

RECEIVED
May 12 2021
SC Court of Appeals

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Newberry County

Honorable D. Craig Brown, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

JOHN HENRY DAVENPORT, JR.

APPELLANT

APPELLATE CASE NO. 2020-000198

RECORD ON APPEAL

VICTOR R SEEGER
Appellate Defender

ALAN WILSON
Attorney General

South Carolina Commission on Indigent
Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589
(803) 734-1330

AMBREE M. MULLER
Assistant Attorney General
PO Box 11549
Columbia, SC 29211
(803) 734-3727

ATTORNEY FOR APPELLANT

DAVID M. STUMBO
Solicitor, Eighth Judicial Circuit

PO Box 516
Greenwood, SC 29648
(864) 942-8802

ATTORNEYS FOR RESPONDENT

INDEX

INDEX	
TRIAL TRANSCRIPT DATED JANUARY 21, 2020	1
VOIR DIRE	5
JURY SELECTION.....	23
TRIAL TRANSCRIPT DATED JANUARY 22, 2020	47
RENEWAL OF MOTION TO BIFURCATE	49
MOTION TO DISMISS FOR FAILURE TO PROSECUTE	50
RULING OF THE COURT	52
OPENING STATEMENT BY MR. DANIEL.....	68
OPENING STATEMENT BY MR. VERNER	76
TESTIMONY	
KENYATA HUNTER	
Direct Examination by Mr. Scott	82
Cross Examination by Mr. Verner	96
Redirect Examination by Mr. Scott	103
YOLANDA WILLIAMS	
Direct Examination by Mr. Scott	105
Cross Examination by Mr. Verner	114
MICHAEL WOOD	
Direct Examination by Mr. Scott	125
Cross Examination by Mr. Verner	134
Redirect Examination by Mr. Scott	137
Re-Cross Examination by Verner	138
LATORYA MORRIS	
Direct Examination by Mr. Scott	141
Cross Examination by Mr. Verner	152
Redirect Examination by Mr. Scott	164
COLLOQUY WITH DEFENDANT REGARDING BIFURCATION.....	192

COLLOQUY WITH DEFENDANT REGARDING HIS RIGHT TO TESTIFY	238
TRIAL TRANSCRIPT DATED JANUARY 23, 2020	248
COLLOQUY WITH DEFENDANT REGARDING HIS RIGHT TO TESTIFY	251
CLOSING ARGUMENT BY MR. SCOTT	254
THE STATE RESTS	256
RENEWAL OF MOTION FOR DIRECTED VERDICT	256
CLOSING ARGUMENT BY MR. SCOTT (CONTINUED)	257
CLOSING ARGUMENT BY MR. VERNER	264
CHARGE ON THE LAW	276
VERDICT	297
TESTIMONY	
WALTER BENTLEY	
Direct Examination by Mr. Scott	299
CLOSING ARGUMENT BY MR. SCOTT	305
CHARGE ON THE LAW	306
VERDICT	311
SENTENCING	324
INDICTMENT	327
SENTENCE SHEET	329
CERTIFICATE OF COUNSEL	330

1 STATE OF SOUTH CAROLINA
2 IN THE GENERAL SESSIONS
3 COUNTY OF NEWBERRY

4 County of Newberry
5 State of South Carolina,

6 Plaintiff,

7 vs. Transcript of Record
8 2019-GS-36-0086

9 John Henry Davenport, Jr.

10 Defendant.

11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

January 21, 2020
Newberry, South Carolina

B E F O R E:

The HONORABLE D. CRAIG BROWN

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

Dale Scott, Representing the State of South Carolina
Taylor Daniel, Representing the State of South Carolina

Charles Verner, Represent the Defendant

SHARON G. HARDOON, CSR
Official Circuit Court Reporter, II

1 THE BAILIFF: All rise.

2 THE COURT: Thank you. Be seated,
3 please.

4 Good afternoon, Ladies and Gentlemen, I
5 hope you all are doing well today. My name is
6 Craig Brown. I am a Circuit Court judge from
7 Florence, South Carolina. I had the privilege of
8 driving up here this morning to be here and hold
9 court for this one week, and I emphasize one-week
10 term of general sessions court. Not a multi-week
11 term. You're going to get the best of both worlds
12 this week. You got a one-week term. The term is
13 a short week with only three days. We didn't have
14 court yesterday for the Martin Luther King
15 holiday, and we will not be holding court Friday
16 because of a mandatory conference that all the
17 Circuit Court judges in the state have to go to.
18 So you all get the benefit of a three-day week,
19 okay?

20 It's kind of like I tell my wife, we'll be
21 riding around in the car looking for a parking spot
22 and then all of a sudden we'll find a parking spot
23 right up front of whatever store we're going to, and
24 I'll look at her and say, I'm glad you living right,
25 that's why we got that parking spot. Somebody out

1 there is living right this week. More than one of
2 you, I hope. So that's why you got that three-day
3 week.

4 Now, what I'm going to do is, I'm going to
5 get you qualified to serve here this three-day week.
6 You all have gone through the first hurdle, so to
7 speak, in this qualification process and that's roll
8 call. That was conducted by the clerk's office, and I
9 came in here to take you down the home stretch, so to
10 speak, and get you qualified.

11 Ladies and Gentlemen, I know that jury
12 service never, ever comes at a convenient time.
13 Okay? But jury service is the only remaining
14 service that you have in this country as a
15 citizen. It's not a situation where you get
16 drafted into the military and have to go away for
17 a two-year period of time. That's how the draft
18 used to work. But that's not the situation
19 anymore. This is the only true remaining service
20 that you have as citizens.

21 And as a juror, as a potential juror, we
22 can only get you up here once every three years.
23 Okay? Now that's not to say you can't serve in
24 City Court, Magistrate Court, or Federal Court.
25 But, as far as Circuit Court goes, you can only be

1 called up here once every three years. A lot of
2 people go an entire lifetime and never get
3 summoned. On the other hand, some people seem
4 like they get picked every time -- every three
5 years rolls around. I'm sorry. That's just how
6 it is. Okay?

7 Now, having said that, let me tell you a
8 couple of other things before I start asking you
9 to these questions. As I said a minute ago, I
10 know jury service never comes at a convenient
11 time. I can remember, when I practiced law in
12 Florence, I was the only lawyer in my office. I
13 had three people working for me. I was the only
14 person generating income. Okay? I got summoned
15 for jury duty over in City Court. My initial
16 thoughts were, surely this judge will let me out
17 of jury duty. I'm the person generating income in
18 my office. So I go over there, Judge, I'd like to
19 get out of jury duty. I'm the only lawyer in my
20 office. The only one generating income. These
21 people working for me expect to be paid on Friday.
22 Bills are continuing to come. That's just a
23 reality. The Judge looked at me and said,
24 Mr. Brown, I'm sorry, you're going to serve. I
25 said, okay.

1 So my next thought was, well, surely,
2 none of these lawyers will put me on the jury
3 because I practice with all these lawyers. I know
4 them all. I didn't get put on one jury that week.
5 I got put on five that week. Okay?

6 Now, what that meant is this: During
7 that week that I served, I was at my office at
8 seven o'clock in the morning, whenever I needed to
9 be there to get whatever work I needed to do
10 before I went over to the courthouse to fulfill my
11 obligation as a juror. When we were cut loose
12 from court that afternoon, I was back at my office
13 until six, or seven o'clock at night, whatever I
14 needed to do to make sure that my work was done.
15 Okay?

16 I say that to say this: Jury service is
17 a sacrifice. Okay? It's a sacrifice. Anything
18 worth having, as my grandfather used to say, takes
19 some sacrifice. Our jury system is worth the
20 sacrifice. That's not to say that some of you may
21 not be excused here today. I want to point out to
22 you, and I can't emphasize to you enough how
23 important service is. Okay?

24 Now, what I'm getting ready to do, Ladies
25 and Gentlemen, I'm going to ask you all a series

1 of questions. The questions that I'm going to ask
2 of you, most of them are pretty easy. Pretty easy
3 questions. Some of them, a couple of them, may
4 not seem easy, but I want you to understand that
5 this qualification process is not -- is not meant
6 to embarrass anyone. Okay? If I ask a question
7 of you during this qualification process and you
8 do not wish to stand in the presence of your
9 fellow jurors to respond, please make a mental
10 note of that question and I'll give you an
11 opportunity to come up here and speak to me at
12 sidebar at the conclusion, along with attorneys
13 that may be involved with the trial that we
14 have -- or that we're getting ready to pick a jury
15 in.

16 Now, before I start my questions, I want
17 to introduce you to a couple people. This young
18 lady seated in front of me and to my right, I hope
19 I'm pronouncing her name correctly, Miss Hardoon,
20 she's my court reporter. This is a court of
21 record. Whatever is said in here, please make
22 sure that you speak loud enough so that if no one
23 else hears you, she hears you. Okay?

24 To my immediate left, is Charlie
25 Corrigan. He is my law clerk. He has gone to law

1 school, finished law school, taken and passed the
2 bar, and I tell people he is my lawyer. He is up
3 here to aid and assist me in carrying out my
4 duties as a judge. So he will be in and out of
5 here with me if you're serving as a juror this
6 week with me.

7 Now, I'm going to begin these questions.
8 Please listen very carefully to these questions.

9 Is there any member of the jury panel not
10 a citizen of United States? If so, please stand.
11 See, that was an easy question.

12 All right. Is there any member of the jury
13 panel that is not a resident and citizen of Newberry
14 County? If so, please stand.

15 All right. Is there member of the jury panel
16 that is unable to read, write, speak, or understand
17 the English language? If so, please stand.

18 All right. Is there any member of the
19 jury panel that has less than a sixth grade
20 education or its equivalent? If so, please
21 stand.

22 All right. Is there any member of the
23 jury panel who is unable, unable because of mental
24 or physical infirmaries, to render efficient jury
25 service this week? For example, does any member

1 of the jury panel have any medical condition that
2 would prevent you from serving as a juror this
3 week? We typically run court about an hour and a
4 half to two hours between breaks. If that
5 particular situation applies to you, please
6 stand.

7 All right. Has any member of the jury
8 panel been convicted by guilty plea or trial in
9 State or Federal Court of record of a crime
10 punishable by imprisonment for more than a year
11 and your rights have not been restored by pardon
12 or amnesty? Please understand that punishable by
13 more than a year mean that you could have, that
14 you could have received a sentence of more than a
15 year regardless of what sentence you actually may
16 have received. If so, please stand.

17 All right. Is there any member of the
18 jury panel that is a clerk, or deputy clerk of
19 court, constable, sheriff, or other commissioned
20 law enforcement officer, probate judge, county
21 commissioner, magistrate, or other county officer,
22 or employed within the walls of any courthouse?
23 If so, please stand.

24 All right. Is there any member of the
25 jury panel who has previously -- hold on one

1 second. I was informed this morning, this is
2 actually the first term of this year, so I'm not
3 going to ask you that question right now, okay?

4 Is there any member of the jury panel who
5 served as a member of the Newberry grand jury
6 during the past several years? If so, please
7 stand.

8 All right. Ladies and Gentlemen, we now
9 move to what's called jury exemptions. State law
10 provides for several exemptions to jury service.
11 An exemption does not mean that you are not
12 qualified to serve. It simply means that you have
13 the right to say that you choose not to serve.

14 The first exemption, Ladies and
15 Gentlemen, involves those of you who may be 65
16 years of age or older. If you are 65 years of age
17 or older, and you wish to be exempted, the Court
18 will certainly exempt you from service. However,
19 the Court would encourage you to serve, if you so
20 desire.

21 Is there any member of the jury panel who
22 is 65 years of age or older and who wish to be
23 exempt from jury service? If so, please stand.

24 All right. Another exemption is jury
25 service. No person is required to serve as a

1 juror more often than once every three calendar
2 years. Therefore, if any member of the jury panel
3 has served on jury duty during the last two
4 calendar years, you may be exempt from service
5 this week, if you choose to be exempted. Please
6 note, this exemption does not apply if your jury
7 service was in Magistrate's Court, City Court, or
8 Federal Court. If this exemption does apply to
9 you and you wish to be exempted, please stand.

10 All right. Individuals who have served
11 as grand jurors in the last five calendar years
12 may also be exempt from jury service.

13 Is there any member of the jury panel who
14 has served on the grand jury panel during the last
15 five calendar years and wishes to be exempted? If
16 so, please stand.

17 All right. The next exemption, Ladies
18 and Gentlemen, deals with those of you who have
19 small children. This exemption has several parts
20 and all of which must apply for you to be exempt
21 on this basis. You may be exempt from jury
22 service if you have a small child or children
23 under the age 7, you have legal custody of your
24 child or children, you have the principal care,
25 custody and control of your child or children, and

1 you are unable to make arrangements for the
2 adequate care of child or children while
3 performing jury duty. If all of these
4 requirements apply to you then you may be exempt
5 on this basis. If this exemption does apply to
6 you and you wish to be exempt, then please
7 stand.

8 All right. The next exemption, it
9 involves those of you who may be attending school
10 at this time or working in some capacity with a
11 school. If this exemption applies to you and you
12 wish to be exempted, the Court can transfer your
13 service to a later time which will not conflict
14 with your school responsibilities.

15 Is there any member of the jury panel who
16 is a full-time student, school teacher, school
17 crossing guard, school bus driver, or who serves
18 in any other school related function who is unable
19 to serve on jury duty this week as a result of
20 that school involvement? If so, please stand.

21 All right. Is there any member of the
22 jury panel who is employed with the Department of
23 Corrections at a penitentiary? If so and you wish
24 to be exempted, please stand.

25 All right. Is there any member of the

1 jury panel who performs services for a business,
2 commercial or an agricultural enterprise, who are
3 so essential to the operation of the enterprise
4 that if you were required to perform jury duty,
5 the enterprise would have to close or stop
6 functioning? If so, and you wish to be exempted,
7 please stand.

8 All right. Is there any member of the
9 jury panel who is the primary caretaker of a
10 severely disabled person, or a person age 65 or
11 over who cannot care for himself or herself and
12 cannot be left unattended? If so, please stand.

13 All right. Ladies and Gentlemen that
14 concludes the statutory list of qualifications and
15 exemptions from jury service. It may be that you
16 are qualified and that no exemption applies to you
17 for jury service this week, this week constitute
18 an extreme hardship on you for a particular
19 reason. Please understand that I cannot -- I
20 cannot excuse a qualified juror from jury service,
21 but, under extreme and compelling circumstances, I
22 may excuse a juror from this term of court and
23 transfer you to another term of court particularly
24 those who have not been transferred before.
25 Please understand, Ladies and Gentlemen, that

1 general inconvenience, general inconvenience is
2 not a sufficient reason to transfer your service
3 to another term of court. To justify a transfer
4 service this week must constitute an extreme
5 hardship to you. If that particular situation
6 applies to you, please stand.

7 All right. Ladies and Gentlemen, as I
8 told you from the outset that if I asked a
9 question of you and you did not wish to stand in
10 the presence of your fellow jurors to respond,
11 then I will give you an opportunity to come
12 forward and speak to me here at sidebar. If that
13 particular situation applies to you, please
14 stand.

15 All right. I'll, kind of, hesitantly ask
16 this question right here, but inevitably, I'll
17 finish qualifying a jury and one or two will then
18 stand up and talk to one of my bailiffs and say, I
19 need to speak to the judge. This is your chance.
20 All right? This is your chance.

21 All right. Let the record that no one is
22 standing, Madame Court Reporter.

23 I will tell you, Ladies and Gentlemen,
24 having gone through that qualification process
25 with you, I might have talked too fast for you and

1 you didn't have time to think about my questions.
2 You know, a lot of people say we in the south talk
3 slow. I try to debunk that theory. Okay? That's
4 about as smooth of a qualification process as it
5 gets in this state. Okay? And that is because
6 your clerk's office here does an outstanding job
7 ferreting out, so to speak, individuals that fall
8 under those exemptions. So that speaks volumes to
9 your clerk's office here.

10 I can say, I've been on the bench going
11 on 10 years this year, it is not always the case
12 where we go through this qualification process
13 nearly as smoothly as it went here today. So that
14 speaks volumes for how well your clerk's office
15 operates here in Newberry County.

16 Anything from the State at this time? State
17 ready to proceed in calling its first case?

18 MR. SCOTT: We are, sir.

19 THE COURT: Call your first case, please.

20 MR. SCOTT: The State calls The State vs.
21 John Henry Davenport, Jr. Indictment
22 2019-GS-30-0086. That's a true billed indictment
23 for domestic violence in the first degree, Your
24 Honor.

25 MR. SCOTT: All right. Ladies and

1 Gentlemen, let me ask this, you all have in here
2 since about two o'clock; is that right? Does
3 anyone need a break?

4 All right. The State of South Carolina
5 has called the case of State vs. John Henry
6 Davenport, Jr. Mr. Davenport is charged by
7 indictment that I hold in my hand with the offense
8 of domestic violence first degree. The indictment
9 reads that the defendant, John Henry Davenport,
10 Jr. on or about October 18th, 2018 in
11 Newberry County, South Carolina did cause physical
12 harm or injury to Latorya Sherelle Morris, a
13 household member, or did offer or attempt to cause
14 physical harm or injury to said household member
15 with apparent present ability under circumstances
16 reasonably creating fear of imminent peril.

17 Now, Ladies and Gentlemen, the indictment
18 that I just read to you is not evidence in this
19 case. It is simply the charging document which
20 brings this case into this court. The defendant
21 in this case, Mr. Davenport, has pled not guilty
22 to this charge. Therefore, the State of South
23 Carolina bears the burden of proving his guilt
24 beyond a reasonable doubt.

25 Now, before we move forward in selecting

1 a jury in this case there are certain questions
2 that I must ask of you.

3 Is there any member of the jury panel
4 that has ever been related by blood, connected by
5 marriage, had a close personal business or social
6 relationship with Mr. John Henry Davenport, Jr.,
7 or Miss Latorya Sherelle Morris? If so, please
8 stand.

9 All right. The following, Ladies and
10 Gentlemen, is a list of potential witnesses in
11 this case. They include Kenyata Hunter, Yolanda
12 Williams, the City of Newberry Police Department,
13 Mike Wood, City of Newberry Police Department, and
14 Walter Bentley with the solicitor's office, 8th
15 Circuit Solicitor's Office. Is there any member
16 of the jury panel that's ever been related by
17 blood, connected by marriage, had a close personal
18 business or social relationship with any of those
19 potential witnesses? If so, please stand.

20 All right. If the attorneys would introduce
21 themselves, State, followed by defense counsel,
22 please.

23 MR. SCOTT: Thank you. Your Honor, just,
24 Latorya Morris was listed on the witness list. I
25 know she was in the indictment, but she would be a

1 State's witness.

2 THE COURT: Well, I skipped over her name
3 because I already asked them that question when I
4 ask them that question -- with Miss Morris in the
5 indictment.

6 MR. SCOTT: Thank you, Your Honor.

7 I'm Dale Scott, Deputy Solicitor in 8th
8 Circuit. You all live in the 8th Circuit or else
9 you would be able to serve as a juror today. The
10 8th circuit is comprised of Greenwood, Abbeville,
11 Laurens and Newberry County. Helping try this
12 case this week is going to Assistant Solicitor
13 Taylor Daniel, and investigator at my office
14 Walter Bentley.

15 THE COURT: Defense counsel.

16 MR. VERNER: My name is Charles Verner.
17 I practice law here. I'm from Newberry. I work
18 with my father Jay Verner. We are next door right
19 next to the Cabana Cafe on Boyce Street. The
20 Verners, if you know us. My client, of course, is
21 John Henry Davenport. He lives on Wise Street
22 here in Newberry. A black man living on Wise
23 Street, John Henry Davenport.

24 THE COURT: All right. Is there any
25 member of the jury panel that's ever been related

1 by blood, connected by marriage, any close
2 personal, business, or social relationship or ever
3 been represented by any of the attorneys involved
4 in this case? If so, please stand.

5 All right. Has any member of the jury
6 panel formed or expressed an opinion about any
7 issue or matter involved in this case? If so,
8 please stand.

9 JURY PANEL MEMBER: Can you repeat that,
10 please?

11 THE COURT: Has any member of the jury
12 panel formed or expressed an opinion about any
13 issues or matter involved in this case? If so,
14 please stand.

15 Hold on a minute. I should have said
16 this from the outset. If you wish to say
17 something, first I need your name and your juror
18 number. Okay. Stand up. And please stand. Tell
19 me your name and juror number.

20 MS. WARREN: Lois Warren, and I have no
21 idea.

22 THE COURT: Hold on a minute. Can you
23 approach for a minute.

24 MS. WARREN: Warren.

25 THE COURT: Yes, ma'am.

1 MS. WARREN: I'm a criminal domestic
2 violence victim and I don't feel like I can deal
3 with that.

4 THE COURT: I'll set you aside for this
5 case.

6 All right. Is any member of the jury
7 panel aware of any bias or prejudice toward either
8 the State or the defendant in this case? If so,
9 please stand.

10 All right. Is there any member of the
11 jury panel who is a member of or contributor to
12 any group which has its primary concern the
13 promotion of law enforcement? Those groups might
14 include, but certainly are not limited to MAAD,
15 SAAD, or CAVC, Citizens Against Violent Crime? If
16 so, please stand.

17 All right. Does any member of the jury
18 panel know of any reason -- any reason whatsoever
19 why he or she should not serve as a juror in this
20 case with particular emphasis being placed upon
21 your ability to be fair and impartial to both the
22 State and the defense? If so, please stand.

23 Does the State have any additional voir
24 dire?

25 MR. SCOTT: We don't, Your Honor.

1 THE COURT: Defense counsel?

2 MR. VERNER: It's not significant. I
3 think the Court addressed it, but can we step up
4 for just one second.

5 The thought the Court asked this, but I
6 may not have heard it, but did the Court ask if
7 anybody ever had any relationship the lawyers in
8 the case?

9 THE COURT: Okay.

10 MR. VERNER: I apologize. Normally
11 they've been going with, have they had any
12 business with the solicitor office?

13 THE COURT: I asked them, the jury panel,
14 if they related by blood, or marriage, and close
15 personal, business, or social relationship, or
16 ever any represented by any one of the attorneys
17 in this case.

18 MR. VERNER: I think I got confused
19 because solicitor didn't ask about any family.
20 I'm satisfied. I apologize.

21 THE COURT: That's all right.

22 MR. VERNER: With that caveat, Judge, I'm
23 satisfied.

24 THE COURT: Could Juror Number 141,
25 Mr. Angus Senn, could you approach, please?

1 Lawyers can approach. Mr. Verner.

2 THE COURT: Mr. Seen, how are you doing
3 today?

4 MR. SENN: Fine. How are you?

5 THE COURT: Very well. What is your date
6 of birth?

7 MR. SENN: [REDACTED].

8 THE COURT: And your Social Security
9 number?

10 MR. SENN: [REDACTED].

11 THE COURT: Do you have a prior
12 conviction for some type of false records, or
13 aiding and abetting?

14 MR. SENN: That involved my trucking
15 company about '96, '7, something like that. I had
16 a driver with a false license.

17 THE COURT: You received one year
18 probation?

19 MR. SENN: I think so.

20 THE COURT: What does that carry?

21 MR. SCOTT: It's a federal charge. It's
22 listed as a felony, I believe.

23 MR. SENN: I don't remember. It's so
24 distant ago. It involved our company. I'm the
25 CEO, so that's why the two were connected.

1 THE COURT: Any objection to excusing
2 him?

3 MR. VERNER: All I know is it's a federal
4 charge. I don't know --

5 MR. SCOTT: Judge, I'll just leave it to
6 the Court's determination.

7 THE COURT: I'm going to excuse you from
8 service this week.

9 MR. SENN: Okay.

10 THE COURT: You're free to go.
11 Appreciate it.

12 MR. SENN: Yes, sir.

13 MR. VERNER: What number juror was that,
14 Your Honor?

15 THE COURT: Number 141.

16 All right. Anything further from the
17 State at this time?

18 MR. SCOTT: No, Your Honor.

19 THE COURT: Defense counsel?

20 MR. VERNER: Nothing, Your Honor.

21 THE COURT: Is State ready to proceed
22 with jury section?

23 MR. SCOTT: We are, Your Honor. I just
24 discussed with the clerk of court. We, kind of,
25 been doing it a little different lately. As you

1 can see, there's no real efficient way get to the
2 front from there, so we have them stand up where
3 they are, and with Verner's permission, we'll just
4 have them stand where they are and us pick that
5 way.

6 THE COURT: Any objection to that?

7 MR. VERNER: Mr. Verner's consent, but
8 other than omitting the "Mr.", that's how we've
9 been doing it for the last few months, Judge?

10 THE COURT: All right. Did all of you
11 out in the audience understand that? If your name
12 is called, if you'll just simply stand where you
13 are, the State will have an opportunity to say
14 whether they want you seated or want you excused.
15 The State says that you are to be seated and then
16 defense counsel will have the opportunity to say
17 whether to seat you or excuse you. If they both
18 seat you, then make sure you gather all of your
19 belongings and come forward and you'll go in this
20 jury box over here.

21 Five and five on the strikes, gentlemen?

22 MR. SCOTT: Yes.

23 MR. VERNER: Yes.

24 THE COURT: How many alternates; one or
25 two?

1 MR. SCOTT: One will be fine, Your Honor.

2 MR. VERNER: I don't have a problem with
3 one, Judge.

4 THE COURT: One and two on the strikes of
5 the alternate.

6 All right, Madame Clerk, ready when you
7 are.

8 THE CLERK: Yes, sir. We're getting the
9 list now.

10 Jury number 69, Martha Hendrix, what says
11 the State?

12 MR. SCOTT: Please present the juror.

13 THE CLERK: The defense?

14 MR. VERNER: Please seat the juror.

15 THE CLERK: Please come forward and have a
16 seat in the jury box to your left. Bring your
17 personal belongings with you.

18 Number 48, Duncan Drebenstedt. What says the
19 State?

20 MR. SCOTT: Please present the jury.

21 THE CLERK: The defense.

22 MR. VERNER: Please seat Mr. Drebenstedt.

23 THE CLERK: Please come forward and have
24 a seat in the jury box.

25 Number 97, Louise Langston. What says the

1 State?

2 MR. SCOTT: Please present the juror.

3 THE CLERK: The defense?

4 MR. VERNER: Please seat Mr. Langston.

5 THE CLERK: Please come forward and have
6 a seat in the jury box.

7 Number 56, Molly Fortune. What says the
8 State?

9 MR. SCOTT: Please present the juror.

10 THE CLERK: The defense?

11 MR. VERNER: I think for this particular
12 case, I'm going to excuse Miss Fortune.

13 THE CLERK: You can have a seat. Thank
14 you.

15 Number 151, Maggie Taylor. What says the
16 State?

17 MR. SCOTT: Please present the juror.

18 THE CLERK: The defense?

19 MR. VERNER: Please seat this juror.

20 THE CLERK: Come forward and have a seat
21 in the jury box.

22 Number 160, Misty West. What says the State?

23 MR. SCOTT: Please present the juror.

24 THE CLERK: The defense?

25 MR. VERNER: For today's case, I'm going

1 to excuse Miss West.

2 THE CLERK: You can have a seat.

3 Number 157, Tomoka Ward. What says the
4 State?

5 MR. SCOTT: Please excuse the juror from
6 this trial.

7 THE CLERK: You can have a seat. Thank
8 you.

9 Number 90, Thomas Kiker. What says the
10 State?

11 MR. SCOTT: Please present the juror.

12 THE CLERK: The defense?

13 MR. VERNER: Please seat Mr. Kiker.

14 THE CLERK: Please come forward and have
15 a seat in the jury box.

16 Number 89, Sandy Kiker. What says the State?

17 MR. SCOTT: Please present the juror.

18 THE CLERK: The defense?

19 MR. VERNER: Your Honor, could I ask if
20 the two Kikers are related?

21 THE COURT: Yes.

22 MR. VERNER: My problem would be
23 discussing cases?

24 THE COURT: Are you all related?

25 MS. KIKER: Yes, sir. We are related.

1 We would not be discussing the case.

2 THE COURT: How are you all related?

3 MS. KIKER: I'm his mother.

4 THE COURT: Does he live with you?

5 MS. KIKER: No, sir.

6 THE COURT: He does not live with you?

7 MS. KIKER: No, sir.

8 THE COURT: Okay.

9 MR. VERNER: Out of an abundance of
10 caution, I am going to excuse Miss Kiker from the
11 this trial.

12 THE CLERK: Have a seat. Thank you.

13 138, Henry Russell. What says the State?

14 MR. SCOTT: Please present the juror.

15 THE CLERK: The defense?

16 MR. VERNER: Please seat Mr. Russell.

17 THE CLERK: Come forward and have a seat
18 in the jury box.

19 Number 94, Walter Koon, Jr. What says the
20 State?

21 MR. SCOTT: Please excuse this juror.

22 THE CLERK: You can have a seat. Thank
23 you.

24 Number 33, Deena Connelly. What says the
25 State?

1 MR. SCOTT: Please present the juror.

2 THE CLERK: The defense?

3 MR. VERNER: Please seat Miss Connelly.

4 THE CLERK: Please come forward and have
5 a seat in the jury box.

6 164, brenda Williams. What says the State?

7 MR. SCOTT: Please present the juror.

8 THE CLERK: The defense?

9 MR. VERNER: Please seat the juror.

10 THE CLERK: You can come forward and have
11 a seat in the jury box, please.

12 Number 100, Justin Lindler. What says the
13 State?

14 MR. SCOTT: Please present the juror.

15 THE CLERK: The defense?

16 MR. VERNER: Please seat Mr. Lindler.

17 THE CLERK: Please come forward and have
18 a seat in the jury box.

19 Number 6, Wanda Bartley. What says the
20 State?

21 MR. SCOTT: Please present the juror.

22 THE CLERK: The defense?

23 MR. VERNER: Please seat Miss Bartley.

24 THE CLERK: Miss Bartley. You can come
25 forward and have a seat in the jury box.

1 Number 128, Norma Price. What says the
2 State?

3 MR. SCOTT: Please present the juror.

4 THE CLERK: The defense?

5 MR. VERNER: From today's case, I am
6 going to excuse Mrs. Price.

7 THE CLERK: You can have a seat. Thank
8 you.

9 Number 146, Rebecca Sothwick. What says the
10 State?

11 MR. SCOTT: Please excuse the juror from
12 this trial.

13 THE CLERK: You can have a seat. Thank
14 you.

15 Number 77, Clifford Hughes. What says the
16 State?

17 MR. SCOTT: Please present the juror.

18 THE CLERK: The defense?

19 MR. VERNER: Please seat Mr. Hughes.

20 THE CLERK: Come forward and have a seat
21 in the jury box, please.

22 Number 91, Mandy Kinard. What says the
23 State?

24 MR. SCOTT: Please present te juror.

25 THE CLERK: The defense.

1 MR. VERNER: From today's case, I am
2 going to excuse Mrs. Kinard.

3 THE CLERK: Yo can have a seat. Thank
4 you.

5 Number 35, Jeffrey Conner. What says the
6 State?

7 MR. SCOTT: Please present the juror.

8 THE CLERK: Challenge for cause by the
9 defense?

10 MR. VERNER: Seat the juror.

11 THE CLERK: You can come forward and have
12 a seat in the jury box.

13 THE CLERK: One alternate?

14 THE COURT: One alternate.

15 THE CLERK: Number 17, James Brown.

16 MR. VERNER: Is this the alternate?

17 THE CLERK: Yes.

18 What says the State?

19 MR. SCOTT: Please excuse the alternate
20 from this trial.

21 THE CLERK: You can have a seat,
22 Mr. Brown. Thank you.

23 Number 45, Kevin Dorroh. Any challenge for
24 cause by the State.

25 MR. SCOTT: Please present this

1 Mr. Dorroh.

2 THE CLERK: What says the defense?

3 MR. VERNER: Please seat Mr. Dorroh.

4 THE CLERK: You can come forward and have
5 a seat in the jury box.

6 THE COURT: Are there any matters of law
7 that we need to take up with regards to jury
8 selection from the State?

9 MR. SCOTT: No, Your Honor.

10 THE COURT: Defense counsel.

11 MR. VERNER: No, Your Honor.

12 THE COURT: All right. Ladies and
13 Gentlemen, you all have been selected as fair and
14 impartial jurors in this case. And what I'm going
15 to ask you all to do at this point, I'm going to
16 ask you to step in the jury room in just a minute.
17 Do not discuss this case at all. You know very
18 little about this case. You will hear me say
19 throughout that you are not to discuss this case
20 at all with anyone until you are instructed to do
21 so by the Court. If you will step to the jury
22 room. If you need to take a quick break, go ahead
23 and do so, and I'll get you back out here in just
24 a minute. Please step to the jury room.

25 THE COURT: All right. Ladies and

1 Gentlemen, those of you that you seated out in the
2 audience, ordinarily I would say that doesn't mean
3 you're not going to get to serve this week. But
4 that does mean, since you didn't get selected on
5 this jury, that you're not going to serve on a
6 jury this week. So when I cut you loose here
7 today, you will be done the balance of week. You
8 don't need to call back or come back.

9 Now, if you see any of these jurors out
10 and about after today, don't tell them I cut you
11 loose for the week and I'm going to make them sit
12 through this week for this trial.

13 All joking aside, I want to emphasize to
14 you again how important your service is as jurors,
15 if you summoned back up here or whether it be in
16 city court, magistrate court, or federal court,
17 and I hope that you are willing to serve, like
18 you've come here today to serve. It's amazing the
19 number and types of excuses that people come up
20 with to try to get out of jury service, and I
21 understand it never comes at a convenient time,
22 but it's ensuring that our jury system stays in
23 place and is very important. Which means that a
24 lot of people that make our system work, so to
25 speak. You heard me say my court reporter, you

1 got the clerk staff here, you got the bailiffs in
2 the front and in the back, you got the lawyers,
3 you got law enforcement here, and a lot of people
4 make this system run, but you, Ladies and
5 Gentlemen, are the most important. Can't do it
6 without you all. Okay?

7 You can rest assured, if you were a
8 plaintiff or a defendant in a civil case, or a
9 defendant or in some capacity a victim in a
10 criminal case, you would want people, such as
11 yourselves, serving as jurors in this courtroom.
12 You wouldn't want me or any other judge walking in
13 here first day of the week, Tuesday this week,
14 looking at all the sheriff's deputies and saying,
15 go find me the first 12 people in the street,
16 bring them up here and let's try this case. You
17 wouldn't want a system like that.

18 Nor would you want me, or a panel of
19 judges sitting up here making all of these
20 decisions. When you're called upon to serve as
21 jurors, it gives you, Ladies and Gentlemen, an
22 opportunity to say what goes on in your community.
23 I hope you understand how vitally important that
24 is. Okay?

25 As I said before jury service is the only

1 true remaining service that we have as citizens in
2 this country and anything worth having takes some
3 sacrifice, and our jury system, ensuring that
4 stays in place, is worth having and worth the
5 sacrifice that you made to be here this week and
6 made to be here all week, if necessary.

7 I release you here today.

8 Work excuses, Madame Clerk?

9 THE CLERK: Yes, sir. They'll be mailed
10 to you along with your check. But if you need one
11 before you get it, you can stop downstairs at our
12 office and we'll be glad to give you one, a
13 statement.

14 THE COURT: You all pay them on cards
15 nowadays?

16 THE CLERK: No, sir. We write checks.

17 THE COURT: They do cards in Florence.
18 In Florence, they give the jurors debit cards, I
19 guess. I've never seen one. And I guess in some
20 way, shape, or form above my pay grade, they put
21 money on those cards. I guess you have to call.
22 I don't know how it works.

23 Anyway, you're going to get paid for
24 being here today. Don't go lay some large ticket
25 aside. It's not going some big check for being

1 here today. The truth of the matter is, most of
2 you, looking out there to see, I see a couple --
3 as you get older, it's hard to tell what people's
4 ages are. I see a few out there that I think are
5 really young, okay? There used to be a Mastercard
6 commercial and they run through these and at the
7 end they ask a question about the Mastercard and
8 they say "priceless." You remember that? Some of
9 you yes, some of you no. Your service is
10 priceless. You can't put a price tag on it. You
11 can't put a price tag on it. Your service is
12 invaluable.

13 That check that you're going to get, you
14 might be able to buy yourself a Happy Meal or
15 something at McDonald's. I don't know what it
16 will be. But don't put any large ticket item
17 aside.

18 But, again, I want to thank you for your
19 service. You all are free to go for today and for
20 the rest of the week. I hope you all have a nice
21 week. Thank you.

22 (Jury panel excused at 3:21 p.m.)

23 (Off the record.)

24 THE COURT: The court would affirm its
25 concern over the prejudicial effect of introducing

1 such a criminal sexual conduct setting. In
2 essence there has got to be a bifurcation of the
3 guilt followed the prior --

4 MR. VERNER: Rauch Wise's case.

5 THE COURT: What's the name of the case?

6 MR. VERNER: Rauch Wise was the attorney
7 with Charles Gross.

8 THE COURT: So, you know, it, kind of,
9 leads me to believe that our appellate courts are
10 going on these cases where in prior offenses are
11 elements of the charge.

12 MR. VERNER: Well, that's exactly how I
13 see it, Judge. Right now the State's right of
14 existing law is that state does not have to accept
15 the stipulation on priors.

16 THE COURT: Exactly.

17 MR. VERNER: But there have been some
18 current opinions that have been, kind of, chipping
19 that back a little bit.

20 THE COURT: There certainly is that out
21 there, which gives me some concern.

22 MR. SCOTT: Well, I would just argue,
23 let's take a look at that case because my
24 recollection is -- I think it might be Judge
25 James, whoever wrote the opinion was careful to

1 make a -- they were dealing with CSC cases, based
2 on the nature of CSC case and how sensitive they
3 were. And I think they were careful to indicate
4 that that case applied to CSCs in particular. I
5 think they did make --

6 MR. VERNER: I think it's an 8th Circuit
7 case?

8 THE COURT: Let's look at that case over
9 night and why don't you all be back here about
10 9:00 in the morning. We'll talk about it some
11 more at that point. I'm just concerned that
12 that's, kind of, of way -- I understand they may
13 have cut out an exception there just on CSC cases,
14 but it still gives me concern. If they want to
15 find a reason, that gives them a reason.

16 MR. VERNER: That's what they, kind of,
17 told us at the public defender's conference. The
18 law, it still seemed a little bit that they hadn't
19 strongly come down.

20 MR. SCOTT: I've got a citation here. It
21 Cross. State v. Cross, C-r-o-s-s.

22 MR. VERNER: I'll look at that.

23 MR. SCOTT: 427 SC 465.

24 MR. VERNER: Is that Rauch Wise?

25 MR. SCOTT: Judge James issued the

1 opinion.

2 THE COURT: We'll take a look at that
3 overnight.

4 MR. DANIEL: Your Honor, we were reading
5 out the body of the indictment, did you omit that
6 intentionally?

7 THE COURT: Yes.

8 MR. DANIEL: Okay.

9 THE COURT: Absolutely, I did.

10 MR. VERNER: We all noticed from this
11 end. We all noticed.

12 THE COURT: Do what?

13 MR. VERNER: We all noticed the Court cut
14 that out, so I thought it intentional too.

15 THE COURT: Can you bring me the jury and
16 let me go ahead and release them for the day.

17 (Jury enters the courtroom at 3:30 p.m.)

18 THE COURT: All right. Ladies and
19 Gentlemen, I approbate your patience back there.
20 I thought we are going to start the trial this
21 afternoon, but we're going to start it tomorrow
22 morning. Okay? I'm going to cut you loose here
23 in just a second. I want to go over a few things
24 with you real quick.

25 First of all, I'm going to ask you to be

1 back here tomorrow morning at 9:30. Be back
2 tomorrow morning at 9:30. We'll start as promptly
3 at that time as possible.

4 If something of an emergency comes up,
5 please make sure you call up here. Because I've
6 asked you to be back here at 9:30, if you don't
7 show up and we hadn't heard from you, I'm going to
8 send a deputy looking for you. Okay? So please
9 make sure you're back here at 9:30.

10 While your serve this week, we typically
11 will start at 9:30 in the morning. We'll run
12 about an hour and a half, maybe two hours, take a
13 mid-morning break. Go about the same. Typically
14 break for lunch around one o'clock. That's not
15 set in stone. It just, kind of, depends on where
16 we are in the trial. If it's twelve o'clock and
17 the next witness -- I'm informed that the next
18 witness may be lengthy, I may let you go to lunch
19 at twelve o'clock. Okay? I take typically about
20 an hour and 15 minutes, hour and a half lunch
21 break. I resume around 2:00, 2:15, somewhere in
22 that range. Go for about hour and a half hour,
23 take afternoon break, and go sometime around 5:00
24 or 6:00.

25 I don't sit up here looking at that clock

1 back there and as soon as it strikes 5:00 say, why
2 don't we stop for the day. If there's a witness
3 on this stand, it will be my intention to finish
4 that witness for the day. Okay?

5 Under very, very, and I emphasize "very" rare
6 circumstances will you be here beyond six o'clock.
7 There's a possibility, but it's very, very rare.
8 Okay?

9 Having said that, if I'm informed at 4:00
10 or 4:30 the next witness is going to be lengthy,
11 rather than take a chance of keeping you here
12 beyond six o'clock, I may let you go home at that
13 point and we'll reconvene the next morning. Okay?

14 As you serve this week, I know it's cold
15 outside, I want you to be comfortable in this
16 courtroom as you serve. If I have anything to do
17 with the thermostat in here, it's going to be kind
18 of cool in here. In fact, right now, I think it's
19 hot in here. Throughout the day, it's, kind of,
20 gone up and down. It will get hot and then it
21 will get colder. It will hot and it will get
22 colder. That's just -- it is what it is. All
23 right?

24 Right, Madame Clerk?

25 THE CLERK: That's right. Can't do

1 anything about it.

2 THE COURT: But I want you to be
3 comfortable as you serve. If you're really cold
4 natured layer up, please. I don't even think the
5 airlines give out blankets anymore, but I know
6 they sure don't up here. So bring your jacket. I
7 want to be comfortable as you serve. You can
8 layer up as much as you want.

9 The other side of that coin is, if you're
10 hot natured, like me, I'm hot natured, I'm only
11 going to let you take of so much clothing. I have
12 to keep this on because this is part of my
13 uniform, so to speak. As I sit up here, kind of,
14 elevated, you all in the back are elevated, too,
15 heat tends to rise. But I want you to be
16 comfortable as you serve this week. But I sit up
17 here with an undershirt on, a dress shirt, a neck
18 tie, and black robe as part of my uniform which is
19 like a blanket wrapped around me. Okay? So I
20 get, kind of, toasty sitting up here. I want you
21 all to be comfortable as you serve this week.

22 When I release you here today, I told you
23 briefly before you went back in the jury room, do
24 not, do not discuss this case at all with anyone.
25 Okay? With anyone. That means family, friend,

1 friends, et cetera. Do not do any independent
2 investigation. Don't get on the Internet trying
3 to search people's names and whatnot. That's
4 highly inappropriate. All right.

5 When juries are empanelled, as you all
6 are, juries are to decide cases solely, solely on
7 the evidence and testimony presented in the
8 courtroom and not improperly influenced by
9 anything outside of this court. Okay?

10 So I'm instructing you, don't discuss
11 this case with anyone.

12 You know, very little about this case
13 right now other than what I've told you. And as I
14 told you from the outset, the State bears the
15 burden of proving guilt beyond a reasonable doubt.
16 And whether or not they reach that burden is to be
17 based solely upon the evidence and evidence
18 presented in this courtroom and no where else.

19 Not only are you not to talk about the
20 case, no one is to try to talk to you about the
21 case. So if anyone outside of this courtroom
22 tries to talk to you about this case, please let
23 the bailiff know immediately upon your return
24 tomorrow. I know Newberry is a small town. I
25 grew up in a small town a good bit smaller than

1 Newberry. Okay? I grew up in the big town of
2 Kingstree, South Carolina. So I understand small
3 tones. A lot of people know each other. Okay?

4 You may or may not know these lawyers
5 that are involved in this case. They're being --
6 and they're always instructed not to talk to
7 jurors. Okay?

8 So if you see any one of these lawyers or
9 anybody involved in this case and they don't speak
10 to you, they're not being unfriendly. They're
11 following this court's instructions. My advice to
12 you, as you serve this week during this trial,
13 stay by yourself as you come in and out of this
14 courtroom or with your fellow jurors. Okay? That
15 way -- innocent conversations could be
16 misconstrued. You don't want to run into those
17 situations. Okay?

18 Anything from the State before I release
19 the jury?

20 MR. SCOTT: Nothing from the State, Your
21 Honor?

22 THE COURT: Defense counsel?

23 MR. VERNER: The Court, kind of, glossed
24 over it -- mentioned it, but I just wanted to
25 emphasize the prohibition about going on the

1 Internet or Facebook and trying to find out names.

2 THE COURT: I've already said that, I
3 think.

4 I hope you all understand the importance
5 of that. Please don't violate the Court's
6 instructions on that. Violation of those
7 instructions could result in contempt. Just they
8 could. That's the reality of it. It's very, very
9 important, as I stressed to you previously, that
10 you, or any other jurors empanelled on cases that
11 the case is decided solely based upon the evidence
12 and testimony presented in the courtroom. Okay?

13 You all have a nice evening. Please be
14 back tomorrow morning at 9:30 and we will start
15 the trial in that case at that time.

16 Before I cut you loose, when you all
17 return tomorrow morning before you come out here,
18 if you all would select -- go ahead and select a
19 foreperson, I will tell you that your foreperson
20 cannot Mr. Dorroh, but the initial 12 that were
21 seated, it can be any of you initial 12. But
22 there should be pen and paper in the jury room.
23 If not, it will be provided to you. Write down on
24 the paper who the foreperson is. Give it to my
25 bailiff. When you all -- before you come out in

1 the morning, or when you all come out in the
2 morning, the bailiff will give that to me, and I
3 will tell you the foreperson will be seated where
4 this gentleman is in the front and farthest from
5 me, so I'll let you all select that foreperson.

6 The rest of you, as you come in and out
7 of the courtroom, you all do not have assigned
8 seats. Okay? So you sit wherever you so desire.
9 You don't have assigned seats.

10 I will say, Mr. Dorroh, that you can seat
11 -- I want you to sit in that seat. You and the
12 foreperson will have assigned seats. But the
13 remaining jurors will not have assigned seats,
14 other than alternate and the foreperson. Okay?

15 You all have a nice evening. I'll see
16 you all in the morning at 9:30. Thank you.
17 Follow this young lady right here.

18 (Jury is dismissed for the day at 3:39 p.m.)

19 THE COURT: You all be back about 9:00 in
20 the morning.

21 (The proceeding were adjourned at 3:40 p.m.)

22

23

24

25

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

CERTIFICATE OF REPORTER

I, SHARON G. HARDOON, Official Circuit Court Reporter, II for the State of South Carolina at Large, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the proceedings had and evidence introduced in the trial of the captioned case, relative to appeal, in General Sessions for Newberry County, South Carolina.

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

April 25, 2020



Sharon G. Hardoon, CSR
Official Circuit Court Reporter, II

1 STATE OF SOUTH CAROLINA
2 IN THE GENERAL SESSIONS
3 COUNTY OF NEWBERRY

4 County of Newberry
5 State of South Carolina,

6 Plaintiff,

7 vs. Transcript of Record
8 2019-GS-36-0086

9 John Henry Davenport, Jr.

10 Defendant.

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

January 22, 2020
Newberry, South Carolina
Volume II

B E F O R E:

The HONORABLE D. CRAIG BROWN

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

Dale Scott, Representing the State of South Carolina
Taylor Daniel, Representing the State of South
Carolina

Charles Verner, Representing the Defendant

SHARON G. HARDOON, CSR
Official Circuit Court Reporter, II

1	INDEX	Page	Line
2	Witness Name		
	Kenyata Hunter		
3	Examination By Mr. Scott	83	1
	Cross By Mr. Verner	96	12
4	Re-Direct By Mr. Scott	103	5
	Yolanda Williams		
5	Examination By Mr. Scott	105	8
	Cross By Mr. Verner	113	25
6	Michael Wood		
	Examination By Mr. Scott	125	15
7	Cross By Mr. Verner	134	14
	Re-Direct By Mr. Scott	137	13
8	Re-Cross By Mr. Verner	138	24
	Latorya Morris		
9	Examination By Mr. Scott	141	2
	Cross By Mr. Verner	152	2
10	Re-Cross By Mr. Scott	164	6
11	Certificate of Reporter	247	1
12	EXHIBITS		
13	STATE EXH. 1, 911 recording	56	10
14	STATE EXH. 1, 911 recording	90	13
15	STATE EXH. 2, Picture of house	56	12
16	STATE EXH. 2, Picture of house	91	5
17	STATE EXH. 3, Picture	56	14
	STATE EXH. 3, Picture; Brantley Street	106	10
18	STATE EXH. 4, Picture; 	56	16
19	Floyd Street		
20	STATE EXH. 4, Picture; Floyd Street	113	21
21	STATE EXH. 5, 911	56	18
	STATE EXH. 6, DMV history; Davenport	56	20
22	STATE EXH. 7, DMV history; Morris	56	22
	STATE EXH. 8, Conviction	56	24
23	STATE EXH. 9, Conviction	57	1
24			
25			

1 THE BAILIFF: All rise, nine 29.

2 THE COURT: All right. It's my
3 understanding defense counsel wanted to put
4 something on the record this morning.

5 MR. VERNER: Yes, sir.

6 Judge, I'm renewing my motion from
7 yesterday to bifurcate the issue of the prior
8 domestic violence convictions for 1st degree
9 domestic violence. Really, under the 403 rule, as
10 I see it, as expounded upon by the cross decision
11 where I think the appellate courts have made it
12 clear that they want a 403 analysis of prior
13 convictions be considered by the trial judge, even
14 in cases such as the criminal sexual conduct
15 statute were the prior convictions are elements of
16 the crimes themselves.

17 I believe the Court, in chambers, ruled
18 that that issue is being considered by the Court
19 and that the State has agreed not to raise the
20 prior convictions in their opening arguments, or
21 testimony without some affirmation by the Court to
22 proceed on that line.

23 Thank you.

24 THE COURT: Mr. Daniel, Mr. Scott?

25 MR. SCOTT: Your Honor, that was my

1 understanding as well. This will be considered.
2 I'll withhold it from my argument. If you care to
3 hear it later.

4 MR. VERNER: I apologize, Your Honor, I
5 did have one motion I mentioned yesterday to the
6 Court too.

7 In the November term, Judge, the --
8 Judge Clyburn Pope admonished defendants in this
9 courtroom in November that the case would be
10 called for trial in the December term, and that
11 the Court would not consider any request for
12 continuances beyond that term.

13 Now, Judge Clyburn Pope is not the chief
14 administrative, in fact would be a visiting judge,
15 like Your Honor, but I don't think the State would
16 dispute that the Court admonished the defendant
17 that the case would be called in December. He
18 tells me that the case -- that the December term
19 did come and go without the case being called for
20 trial. My client has raised to me that issue, and
21 I submit to the Court that we would ask that --
22 for failure to prosecute this case diligently, we
23 would ask that this case be dismissed.

24 THE COURT: Anything from the State on
25 that?

1 MR. SCOTT: Your Honor, this is a case
2 that arises from an October 18, 2018 incident. We
3 have spoke with Mr. Davenport getting him
4 representation. We had him before the Court a
5 number of times to be admonished to get legal
6 representation --

7 The term that Mr. Verner refers to was
8 Judge Clyburn Pope. She's in Newberry. We
9 implored her to admonish him again to seek
10 representation. At that point, he indicated he
11 was going to hire private representation. She
12 gave him, must provide written notice by
13 December 2nd of 2019 of representation. We never
14 got any letter of representation; therefore, by
15 default, the public defender took his case.

16 As Your Honor is probably aware, December
17 this last term of court, we were scheduled to have
18 Judge Hocker. Unfortunately, I believe it to be
19 Thursday or Friday prior to the term of court
20 Judge Hocker assistant let us know that he had
21 suffered a fairly catastrophic injury resulting in
22 plastic surgery and various other medical
23 procedures.

24 At that point, we were, kind of, in flux
25 and limbo as far as what the term of court would

1 be. We made the decision to cancel the jury at
2 that point, speaking with the clerk of court, not
3 knowing whether or not we have a judge. I believe
4 at the last minute we were able to obtain -- I
5 think it was Judge Hughston came in and filled in
6 for Judge Hocker.

7 But those would be the reasons and they
8 were fairly exigent reasons that we were unable to
9 call his trial to a jury.

10 However, this is the very next term of
11 court and here we are, Your Honor. I don't see
12 any prejudice he's suffered.

13 THE COURT: Based on what I've heard here
14 today, I'm going to respectfully deny defendant's
15 motion to dismiss for failure to prosecute.

16 Let me ask you this, Mr. Verner: Was
17 there ever a motion for speedy trial filed?

18 MR. VERNER: No, Your Honor.
19 And just to clarify something just briefly, I
20 don't take public defendant cased by default. I
21 would require court appointment, or the client to
22 at least ask me for representation. I don't step
23 in unasked in cases.

24 THE COURT: Have you been appointed?

25 MR. VERNER: No. But I take it that the

1 client has come to me and said that he could not
2 hire an attorney and asked me to represent him, so
3 I take that as his application, the -- and I don't
4 dispute the rest of the characterizations of the
5 State. I was actually in the hearing -- and I
6 apologize, Judge, what was the Court's concern or
7 question?

8 THE COURT: I asked you whether or not
9 you have actually, officially been appointed.

10 MR. VERNER: The speedy trial motion.

11 THE COURT: I asked that as well.

12 MR. VERNER: He had not actually come in.
13 I have seen him over the months in the courtroom
14 and spoken to him informally and offered my
15 services for several months. He had not actually
16 com in to see him even though we had scheduled
17 some appointments until Friday -- yesterday is the
18 first time we actually reviewed the case together
19 other than some informal conversations.

20 He has -- the State has given me the file
21 at sometime in the back on the anticipation that I
22 would be the attorney. To my knowledge, he has
23 not filed any speedy trial, and I certainly
24 haven't filed any motions beyond requesting
25 discovery in this case, Judge.

1 MR. VERNER: I've got his actual case
2 file and documents. Some of them are on my phone.
3 I'll represent, I'm not texting or doing anything
4 other than looking at them.

5 THE COURT: Okay.

6 MR. VERNER: I use the laptop for some
7 documents. I was just told about cell phones in
8 the courtroom.

9 MR. SCOTT: Judge, the State has nine
10 exhibits. I'm asking the court reporter to
11 premark those nine exhibits.

12 MR. VERNER: I don't anticipate any
13 objections other than 8 and 9, which is prior
14 convictions. But the State -- I would ask the
15 State to individually introduce them, but I don't
16 anticipate any objections.

17 Well, the 911 call, I would object to. I
18 know the case on the 911 call, where the -- I'll
19 wait until the State introduces it, but I do
20 anticipate -- I know the Supreme Court says that
21 911 calls or not testimonial in nature.

22 THE COURT: Correct. It's not a Crawford
23 issue.

24 MR. VERNER: I still maintain that they
25 are. I respect the Court's -- on those

1 objections, and possibly 403, the 911 call. But
2 that's the only anticipated objection.

3 THE COURT: All right. Anything before I
4 bring the jury out from the State?

5 MR. SCOTT: No, Your Honor.

6 THE COURT: Defense counsel?

7 MR. VERNER: No, Your Honor.

8 THE COURT: Bring the out jury out,
9 please ma'am.

10 (STATE EXH. 1, 911 recording, was marked for
11 identification.)

12 (STATE EXH. 2, Picture of house, was marked
13 for identification.)

14 (STATE EXH. 3, Picture, was marked for
15 identification.)

16 (STATE EXH. 4, Picture; [REDACTED] Floyd Street,
17 was marked for identification.)

18 (STATE EXH. 5, 911 recording, was marked for
19 identification.)

20 (STATE EXH. 6, DMV history; Davenport, was
21 marked for identification.)

22 (STATE EXH. 7, DMV history; Morris, was
23 marked for identification.)

24 (STATE EXH. 8, Conviction, was marked for
25 identification.)

1 (STATE EXH. 9, Conviction, was marked for
2 identification.)

3 (Jury enters the courtroom.)

4 THE COURT: All right. You two gentlemen
5 seated by my alternate, if you all will come down
6 and sit in these two chairs.

7 Mr. Foreman -- I'm assuming you're my
8 foreman. Would you give that piece of paper to my
9 bailiff, please, sir?

10 Madame Clerk, would you swear the jury,
11 please?

12 THE CLERK: Please stand and raise your
13 right hand. You shall well and truly try the
14 issue in this case in the State vs. Defendant and
15 true verdict render according to the law and
16 evidence, so help you God? Please respond
17 "I will."

18 JURY PANEL: I will.

19 THE CLERK: Have a seat.

20 THE COURT: All right. Ladies and
21 Gentlemen, we are about to try the case of State
22 of South Carolina vs. John Henry Davenport, Jr.
23 And before we begin the trial, I will tell you
24 this trial will probably be different from what
25 you might expect. Many people do not have the

1 chance to attend actual court sessions, as you're
2 doing now, and may think from watching television
3 or reading books that trials are always full of
4 high drama, intense outcomes, and riveting
5 circumstances. While all of those things may be
6 true at times, this trial, Ladies and Gentlemen,
7 is not for entertainment. It is a fundamental
8 part of our democracy, an effort to make sure that
9 justice is done between the parties before the
10 Court.

11 In making sure that justice is done
12 between the parties, the process is often slow,
13 deliberate, and repetitive. The opposite, the
14 opposite of what you may have seen on television,
15 in movies, or read in books.

16 This courtroom, Ladies and Gentlemen, is
17 a place of honor, dedicated to the protection and
18 preservation of citizen's rights through what many
19 called the greatest justice system ever created.

20 The attorneys appearing before you are
21 advocates for the parties that they represent, but
22 first, and foremost, they are officers of the
23 Court sworn to uphold the integrity and fairness
24 of our judicial system. You should expect them to
25 be professional, competent, and ethical in the

1 representation of their client's interest.

2 Now, what I will now say to you, Ladies
3 and Gentlemen, is intended to serve as an
4 introduction to the trial of this case. These
5 remarks are not a charge on the law in this case.
6 I will instruct you on the law applicable to this
7 case at the end of the trial before you retire to
8 consider your verdict. This is merely an
9 explanation of the procedure that we will follow
10 in the trial of the case so that you may better
11 understand what may be happening.

12 Now, the defendant, Ladies and Gentlemen,
13 is charged by an indictment filed in this court
14 with the offense of domestic violence 1st degree,
15 the elements of which will be explained to you
16 later. The indictment is simply the charging
17 document by which this case is brought into this
18 court and it is not, in any sense, evidence of any
19 of the allegations that it contains.

20 The defendant has pled not guilty to this
21 indictment; therefore, the State of South Carolina
22 has the burden of proving each of the elements of
23 the indictment beyond a reasonable doubt. And it
24 will be your duty, Ladies and Gentlemen, to decide
25 whether the State has met that burden.

1 Your purpose as jurors is to find an
2 determine the facts. You are the sole and
3 exclusive judge of the facts. If, at any time, I
4 make any comment regarding the facts, you must
5 disregard it. Now, you are to determine the facts
6 from the testimony that you hear and other
7 evidence that may be introduced during the course
8 of this trial. It is up to you to determine the
9 inferences which you feel may properly be drawn
10 from the evidence.

11 It is especially important that you
12 perform your duty of determining the facts
13 diligently and consciously because, ordinarily,
14 there is no way to correct an erroneous
15 determination of the facts by a jury.

16 On the other hand, and with equal
17 emphasis, the same law that makes you the judge of
18 the facts makes me the judge of law. The law, as
19 given by the Court, is the only law that you may
20 consider. You must accept it and follow it even
21 though you may disagree with it.

22 I cannot, I cannot tell you all what the
23 facts in this case are, and you cannot disagree
24 with me about what the law is or should be. Your
25 job is to take the law as I give to you and apply

1 it to the facts as you find them from the
2 testimony of the witnesses and any other evidence
3 that is introduced.

4 After doing that, you will render your
5 verdict under the solemn oath that you just took
6 as jurors.

7 Now, until I tell you, Ladies and
8 Gentlemen, to begin your deliberations you must
9 not, you must not discuss this case with anyone,
10 including your fellow jurors, friends, family
11 members, and anyone involved in this case.

12 As I told you yesterday, the attorneys
13 and parties in this case have been advised that
14 they are not to talk to you at all outside of this
15 courtroom. So if you see anyone involved in this
16 case and they do not speak to you, they are being
17 unfriendly. They are simply follow this Court's
18 instructions.

19 Now, during your deliberations, you may
20 only -- you may only discuss this case in the jury
21 room with your fellow jurors because they have
22 seen and heard the same evidence you have. You
23 must not discuss the case with anyone other than
24 your fellow jurors until you all have returned a
25 verdict and the case is at an end.

1 I remind that you must decide this case
2 based solely on the evidence presented here in
3 this courtroom. This means that during the trial,
4 you must not conduct any independent research
5 about the case, the facts of the case, the
6 evidence presented in the case, or the people or
7 organizations involved in any way in the case.

8 Please do not try to find out information
9 from any source outside of this courtroom. In
10 other words, you must not look at dictionaries or
11 other reference materials, search the Internet,
12 websites, or blogs, or use any other electronic
13 tools to get information about this case to help
14 you decide the case. You may not use computers,
15 telephones, cell phones, smart phones, smart
16 watches, tablets, the Internet, or other tools of
17 technology with communication capabilities at any
18 time while you are in the courtroom or during our
19 deliberations.

20 Now, during your breaks, for meals or
21 overnight, if necessary, you may use those
22 devices. However, you must not use those devices
23 to communicate with anyone about the case until
24 the case is over. This means you must not use
25 phone calls, emails, text messages, instant

1 messages, Twitter, or any blog, chat room, or
2 website, including but not limited to Facebook,
3 Google+, Myspace, Link, YouTube, or any social
4 media websites to receive information about this
5 case. This includes information about a party, a
6 witness, an attorney, a court officer, news
7 accounts about the case, research on topics
8 raised, any topics that you think would be helpful
9 in deciding the case, or any testimony presented
10 by any witness during the trial.

11 I don't think you are going to see any,
12 but I'm instructing not to read, listen to, or
13 watch any news reports about the case, if there
14 are any. This includes anything that may be in
15 the newspapers or on the internet, radio, or
16 television.

17 You must not, Ladies and Gentlemen,
18 consider anything that you may read or hear about
19 the case outside of this courtroom whether it be
20 before or during the trial. Information outside
21 of this courtroom, such as on television, radio,
22 or Internet, or from other sources might be wrong
23 or incomplete. In our judicial system, it is
24 important that you not influenced by anything or
25 anyone outside of this courtroom.

1 If you become aware of another jurors's
2 violation of these instructions, please inform the
3 Court immediately. It is important that you keep
4 an open mind and not decide any issues in the case
5 until all of the evidence has been presented, the
6 parties have made their closing arguments, and I
7 have instructed you on the law applicable to this
8 case.

9 It is your solemn responsibility,
10 Ladies and Gentlemen, to determine whether the
11 State has proven the defendant guilty beyond a
12 reasonable doubt, and your verdict must be based
13 solely on the evidence as it is presented to you
14 in this trial, and on the law as I instruct you
15 during and at the close of the trial.

16 Now, in just a moment, Ladies and
17 Gentlemen, the prosecutor or the solicitor will
18 make what's called an opening statement in which
19 the solicitor will explain to you the issues in
20 this case, or at least what they believe the
21 issues are in this case.

22 The attorney for the defendant may also
23 make an opening statement, although he is not
24 required to do so.

25 What the attorneys tell you during their

1 opening statement is only their contentions. It's
2 not evidence. It's only their contention as to
3 what the issues are.

4 The evidence in this case, Ladies and
5 Gentlemen, will be presented to you by the
6 testimony of sworn witnesses from this witness
7 stand, and/or by exhibits that may be introduced
8 into evidence during the course of this trial.

9 Now, Ladies and Gentlemen, during the
10 course of the trial, from time to time, you may
11 hear one of the attorneys say something like, Your
12 Honor, I believe we have a question of law, or a
13 matter of law to discuss, or they may request
14 permission to approach the bench, or sometimes I,
15 myself, might find it necessary to excuse you from
16 the courtroom for a short while so the attorneys
17 and I can discuss a matter of law.

18 The reason for this, Ladies and
19 Gentlemen, is because you, you are the judge of
20 the facts in this case, and sometimes when I am
21 discussing matters of the law with the attorneys,
22 it may be necessary for me to make some comment as
23 to the facts in connection with ruling whether or
24 not a particular law applies. I am not supposed
25 to tell you what I think the facts are in this

1 case, so I'll excuse you from the courtroom while
2 these discussions take place so that in no way
3 might you be influenced by anything that I might
4 say or do in connection with the facts.

5 Now, in determining the true facts in
6 this case -- or the facts in this case, excuse me,
7 you must decide whether or not the testimony is
8 believable. It will be my responsibility to rule
9 as a matter of law as to whether certain testimony
10 is admissible or not. But once the testimony is
11 admitted, whether or not you believe it is solely
12 for you to determine. In deciding whether to
13 believe a witness, you have the right to consider
14 the interest of any witness, the bias of any
15 witness, the prejudice of any witness, the
16 opportunity for the witness to have seen the
17 matters and things by which the witness may
18 testify, and the way the witness acts on the
19 witness stand. You have the right to consider
20 anything that is in the record that will help you
21 evaluate the testimony of the witnesses.

22 That means, Ladies and Gentlemen, that it
23 is your duty to pay close attention to these
24 witnesses, to observe the witnesses, to listen to
25 the witnesses and to pay close attention to the

1 attorneys, and to the Court. Please don't let
2 your thoughts wander, but give strict attention to
3 the testimony in this case so that at the end of
4 all the testimony, after the arguments of counsel
5 and the charge on the law by the Court, you will
6 then be in a position to determine what the facts
7 are and to apply the law to those facts and, thus,
8 render a verdict.

9 Now, later in this case -- well, we've
10 already selected a foreperson in this case. I
11 will tell you, Mr. Foreperson, it will be your
12 responsibility to be the jury's spokesperson here
13 in court. It will also be your duty to write the
14 verdict, but I will give you further instructions
15 at the conclusion of this case.

16 Now, in order to preserve everyone's
17 rights, I will give the parties an opportunity to
18 object to anything I have said to you all.

19 Any exception or objection to anything I
20 have said from the State?

21 MR. DAVENPORT: No, Your Honor.

22 THE COURT: Defense counsel?

23 MR. VERNER: No, Your Honor.

24 THE COURT: All right. We will now,
25 Ladies and Gentlemen, begin the trial of this

1 case. The State is recognized for opening
2 statement.

3 MR. DAVENPORT: Thank you, Your Honor.
4 May it please the Court?

5 THE COURT: Yes, sir.

6 MR. DANIEL: Members of the jury, good
7 morning.

8 A few weeks ago, when you started to
9 receive your summons in the mail telling you all
10 to report to jury duty this week, you may have
11 several emotions. First and foremost, annoyance.
12 You may have been annoyed that you had to come to
13 court. It's time away from your jobs. Time away
14 from your family, personal obligations. It's an
15 inconvenience, and Judge Brown alluded to that
16 yesterday. Jury duty does involve a sacrifice.
17 Financially, you're not getting paid in the
18 traditional sense. You get a small stipend that
19 covers your mileage, but that's about it.

20 Jury service is the last fashion of civic
21 duty the government can require you to perform.
22 Now we no longer have the draft for the military,
23 jury service is it. The government can't require
24 you to be elected officials, but that's how
25 important jury service is. The judge touched on

1 that yesterday. I just echo that sentiment
2 wholeheartedly. But, yes, it's an inconvenience.

3 The second emotion when you got that
4 summons in the mail was anxiety, fear about coming
5 to court. Because, let's be honest, this is an
6 intimidating environment, particularly if you're
7 not used to being in court or accustomed to being
8 in court like I am for my job. Nonetheless, you
9 got a judge wearing a robe, the bailiffs,
10 deputies, a court reporter taking down everything
11 we're saying, it's an intimidating environment. I
12 used to go to traffic court to pay a speeding
13 ticket, a parking ticket, I used to get very
14 nervous. It's the natural thing to be nervous,
15 that anxiety about coming to court no matter what
16 the reason is you're coming to court.

17 And, maybe lastly, confusion when you got
18 this summons in the mail. You're thinking to
19 yourself, I'm not a judge. I'm not a lawyer. I'm
20 not a police officer. What could I possibly
21 contribute to the Court. The only thing I know
22 about the law, about trials is what I see on TV,
23 Law & Order, what I see in movies, things like
24 that.

25 Well, it's precisely because you're not a

1 judge, a lawyer, a police officers that you're
2 here today, because we want our jurors to, first
3 and foremost, be residents in Newberry County and
4 come from a, what we call, a cross section of the
5 community; men, women, different ages,
6 occupations, races, all those experience.
7 Different life experience. We want that. And the
8 Constitution demands that under the 6th Amendment,
9 a fair and impartial jury to determine guilt or
10 innocence. And that's what we mean by issues of
11 fact. We're talking about guilt or innocence.
12 Only you guys can decide.

13 And so let me just simplify why you're
14 here today. It's really to answer one question.
15 Are you firmly convinced that John Davenport is
16 guilty of domestic violence in the 1st degree?
17 That's it. That's the one question you'll have to
18 answer at the conclusion of this case after the
19 evidence has been presented. And if all 12 of
20 you, it's unanimous, that you are firmly
21 convinced, it's a guilty verdict. If all 12 of
22 you are not firmly convinced, it's not guilty.
23 That is the most implicit way I can put that to
24 you. So maybe that will put your mind at ease
25 about why you are here.

1 Why you are here? Domestic violence in
2 the 1st degree. It's the State of South Carolina
3 vs. John Davenport. That's the crime he's charged
4 with. And domestic violence, simply put, is where
5 you commit an act of assault and battery against
6 what the law defines as a household member. And a
7 lot of times that can be spouses, former spouses,
8 ex-wife, ex-husband, people who are not married
9 but have a child in common. Or, as it is in this
10 particular case, boyfriend and girlfriend who used
11 to do live together. The law say cohabitante. But
12 that just means living together, or used to live
13 together, and it applies that they used to live
14 together ad had some kind of sexual relationship
15 too.

16 That's the case we're dealing with here
17 today, the facts. The victim in this case,
18 Latorya Morris, was the on again, off again
19 girlfriend of John Davenport, and, under the law,
20 she would constitute a household member.

21 And the evidence in this case is going to
22 take you all back about 15 months ago to
23 October 18th of 2018. And it was a little after
24 midnight that night when -- we have an eyewitness
25 in this case, so it's not just Latorya Morris

1 being a victim who's going to tell you what
2 happened, we actually have an eyewitness, and
3 that's what's unique about this particular case.

4 A lot of times in domestic violence
5 cases, the only witness is the victim because
6 these things happen behind closed doors and it's
7 just the perpetrator and a victim. So, really, t
8 here's no witnesses. But here, this was done in
9 front of a third party, Kenya Hunter. So that's
10 what separate this case from a lot of cases we
11 deal it. And a lot of times, the victims are
12 supportive of their abuser for financial reasons,
13 emotional reasons.

14 So, in this particular case, we have
15 somebody that we believe is independent, has no
16 motive to misrepresent the facts, things of that
17 nature. But, again, that would be your
18 determination.

19 But on October 18th of 2018, Miss Kenya
20 Hunter called law enforcement, called 911 and
21 reported that John Davenport -- and the eyewitness
22 doesn't know John Davenport -- she reported a
23 little after midnight that John Davenport came to
24 her house. This happened at Kenya's house on
25 **Norder Street in the city limits of Newberry,

1 came to her house and essentially knocked Latorya
2 Morris, who was staying at Kenyata's house, to the
3 ground, knocked her down, and repeatedly struck
4 her about the face and upper body area. And
5 she'll describe it as almost being -- almost as if
6 John Davenport were assaulting another man. And
7 she witnesses. She reported it to 911.

8 John Davenport flees the scene. They
9 give a description of what he's wearing in the
10 car. And Kenyata actually knows John Davenport
11 from a relative. She's a relative, so there's no
12 issue of identity, who did this.

13 Police arrive. Officer Yolanda Williams
14 and Officer Mike Wood arrive. So at that point,
15 so they're given their statement and leave, John
16 Davenport drives back by the house while the
17 police are there in the same car he left in. He's
18 a passenger in that vehicle. Kenyata and Latorya
19 see that and notify police, hey, he's coming back
20 by the house again, and then the police eventually
21 pull that car over.

22 Those are the essential allegations in
23 this case, the facts we intent to prove.

24 Actually, earlier that night, or a few
25 hours prior to this incident I just described, so,

1 at this point, it was October 17th, a few hours
2 earlier, Officer Yolanda Williams takes a report
3 involving Mr. Davenport and our victim, Latorya
4 Morris, again, to another location. So this as an
5 ongoing thing they had that night.

6 But those are the essential facts. So
7 it's about a five-witness case from the State's
8 perspective. So it will be a quick trial. You
9 may get the case today, you may not. But, in any
10 event, you should have the case by tomorrow at the
11 latest.

12 Again, factual determination of guilt or
13 innocence can only be made by the jury. You guys,
14 you didn't want to be here. You were summoned
15 here. We realize that. We realize your time is
16 valuable. Time is the most valuation commodity
17 that I know of. It's never going to be any longer
18 than one day. And I want you all to understand
19 that how you decide this case is it. The judge
20 alluded to it, the factual determination of guilt
21 or innocence cannot be change.

22 How you decide today, will decide the
23 fate of this case. So we want you to get this
24 decision. We want you to make the right decision,
25 reach the proper verdict. A proper verdict that's

1 consistent with the evidence. We don't want you
2 to waste this opportunity. You did not ask for
3 it. You did not ask for this. It was, kind of,
4 thrust upon you.

5 With that again, I would like to share,
6 kind of, a poem I heard. It's been a couple years
7 now. I think it's very apropos to being juror in
8 this case, but it's a short poem and it goes
9 something like this: I only have a minute. Sixty
10 seconds in it. Forced upon me. I did not choose
11 it, but I know that I must use it. Give account
12 if I abuse it. Suffer if I lose it. Just a tiny
13 little minute, but eternity is in it.

14 And, again, your jury service this week
15 represents a small snapshot of your lives, but
16 it's important. We'll never get this time back.
17 We'll never get to change your decision. Your
18 verdict will be the verdict. You can't change
19 that.

20 So I want you, at the conclusion of the
21 this case, when you deliberate in your
22 deliberations, render a verdict that's consistent
23 with the evidence. Go where the evidence leads
24 you and it's our position as the State, as the
25 prosecution, that there is only one verdict that

1 is consistent that will be unavoidable.

2 It will be inconvenient for
3 Mr. Davenport, but, nevertheless, it will be the
4 right verdict, and that will be the verdict of
5 guilty. And so, at the conclusion of this case,
6 we will be asking -- but, again, we offer the case
7 to you. We thank you for the privilege of your
8 time and we look forward the presenting this case
9 to you.

10 Thank you.

11 THE COURT: Mr. Verner.

12 MR. VERNER: May it please the Court?

13 THE COURT: Yes, sir.

14 MR. VERNER: Members of the jury, again,
15 I'm Charles Verner. I'll stand up for a second.
16 John Henry Davenport is my client. He's from
17 Newberry. Silver Street area. Newberry High
18 School grad. Always lived in Newberry. Worked at
19 Valmont. He's charged with domestic violence.

20 The domestic violence is a fairly new,
21 particularly specific statute where it's
22 traditionally assault and battery of a family
23 member. We didn't have it up until maybe a decade
24 ago. It's designed for women who are trapped --
25 although it applies to men too, but realistically

1 it applies for women who are trapped in a
2 relationship financially, or, because of children,
3 can't get out, have an abusive spouse, just an
4 abusive dead end situation she can't get out of
5 because he is keeping her in it, or the children,
6 or the circumstances are keeping her in it. And
7 it has consequences specifically for that
8 situation. I submit to you that he is not guilty
9 of the domestic violence charge.

10 And just -- we will allege there are some
11 biases in some of the witness and we'll get into
12 that. I'll just add the case is going to unfold
13 before you in just a few minutes, and so you'll
14 hear just as much as I do.

15 Again, as the prosecutor said, a guilty
16 verdict and an innocent verdict cannot be undone.

17 This judge, I have a lot of respect for
18 this judge. The Supreme Court sent a Circuit
19 Court Judge to Newberry for important reasons. He
20 is probably the least important person in this
21 case in this regard, I get to give my legal
22 arguments. The State gets to give their legal
23 arguments. People get to give testimony. This
24 judge does not get to give his personal opinion in
25 this case. He is a referee. He is -- basically,

1 can, evidence come in because it's been disclosed
2 or whatever the specific rules are, but nobody --
3 this judge -- a lot of juries tell me there's
4 Supreme Court and they look at what we do and see
5 if we got it right, and that's not how it works.

6 The Supreme Court -- there is no calvary
7 after today to undue a wrong verdict. You have
8 got to get it right. And I respect -- you take an
9 oath to do this service. And, you know, I've
10 tried a lot of cases. I've been a public defender
11 here in Newberry for 10 years. They have been
12 here about a decade as well. We try a lot of
13 cases in Newberry. Sometimes people get found
14 guilty. Sometimes people get found not guilty,
15 but we move on to the next one. Nobody holds a
16 grudge against your verdict. You take an oath to
17 do what you think is right. And so I'll just ask
18 you to do what you think is right.

19 The role was the jury -- we are not a
20 class or scientific community trying to all look
21 at the same set of facts and determine some
22 mathematical formula that we can all agree on.
23 The problem is with that is, nobody was there.
24 Nobody in this courtroom behind this bar. I
25 wasn't there. The prosecutors weren't there.

1 Nobody behind this bar was there on October 18th
2 of 2018. We can only go by what we believe
3 happened. And the burden of convincing you, what
4 happened, is entirely on the State. It's their
5 party. They are the ones who have summoned us all
6 here. They have the burden of proving all of the
7 elements of their cases -- on any part of their
8 case, they have to prove it all, which means they
9 have to have witnesses or they have to have actual
10 evidence to show you.

11 If there is a failure on that, as the
12 judge will tell you, there is only one -- this is
13 a criminal trial. There is only one with chips on
14 the table and that this is John Henry Davenport,
15 and that's why the Court tells you that you have
16 to give him the benefit of any doubt. The rest of
17 us move on. It might be a little intimidating for
18 us to be here, but we'll get over it.

19 And just to explain the role of the jury,
20 we cannot, as a hundred percent probability, find
21 out what happened on October 18th. There's just
22 no way. We weren't there. We have to rely on
23 what other people and tell us.

24 But the jury isn't to find the truth of
25 what happened that night. The jury is to protect

1 the citizen from the State taking their liberty or
2 taking their life, or taking their property. The
3 State cannot come in and punish someone without
4 12 members of his community saying that you have
5 proven what you have to prove. You are not here
6 to find the truth. You are here to protect the
7 citizen of somebody who lives in Newberry here
8 with you. That is your role. We don't work
9 together. You are adversarial to the State. You
10 are the defense that protects the citizen from the
11 State, and me too.

12 And it's largely -- America is the only
13 one who has the jury trial system set up. Some of
14 them have different forms, but we are really the
15 only ones who have it. It isn't unique. It isn't
16 a recent invention. These trials -- what you're
17 doing isn't just American. It's as old as
18 civilization. A jury trial is largely when the
19 king or the ruler or the State, instead of sending
20 the king to make a decision, or his designee, the
21 judge or his panel of judges, a jury trial
22 basically means that the king turns over control
23 of somebody's fate to the citizens of the
24 community.

25 But the king won't decide whether you're

1 guilty. The king will let your peers decide
2 whether you're guilty or not, and that's basically
3 a trial, is, do you want citizens making that
4 decision or the king himself or king's the
5 representation, and George Washington and that
6 group said, we want citizens making that decision.
7 They didn't amend it.

8 I'm not saying this religiously. Just
9 historically, Jesus Christ, you all remember the
10 story Barrabas and Pontius Pilate. That's a jury
11 trial. That's a stepping aside. I'm not going to
12 step in as king. I'm going to let you decide who
13 is guilty. Was there a crime committed. What's
14 the punishment. Pontius Pilate, you want Barrabas
15 or Christ. That's a jury trial.

16 It goes back to Socrates, 500 years
17 before then when -- Socrates was a Greek poet or
18 Greek philosopher in sabbatical. I'm not saying
19 that religiously or any other purpose just to show
20 that what you're doing is not unique. It is just
21 using your common sense to determine if the State
22 should punish somebody and punish them criminally.

23 This is not a school teacher punishment.
24 This is a criminal -- that the Supreme Court has
25 sent a judge for Florence, one of 50 judges in the

1 state give or take. We know this is a serious
2 business. This it might be over by the end of the
3 day. But what we understand, the -- that we're
4 here for an important event. I mean, you
5 literally have got somebody's fate in your hands
6 and you got a duty to decide whether it's a
7 criminally punishable case or not.

8 And all I'm telling you is, you owe any
9 benefit of the doubt to John Henry Davenport and
10 that's all we're asking for.

11 Thank you.

12 THE COURT: Call your first witness. The
13 State calls Kenyata Hunter, Your Honor.

14 THE CLERK: Raise your right hand and
15 place your left on the Bible. The testimony you
16 give this jury, do you solemnly swear or affirm to
17 tell the truth, the whole truth, and nothing but
18 the truth, so help you God?

19 THE WITNESS: Yes, Your Honor.

20 THE CLERK: Have a seat. State your name
21 for the record.

22 THE WITNESS: Kenyata Hunter.

23 WHEREUPON:

24 KENYATA HUNTER,
25 after having been sworn, testified as follows:

Testimony of Kenyata Hunter
DIRECT EXAMINATION

83

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

BY MR. SCOTT:

Q Kenyata, where do you live?

A I live, right now, at [REDACTED] Pine Street.

MR. VERNER: Your Honor, I apologize. I would ask her to speak up just a little bit. Is that microphone turned on?

MR. VERNER: I think the Court just admonished us the microphone is not working, so if you'll have to be just extra --

THE COURT: Hold on just a second. Is it on now?

Miss Hunter, you were in here when I was talking to the jury. I don't always talk that loud, but I raised my voice intentionally to ensure everyone on that jury hears me. Okay? So when questions are asked of you, assume that you're talking to those individuals in the back row or that jury.

THE WITNESS: Yes, sir.

THE COURT: To ensure that they hear you. Okay?

THE WITNESS: Yes, sir.

THE COURT: Mr. Scott, you may proceed.

MR. SCOTT: Thank you.

1 BY MR. SCOTT:

2 Q Kenyata, tell me one more time. Where do you live
3 now?

4 A [REDACTED] Pine Street, Newberry.

5 Q October 2018, where were you living?

6 A [REDACTED] Gilder Street.

7 Q Is that in Newberry County?

8 A Yes, sir.

9 Q Okay. Do you remember that date of October 18,
10 2018?

11 A Yes, sir.

12 Q At the time, you were pregnant?

13 A Yes, sir. With my twins.

14 Q Okay. Who is Latorya Morris?

15 A She was just -- well, a friend of the family
16 and going with John Henry Davenport.

17 Q She was a friend of the family and what?

18 A She was going with my cousin, John Henry
19 Davenport.

20 Q John Henry Davenport is your cousin?

21 A Yes, sir.

22 Q And Latorya Morris was going with him?

23 A Well, I guess on and off because he had
24 another girlfriend, so I guess they were on and
25 off. So, I don't know. Because one day, they're

Testimony of Kenyata Hunter

85

1 together. One day, they're not. He had another
2 girl. I don't know.

3 Q So going together, they had a boyfriend/girlfriend
4 relationship, is that what that means?

5 A I guess so.

6 Q Okay. Would you see them together from time to
7 time?

8 A Yes, sir.

9 Q Why was Latorya Morris at your house that night?

10 A Because she had nowhere to go and I was being
11 nice to her to let stay at my house because she
12 had nowhere to go. And I'm not the type of person
13 that lets people stay on the street when they
14 ain't got nowhere to go.

15 Q Okay. Was it that night that she did come over?

16 A Well, she been at my house plenty of times
17 that night.

18 Q Okay. But do you remember how she came to be at
19 your house that night?

20 A Well, I picked her up when I got off from
21 work that night. So when I got home from work in
22 Winsboro KFC. So I picked her up from -- what it
23 was? I forgot the name of the street she was on.
24 But I went and picked her up -- Pine Street. And
25 I went and picked her up. It was already late

1 anyway, so I wanted her to sleep in a bed. You
2 know, here go to bed. And she was laying down.
3 Her and Jay had gotten into it earlier that day.
4 Why you keep getting into it? Why you all got to
5 be around somebody. She was like, I'm done with
6 him. I'm done. I said, okay, I heard that plenty
7 of times but you always be right back with him, so
8 it doesn't matter. So, you go on to bed so by the
9 time, once you all get into it, well, don't open
10 my door. When he knock on the door, just don't
11 open the door.

12 Q I'm sorry. You're fine. But, if you don't mine,
13 just slow down a little bit just to make sure I want
14 the jury to hear everything you say, but also so this
15 court reporter can type it down.

16 Just correct me if I'm wrong, but you
17 said she called you to pick her up.

18 A Yes, sir.

19 Q You were coming from Winsboro. You work at the
20 KFC in Winsboro.

21 A Yes, sir.

22 Q And she had indicated she had gotten into with
23 John?

24 A Yes, sir.

25 Q So you gave her a ride back to your house?

Testimony of Kenyata Hunter

87

1 A Yes, sir.

2 Q Do you remember about what time it was?

3 A It was probably around 11:30, twelve o'clock
4 around that time.

5 Q Midnight? Getting close to midnight?

6 A Yes.

7 Q And I think you indicated she was going to sleep
8 on your couch?

9 A Yes, sir.

10 Q Okay. Pick up where you were just talking about.
11 I know it's hard to slow down when you naturally talk
12 fast, but try to speak a little bit slower. You were
13 discussing what you warned her about if somebody
14 knocked on the door.

15 A Don't open my door. So him being my cousin,
16 I opened the door myself. Who's knocking on my
17 door this time of night. So I'm the one that
18 opened the door because sometimes my kids' father
19 do come at night.

20 Q All right. So there was a knock on the door at
21 some point?

22 A Yes, sir.

23 Q And where were you when you heard the knock?

24 A In my bedroom.

25 Q And Latorya, to your knowledge, was in the front

1 living room?

2 A Yes, sir.

3 Q You heard the knock?

4 A I heard the knock, because I wasn't asleep.
5 I sitting there looking at TV.

6 Q And did you suspect who it was?

7 A No, sir. I just went ahead and opened the
8 door. I said, who is it? So normally he stay the
9 night at Jay's, so I opened the door. And he
10 busted the door and he ran to her and they got
11 into it. So I'm like you all, stop, stop, stop.

12 So I called the police because it was my
13 house and I'm a high-risk pregnancy, so that's the
14 reason I called the police.

15 Q Okay. Tell me -- now, you say they got into it.
16 You say Jay, that's what you call --

17 A Everybody called him that, yes, sir.

18 Q Mr. Davenport?

19 A Yes, sir.

20 Q But he came and went -- did he go straight --

21 A Straight to her.

22 Q And tell me, there was physical contact?

23 A Yes, sir. Well, both of them were fighting
24 each other.

25 Q Well, describe what you saw?

Testimony of Kenyata Hunter

89

1 A They were fighting each other. You all stop,
2 stop, stop, stop. And she yelling, call the
3 police, call the police. So I'm like, I'm going
4 to call the police because I'm high-risk
5 pregnancy. And by this time, my kids, because if
6 I lose my kids, it will would on him. Those are
7 my kids.

8 Q I want you to not just say they got into it. I
9 want you --

10 A They got into a physical altercation.

11 Q I want you to describe the physical altercation?

12 A He was punching her and she was punching him.

13 Q Okay. Who struck first?

14 A Well, he struck first because she was laying
15 down.

16 Q Okay. And where was he hitting her?

17 A In her face, and, I guess, her body parts.

18 Q Okay. All right. So you did call 911?

19 A Yes, sir, I did.

20 Q This is State's Exhibit 1. Do you remember us
21 listening to that?

22 A Yes, sir.

23 Q And what is it? Is that your 911 call?

24 A Yes.

25 MR. SCOTT: Your Honor, The State offers

Testimony of Kenyata Hunter

1 State's Number 1 for admission into evidence.

2 THE COURT: Any objection?

3 MR. VERNER: She's here to testify,
4 Judge. I do believe it would be -- that she's not
5 a participant in the assault, so I do believe it
6 would be testimonial under those circumstances.

7 THE COURT: Over defendant's objection,
8 I'll allow it.

9 MR. SCOTT: Your Honor, the State now
10 asks to publish State's Number 1.

11 THE COURT: Objection is so noted for the
12 record.

13 (STATE EXH. 1, 911 recording, was entered
14 into evidence.)

15 (911 call played in its entirety.)

16 BY MR. SCOTT:

17 Q This is State's Exhibit Number 2. Do you
18 recognize this?

19 A Yes, sir, I do.

20 Q What's that?

21 A That's my house on Gilder.

22 Q That's the house on Gilder Street?

23 A Yes, sir.

24 Q Is that the location where this happened?

25 A Yes, sir.

Testimony of Kenya Hunter

91

1 MR. SCOTT: Your Honor, the State offers
2 Number 2 into evidence.

3 MR. VERNER: Without objection.

4 THE COURT: So admitted. Number 2.

5 (STATE EXH. 2, Picture of house, was
6 entered into evidence.)

7 BY MR. SCOTT:

8 Q Okay. Do you remember law enforcement getting
9 there after you made that 911 call?

10 A Yes, sir.

11 Q Who did you speak with on your front porch?

12 A With a neighbor. What we call Wanda Kay.

13 Q You call her what now?

14 A Wanda Kay.

15 Q The Yolanda?

16 A Yes, sir.

17 Q Mendenhall. I think it's Williams now.

18 A Uh-huh.

19 Q And did you indicate to her what happened?

20 A Yes, sir. She did also. She was on the
21 porch herself.

22 Q Latorya?

23 A Yes, sir.

24 Q So you and Latorya were on the front porch talking
25 to Yolanda?

1 A Yes, sir.

2 Q Do you remember writing a statement?

3 A Well, I only wrote what happened at the
4 house. That was it.

5 Q As opposed to what? What else would you have
6 written about?

7 A That was it.

8 Q Okay. But you wrote a statement about what
9 happened at your house?

10 A Yes, sir.

11 Q Don't read that out loud, but take a look at that.
12 Is that the statement you wrote that night?

13 A Yes, sir. Yes, sir.

14 Q Okay. Do you remember describing how John Henry
15 Davenport was hitting Latorya Morris?

16 A Well, he was punching her face and pulled her
17 out of the chair. He was punching her face. And
18 she was kicking back and everything, you know,
19 trying to defend herself.

20 Q She was trying to defend herself?

21 A Yes, sir.

22 Q Do you remember the statement, "He was hitting her
23 like a man?"

24 MR. VERNER: Object.

25 THE WITNESS: Yes, sir, he was.

Testimony of Kenyata Hunter

93

1 MR. VERNER: I object to, one, the
2 statement is not in evidence. Two, it can't come
3 into evidence unless it's a prior inconsistent
4 statement or it's either a prior consistent
5 statement rebutting an inconsistency. So I do
6 think it's improper to ask her about the statement
7 that's not in evidence. And she's here to testify
8 what happened.

9 THE COURT: I'm going to overrule the
10 objection. You may continue.

11 BY MR. SCOTT:

12 Q Okay. What does that mean? Describe what does it
13 mean to hit somebody like a man?

14 A I mean, you a female -- you shouldn't be
15 hitting no female like they're another dude or
16 something.

17 Q Okay. Well -- okay.

18 And so you gave a statement to the officer?

19 A Yes, sir.

20 Q Do you remember -- it sounds like you described it
21 as a four-door red car that he took off in?

22 A Yes, sir.

23 Q So when you left your house, you saw him get into
24 that car?

25 A Yes, sir.

1 Q And you gave that description to Yolanda while she
2 was on the front porch?

3 A Right. And she seen the car drive past while
4 we were all standing out there.

5 Q I want you to tell the jury about that. So you're
6 out there talking to law enforcement, you and Latorya
7 Morris --

8 A Yes, sir.

9 Q -- and what happens next?

10 A And the car just rode passed, and that's when
11 Latorya stated and I also stated, that's the car
12 right there.

13 Q You said, there he goes right there?

14 A Yeah. And the other police officer, I don't
15 know his name, he went behind the car, so I don't
16 know what his name was.

17 Q Okay. So you pointed out the car as it rode by?

18 A Yes, sir.

19 Q And, to your knowledge, did Yolanda Mendenhall
20 call another officer to stop him?

21 A Yes, sir. But she was already out there with
22 her, too.

23 Q Okay. Did -- okay. So, in your observations,
24 when he was hitting her, was it causing harm to her?

25 A Yes, sir, to the point that I had to take her

Testimony of Kenyata Hunter

95

1 to the emergency room because she was like, I'm
2 hurting. He kicked me in the stomach. She was
3 talking about he kicked me in my stomach earlier,
4 and all kinds of stuff. I was telling her, okay,
5 now don't have me take to you to the emergency if
6 you're going to run back to him.

7 Q Okay. You were worried that she would reconcile
8 with him later?

9 A I already knew she would, so it wasn't going
10 to be no big deal.

11 Q After -- when you were on the front porch and
12 after you had seen him hitting her in the face and
13 stomach area, did you observe any kind of injuries?

14 A I mean, she was bleeding a little bit, but
15 that was it.

16 Q Any swelling or redness on her?

17 A Her eye.

18 Q Her eye was what?

19 A Swelling.

20 Q All right. John Davenport is a cousin of yours?

21 A Yes, sir.

22 Q Any doubt as to who that was that came in and beat
23 on her?

24 A I know all my family members' name.

25 Q Do you see John Henry Davenport today?

1 A I don't get to see him because I work all the
2 time.

3 Q No. My question is: Do you see him here today?

4 A Oh, yeah, I see him.

5 Q Is that him right here?

6 A Yes, sir.

7 MR. SCOTT: Thank you, Kenyata. Answer
8 any questions that Mr. Verner has for you.

9 THE COURT: Cross-examination.

10 MR. VERNER: Thank you. May it please
11 the Court, Your Honor?

12 CROSS-EXAMINATION

13 BY MR. VERNER:

14 Q Good morning, Miss Hunter.

15 A Good morning.

16 Q Just -- if you don't mind, I'm going to ask you
17 questions from over here so the people who need to
18 hear you can hear you.

19 A Not a problem.

20 Q When you saw John Davenport, you called him Jay
21 that night, he was with his girlfriend Miss Sanders,
22 wasn't he?

23 A Yes, sir.

24 Q Do you remember whether you had already agreed to
25 take Miss Morris to the hospital for a UTI infection

Testimony of Kenyata Hunter

97

1 she had?

2 A No, sir. She didn't say she had a UTI. She
3 said she went to the hospital and they stated she
4 had a UTI, but she went to the hospital after he
5 beat her.

6 Q Were you familiar with Yolanda Mendenhall?

7 A I seen her as a police officer and seen her
8 around, but I don't know her personally.

9 Q Well, that's my question: Did you know her as
10 either a family member or friend of the family?

11 A No, sir.

12 Q So you don't know whether she had a good
13 relationship with Jay --

14 A I'm younger than them, so I don't know what
15 they did back in the day. That's between them.

16 Q Okay. Had you heard they had had a falling out?

17 MR. SCOTT: Objection.

18 THE WITNESS: No, sir.

19 MR. SCOTT: Objection to what she's
20 heard.

21 THE COURT: Objection is sustained.

22 BY MR. VERNER:

23 Q Now, I think you indicated to Mr. Scott that
24 occasionally your child's father would come over to
25 the house at late hours, so you thought --

1 A Yes, sir. But, also, he had a key also, so
2 there wasn't no need for him to knock on the door
3 unless he left his key at his mother's house.

4 Q And that's Antwan?

5 A Antwan, yes, sir.

6 Q And what's Antwan's last name?

7 A Glenn.

8 Q Glenn. Is it fair to say that you also have, kind
9 of, an up-and-down relationship with Antwan at times?

10 A What my kids' father got going on between me
11 and him ain't got nothing to do with this case.

12 Q Well, I'm asking you --

13 MR. SCOTT: That would be my objection
14 too as to relevance, Your Honor.

15 THE COURT: Mr. Verner?

16 MR. VERNER: If she answers, Judge, I
17 will, I think, tie it into the case.

18 THE WITNESS: I mean, no, we're not
19 together.

20 THE COURT: Hold on, ma'am.

21 MR. VERNER: I'll going to the back of
22 that question, Judge, and work backwards from
23 there if the Court has some concern about the
24 foundation of the question, and then I'll work my
25 way back.

Testimony of Kenyata Hunter

99

1 THE COURT: I'm going to sustain the
2 objection at this point.

3 BY MR. VERNER:

4 Q Is it fair to say that Antwan is a good friend of
5 Jay?

6 A I mean, he also used to went back and also
7 was trying to slander my name about this case,
8 about unnecessary stuff saying I signed a warrant
9 on him. I did not sign a warrant on him. He was
10 texting my child's father.

11 Q I'm going to -- ma'am, it's a simple question.

12 A And it's a simple question I'm trying to tell
13 you.

14 Q Let me -- I got the privilege to be the one that
15 gets to ask questions.

16 A Not a problem.

17 Q Jay and Antwan are good friends?

18 A I guess. I don't know.

19 Q Sometimes they stay together?

20 A No, they don't even stay together. So I
21 don't know. They don't come to my house and spend
22 all night, so stop.

23 Q They -- is it fair to say that Antwan and Jay have
24 gone on dates with other women?

25 A If they did, I don't care.

Testimony of Kenyata Hunter

100

1 Q My question again is: You haven't got in
2 arguments about Jay hanging out with Antwan?

3 A No, because it isn't going to be me, so
4 what's the purpose of arguing over it. If there
5 was a date, it was cold date. So what's the date?

6 Q I don't know. Where was Miss Morris staying?

7 A She was staying at my house. Sometimes she
8 stay at Tina's house. Sometimes she stay at
9 Lisa's house. She didn't have anywhere to stay.

10 Q She was, kind of, relying on friends?

11 A She relied on his family to have somewhere to
12 stay.

13 Q But, I mean, on that particular day, you don't
14 remember where she was?

15 A She was staying with me that particular
16 day.

17 Q Well, I thought you indicated that she came to
18 your house to use the phone.

19 A She did not come to my house to use no phone,
20 but she had her own cell phone because she was
21 using his cell phone.

22 Q So had she been there earlier in the day?

23 A She was there earlier that day before I went
24 to work. And I took her to Lisa's house to drop
25 her off when he was there. So she was --

Testimony of Kenyata Hunter

101

1 Q Now, who is Lisa?

2 A His sister. She was at -- as a matter of
3 fact, he was going with Panjora and Latorya at the
4 same time.

5 Q Okay. So he has been dating several women?

6 A Just Panjora and her.

7 Q And Panjora is Miss Sanders.

8 A Yes, sir.

9 Q And that's the lady you saw him with that same
10 day?

11 A Yes, sir. She married our other cousin
12 also.

13 Q Okay. And, in fact, she was the lady driving the
14 car when he rode by your house?

15 A Yes, sir.

16 Q Okay. And do you know how long they been seeing
17 each other?

18 A Well, I guess for about a year, I guess. He
19 was seeing Latorya before he started seeing her.

20 Q All right. Did you take any photographs of any --
21 are you aware of any photographs?

22 A I didn't take no photographs of nobody.

23 Q Okay.

24 MR. VERNER: Judge, your indulgence one
25 second.

Testimony of Kenyata Hunter

102

1 THE COURT: Yes, sir.

2 BY MR. VERNER:

3 Q Are you still good friends with Miss Morris?

4 A No, sir, I'm not, because I ain't talked to
5 her because she's too busy listening to him, so
6 that's why we're not good friends like we used to
7 be.

8 Q I heard you, but I didn't.

9 A I said, the reason we're not friends anymore
10 is because she too busy listening to him. What's
11 the purpose of saying she want this, that and the
12 third, and she want this -- this is not the first
13 time he beated her, and it won't be the last time.
14 You look at her face and you will see why.

15 Q So, Miss Morris and you had a disagreement on what
16 happened?

17 A Yes, because with her -- there's no need for
18 a man to beat on a woman.

19 Q So you had a disagreement on --

20 A It's not a disagreement.

21 THE COURT: Hold on. Let him finish his
22 question.

23 THE WITNESS: Go ahead.

24 MR. VERNER: I will tender her back to
25 the State. The State may have some more

Testimony of Kenyata Hunter

103

1 questions.

2 THE WITNESS: Not a problem. Thank
3 you.

4 THE COURT: Any redirect?

5 REDIRECT EXAMINATION

6 BY MR. SCOTT:

7 Q Miss Hunter, tell me who you knew her to stay
8 with. You said Tina?

9 A Sometimes she would Tina when she wasn't
10 staying with her cousin. They do the same thing
11 everywhere they go.

12 Q Who is Tina?

13 A His sister.

14 Q Where does she live?

15 A On Floyd Street.

16 Q Is that [REDACTED] Floyd?

17 A I don't know the address.

18 Q What's her last name?

19 A Hunter.

20 Q Tina Hunter. And what were some of the other
21 places that Latorya stayed at?

22 A Lisa Hunter too. That's on Pine Street.
23 Sometimes.

24 Q Lisa Hunter is who?

25 A His sister.

Testimony of Kenyata Hunter

104

1 Q Okay. And who else?

2 A Whitney.

3 Q Okay.

4 MR. SCOTT: Thank you, Miss Hunter.

5 THE COURT: Anything else, Mr. Verner?

6 MR. VERNER: No, Your Honor.

7 THE COURT: Miss Hunter, you may step
8 down. Thank you, ma'am.

9 THE WITNESS: Thank you.

10 MR. SCOTT: Your Honor, the State would
11 mention to the court we're going to excuse Miss
12 Hunter now.

13 THE COURT: Any objection?

14 MR. VERNER: No, Your Honor.

15 THE COURT: Very well. She's excused.
16 Miss Hunter, you're free to go. You don't have
17 any further responsibility here. You're free to
18 go. Thank you.

19 MR. VERNER: They may have left some
20 exhibits over on the witness stand that they
21 handed her.

22 THE COURT: Mr. Scott, call your next
23 witness, please.

24 MR. SCOTT: The State calls Yolanda
25 Williams.

Testimony of Yolanda Williams

105

1 THE CLERK: Do you solemnly swear or
2 affirm to tell the truth, the whole truth, and
3 nothing but the truth, so help you God?

4 THE WITNESS: I do. Yolanda Williams.
5 WHEREUPON:

6 YOLANDA WILLIAMS,
7 after having been sworn, testified as follows:

8 DIRECT EXAMINATION

9 BY MR. SCOTT:

10 Q Officer Williams, you are employed by the Newberry
11 City Police; is that right?

12 A Yes, sir.

13 Q Okay. And were you working there October 2018?

14 A Yes, sir.

15 Q Do you recall speaking with a Latorya Morris on
16 that date?

17 A Yes, sir, on two different occasions.

18 Q Okay. Start at the -- approximately eight o'clock
19 the Brantley Street Address, did you respond to that
20 location?

21 A Yes, sir.

22 Q Let me show you State's Number 3. Let's see. Do
23 you recognize that?

24 A Yes, sir.

25 Q Is that the location you responded to at

1 eight o'clock that night?

2 A Yes, sir, it is.

3 MR. VERNER: I object -- are you offering

4 it?

5 MR. SCOTT: Yes.

6 MR. VERNER: Without objection.

7 MR. SCOTT: The State offers number 3.

8 THE COURT: Without objection, so

9 admitted.

10 (STATE EXH. 3, Picture; [REDACTED] Brantley Street,
11 was entered into evidence.)

12 BY MR. SCOTT:

13 Q [REDACTED] Brantley, is that in Newberry County?

14 A Yes, sir, it is.

15 MR. VERNER: What number is that,

16 solicitor?

17 MR. SCOTT: 3.

18 BY MR. SCOTT:

19 Q Within the city limits of Newberry?

20 A Within the city limits of Newberry.

21 Q Who was the complainant on that occasion?

22 A Miss Morris.

23 Q Okay. And what was the nature of the call you

24 were responding to?

25 A Okay. This particular --

Testimony of Yolanda Williams

107

1 MR. VERNER: Your Honor, and
2 respectfully, I do -- my understanding is, the
3 indictment is for an incident that happened on
4 October 18th on Gilder Street, so I would object
5 to the 403 and te indictment on this evidence.

6 THE COURT: Will counsel approach?

7 (Bench conference off the record).

8 THE COURT: At this point, I'm going to
9 overrule defendant's objection. So noted for the
10 record.

11 BY MR. SCOTT:

12 Q Officer Williams, I don't want you to talk about
13 any of the details of the call, but what type of call
14 for service was it that you responded to at [REDACTED]
15 Brantley Street?

16 A An assault call.

17 Q You already said your complainant was Latorya
18 Morris?

19 A Yes, sir.

20 Q And did you respond to that [REDACTED] Brantley Street
21 address?

22 A Yes, sir, I did.

23 Q And did you speak with Miss Morris?

24 A Yes, I did.

25 Q Did you seek to help relocate her?

1 A Yes, I did. I paid for her taxi to relocate
2 to leave the scene. Since she needed help, so I
3 paid for her to leave the area.

4 Q Okay. And that was approximately eight o'clock,
5 8:00 p.m. October 17th. Did you receive another call
6 for service sometime later that night going into,
7 like, the midnight, kind of, time period?

8 A Yes, sir. We received another call and it
9 was on Gilder Street. I believe it was -- if I'm
10 not mistaken -- I don't have my glasses on, so I
11 can't really see. [REDACTED] Gilder Street.

12 Q Okay. Who was your complainant? Who called for
13 service on that occasion?

14 A Miss Hunter.

15 Q And the general nature of the call you were
16 responding to on that occasion was what?

17 A An assault.

18 Q And who was, your understanding, the victim?

19 A Miss Morris.

20 Q Okay. So, did you arrive at the scene
21 [REDACTED] Gilder?

22 A Yes, sir, I did.

23 Q It's the State Number 2. Do you recognize that as
24 the Gilder Street location?

25 A Yes, sir.

Testimony of Yolanda Williams

109

1 Q All right. When you arrived, who did you speak
2 with? Who was on the front porch there?

3 A I spoke with Miss Morris and Miss Hunter.
4 Miss Hunter was in her mid-stage of pregnancy and
5 advised that she couldn't assist Morris with the
6 assault that happened.

7 Q Okay. You spoke with both Kenyata Hunter and
8 Latorya Morris on that occasion?

9 A Yes, sir, I did.

10 Q As far as Morris concerned, did you observe any
11 injuries?

12 A Yes, sir, I did.

13 Q Could you describe those?

14 A She had a swollen eye. She was hollering for
15 pain. She was slumped over and said she had pain
16 in her stomach. And Miss Morris -- Miss Hunter
17 advised that Mr. Davenport was stomping Morris in
18 the stomach area. So she was en route to take
19 Morris to the hospital when we arrived. When we
20 got there, Davenport wasn't on scene. We was
21 advised at that point that he was in a red vehicle
22 driving by Miss Sanders, Panjora Sanders. We got
23 the tag number.

24 And while we was on the porch, the vehicle
25 passed the location. I called Lieutenant Wood on the

1 radio and advised him what type of vehicle we was
2 looking for. We were given the clothing description
3 of Mr. Davenport, blue jeans, no shirt, boxer shorts.
4 It's out of the red vehicle driven by Miss Sanders.
5 Lieutenant Woods located the vehicle along with
6 Patrolman Macks at the time, and they located -- he
7 was wearing a clothing description that was described
8 by Miss Morris.

9 After the vehicle passed while on the
10 porch talking to them, the vehicle passed back on
11 that location, it was on Werts Street, Gilder and
12 East Werts. And that's where the vehicle was
13 headed.

14 Q Okay. So what you're saying is, you're out there
15 talking with Latorya Morris and Kenyata Hunter. They
16 describe the car he's in and there he goes, he's
17 riding by the incident occasion?

18 A The vehicle, he rode right by the incident
19 location again.

20 Q And they had given you a general description of
21 what he was wearing that night?

22 A Uh-huh, I did. And the vehicle that he was
23 in, the tag number was the South Carolina tag --
24 it was a 2013 Chevy, Panjora Sanders, and it was
25 MTK108.

Testimony of Yolanda Williams 111

1 Q Okay. But the clothes they described him wearing,
2 they gave you a description, what was that?

3 A It was blue jeans, he had no shirt on, boxer
4 pants -- well, the boxer shorts was showing
5 through by the pants, and no shirt on, and he was
6 on passenger because she was driving. And when
7 Lieutenant Wood made contact with the vehicle, he
8 had the clothing description as described.

9 Q Okay. Tell me the injuries you observed on
10 Morris's face?

11 A She had a black eye. She had bruises to the
12 mouth. Like I said, she was in so much pain,
13 internal pain from him stomping her, and she --
14 the only thing she was wanted was to seek medical
15 help, and Miss Hunter was -- she didn't want to
16 get seen by EMS. She wanted Miss Hunter to take
17 her. Miss Hunter was en route to take her to the
18 hospital.

19 Q She didn't want to be seen?

20 A She didn't want EMS to come on scene.
21 Miss Hunter was going to take her.

22 Q Did you observe any swelling on her face?

23 A Yes, sir.

24 Q Any red markings on her shoulder or back?

25 A Yes, sir.

1 Q Okay.

2 A She had -- okay. When Miss Hunter called,
3 Miss Hunter reported, you know, he entered the
4 residence. He took Morris off her feet. Threw
5 her into the ground, punched her in the face, like
6 he was punching a man. Hunter stated that Morris
7 was trying kick Henry back from punching her,
8 which made him more upset.

9 Q All right. Did you observe -- in your
10 observations, did Miss Morris appear to be in pain?

11 A Yes, sir, she was.

12 Q Did she appear to be suffering from injury?

13 A Yes, sir.

14 Q So your observation is that she has been harmed in
15 some way?

16 A Yes, sir, she has.

17 Q Okay. Let me ask you, what information did you
18 all have as far as what Mr. Davenport's address was?

19 A Well, we had his address as -- he stayed on
20 Floyd Street, [REDACTED] Floyd street.

21 Q Okay. Do you know a Tina Hunter?

22 A Yes, I know Miss Hunter, Miss Tina as
23 John Davenport's sister.

24 Q Where does she live?

25 A [REDACTED] Floyd Street.

Testimony of Yolanda Williams

113

1 Q Okay.

2 A That's exiting Newberry.

3 Q So Tina Hunter and John Davenport live at [REDACTED]

4 Floyd.

5 A Yes, sir.

6 Q Okay. This is State's Number 4. Do you recognize
7 that?

8 A Yes, sir.

9 Q What is that?

10 A It's [REDACTED] Floyd Street.

11 Q And that's the --

12 A Location.

13 Q -- address that you knew Mr. Davenport to live at
14 from time to time?

15 A Yes, sir.

16 MR. VERNER: Without objection.

17 MR. SCOTT: State's Number 4, Your Honor,
18 for admission into evidence.

19 THE COURT: Without objection, so
20 admitted.

21 (STATE EXH. 4, Picture; [REDACTED] Floyd Street,
22 was admitted into evidence.)

23 MR. SCOTT: Answer any questions
24 Mr. Verner may have, please.

25

CROSS-EXAMINATION

1 MR. VERNER:

2 Q Good morning, Officer Williams.

3 A Morning.

4 Q How long have you known John Davenport?

5 A For several years.

6 Q Could it be as long as 20 years?

7 A Yes.

8 Q Okay. You've known these family members and
9 John Henry socially? You know, the family, not as an
10 officer, but know them socially, recognize their
11 faces?

12 A I recognize their faces.

13 Q Is it fair to say that you and John Henry have had
14 a fall -- well, let me ask you: How long have you
15 been a city officer?

16 A Five years.

17 Q Five years?

18 A Uh-huh.

19 Q Is it fair to say that you and John Henry had a
20 falling out more than five years ago in terms of
21 friendship and you all haven't really gotten along?

22 A I have never had no association with John. I
23 know him from when I stayed in Newberry Oaks
24 Apartment. But I have not had no encounter. I
25 have not gone out with him. I have not hung out

Testimony of Yolanda Williams

115

1 with him. So, no, I don't have no kind of
2 relationship.

3 Q You didn't have an argument or falling out years
4 ago?

5 A He -- I don't do disrespectful people. He is
6 very disrespectful. So those kind of people, I
7 stay away from.

8 Q Okay. Now, do you recall taking any photographs
9 of Miss Morris that night?

10 A We took photographs of Miss Morris that end
11 up being lost due to the item that I took it
12 with.

13 Q Okay. Did you use a camera or a cell phone-type
14 phone?

15 A I used my Smartphone.

16 Q Okay. And, again, tell us where the photographs
17 are?

18 A The pictures of Miss Morris's injury was on
19 the phone that got damaged. And then they
20 replaced my phone, so the photos was unable to be
21 found.

22 Q But prior to that date, you hadn't sent them to a
23 file or saved them to a computer?

24 A No.

25 Q Is it possible -- unfortunately, as a city police

1 officer, I would assume that domestic calls is a
2 fairly routine part of your job?

3 A Yes, it is.

4 Q How many -- when you're on duty, does Newberry
5 City do eight-hour shifts or 12-hour shifts?

6 A We do 12-hour shifts.

7 Q 12-hour shifts?

8 A Uh-huh.

9 THE COURT: Is that a yes?

10 THE WITNESS: Yes, sir. My apologies.

11 BY MR. VERNER:

12 Q I don't know if you were in here, but the
13 microphone is not working. If you can get in front of
14 it to make sure.

15 A I'm sorry.

16 Q That's all right. Is it fair to say that getting
17 calls every day on a domestic call probably happens
18 when you're on duty?

19 A Not all the time we get domestics. Just
20 fairly -- you know, we might get some twice a
21 month, but it's not routine that we get domestic
22 calls all time.

23 Q Would you get one a week?

24 A Yes, sir. I'd say we get one a week, but
25 that's between different shifts.

Testimony of Yolanda Williams

117

1 Q Okay. Do you know how well the -- I guess my

2 questions is, if you, yourself, are on duty, do you

3 individually get as many one domestic call a week?

4 A No, sir, I don't.

5 Q Okay. But you would get -- you would certainly

6 plan on getting a couple a month?

7 A Yes, sir. We might run into one or so a

8 month.

9 Q Okay.

10 A I might do, but it's been rarely that I have

11 one.

12 Q Okay. Well, are you on road duty or do you have a

13 specific responsibility that you personally handle?

14 A No, sir. I'm on the road.

15 Q And when you're on the road, is that when you're

16 primarily doing traffic, or you answer whatever calls

17 come in?

18 A I do both. I do traffic and --

19 Q Okay. Do you typically work in the evenings

20 hours, or daytime, or does it, kind of, overlap

21 because it's 12 hours?

22 A It floats. Currently now, I'm on 6 p. to

23 6 a.

24 Q Is that the night shift?

25 A Yes, sir.

1 Q Is it possible -- well, I'll ask you this: Any
2 time you get called on a -- basically dispatched for
3 any kind of investigation or to go to a house, you are
4 required to keep notes on pretty much any call that
5 you're officially designated to take?

6 A Yes, sir.

7 Q And, in fact, the City has, kind of, a -- what's
8 called an incident report, which is their standard
9 program of how you write down your notes of what
10 happened that night?

11 A Yes, sir.

12 Q And that's to help you, later on, remember, or
13 other people who look at it later on, could figure out
14 what happened that night?

15 A Yes, sir.

16 Q That's a requirement to do?

17 A Yes, sir.

18 Q And you understand that you are required that you
19 try to make it as accurate as possible with your best
20 recollection to put all the important details that you
21 think should be in there, right?

22 A Yes, sir.

23 Q Because you understand it's going to be used to
24 refresh your memory, and other people who weren't
25 there are going to be relying on your notes, right?

Testimony of Yolanda Williams

119

1 A Yes, sir.

2 Q So you try to make it as accurate as possible,
3 right?

4 A Yes, sir.

5 Q And you try to make it as complete as possible?

6 A Yes, sir.

7 Q And you typically do those incident reports when
8 the matter is still fairly fresh in your mind?

9 A Yes, sir. On what incident it is, we do try
10 to do it quickly so we have the details down pack
11 in our notes.

12 Q And nowadays, officers even have -- a lot of
13 officers even have, kind of, a laptop computer
14 attached to their patrol cars so they can do it on the
15 road?

16 A Yes, sir.

17 Q Does your patrol car have that?

18 A Yes, sir.

19 Q Okay. When you do an incident report, are you
20 doing it typically at the scene, or do you have to
21 wait until after your shift is over and then type up
22 all your reports at night?

23 A No, sir. Whenever I leave the incident --
24 according what it is, if it's like a domestic, we
25 try to get it typed up. If there has to be a

1 warrant done for that incident, I have to type a
2 report up right then and there.

3 Q So your report was done pretty much very shortly
4 after you were called out in October of 2018?

5 A I was there probably about -- after we
6 cleared the scene, probably about an hour after we
7 cleared the scene.

8 Q Within an hour?

9 A Within an hour, I cleared the scene.

10 Q Have you had a chance, prior to testifying today,
11 to review your incident report and your notes?

12 A No, sir.

13 Q Is it possible that you -- you testified to the
14 jury that somebody told you he had stomped her in the
15 stomach, but that's not in your report, is it?

16 A Yeah.

17 Q It is?

18 A Yes. He punched her repeatedly in the face
19 and punched her -- and kicked her.

20 Q Where are you going for kicking her?

21 A Upon entering the residence using profane
22 towards Miss Morris.

23 Q Right.

24 A And Morris -- well, that might have been the
25 first incident. That was the one from Brantley

Testimony of Yolanda Williams

121

1 Street.

2 Q I'm asking -- I'm not asking about the physical
3 contact. I'm asking you, you specifically used the
4 word "stomping".

5 A Yeah, that was from the Brantley Street,
6 which I was told that I just have to leave that
7 one.

8 Q Well, there's no report -- that's how you report
9 it, a stomping, in the Gilder Street incident, isn't
10 it?

11 A No, sir.

12 Q Okay. And it's not in -- you asked both ladies to
13 provide you a written statement of what happened? You
14 said you took written statements from the witnesses?

15 A Yes, sir.

16 Q And it's not in the written statements either, is
17 it?

18 A I don't have the copy of the written
19 statements.

20 Q And you're aware that Miss Kenyata Hunter just
21 testified before you?

22 A No, sir, I'm not.

23 Q Okay. But as far as being an eyewitness, you
24 would not be an eyewitness. Everything you know
25 you're relying on what other people told you?

1 A Yes, sir.

2 Q And so you would defer to what Miss Kenyata saw,
3 to what she actually testified or said?

4 A I'm not sure what Miss Hunter testified. I
5 cannot say what she said.

6 Q But, as far as what she saw, you defer to her
7 telling it herself?

8 A Yes, sir.

9 Q And you saw John Henry, Jay, later that night
10 after the incident in the red car?

11 A We saw him pass by on Gilder Street.

12 Q Okay.

13 A I didn't see him. I didn't make the traffic
14 stop.

15 Q You just saw the car?

16 A I saw -- I observed the car pass by. That
17 was the car that was described as the car that
18 left the scene with him inside of it.

19 Q But who was in that car and what they said, that
20 was the other officers, the other people?

21 A Yes, sir. I have no knowledge of that.

22 Q Okay. Did you even say who was driving that red
23 car?

24 A My Lieutenant made the stop. I cannot say I
25 saw who drove the car.

Testimony of Yolanda Williams

123

1 MR. VERNER: Answer if Mr. Scott has any
2 follow-up questions.

3 MR. SCOTT: Nothing further, Your
4 Honor.

5 THE COURT: Officer, you may step down.
6 Thank you.

7 THE WITNESS: Thank you, sir.

8 THE COURT: Ladies and Gentlemen, we're
9 been going about an hour and a half. We are going
10 to take a short break. I'm going to ask you to
11 step into the jury room. Do not discuss the case
12 at all. We will get you back out here in just a
13 few minutes.

14 Mr. Foreperson, once you all have had the
15 opportunity to go to the rest room, if you'll come
16 back and knock on the door and let my bailiff
17 know. Step into the jury room. Do not discuss
18 the case.

19 (Jury exits the courtroom at 11:07 a.m.)

20 THE COURT: We'll stand down just a few
21 minutes.

22 MR. VERNER: Could I just put something
23 real quick on the record, Judge?

24 THE COURT: Yes, sir.

25 MR. VERNER: It's not that important. I

1 just wanted to make sure it was on there. John
2 Henry did, actually on the same day he appeared in
3 front of Clyburn Pope, he did actually formally
4 put in an application on that same day to the
5 public defender. I know it's -- for my reasons, I
6 just wanted that in the record, Judge.

7 THE COURT: All right. You've been
8 appointed, I guess, so to speak.

9 MR. VERNER: In case there was a
10 grievance issue, or anything, I just wanted to
11 have that in there. I appreciate it.

12 THE COURT: Thank you.

13 (A break was taken from 11:08 a.m. to 11:28 a.m.)

14 THE BAILIFF: All rise.

15 THE COURT: Thank you. Be seated,
16 please.

17 All right. Is the State ready to
18 proceed?

19 MR. SCOTT: We are.

20 THE COURT: The defense?

21 MR. VERNER: We are.

22 THE COURT: Bring in the jury.

23 (The jury enters the courtroom at 11:28 a.m.)

24 THE COURT: Call your next witness,
25 please.

Testimony of Michael Wood

125

1 MR. DAVENPORT: May it please the Court?

2 The State calls Mike Wood.

3 THE CLERK: Place your left hand on the
4 Bible and raise your right. Do you solemnly swear
5 or affirm to tell the truth, the whole truth, and
6 nothing but the truth, so help you God?

7 THE WITNESS: I do.

8 THE CLERK: Have a seat and state your
9 name for the record.

10 THE WITNESS: My name is Michael Charles
11 Wood, Jr.

12 WHEREUPON:

13 MICHAEL WOOD,
14 after having been sworn, testified as follows:

15 DIRECT EXAMINATION

16 BY MR. SCOTT:

17 Q Officer Michael Wood with the City of Newberry
18 Police Department, correct?

19 A Correct. I'm a lieutenant with the City of
20 Newberry. I work road patrol.

21 Q How long have you been a police officer with that
22 agency?

23 A Approximately 17 years.

24 Q Have you been with any other agencies?

25 A No, sir.

1 Q So you've been a police officer for 17 years. I
2 want to go back to October 18th of 2018, so 15 months
3 ago. Were you on duty, night shift I guess, that
4 particular day?

5 A Yes, sir.

6 Q Okay. A little after midnight, so October 19th at
7 this point, did you have occasion to respond to a call
8 at [REDACTED] Gilder Street?

9 A Yes, sir, I did.

10 Q Okay. And were you the only unit to respond to
11 that call?

12 A No, sir. Corporal Williams was the initial
13 unit. I responded to assist her on that call.

14 Q Officer Williams was on the scene first?

15 A Yes, sir.

16 Q So you arrived in separate patrol car?

17 A I arrived later upon her request for me to
18 come and assist her.

19 Q Approximately, what time did you arrive?

20 A It would be after 2027 hours. I would say,
21 probably about 12:30.

22 Q 12:30 a.m., okay.

23 All right. So you arrive, and who do you
24 encounter when you arrive?

25 A I encountered Corporal Williams. I

Testimony of Michael Wood

127

1 encountered the victim, Miss Morris, and the
2 person she was staying with which I believe was
3 Miss Hunter.

4 Q And what was the nature of the call?

5 A It was supposed to be domestic assault
6 between Miss Morris and Mr. Davenport.

7 Q All right. So Mr. Davenport was the suspect who
8 was identified?

9 A That is correct, yes, sir.

10 Q The perpetrator of domestic assault; is that
11 correct?

12 A That is correct.

13 Q And when you arrived on scene, was Mr. Davenport
14 on scene?

15 A Not at the time, no, sir.

16 Q All right. Not at the time. Did you observe
17 visible injuries to Latorya Morris?

18 A I did, sir. She had swell marks on her face
19 and red marks on her back.

20 Q Was she visibly in pain to you?

21 A She was visibly upset and stating that she
22 was hurting.

23 Q So, initially, Mr. Davenport is not on scene?

24 A No, sir.

25 Q All right. But, at some point, did you indicate

1 that he may have arrived on scene?

2 A While I was on scene speaking with
3 Corporal Williams, Miss Hunter and Miss Morris,
4 they stated that the vehicle that Mr. Davenport
5 was supposed to be in had just driven past. They
6 started pointed saying, that's the car, that's the
7 car, that's the car. And I initially got back in
8 my patrol car and went after him to make a stop of
9 that car.

10 Q So both Miss Hunter and Miss Morris give a
11 description of John Henry Davenport, correct?

12 A He did. He was supposed to be shirtless
13 wearing blue jeans. And they stated that he was
14 in a red car, a red four-door car, but it wasn't
15 the car that he passed us on the scene.

16 Q Okay. Approximately, how long after you arrived
17 at the scene did Miss Morris and Miss Hunter observe
18 this red car?

19 A Maybe ten minutes.

20 Q All right. And did that car -- did you observe
21 that car as well?

22 A Passing by, yes, sir.

23 Q And that fit the description of what they had
24 given to you prior to seeing that car?

25 A Yes, sir.

Testimony of Michael Wood

129

1 Q All right. Tell us what you did next after they
2 observed this vehicle?

3 A I got back in my patrol car and I went after
4 the patrol car attempting to stop it. I finally
5 was able to stop it at the intersection of Drayton
6 and Main Street right across from the Westview
7 Development Center.

8 Q So you initiated a traffic stop on this vehicle.

9 A Yes, sir, I did.

10 Q Would you describe it as being several blocks over
11 from the incident location?

12 A Yes, sir.

13 Q Did you have your blue lights and siren going and
14 things like that?

15 A Blue lights, if I remember, yes. I don't
16 think I had to put my siren on because he pulled
17 over.

18 Q Did the vehicle attempt to flee in any way?

19 A No, sir.

20 Q Okay. So upon pulling this vehicle over, who were
21 the occupants in the vehicle?

22 A The driver was -- what was her name? I'm
23 going to mispronounce her name, forgive me.
24 Panjora Sanders, and the front seat passenger was
25 Mr. Davenport.

- 1 Q Okay. So the driver was a female?
- 2 A Yes, sir.
- 3 Q And Mr. Davenport was a front seat passenger?
- 4 A Yes, sir.
- 5 Q Those were the only two occupants of the vehicle?
- 6 A Yes, sir.
- 7 Q And did Mr. Davenport have on articles of clothing
- 8 similar to what the witnesses described?
- 9 A He was shirtless and he was wearing blue
- 10 jeans, yes, sir.
- 11 Q And this was roughly less than 20 minutes after
- 12 you had responded to the call that you came in contact
- 13 with Mr. Davenport?
- 14 A Yes.
- 15 Q How was Mr. Davenport identified?
- 16 A With his South Carolina identification card.
- 17 We got IDs from both passengers in the vehicle.
- 18 Q Mr. Davenport produced an identification card?
- 19 A As far as I can remember, yes, sir.
- 20 Q Okay. So that would have his address on there?
- 21 A Yes, sir.
- 22 Q Okay. What was the listed address you had?
- 23 A I do not remember the listed address.
- 24 Q Would it be in the police report? Feel free to
- 25 refresh your memory on any details.

Testimony of Michael Wood

131

1 MR. VERNER: Your Honor, I would object,
2 of course, unless he's refreshing these details
3 from something that he actually put in the report
4 and not just reading another police officer's or
5 the DMV report.

6 THE COURT: He can review his report to
7 refresh his recollection.

8 MR. VERNER: From his own report.

9 THE COURT: Yes, correct.

10 THE WITNESS: From the supplemental
11 report that I wrote for this report, I did not
12 list his address.

13 BY MR. SCOTT:

14 Q Okay. Yolanda Williams, Officer Yolanda Williams,
15 she was the primary and she would have noted in her
16 reported the address?

17 A Yes, sir.

18 Q All right. What, if any, statements -- did you
19 question Mr. Davenport about the incident that was
20 just reported to you guys?

21 A I did. I questioned him as well as the
22 driver of the vehicle. I asked him if they had
23 been over on Gilder Street. First, they denied
24 being on Gilder Street. They then changed their
25 statement and said they had just ridden down

1 Gilder Street. That they were just coming out
2 from country and just riding around.

3 Q Don't tell me "they." Specifically tell me, what
4 did Mr. Davenport say?

5 A Mr. Davenport denied being over on
6 Gilder Street at first, and then said that he was
7 in the vehicle and that he was riding around from
8 coming out in the country.

9 Q Okay. So completely denied that he was at the
10 [REDACTED] Gilder Street address?

11 A Correct.

12 Q And how did he explain being in the vicinity of
13 [REDACTED] Gilder Street?

14 A It was stated by him that it just a
15 coincidence and that he was just out riding
16 around.

17 Q Okay. So that was -- so Mr. Davenport is
18 indicating that that is the first time he had been in
19 the vicinity of the Gilder Street address at that
20 time?

21 A Correct.

22 Q Describe, if you can, Mr. Davenport's overall
23 demeanor. Was it compliant, polite?

24 A No, sir. He was -- I would describe it as
25 belligerent. He was not compliant. Did not want

Testimony of Michael Wood

133

1 to truthfully talk with me. He was unhappy to be
2 involved and interact with me.

3 Q Belligerent, does that mean being boisterous,
4 using profanity, yelling?

5 A Correct. Yes, sir.

6 Q Okay. And, again, did you observe any injuries to
7 Mr. Davenport as if he had been assaulted himself?

8 A Once we got Mr. Davenport into custody and he
9 had been placed under arrest, when we were out at
10 the jail, we observed that his left pinky was
11 swollen. From the jail, we took him there tot he
12 hospital, the Newberry emergency room for
13 treatment.

14 Q So you observed a swollen left pinky finger?

15 A Correct.

16 Q On Mr. Davenport?

17 A Correct.

18 Q So an injury to his hand?

19 A Correct.

20 Q To his hand, singular, just one hand?

21 A Yes, sir.

22 Q Did Mr. Davenport report that he had been
23 assaulted by Miss Morris?

24 A He -- at the time, he claimed that the injury
25 to his pinky had come from us, police, saying that

1 we had mishandled him during the arrest.

2 Q So that was the explanation that Mr. Davenport
3 gave to the injury to his hand?

4 A Yes, sir.

5 Q And, at that time, Mr. Davenport, was he arrested
6 or was he free to leave at that point?

7 A He had been arrested, sir.

8 Q And the decision was made at that point to charge
9 him with domestic violence?

10 A Yes, sir.

11 MR. SCOTT: Thank you, sir. Please
12 answer any questions Mr. Verner has.

13 THE COURT: Cross-examination.

14 CROSS-EXAMINATION

15 BY MR. VERNER:

16 Q Essentially, the extent of your participation in
17 this case was, you briefly came to the house on
18 dispatch but then, factually, largely, your role in it
19 was stopping the red car and arresting Mr. Davenport
20 that night?

21 A I came over to the house at the request of
22 Corporal Williams who was working the call. And
23 then, yes, the larger part of interaction came
24 from stopping the car, yes, sir.

25 Q And John Henry Davenport was -- he felt that you

Testimony of Michael Wood

135

1 all were picking -- or focusing or unfairly targeting
2 him in this case?

3 A Yes, sir, I would agree with that.

4 Q And he was angry to be arrested?

5 A Yes, sir, I would agree with that.

6 Q And you've been an officer 17 years?

7 A Close to, yes, sir.

8 Q And everybody is different, but being angry to be
9 arrested is not out of the realm of some people's
10 reaction. Not everybody likes being arrested.

11 A I can't say whether they do or don't. I
12 can't speak for everybody.

13 Q But the people being argumentative or angry that
14 they're being arrested is just something that is, kind
15 of, every time you make an arrest. Not everybody, but
16 that's not out of the ballpark of unusual, is it?

17 A It happens, yes, sir.

18 Q And I would expect that as part of your training
19 and just your common experience, if you came up to
20 arrest me, you're not sure what my reaction is going
21 to be, or anybody off the street until basically they
22 comply. You hope everybody complies, but particularly
23 people who feel like they've been unfairly lied on
24 or -- can be emotional?

25 A I don't know.

1 Q Okay. Is it possible -- in fact, that same night
2 John Henry indicated to you that the finger had gotten
3 injured by putting his hands behind his back and
4 putting the cuffs on him?

5 A I don't know how he claimed that he did. He
6 just claimed that it happened while we were making
7 the arrest.

8 Q Well, do you recall whether he quietly just turned
9 around and put his hands up for you to arrest him, or
10 you had to physically manhandle his hands?

11 A There was no struggle. There was no force.

12 Q Whether there was or not, did, that same night,
13 you were aware that he was saying that he injured his
14 hand when you all had pushed his hands into the cuffs,
15 right?

16 A I'm aware that he said that his hand had been
17 injured while we made the arrest.

18 Q That's all my question is.

19 A Yes, sir.

20 Q That same night, that's how he indicated that he
21 had hurt his hand.

22 A Yes, sir. I'm aware of that.

23 Q And as far as what happened on Gilder Street, or
24 anywhere else, you were not a witness or really had
25 much of a role prior to the arrest?

Testimony of Michael Wood

137

1 A Did I witness the incident, no, sir.

2 Q And there was a lady, his girlfriend, a lady who
3 identified himself as his girlfriend as the driver of
4 the car?

5 A Yes, sir. Miss Sanders.

6 Q It's a little tough to pronounce her first name,
7 but Panjora Sanders?

8 A Pajuna.

9 MR. VERNER: Court's indulgence. I think
10 that's it. Let's see.

11 Officer, see if Mr. Scott as any follow-up.

12 MR. SCOTT: Very briefly, Your Honor.

13 REDIRECT EXAMINATION

14 BY MR. SCOTT:

15 Q All right. Officer Wood, when you initiated the
16 traffic stop and came into contact with Mr. Davenport,
17 you didn't immediately take him into custody, did you?

18 A No, sir. There was a lot of questioning,
19 talking. In fact, at one point, I left him there
20 unarrested but not free to leave with two other
21 officers while I traveled back to the incident
22 location to, again, speak with the officer, the
23 witness, and the victim.

24 Q So you were still conducting your investigation.
25 He was not being arrested at that point?

1 A Correct.

2 Q Was he belligerent prior to being formally taken
3 into custody?

4 A Yes, during the entire time of the traffic
5 stop.

6 Q So he wasn't belligerent just because he was taken
7 into custody?

8 A Correct.

9 Q And as far as the injury to the hand that you
10 noted, I think the question Mr. Verner had for you
11 related to handcuffs, perhaps, being a source of the
12 injury; is that correct?

13 A That's what I heard him say.

14 Q Right. Okay.

15 A I'm not sure how.

16 Q But you observed a swollen left pinky finger?

17 A Correct.

18 Q Is it more consistent if the handcuffs were to
19 cause an injury that there would be some kind of a
20 cut?

21 A Yes, sir. I would agree with that.

22 MR. SCOTT: Okay. Thank you, Officer.

23 MR. VERNER: I do have -- just briefly.

24 RECROSS-EXAMINATION

25 BY MR. VERNER:

Testimony of Michael Wood

139

1 Q So I don't get bogged down on a technical term,
2 when you say "arrest," you're talking about someone
3 where criminal charges are actually going to be made
4 on them, right? They're being held and going to be
5 taken into custody?

6 A Yes, sir. There's being detained and then
7 there's being arrested.

8 Q But, it's fair -- this is an issue that comes up a
9 lot. It's fair to say that the average person when
10 he's put in handcuffs and put in a car, he certainly
11 feels he's under arrest, doesn't he? Even if you
12 consider it investigative or custodial detention for
13 investigation, the average person when he's got cuffs
14 on and he's sitting in the car, he certainly feels
15 like he's been arrested, doesn't he?

16 A Well, this particular incident, sir, when he
17 was handcuffed and placed in the car, he had been
18 placed under arrest.

19 Q He wasn't free to leave.

20 A Prior to being handcuffed?

21 Q Right.

22 A No, sir.

23 Q So, I mean, you would agree that just -- I'm not
24 getting into the technical definition of arrest, but
25 when the average person is told by a police officer

1 you cannot leave, certainly the average person would
2 feel that he's under arrest, the charges might get
3 dismissed, but it's tough when -- the average person
4 can't distinguish between custodial detention and an
5 arrest?

6 A I couldn't say what the average person
7 thinks.

8 MR. VERNER: Thank you, Officer.

9 THE COURT: Sir, you may step down.
10 Thank you.

11 THE WITNESS: Thank you.

12 THE COURT: Can the lawyers approach,
13 please?

14 (Bench conference off the record.)

15 THE COURT: Call your next witness,
16 please.

17 MR. SCOTT: Your Honor, the State calls
18 Latorya Morris.

19 THE CLERK: Place your left hand on the
20 Bible, raise your right. Do you solemnly swear or
21 affirm to tell the truth, the whole truth, and
22 nothing but the truth, so help you, God?

23 THE WITNESS: Yes. Latorya Morris.

24 WHEREUPON:

25 LATORYA MORRIS,

Testimony of Latorya Morris
1 after having been sworn, testified as follows:

141

2 DIRECT EXAMINATION

3 BY MR. SCOTT:

4 Q Speak up loud enough so I can hear you and these
5 guys can hear you, Okay.

6 A Okay.

7 Q Okay. Latorya, you remember October 2018 when all
8 this came to happen?

9 A Yes, sir.

10 Q Okay. Do you remember being at [REDACTED] Brantley
11 Street?

12 A Yes, sir.

13 Q Whose house is that?

14 A Edmond Hunter.

15 Q Edmond Hunter. And who is that?

16 A He -- Well, I call him my uncle, but he ain't
17 really my uncle.18 MR. VERNER: I apologize, Your Honor. I
19 can hear.20 MR. SCOTT: The microphone is working
21 now, Your Honor.22 THE WITNESS: I call him my uncle, but
23 he's really not my uncle.

24 BY MR. SCOTT:

25 Q He's not your uncle, but just call him that?

1 A Yes, sir.

2 THE COURT: Speak into that microphone,
3 please, ma'am.

4 THE WITNESS: Yes, sir.

5 BY MR. SCOTT:

6 Q Do you remember what happened that night while you
7 were over at that Brantley Street address?

8 A Yes, sir. I was over there with John's
9 sister.

10 Q Okay. John is who, John Davenport?

11 A Yes.

12 Q And who is his sister?

13 A Dorothy.

14 Q Dorothy?

15 A Yes, sir.

16 Q You were with Dorothy?

17 A Yes, sir.

18 Q And what happened?

19 A We was sitting there drinking, or whatever.
20 And John had came over there. And we just had a
21 misunderstanding. And then I was about to leave,
22 and one thing led to another. And then I called
23 the police, they came. And Yolanda had got me
24 over to Kentaya's mother's house. And then she
25 got Kentaya from her mother's house when she got

Testimony of Latorya Morris

143

1 off from work. She was on her way to take to me
2 to the hospital. And then, by that time, there
3 was a knock on the door. John came in.

4 Q Can I slow you down just one minute? You're fine.
5 You need a cup of water or anything like that?

6 A (Witness moves head from side to side.)

7 Q Talking about the Brantley Street address, you
8 said one thing led to another and you called the
9 police.

10 A Yes, sir.

11 Q I need you to describe what you mean by one thing
12 led to another.

13 A Like we got into an argument, and his
14 girlfriend was over there.

15 Q Is that Miss Sanders?

16 A Yes. Got into an argument, or whatever. And
17 then he hit me. I hit him back.

18 Q Okay.

19 A I called because I was tired of going through
20 all this. I told them what happened.

21 Q Where did he hit you?

22 A In my face.

23 Q Okay. At that time, were you and John Davenport
24 going together? Were you all seeing one another?

25 A No, sir.

1 Q Okay. How long before that had you all, kind of,
2 broken up?

3 A Well, we was like off and on.

4 Q Okay. Boyfriend and girlfriend, but then you all
5 fall out and then get back together. Is that
6 accurate?

7 A Basically.

8 Q Okay. And this is State's Number 4. Do you
9 recognize that house?

10 A Yes.

11 Q What house is that?

12 A His sister's.

13 THE COURT: What exhibit is that?

14 MR. SCOTT: State's Number 4, Your
15 Honor.

16 THE COURT: Thank you.

17 BY MR. SCOTT:

18 Q That's the [REDACTED] Boyd Street address. And you had
19 lived there at one point?

20 A I had stayed nights over there.

21 Q Okay. Well, you listed that as your dress; is
22 that right?

23 A Yes, sir.

24 Q Okay. And John Davenport, that's his house,
25 too?

Testimony of Latorya Morris

145

1 A Yes.

2 Q So, do you remember when you were living there?

3 A No, because I been back living now -- I want
4 to say about 7 or 8 months.

5 Q Okay. Would June of 2018 sound right to you, that
6 you were living there?

7 A Yeah.

8 Q Okay. So you and Mr. Davenport lived there on and
9 off at least some period of time?

10 A We stayed the night there, too, together.
11 His sister didn't really want us staying together
12 because she didn't really believe in that.

13 Q But she allowed you to list that as your address
14 on your identification?

15 A Yes, sir.

16 Q Okay. Now, you started to talk about after you
17 got into it, you called 911. This is State's Number
18 5. Do you recognize that?

19 A Yes, sir.

20 Q You got listen to this again today, didn't you?

21 A Yes, sir.

22 Q Is that a 911 call from that night?

23 A Yes, sir.

24 MR. SCOTT: Your Honor, the State offers
25 Number five for admission into evidence.

Testimony of Latorya Morris

1 THE COURT: Any objection?

2 MR. VERNER: 5 is the 911 call?

3 MR. SCOTT: Yes.

4 MR. VERNER: Same objection as the other
5 one. It's testimonial. She's here to testify and
6 say what happened.

7 THE COURT: Any response from the State?

8 MR. SCOTT: Your Honor, it is
9 non-testimonial. It does not violate Crawford.
10 This is what -- the call that happened that night.
11 Certainly, I don't think she could testify word
12 for word what she said to 911.

13 MR. VERNER: Is this the call from 8:00
14 or midnight.

15 MR. SCOTT: This is the eight o'clock
16 call from Brantley Street.

17 MR. VERNER: Your Honor, I would object.
18 This is not indicted. If they thought this was
19 part of the crime, it should be in the indictment
20 of the crime.

21 THE COURT: Anything in response?

22 MR. SCOTT: No, Your Honor. This is a
23 res gestae case. It was testified to earlier.
24 She just indicated they had gotten into it at this
25 Brantley Street address, and then she had the

Testimony of Latorya Morris

147

1 occasion to call 911.

2 THE COURT: Over defendant's objection, I
3 will allow it.

4 MR. SCOTT: Your Honor, the State would
5 offer to publish State's number 5 at this point.

6 (911 call played in its entirety.)

7 BY MR. SCOTT:

8 Q Miss Morris, you referred to him in the 911 call
9 as your boyfriend.

10 A Yes.

11 Q Okay. Were you all still seeing each other on and
12 off again?

13 A We were seeing each other on and off, like he
14 had moved on with the other girl.

15 Q I'm sorry?

16 A He had moved on with the other girl, but we
17 were still seeing each other from time to time.

18 Q Okay. Does that mean a sexual relationship?

19 A Yes, sir.

20 Q You said that Yolanda Williams, is her last name
21 now, she was the officer that responded.

22 A Yes, sir.

23 Q And she helped pay for a cab trip for you to go
24 somewhere else?

25 A Yes, sir.

1 Q Did you ask her to help you get somewhere else?

2 A No, she was going to get me away from over
3 there.

4 Q Okay. And did you agree to get away from there?

5 A Yes, sir.

6 Q And you said you went to Kenyata's mother's
7 house?

8 A I went to her mother's house. When Kenyata
9 got off of work, she came and picked me up. And
10 then we went to her house so she could change her
11 clothes so she could take me to the hospital.

12 Q Well, from that incident that happened at the
13 Brantley -- the 911 call we just heard, were you
14 injured from that?

15 A No. It was like a -- I understand it was
16 like a red mark.

17 Q Well, did it -- I mean, were you harmed in any way
18 from the punch to the face?

19 A No.

20 Q It didn't harm you?

21 A No.

22 Q Why did you want to go to the hospital?

23 A Because I was -- I was already complaining
24 about my back. My back was hurting, you know what
25 I'm saying?

Testimony of Latorya Morris

149

1 Q Okay.

2 A So...

3 Q And so while she getting you -- while she was
4 changing, you all were going to go to the hospital,
5 where were you inside of her house?

6 A I was in the bedroom.

7 Q Okay. And tell us what happened next.

8 A A knock came to the door. I answered the
9 door. He came in. He pulled me by my leg off the
10 chair, and she telling him to stop, trying to get
11 him off of me, or whatever. She said she was
12 calling the police. He said he didn't care. And
13 then he and his girlfriend left in the car.

14 Q Okay. When he got on top of you, did he hit
15 you?

16 A He hit me in my head a couple times, and then
17 I was kicking him trying to get him off.

18 Q Trying to get him off?

19 A Yes, sir.

20 Q Okay. He hit you in the head. Did he hit you
21 anywhere else?

22 A No, sir. Not that I remember.

23 Q Do you remember if you had any swelling to your
24 back area?

25 A No, sir.

1 Q Do you remember showing the officers where he had
2 hit you on your face?

3 A Yes, sir.

4 Q Okay. Did he say why he was mad, why he was --
5 what the purpose was for him to be hitting on you?

6 A No, sir.

7 Q Do you recall him being mad about you seeing
8 another man?

9 A That's what he said, but he didn't say that's
10 the reason why he was mad.

11 Q Okay.

12 MR. SCOTT: Beg the Court's indulgence.

13 THE COURT: Yes, sir.

14 BY MR. SCOTT:

15 Q Do you remember telling anybody that it was over
16 him -- he was mad that he thought you were seeing
17 somebody else? Do you remember telling Yolanda that?

18 A No. I think Yolanda had told her it was over
19 somebody else.

20 Q Okay. But you didn't know why he was assaulting
21 you?

22 A No, sir.

23 Q So you have eight o'clock you're at the
24 Brantley Street address, and that's the first incident
25 when you called the police. Yolanda took you over to

Testimony of Latorya Morris

151

1 the Gilder Street -- well, to Kenya's mother's
2 house. Kenya picks you up, takes you to the
3 Gilder Street address, and then he shows up. Did you
4 have any knowledge of how he knew to find you there?

5 A No. At that time, I was staying over
6 there.

7 Q Okay. And he's related to Kenya Hunter as well;
8 is that right?

9 A Yes, sir.

10 MR. SCOTT: Okay. Thank you,
11 Miss Morris. Answer any questions Mr. Verner has,
12 okay?

13 One more, briefly. I'm sorry.

14 BY MR. SCOTT:

15 Q Do you see Mr. Davenport here right now?

16 A Yes, sir.

17 Q Would you just, please, point to him real quick
18 for me?

19 A (Complies.)

20 MR. SCOTT: Thank you. Now, please
21 answer any questions Mr. Verner may have.

22 THE COURT: The record will reflect the
23 witness pointed to the defendant in this case,
24 Mr. Davenport.

25 MR. VERNER: May it please the Court?

Testimony of Latorya Morris
THE COURT: Please.

152

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

CROSS-EXAMINATION

MR. VERNER:

Q Now, Miss Morris, I just want to ask you first, before yesterday, had you ever met me or seen me before?

A Yes.

Q Prior -- have I ever discussed this case with you prior to this week?

A Yes, sir.

Q When was that?

A Last time I came here because I came and I said I really didn't want to testify.

Q Okay. You came in here to the courtroom?

A No, sir.

Q Over in my back office?

A Yes, sir.

Q And I spoke to you about the case then, or just want you wanted to do with the case?

A What I wanted to do with the case, and I said I didn't really want to testify, because -- you know what I'm saying?

Q My question to you is: Have I ever asked you any details about what happened that day on the case? I may have asked what were you --

Testimony of Latorya Morris

153

1 A No, sir.

2 Q Okay. Has the prosecutor talked to you about the
3 details of that case, about what happened?

4 A No, sir. Not until just now.

5 Q Well, you said that -- you've been sitting back in
6 prosecutor's office today, haven't you?

7 A Yes, sir, because I didn't want --

8 Q You said that they played some of the DVDs?

9 A Yea, they played the 911 call. That was
10 it.

11 Q Did they refresh your recollection on what
12 happened that day prior to you testifying, or did they
13 ask you a lot of questions about what happened?

14 A Yes, sir.

15 Q Okay. But I haven't, have I?

16 A No, sir.

17 Q Have I ever suggested anything that you should
18 testify?

19 A No, sir.

20 Q Okay. What address did you tell the officers you
21 were living in, do you recall?

22 A Huh?

23 Q Do you recall what address you were claiming that
24 you were living in, in October 2016?

25 A I was staying at Kenyata's house, but my

1 address is still on Floyd Street.

2 Q Well, do you remember what address you gave the
3 officer?

4 A No, sir.

5 Q I'm going to look it up, but was it possibly
6 Miranda Street?

7 A That's my address now. ■ Miranda in
8 Saluda.

9 Q Were you staying there as far as back as October
10 of 2016 -- I mean, 2018 when this happened?

11 A No, sir. I was -- I had moved back again. I
12 had came back down here.

13 Q Okay. What about Fair Street. I apologize. Do
14 you recall living on Fair Street?

15 A Yes, sir.

16 Q Is that possibly the address ■ Fair Street,
17 Apartment 4 in Newberry, is that possibly the address
18 you told Officer Williams you were living at?

19 A Well, she knew I was staying there.

20 Q Okay. So already knew you?

21 A Yes, sir.

22 Q Okay. And how long have you known
23 Officer Williams?

24 A Since I knew John.

25 Q How long is that?

Testimony of Latorya Morris

155

1 A Well, I knew John since 2014.

2 Q Okay. About five years, give or take?

3 A Yes, sir.

4 Q And, at some point, you were staying in Apartment
5 4 on Fair Street?

6 A Yes, sir.

7 Q And that's over in the Oakland --

8 A Yes, sir.

9 Q -- section of Newberry? Who were you living with
10 on Fair Street?

11 A Charles Jackson and Andrea.

12 Q And how long had you been living there?

13 A I think I stayed there for about, like,
14 three, four months.

15 Q Okay. Now we heard -- as of October of 2018, you
16 didn't have a really stable place to stay every night,
17 is that fair?

18 A Yes.

19 Q Okay. At different times you were staying with
20 your friends for short periods of time?

21 A Yes, sir.

22 Q Okay. And you've been living in Saluda?

23 A Yes, sir.

24 Q You indicated something to the extent of -- Tina
25 Hunter, who is Tina Hunter?

1 A John's sister.

2 Q You had indicated at times that you had spent the
3 night or stayed with her?

4 A Stayed the night sometimes.

5 Q I apologize. I didn't hear you.

6 A Stayed the night.

7 Q Right.

8 A Yeah.

9 Q That you had stayed the night at her house
10 before?

11 A Yes, sir.

12 Q And that she had let you use her address on your
13 identification card?

14 A Yes, sir.

15 Q Was that so you would have a stable place to get
16 your mail or were actually living there?

17 A Get my mail.

18 Q Okay. Now, sometimes people will, like, use their
19 parents' address to get their mail or stuff like that.

20 Were you actually living on Floyd Street or that was
21 just she was letting you go collect your mail there?

22 A She was letting me collect my mail there.

23 And then -- I spent some nights there.

24 Q There's no question that you would go there enough
25 to check in on your mail?

Testimony of Latorya Morris

157

1 A Yes, sir.

2 Q And she was on friendly terms with you?

3 A Yes.

4 Q Is she still on friendly terms with you?

5 A Yes.

6 Q Okay. Is anybody on Mr. Davenport's part of the
7 family no longer on friendly terms with you?

8 A I deal with them.

9 Q What about Kenyata, are you still close to her or
10 have you all fallen out?

11 A Well, I don't talk to her like we used to
12 talk.

13 Q Okay.

14 A Since all this happened, I don't talk to her
15 like that. But it was like friends, friends once
16 upon a time.

17 Q Have you all had a falling out or you just don't
18 see her anymore because you moved to Saluda?

19 A I really don't see them.

20 Q Okay. Did you ever pay rent at [REDACTED] Floyd
21 Street?

22 A No, sir.

23 Q Were you friends with Tina?

24 A Yes, sir.

25 Q Okay. Was that just because of John, though, or

1 you knew her independently of John?

2 A I knew her from --

3 Q From John?

4 A Yes.

5 Q What's the longest period of time that you ever
6 stayed the [REDACTED] Floyd Street in one stretch?

7 A Not like -- besides one night, like, she
8 would let me stay a night, like, if I didn't have
9 nowhere to go and it was cold, or whatever. But
10 other than that, I had to leave, like, the next
11 day. And then if I come back around, and she in a
12 good mood, she would.

13 Q If she was in a good mood and you didn't have a
14 place to stay, she would let you stay that night?

15 A Yes, sir.

16 Q Okay. Does Tina have her own family?

17 A Yes, sir.

18 Q Does she have a husband or a boyfriend who lives
19 with her?

20 A No, sir.

21 Q What about children?

22 A Yes, sir.

23 Q How many children does Tina have there?

24 A She got one staying with her now.

25 Q Okay. What about in 2018, two years ago, or a

Testimony of Latorya Morris

159

1 year and a half ago?

2 A I think both of her sons was staying there
3 then.

4 Q Okay. In what room would Tina let you stay?

5 A In the living room.

6 Q In the living room?

7 A Yes, sir.

8 Q Is it a fold-out couch, I assume, or a futon, or a
9 bed? What type of sleep in the living room?

10 A On the chair.

11 Q On a chair?

12 A Yes, sir.

13 Q Like, an easy chair that can recline?

14 A Like a regular chair.

15 Q That can't be an easy thing to sleep on every
16 night, is it?

17 A No, sir. Not really.

18 Q But it's better than being out in the cold?

19 A Yes, sir.

20 Q Did you ever have your own bedroom at

21 [REDACTED] Floyd Street?

22 A No, sir.

23 Q Did you ever have your own chest of drawers for
24 your belongings, or anything?

25 A No, sir.

1 Q Did John stay with you on that chair that you were
2 over there at night, or Miss Tina, she knew you were
3 friends with John and she would let you come?

4 A Well, John would be there at times when he's
5 working and he is not --

6 Q You're going to have to -- he was what?

7 A At the time, I think he was working at
8 Amick's at night, so he didn't used to be there.
9 But, if he was there, or whatever, he would lay on
10 the floor.

11 Q Okay. But in '18, he was working at Amick's Farm
12 in Saluda, or Lexington?

13 A I think so.

14 Q Okay. Did you and John have your own bedroom that
15 you could stay in there?

16 A No, sir.

17 Q Was John living on Floyd Street or did he live
18 somewhere else?

19 A On Floyd Street.

20 Q Okay. So he did stay there?

21 A Yes, sir.

22 Q Okay. When you were on Floyd Street, would your
23 friends also let you collect your mail and things
24 there too?

25 A Yes, sir. That's why I really had, like,

Testimony of Latorya Morris

161

1 switched my address there. Like Floyd Street to
2 Fair Street, and then I had to changed my ID.

3 Q Okay. Well, you told Officer Williams in October
4 that your address was Fair Street?

5 A Yeah.

6 Q Did you ever change over your license or anything
7 like that?

8 A Yeah.

9 Q You think you may have?

10 A Yes, sir.

11 Q Okay. I'm going to ask you, are you back on your
12 feet? Do you have a stable place to stay now in
13 Saluda?

14 A Yes, sir.

15 Q So you do have long-term housing?

16 A Yes, sir.

17 Q Okay. And I've never asked you about your housing
18 situation prior to just now, have I?

19 A No, sir.

20 Q You understand you're testimony under oath is that
21 you've been a tenant or a resident of [REDACTED] Floyd
22 Street?

23 A Yes, sir.

24 Q But you have stayed there from time to time
25 overnight?

- 1 A Yes, sir.
- 2 Q Is that accurate?
- 3 A Yes, sir.
- 4 Q Okay. Kenyata Hunter has a child or children?
- 5 A Yes, sir.
- 6 Q Do you know who the children's father is?
- 7 A Antwon.
- 8 Q Do you know whether he's good friends or friends
9 at least with John Henry?
- 10 A Yes, sir.
- 11 Q Okay. Would it be fair to characterize Kenyata's
12 relationship with Antwon as on again, off again too?
- 13 A Yes, sir.
- 14 Q Okay. They have highs and lows too?
- 15 A Yes, sir.
- 16 Q Okay. Have you known Kenyata to get angry at
17 Antwon or John Henry because they are friends and hang
18 out?
- 19 A I don't know. Sometimes she'll have an
20 attitude, but I don't know if it's because they
21 were hanging out together, or what the reason may
22 be.
- 23 Q Miss Morris, you said that when John Henry left
24 that night he was with his girlfriend?
- 25 A Yes.

Testimony of Latorya Morris

163

1 Q And that is Panjora Sanders?

2 A Panjora.

3 Q Panjora Sanders. That's a tough name, isn't
4 it?

5 Could her -- could the fact that John was
6 with Panjora that night have caused the argument
7 between you and John, or at least been a part of it?

8 A Well, I wouldn't say a part of it, but we was
9 doing good. But then -- you know, he started at
10 me, or whatever.

11 Q And you had been having an argument with
12 John Henry since earlier in that day when you were on
13 Bentley Street?

14 A Yes, sir.

15 Q Right?

16 A Yes, sir.

17 Q Was that entirely John Henry being angry at you or
18 was that, kind of, a mutual
19 we-were-angry-at-each-other-type situation?

20 A Oh, we were angry at each other and one thing
21 led to another. He swung at me and I tell him I'm
22 going to the police and he can take it out to the
23 car.

24 Q Okay. Panjora with him at the Brantley house?

25 A Yes.

Testimony of Latorya Morris

164

1 MR. VERNER: Your Honor, I'll tender. If

2 Mr. Scott or Mr. Daniel have any questions, you
3 need to answer one more time.

4 THE COURT: Any redirect?

5 MR. SCOTT: Thank you.

6 REDIRECT EXAMINATION

7 BY MR. SCOTT:

8 Q Your testimony is, John, to your knowledge, lived
9 at that [REDACTED] Floyd Street address. That was his
10 address that he would live in; is that right?

11 A Yes, sir.

12 Q And you listed that as your address from June
13 until -- June of 2018 until November of 2019. Does
14 that sound right?

15 A Yes, sir.

16 Q So you actually went to the Department of Motor
17 Vehicles and said this is my legal residence; is that
18 right?

19 A Yeah, the address where I live.

20 Q And when you would stay over there, you typically
21 sleep on the couch. Did he have a room there, John?

22 A No, sir.

23 Q You just slept on the floor in Tina's house?

24 A Yes, sir.

25 Q Okay. Can I ask you something: Where would you

Testimony of Latorya Morris

165

1 guys be intimate together?

2 A Well, we had times, you know, where we be
3 there by ourselves.

4 Q At the Floyd Street address?

5 A Yes, sir.

6 MR. SCOTT: Okay. I think that's all I
7 have for you. Thank you, Miss Morris.

8 THE COURT: Any recross?

9 MR. VERNER: No, Your Honor.

10 THE COURT: Ma'am, you may step down.

11 THE COURT: Can the lawyers approach a
12 minute, please?

13 (Bench conference off the record).

14 THE COURT: Ladies and Gentlemen, we're
15 going to go at this point -- I'm going to let you
16 go ahead and go to lunch at this point. I'm going
17 to ask that you be back here at the courthouse in
18 the jury room at two o'clock. There are some
19 matters I need to take up outside your presence.
20 Be back at 2:00. Do not discuss the case at all
21 with anyone until you are instructed to do so. Do
22 not do any independent investigation. As I told
23 you from the outset, you are to decide this case
24 based solely upon the evidence and testimony
25 presented in this courtroom. You all have a nice

1 lunch. I'll see you back at two o'clock.

2 (Jury exits the courtroom at 12:24 p.m.)

3 THE COURT: All right. Let's talk about
4 this bifurcation issue a little bit more.

5 The defendant moved, or, at least, we
6 talked in chambers, as well the issue pertaining
7 to bifurcation. What I'm referring to is the
8 defendant has been charged and indicted under
9 section 16-25-20 with the offense of domestic
10 violence degree. The State had advised, under
11 subsection (A), "It's unlawful to cause physical
12 harm or injury to a person's own household
13 member." And then it would fall to subsection
14 (B), wherein, a defendant has two or more prior
15 convictions of domestic violence within 10 years
16 of the current offense.

17 Now, I have looked at the case of State
18 v. Cross, which is 427 S.C. 465, the State has
19 advised me at a side bar they've put up all of
20 their witnesses except for this last witness which
21 would testify concerning the defendant's two prior
22 convictions of domestic violence within that
23 10-year time frame.

24 In State v. Cross, which is a 2019 South
25 Carolina Supreme Court case, the issue in this

1 case was that the defendant was charged with
2 criminal sexual conduct 1st degree, criminal
3 sexual conduct with a minor 1st degree, and the
4 basis of taking the criminal sexual conduct 1st
5 degree was the fact that the defendant crossed a
6 prior criminal sexual conduct conviction.

7 Defense counsel in the Cross case moved
8 to bifurcate the defendant's trial arguing that
9 evidence of the defendant's prior criminal sexual
10 conduct was prejudicial to the defendant. The
11 prejudicial effect, in essence, outweighed the
12 probative value. The trial court overruled the
13 defendant's objection allowing evidence of the
14 defendant Cross's prior criminal sexual conduct
15 conviction.

16 The South Carolina Supreme Court in
17 reversing Cross's conviction, in essence,
18 pointed to -- well, first of all, said the
19 evidence of the defendant's prior criminal sexual
20 conduct conviction was -- was relevant. It was
21 relevant because it was an element of the crime
22 for which the defendant had been charged.

23 However, in looking at Rule 403, and its
24 analysis under 403, the Supreme Court concluded
25 that the prejudicial effect outweighed the

1 probative value of the prior conviction and
2 concluded that the case should have been
3 bifurcated. Supreme Court also, in its discussion
4 in the case, stated that the prior conviction --
5 and I'm paraphrasing here -- was not, I guess,
6 probative as to whether or not the defendant in
7 this case committed the offense for which he was
8 charged, but was rather relevant only as it went
9 to the taking it from a -- taking it up to a
10 criminal sexual conduct in the 1st degree.

11 Having said that, the Supreme Court
12 recognized -- in part discussed the case of State v.
13 Benton, 338 S.C. 151, which is a 2000 case wherein the
14 court concluded that the probative value of admitting
15 defendant's prior burglary and housebreaking
16 convictions was not outweighed by the prejudicial
17 effect in proving a prior convictions element of 1st
18 degree burglary. In essence, State v. Cross did not
19 overrule State v. Benton.

20 The Supreme Court pointed out in Cross,
21 I'm quoting here from page 288. On the 288, "The
22 evidence of a 1992 conviction was in no way
23 appropriate when Cross committed the underlying
24 sexual battery upon a minor in 2005."

25 The Court goes on to say, "The damage of

1 unfair prejudice arising from the admission of the
2 '92 conviction at this stage of the trial was
3 exceeding high."

4 The Court goes on to cite State vs.
5 Brooks, 341 S.C. 57, at page 62, "When the prior
6 bad acts are similar to the one for which the
7 appellant is being tried, the danger of prejudice
8 is enhanced."

9 The Supreme Court went on to distinguish
10 the Cross case and the prior -- excuse me, in the
11 Benton case, stating, distinguishing this case and
12 the Cross case, from the 1st degree burglary cases
13 was the inherently prejudicial stigma a prior
14 sexually-related offense undoubtedly carries, this
15 rationale is in keeping with our recognition in
16 James, which is 335 S.C. 34, "The admissibility of
17 prior convictions is always limited by the
18 traditional rules of evidence."

19 The Cross Court -- the Court in cross
20 went on to cite Rule 611-A, the pertinent part
21 being, "The Court should exercise reasonable
22 control over the mode and manner of interrogating
23 witnesses and presenting the evidence so as to
24 make the interrogation and presentation effective
25 for the ascertaining of the truth.

1 Under the facts before us, Rule 611-A
2 require the trial court in Cross to exercise
3 control over the order of presenting evidence in
4 such a way that it won't allow the State to prove
5 an element of the crime, two, at the same time it
6 goes against a violation of Rule 403.

7 I don't know that -- the Supreme Court in
8 Cross did not differentiate between burglary
9 first, for instance, and criminal sexual conduct,
10 but I would note for the record that the criminal
11 sexual conduct 1st degree is a crime against a
12 person -- a person, as opposed to a burglary first
13 which is a crime against property.

14 I would say in understanding what Cross
15 has said here concerning the prior criminal sexual
16 conduct, the Court said, talking about the
17 inherent prejudicial stigma of a prior
18 sexually-related offense undoubtedly carries,
19 other than the criminal sexual conduct, domestic
20 violence -- a prior domestic violence case or a
21 domestic violence conviction appears to be not far
22 behind criminal sexual conduct.

23 I think it's pretty fair and common
24 knowledge if something is seen in the papers, on
25 the Internet on a regular basis, issues pertaining

1 to domestic violence, I think it's pretty fair and
2 common knowledge that domestic in South Carolina
3 ranks right at the top of convictions for domestic
4 violence in the country, violence in the
5 country.

6 Having gone through the Cross case
7 further, considering defendant's request this
8 should be bifurcated, I am inclined to bifurcate
9 this issue, which is raises this concern for me,
10 which would necessitate, I believe, defendant
11 waiving some pertinent or potential issues here.
12 All right?

13 While the Court in Cross talks about the
14 bifurcation, one, bifurcation, in this instance,
15 is not required by the constitution, nor is it
16 required by statute. All right?

17 Here's a concern that I have: If upon
18 ruling on bifurcation, which I'm inclined to do
19 here, my concern is, if the State rests at this
20 point, what does that do with regards to directed
21 verdict on domestic violence 1st? Or what does
22 that do with regards to jeopardy attaching as to
23 domestic violence 1st? If defendant is not
24 inclined, based upon its motion or request to
25 bifurcate, to waive those issues, then because

1 it's not required by statute or the constitution
2 and it is an element of the offense, then the
3 Court would be inclined -- I think would be
4 required not to bifurcate it.

5 So there goes the ball back in your
6 court, so to speak, Mr. Verner.

7 MR. VERNER: Judge, the -- I hadn't
8 anticipated that portion of the argument, but I
9 think that's fair in terms of the constitutional
10 rights, and we would be inclined to waive that.
11 Because that is constitutional right, I do believe
12 I have to get the informed consent of the client
13 and I cannot do that in my own right as an
14 attorney.

15 THE COURT: I'm going to give you some
16 time to talk to him about that, because it's not
17 fair to the State to force their hand on that when
18 I have concerns myself, when I sat up here and
19 thought about it this morning, about potential
20 jeopardy issues, directed verdict issues, and then
21 the State being precluded from putting up the
22 aggravating portion of this case that carries it
23 to the very charge that they have him charged with
24 and indicted here.

25 MR. VERNER: In candor, I didn't see

1 that, but I think the Court is completely correct
2 that if, tactically we could not prejudice the
3 State with that decision. I think it's completely
4 fair.

5 THE COURT: You can't have your cake, so
6 to speak, and eat it too.

7 MR. DAVENPORT: Your Honor, another issue
8 we thought about, let's just say we bifurcate, the
9 jury will decide on basically DV 3rd, if they
10 convict on that, and then let's say, we get a hung
11 jury after we present the second half of our case
12 with just the prior convictions, what posture are
13 we in in that particular scenario?

14 THE COURT: I mean, I guess you have a DV
15 3rd at that point.

16 MR. DAVENPORT: Well, or is it just a
17 mistrial in totality because he's not getting --
18 there hasn't been a lesser given, technically, but
19 yet all they did was find him guilty on DV 3rd and
20 hung up on DV 1st we provide the conviction.
21 That's a possible scenario if you bifurcate.

22 THE COURT: Well, the Supreme Court in
23 Cross didn't address that issue either.

24 MR. VERNER: I didn't anticipate that
25 one, but I would agree that, if it were

1 bifurcated, then the verdict form would have to
2 include domestic violence 3rd and a lesser
3 included offense.

4 But I don't -- my advice, Your Honor, to
5 my client is to let the Court make that as a
6 matter of law determination provided the State has
7 the certified convictions.

8 THE COURT: Well, here's the -- this goes
9 into something else I looked at, which is -- and I
10 looked at this because, Mr. Verner, you had
11 mentioned about stipulating to the prior
12 convictions.

13 MR. VERNER: Yes, sir. As long as the
14 State introduces these certified convictions,
15 Your Honor, into evidence, as opposed to just
16 stipulating it without it being offered as
17 evidence, my recommendation to my client would
18 just be for the Court to accept it as a matter of
19 law, that the convictions speak for themselves and
20 satisfy that element. If the Court would first
21 stipulate to it, that would still be my position,
22 as long as the State introduced the evidence for
23 the Court to see them, as opposed to me
24 stipulating without having them introduced.

25 But, routinely, in DUIs we typically

1 stipulate to prior convictions.

2 MR. DAVENPORT: Your Honor, that's a
3 sentencing matter for prior convictions for DUIs.

4 MR. VERNER: I think that would be
5 fundamentally what this provision is in domestic.
6 I think it's more of a sentencing issue than it is
7 a --

8 THE COURT: Because it enhances the
9 penalty.

10 MR. VERNER: But it does nothing but
11 enhance the penalty, I agree, just like a DUI.

12 THE COURT: It's like a DUI. It's like a
13 drug conviction.

14 MR. VERNER: Yes, sir.

15 MR. SCOTT: But it is entirely different.

16 THE COURT: I'm sorry. I didn't hear you
17 when he started coughing.

18 MR. VERNER: It is different than adding
19 them up just because it's an added element we have
20 to prove. It's not just merely a sentencing
21 trigger. It's an element. Without it --

22 THE COURT: By statute, it's an element.

23 MR. SCOTT: No doubt. That's why I would
24 view it different than the staggered drug, you know,
25 subsequent --

1 THE COURT: I don't disagree with you on
2 that. Okay.

3 MR. SCOTT: I was looking at State v.
4 Odom, which is 412 S.C. 253, and that pertains to
5 stipulations, for instance.

6 MR. VERNER: Your Honor, is that a CSC
7 case out of Aiken?

8 THE COURT: Hold on.

9 MR. SCOTT: That was a criminal
10 solicitation case out of Beaufort.

11 MR. VERNER: I got it here.

12 THE COURT: But what I was getting at, it
13 pertains -- that particular case pertained to
14 judicial notice of an element of the offense,
15 okay, wherein the trial court took judicial notice
16 of the age of the defendant and instructed the
17 jury -- let's see.

18 MR. DANIEL: The age of the defendant
19 would be an element of the crime, Judge. It's a
20 statutory element of CSC.

21 THE COURT: What the trial judge did in
22 that case, the trial judge instructed the jury
23 saying, "Ladies and Gentlemen of the jury, I've
24 taken judicial notice of a fact, that means that
25 you are not allowed to debate whether or not it's

1 true or accurate. I charge you that you must find
2 as conclusive the fact that the appellant's date
3 of birth is [REDACTED], that's [REDACTED],
4 and you shall not -- you are not allowed to debate
5 that. You must accept that as a conclusive fact."

6 Now, the appellate court found that was
7 an error in instruction to the jury. But it was a
8 harmless error in this case. Okay?

9 Now, what the Court said, it says: "The
10 State correctly points out that courts will take
11 judicial notice of subjects and facts of general
12 knowledge, and also of facts in the field of a
13 particular science which are capable of
14 demonstration by resorting to readily accessible
15 resources -- excuse me, readily acceptable sources
16 of indisputable accuracy, and the Judge may inform
17 himself of such facts by reference to standard
18 works on the subject."

19 It goes on to say: "The State overlooked
20 the mandatory nature of a judicial notice of
21 fact." In our version of 201, juxtapose to the
22 constitutionality -- constitutional imposed a
23 burden that the State prove each element of the
24 defense. In all criminal prosecutions, the
25 government must prove beyond a reasonable doubt

1 every element of the charged offense. Here, the
2 jury was instructed to accept this conclusively to
3 determine the appellate was born on [REDACTED],
4 which established a felon as 18 years older at the
5 time of the offense. Taking judicial notice of
6 appellant's date of birth was tantamount to a
7 direct verdict on the element of the accused's
8 age, a practice which is clearly forbidden."

9 The Court went on to say in their
10 reference to 201(F) of the Federal rules of
11 evidence, the Federal courts largely avoid this
12 problem for federal rule of evidence 201(F) is
13 permissive and states that the jury may or may not
14 accept the notice of fact as conclusive, which
15 lends the -- which begs the question of whether or
16 not whether our Rule 201 is different than the
17 Federal rule.

18 Our Rule 201 says: "When judicially
19 noticed the facts, the Court shall instruct the
20 jury to accept as conclusive any fact judicially
21 noticed."

22 So my reading of State v. Odom is, it's
23 an element of the offense. You certainly can't
24 take judicial notice of it. You can't instruct
25 the that they have to accept it as conclusive.

1 But our Rule 201 does not go into they may or may
2 not accept the notice as conclusive. I'm not
3 trying to muddy the waters. I'm trying to look at
4 all the issues -- potential issues in this case.

5 Let me look at my charge because there's
6 a portion in my charge that references
7 stipulations and how the jury is to look at that.
8 I don't know the exact language in the charge that
9 references stipulations.

10 MR. VERNER: And, Your Honor, just to
11 clarify, and the State has proffered the two prior
12 convictions, as opposed to stipulation, I would be
13 arguing that and asking for bifurcation as opposed
14 to stipulating, again, to the two prior
15 convictions.

16 The -- but again, my argument would be
17 the same, whether we waive the jury finding the
18 two conviction as an element or make that a matter
19 for the Court to find and waive that portion of
20 the jury trial. I don't have any hard and fast --

21 THE COURT: Well, here's -- I'm going to
22 dovetail back into what Mr. Daniel was talking
23 about a minute ago, if, for instance, the jury
24 can't -- for instance, if the jury finds the
25 defendant guilty of causing physical harm or

1 injury to a person's own household, and say they
2 come back, we, the jury, find by that unanimous
3 consent the defendant was guilty -- beyond a
4 reasonable doubt we find the defendant guilty of
5 that, okay, subsection (A)(1). And then we submit
6 it to the jury on the two prior convictions and
7 they have a disagreement for whatever reason. All
8 right? I agree after thinking about it with the
9 State that, at that point, it would necessitate a
10 mistrial, because the two or more prior
11 convictions within that 10 years is an element of
12 the offense. It would not kick back, so to speak,
13 to the less domestic third. So I would agreed
14 with the State on that. I think that's
15 appropriate. So it would be clearly a mistrial at
16 that point.

17 So, if we go back to the issue of the
18 State rests, at this point, whether or not the
19 defendant, after consultation with you, is willing
20 to waive any jeopardy or directed verdict issues
21 as to the indicted offense, and, if he's not, then
22 we are not bifurcating, period. The State is not
23 going to be precluded from putting up a case.

24 MR. VERNER: And I agree completely,
25 Judge, and that's my position. Now, again, that

1 is an issue, in my opinion, that requires the
2 informed consent. And I think he knows, but I
3 specifically -- that reaches the constitutional
4 issues that I do think have to be agreed upon
5 expressly. I agree completely with what the Court
6 is saying.

7 I don't believe I can stipulate to the
8 two prior convictions, other than -- just that
9 they're unchallenged if they come in in terms of
10 the -- I don't remember intend on arguing or
11 presenting a counter-evidence-type situation.

12 And I don't know why this wouldn't be
13 domestic victim third degree if the jury --

14 THE COURT: Because it's not a --

15 MR. VERNER: By statute, domestic
16 violence 3rd is a lesser included offense of
17 domestic violence 1st. My intention, actually, is
18 to argue that an assault and battery third degree
19 would be a lesser included offense, but -- based
20 on the lack of cohabitation, proof of
21 cohabitation, the jury could find the battery
22 without cohabitation. My understanding of assault
23 and battery third would be a lesser included
24 offense of domestic violence without cohabitation.
25 I need to double check that over the break. But

1 my intention was going to be to argue assault and
2 battery third to the jury, if the Court indicated
3 that he would --

4 THE COURT: The only evidence in the
5 record is of cohabitation with him.

6 MR. VERNER: Right. I think that she has
7 clearly testified that she never lived at
8 [REDACTED] Floyd Street.

9 THE COURT: Yeah.

10 MR. VERNER: She testified, I only stayed
11 there --

12 THE COURT: She stayed there. Whether it
13 was permanently or periodically, she stayed there.
14 The defendant stayed there. Her ID indicated that
15 she stayed there.

16 MR. VERNER: The ID wasn't introduced,
17 but she did indicate she had an ID that was there.

18 THE COURT: Reflecting her residence.

19 MR. VERNER: My only argument, and we're,
20 kind of, jumping the gun a little bit, or I am at
21 least, but under the legal definition of
22 cohabitation, it means having the same habitation,
23 not a sojourn, not a habit of visiting or
24 remaining for a time. There must be something
25 more than just meretricious intercourse. So

1 cohabitation -- the legal definition is actually
2 living there, not occasional meretricious -- or
3 sojourn -- the legal definition says, sojourn or
4 even a habit of visiting and remaining for a time
5 does not satisfactory cohabitation.

6 THE COURT: Where is that definition
7 coming from?

8 MR. VERNER: Blacks, Blacks Law
9 Dictionary.

10 So the -- my argument to the jury would
11 be, occasional visitation. And another wrongful
12 tort would be that occasionally spending the night
13 at a place does not prove that you inhabit that
14 place.

15 THE COURT: Okay.

16 MR. VERNER: And I understand the State
17 has counter evidence with the driver's license
18 identification. But I believe the lady clearly
19 said, I've never done anything more than stay
20 there on occasion on the chair, and that the only
21 reason I had that address was to collect mail.
22 And, in fact, she indicated a different address at
23 the time that she was -- of this incident to
24 the -- so I certainly that think that that --
25 whether to Court is inclined, on preponderance of

1 evidence, is there any evidence at all that she
2 doesn't live there, I think that's clear. By her
3 own testimony, I never lived there.

4 THE COURT: All right.

5 MR. VERNER: It's certainly a jury issue.
6 And that's, basically, the heart of my
7 defense, cohabitation-type.

8 THE COURT: Anything in response from the
9 State at this point?

10 MR. SCOTT: On the cohabitation aspect or
11 the other issues?

12 I'm sorry, Your Honor. I just want to
13 get clear just for our sake, after we get back
14 from lunch and the Court has ruled, let's say the
15 Court has ruled bifurcation, are we to rest at
16 that point?

17 THE COURT: It's going depend on what
18 they -- after they consult what you all do.

19 MR. SCOTT: Okay.

20 THE COURT: I'm not going to make you
21 rest, if they're not waiving those constitutional
22 issues.

23 MR. SCOTT: I'm just trying to -- just
24 looking ahead down the road. If he does file --
25 his PCR does exercise his appellate rights, what

1 does the Court say about him waiving jeopardy
2 attaching, and what do they say about him --

3 THE COURT: You all look at that over the
4 next hour and let me know. Fair enough?

5 MR. VERNER: What time you want us back,
6 Your Honor?

7 THE COURT: Sir?

8 MR. VERNER: What time do you want us
9 back? The jury be back at 2:00.

10 THE COURT: Two o'clock.

11 MR. VERNER: If I could, Your Honor, I know
12 he is technically in custody. He's always come back
13 to court before, but I do acknowledge he is custody at
14 this point.

15 MR. SCOTT: I only object to that because
16 I have reason to believe he has been
17 communicating, interfering with State's
18 witnesses.

19 THE COURT: You put up all your witness.
20 What I'm going to -- it's not going to be hour.
21 I'll have him taken into custody over lunch.

22 We conclude this matter.

23 (A break was taken from 1:02 p.m. to 2:11 p.m.)

24 THE BAILIFF: All rise.

25 THE COURT: Be seated, please.

1 (Jury enters the courtroom at 2:12 p.m.)

2 THE COURT: Mr. Verner, did you have a
3 chance over lunch to talk to your client?

4 MR. VERNER: I did, Your Honor.

5 THE COURT: And the decision on the
6 bifurcation issue?

7 MR. VERNER: I recognize that the
8 bifurcation is a -- gets into legalistic language,
9 but I believe he's got functional knowledge of the
10 bifurcation issue, Judge, and he's made an
11 intelligent and informed decision that we would
12 waive any appellate issues. We would waive any
13 issues about the sufficiency of the verdict if the
14 issue of -- if that particular element of domestic
15 violence was considered separately, then the --
16 basically, the guilt or innocence of domestic
17 violence.

18 If the Court wants to ask him directly,
19 but we would waive -- and I do have the informed
20 consent of my client that -- the concern that the
21 Court has, that we would challenge the
22 insufficiency of the verdict.

23 And, as I indicated to the Court -- your
24 Honor, the Court addressed this briefly in
25 chambers prior to coming back in, and I indicated

1 that I do not foresee domestic violence second or
2 third degree as an appropriate lesser included
3 offenses where we are. I do maintain that assault
4 and battery third degree would be a lesser
5 included offense.

6 And, of course, it may be back there, but
7 I have written down -- I had pulled a caption, I
8 might have to go back there and get it, but in
9 2001 in York County, the appellate courts have
10 recognized that assault and battery is a lesser
11 included offense of domestic violence, that was in
12 2001. I have not found where that case has been
13 overturned.

14 I can go grab that citation real quick,
15 if the Court wants to wait. Judge Wyatt Sumner is
16 listed as the trial judge. My version, I didn't
17 have the case citation, Judge. I can't remember
18 recall the name of it off my head, but it's a York
19 County case, assault and battery, in 2001 is a
20 lesser included.

21 THE COURT: What says the State?

22 MR. DAVENPORT: Under the new domestic
23 violence law in 2015, assault and battery third
24 degree is a statutory lesser.

25 THE COURT: So you all don't dispute

1 that?

2 MR. DAVENPORT: Well, I need to pull the
3 statute, but I think it's only a lesser of DV 3rd.
4 But, again, Your Honor, it hasn't been disputed
5 that she's not a household member. I think it's
6 uncontested that she's been a household member.

7 MR. VERNER: I don't know how something
8 could be a lesser included domestic violence 3rd
9 and not be a lesser include of domestic violence
10 1st. I mean, domestic violence 3rd, by statute,
11 is a lesser included of 1st. I don't accept that
12 argument.

13 And the domestic violence is different in
14 2000 -- today's domestic violence is different
15 than 2001's, but only in the sense that we now
16 have degrees of domestic violence. The definition
17 of the crime has not changed. Just the fact that
18 we now have degrees of domestic violence.

19 MR. DANIEL: Judge?

20 THE COURT: Mr. Daniel?

21 MR. DANIEL: I found the statute he was
22 referring to. It's under the DV 3rd statute. It
23 is under D, number 3, it just simply says:
24 "Assault and battery in the third degree is a
25 lesser included offense of domestic violence in

1 the 3rd degree as defined in this subsection."

2 MR. VERNER: Judge, my argument, again,
3 as I said, like those Russian -- I think they're
4 called matryoshka dolls where you pull one from
5 the other one. You can't be a lesser included
6 offense of one of the dolls in that collection if
7 you're not under the big doll in that collection.
8 CDV is -- encompasses CDV 2 encompasses CDV 3.
9 CDV 3 by statute encompasses assault and battery.
10 They are all in that doll collection where when
11 you start popping them open, the smallest in there
12 would be assault and battery third.

13 MR. SCOTT: He just conceded that CDV 2
14 and CDV 3rd were not proper lessers. He just
15 conceded that the last time he stood up.

16 THE COURT: Here's what I'm going to do,
17 okay, there's some issues we need to hammer out
18 here. I'm going to let the jury go home today. I
19 don't want to do that, but there are several
20 issues that have come up that we need to address,
21 and I don't want that jury sitting back there for
22 an hour while we're trying to hammer these out.
23 Okay?

24 So we kind of -- not so much on the
25 lesser included, this other stuff kind is

1 uncharted territory a little bit, and I want to
2 make it to where it's as smooth as possible as we
3 go through this. And I am going to go ahead -- I
4 am going to release the jury for today. The
5 question is depending on some of this stuff to
6 make sure that I'm comfortable that he understands
7 what's going on here. I know he's in the middle
8 of trial. I want to make it abundantly on the
9 record that he understands what's going on, and,
10 if he's waiving these issues, that he's knowingly,
11 intelligently, freely, and voluntarily doing so.
12 For post-conviction purposes as well. I want to
13 make sure it's all on the record clear so we are
14 not rushing through these issues and what I
15 believe to be, maybe, my creation of these
16 uncharted territories, so to speak. I get that.
17 But I want everything clear on this, especially
18 with defendant.

19 Any objection from the State?

20 MR. SCOTT: No objection from the State.

21 THE COURT: Defense counsel?

22 MR. VERNER: No, Your Honor.

23 THE COURT: Bring me the jury, please,
24 ma'am.

25 (Jury enters the courtroom at 2:21 p.m.)

1 THE COURT: Ladies and Gentlemen, I
2 appreciate you all being back here when I asked
3 you to be back here. I apologize that you had to
4 wait a few minutes.

5 I apologize. You're throwing me off. I
6 need you to fill in all the way so you don't throw
7 me off on look. You made me look twice to make
8 sure all of you were here.

9 What I'm going to do at this point, I'm
10 going to sent you home for today. There's some
11 legal issues that I want to make sure that I'm
12 spot on with this stuff and I'm correct. You
13 know, you all heard about this case for the first
14 time yesterday when we picked this jury. Same
15 here. Okay? Me too. The first time I heard
16 about it, knew anything about the case, and I told
17 you all about it, when I read the indictment,
18 which is not evidence, that was the first bit of
19 knowledge I had about this case as well. Okay?
20 There are some issues that I want to make sure
21 that I'm right on before the case is given to you
22 all to make a decision on.

23 So rather than have you all sit back
24 there for a period of time, and I don't know how
25 long it might take, one of my pet peeves is to

1 make a jury wait. I just don't like to do that.
2 Okay? I understand your time is valuable, and I
3 try, wherever I'm holding court, to make the most
4 efficient use out of the juror's time because I
5 recognize you have lives out this courtroom.
6 There's times it certainly will come up that you
7 do have that you do have to wait, but at this
8 stage of today, I'd rather send you home rather
9 than have you wait and we get to you or not get to
10 you. Okay?

11 So what I'm going to do is, I'm going to
12 send you home for the balance of today. Do not
13 discuss this case at all with anyone. Don't do
14 any independent investigations. I told you from
15 the outset, you are to decide this case based
16 solely on the evidence and testimony presented in
17 this courtroom. You be back here no later than
18 9:30. Be back here tomorrow morning at 9:30 and
19 we will start as promptly at that time and we'll
20 get you this case this hopefully tomorrow morning.
21 You all have a nice afternoon. I'll see you in
22 the morning.

23 (Jury exits the courtroom at 2:24 p.m.)

24 THE COURT: At this time, Mr Davenport,
25 would you stand, please. If you would raise your

1 right hand, please. Do you swear or affirm to
2 tell the truth, the whole truth, and nothing but
3 the truth, so help you God?

4 MR. DAVENPORT: Yes, sir.

5 THE COURT: You're John Henry Davenport,
6 Jr?

7 MR. DAVENPORT: Yes, sir.

8 THE COURT: All right. Mr. Davenport,
9 I'm going to go over some things with you right
10 now. You've been in here throughout the trial of
11 this case when we started here this morning; is
12 that correct?

13 MR. DAVENPORT: Yes, sir.

14 THE COURT: You've been sitting there
15 with your lawyer as we've had several discussions
16 about your case; is that correct?

17 MR. DAVENPORT: Yes, sir.

18 THE COURT: And one of the issues that I
19 brought up before lunch -- well, let me back up a
20 little bit further. Your lawyer had requested --
21 you weren't here for jury selection yesterday.

22 MR. DAVENPORT: No, sir.

23 THE COURT: It was told to the Court by
24 your lawyer that you told your lawyer to go on and
25 pick a jury without you here; is that right?

1 MR. DAVENPORT: Yes, sir. I had to work
2 last night.

3 THE COURT: Sir?

4 MR. DAVENPORT: I had to work last night,
5 so I told him he can go ahead.

6 THE COURT: Well, in any event, your
7 lawyer yesterday brought up this issue of
8 bifurcation, which that's a big word, so to speak.
9 Okay? It's one of those legal terms that we use
10 in our profession. Okay? It's my understanding
11 that your lawyer has talked with you about that;
12 is that correct?

13 MR. DAVENPORT: Yes, sir.

14 THE COURT: Do you feel like you
15 understand what the word bifurcation means as it
16 relates to your case?

17 MR. DAVENPORT: Pretty much, sir.

18 THE COURT: All right. Well, I'm going
19 to explain some things to you. And, again, you
20 were here before we broke for lunch and we talked
21 about these issues as well. What your lawyer has
22 asked me to do -- but first, you're charged with
23 domestic violence 1st degree, okay? Under the law
24 the State has to prove two things here. One is
25 that you caused physical harm or injury to a

1 person's own household member. Okay? That's the
2 first thing they got to prove. All right? For it
3 to be domestic violence 1st degree, the law also
4 requires that they prove that you have two or more
5 prior convictions of domestic violence within
6 10 years of the current offense. Do you
7 understand that?

8 MR. DAVENPORT: Yes, sir.

9 THE COURT: Now, your lawyer has done a
10 very good job for you and has raised this issue of
11 and telling me, Judge, I'm concerned that if the
12 State puts up evidence in its case in chief, as
13 they're doing it right now, of my client, being
14 you, of these two prior domestic violence
15 convictions tat it would be overly prejudicial to
16 you. Do you understand that?

17 MR. DAVENPORT: Yes, sir.

18 THE COURT: And so what he's asked me to
19 do is not allow the State, in its case in chief,
20 to put up that evidence.

21 Now, you were in here at least at this
22 stage. Okay? Now, you were in here when we had
23 those discussions before we went to lunch. And I
24 raised a couple of issues and concerns that I
25 have. Because, usually, the State puts up its

1 case in its entirety. Okay? And then the State
2 rests. That means they're done. Okay?

3 And what happens in a normal case is that
4 the defense lawyer gets up and makes what's call a
5 motion for directed verdict. I'm going to make
6 this simple for you here. And, typically, in a
7 directed verdict motion, your lawyer says, Judge,
8 they haven't produced any evidence that satisfies,
9 you know, one or more elements of the crime.

10 MR. DAVENPORT: Right.

11 THE COURT: And, therefore, my client is
12 entitled to a verdict in his favor. Okay? That's
13 what ordinarily happens. And the concern I raised
14 is, I stop the State from putting up evidence of
15 your two prior convictions then, under the law, he
16 could get up and say, Judge, they didn't put up
17 any evidence of his two prior convictions which
18 don't make it domestic violence 1st degree,
19 therefore, he's entitled to a directed verdict on
20 this issue. Do you understand that.

21 MR. DAVENPORT: (Nods head up and down.)

22 THE COURT: Is that a yes?

23 MR. DAVENPORT: Yes, sir.

24 THE COURT: Okay. But your lawyer, he
25 told me he talked with you over lunch and

1 explained to you that if we do bifurcate, which
2 means, I stop the State from putting up that
3 evidence of the prior convictions in their case in
4 chief, that you would waive it, or that you give
5 up, that you will not be entitled to a directed
6 verdict on domestic violence 1st degree since I've
7 limited the State from putting up that evidence at
8 this time. Do you understand that?

9 MR. DAVENPORT: Yes, sir.

10 THE COURT: And you agree with that?

11 MR. DAVENPORT: Yes, sir.

12 THE COURT: And that's what -- and you
13 would waive any objections to that or your
14 assertion that you would be entitled to a directed
15 verdict in this domestic violence 1st degree?

16 MR. DAVENPORT: Yes, sir.

17 MR. VERNER: Your Honor, I apologize, but
18 to clarify, only on that element. I still intend
19 to raise the issue of directed verdict on the
20 issue of cohabitation.

21 THE COURT: I understand that. Now, the
22 other side is -- and I think once the State puts
23 up evidence on the two prior convictions, I still
24 think, under the law, you would be required and it
25 would be necessary that you renew your directed

1 verdict motion, or at least make a directed
2 verdict motion at that time.

3 MR. VERNER: Yes, sir. I agree with the
4 Court.

5 THE COURT: Now, let me ask you this,
6 Mr. Davenport: Do you have any questions about
7 what I've asked you about here today?

8 MR. DAVENPORT: No, sir.

9 THE COURT: Do you understand everything
10 that I've explained to you here today?

11 MR. DAVENPORT: Yes, sir.

12 THE COURT: All right. Has anyone used
13 any threats, force, pressure, or intimidation to
14 get you to agree to this?

15 MR. DAVENPORT: No, sir.

16 THE COURT: Did anyone make any promises
17 to you to get you to agree to this?

18 MR. DAVENPORT: No, sir.

19 THE COURT: Okay. Now, in addition to
20 the directed verdict issues, under the law, once a
21 jury is empanelled, we got a jury here that I
22 excused for today, an individual cannot be tried
23 again for the same offense. In other words, if a
24 jury came back and reached a verdict of not guilty
25 in your case, the State comes back and says we got

1 some additional evidence that relates to this same
2 -- or we want to try you again, they wouldn't be
3 allowed to try you again, they wouldn't be allowed
4 to try you again, because, under the law, double
5 jeopardy attaches.

6 MR. DAVENPORT: Yes, sir.

7 THE COURT: That was another issue,
8 another concern that I had if the State rested at
9 this point of your possibility -- or your lawyer
10 raising the possibility of double jeopardy
11 attaching at that point. Do you understand that?

12 MR. DAVENPORT: Yes, sir.

13 THE COURT: You waive that argument as
14 well after consulting with your lawyer?

15 MR. DAVENPORT: (Nods head up and down.)

16 THE COURT: Sir?

17 MR. DAVENPORT: Yes, sir.

18 THE COURT: I see you shaking your head,
19 but I need a verbal response.

20 MR. DAVENPORT: Yes, sir.

21 THE COURT: And, again, nobody has
22 promised you anything or held out hope of reward
23 to get you to waive that right?

24 MR. DAVENPORT: No, sir.

25 THE COURT: How about any threats, force,

1 pressure, or intimidation?

2 MR. DAVENPORT: No, sir.

3 THE COURT: As far as the State is
4 concerned, have I covered that sufficiently to the
5 satisfaction of the State?

6 MR. SCOTT: Your Honor, maybe I'm
7 treading new ground here, but just from what I
8 heard, he's waived any challenge to jeopardy
9 attaching, and he has waived any challenges to a
10 directed verdict as it pertains to the element of
11 prior convictions.

12 THE COURT: Correct.

13 MR. SCOTT: I understand they still plan
14 to challenge --

15 THE COURT: Cohabitation.

16 MR. SCOTT: -- the cohabitation issue.
17 But insofar as those issues, I have no additions
18 or requests to make.

19 THE COURT: Mr. Verner?

20 MR. VERNER: I think the solicitor has
21 said it fairly accurately, Your Honor. I think
22 he's on the record giving up his right to
23 challenge by appeal or habeas corpus the
24 consequences of a jury -- the Court's decision to
25 bifurcate the verdict, which I do believe is in

1 his best interest. So I do believe he has
2 intelligently waived that. And, of course, I
3 don't want intend to raise the legal issues of it.
4 What I'll address is the directed verdict in
5 general, and the directed verdict, specifically,
6 as far as the cohabitation issue. But certainly
7 not on the issue of the two prior convictions not
8 being included.

9 THE COURT: All right. Anything else
10 from the State on that issue?

11 MR. SCOTT: Not on that issue.

12 THE COURT: All right. So, that everyone
13 is -- you can sit down now, Mr. Davenport. Thank
14 you, sir.

15 MR. DAVENPORT: Yes, sir.

16 THE COURT: Now, when we reconvene
17 tomorrow and the jury comes back in, I'll
18 recognize you all, that you rested at this point.
19 What I'm going to do is spend just a second, I'm
20 going to advise your client of his rights, okay,
21 and whether or not he intends to testify in this
22 case. Okay? If he doesn't -- and he doesn't have
23 to give me an answer today. But if he doesn't, at
24 that time point, you will rest as well.

25 MR. VERNER: Yes, sir.

1 THE COURT: I understand what we're
2 fixing to do, because there's not going to be any
3 further testimony on this issue, I'm going to let
4 you, today, argue your directed verdict on that
5 issue. Okay?

6 Does the State have any issue wit that?

7 MR. SCOTT: On cohabitation issue?

8 THE COURT: Yes.

9 MR. SCOTT: No, we're prepared to go
10 forward.

11 THE COURT: And that way, when we bring
12 the jury back in tomorrow and you all have rested
13 at this point, I'm not having to send them right
14 back out. But you can simply -- at that point,
15 you can raise --

16 MR. VERNER: I was going to actually
17 suggest that we argue the directed verdict motion
18 and at least have the basis for it on the record
19 today, and the Court would ultimately --

20 THE COURT: Whatever my ruling is, if I
21 deny your motion, you can simply remove him and
22 waive any prior objections and exceptions and
23 we'll keep moving.

24 MR. VERNER: That would be my
25 recommendation.

1 THE COURT: I recognize you, if you rest
2 at this point, then we're going right into closing
3 arguments on that first element. Okay?

4 MR. SCOTT: Yes, sir.

5 THE COURT: And then the case will be
6 submitted to the jury solely upon whether or not
7 the State has proven beyond a reasonable doubt
8 that the defendant caused physical harm to a
9 person's own household member and any other lesser
10 included offenses that I deem appropriate. We'll
11 get into that here in a minute.

12 And then, if they come back with a
13 verdict -- I'm just talking out loud here for
14 argument sake. They come back with a verdict
15 guilty as to the physical harm or injury to their
16 own household member, then you'll put up evidence
17 pertaining to the two prior convictions through
18 your witness, and I'm assuming that's
19 Mr. Bentley.

20 MR. SCOTT: Yes, sir. I'm, kind of,
21 thinking along the same tracks as Your Honor, in
22 the interest judicial economy, but also maybe the
23 State's interest in, kind of, belt and suspenders
24 approach, I would request, if Your Honor is
25 amenable to it, allowing us to call Mr. Bentley

1 now and I'll introduce those priors as Court's
2 exhibits. They're already in the record. And
3 tomorrow when we rest, they'll at least have been
4 entered as Court's exhibits at that point. And
5 then, if we do get to that stuff where we have
6 secured a conviction, I will move those into
7 evidence at that point. But if we could ahead and
8 enter them, I'd feel a little more comfortable.

9 MR. VERNER: I'll waive the foundation
10 witness if the Court just wants to let the State
11 introduce them directly as a Court exhibit now.

12 THE COURT: Let me see them, please.

13 MR. SCOTT: I got them marked as 8 and 9,
14 Your Honor.

15 THE COURT: Have you seen these?

16 MR. VERNER: I have, Your Honor.

17 THE COURT: They would be Court 1 and 2.

18 MR. VERNER: My understanding is that the
19 conviction in April of 2009 and April sometime in
20 2012 would be the two prior domestic violence
21 convictions. The State has introduced certified
22 copies.

23 MR. DANIEL: Your Honor, the '09 in
24 Newberry County and then a 2014 conviction in
25 Greenwood County. We can mark them Court's

1 exhibits 1 and 2.

2 THE COURT REPORTER: 2 and 3.

3 THE COURT: 2 and 3.

4 MR. DANIEL: My apologies, Your Honor.

5 THE COURT: You want to look at these,
6 Mr. Verner?

7 MR. VERNER: I've seen them. If the
8 Court has noticed something, Your Honor, I have
9 looked at the two prior convictions that they both
10 appear to be domestic violence convictions and
11 they are within the 10 years of the October 2018
12 dates. Although, in all honesty, if the Court has
13 a concern, I'd appreciate it if the Court would
14 relate that to me because I don't see a problem
15 with the convictions.

16 THE COURT: All right. A couple things I
17 see. Okay? One, I don't know that it's necessary
18 on these sentence sheets that the penalties be
19 disclosed. That is not a concern of theirs.
20 Okay? So I would order that those be stricken.
21 That's neither here nor there.

22 The second issue that I see, which goes
23 back into some of these lesser included offenses,
24 the 2009 indictment is for a John Henry Davenport,
25 period, as well as sentencing sheet, John Henry

1 Davenport. The 2012 indictment is John Henry
2 Davenport, Jr. Okay? Some of this identifying
3 information. More specifically, Social Security
4 number, most of which has been stricken in here,
5 but the last four as to each are legible. On the
6 John Davenport Social Security number the last
7 four digits are [REDACTED]. On John Davenport, Jr., the
8 last four, legible, Social Security number is
9 [REDACTED].

10 MR. DAVENPORT: Your Honor, are the date
11 of births the same?

12 THE COURT: Well, I can't tell because
13 the only thing on the date of birth is 1980, and
14 that is on both of them.

15 MR. VERNER: Just, I have -- as Court's
16 exhibits, I did not have any objection. What was
17 actually going to the jury, I was going to let the
18 indictments.

19 THE COURT: What that goes into though,
20 that goes into the lesser included offense of
21 domestic violence second, because, at that point,
22 they could believe -- accept one and reject the
23 other which would only be one prior conviction.

24 MR. VERNER: I understand that
25 completely, Judge.

1 MR. VERNER: Now, my client's last four
2 are [REDACTED]. The -- and I will have to --

3 MR. DANIEL: Your Honor, are the driver's
4 license numbers the same on both sentencing --

5 THE COURT: They're stricken.

6 MR. VERNER: We can put the Court through the
7 paces of asking all those questions.

8 THE COURT: I mean, I'm just telling you
9 -- because, like I said, it goes back to -- you
10 know, what you all are attempting to put into
11 evidence, I'm required under law to charge the
12 jury as to those facts which are in evidence, and
13 that's in evidence. That's going to be in
14 evidence. Those are concerns that I have from
15 looking at these documents on the face.

16 MR. VERNER: Your Honor?

17 THE COURT: So you all figure out how
18 you're going to deal with it. That's something
19 you all got to do. I'm just pointing out to you
20 because I think it does, at that point, fall into
21 the DV 2nd provided I deny his motion on the
22 directed verdict issue pertaining to household
23 member and cohabitation. And so that would
24 certainly go back and be in line with the law of
25 Odom, which I talked about earlier, which you

1 can't instruct a jury that they got to accept it.
2 It's up for them to determine.

3 But I could certainly see, based upon my
4 review of these documents, how that lesser
5 included would be necessary and required under the
6 law.

7 MR. VERNER: I feel sheep-ish to do this,
8 but I would ask the Court to give me leave to
9 withdraw my consent to the admission based on what
10 the Court has raise sua sponte about the
11 inconsistencies.

12 THE COURT: I mean, if I don't raise them
13 sua sponte, there are certainly post-convictions
14 issues.

15 MR. VERNER: And I would ask, Judge, that
16 I withdraw my consent for the admission of those
17 documents until we're satisfied that the -- my
18 concern -- ordinarily, the State just shows the
19 copy of the indictments. They've never shown the
20 sentencing sheets before. But, as far as a
21 Court's exhibit, I don't have a problem with that.

22 But based on the inconsistencies that the
23 Court has raised, Your Honor, that's something
24 that I feel like I should raised, and I would
25 ask --

1 THE COURT: You all got to figure it out
2 and you all got to put up evidence as such.

3 MR. SCOTT: We're going to do it
4 tomorrow. We're going to have the prosecuting
5 attorney here to testify probably.

6 THE COURT: Then that leads into another
7 issue of me having to question this jury about
8 whether any of them are related by blood,
9 connected by marriage, or close personal or
10 business or associate relationship, et cetera.
11 And that's not unusual for a witness to be
12 necessitated at a later stage or a witness to be
13 left off the witness list. If it's a problem, I'm
14 going to have to address it at that point.

15 MR. VERNER: I'm not suggesting how they
16 do it, but I don't anticipate any objections to
17 it.

18 THE COURT: I'm conveying that so your
19 client is aware of that as well. It's not unusual
20 that another witness has to be named after we go
21 through this process, and what typically happens
22 or what happens, Mr. Davenport, when a jury is
23 being qualified, the witness lists are given to me
24 and I ask the entire panel whether or not any of
25 them have ever been related by blood, connected by

1 marriage, have a close personal, business, or
2 social, or if -- he's a lawyer -- any have ever
3 been represented by any of these attorneys. I ask
4 them all that question. That's what I will ask
5 this jury tomorrow depending upon who they wish to
6 add as another witness in your case. Okay?

7 And if any of them say yeah, then I'll
8 have to address that how I deem appropriate to
9 ensure that you're getting a fair trial here.

10 MR. DAVENPORT: Yes, sir.

11 THE COURT: Okay. Let's talk about this
12 -- all of these lesser included offenses here.
13 Okay?

14 He's indicted under DV 1st under
15 16-25-20. Subjection A(1), "It is unlawful to
16 cause physical harm or injury to a person's own
17 household member." That's what you all are going
18 under here. That's Subsection A(1).

19 Then you go to B. What you all have gone
20 or intending to go on under Subsection B is B(3).
21 Isn't that right, Mr. Scott?

22 MR. SCOTT: Yes, Your Honor.

23 THE COURT: B(3), "Wherein one has two or
24 more prior convictions of domestic violence within
25 10 years of the current offense."

1 Okay. Good on that. That's what you all
2 have indicted him for. That's what you all bear
3 the burden of proving his guilt beyond a
4 reasonable doubt.

5 But then you drop down to DV 2nd.
6 DV 2nd degree, which includes A(1), causes
7 physical or injury to person's own household
8 member.

9 And B(3) there, one or more prior
10 convictions, which could kick it to that, based
11 upon what I pointed out to you all here today.
12 All right?

13 Then you go to DV 3rd, which encompasses
14 solely Subsection A, "Cause physical harm or
15 injury to a person's own household member,"
16 period. And the statute clearly says that A&B
17 third is a lesser included offense of DV 3rd.

18 A&B third, "The person commits the
19 offense of assault and battery in the third degree
20 if the person unlawfully injures another person
21 or offers or attempts to injure another person
22 with the present ability to do so," period.

23 The requirement, or the difference
24 between DV one, two, and three, goes from two or
25 more convictions, to one conviction, to no prior

1 convictions. And then drops down to A&B third,
2 which, in essence, takes out that "own household
3 member." Okay?

4 So, I do believe that all of those, at
5 this point, would be part of the charge, one, two,
6 three DV, and then A&B, because they all
7 encompass --

8 MR. SCOTT: But, Your Honor, without the
9 bifurcation, we would have presumably presented
10 evidence that goes beyond all the lesser
11 includeds. Presumably, we would have presented
12 prior convictions. At that point, they would have
13 to consider, did he have these prior convictions,
14 and, if it was uncontested and they believe that
15 he had created this assault on a household member,
16 he would be entitled to none.

17 THE COURT: Well, here's -- I pointed out
18 to you all today an issue on those two prior
19 convictions.

20 MR. SCOTT: I suspect, you know, knock on
21 wood.

22 THE COURT: I mean, I'm not settling
23 --I'm sitting up here. I'm the referee, so to
24 speak. But what I'm looking at it on the back end
25 to from the standpoint of post-PCR issues.

1 Now, nobody ever said anything about
2 that, including me. He gets convicted and I give
3 him 10 years, and Mr. Verner doesn't contest those
4 prior convictions, maybe that is a legitimate PCR
5 issue there.

6 And maybe -- and then we back -- you all,
7 not me, you all are back to square one.

8 MR. SCOTT: Judge, just -- I know this
9 will be dealt with tomorrow. This is the booking
10 photo. The date of births match. Everything
11 matches. They transcribed two numbers -- hear me
12 out.

13 THE COURT: I'm going to hear you. I'm
14 not trying to --

15 MR. SCOTT: If this case was tried as
16 every DV case I've ever tried before, we would
17 have been presenting this case to a jury today.
18 They would have gotten to see the whole picture.
19 He would have gotten zero lesser included.

20 Now, tomorrow, they're going to two
21 chunks, two separate trials. And then, what
22 they're going to have to decide is, A&B third, DV
23 3rd, DV 2nd, DV 1st, and we are going to somehow
24 have to give them a legal education all of those,
25 whereas, had it not been bifurcated, they would

1 not have had to consider all those. It would have
2 been simple, did he commit an assault and injured
3 a household member, they could consider that, and
4 then, did he have two or more priors.

5 I want to say this without challenging,
6 Your Honor. I totally respect any decision you
7 make.

8 THE COURT: I understand you disagree
9 with me. I don't fault you for that. Okay?
10 But -- go ahead and finish, I'm sorry.

11 MR. SCOTT: Well, I may have -- I just --
12 this is -- we are going to be in a position
13 tomorrow -- I almost don't know how we can
14 consider all of these without talking about
15 penalties and everything else.

16 THE COURT: Well, let me say this, I'm
17 not -- this is where I am right now with the
18 issues pertaining to what I pointed out in the
19 sentencing sheets, the discrepancy so to speak, I
20 think creates some issues that do take to DV 2nd
21 at this point. You may clear that up. Okay?

22 Now, we're operating under a different
23 code than the old CDVs where it's kind of like,
24 you know, you get into -- for instance, by way of
25 analogy here, when you got somebody charged with

1 an ABHAN, for instance, okay, and now you got --
2 it used to be common law offense, which is now
3 codified, which is statutory. Okay? And I don't
4 know how many of those you've tried since they
5 changed the law on that.

6 MR. SCOTT: Ten years since this change.
7 It's been awhile.

8 THE COURT: Have you tried any of the
9 ABHANS?

10 MR. SCOTT: I have before, yeah.

11 THE COURT: The law lays out -- you got
12 ABHAN. You got A&B 1st is a lesser included, A&B
13 2nd is a lesser included, A&B 3rd is a lesser
14 included. And more times than not, since they
15 passed that law, we, as judges, have had to charge
16 every one of those lesser includeds whether we
17 agreed with it or not. It is what it is.

18 I mean, I can promise you, as a judge,
19 one of my least favorite things to do is charging
20 a jury and reading all of that information to
21 them. But I can't deviate from what the statute
22 says we're supposed to do.

23 And as part of -- I understand your
24 argument. I don't fault your argument at all.
25 Okay? But the law requires, as a judge, if

1 there's any evidence, any evidence, we are
2 required by law to charge them on that law. Part
3 of our charge also says, you can believe all of
4 what a witness says, part of it, or none of it.
5 You can believe one witness against another, or
6 against many others. You know, you can -- period.
7 So, I mean, therein lies the issue of creating,
8 and putting on us as judges, trying to figure --
9 because what I have a concern about it is -- all
10 right.

11 If, for instance, if there's any
12 evidence, any evidence -- there's clear evidence
13 in here that -- there's testimony that's come from
14 this witness stand that clearly satisfies
15 Subsection A(1) of what you all are required.

16 Now, that's not saying -- and I
17 understand Mr. Verner has got this argument on
18 household member and cohabitation. We'll deal
19 with that in a minute.

20 Clearly evidence of that. Clearly
21 evidence of it, which is required under
22 Subsection 2. Clearly evidence of A(1) for
23 Subjection 3, which is DV 3rd. Okay?

24 But a jury, based upon his argument,
25 wherein the statute says that as assault and

1 battery 3rd is a lesser included of DV 3rd, they
2 can conclude that they weren't household members,
3 but it's still going to a jury because there's
4 evidence in the record of it. Does that make
5 sense?

6 And I'm not -- listen, I understand
7 completely your position on that. But what I'm
8 looking at is, what evidence is in the record of
9 it, if any?

10 Now, separate and apart from the
11 bifurcation issue -- okay? Say, if you just put
12 in the evidence that's in the record right now,
13 and you put in those two indictments and
14 sentencing sheets, and I never said a word -- I
15 looked at it and never said a word about it.
16 Based upon the evidence in the record and what I
17 viewed of evidence in the record, I believe that I
18 would still be required to charge DV 2nd because
19 of the discrepancy in who they are. The
20 discrepancies in sentencing sheets and whatnot
21 because that's evidence in the record. Does that
22 make sense?

23 MR. SCOTT: Yeah. I've been doing this a
24 long time. I understand Your Honor's ruling. I
25 guess my confusion is after -- sorry.

1 THE COURT: No, go ahead. I'm
2 listening.

3 MR. SCOTT: After the first portion of
4 the trial, and I argued to the jury whether he is
5 guilty of A&B -- or DV 1st, at that point, the two
6 charges, or the one charge they are to consider is
7 what? Because we have not yet been allowed to
8 present to them the indictment -- or prior
9 convictions. So the first portion, they're going
10 to consider DV 3rd elements?

11 THE COURT: There's no difference in the
12 DV 3rd elements than DV 1st, from what you're
13 arguing.

14 MR. SCOTT: Right. Aside from the
15 aggravating.

16 THE COURT: Right.

17 MR. VERNER: It would just be DV in
18 general.

19 MR. SCOTT: Essentially.

20 THE COURT: In essence, what you're
21 arguing to the jury is, you know, did he --

22 MR. SCOTT: Cause harm or injury to a
23 household member.

24 THE COURT: Exactly. And that covers all
25 three of them.

1 MR. SCOTT: Okay.

2 THE COURT: DV 1, 2 and 3.

3 MR. SCOTT: Yes, sir. I think I'm clear.

4 And then --

5 THE COURT: So he can turn around and
6 argue in his closing that you all hadn't proven
7 they're a household member and point out whatever
8 he wants as to that issue.

9 Like I said a minute ago, you're not
10 having to educate them on every portion of it.

11 MR. SCOTT: Okay.

12 THE COURT: But I think -- let's see.

13 MR. DANIEL: Your Honor, on phase one of
14 the trial, if they were to find him guilty of
15 A&B 3rd, we would have been wholly deprived of our
16 chance to present evidence, if they win phase 1.

17 THE COURT: Here's what --

18 MR. VERNER: That would mean that they
19 found it on --

20 MR. SCOTT: We didn't get past the
21 cohabitation issue.

22 MR. DANIEL: But, again --

23 MR. SCOTT: I think I'm clear now,
24 Your Honor. So, essentially, the elements they
25 will be presented is the DV 3rd language, and then

1 they could consider, possibly, the A&B 3rd as a
2 lesser. If he is found guilty on the DV 3rd, then
3 we move into the realm of --

4 THE COURT: You said DV 3rd. You mean --

5 MR. SCOTT: 1st, yes, sir.

6 THE COURT: The charge on DV 1st, as far
7 as A(1) is concerned, is the same for DV 1, 2, and
8 3.

9 MR. SCOTT: Yes, sir.

10 THE COURT: That's the same thing.

11 MR. SCOTT: And then at that phase, if
12 there's a question as to whether there's 2, 1 or
13 zero prior convictions dictates on what lessers
14 they get at that point.

15 THE COURT: I think so. It think -- it
16 initially goes to them on DV. Let's just say DV,
17 because they're one in the same as it relates to
18 A(1). Okay? And it goes to them on the issue of
19 A&B 3rd.

20 If they found him guilty of A&B 3rd, then
21 you don't put up anything else.

22 If they find him guilty of A(1), then we
23 go into the other side of it. And then we --
24 based upon what I hear tomorrow as to whether or
25 not -- you know, has the State proven beyond a

1 reasonable doubt, one, the defendant has two or
2 more prior convictions for domestic violence
3 within the last 10 years, or one or more
4 convictions -- how does it read? Two or more --
5 hold on a minute.

6 MR. VERNER: I believe it's one or
7 more.

8 THE COURT: 16-25. Hold on just a
9 minute. 16-25. Yeah, in the second phase, it
10 would be whether or not the State has proven
11 beyond a reasonable doubt the defendant has two or
12 more prior convictions. Or, if no, then you go to
13 the next one, has the State hasn't proven beyond a
14 reasonable doubt the defendant has one prior
15 conviction within the last 10 years. So if they
16 find no as to each, and they've only found him
17 guilty of violating Subsection 1 --

18 MR. SCOTT: It's DV 3rd anyway.

19 THE COURT: It's DV 3rd anyway. Does
20 that make sense?

21 MR. SCOTT: Yes, sir. I think I worked
22 through the calculus now.

23 THE COURT: I'm sorry that it seems --
24 and if they found him guilty initially on the
25 A&B 3rd, you'd never get to that second phrase

1 anyway.

2 MR. SCOTT: I'm checking.

3 THE COURT: Does that sound right?

4 MR. SCOTT: I think so. Yeah, to my
5 understanding.

6 THE COURT: Mr. Verner?

7 MR. VERNER: Judge, I think we all --
8 based on what's locally, we know the Mandy Smith
9 case, we would all agree that if there's any
10 evidence of lesser included charges, the Court has
11 to charge it. The -- I would say that I agree,
12 and I would -- as a lawyer, I would ask the Court
13 to rule, as the has already indicated, the Court
14 thinks if the lesser included stream. As an
15 officer of the Court, my understanding of the law
16 is that the Court doesn't always have to charge
17 lesser included offenses if the Court finds that
18 an offense could only be the greater offense.

19 And so, I think what has generated this
20 discussion, the State did introduce somewhat
21 inconsistent prior conviction forms, which I think
22 a jury could reasonably come up with the one.

23 In all candor, if the State had
24 introduced two conforming prior convictions,
25 Judge --

1 THE COURT: We wouldn't be having this
2 discussion.

3 MR. VERNER: I would not have raised this
4 could only be second and not 1st degree, just as
5 an officer-of-the-court-type discussion.

6 THE COURT: You mean 1st and not 2nd.

7 MR. VERNER: I don't know how it could
8 2nd without it being 1st, if there were two
9 conforming convictions put into evidence.

10 THE COURT: Right.

11 MR. VERNER: And for the same reason,
12 simple CDV would go away, too.

13 But the -- and, unfortunately, there's an
14 appellate case called Abney, which was my case on
15 appeal -- that's the case where Judge Few
16 dissented and Judge Pleicones, kind of, in detail
17 explained the lesser -- the new what is now a
18 lesser included.

19 The -- but if the State introduced
20 evidence of two prior convictions that -- I felt
21 were beyond a reasonable doubt that the Court
22 could only find 2nd or none, I wouldn't argue
23 lesser includeds of 2nd and 3rd. But I understand
24 that they are mandated, if there's any evidence in
25 there.

1 But the -- but I understand how the Court
2 is going to bifurcate the issue. It's domestic
3 violence in general or assault and battery 3rd
4 degree. If it's assault and battery 3rd degree,
5 the case is over with that verdict. If there's a
6 guilty verdict of domestic violence, then it goes
7 -- then we argue about degrees of domestic
8 violence.

9 I guess we'll we have to wait to see what
10 the State introduces, but I understand where the
11 Court is.

12 Just the -- legally, I don't think the
13 Court is compelled to argue the two lesser
14 included offenses if the offense can only be the
15 greater offense.

16 THE COURT: I agree.

17 MR. VERNER: But I guess I'll just ask to
18 cross that bridge.

19 But if the Court is inclined to do it
20 that way, then I would certainly ask the Court to
21 go with it. Obviously, my client is preferred by
22 the way the Court sees it currently. There's,
23 possibly, a greater danger of conviction. But I
24 don't see how a jury could find him not guilty of
25 1st degree if the State -- if they found him

1 guilty of domestic violence and the State
2 introduced the uncontested prior convictions.

3 I understand, the one or more language is
4 ambiguous.

5 THE COURT: It's not one or more. It's
6 just one.

7 MR. VERNER: Oh, it's just one?

8 THE COURT: That's what I was -- that's
9 why I went back and pulled the statute.

10 MR. VERNER: I apologize.

11 THE COURT: Because it would make sense
12 if he said one or more, because then you got two
13 you two or more, which completely cuts out DV 2nd.

14 MR. VERNER: One or more would be bad
15 language, which I can argue is more than one.

16 But, the -- I don't -- as an officer of
17 the court, I don't know if the State needs to
18 introduce the prior convictions in an uncontested
19 matter, if the Court includes lesser included
20 without there being something contested in the
21 record.

22 THE COURT: I'll listen to how you handle
23 it tomorrow and I'll make a decision on it.

24 MR. VERNER: But it certainly would be my
25 client's preference for the lesser included to be

1 all addressed. I would ask that assault and
2 battery would be on the second verdict too.

3 THE COURT: I don't think assault and
4 battery needs to be on the second if it's already
5 on the first.

6 MR. VERNER: I agree that it would be
7 redundant. So I understand where the Court is on
8 that, Judge. I think it's possible that the
9 State -- that the second verdict would have just
10 domestic violence 1st or not guilty.

11 THE COURT: Or second.

12 MR. VERNER: But I can also understand
13 how it could be both elements or all three of
14 them, so all three lesser included.

15 THE COURT: I don't think you need all
16 three lesser includeds on the second verdict form
17 because the first verdict form satisfies domestic
18 violence 3rd degree.

19 MR. DANIEL: They've already convicted on
20 that.

21 MR. VERNER: I agree, Judge.

22 MR. DANIEL: If he won lesser on the
23 second phase.

24 THE COURT: Yes, one lesser.

25 MR. VERNER: But I hadn't -- he said that

1 together.

2 THE COURT: Because DV --

3 MR. VERNER: Is 3rd.

4 THE COURT: 1st, 2nd, and 3rd is the same
5 definition of Subsection A.

6 MR. SCOTT: Correct.

7 MR. VERNER: I agree. I think that might
8 be need to be explained to the jury that, if you
9 find him guilty of domestic violence -- there
10 wouldn't be a form for not guilty on the 2nd
11 phase. Either 1st or 2nd.

12 THE COURT: Right.

13 MR. VERNER: But it would have to be
14 explained that you already found him guilty of
15 domestic violence 3rd third, but that's only --

16 THE COURT: You already found him guilty
17 of domestic violence.

18 MR. VERNER: Without -- I think we can
19 work with language. I'm belaboring that point.

20 MR. SCOTT: While we're all here, I think
21 we can proffer some testify from Investigator
22 Bentley and just make a motion to, possibly,
23 even -- what we view as a scrivener's error, we
24 can take testimony from him, he can subject to
25 cross-examination, but I think we found the root

1 of the -- what I'll call a clerical error on the
2 sentencing sheet.

3 THE COURT: However you want to do it.
4 We can prefer it now or wait until tomorrow.

5 MR. SCOTT: It's three o'clock. We can
6 go ahead and knock it out now. That way, less to
7 do while the jury is waiting.

8 THE COURT: He's still going to have to
9 testify tomorrow. He's going to have to be the
10 one to explain to the jury as to discrepancy in
11 the --

12 MR. DANIEL: Well, Your Honor, his
13 testimony will be contingent upon them finding him
14 guilty to phase one.

15 MR. VERNER: Correct.

16 THE COURT: Yeah. I mean, I'll hear him
17 if you want to. I just don't know the necessity
18 of him having to explain to me --

19 MR. VERNER: We prefer it be tomorrow.

20 THE COURT: Okay. It doesn't make -- I
21 mean, I'll hear it right now, if he wants to get
22 up here and you all will put him up. I mean, it
23 doesn't matter to me. I'm going to let you put
24 him up provided they find him guilty on the DV,
25 and then he can explain it at that point.

1 I'm not -- if there was an issue of
2 defense counsel objecting to his testimony at all,
3 before the jury then I'd say, yeah, let's proffer
4 it and let me hear what his testimony is, and then
5 I'll make a ruling as to whether or not he will
6 testify on that.

7 MR. SCOTT: A portion of it, we'll
8 probably showing booking photo of him that may be
9 not the most flattering picture that I would
10 hope -- -- thank you, Your Honor.

11 THE COURT: If you want to put him up and
12 see if there's any objection to his testimony, if
13 you have a concern about defense counsel
14 challenging any of that --

15 MR. SCOTT: Well, that was --

16 MR. VERNER: I don't foresee that
17 happening, as far as the booking.

18 MR. SCOTT: Thank you, Your Honor. We
19 wait until tomorrow.

20 THE COURT: All right. Let me hear from
21 you, Mr. Verner, on this directed verdict the
22 issue pertaining to household member.

23 MR. VERNER: Fine. Thank you, Judge. We
24 ask for a directed verdict. We understand the
25 State's case is still open. I do not the State

1 has proven beyond a reasonable doubt -- or,
2 actually --

3 THE COURT: Have they presented any
4 direct or substantial circumstantial evidence
5 reasonably tending to prove that she is a
6 household member?

7 MR. VERNER: I understand that they
8 offered some evidence that in the past she has, on
9 her driver's license, indicated that her address
10 is [REDACTED] Floyd Street, which he certainly -- there's
11 evidence that he was living at [REDACTED] based on the
12 police reports, that the police testified to.

13 The lady also testified, Judge --

14 THE COURT: Which lady?

15 MR. VERNER: The complaining victim, Miss
16 Latorya Morris.

17 THE COURT: All right.

18 MR. VERNER: Testified that she did not
19 believe that she would have lived there. She
20 testified that her cohabitation there, at best,
21 was incidental, that she stayed on the couch from
22 time to time when she was homeless because they
23 would let her come over to the house. She never
24 testified that there was any regular or continuous
25 cohabitation. Cohabitation, obviously, means

1 living with someone by code. Habitation -- and
2 I'll get this, but -- I'll pass it up but,
3 Black's Dictionary defines -- and I looked through
4 the code to try to find whether South Carolina
5 Appellate Courts have clearly identified
6 cohabitation, because I indicated in the chamber
7 that the family for alimony and some other type
8 issues would require a 90-day cohabitation,
9 continuous extended cohabitation.

10 The lady testified that she may have
11 spent there a night, but she indicated, I believe,
12 that she never spent there more than one night and
13 that it was occasional.

14 Again, Black's Dictionary, and I will
15 make this a Court's exhibit where it defines
16 cohabitation as living together, living together
17 as husband and wife. Cohabitation means having
18 the same habitation not a sojourn. A habit of
19 visiting -- and not a habit of visiting or
20 remaining for a time, my paren though would be,
21 such as a hotel room or I'll go regularly to my
22 mother's house. There must be something more than
23 a mere mauritius intercourse. The Black's
24 Dictionary defines cohabitation as the right to
25 remain in a house without prejudice to property,

1 which means that you got access to the property.
2 You don't live in a place until you got unfettered
3 access to the personal property. You've got a
4 right to the refrigerator, you got a right to take
5 things, you got a right to leave your things
6 there, but -- as opposed to the use of right,
7 which is staying at a hotel or staying as a guest
8 of somebody where you don't have a right of
9 control over the location.

10 Judge, I would note -- and this is from
11 the petition for rehearing in the State v. Doe
12 case. The Doe case is the recent case where
13 Supreme Court of the State has found where the
14 domestic violence applies to same-sex couples.

15 In the Attorney General's petition for a
16 rehearing, the Attorney General's Office kind of
17 explains in the brief how the legislature crafted
18 the 1994 changes to the law. The Attorney
19 General's Office explains that as far as the issue
20 of cohabitation, the act initially required one
21 year, that the draft law bill had a one-year
22 cohabitation requirement. But the legislatures
23 believed that that could cover roommates and not
24 the heart of the problem which was the male and
25 female having children together, and so they

1 edited out the one-year requirement and put in the
2 words -- the initial 1994 act, male and female,
3 which, of course, the Doe case then struck out and
4 said that's unconstitutional.

5 And that other states -- at the same
6 time, the legislature intended it to be people
7 living to thing for an extended period of time in
8 the male and female or family-type environment,
9 cohabitation in other states, such as Kentucky,
10 requires children to be with you. South Carolina
11 considered that and struck out the requirement of
12 children. Here's the direct language, apparently:
13 "The initial compromises the strength of full
14 protection for cohabiting couples and provides
15 deduction for protective domestic abuse only to
16 those who cohabitated for at least a year," and
17 then they did the exhibit of the bills.

18 There's no evidence other than lady who
19 said, I stayed there from time to time in the
20 house, and this is just, in my opinion, clearly
21 not cohabitation. She testified that even though
22 she had the address there, it would be the same as
23 me using my parents' address for mailing purposes.
24 She testified she's traditionally homeless. She
25 established a residence to obtain correspondence,

1 just like a college student would use his parents'
2 address.

3 And, actually, on the date that this
4 incident happened, she clearly identified that she
5 was living on Fair Street and had for several
6 months. I think she testified I had been living
7 on Fair Street with two people for three or four
8 months.

9 It's suspicious, but I think, as the
10 Court considers, mere suspicion does not reach the
11 level of even reaching to the jury. It has to be
12 beyond a reasonable doubt that they cohabitated.
13 And they're witness testified I only stayed there
14 from time to time. When she would let me, I had
15 to stay on the chair. So I don't think the State
16 has proven cohabitation, which is really the heart
17 of the domestic violence.

18 THE COURT: All right.

19 MR. VERNER: Household member is the
20 heart of the statute.

21 THE COURT: Mr. Scott, Mr. Daniel?

22 MR. SCOTT: Thank you, Your Honor. In
23 the light most favorable to the State, as
24 Mr. Verner conceded, the purpose of the bill was
25 to root out a lot of this domestic violence that's

1 male on female domestic relationship-type
2 violence. We heard the testimony from
3 Kenya Hunter. She said that she knew
4 Miss Morris, the victim, to stay with Tina. I
5 asked Tina who? Tina Hunter. I asked who is Tina
6 Hunter? That is the defendant's sister. She
7 lives at [REDACTED] Floyd Street. She identified it in
8 the picture. Kenya Hunter, that is.

9 Thereafter, we had the victim testify to
10 being in on again, off again sexual relationships
11 with the defendant. Referred to her -- referred
12 to him, rather, as her boyfriend in the 911 call.
13 And then she did indicate that she stayed at that
14 house at [REDACTED] Floyd Street. And when she was over
15 there, she and the defendant would sleep in the
16 same room. Cohabitate, live under the same roof
17 together.

18 The statute does not indicate how long
19 you must cohabit with one another.
20 Certainly -- I think the legislature again is --
21 that's the difference, again, from A&B. These are
22 not strangers or acquaintances. This is boyfriend
23 and girlfriend who engaged in a sexual
24 relationship for some time.

25 My Black's Law dictionary which is hard

1 bound, right here for Your Honor to see, "The fact or
2 state of living together with the suggestion of sexual
3 relations."

4 I think noteworthy, Your Honor, is, you
5 don't typically see somebody making a trip to the
6 DMV to register an address as their residence if
7 they don't have the idea of spending some time
8 there, some significant amount of time.
9 Typically, that involves living under that roof
10 for some period of time. Where she lived at the
11 incident -- or at the time of this incident is
12 largely inconsequential since the statute says
13 cohabitante or have cohabitated.

14 The evidence presented most favorable to
15 the State is that they had, a some point,
16 cohabitated together. Her testimony was, she
17 lived at that Floyd Street -- or rather had that
18 listed as her residence at the DMV for a year. We
19 think, again, that there was significant evidence
20 that shows she was a cohabitant. Thank you.

21 THE COURT: All right. I went back
22 before we reconvened after lunch and had my court
23 reporter pull up the testimony of Miss Morris. I
24 specifically noted in her testimony, one, that the
25 defendant was living at the Floyd Street address;

1 and, two, the question about her license. Her
2 license indicated that that was her address. That
3 was the question about her license or
4 identification indicating that was her address.
5 And her response to that question was, "That's the
6 address where I live." That was her response.
7 That is in the record.

8 The testimony also was, from June until
9 November of '18, that's where she stayed. She
10 testified.

11 Don't shake your head at me,
12 Mr. Davenport. I read the transcript.

13 MR. DAVENPORT: Yes, sir.

14 THE COURT: Reviewing that, in and off
15 itself in the light most favorable to the State,
16 the Court is respectfully denying your motion as
17 to that issue of cohabitation and household
18 member. Certainly, your motion, objection, and
19 argument is noted for the record.

20 All right. Now, what I'm going to do at
21 this point, Mr. Davenport if you would stand,
22 please, sir. Mr. Davenport, we're about to reach
23 the stage -- or we will reach the stage first
24 thing in the morning of your right to present a
25 defense in this case. I'm going to go over some

1 things with you here. I'm going to remind you
2 that you are still under oath. Okay?

3 MR. DAVENPORT: Yes, sir.

4 THE COURT: We're about to reach the
5 stage of the trial where you may present a
6 defense. You have the right to claim the
7 protections given to you by the Fifth Amendment to
8 the Constitution of the United States, which
9 states in part that, "No person shall be compelled
10 in any criminal case to be a witness against
11 himself." This means that you cannot be required
12 to testify in this case. You have the right to
13 testify on your own behalf. However, no one can
14 make you testify. This is a personal right and no
15 one can waive this right except you.

16 Now, if you decide to testify, you will
17 be subject to the same rules that govern other
18 witnesses and you may be examined and
19 cross-examined on any relevant issues in this
20 case.

21 In addition, if you have any convictions
22 involving dishonesty or false statement or crimes
23 punishable by imprisonment for more than a year
24 and this Court determines that's the probative
25 value of admitting this evidence outweighs it's

1 prejudicial effect to you, the prosecutor will be
2 able to introduce your record to attack your
3 credibility.

4 Now, if you decide to testify, the
5 decision on your part must be freely voluntarily
6 and intelligently made with the knowledge of the
7 protections given to you by the Fifth Amendment
8 and the consequences of your decision to testify.

9 If you decide not to testify, I will
10 instruct the jury that they cannot give the fact
11 that you did not testify any consideration
12 whatsoever, and that there is to be absolutely no
13 prejudice to you because you did not testify. It
14 is left entirely up to you whether or not you
15 testify. You may talk with your attorney, your
16 family, your friends, or anyone else, but the
17 final decision will be left entirely up to you.

18 Now, do you understand what I've
19 explained to you?

20 MR. DAVENPORT: Yes, sir.

21 THE COURT: Do you have any questions
22 about what I've explained to you?

23 MR. DAVENPORT: No, sir.

24 THE COURT: Have you discussed with your
25 attorney whether or not you should testify.

1 MR. DAVENPORT: Not yet.

2 THE COURT: What I'm going to do is, I'm
3 going to give you the overnight to talk with your
4 lawyer. When we reconvene in the morning, I will
5 expect an answer from you. Do you understand?

6 MR. DAVENPORT: Yes, sir.

7 THE COURT: All right. You may be
8 seated.

9 So what we will do in the morning when we
10 reconvene is, I will get an answer from
11 Mr. Davenport concerning whether or not he is
12 going to testify. If he does not, after you all
13 have rested, the defendant will move or redo his
14 motion. I'll recognize defense counsel, if he
15 rests and then renews his motions. And we will go
16 right into your argument on this issue as it
17 pertains to A(1) of the domestic violence statute.

18 Then I will charge the jury, after
19 defense counsel argues, because defense counsel
20 puts up nothing on that. He would get last
21 argument anyway. I will charge the jury on
22 domestic violence, which includes Subsection A,
23 physical harm or injury to a person's own
24 household member. We'll define what a household
25 member is under the statute. I will charge them

1 on A&B 3rd. Okay? The verdict form will be given
2 to them to decide those issues.

3 If they determine that you all, the
4 State, has proven guilt beyond a reasonable doubt
5 as to physical harm to a person's own household
6 member, at that point, the State will recognized
7 and you can begin to put up evidence of these
8 prior convictions. All right?

9 Cross-examine as to such to the extent
10 you deem necessary. Once you put that up, you can
11 rest again to ensure that your client's interest
12 are protected, you need to renew all your motions
13 for directed verdict. All right? I don't know if
14 you intend to put anything up in as defense to
15 those issues, but I will give you opportunity
16 to.

17 MR. VERNER: And I don't mean to
18 interrupt, but tentatively, Judge,
19 scheduling-wise, I don't intend to call him as a
20 witness, but we haven't made a final -- we still
21 reserve that right, but just, procedurally, I
22 anticipate the case going the way the Court has
23 outlined it right now.

24 THE COURT: All right. I'm, kind of,
25 giving you a sketch. It's not one written in

1 stone. That sketch is based upon what I think may
2 happen. Okay?

3 If you don't put anything up, as it
4 relates to the prior convictions, other than your
5 cross examination, you rest after the State rests
6 on that issue. I don't know if you all want to
7 argue anything to the jury or not, but I will give
8 you that opportunity. First the State, again
9 followed by defense counsel. And I will simply
10 tell the jury that my prior charge to them is
11 still in place, but I will charge them that the
12 State has to prove beyond a reasonable doubt these
13 lesser includes. I'll give it back to them to
14 make a decision on that. Does that sound --

15 MR. SCOTT: I understand, Your Honor.

16 MR. VERNER: I understand, Judge.

17 THE COURT: We're clear.

18 MR. SCOTT: I am going to make another
19 request, Your Honor.

20 THE COURT: Okay.

21 MR. SCOTT: I don't make this lightly,
22 and, Mr. Verner, I hope would agree with it, I
23 have number of reasons to make this request. I am
24 going to ask that the defendant be held at the
25 detention center tonight. I watched the defendant

1 leave yesterday and follow the victim up the road
2 to Main Street. I will note, and Your Honor will
3 note, that the defendant was not present when he
4 was supposed to be here this morning when the jury
5 arrived. I fear that there will be possible
6 retaliation, to some degree intimidation of the
7 victim in this case. I have reason to believe
8 it's been ongoing up to point we're here today.

9 Again, I almost never make this request,
10 but I am making this request that he be held in
11 detention. It will be one night. We all fully
12 expect this case to be done tomorrow. I want to
13 ensure he is present, but also give me some time
14 to talk with her and let her know what going on.
15 Because the last she heard, I pretty much told her
16 this case will be resolved today, and she, kind
17 of, went on her way this afternoon.

18 And then, of course, we're moving it into
19 tomorrow now, which I need to, kind of, get her on
20 board with that.

21 That is a request I'm making, Your Honor.
22 Just for one night he be held in detention.

23 THE COURT: Mr. Verner?

24 MR. VERNER: Yes. In fairness, I will
25 say, it is very rare that the State does ask for

1 that, and I respect that.

2 On the other hand, Judge, this case was
3 from October 2018. He has always presented to
4 court. She withdrew the no contact order from his
5 bond. She had to go to court to get that
6 withdrawn voluntarily, and she did that. They
7 have come together to the Court this week. They
8 are still in a relationship. She's never
9 expressed, to my knowledge, fear or that he's
10 intimidating her. They have come together as a
11 couple this week, and he has always shown up for
12 court since October of 2018 on this charge. So
13 there is no reason for me to believe -- so, he
14 would like to go home tonight, Judge, and come
15 back on recognizance, as he always has. I
16 understand we're in the trial portion now.

17 But where she has voluntarily
18 relinquished the no contact order provision, I
19 don't think mere contact with her --

20 THE COURT: Well, this is what I'm going
21 to do: I am going to order that he detained
22 tonight. He be detained tonight. At this point,
23 Miss Morris has come in and testified against the
24 defendant. I don't want the potential or the risk
25 of there being some pressure or intimidation upon

1 this witness to come back and testify differently
2 tomorrow to what she may have testified today.

3 So what I'm going as to do: I'm going to
4 order that he be detained tonight and order that
5 he have absolutely no contact with any of these
6 witnesses that have testified here today. All
7 right?

8 Anything else from the State at this time?

9 MR. SCOTT: No, Your Honor. Not for
10 today.

11 THE COURT: Anything further, Mr. Verner?

12 MR. VERNER: No, Your Honor.

13 THE COURT: All right. 9:30 in the
14 morning.

15 (Court adjourned at 3:48 p.m.)

16

17

18

19

20

21

22

23

24

25

CERTIFICATE OF REPORTER

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

I, SHARON G. HARDOON, Official Circuit Court Reporter, II for the State of South Carolina at Large, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the proceedings had and evidence introduced in the trial of the captioned case, relative to appeal, in General Sessions for Newberry County, South Carolina.

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

April 25, 2020



Sharon G. Hardoon, CSR
Official Circuit Court Reporter, II

1 STATE OF SOUTH CAROLINA
2 IN THE GENERAL SESSIONS
3 COUNTY OF NEWBERRY

4 State of South Carolina,
5 Plaintiff,

6 vs. Transcript of Record
7 2019-GS-36-0086

8 John Henry Davenport, Jr.
9 Defendant.

10

11

12

January 23, 2020
Newberry, South Carolina
Volume III

13

B E F O R E:

14

The HONORABLE D. CRAIG BROWN

15

16

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

17

Dale Scott, Representing the State of South Carolina
18 Taylor Daniel, Representing the State of South
19 Carolina

20

Charles Verner, Representing the Defendant

21

22

23

24

SHARON G. HARDOON, CSR
Official Circuit Court Reporter, II

25

26

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

INDEX

Witness Name	Page	Line
Walter Bentley Examination By Mr. Scott	299	17
Certificate of Reporter	326	1

EXHIBITS

STATE EXH. 8, Conviction; 4/23/09	302	23
STATE EXH. 9, Conviction; 2/6/14	304	1

1 THE BAILIFF: All rise.

2 THE COURT: Thanks. Be seated, please.

3 Those of you that are seated out in the
4 audience, let me go over a couple things real
5 quick with you. We are in a trial right now, and
6 we're getting ready to do some arguments. I'm
7 going to give the charge on some law to the jury,
8 so I don't want people going in and out of the
9 courtroom while that's taking place. I don't want
10 the jury distracted in any way when that's taking
11 place.

12 Also, I don't think any of you are
13 allowed to bring cell phones in here. At least,
14 that's, kind of, the rule. That's supposed to be
15 the rule, I was told downstairs. If you have a
16 cell phone on you, make sure it's off. Because if
17 you have a cell phone and it's not off and it goes
18 off in here, it's going to be confiscated. You
19 could be held in contempt of court, which means a
20 fine or incarceration. So make sure they are
21 off.

22 Also, Mr. Lange, this gentleman back here
23 and this young lady over here, Miss Georgia, they
24 are bailiffs. Okay? They are here to aid and
25 assist me as we run court, so to speak. If they

1 ask you to do something, your answer should be
2 yes, sir, or yes, ma'am. Don't give them a hard
3 time. They are here to help me. If you give them
4 a hard time and they bring it to my attention and
5 I have to deal with it, there's a good chance
6 you're going to the Newberry County Detention
7 Center. All right? So, I just want to make that
8 clear and get it out there right now.

9 Can you all find Mr. Verner, please, and
10 get his client in the courtroom? Thank you very
11 much.

12 THE COURT: State ready to proceed?

13 MR. SCOTT: We are, Your Honor.

14 THE COURT: Defense ready?

15 MR. VERNER: We are, Your Honor.

16 THE COURT: Mr. Davenport, could you
17 stand up please, sir. I'll remind you -- I placed
18 you under oath yesterday. I'll remind you that
19 you are still under oath. Okay?

20 MR. DAVENPORT: Yes.

21 THE COURT: Now, before we broke
22 yesterday, I advised you of your certain
23 constitutional rights and asked you whether or not
24 you wished to testify in the trial of your case.
25 I told you this morning that I will give you

1 overnight to talk with your lawyer and whomever
2 you wanted to talk to, but the ultimate decision
3 and final decision would be yours as to whether or
4 not you wished to testify in the trial of this
5 case. As I said, I went over those rights with
6 you yesterday. Do I need to go over those rights
7 with you again today?

8 MR. DAVENPORT: No, sir.

9 THE COURT: Have you had an opportunity
10 to talk with your lawyer about whether or not you
11 should testify?

12 MR. DAVENPORT: Yes, sir.

13 THE COURT: Do you wish to testify in the
14 trial of your case?

15 MR. DAVENPORT: No, sir.

16 THE COURT: Very well. Anything further,
17 Mr. Verner?

18 MR. VERNER: No, Your Honor.

19 THE COURT: You may be seated. Thank
20 you, sir.

21 All right. State and defense counsel clear
22 on how we're going to proceed here this morning?

23 MR. SCOTT: Yes, sir. Before the jury
24 comes in, my understanding is I will rest. And
25 just outside the presence of the jury, I'm only

1 resting as it pertains to -- I guess the issues of
2 a DV -- the underlying elements of a DV 3rd.

3 However, I do reserve the right to present
4 evidence at the second stage of the trial.

5 THE COURT: Correct.

6 MR. SCOTT: As far as aggravating
7 factors.

8 THE COURT: Correct. Mr. Verner?

9 MR. VERNER: That is our working
10 understanding. Yes, sir.

11 THE COURT: Bring me the jury please,
12 ma'am.

13 As the jury is coming in, can the lawyers
14 approach, please?

15 (Bench conference off the record.)

16 (Jury enters the courtroom.)

17 THE COURT: Good morning. Mr. Foreman,
18 Ladies and Gentlemen of the jury, I hope you all
19 had a nice evening last night. I appreciate you
20 all being back here this morning when I asked you
21 to be here. We are, at this time, ready to
22 proceed with the trial. We were able to work
23 through what we needed to work through yesterday
24 afternoon, and I appreciate -- I appreciate you
25 all's patience, so to speak, with regards to that.

1 At this time, I'm going to recognize the
2 State. Mr. Scott.

3 MR. SCOTT: Thank you, Your Honor.

4 MR. SCOTT: Thank you. Ladies and
5 Gentlemen, may it please the Court, I'm Dale
6 Scott. I introduced myself to you guys during the
7 initial qualifications. I work in the solicitor's
8 office. It's my job to present cases to you just
9 as the evidence is given to us. And we do this by
10 showing you physical evidence. There's not a
11 whole lot in this case. We had some pictures.
12 You all got to hear some 911 recordings, but we
13 also presented evidence of people who were there,
14 the witnesses.

15 I've never been privy to any case I've
16 prosecuted, or I've never been a witness to any of
17 these cases I've prosecuted, so I have to
18 ascertain what the evidence is through the
19 witnesses and I present that to you guys. You
20 guys are the ultimate finder of fact. Okay?

21 I'm going to be brief, because this is a
22 fairly simple case. Not a lot of moving parts.
23 Sometimes we have these cases that last a week,
24 sometimes more. This was a day-long trial. Here
25 we are in the second day, but -- it's a domestic

1 violence case. This isn't a simple assault case.
2 That's going to be the thrust of my argument to
3 you at this time.

4 You know, we in the South, and South Carolina
5 in particular, we like to say that we put women on a
6 pedestal and we respect their rights. You teach a
7 little boy, you don't lay hands on a girl. You don't
8 rough house. A little boy does not to rough house
9 with his sister like he can do with little boys. We
10 do like to think respectfully. We put them on a
11 pedestal.

12 The reality is, in the South, South
13 Carolina specifically, we consistently rank at the
14 bottom, as far as -- statistically speaking, for
15 violence against women.

16 MR. VERNER: Your Honor, one, that's
17 evidence that's not in the record. And, two, that
18 would be an appeal to consider evidence outside
19 the record.

20 THE COURT: Can you all approach over
21 here, please?

22 (Bench conference off the record.)

23 THE COURT: With regards to the
24 objection, I sustain the objection.

25 Mr. Scott.

1 MR. SCOTT: Your Honor, just -- I
2 appreciate the Court bringing it to our attention.
3 We have not formally rested on the record.

4 At this time, the State has rested. The
5 State has produced all of the evidence that it
6 intends to produce as far as the elements of the
7 underlying domestic violence charge, Your Honor.

8 THE COURT: Mr. Verner.

9 MR. VERNER: Your Honor, I renew the
10 motion for directed motion I made yesterday
11 afternoon while the jury was out, and I'll
12 reincorporate that into a direct verdict motion.

13 THE COURT: All prior motions and
14 objections are hereby noted as renewed by defense
15 counsel. The Court's rulings as to each remain
16 the same.

17 At this time, defense counsel is
18 recognized.

19 MR. VERNER: Judge, if that's the State's
20 case, the defense is prepared to rest and argue
21 the case. Now, we would let the State argue the
22 case to the jury after we had a chance to rest our
23 case too.

24 THE COURT: Very well. At this time,
25 Ladies and Gentlemen, I'm going to recognize the

1 State in closing argument on the domestic violence
2 issue.

3 Mr. Scott.

4 MR. VERNER: And just to preserve the
5 record, I'm required to renew my directed verdict
6 motion after the close of my case too.

7 THE COURT: Again, so noted for the
8 record, the Court's rulings will remain the same
9 as to each.

10 Mr. Scott, you are recognized.

11 MR. SCOTT: Thank you, Your Honor.

12 So I jumped the gun a little bit there.

13 As I was saying, though, you heard the
14 case. It's a domestic violence case. Okay?

15 In South Carolina, we have specific laws
16 carved out for situations where there's domestic
17 partners involved.

18 In other words, if go outside and Taylor,
19 my co-counsel, and I get in a fight in the parking
20 lot and I hit me in the face or he hits me in the
21 fact, that's simple assault and battery. Okay?

22 We have had to carve out a whole section
23 of the criminal law just to deal with domestic
24 violence due to the nature of it.

25 We all know that domestic relationships

1 and domestic cases have a different element.
2 There's emotion. There's a personal history
3 between the two parties. Sometimes they've had
4 children together, sometimes they are married,
5 sometimes they've been married, sometimes they
6 live together, sometimes they used to live
7 together. There is a different nature that
8 involves two parties that were once a couple, or
9 who are now a couple. These are some of the most
10 explosive-type calls that an officer can go to
11 just because of that passion that is either still
12 there or used to be there, that emotion.

13 So that's why this case is not a simple
14 assault and battery. You heard the evidence.
15 Miss Morris and Mr. Davenport they were on-again
16 off-again boyfriend, girlfriend. They were
17 involved in an intimate relationship for some
18 years. I think she gave the date of maybe 2015
19 when she first met him. So this is an on-going
20 four-year relationship, intimate relationship.
21 They lived together on and off at that [REDACTED] Floyd
22 Street address. Okay? So this is a domestic
23 case. This isn't a simple assault and battery.
24 This isn't a bar fight. This is an assault
25 between somebody who used to claim that he loved

1 Miss Morris and he cared for her.

2 But, on these particular occasions that
3 we're here to talk about today, he was laying
4 hands on her hitting her like a man. You heard
5 Miss Hunter, the eyewitness. Hitting her like a
6 man.

7 The evidence was October 17, 2018 about
8 8:00 p.m., Latorya Morris calls 911. You guys
9 heard that. She's at a [REDACTED] Brantley Street
10 address. She said that her boyfriend had jumped
11 on her and then he left in a red car.

12 Yolanda, used to be Mendenhall, Yolanda
13 Wood, you all heard the female officer yesterday,
14 she showed up and took the report, thought enough
15 of it to pay out of her own pocket -- the officer
16 did -- paid out of her own pocket to get this
17 woman, Latorya Morris, a cab ride away from that
18 scene so she could seek safety at another
19 location, to get away from Mr. Davenport. She
20 chose to go to Latorya Hunter's house.

21 But, see, you know, that's not enough.
22 Mr. Davenport -- again, this is a domestic-type
23 thing. You know, if he and I get in a fight in
24 the parking lot, he's not chasing me down to my
25 house to reengage later. This is a different

1 animal, these domestic cases. There's passion.
2 There's emotion.

3 He followed her to Miss Hunter's house.
4 That's when you get this call about 12:23 a.m.
5 later the night at [REDACTED] Taylor Street,
6 Kenyata Hunter's house. Kenyata is pregnant and
7 doesn't need this. She doesn't need Mr. Davenport
8 to come into her house and beating the crap out of
9 Latorya Morris in her living room. She calls 911
10 and reports it.

11 You all heard that too. You heard an
12 independent eyewitness. This is Kenyata Hunter.
13 Kenyata Hunter is the cousin of Mr. Davenport.
14 She doesn't have any reason to make this up. This
15 is relevant. She's tired. She's tired of him
16 behaving this way towards women. Doing it in her
17 own house. Punching her in the head. Hitting her
18 like a man. That was Kenyata Hunter's
19 description.

20 What she means is, he wasn't holding
21 back. You know, he wasn't -- I don't know how you
22 hit a woman, but he wasn't treating her like a
23 woman. He was hitting her like a man. Like she
24 wasn't equal to him. You guys saw her yesterday.
25 You can make your own judgement. Part of being a

1 juror is to look at the witnesses, determine
2 credibility, but also see how they present
3 themselves.

4 The feeling that I get when you saw
5 Miss Morris testify, that was a broken beaten
6 woman. Did you see her leg from here going
7 50 miles a minute? She couldn't hold it still.
8 She was scared in this courtroom amongst all of
9 us, amongst armed deputies in the presence of the
10 defendant. That's what domestic violence is. You
11 don't just control them physically. You don't
12 just physically assault and abuse them. You get
13 up here. You get in their head. Okay? It's
14 emotional control, too.

15 I submit to you, this was a domestic
16 violence. First of all, defense is going to say
17 it didn't happen, period. And then they're going
18 to say, well, if it did, it was just a simple
19 assault. It's not. I'm here to tell you that is
20 domestic violence. It's not two people who are
21 acquaintances. Two people who meet every once in
22 a while as friends. These are lovers, former
23 lovers.

24 The law says that a household member for
25 domestic violence we must prove that the defendant

1 caused physical harm or injury to a member of the
2 defendant's own household. What's a household
3 member? As I said earlier, it could be a spouse,
4 a former spouse, a person with whom the defendant
5 has a child in common with, or a person of the
6 opposite sex with whom the defendant is living
7 with or has lived with in the past.

8 The evidence shows they lived at that
9 █████ Floyd Street home together. She even had her
10 driver's license, her ID card listed with that
11 address for over a year. She testified to it.
12 She testified she lived there. It wasn't a
13 traditional home that you and I may understand it.
14 Miss Morris stayed at a number of places.
15 Miss Kenyata Hunter said that -- as Kenyata Hunter
16 also said that that █████ Floyd Street was a place
17 she stayed. She testified she lived there. Her
18 ID showed she lived there.

19 Let me tell you what assault and battery
20 in the 3rd degree is. That's a lesser included
21 charge that you will consider. You'll get to
22 consider this. I'm telling you the correct charge
23 is the domestic violence charge.

24 Here's all the assault and battery charge
25 is: If the person unlawfully injures another

1 person. I'm here to tell you Latorya Morris
2 wasn't just another person to Mr. Davenport. This
3 is his on-again off-again girlfriend. It was
4 someone he shared a home with from time to time,
5 someone he had an intimate relationship with.
6 They referred to each other as boyfriend,
7 girlfriend. Okay?

8 This case is a little different. Most of
9 the DV cases we have -- because these things are
10 done behind closed doors. They aren't typically
11 done in public. From time to time, you see it.
12 That's rare. But these are things done in the
13 dark. These are things done in secret.

14 Again, we have an eyewitness here who
15 watched Mr. Davenport come on that poor broken
16 women. Okay? She had to go to the hospital later
17 that night. That's the case.

18 I've got to prove this case to you beyond
19 a reasonable doubt. All that means is -- I think
20 the best way that I can describe it, and the Judge
21 will tell you this, you must be firmly convinced
22 it happened. Okay? That's all it is. That
23 you're firmly convinced that he did injure her.
24 He did do these things. He hit her in the head,
25 hit her in the back. She claimed her stomach was

1 hurting after this whole ordeal. And you need to
2 find they were household members. I submit to you
3 they were.

4 I submit to you again, this is not a
5 simple assault and battery case. This is a
6 domestic violence case. I'm going to ask at the
7 end of this to find him guilty of this domestic
8 violence charge.

9 Thank you.

10 THE COURT: Mr. Verner.

11 MR. VERNER: May it please the Court,
12 Your Honor?

13 THE COURT: Yes, sir.

14 MR. VERNER: Mr. Foreman, members of the
15 jury, I'll go ahead and start off, I'm not saying
16 it didn't happened. John Henry isn't saying it
17 didn't happen. Nobody is -- that's not part of
18 our defense at all.

19 Our defense is entirely -- I want the
20 State to prove the case as it's written by the
21 statute. These are criminal penalties, criminal
22 punishments for specific crimes. I stand for the
23 proposition that when the state brings charges
24 against somebody, they ought to be able to prove
25 all of the elements of the crime.

1 I think there was an assault there. It's
2 clear to me. I don't know how you can find that
3 there wasn't an assault.

4 The problem is, in this case, this
5 particular case, the State has brought charges
6 under a separate statute, the domestic violence
7 statute of South Carolina, and that's where we
8 part ways. And I don't -- I'm very fond, and I've
9 got a lot of respect for my colleagues on the
10 prosecutor's staff, but to some extent, when I was
11 listening to his closing argument like you, he's
12 selling a car to some extent. I know he doesn't
13 have any dog in the fight in terms profit, motive,
14 or any reason to mislead you, but when he's making
15 his case, he's absolutely selling a car.

16 All of his arguments to you weren't --
17 none of those were about the elements of the
18 crime. They were all emotional pitches like he's
19 selling a car. This is a beauty. You will be the
20 apple of all your friends' eyes that this car will
21 just make you feel like a king and he's not
22 talking about the actual elements of the crime.
23 He's not saying how fast this car goes. He's not
24 saying what the speed -- the gas mileage of the
25 car. He's not telling you how many people can fit

1 in the car. He's using phrases like, domestic
2 violence is a crime of emotional control. That's
3 not an element of the charge.

4 Domestic violence is designed to protect
5 women in long-term relationships who cannot get
6 out and who go home and get beat on a regular
7 basis. They can't get out and they are trapped.
8 And that the whole -- it's got different --
9 entirely different dynamics to it.

10 The assault and battery is when you
11 violently beat somebody up. It's not a simple
12 assault and battery case. Assault and battery is
13 when you violently beat somebody up. And the
14 assault statutes have different degrees based on
15 the damage that you do.

16 Well, they don't have any medical
17 testimony or anything. No pictures, no medical,
18 no doctor records to show serious injury or use of
19 a weapon. This is an assault and battery 3rd
20 degree by law. I mean, that is clear. I can't
21 get around that. If there were deadly weapons, or
22 if there were broken bones, or life-threatening
23 injuries or surgery, we would be talking about
24 different degrees of assault and battery. But the
25 traditional fist fight is an assault and battery

1 by law in South Carolina. Man or woman. It
2 doesn't matter.

3 The -- and I don't have the technology of
4 the State. This is the element -- this is what
5 we're arguing about, and this is my sole
6 contention in this case for domestic violence,
7 domestic violence requires the victim to be the
8 household member.

9 Now, the legislature, sometimes when they
10 use phrases, they will specifically define what
11 these phrases mean. They will say, you know, word
12 for word, what does this mean when we're talking
13 about it. But for the vast majority of the words,
14 when the legislature writes laws, it is intended
15 to be the common understanding of what words mean.
16 The 12 of you have to use your common sense and
17 decide what words mean in the law. The laws
18 aren't written in Latin. They're written so that
19 we all understand what the rules are.

20 This is the only definition of household
21 member that the domestic violence statute gives.
22 It has to be your spouse. Well, we know that
23 they're not spouses. They're not husband and
24 wife. The State has never argued that. We know
25 it's not your wife or husband.

1 It has to be your ex-wife; ex-wife,
2 ex-husband. Again, the -- if I can, the State has
3 never argued they're married. The State's never
4 argued that they've ever been married.

5 The third element is they have to have
6 children in common. Not stepfather, or -- well, I
7 mean, step-father, presumably. We'll get to that
8 in a second. It might be a spouse. But they
9 can't be, she's got children from somebody else
10 that I'm fond of, like my ex-girlfriend, they have
11 to have children in common because that traps the
12 woman with him. They don't have children in
13 common, or you would have heard testimony.

14 And all of these are very simple. It's
15 your wife, it's your ex-wife, or it's a woman you
16 have children in common with, or it's a man and
17 woman who are cohabitating or formerly
18 cohabitating.

19 And the problem is, what does cohabitante
20 mean? There's no definition for that other than
21 just the common English. You'd have to go through
22 the dictionary if you want to find out what that
23 means.

24 South Carolina, unlike a lot of states --
25 and I'm not -- we also have common law marriages

1 where you never were married but you lived
2 together a long period of time. You hold yourself
3 out as a married couple, but you never went to the
4 church, you never got married, you never went to
5 the probate court and got the license. And you
6 might not have a child in common together, but
7 you've been with them for a long time. In South
8 Carolina, we still recognize common law marriages
9 to protect the woman. They've been married for
10 30 years, he leaves her, everybody considered
11 their marriage, and then he's just going to say
12 she's a girlfriend, she's entitled to nothing.
13 Well, in South Carolina, we protect common law
14 marriages.

15 But, if this legislature wanted to use
16 common law marriage, they could have used common
17 law marriage. They didn't. But cohabi -- but
18 that -- but I'll submit to you that's what they
19 have in mind. It makes no sense to argue, as the
20 State would, that -- the legislature specifically
21 says the victim has to be your wife, your ex-wife,
22 a woman you have in common with. Somebody who
23 just spent the weekend with you, that's what we
24 have here. We don't have a common law situation.
25 We don't have anything close to a common law

1 situation, and they don't have to prove a common
2 law marriage.

3 But they do have to prove some kind of
4 cohabitation, that is that they live together.
5 That she is in a relationship in my home. We have
6 property rights together. We have cohabitation.

7 The Black's Law definition is the -- it
8 means that you live together for a period of time.
9 It's not just sojourning with anybody here. And
10 I'm married and this doesn't apply to me. But if
11 some younger dude in Newberry has a girlfriend who
12 spends the night with him, would anybody in
13 Newberry say that they live together because she
14 spent the night with me at my house one night?
15 No. I mean, if I'm in my college dorm room and
16 somebody comes and spends the night with me, that
17 might be immoral and that might be a one-night
18 stand or fling, but nobody here would say that's
19 anything close to a spousal relationship.

20 Even if she comes on a regular basis.
21 She spends that -- you know, she works and then --
22 but she's got her own place and she spends the
23 weekend with me, there's no nobody in Newberry who
24 would say that's anywhere close to living
25 together. She spends the weekend with me, or she

1 spends the night with me, she comes over often
2 enough where she leaves, like, an overnight bag at
3 my house, nobody here would say that she's got
4 property rights or that we are in a common law or
5 a cohabitative situation. They are boyfriend and
6 girlfriend and they sleep together. But there's
7 just nobody in 2020 South Carolina or America who
8 considers a boyfriend, girlfriend anywhere close
9 to a marital-type situation, even if she's having
10 sex and she's coming over to his place.

11 The only evidence that they've got of
12 cohabitation, that they're looking at it -- and
13 they're clearly boyfriend and girlfriend, but he's
14 also dating other people. And, as she said, she's
15 apparently dating other men. When this assault
16 happened, he was with his other girlfriend.

17 So, I mean, I submit that they've been,
18 either for jealousy reasons -- the assault just
19 didn't happen out of the blue. Something -- they
20 been jawing at each other, or it's been building.
21 But it just doesn't magically happen out of the
22 blue.

23 The only evidence -- the only evidence of
24 cohabitation is that -- you saw Miss Latorya
25 Morris testify. And I submit to you, did you

1 think that she was -- I think she was the one with
2 the black stocking cap. Did you all think for the
3 most part she was a truthful witness? I submit I
4 do. I think, for the most part, she appeared to
5 be testifying truthfully.

6 I think she said bad things about
7 John Henry. But if you think she was lying to
8 protect him, then you've got to factor that end.
9 If you think she was relatively truthful, as I do,
10 then you got to accept what she said.

11 She said that she has a history of
12 homelessness. She said that when she listed
13 [REDACTED] Floyd Street, which was his sister's house,
14 that she had no other place to list. Did she
15 sound like she was lying? She testified -- I
16 never spoke to her. I never gave her legal advice
17 on what she could testify to help out the
18 John Henry.

19 She came in out of the blue, and probably
20 a fairly low educational -- I'm sorry to say it,
21 but probably a fairly low education lady, came out
22 of the blue, and said, I had to list [REDACTED] for a
23 period of time to collect my mail because I no
24 other place to collect my mail. That's where my
25 boyfriend's sister lived and she was nice

1 enough -- I didn't have a bedroom there because
2 the lady has two sons and she made me -- and when
3 I did stay there, I had to stay in a chair in the
4 living room. If you think she was lying about
5 that, then that is certainly your privilege. If
6 you think that she was being honest, uncoached,
7 then that is her testimony. A woman who lets
8 somebody who doesn't have a permanent place to
9 stay on a chair in the living room, you think the
10 woman who owns that house considers the woman who
11 lives in the chair as having any property rights
12 to that house, any right to live there, you think
13 that the woman, Tina, didn't think that she had
14 the right of -- that she could say, no, you cannot
15 come and spend the night with me tonight, or you
16 got to get out of here, I guaranty you, Miss Tina,
17 who owns that house absolutely believed that.

18 Even if John -- even if the woman let's
19 her brother invite her girlfriend over from time
20 to time to her house and she spends a day or even
21 a weekend there, they are not living together. I
22 understand I'm banging the same drum, but that is
23 the -- that's the arrow and the quiver in this
24 case, is whether they are akin to a husband,
25 ex-husband, children in common, or a continuous

1 cohabitation case, and it's not even close.

2 In fact, I think Miss Morris was entitled
3 to be believed when she said I had use that as her
4 address, the [REDACTED], to collect mail. As
5 Officer Williams testified to, when they actually
6 interviewed her on October of '18, she told the
7 officers that she was living on Fair Avenue in
8 Apartment 4 with those two guys in Oakland, and
9 that she been there for about three or four
10 months. So she clearly wasn't using [REDACTED] as a
11 residence. If I am wrong, you will correct me.
12 And I'm sure that that is the crux.

13 I'm not trying to get a guilty client out
14 of a criminal charge. I am trying to get a guy
15 that we submit is not guilty of the statute he's
16 been charged with. I think he ought to be
17 sentenced appropriately. And, if that sounds like
18 I'm trying to get a guilty guy out of trouble,
19 then I understand that, because, you know, that is
20 my job, too.

21 But it just strikes me as very simple.
22 If you find that this is a situation where she is
23 in a long term or a continuation cohabitation
24 statute with the guy, you are obligated to find
25 John Henry guilty.

1 If you find that this is boyfriend,
2 girlfriend and that they are cohabitators, because
3 they are certainly not husband and wife, they're
4 certainly not ex-husband and wife, they certainly
5 don't have children together, so is this the
6 equivalent-type relationship that the domestic
7 violence laws need to come in for, it is your duty
8 to find him guilty.

9 If you think that there's not -- beyond a
10 reasonable doubt means, just basically, you have
11 to give any benefit of the doubt to John Henry.
12 And the Judge will tell you that there's no way to
13 define reasonable doubt to you other than just
14 words. The way that the law typically says is, if
15 you even hesitate for a second, the -- I'm not
16 sure if this water is burning or not, but I'm
17 going to go ahead and put my hand in it. But even
18 you think for just a second it might be too hot to
19 touch, the Judge will tell you that is the
20 hesitation to act, and that is what you have to
21 require. If you think about it for just a second,
22 well, maybe they don't live together, I'm not
23 completely sure, but they probably do, then I'll
24 tell you, under your oath, your duty is to find
25 him not guilty. It's that simple.

1 I mean, your oath -- and the way American
2 laws work is, he's entitled to the benefit of the
3 doubt. If the State wants to use the power of the
4 State to punish somebody, they better be able to
5 prove their case in spades, and they can't do that
6 in this case today.

7 Thank you.

8 THE COURT: All right. Ladies and
9 Gentlemen, I'm going to, at this time, give you
10 some law as it pertains to this case that the
11 constitution requires now that I charge you and
12 instruct you on the applicable law in this case.
13 It's your duty as jurors to accept and apply the
14 law as I will now state it to you. Furthermore,
15 it is your exclusive duty to decide all the issues
16 of fact in this case and to determine the effect,
17 value, and weight of the evidence. Both the State
18 and defendant have a right to expect that you will
19 carefully consider and evaluate the evidence and
20 apply the law of this case to it so that in the
21 end both the State of South Carolina and the
22 defendant will receive a fair and impartial trial.

23 I want you to understand, when I use the
24 word "defendant," I refer to
25 Mr. John H. Davenport, Jr. Furthermore, it is

1 important to understand that the State of South
2 Carolina charges the defendant under the
3 indictment with domestic violence in the 1st
4 degree.

5 The defendant is charged and the
6 defendant has entered a plea of not guilty. This
7 plea of not guilty places the burden of proof on
8 the State to prove the guilt of the defendant to
9 you, the jury, beyond a reasonable doubt.

10 I remind you that the fact that the
11 defendant was arrested, charged, and indicted in
12 this case is not evidence in this case and cannot
13 be considered by you as evidence of guilt in this
14 case, nor does it create any presumption or
15 inference of guilt. The indictment is simply a
16 formal written instrument which contains the
17 charge made against the defendant. It is the
18 formal document by which this case is brought into
19 this court.

20 Now, during the trial, Ladies and
21 Gentlemen, you and I had separate duties to
22 perform. As the trial judge, it's my
23 responsibility to preside over the trial of this
24 case and I also had the duty to rule upon the
25 admissibility of the evidence offered through the

1 process of this trial. In that regard, you are to
2 consider only the competent evidence before you.
3 You are to consider only the testimony which has
4 been presented from this witness stand together
5 with any evidence admitted into the record in this
6 case and any stipulations of counsel, if there
7 were any. Furthermore, I have the additional duty
8 to charge you on the applicable law in this case.
9 And, in that regard, I am the sole judge of the
10 law in this case. It is your duty to accept and
11 apply the law as I state to you.

12 If you have any preconceived ideas as to
13 what the law is or what the law ought to be and it
14 does not agree with what I tell you the law is,
15 you are obligated under your oath to abandon these
16 preconceptions because you are sworn to accept the
17 law precisely as I state it to you.

18 Ladies and Gentlemen, in this trial, you,
19 you are the sole and exclusive judge of the facts
20 and I am the judge of the law. Do not infer that
21 I have any opinion about the facts in this case
22 from anything that I said during the course of
23 this trial and ruling upon the admissibility of
24 evidence or otherwise, or from anything that I say
25 during the course of this charge to you. In this

1 regard, the law simply does not permit me to have
2 an opinion about the facts.

3 As jurors, it is your duty, your duty
4 alone to determine the effect, value and weight of
5 the evidence presented during the course of this
6 trial.

7 Now, in determining what the facts of
8 this case are, you must judge the credibility,
9 which simply means the believability of the
10 witnesses and the value of weight to be given to
11 their testimony. You alone must decide the force
12 and effect of the testimony.

13 Now, in making this decision, there are
14 many things that you may and should take into
15 consideration such as the appearance and manner of
16 the witness on the stand, the characteristic often
17 referred to as the demeanor of the witness. Was
18 the witness forthright or hesitant? Was the
19 witness's testimony consistent or did it contain
20 discrepancies? What was the ability of the
21 witness to know the facts about which he or she
22 testified? Did the witness have a cause or a
23 reason to be biased or prejudiced in favor of the
24 testimony that he or she gave? Was the testimony
25 of the witness corroborated or made stronger by

1 other testimony and evidence? Or, was it made
2 weaker or impeached by such other testimony and
3 evidence?

4 As jurors, please understand that you
5 have the right to believe a small portion of a
6 witness's testimony and discard the larger portion
7 or vice versa. You may believe all of the
8 witness's testimony or none. You may believe the
9 testimony of a single witness against that of many
10 witnesses or the other way around. In exercising
11 your mental processes and attempting to decide the
12 verdict, the law simply requires that you exercise
13 your good judgment, your common sense, your sense
14 of logic and reason, and your experiences in life.
15 You then apply these attributes to the evidence
16 and apply the law as I state it to you and, thus,
17 arrive at a verdict.

18 It's vital to understand, Ladies and
19 Gentlemen, that a defendant is presumed under the
20 law to be innocent of the crime from which he is
21 charged. A defendant has no obligation to prove
22 his innocence. It is a fundamental rule of our
23 law that a defendant, irrespective of the
24 seriousness of the charge against him, is always
25 presumed innocent of the crime for which he is

1 charged unless an until his guilt has been proven
2 by evidence that satisfies you the jury beyond a
3 reasonable doubt.

4 The presumption of innocence is not a
5 mere legal theory or a legal phrase. The
6 presumption of innocence is very important and you
7 need to understand this presumption accompanies a
8 defendant at the time of his arrest and appearance
9 in this court and continues with a defendant even
10 after you retire to the jury room to deliberate.

11 In other words, a defendant receives the
12 benefit of the presumption of innocence until the
13 very end of his trial when you, the jury, will
14 deliberate upon the evidence and decide whether
15 the State has proven guilt beyond a reasonable
16 doubt.

17 Now, what is a reasonable doubt in the
18 law? A reasonable doubt is the kind of doubt that
19 would cause a reasonable person to hesitate to
20 act. Proof beyond a reasonable doubt is proof
21 that leaves you firmly convinced of the
22 defendant's guilt.

23 Now, there are very few things in this
24 world that we know with absolute certainty. So
25 even in criminal cases, the law does require proof

1 that overcomes every possible doubt. If, based
2 upon your consideration of the evidence, you are
3 firmly convinced that a defendant is guilty of the
4 crime charged, you must find him guilty. If, on
5 the other hand, you think there is a real
6 possibility that he is not guilty you must give
7 him the benefit of the doubt and find him not
8 guilty.

9 Please understand that reasonable doubt
10 may arise from evidence which has been presented
11 in the case or from the lack of evidence in the
12 case. It is your responsibility to determine
13 whether or not reasonable doubt exists as to the
14 guilt of the defendant.

15 I charge you that the defendant is
16 entitled to every reasonable doubt arising in the
17 whole case. If upon any issues of fact essential
18 to conviction and a verdict of guilty you have a
19 reasonable doubt as to how that issue should be
20 resolved, it would be your duty to resolve that
21 reasonable doubt in favor of the defendant.

22 Again, it is important to understand that
23 a defendant is not required to prove his
24 innocence. Instead, the State is required by law
25 to prove every essential element of the offense

1 charged against the defendant by evidence which
2 satisfies you, the jury, of guilt beyond a
3 reasonable doubt. Only then can you convict the
4 defendant and find him guilty.

5 Now, there are two types of evidence
6 which are generally presented during a trial;
7 direct evidence and circumstantial evidence.

8 Direct evidence directly proves the
9 existence of a fact and does not require
10 deduction. Direct evidence is the testimony of a
11 person who claims to have actual knowledge of a
12 fact, such as an eyewitness. It is evidence which
13 immediately establishes the main fact to be
14 proved.

15 Circumstantial evidence is proof of a
16 chain of facts and circumstances indicating the
17 existence of a fact. It is evidence which
18 immediately establishes collateral facts from
19 which the main fact may be inferred.

20 Circumstantial evidence is based on inference and
21 not on personal knowledge or observation. A crime
22 may be proven by circumstantial evidence.

23 However, to the extent the State relies on
24 circumstantial evidence, all of the circumstances
25 must be consistent with each other and when taken

1 together point conclusively to the guilt of the
2 accused beyond a reasonable doubt. If these
3 circumstances merely portray the defendant's
4 behavior as suspicious, the proof has failed.

5 The law makes absolutely no distinction
6 between the weight or value to be given to either
7 direct or circumstantial evidence. Nor is a
8 greater degree of certainty required of
9 circumstantial evidence than of direct evidence.

10 You should weigh all of the evidence in
11 the case. If, after weighing all the evidence,
12 you are not convinced of the guilt of the
13 defendant beyond a reasonable doubt you must find
14 the defendant not guilty. The burden rests with
15 the State regardless of whether the State relies
16 on direct evidence, circumstantial evidence, or
17 some combination of the two. The State has the
18 burden of proving the defendant guilty beyond a
19 reasonable doubt.

20 I instruct and emphasize to you, Ladies
21 and Gentlemen, that the fact that the defendant in
22 this case did not testify is not a factor to be
23 considered by you in any way in your deliberations
24 and in your consideration of the question of guilt
25 or innocence of the defendant. It must not be

1 considered by you in any manner whatsoever. A
2 defendant has the constitutional right to remain
3 silent, and the assertion of this right must not
4 be considered by you in your deliberations. I
5 repeat, under your oath, you are to draw no
6 conclusion whatsoever from the fact that the
7 defendant in this case did not testify. The fact
8 that this defendant did not testify should not
9 even be discussed in the jury room.

10 The burden of proof, as I have stated to
11 you, is on the State. The defendant is not
12 required to prove his innocence. The burden of
13 proof remains on the State to prove guilt beyond a
14 reasonable doubt.

15 Now, in order to establish criminal
16 liability, criminal intent is required. For
17 example, the mental state required to be proven by
18 the State for a particular crime might be purpose,
19 intent, knowledge, recklessness, or criminal
20 negligence. Criminal intent must be proven by the
21 state beyond a reasonable doubt.

22 Criminal intent is always a matter that
23 must be determined by the jury from the
24 circumstances surrounding the situation. There is
25 no way, Ladies and Gentlemen, to prove intent to a

1 mathematical certainly. There is no way that
2 medical science can dissect a person's brain and
3 determine what the person had in mind, so the law
4 says that criminal intent may be inferred from the
5 circumstances shown to have existed. This is how
6 you make a determination of whether or not the
7 element required of intent was present. It is not
8 necessary to establish intent by direct,
9 dispositive evidence. But intent may be
10 established by inference in the same way as any
11 other fact, by taking into consideration the acts
12 of the parties and all the facts and circumstances
13 of the case. Criminal intent is a mental state, a
14 conscious wrongdoing. It is up to you to
15 determine what the defendant intended to do based
16 on the circumstances shown to have existed.
17 Criminal intent can arise from action or a failure
18 to act. It may arise from negligence,
19 recklessness, or an indifference to duty or to
20 consequences that is considered by the law to be
21 the equivalent of criminal intent.

22 Now, the defendant, Ladies and Gentlemen,
23 in this case is charged with domestic violence in
24 the 1st degree. At this time stage, or at this
25 point in the trial, you must consider whether the

1 State has proved beyond a reasonable doubt that
2 the defendant committed the offense of domestic
3 violence. You must prove beyond a reasonable
4 doubt that the defendant caused physical harm or
5 injury to a member of the defendant's own
6 household.

7 A household member is a spouse, a former
8 spouse, a person with whom the defendant has a
9 child in common, or a person of the opposite sex
10 with whom the defendant is living or has lived in
11 the past.

12 Let me restate that. A household member
13 is a spouse, a former spouse, a person with whom
14 the defendant has a child in common, or a person
15 of the opposite sex, a male and female, who are
16 cohabitating or formerly have cohabitated.

17 Now, if you find, Ladies and Gentlemen,
18 that the State has failed to prove beyond a
19 reasonable doubt that the defendant caused
20 physical harm or injury to a member of the
21 defendant's own household, you must then consider
22 whether the State has proved beyond a reasonable
23 doubt that the defendant is guilty of assault and
24 battery in the 3rd degree. A person commits the
25 offense of assault and battery in the 3rd degree

1 if the person unlawfully injures another person.

2 Now, Ladies and Gentlemen, I'm drawing
3 near the conclusion of my charge at this time to
4 you. I want you to understand that you are not
5 partisans or advocates for the State of South
6 Carolina or the defendant. It is your duty by
7 your joint deliberations to determine the facts in
8 this case giving to the defendant the benefit of
9 every reasonable doubt on each and every issue,
10 then to take the facts which you determine to be
11 true, you should take and apply the law which has
12 been given to you by this court and, thus, arrive
13 at a verdict in this case.

14 Thus, when you have accomplished these
15 responsibilities, you will have satisfied your
16 oath as jurors and you will have discharged your
17 duty to this court.

18 Now, once you retire to the jury room,
19 the bailiff will give the verdict form to you
20 Mr. Foreman. When you, the jury, arrive at a
21 verdict as to domestic violence in this case, the
22 foreman -- you, Mr. Foreman, will indicate your
23 verdict on the verdict form. If the State has
24 failed to prove the guilt of the defendant beyond
25 a reasonable doubt, you will indicate your verdict

1 by placing an X beside "not guilty."

2 Likewise, if the State has proven the
3 guilt of the defendant beyond a reasonable doubt,
4 your verdict will be an X beside "guilty."

5 The verdict that you render in this case,
6 Ladies and Gentlemen, must be the verdict of each
7 and every juror. It must be your unanimous
8 verdict. All 12 jurors must agree on the verdict
9 that you authorize the foreman to write for the
10 jury.

11 I want you to further understand, Ladies
12 and Gentlemen, that the order in which the choices
13 of verdict appear on the verdict form are not
14 suggestive of any verdict on the part of this
15 court. The verdict in this case is to be
16 determined by you, the jury, not the Court.

17 Further, Ladies and Gentlemen, please
18 understand that even though the verdict form will
19 be given to the foreman, it is not his verdict
20 alone. It must be the verdict of all 12 of you.
21 And I emphasize it must be your unanimous verdict.

22 At this time, Ladies and Gentlemen, I'm
23 going to ask you to retire to the jury room but do
24 not begin your deliberations on this issue until
25 you're instructed to do so. The law requires that

1 I consult with the attorneys to make sure that I
2 have not left out anything in these instructions.

3 Now, during your deliberations, at this
4 time, should you have any questions, Mr. Foreman,
5 it will be your responsibility to reduce such to
6 writing. Knock on the door and let the bailiff
7 know that you have a question. The bailiff will
8 get that question to me and I'll answer it how I
9 deem appropriate.

10 Likewise, once you all have reached a
11 verdict, completed the verdict form, signed and
12 dated it, knock on the door, let the bailiff know
13 that you've reached a verdict as to this issue.
14 We'll get you back in the courtroom as quickly as
15 possible.

16 On this verdict form, Mr. Foreman and
17 Ladies and Gentlemen of the jury -- Mr. Verner,
18 have you seen this?

19 MR. VERNER: I have, Your Honor.

20 THE COURT: You seen it?

21 MR. VERNER: The State made a copy.

22 THE COURT: Any exception or objection to
23 the verdict form?

24 MR. VERNER: No, I think it's correct.

25 THE COURT: On this verdict form,

1 Mr. Foreman and Ladies and Gentlemen of the jury,
2 it has two questions here. The first question is:
3 "As to the charge of domestic violence, we, the
4 jury, unanimously find John H. Davenport, Jr..."
5 either not guilty or guilty. It's got some
6 instructions in bold below this question, which,
7 in essence say that if you find that the State has
8 proven beyond a reasonable doubt that the
9 defendant, John H. Davenport, Jr. is guilty of
10 domestic violence, you sign and -- mark the
11 appropriate box and sign and date the verdict
12 form.

13 If you find that the State has failed to
14 prove that the defendant is guilty of domestic
15 violence, if you find equally the State has failed
16 to prove beyond a reasonable doubt the defendant
17 is guilty of domestic violence and you mark not
18 guilty, then, and only then, do you go to question
19 two.

20 The instructions should be clear on here.
21 We had that typed out and those instructions are
22 in bold. Again, you only go to question two if
23 you find the defendant not guilty of domestic
24 violence. If you find him guilty of domestic
25 violence, you mark the appropriate box and sign

1 and date the verdict form. You knock on the door
2 and let my bailiff know you got a verdict. We'll
3 get you back in here as soon as possible.

4 Before I ask you to retire to the jury
5 room to consider this issue, anyone on the jury
6 not feeling well? Everyone feeling okay?

7 All right. I'm going to ask that all
8 you -- at this time, all of you step to the jury
9 room, but do not discuss the case at all until you
10 are instructed to do so.

11 (Jury exits the courtroom at 10:30 a.m.)

12 THE COURT: Any exception or objection to
13 the charge at this time to the jury by the State?

14 MR. SCOTT: No, Your Honor.

15 THE COURT: Defense counsel?

16 MR. VERNER: No, Your Honor.

17 THE COURT: All right. Madame, I need
18 you to get -- you all need to come up here and
19 look at these items of evidence.

20 MR. DAVENPORT: There should just be
21 five, Your Honor.

22 THE COURT: Madame Court Reporter, hand
23 those to them. I need you to get Mr. Dorroh, who
24 is my alternate, I'm going to have them pull him
25 out and release him because he can't be back there

1 deliberating on this issue.

2 Any objection to me releasing the
3 alternate from the State?

4 MR. SCOTT: No, Your Honor.

5 THE COURT: Defense counsel?

6 MR. VERNER: No.

7 THE COURT: We will stand at ease in this
8 case right now.

9 (Deliberations start the 10:34 a.m.)

10 (Question from the jury.)

11 THE COURT: (Shows question to State and
12 defense counsel.) A person of the opposite sex
13 with whom the defendant has lived with, is what
14 the charge says.

15 MR. VERNER: Judge, you can show me. I
16 don't have an objection to you just doing that in
17 writing and just have it transmitted back, or you
18 can bring them out. However the Court wants to.

19 MR. DANIEL: Your Honor, didn't you
20 change the language when you gave it?

21 THE COURT: I said -- I checked the
22 statute. I charged, with whom the defendant is
23 living or has lived with in the past.

24 MR. VERNER: I think the Court went back
25 and read the actual words in the statute.

1 MR. DANIEL: Right, that's what I heard.

2 THE COURT: Are they getting your client?

3 MR. VERNER: Well, it depends. I wasn't
4 going to bring him if the Court was just going to
5 submit a note back to the jury. If the Court is
6 going to pull the jury back in the courtroom, then
7 I'll have him brought out. However the Court
8 wants to.

9 THE COURT: Do you have an objection to
10 me -- I was just going to -- I guess I could write
11 this paragraph out. A household member is a
12 spouse, a former spouse, or person with whom the
13 defendant has a child in common, a person of the
14 opposite sex with whom the defendant is living
15 with or has lived with in the past.

16 MR. SCOTT: That's fine with me.

17 THE COURT: Any objection to that,
18 Mr. Verner?

19 MR. SCOTT: Judge, do you send a copy of
20 the charge back with them?

21 MR. VERNER: Judge? My only hesitation,
22 Judge, is, the jury specifically asked for the
23 definition of habitating as opposed to household
24 member.

25 THE COURT: Cohabiting.

1 MR. VERNER: Cohabiting. What the
2 Judge is actually charging is actually the
3 definition of household member, but the jury's
4 question was actually, specifically, what is
5 cohabiting, which is a discreet term.

6 MR. SCOTT: I think if you said something
7 like, members of the opposite sex who have lived
8 together --

9 THE COURT: Get the defendant back in
10 here, please. We're having all these discussions
11 without him.

12 The jury signed a note asking the
13 definition of cohabitante. I've shown the note to
14 the State as well as defense counsel. As each of
15 them know, the statute does not define
16 cohabitation. And what I'm going to do, and what
17 I think is appropriate to do, is simply charge
18 them again on what household member is. My charge
19 reads that a house member is a spouse, a former
20 spouse, a person with whom the defendant has a
21 child common, or a person of the opposite sex with
22 whom the defendant is living or has lived in the
23 past. I think that encompasses everything.

24 Any objection from the State?

25 MR. SCOTT: No, Your Honor.

1 THE COURT: Defense counsel?

2 MR. VERNER: No, Your Honor.

3 THE COURT: All right. Bring me the
4 jury, please, ma'am. I'm going to tell them the
5 statute that specifically defined cohabitate.

6 (Jury enters the courtroom at 10:55 a.m.)

7 THE COURT: All right. Mr. Foreman,
8 Ladies and Gentlemen, I received your note. Let
9 me tell you this: The statute does not
10 specifically define cohabitate. Okay?

11 What I will do is, I'm going to tell you
12 this: Again, a household member is a spouse, a
13 former spouse, a person with whom the defendant
14 has a child in common, or a person of the opposite
15 sex with whom the defendant is living or has lived
16 in the past.

17 Having charged that to you, I'm going to
18 ask you to return to your jury room and continue
19 deliberations on this issue.

20 (Jury exits the courtroom at 11:01 a.m.)

21 THE COURT: Any exception or objection to
22 anything I've said to the jury from the State?

23 MR. SCOTT: No, Your Honor.

24 THE COURT: Defense counsel?

25 MR. VERNER: None from the defendant,

1 Judge.

2 THE COURT: Thank you. We'll stand at
3 ease.

4 (Deliberations continue at 11:01 a.m.)

5 THE COURT: All right. I've been
6 informed the jury has reached a verdict in
7 domestic violence. Anything from the State before
8 I bring the jury in?

9 MR. SCOTT: No, Your Honor.

10 THE COURT: Defense counsel?

11 MR. VERNER: We're ready, Your Honor.

12 THE COURT: All right. Can the lawyers
13 approach just a minute, please?

14 (Bench conference off the record.)

15 THE COURT: All right. Bring the jury,
16 please, ma'am.

17 (Jury enters the courtroom at 11:09 a.m.)

18 THE COURT: All right. Ladies and
19 Gentlemen, have you all reached a unanimous
20 verdict?

21 FOREMAN: Yes, Your Honor. We have.

22 THE COURT: Can I see it? Madame Clerk,
23 you may publish the verdict.

24 THE CLERK: Indictment 2019-GS-36-86, The
25 State of South Carolina vs. John Henry Davenport,

1 Jr. as to the charge of domestic violence, we, the
2 jury, unanimously find the defendant,
3 John H. Davenport, Jr. guilty.

4 Mr. Foreman, Ladies and Gentlemen of the
5 jury, is this your verdict? If so, please
6 indicate by raising your right hand.

7 JURY PANEL: (Jury panel raises right
8 hands.)

9 THE COURT: Let the record reflect all
10 12 jurors raised their right hand.

11 Anything from the State with regards to
12 the verdict at this point?

13 MR. SCOTT: No, Your Honor.

14 THE COURT: Defense counsel?

15 MR. VERNER: Can I look at it? But I
16 don't anticipate -- no, Your Honor. That appears
17 to be correct.

18 THE COURT: All right. Ladies and
19 Gentlemen, you all have reached a verdict with
20 regards to the issue pertaining to domestic
21 violence. We are going to -- at this point, we're
22 going to move into the next phase of this trial,
23 which will be with regards to the State having to
24 prove beyond a reasonable doubt that this is
25 domestic violence in the 1st degree, 1st degree.

Testimony of Walter Bentley

299

1 At this point, I'm going to recognize the
2 State. Call your next witness.

3 MR. SCOTT: Thank you, Your Honor. At
4 this point the State calls Walter Bentley.

5 THE CLERK: Do you solemnly swear or
6 affirm that the testimony you shall give the Court
7 and jury will be the truth, the whole truth, and
8 nothing but the truth, so help you God?

9 THE WITNESS: Yes, ma'am.

10 THE CLERK: Have a seat and state your
11 name for the record.

12 THE WITNESS: It's Walter Bentley.

13 THE COURT: Speak up, please, sir.

14 WHEREUPON:

15 WALTER BENTLEY,
16 after having been sworn, testified as follows:

17 DIRECT EXAMINATION

18 BY MR. SCOTT:

19 Q Investigator Bentley, the indicted charge on
20 Mr. Davenport, to your knowledge, was domestic
21 violence 1st degree. Is that your understanding?

22 A Yes, sir. That's correct.

23 Q And the aggravating factor that the State has
24 relied on is two or more prior convictions for
25 domestic violence. Is that your understanding?

1 A That's my understanding, yes.

2 Q Okay. Did I direct you to obtain evidence of
3 prior convictions for domestic violence with
4 Mr. Davenport as a defendant?

5 A Yes.

6 Q And were you able to uncover records of prior
7 convictions of domestic violence on Mr. Davenport's
8 behalf?

9 A Yes, I was.

10 Q I want to show you now State's Number 8. Do you
11 recognize that?

12 A I do.

13 Q What is that?

14 A It's a true bill indictment from the
15 Newberry County Grand Jury for criminal domestic
16 violence on John Henry Davenport.

17 Q Okay. And a Newberry County Grand Jury
18 indictment?

19 A Yes, sir. It is.

20 Q For domestic violence. On the back side of that,
21 what is the second page of that document?

22 A The second page where it's alleging what
23 Mr. Davenport did, and there's a third page where
24 he was convicted.

25 Q Say that again?

Testimony of Walter Bentley

301

1 A Where he was convicted of the crime.

2 Q Of the domestic violence.

3 A Yes, sir.

4 Q And what was the date of the conviction?

5 A The date of the conviction was 4/23 of
6 2009.

7 Q Okay. Is that within 10 years of the incident
8 date, the incident date being October 18th of 2018?

9 A Yes, sir. That's within 10 years of 2018.

10 Q Okay. Have you researched the accompanying
11 documents, be it booking photos, incident reports, and
12 checked the date of birth and the driver's license
13 number to ensure that that sentencing sheet, those
14 indictments are, in fact, John Henry Davenport, Jr.?

15 A Yes, I did. I reviewed the entire case
16 packet for that case. The date of birth is the
17 same for South Carolina. The driver's license is
18 an indication of the same. I reviewed the booking
19 photographs of Mr. Davenport. And also, I looked
20 at some handwriting. It's consistent between the
21 two cases.

22 Q Okay. So State's Number 8, you're testifying, is
23 a certified conviction of John Henry Davenport to a
24 domestic violence conviction that's happened within
25 the last 10 years?

1 A Yes, sir.

2 Q Or within 10 years of the date of the offense?

3 A From the date of the offense, that's correct.

4 MR. SCOTT: Your Honor, The State offers
5 State's Number 8 for admission into evidence.

6 THE COURT: Any objection?

7 MR. VERNER: I don't have any objection
8 to the admission of the indictment, Judge. The
9 sentencing sheet usually contains information
10 beyond that, so I would ask that part to be
11 redacted. But I don't challenge the admission of
12 that indictment, the true bill.

13 THE COURT: Would you all approach over
14 in side bar, please?

15 (Bench conference off the record.)

16 THE COURT: All right. With regard to
17 State's Number 8, such is hereby admitted into
18 evidence. I have redacted portions of the
19 sentencing sheet that I do not believe are
20 relevant to the issues in this case.

21 MR. VERNER: Yes, sir.

22 THE COURT: It is so admitted.

23 (STATE EXH. 8, Conviction; 4/23/09, was
24 entered into evidence.)

25 BY MR. SCOTT:

Testimony of Walter Bentley

303

1 Q All right, Mr. Bentley. So State's Number 8 is a
2 prior conviction for a domestic violence that
3 Mr. Davenport pled guilty to, was convicted of, and
4 it's dated April 23, 2009.

5 I want to show you State's Number 9. Do you
6 recognize this?

7 A Yes, I do.

8 Q What is that?

9 A It's a true bill indictment from the
10 County of Greenwood for criminal domestic violence
11 also on John Henry Davenport, Jr.

12 Q Okay. And it shows a conviction for the domestic
13 violence?

14 A The third sheet shows a conviction on
15 February 6th of 2014 for domestic violence.

16 Q And is that conviction within 10 years of the date
17 that the offense that we're here to try this week was
18 committed?

19 A Yes, sir.

20 Q Okay.

21 MR. SCOTT: Your Honor, the State offers
22 State's Number 9 for admission into evidence.

23 MR. VERNER: No objection.

24 THE COURT: Without objection, so
25 admitted.

1 (STATE EXH. 9, Conviction; 2/6/14, was
2 entered into evidence.)

3 MR. SCOTT: That's all I have for this
4 witness, Your Honor.

5 THE COURT: Cross examination.

6 MR. VERNER: I don't have any questions,
7 Judge.

8 MR. SCOTT: And, briefly, if I may be
9 heard in just a brief closing, Your Honor.

10 THE COURT: You may step down. Is the
11 State resting at this point pertaining to this
12 portion of the trial?

13 MR. SCOTT: Yes, sir, Your Honor.

14 MR. VERNER: Procedurally, I'll renew any
15 motions prior as to directed verdict.

16 THE COURT: So noted. Let me see you all
17 again.

18 (Bench conference off the record.)

19 THE COURT: All right. Defense has
20 rested on this issue as well. I'll note for the
21 record that all prior motions and objections are
22 noted for the record. As to defense motions and
23 objections, the Court's rulings remain the same as
24 to each.

25 Let me ask this question, Mr. Verner, you

1 do not have any questions of this witness. Does
2 the State have anything else -- does defense
3 counsel have anything with regards to any defense?

4 MR. VERNER: As to this part of the
5 trial, the defense rests as the Court noted. I do
6 agree that the State should have a brief
7 opportunity to argue it.

8 THE COURT: All right. Well, defense has
9 rested once again with regards to the case. I
10 will note, again, for the record that all prior
11 motions and objections are made and the Court's
12 rulings remain the same.

13 At this point, the State is recognized
14 for any brief closing on this issue.

15 MR. SCOTT: Thank you. Just so you
16 wondered, those were the two prior convictions you
17 didn't get to hear about during the first part of
18 the trial. We wanted you to hear the facts as
19 related to Miss Morris and not judge him on what
20 he's done in the past. Those have been offered.

21 What that does, as a recidivist, maybe
22 he's done this before, it takes him out of the
23 realm of a DV 3rd degree into what he's been
24 indicted for, that's domestic violence 1st.

25 So, now I'll ask you to accept those two

1 State Exhibits, State's 8 and 9 as certified copy
2 of prior convictions and I ask you now to find him
3 guilty of domestic violence in the first degree.

4 Thank you.

5 THE COURT: Anything from the defense
6 counsel?

7 MR. VERNER: No, Your Honor. I would
8 just add that the jury needs to find him guilty of
9 what they believe he's guilty of.

10 THE COURT: All right. Ladies and
11 Gentlemen, I previously charged you on the law
12 that's applicable to this case. I remind you all
13 of my prior charge remains the same here. Okay?
14 What I'm going to briefly charge you on here is
15 what domestic violence in the 1st degree is.

16 You all, Ladies and Gentlemen, must
17 determine whether the State, at this point, has
18 proven beyond a reasonable doubt the defendant is
19 guilty of domestic violence in the 1st degree. I
20 will tell you the law says the defendant is guilty
21 of domestic violence in the 1st degree if the
22 defendant has been found guilty of domestic
23 violence, and the State -- which you all have
24 already determined he is guilty of direct
25 violence, and the State has proven to you, the

1 jury, beyond a reasonable doubt that the defendant
2 also has two or more prior convictions of domestic
3 violence within 10 years of the current offense.
4 That is what the law requires that the State proof
5 beyond a reasonable doubt.

6 My charge on you previously as to what
7 reasonable doubt is is the same here. It's the
8 same here.

9 What I am going to do at this time is,
10 I'm going to ask that you all retire to the jury
11 room to deliberate as to whether or not the State
12 has proven beyond a reasonable doubt that the
13 defendant, John Henry Davenport, Jr., whether or
14 not the State has proven beyond a reasonable doubt
15 that he is guilty of the domestic violence in the
16 1st degree.

17 My instructions remain the same,
18 Mr. Foreman, Ladies and Gentlemen of the jury,
19 whatever verdict you render here must be your
20 unanimous verdict.

21 Furthermore should you have any questions
22 during the deliberations on this issue, reduce
23 them to writing, knock on the door, let my bailiff
24 know that you have a question. I'll answer that
25 question how the Court deems appropriate.

1 Likewise, once you all have reached a
2 unanimous verdict -- again, I emphasize it must be
3 unanimous, once you reached that unanimous
4 verdict, fill out, sign and date the verdict form,
5 let my bailiff know that you all reached a
6 unanimous verdict and we'll get you back in the
7 courtroom as quickly as possible. Okay?

8 You all may step to the jury room, but do
9 not begin deliberations on this issue until you
10 are advised to do so.

11 (Jury exits the courtroom at 11:23 a.m.)

12 THE COURT: Any exceptions or objections
13 to anything I said to the jury at this stage from
14 the State?

15 MR. SCOTT: No, sir, Your Honor.

16 THE COURT: Defense counsel?

17 MR. VERNER: Your Honor, I'll let the
18 Court consider this. My preference would be for
19 the Court to have told them, if you do find him
20 not guilty under the first offense statute, that
21 that is not -- that that will not undue the
22 finding of guilty under the -- because I don't
23 want the jury to be misled if we find him not
24 guilty of the second charge, that that would mean
25 that he is no longer guilty of the first charge.

1 I do understand that my legal opinion is
2 that he would not have been entitled to a domestic
3 violence 3rd degree charge.

4 THE COURT: Or 2nd.

5 MR. VERNER: Or 2nd.

6 THE COURT: Well, as we said yesterday
7 afternoon as we went through this lengthy
8 discussion, domestic violence is defined the same
9 for 1st, 2nd, or 3rd. We addressed that issue.

10 What I emphasized to this jury, once
11 again, before giving this to them to deliberate is
12 that the State must prove these two additional
13 convictions beyond a reasonable doubt. And I've
14 told them again, you all have already found him
15 guilty of domestic violence.

16 MR. VERNER: Okay. I just didn't want
17 the jury misled into thinking if they found him
18 not guilty of the second portion that he would be
19 found not guilty of what they already found him
20 for.

21 THE COURT: I think what I've told the
22 jury at this point is sufficient.

23 You can take that, Miss Georgia, and tell
24 them they can begin their deliberations.

25 (Jury begins deliberations at 11:25 a.m.)

1 (Off the record.)

2 THE COURT: My understanding is the jury
3 has reached a verdict on this point. Anything
4 from the State before I bring the injury back out?

5 MR. SCOTT: No, sir.

6 MR. VERNER: I did want to ask, does the
7 Court have a preference as to standing or sitting
8 as the clerk publishes the verdict? Whichever one
9 the Judge has a preference --

10 THE COURT: I don't have any preference
11 on this. That's fine.

12 I'll remind everybody in the courtroom,
13 whatever the verdict is, to keep your emotions in
14 check. Failure to do so could result in you being
15 held in contempt of court. If, for whatever
16 reason, you don't think you can keep your emotions
17 in check, now is your time to leave the courtroom.

18 All right. Bring me the jury, please,
19 ma'am.

20 (Jury enters the courtroom at 11:39 a.m.)

21 THE COURT: All right. Mr. Foreman,
22 Ladies and Gentlemen, have you all reached a
23 anonymous verdict?

24 FOREMAN: Yes, Your Honor. We have.

25 THE COURT: Madame Clerk, you may publish

1 the verdict.

2 THE CLERK: Indictment to 19-GS-36-86,
3 The State of South Carolina vs.
4 John Henry Davenport, Jr. as to the charge of
5 domestic violence in the 1st, we the jury
6 unanimously find the defendant, John H. Davenport,
7 Jr. guilty.

8 Mr. Foreman, Ladies and Gentlemen of the
9 jury, is this your verdict? Please indicate by
10 raising your right hand.

11 JURY PANEL: (All juror raise their hands.)

12 THE COURT: Let the record reflect that
13 all 12 jurors raised their right hand.

14 Anything from the State at this point?

15 MR. SCOTT: No, sir, Your Honor.

16 THE COURT: Defense counsel?

17 MR. VERNER: No, Your Honor.

18 THE COURT: Ladies and Gentlemen of the
19 jury, I want to thank you for your service and
20 your patience throughout this week. When I
21 release you here today, you're done here for the
22 week. You're done. You don't have to come back
23 today or tomorrow. I told you, when we started
24 Tuesday, it's a short week.

25 I told you all, Ladies and Gentlemen,

1 throughout the trial of this case not to talk
2 about it until you are instructed to do so. When
3 you leave here today, you can talk about this case
4 as much as you want or as little as you want, but
5 no one can make you talk about the case if you
6 don't want to. All right? So if someone tries to
7 talk to you about this case and you tell them you
8 don't want to talk about it, then you let the
9 clerk's office know. If they don't leave you
10 alone, you let the clerk's office know and you
11 will be taken care of. Okay?

12 Now, what we're getting ready to do is,
13 we will go straight into sentencing at this point.
14 You all are welcome to stay and hear the
15 sentencing process. I encourage jurors to do so,
16 but you don't have to.

17 It's my understanding that the clerk has
18 your check for your service this week. I will
19 tell you, don't get too excited. It is not that
20 much. The truth of the matter is, you can't put a
21 price tag on what the value of your service is to
22 this community, to this state, and to this country
23 as jurors.

24 After you all were selected Tuesday to
25 serve as jurors in this case, and before I release

1 the balance of the jury panel, and I tell jurors
2 this all the time, okay, if you were seated in one
3 of these tables up here, whether it was as a
4 plaintiff or a defendant in a civil case, or a
5 defendant or a victim, potentially, in a criminal
6 case, you would want people such as yourselves
7 serving on jurors. You would not want me or
8 anyone other judge walking in the courtroom on a
9 Monday, or Tuesday in this case, looking at one of
10 these deputies and saying, go find me the first 12
11 people on the street, bring them up here, and
12 let's try this case. Nor would you want me, or a
13 panel of judges, sitting up here making these
14 decisions.

15 Jury service is the only true remaining
16 service that we have as citizens in this country.
17 It's not a situation where individuals are drafted
18 into the military and have to go serve a couple of
19 years, like maybe your grandmother or
20 great-grandfather had to, or grandmother, so to
21 speak, it's not that situation anymore.

22 As jurors, you can only be called up here
23 to serve in this courthouse once every three
24 years. Some people go a lifetime and never get
25 called. Quite frankly, I think everyone ought to

1 serve at some point. I think everyone would
2 realize this isn't television.

3 When I release you here today, if you're
4 summoned to serve back up here within the next
5 three years, you can ask to be excused. You
6 certainly can, but I would encourage to serve. If
7 you get summoned for City Court, Magistrate's
8 Court, Federal Court, there's not a thing anybody
9 can do to help you on that. You're just going to
10 have to serve in those courts.

11 So, having said that, if you all want to
12 stay for sentencing, you're free to do so. If you
13 do not wish to stay, I ask that you step into jury
14 room and let the clerk come in and give you all
15 your check. Again, you can't put a price tag on
16 the value of your service. Don't go laying big
17 ticket items aside about this check.

18 If you want to stay for sentencing,
19 remain seated. If you want to go to the jury
20 room, a check will be given to you and you will be
21 release at that point from service.

22 Is the State ready to proceed with
23 sentencing?

24 MR. SCOTT: We are, Your Honor.

25 THE COURT: Defense counsel?

1 MR. VERNER: We're ready, Your Honor.
2 Step on up there.

3 We'll go ahead and sign the sentencing
4 sheet. I know it's not mandatory on a conviction
5 typically.

6 THE COURT: Madame Clerk?

7 THE CLERK: Yes, sir.

8 (Off the record.)

9 THE COURT: All right. Mr. Scott.

10 MR. SCOTT: Thank you, Your Honor. To
11 share, I wanted to thank you the jury for their
12 attentiveness in participating in this trial.

13 I want to note, we have produced two
14 prior CDV convictions. With this has five prior
15 domestic violence related convictions beginning in
16 1997, a CDV in 2008, 2009 CDV, 2010 CDV, and then
17 a 2014 CDV. He is a serial abuser of women. And
18 I don't say that lightly. I mean, his record
19 shows it.

20 Aside from that, he's got resisting
21 arrest in '99, simple assault in '99, resisting
22 arrest in 2000, possession of crack 2001, assault
23 while resisting arrest 2001, resisting arrest
24 2001, possession of cocaine in 2008, and another
25 resisting arrest in 2009, but I want to focus on

1 those domestic violence convictions, Your Honor.

2 You saw the victim. All too often, we
3 got these victims that come to us and they say, I
4 want the charges dropped despite the evidence,
5 despite the 911 calls, despite their pleas for
6 help. And when we get them in private, we say,
7 why do you want to do this? It's typical fear of
8 the defendant.

9 And our legislature in 2015, it hadn't
10 been five years, they changed the law. They try
11 to beef up these CDV laws, and that's because,
12 what I said in closing, 2015, I believe we led the
13 nation in homicides at the hands of domestic
14 partners. I think we've helped ourselves a little
15 bit. We're at the lofty position of sixth in the
16 nation of deaths of women at the hands of men that
17 they are in relationships with.

18 He's got five prior convictions. He's
19 asked this jury to find whether he was guilty of
20 none of this and they've rendered a verdict of
21 guilty. This would be his sixth conviction of a
22 CDV-related offense.

23 Again, you know, we've attempted to
24 change the laws to combat this. There's no avail.

25 He has been before a judge five different

1 times and heard from the judge and he still
2 continues to do it. He's not going to conform
3 himself.

4 At this point, we are asking to use what
5 the legislation has given us as far as a penalty
6 being zero to 10 years. We'd ask for the max. If
7 he doesn't deserve the max on a sentence with his
8 record of abusing women and victimizing women, I
9 don't know who does, and I don't know any other
10 reason we would have changed the laws. They are
11 specially designed for somebody like
12 Mr. Davenport.

13 This conviction gives Miss Morris a
14 little bit of reprieve. We hope he is
15 incarcerated for some time where she can get her
16 life in order and get away from anywhere where
17 he'll be able to find her.

18 But at the same time, we are going to ask
19 Your Honor to sign a permanent restraining order.
20 We have drafted one. So, hopefully, once he is
21 released, if he is incarcerated, there will be
22 penalties if he tries to contact this victim.

23 Thank you, Your Honor.

24 MR. VERNER: May it please the Court,
25 Your Honor?

1 THE COURT: Let me see that.

2 MR. VERNER: I was going to go ahead and
3 get him to sign that, unless the Court wants to
4 see it first.

5 THE COURT: Go ahead and have him sign
6 it.

7 MR. VERNER: He has signed it pending if
8 the Court is going to sign it.

9 Judge, John Henry is 39 years old. He's
10 a life-long from here in Newberry from the Silver
11 Street area. He does work full time at the
12 Valmont Plant.

13 I will say John's unusual where he really
14 doesn't have any other history other than domestic
15 violence. He doesn't have stealing charges, or
16 breaking into building charges. The resisting
17 arrest counts that the solicitor was talking
18 about, Your Honor, Newberry County has an
19 ordinance of running from police officers, which
20 they handle in the magistrate -- or municipal
21 court. That would not the resisting arrest in
22 general sessions where there's actual force. They
23 should change the name of it, but the prior
24 resisting arrest would be municipal varieties of
25 running from the police.

1 Just alcohol in public would be,
2 basically, his only charges other than domestic
3 violence up here, with the exception of the one
4 drug offense about 15 years ago.

5 He does have two 19-year-old twin
6 children, Judge. He is here with his fiance in
7 court. She's in the audience. He understands --
8 he knew and he was willing to take a prison time
9 sentence in this case from the beginning. It was
10 just a question of what we believe is appropriate
11 and what the State believes is appropriate.

12 We would ask to court to consider a
13 three-year period of incarceration on this violent
14 offense with five years of supervision and a
15 suspended seven years in prison, if he violates
16 the terms of this probation, Judge.

17 Is there anything you want Judge Brown to
18 know?

19 MR. DAVENPORT: (Shakes head from side to
20 side.)

21 THE COURT: All right. Mr. Davenport, I
22 know I saw you shaking your head in the negative
23 when your lawyer asked you if you wanted to say
24 anything, but I need a verbal response from you.
25 I certainly don't want you to say anything that

1 could affect any appellate rights that you may
2 have, but I will give you an opportunity if you
3 wish to say anything at this point.

4 MR. DAVENPORT: No, sir.

5 THE COURT: Sir?

6 MR. DAVENPORT: No, sir.

7 THE COURT: How much time has he done in
8 jail and would he be entitled to credit for?

9 MR. VERNER: Your Honor, the clerk is
10 going to double check because the -- he believes
11 three days when he was first arrested, and, of
12 course, the overnight last night, but the clerk is
13 still checking.

14 THE COURT: Exhibits? Did you bring the
15 exhibits back out? Let me see Exhibit 8 and 9,
16 which were the prior convictions. Let me see
17 those sentencing sheets again, please.

18 MR. VERNER: Judge, conferring with the
19 clerk, we believe two day because he bonded out
20 the following day, and then, of course, the night
21 that the Court put him in jail.

22 THE COURT: So two days?

23 MR. VERNER: Two days.

24 THE COURT: Neither one of these prior
25 cases were probationary cases, were they? I think

1 one, if I remember correctly. Do you have clean
2 copies of those sentencing sheets?

3 MR. VERNER: Judge, the Court is asking
4 if he's had probation before, or whether this is
5 eligible for probation?

6 THE COURT: No, I'm not -- I want to see
7 the sentence sheet. Do you have a clean copy of
8 those other than what I redacted?

9 THE CLERK: We can run you one, Judge.

10 MR. VERNER: I got he got probation in
11 2008 for one year on the possession of cocaine,
12 but got straight time for the domestic violence.
13 He got probation in 2010 for one year on a
14 domestic violence. So the -- the 2012 case, he
15 got a straight one-year imprisonment. And the
16 2009 case, he got 90 days in jail.

17 MR. SCOTT: Judge, our probation agent,
18 Mr. Simmons, says they had him four times. I do
19 not have a clean copy of that Greenwood sentencing
20 sheet, Your Honor.

21 THE COURT: That's fine.

22 MR. SCOTT: But, certainly, Mr. Simmons
23 can speak to his history with Mr. Davenport.

24 MR. SIMMONS, PROBATION: Yes, sir. Mr.
25 Davenport and I have had four rotations, Your Honor.

1 We had him on assault of a police officer.

2 THE COURT: Well, let me ask this. I
3 notice on this -- that's why I wanted to look at
4 it. This 2009 conviction, it was written on the
5 sentence sheet he must complete batterer's
6 counseling. Did he ever do that?

7 MR. SIMMONS, PROBATION: I'll check the
8 records, Your Honor.

9 THE COURT: While he's looking at that,
10 Mr. Scott, let me ask you something. You gave me
11 his prior criminal record. When was his first run
12 in or conviction of any kind?

13 MR. SCOTT: We have 1997, that first CDV.

14 THE COURT: And that was his first
15 conviction of any kind?

16 MR. SCOTT: Yes, Your Honor. That's my
17 records.

18 THE COURT: All right. I know probation
19 is still looking for what is -- whether or not he
20 completed --

21 MR. SIMMONS, PROBATION: He completed the
22 anger management program in Greenwood.

23 THE COURT: And that would have been done
24 when?

25 MR. SIMMONS, PROBATION: 2011, I believe,

1 Your Honor.

2 THE COURT: All right. Thank you.

3 What is of concern to this Court -- first
4 all, I signed the permanent restraining order and
5 I'll return this to the solicitor to serve a copy
6 of such on Mr. Davenport.

7 What is of concern, and I want you to
8 understand -- I know, Mr. Verner, you've gone over
9 this with your client -- this conviction here
10 today is a conviction of a serious offense. It's
11 a serious offense. It falls under the three
12 strike rule, which Mr. Davenport, if you received
13 two more serious convictions, whether by plea or
14 trial, and the State has properly noticed you of
15 their intent to seek life without parole, the
16 Court would no alternative but to give you life in
17 prison. And life in prison, means life. There's
18 no parole on life in prison.

19 It is of vital concern the number of
20 domestic violence convictions that you have on
21 your record. It is of concern that you have been
22 in and out of the criminal justice testimony since
23 1997. You have four prior probation cases, which
24 it has been conveyed to me that each of them have
25 been revoked. I do not believe that probation in

1 this case would be an appropriate sentence.

2 Based upon everything I've heard here
3 throughout the trial of this case, based upon what
4 I've heard from the State with regards to the
5 defendant's record, I believe the appropriate
6 sentence in this case is that the defendant be
7 committed to the State Department of Corrections
8 for a period of 10 years. I order that he go to
9 anger management, alternative to violence,
10 whatever is offered in the Department of
11 Corrections. Give him credit for two days.

12 Thank you.

13 MR. VERNER: Your Honor, I would ask the
14 Court to consider screening him for the addictions
15 treatment unit. I don't see anything specific
16 about prior drug abuse, but if the alcohol or
17 drugs contributes --

18 THE COURT: Well -- and there was no
19 testimony concerning alcohol use, I don't remember
20 specifically, in this case. And I know -- I wrote
21 on the sentence sheet, pursuant to your request,
22 ATU. I know from my understanding that once he is
23 received at the Department of Corrections, they
24 will screen him for all of that, whether it be
25 addictions treatment unit, whether it be mental

1 health counseling, whatever may be the case. He
2 will be screened for all of that. What I write on
3 these sentencing sheets, at least what I've been
4 told, are simply suggestions, so to speak, on what
5 they do. I don't know that alcohol or any drugs
6 were involved in this particular incident.

7 MR. VERNER: I don't either.

8 THE COURT: As you well know, and the
9 State knows, and everybody that deals in criminal
10 justice system on a regular basis, probably 95 to
11 98 percent of what ends up in criminal court is
12 because of drugs and alcohol.

13 That's the sentence of Court, and I have
14 written that on the sentencing sheet.

15 MR. VERNER: Thank you for your patience,
16 Judge.

17 THE COURT: All right. Ladies and
18 Gentlemen, I'm going to ask you all to step into
19 the jury room for just a minute. The clerk is
20 going to come in there and give you your check.
21 I'm going to step in there for just a minute as
22 well.

23 (The proceedings were concluded.)

24

25

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

CERTIFICATE OF REPORTER

I, SHARON G. HARDOON, Official Circuit Court Reporter for the State of South Carolina at Large, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the proceedings had and evidence introduced in the trial of the captioned case, relative to appeal, in General Sessions, Newberry County, South Carolina.

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

April 26, 2020



Sharon G. Hardoon, CSR
Official Circuit Court Reporter, II

THE STATE OF SOUTH CAROLINA

COUNTY OF NEWBERRY

I hereby waive presentment to the Grand Jury.

WITNESSES

Yolanda Williams
Newberry Police Department

COURT OF GENERAL SESSIONS

February Term, 2019

Indictment # 2019-GS-36-00086

Defendant

WARRANT NUMBER

2018A3620200317

Witness:

THE STATE

vs.

JOHN HENRY DAVENPORT, JR.

TRUE BILL

Wade Dinkens

Foreman of the Grand Jury

Date: 2/22/19

INDICTMENT FOR

Domestic Violence, 1st Degree

SC Code: § 16-25-0020(B)

VERDICT

Phase I - Domestic Violence - GUILTY

CDR: 3811

Phase II Domestic Violence 1st degree - GUILTY

Foreman HENRY ELLIS RUSSELL

Erica Jones

1/23/2020

THE STATE OF SOUTH CAROLINA

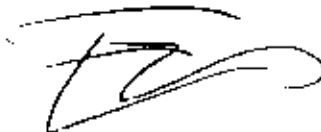
COUNTY OF NEWBERRY

INDICTMENT FOR**Domestic Violence, 1st Degree
§16-25-0020(B)**

At a Court of General Sessions, convened on the 22nd day of February, 2019, the Grand Jurors of Newberry County present upon their oath:

The defendant, John Henry Davenport Jr., on or about October 18, 2018 in Newberry County, South Carolina, did cause physical harm or injury to Latorya Sherrelle Morris, a household member, or did offer or attempt to cause physical harm or injury to said household member with apparent present ability under circumstances reasonably creating fear of imminent peril. In addition the defendant has two or more prior convictions for domestic violence within ten years of the current offense. All in violation of 16-25-0020(B), Code of Laws of South Carolina (1976, as amended).

Against the peace and dignity of the State, and contrary to the statute in such cases made and provided.



Taylor Daniel
Assistant Solicitor

COUNTY OF NEWBERRY

STATE VS.

JOHN HENRY DAVENPORT, JR.

AKA: John Davenport

Race: Black Sex: M Age: 39

DOB: [redacted] SS#: [redacted] 687

Address: Floyd St

City, State, Zip: Newberry, SC 29108

DL# [redacted] SID# SC01190265

INDICTMENT/CASE#: 2019GS36-00086
A/W: 2018A3620200317
Date of Offense: 10/18/2018
S.C. Code §: 16-25-0020(B)
CDR Code #: 3811

SENTENCE SHEET

0-10 yrs

*CDL Yes [] No [] CMV Yes [] No [] Hazmat Yes [] No []

In disposition of the said indictment comes now the Defendant who was [X] CONVICTED OF or [] PLEADS

TO: Domestic Violence, 1st Degree

In violation of § 16-25-0020(B) of the S.C. Code of Laws, bearing CDR Code # 3811

[] NON-VIOLENT [X] VIOLENT [X] SERIOUS [] MOST SERIOUS [] Mandatory GPS [] §17-25-45

The charge is: [X] As indicted, [] Lesser Included Offense, [] Defendant Waives Presentment to Grand Jury. (def.'s initials)

The plea is: [X] Without Negotiations or Recommendation, [] Negotiated Sentence, [] Recommendation by the State.

ATTEST:

Taylor Daniel, Assistant Solicitor

100588 SC Bar #

[Signature] Defendant

[Signature] Attorney for Defendant SC Bar #

WHEREFORE, the Defendant is committed to the [X] State Department of Corrections [] County Detention Center, for a determinate term of 10 days/months/years or [] under the Youthful Offender Act not to exceed ___ years and/or to pay a fine of \$ ___; provided that upon the service of ___ days/months/years and or payment of \$ ___; plus costs and assessments as applicable*; the balance is suspended with probation for ___ months/years and subject to South Carolina Department of Probation, Parole and Pardon Service standard conditions of probation, which are incorporated by reference.

[] CONCURRENT or [] CONSECUTIVE to sentence on: _____

[X] The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by the State Department of Corrections. 2 days

[] 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 ___ days/hours Public Service Employment
Total: \$ ___ plus 20% fee: \$ ___
Payment Terms: _____

[] Set by SCDPPPS _____

Recipient: _____

*Fine: _____ \$ _____

§14-1-206 (Assessments 107.5%) \$ _____

§14-1-211 (A)(1)(Conv. Surcharge) \$100 \$ 10000

§14-1-211 (A)(2)(DUI Surcharge) \$100 \$ _____

§56-5-2995 (DUI Assessment) \$12 \$ _____

§56-1-286 (DUI Breath Test) \$25 \$ _____

Proviso (Public Def/Prob) \$500 \$ _____

§14-1-212 (Law Enforce. Funding) \$25 \$ 2500

§14-1-213 (Drug Court Surcharge) \$150 \$ _____

§50-21-114 (BUI Breath Test Fee) \$50 \$ _____

§56-5-2942(J) (Vehicle Assessment) \$40/vea \$ _____

3% to County (if paid in installments) \$ \$ 325

TOTAL \$ 128.25

Clerk of Court/Deputy Clerk: [Signature]
Court Reporter: [Signature]

Attend Voc. Rehab. Dr 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

Obtain GED []

Other - Anger Management or Alternatives to Violence - ATCC

[] Appointed PD or appointed other counsel, Proviso requires \$500 be paid to Clerk during probation and shall be collected before any other fees.

Presiding Judge: [Signature]
Judge Code: 2160
Sentence Date: 1-23-2020

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,

s/ Victor R. Seeger
Victor R Seeger
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589

ATTORNEY FOR APPELLANT

RECEIVED

May 12 2021

SC Court of Appeals

This 12th day of May, 2021.