

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Greenville County

Honorable Alex Kinlaw, Circuit Court Judge

THE STATE,

V.

OLANDIO R. WORKMAN,

APPELLANT

APPELLATE CASE NO. 2018-001769

RECORD ON APPEAL

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RESPONDENT,

INDEX

INDEX	i
HEARING TRANSCRIPT DATED OCTOBER 6, 2017	1
MOTION FOR COMPETENCY EVALUATION	4
TESTIMONY	
DONNA MADDOX	
Direct Examination by Ms. Gorton	8
RULING OF THE COURT	18
TRIAL TRANSCRIPT DATED SEPTEMBER 17, 18, 19 and 20, 2018	23
TESTIMONY	
DONNA MADDOX (IN CAMERA)	
Direct Examination by Mr. Eppes	34
Cross Examination by Mr. Polsinello	38
Examination by the Court	39
MOTION TO SUPPRESS ADDRESS	53
RULING OF THE COURT	54
MOTION TO SUPPRESS 911 CALL	68
RULING OF THE COURT	72
MOTION TO SUPPRESS FIREARMS	73
TESTIMONY	
SHANNON MCHALE (IN CAMERA)	
Direct Examination by Mr. Polsinello	77
Cross Examination by Mr. Eppes	83
RULING OF THE COURT	88
MOTION TO EXCLUDE WEAPON FROM EVIDENCE	89
RULING OF THE COURT	89

MOTION REGARDING VAGUENESS OF THE KIDNAPPING STATUTE	90
RULING OF THE COURT	90
OPENING STATEMENT BY MR. POLSINELLO	99
OPENING STATEMENT BY MR. EPPES	103
TESTIMONY	
TIRISSA JOHNSON	
Direct Examination by Mr. Polsinello	107
Examination by Mr. Eppes	110
Direct Examination (Continued) by Mr. Polsinello	111
Cross Examination by Mr. Eppes	113
SHANNON MCHALE	
Direct Examination by Mr. Polsinello	115
Cross Examination by Mr. Eppes	134
CHELSEA WILLS-ESKEW	
Direct Examination by Mr. Polsinello	149
Cross Examination by Mr. Eppes	154
STAN WHITTEN	
Direct Examination by Mr. Polsinello	160
Cross Examination by Mr. Eppes	172
Cross Examination (Continued) by Mr. Eppes	180
KENNETH SANDEFUR	
Direct Examination by Mr. Polsinello	184
LORETTA BERGIN (IN CAMERA)	
Direct Examination by Mr. Polsinello	188
Cross-Examination by Mr. Eppes	190
RAMON L. RIVERA (IN CAMERA)	
Direct Examination by Mr. Eppes	200
RAMON L. RIVERA	
Direct Examination by Mr. Polsinello	202
Cross Examination by Mr. Eppes	215
Redirect Examination by Mr. Polsinello.....	219
Re-Cross Examination by Mr. Eppes.....	221
ROBERT J. PERRY	

Direct Examination by Mr. Polsinello	222
Cross Examination by Mr. Eppes	264
Redirect Examination by Mr. Polsinello.....	276
Re-Cross Examination by Mr. Eppes.....	277
ASHLEY BETHELL (IN CAMERA)	
Direct Examination by Mr. Polsinello	278
Cross Examination by Mr. Eppes	281
LORETTA WORKMAN	
Direct Examination by Mr. Polsinello	288
Cross Examination by Mr. Eppes	315
Redirect Examination by Mr. Polsinello.....	321
Re-Cross Examination by Mr. Eppes.....	323
NEIL SONDOV (IN CAMERA)	
Direct Examination by Mr. Polsinello	353
Cross Examination by Mr. Eppes	361
NEIL SONDOV	
Direct Examination by Mr. Polsinello	391
Cross Examination by Mr. Eppes	402
THE STATE RESTS	404
MOTION FOR DIRECTED VERDICT.....	404
RULING OF THE COURT.....	405
RENEWAL OF OTHER MOTIONS	405
RULING OF THE COURT	406
COLLOQUY WITH DEFENDANT REGARDING HIS RIGHT TO TESTIFY.....	414
CLOSING ARGUMENT BY MR. POLSINELLO.....	451
CLOSING ARGUMENT BY MR. EPPES	469
CHARGE ON THE LAW	493
QUESTIONS FROM THE JURY	522
VERDICT	553
MOTION TO STRIKE THE VERDICTS.....	555

RULING OF THE COURT	555
SENTENCING	560
INDICTMENTS AND SENTENCE SHEETS.....	563
COURT’S EXHIBITS #3 AND #4 (JURY QUESTIONS).....	570
COURT’S EXHIBITS #5 AND #6 (JURY QUESTIONS).....	571
COURT’S EXHIBITS #7 (JURY QUESTION).....	572
COURT’S EXHIBITS #12 AND #13 (JURY QUESTIONS).....	573
COURT’S EXHIBIT #8 (WRITTEN JURY CHARGE)	574
COURT’S EXHIBIT #9 (WRITTEN JURY CHARGE)	576
COURT’S EXHIBIT #10 (WRITTEN JURY CHARGE)	577
COURT’S EXHIBIT #11 (WRITTEN JURY CHARGE)	578
CERTIFICATE OF COUNSEL	580

STATE OF SOUTH CAROLINA	)	COURT OF GENERAL SESSIONS
	)	
COUNTY OF GREENVILLE	)	THIRTEENTH JUDICIAL CIRCUIT
	)	
State of South Carolina,	)	Case No(s) : 2016GS2310112,
	)	2016GS2310113
Plaintiff,	)	
	)	
-VS-	)	TRANSCRIPT OF RECORD
	)	
Olandio Workman,	)	
	)	
Defendant.	)	
	)	

October 06, 2017
Greenville, South Carolina

B E F O R E:

HONORABLE LETITIA H. VERDIN, Judge.

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

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I N D E X**DIRECT CROSS REDIRECT RECROSS**

Motions 4

Defense Witnesses:

Dr. Donna Maddox

By Ms. Gorton 8

Certificate of Reporter 22

EXHIBITS PAGE

<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID</u>	<u>EV</u>

PLAINTIFF EXHIBITS

(No exhibits offered.)

DEFENSE EXHIBITS

(No exhibits offered.)

COURT EXHIBITS

(No exhibits offered.)

1 **P R O C E E D I N G S**

2 (Proceedings begin on the 6th day of October,
3 2017 at approximately 11:19 a.m.)

4 **THE COURT:** All right. This is a motion
5 for competency evaluation; is that right?

6 **MS. GORTON:** That's correct, and Dr. Maddox
7 is here.

8 **THE COURT:** All right. Yes, sir.

9 **MR. POLSINELLO:** Your Honor, if I may
10 elaborate, this has evolved into more than just
11 a competency evaluation. Initially, we put this
12 on the docket as the defendant's refusal for
13 Your Honor's order for competency evaluation. A
14 few other issues have evolved since then I
15 think Your Honor would like to know.

16 **THE COURT:** Sure.

17 **MR. POLSINELLO:** We were before Your Honor
18 on August 11th, 2017. This was on the trial
19 docket, first up, on September 13th, 2017. On
20 August 11th, Your Honor signed an expedited
21 competency evaluation order.

22 **THE COURT:** Uh-huh.

23 **MR. POLSINELLO:** The competency evaluation
24 was supposed to happen on September 7th, 2017.
25 On that early morning, Your Honor, when the

1 defendant was being transported to be
2 transported out, he refused to be transported.
3 We have Master Deputy Mike Sweet with the
4 sheriff's office here, who transported
5 Mr. Workman, as well as Corporal William Antley
6 of the detention center, who observed
7 Mr. Workman refusing to be transported. This is
8 according to William Antley's report that the
9 defendant said, quote, Fuck that shit. I'm not
10 going. I'm going to sue that bitch that tried
11 to send me, end quote. Your Honor, once the
12 state heard that that happened on
13 September 7th, we put this on the motions
14 docket to visit this issue.

15 Shortly after, Your Honor, South Carolina
16 Department of Mental Health took it upon
17 themselves to send Dr. Maddox to Mr. Workman in
18 jail. They weren't going to try to resend him.
19 They came to him. Your Honor, that evaluation
20 happened on September 20th, 2017. We received
21 the report October 2nd, 2017. According to
22 Dr. Maddox, who is here today in court,
23 Your Honor, she found Mr. Workman competent to
24 stand trial and that he understands the factual
25 proceedings and has the capacity to assist in

1 his defense. I have a copy of that report if
2 Your Honor would like it. I'm sure Dr. Maddox
3 can elaborate on her findings.

4 Your Honor, shortly before we received that
5 report, the state received a handwritten letter
6 from Mr. Workman dated September 21st, 2017. In
7 this letter, Your Honor, Mr. Workman states
8 that he has fired Cassandra Gorton and that he
9 wants -- he doesn't want a woman attorney and
10 he's okay with Frank Eppes and Larry Crane, who
11 just so happen to be here today in court. He
12 said he only wants a man lawyer.

13 Your Honor, on August 11th, I believe
14 Mr. Workman tried to have Cass relieved, and
15 Cass may have filed a motion herself.
16 Your Honor denied that motion. In this letter,
17 Mr. Workman states that he wants to be put on
18 the jury trial list and that he wants a jury
19 trial. Your Honor, the state was ready to go on
20 September 13th.

21 If Your Honor is inclined to keep
22 Ms. Gorton on his case, given that he's been
23 deemed competent, we most likely can try this
24 in January of 2018. But if Your Honor is
25 inclined to relieve Cass, the state just wants

1 to let Mr. Workman know that this might
2 undoubtedly delay this case. With a new
3 attorney, there's going to be time in getting
4 discovery to that attorney. I'm sure that
5 attorney will want to strategize and talk to
6 Mr. Workman. So that would only delay this
7 trial.

8 THE COURT: All right. Yes.

9 MS. GORTON: Dr. Maddox has come a long
10 ways ---

11 THE COURT: Yes.

12 MS. GORTON: --- to talk to you. So I would
13 call her up.

14 THE COURT: Dr. Maddox.

15 (Dr. Maddox approaches the Court.)

16 THE COURT: Wherever you want to be.

17 DR. MADDOX: (Indicating.)

18 THE COURT: Sure. Perfect.

19 Oh, you want to -- you want to have her
20 testify?

21 MS. GORTON: Yes, Your Honor.

22 THE COURT: Oh, okay.

23 You could just -- do you mind just standing
24 right here?

25 DR. MADDOX: Not a bit.

1 **THE COURT:** That will be good. We can make
2 sure we see you. Sorry. All right. Raise your
3 right hand please.

4 **DR. DONNA MADDOX**
5 having first been duly sworn, testifies as follows:

6 **THE COURT:** All right.

7 **DIRECT EXAMINATION**

8 **BY MS. GORTON:**

9 **Q** Dr. Maddox, did you examine Mr. Workman
10 pursuant to the order for competency exam?

11 **A** I did. I saw him at the Greenville County
12 Detention Center on September the 20th. I also had
13 two resident doctors with me that are training in
14 Greenville, Dr. Bostic and Dr. Nadere [phonetic].

15 **Q** And what was it that made you decide to
16 come all the way to Greenville to examine him, rather
17 than having them try again to transport him?

18 **A** My understanding, Your Honor, was -- I'm no
19 longer employed by the Department of Mental Health,
20 but I do have a contract with them. I'm a contract
21 psychiatrist there. So my understanding was that
22 Mr. Workman was not transported to Columbia for an
23 evaluation and Mental Health contacted me. Since I
24 live in the Upstate in Anderson, they asked me would
25 I evaluate Mr. Workman. I told them I was glad to do

1 that. My residents and I went there, and he was very
2 cooperative with us. I was able to evaluate him.

3 Q Did you have any communications with the
4 jail about his mental state?

5 A No, not with the jail.

6 Q Did you have any conversations with
7 Dr. Martin about his mental state?

8 A I did.

9 Your Honor, what I did was, before I
10 evaluated Mr. Workman, I had some of his discovery; I
11 had some of the letters that he had been writing. I
12 think the solicitor's office -- graciously, I was
13 provided with some of his mental health records from
14 the jail. And I also had his medical records. Now, he
15 has been treated at the department -- at the jail by
16 Dr. Ernest Martin. What I did was, after I evaluated
17 Mr. Workman, I personally telephoned Dr. Martin.

18 If you look at his records, he had been
19 asking for months to have his medications increased.
20 He had been asking almost every week since June of
21 2017. He was not seen. What had happened, Your Honor,
22 back earlier in about April or May, he was on a very
23 strong medication to help him organize his thoughts
24 and decrease his anxiety. That medication was
25 changed. And when it was changed, it was changed to a

1 good medicine, but it was a weaker medicine.

2 So I called Dr. Martin immediately.

3 Dr. Martin increased his medications. I met with
4 Mr. Workman again today. And he has had an increase
5 in his medications.

6 THE COURT: Good.

7 DR. MADDOX: And he is feeling a little bit
8 better. He's sleeping better.

9 THE COURT: Good.

10 DR. MADDOX: And some of his symptoms --
11 he's definitely improved since I saw him on the
12 20th.

13 BY MS. GORTON:

14 Q One of the concerns that was raised when he
15 had the hearing on the motion and the order is that
16 Mr. Workman was basically feigning a mental illness.
17 Are you trained to detect when people are feigning
18 that?

19 A Yes.

20 Q And was it your professional opinion that
21 he was feigning a mental illness?

22 A He is not feigning at all, Your Honor. I
23 think his symptoms are absolutely consistent. I
24 diagnosed him with post-traumatic stress disorder.
25 Because there's people in the court, I won't go into

1 detail unless ---

2 THE COURT: Oh, sure.

3 DR. MADDOX: --- you need it.

4 THE COURT: That's fine. No.

5 DR. MADDOX: But basically what happened,
6 Your Honor, when you have post-traumatic stress
7 disorder, there are periods of time under
8 severe stress when you can become symptomatic
9 and psychotic. And that's what I think
10 happened. He's been in the detention center. He
11 had a change in his medications. His trial date
12 was coming up. He was undermedicated. I had no
13 evidence that he was malingering or faking
14 these symptoms or doing anything to try to
15 cause an upheaval in the court.

16 BY MS. GORTON:

17 Q Can you talk a little bit about the
18 diagnosis of paranoia?

19 A Paranoia is like a symptom, like abdominal
20 pain. It has lots of different causes. He's got two
21 causes for him. He certainly has post-traumatic
22 stress disorder. It was probably preexisting. He's
23 had some serious assaults in the past. I looked at
24 his medical records. He was a victim of a crime and
25 had a rather serious head injury and assault from

1 that. Then also in the jail, he witnessed an assault.
2 It's well-documented in his jail records by
3 Dr. Martin. So he had those that contributed to
4 paranoia.

5 And then, basically, his personality
6 structure. He is, apparently -- person -- what they
7 do is, they're very thoughtful. They spend a lot of
8 time thinking about things. So actions that may
9 happen, even as simple as him being called to the
10 courtroom a minute ago and having to go back, he
11 spends a lot of time thinking about those things.

12 THE COURT: Right.

13 DR. MADDOX: Those things are very
14 significant to him and he's not sure of
15 people's motives when those things happen. So
16 that's his underlying personality structure
17 anyway. So you take that, you have PTSD, and
18 then the recent circumstances, that would be
19 enough, in my opinion, to create -- it's called
20 an attenuated psychosis, meaning it's a
21 psychosis that will come and go. But he is
22 better. He certainly is better than he was on
23 the 20th.

24 THE COURT: He certainly looks a lot --
25 You look a lot better than the last time I

1 saw you. You look like you feel a lot better.

2 MR. WORKMAN: Oh, yes. I do.

3 THE COURT: Dr. Maddox is pretty good.

4 MR. WORKMAN: Your Honor, this is another
5 thing that's been puzzling me about --
6 concerning Gorton. Could you read that out loud
7 so everybody could hear it please?

8 THE COURT: I don't normally read things
9 out loud when they are -- but I'm going to read
10 it to myself.

11 MR. WORKMAN: Oh, okay.

12 THE COURT: (Reviewing.)

13 MR. WORKMAN: How can someone attempt to
14 impede the administration of justice and not be
15 charged for it? Especially when they're
16 conspiring with the solicitor's office and the
17 solicitor right there.

18 THE COURT: I -- Mr. Workman, I understand
19 where you're coming from on this. I understand
20 that you and Ms. Gorton might not have -- might
21 not be getting along. And that sometimes
22 happens.

23 One of the reasons that I kept Ms. Gorton
24 as your attorney is because -- I wasn't sure at
25 the time, but I thought, and now Dr. Maddox has

1 confirmed, that you had some mental issues that
2 needed to be addressed. And it sounds great,
3 that it is being addressed. And Dr. -- and --
4 and Ms. Gorton is particularly skilled with
5 dealing with people in those situations. That's
6 the reason I had kept her on before. I know
7 we're not here necessarily to discuss -- I
8 don't have the motion on my docket about having
9 a new attorney.

10 MS. GORTON: I'm getting there.

11 THE COURT: Okay. Go ahead.

12 MS. GORTON: Certainly.

13 BY MS. GORTON:

14 Q Dr. Maddox, does he continue to exhibit
15 signs of paranoia?

16 A Towards you, specifically, yes. And then
17 overall, a general level, not as specific as to
18 Ms. Gorton.

19 THE COURT: Okay.

20 BY MS. GORTON:

21 Q So in a hypothetical question, as a
22 hypothetical scenario, if we went to trial now, would
23 he be able to cooperate with me in preparing for
24 trial if I were still his lawyer?

25 A No. My opinion is: He would refuse to see

1 you; he would not communicate with you during a
2 trial.

3 **THE COURT:** Okay.

4 **BY MS. GORTON:**

5 **Q** In fact, I provided you with jail logs
6 showing the visits, correct?

7 **A** Yes.

8 **Q** And those showed significant visits, I
9 believe 10, prior to his refusal, starting in about
10 July?

11 **A** That's correct. You two were working -- you
12 generally had a good working relationship up until
13 about July.

14 **Q** And can you tell the judge why that fits in
15 with the diagnosis that you talked about?

16 **A** Again, as I mentioned, his medications had
17 been changed. He recognized -- I mean, he was trying
18 to get help. He had sent numerous -- I outlined them
19 in the report. It was also the period of time he
20 recognized he was having symptoms. That was just a
21 confluence of events. Also, I think some of the
22 nature of the things you all were discussing in terms
23 of trial strategy, even the anxiety of that could
24 have contributed.

25 **THE COURT:** Okay. All right.

1 BY MS. GORTON:

2 Q Is this something that you feel like will
3 be fixed as far as me staying on as his lawyer if his
4 medication is adjusted?

5 A No, I think your relationship is
6 irreparably damaged.

7 Q All right. Thank you. Now, I'm going to go
8 ahead and ask this question, not so much for this
9 Court, but for whatever trial Court might be
10 presiding over trial: Assuming that he does stay as
11 he is today, how do you feel about Mr. Workman
12 representing himself without a lawyer? Do you feel he
13 could do that?

14 A Well, the standard for representing
15 yourself is the standard for competency to stand
16 trial. So technically, he would be competent to do
17 that. I don't recommend it. But my understanding of
18 the standard, I just had a very long testimony for
19 two weeks in Lexington over this very issue. It's the
20 same standard.

21 Q Okay. Now, you said his condition could
22 come and go.

23 A Yes.

24 Q And as he approaches trial and gets that
25 increased stress, he could slide back into the

1 condition that he was? Is that possible?

2 **A** Yes. And he still -- in terms of his
3 relationship with you, that condition has not
4 changed. Medication has not helped that. He's just
5 less anxious. He's feeling better and he's able to
6 think more clearly.

7 Your Honor, I opined he's competent
8 because, in general, competency is the capacity, not
9 necessarily the individual -- the individual's
10 relationship. It's the capacity to work with other
11 attorneys. He's had relationships with attorneys in
12 the past that have represented him. And I do think
13 he's got a capacity to work with other attorneys. I
14 think just this relationship has gotten to the point
15 where I don't think that he would be able to assist.

16 **Q** Do you have an opinion as a male versus
17 female attorney?

18 **A** I definitely -- it's my opinion a male
19 would be better suited to deal with him.

20 **THE COURT:** Okay. On this -- I'll say
21 this: I normally don't -- I normally don't take
22 gender into consideration, whether somebody's
23 male or female in deciding -- appointing an
24 attorney or anything like that. But in your
25 situation, because of what Dr. Maddox has said,

1 I will do that this time. I will do that. All
2 right.

3 MS. GORTON: Frank's here.

4 THE COURT: Mr. Eppes.

5 MR. EPPES: I had a bad feeling --
6 Please don't think when I say I had bad
7 feeling that it had anything to do with you. As
8 you know, I think a lot of you.
9 I'm here.

10 THE COURT: Mr. Workman, obviously, thinks
11 a lot of you. And -- as well -- and I normally
12 don't do this, but these are extraordinary
13 circumstances. And so I'm going to appoint you
14 as Mr. Workman's attorney.

15 MR. EPPES: Can I ask one thing,
16 Your Honor?

17 THE COURT: Yes, sir.

18 MR. EPPES: As Your Honor knows,
19 Ms. Gorton is much more enthusiastic about the
20 trial issues than I am. I would ask that she
21 remain on the case to assist me behind the
22 scenes. If Mr. Workman doesn't want her at
23 counsel table, that's perfectly fine with me,
24 but I'm going to need her help preparing for
25 this trial, if it winds up indeed being a

1 trial.

2 She would help, Mr. Workman. If I didn't
3 think she'd help, I wouldn't be asking this.
4 (There is a pause.)

5 **MR. WORKMAN:** I'll leave it up to you,
6 Frank.

7 **MR. EPPES:** Your Honor, I think -- I think
8 that will be appropriate. I'd also ask that --
9 I'd also ask that if I need some help from the
10 public defender's office that I be able to
11 draft, perhaps, the public defender to help me,
12 as well.

13 **THE COURT:** All right. And -- and -- you
14 know, it pains me greatly to have these words
15 come out of my mouth, but here they are: a male
16 attorney ---

17 **MR. EPPES:** Oh, I agree.

18 **THE COURT:** --- from the public defender's
19 office. All right.

20 Mr. Workman, it sounds like it all has
21 worked out just fine. You're not going to have
22 any more contact with Ms. Gorton, although
23 she'd be helping only through Mr. Eppes.
24 Mr. Eppes is going to be your lawyer.

25 And hopefully -- and if there's some issue

1 we need to address at the end of this case, we
2 can do that. Okay. But I'm going to give you
3 this paper back for us to deal with that on
4 down the road. How about that? Is that fair
5 enough?

6 MR. WORKMAN: Yes, ma'am.

7 MS. GORTON: Judge, for clarification, will
8 there be an order relieving me for insurance
9 purposes?

10 THE COURT: Uh-huh.

11 MS. GORTON: Okay.

12 THE COURT: I'll relieve you. But then as
13 Mr. Eppes feels like he needs to talk to you or
14 needs your assistance...

15 MS. GORTON: If he could just act as a
16 supervising lawyer and I'll be his paralegal,
17 then that's great.

18 MR. EPPES: Your Honor, if I may raise one
19 other issue, I have a case in Anderson that's a
20 mess. It's going to be, probably, the week of
21 Valentine's Day.

22 THE COURT: Got you.

23 MR. EPPES: I have no idea what the
24 logistics are going to be January, February,
25 and March, but that case has to take priority.

1 **THE COURT:** I understand. I understand.

2 **MR. EPPES:** So I just wanted to make the
3 Court aware of that as far as trying to set a
4 trial date.

5 **THE COURT:** And I know Mr. Polsinello will
6 be very reasonable in working with you with
7 that.

8 **MR. POLSINELLO:** We'll coordinate.

9 **THE COURT:** I understand that case, with
10 the number of experts that would need to be
11 brought in that case, it would need to take
12 precedent. All right. Good enough.

13 Have you addressed everything, Mr. Workman,
14 today?

15 **MR. WORKMAN:** Yes, Your Honor.

16 **THE COURT:** Okay. Well, good. I'm going to
17 give you this paper back. Okay?

18 **MR. POLSINELLO:** Thank you, Your Honor.

19 **MS. GORTON:** Thank you.

20

21 (Proceedings conclude at approximately
22 11:37 a.m.)

23

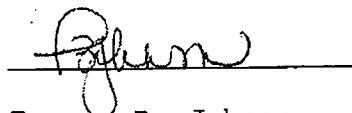
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CERTIFICATE

I, the undersigned, Teresa B. Johnson, Official Court Reporter for the Thirteenth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of all the proceedings had and evidence introduced in the trial of the captioned case, relative to appeal, in the Court of General Sessions for Greenville, South Carolina, on this 28th day of November, 2018.

I do further certify that I am neither of kin, counsel nor interest to any party hereto.



Teresa B. Johnson

Circuit Court Reporter

STATE OF SOUTH CAROLINA)

COUNTY OF GREENVILLE)

COURT OF GENERAL SESSIONS

2016-GS-23-10112

2016-GS-23-10113

STATE OF SOUTH CAROLINA,)

vs.)

TRANSCRIPT OF RECORD

OLANDIO R. WORKMAN,)
DEFENDANT.)

ORIGINAL

September 17, 18, 19, and 20, 2018
Greenville, South Carolina

B E F O R E:

THE HONORABLE ALEX KINLAW, JR., JUDGE; and a jury.

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

DEREK R. POLSINELLO, ESQ.
Assistant Solicitor

FRANK L. EPPES, ESQ.
Attorney for the Defendant

HOLLIE M. JENKINS
Circuit Court Reporter

I N D E X

(SW) - Denotes State's Witness
 (DW) - Denotes Defense Witness
 (IC) - Denotes In Camera

Page No.

Pre-Trial Matters.....	8
<u>(DW) DONNA SCHWARTZ MADDOX, M.D. (IC):</u>	
Direct Examination by Mr. Eppes.....	12
Cross-Examination by Mr. Polsinello.....	16
Examination by the Court.....	17
Pre-Trial Matters.....	19
Jury Qualification.....	34
Jury Selection.....	48
Pre-Trial Motions.....	62
<u>(SW) SHANNON MCHALE (IC):</u>	
Direct Examination by Mr. Polsinello.....	86
Cross-Examination by Mr. Eppes.....	92
Pre-Trial Motions.....	94
Introductory Remarks by the Court.....	108
Opening Statement by Mr. Polsinello.....	116
Opening Statement by Mr. Eppes.....	120
<u>(SW) TIRISSA JOHNSON:</u>	
Direct Examination by Mr. Polsinello.....	124
Examination by Mr. Eppes.....	127
Continued Direct Examination by Mr. Polsinello.....	128
Cross-Examination by Mr. Eppes.....	130
<u>(SW) SHANNON MCHALE:</u>	
Direct Examination by Mr. Polsinello.....	133
Cross-Examination by Mr. Eppes.....	151
Matters of Law.....	156

TUESDAY, SEPTEMBER 18, 2018

<u>(SW) CHELSEA WILLS-ESKEW:</u>	
Direct Examination by Mr. Polsinello.....	166
Cross-Examination by Mr. Eppes.....	171

INDEX (CONTINUED)Page No.

<u>(SW) STAN WHITTEN:</u>	
Direct Examination by Mr. Polsinello.....	177
Cross- Examination by Mr. Eppes.....	189
Matters of Law.....	189
<u>(SW) STAN WHITTEN:</u>	
Continued Cross-Examination by Mr. Eppes.....	197
<u>(SW) KENNETH SANDEFUR:</u>	
Direct Examination by Mr. Polsinello.....	201
<u>(SW) LORETTA BERGIN (IC):</u>	
Direct Examination by Mr. Polsinello.....	205
Cross-Examination by Mr. Eppes.....	207
Matters of Law.....	207
<u>(SW) RAMON L. RIVERA (IC):</u>	
Direct Examination by Mr. Eppes.....	217
<u>(SW) RAMON L. RIVERA:</u>	
Direct Examination by Mr. Polsinello.....	219
Cross-Examination by Mr. Eppes.....	232
Redirect Examination by Mr. Polsinello.....	236
Recross-Examination by Mr. Eppes.....	238
<u>(SW) ROBERT J. PERRY:</u>	
Direct Examination by Mr. Polsinello.....	239
Matters of Law.....	274
<u>(SW) ROBERT J. PERRY:</u>	
Cross-Examination by Mr. Eppes.....	281
Redirect Examination by Mr. Polsinello.....	293
Recross-Examination by Mr. Eppes.....	294
<u>(SW) ASHLEY BETHELL (IC):</u>	
Direct Examination by Mr. Polsinello.....	295
Cross-Examination by Mr. Eppes.....	298
Matters of Law.....	298

INDEX (CONTINUED)Page No.(SW) LORETTA WORKMAN:

Direct Examination by Mr. Polsinello.....	306
Cross-Examination by Mr. Eppes.....	332
Redirect Examination by Mr. Polsinello.....	338
Recross-Examination by Mr. Eppes.....	340

Matters of Law.....	341

WEDNESDAY, SEPTEMBER 19, 2018

Matters of Law.....	362

(SW) NEIL SONDOV (IC):

Direct Examination by Mr. Polsinello.....	370
Cross-Examination by Mr. Eppes.....	378

Matters of Law.....	381

(SW) NEIL SONDOV:

Direct Examination by Mr. Polsinello.....	408
Cross-Examination by Mr. Eppes.....	419

State Rests.....	421
Motions.....	421
Questioning of the Defendant.....	431
Matters of Law.....	435

(DW) DONNA SCHWARTZ MADDOX, M.D.:

Direct Examination by Mr. Eppes.....	455
Cross-Examination by Mr. Polsinello.....	456
Redirect Examination by Mr. Eppes.....	457

Matters of Law.....	458
Defense Rests.....	467
Closing Argument by Mr. Polsinello.....	468
Closing Argument by Mr. Eppes.....	486
Charge on the Law by the Court.....	510

INDEX (CONTINUED)THURSDAY, SEPTEMBER 20, 2018Page No.

Questions from the Jury.....	539
Verdict of the Jury.....	570
Sentencing by the Court.....	577
Certificate of the Court Reporter.....	579

INDEX (CONTINUED)E X H I B I T S

<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID.</u>	<u>EVD.</u>
	(State's Exhibits)		
S-1	CD-911 Calls.....	127.....	127
S-2	CAD Reports.....	129.....	129
S-3	Map.....	8.....	135
S-4	Map.....	8.....	137
S-5	Photograph.....	8.....	170
S-6	Photograph.....	8.....	170
S-7	Photograph.....	8.....	170
S-8	Photograph.....	8.....	170
S-9	Photograph.....	8.....	170
S-10	Photograph.....	8.....	170
S-11	Photograph.....	8.....	170
S-12	Photograph.....	8.....	170
S-13	Photograph.....	8.....	170
S-14	Photograph.....	8.....	170
S-15	Gun.....	184.....	184
S-16	Long Gun-AK-47.....	185.....	185
S-17	MD Magazine.....	186.....	186
S-18	MD Magazine.....	186.....	186
S-19	MD Magazine.....	186.....	186
S-20	MD Magazine.....	186.....	186
S-21	MD Magazine.....	186.....	186
S-22	Ammunition.....	187.....	187
S-23	Ammunition.....	187.....	187
S-24	Ammunition.....	187.....	187
S-25	Blue Bag.....	188.....	188

INDEX (CONTINUED)E X H I B I T S

<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID.</u>	<u>EVD.</u>
(Court's Exhibits)			
C-1	Supplemental Report.....	100.....	100.
C-2	CD.....	538.....	538
C-3	Note from the Jury.....	548.....	548
C-4	Note from the Jury.....	548.....	548
C-5	Note from the Jury.....	560.....	560
C-6	Note from the Jury.....	560.....	560
C-7	Note from the Jury.....	560.....	560
C-8	Jury Charge.....	560.....	560
C-9	Jury Charge.....	560.....	560
C-10	Jury Charge.....	560.....	560
C-11	Jury Charge.....	560.....	560
C-12	Note from the Jury.....	565.....	565
C-13	Note from the Jury.....	569.....	569

All Exhibits were retained by the Clerk of Court for Greenville County.

P R O C E E D I N G S

(WHEREUPON, State's Exhibit Nos. 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, and 14 were marked for identification only.)

THE COURT: Mr. Eppes.

MR. EPPES: Your Honor, we have one issue that I think we can handle right now that involves Dr. Maddox.

THE COURT: All right. Before we bring the panel up? Do you want to do it now?

MR. EPPES: Yes, sir.

THE COURT: All right.

MR. EPPES: Your Honor, I was appointed on this case after --

THE COURT: Just so -- just so the record -- the record will be clear. This is in the interest of State v. Orlandio Workman; is that right?

MR. EPPES: It's Olandio.

THE COURT: Olandio Workman.

Mr. Eppes, go ahead.

P R E - T R I A L M A T T E R S

MR. EPPES: Your Honor, I was appointed on this case after Mr. Workman had some dissatisfaction with his previous two lawyers. He -- he was required to do a psychiatric evaluation. And they had some problem with him going to Columbia. So Dr. Maddox was retained by the

1 D -- the Department of Mental Health to come up here and
2 meet with him and do that.

3 And through the course of her initial findings and --
4 and everything else, he is seeing Dr. Martin down at the
5 detention center. Everybody believes him to be competent.

6 Dr. Maddox spoke with him again this morning. And
7 just so everything's clear and to explain a little bit to
8 the Court about Mr. Workman that I think will be helpful
9 as we go along in the trial should he get tired or
10 anything, I'd like to just put Dr. Maddox on the stand to
11 tell you a little bit about him.

12 THE COURT: All right. And that's -- that's just
13 to -- to elaborate upon what you just said?

14 MR. EPPES: To reaffirm his competence, discuss his
15 medications, and, frankly, discuss the fact that he may
16 need coffee from time to time. Because one of his
17 medications makes him a little tireder than the other
18 ones --

19 THE COURT: Let me ask you this, Counsel. Do you
20 want to do that now, or do you want to do that pre-trial
21 before the jury is impanelled? When do you want to do it?

22 MR. EPPES: I'm -- I'm happy to do it now. I don't
23 think there's any implication of it with the jury being
24 sworn. But, frankly, I would defer to Your Honor on that.

25 THE COURT: Yeah. We can do it now. I don't have a

1 problem doing it now. All right. Is he --

2 What's -- what's the State's position?

3 MR. POLSINELLO: May it please the Court.

4 Derek Polsinello representing the State, Your Honor.

5 THE COURT: How are you doing?

6 MR. POLSINELLO: No objection, Your Honor.

7 This case has a long procedural history. It's around
8 722 days old as of today.

9 And just to let Your Honor know that Dr. Maddox did
10 meet with this Defendant on September 20th, 2017, at the
11 detention center. A competency evaluation was done. He
12 was found to be competent. She submitted her report to us
13 on October 1st, 2017. I have a copy of that report, if
14 Your Honor would like to see it.

15 I spoke to her this morning after Mr. Eppes and her
16 met with the Defendant and --

17 THE COURT: Is that a roundabout way of you telling
18 me you disagree with what Mr. Eppes is asking?

19 MR. POLSINELLO: No. I don't disagree. I just
20 wanted for the record --

21 THE COURT: I think Mr. Eppes just wanted "yes" or
22 "no." All I want is a "yes" or "no."

23 MR. POLSINELLO: I just wanted the record to show how
24 competency was addressed early on in the stage of this
25 case. This isn't sort of a morning issue. I just wanted

1 to make sure that it was known that we've addressed this
2 months -- months ago.

3 THE COURT: Okay. The record is so noted. I think
4 for the limited purpose of what Mr. Eppes is wanting to
5 make inquiry of the witness, I don't -- I don't really
6 have a problem doing it now. I just wanted to know
7 whether or not you had a position one way or the other.
8 And I'm assuming you do not.

9 MR. POLSINELLO: No objection to doing it now.

10 THE COURT: All right. Madam Clerk, we're going to
11 just kind of hold off bringing the panel up --

12 THE CLERK: Okay. I'll just tell her we're going to
13 wait for a second.

14 THE COURT: Just tell her to wait for a second.
15 We're going to go ahead and do this now, I think.

16 All right. Mr. Eppes.

17 MR. EPPES: Your Honor, I'd just ask that Dr. Maddox
18 take the stand.

19 THE COURT: All right. Dr. Maddox, would you come
20 forward? Come around here to be sworn.

21 THE CLERK: Ma'am, if you'll, please, place your left
22 hand on the Bible. Raise your right hand.

23 WHEREUPON,

24 DONNA SCHWARTZ MADDUX, M.D.,
25 after first having been duly sworn, testified as follows:

1 THE CLERK: Thank you.

2 Please be seated.

3 THE COURT: Mr. Eppes.

4 THE CLERK: If you'll, please, state your name for
5 the record.

6 THE WITNESS: Yes, ma'am. Donna, middle name
7 Schwartz, S-C-H-W-A-R-T-Z, last name Maddox, M-A-D-D-O-X.

8 THE CLERK: Thank you.

9 DIRECT EXAMINATION

10 BY MR. EPPES:

11 Q Dr. Maddox, you and I've known each other a long
12 time; right?

13 A Yes.

14 Q And you've done cases for me as defense counsel, and
15 you've done cases for the various solicitor's offices in
16 the state; correct?

17 A Yes.

18 Q And you've examined people for competency and for
19 evaluations as well; correct?

20 A Yes.

21 Q Okay. Now, you had cause to examine Mr. Workman
22 based upon an order that, I believe, was issued by Judge
23 Verdin; is that right?

24 A That's correct.

25 Q Would you tell the Court about your initial

1 evaluation, and then about your discussions with
2 Mr. Workman today, and what your findings are, please?

3 A Certainly.

4 Your Honor, what happened is I don't work for the
5 Department of Mental Health.

6 THE COURT: Yes, ma'am.

7 THE WITNESS: I'm, actually, retired in -- in private
8 practice of forensic psychiatry. But I do have a contract
9 with them. And, at times, I perform competency to stand
10 trial and criminal responsibilities for them, as well as
11 some of the sexually violent predator evaluations.

12 And what happened in this case, Mr. Workman -- Judge
13 Verdin had ordered a competency to stand trial evaluation.
14 He did not want to be transported from the detention
15 center. And so Columbia -- the Department of Mental
16 Health called me and asked me would I come to the
17 Greenville County Detention Center and see him, which I
18 was glad to do. I did that.

19 Mr. Workman does have a history of mental illness.
20 And at the time that I saw him, Your Honor, his
21 medications definitely needed to be adjusted. He, in my
22 opinion, was psychotic at the time that I saw him last
23 year. But his psychosis was mainly limited to the
24 problems he was having with his attorney. He believed
25 that she had divulged privileged information to law

1 enforcement.

2 But, at the time, I had still opined that I thought
3 he was competent because he had a -- he did have a
4 capacity to address. He just did not trust this attorney.
5 He had worked with Mr. Eppes in the past. And I had
6 recommended that, perhaps, Mr. Eppes, since he did have a
7 capacity to work with him, be appointed in this case. And
8 that -- and that's what happened.

9 Since then after I saw him, I called the detention
10 center. And Dr. Ernest Martin is a psychiatrist who works
11 there. And Dr. Martin adjusted his medications. And
12 today, I see a new man. He is so -- he's well, but he is
13 on much more medications than he was when we originally
14 had the hearing last year.

15 He's on Seroquel, which is an antipsychotic
16 medication, 600 milligrams at night. He is, also, on an
17 antidepressant called Wellbutrin.

18 Your Honor, these medicines -- and -- and I did agree
19 with Mr. Eppes. They would -- if you and I took Seroquel
20 600 milligrams at night, we would probably be sleeping for
21 two or three days.

22 So one of the recommendations I was going to make is
23 that we have some kind of caffeinated beverage for him
24 during the trial this week as -- as -- because as the
25 trial wears on -- he's well, Your Honor. He's competent

1 to stand trial. He doesn't have any symptoms of mental
2 illness right now.

3 But with a trial lasting during the week, of course,
4 he -- the stress may get to him. And so I think it's
5 important to make -- take breaks if he needs them. Let's
6 make sure that he's awake and not experiencing the side
7 effects of his medicine.

8 But he, clearly, knows why he's here. He trusts his
9 attorney. I observed them working together today. His
10 thought processes, he's able to pay attention. He's very
11 protective. He knows his case very well. And it's my
12 opinion that he's competent.

13 THE COURT: Any other questions, Mr. Eppes?

14 BY MR. EPPES:

15 Q Is there any special -- are there any other special
16 things that you would recommend as far as if Mr. Workman
17 feels tired, or anything as far as breaks, or anything
18 like that that might be appropriate in this case?

19 A Absolutely. He may -- and he's -- he is today, at
20 least, certainly, well enough that he would let you know
21 if he needs a small break.

22 The other thing, Your Honor -- and I told both
23 parties if anything -- during the week, I'm in town. If
24 there's any questions, if you guys call me, I'll be glad
25 to look in on him. And if -- if medicines need adjusting,

1 I can get in touch with Dr. Martin at the jail as well.

2 THE COURT: Yes.

3 MR. EPPES: And, Your Honor, quite frankly, it's --
4 it's my intention when the State rests -- I think we'll
5 have some advance notice of that. But it's my intention
6 when the State rests as Mr. Workman determines whether or
7 not he should testify, because of the stressors that that
8 causes, I'm going to ask Dr. Maddox to come see him again
9 at that time.

10 THE COURT: All right.

11 MR. EPPES: I think that will give Mr. Workman some
12 comfort as well. He -- she and he have developed a
13 rapport.

14 THE COURT: All right. Any questions, Counsel?

15 MR. POLSINELLO: Briefly, Your Honor.

16 THE COURT: Okay.

17 CROSS-EXAMINATION

18 BY MR. POLSINELLO:

19 Q Dr. Maddox, this morning you spoke to the Defendant?

20 A I did.

21 Q Is it your position that he has a factual
22 understanding of this proceeding?

23 A Absolutely.

24 Q Is it your opinion that he was able to assist his
25 Counsel in his defense?

1 A He was. I, actually, observed them working together.
2 And they have a good working relationship. And -- and,
3 yes, it's my opinion he has the capacity to assist.

4 Q And in your conversations and observations this
5 morning, you didn't observe any signs of mental illness?

6 A No. He -- he is -- he's not paranoid. He's able to
7 divulge specific details to his attorney that they're
8 working on. And he's cooperating with the trial strategy.
9 It's my opinion he's -- he doesn't have any symptoms of
10 mental illness today.

11 MR. POLSINELLO: Thank you.

12 No further questions.

13 THE COURT: I've just got one question, Doctor.

14 EXAMINATION

15 BY THE COURT:

16 Q You may have already answered this. But he's
17 taking -- what's the name of that medication?

18 A Seroquel.

19 Q Seroquel. How often is that dose?

20 A Every night.

21 Q Every night?

22 A Yes, sir.

23 Q All right. So it would be logical to assume that he
24 took a dosage last night prior to coming here?

25 A Yes, sir. I asked him and he stated he did.

1 Q All right. So there's no medication at all that he
2 would take during the daytime that would affect his
3 ability to be cognitive?

4 A No, sir. He takes Wellbutrin, which is an
5 antidepressant, in the morning. But, actually, that would
6 help him. That helps you pay attention and keeps you
7 alert. So that one would not sedate him.

8 Q All right. And he takes that one early in the
9 morning when he first gets up?

10 A Yes, sir.

11 Q All right. And that doesn't wear off if we -- if we
12 were functioning from, say, a -- 9:30 to 5:00, that
13 medication would keep him pretty focused?

14 A Yes.

15 Q In your opinion?

16 A Yes.

17 Q All right.

18 A He just will get --you know, as he -- as you sit and
19 he's sedated, he would be prone to getting quite sleepy
20 because he won't be physically active. So that's why I
21 recommended coffee or some kind of soda.

22 Q All right. So the -- the bailiffs just may have to
23 make sure that he gets decaf coffee on a regular basis; is
24 that right?

25 A No, sir. Caffeinated. We need caffeine.

1 THE COURT: I mean caffeinated -- caffeinated coffee
2 on a regular basis. I guess that -- I'm assuming they can
3 cover that.

4 THE BAILIFF: Yes, sir.

5 THE COURT: Y'all can cover that?

6 THE BAILIFF: Yes, sir.

7 THE COURT: All right. Thank you, ma'am.

8 THE WITNESS: Thank you.

9 THE COURT: Any other questions?

10 (WHEREUPON, there was no response.)

11 THE COURT: All right. Thank you, ma'am.

12 You can step down.

13 All right. Anything else, Mr. Eppes, before we --

14 MR. EPPES: Your Honor, Dr. Maddox was subpoenaed.

15 I'd ask that she be released from that subpoena.

16 THE COURT: Any objection?

17 MR. POLSINELLO: No objection, Your Honor.

18 THE COURT: All right. Thank you, Dr. Maddox.

19 We'll be in touch.

20 THE WITNESS: Thank you.

21 THE COURT: All right. Mr. Eppes, anything else
22 before we get the panel?

23 MR. EPPES: Nothing else, Your Honor.

24 THE COURT: Counsel, there's -- there's just -- on
25 the witness list, Mr. Eppes, is there -- is there a

1 handwritten addition?

2 MR. EPPES: Yes, Your Honor.

3 Thank you very much.

4 Your Honor, my client -- my client had a -- had a
5 lawsuit pending with the county. And it was a very broad
6 lawsuit like you sometimes see when people are at the
7 detention center. It listed a lot of names that you'll be
8 familiar with, Mr. Kernel, Mr. Vandervost, Scotty
9 Bodiford, and others.

10 THE COURT: And that's in addition to the list I've
11 already been given?

12 MR. EPPES: Yes, sir. And we'd ask that -- he has
13 some concern that friends or relatives of these
14 individuals might be in the venire. And he would like to
15 have those read.

16 THE COURT: All right. I've got your entire witness
17 list?

18 MR. POLSINELLO: Yes, Your Honor.

19 MR. EPPES: Your Honor, I'm sorry to burden the Court
20 with this question. But I've got about a half dozen plea
21 people upstairs that I was hoping to speak with. But
22 because of the way things have gone, I haven't been able
23 to speak with them.

24 Do you anticipate starting right after we pick this
25 jury, or do you anticipate some lag time before we start?

1 THE COURT: If you need some lag time, I'll give you
2 some.

3 MR. EPPES: Okay. Well, I'd just like to go upstairs
4 and tell them all to go.

5 THE COURT: All right. Do you want to do that after
6 we pick the jury?

7 MR. EPPES: Yes, sir. I think so, if that suits you.

8 THE COURT: I'll let you do that.

9 MR. EPPES: And we're going to have some motions that
10 we could do. It might be that if you wanted to pick the
11 jury and then give me about 15 minutes, then we could do
12 our motions and go to lunch, or however -- I'm sorry,
13 however you want to do it.

14 THE COURT: Okay. Are you opposed to that request,
15 Counsel?

16 MR. POLSINELLO: Not really, Your Honor. I would
17 just ask that we hash out and hammer out all the pre-trial
18 motions before lunch, whenever that may be.

19 THE COURT: All right. We'll see where we are.

20 MR. POLSINELLO: All right.

21 MR. EPPES: Thank you, Your Honor.

22 THE COURT: Let me ask you. You've seen this -- this
23 list, this handwritten list?

24 MR. POLSINELLO: Yes, Your Honor, just this morning.

25 THE COURT: I'm going to go through this as best I

1 can, you know. I'll go through it as best I can.

2 MR. EPPES: Yes, sir. We tried to make it the most
3 manageable we could.

4 THE COURT: Yes, sir.

5 MR. EPPES: And the parties list on the other thing.

6 THE COURT: Yes, sir.

7 MR. EPPES: We -- we went through and we believe
8 culled out the duplicate names.

9 THE COURT: Yes, sir.

10 MR. EPPES: Your Honor, I, also, have some voir dire
11 questions.

12 THE COURT: Okay. Have you showed them to --

13 MR. EPPES: I just handed him a copy.

14 THE COURT: Solicitor, I'm going to be -- I'm going
15 to be pronouncing your name a lot today. So what is it?

16 MR. POLSINELLO: Polsinello.

17 THE COURT: Pols -- Polsinello?

18 MR. POLSINELLO: Yes, Your Honor.

19 THE COURT: That's your last name?

20 MR. POLSINELLO: So think Paul, the name Paul.

21 THE COURT: Sinello?

22 MR. POLSINELLO: Sinello, Polsinello.

23 THE COURT: All right.

24 MR. POLSINELLO: I can promise you, Judge, I'm the
25 only one in the state, the only Polsinello in the state.

1 We're all up north.

2 THE COURT: You think you might be. You might be the
3 only one.

4 MR. POLSINELLO: That I know of.

5 THE COURT: Are you opposed to anything on --

6 MR. POLSINELLO: I'm just reading it right now, Your
7 Honor. I know -- I'm already seeing two.

8 Could I have just one minute?

9 THE COURT: Yes, sir.

10 (Pause.)

11 THE COURT: Yes, sir.

12 MR. POLSINELLO: Your Honor, I'm just receiving this
13 a couple minutes ago. The State has no objection to the
14 first set.

15 THE COURT: What's the first set?

16 MR. POLSINELLO: Have you been a victim of domestic
17 violence? Have any of your family members been a victim?

18 THE COURT: You're okay with that one?

19 MR. POLSINELLO: Okay with that one. And we're,
20 also, okay with, are you a member of or do you support any
21 groups or facilities concerning domestic violence --

22 THE COURT: Well, let's do it -- let's do it this
23 way. It probably will be easier if you tell me the ones
24 you don't agree with.

25 MR. POLSINELLO: Every other one other than those

1 two, Your Honor.

2 In terms of the seminar or events, education in
3 college these days and high school, it's very progressive.
4 And sometimes education on domestic violence is a given.
5 And I don't see why that would skew someone. Just
6 receiving education, why that would be prejudicial or
7 affect their ability to be impartial just by receiving
8 education on the topic. So I would move to strike that
9 question.

10 THE COURT: To make sure I'm -- we're on the same
11 path. You're moving to strike the second question about,
12 have been involved -- you move to strike that?

13 MR. POLSINELLO: Yes, Your Honor.

14 THE COURT: All right. What others?

15 MR. POLSINELLO: The State has no problem with, has a
16 member or friend ever been formally accused or charged
17 with domestic violence?

18 THE COURT: What about the one right above that?

19 MR. POLSINELLO: No objection to that, the CAVE, Safe
20 Harbor, Julie Valentine Center.

21 But then the rest, Your Honor, the last one, two,
22 three, four, five. There's four questions about -- or
23 there's three questions about owning a gun. There's a
24 question about taking a self-defense class.

25 And then that last question, interracial

1 relationships. I think we're veering off course, you
2 know, the focus of this trial. Owning a gun. That --
3 that's a Second Amendment right, you know, to a lot of
4 people in this country. And I don't see how that would --
5 just knowing that would cause someone to be prejudiced in
6 this case.

7 MR. EPPES: Your Honor, the victim has a concealed
8 weapons permit.

9 MR. POLSINELLO: And, lastly, Your Honor, the
10 interracial relationships. I really think we're going
11 down a dark path. I mean, in this day and age, I think
12 it's -- I would like to think most people -- you know, we
13 accept everyone based -- it doesn't matter, race, origin,
14 color, or creed. And asking that question kind of
15 immediately may highlight -- might kind of bring up
16 everyone's ears, you know. It could offend them is what
17 I'm saying. I don't think that's necessary to ask in this
18 day and age.

19 THE COURT: What rock have you been under?

20 MR. POLSINELLO: Maybe it's --

21 THE COURT: No. What rock have you been under?

22 MR. POLSINELLO: In terms of interracial
23 relationships, Your Honor, I don't -- I mean --

24 THE COURT: You apparently hadn't been under the same
25 rock I've been under.

1 MR. POLSINELLO: No. I -- probably not, Your Honor.

2 THE COURT: All right. So you don't want any of
3 these other questions.

4 Let me hear from you on what his objections are,
5 Mr. Eppes.

6 MR. EPPES: Your Honor, the seminars concerning
7 domestic violence, you know, one of the things that --
8 that I've heard from Mr. Polsinello and others is South
9 Carolina leads the nation in deaths involving domestic
10 violence. And I'm worried that if they had a seminar like
11 that, it may have affected their thinking on the subject,
12 that -- that it might affect their thinking on the
13 subject.

14 As far as the guns, the victim has a concealed
15 weapons permit. It's going to come up in the case. I
16 have some concerns about it. I, frankly, think
17 Mr. Polsinello should as well. Self-defense class is the
18 same kind of issue. It's going to be raised as part of
19 this case.

20 And, Your Honor, my paralegal and I, actually,
21 struggled over the last question yesterday and we went
22 back and forth on it. And my experience tells me that
23 some people are still affected by that. And I think it's
24 something that we should be aware of. And I think it's an
25 appropriate question to ask.

1 I don't like asking it any more than anybody else
2 does. And it makes me uncomfortable talking about it.
3 But at the same time, I think if somebody hears that
4 question and thinks enough about it that it bothers them,
5 I think we should know it.

6 MR. POLSINELLO: Your Honor, the State would still
7 stand by its original objections and the reason,
8 especially --

9 THE COURT: All right. Let me make sure I'm -- so
10 let's go over the questions. The first question, Have you
11 been a victim of domestic violence? Have any of your
12 family members or friends been victims of domestic
13 violence? Both sides are okay with that question?

14 MR. POLSINELLO: Yes, Your Honor.

15 THE COURT: The next question you're okay with, Are
16 you a member of the groups CAVE, Safe Harbor, Julie
17 Valentine, Compass of Carolina? Both sides are okay with
18 that question?

19 MR. POLSINELLO: Yes, Your Honor.

20 THE COURT: All right. I'm going to allow, Has a
21 family member or friend ever been formally charged with
22 domestic violence? I'm going to allow that.

23 I'm going to allow the question regarding the
24 concealed weapons permit.

25 I'm going to allow the question regarding, Do you or

1 a member of your family currently own a gun? I'm going to
2 allow that.

3 And I'm, also, going to allow the question regarding
4 interracial relationships. I'm going to allow that.

5 The others I will not allow. Okay.

6 MR. POLSINELLO: And the others, just to clarify,
7 that's --

8 THE COURT: And I can go through them. Have you been
9 involved in seminars, events? I will not allow that.

10 Have you or a member of your family purchased a gun?
11 I will not allow that.

12 Have you or a member of your family ever taken a
13 self-defense class? I will not allow that. Those are the
14 three.

15 All right. Any other issues before we bring the
16 panel in of any sort from either side?

17 MR. EPPES: None from the Defense, Your Honor.

18 THE COURT: Anything from the State?

19 MR. POLSINELLO: Yes, one, Your Honor.

20 THE COURT: Yes, sir.

21 MR. POLSINELLO: Juror #49.

22 THE COURT: #49.

23 MR. POLSINELLO: Her name is Lynn Davis.

24 THE COURT: Okay.

25 MR. POLSINELLO: She was there, Your Honor. Her

1 record is extensive. And she never answered to Your Honor
2 in terms of have you been convicted of a crime where the
3 potential sentence was a year or more.

4 THE COURT: Okay.

5 MR. POLSINELLO: She didn't bring that to Your
6 Honor's attention. So we would just ask that she be
7 stricken if she is brought in.

8 THE LAW CLERK: No.

9 THE COURT: She's not on the panel?

10 THE BAILIFF: She's not on the panel, no, sir. She's
11 not on this one.

12 THE COURT: All right.

13 THE LAW CLERK: Okay. And that's the wrong --

14 THE BAILIFF: She may be on one downstairs, but she's
15 not on this one.

16 MR. POLSINELLO: Okay. I get it.

17 THE LAW CLERK: That's a different person. The clerk
18 checked to make sure, but it's not the same person. They
19 had the same birth date, but everything else is different.

20 MR. POLSINELLO: All right. So that wasn't --

21 THE LAW CLERK: No.

22 MR. POLSINELLO: The Lynn Davis that was down there
23 wasn't --

24 THE LAW CLERK: The person that you have, no, sir.

25 MR. POLSINELLO: Okay.

1 THE COURT: Okay. We're going to probably go ahead
2 and do that now, if we can.

3 Do you want to do it now?

4 MR. POLSINELLO: The State's ready --

5 THE COURT: I mean, you asked to do it before lunch;
6 is that right?

7 MR. POLSINELLO: Yes, Your Honor.

8 MR. EPPES: Your Honor, if it's all the same and the
9 jury is going to go either way, if you'd let me -- I've
10 got people upstairs --

11 THE COURT: I'll tell you -- I'll tell you what we're
12 going to do. I'll tell you what we're going to do. We're
13 going to let the -- we're going to let the jury come back
14 at 2:30. I'm going to let you guys come back at 2:00.
15 And 30 minutes -- and then we'll handle the motions.

16 Because I think, Counsel, you indicated it's about a
17 30-minute window. That's all we need. I think it's --

18 MR. POLSINELLO: If that, Your Honor.

19 THE COURT: If that. So let's do it that way to
20 accommodate Mr. Eppes. And I understand what he's got to
21 do.

22 So we're going to let the jury go and come back at
23 2:30. Be promptly back at 2:30. You guys come back at
24 2:00. And then we'll go ahead and proceed with the
25 motions at that time. And then that'll -- then you're

1 free to go right now and take care of what you --

2 MR. EPPES: Thank you very much, Your Honor. I
3 really appreciate it.

4 THE COURT: All right. We'll stand down until about
5 2:00.

6 (WHEREUPON, a lunch break was taken.)

7 THE COURT: All right. Madam Clerk, let's go back on
8 the record in the matter of State v. Olandio R. Workman.

9 All right. Mr. Eppes and Panisello [sic].

10 MR. POLSINELLO: Polsinello, Your Honor.

11 THE COURT: Polsinello. Mr. Polsinello, my
12 understanding -- we've got two motions that you want me to
13 hear. And one -- go ahead.

14 MR. POLSINELLO: Your Honor, the State has one motion
15 in limine.

16 THE COURT: Okay.

17 MR. POLSINELLO: I think Mr. Eppes might have a
18 couple. And then the State has a couple of just
19 housekeeping matters that it just wants to put on the
20 record just to protect the integrity.

21 THE COURT: Okay.

22 PRE-TRIAL MOTIONS

23 MR. POLSINELLO: Your Honor, the first motion in
24 limine for the State is to suppress any and all statements
25 in questioning and references to the victim's current

1 address, her whereabouts, and living location.

2 MR. EPPES: Without objection, Your Honor.

3 THE COURT: All right. Granted.

4 What's your next one?

5 MR. POLSINELLO: Your Honor, the State is not going
6 forward on indictment 2016-GS-23-10114, possession of a
7 firearm by a convicted violent felon. That's already been
8 established before, but just for the record.

9 THE COURT: All right. And I think that was part of
10 the pre-trial discussion we had about --

11 MR. EPPES: Your Honor, yes, sir. And, Your Honor,
12 there's no factual basis for that. I would ask that it be
13 dismissed.

14 THE COURT: I was going to ask you -- you say you're
15 not going forward. What does that mean? You're nolle
16 prossing it?

17 MR. POLSINELLO: Yeah. The State intends on nolle
18 prossing it, dismissing it.

19 THE COURT: All right. Are you going to nolle pros
20 that today, tomorrow, the next day?

21 MR. POLSINELLO: I was going to wait until the
22 conclusion of the trial, but whatever Your Honor
23 instructs.

24 MR. EPPES: Your Honor, I'm very likely to ask a
25 witness about it being dismissed. So as long as I can ask

1 that it's been dismissed.

2 THE COURT: Well, that's the reason I asked that is
3 because if he asks -- if he asks that question, then there
4 has to be some evidence that it was, you know, dismissed.

5 So that's why I said, are you going to nolle pros it
6 this afternoon, tomorrow --

7 MR. POLSINELLO: I was planning on doing it when we
8 get a verdict, submitting all the sheets together at once,
9 whatever it may be.

10 THE COURT: All right.

11 MR. EPPES: Your Honor, as long as I can ask a
12 question and say -- and then -- and point of fact, there's
13 not enough evidence to do that, this case is being
14 dismissed; correct? That's --

15 THE COURT: Is he allowed to ask that question?

16 MR. POLSINELLO: I -- it may not be dismissed at that
17 moment. So I would just ask that maybe you can rephrase
18 the questioning, the State is not going forward on the
19 charge. Because it may not be dismissed when he asks
20 that.

21 MR. EPPES: Well, then if I can say and there's
22 not -- in fact, there's not enough evidence to prove that
23 charge that you had my client arrested for, that's enough
24 for me.

25 MR. POLSINELLO: I can't tell you it will be

1 dismissed at that point. But at the conclusion of all the
2 charges, it will be dismissed.

3 THE COURT: Yeah. Well, I think what Mr. Eppes is
4 asking, when he gets to that point and he asks a question
5 like that, are you going to jump up and object?

6 MR. POLSINELLO: As long as he doesn't phrase it, is
7 it -- has it been dismissed?

8 THE COURT: Let's -- let's clean that up right now.

9 MR. POLSINELLO: Okay.

10 THE COURT: I don't want to get to that point and
11 then we've got that issue. So how he phrased it a minute
12 ago, are you okay with that?

13 MR. POLSINELLO: Sure. I didn't hear dismissal or
14 dismissed coming out of his mouth.

15 MR. EPPES: I'm going to say some version of he
16 shouldn't have been charged with that. As a matter of
17 fact, that charge has either been dismissed or is going to
18 be dismissed.

19 MR. POLSINELLO: Your Honor, if Mr. Eppes chooses to
20 go down that route, I would argue that he's going to open
21 the door to the reason why the officer made that charge.
22 And it is based on the Defendant's criminal history and
23 what has showed up on NCIC.

24 So if he asks that, the officer should be allowed to
25 explain why he, initially, made the charge. And it goes

1 to the Defendant's criminal record.

2 MR. EPPES: It goes to the fact, Your Honor, that
3 Mr. Polsinello is dancing around that my client was once
4 charged with domestic violence high and aggravated nature
5 and he pled to a lesser charge, which I think was pretty
6 clear on the NCIC. Mr. Polsinello would say no.

7 One of -- frankly -- and I don't mind sharing this.
8 One of the theories of this case is that this case, in
9 addition to my client's protestations of innocence, in
10 addition to that, this case was overcharged. And -- and
11 part of that goes to the fact that they charged a crime
12 that's having to be dismissed because, in fact, there's no
13 factual basis for that crime under the law of South
14 Carolina.

15 He has never been convicted of a violent crime as
16 that is defined in South Carolina Code Section 16-1-60.
17 And, therefore, he shouldn't have been charged. And, now,
18 they're dismissing it. And that is a point of evidence
19 that might be relevant to defending this case.

20 MR. POLSINELLO: Your Honor, I can clear that up even
21 more. So when officers ran the Defendant's criminal
22 history, they saw that CDVHAN and unlawful carrying of a
23 weapon, a pistol. They were right on top of each other.
24 Later, the conviction dates, it had the CDVHAN and the
25 UCAP under it and it said, Convicted. And I think it was

1 one year suspended to something.

2 So right at face value, it did look like he was
3 convicted of CDVHAN.

4 THE COURT: Well, here's the deal. Here's the deal.
5 The State is dismissing the -- I mean is going to dismiss
6 the case for a reason. If you didn't have -- if you had
7 enough to go forward on it, you probably would; right?

8 MR. POLSINELLO: For that --

9 THE COURT: I mean --

10 MR. POLSINELLO: Absolutely.

11 THE COURT: -- that's -- that's the State I know.

12 MR. POLSINELLO: Absolutely.

13 THE COURT: I mean, unless it's changed over the
14 years. But if you had enough to go forward, you'd go
15 forward. So, you know, the song and dance about why
16 you're doing something, you know, don't bring me that.

17 If -- if you say that you were going to dismiss the
18 case, you had a reason to do so; right? You're just not
19 going to dismiss the case just for -- just to be
20 dismissing it.

21 MR. POLSINELLO: No.

22 THE COURT: So we're making something complicated.

23 All I -- all I -- the reason I asked whether you're going
24 to nolle pros the case or if you're going to do it --
25 well, you know, if you really think about it, the case was

1 docketed for a trial this week. You knew it was going to
2 be coming -- either would be me or Judge Miller, either
3 one of us. You had these discussions before today.

4 So I guess the ultimate question is -- is that -- to
5 eliminate this problem, then in retrospect, it'd probably
6 have been more prudent to nolle pros it before you came
7 here. It could have been nolle prossed last week. It
8 could have been nolle prossed two weeks ago. You didn't
9 just have this discussion today. You had this discussion
10 two or three weeks ago.

11 MR. POLSINELLO: Your Honor, we didn't come to this
12 conclusion until recently.

13 THE COURT: How recent? Two minutes ago?

14 MR. POLSINELLO: No. I would say over the weekend,
15 we were still looking into it. I had my investigator look
16 into it as well.

17 Your Honor, the NCIC, that's done by a federal
18 agency. It's not by people in this county, you know, by
19 the clerk. So, you know, they -- sometimes, they mess up,
20 when they input the data. And we were trying to figure
21 that --

22 THE COURT: I --

23 MR. POLSINELLO: All I ask, Your Honor, is if the
24 Defense attorney proceeds to ask the State's witness has
25 it been dismissed, I think he's opening the door to the

1 officer to allow to respond why he charged it in the first
2 place. If the jury gets to hear that it's been dismissed,
3 it would be a -- overly prejudicial if we're not allowed
4 to explain --

5 THE COURT: Well, the officer is going to be your
6 witness. You can control him. You can tell him -- you
7 know, what kind of question Defense Counsel is going to
8 ask. The officer is your witness. You can tell him that
9 question's coming. You talk to -- isn't the officer your
10 witness? He's your witness.

11 MR. POLSINELLO: Yes, Your Honor.

12 THE COURT: He's your witness. Then the door -- the
13 door can't be opened unless you tell him to open it. So
14 you know that question's coming. Then you instruct your
15 officer accordingly.

16 MR. POLSINELLO: Okay.

17 THE COURT: Doesn't that make sense?

18 MR. POLSINELLO: Would he be allowed to explain why
19 he made the charge in the first place?

20 THE COURT: Well, I don't want to get into trying the
21 case for either one of you. I'm just -- I'm just -- I'm
22 just talking. I don't want to do that for either side.

23 But my question is, you've agreed -- the State has
24 agreed to dismiss that particular offense. All right.
25 Mr. Eppes wants to ask a question about whether it's

1 dismissed. I'm just trying to figure out a way to craft
2 that question so it's acceptable to both sides. That's
3 all we're trying to do.

4 MR. EPPES: If I may, Your Honor.

5 THE COURT: Yes, sir.

6 MR. EPPES: At this time, officer, you'll agree with
7 me that there is no factual basis for this charge to be
8 tried?

9 MR. POLSINELLO: That's correct.

10 MR. EPPES: And I don't think that opens the door.

11 THE COURT: All right. Are you -- are you okay with
12 that?

13 MR. POLSINELLO: I'm just worried, Your Honor. The
14 way that this could potentially be phrased is that the
15 State just reckless -- recklessly makes charges. And
16 that's not the case here.

17 THE COURT: I know y'all don't do that.

18 MR. POLSINELLO: That wasn't the case here, Your
19 Honor. Because when -- when they pulled up his record, it
20 did show that CDVHAN with a UCAP under it and it said,
21 Convicted. It didn't differentiate. And that's what a
22 lot of times they have to go off of when they're out there
23 making these charges. So I -- I feel that --

24 THE COURT: Well, I'm just telling you, I don't feel
25 that way.

1 MR. POLSINELLO: Okay.

2 MR. EPPES: Your Honor, I don't want to burden the
3 Court. But this motion was filed May 31st of last year,
4 2017.

5 THE COURT: Oh, my gosh.

6 MR. EPPES: With the sentencing sheets.

7 THE COURT: Counsel.

8 MR. POLSINELLO: Your Honor, we were still --

9 THE COURT: I mean, come on. You know, you've got a
10 motion filed a year -- almost a year or so ago. And then
11 you're telling me that you just thought about it over the
12 weekend.

13 MR. POLSINELLO: Your Honor, we were looking into it
14 up until --

15 THE COURT: What were you doing for 364 days?

16 MR. POLSINELLO: Your Honor, like I said, this date
17 is inputted by a federal agency. And the way that they
18 input things, it's -- it's tough to get in contact with
19 someone. Oftentimes, we have to -- you have to look into
20 the criminal records here and correct their mistake that
21 they made when they uploaded that.

22 And so we were still working on that.

23 MR. EPPES: The sentencing sheet was attached to the
24 motion that says, Lesser included -- pled to lesser
25 included offense of CDVHAN, which at the time of this plea

1 was -- the only other lesser included offense was CDV.

2 THE COURT: So you -- you had to have seen that,
3 Counsel.

4 MR. POLSINELLO: I don't recall seeing that.

5 MR. EPPES: All right. Here's a copy. My
6 previous -- my previous Counsel filed it.

7 THE COURT: Was it attached to the motion?

8 MR. EPPES: Yes, sir.

9 MR. POLSINELLO: Your Honor, this was the previous
10 Counsel's work. And she had requested to be relieved.
11 And then Mr. Eppes was appointed.

12 THE COURT: So what does that do to the motion? The
13 motion gets thrown out the window, too?

14 MR. POLSINELLO: I'm not saying that, Your Honor.
15 See, on here, it doesn't -- criminal domestic violence.
16 It doesn't specify a first.

17 MR. EPPES: It says lesser included of criminal
18 domestic violence high and aggravated. If you look right
19 there, there's a lesser included offense.

20 THE COURT: All right. We're going to move this --

21 MR. POLSINELLO: That's the first time I've saw that.

22 MR. EPPES: Sorry, Your Honor.

23 THE COURT: I know. We're going to move this along.

24 Counsel, I'm going to -- first of all, the last way
25 the question was phrased by Defense Counsel, Mr. Eppes,

1 I'm going to allow that question to be asked. Okay.

2 MR. POLSINELLO: Okay.

3 THE COURT: You are in control of your witness.

4 MR. POLSINELLO: Yes, sir.

5 THE COURT: Do you understand that?

6 MR. POLSINELLO: Yes, sir.

7 THE COURT: When we get to the portion of the trial
8 where that question is asked, I think the only -- the
9 answer that should be elicited from the -- from your
10 client --

11 I'm assuming, Mr. Eppes, you're asking a "yes" or
12 "no"; correct?

13 MR. EPPES: I'm going to ask him, yes, sir. And in
14 point of fact, you charged this charge and there's no
15 factual basis for this charge to go forward and be
16 prosecuted; correct? That's going to be the only question
17 I ask about it.

18 THE COURT: And -- and that's the only answer that --
19 that I think -- the answer that he's seeking.

20 So you're still -- you still have some issues with
21 that?

22 MR. POLSINELLO: No. I have no issues with that,
23 Your Honor.

24 THE COURT: So we're done with that?

25 MR. POLSINELLO: Yes.

1 THE COURT: All right. What else have we got?

2 MR. POLSINELLO: Your Honor, I don't -- I don't
3 believe there's a need for a Jackson v. Denno. The brief
4 encounter that the Defendant had with law enforcement, he
5 was not under custodial interrogation.

6 I just want to confirm. I'm sure Frank agrees
7 there's no need for a Jackson v. Denno.

8 MR. EPPES: Your Honor, I would agree with that.
9 There's some characterizations that are -- might be at
10 issue in the case.

11 But my client came to the door. Law enforcement
12 asked -- inquired about his wife. He said she wasn't
13 there. They asked if they could come in. He said, No.
14 They left and waited on a warrant. I do not believe that
15 that was a custodial interrogation meriting a Jackson v.
16 Denno hearing.

17 THE COURT: All right.

18 MR. EPPES: But we wanted to make -- bring it to the
19 Court's attention just to be on the safe side.

20 THE COURT: All right. Anything else in limine from
21 the State?

22 MR. POLSINELLO: That's it from the State, Your
23 Honor.

24 THE COURT: All right. Mr. Eppes.

25 MR. EPPES: Your Honor, I have a few things. But I,

1 actually, have two written motions. One of these issues,
2 the issue that's under bullet point three, we have
3 resolved. I had asked to have something stricken from the
4 CAD reports.

5 The first issue is very likely -- I'm not going to
6 tell you -- the first and second issues are together.
7 There's a 911 tape. It's my belief that the individual
8 that called 911 is not available to testify, which in my
9 mind makes it a Sixth Amendment violation for lack of
10 cross-examination.

11 I don't really object to the officer saying we got a
12 911 call that this woman was not available -- was not
13 coming to work. And so we went to check it out.

14 In addition to that, Mr. Polsinello has quite
15 properly redacted the 911 call to take out a lot of,
16 frankly, prejudicial information. However, he has left in
17 that call the phrase when the -- when the caller said she
18 wished to remain anonymous, he left the phrase, I don't
19 want him to do nothing to me, which, frankly, I believe is
20 prejudicial and not probative of anything. It implies
21 that this witness that I'm not in a position to
22 cross-examine is scared of my client. And I think that
23 that's unduly prejudicial and not relevant to this
24 proceeding.

25 And so I'd ask that you consider striking the entire

1 911 tape and letting the officers just say, our records
2 indicated there was a call and we did a welfare check.
3 And if that doesn't -- if the Court disagrees with that, I
4 would like for that phrase to be redacted from the tape
5 or, otherwise, not played.

6 MR. POLSINELLO: Your Honor, I have the 911 tape
7 ready to go. The first call is just under two minutes.

8 Would you like to hear it unedited so you can get an
9 idea of what's in dispute?

10 THE COURT: Yes.

11 MR. POLSINELLO: And that way I can show you what has
12 been redacted.

13 (WHEREUPON, an unmarked 911 call was played in open
14 court.)

15 MR. POLSINELLO: Your Honor, so the State has already
16 redacted 28 seconds of that call. And what we redacted
17 are the conversation between this caller and dispatch, Is
18 he going to shoot at us?

19 She says, I don't know.

20 Is he someone that shoots?

21 That's all been redacted.

22 She says, I ain't saying he a violent guy that shoots
23 people. But I think he is a violent guy and that he jumps
24 on his wife all the time.

25 So that's been redacted. What Mr. Eppes is -- you

1 know, he has a problem with -- it looks like this was
2 about four seconds when she says, I don't want him to know
3 my name because I don't want him to do nothing to me. And
4 just hearing now, he wants the entire thing thrown out.

5 Your Honor, I don't think this meets Crawford v.
6 Washington and Davis v. Washington. Clearly, those cases
7 state that the statements identifying the Defendant during
8 a 911 call are not testimonial. And that a 911 call is
9 not the sign to establish or prove past facts, but to
10 describe circumstances requiring police assistance and
11 emergency. The Court states that a 911 call at the
12 initial interrogation was ordinarily not designed
13 primarily to prove a past fact, but to describe
14 circumstances requiring police assistance.

15 And in those cases, Your Honor, Davis v. Washington,
16 Crawford, and even its predecessor, Michigan v. Bryant,
17 the 911 call was allowed in. It's -- it's non-testimonial
18 in nature. And that's not subject to Crawford or Sixth
19 Amendment confrontation.

20 Your Honor, her -- I think it's important for the
21 jury to know that she wished to remain anonymous. They're
22 going to hear this call and going to -- who is this woman?
23 Why is she calling? You know, why isn't she here today?
24 She wished to remain anonymous. And that goes to the
25 emergency, the seriousness of the situation.

1 Because, Your Honor, when officers went out a few
2 minutes after this, it was an emergency. The -- the
3 evidence will show that the victim and her children were
4 in the back being held. And that when the officers
5 knocked on the door and asked the Defendant, are the
6 victims home, he lied and said, No.

7 So for those reasons, we ask that we have redacted
8 what should be redacted and the rest should come in.

9 MR. EPPES: Your Honor, I'd like him to play for you
10 the redacted version so you can hear how damning the
11 statement, I don't want him to jump on me sounds in the
12 redacted version. It was kind of softened because of the
13 other matters in the unredacted version.

14 MR. POLSINELLO: In the redacted version, we're not
15 playing anything where it says, he jumps on me.

16 MR. EPPES: No. She said -- I believe -- I may -- I
17 may stand corrected. You may have redacted more than I
18 heard. But when you redacted it for me, she said, I don't
19 want to give you my name because I don't want him to do
20 nothing to me.

21 THE COURT: And that was the last portion of that
22 that I heard?

23 MR. POLSINELLO: And, again, Your Honor, that's just
24 showing her wish to remain anonymous. That's not saying
25 he's going to do anything. That's a concerned citizen not

1 wanting to get involved for whatever reasons. And -- and
2 it goes to the emergency of the situation. She was
3 correct in calling 911.

4 (WHEREUPON, an unmarked 911 call was played in open
5 court.)

6 THE COURT: All right. Counsel, let me ask a
7 question. I don't want -- this is the portion of the tape
8 that I'm grappling with. And -- and I've got that Davis
9 v. Washington case in front of me. But I don't want him
10 to do -- I don't want him to know my name because I don't
11 want him to do anything to me.

12 And your position is that -- that that statement is
13 only intended to -- to show that she doesn't want her
14 identity to be revealed; is that correct?

15 MR. POLSINELLO: Yes, Your Honor.

16 THE COURT: And -- and your position -- the State's
17 position is -- is that that whole -- everything that I
18 just heard, inclusive of that statement, is
19 non-testimonial?

20 MR. POLSINELLO: Yes, Your Honor.

21 THE COURT: All right. Any further argument,
22 Mr. Eppes, before I rule on that point?

23 MR. EPPES: Your Honor, it's -- it is testimonial. I
24 don't want him to do anything to me. I have other
25 information that indicates to me that this is a dangerous

1 person. He is not being charged with being a dangerous
2 person. He's being charged with what happened from the
3 27th to 29th of August.

4 And this woman -- all her information was gleaned
5 about anything that happened before then. Because the one
6 thing that's clear is from the 27th to the 29th of August,
7 she has not seen the victim in -- the alleged victim in
8 this case.

9 THE COURT: All right.

10 MR. POLSINELLO: Your Honor, the way that Mr. Eppes
11 just characterized that 911 call's worth, he is a
12 dangerous person. She did not say that. He's -- he's
13 being over analytical in this situation with that
14 statement from her. He's -- he's veering off --

15 THE COURT: But when she says, I don't want him --
16 I'm afraid -- I don't want him to do anything to me, what
17 do you -- how --

18 MR. POLSINELLO: Your Honor, that's my take on an
19 anonymous caller. And it's not -- it's not uncommon for
20 anonymous callers to call 911. And they explain to 911
21 they don't want to be a part of this for whatever reason.

22 THE COURT: Well, you know, Counsel if you dissect
23 that a little bit and she says, I don't want him to know
24 my name and she doesn't say anything else, then I'm right
25 in the same boat the -- the jury would be in. I mean, I

1 think the whole thing would be non-testimonial.

2 But I'm -- I'm having some issues with that last --
3 the last portion of that statement, I don't want him to do
4 any -- something to me, or however it was phrased. I've
5 got a real problem with that.

6 And because I've got a real problem with that, I am
7 going to ask -- and I've looked at Davis v. Washington.
8 And I read that case. And I think that case really talked
9 about what was considered non-testimonial. And, you know,
10 that whole -- the whole phraseology in there that talked
11 about what was non-testimonial.

12 But based upon what I've heard, I'm going to make a
13 finding that that portion of the 911 call, that should be
14 redacted. And once that's redacted, then I think we've
15 got complete compliance with the Davis case. And that's
16 going to be my ruling on that.

17 MR. POLSINELLO: Yes, Your Honor.

18 The State would just ask -- we would need about 10
19 minutes to redact this, Your Honor.

20 THE COURT: Do you want me to delay it for 10
21 minutes? You've got people that can do that, don't you?

22 MR. POLSINELLO: We have to -- yeah. She would go
23 and redact that portion right now.

24 THE COURT: Okay. But that's not going to delay us
25 with moving forward?

1 MR. POLSINELLO: I don't know. I guess it all
2 depends on when Donna can get back. Obviously, we're --

3 THE COURT: Is that your first witness?

4 MR. POLSINELLO: Our first witness --

5 THE COURT: I'm going to talk. You say it's going to
6 take 10 minutes. I'm going to talk for another 10
7 minutes.

8 MR. POLSINELLO: Okay. Yes, Your Honor.

9 THE COURT: I might talk for another 12 or
10 13 minutes. So that covers that?

11 MR. POLSINELLO: Yes, Your Honor.

12 THE COURT: Does that cover that?

13 MR. POLSINELLO: Yes, Your Honor.

14 THE COURT: All right. Anything else? Any other
15 motions? Anything else?

16 MR. EPPES: Yes, Your Honor.

17 Your Honor, there's, also, a motion -- there's, also,
18 a motion to suppress the firearms in this case based upon
19 a search warrant. This motion, also, was filed in May of
20 last year by previous Counsel. I, actually, tried to
21 improve upon it. And at the end of the day, I've
22 determined that the previous motion was sufficient.

23 Judge, I'd like to hand up the search warrant --

24 THE COURT: All right.

25 MR. EPPES: -- in this matter. I believe, Judge, it

1 is undisputed that the search warrant in this matter --
2 I'll direct your attention to Page 3. It's marked as 24
3 on the bottom. That's an internal numbering from my office.

4 But the search warrant in this case listed as the
5 sole description of what was sought: Loretta Workman,
6 white female, date of birth, size, weight, dark hair, dark
7 eyes, her driver's license number, and this address.

8 It's undisputed that after some time, the SWAT team
9 went in and got Ms. Workman out. And after they got her
10 out, I believe it is undisputed, although I'll defer to
11 Mr. Polsinello, that after they got her out without
12 seeking permission or anything else, they went back in.

13 There's some dispute as to whether when they went and
14 got her out they had completely cleared the facility --
15 the home to ensure that no one else was there. Quite
16 frankly, I'm very familiar with the Greenville SWAT team.
17 They're very competent. I can't imagine they could go in
18 a mobile home, get three people out, and not have cleared
19 it for all other people.

20 But that said, it is the State -- it is my belief
21 that the State's position is something else. But,
22 thereafter, that -- the long gun you can see over there in
23 the envelope and the pistol were found. The long gun was
24 under a bed that had to be lifted that had about a
25 four-inch space for a gun that was in the room that the

1 victim was found in. And the pistol was found in a drawer
2 in the room with the victim by her bedside table.

3 And I would say that both of those items should be
4 excluded from this case.

5 MR. POLSINELLO: Your Honor, the -- the guns are a
6 substantial part in the State's case, and in the State's
7 theory. The State intends to show through the testimony
8 and evidence that although these were the victim's -- they
9 were her guns. She did not have control of them during
10 this weekend. He had control of them. He used them as an
11 intimidation tactic. He, literally, held the
12 nine-millimeter at one point and he hit her while he was
13 holding it. She will testify to that.

14 In terms of the search warrant, Your Honor, if you
15 look under the first page marked 23, Reasons for affiant's
16 belief that the property sought is on the subject
17 premises, property sought. Your Honor, the last -- the
18 second to last sentence -- among many things that the
19 deputy gathered was that she gathered information that the
20 Defendant is known to possess several firearms and
21 discharge them in close proximity to neighbors homes.

22 So right off the bat, Your Honor, they had reason to
23 believe and they were correct that firearms were on the
24 premises. They spoke to neighbors. And he was known to
25 possess firearms. So the deputy included that in this

1 language right here.

2 The fact that -- description of property sought, you
3 know, it is kind of awkward, Your Honor. No one is a
4 piece of property. I think we established that with the
5 emancipation proclamation at the end of the Civil War. No
6 person is another person's property.

7 Your Honor, I -- it's my understanding that these --
8 these -- these type of calls in cases where it's a welfare
9 check, when they type -- the welfare check of this victim
10 that they believe is in danger. When they automatically
11 upload the search warrant, if there isn't specific guns
12 that are known beforehand when they upload it, the
13 victim's name comes up.

14 We have the deputy here, Deputy Shannon McHale who
15 created the search warrant. And this isn't the first time
16 this has happened. This isn't the first issue. That --
17 that's just a scribbler's error, if you will. No one is
18 someone's property. The property was described under,
19 Property sought, Your Honor.

20 So it's the State's position that this is a valid
21 search warrant, that the Defense Counsel is, essentially,
22 creating new precedence. I don't know if he has case law
23 that shows where this is Unconstitutional or when
24 something like this -- the entire search warrant gets
25 thrown out. But I believe this is just a clerical error,

1 Your Honor.

2 The deputy can testify as to how her name came up.
3 Clearly, she's not property. And the suspicions that they
4 had that day ended up being correct, including the firearms.

5 THE COURT: Do you got the deputy here?

6 MR. POLSINELLO: Yes, Your Honor.

7 THE COURT: Do a proffer for me.

8 MR. POLSINELLO: Okay. Deputy McHale, come on up to
9 the stand.

10 THE CLERK: If you would, please, place your left
11 hand on the Bible and raise your right hand.

12 WHEREUPON,

13 SHANNON MCHALE

14 after first having been duly sworn, testified as follows:

15 THE CLERK: Thank you.

16 Please be seated.

17 THE COURT: Yes, sir.

18 THE CLERK: Please state your name for the record.

19 THE WITNESS: Shannon McHale with the Greenville
20 County Sheriff's Office.

21 THE CLERK: Thank you.

22 DIRECT EXAMINATION

23 BY MR. POLSINELLO:

24 Q Deputy McHale, were you employed with the sheriff's
25 office around August 27th, 2016?

1 A Yes, sir.

2 Q What was your title at that time?

3 A Deputy two is the official title. I'm a uniform
4 patrol deputy assigned to the road.

5 Q How did you first become involved in this case
6 responding to this incident?

7 A We received a -- well, Greenville County received a
8 request for a welfare check on Ms. Wilson -- Workman. And
9 I was dispatched out to that residence.

10 Q Were you in close proximity to that residence when
11 you were called?

12 A I was in the general area. And I made it that way.

13 Q Okay. Were you familiar with that area?

14 A Yes, sir.

15 Q [REDACTED], [REDACTED] in Piedmont, South
16 Carolina, Greenville County?

17 A Yes, sir.

18 Q How are you familiar with that area?

19 A I am assigned to that general area, actually,
20 anything west of Augusta underneath Greenville city is my
21 beat area.

22 Q And when you responded, you knocked on the door?

23 A Yes, sir.

24 Q Did this Defendant answer?

25 A Yes, sir.

1 Q You spoke to him?

2 A Yes, sir.

3 Q You asked if the victim was there?

4 A Yes, sir.

5 Q And did you tell him the reason why you were there?

6 A I believe I said something along the lines of, she
7 hadn't shown up for work in a few days.

8 Q Okay. And what was his response?

9 A He, actually, was initially -- he, actually, was the
10 one who brought up that I couldn't go in the house and
11 look for her. And I said, That's fine. Is she here?

12 And he said, No. He said that she was out shopping
13 with a mother -- her mother and she'd be back in an hour.

14 Q Was -- was that correct?

15 A No, sir.

16 Q Where was she?

17 A She was inside the residence.

18 Q Okay. Were you -- did you believe the victim was in
19 there?

20 A Yes, sir.

21 Q Okay. What made you have that belief?

22 A There was, actually, several things over the course
23 of the initial investigation while we were on scene.
24 Speaking with Mr. Workman, he was, initially, off the bat
25 very reluctant to have me come in the house, which I

1 totally understand. I don't want to walk in people's
2 houses without their permission.

3 I asked if Ms. Workman could come to the door. And
4 he said she wasn't there. While I was there, I did
5 observe one of their young children come to the door
6 because he had the door cracked. He had -- the child came
7 to the door and kind of looked out a little.

8 Also, while I was on scene -- to better locate that
9 trailer because it is a little close together and not
10 everything's marked, I ran a license plate that did come
11 back to Mrs. Wilson -- Workman. I apologize. And then I
12 did speak to neighbors in the area who said both if her
13 kids were there, she would be there, and that they hadn't
14 seen her in a few days.

15 And, finally, we did, actually, request the phone
16 company that she has her phone through to conduct a ping
17 to see where it's location was. It had been off for
18 several hours. But prior to it being off, it was still in
19 the residence.

20 Q Okay. Were you in charge of writing the search
21 warrant?

22 A Yes, sir.

23 Q So you typed this up?

24 A Yes, sir.

25 Q Do you need to look at it to refresh your memory?

1 A If possible.

2 Q Okay.

3 A Thank you.

4 Q When you type the search warrant, how does -- how
5 does it upload? How does it come to be?

6 A Greenville County Sheriff's Office maintains a folder
7 that includes all the documents we -- and a general PDF of
8 the search warrant is there with us entering in all the
9 appropriate tabs in there.

10 Q Okay. Under Description of Property Sought, do you
11 see that on the first page?

12 A Yes, sir.

13 Q That's the victim's name; correct?

14 A Yes, sir.

15 Q And her -- her sex, her race, her date of birth, her
16 height, weight?

17 A Uh-huh.

18 Q Did you type that in there?

19 A Yes, sir.

20 Q Okay. Did that upload automatically or did you type
21 that?

22 A I typed that.

23 Q Okay. In cases like this, is it common to do that?

24 A If we are searching for individuals, we would put
25 that person and then probably describe them just to make

1 sure there's not any chance we walk in and we see someone
2 who might look similar or have a similar name. We want to
3 describe that person as well as we can.

4 Q So the way that you investigate them and type this
5 up, that was customarily done?

6 A Yes.

7 Q Was this your first time doing it?

8 A For this type of search warrant?

9 Q Yeah.

10 A Yes, sir.

11 Q Okay. Under -- same page towards the bottom, Reason
12 for affiant's belief that the property sought was on the
13 subject, the second to last sentence, how that Defendant
14 is known to possess several firearms and discharge them in
15 close proximity in the neighbor's home, you typed that?

16 A Yes, sir.

17 Q Where did you get that information?

18 A We, actually, were able to pull -- my apologies. We
19 were able to pull the previous call history out at that
20 residence. There had been calls at trailer #7 saying that
21 Mr. Workman had been discharging firearms.

22 We, also, spoke with family members and neighbors who
23 did say he was known to be in possession of firearms and
24 has discharged them in the past.

25 Q And after this investigation was complete, is it your

1 understanding that firearms were located --

2 A Yes, sir.

3 Q -- in the -- in the residence?

4 So you were correct in your suspicion when you typed
5 this up?

6 A Yes, sir.

7 Q In terms of premises to be searched, you're the one
8 that typed in the [REDACTED] --

9 A Yes, sir.

10 Q -- and all that information?

11 A Yes, sir.

12 MR. POLSINELLO: No further questions, Your Honor.

13 THE COURT: Cross-examination, Mr. Eppes.

14 CROSS-EXAMINATION

15 BY MR. EPPES:

16 Q This was -- this was a search warrant for a welfare
17 check; right?

18 A Yes, sir.

19 Q You were checking on her; correct?

20 A Yes.

21 Q Have you ever done a search for a welfare check and
22 seen marijuana on a table?

23 A I will be honest with you, I have never done a --
24 prior to that, I had never done a search warrant for a
25 welfare check.

1 Q Have you ever walked into a house and seen marijuana
2 on a table, or heard of other deputies that do?

3 A Yes.

4 Q What do y'all do at that point?

5 A We would secure the scene and obtain a search
6 warrant.

7 Q You'd go back out and obtain a search warrant?

8 A Generally, if it's in plain view, it is -- falls
9 under plain view doctrine. But if we want to continue
10 searching the residence, we would obtain a search warrant.

11 Q Okay. So y'all got Ms. Workman out. And she was the
12 subject of the search warrant; correct?

13 A Yes, sir.

14 Q And after you got her out, y'all got her completely
15 out. She was safe. SWAT had secured the scene; is that
16 correct?

17 A Yes, sir.

18 Q Okay. And at that point, if y'all were worried about
19 guns or evidence of a crime because of Ms. Workman's
20 condition or something else, why didn't you just go get
21 another search warrant? That's what you'd have done in a
22 drug case.

23 A Well, I will admit I was never inside the residence.
24 I had no further involvement once it was released over to
25 SWAT.

1 Q Okay. But the purpose of your search warrant was to
2 check on Ms. Workman?

3 A Yes, sir.

4 Q And Ms. Workman came out of the house?

5 A After SWAT went inside, yes, sir.

6 Q And at that point, they hadn't found these two guns
7 that are over here?

8 A I can't attest to that. I wasn't inside the
9 residence.

10 Q Well, I will represent to you, at that point, they
11 had not found the two guns. And nobody asked Ms. Workman,
12 who owned the house, at that point if they could go back
13 in and search. Did you ever see anybody do that?

14 A I wasn't there when -- I had withdrawn to an outside
15 perimeter. I couldn't say what conversation was held with
16 Ms. Loretta -- or Ms. Workman.

17 MR. EPPES: Thank you.

18 THE COURT: All right. Anything else?

19 MR. POLSINELLO: No further questions, Your Honor.

20 THE COURT: All right. And I have no questions,
21 ma'am.

22 You can step down.

23 All right. Anything further on that -- as it relates
24 to that motion?

25 MR. EPPES: Your Honor, to the extent -- I honestly

1 anticipated the argument that, well, we saw that she had
2 been beat up, so we went back in to look for evidence of
3 that.

4 But in point of fact, they could have gone and got
5 another search warrant for that purpose. The purpose of
6 this search warrant, the stated purpose was a welfare
7 check on this woman.

8 They came out. They got her. They got her out of
9 the house. They went back in without permission. They
10 found those two guns secreted, one under a bed, one in a
11 drawer. They were not in plain sight. It should be -- it
12 should be excluded from this case and suppressed.

13 MR. POLSINELLO: Your Honor, just briefly. Your
14 Honor, they did have permission to enter the home. That
15 was the victim's home at the time. She gave -- it will be
16 her testimony that she gave the officers permission to
17 search the home. And they had this warrant.

18 The Defendant -- the Defendant was there, and he
19 fled. So they couldn't ask him any questions at the time.
20 She -- they had lawful consent to enter that home. That
21 was her home.

22 When she was talking to the officers, Your Honor, she
23 told them how the guns were in the home. They were her
24 guns. And it makes sense because at the end of the search
25 warrant, he was known to possess them and fire them, even

1 though they were hers. He would take them and do whatever
2 he wanted.

3 So they had reasons to search the home. They had a
4 valid search warrant that was signed by the Judge with the
5 proper return. And we just believe that, you know,
6 arguing schematics here trying to limit the scope of the
7 search warrant to focus on the description of property
8 sought when the entire search warrant should be viewed as
9 a whole.

10 THE COURT: All right.

11 MR. EPPES: Your Honor, if I may. I'm handing up
12 pages 64 and -- well, these are my numbers. This is the
13 report of Paul Floyd of SWAT, who says that he went in to
14 make a -- to take a fresh set of eyes on the house after
15 Ms. Workman had come out of the house.

16 I believe if you look at Officer Perry's report, he
17 would say that he got permission after SWAT had gone. I'm
18 not a hundred percent sure of that. He's here to testify,
19 I guess.

20 But I'd like to hand these pages up where he said, I
21 moved inside the residence for a fresh set of eyes and
22 conducted a secondary, tertiary search of the residence.
23 During this, I did observe an AK-47 style rifle underneath
24 the bed. And that was before permission and after the
25 woman was out of the house.

1 MR. POLSINELLO: Your Honor, we don't know that that
2 was before permission. That's just an assumption right
3 now.

4 Investigator Perry of the sheriff's office is here.
5 He walked in, Your Honor. And he can testify to where
6 those guns were found. The victim told him where they
7 were. They were hers. They weren't the Defendant's.

8 THE COURT: All right.

9 MR. POLSINELLO: For those reasons, Your Honor, we
10 think this is a valid search --

11 THE COURT: All right. I'm going to -- I'm going to
12 go ahead and deny the motion. And I'll note it for the
13 record, Mr. Eppes --

14 MR. EPPES: Thank you, Your Honor.

15 THE COURT: -- your objection for the record.

16 All right. Anything else?

17 MR. EPPES: Yes, sir, Your Honor.

18 THE COURT: All right.

19 MR. EPPES: Regarding the long gun, it was found
20 under the bed that the victim was found in while this --
21 while this case was going on. The victim has never said
22 that he possessed the long gun. She has never said that
23 he used the long gun during anything involved in this
24 case. It was under the bed. It belonged to her.

25 It's more prejudicial than probative. And I would

1 ask that it be excluded from the evidence based upon the
2 fact that it's irrelevant and the search.

3 THE COURT: All right. So your argument is the
4 prejudicial value outweighs the probative value?

5 MR. EPPES: Yes, sir. It's an AK-47. I mean, it's a
6 serious looking gun.

7 THE COURT: Mr. Panisello.

8 MR. POLSINELLO: Briefly, Your Honor. One of the
9 indictments -- you know, count two of that one indictment
10 is possession of a weapon, a gun during the commission of
11 a violent crime. There were two guns in this case, Your
12 Honor. It's the State's position that that's a
13 substantial piece of evidence.

14 And the victim will testify that even though those
15 were hers that he had possession and control of those this
16 weekend. That he was using those as an intimidation and
17 in a threatening manner. That's a substantial part of the
18 State's case. Whether or not -- that's an issue of fact,
19 Your Honor, that I believe is appropriate for the jury to
20 decide.

21 But it will be her testimony that he did have these
22 and use them while committing this crime.

23 THE COURT: All right. I'm going to -- I'm going to
24 go ahead and deny that motion, Mr. Eppes.

25 But I think, certainly, during cross-examination,

1 you'll have an opportunity to explore that in great
2 length. But I'll -- I'll note that -- your objection for
3 the record.

4 MR. EPPES: Your Honor, finally -- and I apologize
5 for not having anything in writing. But somebody that I
6 respect pointed this out to me recently. There's been
7 a -- I understand the law in South Carolina that currently
8 exists, our kidnapping statute is a violent statute. I
9 understand that under established precedent, you would
10 have no choice but to deny this motion.

11 But I'm going to raise the motion that the kidnapping
12 statute is void for vagueness under Constitutional grounds
13 and does not afford a Defendant due process -- the
14 adequate protections and due process to defend himself
15 because of the vague nature of it. And I want to preserve
16 that for appeal.

17 THE COURT: All right. So noted. And, of course,
18 I'll -- I'll deny your motion as it relates to that. But
19 it's noted for the record. And you can raise it at the
20 conclusion of the State's case again.

21 MR. EPPES: Thank you, Your Honor.

22 THE COURT: All right. Anything else from either
23 side?

24 MR. POLSINELLO: Nothing, Your Honor.

25 I'm just curious where my investigator is with that

1 redacted tape.

2 MR. EPPES: Your Honor, can we stand down for a
3 minute?

4 THE COURT: It's about 10 minutes to 3:00. I'm going
5 to take a 10-minute break. That should give your
6 investigator another 10 minutes to get the redacted tape
7 to you. And then we'll resume at 3:00.

8 (WHEREUPON, a break was taken.)

9 THE COURT: A couple of matters. The two -- two
10 pieces of -- I think a report -- two documents --
11 Mr. Eppes is going to have the court reporter mark them.

12 Mr. Paniselli [sic], you've seen them?

13 MR. POLSINELLO: I'm sorry, Your Honor.

14 THE COURT: He's going to have those two documents --

15 MR. EPPES: I'm going to mark these two documents,
16 the report. It's two pages.

17 THE COURT: Any objection to that?

18 MR. POLSINELLO: None right now, but there may be in
19 the future.

20 MR. EPPES: They're not evidence. They're just
21 exhibits -- Court's Exhibits for the motion.

22 MR. POLSINELLO: Okay.

23 (WHEREUPON, Court's Exhibit No. 1 was marked for
24 identification and admitted into evidence.)

25 MR. POLSINELLO: Your Honor, there's one minor issue

1 with this 911 call -- tape. So this was the first
2 redacted version. And this is the redacted version that
3 Your Honor instructed. But this only has one call.
4 There's another call that's a part of this case and that's
5 not on here. Because she didn't have time to get it on,
6 apparently.

7 MS. DONNA SMITH: Can't we take this one and just
8 take that one off? And then you've got that one and this
9 one. I can just delete the first one on here.

10 MR. EPPES: I have no objection to that, absolutely.

11 MR. POLSINELLO: I thought that's what we were doing.

12 Ms. DONNA SMITH: I think I can do it right here,
13 can't I?

14 THE COURT: Well, while she's doing that, we're still
15 on the record.

16 Even though the Court denied your motion, Mr. Eppes,
17 regarding the Constitutionality of the kidnapping, I just
18 thought for the record I would read you something. And I
19 took this language directly out of the Adams v. Aiken case
20 that was found at 967 F.2d 1306. It's a 1992 case. And
21 it says, specifically, that the statutory definition of
22 kidnapping is not Unconstitutionally vague on its face.
23 And that's a 1992 case. And there was -- there was a
24 remand on that case, not for that purpose. But I think
25 relating to the instructions that the Judge gave the jury

1 at that time.

2 So just -- just for purposes of review on both sides,
3 you can just take a look at that case. We found that case
4 during the break and wanted you to be aware of it.
5 Although, that does not impact my ruling upon that motion
6 regarding the Constitutionality of the definition of
7 kidnapping. I wanted to throw that out there.

8 Do you need to hear that again before we move
9 forward? Tell me where we are in terms of that.

10 MR. EPPES: Your Honor, I don't need to hear the tape
11 of the original 911 call. There's -- there's a different
12 911 call that -- that I believe they're going to put into
13 evidence. And that 911 call, I believe, is on this disk.
14 So I think she's deleting one call and then --

15 MS. DONNA SMITH: I'm trying to.

16 MR. EPPES: -- trying to.

17 And, Your Honor, I don't want to -- we can agree
18 if -- if that messes with the flow of the Prosecution, we
19 can agree to the fact that a disk that is properly --
20 includes the now further redacted version of the original
21 911 call as well as the information on this other 911
22 call. We can agree that both of those things can be on a
23 disk that's later put in if they need to play that today.

24 Although, when he gets ready to play the second 911
25 call, I'm going to object to it as well, but.

1 MR. POLSINELLO: Your Honor, I'm just concerned --
2 obviously, we don't want the jury hearing that last
3 portion that Your Honor instructed us to be redacted. But
4 we, also, want to play the entire complete calls. There's
5 two calls.

6 MS. DONNA SMITH: At one time.

7 MR. POLSINELLO: At one time, Your Honor.

8 THE COURT: Here's my question. How can we
9 accomplish that so we can move this along? I don't want
10 to spend 45 minutes trying to figure out how to do this.
11 You guys are smart, y'all figure it out.

12 (Pause.)

13 THE COURT: That's -- this -- your first witness is
14 going to be this person that's going to talk about --

15 MR. POLSINELLO: It's Ms. Johnson, Your Honor.

16 THE COURT: She doesn't have anything to do with the
17 call?

18 MR. POLSINELLO: She's how we get the 911 call in,
19 Your Honor.

20 THE COURT: Okay. So, gentlemen, are y'all ready to
21 proceed, or what are we going to do? What are we doing?
22 Are you ready? Anything else? Can we move --

23 MR. POLSINELLO: Your Honor, the State's ready to
24 proceed. But I'm -- I'm just -- fear, Your Honor, after
25 opening -- my opening's going to be brief. I'm sure

1 Mr. Eppes is, too.

2 Our first witness is going to be Ms. Johnson
3 authenticating this 911 call, which is real brief. And,
4 obviously, I don't know if my investigator will be here
5 with that redacted call. We need, like, 10 minutes. I
6 apologize.

7 THE COURT: Well, I'm going to talk to the jury for
8 about 10 minutes before we get started anyhow.

9 MR. POLSINELLO: Okay. Your Honor, if -- when the
10 State's ready to call its first witness, if Ms. Smith is
11 not here, would you allow me to just briefly go out and
12 call her and see where she is with the redaction?

13 THE COURT: Yes. I'll do whatever you want me to do.
14 What do you want me to do? Do you want me to wait 10
15 minutes?

16 (WHEREUPON, there was no response.)

17 MR. EPPES: You can say "yes."

18 MR. POLSINELLO: I -- that probably would be best,
19 Your Honor. So we don't have to interrupt when we begin.

20 THE COURT: All right. We'll wait 10 minutes.

21 MR. POLSINELLO: All right. Thank you.

22 THE COURT: It's five after 3:00 now. But I'm not
23 going to wait longer than that. Because I don't like that
24 jury sitting back there. I told them 2:30. And they've
25 already been sitting back there 35 minutes. I don't like

1 doing that.

2 MR. POLSINELLO: Agreed.

3 (WHEREUPON, a break was taken.)

4 THE COURT: Mr. Eppes.

5 MR. EPPES: Your Honor, the guns aren't in evidence
6 yet. I hate to leave them out there with the jury
7 scratching their heads about what they are. Can we figure
8 out something to do with that stuff until it's admitted
9 into evidence, nor is that bag? I don't know what it is.

10 And I'd ask that -- that all that stuff be off the
11 table. I don't want the jury studying on that during
12 opening arguments.

13 THE COURT: All right.

14 MR. POLSINELLO: Your Honor, the trials that I've
15 been in, customarily, the evidence is on there, or we can
16 put it to the side.

17 THE COURT: Well, you haven't been in a trial with
18 me. And it's not going to be on the table.

19 MR. POLSINELLO: No problem.

20 THE COURT: Take -- so find some place to put them.
21 Where do y'all -- where do you want to put them?

22 MR. POLSINELLO: Your Honor, it -- can we just put it
23 underneath the table? Is that fine?

24 MR. EPPES: I have no objection to that.

25 THE COURT: Let's put it underneath the table.

1 The bag, too, Mr. Eppes?

2 MR. EPPES: The bag, too. Yeah.

3 (Pause.)

4 MR. POLSINELLO: Your Honor, we have the redacted 911
5 calls.

6 (WHEREUPON, an unmarked 911 call was played in open
7 court.)

8 MR. POLSINELLO: Your Honor, that's the gist of the
9 second call. And, eventually, they hang up.

10 THE COURT: All right.

11 MR. EPPES: Your Honor, this is a 911 call after
12 Ms. Workman has been located and taken away. The
13 allegation is that it came from my client's phone and has
14 nothing to do with nothing. They seem to think it's
15 important. I don't quite understand their theory. I
16 don't believe it's relevant to the case. But I stand here
17 kind of bumfuzzled as I listen to it again. Because
18 there's, I think, four to six minutes of just blank tape
19 with a 911 dispatcher and an EMS dispatcher listening to
20 nothing. But I could be wrong.

21 MR. POLSINELLO: Your Honor, this call is part of the
22 State's case and has its own case number. And it's a
23 substantial part of the State's case.

24 Because what the State intends to show through
25 evidence and testimony, Your Honor. We all know the

1 Defendant met the first officer at the door, said the
2 victim wasn't there, even though she was. Before SWAT
3 could surround the house and get there, he fled. He -- he
4 got out the back somewhere. I mean, there will be
5 testimony to that.

6 Your Honor, when the victim was, finally, safe and
7 out at the front, this call was made. Crooked Creek
8 Circle is -- is a stone's throw behind this incident
9 location. And we believe that this is the Defendant
10 making this call, trying to distract law enforcement to
11 bring them over there.

12 And the call that -- this was made, Your Honor, and
13 came from the Defendant and victim's phone. She -- the
14 phone number's there. Obviously, the male didn't give his
15 name.

16 So then you look where the call was made. And this
17 specific phone number, the victim is familiar with that.
18 And it was a phone they shared. And she, also, knows by
19 being married to him and having children in common that
20 this is his voice.

21 THE COURT: All right. The Defense's objection is
22 relevancy. I'm going to go ahead and move forward on it,
23 subject to your -- your objection, for the record.

24 MR. EPPES: Thank you, Your Honor.

25 THE COURT: All right. Anything else before we bring

1 evidence showed during the course of the trial and what
2 your verdict should be. And then I'll give you
3 instructions on the law that you are to apply to the facts
4 in this case. Then the case will be in your hands for
5 your decision and a verdict.

6 Now, until we reach that point, here again, ladies
7 and gentlemen of the jury, you are collectively -- do not
8 talk about this case with anyone. Do not do any outside
9 investigation. Keep an open mind. And do not communicate
10 with anyone or any person -- anyone or any form of media
11 about the case.

12 Those -- that concludes my opening remarks to you. I
13 am now going to defer to Counsel for the State,
14 Mr. Paniselli, for his opening statement.

15 Counsel, are you ready to proceed?

16 MR. POLSINELLO: May it please the Court.

17 THE COURT: Yes, sir.

18 OPENING STATEMENTS

19 MR. POLSINELLO: Your Honor.

20 Ladies and gentlemen of the jury, good afternoon.

21 My name is Derek Polsinello. I'm an assistant
22 solicitor with the solicitor's office here in Greenville
23 representing the State and the victim. With me throughout
24 the course of the next few days is Investigator Donna
25 Smith from the solicitor's office.

1 I'm going to apologize in advance for the next couple
2 of days. You might see me zipping around here kind of
3 moving quickly. There's two reasons for that. One, it's
4 coffee. I can't do this job without coffee. I like it
5 black, no cream, no sugar.

6 The second thing -- the second reason, during trial
7 week, the inner collegiate athlete in me, I get charged
8 up. I get excited. And I was thinking about that the
9 other day. This couldn't be farther from a college-type
10 environment, a game. A game is fun. And it's a game.
11 There's nothing fun about being here this week, having to
12 be here.

13 The Defendant has been charged with domestic violence
14 of a high and aggravated nature. He's been charged with
15 possession of a weapon during the commission of a violent
16 crime. And he's been charged with kidnapping.

17 Now, I'm not going to get -- delve right now into
18 what those -- what the elements are -- the specific
19 elements. Because we will address that towards the end of
20 the trial. There's an appropriate time, and His Honor
21 will address you, the jury, on the elements.

22 But like Your -- like His Honor said, all the
23 evidence comes from up here on the witness stand. This is
24 evidence. And, likewise, there might be some evidence
25 that comes in here, physical, tangible evidence. You, the

1 jury, it's on you to listen to all the evidence, consider
2 everything. And then you will apply that to the statutes
3 at the end of this case and the elements. And we'll go
4 over that.

5 Like I said, it's not fun. I know you don't want to
6 be here. But, unfortunately, bad things happen in life.
7 This case is an unfortunate look into a domestic violence
8 home. The reality is it happens in our community. And
9 while we may not be exposed to it, the fact is it happens.
10 And that's why we're here.

11 The victim in this case is Loretta Workman. You will
12 learn through the evidence that she is the wife of the
13 Defendant, that they share two children in common, and
14 that she formerly lived with him. And what makes this
15 even more unfortunate is that all -- the evidence will
16 show that all of this occurred in front of two minor
17 children. To me, that just heightens the seriousness of
18 it.

19 It's one thing if domestic violence occurs in the
20 home. It's horrible. It's a bad thing. But when
21 children are exposed to it, it just heightens the level.

22 I want you to ask yourself -- constantly ask yourself
23 about four questions throughout this trial. And I promise
24 there's a purpose for this. And I'll have a chance to
25 revisit at the end, and we'll go over it.

1 Continuously, throughout this trial, please, ask
2 yourselves, did the -- did the Defendant physically harm
3 or injure the victim in this case at any point? Did he
4 assault her from the dates of Saturday, August 27th, 2016,
5 to Monday, August 29th, 2016, at [REDACTED] in
6 Piedmont, South Carolina, in Greenville County?

7 This spanned an entire weekend. As, yourselves, did
8 he assault her? Ask yourselves, did he possess a gun, a
9 weapon in any manner while committing these acts? Ask
10 yourselves, at any point during that weekend span, was
11 Ms. Workman confined, restrained? Could she not leave the
12 home at any point for any brief moment? And then,
13 finally, ask yourselves, were children present when this
14 happened? It's very important. And, again, we'll address
15 everything at the end. And we'll bring everything in full
16 circle.

17 Earlier this morning, His Honor told you all down at
18 qualifications that the service that you're performing
19 today, it's valued, it matters. It's one of the greatest
20 things you can do for this country. And that's absolutely
21 true.

22 Because this justice system, the American justice
23 system cannot function without you all. You've been
24 picked by the Defense Counsel and myself. You're
25 entrusted to make a -- and render a just verdict based on

1 the evidence. And we're confident you'll do that.

2 So, again, thank you so much for your service. I
3 know we don't want to be here. But, like I said, bad
4 things happen. And when they do, there are victims. And
5 the State represents those victims and upholds the law.
6 And that's why we're here.

7 I'll have another opportunity to speak to you all
8 again at the end of this trial. And I look forward to
9 that.

10 Thank you.

11 THE COURT: All right. Mr. Eppes.

12 MR. EPPES: I introduced myself before, but my name
13 is Frank Eppes.

14 Y'all may figure this out since Mr. Polsinello told
15 you a little bit about himself, but I've had about -- I've
16 had two years to learn his name, so I'm way ahead of the
17 Judge.

18 But for every time he moves slow -- fast, I'm going
19 to move really slow. And, interestingly enough, since he
20 brought it up, I, too, was an intercollegiate athlete.
21 But it ain't got nothing to do with nothing.

22 This is Olandio Workman. I've represented him off
23 and on for a while now. I've known him for several years.

24 And I don't mind telling you that I agree with
25 Mr. Polsinello. This is not a game, because Olandio's

1 entire future is at stake. And that makes your job the
2 hardest job of all.

3 And Mr. Polsinello and I to the extent that we're
4 athletes or competitive or anything else, we get caught up
5 in, a lot of times, a bunch of hugie [phonetic]. And --
6 and that's important for y'all to remember because what we
7 say is not evidence. What we say is trying to guide you
8 to the evidence.

9 But in point of fact, y'all have to look at the
10 evidence. And the evidence is testimony from people that
11 know facts that are relevant to this case, or it's
12 information, or it's stuff that was uncovered by forensic
13 techs, or other things. And it's testimony.

14 And Mr. Polsinello is right, too, my client is
15 charged with doing something in front of his kids. As a
16 matter of fact, one of the charges, domestic violence high
17 and aggravated, has a lesser included charge, domestic
18 violence first degree. And both of them can occur because
19 something occurs in front of your kids or in front of
20 children. Both of them can occur when a gun is used.
21 Both of them can occur when violence ensues.

22 And to the extent we talk about that, I'm going to
23 talk about the lesser included one. Because if you were
24 to find that my client is guilty of anything, which I
25 don't necessarily think you will, I think you're going to

1 find he's guilty of the lesser included.

2 Now, again, the facts of this case -- the facts of
3 this case that my client's charged with, the indictments
4 are solely about what happened between August the 27th and
5 August the 29th of 2016. And what I like to look at -- at
6 my role is I look at lawyers more as a lens. You kind of
7 know where we're both coming from and we're trying to
8 focus your information.

9 But what y'all got to do is y'all got to look at
10 everybody that testifies up here, and look at when they're
11 telling the truth, when they're bending the truth, when
12 they've told the truth in the past, when they've told the
13 truth in the future. And you've got to try to put
14 yourself in the basis to see if there is proof beyond a
15 reasonable doubt that my client is guilty of these three
16 charges.

17 And to the extent that things happen -- that things
18 are reported, or things happen, and things are dealt with
19 that did not occur in that home during those two days,
20 they are not necessarily much of anything. But y'all have
21 got to use your good judgment as citizens to determine
22 that.

23 And I feel like it's going to take a while to do
24 that. And I feel like there's going to be some sniping.
25 And I'm just -- I'm a little bit [inaudible] as to how to

1 get across to you that all of that is extraneous. And I
2 really want you to focus on what happened and what was
3 going on from August 27th to August 29th. And that is
4 where everything occurred that is important.

5 But there's going to be information from other parts
6 of this family's lives that may be brought into this case.
7 And I ask that you give your best judgment to responding.

8 Finally, I want to ask that you -- you're going to
9 hear a lot about protecting your community. And -- and
10 you're going to hear a lot about -- the Judge even asked
11 you a question before about domestic violence, theories,
12 and beliefs. And I understand that that's important to
13 the State of South Carolina. And I understand it's
14 important to politicians and everybody else.

15 But in this particular case, the State of South
16 Carolina and the United States Constitution have charged
17 you with listening to the evidence in the way -- and
18 addressing the law in the way that the Judge instructs you
19 about the law.

20 And it is very important that you think about Olandio
21 Workman. Olandio Workman is not a person -- he's not part
22 of a message. He is a person whose very freedom is
23 implicated by your decision.

24 And I think it is very important as you look at these
25 witnesses, and listen to their agendas, and listen to

1 everything that they say about the evidence that you focus
2 on the fact of whether or not the State can prove a case
3 against Olandio Workman. And I submit to you that as to
4 the three charges as brought, they cannot.

5 Thank you.

6 THE COURT: Thank you, Mr. Eppes.

7 Is the State ready to proceed?

8 MR. POLSINELLO: Yes, Your Honor.

9 THE COURT: The State can call its first witness.

10 MR. POLSINELLO: Your Honor, the State calls Tirissa
11 Johnson to the stand.

12 THE COURT: Come forward, ma'am.

13 THE CLERK: Ma'am, if you'll, please, place your left
14 hand on the Bible and raise your right hand.

15 WHEREUPON,

16 TIRISSA JOHNSON,

17 after first having been duly sworn, testified as follows:

18 THE CLERK: Thank you.

19 Please be seated.

20 Would you, please, state your name for the record?

21 THE WITNESS: Tirissa Johnson.

22 THE CLERK: Thank you, ma'am.

23 DIRECT EXAMINATION

24 BY MR. POLSINELLO:

25 Q Ms. Johnson, are you currently employed?

1 A Yes, I am.

2 Q With whom?

3 A The Greenville County Sheriff's Office within the
4 communications division.

5 Q How many years have you been employed there?

6 A About 20.

7 Q What's your current title?

8 A 911 research clerk.

9 Q What are your general duties and responsibilities as
10 the 911 researcher?

11 A So I am kind of the custodian of the calls that come
12 in that are recorded, the radio traffic that's recorded,
13 and the information that's within the computer system.

14 Q Are 911 -- so you're familiar with maintaining and
15 receiving 911 calls?

16 A Yes, I am.

17 Q Are the 911 calls kept in the course of regular
18 conducted business activity where you work?

19 A Yes, they are.

20 Q Is it regular practice to keep, maintain, and store
21 the 911 calls?

22 A It is.

23 Q Do you have personal access to all 911 calls?

24 A I do.

25 Q Do you record any copies of the 911 calls?

1 A Yes, I do, on a daily basis.

2 Q Ms. Johnson, do you recognize that disk?

3 A I do.

4 Q Is that disk a copy of the 911 call as it relates to
5 this case?

6 A It is.

7 Q Have you listened to that call in its entirety
8 before?

9 A I have. And I have my initials and today's date on
10 it.

11 Q Okay. And that -- is that a true and accurate copy?

12 A It is.

13 Q Do you have personal access to that call if you need
14 to access it?

15 A Yes, I do.

16 Q Okay. And you've listened to that before?

17 A Yes, I have.

18 MR. POLSINELLO: Okay. Your Honor, pursuant to the
19 South Carolina Rules of Evidence, the State moves to
20 submit this into evidence as State's Exhibit No. 1.

21 THE COURT: Any objection?

22 MR. EPPES: Your Honor, can we approach for a second?

23 THE COURT: Yes, sir.

24 (WHEREUPON, a bench conference was held.)

25 MR. POLSINELLO: Your Honor, pursuant to the South

1 Carolina Rules of Evidence, the State moves to submit this
2 into -- exhibit as State's Exhibit No. 1.

3 MR. EPPES: Your Honor, if I may ask one question.

4 THE COURT: Yes, sir.

5 EXAMINATION

6 BY MR. EPPES:

7 Q Ma'am, is this a true and correct copy of the 911
8 tape as agreed by the Court that it should be admitted in
9 this case?

10 A Yes, it is.

11 MR. EPPES: Okay.. And, Your Honor, I'd renew my
12 objection to both of the 911 calls on this tape.

13 THE COURT: All right. Your objection is so noted
14 for the record.

15 All right. It'll be State's Exhibit No. 1 subject to
16 Defense Counsel's objection.

17 (WHEREUPON, State's Exhibit No. 1 was marked for
18 identification and admitted into evidence.)

19 MR. POLSINELLO: Your Honor, at this time, the State
20 moves to publish this for the juries viewing.

21 THE COURT: All right. Just so the record will be
22 clear, you said for the juries view, for the juries
23 hearing.

24 MR. POLSINELLO: Yes, Your Honor.

25 THE COURT: It's not -- I just wanted to make sure

1 the record's clear.

2 MR. POLSINELLO: That's correct.

3 THE COURT: All right.

4 (WHEREUPON, State's Exhibit No. 1 was played in open
5 court.)

6 CONTINUED DIRECT EXAMINATION

7 BY MR. POLSINELLO:

8 Q Ms. Johnson, what are CAD reports?

9 A CAD stands for computer-aided dispatch. So that
10 would be the information that call takers take and put
11 into the call for whatever call it is that they're taking.
12 And then the dispatchers as well showing calls being
13 dispatched, and any other comments that are made.

14 Q So for every 911 call made, is there an associated
15 CAD report?

16 A Typically, if the sheriff's office responds, yes.

17 Q Okay. Are CAD reports useful?

18 A Yes.

19 Q Why is that?

20 A Because it captures the information and it's -- time
21 stamps things in there as well.

22 Q Okay. So is it fair to say that the CAD reports kind
23 of show -- they kind of articulate the 911 call in word or
24 print format?

25 A That would be fair.

1 Q Okay. I'm going to ask you to take a look at this
2 document.

3 A This does appear to be one of our CAD reports.

4 Q And is that the CAD report as it relates to this
5 case?

6 A Yes.

7 Q Have you viewed that CAD report before?

8 A I have.

9 Q Okay. Is that a true and accurate representation of
10 the CAD report, other than on that first page, that
11 redaction?

12 A Yes.

13 MR. POLSINELLO: At this time, the State moves and
14 submits this pursuant to the South Carolina Rules of
15 Evidence as State's Exhibit No. 2.

16 MR. EPPES: Without objection, Your Honor.

17 THE COURT: Without objection, State's Exhibit No. 2
18 is so admitted.

19 (WHEREUPON, State's Exhibit No. 2 was marked for
20 identification and admitted into evidence.)

21 MR. POLSINELLO: Your Honor, permission to publish
22 this for the jury.

23 THE COURT: Yes, sir.

24 MR. POLSINELLO: No further questions, Your Honor.

25 THE COURT: Cross-examination.

CROSS-EXAMINATION

BY MR. EPPES:

Q The CAD reports and 911 tape, they make up part of the sheriff's office records in a case; right?

A Yes.

Q There's a case file that includes reports from the officers that are involved in the case and --

A Correct.

Q -- other audio and video evidence; correct?

A Correct.

Q And all of that is kept by the Greenville County Sheriff's Department in their ordinary course of business; correct?

A The records and reports are not maintained by the sheriff's office. They are maintained by Greenville County itself and the records division.

Q But the records division keeps them in the normal course of business for use by the sheriff's office, the solicitors, and whoever needs them; correct?

A That's correct.

Q Have you looked at any other parts of the case file in this case, other than the stuff that you've testified about today?

A No. I would have no real basis to.

Q Okay. So if I informed you that part of the records

1 kept by the sheriff's department in the ordinary course of
2 business show that Loretta Workman called into work on
3 Saturday the 27th of August, and left a garbled message,
4 would you have any reason to dispute that?

5 A No.

6 Q Okay. And if I told you that at the time that second
7 911 tape was done, which I'll represent to you I believe
8 was on the 29th of August, that at that time there were no
9 warrants outstanding for Olandio Workman, would you have
10 any reason to dispute that?

11 A No.

12 Q Okay. If I represented to you that the warrants that
13 were issued for Olandio Workman were issued on September
14 the 8th of 2016, would you have any reason to dispute
15 that?

16 A No.

17 Q And, finally, if I represented to you that the
18 sheriff's department records indicate that Olandio Workman
19 walked into the sheriff's office and turned himself in on
20 the four warrants that were issued on September the 8th,
21 and that he did that on September the 24th of 2016, would
22 you have any reason to dispute that?

23 A No.

24 MR. EPPES: Thank you.

25 No further questions.

1 THE COURT: Anything on redirect?

2 MR. POLSINELLO: Nothing further, Your Honor.

3 THE COURT: All right. I have no questions.

4 Thank you, ma'am.

5 You can step down.

6 The State can call its next witness.

7 MR. POLSINELLO: Your Honor, the State calls Deputy
8 Shannon McHale.

9 THE COURT: Come forward.

10 MR. POLSINELLO: Your Honor, Ms. Johnson is under
11 subpoena. May she be released --

12 MR. EPPES: I was about to say, Your Honor, she -- as
13 far as I'm concerned, she can be excused from her
14 subpoena.

15 THE COURT: All right. That's without objection.
16 She is so released.

17 THE CLERK: Please raise your right hand.
18 WHEREUPON,

19 SHANNON MCHALE,
20 after first having been duly sworn, testified as follows:

21 THE CLERK: Please be seated.

22 And, please, state your name for the record.

23 THE WITNESS: Shannon McHale.

24 THE CLERK: Thank you.

25 THE COURT: Solicitor.

DIRECT EXAMINATION

BY MR. POLSINELLO:

Q Deputy McHale, are you currently employed?

A Yes, sir.

Q With whom?

A With the Greenville County Sheriff's Office.

Q How long have you been employed there?

A Three years.

Q Were you employed with the sheriff's office around August 27th, 2016?

A Yes.

Q At that time, what was your title?

A I am a -- I was a deputy two. I'm, actually, still a deputy two on uniform patrol assigned to echo platoon.

Q What are your general duties and responsibilities in that unit?

A As a uniform patrol deputy, our main objective is to answer calls for service, 911 calls, and maintain officer presence in our assigned beat areas.

Q You just stated "beat areas"?

A Yes, sir.

Q Did you arrived to [REDACTED] on this incident -- incident date on August 27th, 2016?

A (There was no response.)

Q Did you arrive?

1 A Yes, sir.

2 Q Okay. What beat area is that?

3 A [REDACTED] is in beat area six.

4 Q Are you familiar with that area?

5 A Yes, sir. While working at the sheriff's office,
6 I've been assigned to the area since -- the entire time.

7 Q So on this date --

8 MR. EPPES: Your Honor --

9 THE COURT: Yes, sir.

10 MR. EPPES: -- I hate to interrupt Mr. Polsinello.
11 But I believe he said the 27th. And I believe he meant
12 the 29th. I could be wrong about that.

13 THE COURT: Is that correct, Counsel?

14 MR. EPPES: I just want to make clear the day that
15 all this occurred.

16 BY MR. POLSINELLO:

17 Q Deputy McHale, what date did you respond to the
18 incident location?

19 A It should have been Monday, I believe, the 29th.

20 Q Okay. Of 2016?

21 A Yes, sir.

22 Q Are you familiar with that map?

23 A Yes, sir.

24 Q Is this the incident location that you responded to?

25 A Yes, sir.

1 Q Does this appear to be a fair and accurate
2 representation of that location?

3 A Yes, sir.

4 Q You're familiar with this location?

5 A Yes, sir.

6 Q Prior to this incident date, and working this beat
7 area, did you respond to calls at this location?

8 A In that general area, yes, sir.

9 Q So you're familiar with this location?

10 A Yes, sir.

11 Q Does this appear to be a fair and accurate
12 representation of this area?

13 A Yes, sir.

14 MR. POLSINELLO: Your Honor, pursuant to the South
15 Carolina Rules of Evidence, the State moves to submit this
16 exhibit as State's Exhibit No. 3.

17 THE COURT: Any objection?

18 MR. EPPES: No objection, Your Honor.

19 THE COURT: Without objection, it'll be State's
20 Exhibit No. 3.

21 (WHEREUPON, State's Exhibit No. 3 was admitted into
22 evidence.)

23 BY MR. POLSINELLO:

24 Q Deputy McHale, are you familiar with this area?

25 A Yes, sir.

1 Q Is this the incident location?

2 A Yes, sir.

3 Q Is this just a zoomed-in version?

4 A It's zoomed in. That star is just indicating [REDACTED]

5 [REDACTED].

6 Q This is the incident location --

7 A Yes, sir.

8 Q -- that you responded to --

9 A Uh-huh.

10 Q -- on the date in question?

11 A Yes, sir.

12 Q Does this appear to be a true and accurate
13 representation of the location?

14 A Yes, sir.

15 MR. POLSINELLO: Your Honor, pursuant to the South
16 Carolina Rules of Evidence, the State moves to submit this
17 as State's Exhibit No. 4.

18 THE COURT: Any objection?

19 MR. EPPES: Your Honor, there's -- I'd like for the
20 witness to make it clear that the mark to -- the green
21 mark of [REDACTED] does not, actually, point to the
22 exact incident location. It is just a marker to show the
23 trailer park.

24 MR. POLSINELLO: We'll get there, Your Honor. That
25 map, actually, references the --

1 MR. EPPES: That's my only objection to that
2 exhibit --

3 THE COURT: All right.

4 MR. EPPES: -- as long as they clarify --

5 MR. POLSINELLO: This isn't pointing to the trailer,
6 Your Honor. This is pointing just to the general [REDACTED]
7 Road address. And, actually, that map points to the
8 trailer.

9 THE COURT: I'll overrule your objection for right
10 now. Maybe we can revisit it, depending upon any
11 clarification.

12 Go ahead.

13 MR. EPPES: Thank you, Your Honor.

14 MR. POLSINELLO: Your Honor, the State moves to
15 submit this as State's Exhibit No. 4.

16 THE COURT: All right. Subject to that
17 clarification, Counsel?

18 MR. EPPES: Yes, sir, Your Honor, subject to that
19 clarification.

20 THE COURT: All right. Subject to that
21 clarification, it will be State's Exhibit No. 4.

22 (WHEREUPON, State's Exhibit No. 4 was admitted into
23 evidence.)

24 BY MR. POLSINELLO:

25 Q Deputy McHale, just take a look at that map. Do you

1 see that green dot?

2 A Yes, sir.

3 Q Is that Lot 7?

4 A I believe so, yes.

5 Q That's where you responded to?

6 A Yes, sir.

7 Q How did you first come to respond to that area?

8 A The Greenville County Sheriff's Office received a
9 call for service. It's regarded as a welfare check. An
10 individual called in stating Ms. Loretta Workman hadn't
11 shown up for work in a few days. And they were concerned
12 and wanted us to go out to her residence and check on her.
13 I then -- oh.

14 Q You can keep going.

15 A I then -- which was [REDACTED]. I drove
16 to that area and was able to locate the address running
17 license plates.

18 Q Okay. And this is in Greenville County?

19 A Yes, sir.

20 Q Even though it has a Piedmont -- Piedmont -- it's in
21 Greenville County?

22 A Piedmont is unincorporated. It falls under
23 Greenville Counties jurisdiction.

24 Q Okay. You were the first officer to respond?

25 A Yes, sir.

1 Q And what did you observe when you walked to the
2 residence?

3 A I observed a vehicle -- at least, one vehicle parked
4 in the driveway, including a motorcycle and a small
5 four-door. It's a trailer along the roadway. The front
6 door is, actually, located on the left-hand side. I
7 didn't notice anything really amiss.

8 Q Okay. Do you remember what time you responded, what
9 time of day it was?

10 A It was right before 7:00 p.m.

11 Q Okay. Was the sun still up?

12 A At that point, yes, sir.

13 Q Okay. And did you approach the residence?

14 A Yes, sir.

15 Q Did you knock on the front door?

16 A I did.

17 Q And what happened after you knocked on the front
18 door?

19 A I knocked on the front door and Mr. Workman came to
20 the door. He, initially, just pulled back the curtain.
21 Because the door has a diamond window cutout in it. He
22 pulled back the curtain and talked to me. I stated I was
23 here to speak with Ms. Loretta Workman. And he advised
24 she wasn't there.

25 He then eventually -- I went on speaking with him.

1 He opened up the door. He stated I could not come in to
2 search his residence. I advised I didn't want to search
3 his residence. I just needed to talk to Ms. Workman. If
4 she was here, could she, please, come to the door.

5 While speaking with him, he, eventually, said that
6 Ms. Workman was gone. She had gone to -- with her mother
7 and she'd be back in an hour.

8 Q Okay. Did you ask him -- when he said she was with
9 her mother, did you ask her [sic] where that address was?

10 A Not to my recollection.

11 Q Okay. So, at first, how would you describe the
12 Defendant's conduct towards you?

13 A He was very reluctant to speak with law enforcement.
14 He seemed very defensive. He was the one who, actually,
15 broached the topic of you can't come in my residence. And
16 I told him, That's fine. I don't want to. I just want to
17 speak with Ms. Loretta. And if she's there, could she,
18 please, come to the door.

19 Q Okay. When he came to the door, did anyone else come
20 to the door?

21 A I couldn't see anyone. When he had pulled back the
22 curtain, eventually, when he opened up the door -- he,
23 actually, only opened up the door about three or four
24 inches. He just cracked it. He never opened it fully.

25 And while I was speaking with him, I did see a

1 juvenile, like, a young child come to the door, grab at
2 the door. I could see just his hands kind of going around
3 the door. And I never saw anyone else.

4 Q Okay. Did you get that juvenile's face at all?

5 A I believe I saw a sliver. I saw some hair and a
6 cheek. And I think --

7 Q How old --

8 A Under six. I don't recall if he was wearing -- I
9 think maybe he was wearing a diaper and no shirt on.

10 Q Okay. Did you believe the victim was in the
11 residence?

12 A While conducting my investigation, I did.

13 Q What led you to believe that?

14 A So, initially, while on scene, I spoke with him. He
15 denied that she was there. Just because of the
16 relation -- the call for service of doing a welfare check,
17 I remember asking if I could call her number, or
18 something. And either it was broken or she wasn't going
19 to pick up. I asked, Okay. What's her mother's number?
20 And we weren't able to locate her mother -- or mother's
21 number.

22 So while I was on scene while waiting for backup to
23 arrive, I kind of just hung out. And then once I had
24 another partner to show up to maintain officer presence,
25 I, actually, spoke with neighbors. All the neighbors said

1 that they hadn't seen Ms. Workman in a few days, that the
2 vehicle -- if her vehicle was in the driveway, she
3 wouldn't have driven off in another car. And that if her
4 children were there that she would be there.

5 Q How many vehicles were in the driveway?

6 A I remember the broken down motorcycle. I remember a
7 small four -- like, a small sedan. I can't recall if
8 there was another one. I know I did run the license
9 plate. Because of the fact it's in a trailer park, it's a
10 little hard to find places. I ran the license plate,
11 which came back to Ms. Wilson -- Ms. Workman, Ms. Loretta
12 Workman.

13 Q So one of the cars that was in the driveway, you ran
14 that tag and it came back as her car?

15 A Yes.

16 Q Did you check any hospitals?

17 A While on scene, we, actually, requested our
18 dispatchers to. And they did call the surrounding
19 hospitals and said that Ms. Loretta Workman wasn't there.

20 Q Okay. Did you speak with anyone else?

21 A Once we -- once I had proper -- proper officer
22 presence, we, actually, ended up calling her boss,
23 Miss Teresa. Teresa advised that she hadn't been to work
24 in a few days, and that was unlike her.

25 She, actually, advised that she had left a voicemail,

1 I believe, on Saturday. I can't remember the exact -- if
2 it was the 27th or 28th. I apologize. She had left a
3 voicemail. It was garbled. And that since then, she
4 hadn't been able to make contact with Ms. Workman.

5 Q How did you get in contact and find out that this
6 Teresa was the victim's boss?

7 A I apologize. I can't recall.

8 Q Okay. But you somehow --

9 A Yeah. We made contact and were able to speak with
10 her.

11 Q Okay. Did you check the victim's cell phone?

12 A Yeah. We attempted to make contact. It, actually,
13 went straight to voicemail. We then requested our
14 dispatch to -- what we refer to as a ping. They contact
15 the provider of the phone and try and get a last known
16 location.

17 When we made that request to the provider, they,
18 actually, advised that the phone had been off for about
19 27 hours at that point. But prior to it being turned off,
20 it was showing at [REDACTED].

21 Q Okay. So all of these investigations that, you know,
22 the measures that you took, this led you to believe that
23 the victim was inside the home?

24 A Yes, sir.

25 Q And was that, in fact, true?

1 A Yes, sir.

2 Q Okay. Who was with her?

3 A She was inside the residence with her two young
4 children.

5 Q How did you come to find out that she was, in fact,
6 in there with her two children?

7 A After attempting to locate her through all the means,
8 checking hospitals, conducting the pings, speaking with
9 neighbors, we eventually -- and knowing that her vehicle
10 was there, I, eventually, sought and obtained a search
11 warrant to locate Ms. Loretta Workman. And then, at that
12 point, we requested SWAT to respond and enter into the
13 residence.

14 Q Okay. So does SWAT respond on scene in every case?

15 A No, sir.

16 Q Why did SWAT respond in this case?

17 A SWAT has a requirement that if it is perceived enough
18 of a threat due to various circumstances, they will
19 respond. And in this case, they had deemed that there was
20 enough of a threat to require it.

21 Q Okay. When you first arrived, you didn't have any
22 backup or support, it was just you?

23 A Yes.

24 Q Did you -- did a deputy respond for support or did
25 SWAT arrive first?

1 A A deputy responded.

2 Q How many minutes would you say elapsed from the
3 moment you knocked on the door and made contact with the
4 Defendant until a deputy came? How many minutes elapsed?

5 A I can't give a specific time without looking at our
6 CAD. I would say, at least, three to four minutes.

7 Q Three to four minutes. And where did that deputy go
8 when he arrived on scene?

9 A He -- I remained at the front door. Once he arrived,
10 I kind of explained what was going on. I, actually,
11 advised him to see if he could make contact with
12 Mr. Workman himself.

13 So he went to the front door. And, at that point, I
14 went -- I had advised my partner of this. At that point,
15 I went and tried to speak with some neighbors to see if
16 maybe they had seen her leave or knew where she might have
17 been.

18 Q All right. So during this whole time, the back of
19 the property wasn't secured yet?

20 A No, sir.

21 Q When SWAT arrived, did they surround the property?

22 A Yes, sir.

23 Q So how many minutes would you say elapsed from the
24 moment that second deputy helped to give you support until
25 SWAT coming and surrounding the premises?

1 A Well, once my partner arrived on scene, we, actually,
2 remained on there until we had additional units --
3 additional uniform patrol officers. They -- again, it was
4 a little bit of a timeframe between when my partner had
5 shown up to when additional officers had shown up:

6 After that point of obtaining the search warrant, I
7 would say it was an extended period of time before SWAT
8 arrived.

9 Q In terms of minutes, your best guess, what would
10 you -- what would it be?

11 A I'd say, at least, conducting our investigation on
12 scene, talking with hospitals, talking with family
13 members, and then obtaining the search warrant, it was, at
14 least, an hour, two hours before SWAT arrived.

15 Q Okay. When they arrived and when the victims were
16 brought out of the house, was the Defendant there?

17 A No, sir.

18 Q Where did he go?

19 A I was -- I don't know. He was inside the residence
20 when I was there. And then he was not there when SWAT
21 conducted their search of the house.

22 Q Did you observe the victim when she came out of the
23 house?

24 A I can't say when she, initially, came out of the
25 house. I know I walked up to the ambulance where she was

1 and did observe the -- the victim.

2 Q The victim in this case, Ms. Workman?

3 A Yes.

4 Q How did she appear?

5 A She had bruising to her face. Actually, I believe
6 both of her eyes had been -- she had black eyes, both
7 eyes. They were, actually, really badly swollen. I --
8 I'd assumed she could barely see out of them as to how
9 swollen they were.

10 Q Did you write a report detailing this incident?

11 A Yes, sir.

12 Q Have you had a chance to look at that report before
13 today?

14 A Yes, sir.

15 Q On Page 3 of your report, you mention a Crooked Creek
16 Circle and Rosalee Drive?

17 A Yes, sir.

18 Q Why did you mention that?

19 A The residence in question -- and if you can look at
20 the map, that trailer, actually, backs up to a wood line.
21 And immediately behind that is houses that are on Crooked
22 Creek and Rosalee. They sit right there.

23 Q Okay. So why is that mentioned in your report?

24 A Page 3 is the section at the end. We received a 911
25 call for service while I was on scene attempting to do a

1 welfare check on Ms. Workman in which a male had stated he
2 had been stabbed at Crooked Creek and Rosalee, which backs
3 up to where our location was. And that -- after officers
4 arrived on scene, they were unable to locate him.

5 And after -- while we were conducting our
6 investigation while we were on scene for our stuff, we,
7 actually, determined that the phone number that was called
8 in for that 911 stabbing call belonged to the Workmans.

9 Q How did you determine that, that that phone number of
10 the reported alleged stabbing belonged to the Workmans?

11 A I believe Ms. Loretta stated it did. But in addition
12 to that, if you -- we have a system where we can search
13 prior reports and call history. And we -- I placed that
14 phone number through our system, which showed that it --
15 there were prior calls for service with that number
16 associated with Mr. Workman.

17 Q The Defendant?

18 A Yes.

19 Q When this 911 call was played here before, were you
20 in the courtroom?

21 A Yes, sir.

22 Q Did you hear that 911 call, the alleged stabbing?

23 A Yes, sir.

24 Q So that's what you're referring to when you talk
25 about that alleged stabbing that happened right behind

1 [REDACTED] Road?

2 A Yes, sir.

3 Q Was there ever any stabbing ever found?

4 A Officers arrived on scene. We never located any
5 individual with a -- or they never located any individual
6 with stab wounds.

7 Q Okay. I'm handing you State's Exhibit No. 2. The
8 number that you searched for this alleged stabbing that
9 came up as belonging to the Defendant, is that the number?

10 A I would have to compare it to my report. I did not
11 memorize the phone number off the top, but I believe so.

12 Q Do you need your report to refresh your memory?

13 A If I could just so I could confirm.

14 Yes, sir. Those numbers are the same.

15 Q Okay. Thank you.

16 Being that you're familiar with this residence and
17 this area, I'm going to put up State's Exhibit No. 4.
18 It's a closer look at the incident scene. So I'm pointing
19 to that trailer right there. Is that Lot 7, the incident
20 location?

21 A Yes, sir.

22 Q So that's where you arrived?

23 A Yes, sir.

24 Q And right behind there, there's a tree line?

25 A Yes, sir.

1 Q And then we see Crooked Creek Circle right here?

2 A Yes, sir.

3 Q Okay. Did you ever go back behind the trailer and
4 enter that wood line?

5 A I did not, sir.

6 Q Okay. How -- I mean, how far would you say is the
7 trailer -- the back of this trailer to that -- to the next
8 street over, Crooked Creek Circle? How far?

9 A I'll be honest with you, I'm terrible at judging
10 distances. I apologize for that. It's not far at all.
11 You can see the house through the wood line.

12 Q Okay. That close?

13 A Yes.

14 Q But there is a wood line there --

15 A Yes, sir.

16 Q -- separating?

17 A Uh-huh.

18 Q Okay. Did you personally talk to any of the children
19 inside?

20 A No, sir.

21 Q But you -- they came out with the victim?

22 A Yes, sir.

23 Q So there were two children?

24 A Yes.

25 Q I think you already mentioned the six-year-old. What

1 age was the other one?

2 A I cannot recall, sir.

3 Q Do you have a --

4 A They were both under the age of six.

5 Q Okay. So fairly young?

6 A Yes.

7 Q Were they both males?

8 A Yes.

9 MR. POLSINELLO: No further questions, Your Honor.

10 THE COURT: All right. Mr. Eppes.

11 CROSS-EXAMINATION

12 BY MR. EPPES:

13 Q Officer McHale, that number you looked at with
14 Mr. Polsinello, that 488 number -- 478 number?

15 A Yes, sir.

16 Q Is that the number y'all were calling to try to reach
17 Ms. Workman?

18 A I do not believe so.

19 Q But they shared that phone?

20 A They did.

21 Q And you did this report -- well, I'm going to get to
22 that in a minute.

23 Will you come down here a second?

24 A (Witness complied.)

25 Q Thank you.

1 I'm trying to figure out logistics here. And I think
2 the jury can see around you better than they can see
3 around me. Would you go over to the other side so we can
4 talk about this at the same time.

5 MR. EPPES: Ladies and gentlemen, if some of y'all
6 can't see, please, let us know.

7 BY MR. EPPES:

8 Q It's this trailer; right?

9 A Yes, sir, this one.

10 Q Okay. Now, which side was the front door on?

11 A The front door is on the front left side.

12 Q All right. Is it there?

13 A I can't say exactly --

14 Q But it's on this side?

15 A Yes.

16 Q Is there a door over here?

17 A No. It's in the rear.

18 Q There's a door back there?

19 A Yes.

20 Q And are there windows back here?

21 A I believe a window is right here, yeah.

22 Q Did you go in the residence at all?

23 A No.

24 Q So you don't know where the living area was, or
25 anything?

1 A No.

2 Q Okay. Thank you.

3 And -- and -- well, let me ask you another question.
4 Where did your partner park? You were in one car, he was
5 in another.

6 A We parked our vehicles. And then we got out and
7 walked up to the trailer.

8 Q Okay. Where did y'all park?

9 A I believe I parked, initially, here. I know we,
10 actually, moved a vehicle and attempted PA callouts. So
11 we did angle a vehicle towards that trailer. There were
12 additional vehicles parked down here. And as we got more
13 cars, we went farther down the road towards [REDACTED].

14 Q Did anybody park beyond the trailer on this side?

15 A It's possible. I can't say one way or the other.

16 Q Okay. You can go back.

17 A (Witness complied.)

18 Q Now, you wrote this report down on the 30th; correct?

19 A Yes, sir.

20 Q And in point of fact, this event took place into the
21 early morning hours of the 30th?

22 A Yes, sir.

23 Q Do you remember if you wrote it before you went
24 off-duty, or you wrote it the next day?

25 A I wrote it before I went off-duty.

1 Q Okay. And you put down all the information that you
2 had about this case; correct?

3 A Yes, sir.

4 Q That you thought might be pertinent?

5 A Yes, sir.

6 Q Okay. And -- and you put down -- and there was
7 information that the supervisor, Teresa, called back and
8 told y'all that she had a voicemail from Loretta from the
9 Saturday that she was supposed to work; correct?

10 A Yes, sir.

11 Q And so you put that in your report?

12 A Yes, sir.

13 Q And you, also, put in your report that the
14 coworker -- and I'm not sure who that was -- said that
15 Loretta was at work -- when she was at work, she had
16 slight bruising or a small scratch on her neck; is that
17 correct?

18 A Yes, sir.

19 Q Okay. And you wrote the search warrant, but SWAT
20 executed it; correct?

21 A Yes, sir.

22 Q And the search warrant asked for -- gave you
23 permission to search the property to look for Loretta
24 Workman; correct?

25 A Yes.

1 Q And it gave a physical description of her?

2 A Yes, sir, it did.

3 Q The motorcycle that was out there, why do you say it
4 was broken down?

5 A I remember -- bear with me. I can remember thinking
6 it was inoperable. But I couldn't say one way or the
7 other now why. It could have been possibly it looked like
8 it was under construction, or had a flat tire.

9 Q If I told you it was new, would that change your
10 opinion of it, relatively new?

11 A It -- opinion to the fact that it was being worked
12 on?

13 Q Were you involved in any other parts of the
14 investigation of this case?

15 A No, sir, I was not.

16 MR. EPPES: Thank you.

17 THE COURT: All right. Anything else?

18 MR. POLSINELLO: No further questions, Your Honor.

19 THE COURT: All right. And I have no other
20 questions.

21 Ma'am, you can step down.

22 I'm going to -- I'm going to send the jury out for a
23 minute. I've got a matter I need to discuss with you.

24 All right. Take the jury out.

25 Be sure -- do not talk with each other about the

1 matter. No conversations at all about this case.

2 Remember what I told you earlier.

3 (WHEREUPON, the jury was excused from open court at
4 approximately 4:32 p.m.)

5 THE COURT: All right. Two things. One, I think
6 it's important that -- that both sides get a fair trial.
7 And even though the Court goes to -- and the two of you go
8 to great lengths to try to make sure that that happens in
9 the selection of jurors. But the Court noticed that Juror
10 #64 was sleeping throughout the whole process. I don't
11 think that benefits either side to have a juror that's
12 sleeping through the proceedings.

13 And, of course, we even brought it to the attention
14 of the bailiff. And I watched him. And I don't know if
15 either one of you did. But, certainly, that may be
16 something that I saw that I thought I needed to bring it
17 to the attention of Counsel. Because I admonished all
18 members of the jury that it's incumbent upon them to pay
19 attention, be focused, and listen to the testimony.

20 And I don't know whether this particular juror has --
21 was he -- did he work last night or -- but he was sleeping
22 throughout most of the proceedings. I would say
23 90 percent -- 90 percent of it. I don't think he -- if I
24 had to guess, I don't think he heard a word either one of
25 you said. But that's just my guess.

1 So having said that, I wanted to see -- to bring that
2 to the two of you and to address that issue. Of course, I
3 could bring him in, that particular juror, or we could
4 just see what happens tomorrow maybe. That's the first
5 thing. So we'll address that.

6 The second thing is, the State's next witness is --
7 is going to be rather lengthy; is that correct?

8 MR. POLSINELLO: No, Your Honor.

9 THE COURT: No?

10 MR. POLSINELLO: All she did was take the photos of
11 the victim and observe some of the evidence. She met with
12 the victim and just observed bruising, nothing --

13 THE COURT: All right. So --

14 MR. POLSINELLO: I think if we -- if we were to call
15 her, we'd be done before 5:00.

16 THE COURT: All right. What's Counsel's position
17 on what --

18 MR. EPPES: Your Honor, I may -- I may want to
19 reserve the right to recall that witness. But I have no
20 objection to doing that.

21 And Officer McHale, as far as I'm concerned, can be
22 excused before I forget to say that.

23 THE COURT: All right. Well, no objection to her
24 being excused; right?

25 MR. POLSINELLO: No, none, Your Honor.

1 THE COURT: But as it relates to the juror --

2 MR. EPPES: As it relates to the juror, Your Honor,
3 my view would be given the relatively preliminary nature
4 of most of this and because we have two alternates and we
5 think it's going to be a three-day trial, I would be very
6 reluctant to burn an alternate at this early stage absent
7 more -- now, if it continues tomorrow, I may have a
8 different view. Because I'll pay attention to it now.
9 I'll be honest, Judge, I don't look at the jury very much.
10 It just makes me confused, so.

11 MR. POLSINELLO: Your Honor, before we broke for
12 today, I was going to bring up this issue, but, obviously,
13 you did it first.

14 THE COURT: You saw what I saw?

15 MR. POLSINELLO: I'm just sharing the same concern.
16 He's a -- you know, a young, young guy. And I don't --
17 it's not like he was just dozing off for five minutes and
18 then woke up and realized it. You're correct. It was
19 continuous.

20 THE COURT: All right. And I don't think it's fair
21 to either side. I'll tell you what we'll do. We'll bring
22 the jury back in for that last witness that you have. You
23 said it was probably going to be a short one. And we'll
24 revisit this issue if it occurs tomorrow.

25 Is that -- is that a fair -- moving forward, I

1 just -- and let's just see where it goes tomorrow. Then
2 we'll address it.

3 Is that -- is that a fair resolution on both sides?

4 MR. EPPES: I believe so, Your Honor.

5 MR. POLSINELLO: Yes, Your Honor.

6 THE COURT: And, of course, we've got two alternates.
7 But we'll address that tomorrow and see if we have to
8 replace that particular juror. I'm just going to assume
9 he had a bad night, or he worked third shift, or
10 something. But he was not here.

11 Anyway, anything before I bring the jury back?

12 MR. POLSINELLO: Your Honor, I -- you know, I know I
13 said before 5:00. But I'm going to be honest. Some of
14 our photos are going to come in next. There's only 10. I
15 can have her look at all 10 at once. And we can
16 authenticate them that way, rather than having to do them
17 one at a time.

18 THE COURT: Why don't we do this. It's about -- it's
19 about 20 minutes to 5:00. Why don't we just put a pin in
20 it for today and we'll just reconvene tomorrow morning at
21 9:30.

22 Let me just bring them back out so I can give them
23 some instructions before stopping for the day.

24 (WHEREUPON, the jury came into open court at
25 approximately 4:39 p.m.)

1 THE COURT: All right. Ladies and gentlemen of the
2 jury, it is approximately 4:40 p.m. -- almost 4:40 p.m. on
3 Monday, September the 17th, 2018. I'm going to let you go
4 for the afternoon. The reason I'm going to let you go for
5 the afternoon is you're going to be able to go home. And
6 we're going to reconvene tomorrow morning at 9:30.

7 I want everyone to go and have a good nights sleep
8 and come prepared to focus tomorrow. So I'm going to let
9 all of you go and reconvene back at -- now, be sure to
10 report to the jury room by 9:30.

11 And, please, ma'am, please, sir, do not talk about
12 this case to each other. Don't talk about this case to
13 your children. Don't talk about this case to your spouse.
14 Don't talk about this case to your in-laws. Don't talk
15 about this case to anybody. Don't turn on the television
16 and think you're going to find it. Don't do that. Don't
17 look at any newspapers to see if you're going to find
18 something. In other words, what I'm trying to tell you is
19 don't talk about this case to anyone at all until I see
20 you tomorrow at 9:30.

21 Okay. 9:30. Have a good evening.

22 (WHEREUPON, the jury was excused from open court at
23 approximately 4:40 p.m.)

24 THE COURT: All right. Counsel, I made an attempt to
25 indirectly address that, so if you picked up on that.

1 MR. POLSINELLO: Yes, Your Honor.

2 THE COURT: I indirectly addressed it. So,
3 hopefully, we'll reconvene tomorrow morning.

4 And feel free to leave your stuff in here. I'm sure
5 the bailiffs and everybody will take care of you if you
6 need to leave your stuff.

7 Okay. We'll see you tomorrow morning.

8 (WHEREUPON, the proceedings were concluded at
9 approximately 4:41 p.m., to be reconvened on
10 Tuesday, September 17, 2018.)

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1 TUESDAY, SEPTEMBER 18, 2018

2 THE COURT: Gentlemen, anything -- anything before we
3 bring the jury out?

4 MR. POLSINELLO: Nothing from the State, Your Honor.

5 THE COURT: From the Defense?

6 MR. EPPES: Your Honor, I would note that my
7 paralegal -- we cut it real close. And she's not here
8 yet, but that's fine. We're good with the jury coming
9 out. I just wanted you to know she's going to be walking
10 in.

11 THE COURT: All right. Very well.

12 Bring the jury in.

13 (Pause.)

14 THE COURT: Hold on one second. Hold on one second
15 with the jury.

16 Tell him to hold on.

17 THE BAILIFF: Yes, sir.

18 THE COURT: Could I see y'all just a second?

19 (WHEREUPON, a bench conference was held.)

20 THE COURT: All right. Could you bring Juror #153 in
21 for a sidebar?

22 (WHEREUPON, Juror #153, Bhavisha Patel, entered the
23 courtroom.)

24 (WHEREUPON, a sidebar was held with the Court, the
25 attorneys, and Juror #153, Bhavisha Patel.)

1 JUROR #153, BHAVISHA PATEL: Good morning.

2 THE COURT: Let me say something first. I got your
3 message about your child -- picking up your child. Is
4 that the message you sent about you got to pick your child
5 up every day?

6 JUROR #153, BHAVISHA PATEL: Correct.

7 THE COURT: What time do you have to pick her up?

8 JUROR #153, BHAVISHA PATEL: I have -- I start my
9 work at 6:00. So I finish my work at 2:30. So I can pick
10 up my daughter at 3:00. And my husband travels. So he's
11 not at home.

12 So I talked to my neighbor yesterday. So she -- she
13 picked her up yesterday. But then after tomorrow -- after
14 today, I don't have anybody to pick her up.

15 THE COURT: After today, you don't have anybody?

16 JUROR #153, BHAVISHA PATEL: Yes, sir.

17 THE COURT: Let me ask you this. Do you have
18 somebody that could pick her up today?

19 JUROR #153, BHAVISHA PATEL: I can give them -- I
20 can -- only for today you mean?

21 THE COURT: Yes. Because I think we might be okay
22 tomorrow.

23 JUROR #153, BHAVISHA PATEL: Okay. I can --

24 THE COURT: Before that time.

25 JUROR #153, BHAVISHA PATEL: Okay. If I can give

1 somebody a call and ask them if they can do that.

2 THE COURT: All right. If that person can't do it,
3 can you -- can you pick the child up at 4:00?

4 JUROR #153, BHAVISHA PATEL: She -- that's the thing.
5 She has private school. So she doesn't have a day care,
6 or anything. She's not in public school.

7 THE COURT: Okay. So you have to pick her up at
8 3:00?

9 JUROR #153, BHAVISHA PATEL: Yeah, yeah.

10 THE COURT: One of the bailiffs is going to let you
11 make a call to see if you can cover it today.

12 JUROR #153, BHAVISHA PATEL: Okay.

13 THE COURT: And then tomorrow, we'll -- we'll work it
14 out. Okay. If you can cover today.

15 JUROR #153, BHAVISHA PATEL: Yeah. And I will let
16 you know.

17 THE COURT: Okay. Let the bailiff know at some
18 point.

19 JUROR #153, BHAVISHA PATEL: Okay. Thank you.

20 (WHEREUPON, Juror #153, Bhavisha Patel, exited the
21 courtroom.)

22 MR. EPPES: Is she going to make the call now or
23 when?

24 THE COURT: Yeah. She's going to make the call now.

25 MR. EPPES: Thank you, Your Honor.

1 (WHEREUPON, the sidebar was concluded.)

2 THE COURT: Yes, sir, Mr. Eppes.

3 MR. EPPES: Mr. Workman just informed me that because
4 of transport and all, he didn't get his medication this
5 morning. Could you, please, ask the deputies or whoever
6 handles that to see if we couldn't get it over here at
7 some point before lunch.

8 THE COURT: Y'all will be able to take care of that?

9 THE COURTROOM DEPUTY: Do they know at the jail what
10 the medication is?

11 MR. EPPES: Yeah. They give it to him at the jail.
12 It's Wellbutrin.

13 THE COURTROOM DEPUTY: What is it?

14 MR. EPPES: Wellbutrin.

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

16 (WHEREUPON, the jury came into open court at
17 approximately 9:45 a.m.)

18 THE COURT: Good morning. I hope everybody is well
19 rested and ready to move forward today.

20 Is the State ready to proceed?

21 MR. POLSINELLO: Yes, Your Honor.

22 THE COURT: Call your next witness.

23 MR. POLSINELLO: Your Honor, the State calls Chelsea
24 Wills-Eskew.

25 THE CLERK: Ma'am, if you'll, please, place your left

1 hand on the Bible and raise your right hand.

2 WHEREUPON,

3 CHELSEA WILLS-ESKEW,

4 after first having been duly sworn, testified as follows:

5 THE CLERK: Thank you.

6 Please be seated.

7 THE COURT: Yes, sir.

8 THE CLERK: And, please, state your name for the
9 record.

10 THE WITNESS: Chelsea, C-H-E-L-S-E-A, Wills,
11 W-I-L-L-S, hyphen Eskew, E-S-K-E-W.

12 THE CLERK: Thank you.

13 DIRECT EXAMINATION

14 BY MR. POLSINELLO:

15 Q Officer Wills-Eskew, are you currently employed?

16 A I am.

17 Q With whom?

18 A Greenville County Department of Public Safety.

19 Q What's your title?

20 A Forensic technician.

21 Q What are your general duties and responsibilities as
22 a forensic technician?

23 A We respond to crime scenes and document them via
24 photographs and video. We collect any pertinent evidence,
25 and we process it.

1 Q How long have you been employed with this agency?

2 A Three years.

3 Q Were you employed with this agency around
4 August 29th, 2016?

5 A Yes, sir.

6 Q Did you respond to this incident location on that
7 date, [REDACTED] ?

8 A I did.

9 Q In Greenville County?

10 A Uh-huh.

11 Q What was the first thing that you did when you
12 arrived on scene?

13 A I met with Sergeant Rivera.

14 Q Okay. Is he with the sheriff's office?

15 A Yes, he is.

16 Q And what did you learn?

17 A I learned that they responded sometime earlier -- I
18 didn't respond until the 30th. It was after midnight.
19 They responded on the 29th in reference to a welfare
20 check. And that someone who they believed had been
21 assaulted had been found in the residence. And they
22 requested that I take photographs.

23 Q What time did you respond?

24 A If I can refer to my report.

25 I was sent a call at 1:59 a.m.

1 Q Okay. And after you spoke to Sergeant Rivera, what
2 did you do next?

3 A I met with the victim. And I took photographs of her
4 and her injuries.

5 Q Okay. Did you observe the victim?

6 A I did.

7 Q Did she -- how did she appear to you?

8 A She had extensive bruising to her face. And her eye
9 area was very swollen. There were, also, some bruises to
10 the -- one side in front of her neck.

11 Q You took photos of her?

12 A Yes, I did.

13 Q Did you go into the house?

14 A I did. They stated that they had obtained a search
15 warrant. And they would like me to document the condition
16 of the residence and firearms that they had located in a
17 front bedroom.

18 Q And you took all those photos as well?

19 A I did.

20 Q Officer Wills-Eskew --

21 MR. EPPES: Your Honor --

22 THE COURT: Yes.

23 MR. EPPES: -- these photos include photos of the
24 guns found during the search warrant. And I renew my
25 objection to the scope of the search warrant at this time.

1 THE COURT: All right. So noted.

2 BY MR. POLSINELLO:

3 Q Officer Wills-Eskew, I'm going to ask you to take a
4 look at these photos. Just take a look at each one,
5 please.

6 A (Witness complied.)

7 Q Do you recognize each one of those photos?

8 A I do.

9 Q Did you take these photos?

10 A I did, sir.

11 Q Are each one of these photos a true and accurate copy
12 of the photos you took?

13 A Yes.

14 MR. POLSINELLO: Your Honor, pursuant to the South
15 Carolina Rules of Evidence, the State moves to submit
16 these photos into evidence that were previously marked as
17 State's Exhibit Nos. 5 through 14.

18 THE COURT: Is that subject to your objection,
19 Mr. Eppes?

20 MR. EPPES: Subject to my objection, Your Honor.

21 THE COURT: All right. That'll be State's Exhibit
22 Nos. 5 through 14?

23 MR. POLSINELLO: Yes, sir.

24 THE COURT: You're doing them individually, instead
25 of collectively?

1 MR. POLSINELLO: They've been previously marked
2 individually as State's Exhibit Nos. 5 through 14.

3 THE COURT: Thank you, sir.

4 (WHEREUPON, State's Exhibit Nos. 5, 6, 7, 8, 9, 10, 11,
5 12, 13, and 14 were admitted into evidence.)

6 MR. POLSINELLO: Your Honor, permission to publish
7 these for the juries viewing.

8 THE COURT: Yes, sir.

9 BY MR. POLSINELLO:

10 Q Agent Wills-Eskew, when you went into the home, did
11 you notice any other pieces of evidence?

12 A Not that they notified me of, nothing that I felt was
13 pertinent.

14 Q Okay. So you didn't observe any guns?

15 A No. I observed -- other than the guns. I apologize.

16 Q That's what I'm referring to.

17 A Yes. I observed the guns in the front bedroom.

18 Q Okay. Where were they located?

19 A One was under a mattress and box spring on the floor.
20 And one was in a dresser drawer.

21 Q Okay. Did you notice any bullets?

22 A There was a bag of ammunition. I'm not sure where it
23 originally was. But I was just shown where it had been
24 located.

25 Q Okay. Did you observe -- other than the victim, any

1 children on scene?

2 A There was one child outside whenever I arrived. I'm
3 not sure where they went.

4 Q Did you speak to that child?

5 A No, I did not.

6 MR. POLSINELLO: Thank you.

7 No further questions, Your Honor.

8 THE COURT: All right. Cross-examination, Mr. Eppes.

9 CROSS-EXAMINATION

10 BY MR. EPPES:

11 Q You got there sometime after 2:00 in the morning;
12 right?

13 A If I can refer to my report.

14 Q Yes, ma'am.

15 A I arrived on scene at 2:29 a.m.

16 Q And your job is to collect evidence; correct?

17 A As well as document the scene.

18 Q Okay. And in your documentation of the scene, your
19 report indicates that you found a big dent in the door
20 where the SWAT team had gone in; is that right?

21 A Yes, sir.

22 Q And you found these two guns. And they were in the
23 same room; correct?

24 A Sir, I did not locate the guns. I was just shown
25 where the guns were located. Whoever executed the search

1 warrant located the firearms.

2 Q Okay. Then that's my problem. I used the wrong
3 word.

4 A Okay.

5 Q You were shown where the guns were located?

6 A Correct.

7 Q They were located in the same room?

8 A Both guns were in the same room, yes.

9 Q One of them was in a night stand?

10 A Uh-huh.

11 Q And one of them was --

12 THE COURT: Make sure you say "yes" or "no," ma'am.

13 THE WITNESS: Okay. Sorry.

14 THE COURT: All right.

15 THE WITNESS: Yes.

16 BY MR. EPPES:

17 Q And one of them was under the bed?

18 A Yes, sir.

19 Q Okay. And the one that was under the bed, the
20 mattress was flipped up kind of haphazardly?

21 A Yes, it was.

22 Q I think the jury is looking at the pictures, so I'm
23 not going to -- but you remember that from that
24 photograph?

25 A Yes.

1 Q And this bed, it's one of those beds where you have a
2 box on the ground and a mattress over it; right, with
3 slats?

4 A I believe it had a box spring, as well as a mattress.

5 Q Okay. But the base of the bed, there wasn't any
6 space under -- to stick your hand under the bed. It was a
7 four-inch piece of plywood all the way around?

8 A I don't recall without looking more closely at the
9 pictures.

10 MR. EPPES: I hate to do this to you. Can I look at
11 those?

12 I'm sorry. You can go back to looking at the rest,
13 but I need this one for a minute.

14 BY MR. EPPES:

15 Q Okay. Now, I'm showing you what's been marked as
16 State's Exhibit No. 13. And you can see there that slat
17 and that solid piece of wood. Does that refresh your
18 recollection that there was a piece of wood going all the
19 way around that bed?

20 A I can't tell from this angle if there's a gap
21 underneath the piece of wood. I, also, took overall
22 pictures of the room. And those would be more
23 representative of what the size of the piece of wood looks
24 like.

25 Q Okay. I've never seen a better picture of it, but

1 that's me.

2 But you don't have any independent memory of that?

3 A No, I do not.

4 Q Okay. And if I represented to you that this is the
5 room where the SWAT team located Loretta Workman, do you
6 know that for a fact, or not?

7 A No, sir. I have no information about where they
8 located her in the residence.

9 Q All right. And when you got there at some point
10 after 2:00 in the morning, there were bugs and stuff in
11 the house?

12 A There were some insects.

13 Q And your record reflects that at sometime that
14 morning, you were told that law enforcement had contacted
15 DSS --

16 MR. POLSINELLO: Objection, Your Honor. Hearsay.

17 THE COURT: Sustained.

18 MR. POLSINELLO: He's attempting to state what
19 someone else said.

20 THE COURT: I sustained the objection.

21 MR. POLSINELLO: Okay. Thank you.

22 BY MR. EPPES:

23 Q Your report reflects that DSS had been contacted;
24 correct?

25 A That was the information I had been given by Sergeant

1 Rivera.

2 Q And it reflects that that was because of the
3 condition of the residence?

4 A I was not told why they were contacted, just that
5 they had been contacted.

6 Q Thank you.

7 Okay. Now, you said you found the guns, but,
8 otherwise, you found nothing pertinent to the case;
9 correct?

10 A As I stated before, I did not locate the guns. I was
11 just shown where someone --

12 Q Sorry --

13 A -- else had located the guns.

14 Q That's the way my mind works. I apologize.

15 A I was not notified of any other items that they were
16 looking for or that I assisted in looking for that would
17 have -- they thought were pertinent to the case.

18 Q And you didn't observe anything pertinent?

19 A Not that I felt, no.

20 Q And no one showed you any locks of hair, did they?

21 A No, sir.

22 Q And no one showed you a knife, did they?

23 A No.

24 Q And you didn't locate either locks of hair or a knife?

25 A No.

1 Q And you did a pretty close look of the house for what
2 you thought would be pertinent evidence because you're a
3 forensic technician; correct?

4 A I took overall pictures of the residence. And in
5 light of the information I was given, I did not see
6 anything that I felt was relevant.

7 MR. EPPES: Thank you.

8 THE COURT: All right. Anything on redirect?

9 MR. POLSINELLO: Nothing further, Your Honor.

10 THE COURT: All right. I have no questions.

11 Thank you, ma'am.

12 You can step down.

13 MR. POLSINELLO: Your Honor, may this witness be
14 relieved of her subpoena?

15 THE COURT: All right. Any objection?

16 MR. EPPES: No objection, Your Honor.

17 THE COURT: All right. The witness is so released.

18 All right. Next witness.

19 MR. POLSINELLO: Your Honor, the State calls Stan
20 Whitten to the stand.

21 THE CLERK: Sir, if you'll, please, place your left
22 hand on the Bible and raise your right hand.

23 WHEREUPON,

24 STAN WHITTEN,

25 after first having been duly sworn, testified as follows:

1 THE CLERK: Thank you.

2 Please be seated.

3 Please state your name for the record.

4 THE WITNESS: Stan Whitten.

5 THE CLERK: Thank you.

6 DIRECT EXAMINATION

7 BY MR. POLSINELLO:

8 Q Is it Master Deputy Stan Whitten?

9 A It's now sergeant.

10 Q Sergeant.

11 A Yes.

12 Q Excuse me. Congratulations.

13 Sergeant Whitten, are you currently employed?

14 A Yes, sir, I am.

15 Q With whom?

16 A The Greenville County Sheriff's Office.

17 Q How long have you been employed there?

18 A 12 years.

19 Q Were you employed with the sheriff's office around
20 August 29th, 2016?

21 A Yes, sir, I was.

22 Q On that -- around that date, did you respond to this
23 incident location?

24 A Yes, sir, I did.

25 Q All right. How did you first become involved in this

1 case?

2 A Well, I was on bravo platoon at the time. And I was
3 a master deputy at the time that -- that this incident
4 occurred.

5 On bravo platoon, we work rotating shifts. We rotate
6 every six weeks, 7:00 p.m. to 7:00 a.m. or 7:00 a.m. to
7 7:00 p.m. And we were just coming on duty the night of
8 this incident. So we were coming on.

9 Echo platoon -- which Deputy McHale was already on
10 this scene the night that -- that we came on duty. And we
11 responded much later -- several hours later for assistance
12 for perimeter of this residence.

13 Q What time did you respond?

14 A About 10 -- 10:00 at night roughly, as I remember.

15 Q When you arrived on scene, what's the first thing
16 that you observed?

17 A I believe SWAT units were already on scene. Several
18 other deputies were on scene. And me -- I had a trainee
19 with me. A trainee -- deputies go through a field
20 training program for 16 weeks.

21 So I had a trainee with me. And he and I took up a
22 position on the -- the left side of the mobile home until
23 SWAT did what they did -- made entry into the residence.

24 Q Okay. So you took a position on the home while SWAT
25 was there making callouts?

1 A Yes, sir. We did until we were relieved by SWAT. And
2 then we backed out. SWAT did their thing.

3 Q When you say "SWAT did their thing," what were they
4 doing?

5 A Well, they -- they relieved us and put -- set a
6 perimeter on the residence. And then they made entry
7 into -- into the residence.

8 Q How long did that take from the time that they set up
9 until they made entry into the residence?

10 A Well, they were on scene when I got there, so I don't
11 know exactly. However, when we got on scene, it was maybe
12 an hour or two that they made entry into the residence.

13 Q Okay. What was happening that whole hour?

14 A They were negotiating. They were -- I believe a
15 negotiator was on scene. And, again, I'm going off
16 memory. A negotiator was on scene. They were using the
17 PA system on the -- on the -- on the -- one of the
18 vehicles to -- to make callouts to the residence.

19 Q What's a callout?

20 A A loud microphone that they use to callout people
21 inside the residence.

22 Q Who were they calling out?

23 A Both Ms. Workman and -- I believe they were calling
24 out Mr. Workman as well.

25 Q And did the Defendant ever come out?

1 A No, sir.

2 Q Okay. Eventually, did -- were the victim and two
3 children found there?

4 A Yes, sir, they were.

5 Q Okay. Did you -- once SWAT entered the residence and
6 once the victim and her children were secured and safe,
7 what did you do?

8 A I was instructed by Sergeant Rivera to take Deputy
9 Kirk, my trainee, and go inside the residence and secure
10 weapons that were found inside the residence.

11 Q Okay. So you observed the weapons?

12 A Yes, sir.

13 Q Anything else other than the two guns?

14 A That's what I was instructed to -- to go collect.

15 Q Was there anything else that you collected, other
16 than the two guns?

17 A Yes. There was ammunition, magazines, and a
18 lunchbox, I believe, yeah.

19 Q Okay. Where was all of this found? What room?

20 A The master -- master bedroom.

21 Q Was that in the back of the residence?

22 A The front of the residence.

23 Q The front. Where -- where was the -- the
24 nine-millimeter found?

25 A I believe it was in the dresser drawer.

1 Q Okay. And the AK style rifle?

2 A Under the mattress on the bed.

3 Q Okay. And there was ammunition?

4 A Yes, sir.

5 Q Was it all in one place, or --

6 A I believe it was. I don't actually -- I don't
7 remember exactly. I believe it was all -- it was all
8 together when we collected it.

9 Q Okay. Was it in the bag?

10 A Yes, sir.

11 Q The blue cooler bag?

12 A Yes, sir.

13 Q Okay. Were the guns cleared and made safe?

14 A Yes, sir, they were.

15 Q Who did that?

16 A I don't know.

17 Q You didn't do that?

18 A No, sir.

19 Q Okay. So did you collect all this evidence?

20 A Yes, sir.

21 Q Okay. So, obviously, when you collected the guns,
22 they -- were they made safe by them?

23 A Yes, sir.

24 Q Okay. And when you collect this evidence, describe
25 the process of how that's done and what happens with the

1 evidence.

2 A Yeah. It's cataloged. It's cataloged with the make,
3 model, and serial number of the weapons and -- and scribed
4 onto a property and evidence sheet, and taken down to --
5 all the stuff that we collect is taken down to our
6 property and evidence room down at the law enforcement
7 center.

8 Q Okay. So you, along with your trainee, collected all
9 this evidence and you brought it to the law enforcement
10 center?

11 A Yes, sir.

12 Q Did you bring it immediately -- or early that
13 morning?

14 A Yes, sir.

15 Q Okay. And when you bring it to the law enforcement
16 center, what happens then?

17 A We put it in an evidence locker and lock it in an
18 evidence locker for the evidence technicians the next
19 morning to -- to take that and catalog it at property and
20 evidence.

21 Q So you saw all this evidence be -- stored in the
22 locker and cataloged?

23 A Yes, sir.

24 Q When you dropped it off?

25 A Yes, sir.

1 MR. POLSINELLO: Frank, do you want to come and check
2 it out, the exhibits.

3 MR. EPPES: Is there a gun lock on both of them?

4 THE WITNESS: Sir?

5 MR. EPPES: Is there a gun lock on both of them?

6 THE CLERK: Yes, sir.

7 MR. EPPES: Your Honor, I really have very little
8 intention of handling these weapons. But I'm not going to
9 use gloves, unless y'all tell me there's some reason to do
10 it. So that's -- if there is, I need the officer or
11 somebody to tell me that right now.

12 MR. POLSINELLO: Your Honor, we -- we can get
13 Mr. Eppes gloves, if he wants them.

14 MR. EPPES: I don't like them. They're itchy.

15 MR. POLSINELLO: Okay.

16 MR. EPPES: I mean, if there's a reason I can't touch
17 it, let me know.

18 THE COURT: Well, there's -- I've been -- I've been
19 informed that there's no reason why you cannot touch it.

20 MR. EPPES: Thank you.

21 THE COURT: All right.

22 MR. EPPES: No objection.

23 THE COURT: All right. The record is so noted.

24 BY MR. POLSINELLO:

25 Q Sergeant Whitten --

1 A Yes, sir.

2 Q -- do you recognize this gun?

3 A Yes, sir.

4 Q Is this the gun that was found on scene?

5 A Yes, sir.

6 Q The nine millimeter?

7 A Yes, sir.

8 MR. POLSINELLO: Your Honor, pursuant to the South
9 Carolina Rules of Evidence, the State moves to submit this
10 as State's Exhibit No. 15.

11 THE COURT: Any objection?

12 MR. EPPES: No objection.

13 THE COURT: Without objection, so admitted.

14 MR. EPPES: Well, Your Honor, subject to my --

15 THE COURT: Subject to --

16 MR. EPPES: -- other objections.

17 THE COURT: Subject to your other objections.

18 (WHEREUPON, State's Exhibit No. 15 was marked for
19 identification and admitted into evidence.)

20 BY MR. POLSINELLO:

21 Q Sergeant Whitten, do you recognize this gun?

22 A Yes, sir.

23 Q Is this the assault rifle that was found in the
24 residence on this incident date?

25 A The AK-47, yes, sir.

1 Q Okay. This is the same gun that you transported to
2 property and evidence?

3 A Yes, sir.

4 MR. POLSINELLO: Your Honor, pursuant to the South
5 Carolina Rules of Evidence, the State moves to submit this
6 into evidence as State's Exhibit No. 16.

7 THE COURT: Is that subject to Defense --

8 MR. EPPES: Subject to the same objection, Your
9 Honor.

10 THE COURT: Subject to Defense Counsel's previous
11 objection.

12 (WHEREUPON, State's Exhibit No. 16 was marked for
13 identification and admitted into evidence.)

14 BY MR. POLSINELLO:

15 Q Sergeant Whitten, do you recognize these three
16 magazines?

17 A Yes, sir.

18 Q These are the magazines that were found on scene?

19 A Yes, sir.

20 Q Are these type of magazines compatible with that nine
21 millimeter?

22 A Yes, sir, they are.

23 MR. POLSINELLO: Your Honor, pursuant to the South
24 Carolina Rules of Evidence, the State moves to submit
25 these into evidence as State's Exhibit Nos. 17, 18, and

1 19.

2 MR. EPPES: Same objection, Your Honor.

3 THE COURT: All right. Subject to Defense Counsel's
4 previous objection.

5 (WHEREUPON, State's Exhibit Nos. 17, 18, and 19 were
6 marked for identification and admitted into evidence.)

7 BY MR. POLSINELLO:

8 Q Sergeant Whitten, do you recognize these magazines?

9 A Yes, sir, I do.

10 Q These are the magazines that were found on scene at
11 the incident location that night?

12 A Yes, sir.

13 MR. POLSINELLO: Your Honor, pursuant to the South
14 Carolina Rules of Evidence, the State moves to submit
15 these magazines as State's Exhibit Nos. 20 and 21.

16 THE COURT: Mr. Eppes.

17 MR. EPPES: Same objection, Your Honor.

18 THE COURT: All right. Subject to Defense Counsel's
19 previous objection.

20 (WHEREUPON, State's Exhibit Nos. 20 and 21 were marked
21 for identification and admitted into evidence.)

22 BY MR. POLSINELLO:

23 Q Sergeant Whitten, I'm going to ask you to take a look
24 at these three bags, take a look inside.

25 A Yes, sir.

1 Q Is this all the ammunition that was collected on
2 scene that night?

3 A Yes, sir, it is.

4 Q And all of this was -- was it loose or was it in --

5 A It was in that blue bag.

6 Q That blue bag?

7 A Yes, sir.

8 Q Is this the ammunition that you transported?

9 A Yes, sir, it was.

10 Q Into P&E?

11 A Yes, sir.

12 MR. POLSINELLO: Your Honor, pursuant to the South
13 Carolina Rules of Evidence, the State moves to submit
14 these three separate bags into -- I believe it's State's
15 Exhibit Nos. 22, 23, and 24.

16 THE COURT: Mr. Eppes.

17 MR. EPPES: Same objection, Your Honor.

18 THE COURT: All right. So admitted subject to
19 Defense Counsel's previous objection.

20 (WHEREUPON, State's Exhibit Nos. 22, 23, and 24 were
21 marked for identification and admitted into evidence.)

22 BY MR. POLSINELLO:

23 Q Lastly, Sergeant, this is the blue bag that you were
24 referencing?

25 A Yes, sir, it is.

1 Q This is the same bag that you collected and
2 transported down to P&E?

3 A Yes, sir.

4 MR. POLSINELLO: Your Honor, pursuant to the South
5 Carolina Rules of Evidence, the State moves to submit this
6 into evidence as State's Exhibit No. 25.

7 THE COURT: Mr. Eppes.

8 MR. EPPES: Same objection.

9 THE COURT: All right. So admitted subject to
10 Defense Counsel's previous objection.

11 (WHEREUPON, State's Exhibit No. 25 was marked for
12 identification and admitted into evidence.)

13 BY MR. POLSINELLO:

14 Q Sergeant Whitten, did you ever speak with the victim?

15 A No, sir, I did not.

16 Q Okay. Did you observe her?

17 A Yes, sir, I did.

18 Q How did she appear to you?

19 A It was at a distance. But I -- I saw a swollen face.
20 I'd say at a distance from me to you.

21 Q Were there any children with her?

22 A Yes, sir.

23 Q How many?

24 A Two.

25 MR. POLSINELLO: No further questions, Your Honor.

1 THE COURT: Cross-examination, Mr. Eppes.

2 CROSS-EXAMINATION

3 BY MR. EPPES:

4 Q Sergeant, did you have any further -- anything
5 further to do with this case?

6 A No, sir.

7 Q Okay. Are you aware that my client was charged with
8 possession of a weapon by a person prohibited by law from
9 possessing a weapon?

10 A No, sir.

11 Q Okay. If I represented to you that he was, would you
12 accept that for the purposes I'm going to discuss with you
13 later?

14 A I don't know what you're asking.

15 Q Okay. Do you know that that charge was not brought
16 to trial --

17 MR. POLSINELLO: Objection, Your Honor.

18 THE COURT: All right. Let's -- take the jury out.
19 We've got a matter to discuss with the lawyers.

20 (WHEREUPON, the jury was excused from open court at
21 approximately 10:13 a.m.)

22 THE COURT: Apparently, this is regarding what we had
23 discussed yesterday. And the Court was very deliberate in
24 trying to smooth that path out. Because I was hoping that
25 we wouldn't get to a rocky rode in -- in that line of

1 questioning. But, apparently, we have.

2 MR. EPPES: Your Honor, I have one question. And I
3 can tell you what it is.

4 THE COURT: Yes, sir.

5 MR. EPPES: Are you aware that that charge was not
6 brought to this trial because there was insufficient
7 evidence to support it?

8 MR. POLSINELLO: Your Honor, I believe this goes to
9 the very heart of the issue that we discussed in
10 pre-trial. Obviously, Master [sic] Whitten is not the one
11 who made the charges. He doesn't know if -- the answer to
12 Frank's question.

13 And, quite frankly, this goes to the heart of what we
14 were discussing yesterday. And at the appropriate time,
15 the State likely will bring this topic out. It seems like
16 this is the appropriate witness to do it with.

17 THE COURT: Not the appropriate witness.

18 MR. POLSINELLO: Not the appropriate witness. He
19 didn't make the charges. He doesn't --

20 THE COURT: So -- so you have another witness that's
21 from the sheriff's department?

22 MR. POLSINELLO: Yes, Your Honor.

23 THE COURT: Who is it? Who would that be?

24 MR. POLSINELLO: That would be our lead investigator,
25 Bob Perry.

1 THE COURT: All right. And that would be the
2 appropriate witness?

3 MR. POLSINELLO: He's the one that presented the
4 warrants, Your Honor --

5 THE COURT: Okay.

6 MR. POLSINELLO: -- and made the charges, and who
7 looked into the criminal history.

8 THE COURT: All right. So if Mr. Eppes posed that
9 question to that witness, then there would not be any
10 objection by you?

11 MR. POLSINELLO: That question may very well already
12 be answered before Mr. Eppes even asks that witness that.

13 THE COURT: All right. So your objection, at this
14 juncture, is that this witness is not the proper witness
15 for that question that's being posed by Mr. Eppes.

16 MR. POLSINELLO: Not -- yes. Not only is it not the
17 proper witness, but it's outside the scope, you know, of
18 the questioning. And I don't believe he knows that
19 information.

20 MR. EPPES: They just put an armory on -- on this
21 table that was under the -- found, literally, beside the
22 victim and under the victim. And they're saying that my
23 client did that. They're saying that my client used that
24 in a violent crime. They got all that stuff because they
25 were charging my client with possession of a gun that he

1 didn't have any right to possess. And point of fact,
2 everything on that table belongs to the victim in this
3 case.

4 So I have a right to bring it out however I need to
5 bring it out I believe to -- to try to soften the blow to
6 this jury of this charade.

7 MR. POLSINELLO: Your Honor --

8 Mr. EPPES: And that's my argument for why I should
9 be able to ask that question right now, Your Honor.

10 MR. POLSINELLO: He's been charged with possession of
11 a weapon during the commission of a violent crime. These
12 are the weapons and stuff that are associated with that
13 charge. It's perfectly allowed and reasonable to have
14 this there right now.

15 In terms of that other charge, obviously, we're not
16 going forward on it. It will be dismissed. And the State
17 intends on asking the lead investigator about that charge.

18 THE COURT: Proffer that question again that you --
19 that you asked this witness? And I'll -- I'll get the
20 court reporter to go back to it, if need be. And his
21 response was -- I think he didn't know.

22 What was that question again?

23 MR. EPPES: I asked -- the first thing I asked was,
24 was he charged with possession of a weapon by someone who
25 is prohibited by law from having a weapon, which does not

1 implicate my client's criminal record. It just says
2 prohibited by law.

3 THE COURT: And that -- your answer to that was?

4 THE WITNESS: I do not know.

5 MR. EPPES: And my next question is, are you aware
6 that that warrant was brought, but it was not pursued
7 because of a lack of evidence to prove that charge?

8 THE COURT: And your answer was?

9 THE WITNESS: No.

10 MR. EPPES: That's all it was.

11 THE COURT: So he answered no.

12 MR. EPPES: Well, he didn't answer. The jury didn't
13 hear it because Mr. Polsinello objected.

14 THE COURT: You objected before he answered?

15 MR. POLSINELLO: Yes, Your Honor.

16 I was of the understanding that this would be later
17 on in the trial with the officer who made the charges, and
18 who researched his criminal history, and then --

19 THE COURT: Well, I -- you know, I understand that,
20 Counsel. But based upon -- I probably -- you probably
21 just pulled the trigger a little too fast. I think if you
22 would have let the witness answer the question, then there
23 wouldn't be a need for an objection to Counsel's question.

24 MR. POLSINELLO: Okay.

25 THE COURT: Because, I mean, his answer was -- his

1 proffered answer during this proffer period was no. So --

2 MR. POLSINELLO: I understand, Your Honor.

3 THE COURT: -- you understand what I'm --

4 MR. POLSINELLO: I would just object to it on the
5 side of caution just because of this pre-trial matter
6 yesterday. And I see where Frank was going with it. And
7 I just wanted to make sure that we were staying on track
8 with the line of questioning.

9 THE COURT: All right. Well, I tried to prevent all
10 that yesterday when we talked about it, so.

11 All right. So to make sure we're clear. Mr. Eppes
12 is going to proffer -- he's going to ask those questions
13 that he proffered a minute ago again to this witness.
14 I'll allow him to ask the question again. And then the
15 witness has already proffered his answer to those two
16 questions. Those are the two questions that we'll let go
17 forward.

18 MR. POLSINELLO: Yes, sir.

19 THE COURT: Do you have any concerns about that?

20 MR. POLSINELLO: No, sir.

21 THE COURT: All right. Any questions concerning
22 that?

23 MR. EPPES: I can't word it exactly the same way. So
24 I might ask the court reporter to read it back. Because I
25 liked it the way I -- and I'm afraid I'll say it

1 differently. And I don't want to cause any problems.

2 THE COURT: Well, you know, I want
3 Mr. Poniselli [sic].

4 MR. POLSINELLO: Polsinello.

5 THE COURT: Polsinello to be okay with it.

6 MR. POLSINELLO: I've been called Polsiniski before.
7 So I'll take --

8 THE COURT: You know I'm doing the best I can.

9 MR. POLSINELLO: I know. It's a tough name, Judge.

10 THE COURT: I'm doing the best I can.

11 MR. POLSINELLO: It's hard down here.

12 THE COURT: Okay.

13 MR. EPPES: I'll -- I'll be able to do it.

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

15 MR. POLSINELLO: Your Honor, just briefly. When the
16 jury was being led out, the last juror was --

17 MR. EPPES: That's fine.

18 MR. POLSINELLO: -- viewing the photos. We would
19 just ask that she be allowed --

20 MR. EPPES: I'll be happy to give them back to her.

21 THE COURTROOM DEPUTY: Your Honor, also, in reference
22 to his medication. The jail is refusing to give it to us.
23 They said he can take it when he gets back this evening.
24 The medical staff is refusing to give it to him.

25 THE COURT: Well, can you send this message to the

1 jail? You tell them that I said they better get the
2 medication over here.

3 THE COURTROOM DEPUTY: I'll be happy to. That's what
4 I told them the first time.

5 THE COURT: Tell them exactly what I said.

6 THE COURTROOM DEPUTY: I told them the first time.
7 I'll tell them again.

8 MR. EPPES: Thank you, Your Honor.

9 THE COURT: You know, if they -- whoever I need to
10 talk to over there, you get them on the phone. You tell
11 them that I said that, not you said that, I said that.
12 They need to have it -- get it over here.

13 Tell them I want the medication -- that I know how
14 far the jail is from this building. I want the medication
15 over here within an hour.

16 All right. Anything else, Mr. Eppes, or Solicitor?
17 Anything before we bring the jury back?

18 (WHEREUPON, there was no response.)

19 THE COURT: If nothing further -- I hear nothing.
20 So bring the jury back.

21 MR. EPPES: Your Honor, I'm sorry.

22 THE COURT: Bring the jury back.

23 (WHEREUPON, the jury came into open court at
24 approximately 10:21 a.m.)

25 THE COURT: All right. Mr. Eppes.

1 MR. EPPES: Your Honor, I'm going to repeat the
2 question before the objection to get started.

3 CONTINUED CROSS-EXAMINATION

4 BY MR. EPPES:

5 Q Officer -- Sergeant Whitten, are you aware that my
6 client was originally arrested and charged on
7 September 8th with -- of 2016, with possession of a weapon
8 by someone who's prohibited -- a weapon and ammunition by
9 someone who's prohibited to have that?

10 A I don't -- I don't know.

11 Q And are you aware that as we go forward in this trial
12 today, that charge is not part of this trial because there
13 has not been sufficient evidence to bring that charge?

14 A No. I didn't make the charges.

15 Q Okay. Now, in your notes -- have you reviewed your
16 notes for this?

17 A My incident report?

18 Q Yes, sir.

19 A Yes, sir.

20 Q Okay. And you said in there that the forensic staff
21 went on-site and reviewed the scene for evidence; correct?

22 A Yes. Yes, sir.

23 Q Okay. And so they would have looked over the scene
24 for whatever they could find that was evidence of a crime;
25 correct?

1 A Yes, sir.

2 Q Okay. And this is what they told you to get?

3 A I -- I was directed by Sergeant Rivera to go collect
4 the weapons and ammunition in the residence. That's what
5 I was directed to do.

6 Q And -- and did you take it -- there's a photograph of
7 this long gun that was under the bed. Did you take it out
8 from under the bed?

9 A I -- no, sir.

10 Q Somebody handed it to you?

11 A Yes, sir.

12 Q Okay. Do you know where this -- I think you called
13 it a lunchbox. Do you know where this was found?

14 A No, sir.

15 Q All right. I'm going to just go through these with
16 you. Do you know who owned this gun?

17 A I do not.

18 Q If I represented to you that it was Loretta Workman,
19 would you have any reason to dispute that?

20 A No, sir.

21 Q Do you know who owned these two ammunition clips?

22 A I do not.

23 Q If I represented to you that it was Loretta Workman,
24 would you have any reason to dispute that?

25 A No, sir.

1 Q Do you know who owned these three ammunition clips?

2 A No, sir, I do not.

3 Q If I represented to you that they are owned by
4 Loretta Workman, would you have any reason to dispute
5 that?

6 A No, sir.

7 Q If I represented to you that this pistol was owned by
8 Loretta Workman, would you have any reason to dispute
9 that?

10 A No, sir.

11 Q If I represented to you that Loretta Workman has a
12 concealed weapons permit, would you have any reason to
13 dispute that?

14 A No, sir.

15 Q And if I represented to you that both these guns were
16 found in the room where Loretta Workman was found, would
17 you have any reason to dispute that?

18 A No, sir.

19 Q If I represented to you that as far as the evidence
20 shows, all this -- this ammunition was owned by Loretta
21 Workman, would you have any reason to dispute that?

22 A No, sir.

23 Q And the ammunition was, actually, found -- I'm going
24 to show you a photograph. It wasn't found -- a lot of
25 that ammunition was found in boxes; correct?

1 A It was handed to me in the -- in the blue cooler.

2 Q In the blue cooler?

3 A Yes, sir.

4 Q Do you know if these boxes were in the blue cooler?

5 A I believe they were.

6 MR. EPPES: Okay. Thank you.

7 THE COURT: Redirect?

8 MR. POLSINELLO: No further questions, Your Honor.

9 THE COURT: All right. And I have no questions.

10 Thank you, Officer.

11 You can step down.

12 MR. POLSINELLO: Your Honor, may this witness be
13 relieved under subpoena?

14 THE COURT: All right. Any objection?

15 MR. EPPES: None, Your Honor.

16 THE COURT: All right. Without objection, he's so
17 relieved.

18 Next witness by the State.

19 MR. POLSINELLO: Your Honor, the State calls Deputy
20 Kenneth Sandefur to the stand.

21 THE CLERK: Sir, please place your left hand on the
22 Bible. Raise your right hand.

23 WHEREUPON,

24 KENNETH SANDEFUR,

25 after first having been duly sworn, testified as follows:

1 THE CLERK: Thank you.

2 Please be seated.

3 And, please, state your name for the record.

4 THE WITNESS: My name is Kenneth Sandefur.

5 THE CLERK: Thank you.

6 DIRECT EXAMINATION

7 BY MR. POLSINELLO:

8 Q Is is it Deputy Sandefur?

9 A Deputy Kenneth Sandefur, yes.

10 Q Are you currently employed?

11 A I am, sir.

12 Q With whom?

13 A The Greenville County Sheriff's Office.

14 Q How long have you been employed there?

15 A Five years.

16 Q Were you employed with the sheriff's office around
17 August 29th, 2016?

18 A Yes, sir, I was.

19 Q Did you respond to this incident location?

20 A Not the incident location, no, sir.

21 Q Okay. How did you first become involved in this
22 case?

23 A I believe Deputy McHale, who's already testified,
24 when she arrived on the scene, she first spoke with
25 Mr. Workman. He advised that Ms. Workman was with her

1 mother shopping, or -- or doing something. During the
2 investigation, they found out the address to her mother,
3 which was [REDACTED] in Greenville County, South
4 Carolina.

5 Q And were you in that area at that time?

6 A That's the area that I worked back in 2016, the west
7 side of Greenville, which we consider area eight.

8 Q And so this is [REDACTED] in Greenville?

9 A Greenville County, South Carolina, yes, sir.

10 Q Were you just patrolling?

11 A I -- I got a call. I was asked to go there,
12 specifically, to look for Loretta Workman.

13 Q Okay. And when you arrived there, what's the first
14 thing that you did?

15 A I knocked on the front door and made contact with her
16 parents, her mother and father.

17 Q Is her mother here today in court?

18 A Yes, her mother is.

19 Q Could you point her out to the jury?

20 A The far left, pretty lady right there in the white
21 and black.

22 Q Okay. So you spoke to the victim's mother?

23 A I did.

24 Q Okay. And what did you say?

25 A I asked her if she had seen Loretta, or if Loretta

1 was there. She advised me that she had not seen Loretta
2 in almost two years.

3 Q So the victim wasn't there?

4 A No.

5 Q And then what did you do next?

6 A She -- her mother advised me that she -- that her
7 sister, Brandy, had been in contact with her, that they
8 were the only two that talked. So she gave me Brandy's
9 phone number. And I made contact with Brandy.

10 Q Okay. And what did you learn when you made contact
11 with Brandy?

12 A Brandy told me that she had last talked to her
13 approximately a week prior. And then she hadn't been able
14 to get ahold of her since.

15 Q And after you gathered all this information, what did
16 you do next?

17 A I called Sergeant Rivera, who was on scene at [REDACTED]
18 [REDACTED], and advised him that she was not there and had not
19 been there. And they hadn't seen her in two years.

20 Q All right. What time was this around?

21 A I got to their house at 8:32 p.m.

22 Q Okay. And this was on the 29th?

23 A August 29th, 2016.

24 MR. POLSINELLO: Thank you, Deputy.

25 No further questions.

1 THE COURT: Cross-examination.

2 MR. EPPES: No questions, Your Honor.

3 THE COURT: All right. And I have no questions.

4 Sir, you can step down.

5 MR. EPPES: Your Honor, I have no objection to this
6 witness being released.

7 THE COURT: All right. Sir, you're free to go.

8 THE WITNESS: Thank you.

9 THE COURT: Is the State ready for its next witness?

10 MR. POLSINELLO: Excuse me, Your Honor.

11 Yes, Your Honor. The State calls Loretta Bergin to
12 the stand.

13 MR. EPPES: Your Honor, may we approach?

14 THE COURT: All right. Yes, sir.

15 Prior to the witness coming up?

16 MR. EPPES: Yes, sir, if possible.

17 THE COURT: All right.

18 (WHEREUPON, a bench conference was held.)

19 THE COURT: Take the jury out.

20 (WHEREUPON, the jury was excused from open court at
21 approximately 10:31 a.m.)

22 THE COURT: Ma'am, would you come on up?

23 Madam Clerk, swear her in.

24 THE CLERK: Yes, sir.

25 Ma'am, if you'll, please, place your left hand on the

1 Bible and raise your right hand.

2 WHEREUPON,

3 LORETTA BERGIN,

4 after first having been duly sworn, testified as follows:

5 THE CLERK: Thank you.

6 Please be seated.

7 THE COURT: All right. We're at a proffer point.

8 Her sworn testimony will be for the purpose of the

9 proffer, as well as when the jury comes back.

10 MR. POLSINELLO: Yes, Your Honor.

11 THE CLERK: Please state your name for the record.

12 THE WITNESS: Loretta Bergin.

13 THE CLERK: Thank you.

14 DIRECT EXAMINATION

15 BY MR. POLSINELLO:

16 Q Ms. Bergin, how do you know the victim in this case?

17 A She's my daughter.

18 Q On August 29th, 2016, did officers from the sheriff's
19 office come knocking at your door?

20 A Yes, they did.

21 Q Was that Deputy Kenneth Sandefur?

22 A Yes.

23 Q And what did he inquire about?

24 A He wanted to know if I had seen my daughter.

25 Q Okay. And what did you tell him?

1 A I told him that I hadn't seen her in over -- over two
2 years.

3 Q Okay. And why hadn't you seen her in over two years?

4 A We were not allowed to see her.

5 Q Why weren't you allowed to see her?

6 A Every time we went to her house, there was some
7 reason why we couldn't go in and see her. We were told by
8 her husband that she was either cooking naked, she was
9 sleeping, she was out with the kids, she -- there was
10 always a reason why I couldn't see her.

11 Q Okay. So your attempts to visit your own daughter,
12 it's your testimony, that -- were hindered by this
13 Defendant?

14 A Yes.

15 Q When the deputy came knocking at your door that
16 night, who was in the house with you?

17 A My husband and myself.

18 Q Okay. And, obviously, Loretta wasn't there?

19 A No.

20 Q Okay. No further --

21 A She didn't even know where I lived.

22 Q Your own daughter didn't know where you lived?

23 A No.

24 MR. POLSINELLO: No further questions, Your Honor.

25 THE COURT: Mr. Eppes.

CROSS-EXAMINATION

BY MR. EPPES:

Q Ma'am, your daughter was in contact with your other daughter; correct, her sister?

A Yes.

Q And -- and she could have easily inquired as to where you lived from her sister; correct?

A She could have, but she didn't.

Q And are you -- are you aware that your daughter had a job and went to work five, six days a week?

A Yes.

Q And every day she went to work, she had access to telephones, she had a cell phone; correct?

A Yes.

Q And she made the decision not to call you; correct?

A She didn't know my phone number.

Q Did your other daughter that she was in communications with have your phone number?

A Yes.

Q And your daughter was in contact with your other daughter?

A Yes.

MR. EPPES: Okay. Your Honor, they're trying to pile on something here that has nothing to do with the events of the 27th through the 29th of August, which is what my

1 client is charged with. This is indicative of this
2 witnesses opinion that her mother -- that her daughter was
3 prohibited to see her. But there's adequate means for her
4 daughter to find out where she lived, find out her phone
5 number with people she was in communications with. She
6 had time when she was away from this Defendant to so
7 communicate.

8 This is an effort by the State to pile on and -- and
9 do things to affirm their case outside the scope of the
10 evidence of what my client was, actually, charged with.
11 And I do not believe it is appropriate.

12 MR. POLSINELLO: Your Honor, we absolutely believe
13 not only is it appropriate, it's relevant. And she's
14 allowed to state her opinion. Whether or not the victim
15 had a cell phone could have -- that's for the jury to
16 decide.

17 And the statements that Mr. Eppes made, that would be
18 appropriate at closing. And that's for -- something for
19 the jury to decide. But, clearly, the Defendant lied when
20 that first officer came and said that the victim was with
21 her mother and said she would be back in an hour. I
22 believe they have a right to hear from her mother and see
23 how she didn't -- she was not there. Not only was she not
24 there and the Defendant was lying, that the victim was
25 under her [sic] control. That's what this case is about,

1 Your Honor. Domestic violence is about controlling the
2 victim.

3 We believe it's relevant. And whether or not the
4 victim could have contacted her, their family relations,
5 that's for them to decide.

6 THE COURT: Well, Counsel, let me tell you what --
7 what -- what I'm grappling with right now. I'm trying to
8 connect the dots. And let me tell you what dots I'm
9 trying to connect.

10 You've got -- you've got this -- this Defendant
11 charged with kidnapping and these offenses. And I'm
12 trying to determine where the connection is. Is this a
13 broken family relationship that had absolutely nothing to
14 do with this Defendant?

15 THE WITNESS: No.

16 THE COURT: I mean --

17 Ma'am, I'm not asking you the question.

18 THE WITNESS: Okay.

19 THE COURT: I'm not asking you the question. I'm
20 directing the question to these lawyers. You're going to
21 be asked -- you're going to be asked enough questions. So
22 let me -- let me do what I do. All right.

23 THE WITNESS: Okay.

24 THE COURT: My question is, is this a broken
25 relationship?

1 Because it's hard for me to fathom, Counsel, that --
2 that -- that this witness could not have made contact with
3 her daughter when there was another daughter that had a
4 phone number, as Counsel indicated, that this -- this
5 daughter worked every day. If this mother wanted to see
6 his [sic] daughter, she could have went to her workplace.

7 So -- so I'm trying to connect the dots between a
8 broken relationship between a daughter and a mother, as
9 opposed to where you're headed with it. And -- and so
10 I'm -- the whole -- and I'm sure Counsel's argument is
11 about relevancy. And I ain't there yet. And you haven't
12 taken me there yet.

13 So I need to hear some more because I'm not there.

14 MR. POLSINELLO: Your Honor, I think we're -- we may
15 be making a leap into their personal life about a broken
16 relationship --

17 THE COURT: I think you're making a big jump.

18 MR. POLSINELLO: -- where it's more about the
19 Defendant preventing the victim from seeing her --
20 control. It's another tactic that is common in these
21 types of cases. Domestic violence, as you know, Your
22 Honor, it's a very sensitive crime in nature because it's
23 about control. And that's what he was doing throughout
24 this weekend and especially --

25 THE COURT: He was -- he was -- he was preventing her

1 from going to her daughter's place of employment if she
2 wanted to see her. He was preventing her from getting the
3 phone number from the other sister if she wanted to talk
4 to him [sic]. He's responsible -- what you're telling me
5 and what your argument is is that he's responsible for all
6 that.

7 MR. POLSINELLO: We'll hear from the victim, Your
8 Honor, you know. But there's -- there's psychological
9 reasons why victims of domestic violence make the
10 decisions they make. And we're not to judge them for
11 it --

12 THE COURT: Have you got -- are you going to bring
13 some expert testimony in to tell me that, other than you
14 standing up here telling me that?

15 MR. POLSINELLO: That's a possibility, Your Honor.

16 THE COURT: Is it? Well, I didn't see any expert on
17 your witness list.

18 MR. POLSINELLO: Yes, sir. And --

19 THE COURT: I mean, it's one thing you standing there
20 telling me that. But are you going to bring somebody in
21 here that's an expert to tell me that?

22 MR. POLSINELLO: Yes, Your Honor. His name is Neil
23 Sondov. He's --

24 THE COURT: He's on your witness list?

25 MR. POLSINELLO: Yes, sir.

1 THE COURT: Are you going to call him as a witness?

2 MR. POLSINELLO: Yes, Your Honor.

3 I've handed Mr. Eppes his CV yesterday at the
4 beginning of the trial. He's on our witness list.

5 THE COURT: Well, you call him as a witness and then
6 maybe we'll revisit this witness. But -- and then I'll --
7 I'll withhold my ruling on relevancy. At this point, I'm
8 not -- I'm not there yet.

9 MR. POLSINELLO: Okay.

10 THE COURT: So if you want to -- if this -- this --
11 this doctor -- what did you say his name was?

12 MR. POLSINELLO: Neil Sondov.

13 THE COURT: If he's on your witness list, let me hear
14 from him. And then I'll revisit this.

15 MR. POLSINELLO: Okay. So just to be clear, Your
16 Honor, we're not calling this witness right now.

17 THE COURT: Well, I'm not preventing you from calling
18 the witness, but you're not calling him [sic] right now.

19 MR. POLSINELLO: Yes, Your Honor, understood.

20 THE COURT: Do you understand that?

21 MR. POLSINELLO: Yes, sir.

22 THE COURT: All right. Ma'am, go have a seat.

23 Anything -- who's your -- who's your next witness?

24 MR. POLSINELLO: He just walked in, Your Honor.

25 THE COURT: All right.

1 MR. EPPES: Your Honor, could we just -- since the
2 jury's already out, could we just take a --

3 THE COURT: Let's take about a 15-minute break.

4 Could anybody -- somebody check on -- and let me just
5 put this on the record. I want this on the record.

6 One of the reasons that I requested that the jail
7 send the medication for this Defendant is twofold. One
8 was because at the outset, Counsel presented -- I forget
9 the young lady -- the lady's name, the counselor --

10 MR. EPPES: Dr. Maddox, Your Honor.

11 THE COURT: Dr. Maddox. It was unrefuted that the
12 Defendant had some issues that we needed to address so he
13 could focus during this trial. All right. To be fair to
14 both sides, to the State as well as the Defendant, that's
15 why I said I wanted the jail to get the medication over
16 here. Because that's what we talked about at the
17 beginning.

18 And the jail is not under a maybe they can do it. I
19 am directing them to do it. And I want that on the record
20 just in case the jail doesn't comply with what I just
21 asked. I want it on the record that I've asked that. And
22 I gave them an hour to get it over here. And that's the
23 only reason I'm doing that is because both lawyers well
24 know that at the beginning of the trial, there was some
25 issues regarding this Defendant in terms of his ability to

1 focus.

2 And that was -- Mr. Eppes, you made the argument and
3 motion.

4 And, Counsel, you were present when that occurred.

5 So I just want that on the record as to the reason
6 that I'm asking that that occur.

7 We'll take a 15-minute break. And then y'all can let
8 me know the status of that.

9 THE COURTROOM DEPUTY: The nurse is on her way over.

10 THE COURT: All right. Very well.

11 MR. EPPES: Thank you.

12 THE COURT: Okay. Let's take about a 15-minute
13 break.

14 (WHEREUPON, a break was taken.)

15 THE COURT: All right. Gentlemen, anything else
16 before we bring the jury out?

17 MR. POLSINELLO: Nothing from the State, Your Honor.

18 THE COURT: From the Defense?

19 MR. EPPES: Your Honor, if he's about to call
20 Detective Rivera, rather than break up the testimony,
21 there's some things that I'd like to illicit from
22 Detective -- from Officer Rivera about the -- about the
23 search warrant that I'd like to do in the form of a
24 proffer --

25 THE COURT: All right.

1 MR. EPPES: -- and renew my motion. Is there any way
2 we could do that first?

3 MR. POLSINELLO: I just would like -- where are we
4 heading with this?

5 I don't know -- the search warrant, obviously, Your
6 Honor, has ruled on that. The evidence is in. Deputy
7 McHale has testified to the search warrant.

8 Where are we going with this?

9 THE COURT: You're asking me. I'm not trying the
10 case.

11 MR. POLSINELLO: I'm -- indirectly to Frank.

12 MR. EPPES: I want to do a proffer of it, because I
13 don't want to really ask him about it on cross with the
14 jury here. But I do want to ask him about it to flesh out
15 some things that we represented. I -- it's three or four
16 questions. It's not a lot.

17 MR. POLSINELLO: I -- I guess we'll proffer right
18 now, Your Honor. But to flush out -- Your Honor has
19 already ruled on the search warrant. Deputy McHale has
20 testified to it and --

21 MR. EPPES: Well, I can just do it -- I can just do
22 it during my cross. It's not a big deal.

23 MR. POLSINELLO: I just want to know where we're --
24 we can proffer. But where are we going?

25 MR. EPPES: I'll do it during my cross. It's not a

1 big deal.

2 MR. POLSINELLO: Well, now, I do want to proffer,
3 Your Honor. Because I want to see where he's going with
4 this.

5 THE COURT: Well, you know, when I -- when I took
6 this job, they told me to sit as the -- the judge of the
7 law. They didn't tell me to strategize for lawyers, and
8 tell them how to try their case, or whatever. That's now
9 my job.

10 So y'all tell me what you want to do.

11 MR. EPPES: I'd like to do a proffer, Your Honor.

12 THE COURT: Do you oppose that?

13 MR. POLSINELLO: No objection.

14 THE COURT: All right. Let's do a proffer.
15 Have you got the officer here?

16 MR. POLSINELLO: He's here, Your Honor.

17 THE COURT: You said about two or three questions?

18 MR. EPPES: Yes, sir. It's not --

19 THE COURT: All right. Come on up.

20 MR. EPPES: It's not a lot.

21 THE CLERK: Please place your left hand on the Bible
22 and raise your right hand.

23 WHEREUPON,

24 RAMON L. RIVERA,

25 after first having been duly sworn, testified as follows:

1 THE CLERK: Thank you.

2 Please be seated.

3 THE COURT: All right.

4 THE CLERK: And, please, state your name for the
5 record.

6 THE WITNESS: Ramon L. Rivera.

7 THE CLERK: Thank you.

8 THE COURT: Mr. Eppes.

9 DIRECT EXAMINATION

10 BY MR. EPPES:

11 Q Mr. Rivera -- Deputy Rivera -- are you a sergeant?

12 A I am a sergeant.

13 Q I'm sorry.

14 A That's okay.

15 Q Sergeant Rivera, your -- do you have your report in
16 this case?

17 A Not on hand, no.

18 Q Okay. Well, in your report, you said that forensics
19 tech Wills-Eskew arrived on scene and obtained overall
20 photographs of the residence. During this time, an AK-47
21 rifle, a Smith & Wesson nine-millimeter pistol, and
22 several rounds of ammunition were located in the master
23 bedroom. Were they located by SWAT or were they located
24 by uniform patrol?

25 A They were located by SWAT during the initial sweep of

1 the house.

2 Q Okay. So if Investigator Eskew got there at 1:30 in
3 the morning, by the time she got there, the weapons had,
4 actually, been located?

5 A Correct.

6 MR. EPPES: That's all.

7 Thank you, Your Honor.

8 MR. POLSINELLO: No objection to the eliciting of
9 that testimony, Your Honor.

10 THE COURT: Okay. Sir, you can step down.

11 THE WITNESS: Thank you, sir.

12 THE COURT: All right. Anything else before we bring
13 the jury out?

14 MR. POLSINELLO: Nothing from the State.

15 MR. EPPES: Nothing from the Defense, Your Honor.

16 THE COURT: All right. Bring the jury out.

17 (WHEREUPON, the jury came into open court at
18 approximately 11:00 a.m.)

19 THE COURT: All right. Before we get started, it's
20 been brought to my attention that some of the jurors have
21 asked whether or not they could take notes during the
22 proceedings. I don't have any problems with that. You
23 can take notes. I'll make a determination at the end --
24 or near the end of the trial whether or not those notes
25 can be taken back in the deliberation room with you. But

1 if you wanted to take notes at this juncture, feel free to
2 do so.

3 All right. Solicitor.

4 MR. POLSINELLO: Your Honor, the State calls Sergeant
5 Rivera to the stand.

6 THE CLERK: Sir, please place your left hand on the
7 Bible and raise your right hand.

8 WHEREUPON,

9 RAMON L. RIVERA,
10 after first having been duly sworn, testified as follows:

11 THE CLERK: Thank you.

12 Please be seated.

13 And, please, state your name for the record.

14 THE WITNESS: My name is Ramon L. Rivera.

15 THE CLERK: Thank you.

16 DIRECT EXAMINATION

17 BY MR. POLSINELLO:

18 Q Sergeant Rivera, are you currently employed?

19 A Yes, sir, I am.

20 Q With whom?

21 A The Greenville County Sheriff's Office.

22 Q How long have you been employed there?

23 A I have been there now for a little over 14 years.

24 Q Were you employed with the sheriff's office around
25 August 29th, 2016?

1 A Yes, sir, I was.

2 Q How did you first become involved in this case?

3 A I, initially, responded to Crooked Creek -- I think
4 it's drive or road -- in reference to a stabbing call.
5 When I arrived, it turned out that after speaking to some
6 of the bystanders that were there, there was no -- no
7 witnesses to any kind of altercation or any kind of
8 stabbing. There was no crime scene found.

9 So as I cleared that call, I -- some of my deputies
10 were over on [REDACTED] Road. And I got out with them to,
11 basically, check up on them and see -- see what they had
12 and if they needed any assistance with anything.

13 Q I'm going to ask you to step down from the stand a
14 second and point to this map for the jury.

15 A (Witness complied.)

16 Q So it's your testimony you were -- first responded to
17 a stabbing?

18 A Correct.

19 Q At Crooked Creek and Rosalee?

20 A I believe that was the intersection, yes, sir.

21 Q Okay. Can you point to where you responded?

22 A I responded -- this is Rosalee, and this is Crooked
23 Creek. I, actually, drove the entire block -- or the
24 entire circle speaking to a couple of bystanders that were
25 out at different residences, front yards, porches. And

1 nobody saw or heard any kind of altercation. Usually,
2 when we have a call of stabbing, we -- we see a crowd
3 gathering. There was nothing. It was just a quiet night
4 in that general neighborhood.

5 So as I was leaving, some of the deputies were here
6 on [REDACTED] Road. So I got out with the deputies to see --
7 check on them and -- and see if they needed any assistance
8 with anything.

9 Q When you responded to the alleged stabbing, you spoke
10 to neighbors?

11 A I spoke to neighbors.

12 Q No one saw any stabbing?

13 A No stabbing, no altercation, no arguments.

14 Q Did you see any blood anywhere?

15 A No, sir.

16 Q Any knives?

17 A No, sir.

18 Q Did you get out of your car at any time?

19 A I believe -- yes. I think -- I'm pretty sure I got
20 out in this general area and walked a little ways, a few
21 feet this way and a few feet in either direction. Because
22 that's the intersection we were given. But nothing was
23 found.

24 Q Okay. But you did -- in your car, you did a lap?

25 A Yes, sir. We -- I drove the entire route.

1 Q No signs of any stabbing?

2 A No, sir.

3 Q Okay. And then you couldn't help but notice the law
4 enforcement presence on the other side of the tree line?

5 A Right. I -- I was aware that my deputies were there
6 for a welfare check. So when I came back, I saw them
7 still there. So I -- I got out with them.

8 Q Okay. Thank you.

9 You can have a seat.

10 A (Witness complied.)

11 Q So after you determined that there was no stabbing,
12 you went to this incident location?

13 A Yes.

14 Q [REDACTED] ?

15 A Correct.

16 Q And what did you do first when you arrived on scene?

17 A I started speaking to the deputies. It was Deputy
18 McHale and Master Deputy Shannon McMakin [phonetic] at the
19 time. And they were, basically, getting me up to speed
20 that they went -- they responded there to a welfare check
21 in reference to a lady who had not shown up to work, which
22 was out of character for her.

23 And when they arrived and knocked on the door, a -- a
24 black male opened the door. When they tried to speak to
25 the black male, he was verbally combative and,

1 essentially, slammed the door in their face and would not
2 come back out to the door.

3 Q So when you learned all this and when you arrived on
4 scene, was SWAT there yet?

5 A No.

6 Q Okay. Earlier in this trial, the 911 call tape was
7 played.

8 A Okay.

9 Q And we heard a Virginia. Did you speak to a Virginia
10 in this case?

11 A I believe that was her name. She was the initial
12 complainant who called to check on -- on the victim -- or
13 the female that had not shown up to work.

14 Q So you spoke to Virginia?

15 A Yes.

16 Q And you learned that she was concerned?

17 A I learned she was concerned. She mentioned sometime
18 back prior to this date -- I think it was maybe a week, a
19 week and a half, two weeks, somewhere in there, the female
20 had scratches on her, but they never really talked about
21 it. It was just enough for -- to raise an eyebrow for --
22 for the complainant.

23 I'm sorry. What was her name again?

24 Q The victim?

25 A The -- the complainant.

1 Q Virginia.

2 A Virginia. It was enough for Virginia to -- to become
3 aware of the injuries. And when she didn't show up to
4 work on this given day, then it raised suspicion. And she
5 wanted us to check on her.

6 Q Okay. In your investigation, did you come to find
7 the victim's cell phone number?

8 A We did find her cell phone number. I tried calling
9 it. And it went straight to voicemail indicating that the
10 phone was off.

11 Q Okay. Was there any other means that were used to
12 try to find the victim's whereabouts or cell phone?

13 A Yes. Obviously, prior to me calling the cell phone,
14 deputies tried knocking on the door multiple times. We,
15 also, tried making callouts through the PA in the car on
16 [REDACTED] Road.

17 And then when I called the phone multiple times and
18 it went to voicemail -- straight to voicemail, I asked
19 dispatch to see if they could find who the cell phone
20 provider was so that we could try to get historical data
21 on the phone and see when it was last on, what tower it
22 may have been near, those sort of things to give us more
23 direction.

24 Q And what did you learn through that information?

25 A I learned that there was no historical data. And the

1 phone was last powered on 27 hours prior to us checking.

2 Q So the phone was last powered on 27 hours prior to
3 when you checked?

4 A When dispatch checked, yes.

5 Q Okay. Did you do any other research or
6 investigation?

7 A We spoke to some of the neighbors. There was a
8 Hispanic family. I don't -- I never -- I don't remember
9 their names, who said that they had not seen the victim in
10 a couple of days, but if her car was there, she was there.
11 Her car was in the driveway and...

12 Q Okay.

13 A And that was -- that was -- oh, I think I, also,
14 spoke to her mother at some point that evening, too.

15 Q Okay. When you learned all of this, gathered all
16 this information, what did you do next?

17 A Given the circumstances that we had a female who for
18 all we knew was very diligent with work, showed up on
19 time, was there as scheduled, had not shown up, plus, the
20 indication of injury a week or two prior to, and the
21 co-worker who, obviously, knows her, you know, becoming
22 concerned, we, also, learned during that time, too, that
23 there were multiple calls to that same address where a
24 black male was shooting a rifle in close proximity to the
25 trailers.

1 So given the entire circumstance of all that, we went
2 ahead and -- or I went ahead and asked Deputy McHale to
3 obtain a search warrant for the residence.

4 Q Okay. And what happened next?

5 A Okay. She got the search warrant. I contacted
6 Sergeant DeBruin, who was my co-sergeant at the time. He
7 is a SWAT team member. I briefed him on it, on what we
8 had so far, the circumstances that we had. Lieutenant
9 Blue [phonetic] had, also, arrived on scene. Once DeBruin
10 arrived on scene, he spoke to Blue. And Blue made the
11 determination to go ahead and call SWAT out.

12 Q Is SWAT called out to every crime scene?

13 A No.

14 Q What factors are considered in deciding to call out
15 SWAT?

16 A Okay. Essentially, the -- the danger that the call
17 poses -- the potential danger that the call poses. Given
18 the fact that we had a female who was diligent with work,
19 had injuries a couple -- you know, one to two weeks prior
20 to, had not been seen, had not shown up to work, and the
21 call history where someone had fired a rifle in close
22 proximity to the trailers or the other residences, at that
23 point, it was, at least, necessary to speak to the SWAT
24 commander and let him make the decision whether SWAT was
25 coming out or not.

1 Q Okay. When SWAT comes out -- okay. Let me back up.
2 Before the SWAT came out, was the house surrounded yet?

3 A Prior to, we only had -- I believe it was two
4 deputies on scene. And they were busy trying to speak to
5 neighbors and trying to gather information as to the
6 whereabouts of the female, see if any of the neighbors had
7 seen the female. And once we determined we were going to
8 do a search warrant, we -- I asked for more deputies to
9 arrive. I think two more units arrived. At that point,
10 we could do a proper -- we could properly secure the
11 perimeter around the residence to make sure nobody came
12 in, nobody went out.

13 Q So before SWAT came, was the perimeter properly
14 secured?

15 A It was not, initially. But, eventually, we did get
16 enough man power there.

17 Q How much time do you think elapsed from when the
18 first two deputies -- when you arrived there until SWAT
19 came out and properly secured the area? How much time
20 elapsed?

21 A Off the top of my head, I would say it was, at least,
22 45 minutes from -- from the initial call when I arrived
23 and then probably, at least, an hour or better before we
24 called SWAT.

25 Q Okay.

1 A It takes some time for them to get out of bed, get
2 moving, and -- and respond.

3 Q Okay. And so, obviously, when SWAT came, they
4 properly secured the perimeter?

5 A Correct.

6 Q Was the Defendant found on scene?

7 A No. Once they -- once they made it into the
8 residence, the Defendant was not found on scene.

9 Q Okay. So when SWAT's there, then what happens?

10 A Prior to them going in the house?

11 Q No, no. When SWAT is there and they secure the
12 perimeter --

13 A Okay.

14 Q -- what happened next?

15 A All right. So SWAT showed up, their equipment,
16 trucks, the BearCat, which is their -- their armored
17 vehicle. They -- they, also, have negotiators respond
18 with them. And they made callouts for approximately an
19 hour, pretty loud callouts, not only just voice, but,
20 also, running the siren on the truck, which we, also, did
21 in the patrol call when we did the callouts. There was no
22 response. So, eventually, the call was made to force
23 entry into the residence.

24 Q Is it unusual or uncommon for callouts to be made for
25 an hour in these types of scenes?

1 A I don't know what SWAT protocol is exactly. I know
2 they do attempt to do callouts. They do attempt to reach
3 people by phone, whomever they're trying to talk to, or
4 trying to come out of the house. So I don't know what
5 their standard time is.

6 Q Okay. So when the -- when SWAT breached the doorway
7 and entered, where were you?

8 A I was behind one of the -- standing behind one of the
9 vehicles, essentially, across the road from that same
10 trailer.

11 Q Okay. Did you observe the victim and her two minor
12 children come out of the house?

13 A Yes.

14 Q Okay. Did you make contact with them?

15 A Yes. I spoke to the female.

16 Q Okay. Where did you speak to the victim?

17 A It was right around the front door. I'm not sure if
18 it was just inside the trailer or just outside on the
19 porch. But it was right around the front door when I
20 spoke to her.

21 Q How did she appear to you, her physical appearance?

22 A She -- right off the bat, I could see that she had
23 two black eyes. She had what appeared to be some swelling
24 around her cheek bone area. And she was constantly
25 saying, What's going on, what's going on, even though the

1 bedroom she was found in, which is what would be
2 considered the master bedroom -- she was found in the
3 bedroom closest to the driveway, closest to the road,
4 right next to vehicles we were using for callouts and the
5 siren.

6 So in a single wide trailer, I found it hard to
7 believe that she did not hear the callouts that we made
8 for over an hour.

9 Q Did you notice any other further physical injuries on
10 the victim?

11 A Once we got her out to better light -- I walked her
12 to the ambulance. And when it was better lit, I could see
13 there was some finger marks on her.

14 Q On where?

15 A It was -- I believe it was one of the arms. And I
16 don't recall where the other ones were.

17 Q I'm handing you State's Exhibit Nos. 9 and 10.

18 A Okay.

19 Q Does that refresh your memory?

20 A Yes, yes. This appears to be her right arm. And
21 State's Exhibit No. 9 would be around her neck.

22 Q Okay. What else did you say to the victim?

23 A I told the victim that -- I told her, just like I
24 told you guys, that I found it hard to believe that she
25 did not hear any of the commotion that we were making. We

1 were making a lot of noise. Plus, we had to get some of
2 the neighbors -- the immediate residences out of the way
3 in the event that anything were to -- to go bad.

4 Q Okay. The two weapons involved in this case that
5 have been submitted right here. Do you see this AK-style
6 rifle?

7 A Yeah, I do.

8 Q And then the nine millimeter?

9 A I do.

10 Q State's Exhibit Nos. 15 and 16, you observed those
11 guns on scene?

12 A Yes.

13 Q What did you do with those?

14 A I took down the serial numbers. And I checked them
15 on NCIC, which is a national database. And they came back
16 clear.

17 Q What does that mean, "they came back clear"?

18 A NCIC being a national database, if any vehicle, any
19 guns, anyone is missing, they get inputted into that --
20 that computer system. And it doesn't matter if it's here
21 or California, if anybody were to run that serial number
22 and that gun was showing up stolen, or the person was
23 missing, or the car stolen, something along those lines,
24 it's going to create a hit. It's going to alert you that
25 there's something going on with whatever you just checked,

1 which in this case were the serial numbers. And they were
2 clear.

3 Q Did you ever talk to the two minor children?

4 A I don't recall. I don't think I did.

5 Q Okay. So just the victim?

6 A Just the female victim, yes.

7 Q Was that the extent of your involvement in this case?

8 A Yes, sir. Once I walked her over to the ambulance, I
9 spoke to the victim's sister, I believe it was. They were
10 going to take her in for a day or two. And I did escort
11 the female back to get some clothing items and hygiene
12 items for her and the children.

13 Q Was the victim's sister on scene?

14 A I think she, eventually, showed up towards the end.

15 Q Okay.

16 A I don't remember.

17 MR. POLSINELLO: Thank you.

18 No further questions.

19 THE COURT: Cross-examination.

20 CROSS-EXAMINATION

21 BY MR. EPPES:

22 Q You know, Sergeant Rivera, you were the supervisor on
23 scene, weren't you?

24 A Yes, sir.

25 Q And in your report, you wrote that -- your report

1 from this Virginia was that the previous week the victim
2 had marks and scratches on her neck; correct?

3 A That's correct.

4 Q And by marks, would that indicate to you bruising?

5 A Marks could be anything.

6 Q Okay. You said a minute ago that the -- there was a
7 woman on scene. Do you know whether that was
8 Mrs. Workman's sister or Mr. Workman's sister?

9 A I don't recall.

10 Q You said that Ms. Workman was in the front room. Is
11 that where this pistol was found?

12 A I believe that pistol was found on the side table
13 next to the bed in that front room.

14 Q In the front room where Ms. Workman was?

15 A In the bedroom.

16 Q And was the ammunition found in there as well?

17 A I don't remember.

18 Q Okay. And this long gun was, actually, found under
19 the bed?

20 A When I saw the long gun, it was already on the bed.

21 Q On the bed?

22 A Yes.

23 Q But the bed had been -- had the bed been put back, or
24 flipped up?

25 A I believe it was flipped up.

1 Q Okay. And that bed -- I'll show you the picture
2 we've got. That bed -- do you recall -- it was one of
3 those beds like you sometimes see in a hotel where there's
4 a box with a piece of wood all the way around so you can't
5 get dust under it, or reach under it. And the mattress
6 was on top of it; is that correct?

7 A This looks to be accurate, sure.

8 Q But you -- do you remember -- the bed had to be --
9 the mattress had to be lifted to get to this gun?

10 A Yes.

11 Q Okay. And that's the bedroom Ms. Workman was found
12 in?

13 A Yes.

14 Q And you said before it was the master bedroom for a
15 trailer. So it's fair to say it was a little bit tight?

16 A There's -- it was the bigger of the bedrooms. It was
17 the one on the end when you first walk in the door and to
18 the right.

19 Q Was there a chair in there?

20 A I don't remember.

21 Q Ms. Workman seemed out of it. She kept saying,
22 What's going on, what's going on; correct?

23 A That's correct.

24 Q And you -- and you had, originally, got the call
25 about the 911 call?

1 A About the stabbing victim or --

2 Q The stabbing victim called.

3 A Yes.

4 Q And so it's my belief now that, based on your
5 investigation and everything else, Mr. Workman was gone by
6 the time you got to the trailer. He was gone for that
7 entire hour of SWAT. And he was gone when the ram went in
8 the door as far as you know?

9 A The last I knew, he was in the trailer because he
10 slammed the door on the deputies face.

11 Q That's the last you knew?

12 A Correct.

13 Q But -- but it's like -- at some point, he was gone?

14 A Yes. Because he was not there when -- yes. He was
15 not there when the door was breached.

16 Q And this whole event took about two hours?

17 A I don't know exactly how long it took from beginning
18 to end.

19 Q Okay. And as far as these guns, you said they were
20 cleared. They hadn't been used in a crime. Did you,
21 also, find out that they belonged to Ms. Workman?

22 A Those cannot -- on NCIC where we check them, it does
23 not tell you who bought the guns.

24 Q But if I represented to you that she had bought them,
25 you'd have no reason to dispute that?

1 A I'd have nothing to dispute it or not dispute it,
2 correct.

3 Q And based on your investigation, the guns were found
4 in the same room as her?

5 A Correct, which is the room they shared.

6 MR. EPPES: Thank you.

7 THE COURT: Anything on redirect, Counsel?

8 MR. POLSINELLO: Briefly, Your Honor.

9 THE COURT: All right.

10 REDIRECT EXAMINATION

11 BY MR. POLSINELLO:

12 Q Sergeant Rivera, when the victim was asking you,
13 What's going on, what's going on -- and from your report,
14 it looks like you stated she appeared out of it. What did
15 you think?

16 A It appeared to me that she -- she was not wanting to
17 cooperate, not -- it's not reasonable for someone to not
18 know what's going on when we were there for an extended
19 amount of time running the sirens, being on the PA calling
20 Mr. Workman by name to come out of the house.

21 At some point, even if you're in a deep sleep, you're
22 going to most likely hear that. A reasonable person would
23 hear that and stir or try to peek out the window and see
24 what's going on, especially in a trailer park setting
25 where the houses are -- the trailers are so close

1 together.

2 Q Okay. So is it fair to say that you found it
3 strange?

4 A Yes. I found it strange.

5 Q Okay. Did you form any belief as to why?

6 A I -- I -- based on my experience that I've had
7 dealing with domestic violence situations, it appears that
8 she was just trying to cover or play dumb, for lack of a
9 better word.

10 Q Was this your first domestic violence scene that you
11 responded to?

12 A No, sir.

13 Q How many would you say you've responded to in your
14 career?

15 A I -- I couldn't put a number on it. I've worked
16 everything from uniform patrol to homicide. So I've
17 worked countless --

18 Q Over a hundred?

19 A Sure. I mean, I -- I couldn't put a number to it. I
20 couldn't even begin to guess.

21 Q So the way the victim was acting and through your
22 experience in these types of situations, you kind of knew
23 what was going on?

24 A Yes.

25 MR. POLSINELLO: No further questions.

1 THE COURT: Any on recross?

2 RECROSS-EXAMINATION

3 BY MR. EPPES:

4 Q Do people sometimes come out -- not -- fail to come
5 out of their houses when the bull horn is requesting them
6 to come out because they're afraid they're going to be
7 arrested?

8 A If they've done something wrong, possibly.

9 Q Or if they think they've done something wrong, even
10 if they haven't?

11 A Possibly.

12 MR. EPPES: Thank you.

13 THE COURT: All right. I don't have any questions.
14 You can step down.

15 THE WITNESS: Thank you.

16 MR. POLSINELLO: Your Honor, may this witness be
17 relieved of his subpoena?

18 MR. EPPES: Without objection, Your Honor.

19 THE COURT: All right. Sir, you're free to go.

20 THE WITNESS: Thank you, sir.

21 THE COURT: All right. You can call your next
22 witness.

23 MR. POLSINELLO: Your Honor, the State calls Sergeant
24 Robert Perry.

25 THE CLERK: Sir, if you would, please, place your

1 left hand on the Bible and raise your right hand.

2 WHEREUPON,

3 ROBERT J. PERRY,

4 after first having been duly sworn, testified as follows:

5 THE CLERK: Thank you.

6 Please be seated.

7 Please state your name for the -- for the jury.

8 THE WITNESS: It's Robert J. Perry.

9 THE CLERK: Thank you.

10 DIRECT EXAMINATION

11 BY MR. POLSINELLO:

12 Q Sergeant Perry, your current title is sergeant?

13 A That's correct.

14 Q I can't help but notice in these reports dating back
15 to August of 2016, your title was investigator?

16 A Yes, sir.

17 Q So you were an investigator at the time?

18 A At that particular time, I was the senior
19 investigator in the special victims unit that Greenville
20 County has for violent crimes committed on children.

21 Q So at that time in that position with that title,
22 what were your general duties and responsibilities with
23 the sheriff's office?

24 A So I, actually, worked out of county square in a
25 separate office with six other investigators. Our unit,

1 specifically, looked at any type of violent crime that
2 would be committed on a child, whether it was a death, or
3 a sexual assault, or possibly unlawful neglect of the
4 child, things of those natures.

5 Q How many years have you been employed with the
6 sheriff's office?

7 A I started with them in 2006.

8 Q Okay. So, obviously, around August 29th, 2016, you
9 were employed with the sheriff's office?

10 A Yes, sir.

11 Q How did you first become involved in this case?

12 A I've been a member of the SWAT team since 2011. So I
13 got activated that particular night for a SWAT call where
14 we possibly had a subject barricaded in a house. And
15 that's, basically, the only information I had when I
16 arrived on scene.

17 Q Do you recall what time you arrived on scene?

18 A It was prior to 12:00. So I'm thinking somewhere
19 around 10:30ish.

20 Q p.m.?

21 A Yes.

22 Q So it was dark out?

23 A Yes.

24 Q And you responded to this incident location for [REDACTED]

25 [REDACTED] ?

1 A That is correct.

2 Q And what's the first thing that you did when you
3 arrived on scene?

4 A So my primary responsibilities on the SWAT team is --
5 is crisis negotiations. Previously, I was a tactical
6 officer. But as I got older, I just kind of filtered away
7 from that and went back into a different avenue still on
8 the team, but mostly dealing with crisis negotiations.

9 So I contacted our SWAT commander on scene, a
10 gentleman by the name of Tommy McConnell. And he was,
11 basically, the guy in charge at that particular time. I
12 asked him where he needed me, what he needed done. And he
13 said, We've already started to try to negotiate with the
14 possible suspect inside. And he kind of filled me in a
15 little bit about what they were doing.

16 Q Did you make any attempts to reach out to the
17 Defendant or the victim?

18 A I believe, at that time, I was simply gathering
19 information. We already had another investigator -- or
20 another negotiator on scene, who was, actually, in the
21 armored vehicle there.

22 And they had pulled it right into the driveway
23 probably -- I don't know -- 10 or 15 feet from the front
24 of the door. And he was on the PA system or the public
25 address system calling out, you know, This is Greenville

1 County Sheriff's Office SWAT team. We're not here to harm
2 you. We just need to talk to you. Please come to the
3 door or answer your phone. And that was just kind of this
4 repeated statement for probably every bit of an hour, hour
5 and a half.

6 Q Okay. Did you write a report about this incident?

7 A I did.

8 Q Do you have the report with you?

9 A I do.

10 Q In your report, is it true that you stated you tried
11 calling the Defendant and the victim's cell numbers?

12 A So that is correct. That was after we had gathered
13 their information.

14 Q Okay.

15 A In other words, after we -- initially, we didn't have
16 numbers for everybody.

17 Q Yeah.

18 A So we, eventually, got their numbers and started
19 making those recorded calls to try to find -- either it
20 was dead or it was going to voicemail.

21 Q This was the Defendant's phone and the victim's?

22 A That -- I think that we were aware of, the only
23 numbers we had.

24 Q Okay. And, eventually, the door was breached by
25 SWAT?

1 A That's correct.

2 Q Was the Defendant ever found inside?

3 A As far as in the residence, no, he was not.

4 Q Okay. Was the victim and the two children located in
5 there?

6 A They were.

7 Q Okay. Did you talk to the victim?

8 A So part of being a crisis negotiator is we, also,
9 want to do what we call a post-interview. So whenever we
10 find anybody on scene and we don't find a suspect, we
11 interview them and see if we could have done anything
12 differently, see if -- you know, what's going on. And
13 being an investigator, we're trying to gather some
14 information.

15 So it's very customary as -- for years, we've been
16 doing that when we have the opportunity. We even
17 interview suspects that we take into care -- or into
18 custody.

19 So myself and my partner, we went and tried talking
20 to her. It didn't go very well.

21 Q What didn't go well?

22 A She -- she appeared kind of traumatized, I guess is a
23 good word, irritable, irritated at us for being there over
24 the whole situation.

25 Q Okay. When you talked to her, were her children

1 present?

2 A Originally, they were kind of clinging to her when
3 she first came out. Then everybody got moved down the
4 road to the -- to the ambulance. Because we, basically,
5 had the whole road closed off. And everybody was walked
6 down to the ambulance.

7 So at one time or another, she was spoken to
8 separately. She might have had her littlest child with
9 her. I'm not real sure.

10 Q Do you know the name of the oldest child?

11 A I only know him as Little Ray. That's how I think --
12 when I talked to him, he kind of introduced himself. I
13 said, Hey, big guy. What's your name?

14 He said, I'm Little Ray.

15 So that's the name that I know.

16 Q Do you know how old he was at the time?

17 A I believe he was six years old.

18 Q Okay. How did the victim physically appear to you?

19 A She was rough. She had bruises, like, all over her
20 visible parts of her body that were visible. Her face was
21 swollen and bruised. It was obvious that some type of
22 altercation had occurred.

23 Q What -- did she tell you where those injuries came
24 from at first?

25 A At first, she was not really cooperative. She was --

1 like I said, she was irritated. And then after speaking
2 on and off -- so I'd talked to her for a moment. The
3 paramedics would look at her. I'd talk to her again. She
4 did make a statement on where the injuries came from to
5 me.

6 Q And what did she say?

7 A She said that they happened before in a bar fight, or
8 something of that nature.

9 Q When she told you that, what was your initial
10 thought?

11 A That it was not correct.

12 Q Why did you form that opinion?

13 A Just working so many cases through the years.
14 Approximately, I started in 1986. So, I mean, through the
15 years, seeing these types of injuries, if someone had been
16 beaten that badly in a bar fight, first off, there
17 probably would have been police there. But it would --
18 the bruises did not appear to be something related to
19 that. It appeared to be something different.

20 Q What is that something different?

21 A It looked like they were bruises -- even though you
22 can't really tie them to bruises. But they looked like
23 they were fresh bruises, and older bruises, and injuries.
24 And she had lacerations on her that looked older and not
25 just fresh, like, you know. So it looked like this was a

1 continual cycle she was in.

2 Q Okay. Did you ask the victim about why she didn't
3 come out at first when the callouts were made?

4 A Yes.

5 Q And what did she say?

6 A Basically, she was sleeping, or something of that
7 nature.

8 Q And what did you think when you heard her say that?

9 A That I did not believe her. Not only were we,
10 literally, feet away from her aluminum trailer -- or
11 mobile home, but we had set up a device called an LRAD.
12 And an LRAD is a long-range acoustic device. And it's a
13 brand new device that's been instituted in Greenville
14 County. And it kind of looks like a -- a boom box
15 speaker.

16 And, basically, what it does is it takes sound and it
17 condenses sounds into a very small -- almost like a
18 spotlight. And it can throw sound from here to that wall.
19 And the first juror could hear it and the second juror
20 couldn't. So it's -- it just condenses it almost into a
21 cone.

22 And we had set this thing up 20 feet from her
23 trailer. And we had -- basically, the whole walls on that
24 trailer were moving, because we were blasting this
25 trailer.

1 Q Okay. After she stated that she was sleeping, did
2 you question her further about why she didn't come out?

3 A I did. And I said, you know, I find it hard to
4 believe that anybody could sleep through that. Why aren't
5 you coming out? Why didn't you just come to the door?

6 I think I said -- she was just very irritated at
7 everything, and -- and just seemed very angry.

8 Q Did you ever speak to the smallest child, the
9 littlest one?

10 A I believe the littlest one -- I believe his name is
11 Anu. And I did deal with children. I had gone to a class
12 called Juvenile Forensic Interviewing. That's a
13 specialized course to kind of help you learn how to talk
14 to children in a -- kind of like a non-confrontational,
15 friendly way.

16 So I kind of leaned down and talked to him. And he
17 was just not very verbal. I mean, he was so small that he
18 was just not -- you just couldn't carry on a conversation
19 with him.

20 Q So he was so young you didn't get any information
21 from him?

22 A No.

23 Q Okay. Did you speak to Little Ray, the oldest child?

24 A Yes, I did.

25 Q When you spoke to him, where was the victim, his

1 mother?

2 A I think she was, actually, in -- sitting in the
3 ambulance. So -- and Little -- me, and Little Ray, and my
4 partner, Investigator Serrano, were at the back of the
5 ambulance. So she was in the ambulance. And he was at
6 the back of the ambulance kind of sitting on the bumper.

7 Q So is it fair to say that the victim could see you
8 talking to her child, Little Ray?

9 A Yes.

10 Q And what did you learn talking to Little Ray?

11 A So Little Ray is an adorable young boy, very
12 friendly, very talkative. He's very smart for his age. I
13 kind of asked him, you know, if he heard us there.

14 And he says, Oh, yeah. I heard you guys for -- you
15 know, in his characterization -- hours, you know. But mom
16 wouldn't let us come out. Mom wouldn't let us come out of
17 the room.

18 But he did say that he had heard his mom and his dad
19 fighting. He didn't see them fighting, but he had heard
20 that they were fighting when I asked, specifically, about,
21 you know, I noticed some marks on your mom, how did those
22 marks get on your mom? Did something happen at the house?
23 Did something happen at work, or somewhere else? You
24 know, things of that nature. And he made the statement
25 that he had heard them fighting in the other room, but he

1 didn't, actually, physically see them.

2 MR. POLSINELLO: Mr. Bailiff, could you get the
3 lights, please?

4 BY MR. POLSINELLO:

5 Q Sergeant Perry, that child, is that Little Ray?

6 A That's correct.

7 Q That's who you spoke to?

8 A That's correct.

9 Q In your report, you reference a "Tammy Green." Who's
10 Tammy Green?

11 A So, at that particular time, I'm just kind of -- kind
12 of assisting uniform patrol in this case. It's not going
13 to be a case that our unit would necessarily handle
14 because it's not dealing, specifically, with a child.
15 Even though there are children in -- in the situation,
16 it's not something we'd, specifically, handle.

17 So I, basically, talked with uniform patrol and the
18 deputies on scene and said, you know, how can we assist
19 you? And that's kind of where we went.

20 But during this time, I was like, look, you know, I'm
21 telling you, you know, 28, 30 years of experience is
22 telling me this woman is a victim of domestic violence.
23 So we need to take some precautions here. She cannot stay
24 at the house because we have not located her husband.
25 And, right now, he's our main suspect, even though she

1 hasn't told me, at this particular time, that she is a
2 victim of domestic violence. But common sense is telling
3 me something's going on.

4 So we've got to get her into the Safe Harbor, you
5 know, a battered women's shelter, something of that nature
6 for her and just make sure that her and the children are
7 safe. We, also, need to, you know, do our best to secure
8 her residence. And we talked about that -- I talked about
9 that with her.

10 Q Okay. Did she ever on that date when you spoke to
11 her -- I guess it would be the early morning -- is it
12 August 30th --

13 A Right.

14 Q -- of 2016, or in the wee hours of the morning?

15 A That'd be correct.

16 MR. EPPES: Your Honor, are we talking about Tammy
17 Green, or somebody else? I'm -- I'm clearly --

18 BY MR. POLSINELLO:

19 Q When you spoke with the victim, Sergeant Perry?

20 A Right. That would have been the first thing early in
21 the morning.

22 Q When you were speaking with her, did she ever mention
23 anything about a lock of hair being cut?

24 A No.

25 Q Did she ever mention anything about a knife?

1 A No.

2 Q Sergeant Perry, do you see this area right here that
3 I'm circling?

4 A Yes.

5 Q Did you notice that when you observed her?

6 A I have to be honest with you, I probably did not.
7 Because she was kind of disheveled that night.

8 Q Okay.

9 A I remember noticing her hair being shorter on one
10 side than the other.

11 Q Okay. So did a Tammy Green arrive on scene?

12 A So I'm sorry. I was kind of in a long story there.
13 But, basically, talking to her trying to get her into a
14 safe place -- she didn't want to go with us to Safe Harbor
15 or one of the other women's shelters.

16 So I said, all right, who -- who -- family member can
17 we get here to help you tonight? So she gave us a couple
18 of names. And one of the names was Tammy Green, who, I
19 believe, was the -- her husband's sister.

20 Q Okay.

21 A And she did arrive on scene. And I interviewed Tammy
22 to make sure that she understood kind of what's going on,
23 and how important it was that, you know, she do her best
24 to keep the children safe and Loretta safe.

25 Q And how did Tammy Green respond to that?

1 A Very accepting. She says, you know, Olandio doesn't
2 even know where I live. I live in a gated community. He
3 has phone numbers. But, you know, there's nobody he
4 knows -- or he's going to know where everybody's at.

5 So, at that point, we felt pretty safe allowing her
6 to go with Ms. Green.

7 Q Okay. Did the boys go with the victim and Ms. Green
8 as well?

9 A That's correct.

10 Q Okay. Was DSS notified?

11 A Any time there's a possible domestic violence
12 incident and there's children involved, DSS is going to
13 get a copy of that report. So DSS was notified that night
14 and told kind of what we're dealing with. And I even had
15 them respond out at 3:00 in the morning, or whatever time
16 it was, 2:30 in the morning.

17 I told them that I had -- I will talk to the victim.
18 I'll set up a time. I know the address. I'll meet you
19 over there at 10:00 in the morning. And we'll talk to her
20 again when things have settled down a little bit.

21 Q So were -- were you planning on speaking with the
22 victim on August 30th around 10:00 a.m.? Were you
23 planning on following up with the victim?

24 A Yes, correct.

25 Q And DSS?

1 A That is correct.

2 Q Okay. Before that, we're still into the wee hours of
3 the morning. Did you assist Sergeant Rivera in the search
4 of the home?

5 A Yes, I did.

6 Q Okay. And you located all this evidence that's on
7 this table?

8 A Correct. The -- the SWAT team, actually -- the
9 initial guys, the breach team lifted up the bed to see if
10 anybody was hiding under the bed. Because it's one of
11 those beds -- I think you heard before, it's kind of like
12 a motel bed. It has a gap underneath it.

13 So we lifted it up. When they saw the weapon, they
14 left it there. I think they left the bed propped up.

15 Q Okay. Before you entered the home, were you given
16 permission to enter the home?

17 A Yeah. Actually, they had the search warrant. And
18 then I had, actually, talked to Ms. Loretta -- or
19 Ms. Workman and told her that we were going to go ahead
20 and secure the house. And we were going to take some
21 pictures inside the house, and anything else in the house
22 that concerned us, things of this nature. And she just
23 kind of said, you know, go do what you got to do. So she
24 kind of gave me permission to -- or she gave me permission
25 to go in.

1 Q Did you ask her if there were any weapons inside of
2 the home?

3 A I don't remember. I think I did.

4 Q Okay.

5 A I think I did. I think she said that there were.
6 And there were weapons in the home.

7 Q Okay. Did you ever find out who those guns were
8 registered to?

9 A Well, actually, I only found out who had, actually,
10 bought them.

11 Q Okay. And who was that?

12 A Ms. Workman said that she had to buy the weapons.

13 Q Okay. Did she -- before you entered the home, did
14 she tell you where the guns were?

15 A I think she did. I think she told me there was
16 something under the bed, and there was something in the
17 night drawer. And there was one other somewhere else that
18 we never located.

19 Q Okay. And so when you entered the home with Sergeant
20 Rivera, all of this was found in the master bedroom?

21 A That's correct.

22 Q And that was in the front of the home?

23 A Correct.

24 Q Okay. And what did you observe when you went into
25 that master bedroom?

1 A It was a little disheveled, I think, from the SWAT
2 team. I think they had tossed -- you know, it was a full
3 bedroom. There were lots of items in there. But I think
4 they had tossed the bed making sure nobody was under it,
5 looked through the closet, things of that nature. But
6 they had not, actually, touched any of the weapons. I was
7 the one that physically made the weapons safe, ejected the
8 rounds, dropped the magazines, and physically made the
9 weapons safe.

10 Q What do you mean made the -- "physically made the
11 weapons safe"?

12 A In other words, not having the round -- an actual
13 round in the chamber of the weapon. So for the AK-47, I'm
14 familiar with them. I dropped the magazine, pulled the
15 bolt back, locked them back, and checked it, and made the
16 weapon safe, and then locked the bolt back. So, at that
17 point, it was an empty weapon.

18 Q Were there live rounds in both of these guns?

19 A Yes, there was.

20 Q A bullet in each chamber?

21 A That's correct.

22 Q Did they have a magazine in each?

23 A Each one had a magazine in it.

24 Q Okay. Was -- this AK magazine, was that fully
25 loaded?

1 A You know, I don't remember if -- there were two
2 magazines there. And I don't remember how many rounds
3 were in each magazine.

4 Q Okay.

5 A But, yeah, it had rounds in the magazine, multiple
6 rounds.

7 Q All of this ammunition right here, was this all in
8 the cooler bag at first?

9 A I don't think all that ammunition was in the cooler
10 bag. I think some of that ammunition came out of the
11 weapons themselves.

12 Q Okay.

13 A So, like, I would empty all the magazines. Because
14 our property and evidence are not taking a magazine that's
15 loaded into storage. So you'd empty the magazines and put
16 them in a separate bag, things of that nature. But there
17 was ammo inside that blue little bag there, lunch bag, I
18 guess.

19 Q When Sergeant Rivera did the NCIC check on the guns
20 and they came back clear, as his testimony was, did you
21 notify the victim of that?

22 A I don't think I told her anything. It just meant
23 they weren't stolen. She had told me that she had bought
24 them. So I didn't really think that they were stolen.

25 Q Okay. Did you let her know that you guys were

1 seizing these?

2 A At that time, they were taken into our care for
3 safekeeping. Because, again, I was kind of under the
4 impression that I was dealing with a domestic violence
5 incident. And I didn't want anybody, especially her
6 husband, coming back to the house and harming himself.

7 Q Because the suspect, he fled the residence?

8 A That's correct.

9 Q He wasn't apprehended at this time; correct?

10 A No. He was not apprehended.

11 Q So it's customary in these types of cases, given the
12 search warrant, given your investigation, speaking with
13 the victim, learning everything that you guys learned to
14 seize those weapon?

15 A Oh, absolutely.

16 Q Okay. When the victim left with Tammy Green and when
17 the scene was cleared, what did you do next?

18 A I think I went to the house for a few hours and then
19 went right back to my office in the morning. When I got
20 into my office is when I got a call from DSS.

21 Q Okay. And did you attempt to make contact with the
22 victim?

23 A Yeah.. Actually, DSS called me and said that they had
24 gone out earlier for whatever reason. And -- and they
25 were told that Loretta had taken her kids and had fled.

1 So I still had her phone number. I don't remember if
2 I got it from her or if we had it previous. So I tried to
3 call her. And it went to voicemail. So I left her a
4 message.

5 Q Was -- okay. Was this on August 30th -- I'm sorry --
6 August -- yeah, it would be August 30th?

7 A Yeah. That'd be the very -- that day of the
8 incident, so to speak. It kind of dragged out. I think
9 it started around 7:00 the day before. And it went all
10 the way early into the morning.

11 Q Did the victim reach back out to you at your attempts
12 to contact her?

13 A No, she never did.

14 Q When you found out that she fled, do you mean fled
15 the state?

16 A Yeah. I was told that she had fled the state. She
17 had taken her kids and, basically, snuck back to the -- to
18 her home for just a few moments, grabbed some items,
19 loaded it in the vehicle, and fled the state.

20 Q Okay. What did -- in terms of your investigation --
21 let me back up. At this point, were warrants presented to
22 a judge?

23 A I still didn't have a -- I still didn't have, like, a
24 crime that I knew of. Because she had not told me what
25 happened. So, at this point, it was just kind of, you

1 know, I mean, an information only kind of report.

2 Q So the Defendant wasn't charged at this point?

3 A That's correct.

4 Q But he, also, wasn't apprehended; correct?

5 A That's correct.

6 Q His whereabouts were unknown?

7 A We did reach out to him on the phone -- on the cell
8 phone, but he never tried to reach back to us, so.

9 Q Okay. How many times do you think you attempted to
10 contact him during this point?

11 A From this point on, I don't know if I called him
12 again after she had fled the state.

13 Q Okay.

14 A I don't know if I -- I don't recall trying to reach
15 out to him again. But previously when we were on scene,
16 we had tried to contact him.

17 Q So did you want to reach out to him to get his side
18 of the story?

19 A Absolutely.

20 Q And he never responded back?

21 A That's correct.

22 Q In terms of your investigation into this case, you
23 find out that the victim fled. What did you do next?

24 A It was concerning. Because, like I said, through the
25 years working these types of cases, when I find somebody

1 who flees, it's not necessarily such an inconvenience to
2 me when they're only fleeing, like, from one house to
3 another to try to hide. But when they're fleeing out of
4 state, it's very concerning. Because it shows, in my
5 opinion, a tremendous amount of fear for safety, so.

6 It, also, created a demographic issue on how I'm
7 going to get back in touch with her. And that was some
8 issues that I had to overcome.

9 Q Okay. In your report, it says on September 2nd,
10 2016, you followed up. And is it true that you went to
11 the victim's mother's house?

12 A Yeah. After -- I think I might have called the
13 actual Ms. Workman more than once and left messages. I
14 don't recall. But when she didn't call me back after two
15 days, I, actually, went by the -- her mother's house.

16 And that's where I was told that -- and I had,
17 actually, talked to Ms. Green on the phone, too. And
18 Ms. Green told me that she had fled somewhere. She didn't
19 know where. But I, actually, went by the mother's house.
20 And the mother confirmed that she was no longer in South
21 Carolina. She had fled the state.

22 Q Okay. And that was on September 2nd?

23 A That's correct.

24 Q And so what did you do after you learned that
25 information?

1 A So I gave give Ms. Bergin my card. That's her mom,
2 Loretta Bergin. I gave her my card and said, Look, I need
3 to talk to her. She can talk to me over the phone. She
4 doesn't have to talk to me in person. But I'd like to
5 talk to her and kind of follow-up on this a little.
6 Please just -- you know, if you have any contact with her,
7 or if other family members have contact with her, her
8 sister, anybody, just give her my number. Have her call
9 me. And I gave her my card and, basically, left.

10 Q And this was on September 2nd?

11 A That's correct.

12 Q Okay. And then what did you do next in this case?

13 A Nothing. I mean, there wasn't really anything else
14 to do. I probably had 15, 20 other cases I was working on
15 at the time. So I just went back to working on other
16 things.

17 Q Did you, eventually, hear from the victim?

18 A I did. Eventually, a few days later, I received a
19 call from her sister, I believe, in my office.

20 Q Do you remember what date that was?

21 A I want to say it was on the 6th. I want to say it
22 was on the 6th of September, September 6th.

23 Q So a few days have passed since when you went to
24 Ms. Bergin's home to when you received this call from the
25 victim's sister?

1 A That is correct.

2 Q And you, eventually, spoke to the victim?

3 A I did. I kind of felt like the -- you know, in
4 negotiations, we've got this thing called TPI. It's
5 called a third-party intermediary. And she was kind of
6 acting as that intermediary, the sister was.

7 So I told her, you know, kind of who I was and, you
8 know, we were not here to cause any issues. But if
9 something happened to her, then we're here to help her,
10 and the sister -- if she'd like to give us a statement and
11 come forward. And I think the sister talked to
12 Ms. Workman. And then I did get a phone call from
13 Ms. Workman.

14 Q Okay. What date was that?

15 A I want to say the same day, right about the same time
16 frame.

17 Q Okay. And so you received a call from the victim?

18 A Yes.

19 Q And what -- was that call recorded?

20 A It was.

21 Q Did you advise her of that?

22 A I think I told her that -- I think we spoke for a
23 little while and just kind of got some background. And I
24 said, I'd like to -- we've got, you know -- I don't
25 know -- hundreds of miles separating us. It's not going

1 to be possible for me to sit down with you and get you to
2 write out a statement, or give a verbal statement. But
3 you can verify who you are over the phone. Your sister is
4 verifying who you are over the phone. I'll take a
5 recorded statement over the phone. And this will progress
6 the investigation a little.

7 So, at that point, we went ahead and recorded a
8 statement over the phone.

9 Q Okay. And the victim consented to that?

10 A That's correct.

11 Q How did the victim sound when you were speaking with
12 her?

13 A Dramatically different, very apologetic. She was
14 almost relieved, I guess, is a good way of sensing -- or
15 talking about the way she had spoke, a sense of relief
16 maybe, apologetic for not cooperating more the -- that
17 night of the incident.

18 Q So, at this point, it was your understanding that she
19 was out of state when you had this conversation?

20 A That's correct.

21 Q Why did she apologize?

22 A I think -- well, I mean, my opinion is I think she
23 felt that she had the opportunity and we were presenting
24 ourselves the night of the incident and that maybe fear or
25 whatever was hindering her from coming forward and really

1 talking about what occurred. And she may have felt
2 embarrassed over that, or ashamed, or whatever.

3 Q In your experience in law enforcement in these types
4 of cases, were you surprised --

5 A No.

6 Q -- by her turn around?

7 A No. I've seen it dozens of times.

8 Q Okay. And did the victim tell you what happened --

9 A She did.

10 Q -- during that time frame?

11 A She did.

12 Q The incident period we're talking about?

13 A Yeah. From the 27th to, basically, the 29th.

14 Q And what did she tell you?

15 A Well, she -- she, basically, gave a story of a
16 continual cycle of domestic violence, control, abuse,
17 fear, intimidation. And she listed Mr. Workman as the
18 suspect.

19 She admitted to being hit by him with -- not only by
20 his fist, but his feet. She admitted that he had access
21 to the weapons in the house. And, at one time, he,
22 actually, had one of the guns in his hands when he was
23 accusing her of something or another and, actually, had
24 struck her with the gun in his hand all -- all in one
25 motion.

1 She admitted that he was accusing her of cheating so
2 he was going to cut off her hair so that she would look
3 terrible and no one -- no other man would ever want her,
4 things of this nature. So it was just this continual
5 cycle of violence that seemed to occur over this period of
6 time.

7 Q Do you remember what date the victim told you that
8 this all started?

9 A I believe she said it was the 22nd. I think it
10 started, you know, a few days before we were, actually,
11 out there at her residence.

12 Q And how long did she tell you that this went to?

13 A Well, I'm sorry. I -- if we're talking about the
14 incident that we were dealing with --

15 Q Yeah.

16 A -- it was just to that Saturday -- or not that
17 Saturday, to the 29th, when we, actually, responded.

18 Q Okay.

19 A But she had kind of mentioned that there were issues
20 in the past, also. But it had just gotten really, you
21 know, unbearable that last couple, three days.

22 Q Okay. Did she tell you that the children were
23 present in the home?

24 A She did.

25 Q Okay. Did -- when she told you all this, did you

1 have any questions for her?

2 A I did. I talked to her a little bit about, you know,
3 why -- why didn't you come forward? You know, why didn't
4 you come out? Why weren't you talking to us, and things
5 of that nature. And why didn't you come out of the
6 bedroom? I mean, you know, if you knew he had fled out of
7 the residence, why didn't you just come out of the
8 bedroom?

9 And her basic statement was, well, I didn't know he
10 had fled the residence. I thought he was still there. He
11 had shut the bedroom door. And we were closed in the
12 front. And we were afraid to leave. Because, as far as I
13 knew, he was still in the main part of the trailer. So
14 she didn't dare venture out of that bedroom. And as far
15 as I knew, I don't know that she did. Because we found
16 her in that bedroom when we made entry.

17 Q Did you ask her about the guns?

18 A I did.

19 Q And she stated that they were hers?

20 A Yeah. That she was the one that had to buy them.
21 That's correct.

22 Q Okay. Up until this point -- this conversation, had
23 the Defendant been charged?

24 A No.

25 Q How did your conversation with her -- was there

1 anything that came out in the conversation that I haven't
2 asked about?

3 A Not -- not so much as just this very evident cycle of
4 domestic violence that she was living in.

5 Q What did you -- how did you explain to her how you
6 were going to go forward with this case and with DSS?

7 A So, basically, I told her that DSS is going to need
8 to contact you. They're going to need to talk to you.

9 And on our end, we're going to try to pull up as much
10 information as we can. We will try to talk to
11 Mr. Workman, if we can find him, or if he'll talk to us.
12 If we can't, we're going to gather information. We're
13 going to go to the Judge. And in this case, it was Judge
14 Hudson. And we're going to present our case to the Judge
15 and see if criminal charges would apply.

16 Q Okay. Was the victim cooperative at the end of your
17 conversation?

18 A Oh, yeah, definitely.

19 Q With -- with her being notified that DSS may be
20 contacting her?

21 A Yeah. She was a little at ends with DSS, a little
22 nervous about DSS getting involved. Because she didn't
23 want her children being taken away. She had done her best
24 to protect her children. And that's why she had fled the
25 entire state to protect her children, as well as herself.

1 So -- and I kind of reassured her that I had spoken to the
2 DSS caseworker here. And they were going to relay that
3 information to wherever she was living to their DSS
4 caseworker there.

5 Q Was she concerned about her children --

6 A She was.

7 Q -- and their well-being?

8 A More than herself.

9 Q Okay. Once you ended this conversation, what did you
10 do next?

11 A So, like I said, I just kind of gathered all my
12 information, all the kind of clerical stuff, paperwork. I
13 went and spoke to Judge Hudson and sought warrants. I was
14 seeking warrants for domestic violence high and aggravated
15 since she had given me a statement of not being allowed to
16 leave the residence for days on end, and things of this
17 nature, so -- being assaulted by her husband, a household
18 member, you know. So I sought warrants through Judge
19 Hudson for the appropriate charges.

20 Q Okay. As you know, the Defendant is on trial today
21 for three charges. Did you seek a fourth charge,
22 initially, in this case?

23 A I did.

24 Q What was that charge?

25 A The fourth charge was being in possession of a weapon

1 when you weren't allowed to be -- or have it, if that
2 makes sense.

3 Q Okay. And through your further investigation, was it
4 determined there was enough evidence to go forward on that
5 fourth charge?

6 A No, there was not.

7 Q Okay. Just the three charges we're here for today?

8 A That's correct.

9 Q Okay. The judge signed the warrants?

10 A That's correct.

11 Q Okay. Do you know when the Defendant was apprehended
12 for these charges?

13 A I believe he turned himself in several weeks later,
14 maybe, like, two weeks later, something of that nature,
15 like, maybe two and a half weeks later.

16 Q Does -- October 5th, does that sound right from your
17 report?

18 A It's possible. I'd have to look.

19 Q Okay.

20 A I thought it was the end of September, but it might
21 have been in October.

22 Q So you discovered that he turned himself in?

23 A Right. I -- I did not know he had turned himself in.
24 I was just -- after warrants are issued, they get sent
25 down to our warrants division. And the ladies and

1 gentlemen down there are the ones that, actually, go out
2 and serve the warrants. Sometimes, they call you when
3 they find the people. And sometimes, they don't. But
4 they will actively search for this person until they are
5 found.

6 But, usually, what I do is at the first start of each
7 month, I go in and I'll have a list of the warrants that
8 I've written. And I'll just type them in the computer and
9 search to see if anybody's been found. And that just
10 helps me with case closure. So I won't have an active
11 case sitting on my desk, you know, that says pending
12 service of the warrant. I'll check it. If the warrant's
13 been served, I'll do a real short supplement. And I'll
14 close that case out and get it off my desk.

15 Q Okay. Are you familiar with this incident location?

16 A I was not until that night.

17 Q Okay. Can you see that?

18 A Well enough.

19 Q Okay. The incident location is that green circle?

20 A Correct.

21 Q And in the back, you see Crooked Creek Circle?

22 A Correct.

23 Q How much distance would you say is between that?

24 A Between the incident trailer?

25 Q Yes. And -- and that back -- Crooked Creek Circle?

1 A I, actually, walked from that trailer through the --
2 through the trees to the back neighborhood. And it was
3 maybe a one-minute walk. So maybe, like, 75 yards, 50
4 yards.

5 Q Okay. So when you arrived on scene that night, you
6 went back to Crooked Creek Circle?

7 A Yeah. When they -- they had searched the trailer and
8 nobody was there. Several of us were just kind of milling
9 around outside. And I saw where the back door was. And I
10 said, oh, he probably left through the back door. And if
11 I knew people were at the front of the house, I would have
12 went out the back of the house.

13 So several of us just walked kind of through there
14 just to check the woods to make sure somebody is not
15 simply hiding 50 yards away.

16 Q So it's relatively close to the incident location?

17 A Yes.

18 Q Okay. Is there a tree line separating that?

19 A There is. A lot of brush, and debris, and vines, and
20 briars, and all kinds of stuff.

21 Q Okay. So it's a pretty thick brush?

22 A I mean, you could walk through it.

23 Q Okay.

24 A I mean, there were trails kind of -- like, trails cut
25 out through it.

1 Q So at night -- let's just say it's nighttime and
2 someone is back here by Crooked Creek Circle, could they
3 be seen from a clear view from [REDACTED] Road --

4 A No.

5 Q -- through that brush?

6 A No. I don't think so.

7 Q It's -- it's thick enough to hide that person?

8 A That's correct.

9 Q Are you familiar with Hope Industries in Greenville?

10 A Just through name only. I don't think I've ever been
11 physically in their facility.

12 Q Are you familiar with the address, the business
13 location?

14 A I do know it's close to that particular incident,
15 probably less than -- probably about a mile from that
16 particular address.

17 Q Okay. So Hope Industries is about a mile from [REDACTED]
18 [REDACTED]?

19 A That's correct.

20 Q How do you know that?

21 A Because I had received information that's where he
22 had worked. So I'm not sure why. Just -- you know, I
23 think I asked Ms. Workman if he was -- if he was working.
24 And she said part-time he'd help out at something -- Hope
25 Industries, or someplace else.

1 Q So when you researched the distance, it came up one
2 mile?

3 A Yeah. That's correct.

4 Q How far of a drive is that?

5 A Maybe like two minutes.

6 Q Okay. Relative -- you can get down from the stand
7 and point out for the jury.

8 A (Witness complied.)

9 Q Relative to that incident location, where is Hope
10 Industries, if you have to go off the map?

11 A I'm not sure. I'd have to maybe look at the -- I
12 may, actually, have the address. I'm not sure which one
13 of these streets will lead to it, maybe off Dixie Circle.
14 Do you have a --

15 Q Okay.

16 A I -- I'm not sure. I hardly ever work in this area.
17 So I'm not real familiar with it. So that's why.

18 Q Okay. When you spoke to the victim around
19 September 7th on the phone, did she mention anything about
20 a knife or hair?

21 A She did tell me that he had cut her hair. And it
22 was -- that was part of that whole control -- you know, to
23 cut her hair off. Because he thought she had pretty hair,
24 and to cut it all off and make her look ugly so nobody
25 else would want her.

1 MR. POLSINELLO: Thank you.

2 No further questions, Your Honor.

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

4 Before we do cross-examination by Mr. Eppes, ladies
5 and gentlemen, we're going to break for lunch. I'm going
6 to give you an opportunity to go to lunch. And I need you
7 back in your jury room at about 2:00.

8 So I'm going to give you an extended period of lunch.
9 So you can walk around so you can get loosened up a little
10 bit. And then come back at 2:00.

11 Please, ma'am, and, please, sir, during the lunch
12 break, don't talk about the case to each other. And you,
13 certainly, remember my instructions earlier, don't talk
14 about the case with anyone. And don't try to do any
15 research, or do anything of that nature.

16 Okay. Have a good lunch.

17 (WHEREUPON, the jury was excused from open court at
18 approximately 12:12 p.m.)

19 THE COURT: All right. Counsel, anything before we
20 break for lunch?

21 It's my understanding the nurse from the jail is
22 here. So I'm going to let you and the nurse handle that
23 portion.

24 But anything else --

25 MR. POLSINELLO: I was just going to notify Your

1 Honor that the nurse is here.

2 THE COURT: Right.

3 MR. EPPES: Your Honor, can we just make clear on the
4 record -- because I'm very sorry she had to come over
5 here. But can we make clear on the record that the
6 psychiatrist at the beginning of this proceeding said that
7 it was critical to Mr. Workman's treatment and to his
8 staying awake and focused that he get that medicine prior
9 to being transported in the morning?

10 THE COURT: Yes. And -- and I said that a little
11 while ago.

12 Ma'am, you're the nurse; is that correct?

13 MS. CRYSTAL WILLIAMS: Uh-huh.

14 THE COURT: Okay. Stand up.

15 What's your name?

16 MS. CRYSTAL WILLIAMS: Crystal Williams.

17 THE COURT: All right. Ms. Williams, at the outset
18 of the trial, it was -- it was made -- the Court was made
19 aware that the medication that Mr. Workman is on, he has
20 to receive that in the morning before he's transported
21 over here.

22 MS. CRYSTAL WILLIAMS: Honestly --

23 THE COURT: Well, I'm not blaming you. I know -- I
24 know you're the messenger.

25 MS. CRYSTAL WILLIAMS: Yeah, basically.

1 THE COURT: But -- but whoever this message needs to
2 go to --

3 MS. CRYSTAL WILLIAMS: Right.

4 THE COURT: -- you tell him or her that tomorrow --
5 this trial may extend into tomorrow probably in all
6 likelihood. Tomorrow when Mr. Workman is here that his
7 medication better be dispensed to him before he gets over
8 here.

9 MS. CRYSTAL WILLIAMS: Yes, sir.

10 THE COURT: All right. Do you understand that?

11 MS. CRYSTAL WILLIAMS: I understand.

12 THE COURT: So whoever you need to tell that to, you
13 can just put my name on it and put an exclamation mark
14 behind it.

15 MS. CRYSTAL WILLIAMS: Yes, sir.

16 THE COURT: Okay. So anything else before we --
17 before we break?

18 (WHEREUPON, there was no response.)

19 THE COURT: All right. I'm going to let you guys
20 handle that. Because I think there was a procedure that
21 had to be followed. So I'm going to let y'all handle
22 that.

23 All right. We'll break. And we'll reconvene --

24 Oh, I'm sorry. I got -- you can step down. You can
25 step down.

1 An admonition.

2 MR. EPPES: I'd ask that you give him an admonition,
3 Your Honor.

4 THE COURT: All right. The admonition is that you --
5 you know, you've testified many times. You know what I'm
6 getting ready to say. You can eat lunch. You can't talk
7 during -- you know, during the lunch break.

8 Do you understand that?

9 THE WITNESS: Correct.

10 THE COURT: Okay. Good enough.

11 MR. POLSINELLO: Your Honor, what time are we
12 reconvening?

13 THE COURT: 2:00.

14 (WHEREUPON, a lunch break was taken.)

15 THE COURT: Okay. Gentleman, anything before we
16 bring the jury out?

17 MR. EPPES: Judge, we have one odd issue.

18 THE COURT: Well, we've -- what's that?

19 MR. EPPES: We're getting that way. My client
20 informed me this morning that his phone that was in the
21 jail -- his personal effects at the jail might have some
22 relevant information on it. I haven't been able to see
23 that to determine whether that's the case or not.

24 But Officer Kramer has graciously come up here in
25 response to my subpoena with his phone, which has been in

1 the jail since September of 2016. The clerk's office had
2 some cords here to charge it. I'd like to plug it in the
3 wall and charge it. So at break, I can discuss it with my
4 client. But we didn't want to open the seal on the bag
5 without your permission.

6 THE COURT: Does the State have a position?

7 MR. POLSINELLO: Obviously, Your Honor, this is an
8 issue of first impression. The -- the phone was never
9 considered part of the evidence in this case. It wasn't
10 in the P&E report. It wasn't in the listed items. I
11 guess -- it would all depend what's on the phone.

12 The State has no objection to -- if that's the
13 Defendant's defense to seeing what's on it or trying to --
14 it's his phone -- trying to turn it on. But whatever
15 results from that, I would --

16 MR. EPPES: And, Your Honor, obviously, we'd want
17 to -- we'd have to show you that and get it into an
18 admissible state. I have no idea right now.

19 THE COURT: All he's asking right now is to be able
20 to plug the phone in and see what's on it. I don't see a
21 problem with that. You shouldn't either.

22 MR. POLSINELLO: No objection.

23 THE COURT: All right. And I'll -- I'll permit that.
24 And then, you know, once you take a look at it -- and then
25 if there are any evidence -- once you look at the phone,

1 then, certainly, we'll deal with that at that time.

2 But right now, it's my understanding all Counsel is
3 asking for is the right to unseal the bag, plug the phone
4 in, charge it, and during a break look at it. That's --
5 and then anything after that may warrant some further
6 discussion by the Court and by you two.

7 MR. EPPES: Yes, sir. And, Your Honor, I don't --
8 given what I believe to be on the phone, I don't think
9 chain of custody is an issue for any of that. And I would
10 ask that we be allowed to have the phone in my custody and
11 that the officer not have to stay here with it.

12 THE COURT: All right. Any objection to that,
13 Counsel?

14 MR. POLSINELLO: Frank, when you say in your
15 "custody," do you mean overnight?

16 MR. EPPES: I don't care if we leave it here
17 overnight.

18 MR. POLSINELLO: I was just going to say --

19 MR. EPPES: I -- I will probably leave it here
20 overnight. I just hate for this officer to have to sit
21 here while the phone charges. If you want to put it in
22 the clerk's custody, let the clerk charge it, release it
23 to me when I need to discuss it with my client, give it
24 back to the clerk, I'm happy to do that, too. However you
25 want to do it.

1 THE COURT: We're talking about charging the phone?

2 MR. EPPES: Yes, sir.

3 MR. POLSINELLO: Your Honor, if -- if this phone --

4 THE COURT: We're talking about charging the phone?

5 MR. EPPES: Yes, sir.

6 THE COURT: Do y'all want me to decide how the phone
7 is going to be charged?

8 MR. EPPES: No. I'll charge the phone, Judge. And
9 if we need -- if it's -- if it needs to stay in anybody's
10 possession overnight, I'll entrust it to the clerk.

11 MR. POLSINELLO: That's what we would ask.

12 THE COURT: I think y'all can work that out.

13 MR. POLSINELLO: Okay.

14 MR. EPPES: Thank you, Judge.

15 THE COURT: Anything else?

16 MR. EPPES: Nothing, Your Honor.

17 MR. POLSINELLO: Nothing right now.

18 THE COURT: Okay. If there's nothing else, bring the
19 jury back.

20 (Pause.)

21 MR. POLSINELLO: Your Honor.

22 THE COURT: Yes, sir.

23 MR. POLSINELLO: Given that Mr. Eppes is about to
24 cross Investigator Perry, the State would just ask that
25 Investigator Perry be allowed to sit where he's been left

1 off the last time the jury saw him. If Investigator Perry
2 can just have a seat.

3 THE COURT: Come up here.

4 It's not a problem.

5 Come up here and have a seat. And you're -- you're
6 still under oath.

7 THE WITNESS: Yes, sir.

8 THE COURT: And let me just ask you this question.
9 During lunchtime, did you -- did you talk to him?

10 THE WITNESS: No, sir.

11 THE COURT: About this case? Did you talk to
12 Mr. Poniselli about the case?

13 THE WITNESS: No.

14 THE COURT: All right.

15 (WHEREUPON, the jury came into open court at
16 approximately 2:13 p.m.)

17 THE COURT: All right. I think we're ready to
18 proceed.

19 Mr. Eppes, cross-examination.

20 MR. EPPES: Your Honor, I may need help with the
21 overhead.

22 CROSS-EXAMINATION

23 BY MR. EPPES:

24 Q Investigator Perry, I'm going to kind of go backwards
25 for a minute and then I'm going to get us reoriented.

1 Towards the very end of your testimony, you stated that --
2 that during the discussions you had on the telephone with
3 Ms. Workman, she said, at one point, Mr. Workman had cut
4 off her hair with a knife?

5 A That's correct.

6 Q And -- but she, also, added that he was not
7 threaten -- he did not threaten her with the knife; is
8 that not correct?

9 A I don't remember her saying anything about him
10 threatening her with a -- with a knife.

11 Q She, specifically, said he did not threaten her.
12 I'll represent that to you. Do you recall that statement
13 or not?

14 A That sounds accurate.

15 Q It does sound accurate. Okay. And no knife was
16 found at the scene; correct?

17 A I'm sure there were knives at the scene, but we
18 didn't look for any particular knife.

19 Q And the forensics -- you've already heard the
20 forensics officer and others, I think, testify that no
21 hair was found at the scene; correct?

22 A Again, we weren't looking for hair. We didn't find
23 any hair. That's correct.

24 Q Now, Mr. Polsinello -- and I wrote this down. He
25 said that Mr. Workman turned himself in on October 5th.

1 I'm going to show you a report from your file. And would
2 you use that report to refresh your recollection that
3 Mr. Wakefield [sic] turned himself in on, I believe, the
4 24th of September -- Workman?

5 A Correct.

6 Q I'm mixing up.

7 A I thought it was the end of September.

8 Q The 24th of September?

9 A Yes, sir.

10 Q So approximately -- you got the warrant on the 8th of
11 September?

12 A Yes.

13 Q Okay. I want to keep some dates straight in my head,
14 so...

15 MR. EPPES: How do you make this cut on?

16 Can you make it brighter, Ms. Smith?

17 MS. DONNA SMITH: Do you want it brighter?

18 MR. EPPES: I just want it where you can see that
19 piece of paper.

20 MS. DONNA SMITH: Okay.

21 MR. EPPES: Thank you.

22 BY MR. EPPES:

23 Q All right. So these events happened August 27th
24 through 29th; right?

25 A Correct.

1 Q Of 2016. Okay. Is that right?

2 A Yes, sir.

3 Q And so you did your investigation then. And then
4 September 7th -- September 7, you had your telephone
5 interview with Ms. Workman?

6 A The 6th or the 7th. I don't remember, one of those
7 two days.

8 Q Okay. And then -- and you may not remember this
9 date, but we looked it up. January 26th of 2017, you had
10 the preliminary hearing, even though I can't keep it on
11 that table. Okay. Does that sound right to you?

12 A It's possible, yes.

13 Q Okay. This ain't working worth a dern. Anyway, so
14 we've got three dates. There -- one thing two weeks
15 later, and then three months later. Okay. You testified
16 at the preliminary hearing; right?

17 A Yes, sir.

18 Q Okay. And in your testimony today, you said that on
19 August 29th, you thought there was -- or 20 -- yeah, 29th,
20 you thought there was more going on, based on your
21 experience?

22 A The 29th into the 30th?

23 Q Yeah.

24 A Yes.

25 Q And then later on, Mr. Polsinello asked you about

1 your opinion. And you said your opinion was that this was
2 a case of domestic violence?

3 A That's correct.

4 Q And then you spoke with Ms. Workman. And after you
5 spoke with her, you arrested -- you issued the warrants
6 for Mr. Workman on these, originally, four charges?

7 A That's correct.

8 Q And you've pointed out that there was insufficient
9 evidence to prosecute concerning the possession of a
10 weapon by someone who's prohibited from having one?

11 A That is correct.

12 Q And, frankly, that decision was made in the last
13 72 hours; correct?

14 A I'm not sure when that decision was made.

15 Q Okay. Thank you.

16 But, in your opinion, this was a case of domestic
17 violence and it had to be dealt with?

18 A That is correct.

19 Q And, in fact, in your interview with Ms. Workman, you
20 told her, I don't think that this guy should get away with
21 what he did to you scot-free. It's ridiculous. I mean,
22 he should be held accountable. And I'm the one that is
23 going to hold him accountable?

24 A Sounds about right.

25 Q Sounds like what you said to her that day?

1 A That's exactly right --

2 Q I'll represent to you that's word for word what you
3 said to her.

4 A On the phone?

5 Q Uh-huh.

6 A Yes.

7 Q Do you have any -- do you have any reason to dispute
8 that?

9 A No, sir.

10 Q Okay. And then you brought these four charges, one
11 of which has been dismissed for lack of evidence. And
12 about two months later, we had the preliminary hearing;
13 correct?

14 A Yes, sir.

15 Q Now, I'm going to jump back to what you said today in
16 your testimony, which was that y'all interviewed Little
17 Ray, Olandio -- Olandio "Little Ray" Workman the night of
18 the incident, the night -- the 29th --

19 A We spoke to him. That is correct.

20 Q And he said he had heard things and not seen
21 anything?

22 A That's correct.

23 Q Okay. Well, do you recall your preliminary hearing?

24 A No, sir.

25 Q Okay. If I represent to you that in the preliminary

1 hearing, you said that Little Ray Workman had seen the
2 assault, you told a judge that, would you disagree with
3 that?

4 A I don't remember saying that during the
5 preliminary --

6 Q You do remember saying it?

7 A I said I do not remember saying that.

8 Q Do you want to hear a tape of you saying it?

9 A I believe you.

10 Q Okay. And in addition, you mentioned today that --
11 that Mr. Workman had hit -- that Ms. Workman told you that
12 Mr. Workman had hit her with a gun. In fact, she said
13 he -- in that taped interview, he might have hit her hand
14 with the butt of a gun; is that correct?

15 A I think more accurately what I said today was he hit
16 her when -- while he was holding that gun. So he hit her
17 with the hand that was holding a gun.

18 Q He hit her in the hand or with the hand? Because
19 it's two different things.

20 A Well, it's the same thing. If you're holding a gun
21 and you hit somebody, like, are you hitting them with your
22 hand or are you hitting them with the gun?

23 Q Okay. Well, I'm going to play to you what he said in
24 that tape -- what was said in that taped interview.

25 MR. EPPES: Go ahead and play it.

1 (WHEREUPON, an unmarked recording was played in open
2 court.)

3 BY MR. EPPES:

4 Q So that's what she told you, that he had hit her hand
5 with the hand that was holding the gun?

6 A Did she not say her hand was covering her face?

7 Q No, she did not. I'll play it again.

8 A I think that's how I took it, that she was covering
9 her face when he hit her.

10 MR. EPPES: Play it again.

11 (WHEREUPON, an unmarked recording was played in open
12 court.)

13 BY MR. EPPES:

14 Q Does it say anything about her hand being around her
15 face?

16 A Her hand up. I think I just took it for granted that
17 she was --

18 Q You just took it for granted.

19 A -- trying to protect her face.

20 Q Okay. So if you said in the prelim that she had told
21 you he hit her in the face with a gun, that wouldn't be
22 accurate; correct?

23 A I think that would be accurate.

24 Q Because of your impression?

25 A That's -- while I was talking to her, that's what we

1 were talking about. So that's how I understood the
2 statement she made to me.

3 Q I understand.

4 A That she was protecting her face.

5 Q Okay. Now, let's go back to Little Ray. In your --
6 in the preliminary hearing, you told the Judge that he
7 had -- that he had seen his father hit his mother. And
8 your testimony today is different than that; isn't that
9 correct?

10 A I don't remember saying that, but I might have, so.
11 (WHEREUPON, an unmarked recording was played in open
12 court.)

13 BY MR. EPPES:

14 Q You said -- you said there he heard and seen.

15 A Okay.

16 Q So that's not accurate?

17 A It's pretty accurate. He said to me at the back of
18 the trailer that he -- he, obviously, saw the injuries to
19 his mother. He heard them fighting. So he not only heard
20 it, but, yet, he saw the injuries to his mother, so.

21 Q He said that he did not see his father hit his
22 mother?

23 A Physically, that's correct.

24 Q He said that?

25 A That's -- that's correct.

1 Q So -- so in your -- the way you're saying it is your
2 testimony was more that he perceived his father hitting
3 his mother?

4 A Well, I think the testimony was that he heard,
5 because that's what he told me, I heard --

6 Q Is hearing not perceiving?

7 A Well, it could be.

8 Q Okay.

9 A Perception -- perceiving is --

10 Q But he did not see it?

11 A Not that I know of.

12 Q Okay. Now, the first night when you met Ms. Workman,
13 your records show that -- or she told -- she told you
14 she'd been in a bar fight. She told you or someone she'd
15 been in a bar fight?

16 A Yeah, like a couple days before, or something of that
17 nature.

18 Q And in your testimony at the preliminary hearing, you
19 told the Judge that one of the things in your records were
20 that a witness had seen her prior to that at work, and
21 that she had covered up bruises on her face with makeup?

22 A I think Sergeant Rivera testified to that.

23 Q He testified as to the bruises around the neck and
24 the bruises and scratches around the neck that were
25 reported.

1 A I -- I thought he was talking about the face when he
2 said scratches.

3 Q Okay. But you testified in your preliminary hearing
4 that there were bruises on her face covered up with
5 makeup?

6 A It's possible.

7 Q It's possible?

8 A I don't remember that hearing.

9 MR. EPPES: Can we play that part?

10 THE WITNESS: I believe you.

11 BY MR. EPPES:

12 Q Okay. So if I tell you, will you --

13 A That's accurate.

14 Q -- you'll accept that.

15 Okay. When you saw her that night, you said you saw
16 her in the ambulance. Was she hospitalized?

17 A No, she was not.

18 Q And she was sent with Mr. Workman's sister?

19 A Tammy Green. That's correct.

20 Q And, now, you talked about DSS being involved. Did
21 you share with DSS your expertise that this was a -- an
22 abuse situation, and that all efforts should be made to
23 allow her to resolve her situation with Mr. Workman and
24 keep her kids?

25 A Me and DSS had multiple conversations. So I'm not

1 sure exactly what we talked about. I do know that I told
2 them that it was an obvious, in my opinion, domestic
3 violence incident. And that the mom was trying to protect
4 her children and that's why she fled the state. She
5 didn't flee the state to get away from DSS. She fled the
6 State to protect herself and her children.

7 Q One final thing. In your discussions with her on
8 that September 7th or so conversation, did you,
9 specifically, ask Ms. Workman if when she said her husband
10 grabbed her around the neck if she had lost consciousness
11 or passed out?

12 A I remember talking to her about choking, you know,
13 her -- her statement that he had choked her at sometime
14 during that period of time.

15 Q And do you remember affirmatively asking her whether
16 or not she passed out?

17 A I'm sorry. I didn't listen to that tape, so I don't
18 remember. I may have. It seems like a reasonable
19 question.

20 Q And if I represent to you that she told you that she
21 did not lose consciousness, would you have any reason to
22 dispute that?

23 A No. I'd say that's correct.

24 Q You think that's correct?

25 A Yes.

1 Q You think she did tell you that?

2 A I think that's correct.

3 MR. EPPES: Okay. Thank you.

4 THE COURT: Anything on redirect, Mr. Poniselli?

5 MR. POLSINELLO: May I have a moment, Your Honor?

6 THE COURT: Yes, sir.

7 (Pause.)

8 MR. POLSINELLO: One follow-up question, Your Honor.

9 THE COURT: Yes, sir.

10 REDIRECT EXAMINATION

11 BY MR. POLSINELLO:

12 Q Investigator -- Sergeant Perry, through your
13 investigation in this case, the evidence you collected,
14 the statements that you've obtained by the victim, is it
15 your understanding that the Defendant used the firearm to
16 assault the victim?

17 A It is my understanding. I just am not sure exactly
18 what he used, which firearm.

19 Q Okay. Whether or not he hit her in the face or if
20 she put up her hand to cover her face, it's your
21 understanding that when he was assaulting her, he was
22 using the weapon?

23 A He had it in his hand. That's correct.

24 MR. POLSINELLO: No further questions.

25 THE COURT: Recross?

RECROSS-EXAMINATION

BY MR. EPPES:

Q Do you have any evidence that he used this firearm in any way, shape, or form?

A No, sir.

Q And this firearm was found under the bed that Ms. Workman was found under [sic]; correct?

A That is correct.

Q And you had to pick up the mattress to get it?

A That's correct.

MR. EPPES: Thank you.

THE COURT: All right. I have no questions.

You can step down.

THE WITNESS: Thank you, sir.

THE COURT: Do you want this witness excused or stay around?

MR. POLSINELLO: One moment, Your Honor.

THE COURT: Okay.

(Pause.)

MR. POLSINELLO: Sergeant Perry is going to remain throughout the course of the trial, Your Honor.

THE COURT: Okay. You can call your next witness.

MR. POLSINELLO: Your Honor, may I approach briefly with Defense Counsel?

THE COURT: Yes.

1 (WHEREUPON, a bench conference was held.)

2 THE COURT: Let's take the jury out.

3 (WHEREUPON, the jury was excused from open court at
4 approximately 2:36 p.m.)

5 THE COURT: All right.

6 MR. POLSINELLO: Your Honor, the State calls Ashley
7 Bethell to the stand.

8 THE COURT: Officer Bethell, would you come forward?

9 THE CLERK: Ma'am, would you, please, place your left
10 hand on the Bible and raise your right hand?

11 WHEREUPON,

12 ASHLEY BETHELL,

13 after first having been duly sworn, testified as follows:

14 THE CLERK: Thank you.

15 Please be seated.

16 THE COURT: All right. So -- so the record will be
17 clear, Counsel, this is to be proffered testimony?

18 MR. POLSINELLO: Yes, Your Honor.

19 THE COURT: All right.

20 THE CLERK: Please state your name for the record.

21 THE WITNESS: Ashley Bethell.

22 THE CLERK: Thank you.

23 DIRECT EXAMINATION

24 BY MR. POLSINELLO:

25 Q Is it Deputy Bethell?

1 A It's Sergeant Bethell.

2 Q I apologize, Sergeant -- Sergeant Bethell.

3 A You can call me deputy. That's fine.

4 Q Are you currently employed?

5 A Yes, sir.

6 Q With whom?

7 A Greenville County Sheriff's Office.

8 Q Were you employed with the sheriff's office around
9 August 29th, 2016?

10 A Yes, I was.

11 Q Did you respond to this incident location, [REDACTED]

12 [REDACTED]?

13 A I did.

14 Q How did you first become involved in this case?

15 A I am a negotiator assigned to the SWAT team. And so
16 we received a callout in regards to a barricade at that
17 location. And that's what I responded in reference to as
18 a negotiator.

19 Q Did you write a report detailing this incident?

20 A I wrote a supplement.

21 Q A supplement. Do you have that supplement with you?

22 A I do.

23 Q Did you encounter the victim in this case when you
24 were out there?

25 A I encountered her briefly once she was removed from

1 the residence that we were at.

2 Q Were her children with her?

3 A Yes, sir.

4 Q Did you make any contact with her children?

5 A When she was removed from the residence by the
6 other -- the tactical team, I was standing by with the
7 actual medic unit outside the side door of the medic unit.
8 The victim was inside of the medic truck sitting there.
9 She was not talking. And the children were inside the
10 back of the truck.

11 Q Okay. The oldest -- the child -- the six-year-old
12 that you referenced in your report?

13 A Yes, sir.

14 Q Did you observe him make any gestures or hear him --
15 overhear him make any statements?

16 A He was in the back of the medic truck speaking with
17 the medics. And he referenced, My daddy did that.

18 Q Did what?

19 A The victim was in the back of the ambulance. And she
20 had swollen eyes. Her eyes were almost swollen shut.

21 Q Okay. And did he point to her?

22 A He was speaking to the medics in reference to his
23 mom.

24 Q So he wasn't -- he didn't state this to you. You
25 observed him stating this?

1 A Correct.

2 MR. POLSINELLO: Okay. No further questions.

3 THE COURT: Cross-examination.

4 CROSS-EXAMINATION

5 BY MR. EPPES:

6 Q Do you know what the medics asked him?

7 A I'm sorry. No, sir, I did not. If they -- if they
8 were speaking to him, I don't know what the exact
9 conversation was.

10 Q So your perception -- how far away were you?

11 A Right outside the side door of the medic truck. The
12 door was open. And the victim was sitting right inside
13 there.

14 Q So your perception was that that's what he was
15 saying. But you really don't know what was in a
16 six-year-olds mind at that point?

17 A No. I cannot say what was in his mind. The medic
18 kind of looked at me when speaking to him. I did not hear
19 the exact question. And he just said, My daddy did that.

20 MR. EPPES: Thank you.

21 MR. POLSINELLO: Your Honor, it's the State's
22 position that this would qualify under 803, hearsay
23 exception, present sense impression, and excited
24 utterance. I think it's reasonable to say that the child
25 was under stress when he gave the statement.

1 You know, we'd like to think that a six-year-old
2 doesn't have to leave his house around 1:00 a.m. and have
3 to deal with law enforcement, and see his mom get attended
4 to by EMS, you know, with lights flashing. We believe
5 that it's an excited utterance, present says -- present
6 sense impression. And the rules have been created to
7 allow this type of testimony.

8 THE COURT: What do you say, Mr. Eppes?

9 MR. EPPES: Your Honor, this is a six-year-old child.
10 He's already said he heard his parents arguing. He did
11 not see his father hit his mother. At that point, he's
12 already talked to law enforcement about it.

13 Last night, my son informed me that Albert Einstein
14 was coming to dinner. So, you know -- he's five. So, you
15 know, it's highly speculative. It is hearsay evidence.
16 It is meant to bolster the testimony that may or may not
17 be coming from my client's son. And I don't think it's
18 appropriate given the age and -- the age of the -- of the
19 person that the testimony is supposedly hearsay from.

20 Further, given the fact that he is available to the
21 extent that a six -- a seven-year-old, I guess now, can
22 testify.

23 And, thirdly, that the whole thing has been testified
24 to by two or three officers.

25 THE COURT: So, Mr. Poniselli, you're relying on this

1 being an excited utterance. Is that what you're telling
2 me?

3 MR. POLSINELLO: Excited utterance and present sense
4 impression, Your Honor. I believe the close proximity --
5 the close proximity and the time frame of when SWAT was
6 out there making the callouts, lights flashing, the -- the
7 callouts over the call speaker, and then proceeding when
8 the victim and the children were being led out of the
9 house, it was all within a very short time frame.

10 The Defendant was not apprehended at this point, you
11 know. We -- we don't know where he was. That heightens
12 the seriousness, you know, of this and can cause --
13 potentially causes stress.

14 In terms of the age of the child, I'm not aware of,
15 you know, anything in the rules that requires an age limit
16 for this exception to be allowed.

17 And, quite frankly, Your Honor, this is the first
18 time we would be hearing this testimony. I don't -- I
19 don't recall testimony prior to this where -- where it was
20 shown that the victim was in the ambulance, the son right
21 by her pointing to his mother and saying, Daddy did that
22 to mommy. This would be the first time that would be
23 elicited. And it's clearly -- that's in the sergeant's
24 report.

25 THE COURT: Anything else, Mr. Eppes?

1 MR. EPPES: Your Honor, it's not going to change much
2 of anything. The officer testified that he believed the
3 son perceived that the father had done it. It's -- it's
4 bolstering that testimony. It's hearsay. They either
5 want to put the boy on or they don't.

6 If they're using the statement, I'm entitled to
7 cross-examine the kid about what he meant by the
8 statement. And if they're going to put him on, you know,
9 that's fine. But I don't think they want to put him on.
10 I think that's one of the reasons I'm dealing with this
11 officer. It's hearsay.

12 THE COURT: Well, there was some testimony from one
13 of the officers maybe earlier where -- and I don't know
14 which officer it was. But one of the officers testified
15 that the child said something, I guess, during
16 Mr. Poniselli's direct examination. And there was no
17 objection launched at that time, you know. Obviously, I
18 don't know why, but there was no objection at that time.

19 MR. EPPES: Well, Judge, could I respond to that?

20 THE COURT: Go ahead.

21 MR. EPPES: It was -- at that time, I knew that that
22 officer was going to testify -- or an officer was going to
23 testify that he perceived them arguing, but he knew he
24 hadn't struck -- but he had never seen his father strike
25 his mother. And that's the most important thing about

1 this whole mess as far as I'm concerned. So I let that
2 go.

3 This is a witness that's up here for no other reason
4 than to bolster an impression of hearsay.

5 THE COURT: All right. Let me just read a couple of
6 things. And this is what I was grappling with.

7 And, Counsel, your -- your reliance upon two things
8 as an exception under 803 present sense impression and
9 excited utterance. And this is what I'm trying to get to.

10 Present sense impression, a statement describing or
11 explaining an event or a condition made while or
12 immediately after the declarant perceived it. That's
13 present sense impression.

14 Excited utterance, a statement relating to a
15 startling -- startling event or condition made while the
16 declarant was under the stress of excitement that it
17 caused.

18 The second part of this I've got a problem -- with
19 that situation based upon the definition of excited
20 utterance, it's the last portion of it. And I -- and you
21 see where I'm at. I've got a problem with a statement
22 relating to a startling event or a condition made while
23 the declarant was under the stress of excitement that it
24 caused. I -- I don't get there. I don't get that in this
25 situation.

1 Can you take me there, or possibly take me there?

2 MR. POLSINELLO: I understand what you're saying,
3 Your Honor. And it's the State's position that a
4 six-year-old -- I would like to think it's not normal to
5 have to be taken out of your home, you know, around 1:00
6 a.m. midnight with heavy police office -- officer presence
7 with lights flashing, with ambulances there. And within a
8 short time of having -- to have that happen to be taken
9 out to talk with officers, to see your mother, you know,
10 covered in bruises. All of that coupled, I would believe
11 a child -- especially a child would be under stress, Your
12 Honor. And any statements that the child may have said at
13 that time would coincide with this rule.

14 THE COURT: Well, I hear you. But unless you're
15 going to bring me somebody in here that says a
16 six-year-old, given these chain of events, could be under
17 stress, I don't get there.

18 Let me ask you this. And we can play this back, if
19 there's some need to. There was a question asked of this
20 particular witness. And I think she indicated that she
21 didn't know what EMS asked the child to elicit that
22 statement. She -- she wasn't familiar with what -- what
23 was asked by EMS to elicit the statement.

24 So based upon that, I still can't get there. Based
25 on that answer, I can't get to where you are. And I don't

1 think there's any way to get to where you are. Based upon
2 my -- my -- this Court's understanding and applying Rule
3 803, an exception to the hearsay rule, based upon your
4 assertion that it's not hearsay because based on the
5 present sense impression or an excited utterance, I'm
6 inclined to reject your argument.

7 MR. POLSINELLO: Yes, Your Honor.

8 THE COURT: And make a finding on the record that
9 the -- based on my interpretation of Rule 803 and your
10 argument regarding it, the exception to 803 being those
11 two things, present sense impression and excited
12 utterance, the Court is inclined to reject your argument
13 and would deem the statement of the child hearsay. All
14 right.

15 MR. POLSINELLO: Yes, Your Honor. We will not be
16 calling Sergeant Bethell as a witness.

17 THE COURT: All right. Thank you, ma'am.

18 THE WITNESS: Thank you.

19 MR. EPPE: Your Honor, Sergeant Bethell may be
20 excused, as far as I'm concerned.

21 THE COURT: Any objection?

22 MR. POLSINELLO: No objection, Your Honor.

23 THE COURT: All right. Thank you, ma'am.

24 THE WITNESS: Thank you.

25 THE COURT: All right. Anything before we bring the

1 jury back?

2 MR. POLSINELLO: Your Honor, like Mr. Eppes, I
3 hydrated well over lunch. May I -- I'll be back in
4 30 minutes.

5 THE COURT: 30 minutes?

6 MR. POLSINELLO: I'm sorry. 30 seconds.

7 THE COURT: Okay. We'll take a short break.

8 (WHEREUPON, a break was taken.)

9 THE COURT: Anything before we bring the jury back?

10 MR. POLSINELLO: Nothing from the State, Your Honor.

11 MR. EPPES: Nothing from the Defense, Your Honor.

12 THE COURT: All right. Bring the jury back.

13 (WHEREUPON, the jury came into open court at
14 approximately 2:59 p.m.)

15 THE COURT: All right. Mr. Poniselli.

16 MR. POLSINELLO: Your Honor, the State calls Loretta
17 Workman to the stand.

18 THE CLERK: Ma'am, if you'll, please, place your left
19 hand on the Bible and raise your right hand.

20 WHEREUPON,

21 LORETTA WORKMAN,

22 after first having been duly sworn, testified as follows:

23 THE CLERK: Please have a seat.

24 And, please, state your name for the record.

25 THE WITNESS: Loretta Workman.

1 THE CLERK: Thank you.

2 DIRECT EXAMINATION

3 BY MR. POLSINELLO:

4 Q Ms. Workman, how do you know the Defendant?

5 A He's my husband.

6 Q How long have you been married to him?

7 A Now, for 13 years.

8 Q Are you currently married to him?

9 A I am.

10 Q Do you have any children in common?

11 A I do.

12 Q How many?

13 A Two.

14 Q Starting with the youngest going to the oldest, what
15 are their names and ages?

16 A Anu, he's four now. And Olandio, he's eight.

17 Q Okay. At the time of this incident, how old was Anu?

18 A Two.

19 Q And how old was Olandio?

20 A Six.

21 Q Okay. And --

22 THE COURT: Could you spell those names for the court
23 reporter?

24 THE WITNESS: O-L-A-N-D-I-O.

25 THE COURT: And the other child's name?

1 THE WITNESS: A-N-U.

2 THE COURT: Thank you, ma'am.

3 BY MR. POLSINELLO:

4 Q Your six-year-old, what do the teachers call him?

5 A "O."

6 Q "O." Is that what he likes to be called today?

7 A Yes.

8 Q Okay. How long did you live with this Defendant at

9 [REDACTED] ?

10 A Probably four or five years.

11 Q You lived together at that trailer?

12 A Yes.

13 Q Before that, did you live with him?

14 A Yes.

15 Q At another addresses.

16 A Yes.

17 Q In Greenville County?

18 A Yes.

19 Q At the time, were you employed?

20 A Yes.

21 Q Okay. When I say, at the time, you know I'm talking
22 about around August 27, 2016?

23 A Yes.

24 Q Where -- who were you employed with?

25 A Saint Francis Hospital, Morrison Group.

1 Q Okay. And what were you doing there?

2 A I was a deli associate. I worked the deli,
3 short-order line cook.

4 Q Okay. And how long were you employed in that line of
5 work there?

6 A Probably -- I was pregnant with Anu when I started
7 working there. So probably about four years, three or
8 four years.

9 Q Okay.

10 A [Inaudible] --

11 THE COURT: All right, ma'am. I'm sitting right next
12 to you and I'm struggling trying to hear you. So --

13 THE WITNESS: Sorry.

14 THE COURT: These jurors, also, need to hear you. So
15 you've got to speak up so everybody -- it's important that
16 everybody hear what you're talking -- what you're saying.

17 THE WITNESS: Yes, sir.

18 THE COURT: All right.

19 BY MR. POLSINELLO:

20 Q Ms. Workman, were you supposed to work that weekend?

21 A On Sunday, I was supposed to work.

22 Q Okay. So would -- that would be the 28th?

23 A Yes.

24 Q Okay. Were you supposed to work Monday --

25 A Yes.

1 Q -- the 29th?

2 Can you tell me starting on the 27th, that Saturday,
3 how your day was going. What was happening in the
4 morning?

5 A The -- the day was great, you know. I was with the
6 kids, you know, and making dinner, cleaning house, and,
7 you know, cooking food, doing what mom's do, you know,
8 taking care of the kids.

9 Q Was the Defendant there?

10 A No. He had went to work that afternoon -- that
11 day -- he was working overtime that day.

12 Q Okay. Was that at Hope Industries?

13 A I believe that was the name of it.

14 Q Just down the road?

15 A Yeah. It was just down the street.

16 Q How did he get to work that day?

17 A Motorcycle.

18 Q Okay. So the motorcycle was working?

19 A Correct.

20 Q Okay. How many cars did you guys have?

21 A Three.

22 Q Three. Were they all there?

23 A Yes.

24 Q Okay. Were they all functioning?

25 A If I remember, the two Toyotas were functioning. But

1 his white -- his blue car I don't believe was functioning
2 at the time.

3 Q Okay. The little blue car that has been referenced,
4 that wasn't working?

5 A Yes.

6 Q Okay. You had a white Toyota?

7 A Correct.

8 Q What time did he come home to [sic] work that day?

9 A Probably about 4:30, 5:00ish, between 4:30 and 5:00
10 because he got off at 4:30.

11 Q And what happened when he came home?

12 A He told me that he was going to go look at a wheel
13 for his motorcycle, a tire for his motorcycle.

14 Q And then what happened?

15 A He left.

16 Q And what time did he come back?

17 A It was probably about four or five hours later.

18 Q Would that be nighttime then?

19 A Yes.

20 Q And then what happened when he came back?

21 A Immediately, as he come through the door, he --
22 Where's your phone? Who have you been talking to? I know
23 you've been cheating on me, you cheating, lying bitch
24 and -- sorry.

25 Q Okay. Whatever is the truth --

1 A And it was just -- I was like, My phone's right here.
2 You can look at whatever you want to look at, you know.
3 Because he constantly -- he did it to me all the time,
4 looked at my phone all the time. So as a regular -- go
5 ahead, look at my phone.

6 And, immediately, he was -- he'd slap me, Oh, you're
7 lying to me. You've been erasing text messages. Your
8 phone says that you were at such and such for five minutes
9 before you went to work. And, you know, he just was
10 slapping me repeatedly. You're a liar. You're a liar.
11 He punched me repeatedly.

12 It was just over and over and over again. Who have
13 you been sleeping with? I know you've been fucking my
14 brother. I know you've been fucking this person. I know
15 you've been doing this. I know you've been doing that.
16 And he was just constantly, constantly smacking me in the
17 face, hitting me on my head, punching me in my arms. I
18 mean, it was just repeatedly, Who have you been talking
19 to? I know you've been cheating on me.

20 Q Were the children present in the home when this
21 happened?

22 A Yes.

23 Q Where were they?

24 A Well, they were running in and out, watching TV,
25 playing. I mean, Olandio used to have a -- a Wii video

1 game. And he was mostly playing on that.

2 Q Okay. Did they know what was going on?

3 A I'm pretty sure they did.

4 Q Okay. And what happened into that night?

5 A It just -- it continued the whole three days with him
6 just saying that I was cheating on him, that he swore that
7 I was meeting his brother up the street before work and
8 having sex with him in the car. And that I had been
9 screwing people at my job in the bathroom. And that I'd
10 been taking off and fucking men in front of my children.
11 And he was just repeatedly hitting and smacking. Every
12 time I even opened my mouth, You're lying. And he'd smack
13 me again, or he'd punch me again, or choke me, and throw
14 me to the floor.

15 Q And this went on into Sunday?

16 A Yes.

17 Q Did he go to work Sunday?

18 A No.

19 Q So what happened Sunday?

20 A The same. I mean, I didn't get any rest. He didn't
21 allow me to sleep, or anything. It was just, Who have you
22 been talking to me? I know you've been cheating on me.
23 Tell me the truth. Lying bitch, tell me the truth, lying
24 bitch. Every time I'd even say, I didn't do it, I haven't
25 cheated on you, he'd hit me again.

1 Q Would he hit you with his fists?

2 A Yes.

3 Q In the face?

4 A Yes.

5 Q Were the fists closed?

6 A Yes.

7 Q And -- and you stated that he threw you on the floor?

8 A Numerous times.

9 Q Did your face land on the floor?

10 A Yes.

11 Q Did you want to leave?

12 A Yes.

13 Q Could you leave?

14 A No.

15 Q So now, we're into Sunday. And what happened all --
16 you know, all day Sunday into the night?

17 A The same -- same things, Who have you been sleeping
18 with? Who have you been talking to? I know you've been
19 cheating on me. The same.

20 And then he would make me cook breakfast for him and
21 the children. He made me cook lunch for him and the
22 children.

23 Q All day Sunday?

24 A All day. He made me cook dinner. I wasn't allowed
25 to eat, so.

1 Q That Sunday night, were the children put to bed?

2 A Yes.

3 Q Did they sleep in a different room than you guys?

4 A No -- well, Olandio would usually sleep on the couch
5 because he didn't like being in his room. And Anu would
6 usually sleep with us, because he was smaller.

7 Q Okay. So when you would go to bed at night with the
8 Defendant, Anu would be there?

9 A Yes.

10 Q He was two at the time?

11 A Yeah.

12 Q And this continued all throughout Sunday night?

13 A Yes.

14 Q And so then what happened come Monday morning?

15 A He -- he had, actually, went to work Monday morning.
16 But before he went to work, he was doing something
17 outside. I didn't know what he was doing around the
18 trailer. And he told me that if I were to try and open
19 the door or any of the windows that the trailer would
20 explode.

21 Q Okay. Let me back up. I forgot to ask. At any of
22 the time period between that Saturday to the Monday, did
23 he hold any of these guns?

24 A Yes.

25 Q Which gun did he hold?

1 A Both of them.

2 Q Okay. Whose guns are those?

3 A Mine.

4 Q You bought those?

5 A Yes.

6 Q Was he with you when you bought those?

7 A Yes.

8 Q Okay. So they're registered under your name?

9 A Yes.

10 Q So you couldn't -- you didn't have access to these
11 guns. He denied you access to these guns?

12 A That's correct.

13 Q What -- why was he holding them?

14 A I guess for intimidation. And he was threatening me
15 with them.

16 Q Were they loaded?

17 A As far as I know, they were. I -- they weren't in my
18 hands, so I can't tell you if they were or not. There
19 was -- the clips were in them, yes.

20 Q Okay. All this ammunition here, who bought this?

21 A I did.

22 Q Did he hit you while holding that gun?

23 A Yes.

24 Q Can you describe how he hit you when he was holding
25 it.

1 A I was sitting on the bed. And he was yelling at me
2 and saying, Who have you been sleeping with? Who have you
3 been sleeping with? And he put his hand up. He had the
4 gun. And he put his hand up like he was going to strike
5 me with it. And I went like this. And when I went like
6 this, he come to the side and hit my hand out of the
7 way -- oops, sorry -- with the butt of the gun, the
8 pistol.

9 Q It sounds like you tried to defend yourself by
10 putting up your arms?

11 A Correct.

12 Q Did he just strike you once or multiple times?

13 A Once in the hand with the gun.

14 Q Okay. Throughout that whole weekend?

15 A Yes.

16 Q Just once. And he was holding it?

17 A Yeah. He was holding it, carrying it around the
18 house, everything.

19 Q In front of the children?

20 A Yes.

21 Q Were you supposed to work on Monday?

22 A Yes.

23 Q The 29th?

24 A Yes.

25 Q Did you go to work?

1 A No.

2 Q Why not?

3 A Because he told me if I opened the door, the trailer
4 would explode. And, plus, he wasn't allowing me to go
5 anywhere. He took the keys to the cars, everything.

6 Q Did you believe him when he made that threat?

7 A Yes.

8 Q Why did you believe that?

9 A Well, he was outside messing around the trailer,
10 which I could hear him. And, you know, I don't know what
11 he's capable of. You see what he did to my face.

12 Q Who's Virginia?

13 A A coworker.

14 Q Okay. So you know Virginia?

15 A Yes.

16 Q You worked with her?

17 A Correct.

18 Q Would you say that she was your friend?

19 A Yeah. I wasn't allowed to have friends. But, yeah,
20 she was my friend.

21 Q Why weren't you allowed to have friends?

22 A Ask him.

23 Q Who's "him"?

24 A Olandio, my husband. I wasn't allowed to have
25 friends. He wouldn't allow me to have friends.

1 Q Okay. So Monday morning, did the Defendant,
2 eventually, go to work?

3 A Yes.

4 Q Did he use his motorcycle to go?

5 A Yes.

6 Q And you didn't go to work?

7 A No.

8 Q Because you believed the outside was --

9 A Booby trapped.

10 Q -- booby trapped?

11 So what did you do all day Monday?

12 A Taking care of my kids.

13 Q Okay.

14 A I mean, I was just trying to clean up, you know,
15 trying to get myself healed up, you know, and --

16 Q Did you ever call your mom during this --

17 A I didn't have a phone.

18 Q Why didn't you have a phone?

19 A He broke it.

20 THE COURT: Keep your voice up.

21 THE WITNESS: He broke it.

22 BY MR. POLSINELLO:

23 Q Okay. When did he break it?

24 A I think it was Sunday that he broke it.

25 Q Okay. If you could have called your mom, would you

1 have?

2 A Yes, if I had her phone number.

3 Q Okay. Was there a land line in the trailer?

4 A No.

5 Q So just cell phones?

6 A Yes.

7 Q You only had one cell phone?

8 A Yes.

9 Q Did he have his own cell phone?

10 A Yes.

11 Q I'm showing you State's Exhibit No. 2. You can take
12 a closer look, if that helps. Do you see that number
13 right there?

14 A Yes.

15 Q This number ending in 9522?

16 A Correct.

17 Q 864-478-9522?

18 A Yes.

19 Q Are you familiar with that phone number?

20 A Yes.

21 Q How are you familiar with that phone number?

22 A It was his phone number.

23 Q That was his phone?

24 A Correct.

25 Q So you've seen that number before?

1 A Yes.

2 Q Around this time -- when was the last time that you
3 saw your mother?

4 A The last time I saw my mom, Olandio was probably six
5 months old.

6 Q "O" was six months old?

7 A Correct.

8 Q So you didn't see her for years?

9 A Years.

10 Q Okay. Why not?

11 A I wasn't allowed to.

12 Q Why weren't you allowed to?

13 A He wouldn't let me. Any time I would want to talk to
14 my mom, or my sister, or any of my family, he'd get mad.
15 And he just made it to the point where I wasn't allowed to
16 talk to them. And if I would talk to them, he'd hit me or
17 he'd hurt me. Or if he found out that I would talk to my
18 sister, or if he found out my sister showed up at my job,
19 he'd hurt me.

20 Q On Monday morning, the 29th, when he went to work,
21 who -- where were the keys for the Toyota?

22 A He took all the keys with him.

23 Q What time did he come back on that Monday?

24 A Between 4:30 and 5:00. Because he got off at 4:30.
25 So it took, literally, two seconds -- well, more than two

1 seconds, like, maybe a minute on the motorcycle to get
2 from his job to our house.

3 Q Before he came back on that Monday, did you look at
4 yourself in the mirror?

5 A Yes.

6 Q What did you think?

7 A I couldn't believe that he could, actually, do that
8 to me. I mean, I was really hoping the night it
9 happened -- you know, the lasting effects that were going
10 to effect me for the rest of my life from it.

11 Q Did you try to cover yourself up?

12 A I did put some -- no, I didn't put any makeup on that
13 morning. I didn't do anything. I washed my face because
14 I was -- you know. But other than that, no.

15 Q Okay. When the Defendant came home that afternoon
16 after work, what happened when he entered the home?

17 A The same thing. Everything was still continuing. I
18 know you've been sleeping with somebody. Why don't you
19 tell me the truth? Just tell me the truth and this will
20 all be over. And I was like, I am telling you the truth.
21 I've never slept with anybody in our entire relationship.

22 Q Did he assault you when he came home?

23 A Yes.

24 Q How?

25 A Hitting, punching, kicking, slapping, pulling my

1 hair.

2 Q On that Monday, do you recall hearing a knock on the
3 door from the sheriff's office?

4 A No. Because I was in the shower.

5 Q Okay.

6 A He told me to go take a shower because I was
7 disgusting.

8 Q He ordered you to do that?

9 A Yes.

10 Q Okay. So when you came out of the shower, what's the
11 first thing that you heard or saw?

12 A He said -- he said, The police are here.

13 Q The Defendant said that to you?

14 A Yes. And he told me to go put on some makeup so I
15 could try and cover up the bruises on my face.

16 Q Did you do that?

17 A I did. But, obviously, it didn't work. You could
18 still see the bruises on my face. And then he told me to
19 lay down in the bedroom with the kids and not make a
20 sound.

21 Q Okay. This is the bedroom in the front?

22 A Yes.

23 Q So he ordered you to go in there with the kids?

24 A Yes.

25 Q Where were the guns at the time?

1 A He had them in the living room, as far as I know.

2 Q Okay. And what happened? What's your first
3 recollection after that?

4 A Well, he shut the door. And I could hear him. He
5 came in the room one or two times after that. But then
6 after that, I didn't hear or see him any more. All I
7 heard was, Mr. Workman, please, come to the door.
8 Loretta Workman, please, come to the door. We're just
9 here to check on you. Come to the window, or something.
10 Let us know you're in there. It was just over and over
11 repeatedly.

12 Q Were you sleeping during all this?

13 A No.

14 Q Was it very loud?

15 A It was.

16 Q Why didn't you come out of the room?

17 A Because I thought he was in there. And I didn't want
18 him to hurt me, or do something to me or the kids.

19 Q And you knew the police were there?

20 A Yes.

21 Q Did you want the police there?

22 A Yes. I wanted -- I wanted to be rescued.

23 Q Ma'am, if you can't see that map, feel free to come
24 down. I just want you to point for the jury -- can you
25 point -- here, ma'am.

1 A Oh.

2 Q Can you point where the trailer was?

3 A (Witness indicated.)

4 Q Right there. Do you know where the Defendant went?

5 A Well, if my bedroom is here and the living room is
6 here --

7 THE COURT: Excuse me. Just hold on a second.

8 For the purposes of the court reporter, ma'am --

9 THE WITNESS: Oh, sorry.

10 THE COURT: -- you've got to talk -- I hate to tell
11 you this. But you might want to go on the other side
12 and -- so, at least, your voice will be projected towards
13 the court reporter and she can hear you. But you've got
14 to speak a little louder than you would if you're sitting
15 there.

16 THE WITNESS: Yes, sir.

17 THE COURT: Thank you, ma'am.

18 THE WITNESS: The -- the bathroom is, actually, in
19 the front with the bedroom. And then there's the living
20 room, and the kitchen, which goes back into the hallway
21 where there's another bathroom. And then there's a
22 bedroom in the back.

23 BY MR. POLSINELLO:

24 Q Okay. Is there a doorway out leading to the back?

25 A The backyard.

1 Q Is there an exit at the end of your trailer? Is
2 there a door?

3 A There is, right here on this side.

4 Q Okay. And is there a window in the back of the
5 trailer in that bathroom?

6 A There's a back bedroom back here. And, yes, there
7 are multiple windows.

8 Q Multiple windows?

9 A Yes.

10 Q Okay. Thank you.

11 Why did you tell Investigator Perry that your
12 injuries came from a bar fight?

13 A Olandio told me to tell him that.

14 Q Did they come from a bar fight?

15 A No.

16 Q Were you in a bar any at all during those three days?

17 A No.

18 Q You were with your children in your home?

19 A Yes.

20 Q Is there any other reason why you told him that?

21 A To protect myself.

22 Q How would that protect yourself?

23 A Because I didn't know what was going to happen after
24 they left. I didn't know if I was going to be stuck
25 there. I didn't know if I was going to be able to go

1 anywhere. I didn't know. I didn't know if they were
2 going to catch him. I didn't know.

3 So for -- to save face on myself and, you know, if he
4 did catch me or if he did come back to me, oh, what'd you
5 tell them? You told them this. I was thinking it was
6 going to make it worse on myself.

7 Q Okay. So you knew when you told Perry that you got
8 in a bar fight that that wasn't the truth?

9 A Correct.

10 Q Did you -- at the time when you were in the ambulance
11 and the lights were flashing, did you know if the
12 Defendant was apprehended or not?

13 A No.

14 Q Did that affect your demeanor on that night?

15 A Yes.

16 Q Or early morning?

17 A Yes. I was scared.

18 Q I'm showing you State's Exhibit No. 8. Do you see
19 that, your hair right there?

20 A Yes.

21 Q What happened?

22 A He cut it off with a knife.

23 Q When did he do that?

24 A I believe it was Sunday.

25 Q What knife did he get?

1 A He just got a kitchen knife out of the kitchen.

2 Q Okay. Why did he cut your hair?

3 A He told me he was going to make me ugly. He was
4 cutting my hair off so I would be ugly, nasty, and nobody
5 would love me.

6 Q Okay. This right here, that's where he cut it?

7 A Yes.

8 Q Where the kind of clean line is?

9 A Yes.

10 Q What happened to that chunk of hair?

11 A I don't remember what he did with it.

12 Q Okay. You didn't do anything with it?

13 A No.

14 Q Who is Tammy Green?

15 A My sister-in-law.

16 Q Okay. So that's the Defendant's sister?

17 A Yes.

18 Q Did she come to the incident location on the 29th?

19 A Yes.

20 Q Or it might have been early on the 30th?

21 A Correct.

22 Q Why did she come to the scene?

23 A I think everybody, actually, saw it on the news and
24 showed up.

25 Q Did you call her?

1 A I didn't have a phone.

2 Q Okay. So she -- somehow, she got there?

3 A Yes.

4 Q At that time, did you have a good relationship with

5 her?

6 A Yes.

7 Q Did you go home with her that night?

8 A I did..

9 Q Why did you go home with her?

10 A She has a gated community.

11 Q Okay. You felt safe with her?

12 A Correct.

13 Q Even though it's the Defendant's sister?

14 A Yes.

15 Q You -- were your children with you?

16 A Yes.

17 Q Okay. And then the next morning, you fled the state

18 with your children?

19 A I did.

20 Q Why did you do that?

21 A Because Tammy had got a call from Angie, which is the

22 Defendant's cousin, saying he was here looking for her.

23 And I took my kids and put them in the car and left.

24 Because I didn't want him to come there next and look for

25 me there.

1 Q That was your first instinct as a mother?

2 A Yes.

3 Q Did you ever -- other than being back here for this
4 trial, did you ever come back?

5 A No. I didn't even go and get any clothes out of the
6 trailer before I left. I never went back to the trailer
7 that night.

8 Q So a few days passed. And did you, eventually, speak
9 with Investigator -- at the time Investigator Perry?

10 A Yes.

11 Q How did you come in contact with him?

12 A I believe my sister, actually, contacted him first.
13 Because my mom or somebody had gave the number to my
14 sister. And she contacted him at first.

15 Q Okay. So there were other family members kind of
16 behind the scenes that put you in contact with
17 Investigator Perry?

18 A Yes.

19 Q When you spoke to Investigator Perry, did you
20 apologize to him?

21 A I did.

22 Q Why did you apologize?

23 A Because I lied in the beginning. And knowing now --
24 I mean, I know I shouldn't have. But I was trying to -- I
25 was thinking I was trying to protect myself.

1 Q Okay. Everything that you told Investigator Perry
2 and the Court today, is it true?

3 A Correct.

4 Q Were you -- did you ever speak to anyone from DSS
5 from this state?

6 A Yes.

7 Q Okay. Did you explain to them the reasoning and the
8 decision making that you made?

9 A Yes.

10 Q Why you fled?

11 A Yes.

12 Q You don't live in this state anymore, do you?

13 A No.

14 Q Did your children come here with you this week?

15 A Yes.

16 Q You brought them here yourself?

17 A Yes.

18 Q Why did you come here this week?

19 A So I could come to this trial so I can -- he can pay
20 for what he did to me. So I can tell my boys that it's
21 not okay to hit a woman, and you cannot get away with it.
22 It doesn't matter if it's your mom, your dad, your sister,
23 your brother. People have to abide by the law and pay for
24 what they did.

25 Q Since this incident, have you seen your mother?

1 A Since the incident, have I seen my mom?

2 Q Yeah.

3 A Oh, yes.

4 Q This is her right here?

5 A Yes.

6 MR. POLSINELLO: Thank you.

7 No further questions at this time, Your Honor.

8 THE COURT: All right. Let's take about a 10-minute
9 break. And then we'll go forward with cross-examination.

10 Ladies and gentlemen of the jury, do not talk about
11 the case with each other. I'll be back with you in a few
12 minutes.

13 Okay. Take the jury out.

14 (WHEREUPON, the jury was excused from open court at
15 approximately 3:30 p.m.)

16 THE COURT: All right. Ma'am, you can exit the
17 witness stand. But during the break, do not talk to
18 Mr. Ponisello about your testimony.

19 THE WITNESS: Yes, sir.

20 MR. EPPES: Your Honor, I'd ask that she just not
21 talk to anybody about her testimony.

22 THE COURT: Don't talk to anybody.

23 Thank you, Mr. Eppes.

24 All right. We'll be down for about 10 minutes.

25 (WHEREUPON, a break was taken.)

1 THE COURT: Come on back up, ma'am.

2 Ma'am, you did not discuss this case with anyone, did
3 you?

4 THE WITNESS: No.

5 THE COURT: All right. Anything else before we bring
6 the jury back?

7 MR. POLSINELLO: Nothing from the State, Your Honor.

8 MR. EPPES: Nothing from the Defense, Your Honor.

9 THE COURT: All right. Bring the jury back.

10 (WHEREUPON, the jury came into open court at
11 approximately 3:42 p.m.)

12 THE COURT: All right. Cross-examination, Mr. Eppes.

13 CROSS-EXAMINATION

14 BY MR. EPPES:

15 Q You've sat through the trial, haven't you?

16 A Yes.

17 Q And you heard the officer say that their records
18 indicate that you -- you left a message with work that
19 Saturday, the 27th. Do you recall doing that?

20 A Yes.

21 Q And did you tell them you weren't coming in that day?

22 A Yes.

23 Q Wasn't it you and your husband's practice on days
24 when he had work and he could make more money than you
25 that you would call in sick and take care of the kids?

1 A No.

2 Q Why didn't you -- why did you not go in that day?

3 A He told me to call and tell them that I wasn't
4 showing up.

5 Q So you called and told them you weren't showing up
6 that day. And then you had a great day with your kids?

7 A Saturday -- I didn't work Saturday.

8 Q Did you call Saturday? That's what I was asking --

9 A Saturday evening I called for Sunday.

10 Q Oh, okay.

11 A He told me to call and tell them that I wasn't coming
12 to work.

13 Q So you're saying you called Saturday evening, not
14 Saturday morning?

15 A Correct.

16 Q Did you go to work Saturday morning?

17 A I was off Saturday.

18 Q All right. And when you left the house, you told
19 Officer Perry that you had been in a bar fight?

20 A Correct.

21 Q Had you been out the night before?

22 A No.

23 Q And at that time, you went over to your
24 sister-in-law's house; correct?

25 A Correct.

1 Q And then you testified that you left town soon
2 thereafter. Did you leave on the 30th, the 31st, or the
3 1st, or 2nd? Do you remember?

4 A It was directly the day after they got me out of the
5 house.

6 Q So daylight came that day and you're saying you left
7 that day?

8 A Correct.

9 Q And then it's fair to say that when you called
10 Officer Perry, you were in a safe location?

11 A Correct.

12 Q And you told him at that time that you were in the
13 shower when -- when they came to the door the first time;
14 correct?

15 A Yes.

16 Q And I'll represent to you and you can tell me if this
17 is accurate or not. At that time, you didn't tell him
18 anything about being instructed to take a shower and you
19 didn't tell him anything else about the shower, other than
20 you were in the shower when they first came to the door?

21 A Correct.

22 Q And you, also, said that y'all had been living
23 together for 12 years and married for 11. And that for
24 the vast majority of that time, you had had a good
25 relationship?

1 A Correct.

2 Q And I'm going to go backwards now. The night of this
3 incident, the night DSS showed up, do you remember that?

4 A I never spoke with DSS personally.

5 Q You went immediately -- you went immediately to your
6 sister-in-law's house?

7 A Correct.

8 Q And the next morning, you left before you spoke to
9 DSS?

10 A Correct.

11 Q And when you talked to Officer Perry on the -- I
12 believe it was the 7th of September. When you spoke to
13 him on that day, there was, actually, a DSS worker on the
14 line; correct?

15 A Correct.

16 Q And she said that she was going to check on the
17 children out there in wherever you are?

18 A Correct.

19 Q And did DSS come check on the children?

20 A I believe I took them down to the office. Because I
21 was going to file for assistance anyways.

22 Q Okay. Now, you, also, told Officer Perry that during
23 all this yelling and screaming that you say happened,
24 Mr. Workman said that he was going to kick you out of the
25 house?

1 A Yes.

2 Q Okay. And that you were going to lose your job, and
3 car, and everything?

4 A Correct.

5 Q And you said that he cut your hair. But you, also,
6 said that he didn't threaten you with a knife; is that
7 correct?

8 A Correct.

9 Q So he never threatened you with a knife?

10 A No. He didn't threaten me.

11 Q Okay. He never threatened you?

12 A Not with the knife.

13 Q Okay. And you've testified that -- if my
14 interpretation of your statement there was correct that he
15 hit you with your hand -- or he hit you in the hand or the
16 fingers with the gun, not in the face?

17 A Correct.

18 Q And I believe you said your husband slept on the
19 couch and you slept with Anu?

20 A No. Olandio, my son, slept on the couch.

21 Q Oh, I got that mixed up. I'm sorry. Did anybody
22 sleep in the other bedroom?

23 A The last bedroom was the childrens bedroom, but they
24 never slept back there.

25 Q Okay. Do you know when he left the house whether

1 Mr. Workman left through the door or the window?

2 A I don't know.

3 Q And on the night that you spoke to Investigator
4 Perry, you said that you weren't sure if the gun was
5 loaded or not, this pistol that you saw?

6 A Correct.

7 Q And when you talk about a pistol, are you talking
8 about this one that was found in the nightstand by your
9 bed?

10 A Yes.

11 Q And when you talked about this long gun, you're
12 talking about the long gun that was found under your bed?

13 A Yes.

14 Q And you have a concealed weapons permit?

15 A I do.

16 Q And he went to work on Monday?

17 A Yes.

18 Q And he -- did he -- he left the house on Sunday, too,
19 some, didn't he?

20 A No.

21 Q And you, also, told the investigator that although he
22 may have put his -- he put his hands around your neck, you
23 didn't lose consciousness?

24 A That time he choked me, I didn't lose consciousness.

25 Q During that weekend?

1 A I didn't -- well, not from choking I didn't lose
2 consciousness, no.

3 MR. EPPES: Thank you.

4 Hang on, Your Honor.

5 (Pause.)

6 BY MR. EPPES:

7 Q Do you know why the police would have written down
8 that your coworker said you were supposed to work on
9 Saturday, if you're saying now you don't -- you don't --
10 weren't supposed to work on Saturdays?

11 A I didn't work Fridays and Saturday.

12 Q Do you know an individual named "Q"?

13 A No, not that -- I don't remember a "Q."

14 MR. EPPES: Thank you.

15 That's all the questions I have, Your Honor.

16 THE COURT: Redirect?

17 MR. POLSINELLO: Briefly, Your Honor.

18 THE COURT: All right.

19 REDIRECT EXAMINATION

20 BY MR. POLSINELLO:

21 Q Ms. Workman, do you see that AK-style assault rifle
22 in there --

23 A Yes.

24 Q -- in that photo?

25 That's the same rifle; right?

1 A Yes.

2 Q And it was your testimony that throughout the course
3 of this weekend that the Defendant possessed that, he held
4 it, and used it in a threatening manner against you?

5 A Correct.

6 Q How did this rifle get under the bed?

7 A I'm -- I'm not sure. I'm assuming when he came back
8 in the bedroom after the police were there and told me to
9 lay down on the bed -- I wasn't paying attention to what
10 he was doing when he came back in and out, maybe two or
11 three times he did that. So I'm assuming he may have put
12 it under there one of those times when he came in the
13 room.

14 Q Did you put that rifle under the bed?

15 A No.

16 Q Did you even have an opportunity to?

17 A No.

18 Q Is that because he possessed it?

19 A Correct.

20 Q Is that where that rifle's normally kept?

21 A It is.

22 Q Okay. That bed, does that -- was -- that wooden
23 fixture, the base, was that like sturdy and secure?

24 A I mean, it's just a regular bed frame, wood bed
25 frame.

1 Q Okay. Was it easy to lift up?

2 A Yes.

3 MR. POLSINELLO: Okay. No further questions.

4 THE COURT: Anything on recross?

5 RECROSS-EXAMINATION

6 BY MR. EPPES:

7 Q In your discussions on the 6th of September with
8 Officer Perry, you never mentioned the long gun, did you?

9 A I -- I don't recall.

10 Q If I represented to you that you never mentioned it,
11 would that refresh your recollection, or would you have
12 any reason to dispute that I tell you that you never
13 mentioned it in that phone call?

14 A I don't know.

15 MR. EPPES: Thank you.

16 That's all, Your Honor.

17 THE COURT: And I have no questions, ma'am.

18 You can step down.

19 Any -- any other witnesses, Mr. Polsinello?

20 MR. POLSINELLO: Your Honor, the State has one last
21 witness. But we may need to take this issue up outside
22 the presence of the jury.

23 THE COURT: All right. Take the jury out.

24 (WHEREUPON, the jury was excused from open court at
25 approximately 3:55 p.m.)

1 MR. POLSINELLO: Your Honor, the State's last witness
2 would be Neal Sondov. He's the senior psychotherapist,
3 the expert. He's currently in a meeting. He's -- he gets
4 paid for, you know, what he does. He said he can be here
5 tomorrow morning 9:30.

6 And I'm, also, thinking that one juror, you know, who
7 was concerned about picking up her son, I would have no
8 objection to stopping right now and continuing in the
9 morning with the State's last witness.

10 THE COURT: Well, that -- that juror -- I've been
11 advised by the bailiffs that that juror made arrangements
12 for her husband to pick the child up. And that's why I
13 didn't bring it back up.

14 MR. POLSINELLO: Okay.

15 THE COURT: But let me just ask you this. Are we
16 going to revisit the mother of the -- we're not going to
17 revisit that?

18 MR. POLSINELLO: I don't foresee that right now the
19 way the trial has developed and with our last witness,
20 Mr. Sondov. I don't plan on having to call Ms. Bergin.

21 THE COURT: And the reason I'm asking that, Counsel,
22 is because the way it was couched -- just to protect the
23 record. I was -- I indicated on the record that I was
24 going to withhold my ruling as to that witness after I
25 heard from this gentleman that you said can't be here

1 until tomorrow, Neal whatever his name is.

2 MR. POLSINELLO: Yes, sir. Sondov.

3 THE COURT: All right. So -- but what I'm hearing
4 from the State is that that witness will not be called --
5 not Mr. Sondov, but the mother. And that there would be
6 no need for the Court to rule on that issue as to whether
7 or not --

8 MR. POLSINELLO: If -- if Mr. Sondov testifies, I
9 don't foresee a need to have to call Ms. Bergin.

10 THE COURT: All right. Well, just -- just to be
11 clear. I'm going to go ahead and rule on that just --
12 just to -- I'm not going to allow the testimony.

13 MR. POLSINELLO: Ms. Bergin's?

14 THE COURT: Yes. You know, because I indicated that
15 I wanted -- I was going to rule on that. And I heard the
16 proffer. And I think after that, I indicated I was going
17 to rule whether or not I would allow her testimony.

18 And after due consideration, I'm not going to allow
19 it. And the basis -- and I'm going to put on the record
20 the reason I'm not going to allow it is because I don't --
21 I think Counsel made a relevancy objection at the time
22 that the proffer was made. And after I thought about
23 it -- and I do not see the relevancy of her testimony
24 regarding the distance in the relationship between she and
25 her daughter as it relates to this incident. And because

1 of that, I was not going to allow the testimony. But I
2 wanted to put that on the record because of the way this
3 trial has proceeded. I wanted to make sure that all I's
4 and all T's were dotted and crossed.

5 So if you're telling me that you're not going to call
6 her, that's fine. But I wanted to make -- I wanted to
7 rule on that since I left that open.

8 So if you have a witness that's not going to be
9 available until in the morning, unless Mr. Eppes has an
10 objection, I don't have a problem --

11 MR. EPPES: Judge, this guy, he's another -- you
12 know, the -- Ms. Munson's not here because -- I don't want
13 to include her in that. The whole -- the whole domestic
14 violence -- and whatever you want to call it -- movement,
15 all this buttressing stuff -- this is a psychiatrist
16 that's going to say, you know, that sometimes women that
17 are abused lie when they're in the presence of their
18 abuser and, thereafter, they tell the truth. I mean, the
19 officer's testified to that.

20 I don't think an expert does anything but try to
21 buttress that. That's what he's bringing the guy in for,
22 to say that people that are abused do that. Frankly, you
23 can take judicial notice of that. He's just trying to
24 buttress his case with, you know, the imprimatur of an
25 expert. I think it's cumulative, not necessary. And I'm

1 going to oppose it in the morning when the expert gets
2 here. But I -- if the expert can't come today, I'd just
3 as soon be done with it.

4 MR. POLSINELLO: Your Honor, if we're doing -- if
5 we're doing sort of a hearing on whether or not the expert
6 will be allowed to be called, I'll be glad to elaborate.
7 I have a memo prepared.

8 THE COURT: All right. This -- this witness -- this
9 witness, he was on your witness list?

10 MR. POLSINELLO: Yes. He's on the witness list, Your
11 Honor.

12 THE COURT: All right.

13 MR. POLSINELLO: Your Honor, there's a few cases that
14 have recognized an expert being allowed to testify in
15 domestic violence cases. I'm -- I'm citing the first
16 case, U.S. v. Falst [phonetic]. That's out of our -- our
17 federal circuit, the Fourth Circuit. It's a 2016 case.

18 Your Honor, it's very similar to this case. The
19 Defendant was charged with domestic violence, kidnapping,
20 and possession of a firearm. Your Honor, our Fourth
21 Federal Circuit acknowledged and allowed this expert to
22 testify. The --

23 MR. EPPES: Your Honor, does he have a copy of that
24 case? I mean, I see this brief here.

25 THE COURT: Let me just ask you this, Mr. Ponisello.

1 In that case -- that case talks about -- and I think in
2 that case, the -- the Court allowed the expert to testify.
3 But that was totally dependent upon the -- the extent of
4 the of -- the extent of the defense counsel's
5 cross-examination of the victim. I think that's what that
6 case said.

7 And -- and, you know -- and I think that in that
8 case, the Court allowed the expert to -- to testify
9 because in the -- in the cross-examination by defense
10 counsel in that case, there was some question as to
11 whether or not the victim in that case had an opportunity
12 to leave. So the defense counsel in that case opened the
13 door to that. And based upon that, that's why the Court
14 allowed that expert to testify.

15 But from what I heard Mr. Eppes' cross-examination of
16 the victim, I -- I don't know how that -- how his limited
17 cross-examination -- when I say limited, I'm not using it
18 in a loose sense, but how that opened the door to -- to
19 having an expert. Because the expert is supposed to
20 buttress, you know, some sort of rebuttal for lack of a
21 better word any -- any testimony that the victim had. But
22 that's how I read that case.

23 Now, you might see it differently. I'm familiar with
24 the case because I've seen it several times. And I've
25 read it on numerous occasions. But that's the way I see

1 the case.

2 MR. EPPES: Your Honor.

3 THE COURT: Yes, sir.

4 MR. EPPES: If I may. That case is from the western
5 district of Virginia. It has nothing to do with the
6 application of South Carolina law. I mean, it's Fourth
7 Circuit, but --

8 MR. POLSINELLO: And we're in the fourth federal
9 circuit.

10 MR. EPPES: Which has nothing to do with the State of
11 South Carolina. And if you want me to subpoena Judge Few
12 to talk about that, I'll be happy to.

13 MR. POLSINELLO: The State would argue that it is
14 relevant and applicable case law that Your Honor could
15 consider. I understand Your Honor's interpretation.
16 Likewise, Your Honor, you'll see that there's been other
17 courts, U.S. v. Johnson in the eighth circuit, Moore v.
18 State in the Court of Appeals in Georgia, State v. Johnson
19 in the Court of Appeals in North Carolina who have all
20 acknowledged --

21 THE COURT: Any state cases?

22 MR. POLSINELLO: -- these type of experts in these
23 cases to explain the reasons why the victims don't leave.

24 Clearly, Your Honor, she didn't leave. She felt she
25 couldn't leave. Domestic violence, it's the State's

1 position acquires specialized knowledge to explain why
2 victims may make the decisions they make. Specifically,
3 this is the exact type of case.

4 I don't think -- it's easy, I would think, for a jury
5 to judge a victim, why didn't she leave? I would like to
6 think most of us don't have to experience being a victim
7 of domestic violence. And there is a control, a fear that
8 they experience. And all of these courts have
9 acknowledged allowing an expert to testify to that.

10 MR. EPPES: Your Honor --

11 MR. POLSINELLO: We're just asking that this Court
12 acknowledge that -- the current valid case law and --

13 MR. EPPES: Your Honor, if I may.

14 THE COURT: Yes.

15 MR. EPPES: I'm look looking at State v. McKerley,
16 which the -- we're just looking at it on Westlaw. And
17 it's got a yellow flag --

18 THE COURT: Spell that. Spell the last name.

19 MR. EPPES: M-C-K-E-R-L-E-Y decided March 28th, 2012,
20 by the Court of Appeals 397 S.C. 461, 725 S.E. 2d 139.
21 The assessment of witness credibility is within the
22 exclusive province of the jury. Witnesses are, generally,
23 not allowed to testify whether another witness is telling
24 the truth.

25 He's putting that expert on to say victims of

1 crime -- or alleged victims of a crime often do this,
2 often delay their testimony, don't tell the truth the
3 first time, tell the truth later. That is bolstering that
4 testimony. It is nothing more.

5 In this -- in this case, the expert -- in this case,
6 the expert never said she "believed" the victim, what the
7 victim stated in her interviews. However, there was no
8 other way to interpret the testimony than as her opinion
9 that the victim was telling the truth. We agree. This is
10 the premise of the Supreme Court decision in Jennings, 394
11 S.C. 480 in which Justice Pleicones stated, There's no
12 other way to interpret the language used in reports other
13 than to mean the forensic interviewer believed the
14 children were being truthful.

15 That's a different case. And it involves a sex
16 crimes case. But it's the same theory. He's trying to
17 get this witness -- this expert who hasn't heard the
18 testimony of this witness and, as far as I know, has not
19 examined her. I've, certainly, not been provided with an
20 exam to say it is common for witnesses in these situations
21 to tell the truth.

22 Well, I gave Investigator Perry a little bit of
23 latitude to say that. He, certainly, doesn't need an
24 expert to say it. He's got evidence of it in the record
25 already.

1 THE COURT: But, Counsel, wouldn't you think it would
2 be better -- you know, if you're going to use an expert in
3 that regard, you know, all the years that I practiced, if
4 I was going to use an expert in that regard, I would make
5 very certain that that expert had some dialogue with
6 this -- with the victim in this case.

7 I mean, you're bringing somebody that in all
8 likelihood if she -- if the witness -- if this expert has
9 seen this victim probably once or twice, or maybe never
10 seen her. But based on what Mr. Eppes said, he probably
11 hasn't talked to her.

12 MR. POLSINELLO: That's exactly right, Your Honor.
13 It's very similar to these child sex crime cases where --

14 THE COURT: Well, before you -- before you travel
15 that street, I want you to tell me -- I guess I want to
16 stay on the same -- same path. The McKerley case, what
17 Mr. Eppes talked about in terms of what -- his argument
18 about bringing this expert in -- because this --
19 essentially, if all you're going to put -- put the expert
20 up to say that she may not be telling -- this is -- well,
21 tell me why -- why you're putting the expert up.

22 MR. POLSINELLO: Your Honor, the victim didn't leave.
23 And the Defendant went to work. So, in theory, I would
24 think it would be reasonable for --

25 THE COURT: But you're going to put the expert up to

1 say she's lying.

2 MR. POLSINELLO: No, Your Honor. The expert is to
3 explain why victims don't leave. There's a psychology
4 behind that, the trauma that they've experienced. It's
5 very similar, Your Honor, to -- in these CSC cases, the
6 forensics expert does not know the facts of the case, does
7 not talk to the victim. They testify as to the reason why
8 child victims may delay in reporting, or why they, you
9 know, don't leave, or why they're afraid to disclose.

10 The State is asking the Court to acknowledge that.
11 And the case law that's been provided, courts have
12 acknowledged that. And they are allowing these experts
13 in. I wouldn't want our expert to meet with the victim.
14 Because there could be some potential bias. And that's
15 not why it's not done with the forensic experts in child
16 sex cases.

17 MR. EPPES: Your Honor, did the victim not say she
18 didn't leave because she was told there was a bomb? She
19 didn't say if she was free to leave and didn't leave
20 because she was scared. She said because she was told
21 there was a bomb --

22 MR. POLSINELLO: And that's ludicrous, Your Honor.
23 Clearly, there was no bomb --

24 MR. EPPES: Include anything that expert --

25 MR. POLSINELLO: And so a reasonable person, I think,

1 would understand why she felt like that. Because domestic
2 violence is such a specialized -- it's such a sensitive
3 crime in nature. And victims make choices, you know, that
4 whereas us -- you know, citizens may -- may be -- may
5 judge them for that.

6 The State's just asking this Court to acknowledge
7 that experts have been used in similar cases in other
8 circuits, and to be allowed -- allow the expert to
9 testify.

10 THE COURT: What time is your expert to be available
11 tomorrow?

12 MR. POLSINELLO: Your Honor, he said he could be here
13 at 9:30.

14 THE COURT: All right. You hold off calling him.
15 Because I -- at 9:30, I'm going to tell you -- I'll --
16 I'll give you my ruling. So you tell him that he may --
17 he may come and he may not come. So just wait until 9:30
18 and I'll let you know.

19 MR. POLSINELLO: Yes, sir.

20 MR. EPPES: Well, you're going to make sure he's
21 here, though.

22 THE COURT: Yeah. I mean, he's here. I'm not -- I'm
23 not -- I want him here in the building. That's what I'm
24 saying.

25 MR. POLSINELLO: You want the expert here at 9:30?

1 THE COURT: Yeah. Because I'm not sure --

2 MR. POLSINELLO: Yes, sir.

3 THE COURT: -- that -- whether I'm going to grant
4 your request or not.

5 MR. POLSINELLO: Understood, Your Honor.

6 THE COURT: I'm going to sleep on it. And I'll let
7 you know in the morning.

8 All right. Other than that, anything else?

9 MR. EPPES: Not at this time, Your Honor.

10 THE COURT: Okay. So we'll --

11 MR. EPPES: Your Honor, I -- I hate to ask. But I'm
12 superstitious. You're going to bring the jury back,
13 aren't you, and tell them not to talk to anybody?

14 THE COURT: Yeah, yeah. I'm going to do that.

15 MR. EPPES: I was just making sure.

16 THE COURT: Yeah. I know. I know. I'm talking to
17 you right now.

18 MR. EPPES: Yes, sir. I understand.

19 THE COURT: I'm talking to you right now.

20 And that's the only other witness you have; right?

21 MR. POLSINELLO: Yes, Your Honor.

22 THE COURT: All right. Your expert is -- he's local?

23 MR. POLSINELLO: Yes, Your Honor. I have his CV, if
24 Your Honor would like it.

25 THE COURT: Have you got a copy of it?

1 MR. EPPES: I got it Monday. That was the first I
2 had ever heard of him.

3 THE COURT: Yeah. Just give it to me.

4 MR. EPPES: Your Honor, as an administrative matter,
5 Dr. Maddox is here. She has to be in Charleston in the
6 morning. She and I -- if it's possible -- and I, frankly,
7 don't mind if the officers are in here. Could she and I
8 just sit in here with my paralegal after everything is
9 done and have a conversation with Mr. Workman about his
10 right to testify and how he's doing right now?

11 THE COURT: Yeah. Any objections to that?

12 MR. POLSINELLO: As long as court security is here,
13 Your Honor, and the bailiff.

14 THE COURT: All right. One last question. So,
15 Mr. Eppes, you've -- you've never met this gentleman,
16 Sondov?

17 MR. EPPES: If I have -- if I have, I don't know it.
18 I don't believe I have. I looked at his resumé. I -- I
19 called my friend, Chip Price. And Chip Price had never
20 heard of him. But I'm sure Dr. Maddox has heard of him.

21 (WHEREUPON, Dr. Maddox shook her head.)

22 MR. EPPES: No.

23 So everything I know about him is on that resumé.

24 THE COURT: All right. Is this -- is this the same
25 person that's used -- and I'm just asking -- in that whole

1 domestic violence protocol?

2 MR. POLSINELLO: I'm sorry. What was the question,
3 Your Honor?

4 THE COURT: The domestic violence protocol that's
5 part of the Solicitor's Office. Is there any
6 connection --

7 MR. EPPES: That committee?

8 THE COURT: That committee --

9 MR. EPPES: I'm, actually, on that committee.

10 THE COURT: You're on that committee.

11 Is there any connection between this guy and that
12 committee?

13 MR. POLSINELLO: Are we talking about the domestic
14 violence fatality review committee?

15 MR. EPPES: Yeah.

16 THE COURT: Well, I didn't -- I didn't -- I didn't
17 call it right. It's -- let me say it right. It's the
18 domestic violence fatality review committee. I didn't say
19 it right, Counsel. But let me say it again. It's the
20 domestic violence fatality review committee. That's the
21 one I'm talking about.

22 MR. POLSINELLO: He is not on that --

23 THE COURT: Is there any connection --

24 MR. POLSINELLO: He's not --

25 THE COURT: -- with this guy and this -- and the

1 domestic violence fatality review committee?

2 MR. POLSINELLO: He's not --

3 THE COURT: Any connection?

4 MR. POLSINELLO: He's not on that committee.

5 THE COURT: All right. That's all -- that's all I
6 was asking.

7 Bring the jury back.

8 (Pause.)

9 THE COURT: What's that cite, Mr. Eppes, on that
10 McKerley case again?

11 MR. EPPES: Your Honor, it appears to be 397 S.C.
12 461, 725 S.E. 2d 139.

13 THE COURT: All right.

14 MR. EPPES: It's a Court of Appeals case. And it
15 does have a -- it does have a yellow flag on it. And I
16 can tell you I have not looked to see what the yellow flag
17 is about.

18 THE COURT: Okay.

19 (WHEREUPON, the jury came into open court at
20 approximately 4:15 p.m.)

21 THE COURT: Could I see y'all for two seconds?

22 (WHEREUPON, a bench conference was held.)

23 THE COURT: All right. Ladies and gentlemen of the
24 jury, I'm going to excuse you for the evening. And we're
25 going to start back at 9:30 tomorrow morning. I want all

1 of you to leave.

2 Juror #106, you remain. That's -- #106, is that you,
3 ma'am?

4 JUROR #106, CHANTAL KENNEDY: (Juror #106, Chantal
5 Kennedy, raised her hand.)

6 THE COURT: You remain.

7 All the rest of you are free to go. Please, ma'am,
8 and, please, sir, do not talk about the case overnight.
9 Do not talk about the case with your -- with your family
10 members, your friends. Do not do any research or try to
11 look at any television regarding the case. In other
12 words, talk to no one until you return tomorrow morning.

13 Be in your jury room at approximately 9:30 sharp, if
14 you can. Okay.

15 Juror #106, you remain. You remain in the courtroom.

16 JUROR #106, CHANTAL KENNEDY: Just stay?

17 THE COURT: Yeah. Let everybody else leave.

18 (WHEREUPON, the jury was excused from open court at
19 approximately 4:19 p.m., with the exception of Juror
20 #106, Chantal Kennedy.)

21 THE COURT: We'll have a sidebar.

22 Would you come on up?

23 (WHEREUPON, there was a sidebar held with the Court,
24 the attorneys, and Juror #106, Chantal Kennedy.)

25 THE COURT: Your name is Ms. --

1 JUROR #106, CHANTAL KENNEDY: Chantal Kennedy.

2 THE COURT: How do you spell your last name?

3 JUROR #160, CHANTAL KENNEDY: C-H-A-N-T-A-L, Kennedy,
4 K-E-N-N-E-D-Y.

5 THE COURT: All right. You had told me earlier in
6 the week that you run a salon; right, a beauty shop, or
7 something?

8 JUROR #106, CHANTAL KENNEDY: Yes.

9 THE COURT: And that you -- you needed Wednesday to
10 work; is that correct? Wednesday would be a problem.
11 Tomorrow would be a problem.

12 JUROR #106, CHANTAL KENNEDY: I can come tomorrow.
13 But not Thursday and Friday because it's my big day.

14 THE COURT: Okay. But you can -- you can be here
15 tomorrow?

16 JUROR #106, CHANTAL KENNEDY: If you need me, yes.

17 THE COURT: So Thursday and Friday is the problem?

18 JUROR #106, CHANTAL KENNEDY: Yes.

19 THE COURT: I think we'll be okay.

20 JUROR #106, CHANTAL KENNEDY: Are you sure?

21 THE COURT: I'm sure.

22 JUROR #106, CHANTAL KENNEDY: It's a good
23 experience --

24 MR. EPPE: It all depends on their deliberations.

25 THE COURT: Yeah.

1 JUROR #106, CHANTAL KENNEDY: It's very interesting,
2 but --

3 THE COURT: So you -- could you come in Thursday
4 morning?

5 JUROR #106, CHANTEL KENNEDY: (There was no verbal
6 response.)

7 THE COURT: So you can't come in Thursday at all?

8 JUROR #106, CHANTAL KENNEDY: Well, I can come in
9 Thursday. Okay. Do I need to come tomorrow, too?

10 THE COURT: Well, we'd like for you to.

11 JUROR #106, CHANTAL KENNEDY: Okay. I'm coming
12 tomorrow and Thursday morning. And I guess I can work on
13 Thursday afternoon, Friday, and Saturday.

14 THE COURT: Okay.

15 JUROR #106, CHANTAL KENNEDY: I'll be here tomorrow.

16 THE COURT: Okay. We'll see you.

17 JUROR #106, CHANTAL KENNEDY: Thank you.

18 THE COURT: Don't talk about the case.

19 JUROR #106, CHANTAL KENNEDY: Okay. Thank you.

20 (WHEREUPON, the sidebar was concluded.)

21 (WHEREUPON, Juror #106, Chantal Kennedy, was seated
22 in the courtroom.)

23 THE BAILIFF: Judge, Ms. Patel, Juror #153, has an
24 issue about tomorrow, she just told me. She has no one to
25 pick up her daughter.

1 MR. EPPES: Your Honor, let's get through the case in
2 the morning and we can decide about that tomorrow around
3 lunchtime.

4 THE COURT: It's something else.

5 MR. EPPES: Different?

6 THE COURT: It's different.

7 Bring her in.

8 THE BAILIFF: Okay.

9 THE COURT: Ma'am --

10 You can let her go.

11 THE BAILIFF: Okay.

12 THE COURT: Ma'am, see you tomorrow. Don't talk
13 about the case.

14 (WHEREUPON, Juror #106, Chantal Kennedy, exited the
15 courtroom.)

16 (WHEREUPON, Juror #153, Bhavisha Patel, entered the
17 courtroom.)

18 THE COURT: Just let the record reflect I'm going to
19 instruct the bailiffs -- well, here she is. Let's just
20 bring her up.

21 (WHEREUPON, there was a sidebar held with the Court,
22 the attorneys, and Juror #153, Bhavisha Patel.)

23 THE COURT: What we're going to do is let you come in
24 in the morning. And then we'll see -- we'll see where we
25 are tomorrow. But -- and then we'll address -- because I

1 think the problem you have is somebody picking your child
2 up tomorrow.

3 JUROR #153, BHAVISHA PATEL: Okay.

4 THE COURT: Is that -- is that the issue?

5 JUROR #153, BHAVISHA PATEL: No -- yeah. That's the
6 problem tomorrow exactly.

7 THE COURT: What time does the child have to be
8 picked up tomorrow?

9 JUROR #153, BHAVISHA PATEL: 3:00.

10 THE COURT: Okay. Well, just -- just come tomorrow.
11 And then if we get closer to that time, we'll see at that
12 time.

13 JUROR #153, BHAVISHA PATEL: Okay.

14 THE COURT: Okay. You can go. See you tomorrow.
15 Don't talk about the case.

16 (WHEREUPON, the sidebar was concluded.)

17 (WHEREUPON, Juror #153, Bhavisha Patel, exited the
18 courtroom.)

19 THE COURT: All right. Anything else before we
20 adjourn for the day?

21 And I think, Mr. Eppes, you wanted to be able to stay
22 and talk to --

23 MR. EPPES: I'd like to stay in here, if it's okay.

24 THE COURT: And I don't think there's a problem with
25 that.

1 Mr. Poniselli.

2 MR. POLSINELLO: Will courtroom security be in here?

3 MR. EPPES: Yes.

4 THE COURT: Yeah.

5 MR. EPPES: I suspect John Caldwell will be in here.

6 THE COURTROOM DEPUTY: I'll spend the night for you.

7 THE COURT: Okay. Y'all have a good evening. See
8 you tomorrow morning at 9:30.

9 (WHEREUPON, the proceedings were concluded at
10 approximately 4:24 p.m., to be reconvened on
11 Wednesday, September 19, 2018.)

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WEDNESDAY, SEPTEMBER 19, 2018

1 THE COURT: Some housekeeping matters before we --
2 before we get -- bring the jury back. First thing, on the
3 matter regarding the psychologist -- psychologist? That's
4 the -- he was --

5 MR. POLSINELLO: He is a senior psychotherapist.

6 THE COURT: Psychotherapist. I'm sorry. Let me tell
7 you what -- what I'm going to do on that. And then I'm
8 going to do it this way.

9 Mr. Eppes, I think you -- you cited the McKerley
10 case. And in that case, you had a -- and I thought so,
11 but I wanted to be absolutely certain. In that case, you
12 had a forensic interviewer who was -- who had interviewed
13 a child in an abuse case. And, you know, we see -- I -- I
14 saw a lot of this over in the Family Court where the
15 interviewer during his or her testimony would state
16 that -- or make a statement indicating that they thought
17 the -- the statements of the child was believable.

18 And that -- I think in the McKerley case, the Court
19 thought that that was improper and -- and did not
20 interpret that as how you -- how you couched it, putting
21 one witness against the other. And they didn't look at it
22 that way in that case.

23 In this case that we have now, the expert from what I
24 understand --
25

1 And, Counsel, you can correct me if I'm wrong.

2 And there's several cases. And I just wanted to have
3 the opportunity to look at them. And I'll give you some
4 cites and you can just take a look at them. State --
5 State v. Myers, and that's found at 301 S.C. 251. That's
6 a 1990 case. State v. Jones, 817 S.E.2d 268. And that's
7 a 2018 case. And then Robinson --

8 Am I going too fast?

9 (WHEREUPON, there was no response.)

10 THE COURT: Robinson v. State, 308 S.C. 74, 1992.

11 And in all of these cases -- and I'm just going to
12 read some language I think that sort of sums it up. I
13 think in Jones, the Court held -- and this is Justice
14 Hearn -- that expert testimony may be used to help the
15 jury determine a fact in issue, based upon the expert's
16 specialized knowledge, experience, or skill, and is
17 necessary in cases in which the subject matter falls
18 outside the realm of ordinary lay knowledge.

19 And the reason I say that, in that instance, based
20 upon what the solicitor indicated that the expert is
21 talking about -- for lack of a better word -- a better way
22 to couch it -- why victims of domestic violence don't
23 leave in certain instances. And -- and I think your --
24 your argument was that that was putting one witness
25 against the other.

1 And I think -- when you look at these cases, I think
2 it gives a window -- as a matter of fact, a big window
3 of -- including the expert testimony if it's -- if it's
4 structured and -- and limited in that window. And I'm
5 thinking based upon what the Solicitor indicated yesterday
6 that was where he was.

7 So having looked at these cases and having looked at
8 the case that you cited, I think there's a distinction
9 between the two. And I think -- so I'll be glad to hear
10 from you, but -- but I -- on that point.

11 MR. EPPES: Your Honor, those cases have to do with
12 juveniles and explaining why -- why juveniles behave the
13 way they do. In point of fact, what -- what
14 Mr. Polsinello is planning to use Dr. Sondov for is fairly
15 simple. It's -- he may not be a doctor. I may
16 have promoted him to doctor. He's trying to bolster his
17 witness.

18 He's -- as he stated, his witness said something that
19 was incredible. She said that there was a bomb, that she
20 believed some statement that my client supposedly made
21 that there was a bomb under the trailer, which is
22 ridiculous. And he knows it's ridiculous. And so he's
23 using this witness to bolster that by saying people under
24 stressful situations go crazy.

25 And -- and this woman has never -- if you listen to

1 her testimony and listen to what my client's charged with,
2 this is not a Stockholm situation where she was kept
3 prisoner for several years. This is a 48-hour event that
4 she's alleged here. And he's trying to use Mr. Sondov
5 to -- to bolster her testimony and explain why she's
6 telling stories. And that's not fair. That's not fair to
7 my client. That's not fair to the process.

8 He's trying to give a psychological reason for what,
9 frankly, is, clearly, untrue statements by this woman.

10 MR. POLSINELLO: Your Honor, the State would
11 respectfully disagree.

12 We keep hearing Mr. Eppes saying this witness is
13 bolstering the victim's testimony, bolstering. I think
14 Your Honor was crafting an assessment of McKerley. And we
15 can even look to Brown and then Kromah, the Supreme Court
16 cases in this state, Your Honor, where the Court when
17 allowing these forensic experts -- blind experts to
18 testify, the Court and the law, specifically, says that
19 the expert cannot testify to the victim's credibility,
20 whether or not that expert believes that victim is a
21 victim and her character for truthfulness.

22 So they don't want these experts meeting with these
23 victims. And they're testifying blindly to the
24 psychological reasons of why victims make the choices they
25 do. That is allowed. It's allowed under the statute.

1 And it's allowed in the case law. And I believe Your
2 Honor pointed that out in -- in Myers, Jones, and State.

3 An expert -- as Your Honor stated, an expert may be
4 needed and is proper if there's a specific issue that
5 is -- that is outside the purview of the layperson. And,
6 quite frankly, Your Honor, I don't -- I would like to
7 think most lay people have haven't experienced this
8 situation.

9 And so, therefore, it's easy to judge, to judge the
10 victim, to attack the victim. Why didn't she do this?
11 Well, she could have left. We heard her, that's true,
12 testify that on Monday when the Defendant left for work,
13 she didn't leave because she thought there was a bomb.
14 And I believe she had reason to think that.

15 But there were other instances before that, Your
16 Honor, in this fact pattern where she could have -- maybe
17 she could have left, but she didn't. And, therefore, we
18 believe that, according to case law, the expert should be
19 allowed to testify.

20 We're not going to ask the expert, do you think the
21 victim is credible? He wouldn't know. He hasn't talked
22 to her. We're going to have him explain reasons for
23 delay, not reporting. We saw that the victim said she got
24 in a bar fight. And she testified that's a lie. There's
25 a very specific psychological reason why she said that

1 lie, and why seven days later she apologized to our
2 investigator. We believe an expert is needed and it's
3 proper, according to case law, to explain that to the
4 jury.

5 THE COURT: You see -- and, Mr. Eppes, see, what --
6 in McKerley that you -- that you cited on yesterday -- and
7 I had an opportunity to read it again. See, in that case,
8 the reason the Court reversed the trial court's decision
9 in that case was that the forensic interviewer during his
10 testimony was making an assessment regarding credibility
11 of the child or -- of the child. And, in that case, that
12 was improper.

13 And -- and I can tell you that every case that I sat
14 in where that was attempted to do -- because we get this
15 same thing over in Family Court. Every case that I sat
16 in, that was not permissible -- permitted. And we all --
17 we all looked back to that McKerley case that you cited
18 yesterday. And I -- that's why I was familiar with it
19 over in -- when we were over in the Family Court.

20 But the difference in this case is that Counsel is
21 not putting the expert up to -- to testify as to the
22 credibility of the victim, but is putting the witness up
23 to give a -- for lack of a better word, a generic analysis
24 of what happens to persons who are put in that situation,
25 a -- a general category of persons who are victims of

1 domestic abuse. The expert -- expert is going to tell the
2 Court what occurs oftentimes when -- when those parties
3 are confined or not allowed to leave, not necessarily
4 talking about anything that has to do with the credibility
5 of the victim, but just to give that analysis.

6 And that's why I said when you look at -- when you
7 look at those cases I cited, the Myers case, the Jones
8 case, and that other one, the Robinson case, all those
9 cases, each and every single one of them, the premise was
10 that -- and I think this is -- this is just powerful
11 stuff. Expert testimony may be used to help the jury to
12 determine a fact in issue, based upon the expert's
13 specialized knowledge, experience, or skill. And this
14 is -- this is -- this is the crucial part right here, And
15 is necessary in cases in which the subject matter falls
16 outside the realm of ordinary lay knowledge.

17 And that's just -- that's just some powerful stuff,
18 Mr. Eppes.

19 MR. EPPES: And, Judge, those cases are about the
20 molesting of children, which is still a unique and
21 horrific crime.

22 THE COURT: I understand.

23 MR. EPPES: Every person on that jury is going to be
24 aware of issues about domestic violence. It permeates our
25 culture. It's on television every day. It's in the

1 movies every day. Every person on that jury is going to
2 be aware, for lack of a better way of describing it, of
3 Stockholm syndrome, that people are kidnapped sometimes
4 like Patty Hearst, go to the benefit of their captors.

5 This testimony is being put in to rationalize all her
6 testimony, including the testimony that was provided by
7 tape in 2016 when she was interviewed by Officer Perry
8 from what she admitted to be a safe space, and the
9 testimony that was offered on that witness stand
10 yesterday. He is trying to bolster her testimony with the
11 use of an expert. He is trying to rationalize through
12 psychological information that's really not relevant why
13 she might still not be telling the truth.

14 THE COURT: All right. Well, I -- I respectfully
15 disagree, Mr. Eppes. And I'm going to allow the testimony
16 subject to your objection.

17 MR. EPPES: Well, Your Honor, we have to, frankly --

18 THE COURT: You want -- you want --

19 MR. EPPES: -- in my view, hear a proffer to
20 determine --

21 THE COURT: You want a proffer?

22 MR. EPPES: -- whether he's an expert or not.

23 THE COURT: All right. So -- all right. There's
24 some question about that?

25 MR. EPPES: I -- I think there still is.

1 THE COURT: All right.

2 MR. EPPES: We haven't heard what he has to say.

3 THE COURT: All right.

4 MR. POLSINELLO: No objection --

5 THE COURT: All right.

6 MR. POLSINELLO: -- to proffering Mr. Sondov.

7 THE COURT: Call him up.

8 THE CLERK: Sir, please come forward.

9 If you would, please, place your left hand on the
10 Bible and raise your right hand.

11 WHEREUPON,

12 NEIL SONDOV,

13 after first having been duly sworn, testified as follows:

14 THE CLERK: Thank you.

15 Please be seated.

16 And if you'll, please, state your name for the
17 record.

18 THE WITNESS: Neil Sondov, S-O-N-D-O-V.

19 THE CLERK: Thank you.

20 DIRECT EXAMINATION

21 BY MR. POLSINELLO:

22 Q Mr. Sondov, are you currently employed?

23 A Yes, sir, I am.

24 Q With whom?

25 A With Compass of Carolina.

1 Q How long have you been employed there?

2 A Since 1999.

3 Q What is your title?

4 A I am a senior therapist in the family violence
5 intervention program.

6 Q What is Compass of Carolina?

7 A Compass of Carolina is a United Way non-profit
8 counseling agency. We offer counseling to children,
9 adults, couples. And we, also, have a family violence
10 intervention program, which offers services to the
11 perpetrators, victims, and children impacted by domestic
12 violence.

13 Q What are your duties and responsibilities as a senior
14 therapist -- psychotherapist?

15 A I spend half my time seeing individuals and couples,
16 and the other half is in the family violence intervention
17 program facilitating the -- mostly, the perpetrator
18 groups. I, also, do individual treatment with folks in
19 the program. I do a lot of community outreach, education,
20 things along those lines.

21 Q Do you meet with both victims and defendants of
22 domestic violence?

23 A The vast majority of what I do is with perpetrators.
24 But you cannot deal with perpetrators without, also, being
25 aware of issues and safety concerns, things like that that

1 will impact the victims.

2 Q What's your educational background?

3 A I have a Master's Degree in Community Agency
4 Counseling from Winthrop University. My undergraduate
5 degree is from the University of South Carolina in
6 interdisciplinary studies. I have had advanced training
7 in domestic violence and its dynamics.

8 Q Do you hold any professional licenses or
9 certificates?

10 A I am a licensed professional counselor in the State
11 of South Carolina, and a nationally certified employee
12 assistance professional.

13 Q Do you have any specialized training in domestic
14 violence?

15 A Yes. I have attended over the years multiple
16 trainings from such organizations as Emerge, the Duluth
17 Project. These are some of the most well renowned
18 programs and deal with domestic violence issues.

19 Q Talk about what you primarily do when you meet with
20 defendants of domestic violence.

21 A For the most part, I do see them in the group
22 setting. Our program is a 26-week psychoeducation program
23 where we talk about the dynamics of domestic violence.
24 We -- we -- safety is paramount, certainly, foremost
25 safety for the victims, but, also, safety for the

1 perpetrators.

2 The whole concept is studies show that up to seven
3 incidents may occur before a victim reports or leaves. So
4 many couples who engage in domestic violence still live
5 together, still in the relationship. So we try to do what
6 we can to help reduce the opportunity for further
7 violence.

8 Q How many victims and defendants of domestic violence
9 would you say, if you had a best guesstimate, that you've
10 worked with over the years of your involvement in this
11 field?

12 A Probably thousands. I've been doing this 25 years,
13 so I've seen a lot of people.

14 Q So would that be the same number of years that you
15 counseled victims in domestic -- and defendants in
16 domestic violence?

17 A Yes, sir.

18 Q Other than women, can victims of domestic violence be
19 men and children?

20 A Yes, they can. Statistically, nationally, it is
21 shown that 85 percent is male on female domestic violence,
22 15 percent female on male. In the State of South
23 Carolina, it's probably more 75 to 25, or 70 to 30,
24 somewhere in that range.

25 Q Okay.

1 A And children are what we call the hidden victims that
2 we often -- they get the indirect issues of having
3 witnessed and being impacted by the fallout from domestic
4 violence.

5 Q Do you provide any professional training, or do you
6 teach others in your field?

7 A Yes. I provide trainings when asked. I've trained
8 on the local and regional level presenting on topics such
9 as domestic violence, and substance abuse, domestic
10 violence in the workplace, and other associated topics.

11 Q What -- what's the regional level where you've taught
12 this?

13 A The tri-state area of South Carolina, North Carolina,
14 and Georgia.

15 Q Okay. Have you ever been qualified as an expert in
16 court before?

17 A No, sir, I have not.

18 Q Do you know why you're here testifying today?

19 A I was requested to testify on the dynamics of
20 domestic violence.

21 Q Who subpoenaed you?

22 A You did, sir.

23 Q Okay. Is Compass of Carolina a law enforcement
24 agency?

25 A No, sir, we are not.

1 Q Is Compass a non-for-profit agency?

2 A Yes, sir, we are.

3 Q Okay. How do cases get referred to Compass?

4 A On an annual basis -- or at any time, we have
5 probably 150 to 200 perpetrators in our program.

6 Q Okay. Where does Compass funding come from?

7 A It comes from a variety of sources. It comes from
8 the United Way. It comes from the Violence Against Women
9 and Victims Crime Act on the federal level, grants from
10 those.

11 And we do charge the perpetrators for services. So
12 we do get some revenue there, which is, also, used to help
13 fund the victims programs for which there are no charge.

14 Q Is that funding in any way contingent upon what you
15 say here today?

16 A No, sir.

17 Q Are you being paid by the solicitor's office or a law
18 enforcement agency for your testimony today?

19 A No, sir.

20 Q Have you been promised anything in return for your
21 testimony today?

22 A No, sir.

23 Q Have you spoken with the victim in this case?

24 A No, sir, I have not.

25 Q Have you had any contact with the victim in this

1 case?

2 A No, sir.

3 Q Have you seen any evidence in this case?

4 A No, sir.

5 Q Other than the conversations you had with me, have
6 you done any investigatory work or interviewed anyone
7 involved in this case?

8 A No, sir.

9 Q Are you familiar with the term "delayed reporting" --

10 A Yes, sir.

11 Q -- in domestic violence cases?

12 A Yes, sir, I am.

13 Q What does delayed reporting by the victim mean as it
14 relates to victims of domestic violence?

15 A Delayed reporting is when the report comes after --
16 sometime after the incident. It can range from hours to
17 days to weeks.

18 Q Why would a victim not report the abuse right away?

19 A There's a variety of reasons, fear of reprisal, fear
20 that they don't -- won't be believed. Many victims don't
21 want the relationship to end. They want the abuse to end.
22 So they feel like maybe they can change their abuser.
23 They've got shame in thinking that maybe they caused the
24 abuse. There's the stigma of being abused.

25 And the one thing that is shown across many studies

1 is truly the fear of not being believed.

2 Q So is it uncommon for victims to delay reports of
3 abuse?

4 A No, it is not.

5 Q In your experience, what percentage of victims do not
6 report or disclose right away?

7 A National statistics suggest that domestic violence is
8 underreported by about 50 percent.

9 Q Is it uncommon for the victim, initially, when they
10 meet with law enforcement to give -- to lie for the
11 Defendant?

12 A No, it is not.

13 Q Why is that not uncommon?

14 A Again, it could be fear of reprisal. There could be
15 a financial, psychological dependence. Again, hope that
16 the relationship may work out.

17 Q Is it uncommon for family members of the victim to
18 want to try to help the victim?

19 A No, it is not.

20 Q Is it uncommon for the victim to not want to talk
21 to [sic] the incident when officers arrive on scene?

22 A I'm sorry, sir. Could you repeat the question?

23 Q In domestic violence scenarios, is it uncommon for
24 victims to not want to talk right away and disclose?

25 A No, it is not. As a result of trauma, they could not

1 really be processing or functioning cognitively at their
2 full capacity. And, sometimes, they're still trying to
3 figure out exactly what happened. Many times, they've
4 been violated by somebody very close to them. And that's
5 a difficult thing emotionally and psychologically.

6 Q Is it uncommon for victims to be concerned about
7 the -- about the suspect and whether or not the suspect
8 will be going to jail?

9 A No, it is not.

10 Q Why is that?

11 A Either two reasons. Either for their safety. Again,
12 if he's out -- he or she, excuse me, is out, there's a
13 chance of further reprisal. And, also, the damage it
14 could do to the relationship. Again, they love him, they
15 don't want anything bad to happen.

16 MR. POLSINELLO: Thank you, Mr. Sandefur.

17 THE WITNESS: Thank you, sir.

18 MR. POLSINELLO: No further questions.

19 THE COURT: Mr. Eppes.

20 CROSS-EXAMINATION

21 BY MR. EPPES:

22 Q Is Compass of Carolina related in any way to St.
23 Francis Bon Secours Hospital?

24 A No, sir.

25 Q You don't get any money from there, or anything?

1 A Not to my knowledge.

2 Q You do get your money -- and let me just start by
3 saying I'm familiar with your organization as you well
4 know; correct?

5 A Yes, sir.

6 Q I've given y'all money in the past; correct?

7 A Yes, sir, you have.

8 Q I, frankly, have sent several -- many -- a number of
9 my clients there over the years?

10 A Yes, sir. Yes.

11 Q And I know that a lot of your funding is from the
12 defendants that are sent there by the courts and the
13 solicitor's office; correct?

14 A A portion of it, yes, sir.

15 Q Okay. Have you ever testified for a defendant in a
16 domestic violence situation?

17 A No, sir, I have not.

18 Q How many times have you testified in court?

19 A Probably over the span of my career with different
20 cases, half a dozen.

21 Q Have you testified as an expert?

22 A No, sir.

23 Q Have you ever testified as an expert in delayed
24 reporting?

25 A No, sir. I have not previously.

1 Q Have you ever testified -- have you ever testified in
2 any other aspect of victim conduct?

3 A No, sir, I have not.

4 Q Do you believe yourself to be an expert in victim
5 conduct?

6 A I'm not comfortable with the word expert. But I do
7 have a great deal of knowledge.

8 Q But you don't believe you're an expert?

9 A As I said, that's a personal thing with the word
10 expert. But I have -- I feel I have greater knowledge
11 than most people.

12 Q Okay. Have you ever known victims to lie?

13 A I've known victims to falsely report, yes, sir.

14 Q Have you ever known victims to falsely exaggerate
15 what happened?

16 A I've -- reality is perception. I know that under
17 stress and trauma people can have exaggerated perceptions.

18 Q Have you ever known victims that -- that wanted to
19 punish their abuser?

20 A Yes, sir.

21 Q And have you ever known victims to act in a way that
22 punished their abuser that was not truthful or otherwise
23 ethical?

24 A Yes, sir.

25 MR. EPPES: Your Honor, subject to knowing what he

1 wants him to be an expert about, that's all my questions.

2 THE COURT: I wrote something down, Counsel. As a
3 matter of fact, these -- these are some of the first words
4 that came out of Mr. Sandefur's mouth. And I think
5 pursuant to your question, he said -- he was talking about
6 the dynamics of domestic violence. And I'm assuming
7 that's the -- that's the narrow window that you're going
8 to be asking questions about.

9 MR. POLSINELLO: Your Honor, the -- the questions
10 that I just asked Mr. Sandefur, those are them. I -- I
11 wouldn't -- I don't foresee myself going outside the
12 questioning that I've already asked.

13 THE COURT: All right. And I guess, Mr. Eppes,
14 that's subject -- subject to any -- to your objection. Do
15 you got another questions you want to ask him?

16 MR. EPPES: Your Honor, my client has one more
17 question.

18 THE COURT: Go ahead.

19 BY MR. EPPES

20 Q Are you ever familiar with cases where there's
21 multiple generations of abuse?

22 A Yes, sir.

23 Q And -- and are you familiar with any cases where an
24 individual who was abused at home, thereafter, took it out
25 on her husband -- abused in childhood by her parents, by

1 her father?

2 A Childhood abuse can lead to behaviors on either end
3 of the spectrum. It tends more to lean towards victim
4 behavior, but it can lead to aggressive behavior.

5 MR. EPPES: Thank you very much.

6 MR. POLSINELLO: Your Honor, I'm just -- I'm a little
7 cautious that that would cause a red flag for me right
8 now. Child abuse. This is, obviously, not a child abuse
9 case. This isn't a CSC.

10 So in terms of that line of questioning, if Mr. Eppes
11 were to go down that road on cross-examination, I probably
12 would object. We -- we be could venturing down -- getting
13 off the tracks here with child abuse. There's no
14 allegations of that. The Defendant is not on charge --
15 not on trial for child abuse.

16 THE COURT: I -- I tend to agree with you, Counsel,
17 on that.

18 Mr. Eppes, I -- I won't let you go down that -- that
19 line of questioning.

20 So you're offering him as an expert.

21 And you're objecting --

22 MR. EPPES: I'm objecting. That's correct.

23 THE COURT: So I'm going to -- I'm going to allow him
24 subject to your objection.

25 And the line of questioning -- Counsel, I want to be

1 very clear. I want to make -- okay. You've got them
2 written down?

3 MR. POLSINELLO: Yes, Your Honor.

4 THE COURT: All right. I want to be clear. I don't
5 want you to ask any more questions than you just asked
6 just a minute ago.

7 MR. POLSINELLO: Yes, Your Honor.

8 THE COURT: All right. Sir, you can step down.

9 THE WITNESS: Thank you, sir.

10 THE COURT: Before -- before --

11 MR. EPPES: Your Honor, we -- we have an issue that I
12 need to bring to the Court's attention right now.

13 THE COURT: All right. Before you do that,
14 Mr. Eppes, I just want to -- and I know the cases that
15 I -- that I cited -- obviously, we're talking about child
16 abuse cases. But I was really citing those cases to give
17 you what the Court thought about the dynamics of experts
18 in these kind of cases.

19 But I wanted to read some language into the record
20 out of a case that I was looking for earlier. And this
21 was the Jones -- State v. Jones case, which is found in
22 817 S.E.2d 268, which is a 2018 case. As a matter of
23 fact, this case was -- this case was heard by my
24 colleague, Judge Stilwell.

25 And, in this case -- I'm just going to read some

1 language, two portions. The expert's -- the Court said
2 that the expert -- appellate court, Expert witnesses
3 generalized testimony regarding child sex abuse dynamics
4 did not result in improper bolstering on behalf of the
5 victims in the prosecution for criminal sexual conduct.
6 And I understand what we've got here is different. And
7 where the witness did not evaluate or interview the
8 victim.

9 So, here, we've got a situation where the expert
10 witness did not evaluate or interview the witness. That's
11 parallel to what we've got here. And even though we're
12 talking sex -- child sex abuse in the -- in the Jones
13 case, we don't have that here. But the appellate court
14 made a finding that the expert witnesses generalized --
15 and that's pretty much what we've got here, generalized
16 testimony -- did not result in improper bolstering of
17 the -- on behalf of the victims. Now, let me say that.

18 Then, also, here's some other -- and I -- and I use
19 the word powerful stuff. And I -- and I probably use that
20 a little loosely. And I'm sorry. That's just -- that's
21 just some language in the case. And I hope you don't take
22 it anyway.

23 But it says, Testimony -- same case -- testimony
24 about the behavior of the non-offending caregiver often to
25 educate the jurors on why a non-offending caregiver may

1 fail to act after learning sexual abuse has occurred
2 failed within an area of specialized knowledge for which
3 expert testimony could be utilized in the prosecution of
4 criminal sexual conduct with a minor.

5 So the whole piece about educating the jurors,
6 that -- that's in this case. And then the whole piece
7 about that even though this expert didn't interview the
8 witness or had any interviews that that expert's
9 generalized testimony did in no way bolster the -- was not
10 improper bolstering on behalf of the victims. I
11 thought -- I wanted to say that because this was the
12 language I was looking for earlier.

13 But, now, I'll be glad to hear -- since I already
14 ruled on that issue, but I just wanted to have that on the
15 record.

16 What -- what else have we got, Mr. Eppes?

17 MR. EPPES: Your Honor, this morning, for the first
18 time in a while -- I'm going to tell you, my client has
19 corresponded with me regularly from the detention center.
20 And he's asked me about his preliminary hearing tape,
21 which I've discussed with him, but, frankly, never played
22 for him, and the tape of the interview with Ms. Workman,
23 which I've, also, discussed with him, but never played for
24 him, and a series of employment records for a woman named
25 Teresa Drummond that was Ms. Workman's supervisor at her

1 place of employment.

2 We have some of those records, which, frankly, I
3 don't know are particularly helpful. I've said this to my
4 client. He thinks they're critical to the case. He has
5 some other issues that he would like to raise himself for
6 the Court. Because I don't think he likes exactly the way
7 I'm explaining them.

8 I'd like him to raise them right now so that the
9 Court is aware of them as we conclude -- what I believe to
10 be conclude the State's case. Because I think we're going
11 to have to address them immediately following the State's
12 case. And I just want to get them on the record now.

13 I will, also, tell you, Your Honor, that we had
14 discussions about this issue last night with Dr. Maddox
15 here. And I had, frankly, hoped that -- that they would
16 not come to the fore. But my client's entitled to the
17 trial that he wants, not the trial that I want to give
18 him.

19 And so I'd like you to listen to what he has to say
20 and us decide an appropriate way forward. Because I don't
21 want to disregard his -- his feelings. But he and I do
22 not exactly agree on some of these things.

23 THE COURT: All right. Let me -- let me ask this
24 before, Mr. Workman, you speak.

25 Mr. Eppes, first of all, have you and your client

1 discussed whether or not he's going to testify in his
2 behalf?

3 MR. EPPES: We have discussed it. I do not believe
4 he has made a decision at this time.

5 THE COURT: All right. And that's a decision that
6 he'll make, I guess, soon.

7 MR. EPPES: That is a decision that I am hoping he
8 will make after we talk to the Court about these issues,
9 and, frankly, after Dr. Maddox gets here so that we can
10 all talk together. Because she has a way of translating
11 to each of us. Because we don't -- we aren't always on
12 the same page. And -- and she's frankly, a gentle
13 presence that helps me and my client communicate better.

14 THE COURT: All right. And my second question is --
15 And I'll be glad to hear from you, Mr. Workman.

16 But my -- here's my concern. And -- and I want to
17 make sure I couch it the right way.

18 You've got Mr. Eppes as your retained counsel; is
19 that correct?

20 MR. EPPES: I'm not retained. I was appointed by the
21 Court, Your Honor.

22 THE COURT: Appointed as your current lawyer; is that
23 correct?

24 DEFENDANT WORKMAN: (There was no verbal response.)

25 THE COURT: Speak up so I can hear you.

1 DEFENDANT WORKMAN: Yes, sir.

2 THE COURT: All right. And the issues that you would
3 like to raise with me are legal issues, factual issues. I
4 want to -- I want to make sure that we don't go down a
5 path that I can't address. Because we're going to -- if
6 you're going to ask me questions as it relates to factual
7 issues, then I can't address any of those. So --

8 MR. EPPES: Your Honor, he is -- he is going to tell
9 you about some items that he wants me to subpoena today
10 that I've just told him, quite frankly, we'll never have
11 for -- the way the Court is going to want this trial to
12 proceed. That's what it's about.

13 THE COURT: All right. Let me hear from you.

14 DEFENDANT WORKMAN: Yesterday, when Ms. Workman was
15 testifying, she both knowingly and willfully perjured
16 herself and lied. She said that we didn't have a house
17 phone, sir.

18 THE COURT: Okay. Hold on a second. Hold on a
19 second. Hold on. Hold on. That's -- that's -- that's
20 what I was trying to make sure -- the path that we didn't
21 follow is that if you're -- those are factual allegations
22 that you're making. I can't -- if you're asking --

23 DEFENDANT WORKMAN: Well, can I put it another way
24 then?

25 THE COURT: Well, you know, Counsel tells me that --

1 that these questions that you're asking me are some
2 procedural questions in terms of things that you would
3 want to present to the Court. But I don't know if you're
4 going down the road of making statements regarding the
5 facts and you want me, as the trial Judge, to comment on
6 them. And I can't do that.

7 DEFENDANT WORKMAN: Okay. I need my Charter bill
8 subpoenaed. It's my phone bill. It's my Internet. And
9 it's my cable. I had all three of those. I had a house
10 phone, a working phone, Internet, and cable TV.

11 THE COURT: All right. Let me ask you this. Prior
12 to Mr. Eppes representing you, you had another attorney;
13 is that correct?

14 DEFENDANT WORKMAN: Yes. Cassandra Gorton. Well,
15 she's still officially --

16 MR. EPPES: She's -- she's -- she has an order that
17 says she is to assist me in any way possible in this case.

18 THE COURT: All right. But she's not here?

19 MR. EPPES: She's not here.

20 DEFENDANT WORKMAN: And I need her, too, as well to
21 state my claim like the Solicitor has stated their claim.

22 THE COURT: You need her here?

23 DEFENDANT WORKMAN: Yes, sir. Because she is more
24 affiliated with this case than Mr. Eppes. And I want her
25 to handle my --

1 THE COURT: Well, hold on a second, Mr. Workman.

2 We've been -- we've been going at this for almost --
3 this is the third day --

4 DEFENDANT WORKMAN: Yes. This is the third day.

5 THE COURT: -- and this is the first time that I'm
6 hearing that there's an attorney involved in your
7 representation that's not here. Why am I just hearing
8 this today?

9 DEFENDANT WORKMAN: Because --

10 THE COURT: I mean, we had -- we had pre-trial
11 motions. We had -- we -- we had jury qualification. I've
12 not heard this.

13 I didn't -- I saw Mrs. Gorton's name on a document.
14 But I was under the impression -- at least, I heard that
15 you were not satisfied with -- with the prior -- your
16 previous attorney. And -- and that Mr. Eppes was -- was
17 coming in and he was now representing you. I -- I heard
18 nothing about you wanting Ms. Gorton here before just two
19 seconds ago.

20 DEFENDANT WORKMAN: Yes, sir. That's correct.

21 THE COURT: Why wasn't -- why wasn't that told to the
22 Court by either -- by you since you wanted her? Why
23 didn't you tell your lawyer to have him tell me that?

24 DEFENDANT WORKMAN: Because at the time, Your Honor,
25 it didn't really arise until after Mr. Eppes indicated

1 that -- cross-examining Ms. Workman, he didn't want to
2 just get into specifics with her. Because he didn't want
3 the jury to think that he was [inaudible] her or attacking
4 her.

5 But Ms. Gorton is a lady. And she would be able to
6 cross-examine her fairly and correctly, sir.

7 THE COURT: In other words, you're -- you think that
8 Ms. Gorton would be able to cross-examine the witness
9 better than Mr. Eppes. Is that what you're saying?

10 DEFENDANT WORKMAN: Yes, sir. Because they had their
11 chance to present all their evidence; right, and they
12 called -- and their witnesses?

13 And, now, he wanted expert testimony. Isn't it my
14 right that I get the same, to call the witnesses that I
15 want subpoenaed and to present the evidence that I need
16 presented?

17 THE COURT: Mr. Workman, this is a 2016 case. This
18 case -- I looked at -- I think these indictments are 2016.
19 This is a 2016 case. These things -- these occurred back
20 in -- these incidents -- alleged incidents occurred back
21 in 2016.

22 DEFENDANT WORKMAN: Yes, sir.

23 THE COURT: You had -- listen to me for a second.
24 You had Ms. Gorton, your prior lawyer. She could have
25 subpoenaed anything that you wanted. And then you had an

1 opportunity to meet with Mr. Eppes. But to come the third
2 day of the trial and -- and say now that you want some
3 things subpoenaed, I mean, the Court doesn't work that
4 way.

5 DEFENDANT WORKMAN: Yes, sir. But, basically, the
6 stuff I want subpoenaed, I already asked for and --

7 THE COURT: Your subpoenas were already issued?

8 DEFENDANT WORKMAN: They wasn't issued, sir.

9 THE COURT: Well, who do you -- well, what do you
10 mean you already asked for them? Who did you -- who did
11 you ask?

12 DEFENDANT WORKMAN: I wrote a letter two times to
13 Mr. Eppes. I don't know if it slipped his mind or he had
14 other cases. But I wrote two specific letters indicating
15 the things that I wanted.

16 THE COURT: Well, let me ask you this, Mr. Workman.
17 Okay. You wrote -- you allegedly wrote Mr. Eppes the
18 letter --

19 MR. EPPES: He wrote it, Judge. He did.

20 THE COURT: Okay. You wrote him a letter. All
21 right. You didn't get these things. I guess where I'm at
22 is, why wasn't the Court told about that at the outset, as
23 opposed to waiting until three -- almost three days of
24 trial that you didn't get those things?

25 DEFENDANT WORKMAN: This is my first jury trial, Your

1 Honor.

2 THE COURT: Well, but, you know, I don't think this
3 being your first jury trial has got to do with anything.
4 I mean, if you -- if -- if you knew that you needed
5 that -- those documents to go forward -- I mean, you're
6 putting the Court in a very difficult position at this
7 particular point, you know.

8 I -- throughout this process, I've -- I've listened
9 to both side. I've -- I've carefully evaluated the
10 objections as to evidence on both sides. I've excluded
11 evidence and testimony that I thought had no basis as it
12 relates to the applicability of the law. I've done all
13 that. But, now, to tell me that you're dissatisfied with
14 your lawyer --

15 DEFENDANT WORKMAN: Sir, I didn't say I was
16 dissatisfied with him. I said there was a couple issues
17 that needed to be discussed with the Court. And there's
18 information that I need that is very vital to this case.
19 And it would prejudice me, Your Honor, that -- if I don't
20 get it.

21 THE COURT: And that's a Charter phone bill?

22 DEFENDANT WORKMAN: Yes, sir. It's a Charter phone
23 bill that said that I had a phone and cable. It was in my
24 name. And --

25 THE COURT: Why didn't you get this -- why didn't you

1 get this yourself before today?

2 MR. EPPES: Your Honor, he's been incarcerated.

3 THE COURT: Well, why didn't you get somebody to get
4 it for you?

5 DEFENDANT WORKMAN: One thing, it didn't come up.
6 And I didn't know nothing about it, Your Honor, until she
7 said that -- yesterday on the bench that we didn't have a
8 telephone, we didn't have a house phone. She,
9 specifically, said that.

10 THE COURT: All right. And -- and you think that --
11 I'm -- I'm -- you know, I'm very careful how I'm choosing
12 my words. Because I don't want to say anything that is
13 interpreted as me commenting on the facts of the case.
14 You're -- you're saying that that information is vital to
15 your case? Is that what you're saying?

16 DEFENDANT WORKMAN: Yes, sir. It would impeach her
17 credibility as a witness.

18 And, also, her work attendance for August 16th --
19 August the 26th through the 29th of 2016 -- they gave me
20 the old one. What I'm saying, Your Honor, is I believe
21 every one of them was sent. But they done away with the
22 up-to-date ones and just gave me the old ones. And the
23 up-to-date one would clarify that Ms. Workman was supposed
24 to be at work Saturday morning at 6:00.

25 And Teresa Drummond, also, will verify that they --

1 that she received a phone call from Ms. Workman Saturday
2 morning. And that they didn't come up with the evening
3 thing until after my alibi and witness statement was
4 served over to the Court. It was, he came home. It was
5 no evening thing. That's something new that Derek
6 Polsinelli [sic] put into play.

7 MR. EPPES: Your Honor, if I may. Teresa Drummond
8 worked -- the way that Ms. Workman -- it's my belief, and,
9 certainly, Mr. Polsinello can correct me. But Ms. Workman
10 worked for an outside contractor that provides food
11 services to St. Francis Hospital. That is where this
12 Teresa Drummond worked.

13 I believe -- and, again, Mr. Polsinello can correct
14 me. He made a diligent search for Teresa Drummond. We
15 made a diligent search for Teresa Drummond. We couldn't
16 find Teresa Drummond. It is our understanding that the
17 turnover rate at the Morrison's facility in St. Francis is
18 weekly or biweekly.

19 Ms. Gorton provided us with the records of
20 employment. She had gotten them by subpoena, which that's
21 a carol for another Christmas. But she got those records.
22 And we've looked at them. And I didn't think they added
23 anything more than the police records that I brought out
24 on cross-examination that the caller said he -- she was
25 supposed to work Saturday, Sunday, and Monday and had not

1 been there. It's a fact that I plan to address in closing
2 argument. But -- but that particular thing has been a
3 long-standing issue. And we have tried to find the
4 information that Mr. Workman has been looking for in that
5 regard.

6 The thing about the house phone just came up today.
7 He thinks it's important, quite frankly.

8 And we'll deal with this after the State has rested
9 about his testimony. He and I have been in discussions
10 about that issue, and a couple of other issues, and
11 whether or not he should testify. And that is an ongoing
12 discussion.

13 And he has, also, informed me that he's going to want
14 an expert witness to attempt to rebut --

15 Is it Mr. or Doctor? I'm --

16 MR. NEIL SONDOV: Mr.

17 MR. EPPES: Mr. Sondov, and an expert on child abuse
18 and drug abuse. We do not have such an expert witness.
19 Frankly, right at this point, we don't have any evidence
20 in the record about drug abuse. Because I know that
21 Mr. Polsinello was addressing that issue.

22 We had attempted to find, at least, one individual
23 that my client believes was selling drugs to Ms. Workman.
24 Obviously, we're far afield of where the case has been
25 thus far. But I will tell you that we have attempted to

1 find them. We have been unable to find them.

2 And -- and Mr. -- my client is informing me that
3 Mr. Polsinello is aware of her [sic] communications my
4 client has had directly with him about these issues being
5 raised. But, obviously, that is not Mr. Polsinello's job.
6 That is my job. And -- and, Judge, that is where we are.

7 Judge, I would, also, remind you, although it's not
8 part of the record yet, that in the report where Ms. --
9 Dr. Maddox found Mr. Workman competent, she, also, talked
10 about his medication. And as she was on the stand, she
11 talked about his issues with paranoia. And I have asked
12 her to come over here. And I -- this is a unique
13 situation to me as well.

14 So I just wanted to get all that on the record to the
15 Court as early as possible today. Because it just came to
16 my attention today.

17 THE COURT: Yes, sir.

18 MR. POLSINELLO: Your Honor, this is the procedural
19 history of this case. This case is --

20 I'm sorry. Will you, please, give that to His Honor?

21 This case is 725 days old as of today. Your Honor,
22 you'll see on the procedural history that the State just
23 gave you this goes way back all the way to September 26,
24 2016. The first attorney was Dorothy Manigault with the
25 Public Defender's Office. The Public Defender's Office

1 moved to be relieved from the case entirely. The Court
2 granted that. Then Cass Gorton was appointed. And I
3 believe that was through 608.

4 Your Honor, you'll see I handed you a letter, a
5 hand-written letter by the Defendant that he sent our
6 office dated September 21st, 2017. In that letter, Your
7 Honor, you'll see that the Defendant wanted to fire
8 Cassandra. Those are -- that's his writing. Those are
9 his words. And he, specifically, requested Frank Eppes or
10 Larry Crane. Obviously, Frank was appointed by Judge
11 Verdin.

12 So the first issue, Your Honor, that the Defendant
13 feels that Cass will help him, however how, is contrary to
14 Mr. Workman's own letter in his own words. The State
15 feels that he's just trying to unduly delay this process.
16 He, clearly, wanted to fire Cass.

17 In terms of the -- and he got who he wanted. He,
18 specifically, requested Frank. And the Court did
19 Mr. Workman a favor by appointing Frank. And, quite
20 frankly, Your Honor, Ms. Manigault and Ms. Gorton are
21 fantastic attorneys. I'm sure Mr. Workman would have been
22 in great hands. But he could not be in better hands with
23 Mr. Eppes. I'm sure Your Honor will agree, he's one of
24 the finest attorneys in this state.

25 So with that said, Your Honor, in terms of these

1 records, these phone records, they had 725 days to get
2 these records. This -- they had 725 days. This is not an
3 emergency issue. This is not some -- you know, a big
4 ground breaking thing that has come to light.

5 I have a feeling, Your Honor, that the Defendant
6 doesn't like the way this trial is going, the evidence
7 that has been properly authenticated. I don't think he
8 likes what -- what he's going against. And so now, he's
9 trying to create a way to unduly delay the Court and the
10 proceedings.

11 Your Honor, in terms of them wanting to call an
12 expert to rebut our expert. We handed the Defense
13 attorney and the Court our witness list on Monday. His
14 name was on there. They've had all these days to research
15 that name and call their expert.

16 So the State just feels that these are non-material
17 issues and that they are unnecessarily unduly delaying
18 this trial. The State requests to proceed with this next
19 witness. And in terms of whatever evidence that
20 Mr. Workman may want to present, he'll have that
21 opportunity.

22 But the time has been, Your Honor. The time has
23 passed. It's 725 days old. It's been on the docket
24 multiple times. It's been continued multiple times. Once
25 for the Defendant himself because he was going to testify

1 as a State witness in a -- in a -- two cases, Your Honor.
2 And when he was called to testify at trial, he backed out.
3 And we have letters documenting that, if Your Honor would
4 like to see that.

5 MR. EPPES: One of those cases ended in a guilty
6 plea. Your Honor, I wanted to stand up to clarify one
7 issue.

8 THE COURT: Okay.

9 MR. EPPES: Judge Verdin and I both think the world
10 of Cass Gorton as an attorney. And when Cass got laid off
11 the case, I requested and Judge Verdin honored my wish
12 that Cass be available for consultation. And I have
13 consulted with her on a regular basis throughout my trial
14 preparation in handling this case.

15 So I wanted the Court to know that it wasn't a
16 situation where anybody expected her to be in the
17 courtroom for the trial. But she has been available. As
18 a matter of fact, I spoke with her last night. And she
19 has provided help and insight. As Your Honor will
20 remember, I had two motions that she had drafted many
21 months ago and filed over a year ago.

22 That said, Your Honor, that's where we are this
23 morning. And I just wanted you to be aware of it.

24 THE COURT: Let me make sure I'm reading this
25 correctly. And I'll tell you where we -- what we're going

1 to do.

2 I've got your letter, Mr. Workman. I'm reading a
3 portion of it. It says, I have -- I'm just reading a
4 portion of it. I have sent copies to the White House,
5 judges at the Supreme Court in D.C., the senate judiciary
6 committee. I have fired Cassandra Gorton six times.
7 Okay. I'm going to make sure she gets disbarred. I don't
8 want another woman lawyer. Okay. Mr. Frank. Okay.
9 Frank Eppes, I'm assuming. Okay. Frank Eppes or Larry
10 Crane, a man lawyer. Thank you.

11 So you asked for either Frank Eppes or Larry Crane;
12 is that correct?

13 DEFENDANT WORKMAN: (There was no verbal response.)

14 THE COURT: Sir, I'm talking to you.

15 DEFENDANT WORKMAN: Sir?

16 THE COURT: I'm reading your letter. Is that --

17 MR. EPPES: Your Honor, when he spoke with
18 Dr. Maddox, he told -- I don't know what the letter says
19 right this second because it's not in front of me. But
20 Dr. Maddox -- he told Dr. Maddox he trusted myself and
21 Mr. Crane. And that's how he got to that point.

22 THE COURT: All right. Anyway, I'm not going to --
23 sir, I just got -- first of all, I'm not going to delay
24 the proceedings. I'm not going to do that. I'm going to
25 make a finding on the record, based upon the procedural

1 history of the case, that this case has been ongoing since
2 September of 2016. It is now September of 2018, almost
3 two years later. So I'm not going to delay the process.

4 I am going to make a finding that you had ample
5 opportunity to -- you've had three different lawyers. You
6 had Dorothy Manigault, which I -- I find to be an
7 outstanding attorney. You've got Ms. Cass Gorton, which
8 I, also, find to be an outstanding attorney. And I
9 also -- you've got Mr. Frank Eppes, who is, also, a very
10 outstanding attorney.

11 So you've had the benefit of -- of three outstanding
12 lawyers, which I have had the opportunity to try cases on
13 this side with two of them, not Mr. Eppes, but two of
14 them. So I -- and I've been around a long time. I've
15 been around a long time. I know just about all the
16 lawyers in this county of the bar. And you've got --
17 you've had fine lawyers.

18 And now, I -- if you're sitting there and you're
19 telling me that you -- you don't like -- first of all, I'm
20 not going to continue the case. We're going to move
21 forward. I'm going to -- I'm going to find that you had
22 ample opportunity to -- to get all this information that
23 you're requesting since 2016, September of 2016.

24 However, if you're saying that -- that going forward
25 you're not satisfied with the cross-examination techniques

1 of your current lawyer and you want to do it yourself --
2 now, I want to make sure we understand.

3 You -- you -- are you okay with Mr. Eppes proceeding
4 forward?

5 DEFENDANT WORKMAN: I didn't say I wanted to
6 cross-examine myself. I said I wanted Cass to
7 cross-examine.

8 THE COURT: Well, we -- well, Ms. Gorton is not here.
9 She's not the attorney of record.

10 MR. EPPES: Your Honor, if I may, Ms. Gorton is in a
11 dental chair. And she said half her face is numb. I just
12 contacted her this morning. I told her to stay and do the
13 procedure and call when she could.

14 But, Your Honor, could I clear some things up on the
15 record?

16 THE COURT: Yes.

17 MR. EPPES: Are you done with your ruling? I'm
18 sorry.

19 THE COURT: I'm done. We're going to -- we're going
20 to continue in just a minute.

21 MR. EPPES: Well -- well, let me clear some things up
22 on the record. Because I want to make -- I want to
23 protect my client's record. Okay.

24 Your Honor, number one, I did not think about, nor
25 did I subpoena the records for his phone, cable, and

1 Internet bill at the house. I did not do that. There's
2 no question about it.

3 Number two, I was asked to find Teresa Drummond and
4 to subpoena her. I was not able to do that. I did not
5 find her. Nor did I find Virginia, the 911 caller. I was
6 asked to do that and I failed to do that.

7 Number four [sic], I was -- Mr. Workman and I have
8 been over those work -- those work records a little bit.
9 He has told me that they were incomplete. I have done
10 nothing to further complete those records. That's my
11 mistake, not his.

12 Is that everything you talked about?

13 And I did not -- I anticipated that the Government
14 might try to call a bolstering psychotherapy expert. I
15 did not get an -- an expert on that. I, frankly, did not
16 believe that there was any way to prove any drug use by
17 Ms. Workman. So I did not pursue an expert on that.

18 Any of these things that are found later to rise to a
19 failure of the standard of care, I accept full
20 responsibility for. And I want to put that on the record
21 right now so that he has that record preserved and he
22 doesn't have to create it out of whole cloth, depending on
23 how this trial goes.

24 I'm making no statement as to whether any of those
25 things fall below the standard of care. However, I do

1 want to say on the record right now I didn't do them.

2 THE COURT: Is there something you want to --

3 DEFENDANT WORKMAN: Yes, sir.

4 THE COURT: Stand up.

5 DEFENDANT WORKMAN: So are you saying, Your Honor,
6 I'm not going to have the opportunity to subpoena my phone
7 bill? Because I never had a chance. I never knew that
8 she was going to say that we didn't have a house phone. I
9 never knowed [sic] that. And --

10 THE COURT: Let me tell you what I'm saying. Let me
11 tell you exactly what I'm saying. I'm saying that I got
12 an order -- I got a scheduling order from the clerk's
13 office. This case was on the schedule. I was assigned to
14 come in here and hear the case. And I walked through that
15 door to hear a case that was indicted back in 2016. My
16 job, as mandated by the folks that put me here, is to hear
17 the case and apply the law.

18 My job is not to orchestrate trial strategy for
19 either side. My job is not to say -- to tell who -- who
20 can subpoena who and who should subpoena who. It's not my
21 job.

22 So in answer to your question, I have no position on
23 that. The only -- you've had lawyers. That's -- that's
24 not what I am assigned to do. My job is to hear the case.
25 I am the judge of the law. Those 12 people over there are

1 the judges of the facts. Your lawyer represents you.
2 Mr. Polsinelli [sic] represents the State. Everybody's
3 got a role.

4 So that's -- that's what I'm here to do. I don't
5 know if that answers your question. But that's the answer
6 that I'm giving you.

7 All right. Anything else before we move -- move
8 forward?

9 MR. EPPES: Your Honor.

10 THE COURT: Yes, sir.

11 MR. EPPES: Could we just take a short break and let
12 me get my head around cross-examining Dr. Sondov before we
13 start back?

14 THE COURT: All right. I'm going to -- you know, the
15 jury panel has been sitting back there since 9:30.

16 MR. EPPES: I understand, Judge.

17 THE COURT: I don't like the panel sitting back
18 there, you know, because lawyers out here can't -- you
19 know, are messing around. I don't like lawyers sitting
20 around here messing around when we've got a panel sitting
21 back there.

22 So I'll give you five minutes.

23 MR. EPPES: Thank you, Your Honor.

24 THE COURT: All right.

25 (WHEREUPON, a break was taken.)

1 THE COURT: Bring the jury out.

2 MR. EPPES: Your Honor, this doesn't have to be on
3 the record. But Dr. Maddox is here. And assuming the
4 State rests after this next witness, I'm going to ask for
5 some time to go in the back and talk with my client with
6 Dr. Maddox present.

7 MR. POLSINELLO: No objection.

8 THE COURT: Okay. Bring the jury out.

9 (WHEREUPON, the jury came into open court at
10 approximately 10:41 a.m.)

11 THE COURT: Good morning.

12 All right. We're going to proceed in a minute.

13 Mr. Eppes, would you speak just a little louder for
14 the -- so the jury can hear you? They're having a tough
15 time trying to hear you.

16 So just kind of raise your tone just a little bit.
17 Help them out a little bit.

18 MR. EPPES: Yes, Your Honor.

19 I -- I learned in a class I took 25 years ago that
20 because I'm so big, I ought to be quiet because it
21 intimidates people. And I don't think I'm real
22 intimidating. But I do keep my voice probably lower than
23 I should. And I will try to be more vocal today.

24 THE COURT: All right. Counsel, are you ready to
25 proceed?

1 MR. POLSINELLO: Yes, Your Honor.

2 THE COURT: All right.

3 MR. POLSINELLO: The State calls Neal Sondov to the
4 stand.

5 THE COURT: Mr. Sondov, come on up.

6 THE CLERK: If you would, please, place your left
7 hand on the Bible and raise your right hand.

8 WHEREUPON,

9 NEIL SONDOV,

10 after first having been duly sworn, testified as follows:

11 THE CLERK: Thank you.

12 Please be seated.

13 MR. EPPE: Your Honor, I renew my objection.

14 THE COURT: All right. So noted.

15 THE CLERK: And, please, state your name for the
16 record.

17 THE WITNESS: Neil Sondov, S-O-N-D-O-V.

18 THE CLERK: Thank you, sir.

19 DIRECT EXAMINATION

20 BY MR. POLSINELLO:

21 Q Mr. Sondov, are you currently employed?

22 A Yes, sir. I'm with Compass of Carolina.

23 Q What is Compass of Carolina?

24 A We are a United Way non-profit counseling agency
25 providing services -- counseling services for adults,

1 children, and couples. And we, also, have our family
2 violence intervention program providing services for the
3 victims and the perpetrators, as well as the children
4 impacted by domestic violence.

5 Q How long have you been employed there?

6 A I've been there 20 years.

7 Q What is your title?

8 A I am a senior therapist in the family violence
9 intervention program.

10 Q What are your duties and responsibilities as a senior
11 therapist?

12 A I spend half my time seeing couples and individuals
13 for general mental health issues. And the other half I
14 spend in the family violence intervention program
15 facilitating perpetrator groups, doing community outreach,
16 working on the curriculum, and various things to make that
17 program successful.

18 Q You stated that you meet with couples. Would that
19 imply both victims and defendants of domestic violence?

20 A The couples work is not with victims and perpetrators
21 together. That is dangerous and counter indicative,
22 especially if the abuse is ongoing. The couples work is
23 separate from domestic violence issues.

24 Q Okay. What is your highest level of education?

25 A I have a Master's Degree in Community Agency

1 Counseling from Winthrop University. And I am a licensed
2 professional counselor in the State of South Carolina.

3 Q Do you hold any professional licenses or
4 certificates?

5 A The LPC, licensed professional counselor, in the
6 State of South Carolina. And I am a certified employee
7 assistance professional.

8 Q Do you have any specialized training in domestic
9 violence?

10 A I have been fortunate enough to be trained under the
11 Emerge program out of Cambridge, Massachusetts, the Duluth
12 Program out of Duluth, Minnesota, the Oakland Men's
13 Project, obviously, out of Oakland. And these are
14 considered three of the forerunners in the domestic
15 violence field.

16 Q And what does that specialized training involve?

17 A It involved different strategies to help perpetrators
18 reduce the opportunity -- or the chance, actually, of
19 re-abusing, and, also, how to help assure safety of the
20 victims.

21 Q So do you have any training and experience in
22 counseling victims and defendants of domestic violence?

23 A While the vast majority of my experience is with
24 perpetrators, we believe that safety is paramount. And
25 you really cannot work with the perpetrators if you are,

1 also, not aware of the victims, their issues. And, again,
2 safety is -- is of the utmost concerns.

3 Q Okay. Do victims come to your organization?

4 A Victims -- we do have programs for perpetrators,
5 victims, and children of domestic violence.

6 Q So there's classes for them?

7 A Yes, sir.

8 Q And do you oversee the management?

9 A I -- I work, again, mostly with the perpetrators. I
10 do work with the curriculum of both the -- both the
11 victims and the perpetrators.

12 Q Okay. How many victims and defendants of domestic
13 violence have you worked with over your years?

14 A I'm not exaggerating. It would have to be thousands.
15 I've been doing it for 25 years, so.

16 Q Other than women, can victims of domestic violence be
17 men and children?

18 A Yes, they can. The accepted national average is --
19 it's about 85 percent male on female domestic violence,
20 15 percent, obviously, the other way. In the State of
21 South Carolina, the statistics show it's more 75/25. And
22 I would say in our program that at any time it probably
23 runs about 70/30.

24 Q 70/30?

25 A Male perpetrators, female perpetrators.

1 Q What are hidden victims?

2 A Hidden victims is a term that we use when it comes to
3 mostly children. There's the idea that if the children
4 are not in the room, if they're not witnessing it
5 directly, if they're not experiencing it directly, they
6 are not impacted. And that has been found to be untrue,
7 that, you know, children are a lot more aware than we give
8 them credit for. And, therefore, they can be impacted by
9 domestic violence.

10 Q Do you provide any professional training or teach
11 others in your field?

12 A Yes, I do. I've talked and presented on the regional
13 level and across different platforms. I've done live
14 trainings. I've done some media interviews. I've done
15 some Internet-based kind of interview programs, things
16 along those lines.

17 Q Do you provide any regional training?

18 A I've done trainings in the tri-state area being
19 Georgia, South Carolina, and North Carolina.

20 Q Do you lead those trainings?

21 A I'm sorry, sir.

22 Q Do you lead those trainings?

23 A Most of the time, I do lead or I will work with a
24 co-presenter.

25 Q Just generally speaking, what -- what's your

1 audience? What are the numbers in your audience?

2 A The audiences have ranged from, you know, the general
3 community educational type programs to programs for more
4 specific audiences, such as counselors, social workers,
5 victims advocates, law enforcement. So it's -- it's been
6 a range depending on the topic and exactly the audience
7 I'm speaking to.

8 Q Have you ever testified in court before?

9 A Yes, sir. But not in a domestic violence case.

10 Q How many times have you testified in court?

11 A Probably half a dozen.

12 MR. POLSINELLO: Your Honor, pursuant to South
13 Carolina Rule of Evidence 702, the State moves to submit
14 Mr. Sondov as an expert in domestic violence dynamics.

15 THE COURT: Mr. Eppes.

16 MR. EPPES: Your Honor, I continue my previous
17 objection.

18 THE COURT: All right. I'll so qualify him subject
19 to Mr. Eppes's objection.

20 MR. POLSINELLO: Thank you.

21 BY MR. POLSINELLO:

22 Q Mr. Sondov, do you know why you're testifying here
23 today?

24 A I was requested -- I was subpoenaed by the
25 solicitor's office to come and speak on the dynamics of

1 domestic violence.

2 Q Is Compass of Carolina a law enforcement agency?

3 A No, sir, we are not.

4 Q Is Compass of Carolina a non-for-profit agency?

5 A Yes, sir, we are.

6 Q How do cases get referred to Compass?

7 A Through a variety of sources. Mostly, there is law
8 enforcement involvement in that. It can be through the
9 court system, through the solicitor's office, other
10 branches of the judiciary, such as -- and law enforcement
11 such as PTI, Probation, Pardon, and Parole, the Department
12 of Social Services.

13 Q Where does Compass funding come from?

14 A The majority of Compass funding comes from grants
15 from the United Way, the family violence intervention
16 program. It is funded in -- in good part by grants from
17 the Victims of Crime Act and from the Violence Against
18 Women Act, both of which are federal grants.

19 And we, also, use the revenues that we generate from
20 our perpetrator programs to help fund the victim programs.
21 Because the programs for victims and children of domestic
22 violence are often at no cost.

23 Q Is that funding in any way contingent upon your
24 testimony here today?

25 A No, sir, it is not.

1 Q Are you being paid by the solicitor's office or a law
2 enforcement agency for your testimony today?

3 A No, sir.

4 Q Have you been promised anything in return for your
5 testimony today?

6 A No, sir.

7 Q Have you spoken with the victim in this case?

8 A No, sir.

9 Q Have you had any contact with the victim?

10 A No, sir.

11 Q Have you seen any evidence in this case?

12 A No, sir.

13 Q Other than the conversations you've had with me, have
14 you done any investigatory work, or interview anyone
15 involved in this case?

16 A No, sir, I have not.

17 Q Are you familiar with the term "delayed reporting" in
18 domestic violence cases?

19 A Yes, sir.

20 Q What does delayed reporting mean?

21 A Delayed reporting is the time in between the
22 occurrence of an incident and when a report is made to law
23 enforcement. This can be hours. This can be days. This
24 can be weeks. There's a myriad of reasons that that might
25 occur.

1 Q In your experience, how common is delayed reporting
2 among victims?

3 A It is nationally accepted that the rate for
4 nonreporting or underreporting of domestic violence is
5 approximately 50 percent. In my opinion, I think almost
6 all cases of domestic violence involve some form of
7 delayed reporting. Because it is very seldom a one-time
8 incident. This may be the one time things got this bad or
9 the one time somebody felt the need to report. But,
10 usually, there have been other incidents leading and
11 building.

12 So I think there is truly an aspect of underreporting
13 in almost all domestic violence cases.

14 Q Why would a victim not report abuse right away?

15 A Victims will not report for a variety of reasons.
16 One of the big ones is fear of reprisal, that they may get
17 harmed further. There could be some psychological or
18 emotional dependence upon the -- the abuser.

19 One of the things is many of the abusers -- I'm
20 sorry, many victims don't want the relationship to end.
21 They want the abuse to end. And they have hope that
22 the -- that that will happen and the relationship will
23 improve.

24 There's, also, a tendency for victims to blame
25 themselves for the abuse, that they did something to cause

1 the abuse.

2 Q What is fear of reprisal?

3 A Fear of reprisal could be that if -- if they report,
4 they will get harmed further, physically, financially,
5 families could be harmed, pets, children.

6 Q In your experience, your decades of experience with
7 thousands of cases, that's not uncommon?

8 A That -- that is, certainly, a -- I think a viable
9 threat.

10 Q Is it uncommon for victims not to want to talk about
11 the incident at first?

12 A Lots of times, victims aren't really fully aware of
13 what has happened. This is usually somebody they cared
14 about, somebody they've loved who has violated them in
15 some way. And that's a lot to process. There can be
16 trauma. And trauma affects the way we make our decisions,
17 the way we process the information that we receive. So,
18 no, it is not uncommon.

19 Q Is it uncommon for victims to be concerned about the
20 suspect and whether or not he or she's going to jail right
21 after the abuse?

22 A For a variety -- for probably opposite reasons,
23 that's a very real concern. On one side of the spectrum,
24 there is that fear of reprisal that we had previously
25 discussed. If he doesn't go to jail, you know, what might

1 happen to me further?

2 The other part is, again, it could be financial. If
3 he goes to jail, what's going to happen to his job?

4 Again, it could be the shame, oh, I put him in jail.

5 Again, as -- as we eluded to, often there's -- there are
6 strong emotional bonds. And they do not want to do what
7 they see as harming their perpetrator.

8 Q After the abuse occurs, is it uncommon for victims
9 to, eventually, open up and to want to give a truthful
10 account?

11 A I'm sorry, sir. Could you repeat?

12 Q After the abuse has occurred, domestic violence
13 abuse, is it uncommon for victims to want to, eventually,
14 open up and to give a detailed truthful account?

15 A That's not uncommon either. Again, so many factors
16 depend on, you know, the individual, their history. But
17 it's not uncommon for them to want to be able to try to
18 process this thing that is just a very unexpected and a
19 very hurtful thing that has happened to them.

20 Q After some time has gone by after the abuse occurred,
21 is it uncommon for victims to be apologetic?

22 A No. There -- one of the things in what we call the
23 cycle of violence is there is the honeymoon phase where
24 everybody says they're sorry. And, again, there's that
25 hope that the relationship will get better.

Often times, victims are made to believe that they are the cause of the abuse. And abuse is never the victims responsibility. Even if a victim was to provoke a perpetrator, we have a saying that provocation does not equal justification. No matter how much somebody may provoke, the ultimate decision to be abusive, the ultimate decision to be violent lies with the perpetrator.

MR. POLSINELLO: Thank you, Mr. Sondov.

No further questions at this time.

THE COURT: Cross-examination, Mr. Eppes.

CROSS-EXAMINATION

BY MR. EPPES:

Q You've never testified on behalf of a defendant;
correct?

A No, sir, I have not.

Q And defendants and convicted individuals pay for their treatment, which is a lot of the funding -- or a portion -- a significant portion. I don't know the numbers. I'm not really worried about them.

A Right.

Q Of your work; correct?

A A point of the rehabilitative and punitive process is
a -- a financial obligation, yes, sir.

Q And you've been around a lot of victims?

A Yes, sir.

1 Q And once they get in a safe space, I think you
2 testified they often give truthful accounts?

3 A They can, yes, sir.

4 Q Okay. And -- but you've, also, been around victims
5 that say that they want the person that hit them to pay
6 for their crimes; correct?

7 A Yes, sir.

8 Q And you've been around victims that made up stories
9 and exaggerated stories in order to make their abuser pay
10 for their crimes, haven't you?

11 A There have been some. But I have not found that to
12 be common.

13 Q But you've seen it?

14 A I'm sorry, sir.

15 Q You've seen it?

16 A I've seen it, yes, sir.

17 MR. EPPES: Okay. Just one second, Your Honor.

18 (Pause.)

19 MR. EPPES: Thank you, Your Honor.

20 THE COURT: Anything on redirect?

21 MR. POLSINELLO: No further questions, Your Honor.

22 THE COURT: All right. I have no questions.

23 Thank you, sir.

24 You can step down.

25 THE WITNESS: Thank you, sir.

1 THE COURT: All right. Do you want this witness to
2 be excused?

3 MR. POLSINELLO: Yes, Your Honor.

4 THE COURT: Any objection?

5 MR. EPPES: Without objection, Your Honor.

6 THE COURT: All right. Sir, you're free to leave.

7 THE WITNESS: Thank you, sir.

8 THE COURT: All right. Does the State have any other
9 witnesses?

10 MR. POLSINELLO: Your Honor, the State rests its case
11 in chief. No further witnesses.

12 THE COURT: All right. Send the jury back. Take the
13 jury out.

14 (WHEREUPON, the jury was excused from open court at
15 approximately 10:59 a.m.)

16 THE COURT: All right. Let's talk time. It's --
17 it's about 11:00 right now.

18 And, Mr. Eppes, you --

19 MOTIONS

20 MR. EPPES: Your Honor, as an initial matter, I'd
21 like to make a motion for a directed verdict based on the
22 failure of the evidence to prove the claims of kidnapping,
23 domestic violence of a high and aggravated nature, and
24 possession of a weapon during a violent crime.

25 MR. POLSINELLO: Briefly, Your Honor. Citing State

1 v. Wheeler, the Supreme Court of South Carolina 1972, it's
2 259 S.C. 571, If there is any evidence tending to support
3 an inference of guilt, the Court must submit the issue to
4 the jury. When a motion for a directed verdict was made,
5 the trial judge's concerns were the existence or
6 nonexistence of evidence. And it is his or her duty to
7 submit the case to the jury if there is evidence, either
8 direct or circumstantial, which reasonably tends prove the
9 guilt of the accused, or from which the guilt may be
10 fairly and logically deduced.

11 Your Honor, it's the State's position that there's a
12 substantial amount of evidence in this case, overwhelming,
13 25 exhibits. The State has produced over 10 witnesses.
14 That testimony is -- should be considered. Based on the
15 fore -- foregoing; we would ask that Your Honor rule
16 against Defense Counsel's motion and continue the case
17 forward.

18 THE COURT: All right. Anything -- anything else,
19 Mr. Eppes?

20 MR. EPPES: On that issue, no, Your Honor. I have no
21 reply.

22 THE COURT: All right. Motion's denied.

23 MR. EPPES: Your Honor, I'd like to renew my motion
24 as to the search warrant, to strike the guns from the
25 record and have them not a part of this case.

1 THE COURT: All right. Your motion is so noted. And
2 that's, also, denied.

3 MR. EPPES: Thank you, Your Honor.

4 THE COURT: All right. Mr. Eppes, previously, you
5 asked to be allowed to have some time -- well, first of
6 all, let me ask you this. How many witnesses do you have
7 for --

8 MR. EPPES: That's a good question, Your Honor. Your
9 Honor, I have to speak with my client about his right to
10 testify and his right to present evidence versus my right
11 for last argument. Although Justice Beatty has amended
12 that somewhat to relieve the burden on the Defense of
13 trying to guess about what the Prosecution is going to
14 say, I believe I still have a right to last argument with
15 no rebuttal. Because I've put up no evidence as -- up to
16 this time.

17 However, my client and I have to discuss that. We
18 would like to have Dr. Maddox in on the discussion. We're
19 happy to just go back here into the room and have it.

20 THE COURT: So the witness list that you provided,
21 none of those persons --

22 MR. EPPES: The witness list that I provided has
23 one -- one person on it, the representative of Hope
24 Industries. Mr. Motes is right back here. And he's
25 available to testify as to Mr. Workman's work on those

1 days.

2 THE COURT: But you haven't decided whether
3 you're going to call him.

4 MR. EPPES: We haven't decided because we've already
5 got into evidence that he went to work. And that's just
6 where we are. But I -- there may be another witness.
7 And -- and I, actually, have an expert here on drug abuse
8 that I've got to discuss the matter with my client and
9 with him.

10 THE COURT: All right. How much time do you need?

11 MR. EPPES: I need about 30 minutes, Judge. And I'm
12 sorry. I just -- I don't know -- know any way to tell you
13 how sorry I am. But I don't think there's any way we can
14 tell you a short period of time that will resolve this
15 issue. We just need some time to hash it out.

16 THE COURT: Let me tell you what I'm thinking.
17 I'm -- I'm just thinking about those jurors sitting back
18 there for another 30 to 45 minutes.

19 And because you say 30 minutes, but it could take
20 longer than that. It may very well take longer than that.
21 And I guess that's why I've got this job. I've got to
22 figure this thing out. That's why they gave it to me.
23 It's 11:00. I've got to figure it out. Let's see. It's
24 too early for lunch.

25 MR. EPPES: Your Honor, the only thing I would --

1 THE COURT: Now, I take --

2 MR. EPPES: I would tell you one thing about it.

3 THE COURT: Yes.

4 Mr. EPPES: This is the only thing. I promised
5 Mr. Motes I'd have him out of here by noon. And that
6 is -- I -- I want to honor that request. We're going to
7 make a decision about Mr. Motes in order for me to honor
8 that request.

9 MR. POLSINELLO: And I'm sorry. This Mr. Motes -- I
10 just -- I feel like I have to speak. This is the Defense
11 witness list that I was handed.

12 MR. EPPES: A representative from Hope Power and
13 Industrial. Mr. Motes --

14 MR. POLSINELLO: I believed that was Corie Burleson,
15 Your Honor. That's how it appears --

16 MR. EPPES: Your Honor, there's two numbers. I'll
17 hand this up. Corie Burleson, Hope Power and Industrial.
18 And then a representative from Hope Power and Industrial.
19 I subpoenaed them. And I didn't know what -- who I was
20 going to get. And I don't know any other way to do that.

21 MR. POLSINELLO: That would explain the appearance of
22 the witness list, Your Honor. But, obviously, Mr. Motes'
23 name is not on there. And the State assumed under that
24 Corie Burleson, that title, that that was her -- or that
25 could be a guy. I don't know --

1 THE COURT: Bring the jury back in. I'm going to
2 tell them something.

3 MR. POLSINELLO: Your Honor, may I propose an idea?
4 (WHEREUPON, there was no response.)

5 MR. POLSINELLO: It goes to Mr. Eppes request. The
6 State has no objection to allowing Mr. Eppes the
7 30 minutes he requested. If you were to give Mr. Eppes
8 30 minutes and then we would have an early lunch, that
9 might, obviously, give the jury a break and afford
10 Mr. Eppes more time, if need be. And we could say we
11 could start up at 12:30.

12 MR. EPPES: Your Honor, apparently --

13 MR. POLSINELLO: If that helps him out.

14 MR. EPPES: Apparently, I -- I -- in my new louder
15 voice, I don't communicate well.

16 THE COURT: Well, hold the jury. They're not
17 standing out there.

18 THE BAILIFF: They're right here.

19 THE COURT: Oh, okay.

20 MR. EPPES: I told Mr. Motes I would try to have him
21 out of here by noon.

22 THE COURT: Well, bring them back in. Bring them
23 back in.

24 (WHEREUPON, the jury came into open court at
25 approximately 11:06 a.m.)

1 THE COURT: Ladies and gentlemen of the jury, it is
2 September, and it's not December. And, you know,
3 oftentimes in December, you get Christmas presents in
4 December. Now, you don't get them in September. But I'm
5 going to give you a small Christmas present right now.
6 I'm going to let you leave to go to an early lunch, or
7 whatever you got to do. And I'm going to let you come
8 back -- I want you back in your jury room at 1:30.

9 Okay. Now, try to be back at 1:30. If you have any
10 issues -- you've got the bailiffs. But try to be back at
11 1:30. Don't talk about the case with anyone. Don't do
12 any research. Even though you're going to have some extra
13 time, don't go buy a newspaper, don't do any of that.
14 Don't talk -- so don't do any of that. I'll see you back
15 at about 1:30.

16 (WHEREUPON, the jury was excused from open court at
17 approximately 11:07 a.m.)

18 THE COURT: And, Counsel, if -- I'm sure this is the
19 very first time you've ever tried a case in front of me.
20 But I try to give deference to not letting the jury sit
21 back for long periods of time. I don't think it's -- it's
22 productive for either side to have jurors just sitting
23 back there. And I don't think it benefits either side.

24 So this is what we're going to do.

25 Mr. Eppes, you're going to have an opportunity to

1 talk to your client, and whatever. But at 1:30, not 2:00,
2 not 2:15, not 2:20, at 1:30, we are going to start back.
3 Okay.

4 MR. EPPES: Yes, sir.

5 THE COURT: I'm going to get back here -- I'm going
6 to be coming -- I'm going to back in here at 1:00. And at
7 1:00, if there are any issues that we need to address,
8 we've only got a 30-minute window to address them.
9 Because we're starting back exactly at 1:30.

10 And then by that time, you should -- I'll bring --
11 and I'll tell you at 1:00, depending upon what kind of
12 conversation you have with the Defendant, then I'll
13 address that at 1:00 in terms of if I have to have any
14 dialogue with the Defendant regarding his right to
15 testify, or that kind of thing. We'll do that at 1:00.

16 MR. EPPES: Yes, sir.

17 THE COURT: So, Madam Court Reporter, I'll be back in
18 here at 1:00 to put some things on the record, if we need
19 to do that. It depends on where we are. Okay.

20 MR. EPPES: Thank you.

21 THE COURT: Then -- so y'all go and enjoy your lunch.
22 And I'll see you back here at 1:00. Okay.

23 Anything else before we --

24 MR. EPPES: Your Honor, if everybody's leaving the
25 courtroom, can we do like we did yesterday and leave

1 courtroom security in here and I have this conversation
2 with Dr. Maddox and Mr. Workman in here?

3 THE COURT: Well, let me ask you this. Because the
4 deputies, now, they -- they got to eat lunch, too.
5 They -- they eat.

6 MR. EPPES: We'll, certainly, have them out of here
7 by high noon so they can go eat and be back by 1:00.

8 THE COURT: Well, let me ask you this. Why can't
9 you -- you know, it's 11 -- it's 10 after 11:00. Do you
10 want them to sit here until 12:00?

11 MR. EPPES: We've got to sit somewhere.

12 THE COURTROOM DEPUTY: We're busy, too, Judge. But
13 we'll try to make Mr. Eppes --

14 THE COURT: Just -- just work -- just -- y'all just
15 work with him. He's a fine fellow. Just work with him.

16 MR. EPPES: Thank you, Your Honor.

17 THE COURT: Okay. We'll see you in a little bit.

18 (WHEREUPON, a lunch break was taken.)

19 THE COURT: Mr. Eppes, and, Mr. Postelli [sic].

20 MR. POLSINELLO: Yes, Your Honor.

21 MR. EPPES: Your Honor --

22 THE COURT: All right. What have we got?

23 Mr. Eppes, I guess I'll defer to you.

24 MR. EPPES: Mr. Workman, and I, and Dr. Maddox have
25 had a pretty good discussion. And he's, actually,

1 contributed to some of the things I'm going to say to the
2 jury, a couple really good things. And after going
3 through all that, I believe it is right now his
4 determination that we will rest and he will not exert his
5 right to testify.

6 THE COURT: Okay.

7 MR. EPPES: To the extent that you need to question
8 him about that, he is available for that. And I, also,
9 believe that because I am trying to make sure everything
10 is the best way it can be procedurally for him, regardless
11 of how this case goes, I think it's going to be
12 appropriate for Dr. Maddox to get up and report in general
13 terms her review of him and assessment of his current
14 mental state.

15 THE COURT: All right. And you want that to occur
16 after I make inquiry of him?

17 MR. EPPES: Yes, sir. I think that'd be the best way
18 to do it.

19 THE COURT: All right. Anything else? Just --
20 that's it so far?

21 MR. EPPES: That's it. I told him you were going to
22 have to talk to him about his right to testify.

23 THE COURT: All right. Mr. Workman, would you --
24 would you stand for me. Just raise your right hand for
25 me.

1 WHEREUPON,

2 OLANDIO R. WORKMAN,
3 after first having been duly sworn, testified as follows:

4 THE COURT: All right. Speak up so that Madam Court
5 Reporter can hear you.

6 DEFENDANT WORKMAN: Yes, sir.

7 THE COURT: All right. Now, you have been
8 represented by Mr. Eppes in this -- throughout this
9 proceeding; is that correct?

10 DEFENDANT WORKMAN: Yes, sir.

11 THE COURT: All right. And he has discussed with you
12 your right to testify; is that correct?

13 DEFENDANT WORKMAN: Yes, sir.

14 THE COURT: All right. And you understand that you
15 have an absolute right to testify if you desire to do so.

16 Do you understand that?

17 DEFENDANT WORKMAN: Yes, sir.

18 THE COURT: All right. And you, also, have the right
19 not to testify if you do not want to do so. In other
20 words, you could waive your right to testify. But it has
21 to be -- I have to make a finding that that waiver is
22 knowing and intelligently made by you.

23 So are you -- and I understand that you were under
24 some medication. And I was made privy to that information
25 at the beginning of the trial. And I understand that

1 we've been at this for almost our third day and that
2 you've been taking medication.

3 So I'm going to ask you this question not because
4 it's related directly to any medication you're taking, but
5 I have to ask you this question. Are you under the
6 influence today of anything at all that may impact your
7 decision, what you just told me, or what your -- let me
8 ask this question before -- before I do that.

9 Is it your desire not to testify in this case?

10 DEFENDANT WORKMAN: Yes, sir.

11 THE COURT: All right. Now, the record does reflect
12 that you hesitated when I asked you that question. So,
13 you know, I've got to not only just -- to look at what you
14 say, but I've, also, got to -- to examine your demeanor,
15 and all that. So you hesitated. So I'll ask this
16 question again.

17 This decision not to testify is your decision; is
18 that correct?

19 DEFENDANT WORKMAN: Yes, sir.

20 THE COURT: It's not your lawyer's decision. Is it
21 your decision?

22 DEFENDANT WORKMAN: Yes, sir.

23 THE COURT: All right. And you had ample time and
24 ample opportunity to discuss this decision with your
25 lawyer, Mr. Eppes?

1 DEFENDANT WORKMAN: Yes, sir.

2 THE COURT: All right. And you're satisfied with the
3 advice and counsel he has given you as it relates to your
4 decision to testify or not testify?

5 DEFENDANT WORKMAN: Yes, sir.

6 THE COURT: Okay. And the medication that you're
7 taking -- or are currently taking, that does not in any
8 way impact your ability to understand what I've just asked
9 you?

10 (WHEREUPON, there was no response.)

11 THE COURT: Do you understand my question? Let me
12 rephrase it this way.

13 The medication that you're on -- you -- you
14 understand the questions I just asked you?

15 DEFENDANT WORKMAN: (There was no verbal response.)

16 THE COURT: Is that a "yes"?

17 DEFENDANT WORKMAN: Yeah.

18 THE COURT: You've got to speak up.

19 DEFENDANT WORKMAN: Yes, sir.

20 THE COURT: All right. And is there anything that I
21 asked you that you got the slightest bit of hesitation or
22 question about?

23 DEFENDANT WORKMAN: While I'm waiving the right to
24 testify, what other kind of rights do I waive?

25 THE COURT: Well, you know, the only -- here again,

1 the only matter -- the issue before me presented by
2 Counsel is your -- whether or not you wanted to testify or
3 not. If you need time to talk with your lawyer, I'll be
4 glad to let you do that.

5 MR. EPPES: You're waiving your right to testify.
6 The Judge has to inquire about that.

7 We're, also, not putting up any evidence, which the
8 Judge doesn't have to inquire about. But you know because
9 we've talked about not putting up any evidence to get the
10 last argument.

11 And one thing I didn't mention to you. Because
12 you're waiving your right to testify, the Judge is going
13 to, specifically, instruct the jury that they cannot hold
14 your decision not to testify against you.

15 DEFENDANT WORKMAN: Okay.

16 MR. EPPES: It only -- it -- the evidence -- all the
17 evidence they have is the evidence they have. And the
18 fact that you chose to exert your right not to testify
19 cannot be held against you. And the Judge is going to
20 tell the jury that.

21 THE COURT: And Counsel is exactly correct. In my
22 charge to the jury, I will make specific reference to --
23 to what Counsel just stated. There'll be some language in
24 there that I will, specifically, state to the jury.

25 DEFENDANT WORKMAN: Yes, sir.

1 THE COURT: Is there any other -- any other questions
2 you have of me or your lawyer?

3 (WHEREUPON, Defendant Workman and Mr. Eppes had an
4 off-the-record conversation that was out of the
5 hearing of the court reporter.)

6 DEFENDANT WORKMAN: Yes, sir.

7 THE COURT: Yes what?

8 DEFENDANT WORKMAN: I understand.

9 THE COURT: All right. Let me ask this last
10 question. And I'm going to ask it again. I already asked
11 it, but I'm going to ask to be sure. In light of all the
12 questions that I've asked you and in light of all the
13 dialog that you've had with your lawyer, whether just a
14 few minutes ago or prior to us going to lunch, is it your
15 voluntary decision today not to testify in this case? Is
16 this your decision?

17 DEFENDANT WORKMAN: Yes, sir.

18 THE COURT: All right. And that was freely and
19 voluntarily made by -- by you?

20 DEFENDANT WORKMAN: Yes, sir.

21 MR. EPPES: Your Honor, I would, also, state that
22 based -- my advice is partly based on the fact that I have
23 informed him that in this particular case by not putting
24 forth any evidence, we get last argument.

25 I -- Mr. Polsinello and I have discussed this

1 briefly. He seems to think that if I misstate the record,
2 he has the right to get back up and say something about
3 it. In 30 years of practice, I've never seen that. But I
4 want to hash it out right here in case something happens
5 and I have Mr. Polsinello hopping back up after I have
6 assured my client that I'm going to get last argument.

7 THE COURT: Mr. Postinello [sic].

8 MR. POLSINELLO: Your Honor, I believe what Frank is
9 referring to -- I'm handing him a copy of the case law,
10 the State v. Beaty, a December 2016 opinion. I'm sure
11 Your Honor is familiar with it. And, Your Honor, I'm sure
12 you're aware when this opinion was issued, it kind of
13 caused a lot of confusion. And I'm sure I'm not the first
14 one to say that.

15 It's my understanding, Your Honor, interpreting --
16 and I've highlighted -- I've highlighted the relevant
17 sections. It's my interpretation that because of the
18 Defendant's choice, the State is going to close first.
19 Then Defense Counsel's going to close. And then the State
20 is allowed a brief rebuttal only as it's limited in scope
21 to the content of Defense Counsel's closing argument.
22 It's my understanding that that's what the current status
23 is. And I think Frank may disagree. But I -- I'm pretty
24 sure that's what it says.

25 It says, In a criminal trial where the party with the

1 middle argument requests the party with the right to the
2 first and last closing argument must open in full on the
3 law and the facts -- which the State will, Your Honor --
4 and in reply may respond in full to the other parties
5 argument, but not raise a new matter. And that was --

6 MR. EPPES: Judge --

7 MR. POLSINELLO: -- in case law, that was under
8 Subsection B.

9 MR. EPPES: I'm familiar with this decision. But I
10 don't think it's changed the right to absolute last
11 argument in a case where I choose not to put up any
12 evidence.

13 MR. POLSINELLO: Your Honor, I would just stress this,
14 brief rebuttal I believe that the Supreme Court has laid
15 out, it's not -- it wouldn't be another argument. It's a
16 brief reply to the prior closing arguments -- closing and
17 has to be limited in scope in terms of if there's anything
18 that does not inline with the evidence, that it's
19 corrected for that. It's not to reteach the law or --

20 THE COURT: Here's -- here's -- and -- and I'm
21 familiar with this case. And I tried -- I don't know how
22 old you are, Counsel. But I've tried hundreds of cases in
23 this court. As a matter of fact, I've -- I've tried a lot
24 of cases, felony cases, death penalty cases. I've tried a
25 lot of them.

1 And what I think the -- what courts don't want to
2 happen is this, is that the Defendant doesn't put up any
3 evidence, the State goes first, Defense Counsel goes last.
4 You know, we wouldn't be here if your theory of the case
5 was the same as the Defendant's theory of the case.

6 So I want to -- the Court wants to avoid the State
7 getting up after the Defendant's argument and saying,
8 well, you know, I -- I disagree with that rendition of the
9 facts, you know. Because the facts are -- your facts are
10 your facts, his facts are his facts. But I -- I've
11 discouraged the Solicitor getting up and saying, well, you
12 know, I understand that's what Mr. Eppes said what the
13 facts were, but remember what I told you what the facts
14 were when you first got up. And then you get back and do
15 the same thing, you know. We try to avoid that.

16 So I'm just -- your rebuttal would be -- I mean, if
17 he -- if -- if he misstates anything as far as any of the
18 evidence that was presented and that kind of thing,
19 certainly, that needs to be addressed. In other words, if
20 there was some misstatement on the evidence. But I don't
21 want you jumping up because you disagree with how he --
22 how he -- his side construes the facts. Because the State
23 construed the facts one way, his side -- the Defense
24 construed it another way. And, you know, that's what --
25 that's what I think we want to avoid. We don't want to

1. get into that.

2. So if there's no misstatement regarding the evidence,
3. I don't see a need for the -- for you to get back up.

4. MR. POLSINELLO: I'm -- I'm in agreement with Your
5. Honor's assessment right there. Frank just told -- it was
6. my --

7. Frank, correct me if I'm wrong. When we were talking
8. before on this matter, it was my understanding he didn't
9. believe that we didn't have a right to a brief rebuttal.
10. And I just wanted to clarify --

11. MR. EPPES: He's right. I don't believe that.

12. MR. POLSINELLO: But that's contrary, I believe, to
13. this opinion. And it clearly -- it states, In reply may
14. respond in full to the other parties argument, but may --
15. but may not raise a new matter.

16. THE COURT: And you know what. And I didn't write
17. this opinion. And I've got my opinion. And I'll just
18. keep it to myself. But this is what this says. But I
19. think you've got to agree that if -- if Counsel doesn't
20. misstate the applicability of the evidence and anything as
21. it relates to the evidence that -- that was presented,
22. then I don't think that you would -- why would you jump
23. up?

24. MR. POLSINELLO: I -- I wouldn't. If -- I wouldn't,
25. Your Honor, if it was properly stated. You know,

1 obviously, we've had --

2 THE COURT: You know, sometimes lawyers jump up
3 because the other lawyer is -- is arguing better than he
4 or she is. And you want to -- you want to -- you know,
5 you go through that. You sound better than me. So I'm
6 going to jump up. And so I can -- so last -- to the
7 jury -- my voice will be the last thing the jury hears.
8 You know, I don't want to do that.

9 MR. POLSINELLO: Your Honor, it's my understanding
10 that this -- this opinion, this brief rebuttal, it would
11 be only limited to something such as, you know, I know
12 Frank is -- Mr. Eppes is not going to do this. But if he
13 picked up one of those guns and mischaracterized, you
14 know, whatever it is. It's something like that. Or maybe
15 testimony from -- from an officer where it's clear that
16 she knocked on the door and it was stated she didn't knock
17 on the door, issues like that.

18 THE COURT: Well, let me ask you this, Counsel.
19 You're giving your closing argument. Mr. Eppes is going
20 to give his closing argument. If he disagrees with --
21 with something you say in your closing argument, is it all
22 right for him to jump up and say --

23 MR. POLSINELLO: I don't think --

24 THE COURT: I don't mean about this case. I'm just
25 talking about --

1 MR. POLSINELLO: Do you mean during my closing?

2 THE COURT: Yeah, yeah.

3 MR. POLSINELLO: Your Honor, I -- I understand what
4 you're saying --

5 THE COURT: You know, that's --

6 Mr. POLSINELLO: -- but I'm going to object. We do
7 have different interpretations of the facts and evidence.

8 THE COURT: Well, yeah, you wouldn't be here if you
9 did -- if you did. If you had the same interpretation,
10 you wouldn't be here.

11 MR. POLSINELLO: Exactly.

12 THE COURT: But, see, I -- I just -- I'm just -- I
13 don't want to beat a dead horse dead.

14 MR. POLSINELLO: Yes, sir.

15 THE COURT: You know, I just don't want a situation
16 where we get a lot of jumping up and down and it's really
17 not necessary because you disagree with how he is stating
18 his version of the facts versus your version.

19 MR. POLSINELLO: I understand.

20 But would Your Honor allow --

21 THE COURT: I know you're trying to tie me in. I
22 know -- you keep asking me about this case. I know what
23 you're trying to do. I -- I'm just telling you that I see
24 the case. I know about the case. But what I'm saying is
25 that if, in fact, there's no misstatement about the

1 evidence presented, you agree that there's no reason for
2 you to jump up.

3 MR. POLSINELLO: Yes.

4 THE COURT: Now, you agree with that?

5 MR. POLSINELLO: Yes.

6 THE COURT: All right. So we're on the same page?

7 MR. POLSINELLO: Yes, Your Honor.

8 THE COURT: Okay.

9 MR. POLSINELLO: So would the State -- if -- if it
10 comes to this point, if it's necessary -- if it's deemed
11 necessary, would Your Honor allow a brief rebuttal as it
12 relates to this opinion?

13 THE COURT: Madam Court Reporter, can we go off the
14 record for just a minute?

15 (Off the record.)

16 THE COURT: Go ahead.

17 MR. EPPES: I assume if I rest, we're going to argue
18 and charge.

19 THE COURT: I mean, unless y'all need a break or
20 something.

21 Well, let me ask you this. Have you got any -- we're
22 just going to charge on the law, the statute?

23 MR. EPPES: Yes, sir. The only -- the only thing
24 that --

25 THE COURT: What about a lesser included? Is -- that

1 was an issue.

2 MR. EPPES: The only thing I'm aware of --
3 Mr. Polsinello and I have already discussed a lesser
4 included of domestic violence first degree. And I believe
5 because of the way the domestic violence first degree
6 statute reads that if there's moderate bodily injury and
7 certain other factors that it has to be moderate bodily
8 injury meaning the definition of domestic violence second
9 degree with enhancing factors. I think you're going to
10 have to read domestic violence second degree as well.

11 And I just wanted to make sure about that before I
12 argue it and get objected to.

13 THE COURT: So what's your position on second degree?
14 I've got --

15 MR. EPPES: And, Your Honor, you can tell them that
16 you don't believe -- you can tell them whatever you want
17 about second degree. I'll argue it. But I'm not going to
18 argue second degree very much.

19 THE COURT: Have you got -- have you got a problem,
20 Mr. Poniselli, in charging second degree?

21 MR. POLSINELLO: Your Honor, Mr. Eppes and I are in
22 agreement with the lesser included charge of domestic
23 violence first degree being read. But I would object to
24 domestic violence second degree. I have the domestic --
25 domestic violence first degree statute in front of me.

1 THE COURT: Okay.

2 MR. POLSINELLO: Obviously, there's multiple ways to
3 prove it. I -- I don't see why -- how domestic violence
4 second degree can come in. Our legislature has defined in
5 this statute what great -- what great bodily injury means.
6 And there's multiple ways to prove it and you don't have
7 to have great bodily injury.

8 MR. EPPES: Your Honor, if I may. I'd point you to
9 South Carolina Code Section 16-25-20. And it says in
10 point B(5) regarding the definition of domestic violence
11 first degree, In the process of committing domestic
12 violence in the second degree, one of the following, also,
13 results: The offense is committed while in the presence
14 or being perceived by a minor, the offense is committed --

15 THE COURT: Are you reading -- are you reading second
16 degree or first?

17 MR. EPPES: I'm reading first.

18 THE COURT: B?

19 MR. EPPES: I'm reading the enhancements to first.

20 The offense is impeded -- is committed by impeding
21 the victim's breathing or air flow. The offense is
22 committed using physical force or the threatened use of
23 force against another to block that person's access to a
24 cell phone, telephone, or electronic communication device.
25 So I think you've got to read second to explain the

1 enhancements for first.

2 MR. POLSINELLO: And -- and the State would disagree
3 with that, Your Honor. I think first degree is, clearly,
4 laid out. And it says that first degree is a lesser
5 included offense of DVHAN. First degree, there are
6 multiple -- multiple ways to prove it, Your Honor. And I
7 think the legislature does a pretty good job of explaining
8 that.

9 I don't think we need second degree to explain first.
10 First degree is, clearly, laid out.

11 MR. EPPES: You can substitute the elements of second
12 degree, Judge, into the place where it says that. I'm
13 happy to do it that way so it doesn't say second degree.

14 THE COURT: The statute -- 16-25-65, I hear what
15 you're saying, Mr. Eppes. But it says, Domestic violence
16 in the first degree -- and I'm reading this -- repeating
17 what the Solicitor indicated. It, specifically, states
18 that's a lesser included. And I'm trying to get to where
19 you are on the enhancement argument regarding second
20 degree has to be read to get to first. Help me with that.

21 MR. EPPES: Well, Your Honor, there's evidence in
22 this case that the offense was committed in the presence
23 of or while being perceived by a minor. There's evidence
24 in this case that the offense is committed by impeding the
25 victim's breathing or air flow and it doesn't -- without

1 causing loss of consciousness, which is part of domestic
2 violence high and aggravated. There's evidence in this
3 case that this offense was committed using physical force
4 or the threat of use of force to block that person's
5 access to the telephone.

6 So that is three things that are factually in this
7 case that are enhancements to domestic violence second
8 degree. And I don't see any other way to read those
9 enhancements in that make it domestic violence first
10 degree, which is a lesser included of domestic violence
11 high and aggravated.

12 I don't want the jury to think for some reason that
13 choking somebody automatically rises to high and
14 aggravated, or that blocking somebody from using the
15 telephone automatically rises to high and aggravated.
16 And -- and so I think it's appropriate to fashion some way
17 to say criminal domestic violence -- and you can say it
18 like this.

19 You can say criminal domestic violence in the first
20 degree, also, may include moderate injury accompanied by
21 choking, blocking somebody from the telephone, or being
22 perceived by a minor. I -- I think that would be an
23 appropriate way to do it.

24 I'm not asking for the words criminal domestic
25 violence second degree. I'm asking for the enhancements

1 to be read in that would make something criminal domestic
2 violence first degree.

3 THE COURT: Let me ask you this. On first degree, as
4 I'm reading the statute, 16-25-20, it's unlawful to cause
5 physical harm or injury to a person's own household
6 member. That's the first provision; is that correct?

7 MR. POLSINELLO: Yes, Your Honor, A(1).

8 THE COURT: A(1).

9 A(2), Offer or attempt to cause physical harm or
10 injury to a person's own household member with apparent
11 present ability under circumstances reasonably creating
12 fear of imminent peril. That's A(2).

13 And then it goes on to say, Except as otherwise
14 provided in this section, a person commits the offense of
15 domestic violence in the first degree if the person
16 violates the provisions of Subsection A, and great bodily
17 injury to the person's own household member results or the
18 act is accomplished by means likely to result in great
19 bodily injury to the person's own household member.

20 MR. POLSINELLO: That's just -- Your Honor, that's
21 one. There are --

22 THE COURT: Then there's two.

23 MR. POLSINELLO: Two and three and four. There's
24 5(a), 5(b). There's multiple ways to get it.

25 THE COURT: Well, two -- it says, If -- three is --

1 I'm still talking first -- first degree. Three would be
2 as -- two more prior convictions.

3 Do you agree with that?

4 MR. POLSINELLO: Yes, Your Honor.

5 THE COURT: Four would be a person uses a firearm in
6 any manner that violates Subsection A.

7 Do you agree with that?

8 MR. POLSINELLO: Yes, Your Honor.

9 THE COURT: And five the process of committing
10 domestic violence in the second degree, one of the
11 following, also, results.

12 MR. POLSINELLO: Yes. And then the legislature goes
13 on A through E and how to get to that. And then there's
14 EI -- E(1) and E(2). It -- it is a road map, Your Honor.
15 And you've got to connect the dots. That's the way the
16 legislature wrote it.

17 I would -- you know, if Your Honor wants to -- if it
18 feels it's appropriate to explain what domestic violence
19 second degree is, in reading the charge to understand then
20 what that is, I don't think we'd have a problem with that.

21 But not reading it as a lesser included charge -- the
22 lesser included --

23 THE COURT: Are you okay with that?

24 MR. EPPES: Yes, sir.

25 MR. POLSINELLO: -- is first degree.

1 THE COURT: Are you okay with that?

2 MR. EPPES: Yes, sir.

3 THE COURT: All right. Well, this is what I want you
4 to do. I've got a copy of the statute in front of me. So
5 I won't miss -- misspoke -- misspeak when I get to that
6 portion, you just give me what you want me to say.

7 MR. EPPES: Your Honor, I really think that if you
8 look at domestic violence second degree, since there's no
9 previous conviction, there's no protective order, and no
10 issues with third degree, I think if you say -- instead of
11 domestic violence second degree you say, if a person
12 commits the offense -- if you violate subsection A and --
13 if the person violates subsection A and moderate bodily
14 injury to their own household member results or is
15 accomplished by means likely to result in the moderate
16 bodily injury of a person and the offense is committed in
17 the presence of or perceived by a minor. The offense is
18 committed during the commission of a robbery, burglary, or
19 kidnapping. The offense is committed by impeding the
20 victim's breathing or air flow, or by prohibiting somebody
21 from using the telephone to do anything. I'm okay with
22 it.

23 THE COURT: Yeah. But I'm -- I'm not defining
24 second.

25 MR. EPPES: You're defining -- you're using the

1 definition of second to say what the enhancements go to.

2 MR. POLSINELLO: But there's no way that the jury
3 would know that that's the definition of second degree.
4 We're, like, kind of mincing and dicing the statute now.

5 THE COURT: I'm -- I'm not comfortable doing it that
6 way because that -- that's confusing.

7 MR. EPPES: Then say the parties have agreed that --
8 I'm sorry. The parties have agreed that criminal domestic
9 violence first offense is a lesser included offense of
10 this statute.

11 However, there is -- I'm not charging you -- I'm only
12 charging you on the law of criminal domestic violence
13 second offense as it relates to second degree as it
14 relates to criminal domestic violence first degree when
15 you begin charging them on criminal --

16 THE COURT: I think that confuses them, Mr. Eppes. I
17 really do. I think -- you know, I think you either --
18 you -- you charge -- you charge what's in the indictment,
19 high and aggravated. You charge that, charge the law on
20 that. And then you charge -- you've got to charge first
21 degree because that's a lesser included of the ABHAN.

22 What -- I hear what you're telling me. But the way
23 I'm reading this and what Mr. Poniselli -- Poniselli --
24 I'm going to get your name before it's over with.

25 But, anyway, what he's saying is he's not opposed --

1 you know, I think I'm hearing him say he's not opposed to
2 the Court defining second degree, but he's absolutely
3 opposed to the Court charging that.

4 Is that -- is that what you're telling me? Charging
5 first degree and second degree as -- as an option by way
6 of --

7 MR. POLSINELLO: Your Honor, I would propose that,
8 you know. I have this statute printed out word for word,
9 you know, as it's online and in the current Code of Laws.
10 I think the easiest way is for domestic violence first
11 degree the lesser included charge -- jury charge, just to
12 read it just as it is in the law.

13 THE COURT: Let me see what you've got, to make sure
14 you've got the same thing I've got.

15 MR. EPPES: Judge, my fear is that -- my fear is that
16 what we're going to get is a question from the jury about
17 what is criminal domestic violence second degree.

18 (Pause.)

19 MR. EPPES: I -- if you want to charge it just like
20 that, fine. But, Judge, in my experience, what you're
21 going to get is a question of what's criminal domestic
22 violence second degree?

23 MR. POLSINELLO: And I think it'd be appropriate,
24 Your Honor, to maybe at that time explain to them.

25 THE COURT: You're -- you're okay with me giving --

1 MR. POLSINELLO: If they have that question --

2 THE COURT: If that question comes out?

3 MR. POLSINELLO: Yes, Your Honor.

4 THE COURT: Otherwise, see, this is --

5 MR. EPPES: I understand.

6 MR. POLSINELLO: I do plan --

7 THE COURT: Go ahead and make a copy of it. I've got
8 the same thing, but it's smaller.

9 Now, if that question comes back, we've got -- we've
10 got an agreement now that we're not going to -- nobody is
11 going to be upset if I -- because it's probably going to
12 be a definition of what second degree is, and can that be
13 a potential verdict? I mean, you're talking about --

14 MR. EPPES: I don't have a problem with doing it
15 later. I just think you ought to say, you know, second
16 degree is not a lesser included of this, so I charge you
17 that you cannot consider this crime. However, because
18 it's part of the definition of criminal domestic violence
19 first degree, here's what it is and just do moderate
20 injury, just the -- number one. That's all we need.

21 MR. POLSINELLO: We're mincing and dicing the
22 statute, Your Honor --

23 THE COURT: I'm going to read -- I'm going to read
24 the entire statute. I mean, I'm going to read the statute
25 on first degree as -- you know, as it relates to being a

1 lesser included of the domestic -- high and aggravated.
2 I'm going to read that. What you just -- I'm going to
3 read that.

4 And I agree, Mr. Eppes, that it may come back and
5 they have a question as to what second degree is. And
6 we'll cross that bridge when we get to it.

7 MR. EPPES: Yes, sir.

8 THE COURT: But, you know, for -- for verdict form
9 purposes, you know, we're going to have that first degree.
10 We're going to have high and aggravated. And then we're
11 going to have a line for first degree. We're not going to
12 have a second degree.

13 MR. EPPES: That's what's absolutely the way it ought
14 to be, Judge.

15 THE COURT: We'll have first degree. We're going to
16 have ABHAN -- not ABHAN, domestic violence, ABHAN, and
17 then a line, then first degree, second line.

18 Do you agree with that on the verdict form?

19 MR. POLSINELLO: Yes, Your Honor.

20 MR. EPPES: I agree with that a hundred percent,
21 Judge.

22 THE COURT: All right. As a matter of fact, I'm
23 going to put you guys to work. Let's get your -- get this
24 fine lady sitting next to you to make sure that I get a
25 verdict form that has all that on there. She -- she'll do

1 that for me. And just bring that to me at the appropriate
2 time.

3 All right. So we've got that out of the way. I
4 think we've got that out of the way.

5 Did you get your copy back?

6 MR. POLSINELLO: Yes. Yes, Your Honor.

7 THE COURT: We -- what we got?

8 Anything else, Mr. Eppes, before we bring the jury
9 back?

10 MR. EPPES: No, just Ms. Maddox -- Dr. Maddox.

11 THE COURT: Oh, you, actually, want that on the
12 record?

13 MR. EPPES: I want to put her on the record, yes,
14 sir. I think it's appropriate.

15 THE COURT: All right. This is just regarding the
16 current state of the Defendant?

17 MR. EPPES: And our -- our discussions on the fact
18 that he understands.

19 THE CLERK: Ma'am, please, raise your right hand.
20 WHEREUPON,

21 DONNA SCHWARTZ MADDOX, M.D.,
22 after first having been duly sworn, testified as follows:

23 THE CLERK: Thank you.

24 Please be seated.

25 THE COURT: Good to see you again.

1 THE WITNESS: You too, Your Honor.

2 THE COURT: All right. Yes, sir, Mr. Eppes.

3 DIRECT EXAMINATION

4 BY MR. EPPES:

5 Q Dr. Maddox, just to review. You represent the
6 Department of Mental Health in this case; correct?

7 A Yes.

8 Q And you've been kind of on call because of your
9 diagnoses of Mr. Workman, which includes the fact that at
10 all times that you've observed him during this trial he's
11 been competent; correct?

12 A Yes. I've -- I've met with him yesterday in the
13 afternoon. I met with him again today and, actually, met
14 with him right before court this afternoon. And I've been
15 able to observe him firsthand working with you,
16 communicating with you, you two working on strategies
17 together.

18 And it's absolutely my opinion that he knows what
19 he's doing, Your Honor, and he's able to assist in his
20 defense.

21 Q And you've been privy to our communications; correct?

22 A I have.

23 Q And you've shared some of those conversations with
24 the State; correct?

25 A No. The -- the only --

1 Q Well, no. You've shared the information that you've
2 gleaned about his psychological condition with the State?

3 A Absolutely.

4 Q Because you are an unbiased observer retained by the
5 Department of Mental Health?

6 A That's right. And -- and I did have a conversation
7 with the Solicitor after court this morning to explain
8 that I was there to evaluate Mr. Workman again prior to
9 his waiving his right to testify.

10 MR. EPPES: That's all I have, Your Honor.

11 THE COURT: Anything, Mr. Poniselli?

12 CROSS-EXAMINATION

13 BY MR. POLSINELLO:

14 Q Dr. Maddox, so you had a chance to talk with the
15 Defendant today?

16 A Yes, sir, on two occasions.

17 Q Is it your opinion that he's competent?

18 A Yes. He remains competent.

19 Q Can someone have a mental illness, but still be
20 competent?

21 A Absolutely, yes.

22 Q In your professional opinion, observing the Defendant
23 and his interactions with Mr. Eppes, was he able to assist
24 his counsel?

25 A In my opinion, yes. They -- they had a difference of

1 opinions when they were working on trial strategies
2 together. And he was able -- he's self-protective. And
3 he -- they were able to communicate and work through those
4 differences together. And he was able to speak his mind
5 and get his points across.

6 So I observed them directly. And I -- I observed
7 him. He's very protective. And he's interested in his
8 well-being.

9 MR. POLSINELLO: Okay. Thank you.

10 THE WITNESS: You're welcome.

11 MR. POLSINELLO: No further questions.

12 REDIRECT EXAMINATION

13 BY MR. EPPES:

14 Q Dr. Maddox, have you seen anything that made you
15 think that Mr. Workman was dilatory, malingering, or
16 trying to delay this proceedings --

17 A Not at all.

18 Q -- rather than just trying to defend himself?

19 A No, not at all.

20 In my opinion, Your Honor, as -- he's -- he's
21 following the testimony. And there's some things that
22 have caused him concern. And he was expressing those
23 concerns. I don't think he's malingered any symptoms of
24 illness.

25 In fact, he's -- he's -- continues to cooperate with

1 you, even when he may have some differences with you.

2 THE COURT: Anything else from either side?

3 MR. POLSINELLO: Nothing further from the State.

4 THE COURT: All right. And I have no questions,
5 ma'am.

6 Thank you, ma'am.

7 You can step down.

8 THE WITNESS: Thank you.

9 May I be excused?

10 THE COURT: Can she be excused? Any objection?

11 MR. POLSINELLO: No objection.

12 MR. EPPES: No objection, Your Honor.

13 THE COURT: All right. Thank you, ma'am.

14 THE WITNESS: Thank you.

15 THE COURT: I appreciate it. You're free to go.

16 All right. Gentlemen, when I bring the jury back in,
17 we'll go straight into closing arguments.

18 MR. POLSINELLO: Yes, Your Honor.

19 MR. EPPES: Yes, sir.

20 THE COURT: And I'll put on the record that the --
21 the Defendant has rested.

22 MR. EPPES: I will rest, Your Honor. If you would,
23 if you'll just go to Mr. Eppes. And I'll say, the Defense
24 rests.

25 THE COURT: I'll go to Mr. Eppes. All right.

1 MR. EPPES: And -- and, Your Honor, this may be
2 slightly premature. But I'm -- I'm going to say I rest.
3 And then I'm going to say, Your Honor, I'm making a --
4 again, a motion for directed verdict. And that way, you
5 can just deny it on the record and I'll be done with it.

6 THE COURT: We'll see what I do.

7 MR. EPPES: Oh, okay. Well, that's true.

8 Thank you.

9 THE COURT: Thank you, sir.

10 MR. POLSINELLO: Your Honor, I just -- I can't help
11 but notice. So, obviously, for the charges and
12 instructions, we've got DVHAN down and DV first. I'm
13 assuming kidnapping is going to be read.

14 THE COURT: The statute.

15 MR. POLSINELLO: The statute. As well as --

16 THE COURT: Possession of a weapon.

17 MR. POLSINELLO: Yeah. Word from word from the
18 statute?

19 THE COURT: A weapon -- possession of a --

20 MR. POLSINELLO: Yeah. During a violent crime --

21 THE COURT: Yeah. Word for word.

22 MR. EPPES: The only -- the only thing I have, Your
23 Honor, you're going to read the definition of great bodily
24 injury; correct?

25 MR. POLSINELLO: I -- I'm pretty sure that's

1 standard.

2 THE COURT: And let me get that statute.

3 (Pause.)

4 THE COURT: Gentlemen, come here for a second. Bring
5 me your -- bring me what you've got on -- on kidnapping
6 and possession of a weapon.

7 MR. POLSINELLO: Yes, Your Honor. And, again, this
8 is word for word from the SC Courts website and the
9 statute. I've, obviously, taken out the sentencing
10 ranges.

11 (WHEREUPON, a bench conference was held.)

12 THE COURT: All right. We're back on the record.

13 We've got a juror issue. I don't know Ms. Patel's
14 juror number, but both Counsel are fully aware of who she
15 is. She -- she was the juror who had the issue regarding
16 picking up a child. And she told me about that yesterday
17 and she told me about that the day before. I thought the
18 child was maybe picked up by now. But we've got to deal
19 with that issue.

20 So what's -- what's the pleasure? We've got two
21 alternates, Mr. Eppes, and, Mr. Poniselli.

22 MR. POLSINELLO: Your Honor, the State is indifferent
23 and stands by the Court's decision.

24 THE COURT: Well, you know -- you know, at the outset
25 on Monday, I said you're going to be inconvenienced a

1 little bit, you know. And the only issue I have with this
2 is if Ms. Patel had indicated -- and I, clearly, asked on
3 the record down there -- down in the qualification of the
4 panel whether or not anybody had a problem with small
5 children.

6 And I don't know what I would have done if she came
7 up and talked to me. But, I mean, she let us know about
8 this somewhere mid -- mid-trial. And I -- I just think as
9 bad as I would like to help her, I -- I just can't at this
10 point. She's just going to have to make a phone call.
11 Because we're -- we're in the -- we're in the stretch.
12 And I didn't tell her yesterday that I'd do it. I told
13 her I'd listen to her and we'd consult.

14 Tell her, unfortunately, I'm not going to be able to
15 let her go. She's just going to have to work it out.
16 She's going to have to call somebody and work it out. I
17 think she was able to call somebody yesterday.

18 Unless either one of Counsel has a different
19 position. I don't want to -- I want to make sure that I
20 don't have -- let me put it this way. I want to make
21 certain that I don't have a juror who's -- because of that
22 is not going to --

23 Do you see where I'm going with this?

24 MR. EPPES: That is my concern, Your Honor.

25 THE COURT: I don't want a juror who's -- who's going

1 to be -- let me just say, I don't want a juror sitting
2 there who's -- who's going to be mad, or whatever. And
3 she's sitting there and -- and she's going to be a -- a
4 virus to both sides, not necessarily just to the State,
5 but could be a virus to the Defense as well, you know.
6 Because -- and she's not focused.

7 And it's -- it's incumbent -- you know, as I told
8 everybody at the beginning of the week -- I told the
9 jurors, you've got to be focused. And I -- you know, I'm
10 starting to -- these cases -- this case is important
11 to -- to Mr. Workman as it is to the State. And he wants
12 the jurors to be focused and the State wants them to be
13 focused.

14 So even though I said that, I'm thinking that that
15 might not be -- I'll put it this way. I'm just going to
16 go ahead and -- and let one of the alternates serve. I
17 think Ms. Patel has -- has approached us too many times to
18 count.

19 So I'm going to let one of the alternates serve.
20 Bring her out.

21 MR. EPPES: Thank you.

22 THE COURT: I'm going to bring her out. And I'm
23 going to excuse her. And then I'm going to appoint
24 alternate number one. I don't know who the first
25 alternate was.

1 You got that?

2 THE CLERK: Uh-huh.

3 THE COURT: Whoever that first alternate was will
4 take her place.

5 And I -- I guess, Bailiff, you know who that is based
6 on where they're sitting at.

7 THE BAILIFF: Who is it?

8 THE COURT: #43 is the first alternate. That's my
9 recollection of it. So #43 will take the place of
10 Ms. Patel.

11 (WHEREUPON, Juror #152, Bhavisha Patel, entered the
12 courtroom.)

13 THE COURT: Ms. Patel, come up here.

14 All right. Ma'am, I'm going to -- I understand that
15 you had an issue a couple of days ago and you had an issue
16 yesterday regarding the pick up of -- of your child or
17 children.

18 JUROR #153, BHAVISHA PATEL: Correct sir.

19 THE COURT: All right. I don't know if you heard me
20 on Monday when I asked people -- or persons who had an
21 issue regarding a small child. You did not indicate that
22 to me. I think that's -- that was our concern. I don't
23 know -- I'm not sure what I would have done. But I am
24 going to let you go. And we're going to replace you with
25 an alternate.

1 So, Madam Clerk, how does that work?

2 I am going to -- she -- I think I got some directive
3 that she needs to go back in the pool.

4 THE CLERK: Yes.

5 THE COURT: Because -- so you're not -- I don't know
6 how the next pool is going to treat you.

7 THE CLERK: She has to -- there's a number on the
8 back of her badge. If she'll call back after 6:00 tonight
9 and find out what time to report tomorrow.

10 JUROR #153, BHAVISHA PATEL: Okay.

11 THE COURT: If you'll do that for me, ma'am.

12 JUROR #153, BHAVISHA PATEL: Sure. No problem.

13 THE COURT: All right. Thank you, ma'am.

14 JUROR #153, BHAVISHA PATEL: Thank you.

15 (WHEREUPON, Juror #152, Bhavisha Patel, exited the
16 courtroom.)

17 THE COURT: Before we bring the jury in -- so
18 alternate #43 will replace Ms. Patel. That'll be
19 alternate number one. Alternate number two is Juror #12.

20 And we don't have any other issues?

21 THE BAILIFF: I do not know of any right now.

22 THE COURT: Okay. If we don't have any other issues,
23 then we'll --

24 MR. EPPES: Your Honor, I just wanted to put on the
25 record my request that you clarify or somehow define

1 domestic violence second degree as -- as it relates to the
2 enhancements that -- domestic violence second degree, plus
3 certain elements create the lesser included offense of
4 domestic violence first degree. And I believe that's a
5 mistake on the charge, but Your Honor's ruled. I just
6 wanted to make it clear that I did object to --

7 THE COURT: Yes. And I -- and I kind of addressed
8 that. Just to be clear, I am going to charge the
9 following. I'm going to charge domestic violence high and
10 aggravated nature pursuant to the statute. I am going to
11 charge kidnapping pursuant to the statute. I am going to
12 charge possession of a weapon during the commission of a
13 violent crime pursuant to the statute. I'm, also, going
14 to charge domestic violence first degree as a lesser
15 included of domestic violence high and aggravated nature.
16 Those -- those are the charges.

17 And let the record reflect that I've reviewed these
18 charges with both lawyers, both of the attorneys. And
19 we're clear. And I will also -- at some point during the
20 charge, I will give a definition of great bodily injury,
21 but would not address the issue of moderate bodily injury.

22 However, if there was a question of -- by --
23 potential question by the jury panel regarding second
24 degree, then we'd address that at the appropriate time, if
25 that came up. And that's my understanding of where we are

1 on the charges.

2 Where are we on the verdict forms? We --

3 MR. POLSINELLO: We're working on it.

4 THE COURT: She's working on that?

5 MR. POLSINELLO: Yes.

6 THE COURT: But we're talking kidnapping, NG or G.

7 We're talking domestic violence high and aggravated

8 nature, NG or G. We're talking domestic violence first

9 degree, NG or G. And then we're talking possession of a

10 weapon during the commission of a violent crime, NG or G.

11 And that's pretty much what you're working on; right?

12 (WHEREUPON, there was no response.)

13 THE COURT: Is that -- that -- we're clear?

14 Everybody's clear on that?

15 (WHEREUPON, there was no response.)

16 THE COURT: Okay. Other than that, it's just going
17 to be the standard -- standard charge that I normally do.

18 And, of course, I'll give you an opportunity to see if you
19 have any exceptions.

20 And, of course, your -- your objection, Mr. Eppes, is
21 continuing and it's noted for the record.

22 MR. EPPES: Thank you, Your Honor.

23 THE COURT: All right. Anything else before we bring
24 the jury back?

25 MR. POLSINELLO: Nothing from the State, Your Honor.

1 MR. EPPES: Nothing from Defense, Your Honor.

2 THE COURT: All right. Bring the jury out.

3 (WHEREUPON, the jury came into open court at
4 approximately 2:11 p.m.)

5 THE COURT: Okay. Mr. Eppes, anything from the
6 Defense?

7 MR. EPPES: Your Honor, the Defense rests.

8 THE COURT: All right. Ladies and gentlemen of the
9 jury, the -- the State has presented you all the witnesses
10 and evidence they intend to present. And the Defendant
11 has also -- has rested.

12 Now, the next thing that happens is both sides are
13 going to present to you what is called closing arguments.
14 And I probably said that to you at the beginning. Your
15 attentiveness during the entire trial, obviously, is a
16 must. And your attentiveness at closing arguments is real
17 important.

18 So I want you to focus upon what these lawyers have
19 got to tell you. Because this is their -- their
20 opportunity to summarize the facts and evidence as seen
21 through the Defendant's -- Defendant's eyes, as well as
22 the State -- through the Prosecution's eyes. So listen to
23 them and listen to them very carefully as they do that.

24 Solicitor, are you ready?

25 MR. POLSINELLO: Yes, Your Honor.

1 THE COURT: All right.

2 MR. POLSINELLO: May it please the Court.

3 THE COURT: Yes, sir.

4 CLOSING ARGUMENTS

5 MR. POLSINELLO: Your Honor.

6 Ladies and gentlemen of the jury, good afternoon.

7 Domestic violence is a very unique crime in itself.

8 It's its own separate animal, if you will.

9 Mr. Bailiff, could you get the lights, please?

10 If you think about it, a lot of crimes occur out in
11 public. In this day and age, you know, everyone has their
12 cell phones. We all have video recording devices.

13 There's a lot of cameras on the streets these days. A lot
14 of crime happens out in public, if you will.

15 Domestic violence is so unique because, oftentimes,
16 as in this case, it happens within the confines of
17 someone's home. It's very sensitive in nature. It's
18 intimate, close quarters. The public's not aware of it
19 most of the time, as in this case. It's really sort of
20 the Defendant controlling, manipulating and using his
21 presence to dominate.

22 Why don't -- why didn't it happen out in public?
23 It's because they would be challenged, we would like to
24 think. And that wasn't the case. There was no -- nobody
25 to challenge the Defendant and what he did to the victim

1 in this case. It was brutal. She took a beating.

2 And you know what? I just referred to Ms. Workman as
3 victim. I'm not going to refer to her with that word any
4 more, the "V" word because she's a survivor. The survivor
5 took a beating.

6 It's secretive in nature. Like I said, the Defendant
7 can't be challenged. And you heard from Ms. Workman about
8 the ordeal that she went through from August 27, 2016, to
9 August 29, 2016, that Saturday starting at around 4:30
10 p.m. when the Defendant came home. He did not work
11 Sunday. And it continued all then until Monday when he
12 left for work, she said Monday morning.

13 If you think about that, how many hours is that him
14 in the home with her? So he gets there Saturday after
15 work at 4:30. We're talking well over 24 hours. Look at
16 the damage that can be done in 24 hours. He had control.
17 No one challenged him. It was his world.

18 What the survivor endured this weekend, it's
19 despicable what happened to her. It's deplorable. And
20 that's why we have a domestic violence law is to try to
21 prevent and deter people from committing this crime. And
22 when people do commit this crime, it's to hold them
23 accountable to the law. No one's above the law. I submit
24 to you, ladies and gentlemen of the jury, that this should
25 not be allowed in our community. No wife, no mother, no

1 victim deserves to be beaten up like this.

2 Now, in a few moments towards the end of this trial,
3 His Honor is going to instruct you on the law. Remember,
4 at the beginning of the closing [sic] arguments, I told
5 you that I'm not going to get into the law and the
6 elements, that there's an appropriate time to do that
7 towards the end of this trial. And that's now.

8 And, unfortunately, it's -- it's sort of mechanical.
9 You're going to be instructed on the law, you know.
10 Obviously, there's adjectives in there, specific criteria
11 that the State has to meet. And the way that we meet that
12 is by the evidence.

13 And as I told you earlier, that evidence can come in
14 two forms. It can come from up here in the form of
15 testimony. That is evidence. And then it comes in the
16 form right here, tangible evidence, if you will, audio
17 recordings, photos, guns. I just -- I'm going to try to
18 briefly run through this with you all, going over the
19 elements.

20 So this is domestic violence of a high and aggravated
21 nature. This is the law that our legislature has created.
22 And this is how they define it. As you can see, there's
23 one way to meet the elements of this law. That's number
24 one right there.

25 Number two, I want you to focus on number two.

1 Commits the offense with or without an accompanying
2 battery and under circumstances manifesting extreme
3 indifference to the value of human life and would
4 reasonably cause a person to fear imminent great bodily
5 injury or death. That's it. That's one way to prove
6 domestic violence of a high and aggravated nature.

7 So think about all the evidence, all the testimony
8 that's happened. I submit to you, I stand here firmly
9 convinced based on the evidence that the State has met
10 those elements.

11 The Judge is going to instruct you when he instructs
12 you about the law about the standard of proof, beyond a
13 reasonable doubt. And that is correct. The State has to
14 prove its case, each charge beyond a reasonable doubt.
15 Customarily, that's thought that it's that type of doubt
16 that would cause a reasonable, ordinary, prudent person to
17 hesitate to act, to have to think about it. It's not an
18 absolute doubt. It's not a hundred percent doubt. It's
19 just a hesitation, if you will.

20 If you think about this, what the survivor
21 experienced in this case, clearly, she was beaten at the
22 hands of this Defendant. So that's battery, if you will.
23 So we met with -- battery.

24 Under circumstances manifesting extreme indifference
25 to the value of human life. I submit to you that holding

1 up your wife over 24 hours with minor children present,
2 that's showing an extreme indifference to the value of
3 human life. How's that valuing life if you're doing this
4 and your children are present, you're not letting your
5 life -- wife leave? It's a great indifference to the
6 value of human life. Human life should be -- it's
7 precious. It should be cherished. It should be
8 celebrated. It shouldn't be beaten, and downtrodden, and
9 suppressed.

10 And would reasonably cause a person to fear imminent
11 bodily injury or death. Based on the evidence that you
12 heard, was Ms. Workman, the survivor, undergoing that?
13 Would that cause her to reasonably fear great bodily
14 injury or death? Would a reasonable person think that? I
15 submit to you, ladies and gentlemen, being beaten,
16 intimidated with weapons, how is this a kind act? This is
17 normally used for either target practice, training, or
18 self-defense. And that sometimes implies shooting someone
19 or killing someone.

20 Well, how did the Defendant -- he wasn't using this
21 for target practice. There's no evidence of that. He was
22 using it to intimidate her and coerce her. I submit to
23 you that that would cause a reasonable person, especially
24 if they couldn't fight back, to fear great bodily injury
25 or death.

1 You heard testimony that there was a live round in
2 the chamber when the officers confiscated that. That
3 means that gun was ready to go. There was a bullet in
4 there. And all you needed to do was click that trigger.
5 And the survivor knew that. She had to experience that.
6 Based on the evidence, ladies and gentlemen, the State
7 submits to you confidently that DVHAN has been met.

8 This follows the statute, the first page that you
9 saw, circumstances manifesting extreme indifference to the
10 value of human life include, but are not limited to using
11 a deadly weapon. Do you see that one? Look at number
12 three. Committing the offense in the presence of a minor.
13 And then look at number five. Committing the offense
14 during the commission of a robbery, burglary, kidnapping,
15 or theft.

16 So our legislature has laid out multiple ways that
17 are including but not limited to -- it's not an exhaustive
18 list -- exhaustive list to meet these elements. And the
19 State has met multiple elements right here, even though it
20 didn't have to. It's an or statute.

21 Clearly, you heard from the victim's testimony that a
22 gun was used. She -- it -- it seemed like she was about
23 to be struck in the head and she put her hand up in
24 self-defense. That's using a deadly weapon. That is a
25 deadly weapon. I think we're all in agreement. That's

1 not a toy gun. It's not a squirt gun. It's a nine
2 millimeter. And it had -- was loaded with a bullet.

3 Number three, committing the offense in the presence
4 of a minor. There he is, ladies and gentlemen. And
5 that's just one minor. That's Little Ray, six years old
6 at the time. Don't forget about Anu, who was two years
7 old at the time.

8 And then right here in number five, another way to
9 meet that element is by a kidnapping. And I'm going to
10 get to that shortly with you all.

11 Likewise, when the Judge -- when His Honor reads
12 the -- that statute to you, he's, also, going to read a
13 lesser charge of domestic violence first degree. There's
14 the statute. Not only has the State met the original
15 charge, DVHAN, but it's, also, met this statute, this
16 lesser charge. As you can see, it's unlawful to cause
17 physical harm or injury to a person's own household
18 member. As you heard, household member -- the survivor is
19 married to the Defendant. They have children in common.
20 And they formerly lived together. They're household
21 members.

22 Offer or attempt to cause physical harm or injury to
23 a person's own house [sic] member with the apparent
24 present ability under circumstances that reasonably create
25 fear of imminent peril. I believe we've already gone over

1 that.

2 You can see in Section B, you can -- also, can meet
3 first degree if the person violates right here above in A.
4 And there's multiple ways to prove it. I want you to look
5 at number four. The person uses a firearm in any manner
6 while violating the provisions of Subsection A, using the
7 firearm in any manner. You don't have to shoot someone.
8 You don't have to point at them. You can just merely use
9 this as an intimidation tactic while you're hitting the
10 person. And that's what the Defendant did. The State
11 meets that element.

12 Likewise, if the offense is committed in the presence
13 or well-being perceived by a minor. We've already gone
14 over that. Also, C, the offense is committed during the
15 commission of a kidnapping. That's what we're going to
16 discuss right now.

17 There's the kidnapping statute. That's it. Whoever
18 shall unlawfully seize, confine, inveigle, decoy, kidnap,
19 abduct, or carry away any other person by any means
20 whatsoever without authority of law, except when a minor
21 is seized or taken by its parents is guilty. Our
22 legislature did not put a time limit. There's no required
23 time limit to kidnap someone. I think that's often a
24 common misconception in our society. Unfortunately, in
25 the movies, you know, in a lot of kidnappings, you see

1 people abduct someone out of a van, haul them in, and
2 there's a ransom, and days go by. That's one form of
3 kidnapping.

4 Unlawfully confining, abducting, preventing someone's
5 movement from leaving in any way, however long, is
6 kidnapping. The survivor wanted to leave throughout that
7 Saturday night, throughout that Sunday. She couldn't
8 leave. You heard from her.

9 He had her cell phone. She couldn't call on her cell
10 phone. If she had her cell phone at any point, don't you
11 think she would have called 911? I mean, it's hard to
12 imagine him, the Defendant, for 48 hours, or whatever,
13 constantly watching over her, even though it -- it does
14 sound like that's what happened. But maybe there was a
15 brief moment when she was alone, if she had her cell
16 phone, a reasonable person would have probably tried to
17 call 911 or sought help, but she couldn't. She was being
18 confined. Her movement was being restrained by this
19 Defendant. So the kidnapping has been met.

20 And, lastly, His Honor is going to read to you all
21 possession of a weapon during the commission of a violent
22 crime. That's the other charge the Defendant is on trial
23 for. I can tell you right now and His Honor will let you
24 all know that DVHAN and DV first degree are violent
25 crimes. Kidnapping is a violent crime. So if you believe

1 through the evidence that the Defendant is guilty of
2 DVHAN, or DV first, or kidnapping and that he possessed
3 this weapon while doing so in any manner whatsoever, you
4 will likely find him guilty.

5 I think some -- some very compelling testimony was
6 from Deputy McHale, the State's second witness, the female
7 officer with the Greenville County Sheriff's Office. She
8 was patrolling this area on August 27th, 2016. She gets a
9 call from dispatch to do a welfare check. And you heard
10 on this 911 call, the survivor's employer called because
11 she'd missed work. That's how Deputy McHale came out
12 there. Great police work. She got their address right
13 away and showed up.

14 You can take this exhibit back with you. All this
15 evidence, you have a right to view, if you want. If you
16 notice on State's Exhibit No. 2, the call was placed
17 around 8:08, that anonymous call from Virginia. Deputy
18 McHale arrived in minutes, knocked on the door. Who
19 answers? The Defendant. You heard all she was trying to
20 do was make sure the victim was safe. It was a welfare
21 check. And you heard the Defendant's response, She's not
22 here. She's with her mother. And we all know that's a
23 lie, because you heard from the victim. She hadn't seen
24 her mother in years.

25 And why is it a lie? Because the victim is terrified

1 for her life with her children hiding in the room because
2 she was told to do so. He wouldn't -- the Defendant
3 wouldn't let Deputy McHale in, and we all know why. We
4 all know what he was concealing, confining.

5 So Deputy McHale can't force entry. She didn't have
6 reason to legally. She did what she was supposed to. But
7 her suspicions -- if you notice, she was suspicious, and
8 she had reason to be so.

9 Well, you heard from her. She called for back up.
10 She called for assistance. One deputy came, one other
11 man. And, you know, someone's in the front. Someone's at
12 the side. A few minutes go by before that deputy could
13 get there. And then SWAT was called. But that -- we all
14 heard that that took about 30 minutes to happen.

15 So think about it. The Defendant was there at one
16 point. And by the time SWAT came and surrounded the house
17 and when they breached, the Defendant wasn't inside. We
18 all know what happened. We heard from the victim there's
19 a door here, and there's a window to a bathroom here. He
20 likely went out one of these areas and scurried back here
21 to Crooked Creek Circle and Rosalee Drive.

22 We heard testimony from the Investigator that it's --
23 it's a short distance, you know. There's trails here.
24 You can walk. Even though it has thick brush, you can
25 just zip on back there. And that's what happened.

1 (WHEREUPON, State's Exhibit No. 1 was played in open
2 court.)

3 MR. POLSINELLO: State's Exhibit No. 2, this CAD
4 report showing a male calling from this Rosalita --
5 Rosalee Drive and Crooked Creek Circle in reference to a
6 stabbing. This call was made, it looks like, 40 minutes
7 after that initial call was made by Virginia to do the
8 welfare check. You can match up the times. So that call
9 was made 40 minutes after the welfare check.

10 So Deputy McHale arrived shortly after the welfare
11 check, knocks on the door, meets the Defendant, slams the
12 door. He comes out, comes to this -- around to this
13 location, Crooked Creek Circle and Rosalee Drive, and says
14 he got stabbed.

15 And we heard from Sergeant Rivera, there was no
16 stabbing. This is where he responded first. He took a
17 loop in his car. He got out, talked to neighbors. There
18 was no stabbing. If there's a stabbing, there's blood,
19 neighbors come out. There was no stabbing. You heard --
20 on this CAD report, you can see where the -- this call
21 came from, (864)478-9522. I showed that to the survivor
22 up here. She was familiar with this number. This was the
23 Defendant's number.

24 That tactic of making that 911 call, think about
25 that. Law enforcement presence starts getting heavy.

1 McHale calls for back up. SWAT comes. And you make that
2 call. Why? You're trying to get law enforcement presence
3 away from this area to report to this area. It's so
4 manipulative. It's disturbing. Fortunately, no -- no
5 more harm was done to the victim.

6 It took a while for her to come out. And that was --
7 that was unfortunate. SWAT came. You heard the callouts
8 for an hour. Think about what the survivor went through
9 in the last 48 hours. She was in there with her children
10 terrified because the Defendant told her not to come out.

11 The last time she heard, he told her to go in that
12 room and she did. She didn't know he left. She didn't
13 know that he jumped out. She had a right to be scared and
14 terrified after the beating that she took. She didn't
15 want any more. She was going to do what he said. So I
16 think a reasonable person should understand why she didn't
17 come out and why SWAT had to breach down the door.

18 So the survivor comes out to the end of the driveway.
19 She gets checked out by EMS. And she, first, tells
20 Investigator Perry she got in a bar fight. She got in a
21 bar fight. That's as believable as if I stated she got in
22 a fight with Ronda Rousey, or Matthew Justice, or Holly
23 Holm. Holly Holm did this to her. It's ludicrous, and so
24 is this bar fight. And that's what the Defendant wants
25 you to believe and what Defense Counsel may say.

1 But we heard from Mr. Sondov and the survivor herself
2 why she said that. I'm asking you, the jury, not to
3 victimize the victim, not to judge her. I don't know what
4 she went through. I'm probably never going to. I'm
5 never -- I'm not a woman. I'm not going to be a woman in
6 domestic violence. But I can understand using a
7 reasonable prudent person -- I can understand the decision
8 making that she did. And I don't think it's fair to judge
9 her.

10 And another sign of that is on September 7th, when,
11 you know, a few -- a week went by, she, finally, was able
12 to talk to Investigator Perry. She apologized is one of
13 the first things she did. I think that's strong, that
14 should tell you something. She apologized for not telling
15 the truth and lying. It's not that it didn't happen. She
16 was scared. She was terrified. The Defendant's
17 whereabouts were unknown at the time. He was not
18 apprehended.

19 So after having experienced that and talking to
20 officers, I can -- I think it's reasonable that someone
21 was afraid. You know, maybe they're out in the bush.
22 Maybe they're watching us from afar. From that 911 call,
23 the CAD report, the matching number, the time frame, we
24 all know he was at one point. There was no stabbing. So
25 I ask you not to judge her for this whole bar fight thing.

1 I think it's interesting to note -- you heard
2 Investigator Perry say and you heard the survivor say that
3 the Defendant's sister, Tammy Green, came to the scene and
4 drove them to her house for that night with the children,
5 the Defendant's sister. I think that says something. The
6 Defendant's own sister wanted to protect her and the
7 children. She invited her into their home where
8 Ms. Workman stayed with her children. But then on that --
9 early the next morning, she fled. She fled the state with
10 her children out of fear.

11 And last night, I was watching, I think, the Blue
12 Planet National Geographic something and there was a
13 scene, a momma polar bear with her cubs going up a
14 mountain, you know, the helicopter viewpoint capturing
15 this moment in nature. And the male polar bear was going
16 after them. It was his own cubs. This happens in nature.
17 Nature's a violent thing. And it's crazy how that can
18 happen.

19 And the momma polar bear goes back and tries to fight
20 him off protecting her cubs. And they're running, you
21 know, running away. And they, eventually, got away. If
22 you want to just boil it down to its elementary status, I
23 think we know there's some animalistic things that we
24 experience sometimes when we're held down and we're
25 confined. We want out. When we're losing air,

1 consciousness, we're going to fight to survive. And
2 that's what the survivor did with her children that early
3 morning deciding to flee, deciding to flee. She wanted to
4 get out because she knew the danger that she and her
5 children were in. You can't forget it. You would be --
6 you would be traumatized.

7 So I ask you not to find fault in judging her for the
8 reason and the decision making that she did. But she came
9 here this week. We all know she lives far away. She came
10 here with her children.

11 Why'd she come here? You heard her testimony. I
12 asked her, Why did you come here? It was her testimony
13 she came here to make sure the Defendant's held
14 accountable, to send a message that this should not be
15 tolerated, to send a message to her boys and to show them
16 that this is not acceptable and that you can stand up and
17 fight. She could not fight and stand up during this
18 period, reasonably so. She doesn't look like a fighter.
19 She doesn't look like she's capable of fighting back. But
20 she stood up now. She stood up this week.

21 In a moment Mr. Eppes, Defense Counsel, is going to
22 have an opportunity to speak to you all. He's probably
23 going to highlight that the victim said she got in a bar
24 fight. We all know that that's not true. And we all know
25 why the victim said that. Mr. Sondov, the expert himself

1 in domestic violence dynamics with over 20 years of
2 experience in this type of work, explained why victims may
3 lie at first, the reason, the factors, the fear of
4 reprisal.

5 Defense Counsel might, also, mention, well, if the
6 children were present, why didn't -- the State could have
7 called them as a witness. First of all, Anu, at the time,
8 was two. And you heard Investigator Perry, he couldn't
9 illicit any information from a two-year-old. He's out of
10 the question. Little Ray was six years old at the time.
11 Haven't the children been through enough trauma?

12 At one point during the cross-examination, Defense
13 Counsel asked the victim was she hospitalized.
14 Irrelevant. You don't need to be hospitalized to be a
15 victim of domestic violence. It's not required under the
16 statute, as you saw. Yeah, she was pulverized and
17 pummelled. She was more concerned about getting out of
18 the state for her children.

19 We heard testimony from the victim that the Defendant
20 cut her hair during this ordeal. And on scene when
21 Investigator Perry was coming through the house, he didn't
22 find any hair. He didn't find a knife. So much time had
23 gone by. And, you know, it doesn't sound like -- I don't
24 think there's any evidence that they searched every room.
25 It seems like they focused on that master bedroom where

1 the guns were found.

2 Take a look at this clean line right here. Do you
3 think it's reasonable to infer that that's either scissors
4 of a knife. That's -- that's a very smooth line. The
5 victim's telling the truth. Why -- why would she want to
6 do that to her own hair? She had long hair. It would be
7 odd to just want to snip. She didn't because he did it.
8 And you don't have to find a lock of hair or the knife to
9 prove this any further. The evidence is here. It just
10 goes to show further the brutality, the seriousness of the
11 situation resorting to that type of tactic to control.

12 During opening argument, Defense Counsel talked about
13 his client's freedom. Those were his own words. His
14 freedom is at stake. What about the survivor's freedom
15 during August 27th, 2016, to August 29th, 2017 -- 2016?
16 Sorry. Her freedom was deprived. Her movement was
17 deprived. What about her freedom?

18 In light of the evidence, I don't see how a
19 reasonable, prudent person would hesitate to answer the
20 following questions. Do you remember those four questions
21 that I asked you to constantly ask yourself throughout the
22 course of this trial? Did the Defendant physically
23 assault the survivor, Ms. Workman? Clearly, he did. Were
24 minor children present? Clearly, they were. Was a weapon
25 such as a firearm used in any manner? Which it was. And,

1 lastly, were her -- was her freedom, was her movement
2 confined or restrained in any manner? Which it was.

3 I believe we heard her say she was supposed to report
4 to work on Monday. And she didn't report because she was
5 terrified. He told her -- the Defendant, don't leave the
6 house. And he went to work. And she was so scared she
7 didn't. Think about it. That triggers the calling from
8 her work from this Virginia. She's not there.

9 Thank God this Virginia called law enforcement, 911
10 to do this welfare check. Thank God Deputy McHale arrived
11 on scene, confronted the Defendant, and immediately had a
12 suspicion that the victim and her children were in there.
13 The car was in the front of the driveway. The Defendant
14 slammed the door on her. He wouldn't allow her in.

15 All these answers, all these questions, is he guilty?
16 Based on the evidence -- taking the evidence and applying
17 it to the elements, there's no hesitation to act.

18 I ask that you render a true and just verdict, not
19 only finding the Defendant guilty, but, also, granting the
20 survivor the justice she deserves.

21 Thank you.

22 THE COURT: Mr. Eppes.

23 MR. EPPES: I don't stand behind this. I just need a
24 place to put my paper. I'd like to say I'm not absent
25 minded, but I write stuff down, so y'all bear with me.

1 We've got, as you know, a lot of ground to cover.

2 I want to start where Mr. Polsinello ended just for a
3 second. And I want you to think about what he didn't talk
4 about that Ms. Workman said, that Mr. Workman had told her
5 there was a bomb. He didn't say that. And I've been
6 studying about that story because I really -- I don't
7 think it's true. I don't think you have any reason to
8 find it true. And -- and I've been studying about it and
9 it got me to thinking about the whole case.

10 Because in point of fact, everybody has their reasons
11 for what they do. You know, we're a nation. And we have
12 competitors like Mr. Polsinello that want to win. And we
13 have people like Officer Perry that have their opinions
14 and hunches about what appears and make their decisions
15 and decide to do it. But, frankly, we have too many
16 people with too many doggone opinions. I'm not talking
17 about Officer Perry. I'm talking about politics, which I
18 guess I shouldn't talk about. And we have lawyers.

19 Now, I said Mr. Polsinello, you know, wants to win, a
20 college athlete and all. He still kind of looks like it.
21 I, a college athlete, do not look like it. It's my fault.

22 And I like to think of myself as a lawyer. And I,
23 sometimes, talk slow about being a lawyer because I grew
24 up in the courthouse. And I've been around this stuff my
25 whole life. But it -- it -- I take it seriously. And I

1 don't have any illusion that I don't know that you know
2 that I'm trying to persuade you with something. I'm
3 trying to focus your attention on what I think is
4 important. Because that, I think, is what's important to
5 your decision. And I'm counting on you to make that
6 decision.

7 And the law is what this is all about. The Judge is
8 going to tell you the law. And I'm going to talk about it
9 a good bit. But the Judge is going to tell you the law.
10 And anything I say that's wrong, you go with the Judge.
11 And y'all are the decider of the facts. Y'all are all 12
12 strangers to Mr. Workman, 12 strangers to everybody in the
13 courtroom, really.

14 You're going to apply the law to the facts you've
15 seen and the evidence you've seen from the witness stand
16 to decide whether Mr. Workman is found guilty or not
17 guilty of the crimes he's charged with. And it's
18 terrifying. And I get a little emotional when I talk
19 about this because I always tell the same story.

20 My old man was a Judge, like Judge Kinlaw. And when
21 I was a boy, I struggled with the ideas of law, and
22 justice, and how things could go awry. And he -- he
23 always said the same thing. He'd say it exactly the same
24 way. He'd say, Oh, it's a terrible system. It's terrible
25 that 12 people in a box get the evidence that they're

1 allowed to see and make a decision about a man or woman's
2 life. It's a terrible thing. And then he'd look at me
3 and he'd grin and he'd say, But it's the best system
4 anybody has ever come up with.

5 Because y'all as a group and individually, y'all have
6 a way of cutting through a bunch of bologna and seeing
7 that I'm a lawyer for the Defendant, that Mr. Polsinello
8 is a lawyer for the State. That the Defendant is a
9 defendant. That Officer Perry is an officer that has his
10 agenda, which he's told you. That Ms. Workman has her
11 life.

12 And -- and you cut through all that and at the end of
13 the day, frankly, juries do good jobs. They work hard.
14 They listen. They follow the Judge's instructions. And
15 they do what they're supposed to do. And that's my way of
16 saying everybody knows what they're doing here. But I
17 just need you to listen to the evidence we've got.

18 Now, I told you, you know, Mr. Polsinello, the
19 competitor, wants to win. I want you to see the facts the
20 way I want you to see the facts. I think you'll remember,
21 because I read it to him, Officer Perry said, I don't
22 think this guy should get away with what he did to you
23 scot-free. It's ridiculous. I mean, he should be held
24 accountable. And I'm the one that's going to hold him
25 accountable. So we know that's there. And Ms. Workman

1 said, I want him to pay for what he did to me, or I want
2 him to be accountable for what he did to me, whatever it
3 was.

4 And you've heard from a bunch of other witnesses.
5 And you've heard a bunch more facts. And -- and I want to
6 kind of go through those with you. But you have to
7 evaluate the witnesses. You've seen them, you've heard
8 from them. You have to decide what you believe and what
9 you don't believe. And I believe it's fair to say
10 everybody's version of facts is a little bit different.
11 But you have to parse through them and figure out what
12 happened.

13 Now, we started with this 911 call. The 911 call, I
14 think you can listen to it again, said that she hadn't
15 been to work in several days. And you think about it,
16 Saturday, Sunday, Monday, that's several days. If they
17 said she didn't come to work two, yesterday and today is
18 what I would have said, not several days on the 911 call.

19 So it begs the question, what's the big deal about
20 Saturday? Ms. Workman said she didn't have to go to work
21 that day. Now, you know, we have this evidence that --
22 that she called into work on Saturday. And she says --
23 when I asked her about it, because she'd already said she
24 didn't work Saturday, she said, oh, I called in that
25 night. Well, that's -- it's hard to believe she worked in

1 food service at St. Francis, and food service don't work
2 at night.

3 And she's testified that Mr. Workman got home from
4 work at 4:30, 5:00, went out for three or four hours, and
5 came home, which makes it 9:00, 9:30, I guess, 8:30, 9:30.
6 And, thereafter, all of this supposedly started.

7 And she never said anything during her testimony
8 about calling work. And if she'd, actually, called work
9 that night, don't you think her supervisor that got there
10 and heard the call would have said, oh, she called Sunday
11 morning, not Saturday morning? That's what I think. It's
12 just an odd little thing that doesn't jive with -- with
13 the story.

14 Now, we've got this crime scene on Saturday night.
15 I -- I keep wanting to say Saturday, it's Monday night,
16 because, honestly, most of the time, stuff happens on
17 Saturday night. We've got this 911 call.

18 And Mr. Polsinello said, you know, the police came to
19 the house and she was in the room. Well, she said -- no
20 dispute, she debated who took -- you know, she said
21 Mr. Workman made her take a shower. But she took a
22 shower. She said, I was in the shower when the police
23 came. She said that. I don't know why, if that's the
24 deal or not, if that's important or not.

25 So the police come and they stay. And Mr. Workman

1 left. And there's no question about any of that. The
2 SWAT call -- the 911 call about the knifing and all, he's
3 not charged with making a fake 911 call. It happened.
4 Frankly, I believe if you look at the time on the CAD's of
5 everybody, it happened either before or right after SWAT
6 got to the house. I think it was before. And I -- I just
7 don't know that it's relevant for any purpose. But let's
8 go back to the house.

9 So, now, this entire long four-hour standoff, however
10 long it was, four or five hours with this focused sound
11 thing that I'm scared to ever have near me because it
12 sounds like it'd break your teeth or something, it goes on
13 while Ms. Workman is in a room with her guns that she
14 owned. And it went on and on and on.

15 And, you know, I understand that the SWAT team comes
16 out and uses all their stuff. And the Prosecutor wants to
17 talk about it and tell you to set the stage for
18 everything. But the SWAT team didn't do very much. They
19 banged on the door. Nobody answered. They knocked the
20 door in. They found the people. They got the kids out.
21 Okay. And at that point, no charges were brought.

22 So we're -- we're now at Saturday night.
23 Ms. Workman's out of the house. The officers have gone in
24 the house. We've had this elaborate show about these guns
25 and the rubber gloves. And that just may be the

1 difference in me and Mr. Polsinello. But I hate those
2 gloves.

3 And when Ms. Workman gets out of the house, she says
4 something about a bar fight. Well, you know, I don't know
5 if there was a bar fight or not. What I do know is the
6 evidence indicated from that night in the police reports
7 that she had bruising on her neck and throat before
8 Saturday night.

9 Investigator Perry said -- he testified at the
10 preliminary hearing that he -- that she had bruising of
11 her face that she covered up with makeup before Saturday
12 night. So it was before Sunday and Monday, too. So her
13 injuries, whatever they may be, are her injuries. But at
14 the same time, we don't know which injuries were before
15 and which injuries were after.

16 As a matter of fact, the forensic examiner went in --
17 that's Ms. Wills-Eskew. And Ms. Wills-Eskew says that she
18 gathered the guns. And she says, I found no other
19 pertinent evidence. Well, you know, from television and
20 anything you've ever seen or read, they don't walk in the
21 house and say, whoa, there's two guns, and take them.
22 They come study the whole house looking. If they'd have
23 found hair cut on the floor, they would have done
24 something with it. If they had found a knife that was
25 thrown on the floor or sitting on a night stand, they'd

1 have done something with it.

2 And they took these pictures. And the pictures are
3 the pictures. And y'all can judge them. And I -- I want
4 you to use your reasonable judgment. But I want to show
5 you this picture, which I've got upside down, because I
6 think it is significant. You look at this picture.

7 And I'm really not a hundred percent on that hair,
8 but I see strands of hair coming all the way down here.
9 And I see this strand of hair here. But then when I look
10 at this picture and Ms. Workman's shoulder, I don't see a
11 gap. I don't see anything that indicates that the hair on
12 either side is missing, or gapping, or has been cut. And
13 I'm just, frankly, not sure that this isn't an optical
14 illusion. But I'll leave that to your judgment.

15 I will remind you, though, that she said and
16 everybody said that he never threatened her with a knife.
17 So I feel like there's a grain of truth in that.

18 Now, the forensic examiner was interesting for
19 another reason. And she said it. And I don't know that
20 anybody was paying attention to it. But she said the
21 house was filthy. She said the house was filthy and we
22 called DSS about the kids.

23 They didn't call DSS because Ms. Workman was the
24 victim of a crime. They called DSS because the house was
25 filthy. They called DSS. And, sometime, while they were

1 calling DSS, Ms. Workman perked up and said, I'll go
2 anywhere. I'd like to go to my sister-in-law's house, and
3 went to Mr. Workman's sister's house. She left and that's
4 where she went. And the rest of what the forensic person
5 said was nothing pertinent to the crime.

6 I'd, also, like to point out about these two guns two
7 things. Number one, there's no fingerprints. There's no
8 DNA. There's no place where somebody would have hit
9 somebody and put anything on them. And, you know, they've
10 checked.

11 And the most important thing -- and I, frankly, got
12 this out of the transcript that the court reporter's
13 taking, because I think it's a critical thing from that
14 night. I asked Investigator Perry, Okay, did she --
15 before you entered the home, did she tell you where the
16 guns were? Meaning Ms. Workman.

17 And he said -- and you can ask the court reporter to
18 read it back to you herself, because it's in there. He
19 said, I think she did. I think she told me there was
20 something under the bed and there was something in the
21 night drawer. And there was one somewhere else that we
22 never located.

23 Now, there's this third gun that they don't talk
24 about, or they talk about -- and I've never been clear on
25 what the heck they think about it. But Mr. Polsinello

1 told you, the black and silver gun is the gun she said did
2 everything, the gun that she owned that was in the night
3 stand by the bed where she says she was. So she knew
4 where the guns were that night, but things changed.

5 Well, that -- and -- and let me go back to judging.
6 Because this is a different kind of judging. But
7 Mr. Polsinello referred to my client, or his actions, or
8 however you want to say it as despicable, deplorable, no
9 one's above the law. Y'all have got to punish him for
10 what he did. I don't know. But I don't like it when
11 people call my clients despicable, deplorable.

12 And he, also, said it's not fair to ask you to judge
13 her. I'm not asking you to judge anybody. I'm asking you
14 to listen to the facts and try to determine who's telling
15 the truth, and what they're telling the truth about, and
16 what they're not telling the truth about. The why I don't
17 really -- I don't think anybody has told us about the why,
18 so you'd have to use your common sense.

19 I'm not asking you to judge anybody. I'm not saying
20 anybody that testified in this case is in the wrong. All
21 I'm saying is the facts don't add up to proof beyond a
22 reasonable doubt of kidnapping, domestic violence high and
23 aggravated, and possession of a weapon during a violent
24 crime, which are the three things my client's charged
25 with. That's all I'm saying.

1 Now, after this night, everything was set up for the
2 next morning. And the next morning, Investigator Perry is
3 supposed to see her -- to see Ms. Workman, but she's left
4 the state.

5 Now, again, the interesting fact that comes in that
6 nobody has really thought about is she's, also, supposed
7 to meet with DSS. And DSS was called, I'll say again, not
8 because of her injuries, but to make sure the kids were
9 okay because of the condition of the house.

10 And so Ms. Workman left. She left the state. She
11 had a meeting with law enforcement and DSS. And for
12 whatever reason, she left the state.

13 Now, the DSS thing just -- it keeps coming up. And I
14 think it's more important. And I think if you look at the
15 evidence in its entirety, you'll see why it's more
16 important.

17 So a week, 10 days later, Ms. Workman is in a safe
18 place. Excuse me one second. One thing I'll tell y'all
19 while I'm studying, you may have seen me sweating. I
20 sweat because I'm big. It ain't because I'm nervous. I
21 get nervous, but I sweat whether I'm nervous or not.

22 So, now, we get to the rest of the stories. And the
23 reason I say "stories" is because we've kind of got --
24 we've kind of got six stories. We've got the stories of
25 the night of the incident from Investigator Perry and

1 Ms. Workman. We've got the interview with Investigator
2 Perry with Ms. Workman. And we've got their testimony
3 here.

4 Now, you'll remember the interview. She said she was
5 in a safe place. And I asked a lot of questions about it.
6 And they talked about a lot of things. But there's one
7 thing they didn't talk about in that interview. Because
8 you heard no testimony that they talked about it, which is
9 they didn't talk about the fact that Mr. Workman went to
10 work Monday morning.

11 The interview took place a week later. Ms. Workman's
12 in a safe place. But nothing comes up about him being at
13 work. She says it all started after her husband got off
14 work at 4:30 and then left for three or four hours.

15 Now, you'll remember in that interview, Investigator
16 Perry when he was describing, he said she got hit in the
17 face with a pistol. And she said later on the stand here
18 and at the interview, too, that it wasn't true.

19 Now, the other thing they left out of the interview,
20 but I -- the other thing that's part of the interview that
21 we don't talk about very much and I may have mentioned it
22 already is DSS was on the phone during that interview.

23 So with DSS on the phone, they're talking about a lot
24 of things. Ms. Workman said that although Olandio put his
25 hands on her neck, he never choked her close to losing

1 consciousness. And Mr. -- Investigator Perry told you
2 later, he didn't think the long gun, the AK-47, was
3 implicated in this at all because she never mentioned
4 anything about it in that interview or since then, as far
5 as I know, until she got on the stand.

6 Officer Perry told her that he was going to hold
7 Mr. Workman accountable. I've read that quote to you
8 already. He got up. He got his file together and he
9 brought charges, one of which wasn't even supported by the
10 law at all. He brought this kidnapping charge. He
11 brought this domestic violence HAN charge. And he brought
12 the possession of a handgun during a violent crime charge.
13 He brought them all. He brought them all to hold
14 Mr. Workman accountable.

15 And, now, the file's in the system. It's handed off
16 to a competitor, Mr. Polsinello. And the case proceeds
17 for almost two years.

18 And what happened during that period of time? Well,
19 according to Ms. Workman, the -- DSS looked in on her
20 once, figured things were fine wherever she is, and they
21 went away. And here we are this week. Here we are at the
22 trial. And you've heard the story, but it's -- it's
23 simply -- the story has been adjusted to get where we are
24 now with the goals that everybody has to win, and hold
25 people accountable, and all that.

1 Ms. Workman told you that during this event, her
2 husband had her car keys. And, yet, the day after -- the
3 day after that morning, she got in her car and drove away.

4 Now, Officer Perry pointed out to you that he
5 believes she went back to the house, got things for the
6 children, and walked away. She says she didn't do that.
7 But she drove away in the car with her car keys.

8 And -- and we heard this story that, apparently, you
9 know, Mr. Polsinello didn't think enough of it to mention,
10 that he told her the trailer was rigged to explode. Well,
11 why did that story come up now? Because there's no
12 question that Mr. Workman went to work. There's no
13 question that he left the house and went to work. So
14 there has to be a reason in the eyes of somebody that's
15 making up a way to make somebody pay on the fly.

16 And, yesterday, she admits that she owned the guns.
17 She had a concealed weapons permit. But she says in a
18 trailer, I was being terrorized with guns that somehow got
19 secreted in my bedside stand, and under my bed without me
20 knowing it. And that's where they were found. And,
21 remember, Investigator Perry said she knew they were
22 there. She told him that night after the thing. That
23 night, she said -- I think he said that. I think she told
24 me where they were.

25 They want to make Olandio pay. Nobody being held

1 prisoner loses track of a gun. Nobody being held prisoner
2 forgets about a bomb in an interview when they're in a
3 safe place. The witnesses are not credible. They are
4 adjusting their stories to fit the facts that are before
5 them on the day in question. Ms. Workman adjusted her
6 story in a steady line from the time that the DSS arrived
7 until now. And it does not prove the case that the
8 Prosecution is -- has submitted.

9 If someone -- if someone is beaten about the face and
10 head, and kicked and stomped, and grabbed, and everything
11 else -- and I apologize to you for making this argument
12 because it's an awful argument to be making, but they look
13 much worse than that. If someone is terrorized and beaten
14 repeatedly in the face and head with closed fists --
15 again, I apologize for making the argument, but they look
16 much worse than that.

17 This story is not true. Ms. Workman may have her
18 reasons for being gone from her husband. That's between
19 her and her husband. But this story is not true.

20 It's interesting, Mr. Polsinello used the -- used the
21 polar bear analogy. There's -- there's no -- they say
22 there's no more dangerous animal on earth than a polar
23 bear. It's the only one that eats people.

24 And I was thinking about that. And I was, also,
25 thinking about the other analogy -- the other analogy of

1 danger that my daddy and momma used to always say, which
2 is there's no -- nothing on earth worse than a woman
3 scorned. And you heard their own expert say -- you heard
4 their own expert say, sometimes, victims want revenge and
5 they lie.

6 Now, I want to talk to you about the law. I'll bet
7 y'all thought I was getting that paper up and I was done.
8 And I'm sorry about that.

9 Mr. Polsinello showed you the law of domestic
10 violence high and aggravated. And he told you about
11 committing the offense under circumstances manifesting
12 extreme indifference to the value of human life and great
13 bodily injury to the victim results. Well, there's no
14 great bodily injury here. Ms. Workman, her injuries look
15 bad. I'm not disputing them. She never went to the
16 hospital. She never went to the doctor about them.

17 Now, he focused on number two, committing -- because
18 I think he may concede that point. But I don't know for
19 sure. Commits the offense with or without an accompanying
20 battery under circumstances manifesting extreme
21 indifference to the value of human life, and would
22 reasonably -- reasonably cause a person to fear imminent
23 great bodily injury or death.

24 Ladies and gentlemen, he went to work. She did not
25 leave. If she thought he was going to kill her, she would

1 have left. If she thought he was going to deprive her of
2 the use of life, of her limbs, her organs, she would have
3 left. But that is not the reason I put this on here.

4 The reason I put this on here is to talk about the
5 elements that you can -- the circumstances that manifest
6 this, which Mr. Polsinello talked about. And he showed
7 them to you. And he said, Using a deadly weapon,
8 knowingly impeding normal breathing or circulation. Look
9 down here at the bottom. I don't think he mentioned this
10 one. Thereby causing stupor or loss of consciousness for
11 any period of time. Now, you'll remember she,
12 specifically, told Officer Perry she never lost
13 consciousness.

14 Committing the offense. And the offense would be the
15 actual battery, the -- the domestic violence, the hitting
16 in the presence of a minor. I'll remind you that the
17 testimony is that Ray -- I guess they call him "O" now --
18 Workman, Little Ray perceived -- perceived the injuries,
19 but did not see them. I'll show -- I'll tell you why I
20 think that's important later.

21 And, you know, the whole idea that I'm going to worry
22 about -- worry about whether they called a kid or not,
23 golly-bum, everything the kid said was always -- already
24 in the record. That was their business whether they
25 wanted to call him. I sure wouldn't have.

1 Using physical force to block a person's access to a
2 cell phone and committing the offense during the
3 commission of a kidnapping. Okay. So that's domestic
4 violence high and aggravated.

5 Now, let's go to domestic violence first degree,
6 which the Judge is going to tell you is a lesser included
7 offense. And that is to cause physical harm or injury to
8 a household member, or to offer to charge it -- cause it
9 with the apparent ability to do so. And that one,
10 interestingly enough, just like high and aggravated
11 without the threat of death or great bodily injury, it
12 includes an actual great bodily injury.

13 If the great bodily injury results or the act is
14 accomplished by means likely to result in a great bodily
15 injury, then that can be it. So if you believe that she
16 didn't fear for her death even if you believe these
17 injuries rose to a great bodily injury, that would be
18 domestic violence first degree.

19 The third one -- no, there's the third one. Okay.
20 Now, look at number four. Remember, this is domestic
21 violence first degree, not high and aggravated. The
22 person uses a firearm in any manner while violating the
23 provisions of Subsection A, which is up here about causing
24 physical harm or threatening to. So a firearm's included
25 in this one. And then in the process of committing

1 domestic violence in the second degree, which is less than
2 great bodily injury -- did I lose that? Well, now, I've
3 lost my page. Here it is. Sorry.

4 So this -- we're still on domestic violence first
5 degree, a lesser included offense of domestic violence
6 high and aggravated. The offense is committed in the
7 presence of or while being perceived by a minor. The
8 offense is committed during a kidnapping. And the offense
9 is committed by impeding the victim's breathing, flow --
10 or air flow. And it doesn't include them passing out.

11 And there's, also, keeping somebody away from a
12 telephone. But, you know, the whole telephone thing is
13 interesting. Because, again, either Ms. Workman called
14 work in the morning, which means she's telling a story
15 about that, or she called in the evening, which means she
16 had a telephone. It's unclear to me which. But it seems
17 like that's something that would have been clarified.
18 Now, so that's domestic violence high and aggravated.

19 And I'm, frankly, not going to talk about the gun
20 very much. Because y'all are either going to decide the
21 gun was there or not. And I think I made it pretty clear
22 that these guns belong to Ms. Workman. She knew where
23 they were. They were in the room she was in. So that
24 whole thing just gives me pause. She was in the house
25 that whole day by herself with the guns.

1 Now, Mr. Polsinello's four questions, the interesting
2 thing about three of them is they could apply to domestic
3 violence first degree. Did the Defendant physically harm
4 the victim at any time? Did the Defendant possess a
5 weapon at any point? And were children present? Did they
6 perceive the injury? Yes.. So I really think at the end
7 of the day, if you look at that, you're going to see
8 domestic violence first degree, not domestic violence high
9 and aggravated.

10 I, also, think that the motive of keeping DSS away
11 from this problem is a pretty compelling -- the two -- the
12 twin motives of keeping DSS away from this problem and
13 making sure that Olandio Workman pays for this are the
14 primary motivators for her testimony. And I think that
15 you should look with great skepticism on the truthfulness
16 of that testimony.

17 Again, about the gun, about the phone. She had the
18 phone. She said -- well, she said she had the phone and
19 called work at night. So I really think something about
20 that is untrue. And the idea that someone is kept
21 prisoner for this period of time or for any period of
22 time, rather than simply she chose not to go to work
23 Saturday. She chose not to go to work or anywhere Sunday.
24 I think given the way this story has unfolded, that is,
25 quite frankly, the more reasonable interpretation.

1 I, also, think that at the end of the day, you should
2 return a verdict of not guilty on all three of these
3 charges. And I'll leave it to you to decide whether you
4 should return a verdict of guilty as to domestic violence
5 first degree.

6 Thank you.

7 THE COURT: All right. Ladies and gentlemen of the
8 jury, I'll tell you what we're going to do. I'm going to
9 charge you on the law, but that's going to take a minute.
10 And I'm going to be talking a little while. And the
11 lawyers have talked a little while. So I'm going to let
12 you stretch your legs. I'm going to let you take about a
13 10-minute break before you hear from me.

14 And be sure not to talk to each other about the case
15 yet. Don't have any conversations with each other. But
16 I'm going to let you go use the bathroom and stretch your
17 legs before you hear from me.

18 Okay. Take the jury out.

19 (WHEREUPON, the jury was excused from open court at
20 approximately 3:32 p.m.)

21 THE COURT: We'll take a 10-minute break.

22 (WHEREUPON, a break was taken.)

23 THE COURT: Gentlemen, anything before we bring the
24 jury out?

25 MR. POLSINELLO: Nothing from the State, Your Honor

1 open.

2 MR. EPPES: Nothing from the Defense, Your Honor.

3 THE COURT: Have you got that verdict form that I can
4 take a look at?

5 MR. POLSINELLO: Yes, Your Honor.

6 THE COURT: Have you seen this?

7 MR. EPPES: No, sir.

8 THE COURT: Let me ask Counsel, I'm going to -- when
9 we get to that portion -- obviously, this is a -- a
10 verdict form. And I understand. I've seen it like that.
11 I'm just going to read it exactly as it is.

12 And don't be surprised if the panel may have a
13 question. Because that -- that's a little different when
14 you've got the lesser included and you've got -- are
15 trying to stick that in there. It's if this, then that,
16 you know, that kind of thing. So they -- they may not
17 have a question about it. And I'm hoping they won't, but
18 they -- they may have.

19 MR. POLSINELLO: I suspect they will, Your Honor.

20 THE COURT: Yeah. Because that's -- that's kind
21 of --

22 MR. EPPES: Your Honor, I think that should say, You
23 may then answer -- I'd put this last, but. You may then
24 answer question two.

25 THE COURT: Which paragraph is that?

1 MR. EPPES: I understand what he said. If your
2 answer is guilty, proceed to question three and do not
3 answer question two. Okay. Well, I don't know how to do
4 it, but that ain't the way I'd do it.

5 THE COURT: You know --

6 MR. EPPES: They should do it. They're a pretty
7 smart jury.

8 THE COURT: Yeah. Well, oftentimes, you have a
9 situation like that and they'll come back and have a
10 question about the format. And we'll just have to deal
11 with that if we have to, maybe we may not. But I think
12 it's pretty clear, but we'll see.

13 MR. POLSINELLO: Your Honor, we had another person in
14 DV -- in the DV unit type this up. I'm pretty sure she
15 got it off --

16 MR. EPPES: Is that person Judy Munson?

17 MR. POLSINELLO: -- of the judicial website.

18 THE COURT: Okay.

19 MR. EPPES: Was it Judy or someone else?

20 MR. POLSINELLO: Was it Candace?

21 MS. DONNA SMITH: Candace.

22 MR. EPPES: If that's off the website --

23 THE COURT: Gentlemen, I'm going to -- I'm just going
24 to -- just so you know, I'm just going to read it exactly
25 like you have it on here.

1 Okay. Let's bring the jury back.

2 (WHEREUPON, the jury came into open court at
3 approximately 3:52 p.m.)

4 CHARGE ON THE LAW

5 THE COURT: Ladies and gentlemen of the jury, I am
6 going to charge you on the law. And I'm probably going to
7 talk probably slower than I normally would just so I can
8 make sure that you get everything that I'm getting ready
9 to say. And I'm going to speak loud enough so, hopefully,
10 the gentleman on the second row in the black shirt can
11 hear you -- hear me. If you do not hear me, please,
12 ma'am, and, please, sir, let me know. But I'm going to do
13 my best to speak loud enough so you can hear me.

14 Now, ladies and gentlemen of the jury, you've heard
15 all the evidence that you're going to hear in this case.
16 And you've heard the closing arguments of both lawyers.
17 It is now my duty to instruct you on the law that applies
18 to the facts in the case that you just heard.

19 And it's your duty to determine the facts from the
20 evidence that you've heard during this trial. And to
21 those facts, you must -- you must apply the law as I give
22 it to you. And you should not be concerned with what you
23 think the law should be, but what the law is. And you
24 should not be concerned with any undue sympathy, biases,
25 or prejudices, personal likes, or any dislikes that you

1 may have. And that means that you must decide this case
2 solely on the evidence before you and according to the law
3 as I give it to you. You may recall you took an oath at
4 the beginning of this trial to do exactly that.

5 Now, in following my instructions, you must follow
6 them all and not single out some of the instructions and
7 ignore the others. You must follow them all. Because all
8 of my instructions are equally important in this case.

9 And do not read into these instructions or anything
10 that I may have said or done during the trial as any
11 indication as to what I think the facts are or what your
12 verdict should be. I have no opinion. Because as I told
13 you at the outset, under our system of justice and the
14 Constitution that we are governed, you, all 12 of you, are
15 the sole judges of the facts. And I am the judge of the
16 law.

17 You decide what the facts are by evaluating and
18 weighing the evidence that you've heard during this trial.
19 There's no way for you to do that in a literal sense.
20 I'm, certainly, not going to give you a set of scales to
21 go back and forth for you to conduct any experiments.
22 What I'm talking about is weighing the evidence --
23 weighing the evidence and evaluating it by using your good
24 common sense, your sense of logic and reason, and your
25 life experiences that you've had. And you bring all of

1 those things to bear with you during the time you've heard
2 this trial.

3 And I told you at the beginning of the case that
4 evidence consists of several things. The first is the
5 sworn testimony that came from that witness stand. The
6 other form of evidence is exhibits that are displayed not
7 only on that table, but anything that was marked as an
8 exhibit. Those are the two forms of evidence that you are
9 to adhere to.

10 Now, you, as jurors, have to gauge the credibility.
11 When I say "credibility," I'm talking about believability
12 of the evidence. But I will tell you that you, also, may
13 consider in deciding the credibility of witnesses
14 testimony in such a way that you might believe everything
15 a witness says, you may believe nothing a witness says, or
16 you may believe parts of a witnesses testimony and
17 disbelieve other parts. You may believe one witness over
18 several or several over one. But I know you will decide
19 this matter of credibility using your logic, your reason,
20 and your good common sense.

21 Now, there are, also, two sources of types of
22 evidence. And what I'm talking about now is direct
23 evidence and circumstantial evidence. Direct evidence is
24 the testimony of someone who claims to have direct and
25 actual knowledge of a fact such as an eyewitness. Direct

1 evidence is evidence that, if it is believed, immediately
2 establishes a fact.

3 Circumstantial evidence. Circumstantial evidence is
4 indirect evidence. Put another way, circumstantial
5 evidence is proof of a claim -- of a chain of facts from
6 which you could find that another fact exists, even though
7 it has not been proven to you directly. The law makes no
8 distinction between the weight or value to be given to
9 either direct or circumstantial evidence. You may
10 consider both kinds. And there's not a great degree of
11 certainty required of one over the other.

12 Now, ladies and gentlemen, there are certain
13 witnesses who come in here, and as it was in this case,
14 who are qualified and described as what you may call
15 experts. These are people who by reason of their
16 training, education, and experience have achieved a
17 certain expertise in a certain field. And they are,
18 unlike other witnesses, entitled to give their opinion
19 about things that they have observed.

20 However, expert witnesses share this with all other
21 witnesses. And what am I saying? And that is that you
22 are the jury -- you, the jury, are the sole judges of
23 their credibility as well. You may accept their
24 testimony. You may reject it. Or you can give it
25 whatever weight you think it deserves. You're not

1 required to accept even the uncontradicted opinion of an
2 expert.

3 Now, there are certain principles that apply in a
4 criminal case. And I'm going to go over those with you
5 again. And I probably said it to you at the outset, but
6 I'll go over it again. The first is the mere fact that a
7 Defendant is indicted -- and these two documents that I
8 made reference to at the outset are considered
9 indictments.

10 The mere fact that this -- a Defendant is indicted
11 and charged does not constitute evidence of any kind. The
12 fact that a person has been indicted does not even create
13 a suspicion of guilt. I explained to you that these
14 indictments are simply the formal manner in which this
15 case begins. And, certainly, that does not constitute any
16 evidence against this Defendant.

17 This Defendant has pled not guilty to these two
18 indictments. So the burden is put squarely on the
19 shoulders of the State to prove the Defendant's guilt
20 beyond a reasonable doubt. And he can only be convicted
21 if all 12 of you agree that the State has proven each and
22 every element of the charge beyond a reasonable doubt.

23 This Defendant is presumed innocent. And that
24 presumption of innocence is not some legal technicality.
25 It's a fundamental right that every person enjoys in this

1 country. And it can only be removed if the State
2 convinces you with proof beyond a reasonable doubt as to
3 every element of the offense.

4 So what is reasonable doubt? Reasonable doubt is
5 defined as the kind of doubt that would cause a
6 reasonable, sincere, honest, and conscientious person to
7 hesitate to act in an important matter in their own
8 affairs. Proof beyond a reasonable doubt is proof that
9 leaves you firmly convinced of the Defendant's guilt. The
10 law does not require proof that overcomes every possible
11 doubt.

12 So if, based on your view of the evidence, you are
13 firmly convinced that the Defendant is guilty of the
14 offenses charged, then you must find him guilty. On the
15 other hand, if you think there is a real possibility that
16 he is not guilty, you must give him the benefit of the
17 doubt and find him not guilty.

18 A reasonable doubt may arise from the evidence or
19 lack of evidence. And a Defendant is entitled to every
20 reasonable doubt and that may arise -- that may arise in
21 the -- in the case. And that means that as to the issue
22 of fact that is essential to a finding of guilt, you have
23 some reasonable doubt as to how that issue should be
24 resolved, it is your duty to resolve it in the Defendant's
25 favor.

1 Now, ladies and gentlemen, the fact that a defendant
2 in a criminal trial does not testify -- and in this case
3 the Defendant did not testify -- that is something that
4 you cannot consider in any way in your deliberations; or
5 your consideration of guilt or innocence of the Defendant.
6 The fact that a defendant in a criminal trial does not
7 testify and claims his right to not testify, which is
8 guaranteed by both our state and federal Constitution, is
9 not something that you can even discuss in the jury room.
10 And it would not be in keeping with your oath to consider
11 it, discuss it, or give it any weight whatsoever.

12 A defendant has the Constitutional right to remain
13 silent. And the claiming of this right cannot be
14 considered in any way. You are not -- you are not to draw
15 any conclusions whatsoever from the fact that the
16 Defendant did not testify in this case. The burden of the
17 proof -- burden of proof still remains entirely on the
18 shoulders of the State. And the Defense has no obligation
19 or requirement to prove himself innocent or not guilty.

20 Now, in order to establish criminal liability, the
21 State must prove criminal intent. And criminal intent is
22 a -- is a matter that must be determined by you from the
23 facts. And there is no way to prove criminal intent to a
24 mathematical certainty.

25 So the law says that criminal intent may be inferred

1 from the circumstances. It is not necessary to establish
2 intent by direct evidence. Intent may be established by
3 circumstantial evidence taking into account the
4 circumstances that are at issue. Criminal intent is a
5 mental state of conscious wrongdoing. It is up to you to
6 determine what the Defendant intended to do based on the
7 circumstances shown to have existed.

8 Now, let's go to the offenses upon which this
9 Defendant is charged. First of all, there will be some
10 discussion of domestic violence. But I'm going to read to
11 you the definition of great bodily injury as set forth in
12 Section 16-25-10 of our South Carolina Code of Laws.
13 Great bodily injury is defined and means bodily injury
14 which causes a substantial risk of death, or which causes
15 serious permanent disfigurement, or protracted loss of
16 impairment of the function of a bodily member or organ.

17 Now, this Defendant is charged under an indictment
18 with domestic violence of a high and aggravated nature.
19 And this is set forth in Section 16-25-65 of our South
20 Carolina Code of Laws. And that offense -- and I'll read
21 the law as it applies to that offense. A person who
22 violates Section 16-25-20 Subsection A is guilty of the
23 offense of domestic violence of a high and aggravated
24 nature when one of the following occurs, the person,
25 number one, commits the offense under circumstances