---

6 Q Okay,

7 A when I saw what it was -- I'm sorry.

8 when I saw what it was, I wrap it back up, I put it
9 back in the envelope, and put it in my trunk.

10 Q Okay. You say it slid out of this envelope.

11 where was this envelope located?

12 A On the floor in the passenger side.

13 Q Just on the floor?

14 A On the passenger side.

15 Q Okay. When you had your interview October 6th, 2016,
16 with Investigator Gonzales, you, you told him about the
17 knife, right?

18 A Correct.

19 Q And you told him about the let me in your car or else
20 statement, right?

21 A Correct.

22 Q You didn't tell him about getting beat the entire ride
23 from Orangeburg to Richland County, right?

24 A Yes, I did.

25 Q You did?

- 1 A Yes.
- 2 Q Was he writing down everything you said to him?
- 3 A I don't know, but I did -- he asked me was it a smooth
- 4 ride coming up, and I told him no, it wasn't.
- 5 Q Okay. Is that all you said, no, it wasn't?
- 6 A Yes, I said no, it wasn't. He was fighting me there.
- 7 Q Okay. But you reviewed your statement.
- 8 None of that was in your statement, right?
- 9 A Correct.
- 10 Q Now, I think the total deposit slip that I saw was
- 11 for -- let me find this. There it is. \$5,170.00.
- 12 Is that right?
- 13 Is that what that says right there?
- 14 A Yes, sir.
- 15 Q And that's, that's your handwriting, right?
- 16 A Correct.
- 17 Q So, you're the one that filled that out, and the, the
- 18 day that, that this incident allegedly happened in
- 19 September, September 28th, that's what you were going to
- 20 deposit, right?
- 21 A Correct.
- 22 Q Now, you said something at -- and this -- the reason
- 23 I'm asking this question is cause I was a little confused.
- 24 You said that's not all the money that's in that bag?
- 25 A What you mean that's not all the money?

Tiffany Green - Cross-examination
by Mr. Hodge

1 Q well, I thought -- and that's why I'm ask -- I'm trying
2 to clear it up.

3 when you take the deposit bag, and there's a deposit
4 slip for \$5,170.00, is there more than that in the deposit
5 bag?

6 A No, it's not more than that in the deposit bag.
7 whatever the deposit bag says, that's what's in there.
8 She -- I thought she was asking me about the change. Like
9 if you needed change for the store.

10 Q And maybe she was. I don't know. That's why I was
11 asking that question. I, I was confused.

12 Did you -- you said you went back to the Murphy's, and
13 counted the money.

14 A Me and Chris.

15 Q Okay. Had Chris already counted the money before you
16 got there?

17 A I don't know. I was at the hospital.

18 Q Okay. How long were you in the hospital again?

19 A I want to say about two hours maybe. Excuse me.

20 MR. HODGE: Can I have just a moment?

21 (Pause.)

22 A Excuse me. Excuse me.

23 Q Just, just a couple more. Back to the money. Just I
24 lost my train of thought for a second.

25 So, in your statement to Investigator Gonzales that you

1 have reviewed and, and gave, you said that there was
2 \$2,166.00 of the \$5,070.00 that was missing, correct?

3 A Correct. When me and Chris counted it.

4 Q Okay. When you were at the store, did anyone else
5 come -- customers come to the store?

6 A What you mean?

7 Q When you were working.

8 When you were the only one there, did you have
9 customers that morning?

10 A I probably had a few. Not that many.

11 Q Do you remember if Wesley ever interacted with any of
12 them?

13 A No, sir.

14 MR. HODGE: No more questions. Thank you.

15 THE COURT: Any redirect?

16 SOLICITOR CAVANAUGH: No more questions for this
17 witness, Your Honor.

18 THE COURT: You may step down.

19 Your next witness.

20 SOLICITOR CATHCART: State calls Mykenzi Gibbs.

21 THE COURT: All right. Ms. Gibbs, she'll swear you in.
22 Left-hand on the Bible.

23 THE CLERK: Raise your right-hand please.

24 MYKENZI GIBBS, being first duly
25 sworn, testified as follows:

Mykenzi Gibbs - Direct examination
by Solicitor Cathcart

1 THE CLERK: Thank you. Have a seat in the witness
2 stand please.

3 (Witness complies.)

4 THE CLERK: State your name please for the record.

5 THE WITNESS: My name is Mykenzi Alexis Gibbs.

6 DIRECT EXAMINATION

7 BY SOLICITOR CATHCART:

8 Q Ms. Gibbs, where are you employed?

9 A Providence Health Northeast in the Emergency
10 Department.

11 Q What do you do there?

12 A I'm a physician assistant.

13 Q Please describe to the jury basically what your, what
14 your job entails.

15 A I am trained medically like a physician. I order
16 diagnostic studies, prescriptions. I perform procedures.
17 Pretty much everything short of surgeries, which I can be
18 trained to do that if that were part of something I needed
19 to do.

20 Q Okay. And were you doing this back in 20 -- 2016?

21 A Yes.

22 Q And did you have the opportunity to treat a individual
23 on, back on, excuse me, September 28th of 2016?

24 A Yes.

25 Q A Ms. Green?

- 1 A Yes.
- 2 Q Would you please describe to the jury what brought her
- 3 to y'all's emergency room?
- 4 A She was assaulted --
- 5 Q Okay.
- 6 A -- per her, her recognance (phonetic).
- 7 Q I, I understand you didn't see the assault occur.
- 8 what -- when you -- and do you recall her from memory?
- 9 A Vaguely. I think I remember the room that I seen her
- 10 in. Just witnessing her demeanor today, I kind of -- it
- 11 kind of comes back to me.
- 12 Q And did you have the opportunity -- did, did you just
- 13 see her testify just a few minutes ago?
- 14 A Yes.
- 15 Q Okay. And did you or when you do these procedures or
- 16 do these treatments, do y'all keep records of them?
- 17 A Yes.
- 18 Q And do you have a copy of your records with you?
- 19 A I do.
- 20 Q Would looking at that help refresh your memory as to
- 21 what treatment that y'all gave her?
- 22 A It does. It's a---
- 23 Q Do you---
- 24 A It's a complete detail.
- 25 Q Okay. Would you please just tell the jury what she

1 came in as needing and what y'all did?

2 A So, she was seen by myself at about twenty minutes
3 after two o'clock at which time I spoke with her regarding
4 while she was -- why she was there. She stated to me that
5 she had pain to the left side of her face as well as her
6 right jaw with opening her mouth. She also had a ringing
7 sensation in her right ear, and states that she had these
8 injuries after being punched in her face three to four times
9 by an ex-boyfriend.

10 Q Okay. And did you -- and, and -- gosh. Excuse me. I
11 can't talk today.

12 In observing her, was her symptoms consistent with what
13 she was telling you -- told you happened to her?

14 A Yes.

15 Q Did she -- what were her symptoms that she showed on
16 that?

17 A So, she actually had like blood in her face. There was
18 swelling to the left side of her face. I didn't examine any
19 injury to her teeth. She denied like any neck or back pain.
20 She was able to recall a full story. She didn't lose
21 consciousness, but I could see visible injury to her face.

22 Q And that was consistent with being punched?

23 A I would say so, yes.

24 Q Did you do any other further diagnostic treatment such
25 as checking whether or not anything was broken?

1 A I did. I ordered a CT of her face without contrast at
2 that time looking for broken facial bones. It would also
3 just show me any fluid that would be in an abnormal space,
4 again, if she had any facial bone injury.

5 Q And this would of been because of it being described as
6 a serious trauma or a light trauma or---

7 A Anytime that someone says they're punched in the face,
8 I consider that to be serious. Especially if I don't
9 witness it. And usually, when you go through something
10 traumatic like that that, there be -- people are not the
11 best historian. So, even if she would of said she got
12 punched in the face once, I could see blood in her mouth.
13 And so I would of -- I scanned her face anyways.

14 Q So, when you say they're not the best historian, what
15 do you mean?

16 A You can -- you just -- your adrenaline can be flowing,
17 and they don't always recall, you how, how many times they
18 were hit, if they were hit with a weapon, you know, did they
19 actually pass out, were they dizzy. Just things can be a
20 blur for patients.

21 Q And that's not unusual especially right after the event
22 occurs?

23 A No, not at all.

24 Q Okay. And so as she told you what happened, she's
25 basically responding to this is why I'm hurting like this?

1 A Yeah, but she's not very emotional. So, she wasn't
2 overly dramatic I guess I can say. She just kind of said
3 it, and that was that. And so I asked, you know, well, you
4 have any neck pain, do you have any back pain, did you pass
5 out, very direct. She didn't give much more.

6 Q She was responding to your questions?

7 A Yes.

8 Q And did you prescribe her any medication after you saw
9 her?

10 A I did. So, while she was in the department, because it
11 was an assault, and I did ask if -- I always try to make a
12 point, when they know it's an assault, to know whether or
13 not a police report was filed, and she did tell me that she
14 had done that. And so, because of that, I didn't give her
15 any heavy narcotics.

16 Plus, I think that she probably, I didn't note it, but
17 she must of been driving because I only gave her Tylenol.
18 And, usually, something like that, I'll give something a
19 little more. But I, obviously, didn't want to impair her
20 judgment. So, I gave her Tylenol while she was there in the
21 department, discharged her home on Ibuprofen 800 milligrams,
22 as well as Norco, which is a narcotic.

23 Q And the narcotic, she would fill out the prescription
24 herself later?

25 A Yes.

1 Q You did that for --?

2 A Pain.

3 Q For the pain?

4 A Uh-huh. (Affirmative).

5 Q And she did indicate to you who punched her?

6 A She just told me it was an ex-boyfriend. She did not
7 give his name.

8 SOLICITOR CATHCART: Beg the Court's indulgence.

9 (Pause.)

10 Q Thank you so much. Please answer any questions from
11 defense counsel.

12 A Okay.

13 CROSS-EXAMINATION

14 BY MR. HODGE:

15 Q Morning or afternoon now, Ms. Gibbs.

16 A Good afternoon.

17 How are you?

18 Q Good.

19 I'm always confused when I go see a physician's
20 assistant.

21 what do I call you?

22 A My name.

23 Q PA, physician's assistant?

24 You see why -- there's no---

25 A Mykenzi's fine.

Mykenzi Gibbs - Cross-examination
by Mr. Hodge

1 Q There's no special acronym or you know---

2 A No.

3 Q All right.

4 A Mykenzi's fine.

5 Q All right. Well, I'm gonna call you Ms. Gibbs.

6 A Okay.

7 Q But I just had a couple of really quick questions for
8 you.

9 You generate a report when we -- these individuals come
10 in in the meantime, right?

11 A Every individual -- every patients I see.

12 Q Right.

13 And I think you said, because of the, the initial
14 report to you that it was an assault, your immediate thought
15 is it could be severe trauma, correct?

16 A Right.

17 Q And so that's why you ordered a face scan just to make
18 sure that it's not one?

19 A Yes.

20 Q Did you get the results from the facial scan in this
21 case?

22 A I did, immediately.

23 Q Okay. And what, what were the results?

24 A She did not have any broken bones in her face. Her
25 sinuses were clear. No fracture. No large hematoma or

1 other acute finding.

2 Q Okay. So, based on your experience in the medical
3 field and in the times that you have seen a number of
4 patients come in, you initially -- kind of like this is a
5 serious trauma, but these aren't serious injuries, right?

6 A I think being punched in the face is serious.

7 Q But the injuries themselves are not severe, right?

8 A Uh-huh. (Affirmative).

9 Q We're on a, on a level of severity?
10 They're not severe injuries, correct?

11 A No.

12 Q Okay. That's all I have. Thank you.

13 SOLICITOR CATHCART: No other questions, Your Honor.

14 THE COURT: All right.

15 THE WITNESS: Thank you.

16 THE COURT: You may step down.

17 THE BAILIFF: Watch your step when you do.

18 THE WITNESS: Okay. Thank you.

19 THE COURT: Next witness.

20 SOLICITOR CAVANAUGH: State calls Ashleigh Dixon.

21 ASHLEIGH DIXON, being first duly
22 sworn, testified as follows:

23 THE CLERK: Thank you. Have a seat in the witness
24 stand please.

25 (Witness complies.)

Ashleigh Dixon - Direct examination
by Sol. Cavanaugh

1 THE CLERK: State your name for the record.

2 THE WITNESS: Ashleigh Dixon.

3 DIRECT EXAMINATION

4 BY SOLICITOR CAVANAUGH:

5 Q Good afternoon, Ms. Dixon.

6 A Hello.

7 Q Where are you employed?

8 A Richland County Sheriff's Department.

9 Q And what -- how long have you been employed with the
10 Sheriff's Department?

11 A Ten years.

12 Q What is your current role at the Sheriff's Department?

13 A I am a DNA serologist.

14 Q And what does that mean?

15 A I assist analysts in case work, and I screen items of
16 evidence for biological fluids.

17 Q How long have you been in that capacity?

18 A Eight years.

19 Q In 2016, did you also -- was there a period of time
20 where you were in the evidence room at the Sheriff's
21 Department?

22 A Yes, ma'am.

23 Q Okay. Were you involved -- does, does Richland County
24 Sheriff's Department assign specific case numbers to
25 individual investigations?

1 A Yes, ma'am.

2 Q Okay. Were you involved in the investigation against
3 Wesley Givens?

4 A Yes.

5 Q And was his case given a, a particular case number?

6 A Yes, ma'am.

7 Q Do you have that in front of you?

8 A Yes, ma'am.

9 Q Okay. I'm gonna show you the property reports for this
10 particular case.

11 As it relates to -- what is Item Number 2 classified
12 as?

13 what actual item of evidence is that?

14 A Long fillet knife with a black handle.

15 Q Okay. And did you collect that evidence from
16 Investigator Gonzales?

17 A Yes.

18 Q Okay. And what date was that?

19 A October 10th, 2016.

20 Q Okay. And then did you also -- and that was -- what,
21 what role were you -- was that when you were in the evidence
22 room?

23 A I was in -- I assisted the evidence room. If they
24 needed help logging in items, I assisted with logging in.

25 Q So, you had the dual role at the Sheriff's Department

Ashleigh Dixon - Direct examination
by Sol. Cavanaugh

1 at that time?

2 A Yes.

3 Q Okay. But you did log that evidence in when
4 Investigator Gonzales turned it in to you?

5 A Yes, ma'am.

6 Q Okay. And then later on, in 2000 -- on July 17th of
7 2017, did you check that same item of evidence out?

8 A Yes.

9 Q And what -- in what capacity were you working at that
10 time?

11 A In the DNA lab as a serologist.

12 Q Okay. And so, when you checked the, the knife out on
13 that day, what did you do next with that, with that knife?

14 A I brought it up to the DNA lab, made sure that the
15 evidence was properly sealed, and then I processed it for
16 DNA.

17 Q Okay. And what is involved -- what, what was involved
18 with that process with that knife?

19 A So, I took a sterile swab, and swabbed the handle of
20 it. And then I used sterile scissors, took a cutting.

21 well, I took the whole swab, cut it up, and put it in a
22 tube, and then I passed it up onto the analyst for further
23 analysis.

24 Q And, in this case, who was that DNA analyst, analyst?

25 A Jennifer Martin.

1 Q Did you -- directing your attention to Item Number 4
2 under the same case number, what is that?

3 Just what is, what is Item Number 4?

4 A Buccal swabs from the suspect, Wesley Givens.

5 Q I'll ask you to look at what's been marked as Court's
6 Exhibit -- well, for identification purposes only at this
7 point, State's Exhibit No. 20.

8 Can you read the description on that bag?

9 A Two cotton Buccal swabs of Wesley Givens DNA.

10 Q And you actually -- I apologize.

11 You actually did not have any contact with that
12 particular item?

13 A No, ma'am.

14 Q So, your role in this case was specific to the knife?

15 A Yes, ma'am.

16 Q Thank you, Agent. Please answer any questions from the
17 defense.

18 THE COURT: By the defense.

19 MR. HODGE: Very briefly, Your Honor.

20 CROSS-EXAMINATION

21 BY MR. HODGE:

22 Q I just have a couple questions, quick questions on this
23 property report.

24 You still have it in front of you?

25 A Yes, sir.

1 Q Okay. 10/10/2016 at 10:50, I believe that's Item 2.

2 You see where I'm at?

3 A Yes, sir.

4 Q It says item relocation.

5 What does that mean?

6 A That just means like that box might not have had enough
7 room in it. So, it was just that item of evidence was moved
8 to a different bin location in the evidence room.

9 Q Okay.

10 A It wasn't taken out or anything.

11 Q Okay. And then 7/17 is when you got the Item 2, which
12 was the knife, from Mr. Kleber, Kleber?

13 A Correct.

14 Q Right?

15 Okay. And then, on 7/19/2017, you returned it to the
16 lock?

17 A Yes, sir.

18 Q So, two days later?

19 A Yes, sir.

20 Q And what was going on during those two days again?

21 A I was processing the knife for DNA.

22 Q Okay. And so you were taking swabs from the knife?

23 A I took a swab of the knife handle.

24 Q Okay. What did you do with that swab?

25 A I cut it up, put it in a tube, and passed it on to the

1 analysis for further analysis.

2 Q Okay. And is that -- does that swab become a different
3 item?

4 A No, sir.

5 Q So, it's -- is it still part of Item 2?

6 A Yes.

7 Q But you -- so, you gave that swab, which is an
8 extension of Item 2, to a lab technician?

9 A To a lab analyst.

10 Q Is, is that noted in this report?

11 A On that sheet -- that -- the lab analyst -- the DNA
12 analyst is the one that writes the report.

13 Q Well, I mean is, is you transferring it to her noted in
14 this property report as being given from -- cause I see it's
15 given from everybody to everybody, and I see Kleber to
16 Ashleigh Dixon, Item 2. And, two days later, Ashleigh Dixon
17 to locker return.

18 But I don't see Ashleigh Dixon to the DNA analyst, and
19 I'm just wondering is that normal?

20 A Yes, sir, the actual knife is not transferred to her.
21 It stays in my custody. So, the swab that I took of the
22 knife handle, that's what goes in the tube, and it goes to
23 her.

24 Q Okay. So, that's not, that's not documented in any
25 way?

Ashleigh Dixon - Cross-examination
by Mr. Hodge

1 A No, sir.

2 Q It's just practice, procedure?

3 A Yes, sir.

4 Q Okay. That's all I got. Thank you.

5 SOLICITOR CAVANAUGH: No further questions.

6 THE COURT: Thank you. You may step down.

7 Your next witness.

8 SOLICITOR CAVANAUGH: State calls Investigator

9 Gonzales.

10 THE COURT: Ladies and gentlemen, let's stand for a
11 moment, and get a little stretch in.

12 (WHEREUPON, the jurors comply.)

13 THE COURT: All right.

14 WILLIAM GONZALES, being first duly
15 sworn, testified as follows:

16 THE CLERK: Thank you. Have a seat in the witness
17 stand please.

18 (Witness complies.)

19 THE CLERK: State your name for the record.

20 THE WITNESS: William Gonzales.

21 DIRECT EXAMINATION

22 BY SOLICITOR CAVANAUGH:

23 Q Investigator Gonzales, where are you employed?

24 A With the Richland County Sheriff's Department.

25 Q And how long have you been at the Richland County

1 Sheriff's Department?

2 A I've been with the Richland County Sheriff's Department
3 a little bit over 18 years.

4 Q What is your current role at the Sheriff's Department?

5 A My current role at that Sheriff's Department is a
6 school resource officer.

7 Q Did you -- were you -- did you ever work in an, in an
8 investigator capacity?

9 A Yes, ma'am.

10 Q Okay. And what period of time were you an investigator
11 with the Sheriff's Department?

12 A I would say about 15 years.

13 Q Okay.

14 A At the time of the incident, I was the -- an
15 investigator with the major crimes unit.

16 Q Okay. And you actually officially retired from the
17 Sheriff's Department.

18 Is that correct?

19 A That's correct. I retired last year and came back.

20 Q Okay. And, and that's when you came back in your
21 capacity as a school resource officer?

22 A That's correct.

23 Q And as, as your -- in your role as an investigators
24 (sic) in the, in the major crime unit, what were some of
25 your duties and responsibilities?

William Gonzales - Direct examination
by Sol. Cavanaugh

1 A I will get cases assigned that were violent cases,
2 major crime, i.e. robberies, burglaries, homicides. I will
3 gather the facts. I will try to identify a person of
4 interest or those facts led to a suspect, and those facts
5 led, led to a level of probable cause, then that person will
6 be charged accordingly.

7 Q And were you assigned to the investigation against
8 Wesley Givens?

9 A That's correct.

10 Q And how do cases actually get assigned to
11 investigators?

12 what's that process?

13 A Oh, the process, once the report is made, that report
14 makes its way up to major crimes unit or criminal
15 investigation unit, and the supervisors, every morning, they
16 will go through the reports, and they'll identify -- let go
17 here. They will identify which report goes to different
18 units, i.e. burglaries, larceny, sexual assault, and so on.

19 Q When were you assigned the case that we're in trial
20 for?

21 A I believe it was like two to three days after the
22 incident happened.

23 Q Okay. And when -- what did you -- did you make a
24 report of the things that you did in this particular case?

25 A Yes, I start reading the narrative of the report, and I

1 start trying to identify people, made contacts, especially
2 with the victim, ask them what happened. And, then -- from
3 thereon, it just leads on to certain other things that I
4 needed to check up with.

5 Q Okay. And, in this particular case, did you make your
6 own investigative report?

7 A Yes.

8 Q Okay. And is that document the steps that you took in
9 your investigation?

10 A Yes, it's called follow-up report.

11 Q Okay. And do you have that with you at the witness
12 stand?

13 A That's correct, ma'am.

14 Q Okay. And as you are recalling this incident, does
15 that report help refresh your memory?

16 A Yes.

17 Q Okay. What was the -- whose the first person that you
18 came in contact, and, and when, regards to this particular
19 case?

20 A I believe the -- October the 3rd. I want to say that,
21 that could of been on a Monday or Tuesday. I'm not sure. I
22 got in contact with the, with the lost provision (sic) of
23 Murphy, which is Mr. Brandon.

24 Q Okay. And what did you say his role was at Murphy's
25 Gas Station?

William Gonzales - Direct examination
by Sol. Cavanaugh

1 A He's -- he stated he was a, I believe, the general
2 manager or the district manager.

3 Q And what did he request from you?

4 A He wanted to get a copy of the report. So, at that
5 moment, I took, I took the time and I asked him certain
6 questions, if he knew what happened, who was involved, and
7 was there any video surveillance located at the property.

8 Q So, you tried to confirm, through him first, whether
9 any surveillance would of shown what occurred?

10 A That's correct.

11 Q And did he indicate that there was surveillance?

12 A He indicated that the incident happened off property,
13 and that the little surveillance they have, the camera
14 actually pointed down toward the pump.

15 Q Okay. And did you later meet with a Chris Overton in
16 this case as well?

17 A I don't recall meeting with a Chris Overton.

18 Q Well, let me ask you this.

19 Did you also check to see if there was any other
20 possible surveillance video that, that would of captured any
21 of these incidents?

22 A Yes, I, I responded, and normally, normally I, I like
23 to do those things. I responded to the scene, and, and I
24 looked around just to see if there was any other camera that
25 were located close to the incident location, and I just

1 couldn't find none.

2 Q Okay. Did you, on that same day, October 3rd, did you
3 speak with -- did you try to make contact with a witness
4 that was listed on the incident report?

5 A That's correct.

6 Q Okay. And who was that witness?

7 A I think a Ms., Ms. Roush.

8 Q Linda?

9 A Linda Roush.

10 Q Okay. And did she relay to you what she did in this
11 particular case to help with the victim?

12 A That's correct.

13 Q Did she also indicate to you or did she give a, a
14 description to you of the person she observed hitting the
15 victim that day?

16 A Oh, all she stated was that she only know they was a
17 black male. She didn't get a good look at him, facial,
18 cause I asked her, if I was to show to her -- and, at that
19 moment, we had a person of interest that was written on the
20 report. So, at that moment, I asked her, if I would show
21 her a photo lineup, would she be able to identify the person
22 that she saw that night striking the victim, and she stated
23 no, cause it was kind of like far away. She stated it was
24 roughly about a little bit more then 30 feet. So, she
25 didn't actually see his face.

William Gonzales - Direct examination
by Sol. Cavanaugh

1 Q Did you come into contact -- did you make contact with
2 the actual victim in this case?

3 A I did.

4 Q And what's her name?

5 A Ms. Tiffany Green.

6 Q Okay. And what day did she come in to meet with you to
7 give her statement?

8 A Yes, I had made attempts to call Ms. Green, which
9 failed, and I left messages, and we finally got in contact,
10 I believe, that same week I was working night shift. So, it
11 was kind of like contradicting her trying to get in contact
12 with me, and me trying to get in contact with her. So, we
13 finally got in contact, and we agreed for a date to come in,
14 which was the day that I took her statement for her to come
15 in at headquarters. I was working night shift.

16 Q So, you said you were playing phone tag back and forth?

17 A Yes.

18 Q Okay. And so she came in on October the 6th of 2016?

19 A That's correct.

20 Q Okay. And she came -- where did she come to give her
21 statement?

22 A At headquarters.

23 Q And did she relay to you what had occurred the week
24 prior?

25 A Yes, she came in. I took her to my office, and I

1 started talking to her. Even at that moment she was kind of
2 like nervous. So, I told her relax and just, just tell me
3 what happened. So, she told me. She told me what happened.
4 She told me that she had a, a relationship with this guy
5 previously, and that he had assaulted her several times on
6 the---

7 MR. HODGE: Objection, Your Honor.

8 THE COURT: The objection is sustained at to the last
9 portion of the testimony.

10 MR. HODGE: Thank you, Your Honor.

11 A Um.

12 Q Well -- I'm gonna stop you there.

13 So, she came in to tell you what occurred to her that
14 particular day?

15 A That particular day, correct.

16 Q And was this a case of, of who done it?

17 I mean were we unsure about the identity of this -- of
18 who assaulted her that day?

19 A Well, she was sure of the identity of who assaulted
20 her, and I have a procedure that, even though they put a
21 name on the report, I always like to do a follow-up on that,
22 find out who he is, get a picture, and, at that moment, to
23 me, that individual, is a person of interest. So, by that
24 time, I believe I had already photo lineup set up by the
25 time she came in, and I showed her a photo lineup just to

1 confirm that the person that she's talking about is the same
2 person that we have a person of interest that we are in the
3 same sheet of music here. So, when I showed her the photo
4 lineup, she positively identified the individual as the
5 Defendant.

6 Q And this is someone that she'd actually been in a
7 relationship for several years, correct?

8 A Correct. I believe she stated a little bit over four
9 years.

10 Q She was very familiar with the Defendant?

11 A She knows him by sight and name.

12 Q When you were taking Ms. Green's statement, can you
13 explain, explain that process?

14 Like how do you go about getting that information?

15 I mean the process itself.

16 A I normally, as they sitting down, I ask the questions,
17 and they answer. And, as they answering, I'm trying to
18 type. I'm not a good typer. I'm a one finger typer.

19 So, we leave from the moment it started to the moment
20 it end, and I ask questions. She answered. Once that
21 process is done, I read the whole statement back to her from
22 my monitor, and I ask them are you -- is, is this basically
23 the story that happened that day, and they say yes, that's
24 what happened. So, I'll print it out, and, once I print it
25 out, I'll show it to them, and I tell them that you are free

1 to read it on your own.

2 This is basically what we spoke about, and, if you look
3 at this statement, and, and that's always a routine that I
4 have, I, I put an X where it says sign. I said, once you
5 finish -- once you feel comfortable with it, you feel free
6 to read it, and, if you agree with that, then I need for you
7 to sign where the X is at. And, if you look at the
8 statement, it has an X, X sign.

9 Q Based on what you just described that you're typing
10 with fingers as she's giving the statement, is it possible
11 that you could of missed some details?

12 A Absolutely. It, it always happen. I don't type that
13 fast, and sometimes, bits and -- they talk quick, a lot.
14 So, I'm, I'm trying to say okay, hold up, hold up -- hold
15 that thought, and I'll finish the statement there, and then
16 I'll come back to them. And then sometimes also, when you
17 do those, those stopping and go's a lot, you can see that
18 they getting frustrated. So, you try to get straight to the
19 point, and that's happened a lot.

20 Q Okay. Do you remember whether that happened in this
21 particular case specifically or are you saying it happens in
22 general?

23 A No, like, like I previously stated, she was, she was
24 nervous when she first came in, and I could see that -- I
25 could see that asking her questions again and again and

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by Sol. Cavanaugh

1 again of what happened, it kind like re-vivid (sic) the
2 moment, and it didn't feel too comfortable.

3 Q When she was at the Sheriff's Department, did she
4 indicate whether the Defendant had left any belongings
5 behind?

6 A Yes, after the -- but she did tell me that. And so I
7 told her, well, take the statement first, and then we'll go
8 and see what we got. She did tell me that, that he -- and
9 some misspelling, and it's gonna be some report that some
10 boxes are not even checked on the initial responder's
11 report.

12 So, the -- if you read that statement where it says
13 that you mentioned that they or recurring on the scene, and
14 in, in Green's vehicle, what I forgot -- what I -- my intent
15 was -- what I forgot to put down there, it should of said
16 recovered at the scene by Green, and in Green's vehicle.

17 Q And there were items of the Defendant's that were
18 collected at the scene on September 28th of 2016, right?

19 A That's correct.

20 Q And---

21 A I believe it was his wallet.

22 Q When you were pointing at that manila envelope that
23 contained a knife, what else was in that manila envelope?

24 A When I scrumage (phonetic) through the envelope, all
25 the documents that were in the envelope had the Defendant's

1 name on each one of those document (sic).

2 Q Did you collect those as well?

3 A Yes, ma'am.

4 (WHEREUPON, a group of documents was marked as State's
5 Exhibit No. 24 for identification purpose only at this
6 time.)

7 Q I'm gonna show you what's been marked for
8 identification at this point as State's Exhibit 24.

9 what is -- what is that item?

10 A Numerous documents of Wesley Givens found in victim's
11 vehicle.

12 Q Okay. Are those the same documents that you collected
13 from that envelope?

14 A Yes, I particular -- particularly the form where it had
15 the appointment for that same day from the Social Security
16 Department. So, yeah.

17 SOLICITOR CAVANAUGH: Your Honor, at this time I'd ask
18 that State's Exhibit 24 be introduced into evidence.

19 THE COURT: Any objection?

20 MR. HODGE: No objection, Your Honor.

21 THE COURT: Admitted.

22 (WHEREUPON, State's Exhibit No. 24 was received into
23 evidence at this time.)

24 Q And so, Investigator Gonzales, you stated what
25 particular, what particular form that came to your attention

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1 in this set of paperwork?

2 A The, the form that -- from the Social Security
3 Administration Department because the victim had stated that
4 the reason she gave him a ride to the incident location was
5 because he had an appointment that day with the Social
6 Security Department. So, that, that form kind of
7 corroborates the victim statement in reference to why he was
8 there, where he was going.

9 Q Okay. And, in fact, did you -- you made a point to, to
10 collect -- to make a copy of that particular hearing date?

11 A Correct.

12 Q Okay. Do you have that in your original case jacket, a
13 copy of that document?

14 A I cannot tell you, ma'am.

15 Q Is your case jacket at the table or---

16 A Yes, it's at the table. I don't know if I, I don't
17 know if, if I took a copy of it or I just submitted it all.

18 A Yes.

19 Q Okay.

20 A It's in the case jacket.

21 Q Okay. And so is this -- I'm gonna mark.

22 (WHEREUPON, a document was marked as State's Exhibit
23 No. 25 for identification purposes only at this time.)

24 Q I'm gonna show you what's marked as State's Exhibit 25.
25 Do you recognize that document?

1 A Yes, ma'am, that's the document that I obtained a copy
2 of.

3 Q Okay. And, and what is that specifically?

4 A That's the document from the Social Security
5 Administration indicating that Wesley Lamonte Givens had an
6 appointment at September the 28th at 3:30.

7 Q Of what year?

8 A Of 2016.

9 Q And, again, when did you collect these documents?

10 A The, the day -- October the 6th. The day I obtained
11 the victim's statement, that's the day I collected those
12 documents. That's when it was brought to my attention.

13 SOLICITOR CAVANAUGH: Your Honor, at this time, I'd
14 like to introduce State's Exhibit 25 into evidence.

15 THE COURT: Any objection?

16 MR. HODGE: No objection, Your Honor.

17 THE COURT: It's admitted.

18 (WHEREUPON, State's Exhibit No. 25 was received into
19 evidence at this time.)

20 Q Investigator Gonzales, why was that particular document
21 significant to you?

22 A It, it corroborated the victim's statement that the
23 reason she gave him a ride there was because he was
24 supposedly in a -- had an appointment at 3:30 at, at the
25 Social Security Department, and that gave the, the validity,

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1 validity to the victim's statement.

2 Q Okay. And did she also give you an approximate amount
3 that was stolen from the (indiscernible) that day?

4 A I believe it was approximate amount. I think it's in
5 her statement. Yes. Yes, she did.

6 Q Okay. At, at some -- did you collect Mr. Givens Buccal
7 swab at a later date?

8 A Yes.

9 Q I'm gonna show you what's been marked as State's
10 Exhibit 20.

11 A Yeah.

12 Q Okay. And what, what does that bag read, Investigator
13 Gonzales?

14 A Ma'am?

15 Q What is in that bag?

16 A This is -- it's a carbon box with -- a cardboard box
17 that states oral swab.

18 Q Okay. Does it indicate on the bag who it belongs to?

19 A Yes, Wesley Givens.

20 Q Okay. And when did you actually collect that swab from
21 Mr. Givens?

22 A I submitted; I submitted this, this swab into evidence,
23 but the swab was, was, if I'm not mistaken, was collected by
24 the fugitive when he was arrested.

25 Q No, sir.

1 I'll show you---

2 A No.

3 Q ---the property report. Point your attention to the
4 line by October 2nd, 2017, specific relates to Number 4.

5 A Okay.

6 Q And who collected that?

7 A Yes.

8 Q You wrote on this bag, didn't you?

9 A Yes, I did.

10 Q Okay. And that would indicate that you, you filled out
11 this bag, correct?

12 A That's correct.

13 Q On October 2nd, 2017?

14 A Correct.

15 Q Okay. And this was when you -- is this when you
16 obtained Mr. Givens Buccal swab, according to the property
17 reported, and according to what you put on that bag?

18 A Yes.

19 Q Okay. And when you collect someone's Buccal swab, how
20 is that process done?

21 A Again, I'll put on some latex gloves. Normal process
22 of, of collecting Buccal, you put on latex gloves. We have
23 two Buccal swabs that are sealed in a container. That seal
24 is, is, is broken through the handle part of it, and the
25 individual is the one that pulls from -- the handle part of

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1 the swab is not touched. It's pulled from the, from the
2 handle part, pulled out by the individual, and he is told to
3 place it in his, in his mouth like he's brushing his teeth
4 on the right side or the left side. And then the other one
5 will be on the opposite side from, from where we did the
6 initial one.

7 Q Okay. And---

8 A And then that's put -- the box -- I hold the box, and
9 he places -- that individual places the Buccal swab inside
10 the box. I seal it.

11 Q And you're wearing gloves throughout that process?

12 A Yes.

13 Q Is that right?

14 A Normal procedure.

15 Q Okay. And, once again, is that -- do you put the swab
16 in an evidence bag?

17 A That's my signature. That's my information, yes.

18 Q Okay. And what date does it actually indicate you
19 submitted it to the evidence room?

20 A October the 2nd.

21 Q And then if you, once again, if you look at, at the
22 property report, I point you to that particular line, did
23 you turn it into the property and evidence?

24 A I turned it into the property.

25 SOLICITOR CAVANAUGH: Your Honor, at this time, I'd ask

1 that State's Exhibit No. 20 be entered into evidence.

2 THE COURT: Any objection?

3 MR. HODGE: Is this the Buccal swab?

4 SOLICITOR CAVANAUGH: Yes.

5 MR. HODGE: No objection.

6 THE COURT: It's admitted.

7 (WHEREUPON, State's Exhibit No. 20 was received into
8 evidence at this time.)

9 Q Investigator Gonzales, did you obtain warrants for
10 Mr. Givens arrest?

11 A After, after I obtained a statement from the victim,
12 and that he was properly identified, yes.

13 Q And what specific -- do you have copies of those
14 warrants with you?

15 A Yes, I have the actual warrant and the warrant
16 worksheet.

17 Q Okay. And what crimes did you charge Mr. Givens for
18 or, or swear out warrants for?

19 A One of the charges were kidnapping. He was charged
20 with kidnapping cause he forced the victim, against her
21 will, to get in the car while using an object, armed robbery
22 cause the money that was taken from, from the incident
23 location that didn't belong to him, use of a weapon during a
24 violent crime, and assault and battery first degree cause of
25 the injuries to the victim.

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by Sol. Cavanaugh

1 Q During your investigation, did you learn that, that
2 they had actually lived together for a period of time?

3 A Yes.

4 Q Did you later present indictments for domestic violence
5 of a high and aggravated nature to the Grand Jury?

6 A That's correct.

7 Q And, in fact, that indictment was true billed by the
8 Grand Jury.

9 Is that correct?

10 A That's correct.

11 Q Did you actually -- what day were the warrants sworn
12 out?

13 A October the 7th of 2016.

14 Q And were you actually the investigator or the officer
15 who arrested Mr. Givens?

16 A Say again.

17 Q Did you serve those warrants on Mr. Givens?

18 A No.

19 Q Okay.

20 A I entered---

21 Q Go ahead. You --.

22 A Those warrants were entered in N.C.I.C.

23 Q Okay. And did someone else serve him with those
24 warrants on January 17th of 2017?

25 A That's correct.

1 Q Did Mr. Givens, the Defendant, did he give any
2 statements to you?

3 A No. No.

4 SOLICITOR CAVANAUGH: Beg the Court's indulgence.

5 (Pause.)

6 Q Thank you, Investigator Gonzales. Please answer any
7 questions from defense counsel.

8 THE COURT: Yes, sir.

9 MR. HODGE: Thank you, Your Honor.

10 CROSS-EXAMINATION

11 BY MR. HODGE:

12 Q Good afternoon, Investigator Gonzales.

13 A How you doing, sir?

14 Q I'm all right.

15 I'm probably gonna jump around. I'll try not to too
16 much, but I just have some questions for you. We're gonna
17 start essentially where we started today.

18 You talked to Brandon from loss prevention is what you
19 testified to.

20 Is that right?

21 A That's correct.

22 Q And that Brandon is mentioned in your investigative
23 report, correct?

24 A That's correct.

25 Q And Brandon told you that the victim was working that

1 morning, but that the incident happened outside the store
2 property. So there was no video.

3 Is that right?

4 A That's correct.

5 Q But you were told, at some point, by another
6 individual, that the cameras were working, right?

7 A No.

8 Q So, you don't recall ever talking to Chris Overton?

9 A If I -- I probably did. I just don't, don't recall---

10 Q Sure.

11 A ---whether I talked to him or not.

12 Q Well, it's been two years ago. That's fine.

13 Okay. But you know that the victim in this case, that
14 Ms. Green went to work that day, right?

15 A Correct.

16 Q And you know that she had Mr. Givens in the car with
17 her that day, right?

18 A According, according to what she stated, right.

19 Q Right.

20 So, you know, based on her statements, that she took
21 her to her job at Murphy's Gas Station?

22 A That's correct.

23 Q Does it not make sense that, at some point, Ms. Green
24 and/or Mr. Givens would of been captured on that video when
25 she got to work that morning?

1 A I don't know. There's no video.

2 Q And there's no video because you didn't pull the video,
3 right?

4 A There's no video cause I asked the manager of the
5 store, and he stated that that happened off, off the
6 parking -- off the property. That there was no video.

7 Q Well, I, I certainly do not disagree that the majority
8 of the allegations occurred off property premises. However,
9 you heard Ms. Green's testimony this morning, and I assume
10 that she gave you a similar version, although a lot of that
11 is not in her statement, regarding her going to work, and
12 Mr. Green (sic) being there, and Mr. Green (sic) hanging
13 around.

14 You recall all that --

15 A Yes.

16 Q -- from this morning, if nothing else?

17 A Yes.

18 Q Okay. And assuming that that was what you were told
19 during the time of this investigation 749 days ago, it would
20 make sense for at least Ms. Green to be visible on a video
21 camera, correct?

22 A As, as I previously stated, that's the reason I wanted
23 to talk to somebody at the store, and they stated there was
24 no video.

25 Q Well, is Brandon at the store?

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by Mr. Hodge

1 A Well, he's a regional manager. So, he should know.

2 Q Do you know if Brandon ever reviewed the video?

3 A No.

4 SOLICITOR CAVANAUGH: Objection. This calls for
5 speculation, Your Honor.

6 THE COURT: The objection is overruled.

7 Q Did you ever ask---

8 THE COURT: You've asked the question.

9 MR. HODGE: Oh.

10 THE COURT: Do you want an answer?

11 MR. HODGE: He, he answered I think.

12 THE COURT: Of course---

13 MR. HODGE: He said no.

14 THE COURT: Okay. No. All right.

15 MR. HODGE: Thank you, Your Honor.

16 Did you ever ask someone directly at that store to give
17 you access to their cameras?

18 A I asked Mr. Brandon. He stated there was no video.

19 Q Okay. He stated there was no video because the
20 incident happened outside of the store property?

21 A That's correct.

22 Q Okay. But you didn't ask anyone at the store?
23 That's my question.

24 Did you ask anyone physically at the Murphy's Gas
25 Station to let you look at their video?

1 A No, I, I spoke directly to Mr. Brandon, which he's the
2 general manager.

3 Q Do you know where Mr. Brandon works?

4 A I think he's -- he works out-of-state or somewhere
5 else. I don't know.

6 Q Do you know where the video surveillance is kept for---

7 A No.

8 Q ---Murphy's Gas Station?

9 A No.

10 Q So, you asked Brandon, who works out of state, about
11 the video and that's it?

12 A That's correct.

13 Q Okay. I think you testified that you, you like to go
14 out to the incident location.

15 Is that right?

16 A That's correct.

17 Q And so did you go to the incident location here?

18 A That's correct.

19 Q And while -- when did you go to the incident location?

20 Let me ask that.

21 When did you go?

22 Do you know?

23 A I want to say it was that same day I spoke to -- with
24 Mr. Brandon. That afternoon.

25 Q So, that would be, according to your report, October

William Gonzales - Cross-examination
by Mr. Hodge

1 3rd, 2016, right?

2 A Correct.

3 Q So, less than a week after it happened you report to
4 the incident?

5 A That's correct.

6 Q Okay.

7 A You got to keep in mind that, prior to this incident,
8 I'm, I'm working probably five to ten cases at the same
9 time. So, I'm going from place to place to place to place.

10 Q Well, I understand that, and I certainly -- you were
11 not the reporting officer, and I'm not trying to say
12 otherwise. I'm just asking when you went out there to the
13 incident location.

14 So, when you got to the incident location, which I
15 guess, at this point, would be the old Ryan's, now the
16 Magnolia's.

17 Is that correct?

18 A That's correct. It was still Ryan's. They still had
19 the sign, Ryan's.

20 Q Okay. Did you personally take any pictures or
21 anything?

22 A No.

23 Q Okay. Did you ever go to the Murphy's, which is a
24 hundred yards from that Ryan's, or maybe a little more than
25 that, did you ever go to the Murphy's Gas Station?

1 A I did.

2 Q Okay. Did you ever take pictures at the Murphy's Gas
3 Station?

4 A No.

5 Q Did you ever talk to anyone at Murphy's Gas Station?

6 A Other than the manager, no.

7 Q And who was the manager that you talked to?

8 A Mr. Brandon.

9 Q I thought you said Brandon worked out of state?

10 A I'm assuming he does. I spoke to him on the phone.
11 Never met him in person.

12 Q Okay. So, my question is did you speak to anyone at
13 Murphy's?

14 A At the actual store?

15 Q At the actual store.

16 A No, sir.

17 Q Did you speak to -- so, you didn't speak to any
18 employees that were there?

19 A No, because they were not present during the incident.
20 So, the only person that I was interested in speaking to was
21 the victim.

22 Q Because you had your man, right?

23 A No, I had a person of interest that was placed on the
24 report.

25 Q Okay. But you heard Ms. Green testify this morning

William Gonzales - Cross-examination
by Mr. Hodge

1 that there was another individual that was there during some
2 of this at least, correct?

3 You heard that testimony?

4 A That's correct.

5 Q Did you ever talk to that lady?

6 A No.

7 Q Did you ever try to find out who was working that
8 morning?

9 A To be honest with you, I believe this was the first
10 time I ever heard, heard that part.

11 Q So, you didn't, you didn't look into who might be
12 working and who might of given you some insight on the case
13 there at Murphy's, right?

14 A Well, the victim was working that day.

15 Q True.

16 A So --.

17 Q But she wasn't the only one, right?

18 A Nope.

19 Q Okay. Now, this skips ahead a little bit cause it was
20 a question I'd written down, but you stated later, but you
21 never talked to Wesley Givens either, right?

22 A No.

23 Q You never called him and asked him for a statement or
24 anything like that?

25 A No.

1 Q Did he ever reach out to you?

2 A Not that I know of.

3 Q Okay. Now, I'm gonna go to your investigative report
4 here. This was -- let me ask you this.

5 was this report taken contemporaneously with what was
6 being said?

7 were you noting in this report as you talked to, let's
8 say, Ms. Roush or Brandon from corporate?

9 A Yes, normally, normally what I -- and I speak to them
10 on the phone, I have, I have the form up on my computer,
11 and, as I'm talking to them, I'll, I'll, I'll put some
12 comments in there.

13 Q Okay. And do you recall speaking to Linda Roush?

14 A Yes.

15 Q Taking notes on what she said, did you jot down the
16 general idea of everything she told you that day in your
17 investigative report?

18 A Generally, yes.

19 Q Okay. Based upon your investigative report, did she
20 ever mention to you that she saw someone hitting the female
21 while she was driving the car?

22 A As she was driving the car?

23 Q Yes, sir.

24 A No.

25 Q Okay. You then say you met with Tiffany Green on

1 October the 6th, 2016, at 18:30.

2 A That's correct.

3 Q That's 6:30PM, correct?

4 A That's correct.

5 Q During that conversation with Ms. Green, and based on
6 your investigative report, and the statement that you
7 prepared for Ms. Green, do you see anywhere in there where
8 she tells you that she had been beaten the entire way to
9 work?

10 A No, but I, I believe -- I think she did mention that
11 during our conversation. I just didn't write it down.

12 Q You didn't think that was important?

13 A At the moment I was concentrating on what happened at
14 the incident location with the robbery starting there at
15 that moment.

16 Q So, you didn't think her reporting a previous battery
17 on the same day from the same individual in the same car
18 that you said is the incident location was important enough
19 to note?

20 A I was concentrating on what happened on the robbery.

21 Q Okay. As the chief investigator on this case, you have
22 to sign off on the incident report.

23 Is that correct?

24 A No, I don't sign off on the incident report. That,
25 that is done by the patrol unit supervisor.

1 Q Do you review the incident report?

2 A I get a copy -- I get the actual report once I get the
3 case assigned.

4 Q Okay. So, once it's assigned to you, you get the
5 report?

6 A That's correct.

7 Q And did you read and, and, in your preparation for this
8 case, review the incident report in this case?

9 A Yeah, that's correct.

10 Q Do you see any where in that incident report where
11 there's a knife mentioned?

12 A No.

13 Q So, the first mention of, of the knife is, is over a
14 week later when Ms. Green comes to your office for her
15 interview, correct?

16 A Yes, you got to understand that this is a lady that's
17 been emotionally distressed. She's, she's gone through
18 trauma. She was beaten. So, this, this -- it's not, it's
19 not common for a victim to not tell you everything at the
20 moment, and, as time progresses, as they have time to settle
21 down, they remember things.

22 Q So, you think it's common for someone to forget that
23 they were threatened with a knife?

24 A It's a possibility.

25 Q Okay. Now, I think you said that Ms. Green told you

1 about a knife prior to the interview, and you said well,
2 we'll go look at it after we talk, right?

3 A Correct.

4 Q Okay.

5 A Correct.

6 Q So then she took you outside to her car, right?

7 A After, after I finished with the statement, then I
8 asked her show me where -- what we got.

9 Q All right. And where was her car parked?

10 A It was parked in front of the -- in the parking lot at
11 the front of the headquarters.

12 Q Okay. Where was the envelope that she wanted you to
13 look at?

14 A She opened the trunk of her car, and, and it was in the
15 trunk of her car.

16 Q Based on her statement that she had just given you, and
17 the incident report that you had reviewed leading up to
18 that, and your own investigative notes, were there any, any
19 accusations or anything that happened in the trunk of Ms.
20 Green's car?

21 A Can you clarify that question?

22 Q Sure.

23 Was -- did Ms. Green say that anything -- any actions
24 occurred in the trunk of her car?

25 A Any actions that occur in the trunk of her car?

1 Q Yes, sir.

2 A The only actions that occur in the trunk of her car was
3 me retrieving the evidence.

4 Q Okay.

5 A That's, that's -- that, that I, that I'm aware of at
6 that moment.

7 Q Right.

8 So, I'm asking about the day of the incident, September
9 28th.

10 A Oh.

11 Q The day of the incident, based on your investigation,
12 did any of the alleged events on September 28th, 2016,
13 happen in the trunk of Ms. Green's car?

14 A No.

15 Q Okay. At any point during your investigation, did you
16 determine that Mr. Givens had access or went into the trunk
17 of Ms. Green's car?

18 A Nothing was mentioned about that, no.

19 Q Okay. But you testified that you consider that to be
20 the incident site, the incident location, right?

21 A That's correct.

22 Q Because it's in the trunk of her car, that makes it at
23 the incident location?

24 A Well, she secure (sic) it. She secured the envelope
25 with the evidence in the trunk of her car, which was a good

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by Mr. Hodge

1 thing to do, but the incident happened inside the car. So,
2 even though it's mobile, it is a crime scene.

3 Q Was it roped off?

4 A When was it roped off?

5 Like---

6 Q Yeah, that's what I was asking.

7 A The day of the incident, the day I---

8 Q At all.

9 A ---took---

10 Q Is her car roped off as a crime scene?

11 A I don't know. I was not at the crime scene.

12 Q Well, you say it's a crime scene. Obviously, the
13 important thing about a crime scene, when you're
14 investigating certain things, is you make sure that no one
15 tampers with anything, right?

16 A That's the logic behind it.

17 Q Right.

18 And that's why you rope it off, you put caution, do not
19 enter, right?

20 A That's not necessarily all the time of, of --
21 peoples -- people determine that because they see a lot of
22 movies with, with crime ropes all the way around, but not
23 necessarily standard, yes. We want to, when, when possible,
24 if we have the tape, yes. If not, then we just keep people
25 away.

1 Q I certainly understand, but you want to keep people
2 away so that no one can tamper with what evidence may be
3 there, right?

4 A That's, that's the theory, yes.

5 Q And so your testimony is you have -- you know that Ms.
6 Green secured the evidence, right?

7 A She had it in the trunk of her car. So, it was secure.

8 Q What happened to it from Septembers 28th to the day
9 that you saw it?

10 A I do not know, sir.

11 Q You have no idea, right?

12 A That's correct.

13 Q You have no idea if the knife that she alleges he had
14 on the 28th is the same knife that you saw in her trunk on
15 October 6th, right?

16 A That's correct.

17 Q You have to go on her word, correct?

18 A That's correct.

19 Q Because she's telling you that that's the knife?

20 A Well, there's no reason for me not to believe that
21 she's, that's she's lying because everything else she said
22 it -- has been on point. Everything else she stated has
23 been on point, have been corroborated.

24 Q Now, this is your handwriting on this evidence box I
25 think you testified to, right?

1 A That's correct.

2 Q And on, on this, in your handwriting, it says long
3 fillet knife with black handle found at the crime scene,
4 right?

5 A That's correct.

6 Q You're basing that statement, on a piece of evidence
7 that is now admitted into this trial, you're basing that
8 statement on Ms. Green's word?

9 A On what word, sir?

10 Q Ms. Green, Tiffany Green. You're basing that on her
11 word.

12 A Yes, I mean she found, she found the, the knife inside
13 her car in the same envelope that she had stated to
14 initially, and she asked if she found it afterwards she
15 found it. She secured it in the trunk of her car. It
16 happens, it happens in, in best cases.

17 Q I think -- I asked her a couple of times where that
18 envelope was, and she said it was in the floorboard of her
19 car at the time of the incident is what she said.

20 You had an officer on the scene, didn't you?

21 A Yes, it was a responding officer that was on scene.

22 Q And that officer found some money and a bunch of other
23 things, a wallet, at the scene, right?

24 A He found the wallet and the money, that's correct.

25 Q An officer did not find an envelope with a knife in it,

1 did she?

2 A She did not find the envelope and the knife, but that
3 envelope could of been staring at, at her in her face, and
4 she just, she just didn't know that that envelope was part,
5 was part of the puzzle of the crime scene at that moment.

6 Q That's right.

7 She didn't know because Ms. Green didn't tell her that
8 there was a knife, right?

9 A That's correct.

10 Q Now, I think this other -- I don't remember -- Exhibit
11 24 here, you testified that these are the documents that Mr.
12 Givens left behind in her car in the envelope next to the
13 knife in the floor that ends up in the trunk, right?

14 A Those are the documents I collected from the trunk.

15 Q Where's the envelope?

16 A The envelope, I took the documents out of the envelope.
17 It was a plain envelope. There was no need for me to submit
18 that into evidence. So, it's a possibility that I discarded
19 the envelope.

20 Q Okay. Well, we saw the knife, I believe, was in this
21 box, and I, I, I want to think that the testimony was Ms.
22 Green never saw this knife, right?

23 A That's what she stated.

24 Q She said that it was wrapped in a black plastic bag the
25 entire time, correct?

1 A Correct.

2 Q Where's the black plastic bag?

3 A I didn't see no need to submit the, the black plastic
4 bag into evidence.

5 Q Well, that's all she saw was a black plastic bag. So,
6 I think that's a pretty important piece of the puzzle to see
7 if there was a black plastic bag wrapped around that knife.

8 You don't think so?

9 A (No audible response.)

10 Q And you talked about the warrants, and I'm just gonna
11 pick one because it says---

12 A Which warrant is that, sir?

13 Q The use of a weapon during a violent crime.

14 A Okay.

15 Q I -- it is the third line down, and it starts with
16 unlawfully have in his possession, and visibly display a
17 long knife at the victim.

18 Do you see that?

19 A Yes.

20 Q But she told you she didn't see the knife, right?

21 A I was informed that I would -- I was informed that
22 she -- she stated that it was a knife. So, I'm assuming
23 that she probably realized that afterwards when she found,
24 when she found the, the envelope with the knife in the car.

25 Q How long did you talk to Ms. Green?

1 A I spoke to her on the phone one day, and then she came
2 in headquarters, and I spoke to her -- I could say somewhere
3 between maybe an hour, an hour and a half.

4 Q Okay.

5 A Late at night.

6 Q And so it was nighttime when you took those pictures of
7 the knife and the envelope that were in the trunk of the
8 car, correct?

9 A That's correct.

10 Q What time does the evidence lab close or the evidence
11 room close?

12 A Oh, we 24/7.

13 Q Well, I'm looking at, and maybe I'm missing something,
14 but I'm looking at the property report that's been testified
15 from a number of times, and it shows, on October 7th,
16 2016, at 22:50, which would be---

17 A 10:00---

18 Q 10:50?

19 A Yes, sir.

20 Q I should know better. That that is when you collected
21 Items 2 and 3, which is a long fillet knife with a black
22 handle, and numerous documents of Wesley Givens.

23 Is that -- do you see that?

24 Do you have that property report up there?

25 I think she gave it to you. If not, I can show you my

William Gonzales - Cross-examination
by Mr. Hodge

1 copy.

2 A On what date is that?

3 Q October 7th, 2016.

4 A Okay.

5 Q And you have documented there that on October 7th,
6 2016, at 10:50, you collected Items 2 and 3, right?

7 A Which is a knife?

8 Q The knife and the documents, correct?

9 A Yes.

10 Q But you actually took them into your possession
11 October 6th. I don't -- I guess around 12:00PM if I'm
12 reading the time right.

13 A Okay.

14 Q Does that sound right?

15 A Whatever time is on that -- on the form that, that it
16 was turned in.

17 Q Well, she gave you a statement October 6th, 2016, at
18 10:38 hours?

19 A Correct.

20 Q I'm just curious. Where were the items for 24 plus
21 hours?

22 A What date and time does it say---

23 Q Item---

24 A ---the items -- can I see the items please?

25 Q Oh, sure.

- 1 A The actual item.
- 2 Q Oh, I'll get them.
- 3 A Okay.
- 4 Q I'm sorry. I thought you were still looking at it.
- 5 A No.
- 6 Q So, when were those items submitted into evidence?
- 7 A On October 7th at 22:50.
- 8 Q So, where were they from the time you took them from
- 9 Ms. Green and submitted them into evidence?
- 10 A They had to be secured in my desk locked.
- 11 Q Is that standard procedure?
- 12 A If, if you working the night shift, that's -- it
- 13 happens. If you get called from one call to another, and,
- 14 while you're finishing something, you get called out to the
- 15 shooting that happened somewhere or something happened
- 16 somewhere, you got to leave, yes.
- 17 Q Okay. I'm almost done, Investigators Gonzales. I
- 18 promise.
- 19 A That's fine.
- 20 Q Let me go back to your investigative report.
- 21 A What, what page would that be, sir?
- 22 Q Page 2 of your investigator report specifically. The,
- 23 I guess, third from bottom paragraph. Although the last few
- 24 are very short. The one that starts Givens wallet.
- 25 A Okay.

1 Q Where was Wesley Givens wallet found?

2 A It was found on the scene by the responding officer.

3 Q Okay. Now, this investigative report says Givens
4 wallet and knife he used in Green, which is one of those
5 typos you talked about obviously, on Green---

6 A Uh-huh. (Affirmative).

7 Q ---and an envelope with Givens documents to include a
8 copy of the appointment for that day of the Social Security
9 Administration were recovered at the scene, and in Green's
10 vehicle.

11 A Correct.

12 Q And it's your testimony that the reason you wrote
13 that -- I got two reasons, but -- I'm not sure which one it
14 is.

15 But I think the reason you wrote that is because
16 either, A, you consider her car, eight days later, to still
17 be a crime scene, or, B, it's just an error in your report.

18 A Well, you can put a little bit of both, and I'm gonna
19 explain why. Like I, like I stated before, when it goes
20 down to the part of administrative or recovered at the
21 scene, and in Green's vehicle, my intention was to put at
22 the scene by Green, and in Green's vehicle. So, that means
23 she found those items in her car.

24 Q But she didn't find them at the scene, right?

25 A The crime scene was the vehicle.

1 Q Oh, that's right.

2 But she didn't find them at the incident location,
3 right?

4 A When you, when you say incident location, you talking
5 anything outside of that car?

6 Q I'm talking when the car was at the Ryan's Steakhouse.

7 A Okay.

8 Q She did not find that knife?

9 A Not at that moment. Not at that moment.

10 MR. HODGE: Can I have a moment?

11 (Pause.)

12 Q Just a couple.

13 The, the envelope in the black bag we've established
14 you didn't think to report it enough to put it into
15 evidence. There was a moneybag that was ripped that was
16 mentioned in, in Ms. Green's testimony. I think there's a
17 picture of it in here.

18 Is that in evidence?

19 A I don't know. I did not recover that. I did not see
20 that. The only time I saw that was in pictures.

21 Q Okay. And the same thing for the, the deposit slip I
22 assume?

23 A Yeah, whatever happened on the crime scene, I was not
24 present there.

25 Q Right.

William Gonzales - Cross-examination
by Mr. Hodge

1 A I was assigned the case two or three days later.

2 Q But if they would of taken it into evidence, you being
3 the investigator assigned, would of gotten all of that from
4 them, right?

5 A That's correct.

6 Q Do you remember, do you remember taking Mr. Givens
7 Buccal swab?

8 A No, I don't recall.

9 MR. HODGE: Nothing further, Your Honor.

10 THE COURT: Any redirect?

11 SOLICITOR CAVANAUGH: Yes, Your Honor.

12 REDIRECT EXAMINATION

13 BY SOLICITOR CAVANAUGH:

14 Q You just said you don't have a specific memory of
15 taking Mr. Givens Buccal swab, correct?

16 A No, ma'am, I submitted it into evidence.

17 Q Right, and that's why it's important to clearly
18 document the evidence bags that the Buccal swabs are
19 contained in.

20 Right?

21 A Correct.

22 Q Of course, your name is on that evidence bag with the
23 date that you collected it, correct?

24 A The day I submitted it into evidence, yes.

25 Q Yes.

1 And your name's on that bag because you collected that
2 particular piece of evidence, right?

3 A If, if my name is on this bag, that means I collected
4 it. I just don't, don't---

5 Q Have a separate memory of it.

6 A Yes, ma'am.

7 Q While, while the plastic bag and the actual folder
8 containing those documents the Defendant left behind were
9 not collected, you did document it by taking these
10 photographs before you put the paperwork and the knife in
11 evidence, correct?

12 A That's correct.

13 Q You also mentioned what, what Ms. Roush, the witness,
14 stated to you or didn't state to you on the phone. He was
15 asking you about that. I would like to point to your
16 attention to about five lines down in that second paragraph
17 --

18 A Of the --?

19 Q -- of your investigator report --

20 A Follow, follow-up.

21 Q -- where you're referring to Ms. Roush. First page.

22 A Oh.

23 Q How did she actually describe to you how the Defendant
24 was beating the victim that day?

25 A Well, she stated, she stated that---

William Gonzales - Redirect examination
by Solicitor Cavanaugh

1 Q well, read what she actually -- what you actually
2 wrote---

3 A Okay.

4 Q ---please.

5 A She said she stopped to help, and saw a black male drag
6 the black female out of the driver's side of the vehicle,
7 and onto the ground. While on the ground, the black male
8 was punching the female several times upon her face and
9 body. She stated he was hitting her like a man.

10 Q Thank you.

11 About how -- you just testified that you met with Ms.
12 Green for about an hour and a half, correct?

13 A Correct.

14 Q And her statement is two pages, the one that you
15 actually typed out for her.

16 Is that correct?

17 A Correct.

18 Q Were you able to get every single thing that she told
19 you in that two pages?

20 A No, ma'am.

21 Q And, in your investigator report, this is a summary
22 of -- it, it includes a summary of what she said to you,
23 correct?

24 A Basically, yes.

25 SOLICITOR CAVANAUGH: Beg the Court's indulgence.

1 (Pause.)

2 SOLICITOR CAVANAUGH: Thank you, Investigator Gonzales.

3 THE COURT: All right. Anything further?

4 MR. HODGE: One quick question, Judge.

5 RE CROSS EXAMINATION

6 BY MR. HODGE:

7 Q Are statements limited to two pages, Investigator
8 Gonzales?

9 A No, they could be one page.

10 MR. HODGE: No further questions.

11 THE COURT: Thank you. You may step down.

12 THE WITNESS: Thank you.

13 THE COURT: We're gonna quit today for the day with
14 this jury, and start back at 9:00 tomorrow morning.

15 SOLICITOR CATHCART: Yes, sir.

16 SOLICITOR CAVANAUGH: Yes, Your Honor.

17 THE COURT: Ladies and gentlemen, thank y'all very
18 much. We need you back at 9:00AM tomorrow morning fresh and
19 ready to go. One more day.

20 Please do not discuss the case, allow anyone to discuss
21 it with you or in your presence. 9:00AM.

22 (WHEREUPON, the following takes place outside the
23 presence of the jury.)

24 THE COURT: How many more witnesses do you-all
25 anticipate, the State?

1 SOLICITOR CATHCART: Two more, Your Honor.

2 THE COURT: All right. Mr. DNA and --?

3 SOLICITOR CATHCART: And the -- Mr. Overton, who is the
4 fellow who came -- branch manager who came and---

5 THE COURT: Regional man.

6 SOLICITOR CATHCART: ---and helped them.

7 THE COURT: Okay. Very good.

8 Okay. We're gonna let you-all check out. These other
9 folks are here to see me too.

10 SOLICITOR CAVANAUGH: Your Honor, did you say
11 nine o'clock or --?

12 THE COURT: Yeah, at nine o'clock---

13 SOLICITOR CAVANAUGH: Okay.

14 THE COURT: ---tomorrow morning.

15 SOLICITOR CAVANAUGH: Okay.

16

17 (WHEREUPON, this case was in recess for the evening.)

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1 Thursday, October 18th, 2018

2
3 THE COURT: Outside of the court reporter trying to get
4 ready, anything else for the record?

5 SOLICITOR CATHCART: Only thing for the record, Your
6 Honor, we want to revisit the prior two convictions as to
7 how and when they must be included.

8 THE COURT: All right.

9 SOLICITOR CATHCART: That's -- we only have a couple of
10 more witnesses left.

11 THE COURT: All right. We need to do that on the
12 record---

13 SOLICITOR CATHCART: Yes, sir.

14 THE COURT: ---so we have a record.

15 It's part of the continuing disaster of court reporters
16 and no court reporters.

17 SOLICITOR CATHCART: Yeah, I understand there's a few
18 openings.

19 THE COURT: It's, it's impossible to do court or have
20 any certainty of anything with regard to the court. We
21 started with the monitor after not having any court
22 reporter's assigned, and who knows where he had to go this
23 morning maybe -- but he says he'll be here this afternoon.
24 So, we had a reporter driving in from Spartanburg, and she
25 was coming not for me, but for Judge Manning, and,

1 fortunately, as we diverted her here.

2 (Pause.)

3 THE COURT: Yes, sir, Mr. Cathcart.

4 SOLICITOR CATHCART: Please the Court, Your Honor.

5 As we stated earlier, the jury does determine that this
6 does not meet the elements of domestic violence of a high
7 and aggravated nature, the lesser in this would be CDV
8 first. In intent -- in anticipation of that, one of the
9 elements of CD first, I believe it is as an element, is two
10 or more prior convictions of domestic violence.

11 The State does seek to introduce his two prior
12 convictions. Indictment 2016-GS-38-1618 and
13 2016-GS-38-1617.

14 THE COURT: And you seek to introduce it through what
15 means?

16 SOLICITOR CATHCART: They are both been certified by
17 the Clerk's Office, the Clerk of Orangeburg, under, under
18 902. They are self-authenticated documents.

19 THE COURT: All right. Any dispute as to that from the
20 defense?

21 MR. HODGE: Your Honor, I, I can't find anywhere where,
22 other than the definition itself, where there's case law
23 establishing whether conviction on the same day equals one
24 of two.

25 THE COURT: You're referring to the document itself?

1 MR. HODGE: Oh, the document---

2 THE COURT: Self-authenticating---

3 MR. HODGE: No, sir. No, sir.

4 THE COURT: ---under Rule 902, do you agree with that?

5 MR. HODGE: Yes, sir, as long as they're certified true
6 copies, I don't, I don't have any objection.

7 THE COURT: Okay. Okay.

8 SOLICITOR CATHCART: And, Your Honor, as to -- if I can
9 go ahead and have these marked I guess.

10 THE COURT: Uh-huh. (Affirmative).

11 SOLICITOR CATHCART: May I borrow your stapler again,
12 Your Honor?

13 THE COURT: Yes, sir.

14 (WHEREUPON, the certified copies of the convictions
15 were marked as State's Exhibit Nos. 26 and 27, and received
16 into evidence at this time.)

17 SOLICITOR CATHCART: And---

18 THE COURT: Yes, sir.

19 SOLICITOR CATHCART: The Indictment ending in 1617 is
20 State's Exhibit 26, and 1618 will be State's Exhibit 27.

21 Your Honor, as to the issue that the defense raised as
22 to the fact that these both were pled to on the same day,
23 and, therefore, he is indicating that would make them the
24 same incident, despite the fact that State's Exhibit No. 27
25 is a conviction from an incident which occurred on August

1 the 28th of 2016, and 1617, State's Exhibit No. 26, is an
2 incident which occurred on April 28th of 2016. Months
3 apart of two separate incidents, incidents.

4 The State would be relying on case law, State v. Koon,
5 which is then further supported by State v. Bryant.

6 If I may approach and hand those up?

7 THE COURT: All right. And the exhibits.

8 SOLICITOR CATHCART: Yes, sir.

9 THE COURT: We, we reviewed all that yesterday, that,
10 that they're not closely connected, then they're separated
11 offenses. So, I understand the law, and the State's
12 arguments on this issue.

13 SOLICITOR CATHCART: Yes, sir, and I believe,
14 yesterday, you also made a finding that the priors are the
15 element of CDV first.

16 THE COURT: Yes, sir.

17 SOLICITOR CATHCART: ---or DV first.

18 THE COURT: Yes, sir. I'm just wondering what's the
19 issue at this point. The, the defense, that he sort of is
20 at a loss. I mean what -- if he's still at a loss or is
21 he -- does he have a response basically?

22 SOLICITOR CATHCART: That's where I'm at as well, Your
23 Honor. He indicated he did not have case law. That's why I
24 provided that for him.

25 THE COURT: All right.

1 MR. HODGE: Well, Judge, I guess, you know, my, my
2 statement of no case law is there's no, no where is the CDV
3 law here. These are all burglary cases, which are obviously
4 two totally separate things. And, and in this, this one
5 about the, the burglary, and it clearly states that it was a
6 different building, different location, all of that stuff,
7 and here we have the same victim, same relationship, same
8 accusations, for lack of a better term, but, essentially,
9 it's -- they're, they're very closely related even though it
10 happened four months apart. All of the other elements are
11 the same.

12 THE COURT: Yeah, the whole purpose of the CDV Statute
13 is you do it once, it's one thing. Punishment, you do it a
14 second time, it's, it's another punishment. You do the
15 third time, it's another punishment. So, we -- even within
16 the, the statute of first degree and second degree, it all
17 depends on the number of times and number of prior offenses
18 of CDV.

19 Now, this 17-25-50 that, that---

20 SOLICITOR CATHCART: Your Honor, I have a copy of that
21 as well.

22 THE COURT: Well, it's within the case. It says in
23 determining the number of offenses for the purpose of
24 imposition of sentence, the Court shall treat as one offense
25 any number of offenses which have been committed at times so

1 closely connected, and in point of time that they may be
2 considered as one offense. And, you know, all the instances
3 of they're two armed robberies from the same incident, the
4 guy goes in and robs two people or something that are so
5 closely connected that that would not extend, in my view as
6 well, one CDV that occurred on April 28th, and another one
7 that occurred in August 28th.

8 And I think there were also instances in the cases
9 where they -- the State v. Koon, a burglary committed on
10 March 28th of a different building at a different location
11 clearly constitute a separate offense from burglaries
12 occurring two weeks prior. So now here we have months
13 apart.

14 Okay.

15 MR. HODGE: And, again, I -- the things I address in
16 that were just the different buildings and all that stuff.

17 THE COURT: Yes, sir, I understand. Well, you know,
18 I -- as I challenge the State on the issue yesterday, you
19 know, prior to reviewing anything, and so we've now reviewed
20 everything, and they are separate offenses for the purposes
21 of enhancement of the domestic violence or, or as an element
22 of the offense, which is similar to the burglary first
23 degree statute in that respect.

24 MR. HODGE: Thank you.

25 SOLICITOR CATHCART: So, we -- I understand, before we

1 go forward, we are allowed to present those to the jury?

2 THE COURT: And they're -- yes. Yes.

3 SOLICITOR CATHCART: Thank you.

4 THE COURT: It's an element of the offense.

5 SOLICITOR CATHCART: Thank you, Your Honor.

6 May I get them back so I can?

7 THE COURT: All right.

8 MR. HODGE: And, Judge, just, just for the record, I
9 would object to them being entered into evidence even as an
10 element of DV -- domestic violence first. He's not charged
11 with domestic violence first. It's not an element of
12 CDVHAN, what is what he was indicted on. I feel like it's
13 more prejudicial than it is probative.

14 THE COURT: All right.

15 MR. HODGE: So, for those reasons, I would object,
16 Judge, but I certainly understand your ruling.

17 THE COURT: I understand. But, you know, when you're
18 dealing with these different degrees of assault, the jury is
19 in, almost all instances, they to, to determine what fits.
20 The same thing as armed robbery. Did he have a weapon. Did
21 he take the money without a weapon.

22 well, that's strong armed robbery versus common law
23 robbery, or I mean armed robbery versus strong robbery.

24 MR. HODGE: Yes, sir.

25 THE COURT: what do you call it?

1 SOLICITOR CATHCART: Strong armed robbery.

2 THE COURT: Versus strong armed robbery. You know, the
3 different level of -- levels of assault. You know, it's --
4 and, you know, a judge was just reversed in this weeks
5 advance sheets for not charging the lower levels of assault.
6 So, the jury has to figure out what fits, if anything, and I
7 understand your point.

8 well, the State is charged him with CDVHAN, and here
9 they're not only trying to prove that, but they're also
10 attempting to prove a lesser, but the State has the burden
11 of proof as to any offenses. So, if the State solely
12 attempts to prove the highest offense without putting in
13 some evidence of a lower, then the jury would have no basis
14 to reach a finding.

15 In this case, particularly where the cross-examination
16 challenges the victim, alleged victim, on why didn't you
17 stop, why didn't you call the police, why this, why that.
18 In reality, she could of responded well, he had been beating
19 me up so many times in the past where I called the police
20 and they didn't do anything or I've -- he's beat me up so
21 much in the past that, that I'm just fearful of him. Many
22 things she could of said in response, and, of course, I
23 sustained the objection when the officer sought to say some
24 of it.

25 But I, you know, the -- a lot of this could of been

1 made relevant through the presentation of the evidence, and
2 the challenging the victim as to her conduct.

3 SOLICITOR CATHCART: Thank you, Your Honor.

4 MR. HODGE: Thank you.

5 THE COURT: So, it's ten till 10:00, and we're -- well,
6 the jury has been there -- have they been here since what
7 time?

8 SOLICITOR CATHCART: Should of been here since nine
9 o'clock I believe.

10 THE CLERK: They were here about ten minutes to 9:00.

11 THE COURT: They got here earlier or on time cause
12 they, you know, we -- I tell them 9:00, and then the
13 bailiffs tell them what time?

14 THE CLERK: Like a quarter till 9:00.

15 THE COURT: A quarter till 9:00. They've been here a
16 while.

17 well, let's, let's bring them in. Let's get rolling.

18 (WHEREUPON, the following takes place within the
19 presence of the jury.)

20 THE COURT: All right. Thank you.

21 Good morning.

22 Yesterday we had a -- first couple of days we had a
23 court monitor who doesn't describe -- transcribe things or
24 type things up, but he records them in the machine, and it
25 goes into the clouds, everything that's being said.

1 Now we have a court reporter who is got realtime or
2 realtime -- who, in realtime, is transcribing what's being
3 said. And so we're ready. That caused some delay in us
4 getting started this morning, and having her come from
5 Spartanburg to set things up. And we're ready to roll --
6 ready to proceed with the State.

7 Nest witness.

8 SOLICITOR CAVANAUGH: Thank you, Your Honor.

9 The State calls Chris Overton.

10 CHRIS OVERTON, being first duly
11 sworn, testified as follows:

12 THE CLERK: Have a seat in the witness stand please.

13 (Witness complies.)

14 THE CLERK: State your name for the record.

15 THE WITNESS: Chris Overton.

16 DIRECT EXAMINATION

17 BY SOLICITOR CAVANAUGH:

18 Q Good morning, Chris.

19 where do you work?

20 A Murphy U.S.A.

21 Q And what is your position at Murphy's U.S.A.?

22 A District manager.

23 Q When you say district manager, how many stores do you
24 manage?

25 A I oversee 13 stores from the greater Columbia Metroplex

1 out towards the coast up to Rock Hill and
2 Greenville/Spartanburg.

3 Q Do one of the stores that you manage include the
4 Murphy's U.S.A. located at 10,000 -- in the 10,000 block of
5 Two Notch Road?

6 A Yes, ma'am.

7 Q Does -- who is your supervisor?

8 A My supervisor, at the time, was Keith Emory.

9 Q And does a individual by the name of Brandon Brumley
10 work for Murphy U.S.A. as well?

11 A Yes, he does.

12 Q Where -- what is his position?

13 A Brandon is the senior loss preventive -- loss
14 prevention analyst. He lives in El Dorado, Arkansas.

15 Q And his office -- is his office physically located in
16 Arkansas as well?

17 A Yes, he's at the corporate headquarters in El Dorado.

18 Q Do you know Tiffany Green?

19 A Yes, I do.

20 Q And are you Ms. Green's supervisor?

21 A Yes, ma'am.

22 Q When did you begin to work at Murphy's?

23 A I joined Murphy approximately eight and a half years
24 ago after college.

25 Q Okay. Do you know when Ms. Green began working for

1 Murphy's Gas Station?

2 A Approximately around the same time. She came on about
3 eight years.

4 Q Okay. What is her current role at Murphy's U.S.A.?

5 A She is a store manager.

6 Q Do you know when she became the store manager?

7 A She is been a store manager who just recently
8 celebrated her five year anniversary. So, approximately
9 five years ago. Probably almost six at this point.

10 Q At the individual Murphy locations, who is responsible
11 for making daily bank deposits?

12 A The store manager is. Also the assistant manager will
13 take that responsibility on the days that the store manager
14 is off.

15 Q Has Ms. Green left -- had this responsibility?

16 A Yes, she's had the responsibility for even longer then
17 she was a store manager because she was an assistant
18 beforehand.

19 Q Besides what occurred on September 28th, 2016, has
20 there ever been any issues with her regarding the daily
21 deposit?

22 A No, there is not.

23 Q Does Murphy's have a, a policy on how the daily
24 deposits are made?

25 A Yes, we do.

1 Q Okay. And can you describe that just from the
2 beginning of the process?

3 A Each day the store manager will come in, and they will
4 run a system report through our organization back office
5 computer that will calculate out what the daily sales are,
6 and what the total deposits should be minus the credit
7 cards, and checks, and fees, and such. So then the store
8 manager will then take out the money from the safe, and
9 balance that with what's on the back office computer. They
10 then go through and organize the money by fives, tens,
11 twenties, fifties, one hundreds, depending on the bank that
12 we use. There's different requirements.

13 They then put the money individually, rubber band it,
14 and sometimes other ones don't require to be rubber banded.
15 The money is then put inside of a sealed envelope that's
16 provided to us by a banking corporation, and then the
17 deposit slip, along with checks, is sealed into another
18 portion that's un -- tamper proof deposit bag.

19 Q Okay. And so are the employees instructed to walk out
20 of the store with visible cash?

21 A No. When an employee goes to the bank, whether it be
22 an assistant manager or a store manager, they are to use
23 discretion depending on the situation. The deposit bag
24 should never be in plain open view.

25 We have several store managers that will keep an empty

Chris Overton - Direct examination
by Solicitor Cavanaugh

1 McDonald's bag to take it to the car. They will put it in a
2 back pack. They will wrap it in a Wal-Mart bag. Some of
3 them, during winter months, will put it in their coat, but
4 it does need to be concealed while leaving the premises so
5 that it's not seen by the general public.

6 Q Okay. I want to bring your attention to September
7 28th, 2016.

8 Did you actually go to the scene of Ryan's Steakhouse?

9 A Yes, I did.

10 Q Okay. And what caused you to go to Ryan's Steakhouse
11 that day?

12 A I was over in West Columbia, and I received a phone
13 call from Ms. Green on her cell phone. She was, for a
14 better word, panicked, extremely panicked, and emotional. I
15 couldn't exactly make out what she was saying except for
16 that she'd been robbed, there'd been a robbery, and there
17 was an accident. And, at that point, I stopped everything I
18 was doing, and I immediately drove over to the Two Notch
19 location.

20 Q Okay. And who all was on the scene when you arrived at
21 the -- at where she was?

22 A When I arrived, the fire department, the EMS services,
23 and multiple Richland County Sheriff's Department vehicles,
24 and detectives were there.

25 Q Once you arrived, did you speak with law enforcement?

1 A I did. I kind of asked a few questions just to kind of
2 get a general sense of what was going on. Tiffany was being
3 treated for her injuries.

4 Q Okay. And did you, did you collect the cash that was
5 left behind that day?

6 A Yes, some of the officers had collected, and I assisted
7 with the collecting, making sure that it was secured.

8 Q Okay. And did you -- I want to show you what's marked
9 as State's Exhibit 5, which is the ripped open moneybag
10 that's been introduced.

11 Did you -- does that -- does that depict a typical
12 moneybag that, that you're familiar with with the store?

13 A Yes, that is one of the moneybags that our company
14 purposely purchases. It's a tamper proof bag that's (sic)
15 includes signatures of both the manager, and also, for
16 security purposes if it is damaged in any way, they are to
17 alert us so that we can take precautions, and have an
18 investigation.

19 Q And the money that was left behind that day, did you
20 take possession of that, and take it back to the store?

21 A Yes, we took it back to the store.

22 Q Okay. And did you create an internal report for this
23 incident?

24 A Yes, there was an internal report done approximately
25 three to four days afterwards for safety account purposes.

Chris Overton - Direct examination
by Solicitor Cavanaugh

1 Q Okay. And who did those internal reports go to?

2 A They -- we have a support center that keeps logs of all
3 of the reports. The safety incident report is then sent
4 over to loss prevention, and it's sent over to, to our
5 safety department, which gives our company access to those
6 records with Liberty Mutual, who's our insurance provider.

7 Q Okay. Are you familiar with where cameras are located
8 in the -- at the Two Notch Road Murphy's location?

9 A Yes, ma'am.

10 Q And can you explain that -- where they are located?

11 A Yes, we have a high resolution camera over the
12 register, and also over the safe itself. We also have a
13 back office com -- back office computer, scanner camera.
14 Also one in the back room, and we also have a camera on the
15 left-hand side of the building to see Dispensers 1 through
16 4, and a camera on the right-hand side of the building that
17 displays Dispensers 6 through 8.

18 Q And, in this particular case, did you have an
19 opportunity to review surveillance video from this day?

20 A I did, as well as my loss prevention upward home
21 office.

22 Q And when you were reviewing that footage, what were you
23 actually looking for at that time?

24 A Just anything out of the ordinary to see if protocols
25 were followed, to see who was at the store at the time, to

1 see if there was any instance of being able to see the
2 alleged incident occur, and---

3 Q Okay.

4 A ---to see basically what happened.

5 Q Where Tiffany's car was parked that day, were you
6 able -- when you're reviewing the surveillance video, were
7 you able to see that car from the cameras?

8 A No, I was not.

9 Q Okay.

10 A Her car was parked approximately 10 yards outside of
11 the camera range. The cameras outside are specifically made
12 to combat credit card fraud at the pumps, and incidents
13 where a stolen car, things of that nature.

14 SOLICITOR CAVANAUGH: Okay. Beg the Court's
15 indulgence.

16 (Pause.)

17 SOLICITOR CAVANAUGH: Thank you. Please answer any
18 questions from defense counsel.

19 A Yes, ma'am.

20 CROSS-EXAMINATION

21 BY MR. HODGE:

22 Q Morning, Chris.

23 A Morning.

24 Q My name is William Hodge. I represent Wesley Gives in
25 this case, and I just have a few questions for you.

Chris Overton - Cross-examination
by Mr. Hodge

1 A Yes, sir.

2 Q Are you the one that hired or promoted Ms. Green into
3 that position?

4 A Yes, sir.

5 Q Okay. And you say you did that about five years from
6 today?

7 A Give or take. She was an assistant manager with us for
8 approximately two to three years beforehand.

9 Q Okay. Now, you talked about protocols as far as taking
10 the money from the safe, and taking it to the car, right?

11 You said they put it in a bag I believe, right?

12 A Yes, sir.

13 Q Are they -- is their car normally parked out back
14 whenever they make -- take those deposits out there or---

15 A Yes, normally during the day it is.

16 Q Okay. Do you know what time Ms. Green was to arrive at
17 work that morning?

18 A I believe she opened the store that morning. So, it
19 would of been -- we have fallen summer months. So, it
20 probably would of been around 5:30 or so.

21 Q Okay. And when she arrives at the store, typically
22 when an employee arrives at the store, and it's dark
23 outside---

24 A Uh-huh. (Affirmative).

25 Q ---do you have a place that you prefer for them to

1 park?

2 A Sometimes, depending on the location and the judgment
3 of the manager, we encourage them, number one, to do a loop
4 around the lot to see if there are people hanging around for
5 security purposes for our employees.

6 Also, if there is a reason that the manager feels as
7 though there's, again, homeless people sometimes that will
8 be around the lot early in the morning, we encourage them to
9 park closer to the building early in the morning until
10 sunlight arise so that they can safely enter into the
11 building, and not be subjected to walking across the lot.

12 Q Okay. And so, assuming that all of that were the case
13 the morning of September 28th, 2016, if Ms. Green says
14 that she pulled up to that first spot right there where
15 you'd recommend safe parking --

16 A Uh-huh. (Affirmative).

17 Q -- that would of been on surveillance camera, right?

18 A Yes.

19 Q Okay. Because the camera points in that direction,
20 correct?

21 A It is on that side of the building, yes.

22 Q And does that camera capture the doors to the office,
23 and to the restroom right there?

24 A It captures the kiosk opening door. Not much of the
25 middle room of the restroom, no.

Chris Overton - Cross-examination
by Mr. Hodge

1 Q Okay. But it does capture that kiosk opening of the
2 door?

3 A Uh-huh. (Affirmative).

4 Q And so you would see Ms. Green walking into that kiosk?

5 A Yes, sir.

6 Q All right. And if someone got out of the car while Ms.
7 Green was parked in that area, that would also be on video,
8 right?

9 A Yes. If they got out of the vehicle right there in
10 front of the dispensers.

11 Q Okay. And if someone approached and opened or knocked
12 on or bothered the door to the kiosk, that would also be
13 caught on surveillance camera?

14 A Yes, it would be.

15 Q Okay. If someone was walking around that kiosk, goes
16 to the front to pay at the cash register, would that be on
17 that video?

18 A Yes, it would. We, we have a camera that oversees the
19 front, so when a customer walks up, we get a picture of
20 them.

21 Q Okay. And if someone walked -- I believe you testified
22 there were two cameras inside the kiosk?

23 A Uh-huh. (Affirmative).

24 Q Correct?

25 A Yes, sir.

1 Q And that shows it's not a very big room, correct?

2 A No, it's actually probably 60 square feet maybe.

3 Q Right.

4 So, that camera -- generally those two cameras catch
5 that entire room?

6 A They would be, yes.

7 Q Okay. So, if someone came into that room, it would be
8 on video?

9 A Yes, sir.

10 Q And if someone forced that door open, that would be on
11 video?

12 A Yes.

13 Q Did you ever talk to Investigator Gonzales?

14 A I did not.

15 Q Did he ever try to reach out to you?

16 A Not that I recall.

17 Q Who maintains your security footage?

18 A Murphy U.S.A., our corporate office.

19 Q So, where is it stored at?

20 A It is stored, stored on a hard drive at the store.

21 Q At your store?

22 A At our store, and it also has a satellite uplink to our
23 home office as well.

24 Q So, if someone wanted to review the security footage
25 from any given day, they could come to you?

Chris Overton - Cross-examination
by Mr. Hodge

1 A They could come to me. They can also contact our home
2 office. It's preferable that they would come to me with
3 those kinds of incidents because of the fact that our home
4 office feed is extremely slow. It's a satellite uplink.

5 Q Okay. If one of your employees is leaving to make a
6 deposit, you say they have the deposit concealed in a bag of
7 some sort, McDonald's, book bag, whatever the case may be,
8 right?

9 A Uh-huh. (Affirmative).

10 Q Do you teach them to be vigilante of their surroundings
11 during that, that moment?

12 A Yes, we do.

13 Q Okay. And if someone -- if an employee or the manager
14 was afraid or was nervous about someone being around the car
15 or being around the facility, would they still -- would you
16 still advise them to go ahead and make that deposit?

17 A I guess define nervous.

18 Q Well, I mean if they were afraid of someone approaching
19 them. Someone was literally standing next to their vehicle
20 that they weren't comfortable with or didn't want to have
21 any interaction with while they have all that money in their
22 hand.

23 would you advise them to go ahead and make that
24 deposit?

25 A I would advise them no, not to go out to their vehicle

1 if there's somebody of risk---

2 Q Okay.

3 A ---standing next to it.

4 Q Now, you said that the deposit slip itself that's
5 printed out, and I think we have a picture of somewhere up
6 here -- maybe. Yeah, there it is.

7 This deposit slip is your deposit?

8 Not one that you filled out, but that is a deposit slip
9 from Murphy's?

10 A That is---

11 Q Right?

12 A That is the deposit slip for---

13 Q Okay.

14 A ---for Murphy's, yes.

15 Q And that's the one that you saw today that you came to
16 the scene, the incident location, at the Magnolia's, right?

17 A Yes, sir.

18 Q And on here it says \$5,170.00, right?

19 A Uh-huh. (Affirmative).

20 Q And you talk about there was more money or there could
21 be more money in the, in the bag.

22 Is that what you're saying?

23 A There's various ways. There could be money as far as
24 change goes for the safe. The following morning, under
25 Murphy policy, what they will do is they then buy change

Chris Overton - Cross-examination
by Mr. Hodge

1 back from the store through the safe from the sales of the
2 previous day.

3 Q How soon after Tiffany was taken away in the ambulance
4 did you have a, a conversation with her or meet with her?

5 A I picked her up from the hospital. It was probably
6 three or four hours later.

7 Q Okay. Is it against policy to allow someone in your
8 automobile while you're making a deposit?

9 A We do not encourage, and it is against policy to have
10 anybody inside of the vehicle for safety, and for also
11 insurance reasons.

12 Q You say that, in your review of this case, there was an
13 internal report done.

14 Is that right?

15 An internal loss prevention report.

16 A There was a safety incident report done, yes.

17 Q Okay. What, what was involved in that?

18 A Basically just calling and giving a general description
19 of, of what happened, and the total dollar loss amount.
20 Also the persons involved, and also the days and times that
21 it approximately happened.

22 Q And that's given to corporate, right?

23 A That's given to corporate. That's done by our national
24 support center. It's, for better or lack of a term, it's
25 call center, and we call in, and we report the incident.

1 And it's just logged and filed for further use.

2 Q Now, let me ask you this.

3 Was, was there anyone else working the morning of
4 September 28th, 2016, if you recall?

5 A Not in the morning, no.

6 Q Okay. What about around ten o'clock?

7 Do you normally have a second employee show up around
8 then?

9 A Yes, we do.

10 Q Do you know who was working that morning at ten
11 o'clock?

12 A I believe there was an employee, Anita. I do not
13 recall her last name.

14 Q All right. Going back to that deposit real quick, just
15 to clarify, originally I think it -- it's been testified to
16 you counted the money at the scene with the -- another
17 officer.

18 Is that right?

19 A Yes, sir.

20 Q Okay. And then, after you picked Tiffany up from the
21 hospital, you guys went back and recounted the money.

22 Is that right?

23 A I think we recounted/just had to do a new deposit slip.
24 The original one was completely destroyed, and a new one had
25 to be filled out to be taken to the bank along with the new

Chris Overton - Cross-examination
by Mr. Hodge

1 deposit bag. They would not accept, obviously, the deposit
2 slip that we had or that the, the one was in the picture
3 just a moment ago.

4 Q Okay. So, there were, there were two loss amounts that
5 have been testified to. One of them was \$1,400.00.

6 A Uh-huh. (Affirmative).

7 Q And the other one was \$2,100.00.

8 Can you tell me why they would be a difference of that
9 much money?

10 A Um.

11 Q Or close to \$2,000.00 may of been the, the actual
12 testimony.

13 A Yeah, I think it was more like 1,900.00.

14 Q Okay.

15 A And also I think that the original -- the deposit theft
16 from that day was around 1,500.00 that went missing. What
17 happens is, again, the following morning, Tiffany was not
18 able to work due to the circumstances. We had another
19 manager come into the store and the policy is to recount the
20 safe. They recounted the safe. They made the change for
21 that day. They realized that they had to take 400.00 and
22 some odd dollars from that day to refill the safe. So,
23 there was \$400.00 missing. That was booked into our
24 accounting as a shortage.

25 Q Okay.

1 A So, when the report was filed, we added that on into as
2 well. So, again, just general safety report. We just added
3 it up to, I believe, 1,900.00.

4 MR. HODGE: May I have a moment?

5 (Pause.)

6 MR. HODGE: No further questions. Thank you.

7 THE COURT: State.

8 REDIRECT EXAMINATION

9 BY SOLICITOR CAVANAUGH:

10 Q If someone is forced into their vehicle through the
11 threat of a weapon --

12 A Yes, sir.

13 Q -- would that be considered a violation of policy?
14 would they have been in violation of policy?

15 A Absolutely not.

16 Q And, once again, is Ms. Green still an employee at your
17 store?

18 A Yes, she is. Ms. Green followed the company policy and
19 protocol that, if approached with a weapon or a threat, that
20 you are to adhere to the demands of that person 100 percent.
21 Our company believes in the security and safety of our
22 employees first. So, if somebody comes up and says I've got
23 a, a weapon, you need to get in this car with me right now,
24 she followed protocol, protocol with that.

25 Q Thank you.

Jennifer Miller - Direct examination
by Sol. Cathcart

1 THE COURT: Anything else?

2 MR. HODGE: No, Your Honor. Nothing.

3 THE COURT: Thank you, sir. You may step down.

4 Next witness.

5 SOLICITOR CATHCART: State calls Jennifer Martin (sic).

6 JENNIFER MILLER, being first duly
7 sworn, testified as follows:

8 THE CLERK: Thank you. Have a seat in the witness
9 stand.

10 (Witness complies.)

11 THE CLERK: State your name for the record.

12 THE WITNESS: Jennifer Miller.

13 DIRECT EXAMINATION

14 BY SOLICITOR CATHCART:

15 Q And I called you Martin.

16 Is that your maiden name or your now name?

17 A Maiden name, yes, sir.

18 Q It's Martin?

19 A It's Martin. I am currently now Miller, yes.

20 Q I'm sorry.

21 where are you employed?

22 A The Richland County Sheriff's Department.

23 Q And what do you do there?

24 A I'm a DNA analyst in the DNA lab.

25 Q And can you describe to the jury basically what your

1 job is as a DNA analyst at the DNA lab?

2 A Sure. So, my job, as an analyst, is to develop DNA
3 profiles from any biological material that might be related
4 to a case.

5 Q But you don't collect the material, do you?

6 A No, sir.

7 Q It's provided to you from a witnesses or from -- you
8 get it from the evidence room?

9 A From the evidence room, yes.

10 Q Have you received training to become a DNA analyst?

11 A Yes, sir.

12 Q Could you please describe to the jury what your
13 training is?

14 A Sure.

15 So, when I started at the Richland County Sheriff's
16 Department, I received in-depth training in the area of
17 forensic serology and DNA, and I've been trained by three
18 court certified DNA analysts, and have been deemed
19 competent, competent, excuse me, according to FBI and DAB
20 guidelines.

21 Q And when you say you've been trained, how long has this
22 training been going on?

23 what kind -- how many classes'ish?

24 A It's not really a class thing.

25 Q Uh-huh. (Affirmative).

Jennifer Miller - Direct examination
by Sol. Cathcart

1 A I'm trained by other analysts who have already been
2 certified. So, it took me about a year to complete my
3 training at the Sheriff's Department.

4 Q So, it's almost as if -- apprenticeship under
5 pre-qualified analysts?

6 A Exactly. Yes.

7 Q And you have been qualified as an expert before?

8 A Yes, sir.

9 Q And qualified as what?

10 A As a DNA expert.

11 Q As a DNA expert, expert in DNA, DNA and serology?

12 A Yes, sir.

13 Q Where was that?

14 Where were you qualified in court?

15 A Right here actually.

16 Q In General Sessions Court?

17 A Yes, sir.

18 SOLICITOR CATHCART: Okay. Your Honor, at this time,
19 the State seeks to introduce Jennifer Miller as the expert
20 in DNA analyst and serology analyst.

21 THE COURT: What says the defense?

22 MR. HODGE: No objection, Your Honor.

23 THE COURT: All right. Ladies and gentlemen, she is an
24 expert in the field that the solicitor proposes. That means
25 she can give opinions based on her education, training, and

1 experience.

2 SOLICITOR CATHCART: Thank you, Your Honor.

3 Did you submit a report on the Case Number 1609016828?

4 A Yes, sir.

5 Q Okay. Do you recall when you -- do you have a copy of
6 that report with you?

7 A Yes, sir.

8 Q Okay. Do you recall when you completed this report?

9 A I issued this report on February 15th of 2018.

10 Q And what did you analyze?

11 A Let's see. I performed DNA analysis on Item 2, which
12 was labeled as a knife, as well as Item 4, which is labeled
13 as a Buccal swab from Wesley Givens.

14 Q And you say Item 4 and Item 2?

15 A Correct.

16 Q Those are presented to you through -- how did you get
17 the numbers, Item 4, Item 2?

18 A Those are generated from the evidence room.

19 Q Okay. And when people -- in fact, you were here
20 yesterday when we were talking about the evidence log. Item
21 4 was listed as a knife or -- excuse me.

22 A Item 2.

23 Q Item 2 was listed as a knife, and Item 4 listed as
24 Buccal scab. Investigator Gonzales testified that he did
25 the swab, and then the other, other analyst testified that

Jennifer Miller - Direct examination
by Sol. Cathcart

1 she swabbed the knife, right?

2 Those are the two swabs that you analyzed together?

3 A Right.

4 Q Okay. And how can you analyze those two items?

5 You say you analyzed them.

6 what did you do?

7 A So, the beginning of our process is to process the
8 evidence. So, as Ms. Dixon testified, she would of taken a
9 swab of the knife. She would cut that swab out, put it into
10 a tube, and would stick it on my bench.

11 I was actually responsible for processing the Buccal
12 swab. I would simply take the swab out of the box after
13 assuring that the evidence bag was not tampered with, and
14 everything was filled out properly. I would of cut just a
15 small portion of that swab.

16 THE COURT: Can you-all make out all the words she's
17 saying?

18 THE JUROR: Not everything.

19 THE WITNESS: Sorry.

20 Q well, speak up a little bit louder---

21 A Sure.

22 Q ---please.

23 A Yeah. So, I would of taken just a small cutting from
24 the Buccal swab and stuck it into a tube. I would then take
25 those tubes through our process we call extraction. This

1 just simply pulls the DNA out of that cotton and puts it
2 into a purified form that we're able to work with.

3 So, that purified form of DNA, I would then put through
4 an instrument that quantitates it. That just means it looks
5 to see how much DNA is in that tube. So, once we know how
6 much is in there, we do what we call normalize, which is
7 just a concentrate down that DNA to a level that our
8 instrument can read it.

9 we would then stick it on the instrument to be read.
10 The data comes off. It's basically in peaks or like
11 mountains almost. And then we sit down, and we interpret
12 that data, and then I generate a report.

13 Q And is that report that you generate reviewed by
14 another analyst as well?

15 A It is, yes.

16 Q So, it's peer reviewed within your own department?

17 A Right, it is technically reviewed, and administratively
18 reviewed.

19 Q And is that -- that was done in this case?

20 A Yes, sir.

21 Q All right.

22 A All cases.

23 Q And when you say you did this process, you did it on
24 the swab you or the sample you took from the Buccal swab,
25 and also the swab that was taken from the knife, right?

Jennifer Miller - Direct examination
by Sol. Cathcart

1 A Right. The cutting that I took from the Buccal swab as
2 well as the cutting that Ashleigh took from the swab that
3 she did of the knife.

4 Q And each one gives a reading of the DNA, and you
5 compare those two samples?

6 A Right. Yes, we interpret the data that comes from the
7 piece of evidence first, and then we'll make a comparison to
8 whatever Buccal swabs we may have.

9 Q Okay. And were you able to make a determination on
10 this case?

11 A Yes.

12 Q Could you please tell the jury what, if any,
13 determination you made from the sample from the knife, and
14 the sample, the known sample, from that man?

15 A Sure. So, I'm just gonna read directly from my report.
16 The DNA result from Item 2 is a mixture.

17 Q Item 2 being the knife, correct?

18 A Correct.

19 Q Okay.

20 A Wesley Givens cannot be excluded as a contributor to
21 this mixture. Based on the most recent population data
22 available, and the genetic results obtained, a match between
23 this DNA result and Wesley Givens is approximately
24 3.7 million times more likely than a coincidental match to
25 an unrelated person.

1 Q Okay. So -- and when you write your report, you don't
2 say it's him, but you're saying it's a mix of DNA on that
3 knife, correct?

4 A Correct.

5 Q And that his DNA is in that mixture?

6 Is that what -- he cannot be excluded means his DNA,
7 DNA's on that knife?

8 A Correct. We just take a more conservative approach to
9 the statement.

10 Q Okay. And that's -- you couch it that way, but is this
11 your opinion that the -- this knife from the swab that you
12 sampled from the Item 2, the knife, State's Exhibit 19, has
13 the Defendant's DNA on it?

14 A Yes.

15 Q Please answer any questions the defense counsel has.

16 A Yes, sir.

17 CROSS-EXAMINATION

18 BY MR. HODGE:

19 Q Morning, Jennifer.

20 A Good morning.

21 Q How are you?

22 A I'm good.

23 How are you?

24 Q I'm okay.

25 Did you test or were you asked to test Item 2 for

1 anyone else's DNA?

2 A I do not have a request for any other Buccal swabs, if
3 that's what you mean, no, sir.

4 Q Okay. So, you were specifically looking to see if it
5 was possible that Mr. Givens DNA was on that knife?

6 A Yes.

7 Q But you said there was a mixture.

8 So, his DNA wasn't the only DNA on that knife, right?

9 A No, sir.

10 Q I've got -- do you have a copy of your full report with
11 the bench notes and all of that?

12 A Yes, sir.

13 Q Okay. I'm just gonna ask you to review one page cause
14 I, honestly, am trying to get some clarification.

15 A Okay.

16 Q And you may have to get way too technical for me.

17 This page here, do you recognize that page?

18 A Yes, sir.

19 Q What is that page?

20 A That would be considered the coversheet --

21 Q Okay.

22 A -- that we put in our case jacket.

23 Q Okay. This line or these lines here, are these your
24 notes on this?

25 A Yes, sir.

1 Q Okay. That line says D2511 can't be used for
2 match/statistical purposes.

3 What does that mean?

4 A Okay. So, the next line where it says see project
5 verification, and it gives a funny number?

6 Q Right.

7 A That is basically just a set of quality procedures that
8 we do on every single one. So, if something in those
9 quality measure checks doesn't fit perfectly, then we'll ink
10 or not use that location on the DNA profile just to be extra
11 conservative.

12 Q So, let me ask you, I guess, in layman's terms, does
13 that mean it was not an exact match?

14 A No, sir.

15 Q So, what does that -- what does -- I guess my question
16 is why, why is that on the front cover of your, of your
17 report that it's not a match?

18 A That's actually---

19 Q Not used as a match.

20 A That's, that's gonna be a -- written on the cover page
21 of every single sample that I would of run in that run.

22 Q Okay.

23 A Because it's for all samples because the quality check
24 that we did just didn't feel safe about that location. So,
25 we just decide completely and totally. We're still able to

1 interpret that locus. Just to be conservative for protocol,
2 we don't use it for statistical purposes. So, it was not
3 included in the statistic that was calculated for this case.

4 Q I---

5 A If that makes more sense.

6 Q That does make more sense.

7 A I'm sorry.

8 Q Now -- no, that's okay. I'm, I'm, I'm not an analyst.
9 So, that's why I'm asking you.

10 You said you got -- you got this knife from the
11 evidence room or I believe actually Ms. Dixon gave you this
12 knife.

13 Is that correct?

14 A No, sir.

15 Q Gave you the Buccal swab from the swab from the knife,
16 right?

17 A She would of given me the cutting---

18 Q Right.

19 A ---taken from the swab.

20 Q Right.

21 A Yes, sir.

22 Q You did not collect this knife yourself, right?

23 A No, sir.

24 Q You don't know the history of this knife---

25 A No, sir.

1 Q ---do you?

2 You don't know who, who had this knife prior to it ever
3 making it into that evidence locker---

4 A No, sir.

5 Q ---right.

6 And that it's your testimony that there was multiple,
7 at least more than one, samples of DNA on this knife?

8 A Correct.

9 MR. HODGE: May I have a moment?

10 (Pause.)

11 Q Let me ask you this, and I know you're, you're a DNA
12 expert, right?

13 You don't -- do you do anything with fingerprints?

14 A No, sir.

15 Q So, you don't test any fingerprints or anything?

16 A No, sir, we have a latent prints section.

17 Q Okay. And if, if I use a kitchen knife while I'm in my
18 kitchen trying to cook up some carrots, and I'm holding my
19 kitchen knife, does my DNA get transferred to that?

20 A It is possible, yes, sir.

21 Q Okay. I don't have any further questions. Thank you.

22 REDIRECT EXAMINATION

23 BY SOLICITOR CATHCART:

24 Q The sample from Mr. Givens and the knife match,
25 correct?

Jennifer Miller - Redirect examination
by Sol. Cathcart

1 His DNA is on that knife?

2 A Yes, sir.

3 Q Thank you.

4 No further questions, Your Honor.

5 THE COURT: Anything else?

6 MR. HODGE: No, Your Honor.

7 THE COURT: Thank you. You may step down.

8 Next witness.

9 SOLICITOR CATHCART: Your Honor, at this time, the
10 State seeks to introduce State's 26 and State's 27 under 902
11 as self-authenticating documents. This being Defendant's
12 two prior convictions for domestic violence as an element of
13 the charge.

14 THE COURT: All right. What says the defense?

15 MR. HODGE: Just the previously stated objections, Your
16 Honor. We would just restate those. Other than that, we
17 understand your ruling. That's it.

18 THE COURT: All right. The -- those, those two
19 exhibits are admitted as self-authenticating,
20 self-authenticating, self-authenticating documents.

21 And, ladies and gentlemen, I'll give you more --
22 further instruction on this regarding the use of those
23 documents later on, but they're not in any way admitted
24 to -- as evidence that the Defendant committed the crime or
25 the crimes alleged in this case, but they are admitted to

1 show two prior offenses of domestic violence as an element
2 of one of the possible charges in the case.

3 SOLICITOR CATHCART: Thank you, Your Honor.

4 THE COURT: All right. Anything further from the
5 State?

6 SOLICITOR CAVANAUGH: Your Honor, at this time, the
7 State rests.

8 THE COURT: All right. Ladies and gentlemen, the State
9 has rested, and you've heard the State's case, and now I
10 need to talk with the lawyers about a few things. So, we'll
11 have you go to the jury room for a break. Please do not
12 discuss the case.

13 (WHEREUPON, the following takes place outside the
14 presence of the jury.)

15 THE COURT: The State has rested.

16 Any matters of law at this time, the State or the
17 defense?

18 MR. HODGE: Your Honor, at this time, the defense would
19 make a motion for directed verdict in particular on the
20 armed robbery. There was no testimony offered whatsoever
21 that the money was taken while Mr. Givens was armed with any
22 weapon. I believe the testimony was that she saw a plastic
23 bag she believed to be a weapon that she was getting in the
24 car, was told to get in the car, but that that was placed
25 back in an envelope, placed, placed back in an envelope, and

1 then placed either in the floorboard or, or somewhere on the
2 passenger side, and, and there's no testimony he ever
3 touched it or picked it up or brandished it or offered to,
4 to hurt her in any way to take the money from that point on.

5 I think the testimony about him snatching the money was
6 him using his hands. There was no effort to snatch the
7 money while he held the knife to her. There was no threat
8 of I'm gonna stab you with this knife if I take -- if you
9 don't let me take this money. Even if she's holding on to
10 him later on trying to keep him from leaving, he never once
11 attempted to take a knife or a weapon out of any type.

12 So, we would certainly make a motion for directed
13 verdict on the charge of armed robbery.

14 As for the charge of criminal domestic violence high
15 and aggravated, I believe the only testimony that, that the
16 State would be -- we believe is, is extremely --
17 circumstances or extreme fear is the car -- while she's
18 driving the car.

19 I believe the testimony -- all of the testimony that we
20 heard from her, from, from the victim, was that she was the
21 one swerving the car, trying to draw attention. She was the
22 one slamming on brakes trying to draw attention. She was
23 the one who decided she was gonna run into the Ryan's
24 Steakhouse to make it stop.

25 Not once did she testify that she was swerving or

1 slamming on brakes because he was causing her to do that or
2 because he was striking her, and that -- that was causing
3 her to swerve the car. She was doing it of her own
4 volition. She was doing it to try to draw attention. And
5 so I don't believe that, that action causes, causes it to
6 rise to the level of CDVHAN.

7 I also -- there's also, again, no testimony of a knife
8 being used during the assault or any other time. So, we
9 would ask for a directed verdict on the CDVHAN itself.

10 Judge, as to the kidnapping, I would make the motion
11 based on the fact she never saw the knife, but she, you
12 know, obviously there was testimony obviously about the bag.
13 I believe the warrant said clearly visible, and, in this
14 case, that was not the situation. It was never clearly
15 visible, and, matter of fact, she testified that she didn't
16 even see the knife until she opened it herself later on down
17 the road.

18 So, for those reasons, Judge, and obviously the -- if
19 there was no knife found, then there can be no possession of
20 a weapon. So, we make a motion there.

21 Thank you.

22 THE COURT: All right. What says the State?

23 SOLICITOR CATHCART: Your Honor, as to the armed
24 robbery, Defendant, when he committed this crime, went to
25 the victim and pulled out an object that she perceived to be

1 a weapon when -- in a threatening manner. She has known
2 this man for four years. He pulled out the black bag which
3 containing the knife. She knew that it was a weapon knowing
4 him, and he threatened her with it saying you're getting in
5 the car.

6 As to the armed robbery, and as to the kidnapping,
7 kidnapping being making her go into the car. Having nothing
8 to do with the weapon at all, that's -- the kidnapping does
9 not need a weapon.

10 He threatened her with this object. It has been shown
11 to be a knife which later found out to be a knife. She knew
12 it was something when she was robbed of, of -- by the
13 Defendant, and he was continued to be armed with that weapon
14 throughout the entire time until he fled the scene when he
15 was caught redhanded beating her down.

16 He did the -- take money of Murphy's Gas Station from
17 her presence by use of the threat, force, and also the fact
18 that she knew he was armed with a deadly weapon, what she
19 perceived to be a deadly weapon based upon his actions.

20 As to the CDVHAN, the high and agg -- the standard of
21 that being the -- oh, man, sorry. My print is tiny.
22 Circumstances manifesting extreme indifference to the value
23 of human life, and reasonably cause a person to fear great
24 imminent threat or bodily injury or death.

25 He was beating her down while she was driving down Two

1 Notch Road. She said she swerved when he hit her. He
2 was -- the witness, Ms. Morris, indicated that her head was
3 down like this while she was driving erratically watching
4 him wail on her face. I would state that would cause any
5 reasonable person to fear great bodily injury while driving
6 a motor vehicle down the highways of Richland County in such
7 that she finally made it stop by driving into a building
8 going over a speed bump or the parking hump until her car
9 bottomed out not able to go any further digging itself into
10 the ground.

11 This shows clearly a person who had or any reasonable
12 person would fear great bodily injury and/or death. Again,
13 while he's armed with what appeared to be a weapon to her,
14 what he projected to her as a weapon when he told her to get
15 in the car cause the deal was changed.

16 Possession of a stolen -- of a weapon during a violent
17 crime, as she pointed out to the investigator and as the
18 State's pointing out in this trial as to the jury as well,
19 he was in a possession. He threatened her with by the looks
20 like 5-inch blade fillet knife. I believe that all the
21 elements, in the light most favorable to the State, we have
22 met each element there, and should go past the directed
23 verdict at this time, Your Honor, and be allowed to go to
24 the jury.

25 THE COURT: All right. Cases can be proven by direct

1 or circumstantial evidence.

2 The indictment with regard to armed robbery says that
3 Wesley Lamonte Givens did, in Richland County, on or about
4 September 28th, 2016, committed robbery by felonious taking
5 from the person or presence of Tiffany Green, by means of
6 force or intimidation, goods or monies of Murphy U.S.A.
7 such goods or money -- monies being described as U.S.
8 currency with the intent to deprive the owner permanently of
9 such property, while armed with a pistol, dirk, slingshot,
10 metal knuckles, razor, or other deadly weapons, or while
11 alleging, either by actions or words, that he or she was
12 armed while using a representation of a deadly weapon or any
13 object which a person present during the commission of the
14 robbery reasonably believed to be a deadly weapon.

15 So, if he was armed, whether or not she saw the gun, if
16 he was armed while taking this money by force or
17 intimidation, then it's armed robbery, and armed robbery
18 can -- I mean whether or not he's armed would be direct or
19 circumstantial proven. Circumstances of -- presented shows
20 that he had his manila envelope with all of his things in
21 it, and that he was in control of that envelope, and that he
22 left that envelope in her car. And, while she was driving
23 down 26 in traffic, following the robbery, she had to apply
24 the brakes, and, and the, the, the knife slid out of the
25 envelope.

1 So, through circumstances and circumstantial evidence,
2 it was -- would of been in the envelope that he had when he
3 committed the offense at Murphy's or out at the Ryan's out
4 on Two Notch. So, I think, taking the evidence as a whole,
5 it, it -- there's adequate evidence from which the jury can
6 conclude that he was armed while committing the robbery,
7 which would make it armed robbery.

8 With regard to possession of a weapon during the
9 violent crime, the wording is a little clearer on the
10 State's side because it says Givens possessed a firearm or
11 visibly displayed what appeared to be a firearm or visibly
12 displayed a knife. So, since he possessed, which means he
13 had it on him, or he displayed what appeared to be a firearm
14 or he displayed the, the knife. So, the facts are there on
15 those two offenses as well as the other offenses, if
16 believed by the jury, or taken in light -- taken in the
17 light most favorable to the State, they can find him guilty
18 of all these crimes, and I deny your motion.

19 SOLICITOR CAVANAUGH: Thank you, Your Honor.

20 MR. HODGE: Thank you.

21 THE COURT: So, we're now ready to press onto the
22 defense.

23 Mr. Givens.

24 THE DEFENDANT: Yes, sir.

25 THE COURT: I need to ask you some questions about your

1 right to testify or not to testify. So, I need you to
2 stand, and be sworn right where you are.

3 THE DEFENDANT: All right.

4 (WHEREUPON, the Defendant was placed under oath at this
5 time.)

6 THE COURT: Mr. Givens, we've reached the point in
7 trial where you have the right to present your defense. Of
8 course, you have no, have no burden of proof, and you're not
9 required to present a defense, but it's time for the
10 defense. The State has rested, and I'm going to explain to
11 you certain of your rights, and, if you don't understand
12 anything that I say, let me know, and I'll be happy to
13 explain in more detail to you.

14 Do you understand?

15 THE DEFENDANT: Yes, sir.

16 THE COURT: As I've indicated, we reached the stage of
17 the trial where you may present your defense. You have the
18 right to claim the protections given to you by the Fifth
19 Amendment to the Constitution of the United States, and the
20 Fifth Amendment to the Constitution of the United States
21 says, in part, that no person shall be compelled, in any
22 criminal case, to be a witness against himself.

23 This means that you cannot be compelled or required to
24 testify, but you have the right to testify on your own
25 behalf if you want to, but no one can make you testify.

1 whether or not you testify is a personal right that you
2 have, and no one can waive this right except you.

3 Now, if you decide to testify, you'll be subject to the
4 same rules that govern other witnesses, and you may be
5 examined or cross-examined on any relevant issue in this
6 case.

7 In addition, concerning any convictions involving
8 dishonesty or false statement or any other crimes that you
9 may have on your record that are punishable or were
10 punishable by imprisonment for more than one year, and I
11 decide that the probative value of admitting this evidence
12 outweighs its prejudicial effect to you, if I allow it in,
13 allow, allow the evidence or allow the State to use that
14 evidence, they -- the solicitor will be able to
15 cross-examine you on it, and use that record to attack your
16 credibility.

17 Now, if you decide to testify, this must be a free,
18 voluntary, and intelligent decision made by you with
19 knowledge of the protections given to you by the Fifth
20 Amendment, as well as your -- the consequences of your
21 decision to testify. If you decide not to testify, I will
22 instruct the jurors that they cannot give the fact that you
23 did not testify any consideration whatsoever, and there's to
24 be absolutely no prejudice to you because you did not
25 testify.

1 Now, it's left entirely up to you whether or not you
2 testify. You may talk to your lawyer, Mr. Hodge, about it
3 some more. You may talk with your grandma, mama, anyone
4 else you want to talk to concerning whether or not you
5 should testify, but the final decision will be left entirely
6 up to you.

7 Do you understand what I've explained?

8 THE DEFENDANT: Yes, sir.

9 THE COURT: Do you have any questions about what I've
10 just explained?

11 THE DEFENDANT: No, sir.

12 THE COURT: Have you talked with your lawyer about
13 whether or not you should testify?

14 THE DEFENDANT: I need to.

15 THE COURT: You need to talk with him about it?

16 THE DEFENDANT: Yes, sir.

17 THE COURT: All right. We're gonna take a break, and
18 give you-all time to talk about that, and, during that time,
19 if you need to talk with any, any family members, they can
20 come up and talk to you briefly about it as well if you need
21 to do that, and we'll take about ten minutes---

22 SOLICITOR CAVANAUGH: Yes, sir.

23 THE COURT: ---and be ready to proceed.

24 THE DEFENDANT: Can I hug my grandmama?

25 THE COURT: Well, let me see. Who's the chief, chief

1 law man in here?

2 (WHEREUPON, a police officer raises their hand.)

3 THE COURT: You're the chief?

4 THE OFFICER: (Nods affirmatively.)

5 THE COURT: Totally up to him. I'll be the judge. I
6 don't supervise the hugging.

7 THE DEFENDANT: All right.

8 (WHEREUPON, a short recess was taken at this time.)

9 THE COURT: Mr. Givens, what did you decide?

10 THE DEFENDANT: I'm gonna testify, sir.

11 THE COURT: You're gonna testify?

12 THE DEFENDANT: Yes, sir.

13 THE COURT: All right. Y'all ready for the jury?

14 MR. HODGE: Judge, we, we also have the one other
15 witness that I've mentioned in---

16 THE COURT: Okay.

17 MR. HODGE: ---questioning. Obviously, I don't want
18 the jury to see Mr. Givens walking from here to there in leg
19 shackles. I would just ask that, after my first witness
20 goes, to take another short break to allow him to get up.
21 That's all.

22 THE COURT: Okay. Bring the jury.

23 (WHEREUPON, the following takes place within the
24 presence of the jury.)

25 THE BAILIFF: The jury's seated, Your Honor.

Anitra Smith - Direct examination
by Mr. Hodge

1 THE COURT: Thank you.

2 Ladies and gentlemen, you've heard the State's case.

3 It's the defense's turn.

4 Your first witness.

5 MR. HODGE: Thank you, Your Honor.

6 Defense would call Anitra Smith.

7 THE COURT: Ms. Smith. If you would, come around up
8 here to the bailiff.

9 ANITRA SMITH, being first duly
10 sworn, testified as follows:

11 THE CLERK: Thank you. Have a seat in the witness
12 stand please.

13 (Witness complies.)

14 THE BAILIFF: Speak into the microphone.

15 THE CLERK: State your name for the record.

16 THE WITNESS: Anitra Smith.

17 DIRECT EXAMINATION

18 BY MR. HODGE:

19 Q Can you spell Anitra just so the court reporter makes
20 sure she has it?

21 A A-N-I-T-R-A.

22 Q Thank you, Ms. Smith.

23 How are you today?

24 A Good.

25 Q I'm gonna ask you just a few questions this morning.

- 1 Okay?
- 2 A Yes, sir.
- 3 Q Where do you work?
- 4 A At Gate Petroleum.
- 5 Q What do you do there?
- 6 A Cashier.
- 7 Q How long have you worked there?
- 8 A About six months, seven months.
- 9 Q Where do you live?
- 10 A In Camden.
- 11 Q Okay. Do you have any children?
- 12 A Yes, sir.
- 13 Q Where did you work prior to working at Gate?
- 14 A Two years ago worked at the Murphy's U.S.A.
- 15 Q Where was that located?
- 16 A In Columbia.
- 17 Q Okay. And you say two years ago you worked there.
- 18 Why did you leave Murphy's?
- 19 A I was five months pregnant and couldn't perform the
- 20 duties that were -- that I needed to do. And so I just put
- 21 in a two week notice.
- 22 Q Okay. So, you gave a two weeks notice?
- 23 A I did.
- 24 Q Okay. I'm gonna ask you some specific questions now
- 25 regarding two years ago.

Anitra Smith - Direct examination
by Mr. Hodge

1 Were you working -- do you recall whether you were
2 working on September 28th, 2016?

3 A Yes, sir.

4 Q Who were you working with that day?

5 A Tiffany Green.

6 Q Do you recall what time you got to work that morning?

7 A About 5:30.

8 Q Okay. And, when you arrived, who was there?

9 A Tiffany, and there was a gentleman standing beside her
10 car.

11 Q Where was her car at that time?

12 A It was in the parking lot area over by -- it was a
13 couple of other businesses over there. I'm not sure. But
14 we have the park like right across from the business.

15 Q Okay. And so you saw Tiffany and another gentleman you
16 said, right?

17 A She was inside the building, but he was---

18 Q She was---

19 A ---standing beside her car.

20 Q Okay. At any point -- well, what did you see after
21 that?

22 A Nothing. Just him standing beside her car. When I
23 arrived at work, I told her that there was a gentleman
24 standing beside her car, and she was like oh, well, that's
25 my boyfriend.

1 Q Okay. So, Tiffany told you that that was her
2 boyfriend?

3 A Yes, sir.

4 Q Okay.

5 A Because I was scared. I was aware -- actual --
6 actually I didn't want to go into the job. So, then, when I
7 went in there, I asked her, you know, who was that, and she
8 was like that was her boyfriend.

9 Q Okay. Did you ever have an opportunity to see them
10 interact?

11 A No, sir.

12 Q Did you ever see him talk to her?

13 A One time. As I was in there counting cigarettes, he
14 knocked on the room that we were counting cigarettes in, and
15 she stepped outside to talk to him.

16 Q Okay. About how long was she gone?

17 Do you remember how long she was out there?

18 A About ten minutes.

19 Q Was she upset when she came back in?

20 A Not to me, no.

21 Q Was she upset that morning when you arrived at work?

22 A No, sir.

23 Q Did you -- did you witness any, any arguing or anything
24 that morning?

25 A No, sir.

Anitra Smith - Direct examination
by Mr. Hodge

1 Q You became aware that something had occurred later that
2 day, correct?

3 A Later on that day.

4 Q Okay. How did you become aware of that?

5 A The district manager, which is Chris, I forgot his last
6 name, but came to the job, and stated that Tiffany would not
7 be coming back because an incident took place.

8 Q And, Chris, is that Chris Overton?

9 A Yes, Chris Overton.

10 Q And he was your district manager.

11 Is that right?

12 A Yes, sir.

13 Q Okay. Did you ever have a chance to talk to Tiffany
14 that day?

15 A Not that day.

16 Q Have you talked to Tiffany since then?

17 A Yes, sir.

18 Q When was that conversation?

19 A About two weeks -- about a week later actually when she
20 came back to work.

21 Q Okay. So, she came back to work about a week later?

22 A Yes, sir.

23 Q Okay. At any point that day, September 28th, not the
24 day she came back to work, September 28th, did you -- did
25 Tiffany leave to go make a deposit?

1 A She did.

2 Q What did you see when she went to make the deposit?

3 A Basically it's mandatory for us to pull up to the front
4 door when we were getting ready to take a deposit cause we
5 cannot walk that money across the parking lot. So, she
6 pulled up to the front of the door, took the deposit, and
7 got in the car. From then on, I don't know what happened.

8 Q Okay. Did you notice, was there anyone in her car when
9 she pulled up?

10 A I didn't notice. I was too busy dealing with
11 customers. All I know is I seen her pull up to the front of
12 the build -- the building, but I don't think I seen anyone
13 in there.

14 Q Okay. She pulled up in front of the building, and got
15 the deposit?

16 A Got the deposit.

17 Q Okay. I'm gonna hand you what's been previously marked
18 as 1 and 2, the moving in shots.

19 Do you recognize those photos?

20 A Yes, sir, this -- yes, sir, this is the building where
21 we worked.

22 Q That's the Murphy's Gas Station?

23 A Yes, sir.

24 Q Okay. And do those -- has, has the building changed
25 any since you worked there or --?

Anitra Smith - Direct examination
by Mr. Hodge

1 A I haven't been there back since.

2 Q Based on those pictures, does that look how it looked
3 back when you worked there?

4 A Yes, sir.

5 Q Were those cameras there when you worked there?

6 A Yes, sir.

7 Q All of them?

8 A All of them.

9 Q Okay. And do those pictures accurately reflect how
10 that store appeared when you worked there?

11 A Uh-huh. (Affirmative).

12 Q At least that portion of the store, the camera?

13 A Yes, sir.

14 MR. HODGE: At this time, Judge, we'd move 1 and 2 into
15 evidence, which are just zoomed in shots of the, the gas
16 station itself.

17 THE COURT: Any objection?

18 SOLICITOR CAVANAUGH: No, Your Honor.

19 THE COURT: They're admitted.

20 MR. HODGE: Thank you.

21 (WHEREUPON, Defendant's Exhibit Nos. 1 and 2 were
22 received into evidence at this time.)

23 Q Are there monitors in the kiosk that show what the
24 security cameras are looking at?

25 A It should be. Actually cause we use to have to watch

1 the screens like at least 15 minutes a day. So, it should
2 be cameras and voice recording and all that.

3 Q What do those cameras that you testified to were there
4 in 2016, what do those cameras show?

5 What angle do they show?

6 What are they, what are they geared towards?

7 What do they -- what all do they show?

8 A They geared towards the front of the store, the side of
9 the store, and I believe that's it.

10 Q So, if someone pulls up and parks where the doors to
11 the kiosk are, would that be visible on those cameras?

12 A Yes, sir.

13 Q Okay. If someone is -- I think you testified that
14 someone pulled up in front of the store.

15 Would that be visible on those cameras?

16 A Yes, sir.

17 MR. HODGE: Can I have just a moment, Your Honor?

18 (Pause.)

19 Q Ms. Smith, I don't have any further questions at this
20 time. Please answer any questions that the State has.

21 Thank you.

22 A Thank you.

23 CROSS-EXAMINATION

24 BY SOLICITOR CAVANAUGH:

25 Q Ms. Smith, you just testified to where cameras were

Anitra Smith - Cross-examination
by Sol. Cavanaugh

1 located in the store.

2 A Yes.

3 Q If -- beg the Court's indulgence.

4 (Pause.)

5 Q If Ms. -- if Ms. -- I show you what's marked as Exhibit
6 15.

7 Do you recognize this as the Murphy's Gas Station?

8 A Yes.

9 Q Okay. May I have it back please?

10 A (Witness complies.)

11 Q If Ms. Green's car is parked over here, Murphy's
12 cameras would not cover that, correct?

13 A It looks like it won't. I don't know. That's not
14 where her car was parked at though.

15 Q Okay. And we're talking about something that occurred
16 two years ago, right?

17 A Uh-huh. (Affirmative).

18 Q And did you work with Ms. Green on a frequent basis?

19 A Yeah, every morning cause I was getting trained for
20 assistant manager.

21 Q Okay. And so how often would you work with her?

22 A A little more than five days a week.

23 Q And approximately how many times?

24 A Forty hours a week.

25 Q Approximately how many occasions?

1 How many days did you work with her?

2 A Five days a week.

3 Q How many times did you work, work with her on a weekly
4 basis?

5 A Oh, five days a week every day cause, like I said, she
6 training me for assistant manager.

7 Q And how long were you at that particular location with
8 Ms. Green?

9 How many weeks?

10 A I worked there five months.

11 Q And your memory is clear about something that occurred
12 two years ago?

13 A Yes.

14 Q Okay. Did you have an opportunity to see Ms. Green
15 after the incident occurred?

16 A Yes.

17 Q No, I'm talking about the day. The afternoon that the
18 incident occurred.

19 A No, ma'am.

20 Q Okay. So, you didn't see all her bruising or bleeding
21 or anything like that?

22 A No.

23 Q Thank you, Ms. Smith.

24 THE COURT: Anything else?

25 REDIRECT EXAMINATION

Anitra Smith - Redirect examination
by Mr. Hodge

1 BY MR. HODGE:

2 Q Ms. Smith, I think you testified that, that Tiffany had
3 told you that that was her boyfriend out there?

4 A Yes.

5 Q Is that right?

6 Did she tell you why he was there?

7 SOLICITOR CAVANAUGH: Objection. Hearsay and beyond
8 the scope of my redirect.

9 THE COURT: What did you ask her?

10 MR. HODGE: If she knew Tiffany or if Tiffany told her
11 why her boyfriend was out there.

12 THE COURT: If she told her why what?

13 MR. HODGE: why her boyfriend was out near her car.

14 THE COURT: I sustain the objection. It's beyond
15 the---

16 MR. HODGE: Thank you.

17 THE COURT: ---cross-examination.

18 Q Thank you, Ms. Smith.

19 THE COURT: You may step down.

20 Ladies and gentlemen, have you go to the jury room just
21 for another minute, and we'll be right back. Please step
22 out.

23 (WHEREUPON, the following takes place outside the
24 presence of the jury.)

25 THE COURT: All right. You may take your seat up here.

1 SOLICITOR CAVANAUGH: Your Honor, before Mr. Givens
2 takes the stand, I'd like to make sure we go over which
3 convictions of his he can be impeached with.

4 THE COURT: All right.

5 SOLICITOR CAVANAUGH: Under 609(a)(2) related to
6 convictions that involve dishonesty, Mr. -- the Defendant's
7 been convicted of, in 2013, he was convicted of forgery less
8 than \$10,000. And then, since State v. Broadnax has been
9 decided in 2015, this case requires that in order -- well,
10 it negates -- it says that armed robbery and larcenies are
11 no longer considered crimes of dishonesty so that they can't
12 be -- as far as their admission for impeachment value, we
13 have to then go back to 609(a)(1) which requires a balancing
14 test.

15 In 2003, Mr. Givens was convicted of burglary in the
16 second degree and grand larceny for which he received a ten
17 year sentence. According to his Department of Correction
18 history, he was still incarcerated for that sentence in
19 2009, which would be within that ten year limitation of when
20 he was actually released from confinement as well as, 2016,
21 he has a conviction for petty larceny, and then, 2018, he
22 has a conviction for grand larceny.

23 Your Honor, as far as the balancing test is to be
24 conducted to determine whether those convictions are more
25 probative versus prejudicial in this case, we have to look

1 at the five factors outlined in State v. Black, and those
2 five factors are the impeachment value of the crime, the
3 point in time of the conviction, and the witnesses
4 subsequent history, the similarity between the past crime
5 and the charged crime, as well as the importance of the
6 defendant's testimony, and the centrality of the credibility
7 issue.

8 Your Honor, the State would argue that breaking into
9 someone's home and committing larceny, specifically --
10 especially the larceny aspect of it, and his other two
11 subsequent convictions for larceny are certainly more
12 probative than prejudicial in this matter as it goes -- it's
13 probative to the credibility of, of, of this particular
14 witness, Mr. Givens, and we would argue that, that, when you
15 view those convictions under that five factor test, that,
16 that he should be impeached with those along with the 2013
17 conviction for forgery.

18 THE COURT: Mr. Hodge.

19 MR. HODGE: Thank you, Your Honor.

20 As for the forgery, I certainly understand that one
21 being used. Although we would object that it's more
22 prejudicial than probative.

23 As for the other ones, Judge, I think that they're
24 nowhere near the circumstances that we have here. They're
25 not similarly related or anything. This is clearly a

1 domestic issue that, that we've already got into the fact
2 that those are -- that it's been a history in the past.

3 So, I believe that it is certainly more prejudicial to
4 Mr. Givens for them to bring up other completely unrelated,
5 and not even characteristic of this offense. Charges of
6 burglary, while there's no, no accusation that he broke into
7 anywhere here or that he did any sort of breaking or
8 entering of anything.

9 As far as the, the grand larceny, you know I think that
10 goes hand in hand with the burglary. I don't think
11 there's -- it's, it's totally different what they're
12 accusing you as to what they would like to, to impeach him
13 with. I would simply say that, that I don't think that it
14 meets that, that prong test. I certainly believe that it's
15 more prejudice then it is probative. I think the jury, you
16 know, can judge Mr. Givens on his credibility based on how
17 he testifies, and how he appears on the witness stand.

18 I don't think that those two things will aid in any
19 way, and I believe they certainly would hurt Mr. Givens, and
20 cause the jury to just assume, because he has prior theft,
21 theft charges or burglary charges or whatever happened, that
22 he, he clearly did this time.

23 So, for those reasons, Judge, we would say that I, I
24 believe it's more prejudicial then probative, and I don't
25 think it, it meets the Blackwell test.

1 Thank you.

2 THE COURT: It would appear it would seem as if someone
3 committed a similar crime that that would be a -- be more
4 likely to be admitted based on the similarities of it, but
5 the State v. Howard and other cases says the similarities of
6 the offenses weigh against admissibility based on the
7 prejudice versus probative analysis.

8 So, if he -- if you're on trial for armed robbery, and
9 you have a prior armed robbery or burglary and you have a
10 prior burglary, that weighs against admitting it. The
11 similarities, that's really the opposite as what would seem
12 to be the natural instinct. So, his prior offenses here or
13 his convictions, they're, they're none of the same offenses.
14 They're all different, aren't they?

15 So, the -- of course, I haven't seen his record. I've
16 heard the thirty second explanation to me as to what's on
17 the record, and -- but the -- so, we have to do this
18 analysis, and now the Court previously heard -- held that
19 where cases involving dishonesty or theft, that there is no
20 prejudice, there's no analysis required.

21 Is that still the case or was that changed in State v.
22 Broadnax?

23 SOLICITOR CATHCART: Your Honor, if I may just approach
24 and hand up a copy of his record --

25 THE COURT: Yes, sir.

1 SOLICITOR CATHCART: -- while she continues her
2 arguing?

3 SOLICITOR CAVANAUGH: Yes, State v. Broadnax, which I
4 do have a copy of for defense counsel and the bench.

5 THE COURT: We have cases galore on our computer.

6 SOLICITOR CAVANAUGH: Okay. Well, I hand a copy to
7 defense -- to Mr. Hodge.

8 SOLICITOR CATHCART: I'll go ahead and hand it up, Your
9 Honor, so you got -- it has the cite numbers.

10 SOLICITOR CAVANAUGH: In State v. Broadnax, the prior
11 conviction that was used, which the Court determined did
12 not -- did no longer qualify as a crime of dishonesty, was
13 actually armed robbery.

14 THE COURT: We are not dealing with that.

15 SOLICITOR CAVANAUGH: Exactly, Your Honor.

16 THE COURT: We have the same types of crime, and then
17 the Court asked to do the balancing test. State v. Howard
18 involving a boy, when he was a juvenile, he continued to get
19 in trouble, and he, he committed an assault and battery
20 against his girlfriend. The judge allowed it in, and they
21 reversed him, and he went back. The judge says well, he did
22 it before. So, it should, should be admitted, and they
23 reversed him again because he didn't do the balancing test.

24 So, that says where the -- that the same type of
25 crimes, then you must do on -- the on-the-record balancing

1 test as to whether more prejudicial than probative.

2 Now, his previous conviction, he had an assault and
3 battery.

4 When was that?

5 Three years. 2000 -- is that 2013, the assault and
6 battery?

7 SOLICITOR CAVANAUGH: Yes, Your Honor. He -- that's
8 correct.

9 THE COURT: And the sentence was, was three years. So,
10 we have an assault. So, that is a similar crime, which
11 requires a balancing test. Regardless of the balancing test
12 in similar prior crimes, the Court must consider impeachment
13 value of prior crimes. The point in time of conviction, and
14 the witnesses subsequent history, and the similarities of
15 crimes, importance of the defendant's testimony, and the
16 centrality of the credibility issue.

17 What is impeachment value of the prior crime in this
18 case of -- if the crime is assault, prior crime is assault?

19 SOLICITOR CAVANAUGH: Well -- all right. Your Honor,
20 as the -- I actually did not, when I was asking you to
21 consider the larcenies as, as convictions that can be
22 impeached, I actually did not include all three of his
23 convictions for assault and battery due to the fact that
24 they are similar---

25 THE COURT: All right.

1 SOLICITOR CAVANAUGH: ---in nature to the offense
2 charged. So, that's why I didn't even bring that up to the
3 Court.

4 THE COURT: All right. Well, good.

5 SOLICITOR CAVANAUGH: All right.

6 THE COURT: We won't, we won't consider that.

7 All right. So then with respect to grand larceny, you
8 didn't say anything about threatening the life of a public
9 official cause that's -- that's, that's not over a year.

10 So, what are you trying to get in, larceny, and what
11 else?

12 SOLICITOR CAVANAUGH: Your Honor, the 2003 conviction
13 for burglary second degree and grand larceny, for which he
14 received a ten year sentence, and pursuant to Subsection B
15 of Rule 609, the time limit -- the ten year time limit,
16 limit to be---

17 THE COURT: I understand---

18 SOLICITOR CAVANAUGH: Okay.

19 THE COURT: ---it ends when the sentence is over.

20 SOLICITOR CAVANAUGH: Yes.

21 THE COURT: So, that's not relevant.

22 SOLICITOR CAVANAUGH: Yes, Your Honor. So, that would,
23 that would qualify under Rule 609 -- under the like limit.
24 And, then 2016, he was convicted of petty larceny, and, in
25 2018, he was convicted of grand larceny.

1 THE COURT: How about breaking into tanks?

2 SOLICITOR CAVANAUGH: Auto breaking, Your Honor---

3 THE COURT: Breaking into auto tanks, et cetera, 18
4 months, 2015.

5 SOLICITOR CAVANAUGH: Yes, Your Honor. I'd also -- I
6 also believe that that crime requires the balancing test
7 that would go towards Mr. Givens credibility as a witness,
8 and it's very similar to what he's charged with here.

9 THE COURT: So, what's the argument in favor of the
10 balancing test or you just want me to do a spontaneous
11 analysis of everything?

12 SOLICITOR CAVANAUGH: Well, no, Your Honor. The, the
13 three -- the four convictions -- well, excuse me, five
14 convictions that we've just -- the burglary in the second
15 degree, and grand larceny, the auto breaking, the petty
16 larceny, and the grand larceny, they all are within that ten
17 year time limit, we believe fits the five factor balancing
18 test which is outlined in State v. Black.

19 THE COURT: Which is what?

20 SOLICITOR CAVANAUGH: It was decided by the Supreme
21 Court of South Carolina. The cite is 400 S.C. 10.

22 THE COURT: Well, we usually use State v. Grant or
23 State v. Quash for impeachment value, point in time,
24 similarity, importance, and centrality.

25 You mean -- those are the five things you're talking

1 about?

2 SOLICITOR CAVANAUGH: Yes, Your Honor.

3 THE COURT: I'm saying that each one, why -- what basis
4 makes it admissible in this, in this instance?

5 SOLICITOR CAVANAUGH: Well, as far as the impeachment
6 value of the prior crime, each of these convictions go
7 towards Mr. -- under the factor number one, impeachment
8 value, go towards his -- each witness has been -- well, not
9 each witness, but the victim has been cross-examined about
10 her credibility. Each of these convictions would indicate
11 that he has -- lacks voracity. I mean he's, he's committed
12 five crimes that certainly the jury should hear about as to
13 whether or not they're gonna believe this particular
14 witness.

15 THE COURT: All right.

16 SOLICITOR CAVANAUGH: The point---

17 THE COURT: That's Point A.

18 SOLICITOR CAVANAUGH: The point---

19 THE COURT: You have four more to go.

20 SOLICITOR CAVANAUGH: Yes, sir, the point in time---

21 THE COURT: And four more crimes to go. So --.

22 SOLICITOR CAVANAUGH: Excuse me?

23 THE COURT: You're, you're giving me the analysis as to
24 each crime, right?

25 SOLICITOR CAVANAUGH: Yes, Your Honor. So, burglary in

1 the second degree and grand larceny, which is the first
2 crime, that -- the first conviction we're seeking to admit
3 is that the burglary in the second degree, he broke into
4 someone's home without their consent. While it's not
5 similar to armed robbery or kidnapping or domestic violence
6 of a high and aggravated nature, it does show that he is
7 breaking into someone's house without their consent and
8 stealing.

9 THE COURT: Well, let me just -- again, let me go back
10 to make sure if the offense carry over -- carries over one
11 year, then under, let's see, 609, 609(b), let's see,
12 609(a) -- 609(a)(2), evidence that any witness has been
13 convicted of a crime shall be admitted if it involves
14 dishonesty or false statement regardless of the punishment,
15 and that's under two.

16 Now, this, under (a)(1) never against a witness other
17 than the accused shall be admitted subject to 403 if it's
18 punishable in excess of one year, and that an accused has
19 been convicted of such crimes shall be admitted, and the
20 Court determines that probative value admitting it outweighs
21 its prejudicial effect.

22 So, do you have to do this analysis if it involves a
23 crime of dishonesty or false statement?

24 SOLICITOR CAVANAUGH: No, Your Honor. I don't believe
25 that the balance---

1 THE COURT: All right.

2 SOLICITOR CAVANAUGH: ---test is required.

3 THE COURT: Which one of these can you eliminate doing
4 this analysis on because they involve dishonesty or false
5 statement?

6 SOLICITOR CAVANAUGH: The forgery, Your Honor.

7 THE COURT: All right. So, forgery is in.

8 All right. So, the -- so we're back to these
9 larcenies, and burglary -- larcenies are not dishonesty or
10 false statement?

11 That's not dishonesty?

12 SOLICITOR CAVANAUGH: Well, Your Honor, stealing
13 property from someone would tend to -- it sounds straight
14 forward that it does involve dishonesty. State v. Broadnax
15 is specific to---

16 THE COURT: Armed robbery.

17 SOLICITOR CAVANAUGH: ---armed robbery.

18 THE COURT: Okay.

19 SOLICITOR CAVANAUGH: It does not -- it does not state
20 that, because that was the crime at issue, that -- the, the
21 conviction at issue in that particular case.

22 THE COURT: Well, why do you keep going to that if it's
23 not relevant to what we're talking about?

24 SOLICITOR CAVANAUGH: Well, Your Honor, larceny just --
25 I guess, larceny is considered a, a lesser included of armed

1 robbery, but it, but it negates the element of the use of
2 force. And so, while -- so -- but I still believe that,
3 that the plain meaning of larceny, when is the -- should be
4 considered a crime of dishonesty subject to 609.

5 THE COURT: You believe Broadnax applies to larceny and
6 armed robbery?

7 SOLICITOR CAVANAUGH: Your Honor, I don't think so
8 because the case doesn't actually speak on that.

9 THE COURT: Okay.

10 SOLICITOR CAVANAUGH: But just because of the fact that
11 the armed robbery is a lesser included, excuse me, larceny
12 is a lesser included of armed robbery, that's why I
13 suggested to the Court that the balancing test should be
14 conducted, but Broadnax is specific to armed robbery. And
15 each of these acts that we are pointing out to -- pointing
16 to Your Honor is -- involves him stealing property, which
17 would certainly go towards his credibility as a witness.

18 THE COURT: All right. Anything else?

19 Any response, Mr. Hodge?

20 MR. HODGE: Your Honor, I think -- I don't think the
21 argument changes anything outside the scope of that. So, my
22 position is still you're the one who has to decide. So, my
23 position is---

24 THE COURT: No, I know -- I have to decide, but, as
25 lawyers---

1 MR. HODGE: Yes, sir.

2 THE COURT: ---you know, that's why, you know, I don't,
3 I don't think I have to just pull things out of thin air.
4 That's why I look for the lawyers to give me the tools to
5 make the decisions such as what do you -- you want a
6 competent analysis.

7 what is your analysis of these factors?

8 MR. HODGE: My analysis, from, from what I am reading,
9 Judge, is that the, the big test for me, and the big
10 question for me is what is gained, what is probative versus
11 what is prejudicial in this situation.

12 THE COURT: All right.

13 MR. HODGE: That's the factor that I think---

14 THE COURT: Everything is prejudicial. We know that.

15 MR. HODGE: Yes, sir, that's correct. But, I guess,
16 then you have to weigh the other side of what is, what is
17 this probative of. And, to me, the only thing that it's
18 probative of is that my client's a bad dude, and that's all
19 they're trying to use it for is to prove that he's a bad
20 guy. Has nothing to do with his credibility. Has nothing
21 to do with, with his believability on that witness stand or
22 his testimony in this case.

23 The forgery, obviously, that is specifically defined
24 under the rules of evidence. So, that's why I conceded that
25 one. These other crimes are -- the larceny and the burglary

1 are, you know, at times, violent or, or, at least, more
2 serious crimes, much more serious than a forgery or
3 fraudulent check, but they don't go towards his credibility
4 more than they go towards him being a bad guy.

5 THE COURT: well, at one time, you know, the common
6 notion was if you were -- if you'll lie, you'll steal or
7 maybe vice versa. If you'll steal, you'll lie. So, we
8 didn't use to have to go through this -- all this analysis.
9 If he was -- if you had some stealing on your record, the
10 jury was entitled to know about it cause that means you're
11 likely to do some lying if you got -- get on the witness
12 stand.

13 The two go hand in hand. Now we have this extra step
14 here we're supposedly doing this analysis, and I'm like
15 well, do I have to do it in these stealing cases or, you
16 know, a larceny, auto breaking, larceny, burglary or, if the
17 burglary and the larceny occurred at the same time, or do I
18 have to do it where there are similar prior crimes cause
19 that's the -- that's when, typically, you have to do this
20 balancing if this -- you have the similarities.

21 So, as I said, it was Stacy Howard who kept punching
22 his girlfriend while riding down the road. They couldn't
23 get into the prior punching the girlfriend because of the
24 similarities, and they don't just say he's guilty because he
25 did it before.

1 Go ahead.

2 SOLICITOR CATHCART: Your Honor, I wasn't sure if I'd
3 be allowed to speak.

4 THE COURT: Yes, sir.

5 SOLICITOR CATHCART: Thank you.

6 This is -- we're back where it should be as to a well,
7 not necessarily where it should be, but it is a balancing
8 test. And what you're to look to if it's so similar such as
9 if we're trying to get in all these assaults, and that would
10 be prejudicial. However, we're talking about his criminal
11 acts that have no even slight similarity to what we're here
12 today on.

13 If we did not -- if these were not allowed to come in,
14 nothing would be able to come in. No prior record
15 whatsoever other than a forgery or some type of fraud would
16 ever make it past the test. If he has a criminal act within
17 a ten year period, and it's not so similar as to say since
18 he did it that time, he's doing it again, I think it comes
19 in. Otherwise, it -- nothing would.

20 THE COURT: All right. Let's see.

21 (Pause.)

22 THE COURT: All right. Well, the impeachment value of
23 the prior crime, I'm struggling with that.

24 What is the, the, the impeachment value?

25 I know it's important for the Court -- the State to

1 impeach. Impeachment value of prior crime leaves a question
2 mark on that, but the point in time of conviction and the --
3 and his subsequent history. It appears he's had a
4 continuous past, past of criminal activity from as far back
5 as 2003 until now for -- and there's been no significant gap
6 in his history.

7 But the, the -- but as to the similarities, they're,
8 they're no similarities between the past, and the crime
9 charged because those are not being offered though his two
10 prior domestic violences are in evidence because -- as
11 elements. The importance of the Defendant's testimony I
12 think, at this point, for the most part, the -- although Mr.
13 Hodge artfully cross-examined the, the, you know, the
14 victim's testimony for the most part, it's unchallenged in a
15 lot of respects. So, there isn't significant importance for
16 the Defendant to testify for the jury to believe him.

17 So, his -- there is some importance to him, him giving
18 convincing testimony, and neutrality of the credibility
19 issue. While the law degrades that -- and we base it on
20 whether or not he is credible when he testifies versus the
21 testimony of the State's witnesses.

22 I think on -- I think on balance, the probative value
23 of admitting all of these outweigh a prejudicial impact on
24 him because the prior crimes in these cases says that --
25 Broadnax says that beyond the basic crime itself, the --

1 it's not probative. It says -- the language, it says that
2 holding -- Broadnax holding, the Court of Appeals correctly
3 decided to follow the rule as formulated in Bryant that
4 convictions for robbery, burglary, theft, drug possession,
5 beyond the crime itself, is not probative for truthfulness
6 for purposes of 609(a)(2).

7 Yeah. So, that would mean that the crime itself is
8 okay for them to know about, but you can't get into the
9 details of the crime.

10 SOLICITOR CATHCART: That would be our position, Your
11 Honor, yes, sir.

12 THE COURT: And which is the same as admitting the
13 prior convictions of domestic violence. You can't get into
14 specifics of it, but just conviction itself.

15 So, I believe that all of this is relevant on the issue
16 of impeachment and credibility, and I am admitting the
17 larceny, the burglary, and auto breaking, and forgery.

18 All right. Let's take a two minute stretch, and then
19 bring the jury on in.

20 SOLICITOR CATHCART: Your Honor, I'm sorry. Just to be
21 clear, one of the things we did not ask to be admitted, and
22 is a petty larceny. That did not carry up to a year. So, I
23 don't think we will be---

24 THE COURT: All right.

25 SOLICITOR CATHCART: ---seeking to introduce that.

1 THE COURT: Let's leave that out.

2 SOLICITOR CATHCART: Yes, sir.

3 THE COURT: We don't want to kill a gnat with a sledge
4 hammer.

5 SOLICITOR CATHCART: Thank you, Your Honor.

6 THE COURT: All right. Two minute stretch.

7 (WHEREUPON, a short recess was taken at this time.)

8 THE COURT: Okay. I think we can bring them in.

9 THE BAILIFF: All right.

10 (WHEREUPON, the following takes place within the
11 presence of the jury.)

12 THE BAILIFF: The jury is seated, Your Honor.

13 THE COURT: All right. You may swear him please.

14 THE CLERK: Yes, Your Honor.

15 WESLEY GIVENS, being first duly
16 sworn, testified as follows:

17 THE CLERK: Thank you. State your name for the record
18 please.

19 THE DEFENDANT: Wesley Lamonte Givens.

20 THE COURT: Yes, sir.

21 MR. HODGE: Okay. Just wanted to make sure, Judge.
22 Thanks.

23 DIRECT EXAMINATION

24 BY MR. HODGE:

25 Q It's still morning. Good morning, Wesley.

- 1 A Good morning.
- 2 Q How you doing?
- 3 A All right.
- 4 Q How old are you?
- 5 A Thirty-seven.
- 6 Q Got any kids?
- 7 A Four.
- 8 Q Four?
- 9 A Yes.
- 10 Q How old are they?
- 11 A Eighteen, sixteen, eight, and five.
- 12 Q Where -- what county are you from?
- 13 A Orangeburg, South Carolina.
- 14 Q How long have you lived there?
- 15 A Pretty much all my life except for like two years.
- 16 Q You got any family there?
- 17 A The majority of my family.
- 18 Q The majority of your family?
- 19 A Yes.
- 20 Q Who did you live with in Orangeburg?
- 21 A I stayed with myself, my mom, my grandmom, depending
- 22 upon what time---
- 23 Q Okay.
- 24 A ---of year.
- 25 Q And, and is anyone here in the courtroom for you today?

Wesley Givens - Direct examination
by Mr. Hodge

- 1 A Yes, my mom, and my grandmother.
- 2 Q Were you working anywhere back in 2016?
- 3 A 2016, no, I wasn't working.
- 4 Q Okay. Have you previously held a job?
- 5 A Yes.
- 6 Q What did you do?
- 7 A A barber, forklift operator.
- 8 Q Okay. Do you know Tiffany Green?
- 9 A Yes, sir.
- 10 Q How did you meet Tiffany?
- 11 A Well, Ms. -- I knew Tiffany from elementary school, but
- 12 we started dating back in 2012. I worked at the gas
- 13 station. When I first started having seizures since 2010
- 14 and '11, and she would always try to give me her number. I
- 15 never called. So, her cousin, he passed. He got killed in
- 16 a robbery, and, you know, she seen me at the Dollar General
- 17 one day, and she gave me her number, and I called her. So,
- 18 we went out to eat lunch one day, and she was finalizing her
- 19 divorce. And, from there, we just started dating.
- 20 Q Okay. Now, you, you said when you first started having
- 21 seizures.
- 22 Is, is there something medically wrong with you?
- 23 A Yes.
- 24 Q What do you -- what's wrong?
- 25 A I have epilepsy, chronic asthma, and high blood

1 pressure.

2 Q Okay. How long did you and Ms. Green date?

3 A I'd say about two years.

4 Q Two years?

5 A Yes.

6 Q Where did y'all live?

7 What, what area did y'all live in during that time?

8 A Well, it started off in The Summit. From The Summit to
9 Parklane Place Apartments. From Parklane Place Apartments,
10 to my grandmother's house in Orangeburg, and to West -- John
11 Wesley in Orangeburg in an apartment complex.

12 Q But -- so, it was in Orangeburg most of the time?

13 A Yes.

14 Q Okay. What years -- what range of years were you and
15 Tiffany together dating, boyfriend/girlfriend, whatever?

16 A 2012 until 2016.

17 Q Okay.

18 A It was off and on for like two years.

19 Q Okay. Did you ever live together?

20 A Yes, sir.

21 Q Where did y'all live when you lived together?

22 A In The Summit in Columbia, Parklane Place Apartments
23 for about two to three months, and in Orangeburg cause we
24 stayed together for about a year.

25 Q Were you living together in September of 2016?

Wesley Givens - Direct examination
by Mr. Hodge

1 A No, sir.

2 Q Okay. Describe your relationship with Ms. Green as
3 best you can.

4 A At first, when it started, it was -- it's pretty good,
5 and she's a real jealous person. She's real jealous, and we
6 have our ups and down. She was kind of like jealous of my
7 children's mom cause I have three of them. But the youngest
8 one is the one I was more closer to, and we get into a lot
9 of arguments about -- Tiarra is her name. We would get into
10 a lot of arguments about her, and I don't even -- that's it.

11 I mean I can't really explain because we'd be together
12 one day, and we're not together, and she'll call me back.
13 Well, she'll call me, continuously call me, and she was
14 telling me that, you know, her mom passed, and her father
15 was an alcoholic. So, she basically told me she needed me
16 cause she didn't have anyone. Her sister stayed in North
17 Carolina, and I was like more there cause she worked a lot
18 of hours during the day.

19 So, I was there for the children. I would get them
20 ready for school, get, get them back from school, do the
21 house chores, cleaning up, cooking, everything. I was like
22 an house husband while she did the majority of the work.

23 Q And this is -- is this her children or your children or
24 both?

25 A All hers.

1 Q When this incident allegedly occurred in September,
2 2016, September 28th, were y'all together at that time?

3 A No, sir.

4 Q Were y'all boyfriend/girlfriend, dating, or anything at
5 that time?

6 A No, we wasn't dating.

7 Q What was going on in the relationship at that time?

8 A Like a month ago, we had had an incident that had
9 transpired, and I left due to the fact, you know, we got
10 into it over my baby moms, and I was back friends with
11 Tiarra. We got back on good terms basically, and I was at
12 my grandmother house staying, and that's -- Tiffany would
13 call. She would call me at Georgia (phonetic) at the time
14 and ask what I had going on, was I coming back home. And
15 she would throw my clothes out today, and then, tomorrow,
16 she would be asking me to come right back. That's -- it was
17 real rocky. That's all I could say.

18 Q And that was during the month or so between August and
19 September that, that you're referring to?

20 A Yes, sir.

21 Q Okay. And so, during that month, Tiffany would talk to
22 you?

23 A Yes, sir.

24 Q And y'all communicated with each other?

25 A Yes, sir.

Wesley Givens - Direct examination
by Mr. Hodge

1 Q Let's go to September 28th --

2 A Yes, sir.

3 Q -- 2016.

4 Do you remember that day?

5 A Yes, sir.

6 Q Well, let's -- I tell you what. Let's take one step
7 back to the 22nd.

8 Did you make contact with Tiffany Green on the 27th?

9 A Yes, I did.

10 Q For what purpose?

11 A I asked her could she take me to Columbia cause I had a
12 disability hearing -- social ability -- disability to get
13 social for my --.

14 Q Okay. And did she agree to take you?

15 A Yes, she granted to, to get around and be around, be
16 around to be part of the family mainly cause she really
17 didn't have family like that.

18 Q Okay. When was the next time, if at all, that you saw
19 Tiffany Green?

20 A The next morning, about 4:30.

21 Q What happened at 4:30?

22 A She came and picked me up from my grandmother's house.

23 Q What was she driving?

24 A A Grand Marquis. Tinted windows.

25 Q Is it that car?

- 1 A Yes, sir.
- 2 Q And she picked you up in that car?
- 3 A Yes, sir.
- 4 Q Where did you go?
- 5 A To Columbia to her job. Murphy's U.S.A.
- 6 Q Do you remember what time you got there?
- 7 A It's about 5:15.
- 8 Q Anything happens on the ride up to Murphy's?
- 9 A No, I mean she drove. I was in the passenger side. I
- 10 dozed off the majority of the time.
- 11 Q Okay.
- 12 A Tiffany is a bad driver for one. I, I will tell you
- 13 that. So, if she hit a bump, I come back and conscious and
- 14 ask her what was going on---
- 15 Q Okay.
- 16 A ---for the majority of the part cause, the previous job
- 17 that she had when I first met up with her, I'm going back a
- 18 little bit, she was working at Murphy's and Wal-Mart, and
- 19 she would fall asleep on the road, and I started taking her
- 20 to work, and back at, at that time. But I would have the
- 21 car and drive more than she would.
- 22 Q Okay.
- 23 A And this particular morning she drove because, as I
- 24 stated, I was with my grandma -- at my grandmother's house.
- 25 I wasn't with her.

Wesley Givens - Direct examination
by Mr. Hodge

1 Q And so you say you dozed on and off during the ride to
2 the gas station that morning?

3 A Yes.

4 Q Was there any arguments during that ride there?

5 A Not at all.

6 Q Did you have any altercations or anything with her
7 during that ride?

8 A Not at all.

9 Q What happened once she got to Murphy's?

10 A When she got to Murphy's, she pulled up in front of the
11 store as she always do. When she go to the store, she
12 always pull up in front instead of going to the side for
13 security purposes I guess. She got out, went inside the
14 store, cause the pumps usually come on at 5:30. She told me
15 they would come on at 5:30, but they couldn't open the store
16 until 6:00.

17 So, she went in the store. I sat in the car for a
18 little while. At that particular time, I know I went to
19 Wal-Mart at first cause I was hungry. I went to Wal-Mart in
20 the same car. Went to Wal-Mart, went to Wal-Mart. Got her
21 a bag of chips and a ready made salad out the deli, and I
22 went back to Wal-Mart. I mean, excuse me, I went back to
23 Murphy's, and sat in the parking lot, and ate my food.

24 Q Okay. And I'm gonna show you this map.

25 Is this the Murphy's that you're -- this is where the

1 Murphy's is?

2 A Yes, sir.

3 Q Where is Wal-Mart in -- sorry.

4 Where is Wal-Mart in relation to this Murphy's?

5 A Okay.

6 Q Is it down here somewhere?

7 A I can't---

8 Q So here's the Lowe's, and here's the Murphy's.

9 A Wal-Mart would be back this way.

10 Q Right in here somewhere?

11 A Yes.

12 Q Right down here.

13 Is this Wal-Mart parking lot near right here?

14 A Yes, it is.

15 Q All right. So, you drove her car to Wal-Mart?

16 A Yes, I had possession of the car more than she did
17 cause she would always be at work.

18 Q Okay. And so this particular morning you had the keys
19 I assume?

20 A Yes.

21 Q And drove down?

22 A Yes.

23 Q All right. Did you go anywhere else?

24 A I sat in the parking lot for a while, and her coworker
25 came. I witness her co-worker pull up. She came, I guess,

Wesley Givens - Direct examination
by Mr. Hodge

1 between 5:30 and 6:00 I would say. I don't know the exact
2 time. She said -- cause this wasn't gonna be a full day say
3 works. She said she had to go do some of -- a, a few
4 things, and she was leaving early, and he would take me to
5 the disability place.

6 I left there. Once I left, I left from the job. I did
7 go to Burger King. Sat in Burger King, ate a meal cause I'm
8 a real hungry person. The salad didn't really do justice
9 with the chips. I didn't -- I just sat there for a while,
10 and then I came back to the store. Me and Tiffany -- I
11 knocked on the door. We talked for a while.

12 Q Okay.

13 A I say about 10 or 15 minutes.

14 Q And, and you say you knocked on the door.

15 You knocked on the door of that kiosk?

16 A It's the storage cause it's another room where she go
17 get like sodas and everything to put into a machine, and she
18 would transfer some of this stuff to bring to that other
19 open scene. It -- she calls it the cigarette room. I
20 knocked on the cigarette room door.

21 Q I'm gonna show you what's been entered as Defense
22 Exhibit 1.

23 Which door are you referring to?

24 A This one in the middle.

25 Q The one in the middle.

1 A Next to the bathroom. Next to the office door.

2 Q So, you knocked on that door?

3 A Yes, she had it opened.

4 Q Okay. And you and her had a conversation?

5 A Yes.

6 Q All right. At some point, did you and Tiffany ever get
7 back in the car together?

8 A Not until later that -- probably -- well, as I stated,
9 I left, and, when I came back, I pulled in front the tree.
10 It's a tree out there in front, a little bush, when she will
11 park the car sometimes. And, when I did pull up, she told
12 me to come pull up in front the store, which I always do, so
13 she can make the money deposit, bank deposit. And I pulled
14 in front the store. I guess that would be -- I always
15 called it Pump 1, but it's -- I found out that it's Pump 4.

16 Q Okay.

17 A And she went side the store, came back out, and got in
18 with me.

19 Q So, you pulled the car up at Pump 4?

20 A Yes, sir.

21 Q And she got in the car?

22 A She got in on the driver's side. I got -- I was on the
23 passenger side cause, when she go to the bank, she would
24 pull up to the window. She'll go around and pull up to the
25 window. She would have the deposit key, but if bank's open,

Wesley Givens - Direct examination
by Mr. Hodge

1 she will go to the window.

2 Q Okay. Once she got in the car, where did y'all go from
3 there?

4 where did she drive you?

5 A Well, when we first got in the car, she stated that she
6 wanted to talk about our past relationship, and she asked
7 did -- was I in love with her. I told her no. For -- we
8 went to Sonics initially, and that's where we sat and
9 talked. We sat at Sonic's parking lot. She got a water,
10 went around Sonics. She got a water. We parked at the rear
11 of Sonics. Sat in there about 45 minutes.

12 During the conversation, she asked was I in love with
13 her. I told her I wasn't in love with her, but I did love
14 and care for her. So, she stated you about to get your lump
15 sum, you about to get your money, and now you don't want to
16 have nothing to do with me.

17 Q What, what do you mean get your lump sum, get your
18 money?

19 what, what was she referring to?

20 A I guess my disability.

21 Q Were you -- is, is that what your hearing was for is to
22 go get a check?

23 A To see about be approved for one, yes.

24 Q Right.

25 So, you didn't know if you were getting any money that

1 day, right?

2 A No, that, that was my first hearing.

3 Q Okay. All right. So, you had a conversation about
4 your relationship in Sonic.

5 Then where did she go?

6 A She received a phone call from an employee that worked
7 with her. It was a Caucasian white lady. Her mom stated
8 that she wanted to speak to her. So, she went back to the
9 job. We pulled in the parking lot, and she spoke with her a
10 few -- for about 15 minutes, but, during that conversation,
11 the lady stated her daughter had kidney stone removal, and
12 that she was under -- she was on some medication, that she
13 couldn't make it to work for a while. And Ms. Green stated
14 that it was okay, and, for the most part, that she can take
15 as much time as she needed.

16 Q Okay. So, she went back to the store. Still has the
17 deposit in the car. Haven't been to the bank yet.

18 Right?

19 A No.

20 Q Left Sonic. Went back to the store.

21 A Yes.

22 Q Where did she pull up when she came back to the
23 Murphy's to talk to this other person?

24 A If you had those pictures I could show you cause it's
25 like under --.

Wesley Givens - Direct examination
by Mr. Hodge

1 Q This is showing both sides of Murphy's. There's no
2 picture of the front I don't think.

3 A Well, it will be this back way cause it's like a little
4 sidewalk. If you had the bigger picture I could show you.

5 Q Okay.

6 A This -- I seen---

7 Q This one --

8 A Yes.

9 Q -- or this one?

10 A She pulled right here.

11 Q Okay. So, she pulled right there where the turn in is
12 to the Murphy's?

13 A Yes.

14 Q Okay. Now, after she's talked to this other employee
15 or employer's mom or employee's mom, whatever the case may
16 be, where did -- what happened next?

17 Did she get back in the car?

18 A We got in the car and she made like a left turn to go
19 towards Wal-Mart, and she stated -- she said Wesley, I'm not
20 letting you leave me. She stated just like she said I'm not
21 letting you leave me. You're the only person I have. I
22 don't have my sister. I don't have my mom whose passed, and
23 my dad is an alcoholic. I don't, I don't have no one to
24 take care of my family.

25 She said, you know, I need help. I be at work. She

1 said you the only person I have, and she took off going the
2 wrong -- she went around the parking lot twice in high speed
3 probably doing about -- I'm gonna say about 50, 55. At
4 first, I take it -- I was like Tiffany, don't do this.
5 Don't act crazy like this cause she has a real bad temper.
6 That's one thing that was never mentioned during this whole
7 trial. She has a real bad temper, and she's a very fisty
8 female. She grew up fighting, and I'm a more laid back type
9 person up until a point to where you push me.

10 But, anyway, she went around the parking lot, and I
11 asked could she slow down cause she know I had pending
12 charges in Orangeburg, and I was on probation due to a CDV
13 charge that I had for her, and she stated -- she said you
14 gonna die today, bitch. Those was her exact words. She
15 said you gonna die today, bitch, and I said no, this is all
16 nonsense. I said I don't want to be with you. You don't
17 want to be with me. Why don't you work a side relationship
18 with your husband, and she said you know David don't want to
19 be with me. And she went around the parking lot the second
20 time.

21 And this is when we got in front I'd said probably
22 Dollar Tree. I -- you know, I told her -- I was like you
23 know somebody that's gonna call the police cause it's a lot
24 of people out here. It's a good, a good bit of crowd of
25 people out there this particular day. And when she went to

1 make a right, she was still speeding. I'm talking about she
2 was really speeding speeding for this particular parking
3 lot. Only thing that really saved us for crashing into
4 anybody was those speed bumps that she would hit like boom.

5 So, when she went to make a right turn, she sped up.
6 She was like you gonna die today, bitch. So, she went to go
7 running into -- she told me. She was like I'm gonna run you
8 into Ryan's.

9 So, at first, you know, I'm thinking that it's like
10 it's a nervous, but, at the same time, it's serious because
11 of where we're at, and due to the amount of people that's
12 out there. And I went to put my foot on the brakes. She
13 pushed my foot away. So, happily, I turned the ignition
14 back, threw the car in park. That's the only thing that
15 kept us from crashing into the building.

16 Q Okay. At any point prior to that, had you reached over
17 and tried to take this deposit bag that she says was next to
18 her?

19 A No, the deposit bag was never on my mind.

20 Q Had you ridden with her before to deposit money?

21 A Over 30 times.

22 Q So, I think we've now arrived at in front of the Ryan's
23 where the car is bogged down there.

24 A Yes, sir.

25 Q Your testimony was you jerked the keys out, tried to

1 throw it in park, and that's the only reason you stopped?

2 A Yes, I mean---

3 Q Right.

4 A ---it was basically like the Flintstone motion of it.
5 Old Flintstone cartoon. I had the -- I had one foot -- it
6 was -- when I did that move to push the car in gear, I was
7 at the point like I wasn't trying to run into no building
8 with this, and I had half of the door opened, but she had
9 done grabbed me and popped my chain with trying to keep me
10 cause I told her I was like you're dying by yourself. I'm
11 getting out the car, and she grabbed my chain, and I had
12 half of my foot out the door basically trying to, in my
13 mind, trying to slow the car down with my foot, you know,
14 which I couldn't do it.

15 Q Okay. So, you were, you were opening the door trying
16 to get out?

17 A Yeah.

18 Q And she, she grabbed you?

19 A She grabbed me around my shirt. I had on a button up
20 shirt kind of like this, Levi shirt, polka dot shirt with a
21 nice chain on, silver chain. I was just dressed for a
22 hearing, you know, casual like.

23 Q Okay. And did you proceed to try to get out of the car
24 once it was stopped?

25 A Yes, I tried to get out. I told her -- cause I knew,

Wesley Givens - Direct examination
by Mr. Hodge

1 you know, that someone was gonna call the police. You
2 and -- for one, the area you're in.

3 Okay. And I wanted to get out the car to be a ride
4 cause she was acting real belligerent, and I mean just
5 crazy. She was acting crazy. She was like you're not gonna
6 leave me, you're not gonna leave me. So, when I went to get
7 out of the car, like she clamped on to me to keep me from
8 getting out the car, and she popped my chain. And, as she
9 crawled over the seat, got out. The next thing I know I
10 just turned around and hit her. I did hit her. I'm gonna
11 admit that. I did hit her.

12 Q Was she -- did you hit her in response to anything?

13 A Yes, I hit her in response to her hitting me. She was
14 attacking me. And, as she was attacking me, she stated
15 you're going to jail. That's what she kept saying, you're
16 going to jail. I told her, I said, Tiffany, get off me.
17 You know I have choice. She said well, you be going to jail
18 today. That's it.

19 Q And I believe the State's already entered into
20 evidence, but that happened to you before, right?

21 She had called the cops on you before, right?

22 A Numerous times. We would get into arguments. She
23 would call the cops, and the same night I'd be right back.
24 Foolish on me.

25 Q At some point did you, did you leave the scene?

1 A Yes, I did.

2 Q Why did you leave?

3 A It wasn't for doing anything wrong. It was basically
4 for wanting to be from around her, and trying to clear my
5 head up, and I guess not really wanting to go to jail at the
6 moment.

7 Q When you left cause you didn't want to go to jail cause
8 she had called on before you, on before you, and you knew
9 what was gonna happen now, did you take anything with you?

10 A No, I didn't. I, I seen -- actually, in -- when I got
11 out the car and we passed licks cause she hit me probably
12 twice, and I hit her probably two to three times, I seen a,
13 a white truck, which was Ms. Roush I later found out, she
14 stopped and she looked, and she seen the altercation, and I
15 seen her pick up her phone. So, I just took off walking.

16 Q Okay.

17 A And I walked around, went across the street in the
18 parking lot in Lowe's.

19 Q Did you take any money with you?

20 A No.

21 Q What did you have in your possession that morning when
22 she picked you up?

23 A A manila envelope with my legal materials. All my
24 Social Security stuff in it.

25 Q What did you have that for?

Wesley Givens - Direct examination
by Mr. Hodge

1 A For Social Security.

2 Q Okay. Cause you had a hearing?

3 A Yes, sir.

4 Q Did you have a knife in that envelope?

5 A No, sir.

6 Q Did you plan on taking a knife to your hearing with
7 you?

8 A No.

9 Q Did you put a knife in a black plastic bag?

10 A No, sir.

11 Q Did you ever pull out a plastic bag with a knife in it?

12 A No, sir.

13 Q Did you ever threaten Ms. Green with a knife?

14 A No, sir.

15 Q Did you ever tell her you had a knife?

16 A No, sir.

17 Q When you left the scene after seeing someone on the
18 phone, did you leave a knife behind?

19 A No, sir, I never had possession of any knives to leave
20 anything.

21 Q After that, did you ever find out, realize that law
22 enforcement had, in fact, been called?

23 A I, I mean it's, it's -- you can know they been called
24 cause an incident took place. Somebody would have called
25 them. I mean I saw Ms. Roush on the phone. So, it's

1 obvious that they called. But, like I said, I left and I
2 walked off, and, later on, I found out, when I spoke to my
3 grandma, that Tiffany called her and said that we been, we
4 been into an incident, incident, a fight incident, and she
5 was at the hospital. So --.

6 Q And so you didn't talk to any law enforcement regarding
7 these cases?

8 A I never did.

9 Q You never talked to any law enforcement about this
10 case?

11 A No way. Not until the day I was arrested. The U.S.
12 Marshal came and picked me up.

13 Q Okay. But you've never given a statement in this case,
14 right?

15 A No, sir, no one never came and spoke to me.

16 Q I'm gonna ask you a few uncomfortable questions now --

17 A Yes, sir.

18 Q -- Wesley, if that's okay.

19 Have you ever been in trouble before?

20 A Yes, sir.

21 Q Now, we've, we've heard the, the two criminal domestic
22 violence charges that are already into evidence, right?

23 We know about those, right?

24 A Yes, sir.

25 Q Did you go to trial on those?

Wesley Givens - Direct examination
by Mr. Hodge

- 1 A No, sir.
- 2 Q Did you plead guilty to those?
- 3 A Yes, sir.
- 4 Q Have you also, some 15 years ago, 2003, longer than 15
- 5 years ago, were you convicted of a grand larceny and a
- 6 burglary second?
- 7 A Yes, sir.
- 8 Q Did you go to trial on those charges?
- 9 A No, sir.
- 10 Q Plead guilty to those charges?
- 11 A Yes, sir.
- 12 Q Did you serve time on them?
- 13 A Six years and ten months I served.
- 14 Q In 2013, were you convicted of a forgery?
- 15 A Yes, sir.
- 16 Q Did you do any time on that one?
- 17 A No, sir.
- 18 Q Did you plead guilty on that one?
- 19 A Yes, sir.
- 20 Q In 2015, were you convicted of a breaking into auto
- 21 tanks where fuel is stored?
- 22 A Yes, sir.
- 23 Q Did you plead guilty on that one?
- 24 A Yes, sir.
- 25 Q Did you serve time on that one?

1 A Yes, 21 days actually.

2 Q And then, in 2016, I believe it was 2016, it's
3 admissible -- from my memory.

4 So, have you pled guilty to a grand larceny?

5 I think it was actually this year that I have, 2018,
6 that you pled guilty.

7 Is that right?

8 A Yes, I went to court in Orangeburg.

9 Q Okay. And you, you pled guilty to that charge, right?

10 A Yes, I actually pled guilty to that charge, and the two
11 domestic violence that was recently brought up.

12 Q All at the same time?

13 A Yes, they were -- they were all together.

14 Q Okay.

15 A I got sentenced today -- the same day on those charges.

16 Q Does the fact that you have that history that you've
17 been and pled guilty to those charges, does that affect your
18 testimony today?

19 A No, sir, I have no reason to lie.

20 Q Are you telling the truth today?

21 A Yes, I am.

22 Q You swore an oath to tell the truth, right?

23 A Yes, I did.

24 Q And you're telling the truth today --

25 A Yes, sir.

Wesley Givens - Direct examination
by Mr. Hodge

1 Q -- to what happened September 28th, 2016?

2 A Yes, sir.

3 Q Have you ever met Anitra Smith?

4 A No, sir.

5 Q You ever seen her before today?

6 A I -- today was the first day I've seen her, yes.

7 Q Okay.

8 A I've never seen her before.

9 Q Okay. Did you tell her what to say?

10 A I don't know her. Never spoke to her.

11 MR. HODGE: Okay. Can I have just a moment?

12 (Pause.)

13 Q Then one thing I think I -- I might of asked you this,
14 but I want to make sure. I didn't have it checked off.

15 when you left after the fight at the Ryan's, did you
16 take any money with you?

17 A No, sir.

18 Q At any point did you steal any money from Tiffany or---

19 A No, sir.

20 Q Did you steal any money from Murphy's U.S.A.?

21 A No, sir.

22 Q And you testified that you had been there on multiple
23 deposit runs with her?

24 A Numerous. A lot. A whole lot.

25 Q When you went to the, the bank or, or the Sonic I guess

1 after she walked out with the deposit, you went to Sonic,
2 and went to these places, at any point did you force Tiffany
3 Green into that vehicle?

4 A No, sir, she got in there at her own will. She went
5 everywhere she wanted to go. She asked me -- stated that
6 she wanted to talk knowing she's suppose to take the
7 deposit, but that's where she said she was going at first,
8 but we ended up at Sonics.

9 Q To any---

10 A That's all.

11 Q Sorry.

12 At any point did you restrain her or prevent her from
13 getting out of the vehicle?

14 A No, sir.

15 Q I don't have any further questions. Thank you, wesley.

16 THE COURT: Cross-examination.

17 SOLICITOR CATHCART: Please the Court.

18 CROSS-EXAMINATION

19 BY SOLICITOR CATHCART:

20 Q Let's talk about allegedly.

21 You were there, right?

22 A Was in where?

23 Q At Murphy's.

24 You were there?

25 A Yes, sir.

Wesley Givens - Cross-examination
by Sol. Cathcart

1 Q So, the camera angles, and all that stuff that we've
2 talked about the past two days, you were there, right?

3 A At Murphy's, yes.

4 Q Yeah.

5 You were at her car in the parking lot where the
6 cameras don't show you, right?

7 A The cameras don't show me?

8 Q Right.

9 You can't see where she was parked where you said you
10 were standing on the video cameras at Murphy's, correct?

11 A The camera do show you everywhere.

12 Q They show you everywhere in the wal-Mart parking lot?

13 A That wasn't wal-Mart parking lot.

14 Q So, when the testimony that, that shows the pumps and
15 the inside, that's not correct, they show everywhere?

16 You know that about Murphy's, right?

17 Is that what you're saying now?

18 A What I'm saying is I was there where the cameras could
19 have seen me.

20 Q You knew the cameras could see you from where you were
21 standing?

22 A Everywhere I was, yes.

23 Q They would see you wherever you moved?

24 A Yes.

25 Q Cool.

1 And so, when she said that she saw you out by the car
2 in the other parking lot, the camera's watching you there,
3 right?

4 A Yes.

5 Q Okay.

6 A Those cameras can see you, but no one ever took
7 initiative to actually look at them.

8 Q And when she said that -- you said that you drove the
9 car up---

10 A To the pumps.

11 Q ---she didn't see you, but the camera's watching you,
12 right?

13 A She did see me. The camera saw me, yes.

14 Q She just testified just right before you, and said she
15 did not see you in the car where the -- she said it pulled
16 up?

17 You pulled up---

18 A She said she saw---

19 Q ---and then she got out. You got the passenger side.

20 A She said she didn't see me. She saw --.

21 Q But she did see you?

22 A ---the car pull up. That's what she stated.

23 Q She did?

24 Okay. And then -- and you now say that y'all came back
25 there?

Wesley Givens - Cross-examination
by Sol. Cathcart

1 A Yes, sir.

2 Q And talked to this new woman about some kid with kidney
3 stones?

4 A She's not new. It's one of her employees.

5 Q And you were -- she did -- she, of course, saw you
6 then, and the cameras saw you then too because you were
7 there, right?

8 A Yes.

9 Q And you talked to her too?

10 A Never spoke her.

11 Q Didn't see her?

12 I mean it's a kiosk. It's not that big of a place.

13 She saw you though, didn't she?

14 A You have to ask her that, sir.

15 Q She said she didn't see you before, again, that time.
16 She didn't see you in the car. She -- the only time she
17 said she ever saw you was out by the car where cameras don't
18 show you?

19 A That morning, yes.

20 Q Is that right?

21 A That morning, yes. She said she didn't see me when the
22 car pull up. She couldn't see who was in the car cause she
23 didn't see.

24 Q You lived with her?

25 You admit that y'all cohabitated before, correct?

- 1 A who is her?
- 2 Q I'm sorry?
- 3 A who is her?
- 4 Q Oh, I'm sorry. Tiffany.
- 5 A Yes.
- 6 Q The woman you beat. That's who I'll be talking to --
- 7 talking about.
- 8 Okay. You lived with her, correct, cohabitated?
- 9 A Yes.
- 10 Q In fact, y'all cohabitated in 2016, didn't you?
- 11 A Yes, sir.
- 12 Q And when you said she called the cops on you in 2016,
- 13 that's what you said you were worried about now cause she's
- 14 gonna call the cops on you again, that's your way of talking
- 15 about how you were convicted those two prior times of
- 16 beating her, correct?
- 17 A I didn't beat her.
- 18 Q You were convicted, correct?
- 19 A You can have an argument and get convicted of criminal
- 20 domestic violence.
- 21 Q Is that what happened here today on the, on the date
- 22 this occurred?
- 23 You're just having an argument, and you thought that
- 24 you were gonna get convicted?
- 25 A We was -- a fist fight. We got in -- we was hitting

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1 each other. So, it was basically like I was defending
2 myself.

3 Q You were defending yourself while Ms. Morris saw you
4 punching her while she was driving in front of the Dollar
5 Tree---

6 A It's what---

7 Q ---when she was driving the car?

8 A I don't know Ms. Moore (sic).

9 Q One of the women who called 9-1-1-1 (sic). In fact,
10 the one you referenced when you said oh, that's when she
11 started driving really crazy in front of the Dollar Tree.

12 A Is that the lady that state she seen a fist fight, Ms.
13 Moore (sic)?

14 Q She said that she saw you pummeling the driver.

15 A She stated she seen two people hitting each other.

16 Q After she tried to wreck into a building to stop you
17 from beating her.

18 So, you didn't have a job in 2016, right?

19 A No, sir.

20 Q Not on disability yet, correct?

21 A No, sir.

22 Q And you were living with her, correct?

23 A Up until probably like August some time.

24 Q August some time.

25 A Yes.

1 Q When something happened, and you moved out. In fact,
2 she moved you out.

3 Took your stuff to your grandma's house, right?

4 A Yes.

5 Q Stopped paying for you. Stopped paying for you. I
6 mean you were living on something. She's taking care of her
7 kids, taking care of herself, taking care of her grandkids,
8 and taking care of you until August when she put you out,
9 correct?

10 A No, it's not correct. I wasn't living off her.

11 Q You were living on the barter system?

12 A No, I have a mom that's a captain with EMS. I have
13 other family members. I did cut hair on the side. I
14 mean -- besides, I didn't really need much. I sat at -- I
15 took care of her kids.

16 Q That's---

17 A I, I took them---

18 Q ---cause you were living at her house, right?

19 A I took them to school. I did they homework. I cooked,
20 cleaned. So --.

21 Q You need her?

22 A No, I didn't.

23 Q She had work. She took care of her kids, grandkids,
24 and, when she kicked you out, you kept calling her?

25 A No, I did not.

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1 Q You finally told her that you've left her alone if she
2 just did this one more thing for you?

3 A No, I did not.

4 Q So, in your testimony, y'all left at 4:30 out of
5 Orangeburg, correct?

6 A Yes.

7 Q And got to her place of business at 5:30, correct?

8 A 5:15 I'd say.

9 Q 5:15. My apologies.

10 And, in that time in-between 5:15 and 5:30 when she
11 showed up, and this time I mean the witness for you, you've
12 gone to two separate places to eat?

13 Wal-Mart?

14 A Yes.

15 Q You got yourself filled up. Then you were still kind
16 of hungry.

17 What did you get at Wal-Mart?

18 A A salad, a bag of chips.

19 Q Okay. Nothing to drink?

20 A No, sir.

21 Q Okay. Dry salad, bag of chips, and then you went to --
22 back to -- you had -- you didn't walk there. You drove the
23 car is what you're telling us.

24 A I drove that same Mercury Grand Marquis that I always
25 drive.

- 1 Q What year is that Mercury?
- 2 A 2006 if I'm correct.
- 3 Q Okay.
- 4 A It's the same car I took to get the windows tinted to
- 5 five percent with the tint window.
- 6 Q Okay. It's 2006 you say?
- 7 A Yes.
- 8 Q Okay. With air bags, of course?
- 9 A Excuse me?
- 10 Q With air bags, right?
- 11 A With air bags?
- 12 Q Air bags, yes.
- 13 A Yes.
- 14 Q Yes.
- 15 A I imagine so.
- 16 Q Drove back over to the Wal-Mart. And then you drove it
- 17 over to Burger King after you came back first, and went over
- 18 to the Burger King, and what did you get there?
- 19 A I went to Wal-Mart, got a salad, got a chip.
- 20 Q Okay.
- 21 A Went to the car. I stayed there for a while. Knew it
- 22 was gonna be a while cause she said that she wasn't gonna
- 23 leave until after she had to do some work. Sat there for --
- 24 in the parking lot for a while. I went to Burger King, sat
- 25 in Burger King, got a newspaper, and I sat in there, and ate

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1 the sausage biscuit, and orange juice that I always get.

2 Q Okay. And how, how long is a while?

3 I'm lost here.

4 A How long is the while that I sat there?

5 Q You got there at 5:15, Wal-Mart, sat at the place for a
6 while, then you went to Burger King, hung out there for a
7 while.

8 A Yeah.

9 Q How long is a while?

10 An hour.

11 A Probably a little longer than that.

12 Q So, hour and a half, two hours?

13 A I'd say about hour and a half, yes.

14 Q So, about getting close to 7:00.

15 So then when you go back, and that's where you meet
16 her, correct?

17 A I never met her.

18 Q You never saw her?

19 A No, not until today.

20 Q She didn't -- so, she didn't see you at the car when
21 she pulled up?

22 A She probably saw me. I ain't see her.

23 Q And in an empty parking lot at 5:30 in the morning, a
24 person who's walking into this same store that you're at.

25 A See, what you have to remember, that parking -- that's

1 a Wal-Mart. Entrance is a busy center. So, it's just not
2 empty. You have trucks parked out there. You have a
3 homeless van that be parked out there. It's numerous cars
4 that be parked in that parking lot. We have numerous people
5 walking in that parking lot. Homeless people. You have
6 homeless people that stay behind that actual village in that
7 plaza. So --.

8 Q So, you're not paying attention to what's around you?

9 A I know because I went there for over two years.

10 Q While she's taking care of you?

11 A While she's taking care of me, no.

12 Q Yeah.

13 I mean you're living at her house?

14 A No. If anything, I took care of her. I brought
15 civilization to that home.

16 Q Really?

17 A Yes.

18 Q That's the civilized -- civilization that you brought
19 to the home?

20 A I mean you have a wife right, sir?

21 Q I'm sorry?

22 A Do you have a wife?

23 Q I had one.

24 A Do y'all have disputes?

25 Q I've never hit my wife.

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1 A Do y'all have disputes?

2 Q Absolutely.

3 A Have she ever called the cops on you?

4 Q No.

5 A That's the only reason you don't have a CDV, sir.

6 Q You said that, as you were driving up with her, you
7 fell asleep off and on?

8 A Yes, on the---

9 Q On the way up, right?

10 A Yes.

11 Q She's a bad driver. She nods off herself.

12 A At this particular day, I mean she'll -- they have the
13 things on the road to, if you gone over or not, it will make
14 little (witness makes noise) -- that noise.

15 Q So, that's, that's gonna be your early warning system
16 if she nodded off while you're sleeping in the car?

17 A It will bring me back to realization as to what's going
18 on, are you okay, yes.

19 Q And you -- your plan was, what you're telling us now,
20 is that you just gonna hang out there until she would get
21 permission, later on from this other white lady, to take you
22 to your hearing, and that we know you were going to cause
23 you left your appointment in the car?

24 A Get permission from what other white lady?

25 Q The person that says she can get off work.

1 A Another white lady?

2 I never heard of that.

3 Q I'm sorry. The lady -- you said that y'all went to
4 Sonic, leave Sonic, came back. She went in to get the time
5 off.

6 A The only white lady was ever brought up that I say that
7 day was her employee's mom that she went to speak to.

8 Q If I misheard, I apologize.

9 Y'all went -- she went back to get time off so she
10 could take you to the hearing, right?

11 A She didn't have to get time off. From my
12 understanding, she was already clocked out. She didn't have
13 to get permission. She's a manager.

14 Q She clocked off.

15 So, she can just leave when she wants to?

16 A No, if she does, I guess---

17 Q You never -- that's what she told you?

18 A I guess, if her relief is there, yes, I guess.

19 Q Okay. And that was after she had already gone with you
20 back there, excuse me, went outside, and asked you to pull
21 your car up or her car up, excuse me, her car up, and so she
22 can take out the bank bag, right?

23 A The question again?

24 Q I'm sorry. That was -- that did come out a little
25 confusing.

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by Sol. Cathcart

1 A Yes, sir.

2 Q After you went to the Burger King, and hung out for a
3 while, at some point, point she told you to come pull the
4 car up to Pump 4?

5 A When I arrived back at the station, I asked, which is
6 Murphy's Station, I asked her how long it was gonna be cause
7 I was planning on leaving again. I was gonna actually go to
8 the mall. She said no, pull up to the pump.

9 Q Okay. So, you went inside the store to ask her that?

10 A Did I go inside the store?

11 Q Or go to the store or go to the window and ask her
12 that.

13 A Why would I go to the window?

14 Q Well, did you yell it across the parking lot or how
15 much longer you gonna be?

16 A No.

17 Q How did you talk to her to find out how long you -- she
18 was gonna be so you could go off and do your own thing?

19 A If you would of seen the cameras, the camera seen us
20 talking, she -- basically we met. We met. She told me to
21 pull up to the pump so she can get the bank deposit and we
22 can leave.

23 Q Met where?

24 That's what I'm asking you.

25 A In Murphy's parking lot.