

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Kershaw County
Honorable Clifton Newman, Circuit Court Judge

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SC Court of Appeals

THE STATE,

RESPONDENT,

V.

DAVID ONEIL VINCENT,

APPELLANT

APPELLATE CASE NO 2017-001744

RECORD ON APPEAL

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1 STATE OF SOUTH CAROLINA)
2 COUNTY OF KERSHAW) COURT OF GENERAL SESSIONS
3 2016-GS-28-0380

4 State of South Carolina,)
5 Plaintiff,)
6 vs.) TRANSCRIPT OF RECORD
7 David O'Neil Vincent,)
8 Defendant.)

9 August 10-11, 2017
10 Camden, South Carolina

11
12
13 B E F O R E:

14 THE HONORABLE CLIFTON B. NEWMAN, JUDGE; and a jury.
15
16

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1 believe we have to take up some matters outside
2 your presence before we get started, so I'll have
3 you go to the jury room.

4 Please do not discuss this case from this
5 point forward until I tell you that it's time to do
6 so, which will be after you've heard the entire
7 case, the arguments of counsel, and the explanation
8 of the law.

9 So please go to the jury room.

10 (WHEREUPON, the jury retires to the jury
11 room at 10:36 a.m.)

12 THE COURT: Solicitor?

13 MR. PAULING: Yes, Your Honor, as far as
14 pretrial, I know we have a Jackson v. Denno. There
15 was a statement that was given to law enforcement
16 by the Defendant during the course of this
17 investigation. And I've got my witness here, Penny
18 Lloyd, for that. I know we have that. I don't
19 know if there is any other matters.

20 MR. KIRINCICH: Your Honor, if that's all the
21 Solicitor has, I do have a few pretrial requests.

22 Your Honor, I discussed this with Solicitor
23 Pauling. I would ask that the witnesses be
24 sequestered in this case, Your Honor. I know it's
25 up to the Court's discretion on whether to do that.

1 The State did not have any objection to that. So
2 at this time, I would ask the witnesses be
3 sequestered.

4 THE COURT: What is your basis for the motion?

5 MR. KIRINCICH: Your Honor, during this case,
6 several statements were given to law enforcement.
7 Some statements were given at the time of the
8 incident. Some statements were given a week later.
9 Some statements were given over a year later. It
10 appears to me that there was some collaboration or
11 at least discussion when those statements were
12 given, Your Honor. I would not want the witnesses
13 to in any way be influenced by testimony of people
14 testifying before them and then try to match their
15 statements to that.

16 THE COURT: All right. Mr. Pauling?

17 MR. PAULING: And, Your Honor, I'm not giving
18 credence to what Mr. Kirincich's thoughts may be as
19 far as collusion, that didn't happen, but I have
20 discussed it with Mr. Kirincich. I have no problem
21 with my witnesses being sequestered. However, per
22 our Victim's Bill of Rights Act, Ms. Trisha Guy has
23 the right to be in the courtroom during this
24 process.

25 MR. KIRINCICH: We have no problem with that

1 at all, Your Honor.

2 MR. PAULING: I just request that she be here,
3 as well as my chief investigator, Penny Lloyd, Your
4 Honor.

5 THE COURT: All right. Typically, I do not
6 like to routinely sequester witnesses because the
7 courtroom is an open courtroom, and absent a
8 showing of a need or benefit of sequestration, I
9 usually don't sequester witnesses. Not
10 automatically, anyway.

11 MR. KIRINCICH: Yes, sir.

12 THE COURT: Particularly since it seems to be,
13 when witnesses are sequestered, it creates delays
14 in trials, like during the last trial, trying to
15 find the next witness and he was downstairs
16 somewhere. You know, it creates delay just sitting
17 and waiting for someone to be found and brought
18 into court.

19 All that considered, I grant the motion.

20 MR. KIRINCICH: Thank you, Your Honor.

21 THE COURT: In this case.

22 MR. KIRINCICH: Thank you.

23 MR. PAULING: Yes, sir, Your Honor.

24 THE COURT: They will be able to stay once
25 they testify.

1 MR. PAULING: Yes, sir. Thank you, Your
2 Honor.

3 MR. KIRINCICH: Your Honor, another matter
4 that I discussed with Solicitor Pauling, Your
5 Honor, I don't know how the Court feels about this,
6 and I know the Solicitor has said he discussed this
7 with his witnesses or he will discuss this with his
8 witnesses before they testify, there were a lot of
9 matters that preceded this incident back in October
10 of 2015 regarding the separation of my client,
11 Mr. Vincent, and his wife, Rosa Vincent, who is a
12 witness but is not the alleged victim in this case,
13 Your Honor. I think based on statements that have
14 been given, a lot of those statements were written
15 with a lack of personal knowledge and with hearsay.
16 Your Honor, if those witnesses are allowed to
17 testify to that, I would be objecting numerous
18 times throughout that.

19 The Solicitor said that he was going to
20 discuss that with his witnesses and keep the
21 testimony to the case at hand, Your Honor. So I
22 don't know if it's appropriate to ask for a
23 limiting instruction to be given to witnesses
24 beforehand or if we just address it as it comes
25 with numerous objections.

1 THE COURT: Well, I know nothing of the case.
2 I have no basis to rule on anything. I have no --
3 I hate motions in limine, particularly when they
4 are asking me to make evidentiary rulings
5 concerning something I know nothing about.

6 MR. KIRINCICH: Yes, sir, I understand.
7 That's why --

8 THE COURT: You know, that puts me in a bad --
9 tough position to say, well, a witness can say this
10 or say that or can't say this or can't say that. I
11 don't know. That's why we have a trial and lawyers
12 object when inappropriate questions are asked, and
13 hopefully inappropriate questions are not asked. I
14 don't know. I have no basis to make any
15 preliminary rulings on anything. And I prefer one
16 trial, not a trial before they testify and then
17 again -- you know, outside the presence and before
18 the jury. I find that is usually unnecessary. It
19 all works itself out. Then in most instances when
20 I grant motions in limine, then the lawyers ask a
21 question that elicits the same answer that they
22 have asked me to order the witness not to get into.

23 MR. KIRINCICH: Yes, sir.

24 THE COURT: It all washes out pretty well.
25 What do you say about it, Mr. Pauling?

1 MR. PAULING: Your Honor, I have spoken with
2 Mr. Kirincich. I agree with your statement, Your
3 Honor, and I have spoken with Mr. Kirincich about
4 it, Your Honor. And if it comes up, the objection
5 can be made and then be dealt with at that point.
6 But I have spoken to Mr. Kirincich about his
7 concerns.

8 THE COURT: It will all work out, I'm sure.

9 MR. KIRINCICH: Your Honor, I completely
10 understand the Court's answer on my last motion,
11 but I'm going to make another one that's probably
12 going to get the same answer.

13 Your Honor, in several of the statements,
14 Mr. Vincent is referred to as "devilish" or "had
15 the look of the devil" or "pure evil."

16 Your Honor, I believe for the jury to hear
17 that would be inflammatory. It gives him extra
18 features not in a human to call him the devil
19 himself.

20 Your Honor, again, if the statement is made, I
21 will object to it as being inflammatory, but as
22 long as the Solicitor I think does not try to
23 elicit it or discuss it with their witness, I would
24 be happy. I know you just made a ruling on a
25 similar motion.

1 THE COURT: People used words? You are saying
2 that's a word that someone used when they gave the
3 police a statement?

4 MR. KIRINCICH: Yes, sir.

5 THE COURT: And you are assuming they will use
6 those same words when they testify?

7 MR. KIRINCICH: Your Honor, if they have
8 reviewed their statements they have given, it is
9 probably going to be fresh in their mind. I don't
10 know if the Solicitor will try to elicit a
11 comparison to the devil and my client, but I think
12 that would be inflammatory and inappropriate.

13 THE COURT: How about it, Mr. Pauling?

14 MR. PAULING: Your Honor, that's not going to
15 be an issue, Your Honor.

16 THE COURT: All right. He says it's not going
17 to be an issue.

18 Rule 701, opinion testimony of lay witnesses,
19 witnesses may testify to matters rationally based
20 on the witness's perception, helpful to a clear
21 understanding of the witness's testimony or
22 determination of a fact in issue and do not require
23 special knowledge, skill, experience, or training.

24 So if a witness is asked a question like,
25 Well, how did this person appear to you, what are

1 they to say? He appeared pretty devilish or he
2 appeared -- Am I going to be able to choose the
3 words a witness uses in giving their impressions of
4 things, of people, or whatever is going on?

5 MR. KIRINCICH: Your Honor, I don't want to
6 dictate what any witness is going to say. And I
7 had 701 open as well. But I think there are plenty
8 of words to describe anger rather than comparison
9 to the devil. And maybe it's just me, maybe it has
10 different connotations here in the south, and
11 especially with somebody that I know -- I think I
12 excluded her because her husband was a pastor, and
13 people who are regularly attending church, I think
14 there is an extra level associated with saying
15 someone is the devil rather than he appeared angry
16 or his eyes were red and his teeth were clinched,
17 or something along that line.

18 THE COURT: You didn't put the preacher's wife
19 on there, though, did you?

20 MR. KIRINCICH: No, sir, I believe I excluded
21 her. She knew some of the other witnesses.

22 THE COURT: Okay. It will all work out.
23 Mr. Pauling says it won't be an issue.

24 MR. KIRINCICH: Thank you, Your Honor.

25 And, Your Honor, finally, I renew my motion

1 under Rule 5 and Brady for all evidence. I truly
2 believe that Solicitor Pauling has provided me with
3 everything. Up and through last week, he was
4 giving me discovery, including the statement for
5 the first time that Ms. Lloyd is going to testify
6 to during our Denno hearing, but if there is
7 anything else that we do not have or that he
8 believes we do not have that should be turned over.
9 I ask that he do it now.

10 THE COURT: All right.

11 MR. PAULING: And, Your Honor, I believe it
12 was Monday -- well, first, Your Honor, it is my
13 position that we have complied with Rule 5 and
14 Brady.

15 I believe on Monday, Mr. Kirincich and
16 Mr. Lyon came to my office and sat with my
17 receptionist and doublechecked, went through my
18 file, compared what they had with what I have. He
19 is correct, when I was made aware of this statement
20 that we're going to have this Denno hearing on last
21 week, I alerted Mr. Kirincich regarding the
22 substance of that statement and turned that over to
23 him. But we have complied with Rule 5 and Brady,
24 Your Honor.

25 THE COURT: All right.

1 MR. KIRINCICH: Your Honor, as to that meeting
2 on Monday, we did not go through his file. At the
3 time, he was involved with preparation for another
4 trial. His office did make available disks. I
5 wanted to make sure that all disks that had been
6 turned over -- excuse me, all disks in his file had
7 been turned over since those are not easily
8 searchable through other means of what is provided
9 to us. And, Your Honor, I, quite frankly, wanted
10 to see if they had some other photos that have
11 never been provided to us. They were not in his
12 file, so I assume they do not intend to introduce
13 those additional photos or records. So if he says
14 he's given me everything, I have the utmost faith
15 and confidence in his word.

16 THE COURT: All right. Concerning the Jackson
17 v. Denno hearing, what type of motion did you
18 make for having the hearing? I don't know if a
19 motion is really needed to trigger a Jackson v.
20 Denno, so proceed.

21 MR. PAULING: Yes, sir.

22 Your Honor, at this time the State would call
23 Penny Lloyd to the stand.

24 (Witness approaches.)

25 THE BAILIFF: Place your left hand on the

1 Bible, and raise your right hand, please.

2 (Witness complies.)

3 THE CLERK: Do you solemnly swear or affirm
4 the testimony you give in this case will be the
5 truth, the whole truth, and nothing but the truth,
6 so help you God?

7 THE WITNESS: I do.

8 THE CLERK: Have a seat in the witness stand,
9 and state your full name for the record.

10 (Witness seated.)

11 THE WITNESS: My name is Penny Marie Lloyd.

12 PENNY MARIE LLOYD,

13 after being duly sworn, testified as follows:

14 DIRECT EXAMINATION

15 BY MR. PAULING:

16 Q Ms. Lloyd, how are you doing this morning?

17 A I'm doing well. Thank you.

18 Q Please tell the Court where you are currently
19 employed and what your position is at this
20 particular time?

21 A I am employed for the City of Camden at the Camden
22 Police Department, and my current position is
23 lieutenant managing administration, community
24 policing division, and the school resource officer
25 program.

1 Q And how long have you been in law enforcement?

2 A I have only been in law enforcement about seven
3 years.

4 Q Now, back in 2015, I guess, specifically, October
5 2015, were you employed with Camden Police
6 Department?

7 A Yes, sir.

8 Q And in what capacity at that time?

9 A I was a detective assigned to the investigations
10 division.

11 Q And as a detective assigned to investigations, what
12 were your duties at that point?

13 A To investigate any case that was assigned to me and
14 to operate on a rotating on-call list for
15 investigators.

16 Q Back on October 2nd of 2015, were you the on-call
17 investigator?

18 A Yes, sir.

19 Q And you said cases were assigned on an on-call
20 basis, is that what you said?

21 A Cases would be usually assigned every morning, but
22 if the on-call investigator were working that day
23 or stayed a little past 5:00 and the call came out
24 and an investigator would be needed, they would be
25 directed to go and take that case.

1 Q Okay. Now, on October 2nd of 2015, were you the
2 on-call investigator?

3 A Yes, sir.

4 Q Okay. And did you get a call or was there a call
5 to you to investigate a particular matter at Roxie
6 Hart Salon?

7 A Yes, sir.

8 Q Okay. And is that here in the City of Camden?

9 A Yes, sir.

10 Q 1025 Broad Street?

11 A Correct.

12 Q And did you respond to that particular location?

13 A I did.

14 Q Okay. And, now, when you responded to that
15 location, did you -- were you made aware of what
16 the situation was, the allegations of what was
17 going on?

18 A Yes, sir. I heard the call come out. I was still
19 at the office with other officers, actually. And I
20 was not the responding officer, that would have
21 been a shift officer that was there. And I drove
22 out to the scene and spoke to officers at the
23 scene.

24 Q And once you spoke to those officers at the scene,
25 did they give you the rundown of what was going on?

1 A Yes. I was briefed on the incident and I was given
2 some general paperwork, and they were going to
3 continue to remain at the scene.

4 Q Okay. And, now, just tell the Court what was your
5 understanding of what had happened, what was going
6 on at Roxie Hart.

7 A My understanding was that the Defendant, Mr.
8 Vincent, was alleged to have gone into the
9 business, that there were clientele and employees
10 in the business, and that he had grabbed an
11 employee by the throat and thrown her backwards
12 causing injury, and that that victim was at the
13 hospital or on the way. And I was concerned to
14 find out what else was going on at that time. And
15 that Mr. Vincent, I was told, had left the area at
16 that time.

17 Q So at that point, you weren't able to make contact
18 with the victim at that particular point?

19 A No.

20 Q Okay. And you weren't able to make contact with
21 David Vincent at that time, at Roxie Hart?

22 A No, I wasn't.

23 Q At some point, did you come in contact with
24 Mr. Vincent?

25 A Yes, much later that evening.

1 Q Okay. And tell the Court, how did that come about?

2 A Someone made him aware that I had initiated
3 warrants due to this incident against him and --
4 which I had. And he contacted another officer by
5 phone, to my recollection, and that officer told
6 him that I would meet him out at the Detention
7 Center, and that I did, in fact, have warrants
8 against him for this incident.

9 Q Specifically, you had a warrant for assault and
10 battery second degree; is that correct?

11 A Yes, sir, it was.

12 Q And when you -- and did you go to the Detention
13 Center?

14 A Yes, I did.

15 Q And did you meet Mr. Vincent at the Detention
16 Center?

17 A Yes, he -- I believe he was already there.

18 Q Okay. Where was he? Was he inside? Outside?

19 A Outside. They have some benches in the front
20 outside of the Detention Center, and he was in that
21 area with other family members.

22 Q Other family members?

23 A Of his own, yes.

24 Q Do you recall the family members he was with or who
25 was -- when I say who was with him, do you recall

1 who he was with?

2 A He was with some adult family members. And I was
3 alarmed to see children there as well.

4 Q His children?

5 A Yes, sir.

6 Q Okay. Now, did you make contact with him at that
7 point?

8 A I did.

9 Q And would you just tell -- how did you do that?

10 A I pulled in and I got out of my vehicle. And we
11 approached each other pretty quickly. Mr. Vincent
12 and I were familiar with each other from my
13 position at the Police Department. And I think
14 right away, I did feel comfortable enough, I looked
15 at him and I said, What on earth is going on? What
16 has happened here?

17 Q Okay. And when you asked him that question --
18 well, let me ask you, before you asked him that
19 question, did you Mirandize him at all?

20 A No, sir.

21 Q Okay. Now, was he in custody?

22 A There were no handcuffs or anything on him. He
23 knew that I likely had warrants for him.

24 Q Well, when you approached him -- before you asked
25 him that question, did you show him the warrant for

1 assault and battery second degree or --

2 A No, sir. At that time, I was focused on the
3 children being present in front of the Detention
4 Center.

5 Q Now, had you -- you were acting on the warrant?

6 A Yes.

7 Q Okay. Would you have served the warrant on him
8 anyway?

9 A No.

10 Q Okay. And why is that?

11 A We cannot serve our own warrants. The shift
12 sergeant had already been notified to send someone
13 to our area when they were available.

14 Q So once you got to the Detention Center, you would
15 have handed the warrant over to another individual?

16 A Yes, sir.

17 Q To serve on Mr. Vincent?

18 A Yes, sir.

19 Q At any rate, you asked him that question, What on
20 earth were you thinking?

21 A Yes. And what is going on, yes, sir.

22 Q And what was his response to you at that time?

23 A Mr. Vincent did come right up to me and, as I said,
24 we were slightly familiar with each other from
25 other work, and he apologized. He said something

1 along the lines of he should not have gone there.

2 Q Did he indicate where or he just said he should not
3 have gone there?

4 A No, he said something about he should not have gone
5 there. There was much general conversation between
6 the two of us. I believe he mentioned that he
7 didn't mean for anybody to get hurt. He thought
8 that the woman that was injured, who I assumed he
9 was referring to as Ms. Trisha Guy.

10 Q Did he say her name or said she or --

11 A He just said she at that time. He said he thought
12 she had something in her hand when she approached
13 him at the business and pointed and asked him to
14 leave.

15 Q Okay. Now, that statement that he made to you,
16 that is in the parking lot area of the Detention
17 Center?

18 A Yes.

19 Q Now, that particular statement, was it reduced to
20 writing at all?

21 A No, sir.

22 Q Okay. Did you interview him at a later time
23 regarding that particular statement?

24 A No, I did not.

25 Q When you asked him that question, What on earth

1 were you thinking, did he ask you at that time
2 to -- did he say he didn't want to talk to you or
3 say he wanted to talk to an attorney?

4 A No. To my recollection, he was a little excited.
5 I understood he was concerned about the situation.
6 He just made those general statements. And he also
7 mentioned that he was expecting DSS to show up at
8 the Detention Center. And that was all his
9 conversation pretty much.

10 Q Did you question him any further about the
11 statement that he gave?

12 A No, I did not.

13 MR. PAULING: Beg the Court's indulgence.

14 (Pause.)

15 BY MR. PAULING:

16 Q Now, Detective Lloyd, did Mr. Vincent ever specify
17 what he thought that she might have had in her hand
18 or did he say he just thought she had something in
19 her hand?

20 A I don't believe so. I believe there was reference
21 to possibly some type of hair tool, comb, or
22 haircutting scissors. It was clarified it was not
23 a gun, or anything like that, of course.

24 Q Okay.

25 MR. PAULING: No further questions at this

1 time, Your Honor.

2 THE COURT: All right. Mr. Kirincich?

3 MR. KIRINCICH: Thank you, Your Honor.

4 CROSS-EXAMINATION

5 BY MR. KIRINCICH:

6 Q Good morning.

7 A Good morning.

8 Q I'll just kind of run through this quickly.

9 Warrants had already been obtained for Mr. Vincent?

10 A Yes, sir.

11 Q He was turning himself in that night?

12 A Yes, sir.

13 Q Right?

14 A He was meeting me there, yes, sir.

15 Q He had already gone to the Kershaw County Detention
16 Center? That's where the encounter took place?

17 A Yes, sir.

18 Q But he was not in handcuffs?

19 A No, sir.

20 Q And I praised you before, I'll praise you again
21 here. You were an excellent investigator as far as
22 the work that you did, the notes that you took.
23 But this statement was not in your incident report,
24 was it?

25 A No, I don't believe from that night.

1 Q Is there a reason that it didn't end up in the
2 incident report that night?

3 A Nothing specific, other than I probably couldn't
4 read my handwriting before I keyed stuff in. I
5 keyed those notes in I believe a day or two after
6 that night. That was a long evening for us, for
7 myself.

8 Q Sergeant Steele, he's also with the City of Camden?

9 A Yes.

10 Q And do you know when he was called to, I guess, in
11 your mind, put Mr. Vincent in custody?

12 A He was notified when I was there and that Mr.
13 Vincent was there outside. I'd have to look. It
14 was late in the evening. I don't remember the
15 time.

16 Q Do you know if these statements occurred after
17 Sergeant Steele was called?

18 A I don't know. I don't believe I recall Sergeant
19 Steele present, but I don't -- I don't recall.

20 Q Did you call for another officer as soon as you
21 arrived at the Detention Center?

22 A I did not make the call. There were other general
23 officers in the area, and there was another
24 investigator in the area that were also in contact
25 with me and I believe it was somebody else that

1 made the call.

2 Q When you say in the area, do you mean actually at
3 the jail or on the road to the jail?

4 A There was another investigator that accompanied me
5 to the jail, and there was, of course, the shift
6 on-duty, and the shift sergeant that I believe may
7 have still been at the hospital that had been in
8 touch with me working on this case.

9 Q Which other investigator was there with you?

10 A The lieutenant of investigations at that time,
11 Herbie Frasier.

12 Q Would it have been possible for him to serve the
13 warrant?

14 A When -- he could have, but we made the decision for
15 him not to at that time. There was a conversation
16 he and I had about why he would not serve the
17 warrant at that time.

18 Q Was Mr. Vincent free to leave? Could he have left
19 if he wanted to?

20 A To my understanding, he was there to turn himself
21 in to us. He knew that I had warrants. And he
22 had -- it sounded like he had some conversation he
23 wanted to have as well. As I said, he approached
24 me as well when I got out of the vehicle. So if he
25 would have tried to leave, he probably would have

1 been stopped.

2 Q And at any point after you realized this was not in
3 your notes, did you reduce it to writing in an
4 e-mail to the Solicitor, in your own personal
5 notes, do you have your handwritten notes, any of
6 those?

7 A The notes from that night would have been chicken
8 scratch because I knew I would not go back to the
9 office and key them into my computer and they would
10 have been destroyed. Everything that I would have
11 had would have been turned over or would have been
12 in here and you would have had copies of it.

13 Q So at no point have you reduced this to writing on
14 your own subsequent to whatever chicken scratch
15 notes you might have had that you say were
16 unreadable?

17 A I don't think I understand what you're asking.

18 Q I'll tell you why I'm asking, maybe that will help.
19 What you testified to was slightly different than
20 what has been relayed to me by the Solicitor. The
21 Solicitor's statement was, I shouldn't have done
22 that, but I thought she had something in her hand
23 and was pointing it in my face.

24 And then I think you testified he said he
25 should not have gone there, didn't mean for anyone

1 to get hurt.

2 So did you at any point write this down or
3 you're just kind of generally summarizing what
4 you --

5 A There was general paraphrase of the conversation.
6 I thought I made that clear. I believe that
7 conversation between Mr. Vincent and I even came up
8 again in the coming days. He brought that same
9 conversation up.

10 Q I'm sorry, when was that? You said in the coming
11 days?

12 A When he would call in about the case.

13 Q Okay.

14 A There's a note, which I know you got later on where
15 I even referenced it in the investigator notes, and
16 that came in a couple days later. He kept
17 insisting that she had something in her hand.

18 Q Okay. So the part that you remember, not word for
19 word, we are not going verbatim, was either, I
20 shouldn't have done that, or, I shouldn't have gone
21 there. I didn't mean for anyone to get hurt, but I
22 believe she had something in her hand, some sort of
23 tool?

24 A When I left there, I had all of that general
25 information from conversing in general -- in a

1 general way with Mr. Vincent. I had that general
2 information.

3 Q I just want to make sure that I have --

4 A Yes.

5 Q -- the general statement. You know, I know it's
6 hard to understand -- or remember what happened way
7 back there, but the general statement that I just
8 gave to you is correct?

9 A Generally paraphrased, yes. We probably conversed
10 for a few minutes out there.

11 Q All right. Thank you.

12 THE COURT: Any redirect?

13 MR. PAULING: None from the State, Your Honor.

14 THE COURT: All right. You may step down.

15 (Witness steps down.)

16 THE COURT: Next witness.

17 MR. PAULING: That's all the State would have,
18 Your Honor.

19 THE COURT: Any witnesses by the Defense?

20 MR. KIRINCICH: No, sir, Your Honor.

21 THE COURT: Any argument?

22 MR. PAULING: Your Honor, it is the State's
23 position that the statement that Mr. Vincent made
24 to Detective Lloyd was freely and voluntarily
25 given. She indicated that when she met with him --

1 he had already contacted law enforcement to turn
2 himself in, but when she met with him outside the
3 Detention Center, he was there with family at that
4 particular time. And when she met him, albeit it
5 was in response to a question she asked, Your
6 Honor, they had what is characterized as general
7 conversation. But in response to her question, he
8 answered her as to what had occurred and at no
9 point asked her to stop questioning him, ask for an
10 attorney, or any of those things. He was not in
11 custody at that time. He wasn't handcuffed. He
12 had not been served with the warrants at that
13 particular time, Your Honor.

14 The State's position is that the statement
15 that he gave in response to the question was freely
16 and voluntarily made, Your Honor.

17 THE COURT: All right. Mr. Kirincich?

18 MR. KIRINCICH: Thank you, Your Honor. Your
19 Honor, I think whenever I asked Lieutenant Lloyd if
20 he was free to leave, after some reflection, she
21 said, No, if he tried to leave, he would have been
22 stopped. So I believe effectively he was in
23 custody even though he was not in handcuffs. It
24 would have been appropriate for her to Mirandize
25 him at the time. She knew he was there to turn

1 himself in. He was not leaving.

2 THE COURT: At what point should she have done
3 that? At what point was she required to do that?

4 MR. KIRINCICH: Your Honor, I think before she
5 started questioning him. He was in --

6 THE COURT: She said, What's going on? Is
7 that an interrogation, or what is that? What in
8 the world is going on?

9 MR. KIRINCICH: I think she asked what he was
10 thinking. Well, the statement that I got from the
11 Solicitor, What were you thinking?

12 THE COURT: The statement you got from the
13 Solicitor?

14 MR. KIRINCICH: Yes, sir.

15 THE COURT: We can't go based on what you got
16 from the Solicitor, we have to go based on
17 testimony, don't we?

18 MR. KIRINCICH: And, Your Honor, if she
19 testified what was going on and said -- I think
20 they're very similar in nature. And it's a general
21 question. I agree with the Court that it's not
22 something that would normally elicit a response of
23 confession or admission. But, Your Honor, whatever
24 argument I make right now, I think Detective Lloyd
25 was correct in that he made similar statements to

1 her days later on the phone when he was not in
2 custody, when he would have had --

3 THE COURT: Were they voluntary?

4 MR. KIRINCICH: Yes, sir, Your Honor. I mean,
5 by all appearances, he continued to contact law
6 enforcement after this, whether it was about bond
7 or about the general situation. So she's correct,
8 although this is not referenced in any report that
9 I had before last week, he did continue to make
10 contact and make similar statements. So I think
11 even if I was to argue that this should be
12 excluded, I don't have any argument to exclude
13 further statements that he would have made while
14 not in custody and while well aware of his rights
15 that he had a right to counsel. That's the
16 summation of my argument.

17 THE COURT: Well, you were asking questions, I
18 kind of view it as what's the point of this hearing
19 because it's -- you sort of gave the Defense --
20 sort of -- it may even be your defense to the jury,
21 I don't know. So what are we fighting over at this
22 point, if we're fighting over anything?

23 I notice in response to Mr. Pauling, it's not
24 whether it's freely and voluntarily, it's --
25 clearly, she didn't make him talk to her, but it's

1 a question of whether it's a custodial
2 interrogation. When is Miranda triggered? She
3 said he couldn't leave on the one hand, and on the
4 other hand, he came there voluntarily. She said he
5 was initiating some of the conversation. They know
6 each other. She just generally asked him, What's
7 going on? And whether or not that amounts to a
8 custodial interrogation, whether a police officer,
9 if they know someone and they -- I guess -- did he
10 call or arrange to come to the -- he was the one
11 calling around, so -- isn't that right?

12 MR. KIRINCICH: He had become aware that they
13 were issuing warrants and made the arrangements to
14 turn himself in.

15 THE COURT: So he came there, and she was to
16 say, Stop, don't say anything, let me give you your
17 Miranda Warnings, or -- if you know the person, How
18 are you doing today? Well, I just shot somebody,
19 not doing too good. Would that be a custodial
20 interrogation?

21 MR. KIRINCICH: Absolutely not, in that
22 situation, Your Honor.

23 THE COURT: So I'm just wondering, she says,
24 What in the world is going on? What's going on?
25 Kind of a common courtesy as well, if you know the

1 person. In the end, it really doesn't matter
2 whichever way I rule, because you've acknowledged
3 that he made the same statements voluntarily.

4 MR. KIRINCICH: And that's correct, Your
5 Honor. And that is, while not as explicit as what
6 she testified to, it is referenced somewhat in the
7 further report that Detective Lloyd, now Lieutenant
8 Lloyd did. Again, like I said, it's not as
9 explicit, but it's -- he knew he should not have
10 gone to the salon and initiated the incident, but
11 he, you know, something regarding the girl, so. It
12 wasn't as explicit here, but with her testifying
13 that he said the same thing later, I don't have a
14 leg to stand on to say that that was not voluntary.
15 And so it would come in regardless of whatever
16 ruling you made on this particular statement of the
17 night he turned himself in.

18 THE COURT: Well, my ruling is that the
19 statements made were not in response to a custodial
20 interrogation. I know it's triggered at some
21 point, she said he wasn't free to leave, but -- on
22 the one hand -- but then she did not seek to
23 solicit any incriminating information from him. Of
24 course, I don't even know whether the information
25 is really incriminating.

1 MR. KIRINCICH: Yes, sir.

2 THE COURT: I'll side with the side of the
3 State and not suppress based on the agreement. A
4 voluntary statement wasn't subject to a -- or
5 wasn't elicited through a custodial interrogation.

6 All right.

7 MR. PAULING: Thank you, Your Honor.

8 I don't have anything further, Your Honor.

9 THE COURT: All right. Let's take about 10
10 minutes and then start with the jury.

11 MR. PAULING: Yes, sir.

12 THE COURT: We plan to order lunch for the
13 jury and take a short lunch break. I don't know if
14 you all planned to get something to eat, but we
15 have plans for us already.

16 MR. KIRINCICH: Your Honor, does the Court
17 know the time? I can make arrangements for my
18 client to get something.

19 THE COURT: Probably half an hour, we will
20 take about a half an hour around -- about 1:00
21 o'clock.

22 THE CLERK: I think it will be at least 1:00.

23 THE COURT: Yes, about 1:00.

24 MR. KIRINCICH: Thank you.

25 THE COURT: One additional thing before we

1 (WHEREUPON, the proceedings resumed at
2 11:35 a.m.)

3 THE COURT: All right. Are we ready to start
4 the case?

5 MR. PAULING: The State's ready, Your Honor.

6 THE COURT: The Defense is ready?

7 MR. KIRINCICH: Yes, sir, Your Honor.

8 Your Honor, prior to our last break,
9 Mr. Vincent said he needed a couple of minutes to
10 talk with me. I spoke with him before he left the
11 courtroom and since he has come back. He has again
12 indicated he would like to go forward with the
13 trial.

14 THE COURT: Is that right, Mr. Vincent?

15 THE DEFENDANT: Yes, sir.

16 THE COURT: All right. Is that right?

17 THE DEFENDANT: Yes, sir.

18 THE COURT: All right. Very good.

19 Bring the jury.

20 (WHEREUPON, State's Exhibit Nos. 1 - 15
21 were marked for identification only.)

22 (WHEREUPON, the jury came into open
23 court at 11:37 a.m.)

24 THE COURT: Welcome back, ladies and
25 gentlemen. If y'all will stand and be sworn.

1 THE CLERK: Please raise your right hand.

2 (Jurors comply.)

3 THE CLERK: Do you solemnly swear or affirm
4 that you shall well and truly try and true
5 deliverance make between the State of South
6 Carolina and the Defendant at bar, whom you shall
7 have in charge, and render a true verdict according
8 to the law and evidence, so help you God?

9 Please signify by saying, "I do".

10 THE JURY: "I do."

11 THE CLERK: Thank you. Please be seated.

12 (Jury seated.)

13 THE COURT: Ladies and gentlemen, you all just
14 took an oath to well and truly try this case and
15 render a true verdict according to the law and
16 according to the evidence, so help you God. And if
17 you hold true to that oath, then you will have
18 fulfilled your responsibility as a juror and no one
19 will have any basis to criticize your verdict.

20 As I stated earlier, this case comes into
21 court as a result of an indictment returned by the
22 Grand Jury of Kershaw County charging Mr. Vincent
23 with the offense of assault and battery second
24 degree. He has pled not guilty to this charge, and
25 he is presumed to be not guilty and cannot be found

1 guilty unless the State presents evidence which
2 convinces you, the jury, of his guilt beyond a
3 reasonable doubt. And that is the purpose of a
4 trial, to determine whether the State can meet that
5 burden of proof.

6 Out of all the folks who were summoned for
7 jury duty, out of all the people who live here in
8 Kershaw County, out of all the folks who live in
9 South Carolina, only the 12 of you who will
10 deliberate can decide this case, can decide whether
11 the Defendant is guilty or not guilty. And you
12 decide that by making a determination of the facts
13 of this case. And I will explain to you the law
14 that you are to apply to those facts.

15 You are the sole judge of the facts of this
16 case, and as the presiding judge, I am the sole
17 judge of the law of this case. So you take the
18 facts as you find them to be and apply the law as I
19 give it to you, deliberate, and reach a verdict.

20 It is critically important that you pay
21 attention and be focused on the testimony that will
22 come from this witness stand, because it will be
23 your responsibility to weigh the credibility of the
24 witnesses who testify and of the evidence offered
25 during the trial.

1 results or moderate bodily injury to another person
2 could have resulted.

3 So, breaking that down, what I need the 14 of
4 you to listen to is to determine whether
5 Mr. Vincent committed the offense of assault and
6 battery. Did he unlawfully injury another person?
7 And I'll break that down. Unlawfully. So when you
8 hear the witness testimony, when you've heard
9 everything, you need to make the determination is
10 what he did that day -- because I'm going to tell
11 you, we're not contesting the fact that Mr. Vincent
12 pushed Ms. Guy. But was it unlawful at the time?

13 Then you have to determine what moderate
14 bodily injury occurred. Now, the State has
15 indicated they're going to call a physician's
16 assistant and a doctor. You have to determine, did
17 moderate bodily injury occur in this case? I don't
18 know everything they're going to say. I'll have
19 the opportunity at the end to sum up what's been
20 done and kind of give you my opinion on everything,
21 so I'm not going to ask for any specific vote right
22 now. I'm sure you know which way I want you to
23 vote without me saying it, but I just ask that you
24 pay careful attention to the testimony, think about
25 what bias these witnesses may have, and how they

1 may remember, misremember, add detail or leave
2 certain details out. So all I ask from you is for
3 your attention to these witnesses during the case
4 and careful consideration at the end.

5 Thank you.

6 THE COURT: First witness.

7 MR. PAULING: The State would call Rosa
8 Vincent.

9 THE COURT: Rosa Vincent.

10 (Witness approaches.)

11 THE BAILIFF: Place your left hand on the
12 Bible, and raise your right hand, please.

13 (Witness complies.)

14 THE CLERK: Do you solemnly swear or affirm
15 the testimony you give in this case will be the
16 truth, the whole truth, and nothing but the truth,
17 so help you God?

18 THE WITNESS: I do.

19 THE CLERK: State your full name for the
20 record. Have a seat in the witness chair.

21 (Witness seated.)

22 THE WITNESS: Rosa Lee Vincent.

23 ROSA LEE VINCENT,
24 after being duly sworn, testified as follows:

25 DIRECT EXAMINATION

1 BY MR. PAULING:

2 Q How are you doing, Ms. Vincent?

3 A Good.

4 Q I think we can hear you.

5 A Okay.

6 Q If not, just speak directly into that microphone.

7 Ma'am, where do you currently live, or do you live
8 here in Camden? Where do you live?

9 A I live in Lexington, South Carolina.

10 Q You live in Lexington South Carolina. And at some
11 point, did you live in Camden?

12 A I did.

13 Q And when would that have been?

14 A 2015.

15 Q Okay. And do you have family in Lexington? Do you
16 have a family?

17 A No. I live there with my fiancé.

18 Q Okay. Back in 2015, though, were you married at
19 some point?

20 A Yes.

21 Q Okay. And who were you married to?

22 A David Vincent.

23 Q And is he present here in the courtroom?

24 A Yes.

25 Q Okay. And, now, you and Mr. Vincent, you have

1 children?

2 A Yes.

3 Q And how many children do you have?

4 A Two.

5 Q And back in 2015, you were living in Camden; is
6 that correct?

7 A Yes.

8 Q Okay. Now, were you and David Vincent living
9 together at that point?

10 A No.

11 Q Okay. And back in October of 2015, specifically,
12 what was your marital status at that point?

13 A Divorced.

14 Q Okay. And just -- when were you divorced?

15 A September 17th.

16 Q September of 2015. And, now, in October of 2015,
17 were you employed?

18 A Yes.

19 Q Okay. And where were you employed?

20 A Roxie Hart.

21 Q And that's here in Camden?

22 A Yes.

23 Q Now --

24 THE COURT: Can y'all hear her good enough?

25 (Jury indicates in the affirmative.)

1 THE COURT: All right.

2 BY MR. PAULING:

3 Q And are you still employed there?

4 A Yes.

5 Q Okay. And at Roxie Hart, what is the nature of --
6 what do you do there?

7 A I'm a cosmetologist. I do hair.

8 Q And how long have you been a cosmetologist?

9 A Since 2002.

10 Q Since 2002?

11 A Uh-huh.

12 Q And as far as Roxie Hart is concerned, what were
13 your normal hours working there?

14 A Anywhere from 8:00 to 6:00.

15 Q 8:00 a.m. to 6:00 p.m.?

16 A Yes. That's just according to if I have clients or
17 not.

18 Q And do you know Trisha Guy?

19 A I do.

20 Q Okay. Can you tell the jury, how do you know
21 Trisha Guy?

22 A I met her through doing her hair when I worked at
23 New Dimensions Hair Salon.

24 Q And New Dimensions Hair Salon, that's a salon? Is
25 that also here in Camden?

1 A It's also in Camden, uh-huh.

2 Q And that's where you met Trisha Guy. Is she still
3 a client of yours?

4 A She is.

5 Q And in October of 2015, was she a client of yours
6 as well?

7 A She was.

8 Q And specifically October 2nd, 2015, do you recall
9 that day?

10 A I do.

11 Q And do you recall working that day?

12 A I do.

13 Q And do you recall about what time you went in? Was
14 it still kind of the 8:00 to 6:00 schedule as you
15 mentioned?

16 A Yes. I don't recall exactly when I went in, but it
17 was early morning.

18 Q And that particular day, did you have some
19 conversation with David Vincent?

20 A I did.

21 Q And did you contact him or did he contact you?

22 A He was contacting me.

23 Q What was it in reference to?

24 A The girls, and who was going to be picking them up
25 on Sunday. His sister had picked them up from

1 school Friday after school, so they had went
2 directly to their daddy.

3 Q I'm going to tell you, you seem a little bit
4 nervous. Are you all right?

5 A I am a little nervous.

6 Q And that's natural, but let me just slow you down
7 just so the jury understands. You said the girls,
8 you have two girls?

9 A I do.

10 Q And what are their names?

11 A Caroline and Casey.

12 Q Okay. And how old are they?

13 A Caroline is 11 and Casey's 9.

14 Q And I'll just ask you this. One of your daughters,
15 are they present here in this courtroom?

16 A She is.

17 Q Did you bring her here?

18 A No.

19 Q Now, do you need just a moment?

20 (Pause.)

21 Q Are you okay? Now, you indicated Mr. Vincent was
22 contacting you about the girls. What was -- you
23 said about the weekend, what was going on that
24 weekend?

25 A I go to a hair show every year in October, and that

1 was the weekend I was going to the hair show. And
2 the hair show starts on Sunday and it ends on
3 Monday. So I was going to have their babysitter,
4 which has been keeping them, and she still keeps
5 them, Terry Ward, to pick them up on Sunday at the
6 meeting place at 6:00 o'clock at McDonald's. And
7 he didn't want her picking them up because he said
8 he didn't know her well enough to leave them with
9 her and he wanted me to be there to pick them up.

10 Q And now this hair show was going to be that
11 weekend. Do you recall what day of the week this
12 was, this incident was?

13 A It was on Friday.

14 Q On Friday, okay.

15 THE COURT: Hold a moment, please.

16 Ms. Hasty, can you turn the volume up anymore?

17 THE CLERK: Can y'all hear that?

18 THE COURT: Everyone can hear better than me,
19 apparently.

20 Go ahead.

21 MR. PAULING: Thank you, Your Honor.

22 BY MR. PAULING:

23 Q And so did you have several conversations with him
24 that day?

25 A It seemed like there was a few of them back to

1 back. It was just the one in particular I
2 remember.

3 Q Were these phone conversations, text messages?
4 What was the situation?

5 A Both.

6 Q Both?

7 A Yes.

8 Q And was this while you were working?

9 A Yes.

10 Q Okay. And at some point did you see him later that
11 day?

12 A Yes.

13 Q And where did you see him?

14 A In the salon.

15 Q Now, had you told him to come down to the salon?

16 A No.

17 Q Were you expecting him to be at the salon?

18 A No.

19 Q Do you know if he had an appointment at the salon?

20 A No.

21 Q And you said you saw him there. Where did you
22 see -- when you saw him, where did you see him?

23 A I was in the shampoo room, which is the room off
24 from the side of the main room, but the door going
25 out leads into the main room. So I saw him after I

1 heard commotion, and then that was when I saw him
2 when I walked through the door facing the main
3 room.

4 Q And I'm going to slow you down for just a minute.

5 MR. PAULING: Your Honor, may I approach the
6 witness?

7 THE COURT: Yes, sir.

8 BY MR. PAULING:

9 Q Ms. Vincent, I'm going to show you what's been
10 marked State's 1 through 13 --

11 A Uh-huh.

12 Q -- for ID purposes and ask you if you recognize --

13 A Yes.

14 Q -- the images in those photos?

15 A Yes, that's the salon.

16 Q Roxie Hart?

17 A Yes. That's the entrance at Roxie Hart. That's
18 the desk.

19 Q Just go through them and just tell me if you
20 recognize all of those.

21 A Okay. I feel like I'm at work, I mean, exactly.
22 Okay.

23 Q Now, do those photos fairly and accurately depict
24 the way the salon looks now?

25 A Yes, exactly.

1 Q Do those photos fairly and accurately depict the
2 way the salon -- inside the salon and the front
3 door, how it looked back in October of 2015?

4 A It's the same.

5 Q Would those photos be able to aid you in explaining
6 to the jury where you were?

7 A Yes.

8 MR. PAULING: Beg the Court's indulgence.

9 (Pause.)

10 MR. PAULING: Your Honor, at this time, the
11 State would offer State's Exhibits 1 through 13
12 into evidence.

13 THE COURT: Any objection?

14 MR. KIRINCICH: Your Honor, I believe
15 Ms. Vincent testified that's what it looked like
16 then, it's what it looked like now. It's an
17 accurate representation. Those are not originals
18 and I don't think she's been offered as the person
19 that took those photos. With that being said, no
20 objection.

21 THE COURT: They are admitted without
22 objection.

23 MR. PAULING: Thank you, Your Honor.

24 (WHEREUPON, State's Exhibit Nos. 1 - 13
25 were admitted into evidence.)

1 MR. PAULING: May the witness step down for
2 just a moment, Your Honor?

3 THE COURT: Yes.

4 MR. PAULING: And, Your Honor, with the
5 Court's permission, can the Clerk's Office be
6 allowed to just dim just these lights, Your Honor?

7 THE COURT: Is that picture nice and clear for
8 the jury?

9 THE JURY: Yes, sir.

10 MR. PAULING: Thank you, Judge.

11 THE COURT: You said if you turn the gas
12 lights off, what will happen?

13 THE CLERK: It takes a little bit for them to
14 come back on.

15 THE COURT: On and off because of the system.

16 THE CLERK: I can cut these off, but if I turn
17 the gas lights off, it will be a while before they
18 come back on.

19 MR. PAULING: I understand.

20 Ms. Vincent, if you will step down.

21 (Witness steps down.)

22 BY MR. PAULING:

23 Q Ms. Vincent, this is State's 1. If you can just
24 describe to the jury what that is there.

25 A That's the front door to Roxie Hart.

1 Q And that's the main entrance?

2 A Yes.

3 Q And State's 2, what is this area here?

4 A That is our entrance, the entry area, and that's
5 the products that we sell.

6 Q But this entry area here, is that the reception
7 area?

8 A Yes.

9 Q Okay. Who is usually at that area there?

10 A Brandi.

11 Q Brandi Peake?

12 A Yes.

13 Q State's 3. Now, what is this showing? Is this
14 another view of that reception area?

15 A That's the reception desk, yes.

16 Q Okay. And that area with the mirrors and chairs on
17 that side, is that, I guess, the left side of the
18 salon as you go in?

19 A It is.

20 Q And State's 4, is that just another view as coming
21 in there?

22 A Yes.

23 Q Now, State's 5, can you explain to the jury what
24 this area is here where I've got the laser pointed?

25 A It's the main area where people, clients would sit

1 while they were waiting on their stylist to get
2 ready for them.

3 Q So as clients come in, would they check in at the
4 reception area?

5 A They'd check in there and then go have a seat right
6 there.

7 Q And, now, where these mirrors are --

8 A Uh-huh.

9 Q -- are those different stations? What are those?

10 A Those are different stations where stylists work.

11 Q Okay. And you mentioned the shampoo room earlier.
12 Can you see it from that particular photo?

13 A No, you can't. It is blocked by that one beam
14 right there.

15 Q Blocked by that beam?

16 A Uh-huh.

17 Q So the shampoo room is behind that?

18 A Yes.

19 Q And, now, State's 6, is this looking directly from
20 the entrance of Roxie Hart down into the main area?

21 A It is. It's like right where the reception desk
22 is.

23 Q Over this way?

24 A Yes, over way -- yeah.

25 Q And then this is the waiting area?

- 1 A The waiting area.
- 2 Q Here. And, now, this area here?
- 3 A That's the shampoo room.
- 4 Q That's the shampoo room?
- 5 A Uh-huh.
- 6 Q And, now, what is this area here?
- 7 A That's where my station is, behind the products.
- 8 Q Okay. Now, if you keep on going further down this
- 9 hallway, what is down that way?
- 10 A It's the kitchen area for us, for the employees.
- 11 It's also where our massage rooms are, the place
- 12 where we do the pedicures and such, and a hallway
- 13 that leads to the exit.
- 14 Q Okay. And when you say the exit, is that an exit
- 15 for customers, is it an exit for employees?
- 16 A For everyone.
- 17 Q Okay.
- 18 A Customers and employees.
- 19 Q Well, let me ask you this. When a customer usually
- 20 comes in, would they go back out that front door or
- 21 they always exit the rear door?
- 22 A They usually exit where they entered.
- 23 Q Okay. Okay. The next one I believe is State's 7.
- 24 Okay. Again, this is the waiting area; correct?
- 25 A Yes.

1 Q And you mentioned your station being behind this,
2 so this is your station here?

3 A It is.

4 Q Okay. And, again, that's just another view of the
5 waiting area?

6 A It is. And the stylist chairs on the right side.

7 Q On the right side. So this is a view from the left
8 side of the salon --

9 A Yes.

10 Q -- as you come in? Okay. And, now, State's 9,
11 what door is that?

12 A The front.

13 Q The front door. So we're looking back -- is this
14 back like from the hallway?

15 A Yes, from my station.

16 Q From your station?

17 A From my station, shampoo area.

18 Q Your station would be right over here?

19 A Yes.

20 Q And the shampoo area is right around this corner
21 here?

22 A Uh-huh.

23 Q Okay. And State's 10, is this a better view of the
24 shampoo area that you referenced?

25 A Yes, and that's the corner where I was standing

1 folding towels.

2 Q Inside there?

3 A Yes.

4 Q All right. And, again, that's your station there
5 looking going down the hallway?

6 A Yes. Behind the --

7 Q The shelves?

8 A Yes.

9 Q State's 11?

10 A Yes.

11 Q Again, your area here?

12 A Yes.

13 Q State's 12. And, again, now, this being State's
14 13, again, that's looking -- this is your area here
15 where I have the laser pointer?

16 A Uh-huh.

17 Q And this is looking back from down the hallway?

18 A Uh-huh.

19 Q And, now, if we can go back to State's 10, I
20 believe it was, you indicated that you were in this
21 area when you heard a commotion?

22 A Yes.

23 Q And what did you do at that point?

24 A I heard someone screaming for someone to leave now.
25 And when I heard that, I started easing my way to

1 the door there. And that's when I saw David
2 standing right -- no, further over, in this area
3 right here. No, further over. Yeah, he would have
4 been right in that area a little bit closer up.

5 MR. PAULING: Beg the Court's indulgence.

6 (Pause.)

7 BY MR. PAULING:

8 Q I refer you to State's 5.

9 A Yeah, he was on the other side of the beam towards
10 the middle.

11 Q This one?

12 A Yeah, but on this side in the middle.

13 Q Okay.

14 A In that area right there is where he was, and I saw
15 Ashley pointing at him and yelling at him to leave
16 now.

17 Q Okay. And when you say Ashley, are you speaking of
18 Ashley Frost?

19 A Yes.

20 Q Now, that area there, is that beyond the waiting
21 area?

22 A Yes, it is.

23 Q Okay. Is that in close proximity to your station,
24 though?

25 A It is.

1 Q Okay. And, again, you were in the shampoo room
2 when you heard the commotion?

3 A Yes.

4 Q Now, what was Mr. Vincent doing at that point?

5 A Just staring off, just staring in the direction of
6 the back, like down, like in the back.

7 Q Staring in the direction of the back hallway?

8 A Yeah. I couldn't see that area right away --

9 Q I understand.

10 A -- but he was looking down, like in a daze like.

11 Q Now, did you see -- you mentioned Ashley Frost.

12 Did you see anybody else?

13 A When I walked around, when I finish walking around,
14 I saw Trisha getting up off the floor. Someone was
15 helping her, but I don't know who or what.

16 Q Trisha Guy?

17 A Yes.

18 Q I'm sorry, and you can take your seat now.

19 (Witness returns to witness stand.)

20 THE WITNESS: I didn't -- I was in shock to
21 see him, for one, being there because he, you know,
22 wasn't -- he's not supposed to be there. I mean,
23 we were divorced. There's no reason, and the kids
24 were in his care. So I didn't even know it had
25 taken place. I was in shock about why he was

1 there, and Trisha is on the floor, and then here's
2 someone yelling at him. I did not know what had
3 taken place.

4 BY MR. PAULING:

5 Q Did you have any conversation with him at that
6 point?

7 A No.

8 Q Did he say anything to you?

9 A No, he didn't say anything to anyone at that point.
10 I didn't hear him talk to anyone.

11 Q And what did he do at that point in time?

12 A Eerily enough, he just turned around and just
13 casually walked out of the salon.

14 Q He didn't run out of the salon?

15 A No. No. He had a look on his face I can't
16 describe. And he was just walking like he had no
17 fear of anything, he was just walking out.

18 Q Do you know if he actually saw you?

19 A I can't say. I was just in shock.

20 MR. KIRINCICH: Object, Your Honor, she can't
21 know if he saw her or not.

22 THE WITNESS: But I couldn't even say if he
23 looked in my direction.

24 THE COURT: I overrule the objection.

25 BY MR. PAULING:

1 Q You can't say if he looked in your direction?

2 A No. I mean, I was just like staring at someone
3 that -- I mean, I couldn't understand why he was
4 there. And the look on his face was the one thing
5 I just couldn't get over, you know, that he was
6 just staring off, like something wasn't quite right
7 with him.

8 Q Now, you mentioned the entrance and then you
9 mentioned even a back door down the hallway?

10 A Yes.

11 Q Okay. Do you -- when you enter Roxie Hart, the
12 doors, do they close? When I say they close, I
13 mean do they lock behind you?

14 A No.

15 Q The main entrance, well, if somebody goes through
16 and the door closes, will it automatically lock
17 behind them?

18 A No, you can come and go as you please, you know, as
19 you will. It's -- no.

20 Q What about the doors at the end of the hall?

21 A No, they're open. Always are when we're there.

22 Q Now, after he left the store -- left the salon, I'm
23 sorry -- what did you do at that point?

24 A I immediately took in what happened. Then I'm
25 thinking, Where are my girls? They are in his

1 care. Where are they? He just did this to Trish
2 --

3 MR. KIRINCICH: Objection, Your Honor. She's
4 gone over the incident. I don't see how this is
5 relevant at this point.

6 THE COURT: Mr. Pauling?

7 MR. PAULING: I mean, I think it was -- her
8 answer was responsive to the question. I don't
9 think the question was improper. I just simply
10 asked her what she did after he had left the
11 store -- excuse me, the salon -- and she indicated
12 --

13 THE COURT: I heard what she said and what you
14 said, and I sustain the objection.

15 MR. KIRINCICH: Thank you, Your Honor.

16 THE COURT: As not being responsive to the
17 question.

18 BY MR. PAULING:

19 Q Let me ask it this way. Did you stay at the salon?

20 A I did.

21 Q Do you know if law enforcement was called?

22 A They were.

23 Q Do you know if law enforcement responded?

24 A They did.

25 MR. PAULING: Beg the Court's indulgence.

1 (Pause.)

2 MR. PAULING: Thank you, Your Honor. I have
3 no further questions at this time.

4 THE COURT: Cross-examination?

5 MR. KIRINCICH: Your Honor, I don't have any
6 questions of this witness.

7 THE COURT: Thank you. You may step down.

8 (Witness steps down.)

9 THE COURT: Your next witness.

10 MR. PAULING: The State would call Ms. Trisha
11 Guy.

12 (Witness approaches.)

13 THE BAILIFF: Place your left hand on the
14 Bible, and raise your right hand, please.

15 (Witness complies.)

16 THE CLERK: Do you solemnly swear or affirm
17 the testimony you give in this case will be the
18 truth, the whole truth, and nothing but the truth,
19 so help you God?

20 THE WITNESS: I do.

21 THE CLERK: State your full name for the
22 record. Speak closely to the microphone.

23 THE WITNESS: Trisha Hargett Guy.

24 THE CLERK: You need to scoot up closer to the
25 microphone.

1 TRISHA HARGETT GUY,
2 after being duly sworn, testified as follows:

3 DIRECT EXAMINATION

4 BY MR. PAULING:

5 Q How are you doing, Ms. Guy?

6 A I'm okay.

7 Q Ms. Guy, can you tell the jury, ma'am, where you're
8 from? Is this your home, the Camden area?

9 A Not originally. I'm originally from Tennessee.

10 Q But at some point you made Camden your home; is
11 that correct?

12 A Yes. Yes.

13 Q And are you married?

14 A Yes.

15 Q Okay. And do you and your husband have children?

16 A Yes.

17 Q And about how long have you lived here?

18 A About 10 years.

19 Q About 10 years. And you mentioned your husband --
20 and I said children. A child or children?

21 A Two. I have a boy and a girl.

22 Q One girl. How old are they?

23 A My son is now 19 and my daughter is 14.

24 Q And, now, other than your husband and your
25 children, do have other family here in this area?

1 A No.

2 Q Okay. But you've made Camden home?

3 A Yes. Yes.

4 Q All right. Now, are you employed?

5 A Yes.

6 Q And can you just explain to the jury, where are you
7 employed?

8 A I'm generally a schoolteacher for USC Sumter. I'll
9 do that again in the fall. But I have a store
10 inside Roxie Hart Salon, Southern Mother Market,
11 and I sell handmade products inside the store. And
12 that's my connection to the salon, is selling
13 products inside the store.

14 Q And that's your connection with Roxie Hart. Do you
15 also know Ms. Rosa Vincent?

16 A Yes.

17 Q Okay. How do you know Ms. Vincent?

18 A She is my hairstylist from New Dimensions.

19 Q And when she left from New Dimensions to Roxie
20 Hart, did you just kind of follow her over there?

21 A I -- well, I went to -- I was still with her at New
22 Dimensions, and then I started the little shop at
23 Roxie Hart. And then she became a stylist at Roxie
24 Hart, so I continued to -- didn't want to leave
25 her, so I kept getting my hair done by her.

1 Q And, now, you mentioned a little store. What sort
2 of products do you sell there?

3 A Just soaps and bath bombs, pillows, that sort of
4 thing.

5 Q And you were working there doing that back in
6 October of 2015?

7 A Yes.

8 Q And specifically October 2nd of 2015, do you recall
9 that day, ma'am?

10 A Yes.

11 Q And, now, are you typically there all day from the
12 time it opens or closes, or how does your schedule
13 work at Roxie Hart?

14 A No, I would generally come in in the afternoons
15 from about 3:00 to 6:00. It was -- about 3:00 to
16 6:00 was when I was there typically.

17 Q And was this -- this particular day, October 2nd --
18 when I say a typical day, a normal day, I mean, as
19 far as you arriving, did you get there around
20 3:00 o'clock?

21 A I think so. I really -- I think so.

22 Q Now, when you got to Roxie Hart, did you have any
23 conversation or did you have -- did you see -- did
24 you see Rosa Vincent that day?

25 A Yes.

1 Q I mean, is that normal? Do you --

2 A Yes.

3 Q I mean, whether or not you had an appointment, you
4 were working there, you would come in contact with
5 Rosa; is that correct?

6 A Yes.

7 Q And, now, did you have any discussion with her --
8 did you talk with her about how her day was going?

9 A Yes.

10 Q Okay. And how was she that day?

11 A She was -- she was upset.

12 Q And did you -- just yes or no, did you know why she
13 was upset?

14 A Yes.

15 Q Now, you mentioned you knew Rosa Vincent. Did you
16 also know David Vincent?

17 A Yes.

18 Q And were you aware of their marital status at that
19 time?

20 A Yes.

21 Q Now, do you know if he was a client of the salon?

22 A He was not.

23 Q And had you ever seen him in the salon?

24 A No.

25 Q Before that day?

1 A No.

2 Q And did you talk to Rosa about how she was that
3 day?

4 A Yes.

5 Q Now, at some point -- before I get there, I'm going
6 to direct your attention, Ms. Guy, to first State's
7 Exhibit 3 and this area here. Now, what area is
8 that?

9 A Reception.

10 Q What is this -- what's this right here?

11 A That is part of my little shop.

12 Q This is some of the wares that --

13 A Yes.

14 Q -- that you would sell?

15 A Yes.

16 Q Now, back in 2015, is that where your products
17 were?

18 A Yes. That's always been there.

19 Q So that's where you were. So if your products were
20 there, would you be somewhere, I guess, in that
21 neighborhood?

22 A Yes.

23 Q Now, that particular day, did you see David Vincent
24 that day?

25 A Yes.

1 Q And when do you recall first seeing him?

2 A I saw him at the back of the salon standing,
3 looking at Rosa's station.

4 Q And you say at the back of the salon, if I can get
5 this pointer, Rosa's station being --

6 A Right there.

7 Q -- behind that area there?

8 A Yes.

9 Q And where was he?

10 A He was standing kind of near the column.

11 Q This column?

12 A Right.

13 Q Okay.

14 A In that area.

15 Q In this area?

16 A Uh-huh.

17 Q Okay. And, now, at that particular point, though,
18 did you know where Rosa was?

19 A I didn't. I thought she was -- I just knew that
20 she wasn't there. I was thinking she was in either
21 the break room or just somewhere else. I just knew
22 she wasn't in her station.

23 Q Okay.

24 A Thankfully.

25 Q Now, I know you saw him at that location, but where

1 were you?

2 A I felt like I had walked -- I knew I hadn't seen
3 him -- I was up front when I became aware of him.

4 Q Let's go back to State's 3. This area here is the
5 reception area?

6 A Yes.

7 Q Okay. Do you know if you were anywhere in this
8 area?

9 A Yes.

10 Q And whereabouts? Where I have the pointer or do I
11 need to go left, right?

12 A I was with Brandi in the actual little --

13 Q In this area here?

14 A Yes. I know that's when I first became aware that
15 he was there.

16 Q Okay. You're speaking of Brandi Peake?

17 A Brandi Peake, yes, sir.

18 Q And, now, once you saw him there, you said he was
19 staring at Rosa's station, what did you do?

20 A What did I do?

21 Q Yes.

22 A I -- I walked back to where he was and I just -- he
23 was -- he was looking back, so I went around to
24 where I could face him, and I just looked at him
25 and said, You need to -- you're not supposed to be

1 here, you need to leave. And I said that very
2 plainly, very just matter of fact, just, You're not
3 supposed to be here, you need to leave.

4 Q And you went over to him. So about how close were
5 you then?

6 A Probably a couple of feet or so.

7 MR. PAULING: Your Honor, may the witness step
8 down?

9 THE COURT: Yes, sir.

10 MR. PAULING: Please step down, Ms. Guy.

11 (Witness steps down.)

12 BY MR. PAULING:

13 Q Okay. Were you this close, you think?

14 A Uh-huh, about like this.

15 Q And you were standing in front of him?

16 A Yes.

17 Q And what did you say to him?

18 A I said, You're not supposed to be here. You need
19 to leave.

20 Q Do you recall if he -- you pointed at him or
21 pointed anything at him? Do you recall?

22 A No. No. I didn't do any of that.

23 Q And did he respond to you at all?

24 A He just ran towards me and said, I'm tired of you,
25 something, and grabbed me by the neck and threw me

1 back. I don't know what the rest of the sentence
2 was.

3 THE COURT REPORTER: I'm sorry, I can't hear.

4 A I don't know what the rest of the sentence was.

5 Q And just tell me, where did he grab you?

6 A By my neck with both hands.

7 Q With both of his hands?

8 A Yes.

9 Q Now, did he push you back or what happened? Tell
10 the jury what happened.

11 A He literally picked me up by my neck and threw me
12 back, and I felt myself go up off the floor. And
13 all I was thinking about was -- there's marble
14 flooring, and I remember thinking I didn't want to
15 hit that beam and I didn't want to hit my head on
16 the floor. I just -- I remember just thinking I
17 didn't want to split my head open.

18 Q And were your feet literally off the floor?

19 A Yes, they were literally off the floor.

20 Q You can take your seat.

21 (Witness returns to witness stand.)

22 Q And at some point you hit the floor, so where was
23 he after he threw you on the floor, if you recall?

24 A Immediately, I don't recall. I just remember
25 everybody yelling for him to leave, just lots of

1 yelling.

2 Q And I know you said, you know, everybody. There
3 were other people in the saloon; is that correct?

4 A Yes, it was full. There were lots of people there
5 that day.

6 Q What was going through your mind at that point?

7 A I was worried he had the kids with him and that he
8 was going to hurt them.

9 Q When you landed on the floor, what was your injury?
10 What part of you was hurting at that point? Did
11 you hit your head, or what happened?

12 A No. I barely kept my head up off the floor. I
13 landed really hard on my butt. And that's where my
14 broken tailbone came in. Again, marble floors.
15 And so I broke my tailbone and I -- when I -- from
16 trying to -- from straining, from trying not to hit
17 the floor, I actually had like injury to my neck
18 that felt like whiplash or something, like I was
19 straining so hard not to hit the floor with my head
20 that my neck muscles were just so tense for -- you
21 know, that I just -- that really hurt. And then I
22 wasn't even really aware of it, but I caught myself
23 on my right wrist just trying not to -- that's what
24 really --

25 Q Trying to break the fall?

1 A Yeah, trying to break my fall, that was what --
2 yes.

3 Q Now, did you see where David Vincent went after the
4 fact?

5 A I did see him -- I did see him go out the door.
6 That was the last point that I saw him was I saw
7 him go out the door.

8 Q Okay. Which door now?

9 A The front door.

10 Q The front door. Okay. Now, was law enforcement
11 called?

12 A Yes.

13 Q And did law enforcement respond?

14 A Yes.

15 Q And do you recall speaking with law enforcement?

16 A Yes.

17 Q And did you, in fact, provide a written statement
18 to law enforcement?

19 A Yes.

20 Q And the statement that you provided law
21 enforcement, that was -- was that there at the
22 scene?

23 A I provided that at the hospital, that was when I
24 wrote that.

25 Q Okay. So you did go to the hospital?

1 A Yes.

2 Q And do you remember how you were transported to the
3 hospital?

4 A My husband drove me there.

5 Q Okay. And you were treated? And when I say the
6 hospital, which hospital would that have been?

7 A The Kershaw County, the Camden Hospital.

8 MR. PAULING: May I approach the witness, Your
9 Honor?

10 THE COURT: Yes, sir.

11 BY MR. PAULING:

12 Q Ms. Guy, I'm going to show you what has been marked
13 for ID purposes State's Exhibit 14 and 15. I'm
14 going to ask you if you recognize those particular
15 photos?

16 A Yes.

17 Q And did those two photos, 14 and 15 -- well, let me
18 ask you this. Do you know who took those photos?
19 Do you recall who took those photos?

20 A I believe it was Natalie, one of the other stylists
21 at the salon. I believe she was the one who took
22 them.

23 Q Now, that particular -- those two particular
24 photos, though, were they taken that day at the
25 salon?

1 A Yes.

2 Q Would that have been prior to you going to the ER?

3 A Yes.

4 Q And, now, do they -- those photos, do they fairly
5 and accurately depict the bruising or the red marks
6 around your neck at that time?

7 A Yes.

8 MR. PAULING: Your Honor, at this time I would
9 offer State's 14 and 15 into evidence.

10 MR. RAEHN: No objection, Your Honor.

11 THE COURT: Admitted without objection.

12 (WHEREUPON, State's Exhibit Nos. 14 - 15
13 were admitted into evidence.)

14 MR. PAULING: Your Honor, may I publish these
15 to the jury?

16 THE COURT: Yes.

17 (Exhibits published to the jury.)

18 MR. KIRINCICH: Your Honor, can I make a
19 request that he hold off on any new questions until
20 the jury's attention is on the witness?

21 THE COURT: I deny that request.

22 You may proceed.

23 MR. PAULING: Thank you, Your Honor.

24 THE COURT: You get copies of all exhibits in
25 the jury room at the end of the trial.

1 You may proceed.

2 MR. PAULING: Thank you, Your Honor.

3 BY MR. PAULING:

4 Q Now, Ms. Guy, you indicated that you had gone to
5 the emergency room?

6 A Yes.

7 Q And following your ER visit, did you go to another
8 healthcare facility the next day?

9 A I did. I was -- we had to go to the police station
10 the next day. And I remember we were speaking to
11 Penny, and she happened to look down and notice my
12 wrist and it was pretty bruised at that point and
13 it was painful. I was kind of still in a daze.
14 And at that point, that was when I went to Urgent
15 Care in Elgin and had that assessed as well because
16 it was painful.

17 Q Now, you mentioned the injury to your tailbone and
18 to your wrist. Did you continue to receive
19 treatment for that or what happened -- or what was
20 the treatment for the broken tailbone?

21 A There is really no treatment for a broken tailbone.
22 You just have to sit on -- there's really no
23 treatment for it. It's just very sore and painful.

24 Q Is it a long-healing process?

25 A Yes. Yes. It's hurting today.

1 Q Ms. Guy, how tall are you?

2 A I'm 4'11".

3 MR. PAULING: Beg the Court's indulgence.

4 (Pause.)

5 MR. PAULING: The State has no further
6 questions now, Judge.

7 THE COURT: Cross-examination?

8 MR. KIRINCICH: Thank you, Your Honor.

9 CROSS-EXAMINATION

10 BY MR. KIRINCICH:

11 Q Good afternoon.

12 A (No response.)

13 Q I'm not going to go through with asking them to put
14 the photos back up there, but distance-wise, when
15 you saw Mr. Vincent, what amount of distance did
16 you cover to get close to him?

17 A To actually approach him?

18 Q Yes, ma'am.

19 A I -- I'm not sure. I'm really not sure.

20 Q Greater than 20 feet?

21 A I literally have no -- I just don't know. I have
22 no idea what the distance is from the front of the
23 salon to the area that he was in. I'm not good at
24 guessing that sort of thing.

25 Q You didn't notice him when he walked in and spoke

1 to Ms. Peake, though?

2 A No, I did not. A lot of -- a lot of people were in
3 and out, so I didn't notice.

4 Q In regards to your injuries that you suffered,
5 where did you receive the diagnosis of a broken
6 tailbone?

7 A At the hospital.

8 Q Was that the final diagnosis or the suspected
9 diagnosis?

10 A No, it was a final diagnosis.

11 Q And how do you know that was final?

12 A The doctor that I saw -- or I believe he was a
13 nurse practitioner, I'm not sure -- that's what he
14 told me.

15 Q Okay.

16 A He said it was fractured.

17 Q How did he come to that conclusion?

18 A X-ray.

19 Q Now, weren't you told at the time that a
20 radiologist had to read the X-ray?

21 A Quite honestly, I don't remember. I was too upset.

22 Q Did you ever do any follow-up, either the next day
23 with Dr. Borucki, your primary care physician, on
24 this broken tailbone?

25 A I mentioned it to my primary care physician months

1 later and I didn't follow-up. I mean, I did tell
2 Dr. Borucki about it, about the assault when he
3 assessed my wrist, but he didn't offer to assess
4 that. He was just -- he only assessed my wrist,
5 that's it.

6 Q Whenever you were at the Kershaw Health Emergency
7 Room, do you remember them indicating that they
8 would call you with any abnormalities in your
9 X-rays?

10 A I don't remember that.

11 Q Did anybody call you to confirm a broken coccyx,
12 which is the name that we all call our -- the
13 medical name for what we all call our tailbone?

14 A No, no one did.

15 Q Okay. So a physician's assistant did not actually
16 read the X-ray, did he?

17 A Yes, he did.

18 Q When did he do that? While you were there?

19 A While I was there.

20 Q And that would have been -- and I don't know his --
21 just Physician's Assistant Hill?

22 A Hill.

23 Q And the next day, you went to Elgin Urgent Care and
24 that's where you saw Dr. Borucki?

25 A Uh-huh, yes.

1 Q And did he do an X-ray on your wrist?

2 A No.

3 Q He just treated it as a sprain or strain or
4 something?

5 A Yes. It was blue and greenish all over and very
6 sore to the touch, but I could move it. He tested
7 the movement, you know, mobility of it, so he felt
8 like it would not be necessary to do an X-ray that
9 my insurance might not pay for at the time.

10 Q Did you have to do any follow-up treatment for your
11 wrist?

12 A No. Other than mentioning it to my family care
13 physician, you know, just mentioning it -- just
14 mentioning the whole thing to him. I did tell him
15 about the entire attack.

16 Q Okay. And as far as your neck, did you have to do
17 any follow-up treatment for any strain there?

18 A They just told me to, you know, take muscle
19 relaxers, which I believe were prescribed to me as
20 part of the treatment. And that was -- that helped
21 with that.

22 Q Whether you took the muscle relaxers or not, did
23 you have to do any follow-up for care or for
24 prescriptions?

25 A No.

1 Q All right. On these photos, you said you believe
2 somebody named Natalie, is that right, took them?

3 A I think so.

4 Q Was she a customer or another employee there?

5 A She's another employee.

6 Q Do you know how she took them?

7 A With her cell phone.

8 Q And you've seen these -- did you see them before
9 today and again today?

10 A Yes, I've seen them.

11 Q While there is some general redness on your neck,
12 were there any scratches that are not visible in
13 these photos?

14 A That's what it looked like after he did that.

15 Q Were there any -- I don't know the medical terms to
16 describe any like burn marks where skin-on-skin
17 contact happened?

18 A No.

19 Q No? And was there any bruising that occurred
20 that's not captured in these photos?

21 A It certainly bruised.

22 Q But nobody ever took photos?

23 A No.

24 Q When --

25 A No.

1 Q When you met with law enforcement at the hospital,
2 do you know who the officer was?

3 A Hemming. I believe Officer Hemming.

4 Q Hemming?

5 A Hemming, yes.

6 Q Did he take any photos of you that night?

7 A No.

8 Q Did -- at the time, Detective Lloyd, did she take
9 any photos of you the next day?

10 A She took -- I believe you -- I believe she did. I
11 think she took some as well.

12 Q Have you seen any of those photos since that time?

13 A I don't believe I have.

14 Q Ms. Guy, I think this past spring you signed a
15 release for the Solicitor's Office to obtain your
16 medical records?

17 A Yes.

18 Q Was there anything that you said that they could
19 not receive?

20 A No.

21 Q In regards to this case?

22 A No.

23 Q So if there were X-rays, you would have authorized
24 them --

25 A Yes.

1 Q -- to see those? Any other doctors' reports, you
2 authorized them to see and to actually obtain a
3 copy --

4 A Yes.

5 Q -- of those records? Have they gone over any
6 X-rays with you in preparation for this case?

7 A No.

8 Q Do you know if any X-rays were turned over from the
9 hospital to the solicitor's office?

10 A Huh-uh, I don't know.

11 Q Did you keep a copy of your discharge and patient
12 instruction from the hospital?

13 A Yes.

14 Q Have you looked at that recently?

15 A Pretty recently.

16 Q I'm sorry?

17 A Pretty recently.

18 Q Okay. So you're somewhat familiar with it. Did
19 the hospital or the Solicitor's Office give you a
20 copy of what they received from Kershaw Health?

21 A You mean a copy of my own documents?

22 Q Yes, ma'am.

23 A No.

24 Q You didn't receive like your full medical report
25 from there?

1 A I'm not sure I understand. I felt like I had all
2 the medical records.

3 Q Do you remember telling them what your pain level
4 was at the time?

5 A No.

6 Q Were you -- and if I've asked this, I apologize,
7 but were you aware of any of the recommendations
8 made by the radiologist in this case?

9 A Obviously, not just -- not sit -- I don't know. I
10 don't know. I can't remember. Obviously, not to
11 exercise -- I don't remember, it was just kind of
12 general things that you can't do when your tailbone
13 is broken.

14 Q I'm sorry. I'm not trying to trick you or anything
15 on this. You saw the physician's assistant. And
16 did you see Dr. Trowbridge that night, do you
17 remember seeing?

18 A I don't remember.

19 Q Okay. And the reason I'm asking about the
20 radiologist, because it doesn't appear that his
21 report was done until the next day. But you never
22 had any follow-up with the radiologist or any
23 follow-up on your tailbone, did you?

24 A No.

25 Q Okay.

1 A Like I said, I did speak to my family physician
2 about it and tell him about it. That's follow-up
3 in my eyes.

4 Q Okay.

5 MR. KIRINCICH: Your Honor, if I can have just
6 a moment, please.

7 (Pause.)

8 Q I'm sorry, I just have a couple additional
9 questions. You said that this is the first time
10 that Mr. Vincent, to your knowledge, had been in
11 Roxie Hart? You had never seen him in there
12 before?

13 A I had not.

14 Q Okay. And you were unsure of the distance that you
15 covered to get to him?

16 A I am unsure.

17 Q But pointing to the picture earlier, it was on what
18 would be the right side of the column --

19 A In that --

20 Q -- close to that shelf and where the customers
21 normally wait?

22 A I didn't say that.

23 Q No, no, I'm just saying from the picture, that
24 column blocks the view of the --

25 A Can I see the picture again, please?

1 Q Sure. I'll give you all the photos. They are in
2 order.

3 A I would be more comfortable with the jury seeing
4 it.

5 Q Sure. You pick out the one that you want to
6 explain it with.

7 A I think you should. It was your question.

8 Q Well, here's 5.

9 A Again, it's your question.

10 Q Yes, ma'am, I'm going to ask, would 5 be better
11 than 6 as far as answering the question?

12 A Either one.

13 Q Okay. All right. That is State's Number 5, and
14 the column that's in the back, it's almost in the
15 center of the photo, but the last column, that's
16 blocking the door to the shampoo room in this
17 photo? That's correct?

18 A Yes.

19 Q And Mr. Vincent was to the right of that column?

20 A In that area, yes.

21 Q In that area. And you left from the front of the
22 store to go up to him?

23 A Yes.

24 Q And as far as you know, he had never been there
25 before?

1 A Yes.

2 Q Do you know if he was waiting at Rosa's station
3 then or was he just where the customers were
4 supposed to be?

5 A He was looking at it, looking at the wall where her
6 picture is with her license and photographs.

7 MR. KIRINCICH: Your Honor, I don't have any
8 further questions at this point in time.

9 THE COURT: Any redirect?

10 MR. PAULING: No, Your Honor.

11 THE COURT: Thank you. Ma'am, you may step
12 down.

13 (Witness steps down.)

14 THE COURT: All right. Let's see, we ordered
15 lunch for the jury. Has it gotten here yet?

16 THE CLERK: I just went and gave them my key.

17 THE COURT: Do you have another witness, 10-
18 or 15-minute witness?

19 MR. PAULING: Yes, Your Honor.

20 THE COURT: All right.

21 MR. PAULING: The State would call Therin
22 Hill.

23 THE COURT: All right.

24 MR. PAULING: Your Honor, may we approach?

25 THE COURT: Yes.

1 And while they are approaching, let's just
2 everybody stand for a moment, please.

3 (WHEREUPON, a bench conference was held
4 in the presence of the jury, but outside
5 the hearing of the jury.)

6 THE COURT: All right.

7 (Witness approaches.)

8 THE BAILIFF: Place your left hand on the
9 Bible, and raise your right hand, please.

10 (Witness complies.)

11 THE CLERK: Do you solemnly swear or affirm
12 the testimony you give in this case will be the
13 truth, the whole truth, and nothing but the truth,
14 so help you God?

15 THE WITNESS: I do.

16 THE CLERK: Please have a seat in the witness
17 chair, and state your full name for the record.

18 (Witness seated.)

19 THE WITNESS: Okay. My name is Therin Hill.

20 THERIN HILL,
21 after being duly sworn, testified as follows:

22 DIRECT EXAMINATION

23 BY MR. PAULING:

24 Q How are you doing, Mr. Hill?

25 A Good.

1 Q And if you could tell the jury, where are you
2 currently employed, sir?

3 A I'm sorry, I didn't hear the last part.

4 Q I'm sorry. Where are you currently employed?

5 A Currently, I'm employed for USC School of Medicine.

6 Q And what you do for the USC School of Medicine?

7 A I'm the Director of Clinical Education for the P.A.
8 program.

9 Q The P.A. program?

10 A Correct.

11 Q And what is the P.A. program?

12 A Physician assistant.

13 Q What does that entail? What is a physician's
14 assistant?

15 A A physician assistant is a mid-level provider. We
16 are taught primary care and other skills that --
17 essentially, most people are familiar with a nurse
18 practitioner, which is created by the nursing
19 industry, but the P.A. is the doctor version.
20 We're trained under the medical model.

21 Q And speaking of training, if you could tell the
22 jury, what is your educational background?

23 A My physician assistant, I graduated in 1996 at
24 Gannon University in Erie, Pennsylvania, with a
25 Bachelor of Science for Physician Assistant. I

1 have a MBA in Healthcare Administration. That was
2 from the New York Institute of Technology in 2007.

3 Q Okay. As far as your work history in the medical
4 field, what would that be, sir?

5 A I have worked -- the last 22 years I have worked
6 ER, urgent care, interventional radiology, and
7 cardiology.

8 Q Interventional radiology?

9 A Yes.

10 Q What is that, sir?

11 A Interventional radiology is the procedures of
12 dialysis as well as vascular access.

13 Q And you mentioned where you were employed now. At
14 some point, were you employed with Kershaw Health?

15 A I was employed with Kershaw Health prior to this
16 time period, but the employer at that time was
17 ApolloMD.

18 Q What is that, I'm sorry?

19 A ApolloMD is an ER contract.

20 Q Okay.

21 A And they were -- the contract was at Kershaw
22 Health.

23 Q Okay. And so were you employed at Kershaw Health
24 back during October of 2015?

25 A Through ApolloMD.

1 Q Through Apollo MD, okay. And so your employment
2 through that at Kershaw Health -- when you were at
3 Kershaw Health, what would you do?

4 A I would work sort of the minor emergencies in the
5 ER and assist the ER physician with the major
6 emergencies.

7 Q And you mentioned your degrees and you mentioned
8 being a physician's assistant. Are you licensed in
9 that field?

10 A Yes. Yes, there is a licensing both nationally as
11 well as state license.

12 Q Okay. And are you licensed in both state and --

13 A I'm licensed in the State of South Carolina and
14 board certified nationally.

15 Q As far as your employment, I understand that you
16 work through this ApolloMD, but are you under the
17 supervision of a set of doctors or anything like
18 that?

19 A Yes, it's -- each shift has a doctor and a P.A.

20 Q And during your employment at Kershaw Health and
21 during your work at Kershaw Health --

22 A Uh-huh.

23 Q -- you had the opportunity to treat any number of
24 patients with any myriad of injuries?

25 A We would see about 40, 30 to 40 patients in 12 to

1 14 hours.

2 Q And with varying injuries?

3 A Yes.

4 Q What types of injuries did you treat or assess?

5 A Everything. It could be from insect bites to
6 lacerations to fractures to chest pain, abdominal
7 pain, respiratory ailments, viruses.

8 Q And in treating individuals that came through --
9 this would be at the ER; is that correct?

10 A Uh-huh.

11 Q And in treating those individuals who came to the
12 ER, would you assess their injury and, I guess,
13 recommend a treatment plan, sir?

14 A Yes.

15 Q And over the course of time, and just a rough
16 estimate, about how many patients do you think you
17 would have seen during your time there, at least in
18 Kershaw?

19 A Well, I would work about 20 12-hour shifts a month.

20 Q 20 12-hour shifts?

21 A Uh-huh.

22 Q Yes, sir.

23 A And I see 30 to 40 every shift.

24 Q A fair number of patients?

25 A Uh-huh.

1 MR. PAULING: Your Honor, at this time I would
2 offer Therin Hill as an expert in the field of
3 general medicine and urgent care, Your Honor.

4 THE COURT: Mr. Kirincich?

5 MR. KIRINCICH: Your Honor, I don't see a need
6 to introduce him as an expert to give his testimony
7 any additional weight that would come along with an
8 expert. I don't think he's testifying to anything
9 that he was not directly involved in and observed,
10 but there's no additional scientific reports or any
11 technical documents that he's reviewed that are I
12 think outside of what he actually did that day.

13 THE COURT: The question is, do you agree that
14 he's an expert in the field offered or do you
15 object? Do you have voir dire that you'd like to
16 ask him?

17 MR. KIRINCICH: I object to him being
18 qualified as an expert in this case, Your Honor.

19 THE COURT: All right. And the basis for your
20 objection?

21 MR. KIRINCICH: Your Honor, again, as I
22 stated, there was no scientific documents that are
23 being introduced here. Everything that I believe
24 he's testifying to is what he was directly involved
25 in. Your Honor, I don't think there's a need to

1 qualify him as an expert. He's not providing any
2 additional technical expertise to help the triers
3 of fact in this case.

4 THE COURT: Mr. Pauling, response?

5 MR. PAULING: Your Honor, at this time,
6 I'll -- I'll move on at this point, Your Honor.
7 I'll withdraw my request, Your Honor.

8 THE COURT: Okay.

9 MR. PAULING: Thank you, Judge.

10 THE COURT: Yes, sir.

11 BY MR. PAULING:

12 Q Now, Mr. Hill, back in October of 2015,
13 specifically October 2nd of 2015, did you have the
14 occasion to treat an individual by the name of
15 Trisha Guy?

16 A Yes.

17 Q And if you could tell the jury how that came about,
18 sir.

19 A She presented to triage quite upset. At that
20 point, the triage nurse would evaluate her. And
21 she was assigned an acuity or directed for an
22 acuity, whether she be major or minor.

23 Q Is triage, is that just the area where you kind of
24 assess who needs treatment, when and where?

25 A That's where the nurse first greets the patient.

1 Q Okay.

2 A Does their blood pressure and the rest of their
3 vital signs and writes an initial short summary,
4 one- or two-word summary of what's going on. And
5 then she directs them to where they would go from
6 there. She was directed to myself as an assault
7 with a complaint of head, neck, and lower back
8 pain, buttock pain.

9 Q And did you assess her injuries?

10 A I did.

11 Q How did you go about that?

12 A Did a head-to-toe evaluation, and that pretty much
13 corresponded to her complaint with the neck pain.
14 It was also involving some muscle areas, what we
15 call paraspinous muscle, and as well as lower back,
16 coccygeal, tailbone tenderness, as well as muscle
17 tenderness in that general area.

18 Q And did you further test her for any injury to the
19 coccyx, the tailbone area?

20 A We did some X-rays.

21 Q What were the results of the X-rays?

22 A We X-rayed both the neck and the sacral coccyx, the
23 sacrum being just above the tailbone.

24 Q Yes, sir.

25 A To make sure that there wasn't something else on

1 top of that, because she was tender in a good-sized
2 area. Her cervical spine was fine. There was no
3 fractures. Her tailbone or coccyx area did show
4 some angulation that looked off to me --

5 Q Yes, sir.

6 A -- that would make me say that this was most likely
7 a fracture. The radiologist did call us and he
8 expressed those same concerns.

9 Q And after doing that, what was your report to
10 Ms. Guy? What did you tell her to do as far as
11 treatment was concerned?

12 A We talked to her about treatment. She started on
13 some muscle relaxers, some anti-inflammatories to
14 try to address not only her neck, but the buttock
15 area, as well as ice. She was given something for
16 pain. We had a discussion. One of the problems
17 with the tailbone is too much pain medicines make
18 you constipated, which would be even more painful
19 than the pain she was already dealing with. We
20 recommended what we call a hemorrhoid doughnut or
21 something like that that allows her to sit and try
22 to be comfortable. It's a very uncomfortable
23 injury. It's not one you can turn a certain way
24 and get comfortable. It's just very difficult to
25 deal with.

1 Q Well, a fracture of the tailbone, is that like a
2 fracture of your femur?

3 A It's a fractured bone.

4 Q Well, I understand that, but I guess the -- the
5 coccyx, if you explain it to the jury, is this
6 something you can put a cast on it?

7 A No, it's very difficult to cast it. It's not a lot
8 you can do with it. Where it -- in my -- what I've
9 seen, the only time I've ever seen something done
10 different than that was actually the tailbone had
11 actually penetrated into the rectum. And that's
12 probably about the only time you're going to --
13 there has to be some involvement there --

14 Q Yes, sir.

15 A -- to do something. It's just a very uncomfortable
16 injury.

17 Q And you mentioned that when you got the information
18 or it came to you, you understood it was an
19 assault. Was the understanding that she had
20 actually hit the ground from falling?

21 A She told us the whole story. And that she -- the
22 police were there and would be coming down to talk
23 to her there as well.

24 Q I guess -- I'm sorry.

25 A She was --

1 Q Go ahead, I'm sorry.

2 A What she told me is --

3 MR. KIRINCICH: Objection, Your Honor, hearsay
4 at this point.

5 MR. PAULING: Your Honor, it's only -- I'm
6 sorry.

7 THE COURT: Response?

8 MR. PAULING: It's not being offered for the
9 truth, but just in his treatment how he came to the
10 diagnosis or part of the treatment.

11 THE COURT: Yes, sir. Response?

12 MR. KIRINCICH: Your Honor, I don't know -- I
13 understand she's already testified, and it seems to
14 me like there's nothing else it's being offered for
15 other than the truth of the matter asserted in this
16 particular case -- or in this particular line of
17 questioning.

18 THE COURT: The testimony at this point is
19 what occurred to Ms. Guy?

20 MR. PAULING: The question was -- the question
21 was, was he told what had happened.

22 THE COURT: That's yes or no.

23 THE WITNESS: Yes.

24 BY MR. PAULING:

25 Q And the injury that she suffered, was that

1 consistent with that?

2 MR. KIRINCICH: Your Honor, I'm sorry, is he
3 withdrawing the initial question or is there a
4 ruling from the Court?

5 THE COURT: The question was modified.

6 MR. PAULING: Right.

7 BY MR. PAULING:

8 Q I'm sorry, was that consistent with the injury that
9 you saw?

10 A Yes.

11 Q Now, you indicated that you gave her a treatment
12 plan. Do you recall at that time that she had -- I
13 know you mentioned the neck and the lower back
14 area. Did she mention at that point any other
15 injury that you recall?

16 A She had some other complaints that were kind of
17 vague and you try to narrow it down to -- so that
18 you can focus what your treatment plan is going to
19 be. And those were the two areas that she really
20 focused on.

21 MR. PAULING: Beg the Court's indulgence.

22 (Pause.)

23 MR. PAULING: No further questions at this
24 time, Your Honor.

25 THE COURT: Cross-examination.

1 MR. KIRINCICH: Thank you, Your Honor.

2 CROSS-EXAMINATION

3 BY MR. KIRINCICH:

4 Q Good afternoon.

5 A Good afternoon.

6 Q Did you bring any documents with you today?

7 A No.

8 Q You indicated you see 30 to 40 patients, 20 days a
9 month, on 12-hour shifts; right?

10 A Uh-huh.

11 Q So over the course of your time at Kershaw Health
12 and in your profession, you've seen thousands of
13 individuals; correct?

14 A Safe assumption.

15 Q So to answer questions today, did you review
16 Ms. Guy's file before court?

17 A I saw a copy of the ER record.

18 Q Okay. And was that provided to you during your
19 course of employment or did the Solicitor's Office
20 provide that?

21 A The Solicitor's Office provided it.

22 Q And if I may ask, how long ago was it that you
23 reviewed that?

24 A Last time, probably yesterday. I got it about --
25 we had multiple delays. I mean, probably two

1 months ago.

2 Q Okay. Did you have any independent recollection of
3 seeing Ms. Guy on that day?

4 A I do remember the case because of the events.

5 Q All right. Whenever Patricia Houck's name is on
6 the report, was she a nurse that was under your
7 direction?

8 A She was the -- one of the nurses that were on that
9 night.

10 Q Okay.

11 A It would depend on where it was in the nursing
12 chart, the nursing documentation whether she was
13 triage or whether she was the nurse working with
14 me.

15 Q I got you. And I see Dr. Trowbridge. Was he the
16 assigned --

17 A He was on the main side of the ER.

18 Q Do you know if Dr. Trowbridge saw Ms. Guy that
19 night?

20 A Dr. Trowbridge would often take a walk and try to
21 see and do his own little assessment of where the
22 patients are and how their complaints were.

23 Q So most likely --

24 A So he may have, but it may not have been when I was
25 with him.

1 Q I understand you were busy and certain times are
2 busier than others, so you have multiple people to
3 juggle at one time; right?

4 A Typically.

5 Q But you were able to review the entirety of this,
6 and I think you actually probably signed off on the
7 entire report as part of your duty?

8 A If I had done the documentation, I would have
9 signed off.

10 Q On the report, it has -- I flipped to the wrong
11 part here. Ms. Guy at some point was asked what
12 her pain level was. Is that a normal procedure or
13 normal course of action to ask somebody what their
14 pain level is?

15 A Yes.

16 Q And she put that she was at a four, or at least
17 responded she was at a four. What does that mean?
18 Is that a four out of?

19 A It is -- the pain scale is a subjective, objective
20 assessment of pain. We ask the patient to rate 0
21 being no pain, 10 being the worst pain they've ever
22 felt, to try to get a projection of where they
23 perceive their pain to be.

24 Q All right. So she said she was at four. It wasn't
25 a 0, but not a 10, which was the highest?

1 A Uh-huh.

2 Q With the X-rays that were done, were they done at
3 your direction?

4 A I ordered the X-rays.

5 Q Did you have an initial impression of what the
6 diagnosis was going to be before the X-ray?

7 A There's a working diagnosis.

8 Q And in this particular case, was the working
9 diagnosis a fracture of the coccyx?

10 A It was pain in the coccyx and that's why the X-rays
11 were ordered.

12 Q Did you read the X-rays that night?

13 A I do a look at them, but the radiologist does a
14 back-up read. And that's when he called me that
15 night.

16 Q And that was Dr. Kerns, is he the radiologist?

17 A Kerns.

18 Q All right. And you testified that there was some
19 angulation of the coccyx?

20 A Uh-huh.

21 Q Was a fracture ever visibly confirmed on the X-ray?

22 A There was an angulation that led to the assumption
23 that it was -- the way that would be produced would
24 be with a fracture.

25 Q And Dr. Kerns expressed some concern that -- with

1 the angulation --

2 A Uh-huh.

3 Q -- that it could be a fracture?

4 A Yes.

5 Q But also this could be normal angulation?

6 A I am not a radiologist. I would defer that to him.

7 But it was a pretty significant angulation. I

8 don't know if I've ever seen that as a normal.

9 Q What makes you say it was significant? I mean,
10 there's nothing in your notes that indicates
11 significant angulation, so what makes you now say
12 significant?

13 A I mean, it was an angulation that sticks in my mind
14 that -- it certainly jumped out to make you look at
15 the film image again.

16 Q But she was only at a pain level four? Would that
17 be congruent with this significant angulation?

18 A It could be. Everybody's interpretation of pain is
19 different.

20 Q Nurse Houck's notes, and you said that you reviewed
21 this whole thing and signed off on it, that she was
22 able to sit unaided, would that be normal with this
23 significant angulation?

24 A Again, it's a tough injury. I don't remember her
25 sitting normal. I do remember her sitting and

1 standing alternately.

2 Q Would you dispute that the notes that Nurse Houck
3 put in here and you signed off on at this point --

4 A No.

5 Q -- that she was sitting unaided?

6 A At the time she probably signed off, she could have
7 been.

8 Q And would you dispute the radiologist reports that
9 this could be due to normal variation?

10 A Again, I'm not a radiologist. I just saw the same
11 angulation that caught his attention.

12 Q Would the radiologist be more specialized in
13 reading X-rays than what you are?

14 A Yes.

15 Q And nothing would -- well, would anything be
16 official on an X-ray before the radiologist read
17 it?

18 A There is a preliminary read.

19 Q But nothing is official until it is read by a
20 radiologist?

21 A I guess I don't understand your official
22 designation.

23 Q I guess we're probably just parsing words on what's
24 an initial diagnosis and an official final
25 diagnosis.

1 A The final diagnosis would be made by myself.

2 Q Okay. What if the radiologist disagreed with you,
3 would you still stick with your initial diagnosis?

4 A There would be a re-examination and an addendum.

5 Q Did anybody contact Ms. Guy and ask her to come in
6 for further X-ray?

7 A What was -- the conversation I had between myself
8 and the radiologist was I was sending her to ortho
9 or to her primary care, and he mentioned that if it
10 continued to bother her that a CAT scan may be an
11 option.

12 Q Do you know if a CAT scan was ever done?

13 A No, I don't.

14 Q Do you know --

15 A It wasn't done in the ER.

16 Q Do you know if an orthopedic doctor ever requested
17 the X-rays in this case?

18 A I wouldn't see that request.

19 Q Would you see any request if any doctor requested
20 documentation from her initial visit with the ER?

21 A No, I wouldn't.

22 Q You don't have to sign off on anything in that
23 regard?

24 A That goes to medical records and it's requested
25 from there.

1 Q On Ms. Guy's patient instruction page, it says
2 cervical strain, coccyx injury, and contusion in
3 adults. Would that coccyx injury language, would
4 that also cover a fracture or would a fracture be
5 specifically noted on that?

6 A That would cover -- cover that. I think what
7 you're reading is the instruction sheets?

8 Q Yes, sir.

9 A That is a generalized instruction sheet.

10 Q So it would cover everything from just pain through
11 fracture, through a serious injury that you talked
12 about where it pierced something else?

13 A Right. Well, that wouldn't be discharged, but
14 those others would be.

15 MR. KIRINCICH: Your Honor, I don't have any
16 further questions at this time. Thank you.

17 THE COURT: Any redirect?

18 MR. PAULING: Yes, Your Honor, just briefly.

19 REDIRECT EXAMINATION

20 BY MR. PAULING:

21 Q Now, so you mentioned the angulation. Can you
22 explain to the jury what you mean by angulation?

23 A The tailbone is not perfectly straight. It has a
24 nice gentle curve to it. And any time you see a
25 deviation from that curve, you have to be very

1 suspicious as a clinician. And it wasn't a nice
2 sweeping curve.

3 Q And so when you say specific angulation, the
4 angulation is not --

5 A It's not smooth.

6 Q Not smooth, okay.

7 A There's something that deviates from that natural
8 curve.

9 Q And when you say natural curve, from the, I guess
10 the --

11 A Sacrum -- where the sacrum and the tailbone meet,
12 from there, that would be the back of your pelvis,
13 and then the tailbone comes down from there. And
14 it's normally this nice crescent shape.

15 Q And you didn't see that?

16 A Did not see that.

17 Q Mr. Kirincich asked you about the nurse's notes and
18 the note about Ms. Guy sitting unaided. That note,
19 did that indicate to you that she didn't have pain,
20 that she was sitting unaided? Does unaided mean --

21 A I guess the unaided would be the part that I
22 guess -- I don't understand that -- in that area, I
23 believe there was a chair that did have some
24 cushion to it. It's not the most comfortable
25 chair. They're not built for comfort. So she

1 could have been sitting and standing in there. But
2 we weren't doing anything to allow her to sit.

3 Q You mentioned -- what is a closed fracture? What
4 does that mean?

5 A A closed fracture means it hasn't penetrated the
6 surface of the skin.

7 Q This is a fracture beneath the skin?

8 A Yes.

9 Q And that was noted in the notes as well; correct?

10 A Uh-huh.

11 MR. PAULING: Nothing further, Your Honor.

12 THE COURT: Further examination?

13 MR. KIRINCICH: No, sir, Your Honor.

14 THE COURT: All right. Thank you.

15 THE WITNESS: Thank you, Judge.

16 THE COURT: Appreciate it.

17 (Witness steps down.)

18 THE COURT: Ladies and gentlemen, we have
19 reached our break time now. I understand your
20 lunch is here. We are going to try to limit the
21 break to about a half an hour and start back around
22 2:00 o'clock or shortly thereafter.

23 Please go to the jury room. Please do not
24 discuss the case.

25 (WHEREUPON, the jury retires to the jury

1 room at 1:26 p.m.)

2 THE COURT: We'll break until about 2:00.

3 MR. PAULING: Thank you, Your Honor.

4 (WHEREUPON, a lunch break was taken.)

5 (WHEREUPON, the proceedings resumed at
6 2:03 p.m.)

7 THE COURT: Do y'all have any request for
8 charges you want me to be looking over?

9 MR. PAULING: I don't have a specific request,
10 Judge.

11 MR. KIRINCICH: Your Honor, I sent your law
12 clerk an e-mail late yesterday afternoon asking if
13 the Court had any standard jury instructions that
14 they were giving. Obviously, we would want
15 reasonable doubt, burden of proof. If Mr. Vincent
16 does not testify, Your Honor, a request that the
17 word failure not be used. He doesn't have a
18 failure to testify because he has no duty. And in
19 some small way, that could lead to burden shifting
20 in the mind of a juror if they hear the word
21 failure in regards to the Defendant.

22 THE COURT: I'll let you submit a proposed
23 charge on that.

24 MR. KIRINCICH: Does Your Honor have charges
25 that you do?

1 THE COURT: I have a standard charge on
2 everything, including the failure to testify. If
3 you have something that you think is better, then I
4 need to know what it is.

5 MR. KIRINCICH: Yes, sir, Your Honor.

6 THE COURT: Other than putting the burden on
7 me to write something that you would like. We have
8 a standard charge already that has been given
9 probably for 50 years on the failure of the
10 Defendant to testify, but if you have something
11 that you would request, draw it up and submit it.

12 MR. KIRINCICH: Yes, sir, Your Honor, and I'll
13 state in my personal opinion, it's probably a
14 mistake for 50 years if we have been doing failure
15 in regards --

16 THE COURT: Pardon me?

17 MR. KIRINCICH: It's probably been a mistake
18 for 50 years if we have applied the term failure to
19 the Defendant.

20 THE COURT: Yes, sir. Has it ever been
21 challenged?

22 MR. KIRINCICH: I do not know, Your Honor. If
23 we're still doing it, then, no, the challenge was
24 not successful.

25 Your Honor, and then also, if the Court has

1 any charge for assault and battery second degree
2 which was codified I think within the last seven
3 years that is anything different than what the
4 statute reads, I would like to see that beforehand.

5 THE COURT: Well, you know, the lawyers give
6 requested charges and the judge gives the charge.
7 Either I accept the requests to charge or not. I
8 don't --

9 MR. KIRINCICH: But, Your Honor, the Court
10 does read out the charge --

11 THE COURT: And I give the jury a copy of it.

12 MR. KIRINCICH: If we could see it --

13 THE COURT: Depending on the circumstances,
14 I'll let the lawyers screen it. But I don't know
15 that counsel has a right to pre-screen charges
16 given to the jury. You have a right to make a
17 request and the Court considers and then you object
18 and disagree. But it's kind of parsable, just the
19 notion that someone says, I want to see what you're
20 going to do in advance of you doing it. That's not
21 burden shifting, it's --

22 MR. KIRINCICH: I could let you know
23 beforehand if I intend to object.

24 THE COURT: Well, it doesn't matter, that
25 part. I'm just saying, if you have a request to

1 charge, then give it to me and then I'll consider
2 it in formulating my charges. Let's see, that's
3 per the rule on -- it doesn't include a provision
4 for the Court to prepare it and then give the
5 lawyers a copy so they can object or not object.

6 MR. KIRINCICH: Your Honor, with that being
7 said, will we have an opportunity before the jury
8 charges are given to prepare anything that we may
9 want?

10 THE COURT: Yes.

11 MR. KIRINCICH: Thank you.

12 THE COURT: That's what I'm saying, if you
13 have anything you want, you need to --

14 MR. KIRINCICH: I don't have anything
15 prepared.

16 THE COURT: You'll have an opportunity -- you
17 request -- the charge conference takes place after
18 all the evidence, but typically lawyers don't wait
19 until after all the evidence to formulate what
20 their request is -- the requests are, so that's why
21 I typically ask early on.

22 MR. KIRINCICH: Yes, sir. Your Honor, there
23 is one other issue that came up this morning that
24 we need to address.

25 THE COURT: All right.

1 MR. KIRINCICH: Your Honor, the Solicitor,
2 after e-mailing your law clerk, I talked with him
3 yesterday afternoon and he did e-mail me his
4 proposed jury list. There was a name on there,
5 Dr. Robert Borucki, B-O-R-U-C-K-I. I didn't know
6 why he was listed on the jury list as a potential
7 witness. I did not ask the Solicitor about that
8 yesterday afternoon when it was given to me. I
9 know Dr. Borucki from him treating me at one of the
10 Urgent Cares, but I didn't know if he was some
11 supervisor or the custodian of records of some sort
12 for medical records that had been provided to me.

13 Your Honor, as it turns out, Dr. Borucki is
14 the second physician that Ms. Guy visited the
15 day -- or, excuse me, the physician she visited the
16 day after going to the emergency room. The State
17 went back and checked their communication to me.
18 They were unable to show or to find where they had
19 provided Dr. Borucki's report or any evidence that
20 she had gone for any sort of additional care. They
21 gave that to me, Your Honor, I think within the
22 last 10 minutes after -- probably the last 15
23 minutes after checking to make sure it had not been
24 provided before.

25 Your Honor, I've had time to read it. I don't

1 believe their not turning it over was anything
2 intentional. When we discussed medical records, I
3 think we discussed medical records and they assumed
4 it had been sent at the same time as the other
5 records.

6 It's my understanding he is the next witness
7 to be called. Your Honor, in the grand scheme of
8 things, this may be a mistake on my part that will
9 later have some consequences, but I am not going to
10 object to him testifying. I'm not going to object
11 to any violation of discovery or Brady that may
12 have occurred. I don't think that there has to be
13 any ill intent, and I don't think there was here,
14 but even accidental failure to turn over is
15 problematic.

16 In this case, Your Honor, I have reviewed the
17 records. I believe that there may be some
18 information that he can testify to that is actually
19 beneficial to our case. So I just wanted to make
20 the Court aware of it, that I am not objecting, and
21 we just received this within the last 20 minutes.

22 THE COURT: All right. Anything further on
23 that point?

24 MR. PAULING: Your Honor, just for the record,
25 I know Mr. Kirincich has spoken to it, but I just

1 want to make the Court aware that we made these
2 record requests some time ago. Actually, we made
3 record requests at the same time. Your Honor, it's
4 coming from two different health providers, Your
5 Honor. And I thought that we had turned over these
6 medical records to Mr. Kirincich, and I believe we
7 had, Your Honor. When I checked the system, it's
8 not what you believe, but what you can prove, I
9 understand that, Judge. And I have -- we did check
10 and I couldn't find where we had turned them over.

11 I told Mr. Kirincich -- well, I provided him
12 the records, also indicated to him -- and I flat
13 out asked him, understanding the circumstance, if
14 he would be objecting to him testifying or if I
15 needed to call him later in my line of witnesses,
16 your Honor.

17 But I want to make the Court well aware of
18 that, the State did not intentionally withhold this
19 information, this medical information. Dr. Borucki
20 has always been a witness of ours, our intent to
21 call him as a witness even when we had scheduled
22 this case prior to, Your Honor. But that's all we
23 have on that, Your Honor.

24 THE COURT: All right. With regard to
25 instructions under Rule 20 of the Rules of Criminal

1 Procedure, it says: All requests for legal
2 instructions to the jury shall be submitted at the
3 close of the evidence or such earlier time as a
4 trial judge shall reasonably direct. All requests
5 must include accurate citation to authorities
6 relied upon.

7 Subsection (b) of that: The parties shall be
8 given an opportunity to object to giving or failure
9 to give instructions before the jury retires.
10 Failure to object should constitute a waiver.

11 That's the issue on jury charge for the time
12 being.

13 Let's bring the jury.

14 (WHEREUPON, the jury came into open
15 court at 2:14 p.m.)

16 THE COURT: The jury is back.

17 Your next witness.

18 MR. PAULING: The State would call Dr. Robert
19 Borucki.

20 (Witness approaches.)

21 THE BAILIFF: Place your left hand on the
22 Bible, and raise your right hand, please.

23 (Witness complies.)

24 THE CLERK: Do you solemnly swear or affirm
25 the testimony you give in this case will be the

1 truth, the whole truth, and nothing but the truth,
2 so help you God?

3 THE WITNESS: I do.

4 THE CLERK: Thank you. Have a seat in the
5 witness chair and state your full name for the
6 record.

7 THE WITNESS: My name is Robert Bruce Borucki.
8 ROBERT BRUCE BORUCKI, M.D.,
9 after being duly sworn, testified as follows:

10 DIRECT EXAMINATION

11 BY MR. PAULING:

12 Q Dr. Borucki, how are you doing, sir?

13 A Good.

14 Q If you could tell the jury, sir, where are you
15 currently employed?

16 A I'm currently employed at Kershaw Health, and I'm
17 in the Urgent Care Center in Elgin.

18 Q In what capacity are you employed at those two
19 places?

20 A I'm a physician in the Urgent Care.

21 Q And if you would just tell us your educational
22 background.

23 A How far back would you like?

24 Q From your undergrad on.

25 A I went to undergrad at Johns Hopkins University and

1 then medical school at Chicago Medical School. I
2 did my residency in family medicine at Richland
3 Memorial, and have worked in family medicine and
4 emergency room and urgent care.

5 Q And your employment history, just briefly?

6 A I've been at the Urgent Care for about seven years
7 now. Prior to that, I ran a family practice office
8 where we did primary care. And I also worked in
9 the emergency rooms for the past 25 years.

10 Q You were working at the Urgent -- Elgin, excuse me,
11 Urgent Care back in October of 2015?

12 A Yes, I was.

13 Q And specifically on October 3rd of 2015, were you
14 working there at that time?

15 A Yes.

16 Q Okay. And on that date, did you come in contact
17 with Trisha Guy?

18 A Yes.

19 Q Okay. And how did that come about, sir?

20 A She came in as a patient with a complaint of wrist
21 pain. And further history, she had been seen the
22 day before in the emergency room after an assault
23 and had some injuries identified. And she had some
24 persistent wrist pain in addition to the other
25 problems and wanted that further evaluated.

1 Q Wrist pain?

2 A Yes.

3 Q And did you evaluate her regarding her wrist pain?

4 A Yes, I did.

5 Q And what takes part as part of your evaluation?

6 A Well, after the history I examined -- I examined
7 her and her wrist and determined that she needed an
8 X-ray. And we did the X-ray and it was reviewed
9 and there was no fracture. And because of the
10 injury, we splinted it with an orthopedic splint
11 and continued the medicine she had already been
12 given.

13 Q And medicine, pain medication?

14 A Yes.

15 Q Now, you indicated that you were given a history,
16 or at least you got information about an assault.
17 Was that from her or did you get notes from the ER
18 prior to?

19 A Both.

20 Q Both?

21 A I interviewed her and reviewed the notes prior to
22 seeing her from the previous day.

23 Q And so you had information regarding about how the
24 injury came about; is that correct?

25 A Yes.

1 Q And this -- what was your diagnosis as far as her
2 wrist was concerned? I know you said there was no
3 fracture to the wrist, so what was your diagnosis
4 as far as her wrist?

5 A The diagnosis was a wrist sprain, so a ligamentous
6 injury in the wrist. And that causes pain and loss
7 of function, and I treated it.

8 Q And as far as the treatment plan of any sort, I
9 know you said you would continue her on the pain
10 medications, but was there any other treatment plan
11 that you recommended to her?

12 A Yes, it would be activity as she could with a wrist
13 splint on for one or two weeks.

14 Q Did you schedule a follow-up visit for her, or was
15 it simply take the splint off in one to two weeks?

16 A Our usual routine would be the splint as tolerated,
17 and then any follow-up would be obtained through
18 her primary doctor, or we could work out a referral
19 to an orthopedist, if necessary.

20 Q And the injury that you diagnosed, the sprain, was
21 that consistent with the history that you were
22 given?

23 A Yes, it was.

24 Q Do you recall treating her further since that time?
25 Do you recall treating her further since that time?

1 A No, I don't.

2 MR. PAULING: Beg the Court's indulgence.

3 (Pause.)

4 MR. PAULING: No further questions at this
5 time.

6 THE COURT: By the Defense?

7 MR. KIRINCICH: Thank you, Your Honor.

8 CROSS-EXAMINATION

9 BY MR. KIRINCICH:

10 Q Dr. Borucki, nice to see you again. I met you at
11 Elgin Urgent Care a few months ago.

12 Did you have -- well, how many patients have
13 you seen in your seven years at Elgin Urgent Care?

14 A I can estimate, if you let me do a little bit of
15 math in my head.

16 Q Yes, sir.

17 A 30 to 35,000.

18 Q Do you have any specific recollection of seeing
19 Ms. Guy back in October of 2015?

20 A Yes.

21 Q And did you also have the opportunity to review the
22 file that the hospital or Elgin Urgent Care may
23 have for Ms. Guy?

24 A Yes.

25 Q And have you reviewed it recently?

1 A Yes.

2 Q It appears that Nurse West, Selena West, was also
3 involved in the care for Ms. Guy on that day.

4 Would she have been working under your direction?

5 A I'm not sure what that means, but --

6 Q Would all of her notes and diagnostics have gone
7 into what you would have seen in the treatment of
8 Ms. Guy?

9 A Yes.

10 Q And so if her name is in here, but you signed off
11 on the final report, that would have been after
12 reviewing what she put in there?

13 A I would actually sign off on my work that I had
14 done prior to her being discharged, prior to the
15 nurse signing off.

16 Q Prior to the nurse signing off?

17 A On her nursing notes.

18 Q Okay. If it says -- and I don't know if this is an
19 abbreviation -- gen med, physical exam, is that
20 what you would have done?

21 A Yes.

22 Q So you noted that she had some tenderness -- she,
23 being Ms. Guy, had some tenderness in her coccyx?
24 Do you remember seeing that in there?

25 A Yes.

1 Q Did you do any additional X-rays or examination of
2 her tailbone --

3 A No.

4 Q -- area? Did she make any specific complaints
5 about that injury to you?

6 A Yes, she mentioned in the beginning that she was
7 having pain in several areas, her neck, her low
8 back -- her very low back, and her wrist.

9 Q I'm sorry, I'm trying to find something to ask you
10 about specifically. I can't find it yet, but I'll
11 come back to it with the coccyx. You did an X-ray,
12 though, on her wrist; is that right?

13 A Yes.

14 Q And you've already indicated there was no fracture;
15 is that right?

16 A Yes.

17 Q And the treatment plan included a wrist splint for
18 one to two weeks and then a possible referral to
19 her -- or you always tell them to go see their
20 primary care physician for initial follow-up; is
21 that right?

22 A Yes.

23 Q But indicated that if she couldn't do that, then
24 you would work with her on a referral, and then
25 there was also a mention of an orthopedist; is that

1 right? Is that who she would have been referred
2 to?

3 A Yes.

4 Q And do you know if you ever had to do a referral to
5 an orthopedist?

6 A I don't believe so.

7 Q There was a note here in the general -- or gen
8 medical history of illness. Do you know who would
9 have been responsible for taking those notes or
10 inputting those notes into this document?

11 A Can I look at my copy?

12 Q Oh, yes, I didn't know you had -- yeah, that's
13 great.

14 (Pause.)

15 A Part of this is entered at intake, and then the
16 specific details of the exam are entered by me.

17 Q Okay. This particular page I'm looking at has a
18 header with the address for Elgin Urgent Care, and
19 the page number at the bottom is Number 1. So if
20 you want to refer to what you have. I have, Seen
21 yesterday an ED after assault, had coccyx fracture
22 possibly. Are we on the same page?

23 A Yes.

24 Q Okay. Why does it say, Had coccyx fracture
25 possibly?

1 A That is sometimes a difficult diagnosis to make.
2 If you have an injury to your tailbone, they're
3 painful, whether it's fractured or not. When you
4 have the -- and the X-ray is sometimes tough to
5 determine. And I put possibly because the X-ray
6 was consistent because of the angulation, the bones
7 were not separated, but they were curved in an
8 abnormal way. And along with the pain, it's -- we
9 presume it's a coccyx fracture.

10 Q So there's no -- you said they're not separate, so
11 there's no visible fracture, but there's an
12 angulation issue?

13 A Yeah, there's an anatomic difference that usually
14 isn't there.

15 Q Okay. Did you look at Dr. Kerns' radiological
16 report for the coccyx and the sacrum X-ray?

17 A Yes.

18 Q Okay. And he had, I think, pretty much the same
19 impression, but said there could be some normal
20 variation and it was not definitive that this was a
21 fracture; is that right?

22 A Yes.

23 Q Do you know if any further tests were ordered by
24 you on October, I think, 3rd in regards to her
25 tailbone?

1 A No, they weren't.

2 Q And do you know if anybody made any additional
3 request to you for your records, you know, whether
4 it's an orthopedist or her primary care physician?

5 A Not that I'm aware of.

6 Q Thank you.

7 THE COURT: Anything further?

8 MR. PAULING: Beg the Court's indulgence.

9 (Pause.)

10 MR. PAULING: Nothing further, Your Honor.

11 THE COURT: Thank you, Doctor.

12 THE WITNESS: Thank you.

13 (Witness steps down.)

14 THE COURT: Next witness.

15 MR. HUTCHINSON: The State calls Brandi Peake,
16 Your Honor.

17 THE COURT: Why don't we stand a moment while
18 we they are trying to find this person?

19 (Pause.)

20 (Witness approaches.)

21 THE COURT: All right, thank you.

22 THE BAILIFF: Place your left hand on the
23 Bible, and raise your right hand, please.

24 (Witness complies.)

25 THE CLERK: Do you solemnly swear or affirm

1 the testimony you give in this case will be the
2 truth, the whole truth, and nothing but the truth,
3 so help you God?

4 THE WITNESS: Yes, ma'am, I do.

5 THE CLERK: Please be seated in the witness
6 chair, and state your full name for the record.

7 (Witness seated.)

8 THE WITNESS: Brandi Peake.

9 BRANDI PEAKE,
10 after being duly sworn, testified as follows:

11 DIRECT EXAMINATION

12 BY MR. HUTCHINSON:

13 Q Good afternoon, Ms. Peake. Can you tell us what
14 city you currently live in?

15 A Elgin.

16 Q And how long have you lived in Elgin?

17 A Three years.

18 Q So back in 2015 you lived in Elgin as well?

19 A Sorry.

20 Q No, that's okay. So two years ago you would have

21 --

22 A Yes, sir.

23 Q -- lived in Elgin as well?

24 A Yes, sir.

25 Q Where are you currently employed?

1 A Roxie Hart Salon and Spa.

2 Q How long have you been there?

3 A Since October of 2012.

4 Q And what are some of your job duties that you have
5 there?

6 A I'm the receptionist at Roxie Hart.

7 Q And have you been the receptionist there the whole
8 time?

9 A Yes, sir.

10 Q What are your typical work hours?

11 A Tuesday through Friday, I'm there from about 8:30
12 or 9:00 until 5:00. And on Saturday, there from
13 about 8:30 or 9:00 until 2:00.

14 Q How many people typically work there at Roxie Hart
15 with you?

16 A About 10 to 12.

17 Q Does Rosa Vincent work there with you?

18 A Yes, sir.

19 Q And how about Trisha Guy?

20 A Trisha is like -- she's not an actual employee, but
21 she has some of her belongings at Roxie Hart.

22 Q How long have you known Ms. Vincent?

23 A Rosa, you know, I know her through Roxie Hart.

24 Since 2015, she started working at Roxie Hart.

25 Q And is it about the same amount of time that you've

1 known Ms. Guy or --

2 A Yes, sir.

3 Q So you worked at Roxie Hart back on October 2nd,
4 2015?

5 A Yes, sir.

6 Q Okay. And on that date, you would have been doing
7 the same receptionist duties that we talked about
8 before?

9 A Yes, sir.

10 MR. HUTCHINSON: Your Honor, may I approach
11 the witness?

12 THE COURT: Yes, sir.

13 BY MR. HUTCHINSON:

14 Q Ms. Peake, I'm just going to show you a couple of
15 pictures here just to make sure you recognize what
16 they are. Can you recognize what this first
17 picture is right here?

18 A Yes, sir, that's my desk, receptionist desk.

19 Q At Roxie Hart?

20 A Yes, sir.

21 Q And how about this second one right here?

22 A This is at Roxie Hart. It's our seating area, and
23 this is like we have stations. Like, my desk would
24 be here, like Rosa's station would be here, and you
25 would walk back and our shampoo area would be

1 there.

2 Q Thank you.

3 A Yes, sir.

4 MR. HUTCHINSON: And, Your Honor, these have
5 previously been admitted as State's Exhibits 4 and
6 5. Permission to publish them to the jury, please?

7 THE COURT: Yes, sir.

8 (Exhibits published to the jury.)

9 BY MR. HUTCHINSON:

10 Q To start out with, what we talked about first,
11 State's Exhibit 4, just so the whole jury can see
12 it, this is where you work? This is where you
13 spend most of your time there at Roxie Hart?

14 A Yes, sir.

15 Q Okay. This is where you would have worked on the
16 day of October 2nd, 2015?

17 A Yes, sir.

18 Q Except for maybe breaks, and so forth like that?

19 A Yes, sir.

20 Q Now, in State's Exhibit 5, would it be fair to say
21 if you're looking towards the back of the store,
22 this is kind of -- or back of the shop, Roxie Hart,
23 this is kind of what your view is from the front?

24 A Yes, sir.

25 Q Now, on October 2nd, 2015, did you come in contact

1 with the Defendant, David Vincent?

2 A Yes, sir.

3 Q And where was your first contact with him in Roxie
4 Hart? Where was he? Where did you first come in
5 contact with him?

6 A When he walked through the front door.

7 Q Was it at your station? Were you at your station
8 at the time?

9 A Yes, sir.

10 Q And do you know approximately what time it was that
11 day?

12 A I don't.

13 Q And when he came into Roxie Hart, do you remember
14 him saying anything?

15 A Well, I first -- you know, I asked him if he had an
16 appointment. And he said he did and with Rosa.

17 Q Now, were you aware at that time whether or not he
18 had an appointment with Rosa?

19 A I didn't until I looked on her book, which would
20 have been on my computer in front of me.

21 Q Now, you stated you've worked there about three
22 years?

23 A Yes, sir.

24 Q Had you ever seen him come in before for an
25 appointment?

1 A No, sir.

2 Q And when he said he had an appointment, did you
3 tell him to have a seat? Did you tell him to wait?
4 What do you typically do?

5 A Well, like for -- just for anybody in general that
6 would come in, you know, we greet them, Hey, how
7 are you? Who are you here to see? And they would
8 say, I'm here to see whoever. And, you know,
9 They'll be right with you, you can take a seat in
10 the waiting area.

11 Q Now, did Mr. Vincent take a seat in the waiting
12 area?

13 A No, sir.

14 Q What did Mr. Vincent do?

15 A He went straight back like he was going to Rosa's
16 station.

17 Q Now, did you immediately recognize who the
18 Defendant was?

19 A I didn't recognize him, but I got a feeling --
20 like, I got a feeling from him that, wait a minute,
21 he shouldn't be here, or something's not right with
22 him.

23 Q But when he walked in the door, you couldn't say,
24 Hey, this is --

25 A No, sir, I couldn't -- like, I didn't recognize who

1 he was. Like, I didn't know who he was just by his
2 face.

3 Q So when we're looking at this picture right here,
4 you said he kind of went back there. Did he kind
5 of -- so we've got a center area here. Did he stay
6 somewhere in the center approximately, or where did
7 he go after he passed your reception area?

8 A When he passed me, he stood there for like a
9 second, and then he walked straight back to -- if
10 you look to where you see where all those -- if you
11 go straight back past the couch.

12 Q Past the couch?

13 A Yes, sir, past the couch. Keep going back. Like
14 right past there.

15 Q So approximately right here, just kind of in the
16 middle area, though?

17 A Yes, sir.

18 Q Kind of in the middle area?

19 A Yes, sir.

20 Q Still fully within your view?

21 A Yes, sir.

22 Q Now, he said that he had an appointment with Rosa.
23 Did somebody go get Rosa, or what happened next?

24 A I'm sorry?

25 Q It's okay. Did somebody else speak to him before

1 they spoke to Rosa, or did he speak to Rosa at all?

2 A At that point, Trisha was standing behind me, like
3 at my desk. There's like a partition kind of.

4 Q So it would have been kind of to the left --

5 A Behind me, yes, sir.

6 Q Okay.

7 A And, you know, when I got that feeling -- like,
8 when I got that feeling, I said, Hey, Trisha, is
9 that him? And she said, Him? I said, Is that
10 David? And at that point, that's when Trisha came
11 from behind the desk.

12 Q So after you, Trisha was the next person the
13 Defendant came in contact --

14 A Came in contact with, yes, sir.

15 Q Now, after Ms. Guy came around, what happened next?
16 Did she talk to him, or what happened next?

17 A Trisha -- when Trisha came around the corner
18 there -- you know, she came around to figure out
19 why he was there, you know, to see what he was
20 doing, to tell him -- she said, David, you can't be
21 here. Why are you here?

22 MR. KIRINCICH: Objection, Your Honor,
23 hearsay.

24 BY MR. HUTCHINSON:

25 Q You can't really testify what other people said,

1 just kind of tell me kind of what you saw happen.

2 A Okay.

3 MR. KIRINCICH: Your Honor, is he withdrawing
4 the question, the answer? Is there a ruling from
5 the Court?

6 THE COURT: I don't know.

7 MR. HUTCHINSON: Your Honor, the question was
8 -- oh, I'm sorry.

9 THE COURT: I heard the question. I heard the
10 objection.

11 MR. HUTCHINSON: Your Honor, the question
12 wasn't intended to elicit any sort of hearsay. I
13 was just asking what she did after -- when she came
14 in contact with him. So I was just asking her to
15 testify to what she saw, not what she heard, Your
16 Honor.

17 THE COURT: Mr. Kirincich wants to know if
18 you're withdrawing the previous question. You want
19 me to rule on the objection?

20 MR. HUTCHINSON: Your Honor, I'm not
21 withdrawing the question. The question wasn't
22 eliciting any sort of hearsay testimony. I just
23 asked her what she did next.

24 THE COURT: So you want to wait for me to rule
25 then, or you're talking to the witness?

1 MR. HUTCHINSON: Yes, sir. Your Honor, the
2 witness I believe can answer the question about
3 what she saw, but not --

4 THE COURT: I understand there's an objection.
5 He wants me to rule on the objection, unless you're
6 withdrawing the question.

7 MS. HUTCHINS: Your Honor, I'll withdraw that
8 question and ask another question.

9 THE COURT: All right.

10 BY MR. HUTCHINSON:

11 Q Ms. Peake, Ms. Guy, how did she come -- just tell
12 me, not what she said, but how did she -- you said
13 she was the next person to come in contact with the
14 Defendant. Can you tell me what you saw as far as
15 how she came in contact with the Defendant?

16 A I saw Trisha come around the corner and --

17 Q When you say come around the corner, so she was --

18 A If you'll --

19 Q -- back in the back there?

20 A Can you go back to the picture of my desk?

21 Q Sure. Of course.

22 A Okay. You see the partition back there?

23 Q Yes, ma'am. So he got right here?

24 A Yes, sir, that's where she came around that corner
25 there.

1 Q So she came here and went to this area right here?

2 A Came around there, yes, sir.

3 Q Okay. And then go to State's 5. That's where we
4 pick up about right here, she continues?

5 A Yes, sir.

6 Q Okay. So what happened next, after she got to
7 wherever Mr. Vincent was?

8 A That's when they spoke.

9 Q Okay.

10 A And then from there, that's when -- that's when the
11 assault happened.

12 Q Okay. So you said they spoke. Can you describe --
13 was there some sort of physical altercation, is
14 what you are saying?

15 A Yes, sir.

16 Q Okay. Can you describe what happened?

17 A After -- I guess, after Trish spoke with him, you
18 know, he picked her up by her throat off the ground
19 and shook her and threw her onto the ground.

20 Q Now, at any point did Ms. Guy attempt to place her
21 hands on the Defendant?

22 A No, sir.

23 Q Before he grabbed her, did she have anything in her
24 hand --

25 A No, sir.

1 Q -- that she was coming at him with?

2 A No, sir.

3 Q Did -- do you think there was any sort of
4 aggressive manner to which she came towards him?

5 A No, sir.

6 Q So after he picked her up and threw her, what
7 occurred after that?

8 A After that happened, I mean, like, that's when I
9 came around the corner, like, everyone in the salon
10 we were all like what, what just happened? Like,
11 this didn't just happen. Like, this really did not
12 just happen, you know. It was chaotic. And then
13 we were trying to get him out of there, and he just
14 turned around and just walked out slowly like
15 nothing -- like nothing just happened.

16 Q And at the time, were the customers -- other
17 customers in there as well?

18 A There were other customers in there, yes, sir.

19 Q How many people approximately in the Roxie Hart,
20 would you say, at the time?

21 A Including us?

22 Q Yes.

23 A Maybe 15, 20. That's just an estimation.

24 Q But there was a lot of people in the area when this
25 occurred?

1 A Yes, sir.

2 Q At any time did you see Ms. Rosa Vincent come out

3 --

4 A No, sir.

5 Q -- into the area while the Defendant was there?

6 A No, sir.

7 Q Now, after these events happened, did anybody
8 contact law enforcement?

9 A Yes, sir.

10 Q And who did that?

11 A Me.

12 Q Okay. So did you just call 9-1-1?

13 A I did.

14 Q Okay. Did y'all take any further steps after he
15 left?

16 A I locked the front door and somebody locked our
17 back door.

18 Q And how long did that remain -- those remain locked
19 for?

20 A Until law enforcement got there.

21 Q And approximately -- do you know approximately how
22 long that was?

23 A I don't, no, sir.

24 Q Okay. But the doors remained locked until --

25 A (Witness nods affirmatively.)

1 Q Okay.

2 MR. HUTCHINSON: Beg the Court's indulgence.

3 (Pause.)

4 MR. HUTCHINSON: Your Honor, nothing further
5 at this time.

6 BY MR. HUTCHINSON:

7 Q Please answer any questions the Defense may have.

8 THE COURT: Cross-examination?

9 MR. KIRINCICH: Thank you, Your Honor.

10 CROSS-EXAMINATION

11 BY MR. KIRINCICH:

12 Q Good afternoon, Ms. Peake. How are you doing
13 today?

14 A I'm okay.

15 Q This happened back in 2015. You said Ms. Vincent
16 started working there in 2015, the same time as
17 Ms. Guy, right around the same time period, 2015 as
18 well?

19 A Yes, sir.

20 Q But you had been there a few years before then?

21 A That's correct.

22 Q All right. And you're still there?

23 A That's correct.

24 Q How many, and I'll call them booths, and if there's
25 another word for them, correct me, please, but how

1 many booths for the different cosmetologists are
2 right there before you would go to the shampoo room
3 or that back massage room?

4 A Okay, give me a second just to count in my head.

5 Q Yes, ma'am.

6 (Pause.)

7 A Six? There's eight.

8 Q Eight total?

9 A Approximately eight, yes, sir.

10 Q And I'm not familiar with the salon, all I've ever
11 seen are pictures.

12 A Yes, sir.

13 Q But are there -- when you come in the front door of
14 Roxie Hart, your desk is to the left?

15 A Yes, sir.

16 Q All right. Are there three behind you to the left
17 on the wall?

18 A There's one directly behind me and then -- I'm
19 sorry, four behind me.

20 Q Four behind you, so as a customer walks in, to
21 their far left on the wall, there's four?

22 A Yes, sir.

23 Q And it doesn't appear this is directly across from
24 where you are, but there's a rectangular rug or
25 square rug or something that has seats and then a

1 couch along the back?

2 A Yes, sir.

3 Q And then, again, coming in through the door facing
4 where those customers come in and sit down, are
5 there additional booths to the right of that?

6 A There's two, yes, sir.

7 Q And then we saw from that one picture behind the
8 couch that you pointed out, there was a shelf that
9 looks like it had product that was for sale?

10 A Yes, sir.

11 Q How many booths are back behind that?

12 A Two.

13 Q So that seating area is somewhat central, at least
14 as best it could be with the dimensions of that
15 room?

16 A That's correct, yes, sir.

17 Q So when Mr. Vincent came in, you didn't recognize
18 him as a customer; right?

19 A I didn't recognize him at all.

20 Q As far as you know in the time that Ms. Vincent had
21 been working there, he had never been in?

22 A No, sir.

23 Q And he indicated to you upon questioning that he
24 had an appointment; right?

25 A Yes, sir.

1 Q You were doing your job, didn't recognize him,
2 immediately told him to go to where?

3 A To take a seat. He could take a seat, yes, sir.

4 Q And he went to that area; right?

5 A Yes, sir.

6 Q But he didn't actually sit down?

7 A He didn't.

8 Q All right. But he went and waited where it was
9 apparent, I guess -- is it apparent when you walk
10 in that that's the waiting area? I mean, are there
11 magazines and chairs?

12 A I say it should be apparent, but not everybody
13 knows that that is our waiting area, yes, sir.

14 Q And so, in your experience with not everybody
15 knowing, do you do some sort of gesture or wave of
16 the hand, you know, to say, This is where you're
17 supposed to go?

18 A Or I'll say, You can take a seat in our waiting
19 area, yes, sir.

20 Q All right. So he went to that area, but he did not
21 sit down?

22 A No, sir.

23 Q And, again, he'd never been there before, so you
24 don't know that he was heading towards Rosa's
25 station or where Rosa was because, as far as you

1 know, he had never been there; right?

2 A Well -- can you ask that question again? I'm
3 sorry.

4 Q Yes, ma'am. I think you had said that he was
5 heading towards Rosa's station, but as far as you
6 know, he had never been there before and he was
7 just going to the waiting area where he was told to
8 go?

9 A To me, in my experience, he was walking straight
10 back like towards her station.

11 Q Okay.

12 A Like, he didn't go like he was going to go and take
13 a seat.

14 Q Okay. And you said he had a certain air about him,
15 or however you might have described it, and then
16 you turned and you asked Ms. Guy, Is that him? And
17 she replied in some way, Him? She made contact --
18 you know, visual contact of him or visual
19 confirmation and she went and walked to him; right?

20 A Yes, sir.

21 Q All right. Those tiles that are down on the floor
22 at Roxie Hart, have they been there the whole time
23 that you've been there?

24 A They have.

25 Q Do you know how big they are?

1 A I do not.

2 Q Are they more than a foot?

3 A I do not know the dimensions of the tiles on the
4 floor.

5 Q You just looked at the State's 4 and 5. I'll hand
6 them to you again.

7 A Thank you.

8 Q That is your desk and a shot straight back past the
9 waiting area?

10 A Yes.

11 Q Is that right?

12 A Yes, sir.

13 Q These columns that are in there, this is the
14 furthest column from you?

15 A That is the furthest from me on this side, yes,
16 sir.

17 Q And behind that, that's not a column, but the
18 wall's painted?

19 A That's the wall, yes, sir.

20 Q So from your area where you always work to the
21 point where Ms. Guy made contact with Mr. Vincent,
22 how far is that?

23 A I honestly can't tell you foot-wise.

24 Q Okay. Does it take you more than six paces to get
25 there?

1 A I mean, I'm sorry, I've never --

2 Q Okay. I took six paces after I asked you that. Is
3 it farther or closer than you are when you would be
4 at your desk to me right now?

5 A It would be a little bit further, I believe.

6 Q Would be a little bit further than what I am to you
7 right now?

8 A Yes, sir.

9 Q Did you have any particular relationship with
10 either Ms. Guy or Ms. Vincent at this time? I know
11 y'all have worked together or in proximity to each
12 other now for multiple years, but at this time had
13 they been there just a short amount of time?

14 A They had been there just a short amount of time,
15 yes, sir.

16 Q All right. Did you maintain visual contact with
17 Trisha the whole time she was walking towards
18 Mr. Vincent?

19 A Yes, sir.

20 Q Did you see her with her hand up pointing, making
21 gestures towards him as she was walking?

22 A No, sir.

23 Q Ms. Peake, I don't have any other questions for
24 you. Thank you for answering what you have.

25 THE COURT: Anything further?

1 MR. HUTCHINSON: Nothing further from the
2 State, Your Honor.

3 THE COURT: Thank you. You may step down.

4 MR. HUTCHINSON: Thank you.

5 (Witness steps down.)

6 THE COURT: Next witness.

7 MR. HUTCHINSON: Your Honor, the State calls
8 Ashley Frost.

9 THE COURT: I think we'll take a few minutes
10 break. If you'll go to the jury room.

11 When you come back from the jury room, Ms.
12 Jessica Duke, D-U-K-E, I'm going to appoint you to
13 serve as the foreperson of the jury. You'll be
14 responsible for being the jury spokesperson,
15 presiding over the jury deliberations, taking that
16 foreperson seat there, et cetera. All right.
17 Please do not discuss the case.

18 (WHEREUPON, the jury retires to the jury
19 room at 2:58 p.m.)

20 (WHEREUPON, a break was taken.)

21 THE COURT: Do you have the next witness here?

22 MR. PAULING: We do, Your Honor.

23 THE COURT: All right. Bring them on.

24 (WHEREUPON, the jury came into open
25 court at 3:08 p.m.)

1 THE COURT: Yes, sir. Your next witness.

2 MR. HUTCHINSON: Thank you, Your Honor. The
3 State calls Ashley Frost.

4 THE COURT: Ms. Frost.

5 (Witness approaches.)

6 THE BAILIFF: Place your left hand on the
7 Bible, and raise your right hand, please.

8 (Witness complies.)

9 THE CLERK: Do you solemnly swear or affirm
10 the testimony you give in this case will be the
11 truth, the whole truth, and nothing but the truth,
12 so help you God?

13 THE WITNESS: I do.

14 THE CLERK: Have a seat in witness chair, and
15 state your full name for the record.

16 (Witness seated.)

17 THE WITNESS: Ashley Elaine Frost.

18 ASHLEY ELAINE FROST,
19 after being duly sworn, testified as follows:

20 DIRECT EXAMINATION

21 BY MR. HUTCHINSON:

22 Q Good afternoon, Ms. Frost. What city do you
23 currently live in?

24 A Camden.

25 Q Have you lived there for a long time?

1 A Yes, sir.

2 Q How long would you say, your whole life?

3 A Majority. All my school years.

4 Q Okay. Where are you currently employed?

5 A At Roxie Hart Salon.

6 Q How long have you been employed there?

7 A 2010, I think is when we moved there. And there
8 was a brief time where I was part-time, and then I
9 quit for a little while while I was going back to
10 school, and then started back up about 2014.

11 Q So this last time continuously since 2014?

12 A Yes, sir.

13 Q What are some of your job duties there?

14 A I'm a cosmetologist. I cut and color hair. I'm
15 also licensed to do pedicures, and I can do facials
16 as well.

17 Q And what are your typical work hours there?

18 A They vary. Depending on the start of my day when a
19 client books an appointment until my last client,
20 so on average, between 9:00 and 6:00.

21 Q And are there a variety of people there that work
22 with you or --

23 A Oh, yes.

24 Q How many people would you say work there with you?

25 A Let's see, I think we have eight stylists, and then

1 roughly three massage therapists, two or three
2 massage therapists, part-time sometimes. And --
3 yeah, and a receptionist.

4 Q Does Ms. Rosa Vincent work there with you?

5 A She does.

6 Q What kind of things have you seen her do there?

7 A Mostly hair. That's what she does.

8 Q How about Ms. Trisha Guy?

9 A When Trisha was employed there, so to speak, she --
10 mostly like trinkets, pillows, soaps. She sold
11 stuff like that in the salon.

12 Q Okay. You said sold. Has she stopped?

13 A Yes. She no longer does that.

14 Q Back in --

15 A Well --

16 Q -- October of 2015 --

17 A -- excuse me, actually, she has a couple of things
18 that she still has out there, sorry. I just -- I
19 forget about that little table we have at the
20 reception desk. She does have some stuff.

21 Q But she has a reason to come to Roxie Hart,
22 basically, is what you're saying?

23 A Yes.

24 Q And she was coming there in October of 2015?

25 A Uh-huh.

1 Q And you were working there --

2 A I was.

3 Q -- in October 2015?

4 A Yes.

5 Q Now, do you remember October 2nd, 2015?

6 A I do, very well.

7 Q Did you come in contact with the Defendant --

8 A I did.

9 Q -- David Vincent on that day?

10 A I did.

11 Q Can you tell me where you first came into contact
12 with him?

13 A As soon as he walked in the front door, I was
14 approaching the front desk where Brandi sits. And
15 that's where I first encountered him.

16 MR. HUTCHINSON: Your Honor, if I can approach
17 the witness, please?

18 THE COURT: Yes, sir.

19 BY MR. HUTCHINSON:

20 Q I'm showing you what's previously been admitted as
21 State's Exhibit 5. Do you recognize this right
22 here?

23 A Yes, that's the main floor.

24 MR. HUTCHINSON: Your Honor, permission to
25 publish this?

1 THE COURT: Yes, sir.

2 MR. HUTCHINSON: Thank you.

3 BY MR. HUTCHINSON:

4 Q Okay. So approximately where in this picture were
5 you when you came in contact first with the
6 Defendant?

7 A That podium to the left, that's probably one of the
8 closest in the picture to the desk. I was in front
9 of that walking towards the front entrance.

10 Q Okay. So would you say the front desk is probably
11 about here?

12 A Yes, sir.

13 Q Okay. So this is, would you say --

14 A Yeah, around that area, uh-huh.

15 Q Okay. And would this be -- would have been you
16 towards the back of Roxie Hart where you were at
17 that time?

18 A No -- well, what, looking back?

19 Q Yes.

20 A Yes, from the front door looking back, that
21 direction.

22 Q Now, you first came into contact with him. What
23 did you see him do after you came in contact with
24 him initially?

25 A Brandi asked him how she could help him.

1 MR. KIRINCICH: Objection, Your Honor,
2 hearsay.

3 BY MR. HUTCHINSON:

4 Q Just -- let's just stick to --

5 THE COURT: There's an objection.

6 MR. HUTCHINSON: Yes, Your Honor.

7 THE COURT: I don't need assistance presiding
8 over the trial.

9 MR. HUTCHINSON: Yes, Your Honor. I
10 apologize. I withdraw the question.

11 BY MR. HUTCHINSON:

12 Q So what did you physically see Mr. Vincent do?

13 THE COURT: You may withdraw the question, but
14 the objection is nevertheless overruled. But, go
15 ahead.

16 BY MR. HUTCHINSON:

17 Q You first came in contact with Mr. Vincent -- let's
18 put it this way, who was with you when you first
19 came in contact with Mr. Vincent?

20 A It was --

21 Q Were there other people with you?

22 A -- myself, Brandi at the desk, and then David at
23 the corner.

24 Q Did you stay right there, or did you go somewhere
25 else in the salon after you came in contact with

1 Mr. Vincent?

2 A After he asked for Rosa, I -- when he asked --
3 well, someone was -- when he asked at the front
4 desk -- well, she asked him how she could help him.
5 And he was looking for Rosa. And she said, Well,
6 do you have an appointment? And he said, Yeah, I
7 have got an appointment.

8 At that point his energy was very -- not good.
9 I had red flags. He was -- he seemed very agitated
10 and angry. So I told him that I would go get Rosa.

11 And Brandi said, Well, why don't you just wait
12 over here and we'll get her for you. And at that
13 moment, that is when I walked away.

14 Q So did you go look for Rosa?

15 A I did.

16 Q Okay. So where did you go look for Rosa?

17 A I tell you where my mindset was. I didn't like his
18 energy and I knew something wasn't right, so --

19 MR. KIRINCICH: Objection, Your Honor. She's
20 not answering the question --

21 THE WITNESS: I'm getting --

22 THE COURT: The objection is overruled.

23 THE WITNESS: I was going to find Rosa and ask
24 her to lock herself in the bathroom and that we
25 would get rid of him.

1 BY MR. HUTCHINSON:

2 Q Now, where all did you look?

3 A I poked my head in the kitchen, the relaxation
4 room. I was moving fairly quickly just kind of
5 looking for her in a hurry, because I didn't know
6 where she was, and I was afraid of what would
7 happen if they came in contact.

8 Q Now, did you still have your eye on what was
9 happening?

10 A I did, yes.

11 Q So would you say that you had your eye on the
12 Defendant the whole time?

13 A Periodically, yes. I was moving, looking back
14 behind me, looking in rooms, looking behind me,
15 headed down the hallway to see if she was outside.

16 Q Did you find her?

17 A I never found her, no.

18 Q So looking for Rosa. You didn't have a chance to
19 find her. Did you see any -- did you notice the
20 Defendant do anything other than just stand there
21 and wait?

22 A He was walking further into the salon. He got to
23 about that second podium right in that area.

24 Q Right here?

25 A Yes. And that is when Trish approached him.

1 Q Okay. Now, without -- don't tell me what he said,
2 but can you tell me what happened when Ms. Guy
3 approached the Defendant?

4 A What I saw?

5 Q Yes.

6 A I was at the back door, so I was down the hall, but
7 I could see straight down and see both of them.
8 And I don't know what was said, but I saw her look
9 up at him and kind of point her finger at him, and
10 then he just kind of moved at her and grabbed her
11 by the neck.

12 Q Okay. When you say grabbed her by the neck, was it
13 one hand, two hands? Could you see anything more?

14 A It seemed like it started with one hand and then it
15 just kind of was like this and he kind of flung her
16 back and she landed on her bottom.

17 Q Okay. Now, before you said you were kind of in the
18 back, that would be like at this back hallway area
19 right here?

20 A Yes. There is a very long hallway, but when those
21 doors open, and they were open, I can see straight
22 down.

23 Q Okay. So they were open that day?

24 A Uh-huh.

25 Q And were they typically open?

1 A Yes, we typically keep them open, unless we have a
2 massage going on, just to keep the noise down, but
3 they were open that day.

4 Q Were you close enough to be able to tell whether or
5 not Ms. Guy had anything in her hand when she was
6 approaching?

7 A I saw a finger come up, but as far as I know, there
8 was nothing in her hand.

9 Q Now, after -- you said he put his hands on her and
10 flung her, were your words. Did you see the
11 Defendant do anything after that? Were you still
12 looking at --

13 A I immediately ran down the hall screaming for him
14 to stop, because I didn't know what he was going to
15 do next. And he kept walking towards her. I think
16 at that point she was kind of scooting away on the
17 floor. Another hairdresser was helping her up by
18 the time I got in front of them. And I remember
19 kind of getting between them and holding my arm
20 out, like soccer mom style, and asking him to stop,
21 asking him what he was doing. And he was very
22 angry. He was very angry. And I remember just
23 screaming at him to stop and asking him -- you
24 know, I said, You are in a room full of people,
25 what do you think you're going to get away with?

1 And that blew my mind.

2 Q Now, you gave a motion to put your hand down. At
3 any time, did you or anybody else to your knowledge
4 put their hand on the Defendant?

5 A No, not at all.

6 Q So your motion here was probably --

7 A It was more of a mom protective thing. You know
8 when you're in a car, you kind of slam on the
9 brakes and you're protecting your kid or whoever's
10 next to you. It was just one of those things
11 instinctively I just did.

12 Q Now, at any time during this incident, did Rosa
13 come out?

14 A No, I never saw her.

15 Q Now, did you give a statement to police immediately
16 after this happened?

17 A I did not.

/ 18 Q Tell me why you didn't.

19 MR. KIRINCICH: Objection, Your Honor.

20 THE COURT: Basis for the objection?

21 MR. KIRINCICH: Your Honor, I don't think the
22 answer that she is going to give is relevant to
23 whether this incident occurred or not. I've seen
24 the video where she explained why, and it is not
25 relevant to this case.

1 THE COURT: Any response by the State?

2 MR. HUTCHINSON: Your Honor, I think Defense
3 counsel has made allegations as far as the memory
4 of the witnesses in this case, I'm just trying to
5 clarify that -- what her memory of it is of the
6 events that occurred.

7 MR. KIRINCICH: Your Honor, if I may?

8 THE COURT: Yes, sir.

9 MR. KIRINCICH: Her memory of what occurred
10 has nothing to do with the question. He asked her
11 why she didn't do it at the time.

12 THE COURT: All right. I sustain the
13 objection.

14 BY MR. HUTCHINSON:

15 Q Let's put it this way. Did you give a statement to
16 the police?

17 A No, I did not. Not after it happened, no.

18 Q At some point, did you?

19 A Yeah, just recently this year.

20 Q When you did so, do you feel that you remembered
21 the incident well?

22 A Oh, yes, very vividly.

23 MR. HUTCHINSON: Beg the Court's indulgence,
24 Your Honor.

25 (Pause.)

1 MR. HUTCHINSON: Nothing further at this time,
2 Your Honor.

3 BY MR. HUTCHINSON:

4 Q Please answer any questions from Defense counsel.

5 THE COURT: By the Defense?

6 MR. KIRINCICH: Thank you, Your Honor. No
7 questions for this witness.

8 THE COURT: All right. Thank you. You may
9 step down.

10 (Witness steps down.)

11 THE COURT: Next witness.

12 MR. PAULING: The State would call Penny
13 Lloyd.

14 (Witness approaches.)

15 THE BAILIFF: Place your left hand on the
16 Bible, and raise your right hand, please.

17 (Witness complies.)

18 THE CLERK: Do you solemnly swear or affirm
19 the testimony you give in this case will be the
20 truth, the whole truth, and nothing but the truth,
21 so help you God?

22 THE WITNESS: Yes, I do.

23 THE CLERK: State your full name for the
24 record, please. Thank you.

25 (Witness seated.)

1 THE WITNESS: My name is Penny Marie Lloyd.

2 PENNY MARIE LLOYD,

3 after being duly sworn, testified as follows:

4 DIRECT EXAMINATION

5 BY MR. PAULING:

6 Q Is it Lieutenant Lloyd now?

7 A Yes.

8 Q Lieutenant Lloyd, how are you doing this afternoon?

9 A I'm good. How are you, sir?

10 Q Doing well. Tell the jury, ma'am, where you're
11 currently employed.

12 A I work with the Camden Police Department.

13 Q And, just briefly, tell us your history in law
14 enforcement, I guess. How long have you been with
15 the Camden Police Department?

16 A I've been with the City of Camden there for
17 probably eight and a half years, eight years. But
18 in law enforcement, only for the last seven years.

19 Q And back in 2015 at the Camden Police Department,
20 in what capacity were you employed there?

21 A I was a detective assigned to the investigations
22 unit.

23 Q As far as the investigation unit is concerned, how
24 many investigators do you have in that unit,
25 approximately, or back in 2015?

1 A Four or five, depending on if we were at full
2 staff.

3 Q Okay. And what would your -- I guess, your daily
4 job entail as an investigator at the Camden Police
5 Department?

6 A We would come into work in the morning and go over
7 the cases that had happened the day before and
8 overnight. The lieutenant of investigations would
9 assign them to us. We didn't really specialize.
10 We would get assigned anything and everything. And
11 we rotated being on-call one week at a time. Each
12 investigator would be on-call for cases that
13 happened that required their assistance at night or
14 when the office was closed.

15 Q And just basic -- I'm sorry, what's your law
16 enforcement background and training?

17 A Well, I did get -- I have got a Bachelor of Science
18 in criminal justice from the University of South
19 Carolina. I am a state certified victim service
20 provider for South Carolina, and I'm also a Class
21 One law enforcement officer. So we have a lot of
22 ongoing training every year, and I do also for a
23 victim service provider that we have to keep going
24 to and keep up to date on anything and everything
25 that you could imagine.

1 Q Back in October of 2015, I guess specifically
2 October 2nd of 2015, were you on duty that
3 particular day, or were you on-call that
4 particular day?

5 A Yes, I was.

6 Q And on-call, you had been the on-call investigator
7 for that week?

8 A Yes..

9 Q And were you involved in an assault investigation
10 or investigation of an assault here in the city
11 limits?

12 A Yes.

13 Q And was that at Roxie Hart Salon?

14 A Yes, it was.

15 Q Is that at 1025 Broad Street?

16 A Yes.

17 Q Is that here in Kershaw County?

18 A Yes, it is.

19 Q And if you can tell the jury how you become
20 involved in that particular matter?

21 A We keep our walkie-talkies on our desk and we
22 monitor it, and I heard the call come out. It was
23 shortly before 5:00. I don't remember how long
24 before 5:00 on that Friday. So I knew I would be
25 getting in the car shortly and going down there to

1 see what was going on when I heard there was some
2 type of assault. Got a few things together, jumped
3 in my car, and one of the other investigators
4 jumped in with me. And we drove down there after
5 we knew the shift had gotten there and secured the
6 scene.

7 I immediately made contact with Sergeant James
8 Hemming, who was our shift sergeant that day. He
9 was out in front of the salon. He approached me
10 immediately. I did not get out of my car at that
11 time. He said that a victim was assaulted, she was
12 at -- on her way to the emergency room with her
13 husband. He told me who he believed the
14 Defendant -- suspect was, a Mr. Vincent, and that
15 he had left the area himself. And Sergeant Hemming
16 told me they were working on getting paperwork
17 together for me to look at.

18 Q You said Mr. Vincent, that being David Vincent?

19 A Yes, sir.

20 Q And, now, did you -- you said you stayed in the
21 car. Did you go in Roxie Hart at all at that time?

22 A No, I did not.

23 Q And it was your understanding that the suspect had
24 already left the premises; is that correct?

25 A Yes.

1 Q And that the victim also had already left the
2 premises?

3 A Yes.

4 Q At that point, did you have any information or did
5 you know whether or not the victim had relayed the
6 information to law enforcement?

7 A Yes. I was told that a written statement was being
8 completed at the ER. And I was told by the shift
9 sergeant that several individuals on-site had
10 witnessed the assault and I was told what they had
11 witnessed.

12 Q So you were briefed at that particular time?

13 A Yes.

14 Q And at some point, did you leave from that
15 location?

16 A Yes, I did.

17 Q And where did you go?

18 A At that time, we went back, I believe, directly to
19 investigations. Ms. Rosa Vincent and Mr. David
20 Vincent were known to me through my work, and we
21 were already getting phone calls from Ms. Rosa
22 Vincent. And I already intended in my mind -- with
23 the information I had, I intended that there would
24 be a warrant forthcoming for this specific assault.

25 Q Now -- and at some point, did you seek a warrant?

1 A Did I see what?

2 Q I'm sorry, at some point, did you seek a warrant
3 for assault?

4 A Oh, yes, that evening. I stayed late that evening.

5 Q Was that for assault and battery second degree?

6 A Yes, it was.

7 Q And now, at some point did you come in contact with
8 the Defendant, Mr. David Vincent?

9 A Yes. In the midst of myself driving around -- I
10 had to take the warrants to the judge's home to get
11 signed off, to present to the judge. And in the
12 midst of doing that and speaking with other
13 officers, he actually -- Mr. Vincent called an
14 officer that was in my patrol vehicle.

15 And all I was told was that, That was David
16 Vincent, he understands that you are getting
17 warrants against him, and he has been asked to meet
18 you at the Detention Center. And he stated -- they
19 led me to believe he stated that he would to that.
20 So I expected to meet him that night at the
21 Detention Center.

22 Q But you had not contacted David Vincent, had you?

23 A I had not contacted him directly, I don't believe,
24 no.

25 Q And so did you go to the Detention Center?

1 A Yes, after the warrants were signed.

2 Q Okay. And did you meet with or did you come in
3 contact with David Vincent at the Detention Center?

4 A Yes. When I pulled into the parking lot, I saw him
5 immediately. As I said, we were familiar enough
6 with each other, he knew who I was and I knew who
7 he was. And I got out and he approached me
8 immediately and we began speaking immediately in
9 front of the Detention Center.

10 Q Okay. So this isn't inside, but in the parking lot
11 area?

12 A Correct.

13 Q Do you recall -- you said he approached you. Do
14 you recall if there was anyone with him?

15 A There were other adult family members seated on the
16 benches in front of the Detention Center. And to
17 my alarm, his two little girls were also sitting
18 there at the Detention Center.

19 Q And you had mentioned that -- or you testified,
20 rather, that as he approached, the two of you
21 began --

22 A Talking right away.

23 Q Talking right away. Now, at that particular point,
24 had you served the warrants on him, the warrant?

25 A No. I can't -- you can't serve your own warrants

1 in the state, so I knew somebody else would need to
2 do that, but they were in my car. They were in my
3 possession, prepared.

4 Q But you didn't have them out in your hand when you
5 approached him?

6 A No.

7 Q Okay. And, now, can you explain to the jury, what
8 conversation did you have with him?

9 A I didn't expect to see all the family there that he
10 brought, so when I got out and he approached me, I
11 know I said something along the lines of, What is
12 going on? What are you doing?

13 To my recollection, Mr. Vincent was a little
14 excited as well, which I imagined being at the
15 Detention Center there. I know that he made
16 comments, references to, I shouldn't have gone
17 there. I'm sorry, I didn't want anybody to get
18 hurt, but I thought she had something in her hand.

19 At that time, I took that in my mind to -- I
20 thought he was referring to the victim, Ms. Trisha
21 Guy, because I had been told of what occurred at
22 that assault from the victim -- from the victim and
23 the witnesses -- and I thought he was referring to
24 he believed she had something in her hand when she
25 approached him. I asked him what it was, and he

1 said -- to my recollection, he said he thought it
2 was some type of hair tool, comb, pair of scissors,
3 brush, something like that:

4 By the same token, he said he was going to
5 turn himself in to me peaceably, there would be no
6 problem. He just wanted to make sure there was no
7 problem and that, you know, we kept in mind his
8 girls were there. And that was that.

9 Q And at the time when you all were having this
10 discussion, was he in handcuffs at that time?

11 A No. No.

12 Q Now, at that particular time, you said he said, I
13 shouldn't have gone there. I thought she had
14 something in her hand, he didn't mean for anybody
15 to get hurt. Something along those lines?

16 A Yes.

17 Q Now, at that particular time, did you have him
18 reduce his statement to writing?

19 A No, I did not.

20 Q Now, at that time when you approached him, was your
21 intent to carry on a full interrogation?

22 A No, it wasn't. It wasn't. As I said, he was
23 familiar to me through my work at the Police
24 Department, and I had -- there was a level of
25 familiarity with me enough that I did, I just got

1 out of the car and I said, What is going on with
2 you? What has happened here? What are you doing?
3 And it just -- maybe a little bit of excitement,
4 sure, you're always a little concerned when
5 something goes awry like that, so.

6 Q And, now, did you -- at that particular time, did
7 you have any further discussion with him regarding
8 what had occurred at Roxie Hart?

9 A No, not really. He kept referencing his children,
10 which I was not interested in doing at that time.
11 I felt they needed to be removed and not witness
12 anything going on there at the Detention Center. I
13 felt they should not be there. So we were just
14 trying to quickly resolve the situation.

15 MR. PAULING: Beg the Court's indulgence.

16 (Pause.)

17 BY MR. PAULING:

18 Q And, Lieutenant Lloyd, you mentioned -- or the
19 information that Mr. Vincent had provided you as
20 far as thinking that -- or him saying he had a
21 belief that Trisha Guy had something in her hand of
22 some sort, did you get any information from anyone
23 else that she had something in her hand during the
24 assault?

25 A We -- in general conversation, we never had that

1 corroborated. I had received later that night the
2 written statement by the victim. There was no
3 mention that she had anything in her hand. And I
4 do believe that as statements came in, because some
5 of the witnesses just took time to type it out,
6 there was no mention. We could not corroborate
7 what he had stated to me.

8 Q And, again, after that brief conversation in the
9 parking lot of the Detention Center, were the
10 warrants then subsequently served on him, not by
11 you, but by the shift sergeant?

12 A Right. Arrangements had been made for the shift
13 sergeant to come in. The other investigator that
14 had been in my car was trying to talk with the
15 children and get them to get into a vehicle. We
16 just wanted -- we didn't want them to see anything
17 that would cause them any further distress.

18 And when the shift sergeant arrived, we got in
19 my vehicle, which the girls were in my vehicle as
20 well, and we left the area while the shift sergeant
21 escorted Mr. Vincent into the detention facility to
22 serve the warrants inside.

23 Q Thank you, Lieutenant Lloyd.

24 MR. PAULING: I have no further questions at
25 this time, Judge.

1 THE COURT: All right. Cross-examination?

2 MR. KIRINCICH: Thank you, Your Honor.

3 CROSS-EXAMINATION

4 BY MR. KIRINCICH:

5 Q Good afternoon, Lieutenant Lloyd.

6 A Good afternoon, sir.

7 Q You said Sergeant James Hemming was the responding
8 officer that day?

9 A Yes, sir, I believe so.

10 Q Did Sergeant Hemming give you a list of witnesses
11 to the case?

12 A No, he didn't.

13 Q And so 15 to 20 people is what we've heard were
14 there. We only have statements in law
15 enforcement's file from the co-workers of Ms.
16 Vincent and Ms. Guy; is that correct to say?

17 A Correct.

18 Q Do we know who the patrons were that made up those
19 additional people that were there that day?

20 A I do not.

21 Q We never got a list of any names, of any contact
22 information for anybody who was not the work
23 associate to Ms. Guy for this case, did we?

24 A I did not, no.

25 Q Okay. And did Sergeant Hemming take any photos of

1 a disturbance inside of Roxie Hart to show where
2 this violent assault had occurred?

3 A I don't have any that were turned over to me and I
4 did not witness him do it. I left the scene to
5 work on my part of what I needed to do.

6 Q So we, in this entire room here -- me, the jury,
7 the judge -- we don't have any pictures of scuff
8 marks on the floor from a struggle, do we?

9 A Not to my knowledge, no.

10 Q Any product that was overturned from the shelf that
11 they've testified this happened beside?

12 A I don't recollect anybody saying a product was
13 knocked over.

14 Q But we don't have any pictures of anything there?

15 A No. We have the victim and the witness statements.

16 Q So we have witness statements, but law enforcement
17 did not take any pictures of Roxie Hart, did they?

18 A I did not. That, I can attest to.

19 Q And law enforcement did not get any witness names
20 for anybody else who was there at the time?

21 A I did not.

22 Q So law enforcement at no point asked anybody else
23 if Ms. Guy had something in her hand?

24 A I can't attest to that because I left to start
25 warrants with the information that was already

1 enough for me to start warrants for. I don't know
2 what the officers at the scene continued to do.

3 Q Were you in charge of this investigation?

4 A I was in charge of the warrants, I was not
5 completing the investigation. Sergeant Hemming was
6 there.

7 Q Did Sergeant Hemming turn over into your case file
8 any notes where anybody else was interviewed?

9 A Sergeant Hemming and other officers wrote the
10 report information. Whatever they had that they
11 felt was pertinent was turned over to me, and you
12 should have copies of that in your case file just
13 as I do.

14 Q Do you have your case file with you? And, if so,
15 can you tell me what Sergeant Hemming typed and
16 what you typed?

17 A Sergeant Hemming, as you can see, the initial
18 incident report, 2015-1675.

19 Q And that has his name at the bottom, so he typed
20 that?

21 A He keyed that in.

22 Q Okay. Thank you.

23 A Yes.

24 Q All right. And then what did you type?

25 A I would have typed in my -- the notes that say the

1 investigator -- investigative notes.

2 Q Yes, ma'am.

3 A I did all four of those pages. It says at the top
4 the name of the officer that worked on those pages,
5 and that's my name. That's me.

6 Q All right. Now, with investigators -- excuse me,
7 Sergeant Hemming's report, does it make mention of
8 any witnesses that were interviewed or photos
9 attached to his report or photos on file with a
10 particular SIM card or digital media card?

11 A You want to know if he is referencing photos?

12 Q Well, you said you were unsure as to what he did,
13 so I'm just asking if that's reflected in his
14 report that he took photos or interviewed anybody?

15 A It is not.

16 Q And there are no additional names for witnesses
17 that were not employed by Roxie Hart?

18 A No, there is not.

19 Q This all happened rather quickly, including the
20 response by the Camden Police Department. You said
21 you and another investigator -- was that
22 Investigator Herbie Frasier, Detective, Sergeant
23 Herbie Frasier?

24 A Lieutenant.

25 Q Lieutenant Herbie Frasier?

1 A Yes.

2 Q So he was the other individual with you?

3 A He jumped in the car when I left to go to the
4 scene.

5 Q Did he take any photos or interview any witnesses?

6 A No.

7 Q I'm sorry if I missed it. Did you at some point
8 report to the hospital?

9 A No, I didn't, because Sergeant Hemming was out
10 there and he was going to bring me the written
11 statement. I wanted the warrants done that night.
12 I wanted Mr. Vincent picked up that night.

13 Q All right. Well, as it turns out, Mr. Vincent
14 became aware that the City of Camden was looking
15 for him, and actually he made the first contact?

16 A Yes.

17 Q And although you were not privy to the
18 conversation, it was somehow arranged for him to
19 turn himself in at our Detention Center?

20 A Yes.

21 Q And he showed up whenever he said he was going to
22 be there; correct?

23 A Yes, he did. He did.

24 Q And he made some statement after you just generally
25 said, you know, What were you doing, or, What is

1 going on here; right?

2 A (Nods affirmatively.)

3 Q And his statement, again, although it's not
4 verbatim, you didn't write it down at the time --

5 A Right.

6 Q -- or it's not recorded in any way, was, I
7 shouldn't have gone there. I didn't want anybody
8 to get hurt, but I thought she had something in her
9 hand? Okay. Is that accurate?

10 A Correct.

11 Q And then he made contact with you again shortly
12 after leaving the jail and told you that again?

13 A At various times in various conversations we had
14 over the coming week.

15 Q All right. And at no point did the City of Camden
16 feel it was necessary to find another witness to,
17 you know, actually ask them did he have
18 something -- or did she have something in her hand?

19 A No. We have witnesses that were presented today
20 that saw nothing. I had a victim who is quite
21 small, quite petite compared to his stature, and I
22 had witnesses and the victim's statement that
23 stated that he picked her up by her throat and
24 threw her backwards. I felt that I had enough
25 evidence to make that charge.

1 Q And I'm not arguing with you on that point, but.
2 from what has been turned over to me, those typed
3 statements did not come the night, the afternoon,
4 or the next day from October 2nd, 2015. So nobody
5 in the City of Camden ever thought, Well, we have a
6 statement from the Defendant, we should at least
7 investigate that part of it?

8 A I did not feel I needed a statement from him.

9 Q I'm sorry, you got a statement from him. He made a
10 verbal statement that he was there. He was sorry
11 someone got hurt, but he thought she had something
12 in her hand.

13 A I did not feel I needed a written statement from
14 Mr. Vincent.

15 Q And you didn't feel like any other witness, any of
16 those 15 to 20 witnesses needed to be asked if she
17 had anything at all in her hand?

18 A No. That was discussed. None of them corroborated
19 that. And I feel I have the evidence I needed to
20 show that I had a good -- I have a good charge for
21 assault second degree.

22 Q Who was that discussed with?

23 A As far as what charge to make? Is that what you're
24 asking?

25 Q No, ma'am. Who discussed with the witnesses that

1 were chosen to be interviewed or chosen to give
2 statements, who discussed with them whether Mr. --
3 excuse me, whether Ms. Guy had or could have had
4 something in her hand?

5 A To my knowledge, Sergeant Hemming stayed out there
6 for a while when I left.

7 Q But there's nothing --

8 A He was going to make conversations --

9 Q I'm sorry, I'm going to interrupt you. There's
10 nothing in his report, so is this speculation on
11 what he did now, or can you answer my question?

12 A No, I trust what the shift sergeant did.

13 Q He did not interview any other witnesses, did he?

14 A It's not documented, but he was at the scene. He
15 secured the scene and I trust what he did.

16 MR. KIRINCICH: Your Honor, I don't have any
17 further questions.

18 THE COURT: Redirect?

19 MR. PAULING: Beg the Court's indulgence.

20 (Pause.)

21 REDIRECT EXAMINATION

22 BY MR. PAULING:

23 Q Detective Lloyd, when you went to obtain a warrant
24 for assault second degree, did you feel you had
25 necessary probable cause for that charge?

1 A I did specifically from this very short initial
2 written statement by the victim herself.

3 Q And based on that information -- and even after --
4 it was at that point, and even after you had
5 conversations with David Vincent, at that point,
6 the warrants still hadn't been served; is that
7 correct?

8 A Correct.

9 Q And even after he made that statement, you still
10 felt you had enough to proceed with the charge
11 that you had in your hand; is that correct?

12 A Correct.

13 Q Were you aware if Mr. Vincent had any injury at
14 that point?

15 A Not at all.

16 Q Did he complain of any injury?

17 A No. No, sir, he didn't.

18 Q He simply stated he thought she had something in
19 her hand?

20 A That was all he said.

21 MR. PAULING: Nothing further, Your Honor.

22 THE COURT: Anything further?

23 MR. KIRINCICH: No, sir, Your Honor.

24 THE COURT: All right. Thank you.

25 (Witness steps down.)

1 THE COURT: Next witness.

2 MR. PAULING: Beg the Court's indulgence.

3 (Pause.)

4 MR. PAULING: Your Honor, at this time, the
5 State would rest.

6 THE COURT: All right, ladies and gentlemen,
7 that is the State's case. I will have you go to
8 the jury room for a break. I need to discuss some
9 matters outside your presence. If you'll go to the
10 jury room.

11 (WHEREUPON, the jury retires to the jury
12 room at 3:50 p.m.)

13 THE COURT: Any matters of law?

14 MR. PAULING: None from the State, Your Honor.

15 THE COURT: Yes, sir?

16 MR. KIRINCICH: Thank you, Your Honor.

17 Your Honor, traditionally, at this time the
18 Defense makes a directed verdict motion. The
19 charge we're here for is assault and battery second
20 degree. Your Honor, I don't want to waste the
21 Court's time or anybody else's time here, so, in
22 short, I am not making a motion for directed
23 verdict, whether that is the right move or the
24 wrong move. I would admit at this point that
25 enough evidence has been put on the record that

1 that motion would be denied and I think it would be
2 a waste of time.

3 THE COURT: All right. The Court finds that
4 sufficient evidence exists to proceed with the
5 charge.

6 How many witnesses do you anticipate having?

7 MR. KIRINCICH: Your Honor, the only witness
8 would be Mr. Vincent. I don't know how Your Honor
9 likes to do it. Traditionally, the Courts have
10 advised Defendants on the record of their rights,
11 and I have expressed to Mr. Vincent multiple times
12 that I cannot make him testify or, on the other
13 hand, keep him from testifying, that it's solely
14 his choice. I would like an opportunity to discuss
15 this matter with him, but if the Court wants to
16 advise Mr. Vincent on the record of his rights.

17 THE COURT: All right. We'll do that at this
18 time.

19 Mr. Vincent, if you would stand to be sworn.

20 (Defendant stands.)

21 THE CLERK: Raise your right hand.

22 (Defendant complies.)

23 THE CLERK: Do you swear or affirm to tell the
24 truth, the whole truth, and nothing but the truth,
25 so help you God?

1 THE DEFENDANT: I do.

2 THE CLERK: Thank you.

3 THE COURT: Mr. Vincent, at this time I am
4 going to explain to you certain of your rights. If
5 you do not understand anything that I say, let me
6 know and I'll be happy to explain it in more
7 detail. Do you understand?

8 THE DEFENDANT: Yes, sir.

9 THE COURT: We have now reached the stage of
10 the trial where you may present your defense. Now,
11 you have the rights -- the right to claim the
12 protections afforded you by the Fifth Amendment to
13 the Constitution of the United States. This
14 amendment states in part that no person shall be
15 compelled in any criminal case to be a witness
16 against himself. This means that you cannot be
17 required to testify in this case. You -- however,
18 you do have the right to testify on your own behalf
19 if you would like to. But no one can make you
20 testify. Whether or not you testify is a personal
21 right that you have and no one can waive this right
22 except you.

23 If you decide to testify, you would be subject
24 to the same rules that govern other witnesses, and
25 you may be examined and cross-examined on any

1 relevant issue in the case. In addition, if you
2 have any convictions involving dishonesty or false
3 statements or for crimes punishable by imprisonment
4 for more than one year and I determine the
5 probative value of admitting this evidence
6 outweighs its prejudicial effect to you, the
7 Solicitor, in that instance, will be able to
8 introduce your record to attack your credibility.
9 If you decide to testify, this decision on your
10 part must be freely and voluntarily and
11 intelligently made with knowledge of the
12 protections given to you by the Fifth Amendment and
13 the consequences of your decision to testify.

14 If you decide not to testify, I will instruct
15 the jurors that they cannot give the fact that you
16 did not testify any consideration whatsoever, and
17 there is to be absolutely no prejudice to you
18 because you did not testify. It is left entirely
19 up to you whether or not you testify. You may talk
20 with your lawyer, Mr. Kirincich, your family,
21 friends or anyone else that you may have to talk
22 to, but the final decision will be left entirely up
23 to you. Do you understand what I've explained to
24 you?

25 THE DEFENDANT: Yes, sir.

1 THE COURT: Do you wish to talk to
2 Mr. Kirincich anymore?

3 THE DEFENDANT: I'd like to talk to him
4 outside for a minute.

5 THE COURT: All right. We'll take a break and
6 give you all an opportunity to talk. We will take
7 about 10 minutes or so. Then if you will let us
8 know.

9 MR. KIRINCICH: Thank you, Your Honor.
10 (WHEREUPON, a break was taken at 3:56
11 p.m.)

12 (WHEREUPON, the proceedings resumed at
13 4:10 p.m.)

14 THE COURT: What did you decide, Mr. Vincent?

15 THE DEFENDANT: I decided to let the jury rule
16 instead of me testifying.

17 THE COURT: Okay.

18 Mr. Kirincich?

19 MR. KIRINCICH: Your Honor, as Mr. Vincent
20 just stated, he is not going to testify. Your
21 Honor, we have no witnesses. If I need to -- I
22 don't know that I need to do it in front of the
23 jury because I don't have any burden --

24 THE COURT: You need to rest in the presence
25 of the jury.

1 Well, when they come out and you rest, then
2 are y'all ready to go straight into closing
3 arguments or --

4 MR. PAULING: Your Honor, if I can have a
5 brief, say, 10 minutes?

6 THE COURT: Another 10?

7 MR. PAULING: I didn't know this is what was
8 going to happen at this point, Judge.

9 THE COURT: All right. What day was that we
10 were here late? We don't want to pull another
11 later-nighter tonight. It might take them a while
12 on this case. We can take 10 minutes. You all can
13 argue and they could come back for the charge and
14 deliberation in the morning and have argument out
15 of the way.

16 MR. KIRINCICH: Your Honor, I'm good with
17 whatever the Court decides on that matter. I know
18 y'all were here late, I think, both Monday and
19 Tuesday of this week. Whatever the Court decides,
20 I'm ready to go.

21 THE COURT: Okay. Well, let's take that 10
22 minutes, and then when they come out, we'll do the
23 closing arguments.

24 MR. KIRINCICH: Yes, sir.

25 MR. PAULING: Thank you, Your Honor.

1 THE COURT: All right. Any of them need to
2 smoke a cigarette or get some fresh air or
3 anything?

4 THE BAILIFF: Judge, one did ask how long we
5 would be here, and I told them I don't have no
6 control over that.

7 THE COURT: Well, we're not going to stay
8 late. We're going to leave about 5:00 or 5:30.

9 All right. Well, we're going to take a
10 10-minute break. I'm just saying let them get some
11 fresh air.

12 (WHEREUPON, a break was taken at 4:13
13 p.m.)

14 (WHEREUPON, the proceedings resumed at
15 4:31 p.m.)

16 THE COURT: Are y'all ready for the jury?

17 MR. PAULING: Yes, sir.

18 MR. KIRINCICH: Yes, sir.

19 THE COURT: Okay. They can come on.

20 (WHEREUPON, the jury came into open
21 court at 4:31 p.m.)

22 THE COURT: Madam Forelady, how is the jury
23 doing?

24 THE FORELADY: We're good. Kind of hungry.
25 Two of us are hungry.

1 THE JUROR: I stay that way.

2 THE COURT: That pizza only lasts so long.

3 THE JUROR: Thank you for the pizza.

4 THE COURT: All right. Well, you have heard
5 the State's case. Now, it is the Defense's turn.

6 MR. KIRINCICH: Your Honor, the Defense
7 rests.

8 THE COURT: The Defense has rested. That
9 means you have heard all of the evidence in the
10 case. We are going to proceed with closing
11 arguments, then stop for the day. The State will
12 go first, then the Defense.

13 Mr. Pauling.

14 MR. PAULING: Thank you, Your Honor. May it
15 please the Court?

16 THE COURT: Yes, sir.

17 CLOSING ARGUMENT

18 MR. PAULING: Again, I want to say thank you
19 for your service, for your patience throughout this
20 particular process. Again, as I stated earlier,
21 this case is important to the State, important to
22 Mr. Vincent. I want to thank you for your
23 attention to this particular matter.

24 Now, at a later time the judge is going to
25 instruct you on the law in this particular case, so

1 obviously you take the law as the judge instructs
2 you, but I will tell you that assault and battery
3 second degree for which Mr. Vincent has been
4 charged, what he stands trial for, assault and
5 battery second degree essentially is the unlawful
6 injuring or offering or attempting to injure
7 another person with the present ability to do so.
8 In this case, second degree is the situation where
9 moderate bodily injury does occur or could have
10 occurred. And moderate bodily injury, as defined
11 by South Carolina code, would include a fracture or
12 dislocation. I submit to you that's what we have
13 here.

14 And this is a brief review to the facts as
15 you've heard them. Pay close attention to
16 everything.

17 Rosa Vincent explained to you, first off, the
18 background, the situation with her and her
19 ex-husband, David Vincent. She explained to you
20 that he had tried to be communicating with her
21 earlier that day. She was upset about that, but
22 did not expect him to come to the salon. You heard
23 testimony that he had not been to the salon before.
24 She did not expect him to come, did not invite him
25 there, did not say it was okay for him to be there.

1 Sometime that afternoon, he did show up.

2 You heard from Ms. Trisha Guy. She took the
3 stand and she explained to you that when she saw
4 him, he had gone well beyond the entrance, well
5 beyond the waiting room area, and was at -- near
6 Rosa's station, just staring at her picture on the
7 wall of her license.

8 And Ms. Guy explained to you why she
9 intervened, and she told you what she did. And at
10 no time did she threaten him. At no time did she
11 present any type of weapon towards him. She
12 explained to you that as she was in front of him,
13 all 4'11" of her, how he picked her up by the
14 throat, off of the floor, and threw her backwards.

15 And she told you from that witness stand the
16 concerns she had as she was being thrown back, how
17 she tensed up, and she was concerned about her head
18 busting wide open. She was concerned about hitting
19 whatever was behind her on the floor. And she
20 described to you what was going through her mind at
21 that point.

22 You also heard from Ms. Brandi Peake and Ms.
23 Ashley Frost. And they described what happened,
24 the assault that occurred. They also explained
25 that he appeared to be very angry. He indicated

1 when he walked in that he was there to see Rosa
2 Vincent, that he had an appointment with her. But
3 during the entire ordeal that Ms. Guy went through,
4 that assault, he never once made contact with Ms.
5 Rosa Vincent.

6 Now, he had been communicating with her
7 throughout the day. Presumably, he was there, from
8 what he said, he needed to see her, but he ended up
9 picking up Ms. Guy throwing her across the room. I
10 don't know if he was sending a message or what he
11 was doing, but that's what happened. He was there
12 to see Rosa Vincent, but he never saw her that day.
13 And, in fact, after he assaulted Ms. Guy, he simply
14 walked out. He didn't run out, he simply walked on
15 out.

16 You heard from Therin Hill, you heard from
17 Dr. Borucki, the physicians who treated Trisha Guy.
18 Therin Hill told you about the significant
19 angulation in the coccyx area. He told you about
20 the closed fracture. It was actually a fracture of
21 her tailbone, it just didn't break the skin.
22 Dr. Borucki told you about treating her for her
23 sprained wrist.

24 I submit to you that these injuries, these are
25 the -- these injuries, this is the moderate bodily

1 injury that occurred. The judge is going to
2 instruct you on the law that says that moderate
3 bodily injury did occur or could have occurred.

4 Now, you heard from Lieutenant Lloyd now,
5 Detective Lloyd, and she told you about her
6 investigation. And she told you that during the
7 course of that -- or after she had gotten warrants,
8 David Vincent actually contacted law enforcement to
9 turn himself in. This is an individual who went
10 inside Roxie Hart, assaulted Trisha Guy, walked
11 out, and upon hearing that he had warrants, went to
12 the Detention Center. And when he went there, he
13 talked to Ms. Lloyd and said, I knew I shouldn't
14 have gone there. He knew he had no business there.
15 He didn't have an appointment, he shouldn't have
16 been there, and he knew that when he walked in. He
17 said, I thought she had something in her hand.

18 You heard the testimony of the other
19 witnesses. There was only one individual who
20 indicated that Ms. Guy even pointed anything at
21 David Vincent, and that was Ms. Ashley Frost, and
22 she indicated it was her finger. And everyone was
23 telling him to leave. He shouldn't have been
24 there. Everyone was telling him to leave.

25 Now, as I said, the judge is going to instruct

1 you on the law in this particular matter. It's
2 been a relatively short case. I submit to you and
3 I've told you before that we're here seeking
4 justice, nothing more and nothing less. You've
5 heard the facts. You've heard the evidence.

6 I submit to you that you've heard everything
7 you need to return a verdict that speaks justice.

8 Thank you.

9 THE COURT: Mr. Kirincich.

10 MR. KIRINCICH: Thank you, Your Honor. May it
11 please the Court?

12 THE COURT: Yes, sir.

13 CLOSING ARGUMENT

14 MR. KIRINCICH: Madam Clerk, Mr. Pauling,
15 Mr. Hutchinson.

16 Madam Forelady and ladies and gentlemen of the
17 jury, I spoke with y'all this morning, it seems
18 like a long time ago, but all I asked that you do
19 is pay careful attention to what was testified to
20 here today.

21 The reason I did that, couple of reasons. The
22 main reason is now because I want to talk to you
23 about reasonable doubt. And that is the legal
24 standard that has to be met by the State of South
25 Carolina and beyond. Proof beyond a reasonable

1 doubt is what they have to prove for every element
2 of the crime of assault and battery second degree.
3 So I read part of the definition this morning.
4 Solicitor Pauling gave part of the definition to
5 you now. The judge will again give you the
6 definition of assault and battery second degree. I
7 want to do it and talk to y'all about reasonable
8 doubt.

9 So assault and battery second degree is when a
10 person commits the offense of assault and battery
11 by unlawfully injuring another person or offers or
12 attempts to injure another person with the present
13 ability to do so, and moderate bodily injury to
14 another person results or moderate bodily injury to
15 another person could have resulted. So, again, we
16 use that term "moderate bodily injury."

17 So what does that mean? Because that has to
18 be proven beyond a reasonable doubt since it's one
19 of the elements of assault and battery second
20 degree. Moderate bodily injury means physical
21 injury that involves prolonged loss of conscience,
22 that causes temporary or moderate disfigurement, or
23 temporary loss of the function of a bodily member
24 or organ, an injury that requires medical treatment
25 when the treatment requires the use of regional or

1 general anesthesia, or an injury that results in a
2 fracture or dislocation. Moderate bodily injury
3 does not include one-time treatment and subsequent
4 observations of scratches, cuts, abrasions,
5 bruises, burns, splinters or any other minor
6 injuries that do not ordinarily require extensive
7 medical care.

8 So what is reasonable doubt? Well, there's
9 reasonable doubt that can be questioned in regards
10 to whether the assault and battery occurred. I'm
11 not going to get cute with y'all. I told y'all
12 this morning that Mr. Vincent at no point denied
13 placing his hands on Ms. Guy and pushing her
14 backwards. He told Lieutenant Lloyd that he did
15 so. He said that he was sorry. He did not mean
16 for anyone to get hurt, but he thought she had
17 something when she was coming at him.

18 So what could I talk to you about for
19 reasonable doubt with the assault and battery?
20 Well, how about reasonable doubt is no pictures
21 from the Camden Police Department of Roxie Hart or
22 Trisha Guy. As the detective said, they didn't
23 take those photos that you saw today. They didn't
24 take any photos the date of this incident. As
25 Ms. Guy testified to, her friend or co-worker,

1 Natalie, took the photos of her neck. But wouldn't
2 it have been great if we actually got to see the
3 scene fresh when it happened to see if there were
4 any scuff marks on that nice tile floor that I
5 asked about, to see if any product was out of
6 place, if a chair was disturbed, if the carpet was
7 in any way rumpled? We don't have any of that.

8 We don't have and we've never had a witness
9 list of the other 12 to 17 people that were there.
10 Multiple witnesses have testified there was
11 somewhere between 15 and 20 people in that shop. I
12 could not tell you today who any of those people
13 were if they did not testify today. That is
14 reasonable doubt. Why do we not know who those
15 other people are?

16 And in regards to the 15 to 20 total
17 witnesses, the 12 to 17 that we have no idea who
18 they are, why were none of them questioned about
19 the possibility of Ms. Guy having something in her
20 hand? I think the State, the police, the
21 prosecution owes everybody a duty to do a full and
22 thorough investigation. I think reasonable doubt
23 comes up when they fail to do that. So nobody ever
24 asked those other witnesses because nobody ever got
25 their names or contact information. Did Ms. Guy

1 have something in her hand? Could it have been a
2 comb, a candle, a brush, a nail file, scissors, as
3 Mr. Vincent told Detective Lloyd? We don't know
4 because they never got those names and never felt
5 it necessary to follow up.

6 Reasonable doubt is discrepancy in witness
7 testimony. One witness said Ms. Guy calmly walked
8 towards Mr. Vincent with her hands down. And I
9 specifically asked, Did she have her hand up in his
10 face? And no was the answer. I think
11 chronologically, it was the next witness that
12 came -- and I didn't question her about it. I
13 actually said, No questions at all for that
14 witness. But upon direct examination, she said
15 that Ms. Guy was walking towards him waving her
16 finger pointing up at him. So reasonable doubt can
17 come through discrepancy in witness testimony.

18 Like I think all the witnesses testified they
19 had never seen Mr. Vincent inside that store,
20 Ms. Vincent had only worked there a short amount of
21 time, but they all agreed that he walked directly
22 to her station. How could he have never been
23 there, not know where her station is, she's not
24 there, but he walks directly to it? Again, these
25 are the witnesses, the very few witnesses that the

1 City of Camden chose to interview. We didn't get
2 any patrons or people that do not work with Ms. Guy
3 and Ms. Vincent. We only got the select few that
4 were offered up either by Ms. Guy as witnesses or
5 that they just happened to come forward, I think a
6 year later, a year and a half later for some
7 reason, because there was no initial statement
8 given by Ms. Frost, but she came in much later.
9 And, again, we don't know how.

10 But, again, I'm not trying to be tricky. I
11 don't want defense lawyers to get this bad
12 reputation that we're trying to pull anything over
13 on anybody. Did Mr. Vincent put his hands on
14 Ms. Guy? Absolutely. Okay. So does that mean
15 that reasonable doubt is gone, that he's admitted
16 that he's done this through what I'm saying now? I
17 say no. Reasonable doubt exists in these pictures.
18 You will have these back in the jury room and I
19 invite you to look at them.

20 I asked, Were there any other bruises that
21 showed up that are not visible on these pictures?
22 No. Were there any scratches that showed up that
23 were not visible on these pictures? No. Were
24 there any what I describe as kind of burn marks,
25 where if you were to grab someone and quickly move

1 your skin across their skin, it would appear to
2 almost be some sort of burn, were any of those
3 marks here but not captured by the picture? No.

4 So everybody is picked for the jury, you're
5 qualified, you go through general qualifications,
6 specific qualifications, you bring your own life
7 experiences to the jury. You can sit down and
8 discuss this with your fellow jury members. Is
9 there reasonable doubt to believe or to not believe
10 that Ms. Guy was picked up and shaken like a rag
11 doll, as multiple witnesses described, and thrown
12 backwards by her neck? And this redness, no
13 bruising, no burns, no scratches is all that
14 resulted? Or does that reasonable doubt lead you
15 to believe that things may have happened a little
16 bit differently? Like Mr. Vincent initially told
17 Detective Lloyd that he thought she had something
18 and she came at him and he pushed her away. I ask
19 you to look for reasonable doubt, to consider it.

20 When we move on to the moderate bodily injury,
21 again, I ask you to consider reasonable doubt. So
22 what is reasonable doubt with this moderate bodily
23 injury? I'll agree that there's been testimony
24 that there was a fracture, that she had a fractured
25 coccyx. Her tailbone was broken.

1 Well, when I asked the physician's assistant,
2 Mr. Hill, who ultimately did the radiology report,
3 he agreed it was Dr. Kerns. When I asked
4 Dr. Borucki who did the radiology report,
5 Dr. Kerns. I asked, Were there any visible
6 fractures on the X-rays? The answer was no. There
7 was an angulation that led them to suspect that
8 there could be a fracture.

9 And then I asked, Well, couldn't that also be
10 normal? And they both agreed. I believe the
11 physician's assistant said that the way to confirm
12 it would have been to do a CAT scan or a follow-up
13 with an orthopedic doctor.

14 One, we don't have Dr. Kerns here to testify
15 to what he saw. We don't have the X-rays so we
16 could all take a look at it and see what this
17 angulation might actually be. We don't have a
18 follow-up CAT scan and we don't have a follow-up
19 from an orthopedic doctor.

20 Now, the State very easily could have gotten
21 the X-rays. They did not. They very easily could
22 have subpoenaed Dr. Kerns to come in and testify.
23 They did not. The reason we don't have the CAT
24 scan and the orthopedic doctors, because she never
25 went for any follow-up on what she believed to be a

1 fractured coccyx. So it's what she believes. And
2 when she goes to the doctor the next day because
3 they failed to examine her wrist, they only mark it
4 down as a possibility. They don't have any
5 confirmation that is what happened. So this
6 moderate bodily injury doesn't include one-time
7 treatment. And that is what she did.

8 You know, I think there are some things that
9 are kind of telling in this case, things that have
10 been -- they tried to use it against Mr. Vincent.
11 He was having a disagreement with his wife or his
12 ex-wife at the time. She testified to that first
13 thing this morning. There was some disagreement
14 about where the kids were going to be dropped off,
15 picked up with the babysitter. They didn't come to
16 a resolution on it, so he came to her place of
17 work.

18 Ms. Peake said, Do you have an appointment?
19 Maybe sarcastically, maybe flippantly he said,
20 Yeah, I've got one with Rosa. She says, Well, go
21 over here and wait, we'll get her.

22 So does he charge back and go looking for Rosa
23 and knocking around? No. He doesn't sit down in
24 the waiting area, but he stands in that general
25 waiting area as those photos have shown multiple

1 times.

2 The distance, maybe it's not a big deal, but
3 it somewhat is to me when you finally get a witness
4 who admits that Ms. Guy was coming at him with her
5 finger raised, so whenever Ms. Peake was testifying
6 and I had her sit there and I took my six paces
7 back this way and she says that, Well, it's
8 actually probably further away than Ms. Guy had to
9 go from the reception desk to where Mr. Vincent was
10 waiting.

11 And I submit to you that if somebody is
12 approaching you the whole time in a fast manner,
13 pointing at you, yelling at you, telling you to
14 leave, when they get close enough to you, it's not
15 unreasonable to push that person away from you.
16 You have no idea what their intentions are. And,
17 as he said, he thought she had something in her
18 hand.

19 So what does he do afterwards? Well, in the
20 immediate situation, does he run up and kick her,
21 hit her again? No. No testimony of that
22 whatsoever. They begin yelling at him. They,
23 Ms. Peake or Ms. Frost, said that there was chaos
24 and commotion and people were yelling, Leave,
25 Leave. Does he run out? No. He somewhat turns

1 around, walks out calmly. So what was he supposed
2 to do? What do they want him to do, stay? They
3 tell him to leave. So why are we going to fault
4 him for leaving? We don't. Because when he finds
5 out that the City of Camden is looking for him, he
6 makes the initial contact and he turns himself in.
7 He apologizes, says he shouldn't have gone there,
8 he didn't want anybody to get hurt.

9 Ladies and gentlemen, I'm sorry for what
10 happened that day. I'm sorry for what happened to
11 Ms. Guy. I know my client is sorry, that she
12 didn't deserve that in any way. But what we ask
13 you to consider, is there enough reasonable doubt
14 to believe, to not believe that this happened
15 unlawfully? Is there enough reasonable doubt to
16 say that if it happened that there was moderate
17 bodily injury?

18 I would ask that you find him not guilty of
19 assault and battery second degree. But I'm also
20 going to ask the judge to charge you with assault
21 and battery third degree, which is a lesser offense
22 of assault and battery second degree. And it does
23 not contemplate the moderate bodily injury.
24 Assault and battery third degree simply states that
25 a person commits the offense of assault and battery

1 in the third degree if the person unlawfully
2 injures another person or offers or attempts to
3 injure another person with the present ability to
4 do so.

5 Again, I'll ask you to find him not guilty of
6 assault and battery second degree and in your
7 careful consideration determine whether he is
8 guilty of assault and battery third degree.

9 Thank you.

10 THE COURT: Ladies and gentlemen, it's 5:00
11 o'clock. You've heard the case, you've heard the
12 closing arguments. What remains is the jury charge
13 and deliberations, and we're not going to stay for
14 all that today. I'll have you come back tomorrow
15 morning at 9:30 and we'll proceed at that time.

16 So have a good evening, and we'll see you back
17 tomorrow morning.

18 MR. KIRINCICH: Your Honor, before they leave,
19 can we approach real quickly?

20 THE COURT: Yes, sure.

21 (WHEREUPON, a bench conference was held
22 in the presence of the jury but out of
23 the hearing of the jury.)

24 THE COURT: We're going to reconvene tomorrow,
25 what time?

1 THE JURY: 9:30.

2 THE COURT: 9:30. Please remember that you
3 cannot discuss the case with anyone. You can only
4 deliberate with people on the jury who have heard
5 the same testimony, received the same evidence.
6 And it would be a violation of your oath to go home
7 and discuss it with some family member or friend.
8 You must base your verdict solely on the evidence
9 which has been presented in this courtroom and
10 through deliberation with your fellow jurors.

11 So have a good evening, and we'll see you
12 then.

13 (WHEREUPON, the jury was excused at 4:57
14 p.m.)

15 THE COURT: Regarding requests of jury
16 charges, Mr. Kirincich mentioned in closing the
17 charge of a lesser offense of assault and battery
18 third. Do you have an objection to that?

19 MR. PAULING: Beg the Court's indulgence.

20 (Pause.)

21 MR. PAULING: The State has no objection, Your
22 Honor.

23 THE COURT: All right. I will charge the
24 lesser. Also, regarding any other requested
25 charges, State or Defense?

1 is inclined to -- I have no objection to the charge
2 he's submitted, Your Honor.

3 THE COURT: All right. I'll read the one that
4 you submitted.

5 MR. KIRINCICH: And, Your Honor, I handed two
6 copies up. One has the footnote attached and one
7 does not. I would assume that the Court would want
8 to hand the one without the footnotes to the jury,
9 but however you decide to do that.

10 THE COURT: Yes, we don't give juries
11 footnotes.

12 MR. KIRINCICH: Yes, sir, that's why I
13 provided two copies.

14 THE COURT: You can bring them on, please.

15 (WHEREUPON, the jury came into open
16 court at 9:56 a.m.)

17 THE COURT: Good morning.

18 THE JURY: Good morning.

19 THE COURT: Welcome back, ladies and
20 gentlemen.

21 Madam Forelady and members of the jury, you've
22 heard the testimony, received the evidence, and
23 heard the arguments of the State and the Defendant.
24 I will now explain to you the law that applies to
25 this case.

JURY CHARGE

THE COURT: Under the constitution and laws of South Carolina, you are the finders of the facts in this case. I do not have the right to pass upon the facts or to even express any opinion that I might have as to the facts because this is a matter solely for you, the jury, to determine. As jurors, then, it is your duty to determine the effect, the value, the weight, and the truth of the evidence presented during this trial.

Now, as the trial judge, it is my responsibility to preside over the trial of the case and to rule upon the admissibility of the evidence offered during the trial. You are to consider only the testimony which has been presented from this witness stand, together with any exhibits which have been made a part of the record. Additionally, I have the duty to charge you the law applicable to this case. And as the presiding judge, I am the sole judge of the law of this case. It is your duty as jurors to accept as correct and apply the law as I now state it to you. Then you will deliberate and reach your verdict.

Finally, I charge you in this regard that you should not be concerned with what you think the law

1 ought to be, but rather what I charge you that the
2 law is.

3 Now, you are also the judges, the sole judges,
4 of the credibility, that is, the believability of
5 the witnesses who have testified and of the
6 evidence which has been presented during this
7 trial.

8 In evaluating credibility, you may take into
9 consideration many things, such as the manner of
10 testifying, whether the witness had a reason to be
11 biased or prejudiced, or whether the testimony of a
12 witness was contradicted on the one hand or
13 corroborated and supported on the other hand. It
14 becomes your duty as jurors to analyze and to
15 evaluate the evidence and determine that evidence
16 which convinces you of its truth.

17 Now, while the arguments of counsel, the
18 lawyers, are a beneficial part of every trial, you
19 should remember that statements made by counsel is
20 not evidence, and they are not evidence. In
21 presenting arguments, counsel often refers to the
22 evidence. However, you should base your verdict on
23 the evidence as you remember it; therefore, if
24 there are any conflicts between the recollection of
25 counsel about the evidence and your own

1 recollection about the evidence, you should rely on
2 your own understanding.

3 Now, the Defendant in this case has not
4 testified. This is his constitutional right. It
5 is not a circumstance that you can take into
6 consideration or even allow to enter into your
7 discussion in the jury room. Under the
8 Constitution of South Carolina and the Constitution
9 of the United States, it is a Defendant's
10 constitutional right not to testify. The burden of
11 proof is upon the State of South Carolina to
12 establish his guilt by competent evidence beyond a
13 reasonable doubt. The fact that the Defendant did
14 not take the witness stand and testify in his own
15 behalf does not create any inference against him.
16 The jury must not permit that fact to weigh in the
17 slightest degree against the Defendant, nor should
18 this fact enter into the discussions or
19 deliberations of the jury in any manner.

20 Now, the fact that the Defendant was arrested,
21 charged, and indicted is not evidence and cannot be
22 considered by you as evidence of guilt in this
23 case, nor does it create any presumption or
24 inference of guilt. An indictment is simply the
25 formal written instrument which contains the charge

1 made against the Defendant. An indictment is a
2 formal document by which a case is brought into
3 court.

4 The Defendant has pled not guilty to the
5 charges in the indictment, and that plea places the
6 burden on the State to prove the Defendant guilty.
7 A person charged with committing criminal offenses
8 in South Carolina is never required to prove
9 himself innocent.

10 I charge you that it is an important rule of
11 the law that the Defendant in a criminal trial, no
12 matter what the seriousness of the charge may be,
13 will always be presumed to be not guilty of the
14 crimes for which the -- or crime for which the
15 indictment was issued unless guilt is proven by
16 evidence satisfying you of that guilt beyond a
17 reasonable doubt.

18 The presumption of innocence does not end when
19 you begin your deliberations; but it accompanies
20 the Defendant throughout the trial until you reach
21 a verdict of guilt based upon evidence satisfying
22 you of that guilt beyond a reasonable doubt. The
23 presumption of innocence is like a robe of
24 righteousness placed about the shoulders of the
25 Defendant which remains with the Defendant until it

1 has been stripped from the Defendant by evidence
2 satisfying you of the Defendant's guilt beyond a
3 reasonable doubt.

4 Now, presumption of innocence is not a mere
5 legal theory, it's not just a legal phrase. It is
6 a substantial right to which every Defendant is
7 entitled unless you, the jury, are satisfied from
8 the evidence of the guilt of the Defendant beyond a
9 reasonable doubt.

10 The State must prove the Defendant guilty
11 beyond a reasonable doubt. So, what is a
12 reasonable doubt in the law? A reasonable doubt is
13 a doubt which makes an honest, sincere,
14 conscientious juror in search of the truth to
15 hesitate to act. Proof beyond a reasonable doubt
16 must therefore be proof of such a convincing
17 character that a reasonable person would not
18 hesitate to rely and act upon it in the most
19 important of his or her own affairs.

20 Proof beyond a reasonable doubt can also be
21 described as proof that leaves you firmly convinced
22 of the Defendant's guilt. There are very few
23 things we know in this world with absolute
24 certainty, and in criminal cases, the law does not
25 require proof that overcomes every possible doubt.

1 If, based on your consideration of the evidence,
2 you are firmly convinced that the Defendant is
3 guilty, then you must find him guilty. If, on the
4 other hand, you think that there's a real
5 possibility that he is not guilty, then you must
6 give him the benefit of the doubt and find him not
7 guilty.

8 The Defendant is charged with the offense of
9 assault and battery in the second degree. The
10 State must prove beyond a reasonable doubt that the
11 Defendant unlawfully injured another person or
12 offered or attempted to injure another person with
13 the present ability to do so, and either moderate
14 bodily injury to the person results or moderate
15 bodily injury to the person could have resulted.

16 And moderate bodily injury means a physical
17 injury that results in a fracture or dislocation.
18 Moderate bodily injury does not include one-time
19 treatment and subsequent observation of scratches,
20 cuts, abrasions, bruises, burns, splinters, or any
21 other minor injuries that do not ordinarily require
22 extensive medical care.

23 Included in the greater offense of assault and
24 battery second degree is the lesser offense of
25 assault and battery third degree. If you determine

1 the State has not proven assault and battery in the
2 second degree beyond a reasonable doubt, you should
3 then consider whether the State has proven beyond a
4 reasonable doubt the guilt -- that the Defendant is
5 guilty of assault and battery in the third degree.
6 A person commits the offense of assault and battery
7 in the third degree if the person unlawfully
8 injures another person or offers or attempts to
9 injure another person with the present ability to
10 do so and the extent of the injury does not
11 constitute moderate bodily injury.

12 Madam Forelady and members of the jury, I'm
13 required to charge you the law as I have done
14 through these instructions. They are now being
15 given to help guide you to a just and lawful
16 verdict. Whether some of these instructions will
17 apply will depend upon what you find to be the
18 facts. The fact that I have instructed you on
19 various subjects on this case should not be taken
20 as indicating an opinion of the Court as to what
21 you should find to be the facts or what your
22 verdict should be.

23 Now, you have been chosen and sworn to give
24 the parties in this case a fair and impartial
25 trial. When you have done so, you will have

1 complied with your oath and no one will have the
2 right to criticize your verdict. You must not be
3 influenced by opinions or expressions of opinion
4 that you may have heard outside of the courtroom,
5 but, rather, to base your verdict solely on the
6 testimony of the sworn witnesses who took the
7 stand, the exhibits received into evidence, and the
8 law which I have stated. You should not be swayed
9 by caprice, passion, prejudice, or improper
10 sympathy for or against anyone in this case.
11 Remember, you have no friends to reward or enemies
12 to punish, and all parties are entitled to a fair
13 and impartial trial.

14 It is your duty as jurors to consult with one
15 another and to deliberate in an effort to reach an
16 agreement. Each of you must decide this case for
17 yourself, but only after impartial consideration of
18 all the evidence with your fellow jurors. And, of
19 course, in your deliberations, do not hesitate to
20 re-examine your own views and change your position
21 if you become convinced it is erroneous. However,
22 do not surrender your honest conviction as to the
23 weight or effect of the evidence solely because of
24 the opinion of your fellow jurors, or for the mere
25 purpose of returning a verdict.

1 As I stated earlier, you are the judges,
2 judges of the facts. Your verdict must represent
3 the considered judgment of each juror. In other
4 words, your verdict must be unanimous.

5 And you may have noticed that I have read
6 these instructions. I do so to give you the law as
7 accurately as possible. I'm going to give you a
8 copy of these instructions to have in the jury
9 room. You may refer to them to assist in your
10 deliberations. You must consider the instructions
11 as a whole and may not follow some and ignore
12 others.

13 Madam Forelady, it will be your duty to
14 preside over the deliberations of the jury.

15 If during your deliberations you should desire
16 to communicate with the Court, please reduce your
17 message or question in writing -- to writing,
18 signed by your foreperson, and the foreperson only,
19 and pass the note to the bailiff, who will bring it
20 to my attention. I will then respond as promptly
21 as possible either in writing or by having you
22 return to the courtroom. I caution you, however,
23 with regard to any message or question you might
24 send that you should never state or specify your
25 numerical division at the time.

1 Now, you've heard the evidence and you've
2 heard the law. Whatever your verdict, Madam
3 Forelady, you will indicate it on the verdict form,
4 which will be submitted to you. And the verdict
5 form will either be that: We, the jury, by
6 unanimous consent, find the Defendant guilty of
7 assault and battery second degree, or, Guilty of
8 assault and battery third degree, or, Not guilty.
9 And certainly there is no preference in the -- or
10 suggestibility in the order which I state them.
11 One must be stated first. And you will indicate
12 the verdict by checking the appropriate box and
13 sign and date the verdict.

14 Remember that although the foreperson is the
15 only juror who writes the verdict, it is not hers
16 alone. The verdict has to be unanimous. And,
17 Madam Forelady, you're not authorized to write the
18 verdict until all of you have agreed on the
19 verdict.

20 Now, ladies and gentlemen, I'm going to send
21 you to your jury room. We have 14 jurors. We
22 picked two extras in case some of you fell by the
23 wayside along the way. Out of the first 12, if
24 anyone cannot continue participating out of the
25 first 12, if any of you cannot continue

1 participating with the deliberations, raise your
2 hand, please.

3 (WHEREUPON, there was no response.)

4 THE COURT: Everyone seems to be good to go,
5 which means that when the first 12 goes in, the two
6 alternates will remain with us here in the
7 courtroom.

8 But do not begin to discuss the case until you
9 have received a copy of this jury charge, the
10 verdict form, and the exhibits. Once you receive
11 these things, that will be your signal to begin
12 your deliberations. Once you begin your
13 deliberations, you will deliberate until you have
14 reached a verdict, at which time you will knock on
15 the door, advise the bailiff, and we will receive
16 you out -- we will bring you out to receive your
17 verdict.

18 Please go to the jury room.

19 (WHEREUPON, the jury retires to the jury
20 room at 10:15 a.m.)

21 THE COURT: Any additions or exceptions to the
22 charge?

23 MR. PAULING: None.

24 MR. KIRINCICH: Are we releasing the two
25 jurors before we argue any matters of law, Your

1 Honor?

2 THE COURT: No, sir. They'll be right there.
3 We've got the jury deliberating.

4 MR. KIRINCICH: Yes, sir.

5 MR. PAULING: None from the State, Your Honor.

6 MR. KIRINCICH: None, Your Honor.

7 THE COURT: All right. Very good.

8 So you all can confer about those exhibits.
9 We are making some edits here on our charge to the
10 jury.

11 To the alternates, first, thank you all very
12 much. I hope you enjoyed the experience. Do y'all
13 want to go back and deliberate anyway, or are you
14 satisfied to leave?

15 THE ALTERNATES: We are satisfied to leave.

16 THE COURT: We can only use 12. We'd love to
17 use 13 or 14, but the law only lets us use 12. Of
18 course, if for some reason something happens to
19 three of them and we only have two, then we have to
20 declare a mistrial and come back and do it all over
21 again because we must have 12 people. And
22 sometimes when you don't get enough alternates, you
23 end up with 11 and you have to quit because you've
24 got to have 12. So we picked 14. We can't use
25 you, but thank you very much.

1 find that Bojangle's like we were talking about
2 earlier during the term of court. So let us know
3 if you want lunch ordered, and we'll address that
4 as quickly as possible. That is probably the first
5 thing you should let the bailiff know.

6 But that is the response to your question.

7 Thank you very much.

8 (WHEREUPON, the jury resumes
9 deliberations at 11:51 a.m.)

10 THE COURT: Any additions or exceptions by the
11 State or Defense?

12 MR. PAULING: None from State, Your Honor.

13 MR. KIRINCICH: No, sir, Your Honor.

14 THE COURT: All right. We will wait for the
15 jury.

16 (Break.)

17 THE COURT: I understand there is a verdict,
18 and you can bring them in.

19 (WHEREUPON, the jury came into open
20 court at 12:14 p.m.)

21 THE COURT: Madam Forelady, if you will stand
22 for me.

23 (Forelady stands.)

24 THE COURT: Have you reached a verdict?

25 THE FORELADY: We have, Your Honor.

1 THE COURT: Is it unanimous?

2 THE FORELADY: Yes, sir.

3 THE COURT: All right. If the Defendant will
4 stand, please.

5 (Defendant stands.)

6 THE COURT: You may pass it up. You may be
7 seated.

8 (Forelady seated.)

9 (Court views verdict form.)

10 THE COURT: You may publish the verdict.

11 THE CLERK: State of South Carolina, County of
12 Kershaw. State of South Carolina v. David O'Neil
13 Vincent. Case Number 2016-GS-28-0380.

14 We, the jury, unanimously find the Defendant,
15 David O'Neil Vincent, as to the charge of assault
16 and battery in the second degree: Guilty.

17 Signed by the foreperson, Jessica Duke.

18 August 11, 2017. Camden, South Carolina.

19 THE COURT: All right.

20 THE CLERK: If the jury would please stand.

21 (Jury stands.)

22 THE CLERK: Madam Forelady and ladies and
23 gentlemen of the jury, if this is your verdict,
24 please signify by raising your right hand.

25 (All jurors raised their hands.)

1 THE CLERK: Thank you. You may be seated.

2 (Jury seated.)

3 THE COURT: The verdict appears to be
4 unanimous. Any individual polling requested by the
5 State or the Defense?

6 MR. PAULING: None from the State, Your Honor.

7 MR. KIRINCICH: No, Your Honor.

8 I will just note that if Ms. McCurdy did not
9 get it, that all 12 stood up and raised their right
10 hand that that was the verdict.

11 THE COURT: Did you get that?

12 THE COURT REPORTER: Yes, sir.

13 THE COURT: She got it. How many years have
14 you been on this now?

15 THE COURT REPORTER: 38 years.

16 THE COURT: 38 years. She got it.

17 Well, any post-trial motions?

18 MR. PAULING: None from the State, Your Honor.

19 MR. KIRINCICH: Not at this time, Your Honor.

20 I believe we have ten days to file any post-trial
21 motions.

22 THE COURT: If granted by the Court.

23 MR. KIRINCICH: I would ask for ten days, this
24 being Friday afternoon, that we have ten days to
25 file any post-trial motions.

1 THE COURT: Any objection by the State?

2 MR. PAULING: None from the State, Your Honor.

3 THE COURT: The Court will grant ten days for
4 filing any post-trial motions. However, we will
5 not delay sentencing.

6 MR. KIRINCICH: Yes, sir.

7 THE COURT: All right. Thank you.

8 Ladies and gentlemen, if you find a person
9 guilty, then it becomes my responsibility to
10 sentence. And I certainly want to thank you for
11 your service. You have no role in sentencing, but
12 I usually invite the jury to stick around, and most
13 jurors wants to stick around to the end of the
14 matter. And we'll proceed into that at this time.

15 I'd like to get the forelady and Madam Clerk
16 to write on the indictment itself the verdict and
17 sign and date it in that spot.

18 (Forelady and clerk comply.)

19 THE COURT: Ladies and gentlemen, I certainly
20 want to thank you for your service. That was a
21 very good question that you asked. This statute
22 involving assault crimes has been -- the
23 legislature has been quite busy over the years
24 changing and modifying and rewriting the assault
25 statute. About 10 years or so, and throughout

1 many, many years, the level of assault charges were
2 assault, simple assault, for which you could get 30
3 days, and then it jumped from that to assault and
4 battery of a high and aggravated nature that
5 carries up to 10 years. Then assault and battery
6 with intent to kill carried 20 years, and then
7 above that was murder, which carried 30 years to
8 life. So the types were stiffer. The legislature
9 went through rewriting that portion of the law
10 under the Omnibus Crime Bill, I think it was 2009,
11 and they created these different levels of assault
12 so that there wouldn't be a gap between 30 days and
13 10 years for certain types of assault. So they
14 came up with assault third degree, which carries 30
15 days; assault second degree, which carries up to
16 three years; and assault first degree, that carries
17 up to 10 years. Then they had to draw a
18 distinction between the three. And assault first
19 degree is where serious bodily injury occurred or
20 could have occurred. Assault second degree is
21 where moderate bodily injury occurred or could have
22 occurred or the person attempted for it to occur.
23 And third degree is where -- sort of the same as
24 the simple assault statute where -- of course, they
25 wrote into the statute that what did not constitute

1 moderate injury, such as someone gets hit and has a
2 bruise, a scratch, scrape versus something a little
3 more extensive that's moderate.

4 The problem being is that the people who write
5 the laws in the legislature, they are not always
6 medically trained to define these injuries. So I
7 only read and gave you all a portion that applied
8 to this particular case. There are also some
9 others that may cause the person to be -- surgery
10 with anesthesia can be second degree.

11 Inappropriate touching of someone could be a second
12 degree assault. And some other things that did not
13 apply to this case. But it has been a struggle for
14 the Courts to apply this definition because the
15 legislators who wrote this portion of the law, they
16 are not doctors and they are trying to define
17 moderate injury as part of it.

18 So it was a good question because it is
19 something that the lawyers and legislature --
20 lawyers and legislators and judges have been
21 struggling -- and juries -- have been struggling to
22 figure out exactly what it means.

23 Now, with respect to this offense, the
24 Defendant has been convicted of assault and battery
25 second degree. And, as I indicated, the maximum

1 penalty is up to three years' imprisonment.

2 I will hear from the State.

3 MR. PAULING: Your Honor, may it please the
4 Court?

5 Your Honor, you've heard the facts of the
6 case. As to sentencing, Your Honor, we leave that
7 fully in your discretion.

8 Your Honor, at the appropriate time, Ms. Guy,
9 I believe, would like to address the Court.

10 THE COURT: Okay. I will be happy to hear
11 from her, and anyone else who wants to say
12 anything.

13 Yes, ma'am?

14 MS. GUY: First of all, I do appreciate your
15 job here. I know as a teacher I've held a big desk
16 at the front of the room, and it's not a
17 comfortable spot, I realize. I appreciate you and
18 the jurors. I certainly appreciate your job today,
19 and certainly my attorney.

20 This has been a very difficult experience for
21 me. There's not a day that has gone past that I
22 haven't thought about this. It's been a long time
23 since it happened. The delays that it has taken to
24 get here have been an extra sufferance that I've
25 endured. And I feel that I gave him an opportunity

1 to have the benefit of a lesser sentence. And
2 throughout this entire experience and through my
3 experience with him is arrogance and, I'm not sure
4 what to call it, but I just feel that there is a --
5 I would just -- and I feel like it will -- I feel
6 like -- I just feel that -- I would like the record
7 to show and the punishment to reflect his defiance,
8 continual defiance that I've suffered through and
9 endured with this.

10 THE COURT: What do you mean when you say "his
11 defiance"?

12 MS. GUY: The continual putting off of this
13 case. He has -- the relationship that I have with
14 his ex-wife that led us to this situation that has
15 exacerbated all this. And he has continuously
16 pushed to make this worse in so many ways. He has
17 continuously harassed Ms. Vincent in order to beg
18 me through his daughter to drop the charges, and
19 various things like that.

20 It has been two years of hell. And, again, I
21 feel like I've given him an opportunity to take a
22 lesser charge than the punishment is, and he
23 insists over and over again in having his way.

24 THE COURT: Tell me again -- I know you --
25 tell me again on that day what he did to you.

1 MS. GUY: He entered the store there, the
2 salon, and I didn't realize he had entered the
3 salon. He had been calling that morning and lying
4 about why he was calling, being deceptive with
5 Brandi, saying he needed to speak to Rosa,
6 impersonating other people, which he often did. He
7 had been texting Rosa all morning harassing her
8 about seeing the kids or not getting the kids,
9 about the whole babysitter situation. And I was
10 there with her, and I was just telling her, you
11 know, just stop texting back and forth, you know,
12 just go about your work and let's just leave this
13 situation alone. And she wasn't exacerbating it,
14 she was just trying to work.

15 And so we thought he had stopped and -- I
16 thought he had stopped. And she was working and,
17 luckily, she was out of the room. And I was up
18 front with Brandi. And she said, Is that David?
19 Because she wasn't aware of what he looked like.
20 And I believe the way he knew where her station was
21 was because Rosa's child has been in there many
22 times, the child that he insisted on bringing to
23 court yesterday, which was very inappropriate. I
24 believe he knew where her desk was because he asked
25 the child where it was and it's not hard to find if

1 you go straight back.

2 And so I looked and I saw him, and out of just
3 sheer just disbelief, I just -- I walked over to
4 him -- and it was from the side, I saw him from the
5 side, and so I just -- was just kind of sheer
6 disbelief that he had walked in there. And so I
7 just walked around to him, and I just walked around
8 and addressed him, and I just said -- like I would
9 a student who was in my classroom who wasn't
10 supposed to be there, or something. I just said,
11 You're not supposed to be here. You need to leave.

12 And he just charged at me. Picked me up by
13 the neck and threw me and said, You're -- I'm tired
14 of you always getting -- and all I remember is
15 that, because at that point I was being thrown. He
16 was angry at me because I got him -- I helped his
17 wife get out of an abusive marriage with him. I
18 believe that he was there to hurt her and I believe
19 that I got in the way. Happy I got in the way,
20 because I feel like I got the blunt of that rather
21 than her.

22 THE COURT: How were you -- as far as
23 describing your injuries, tell me again how you
24 describe them. He threw you and you hit the floor?

25 MS. GUY: I hit the floor.

1 THE COURT: Your head hit the floor?

2 MS. GUY: And landed very hard on my backside
3 and straining not to hit my head, because I was
4 really worried I was going to hit the floor with my
5 head and strain my neck. And I must have kind of
6 like reached over to catch myself with my hand
7 because that was when I sprained my wrist. And I
8 was just -- I mean, he flung me. He picked me up
9 and flung me. And one of the things Rosa told me
10 later was that he would do the same to her. And he
11 would pick her up, he would push her and do the
12 same with her, but he was used to doing that to a
13 200-pound woman at the time. She's lost weight.
14 But he was used to doing that with a much bigger
15 woman, so when he did that with me, airborne with
16 me. And he was just very angry.

17 THE COURT: And the tailbone injury that you
18 have, does it affect you now?

19 MS. GUY: Yes, it really does. It's painful.
20 It's just one of those things that -- I mean,
21 yesterday, sitting here all day, it was just -- I
22 don't know, I don't know how long those things take
23 to get over, but it's just -- and maybe -- it's
24 just really sore.

25 THE COURT: Do you still work there?

1 MS. GUY: Yes, I have -- I have -- yes, I do
2 have some things there for sale and do still
3 frequent there.

4 THE COURT: What is it that you sell?

5 MS. GUY: Handmade products.

6 THE COURT: Like?

7 MS. GUY: Like pillows and candles and things
8 made in South Carolina and Tennessee.

9 THE COURT: What would you like to see happen
10 to him?

11 MS. GUY: I feel like -- I feel like he
12 deserves a longer punishment than what I offered
13 him because, again, that was -- I was trying to be
14 nice, you know, and I didn't have to be for any
15 reason whatsoever. I'd like to see some sort of
16 probation attached to -- I would like to see some
17 sort of prison. And I say that because I'm scared
18 every day. I have been scared ever since he did
19 this.

20 THE COURT: Do you know him?

21 MS. GUY: Oh, yes, I know him.

22 THE COURT: Did you know him before then?

23 MS. GUY: Yes. Because, again, I helped his
24 wife get out of their abusive marriage, physically
25 went to his house and removed her belongings and

1 her and their children's belongings, helped her get
2 out of that marriage.

3 THE COURT: So you have reason to believe he
4 was angry with you --

5 MS. GUY: Yes.

6 THE COURT: -- when he came in there that day?

7 MS. GUY: Yes.

8 THE COURT: All right. Who's the guy on the
9 front row there?

10 MS. GUY: That's my husband.

11 THE COURT: You think he wants to say
12 something?

13 MS. GUY: I'm sure he would like to.

14 THE COURT: I'll hear anything else you'd like
15 to say, and I'll speak with him as well. Did you
16 want to say anything else or you want him to talk
17 first?

18 MS. GUY: The situation with the children is
19 bothersome to me. I do think that there should be
20 continued probation in there because I want him to
21 be monitored for the children's sake, that his
22 behavior is kept in check because, like I said,
23 when he did that, my first thought that went
24 through my head was that what's -- because I
25 thought he had the kids with him and I thought he

1 was going to hurt the girls to get back at Rosa.
2 And as you can see by him bringing Caroline in the
3 courtroom yesterday, that's scarring to a child.
4 It's not something that a loving parent would do.
5 I want -- I'm concerned for those girls.

6 Thank you, Your Honor. Thank you.

7 THE COURT: Yes, sir?

8 MR. GUY: Thank you for this opportunity. I
9 just want to say it has been very traumatic for her
10 and for myself because I have to worry about her
11 all the time. I can't leave her at home alone, she
12 gets upset. I have to check on her all the time.
13 I work at night. It's just been crazy. And I
14 don't see it ending. She's beside herself over
15 this stuff, and if he doesn't get something, at
16 least worth the trouble she's been through and my
17 family has been through, and the children seeing
18 her upset, our children, it's not going to help.
19 It's not going to correct itself. The only thing
20 that's going to do that is if he gets a deserved
21 time for what he's done.

22 And I've been angry, you wouldn't believe,
23 over this. And I'd like to honor the law, but if
24 something doesn't get done here -- I can't tell you
25 how angry I am. That's all I'll say.

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

2 Mr. Pauling?

3 MR. PAULING: Your Honor, that's all the State
4 would have. He has no prior record, Your Honor.

5 THE COURT: If the Defendant will come around.
6 (Defendant approaches.)

7 THE COURT: Mr. Kirincich?

8 MR. KIRINCICH: Thank you, Your Honor. Your
9 Honor, if you have any questions I think about what
10 Ms. Guy told the Court, hopefully I can answer some
11 of them, and if I don't, you can ask me. My client
12 may want to say something, Your Honor. I think he
13 still has some rights that he needs protected with
14 us having the 10 days for post-trial motions.

15 Your Honor, as Solicitor Pauling ended with,
16 Mr. Vincent has no prior record at all. He's 44
17 years old. He has been a professional truck driver
18 for 22 years. He has his commercial driver's
19 license. Currently he works as an independent
20 contractor, but stays mainly employed through a
21 beverage distributor in Louisville, Kentucky. He's
22 been living there while on bond for this charge.
23 He runs routes through Kentucky, Indiana, and Ohio,
24 delivering a variety of beverages to a store -- or
25 through his beverage distributor.

1 Your Honor, he previously worked as a truck
2 driver at the Wal-Mart Distribution Center in
3 Pageland. He left that job when he moved to
4 Kentucky. Before that he had been employed by
5 FedEx as a long-haul truck driver. So throughout
6 the 22 years, he's had his CDL and has remained
7 employed and out of trouble.

8 Your Honor, I understand that the victim in
9 the case seeks punishment, and we can understand
10 why. We put this on record earlier this week, Your
11 Honor. Mr. Vincent had offered to plead guilty to
12 the charge. We were asking for a recommendation of
13 probation. We offered to pay restitution for what
14 medical bills she had incurred. We were told at
15 that time that restitution was not important in
16 this case, but they did not want a recommendation
17 of probation.

18 Your Honor, we countered with an offer to
19 plead to assault and battery third degree with a
20 sentence of 30 days in jail. We were again
21 rejected on that offer. We countered with 60 days
22 in jail and a year probation and restitution for
23 the medical bills.

24 Your Honor, I think that there was some issue
25 and question here with the moderate bodily injury.

1 We -- up and through the trial, we requested
2 discovery. We received certain medical records.
3 In my closing I referenced that we never received
4 medical records, such as the X-ray or testimony the
5 jury could hear from Dr. Kerns that may have
6 actually answered the question in our mind
7 previously if this was a fracture or not. And I
8 understand the issue may come down to "could have"
9 occurred. And, Your Honor, unfortunately, that is
10 the way our law reads. I think injury can occur
11 with any assault and battery with -- every day, we
12 all face the possibility that injury could or could
13 have occurred when we slip and fall.

14 So I think it's inartfully written, and I
15 think the Court explained that to the jury. And I
16 think it was actually just modified within the last
17 two years when they redid the DV statute.

18 We understand what the jury has come back
19 with, Your Honor.

20 THE COURT: I think it's a good thing they
21 rewrote it from the way -- from 30 days to 10
22 years. There's a need for something in between.

23 MR. KIRINCICH: Yes, sir, definitely, most
24 definitely. So when we come down to the
25 sentencing, so what is the punishment that he

1 should receive? Well, Your Honor, again, we've put
2 on record what our plea negotiations were,
3 including active jail time for Mr. Vincent. He had
4 to make arrangements with work to make sure that
5 that could be effectuated. Your Honor, he had to
6 bring his daughter with him in anticipation of
7 going to jail. And I'll get back to that because I
8 want to talk about some other things first.

9 So punishment, Your Honor, the stress of this,
10 everything that's been going on with the divorce,
11 with their custody situation, Mr. Vincent is
12 currently taking 12 prescriptions for a total of
13 about 15 pills a day. So in the time that I've
14 been representing him, he had a neurological issue.
15 I thought it was close to a stroke. I was told by
16 doctors it wasn't a stroke, but that required him
17 to be hospitalized for some time. I think after he
18 got to Louisville, he was referred to a specialist
19 there. At some time I provided those records to
20 the Solicitor's Office to show why Mr. Vincent
21 could not come to a role call. He was excused at
22 the time.

23 Your Honor, the case was scheduled for trial
24 this fall and I believe -- and I don't know what
25 Ms. Guy has been told by the Solicitor's Office

1 because she has indicated that Mr. Vincent was
2 unnecessarily delaying this. It was scheduled for
3 trial in the spring in front of Judge McMahon. The
4 month before that, Mr. Vincent had a massive heart
5 attack. I provided documentation of that to the
6 Solicitor's Office. They still noticed him for
7 trial. I indicated that I planned to ask for a
8 continuance. Mr. Vincent got notice --

9 THE COURT: When was that, you said?

10 MR. KIRINCICH: I planned to ask for a
11 continuance in front of Judge McMahon that Monday
12 of court.

13 THE COURT: When was that?

14 MR. KIRINCICH: April.

15 MR. PAULING: I can't remember.

16 MR. KIRINCICH: April, Your Honor, of 2017.
17 Against doctors orders, Mr. Vincent traveled here
18 to South Carolina. I did not ask for a
19 continuance. I told Judge McMahon that I would be
20 prepared to try the case picking the jury on
21 Tuesday. Judge McMahon read the medical
22 documentation and he did not want to put
23 Mr. Vincent through the stress of going through
24 trial, so Judge McMahon asked us to try it in June
25 of this year.

1 Your Honor, I don't really want to publish
2 this to everybody, but I asked for a continuance in
3 June because my wife had a miscarriage, so I was
4 unavailable for court that week. The Solicitor's
5 Office very generously had no problem continuing
6 the case.

7 In July, Your Honor, you were here, the other
8 cases had day certians for that week and were held.
9 So I don't believe that Mr. Vincent has tried to in
10 any way avoid this. He asked for a trial
11 originally. He offered some concessions in
12 pleading to the charge and the reasons for
13 continuance were mostly beyond his control.

14 Your Honor, there was discussion about him
15 bringing his daughter here today. This case all
16 originated because of a disagreement that Mr.
17 Vincent was having with his wife. And I think she
18 testified the divorce had been finalized in
19 September, documentation we had from this case said
20 the divorce had not been finalized at the time, but
21 still there was an agreement for custody. She had
22 primary custody. He had visitation to see the
23 children, to keep the children. He actually had
24 physical custody of both girls on this day, but
25 they were going to be turned over to Ms. Rosa

1 Vincent sometime that Friday or over the weekend
2 with a babysitter. Now, there was a name mentioned
3 earlier in the trial, Ms. Terry Ward. That was not
4 our understanding of who the caregiver was going to
5 be at the time. Mr. Vincent was concerned about
6 dropping the girls off with a babysitter with the
7 uncertainty of Ms. Vincent actually being there.

8 THE DEFENDANT: Her age.

9 MR. KIRINCICH: As it turned out, and I think
10 Detective Lloyd investigated this at the time,
11 Ms. Vincent had a trip out of town planned for that
12 weekend and she testified to a conference. And she
13 had plans to leave the girls for some period with
14 this babysitter. After she was advised not to by
15 the City of Camden Police Department, she canceled
16 that and took custody of the girls.

17 Your Honor, this was not a normal situation
18 that was going on with Mr. Vincent's children at
19 the time. Your Honor, I provided these photos to
20 the Solicitor's Office. I would like to show them
21 to the Court. Your Honor, I don't know if you've
22 made any recognition of the child that was in here
23 yesterday or not, I don't know if you happened to
24 see --

25 THE COURT: Yes.

1 MR. KIRINCICH: She is 11 and a half now, Your
2 Honor. During the divorce -- Your Honor, this case
3 came up in September -- excuse me, October of 2015.
4 These are pictures of his daughter, this is both
5 Caroline and Casey. This is Caroline and what she
6 had been doing to herself while the divorce was
7 going on. It's a condition called
8 trichotillomania. It's connected to obsessive
9 compulsive disorder and stress, and it's mostly
10 seen in young girls. What they do is they pull out
11 hairs, so -- whether it's one at a time or multiple
12 hairs by the chunk. They pull out hairs. Mr.
13 Vincent and his wife did not know what was going on
14 with her. So it led to -- by Halloween, Your
15 Honor, and shortly thereafter, she had pulled out a
16 large majority of her hair.

17 Your Honor, that was a stressful situation for
18 both Mr. and Ms. Vincent. And then compounded with
19 the fact that he was being instructed to drop the
20 girls off with a babysitter, who he believed to be
21 underage and the children were going to be staying
22 there an extended period of time while their mother
23 was away at the conference. He suggested leaving
24 the children with his mother or his sister, someone
25 who was an adult. They had gone back and forth on

1 the phone, text messages, phone calls. It got to
2 the point, I think, where Ms. Vincent was no longer
3 accepting calls or texts from him, so his sister
4 contacted her. There was no response. Mr. Vincent
5 being a truck driver, he was heading out of town
6 that afternoon, stopped by her place of business
7 for the first time ever, he'd never been in there,
8 to physically talk to her to get some confirmation
9 on what was to be done with the children.

10 Your Honor, the reason that he was hesitant to
11 drop the kids off with a babysitter who he did not
12 know and who was possibly underage is because that
13 summer Caroline had been with a babysitter who was
14 underage who allowed the girls to ride horses.
15 Caroline fell off the horse. Nobody took her to
16 seek any medical treatment. It was sometime later
17 when Mr. Vincent picked up his children that he was
18 informed that she had an injury to her foot. So
19 he's the one that took her to the emergency room.

20 Your Honor, also, under care of others, the
21 girls have -- one of the girls burned herself with
22 a hot iron. His youngest daughter was being sent
23 to school in shoes that were at least three inches
24 too big. This was a tough situation for him to be
25 in with the girls. As it turns out, through the

1 process Ms. Vincent did keep custody of both girls
2 with Mr. Vincent paying child support and having
3 visitation.

4 Your Honor, since this case was last scheduled
5 for court in June, I believe Ms. Rosa Vincent had
6 been in touch with the Solicitor's Office.

7 Mr. Vincent has informed me that she could no
8 longer deal with Caroline and her behavioral
9 issues. She asked Mr. Vincent to take physical
10 custody of Caroline. He brought her to court
11 yesterday so she could go with her mother.

12 Your Honor, in my office, Mr. Vincent told his
13 daughter that her mother loved her very much, that
14 she needed to go with her mother, because the child
15 was refusing. Ms. Vincent did not want the child
16 in here. We offered another place for her to go.
17 At the time she would not leave her father. I
18 don't know why exactly. But we offered another
19 place. He asked her to stay in our office, our
20 administrative assistant would have been more than
21 glad to look after her for the time being until her
22 mother was done. And her mother did end up taking
23 her, but it was after Mr. Vincent directed his
24 daughter to obey the rules and to go with her
25 mother.

1 THE COURT: Where are the grandparents?

2 MR. KIRINCICH: Your Honor, his mother is in
3 Kershaw. She was not available yesterday. I don't
4 know --

5 THE DEFENDANT: My sister -- she had to take
6 my nephew to the doctor and she couldn't be here.

7 MR. KIRINCICH: So, Your Honor, the idea
8 was -- Mr. Vincent actually called Ms. Vincent last
9 week and said that there was a possibility that he
10 was going to -- or earlier this week, I'm sorry.

11 MR. PAULING: This week.

12 MR. KIRINCICH: This week, that he was going
13 to be going to jail and would need her to come to
14 take Caroline back for right now.

15 Your Honor, I understand this was a violent
16 act as perceived by the witnesses and as felt by
17 Ms. Guy. Your Honor, I think that Mr. Vincent was
18 driven by the stress of the situation. Ms. Guy had
19 in some way -- and I'm not saying with any bad
20 intentions -- had asserted herself into the
21 separation of Mr. and Ms. Vincent.

22 There are some other allegations that Mr.
23 Vincent has been -- I don't mean this -- he's been
24 hung up on, of some things that happened during the
25 time that she said they were removing items from

1 the house. Law enforcement had to be called at
2 that time because items were being removed that
3 were not part of the court order. There was an
4 allegation that somebody in their party produced a
5 firearm in order to get Mr. Vincent to back down
6 from his assertions that they were taking property
7 that was not part of the court order. There has
8 been a lot -- Your Honor, you're hearing a lot now
9 that was not part of the trial. And the Solicitor
10 and I, I think, both worked to keep a lot of this
11 out because it wasn't really relevant to this. We
12 didn't want to open the door to some other
13 allegations of problems on both sides in the
14 marriage.

15 But what it all boils down to, Your Honor, is
16 this is a man with no record, who during the heat
17 and passion of a disagreement with his wife
18 involving the custody and care of his children went
19 to see her before he left town to try to finalize
20 arrangements for her. He's a working man. He has
21 always worked. He works now. His wife had asked
22 him to take custody of their daughter who has some
23 mental health issues that she was not equipped to
24 deal with.

25 I understand Ms. Guy has indicated that she is

1 scared of Mr. Vincent. He has lived out of state
2 for over a year. I don't believe he has had any
3 contact with her. There were some text messages
4 where I think both Mr. Vincent and his daughter
5 Caroline sent messages to his wife -- or ex-wife,
6 Rosa Vincent, asking her to talk with Trish about
7 the dismissal of these charges.

8 As it turns out, what happened is the
9 screenshot pictures are sent to Ms. Guy who then
10 turns it over to the Solicitor, who turns it over
11 to me. So he did, he did ask his wife who he
12 knew -- or his ex-wife, who he knew to be friends
13 with Ms. Guy to help him out. He didn't want to
14 lose his job over this.

15 Your Honor, I deal with these cases more often
16 than I should, and they don't often end with us
17 going to trial. Many of these cases are resolved.
18 As this gentleman has no prior record, many of
19 these cases are resolved through pretrial
20 intervention. Many of these cases are resolved
21 through pleas to lesser charges or pleas with
22 recommendation of probation. We tried all that and
23 were denied at every turn.

24 Your Honor, respectfully, today I ask that the
25 Court consider a probationary sentence for

1 Mr. Vincent. Your Honor, if you were to send him
2 to prison, that would mean that you would have to
3 send him away for more than 90 days. Your Honor,
4 we think that would be detrimental to him
5 professionally. It would be detrimental to his
6 daughter, who he just recently took physical
7 custody of. And, Your Honor, while it would be
8 punitive, I don't really know that it would aid in
9 the pursuit of justice in this case. I think that
10 can be achieved through probation, through the
11 payback of restitution, if so ordered.

12 The only thing that I would ask, Your Honor,
13 is if the Court orders restitution that we be
14 provided some documentation. We've not gotten
15 anything at this point.

16 THE COURT: All right. Mr. Vincent, anything
17 you would like to say?

18 MR. KIRINCICH: Your Honor, can I just advise
19 him?

20 THE COURT: Yes, sir.

21 (Pause.)

22 THE DEFENDANT: I want to leave everything
23 like it was. I want to say I'm sorry for
24 everything that happened. I didn't mean no harm to
25 anybody. I was under a lot of stress at the time.

1 Right now, I'm scared to death too. You know,
2 heart problems and worried about my young'un.
3 That's the most thing, I'm worried about my kids.
4 I haven't got to see Casey. She won't let me talk
5 to her. I'm having a hard time with Caroline.
6 I've been struggling to get my license for
7 Kentucky, get her registered in school. I got all
8 that done. It's been a hard fight physically
9 getting over the heart attack. I had to do a lot
10 of therapy to make it back just to support my kids.
11 It's something I've been fighting for ever since
12 this marriage. You know, the kid wants me more
13 than she does her mama. I mean, she's scared to
14 death. I mean, I'm scared for her. I mean, I love
15 my kids. I'd do anything for her. Believe me, I
16 was trying to protect my kids at the time all this
17 happened.

18 MR. KIRINCICH: And, Your Honor, excuse me, I
19 didn't say it, but I'm sure the Court remembers
20 that Mr. Vincent, when he found out about these
21 charges, did turn himself in immediately and did
22 make a statement to Detective Lloyd that he was
23 sorry that anybody got hurt. And at the time he
24 believed that she may have had something in her
25 hand, but again reiterated later that he should not

1 have gone there and that he was sorry that this
2 happened.

3 THE COURT: By the State, response?

4 MR. PAULING: Your Honor, I can't speak to
5 the -- well, I'm unable to speak fully to what he
6 stated about, I guess, the prior relationship with
7 Ms. Vincent. Ms. Rosa Vincent is not here to speak
8 in response to that, Judge, and I don't want to try
9 to relay to the Court what she might say, Your
10 Honor. Mr. Kirincich did provide me those photos
11 and he indicated to me why he was -- wanted to show
12 those photos to the Court. But as it relates to
13 whatever stressors Mr. Vincent had in his life at
14 that time, that was not brought upon by Ms. Guy.

15 THE COURT: She was collateral damage or what?

16 MR. PAULING: Judge, I don't know if that's
17 what they're intending to present to the Court, but
18 she was not looking -- she didn't cause this, is
19 what I'm saying, what we're here before the Court.

20 THE COURT: She was collateral damage?

21 MR. KIRINCICH: It sounds like that's a harsh
22 term to apply to a person, Your Honor. But --

23 THE COURT: People get caught in crossfires.

24 MR. KIRINCICH: Sure. She in no way deserved
25 this to happen to her. I mean, that's obvious.

1 She thought she was helping a friend. And, as I
2 said, you know, she didn't think this was going to
3 happen to her when she woke up that day. And it's
4 quite unfortunate that it did.

5 THE COURT: All right.

6 MR. PAULING: That's all the State would have,
7 Your Honor.

8 THE COURT: All right.

9 Ms. Guy, anything further you'd like to say?

10 MS. GUY: I'm, again, deeply disturbed that he
11 is continuously using the children as an excuse for
12 his behavior. That has been a continual --
13 absolutely continual process with him. His wife
14 has an order of protection from him because of this
15 behavior. I have a restraining order against him
16 because of this -- or I have one because of this
17 behavior with him. It is a continual use of the
18 children as a shield against him.

19 THE COURT: Does he have some kind of
20 emotional problems or --

21 MS. GUY: I believe he does. I believe he
22 does.

23 THE COURT: Why do you say that?

24 MS. GUY: It is -- it is -- that's what he
25 does. It's, I have to call you because the

1 children want this. And it -- that's the excuse.
2 Every single time he needs to contact her or he
3 wants to contact Rosa, it is the children. I need
4 to speak to you because the children want this.
5 Rosa has bought multiple cell phones so that he
6 could call them individually and it is, oh, that
7 cell phone disappears. Oh, I have to call you
8 instead of calling the children. There is a
9 continual pattern of his obsession with her instead
10 of the children. He continuously uses the children
11 as a way of getting to her. Like the cell phone
12 pictures you were talking about using Caroline to
13 ask me to drop the charges because he knows that I
14 love -- I love the kids. I love the kids. I've
15 known Rosa enough to be friends with her, very good
16 friends with her, and I care about those kids. I'm
17 a mother, I'm going to care about the kids, you
18 know. He continuously uses them as a shield. And
19 I believe that he purposely took on Caroline as a
20 shield against this case so that he could say --

21 MR. KIRINCICH: Your Honor, I'd object --

22 MS. GUY: -- I can't go to prison because I
23 have custody of Caroline.

24 THE COURT: She's the victim, she can say --

25 MS. GUY: Rosa is perfectly capable of taking

1 care of Caroline. She absolutely is perfectly
2 capable and willing to take care of her. She in no
3 way wants to dismiss her child.

4 THE COURT: All right. Thank you.

5 I want to hear from the officer. Is it Ms.
6 Lloyd?

7 MS. LLOYD: Yes, sir.

8 THE COURT: Ms. Lloyd?

9 MS. LLOYD: Yes, sir.

10 THE COURT: Tell me about this situation. You
11 probably know better than anyone.

12 MS. LLOYD: There are -- there are other cases
13 that were around the Vincent family. I made it
14 clear on record Mr. Vincent was known to me through
15 my job.

16 THE COURT: Do they have ongoing marital
17 troubles?

18 MS. LLOYD: There was ongoing issues. There
19 were concerns of domestic violence. There were
20 concerns of harassment. And I have taken out other
21 charges. I don't know where they will go, but I
22 feel that although Mr. Vincent was forthcoming, I
23 am concerned. I am concerned that he does have
24 some other type of problem, maybe needs some anger
25 management or something, batterer's intervention

1 program, something. I just have concerns for his
2 lack of thought when dealing with others. And
3 there's always an underlying motive of self-serving
4 in everything he has said and done. And I found
5 that consistently through investigating several
6 things regarding Mr. Vincent.

7 THE COURT: Over a period of what time?

8 MS. LLOYD: I'd say about three years.

9 THE COURT: Just sort of a culmination of it
10 all or part of a bigger battle?

11 MS. LLOYD: I am hoping this was a culmination
12 of a situation and that the Court will help offer
13 the appropriate punishment, perhaps intervene with
14 Mr. Vincent, and that there are no future romantic
15 relationships or relationships with females or his
16 children that are in jeopardy. I would hope that
17 from here on out there could be some intervention
18 that could help change and ensure the protection of
19 the people around him so nothing like this ever
20 happens again, or nothing like what we have been in
21 contact and investigated and checked into.

22 As I said, he did meet me at the Detention
23 Center. I don't think it was just simply to turn
24 himself in. I think it's because he -- I mean, he
25 knew. He knew what he had done. He knew he had

1 exploded and he knew he had injured somebody. And
2 he knew I was -- we were going to be all over it
3 trying to get everything required. I was that
4 familiar, I jumped out of the vehicle and I was
5 concerned about how he utilized his children for
6 self-serving purposes.

7 There were family members in the area that
8 could have kept that young lady yesterday is what I
9 was told when I checked into it and spoke with
10 family yesterday. I'm not convinced that there was
11 just no one that could keep her, and I was
12 horrified to see her in this courtroom. I just am
13 concerned. I think he needs -- I think he needs
14 some intervention with some sound punishment from
15 the Court.

16 THE COURT: All right. Anything further,
17 Mr. Pauling?

18 MR. PAULING: Unless the Court has some
19 question for me, no, sir, Your Honor.

20 THE COURT: All right. I'll give
21 Mr. Kirincich one final shot since so much was
22 said.

23 MR. KIRINCICH: Your Honor, I agree with
24 Solicitor Pauling in that Rosa Vincent is not here
25 to answer some of these --

1 THE COURT: That's probably a good thing.
2 This is not divorce court.

3 MR. KIRINCICH: Yes, sir. Again, we tried to
4 keep all this out of the actual trial of the case,
5 but I think it's important here at sentencing.

6 Your Honor, Detective Lloyd --

7 THE COURT: There was an excellent
8 presentation given at a conference last weekend by
9 Judge Michele Hurley, who has been presiding
10 downstairs, on parental alienation, some of the
11 things that she has had to do to fight against
12 parental alienation, and this would seem to be an
13 appropriate example. If you brought a child in
14 court and telling -- and expressing to that child
15 that your mother is trying to get me sent to
16 prison.

17 MR. KIRINCICH: Your Honor, actually, I would
18 say it's the opposite. Because Detective Lloyd
19 talked about additional charges. There were
20 additional charges filed on that day, including
21 harassment with Rosa Vincent as the victim, and
22 she's completely fine with that charge being
23 dismissed. And she told the Solicitor that, Your
24 Honor.

25 THE COURT: How could a child possibly be

1 happy about seeing her mother on the stand
2 testifying against her father in a criminal trial?

3 MR. KIRINCICH: I don't think it's a good
4 thing at all.

5 THE COURT: No, that's why I say it's a
6 perfect example of what we don't want to see, which
7 is parental alienation.

8 MR. KIRINCICH: Yes, sir. Your Honor, I guess
9 I was just disturbed by some of the comments that
10 were made. I did object and I know the Court did
11 not want to hear that being that you're 100 percent
12 correct in that Ms. Guy is a victim, but I think
13 she was speaking on things that we are speculating
14 on. And I approached Solicitor Pauling and he's
15 not going to answer it because he's right again
16 that Ms. Vincent is not here, but what she was
17 saying was directly contrary to what I was told by
18 the Solicitor's Office with Ms. Vincent asking
19 Mr. Vincent to take custody of that child. So it
20 was just completely contrary to what I was told by
21 Solicitor Pauling.

22 THE COURT: You know, the reason -- and it
23 puts a client or puts a party at a disadvantage
24 when they always speak through lawyers. I
25 certainly appreciate every constitutional right the

1 accused has, accused person may have, and their
2 right to remain silent at various stages of a
3 proceeding. But many times, things that the
4 lawyers give me in court is not barebones
5 information, and that's why I want to hear from the
6 officers, someone who has been dealing with the
7 situation., Mr. Pauling has many cases to handle.
8 You have many to handle. And you're doing an
9 excellent job in representing him. There is no
10 obligation for anyone to confess their guilt.
11 There is no obligation that anyone has to say
12 anything to a judge during sentencing. We will
13 give you 10 days to file whatever post-trial
14 motions. I hate doing that. Sentencing is right
15 now. It is what it is. Go ahead.

16 MR. KIRINCICH: Thank you, Your Honor. Your
17 Honor -- and going to what Detective Lloyd --
18 Lieutenant Lloyd now -- was saying. I don't have
19 the full history, but at some point, she felt it
20 was necessary to turn this case over to DSS for
21 investigation based on comments that were made.
22 And so I think that there were issues on --
23 comments that were made by the girls against their
24 mother, so I think there were issues on both sides,
25 Your Honor. And I only bring that up again to go

1 towards what Mr. Vincent stated. He was in a
2 stressed-out mind state on this particular day.
3 But for --

4 THE COURT: Well, according to law
5 enforcement, he's been in a stressed-out mind
6 situation for a number of years, which has led into
7 a lot of intervention and involvement.

8 MR. KIRINCICH: And, respectfully --

9 THE COURT: A stressed-out situation, you
10 know, can be on this side of the line or the other
11 side of the line.

12 MR. KIRINCICH: I'll agree with Lieutenant
13 Lloyd in that this was a culmination of it, for
14 sure, that this was the point where it boiled over.
15 And it's quite unfortunate for Ms. Guy. And he's
16 not a victim in any way, but it's unfortunate for
17 Mr. Vincent at this point because he has been
18 convicted and he does face the loss of liberty, and
19 with that loss of liberty he faces the loss of
20 employment. And, as he stated, he's most concerned
21 about what this means for the child that is with
22 him. He's concerned that his youngest daughter has
23 not wanted to be around him and the oldest one
24 doesn't want to be around her mom. So it's a
25 stressful situation both ways.

1 THE COURT: Anything further?

2 MR. PAULING: Not from the State, Your Honor.

3 THE COURT: Well, we have a lot of things to
4 be concerned about. We're certainly concerned
5 about the fact that our state leads the nation in
6 deaths as a result of domestic violence. The
7 legislature has continually passed stricter and
8 stricter laws dealing with domestic violence and
9 related types of matters. We have all kind of
10 rages going on in society. Road rage, where
11 someone drives in a certain way and the other
12 driver in a rage jumps out and kills them. You
13 know, there just seems to be a rage that occurred
14 at a place down the street on that particular day.

15 Unfortunately, a serious injury occurred to
16 Ms. Guy. She may be an overly-fragile person.
17 She's fragile as far as her size and makeup,
18 something that Mr. Vincent was aware of on that
19 day. And she may be emotionally fragile as a
20 result of what occurred to her on that day. We're
21 not here to try to answer all -- provide all the
22 answers to this situation. It's a complex matter.
23 But we have a crime that's been committed and he
24 has been convicted of that crime.

25 My sentence is that he be committed to the

1 State Department of Corrections for a period of
2 three years, provided that upon the service of
3 eight months, the balance is suspended and
4 probation two years. The issue of restitution will
5 be deferred and handled at a later date as brought
6 before the Court. A special condition of probation
7 is that he must receive anger management.

8 You were appointed to represent him?

9 MR. KIRINCICH: Yes, sir.

10 THE COURT: I'm not sure what type of system
11 that might have allowed him to sneak through
12 Ms. Hasty to get a long distance truck driver
13 getting a court-appointed lawyer.

14 MR. KIRINCICH: Your Honor, I reviewed the
15 application recently. After the divorce,
16 Mr. Vincent had to file for bankruptcy, so he did
17 not have the assets to hire private counsel. He
18 was denied initially and rescreened. I reviewed
19 that recently.

20 THE COURT: A further condition, that he pay
21 \$500 to the Clerk of Court while on probation for
22 the appointment of counsel.

23 That is the sentence of the Court. I wish you
24 the best of luck.

25 MR. PAULING: Your Honor, if I may? I can

1 discuss the restitution. Mr. Kirincich asked about
2 documents -- Mr. Kirincich had asked about
3 documents substantiating restitution. I will share
4 that with him, might be able to get that taken care
5 of today.

6 THE COURT: All right. How much time did he
7 serve, any?

8 MR. KIRINCICH: I believe he was released the
9 next day, Your Honor.

10 THE COURT: Credit for time served.

11 MR. KIRINCICH: It might be two days. We'll
12 get that, Your Honor, if you want to put it --

13 THE COURT: To be determined by the Department
14 of Corrections then.

15 All right. Ladies and gentlemen, I didn't
16 realize it would take so long to go through
17 sentencing, but you all started with the case and
18 you've ended with the case. So thank you all very
19 much. As you can see, things are not so simple.

20 Thank you all very much. I'd like to speak
21 with the forelady before she leaves and ask you
22 some questions. And you all are free to go.

23 Madam Clerk, you have jobs certificates across
24 the hall if they need them?

25 THE CLERK: You can out this door here, right

1 across the hall, and we already have your work
2 statements ready if you need to pick one up. Thank
3 you so much for your service.

4 (WHEREUPON, the trial was concluded at
5 1:16 p.m.)
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(END OF TRANSCRIPT)

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

261

COUNTY OF Kershaw
 STATE VS.
David Oneil Vincent
 AKA:
 Race: WHITE Sex: M Age: 44
 DOB: [REDACTED] SS#: [REDACTED]
 Address: [REDACTED] East 3rd St
 City, State, Zip: Kershaw, SC 29067
 DL#: [REDACTED] SID#: [REDACTED]

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

In disposition of the said indictment comes now the Defendant who was
 TO: Assault/ Assault & Battery 2nd degree

INDICTMENT/CASE#: 2016GS280380A/W#: 2015A2820200316Date of Offense: 10/2/2015S.C. Code § 16-03-0600(d)1CDR Code #: 3413

SENTENCE SHEET

☒ CONVICTED OF or ☐ PLEADS

in violation of § 16-03-0600(d)1 of the S.C. Code of Laws, bearing CDR Code # 3413

☒ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS(CSC w/minor 1st or Lewd Act) ☐ §17-25-45

The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)

The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTORNEY: Pauling, Curtis

SC Bar# 68671

Defendant

Attorney for Defendant

SC Bar#

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,
 for a determinate term of 3 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years
 and/or to pay a fine of \$ _____; provided that upon the service of 8 days/months/years and/or payment
 of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for 2

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of
 probation, which are incorporated by reference.

☐ CONCURRENT or ☐ CONSECUTIVE to sentence on:

☒ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied
 by the State Department of Corrections.

☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Domestic
 Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☒ RESTITUTION: ☒ Deferred ☐ Def. Waives Hearing ☐ Ordered

Total: \$ 866.63 plus 20% fee: \$ _____

Payment Terms: _____

☐ Set by SCDPPPS _____

Recipient: _____

*Fine:	\$
§ 14-1-206 (Assessments 107.5%)	\$
§ 14-1-211(A)(1) (Conv. Surcharge)	\$100
§ 14-1-211(A)(2) (DUI Surcharge)	\$ <u>100.00</u>
§ 56-5-2995 (DUI Assessment)	\$12
§ 56-1-286 (DUI Breath Test)	\$25
Proviso 61.6 (Public Def/Probation)	\$500
§ 14-1-212 (Law Enforce. Funding)	\$25
§ 14-1-213 (Drug Court Surcharge)	\$150
§ 50-21-114(BUI Breath Test Fee)	\$50
§ 56-5-2942(J) (Vehicle Assessment)	\$40/ea
3% to County (if paid in installments)	\$ <u>18.75</u>

TOTAL

\$ 643.75

Clerk of Court/Deputy Clerk: [Signature]

Court Reporter: [Signature]

SCCA/217 (07/2016)

PTUP

_____ days/hours Public Service Employment

Obtain GED ☐

Attend Voc. Rehab. or Job Corp. _____

May serve W/E beginning _____

Substance Abuse Counseling ☐

Random Drug/Alcohol testing ☐

Fine may be pd. in equal, consecutive weekly/monthly
 pmts. of \$ _____ beginning _____

\$ _____ paid to Public Defender Fund

Other: Anger Management

☒ Appointed PD or appointed other counsel,
 Proviso 61.6 requires \$500 be paid to Clerk
 during probation and shall be collected before
 any other fees.

Presiding Judge

Judge Code: 2127

Sentence Date: 8-11-2017

[Signature]
2127
8-11-2017

STATE OF SOUTH CAROLINA)
COUNTY OF KERSHAW)

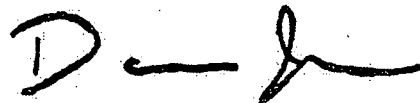
INDICTMENT

At a Court of General Sessions, convened on April 13, 2016, the
Grand Jurors of Kershaw County present upon their oath:

ASSAULT AND BATTERY SECOND DEGREE

That David Oneil Vincent did in Kershaw County
on or about October 2, 2015, commit an assault
and battery in the second degree upon the victim,
TRISHA GUY, which resulted or could have
resulted in moderate bodily injury, to wit by
grabbing victim by the neck and throwing her to
the floor, all in violation of Section 16-3-600(D),
SC Code of Laws (1976, as amended).

Against the peace and dignity of the State, and contrary to the
statute in such case made and provided.



DAN JOHNSON, SOLICITOR

WITNESSES

(S) P Lloyd

- Camden Police Department

ARREST WARRANT NUMBER

2015A2820200316

ACTION OF GRAND JURY

TRUE BILL

Foreperson of Grand Jury
Date: APR 13 2016

VERDICT

Guilty of Assault in
the 2nd Degree

Jessica Duke
Foreperson of Petit Jury
Date:

DOCKET NO. 2016GS280380

The State of South Carolina

County of

Kershaw

COURT OF GENERAL SESSIONS

APRIL TERM 2016

K26

**THE STATE
vs.**

David Oneil Vincent

**Indictment for
ASSAULT/ ASSAULT & BATTERY 2ND
DEGREE**

SC Code: 16-03-0600(d)1
CDR Code: 3413

After being fully advised as to my
legal rights, I hereby waive presentment
to the Grand Jury.

Defendant

I
hereby appear in my own proper person and plead
guilty to the within indictment or to

Defendant

Witness:

C.C.C. PLS. AND G.S.

JOYCE McDONALD
CLERK OF COURT
KERSHAW COUNTY S.C.

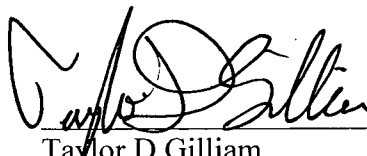
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FILED FOR RECORD

CERTIFICATE OF COUNSEL FOR APPELLANT

Counsel for appellant certifies that this Record on Appeal contains all material proposed to be included by any of the parties and not any other material and that this Record on Appeal complies to the best of my ability with the April 15, 2014 order from the South Carolina Supreme Court entitled "Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings."

Respectfully Submitted,



Taylor D Gilliam
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, S.C. 29211-1589

ATTORNEY FOR APPELLANT

This 6th day of November, 2018.

RECEIVED
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SC Court of Appeals