

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

RECEIVED
JUL 29 2019
SC Court of Appeals

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- 1 Q In Murphy's parking lot---
- 2 A Could you---
- 3 Q ---where you were sitting?
- 4 A Could you get the picture out?
- 5 I'll show you where we met at, sir.
- 6 Q I'm showing you State's Exhibit No. 16.
- 7 Is that the one you're talking about, the picture?
- 8 A We met right here. The same place she parked at before
- 9 she pulled up. Right there on that side of that curb.
- 10 Q Where she first pulled up within view of the kiosk,
- 11 correct?
- 12 A Within view of the kiosk?
- 13 Q Yes. I mean you're saying that---
- 14 A That's not---
- 15 Q ---where you met her was right where she could watch?
- 16 A Where she can see me?
- 17 Q Yeah.
- 18 A You have to ask her cause if she's serving customers,
- 19 and she's not paying attention, I mean that's just like you
- 20 looking here, and typing back here, or running the machine.
- 21 I'm not gonna be able to look back and see who's pulling up.
- 22 She don't have eyes in the back of her head. That's what
- 23 the cameras are for.
- 24 Q Okay. And then you got -- pulled up the car---
- 25 A Yes.

Wesley Givens - Cross-examination
by Sol. Cathcart

1 Q ---to right outside the kiosk where you were driving
2 it, correct?

3 A Yes.

4 Q You walked around the car. Got into the passenger
5 side.

6 A I never got---

7 Q But you did---

8 A I never got out of the car.

9 Q So you shimmied over the---

10 A I slid over the driver's seat.

11 Q Okay.

12 A Yes.

13 Q So, that explains why she didn't see you.

14 Is that what you're saying?

15 A I don't know. You just asked, did she see me.

16 Q Well, she -- we know she didn't see you. She told us
17 that.

18 And when she got back in the car with the bank bag, she
19 talked about how she can't do it without you?

20 A No, she didn't say that there. She said that once we
21 got to Sonic. She stated she needed to talk to me.

22 Q But she needed to get a water from the Sonic just
23 leaving the store that sells water, right?

24 A She ain't needed to get nothing. She just pulled up to
25 the window on her own and got a water. We pulled to the

1 rear.

2 Q To the rear of the Sonic?

3 A Yeah.

4 Q So, she got out of the car, and then went to go inside
5 the Sonic to get it?

6 A No, Sonic's have a window. You go around and park at
7 the rear.

8 Q Okay. And then just parked at the Sonic---

9 A Yeah.

10 Q ---for a while?

11 A Yes.

12 Q Okay. And then, at that point, she's had the bank bag
13 with her, right?

14 A The bank bag was in the middle of us I guess
15 regardless.

16 Q Okay.

17 A From my understanding, she always keep it in her book
18 bag.

19 Q So, you never even really saw the thing really?

20 A No.

21 Q Not a clue what's going on with the bank bag at all,
22 right?

23 A I know what she do. So, I mean it's---

24 Q But I mean it was in her satchel, and you weren't
25 messing with it?

Wesley Givens - Cross-examination
by Sol. Cathcart

1 A No.

2 Q And after y'all left the Sonic, that's when she started
3 talking that, if I can't have you, I'm gonna kill you?

4 A We couldn't even finish our conversation. She received
5 a phone call, as I stated earlier, to go back to the store.

6 Q Right.

7 A She spoke to an employee --

8 Q Okay. Well, that's where I got lost.

9 A -- or her employee's mom. Employee's mom. The same
10 white lady that you just tried to mention that---

11 Q Yeah. Okay.

12 A ---that's this---

13 Q That's what we're talking about white lady, yeah.
14 Okay.

15 A Yeah. She didn't get permission for her because she
16 don't work for Murphy's. That's her employee's mom. She
17 came and asked Tiffany could her daughter have the day, you
18 know, days off due to the fact that she---

19 Q Oh, oh, oh.

20 A ---was taking medicine. She had surgery for kidney
21 stones.

22 Q Okay. And so y'all were back at Murphy's doing this
23 again, right?

24 A Yes, which y'all should of saw on camera.

25 Q And so should she, right?

1 She was there?

2 A I don't know.

3 Q So, after y'all went back multiple times to Murphy's,
4 y'all got back in the car, and just started walking --
5 driving in the parking lot in circles?

6 A Well, after we left from speaking to the young lady,
7 Tiffany made a left, as I stated, and made that quick right
8 to go around the plaza, and she just started speeding up,
9 and acting real crazy.

10 Q So, from -- I'm pointing at State's Exhibit No. 22,
11 which is the blowup, and that's the Murphy's station. Y'all
12 leave that, start going this way, take this turn, and
13 in-between here and where the Ryan's is---

14 A Yes.

15 Q ---it's just crazy town?
16 Gotten real crazy?

17 A (Witness nods affirmatively.)

18 Q Just that one---

19 A Yes, sir, it did.

20 Q That one just straight drive or were y'all circling
21 around?

22 I thought I heard y'all talking about you were circling
23 around.

24 A We made two circles.

25 Q Two circles.

wesley Givens - Cross-examination
by Sol. Cathcart

1 A Two whole circles.

2 Q Circles.

3 A The second circle ended up in her -- to her almost
4 crashing into a Ryan's.

5 Q Okay. So, circle all the way out on Two Notch Road?

6 A Never touched Two Notch.

7 Q Y'all -- okay. So, circle -- I don't understand.
8 where's the circle?

9 A How you don't understand?

10 You just said we went right here in that plaza. We
11 never left the plaza for the---

12 Q That's a half a circle.

13 A That's -- further we went towards Two Notch we be
14 Sonics.

15 Q Okay. But you said you did two circles in the parking
16 lot, right?

17 A Yes.

18 Q Inside the parking lot right here?

19 A The same parking lot. That's a parking lot to me. A
20 plaza. That's what I consist of being a parking lot.

21 Q I'm not trying to argue with you. I'm just trying to
22 understand.

23 A That's what I consider to be a parking lot because it's
24 parking spaces for every car that's in that plaza.

25 Q So, 50 miles an hour?

1 A Probably almost up to 60 at that straight point right
2 there.

3 Q Going 60 down this?

4 A You, you got to understand that it's a Grand Marquis.
5 They have the same engines as Crown Victorias have with a --
6 with just a different suspension.

7 Q Uh-huh. (Affirmative).

8 Seventy miles an hour?

9 A Not 70.

10 Q I'm sorry?

11 A You just said 60, sir.

12 Q I thought you said it may be 70.

13 A It's 55. I said almost 60. I never said 70.

14 Q And you -- okay. Fifty-five to sixty, straight through
15 here, and y'all -- I assume she slowed down from the curve,
16 right?

17 A Straight through where?

18 Q All right. Here. All the way up to there. I don't
19 know. You tell me.

20 A I mean you have to -- you know, it's a---

21 Q You were there, man. Tell me.

22 A I mean I was in the car.

23 So, that's Ryan's, right?

24 Q Uh-huh. (Affirmative).

25 A Okay. So, she would come here.

Wesley Givens - Cross-examination
by Sol. Cathcart

1 Q So, this was---

2 A Right here.

3 Q ---about 10:30 in the morning.

4 Parking lot's full by this time---

5 A It was---

6 Q ---isn't it?

7 A It was after 10:30 actually when that was going on
8 cause you got to recall we went to Sonics---

9 Q Right. So---

10 A ---and we went back to the store.

11 Q 12:00'ish. Parking lot full of people.

12 People buying stuff, right?

13 A I guess.

14 Q She was going 70 miles an hour on two loops?

15 A No, I doubt if she was doing actually a whole 70 cause
16 the speed bumps slow you down a little.

17 Q In fact, you say---

18 A We got up to 60 almost at the straight point.

19 Q It seems like it's hilarious to you.

20 Hilarious are the things that---

21 A The first time, yes.

22 Q ---you're saying to us?

23 A The first time, before she started doing the really
24 crazy stuff and got up to 60, that's when I knew something
25 was really going on wrong with her.

1 Q So, how fast was she going the first time?

2 A Probably about---

3 Q The first lap.

4 A About 45.

5 Q Okay. Forty-five mile an hour first lap, and then she
6 pulled it up to 60 -- 55 to 60?

7 A Yeah.

8 Q Okay. Now you say 60.

9 A I reckon -- you know, when I looked, I was like -- when
10 I first seen her, I told her to slow down, and that's when I
11 looked, and I first seen it, it was like 45, 50 miles per
12 hour. But when we in the stretch in front of like Dollar
13 General, and I looked, I seen it reached -- she was at 60
14 right in front of Dollar General. That's went -- I said
15 well, I'll have to slow this car down myself cause it was
16 serious. It was -- acting crazy.

17 Q Okay. And as y'all passed Dollar General, when the eye
18 witness sees you pummeling her in the head, y'all are doing
19 55 to 60 miles an hour?

20 A So, an eye witness sees me pummeling her in her head at
21 50 to 60 miles per hour.

22 A car crashed when it was doing that, sir, cause, I
23 mean, when we got into our alter -- altercation, the car had
24 done stopped.

25 Q I show you State's brought -- Exhibit No. 14.

Wesley Givens - Cross-examination
by Sol. Cathcart

1 The car stopped after it went over a parking barrier,
2 correct?

3 A Yes.

4 Q It embedded itself into the ground, correct, digging
5 its tires still going toward the Ryan's?

6 A I mean I don't even think that the, the company -- the
7 wrecker company probably did that because I don't think it
8 had made that far. That's -- it look like they was trying
9 to attempt to actually get it out. I don't even think it
10 made it that far that -- at that time. So, that looks like,
11 when the fire department got---

12 Q You mean that far down or that far toward the Ryan's?

13 A That far toward the Ryan's. It brushed the bush cause
14 if you see the incident reported, it say brushed. So, it's
15 \$20.00 damage fee. So, it barely touched it.

16 Q So, you're saying that the fire department pushed the
17 car closer to the Ryan's?

18 A Could have been trying to get it out cause he said he
19 put in a mat under there. So, he was trying to get it out
20 to keep them from having to spend money.

21 Q The fire department made it get this close, and bury
22 the wheel off the sidewalk and off the pavement---

23 A It's a---

24 Q ---in this per -- in this---

25 A It's a possibility. I mean there was a lot going on at

1 the moment. She was trying to---

2 Q There was a lot going on. You were pummeling her in
3 the head.

4 A No, I wasn't.

5 Q She plowed into a curve.

6 That must of been kind of -- y'all were going pretty
7 fast at that point, right?

8 A When she did what?

9 Q When she popped that barrier or that little thing that
10 keeps you in your parking. This thing behind the car. It
11 went over that.

12 Right?

13 That's kind of a pop, isn't it?

14 A It probably did, yes. I, I don't remember any---

15 Q You were in the car.

16 A I don't remember that. The only thing I remember---

17 Q Cause you were busy?

18 A I was trying to stop the car because she was acting
19 belligerent and irate.

20 Q The only air bag that went off in that car?

21 A Did it?

22 Q The only air bag was the bag of money, right?

23 A I don't know. I never seen any money.

24 Q Never saw the money?

25 A No, sir.

Wesley Givens - Cross-examination
by Sol. Cathcart

1 Q The money was broken open. The money was going out the
2 car, but while you're trying to escape -- while you're
3 walking away. I'm sorry. It wasn't running away.

4 while you were walking away from the scene, just, you
5 know, clearing your head, you never saw the money?

6 A Did I see any monies running away from the scene?

7 Q My question was that from -- your testimony, you said
8 you walked away from the scene after you saw that lady on
9 the phone.

10 A Yes, sir.

11 Q And you never saw any money.

12 A Never saw---

13 Q So, there's nothing that happened with her driving
14 around a couple laps.

15 A See, you got to---

16 Q She didn't get the money out, and just rip it up in
17 your face saying this is what I think of you or something
18 like that?

19 A Earlier---

20 Q Did she?

21 A I mean earlier you stated that she stated and she
22 testified that she crawled over the seat, the money fell out
23 of the bag, and the moneybag ripped over, and that she had
24 to go back to, which is Murphy's. But, at this particular
25 point, she states that she crawled over the seat, and the

1 money fell out of the car, and Ms. Rob (sic) states she seen
2 the majority of the money in the car seat. Me having
3 anything to do with any money---

4 Q Yes, we're all here and we heard what they said, and
5 that's not exactly, not exactly what they said. I'm asking
6 you. You were there.

7 A I didn't see no money.

8 Q And you -- and from the point where it hit the wall,
9 not -- almost hit the wall, you tag her in the face a few
10 times in self-defense is what you're telling me, and walking
11 slowly away---

12 A Exactly---

13 Q ---just to clear your mind because that woman saw, you
14 know, our fight. Even though I'm a victim, I'm gonna get
15 out of this. Didn't see the moneybag open. Never saw her
16 open up the -- rip open the moneybag. Never saw money
17 traveling down behind you.

18 A No, sir.

19 Q You certainly, since you didn't see it, take over --
20 almost \$2,000 of it?

21 A No, sir.

22 Q Despite the eye witness who saw all this occur, and
23 helped gather back the money after you fled.

24 A You said help gather back?

25 Q Yes, sir.

Wesley Givens - Cross-examination
by Sol. Cathcart

1 A Why would I help gather back if I didn't---

2 Q I didn't say you. I'm sorry. I didn't mean to
3 interrupt you. I didn't say you helped. Actually you
4 didn't help at all. You fled the scene. Ms. Roush helped,
5 the nurse, who came here and testified before. She said she
6 saw you pounding her face like a man.

7 A Six people said that---

8 Q And you fled the scene when you saw her on the phone to
9 the police and ran.

10 A You had five to six people stating they helped, sir. I
11 mean -- but no one states that they seen me at the scene
12 with any money, taking any money, or any money on the scene
13 while I was there.

14 Q And when you, and when you were defending yourself, as
15 you tell the jury, getting her off of you, she was still
16 coming out of the car.

17 Couldn't get out of the driver's side, right?

18 A I imagine not cause she crawled over the seat.

19 Q Okay. You couldn't run away from her then?

20 She's faster then you?

21 A She climbed on to me and she grabbed my shirt, pulled
22 on the door. As I was pushing the door opened, she crawled
23 over the seat. Got out.

24 Q And---

25 A Tiffany is not slow at all.

1 Q ---you said she was gonna give you a man beat down is
2 what you're saying?

3 She was gonna beat you down?

4 A That she's gonna beat me down?

5 Q Uh-huh. (Affirmative).

6 A It could of been a possibility. She's a big female.
7 She's not small.

8 Q And you've lost a lot of weight today, haven't you---

9 A No.

10 Q ---since you've been here?

11 No?

12 A No, sir.

13 Q You still weigh 190?

14 A Never did weigh no 190.

15 Q Okay. And when you're getting off of her, she was
16 coming up to you, right?

17 You were punching her. Hitting her on the top of the
18 head I guess, right, cause she's hanging on to you?

19 A She was crawling out the car.

20 Q Back of the head, back of the neck, or what?

21 A She was crawling out of the car.

22 Q Okay.

23 A And, as she got in the car, she hit me. I hit her.

24 Q Okay. She was coming out of the car, and you hit her
25 in the back of the head---

Wesley Givens - Cross-examination
by Sol. Cathcart

1 A In the back of the head?

2 Q ---cause she was hanging onto you?

3 You said she's got you.

4 A She's got me. She got out. She was on her feet as the
5 car was---

6 Q She got up and she was like this now?

7 A Are you gonna let me finish speaking, sir?

8 Q I'm sorry. Please.

9 A As the caller stated that she seen two people hitting
10 each over. So, she was on her feet. She was actually on
11 her feet. That's what one of your witnesses testified to.
12 She was on her feet hitting me cause we were passing licks
13 back and forth. A domestic dispute.

14 Q which hands were you using to hit her with?

15 A Can't remember, sir.

16 Q Just a right-hand?

17 A Can't remember. I am right-handed though.

18 Q You don't remember defending yourself against this
19 woman who just tried to kill you. Thank goodness you were
20 able to stop the car in time, and you had to finish up --
21 you don't remember how you punched her?

22 A She not only tried to kill me, she tried to kill
23 herself. So, that's having -- a person not having --

24 Q So---

25 A -- any sense. So, I was defending myself, and, at that

1 time, as I stated, I was defending myself.

2 Q In defending yourself, you punched her multiple times
3 in the face, correct?

4 A I would -- I probably punched her two times, and I seen
5 Ms. Roush, as I stated, and I left.

6 Q Two times?

7 A Yes.

8 Q And those two punches that you hit her with, you caused
9 swelling, not only to this side of the face, but swelling to
10 this side of the face as well such that she thought she
11 broke her jaw?

12 You contacted two times, and those are the two times?

13 Those are only the two hits where each bruise accounts
14 for each punch?

15 That's---

16 A I can't---

17 Q Right?

18 A I mean I can't account for that.

19 Q But you left your bag in the car, correct?

20 A My bag?

21 Q Yeah, your bag. Your manila---

22 A Never had a bag.

23 Q Your manila envelope with your stuff in it, you left
24 that in the car?

25 A I had never had a bag. I had a manila envelope, yes.

Wesley Givens - Cross-examination
by Sol. Cathcart

1 Q I'm sorry. Manila, manila envelope.

2 You left that when you walked away?

3 A When I walked away?

4 Q Yeah.

5 A Yes, it, it was in the car on the back seat actually.

6 Q In the car in the back seat.

7 Not where you're sitting is what you're saying?

8 A No, sir.

9 Q Okay. And then you didn't have any of this
10 information -- didn't have any of their stuff, right?

11 A Well, what is that?

12 I mean I never ever looked at it to see if that's mine.

13 Q It's been marked State's Exhibit No. 24. Please
14 peruse.

15 A Okay. Thank you. Yes, sir, I didn't have any of this.

16 Q That is your stuff?

17 A Yes, sir, it's mine. Yes, it is.

18 Q That is your stuff?

19 A Yes, sir.

20 Q And State's Exhibit No. 25, that is your -- the
21 appointment to go there, correct?

22 A Yes, and my two telephone numbers in which one of my
23 phones Tiffany had cause hers broken at the time.

24 Q Okay. And your testimony today is that you went to
25 that hearing?

1 A I never made it there.

2 Q You never made it there?

3 A No, sir.

4 Q Okay.

5 A I mean that's what's written on the warrant there, I
6 forced her to go downtown, but we never even made it out of
7 the parking lot.

8 Q You will agree with me that punching a woman while
9 she's driving on a public road is reckless disregard for her
10 health and safety?

11 A I never punched a woman driving down a public road.

12 Q Would you agree with me that doing so is reckless?

13 A I would -- that would have to be up your -- I'm not,
14 I'm not a solicitor or a prosecutor. I mean I would say
15 it's dangerous, yes, to punch someone, anyone to be punched
16 at all driving. So, yes, it would be reckless and
17 dangerous.

18 Q That would put the person being punched while she's
19 driving in fear of great bodily injury or death, wouldn't
20 it?

21 A I don't know. I can't state. It depends on what
22 happened, the outcome. If it happens, it depends upon the
23 stated outcome of it.

24 Q And you'll agree with me also---

25 A I never agreed with you on that.

wesley Givens - Cross-examination
by Sol. Cathcart

1 Q I'm sorry?

2 A Let's get this correct. I never agreed with you on
3 that.

4 Q Okay. I'm sorry. Will you agree -- do you agree with
5 me that one of the elements of what you're facing here
6 today, unlike before, is the two prior convictions of the
7 domestic violence?

8 A Two prior convictions of domestic violence?

9 Q Yes, it's one of the elements that we would of had to
10 prove here today that you admitted to?

11 A That I have two prior convictions?

12 Q Yes, sir.

13 A Yes, I've, I've just pled to those in South Carolina
14 Court, you know, Orangeburg, South Carolina.

15 Q Okay.

16 A But I haven't seen a statute or anything stating that
17 about what -- I mean the elements or anything of that nature
18 since they changed in 2017.

19 Q Right.

20 In fact, when that happened, you didn't have two prior
21 convictions, correct?

22 A They were pending.

23 Q Right.

24 Now, it's you have them.

25 It's an element of what we're here today for, correct?

1 A And your point, sir?

2 Q Third time.

3 How about three strikes?

4 Third time. Worst then the first time. You're here
5 for something more serious because you have two or more
6 convictions of domestic violence.

7 A Of a person---

8 Q Right.

9 A ---defending hisself from a person -- from a female
10 trying to kill him. I never got a chance to speak to an
11 investigator as I requested several times. I actually
12 called Mr. Gonzales. He told me to call him back three to
13 five days cause he was working a murder case.

14 Q So, you have, you have---

15 A So, I attempted to press charges against---

16 Q You have -- I'm sorry.

17 A I attempted to press charges against Ms. Green on,
18 several, several occasions.

19 Q Ms. Green -- I'm sorry. I just, I just ask that you
20 ask -- answer questions if that's okay.

21 A I never got one from you.

22 Q Mr. Green (sic), you do have prior convictions of, as
23 the defense counsel pointed out, of burglary second, grand
24 larceny. Also a prior record of auto breaking. A prior
25 record of forgery.

Wesley Givens - Cross-examination
by Sol. Cathcart

1 Correct?

2 A Yes, I have a history of crimes, yes, I do.

3 Q Okay.

4 A But I didn't have a history---

5 Q So, you're---

6 A ---of CDV at all the time until I met Ms. Green, until
7 she repeatedly called.

8 Q And your duty -- and you have handled this knife
9 before, haven't you?

10 A Have I handled it?

11 Q Yeah, cause your DNA's on the knife.

12 A Yes, that's a knife that came out of me and her house.

13 Q You have?

14 A Her place. Me and her place. Our house. I paid bills
15 be.

16 Q But you've been out of that place for a month after she
17 kicked you out?

18 A Yes.

19 Q And she got the lucky chance of getting the one knife
20 with your DNA on it?

21 A It's not many knives and stuff that was in that house
22 to be honest.

23 Q Thank you.

24 A You welcome, sir.

25 THE COURT: Any redirect?

1 MR. HODGE: Briefly, Your Honor.

2 REDIRECT EXAMINATION

3 BY MR. HODGE:

4 Q Mr. Givens, there was a lot of questions asked of you
5 about your opinions on the law.

6 Are you a lawyer?

7 A No, sir, I -- no, I'm not.

8 Q You're an educated man though, right?

9 A Yes, sir.

10 Q Okay. Are you indicted for criminal domestic violence
11 in the first degree?

12 A No, sir.

13 Q What are you indicted for?

14 A Criminal domestic violence of a high and aggravated
15 nature.

16 Q And are two prior convictions an element of that crime?
17 Do you know?

18 A No, sir.

19 Q Okay. Do those two prior convictions mean that you did
20 it again?

21 A No, sir.

22 Q Now, you, you had some questions about pummeling or
23 punching someone in the head, and I think part of that was
24 Ms. Morris testified that you were -- she saw you punching
25 her in the head.

Wesley Givens - Redirect examination
by Mr. Hodge

1 Ms. Morris testified she saw a fight, right?

2 A Yes, sir.

3 Q Okay. Did you ever punch or strike Ms. Green while she
4 was driving a vehicle?

5 A No, sir.

6 Q Now, it was also asked just now if the fight that
7 occurred between you and Ms. Green if she was standing here
8 toe to toe with you like you were boxers.

9 Is that how it happened?

10 A No, sir, it wasn't like that.

11 Q I think you testified that she was hanging on to you,
12 right?

13 A Yes.

14 Q As you're trying to get out the car --

15 A Yes, sir.

16 Q -- she's trying to keep you from, from going anywhere?
17 She's holding you in?

18 A She told me I wasn't leaving. I wasn't leaving her.

19 Q She told you you were getting arrested?

20 A Yes.

21 Q Told you you were going to jail?

22 A Yes.

23 Q And she's holding you that whole time?

24 A Yes, trying to anyway. I was doing whatever I could to
25 get her off me.

1 Q And she popped your chain while she was trying to hold
2 you in, right?

3 A Popped my chain, my shirt.

4 Q Ripped your shirt?

5 A Yes.

6 Q Okay. And, as she's holding you, is that when you
7 struck her?

8 A I didn't struck her until she got out of the car until
9 like she was on basically one foot that I could recall, and
10 we like in front -- in the car door, and she, she hit me in
11 the back on the side, and I hit -- I struck her back.

12 Q So, she came out swinging?

13 A Yes, sir.

14 Q Okay. And this was after she had done a 40 and 50 mile
15 an hour circle around the parking lot telling you you were
16 gonna die?

17 A Almost 60, yes, sir. Never forget it.

18 Q All right. Real quick on these cameras that obviously
19 I've put a lot of questions in.

20 Did you ever go to Murphy's and ask them for
21 surveillance cameras?

22 A No, sir.

23 Q Is it your responsibility to go to Murphy's and ask for
24 surveillance cameras?

25 A No, sir.

1 Q Would you have been on those surveillance cameras if we
2 had them to show this jury?

3 A I should of been, yes, cause I was there.

4 Q You were in front of the store at some point?

5 A Yes.

6 Q You were beside the store at some point?

7 A Was I inside the store?

8 Q Beside the store.

9 A Yes, I -- when I -- I mean this particular morning,
10 when I first -- cause she drove up, and then I got out of
11 the car, and I had to go around the car to get in the
12 passenger seat. I mean the driver's seat. Excuse me.

13 Q Okay. And you knocked on the door to talk to her one
14 time?

15 A Yes, the cigarette room.

16 Q Okay. But we don't have video to show that, right?

17 A No, sir, requested it several times. You even
18 subpoenaed it. Never turned over.

19 Q You went to the Sonic, right?

20 A Yes, sir.

21 Q And I think you heard Ms. Green testify that y'all
22 pulled into the Sonic?

23 A Yes.

24 Q And I think she said she was trying to reason with you.
25 Is that right?

1 A Yes, sir.

2 Q Okay. Have you ever discovered and received any
3 surveillance cameras from Sonic?

4 A No, sir.

5 Q And the only person that you've heard testify that you
6 had a knife or took money is Tiffany Green, right?

7 A Yes, sir.

8 MR. HODGE: Nothing further, Your Honor.

9 THE COURT: Anything further?

10 SOLICITOR CATHCART: Just one thing, Your Honor.

11 RECROSS EXAMINATION

12 BY SOLICITOR CATHCART:

13 Q Y'all put up a case, right?

14 A Excuse me?

15 Q You're here on your case?

16 A Am I here on my case?

17 Q Yeah, you're putting up a case.

18 Did y'all go ask Sonic for the cameras?

19 A The State actually put up the case.

20 Q Did you ask Murphy for their cameras?

21 A That's not my duty. That's the investigators and
22 police. Y'all.

23 Q But you didn't ask them, did you?

24 A I mean it was subpoenaed.

25 SOLICITOR CATHCART: Okay. No further questions, Your

1 Honor.

2 THE COURT: You may step -- well, we're gonna have the
3 jury go to the jury room.

4 well, any additional witnesses?

5 MR. HODGE: I don't anticipate any, no, sir.

6 THE COURT: Any reply?

7 SOLICITOR CATHCART: No, Your Honor.

8 THE COURT: Now, the defense rests?

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

10 THE COURT: State rests?

11 SOLICITOR CATHCART: Yes, sir.

12 THE COURT: All right. Ladies and gentlemen, that's it
13 for the testimony. You've heard all of the testimony in the
14 case. We're gonna break one hour for lunch. You need to be
15 back at 2:15 for closing arguments. Please do not discuss
16 the case.

17 (WHEREUPON, the following takes place outside the
18 presence of the jury.)

19 THE COURT: You may step down.

20 (Witness complies.)

21 THE COURT: Any matters of law?

22 MR. HODGE: Your Honor, we just renew our previous
23 motions for directed verdict. Obviously, you've now heard
24 our side, Mr. Givens side. We renew all of our previous
25 motions.

1 THE COURT: All motions are denied.

2 MR. HODGE: Thank you.

3 THE COURT: Any discussion regarding jury charges or
4 request to charge including lesser included offenses?

5 MR. HODGE: Your Honor, as far as -- I emailed Ms. Reid
6 the DV first statute as well as a limiting instruction that
7 I just took from what's used in the burglary -- in the same
8 instances, and prior convictions are introduced for an
9 element of the lesser included offense in this particular
10 case. I submitted those last night or this morning or last
11 night. And strong armed robbery was already provided to Ms.
12 Reid from when I sent charges initially.

13 So, we would, we would ask that those charges be
14 submitted to the jury, and that have already been proposed
15 to the Court, Your Honor, and copied Mr. Hodge on.

16 THE COURT: All right. Mr. Hodge.

17 MR. HODGE: Your Honor, I, I reviewed the, the ones she
18 submitted I guess yesterday evening, domestic violence first
19 degree, and I appreciate -- as long as it has the limiting
20 language on it. I think that's the standard charge.

21 THE COURT: which lesser includeds do you want me to
22 charge?

23 MR. HODGE: Your Honor, I think I -- can I have a
24 moment to ask my client?

25 THE COURT: All right.

1 (Pause.)

2 THE COURT: Yes, sir.

3 MR. HODGE: All right. Your Honor, after speaking to
4 Mr. Givens, we would not ask that any lesser included be
5 charged.

6 THE COURT: Is that some kind of strategic reason?

7 MR. HODGE: Your Honor, he wants to stand on the
8 indictments as they are, and, and to leave that as it.

9 THE COURT: All right. Well, the State is
10 requesting---

11 MR. HODGE: Yes, sir.

12 THE COURT: ---assault and battery, domestic violence
13 first degree as a lesser included. So, based on the State's
14 motion, I'm gonna charge that because it is possible based
15 on the jury's view of the evidence.

16 MR. HODGE: I understand.

17 THE COURT: But with regard to, with regard to second
18 degree, third degree, assault and battery third degree,
19 there's no request to charge those things.

20 MR. HODGE: No, sir.

21 THE COURT: All right. Is that correct, Mr. -- or
22 they're pondering it.

23 Yes, ma'am.

24 SOLICITOR CAVANAUGH: Your Honor, we're discussing
25 whether a lesser included is, is charged to the jury. As

1 far as the armed robbery charge goes, the State is also
2 asking---

3 THE COURT: The Court's gonna charge strong armed
4 robbery whether -- based on the State's request, and the
5 evidence that he may or may not of had a weapon with him.

6 SOLICITOR CAVANAUGH: Thank you, Your Honor.

7 (Pause.)

8 THE COURT: All right. what's the deal?

9 MR. HODGE: Your Honor, I think, in talking to my
10 client, I think charging the domestic violence second or
11 third at any point being -- would automatically require
12 criminal domestic frist I believe based on the two prior
13 convictions. However, he has asked if you would charge the
14 assault and battery third degree, I guess or whatever it is,
15 the lesser included of, of those. It's not a household.

16 SOLICITOR CAVANAUGH: Your Honor, the State would
17 actually oppose the assault and battery in the third degree
18 charge because Mr. Givens himself has admitted that they
19 were household members and that they lived together being
20 that they lived together for a period of time. And so there
21 is no -- he has -- he's admitted to that aspect of it.

22 There is no evidence in the record that he's only
23 guilty of assault and battery in the third degree, which is
24 the standard to use when determining what charge -- what --
25 whether you charge a lesser included to the jury or not.

1 THE COURT: Domestic violence first degree requires the
2 attempt or attempted injury to a household member, and the
3 or attempting to cause circumstances which reasonably
4 created fear of imminent danger, and there are two prior --
5 that's, that's two priors -- and two, two or more prior
6 convictions that which is part of the testimony. It doesn't
7 seem to require any degree of injury. Just the domestic
8 violence where there -- it's a circumstance where it's a
9 third offense. Two or prior -- two or more priors.

10 So, he's acknowledging being a household member by
11 statute. The, the lower level of degrees, particularly
12 domestic violence third or assault and battery third,
13 they're the same as domestic violence first degree if he has
14 two or more. The elements are the same.

15 So, I don't -- so, I'm not gonna charge assault and
16 battery third degree, and I'm not gonna charge domestic
17 violence second or third degree since you don't want those
18 charged because it's not based on the level of harm. It's
19 based on the two prior, in part, based on two prior
20 offenses.

21 So -- all right. So, I'm not gonna charge it, third
22 degree.

23 what else?

24 SOLICITOR CAVANAUGH: Your Honor, I don't, I don't, I
25 don't believe I submitted a proposed charge for expert

1 witness, but we did have one expert witness.

2 THE COURT: Yeah, I'm not relying on you for
3 everything.

4 SOLICITOR CAVANAUGH: Okay. Thank you.

5 THE COURT: All right.

6 SOLICITOR CAVANAUGH: That's good.

7 THE COURT: Okay.

8 Yes, sir, Mr. Hodge.

9 MR. HODGE: I, I did submit one for the expert witness.
10 I think I just put in there the standard charge that you
11 normally give on that would be fine.

12 THE COURT: All right.

13 MR. HODGE: And then I had added in the objections
14 charges. Just standard objections charge.

15 THE COURT: Standard which charge?

16 MR. HODGE: The charge -- I believe it's the last one
17 that I had, had written up basically instructing the jury
18 any objections I made to not put -- hold against my client,
19 and then I'm just doing my job basically. I think it's 114
20 of Judge Anderson's.

21 THE COURT: We don't use Judge Anderson's.

22 MR. HODGE: Yes, sir, and that's just how I -- that's
23 what the records I had on my computer, but it's -- I had
24 certainly -- I have a hard time -- I'd just like to see it.
25 I've emailed a copy, I believe, to everybody.

1 THE COURT: All right. Let's see what you have.

2 (Pause.)

3 THE COURT: Now, the something about objections you
4 said.

5 MR. HODGE: That's it. It's the, the last one in.
6 Right underneath the expert witness.

7 THE COURT: Oh, okay. Well, we have short -- we tell
8 the jury that the arguments of counsel are not evidence, and
9 I think that covers it.

10 MR. HODGE: Yes, sir, that's fine.

11 THE COURT: All right. All right. Well, we're gonna
12 break till two o'clock. Be ready for closing arguments
13 at -- did I tell them 2:15?

14 2:15.

15 SOLICITOR CATHCART: It should be by 2:15.

16 THE COURT: Yes, sir.

17 SOLICITOR CATHCART: Your Honor, I believe that the
18 State will close on the law first, and their closing, and
19 then we'll have reply?

20 THE COURT: Yeah, both sides get to -- State gets to
21 argue twice.

22 SOLICITOR CATHCART: And make sure it's not an issue,
23 Ms. Cavanaugh will close on the law, and I will close --
24 make -- close on the law and facts, and I'll do the reply.

25 THE COURT: All right. Anything else?

1 (No response.)

2 THE COURT: Okay.

3 (WHEREUPON, Court was in recess for the lunch hour.)

4 SOLICITOR CATHCART: I put the elements of criminal
5 domestic violence, and then I put -- I had to cause -- also
6 cause great bodily injury to -- Subsection 1 and then I --
7 Subsection 3. State's relying on Subsection 3 by itself as
8 to that---

9 THE COURT: Which is---

10 SOLICITOR CATHCART: ---because each one of those is
11 more---

12 THE COURT: Which is which?

13 SOLICITOR CATHCART: It's the two -- as -- commits a
14 domestic violence, and has two or more prior convictions of
15 domestic violence within ten years of the current offense.
16 That's asking you not to charge all, charge all the, all
17 the -- but I just specifically said we got through great
18 bodily injury as well, and that's not what the law is.
19 That's not the law.

20 THE COURT: Oh, we have or.

21 SOLICITOR CAVANAUGH: Yes, Your Honor.

22 THE COURT: Or -- and we deleted the reference order of
23 protection since we heard no evidence about that.

24 SOLICITOR CATHCART: Yes, sir.

25 SOLICITOR CAVANAUGH: Thank you.

1 THE COURT: All right. Let's bring the jury.

2 (WHEREUPON, the following takes place within the
3 presence of the jury.)

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

5 THE COURT: All right. Thank you.

6 Welcome back, ladies and gentlemen. It's now time for
7 closing arguments. If you'd give the lawyers your
8 attention.

9 First from the State.

10 SOLICITOR CAVANAUGH: May it please the Court?

11 THE COURT: Yes.

12 SOLICITOR CAVANAUGH: Good afternoon, ladies and
13 gentlemen.

14 Once again, I'd like to thank you for your time, and
15 your close attention throughout this week as the evidence
16 was presented to you from that witness stand.

17 At this time, I have an opportunity to give you my last
18 statements as it relates to -- I'll touch briefly on the law
19 at the very beginning. I told you that your job, as jurors,
20 are the tryers of facts. It is up to you, individually and
21 collectively, to determine whether the Defendant is guilty
22 of the crimes he is charged with. It is the Judge's
23 responsibility, as he's done throughout this trial, and
24 he'll do at the very end, the Honorable Clifton Newman, will
25 instruct you on the law as it applies to this case as it is,

1 as it is defined by our Code of Laws in South Carolina.

2 So, this morning -- so, this afternoon, I'm going to
3 briefly touch on the law, and then I'll also talk about
4 certain -- about the facts and the testimony that supports a
5 conviction of guilty for Mr. Givens.

6 Mr. Givens is currently indicted for domestic violence
7 of a high and aggravated nature, and that is causing
8 physical harm, that causes physical harm definition here,
9 causing physical harm or offering to cause physical harm or
10 injury which would cause a reasonable person to be in
11 danger, to feel in fear for their safety, and it's committed
12 against a household member under circumstances manifesting
13 extreme indifference to the value of human life.

14 And those circumstances are also defined in our
15 statute. And they include, but they aren't limited to,
16 committing it during the commission of a robbery, or a
17 theft, and also under conditions that could place the
18 household member, Ms. Green, in fear for her life or serious
19 bodily injury.

20 So, ladies and gentlemen, I submit that, when Ms. Roush
21 observed the Defendant, what she described pummeling
22 Ms. Green as she's operating the motor vehicle, that is
23 circumstances manifesting extreme indifference to the value
24 of human life, and that would certainly cause Ms. Green to
25 fear great bodily injury or even death.

1 There's also evidence that 15 -- at least \$1,500.00 is
2 missing from that moneybag that's ripped, which would
3 indicate that a theft occurred. There's also evidence that
4 a knife was used at the very beginning of this process, and
5 it was with him throughout this process, which would
6 constitute the elements related to the theft, and the
7 robbery during the commission of domestic violence.

8 Now, if you don't believe, and the Judge will give you
9 the law in detail and more succinct than I'm able to do at
10 this point, if you don't think that the State has met its
11 burden as it relates to domestic violence of a high and
12 aggravated nature, you'll also be charged with domestic
13 violence in the first degree. That is a lesser included of
14 domestic violence of a high and aggravated nature.

15 And that's simply defined as causing physical harm or
16 attempting or offering to cause physical harm to a person's
17 own household member, which would be Ms. Green since they
18 habitated (phonetic) -- since they lived together for a
19 period of time, which Mr. Givens admitted to, and simply
20 that he had two or more prior convictions, which we know, or
21 that during -- while he attempted to cause harm or offer to
22 cause, cause harm to Ms. Green, it was committed under
23 circumstances that could have caused great bodily injury or
24 did cause great bodily injury to Ms. Green.

25 He's charged with armed robbery for taking that cash

1 that was on Ms. Green's person in that moneybag, in that
2 satchel, through use of what she believed to be a deadly
3 weapon, and turns out was a deadly weapon. It was a knife.
4 That's how this whole process started.

5 Just like I described to you with domestic violence of
6 a high and aggravated nature, if you don't believe that he
7 actually had that weapon on his person despite the fact that
8 they haven't lived together for over a month, and despite
9 the fact this his DNA is on it, then you'll also be charged
10 with the lesser included, which is strong armed robbery.

11 Strong armed robbery is the taking of property, in this
12 case that cash, through the use of force or the threatened
13 use of force. So, armed robbery minus the deadly weapon.

14 Kidnapping is confining Ms. Green for any period of
15 time against her will. He used that knife to make her get
16 in the car with him around eleven o'clock in the morning,
17 and he would not leave that vehicle. Unless she allowed him
18 to take that money, he would not leave that vehicle.

19 She was not in that car for over an hour and a half
20 with Mr. Givens being beaten throughout this period
21 voluntarily. That did not happen. And, again, the
22 possession of a weapon during the commission of a violent
23 crime, domestic violence of a high and aggravated nature is
24 considered violent, armed robbery is considered violent, and
25 kidnapping is considered violent. He possessed that knife

1 throughout each of these crimes, and visibly displayed it to
2 her at the very beginning. Something that she believed was
3 a weapon, and turns out it was.

4 Now, as I stated in my opening, we have the burden.
5 The State has the burden to prove Mr. Givens guilty beyond a
6 reasonable doubt. That is proof that leaves you firmly
7 convinced of the Defendant's guilt.

8 As I stated, we do that -- bring you that evidence
9 through the sworn testimony of this witness -- from that
10 witness stand, and the evidence, the physical evidence,
11 that's introduced throughout the trial.

12 Concerning the witnesses that take the witness stand,
13 it is your job, as jurors, to judge their credibility. When
14 you judge their credibility, you can believe all of what
15 they say, you can believe a part of what they say, or you
16 can believe none of what they say. How you make that
17 determination, you think about their demeanor on the witness
18 stand.

19 Did they have a motive to lie in this case?

20 Is there a bias in the case?

21 Did they know the victim or did they know the
22 Defendant?

23 So, those are some of the things that you can think
24 about when you judge their credibility.

25 Now, let's talk a little bit about the credibility

1 because, ultimately, it's whether you believe Ms. Green or
2 whether you believe the Defendant's version. Ms. Green's
3 testimony, at least a majority of it, was corroborated by
4 witnesses who have no, no bias in this case. They didn't
5 know Ms. Green. For instance, Ms. Roush, she didn't know
6 Ms. Green. The physician's assistant who treated her, she
7 treated her with that occasion, but she didn't know
8 Ms. Green.

9 Now, let's talk about why you should believe Ms. Green
10 and not the Defendant. Ms. Green has been a manager at
11 Murphy's Gas Station -- well, she started as an assistant
12 manager, and she's still a manager for over -- almost ten
13 years, according to her, and according to her supervisor,
14 Chris Overton. She's still employed in that same capacity
15 at Murphy's Gas Station. She's had absolutely no prior
16 issues regarding daily deposits in the past, according to
17 her district manager, and evidenced by the fact that she's
18 worked for so long.

19 As far as the insinuation that Ms. Green, the only way
20 that knife must have gotten wrapped up in that plastic in
21 the, in Mr. Green's, excuse me, the Defendant's belongings
22 that he left behind, first of all, you would have to believe
23 that, since they haven't lived together for over a month,
24 that she kept this one specific fillet knife in a certain
25 place so that she could have an opportunity, at some point

1 in the future just in case she needed, to plant it?

2 Cause how else would this particular knife just happen
3 to have his DNA on it?

4 This is one that she didn't run through the dishwasher?

5 This is one that -- I mean I don't even know. It's so
6 implausible to think that she planted this knowing that oh,
7 my gosh, I bet you his DNA is on that. I mean that's just
8 preposterous, ladies and gentlemen, especially when you
9 weigh it against someone like the Defendant's credibility,
10 who have been convicted of beating her up twice. Just the
11 year, the year that this occurred.

12 Speaking of, if you believe the Defendant, you notice
13 he said that that moneybag, he never saw any cash that day.
14 So, when he walked away from the, the car that day, when he
15 saw the witness and he didn't feel like going to jail that
16 day, so he walked away, he even said that that -- you don't
17 know what -- you don't know anything about money. It was in
18 that bag. He didn't see it.

19 You heard from witness after witness that there's money
20 that -- it was contained to the vehicle, but I mean this bag
21 is ripped open. There's almost \$1,500.00 missing, and the
22 money on the car -- in the car or by the car. So, between
23 the time that Ms. Roush, after he had just enough time to
24 walk away and Ms. Roush comes over to help the victim,
25 in-between that short period of time Ms. Green ripped open

1 the money, got the moneybag out of her satchel, ripped it
2 open, and somehow managed to grab \$1,500.00?

3 seriously?

4 while she's bleeding out of her mouth, while she feels
5 like her jaw is broken, and can barely talk. I mean that
6 makes absolutely zero sense.

7 And, along those lines, despite the fact, let me make
8 sure I get it right, despite the fact that Mr. Green (sic)
9 has a 2003 conviction for grand larceny and burglary, but
10 grand larceny from my point here, despite the fact that he
11 has a 2013 conviction for forgery, 2015 conviction for auto
12 breaking, and then a 2018 conviction, conviction for grand
13 larceny, so two that involves stealing -- convictions that
14 involve stealing, on this particular occasion though, he
15 didn't take any money. That \$1,500.00, I don't know what
16 happened to that. The manager, who hasn't had any issues
17 throughout her employment at Murphy's, must have pocketed
18 it.

19 He also testified that, I believe couched in terms of
20 self-defense, that he did hit her twice because she stood
21 up, despite the fact that Ms. Roush saw her hanging out of
22 the vehicle, despite the fact that she's got grass stains
23 and blood on her pants, the Defendant would have you believe
24 that Ms. Green's standing outside of her driver's door fist
25 fighting. And he only punched her twice, which is what

1 caused that visible swelling that the EMT saw, that the
2 deputy saw, that the physician's assistant who treated her
3 at Providence Northeast saw, those are just for -- from two
4 punches. Not from the pummeling while she's driving. Not
5 from the beating her like a man. Just two punches in
6 self-defense, okay, coming from someone who's been convicted
7 twice of beating her.

8 There's a lot of talk about whether, you know,
9 surveillance would of captured this, whether surveillance
10 would of shown that he was at the store that day. I mean
11 he, himself, admits he's at the store. This is not an
12 identification issue.

13 The beating, the stealing, the robbery, none of that
14 was captured, was captured on the surveillance, but there's
15 no doubt that Mr. Givens was the one in that vehicle. This
16 hearing that was so important to him that day, I mean he
17 left all the paperwork that he needed for that hearing
18 behind. And just because he didn't feel like going to jail
19 that day, he walked away from the scene leaving his wallet
20 behind, leaving the paperwork behind in the envelope that he
21 had that night.

22 Did the Defendant's story just absolutely makes no
23 sense whatsoever, and is not corroborated by any of the
24 witnesses, and is certainly -- his credibility is an issue.
25 It's a huge issue.

1 As I stated at the beginning, as I stated at the
2 beginning of my closing argument, the State asked, asked you
3 to find him guilty on all four counts. The Judge -- you
4 don't need to hear the law again from me. The Judge will
5 instruct you on the law more succinctly and more
6 specifically, specifically, and certainly more eloquently
7 than I've been able to do.

8 When you judge their credibility, when you deliberate
9 on the evidence, I also ask you to use your common sense.
10 These get real technical as they -- some of the issues
11 should be technical. We have to comply with the law that
12 exists in the State, but you -- that doesn't mean that you
13 can't keep your common sense with you.

14 The defense will have an opportunity to talk to you,
15 and then my co-counsel will address you one last time.

16 Again, thank you.

17 THE COURT: Mr. Hodge.

18 MR. HODGE: Thank you, Your Honor.

19 I guess it's roughly 751 days now since the incident
20 occurred. I know that's what I started at whenever I did my
21 openings. Just giving you an idea of how long it's been
22 since this incident allegedly occurred.

23 Now, I told you that we were gonna set out to
24 investigate this case together. I told you that you would
25 hear a number of things that were said, done, and not done

1 the day it happened, and then you'd hear a few more things
2 that came out eight days later. And then you heard a whole
3 new version of things, or at least additional facts of
4 things that happened from this witness stand.

5 We're here, ladies and gentlemen, on what happened that
6 day. Now, the first person who arrived on scene that day
7 was Deputy West. She came in and was a very direct witness,
8 was very honest with the jury I believe.

9 She had the first opportunity to interact with a lady
10 who is now claiming that she was held at knife point, forced
11 into her automobile, and forced to take Mr. Givens somewhere
12 that he never made it to. She didn't tell Deputy West that.
13 She didn't tell Deputy West that she was forced into the car
14 at all. She didn't tell Deputy West that he had a weapon at
15 all or anything that she thought was a weapon at all. She
16 didn't tell Deputy West that she saw a weapon at all.

17 Deputy West testified to that. That's what was told to
18 her that day. Deputy West also talked to Ms. Roush, who is
19 obviously a -- seemed like a very nice lady, and, you know,
20 had been a nurse for a long time. She called the cops cause
21 she saw a fight or saw, I believe she said, an individual
22 hitting someone like a man, hitting her like a man. In that
23 initial report, Ms. Roush never said about seeing her
24 getting pummeled as she was driving the automobile. Those
25 are -- yesterday was the first time we heard that.

1 Eight days later, Ms. Green goes and gets interviewed
2 by the investigator, Investigator Gonzales. I think the
3 case was assigned to Investigator Gonzales a couple of days
4 after the incident. In-between then and meeting with
5 Ms. Green, he reported, I think he said, to the incident
6 cite, the Ryan's. Went out to Murphy's Gasoline. All that.

7 It was at that interview with Ms. Green that she first
8 mentions the knife, first mentions the weapons, first
9 mentions any indication whatsoever that she was forced into
10 a car, forced to do anything against her will whatsoever.
11 And you, you would ask why, why would, why would she make
12 that up. why would she add that into her original statement
13 cause the original version didn't have anything to do with
14 that. So, then, eight days later, that's now what she's
15 saying. She was forced into her car, and that Mr. Givens
16 assaulted her and took her money with a, with a knife.

17 You also heard from another State's witness,
18 Ms. Morris, who did not testify that she saw anyone getting
19 pummeled or anyone getting hit while they were driving
20 around the parking lot. She testified to the same thing she
21 said that day, which was that she saw a fight.

22 well, you heard Mr. Givens say that. They had a fight.
23 There's clearly a physical altercation of some sort outside
24 of the car.

25 There's question about whether she was standing up, and

1 I did the, the boxing motion as everyone seems to want to do
2 whenever they say a fight. I don't think anyone claims that
3 that's how they went toe to toe. You know, mono e mono out
4 there.

5 Ms. Roush says that she saw her hanging out of the car,
6 and she admits, from the witness stand, that she was hanging
7 on to Mr. Givens as he's trying to get out of the car, and
8 he's trying to get out of the car. Well, it makes sense
9 that she's sort of hanging out of the car because she's
10 trying to hold on to him.

11 Now, you heard Mr. Givens say that, you know, it --
12 while she was getting out of the car. He said she was sort
13 of up on one foot when she hit him, and she said she took a
14 swing and hit the money. She did say that.

15 I put a lot of emphasis on a couple of things, and I'm
16 sure you picked up on it. Number one was the knife because
17 obviously that night is what gets you to the armed robbery.
18 The knife was used, armed robbery. But the knife also gets
19 you to the kidnapping because that's how he forced her to
20 get into the car according to Ms. Green.

21 That knife, if it existed at the time of the incident,
22 would of been right there in plain sight for anyone and
23 everyone that was around this car. There was a manila
24 envelope in which she said she knew, eight days later, that
25 he had a knife in it, and that it was in a black plastic

1 bag, and that he had pulled it out and brandished her,
2 brandished the black plastic bag, at least, not the knife
3 itself, but the plastic bag with the knife in it, and shook
4 it at her and told her she's getting in the, in the car or
5 else. She's giving him a ride. I think what she actually
6 said was either I'm getting in this car with you or without.

7 So, obviously she got in her car with him. She knew
8 that the -- if that story was true, she knew the knife was
9 in there, knew the plastic bag was in that envelope. Didn't
10 say a word about that. No one looked in that envelope. No
11 one thought to, hey, maybe there's something else in there.
12 No, no one did anything. No one took a knife. No one
13 mentioned a knife. No one. So, that's why I'm focusing on
14 those things.

15 Now, of course, you know I'm (sic) interviewed
16 Investigator Gonzales, and, and he would lead you to believe
17 that, that the knife was found at the crime scene. That's
18 not true.

19 Now, on the documents, he put numerous documents found
20 in victim's vehicle. Well, that's true. That's where those
21 were found. This says black handle fillet knife found at
22 the scene. That's not true. It was not found at the crime
23 scene. It wasn't found at all by an investigator, by law
24 enforcement. It was conveniently brought to them eight days
25 later by Ms. Green.

1 Now, the prosecution would, would want to make it seem
2 like she's been holding in wait this knife knowing that he
3 handled it for a day like this. She was gonna get him.

4 well, that's not theory. That's not what I believe at
5 all. That's not what happened.

6 what I think, and what certainly is a possibility, is
7 that they lived together for two years. He admits from the
8 witness stand that he helped around the house, took care of
9 the kids. It's been pointed out a number of times wasn't
10 working at the time. So, he's home a lot. It makes perfect
11 sense that any object in her house would have his DNA on it.
12 Perfect sense. That's not a stretch. That's not me saying
13 that she's lying in wait with this knife trying to set him
14 up. It makes perfect sense that anything in that house
15 could have his DNA on it. It didn't just have his DNA on
16 it. It had a mixture of DNA. Also makes sense. Multiple
17 people are handling knives in a household.

18 I don't know what that knife was used for. Maybe she
19 doesn't wash it. Maybe she didn't put it in the dishwasher.
20 She just wipes the blade off. I've certainly done that a
21 number of times. The handle generally doesn't get dirty
22 unless you cut a chicken.

23 Now, I said we're here, and you're task now is deciding
24 what happened that day, September 28th, 2016. The other
25 thing that I, obviously, put a lot of emphasis on, I'm sure

1 you noticed, was the surveillance footage, and there's a
2 number of pictures of the gas stations, of the cameras. I
3 took two pictures myself that are in evidence showing
4 surveillance cameras.

5 There's multiple surveillance cameras that I didn't
6 take pictures of because, to be honest with you, I didn't
7 want anyone to think I was weird. But she testified, and
8 Chris testified, that there was other security cameras
9 inside that kiosk overlooking the cash register, and the
10 safe, and one looking at the front of the store.

11 The testimony from that stand is that Mr. Givens was in
12 the vicinity, maybe not the entire time, but for some of the
13 time, the majority of time, however you want to put it, of
14 that gas station. Somewhere in that gas station. If we had
15 surveillance footage, if we had those cameras, and he was
16 there for as long as they say he was, and, and did the
17 things that, that she says he did, like force the door open,
18 tried to get it unlocked or unlocked her phone, which, which
19 she did, she opened the door to unlock her own cell phone
20 for him, that would be on camera. We would have that. We
21 could look at that.

22 That is something that you, as a jury, and I, as a
23 defense attorney, could say yep, that happened that day
24 because we see it right there. It's kept forever.

25 We don't have that. If he pulled around front or

1 pulled around to the Pump 4 or if she parked at Pump 4,
2 which she testified she did, while he was in the car, we
3 would have that. That would be on that camera. We don't.
4 We don't know.

5 Ms. Smith, who they tried to make look bad before she
6 ever even walked into this room, asking her, Ms. Green, how
7 she lost her or job, or resigned, why she resigned. Cause
8 she couldn't meet her standards. That's what they said.
9 She couldn't meet her standards. Couldn't keep up with the
10 work.

11 Ms. Smith sat right there and told you the reason she
12 couldn't do is cause she's five months pregnant. She put in
13 her two weeks notice. She came here and testified today
14 freely and voluntarily. She has no reason to make up what
15 she said. She's not gaining anything from this, and she
16 doesn't have a grudge against anybody. She is up there to
17 tell you the truth, and that's exactly what she did. And
18 she tells you that there was no indication whatsoever that
19 morning that Ms. Green was distraught, upset, angry, in a
20 fight, had just been assaulted the entire 45 minute ride
21 from Orangeburg to Columbia. She said everything seemed
22 normal.

23 She said Ms. Green told her that was her boyfriend out
24 there. She also says that they pulled around front, and she
25 said she couldn't really see into the car. Well, I've shown

1 you the tint of the car. I'm not surprised by that. She
2 didn't lie to up -- she didn't get up here and say oh, yeah,
3 I saw it. He was in the car and they were hugging and
4 kissing. She didn't say oh, yeah, I saw him. He was
5 walking around. They were talking like nothing was wrong.
6 She told you exactly what she saw, and exactly what she
7 knew, which was that everything seemed normal.

8 She also told you that Ms. Green took that deposit,
9 walked out that door, and got in that car with Mr. Givens.
10 She didn't tell you that she saw anybody brandishing a
11 plastic bag. She didn't tell you she saw anybody with a
12 weapon. She didn't tell you that she was forced into that
13 vehicle. She said she got in that vehicle, and she said I
14 thought that was weird because that's against policy. Not
15 suppose to do that. Not suppose to have people in your car
16 while you're going to make a bank deposit.

17 why?

18 Just it's not smart. So, she said she thought it was
19 odd.

20 SOLICITOR CATHCART: Objection, Your Honor. Arguing
21 facts not in evidence. The testimony -- I'm sorry.

22 THE COURT: All right. Ladies and gentlemen, you heard
23 the testimony.

24 And, counsel, stay within the record. whatever that
25 might be.

1 MR. HODGE: Thank you, Your Honor.

2 If I say anything that's wrong, I don't mean to. I can
3 promise you. I try to write as fast as I'm asking
4 questions, and my mind moves a million, a million miles a
5 minute when I'm doing that. So, I apologize if I say
6 anything that's not there.

7 But she wasn't up here. She didn't come to testify or
8 lie to you. I cant tell you that.

9 Now, I asked a few questions about, you know, where,
10 where's the other evidence, where's the moneybag, or any of
11 that stuff, and I asked that not because any of that may be
12 important. I, I don't know. I mean I would like to have
13 seen a deposit bag, and see how it was ripped. I could see
14 a picture of it, but, you know, I don't know where that
15 picture's taken or when that picture was taken.

16 So, you know, there's, there's certainly some benefit
17 to having those things in your -- in here for you to see,
18 but I do it to show you that there are certain things that
19 we wish we had, and we don't. Ms. Cavanaugh just got up
20 here, and, and I believe actually -- no, I take that back.

21 It was Mr. Cathcart who got up here and was questioning
22 Mr. Givens on the witness stand, and said you're putting up
23 a case, right?

24 Did you ask for that video?

25 Oh, what if I told you he did?

1 It's not his job. His job is not to ask for that video
2 because the burden to proving Mr. Givens guilty is on the
3 them. It's not on him. He doesn't have to prove a thing to
4 you. He is innocent. He was innocent when he walked into
5 this room, and he is innocent as he sits there right now.
6 And until us lawyers sit down, and the Judge charges you on
7 the law, and you go back there and make a determination, he
8 remains innocent until you make a ruling. And if you find
9 him guilty, then he's guilty. But it's you that determine
10 that. We don't have to prove that he's innocent. He's
11 innocent. Presumed innocent as he sits there. They have to
12 prove that he's not.

13 Now, there was some new, like I said, some new
14 information that came out from Ms. Green regarding the ride
15 to Columbia. Different from her statement. Different from
16 her original incident report, and that information was that
17 he had assaulted her the entire ride to Columbia. And, yet,
18 after being assaulted the entire ride to Columbia, which I
19 can tell you, in the morning traffic, is gonna be at least
20 45 minutes, especially that early, you ain't got much, she
21 gets to her work, gets out of the vehicle, walks inside her
22 store where it is a locked door.

23 Doesn't call law enforcement. Doesn't report it to
24 anybody. Doesn't do anything. She has just been assaulted
25 for 45 minutes to an hour on the way in to work. Mr. Givens

1 knocks on the door, which would of been on the security
2 camera. She says she opens the door to talk to him.

3 I don't know about you, but I sure wouldn't do that if
4 I just been assaulted for 45 minutes. I certainly would not
5 open a locked door to let the person who had just been
6 assaulting me for 45 minutes come into my 60 square foot
7 space. But she did, and then he leaves.

8 She then walks out with the deposit bag, and, according
9 to her, sees him standing next to her car. The same man who
10 had just assaulted her for 45 minutes. The same man that
11 you now see has, you know, pled or been charged with it
12 before. She goes and -- towards her car to where he's
13 standing.

14 At this point, there's no, no evidence whatsoever that
15 he has any weapons or anything. He's standing there and
16 she's been assaulted, but she goes towards her car. That
17 doesn't make sense to me.

18 Now, you, you can ask yourself why would that change,
19 why is that such a big deal for me, and, and how do I
20 explain why she would go from the original incident report
21 in which she said she was assaulted, and that he took some
22 money as he ran away versus he held me at knife point, and
23 made me get in my car, then he assaulted me and took the
24 money from me because no where in her testimony does she say
25 he ever, ever handles that knife or that black plastic bag

1 with the knife again once they're in the car.

2 She never sees it again. So, he doesn't take the money
3 from her while he's holding the knife out. So, it all goes
4 back to when he pulls that knife out getting into her car,

5 why did she tell you that?

6 why did she tell the investigator that?

7 One theory is because you heard a number of times from
8 that witness stand she needed this job. She loved this job.
9 She needed this job. She provided for her family with this
10 job. This job put food on her table, and she was afraid she
11 was gonna lose it if some of that money was missing taken by
12 Mr. Givens.

13 I said you would lose your job for getting robbed, and
14 she said absolutely. I brought my personal life into my
15 professional life. All that happened. She brought her
16 personal life to work voluntarily, picked him up after not
17 talking to him for a month, according to him, randomly
18 decided to answer the phone one day, and give him a ride.
19 Also doesn't make sense.

20 So, she let's him in her, in her car with the money
21 deposit, and things go bad. They get into an argument. She
22 starts talking to him about prior relationships. whatever
23 happens, argument wise, in that car, whoever's accusing who
24 of cheating, and a physical altercation occurs. If she
25 wasn't forced into that car, she loses her job. If she let

1 him into that car, she loses her job because that's against
2 company policy. She said it. Chris Overton said it.

3 There's your why. There's your why because she knew
4 otherwise that she would be fired, and she had eight days to
5 think about that. She didn't call the investigator when she
6 found that knife and said hey, I got a knife. Probably
7 should bring that to you. Nope. She had to figure out a
8 way to keep her job and she did it.

9 So, instead of it being a domestic dispute or whatever
10 you want to call it, it now becomes a kidnapping, and it
11 becomes a kidnapping with a knife that was never seen, that
12 wasn't collected, that was somehow found in the crime scene.

13 Now, I first want to apologize to you. I sort of did
14 it before. If I've said anything during this entire trial
15 that's caused you to look poorly upon me or my client, I
16 apologize. I don't mean to offend anybody. Sometimes I get
17 a little excited, I get a little fired up, and I apologize
18 if that has offended you. And it's certainly not my intent.

19 Sometimes, you know, they teach us that some of the
20 important things to do are make eye contact with the jury,
21 and all that stuff while you're up here. And sometimes I am
22 not very good at that when I'm asking questions. It's
23 because I'm thinking. I'm constantly thinking about what my
24 next question is to make sure that I get all the information
25 to you. So, if I hadn't made enough eye contact, I

1 apologize. Don't hold that against Mr. Givens. That's me
2 being an inept lawyer.

3 I didn't thank you in the beginning because opening
4 statements are first impressions. That's my first
5 opportunity to talk to you, and I didn't want to waste any
6 time, your time, Judge's time, the court time. I didn't
7 want to go through all that, but I will thank you now.

8 I will thank you for being patient with us through
9 every break. I will thank you for listening intently to
10 every witness. I will thank you for being here even though
11 you don't have much of a choice. You still have a choice.
12 And I know it's your civic duty, and I thank you for
13 serving.

14 This next stage is where my job gets easier and yours
15 gets harder because this, this is where you have to decide,
16 as a jury, which version, which facts, which witnesses,
17 which evidence you deem credible, and you want to believe.
18 That's on you. I -- all I can do is talk to you about it.
19 Anything I say is not evidence.

20 You will have the opportunity, when you're back there,
21 to look at all of this stuff. And you'll have the
22 opportunity to discuss with each other all of the testimony
23 that was provided, and all of the arguments that you've
24 heard. Everything else.

25 I want you to keep one thing in mind. The burden of

1 proof is not on me. That's their job. Again, that's what
2 makes this system so great because that's they're job
3 because my client is innocent. The burden of proof is on
4 them, and it's not a light burden. It's not a maybe he did
5 it burden. It's not a it could of happened that way burden.
6 It's a very high burden. It's the highest of our standards
7 in the legal community, and the judge will tell what it is.
8 I don't want, I don't want to even pretend to give you the
9 full definition, but he certainly will, and I want you to
10 listen to that because that's extremely important. Because
11 the burden is beyond a reasonable doubt.

12 I've given you a lot of examples of things reasonable
13 people wouldn't do, in my opinion, but I'm not you, and I'm
14 not sitting back there.

15 I'm gonna ask you to just take a look at everything.
16 Discuss everything. Dig into evidence everything.
17 Investigate this case as we have for the last day and a
18 half. And, once you have, and you've come to an
19 understanding, you will realize that they have not met that
20 burden, and you will have no choice but to say that Mr.
21 Givens is not guilty.

22 Thank you.

23 THE COURT: Mr. Cathcart.

24 SOLICITOR CATHCART: Please the Court, Your Honor.

25 I objected just a little while ago in opening

1 statement, and I want to explain what I objected to. He
2 indicated that -- he was talking about Ms. Smith, his
3 witness, and Ms. Witness -- Ms. Smith got on the stand and
4 she said I saw him outside the car in the parking lot at the
5 Wal-Mart. I did not see him again that day.

6 He then proceeded to testify for her or change his
7 story in that she saw him up at the Pump Number 4 when she
8 got out the deposit slip. That is definitely not what she
9 said. She saw him where Ms. Green said she left him early
10 that morning where he was, where we know he was. So, for
11 that reason, I objected because he basically stated
12 something that was not testified to.

13 Defense counsel has made a point about how the burden
14 of proof rests on the State, and that's exactly right. It's
15 exactly the way it should be. If somebody's accused of
16 doing something like this, the State has to prove the
17 elements of that crime beyond a reasonable doubt, leaving
18 y'all firmly convinced of his guilt that he did it. And we
19 do that by putting the witnesses on the stand, and we do
20 that by putting evidence that we are able to collect of the
21 crime that he did. And we put forward the witnesses, and we
22 look, look for video, if there was any video, that showed
23 what he did.

24 He's pointing out that well, there's no video of
25 earlier in the morning. He didn't do anything early in the

1 morning. We know he was there. He said he was there. She
2 said he was there. He left the stuff in the car, and left
3 his DNA on the knife. ID is not an issue.

4 The video exists. He knows that. He talked to the
5 manager. Knows that and it is something that they have on a
6 hard drive in the main station for whatever reason, and you
7 put it. If it was something they wished to put forward,
8 they put up a case, but they chose not to put it up because
9 it's irrelevant. He doesn't want you to look at the
10 evidence. He wants you to look away from it cause the
11 evidence convicts him.

12 Ms. Green lived with him for a long period of time. In
13 2016, as he pointed out, he had a disagreement I believe he
14 called it in which she kicked him out of the house. He
15 moved, moved his stuff over to his grandma's.

16 As he would not let her go, as he had lost control,
17 he's called her constantly. She's able to ignore the phone
18 calls on her cell phone, but she can't ignore a ringing
19 phone at work. So, he calls her there. To get him to
20 finally stop, she agrees to give him a ride up to Columbia.

21 Now, Mr. Hodge says that doesn't make sense to me.
22 He's beat her twice. Why would she do that?

23 It may not make sense to Mr. Hodge. She lived with him
24 for four years, and she just wanted it to stop, and she
25 thinks, if I do it this time, maybe he'll be telling the

1 truth, and leave me alone.

2 when she allows him in the car with her, he's back in
3 control. The first thing he does, she states, is grab her
4 cell phone. Starts going through it. who you been calling,
5 what have you been doing. Interrogating her. Punishing her
6 for the answers until she gets all the way to Columbia.
7 That's her private life. She's done what she said she'd do.
8 He's suppose to leave her alone now.

9 She goes into work. Her work life. She tries to keep
10 it separate. When she goes outside with the bank deposit
11 later that day, he's suppose to be gone. His brother's
12 suppose to have picked him up. She walks out there, and he
13 says plans changed. He pulls out a plastic bag with what
14 she perceives to be a weapon.

15 Now, I want to point out to you it's kind of weird,
16 isn't it?

17 If she's gonna lie, that it's not made up, he pulled
18 out a gun. Not that he pulled out a big knife, small knife,
19 or even specifically this particular knife. Says he pulled
20 out a plastic bag covering something that she perceived to
21 be a threatening -- a threat, a weapon. It's only later
22 that she discovered it was a knife.

23 If Mr. Hodge's correct in his theory that the only
24 reason that she'd of brought this up is cause that's the
25 only ways that she can save her job, why would she say it's

1 in the plastic bag?

2 How does that make sense unless that's what really
3 happened?

4 It's cause it's the truth. She didn't say that during
5 the entire kidnapping assault that she held it -- that he
6 held it up to her neck. He used it to make her get in the
7 car, and then, as he said, put it in the back seat. She got
8 into the car as he told her to. And, again, now her private
9 life and her job are together, and now he's not just
10 threatening her. Now he's not just beating her as he
11 does -- as he has done, as he did on the ride up. Normal
12 thing. Mr. Hodge doesn't understand it, but it's normal a
13 thing in life, in her life.

14 Now he's threatening her livelihood. Now he's trying
15 to take the money. And when she wouldn't fight for herself,
16 she's at least fighting for that. She's fighting for a job,
17 and fighting for food for her children. Her children stay
18 with her. The food in -- on his -- that use to be his
19 tables until the disagreement a month before this happened.

20 She tried to keep him from taking the money, argued
21 about it. He interrogated her. He punched her until
22 finally she couldn't take it anymore, and she tried to get
23 him the only way she could. She hoped somebody would stop
24 the car. Stopped him from when it -- running out with the
25 money. Stopped him from hitting her. She did the only

1 thing she could think to do, and that's just make it end,
2 and drive into Ryan's.

3 If you believe the Defendant, during all of this
4 happening, he never even saw the money. He knew it was in
5 the satchel, inside the bag, in its own bag, but, after the
6 wreck, still unbeknownst to him, it exploded, and it got
7 shredded. Money everywhere. Bag's opened. But he didn't
8 know about it. They weren't fighting over the money at all.
9 Somehow that just happened. That just happened while Ms.
10 Roush was watching him beat her down.

11 He says up on her two feet is what he told us. Saw him
12 beating her down. After he's been punching this side of her
13 face, now he's doing it on this side. Both jaws. He said
14 two wasn't good punches. Defending himself.

15 He only stops when he looks up and sees a woman staring
16 at him and what he's doing on the phone. And then he
17 doesn't walk away to clear his mind. He runs. He starts
18 taking off. He's a victim of attempted murder, and she was
19 threatening -- getting ready to beat him up. But he's, he's
20 on the run. He's running away leaving his documents,
21 leaving his own wallet, but taking about \$2,000.00.

22 Ms. Green didn't ever change her story. Nothing has
23 ever changed from what she told you from the first person to
24 what she testified to you today subject to any questions,
25 any examination that defense counsel had. She'd just been

1 beaten for a long period of time. She's bleeding from the
2 mouth. Her face is swelling. And the police show up, and
3 ask her what's going on, what happened, and she told them.

4 Did she go into what happened in, in Orangeburg that
5 morning?

6 Did she talk about the month before?

7 No, she told her what was going on right now, what she
8 was feeling right now.

9 She told the EMS, when they're asking her about her
10 injuries, yes, punched with a fist.

11 She talk about everything beforehand to them either?

12 No, of course not.

13 She did that when she spoke to an investigator who
14 asked her the questions. How did this begin. What brought
15 you in here.

16 Now that he wants to state that, pulled out -- didn't
17 have enough. Statement is to memorialize her -- what
18 happened so she'll be out here to testify before y'all, but
19 he can ask her those questions, and when she can tell y'all
20 everything that happened to her. It's not to say everything
21 that happened that day nor in the statement. It's only two
22 pages.

23 Does it go with every detail?

24 He's always gonna be able to find something.)

25 why didn't you talk about that?

1 what was color of the car?

2 She told the investigator, and, in her statement,
3 summarized for what occurred. For any specific details, she
4 was -- made herself available for that man who beat her to
5 question her about it.

6 Now, ladies and gentlemen, I'm not here to be the judge
7 of the victim or the witnesses' credibility. That's y'all's
8 job. But what I submit to you is that the Defendant's
9 testimony, Mr. Givens testimony changed, did not make sense,
10 was incredible, unbelievable, was a lie.

11 Ms. Green was here. She testified to what occurred to
12 her. The people who had absolutely no reason to lie cause
13 they didn't know her, don't know him. Although I think
14 Ms. Smith who had to leave from her job because she couldn't
15 just do the job that she was required to do according to
16 her. You heard from Ms. Roush, Ms. Morris of what they saw,
17 how she was being beaten while she was operating a motor
18 vehicle at a high right of speed, and how she drove into the
19 Ryan's. And you heard from -- the testimony from all the
20 other witnesses, the doctors, the EMS, the firemen about the
21 injuries that corroborated what she said, and the pictures
22 at the scene of the money, of, of the car, again,
23 corroborating what happened.

24 I ask that y'all take that back, and come with a
25 verdict, a true verdict, that speaks the truth of what

1 occurred. That he is guilty of domestic violence of a high
2 and aggravated nature, that he punched her while she was
3 operating a motor vehicle on the highways of Richland County
4 until she careened into some other car -- careened into some
5 building such that people were calling 9-1-1 while just
6 driving in the parking lot before she wrecked it into the
7 Ryan's.

8 That he's guilty of kidnapping. Not about the knife.
9 He doesn't need the knife to make her get kidnapped. All
10 you do is make her get in the car. He didn't need a knife
11 to explain why she got in the car. She said he forced me
12 into the car. She's not gonna get in trouble for that.
13 She's got the proof all over her face.

14 She's wrecked her car into a building. The only reason
15 she said there was a knife involved cause there was a knife
16 involved cause that's what he did, and that's why he's
17 charged with and guilty of armed robbery, cause when he took
18 that bag from her, he was armed with a deadly weapon. And
19 that's why he's guilty of possession of a weapon during all
20 three of the violent crimes that he is here before you on.

21 Sorry to take all of y'all's time, but thank you for
22 listening to me. Please find the verdict or come up with a
23 verdict for guilty on each of these charges cause that's
24 what he did, and that's the verdict that speaks the truth.

25 Thank you.

1 THE COURT: We're gonna take about a five minute break
2 or so. Give you a chance to take a break, and then come
3 back for the jury charge. Please go to the jury room.
4 Please do not discuss the case yet.

5 (WHEREUPON, the following takes place outside the
6 presence of the jury.)

7 THE COURT: All right. Take five minutes.

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

9 THE COURT: All right. You can bring them in.

10 THE BAILIFF: All right.

11 (WHEREUPON, the following takes place within the
12 presence of the jury.)

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

14 THE COURT: All right. Thank you.

15 Now, Mr. Foreman and members of the jury, you have
16 heard the testimony. You have now received all of the
17 evidence, and you've heard the arguments. I will now
18 explain to you the law that applies to this case.

19 You are the finders of the facts. I do not have the
20 right to pass upon the facts or to express any opinion that
21 I might have as to them because this is a matter solely for
22 you, the jury, to determine. As jurors then, it is your
23 duty to determine the effect, the value, the weight, and the
24 truth of the evidence presented during this trial.

25 Now, as the trial judge, it is my responsibility to

1 preside over the trial, and to rule upon the admissibility
2 of the evidence offered. You are to consider only the
3 testimony which has been presented from this witness stand
4 together with any exhibits which have been made a part of
5 the record. I have the additional duty to charge you the
6 law applicable to this case.

7 As the presiding judge, I am the sole of -- judge of
8 the law. It is your duty, as jurors, to accept as correct
9 the law as I state it to you, then deliberate, and reach
10 your verdict.

11 Finally, I charge you in this regard that you should
12 not be concerned with what you think the law ought to be or
13 rather what I charge you that the law is. You are also the
14 judges, the sole judges of the credibility, that is the
15 believability of the witnesses who've testified, and of the
16 evidence which has been presented during this trial.

17 In evaluating credibility, you may take into
18 consideration many things such as the demeanor or manner of
19 testifying, whether the witness had reason to be biased or
20 prejudiced, or whether the testimony of a witness was
21 contradicted on the one hand or supported and corroborated
22 on the other hand. It becomes your duty, as jurors, to
23 analyze and to evaluate the evidence, and determine that
24 evidence which convinces you of its truth.

25 There are two types of evidence which are generally

1 presented during a trial. Direct evidence and
2 circumstantial evidence.

3 Direct evidence is the testimony of a person who
4 asserts or claims to have actual knowledge of a fact such as
5 an eye witness. Circumstantial evidence is proof of a chain
6 of facts and circumstances indicating the existence of a
7 fact. The law makes absolutely no distinction between the
8 weight or value to be given to either direct or
9 circumstantial evidence nor is a greater degree of certainty
10 required of circumstantial evidence than of direct evidence.
11 After weighing all of the evidence, if you are not convinced
12 of the guilt of the Defendant beyond a reasonable doubt you
13 must find him not guilty.

14 You've heard evidence that the Defendant was convicted
15 of a crime other than the one or ones for which the
16 Defendant is now on trial. This evidence may be considered
17 by you, if you conclude that it is true, only in deciding
18 whether the Defendant's testimony is believable, and for no
19 other purpose. You must not consider the Defendant's prior
20 record as any evidence of the Defendant's guilt on the
21 charges we are trying today.

22 Now, the rules of evidence ordinarily do not permit
23 witnesses to testify to opinions or conclusions. An
24 exception to this rule exists for witnesses we call expert
25 witnesses. A witness, who by training, education, or

1 experience has become an expert in some art, science, or
2 profession, or calling may state an opinion as to relevant
3 and material matters in which the witness claims to be an
4 expert. An expert may also state the reasons for an
5 opinion.

6 The fact that the Defendant, Wesley Givens, is charged
7 and indicted is not evidence, and cannot be considered as
8 evidence of guilt nor does it create any presumption or
9 inference of guilt. The indictments are simply the formal
10 written instruments which contain the charges made against
11 the Defendant. The indictments are the formal documents by
12 which this case is brought into Court.

13 The Defendant has pled not guilty to the charges
14 alleged against him. The burden is on the State to prove
15 the Defendant guilty. A person charged with committing a
16 criminal offense in South Carolina is never required to
17 prove himself innocent. I charge you that it is an
18 important rule of the law that the Defendant, in a criminal
19 trial, no matter the seriousness of the charges, will always
20 be presumed to be innocent of the crime for which the
21 indictments were issued unless guilt has been proven by
22 evidence satisfying you of that guilt beyond a reasonable
23 doubt. This presumption of innocence does not end when you
24 begin your deliberations, but it accompanies the Defendant
25 throughout the trial until you reach a verdict of guilt

1 based on evidence satisfying you of that guilt beyond a
2 reasonable doubt.

3 The presumption of innocence is like a robe of
4 righteousness placed about the shoulders of the Defendant
5 which remains with the Defendant until it has been stripped
6 from the Defendant by evidence satisfying you of the
7 Defendant's guilt beyond a reasonable doubt. The
8 presumption of innocence is not a mere legal theory. It's
9 not just a legal phrase. It is a substantial right to which
10 every Defendant is entitled unless the -- you, the jury, is
11 satisfied from the evidence of the guilt of the Defendant
12 beyond a reasonable doubt.

13 Now, the indictments in the case allege several charges
14 against the Defendant. The indictments charge the Defendant
15 with domestic violence of a high and aggravated nature,
16 armed robbery, kidnapping, and possession of a weapon during
17 the commission of a violent crime. Each charge is a
18 separate and distinct charge. You must decide each charge
19 separately on the evidence, and the law applicable to it,
20 and your, and your decision as to one charge should not be
21 influenced by your decision as to the other charges.

22 The Defendant may be convicted or acquitted on each
23 charge. You'll be asked to write a separate verdict for
24 each crime charged.

25 The State must prove the Defendant guilty beyond a

1 reasonable doubt.

2 what is a reasonable doubt in the law?

3 A reasonable doubt is a doubt which causes an honest,
4 sincere, conscientious juror in search of the truth to
5 hesitate to act. Proof beyond a reasonable doubt must,
6 therefore, be proof of such a convincing character that a
7 reasonable person would not hesitate to rely and act upon it
8 in the most important of his or her own affairs. Proof
9 beyond a reasonable doubt can also be described as proof
10 that leaves you firmly convinced of the Defendant's guilt.

11 Now, there are very few things in this world that we
12 know with absolute certainty, and, in criminal cases, the
13 law does not require proof that overcomes every possible
14 doubt. If, based on your consideration of the evidence, you
15 are firmly convinced that the Defendant is guilty of the
16 charge or charges against him, you must find him guilty.
17 If, on the other hand, you think there's a real possibility
18 that he is not guilty, you must then give the benefit of the
19 doubt and find him not guilty.

20 The Defendant is charged with domestic violence of a
21 high and aggravated nature. The State must prove, beyond a
22 reasonable doubt, that the Defendant caused physical harm or
23 injury to a member of the Defendant's own household or that
24 the Defendant offered or attempted to cause physical harm or
25 injury to a member of the Defendant's own household with the

1 apparent, present ability to cause harm or injury under
2 circumstances reasonably creating a fear of imminent danger.

3 A household member is a spouse, a former spouse, a
4 person with whom the Defendant had -- has a child in common,
5 or a male or female who are cohabiting or formerly have
6 cohabited.

7 The State must also prove one of the following:

8 One, the Defendant committed the offense under
9 circumstances manifesting extreme indifference to the value
10 of human life and great bodily injury to the victim results.
11 Circumstances which may show extreme indifference to the
12 value of human life include, but are not limited to, using a
13 deadly weapon. A deadly weapon meaning any instrument which
14 can cause or be used to inflict deadly force, committing the
15 offense during the commission of a robbery, burglary,
16 kidnapping, or theft, or the Defendant committed the
17 offense -- having committed -- previously committed -- I'm
18 sorry. Or the Defendant committed the offense with or
19 without an accompanying battery and under circumstances
20 manufacturing -- manifesting extreme indifference to the
21 value of human life, and would reasonably cause a person to
22 fear imminent great bodily injury or death. It also
23 includes using physical force against another to block that
24 person's access of any cell phone, telephone, or electronic
25 communication device with the purpose of preventing,

1 obstructing, or interfering with the report of any criminal
2 offense, bodily injury or property damage to a law
3 enforcement agency, or a request for an ambulance or
4 emergency medical assistance to any law enforcement agency
5 or emergency medical provider.

6 Great bodily injury means bodily injury which causes a
7 substantial risk of death or which causes serious permanent
8 disfigurement or protracted loss or impairment of the
9 function of a bodily member or organ. That's the charge as
10 to criminal domestic violence of a high and aggravated
11 nature.

12 If you find that the State has failed to prove, beyond
13 a reasonable doubt, that the Defendant committed domestic
14 violence of a high and aggravated nature, you may consider
15 whether the State has proven, beyond a reasonable doubt,
16 that the Defendant committed first degree domestic violence.
17 Included within the offense of domestic violence of a high
18 and aggravated nature is the lesser offense of first degree
19 domestic violence.

20 To prove first degree domestic violence, the State must
21 prove, beyond a reasonable doubt, that the Defendant caused
22 physical harm or injury to a member of the Defendant's own
23 household or that the Defendant offered or attempted to
24 cause physical harm or injury to a member of the Defendant's
25 own household with the apparent presentability to cause harm

1 or injury under circumstances reasonably creating a fear of
2 imminent danger.

3 The State must also prove one of the following:

4 One, great bodily, bodily injury to the Defendant's own
5 household member results, or the act is accomplished by
6 means likely to result in great bodily injury to the
7 Defendant's own household member, or, two, the Defendant has
8 two or more prior convictions of domestic violence within
9 ten years of the current offense.

10 Evidence of prior domestic violence offenses by the
11 Defendant was not offered to prove the Defendant has a bad
12 character or to prove that the Defendant committed domestic
13 violence in the first degree on this occasion. The prior
14 domestic violence offenses may be considered by you only for
15 the purpose of determining whether or not the prior offenses
16 satisfy one of the elements of domestic violence in the
17 first degree in this case.

18 Before you can even consider the evidence of the
19 Defendant's prior domestic violence offenses, you must first
20 find that the State has proven, beyond a reasonable doubt,
21 that domestic violence was committed by the Defendant. If
22 you find, beyond a reasonable doubt, that domestic violence
23 in the first degree was committed, then you may consider the
24 evidence of the prior offenses as evidence of one of the
25 circumstances which would make the domestic violence one in

1 the first degree.

2 The Defendant is charged with armed robbery. In order
3 to prove this offense, the State must first prove, beyond a
4 reasonable doubt, that the Defendant took personal property
5 from the person or presence of another person. Property is
6 in the presence of a person if it is within the person's
7 reach, inspection, observation, or control so that the
8 person could, if not overcome with violence or prevented by
9 fear, keep possession of the property. The State must also
10 prove, beyond a reasonable doubt, that the Defendant carried
11 the property away intending to permanently deprive the owner
12 of the property, and to keep the property for the
13 Defendant's own use. The slightest removal of the property
14 or complete possession of the property, even for an instant
15 by the Defendant, is, is sufficient to show a taking and
16 carrying away of the property. The taking and carrying away
17 of the property must have been done with violence or by
18 putting the owner of the property in fear of violence.

19 Finally, the State must prove, beyond a reasonable
20 doubt, that the Defendant was armed with a deadly weapon
21 during the robbery. A deadly weapon is any article,
22 instrument, or substance, which is likely to cause death or
23 great bodily harm. Whether an instrument has been used as a
24 deadly weapon depends on the facts and circumstances of each
25 case. If you find that the State has failed to prove that

1 the Defendant was armed with a deadly weapon, you may then
2 consider whether the State has proved, beyond a reasonable
3 doubt, that the Defendant committed robbery.

4 Included within the offense of armed robbery is the
5 lesser offense of robbery. In order to prove robbery, the
6 State must prove, beyond a reasonable doubt, all of the
7 elements that I've just explained except that the Defendant
8 was armed with a deadly weapon meaning, for the offense of
9 robbery, it means the Defendant was not armed with a deadly
10 weapon.

11 The Defendant is charged with kidnapping. The State
12 must prove, beyond a reasonable doubt, that the Defendant
13 knowingly and unlawfully seized, confined, inveigle,
14 kidnapped, abducted, or carried away another person without
15 authority of law.

16 To do a thing unlawfully is to do it willfully against
17 the law.

18 knowingly, with knowledge, consciously, not accidentally
19 seize, not accidentally.

20 Seize means to take hold or, or -- of suddenly or
21 forcibly.

22 Confine means to limit, restrict, or enclose within
23 bounds, imprison, or shut, or keep in.

24 Inveigle means to lure, entice, or lead astray by false
25 representations, promises, or other deceitful means.

1 kidnapped is to remove a person against his or her will
2 by unlawful force or fraud.

3 Abduct means to carry off secretly or by force for an
4 illegal purpose.

5 Carry away means to remove.

6 The State does not have to prove that the Defendant did
7 all of these things. Instead, if you find, beyond a
8 reasonable doubt, that the Defendant, the Defendant did any
9 of these things, you may find the Defendant guilty of
10 kidnapping. Something done without authority of law is
11 something which a law does not sanction, permit, allow,
12 condone, or provide justification for. The kidnapping does
13 not have to be for any personal or monetary gain, for any
14 illegal purpose, but may be for any reason whatsoever.

15 The Defendant is charged with possession of a weapon
16 during the commission or attempt to commit a violent crime.
17 The State must prove, beyond a reasonable doubt, that the
18 Defendant, that the Defendant visibly displayed a knife
19 during the commission of a violent crime.

20 In order to find the Defendant guilty of a possession
21 of a weapon during the commission of a violent crime, you
22 must first find the Defendant guilty of either committing a
23 violent crime or attempting to commit a violent crime.
24 Armed robbery, kidnapping, domestic violence of a high and
25 aggravated nature, and first degree domestic violence are

1 violent crimes. The State must prove, must prove, beyond a
2 reasonable doubt, that the weapon furthered advanced or
3 helped in the commission of the crime.

4 Now, Mr. Foreman, and members of the jury, I'm required
5 to charge you the law as I have done through these
6 instructions now being given to help guide you to a just and
7 lawful verdict. Whether some of these instructions will
8 apply will depend upon what you find to be the facts. The
9 fact that I've instructed you on various subjects must not
10 be taken as indicating an opinion of this Court as to what
11 you should find to be the facts or, or what your verdict
12 should be.

13 Now, you've been sworn to give the parties a fair and
14 impartial trial. When you've done so, you will have
15 complied with your oath, and no one will have a right to
16 criticize your verdict. You must not be influenced by
17 opinions or expressions of opinions you may of heard outside
18 of the courtroom, but, rather, should base your verdict
19 solely on the testimony of the sworn witnesses who took the
20 stand, the exhibits received into evidence, and the law
21 which I have stated. You should not be swayed by caprice,
22 passion, prejudice, or improper sympathy for or against
23 anyone. Remember you have no friends to reward or enemies
24 to punish, and all parties are entitled to a fair and
25 impartial trial.

1 It is your duty, as jurors, to deliberate in an effort
2 to reach an agreement. Each of you must decide this case
3 for yourself, but only after impartial consideration of all
4 of the evidence with your fellow jurors. In the course of
5 your deliberations, do not hesitate to reexamine your own
6 views, and change your opinions if you become convinced it
7 is erroneous. However, do not surrender your honest
8 conviction as to the weight or effect of the evidence solely
9 because you -- of the opinion of your fellow jurors or for
10 the mere purpose of returning a verdict.

11 As I stated earlier, you are the judges, judges of the
12 facts. Your verdict must represent the judgment of each
13 juror. In other words, your verdict must be unanimous.

14 You may have noticed that I have read these
15 instructions. I do so to give you the law as accurately as
16 possible. I will give you a copy of these instructions to
17 have in the jury room. You may refer to these instructions
18 to assist you in your deliberations. You must consider the
19 instructions as a whole, and may not follow some and ignore
20 others.

21 And, Mr. Foreman, it will be your duty to preside over
22 the deliberations of the jury. If, during your
23 deliberations, you should desire to communicate with the
24 Court, please reduce your message or question to writing
25 signed by your foreperson, and the foreperson only, and pass

1 the note to the bailiff who will bring it to my attention.
2 I will then respond as promptly as possible, either in
3 writing or by having you return to the courtroom. I caution
4 you, however, with regard to any message or question you
5 might send that you should never state or specify your
6 numerical division at the time.

7 Now, you've heard the evidence, and you've heard the
8 law. Whatever your verdict, Mr. Foreman, you will indicate
9 it on the verdict forms, and then sign and date your
10 verdict. And the verdict forms are these.

11 We, the jury, unanimously find the Defendant, Wesley
12 Lamonte Givens, either not guilty or guilty of domestic,
13 domestic violence in the first degree, or guilty of domestic
14 violence of a high and aggravated nature. You will indicate
15 the verdict on the -- by checking the appropriate box. Sign
16 and dating the verdict form.

17 As to armed robbery, we, the jury -- we, the jury,
18 unanimously find the Defendant, Wesley Lamonte Givens,
19 guilty of armed robbery or guilty of robbery or not guilty
20 as to kidnapping. We, the jury unanimously find the
21 Defendant guilty of kidnapping or not guilty. We, the jury,
22 unanimously find the Defendant, Wesley Lamonte Givens,
23 either guilty of a possession of a weapon during the
24 commission of a violent crime or not guilty remembering he
25 cannot be found guilty of possession of a weapon during a

1 violent crime unless he -- you find him guilty of committing
2 a violent crime.

3 Remember that although the foreperson is the only juror
4 who writes the verdict, it is not his alone. The verdict
5 has to be unanimous, and, Mr. Foreman, you are not permitted
6 to or authorized to write the verdict until all of you have
7 agreed on the verdict.

8 Now, ladies and gentlemen, I'm going to send you to
9 your jury room, but do not begin discussing the case until
10 you receive the copy of this jury charge, the verdict forms,
11 and the exhibits. Once you receive these things, that will
12 be your signal to begin your deliberations. Once you begin
13 deliberations, you will deliberate until you have reached a
14 verdict at which time you'll knock on the door, advise the
15 bailiff, and we will bring you out to receive the verdict.

16 Now, we've selected 14 jurors. We can only use 12
17 jurors to participate in the deliberations. I certainly
18 understand it's now after four o'clock. You start
19 deliberating. You'll deliberate until you reach a verdict.

20 Out of the first 12 jurors, if there's any reason you
21 cannot continue with the deliberations based on the time of
22 day or any other reason, and the fact that you're beginning
23 deliberating after four o'clock, if there's any reason
24 you -- any of the first 12 cannot continue with the
25 deliberations, please let me know by showing your hands.

1 (No response.)

2 THE COURT: All right. which means that all 12 jurors
3 are available to continue with deliberations, and we're
4 gonna keep the alternates in the courtroom and release them
5 after the first 12 begin deliberating.

6 So, please go to the jury room.

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

9 THE COURT: Are there any additions or exceptions to
10 the charge?

11 SOLICITOR CAVANAUGH: No exceptions to the charge, Your
12 Honor.

13 MR. HODGE: None from the defense, Your Honor.

14 THE COURT: All right. well, you-all can check the
15 exhibits and --.

16 SOLICITOR CATHCART: Your Honor, as to State's Exhibit
17 27 and 26, which are the prior convictions, the exhibit
18 itself is, is the indictment. It also has a copy of the
19 sentencing sheet.

20 For purposes of -- to send it back to the jury, I
21 propose that we just redact or take out the sentencing sheet
22 just as it talks about sentence, and I think that's
23 irrelevant to the conviction itself.

24 THE COURT: All right.

25 SOLICITOR CATHCART: That's out---

1 THE COURT: Do you agree with that?

2 MR. HODGE: Yes, sir, Your Honor. Just take those out
3 and be fine. The indictments alone.

4 THE COURT: All right. You can take, you can take that
5 sentencing sheet off of it.

6 MR. HODGE: Thank you.

7 (WHEREUPON, the alternate jurors were dismissed at this
8 time.)

9 THE COURT: Okay. We'll be at ease on this. The jury
10 is out deliberating at 4:20.

11 (WHEREUPON, the jury began deliberations at 4:20PM, and
12 a question was sent out by the jury at 5:07PM.)

13 THE COURT: The jury wants to know can you provide a
14 layman's -- can you provide a layman's term definition of
15 criminal domestic violence of a high and aggravated nature,
16 nature, nature to what is the main difference. I guess
17 between the two.

18 Can you provide a layman's term definition of criminal
19 domestic violence of a high and aggravated nature, and what
20 is the main difference?

21 SOLICITOR CATHCART: I'm assuming opposed to in the
22 first?

23 THE COURT: As to -- without, without saying it, it's
24 probably as to the first degree.

25 SOLICITOR CATHCART: Well, Your Honor, I don't know

1 that would be commenting on the facts to distinguish the two
2 in that the criminal domestic, domestic violence first
3 merely means to have -- I'm sorry. Cause physical harm or
4 injury to a person's own household member. Basically DV.

5 THE COURT: Basically what?

6 SOLICITOR CATHCART: Basically it will be the elements
7 of DV.

8 SOLICITOR CAVANAUGH: Domestic violence.

9 SOLICITOR CATHCART: Just straight domestic violence
10 third. We have one of the two things. Either the -- I'm
11 sorry I got to keep doing this. I've got tiny print.
12 Either one causing great bodily injury to a person's own
13 household member, that language of one, or as two or more
14 convictions within the past ten years as opposed to HAN,
15 which has the language that has to do -- trying to get the
16 language of like cause physical harm or injury to one's
17 person's own household member or offer or attempt to cause
18 physical harm or injury to one's household member of
19 apparent presentability under circumstances reasonably set
20 in fear or under peril. Both have that same thing, have
21 those same two predicates.

22 The difference in the HAN would be commits the offense
23 with or without battery, and circumstances manifesting
24 extreme indifference to the value of human life which
25 revolves -- reasonably causes a person to fear imminent

1 great bodily injury or death.

2 That is the difference between HAN as opposed to first,
3 which should be the two predicated elements, and the two
4 convictions or one. And, again, I don't think that's a
5 comment on the facts. It's just that is the difference in
6 those two. Both have the same two first elements, and where
7 they split, the CDVHAN has the language of Subsection 2
8 under A, and CDV first has either three or one. They're not
9 both together.

10 THE COURT: well, they have a copy.

11 Yes, sir, Mr. Hodge.

12 MR. HODGE: Oh, nothing, Your Honor. I was just
13 standing up in case you had any questions for me. I mean I
14 agree that that is the only difference really is the extreme
15 indifferences to, you know, and I'll be honest with you,
16 that's a very broad, hard to define subject. I don't know
17 how you use layman's terms in that, to be honest. I mean
18 that's obviously a -- your typical legal---

19 THE COURT: well, do y'all want to write a response
20 that you both agree on, and I'll read what you write if you
21 both agree on it?

22 SOLICITOR CATHCART: Okay. well, we can try that.

23 THE COURT: All right.

24 MR. HODGE: Put our legal minds together.

25 SOLICITOR CATHCART: Your Honor, can we go back so I

1 can use a computer to do it?

2 THE COURT: Sure.

3 SOLICITOR CATHCART: Okay. Be taken -- shouldn't be
4 more than five or ten minutes at the most.

5 THE COURT: Sure. We're -- they're not going anywhere.
6 We're not going anywhere.

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

8 THE COURT: All right. That's fine for me for them to
9 make the phone calls.

10 THE CLERK: Okay.

11 THE COURT: All right. Yes, sir.

12 SOLICITOR CATHCART: Your Honor, attempting to craft a
13 compromise, based -- all we were doing is redoing your
14 charge, and, in speaking with defense attorney, being
15 objectionable to anything other than, I guess, recharging
16 them as to what you've already given them.

17 THE COURT: All right.

18 SOLICITOR CATHCART: I, I, I don't know how to do it
19 other than us giving a more lay person charge or new words
20 to it, which defense would object to.

21 MR. HODGE: That's correct, Your Honor. I mean I, I
22 personally think that anything we did was just rearranging
23 the words in the statute. It wasn't gonna make it any
24 easier. We weren't gonna be able to define things that they
25 may not understand already, and, after talking to Mr.

1 Givens, you know, we, we think that your charge is good
2 enough. We agreed on that.

3 Obviously, if they need to be recharged on it or they
4 have a copy, they want to read it, whatever the case may be,
5 but I, I don't think changing it will accomplish anything
6 other than, you know---

7 THE COURT: All right.

8 MR. HODGE: Well, I don't know if it will accomplish
9 anything.

10 THE COURT: well, I'll just let them know it's written
11 in plain English even though it is a page long. So, they
12 have to---

13 SOLICITOR CATHCART: Do you have a copy of your charge
14 with you?

15 THE COURT: I do.

16 SOLICITOR CATHCART: May I please see it cause I'm just
17 not understanding why -- what their confusion was. It
18 sounds pretty clear as we were trying to come up, dwindle it
19 down, and what you told them. Of course, obviously I hear
20 this stuff more then they do.

21 (Pause.)

22 THE COURT: All right. Those two. That's one and
23 that's the other.

24 SOLICITOR CATHCART: I don't know how you can ever make
25 it more clear. I mean that's basically all we were going --

1 were attempting to do is show that they both have the first
2 two elements that you have stated, that first degree must --
3 is a lesser of CDVHAN, and --.

4 (Pause.)

5 SOLICITOR CATHCART: I want to say it's the same but
6 the first two elements.

7 MR. HODGE: Right.

8 SOLICITOR CATHCART: And that's all from there, which
9 is that what it says. It just doesn't have---

10 MR. HODGE: This put on it.

11 SOLICITOR CATHCART: ---points.

12 MR. HODGE: We don't have -- yeah, we don't have a
13 diagram.

14 (Pause.)

15 THE COURT: Let's see.

16 (Pause.)

17 THE COURT: Ask them if they want us to get them some
18 Lizard's Thicket?

19 (Pause.)

20 THE COURT: Domestic violence of a high and aggravated
21 nature, the State must show the Defendant showed a reckless
22 disregard for human life, and with the apparent ability to
23 cause extreme harm or, or cause the victim to fear imminent
24 danger of death or serious bodily injury. Then the statute
25 goes on to define it -- examples of extreme indifference to

1 the value of human life.

2 So, having an extreme indifference to the value of
3 human life, and either great bodily injury results or, or
4 could of resulted or the person reasonably believed it could
5 of resulted, that would constitute domestic violence of a
6 high and aggravated nature. And the first degree domestic
7 violence; the person either caused a -- great bodily injury
8 or reasonably caused the person to reasonably believe they
9 were in danger of great bodily injury regardless to whether
10 or not they suffered great bodily injury or, alternatively,
11 if the Defendant had two or more prior convictions.

12 So, the difference primarily, high and aggravated
13 nature, is the, the reckless indifference to human life, and
14 either great bodily injury results or the person reasonably
15 believes that they're in fear of death or great bodily
16 injury, and, the first degree, serious bodily injury
17 occurred or could have occurred or the Defendant had two
18 prior convictions.

19 SOLICITOR CATHCART: Yes, sir, I agree. With the
20 cav -- with the understanding too the jury had -- both of
21 them first require the first two elements of the offense,
22 the simple assault, the -- both of them -- I mean because
23 there is -- they cause physical harm to a household member.

24 THE COURT: Yeah, it has, it has to be a household
25 member for -- past or former household member.

1 SOLICITOR CATHCART: Yes, sir, and the offer or attempt
2 to cause physical harm or injury to a person's household
3 member with apparent ability under circumstances reasonably
4 creating fear of imminent peril. Those first two then go to
5 the difference of the CDVHAN and the CDV first. The only
6 reason I bring that up is because, when you -- as you
7 explained CDV first directly, you talked about had two or
8 more prior convictions of CDV, but still had to hit or try
9 to hit her.

10 THE COURT: Yeah, there must still be a domestic
11 violence.

12 SOLICITOR CATHCART: Yes, sir.

13 THE COURT: There is---

14 SOLICITOR CATHCART: Okay. That's, that's all I'm
15 saying, yes, sir.

16 THE COURT: He, he can't be convicted on a record
17 alone. He has to be -- I mean there, in both instances,
18 there's a domestic violence either by causing serious harm
19 or engaging in conduct that, that, that shows a reckless
20 indifference to human life, and, in the other, first degree,
21 it doesn't have to rise to the level of reckless -- I'm
22 sorry. Of believing that they're gonna die, but that
23 they'll suffer, may suffer great bodily injury.

24 MR. HODGE: The only -- I mean the only thing I would
25 say, Judge, is, is I don't think it -- I don't think

1 reckless indifference is -- I mean that's not the, the
2 language in the statute. I would say -- it says extreme
3 indifference, and I think that extreme versus reckless, in
4 my opinion of it---

5 THE COURT: Yeah.

6 MR. HODGE: ---much more, you know---

7 THE COURT: Well, you're right. I wasn't looking at
8 it.

9 MR. HODGE: Yes, sir, that's fine. I just wanted to
10 make---

11 THE COURT: Extreme---

12 MR. HODGE: I thought you were looking---

13 THE COURT: Extreme difference.

14 MR. HODGE: ---at it. I'm sorry.

15 THE COURT: Not reckless indifference. Extreme
16 indifference.

17 MR. HODGE: Yes, sir.

18 THE COURT: Thank you for correcting me.

19 MR. HODGE: Yes, sir.

20 SOLICITOR CATHCART: I think we're in agreement.

21 THE COURT: Yeah. Yeah, the aggravated domestic
22 violence involves an extreme danger -- an extreme
23 indifference to human life in which serious bodily injury
24 occurs or the person reasonably, reasonably believed that
25 they would suffer extreme bodily injury --

1 SOLICITOR CATHCART: Okay. Yes, sir.

2 THE COURT: -- or, with first degree, there wasn't a
3 showing of extreme indifference to the value of human life,
4 but there was a domestic violence in which the victim
5 believed that there -- she was in imminent peril of great
6 bodily injury or suffered a great bodily injury or if the
7 Defendant had two or more prior convictions.

8 SOLICITOR CATHCART: Yes, sir, I agree with that. I
9 agree that's properly explained, explained, and I understand
10 you're just giving the two differences. But I assume you
11 will also be defining the circumstances for CDVHAN that
12 manifest extreme indifference.

13 THE COURT: well, they, they already have that in
14 the---

15 SOLICITOR CATHCART: Okay.

16 THE COURT: ---in the charge.

17 SOLICITOR CATHCART: Yes, sir.

18 THE COURT: Um.

19 SOLICITOR CATHCART: But just for completeness.

20 THE COURT: All right. Any, any, anything else?
21 Yes, sir.

22 THE DEFENDANT: I, I have a general question. In
23 reading the statute, I'm trying to figure out things myself
24 like you, and at what---

25 THE COURT: what do you---

1 THE DEFENDANT: At what point do you -- how, how does
2 former -- when does former end and when does past end?

3 It should have some type of timeline in the statute
4 because---

5 THE COURT: Former and past?

6 THE DEFENDANT: Yeah. Yeah. Yes, it's in---

7 THE COURT: What do you mean?

8 THE DEFENDANT: It says household member is -- when it
9 speaks upon household member---

10 THE COURT: That you use to live together, former
11 household member?

12 THE DEFENDANT: Yes, sir, that, and it has---

13 THE COURT: Well, it doesn't say how long is former,
14 but former is anytime before.

15 THE DEFENDANT: At some point it had to end though.

16 THE COURT: Well, maybe yes, maybe no, but---

17 THE DEFENDANT: And, and the same thing is whom the
18 defendant---

19 THE COURT: Yeah.

20 THE DEFENDANT: ---is living or has lived with in the
21 past. I mean---

22 THE COURT: I, I hear you, but it's, it's been in this
23 case. It's not really -- doesn't really matter cause it --
24 cause you say it was within a month. So, that's pretty
25 recent, as opposed to, you know, if you end up in a

1 situation with the girl you use to go with, and she would --
2 when you were 18, you would have a valid argument saying
3 well that's too far away to be considered a household
4 member, but one month doesn't matter that much.

5 Now, is it true that we have a verdict?

6 THE BAILIFF: Yes, sir.

7 THE COURT: All right. So, I don't have to define
8 anything.

9 Did the victim leave or---

10 SOLICITOR CATHCART: I didn't---

11 SOLICITOR CAVANAUGH: No, Your Honor.

12 SOLICITOR CATHCART: We didn't bring her down---

13 THE COURT: Somebody going to get per?

14 SOLICITOR CATHCART: ---since it's a question, Your
15 Honor. We're going to get her. Getting her. Getting her.

16 THE COURT: All right.

17 (Pause.)

18 THE COURT: well, they didn't want any Lizard's
19 Thicket, huh?

20 THE CLERK: well, they were---

21 THE COURT: They want to go home. They want to cook
22 their own dinner.

23 THE CLERK: They were kind of wavering on it with
24 Lizard's Thicket.

25 (Pause.)

1 THE COURT: Where are y'all going now?

2 SOLICITOR CATHCART: Where are y'all going?

3 THE OFFICER: The jail chain.

4 SOLICITOR CATHCART: Oh, okay.

5 SOLICITOR CAVANAUGH: Okay. Okay. Okay. Sorry. I
6 didn't know.

7 THE COURT: How long y'all gonna be gone?

8 THE OFFICER: About two minutes.

9 THE COURT: Two minutes?

10 THE OFFICER: Just---

11 THE COURT: Two?

12 THE OFFICER: Yes, sir.

13 THE COURT: All right. We'll, we'll be at ease then
14 for---

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

16 THE COURT: All right. All right. Let's bring the
17 jury.

18 (WHEREUPON, the jury returned to the courtroom with a
19 verdict at 6:16PM.)

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

21 THE COURT: All right. Thank you.

22 Mr. Foreman, if you'll stand for me?

23 (WHEREUPON, the Foreman complies.)

24 THE COURT: Have you reached a verdict?

25 THE FOREMAN: Yes, sir.

1 THE COURT: Is it unanimous?

2 THE FOREMAN: A---

3 THE COURT: Is it, is it unanimous?

4 THE FOREMAN: On each charge, each charge, I mean yeah,
5 for each charge, it be unanimous.

6 THE COURT: Yes, sir.

7 THE FOREMAN: Yes, sir.

8 THE COURT: Okay. Well, just pass it up, and you can
9 have a seat, and we'll, we'll see what you got. You may be
10 seated.

11 (WHEREUPON, the foreman complies.)

12 THE COURT: The Defendant will stand.

13 (WHEREUPON, the Defendant complies.)

14 THE COURT: You may publish the verdicts unless you
15 want to read them?

16 You want to publish them or you want the -- she, she
17 loves to read them herself.

18 THE FOREMAN: Oh, yeah. Yeah. She can read them.

19 THE COURT: She can read them?

20 THE FOREMAN: Yeah.

21 THE COURT: Good. All right.

22 THE CLERK: State of South Carolina, in the County of
23 Richland, the Court of General Sessions for the Fifth
24 Judicial Circuit, Case Number 2017-GS-40-194, the State of
25 South Carolina versus, versus Wesley Lamonte Givens, we, the

1 jury, unanimously find the Defendant, Wesley Lamonte Givens,
2 guilty of domestic violence of a high and aggravated nature.
3 It's signed by the Foreman, and it's dated October 18th,
4 2018.

5 In Case Number 2017-GS-40-2224, we, the jury,
6 unanimously find the Defendant, Wesley Lamonte Givens,
7 guilty of armed robbery. Signed by the foreperson, and
8 dated October 18th.

9 THE COURT: Is it -- let's see that one.

10 THE CLERK: Of robbery. I'm sorry.

11 THE COURT: Well, it's a difference.

12 THE CLERK: Yes, sir, I'm sorry. Of robbery.

13 THE COURT: All right.

14 THE CLERK: Dated -- signed by the Foreman, and dated
15 October 18th, 2018.

16 In Case Number 2017-GS-40-2223, we, the jury,
17 unanimously find the Defendant, Wesley Lamonte Givens, not
18 guilty of kidnapping. Signed by the foreman, and dated
19 October 18th, 2018.

20 In Case Number 2017-GS-40-2225, we, the jury,
21 unanimously, unanimously find the Defendant, Wesley Lamonte
22 Givens, not guilty of the possession of a weapon during the
23 commission of a violent crime, and it's signed by the
24 Foreman, and it's dated October 18th, 2018.

25 Mr. Foreman, is this your verdict, and the verdict of

1 the entire jury?

2 THE FOREMAN: Yes, it is.

3 THE CLERK: Thank you.

4 THE COURT: Any individual polling requested?

5 MR. HODGE: Not from the defense, Your Honor.

6 THE COURT: All right. Any -- the verdict is
7 unanimous.

8 Any posttrial motions?

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

10 MR. HODGE: None from the defense, Your Honor.

11 (Pause.)

12 THE COURT: Yes, sir.

13 MR. HODGE: Judge, other than renewing any motions that
14 we have made prior to now, I do not have any new motions to
15 make.

16 THE COURT: All right. Can you highlight which ones
17 you might be particularly referring to?

18 MR. HODGE: Yes, sir, as far as the directed verdict
19 for the CDVHAN as -- and I believe that was the only one
20 that, that would matter at this point.

21 THE COURT: All right. Well, as the Court ruled
22 earlier that the -- there's evidence in the record from
23 which the jury could have found him guilty of all of the
24 crimes depending on their view of the evidence, considering
25 direct and circumstantial evidence, the -- there's an

1 abundance of evidence that the conduct engaged into -- in by
2 the Defendant raised the -- to the level of domestic
3 violence of a high and aggravated nature, and I respectfully
4 deny the motion.

5 MR. HODGE: Thank you.

6 THE COURT: Ladies and gentlemen, you know it's -- this
7 case sort of represents the beauty of our criminal justice
8 system because, you know, to bring in 12 people from all
9 walks of life, and to have them listen to a case, and argue
10 about it, and figure it out, and come back with a unanimous
11 verdict, it, it, you know, you're -- the jury's are usually
12 directly on point. And I think, if I were sitting on the
13 jury, I probably would of come back with the exact thing
14 you-all came back with. So, I think you were right on the
15 money.

16 with regard to the kidnapping, you know, it's too much
17 voluntary interaction for it to be kidnapping, and with the
18 possession of a weapon during a violent crime, he had to --
19 would of had to use it to facilitate the crime, and I
20 don't -- there's not -- wasn't any -- well, I don't think
21 she saw it. So, I think you're right on the money on both
22 of those, and with regard to the domestic violence of a high
23 and aggravated nature, the -- where a person engaged in
24 manifestly extreme indifference to the value of human life,
25 I think testimony by the, the witnesses of the -- and the

1 end result of what occurred definitely showed some extreme
2 indifference to human life as, as it occurred on that day.

3 And with regard to whether it's armed robbery or strong
4 armed robbery, the most important thing is that he robbed
5 her, and he didn't necessarily use the weapon to rob her.
6 He -- we could -- you say you call it a robbery, but the
7 other word that we typically use is strong armed robbery,
8 and that's people can use any degree of force to take
9 someone's money. That's strong armed robbery. And so
10 that's basically what you found him guilty of.

11 Now, when -- once a jury finds a person guilty of a
12 crime, it becomes my responsibility to impose a sentence,
13 and either we can do that now or we can do it tomorrow.

14 what says the State?

15 SOLICITOR CAVANAUGH: Your Honor, State's ready to
16 proceed with sentencing. Tomorrow is -- is tomorrow is---

17 THE COURT: All right.

18 SOLICITOR CAVANAUGH: Mr. Givens will remain in
19 custody.

20 THE COURT: All right. Let's -- ready to roll.

21 Ready to proceed to sentencing, Mr. Hodge?

22 MR. HODGE: Yes, sir, Your Honor. I think we would be
23 perfectly fine with sentencing today.

24 THE COURT: All right.

25 MR. HODGE: I would ask for just a few minutes to talk

1 with my client before that happens---

2 THE COURT: All right.

3 MR. HODGE: ---just to get, get our heads together.

4 THE COURT: Okay.

5 MR. HODGE: But other than that, I think we're ready to
6 go today.

7 THE COURT: Absolutely.

8 MR. HODGE: Okay.

9 THE COURT: No problem. Take your time. Just we'll --
10 I'm gonna talk to the jury for a few minutes---

11 MR. HODGE: Okay.

12 THE COURT: ---while you talk to him.

13 (Pause.)

14 THE COURT: Ready to go, Mr.---

15 MR. HODGE: Almost.

16 THE COURT: Almost ready.

17 (Pause.)

18 THE COURT: All right. Well, we'll move on into
19 sentencing.

20 we'll hear from the State.

21 SOLICITOR CAVANAUGH: Thank you, Your Honor.

22 As far as -- I mean you've heard the evidence in this
23 particular case. So, obviously, I don't need to go over the
24 factual circumstances that led to his guilty verdict. I
25 would like to touch on his prior record, which is more

1 extensive then what was --.

2 THE COURT: All right. Let me hear the rest of it.

3 SOLICITOR CAVANAUGH: 2001 has a conviction for brown
4 bagging.

5 THE COURT: How old were you in 2001?

6 THE DEFENDANT: Seventeen.

7 THE COURT: All right. Starting at 17.

8 Go ahead.

9 SOLICITOR CAVANAUGH: 2001 he has a conviction for
10 brown bagging.

11 THE COURT: Brown bagging, what's that?

12 SOLICITOR CAVANAUGH: I've never seen that before, Your
13 Honor.

14 THE COURT: That's having some---

15 THE DEFENDANT: Open container, sir, inside a brown
16 bag.

17 SOLICITOR CATHCART: It's open container in a brown
18 bag.

19 THE DEFENDANT: A beer in a brown bag.

20 THE COURT: A beer in a brown bag.

21 well, you were 17.

22 So, all right. Go ahead.

23 SOLICITOR CAVANAUGH: In 2002, he has a conviction for
24 burglary in the second degree, and grand larceny over
25 \$5,000.00.

1 In 2010---

2 THE COURT: And how much time did you do for that?

3 SOLICITOR CAVANAUGH: Well, he served ten years or he,
4 at least, he received ten years.

5 THE DEFENDANT: I was -- I was sentenced to six
6 years -- ten years. I served six years and ten months.

7 THE COURT: Six years.

8 All right. So, that brings you up to 2000 and what?

9 THE DEFENDANT: Nine.

10 THE COURT: 2009?

11 THE DEFENDANT: Yes, sir.

12 THE COURT: All right. Go ahead.

13 SOLICITOR CAVANAUGH: So, in 2010, he was convicted of
14 threatening the life of a public employee.

15 THE COURT: Who did you threaten?

16 THE DEFENDANT: I don't even know. I don't know.

17 THE COURT: You don't remember.

18 All right. What happened with that, the penalty?

19 SOLICITOR CAVANAUGH: Your Honor, it says that he
20 received three days or a fine.

21 MR. HODGE: I think it's 30 days or a fine.

22 SOLICITOR CAVANAUGH: Oh, 30 days. Sorry.

23 THE COURT: All right.

24 SOLICITOR CAVANAUGH: Thirty days or a fine.
25 2011, loitering.

1 2012 -- excuse me, in 2011, another loitering.

2 2012, resisting arrest, which he received four months
3 suspended to 30 months probation. 2012, he was convicted
4 for resisting arrest, and assault and battery in the third
5 degree. In 2012, he was convicted of assault and battery in
6 the second degree.

7 2013, driving under suspension, failure to obey a
8 traffic device, malicious injury to personal property less
9 than 2,000. Two convictions for that, Your Honor. 2013,
10 forgery less than 10,000, and then, in 2013, a -- an
11 additional resisting arrest.

12 2015, auto breaking.

13 THE COURT: Where were you breaking in cars?

14 THE DEFENDANT: I didn't break into cars, sir.

15 THE COURT: What did you do?

16 THE DEFENDANT: I actually, actually I was at Ms.
17 Green's yard going to pick her up, and someone broke in the
18 car, and I was sitting in the car sleeping, and I was
19 accused.

20 THE COURT: And they, they accused you---

21 THE DEFENDANT: Yes, sir.

22 THE COURT: ---of breaking in a car that you were
23 sitting in?

24 THE DEFENDANT: No, another car. One of her coworkers.

25 THE COURT: You were -- were you loitering there and

1 you were accused of breaking in a -- one of her coworker's
2 cars?

3 THE DEFENDANT: Yes, sir.

4 THE COURT: And you pled guilty to that?

5 THE DEFENDANT: Yes, cause, at the time, I was facing
6 the trafficking charge. I was sitting in Lexington County
7 waiting for the federal marshals to come speak---

8 THE COURT: Trafficking?

9 THE DEFENDANT: ---speak with me.

10 THE COURT: Trafficking in what?

11 THE DEFENDANT: Drugs.

12 THE COURT: Okay.

13 THE DEFENDANT: Drugs, and --.

14 THE COURT: Did you ever get convicted of that?

15 THE DEFENDANT: No, actually it was dropped down to a
16 offense, possession of a drug charge.

17 THE COURT: Okay.

18 THE DEFENDANT: They dropped the trafficking.

19 SOLICITOR CAVANAUGH: And, and that's next, Your Honor.

20 2014, possession of crack cocaine, and unlawful
21 carrying of a weapon as well as an additional drug charge,
22 possession of Schedule 1 or 2/LSD. So, I'm not quite sure
23 what all that drug charge encompasses, but it is just a
24 possession charge.

25 2015, failure to obey traffic controlled device, and

1 driving under suspension.

2 2015, assault and battery in the third degree, simple
3 possession of marijuana.

4 THE COURT: Who was the victim of that, that assault?

5 THE DEFENDANT: Excuse me, sir?

6 THE COURT: Who was the victim?

7 THE DEFENDANT: What, what, what happened?

8 THE COURT: Assault and battery third degree in 2015.

9 THE DEFENDANT: I believe Ms.---

10 THE COURT: Who did you assault?

11 THE DEFENDANT: Ms. -- probably Ms. Green. That's when
12 I was accused when we got into an incident.

13 THE COURT: Okay. That's not a domestic violence.

14 Those are -- that's an assault charge.

15 SOLICITOR CAVANAUGH: Yeah, this is separate from his
16 other domestic violence.

17 THE COURT: That's separate from domestic violence.
18 Assault.

19 Which place was that?

20 Which county?

21 THE DEFENDANT: That's in Orangeburg. All of them from
22 Orangeburg, sir.

23 THE COURT: Well, who did you assault in Orangeburg
24 other than Ms. Green?

25 THE DEFENDANT: I don't, I don't remember.

1 THE COURT: Can't remember.

2 All right.

3 SOLICITOR CAVANAUGH: 2016, malicious injury to
4 personal property less than 2,000, petty larceny.

5 THE COURT: What did you damage?

6 Malicious injury to what kind of property, 2016?

7 THE DEFENDANT: That was a vehicle -- actually she
8 done -- she knocked the windows out of her vehicle, and I---

9 THE COURT: And accused you of doing it?

10 THE DEFENDANT: Yes, that's one of the domestic
11 violence -- one of the domestic -- two domestic, domestic
12 violence that I have in -- came in at.

13 THE COURT: But you pled guilty to malicious injury?

14 THE DEFENDANT: What?

15 THE COURT: To malicious injury to property is what she
16 said.

17 THE DEFENDANT: No, actually that was part of a guilty
18 plea for me going to court to have all my charges resolved
19 cause I was sitting in here on these charges from---

20 THE COURT: Okay.

21 THE DEFENDANT: I was in prison from 2016 up until now,
22 and I'm still sitting in jail.

23 THE COURT: Okay.

24 THE DEFENDANT: And that was part of the guilty plea
25 after I went to trial---

1 THE COURT: All right.

2 THE DEFENDANT: ---in Orangeburg.

3 THE COURT: I'm coming back to hearing all of that. I
4 just wanted to clear -- get quick answers cause we're, we're
5 coming to you when the State gets through.

6 SOLICITOR CAVANAUGH: 2017, a conviction for malicious
7 injury to personal property less than 2,000.

8 THE COURT: Was Mr. Green the victim of that one?

9 THE DEFENDANT: Yes, sir.

10 THE COURT: Both malicious---

11 THE DEFENDANT: She had me charged---

12 THE COURT: What were you doing, knocking out her
13 windows or something?

14 THE DEFENDANT: That's what I was accused of.

15 THE COURT: Okay. All right. That same car?

16 THE DEFENDANT: This was an apartment.

17 THE COURT: Apartment.

18 Okay. Knocking out the windows of her apartment?

19 THE DEFENDANT: Oh, yes.

20 THE COURT: Okay.

21 SOLICITOR CAVANAUGH: And then, finally, in 2018, grand
22 larceny, domestic violence of---

23 THE COURT: What did you steal?

24 THE DEFENDANT: I was accused of taking her sister's
25 car.

1 THE COURT: I know what you're accused of doing. You
2 pled guilty or found guilty. I know the lawyer was asking.
3 You pled guilty to all these things.

4 You didn't have a jury trial, did you?

5 (Pause.)

6 SOLICITOR CATHCART: Your Honor, if you wish, I -- we
7 have certified sentencing sheets. I'll go grab it for you.
8 It shouldn't take that long.

9 THE COURT: All right. For the grand larceny?
10 I'm wondering what were you stealing.

11 MR. HODGE: That's what he's asking.

12 THE COURT: Yeah, why don't you get it. It shouldn't
13 take that long.

14 (Pause.)

15 THE COURT: Mr. Givens, you're not from in Orangeburg,
16 are you?

17 THE DEFENDANT: Yes, I'm from Orangeburg. I live
18 there.

19 THE COURT: What part of town are you from?

20 THE DEFENDANT: Off North Road.

21 THE COURT: Say again.

22 THE DEFENDANT: Off the North Road.

23 THE COURT: North Road.

24 THE DEFENDANT: Off -- past Wal-Mart. The mall going
25 up towards that.

1 THE COURT: How many miles out of town are you?

2 THE DEFENDANT: Off the Shinon Bridge Road, I'll say
3 probably roughly 15 miles.

4 THE COURT: Fifteen miles?

5 THE DEFENDANT: Yes, sir.

6 THE COURT: So, you're from in the county, Orangeburg
7 County?

8 THE DEFENDANT: Yes, sir.

9 THE COURT: All right. I'm asking Chelsea here whether
10 she knows you or heard of you cause she's from---

11 THE DEFENDANT: I seen her before.

12 THE COURT: Oh, yeah. She's from in Orangeburg. She's
13 very popular. She was probably -- what were you in
14 Orangeburg, a majorette or---

15 (Pause.)

16 THE COURT: Oh, she was Miss Orangeburg-Wilkinson.

17 THE DEFENDANT: How old are, ma'am?

18 THE LAW CLERK: Twenty-four.

19 THE COURT: You don't---

20 THE DEFENDANT: She probably went to school with my
21 baby brother.

22 THE COURT: You don't, you don't know her from school.
23 She was -- of course everyone knew her. She was Miss
24 Orangeburg-wilkinson.

25 All right.

1 SOLICITOR CAVANAUGH: So, Your Honor, the -- in 2018,
2 along with the two domestic violence second degree charges
3 that he pled to, he also pled at the same time to a
4 malicious injury to personal property between 2,000 and less
5 then 10,000, and grand larceny more than 10,000. The victim
6 was the same in those incidents. His name is Vincent
7 Cokley, and---

8 THE COURT: who is that, Vincent Cokley?

9 THE DEFENDANT: Okay. That's the same -- okay. That's
10 what I thought. It's -- I was accused of taking her sister
11 car. Her sister, Ms. Green's sister car.

12 THE COURT: And who is Vincent Cokley?

13 THE DEFENDANT: That's who the car owner. That's the
14 guy who owned the car.

15 THE COURT: Her sister's boyfriend?

16 THE DEFENDANT: Boyfriend. Baby father.

17 THE COURT: You're charged with stealing her -- taking
18 her -- damaging his car or stealing his car?

19 THE DEFENDANT: Yes.

20 THE COURT: Okay.

21 THE DEFENDANT: He say I stole the car, but it was
22 found in the yard.

23 THE COURT: Okay. All right.

24 THE DEFENDANT: All of those was under an Alford plea,
25 sir. So, I can get my, my sentence done. So -- but it's

1 time that in I'm doing now.

2 THE COURT: Okay.

3 SOLICITOR CAVANAUGH: And, Your Honor, as it relates
4 to, you know, what the State believes the Defendant should
5 receive, in his two prior convictions for domestic violence,
6 he beat Ms. Green in front of her children. The incident
7 that he's been on trial for, he was beating her as she was
8 driving a motor vehicle and would not stop.

9 Ms. Green has had to deal with -- I mean she can
10 explain it in words herself if she chooses to speak to the
11 Court, but she's had to deal with Mr. Givens violence for
12 most of their -- at least the last two years of their
13 relationship. Their relationship was over and he still
14 continued to beat her.

15 He has no respect for women. He was given, you know --
16 he has every right to be on trial, but he was given ample
17 opportunity to accept responsibility for what he did. He
18 put her job, or what she believed, to put, put her job in
19 jeopardy by stealing \$1,500.00 of the store's money putting
20 her life in jeopardy during that process. His violence
21 towards her is clearly escalated. Once again, even after
22 their relationship was over.

23 I'll see if Ms. Green would like to address the Court.

24 THE COURT: Okay. What was the, the sentence sheets on
25 those domestic violence that you-all pulled off, what,

1 what -- let's see it.

2 SOLICITOR CATHCART: They're right here, Your Honor.
3 They're -- and if you want, they're also copies of the
4 warrants, and the factual rendition of what occurred --

5 THE COURT: Okay.

6 SOLICITOR CATHCART: -- on each of those.

7 THE COURT: So, one says, on 4/27/2016, unlawfully
8 caused harm to Tiffany Green, a household member, by pushing
9 her against the wall inside her residence, which resulted in
10 her left arm to bleed, placed his arm around her neck in an
11 attempt to impede her airflow. She escaped and got out the
12 residence to call law enforcement. When she returned back
13 to her residence, Mr. Givens had already left the scene.
14 Photos were taken of her injuries, et cetera.

15 Then the other one -- what's the date of that?

16 8/25 -- 8/28/2016. Attempted to take her vehicle, and
17 drive away. He's in the process of driving off, and the
18 victim tried to take back possession of her vehicle. And
19 that is when the Defendant started punching the victim in
20 the head area. Took place in the presence of the victim's
21 two minor daughters, and the Defendant's toddler child. And
22 the victim did admit that he had -- and the Defendant did
23 cohabited in the past on some Minisha, Minisha Drive in
24 Orangeburg or on the city limits.

25 And, on that, he got a sentence of three years

1 concurrent with the time he was serving on each one, and
2 probation -- to be followed by 18 months probation.
3 Probation to begin when Defendant, I guess, when he was
4 released -- are you on probation now?

5 THE DEFENDANT: I was still locked up, sir. I, I came
6 straight out. I maxed out from prison. I been in prison
7 since this incident when I was locked up.

8 THE COURT: Okay.

9 THE DEFENDANT: The U.S. Marshals picked me up.

10 THE COURT: So, the probation never began cause you
11 never got out of jail?

12 THE DEFENDANT: No. No, sir, it hasn't.

13 THE COURT: It says probation to begin when Defendant's
14 released from SCDC. Mental health assessment must follow,
15 and recommendation of anger management.

16 All right. Be happy to hear from Ms. Green.

17 MS. GREEN: Since Mr. Givens entered my life, it has
18 changed. Since two years ago since the incident happened, I
19 became my worst enemy meaning couldn't sleep, always
20 paranoid, always wondering if somebody's trying to get me.
21 It's just been crazy. My own kids thought, you know, I was
22 flipping out.

23 Wesley is a menace to society. He, he just constantly
24 keep doing things. I'm says -- he constantly do things over
25 and over. It's like he always get the slap on the wrist.

1 He never -- he's never answered for anything he do. Every
2 time it's a short period of time or he -- I just feel like
3 he always get away with everything. I just ask that he get
4 the maximum sentence possible.

5 THE COURT: The maximum possible.

6 Let's see what that might be.

7 MS. GREEN: Also -- I'm sorry. Also--

8 THE COURT: The maximum, the maximum possible is 20
9 years on the CDVHAN. Is it under -- under robbery, it's---

10 SOLICITOR CATHCART: Strong armed, 15 years, Your
11 Honor.

12 THE COURT: Fifteen years on the strong armed. That's
13 35. That's what you got.

14 All right. Well, that's what he's facing. Possible 35
15 years.

16 MS. GREEN: And I was wondering can I get my -- a
17 permanent restraining order?

18 I just have a temporary one right now.

19 Can it change to permanent?

20 THE COURT: All right. What's the process for her
21 getting that?

22 SOLICITOR CATHCART: Your Honor, by this conviction,
23 you can order a permanent restraining order for her. It
24 will be filed. I believe it will be a order in the Clerk's
25 office or we can talk about the -- upon this -- in this

1 conviction, you can make a finding that -- of the, of the
2 permanent restraining order.

3 THE COURT: Okay. That's another new law that's been
4 passed allowing it -- for the Court to order these
5 restraining orders. We'll look, look that up here.

6 All right. What else you have, Ms. Green?

7 MS. GREEN: That's basically it.

8 THE COURT: Are you getting any type of treatment for
9 your---

10 MS. GREEN: I'm planning on going to Sister Care.
11 Ms. Erin had gave me the number to Sister Care to talk to
12 for free counseling.

13 THE COURT: So, listening to his record dating back
14 from the time he was 17 years old, Ms. -- and maybe I don't
15 know, maybe as a juvenile before then, I don't know, how
16 long have you known him?

17 MS. GREEN: Well, I know him since I was a little kid,
18 but Wesley's always in and out.

19 THE COURT: In and out of jail?

20 MS. GREEN: I guess. I don't see him for that period
21 of time. I guess he was locked up for that ten years. I
22 didn't see him. And it's always -- like some of the charges
23 that we -- like she read out, I don't -- I didn't even know
24 half of them.

25 THE COURT: All right. Well---

1 MS. GREEN: And -- oh.

2 THE COURT: Yes, ma'am, go ahead.

3 MS. GREEN: Oh, and I was gonna say I was the victim of
4 the -- he damaging my car, busting the windows out, kicked
5 my TV in, bust my window out of my apartment, broke the
6 iPad, flattened all four of my tires, broke my keys.

7 THE COURT: And, and folks want to know why you didn't
8 call the police on him that---

9 MS. GREEN: I---

10 THE COURT: ---morning?

11 MS. GREEN: I did. That's the malicious injuries.

12 THE COURT: I mean the morning of on your way to
13 Columbia. The day---

14 MS. GREEN: I didn't have a phone. He had my phone. I
15 didn't have a phone. He took it.

16 THE COURT: All right. Yes, ma'am, I'm happy to hear
17 everything that you want to say.

18 MS. GREEN: Oh, no, that's it.

19 THE COURT: Okay.

20 MS. GREEN: Thank you.

21 THE COURT: All right. Thank you.

22 Yes, ma'am.

23 SOLICITOR CAVANAUGH: Your Honor, just very quickly, it
24 sounds like the Defendant is still blaming Ms. Green for
25 some of his criminal convictions. Ms. Green, throughout the

1 pendency of this case, she has indicated to me that he has
2 been -- he's a very manipulative person, and he, as she
3 stated, even though his actions have basically completely
4 altered her life for the worse since they were in a
5 relationship, he barely gets a slap on the wrist.

6 I think that would also go towards his manipulative
7 nature, Your Honor. I believe that, that he knows how to
8 work the system.

9 As I stated, we tried to work this case out in a
10 reasonable manner. I think that his actions on that day,
11 based on his, and also his prior record, would justify Ms.
12 Green's request, and the State echoes that request, to give
13 him the maximum sentence.

14 THE COURT: All right. Mr. Hodge.

15 MR. HODGE: Thank you, Your Honor.

16 I can't remember if we talked about this on the witness
17 stand, but, as you know, Mr. Givens is 37. He's been
18 incarcerated since October 19th, 2016, which is right at
19 one year now -- I mean two years now. As you heard, he does
20 have four children, eighteen year old, a sixteen year old, a
21 eight year old, and a five year old currently. He graduated
22 from Orangeburg High School.

23 THE COURT: That's not wilkinson High School, is it?

24 THE DEFENDANT: Calhoun County.

25 THE COURT: Calhoun County?

1 THE DEFENDANT: Yes.

2 THE COURT: Okay.

3 THE DEFENDANT: CC.

4 THE COURT: All right. Yes, sir. You said -- he said
5 Orangeburg High School.

6 MR. HODGE: Sorry. That's what he told me just a
7 second ago, Judge.

8 THE COURT: That's Chelsea's School, wilkinson, and
9 he's from---

10 MR. HODGE: I wrote down Calhoun.

11 THE COURT: ---Calhoun County?

12 MR. HODGE: Yes, sir.

13 THE COURT: All right. Go ahead.

14 MR. HODGE: I don't know if you've noticed, in the
15 courtroom, they're not here tonight because his mom had to
16 work, but he does have family support. He's got his
17 grandmother, who he was living with, along with his mom.
18 I've also been in touch with his brother who works and has
19 been unable to make it, but his brother is involved in his
20 life as well, and I think there was -- he was mentioned at
21 least a few times.

22 Judge, obviously, obviously, this relationship is one
23 of those polarized relationships I think. Clearly these,
24 these two were somehow, some way drawn to each other despite
25 the, the anger issues, and the violent issues. And it --

1 they, they continued to try to have a relationship over the
2 course of that time. And, obviously, it's, it's caused
3 quite a history for Mr. Givens.

4 I don't think, I don't think he was trying to -- I
5 don't think he was trying to blame Ms. Green for him -- his
6 charges. I think what he was saying was he was accused of
7 those things, and that's just how he ended up with these
8 guilty pleas. On most of these pleas, most of these
9 charges, Your Honor, were, if you look at the rap sheet,
10 were, were pleas all done on the same day or multiple,
11 multiple charges all handled on the same day that weren't
12 even related to each other. And that's on at least a couple
13 of them, and, obviously, you know, that's---

14 THE COURT: I wonder how many, how many times she just
15 didn't bother to call police.

16 THE DEFENDANT: Can I tell you, sir?

17 THE COURT: well, I have to find that out from her, but
18 go ahead.

19 THE DEFENDANT: Honestly, Ms. Green is the type, she's,
20 like I said, it was a rocky relationship. It was up and
21 down. She had several men. We started being friends in
22 2012, but I did time at Turbeville for probation, and she
23 came and picked me up.

24 THE COURT: How many times have you been to prison?

25 THE DEFENDANT: Only twice.

1 THE COURT: Twice.

2 THE DEFENDANT: Actually three times this -- cause I'm
3 in -- I just came from---

4 THE COURT: Three times.

5 THE DEFENDANT: Yes, probation violation that I was
6 finishing up. It was actually twice, but being locked up in
7 this incident right here violated my probation in
8 Orangeburg. My -- and I couldn't have no contact with the
9 law.

10 But Ms. Green, she's a great liar. She has several
11 different men. A friend for everything. And I mean I did
12 my dirt. She did hers. She just couldn't control it. And
13 like the second two years into our relationship, I just lost
14 all respect for her honestly, and she always would tell
15 me -- I, I would leave. We would get into it, and, when I
16 would come -- she'd ask me to come back cause she, cause she
17 had nobody. As I stated before, mom's dead, dad's
18 alcoholic, and her sister lives in Charlotte, North
19 Carolina.

20 So, we were compatible for one another due to the fact
21 that I didn't have a job, and, you know, when I first moved
22 to The Summit, it was like open house. The door was always
23 opened. Kids was home by they self, the twelve year old,
24 eight year old, and six year old. And she would be at work
25 cause she worked two jobs at the time at Murphy's and

1 Wal-Mart in Lexington County.

2 And I went there and helped. Things just turned around
3 for the worst. That's all I can say.

4 Oh, as far as her not calling the police, she didn't
5 call the police a lot of times because it was lies, and she
6 initiated, initiated a lot of this. Like I'm the type
7 person -- for one, I'm gonna be honest on the record. I'm a
8 marijuana smoker. Keeps me warm. Maintain.

9 THE COURT: Keeps you what?

10 THE DEFENDANT: Maintain. I have epilepsy. So, it
11 helps with my seizures for medicinal purposes. And I'm laid
12 back. And she would always say I didn't want to have sex
13 with her. I didn't pay her no attention. But she get off
14 work, only thing she would do is come home and go to sleeps
15 (sic)..

16 I be done did all the house chores, cleaning up
17 cooking, kids -- helping the kids with their homework, and
18 that's it. So, we -- like I stated, we was compatible for
19 one another.

20 So, she didn't really want me out her life cause I
21 have -- well, she filed a restraining order or when they
22 sent her to file the restraining order in Orangeburg when I
23 was locked up in October 19th in Orangeburg for this same
24 incident, she -- the restraining order was done on the
25 6th, and she added me on Facebook on messenger, send me a

1 friend request, on the 7th.

2 So, if I'm that dangerous of -- you don't want a part
3 of me, I have, you know, the actual proof right here, why
4 would you even add me?

5 why would you add me?

6 In prison. She sent it -- messaging, messaging me and
7 talking to me.

8 THE COURT: You were on Facebook in prison?

9 THE DEFENDANT: Yeah. They, they have emails and
10 message, you know. So, I mean, today, it's like she's
11 putting on a facade. It's a lot of things in this case, as
12 far as like the cash part, I felt I shouldn't of been
13 convicted of because---

14 THE COURT: Do you think you grew up in prison?

15 THE DEFENDANT: Do I think---

16 THE COURT: Yeah.

17 Did you, did you grow up in prison?

18 THE DEFENDANT: Did, did I?

19 THE COURT: Yes.

20 THE DEFENDANT: Yes, kind of, sort of.

21 THE COURT: Yeah.

22 I mean you went to prison when you were how old?

23 THE DEFENDANT: Twenty-one.

24 THE COURT: And stayed there until you were --?

25 THE DEFENDANT: Twenty-eight.

1 THE COURT: Twenty-eight.

2 THE DEFENDANT: Yes, sir.

3 THE COURT: And how many times you went to jail before
4 you went to prison?

5 THE DEFENDANT: Before my prison sentence, I had two,
6 two -- I been for brown bagging, and I think -- is that --
7 that was the only thing after that. I went from brown
8 bagging---

9 THE COURT: what kind of burglary did you do?
10 You broke in someone's or --?

11 THE DEFENDANT: Yes, I did.

12 THE COURT: And how did you do that?

13 THE DEFENDANT: Actually I was went -- dating a female,
14 and I had the keys. It really -- it was burglary due to the
15 fact it wasn't consent. I actually had the keys.

16 THE COURT: You broke in a girlfriend's house?

17 THE DEFENDANT: No. Yeah. I had the keys and I didn't
18 break in. It was her uncle's house. She was staying with
19 her uncle.

20 THE COURT: You broke in your girlfriend's uncle's
21 house.

22 what did you steal?

23 THE DEFENDANT: I didn't -- I took the truck for a
24 joyride. That's where the larceny and everything came from.
25 I drove around in the truck, and they charged me with

1 burglary second and grand larceny.

2 THE COURT: And how long were you out of prison before
3 you picked up another case?

4 THE DEFENDANT: I stayed out -- well, I caught a
5 misdemeanor, a ticket, traffic ticket, but I caught a
6 threatening to inflict at the barber shop that I worked at.
7 That's what I remember that from now.

8 THE COURT: who are you threatening, the co-workers,
9 other barbers?

10 THE DEFENDANT: No, a policeman.

11 THE COURT: At the barber shop?

12 THE DEFENDANT: Yes, sir.

13 THE COURT: why did you do that?

14 THE DEFENDANT: Because I got -- well, another
15 relationship with my girlfriend, my baby moms. She sent the
16 police to my job due to us having a conflict.

17 THE COURT: And you threatened the police who came to
18 your job?

19 THE DEFENDANT: Yeah, I asked him why the F he was
20 there. I mean bothering me bringing -- I work for Paul
21 Robinson. You know where whitackers at in Orangeburg?

22 Right across the street at Paul Robinson Barber Shop,
23 and it was surprising when they jumped out on me. I just
24 asked him what the, what the F he was doing there messing
25 with me, and they charged me with threatening to inflict.

1 THE COURT: And you continue to work at that barber
2 shop or that was it?

3 THE DEFENDANT: I continued. I stayed there until
4 2012. The beginning of 2012. I started having epilepsy
5 from a car accident, seizures, grand mal.

6 THE COURT: All right. What kind of medicine are you
7 on?

8 THE DEFENDANT: Kepro. I take a thousand milligrams of
9 that morning and night. Depakote. I take a thousand
10 milligrams morning and night. Lisinopril for high blood
11 pressure.

12 THE COURT: All right. And the State -- and you get
13 free medicine?

14 THE DEFENDANT: In prison?

15 THE COURT: Or wherever you get it from.
16 How do you get it?

17 THE DEFENDANT: Well, it's not free.

18 THE COURT: Do you pay for it?

19 THE DEFENDANT: Yes, sir.

20 THE COURT: How do you pay for it?

21 THE DEFENDANT: My family.

22 THE COURT: They bring you medicine?

23 THE DEFENDANT: No, they -- you can send me money to
24 your canteen, and they take it out. Get like this -- sort
25 of like a copay. Unless you're in the Department of

1 Corrections. But, in the county jail, where I'm at now,
2 they -- you pay for it. You pay for each refill.

3 THE COURT: All right. What else I need to know about
4 you, Mr.?

5 THE DEFENDANT: I really don't know, sir. I mean I do
6 admit I do have anger issues.

7 THE COURT: I see on these warrants here from 2016 that
8 you, you use an address on St. Matthews Road in St.
9 Matthews.

10 THE DEFENDANT: That's my grandmother's house. That's
11 where me and Ms. Green use to stay. That's -- only place I
12 always -- I would go to find peace at. She's been -- she
13 pretty much raised me cause, my mom, she went to Job Corp.
14 My dad was never there, and --.

15 THE COURT: And where's he?

16 THE DEFENDANT: I don't know.

17 THE COURT: And who is he?

18 THE DEFENDANT: Who is he?

19 THE COURT: Yeah.

20 THE DEFENDANT: I mean I know his name, but I never --
21 we never had relations.

22 THE COURT: Uh-huh. (Affirmative).

23 You ever met him?

24 THE DEFENDANT: Yes, when I was younger. Probably like
25 five and twelve.

1 THE COURT: Where does he live?

2 THE DEFENDANT: From my understanding, New York, New
3 York now. He's married in New York. My mom just told me
4 that, and she's a paramedic for Orangeburg County, a captain
5 over the EMS. She been with them for 28 years.

6 THE COURT: All right. What else I need to know?

7 THE DEFENDANT: I just ask for some type of leniency
8 honest, honestly, sir. I mean it's up to you at the end
9 because everything, as I stated before, is preordained, you
10 know. The path that we walk in life is already written.

11 THE COURT: All right. Anything else, Mr. Hodge?

12 MR. HODGE: All right. Your Honor, the only thing that
13 I would add or ask for would be any sentence that you give
14 that you would consider running the two sentences concurrent
15 on each charge.

16 THE DEFENDANT: Your Honor, I have one question though?

17 THE COURT: Yes, sir.

18 THE DEFENDANT: As far as jury deliberation, when they
19 mix-up as far as high, domestic high aggravation, and first
20 degree domestic violence, they couldn't get a full
21 understanding of the basic statute. You know, I've studied
22 the law a little. So -- and it's confusing to me, and it's
23 still confusing. I understand you and the young lady up,
24 Ms. Chelsea, was trying to figure out even that other lady
25 that was up there was reading.

1 And then it's (sic) contradicts itself in so many
2 different forms, and they sent paperwork asking for
3 clarification because, for one, I mean all elements are
4 basically the same in, in each one. So, in South Carolina,
5 you basically is -- it really is here to protect women.
6 Govern women. In my relation, I'm Muslim.

7 THE COURT: Well, they actually changed it. They, they
8 changed some of the words because the, the Court ruled that,
9 that there can be domestic violence on people of the same
10 sex. So, they changed the statute again to accommodate that
11 gender neutral ruling of the Supreme Court.

12 But, you know, we get questions from the jury, and, and
13 that doesn't mean that -- that's why I have the foreperson
14 sign it because, quite often, just one person may have a
15 question, and, you know, then somebody else may answer that
16 question to their satisfaction or they may come to their own
17 answer. They all -- all the answers are right in the papers
18 they have.

19 THE DEFENDANT: So, is it robbery, strong armed
20 robberies as I was alleged of doing consistent in -- is it
21 in the first degree -- criminal domestic first degree
22 statute?

23 THE COURT: Strong armed robbery?

24 THE DEFENDANT: Yes.

25 THE COURT: Now you were convicted of robbery.

1 THE DEFENDANT: Yes, that's the same though.

2 THE COURT: Within the statute, it says during the --
3 offense is committed during the commission of a robbery.

4 THE DEFENDANT: And that's first degree, right?

5 THE COURT: A robbery. That could be a part of
6 criminal domestic violence.

7 THE DEFENDANT: Yes, sir, so my -- that's, that's the
8 question I have. So, they was miss, miss -- I mean I guess
9 they was lost because they asked for better clarification
10 for domestic violence of a high aggravated nature basically
11 called great bodily harm. Basically death. Close to death.

12 Okay. But, in first degree, if you have robbery, which
13 is consistent in the same statute, you have robbery is
14 basically like moderate severe injury.

15 Okay. And the second degree criminal domestic
16 violence, do it have robbery -- does it have robbery in
17 there?

18 THE COURT: Second degree what?

19 THE DEFENDANT: Criminal domestic violence.

20 THE COURT: No.

21 THE DEFENDANT: Okay. So---

22 THE COURT: And you'll, you'll be studying this for
23 years to come. So, I don't need -- I'm not gonna try to---

24 THE DEFENDANT: I'm quite sure.

25 THE COURT: I'm not gonna try to educate you on the law

1 at this point.

2 Anything else?

3 THE DEFENDANT: No, sir.

4 THE COURT: Ms. Green, would you like to respond or say
5 anything else in response to anything that was said?

6 MS. GREEN: No, sir.

7 THE COURT: All right. Well, Mr. Givens, I'm, I'm not
8 known for lenient sentences.

9 THE DEFENDANT: That's understandable.

10 THE COURT: And when I see a person who is -- has been
11 in trouble just continuously from the time you were 17, and
12 you got out of jail, and then she starts reading off these
13 years, 2011, 2012, 2012, 2013, 2014, 2015, 2016, I mean why?

14 why are you just in trouble all the time?

15 THE DEFENDANT: I have---

16 THE COURT: I mean just -- it's just -- why?

17 THE DEFENDANT: Got to look at the day and time we're
18 living in, Your Honor.. I mean what do you have -- what do
19 you have out there?

20 For one, you're in South Carolina, which is a place
21 where Prison Industries is a billion dollar -- zillion
22 dollar industry.

23 Okay. Sixty-five percent of they money is made from
24 prison. Modern day slavery basically. You have more
25 prisoners -- as I stated before, earlier before, in the

1 pretrial, then counties almost.

2 THE COURT: It's not modern day slavery. Slavery
3 was---

4 THE DEFENDANT: Well, let me---

5 THE COURT: The Thirteenth Amendment.

6 THE DEFENDANT: What, what does prison teach you when
7 you go to prison?

8 THE COURT: What was it, Thirteenth, Fourteenth?
9 Pardon me?

10 THE DEFENDANT: What does prison teaches you when you
11 go to prison, sir?

12 That's, that's the---

13 THE COURT: I don't know. I don't know what you -- you
14 haven't, you haven't -- you've never learned very much.
15 Okay?

16 THE DEFENDANT: They don't teach you anything.
17 Everything had been taken out.

18 THE COURT: That's why I asked the question. You grew
19 up in prison, and you grew up with a warped sense of
20 entitlement, right from wrong. Just, you know, some of the
21 things you do, they're just -- they're total disregard for
22 what the law requires as if -- I mean you're a nice looking
23 young fellow. You know, when you -- case started, you
24 wanted to wear your jail, jail uniform throughout the trial.

25 THE DEFENDANT: And that was---

1 THE COURT: And I convinced you not to do that.

2 THE DEFENDANT: No sense in that.

3 THE COURT: I said the jury -- you sit over there, the
4 jurors will think you must be a barber or something. I had
5 no clue that you actually were. I mean just a clean cut
6 fellow, but you -- I mean you're -- but you made the choices
7 to go in a different direction with your life.

8 THE DEFENDANT: Yeah.

9 THE COURT: And it's, it's so unfortunate for you, and
10 the pain that you brought on Ms. Green there. You know, I
11 don't know why she continued to --.

12 THE DEFENDANT: I'm not the only one she dates like
13 that. She loves troubled guys period.

14 THE COURT: You're the kind of fellow she likes?

15 THE DEFENDANT: Yes.

16 THE COURT: All right.

17 THE DEFENDANT: I'm one of those type.

18 THE COURT: All right. I hear you.

19 All right. Well, my sentence is, for domestic
20 violence, the sentence is 15 years, and, for robbery, the
21 sentence is ten years, and they'll run concurrent. And
22 you'll get credit for time served.

23 THE DEFENDANT: Yes, sir.

24 THE COURT: All right. Good luck to you.

25 THE DEFENDANT: Yes, sir.

1 MR. HODGE: Thank you, Your Honor.

2 SOLICITOR CAVANAUGH: Thank you, Your Honor.

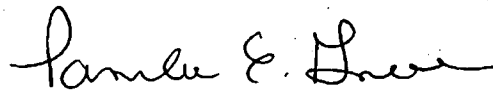
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C E R T I F I C A T E

I, Pamela E. Green, Official Court Reporter for the Seventh Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the proceedings had and evidence introduced in the trial of the captioned case, relative to appeal, in the Court of General Sessions for Richland County, South Carolina, on the 16th, 17th, and 18th days of October, 2018.

I do further certify that I am neither of kin, counsel nor interest to any party hereto.

January 16th, 2019



PAMELA E. GREEN, Court Reporter

WITNESSES

(S) Inv. William Gonzalez
- RCSD

ARREST WARRANT NUMBER

2016A4010203184

ACTION OF GRAND JURY

TRUE BILL

Foreperson of Grand Jury

Date:

AUG 11 2017

VERDICT

Foreperson of Petit Jury

Date:

DOCKET NO. 2017-GS-40-02223

The State of South Carolina

County of

Richland

COURT OF GENERAL SESSIONS

116

August TERM 2017

**THE STATE
vs.**

Wesley Lamonte Givens

**Indictment for
KIDNAPPING**

SC Code: 16-03-0910

CDR Code: 0095

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

Defendant

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

Defendant

Witness:

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

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)

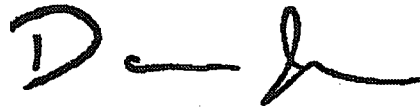
INDICTMENT

At a Court of General Sessions, convened on *Aug 9*, 2017, the
Grand Jurors of Richland County present upon their oath:

KIDNAPPING

That Wesley Lamonte Givens did in Richland County on or about
September 28, 2016, unlawfully seize, confine, inveigle, decoy, kidnap,
abduct or carry away one TIFFANY GREEN, without authority of law, in
violation of Section 16-03-0910, S. C. Code of Laws, (1976, as amended).

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



DAN JOHNSON, SOLICITOR

WITNESSES

(S) Inv. William Gonzalez
- RCSD

ARREST WARRANT NUMBER

2016A4010203185

ACTION OF GRAND JURY

TRUE BILL

Keith D.
Foreperson of Grand Jury

Date: **AUG 11 2017**

VERDICT

Foreperson of Petit Jury
Date:

DOCKET NO. 2017-GS-40-02224

The State of South Carolina

County of

Richland

COURT OF GENERAL SESSIONS

August TERM 2017
116

**THE STATE
vs.**

Wesley Lamonte Givens

**Indictment for
ARMED ROBBERY**

SC Code: 16-11-0330(A)
CDR Code: 0139

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

Defendant

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

Defendant

Witness:

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

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)

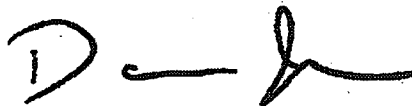
INDICTMENT

At a Court of General Sessions, convened on *Aug 9*, 2017, the
Grand Jurors of Richland County present upon their oath:

ARMED ROBBERY

That Wesley Lamonte Givens did in Richland County on or about September 28, 2016, commit robbery by feloniously taking from the person or presence of Tiffany Green, by means of force or intimidation, goods or monies of Murphy's USA, such goods or monies being described as U.S. Currency, with the intent to deprive the owner permanently of such property, while armed with a pistol, dirk, slingshot, metal knuckles, razor, or other deadly weapon, or while alleging, either by actions or words, that he or she was armed while using a representation of a deadly weapon or any object which a person present during the commission of the robbery reasonably believed to be a deadly weapon. All in violation of §16-11-330(A), S.C. Code of Laws (1976, as amended).

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



DAN JOHNSON, SOLICITOR

STATE OF SOUTH CAROLINA

COUNTY OF
STATERichland

AKA:

Race:

Sex:

Age:

DOB:

SS#:

Address:

City, State, Zip:

DL#

SID#

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

In disposition of the said indictment comes now the Defendant who was

To: Strong Arm RobberyIn violation of § 16-11-335 of the S.C. Code of Laws, bearing CDR Code # 0137☒ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS ☐ §17-25-45The charge is: ☐ As indicted, ☒ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)The plea is: ☒ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

Solicitor

SC Bar #

Defendant

Attorney for Defendant

SC Bar #

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections ☐ County Detention Center, for a determinate term of 10 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and or payment of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for _____ months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on: 2018 G.S. 40-1094
☒ The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by the State Department of Corrections.

☐ The Defendant is to be placed on Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

Pursuant to 18 U.S.C. Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered

PTUP

Total: \$ _____ plus 20% fee: \$ _____

Payment Terms: _____

☐ Set by SCDPPPS _____

Recipient: _____

*Fine: \$ _____
 §14-1-206 (Assessments 107.5%) \$ _____
 §14-1-211 (A)(1)(Conv. Surcharge) \$100 \$ _____
 §14-1-211 (A)(2)(DUI Surcharge) \$100 \$ _____
 §56-5-2995 (DUI Assessment) \$12 \$ _____
 §56-1-286 (DUI Breath Test) \$25 \$ _____
 §47-12 (Public Def/Prob) \$500 \$ _____
 §14-1-212 (Law Enforce. Funding) \$25 \$ _____
 §14-1-213 (Drug Court Surcharge) \$100 \$ _____
 §50-21-114 (BUI Breath Test Fee) \$50 \$ _____
 §56-5-2942(J) (Vehicle Assessment) \$40/ea \$ _____
 §90.7(SCCJA Surcharge) \$5 \$ _____
 3% to County (if paid in installments) \$ _____
 TOTAL \$ _____

Clerk of Court/Deputy Clerk
 Court Reporter:

Jeanette McBride A
CDR

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2017 GS 40-2224

A/W#:

2016 A4010203185

Date of Offense:

9/28/16

S.C. Code §:

16-11-330(A)

CDR Code #:

0139

SENTENCE SHEET

☒ CONVICTED OF or ☐ PLEADS(CSC w/minor 1st or Lewd Act)

(defendant's initials)

☐ Negotiated Sentence, ☐ Recommendation by the State.

Attorney for Defendant

SC Bar #

PTUP

_____ days/hours Public Service Employment

Obtain GED ☐

Attend Voc. Rehab. Or Job Corp. _____

May serve W/E beginning _____

Substance Abuse Counseling ☐Random Drug/Alcohol Testing ☐

Fine may be pd. in equal, consecutive weekly/monthly

pmts. of \$ _____ Beginning _____

\$ _____ Paid to Public Defender Fund

Other: _____

☐ Appointed PD or appointed other counsel,
 \$47.12 requires \$500 be paid to Clerk
 during probation.

Presiding Judge

Judge Code:

Sentence Date

C. Weir
2127
Oct 18, 2018

WITNESSES

(S) Inv. William Gonzalez

- RCSD

ARREST WARRANT NUMBER

2016A4010203186

ACTION OF GRAND JURY
TRUE BILL

Foreperson of Grand Jury

Date:

AUG 11 2017

VERDICT

Foreperson of Petit Jury

Date:

DOCKET NO. 2017-GS-40-02225

The State of South Carolina

County of

Richland

COURT OF GENERAL SESSIONS

116

August TERM 2017

THE STATE

vs.

Wesley Lamonte Givens

**Indictment for
POSSESSION OF A WEAPON DURING THE
COMMISSION OF A VIOLENT CRIME**

SC Code: 16-23-0490

CDR Code: 0549

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

Defendant

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

Defendant

Witness:

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

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)

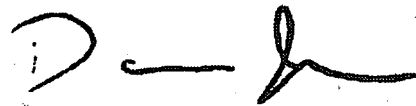
INDICTMENT

At a Court of General Sessions, convened on *Aug 9*, 2017, the
Grand Jurors of Richland County present upon their oath:

**POSSESSION OF A WEAPON DURING THE COMMISSION
OF A VIOLENT CRIME**

That Wesley Lamonte Givens did in Richland County, on or about
September 28, 2016, possess a firearm, or visibly display what appeared
to be a firearm, or visibly displayed a knife, during the commission or
attempted commission of a violent crime, to wit: kidnapping and/or armed
robbery. All in violation of Section 16-23-0490, S. C. Code of Laws, (1976,
as amended).

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



DAN JOHNSON, SOLICITOR

WITNESSES

(S) Inv. William Gonzalez
- RCSD

ARREST WARRANT NUMBER

DP18390

**ACTION OF GRAND JURY
TRUE BILL**

W. J. Allen
Foreperson of Grand Jury JUL 18 2018
Date:

VERDICT

Foreperson of Petit Jury
Date:

DOCKET NO. 2018-GS-40-01094

**AMENDED
The State of South Carolina**

County of

Richland

COURT OF GENERAL SESSIONS

APRIL TERM 2018

116

**THE STATE
vs.**

Wesley Lamonte Givens

**Indictment for
DOMESTIC VIOLENCE OF A HIGH AND
AGGRAVATED NATURE**

**SC Code: 16-25-0065(A)
CDR Code: 3814**

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

Defendant

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

Defendant

Witness:

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

STATE OF SOUTH CAROLINA)
)
 COUNTY OF RICHLAND)

INDICTMENT

At a Court of General Sessions, convened on April 10, 2018, the Grand Jurors of Richland County present upon their oath:

DOMESTIC VIOLENCE OF A HIGH AND AGGRAVATED NATURE

That Wesley Lamonte Givens did in Richland County on or about September 28, 2016, unlawfully cause physical harm or injury to his household member or did offer or attempt to cause physical harm to his household member with apparent present ability under circumstances reasonably creating fear of imminent peril, and did commit this offense under circumstances manifesting extreme indifference to the value of human life and would reasonably cause a person to fear imminent great bodily injury or death, or did in the process of violating a protection order commit domestic violence in the first degree. Circumstances manifesting extreme indifference to the value of human life include but are not limited to the defendant did use a deadly weapon and/or the defendant did commit the offense during the commission of a robbery, burglary, kidnapping and/or theft, and/or the defendant did assault the victim while she was operating a motor vehicle. All in violation of Section 16-25-65, S. C. Code of Laws, (1976, as amended).

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


 DAN JOHNSON, SOLICITOR

WITNESSES

(S) Inv. William Gonzalez
- RCSD

ARREST WARRANT NUMBER

DP18390

ACTION OF GRAND JURY

TRUE BILL

Evon E. Wages

Foreperson of Grand Jury

Date:

APR 10 2018

VERDICT

Foreperson of Petit Jury

Date:

DOCKET NO. 2018-GS-40-01094

The State of South Carolina

County of

Richland

COURT OF GENERAL SESSIONS

APRIL TERM 2018

116

THE STATE

vs.

Wesley Lamonte Givens

**Indictment for
DOMESTIC VIOLENCE OF A HIGH AND
AGGRAVATED NATURE**

SC Code: 16-25-0065(A)

CDR Code: 3814

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

Defendant

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

Defendant

Witness:

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

STATE OF SOUTH CAROLINA)
)
 COUNTY OF RICHLAND)

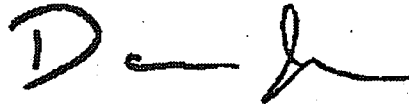
INDICTMENT

At a Court of General Sessions, convened on April 10, 2018, the
 Grand Jurors of Richland County present upon their oath:

DOMESTIC VIOLENCE OF A HIGH AND AGGRAVATED NATURE

That Wesley Lamonte Givens did in Richland County on or about
 September 28, 2016, unlawfully cause physical harm or injury to his
 household member or did offer or attempt to cause physical harm to his
 household member with apparent present ability under circumstances
 reasonably creating fear of imminent peril, and did commit this offense
 under circumstances manifesting extreme indifference to the value of
 human life and would reasonably cause a person to fear imminent great
 bodily injury or death, to wit: the defendant did use a deadly weapon
 and/or the defendant did commit the offense during the commission of a
 robbery, burglary, kidnapping and/or a theft, and/or the defendant did
 assault the victim while she was operating a motor vehicle. All in violation
 of Section 16-25-65, S. C. Code of Laws, (1976, as amended).

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



DAN JOHNSON, SOLICITOR

STATE OF SOUTH CAROLINA

COUNTY OF
STATERichland

VS.

Wesley Lamont Givens

AKA:

Race:

Sex:

Age:

DOB:

SS#:

Address:

City, State, Zip:

DL#

SID#

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

In disposition of the said indictment comes now the Defendant who was

☒ CONVICTED OF or ☐ PLEADSTO: Domestic Violence High + Aggravated NatureIn violation of 16-25-65(A) of the S.C. Code of Laws, bearing CDR Code # 3814☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☒ MOST SERIOUS ☐ Mandatory GPS ☐ §17-25-45The charge is: ☐ As indicted, ☐ Lesser Included Offense,☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)☒ Without Negotiations or Recommendation,☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

Nathaniel Caveness

77690

Solicitor

SC Bar #

Defendant

Attorney for Defendant

SC Bar #

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections ☐ County Detention Center, for a determinate term of 15 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and or payment of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for _____ months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on: 2017 GS 40-2224☒ The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by the State Department of Corrections.☐ The Defendant is to be placed on Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

Pursuant to 18 U.S.C. Section 922, It is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered PTUP

Total: \$ _____ plus 20% fee: \$ _____

_____ days/hours Public Service Employment

Payment Terms: _____

Obtain GED ☐☐ Set by SCDPPPS

Attend Voc. Rehab. Or Job Corp. _____

Recipient: _____

May serve W/E beginning _____

Substance Abuse Counseling ☐

*Fine:

§14-1-206 (Assessments 107.5%)	\$	_____
§14-1-211 (A)(1)(Conv. Surcharge)	\$100	\$ _____
§14-1-211 (A)(2)(DUI Surcharge)	\$100	\$ _____
§56-5-2995 (DUI Assessment)	\$12	\$ _____
§56-1-286 (DUI Breath Test)	\$25	\$ _____
§47.12 (Public Def/Prob)	\$500	\$ _____
§14-1-212 (Law Enforce. Funding)	\$25	\$ _____
§14-1-213 (Drug Court Surcharge)	\$100	\$ _____
§50-21-114 (BUI Breath Test Fee)	\$50	\$ _____
§56-5-2942(J) (Vehicle Assessment)	\$40/ea	\$ _____
§90.7(SCCJA Surcharge)	\$5	\$ _____
3% to County (if paid in installments)		\$ _____
TOTAL		\$ _____

Random Drug/Alcohol Testing ☐

Fine may be pd. in equal, consecutive weekly/monthly pmts. of \$ _____ Beginning _____

\$ _____ Paid to Public Defender Fund

Other: _____

☐ Appointed PD or appointed other counsel, §47.12 requires \$500 be paid to Clerk during probation.

Clerk of Court/Deputy Clerk
Court Reporter:Jeanette McBride R
CDR

Presiding Judge

Judge Code:

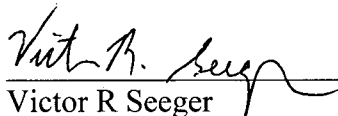
Sentence Date

C. W. Winters
2017
Oct 18, 2018

CERTIFICATE OF COUNSEL FOR APPELLANT

Counsel for appellant certifies that this Record on Appeal contains all material proposed to be included by any of the parties and not any other material and that this Record on Appeal complies to the best of my ability with the April 15, 2014 order from the South Carolina Supreme Court entitled "Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings."

Respectfully Submitted,



Victor R Seeger
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, S.C. 29211-1589

ATTORNEY FOR APPELLANT

This 29th day of July, 2019.

RECEIVED
JUL 29 2019
SC Court of Appeals