

24928

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

ANDERS
NO DEFENDANT'S BRIEF
ORIGINAL

Appeal from Oconee County

Honorable R. Scott Sprouse, Circuit Court Judge

RECEIVED

OCT 16 2019

THE STATE,

SC Court of Appeals
RESPONDENT

v.

BILLY CHRISTOPHER WHITMIRE,

APPELLANT

APPELLATE CASE NO 2019-000388

RECORD ON APPEAL

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INDEX

INDEX i

TRIAL TRANSCRIPT DATED FEBRUARY 25, 2019 1

 JURY VOIR DIRE 4

 JURY SELECTION..... 11

 OPENING STATEMENT BY MS. BLUNDY 25

 OPENING STATEMENT BY MR. PLOWDEN 29

TESTIMONY

 AMIE MARIE ELLISON..... 30

 JOHN TOWERY 44

 NINA MCKEE ANDERSON..... 50

STATE RESTS 54

MOTION FOR DIRECTED VERDICT..... 54

RULING OF THE COURT 55

COLLOQUY WITH DEFENDANT ON RIGHT TO TESTIFY 56

TESTIMONY

 BILLY WHITMIRE 59

CLOSING ARGUMENT BY MS. BLUNDY..... 73

CLOSING ARGUMENT BY MR. PLOWDEN 78

CLOSING ARGUMENT REPLY BY MS. BLUNDY 80

CHARGE ON THE LAW 80

VERDICT 94

SENTENCING95

INDICTMENT AND SENTENCE SHEET105

CERTIFICATE OF COUNSEL108

STATE OF SOUTH CAROLINA
COUNTY OF OCONEE

IN THE COURT OF GENERAL SESSIONS

STATE OF SOUTH CAROLINA,)
)
 PLAINTIFF,)
)
)
 -VS-)
)
 BILLY WHITMIRE,)
)
)
 DEFENDANT.)
 _____)

2016-GS-37-00632

TRANSCRIPT OF RECORD

FEBRUARY 25, 2019
WALHALLA, SOUTH CAROLINA

BEFORE:

THE HONORABLE R. SCOTT SPROUSE

APPEARANCES:

ATTORNEY FOR PLAINTIFF:

BETHANY A. BLUNDY
ASSISTANT SOLICITOR

ATTORNEY FOR DEFENDANT:

DAVID W. PLOWDEN, ESQ.

SUSAN W. HUDGINS
CIRCUIT COURT REPORTER

INDEX

<u>WITNESS</u>	<u>PAGE NO.</u>
OPENING STATEMENTS	
MS. BLUNDY -----	25
MR. PLOWDEN -----	29
AMIE ELLISON	
DIRECT BY MS. BLUNDY -----	30
JOHN TOWERY	
DIRECT BY MS. BLUNDY -----	44
NINA MCKEE ANDERSON	
DIRECT BY MS. BLUNDY -----	50
BILLY WHITMIRE	
DIRECT BY MR. PLOWDEN -----	59
CROSS BY MS. BLUNDY -----	65
CLOSING ARGUMENTS	
MS. BLUNDY -----	73
MR. PLOWDEN -----	78
MS. BLUNDY -----	80
CHARGE OF THE COURT -----	80
VERDICT OF THE JURY -----	93
SENTENCE OF THE COURT -----	95
CERTIFICATE OF REPORTER -----	104

EXHIBITS

<u>NO</u>	<u>DESCRIPTION</u>	<u>ID</u>	<u>EVIDENCE</u>
S-1	PHOTO -----	4	36
S-2	PHOTO -----	4	37
S-3	PHOTO -----	4	38
S-4	PHOTO -----	4	39
S-5	PRE-TEXT PHONE CALL (CD) -----	4	43
C-1	FOREPERSON SELECTION -----	20	

1 (Whereupon State's exhibits 1 - 5 were marked for
2 identification)

3 **THE COURT:** Call the first case, Ms. Blundy.

4 **MS. BLUNDY:** Good morning, Your Honor. May it please
5 the Court? We're here on indictment 2016-GS-37-632. The
6 charge is domestic violence in the second degree. The
7 Defendant in this case is Billy Christopher Whitmire.

8 **THE COURT:** Okay. Ladies and gentlemen, this is the
9 case of the State of South Carolina versus Billy Whitmire.
10 The Defendant's been charged on indictment 2016-GS-37-632
11 with domestic violence, second degree. The Defendant has
12 pled not guilty to this charge.

13 Ladies and gentlemen, the indictment is simply the
14 charge by which the case is brought into court and it is not
15 in any sense evidence of the allegations it contains. With
16 the Defendant's plea of not guilty it places the burden on
17 the State to prove the Defendant guilty beyond a reasonable
18 doubt. And it'll be your duty, ladies and gentlemen, if you
19 are selected to serve on this jury, to decide whether or not
20 the State can meet its burden.

21 I know I just asked you a whole bunch of questions to
22 determine your qualifications and eligibility, but I'm going
23 to ask you some more. I'll remind you that you are under
24 oath. These questions are not to pry into your private
25 life, but to ensure that both the State and the Defendant

1 receive a fair and impartial jury to hear the facts of the
2 case.

3 Now the first order of business, I'd like each attorney
4 to introduce themselves to the jury and any persons that may
5 be assisting with the prosecution or defense in the case.

6 **MR. PLOWDEN:** My name is David Plowden. I'm an
7 attorney here in Walhalla. This is my client, Billy
8 Whitmire, who sometimes goes by Chris.

9 **MS. BLUNDY:** Good morning, everybody. My name is Beth
10 Blundy. And I'm here on behalf of your elected solicitor,
11 Mr. David Wagner. I'm an assistant solicitor.

12 **THE COURT:** All right. Is there any member of the jury
13 panel that is related by blood or marriage or has a close,
14 personal or social relationship with either a party or one
15 of the attorneys involved in the case? If so, please stand.

16 (No response)

17 **THE COURT:** There are none.

18 Has any member of the jury panel ever been represented
19 by one of the attorneys involved in the case or a law firm
20 that they may have been involved in or have one of these
21 attorneys or their law firm represented someone against you
22 in court? If so, please stand.

23 (No response)

24 **THE COURT:** There are none.

25 Now, the following is a list of the potential witnesses

1 that has been submitted. Listen very carefully to these
2 names. Deputy John Towery, Oconee County Sheriff's Office,
3 Deputy Jamie Hellems, Oconee County Sheriff's Office,
4 Investigator Nina McKee, Oconee County Sheriff's Office,
5 Amie Ellison, and Beverly Whitfield, Clerk of Court. Is any
6 member of the jury panel related by blood or marriage or has
7 a close, personal or social relationship with any of these
8 potential witnesses? If so, please stand.

9 (No response)

10 **THE COURT:** There are none.

11 Ladies and gentlemen, this charge is based on
12 allegations that an incident occurred on February 5th, 2016
13 in Oconee County. Does any member of the jury panel have
14 any prior knowledge from any source about the facts of this
15 case?

16 (No response)

17 **THE COURT:** There are none.

18 Does any member of the jury panel have the belief that
19 infidelity or alleged infidelity justifies a reason for
20 physical violence in a relationship?

21 (No response)

22 **THE COURT:** There are none.

23 Does any member of the jury panel have a close relative
24 or have you been a victim of domestic abuse or violence?
25 Okay. I'm going to come forward to the railing.

1 (Whereupon a bench conference was held on the record
2 with the following jurors)

3 (Whereupon juror 107, Susan McCalister, a white female,
4 came forward)

5 **THE COURT:** Ms. McCalister, what was your
6 situation?

7 **MS. McCalister:** My ex-husband pulled a gun on my
8 daughter and myself, and I had to put him in jail in Pickens
9 County. It was about 15 years ago.

10 **THE COURT:** Fifteen years ago?

11 **MS. McCalister:** Yeah.

12 **THE COURT:** With that knowledge do you feel that
13 you could be fair and impartial if called to serve on a
14 jury?

15 **MS. McCalister:** Not in that situation.

16 **THE COURT:** All right. Thank you, ma'am. I'm
17 going to excuse you from this case.

18 **MS. McCalister:** Okay. Do I need to still sit
19 there?

20 **THE COURT:** You need to stay because we're going
21 to draw another jury.

22 **MS. McCalister:** Okay. Thank you.

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

24 (Whereupon Ms. McCalister was excused from this trial)

25 (Whereupon juror number 3, Kimberly Allen, a white

1 female, came forward)

2 **THE COURT:** Yes, ma'am.

3 **MS. ALLEN:** My boyfriend choked me unconscious on
4 the floor, and I had a restraining order. I have PTSD and
5 anxiety from it, so I can't really ...

6 **THE COURT:** Do you feel you could be fair and
7 impartial on this case?

8 **MS. ALLEN:** I feel like I'd have a hard time.

9 **THE COURT:** Okay. How long ago was that?

10 **MS. ALLEN:** A couple of years ago.

11 **THE COURT:** Okay.

12 **MS. ALLEN:** I actually fled the State and moved
13 out of California to get away from him because I was afraid
14 of him.

15 **THE COURT:** Okay. I'm going to excuse you on this
16 case, but I want you to go back and have a seat because
17 we're going to draw another jury.

18 **MS. ALLEN:** Sure. No problem.

19 **THE COURT:** Thank you, ma'am.

20 (Whereupon Ms. Allen was excused from this trial)

21 (Whereupon juror number 163, Deborah Van Der Toorn, a
22 white female, came forward)

23 **THE COURT:** Your number?

24 **MS. VAN DER TOORN:** 162, I think. No, 163.

25 **THE COURT:** Van Der Toorn.

1 MS. VAN DER TOORN: Yes.

2 THE COURT: What's your situation?

3 MS. VAN DER TOORN: I haven't been personally, but
4 when I was a child my mother was the victim of constant
5 abuse. I was taken away from her twice when I was five, and
6 then later at eight, and then put in a children's home, but
7 I was exposed to that environment.

8 THE COURT: With that knowledge do you feel that
9 you could be fair and impartial if you were called to serve?

10 MS. VAN DER TOORN: I would hope so.

11 THE COURT: Well, no, it can't be hope. It's
12 either yes or no.

13 MS. VAN DER TOORN: I mean, I have to go by my
14 initial gut. When they announced that think, and I ---

15 THE COURT: Well, I'm not going to put you in it.
16 Obviously, it's made you very uncomfortable, and I'm not
17 going to put you in an uncomfortable position. So I'm going
18 to excuse you from this case, but I want you to go have a
19 seat. We're going to draw another jury on another case.
20 Thank you, ma'am.

21 (Whereupon Ms. Van Der Toorn was excused from this
22 trial)

23 (Whereupon the bench conference was ended)

24 THE COURT: Any further?

25 (No response)

1 **THE COURT:** Does any member of the jury panel know of
2 any other reason why he or she could not be fair and
3 impartial if called to serve as a juror in this case? If
4 so, please stand. Yes, sir.

5 **JUROR:** I'm a neighborhood friend of Mr. Chris. And
6 ---

7 **THE COURT:** Okay.

8 **JUROR:** --- I don't know much about the circumstance,
9 but I do know ---

10 **THE COURT:** But you're -- do you think that makes it to
11 where you could not be fair and impartial?

12 **JUROR:** I could not, no.

13 **THE COURT:** All right. What's your number?

14 **JUROR:** 14.

15 **THE COURT:** All right. Excuse Mr. Blackwell, number 14.
16 from this case.

17 (Whereupon juror number 14, Victor Blackwell, a white
18 male, was excused from this trial)

19 **THE COURT:** Now, Mr. Blackwell, I'm going to need you
20 to keep your seat. We're going to draw another jury after
21 this one. Okay. Anyone else?

22 (No response)

23 **THE COURT:** Okay. Madam Clerk, are we ready to pull
24 our list?

25 (Pause)

1 **MADAM CLERK:** Ladies and gentlemen, as I call your
2 name, if you would, please come forward. You'll come
3 through the gate, step up to the bar and turn and face the
4 gallery. If you will, bring your personal belongings with
5 you.

6 Number 160, Shameika Turner.

7 (Whereupon juror 160, Shameika Turner, other female,
8 came forward)

9 **MADAM CLERK:** What says the State?

10 **MS. BLUNDY:** Please seat Ms. Turner.

11 **MADAM CLERK:** What says the Defense?

12 **MR. PLOWDEN:** Please seat Ms. Turner.

13 **MADAM CLERK:** Ma'am, if you would, please take a seat
14 in the jury box.

15 Number 69, Natalie Hester.

16 (Whereupon juror 69, Natalie Hester, a white female,
17 came forward)

18 **MADAM CLERK:** What says the State?

19 **MS. BLUNDY:** Please seat Ms. Hester.

20 **MADAM CLERK:** What says the Defense?

21 **MR. PLOWDEN:** Please excuse Ms. Hester.

22 **MADAM CLERK:** Ma'am, you have been excused from this
23 case. You may be seated.

24 Number 88, Lisa Kelley.

25 (Whereupon juror 88, Lisa Kelley, a white female, came

1 forward)

2 **MADAM CLERK:** What says the State?

3 **MS. BLUNDY:** Please seat Ms. Kelley.

4 **MADAM CLERK:** What says the Defense?

5 **MR. PLOWDEN:** Please swear Ms. Kelley.

6 **MADAM CLERK:** Ma'am, if you would, please take a seat

7 in the jury box.

8 Number 2, Vincent Alig.

9 (Whereupon juror 2, Vincent Alig, a white male, came

10 forward)

11 **MADAM CLERK:** What says the State?

12 **MS. BLUNDY:** Please excuse Mr. Alig.

13 **MADAM CLERK:** Sir, you have been excused from this

14 case. You may be seated.

15 Number 87, Vincent Keels.

16 (Whereupon juror 87, Vincent Keels, a black male, came

17 forward)

18 **MADAM CLERK:** What says the State?

19 **MS. BLUNDY:** Please seat Mr. Keels.

20 **MADAM CLERK:** What says the Defense?

21 **MR. PLOWDEN:** Please swear Mr. Keels.

22 **MADAM CLERK:** Sir, if you would, please take a seat in

23 the jury box.

24 Number 137, Luke Rogers.

25 (Whereupon juror 137, Luke Rogers, a white male, came

1 forward)

2 **MADAM CLERK:** What says the State?

3 **MS. BLUNDY:** Please excuse Mr. Rogers.

4 **MADAM CLERK:** Sir, you have been excused from this
5 case. You may be seated.

6 Number 106, Mary Jo McAnally.

7 (Whereupon juror 106, Mary Jo McAnally, a white female,
8 came forward)

9 **MADAM CLERK:** What says the State?

10 **MS. BLUNDY:** Please seat Ms. McAnally.

11 **MADAM CLERK:** What says the Defense?

12 **MR. PLOWDEN:** Please swear the juror.

13 **MADAM CLERK:** Ma'am, if you would, please take a seat
14 in the jury box.

15 Number 153, Debra Taylor.

16 (Whereupon juror 153, Debra Taylor, a white female,
17 came forward)

18 **MADAM CLERK:** What says the State?

19 **MS. BLUNDY:** Please seat Ms. Taylor.

20 **MADAM CLERK:** What says the Defense?

21 **MR. PLOWDEN:** Please excuse Ms. Taylor.

22 **MADAM CLERK:** Ma'am, you have been excused from this
23 case. You may be seated.

24 Number 8, Erik Beebe.

25 (Whereupon juror 8, Erik Beebe, a white male, came

1 forward)

2 **MADAM CLERK:** What says the State?

3 **MS. BLUNDY:** Please seat Mr. Beebe.

4 **MADAM CLERK:** What says the Defense?

5 **MR. PLOWDEN:** Please swear Mr. Beebe.

6 **MADAM CLERK:** Sir, if you would, please take a seat in
7 the jury box.

8 Number 34, Larry Clark.

9 (Whereupon juror 34, Larry Clark, a white male, came
10 forward)

11 **MADAM CLERK:** What says the State?

12 **MS. BLUNDY:** Please excuse Mr. Clark.

13 **MADAM CLERK:** Sir, you have been excused from this
14 case. You may be seated.

15 Number 122, Michael Nalley.

16 (Whereupon juror 122, Michael Nalley, a white male,
17 came forward)

18 **MADAM CLERK:** What says the State?

19 **MS. BLUNDY:** Please seat Mr. Nalley.

20 **MADAM CLERK:** What says the Defense?

21 **MR. PLOWDEN:** Please excuse the juror.

22 **MADAM CLERK:** Sir, you have been excused from this
23 case. You may be seated.

24 Number 142, Cynthia Sandusky.

25 (Whereupon juror 142, Cynthia Sandusky, a white female,

1 came forward)

2 **MADAM CLERK:** What says the State?

3 **MS. BLUNDY:** Please seat Ms. Sandusky.

4 **MADAM CLERK:** What says the Defense?

5 **MR. PLOWDEN:** Please swear the juror.

6 **MADAM CLERK:** Ma'am, if you would, please take a seat
7 in the jury box.

8 Number 94, Charles Lee.

9 (Whereupon juror 94, Charles Lee, a white male, came
10 forward)

11 **MADAM CLERK:** What says the State?

12 **MS. BLUNDY:** Please seat Mr. Lee.

13 **MADAM CLERK:** What says the Defense?

14 **MR. PLOWDEN:** Please swear the juror.

15 **MADAM CLERK:** Sir, if you would, please take a seat in
16 the jury box.

17 Number 71, Lindsay Hobbs.

18 (Whereupon juror 71, Lindsay Hobbs, a white female,
19 came forward)

20 **MADAM CLERK:** What says the State?

21 **MS. BLUNDY:** Please seat Ms. Hobbs.

22 **MADAM CLERK:** What says the Defense?

23 **MR. PLOWDEN:** Please swear the juror.

24 **MADAM CLERK:** Ma'am, if you would, please take a seat
25 in the jury box.

1 Number 135, Samantha Roach.

2 (Whereupon juror 135, Samantha Roach, a white female,
3 came forward)

4 **MADAM CLERK:** What says the State?

5 **MS. BLUNDY:** Please excuse Ms. Roach.

6 **MADAM CLERK:** Ma'am, you have been excused from this
7 case. You may be seated.

8 Number 65, Todd Harpest.

9 (Whereupon juror 65, Todd Harpest, a white male, came
10 forward)

11 **MADAM CLERK:** What says the State?

12 **MS. BLUNDY:** Please seat Mr. Harpest.

13 **MADAM CLERK:** What says the Defense?

14 **MR. PLOWDEN:** Please excuse this juror.

15 **MADAM CLERK:** Sir, you have been excused from this
16 case. You may be seated.

17 Number 130, Mark Purcell.

18 (Whereupon juror 130, Mark Purcell, a white male, came
19 forward)

20 **MADAM CLERK:** What says the State?

21 **MS. BLUNDY:** Please seat Mr. Purcell.

22 **MADAM CLERK:** What says the Defense?

23 **MR. PLOWDEN:** Please swear the juror.

24 **MADAM CLERK:** Sir, if you would, please take a seat in
25 the jury box.

1 Number 44, Joseph Ferriouolo.

2 (Whereupon juror 44, Joseph Ferriouolo, a white male,
3 came forward)

4 **MADAM CLERK:** What says the State?

5 **MS. BLUNDY:** Please seat Mr. Ferri ---

6 **MADAM CLERK:** What says -- oh, I'm so sorry.

7 **MS. BLUNDY:** --- Ferriouolo.

8 **MADAM CLERK:** What says the Defense?

9 **MR. PLOWDEN:** Excuse me. Please -- please swear the
10 juror.

11 **MADAM CLERK:** Thank you. Sir, if you would, please
12 take a seat in the jury box.

13 Number 42, Steven Dubose.

14 (Whereupon juror 42, Steven Dubose, a white male, came
15 forward)

16 **MADAM CLERK:** What says the State?

17 **MS. BLUNDY:** Please seat Mr. Dubose.

18 **MADAM CLERK:** What says the Defense?

19 **MR. PLOWDEN:** Please swear the juror.

20 **MADAM CLERK:** Sir, if you would, please take a seat in
21 the jury box.

22 Number 70, Teresa Hicks.

23 (Whereupon juror 70, Teresa Hicks, a white female, came
24 forward)

25 **MADAM CLERK:** What says the State?

1 **MS. BLUNDY:** Please seat Ms. Hicks.

2 **MADAM CLERK:** What says the Defense?

3 **MR. PLOWDEN:** Please swear the juror.

4 **MADAM CLERK:** Ma'am, if you would, please take a seat
5 in the jury box.

6 **THE COURT:** One alternate.

7 **MADAM CLERK:** This will be for our alternate. Number
8 154, James Thoma.

9 (Whereupon juror 154, James Thoma, a white male, came
10 forward)

11 **MADAM CLERK:** What says the State?

12 **MS. BLUNDY:** Please seat Mr. Thoma.

13 **MADAM CLERK:** What says the Defense?

14 **MR. PLOWDEN:** Please swear Mr. Thoma.

15 **MADAM CLERK:** Sir, -- thank you. Sir, if you would,
16 please take a seat in the jury box.

17 **THE COURT:** All right. Are there any motions or
18 exceptions to the selection of the jury on behalf of the
19 State?

20 **MS. BLUNDY:** None from the State, Your Honor.

21 **THE COURT:** All right. Any motions or exceptions to
22 the selection of the jury from the Defense?

23 **MR. PLOWDEN:** None from the Defense, Your Honor.

24 **THE COURT:** All right. Madam Clerk, would you swear
25 our jury.

1 **MADAM CLERK:** Ladies and gentlemen, if you would,
2 please stand. Raise your right hand. You shall well and
3 truly try, and true deliverance make, between the State of
4 South Carolina, and the Defendant, whom you shall have in
5 charge, and a true verdict give, according to the law and
6 evidence. I will?

7 **THE JURY:** I will.

8 **MADAM CLERK:** Please be seated.

9 **THE COURT:** All right. Ladies and gentlemen of the
10 jury, we are going to start this trial at 2:00. Now, I'm
11 going to send you to the jury room right now, and I want you
12 to do one thing. You have one order of business, and that
13 is to elect a foreperson. This will be the presiding juror
14 over your deliberations at the end. It'll also be the juror
15 that communicates with the Court should there be any
16 problems.

17 So go to -- Madam Bailiff, take the jury to the jury
18 room. When you've elected a foreperson, put that person's
19 name and juror number on a sheet of paper and let the
20 bailiff know.

21 (Whereupon the jury exited the courtroom at 11:16 am)

22 **THE COURT:** All right. Now, are we ready to draw the
23 second jury?

24 (Pause)

25 **THE COURT:** Let me see the -- first of all, let me see

1 the attorneys on this first case while the second case is
2 getting set up.

3 (Whereupon a bench conference was held off the record)

4 (Whereupon the bench conference was ended)

5 **THE COURT:** Okay. One final matter on the Whitmire
6 case before we move on to the next jury. Does the State
7 consent for Mr. Whitmire's bond to continue during the
8 trial?

9 **MS. BLUNDY:** We do, Your Honor.

10 **THE COURT:** All right. So, Mr. Plowden, your client's
11 bond would continue during the trial with consent of the
12 State under the same conditions.

13 **MR. PLOWDEN:** Thank you, Your Honor.

14 **THE COURT:** All right. This case will be in recess
15 until 2:00.

16 (Whereupon court was in recess at 11:18 am)

17 (Whereupon court reconvened at 2:05 pm)

18 **THE COURT:** Before we bring the jury in, juror number
19 71 has been elected the forelady. So let's make this a
20 Court's exhibit.

21 (Whereupon Court's exhibit 1 was marked)

22 **THE COURT:** All right. Anything from the State before
23 we bring our jury in?

24 **MS. BLUNDY:** Yes, Your Honor. There has been some
25 history set to this case. It's been set -- called for trial

1 twice before and has been up to the South Carolina Court of
2 Appeals, an issue with the Homeland Security Act and a tape
3 recorded phone call. I have a copy of the order for your
4 review wherein they agreed that it was not a violation and
5 that -- it was on a motion to suppress, and they denied that
6 motion.

7 **THE COURT:** You say you have a copy of the order?

8 (Pause)

9 **THE COURT:** Okay. And is the recording that you're
10 going to admit today the same recording that was dealt with
11 in this opinion?

12 **MS. BLUNDY:** Yes, Your Honor.

13 **THE COURT:** You agree with that, Mr. Plowden?

14 **MR. PLOWDEN:** Yes, sir.

15 **THE COURT:** Okay. All right. That's so noted. And I
16 have a copy of the order. Are there any other matters
17 before we bring our jury in?

18 **MS. BLUNDY:** No, Your Honor, nothing from the State.

19 **THE COURT:** Mr. Plowden?

20 **MR. PLOWDEN:** Nothing from the Defense, Your Honor.

21 **THE COURT:** All right. Get our jury.

22 (Whereupon the jury entered the courtroom at 2:07 pm)

23 **THE COURT:** All right. Before we start, ladies and
24 gentlemen, let me explain to you our roles in this case.
25 You are the judges of the facts, I am the judge of the law.

1 You will apply the law to the facts as I give it to you.

2 Now, you as the jury have the duty to evaluate the
3 evidence in the case. The evidence is the sworn testimony
4 from the witness stand or any exhibits that are entered into
5 evidence. You and you alone determine the credibility of
6 witnesses and how much weight to give their testimony.

7 What the attorneys say is intended to help you
8 interpret the evidence, but the statements of the attorneys
9 are not evidence. The attorneys will have an opportunity to
10 talk to you at opening statements and also again in closing
11 arguments.

12 Now, there are three things that you are prohibited
13 from doing while you are serving as jurors. The first is
14 talking to third parties about the case. When you're
15 outside the courtroom you may not talk to third parties. If
16 someone comes up to you and asks you about the case or tries
17 to talk to you about it, you let the bailiff know. They
18 will let me know, and I will tend to that.

19 Second thing is, you may not do independent research.
20 It's easy for you to look up -- try to look up on the
21 internet about the facts or the law. You're strictly
22 prohibited from doing that.

23 And the last thing is you must not deliberate amongst
24 yourselves while the case is going on. I will instruct you
25 the appropriate time to deliberate at the end. Deliberate

1 means talking about the case. When you're in the jury room,
2 or you're at lunch or at home, you can talk amongst
3 yourselves about anything you want to except this case. Now
4 the reason for these rules is each side is entitled to a
5 fair and impartial jury that makes its decision based on the
6 evidence presented in the courtroom and not some outside
7 influence.

8 Now the Defendant's pled not guilty. That means that
9 the State has the burden of proving the guilt -- the guilt
10 of the Defendant beyond a reasonable doubt. The Defendant
11 has no burden of proof in this case. The Defendant is
12 presumed innocent. So, ladies and gentlemen, you as a jury
13 determines whether the State meets its burden.

14 Now, this is not an endurance contest. We're going to
15 -- I don't think it's going to be a tremendously long trial,
16 but this trial will probably spill over til tomorrow, but we
17 will take breaks as we go along. If you get in distress and
18 you need a break, let the bailiff know, and we'll do our
19 best to accommodate you.

20 Now, I see that you have note pads. I do not allow the
21 taking of notes during a case. Madam Bailiff, would you
22 collect all the note pads and the pens.

23 (Pause)

24 And, ladies and gentlemen, I realize some of my
25 brethren do allow the taking of notes. I take the

1 traditional view, and I do not allow that. And the reason
2 is two-fold. First is, some folks are good note-takers and
3 some are not. And your deliberations at the end should not
4 be a contest between those who take good notes and those who
5 do not.

6 In school I was always one of the ones that didn't take
7 good notes. So if you're on that side of the fence, I feel
8 your pain.

9 The other is sometimes in a case the demeanor of a
10 witness, how a witness appears when testifying can be an
11 important factor. If your head is buried in a notepad, you
12 might miss something that's important. So for that reason I
13 do not allow the taking of notes.

14 The last thing that I need to tell you before we get
15 started is that my job is to ensure that each side receives
16 a fair trial in accordance with the law, therefore,
17 attorneys may make objections. They may make an objection
18 to a question or to a particular piece of evidence. I have
19 to make a ruling on that objection.

20 The fact that I rule one way or the other does not mean
21 that this Court favors one side or the other. It simply
22 means that I am ensuring that the Rules of Evidence are
23 being applied to the case.

24 And with that in mind sometimes you may be asked to
25 leave the courtroom. We have -- may have to take up a

OPENING STATEMENTS - MS. BLUNDY

25

1 matter of law outside your presence. That is not to hide
2 things from you, it's just to ensure that each side receives
3 a fair trial.

4 So with those preliminary instructions we're going to
5 go to the first stage of the trial, which is opening
6 statements by the attorneys. Ms. Blundy.

7 **MS. BLUNDY:** Thank you, Your Honor. May it please the
8 Court?

9 (Pause)

10 **MS. BLUNDY:** Behind closed doors, domestic violence, as
11 it happened in this case, it happened behind closed doors.
12 No one else to see except for the victim in this case, who's
13 Ms. Amie Ellison, and the Defendant, Mr. Whitmire.

14 There's something in this case that will open the doors
15 for you, jury, to see exactly what happened in this case.
16 And I want you to listen carefully to the evidence. I want
17 you to listen carefully to the testimony so that you will
18 know what happened in this case.

19 This couple has been together 18 years, a very long
20 time. They have never been married. They have lived
21 together that entire time. And they have two boys, ages 11
22 and eight. Both of them love their children very much, and
23 we're not here to debate that today.

24 They have been together, never been married, living
25 together the entire time, but it came to a point in their

OPENING STATEMENTS - MS. BLUNDY

1 relationship where Amie decided that she wasn't happy. She
2 wanted to leave the relationship. She then expressed that
3 to him. He wasn't happy about it.

4 For several days they argued about it. The night
5 before she left it got a little heated, she left. That was
6 February the 4th, 2016. This incident happened the very
7 next morning on February the 5th, 2016.

8 He called her up, he said, I need a favor. Can you
9 come back over to the house? She dropped the boys off at
10 school. They were not present. She went to the house.
11 She'd been with him for 18 years. Still friends with him.
12 Still would do stuff with him.

13 Think she's -- kind of remembers that maybe he had to
14 go to the DMV, some errand that he asked her help with.
15 2016, gets a bit foggy as to exactly why he asked her over,
16 but that's the best that she can remember, so she went.

17 It was early morning. It was early morning and he
18 said, come on, come in the bedroom, come talk to me a little
19 bit, and she did. And she sat down, and he started talking
20 to her.

21 And while he was talking to her he brought up the
22 relationship. And he said, I want to get back together. I
23 want to stay together. I want to make this work. And she
24 said, no. I'm done. I'm not coming back to you. I want
25 better for me, and I want better for my boys.

OPENING STATEMENTS - MS. BLUNDY

27

1 It flipped, instantly enraged. The loss of control
2 made him so angry that he grabbed her by the hair, he threw
3 her against the wall, he struck her multiple times in the
4 face, he got her back on the bed and he choked her. Amie
5 was in complete shock.

6 So much so that after it was all over, and she begged
7 him to stop, he begged her to have sex with him. And she
8 acquiesced. She was afraid. She didn't know what he was
9 capable of doing after that point, and she bent.

10 Immediately when it finished she got up, she lied to
11 him and said, I'm going to the car to get my cigarettes and
12 a drink, and she took off. She went to get her mom. She
13 took her mom, and they went straight to the sheriff's
14 department and filed a report. That is when she came into
15 contact with Deputy Towery.

16 Deputy Towery took the report, talked with her, noticed
17 her physical manifestations and referred the case further to
18 investigations. That's where Investigator Nina McKee played
19 her part.

20 Several days later she had Amie come back and asked her
21 to do a tape-recorded phone call. In that phone call she
22 called the Defendant to talk about what happened that early
23 morning. Listen to that phone call very, very carefully.
24 Listen to the testimony very carefully.

25 There's a way to know what happens behind closed doors.

OPENING STATEMENTS - MS. BLUNDY

28

1 In this case the evidence will show that there was domestic
2 violence in the second degree. So what is that? In the
3 State of South Carolina domestic violence in the second
4 degree is any physical harm or injury or a threat of
5 physical harm or injury with the present apparent ability to
6 carry out that threat.

7 So you don't necessarily have to have physical injury
8 or harm. A threat is enough as long as that person can
9 carry out the threat. To who? A household member.

10 Well, how does South Carolina define who a household
11 member is? It's a spouse, a former spouse, currently
12 cohabitating with somebody, formerly cohabitating with
13 somebody or a couple that has children in common or a child
14 in common.

15 What makes it a second degree? Has to be physical harm
16 or injury or a threat of that and only one of these other
17 conditions. You do not need them all, you only need one.

18 You have to have the threat of physical harm or injury,
19 or the actual physical harm or injury and it resulting in
20 moderate bodily injury, it has to occur while there's a
21 protection order in place, or they have to have one prior
22 conviction of domestic violence within ten years of the date
23 of this offense, or it has to be to someone who is pregnant,
24 in the presence of a minor, during a robbery, burglary,
25 kidnapping or theft, something that causes the impeding of

OPENING STATEMENTS - MR. PLOWDEN

29

1 the victim's air flow or breathing, or preventing them from
2 calling 911 or law enforcement during the altercation.

3 We are here today because of the preventing of the
4 victim's air flow or breathing, the choking. That's what
5 makes this the second degree. And I am confident that when
6 you see all the evidence and you listen carefully you will
7 agree that this is domestic violence in the second degree
8 and the doors will be open for you to find him guilty.
9 Thank you.

10 **THE COURT:** All right. Mr. Plowden.

11 **MR. PLOWDEN:** Thank you, Your Honor. Ladies and
12 gentlemen, actually I agree with a lot of what Ms. Blundy
13 said. We weren't there, nobody was there except for the two
14 people involved. You'll hear testimony trying to, as she
15 says, prove it.

16 But it is important to listen to everybody carefully
17 and evaluate them and what they say based on how you
18 evaluate what anybody says to you when it's -- when their
19 voracity might be at issue. How do you do that? What do
20 you look at? You listen to them and think about do they
21 have a reason to tell the truth or do they have a reason to
22 tell a lie?

23 At the end of the day the Judge is absolutely correct,
24 you're the judges of the facts. Whatever is going to go on
25 in terms of the criminal justice system and this trial is

AMIE ELLISON - DIRECT EXAMINATION BY MS. BLUNDY

1 going to rest on you and your verdict at the end of the
2 trial.

3 It isn't going to be a long trial. It'll be -- it will
4 go to tomorrow, but that'll be the end of it. So we
5 appreciate your being here. We appreciate your being
6 willing to serve on the jury.

7 We realize that it might not have been your first
8 choice of what you wanted to do today, but it is really,
9 really important. Our system would not work without it.
10 And we have the best system in the world. Thank you.

11 **THE COURT:** All right. Ms. Blundy, call your first
12 witness.

13 **MS. BLUNDY:** Yes, Your Honor. We would like to call
14 Amie Ellison to the stand.

15 **MADAM CLERK:** Ma'am, if you would, please come forward
16 to be sworn. If you'll place your left hand on the Bible
17 and raise your right hand.

18 **Amie Ellison,** being duly
19 sworn testified as follows;

20 **MADAM CLERK:** Please be seated.

21 **Direct Examination by Ms. Blundy:**

22 Q. Good afternoon, Amie.

23 A. Good afternoon.

24 Q. Can you please state your full name for the record.

25 A. Amie Marie Ellison.

AMIE ELLISON - DIRECT EXAMINATION BY MS. BLUNDY

31

1 Q. And are you currently residing in Oconee County?

2 A. No.

3 Q. Where were you living on February the 5th, 2016?

4 A. In Westminster, Oconee County, [REDACTED] Road.

5 Q. How long were you in a relationship with the Defendant?

6 A. Eighteen years.

7 Q. Is he present here in the courtroom today?

8 A. Yes, ma'am.

9 Q. Is he sitting at the Defendant's table?

10 A. Yes.

11 Q. During the time that you lived -- during that entire
12 time that you were with the Defendant did you always live
13 together?

14 A. Yes.

15 Q. Just speak up enough so that the jury can hear you.

16 How many children do you have?

17 A. Two.

18 Q. And is the Defendant the biological father of both
19 boys?

20 A. Yes.

21 Q. How old are they?

22 A. Eleven and eight.

23 Q. Who has custody of the boys right now?

24 A. I do during the week. And he's been getting them every
25 weekend.

AMIE ELLISON - DIRECT EXAMINATION BY MS. BLUNDY

1 Q. And how has that transition been going?

2 A. It's been going great.

3 Q. When did you and the Defendant initially separate?

4 A. That morning it happened.

5 Q. Did you leave the house the night before?

6 A. I did, yeah.

7 Q. And why was that?

8 A. Just because I didn't want -- I thought maybe things
9 could calm down. And then it just felt like it was best for
10 us to leave. So I went to my mama's in Anderson County, but
11 the boys were still in school over in Westminster. So that
12 morning I was taking them to school.

13 Q. And so you have -- let me rephrase that. You had
14 planned on coming back to take the boys to school?

15 A. Yes.

16 Q. Did he call you to come to the house?

17 A. Yeah. He knew I was taking the boys to school. So he
18 asked me to come by, and I did.

19 Q. And why did he want you to come by other than that?
20 Was there any other reason?

21 A. Yeah. He was trying to get his license fixed and
22 everything, something was going on. And he wanted me to
23 take him to the DMV's office.

24 Q. Okay. What happened initially when you came back to
25 the house where you had been staying with him?

AMIE ELLISON - DIRECT EXAMINATION BY MS. BLUNDY

33

1 A. I just went inside and sat down and didn't say much,
2 but then he wasn't dressed or ready to go yet. So he wanted
3 to just lay down for a while and talk. So I went to the
4 bedroom with him and just talked to him for a while.

5 And I had already made my mind up before that that I
6 wanted to leave. And because, I don't know, I mean, -- so I
7 told him -- I told him I was going to leave.

8 Q. What happened when you told him that? What did he do?
9 What did he act like?

10 A. He wasn't happy. He was upset. And he did grab my
11 hair and he did punch me a couple of times. And he choked
12 me only for a couple of seconds.

13 And that all did happen. It all did happen, but I know
14 he's sorry, I know he is. I know he's sorry. We've been
15 together a very long time and nothing like that has ever
16 happened before between us, ever.

17 Q. Can you walk me through a little bit about how the
18 altercation happened? Where were you sitting in the
19 bedroom?

20 A. Just on the side of the bed, on my side that I slept
21 on, the right side.

22 Q. And he came up to you first and pulled your hair? What
23 happened first ---

24 A. He was laying there right beside me. I was sitting up
25 and he was just laying down right there on the bed. We were

AMIE ELLISON - DIRECT EXAMINATION BY MS. BLUNDY

1 both on the bed.

2 Q. And then what did he do?

3 A. He grabbed my hair and then hit me against the wall a
4 couple of times.

5 Q. And at some point during the altercation did you end up
6 -- did he end up on top of you?

7 A. Yes. Yes, he did.

8 Q. And was he striking you?

9 A. Yes, a couple of times he did, but it happened so fast.
10 And I was running my mouth, too, after that, you know, and
11 it was just happening so fast.

12 Q. And when he struck you did he strike you -- do you
13 remember if he struck you with an open fist or closed fist?

14 A. I don't.

15 Q. Do you remember if he struck you more than one time?

16 A. No, I don't.

17 Q. At some point during the altercation did you ask him to
18 stop?

19 A. I did.

20 Q. Did he stop initially?

21 A. Yeah, he stopped.

22 Q. Did the altercation continue? You said he choked you.
23 Was that before or after he struck you?

24 A. I really can't tell you. I don't know what happened
25 first. It's been a long time ago.

AMIE ELLISON - DIRECT EXAMINATION BY MS. BLUNDY

35

1 Q. If you saw your statement, would that refresh your
2 memory?

3 A. I think it happened after the hitting. I think it
4 happened after.

5 Q. And how did he choke you? With -- with two hands? One
6 hand? Were you on the bed?

7 A. I was on the bed. I don't know how many hands. I
8 don't know.

9 Q. Was it with hands, or was it with the forearm, or
10 something like that? Or did he squeeze?

11 A. I -- I think it was just with one hand just for like a
12 second or two, I think.

13 Q. Did you ask him to stop when he was choking you?

14 A. I don't remember if I did right then.

15 Q. The State is showing you what has been previously
16 marked as exhibit number 1. What is this?

17 A. That's a picture the officer took that morning when I
18 was giving my statement.

19 Q. Is that how you looked that morning?

20 A. Yeah.

21 Q. Has this photo been altered or changed in any way from
22 that morning?

23 A. No.

24 **MS. BLUNDY:** The State would move to admit exhibit
25 number 1.

AMIE ELLISON - DIRECT EXAMINATION BY MS. BLUNDY

1 **THE COURT:** Any objection?

2 **MR. PLOWDEN:** No objection.

3 **THE COURT:** State's exhibit number 1 would be admitted
4 without objection.

5 (Whereupon State's exhibit 1 was admitted into
6 evidence)

7 Q. Amie, is this where he struck you up in this area of
8 your eye right here?

9 A. Yeah. Yeah.

10 Q. I'm showing you what has been marked as State's exhibit
11 number 2. What is this photograph of?

12 A. That's another picture the officer took when I was
13 giving my statement.

14 Q. And that was the morning of the altercation?

15 A. Yes, ma'am.

16 Q. Is this a fair and accurate representation? Has that
17 photo been altered or changed in any way since it's been
18 taken?

19 A. No, ma'am.

20 **MS. BLUNDY:** The State would move to admit exhibit
21 number 2.

22 **THE COURT:** Any objection?

23 **MR. PLOWDEN:** No objection.

24 **THE COURT:** State's exhibit number 2 would be admitted
25 without objection.

AMIE ELLISON - DIRECT EXAMINATION BY MS. BLUNDY

37

1 (Whereupon State's exhibit 2 was admitted into
2 evidence)

3 Q. Amie, there's a noticeable red mark on your forehead as
4 well as the bridge of your nose and over the other eye.
5 Would it be fair to say he struck you multiple times?

6 A. I guess. I guess. I mean, I guess. I don't know, it
7 happened so fast. I don't know what happened.

8 Q. I'm showing you what has been marked as State's exhibit
9 number 3. What is this a photograph of?

10 A. That's another photo that the officer took when I was
11 giving my statement.

12 Q. Is that a fair and accurate representation as of the
13 day and time it was taken?

14 A. Yes, ma'am.

15 Q. Altered or changed in any way before court today?

16 A. No, ma'am.

17 Q. And this was taken the morning of the altercation?

18 This was taken the morning of ---

19 A. Oh, yes, ma'am.

20 **THE COURT:** What number is this?

21 **MS. BLUNDY:** Number 3.

22 **THE COURT:** Any objection to this being admitted?

23 **MR. PLOWDEN:** No, sir. No objection.

24 **MS. BLUNDY:** The State moves to admit exhibit number 3.

25 **THE COURT:** Okay. It'll be admitted without objection.

AMIE ELLISON - DIRECT EXAMINATION BY MS. BLUNDY

1 (Whereupon State's exhibit 3 was admitted into
2 evidence)

3 Q. Amie, why did the officer photograph your neck?

4 A. Because I told him that Chris had choked me. So that's
5 why. And I wish I could just take it all back, I'm serious.
6 I wish none of this ever happened. I don't know how it
7 happened, but things happen for a reason.

8 And I just want to move on with our lives, seriously.
9 We have two boys, and I just want to move on peacefully. I
10 want to be able to walk out of here and shake his hand and
11 just move on.

12 Q. I understand.

13 A. That's what I want.

14 Q. I understand. I'm showing you what has been marked as
15 exhibit number 4. Do you recognize this photograph?

16 A. Yes, ma'am.

17 Q. When was this taken?

18 A. That was at my mom's house after I'd been with her for
19 a couple of days. I think a officer had called me and
20 wanted me to send him a picture or something.

21 Q. Is it a fair and accurate representation of that same
22 eye from the other photograph?

23 A. It is, yeah. There is a shadow where the picture
24 wasn't too good. But, yes, that is my eye, yes.

25 Q. Is it substantially in the same condition as the day it

AMIE ELLISON - DIRECT EXAMINATION BY MS. BLUNDY

39

1 was taken?

2 A. Yeah, it just looks a little darker and everything
3 because of the shadow, and I guess I didn't have my flash on
4 or something, but, yes. Yes.

5 **MS. BLUNDY:** The State would move to admit exhibit
6 number 4.

7 **THE COURT:** Any objection?

8 **MR. PLOWDEN:** No objection, Your Honor.

9 **THE COURT:** All right. State's exhibit number 4 would
10 be admitted without objection.

11 (Whereupon State's exhibit 4 was admitted into
12 evidence)

13 Q. So that would be how the bruise developed a few days
14 later on that same eye?

15 A. Yeah. It didn't get quite as -- that dark because
16 there is a shadow and a flash. But, yeah, it got a little
17 darker right above my eyelid right there.

18 Q. And you said this all took place at the home that you
19 had been residing in with him, right?

20 A. Yes, ma'am.

21 Q. And that happened in Oconee County, South Carolina?

22 A. Yes, ma'am.

23 Q. After the physical altercation what happened between
24 the two of you?

25 A. He tried to contact me. And I was trying to decide

AMIE ELLISON - DIRECT EXAMINATION BY MS. BLUNDY

1 what I was going to do because we have two kids together and
2 how ---

3 Q. Let me rephrase. After the physical assault just
4 happened, what happened immediately after that?

5 A. Oh, I left.

6 Q. Okay.

7 A. I went to my mama's.

8 Q. Were you involved physically with him before you left?

9 A. (No response).

10 Q. Did you have sexual intercourse with the Defendant?

11 A. Yes, I did. Yes.

12 Q. Okay. And why was that? After, obviously, you're
13 telling us this had happened to you, why did you have sex
14 with him?

15 A. He kept on telling me he was sorry. And I knew he
16 didn't mean what he did. I know he didn't mean what he did.
17 And he wanted to make love, and I did. And I didn't say no.

18 And I was scared 'cause we'd never been through
19 anything like that before, you know. We never fought like
20 that. We have arguments, but we never fight like that. And
21 I was scared and shocked. And we did do it.

22 And after that he wanted to take a quick nap, and he
23 did. And I told him I was going out to the car to get my
24 cigarettes and Mountain Dew, and I did. And I left.

25 Q. And where did you go when you left?

AMIE ELLISON - DIRECT EXAMINATION BY MS. BLUNDY

41

1 A. I went to my mama's house before I went to the law
2 because I was scared. And I really don't -- I don't -- I
3 didn't want to get Chris in trouble because I know, you
4 know, he didn't mean it.

5 But I went to my mama's, and my mama was like, let's go
6 to the law, so we did. We came back -- I went to Anderson
7 County and then came back to Oconee County and seen that
8 officer and gave him the statement and everything that
9 happened.

10 Q. When you were at Anderson County did you first go to
11 Anderson County Law Enforcement or did you come right to the
12 Oconee County Law Enforcement? Where did you go first?

13 A. What do you mean?

14 Q. Did you go to the Anderson County Law Enforcement where
15 you were ---

16 A. Oh.

17 Q. --- staying or did you come ---

18 A. I came back to Oconee County and went there. I never
19 talked to any Anderson County police officers.

20 Q. Do you remember making an initial report with the
21 Oconee County Law Enforcement?

22 A. Yes, I remember that.

23 Q. Were you able to tell them what had happened to you?

24 A. Yes.

25 Q. Were you able to tell them who did it to you?

AMIE ELLISON - DIRECT EXAMINATION BY MS. BLUNDY

1 A. Yes.

2 Q. Did you feel any need to seek any EMS treatment?

3 A. No.

4 Q. I'm showing you what has been marked as State's exhibit
5 number 5. Do you recognize this disk?

6 A. I do. I do.

7 Q. Have you had a chance to listen to it prior to trial?

8 A. Yes, ma'am.

9 Q. Are these your initials right here verifying that?

10 A. Yes.

11 Q. What did law enforcement ask you to do after this
12 physical assault was reported?

13 A. I went to them because I wanted to get a protective
14 order because I wanted things to calm down. I just wanted
15 everything to calm down. And that's the only reason.

16 But they said there wasn't enough proof to get my
17 protective order. So they sort of asked me to do this
18 recording. And I've never done anything like this in my
19 life. And this was very hard for me to do, especially to
20 the man that I loved, you know? And so I did it only
21 because I wanted things to calm down.

22 Q. And the protective order?

23 A. And the protective order.

24 Q. So what did you do exactly?

25 A. I got him on the phone and I was asking him why he did

AMIE ELLISON - DIRECT EXAMINATION BY MS. BLUNDY

43

1 the things that he did to me.

2 Q. And the line was recorded?

3 A. The line was recorded.

4 Q. From the sheriff's office, they were recording it?

5 A. Yes.

6 Q. And you knew it was being recorded?

7 A. I did.

8 Q. And the Defendant did not know that it was being
9 recorded?

10 A. No, he did not.

11 Q. Okay.

12 **MS. BLUNDY:** The State would move to admit exhibit
13 number 5.

14 **MR. PLOWDEN:** Without objection.

15 **THE COURT:** All right. Defendant's [sic] exhibit
16 number 5 would be admitted without objection.

17 (Whereupon State's exhibit 5 was admitted into
18 evidence)

19 A. Can I say one more thing about that?

20 Q. Sure.

21 **MR. PLOWDEN:** Your Honor, I object to that. I can't

22 ---

23 **THE COURT:** Sustained.

24 **MR. PLOWDEN:** This is the time to be answering
25 questions.

JOHN TOWERY - DIRECT EXAMINATION BY MS. BLUNDY

45

1 record.

2 A. John William Towery.

3 Q. Where are you currently employed?

4 A. I'm employed with the Oconee County Sheriff's
5 Department.

6 Q. And how long have you been with the sheriff's
7 department?

8 A. A little over seven years.

9 Q. And what is your title at the sheriff's department?

10 A. At this time I'm -- I've got actually two titles. I'm
11 a corporal over the road patrol. And I'm also SRO on my
12 days off with the -- school resource officer with Fair-Oak
13 Elementary School.

14 Q. Were you working the morning of February 5th, 2016?

15 A. Yes, I was.

16 Q. On that date did you come into contact with the victim
17 in this case, Amie Ellison?

18 A. Yes, I did.

19 Q. How was it that you came into contact with her?

20 A. First we received a telephone call. She did not want
21 to meet at her residence, so I had her come to our
22 substation located right next door to Greenville Memorial,
23 right behind the EMS station.

24 Q. Is that uncommon to have victims come into the police
25 station?

JOHN TOWERY - DIRECT EXAMINATION BY MS. BLUNDY

1 A. No, it's not uncommon. If they're in fear or if they
2 don't want to go and witness or go back to where something
3 happened at, they will. And we have had them meet us at
4 either the sheriff's station or the substation if it is --
5 they feel more secure.

6 Q. Is there always an officer on duty for circumstances
7 like that?

8 A. We go to the substation on a basis to do our reports
9 and things like that, but we have met several people at the
10 -- but there's always somebody, Monday through Friday, at
11 the main office in Oconee over here on Church Street.

12 Q. Who was with her when she came up to the sheriff's
13 office? Was she by herself or did she have somebody with
14 her?

15 A. I believe she had her mother she introduced. I cannot
16 remember her mother's name as of now.

17 Q. What time did she arrive? Do you recall?

18 A. I want to say -- according to my report it was sometime
19 a little after 9:00.

20 Q. In the morning?

21 A. In the morning. Nine am.

22 Q. What did you observe -- what physical manifestations
23 did you observe on her when you initially came into contact
24 with her?

25 A. I had noticed some bruising or redness around her face.

JOHN TOWERY - DIRECT EXAMINATION BY MS. BLUNDY

47

1 And I did notice right off the bat that she did have some --
2 what appeared to me to be some type of bruises on her neck.

3 Q. Was she able to tell you what happened to her?

4 A. Yes, she did.

5 Q. Did you feel that her recollection of the events
6 matched the physical manifestations that you observed ---

7 MR. PLOWDEN: Your Honor, ---

8 Q. --- on her?

9 MR. PLOWDEN: --- I'm going to object to that. That's
10 leading, and I think that's a question for the jury.

11 THE COURT: Rephrase your question, Ms. Blundy.

12 Q. I'm going to show you what has been admitted as State's
13 exhibit number 1. Just looking at the photograph you can
14 tell there's some bruising in this orbital area of her eye.
15 Did you observe that when you came into contact with her?

16 A. Yes, I did.

17 Q. Did that match up with the story that she told you
18 happened?

19 A. Yes, it did.

20 Q. Did you take that photograph?

21 A. Yes, I -- I did take that photo.

22 Q. You think that was taken at the substation?

23 A. Yes, it was.

24 Q. That morning?

25 A. Yes, ma'am.

JOHN TOWERY - DIRECT EXAMINATION BY MS. BLUNDY

1 Q. So how long had she relayed to you from the time this
2 physical altercation occurred til the time that she met with
3 you, how long would you say that would have been?

4 A. I'd say probably a little bit over an hour.

5 Q. How about in this photograph, what else did you observe
6 regarding her physical manifestations or injuries?

7 A. Well, the things that came to my initial observance of
8 it was the scratches and cuts or the lacerations on her face
9 and also, like I said, the bruising around her neck.

10 Q. Did you take this photograph as well?

11 A. Yes, I did.

12 Q. And you took the photograph of her neck?

13 A. Yes, I did.

14 Q. And when you came into contact with her you did say you
15 were able to see redness?

16 A. Yes, I did.

17 Q. And did that match the story she told you about what
18 had happened to her?

19 A. I believe at the time, yes.

20 Q. Is it hard to observe in that photograph?

21 A. No. No. To me, it looks apparently like bruising.

22 Q. What about around the neck? When someone is choked --
23 how long have you been doing this? Seven years?

24 A. Well, I've been here seven years. But I've been
25 certified law enforcement since 2005, so going on 14 years.

JOHN TOWERY - DIRECT EXAMINATION BY MS. BLUNDY

49

1 Q. In a choking case do you always automatically see a
2 physical manifestation for choking?

3 A. You do not always see -- I'm not a physician. I can't
4 answer that. But just in this case, with my experience, it
5 did appear that she had something around her neck.

6 Q. What was her demeanor like when she came in to talk
7 with you?

8 A. She was very upset, I'd say, to the point of almost
9 hysteria.

10 Q. What did you do next after you took the report on this
11 case?

12 A. It was passed on up to investigations for further ...

13 Q. Further review?

14 A. Yes, ma'am.

15 Q. Was she crying when she met with you?

16 A. Yes.

17 Q. Were you able to make sure that she had a safe place to
18 go when she left the substation?

19 A. Yes. She said she was going back to her -- I believe
20 to her mother's home.

21 Q. Thank you.

22 **MS. BLUNDY:** I have no further questions for this
23 witness.

24 Q. Please answer anything Mr. Plowden may have for you.

25 **THE COURT:** Mr. Plowden.

NINA MCKEE ANDERSON - DIRECT EXAMINATION BY MS. BLUNDY

1 (Pause)

2 MR. PLOWDEN: I don't have any -- I'm sorry, any
3 questions.

4 THE COURT: All right. Thank you, officer. You can
5 step down.

6 A. Thank you, Your Honor.

7 MS. BLUNDY: Your Honor, may this witness be excused?

8 THE COURT: Any objection?

9 (Pause)

10 MR. PLOWDEN: Sorry, I was talking ---

11 THE COURT: Any objection to this witness being
12 excused?

13 MR. PLOWDEN: Oh, no, Your Honor.

14 THE COURT: All right. Officer, you are excused.

15 A. Thank you.

16 MS. BLUNDY: Your Honor, next we'd like to call
17 Investigator Nina McKee to the stand.

18 MADAM CLERK: If you would, please come forward and
19 place your left hand on the Bible and raise your right hand.

20 **Nina McKee Anderson,**
21 being duly sworn testified as follows;

22 MADAM CLERK: Please be seated.

23 Direct Examination by Ms. Blundy:

24 Q. Investigator McKee, will you please state your full
25 name for the record.

NINA McKEE ANDERSON - DIRECT EXAMINATION BY MS. BLUNDY

51

1 A. Nina McKee Anderson.

2 Q. Where are you employed?

3 A. The Oconee County Sheriff's Office.

4 Q. And how long have you been with the sheriff's office?

5 A. Approximately 11 years.

6 Q. And during that time have you always been an

7 investigator?

8 A. No, ma'am.

9 Q. How long have you been in the investigations realm?

10 A. Approximately three and a half years.

11 Q. What are some of your duties as an investigator versus
12 a road patrol officer?

13 A. We're assigned cases for further investigation, usually
14 felony type cases. I primarily work property crimes, so
15 burglaries, larcenies, things like that. We're also asked
16 to assist in cases such as domestic violence, sexual
17 assaults. So we can get an array of anything that comes
18 into investigations we work.

19 Q. And it's fair to say you were referred this case,
20 correct?

21 A. I was.

22 Q. How did you end up coming into contact with the victim
23 in this case, Ms. Amie Ellison?

24 A. She had came into the sheriff's office for a follow-up
25 with our victim's advocate in the services that they provide

NINA McKEE ANDERSON - DIRECT EXAMINATION BY MS. BLUNDY

1 in reference to an order of protection due to being fearful
2 of the Defendant. At that time I was asked to assist with
3 what's called a pre-text phone call where we have the victim
4 place a call to the suspect and try to get them or encourage
5 them to talk about the incident that took place.

6 Q. And is that what you did in this case?

7 A. Yes, ma'am.

8 Q. And do you know how much time had passed from the
9 initial altercation til the time that the phone call was
10 placed?

11 A. The day that I met with her was February the 10th,
12 which was five days after the incident.

13 Q. Where did this phone call take place? Did you do it at
14 the sheriff's office? Did you do it at her house? How did
15 it go down?

16 A. It was at the Oconee County Sheriff's Office in an
17 investigative unit in one of our interview rooms. The
18 device used is provided by the sheriff's office. It's just
19 a recording device that hooks to the victim's phone itself.

20 And she's not instructed on what to say or any type of
21 prompting in the conversation. It was just semi-controlled,
22 being placed in front of law enforcement using law
23 enforcement devices to assist with capturing that
24 conversation.

25 Q. So law enforcement equipment was used to record it?

NINA McKEE ANDERSON - DIRECT EXAMINATION BY MS. BLUNDY

53

1 A. Yes.

2 Q. But her phone was used to place the phone call?

3 A. It was.

4 Q. So did she physically dial the Defendant's number?

5 A. She did.

6 Q. And was she aware that you were recording that line?

7 A. She was.

8 Q. Was the Defendant aware that you were recording that
9 line?

10 A. He was not.

11 Q. We all listened to the phone call just a few minutes
12 ago. What was it about that phone call that led you to seek
13 a warrant for his arrest for domestic violence in the second
14 degree?

15 A. Based on his own admission of choking the victim. He
16 said several times that he did, in fact, choke her, which
17 leads to the degree of domestic violence, second. And based
18 on those facts, I presented those facts to the judge.

19 Q. Did you feel it necessary to do any further
20 investigation once you listened to that admission?

21 A. At that time I did not due to the physical
22 manifestations were consistent with what was alleged to
23 happened and based on his own admission to her through the
24 phone call.

25 Q. Thank you. I have no further questions. Please answer

NINA McKEE ANDERSON - DIRECT EXAMINATION BY MS. BLUNDY

1 anything Mr. Plowden may have for you.

2 **MR. PLOWDEN:** No questions, Your Honor.

3 **THE COURT:** All right. Thank you, officer. You can
4 step down.

5 A. Thank you.

6 (Pause)

7 **MS. BLUNDY:** Your Honor, at this time the State would
8 rest their case.

9 **THE COURT:** All right. Madam Bailiff, would you take
10 our jury to the jury room.

11 (Whereupon the jury exited the courtroom at 3:03 pm)

12 **THE COURT:** All right. The State has rested. Are
13 there any motions?

14 **MR. PLOWDEN:** Yes, Your Honor. At this time I'd like
15 to move for a directed verdict on domestic violence, second.
16 The element that I'm looking at is the impeding the victim's
17 air flow or breathing. While there was testimony choking,
18 there was no description of what happened. The victim was
19 not asked and did not volunteer that her airway was impeded
20 or that she had trouble breathing during this.

21 And choking is a term generically defined as a hand or
22 something else around the neck. But the law requires that
23 it impede air flow or breathing. And based on that basis,
24 based on the dearth of evidence, there's no evidence at all
25 that the jury could decide that that happened. And so I

1 think that domestic violence, second, has not been proven.

2 **THE COURT:** Okay. Ms. Blundy.

3 **MS. BLUNDY:** Your Honor, I think when the legislature
4 rewrote the statute they rewrote it specifically to address
5 the issue of choking, which had arrised [sic] prior in
6 numerous cases. I do believe choking to mean impeding of
7 the victim's air flow. And I think that would -- if there's
8 question about that, there's enough to get that to the jury
9 whether they felt choking rose to the level of impeding, but
10 I think there is evidence of that.

11 **MR. PLOWDEN:** Your Honor, if I may. The legislature
12 knows what words mean. If they meant for the word choking
13 to be there, it'd be there.

14 **THE COURT:** Okay. Well, in ruling on a motion for
15 directed verdict, the Court is concerned with the existence
16 or non-existence of evidence, not its weight. To grant a
17 directed verdict, I would have to find, after viewing the
18 evidence in the light most favorable to the State, that
19 there is no evidence of either direct or circumstantial
20 nature that would reasonably prove the elements of the
21 offense.

22 In this case I'm going to find the State has produced
23 some evidence to support the elements of the charge. Mr.
24 Plowden, I believe your arguments go toward the weight of
25 the evidence and not the existence. It is a factual

1 question. So I would deny your motion for a directed
2 verdict at this time.

3 Mr. Plowden, would you have your client please stand.

4 **MR. PLOWDEN:** May I have a minute to discuss that with
5 him?

6 **THE COURT:** Yes.

7 (Pause)

8 **MR. PLOWDEN:** Your Honor, I'd like to put just a couple
9 of things on the record about his decision to make sure that
10 he understands that he doesn't have to and ---

11 **THE COURT:** All right. Well, let me give him his
12 instruction first. And ---

13 **MR. PLOWDEN:** Okay.

14 **THE COURT:** --- then I'm going to allow you to -- all
15 right. Mr. Whitmire, would you -- Mr. Plowden, you can have
16 you and your client stand. All right. Mr. Whitmire, at
17 this time -- well, first of all, Madam Clerk, would you put
18 Mr. Whitmire under oath.

19 **MADAM CLERK:** Sir, if you would, please raise your
20 right hand. Do you solemnly swear or affirm the testimony
21 you give the Court to be the truth, the whole truth and
22 nothing but the truth?

23 **MR. WHITMIRE:** I do.

24 **THE COURT:** All right. Mr. Whitmire, at this time I'm
25 going to explain some of your rights. If you do not

1 understand anything that I say, please let me know, and I
2 will explain it in more detail. If you answer the question,
3 I will assume you understood the question. Do you
4 understand?

5 **MR. WHITMIRE:** (Affirmative nod).

6 **THE COURT:** All right. You need to speak up.

7 **MR. WHITMIRE:** Yes, sir.

8 **THE COURT:** We've reached the stage in the trial where
9 you may present your defense. You have the right to claim
10 the protections given to you by the Fifth Amendment to the
11 Constitution of the United States. This Amendment states in
12 part; No person shall be compelled in any criminal case to
13 be a witness against himself. This means that you cannot be
14 required to testify in this case.

15 On the other hand, you have the right to testify on
16 your own behalf should you choose to do so. However, no one
17 can make you testify. This is a personal right, and no one
18 can waive this right except you.

19 If you decide to testify, you'll be subject to the same
20 rules that govern other witnesses. And you may be examined
21 or cross-examined on any relevant issue in this case. In
22 addition, if you have any convictions involving dishonesty,
23 or false statement or for crimes punishable by imprisonment
24 for more than one year and this Court determines that the
25 probative value of admitting this evidence outweighs its

1 prejudicial effects to you, the solicitor will be able to
2 introduce your record to attack your credibility.

3 If you decide to testify, this decision on your part
4 must be freely, voluntarily and intelligently made with
5 knowledge of the protections given to you by the Fifth
6 Amendment and the consequences of your decision to testify.
7 If you decide not to testify, I will instruct the jurors
8 that they cannot give the fact that you did not testify any
9 consideration whatsoever and that there is to be absolutely
10 no prejudice to you because you did not testify. It is left
11 entirely up to you whether or not to testify. You may talk
12 to your attorney, your family, friends or anyone else, but
13 the final decision will be left entirely up to you. Do you
14 understand what I have explained to you?

15 **MR. WHITMIRE:** I do.

16 **THE COURT:** Do you have any questions about what I've
17 explained to you?

18 **MR. WHITMIRE:** No, sir.

19 **THE COURT:** All right. Well, we're going to go off the
20 record for just a moment and let Mr. Plowden talk to his
21 client. We're going to take a short break and then we'll
22 come back.

23 (Whereupon court was in recess at 3:10 pm)

24 (Whereupon court reconvened at 3:22 pm)

25 **THE COURT:** Mr. Plowden, has your client decided

BILLY WHITMIRE - DIRECT EXAMINATION BY MR. PLOWDEN

59

1 whether he wishes to present a case?

2 **MR. PLOWDEN:** Yes, sir. He tells me he desires to
3 testify.

4 **THE COURT:** All right. Stand up, Mr. -- is that
5 correct, Mr. Whitmire?

6 **MR. WHITMIRE:** Yes, Your Honor.

7 **THE COURT:** Okay. All right. Madam Bailiff, would you
8 get our jury.

9 (Whereupon the jury entered the courtroom at 3:23 pm)

10 **THE COURT:** All right. Ladies and gentlemen, the State
11 has rested. Mr. Plowden.

12 **MR. PLOWDEN:** Thank you, Your Honor. The Defense calls
13 Mr. Whitmire.

14 **MADAM CLERK:** Sir, please come forward to be sworn.
15 Place your left hand on the Bible and raise your right hand.

16 **Billy Whitmire,** being
17 duly sworn testified as follows;

18 **MADAM CLERK:** Please be seated.

19 **Direct Examination by Mr. Plowden:**

20 Q. Mr. Whitmire, how old are you?

21 A. Fifty-three, just have turned that.

22 Q. And how long have you lived in Oconee County?

23 A. Nine, ten years, I guess, something like that.

24 Q. Back on February the 5th of '16 where were you living?

25 A. At [REDACTED] Road.

BILLY WHITMIRE - DIRECT EXAMINATION BY MR. PLOWDEN

1 Q. And you heard the testimony of Ms. Ellison before,
2 right?

3 A. Um-hum (affirmative).

4 Q. You were paying attention?

5 A. Yeah.

6 Q. So that's obviously the incident we want to talk about
7 today.

8 A. Um-hum (affirmative).

9 Q. Can you tell me what happened when she first came over
10 that morning?

11 A. Yeah, but it started off previous to this. We were at
12 home, and we'd been arguing a little bit. And that's when
13 my sister come by, I told her she needed to leave for a day
14 or two. And that's when she did because she wasn't wanting
15 to have a relationship.

16 She'd got caught screwing around is what happened. And
17 so she left and this, that and the other. She done -- then
18 that rocked on that week and stuff.

19 And, hell, I always put the kids on the bus and
20 everything, got them off the bus 'cause I had a job that
21 allowed me to do that, carpentering and stuff. And the next
22 thing you know, the kids -- the bus driver stopped after
23 about the second or third day and told me they was going to
24 a different school. I didn't even know none of that was
25 going on. And ---

BILLY WHITMIRE - DIRECT EXAMINATION BY MR. PLOWDEN

61

1 Q. All right. Well, let's go back and talk about the
2 morning when -- that she came back. You remember that
3 morning?

4 A. Yeah. She came -- she came back and ---

5 Q. Tell me how you got into a spat.

6 A. Oh, her standing there lying and laughing in my face, I
7 ain't done nothing, sniggling [sic] and stuff. I didn't do
8 nothing to her. I put my hand on her shoulder right there
9 and I asked her what she'd been up to.

10 Q. And did you touch her anywhere else?

11 A. Nope.

12 Q. Okay. She said she had hair missing. Did you know
13 anything about that?

14 A. I don't know what happened to her. I don't -- they
15 ain't no telling.

16 Q. Did it happen that morning?

17 A. Not -- not at my account, no.

18 Q. Well, did it happen by anybody's account that ---

19 A. I ---

20 Q. --- morning?

21 A. --- have no idea when it happened. I just, like I
22 said, asked her what the hell she'd been up to. And then
23 she knowed she was caught. And -- and then, in fact, that
24 following day after this incident supposedly happened, her
25 and her mama ---

BILLY WHITMIRE - DIRECT EXAMINATION BY MR. PLOWDEN

1 MS. BLUNDY: Objection, ---

2 A. --- showed up.

3 MS. BLUNDY: --- relevancy to the following day.

4 A. It was four days ---

5 THE COURT: All right. Hold on, hold on. Rephrase
6 your question.

7 Q. Let's -- let's talk about the events of that day, okay?

8 All right. Did you choke her?

9 A. No, sir.

10 Q. All right. You heard the telephone call, correct?

11 A. Um-hum (affirmative).

12 Q. And there's three -- three places in that call, if I --

13 if I remember correctly, that would sort of cut the other
14 way on that. Do you understand what I'm saying?

15 A. Um-hum (affirmative).

16 Q. Okay.

17 THE COURT: All right. Hold on, hold on. Sir, you
18 need to say yes or ---

19 A. Yes.

20 THE COURT: The court reporter can't take it down when
21 you just nod your ---

22 A. Sorry about the um-hum (affirmative). Yes.

23 Q. At first she said why'd you hit me or choke me? And

24 you said, well, I didn't hit you. Okay. And then twice you
25 said I'm sorry about choking you. Why did you say that?

BILLY WHITMIRE - DIRECT EXAMINATION BY MR. PLOWDEN

63

1 A. Because all I could think about the whole time, I'd
2 been with somebody 18 years, and I was thinking about that
3 Smith woman that drowned her kids over there in Lake
4 Hartwell. And I hadn't seen my kids. That's what I was
5 thinking about the whole time. I didn't know what in the
6 hell she was capable of or what she was going to do or
7 nothing else.

8 Q. So why did you say I'm sorry about choking you?

9 A. I knowed that was the only way I was going to see my
10 kids. I was just going along with her. She kept on and on.
11 It was just something to say at the given time is all I was
12 doing. Just ---

13 Q. Okay.

14 A. I was worried about my kids.

15 Q. All right. Do you see your kids now?

16 A. Yeah. I've had them every weekend since this started,
17 which I ain't supposed to, but she -- I raised them since
18 they was babies anyway.

19 Q. What do you mean you're not supposed to?

20 A. She -- court order, I ain't supposed to see them unless
21 we -- they're -- we got a chapperone with us or whatever.
22 She made me look like a dog and all kind of stuff. And ---

23 Q. And that's been almost three years, is that ---

24 A. Yeah.

25 Q. It's the past three years.

BILLY WHITMIRE - DIRECT EXAMINATION BY MR. PLOWDEN

1 A. Yeah, she's been in contempt. And that gal right
2 there, the detective come to my house and somebody ---

3 Q. I don't think we need to get into that, okay?

4 A. All right.

5 Q. Has there been any kind of bad blood or anything
6 physical between you and Ms. Ellison ---

7 A. No.

8 Q. --- since then?

9 A. No.

10 Q. Okay. Have -- how many times have you seen her since
11 then?

12 A. Every weekend.

13 Q. Okay. And that's to hand the boys over and to give ---

14 A. Yeah.

15 Q. --- them back.

16 A. Yeah. I'll take them to Florida and stuff and ---

17 Q. Any problems with that when -- that y'all have?

18 A. (Negative nod).

19 Q. Where do you hand them off?

20 A. McDonald's. She's brought them to the house before ---

21 Q. Okay.

22 A. --- and let them out or whatever.

23 Q. All right. Answer any questions Ms. Blundy might have.

24 A. Sure.

25 **THE COURT:** All right. Ms. Blundy.

BILLY WHITMIRE - CROSS-EXAMINATION BY MS. BLUNDY

65

1 MS. BLUNDY: Thank you, Your Honor.

2 Cross-Examination by Ms. Blundy:

3 Q. Mr. Whitmire, ---

4 A. Yes.

5 Q. --- Attorney Plowden asked you did you choke her, and
6 you stated for the record, no, sir, is that correct?

7 A. (Affirmative nod).

8 Q. But when Amie called you and you didn't know the phone
9 was being recorded, that's not what you said. In fact, you
10 stated the opposite not three times, four different times,
11 does that sound right to you?

12 A. I don't know how many times, but, yeah, I guess it
13 does. I don't know. Whatever y'all come up with. It's how
14 y'all play these games.

15 Q. Did you say, I'm sorry I choked you, and I wish I
16 hadn't done that?

17 A. I think that might have been the correct word, ---

18 Q. Did you say, ---

19 A. --- I don't ---

20 Q. --- I'm sorry I choked you? I didn't know I hit you,
21 but if I did choke you, it was out of rage?

22 A. I don't remember saying that.

23 Q. That wouldn't be on that phone call that we've all just
24 listened to in this courtroom?

25 A. You heard what you heard. And I don't remember saying

BILLY WHITMIRE - CROSS-EXAMINATION BY MS. BLUNDY

1 it. That's all I can tell you, hon.

2 Q. Did you know that this phone call was being recorded?

3 A. No, I didn't think y'all -- nobody'd stoop that low to
4 do that stuff. I didn't -- it's a game to y'all, it's my
5 kids' life to me.

6 Q. Let's get to that fact. You just stated before this
7 Court that you were worried she was going to kill your kids.

8 A. I don't -- she's fooling around with the ---

9 Q. Well, you equated her to the murderer. So is that what
10 you were worried about?

11 A. No, but she's fooling around with a cop in Hall County,
12 so I didn't know if she was fooling around with one over
13 here. I don't have no idea. I don't know what's going on.

14 Q. This ---

15 A. Still don't.

16 Q. --- wasn't about your kids, was it?

17 A. Huh?

18 Q. This was not about your kids, was it?

19 A. What?

20 Q. Any of this?

21 A. Any of what?

22 Q. Any of the physical altercation that occurred with Ms.
23 Ellison?

24 A. I don't know what -- I don't know what happened. I do
25 know I grabbed her by the shoulder and asked her what the

BILLY WHITMIRE - CROSS-EXAMINATION BY MS. BLUNDY

67

1 hell she'd been up to. And the internet, you've heard of
2 that, the internet's ruint my life? That's pretty much
3 what's happened.

4 Q. Did you know she was coming to your house that morning?

5 A. Um ...

6 Q. Amie?

7 A. Yeah.

8 Q. Did you know that she takes the kids to school?

9 A. I didn't know what was going on at the given time.

10 Q. Well, did you plan on taking the kids to school?

11 A. No.

12 Q. No, because she does, correct?

13 A. No. She'd moved them out of school. I didn't know
14 that at that given time. It was the following Monday when
15 they didn't get off the bus for two days is when ---

16 Q. Did you know ---

17 A. --- I knowed they was ---

18 Q. --- they were going ---

19 A. --- at a different school.

20 Q. --- to school that morning?

21 A. Huh?

22 Q. Did you know that they were going to school that
23 morning?

24 A. I wasn't with her. I don't know what she was doing. I
25 had no idea.

BILLY WHITMIRE - CROSS-EXAMINATION BY MS. BLUNDY

1 Q. Were the kids with you?

2 A. If I'd known what she was doing, I'd stopped her eight
3 years ago when she started ---

4 Q. Would you ---

5 A. --- screwing around.

6 Q. --- please answer my question. Were the kids with you?

7 A. No, that given morning, they sure wasn't.

8 Q. So where was the bus coming to?

9 A. It come to the house every day, the same route they
10 always run, by your house.

11 Q. Your house? The Cobb -- the Cobb Bridge Road house?

12 A. Yes. Yes.

13 Q. That's where the kids get picked up for school,
14 correct?

15 A. Yeah.

16 Q. So you knew they were going to school that morning?

17 A. No. They left, like I said, that Thursday before.

18 That's when my sister stopped by and said, y'all don't need
19 to be arguing like this, and she went home. That -- that
20 was on a Thursday.

21 Q. Did she have the kids with her?

22 A. She left with them, yeah. A cop -- the police made
23 them -- let me have -- made her -- made me give them to her.

24 Q. The police made you give the kids to her?

25 A. Yeah. She sent them up there.

BILLY WHITMIRE - CROSS-EXAMINATION BY MS. BLUNDY

69

1 Q. Okay.

2 A. And then after the incident where we got into the
3 little altercation, the next morning her and her mama showed
4 up at the house to show me there wasn't nothing on her
5 telephone. I said, Beth Ann, that's her mama, I said -- I
6 said, you ain't going to believe me, that's your daughter.
7 You ain't ---

8 Q. I'm not asking ---

9 A. --- going to believe ---

10 Q. --- you about that.

11 A. --- nothing I say.

12 Q. I'm not asking you about that.

13 A. Okay. Well, I'm just telling you.

14 Q. You just a moment ago, though, when you were talking,
15 said the little altercation. What were you referring to?

16 A. When I grabbed her and said, what in the hell have you
17 been up to?

18 Q. So you didn't strike her in the face multiple ---

19 A. Uh-uh (negative).

20 Q. --- times? You didn't hit her head in the wall?

21 A. Uh-uh (negative).

22 Q. You didn't pull her hair?

23 A. Uh-uh (negative).

24 Q. You didn't do any of this, you're claiming?

25 A. I grabbed ahold of her. Now, she may have did some

BILLY WHITMIRE - CROSS-EXAMINATION BY MS. BLUNDY

1 jerking around and stuff. There ain't no telling what
2 happened there.

3 Q. You didn't do any of this that we can physically see
4 the brusings, but you want us to believe that ---

5 A. Uh ---

6 Q. --- that you choked her?

7 A. Yeah. In fact, she'd called me before y'all started
8 recording me with all that crap. And I called my boys and
9 said, is there something wrong with your mama? And they
10 said, no, they ain't nothing wrong with mama, nothing wrong
11 with her. I hate to bring them into court, but they'll
12 testify to that. So I don't know what's going on.

13 Like I say, ever since this circus started, I've been
14 in the blind, the whole time been told I didn't need no
15 witnesses, don't need no -- don't need nothing. I ain't
16 been able to say nothing since this started.

17 Q. I think you've said enough. Thank you. I have no
18 further questions.

19 **THE COURT:** Any redirect?

20 **MR. PLOWDEN:** No, sir.

21 **THE COURT:** All right. Thank you, Mr. Whitmire. You
22 can step down.

23 (Pause)

24 **THE COURT:** All right. Mr. Plowden, call your next
25 witness.

1 MR. PLOWDEN: We rest, Your Honor.

2 THE COURT: Okay. Any reply testimony?

3 MS. BLUNDY: None, Your Honor.

4 THE COURT: Okay. Madam Bailiff, would you take our
5 jury to the jury room briefly.

6 (Whereupon the jury exited the courtroom at 3:35 pm)

7 THE COURT: All right. I wanted to go over the charges
8 with counsel. Mr. Plowden, you wish to ---

9 MR. PLOWDEN: Your Honor, just out of an abundance of
10 paranoia, I want to renew my motions ---

11 THE COURT: Yes, sir.

12 MR. PLOWDEN: --- just in case somebody says I didn't.

13 THE COURT: Yes, sir. It's noted for the record. And
14 still denied, but it's noted for the record.

15 I wanted to go over charges. I have -- and also had my
16 clerk to prepare a verdict form. Mr. Plowden, does your
17 client wish to have a lesser included offense of domestic
18 violence, third degree?

19 (Pause)

20 MR. PLOWDEN: Yes, sir, I believe we would ---

21 THE COURT: Okay.

22 MR. PLOWDEN: --- request a lesser included.

23 THE COURT: All right. Well, I have the statute. And
24 I'm going to hand this out. I want each lawyer to look at
25 it.

1 (Pause)

2 **MS. BLUNDY:** Your Honor, we're good with everything on
3 here. We just wanted to make sure that the penalty,
4 obviously, doesn't get read to the jury.

5 **THE COURT:** Right. I mean, I'm not handing this back.
6 It's just a copy of the statute.

7 **MS. BLUNDY:** Okay.

8 **THE COURT:** So that is the charge -- specific charge.
9 I have a general charge on the responsibility of the judge,
10 responsibility of the jury, charge on direct and
11 circumstantial evidence, credibility of witnesses,
12 reasonable doubt, presumption of innocence, criminal intent,
13 charge, arrest, indictment not being evidence, and then a
14 charge about their deliberations. So those are all standard
15 charges. And then we have the statute.

16 Now, my clerk has also done a verdict form, which is a
17 two-page form. And it gives them the two options. Since
18 the State has the burden of proof, I put the not guilty
19 first on the guilty form.

20 **MR. PLOWDEN:** Your Honor, is -- does Your Honor have a
21 charge for definition of moderate bodily injury?

22 **THE COURT:** It's in the statute. It's under subsection
23 4, 16-25-10 subsection 4. So we can read that to them as
24 well from the statute.

25 **MR. PLOWDEN:** Thank you, Your Honor. I appreciate

CLOSING ARGUMENTS - MS. BLUNDY

73

1 that.

2 **THE COURT:** So in accordance with the Supreme Court
3 decision, the State versus Beaty, Ms. Blundy, you will close
4 in full, the Defense will then close in full, and then, Ms.
5 Blundy, you will have the opportunity to reply to anything
6 brought up by the Defense that wasn't covered in your
7 closing since the Defense has produced evidence in the
8 trial.

9 (Pause)

10 **THE COURT:** As soon as this gets printed out we can get
11 them back in here and we can proceed.

12 (Pause)

13 **THE COURT:** Okay. Anything further before we bring our
14 jury in?

15 **MR. PLOWDEN:** Nothing from the Defense.

16 **MS. BLUNDY:** Nothing from the State.

17 **THE COURT:** All right. Let's get our jury.

18 (Whereupon the jury entered the courtroom at 3:44 pm)

19 **THE COURT:** All right. Ladies and gentlemen, each side
20 has rested, therefore, that ends the evidentiary part of
21 this trial. The next stage of the trial will be the
22 opportunity for the attorneys to give you closing arguments.
23 Ms. Blundy.

24 **MS. BLUNDY:** Thank you, Your Honor. At the beginning
25 of the case I had mentioned to you that in domestic violence

CLOSING ARGUMENTS - MS. BLUNDY

1 cases, it often happens behind closed doors to where we
2 don't really know that it becomes a he said/she said, and
3 that is not this case. The doors are open. We know what
4 happened.

5 You as the jury get to use your common sense and life
6 experiences to know what happened. And that's why we
7 selected each and every one of you because we felt you'd be
8 in a good position to do that.

9 We are all old enough to know that relationships are
10 complicated at times. This couple had been together 18
11 years. They have two kids together. You could hear the
12 reluctancy in Ms. Ellison's voice when she testified that
13 she was uncomfortable and she really didn't want to tell
14 each and every one of you exactly what happened to her.
15 That's not uncommon in domestic violence cases. It's not
16 uncommon for a victim to feel that way.

17 She will have an ongoing relationship with this
18 Defendant. They have two children ages eight and 11. And
19 they share custody, custody that he confirmed to what she
20 said. She has them during the week, he gets them on the
21 weekends. They do the exchanges at McDonald's. That's not
22 going to change.

23 You wonder why she is hesitant to come here and tell
24 you what happened to her when she'd finally had enough and
25 said that she was leaving the relationship. And it didn't

CLOSING ARGUMENTS - MS. BLUNDY

75

1 go well for her when she stood up to him. It did not go
2 well.

3 He struck her multiple times in the head, multiple
4 times. And I know these are kind of grainy photographs, but
5 if you review them back in the jury room you can see that
6 clearly this is a bruise right in her eye socket. He struck
7 her in the face. I submit to you that it was with a closed
8 fist, probably a punch.

9 That's not all. If you look closer at the photographs
10 you can notice redness on her forehead, the bridge of her
11 nose and the other eye. He didn't hit her one time, he hit
12 her multiple times square in the face.

13 This was taken at least three days after the incident.
14 This was taken from her cell phone. You can clearly see the
15 bruising coming out even further than it was a couple of
16 days earlier. She has stood up in court, and even though
17 she wants peace in the relationship, she has had the courage
18 to come forward to you and point out her perpetrator in the
19 presence of this courtroom.

20 Her neck, it is hard to tell from this photograph, I
21 will agree, but you heard the officer's testimony that came
22 into contact with her within an hour of the altercation.
23 And he said that he could observe red marks on her neck,
24 which is consistent with what she said happened, that at
25 some point during this scuffle he got on top of her and he

CLOSING ARGUMENTS - MS. BLUNDY

1 choked her. There's no other meaning for choke ---

2 MR. PLOWDEN: Your Honor, ---

3 MS. BLUNDY: --- other than ---

4 MR. PLOWDEN: --- I'm not certain that he got on top of
5 her was in evidence.

6 MS. BLUNDY: I believe that was the testimony, Your
7 Honor, on the bed.

8 THE COURT: Overruled.

9 MS. BLUNDY: There's no other definition for choking.
10 When someone puts their hand around your neck and impedes
11 your breathing, that is what choking is. And she told you
12 that that is what happened to her in this case.

13 Why is it important? Because that's what makes this
14 case a second degree. We're not arguing any of the other
15 factors that you can consider in the second degree. We're
16 not arguing moderate bodily injury. We're not arguing that
17 there was the added protection order at this time. We are
18 arguing that she was choked and she was in a domestic
19 violent relationship with this Defendant.

20 Of course the Defendant feels blindsided and railroaded
21 with the taped phone call. But you heard that Amie did it.
22 Why? Because she wanted a protection order from him. She
23 was scared of him. That's why she came to the police
24 department. She didn't necessarily do it because she wants
25 to get him in trouble. She knew that she would need

CLOSING ARGUMENTS - MS. BLUNDY

77

1 protection going forward. So that's why she sought it out.

2 That's why she agreed to the phone call.

3 Custody was not an issue with this couple. They had
4 worked it out. Those boys are fine, and they are doing
5 fine, and it was never about that. Never.

6 She did it because she wanted protection for those
7 boys. In fact, they worked it out in Family Court. That's
8 not an issue. Not an issue.

9 You heard what happened to her. Not only from her
10 mouth, but from his mouth. That tape recorded phone call,
11 you can listen to it again. But I'll tell you a little bit
12 about what it said.

13 Amie said to him, why did you choke me and hit me the
14 other day? At first he says, I didn't hit you. And then he
15 says, I did choke you. What I've been through, let me tell
16 you, I was at my emotional breaking point. I shouldn't have
17 done that. We've been through a lot.

18 But what does that tell us? He's at an emotional
19 breaking point. He is losing her. He is losing the
20 relationship. And that loss of control over her escalated
21 into violence. That's where the crime comes in.

22 He says -- she says, well, somehow in the midst of
23 things you gave me a black eye. And he says, well, I'm
24 sorry. At some point she said again, you called me, you
25 wanted to talk like an adults -- like an adult. And he

CLOSING ARGUMENTS - MR. PLOWDEN

1 said, yeah, we are adults. Yeah, I'm sorry. I'm sorry I
2 choked you. I wish I hadn't done that. I'm sorry.

3 These are admissions. The fact that he's saying sorry
4 is great. And maybe going forward they can have an amicable
5 relationship, but it doesn't change the fact that he broke
6 the law that day.

7 And lastly, how do we know that this wasn't anything
8 other than domestic violence? He says, I'm sorry, I know I
9 choked you. I didn't know I hit you. That wasn't me. That
10 was rage. He's guilty.

11 **THE COURT:** All right. Mr. Plowden.

12 **MR. PLOWDEN:** Ladies and gentlemen, I'm clearly wrong
13 about that this case was going to go to tomorrow. This is
14 it.

15 You're going to -- the next thing you're going to hear
16 is the Judge tell you what the law is. And you'll go back
17 and apply it to the facts as you find them. We don't know
18 the facts yet. And the reason is because you, the jury,
19 have not deliberated and determined what those facts are.

20 This case for domestic violence, second degree, hangs
21 on a -- whether or not -- excuse me, I picked the wrong
22 papers up -- whether or not the offense is committed by
23 impeding the victim's breathing or air flow. The Government
24 would have to substitute a generic term, choking, for that.

25 Now we don't know in what sense anybody used those

CLOSING ARGUMENTS - MR. PLOWDEN

79

1 terms. You can look at the pictures. You can look at what
2 purports to be a bruise on the neck and ask yourself did
3 that impede the airway? Did it stop somebody -- did it stop
4 her from breathing? What she said was one hand on the
5 throat for a couple of seconds.

6 Now, she never said her breathing was impaired, never
7 mentioned it. All we've heard is choke, choke, choke. You
8 heard -- you heard the tape. I understand -- it says what
9 it says. There's no question about that. That's why we
10 have them. It's good. Nobody's arguing about who said
11 what. We all listened to it.

12 And -- but what I want to tell you is I think that in a
13 situation where a relationship is breaking up that one party
14 or another sometimes gets desperate about not wanting that
15 to happen and they'd apologize for the original sin if that
16 would make it happen, okay? And I think -- I think that's
17 worth considering.

18 And it's certainly worth considering whether or not,
19 when he used that term, he meant I'm sorry I obstructed your
20 airways and made you stop breathing. That's the question
21 out there.

22 Now the Judge is going to instruct you on what they
23 call the -- a lesser included offense, an offense of
24 domestic violence, third degree, that doesn't have this
25 element of choking. It's not there.

CLOSING ARGUMENTS - MS. BLUNDY

80

1 And you'll be able to pick one of the three results in
2 this case. One is guilty of second degree, one is guilty of
3 third degree and one is not guilty. And I ask you, beg you
4 to use your common sense and look at these things and ask
5 yourself in your position was he confessing to obstructing
6 her airway? I think that if you look at that and I think
7 there's ample reason to come to the conclusion that he
8 didn't mean that.

9 Your Honor, I mean, ladies and gentlemen of the jury,
10 what you're doing now is the essence of our legal system.
11 You hear a lot of stuff about it, good, bad or indifference.
12 Some people think that it's fair and some people think it's
13 not. Some people think it approximates justice the best we
14 can. It's a human system.

15 But today, for this case, for Mr. Whitmire, you are the
16 criminal justice system. And it's both an honor to be that,
17 but it's a burden. You've got to look at everything as if
18 it were your case. And I thank you.

19 **THE COURT:** All right. Ms. Blundy, reply.

20 **MS. BLUNDY:** I don't think the Defendant thought about
21 I want to impede her airway, necessarily those technical
22 terms. Choking, the same thing. You have to think about
23 when you wrap your hand around someone's neck, what are you
24 trying to do to them? And that's common sense. Thank you.

25 **THE COURT:** All right. Ladies and gentlemen, we've

CHARGE OF THE COURT

81

1 come to the point in this trial where I instruct you on the
2 law. My instructions will be somewhat lengthy. They'll be
3 in three parts; First, instructions on the general rules
4 that define and control the jury's duties. Secondly, the
5 instructions that state the rules of law that you must
6 apply, what the State must prove to make its case. And,
7 lastly, some rules for your deliberations.

8 The general rules begin with your duties as jurors. It
9 is your duty to find the facts from all of the evidence in
10 the case. To those facts you must apply the law as I give
11 it to you.

12 You shall not be concerned with what the law should be,
13 but what it is. And you must not be influenced by any
14 personal likes or dislikes, opinions, prejudices or undue
15 sympathy. That means you must decide the case solely on the
16 evidence before you in accordance with the law, the very
17 thing that you took an oath promising to do at the beginning
18 of the trial.

19 It is your responsibility and yours alone to determine
20 the facts of this case. I would therefore charge you that
21 if during the course of this trial or during this charge if
22 you have been given or left with the impression that I favor
23 one side or the other, I would specifically instruct you to
24 disregard that impression. Under our Constitution I am not
25 allowed to have an opinion as to the facts of this case.

CHARGE OF THE COURT

1 You should not be influenced by any objections or the
2 Court's ruling on them.

3 You and you alone are the judges of the facts. You
4 determine the facts by evaluating or weighing the evidence
5 that you've heard during the trial.

6 What is evidence? Evidence is the sworn testimony from
7 the witness stand and any exhibits that have been entered
8 into evidence. The statements by the attorneys are not
9 evidence. What they have said in opening statements,
10 closing arguments and at other times is intended to help you
11 interpret the evidence, but it is not evidence.

12 There are two types of evidence which are generally
13 presented during a trial; Direct evidence and
14 circumstantial evidence. Direct evidence directly proves
15 the existence of a fact and does not require deduction.
16 Circumstantial evidence is proof of a chain of facts and
17 circumstances indicating the existence of a fact. Crimes
18 may be proved by circumstantial evidence.

19 The law makes no distinction between the weight or
20 value to be given to either direct or circumstantial
21 evidence. However, to the extent the State relies on
22 circumstantial evidence, all the circumstances must be
23 consistent with each other and when taken together point
24 conclusively to the guilt of the accused beyond a reasonable
25 doubt. If the circumstances merely portray the Defendant's

CHARGE OF THE COURT

83

1 behavior as suspicious, then the proof has failed.

2 The State has the burden of proving the Defendant
3 guilty beyond a reasonable doubt. The burden rests with the
4 State regardless of whether the State relies on direct
5 evidence, circumstantial evidence or some combination of the
6 two.

7 As the judges of the facts you are the sole judges of
8 the credibility, that is the believability of the witnesses
9 who have testified in this case. In determining their
10 credibility you may take into consideration many things,
11 such as the appearance and manner of the witness on the
12 stand, sometimes referred to as the demeanor of the witness,
13 was the witness able to see, hear or know the things about
14 which the witness testified, how well was the witness able
15 to recall and describe those things, did the witness have a
16 cause or reason to be biased and prejudiced in favor of the
17 testimony he or she gave, how reasonable was the witness'
18 testimony considered in light of all the evidence in the
19 case, was the witness' testimony contradicted by what the
20 witness had said or done at another time or by the testimony
21 of other witnesses or other evidence? These are some of the
22 factors you may consider in deciding whether to believe
23 testimony.

24 As jurors you have the right to believe all of the
25 testimony of a witness or none of the testimony of a

CHARGE OF THE COURT

1 witness. You have a right to believe a portion of the
2 testimony of a witness and discard the rest. You may
3 believe the testimony of one witness over the many or the
4 many over the one. Most certainly you do not determine the
5 matter of credibility by simply counting up the number of
6 witnesses who may have testified on behalf of the parties in
7 the case.

8 What is a reasonable doubt in the law? A reasonable
9 doubt is the kind of doubt that would cause a reasonable
10 person to hesitate to act. Some of you may have served as
11 jurors in civil cases where you were told that it is only
12 necessary to prove that a fact is more likely true than not
13 true, such as by the greater weight or the preponderance of
14 the evidence.

15 In criminal cases the State's proof must be more
16 powerful than that, it must be beyond a reasonable doubt.
17 Proof beyond a reasonable doubt is proof that leaves you
18 firmly convinced of the Defendant's guilt.

19 There are very few things in this world that we know
20 with absolute certainty. And in criminal cases the law does
21 not require proof that overcomes every possible doubt. If,
22 based on your consideration of the evidence you are firmly
23 convinced that the Defendant is guilty of the crime charged,
24 you must find the Defendant guilty. If, on the other hand,
25 you think there is a real possibility that the Defendant is

CHARGE OF THE COURT

85

1 not guilty, you must give the Defendant the benefit of the
2 doubt and find him not guilty.

3 A reasonable doubt may arise from the evidence or from
4 a lack of evidence. The Defendant is entitled to every
5 reasonable doubt that may arise in the case. If upon any
6 issue of fact essential to a conviction in a verdict of
7 guilty of an offense, if you have any reasonable doubt as to
8 how that issue should be resolved, it is your duty to
9 resolve that doubt in favor of the Defendant. Suspicion,
10 however strong, is not enough to sustain a conviction. The
11 evidence presented by the State must be substantial evidence
12 that tends to prove the guilt of the Defendant beyond a
13 reasonable doubt.

14 The Defendant has pled not guilty to this indictment.
15 And that plea puts the burden on the State to prove the
16 Defendant guilty. A person charged with committing a
17 criminal offense is never required to prove himself
18 innocent.

19 I charge you that it is an important rule of law that
20 the defendant in a criminal trial, no matter what the
21 seriousness of the charge may be, will always be presumed
22 innocent of the crime for which the indictment was issued
23 unless guilt has been proven by evidence satisfying you of
24 that guilt beyond a reasonable doubt. The presumption of
25 innocence does not end when you begin your deliberations,

CHARGE OF THE COURT

1 but it accompanies the Defendant throughout the trial until
2 you reach a verdict of guilt based on evidence satisfying
3 you of that guilt beyond a reasonable doubt.

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

14 In order to establish criminal liability, criminal
15 intent is required. For example, the mental state required
16 to be proven by the State for a particular crime might be
17 purpose, intent, knowledge, recklessness or criminal
18 negligence.

19 Criminal intent must be proven by the State beyond a
20 reasonable doubt. Criminal intent is always a matter that
21 must be determined by the jury from the circumstances
22 surrounding the situation.

23 There is no way to prove intent to a mathematical
24 certainty. There is no way medical science can dissect a
25 person's brain and determine what that person had in mind.

CHARGE OF THE COURT

87

1 So the law says that criminal intent may be inferred from
2 the circumstances shown to have existed. This is how you
3 make a determination of whether or not the element requiring
4 intent was present. It is not necessary to establish intent
5 by direct and positive evidence, but intent may be
6 established by inference in the same way as any other fact
7 by taking into consideration the acts of the parties and all
8 of the facts and circumstances of the case.

9 Criminal intent is a mental state, a conscious
10 wrongdoing. It is up to you to determine what the Defendant
11 intended to do based on the circumstances shown to have
12 existed. Criminal intent can arise from an action or from a
13 failure to act. It may arise from negligence, recklessness
14 or an indifference to duty or to consequences that is
15 considered by the law to be the equivalent of criminal
16 intent.

17 The indictment charges the Defendant with domestic
18 violence, second degree. I'll remind you that the fact that
19 the Defendant was arrested, charged and indicted in this
20 case is not evidence in this case and cannot be considered
21 by you as evidence of guilt in this case, nor does it create
22 any presumption or inference of guilt. The indictment is
23 simply the formal, written instrument which contains the
24 charges made against the Defendant. It is the formal
25 document by which the case is brought into court.

CHARGE OF THE COURT

1 Now, ladies and gentlemen, I want to read you the
2 statutes that apply to this case. The Defendant has been
3 charged with domestic violence, second degree. It is
4 unlawful to cause physical harm or injury to a person's own
5 household member or offer or attempt to cause physical harm
6 or injury to a person's own household member with apparent
7 present ability under circumstances reasonably creating fear
8 of imminent peril.

9 A person commits the offense of domestic violence in
10 the second degree if the person violates subsection (A),
11 what I just read to you, and moderate bodily injury to the
12 person's own household member results or the act is
13 accomplished by the means likely to result in moderate
14 bodily injury to the person's own household member, or the
15 person violates a protection order and in the process of
16 violating the order commits domestic violence in the third
17 degree, or the person has one prior conviction for domestic
18 violence in the past ten years from the current offense, or
19 in the process of committing domestic violence in the third
20 degree one of the following also results; (A) the offense
21 is committed in the presence of or while being perceived by
22 a minor, (B) the offense is committed against a person known
23 or who reasonably should have been known by the offender to
24 be pregnant, or the offense is committed during the
25 commission of a robbery, burglary, kidnapping, or theft or

CHARGE OF THE COURT

89

1 the offense is committed by impeding the victim's breathing
2 or air flow, or the offense is committed using physical
3 force or the threat and use of force against another to
4 block that person's access to any cell phone, telephone or
5 electronic communication device with the purpose of
6 preventing, obstructing or interfering with the report of
7 any criminal offense, bodily injury or property damage to a
8 law enforcement agency or a request for ambulance or
9 emergency medical assistance to any law enforcement agency
10 or emergency medical provider.

11 A person commits the offense of domestic violence in
12 the third degree if the person violates subsection (A) that
13 I read to you without any of the aggravating circumstances,
14 which I just read to you for second offense.

15 Moderate bodily injury is defined as follows; It means
16 physical injury that involves prolonged loss of
17 consciousness or that causes temporary or moderate
18 disfigurement or temporary loss of the function of a bodily
19 member or organ or injury that requires medical treatment
20 when the treatment requires the use of regional or general
21 anesthesia or injury that results in a fracture or
22 dislocation.

23 Moderate bodily injury does not include one time
24 treatment and subsequent observation of scratches, cuts,
25 abrasions, bruises, burns, splinters or any other minor

CHARGE OF THE COURT

1 injuries that do not ordinarily require extensive medical
2 care.

3 Ladies and gentlemen, we are almost to the point where
4 I send you to the jury room to begin your deliberations.
5 This has been a long instruction on the law, but I leave you
6 with some final thoughts. You were chosen as jurors because
7 both sides believed that you could be fair and impartial in
8 deciding this case.

9 I instruct you to make use of your life experiences,
10 your good common sense and your sense of logic and reason in
11 evaluating the evidence in this case. You are not partisans
12 or advocates for either side. You have no friends to
13 reward, nor any enemies to punish.

14 You are the judges of the facts. Your sole interest is
15 to determine whether the State has proven beyond a
16 reasonable doubt that the Defendant is guilty of the offense
17 charged. Be courteous with one another. Listen to the
18 views of your fellow jurors. Take the amount of time
19 necessary for you to thoroughly evaluate the evidence. This
20 case is important to both sides as this is their day in
21 court.

22 Now, Madam Forelady, I'm going to go over the verdict
23 form with you. It is a two-page verdict form. On the first
24 page it says -- gives the indictment number, indictment
25 number 2016-GS-37-632. And then it says, we, the jury,

CHARGE OF THE COURT

91

1 unanimously find on indictment number, and it gives the
2 number, that the Defendant, Billy Christopher Whitmire, is,
3 and it gives you two options. The first blank, not guilty
4 of domestic violence in the second degree or guilty of
5 domestic violence in the second degree.

6 Then it goes down and it says, alternatively the
7 Defendant may be found guilty of the lesser included offense
8 of domestic violence in the third degree. You may not find
9 the Defendant guilty of this offense if you have found him
10 guilty of domestic violence in the second degree. So,
11 again, you have the same choices, not guilty or guilty.

12 And then there is a place on the second page for you to
13 sign it above your name and date it. Now, you may -- again,
14 you may find the Defendant guilty of domestic violence,
15 second degree. You may find him guilty of domestic
16 violence, third degree. You may find him not guilty of
17 both. Again, you can't find him guilty of both.

18 So when you go back to the jury room do not begin your
19 deliberations until I send the verdict form back and the
20 exhibits. And once I send the verdict form back you may
21 begin your deliberations.

22 When you have reached a unanimous verdict, and your
23 verdict has to be unanimous, you will check the appropriate
24 boxes on the verdict form, knock on the door, let the
25 bailiff know you have reached a verdict. Okay? Now, Madam

1 Bailiff, I will get you to take the jury to the jury room at
2 this point.

3 (Whereupon the jury exited the courtroom at 4:12 pm)

4 **MR. PLOWDEN:** Your Honor, forgive me. I've not been
5 before you before. But the alternate is going back there.

6 **THE COURT:** I'm bringing him back ---

7 **MR. PLOWDEN:** Thank you, Your Honor.

8 **THE COURT:** --- after -- all right. Are there any
9 exceptions to my charge from the State?

10 **MS. BLUNDY:** None, Your Honor.

11 **THE COURT:** Any exceptions from the Defense?

12 **MR. PLOWDEN:** No, sir.

13 **THE COURT:** All right. I need the attorneys to come
14 forward, count the exhibits, make sure they're all there.
15 Madam Bailiff, bring the alternate back in here.

16 (Pause)

17 **THE COURT:** Do we have all our exhibits?

18 **MS. BLUNDY:** Yes.

19 **THE COURT:** Okay. I'll set this right here. And the
20 bailiff can take that back as soon as we get our alternate.

21 (Whereupon the alternate entered the courtroom)

22 **THE COURT:** All right. Mr. Alternate, this will
23 conclude your service for this case. You are welcome to
24 stay if you want to see how it turns out. If you want to go
25 home, you're free to go.

VERDICT OF THE JURY

93

1 **MR. THOMA:** Okay.

2 **THE COURT:** And if you're leaving, make sure you call
3 that number tomorrow night, the number the clerk gave you.
4 The message will be at 6:00 tomorrow night.

5 **MR. THOMA:** All right.

6 **THE COURT:** Okay. Thank you, sir. Madam Bailiff, show
7 him how to get out.

8 (Whereupon the alternate exited the courtroom)

9 **THE COURT:** Madam Bailiff, would you take the verdict
10 form and exhibits back and inform the forelady that the jury
11 may begin their deliberations. All right. We'll go into
12 recess.

13 (Whereupon court was in recess and the jury began
14 deliberations at 4:15 pm)

15 (Whereupon court reconvened at 4:51 pm)

16 **THE COURT:** I've been informed that we have a verdict.
17 Anything from either side before I bring our jury in?

18 **MS. BLUNDY:** No, Your Honor.

19 **MR. PLOWDEN:** No, sir.

20 **THE COURT:** All right. Let's get our jury.

21 (Whereupon the jury entered the courtroom at 4:51 pm)

22 **THE COURT:** All right. Madam Forelady, has the jury
23 reached a verdict?

24 **MADAM FORELADY:** Yes, sir.

25 **THE COURT:** All right. Would you hand that to the

VERDICT OF THE JURY

1 bailiff, please.

2 (Pause)

3 **THE COURT:** All right. Madam Clerk, would you publish
4 the verdict.

5 **MADAM CLERK:** Yes, sir. In the matter of the State of
6 South Carolina versus Billy Christopher Whitmire on
7 indictment number 2016-GS-37-632, domestic violence in the
8 second degree, actually they chose the alternative for the
9 lesser included of guilty of domestic violence in the third
10 degree. Ladies and gentlemen of the jury, if this was your
11 verdict and remains your verdict, please indicate so by
12 raising your right hand.

13 (Whereupon all jurors raised their right hand)

14 **MADAM CLERK:** Let the record reflect that all members
15 of the jury panel have affirmed their verdict.

16 **THE COURT:** Anything before I release the jury from the
17 State?

18 **MS. BLUNDY:** Nothing from the State, Your Honor.

19 **THE COURT:** Anything from the Defense before I release
20 the jury?

21 **MR. PLOWDEN:** No, sir.

22 **THE COURT:** All right. Ladies and gentlemen, thank you
23 for your service on this case. As I told you earlier today,
24 the clerk has given you a telephone number, call that number
25 tomorrow after six pm for further instructions. But thank

SENTENCE OF THE COURT

95

1 you for your service, and you are dismissed. And, Madam
2 Forelady, I need you to sign the indictment.

3 (Whereupon the jury exited the courtroom at 4:53 pm)

4 **THE COURT:** All right. Mr. Plowden, would you and your
5 client come forward.

6 **MR. PLOWDEN:** Yes, sir.

7 **THE COURT:** Ms. Blundy, do you have a sentence sheet
8 prepared?

9 **MS. BLUNDY:** I do, Your Honor. I just need the
10 statutory section for the third degree.

11 (Pause)

12 **THE COURT:** All right. Let me hear from the State
13 first, any prior record or anything you'd like to present.
14 And I'd also like to hear from the victim. And then I'm
15 going to turn it over to Mr. Plowden.

16 **MS. BLUNDY:** Yes, Your Honor. He's got a 1986
17 conviction for dangerous drugs and liquor violation. He has
18 another conviction for possession of marijuana in that same
19 year. He also has a hit and run conviction as well as
20 fleeing a police officer. These are all out of Georgia.

21 In 1992 he has a DUS, and same year a DUI as well as
22 fleeing from a police officer and another DUS. Sorry, Your
23 Honor, the Georgia reporting is not so great.

24 Again in 1995, DUI, 1995, criminal damage to property
25 in the second degree. 1997, theft by taking. 19 -- year

SENTENCE OF THE COURT

1 2000, another DUI, another DUS. And 2002, possession of
2 marijuana and disorderly conduct.

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

4 **MS. BLUNDY:** Given the fact that the jury came back and
5 convicted on the domestic violence in the third degree, the
6 State would ask for the max of 90 days jail.

7 **THE COURT:** Let me hear from the victim. Go to that
8 microphone right there, ma'am. All right. State your name
9 for the record.

10 **MS. ELLISON:** Amie Marie Ellison.

11 **THE COURT:** All right. Ms. Ellison, I'd be happy to
12 hear from you.

13 **MS. ELLISON:** I'd just -- I'm not requesting him to get
14 in any trouble. I'd just like to move on with this and
15 never hear about it again. That's what I want.

16 We have two kids, and I just want to move on. I don't
17 want it to affect them in any way. If they see their dad go
18 to jail, that's going to affect them, you know. And that's
19 all I'm asking. I mean, I'm just ready to move on from
20 this.

21 **THE COURT:** All right. Well, ma'am, I heard you
22 testify that you haven't had anymore problems since this
23 incident in 2016, is that -- is that true?

24 **MS. ELLISON:** That's correct.

25 **THE COURT:** Okay. And, again, you are the victim of

SENTENCE OF THE COURT

97

1 this offense. So you have the right to be heard. And if
2 I'm hearing what you're telling me correctly, you do not
3 want him to go to jail?

4 **MS. ELLISON:** No, I really don't. I'm not seeking
5 that. I'm not seeking anything, you know. I just want to
6 move on.

7 We have two kids that we're still going to have to
8 communicate with, and I'm just -- I want to make the peace
9 and I want to move on. That's all I want. And that would
10 make me really happy, to have peace and move on. I'm
11 serious about that.

12 **THE COURT:** Okay.

13 **MS. ELLISON:** My boys love him and my boys love me.
14 And I just want to move on from all of this, seriously.

15 **THE COURT:** Do you feel he's a threat to you?

16 **MS. ELLISON:** No.

17 **THE COURT:** Okay. All right. Thank you, ma'am.
18 Anything further from the State?

19 **MS. BLUNDY:** Your Honor, the State's position would be
20 to ask for the standard no contact provision in any sentence
21 you impose.

22 **THE COURT:** Okay.

23 **MR. FLOWDEN:** Your Honor, just the nature of this trial
24 that you know a lot about and they aren't having any
25 problems now. The latest of the criminal offenses that the

SENTENCE OF THE COURT

1 solicitor referenced is 17 years ago. I think he's a good
2 candidate for probation. I'd ask that you give him a
3 suspended sentence and some probation. And I understand
4 about the no contact order, that seems appropriate.

5 **THE COURT:** Well, Mr. Plowden, tell me this. I heard
6 testimony that they have a Family Court order. Is that
7 correct?

8 **MR. PLOWDEN:** They went to Family Court and there was
9 an order on visitation. And I'm not -- and he was
10 represented by counsel there.

11 To be honest with you, Judge, if your concern is that
12 he was saying they weren't really abiding by it, to be
13 honest with you, that's the first I've heard of this. I
14 don't -- I don't know what it is.

15 If it's supposed to be supervised and she's letting --
16 I don't know if it's supposed to be supervised and he is
17 doing something and not letting them know that it's not
18 supervised, that's maybe another -- but I think that's in
19 the province of the Family Court. If somebody don't like
20 that, they can take it over there.

21 **THE COURT:** Okay. All right. Mr. Whitmire, is there
22 anything you'd like to tell me?

23 **MR. WHITMIRE:** I was -- I had some evidence I was
24 wanting to present, but I'm tickled if I can go to the
25 house.

SENTENCE OF THE COURT

99

1 **THE COURT:** All right. Now you're seeing your children
2 every other -- every weekend is what ---

3 **MR. WHITMIRE:** Yes, sir.

4 **THE COURT:** --- I heard. When do you pick them up at
5 McDonald's?

6 **MR. WHITMIRE:** On Friday evenings.

7 **THE COURT:** Is it a six pm? Have y'all ---

8 **MR. WHITMIRE:** 5:00.

9 **THE COURT:** Is that what's in the court order?

10 **MR. WHITMIRE:** I don't remember exactly what it was. I
11 ain't worried about that, you know, because I don't remember
12 exactly what it was to be honest with you.

13 **THE COURT:** Okay. But this is just something you and
14 Ms. Ellison have worked out ---

15 **MR. WHITMIRE:** Yeah, ---

16 **THE COURT:** --- amongst yourself?

17 **MR. WHITMIRE:** --- we've worked it out. It's working,
18 good for us.

19 **THE COURT:** Where do the children go to school?

20 **MR. WHITMIRE:** Over in Pendleton.

21 **THE COURT:** So they live with her during the week and
22 they go to school and you get them on the weekends?

23 **MR. WHITMIRE:** Yes, sir.

24 **THE COURT:** And have y'all -- have y'all finished in
25 Family Court or do you have anything else pending?

SENTENCE OF THE COURT

1 **MR. WHITMIRE:** No, I done spent six thousand dollars
2 (\$6,000.00) there and it didn't help me none. So I'm done
3 with it, I guess.

4 **THE COURT:** Okay. What grade are your boys in?

5 **MR. WHITMIRE:** The fourth and the -- fifth and the
6 third, I think. Yeah.

7 **THE COURT:** Where do you work?

8 **MR. WHITMIRE:** I was a carpenter and stuff, but I ain't
9 working nowhere right now because this has about got -- but
10 I'll get back to work since I got this behind me.

11 **THE COURT:** So -- but you're a carpenter? You're ---

12 **MR. WHITMIRE:** Yeah.

13 **THE COURT:** --- self-employed?

14 **MR. WHITMIRE:** Yeah, pretty much. Yeah. I was working
15 for a fellow, but I was having to take so much time off to
16 come over here and stuff, I sort of -- we just sort of had a
17 falling out, but I can get right back to work.

18 **THE COURT:** Yeah. Do you still live in Westminster or
19 have you moved?

20 **MR. WHITMIRE:** Long Creek.

21 **THE COURT:** You live in Long Creek?

22 **MR. WHITMIRE:** Yes, sir.

23 **THE COURT:** Okay. And what McDonald's do you -- where
24 do you exchange ---

25 **MR. WHITMIRE:** Seneca.

SENTENCE OF THE COURT

101

1 **THE COURT:** In Seneca. Okay. On 123 in Seneca. Okay.
2 How many days time served does your client have, Mr.
3 Plowden?

4 **MR. PLOWDEN:** I'm not sure.

5 (Whereupon Mr. Plowden was conferring with his client)

6 **MR. WHITMIRE:** Two days or something, three or so. I
7 ain't got nobody to bond me out over here. I had to get
8 somebody from Georgia to come hire a bondsman.

9 **THE COURT:** Okay. Let me -- Mr. Plowden, could y'all
10 scoot over just one second. Let me ask Ms. Ellison
11 something.

12 Ms. Ellison, would you come up to the microphone,
13 please. The solicitor has asked for a no contact provision.
14 What is your -- what is your wish regarding that? Do you
15 want to have contact with Mr. Whitmire?

16 **MS. ELLISON:** We really don't have any contact except
17 on the Fridays anyway. So it's okay either way. I mean, my
18 step-dad and mom pick them up for me on Sundays because I
19 work weekends. And really the only time I see him is the
20 Friday at 5:00.

21 **THE COURT:** How do you communicate with each other
22 regarding issues -- the children's issues?

23 **MS. ELLISON:** I have the boys their own cell phones so
24 they can call their dad. And they talk to him every night.
25 And I don't talk to him.

SENTENCE OF THE COURT

1 **THE COURT:** Okay.

2 **MS. ELLISON:** The boys have -- they both have their own
3 phone and they call him or he calls them. And we don't
4 speak at all.

5 **THE COURT:** Okay. All right.. Thank you, ma'am.

6 (Pause)

7 **THE COURT:** All right. If there's nothing further,
8 Defendant would be confined to the Department -- to the
9 County Detention Center for a period of 90 days. That's
10 suspended on the service of two years probation.

11 Special conditions of probation, random drug and
12 alcohol testing, he will successfully complete the domestic
13 abuse center counseling program, no contact with the victim
14 except as allowed by Family Court order.

15 So they will be governed by -- Mr. Plowden, you can
16 talk to him about that, how to facilitate contact regarding
17 visitation. I will allow the probation to PTUP upon
18 successful completion of the Domestic Abuse Center program.

19 So, Mr. Whitmire, you got it in your power to terminate
20 your probation early. Just finish the program and -- so I
21 wish all of you, and Ms. Ellison, I wish you luck too.

22 Y'all've got two boys. That's what you've got to think
23 of today. That's -- obviously the two of you are not going
24 to be able to live together, but you've got two children.
25 Move forward and do the best you can, be the best parents

SENTENCE OF THE COURT

103

1 that you can, put this -- put this behind you.

2 And -- now, Mr, Whitmire, you know, don't go down this
3 road again because as your attorney can explain to you, the
4 way the statute's written, it gets worse.

5 **MR. WHITMIRE:** Oh, yeah. But I had a bunch of
6 evidence. They wouldn't let me present nothing.

7 **THE COURT:** Well, yeah, you -- you need to react
8 better. Good luck to you.

9 **MS. BLUNDY:** Judge, since probation is not here, could
10 you order the Defendant to report there at 9:30 in the
11 morning?

12 **THE COURT:** Yeah. Probation's not -- it's past closing
13 time. So, Mr. Whitmire, you be at the probation office by
14 9:30 tomorrow morning to report, okay? It's two blocks
15 over. Mr. Plowden can show you where it is.

16 Now, if you don't -- if you don't report, they're going
17 to -- they're going to violate you before you even get
18 started. So just ---

19 **MR. WHITMIRE:** I'll find it.

20 **THE COURT:** --- show up at probation, okay?

21 **MS. BLUNDY:** Thank you, Your Honor.

22 **THE COURT:** Good luck to all of you.

23 (Hearing Ended at 5:08 pm)

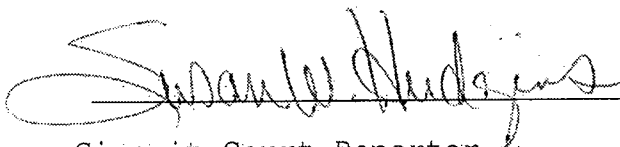
24 (End of Requested Transcript of Record)

Certificate of Reporter

I, the undersigned, Susan W. Hudgins, Official Court Reporter for the Tenth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete transcript of record of all the proceedings had and evidence introduced in the trial/hearing of the captioned case, relative to appeal, in the Circuit Court for Oconee County, South Carolina, on the 25th day of February 2019.

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

April 13, 2019


Circuit Court Reporter

STATE OF SOUTH CAROLINA
 COUNTY OF OCONEE

INDICTMENT

At a Court of General Sessions, convened on JUN 13 2016, the
 Grand Jurors of Oconee County present upon their oath:

DOMESTIC VIOLENCE, 2ND DEGREE

The defendant, Billy Christopher Whitmire, did on or about February 5, 2016, in Oconee County, South Carolina, commit the crime of Domestic Violence in the 2nd Degree, in that the defendant did cause physical harm or injury or offer or attempt to cause physical harm or injury to Amie Marie Ellison, a household member, with apparent present ability under circumstances reasonably creating fear of imminent peril. And, in addition, moderate bodily injury results or the act was accomplished by means likely to result in moderate bodily injury; or the defendant has one prior conviction of domestic violence in the prior 10 years; or, in the process of committing a Domestic Violence 3rd Degree, one of the following resulted: the offense was committed while impeding the victim's breathing or air flow. All in violation of Section 16-25-20(A) and (C) of the South Carolina 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.

5619 JUN 13 5 3 12


 BETHANY BLUNDY
 ASSISTANT SOLICITOR

WITNESSES

Oconee Co Sheriff's Dept.
Nina M. Mckee

ARREST WARRANT NUMBER

2016A3710400069

Barry J. Quinn

ACTION OF GRAND JURY

THE BILL
[Signature]
Foreperson of Grand Jury
Date:
JUN 13 2016

VERDICT

Foreperson of Grand Jury
Date:

DOCKET NO. 2016-GS-37-00632

**The State of South Carolina
County of Oconee**

COURT OF GENERAL SESSIONS

JUN 13 2016, TERM

THE STATE

VS.

BILLY CHRISTOPHER WHITMIRE

INDICTMENT FOR

DOMESTIC VIOLENCE, 2ND DEGREE

SC Code: § 16-25-0020(A) and 16-25-0020(C)
CDR Code: 3812

BAB

RECEIVED

MAR 08 2019

SC Court of Appeals

2019 JUN 13 P 3 15

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BEVERLY H. WHITFIELD
CLERK OF COURT

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MAR 06 2019
CLERK OF COURT
OCONEE COUNTY, SC

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COMPUTER

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No contact
w/ VC

COUNTY OF OCONEE
STATE VS.

BILLY CHRISTOPHER WHITMIRE

AKA: _____
Race: White Sex: M Age: 52
DOB: _____ SS#: _____
Address: _____ rd
City, State, Zip: Westminster, SC 29693
DL# _____ SID# SC00872874

INDICTMENT/CASE#: 2016GS3700632
AWW: 2016A3710400069
Date of Offense: 02/05/2016
S.C. Code §: 16-25-0020(A) and 16-25-0020(C)
CDR Code #: 3812

SENTENCE SHEET

*CDL Yes No CMV Yes No Hazmat Yes No

In disposition of the said indictment comes now the Defendant who was CONVICTED OF or PLEADS

TO: Domestic Violence, 2nd Degree 3rd Degree

In violation of § 16-25-0020(A) and 16-25-0020(C) of the S.C. Code of Laws, bearing CDR Code # 3812-3813

NON-VIOLENT VIOLENT SERIOUS MOST SERIOUS Mandatory GPS \$17-25-45
(CSC w/minor 1st or CSC w/minor 3rd)

The charge is: As indicted, Lesser Included Offense, Defendant Waives Presentation to Grand Jury. _____ (def.'s initials)
The plea is: Without Negotiations or Recommendation, Negotiated Sentence, Recommendation by the State.

ATTEST:

[Signature] 65239
Attorney for Defendant SC Bar #

[Signature] 79907
Beverly Blundy, Assistant Solicitor SC Bar #

[Signature]
Defendant

WHEREFORE, the Defendant is committed to the State Department of Corrections County Detention Center,
for a determinate term of 90 days/months/years or under the Youthful Offender Act not to exceed _____ years
and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and or payment
of \$ _____; plus costs and assessments as applicable; the balance is suspended with probation for 2
months/years and subject to South Carolina Department of Probation, Parole and Pardon Service 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 SC
Department of Corrections
 The Defendant is to be placed on Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

Pursuant to 18 U.S.C. Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Domestic
Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

RESTITUTION: Deferred Def. Waives Hearing Ordered PTUP Upon successful completion
of DAC program +
strict compliance.
Total: \$ _____ plus 20% fee: \$ _____ days/hours Public Service Employment
Payment Terms: _____ Obtain GED

Set by SCDPPPS _____

Recipient: _____	
*Fine: _____	\$ _____
\$14-1-206 (Assessments 107.5%)	\$ _____
\$14-1-211 (A)(1)(Conv. Surcharge)	\$100 \$ 100.00
\$14-1-211 (A)(2)(DUI Surcharge)	\$100 \$ _____
\$56-5-2995 (DUI Assessment)	\$12 \$ _____
\$56-1-285 (DUI Breath Test)	\$25 \$ _____
Proviso (Public Def/Prob)	\$500 \$ 500.00
\$14-1-212 (Law Enforce. Funding)	\$25 \$ 25.00
\$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)	\$ 18.75
TOTAL	\$ 643.75

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: DAC
~~_____~~ No contact with victim
except as allowed by Family Court Order.

Appointed PD or appointed other counsel,
Proviso requires \$500 be paid to Clerk
during probation and shall be collected before any
other fees.

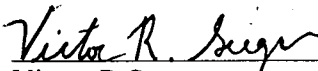
Clerk of Court/Deputy Clerk: *[Signature]*
Court Reporter: *[Signature]*
SCCA/217 (04/2018)

Presiding Judge: *[Signature]*
Judge Code: 2752
Sentence Date: 2-25-19

CERTIFICATE OF COUNSEL FOR APPELLANT

Counsel for appellant certifies that this Record on Appeal contains all material proposed to be included by any of the parties and not any other material and that this Record on Appeal complies to the best of my ability with the April 15, 2014 order from the South Carolina Supreme Court entitled "Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings."

Respectfully Submitted,



Victor R Seeger
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, S.C. 29211-1589

ATTORNEY FOR APPELLANT

This 16th day of October, 2019.