

**ABUSE from page 9**

Felony violation of a no-contact order – domestic violence;

Assault in the second degree – domestic violence, for intentional strangulation;

Assault in the second degree – domestic violence, for causing substantial bodily harm;

Felony harassment – domestic violence;

Plus three domestic violence aggravators, mitigating factors that could affect the length of a sentence.

Even with the charges, Judge Yu said the state bore the burden of proving Richard's guilt. "The presumption of innocence is real," she said.

The prospective jurors then went through a process called voir dire, during which defense counsel and the prosecutor questioned prospective jurors on their backgrounds and any potential prejudices that could impact their decision-making if chosen to sit on the jury. A dozen prospective jurors from the pool were excused before the court adjourned. Richard returned to his cell.

**Day 2**

Tuesday, June 7, 2011

As voir dire continued, more prospective jurors were excused, with others restocking the pool. Sometime after noon, 13 jurors – five men, eight women – were sworn in and impaneled, one serving as an alternate. The court broke for lunch.

Before the jury returned, the defense team made a motion for a mistrial because a juror had commented that Richard's bald head and tattoos indicated he was a skinhead. Judge Yu, finding the jury hadn't been tainted, denied the motion. Richard sat still.

After opening statements, the first witness testified.

DPA Hershkowitz asked a radiologist what Brandy's being "choked" meant. Hands were placed around her neck, and pressure was placed there, the radiologist replied.

Defense attorney Matthew Pang asked the radiologist to confirm that strangulation wasn't a diagnosis when Brandy visited the ER after the assault. "That is correct," the radiologist said.

When the Renton police officer who had responded to Brandy's 911 assault call from November 2009 took the stand, DPA Hershkowitz asked about Brandy's demeanor that night. "She was crying, she was shaking, she was having a hard time talking," the officer said.

Following a cross examination, the court adjourned for the day.

**Day 3**

Wednesday, June 8, 2011

As an officer who arrested Richard testified, Brandy waited in the hallway outside the courtroom. Terrified at seeing Richard again, she wondered whether testifying against him was the right thing to do. His freedom was at stake. But then again, so was her safety.

Her domestic violence advocate – there, along with Brandy's friend, Karen Ciruli – had told Brandy that her mix of emotions, after months of being controlled in a relationship with someone she cared about, was natural. But she had warned Brandy that, in court, her character would be brought into question. Brandy wondered: What would they say?

The courtroom door swung open. It was Brandy's turn.

Brandy took the stand at 10:10 a.m. She hadn't seen Richard since the assault, more than 13 months before, and from her seat facing him, she couldn't believe her eyes: "He looked like crap," she recalls. She found it hard to look at him, but DPA Hershkowitz asked her to identify Richard, for the record. She pointed. "He's got, um, a gray shirt."

Hershkowitz asked her what she had found appealing about Richard when they met. She said that he was nice, sweet; he really cared what happened to her.

Answering questions from the prosecutor,



PHOTOS BY KATE BALDWIN

Brandy detailed the August 2009 assault when she was eight months pregnant, her speech broken by crying. Because of that misdemeanor assault, Richard had been arrested, and the court had enacted a no-contact order, barring Richard from seeing her. But when he got out of work release, Richard moved in with her and the two-month-old Ian in Renton. DPA Hershkowitz asked Brandy her thoughts about Richard before that happened.

"I didn't want Ian not to have his dad, you know, um, and I started to, like –" Brandy began to cry, "– miss him, and I didn't – I just wanted to be with him, you know."

"Was Ian born while the defendant was away?" the prosecutor asked.

"Yeah."

"How did that make you feel?"

"Really bad." Brandy sobbed, unable to stop.

"How soon after he got out – Do you want a moment?" DPA Hershkowitz asked. "Your honor, may we take a break?"

"Yeah," said Judge Yu. "Members of the

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**Brandy couldn't control her tears. "Just that he loved me, and he was sorry, and he would never let –"**

**"Did you believe him this time?" DPA Hershkowitz asked.**

**"I believe him every time," Brandy said.**

jury, let's take a very brief recess. Please rise."

Brandy had been on the stand 16 minutes.

When the court reconvened, Brandy explained that she had wanted to give her relationship with Richard a shot, to believe he wanted to be with her and Ian. But saying that, with Richard watching, made her more nervous. She tried not to look at him.

She told the court how she and Richard would drink and yell, that things would become violent so fast. Maybe she would throw something at him, try to hit him, Brandy said, but she wasn't as strong as he was. The more the story of their relationship came out and the more she described her torn emotions, the more she cried.

"Do you still love Mr. Duncan?" DPA Hershkowitz asked. "Do you still want him in your life?"

"I can't," Brandy said, "can't have him in my life." She continued crying.

"Why can't you?"

The tears flowed. "We can't. We don't get along. We, we can't, we just can't." More tears. "It's not a good thing."

"Brandy, what did he tell you to convince you to come, to have him come back?"

Brandy couldn't control her tears. "Just that he loved me, and he was sorry, and he would never let –"

"Did you believe him this time?" DPA Hershkowitz asked.

"I believe him every time," Brandy said. Yet even with that belief, Brandy said she tired of feeling unappreciated, unloved in the relationship.

The prosecutor asked her to describe the April 2010 assault. She struggled to say, definitively, how long Richard's hands had been around her throat, how much pressure he'd applied. As for the punches: "It's really scary," she said. "But it, like, it doesn't really hurt, though, when it's happening. That's the good thing."

The state had entered 23 exhibits into evidence, including photographs that police officers had taken of Brandy after the assault. DPA Hershkowitz brought her down from the stand to examine the photos, to state for the court who caused the bruises, the bloody lip, the scratch on her neck, allegedly from being choked. Her voice cracked. DPA Hershkowitz asked Brandy to speak up. She did: "Richard."

The court broke for lunch. Brandy had testified for 97 minutes.

After lunch, Brandy described how thankful she was Francisco had walked in during the assault, and she described calling 911. DPA Hershkowitz asked what residual effects she'd experienced. Seeing bruises that lasted for weeks was a continuous reminder, she told the court. But there was another effect: "Emotional pain."

Then Richard's defense team started its cross examination. Alison Warden and Brandy exchanged a "Good afternoon, Brandy" and a "Hello." Then Warden showed pictures of bite marks on Richard's arm. She asked Brandy if she bit him. Brandy said she couldn't say for sure.

"Would there have been times where you've initiated a punch against Mr. Duncan?" Warden asked.

"Correct," Brandy said.

"Or a slap against Mr. Duncan?"

"That's correct."

"Throwing something at Mr. Duncan?"

"Yes, ma'am."

"And biting Mr. Duncan?" Warden asked.

"That was a defensive move, ma'am,"

Brandy said.

Defense counsel Warden continued. Did Brandy take Richard back because she hoped he could contain his anger? "Yes, ma'am."

Did Brandy help him get into work release? "Yeah."

Did Brandy say mean things when she drank? "Yup."

Did the fighting always end when Brandy said, Stop? "I don't –" Brandy sighed.

Warden told her that's what she'd testified to earlier.

Brandy started to feel badgered by the line of questioning. "They kind of make it to be your fault," she remembers. On the stand, she prayed.

Karen Ciruli, seated in the gallery, had never attended a trial before, and she found the process cold. "It was hard sitting there knowing that she had gone through those

things," Karen remembers, "and that she wasn't being believed." Karen wanted to nod to Brandy, to encourage her, but she had been warned not to: It could be perceived as coaching the witness.

Richard, sitting at the defense table, didn't heed such warnings. As Brandy answered questions, Richard caught her eye. Then he whispered, You're doing a good job.

"That, I thought, was just a psychological move," Brandy recalls.

Warden's questions kept coming. She asked Brandy whether Richard, on the night of the April assault, had rebuffed Brandy's attempts to discuss her emotions.

"Ma'am, he never wanted to talk to me," Brandy said.

"And on this incident he didn't want to talk about it?"

"No, ma'am."

"But you kept going with him, right?" Warden asked.

"Yeah, I made him hit me, too."

Judge Yu struck the gavel.

"I never suggested that," Warden said.

"I'm just asking if you kept going verbally with him."

"You know, I, um –" Brandy took a sip of water. "You've got to, got to give me a minute, OK?"

After 10 more minutes of pointed questioning, Brandy asked for a break. Following the short recess, Brandy made it through a final barrage of questions. She left the stand, exhausted, glad to be done. But she was shaken.

Brandy's testimony had lasted more than two hours and 40 minutes.

Next, the state called Francisco Mitchell, who had been Brandy and Richard's roommate. DPA Hershkowitz directed Francisco's attention to the evening of April 29, 2010. Francisco, who had been out at a bar, said when he came home he heard Brandy screaming from the apartment. "I think she was saying, 'Get off me, get off me.'"

After opening the door, Francisco said he saw Brandy lying on the floor. DPA Hershkowitz asked if he saw Brandy get strangled? "No." But the room was messed up, with desk drawers on the floor. "You can see the signs of a struggle." He said he found a broken cell phone the next day in the kitchen.

Hershkowitz asked Francisco about Richard. "You don't want to see anything bad happen to him?"

"No," said Francisco.

Warden began cross examination. She asked Francisco if he'd seen Richard's hands around Brandy's neck. "No." She asked if there was a landline that Brandy could have used to place a call. "Yes." But since Warden didn't ask if it was a working landline, Francisco didn't mention the landline had no phone service.

"I think that's all I have," said Warden.

After 32 minutes, Francisco stepped down from the stand.

Shortly after, the court adjourned for the day.

**Day 4**

Thursday, June 9, 2011

The court heard testimony from a medical examiner, an emergency room social worker, an officer who had helped arrest Richard and then a second doctor. Since the superior court only hears cases Monday through Thursday, the court adjourned for the weekend.

**Day 5**

Monday, June 13, 2011

Early in the morning, the defense called Richard to the stand. He'd never testified in his own defense. A screw up could amount to a life sentence.

Once Richard was sworn in, defense attorney Matthew Pang questioned Richard about his relationship with Brandy. Richard detailed their violent past, which led Pang to ask about April 29.

Richard said he and Brandy had gone to a