

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

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S.C. SUPREME COURT

Certiorari to Aiken County

Honorable Jennifer B. McCoy, Circuit Court Judge

DAVID GLOVER,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2021-001357

APPENDIX

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1 State of South Carolina) In the Court
2 County of Aiken) Of General Sessions
3
4 Indictment No.: 2014-GS-02-01252
5 2014-GS-02-01253
6 2014-GS-02-01254
7
8 State of South Carolina,)
9 Plaintiff.)
10 vs.) Transcript of Record
11)
12 David Glover,)
13 Defendant.)
14
15 May 13-14, 2015 and May 18, 2015
16 Aiken, South Carolina
17
18 B E F O R E:
19 The Honorable R. Knox McMahon, Judge and a jury.
20
21 A P P E A R A N C E S:
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31 To The Honorable R. Knox McMahon
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1 WEDNESDAY, MAY 13, 2015

2 THE COURT: All right. Solicitor, if you would
3 call your first case for trial, please.

4 MR. SLOCUM: Thank you, Your Honor.

5 The State of South Carolina calls the case of The
6 State versus David Glover. Three charges, three
7 indictments: 2014-GS-02-01252 is a true-billed indictment
8 for burglary in the first degree. Indictment
9 2014-GS-02-01253 is a true-billed indictment for the
10 possession of a firearm during the commission of a violent
11 crime. And Indictment 2014-GS-02-01254, that is a
12 true-billed indictment for attempted murder.

13 THE COURT: Thank you. Thank you, Solicitor.

14 Is Mr. Glover present?

15 MR. HAYES: Yes, sir.

16 THE COURT: All right. Thank you. You may be
17 seated, Mr. Glover.

18 And Mr. Hayes, you represent him?

19 MR. HAYES: Yes, sir. I do.

20 THE COURT: Along with co-counsel?

21 MR. HAYES: Mr. Routzong.

22 THE COURT: Routzong? All right. Thank you.
23 Thank you very much.

24 Madame Clerk, did you say there's a preliminary
25 matter, that there were two jurors that wanted to speak to,

1 quote, the judge, unquote?

2 THE CLERK: Yes, sir.

3 THE COURT: Did you tell him that Judge Early was
4 not here?

5 THE CLERK: No. I did not.

6 **PRELIMINARY JUROR MATTERS**

7 THE COURT: You did not? All right. Who wanted to
8 speak with me?

9 THE CLERK: No. 45.

10 THE COURT: All right. If you would, step up here
11 to my court reporter, please? My court reporter is over
12 here.

13 (The juror came forward for a bench conference with
14 the judge.)

15 THE COURT: Good morning. How are you, sir?

16 THE JUROR: Very good. Thank you.

17 THE COURT: This is Mr. Faulk?

18 THE JUROR: Correct.

19 THE COURT: All right. And tell me your situation,
20 Mr. Faulk.

21 THE JUROR: I have a business meeting in Greenville
22 at one o'clock on Friday.

23 THE COURT: Okay.

24 THE JUROR: I would really like to be there if I
25 can. I didn't know how long this would last. I have a

1 small business.

2 THE COURT: Sure. I understand. I understand.
3 Life has priorities.

4 THE JUROR: Yeah.

5 THE COURT: I understand.

6 THE JUROR: Yeah. But I know I need to serve too.

7 THE COURT: No. I understand that also. Would you
8 mind just stepping between the two tables right there for a
9 moment and let me talk with the lawyers?

10 THE JUROR: Okay.

11 (There was a bench conference out of the hearing of
12 the jury venire and the court reporter.)

13 THE COURT: All right. Thank you. Thank you very
14 much.

15 Mr. Faulk, you may step right there. All right.
16 I'm going to protect you for Friday.

17 THE JUROR: Okay.

18 THE COURT: Okay? All right. If you will stay
19 with us this morning.

20 THE JUROR: I appreciate it. All right.

21 THE COURT: Thank you.

22 All right. And there was another one, Madame
23 Clerk?

24 THE CLERK: 167.

25 (The juror came forward for a bench conference with

1 the judge.)

2 THE COURT: Good morning.

3 THE JUROR: Good morning.

4 THE COURT: This is Mr. Smith?

5 THE JUROR: Yes, sir.

6 THE COURT: How are you this morning, Mr. Smith?

7 THE JUROR: Fine. You?

8 THE COURT: I'm doing good.

9 And tell me your situation.

10 THE JUROR: I got three kids that get off the bus
11 at -- between 2:30.

12 THE COURT: At 2:30? Your children?

13 THE JUROR: My grands.

14 THE COURT: Your grandchildren?

15 THE JUROR: Yeah. If I don't get them, they're
16 going to call the police.

17 THE COURT: And there's no one that can assist you
18 in that?

19 THE JUROR: Well, I might could call somebody about
20 12 o'clock and see if they can be there. I just --

21 THE COURT: Did you -- did you discuss this with
22 Judge Early yesterday?

23 THE JUROR: But I didn't find out until I left out
24 of here.

25 THE COURT: Explain that to me.

1 THE JUROR: When I left out of here, I was free,
2 but when I got home, my grandchildren's mother called me
3 and asked me could I get them off the bus because she got
4 to work until 5 o'clock every day.

5 THE COURT: All right. Well, all I can do is
6 transfer you. That's -- there are childcare exceptions,
7 obviously. There's no protection for a grandparent, but I
8 can, of course, transfer you to another term of court. If
9 you get selected, however, for the first case going to
10 trial, it, you know, may take two days, may take the rest
11 of the week. And, of course, I can't break at 2:30, you
12 know, it just wouldn't be fair to the parties. I'm not
13 trying to be unfair to you.

14 THE JUROR: Right.

15 THE COURT: If you want me to transfer you to
16 another term of court, I will do that. But -- and we're
17 going to select a jury now. And once that jury panel is
18 selected, that jury panel, you know it's kind of a penny in
19 for a pound. You're here for the duration of the trial.

20 THE JUROR: I'll get somebody to get them. I'll
21 have to call -- about 12 o'clock I'll call them.

22 THE COURT: You sure?

23 THE JUROR: Positive.

24 THE COURT: All right. I appreciate your
25 consideration in doing that. All right. Thank you. Thank

1 you very much.

2 167, Mr. Smith is going to stay with us.

3 (There was an bench conference out of the hearing
4 of the jury venire and the court reporter.)

5 **JURY VOIR DIRE**

6 THE COURT: All right. Madame Clerk, yesterday was
7 the panel placed under oath?

8 THE CLERK: Yes, sir.

9 THE COURT: All right. And if you would please,
10 ladies and gentlemen of the jury panel, consider yourselves
11 still under oath. The State has called to trial the case
12 of the State versus David Glover. There are three
13 indictments, 2014-GS-02-01252, an indictment for burglary
14 in the first degree; 2014-GS-02-01253, possession of a
15 firearm during the commission of a violent crime; and
16 2014-GS-02-01254, attempted murder.

17 Ladies and gentlemen, the indictments are not
18 evidence. The indictments are the formal charging
19 documents by which the case is brought before a Court and
20 an individual is placed on notice of the charges that have
21 been brought against him or her. The indictments contain
22 mere allegations and are in no way evidence of the
23 allegations contained within the indictment. I will
24 publish, or read to you, these indictments. I do that
25 based on certain questions that I will ask you during this

1 procedure. The purpose of this procedure is to select a
2 fair and impartial jury, trial jury, for this case, a jury
3 that will be fair and impartial to both Mr. Glover and to
4 the State. As I say, I read these indictments based on
5 some questions that I'll ask you during the course of this
6 process.

7 The burglary in the first degree indictment alleges
8 that David Glover did in Aiken County on or about May 10th,
9 2014, willfully and unlawfully enter a dwelling located at
10 105 Mae Acres Court, Aiken, South Carolina, without consent
11 and with the intent to commit a crime therein, and while
12 effecting entry or while in the dwelling or in the
13 immediate flight therefrom, the defendant armed himself
14 with a deadly weapon in violation of 16-11-311 of the Code
15 of Laws of South Carolina. That is an indictment for
16 burglary in the first degree.

17 The next indictment, possession of a firearm during
18 the commission of a violent crime, alleges again that David
19 Glover did in Aiken County on or about that same day, May
20 10, 2014, possess or visibly display a weapon during the
21 commission or intended commission of a violent crime, to
22 wit, a burglary in the first degree all in violation of
23 16-21-490 Code of Laws of South Carolina 1976 as amended.
24 That is an indictment for possession of a firearm during
25 the commission of a violent crime.

1 The next indictment, attempted murder, alleges that
2 David Glover did in Aiken County on or about May 10, 2014,
3 the same day, feloniously, willfully, and with malice
4 aforethought attempt to kill Vernell Weaver by means of
5 shooting the victim in the neck with a firearm all in
6 violation of Section 16-3-29 of the South Carolina Code of
7 Laws as amended. That is an indictment for attempted
8 murder.

9 The State is represented by assistant solicitors
10 with the Second Judicial Circuit.

11 Solicitor, if you would, please introduce yourself
12 and have co-counsel introduce herself --

13 MR. SLOCUM: Thank you.

14 THE COURT: -- to the jury panel, please.

15 MR. SLOCUM: Thank you, Judge. My name is Jay
16 Slocum. And myself along with Ms. Cassie Hall represent
17 the State in this matter.

18 THE COURT: The defendant, Mr. Glover, is present.
19 He's represented by Mr. Hayes and Mr. Routzong.

20 If you'd please stand and introduce yourselves to
21 the jury panel, and your client.

22 MR. HAYES: Yes, sir. I'm David Hayes with the
23 Aiken County Public Defenders Office. This is Michael
24 Routzong with the Aiken County Public Defenders Office. We
25 will be representing Mr. David Glover in the matter of this

1 case.

2 THE COURT: It is also listed in the attempted
3 murder indictment, Vernell Weaver. Is Vernell Weaver
4 present?

5 Solicitor, will you introduce Vernell Weaver.

6 MR. SLOCUM: One second, Your Honor.

7 THE COURT: That's quite all right.

8 MR. SLOCUM: May we approach?

9 (A bench conference was held out of the hearing of
10 the jury venire and the court reporter.)

11 THE COURT: All right.

12 MR. SLOCUM: Thank you.

13 THE COURT: Mrs. Weaver is not present at this
14 time. She does not have to be present during this
15 proceeding as far as jury selection. However, I will ask,
16 is any member of the jury panel related by blood or
17 marriage, have any social business, professional
18 relationship, or know Mrs. Weaver? If so, please stand.

19 (There was no response from the jury venire.)

20 THE COURT: All right. Thank you. As to the
21 attorneys, Assistant Solicitors Slocum and Hall, Mr. Hayes,
22 and Mr. Routzong, is any member of the jury panel related
23 by blood or marriage, close personal friends, have any
24 social, business, personal, or professional relationship
25 with any of the attorneys involved in this case? If so,

1 please stand.

2 (There was no response from the jury venire.)

3 THE COURT: Has any member of the jury panel or any
4 member of your immediate family ever been represented by
5 and/or prosecuted by any of the attorneys involved in the
6 case? Again, the Assistant Solicitors Slocum and Hall, Mr.
7 Hayes, Mr. Routzong. If so, please stand.

8 (There was no response from the jury venire.)

9 THE COURT: The indictments allege incidents that
10 occurred on May 10th, 2014, at Maes Acres, Aiken County,
11 specifically 105 Mae Acres, involving a dwelling, involving
12 a firearm, and involving an attempted murder of a Ms.
13 Vernell Weaver. Does any member of the jury panel have any
14 knowledge about the case from any source whatsoever? If
15 so, please stand.

16 (There was no response from the jury venire.)

17 THE COURT: Does any member of the jury panel have
18 any bias or prejudice towards the parties? That being
19 either Mr. Glover or the State or towards the subject
20 matter involved in the case? If so, please stand.

21 (There was no response from the jury venire.)

22 THE COURT: Does any member of the jury panel know
23 anything about the case from any source whatsoever? From
24 talk? From newspaper, radio, television, Internet, or
25 otherwise? If so, please stand.

1 Your number? All right. Your number and name,
2 sir?

3 THE JUROR: Brandon Peeples.

4 THE COURT: All right. Let me -- I'll rephrase my
5 question. That was a witness. Is that correct? That was
6 not a juror?

7 THE BAILIFF: No, sir.

8 THE COURT: Thank you very much.

9 The jurors to my front right are on the first --

10 THE BAILIFF: Two rows.

11 THE COURT: -- two rows; is that correct?

12 Thank you. Thank you very much.

13 Now, there was a young lady that stood. Your
14 number and name, please.

15 THE JUROR: 69, Deborah Grigg.

16 THE COURT: All right. If you'd step up here for
17 me, please?

18 (The juror came forward for a bench conference with
19 the judge.)

20 THE COURT: Good morning.

21 THE JUROR: Good morning.

22 THE COURT: And you are Ms. Gray?

23 THE JUROR: Grigg.

24 THE COURT: Grigg. All right.

25 Now, tell me your situation.

1 THE JUROR: I heard --

2 THE COURT: Now, speak up just a little bit.

3 THE JUROR: Okay. It was on the news, or the
4 newspaper one. And then I heard on a radio talk show.
5 They were discussing it. And if it is the same one it was
6 a domestic situation.

7 THE COURT: It was what?

8 THE JUROR: Domestic -- if it's the same one I'm
9 thinking of, it was a domestic situation. I don't know if
10 they were married or --

11 THE COURT: All right. Well, let me ask you a few
12 questions about that. Tell me the timeframe, number one,
13 when you --

14 THE JUROR: It would have been in the evening
15 because that's the only time I get on social network or
16 read or the news or anything.

17 THE COURT: But has it been recently? Or was it --

18 THE JUROR: About the time it happened.

19 THE COURT: About the time it happened? Now,
20 you're not even sure it's about this case?

21 THE JUROR: No, but I do remember the -- I'm not
22 even sure. If it's the same one, there was children in the
23 house at the time.

24 THE COURT: Okay. But you don't remember any of
25 the names or anything about that --

1 THE JUROR: Huh-uh.

2 THE COURT: Is that a no?

3 THE JUROR: That's a no.

4 THE COURT: Okay. All right. And you say you read
5 about it in a newspaper?

6 THE JUROR: It's the newspaper or an online
7 newspaper, one or the other.

8 THE COURT: Online?

9 THE JUROR: Yes.

10 THE COURT: And then heard something on the radio?

11 THE JUROR: Yes.

12 THE COURT: And was that a talk show you said?

13 THE JUROR: It was a talk show.

14 THE COURT: What talk show they have --

15 THE JUROR: Austin Rhodes' talk show.

16 THE COURT: Say again?

17 THE JUROR: Austin Rhodes's talk show.

18 THE COURT: Austin Rhodes?

19 THE JUROR: Yeah. But he talks about everything.
20 It's just something I listen to on the way home from work.

21 THE COURT: He talks, and you listen?

22 THE JUROR: On my way home from work, it usually
23 gets to me --

24 THE COURT: Do you remember any other details?

25 THE JUROR: No.

1 THE COURT: Have you ever been on jury duty before?

2 THE JUROR: No, I have not.

3 THE COURT: No. This your first -- This is your
4 first flight?

5 THE JUROR: To jury duty, yeah. I've been in
6 court --

7 THE COURT: You've been what?

8 THE JUROR: I've been in this court once before as
9 a victim of a violent crime.

10 THE COURT: Okay. All right.

11 THE JUROR: Luckily he went away for a long time.

12 THE COURT: When was that?

13 THE JUROR: That was 2006.

14 THE COURT: All right. We're going to talk briefly
15 about that in just a minute.

16 If you're selected as a juror on the trial of this
17 case, you'll base your decision on the evidence and the
18 testimony from the witnesses testifying on the witness
19 stand, any physical items available.

20 THE JUROR: Right.

21 THE COURT: Uninfluenced by anything you may have
22 read or heard on the radio or the online news or social
23 media. Do you understand that?

24 THE JUROR: Yes, sir.

25 THE COURT: And nothing wrong with having kept up

1 with the news or listened to the radio. Can you set
2 aside -- I don't even know if it's the same case.

3 THE JUROR: Uh-huh.

4 THE COURT: Okay. Because I don't know nothing
5 about it. Can you set aside whatever you may have heard or
6 read if you're selected as a member of the jury and base
7 your decision on what you hear in this courtroom?

8 THE JUROR: Absolutely.

9 THE COURT: And the law as I tell you the law is?

10 THE JUROR: Yes.

11 THE COURT: And the law is, you can't be influenced
12 by outside -- other things you've heard.

13 THE JUROR: Right. Right.

14 THE COURT: And you could do that?

15 THE JUROR: Right.

16 THE COURT: Any doubt in your mind you could do
17 that?

18 THE JUROR: Okay. No. No.

19 THE COURT: Okay. And do you know of any reason
20 whatsoever you could not be a fair and impartial juror in
21 the trial of this case for Mr. Glover and the State?

22 THE JUROR: Uh-huh. Right.

23 THE COURT: No reason you couldn't?

24 THE JUROR: No, I don't.

25 THE COURT: All right. Now, let's go back -- let's

1 go to 2006. You were the victim of a violent crime; is
2 that correct?

3 THE JUROR: Yes, sir.

4 THE COURT: All right. Given that fact, can you
5 set aside whatever may have happened to you, personally, in
6 your life, and again sit as a fair and impartial juror in
7 this case for both Mr. Glover and the State?

8 THE JUROR: I can't say with certainty that I
9 could.

10 THE COURT: Okay. And that would be because of the
11 traumatic event?

12 THE JUROR: I still have sometimes I --

13 THE COURT: You still have what?

14 THE JUROR: I still have moments when it comes back
15 and --

16 THE COURT: Sure.

17 THE JUROR: I've even had 9-1-1 come to my house
18 because I was just afraid to go inside the door. And I
19 know it's been a long time, but --

20 THE COURT: All right. I'm going to set you aside
21 for the trial of this case.

22 THE JUROR: Okay.

23 THE COURT: Please do not say anything to your
24 fellow jurors about what you've heard or read or anything
25 else. I mean, that doesn't mean you can't say hello or

1 something like that. Okay?

2 THE JUROR: All right.

3 THE COURT: All right. Thank you very much.

4 THE JUROR: Thank you, Your Honor.

5 THE COURT: Good luck to you. You may go back and
6 have a seat.

7 Solicitor, if you would, by number indicate voir
8 dire questions you object to.

9 MR. SLOCUM: Judge, No. 3 and No. 6.

10 THE COURT: All right. Thank you.

11 Has any member of the jury panel or any member of
12 your immediate family ever been a victim of a crime of
13 personal violence or accused of committing a crime of
14 violence? If so, please stand.

15 This is No. 69?

16 THE JUROR: Yes, sir.

17 THE COURT: You didn't know I could see that far,
18 did you? Thank you. Thank you very much. You may be
19 seated based on my previous ruling.

20 Any others?

21 THE COURT: Thank you. Thank you very much. No
22 one stands.

23 All right. I will decline to ask No. 3. I think
24 it's included generally in both my combinations of 1 and 2.
25 No one stood on No. 4 which is a followup to 1 and 2.

1 Well, let me rephrase that. No. 4 was not asked, and
2 there's no need to ask it since no one stood up on my
3 combination of questions 1 and 2.

4 THE BAILIFF: Your Honor. One of the jurors wanted
5 to answer to that first question. He didn't stand, but
6 he's got a question.

7 THE COURT: All right. Which juror? I don't see
8 any jurors --

9 THE BAILIFF: The first row on the --

10 THE COURT: Would you ask him to please stand?

11 THE BAILIFF: Stand up.

12 THE COURT: Your number and name, please?

13 THE JUROR: Rex Harding, No. 73, sir.

14 THE COURT: All right. If you could, step up here
15 to my court reporter.

16 Thank you, Mr. Whittle.

17 Let's see. Mr. Harding?

18 THE JUROR: Yes, sir.

19 THE COURT: Tell me your situation.

20 THE JUROR: (The court reporter was unable to hear
21 the juror.)

22 THE COURT: Well, I guess my question is any --

23 The court will please come to order.

24 I guess my question is, has any member of the jury
25 panel or any member of your immediate family ever been a

1 victim of or accused of committing a violent crime.

2 THE JUROR: My --

3 THE COURT: And I don't limit it geographically.

4 THE JUROR: Okay. All right. My wife's first
5 cousin did time in the State of Florida for armed robbery,
6 and he is now doing his second stretch for a murder.

7 THE COURT: Okay. All right.

8 THE JUROR: And he's incarcerated.

9 THE COURT: All right. And that would be a first
10 cousin of yours?

11 THE JUROR: My wife's.

12 THE COURT: So it'd be kind of first cousin-in-law,
13 I guess.

14 THE JUROR: Yes, sir.

15 THE COURT: If there is such a relationship.

16 THE JUROR: Yes, sir.

17 THE COURT: All right. Given that fact -- given
18 that fact, and that kinship by marriage --

19 THE JUROR: Yes, sir.

20 THE COURT: -- can you be a fair and impartial
21 juror in the trial of this case for both Mr. Glover and the
22 State?

23 THE JUROR: Yes, sir.

24 THE COURT: Thank you. Thank you very much, Mr.
25 Harding.

1 THE JUROR: I just wanted to make sure I was clear.

2 THE COURT: No. Thank you. Yes, sir. Absolutely.

3 I have asked generally and specifically No. 5 in
4 the general questions that I ask.

5 As to number 6, what agency is the investigative
6 agency in this case, Solicitor?

7 MR. SLOCUM: Aiken County Sheriff's Office.

8 THE COURT: Any other agency involved?

9 MR. SLOCUM: South Carolina Law Enforcement
10 Division.

11 THE COURT: And that would be the only two law
12 enforcement agencies.

13 MR. SLOCUM: That's correct.

14 THE COURT: Thank you.

15 Is any member of the jury panel related by blood or
16 marriage or close personal friends with any individual
17 employed with the Aiken County Sheriff's Department or the
18 State Law Enforcement Division? If so, please stand.

19 Yes, sir. Your number and name, please.

20 THE JUROR: Nicholas Hobbs, No. 80.

21 THE COURT: Related by blood or marriage? Or
22 friends?

23 THE JUROR: Friend.

24 THE COURT: Friend? Sheriff's Office? Or SLED?

25 THE JUROR: SLED.

1 THE COURT: May I ask who that would be?

2 THE JUROR: Phillip Turner.

3 THE COURT: And how long have you been friends with
4 Agent Turner?

5 THE JUROR: Seventeen years.

6 THE COURT: Given the fact that you have such a
7 friendship with Agent Turner, can you be a fair and
8 impartial juror in the trial of this case for both the
9 State and the defense?

10 THE JUROR: Yes, sir.

11 THE COURT: Thank you. You may stay with us.
12 And let's see, this is No. 73, Mr. Harding.

13 THE JUROR: Yes, sir.

14 THE COURT: All right. And Sheriff or SLED?

15 THE JUROR: Sheriff, sir.

16 THE COURT: All right. And kinship or friendship?

17 THE JUROR: Friendship, sir.

18 THE COURT: And who would that be?

19 THE JUROR: Tommy Brock. We worked together out at
20 Savannah River Site. He was a training instructor of mine,
21 and I worked with Wayne Harding, sir.

22 THE COURT: And given those friendships and work
23 relationships, can you be a fair and impartial juror in the
24 trial of this case for both Mr. Glover and the State?

25 THE JUROR: Yes, sir.

1 THE COURT: Thank you. You may stay with us. You
2 may be seated.

3 Any others?

4 (There was no response from the jury venire.)

5 THE COURT: And of course, Solicitors Slocum and
6 Hall have introduced themselves to you. Or to be more
7 specific, I believe Mr. Slocum introduced himself and
8 Solicitor Hall to you. They both work for the Second
9 Judicial Circuit Solicitor's Office.

10 Is any member of the jury panel related by blood or
11 marriage or close personal friends with any employee of the
12 Second Judicial Circuit Solicitor's Office? That includes
13 Aiken, Bamberg, and Barnwell Counties. If so, please
14 stand.

15 (There was no response from the jury venire.)

16 THE COURT: So y'all have no friends?

17 Thank you very much. No one stands.

18 Is any member of the jury panel or any member of
19 your immediate family affiliated with or contributors to
20 any auxiliary police organization or any citizen groups
21 whose primary aim is the prosecution and/or pursuit of
22 individuals involved in criminal activity or the pursuit of
23 victim's rights? Such organizations would include SADD,
24 MADD. If so, please stand.

25 Thank you. No one stands.

1 Has any member of the jury panel discussed this
2 case with anyone, or has anyone attempted to discuss this
3 case with you? If so, please stand.

4 No one stands.

5 And I have previously asked question No. 9.

6 Any additional requested voir dire from the
7 defense, Mr. Hayes?

8 MR. HAYES: Judge, I'm trying to recall, I might
9 ask the Court to ask No. 3, specifically as to domestic
10 abuse.

11 THE COURT: No, sir. I'm not going to ask No. 3.
12 I've addressed No. 3 on the record. Please listen to my
13 rulings. I addressed No. 3. I thought it was covered
14 generally in my combination of No. 1 and No. 2, and I was
15 not going to address it specifically.

16 MR. HAYES: Yes, sir.

17 THE COURT: Thank you.

18 Ladies and gentlemen, I am now going to call a list
19 of names of potential witnesses in the trial of this case.
20 If the witnesses are present, I will ask you to please
21 stand and face the jury panel when your name is called.
22 Again, I would advise the jury panel that the witnesses are
23 not required to be present during this proceeding.

24 The question of course is, ladies and gentlemen, is
25 any member of the jury panel related by blood or marriage,

1 close personal friend, have any business, professional,
2 social relationship with any of these individuals whose
3 names I call and/or stand before you? If so, please stand.

4 Stuart Graybeal, Aiken County Sheriff's Department.

5 This is Deputy Graybeal to my front left.

6 Thank you.

7 Chris Johnson, also with the Aiken County Sheriff's
8 Department. I do not see Mr. Johnson present. Mary F.
9 O'Grady-Watts, Aiken County Sheriff's Department. I do not
10 see Ms. O'Grady-Watts present. Billy Fleury, also Aiken
11 County Sheriff's Department. I do not see Deputy Fleury
12 present. Clay Adams, also Aiken County Sheriff's
13 Department. I do not see Mr. Adams.

14 The next five names -- four of the next five names
15 are all employed with the Aiken County Sheriff's
16 Department. The first four I call out: Kevin Creed,
17 Gerald Turner, Daniel Byrd, Nicholas Lott. Again, all with
18 the Aiken County Sheriff's Department. Paul Meeh, M-E-E-H,
19 Meeh perhaps, with SLED.

20 The next five names, Whitney Berry, also with SLED.
21 Bradford Huffman, DMD.

22 What does that mean? What does DMD mean?

23 MR. SLOCUM: Your Honor, it's a doctorate of
24 mental -- or the medical dentistry or doctorate of some
25 sort of -- it's a doctorate.

1 THE COURT: He's a dentist.

2 MR. SLOCUM: Dentist doctorate. Yes.

3 THE COURT: All right. Thank you.

4 MR. SLOCUM: I always ask that same question, and
5 that was the best I could do.

6 THE COURT: Thank you. So that's Dr. Bradford
7 Huffman.

8 MR. SLOCUM: That's correct.

9 THE COURT: And I guess since it's a doctor, that
10 would also include if you're a patient of Dr. Huffman.

11 Vernell Weaver. This is Ms. Weaver to my front
12 left.

13 Thank you, Ms. Weaver.

14 George Mackey. This is Mr. Mackey to my front
15 left.

16 Thank you. You may remain standing.

17 Thank you, you may be seated.

18 Yes, ma'am. Your number and name, please.

19 THE JUROR: 60, Rachel Glanton.

20 THE COURT: All right. If you'd step up here for
21 me, please.

22 (The juror came forward for a bench conference with
23 the judge.)

24 THE COURT: Good morning.

25 THE JUROR: Good morning.

1 THE COURT: Did you say No. 60?

2 THE JUROR: Yes, sir.

3 THE COURT: And your name again?

4 THE JUROR: Last name's Glanton, G-L-A-N-T-O-N.

5 THE COURT: All right. And tell me your situation.

6 THE JUROR: I know Mr. George Mackey. I worked
7 with him for years.

8 THE COURT: Currently? Can you give me a
9 timeframe?

10 THE JUROR: The year would've been '97 through
11 probably 2000.

12 THE COURT: About three or four years?

13 THE JUROR: Yes, sir.

14 THE COURT: Since those three or four years, do you
15 see Mr. Mackey?

16 THE JUROR: No, sir. I have not.

17 THE COURT: And given the fact that you worked with
18 Mr. Mackey those number of years, can you be a fair and
19 impartial juror on the trial of this case for both the
20 State and the defense?

21 THE JUROR: Yes, sir.

22 THE COURT: Any doubt in your mind about that?

23 THE JUROR: I don't think so. I really think that
24 I could.

25 THE COURT: When you say you don't think so, have

1 you been on jury duty before?

2 THE JUROR: No, sir. I have not. I don't have any
3 experience, so I don't know.

4 THE COURT: And of course, that's maybe just a
5 matter of semantics when you say you think so.

6 THE JUROR: I'm just -- I don't think that I would
7 have a problem with it. It's not involving him, so maybe
8 that would make me partial, but --

9 THE COURT: Okay. And given the fact that he's a
10 witness, a potential witness, in the trial of this case,
11 you can be fair to Mr. Glover?

12 THE JUROR: Yes, sir.

13 THE COURT: And to the State?

14 THE JUROR: Yes, sir.

15 THE COURT: All right. Thank you. I believe you
16 can stay with us. Thank you.

17 Yes, ma'am. Right here. Your number and name,
18 please.

19 THE JUROR: 146, Neatree Rankin.

20 THE COURT: All right. If you'd step forward for
21 me, please.

22 (The juror came forward for a bench conference with
23 the judge.)

24 THE COURT: Good morning.

25 THE JUROR: One of the names you just called, I

1 used to work at a store by my house for a long time and he
2 used to come in a lot. I don't know him personally, but I
3 know him by sight.

4 THE COURT: Mr. Mackey?

5 THE JUROR: Yeah.

6 THE COURT: And what kind of store is that?

7 THE JUROR: A convenient store.

8 THE COURT: And you still work there?

9 THE JUROR: No.

10 THE COURT: So you know him as being a customer at
11 the store?

12 THE JUROR: Uh-huh.

13 THE COURT: And when's the last time you seen him?

14 THE JUROR: Right now.

15 THE COURT: That's a great answer. Before now?

16 THE JUROR: It's been a while.

17 THE COURT: It's been a while?

18 THE JUROR: Uh-huh. Yes, sir.

19 THE COURT: What you call a while?

20 THE JUROR: Years.

21 THE COURT: Okay. All right. Given the fact that
22 he was a customer at the store you worked at, could you be
23 a fair and impartial juror --

24 THE JUROR: Yes, sir.

25 THE COURT: -- in the trial of this case for both

1 Mr. Glover and the State?

2 THE JUROR: Yes, sir.

3 THE COURT: Thank you. I believe you can stay with
4 us.

5 Yes, sir. Your number and name?

6 THE JUROR: James Matthews, No. 113.

7 THE COURT: All right. Step up here for me, Mr.
8 Matthews, please.

9 (The juror came forward for a bench conference with
10 the judge.)

11 THE COURT: Good morning. How are you, sir?

12 THE JUROR: Good morning.

13 THE COURT: Good. Tell me your situation.

14 THE JUROR: I don't have a situation. I work at
15 True Value --

16 THE COURT: All right.

17 THE JUROR: -- and I know both sides, Mr. Mackey
18 and Mr. Glover.

19 THE COURT: All right. So you --

20 THE JUROR: Not by name but just by face.

21 THE COURT: All right. So are they customers or --

22 THE JUROR: Customers.

23 THE COURT: All right. So Mr. Mackey's been a
24 customer?

25 THE JUROR: Yes.

1 THE COURT: And Mr. Glover's been a customer?

2 THE JUROR: Yes, sir.

3 THE COURT: And you just know them by face?

4 THE JUROR: Basically, yes.

5 THE COURT: All right. And you say -- when you say
6 basically, can you explain that a little bit more to me?

7 THE JUROR: Nothing in detail. I have no social
8 reason to be around them.

9 THE COURT: Given that fact, can you be a fair and
10 impartial juror in the trial of this case --

11 THE JUROR: Yes, sir.

12 THE COURT: -- for both Mr. Glover and the State?

13 THE JUROR: Yes, sir.

14 THE COURT: Thank you. You may be seated.

15 THE JUROR: Okay.

16 THE COURT: All right. This is Mr. Smith?

17 THE JUROR: Yes, sir.

18 THE COURT: Step up here for me please, Mr. Smith.

19 (The juror came forward for a bench conference with
20 the judge.)

21 THE COURT: All right. Yes, Mr. Smith?

22 THE JUROR: I went to school with Mr. Mackey.

23 THE COURT: You went to school with him?

24 THE JUROR: Yeah.

25 THE COURT: You grew up with him?

1 THE JUROR: Yeah. We grew up together.

2 THE COURT: All right. Do you see him now?

3 Regularly?

4 THE JUROR: Every now and then.

5 THE COURT: Every now and then?

6 THE JUROR: Yeah.

7 THE COURT: Given those facts, can you be a fair
8 and impartial juror in the trial of this case for both Mr.
9 Glover and the State?

10 THE JUROR: Yes, sir.

11 THE COURT: Thank you. You may stay with us.

12 THE JUROR: All right.

13 THE COURT: Before y'all leave, I want to talk with
14 you one minute.

15 (There was a bench conference out of the hearing of
16 the jury venire and the court reporter.)

17 THE COURT: All right. We'll continue with our
18 list of potential witnesses in the trial of the case.

19 Almetha Green. Ms. Green, to my front left.

20 Thank you, Ms. Green.

21 Otis Green. Mr. Otis Green, also to my front left.

22 Brandon Peeples. Mr. Peeples, to my -- to the back
23 right.

24 Thank you. Thank you, Mr. Peeples.

25 Ronnie Tyler.

1 Again, is any member of the jury panel related by
2 blood or marriage, close personal friends with any of those
3 individuals whose names I just called and/or who stood
4 before you? If so, please stand.

5 (There was no response from the jury venire.)

6 THE COURT: Any additional potential witnesses from
7 the parties? Solicitor?

8 MR. SLOCUM: I'm sorry, Judge --

9 THE COURT: Oh. I'm sorry. I do have another list
10 I did not see. Of course, David Glover. He's already
11 stood before you.

12 Debra Bright. Jessica Abdullah. I do not see Ms.
13 Bright or Ms. Abdullah.

14 Again, is any member of the jury panel related by
15 blood or marriage, close personal friends, any social,
16 business, professional relationship with any of those
17 individuals whose names I've called and/or who stood before
18 you? If so, please stand.

19 (There was no response from the jury venire.)

20 THE COURT: All right. Then, finally, ladies and
21 gentlemen, again you've heard the allegations, the
22 indictments have been read to you. You've been introduced
23 to the -- to Mr. Glover, to the names and/or the witnesses
24 that stood before you or potential witnesses in the trial
25 of this case. You generally know what it may be about.

1 I've also asked you a number of qualifying questions to
2 qualify you as jurors in the trial of this case, as fair
3 and impartial jurors in the trial of this case for both the
4 State and the defense.

5 You know yourselves best. Does any member of the
6 jury panel know any reason whatsoever why you feel like you
7 could not be a fair and impartial juror in the trial of
8 this case for both Mr. Glover and the State? If so, please
9 stand because if it concerns you, it concerns me.

10 THE COURT: No one stands. Thank you. Thank you
11 very much. I find our panel is qualified with the
12 exceptions of those that were stood aside.

13 And I did protect that one individual, Madame
14 Clerk. If you would please give us a panel.

15 The strikes Solicitor are -- the strikes?

16 MR. SLOCUM: It will be five and ten.

17 THE COURT: Five for the State, ten for the
18 defense?

19 Do you agree with that, Mr. Hayes.

20 MR. HAYES: Yes, Your Honor.

21 THE COURT: Thank you. Thank you very much.

22 Madame Clerk, does the Aiken County courthouse
23 allow cell phones in the courthouse?

24 THE CLERK: Uh-huh.

25 THE COURT: Is that a yes?

1 THE CLERK: Yes.

2 THE COURT: In the courtroom?

3 THE CLERK: We suggest they turn them off.

4 THE COURT: Suggest?

5 THE CLERK: Yes.

6 THE COURT: That's not a suggestion; that's an
7 order. If you have your cell phone, please cut it off.

8 THE CLERK: We have found Amber alerts, weather
9 alerts, and daily alarms will still go off if you keep it
10 on silent. So we suggest they turn them off.

11 THE COURT: Please keep that in mind, or they'll
12 end up with some charitable institution.

13 All right. Yes, ma'am. If you would, please give
14 the jurors their instructions, and give us a panel.

15 **JURY SELECTION**

16 THE CLERK: If I call your name, please bring
17 everything you have with you; come to the front; stand in
18 front of me; turn around; and face the audience, please.

19 Number 73, Rex Harding. (White male)

20 What say you for the State.

21 MR. SLOCUM: Please excuse Mr. Harding from this
22 case.

23 THE CLERK: Please return to your seat.

24 Number 177, Charlie Thomas. (Black male)

25 What say you for the State?

1 MR. SLOCUM: Please excuse Mr. Harding -- or Mr.
2 Thomas from this case.

3 THE CLERK: Please return to your seat.
4 Number 91, Betty Jackson. (White female)
5 What say you for the State?

6 MR. SLOCUM: Please excuse Ms. Jackson from this
7 case.

8 THE CLERK: Please return to your seat.
9 Number 144, Cheryl Quarles. (White female)
10 What say you for the State?

11 MR. SLOCUM: Please present Ms. Quarles.

12 THE CLERK: What say you for the defense?

13 MR. HAYES: Please seat the juror.

14 THE CLERK: Please have a seat in the jury box.

15 Number 141, Brandi Pryor. (White female)

16 What say you for the State?

17 MR. SLOCUM: Please present Ms. Pryor.

18 THE CLERK: What say you for the defense?

19 MR. HAYES: Please seat the juror.

20 THE CLERK: Please have a seat in the jury box.

21 Number 135, Susan Pellerin. (White female)

22 What say you for the State?

23 MR. SLOCUM: Please present Ms. Pellerin.

24 THE CLERK: What say you for the defense?

25 MR. HAYES: Please excuse this juror.

1 THE CLERK: Please return to your seat.
2 Number 78, Earnest Herrin. (Black male)
3 What say you for the State?
4 MR. SLOCUM: Please present Mr. Herrin.
5 THE CLERK: What say you for the defense?
6 MR. HAYES: Please seat the juror.
7 THE CLERK: Please have a seat in the jury box.
8 Number 113 James Matthews. (Black male)
9 What say you for the State?
10 MR. SLOCUM: Please excuse Mr. Matthews in this
11 case.
12 THE CLERK: Please return to your seat.
13 I have four strikes for the State and one for the
14 defense.
15 Number 97, Vicky Johnson. (Black female)
16 What say you for the State?
17 MR. SLOCUM: Please present Ms. Johnson.
18 THE CLERK: What say you for the defense?
19 MR. HAYES: Please seat the juror.
20 THE CLERK: Please have a seat in the jury box.
21 Number 112, Keon Madison. (Black male)
22 What say you for the State?
23 MR. SLOCUM: Please present Mr. Madison.
24 THE CLERK: What say you for the defense?
25 MR. HAYES: Please seat the juror.

1 THE CLERK: Please have a seat in the jury box.

2 Number 181, Nathaniel Thornton. (White male)

3 What say you for the State?

4 MR. SLOCUM: Please present Mr. Thornton.

5 THE CLERK: What say you for the defense?

6 MR. HAYES: Please seat the juror.

7 THE CLERK: Please have a seat in the jury box.

8 Number 145, Vivian Raiford. (Black female)

9 What say you for the State?

10 MR. SLOCUM: Please excuse Ms. Raiford from this

11 case.

12 THE CLERK: Please return to your seat.

13 Number 80, Nicholas Hobbs. (White male)

14 What say you for the State?

15 MR. SLOCUM: Please present Mr. Hobbs.

16 THE CLERK: What say you for the defense?

17 MR. HAYES: Please excuse this juror.

18 THE CLERK: Please return to your seat.

19 I have five strikes for the State and two for the

20 defense.

21 Number 102, Aubree Justus. (White female)

22 What say you for the State?

23 MR. SLOCUM: Please present Ms. Justus.

24 THE CLERK: What say you for the defense?

25 MR. HAYES: I'm sorry. What was the number?

1 THE CLERK: 102.
2 MR. HAYES: Please seat the juror.
3 THE CLERK: Please have a seat in the jury box.
4 Number 117, Keisha McDaniel. (White female)
5 What say you for the State?
6 MR. SLOCUM: Please present Ms. McDaniel.
7 THE CLERK: What say you for the defense?
8 MR. HAYES: Please excuse this juror.
9 THE CLERK: Please return to your seat.
10 Number 10, Joseph Bennington. (White male)
11 What say you for the State?
12 MR. SLOCUM: Please present Mr. Bennington.
13 THE CLERK: What say you for the defense?
14 MR. HAYES: Please seat the juror.
15 THE CLERK: Please have a seat in the jury box.
16 Number 72, Aimee Hammett. (White female)
17 What say you for the State?
18 MR. SLOCUM: Please present Ms. Hammett.
19 THE CLERK: What say you for the defense?
20 MR. HAYES: Please seat the juror.
21 THE CLERK: Please have a seat in the jury box.
22 Number 15, Dennis Briatico. (White male)
23 What say you for the State?
24 MR. SLOCUM: Please present Mr. Briatico.
25 THE CLERK: What say you for the defense?

1 MR. HAYES: Please seat the juror.

2 THE CLERK: Please have a seat in the jury box.

3 Number 186, Phuoc Vo. (Asian male)

4 What say you for the State?

5 MR. SLOCUM: Please present Mr. Vo.

6 THE CLERK: What say you for the defense?

7 MR. HAYES: Please excuse this juror.

8 THE CLERK: Please return to your seat.

9 I have five strikes for the State and four for the
10 defense.

11 Number 192, Jason Weeks. (White male)

12 What say you for the State?

13 MR. SLOCUM: Please present Mr. Weeks.

14 THE CLERK: What say you for the defense?

15 MR. HAYES: Please seat the juror.

16 THE CLERK: Please have a seat in the jury box.

17 THE COURT: All right. Mr. Hayes, Solicitor, step
18 up here just a minute.

19 (There was a bench conference out of the hearing of
20 the jury venire and the court reporter.)

21 THE COURT: All right. Madame Clerk, you may
22 continue.

23 THE CLERK: Number 64, Donnie Grbic.

24 THE COURT: I'm sorry. What number?

25 THE CLERK: 64. What say you for the State?

1 MR. SLOCUM: Please present Mr. Grbic.
2 THE CLERK: What say you for the defense?
3 MR. HAYES: Please seat the juror.
4 THE CLERK: Please have a seat in the jury box.
5 Alternates?
6 THE COURT: All right. Two alternates. Strikes
7 are one for the State and two for the defense.
8 THE CLERK: Number 108, Rebecca Lorraine.
9 What say you for the State?
10 MR. SLOCUM: Please present Ms. Lorraine.
11 THE CLERK: What say you for the defense?
12 MR. HAYES: Please excuse this juror.
13 THE CLERK: Please return to your seat.
14 Number 68, Phillip Griffith.
15 What say you for the State?
16 MR. SLOCUM: Please present Mr. Griffith.
17 THE CLERK: What say you for the defense?
18 MR. HAYES: Please seat the juror.
19 THE CLERK: Please have a seat in the jury box.
20 Number 160, Octavia Settles.
21 What say you for the State?
22 MR. SLOCUM: Please present Ms. Settles.
23 THE CLERK: What say you for the defense?
24 MR. HAYES: Please seat the juror.
25 THE CLERK: Please have a seat in the jury box.

1 THE COURT: All right. Any motions regarding the
2 jury selection process from the State?

3 MR. SLOCUM: One from the State, Judge.

4 THE COURT: From the defense?

5 MR. HAYES: Judge, I would just ask for that too.

6 THE COURT: Excuse me?

7 MR. HAYES: Yes, sir.

8 THE COURT: I couldn't quite understand you.

9 MR. HAYES: I'm sorry. No, sir.

10 THE COURT: All right. Madame Clerk, what do you
11 do with the panel during the motions? Report back to --

12 THE CLERK: Jury assembly.

13 THE COURT: -- jury assembly?

14 THE CLERK: They normally go back to the jury room,
15 and then most of the jurors go back to the jury assembly.

16 THE COURT: All right. Ladies and gentlemen that
17 were selected for the trial of this case, momentarily I'm
18 going to have you step back to the jury room with the
19 bailiff. I have a matter of law to take up with the
20 attorneys. Do not discuss the case with anyone including
21 your fellow jurors during this brief recess. Also, Madame
22 Bailiff, no cell phones in the jury room.

23 THE BAILIFF: Yes, sir.

24 THE COURT: All right. And that's standard
25 practice here. Correct?

1 THE BAILIFF: Yes, sir.

2 THE COURT: All right. If y'all would please go
3 with the bailiff.

4 (The jury left the courtroom at 11:17 a.m.)

5 THE COURT: All right. Those of you on the jury
6 panel that have not been selected for the trial of this
7 case, I'm going to ask you to please step back in your jury
8 assembly room during the time in which I hear this motion.
9 Do not discuss this case with anyone including your fellow
10 jurors or anyone else during this brief recess. At the
11 conclusion of the motion hearing, you will be given further
12 instructions concerning your jury service. If you would,
13 please now go and report to your jury assembly room.

14 (The jury panel left the courtroom.)

15 **BATSON MOTION**

16 THE COURT: All right.

17 MR. SLOCUM: Judge, just for the record, I wanted
18 to clarify the State does have one motion. And when Mr.
19 Hayes stood up, he first said he would have one too. And
20 then when directed by the Court, he said, No, we don't have
21 any motions. So I just wanted to see if he has a motion or
22 not.

23 MR. HAYES: No.

24 MR. SLOCUM: Okay.

25 THE COURT: Sheriff, could you take care of that

1 for me, please.

2 MR. SLOCUM: Judge, under Batson v. Kentucky, the
3 State would make a motion in respect to Jurors Numbers 135
4 and 78. 135 is a white female age of 61 who was struck.
5 The very next person called, Number 78, is a black male age
6 of 63 who was seated by the defense. The first one was
7 struck; the second one was seated. Both similarly
8 situated, and no other reason for the defense to have
9 struck 135, per the State's contention, outside of race or
10 gender. We would ask the Court to clarify that.

11 (There was a slight noise disruption from outside
12 of the courtroom.)

13 THE COURT: All right. Go right ahead, Solicitor.

14 MR. SLOCUM: Judge, just that those two jurors were
15 back-to-back, both similarly situated, a white female was
16 struck by the defense and a black male that was sat by the
17 defense.

18 THE COURT: All right. Mr. Hayes?

19 MR. HAYES: Judge, I struck Juror Number 135
20 because yesterday during qualification she indicated to the
21 Court she was working three jobs and one other thing that I
22 can't read my notes on. My contention is that I would like
23 to have somebody that was well-rested and is going to be
24 able to stay awake and pay attention to what's going on
25 here today.

1 As to 78 that the State is saying is similarly
2 situated, he indicated yesterday he only had one job at AGY
3 and that he was hoping to retire this month.

4 THE COURT: It sounds like an intelligent juror,
5 Number 78.

6 MR. HAYES: Yes, sir. My contention would be that
7 he's also not similarly situated being that he's not
8 working three jobs and trying to stretch himself thin.

9 THE COURT: All right. Thank you.
10 Solicitor?

11 MR. SLOCUM: Your Honor, the fact that she was
12 working three jobs, there's no way of knowing when those
13 jobs take place, if she's off this week or has to work at
14 all today, tomorrow, or Friday. We don't feel that's a
15 correct basis for the striking.

16 THE COURT: Are there any other jurors that were
17 seated that have multiple employers? Or that not seated?
18 I was not at the jury qualification yesterday.

19 MR. HAYES: Judge, not that I'm aware of. And I
20 did seat three other white females.

21 THE COURT: Are you aware of any males or members
22 of the African American race, Solicitor, that were seated
23 that have multiple jobs.

24 MR. SLOCUM: I beg the Court's indulgence, Your
25 Honor.

1 (There was a brief pause.)

2 MR. SLOCUM: No, sir, Your Honor. Not to my
3 knowledge.

4 Judge, one other motion by the State in regards to
5 Batson as well. When do you want to -- if you want me to
6 address that now, we can. If you want me to wait until you
7 make your ruling on this --

8 THE COURT: You may do so.

9 MR. SLOCUM: Judge, Number 117, a Ms. McDaniel.
10 She is a white female age of 36, was struck by the defense,
11 and during the alternate selections, Jurors Numbers 68 and
12 160 were both sat by the defense, one a white female, one a
13 black female. In regards to the -- Ms. McDaniel, 117
14 during the original twelve selection, the State inquires to
15 the reason for striking Ms. McDaniel.

16 THE COURT: I'm not tracking as to the alternates.
17 I thought a white female alternate was struck.

18 MR. SLOCUM: The first one was, 108. Number 68 --

19 THE COURT: A white male.

20 MR. SLOCUM: My apologies, Your Honor.

21 THE COURT: And then 160 is a black female, an
22 African American female.

23 MR. SLOCUM: That's to my -- my mistake on notes.
24 My question would be sitting the -- number 160 and striking
25 Number 117, the reasoning behind that. And that would be

1 all from the State.

2 THE COURT: Mr. Hayes?

3 MR. HAYES: As to Number 117, Judge, I struck her
4 because her husband has ties to the government, and he has
5 worked for South Carolina DNR. As to 108, I struck her
6 because she had retired from the Air Force and had ties to
7 the government.

8 THE COURT: DNR I believe indicated Mr. McDaniel
9 was a game warden. Correct?

10 MR. HAYES: That was Number 117's husband. Her
11 husband.

12 THE COURT: 117, Her husband was a game warden?

13 MR. HAYES: Yes, sir.

14 THE COURT: All right. Solicitor.

15 MR. SLOCUM: Nothing further from the State, Judge.

16 THE COURT: All right. Thank you.

17 All right. The most recent opinion that I follow,
18 State versus Cochran, 632 SE 2nd 284, a two-prong process,
19 charged the opponent of the strike -- making the
20 allegations of discriminations. Thereafter, the first
21 prong of the strike is giving a reason; and thereafter
22 going back through the opponent's strike looking for the
23 opportunity to prove purposeful discrimination.

24 The second step of the process does not demand an
25 explanation that is persuasive or even plausible. This is

1 from the United States Supreme Court Case of Purkett. Step
2 two, therefore, the proponent of the strike does not carry
3 any burden of presenting reasons specific or general
4 explanations for the strike. Therefore, unless a
5 discriminatory intent is apparent, the explanation provided
6 by the proponent of the strike, the reason out to be deemed
7 race neutral and the trial court must proceed to the third
8 step. The third step, citing Payton versus Kears, e,
9 parenthetically -- And I'll take this -- I think that's an
10 Aiken County case, but check on that. 495 SE 2nd 205,
11 quote, Striking a juror because she was a, quote, redneck
12 unquote evinces a discriminatory intent and is therefore
13 not facially race-neutral.

14 THE PUBLIC DEFENDER: It's Allendale, Judge.

15 THE COURT: Sir?

16 THE PUBLIC DEFENDER: Allendale.

17 THE COURT: I thought that was an Aiken case. I
18 don't know why, but I thought maybe that was it. In step
19 three, the opponent of the strike must show the reason
20 offered was facially race-neutral was actually mere pretext
21 on discrimination.

22 When I look at the jury panel, it appears there
23 are, by my count, five white females on the jury panel.
24 Juror Number 4 is the first selected white female, nursing
25 student. Juror Number 4, numerically, 144 is her juror

1 number, was accepted. The next Number 5, is juror 141, She
2 was selected as juror number 2 in the panel, a student and
3 cashier. Then we come to 135, the office manager. She was
4 with a towing service, I believe and the defense indicates
5 to me that she had three jobs, and he wanted a juror
6 well-rested.

7 Under the standard of step two, I find that is a
8 race-neutral or gender-neutral reason. The next, of
9 course, was juror number 7 made it two African American
10 males. Juror Number 78 was the seventh juror out of the
11 box who you selected. The ninth juror out of the box,
12 Juror Number 97, was selected; that was a black female.
13 There are one, two, three, four, white males.

14 And I will find also as to 117, Ms. McDaniel, given
15 the fact that her husband is a law enforcement officer, I
16 think that is clearly a race-neutral reason for him to
17 strike.

18 So I would deny the State's motion under Batson,
19 both as to Juror 135 and Juror 117.

20 Any other motions from the State, Solicitor?

21 MR. SLOCUM: No, sir, Judge. Thank you.

22 THE COURT: From the defense?

23 MR. HAYES: No, sir.

24 THE COURT: Thank you. Thank you very much. All
25 right. As far as this case, then, we'll be in recess about

1 15 minutes if there are no further motions as far as this
2 case is concerned. Solicitor? You wanted to -- do you
3 need anything else, Solicitor.

4 MR. SLOCUM: Just -- We have the Jackson v. Denno
5 motion at your discretion, Judge. Whenever you'd like to
6 hear that.

7 THE COURT: I thought -- this is an I thought. I
8 thought we were going to do an openings, send the jury to
9 lunch, and then either do the Jackson versus Denno then or
10 come back early before I tell the jury to come back.

11 MR. SLOCUM: That's fine. I just wanted to bring
12 it to the --

13 THE COURT: All right.

14 MR. SLOCUM: -- Court's attention.

15 THE COURT: All right. Thank you.

16 MR. HAYES: Mr. Glover has brought to my attention,
17 he would like to address getting a new lawyer with the
18 Court before we proceed.

19 THE COURT: Well, I'll be delighted to do that if
20 we do it after I go through this with Mr. Weeks.

21 MR. HAYES: Yes, sir.

22 THE COURT: All right. Thank you. Thank you very
23 much. So as far as this case, we're going to recess 15
24 minutes. Thank you.

25 (A brief recess was observed.)

1 THE COURT: All right. I believe -- I believe we
2 brought up the issue of an attorney matter. Is that
3 correct, Mr. Hayes?

4 MR. HAYES: Yes, sir.

5 THE COURT: All right. I'll be glad to hear from
6 you.

7 MR. HAYES: This is Mr. Glover's motion, Your
8 Honor.

9 THE COURT: All right. Mr. Glover, if you
10 please -- All right. Mr. Glover, tell me your full name.

11 THE DEFENDANT: David Glover.

12 THE COURT: Speak up for me, please.

13 THE DEFENDANT: David Glover.

14 THE COURT: And how old are you, Mr. Glover?

15 THE DEFENDANT: I'm doing all right.

16 THE COURT: How old are you?

17 THE DEFENDANT: I'm 54.

18 THE COURT: Fifty-four? How much education do you
19 have?

20 THE DEFENDANT: Twelfth grade. I've been through
21 some -- let's see, I've been through job training. I've
22 been in school for pipe fitter.

23 THE COURT: What type of work do you do?

24 THE DEFENDANT: Machine operator and pipe fitter.

25 THE COURT: All right. Now, your attorney tells me

1 that you have an attorney matter that you want to bring to
2 my attention. I'll be glad to hear it from you.

3 THE DEFENDANT: Yes, sir. Well, I -- filed a
4 motion about sometime around June.

5 THE COURT: I'll tell you what, why don't you come
6 up and stand right here? All right. You say you filed a
7 motion sometime around June?

8 THE DEFENDANT: Yes, sir.

9 THE COURT: You filed with the Court?

10 THE DEFENDANT: Well, I came in here, and I talked
11 to you, but you had said --

12 THE COURT: You talked to me?

13 THE DEFENDANT: (The defendant nodded his head.)
14 But the lawyer -- I mean, the lawyer was present, and you
15 was saying the next week. That's been two months ago that
16 it was addressed to the Court.

17 MR. HAYES: Actually, what we did, we did a bond
18 motion in front of Judge Early. When he went to address
19 the issue of asking for a new lawyer, Judge Early said he
20 was to do that later when he was back in Aiken. My
21 understanding -- I cannot recall if he was here since that.

22 THE COURT: All right. So y'all were before
23 another judge, not me. You were you before Judge Early.

24 THE DEFENDANT: Excuse me. Judge Early.

25 THE COURT: That's quite all right. I didn't -- I

1 was trying to recollect you being in front of me before.
2 But anyway, I'll be glad to hear from you. I'll be glad to
3 hear from you, Mr. Glover.

4 THE DEFENDANT: Yeah. I've got some motion papers
5 where I had gotten back from the office about taking so
6 long to working on my thing. I got the papers right here.

7 THE COURT: All right. I'll be --

8 Would you hand that up for me please, Madame Clerk?

9 All right. And you have other documents you want
10 me to look at?

11 THE DEFENDANT: That's the only document at this
12 time, sir.

13 THE COURT: Tell me what you want me to do. Tell
14 me what the basis -- what's the basis of this motion you're
15 bringing before me and what you want me to do -- what
16 you're asking me to do.

17 THE DEFENDANT: Well, I was -- I was in the
18 process -- what I was -- to seek getting another lawyer.

19 THE COURT: And tell me why.

20 THE DEFENDANT: Um --

21 THE COURT: Without revealing any confidences
22 between you and your lawyer, tell me why you want another
23 lawyer.

24 THE DEFENDANT: Well, I mean I'm not -- I think
25 that not having -- For instance, when I was supposed to

1 came -- when I supposed to come up into the courtroom about
2 issues, and I was not making it -- things were not
3 happening. I wasn't getting things -- things wasn't
4 getting done.

5 THE COURT: What didn't it get done?

6 THE DEFENDANT: I didn't make it back up to the
7 courtroom, and I didn't talk to the judge. I didn't --
8 couldn't get back up to the courtroom to the judge, talking
9 about I'm going to go to the -- I'm over at the detention
10 center, and I have, you know, when I make a motion or
11 something, I can't come up here. And when it was time for
12 me to come up here, I couldn't move. I couldn't get
13 things -- I'm not getting things done.

14 THE COURT: What motions are you referring to?
15 What motions have been made that have not been before the
16 Court?

17 THE DEFENDANT: I haven't been able to get to the
18 Court to address none of them and everything like that, you
19 know what I'm saying. I mean, I'm just asking -- I'm just
20 asking about any changes, just bringing up changes now.
21 What can be done and what can't be done.

22 THE COURT: What motions do you want to bring
23 before the Court?

24 THE DEFENDANT: You mean motions for a new lawyer,
25 right?

1 THE COURT: No, sir. That's what we're doing now.

2 THE DEFENDANT: Right.

3 THE COURT: But I hear you say there were other
4 motions.

5 THE DEFENDANT: There was -- but that was this
6 issue going on with it, you know that's -- I mean, that's
7 what was going on. I indicate I wasn't being satisfactory,
8 wasn't getting things done.

9 THE COURT: What things was not getting done? I'm
10 not -- I apologize, Mr. Glover. I'm not tracking. What
11 things are not getting done?

12 THE DEFENDANT: Well, I say it better, I say, like
13 I wasn't -- it wasn't satisfactory to me. I don't think
14 that I was treated fair.

15 THE COURT: And how were you not treated fair?
16 Explain that to me.

17 THE DEFENDANT: I think that that I could've
18 been -- I think I could've been -- well, I mean, like I
19 said, I didn't things done like, properly. And I mean, I
20 wasn't getting -- I wasn't getting things done like to
21 move. Either to talk to a lawyer or, I wasn't -- I
22 couldn't get nothing done.

23 THE COURT: I'm still not understanding what things
24 you were attempting to get done --

25 THE DEFENDANT: Okay. Well.

1 THE COURT: -- that weren't done.

2 THE DEFENDANT: Me and -- as far as, me and the
3 lawyer wasn't seeing on the same -- in the long light,
4 seeing eye to eye on the same, you know, things.

5 THE COURT: Given that fact -- and you're telling
6 me that given the fact that you and your lawyer weren't
7 seeing eye to eye on the things that you want me to appoint
8 you another lawyer?

9 THE DEFENDANT: You know, I -- not only the fact
10 that we wasn't seeing eye to eye on things. Things wasn't,
11 you know, I wasn't being addressed. I don't feel like I
12 was being addressed in the right way. I think he wasn't,
13 you know -- I feel like I was being mistreated certain
14 ways.

15 THE COURT: You were mistreated in certain ways by
16 the Court? By officers of the Court? By your lawyer?

17 THE DEFENDANT: Quite similar to it, yeah. We
18 wasn't -- he wasn't -- I wasn't getting things -- anything
19 by the lawyers. Wasn't anything done, and I wasn't treated
20 right.

21 MR. HAYES: If I may? My understanding of it was
22 that he wasn't -- was not happy without -- not having bond,
23 and being denied bond. And was not happy with the offer
24 from the State. We could not come to an agreement as to a
25 plea deal. That was my understanding of the basis.

1 THE DEFENDANT: Well, I understand you have --

2 THE COURT: Is that the substance of what you're
3 trying to tell me now, Mr. Glover?

4 THE DEFENDANT: That's similar of the things -- I
5 mean as far as the way I was treated, the way I feel. I
6 mean, you know, by far as getting things done that could be
7 done.

8 THE COURT: So what are you asking me to do?

9 THE DEFENDANT: Give me that chance to have another
10 lawyer.

11 THE COURT: Mr. Hayes, tell me about yourself.
12 Tell me your educational background.

13 MR. HAYES: Four years of college, Judge. Three
14 years of law school. One year of a master's degree in
15 taxation, Cooley Law School; practiced here for right at 6
16 years this month.

17 THE COURT: And during that time, what various
18 positions have you held?

19 MR. HAYES: Held Assistant Public Defender, Your
20 Honor. Tried multiple cases. As to exactly, I do not know
21 that number.

22 THE COURT: Both felonies and misdemeanors?

23 MR. HAYES: Yes, sir.

24 THE COURT: Both handled a number of cases of plea
25 resolutions and otherwise?

1 MR. HAYES: Yes, sir. Somewhere around two-hundred
2 a year.

3 THE COURT: And of course, your trials, you've had
4 jury trials from start to finish?

5 MR. HAYES: Yes, sir. I believe I was involved --
6 from what I remember from last year, at least in nine,
7 possibly ten.

8 THE COURT: You ought to keep a list.

9 MR. HAYES: I should.

10 THE COURT: I didn't. I know one lawyer who did.
11 I wish I had. But you ought to keep a list. I keep a list
12 of every case I try as a judge so that -- how many I got
13 now? Law clerks, I can't live without them.

14 And you have co-counsel?

15 MR. HAYES: Yes, sir. Mr. Routzong.

16 THE COURT: Tell me -- can you tell me about him?

17 MR. HAYES: Judge, I know he was at the public
18 defender's office a little bit longer than I have been, and
19 he was a graduate of the University of South Carolina Law
20 School. Also, he was in the Marine Corps prior to that.
21 And that's the extent of my knowledge. I do know we are a
22 team together, and he was involved in those cases that we
23 tried last year.

24 THE COURT: And you're aware that he's handled
25 multiple misdemeanor and felony cases?

1 MR. HAYES: Yes, sir.

2 THE COURT: Pleas? Trials?

3 MR. HAYES: Yes, sir.

4 THE COURT: Trials, jury trials to conclusion?

5 MR. HAYES: Yes, sir.

6 THE COURT: Both Mr. Hayes and Mr. Routzong have
7 been in front of me on numerous occasions. In fact, Mr.
8 Glover, they're experienced attorneys. They're experienced
9 criminal defense attorneys. I have found them to very
10 professionally and very competently represent their
11 clients. So with that being said, I'm going to deny your
12 motion to appoint other lawyers to relieve Mr. Hayes or Mr.
13 Routzong. I apologize if I pronounce it wrong. Once I get
14 it wrong in my mind, I never get it right.

15 Do you have any other motions you'd like to make?

16 THE DEFENDANT: Not that I can think of, sir.

17 THE COURT: Sir?

18 THE DEFENDANT: Not that I can think of right now,
19 sir.

20 THE COURT: All right. All right. Well, if you
21 do, please bring them to the attention of your attorney,
22 and he will bring them to my attention. All right?

23 THE DEFENDANT: Yes, sir.

24 THE COURT: Sir?

25 THE DEFENDANT: Yes, sir, I'll do that.

1 THE COURT: Yes, sir. That's why I was handing it
2 to the clerk.

3 THE DEFENDANT: Yes, sir.

4 THE COURT: Thank you. Thank you very much.

5 All right. My suggestion, then, is to bring our
6 jury in, swear our jury, and do openings and then send our
7 jury to lunch. Does that suit the parties?

8 Mr. Slocum?

9 MR. SLOCUM: Yes, sir, Your Honor.

10 THE COURT: Mr. Hayes?

11 MR. HAYES: Yes, sir.

12 THE COURT: All right. Thank you. Thank you very
13 much.

14 If you'll bring our jury, please.

15 (The jury entered the courtroom at 12:25 p.m.)

16 THE COURT: I learned a long time ago, Madame
17 Clerk, never get between a clerk and his or her indictment.

18 THE CLERK: Yes, sir.

19 THE COURT: Mr. Griffith, an alternate. You're an
20 alternate?

21 THE JUROR: I don't know.

22 THE COURT: Yes, sir. All right. You are an
23 alternate. Thank you very much.

24 Ms. Settles, you're an alternate.

25 If you would, please change seats with this young

1 lady next to Mr. Griffith?

2 Is that where y'all normally put the alternates,
3 Madame Bailiff?

4 THE BAILIFF: Yes, sir.

5 THE BAILIFF: Yes, sir. Down in those seats.

6 THE COURT: Thank you.

7 All right. Madame Clerk, if you would, swear our
8 jury panel, please?

9 (The jury was sworn.)

10 **OPENING REMARKS BY THE COURT**

11 THE COURT: Ladies and gentlemen of the jury panel,
12 if you would please give me your complete and undivided
13 attention. The case we're about to try is the case of the
14 State versus David Glover, the defendant. What I will now
15 say is intended to serve as an introduction to the trial of
16 this case. These remarks are not an instruction on the law
17 in the case. I will instruct you on the full and complete
18 law that applies to the case at the end of the trial before
19 you retire to consider your verdict. This is merely an
20 explanation of the procedure that we will follow in the
21 trial so that you may better understand what may be
22 happening.

23 The defendant is charged by indictments filed with
24 this Court for the crimes of burglary in the first degree,
25 possession of a firearm during the commission of a violent

1 crime, and attempted murder, the full and complete elements
2 of which will be explained to you later. Again, ladies and
3 gentlemen, these indictments are simply the formal charging
4 documents by which the case is brought before this Court,
5 and they are not in any sense evidence of any of the
6 allegations they contain.

7 The defendant has pled not guilty to these
8 indictments. The State, the party to my front left, the
9 party closest to the jury box, has the burden of proving
10 each of the elements of the indictments beyond a reasonable
11 doubt. And it will be your duty, ladies and gentlemen, to
12 determine whether or not the State has met that burden.

13 Your duty as jurors is to find and determine the
14 facts of the case. You are the sole judges of the facts of
15 the case. If at any time I make any comment regarding the
16 facts, you must disregard it. You are to determine the
17 facts from the testimony you hear and the other evidence
18 introduced in court. It is up to you to determine what
19 inferences which you feel like may properly be drawn from
20 the evidence. It is especially important that you perform
21 your duties of determining the facts diligently and
22 conscientiously because ordinarily there is no way to
23 correct an erroneous determination of the facts by a jury.

24 On the other hand, and with equal emphasis, the
25 same law that makes you the judges of the facts makes me

1 the judge of the law. The law that's given by the Court is
2 the only law that you may consider. You must accept it and
3 follow it, although you may disagree with it. I cannot
4 tell you what the facts are, and you cannot disagree with
5 me about what the law is or what the law should be. Your
6 job is to take the law as I give it to you, apply it to the
7 facts that you find from the testimony of the witnesses and
8 any other evidence that may be introduced. After doing
9 that, you will render your verdicts, true and just verdicts
10 under the solemn oath which you have just taken as jurors.

11 It is important that you keep an open mind and not
12 decide any issue in the case until all of the evidence has
13 been presented, the parties have made their closing
14 arguments, and I have instructed you on the law in this
15 case. It is your solemn responsibility to determine the
16 guilt or the innocence of the defendant, and your verdict
17 must be based solely on the evidence as it is presented to
18 you in this trial and on the law as I instruct you during
19 and at the close of the trial.

20 Now, in just a moment, the solicitor will make what
21 is called an opening statement in which the solicitor will
22 explain to you the issues in the case, or at least what the
23 solicitor thinks the issues are in this case. Mr. Hayes or
24 Mr. Routzong, one of the attorneys for the defendant, may
25 also make an opening statement, although he is not required

1 to do so. He is not required to do so because a criminal
2 defendant in South Carolina, regardless of the seriousness
3 of the charge, whatever it may be, is always presumed to be
4 innocent of the charge and have no burden whatsoever of
5 proving himself or herself innocent. The State is the
6 party that bears the burden of proving its case beyond a
7 reasonable doubt.

8 Ladies and gentlemen, what the attorneys tell you
9 during their opening statements is not evidence in the
10 case. What they say during their closing arguments is not
11 evidence in the case. Their questions are not evidence in
12 the case. That's the framework by which the witnesses
13 testify before you. The questions are not evidence. It's
14 the responses, the answers of those witnesses that have
15 sworn before you, that have taken the stand to tell the
16 truth of the facts as they recall them to be. What the
17 attorneys tell you is only their contention as to what the
18 issues are. That is where the evidence will be presented,
19 from the witness stand and by any exhibits, photographs,
20 documents, or the like that may be introduced into
21 evidence.

22 From time to time during the trial, you may hear
23 one of the lawyers say something like, Your Honor, I
24 believe we have a question of law or a matter of law to
25 discuss with you. Or, Your Honor, may we approach the

1 bench? Or sometimes, I myself might find it necessary to
2 excuse you from the courtroom for a short while so the
3 attorneys and I can discuss matters of law. This is not to
4 hide anything from you. The reason for this is because you
5 are the judges of the facts, and sometimes when I am
6 discussing matters of law with the attorneys, it may be
7 necessary for me to make some comment as to the facts in
8 connection with ruling whether or not a particular law
9 applies. I am not supposed to tell you what I think the
10 facts are, so I will excuse you from the courtroom while
11 these discussions take place so that in no way will you be
12 influenced by anything that I might say or do in connection
13 with the facts.

14 In determining what the true facts are in this
15 case, in using your individual and collective common sense
16 and good judgement, you or -- you must decide whether or
17 not the testimony of the witnesses is believable. It will
18 be my responsibility to rule as a matter of law as to
19 whether or not certain testimony is admissible at all or
20 not. In other words, whether you hear it or not. But once
21 the testimony is admitted, whether or not you believe is
22 solely for you the jury to decide.

23 In deciding whether to believe a witness, you have
24 the right to consider the interest of the witness or the
25 bias or the prejudice of any witness; the opportunity for

1 the witness to have seen the matters and things about which
2 the witness may testify; and the way a witness acts on the
3 witness stand, their manner, their appearance, their
4 demeanor. You have the right to consider anything that is
5 in the record that will help you evaluate testimony of
6 witnesses. That means it will be your duty to pay close
7 attention to these witnesses, to observe, to listen to the
8 witness, to pay close attention to the attorneys and to the
9 Court.

10 Don't let your thoughts wander, but give strict
11 attention to the testimony in this case so that at the end
12 of all the testimony, after the closing arguments by the
13 attorneys, and the instruction on the law by the Court, you
14 will then be in that position to determine what the true
15 facts are and thus render a true and just verdict in this
16 case.

17 Ladies and gentlemen, just a few administrative
18 matters, many times throughout the course of the trial, and
19 I don't know whether it will be like that in this case or
20 not, a photograph may be introduced into evidence. It may
21 be handed to the foreperson while you're in the courtroom
22 in your jury box and passed among the members of the jury
23 while you're here. If I allow an item into evidence, you
24 will also have it with you in your jury room at the time of
25 your deliberations. With that being said, you can look at

1 an item, you can look at a photograph all you wish.
2 Whatever time you want to take with it out here in the
3 courtroom. Keep in mind, keep in mind that you will also
4 have those items with you in your jury room during your
5 deliberations as to the verdict.

6 I will appoint a -- I'll either appoint or have you
7 select a foreperson among the members of the jury. That
8 individual will sit where this young man is now sitting,
9 seating closest to the bench. It can be anyone but Mr.
10 Griffith or Ms. Settles, although I believe Mr. Griffith
11 and Ms. Settles would make excellent jury forepersons,
12 however they are now, right now in the status of alternate
13 jurors. So it will be one among your number. I will
14 review my jury list over the luncheon recess and either
15 make an appointment or have that election or vote or allow
16 you to select and inform me of that when you return after
17 you're recess.

18 From time to time, you may see me on my computer.
19 I don't tweet. I don't repeat. I don't snap talk or rap.
20 I don't know what it is, but I don't do any of those
21 things. I'm faceless. I don't do any of that. These are
22 very good trial attorneys. I may see what I perceive to be
23 a legal issue lurking down that dusty road, that dusty
24 trail, so I'll do some research in that regard. I stay
25 totally focused and immersed in the trail of the case.

1 Also, as far as sitting, I would always want our
2 two alternates to sit where they're now sitting. Once --
3 and I think I'll just appoint a foreperson over the
4 luncheon recess. Once I appoint that foreperson, again,
5 I'll have him sit here. The rest of you may sit wherever
6 you would like in the jury box except the foreperson and
7 the two alternates. I have found, it's been my experience,
8 my observation of jurors, they can be very territorial.
9 They like to sit in the same spot each and every time and
10 have the same view of the courtroom, same view of the
11 witness stand, same view of the parties.

12 I like that. And if you want to do that, that's
13 certainly fine. But keep in mind, I need to keep the
14 foreperson and the alternates in their seats. Again, if
15 you wish to sit in the same place or move, please do so.

16 And finally, ladies and gentlemen, what am I really
17 in charge of? Taking breaks. I'm in charge of taking
18 breaks. I have a real simple procedure I follow as far as
19 taking breaks. If I want to take a break, we take a break.
20 Everybody's happy. This is not some type of judicial
21 marathon. If any of you need a break, any of you need a
22 break, please raise your hands. Y'all can take y'all's
23 break. We can take our break. If you thoughts start to
24 wander, if you need a rest break, if you're uncomfortable
25 in any manner, raise your hand. You're probably not the

1 only one in the courtroom that thinks that, so please get
2 my attention or the attention of one of our fine bailiffs
3 or officers, and I'll be delighted to help.

4 As far as the parties, I never introduced you.
5 This is my law clerk to my right, Mr. Rogers Harrell. Mr.
6 Harrel is a 2001 graduate of the Citadel. I like hiring
7 Citadel cadets. My son is one. I like to hire graduates;
8 my son is a graduate. I tongue-in-cheek say I like to hire
9 them because they're not real bright, but they're very
10 loyal. That's not true as far as Mr. Rogers Harrel is
11 concerned. He's very bright and very loyal, and as I said,
12 I say that tongue-in-cheek. They stay with us a year, and
13 his year's about up. He's going to be leaving me in
14 August.

15 This is a court of record, and Ms. Brenda to my
16 front left is my assigned court reporter, assigned to me
17 throughout the circuit, and many times I've traveled, when
18 I travel throughout the state, and I'm not in my circuit
19 today. Everything's taken down, everything said in court
20 by me, by the attorneys, the witnesses, what have you, has
21 to be taken down for future transcription if necessary.

22 Any objections to anything I've told the jury from
23 the State, Solicitor?

24 MR. SLOCUM: None from the State, Your Honor.

25 THE COURT: From the defense?

1 MR. HAYES: No, sir.

2 THE COURT: And ladies and gentlemen, we will do
3 our opening statements to you, the parties will. And
4 thereafter we'll take our luncheon recess. If you would,
5 please give the parties your complete and undivided
6 attention. Thank you very much.

7 Solicitor.

8 **OPENING STATEMENTS**

9 MR. SLOCUM: Thank you, Judge. May it please the
10 Court? Mr. Routzong, Mr. Hayes. Ladies and gentlemen of
11 the jury, 368 days ago today, May 10th, 2014, Mr. Glover
12 tried to kill Ms. Vernell Weaver. He hit her with a
13 pistol, shot her in the neck. That bullet exited through
14 her lip. It's a miracle that she's where she is today.

15 You're going to hear that gruesome story. You're
16 going to hear how Mr. Glover, uninvited, went over to this
17 house on Mae Acres Court where Ms. Weaver was; how he shot
18 her, forced his way into that house; and after shooting
19 her -- it's very, very disturbing what you're going to
20 hear, what happens after that first shot, what happens when
21 she retreats, and what happens when she leaves that
22 residence seeking help. You're going to hear all that.
23 You're going to hear it directly from the witnesses
24 themselves.

25 There's two ways to present evidence here in court,

1 two ways you're going to hear it, directly and
2 circumstantially. Direct evidence is what you see, what
3 you hear, what you smell, what you can touch.
4 Circumstantial evidence is what you can piece together to
5 lead you to a final resolution. And I like to use the
6 example of this room. There are no windows to the outside
7 of this room. However, if two people walk into that door,
8 one has an umbrella, that umbrella is wet and that person
9 is dry, the second person coming in behind them doesn't
10 have an umbrella, and that person is soaking wet, you can't
11 see directly that it's raining outside, but you can deduce
12 from seeing those two people come in that it's raining
13 outside. That's what I mean by direct and circumstantial
14 evidence.

15 Now, Mr. Hayes is a fine attorney, and his job here
16 is to get you to look at everything but the issues at hand.
17 I can't tell you what he's going to do or how he's going to
18 do it, but it's his job to advocate for his client and by
19 doing that to make you look elsewhere but what is really at
20 issue here. I want you to pay attention to what these
21 witnesses tell you. And I want you to listen and judge
22 their credibility as the judge directed you. This isn't
23 TV. This isn't CSI; this isn't NCIS. This is not a
24 perfect world. Things don't fall together in 60 minutes
25 for a perfect presentation at the end. This is real life,

1 and this happened a year ago. I wish things were perfect,
2 but they're not. But it doesn't take away from what
3 happened on May 10th, 2014 to Ms. Williams. It doesn't
4 take away from what Mr. Glover did that day.

5 The judge, at the end of this, he's going to tell
6 you the law. And if anything he tells you is different
7 from what I'm about to tell you, please, he's the judge of
8 the law, go with him. The State of South Carolina says
9 that attempted murder is the attempt to kill someone with
10 the intent to kill someone with malice aforethought. The
11 judge will direct to you what malice is, but at the end of
12 this I don't believe you're going to have an issue with
13 anything not being malicious.

14 Possession of a weapon during the commission of a
15 violent crime is just that, you have a weapon when you
16 commit a violent crime. Burglary in the first degree is
17 the entering of a dwelling, where somebody lives, without
18 consent, that means you didn't have permission to be there,
19 and at that entering you had an intent to commit a crime
20 inside that house. Here, we're alleging that crime is
21 attempted murder. You'll be able to see all this by the
22 end of this trial.

23 And the burden that we have as the State is beyond
24 a reasonable doubt, not beyond all doubt, not every doubt
25 in the world; it's just a reasonable doubt. What's

1 reasonable? And that's why we chose you. We didn't ask
2 you to leave your common sense at the door when you came
3 through the metal detectors. We chose you because you are
4 a fair and impartial jury, and it's your job to determine
5 the facts. You're going to hear the facts, and at the end
6 of this, I believe you will be firmly convinced that Mr.
7 Glover's guilty of attempted murder. He's guilty of
8 burglary first. And he's guilty of possession of a weapon
9 during the commission of a violent crime.

10 I thank you for your service. This is going to be
11 a trying time for all of us. Your willingness and
12 sacrifice here today, we wouldn't be able to do this
13 without that, so I thank you. We all thank you. And I ask
14 that at the end of this that you return a verdict of
15 guilty. Thank you.

16 THE COURT: Thank you, Solicitor.

17 Mr. Hayes.

18 MR. HAYES: May it please the Court?

19 THE COURT: Yes, sir.

20 MR. HAYES: The State and the defense don't always
21 agree, and when we have a disagreement, the way we solve
22 that disagreement is bring in a jury. If anybody's a fan
23 of Quentin Tarantino, you know you jump around, you're
24 going to see bits and pieces, and then in the end, you can
25 put it all together. That's kind of like a trial. The

1 State here has their theory, their story. The defendant,
2 Mr. Glover, my client has his story.

3 I'll say that there's a lot that we do agree about
4 in this case. They're right, he shot her. Okay? That's
5 not even going to be an argument. We're not contesting
6 that. What we do contest is the element of malice. Okay?
7 You heard the State say that they have to prove malice and
8 forethought. That means, not only did he shoot her, but
9 when he shot her he intended to kill her out of evil. Our
10 position is, that's not what happened.

11 I believe that you're going to hear testimony from
12 Mr. Glover that's going to say, I was protecting myself
13 from her, and I had every right to shoot her. That's
14 called self-defense. That's what we intend to argue about.
15 That's the only element in that crime that we're going to
16 have a dispute about and that we can't see eye to eye
17 about. That is the issue that you're here for, to make
18 that determination, come to a collective agreement as to
19 who's right.

20 If the State's right, he's guilty. If the defense
21 is right, he's not guilty. And the only people that can
22 make that determination is you. You can only make that
23 determination, though, at the end of the trial after you've
24 heard everything.

25 As to the burglary, they said he broke into the

1 house and he committed a crime. I'm going to say he was
2 already there. She invited him. And when she invited him
3 in, that's not burglary. That's the element that we're
4 going to argue about. That's what we disagree about.
5 That's where I'm going to focus. And if you don't have
6 burglary, and you don't have a weapon, you don't have
7 possession of a weapon during a violent crime. Oh, I'm
8 sorry. If you don't have attempted murder and a burglary,
9 there's no possession of a violent crime, possession of a
10 firearm.

11 Opening statements are a roadmap, and what I
12 intended when I started it is to tell you exactly where I
13 want you to look. I want you to look at everything. I
14 want you to listen to each one of the witnesses from the
15 witness stand; and keep an open mind; and determine, from
16 the evidence that you have before you when we adjourn, what
17 the verdict is. I do not want you to run off and make a
18 hasty decision. That's not how a trial works. Because
19 right now, he has what we call a cloak of innocence over
20 him. And the only way for that to be taken away is that
21 y'all come to a conclusion and the twelve of you
22 collectively decide.

23 All I'm asking is that y'all watch what's going on,
24 pay attention to what each witness says, and I'm going to
25 focus our defense as to what I ask. And at the end of it,

1 listen to what the State said, listen to what the defense
2 said, and look at that evidence for yourself. And then
3 make that decision.

4 THE COURT: Thank you. Thank you, Mr. Hayes.

5 All right. Ladies and gentlemen, I had an election
6 during the opening statements by the attorneys, Juror
7 Number 97, 97. Is that Ms. Johnson?

8 THE JUROR: Yes.

9 THE COURT: Ms. Johnson, I'm going to appoint you
10 foreperson of this jury panel please. Thank you. Thank
11 you very much for volunteering for that important role.

12 Ladies and gentlemen, now we're going to take our
13 luncheon recess.

14 You don't have to move yet. We can do it after.
15 Thank you, though, for your manners. You don't see that
16 anymore.

17 Ladies and gentlemen of the jury panel, we're now
18 going to take our luncheon recess. I would remind you,
19 during this recess, you are not to discuss this case with
20 anyone. That includes your fellow jurors, lunch mate,
21 family, friends, or anyone else. You may not read, watch,
22 or listen to any news accounts about the case whether
23 they're on television, TV, radio, Internet, or otherwise,
24 should there be any. You, of course, may not use your
25 computer, cell phone, or any other electronic device with

1 communication capability while in attendance at trial or
2 during deliberations. The devices may be used during
3 luncheon breaks but may not be used to obtain or disclose
4 information which is prohibited.

5 Information which is prohibited includes but is not
6 limited to the following: Information about a party, a
7 witness, an attorney, or a court officer; news accounts of
8 the case, past or present; information collected through
9 juror research on any topic raised or testimony offered
10 during a trial; or information collected through juror
11 research on any other topic the juror might think would be
12 helpful in deciding the case. Remember, you decide the
13 case based on the evidence, and the testimony of the
14 witnesses testifying under oath before you, and the law as
15 I tell you the law is. Do not do any independent
16 investigation on the Internet or otherwise. Do not expose
17 yourself to any news reports should there be any, present
18 or from the past.

19 With that in mind, we'll take our luncheon recess.
20 I would ask you if you'd please be back promptly at 2:30,
21 promptly at 2:30. I don't want you to think the Court
22 takes hour-and-a-half lunches every day. The parties will
23 be back at 2 o'clock, and we will try to handle any motions
24 that may arise prior to hopefully beginning promptly at
25 2:30.

1 Any questions? Thank you. Thank you very much.

2 See you at 2:30. I hope you all have a pleasant lunch.

3 (The jury left the courtroom at 12:56 p.m.)

4 THE COURT: All right. Anything from the State
5 before we take our luncheon recess.

6 MR. SLOCUM: No, sir. None from the State.

7 THE COURT: Defense?

8 MR. HAYES: No, sir.

9 THE COURT: All right. Court will be in recess
10 until two o'clock, and we can do that motion then. Thank
11 you.

12 (A recess was observed for lunch.)

13 **PRETRIAL MOTIONS**

14 THE COURT: All right. You have a motion, Mr.
15 Hayes?

16 MR. HAYES: Your Honor, I know there's some
17 stipulations, and there's an issue with a representation of
18 Mr. Peeples in the past that we would like to avoid
19 conflict later on.

20 THE COURT: All right. Well, what do y'all want to
21 take us?

22 MR. SLOCUM: Judge, if we want to address the chain
23 issue now, Mr. Hayes has indicated to me that he's going to
24 stipulate to authenticity of the chain in regards to all
25 pieces of evidence that we'll be admitting both with Aiken

1 County Sheriff's Office, their initial chain, as well as
2 the SLED internal chain, one item was taken over there to
3 be tested and then returned.

4 MR. HAYES: That's correct.

5 THE COURT: All right. Is there a list? I
6 believe --

7 MR. SLOCUM: We have a list we can provide to the
8 Court, or we can I can just make it a paper -- and provide
9 an exhibit for the Court.

10 THE COURT: I think that's good.

11 MR. SLOCUM: Okay. We will do that, Your Honor.

12 THE COURT: Do you have any objections to that, Mr.
13 Hayes?

14 MR. HAYES: I would just ask for a copy of it.

15 MR. SLOCUM: We will do that as soon as we
16 materialize that. Could it be done before the end of today
17 or first thing in the morning?

18 THE COURT: Sure.

19 MR. SLOCUM: End --

20 THE COURT: End of the day or first thing in the
21 morning.

22 MR. SLOCUM: Okay. Thank you. Thank you, Judge.

23 Second would be the issue, Mr. Brandon Peeples is a
24 witness for the State. Mr. Peeples was represented by Mr.
25 Hayes back in February of 2013, and after speaking with Mr.

1 Peeples, informing him he would need to waive any conflict
2 he would have in testifying either with us or Mr. Hayes,
3 and he has indicated he will do that on the record. And we
4 just wanted to bring it to your attention. We can do that
5 however the Court would like us to proceed.

6 THE COURT: Let's have him come around now.

7 Mr. Peeples? If you'll just stand right in the
8 front where the Bible's at?

9 Madame Clerk, will you place Mr. Peeples under
10 oath?

11 BRANDON PEEPLES,
12 having been duly sworn, testified as follows:

13 THE COURT: Tell me your name, sir. And you can
14 just stand right there.

15 THE WITNESS: Brandon Peeples.

16 THE COURT: And how old are you, Mr. Peeples?

17 THE WITNESS: 34.

18 THE COURT: How much education do you have?

19 THE WITNESS: One year of college.

20 THE COURT: What type of work do you do?

21 THE WITNESS: A lift truck operator.

22 THE COURT: Where'd you go to college?

23 THE WITNESS: USC-Aiken.

24 THE COURT: USC-Aiken?

25 THE WITNESS: USC-Aiken. Yeah.

1 THE COURT: You have heard the Solicitor inform the
2 Court that in 2012, I understand you were represented by
3 Mr. Hayes?

4 THE WITNESS: Yes, sir. Yes, sir.

5 THE COURT: And that was for DUI second?

6 THE WITNESS: Yes, sir. That's correct.

7 THE COURT: Do you have any problem with Mr. Hayes
8 going forward as Mr. Glover's attorney?

9 THE WITNESS: No, sir.

10 THE COURT: Do you waive any conflict in that
11 regard?

12 THE WITNESS: Yes, sir.

13 THE COURT: And my understanding is you may be
14 called as a witness on behalf of the State?

15 THE WITNESS: Yes, sir.

16 THE COURT: And you have no objection to that.

17 THE WITNESS: No, sir.

18 THE COURT: So you have no complaint you want to
19 make about Mr. Hayes, his representation in the past, or
20 his representation of Mr. Glover?

21 THE WITNESS: No, sir.

22 THE COURT: And you have no complaint you want to
23 make about the solicitor?

24 THE WITNESS: No, sir.

25 THE COURT: Do you have any questions you'd like to

1 ask me?

2 THE WITNESS: No, sir.

3 THE COURT: Have you understood what I've said?

4 THE WITNESS: Yes, sir.

5 THE COURT: Anything further you'd like to ask Mr.
6 Peeples, Solicitor?

7 MR. SLOCUM: No, sir, Your Honor. None from the
8 State.

9 THE COURT: Mr. Hayes?

10 MR. HAYES: Judge, just for the record, I'd like to
11 indicate that all I remembered was his name. I didn't
12 remember when or what the charge was for until I looked
13 back in my records, and I don't believe that it would be
14 admissible in this trial.

15 THE COURT: I did not think it would be admissible
16 under 609. I would agree with you in that regard.

17 MR. HAYES: I also addressed the issue with Mr.
18 Glover, and he indicated to me that he was okay with it as
19 well.

20 THE COURT: All right. Thank you. Thank you very
21 much.

22 Thank you, Mr. Peeples.

23 All right. Next.

24 MR. SLOCUM: The last we have, Your Honor, would be
25 a Jackson v. Denno Hearing. The State is ready proceed.

Stuart Graybeal - Direct Examination In Camera by Mr. Slocum

1 THE COURT: Is there a written motion?

2 MR. SLOCUM: No, sir, Your Honor. This is just an
3 oral motion by the State.

4 THE COURT: An oral motion by the State on Jackson
5 versus Denno.

6 MR. SLOCUM: Yes, sir.

7 THE COURT: You haven't made a motion?

8 MR. HAYES: No.

9 **JACKSON V DENNO HEARING**

10 THE COURT: All right, Solicitor. You may call
11 your first witness.

12 MR. SLOCUM: Thank you, Judge. The State calls
13 Investigator Stuart Graybeal with the Aiken County
14 Sheriff's Office.

15 STUART GRAYBEAL,
16 having been duly sworn, testified as follows:

17 THE CLERK: Have a seat in the witness box. State
18 your full name for the Court.

19 THE WITNESS: Investigator Stuart Graybeal.
20 Spelling of the last name is G-R-A-Y-B-E-A-L.

21 **DIRECT EXAMINATION - IN CAMERA**

22 BY MR. SLOCUM:

23 Q Investigator Graybeal, where do you currently work?

24 A With the Aiken County Sheriff's Office.

25 Q In what capacity?

Stuart Graybeal - Direct Examination In Camera by Mr. Slocum

1 A I'm a criminal investigator.

2 Q And how long have you been with Aiken County?

3 A Since 1994. I briefly left for a little under 2
4 years and returned.

5 Q And what are your duties with the Sheriff's Office?

6 A As a criminal investigator, primarily I receive
7 reports completed by the divisions for follow-up
8 investigation. And I'm also responsible on an on-call
9 status; for example, I will be called out to the major
10 crimes to conduct interviews, follow-up investigation,
11 forensic duties to a certain degree.

12 Q Were you employed on May 11th, 2014 with the Aiken
13 County Sheriff's Office?

14 A Yes. I was.

15 Q And on that day did you have an opportunity to come
16 in contact with the defendant, Mr. David Glover, in this
17 case?

18 A Yes. I did.

19 Q Are you familiar with the Miranda warnings?

20 A Yes, sir.

21 Q What are they?

22 A In our case, it is a printed advisement form
23 approved by the Sheriff's Office that's to be read to a
24 defendant or to a suspect during custodial interrogation.
25 It lists his rights under the Miranda ruling, provides a

Stuart Graybeal - Direct Examination In Camera by Mr. Slocum

1 place for him to initial each one of those specific rights,
2 a signature block acknowledging the rights collectively,
3 and then a waiver section which if the person so chooses
4 they may document a waiver of those rights and agree to
5 speak to law enforcement without representation of counsel.

6 Q Could you please point out where Mr. Glover --
7 where he is in the courtroom.

8 A Mr. Glover is seated at the far right on the
9 defense table. He is wearing a dark suit, white shirt,
10 glasses, and I'm sorry I'm not quite tall enough to see his
11 neck tie.

12 Q Thank you.

13 MR. SLOCUM: Your Honor, for the record, please let
14 it be noted that the witness has identified the defendant.

15 THE COURT: So noted.

16 BY MR. SLOCUM:

17 Q Investigator Graybeal, where did you come in
18 contact with Mr. Glover on May 11th, 2014?

19 A I met Mr. Glover at the Aiken County Detention
20 Center where he was incarcerated.

21 Q What was the purpose of this meeting?

22 A My purpose was to interview him about the incident
23 he was charged with, charged as a result of.

24 Q And did you read him his Miranda rights on this
25 day?

Stuart Graybeal - Direct Examination In Camera by Mr. Slocum

1 A Yes, I did.

2 MR. SLOCUM: Permission to approach, Your Honor?

3 THE COURT: Yes, sir.

4 BY MR. SLOCUM:

5 Q Deputy Graybeal, I'm handing you what's been marked
6 as State's Exhibit A for purposes of this hearing only.

7 Could you please tell me if you recognize that.

8 A Yes, I do.

9 Q And without testifying to its contents, what is it?

10 A This is a approved Miranda warning form used by the
11 Aiken County Sheriff's Office. It would be provided to Mr.
12 Glover, in fact was provided to Mr. Glover during that
13 interview.

14 Q Is that the form that you use in your normal,
15 routine daily practices?

16 A Yes, it is.

17 Q Is it the form you used on May 11th, 2014?

18 A Yes, it is.

19 Q Is it the form you used in the relation to Mr.
20 Glover, the defendant?

21 A Yes, it is.

22 Q Has it been changed, altered, any deletions, or
23 material alterations made to it any way, shape, or form?

24 A None that I'm aware of. It appears --

25 MR. SLOCUM: Your Honor, at this time --

Stuart Graybeal - Direct Examination In Camera by Mr. Slocum

1 THE WITNESS: -- unchanged.

2 MR. SLOCUM: I'm sorry?

3 THE WITNESS: I said it appears unchanged from when
4 I completed it.

5 MR. SLOCUM: At this time, the State would move to
6 admit Exhibit A into evidence for purposes of this hearing
7 only.

8 MR. HAYES: Judge, I'd just like look at it one
9 more time.

10 THE COURT: All right, sir.

11 MR. HAYES: No objections.

12 BY MR. SLOCUM:

13 Q Investigator Graybeal, could you please read this
14 form for us?

15 A Before we ask you any questions, you must
16 understand your rights. You have the right to remain
17 silent. Anything you say can and will be used against you
18 in a court of law. You have the right to talk to an
19 attorney for advice before we ask you any questions and to
20 have him present during questioning. If you cannot afford
21 an attorney, the Court will appoint an attorney to
22 represent you without cost if you wish. If you decide to
23 answer questions now without an attorney present, you will
24 still have the right to stop answering at any time. You
25 also have the right to stop answering at any time until you

Stuart Graybeal - Direct Examination In Camera by Mr. Slocum

1 talk to an attorney.

2 Below that, it has the acknowledgement, I have read
3 this statement of my rights, and I understand what my
4 rights are.

5 Below that is the waiver of rights. It reads as
6 follows. I am willing to make a statement and answer
7 questions. I do not want an attorney at this time. I
8 understand and know what I am doing. No promises or
9 threats have been made to me, and no pressure or coercion
10 of any kind has been used against me.

11 Q And did the defendant initial that form in each box
12 provided?

13 A Yes, sir. He did.

14 Q Did you witness him make those initials?

15 A I did.

16 Q Did he then subsequently sign the bottom and waive
17 those -- waive those rights?

18 A Yes, sir. He signed the acknowledgement and the
19 waiver in my presence.

20 Q And you witnessed that as well?

21 A Yes, sir.

22 Q And you also signed that form too, correct?

23 A Yes, sir. My signature appears directly below Mr.
24 Glover's in the witness box.

25 Q And where was all this -- where did all this take

Stuart Graybeal - Direct Examination In Camera by Mr. Slocum

1 place?

2 A This was in a private interview room at the Aiken
3 County Detention Center. I don't know -- I don't remember
4 if they're numbered or not.

5 Q Did you -- were you able to observe the defendant's
6 physical appearance on this day?

7 A I was.

8 Q Did he appear to completely understand the form and
9 acknowledge it as well?

10 A Yes, sir, he did.

11 Q Did he appear intoxicated to you or in any type
12 of -- under the influence of any type of narcotics?

13 A No, sir. Not that I could tell.

14 Q Did you coerce him to sign it?

15 A No, sir. I did not.

16 Q Was this interview recorded on the 11th?

17 A No, sir.

18 Q Why was that?

19 A When I conduct my interviews, you have the initial
20 Miranda advisement, and then I conduct, for lack of a
21 better term, a pre-interview. I introduce myself, advise
22 the person being interviewed that he is going to be
23 interviewed, that I'm going to ask him some questions. I
24 make sure he understands the charges that are against him
25 and what it is I want to question him about. I take notes

Stuart Graybeal - Direct Examination In Camera by Mr. Slocum

1 based on his responses. I formulate my questions. It's
2 more of an informal interview to begin with.

3 Unfortunately, shortly after I began that process,
4 detention center personnel interrupted, stated that the
5 sheriff's office had telephoned, and I had been dispatched
6 to an unrelated shooting incident in another area of the
7 county. So I had to immediately stop before taking a
8 formal statement.

9 Q So the defendant did give a statement post Miranda
10 warning being given?

11 A Yes, sir.

12 Q And post Miranda warnings being waived by the
13 defendant?

14 A Yes.

15 Q But he did not complete it. Correct?

16 A That is correct.

17 Q And it was not recorded?

18 A That is correct, other than, you know, rough notes
19 and memory.

20 Q Did you address this interview in your report?

21 A Yes. Yes, I did.

22 Q General sessions packet report?

23 A Yes, sir. I did.

24 Q Did you make any promises to the defendant to get
25 him to waive his rights?

Stuart Graybeal - Cross-Examination In Camera by Mr. Hayes

1 A None whatsoever.

2 Q That's all the questions I have. Please answer any
3 Mr. Hayes has for you?

4 THE COURT: Mr. Hayes?

5 **CROSS EXAMINATION - IN CAMERA**

6 BY MR. HAYES:

7 Q I just wanted to clear up something. You said that
8 you didn't complete the interview. What did you mean by
9 that?

10 A I was interrupted. I was on call that weekend,
11 which means I'm subject to being called out to a major
12 crime whenever needed. And that's what happened. The
13 sheriff's office dispatch center contacted the jail, told
14 them to come get me because there's no reception in the
15 interview room for cell phones or pagers. And I was sent
16 to another shooting incident unrelated to this one.

17 Q And the statement that is in the general sessions
18 packet that I was provided, that's the full discussion that
19 you had with Mr. Glover that day?

20 A I'm not sure what you mean by full, but those are
21 the topics we had discussed and his relevant responses.

22 Q Okay. So everything that is in the report, is the
23 only subjects that you covered with Mr. Glover at that
24 point in time?

25 A Yes, sir. To the best of my recollection. It was

Stuart Graybeal - Cross-Examination In Camera by Mr. Hayes

1 very abbreviated.

2 Q The solicitor asked you about how he appeared. You
3 indicate in this report that his eyes were bloodshot, and
4 there were minor abrasions to his finger, right arm, and
5 inside his right elbow?

6 A Yes, sir.

7 Q Did any of those seem to affect his ability to
8 understand --

9 A No.

10 Q -- what the Miranda warnings were?

11 A Not at all.

12 Q At any time did he ask or invoke for an attorney?

13 A No, sir.

14 Q And he appeared at that time to understand what you
15 were discussing?

16 A Yes, sir. What I do when I read Miranda, as a
17 normal course, I have my preliminary questions. As I said,
18 I introduce myself, make sure he understands the charges,
19 have an informal conversation basically to establish that
20 he can hear me and respond appropriately to questions. In
21 terms of Miranda itself, I ask what the education level is.
22 Eyesight, can you see the form? Can you read and write?
23 And I ask them to follow along with me while I read it to
24 them and to let me know if there's any questions.

25 Afterwards, if they have no questions or if their

Stuart Graybeal - Redirect Examination In Camera by Mr. Slocum

1 questions are answered, I'll ask the person being
2 interviewed to repeat these, to describe the rights in
3 their own words to make sure I know they understand it.
4 And if that's done successfully, then I ask them to read
5 the waiver of rights to me. That way I establish they are
6 able to actually read the form. And then I get them to
7 tell me, what does this mean to you?

8 Q Was he able to do that?

9 A Yes, sir.

10 Q Was there anything in his demeanor or while you
11 were going over this that gave you pause that, whether he
12 understood what was on that form?

13 A No, sir. He appeared to be very lucid.

14 MR. HAYES: I beg the Court's indulgence.

15 THE COURT: Yes, sir.

16 MR. HAYES: I have nothing further.

17 THE COURT: Redirect, Solicitor?

18 MR. SLOCUM: Briefly, Your Honor.

19 **REDIRECT EXAMINATION IN CAMERA**

20 BY MR. SLOCUM:

21 Q What was it -- what was the substance of the
22 statement given to you by the defendant on that day?

23 A He acknowledged going to the incident location on
24 Mae Acres Court. Without referring to my report, I believe
25 he said he was invited there by the victim, that he arrived

Stuart Graybeal - Redirect Examination In Camera by Mr. Slocum

1 there about 20 minutes later, that he did park his vehicle
2 away from the house, that the two subsequently became
3 involved in an argument or a verbal dispute over money and
4 that she attacked him with a hammer. He didn't answer
5 directly yes or no about whether he had shot her. He
6 did -- he was questioned about the weapon. I think my
7 specific question was, where is it now? He responded, I
8 don't know, I believe was his exact words. But he wouldn't
9 directly address the shooting. And I was called away
10 before I could explore that further.

11 Q Thank you. Thank you.

12 THE COURT: Re-cross?

13 MR. HAYES: No, sir.

14 THE COURT: Thank you.

15 Thank you, Detective. You may step down.

16 THE WITNESS: Yes, Your Honor.

17 THE COURT: All right. You may call your next
18 witness.

19 MR. SLOCUM: Judge, for the purposes of Jackson v.
20 Denno, that would be all from the State.

21 THE COURT: All right. Mr. Hayes, any witnesses or
22 testimony the defense intends to introduce.

23 MR. HAYES: No, sir.

24 THE COURT: All right. Thank you. I'll be glad to
25 hear from you, Solicitor.

1 MR. SLOCUM: Judge, in terms of the statement given
2 to Investigator Graybeal on May 11th, 2014 by the
3 defendant, we feel like it is admissible as a statement
4 given after a valid advisement of his Miranda rights and a
5 valid waiver of those rights. Investigator Graybeal
6 testified that he witnessed all of his rights being -- all
7 of the defendant's rights being initialed by the defendant
8 himself. He acknowledged that he understood them. He also
9 signed -- the defendant also signed that form as well as
10 Investigator Graybeal who also signed that form.

11 And based on his testimony, all applicable rules
12 around Miranda were followed. A valid waiver -- a valid
13 reading of those rights was given, and a valid waiver was
14 given by the defendant.

15 THE COURT: Thank you.

16 MR. SLOCUM: We -- also there was no coercion on
17 behalf of the -- of Investigator Graybeal. And they are --
18 the statements are admissible.

19 THE COURT: Thank you, Solicitor. Mr. Hayes?

20 MR. HAYES: I have nothing.

21 THE COURT: I'm sorry?

22 MR. HAYES: I have no arguments.

23 THE COURT: All right. In Jackson versus Denno, a
24 defendant is entitled to a reliable determination as to the
25 voluntariness of a statement by a tribunal other than the

1 jury charged with determining innocence. In determining
2 whether a statement was given voluntarily, the Court must
3 consider the totality of the circumstances around the
4 giving of the confession.

5 May I see the rights form please?

6 Which includes the youth of the accused, his lack
7 of education, his low intelligence, lack of any advice to
8 the accused of his constitutional rights, the length of
9 detention, repeated and prolonged nature of the
10 questioning, and the use of physical punishment such as
11 deprivation of food or sleep. In this hearing, the
12 standard I must apply, which is preponderance of the
13 evidence at this stage, I find that he was given Miranda
14 rights.

15 Based on the testimony of the officer -- there was
16 only one officer present. He was read his Miranda rights.
17 He was given the opportunity to read them, and he signed
18 twice acknowledging the given rights and the waiver of his
19 rights, he has initialed each and every single right. His
20 initial appears eight times on the form, and his signature
21 appears twice on the form. It appears there was no
22 coercion, promises, or anything of that nature. His
23 demeanor, the condition appears to be consistent with
24 lucidity. The Court also takes into account the
25 cross-examination of the officer concerning observations

1 that he made of Mr. Glover.

2 It is admissible only for the purposes of Jackson
3 versus Denno. That's all I'm deciding at this point.

4 All right. Anything further before we bring in our
5 jury from the State?

6 MR. SLOCUM: No, sir, Judge.

7 THE COURT: From the defense?

8 MR. HAYES: No, sir.

9 (The jury entered the courtroom at 2:30 p.m.)

10 THE COURT: I may have all this jury sign a
11 document that I started on time.

12 Welcome back, ladies and gentlemen. I hope y'all
13 had a pleasant lunch. We are now beginning the trial of
14 the case by the presentation of evidence and testimony by
15 the State in its case in chief. If you would, please give
16 the parties your complete and undivided attention. Thank
17 you.

18 Solicitor, you may call your first witness.

19 MR. SLOCUM: Thank you, Judge. The State calls Ms.
20 Vernell Weaver.

21 THE COURT: All right. If you would, come around
22 and be sworn for us please.

23 VERNELL WEAVER,

24 having been duly sworn, testified as follows:

25 THE CLERK: Have a seat in our witness box. State

Vernell Weaver - Direct Examination by Mr. Slocum

1 your full name for the Court, and spell your last, please.

2 THE WITNESS: My name is Vernell Weaver. My last
3 name, W-E-A-V-E-R.

4 **DIRECT EXAMINATION**

5 BY MR. SLOCUM:

6 Q Ms. Weaver, good afternoon. Where are you from?

7 A From Saluda, South Carolina.

8 Q And do you have any children?

9 A Yes, I do.

10 Q How many?

11 A I have three.

12 Q What are their names?

13 A Latika, Jimmy, and Brandon.

14 Q And how old are they?

15 A Latika is 35; Oneal is 33, that's Jimmy; and
16 Brandon is 30.

17 Q Do you have any brothers or sisters?

18 A Yes, I do.

19 Q How many?

20 A It was twelve of us, six girls and six boys.

21 Q Do you have any in Aiken County?

22 A I have one.

23 Q And where do you live today?

24 A I live here in Aiken.

25 Q Okay. And when did you move from Saluda to Aiken?

Vernell Weaver - Direct Examination by Mr. Slocum

- 1 A Oh, in '95.
- 2 Q Okay. What brought you here?
- 3 A I was looking for a better job.
- 4 Q Did you find one?
- 5 A Yes, I did.
- 6 Q How do you know the defendant, Mr. Glover?
- 7 A Me and David, we lived together for 13 years.
- 8 Q And where was that?
- 9 A Well, we lived in different places, but we wound up
- 10 at 80 Alfred Street out in Crosland Park.
- 11 Q How would you describe that 13 year relationship?
- 12 A It was -- it was okay. It's a lot of control in
- 13 it, but --
- 14 Q Was it steady for 13 years?
- 15 A It was steady for about like 10 years, and then
- 16 things started getting really off and on, you know,
- 17 raggedy.
- 18 Q Okay. Would you please describe what Mr. Glover
- 19 has on for the Court? And the direction he may be sitting.
- 20 A I can't see what he got on. He got on a brown, a
- 21 gray suit, dark suit.
- 22 Q Is he to your right or to your left?
- 23 A He's to my right.
- 24 Q On what end of that table?
- 25 A To the end, to the very end of the table.

Vernell Weaver - Direct Examination by Mr. Slocum

1 MR. SLOCUM: Your Honor, for the record, please let
2 it be noted that the witness has identified the defendant.

3 THE COURT: So reflected.

4 BY MR. SLOCUM:

5 Q Ms. Weaver, what was going on on May 10th, 2014?

6 Can you please tell us what you were doing that morning?

7 A Well, I was at George's house that morning. And
8 when he was going out of town, and I was preparing to go to
9 church the next day which was Mother's Day. And I think,
10 if I'm not mistaken, I had mentioned to him I was going to
11 get some clothes from the house where me and David shared
12 at Crosland Park.

13 Q Who is George?

14 A George Mackey. He's a friend. He was sort of like
15 a boyfriend at that time.

16 Q This is back in May of last year?

17 A Yes, sir.

18 Q And were you staying at his house?

19 A No. I wasn't staying there, but I was there off
20 and on.

21 Q Had you been there the night before?

22 A Yes, sir.

23 Q Okay. Please continue.

24 A Okay. And I'm not sure whether I called David or
25 David called me. And I remember telling him that I was

Vernell Weaver - Direct Examination by Mr. Slocum

1 going to come home and get me some clothes for church the
2 next day. And then after -- he asked me during that
3 conversation did I want him to pick me up. And I told him,
4 well yeah, that'll be all right, because it was so hot that
5 day. And --

6 Q Where was Mr. George during this?

7 A George had left to go to his niece's graduation.
8 And David asked me where, and I told him on Redd Street.
9 So I walked down to Redd Street, and that's where he picked
10 me up. And he took me back to the house.

11 Q Why did you walk to Redd Street for him to pick you
12 up?

13 A Because, you know, I was at George's house, and he
14 wasn't, you know, he couldn't come up there. That was
15 disrespectful. I didn't want him coming to George's house.
16 So he picked me up on Redd Street, and we went back to the
17 house.

18 Q Okay. What happened when you got there?

19 A We got to the house. We was talking. You know, we
20 talked about our relationship and whether we was going to
21 try and work things out, and just different conversations.
22 And, you know, he asked me, he said, well where's George?
23 I said, George is gone with his niece. So he said
24 something about, well you going back over there? I said,
25 yes I'm going back over there. And, all right.

Vernell Weaver - Direct Examination by Mr. Slocum

1 I got my clothes together, and then he took me back
2 to Redd Street, and I got out right there by the little
3 water thing. He did ask me if I wanted him to drive me up
4 there, and I told him no, you know. So I got out right
5 there. There's a water tower at the end of Redd Street. I
6 got out there, and I walked on down the road.

7 Q What time of day was this?

8 A This was sort of in the evening time.

9 Q Okay.

10 MR. SLOCUM: Beg the Court's indulgence, Judge.

11 THE COURT: Yes, sir.

12 MR. SLOCUM: Permission to approach?

13 THE COURT: Yes, sir.

14 BY MR. SLOCUM:

15 Q Ms. Weaver, I'm showing you what's been marked
16 State's Exhibits Number 1 and Number 2. Okay. Could you
17 please tell me if you recognize those pictures?

18 A That's George's house. And then this is --

19 Q Well, first off, let me -- Do you recognize these?

20 A Yes. I recognize them.

21 Q Okay. Without testifying in detail, what are they?

22 A Pictures of where George house is located.

23 Q Okay. And do these pictures reflect how it looked
24 on May 10th of 2014?

25 A Yes.

Verne11 Weaver - Direct Examination by Mr. Slocum

1 Q Have these pictures been changed or has anything
2 been altered to them to your knowledge?

3 A No.

4 Q And they depict how it looked on that day --

5 A Yes, sir.

6 Q -- last year?

7 A Yes, sir.

8 MR. SLOCUM: Judge, the State would move Exhibits 1
9 and 2 into evidence at this time.

10 THE COURT: Mr. Hayes?

11 MR. HAYES: No objection.

12 THE COURT: State's 1 and 2 is into evidence
13 without objection.

14 (State's Exhibit Number 1 and Number 2 were entered
15 into evidence.)

16 BY MR. SLOCUM:

17 Q All right. All right. Ms. Weaver, let's look at
18 Number 1?

19 A Okay.

20 Q What is that a picture of?

21 A That's -- this one is a picture of George's house.

22 Q Okay. And where is that house located? On what
23 street?

24 A It's located on Mae Acres.

25 Q All right.

Vernell Weaver - Direct Examination by Mr. Slocum

1 A 105 Mae Acres Court.

2 Q Exhibit Number 2, what is that mark up in the
3 corner there by Mae Acres?

4 A That's where George's house is located.

5 Q And is that the mark you made this morning?

6 A Yes, I did.

7 Q Okay.

8 A Yes.

9 Q And what is that street name right there?

10 A This is Redd Street right here.

11 Q Okay. And where does Redd Street come out? And
12 what street does it hit?

13 A It -- okay. You come down on Redd Street, then you
14 have to make a right onto Lloydtown Road. Then you go all
15 the way down to the stop sign, and then you turn on Lincoln
16 Avenue which is not -- it's not a real long distance. But
17 this is the area where I met David at, right along in here.

18 Q Okay. Could you put a -- could you just kind of
19 circle that area where he dropped you off and picked you up
20 that day?

21 A Right along in here. Very close to -- just about
22 to the end. This is Redd Street right here.

23 Q Okay. Now, could you show that, just point to --
24 I'll tell you what. I'll point to it.

25 A Okay.

Verne11 Weaver - Direct Examination by Mr. Slocum

- 1 Q This up here in the left-hand corner?
- 2 A That's where George --
- 3 Q Whose house is that?
- 4 A That's George's house.
- 5 Q All right. And this little mark you made down
- 6 here, what is that?
- 7 A That's Lloydtown Road.
- 8 Q And that's where you were picked up?
- 9 A Right. Right at the inter -- Redd Street runs into
- 10 Lloydtown.
- 11 Q So you walked from George's house --
- 12 A George's house.
- 13 Q -- down here where he got you?
- 14 A Right.
- 15 Q All right. And this is George's house?
- 16 A Yes.
- 17 Q All right. Ms. Weaver, after you got back home,
- 18 after he dropped you off that evening, what happened?
- 19 A Back home?
- 20 Q What happened next? I mean, excuse me, when you
- 21 were back at George's house?
- 22 A Okay. When I got up --
- 23 Q What happened?
- 24 A When I got to George's house, I went in, and I went
- 25 into the kitchen because I was heating up me something to

Vernell Weaver - Direct Examination by Mr. Slocum

1 eat. And then I left out the kitchen, and I went into the
2 bedroom. And when I was in the bedroom, I heard the
3 banging at the door. So I came out the bedroom, and David
4 was standing to the door.

5 Q Was he inside, or was he outside?

6 A No. He was standing to the screen door. And I was
7 about to ask David, what are you doing here? And I saw the
8 gun go up. And when I saw the gun go up, that's when I
9 felt the bullet. I felt it. Then I turned, and I ran.

10 Q Where'd you run?

11 A I ran into the bedroom.

12 Q What'd you do next?

13 A I remember pushing the door behind me, and I
14 grabbed my cell phone. And right after I grabbed my cell
15 phone, he came through the wall.

16 Q Who did you call on your cell phone?

17 A I called -- I dialed 9-1-1. I didn't know if I had
18 hit send or not, but I knew I had -- I knew I mashed the
19 buttons.

20 Q What happened after that?

21 A After that, I saw him come through the wall with
22 the gun, and I remember grabbing his arm. And then we
23 tussled. We tussled across the bed. As we tussled, I was
24 aiming to get the gun away from him. When I got it away
25 from him, I remember trying to throw it out the window. I

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1 just wanted -- I just tried to tear the screen open with
2 something just to throw the gun away. And I was begging
3 with him, please don't kill me. Don't kill me, David.
4 Just go. I remember him snatching me back. And when he
5 snatched me back, he put the gun to my stomach, and he
6 pulled the trigger two more times, and it was just --

7 Q It's okay.

8 Ms. Weaver, did the gun fire the second time?

9 A No. No. Thank God, no. Thank God, no. It
10 didn't.

11 MR. SLOCUM: Beg the Court's indulgence?

12 THE COURT: Yes, sir.

13 BY MR. SLOCUM:

14 Q Ms. Weaver, I'm showing you a CD that's marked
15 State's Exhibit Number 3. Do you recognize the CD?

16 A Yes.

17 Q What are those right there?

18 A Those are my initials.

19 Q You've listened to this CD before?

20 A Yes.

21 Q Is it the 9-1-1 call that you tried to make that
22 night on May 10th of 2014?

23 A Yes.

24 Q This is your voice we hear on this tape?

25 MR. SLOCUM: Your Honor, the State moves Exhibit

Vernell Weaver - Direct Examination by Mr. Slocum

1 Number 3 into evidence.

2 THE COURT: Mr. Hayes?

3 MR. HAYES: No objection.

4 THE COURT: State's 3 is in evidence without
5 objection.

6 (State's Exhibit Number 3 was entered into
7 evidence.)

8 MR. SLOCUM: Permission to publish, Judge?

9 THE COURT: You may publish.

10 (The CD was played for the jury.)

11 BY MR. SLOCUM:

12 Q A few more questions, Ms. Weaver. Was that you on
13 that call?

14 A Yes. Yes. Yeah.

15 Q Is that the one you tried to make in the bedroom?

16 A Yes. Yes.

17 Q What happened after that phone call?

18 A That was -- that's where we was tussling.

19 Q Were you able to get away from him?

20 A Yes. And when I -- I got away from him, after he
21 put the gun to my stomach, and then I happened to look down
22 on the floor. And I saw the bullets. And when I saw
23 bullets on the floor, I jumped up and ran because he had
24 pulled me back some kind of way. And I ran, and I slipped
25 on the glass in the living room. And that's how I got all

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1 cut up.

2 And there was a hammer laying there. And I
3 remember grabbing that hammer. I grabbed that hammer, and
4 I took out. And I ran, and I ran, and I ran to Mr. Green's
5 house.

6 Q And where is Mr. Green's house?

7 A He's next door to George. And I ran, and they
8 helped me.

9 Q What'd you do when you got to Mr. Green's house?

10 A I just hollered for help. I just hollered for
11 help, and I just held on to the hammer. I just held on. I
12 held on. I held on.

13 Q Were you followed to Mr. Green's house?

14 A Yes. Yes.

15 Q Who followed you?

16 A David.

17 Q What did he do when he got there?

18 A Tried to take the hammer out of my hand. I wasn't
19 letting it go. I wasn't letting it go.

20 Q Were you saying anything at this point to anyone?

21 A I felt like I was going to be safe.

22 Q Was this after David left?

23 A After Mr. Green had called the police, that's when
24 he left.

25 Q When you got to the Greens's, were you on the

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1 outside of their house or the inside of their house?

2 A Outside. Outside.

3 Q In front of their door?

4 A Uh-huh. Yes. Yes.

5 Q What kind of injuries did you have?

6 A I had a hole in my neck, and this was all tore up.
7 My teeth -- at the time I didn't realize it, but my teeth
8 was knocked out, and my tongue was split. And I was just
9 all cut up.

10 Q Were you bleeding pretty bad?

11 A Yes, sir. Yes, sir.

12 Q Did you go to the hospital for these injuries?

13 A Yes, sir.

14 Q When did you go?

15 A That same day. That same day.

16 Q Were you taken there in an ambulance?

17 A Yes. Yes.

18 MR. SLOCUM: Beg the Court's indulgence.

19 THE COURT: Yes, sir.

20 BY MR. SLOCUM:

21 Q Ms. Weaver, I'm going to show you a couple more
22 pictures. State's Exhibits 4 and 5. Do you recognize
23 these?

24 A Yes, I do.

25 Q And are they pictures of you?

Vernell Weaver - Direct Examination by Mr. Slocum

1 A Yes. Yes.

2 Q Your injuries on May 10th, 2014?

3 A Yes. Yes. Yes.

4 Q Have they been changed --

5 A No.

6 Q -- in any way, shape, or form, or altered?

7 A No.

8 MR. SLOCUM: Your Honor, the State moves State's
9 Exhibits 4 and 5 into evidence at this time.

10 THE COURT: Mr. Hayes?

11 MR. HAYES: No objections, Your Honor.

12 THE COURT: State's 4 and 5 into evidence without
13 objections.

14 (State's Exhibit Number 4 and Number 5 were entered
15 into evidence.)

16 BY MR. SLOCUM:

17 Q Ms. Weaver, on State's Number 5, your tongue?

18 A Yes.

19 Q Is that the portion that you were discussing just
20 earlier that your tongue was injured?

21 A Yes.

22 Q And your lip on the left-hand side? Is that what
23 you were discussing earlier?

24 A Yes. Yes.

25 Q Ms. Weaver, do you see anybody for a follow-up

Vernell Weaver - Direct Examination by Mr. Slocum

1 visit from these injuries?

2 A Yes. Yes.

3 Q Was that on May 16th of last year?

4 A Yes. Yes.

5 Q Did you receive any stitches from these injuries?

6 A Yes.

7 Q Where about?

8 A On the arm and my face and my neck.

9 Q Ms. Weaver, I'm showing you State's Exhibits 6, 7,
10 8, 9, 10, and 11. These have been marked for
11 identification purposes. Could you just take a look at
12 those for me. Do you recognize those pictures?

13 A Yes, sir.

14 Q Are they pictures of you from May 16th --

15 A Yes.

16 Q -- of '14?

17 A Yes.

18 Q They're pictures of your injuries that you received
19 from May 10th, 2014?

20 A Yes.

21 Q Have they been changed in any way, shape, or form?

22 A No.

23 MR. SLOCUM: Your Honor, the State moves Exhibits 6
24 through 11 into evidence at this time.

25 MR. HAYES: No objections.

Verne11 Weaver - Direct Examination by Mr. Slocum

1 THE COURT: State's 6 through 11 is in evidence
2 without objections.

3 (State's Exhibit Number 6, Number 7, Number 8,
4 Number 9, Number 10, and Number 11 were entered into
5 evidence.)

6 BY MR. SLOCUM:

7 Q Ms. Weaver, did you invite Mr. Glover over to 105
8 Mae Acres Court that day?

9 A No, sir. No, sir.

10 Q Did you give him permission to come in that house?

11 A No, sir. No, sir.

12 Q Ms. Weaver, I'm showing you State's Exhibit 44?
13 It's been marked for identification purposes. Do you
14 recognize this picture?

15 A Yes.

16 Q Is it a picture of 105 Mae Acres Court?

17 A Yes. Yes.

18 Q Is it a picture from May of last year --

19 A Yes. Yes.

20 Q -- 10th, 2014?

21 A Yes.

22 MR. SLOCUM: Your Honor, the State moves Exhibit 44
23 into evidence.

24 THE COURT: Mr. Hayes?

25 MR. HAYES: No objection.

Vernell Weaver - Direct Examination by Mr. Slocum

1 THE COURT: State's 44 is in evidence without
2 objections.

3 (State's Exhibit Number 44 was entered into
4 evidence.)

5 BY MR. SLOCUM:

6 Q Ms. Weaver, what is that on the ground right there?

7 A That's my pocketbook.

8 Q And is that where you had your phone?

9 A My phone had been on the bed.

10 Q Okay.

11 A My pocketbook was on the bed. That's how it got
12 knocked off. Yes.

13 Q Okay. This hole in the wall here --

14 A That's the hole where he came through. He burst --
15 He just busted through that wall.

16 Q He didn't come through the door? He came
17 through --

18 A No, I had --

19 Q -- the wall?

20 A -- pushed the door behind me when I ran in there.

21 Q Okay.

22 A He came through the wall.

23 Q What was going through your mind when all this was
24 happening?

25 A That he was going to kill me.

Vernell Weaver - Direct Examination by Mr. Slocum

1 THE COURT: Speak up for me, please, ma'am.

2 BY MR. SLOCUM:

3 A I was thinking that he was going to kill me.

4 MR. HAYES: Objection. Speculation.

5 THE COURT: Overruled.

6 BY MR. SLOCUM:

7 Q Ms. Weaver, I'm showing you State's Exhibit Number
8 12. Do you recognize that?

9 A Yes.

10 Q And what is it?

11 A That's my earring.

12 Q These earrings you were wearing, one of the
13 earrings you were wearing on the 10th of May --

14 A Yes. Yes.

15 Q -- 2014?

16 A Yes.

17 MR. SLOCUM: Beg the Court's indulgence.

18 THE COURT: Yes, sir.

19 BY MR. SLOCUM:

20 Q Just a few more questions. Ms. Weaver, I'm showing
21 you State's Exhibit 13. Do you know what this is?

22 A That's my tooth.

23 Q And when did this tooth leave your mouth?

24 A When I was shot on May the 10th.

25 Q Did Mr. Glover shoot you that night?

Vernell Weaver - Direct Examination by Mr. Slocum

1 A Yes. Yes.

2 MR. SLOCUM: Your Honor, the State moves Exhibits
3 12 and 13 into evidence at this time.

4 MR. HAYES: No objection, Judge.

5 THE COURT: State's 12 and 13 into evidence without
6 objection.

7 (State's Exhibit Number 12 and Number 13 were
8 entered into evidence.)

9 BY MR. SLOCUM:

10 Q I'm showing you Number 14. Do you recognize this?

11 A Yes.

12 Q And is this the magazine from --

13 A That's the thing that was -- that had the bullets
14 in it.

15 MR. HAYES: I'm sorry. I couldn't hear what she
16 was saying.

17 BY MR. SLOCUM:

18 A That's the thing that hold the bullets.

19 Q And where did you find this?

20 A It was in George's house.

21 Q And when did you find it?

22 A A couple of days or weeks later. I think it was
23 like a week or so later.

24 Q After the hospital?

25 A After the hospital. Yes.

Vernell Weaver - Direct Examination by Mr. Slocum

1 Q And did you give this to Investigator Graybeal?

2 A Not at the time, but I did give it to him later on.

3 Q And is this what you saw --

4 A That's Yes, sir.

5 Q -- on May 10th, 2014?

6 A Yes. Yes.

7 MR. SLOCUM: The State moves 14 into evidence,
8 Judge.

9 MR. HAYES: No objection.

10 THE COURT: State's 14 is evidence without
11 objection.

12 (State's Exhibit Number 14 was entered into
13 evidence.)

14 BY MR. SLOCUM:

15 Q Ms. Weaver, this is 15. Do you recognize this?

16 A That's the hammer.

17 Q Is this what you grabbed --

18 A Yes.

19 Q -- on the way out the door?

20 A Yes. Yes.

21 MR. SLOCUM: Judge, the State moves 15 into
22 evidence.

23 MR. HAYES: No objection.

24 THE COURT: State's 15 is in evidence without
25 objection.

Vernell Weaver - Direct Examination by Mr. Slocum

1 (State's Exhibit Number 15 was entered into
2 evidence.)

3 BY MR. SLOCUM:

4 Q And lastly, Number 16?

5 A That's my cell phone.

6 Q Is this what you called 9-1-1 --

7 A Yes.

8 Q -- on that night?

9 A Yes.

10 MR. SLOCUM: Lastly, Judge, the State moves 16 into
11 evidence.

12 MR. HAYES: No objection.

13 THE COURT: State's 16 is in evidence without
14 objection.

15 (State's Exhibit Number 16 was entered into
16 evidence.)

17 BY MR. SLOCUM:

18 Q Ms. Weaver, that hole that was in the wall, was it
19 there before you locked yourself in that bedroom?

20 A No. No, sir. No. No.

21 Q How was it put there?

22 A David came through it. David pushed it --- David
23 did it.

24 Q Did he do it opening the door? Or did he bust
25 through the wall?

Vernell Weaver - Direct Examination by Mr. Slocum

1 A All I remember is my back was up against the door,
2 and I was making the call. And then he came through the
3 wall.

4 Q Ms. Weaver, do you remember what that gun looked
5 like?

6 A I saw it. Yeah.

7 THE COURT: Of course, there is a specific order
8 from the Supreme Court as far as the use of guns as
9 evidence. Do you want to charge the jury of that now, Mr.
10 Hayes? Or --

11 MR. HAYES: Can we approach?

12 THE COURT: Yes, sir.

13 (There was a bench conference out of the hearing of
14 the jury and the court reporter.)

15 THE COURT: Thank you, Solicitor.

16 Thank you, Mr. Hayes.

17 MR. HAYES: Yes, sir.

18 MR. SLOCUM: Ms. Weaver, before I ask you some
19 questions, I need to ask Investigator Lott some questions.

20 Investigator Lott, is this gun in an un-fireable
21 position?

22 INVESTIGATOR LOTT: It is.

23 MR. SLOCUM: Is it unloaded?

24 INVESTIGATOR LOTT: Yes.

25 MR. SLOCUM: And is it secured by its lock

Verne11 Weaver - Cross-Examination by Mr. Hayes

1 apparatus?

2 INVESTIGATOR LOTT: It is.

3 THE COURT: Thank you. Thank you very much,
4 Investigator.

5 Thank you, Mr. Hayes.

6 MR. HAYES: Judge, I'd just like to ask what number
7 is that of the State's.

8 MR. SLOCUM: 94.

9 MR. HAYES: 94?

10 BY MR. SLOCUM:

11 Q Ms. Weaver, I'm going to show you State's Exhibit
12 94. Do you recognize this?

13 A Yes.

14 Q That's all I have for you.

15 THE COURT: All right. Mr. Hayes?

16 **CROSS-EXAMINATION**

17 BY MR. HAYES:

18 Q Ms. Weaver, you said you have known Mr. Glover for
19 13 years?

20 A Yes, sir.

21 Q Y'all have been together that long?

22 A Yes, sir.

23 Q Y'all have lived together?

24 A Yes.

25 Q Currently -- or y'all purchased a house together --

Vernell Weaver - Cross-Examination by Mr. Hayes

- 1 A Yes, sir.
- 2 Q -- over on Alfred Street?
- 3 A Yes.
- 4 Q -- in Crosland Park?
- 5 A Yes, sir.
- 6 Q And y'all had lived there roughly 8 years --
- 7 A Yes, sir.
- 8 Q -- at this point?
- 9 A Yes, sir.
- 10 Q At the time of this incident, there was no lights
- 11 and water?
- 12 A There -- the lights was off.
- 13 Q So there was no electricity?
- 14 A If I remember correctly, the water -- I had gotten
- 15 the water cut on through some help through churches. The
- 16 lights was off, yes.
- 17 Q And you would describe George Mackey as a
- 18 boyfriend?
- 19 A At that time.
- 20 Q You had stayed with Mr. Mackey overnight that
- 21 night?
- 22 A Yes, sir.
- 23 Q And the next day, you're not sure exactly, but
- 24 somebody contacted -- one party contacted the other --
- 25 A Right.

Vernell Weaver - Cross-Examination by Mr. Hayes

1 Q -- in regards to seeing each other and --

2 A Not seeing each other. Coming home to get some
3 clothes.

4 Q Did y'all make plans to eat?

5 A No.

6 Q Y'all didn't make plans to go to the soup kitchen?

7 A No. I don't think. I don't -- no. I don't
8 remember. No.

9 Q Now, you -- when you went to the hospital, you were
10 drug tested, right?

11 A Yes, I was.

12 Q And you tested positive for cocaine?

13 A Yes, I did.

14 Q Did you stop on the way to Crosland Park and get
15 some cocaine?

16 A No. I did not.

17 Q Now, we listened to the 9-1-1 phone call. I
18 believe you testified that you made that phone call when
19 you went into the bedroom?

20 A Yes, sir.

21 Q And that's when you closed the door?

22 A Yes, sir.

23 Q And before he was in the room?

24 A Yes, sir.

25 Q In that 9-1-1 phone call, did you hear yourself

Verne11 Weaver - Cross-Examination by Mr. Hayes

1 state that, he hit me?

2 A Hit?

3 Q That you were hit?

4 A No. Not saying hit. No. Shot. Not hit. No.

5 Q Did you hear yourself telling him that you're done?

6 That you won't hit him no more?

7 A No. I never said anything like that.

8 Q That's not what they're going to hear --

9 A No.

10 Q -- if they listen real close now?

11 A No. No.

12 Q Now, your testimony that the magazine, the black
13 apparatus that holds the cartridges for the firearm, you
14 saw it on the floor during the struggle?

15 A I saw the bullets on the floor.

16 Q Where did you exactly find the magazine?

17 A I'm not sure. I think it was in the living room.
18 I think. I'm not -- I remember -- this was weeks after, or
19 a week or so after, and I was at George's house, and I was
20 straightening up. And I found it, I think it was either in
21 the bedroom or the living room.

22 Q You found the magazine?

23 A Yes, sir.

24 Q And you had that magazine in your pocketbook for
25 roughly a year?

Verne11 Weaver - Cross-Examination by Mr. Hayes

1 A No.

2 Q When did you -- you turned it over just recently to
3 the solicitor. Didn't you?

4 A Well, you could say that because I did find it a
5 couple weeks afterwards. And it wasn't in my pocketbook.
6 I just took it to the house and put it on his dresser.

7 Q All right. So your testimony is that you've had
8 the magazine for the past year?

9 A You could say that if you want to.

10 Q Not necessarily in the pocketbook?

11 A Not necessarily.

12 Q Is your testimony that you received the injuries to
13 your arm as you were exiting the residence?

14 A Yes, sir.

15 Q After everything in the bedroom had already
16 happened?

17 A Yes, sir.

18 MR. HAYES: I'm sorry, Judge. I beg the Court's
19 indulgence.

20 THE COURT REPORTER: Your Honor, these are
21 Defendant's 1 through 8.

22 THE COURT: 1 through 8?

23 THE COURT REPORTER: Yes, sir.

24 (Defendant's Exhibit Number 1, Number 2, Number 3,
25 Number 4, Number 5, Number 6, Number 7, Number 8 were

Verne11 Weaver - Cross-Examination by Mr. Hayes

1 marked for identification.)

2 BY MR. HAYES:

3 Q I'm going to hand you what is Defense Proposed
4 Exhibit Number 7 for identification. Do you recognize it?

5 A Yes.

6 Q What is it?

7 A That's the door to George's bedroom.

8 MR. HAYES: I'm sorry. Sorry, Judge. I'm getting
9 ahead of myself.

10 BY MR. HAYES:

11 Q Okay. Defense Proposed Exhibit Number 7. I
12 believe you testified that's the bedroom?

13 A Yes.

14 Q Does it fairly and accurately represent --

15 A That's when I ran in the bedroom, and I pushed the
16 door closed behind me.

17 MR. HAYES: Judge, at this time, I would ask to
18 enter Defense Exhibit Number 7 into evidence.

19 MR. SLOCUM: No objection.

20 THE COURT: Defense 7 is in evidence without
21 objection.

22 (Defendant's Exhibit Number 7 was entered into
23 evidence.)

24 BY MR. HAYES:

25 Q Ms. Weaver, I know this is hard. I'm not saying

Verne11 Weaver - Cross-Examination by Mr. Hayes

1 what happened here was easy for you. But could you tell
2 the jury what is on the back of the door?

3 A It's my blood.

4 MR. HAYES: Judge, I ask to publish.

5 THE COURT: You may publish.

6 BY MR. HAYES:

7 Q I'm going to show you Defense Proposed Exhibit
8 Number 8. Do you recognize it?

9 A (The witness nodded.)

10 Q What is it?

11 A It's the door to George's bedroom.

12 Q Does it fairly and accurately represent what was
13 going on that evening?

14 A (The witness nodded.)

15 Q I'm sorry. You'll have to give a verbal --

16 A That's when I ran out. I opened the door and ran
17 out the door.

18 MR. HAYES: Judge, I would ask to enter Defense
19 Exhibit Number 8.

20 THE COURT: Solicitor?

21 MR. SLOCUM: No objection.

22 THE COURT: Defense 8 is in evidence without
23 objection.

24 (Defendant's Exhibit Number 8 was entered into
25 evidence.)

Verne11 Weaver - Cross-Examination by Mr. Hayes

1 BY MR. HAYES:

2 Q Ms. Weaver, I want to ask you, what is on the wall?

3 A That's my blood.

4 Q Your blood?

5 MR. HAYES: Judge, I'd ask to publish it.

6 THE COURT: You may publish it.

7 BY MR. HAYES:

8 Q Ms. Weaver, I'm going to show you Defense Proposed
9 Exhibit Number 5. I ask if you can identify, please?

10 A That's how messed up the room got from us tussling.

11 Q Okay. It's a photograph of the bedroom?

12 A It's a photograph of the bedroom. Yes.

13 Q Does it fairly and accurately represent what the
14 room looked like that night?

15 A I didn't see those pictures until afterwards. So
16 yeah, that's got to be how it looked.

17 MR. HAYES: Judge, I would ask to enter Defense
18 Exhibit Number 5.

19 MR. SLOCUM: No objection.

20 MR. HAYES: I would ask to publish.

21 THE COURT: Defense 5 is in evidence, and you may
22 publish, without objection.

23 (Defendant's Exhibit Number 5 was entered into
24 evidence.)

25 ///

Verne11 Weaver - Cross-Examination by Mr. Hayes

1 BY MR. HAYES:

2 Q Let me show you Defense Proposed Exhibit Number 3.

3 And do you recognize it?

4 A (Witness nodded head.)

5 Q What is it?

6 A That's George's bedroom. That's a picture of his
7 bed.

8 Q Does it fairly and accurately represent the bedroom
9 that day? That night?

10 A It -- like I said, I didn't see it afterwards, but
11 that's the picture that the detective showed me when I was
12 at the hospital.

13 MR. HAYES: Judge, I would move to enter Defense
14 Exhibit Number 3.

15 MR. SLOCUM: No objection.

16 MR. HAYES: And I would ask to publish it.

17 THE COURT: Defense 3 is in evidence without
18 objection. You may publish.

19 (Defendant's Exhibit Number 3 was entered into
20 evidence.)

21 BY MR. HAYES:

22 Q Ms. Weaver, I'm going to ask you, up by the
23 pillows, what's on the bed?

24 A Is that my head scarf?

25 Q I'm talking about the substance on the white?

Verne11 Weaver - Cross-Examination by Mr. Hayes

1 A That's blood.

2 MR. HAYES: Judge, you did grant permission to
3 publish it? I'm sorry.

4 THE COURT: I did.

5 BY MR. HAYES:

6 Q This is Defendant's Proposed Exhibit Number 2. I'm
7 going to show it to you and ask you if you recognize it?

8 A It's blood. It's blood.

9 Q I know it's hard. I'm not trying to do this
10 meanly.

11 MR. HAYES: Judge, I would ask to enter Defense
12 Exhibit Number 2.

13 MR. SLOCUM: Without objection, Your Honor. And we
14 would not object to the remaining pictures either.

15 THE COURT: All right. Defense 2 is in evidence
16 without objection.

17 (Defendant's Exhibit Number 2 was entered into
18 evidence.)

19 MR. HAYES: May I publish it, Judge?

20 THE COURT: You may.

21 MR. HAYES: Judge, can we have a sidebar.

22 THE COURT: Excuse me?

23 MR. HAYES: May we have a sidebar.

24 THE COURT: Yes, sir.

25 (There was a bench conference out of the hearing of

Verne11 Weaver - Cross-Examination by Mr. Hayes

1 the jury and the court reporter.)

2 THE COURT: Thank you. Thank you, Mr. Hayes.

3 BY MR. HAYES:

4 Q I'm handing you what is Proposed Defense Exhibit
5 Number 1. Could you tell us what it is? Or do you
6 recognize it?

7 A It's bullets.

8 Q Does that fairly and accurately represent the
9 photograph there?

10 A Yes.

11 MR. HAYES: Judge, I would move to enter --

12 THE COURT: Was that a yes, Ms. --

13 MR. HAYES: Weaver.

14 THE COURT: Do you recognize it?

15 THE WITNESS: Yes.

16 THE COURT: Thank you.

17 MR. HAYES: I would move to enter Defense Number 1
18 into evidence.

19 MR. SLOCUM: No objection.

20 (Defendant's Exhibit Number 1 was entered into
21 evidence.)

22 BY MR. HAYES:

23 Q Ms. Weaver, I know you said there were some bullets
24 in there. What is the item laying on top of that window
25 pane?

Verne11 Weaver - Cross-Examination by Mr. Hayes

1 A Um --

2 Q Right here?

3 A That's my earring.

4 MR. HAYES: Judge, I would ask to publish.

5 THE COURT: Defense 1?

6 MR. HAYES: Yes, sir.

7 THE COURT: You may publish.

8 BY MR. HAYES:

9 Q I've got one more, Defense Proposed Number 9. Do
10 you recognize it?

11 A Yes.

12 Q What is it?

13 A It's a string.

14 THE COURT REPORTER: A what?

15 THE WITNESS: It's a string.

16 THE COURT REPORTER: I can't hear her.

17 BY MR. HAYES:

18 Q You're going to have to speak up. I'm sorry.

19 A That's where I was trying to tear the string out
20 mid-tussle. And I was able to get the gun out of his hand.
21 I was trying to throw it out of that window, that string.
22 That's the string.

23 MR. HAYES: Judge, I would ask to enter Defense
24 Exhibit Number 9.

25 MR. SLOCUM: Can I see that, please? No objection.

Vernell Weaver - Cross-Examination by Mr. Hayes

1 THE COURT: Defense 9 is in evidence without
2 objection.

3 (Defendant's Exhibit Number 9 was entered into
4 evidence.)

5 BY MR. HAYES:

6 Q Ms. Weaver, that's the picture of the bedroom
7 window. Correct?

8 A Yes.

9 MR. HAYES: Judge, I would ask to publish it.

10 THE COURT: Is that --

11 MR. HAYES: Defense Number 9.

12 THE COURT: -- Number 9?

13 MR. HAYES: Yes, sir.

14 THE COURT: You may publish it.

15 BY MR. HAYES:

16 Q Ms. Weaver, are you left-handed or right-handed?

17 A I'm right-handed.

18 Q Right-handed?

19 A Yes.

20 MR. HAYES: I just beg the Court's indulgence.

21 I have nothing further, Judge.

22 THE COURT: Redirect, Solicitor?

23 MR. SLOCUM: No, sir. Nothing from the State.

24 THE COURT: Thank you. Thank you very much, Ms.

25 Weaver. You may step down.

Verne11 Weaver - Cross-Examination by Mr. Hayes

1 All right. Solicitor, you may call your next
2 witness.

3 MS. HALL: Almetha Green.

4 THE COURT: Ms. Green, would you come around and be
5 sworn for us, please.

6 ALMETHA GREEN,
7 having been duly sworn, testified as follows:

8 THE CLERK: Have a seat in the witness box. State
9 your full name for the Court, spelling your last.

10 MR. HAYES: Mr. Glover needs a restroom break, if
11 he can.

12 THE COURT: I'm sorry?

13 MR. HAYES: Mr. Glover needs a restroom break if
14 that's okay.

15 THE COURT: All right. Certainly. You may return
16 to your seat, Ms. Green.

17 THE WITNESS: Go back to my seat.

18 THE COURT: Yes, ma'am. You may step down.

19 All right. Madame Forelady, ladies and gentlemen
20 of the jury, we'll take about a 15 minute recess. Please
21 remember my instructions. Do not discuss this case during
22 this brief recess. Thank you. Thank you very much. You
23 may now go to with your bailiff.

24 (The jury left the courtroom at 3:22 p.m.)

25 THE COURT: All right. Court will be in recess 15

Almetha Green - Direct Examination by Ms. Hall

1 minutes.

2 (A brief recess was observed.)

3 THE COURT: All right.

4 All right. Anything from the defense before we
5 bring in our jury, Mr. Hayes?

6 MR. HAYES: No, Your Honor.

7 THE COURT: From the State?

8 MR. SLOCUM: None from the State, Judge.

9 THE CLERK: Bring them in.

10 (The jury entered the courtroom at 3:43 p.m.)

11 THE BAILIFF: The jury is present, Your Honor.

12 THE COURT: All right. Welcome back, ladies and
13 gentlemen. We're continuing in the trial of the case by
14 the presentation of evidence and testimony by the State in
15 case in chief, please continue to give the parties your
16 complete and undivided attention. Solicitor, you may call,
17 recall Ms. Green, I believe; is that correct?

18 MS. HALL: Yes, Your Honor. Almetha Green.

19 THE COURT: All right. And she's already been
20 sworn in front of the jury. Ms. Green, you are still under
21 oath. You may come around and join us.

22 All right. Ms. Solicitor?

23 **DIRECT EXAMINATION**

24 BY MS. HALL:

25 Q Good afternoon.

Almetha Green - Direct Examination by Ms. Hall

1 A Good afternoon.

2 Q Ms. Green, where are you from?

3 A Aiken.

4 Q Are you married?

5 A Yes.

6 Q Who are you married to?

7 A Otis Green.

8 Q Do you have any children?

9 A Two. Three, I mean.

10 Q I'm sorry. What was that?

11 A Three children.

12 Q Okay.

13 THE COURT: Which one did you forget?

14 MS. GREEN: I hope none of them.

15 BY MS. HALL:

16 Q Ms. Green, where are you currently living?

17 A I'm living at 108 Mae Acres Court.

18 Q Okay. How long have you lived there?

19 A Almost a year. I moved there in June of last year.

20 Q Okay. Where were you living on May the 10th of

21 2014?

22 A 111 Mae Acres Court.

23 Q Is that within Aiken County?

24 A Yes.

25 Q Where were you on the afternoon of May 10th, 2014?

Almetha Green - Direct Examination by Ms. Hall

1 A At my house in my kitchen.

2 Q Did you hear any gunshots that afternoon?

3 A Two.

4 Q All right. Can you tell me how you started to get
5 involved in this case?

6 A I was in my kitchen, and I heard someone yelling.
7 And at first I thought it was some children, and when I
8 really kept listening, I'm like -- and I saw Ms. Vernell
9 coming. She was yelling before she got where I could see
10 her because there were some trees there. And when she got
11 where I could see her, she was yelling, calling my husband,
12 saying, help me.

13 Q Okay. Did she say anything else when she was
14 running into the yard?

15 A Well, she was just saying, Mr. Ninnie, Mr. Ninnie,
16 he shot me. Help me.

17 MR. HAYES: Objection. Hearsay.

18 THE COURT: I'll be glad to have a hearing under
19 803-1 and 2 outside the presence of the jury.

20 MR. HAYES: Yes, sir. Yes, sir.

21 THE COURT: Is that what you want?

22 MR. HAYES: Yes, sir.

23 THE COURT: Well, actually we don't have to have
24 that outside of the presence of the jury.

25 Solicitor, lay the foundation under 803.

Almetha Green - Direct Examination by Ms. Hall

1 BY MS. HALL:

2 Q Was Ms. Weaver running to your house?

3 A Yes.

4 Q Okay. What -- can you describe her demeanor?

5 A You mean how she was acting when she was coming?

6 Q Yes, ma'am.

7 A Well, she was just like screaming and saying, he
8 shot me. He shot me. He shot me. He didn't --

9 MR. HAYES: Objection, Judge.

10 THE COURT: Under what theory?

11 MR. HAYES: Hearsay, Judge.

12 THE COURT: All right.

13 MR. HAYES: They haven't laid the proper foundation
14 for getting it --

15 THE COURT: Excuse me?

16 MR. HAYES: I don't think the proper foundation has
17 yet been laid.

18 THE COURT: All right. I would deny the motion
19 under 803-2. Thank you.

20 You may continue, Ms. Solicitor.

21 MS. HALL: Thank you, Your Honor.

22 BY MS. HALL:

23 Q You said that Ms. Weaver mentioned Ninnie, Mr.
24 Ninnie. Who is that?

25 A That's my husband. That's his nickname.

Almetha Green - Direct Examination by Ms. Hall

1 Q Okay. What did you do after she was calling for
2 your husband?

3 A I ran from my kitchen, which is back here, and the
4 living room -- the door was over here. I ran, and I said
5 to him, come, this lady -- because I didn't really know who
6 she was, and I said, Come, come, this lady just said she's
7 been shot. And he jumped up. He was laying -- you know,
8 laying down. And he came to the front door.

9 Q Did y'all go both go outside?

10 A No.

11 Q Just to the front door?

12 A No. He went to the front door, and I went like --
13 our living room is here, and the dining room is here, so
14 you know this is where we were. He was in the living room.
15 I was standing in the window. And you could see the porch
16 from both windows.

17 Q Okay. And did anybody else come to your house?

18 A Yes.

19 Q Who was that?

20 A Mr. Glover.

21 Q Do you see him in the courtroom today?

22 A Yes.

23 Q Can you point to the man -- can you point to him
24 and tell me what he's wearing?

25 A He's on the end of the table wearing glasses and a

Almetha Green - Direct Examination by Ms. Hall

1 dark-colored -- and a light-colored shirt.

2 MS. HALL: Your Honor, let the record reflect the
3 witness has identified the defendant, David Glover.

4 THE COURT: So reflected.

5 BY MS. HALL:

6 Q Now, you said the defendant came over to your
7 house. Did -- what did he do once you saw him at your
8 house? Where was he?

9 A He came into the porch -- you know, to the porch.

10 Q Okay. And what was he doing?

11 A He was, like -- she had the hammer, and he was
12 like, kept, you know, pulling the hammer, pulling the
13 hammer. You know, trying to get it out of her hand.

14 Q Okay. Did he make any statements while he was at
15 your house?

16 A The only statement I remember him saying was, my
17 husband said he going to call the police or something, and
18 he said, Don't do it, I'll be in trouble.

19 Q All right. What happened after your husband
20 threatened to call the police?

21 A Well, what happened was that I went in the
22 background and called the police.

23 Q Okay.

24 A And he was talking to him saying, Leave her alone,
25 don't bother her, leave her alone. He kept saying that to

Almetha Green - Direct Examination by Ms. Hall

1 him.

2 Q Okay. What did -- what did the defendant do at
3 that point?

4 A Ms. Glover? I mean, Ms. Vernell?

5 Q Yes, ma'am.

6 A Well, she was just sitting in the chair, you know,
7 just sitting in the chair, you know. He was -- kept
8 pulling and trying to get the thing out her hand, you know,
9 the hammer. And she was just kept, you know, holding onto
10 it, holding onto it.

11 Q Did Mr. Glover leave at any point?

12 A When -- I believe when he heard the sirens, that's
13 when he disappeared.

14 MS. HALL: Your Honor, permission to approach the
15 witness?

16 THE COURT: Yes, ma'am.

17 BY MS. HALL:

18 Q Ms. Green, I'm showing you what has been previously
19 entered into evidence as State's Exhibit 2.

20 A Uh-huh.

21 Q Do you recognize this?

22 A Yes.

23 Q Does this picture accurately reflect the streets
24 and area around your house?

25 A Yes.

Almetha Green - Direct Examination by Ms. Hall

1 Q Okay.

2 MS. HALL: Can I borrow this pen?

3 THE COURT REPORTER: Uh-huh.

4 BY MS. HALL:

5 Q Can I get you to mark on here where your house is?

6 A That's it.

7 Q Okay.

8 A Got it.

9 Q All right. So this right here is where the
10 shooting happened?

11 A Yeah.

12 Q And this is your house right here?

13 A Yes.

14 Q Okay. Can you tell me which direction Mr. Glover
15 ran when he left your house?

16 A He went down -- I believe there was two cars
17 sitting there, like, on this side of my house. This would
18 have been between George's house and my house. He went
19 down through there, went right down through there.

20 Q So would it be correct to say he went towards
21 Lincoln Avenue?

22 A Yes. He went -- yeah.

23 Q Okay. Is that this street right here?

24 A Yes.

25 Q Okay. Thank you.

Almetha Green - Direct Examination by Ms. Hall

1 And you said that the struggle between the
2 defendant and Ms. Weaver was on your front porch?

3 A Yes.

4 MS. HALL: Your Honor, permission to approach the
5 witness?

6 THE COURT: Yes, ma'am.

7 BY MS. HALL:

8 Q Ms. Green, I'm showing you what's been previously
9 marked for State's identification purposes as State's
10 Exhibits 17 through 25. Can you tell me what those are?

11 A The front of my house -- the porch and the front of
12 the house.

13 Q Okay. Is this just another picture of the porch?

14 A Yes. Yes.

15 Q Another?

16 A Yes.

17 Q Okay. What about this picture right here? What is
18 that?

19 A That's the little chair that was sitting on the
20 front porch where she was sitting.

21 Q Okay. Was the blood on this chair, was that on the
22 chair before --

23 A No.

24 Q -- the shooting?

25 A No.

Almetha Green - Direct Examination by Ms. Hall

1 Q No. What is this picture of?

2 A Hammer. The hammer she had in her hand.

3 Q What are these pictures of? State's 22, 23?

4 A That's -- well, this is part of the porch, and
5 that's blood there. That's blood.

6 Q Do you recognize these?

7 A That's the rocking chair.

8 Q Okay. Do these pictures fairly and accurately
9 depict your front porch after this incident on May 10th of
10 2014?

11 A The exact pictures.

12 Q Have they been changed or altered in any way?

13 A No.

14 MS. HALL: Your Honor, at this time the State would
15 move to enter State's Exhibits 17 through 25.

16 MR. HAYES: I have no objection, Judge.

17 THE COURT: State's 17 to 25 into evidence without
18 objection.

19 (State's Exhibits Number 17, Number 18, Number 19,
20 Number 20, Number 21, Number 22, Number 23, Number 24, and
21 Number 25 were entered into evidence.)

22 BY MS. HALL:

23 Q Ms. Green, what is pictured in State's Exhibit 25?

24 A On that pillow back there, that's her blood.

25 Q Okay. And that wasn't there before May 10th?

Almetha Green - Direct Examination by Ms. Hall

1 A Nothing, because I keep it clean.

2 Q Okay.

3 MS. HALL: Permission to publish to the jury, Your
4 Honor?

5 THE COURT: Yes, ma'am. You may publish.

6 BY MS. HALL:

7 Q Ms. Green, did you know David Glover before May
8 10th of 2014?

9 A No.

10 Q Okay. Did you know Ms. Weaver before May 10th of
11 2014?

12 A I had seen her, but I didn't know her.

13 Q Okay. You stated that you called 9-1-1 while they
14 were both at your house?

15 A Yes.

16 Q Okay.

17 MS. HALL: Your Honor, permission to approach the
18 witness?

19 THE COURT: Yes, ma'am.

20 BY MS. HALL:

21 Q Ms. Green, I'm showing you what's previously been
22 marked as State's Exhibit 26. Do you recognize this?

23 A Yes.

24 Q What is it?

25 A It's a CD of the call that I made.

Almetha Green - Direct Examination by Ms. Hall

1 Q Okay. And how do you know that --

2 A Because I initialed it.

3 Q Okay. Does this 9-1-1 call fairly and accurately
4 depict your conversation with the 9-1-1 operator?

5 A Yes.

6 Q Has it been changed or altered in any way?

7 A No.

8 MS. HALL: Your Honor, permission to publish to the
9 jury.

10 THE COURT: Any objections?

11 MR. HAYES: She needs to enter it.

12 MS. HALL: I apologize, Your Honor. At this time,
13 the State would enter, seek to enter, State's Exhibit 26
14 into evidence.

15 MR. HAYES: No objection.

16 THE COURT: State's 26 into evidence without
17 objection.

18 (State's Exhibit Number 26 was entered into
19 evidence.)

20 MS. HALL: Permission to publish, Your Honor?

21 THE COURT: Yes, ma'am.

22 (The CD of the 9-1-1 call was played.)

23 BY MS. HALL:

24 Q Ms. Green, did you recognize the male voice in the
25 background during that call?

Almetha Green - Direct Examination by Ms. Hall

- 1 A Yes.
- 2 Q Whose voice was that?
- 3 A My husband.
- 4 Q Otis Green?
- 5 A Otis Green.
- 6 Q Was David Glover and both Vernell Weaver still at
7 your house during that call?
- 8 A Yes.
- 9 Q Where was Ms. Weaver?
- 10 A She was sitting on that chair.
- 11 Q Okay.
- 12 A And he was standing on the next --
- 13 Q On the right side or the left side, if you're
14 looking towards the house?
- 15 A Actually the chair is facing the way I'm sitting,
16 and he was like in front of her.
- 17 Q Okay. So the long bench?
- 18 A Yeah. That little bench there. Yeah.
- 19 Q And that's where he was trying to get next to her?
- 20 A Yes. That's where she was sitting the whole time.
- 21 Q Okay. Did you observe any injuries on Ms. Weaver?
- 22 A Yes. I saw like something with the neck and
23 bleeding on the lip.
- 24 Q Okay. Did you observe any injuries on David
25 Glover?

Almetha Green - Direct Examination by Ms. Hall

1 A No.

2 Q Did Ms. Weaver have anything with her while she was
3 waiting on EMS?

4 A The hammer.

5 Q Okay. Did EMS arrive after you called 9-1-1?

6 A Yes.

7 Q Do you know about how long after you called they
8 arrived?

9 A Well, I would say it had been about ten minutes at
10 the most.

11 Q Did you watch them, at any point, take care of her?
12 Did they -- what did they do, if you saw that?

13 A They -- well, they -- when EMS had gotten there, or
14 whatever they brought it to the porch. At that point she
15 was sitting in the chair. It seemed like to me she was
16 kind of worn out or something, and she just had her head
17 back and said, don't y'all leave me, don't y'all leave me.

18 MR. HAYES: Your Honor, I object. I would say this
19 is irrelevant.

20 THE COURT: Overruled.

21 BY MS. HALL:

22 Q You can continue.

23 A No see, that's what she was saying, you know, until
24 they got there, she was, like she was out of it.

25 Q Okay. Did you and your husband stay with Ms.

Otis Green - Direct Examination by Ms. Hall

1 Weaver until she was placed in the ambulance?

2 A Yes. Yes.

3 Q Okay. Did you have any further involvement in this
4 case?

5 A No.

6 Q I have no further questions for you. Please answer
7 any the defense may have.

8 THE COURT: Thank you, Solicitor.

9 Mr. Hayes.

10 MR. HAYES: I have no questions, Your Honor.

11 THE COURT: Thank you. Thank you very much, Ms.
12 Green. You may step down.

13 THE WITNESS: Thank you.

14 THE COURT: All right. Solicitor, you may call
15 your next witness.

16 MS. HALL: Otis Green.

17 OTIS GREEN,

18 having been duly sworn, testified as follows:

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

21 THE COURT: Solicitor?

22 **DIRECT EXAMINATION**

23 BY MS. HALL:

24 Q Mr. Green, where are you from?

25 A Aiken.

Otis Green - Direct Examination by Ms. Hall

- 1 Q Where are you currently living?
- 2 A Pardon me?
- 3 Q Where are you currently living?
- 4 A Aiken. 108 Mae Acre Court.
- 5 Q Mae Acre Court?
- 6 A Right.
- 7 Q Okay. How long have you lived there?
- 8 A About seven years.
- 9 Q I'm sorry?
- 10 A About seven years.
- 11 Q Okay. Where were you living on May 10th, 2014?
- 12 A Mae Acre Court.
- 13 Q Okay. 111 Mae Acre Court?
- 14 A Right. That's right.
- 15 Q Okay. Is that within Aiken County?
- 16 A Right.
- 17 Q Where were you on the afternoon of May 10th of
- 18 2014?
- 19 A Well, I was in my bedroom, asleep.
- 20 Q At 111 Mae Acre Court?
- 21 A Yeah.
- 22 Q Okay. How did you become involved in this case?
- 23 A Well, my wife said some woman, somebody's
- 24 hollering, so she woke me up. And the woman come to the
- 25 door. And then he had her on my porch.

Otis Green - Direct Examination by Ms. Hall

1 Q Okay. And what did you see once you got to the
2 door?

3 A I told him, you know, to leave the woman alone. I
4 keep telling him that.

5 Q Okay. What were they doing? Can you show me what
6 the defendant was doing?

7 A She had -- he had a hammer, she was holding this
8 hammer, and he was trying to take it out her hand.

9 Q Okay. Was she sitting at this point?

10 A Right.

11 Q Okay. And was the defendant -- where was he? Was
12 he sitting? Standing?

13 A He was kind of over in front of her.

14 Q Standing over her?

15 A Right.

16 Q Okay. Who was the man -- do you see the man in the
17 courtroom today that was on your porch on May 10th?

18 A Yeah.

19 Q Okay. What is he wearing?

20 A A suit, with glasses on.

21 MS. HALL: Your Honor, let the record reflect the
22 witness has identified the defendant.

23 THE COURT: Where is he sitting at the table?

24 THE WITNESS: Over on the right.

25 MS. HALL: Thank you.

Otis Green - Direct Examination by Ms. Hall

1 THE COURT: So reflected.

2 BY MS. HALL:

3 Q Did Mr. Glover make any statements while he was at
4 your house?

5 A He wasn't -- well, he was trying to do -- he was
6 trying to take the hammer, but he wasn't saying nothing.
7 He was trying to take it out her hand, but he wasn't saying
8 a word.

9 Q Okay. At what point did Mr. Glover leave your
10 house?

11 A Say it again, now.

12 Q At what point did Mr. Glover leave your house?

13 A Well, when I was trying to talk to him, and my
14 wife, she called the policeman. And when I come back out
15 and he had done left. He gone down through the woods, down
16 through there.

17 Q Okay.

18 MS. HALL: Your Honor, permission to approach the
19 witness?

20 THE COURT: Yes, ma'am.

21 BY MS. HALL:

22 Q Mr. Green, I'm showing you what has been previously
23 entered into evidence as State's Exhibit 2. Does that
24 image accurately reflect the streets surrounding your
25 house?

Otis Green - Direct Examination by Ms. Hall

1 A Yeah. My house is right in there. This is my
2 house right there.

3 Q What's --

4 THE COURT: Just speak up for me a little bit,
5 please.

6 BY MS. HALL:

7 Q This X, this second X right here. Is that your
8 house?

9 A That's right.

10 Q Okay. Which street did Mr. Glover run towards?

11 A I didn't see him do that. My wife did, but I
12 didn't see him run.

13 Q You didn't see him run?

14 A Yeah.

15 Q Okay.

16 A Okay.

17 MS. HALL: Your Honor, permission to approach the
18 witness?

19 THE COURT: Yes, ma'am.

20 BY MS. HALL:

21 Q Mr. Green, I'm showing you what has previously been
22 put into evidence as State's Exhibits 17 through 25. Will
23 you look through these and let me know if you recognize
24 these?

25 A Yeah.

Otis Green - Direct Examination by Ms. Hall

1 Q Is this how your porch looked --

2 A Right.

3 Q -- after the shooting incident on May 10th, 2014?

4 A Yeah.

5 Q Thank you. Mr. Green, earlier we played a 9-1-1
6 call your wife made. Was that your voice in the
7 background?

8 A Right.

9 Q While Ms. Weaver was at your house, did you observe
10 any injuries to her?

11 A (Witness shook his head.)

12 Q You didn't see any injuries on Ms. Weaver?

13 A Oh yeah. Yeah. I did.

14 Q Okay. What did you see?

15 A Her neck and her arm and her face.

16 Q Okay. Did you observe any injuries on David
17 Glover?

18 A I didn't see nothing on him.

19 Q No? Okay.

20 Did Ms. Weaver have anything with her while she was
21 waiting on EMS to arrive?

22 A Say it again, ma'am.

23 Q Did Ms. Weaver have anything with her when she was
24 waiting on EMS to arrive?

25 A Well, she got the hammer. That's the only thing I

Otis Green - Direct Examination by Ms. Hall

1 can think of.

2 Q Okay. She still had the hammer?

3 A Yeah.

4 Q Did you know Ms. Weaver prior to May 10th, 2014?

5 A I really don't know. I know her when I see her. I
6 didn't really know her personally.

7 Q Okay. Did you know David Glover prior to May 10th?
8 David Glover?

9 A No.

10 Q No?

11 A I can't --

12 Q I have no further questions for you.

13 THE COURT: Thank you, Solicitor.

14 Mr. Hayes?

15 MR. HAYES: I have no questions, Judge.

16 THE COURT: Thank you, Mr. Green. You may step
17 down.

18 All right. Solicitor, you may call your next
19 witness.

20 MS. HALL: Brandon Peeples.

21 BRANDON PEEPLES,

22 having been duly sworn, testified as follows:

23 THE CLERK: Have a seat in the witness box. State
24 your full name for the Court, and spell your last.

25 THE WITNESS: My name is Brandon Deshawn Peeples.

Brandon Peeples - Direct Examination by Ms. Hall

1 You said spell the last? P--E--E--P--L--E--S.

2 THE COURT: All right. Solicitor?

3 DIRECT EXAMINATION

4 BY MS. HALL:

5 Q Mr. Peeples, where are you from?

6 A Aiken, South Carolina.

7 Q Do you currently live in Aiken?

8 A Yes, ma'am.

9 Q Where are you working?

10 A I'm a lift truck operator at a -- I'm sorry, my
11 company just got bought by another company. It's a
12 Federal --

13 Q That's okay. You're a lift truck operator?

14 A Yeah. It's a Federal Express warehouse.

15 Q Okay. Do you know David Glover?

16 A Yes, ma'am.

17 Q And how do you know him?

18 A We live in the same neighborhood, so if I walk to
19 the store I run into him, and --

20 Q How long -- I'm sorry. Go ahead.

21 A Later on, I ended up getting him a job with me at
22 the grocery store up the street.

23 Q How long have you known him?

24 A I'd say around three or four years.

25 Q Do you see David Glover in the courtroom today?

Brandon Peeples - Direct Examination by Ms. Hall

1 A Yes, ma'am.

2 Q Can you please point him out and tell me what he's
3 wearing?

4 A He's over there to the right wearing a blue suit
5 with what looks like a white shirt and glasses.

6 MS. HALL: Your Honor, please let the record
7 reflect that the witness has identified the defendant,
8 David Glover.

9 THE COURT: So reflected.

10 BY MS. HALL:

11 Q Mr. Peeples, do you know Ms. Vernell Weaver?

12 A Yes, ma'am.

13 Q And how do you know her?

14 A I know her as being David Glover's girlfriend.

15 Q Okay. So how long have you known her?

16 A I guess I met her around the same time I met him.

17 Q Okay. You said that was about three years?

18 A Yes, ma'am.

19 Q Okay. Did you talk to David Glover on the weekend
20 of May 10th of 2014?

21 A Yes, ma'am.

22 Q How did you talk to him?

23 A Through a cell -- cell phone. He called me on my
24 cell phone.

25 Q Okay. He called you?

Brandon Peeples - Cross-Examination by Mr. Hayes

1 A Yes, ma'am.

2 Q Okay. What did he tell you?

3 A He told me that he was going to jail for a long
4 time, and he was going to turn hisself in to the police.

5 Q Okay. Did he tell you why?

6 A No, ma'am. He wouldn't tell me.

7 Q Okay. Did you recognize the cell phone number that
8 called you that day?

9 A Yes, ma'am. I did.

10 Q Okay. And whose number did you know that to be?

11 A David Glover's.

12 Q Did you recognize the voice on the phone?

13 A Yes, ma'am.

14 Q And whose voice was that?

15 A David Glover's.

16 Q I have no further questions for you. Please answer
17 any the defense may have.

18 THE COURT: Thank you, Solicitor.

19 Mr. Hayes?

20 **CROSS-EXAMINATION**

21 BY MR. HAYES:

22 Q How long have you known Mr. Glover?

23 A Around four years as far as I know.

24 Q Now, is Mr. Glover a lawyer?

25 A What's that?

Brandon Peeples - Cross-Examination by Mr. Hayes

1 Q Mr. Glover's not a lawyer, is he?

2 A No.

3 MR. HAYES: I beg the Court's indulgence.

4 BY MR. HAYES:

5 Q In that telephone call, he told you he was getting
6 ready to turn himself in?

7 A Yes, sir.

8 MR. HAYES: I have nothing further, Judge.

9 THE COURT: Redirect, Solicitor?

10 MS. HALL: Nothing from the State, Your Honor.

11 THE COURT: Thank you. Thank you very much, Mr.
12 Peeples. You may step down.

13 THE WITNESS: Yes, sir.

14 THE COURT: All right. Solicitor, you may call
15 your next witness.

16 MR. SLOCUM: Thank you, Judge. The State calls Mr.
17 George Mackey.

18 THE COURT: All right. Mr. Mackey, if you'll come
19 up and be sworn for us please.

20 GEORGE MACKEY,
21 having been duly sworn, testified as follows:

22 THE CLERK: Have a seat in the witness box. State
23 your full name for the Court, and spell your last.

24 THE WITNESS: My name is George Allen Mackey.
25 Mackey, M-A-C-K-E-Y.

George Mackey - Direct Examination by Mr. Slocum

DIRECT EXAMINATION

1
2 BY MR. SLOCUM:

3 Q Thank you, Mr. Mackey. Mr. Mackey, where do you
4 currently live? Where do you live?

5 A 105 Mae Acres Court.

6 Q Is that in Aiken County?

7 A Yes, sir.

8 Q And do you still -- did you live there in May of
9 2014?

10 A Yes, sir.

11 Q Specifically, on May 10th of 2014, did you live
12 there?

13 A Yes, sir.

14 Q How do you know Ms. Weaver?

15 A As a friend.

16 Q How would you describe your relationship back then,
17 in May of 2014?

18 A She was my girlfriend then.

19 Q You're still friends today?

20 A Yeah. We're friendly.

21 Q Were y'all hanging out that weekend?

22 A I was in North Carolina.

23 Q The night before?

24 A Yes, sir.

25 Q Were y'all together the night before?

George Mackey - Direct Examination by Mr. Slocum

- 1 A Yes, sir.
- 2 Q Did she stay with you the night before?
- 3 A Yes, sir.
- 4 Q That would be May the 9th?
- 5 A Yes, sir.
- 6 Q Okay. Did you invite her over to stay with you on
- 7 that day?
- 8 A Yes, sir.
- 9 Q Okay. Where were you on May 10th, 2014?
- 10 A I was in North Carolina.
- 11 Q Why'd you go to North Carolina?
- 12 A My niece graduated from college, and I was up
- 13 there.
- 14 Q Okay. When did you leave for North Carolina?
- 15 A When I got the telephone call from --
- 16 Q No. When did you leave to go up there the first
- 17 time?
- 18 A Saturday morning about 5 o'clock.
- 19 Q So you left your house at 105 Mae Acres Court
- 20 Saturday morning?
- 21 A Yes, sir.
- 22 Q And drove to North Carolina?
- 23 A Yes, sir.
- 24 Q Who'd you go with?
- 25 A My brother-in-law.

George Mackey - Direct Examination by Mr. Slocum

- 1 Q Whose car did y'all go in?
- 2 A His.
- 3 Q Your brother-in-law's car?
- 4 A Yes.
- 5 Q Was there anybody else with you?
- 6 A My whole family.
- 7 Q Your family was going up to see your niece's
- 8 graduation, right?
- 9 A Right.
- 10 Q All right. Do you know the defendant, Mr. Glover?
- 11 A I've seen him.
- 12 Q Did you know him before May 10th of last year?
- 13 A I'd seen him.
- 14 Q Just seen him?
- 15 A That's it.
- 16 Q And did you ever give him permission to be at your
- 17 house?
- 18 A Nope.
- 19 Q Ever?
- 20 A Not ever.
- 21 Q Did you give him permission to be over there on May
- 22 10th of 2014?
- 23 A Sure didn't.
- 24 Q Did you give Ms. Weaver permission to give him
- 25 permission to come to your house?

George Mackey - Direct Examination by Mr. Slocum

1 A No, sir.

2 Q When'd you come back from North Carolina?

3 A Soon as I got the telephone call from MCG.

4 Q What day?

5 A Saturday.

6 Q Why would somebody calling you from MCG make you
7 come back home?

8 A She was at MCG.

9 MR. HAYES: Objection, Your Honor. That's
10 irrelevant.

11 THE COURT: Rephrase the question.

12 MR. SLOCUM: I'll rephrase the --

13 THE COURT: Please let me rule.

14 MR. SLOCUM: Yes, sir.

15 THE COURT: I will sustain the objection. Rephrase
16 the question. Thank you.

17 MR. SLOCUM: Yes, sir.

18 BY MR. SLOCUM:

19 Q What time of day did you come back from North
20 Carolina?

21 A I think we left about -- and I was down about 8:00
22 or 8:15 or somewhere around there.

23 Q What made you leave North Carolina?

24 A When I got the telephone call from MCG.

25 Q Okay. After that telephone call, what did you come

George Mackey - Direct Examination by Mr. Slocum

1 to learn to bring you back to Aiken?

2 A They told me she was in the hospital, so I had to
3 come back and find what was going on. They didn't tell me
4 what was going on at the time.

5 Q About what time did you get back into Aiken?

6 A I got in about 11:00, maybe 10:00, 11:00 somewhere
7 along that line.

8 Q Uh-huh. Did you make it back over to your house
9 that night?

10 A Yes, sir.

11 MR. SLOCUM: I beg the Court's indulgence, Judge?

12 THE COURT: Yes, sir.

13 MR. SLOCUM: Permission to approach, Judge?

14 THE COURT: Yes, sir.

15 BY MR. SLOCUM:

16 Q Mr. Mackey, I am going to hand you pictures that
17 have been previously marked as State's Exhibit -- Exhibits
18 27 through 43 and State's Exhibits 45 through 54. Would
19 you please take and look at those, and without testifying
20 to their contents, do you recognize those pictures? Do you
21 recognize those photos?

22 A Yes, sir.

23 Q Are those photos that fairly and accurately depict
24 your house on May 10th, 2014?

25 A Yes, they do.

George Mackey - Direct Examination by Mr. Slocum

1 Q Have they been changed or altered in any way,
2 shape, or form?

3 A No, sir.

4 MR. SLOCUM: Your Honor, at this time State moves
5 Exhibits 27 through 43 and 45 through 54 into evidence.

6 MR. HAYES: Numbers 27 through --

7 MR. SLOCUM: 43 and 45 through 54.

8 MR. HAYES: I have no objection, Judge.

9 THE COURT: All right. State's 27 to 43 and 45
10 through 54 is in evidence without objection.

11 (State's Exhibit Number 27, Number 28, Number 29,
12 Number 30, Number 31, Number 32, Number 33, Number 34,
13 Number 35, Number 36, Number 37, Number 38, Number 39,
14 Number 40, Number 41, Number 42, Number 43, Number 45,
15 Number 46, Number 47, Number 48, Number 49, Number 50,
16 Number 51, Number 52, Number 53, and Number 54.)

17 BY MR. SLOCUM:

18 Q Mr. Mackey, I'm handing you State's Exhibit 44.
19 It's already been entered into evidence. Is that another
20 picture of your house?

21 A Yes, sir.

22 Q The inside?

23 A Yes, sir. That's my bedroom.

24 MR. SLOCUM: Judge, permission to publish exhibits
25 27 through 54 to the jury? And may the witness step down

George Mackey - Direct Examination by Mr. Slocum

1 to testify to their contents?

2 THE COURT: You may publish. The witness may step
3 down. Mr. Mackey, please keep your voice up when you're
4 away from the witness stand.

5 THE WITNESS: All right.

6 THE COURT: Thank you, Mr. Mackey.

7 THE WITNESS: Yes, sir.

8 BY MR. SLOCUM:

9 Q Mr. Mackey, if you would, please come stand right
10 where this podium is, and face our court reporter so she
11 can hear you. Mr. Mackey, this is State's Exhibit 27.
12 What is that?

13 A That's my house.

14 Q Okay. 28?

15 THE COURT: Speak up a little bit louder so my
16 court reporter can hear you, Mr. Mackey.

17 THE WITNESS: That's my house.

18 THE COURT: Thank you.

19 THE WITNESS: And that's still my house.

20 BY MR. SLOCUM:

21 Q Is this the front?

22 A Yes, sir.

23 Q What you call the front of your house?

24 A Yes, sir.

25 Q All right. 29?

George Mackey - Direct Examination by Mr. Slocum

1 A Yes, sir.

2 Q Still the front?

3 A Yes, sir.

4 Q Was this door -- was this door like this when you

5 left that morning on the 10th?

6 A No, sir. No, sir.

7 Q Was this glass on the ground?

8 A No, sir.

9 Q Same thing here?

10 A Yes, sir.

11 Q What is this right here, this plastic thing?

12 A That's the screen right there.

13 Q Okay.

14 THE COURT REPORTER: I'm sorry --

15 BY MR. SLOCUM:

16 Q And what was that answer?

17 A That's the screen out there, the screen door.

18 Q All right. What about this plastic thing here by

19 the cover?

20 A That's --

21 Q You can get up a little closer if you need to see

22 it.

23 A That's the screen.

24 Q Right. What's this black thing here. This may be

25 a bad picture. We'll skip that and come back to it a

George Mackey - Direct Examination by Mr. Slocum

1 little later.

2 Next picture, please. State's Exhibit 31. Is this
3 your door frame here?

4 A Yes, sir.

5 Q What's that right there?

6 A That's a bullet hole.

7 Q Was that bullet hole there when you left the
8 morning of May 10th, 2014?

9 A No, sir.

10 Q 32?

11 A That's the same bullet hole.

12 Q 33. What's this a picture of here?

13 A That screen -- side screen.

14 Q What is this here? What is this screwed in the
15 door there?

16 A The -- holding --

17 Q Holding the door, chaining the door to the --

18 A Yeah. To hold it to it.

19 Q Is that how you lock it so to speak?

20 A Yes, sir.

21 Q Is that the handle that you would push to get out?

22 A Yes, sir. Yes, sir.

23 Q Next picture. A close up of that same bullet hole?

24 A Yeah.

25 Q 35. What is all this right here?

George Mackey - Direct Examination by Mr. Slocum

1 A All this is my, they're my working tools.

2 THE COURT REPORTER: I'm sorry.

3 BY MR. SLOCUM:

4 Q What are they again?

5 A Working tools.

6 Q What kind of working tools?

7 A Hammer, nail pouches, sawzall, skill saw.

8 Q Is this the saw cover right here? Is that what
9 that does, that plastic thing?

10 A Yes.

11 Q Okay. 36 and 37. Is that a picture of your living
12 room?

13 A Yes, sir.

14 Q 38. Still in your living room?

15 A Yes, sir.

16 Q 39. Is that kind of walking towards the hallway?

17 A Yes, sir.

18 Q 40. And what is that a picture of?

19 A That's the hall -- That's the hole in the wall
20 right by my bedroom.

21 Q Was that hole in the wall there when you left --

22 A No, sir.

23 Q -- on May 10th, 2014 to North Carolina?

24 A No, sir.

25 Q But was it there when you got back?

George Mackey - Direct Examination by Mr. Slocum

1 A Yes, sir.

2 Q Next picture, please.

3 A That's a little farther back --

4 Q 42?

5 A -- that's the hole in the hallway.

6 Q 42?

7 A Yes, sir.

8 Q 43. Was this sheetrock on the ground when you

9 left?

10 A No, sir.

11 Q Was this bullet on the ground when you left?

12 A No, sir.

13 Q 44. Was that the way you left your room?

14 A No, sir. Ain't the way I leave my room.

15 Q 45. That wasn't there?

16 A No, sir.

17 Q You can have a seat back up here in the witness

18 stand.

19 Mr. Mackey, I'm going to show you what's been

20 previously entered into evidence as State's Exhibit Number

21 15. Do you recognize this?

22 A That's mine.

23 Q Is this your hammer?

24 A Yes, sir.

25 Q Is this what you kept in that tool box --

George Mackey - Cross-Examination by Mr. Hayes

1 A Yes, sir.

2 Q -- on May 10th, 2014?

3 You never invited Mr. Glover over to your house?

4 A Nope. Never.

5 Q That's all the questions I have for you, Mr.

6 Mackey. Please answer any Mr. Hayes may have for you at

7 this time.

8 A All right.

9 MR. HAYES: Mr. Mackey, what time did you say --

10 THE COURT: All right. Mr. Hayes?

11 MR. HAYES: I'm sorry, Judge.

12 THE COURT: You may continue.

13 **CROSS EXAMINATION**

14 BY MR. HAYES:

15 Q Mr. Mackey, what time did you say you went to North
16 Carolina?

17 A 5 o'clock in the morning.

18 Q 5 a.m.?

19 A Yes, sir.

20 Q When you left, you left Ms. Weaver at your house?

21 A Yes, I did.

22 Q And you did not return until, you said, 11:00 p.m.?

23 A Yeah. Something like that.

24 Q So you have no idea what happened in between those
25 timeframes?

Daniel Byrd - Direct Examination by Mr. Slocum

1 A No, I do not.

2 Q I've got nothing further.

3 THE COURT: Redirect?

4 MR. SLOCUM: No redirect, Judge.

5 THE COURT: Thank you. Thank you, Mr. Mackey. You
6 may step down.

7 THE WITNESS: Yes, sir.

8 THE COURT: All right. Solicitor, you may call
9 your next witness.

10 MR. SLOCUM: Thank you, Judge. The State calls
11 Deputy Daniel Byrd with the Aiken County Sheriff's Office.

12 THE COURT: Will you come around and be sworn for
13 us, please.

14 DANIEL BYRD,
15 having been duly sworn, testified as follows:

16 THE CLERK: Have a seat in the witness box. State
17 your full name for the Court, and spell your last.

18 THE WITNESS: My name is Deputy Daniel Byrd. Last
19 name is spelled B-Y-R-D.

20 **DIRECT EXAMINATION**

21 BY MR. SLOCUM:

22 Q Deputy Byrd, where do you currently work?

23 A I work for the Aiken County Sheriff's Office.

24 Q And how long have you been with Aiken County?

25 A A little over three years now.

Daniel Byrd - Direct Examination by Mr. Slocum

1 Q Any prior law enforcement experience?

2 A No, sir.

3 Q In your three years with the county, what are your
4 job duties?

5 A I enforce all local, state, and federal laws along
6 with making routine patrols to help enforce laws and deter
7 crime along with answer calls for service.

8 Q Were you employed with Aiken County on May 10th,
9 2014?

10 A Yes, sir. I was.

11 Q And were you ever dispatched to Mae Acres Court
12 here in Aiken County?

13 A Yes, sir. I was.

14 Q Tell us a little bit about that. How did you get
15 involved?

16 A I was the first officer on the scene. We were
17 dispatched to 111 Mae Acres Court where a female called in
18 saying that a woman was claiming she had been shot on her
19 porch.

20 MR. HAYES: Objection. Hearsay.

21 THE COURT: Excuse me, but I think that's in
22 evidence from 9-1-1.

23 MR. SLOCUM: Yes, sir. It is.

24 THE COURT: All right. Do you want to replay the
25 9-1-1? It's not being offered for the truth of the matter

Daniel Byrd - Direct Examination by Mr. Slocum

1 asserted. It's being offered for what the officer did as
2 far as his investigation and call for service.

3 You may continue, Solicitor.

4 MR. SLOCUM: Thank you, Judge.

5 BY MR. SLOCUM:

6 Q You can proceed on how you got to 111 Mae Acres
7 Court?

8 A Well, we got a call where a woman said another
9 woman had been shot and was on her porch, so we responded
10 to it. When I arrived on scene, I observed Ms. Weaver
11 sitting in a chair located on the porch, still holding a
12 hammer. And she kind of had her head back. She was
13 covered in blood.

14 Q What, if any, injury did you observe her to have?

15 A When I got up closer, I observed a hole through the
16 right side of her neck which appeared to be made by a
17 firearm or a bullet, a pretty severe laceration to her left
18 elbow, and she was bleeding pretty profusely out of her
19 mouth.

20 Q Did she make any statements to you?

21 A Yes.

22 Q What did she say?

23 A She told me who shot her.

24 Q What did she say?

25 A She said that her ex-boyfriend, David Glover, shot

Daniel Byrd - Direct Examination by Mr. Slocum

1 her.

2 Q Did she say anything else to you about how she
3 felt?

4 A Not that I can recall.

5 Q About -- let me start over. Did EMS ever arrive?

6 A They did after we secured the scene.

7 Q Okay. About how long was that after you got there,
8 ballpark?

9 A Maybe five, ten minutes tops.

10 Q Okay. After you -- did you stay with Ms. Weaver
11 until the ambulance got there?

12 A No, sir. I didn't.

13 Q Did anyone stay with her?

14 A I believe Sergeant Gainey did, but I can't say for
15 certain.

16 Q Okay. What did you do when you left there?

17 A Myself, Sergeant Comer, and Officer Aaron Hawkins
18 with Public Safety went and checked 105 Mae Acres to -- we
19 conducted a protective sweep of the residence just to
20 ensure that Mr. Glover was still not armed and inside.

21 Q So at this point, you had a suspect, and you went
22 and did a sweep of the house. What all does a sweep
23 entail? What does that mean?

24 A Well, what a protective sweep is, it's just a quick
25 search to ensure, for safety reasons, that the subject is

Daniel Byrd - Direct Examination by Mr. Slocum

1 not in the house next door, because with the paramedics on
2 scene, we don't want an armed individual still hiding next
3 door.

4 Q Right. And did you find anyone in that house?

5 A No, sir.

6 Q What did you do after you did the sweep?

7 A We put crime scene tape up around the house and
8 notified the investigators.

9 Q And what does that putting up crime scene around
10 the house do?

11 A It keeps -- well, I mean, it's a sign to keep
12 everybody else, including, you know, officers that don't
13 need to be there, out.

14 Q Okay. Was there anything else in your
15 investigation that night of any importance?

16 A Yes. His vehicle was located.

17 Q Where'd you locate his vehicle?

18 A Well, Deputy Lott located it first on Lloydtown
19 Road near Lincoln Avenue. And once he come across the
20 radio and said what it looked like, I remembered passing
21 that vehicle when we were going to 111 Mae Acres Court that
22 night.

23 Q And how were you able to confirm that it belonged
24 to David Glover?

25 A The license plate was ran through the South

Daniel Byrd - Direct Examination by Mr. Slocum

1 Carolina Department of Motor Vehicles.

2 Q It came back as David Glover's?

3 A Yes, sir.

4 MR. SLOCUM: Beg the Court's indulgence, Judge.

5 THE COURT: Okay.

6 MR. SLOCUM: Permission to approach?

7 THE COURT: Yes, sir.

8 BY MR. SLOCUM:

9 Q Deputy Byrd, I'm handing you what's been previously
10 marked for identification purposes as State's 62 through
11 66. Could you take a look at those and tell me if you're
12 able to recognize them.

13 A Yes, sir.

14 Q And what are they? Without testifying to their
15 content, what are they pictures of?

16 A One's the stop sign at Lloydtown and Lincoln. And
17 the other is a picture of the vehicle that I passed going
18 to Mae Acres Court.

19 Q Is that a picture of the vehicle from, that you
20 passed on May 10th of 2014 on your way to 111 Mae Acres
21 Court?

22 A It is. It was sitting on the side of Lloydtown
23 Road.

24 Q And do those pictures fairly and accurately depict
25 the car from May 10th of 2014?

Daniel Byrd - Cross-Examination by Mr. Hayes

1 A Yes, sir. From my angle when I was coming in, it
2 would've been -- 64 and 65 would've been the angle I saw it
3 at.

4 Q Have they been changed, altered, deleted, in any
5 way, shape, or form?

6 A Not to my knowledge.

7 MR. SLOCUM: Your Honor, the State moves Exhibits
8 62 through 66 into evidence.

9 MR. HAYES: I have no objection, Judge.

10 THE COURT: State's 62 to 66 into evidence without
11 objection.

12 MR. SLOCUM: Permission to publish, Your Honor?

13 THE COURT: You may publish.

14 MR. SLOCUM: Deputy Byrd, that is all the questions
15 I have for you at this time. Please answer any that Mr.
16 Hayes may have for you.

17 THE COURT: Thank you, Solicitor.

18 Mr. Hayes?

19 **CROSS EXAMINATION**

20 BY MR. HAYES:

21 Q Deputy Byrd, you said you were the first responding
22 officer, and you wrote a report. Correct?

23 A Yes, sir.

24 Q In that report, you indicated there was glass in
25 front door?

Daniel Byrd - Redirect Examination by Mr. Slocum

1 A Of 105 Mae Acres Court. Yes.

2 Q You also stated that it appeared that somebody was
3 thrown through the glass door?

4 A Yes.

5 Q And that was your impression of it after viewing
6 it?

7 A That was my impression. Yes, sir.

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

9 BY MR. HAYES:

10 Q Just to clarify what you mean by that, you're
11 stating that your impression was that somebody went through
12 the door from inside going out?

13 A That's what it seemed like because the door -- the
14 glass was shattered, and the door was pulled back from the
15 frame where the frame was leaning out as if somebody had
16 either been thrown from inside to out or had run through
17 it.

18 Q Thank you. I have nothing further.

19 THE COURT: Anything on redirect?

20 MR. SLOCUM: A couple, Judge.

21 **REDIRECT EXAMINATION**

22 BY MR. SLOCUM:

23 Q Could somebody have pulled that door open from the
24 outside as well for it to be on the outside?

25 A It could've been depending on how well the frame

Daniel Byrd - Redirect Examination by Mr. Slocum

1 was placed in the wall.

2 Q You don't know for sure, though. Do you?

3 A No.

4 Q That's all my questions.

5 THE COURT: Re-cross?

6 MR. HAYES: No, sir.

7 THE COURT: Thank you. Thank you, Deputy Byrd.

8 You may step down.

9 All right. Solicitor, you may call your next
10 witness.

11 MR. SLOCUM: Judge, may we approach for a sidebar
12 briefly?

13 (There was a bench conference out of the hearing of
14 the jury and the court reporter.)

15 THE COURT: All right. Madame Forelady and ladies
16 and gentlemen of the jury, I'm informed that perhaps the
17 next witness will be rather lengthy. Rather than start it
18 just twenty minutes before 5:00, I think we'll take our
19 evening recess. I would remind you, during this recess
20 you're not to discuss this case with others. That includes
21 your fellow jurors, family, friends, or anyone else.
22 You're not to read, watch, or listen to any news reports
23 should there be any. You're not to use your computer,
24 cellular phone, or any other electronic device with
25 communication capabilities to research or disclose any

1 prohibited information which includes but is not limited to
2 the following: Information about a party, an attorney, a
3 court officer, news accounts of the case past or present,
4 should there have been any. Information collected through
5 juror research on any topics raised or testimony offered by
6 any witness or information collected through juror research
7 on any other topic the juror might think would be helpful
8 in deciding the case. Remember you decide the case based
9 on the evidence and the testimony you hear in the
10 courtroom, the reasonable inferences to be drawn therefrom,
11 and the law as I tell you the law is. Any questions?

12 (There was no response from the jury.)

13 THE COURT: No questions. Thank you very much. If
14 you would, please be back promptly at 9:30 in the morning.
15 Be back promptly at 9:30 in the morning. I hope y'all have
16 a pleasant evening. Thank you. Thank you very much.

17 (The jury left the courtroom at 4:39 p.m.)

18 THE COURT: All right. Anything further from the
19 State?

20 MR. SLOCUM: Nothing from the State, Judge.

21 THE COURT: Defense?

22 MR. HAYES: Nothing from the defense.

23 THE COURT: Thank you very much. We'll be in
24 recess until 9:30 in the morning.

25 MR. SLOCUM: Thank you.

1 (Court was in recess until the following morning.)

2 THURSDAY, MAY 14, 2015

3 THE COURT: All right. Good morning, Mr. Glover.

4 THE DEFENDANT: Good morning.

5 THE COURT: All right. Solicitor, anything before
6 we bring in our jury.

7 MR. SLOCUM: Yes, sir, Your Honor. In regards to
8 the chain of custody and the evidence that we'll be
9 admitting in trial, we did admit to trial yesterday and
10 will be admitting to trial today, the State and the defense
11 have stipulated to the authenticity of that chain. We have
12 both signed a document that is now Court's Exhibit Number 1
13 which lists all items of those evidence, and as I said, we
14 both have signed.

15 THE COURT: All right. Thank you.

16 Mr. Hayes?

17 MR. HAYES: That is correct, Judge.

18 THE COURT: All right. And it has been marked,
19 Solicitor?

20 MR. SLOCUM: Yes, sir. As Court's Exhibit Number 1
21 and provided to the court reporter.

22 THE COURT: Thank you. Anything further,
23 Solicitor, before we bring in our jury.

24 MR. SLOCUM: Judge, there will be a couple of
25 witnesses with the Aiken County Sheriff's Office where we

1 will be discussing the handgun as well. Would you like us
2 to put on the record before each witness that this gun is
3 unloaded and locked by a mechanism and is unable to fire
4 each time we address it? Or will the one time from
5 yesterday be sufficient?

6 THE COURT: Y'all step up here and get copies --
7 this is the guidelines for safe handling of firearms as
8 evidence in the courtroom. And I tried to research the
9 origin of that. I thought it was part of a prior Supreme
10 Court order, but I was unable to confirm that. I think it
11 has -- I don't think that each witness has to testify to it
12 since the officer, the forensics officer, yesterday
13 testified to it. But -- And I don't think it's a mandate.

14 MR. SLOCUM: Yes, sir.

15 THE COURT: At least, I was unable to confirm that.
16 I have used it for several years.

17 MR. SLOCUM: Yes, sir.

18 THE COURT: But I don't think every officer -- if
19 you show it in the same condition now as it was yesterday
20 when the officer testified.

21 MR. SLOCUM: It is. Yes, sir. And it will stay
22 that way throughout the remainder of the trial.

23 THE COURT: All right. And of course, if I charge
24 the jury, then I would tell the jury that we can't have the
25 firearm and the ammunition in there at the same time.

1 MR. SLOCUM: Right. Yes, sir.

2 THE COURT: All right. Anything further,
3 Solicitor?

4 MR. SLOCUM: Nothing further from the State, Judge.

5 THE COURT: Anything from the defense?

6 MR. HAYES: No, sir.

7 THE COURT: Thank you. Bring us our jury, please.

8 (The jury entered the courtroom at 9:53 a.m.)

9 THE COURT: All right. Good morning, ladies and
10 gentlemen.

11 Welcome back. I apologize for the delay. It was
12 not -- I assure you it was not the fault of the parties,
13 neither the defense nor the State. They were not on time;
14 they were early and have been working diligently. I hope
15 y'all had a pleasant evening.

16 If you'll recall, we're continuing the trial of the
17 case, the presentation of the testimony and evidence by the
18 State in its case in chief. If you would, please continue
19 to give the parties your complete and undivided attention
20 as you have done throughout the trial of this case.

21 Solicitor, you may call your next witness.

22 MR. SLOCUM: Thank you, Judge. May it please the
23 Court?

24 THE COURT: Yes, sir.

25 MR. SLOCUM: The State calls Sergeant Kevin Creed

Kevin T. Creed - Direct Examination by Mr. Slocum

1 with the Aiken County Sheriff's Office.

2 THE COURT: All right. If you would, come around
3 and be sworn for us, please.

4 KEVIN CREED,
5 having been duly sworn, testified as follows:

6 THE CLERK: Please have a seat in the witness box.
7 State your full name for the Court, and spell your last.

8 THE WITNESS: Kevin Todd Creed. C-R-E-E-D.

9 **DIRECT EXAMINATION**

10 BY MR. SLOCUM:

11 Q Sergeant Creed, good morning, sir.

12 A Good morning.

13 Q Where do you currently work?

14 A At the Aiken County Sheriff's Office.

15 Q And in what capacity do you work for the Aiken
16 County Sheriff's Office?

17 A I'm assigned to the Special Operations Division,
18 Bloodhound Tracking Team, and SWAT.

19 Q How long have you been with Aiken County?

20 A Ten years.

21 Q Were you working in that same capacity on May 10th,
22 2014 with the Aiken County Sheriff's Office?

23 A Yes, sir. I was the on-call tracker.

24 Q Were you called -- what does it mean to be the
25 on-call tracker?

Kevin T. Creed - Direct Examination by Mr. Slocum

1 A To respond with bloodhounds to any calls for
2 service where the dogs are needed.

3 Q Were you called out on May 10th, 2014?

4 A I was.

5 Q Were you called to Mae Acres Court?

6 A Yes, sir.

7 Q What did you do when you got to Mae Acres Court?

8 A Upon my arrival, we met with the on-scene
9 supervisor and was advised of the incident that happened
10 and was advised that we didn't have any type of starting
11 point for the actual bloodhounds. And we attempted to hand
12 track the area in order to locate any type of depressed
13 brush, toe digs, any things of that nature, clothing, and
14 were unable to find anything due to heavy scene
15 contamination from law enforcement, civilian traffic, and
16 emergency medical personnel.

17 Q Could you explain what it means to hand track?

18 A Just walk the area. Look for signs of depressed
19 brush, when somebody runs through tall grass, the brush
20 will be pushed over. Toe digs in the dirt, when the front
21 part of your foot hits the dirt, it digs into the dirt.
22 Things of that nature.

23 Q If you were -- normally when you find a toe dig,
24 what do you do if it's not contaminated?

25 A If it's not contaminated, we'll strike a bloodhound

Kevin T. Creed - Direct Examination by Mr. Slocum

1 on it.

2 Q So on this night, on May 10th, 2014, were you able
3 to locate any digs or brush pushovers or anything that
4 would give you an uncontaminated spot to start the dog?

5 A No, sir.

6 Q What kind of training in tracking is involved with
7 being on the bloodhound team?

8 A We go through a 40 annual -- a 40 hour annual
9 course that's put on by us -- training through the South
10 Carolina Criminal Justice Academy, and then on-the-job
11 training.

12 Q And do you always hand track when you go to call
13 outs? Or do you always put the dog on something when you
14 go to call outs? Or is it different for each call out?

15 A Every call's different. Normally if you have a
16 good starting point or if you have a eye witness that says,
17 he went between point A and point B, we've got a good
18 reference point to use a cutting technique for the dog.
19 But like I said, if the scene's contaminated, it's really
20 hard to do it.

21 MR. SLOCUM: Permission to approach, Judge?

22 THE COURT: Yes, sir.

23 BY MR. SLOCUM:

24 Q Sergeant Creed, I want to show you State's Exhibit
25 Number 2 that's already been entered into evidence. It's a

Kevin T. Creed - Direct Examination by Mr. Slocum

1 photograph of that area of Mae Acres Court. In the top
2 right of that picture, you see the road Mae Acres Court?

3 A Uh-huh.

4 Q There are two houses, one closest to Lincoln Avenue
5 and one right behind it. Which one did you respond to?

6 A The one closest to Lincoln Avenue. The dirt
7 portion.

8 Q Is that 105 Mae Acres Court?

9 A Uh-huh.

10 Q In Aiken County?

11 A Yes, sir.

12 Q So you never made it to the 111 Mae Acres Court?

13 A No, sir.

14 Q So the call out says 111 Mae Acres Court because
15 that's the information dispatch had. Right?

16 A Yes, sir.

17 Q But you responded to 105 where the crime scene had
18 been roped off. Correct?

19 A Yes, sir.

20 Q Can you explain a little bit what you meant when
21 you said the scene was contaminated?

22 A You had foot traffic from civilians walking up and
23 down the road. You had contamination from law enforcement
24 personnel with -- inside the crime scene, emergency medical
25 personnel workers. There was just foot traffic all in the

Kevin T. Creed - Direct Examination by Mr. Slocum

1 yard. You really couldn't pin nothing down.

2 Q So by the time you had gotten there, the initial
3 responders had already been there?

4 A Uh-huh.

5 Q EMS had already been there?

6 A Right.

7 Q And the scene had already been roped off?

8 A Right. Because I, when I -- when the call went
9 out, I was actually at home off duty, but I was the on-call
10 tracker, so it's my responsibility to go to the kennels.

11 You know, get dressed, go to the kennels, get the dogs, and
12 make it to the scene, which it's usually around an hour.

13 Q Okay. How long did you look for a dig or a track
14 or something that wasn't contaminated to put the dog on?

15 A Several hours.

16 Q And were you able to find anything?

17 A We actually -- on the opposite side of the dirt
18 road, there are some abandoned structures. In that patch
19 of woods, we cleared all the structures that we could find,
20 and we were unable to find anything.

21 Q What was the -- can you describe the light
22 situation? Was it day or night or dark, day or night by
23 the time you had gotten there?

24 A By the time I had gotten there, it was already
25 starting to get dark, so we had very little light to work

Kevin T. Creed - Direct Examination by Mr. Slocum

1 with.

2 Q Did you have a flashlight?

3 A We did.

4 Q And that was it?

5 A That was it.

6 Q So did you put a dog down --

7 A No, sir.

8 Q -- on this date?

9 And why is that?

10 A The scene was too contaminated, and we were unable
11 to find a definite track.

12 Q Is that your normal practice when you can't find a
13 definite track?

14 A To not put a dog down?

15 Q Correct.

16 A Yes.

17 Q That's all the questions I have. Please answer any
18 Mr. Hayes may have for you.

19 THE COURT: Thank you, Solicitor.

20 Mr. Hayes.

21 MR. HAYES: I have no questions, Judge.

22 THE COURT: Thank you, Sergeant. You may step
23 down.

24 MR. SLOCUM: Your Honor, may Sergeant Creed be
25 released from his subpoena?

Nicholas Lott - Direct Examination by Ms. Hall

1 THE COURT: Any objections?

2 MR. HAYES: No, sir.

3 THE COURT: The sergeant may be released.

4 All right. You may call your next witness,
5 Solicitor.

6 MS. HALL: The State calls Deputy Nicholas Lott
7 with Aiken County Sheriff's Office.

8 THE COURT: All right. If you'll come around and
9 be sworn for us, please.

10 NICHOLAS LOTT,
11 having been duly sworn, testified as follows:

12 THE CLERK: Please have a seat in the witness box.
13 State your full name for the Court, and spell your last.

14 THE WITNESS: Nicholas Lamont Lott. Last name,
15 L-O-T-T.

16 **DIRECT EXAMINATION**

17 BY MS. HALL:

18 Q Good morning?

19 A Good morning.

20 Q Deputy Lott, where do you work?

21 A Aiken County Sheriff's Office.

22 Q In what capacity?

23 A I'm a road patrol deputy.

24 Q And what all does that entail?

25 A Patrol assigned areas, respond to calls to service,

Nicholas Lott - Direct Examination by Ms. Hall

1 respond to car accidents, things of that nature.

2 Q How long have you been with the Aiken County
3 Sheriff's Office?

4 A Since 3/31/3012. A little over three years now.

5 Q Were you in law enforcement prior to coming to the
6 Sheriff's Office?

7 A Yes, ma'am.

8 Q Where did you work prior to coming to the Aiken
9 County Sheriff's Office?

10 A McCormick County Sheriff's Office.

11 Q And how long were you there?

12 A Four years.

13 Q What kind of law enforcement training have you had
14 over the years?

15 A Basic detective certified, been to interview
16 interrogation, meth lab recognition, patrol officer's
17 response to street drugs, latent print development,
18 specialized classes on criminal domestic violence, things
19 of that nature.

20 Q Thank you. Where were you work -- were you working
21 with Aiken County Sheriff's Office in May of 2014?

22 A Yes, ma'am.

23 Q And how did you become involved in this case?

24 A Tones were dropped, and usually everybody in the
25 general vicinity, which is how we assigned our zones, if

Nicholas Lott - Direct Examination by Ms. Hall

1 it's a border zone next to your zone, then pretty much
2 everybody goes.

3 Q And where were you dispatched to?

4 A 105 Mae Acres Court.

5 Q And in route, did you notice anything prior to
6 reaching 105 Mae Acres Court?

7 A Prior to my arrival to the scene, Deputy Byrd along
8 with other officers from Aiken City had already cleared the
9 scene and the incident location, so we went straight to the
10 perimeter. And as I was on the perimeter, I was patrolling
11 Lloydtown Road which runs directly to Lincoln Avenue which
12 is maybe a quarter mile up from Mae Acres. I located a
13 suspicious vehicle that was kind of parked in a grassy
14 area. It was a brown in color late model Subaru sedan.

15 Q Were you able to determine anything about that car?

16 A I ran the South Carolina registration on it. It
17 came back to the defendant.

18 Q Who's the defendant?

19 A Mr. David Glover.

20 MS. HALL: Permission to approach the witness, Your
21 Honor?

22 THE COURT: Yes, ma'am.

23 BY MS. HALL:

24 Q Deputy Lott, I'm showing you what has previously
25 been placed into evidence as State's Exhibits 62 through

Nicholas Lott - Direct Examination by Ms. Hall

1 66. Do you recognize those pictures?

2 A Yes, ma'am. I do.

3 Q Okay. And can you look through those pictures for
4 me just briefly. What is pictured in those pictures?

5 A It's the intersection of Lloydtown and Lincoln
6 Avenue. It's the location of where Mr. Glover's vehicle
7 was parked.

8 Q And those -- do those pictures fairly and
9 accurately depict the car that you found and where you
10 found it on May 10th of 2014?

11 A Yes, ma'am.

12 Q Do you know if his car was seized as evidence?

13 A Yes, ma'am.

14 Q Okay. And can you tell me how far again that this
15 car was from the incident location, 105 Mae Acres Court?

16 A I would say a little bit under just a quarter of a
17 mile.

18 Q Did you have any further involvement in this case
19 after May 10th, 2014?

20 A Yes, ma'am. 5/19/2014, I was responding to the
21 area of Lincoln Avenue to meet with Craig McBride in
22 reference to a handgun laying on the side of the roadway.

23 Q Okay. What did you observe once you received, once
24 you responded to Lincoln Avenue?

25 A I located a silver and black in color High Point

Nicholas Lott - Direct Examination by Ms. Hall

1 .380 laying on the roadside.

2 Q And that was on Lincoln Avenue?

3 A Yes, ma'am.

4 Q Okay. Do you know the serial number of the gun you
5 found?

6 A Yes, ma'am.

7 Q You may reference your report.

8 A It's P as in Papa 708065.

9 MS. HALL: Permission to approach the witness, Your
10 Honor?

11 THE COURT: Yes, ma'am.

12 BY MS. HALL:

13 Q Deputy Lott, I'm showing you what has been
14 previously entered into evidence as State's Exhibit 1. Do
15 you recognize that picture?

16 A Yes, ma'am.

17 Q What's in that picture?

18 A It's showing the residence of 105 Mae Acres Court
19 and showing the location of where the handgun was located.

20 MS. HALL: Your Honor, permission to publish the
21 exhibit to the jury?

22 THE COURT: Yes, ma'am.

23 MS. HALL: Your Honor, Permission to approach the
24 witness?

25 THE COURT: Yes, ma'am.

Nicholas Lott - Direct Examination by Ms. Hall

1 BY MS. HALL:

2 Q While we're getting that set up, I'm going to show
3 you what's previously been marked for identification as
4 State's Exhibits 82 through 93. If you'll flip through
5 those and let me know if you recognize those?

6 A Yes, ma'am. I do.

7 Q And what are those pictures of?

8 A It's pictures of the location where the handgun was
9 found in.

10 Q Do those pictures fairly and accurately depict the
11 scene when you arrived on May 19th of 2014?

12 A Yes, ma'am, they do.

13 Q To your knowledge, have they been changed or
14 altered in any way?

15 A No, ma'am.

16 MS. HALL: Your Honor, at this time the State would
17 move to enter into evidence State's Exhibits -- I'm sorry,
18 is that -- 82 through 93.

19 THE COURT: Mr. Hayes?

20 MR. HAYES: Can I look through them first, Judge.

21 THE COURT: Yes. Yes, sir. Certainly.

22 MR. HAYES: No objection, Judge. No objection.

23 THE COURT: All right. State's 82 through 93 is in
24 evidence without objection.

25 MS. HALL: Thank you, Your Honor.

Nicholas Lott - Direct Examination by Ms. Hall

1 (State's Exhibit Number 82, Number 83, Number 84,
2 Number 85, Number 86, Number 87, Number 88, Number 89,
3 Number 90, Number 91, Number 92, Number 93 were entered
4 into evidence.)

5 BY MS. HALL:

6 Q Deputy Lott, can I have you step down to explain
7 these pictures for us?

8 I'm going to get you to come around to this side so
9 the court reporter can hear you. This is State's Exhibit
10 1. Can you tell us what's in this picture?

11 A In this picture, you see the actual incident
12 location of 105 Mae Acres Court, and this street down in
13 here is where the handgun was located.

14 Q And what road is that?

15 A It's Lincoln Avenue.

16 Q And State's Exhibit 82. What is pictured in
17 State's Exhibit 82?

18 A It's a street sign for Mae Acres Court in the
19 general vicinity of where the handgun was located.

20 Q If you'll please publish State's Exhibit 84. I'm
21 sorry, 83. What is this a picture of?

22 A It's just below the incident location, and it's
23 coming down Lincoln Avenue towards the exact location where
24 the handgun was located.

25 Q If you could, publish State's Exhibit 84. What is

Nicholas Lott - Direct Examination by Ms. Hall

1 this a picture of?

2 A That's the same location. It's kind of further
3 down Lincoln Avenue.

4 Q 85, please. And again, what is this?

5 A It's a little further down Lincoln Avenue toward
6 where the handgun was located.

7 Q Can you point out in this picture where the handgun
8 was located?

9 A It's in that general vicinity. It's in front of
10 this SUV.

11 Q Okay. 86, please. And what is this picture
12 showing?

13 A It's showing, possibly looks like where the rain
14 had washed -- where it had washed the handgun down the --

15 THE COURT REPORTER: I'm sorry. I didn't hear
16 that.

17 THE WITNESS: I said, it's showing the rain could
18 possibly wash the handgun down the ditch bank.

19 BY MS. HALL:

20 Q And what's at the top of that embankment?

21 A Grass and dirt.

22 Q Okay. Is the address of the house sitting at the
23 top of that embankment 105 Mae Acres Court?

24 A Yes, ma'am.

25 Q Okay. State's Exhibit 87?

Nicholas Lott - Direct Examination by Ms. Hall

1 A That's a little further along down the road where
2 the handgun was actually located.

3 Q Okay. 88.

4 A That's the same area just a little bit further
5 down.

6 Q Okay. And can you point out where the gun would be
7 if we had a bigger picture?

8 A Somewhere in there.

9 Q Okay. 89. And what's shown in this picture?

10 A That's the actual handgun in its location.

11 Q State's 90. What is this?

12 A That's the silver in color High Point .380.

13 Q That you found on May 19, 2014?

14 A Yes.

15 Q May 19th?

16 A Yes, ma'am. May 19th.

17 Q 91. What is this picture showing?

18 A And that's the serial number of the High Point
19 .380.

20 Q 92. What is this picture showing?

21 A That's the empty magazine that went with the High
22 Point.

23 Q Is that how you found it on May 19th of 2014?

24 A Yes, ma'am.

25 Q State's 93. What is this picture showing?

Nicholas Lott - Direct Examination by Ms. Hall

1 A That's showing the make and model and the caliber
2 of the firearm that was found.

3 Q Thank you. You can return to the witness stand.

4 Deputy Lott, I am now showing you State's Exhibit
5 94. Do you recognize this?

6 A Yes, ma'am.

7 Q What is it?

8 A It is the High Point .380 that was located on May
9 19th on Lincoln Avenue.

10 Q How do you know this is the same gun?

11 A By the serial number.

12 Q Okay. Has it been changed or altered in any way
13 other than having this locking device on it?

14 A Not to my knowledge.

15 MS. HALL: Your Honor, at this time the State would
16 move to enter State's Exhibit 94 into evidence.

17 THE COURT: All right. Mr. Hayes?

18 MR. HAYES: No objection.

19 THE COURT: State's 94 is in evidence without
20 objection.

21 (State's Exhibit Number 94 was entered into
22 evidence.)

23 BY MS. HALL:

24 Q Deputy Lott, did anyone else from the Sheriff's
25 Office respond to the call when you found the gun?

Nicholas Lott - Direct Examination by Ms. Hall

1 A Yes, ma'am. Investigator Johnson did.

2 Q Okay. Did Investigator Johnson do anything while
3 on the scene?

4 A Yes, ma'am. He processed the area. He
5 photographed and collected the gun, and he put it into
6 evidence.

7 Q Okay.

8 MS. HALL: Permission to approach, Your Honor?

9 THE COURT: Yes, ma'am.

10 BY MS. HALL:

11 Q Deputy Lott, I'm showing you what has been
12 previously entered into evidence as State's Exhibit 2. Do
13 you recognize this?

14 A Yes, ma'am.

15 Q Okay. Is this a map of the area surrounding the
16 incident location?

17 A Yes, ma'am.

18 Q Okay. Can I have you mark on this map where you
19 found the gun? If you'll just put an X and write gun out
20 beside it.

21 And can I have you put an X where you found the
22 car, the defendant's car? If you'll write car out beside
23 that?

24 MS. HALL: Your Honor, permission to publish
25 State's 2?

Nicholas Lott - Direct Examination by Ms. Hall

1 THE COURT: Yes, ma'am. You may publish.

2 MR. HAYES: Judge, could I look at where he put the
3 marks before we publish it?

4 THE COURT: Certainly.

5 MR. HAYES: Thank you.

6 THE COURT: Any objection?

7 MR. HAYES: No, sir.

8 THE COURT: All right. You may publish to the
9 jury.

10 BY MS. HALL:

11 Q If you'll step down so that we can show the jury.
12 Excuse me. All right. Can you show the jury in this
13 picture where 105 Mae Acres Court is, where the incident
14 occurred?

15 A It's right here.

16 Q Okay. And can you show the jury where you found
17 the gun on May 19th of 2014?

18 A Just a little bit below this, right here on Lincoln
19 Avenue.

20 Q So this is the house, and this is where the gun was
21 found?

22 A Yes, ma'am.

23 Q Okay. Okay. And can you show the jury where you
24 found the defendant's car on May 10th of 2014?

25 A It was in this grassy area right here.

Nicholas Lott - Cross-Examination by Mr. Hayes

1 Q Okay. About how far again was that from the
2 incident location?

3 A I would say it's under a quarter of a mile.

4 Q Thank you. You can return.

5 MS. HALL: Beg the Court's indulgence.

6 THE COURT: Yes, ma'am.

7 MS. HALL: Deputy Lott, I have no further
8 questions. Please answer any the defense may have?

9 THE COURT: Thank you, Solicitor.

10 Mr. Hayes.

11 MR. HAYES: Beg the Court's indulgence.

12 **CROSS EXAMINATION**

13 BY MR. HAYES:

14 Q Deputy Lott?

15 A Yes, sir.

16 Q You testified earlier that you took the photograph
17 and that the gun may have washed down the hill. Correct?

18 A Yes, sir.

19 Q You don't know whether it did or didn't, though.
20 Correct?

21 A Did not -- cannot confirm that.

22 Q Okay. Do you even know if it rained in the period
23 between the time of the incident and the time the gun was
24 found?

25 A No, sir.

Nicholas Lott - Cross-Examination by Mr. Hayes

1 Q And that timeframe was several days?

2 A Yes, sir.

3 Q I have nothing further. Thank you.

4 THE COURT: Redirect, Solicitor?

5 MS. HALL: Nothing, Your Honor.

6 THE COURT: Thank you. Thank you, Deputy Lott.

7 You may step down.

8 MS. HALL: Your Honor, may Deputy Lott be released
9 from his subpoena?

10 THE COURT: Any objection?

11 MR. HAYES: No objection.

12 THE COURT: You may leave if you want.

13 All right. Solicitor, you may call your next
14 witness.

15 MS. HALL: The State calls Investigator Fleury of
16 the Aiken County Sheriff's Office.

17 THE COURT: All right. Would you come around and
18 be sworn for us, please?

19 BILLY FLEURY,

20 having been duly sworn, testified as follows:

21 THE CLERK: Have a seat in the witness box. State
22 your full name for the Court, and spell your last.

23 THE WITNESS: Billy Fleury. F-L-E-U-R-Y.

24 ///

25 ///

Billy Fleury - Direct Examination by Ms. Hall

DIRECT EXAMINATION

BY MS. HALL:

Q Good morning.

A Good morning.

Q Investigator Fleury, where do you work?

A Aiken County Sheriff's Office.

Q In what capacity?

A Lieutenant of Investigations, adult investigations.

Q And what all does that job entail?

A I'm a supervisor. I review -- I assign cases, review cases, approve cases that come to the Solicitor's Office. From time to time, I'll assist the investigators out in the field.

Q How long have you been at the Sheriff's Office?

A With Aiken County, December 2nd will be 27 years.

Q Were you in law enforcement prior to coming to the Sheriff's Office?

A Yes, ma'am, with Saluda Town Police and the Saluda County Sheriff's Office.

Q How many years?

A About four years.

Q Okay. Can you briefly explain some of the training you've had with law enforcement over the years?

A Yes, ma'am. With Saluda County, I went to the academy and had basic homicide, crime scene, also basic

Billy Fleury - Direct Examination by Ms. Hall

1 detective. I've been to Florida. I've had training in
2 homicide, homicide management, and case management.

3 Q Were you working with Aiken County Sheriff's Office
4 on May 10th of 2014?

5 A Yes, ma'am.

6 Q How did you become involved in this case?

7 A Well, I received -- we have what we call a admin
8 page. That's when we have a major incident happened, a
9 shooting, burglaries, a fire, we have what we call admin
10 page. That's where all the supervisors or the
11 administration gets paged out, or they received a page.
12 Investigator Graybeal was on call that night, and I went
13 out to assist him.

14 Q Okay. What did you do once you got to 105 Mae
15 Acres Court?

16 A I was briefed by Investigator Graybeal, and the
17 victim in this case had been transported to what we called
18 back then Medical College of Georgia, we called it MCG.
19 And I went to MCG to talk to the victim.

20 Q Where is that located?

21 A It's in Augusta, Georgia.

22 Q Were you able to meet with the victim, Vernell
23 Weaver?

24 A Yes, I did.

25 Q Do you know about what time you met with her?

Billy Fleury - Direct Examination by Ms. Hall

1 A I don't know, 7:00, 8:00, somewhere in there.

2 Q Okay. What did you do while at the hospital?

3 A I spoke to her a few minutes. I then took a
4 photograph of her.

5 Q Okay.

6 A And then I performed a GSR kit.

7 MS. HALL: Your Honor, permission to approach the
8 witness?

9 THE COURT: Yes, ma'am. You may approach.

10 BY MS. HALL:

11 Q I'm showing you what has previously been marked as
12 State's Exhibit 81.

13 A Yes, ma'am.

14 Q Do you recognize this?

15 A Yes, ma'am. That's Ms. Weaver, I took that with my
16 cell phone.

17 Q Okay. Does this picture fairly and accurately
18 depict her condition on May 10th of 2014?

19 A It does.

20 Q Has it been changed or altered in any way?

21 A No, ma'am.

22 MS. HALL: Your Honor, at this time the State would
23 move to enter State's Exhibit 81 into evidence.

24 MR. HAYES: No objection.

25 THE COURT: State's 81 is in evidence without

Billy Fleury - Direct Examination by Ms. Hall

1 objection.

2 (State's Exhibit Number 81 was entered into
3 evidence.)

4 MS. HALL: Your Honor, permission to publish to the
5 jury?

6 THE COURT: Yes, ma'am.

7 BY MS. HALL:

8 Q Lieutenant Fleury, you said that you also did a GSR
9 kit. What does GSR stand for?

10 A Yes, ma'am. That is a Gunshot Residue Kit.

11 Q Can you explain what that is and what you do with
12 that kit?

13 A If -- if a gun has been fired, if you've held a gun
14 or a gun has been fired near you, either in defense or
15 anything like that, you will have this residue -- may have
16 what they call gunshot residue. Now, how they perform
17 these things when they go to SLED -- but inside this kit is
18 what they call, what I call a dabber, and you have to read
19 the instructions. And what I do, I open up the kit. And
20 even though I've done it for years, I still read the
21 instructions on these kits. And you'll have a dabber that
22 you dab the inside of the right hand and the left hand, and
23 then you put them back in their container, you seal it up
24 and put your initials on it and --

25 Q You said you've been doing this for years. Do you

Billy Fleury - Direct Examination by Ms. Hall

1 know roughly how many times you've collected these kits?

2 A I could not tell you.

3 Q Too many to count?

4 A I couldn't count how many times.

5 Q Okay. What did you do with the GSR kit in this
6 case when you finished?

7 A Yes, ma'am. The kit stayed in my possession, and
8 then I turned it in to the evidence, to Mr. Turner.

9 Q When -- when would you have turned it in?

10 A It would've been Monday.

11 Q The following Monday?

12 A Yes, ma'am.

13 Q How did you check this piece of evidence into the
14 evidence room? Can you explain?

15 A I just -- I just turned it in to Gerald Turner.

16 Q Okay.

17 MS. HALL: Your Honor, permission to approach the
18 witness?

19 THE COURT: Yes, ma'am.

20 BY MS. HALL:

21 Q I'm showing you what has been previously marked for
22 identification purposes as State's Exhibit 80. Do you
23 recognize what's in that bag?

24 A That's the gunshot residue collection kit. That's
25 where I signed it.

Billy Fleury - Direct Examination by Ms. Hall

1 Q How do you know that's the kit you collected from
2 Ms. Weaver?

3 A It's got my signature, and that's my writing.

4 Q Okay.

5 MS. HALL: Your Honor, at this time the State would
6 move to enter State's Exhibit 80 into evidence.

7 MR. HAYES: No objection.

8 THE COURT: State's 80 is in evidence with no
9 objection.

10 (State's Exhibit Number 80 was entered into
11 evidence.)

12 MS. HALL: Beg the Court's indulgence.

13 Lieutenant Fleury, I have no further questions for
14 you. Please answer any the defense may have.

15 THE COURT: Thank you. Thank you, Solicitor.

16 Mr. Hayes.

17 MR. HAYES: Judge, I have no questions.

18 THE COURT: Thank you. Thank you very much,
19 Lieutenant.

20 THE WITNESS: Yes, sir.

21 THE COURT: You may step down.

22 All right. Solicitor, you may call your next
23 witness.

24 MR. SLOCUM: Thank you, Judge. The State calls
25 Investigator Mary Frances O'Grady-Watts.

Mary Frances O'Grady-Watts - Direct Examination by Mr. Slocum

1 THE COURT: All right. If you'll come around and
2 be sworn for us, please.

3 MARY FRANCES O'GRADY-WATTS,
4 having been duly sworn, testified as follows:

5 THE CLERK: Please have a seat in the witness box.
6 State your full name for the Court, spelling your last.

7 THE WITNESS: Mary Frances O'Grady-Watts,
8 O - ' - G - R - A - D - Y - - W - A - T - T - S .

9 **DIRECT EXAMINATION**

10 BY MR. SLOCUM:

11 Q Investigator Watts, good morning.

12 A Morning.

13 Q Where do you currently work?

14 A Aiken County Sheriff's Office.

15 Q How long have you been with Aiken County?

16 A Ten years.

17 Q Has your entire tenure in law enforcement been with
18 Aiken County?

19 A No. It was at Columbia Police Department for
20 ten-and-a-half years prior to that.

21 Q What's your total involvement in law enforcement?

22 A 22 years this year.

23 Q Were you -- what is your job capacity with Aiken
24 County?

25 A I am a member of the forensics unit. I'm one of

Mary Frances O'Grady-Watts - Direct Examination by Mr. Slocum

1 the investigators.

2 Q And what does that entail? What are your duties?

3 A We basically are evidence collectors. We're
4 members of the crime scene unit.

5 Q Were you working in that capacity on May 10th of
6 2014?

7 A I was.

8 Q And were you called out to Mae Acres Court that
9 night?

10 A Yes.

11 Q Is that 111 Mae Acres Court?

12 A I was actually at both.

13 Q 111 and 105?

14 A Correct.

15 Q Both of them in Aiken County. Right?

16 A Yes.

17 Q What'd you do when you first got there?

18 A Arrive on the scene; look for the first responding
19 officer; basically ask what has happened or what I need to
20 do; see if the other investigator is there. Basically,
21 kind of get a game plan together and then, depending on
22 where you need to go first, you're going to actually start
23 looking around to see what you have and what you can work
24 with.

25 Q What'd you do first that night?

Mary Frances O'Grady-Watts - Direct Examination by Mr. Slocum

1 A Went over into the scene to kind of look around and
2 see what was involved. But actually, I went over to where
3 Ms. Weaver was because that was where we actually -- we
4 were dispersed to that.

5 Q Was that 111?

6 A That's 111.

7 Q Okay. And what'd you do at 111?

8 A Took photographs, collected the hammer from off of
9 the front porch.

10 MR. SLOCUM: Permission to approach, Judge?

11 THE COURT: Yes, sir.

12 BY MR. SLOCUM:

13 Q Investigator Watts, I'm going to show you State's
14 Exhibit 15. It's already been entered into evidence. Do
15 you recognize what this is?

16 A Yes.

17 Q Is this the hammer you collected that night?

18 A It is.

19 Q It's from 111?

20 A Correct.

21 Q And then you took pictures of the front of the
22 house?

23 A Yes, I did.

24 Q What else did you do, if anything, at 111?

25 A That was pretty much it. I mean --

Mary Frances O'Grady-Watts - Direct Examination by Mr. Slocum

1 Q Where'd you go after that?

2 A Went back to 105 which is the actual incident
3 location.

4 Q And what'd you do when you got there?

5 A Took photographs once again, outside, inside.
6 Looked around to see what was and what was not in play.
7 Corroborated with Investigator Graybeal to find out what we
8 needed to collect.

9 Q Based on that investigation, what, if anything, did
10 you collect?

11 A We collected, from the scene, two unfired rounds
12 which were in the living room, her earring which was also
13 on the living room floor, and then her cell phone which was
14 in the bedroom back behind the bed on the floor.

15 MR. SLOCUM: I beg the Court's indulgence.

16 THE COURT: All right.

17 MR. SLOCUM: Permission to approach, Judge?

18 THE COURT: Yes, sir.

19 BY MR. SLOCUM:

20 Q Investigator Watts, I'm showing you State's
21 Exhibits 74, 75, and 76 for identification purposes only.
22 Do you recognize what those items are?

23 A Yes, I do.

24 Q What is 74?

25 A 74 is the unfired R&P brand .380 round from the

Mary Frances O'Grady-Watts - Direct Examination by Mr. Slocum

1 floor of the living room in the incident location.

2 Q And 75?

3 A 75 is the Winchester brand .380 unfired round from
4 the floor of the living room.

5 Q 76?

6 A 76 is the gold in color metal woman's earring from
7 the floor of the living room at the incident location.

8 Q And are those the items you collected on May 10th,
9 2014?

10 A Yes, they are because this is my handwriting.

11 Q And you know that because that is your handwriting?

12 A Correct.

13 Q Have those items been changed or altered in any
14 way, shape, or form since you collected them?

15 A No. They have not.

16 MR. SLOCUM: Your Honor, at this time the State
17 moves Exhibits 74, 75, and 76 into evidence.

18 MR. HAYES: No objection, Judge.

19 THE COURT: 74, 75, and 76 State's in evidence
20 without objection.

21 (State's Exhibit Number 74, Number 75, and Number
22 76 were entered into evidence.)

23 BY MR. SLOCUM:

24 Q And Ms. Weaver, I'm showing you State's Exhibit
25 14 -- I mean, Ms. -- Investigator Watts. And it's not 14,

Mary Frances O'Grady-Watts - Direct Examination by Mr. Slocum

1 it's State's Exhibit 16. My apologies. This has already
2 been entered into evidence. Do you recognize what that is?

3 A Yep. That's the cell phone that was from the
4 bedroom.

5 Q That's what you also collected that night?

6 A Right. That's my writing.

7 Q And where was this found?

8 A In the bedroom.

9 Q Investigator Watts, I'm showing you State's
10 Exhibits 55 through 61 that have been marked for
11 identification purposes. Could you take a look at those
12 and tell me if you recognize them, please ma'am.

13 A I do.

14 Q And what are they?

15 A These are pictures taken from the crime scene
16 itself.

17 Q Are they fair and accurate representations of the
18 crime scene at 105 Mae Acres Court on May 10th of last
19 year?

20 A Yes.

21 Q Have they been changed, altered in any way, shape,
22 or form to your knowledge?

23 A No.

24 MR. SLOCUM: Your Honor, at this time the State
25 moves into evidence State's Exhibits 55 through 61.

Mary Frances O'Grady-Watts - Direct Examination by Mr. Slocum

1 MR. HAYES: No objection, Judge.

2 THE COURT: 61 through 65.

3 MR. SLOCUM: 55 through 61.

4 THE COURT: 55. Okay.

5 MR. SLOCUM: Yes, sir.

6 THE COURT: Into evidence without objection.

7 (State's Exhibit Number 55, Number 56, Number 57,
8 Number 58, Number 59, Number 60, Number 61 were entered
9 into evidence.)

10 MR. SLOCUM: And permission to publish?

11 THE COURT: Yes, sir. You may publish.

12 BY MR. SLOCUM:

13 Q Investigator Watts, in just a minute, please step
14 down and testify to these pictures, please. We're going to
15 stand over here so the court reporter can hear you.

16 State's Exhibit 55. Can you tell us what we're
17 looking at here?

18 A This is a shot of the floor in the living room.
19 This is the actual front door, so you're looking at the rug
20 and, of course, what's left of the screen door.

21 Q And what are these red spots on the rug here?

22 A This is going to be blood. Right on the carpet.

23 Q And 56?

24 A A little closer shot of the top left corner of the
25 actual rug itself. You can see the unfired rounds and the

Mary Frances O'Grady-Watts - Direct Examination by Mr. Slocum

1 earring.

2 Q Are those the items you collected that night?

3 A They are.

4 Q That you just entered into evidence?

5 A Correct.

6 Q 57. Where is this view from?

7 A This -- if you're facing the actual door itself,
8 you're looking back from where the bedroom would be, where
9 the entrance would be to the hallway. If you're standing
10 at the front door, you're seeing all these markers, the
11 rounds, and her earring.

12 Q 58?

13 A And I just have them with markers.

14 Q What's the purpose of those markers?

15 A It's to show correlation and to show scale. You'll
16 also be able to keep track of all the different items that
17 you have on scene. Each one of them actually has a number
18 assigned to it.

19 Q 59?

20 A This just basically shows you the scale of the
21 unfired round.

22 Q 60?

23 A Same thing with the second one.

24 Q And 61?

25 A And then the earring itself.

Mary Frances O'Grady-Watts - Direct Examination by Mr. Slocum

1 Q Thank you, ma'am. That's all on these pictures.

2 What all did you photograph that night?

3 A You basically try to paint a picture of what is
4 going to happen or has happened at the incident location,
5 so I took photographs of what I took outside and the inside
6 specifically trying to get the damage that was -- that took
7 place or anything that had incurred to the infrastructure
8 of the house.

9 Q Did you photograph any vehicles that night?

10 A I did. I photographed a vehicle which was down the
11 street, which was a Subaru, which wound up being owned by
12 Mr. Glover.

13 Q And was that Subaru collected as evidence?

14 A It was.

15 Q What do you do when collect a car into evidence?
16 How does that work?

17 A We will actually have it towed back to the forensic
18 garage. We'll place it in there, lock it down, and then we
19 will process it pursuant to either a search warrant or
20 consent to search situation afterward.

21 Q What'd you do in this case? Did you get a search
22 warrant?

23 A Yes.

24 Q After you obtain that search warrant, what's the
25 next step that follows?

Mary Frances O'Grady-Watts - Direct Examination by Mr. Slocum

1 A We will go, and we will do the same thing that we
2 would do at a incident location. We will process the car
3 the same way. We'll take photographs. We will look
4 through it to see what we are actually trying to obtain
5 pertaining to the actual incident.

6 Now, in this case we're looking for DNA,
7 ammunition, guns, clothing, things along that nature which
8 will corroborate anything that happened during the initial
9 incident.

10 MR. SLOCUM: Beg the Court's indulgence.

11 THE COURT: Yes, sir.

12 BY MR. SLOCUM:

13 Q Investigator Watts, I'm showing you State's 67
14 through 73. Could you take a look at those, please ma'am,
15 and tell me what -- if you recognize them?

16 A I do.

17 Q And without testifying to their contents, can you
18 tell us what they are?

19 A These are the photographs that I took of Mr.
20 Glover's vehicle inside the garage at headquarters.

21 Q And that was after it was -- when was that done?

22 A After we had towed it.

23 Q The next time you had contact with it?

24 A Correct.

25 Q Have you -- have those pictures been changed,

Mary Frances O'Grady-Watts - Direct Examination by Mr. Slocum

1 altered, deleted in any way, shape, or form?

2 A No.

3 Q They fairly and accurately depict the car as you
4 saw it --

5 A Yes.

6 Q -- from your search warrant execution?

7 A Correct.

8 MR. SLOCUM: Your Honor, the State moves Exhibits
9 67 through 73 into evidence.

10 THE COURT: Mr. Hayes?

11 MR. HAYES: No objection, Judge.

12 THE COURT: 67 through 73 is in evidence without
13 objection.

14 (State's Exhibit Number 67, Number 68, Number 69,
15 Number 70, Number 71, Number 72, Number 73 were entered
16 into evidence.)

17 BY MR. SLOCUM:

18 Q Investigator Watts, can you tell me what's all in
19 those photos?

20 A They're different photographs of the exterior and
21 the interior of the vehicle.

22 Q The vehicle that was towed on May 10th, 2014?

23 A Mr. Glover's, yes.

24 Q And what, if anything, in those pictures led you to
25 believe that it was his vehicle?

Mary Frances O'Grady-Watts - Direct Examination by Mr. Slocum

1 A There was actually a prescription pill bottle and a
2 ID which was found in the glove compartment.

3 Q Did it have his name on it?

4 A Yes, it did.

5 Q Investigator Watts, I'm showing you State's 62, 3,
6 4 -- 62, 63, 64, 65, and 66. They have already been
7 entered into evidence. Do you recognize those?

8 A Yes, I do.

9 Q What are they?

10 A These are the photographs that I took at the scene
11 down the street where the vehicle was found.

12 Q Of the same car?

13 A Yes.

14 Q Same car you photographed in the daylight?

15 A Correct.

16 Q -- when you were executing the search warrant?

17 A Yes.

18 Q What if anything did you do forensically with the
19 evidence that you seized from 105 Mae Acres Court?

20 A I didn't actually do anything forensically aside
21 from -- not that I collected, but there, with the gun that
22 was collected from there.

23 Q Did you have any hand in the next step of that
24 process?

25 A I did swab the gun for potential ownership and/or

Mary Frances O'Grady-Watts - Direct Examination by Mr. Slocum

1 identification of the substance that was found, or seen, on
2 it.

3 Q I'm showing you State's Exhibit 94 that was entered
4 into evidence. Do you recognize it?

5 A Yes.

6 Q Is this the gun you swabbed?

7 A I did.

8 Q And by swabbed, what do you mean?

9 A We will take a Q-Tip, and we will put distilled
10 water onto the actual cotton end of it, and we will try to
11 take and get any type of substance that we can see or not
12 see on the surface of the weapon.

13 Q And after you -- how many swabs did you do on this
14 one?

15 A I did two. I did one of the trigger housing, and
16 then I did one of the pistol frame which was around the
17 serial plate because there was a red unidentified
18 substance. So we're trying to identify basically what that
19 is and who it comes back to.

20 Q So after you took those two swabs, what'd you do?

21 A You would close them up because they have a plastic
22 housing on top of the specimen. It will dry. You put them
23 into a envelope, mark the envelope with all the pertinent
24 information and your information, seal it up, and then it
25 will sit there until you take it to SLED for further

Mary Frances O'Grady-Watts - Direct Examination by Mr. Slocum

1 analysis.

2 MR. SLOCUM: Permission to approach, Judge?

3 THE COURT: Yes, sir.

4 BY MR. SLOCUM:

5 Q Investigator Watts, do you recognize that envelope?

6 A This is the envelope -- or actually the plastic
7 housing that will be -- the swab for DNA evidence will be
8 placed into at South Carolina Law Enforcement Division.

9 Q And can you open that envelope up and tell us
10 what's inside of it? We marked one 77 and State's Exhibit
11 78 for identification purposes. Can you tell us what 77
12 is?

13 A 77 is swab of trigger housing for potential DNA
14 evidence from the High Point .380 semiautomatic pistol.

15 Q And the next one?

16 A 78 is swab of frame beneath slide by serial number
17 to High Point .380 semiauto pistol.

18 Q Are those the swabs you took of this gun?

19 A Yes.

20 Q State's Exhibit 94?

21 A Yes.

22 Q How do you know that?

23 A This is my handwriting.

24 Q What did you do after you took those swabs?

25 A You put tape on the back of them. You seal them

Mary Frances O'Grady-Watts - Direct Examination by Mr. Slocum

1 up. You wait. They actually go into a holding pattern
2 until you can go to SLED. You'll deliver all of the
3 evidence to SLED. They will disperse it throughout the
4 different aspects of the lab. And you just wait on them to
5 do the analysis and hopefully get something that you need
6 back.

7 Q Have those packets and those swabs been changed,
8 other than the testing done by SLED, since you took them,
9 to your knowledge?

10 A No. They were in this envelope coming back.

11 MR. SLOCUM: Judge, the State moves State's
12 Exhibits 77 and 78 into evidence at this time.

13 MR. HAYES: No objection, Judge.

14 THE COURT: State's 77 and 78 is in evidence
15 without objection.

16 (State's Exhibit Number 77 and Number 78 were
17 entered into evidence.)

18 BY MR. SLOCUM:

19 Q Investigator Watts, State's Exhibit 14 -- can you
20 take a look at that and tell us what it is?

21 A It's a magazine to a semiautomatic pistol.

22 Q Okay. Is that the one that was collected in this
23 case?

24 A It was collected by Investigator Graybeal. Yes.

25 Q All right. You can put it back in the bag. And

Mary Frances O'Grady-Watts - Direct Examination by Mr. Slocum

1 State's Exhibit Number 80. Tell us what that is.

2 A It's a gunshot residue kit.

3 Q And once the gunshot residue kit is taken, what
4 happens to that kit?

5 A Once the -- once the officer takes the kit, it's
6 sealed with the red tape. This way you know that it's
7 tamper-proof. You'll into evidence. It'll be logged in,
8 and it'll wait with all the other evidence that's going to
9 go to the lab. Once it reaches the lab, they take it out
10 of its housing, and they will in turn analyze it on the
11 microscope.

12 MR. SLOCUM: Permission to approach, Judge?

13 THE COURT: Yes, sir.

14 BY MR. SLOCUM:

15 Q Investigator Watts, I'm showing you State's Exhibit
16 79. Would you please tell us what that is without
17 testifying to its contents?

18 A Well, I delivered it to SLED. It's a swab.

19 Q Is there any way for you to --

20 A Without cutting it?

21 Q If you could, open the bags to indicate what's on
22 your envelope. You can cut it.

23 A Buccal swab that was collected from Vernell Weaver.

24 Q Could you explain? Well, is that the buccal swab
25 you took from the victim, Ms. Weaver?

Mary Frances O'Grady-Watts - Direct Examination by Mr. Slocum

1 A Yes.

2 Q How do you know it's from her?

3 A My handwriting.

4 Q Has that been altered or changed in any way, shape,
5 or form?

6 A No.

7 Q What date does it indicate that that was taken?

8 A I collected this on May 22nd of '14 at 1:50 in the
9 afternoon.

10 Q And --

11 MR. SLOCUM: Judge, at this time, the State moves
12 State's Exhibit 79 into evidence.

13 MR. HAYES: No objection, Judge.

14 THE COURT: Thank you. State's 79 is in evidence
15 without objection.

16 (State's Exhibit Number 79 was entered into
17 evidence.)

18 BY MR. SLOCUM:

19 Q If this was collected on 5/22/14, 12 days after the
20 incident, what was it that made you do this? Why did you
21 do the buccal swabs from the victim?

22 A The lab won't require a standard from suspect or
23 victim, and basically this is a known standard. What
24 you're doing is, you're basically saying, I have a sample
25 of this person's DNA, and you will use that for comparison

Mary Frances O'Grady-Watts - Direct Examination by Mr. Slocum

1 to either eliminate or identify some substance that you
2 already have on a piece of evidence.

3 Q And what were you planning on comparing those known
4 standards to?

5 A To the unknown substance that was on the pistol.

6 Q The two swabs you did?

7 A Correct.

8 Q So did -- at some point the swabs, the buccal swabs
9 from the victim, Ms. Weaver, and the gunshot residue kit
10 ever get tested?

11 A Yes. They were tested. I'm not sure on what date,
12 but I know that I delivered them to the lab on 5/23 of '14.

13 Q You delivered all three of those items to SLED
14 yourself?

15 A Yes.

16 Q How does -- how's that work? How do you drop them
17 off?

18 A Basically, you'll transport -- you'll take them to
19 the lab. Once you get into the actual evidence intake,
20 what they will do is they will separate each individual
21 lab's evidence. They'll package them individually. You
22 get a barcode that identifies them so you have a tracking
23 number throughout the whole process. They will in turn put
24 it into their slots for refrigeration depending on what
25 type of evidence you're dealing with, and then that analyst

Mary Frances O'Grady-Watts - Cross-Examination by Mr. Hayes

1 will come down and pick up their evidence from their
2 evidence intake. And I will have a receipt when I leave of
3 everything that I dropped off.

4 MR. SLOCUM: Beg the Court's indulgence, Judge.

5 Investigator Watts, that's all the questions I
6 have. Please answer any that Mr. Hayes may have for you.
7 Thank you.

8 THE COURT: Thank you. Thank you, Solicitor.

9 Mr. Hayes?

10 MR. HAYES: May it please the Court?

11 THE COURT: Yes, sir.

12 **CROSS EXAMINATION**

13 BY MR. HAYES:

14 Q Investigator Watts, the Solicitor asked you about a
15 magazine, or I would call it a clip, to the High Point that
16 was collected by Investigator Graybeal. Are you aware of
17 what day that was collected?

18 A It should've been almost a week or so ago. Not too
19 long from now.

20 Q From now? During the investigation when you first
21 arrived on scene, you photographed, you collected the
22 evidence. Where exactly did you find the cell phone?

23 A It was in the bedroom on the backside of the bed on
24 the floor. We actually had to move the bed to go get it.

25 Q So y'all -- you would move furniture if needed to

Mary Frances O'Grady-Watts - Cross-Examination by Mr. Hayes

1 and check behind it for evidence?

2 A Right.

3 Q Did you find any spent shell casings?

4 A There was one on the floor in a photograph that I
5 was taking. Actually I was trying to document the evidence
6 that was there. And the lighting wasn't all that great in
7 the room, but there was one on the floor. Now, from what I
8 understood there was no shots that had been fired in that
9 room. It was only in the front room. So what we were
10 looking for was her cell phone, evidence of any type of
11 assault, which there was plenty of transfer on the walls
12 and on different objects in there.

13 Q Now, when you say transfer, what do you mean?

14 A You can take a substance, and you can take it from
15 one point and put it onto another. It needs some type of
16 action. So in her case, she was bleeding at the time, so
17 she was actually taking the blood off of herself and
18 putting it onto another substance.

19 Q Part of that is also known as castoff?

20 A Castoff is a little bit different.

21 Q If somebody's got blood on their hands or arms --

22 A You could -- That's --

23 Q -- and they swing them around --

24 A Yes, that's castoff.

25 Q That's castoff?

Mary Frances O'Grady-Watts - Cross-Examination by Mr. Hayes

1 A Correct.

2 Q You can also transfer by leaning up against it and
3 pushing on it. Right?

4 A Correct.

5 Q Touching it?

6 A It's just different terminology for different
7 things.

8 Q During that search of the residence, did you find a
9 .380 caliber cartridge that was fired, empty?

10 A No. Well, in the photograph yes. But not that
11 night. No.

12 Q What photograph?

13 A There is a photograph that we have. That I saw.

14 Q I have not been provided any photograph of a
15 cartridge that was spent. Do you know if it was turned
16 over to the Solicitor's Office?

17 MR. HAYES: Can we approach, Judge?

18 MR. SLOCUM: Sidebar?

19 THE COURT: Let's let her answer the question
20 first. Can you answer the question?

21 BY MR. HAYES:

22 Q Do you know if it was provided to the Sheriff's
23 Office? I mean, to the Solicitor's Office?

24 A They have copies, I guess.

25 THE COURT: All right.

Mary Frances O'Grady-Watts - Cross-Examination by Mr. Hayes

1 (There was a bench conference out of the hearing of
2 the jury and the court reporter.)

3 THE COURT: All right. Thank you. I'm glad I was
4 able to help y'all with that issue. All right. Mr. Hayes,
5 you may continue.

6 MR. HAYES: Thank you, Judge.

7 THE COURT: Yes, sir.

8 BY MR. HAYES:

9 Q In that search and photographing and collecting
10 evidence, y'all did not find the actual magazine, though,
11 in the house?

12 A No.

13 Q Y'all didn't find the gun either?

14 A No.

15 Q And you found the cell phone behind the bed?

16 A Uh-huh. Yes.

17 MR. HAYES: I beg the Court's indulgence.

18 THE COURT: Yes, sir.

19 BY MR. HAYES:

20 Q Investigator Watts, I'm handing you what's marked
21 as State's Exhibit Number 50. It's already in evidence.
22 Is this the photo --

23 THE COURT: It's State's 50?

24 MR. HAYES: State's 50.

25 THE COURT: All right.

Mary Frances O'Grady-Watts - Redirect Examination by Mr. Slocum

1 BY MR. HAYES:

2 Q Is this the photograph you were referring to?

3 A I can't tell from this photograph.

4 THE COURT: I'm sorry. I couldn't hear.

5 THE WITNESS: You cannot tell from this photograph.

6 BY MR. HAYES:

7 Q State's 51?

8 A That one you can.

9 Q Is that cartridge fired or unfired?

10 A I believe it's fired.

11 Q You sure about that?

12 A Not in the photograph. No.

13 THE COURT: I'm sorry. I couldn't hear you.

14 THE WITNESS: Not in the photograph, no.

15 MR. HAYES: Nothing further, Judge.

16 MR. SLOCUM: Brief redirect, Judge?

17 THE COURT: Yes, sir.

18 **REDIRECT EXAMINATION**

19 BY MR. SLOCUM:

20 Q Investigator Watts, Mr. Hayes just made mention
21 about a bullet in 50 and 51 State's exhibits. Can you see
22 those pictures?

23 A Yes.

24 Q You don't know if it's been fired or unfired. Do
25 you?

Mary Frances O'Grady-Watts - Redirect Examination by Mr. Slocum

1 A Not in that photograph. No.

2 Q Do you know why it wasn't listed on the collection
3 sheet?

4 A We didn't see it at the time. Because like I said,
5 we didn't -- we knew where the action had taken place at
6 the front door. We were not told, because we had no access
7 to Ms. Weaver at the time to say, there was another action
8 that had taken place in the house. All we know is that
9 there was a struggle that took place. The wall is now
10 having a hole in it, and this is what the bedroom now looks
11 like.

12 Q State's Exhibit 45. Do you know what this is?

13 A This is in the bedroom on the other side of the
14 wall where it now has a hole.

15 Q Is it a clean bedroom?

16 A No. It's not.

17 Q Is there stuff everywhere?

18 A There is.

19 Q 44, State's Exhibit. Same thing there?

20 A That's a better picture of the doorway where there
21 is now a hole in the sheetrock, and everything is on the
22 floor.

23 Q Is it possible to miss a bullet of that size in a
24 room like that?

25 A Yes.

1 MR. SLOCUM: No further questions, Judge.

2 THE COURT: Recross, Mr. Hayes?

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

4 THE COURT: Certainly.

5 MR. HAYES: I have nothing further, Judge.

6 THE COURT: Thank you, Mr. Hayes. Thank you,
7 Officer O'Grady-Watts. You may step down.

8 MR. SLOCUM: Judge, may Investigator Watts and
9 Lieutenant Fleury be released from their subpoenas?

10 THE COURT: Any objection, Mr. Hayes?

11 MR. HAYES: No, sir.

12 THE COURT: They can be released. Thank you.

13 MR. SLOCUM: Thank you, Judge.

14 THE COURT: Thank you for being here, Lieutenant.
15 Thank you for being here, Officer.

16 THE BAILIFF: Break time, Judge?

17 THE COURT: All right.

18 THE BAILIFF: Break time.

19 THE COURT: Oh, yes. Thank you. Thank you very
20 much. I will sometimes just sit here too long. All right.
21 Ladies and gentlemen, perhaps now would be a good time to
22 take our morning recess. Please remember during this
23 recess do not discuss this case with anyone including your
24 fellow jurors. Thank you very much. You may now go with
25 you bailiff. Thank you.

1 (The jury left the courtroom at 10:59 a.m.)

2 THE COURT: All right. Court will be in recess 15
3 minutes. Thank you. Thank you very much.

4 MR. SLOCUM: Thank you, Judge.

5 (A brief recess was observed.)

6 THE COURT: Anything from the State before we bring
7 in our jury, Solicitor?

8 MR. SLOCUM: Nothing from the State, Judge.

9 THE COURT: Defense?

10 MR. HAYES: Nothing.

11 (The jury entered the courtroom at 11:19 a.m.)

12 THE COURT: All right. Ladies and gentlemen, if
13 you'll please continue to give the parties your complete
14 and undivided attention as you have done throughout the
15 trial of this case.

16 Solicitor, you may call your next witness.

17 MS. HALL: Lieutenant Clay Adams.

18 THE COURT: All right. Lieutenant, if you'll come
19 around and be sworn, please.

20 CLAY ADAMS,

21 having been duly sworn, testified as follows:

22 THE CLERK: Please have a seat in the witness box.
23 State your full name for the Court, and spell your last.

24 THE WITNESS: Martin Clay Adams. A-D-A-M-S.

25 ///

Clay Adams - Direct Examination by Ms. Hall

DIRECT EXAMINATION

BY MS. HALL:

Q Good morning.

A Good morning.

Q Lieutenant Adams, where do you work?

A I work for the Aiken County Sheriff's Office.

Q In what capacity?

A I am the Lieutenant of Forensic Investigations for the Sheriff.

Q What all does that entail?

A I oversee the day-to-day operations of the crime scene technicians, our evidence facility, our drug laboratory, and our processing labs.

Q How long have you held that position?

A Since 2009.

Q Were you in law enforcement prior to 2009?

A I was. I have been in law enforcement since 2001.

Q What kind of training have you had in your time in law enforcement?

A I am a certified law enforcement officer through the Criminal Justice Academy. I am a internationally certified latent print, certified latent print examiner. I've had extended classes in latent print development, crime scene processing, crime scene photography, basic detective.

Clay Adams - Direct Examination by Ms. Hall

1 Q You said you were a certified latent fingerprint
2 examiner. Do you know how many other people hold that
3 certification in the world?

4 A There is approximately 920 of us.

5 Q Do you know how many hold that certification in
6 South Carolina?

7 A I believe there's eight.

8 Q Do you know approximately a roundabout number of
9 how many cases you've worked over the years involving the
10 collection, identification, or examining of fingerprints?

11 A I have no way of tallying all of them.

12 Q Okay. Have you been qualified as an expert in the
13 Courts of South Carolina?

14 A I have.

15 Q About how many times?

16 A I've testified nineteen times in general sessions.

17 MS. HALL: Your Honor, at this time the State would
18 move to have Lieutenant Clay Adams qualified as an expert
19 in fingerprint analysis.

20 MR. HAYES: I have no objection to that, Judge.

21 THE COURT: All right. Madame Forelady, ladies and
22 gentlemen of the jury, normally a person cannot give
23 opinion testimony. Normally when a person testifies, they
24 must testify to what they either saw, heard, or sensed by
25 smell, or something of that nature. However, there is an

Clay Adams - Direct Examination by Ms. Hall

1 exception when someone is qualified because of education,
2 experience, training in a particular field, art, or
3 science. They are permitted to give their opinions in
4 those areas if the Court qualifies them that way. This
5 witness, Lieutenant Clay Adams, will be qualified as a
6 witness in the area of fingerprint identification and
7 analysis to give opinion testimony in that area and the
8 basis of those opinions. That does not mean that you must
9 accept the opinions, but it is evidence for you, the jury,
10 to use in any way you see fit. Thank you.

11 Solicitor, you may continue.

12 MS. HALL: Thank you, Your Honor.

13 BY MS. HALL:

14 Q Lieutenant Adams, can you briefly explain how
15 fingerprints work and how they are deposited onto different
16 surfaces?

17 A A fingerprint is water, basically. It's 98 percent
18 water. The other 2 percents are amino acids, nitric acids,
19 and other components of the body. To better understand
20 what a fingerprint is, I like to correlate it with the
21 water ring that a glass leaves on a coffee table without a
22 coaster. When you take that glass away and that water ring
23 is there, that's a fingerprint. It's just on a much larger
24 scale. In your hands, you have pores. And in these sweat
25 pores, it secretes the water and the amino acids to

Clay Adams - Direct Examination by Ms. Hall

1 lubricate the hands. Well, when the hands come in contact
2 with an item, that impression or that water ring is left in
3 its place when the hand is removed. That is a fingerprint.

4 Q Can you explain how we look for fingerprints,
5 observe them on different surfaces?

6 A There are two types of surfaces in this world.
7 There's porous surfaces and nonporous surfaces. So when we
8 have an item in question that they want to know if there's
9 any fingerprints on, we first determine what type of
10 surface it is because that will determine what type of
11 process we use. In this instance, we would understand that
12 this surface that I was looking at was a nonporous surface.
13 So what we do is we examine it, see what type of surface is
14 available, if there is a fingerprint that's already visible
15 to the naked eye. If not, then we proceed on to other
16 steps to see if another print is there.

17 Q Can you explain the difference in what's called a
18 latent print and an inked print?

19 A A latent print is the fingerprint in question,
20 latent meaning hidden. Because the fingerprint is water,
21 it's -- in its own state can appear to be invisible. It's
22 clear. So that's why we would do processes to develop that
23 print so that it can be seen with the naked eye, to get a
24 contrast. An inked print is a print that is obtained from
25 a person from an ink pad to a piece of paper. Be it on a

Clay Adams - Direct Examination by Ms. Hall

1 ten print card when someone's arrested on an elimination
2 card. But to identify a specific person that we would use
3 when we are comparing to a latent print.

4 Q In your experience, have you ever identified
5 someone by comparing a latent print to a known inked print?

6 A All identifications are done from comparing a
7 latent print to a known or an inked print.

8 Q And have you been able to identify an individual's
9 latent prints comparing it to an inked print in the past?

10 A Yes.

11 Q Did you have the opportunity to review any evidence
12 in this case?

13 A I did.

14 Q Okay. And what did you review?

15 A I was asked to examine a magazine to a pistol.

16 Q And where did you get that magazine from?

17 A From Gerald Turner who is my evidence custodian.

18 Q Do you remember the date you retrieved that from
19 evidence?

20 A I believe it was May 16th of this year.

21 Q Thank you. Why did you retrieve that piece of
22 evidence from the evidence custodian?

23 A I was asked to examine it from the Solicitor's
24 Office.

25 MS. HALL: Permission to approach the witness, Your

Clay Adams - Direct Examination by Ms. Hall

1 Honor?

2 THE COURT: Yes, ma'am.

3 BY MS. HALL:

4 Q Lieutenant Adams, I'm showing you what has
5 previously been entered into evidence as State's Exhibit
6 14. Do you recognize that?

7 A I do.

8 Q Why do you recognize it?

9 A The date and my initials on the evidence tape.

10 Q Is that the magazine you examined on May 6th of
11 this year?

12 A It is.

13 MS. HALL: Permission to approach the witness, Your
14 Honor.

15 THE COURT: Yes, ma'am.

16 BY MS. HALL:

17 Q I'm now showing you what has been marked as State's
18 Exhibit 101. Do you recognize what's in that envelope?

19 A I do.

20 Q And what is that?

21 A This is an elimination fingerprint card for the
22 name of Vernell Weaver.

23 Q Are those the inked fingerprints you were referring
24 to?

25 A Yes.

Clay Adams - Direct Examination by Ms. Hall

1 Q And did you have an opportunity to compare those
2 inked fingerprints in this case? I'm sorry. When you got
3 the magazine out of evidence, what did you do with it?

4 A First of all I examined it to see if it was a
5 suitable surface for a latent fingerprint. I determined
6 that it was, and then I did a visual examination of it. I
7 was not able to see with the naked eye any full fingerprint
8 pattern types, so I decided to use what's called
9 cyanoacrylate fuming. It's superglue. It's where we take
10 superglue, and we heat it to a vapor inside a chamber, and
11 that vapor adheres to any moisture that is from the
12 fingerprint that is on the item, giving it more of a
13 contrast developing of the print so that we can see it. In
14 this case, it was processed for further processing for the
15 development of fingerprints, and I was unable to see any
16 identifiable fingerprints.

17 Q Can you explain what that means? Were you able to
18 see anything after going through this process?

19 A Yes. I can see where someone has -- a person has
20 handled it. There's three different levels of detail in
21 fingerprints. There's a level one detail, which we can see
22 the pattern type. But there's no further detail in that
23 fingerprint that would make it specific to an individual.
24 Level two detail is we can see the pattern type, but then
25 we can see the minutiae. And these are the, what I call

Clay Adams - Direct Examination by Ms. Hall

1 points in the fingerprint that make it specific to an
2 individual. Level three detail is the pattern type, the
3 minutiae, and then even closer where we can actually see
4 the pores, the sweat pores and the ridge detail, the ridge
5 shapes themselves.

6 In this case, there's only level one detail meaning
7 I can see that the item had been handled. There's just not
8 enough detail in that fingerprint for me to identify an
9 individual.

10 MS. HALL: Beg the Court's indulgence.

11 THE COURT: Yes, ma'am.

12 BY MS. HALL:

13 Q Lieutenant Adams, if you had found a more detailed
14 print, what would you have compared it to in this case?

15 A I would have compared it first to any known
16 individuals known in the case such as victims, suspects,
17 officers.

18 Q Did you have any known inked prints in this case?

19 A I did.

20 Q Whose were those?

21 A Ms. Weaver and the defendant.

22 Q I have no further questions for you. Please answer
23 any the defense may have.

24 THE COURT: Thank you, Solicitor. Mr. Hayes?

25 MR. HAYES: I have no questions, Judge.

Whitney Berry - Direct Examination by Mr. Slocum

1 THE COURT: Thank you very much, Lieutenant. You
2 may step down.

3 All right. Solicitor, you may call your next
4 witness.

5 MR. SLOCUM: Thank you, Judge. The State calls Ms.
6 Whitney Berry with the South Carolina Law Enforcement
7 Division.

8 THE COURT: All right. Agent Berry, if you'll come
9 around and be sworn for us, please.

10 WHITNEY BERRY,
11 having been duly sworn, testified as follows:

12 THE CLERK: Please have a seat in the witness box.
13 State your full name for the Court, and spell your last.

14 THE COURT: All right. Solicitor?

15 THE WITNESS: My name is Whitney Berry. B-E-R-R-Y.

16 **DIRECT EXAMINATION**

17 **BY MR. SLOCUM:**

18 Q Agent Berry, where do you currently work?

19 A I work for the South Carolina Law Enforcement
20 Division, also known as SLED.

21 Q How long have you been with SLED?

22 A I've been with SLED for a little over two years
23 now.

24 Q And at SLED, what is it that you do?

25 A At SLED I work in the Trace Evidence Department as

Whitney Berry - Direct Examination by Mr. Slocum

1 a gunshot residue analyst.

2 Q Could you explain to us a little bit what that
3 means?

4 A As a gunshot residue analyst, my duties are to
5 process clothing as well as GSR kits that have been
6 collected by other agencies and analyze them for the
7 presence of gunshot residue.

8 Q And what type of training do you have to do this?

9 A I completed -- well, I have a bachelor's of science
10 degree in Chemistry from the University of South Carolina.
11 I completed SLED's nine month in-house GSR training course
12 which included hands-on training as well as practical
13 examinations, written examinations, readings on the theory
14 of scanning electron microscopes and gunshot residue
15 analysis. I've also attended Hooke College of Applied
16 Sciences up in Westmont, Illinois and taken a class up
17 there on gunshot residue microscopy.

18 Q Are there annual classes that you have to take for
19 certification?

20 A We have a proficiency test that we must take and
21 pass annually in order to continue examining in our
22 respective field.

23 Q Have you ever testified in court before?

24 A Yes, I have.

25 Q About how many times?

Whitney Berry - Direct Examination by Mr. Slocum

1 A Eight.

2 Q Do you have any professional affiliations?

3 A I am a member of the American Society of Trace
4 Evidence Examiners.

5 Q What would be your title at SLED?

6 A My official title would be Criminalist 2.

7 Q And what does that mean?

8 A A criminalist at our lab is a person who works in
9 our field and does analysis.

10 Q How do these GSR kits come to you at SLED?

11 A When a GSR kit is submitted through an agency, it
12 is taken to our Evidence Control Department, or our log-in
13 area. They come in and they submit the evidence to our log
14 in technicians. Every case is given a unique lab
15 identifying number when it is signed in. It is -- each
16 item in the case is also given an identifying item number.
17 These items are then stored by Evidence Control in their
18 storage area which is secured by lock and key.

19 And when a request comes in for a GSR kit to be
20 analyzed for court or investigative purposes, then myself
21 or sometimes one of my coworkers will go downstairs and
22 will retrieve it from the evidence technician.

23 Q Did you receive any GSR kits in this case we are
24 here for today?

25 A Yes, I did.

Whitney Berry - Direct Examination by Mr. Slocum

1 MR. SLOCUM: Permission to approach, Judge?

2 THE COURT: Yes, sir.

3 BY MR. SLOCUM:

4 Q Agent Berry, I'm handing you State's Exhibit Number
5 80. Do you recognize what that is?

6 A Yes. This is the gunshot residue kit that was
7 submitted in this case. Let's see. I took it and opened
8 it on October 22nd, 2014, and I was finished with it and
9 sealed it back on October 27th, 2014.

10 Q When you say you opened it, you're talking about
11 the box inside there?

12 A Opening it in this sense would be opening the outer
13 envelope as well as the container inside.

14 Q And is that the container that you tested in
15 regards to this case?

16 A Yes, it is.

17 Q How are you able to tell us that?

18 A I'm able to tell because it has the lab identifying
19 number on the bottom as well as the lab number, my
20 initials, and the date I opened it.

21 Q Does it tell you who or where that GSR kit came
22 from?

23 A The outside of the kit says that it came from
24 Vernell Weaver; however, every kit comes with a GSR
25 information collection sheet inside. That sheet is removed

Whitney Berry - Direct Examination by Mr. Slocum

1 by myself or whichever analyst is processing it. It is
2 then put in as part of our case jacket. It has pertinent
3 information on it such as what time the incident occurred,
4 when the GSR kit was collected, as well as the name of the
5 subject that the GSR kit was collected from.

6 Q And what's the subject on that box there?

7 A On this particular one it was Vernell Weaver.

8 Q And did you formulate a report after testing that
9 GSR kit?

10 A Yes, I did.

11 Q And what were the results of that report?

12 A So a GSR kit contains four separate particle lifts.
13 They are labeled right palm, right back, left palm, and
14 left back. So it refers to the different areas of the
15 hand. The palm area would be from the bottom all the way
16 up through the fingers. You would get all the fingers.
17 The back would be the back of the hand, again from the
18 wrist all the way up to cover all the surfaces including
19 the web between the thumb and forefinger.

20 This is collected, as I believe it was described
21 earlier, by -- what did he call it? Dobbers? Or what they
22 are is particle lifts. It is basically a -- think about a
23 sticker on something about the size of a roofing nail, and
24 this sticker is made out of carbon tape, and it will pick
25 up particles off the skin as it's pressed against

Whitney Berry - Direct Examination by Mr. Slocum

1 something.

2 Q Were any particles prominent in that GSR kit that
3 you tested?

4 A Yes. The right back of Vernell Weaver, the right
5 back of the hand, particles of gunshot residue were found,
6 and also a consistent particle was found.

7 Q What does that mean?

8 A When we think of gunshot residue, I like to
9 describe it like a pyramid. At the top you have a
10 three-component particle, and this three-component particle
11 is molten in shape which proves that it was under high heat
12 and high pressure that you would find when a gun was
13 discharged. It's a three-component particle composed of
14 lead, barium, and antimony. And these three components,
15 when molten, only come from gun, gun primer residue. So it
16 would only come from gunfire.

17 Q How many particles did you find?

18 A I did not have an exact count of gunshot residue
19 particles. It was more than two in this case, based on the
20 report.

21 Q But you did find some?

22 A Yes. I did find some.

23 Q And where on Ms. Weaver's hands did that indicate
24 from the swabs?

25 A It would be on the right back.

Whitney Berry - Cross-Examination by Mr. Hayes

1 Q Any other -- any other places?

2 A I found one particle of gunshot residue on her left
3 palm and again that one consistent particle on the right
4 back.

5 Q And these are particles, the three particles you
6 discussed, all derived from gunshot, a firing pistol?

7 A Yes. They all come from primer.

8 Q Agent Berry, that's all the questions I have.
9 Please answer any Mr. Hayes might have for you.

10 A Okay.

11 THE COURT: Mr. Hayes?

12 **CROSS EXAMINATION**

13 BY MR. HAYES:

14 Q Agent Berry, according to a report that I was
15 given, no GSR or gunshot particles were found on Ms.
16 Weaver's right palm?

17 A That is correct.

18 Q Now, it is alleged that she was shot. And she
19 would've got the GSR on her from the muzzle blast?

20 A When a gun is fired, you expect to see gunshot
21 residue come from certain areas. For example, the ejection
22 slide port on a semiautomatic which would potentially
23 engulf the hands of the person holding the gun. The
24 majority of the gunshot residue is going to follow the path
25 of the projectile, or the bullet, out the muzzle end of the

Whitney Berry - Cross-Examination by Mr. Hayes

1 gun, towards its intended target.

2 Q So if she was the intended target, she would be in
3 front of the muzzle?

4 A Yes.

5 Q And the majority of the GSR would land on her or
6 around her?

7 A Up to a point. Different things can come into play
8 with that such as the caliber of the gun, the specific type
9 of ammunition used, the cleanliness of the gun, how well it
10 was taken care of, maintenance routinely and taken care of,
11 and other factors like that can limit how far or how much
12 potential GSR could come out.

13 Q And in this case, she -- there was GSR found on
14 her?

15 A Yes.

16 Q Now -- and a reason for not having found GSR on her
17 palm, could that be that she was clenching a fist?

18 A I can --

19 MR. SLOCUM: Objection. That calls for
20 speculation, asking her to make a determination on what
21 could've happened. It's not a direct question.

22 THE COURT: Well, Agent Berry hasn't been qualified
23 as an expert. She's not -- you may ask another question.

24 BY MR. HAYES:

25 Q Agent Berry, if somebody was in front of the

Whitney Berry - Cross-Examination by Mr. Hayes

1 muzzle, within range of getting GSR on them, it would be
2 expected it would be found all over them?

3 A Again, different factors could affect it. But you
4 would expect to find some GSR on them potentially.

5 Q Okay.

6 A I can't testify to how much one would expect to
7 find on someone standing in front of the muzzle of a gun.

8 Q Okay. But you would expect to find something?

9 A Yes.

10 Q Okay. I've talked to you on the phone before?

11 A Yes.

12 Q There are other factors to also take into
13 consideration?

14 A Yes.

15 Q Whether they were touching something?

16 A Yes.

17 Q How much they were sweating?

18 A Yes.

19 Q Whether they washed their hands?

20 A Yes.

21 Q How much they were bleeding?

22 A Yes.

23 Q Those items can also take GSR away?

24 A Yes. GSR is very fragile. If you think about
25 being in kitchen and your hands are covered with flour,

Whitney Berry - Cross-Examination by Mr. Hayes

1 every time you clap your hands, a little bit of flour comes
2 off. Every time you wipe your hands on your pants, put
3 your hands in you pocket, put them under water, all these
4 things remove a little bit more of the flour. GSR is very
5 similar in that respect as it does not take very much to
6 remove it or to change its shape. So in this specific
7 question, if a person is sweating profusely or washed their
8 hands or was bleeding profusely, all of these things could
9 potentially remove the GSR from the sampling areas.

10 Q In that aspect as well, if somebody was holding
11 something and the inside palm of the hand was not exposed,
12 they would not expect to find GSR as well?

13 A If there is an intervening object between the
14 target and the muzzle of the gun, that could prevent GSR
15 from being on the object on the other side. So for an
16 example, if the hand was in a fist, the intervening object
17 would be the outside of the hand, so you may not find it on
18 the inside. The same would be true of a wall. If somebody
19 was standing on the other side of a wall or a window and
20 the bullet went through, you may not find gunshot residue
21 on the person on the other side.

22 Q Because the wall or the object blocked it?

23 A Yes.

24 MR. HAYES: Beg the Court's indulgence.

25 THE COURT: Thank you, sir.

Whitney Berry - Redirect Examination by Mr. Slocum

1 BY MR. HAYES:

2 Q Agent Berry, in your report, gunshot residue was
3 also found on the left palm?

4 A Yes.

5 Q Which would be the left hand, inside?

6 A Yes.

7 Q And that would be somewhere, I think you testified
8 from the base of the hand to the finger?

9 A Yes.

10 Q It was also found on the right back?

11 A Yes, it was.

12 Q And it was not found on the left back?

13 A No, it was not.

14 Q Thank you. No further questions.

15 THE COURT: Redirect?

16 MR. SLOCUM: Brief redirect, Judge.

17 THE COURT: Yes, sir.

18 **REDIRECT EXAMINATION**

19 BY MR. SLOCUM:

20 Q Agent Berry, if a gun is fired by one person and
21 another person touches that gun seconds after, would that
22 second person have GSR on their hands?

23 A There is the potential for secondary transfer from
24 somebody touching a weapon that has been discharged. Yes.

25 Q That's all the questions I have.

Whitney Berry - Redirect Examination by Mr. Slocum

1 THE COURT: Re-cross?

2 MR. HAYES: No, sir.

3 THE COURT: Thank you. Thank you for being with us
4 today, Agent Berry.

5 THE WITNESS: Thank you.

6 THE COURT: You may step down. Any objections to
7 the officer being excused?

8 MR. SLOCUM: No objection from the State, Judge.

9 MR. HAYES: No, sir. I had a subpoena as well for
10 her, and I have no objection.

11 THE COURT: Thank you very much. You may be
12 excused.

13 All right. Solicitor, you may call your next
14 witness.

15 MR. SLOCUM: Judge, may Lieutenant Adams be
16 released from his subpoena as well?

17 THE COURT: Any objection?

18 MR. HAYES: No, sir. No objection.

19 THE COURT: He may. Thank you for being with us.

20 MR. SLOCUM: Judge, the State calls Agent Paul Meeh
21 with the South Carolina Law Enforcement Division.

22 PAUL MEEH,

23 having been duly sworn, testified as follows:

24 THE CLERK: Please have a seat in the witness box.

25 State your full name for the Court, and spell your last.

Paul Meeh - Direct Examination by Mr. Slocum

1 THE WITNESS: My name's Paul Meeh. My last name is
2 M-E-E-H.

DIRECT EXAMINATION

3
4 BY MR. SLOCUM:

5 Q Agent Meeh, where do you currently work?

6 A I work at SLED in Columbia.

7 Q And how long have you been with SLED?

8 A About eight years now.

9 Q At SLED, what are your duties?

10 A I'm a forensic scientist in the DNA department.

11 Q And what all does that entail?

12 A I do serology which is the identification of body
13 fluids, and then I do DNA on those body fluids to try to
14 determine whom -- to whom they belong.

15 Q And what type of training do you have, background
16 do you have to do that?

17 A I got my under grad degree in 2001 from the
18 University of South Carolina. That was in Biology. I got
19 my master's degree in 2003. That was in molecular Biology.
20 I did three years of PhD work, but I did not finish my PhD.
21 I was hired away by SLED before I finished. And then I did
22 a year and a half of training in SLED for, you know, in
23 SLED's in-house training which is -- which consists of
24 doing DNA test samples, written, oral examinations.

25 Q Has all your time with SLED been with DNA?

Paul Meeh - Direct Examination by Mr. Slocum

1 A Yes.

2 Q And do y'all have annual certifications or --

3 A We're proficiency tested twice a year.

4 Q And you have to pass those to keep being --

5 A Yes, sir.

6 Q -- employed?

7 A Yes, sir.

8 Q How many times have you testified in court?

9 A Approximately twenty, maybe twenty--five.

10 Q Do you have any professional affiliations for your

11 certifications?

12 A I do not right now.

13 Q Have you had any in the past?

14 A I did. I had one for molecular Biology that was

15 for pathology that was during my under grad. And my

16 graduate school I was doing -- and that was probably the

17 American Society for Pathology.

18 Q Were you working for SLED -- let me start over.

19 Did you test anything in this case?

20 A I did. I tested some swabs and a standard.

21 MR. SLOCUM: Permission to approach, Judge?

22 THE COURT: Yes, sir.

23 BY MR. SLOCUM:

24 Q Agent Meeh, I'm handing you State's Exhibits 77,

25 78, and 79 that have been entered into evidence. Would you

Paul Meeh - Direct Examination by Mr. Slocum

1 take a look at those for me please, sir. Do you recognize
2 what those are?

3 A I do. You can see my initials and the date on the
4 outside of this heat-sealed pouch. That means I cut this
5 open myself and worked with these. I witnessed the
6 previous agent or previous person cut this open, so I know
7 it was sealed when it was received here.

8 Q And what are the two envelopes inside there?

9 A These two would be Item Number 2 and my initials
10 and Item Number 3 or my Item Number 2 and Item Number 3,
11 which are swabs from a High Point .380. This one is going
12 to be a standard which is a buccal swab which is from
13 Vernell Weaver.

14 Let me just double-check that. Correct. This
15 one's a buccal swab from Vernell Weaver.

16 Q And what's the exhibit number from the State on
17 that one that you just testified to be from Ms. Vernell
18 Weaver?

19 A 79.

20 Q And the other two swabs, Could you tell me what
21 those numbers are?

22 A I would, but I don't see the sticker on them.

23 Q They're on the inside of the envelope on the
24 envelopes themselves.

25 A 78 and 77.

Paul Meeh - Direct Examination by Mr. Slocum

1 Q Tell us what you do when you receive those three
2 items. How does it all work?

3 A So in this case I went down, and I pick up the
4 evidence from our evidence control which is on the bottom
5 floor. And I have a receipt that has requesting analysis
6 on it, and in this example they asked for blood and
7 ownership on this pistol. That means they took swabs from
8 the gun, and they felt like there was probably blood or
9 something on it. They wanted me to test for that and then
10 to see who it belonged to. So I did some preliminary
11 testing for blood which was positive on the swabs from the
12 pistol. That was by phenolphthalein. And then I tested it
13 for DNA and found that it matched Vernell Weaver on both
14 times.

15 Q So the DNA known standard from Ms. Weaver matched
16 the DNA that you developed from those two gun swabs?

17 A Correct.

18 Q What was the final results that you determined as
19 indicated on your report?

20 A Well, Item 2, the DNA profile developed from Item 2
21 matches the DNA profile of Vernell Weaver. The probability
22 of randomly selecting an unrelated individual having a DNA
23 profile matching this item is approximately one in
24 thirty-eight-quadrillion.

25 Q Can you explain that? It's one in

Paul Meeh - Direct Examination by Mr. Slocum

1 thirty-eight-quadrillion that it's anybody else but her?

2 A It's -- if you began testing people today, if we
3 went outside and just began attempting to test people for
4 DNA, you would have to test thirty-eight-quadrillion people
5 before you would, before you would probably find one. And
6 then you're still not guaranteed. This is a conservative
7 estimate at that point. So you would have to test the
8 equivalent of 5.5 million earths of people before you found
9 someone who matched this just randomly.

10 Q So there aren't thirty-eight-quadrillion people on
11 this planet?

12 A There are not. There are only seven billion.
13 That's a much smaller number. Thirty-eight-quadrillion's a
14 massive number.

15 Q Did you find any other DNA's or DNA contributions
16 in those swabs?

17 A I did. Item 3 -- Item 3 was a slightly different
18 result. The DNA profile developed from item 3 is a mixture
19 of at least two individuals. The DNA profile of the major
20 contributor to this mixture also matches the DNA profile of
21 Vernell Weaver. The probability was the same, at one in
22 thirty-eight-quadrillion. There was a partial DNA profile
23 of a minor contributor to that mixture, but it was
24 insufficient for reliable interpretation.

25 Q What does that mean, insufficient for reliable

Paul Meeh - Direct Examination by Mr. Slocum

1 interpretation?

2 A So a DNA profile is like a locker combination. You
3 have fifteen sets that are tested there. And then in this
4 example, the blood that was on Item Number 3 of Vernell
5 Weaver overwhelmed any minor contributor there. So anybody
6 else who touched it or anybody else's blood that was there,
7 I couldn't tell to whom that belonged. I couldn't put
8 it -- I couldn't just figure it out. There wasn't enough
9 information there.

10 Q If you would've had a known standard, would you
11 have even been able to compare it?

12 A I wouldn't have. The minor contributor to this
13 mixture is so small that I would never have been able to
14 compare it.

15 Q So what you mean it was insufficient for reliable
16 interpretation is you didn't have enough to compare it to
17 anything. Right?

18 A Correct.

19 Q Could you tell if it was male or female?

20 A I cannot.

21 Q Agent Meeh, thank you. That's all the questions I
22 have. Please answer any Mr. Hayes may have for you.

23 A Thank you, sir.

24 THE COURT: Thank you, Solicitor.

25 Mr. Hayes?

Paul Meeh - Cross-Examination by Mr. Hayes

CROSS EXAMINATION

BY MR. HAYES:

Q So just to boil it down real simple for me, her blood was found on the gun?

A Correct.

Q All right.

THE COURT: Redirect?

MR. SLOCUM: Nothing, Judge.

THE COURT: Thank you. Thank you very much.

THE WITNESS: Thank you, sir.

THE COURT: Thank you for being with us today.

Any objections to the officer being excused?

MR. SLOCUM: None from the State.

MR. HAYES: No objection, Judge.

THE COURT: Thank you. You are excused.

All right. Solicitor, you may call your next witness.

MR. SLOCUM: Thank you, Judge. The State calls Dr. Bradford Huffman.

THE COURT: All right. If you'll come around for us please, Doctor.

BRADFORD HUFFMAN,

having been duly sworn, testified as follows:

THE CLERK: Please have a seat in the witness box. State your full name for the Court, and spell your last.

Bradford P. Huffman - Direct Examination by Mr. Slocum

1 THE WITNESS: My name is Bradford P. Huffman.

2 H-U-F-F-M-A-N.

3 **DIRECT EXAMINATION**

4 BY MR. SLOCUM:

5 Q Dr. Huffman, good morning.

6 A Good morning.

7 Q Where do you currently work?

8 A I work at the Georgia Regents University, formerly
9 MCG, Medical College of Georgia. Georgia Regents
10 University. I'm in the department of Oral and
11 Maxillofacial Surgery.

12 Q Is that a hospital in Augusta?

13 A The hospital in Augusta, exactly. Right across the
14 river.

15 Q All right.

16 A We're -- I'm sorry.

17 Q Go ahead. I'm sorry.

18 A No. No. We're a level 1 trauma center, and we see
19 many different --

20 Q What is your job title at GRU?

21 A I'm a oral and maxillofacial surgery resident.

22 Q Okay. And tell us a little bit about your
23 education. What'd you have to do to get there?

24 A Sure. So I went to the University of Georgia,
25 graduated from the University of Georgia in 2007. Then I

Bradford P. Huffman - Direct Examination by Mr. Slocum

1 went to dental school at MCG at the time. Still -- the
2 name change is very confusing. It was MCG and then Georgia
3 Health Sciences and now GRU. Went to dental school. I
4 graduated from dental school there. And then I did a
5 intern year in oral and maxillofacial surgery.

6 It -- just a little background, oral and
7 maxillofacial surgery is very, very competitive to get
8 into. They only accept two residents per year, and there
9 are only two programs in the state of Georgia, one in
10 Augusta and one at Emory. So I did my intern years there
11 in hopes to try to get into the program here. So I'm
12 finishing my second year resident in the program of oral
13 and maxillofacial surgery at Georgia Regents University.

14 Q Do you -- the year you started your internship you
15 were one of four people in the state to be starting that?

16 A Yes, sir.

17 Q And when did you -- When you graduated from the
18 Medical College of Georgia, did you obtain your medical
19 degree?

20 A No. I obtained my dental degree, so I --

21 Q Your dental degree. I'm sorry.

22 A Exactly. Yes, sir. And I passed my written
23 boards, my oral boards, my patient boards. And then when I
24 was in my intern year, I became Advanced Cardiac Life
25 Support certified, or ACLS, PALS or -- pals, means

Bradford P. Huffman - Direct Examination by Mr. Slocum

1 Pediatric Advanced Life Support, and then also BLS, Basic
2 Life Support, and I also became ATLS which is Advanced
3 Trauma Life Support certified.

4 Q Dr. Huffman, tell us a little bit about your
5 research experience and your publications.

6 A Sure. So I've -- actually before I got into dental
7 school, I did a year of research as a research assistant.
8 I believe I have about nine papers in publication right now
9 ranging anywhere from dental research to tracheostomy which
10 is a artificial opening needed for some patients who are
11 intubated meaning they have a tube that we're breathing for
12 them for a long period of time so you have to change it to
13 a tracheostomy, so I have a paper on tracheostomy.

14 I have a paper on oropharyngeal lacerations meaning
15 lacerations in the back of the throat, in the neck, that
16 can cause bleeding in significance. So one of the
17 anesthesiologists was doing a case, and they put the tube
18 through the back of the throat which is very dangerous
19 because you have lots of vascular structures through the
20 posterior airway especially the jugular, carotid, all the
21 big vascular areas. So we are called in and consulted to
22 repair these lacerations.

23 Q How many times have you been published?

24 A Eight currently. One more in publication now. So,
25 nine.

Bradford P. Huffman - Direct Examination by Mr. Slocum

1 Q And where are these articles published?

2 A Club Med -- all kinds of peer review journal
3 articles. The ones --

4 Q Peer reviews. I'm sorry. Go ahead?

5 A One's also in a textbook. The Oral and
6 Maxillofacial Surgery Current Concepts.

7 Q These peer review journals are in the dental field?

8 A Medical, dental. There were -- I think six of them
9 were in dental, and then the three now are in medical.

10 Q Okay.

11 A And all of them are peer reviewed.

12 Q And what does that mean peer reviewed?

13 A It means before they publish anything you have to
14 have all the different articles, and editors want to look
15 through all your papers that you've written. They can ask
16 you questions about this and say, Hey this doesn't quite
17 make sense. It means all of the physicians can evaluate,
18 look at this literature before it's published. It's a
19 higher-quality of literature.

20 Q After it's published into something that is
21 reviewed and recognized by others in your field?

22 A Yes, sir. Definitely. And it's also cited by
23 different authors with the same interests. So if there's
24 another article on oropharyngeal lacerations, then this
25 author will cite this paper and say, Hey I can say this

Bradford P. Huffman - Direct Examination by Mr. Slocum

1 according to this paper.

2 Q So other doctors rely on your information as you've
3 provided in your publications --

4 A Yes, sir.

5 Q -- right?

6 A Yes, sir.

7 Q You said you're currently in the third year of your
8 internship, or oral maxillofacial surgery internship?

9 A Well --

10 Q Tell us about that a little bit?

11 A Sure. My first year was the intern year. I got
12 in. I became one of the two residents to get into that
13 program. So my intern year was just like a preliminary
14 year to make sure -- to try to get my foot in the door. I
15 was doing all the same stuff I'm doing now, just I had to
16 do all the grunt work then. Still no glory, but now I
17 started my residency. And the residency of oral and
18 maxillofacial surgery is four years. So I'm finishing my
19 second year. So I'll have three total years of oral and
20 maxillofacial surgery kind of under my belt now.

21 And our job description varies anywhere from --
22 It's kind of confusing. People think oral and
23 maxillofacial surgery, we do anything from the face. We do
24 cheek fractures. We do oral fractures. We do jaw
25 fractures. We do -- we take out wisdom teeth. We do

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1 reconstruction of the defects from cancer. We remove
2 cancer from the face. We cut out big portions of the jaw
3 and reconstruct it. We take bone from the hip and do
4 different reconstructive surgeries to repair all these
5 different benign and malignant lesions caused by different
6 pathologies.

7 We also take trauma call for the first 10 days of
8 the month at Georgia Regents University. So trauma call --
9 It's a rotating trauma call at GRU which means the first 10
10 days of the month is all oral and maxillofacial surgery.
11 Anything above the clavicle, anything on the face is our
12 department.

13 Q So do you get called on everything that's above the
14 face --

15 A Exactly.

16 Q -- for those 10 days?

17 A Exactly. Every single thing whether it's a lip
18 laceration to gunshot wounds to stabbings to -- you name
19 it. Anything on the face we're more than capable to --
20 most commonly --

21 Q Did --

22 A I'm sorry. Most commonly, motor vehicle
23 collisions, assaults, gunshots, and any kind of trauma.

24 Q As one of four people entering an internship in a
25 year in the state of Georgia, do you obtain information in

Bradford P. Huffman - Direct Examination by Mr. Slocum

1 this oral and maxillofacial surgery internship that you
2 would not get anywhere else?

3 A Yes, sir. Definitely.

4 Q And you said you treat gunshot wounds?

5 A Yes, sir.

6 Q Approximately how many in your time at GRU?

7 A We usually get about one to two a month. I've been
8 there finishing my three years, so we probably -- I've seen
9 probably between thirty to forty, in that area.

10 Q When's the most recent one?

11 A Last Saturday I had one.

12 MR. SLOCUM: Beg the Court's indulgence.

13 THE COURT: Yes, sir.

14 MR. SLOCUM: Judge, at this time the State would
15 move to qualify Dr. Huffman as an expert in oral and
16 maxillofacial trauma and treatment.

17 MR. HAYES: I have no objection, Judge.

18 THE COURT: All right. Again, Madame Forelady,
19 ladies and gentlemen of the jury, normally a person cannot
20 give opinion testimony. Normally a person must testify as
21 to either what they saw, heard, or sensed through smell, or
22 something of that nature. However, there is an exception
23 when someone is qualified because of education, experience,
24 or training in some particular art, science, profession, or
25 field. They are permitted to give their opinions and the

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1 basis for their opinions in certain areas if the Court
2 qualifies them that way.

3 This witness, Dr. Bradford Huffman, will be
4 qualified in the area of oral maxillofacial trauma and
5 treatment to give opinion testimony in that area and the
6 basis for that opinion. That does not mean that you must
7 accept the opinions, but if it's evidence that you, the
8 jury, can use in any way you deem appropriate. Thank you.

9 Solicitor, you may continue.

10 MR. SLOCUM: Thank you, Judge.

11 BY MR. SLOCUM:

12 Q Dr. Huffman, were you working at GRU on May 10th of
13 2014?

14 A Yes, sir.

15 Q Did you happen to come in contact with the victim
16 in this case, Ms. Vernell Weaver?

17 A Yes, sir. I was -- when we take trauma call the
18 first 10 days of the month, we're required to stay
19 in--house which means stay in the hospital. So I was paged
20 by the trauma team. The trauma team is a group of trauma
21 physicians that come in, and they get all the pages for any
22 kind of penetrating trauma, motor vehicle collision.

23 So they paged me and said, Hey I have a level 1.
24 Level 1 is the highest level. It means that a
25 penetrating -- my page said level 1 GSW STICU, it means

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1 shock trauma intensive care unit, room so and so. So I was
2 consulted on the 10th and went down and evaluated Ms.
3 Weaver on this day, the 10th.

4 Q And what did you observe when you came in contact
5 with Ms. Weaver?

6 A So when I evaluated Ms. Weaver, she was very
7 anxious, nervous, kind of trembling and shaking. She had a
8 laceration that looked, appeared as a gunshot wound
9 entrance to her right neck. She also was bleeding out of
10 her mouth a little bit. She had a hole in the floor of her
11 mouth.

12 I'm sorry, pardon me for putting my fingers in my
13 mouth, but kind of on the right aspect under her mouth
14 here, under her tongue.

15 And she also had a laceration, a hole, in the left
16 part of her tongue. And then she had a broken off first
17 premolar, which is this maxillary first premolar, which is
18 this tooth here. And then she had a, what appeared to be
19 as a exit wound from a bullet on the left part of her lip.
20 And she was bleeding from all of these.

21 MR. SLOCUM: Judge, permission to approach?

22 THE COURT: Yes, sir.

23 BY MR. SLOCUM:

24 Q Dr. Huffman, I'm going to show you State's Exhibits
25 that have been entered into evidence as State's Exhibits 4

Bradford P. Huffman - Direct Examination by Mr. Slocum

1 and 5. Do you recognize what those are?

2 A Yes, sir. These are the pictures I took with my
3 cell phone after getting permission from Ms. Weaver, after
4 evaluating her and getting permission to take these
5 pictures with my cell phone.

6 Q You personally took those on May 10th, 2014?

7 A Yes, sir. These came off my cell phone. I took
8 these pictures.

9 Q What, if any treatment did you have a hand in with
10 Ms. Weaver, that night?

11 A Yes, sir. So on Exhibit 4, you can see I've closed
12 her lip laceration, looked -- appeared as an exit wound,
13 through her left upper lip.

14 Q Could you show the jury what you're talking about.

15 A I'm sorry. Yes. Pardon.

16 I closed this laceration here from her left upper
17 lip, and also you can see here there's a little abrasion
18 wound, meaning, like something rubbed against it right here
19 on the left part of her cheek as well. So I closed this
20 with stitch prolene. Prolene is just a type of suture.
21 It's non-absorbable means I have to cut it out in a week.
22 And the reason we use the non-absorbable sutures, it causes
23 minimal tissue inflammatory response. So potentially less
24 scarring. So we put a suture there.

25 Exhibit 5 is a laceration, the hole to her tongue.

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1 And this has like a three vicryl suture. Vicryl suture is
2 a stitch that we use that comes out. It's kind of
3 stronger. It's great for the tongue. The tongue heals
4 really well, and this just is an absorbable suture we don't
5 have to cut out. But it can cause an inflammatory
6 response. That's why -- the tongue, it's not really that
7 big of an issue.

8 Q During your treatment and the stitching of Ms.
9 Weaver, were you able to form an opinion as to how these
10 injuries occurred to her?

11 A Yes, sir. I --

12 Q Just yes or no?

13 A Yes, sir.

14 Q Yes, sir.

15 Okay. Now, as a expert in the field of oral and
16 maxillofacial trauma and treatment, to a reasonable degree
17 of medical certainty, most probably what caused that?

18 A A projectile or a gunshot wound from -- with
19 entrance in the right neck, through the floor of her mouth,
20 through her tongue, breaking off the first premolar, and
21 through the lip.

22 Q How were you able to determine that?

23 A Number one, the entrance wound and the exit wound,
24 the path that it took. Number two, I evaluated the CT
25 scan. The CT scan is a CAT scan, where it shows the

Bradford P. Huffman - Direct Examination by Mr. Slocum

1 images. I'm able to look at the images and say that she
2 actually had a piece of the inferior border of her mandible
3 that was fractured from the path of the projectile or of
4 the bullet. Also, you can -- on the CT scan I was able to
5 evaluate and see gas. And normally in a CT scan or a CAT
6 scan, in everybody's normal neck, obviously your trachea,
7 your breathing tube, has air in it, has gas in it. But all
8 the rest of your head and neck doesn't have any gas in it
9 except for your sinuses. In this CT scan, I could see free
10 air or free gas, and that means just gas bubbles where
11 they're not supposed to be. So in that CT scan, you can
12 scroll through the images. In certain images you can see
13 gas from -- in the subcutaneous tissues, or tissues below
14 the skin, that go from the right neck and follow the path
15 up through the floor of her mouth and through her lip. And
16 you can see the fractured mandible on the inferior border
17 and the fracture to on the left side as well as the gas
18 pattern.

19 Q In regards to the injury on her tongue --

20 A Yes, sir.

21 Q -- as an expert in oral and maxillofacial trauma
22 and treatment, to a reasonable degree of medical certainty,
23 most probably could that have been caused by her biting it?

24 A It doesn't appear -- no.

25 Q How so?

Bradford P. Huffman - Direct Examination by Mr. Slocum

1 A Because her tongue had the -- because her lip, her
2 tongue, and the laceration in the floor of her mouth all
3 followed the same pattern. So -- pardon my finger, putting
4 my fingers in my mouth. I'm sorry, y'all. But if you see
5 the entrance wound, excuse me. The exit wound follows the
6 path from her lip through her tongue and the floor of the
7 mouth, again below the tongue here, down breaking a piece
8 off the inferior border, and then coming out, coming in her
9 neck essentially.

10 Q So something going from the bottom up and out --

11 A Exactly.

12 Q -- would've taken off the tongue and the tooth?

13 A Exactly.

14 Q -- as it exited?

15 A Exactly. If something was coming from down, in,
16 you know, it would've most likely dislodged, or lodged, the
17 tooth into the floor of the mouth or into the neck or
18 something like that and caused additional injury.

19 Q To a reasonable degree of medical certainty, most
20 probably the injury to her left lip, the exit wound, could
21 that have been caused by a hammer?

22 A No, sir.

23 Q And how is that?

24 A A hammer would not have gotten -- a hammer may have
25 been able to break a tooth off, but it would not have been

Bradford P. Huffman - Direct Examination by Mr. Slocum

1 able to cause the laceration to her tongue. A hammer's
2 more of a blunt force object. The tongue would've just
3 moved out of the way of the hammer.

4 Q And the tooth --

5 A And the laceration of the floor of the mouth as
6 well. A hammer would not have been able to get through
7 there and through the neck.

8 Q It wouldn't have done all that?

9 A Exactly.

10 Q To a reasonable degree of medical certainty, most
11 probably being shot in the neck could potentially kill a
12 person?

13 A The mortality associated with level 1 penetrating
14 injuries, especially in the head and neck, is very high.

15 Q Can you explain a little bit about that?

16 A Sure. The head and neck is essentially the pathway
17 for a lot of vital structures. All the blood supply from
18 your heart up to your brain and the blood returning from
19 your brain to your heart all travel in this one little
20 area. Also your breathing tube or your trachea is in this
21 area as well.

22 Your esophagus, the bases of your lungs come up to
23 about here as well. Your spinal cord which controls your
24 breathing, all of your voluntary movements, your spinal
25 cord again travels from your brain to the rest of your body

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1 and gets sensation from the rest of your body all travel in
2 this one little area. So penetrating neck injuries have a
3 very high mortality associated with them.

4 MR. SLOCUM: Permission to approach, Judge?

5 THE COURT: Yes, sir.

6 BY MR. SLOCUM:

7 Q Dr. Huffman, I'm showing you State's Exhibits 95
8 through 100. If you could take a look at those and tell me
9 what they are, please sir?

10 A Yes, sir. State's Exhibit 95 --

11 Q Without showing them, can you tell me what they
12 are?

13 A I'm sorry. Oh, I'm sorry.

14 Q That's okay. Do you recognize them?

15 A Yes, sir.

16 Q What are they?

17 A These are the CT scans or CAT scans of Ms. Vernell
18 Weaver when she came in on the 10th.

19 Q The ones you reviewed on May 10th, 2014?

20 A Yes, sir. These are the exact ones I reviewed on
21 May 10th, 2014.

22 Q Have they changed in any way, shape, or form since
23 you reviewed them on May 10th?

24 A No, sir. These are the same.

25 MR. SLOCUM: Judge, the State moves State's

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1 Exhibits 95 through 100 into evidence at this time.

2 MR. HAYES: No objection.

3 THE COURT: State's 95 through 100 is in evidence
4 without objection.

5 (State's Exhibit Number 95, Number 96, Number 97,
6 Number 98, Number 99, and Number 100 were entered into
7 evidence.)

8 BY MR. SLOCUM:

9 Q Dr. Huffman, the first picture -- let me back it up
10 a little bit.

11 The neck injury -- is there swelling associated
12 with a gunshot wound in terms of tissue?

13 A Definitely. Gunshot wounds are a type of ballistic
14 injury that, number one when you have any kind of
15 penetrating trauma or gunshot wound, you have the actual
16 path of the bullet which can cause damage wherever it goes.
17 I mean, all the structures that it encounters can cause
18 damage.

19 Number two, there's also a cavitation effect of a
20 bullet. I don't know if you've see ballistics gel on
21 Mythbusters or different -- if you look at ballistics, you
22 can see the actual path that the bullet travels damages
23 everything. But then the actual energy associated with
24 that bullet causes a potential huge cavitation energy
25 depending on the muzzle or the energy of the projectile and

Bradford P. Huffman - Direct Examination by Mr. Slocum

1 the path, the direction that it travels.

2 So a lot of times you have tissue associated near
3 that bullet path that can be damaged that can cause
4 significant damage and necrosis, meaning dying, of that
5 tissue because it superheated and expanded that tissue.
6 Even the path of the bullet -- that was not actually
7 encountered directly but just in the actual vicinity
8 because of the cavitation energy.

9 Q Was that a concern for you on May 10th for Ms.
10 Weaver last year?

11 A Yes, sir. Definitely. Again, this is structures
12 that are very close to huge vascular structures; the common
13 carotid, the internal jugular. Anytime you have any kind
14 of swelling that's associated with the neck, there's a
15 potential risk of airway involvement. The concern with
16 airway involvement is the neck gets swollen, the trachea
17 gets deviated, and she's not -- the patient is not able to
18 breathe appropriately or effectively. And then that would
19 require the patient to get intubated, and we'd have to
20 breathe for the patient, put an airway in place to prevent
21 the swelling from closing the airway.

22 Q Did y'all do any preventative measures that night?
23 Or were you just watching it?

24 A No. We gave her steroids to help with the swelling
25 as well --

Bradford P. Huffman - Direct Examination by Mr. Slocum

1 Q So as you --

2 A -- and oxygen.

3 Q Did she ever not breathe on her own?

4 A No. She was breathing on her own the whole time.

5 Q Okay.

6 MR. SLOCUM: Judge, permission for Dr. Huffman to
7 step down to testify to Exhibits 95 through 100?

8 THE COURT: You may step down.

9 BY MR. SLOCUM:

10 Q Dr. Huffman, if you would, stand over there kind of
11 near the podium where I was standing so my court reporter
12 here can hear you.

13 Dr. Huffman, this is State's Exhibit 95. Can you
14 please tell the jury what we're looking at here?

15 A Yes, sir. This is a 3D rendering or reconstruction
16 from the CAT scan of Ms. Vernell Weaver. This is a
17 combination of her CTF the CAT scan of her head without
18 contrast. Contrast is the stuff they inject into your
19 veins so that you can see all the blood vessels and blood
20 supply. So this is a CT scan of the head, of the bones,
21 and of the CTA. A CTA means a CAT scan with contrast that
22 you can look at all of the vessels of the neck. We usually
23 get a CTA for any kind of penetrating neck injuries when
24 we're looking for any kind of vascular injury. So this
25 shows the CT of the head in conjunction with all the

Bradford P. Huffman - Direct Examination by Mr. Slocum

1 vascular supply of the neck as well. This also --

2 Q What's that big thing there?

3 A This yellow structure here is the external
4 jugular --

5 Q And --

6 A -- that supplies all the blood returning from the
7 brain and the head and face down back to the heart. On
8 the medial aspect of this is the common carotid which
9 supplies all the blood from the heart up to the face. It
10 branches in the face. It splits into the face and then
11 into the brain. But these are the two main blood supplies
12 on each side, the jugular and the carotid right and left.

13 Q Okay. Can you explain to us what this green line
14 is here?

15 A This green line is the bullet path that the
16 radiologist determined based on the gas track of the CT
17 scan of Ms. Weaver. Also if you note here in this bullet
18 path, shows the proximity to the jugular, common carotid.
19 You notice here on the right inferior border, the mandible,
20 there's one little piece that kind of chipped off right
21 here. This is part of the inferior part of the mandible
22 that was damaged during -- when the projectile -- when the
23 bullet passed from the neck through the inferior border of
24 the mandible.

25 Q Is this the damage you were talking about is

Bradford P. Huffman - Direct Examination by Mr. Slocum

1 outward from a bullet?

2 A Exactly. This is exactly the type of damage that
3 you would see from the type of cavitation energy, or the
4 energy from the bullet, just kind of going in that general
5 vicinity of the mandible. If the bullet were to actually
6 hit the mandible, you would see it fractured, and -- but
7 this little piece is from the cavitation energy of the
8 bullet and the associated areas bending and popping out.

9 Q And could you kind of orient us with which way the
10 bullet's traveling --

11 A Yes. Sure.

12 Q -- in this picture?

13 A Sure. So, the bullet -- and this picture is kind
14 of confusing because she's laying down in the CT scanner.
15 She's laying straight up in the CT scanner. And from this
16 way it looks like the bullet path is going from her right
17 neck up through the inferior border of the mandible,
18 through the floor of the mouth, through the tongue, up to
19 break off the left first premolar, right side premolar, and
20 then through the lip. And so when I first saw this I was a
21 little confused as to how she was shot from this area, from
22 behind it looks like.

23 Q But we're seeing it as she was on that night?

24 A But we're seeing it as how she was laying in the CT
25 scanner.

Bradford P. Huffman - Direct Examination by Mr. Slocum

1 Q Okay. And State's Exhibit 96. What are we looking
2 at here?

3 A This is -- these are your actual axial views of the
4 CAT scan. This means that if you take slices of
5 someone's -- this is looking at, like, from your toes
6 looking up. These are individual slices of the CAT scan
7 from -- this is about the level, about here. This is her,
8 this is her mandible. These little dots -- all right. So
9 this big black dot here is her trachea, this is her wind
10 pipe, what she breathes through. These little black dots
11 here are all areas of subcutaneous gas. The subcutaneous
12 gas that is not supposed to be there. Again, the only
13 places that you have gas normally is the trachea and
14 sinuses. This is the mastoid, mastoid air cells.
15 Completely unrelated. These are dots of subcutaneous gas.
16 They are not supposed to be there.

17 Also, if you look closely you can also see -- I
18 don't expect y'all to see it, but this a fracture of the
19 maxillary left first premolar. You can see this tooth, and
20 you can see the -- you can actually see a dot of gas at the
21 tooth there as well that is fractured.

22 Q Is this shot looking from bottom up from the right
23 side to the left?

24 A Exactly. This is the right side. This is the
25 patient's right side. This is the right side of her neck.

Bradford P. Huffman - Direct Examination by Mr. Slocum

1 This is subcutaneous gas from the right from the bullet
2 wound on the right side through, this is kind of at the
3 level of the floor of the mouth, through the floor of the
4 mouth, and then you can also see the fractured tooth and
5 then more subcutaneous gas on the left upper lip.

6 Q State's Exhibit 97?

7 A This is another picture a little more inferior, or
8 a little bit further down towards the mandible. Here you
9 can also see additional subcutaneous gas showing the path
10 of the bullet tracking. This scatter is just from dental
11 fillings in the area, but the important note is to show
12 here all the subcutaneous gas in the path of the bullet.

13 Q That shouldn't be there?

14 A No.

15 Q In the normal course --

16 A No, this is not there in a normal CT scan. As
17 opposed to the left side. If you see the left side,
18 there's no subcutaneous gas in the neck at this area on the
19 left side. It's all on the right in this direction.

20 Q State's 98?

21 A This CT scan again is even more inferior, so we're
22 going just top down a little bit more and more every time.
23 This shows -- again, this is her mandible. This is her
24 trachea. This is her spinal cord. You can see here --
25 just compare. And I'm not expecting you to relate to all

Bradford P. Huffman - Direct Examination by Mr. Slocum

1 this, but just compare this side, or the right side of her
2 mandible as to the left side of her mandible. This is the
3 portion that's irregular and fractured off of the inferior
4 border of the right side of the mandible as well as all
5 this subcutaneous gas on the right side of her neck from a
6 projectile or bullet passing through here, here, here,
7 here, and here. All along the inferior border. And again,
8 this is the trachea. This is the normal anatomy as you can
9 see the path of the subcutaneous gas.

10 Q And State's Exhibit 99? What are we looking at
11 here?

12 A Yes, sir. So this is actually the CTA. This is
13 the -- not the 3D reconstructed version of the CTA. The
14 CTA is the CAT scan with contrast. Again, contrast is the
15 material that they inject into your veins that allows the
16 physicians to see the vascular, the vasculature. Right
17 here, this big vascular structure here is the external
18 jugular, and this very round vascular structure here is the
19 common carotid.

20 Q What is that measurement you have there beside it?

21 A This measurement's 3.2 millimeters from the gas --
22 or the subcutaneous gas to the common carotid.

23 Q That's how far the path was from her common carotid
24 artery?

25 A From her common carotid.

Bradford P. Huffman - Direct Examination by Mr. Slocum

1 Q State's Exhibit 100. What do we have here?

2 A Again, this is another view, a little bit more
3 inferior, of the CTA or the CAT scan with the contrast in
4 order to show vasculature. Again, you can see the soft
5 tissues are better illuminated now with the contrast. But
6 you can see all the subcutaneous gas and the path of the
7 gas got very close to the jugular and the carotid as well.

8 Q You can have a seat, Dr. Huffman. Thank you.

9 A Thank you.

10 MR. SLOCUM: Beg the Court's indulgence, Judge?

11 THE COURT: Yes, sir.

12 BY MR. SLOCUM:

13 Q Dr. Huffman, to a reasonable degree of medical
14 certainty, most probably, if that bullet would've been 3.3
15 millimeters in the opposite direction and hit that carotid
16 artery, what could've happened?

17 A There are numerous things that can happen,
18 especially with injury to the common carotid. Again, this
19 is the -- this is the highway of all the blood to your head
20 and face. Number one, if -- she probably wouldn't have
21 made it to the hospital; she would've exsanguinated at the
22 scene.

23 Q What does that mean?

24 A She would've bled out into her neck.

25 Q She would've died at the scene?

Bradford P. Huffman - Cross-Examination by Mr. Hayes

1 A She would've died at the scene. Number two, if she
2 didn't die, she -- her neck would be swollen so big from
3 all this blood at high pressure because it's right from the
4 heart, it would have swollen her neck so big that she
5 couldn't breathe and that she would most likely have coded
6 her way into respiratory arrest meaning she can't breathe
7 because of asphyxiation because her trachea was deviated to
8 one side because of the amount of swelling from the blood.

9 Q Dr. Huffman, thank you. Please answer any
10 questions Mr. Hayes may have for you.

11 A Yes, sir.

12 THE COURT: Thank you, Solicitor.

13 Mr. Hayes?

14 **CROSS EXAMINATION**

15 BY MR. HAYES:

16 Q Dr. Huffman.

17 A Yes, sir.

18 Q In examining Ms. Weaver, --

19 A Yes, sir.

20 Q -- were you able to, with a degree of medical
21 certainty, make or form an opinion as to the direction of
22 travel or angle that the bullet entered and exited Ms.
23 Weaver?

24 A Yes, sir.

25 Q What would that -- what would that angle be?

Bradford P. Huffman - Cross-Examination by Mr. Hayes

1 A The angle would be from her right neck below the
2 inferior border of the mandible and -- pardon me for
3 pointing. It's just easier to point. From her right neck
4 through the inferior border of the mandible, through the
5 floor of her mouth, through the tongue, through the
6 maxillary first premolar, and through the lip. So the
7 angle would be this angle, if you can imaging that. From
8 here out to here.

9 Q So the shot would've been fired from a lower area
10 upwards?

11 A The shot -- the shot would've been -- perhaps she
12 was bracing or moving away, but the shot would've been from
13 this direction up through here.

14 Q Okay. So either it was from a lower area or she
15 had to have turned --

16 A Or she was turned and bracing against something.

17 Q -- turned her head for it to make that straight
18 line path?

19 A Exactly.

20 Q -- to make the damage from the right side of the
21 neck, up through the tongue, floor of the mouth, and up out
22 the -- just below her nose?

23 A Exactly.

24 MR. HAYES: Beg the Court's indulgence.

25 THE COURT: Certainly.

1 MR. HAYES: Nothing further.

2 THE COURT: Redirect?

3 MR. SLOCUM: No, sir, Judge.

4 THE COURT: Thank you. Thank you very much,
5 Doctor. You may step down.

6 Any objections to the witness being excused?

7 MR. SLOCUM: None from the State, sir.

8 MR. HAYES: No objection, Judge.

9 THE COURT: Thank you, and you may be excused.
10 Thank you for being with us.

11 THE WITNESS: Yes, sir. Thank you.

12 THE COURT: All right. Solicitor, you may call
13 your next witness.

14 MR. SLOCUM: At this time, the State rests its case
15 in chief. We would reserve to call any rebuttal witnesses
16 if necessary.

17 THE COURT: All right. Thank you. Thank you, Mr.
18 Slocum.

19 Madame Forelady, ladies and gentlemen of the jury,
20 perhaps would be a good time for us to take our luncheon
21 recess. I would remind you though during this recess you
22 are not to discuss this case with anyone. That includes
23 your fellow jurors, lunch mates, family, friends, or anyone
24 else. Do not read, watch, or listen to any news reports
25 about the case should there be any. Do not do any

1 independent investigation or any investigation on the
2 Internet which includes those areas but is not limited to
3 those areas that are prohibited as I have previously told
4 you on numerous, numerous occasions. I'm sure all of you
5 could repeat that back to me at this time.

6 Remember to keep an open mind. Do not decide any
7 issue of the case until you have heard all the evidence,
8 all the testimony, closing arguments by the attorneys, and
9 the instruction on the law by the Court.

10 With that being said, I would ask you to please be
11 back promptly at 2:00 p.m. and 1400 hours. Would you
12 please be back promptly at 2:00 p.m. I hope y'all have a
13 pleasant lunch. Thank you. Thank you very much.

14 (The jury left the courtroom at 12:31 p.m.)

15 **MID-TRIAL MOTIONS**

16 THE COURT: All right. Any motions, Mr. Hayes?

17 MR. HAYES: Yes, sir. At this time we would move
18 for a directed verdict. Taking the evidence most favorable
19 to the non-moving party, the State. Judge I would make a
20 motion based on the fact that as an element of malice. I
21 don't believe that the evidence they have put forth shows
22 that the malice or the intent would be viewed for the
23 attempted murder charge.

24 THE COURT: All right. Thank you. So that's --
25 your motion is only as to -- your making your motion only

1 as to the attempted murder charge?

2 MR. HAYES: Yes, sir.

3 THE COURT: Do you have motions as to the other
4 charges?

5 MR. HAYES: Yes, sir. Judge, as to the other
6 charges, it would be taking the evidence most favorable to
7 the non-moving party that the evidence that was put forth
8 does not meet the standard. And a reasonable jury could
9 find him not guilty.

10 THE COURT: Thank you. Thank you very much.
11 Solicitor?

12 MR. SLOCUM: Judge, in regards to the malice
13 element, malice, as everyone knows, can either be expressed
14 or implied. There is ample evidence in the record for a
15 jury to imply the malice. And if you need specifics, I
16 can.

17 In regards to the other motions, again there's
18 ample evidence for both the burglary first as well as the
19 possession of a weapon. The State thinks there's plenty of
20 evidence to move forward, Judge.

21 THE COURT: All right. Thank you, Solicitor.

22 All right. Reviewing the testimony in the light of
23 the non-moving party, and applying the standard that I must
24 apply at this point, I would respectfully deny the motion
25 for a directed verdict both as to burglary first degree,

1 attempted murder, and possession of a weapon during the
2 commission of a violent crime.

3 There have been fourteen witnesses that have
4 testified, the first, of course, being Ms. Weaver who
5 testified that she had gone to get some of her belongings
6 and gone with Mr. Glover. At the point of her return, she
7 did not return -- she returned to the area but not directly
8 to the 105 Mae Acres address. She was let out at her
9 request and walked to the Mackey residence, was inside the
10 residence when she heard a commotion and was confronted by
11 Mr. Glover who was armed at that time with a handgun. She
12 testified she did not invite him over and did not give him
13 consent to be there.

14 Mr. Mackey, who is the home owner, also testified
15 that he had never given Mr. Glover consent to be at that
16 residence. In fact, he testified he didn't know him, that
17 he had seen him but didn't know him. He further testified
18 he had never given Ms. Weaver permission to give Mr. Glover
19 permission to be in the Mackey residence. So clearly
20 there's both direct and substantial evidence as to the
21 burglary in the first degree, the entering of the dwelling
22 without consent with the intent to commit a crime therein.
23 Generally you do not enter a residence of another, armed
24 with a deadly weapon, without -- with positive intentions.

25 As to the issue on the malice aforethought, it can

1 be expressed or inferred. I find there is both direct
2 evidence from the -- at least stop him from the point that
3 he let Ms. Weaver out, placing his vehicle in a location
4 not directly at the residence but somewhat removed and
5 remote from the location, entering it in a violent manner,
6 of course, armed with the deadly weapon. The degree of the
7 assault, the degree of the injuries, the fact -- given the
8 fact that Ms. Weaver's attempt to defend herself, the
9 relentless assault by Mr. Glover and the fact that he
10 continued to follow her when she went for assistance at the
11 Green residence.

12 Further the flight from the scene was evidence and
13 consciousness of guilt and the conversation with Mr.
14 Peeples. Given all of that, I would respectfully deny the
15 motion as to all three charges.

16 Any other motions, Mr. Hayes?

17 MR. HAYES: No, sir.

18 THE COURT: Do you want me to question your client
19 as to his right to testify or not to testify?

20 MR. HAYES: Yes, sir.

21 THE COURT: If you'd come around please, Mr.
22 Glover.

23 Madame Clerk, would you place Mr. Glover under oath
24 for me, please?

25 ///

1 DAVID GLOVER,
2 having been duly sworn, testified as follows:

3 **QUESTIONING OF DEFENDANT BY THE COURT**

4 THE COURT: Tell me your full name, please.

5 THE DEFENDANT: David Glover.

6 THE COURT: And again your age, Mr. Glover?

7 THE DEFENDANT: 54.

8 THE COURT: And your educational level?

9 THE DEFENDANT: Twelve, twelfth grade. Twelfth
10 grade.

11 THE COURT: All right. Mr. Glover, I need to go
12 over some things with you. I do that with everyone who is
13 on trial, and I require their responses to be under oath.
14 That's why I had the clerk administer the oath to you.

15 We have reached the stage of the trial where the
16 State has rested, and your side, the defense, now has the
17 opportunity to present additional evidence. He's already
18 presented some evidence in the nature of photographs but to
19 present additional evidence for the jury to consider. Do
20 you understand where we're at in the trial.

21 THE DEFENDANT: Well, his -- his -- not exactly.

22 THE COURT: Well, the State has rested its case.

23 THE DEFENDANT: What does that mean?

24 THE COURT: That means the State is not going to
25 present any more evidence in its case in chief. They're

1 not going to call any more witnesses in their case in
2 chief.

3 Now, your side, the defense, has the opportunity to
4 present additional evidence or additional witnesses for
5 testimony. Do you understand that.

6 THE DEFENDANT: It'll be my chance as far as all
7 the -- as far as like defending. Well, defending myself
8 side of the case.

9 THE COURT: In that regard, the defense, your side
10 may call witnesses to testify. And if you choose to
11 testify, you may do so. Do you understand?

12 THE DEFENDANT: I understand.

13 THE COURT: No one can force you to testify, Mr.
14 Glover. You have the absolute right to remain silent. And
15 if you choose not to testify, I will tell the jury that
16 they cannot hold your silence against you in any way. I
17 will further tell the jury that they're not to discuss that
18 in the jury room if you don't testify. Do you understand
19 that?

20 THE DEFENDANT: Yes, sir. For all you're saying
21 though, testifying would be telling my side of the story.

22 THE COURT: Yes, sir.

23 THE DEFENDANT: Yes, sir.

24 THE COURT: Yes, sir. But if you chose not to
25 testify, you don't have to.

1 THE DEFENDANT: Yes, sir.

2 THE COURT: Nobody can force you to testify. Do
3 you understand that?

4 THE DEFENDANT: Yes, sir.

5 THE COURT: And if you didn't testify, I would tell
6 the jury they can't hold that against you, the fact that
7 you remained silent.

8 THE DEFENDANT: Yes, sir.

9 THE COURT: I would tell the jury they can't even
10 discuss that in the jury room. Do you understand?

11 THE DEFENDANT: I understand.

12 THE COURT: I believe at this point the State would
13 have the final closing argument because items have already
14 been introduced into evidence. Correct?

15 MR. HAYES: That's correct.

16 THE COURT: Does Mr. Glover have any prior criminal
17 history that would subject him to impeachment under Rule
18 609?

19 MR. HAYES: I do not believe so, Judge. I believe
20 everything he's got is outside the realm of age, and I have
21 not been notified --

22 THE COURT: So I do not have to visit that?

23 MR. HAYES: No, sir.

24 MR. SLOCUM: That's correct, Judge.

25 THE COURT: Mr. Glover, the decision about whether

1 you testify or not is your decision to make and your
2 decision alone. I expect that you have conferred with your
3 attorney or perhaps with others whose opinions you value on
4 life's important decisions. But your decision about
5 whether you testify or not is your call to make. It is
6 your decision. Do you understand that?

7 THE DEFENDANT: Yes, sir.

8 THE COURT: Has anyone -- I'm sorry.

9 Solicitor?

10 MR. SLOCUM: I'm sorry, Judge. I misspoke earlier.
11 He does have a crime of dishonesty, a shoplifting from 1983
12 that --

13 MR. HAYES: Judge, that's what I was saying. I
14 have not been noticed as to the rules within 10 days that
15 they intended to use it.

16 MR. SLOCUM: And we would still not use it. I just
17 wanted to inform the Court that there was one we would not
18 be using.

19 THE COURT: All right. Thank you.

20 Mr. Glover, has anyone exercised any undue
21 influence over you to get you to choose to testify or not
22 to testify.

23 THE DEFENDANT: No, sir. You mean, like,
24 influenced me?

25 THE COURT: Yes, sir.

1 THE DEFENDANT: No, sir.

2 THE COURT: In other words, like, twisting your arm
3 to testify or not to testify.

4 THE DEFENDANT: No, sir.

5 THE COURT: Today are you under the influence of
6 any medication, drugs, or alcohol, or anything that
7 negatively affects your thinking ability?

8 THE DEFENDANT: No, sir.

9 THE COURT: Do you suffer or have any physical,
10 mental, or emotional problems that affect your thinking
11 today?

12 THE DEFENDANT: No, sir.

13 THE COURT: Do you have any questions you would
14 like to ask me about your decision to testify or not to
15 testify?

16 THE DEFENDANT: Well, not at -- not at the time,
17 sir. No.

18 THE COURT: All right. Well, what I think I'll do
19 is I'm going to give him over the luncheon recess.

20 And perhaps you would have the opportunity to talk
21 with your lawyer some more, and when we come back after
22 lunch I will ask you what your decision is. Okay?

23 THE DEFENDANT: Yes, sir.

24 THE COURT: But you understand your right, that you
25 have the right to testify or not to testify. You

1 understand that, right?

2 THE DEFENDANT: Yes, sir. I'm willing to testify
3 and tell my side -- my side of the story.

4 THE COURT: Well, what I was just telling you is
5 I'm going to give you the opportunity to speak more with
6 your lawyer.

7 THE DEFENDANT: Okay.

8 THE COURT: And then when we come back after lunch,
9 if that's your decision, that's fine. If you change your
10 decision that's fine too. But I'll give you that
11 additional time. Okay?

12 THE DEFENDANT: Yes, sir.

13 THE COURT: All right.

14 THE DEFENDANT: Thank you.

15 THE COURT: Thank you.

16 THE DEFENDANT: Thank you.

17 THE COURT: Anything else you'd like for me to ask
18 him now, Mr. Hayes?

19 MR. HAYES: No, sir.

20 THE COURT: Thank you, Mr. Glover. You may return
21 to your seat.

22 All right. Anything further from the defense, Mr.
23 Hayes?

24 MR. HAYES: Not at this time, Your Honor.

25 THE COURT: All right. Anything from the State?

1 MR. SLOCUM: None from the State, Judge.

2 THE COURT: All right. We'll be in recess until 2
3 o'clock.

4 (A recess was observed for lunch.)

5 THE COURT: All right. Anything from State before
6 we bring in our jury?

7 MR. SLOCUM: None from the State, Judge.

8 THE COURT: Mr. Hayes?

9 MR. HAYES: No, sir.

10 THE COURT: Could you have your client come back
11 around for me?

12 MR. HAYES: Yes, sir.

13 THE COURT: Could you come back around, Mr. Glover?

14 THE DEFENDANT: Yes, sir.

15 THE COURT: You're still under oath, Mr. Glover.
16 Mr. Glover, did you have a opportunity to think about your
17 right to testify or not to testify over the luncheon
18 recess?

19 THE DEFENDANT: Yes, sir.

20 THE COURT: All right. Have you -- have you made a
21 decision?

22 THE DEFENDANT: Yes, sir.

23 THE COURT: And whatever decision you've made, is
24 it your decision?

25 THE DEFENDANT: Yes, sir.

1 THE COURT: Of your own free will and accord?

2 THE DEFENDANT: Yes, sir. My own free will.

3 THE COURT: All right. And what is your decision,
4 Mr. Glover?

5 THE DEFENDANT: To testify.

6 THE COURT: All right. And your decision is to
7 testify. Is that correct?

8 THE DEFENDANT: Yes, sir.

9 THE COURT: Do you have any questions about your
10 right to testify or not to testify?

11 THE DEFENDANT: Questions like what?

12 THE COURT: They're your questions. I can't tell
13 you what questions.

14 THE DEFENDANT: I'm sorry.

15 THE COURT: Now, do you have any questions you'd
16 like to ask me about your right to testify or not to
17 testify?

18 THE DEFENDANT: No, sir.

19 THE COURT: All right. Thank you. Thank you very
20 much. You may return to your seat.

21 I find that Mr. Glover is an intelligent gentlemen,
22 that he is educated, that he understands his right to
23 testify or not to testify, and I find that he has decided
24 to testify and that decision is made of his own free will
25 and accord knowingly, voluntarily, and intelligently.

1 Nothing from the defense?

2 MR. HAYES: No, sir.

3 (The jury entered the courtroom at 2:11 p.m.)

4 THE COURT: All right. Madame Forelady, ladies and
5 gentlemen of the jury, welcome back. I hope you all had a
6 pleasant lunch. As you recall the State rested in its case
7 in chief prior to our luncheon recess. That means you have
8 heard all the evidence and all the testimony you're going
9 to hear from the State in its case in chief.

10 The defendant may present evidence and testimony if
11 the defendant chooses to do so; however, as you've heard me
12 say before, a criminal defendant in South Carolina is
13 always presumed to be innocent and never has any burden to
14 prove himself innocent. However, the defendant may present
15 evidence and testimony if the defendant chooses to do so.
16 The burden of proof is always on the State of South
17 Carolina to prove the elements beyond a reasonable doubt.

18 So we will now turn our attention to Mr. Hayes and
19 ask, Mr. Hayes does the defendant intend to present any
20 additional evidence and testimony?

21 MR. HAYES: We do, Your Honor.

22 THE COURT: All right. So if you'll call your
23 first witness, please?

24 MR. HAYES: The defense would call David Glover.

25 THE COURT: All right. Mr. Glover, if you would,

David Glover - Direct Examination by Mr. Hayes

1 come around and be sworn, please?

2 DAVID GLOVER,

3 having been duly sworn, testified as follows:

4 THE CLERK: Please have a seat in the witness box.

5 State your full name for the Court, and spell your last.

6 THE DEFENDANT: David Glover. G-L-O-V-E-R.

7 THE COURT: All right. Mr. Hayes?

8 **DIRECT EXAMINATION**

9 BY MR. HAYES:

10 Q Mr. Glover, how are you doing?

11 A I'm doing good, sir.

12 Q You're quite aware of why we're here today?

13 A Yes, sir.

14 Q I'm going to jump right to it. Do you remember May
15 10th, 2014?

16 A Yes, sir.

17 Q On that day, I want you to walk us through that
18 day. What happened in the morning, first thing?

19 A In the morning I got up. In the morning I got a
20 call from Vernell Weaver.

21 Q What was the subject of that phone call?

22 A The subject of that phone call was to go get
23 something to eat.

24 Q Where were you intending to go eat?

25 A At the church.

David Glover - Direct Examination by Mr. Hayes

1 Q After the phone call, what happened?

2 A She told me to wait about 20 minutes to call. She
3 would call back and let me know when she'd be ready.

4 Q Did she call you back?

5 A Yes.

6 Q What did you do?

7 A She had told me where she would be at. She would
8 be walking, to pick her up. That's what I did. I headed
9 that way.

10 Q Where did you pick her up at?

11 A I picked her up, up the road from the house, from
12 the house that she was staying in that night.

13 Q What was -- was she carrying anything?

14 A Carrying a bag, sir. Excuse me.

15 Q Do you know what was in the bag?

16 A No, sir. I know she said she put a few clothes in
17 it. But I don't know. I didn't see them. I never looked
18 in the bag.

19 Q Once you picked her up, where did y'all go?

20 A When I picked her up, we proceeded down the road
21 and we made about two stops.

22 Q What was your first stop?

23 A The first stop was by -- she wanted to stop by a
24 friend's house, said she wanted to get something from them.

25 Q Whose friend?

David Glover - Direct Examination by Mr. Hayes

1 A Her friend.

2 Q Where were you?

3 A In the car.

4 Q Did you ever go inside?

5 A No, sir. She said she wanted -- she wanted to stop
6 there. She wanted to pick up -- she wanted to pick up
7 something to get high on, whether she called it crack or
8 something.

9 Q When she came back to the car, where did you go?

10 A We went to Crosland Park, sir.

11 Q Did you make another stop? That was the first
12 stop. Where was the second stop?

13 A The stop was by the store up the road on Number 1.

14 Q Gas station?

15 A Yes.

16 Q Did you go in?

17 A No.

18 Q When she came back to the car, where did you go?

19 A When she came back to the car, we went to the house
20 on Crosland Park.

21 Q When you got to Crosland Park, where did you go to?

22 A We went in. We went in for awhile. You know, I
23 mentioned about we wanted to go get something to eat. We
24 went in. We went in. We went in, and she had something to
25 smoke, so while we was in the house she smoked her crack.

David Glover - Direct Examination by Mr. Hayes

- 1 Q How do you know this?
- 2 A I smelled it in the sink.
- 3 Q Do you smoke crack?
- 4 A No, sir.
- 5 Q Now, you said to this house, which house is this in
- 6 Crosland Park?
- 7 A The house we went to?
- 8 Q Yes, sir.
- 9 A My house.
- 10 Q What's that address?
- 11 A 880 Alfred Street. It's our house. I mean, we was
- 12 staying there. We stayed there together. She was welcome.
- 13 She was welcome there.
- 14 Q Y'all lived together is what you're saying?
- 15 A Yes, sir.
- 16 Q How long had y'all lived together?
- 17 A Thirteen, fourteen years, thirteen years. Thirteen
- 18 years.
- 19 Q How long in that house?
- 20 A In that house, maybe eight or nine.
- 21 Q Was the lights off in that house?
- 22 A Yes, sir.
- 23 Q What about the water?
- 24 A The water was on.
- 25 Q I'm sorry?

David Glover - Direct Examination by Mr. Hayes

- 1 A No. The water was on.
- 2 Q The water was working, but the lights were off?
- 3 A Right. I was working on the house. They took that
- 4 water, the lights got turned off. Yes, sir.
- 5 Q How long did you stay at this house?
- 6 A How long was I staying there.
- 7 Q How long did you and Ms. Weaver stay at that house?
- 8 A Oh. We was there twenty to maybe thirty minutes.
- 9 Q When you left, where did you go?
- 10 A We proceeded back to the house she left.
- 11 Q You went back to 105 Mae Acres?
- 12 A Yes, sir.
- 13 Q Did you make any stops on the way back?
- 14 A No, sir.
- 15 Q When you got back to Mae Acres or Lincoln Avenue,
- 16 what happened?
- 17 A We parked.
- 18 Q Where did you park?
- 19 A I parked up the street on the left-hand side of the
- 20 road.
- 21 Q Why?
- 22 A Because of -- she told me to because the neighbors
- 23 was nosey and she didn't want the neighbors in her
- 24 business.
- 25 Q After you parked the car up the road, what

David Glover - Direct Examination by Mr. Hayes

1 happened?

2 A We went -- she invited me in the house. We went in
3 the house.

4 Q When you got inside, what did you do?

5 A Sit down and talk about -- sit down and talked.

6 And she got whatever she was going to get out her bag, got
7 her stuff out her bag and you know did what she do. She
8 continued to still, I mean, she was you know still, smoke
9 the rest of the crack that she had at the time.

10 Q How do you know that?

11 A Because I seen it and smelled it.

12 Q What were you doing during this period of time?

13 A I was sitting there -- I was sitting there talking,
14 talking back and forth to her. You know, killing time.

15 Q What room were you in?

16 A In the front room.

17 Q And where was she?

18 A In the side room.

19 Q What happened when she finished?

20 A When she finished, she run out but she wanted some
21 more to smoke at the time. So she asked did I have any
22 money to help her get something to smoke.

23 Q What happened? What'd you tell her?

24 A I didn't have no money at the time to get stuff.

25 Q When she heard that, what happened?

David Glover - Direct Examination by Mr. Hayes

1 A She hit me a couple time, but then I mean we --

2 THE COURT REPORTER: I'm sorry. Speak up.

3 THE WITNESS: What happened after that, she seemed,
4 she got disappointed about it. She did, you know, we began
5 to argue and argue, got more --

6 BY MR. HAYES:

7 Q Y'all began to fight?

8 A Yes, sir.

9 Q Were y'all hitting each other?

10 A Yes, sir.

11 Q The fight escalated?

12 A Yes, sir.

13 Q At what point did she grab the hammer?

14 A During -- when she started yelling.

15 Q Was that at the beginning of the conversation, or
16 the argument?

17 A In the middle. Around the middle of it.

18 Q When she got the hammer, what did you do?

19 A I got a little offended, but I mean I didn't know
20 whether -- what was going to happen next. I just had to
21 see.

22 Q Did she ever swing the hammer at you?

23 A Yes, sir.

24 Q When?

25 A During the argument.

David Glover - Direct Examination by Mr. Hayes

1 Q Y'all ended up having a fighting match over the
2 hammer?

3 A Yes, sir.

4 Q Tell the ladies and gentlemen of the jury about
5 that fight.

6 A Well, we got into a struggle with it. She had the
7 hammer in her hand. I got offended when she got the
8 hammer, so we struggled. I went to grab the hammer. She
9 pushed me back. I went back into the wall. The wall
10 cracked.

11 Q All right. Which wall cracked?

12 A The wall was cracked by the door.

13 Q Is that the hallway door?

14 A The hallway door. Yes, sir.

15 Q After it cracked, what happened?

16 A I got up. I guess I went through it then because
17 there wasn't nothing but sheet rock there, so I got up.
18 You know, I was talking, continued talking to her, but it
19 didn't really do no better. She was like she was in a
20 rage. So the argument escalated some more, and then I
21 pushed her. I went back into the door, the glass door.

22 Q So when you got up from the sheet rock, y'all
23 fought into the living room?

24 A Yes.

25 Q Tell the ladies and gentlemen about the fight in

David Glover - Direct Examination by Mr. Hayes

1 the living room.

2 A The fight in the living room -- when I got pushed
3 again and I went through, the door with the glass broke.

4 Q Who all went through the front door?

5 A We both ended -- went through the front door, but
6 she was just right in the doorway.

7 Q At some point in time you had a gun on you. Right?

8 A Yes, sir.

9 Q When did you pull the gun out?

10 A During that, during that time, during that time of
11 struggle when I was falling through the door.

12 Q Why did you pull the gun out?

13 A Because I was scared. I felt I fended for my life
14 at the time.

15 Q Why were you scared?

16 A Because she had a hammer.

17 Q When you pulled the gun out, what did you do?

18 A The gun went off, and it fired. I didn't know was
19 she hit or not.

20 Q How many times did you fire?

21 A Only fired twice.

22 Q Where were you at when you actually pulled the
23 trigger and fired the firearm?

24 A I was -- when I fell back, I fell, and I was
25 getting up, on my butt I was getting up, and during the

David Glover - Direct Examination by Mr. Hayes

1 time I was getting up in the struggle.

2 Q Were you on the porch? Or were you inside the
3 house?

4 A On the porch.

5 Q So at that time you were on your rear end?

6 A Yes, sir.

7 Q Where was she at?

8 A She was in the doorway.

9 Q What, if anything, did she have in her hand?

10 A She still had the hammer.

11 Q What was she doing with that hammer at that point
12 in time?

13 A She swung the hammer, but then she -- she swung the
14 hammer.

15 Q All right. After you fired at her, what happened?

16 A She ran into the room.

17 Q What did you do?

18 A Well, I come in the room behind her because I
19 didn't know what had happened, I mean was she -- I needed
20 to talk to her. I know, to see was she all right or, the
21 incident, by the incident.

22 Q You followed after her?

23 A Yes.

24 Q When you got in the bedroom door, were you in?

25 A No.

David Glover - Direct Examination by Mr. Hayes

1 Q Was it locked?

2 A I don't think it was locked, but I think she pushed
3 it up. She might've been she was holding it. It was
4 pushed up.

5 Q Why were you going towards the bedroom?

6 A I was going towards the bedroom just to see was she
7 all right, what had happened, and talking to her.

8 Q At this point did you know if she was high?

9 A No.

10 Q Did you know if she was injured in any way?

11 A Yeah, I know we both was injured because we both
12 was bleeding, so I didn't know where the blood was coming
13 from.

14 Q Why were y'all bleeding?

15 A Because one, glass, we fell on the floor with the
16 glass, I fell on the floor. I was bleeding glass.

17 Q All right. So the door was locked. What did you
18 decide to do?

19 A Since the wall was tore up right there, you could
20 see right in there, I went through the wall.

21 Q You went into the bedroom?

22 A Yes.

23 Q And you went through the wall?

24 A Yes.

25 Q When you got in the bedroom, what happened?

David Glover - Direct Examination by Mr. Hayes

1 A When I got in the bedroom, she was in a rage. She
2 was still screaming and hollering.

3 Q I'm sorry. I couldn't hear you?

4 A When I got in the bedroom, she was still in a rage.
5 She was screaming and hollering about it. You know, and it
6 wasn't long before you know she jumped up and ran out the
7 door with the hammer.

8 Q At some point, were y'all fighting in the bedroom?

9 A Yes.

10 Q What were y'all fighting over?

11 A I really don't know what we was fighting over at
12 that time. I know she had -- but I -- that the time I
13 found out she had, she was bleeding, and she had been hit.
14 She had been shot.

15 Q While you're in the bedroom, when did she leave?

16 A She leave when I came in momentarily and ran out
17 after, ran out the door after we -- she was still in a rage
18 for a few minutes and then for a while, and then she ran
19 out the door.

20 Q So y'all fought in the bedroom, is what you're
21 saying, and then she left?

22 A Yes.

23 Q All right. Where did she go?

24 A She went next door.

25 Q What did you do?

David Glover - Direct Examination by Mr. Hayes

1 A I ran next door too.

2 Q Why did you go next door?

3 A Because that's where she went, and I was still, you
4 know, I was trying to see was she all right, what was going
5 on. With the situation, I was concerned.

6 Q Were you still trying to take the hammer away from
7 her?

8 A Yes, sir. I was still trying to take the hammer.

9 Q Where was the gun?

10 A The gun had dropped. The gun had fell. I'm not
11 sure, I didn't know where the gun had fell.

12 Q All right. And this is while you were at the
13 house?

14 A Yes.

15 Q When did you leave?

16 A The house?

17 Q Uh-huh.

18 A I left the house momentarily when she called
19 somebody to come to the door. They seen me pulling, you
20 know, pulling my hand on the hammer. She had the hammer.
21 They said, y'all quit fighting. I'm going to call the
22 ambulance, the police. And so momentarily I left her
23 alone.

24 Q And where did you go?

25 A Across the yard, across the road.

David Glover - Direct Examination by Mr. Hayes

1 Q Why did you leave?

2 A Well, I was scared at the time.

3 Q When you left, you said you went across the yard
4 and across the road. Where did you go?

5 A In the woods.

6 Q What did you do in the woods?

7 A I stayed there. I sat down in the woods. I was
8 scared, trying to get myself together.

9 Q How long did you stay in the woods?

10 A I don't know. It was for a long time because later
11 on I heard sirens, ambulance, and yeah and all. And I just
12 stayed, and it was, I mean it was there for a long time.
13 It was about like dusk dark or something.

14 Q At some point did you go back to that Alfred Street
15 in Crosland Park?

16 A Yes.

17 Q What did you do when you got there?

18 A I was trying to -- trying to get -- to change
19 clothes.

20 Q All right. After you got your clothes changed,
21 where did you go?

22 A After I got my clothes changed, I went and hid in
23 the woods again.

24 Q When did you turn yourself in?

25 A After that. Later. Later on.

David Glover - Cross-Examination by Mr. Slocum

1 Q Is there anything else that you want to tell the
2 ladies and gentlemen of the jury?

3 A Well, I do want to say, I mean I, for the record, I
4 care a lot for Vernell, and I wouldn't do nothing to hurt
5 her. I would do anything for her, but things got out of
6 hand, and I apologize about it. But --

7 THE COURT: No, sir. He can't testify like that.
8 You've got to ask him a direct questions. And you've got
9 to give a direct answer. You can't --

10 THE DEFENDANT: Okay.

11 THE COURT: You can't just make a statement to the
12 jury.

13 MR. HAYES: Mr. Glover, answer any questions that
14 Mr. Slocum or Ms. Hall have for you.

15 THE COURT: Thank you, Mr. Hayes.
16 Solicitor?

17 MR. SLOCUM: Thank you, Judge.

18 **CROSS EXAMINATION**

19 BY MR. SLOCUM:

20 Q Mr. Glover, you just testified, Mr. Hayes asked
21 you, that Ms. Vernell Weaver was always welcome at 880
22 Crosland Park. That was the address. Right?

23 A Yes, sir.

24 Q Well, then why did you try to eject her three
25 times?

David Glover - Cross-Examination by Mr. Slocum

1 A That was during the time we was having problems,
2 back and forth having problems.

3 Q So three --

4 A It was -- that was the time we was having problems.
5 She was -- she -- she had -- she was smoking, and it got
6 worse. It was just a mess. I couldn't --

7 Q So you admit to having her removed from your
8 premises on three different occasions by the Court? Yes,
9 or no?

10 A I had her -- I had to have her -- I don't
11 understand the question.

12 Q Did you have her removed or ejected from those
13 premises on three different times?

14 A I never did. I put in a request to have her
15 removed, but I never had her removed. We always worked it
16 out. We talked, and we -- and we always, you know, we --

17 Q Yes, or no? Did you have her removed or not?

18 A No, sir.

19 Q Okay. You were never invited over to Mae Acres
20 Court. Were you?

21 A Yes, I was. Yes, sir.

22 Q You were?

23 A Yes, sir.

24 Q Not by Mr. Mackey, though, the guy that owned the
25 house at 105 Mae Acres Court. He didn't invite you over

David Glover - Cross-Examination by Mr. Slocum

1 there. Right?

2 MR. HAYES: Judge, I would object.

3 MR. SLOCUM: I asked if he'd ever been invited over
4 there by Mr. Mackey. It's a yes or no question.

5 THE COURT: Let me rule, please.

6 What's the basis of your objection?

7 MR. HAYES: I believe that is an improper statement
8 of the law. Burglary is a person who is in possession of
9 the dwelling at the time, not the person who is the owner.
10 I believe our law is quite distinct about that.

11 MR. SLOCUM: Judge, can we have a sidebar, please?

12 THE COURT: I overrule the objection. Yes, we can
13 have a sidebar, but I overrule the objection.

14 BY MR. SLOCUM:

15 Q Has Mr. Mackey ever given you -- Have you ever been
16 invited over to Mr. Mackey's house at 105 --

17 A Please ask me the question again because I seen Mr.
18 Mackey, and I've known him. Yes, I've been invited over to
19 the house before.

20 Q When was that?

21 A It haven't been lately though. We used to -- we
22 have -- we used to talk. I talked to him a few times,
23 and --

24 Q When was it?

25 A It been -- it been like maybe -- maybe like two

David Glover - Cross-Examination by Mr. Slocum

1 years or something like that.

2 Q Okay.

3 A We never had no disagreement.

4 MR. SLOCUM: I hadn't asked a question, Judge.

5 THE WITNESS: Yes, sir.

6 MR. SLOCUM: Beg the Court's indulgence, Judge.

7 THE COURT: Yes, sir.

8 BY MR. SLOCUM:

9 Q Mr. Glover, I'm showing you State's Exhibit 42.

10 That's the hole in the wall. Isn't it?

11 A Yes, sir.

12 Q And you said you were pushed back into that hole in
13 the room. Right?

14 A Yes.

15 Q You see this picture here? 44? Same hole? Same
16 room?

17 A Yes.

18 Q That's the same room? 45?

19 A It looks that -- it looks like it.

20 Q That's the same room. So when you were pushed back
21 into this wall, how did the sheet rock get on the inside of
22 the room?

23 A I mean, I don't know. All I know, I know that I
24 was pushed in the wall, but how it get on the inside, it
25 was somebody --

David Glover - Redirect Examination by Mr. Hayes

1 Q Somebody came through that hole. Didn't they? You
2 went through. You came through that hall trying to get Ms.
3 Weaver. Didn't you?

4 A No.

5 Q You can run faster than Ms. Weaver. Can't you?

6 A Probably can.

7 Q So when you got pushed into this wall, you were
8 closer to the door. You could've left. You can run faster
9 than her. You could've left. Couldn't you? When y'all
10 tussled --

11 THE COURT: Answer out loud for me, please.

12 THE WITNESS: Yes.

13 BY MR. SLOCUM:

14 Q When you said y'all tussled in the living room out
15 the door and busted the door, you were on your back and she
16 was in the doorway; isn't that right?

17 A Correct.

18 Q You could've left. Yes, or no?

19 A Yes.

20 MR. SLOCUM: That's all the questions I have,
21 Judge.

22 **REDIRECT EXAMINATION**

23 BY MR. HAYES:

24 Q As to the evictions of Ms. Glover, you filed three
25 times with the magistrate court to have her evicted,

David Glover - Redirect Examination by Mr. Hayes

1 correct?

2 A Correct.

3 Q At any time did y'all ever go through with the
4 eviction?

5 A Yes.

6 Q Was she ever asked to leave the property?

7 A Yes.

8 Q All right. Mr. Slocum asked you about the hole in
9 the wall.

10 THE COURT: About what? I didn't hear you.

11 MR. HAYES: The hole in the wall.

12 THE COURT: Thank you.

13 BY MR. HAYES:

14 Q While you were fighting, the first part of the
15 fight was in the hallway, and that's when you fell back and
16 hit the wall?

17 A Yes.

18 Q Later after you went through the glass in the
19 living room and you went back down the hall, you went
20 through the hole or went through the crack in the wall into
21 the bedroom?

22 A Yes.

23 Q And that's when you were going to go check on her?

24 A Yes.

25 Q Nothing further.

1 THE COURT: Recross, Solicitor?

2 MR. SLOCUM: None from the State, Judge.

3 THE COURT: Thank you. Thank you, Mr. Williams --
4 excuse me. Thank you, Mr. Glover. You may step down.

5 All Right. Mr. Hayes, you may call your next
6 witness.

7 MR. HAYES: The defense would rest at this time,
8 Your Honor.

9 THE COURT: Thank you. Thank you very much. Your
10 motions are noted --

11 MR. HAYES: Yes, sir.

12 THE COURT: -- for the record.

13 MR. HAYES: You want to go straight into closing?

14 THE COURT: No, sir. I'm going to see if they have
15 any evidence or testimony in reply.

16 MR. HAYES: Yes, sir.

17 THE COURT: All right. Solicitor, does the State
18 have any evidence or testimony in reply?

19 MR. SLOCUM: No, sir, Judge.

20 THE COURT: All right. Thank you. Thank you very
21 much.

22 All right. Madame Forelady, ladies and gentlemen
23 of the jury panel, you've now heard all the evidence, all
24 the testimony you're going to hear from both the State and
25 the defense, from all the parties in the trial of this

1 case. At this stage, I must speak outside of your presence
2 with the attorneys and review certain matters. Thereafter,
3 we will be at the stage of the closing arguments by the
4 attorneys.

5 Does the State intend to open?

6 MR. SLOCUM: We will waive opening on the law,
7 Judge.

8 THE COURT: All right. The procedure we follow in
9 the closing arguments in a case such as this is, Mr. Hayes
10 will close first on behalf of his client, Mr. Glover,
11 followed by the Solicitor on behalf of the State. Then I
12 will instruct you on the law that you're to apply to the
13 facts of the case and the case will be submitted to you for
14 your deliberations. We'll take about a 15 minute recess,
15 about a fifteen minute recess. And do not discuss the case
16 during this brief recess. Thank you very much. You may go
17 with your bailiff.

18 (The jury left the courtroom at 2:39 p.m.)

19 **MOTIONS**

20 THE COURT: All right. Mr. Hayes, any motions?

21 MR. HAYES: Judge, I would renew my previous motion
22 for a directed verdict on all three charges.

23 THE COURT: All right. And I would -- thank you
24 Mr. Hayes. Based on the standard I must apply, I am going
25 to respectfully deny the motion. I find there is both

1 direct and substantial circumstantial evidence as to each
2 charge and each indictment.

3 **JURY CHARGE CONFERENCE**

4 THE COURT: Requested charge, Mr. Hayes?

5 MR. HAYES: Yes, sir. I would ask for a
6 self-defense request, or a self-defense charge, as well as
7 a charge as to burglary. Burglary being a crime against
8 the -- the person in possession of the home, not the owner.
9 I believe there was testimony elicited from Mr. Mackey
10 saying that he had not given Ms. Weaver permission to
11 invite anybody. But the law is clear that if an invitee
12 invites somebody the crime would be against them, not
13 against the owner.

14 THE COURT: I think the jury question is whether or
15 not she invited him. I think the jury question is whether
16 or not there is consent. With or without consent is what I
17 think the element or the offense of burglary in the first
18 degree is. Without consent. Now, I agree with you with
19 the proposition that consent could come from the possessor
20 or from -- I don't think under State v. Singley (phonetic)
21 it can come from the one who has an interest in the
22 property, but I think that's a factor of determination for
23 the jury. So I'm not sure what you're asking in the
24 charge.

25 MR. HAYES: I'm just asking, Judge, for the Court

1 to inform them that it is not the owner. Even if he says,
2 I didn't give it. The question of fact is whether or not
3 they believe Mr. Glover, did she invite him in and give him
4 consent.

5 THE COURT: Or they could believe that he had been
6 given consent by Mr. Mackey. The jury's the finder of the
7 facts in the case.

8 MR. HAYES: Yes, sir. And I --

9 THE COURT: You're asking me to just focus their
10 attention on Ms. Weaver?

11 MR. HAYES: Yes, sir. The testimony in the case
12 was that Mr. Mackey had left at 5:00 a.m. earlier that day
13 and was not present until after 11:00 p.m. that night, he
14 was nowhere -- he wasn't even in the state. The testimony
15 was that he was in North Carolina, but he was the only
16 person at that house and who was left in possession of it
17 was Ms. Weaver at the time.

18 THE COURT: I will charge 16-11-310(3)a, enters a
19 building without consent means to enter a building without
20 the consent of the person with lawful possession.

21 MR. HAYES: Yes, sir.

22 THE COURT: I don't find that a legal title is a
23 factor in dispute in this case.

24 MR. HAYES: No, sir. It's not. My concern is the
25 jury will be confused because the State on at least two

1 occasions elicited testimony that Mr. Mackey had not given
2 him permission. And I do not want the jury to be confused
3 about -- that the crime is not against Mr. Mackey and the
4 ownership. The crime would be with Ms. Weaver in
5 possession of the home.

6 THE COURT: In lawful possession.

7 MR. HAYES: Yes, sir.

8 THE COURT: All I was thinking is, let's say, isn't
9 the reverse true also? What if Mr. Mackey had given him
10 permission?

11 MR. HAYES: He would still need her permission.

12 THE COURT: Would he be guilty of burglary in the
13 first degree if Ms. Weaver had withheld?

14 MR. HAYES: I'm sorry. One more time, Judge. Make
15 sure I follow the --

16 THE COURT: She's the invitee.

17 MR. HAYES: Yes, sir.

18 THE COURT: So what if -- what if Mr. Mackey had
19 given Mr. Glover permission to enter the dwelling?

20 MR. HAYES: And had left and went to North Carolina
21 and he came in and this happened? Judge, not conceding
22 that that -- I would say that it still would be a burglary
23 because Ms. Weaver is the possessor of the home at that
24 time. Mr. Mackey is out of state at this point in time.

25 THE COURT: But clearly you're not -- that's what

1 you want. It might be what you get.

2 Solicitor, do you have a position?

3 MR. SLOCUM: Judge, I heard building a lot. I'm
4 making sure we're talking about burglary first and the word
5 dwelling as well in there.

6 THE COURT: I charge that. I charge the definition
7 of dwelling.

8 MR. SLOCUM: Other than that, the State leaves it
9 in your discretion, Judge.

10 THE COURT: All right. I'll charge that.

11 MR. HAYES: Judge, on other instruction that I
12 request the Court would be self-defense.

13 THE COURT: All right. Do you have a proposed
14 charge?

15 MR. HAYES: No, sir. I would ask for the Court's
16 standard.

17 THE COURT: Solicitor, do you have a position?

18 MR. SLOCUM: I'd like to see the charge he's going
19 to request.

20 THE COURT: Well, I guess I'd have to write it, and
21 then I'll show it to both of you. How about that?

22 MR. SLOCUM: That would be great, Judge.

23 THE COURT: I'll print it out in just a minute.
24 Any lesser-included offenses.

25 MR. HAYES: No, sir.

1 THE COURT: All right. Thank you.

2 Solicitor, any requests to charge?

3 MR. SLOCUM: Judge, the State would like to request
4 a lesser-included offense of assault and battery of a high
5 and aggravated nature on the attempted murder indictment.
6 That statute reads that the person who commits the offense,
7 statute 16-3-600(B)1, the person who commits the offense of
8 assault and battery of a high and aggravated nature, if
9 that person unlawfully injures another person and a great
10 bodily injury results to another person or the act is
11 accomplished by means likely to produce death or great
12 bodily injury, we feel like those elements are met with the
13 facts presented before the Court today.

14 THE COURT: All right. Thank you.

15 Mr. Hayes?

16 MR. HAYES: I beg the Court's indulgence.

17 THE COURT: Yes, sir.

18 (There was a brief pause.

19 THE COURT: Mr. Hayes?

20 MR. HAYES: Judge, if we do do an ABHAN, I would
21 ask that the Court do the A and B first as well. Other
22 than that, I don't have nothing else to add.

23 MR. SLOCUM: Judge, can I respond to that at your
24 discretion?

25 THE COURT: That would be 600(C)1.

1 MR. HAYES: That's -- Yes, sir.

2 THE COURT: All right. Yes, Solicitor?

3 MR. SLOCUM: Thank you, Judge. The reason why
4 assault and battery first degree should not be included,
5 Judge, the elements of assault and battery in the first
6 degree state that the person who's guilty of that would
7 have unlawfully injured another person, and the act
8 involving nonconsensual touching of the private parts of
9 the person either above the clothing or with lewd and
10 lascivious intent, which we do not have present in this
11 case.

12 Number two, occurred during the commission of a
13 robbery, burglary, kidnapping, or theft. The defense on
14 testimony, he denies the burglary. Under subsection B,
15 offers or attempts to injure another person with the
16 present ability to do so. We have testimony here that the
17 defendant admitted to injuring the victim. The victim
18 testified to her injuries. There was not attempt at injury
19 but actually was injury. And these, this act was
20 accompanied by means likely to produce death or great
21 bodily injury. Again, likely to produce death or great
22 bodily injury. We have actual great bodily injury.
23 Nothing likely to be produced. It was produced.

24 And again, the second one, subsection B, occurred
25 during the commission of a robbery, burglary, kidnapping,

1 or theft, which the defendant had denied. Therefore A and
2 B first is not applicable pretty much on all elements,
3 Judge. That's the State's position.

4 THE COURT: All right. I will charge assault and
5 battery of a high and aggravated nature and assault and
6 battery in the first degree. It's no moment to this Court
7 that Mr. Glover has denied a burglary. If the jury, as the
8 fact finder, they can believe all, part, or nothing from
9 what Mr. Glover testified to, they could find him guilty of
10 the burglary regardless of his testimony and find that he
11 unlawfully injured another person during the commission of
12 the burglary.

13 I do not think the other subsections apply. Also,
14 looking at 16-3-600(C)3, assault and battery in the first
15 degree is a lesser-included offense of assault and battery
16 of a high and aggravated nature. As defined in subsection
17 (B)1 and attempted murder as defined in subsection 16-3-29.

18 All right. So I'll charge both lesser included
19 offenses.

20 Anything further, Mr. Hayes?

21 MR. HAYES: No, sir.

22 THE COURT: Solicitor?

23 MR. SLOCUM: Judge, just to the self-defense
24 charge. If memory serves me correctly, the defendant has
25 to have no fault in bringing about the difficulty and no

1 other means of escape, of getting out of the situation.
2 The State doesn't think the statute for the charge applies
3 based on those two things. The defendant said he could've
4 left of his own will, and he didn't. It has to satisfy all
5 four of those elements, and he himself admits to not
6 satisfying one of them. We feel like it's not applicable.
7 But again, if the Court would like to wait to rule on that,
8 we would see the full charge, but that's the State's
9 position at this point.

10 THE COURT: Well, taking his testimony, not
11 evaluating -- part of his testimony was that Ms. Weaver was
12 smoking crack cocaine prior to going back to 105 Mae Acres.
13 Upon return to 105 Mae Acres, she's still smoking. He saw
14 it. He smelled it, crack cocaine. She invited him in, and
15 he saw her smoking it and smelled it. And then she was
16 high and got disappointed because she wanted more crack
17 cocaine and wanted money, but he didn't have any money.
18 And they began arguing. And then she got the hammer, and
19 some type of physical altercation ensued. And they fought
20 in that front room, somehow ended up falling out the front
21 door. He did, she did. She was still slinging the hammer
22 around, and that's when he got the gun and shot because he
23 was in fear for his life.

24 If you believe his testimony, he says he goes back
25 in to check and make sure she's all right. That's his

1 testimony. And if you believe that -- well, I think it's
2 an issue for the jury.

3 MR. HAYES: Yes, sir.

4 THE COURT: All right. So let's take about a 15
5 minute recess. And I take it y'all want to argue and
6 charge today?

7 MR. SLOCUM: Yes, we do, Judge.

8 MR. HAYES: I do, Judge.

9 THE COURT: Let's take about 15 minutes.

10 (A brief recess was observed.)

11 THE COURT: All right. Just to revisit, I am going
12 to charge the requested charge by the defense on the
13 burglary. As to self-defense, in looking at the standard
14 charge, there is much that does not apply to this specific
15 case. So I have: Self-defense, the defendant has raised a
16 defense of self-defense. Self-defense is a complete
17 defense, and if it was established, you must find the
18 defendant not guilty. The State has the burden of
19 disproving self-defense by proof beyond a reasonable doubt.
20 If you have a reasonable doubt of a defendant's guilt after
21 considering all the evidence including the evidence of
22 self-defense, then you must find the defendant not guilty.
23 If, on the other hand, you have no reasonable doubt of the
24 defendant's guilt after considering all the evidence
25 including the evidence of self-defense, then you must find

1 the defendant guilty.

2 The following elements are required to establish
3 self-defense. First is without fault. The defendant must
4 be without fault in bringing on the difficulty. If the
5 defendant's conduct was the type which was reasonably
6 calculated to and did provoke a deadly assault or an
7 assault, the defendant would be at fault in bringing on the
8 difficulty and would not be entitled to an acquittal based
9 on self-defense.

10 Second, eminent danger. The second element of
11 self-defense is that the defendant was actually in imminent
12 danger of death or serious bodily injury or that the
13 defendant actually believed he was in imminent danger of
14 death or serious bodily injury. If the defendant was
15 actually in imminent danger, it must be shown that the
16 circumstances would have warranted a person of ordinary
17 firmness and courage to strike a blow to prevent death or
18 serious bodily injury. If the defendant believed he was in
19 imminent danger of death or serious bodily injury, it must
20 be shown that a reasonable prudent person of ordinary
21 firmness and courage would have held the same belief.

22 Deciding whether the defendant actually was or
23 believed he was in imminent danger of death or serious
24 bodily injury, you should consider all the facts and
25 circumstances surrounding the crime including his physical

1 condition and the characteristics of the defendant and the
2 victim.

3 The final element -- The final element of
4 self-defense is that the defendant has no other probable
5 way to avoid the danger of death or serious bodily injury
6 than to act as the defendant did in this particular
7 instance.

8 All right. Any additional requests as to the issue
9 of self-defense, Mr. Hayes?

10 MR. HAYES: No, sir.

11 THE COURT: Solicitor?

12 MR. SLOCUM: No, sir.

13 THE COURT: All right. And I will charge this
14 right after I charge the attempted murder, assault and
15 battery of a high and aggravated nature, assault and
16 battery first degree. All right.

17 All right. I'm sorry it's took me so long. It
18 just takes a while to get through that self--defense
19 charge.

20 Mr. Whittle, will you bring us our jury?

21 THE BAILIFF: Yes, sir.

22 THE COURT: Thank you.

23 (The jury entered the courtroom at 3:45 p.m.)

24 THE COURT: All right. Welcome back, ladies and
25 gentlemen of the jury panel. I apologize for the delay.

1 As a great trial judge told me one time many years ago, and
2 he was a former governor of South Carolina, George Bell
3 Timmerman. He always said, good trial lawyers can't tell
4 time, which I find to be true. I don't compare myself to
5 Governor, Judge Timmerman, nor do I say I'm a good trial
6 judge, but I don't think trial judges can tell time either.

7 I work very diligently and your time is very is
8 very important to me. I try to manage it as efficiently as
9 possible. It's not the fault of the parties whatsoever.
10 And if you ever get to meet any other members of the South
11 Carolina Circuit Court Judiciary, of course, this is on the
12 record, you will find that many of are much like me. Not
13 only can they not tell time, they don't have much
14 personality either.

15 As I told you, we're now at the stage of the
16 closing arguments by the attorneys. This is the last
17 opportunity the attorneys will get to speak to the jury and
18 only the second time that they get to speak to the jury
19 directly, the finders and the judges of the facts in the
20 trial. It's a very important day for Mr. Glover. It's an
21 important day for the State. As you have done throughout
22 the course of the trial, I'd ask that you please give the
23 parties your complete and undivided attention.

24 I do not allow any of the spectators to go in and
25 out during the closing arguments by the attorneys. You may

1 certainly leave after Mr. Hayes speaks and before the
2 solicitor begins or after the solicitor finishes and before
3 I begin the charge on the law.

4 So if you would, please give the parties your
5 complete and undivided attention. Mr. Hayes?

6 **CLOSING ARGUMENTS**

7 MR. HAYES: May it please the Court? Mr. Slocum.

8 All right. At the beginning of the trial, I told
9 y'all that I'm only focusing on two elements: Whether he
10 had permission to be in that house, which would go towards
11 the burglary, and whether there was malice, meaning did he
12 do it with an evil intent or did he do it because he was
13 trying to protect himself?

14 You have heard from multiple, numerous witnesses
15 from the State in them putting up their case in chief.
16 You've got right at over a hundred pieces of evidence as
17 well to consider along with the testimony that you heard.
18 And looking at all the evidence, listening to all the
19 testimony, you also consider credibility. Do you believe
20 this person? And the Judge is going to tell you, you get
21 to believe all of what one of them says or nothing, a piece
22 of what this person over here says and a piece of what this
23 person over here says. And you're going to pull it all
24 together, and you're going to decide what the true facts
25 are. What happened that night? And once y'all make that

1 decision, you're going to apply the law to that story, the
2 law that the Judge gives you, and you're going to come up
3 with a verdict. In doing that, there's a few things that I
4 want you to focus on.

5 First, whether he had permission. Now, the State
6 elicited testimony from Mr. Mackey. I don't know him as
7 well as, I didn't tell her she could invite anybody. I
8 submit that that is not the actual correct part of the law.
9 And the Judge is going to tell you, the burglary is against
10 the person in possession of the home. Now, Mr. Mackey did
11 testify that at 5 a.m. he got up, he got in his car with
12 his family members, and then he went to North Carolina to
13 go see his -- I believe it was his niece -- graduate from
14 college, leaving Ms. Weaver at the house in possession of
15 the home.

16 You also heard from Mr. Glover. There's not very
17 many trials that I can start in my opening saying that I'm
18 going to tell you and you're going to hear it from my
19 defendant. This is one of the very few. From the very
20 beginning, we knew he had to tell his story. And you heard
21 him from the stand tell you, I got up on May 10th, 2014.
22 He talked to Ms. Weaver. He testified she called him. She
23 said she didn't know who, but somehow they made contact.
24 He said they had made plans to go eat, that she wanted to
25 come back over and get clothes, swap out. She had lived at

1 this residence with him for almost 10 years. They had been
2 together for 13 and lived together for 13 years. That they
3 go, he goes and gets her. He picks her up.

4 She denied stopping and picking up any cocaine or
5 stopping anywhere else other than a quick shop. He says,
6 we stopped, and she got cocaine. I know it because I saw
7 it, and I smelled it when she smoked it. At the house over
8 at Crosland Park and when we came back to the house at Mae
9 Acres, I saw it and smelled it, and she finished it off.
10 And you also heard her testify, she tested positive for
11 cocaine when she went in for medical treatment at
12 University -- or Medical College of Georgia, or GRU, or
13 whatever it's called now.

14 He says that they got there. She didn't want him
15 to pull around to the house because they didn't people
16 nosing in their business. They parked the car, and they
17 walked up to the house. He said, she told me to come in,
18 sit down. I did. She went back to the room, unpacked the
19 bag, finished smoking her crack cocaine. I said, how do
20 you know this. I could smell it. I could see her doing
21 it. She comes out, and she gets in a fight with him about
22 money. Said she wanted to get more. She was out. They
23 got into a fight.

24 The fight escalates. She picks up the hammer.
25 They start struggling over the hammer. He falls back

1 against the wall going into the bedroom, busting the
2 sheetrock, cracking it. They continue to fight. Go into
3 the living room, still fighting. They go through the glass
4 door, busting it, falling to the ground. And that's when
5 he pulls out the gun, and he shoots two shots. He
6 testified he shot two times. Don't know where they went.

7 We know for sure one went into the wall, at least
8 through it in the door frame. We've got pictures showing
9 it the State entered. And we know for a fact one went into
10 her right side of her neck, traveled up through her mouth,
11 out just below her nose. He testified, I did not know at
12 the time if I hit her or not. But he got up, and he ran
13 into the bedroom. He knew they were hurt because they both
14 had gone through the glass when they were fighting over a
15 hammer. There was blood everywhere. I know she's hurt, so
16 let's go check on her. But she wouldn't let him in. I
17 can't say I blame her. They get in the room -- he gets
18 into the room. He says, I went through the wall. She
19 wouldn't open the door.

20 Now, the little things that corroborate the story
21 that seem to me to give light and truth to what he is
22 saying and supporting what he is saying -- this is Defense
23 Exhibit 7 -- is the blood on the back of the door. If you
24 look at it, it looks like where somebody's holding the door
25 shut. Now, I'm not saying this ain't gruesome and that

1 this wasn't serious, but it seems to tend to lend a little
2 more credibility, I believe, to Mr. Glover. Because what
3 does she testify to? That she sees him, she's going toward
4 the door. She doesn't know if he came in or not. And then
5 he shot me. I ran to my room, and I called 9-1-1.

6 That she ran from the room after they fought a
7 little bit, she slips and falls and cuts her arm on the
8 glass in the living room. How is there blood all over the
9 back of the door? If you look at the pictures of the
10 bullet wound in her face that the State entered when she's
11 laying on the gurney, it's not pumping, gushing. Look at
12 the cut on her forearm. Look at the stitches where it
13 healed-up. Look at the gash all the way up her arm. You
14 don't get that from just slipping and falling, sliding
15 across the glass. She does have some scrapes going up the
16 arm. But the big one, the deep one, that's a deep gash
17 from going through a glass door with Mr. Glover. If that
18 was true, I entered these pictures, and I know it seemed
19 like I was trying to torture her. But that was not my
20 intent.

21 If you take a look at all the pictures that were
22 entered in the bedroom, it's horrific. I will give you
23 that. Blood on the bed, blood droplets castoff running
24 down the wall, spray all over the wall by the window where
25 she said she was trying to throw the gun. She's trying to

1 throw it out the window? What's she doing? She's
2 flinging, back up trying to get through the window. What
3 else is coming off her? Blood. Why? It's all over her
4 arm where she split it going through the glass door.

5 Look at the glass. The glass -- if he'd have tore
6 the door open and tried to get in and/or run through the
7 door and busted in on her, the glass would be on the
8 inside. Most of that glass is on that porch. If you look
9 at 29, State's 29, you will see that the door is not tore
10 open from where someone grabbed the handle and rips their
11 way into the house. But you're looking at the hinges tore
12 off. The handle is the only thing still affixed to the
13 wall. I'm not grabbing at the hinges and pulling the door
14 open and trying to get in.

15 And if you look at 33, she said they had a latch
16 with a chain. The door's still latched. The chain is the
17 only thing holding it up. That tends to lead me to believe
18 that he was already in the house with her permission, and
19 they were inside, and they had locked the door, the chain.
20 And then they started fighting in the house. They fell
21 through the door, tearing it off the hinges, busting the
22 frame. And the only thing left holding it up is the chain
23 they used to keep it shut.

24 Now, I asked her as well as the State. I wanted to
25 clarify, when did you call 9-1-1? She was very clear. I

1 called it when I ran into the room. First thing. Called
2 it when I got in the room. I think that is very important.
3 There is a horrific sounding 9-1-1 call. I know y'all
4 heard it, and I'm going to ask y'all to play it again at
5 least a couple of times. That way you can listen to
6 exactly what is going on in here. Not to just the
7 screaming and the emotion, but listen to the words that are
8 spoken. I believe if you listen to this, what you hear is
9 her yelling at him saying, you hit me, meaning that she got
10 shot. And he's telling him -- she's telling him, you shot
11 me. Come on. She's hysterical, though. The next thing to
12 come out of her mouth is, I won't hit you no more. Well,
13 if she called the police or 9-1-1 when she ran into that
14 bedroom and closed the door, that means she was hitting him
15 beforehand. That seems to me to give credibility to Mr.
16 Glover because her testimony is, there wasn't no fight. He
17 shot me at the door, and I ran into the room. But in here,
18 she's saying something different. I believe it says, I'm
19 done, I'm done, I won't hit you no more, I won't hit you no
20 more. It's hard to hear. I submit that. But if you
21 listen to it, I believe that's what you will hear. And I'm
22 going to ask you to please play it again while y'all are
23 deliberating.

24 You also heard from a very educated individual
25 about GSR kits, gunshot residue. You heard me ask Ms.

1 Weaver, what hand are you? Right-handed. I'm left-handed.
2 My tendency is to use that left-hand. She said, I'm
3 right-handed. You heard from the person on the stand
4 testify that she tested her, and she had gunshot residue on
5 her. She said in two places, palm of her right hand, which
6 I submit is because she's got a hammer in her hand, GSR
7 can't get on it, and on the back of the left hand. Well,
8 the back of the left hand would be explained to me, as you
9 saw the medical doctor testify about how the bullet hit.
10 She's fighting him with a hammer. They're at the front
11 door. She sees the gun. What's the instinct? The
12 instinct's going to be like, oh boy. Hammer, left hand,
13 I'm turning away, I get struck. Bullet goes up, through,
14 and out. That's because Mr. Glover is laying there on the
15 concrete, or sitting up on the concrete, and she was in the
16 doorway. That's how you get that trajectory. That's how
17 you get no GSR on the back of the left hand, but it's on
18 the palm. It was on the back of the right hand, but it
19 wasn't in the palm of the right hand.

20 Also, when people are fighting, they start losing
21 articles of clothing. Defense exhibit 1 is a photograph.
22 You see two cartridges laying in the floor and an earring.
23 Now, if you look at the photographs in the bedroom, where
24 they were, I believe they testified they were tussling,
25 there's another earring. There's more cartridges.

1 Now, Mr. Glover goes over to the neighbor's house
2 with Ms. Weaver. What was the testimony in that? The
3 testimony in that was -- is, they were still pulling at the
4 hammer. And they testified that they were out there having
5 no holds barred fight. He was still concerned about the
6 hammer, and she was still holding on it.

7 And he left when he heard the police was going to
8 be called. Why? He's scared. He knows she's severely
9 hurt. He knows he shot at her. There's blood everywhere.
10 The house was tore apart. He is not a lawyer, and he is
11 not an officer. He don't know what to expect other than,
12 I'm probably going to jail. So he's scared. What does he
13 do? Runs away. Runs off into the woods and sits down and
14 tries to get himself back together. He gets evidently a
15 little more cool, a little more levelheaded, figure out
16 what to do. He goes home. He cleans himself up. Now he
17 can turn himself in. And hey here I am.

18 Now there's testimony from Mr. Peeples that he
19 called him, told him, I messed up. Again, he's not a
20 lawyer. He don't know what's going on. He don't know what
21 to expect. He's confiding to a friend, trying to look for
22 a little comfort. Trying to find a familiar voice. I
23 don't believe it was any more than that. And it was a very
24 short conversation. And he told him at the end of the
25 conversation, I'm turning myself in. And he did.

1 You also determine people's credibility by watching
2 their actions and seeing how they act, how they behave.
3 When they sat on the stand, did they make eye contact? How
4 did they hold themselves? Watching Ms. Weaver, I don't think
5 I saw her look up once. When I was standing there trying
6 to cross-examine her and show her pictures, most of the
7 time she was focused toward the floor. She would glance
8 up, look at the picture, and go right back to the floor. I
9 understand it was very traumatic, and I'm not saying hold
10 that against her. But you get to judge, how do these
11 people's behavior and actions feel and look to you?

12 I know the State a lot of times will come in and
13 say, we didn't ask you to leave your common sense at the
14 metal detector. You live a life outside this courtroom.
15 That's why we picked you. Some younger than others, some
16 older than others, some more educated. Everyone in here
17 have life experiences. Use them. Use your experiences to
18 help you.

19 Now, I believe Ms. Weaver said that they had been
20 together and the relationship was good for up to 10 years,
21 and after that it was kind of rotten. And when Mr. Glover
22 was on the stand, there was a question about eviction
23 process. But yet, her belongings were still at Alfred
24 Street, at their house together. She testified that that's
25 currently where she lives. She's still there. She said

1 that Mr. Mackey was her boyfriend at the time. And she's
2 calling Mr. Glover to come get clothes and pick her up. I
3 think these things have a tendency to show that they were
4 still talking to each other, still had a relationship, and
5 could lead you to believe she asked him to stay.

6 And what else did they say about Alfred Street at
7 that time? What did she tell you? What did Mr. Glover
8 tell you? No electricity. There was no electricity in
9 Crosland Park at this point in time. What did they have at
10 105 Mae Acres? Electricity. And I believe she testified,
11 it was hot. Where was Mr. Mackey? Not in this state. He
12 testified he was in North Carolina. Perfect time to say,
13 hey come over. Stay here. He's not coming back for a
14 while. And then the fight.

15 You will hear the Judge instruct you as to what the
16 law is, so if it's different from what I say please accept
17 what the Judge says over me. You've heard Mr. Glover say
18 he was scared that she was going to injure him at that
19 point, when he was down on the ground, with the hammer. I
20 don't know how anybody would react. I don't know how I
21 would react. If you believe that he -- if you believe that
22 he believes that he could receive great bodily injury or
23 death by the hands of Ms. Weaver with that hammer, and he
24 shot in self-defense, then I would ask you to find him not
25 guilty.

1 If you believe that he had permission to be in that
2 house after looking at these things, the items of evidence,
3 particularly the door of how it's tore off the hinge from
4 the hinge side, then he's not guilty of burglary. And then
5 as a result would not be guilty of a weapon during the
6 commission of a violent crime.

7 I appreciate y'all's attention. The only thing I'm
8 going to ask you to do is to reserve your decision until
9 you've reviewed all the items of evidence. And I'm going
10 to ask you again to please listen to the 9-1-1 call once or
11 twice for me before you come to your decision.

12 THE COURT: Thank you. Thank you, Mr. Hayes.
13 Solicitor.

14 MR. SLOCUM: Thank you, Judge. May it please the
15 Court? Mr. Hayes, Mr. Routzong.

16 Ladies and gentlemen, I told you in the beginning
17 what Mr. Hayes was going to do, make you look elsewhere
18 from what really happened. And he's just doing his job,
19 and that's what you just heard. He wants you to focus on
20 Ms. Weaver having cocaine in her system. He wants you to
21 focus on GSR on a certain part of her hands and not on a
22 certain part of her hands. He wants you to look at some
23 blood on a window, on the wall, coming from the scratches
24 in her arm. But what he failed to mention was the gunshot
25 wound in her neck and the blood on her hand from trying to

1 stop it from bleeding.

2 In the State of South Carolina, the law doesn't say
3 that the victim can't have cocaine in their system, the
4 victim can't have GSR on their hands. Doesn't matter.
5 That's what he was doing, trying to make you look elsewhere
6 than what really happened.

7 Ladies and gentlemen, I told you you were going to
8 hear the whole gruesome story in my opening. And that's
9 why we paraded all these witnesses up here. We told you
10 everything that we could. Everything with GSR, everything
11 with the DNA testing, everything with fingerprints even
12 though we didn't find a fingerprint. The bloodhound
13 tracking team came out even though they couldn't put a dog
14 on the ground. We left no stone uncovered. We told you
15 about the shell in the bedroom that Investigator Watts took
16 a picture of that she didn't collect. Why? Because this
17 is real life. This isn't NCIS. This is not CSI. We want
18 it to be. But we're not going to hide anything. We
19 brought it all out, and that shell confirms her story.

20 I want to go back and address what the witnesses
21 told you. The Greens. Ms. Almetha and Mr. Otis were at
22 their house at 111 just up from 105. Ms. Almetha heard two
23 shots. Here comes Ms. Weaver, bloody, with a hammer. Help
24 me. Help me. I've been shot. Help me. She goes and gets
25 Mr. Otis. Mr. Otis comes back, sees the defendant come up.

1 Tussled, following Ms. Weaver to their house. Mr. Green
2 sees him, sees the struggle. And what does Mr. Green say?
3 Don't do it now. Leave her alone. Don't do it. Don't do
4 it. Don't do it, now. The 9-1-1 call that Ms. Green made
5 while Ms. Weaver was outside her house, you'll hear those
6 words. Mr. Green told you that was him on that tape. He
7 said the defendant left, took off from 111 Mae Acres Court.
8 Why? Because he had just said, don't call the police.
9 I'll get in trouble. And he fled because his conscious was
10 guilty. And he told Brandon Peebles that the next day,
11 I've done something bad. I'm going to turn myself in.
12 Because he knew. She didn't hit him. She was shot in the
13 neck by this man.

14 Mr. Hayes just showed you these pictures. I think
15 it's important because this pictures shows the chain still
16 locked on the door. She told you the door was open and the
17 storm door was closed. The storm door was locked because
18 she was the only one supposed to be in there. She did not
19 give anybody permission, especially the defendant, to come
20 in there. And what does she say that she sees? She sees
21 him raise up a silver and black gun.

22 And then we have the defendant himself. He didn't
23 realize what he was doing when he said this. He said, I
24 shot twice. Same thing that Ms. Green said, I heard two
25 shots. I shot twice. Because one wasn't enough. He went

1 over there to finish her. That's why after he shot one
2 time he tried to shoot again. And you know what he did?
3 He went after her to check. And when he realized she was
4 locked in that room, locked the door, holding the door
5 closed with a gunshot wound in her neck, he snapped and
6 busted his way through the wall because he wasn't stopping
7 until he was finished what he went over there -- what he
8 started.

9 I wish I could say it ended there, but it doesn't.
10 They tussled. She's bleeding. She tells you she tries to
11 get the phone and throw it out the window. There's your
12 evidence of that. There's the tussling, evidence of that
13 in the room. Him busting through the sheetrock, which on
14 the inside of the room, which he said he got pushed into
15 from this way. Yet, there's sheetrock on the inside. It
16 doesn't make sense, ladies and gentlemen. His story does
17 not hold water.

18 He went over there with a gun with one thing in
19 mind. Somehow she was able to get away and run to the
20 Greens' house. First try to call 9-1-1 didn't work, so she
21 had to run and go find help. He still couldn't stop. He
22 chased after her.

23 Ladies and gentlemen, you get to judge the
24 credibility of the people who came up to testify. Mr.
25 Hayes told you that. I'm telling you that. Ms. Weaver was

1 shaking like a leaf. Three-hundred and sixty-nine days
2 now, and it still has that effect on her. She didn't make
3 this up. She's no lawyer either. She couldn't have
4 crafted this story in seconds as she ran to the victim's
5 house, I mean to the Greens' house. There's no way for her
6 to come up with that story that quickly because she's
7 telling the truth. It's y'all's job to find the facts and
8 to judge the credibility of those witnesses.

9 Who has the reason to lie here? Ms. Green? Mr.
10 Green? Have a reason to lie? What reason do they have to
11 make it up? That she ran to their house and said, he shot
12 me, help me. What reason does she have?

13 I told you about direct and circumstantial
14 evidence. How what somebody said and saw, heard, direct
15 evidence from them. You can also tie that in
16 circumstantially. Ms. Weaver told you, I tried to get the
17 gun. I got it away from him inside. I saw him grab it
18 from me after I tried to throw it out the window and put it
19 to my side, and he pulled the trigger twice. So the first
20 time wasn't enough, so he racked it again. And there's
21 your shell from where it didn't pull so he did it again.
22 By the grace of God, it didn't fire again. We ended up
23 finding that gun right down at the bottom of the hill from
24 this house. That gun had her blood on it from where she
25 had tried to get it from him and throw it out the window.

1 You can follow the dots and put it all together. Her story
2 is seamless. It's been seamless since seconds after this
3 happened.

4 Ladies and gentlemen, the defendant and Mr. Hayes
5 wants you to think there's no malice here. This wasn't an
6 accidental shooting. This was a premeditated, planned,
7 cold-blooded act. So much that he hid his car away so no
8 one would see it, so Ms. Weaver wouldn't see it, went up
9 there, banged on the door, waited for her to come into
10 view, and pow, pow, and chased her to make sure he did
11 finish it. It wasn't done, so he kept chasing her.

12 Reasonable doubt, addressed it in open. The Judge
13 is going to tell you about it. What will leave you firmly
14 convinced? You don't hesitate to act. Not beyond all
15 doubt. Not -- few things we know for certain in this
16 world. Beyond a reasonable doubt. What's reasonable here?
17 Which story makes sense? Which pieces add up? And again
18 on the law thing, whatever the Judge tells you, please go
19 with what he says.

20 The law in this state says, attempted murder is the
21 attempt to kill someone with intent, shooting someone at
22 point blank range twice, following them into the room to
23 fire two more times, there's your attempt. With malice
24 aforethought. The planning, the hiding of the car. He
25 didn't want to be seen. The running. The fleeing. Your

1 malice comes from his actions. And I don't know if he knew
2 it when he said it. I shot twice. If she had a hammer,
3 one would've done. If it is really true what he is saying,
4 one would've done. But he did two, and he tried two more.

5 In terms of burglary, it's the entering of a
6 dwelling without consent and with the intent to commit a
7 crime. He did not have permission from anyone to go into
8 that house. And while he was in there, he tried to kill
9 Ms. Weaver.

10 Mr. Hayes mentioned the 9-1-1 call. He said that
11 if you listen closely you'll hear her say, I won't hit you
12 anymore. I want you to listen to that phone call. In
13 fact, we're going to listen to it right now. This phone
14 call is not the sound of someone who has been accidentally
15 hurt and who is being checked on by another individual. It
16 is the sound of a woman who is desperate in fear of her
17 life, screaming why are you doing this, why are you doing
18 this?

19 (The 9-1-1 call was played for the jury.)

20 MR. SLOCUM: If he was being concerned for her at
21 that point, that wouldn't have been happening.
22 Legitimately concerned for her well-being, that call
23 would've been clear, or he would've grabbed the phone from
24 her and said, get over here, she's been shot accidentally.
25 He didn't because that wasn't his intention when he entered

1 that room, when he busted through that sheetrock.

2 Ladies and gentlemen, no mother should have to have
3 that as a reminder of Mother's Day.

4 MR. HAYES: I object, Judge.

5 THE COURT: Ladies and gentlemen of the jury panel,
6 you are the judges of the facts of the case. It will be up
7 to you to determine the credibility of it. Thank you.

8 MR. SLOCUM: Nothing further.

9 THE COURT: Thank you.

10 **JURY CHARGE**

11 THE COURT: Ladies and gentlemen of the jury panel,
12 if you will please give me your complete and undivided
13 attention. It is now my duty to instruct you on the law
14 that applies to the facts of this case as you find the
15 facts to be.

16 The manner in which I instruct the jury on the law
17 is I instruct the general criminal law that applies to all
18 criminal cases in South Carolina. Then I will charge you
19 the particular charges in the indictments. Thereafter, I
20 will cover the form of the verdict. Typically I will give
21 you the subject matter of the particular area I'm fixing to
22 cover when I change from one subject matter to the next
23 one, I will give you the heading.

24 This instruction to you is very well scripted. It
25 will probably take about 25 minutes. I will make sure I

1 cover it all and as I say, if you please, give me your
2 undivided attention.

3 Charge, arrest and indictment is not evidence. The
4 indictments charge the defendant with burglary in the first
5 degree, attempted murder, and as lesser-included offenses,
6 assault and battery of a high and aggravated nature and
7 assault and battery in the first degree which I will
8 explain and further instruct you further in my charge. And
9 finally, possession of a firearm during the commission of a
10 violent crime.

11 I remind you that the fact the defendant was
12 arrested, charged, and indicted in this case is not
13 evidence in the case and cannot be considered by you as
14 evidence of guilt in this case; nor do the indictments
15 create any presumption or inference of guilt.

16 These documents, as I have told you on other
17 occasions are simply the formal written instruments which
18 contains the charges made against the defendant. They are
19 the formal document by which this case is brought before
20 the Court.

21 Multiple charges. The indictments in the case
22 allege several different offenses against the defendant.
23 Burglary in the first degree, attempted murder, possession
24 of a firearm during the commission of a violent crime.
25 Each indictment charges a separate and distinct offense.

1 You must decide each indictment separately on the evidence
2 and the law that applies to it uninfluenced by your
3 decision as to any other indictment. I will give you this
4 caveat: I will cover it further in my charge. As to the
5 charge of possession of a firearm during the commission of
6 a violent crime, you first find the defendant guilty of a
7 violent crime before could find the defendant guilty of
8 possession of a firearm during the commission of a violent
9 crime. As I state, I will explain that to you further in
10 my charge.

11 The defendant may be convicted or acquitted on
12 either the burglary in the first-degree indictment, the
13 attempted murder indictment or the possession of a firearm
14 during the commission of a violent crime. You will be
15 asked to write a verdict of guilty or not guilty as to each
16 indictment.

17 Duties of trial jury and trial judge. I remind you
18 that during this trial, you and I have certain distinct
19 duties to perform. As the trial judge it is my
20 responsibility to preside over the trial of this case and I
21 also have the duty to rule on the admissibility of the
22 evidence offered during the trial. You are to consider
23 only the competent evidence before you.

24 If there was any testimony ordered stricken from
25 the record, you must disregard that testimony. You are to

1 consider only the testimony which has been presented from
2 the witness stand, any exhibits which have been made part
3 of the record and any stipulations by the attorneys.

4 I have the additional duty to charge you the law
5 that applies to the case. As the presiding judge, I am the
6 sole judge of the law of this case and it is your duty as
7 jurors to accept and apply the law as I now state it to
8 you. If you already have any idea as to what the law is or
9 what the law ought to be and it does not agree with what I
10 now tell you the law is, you must abandon your idea, you
11 must set it aside, because you are sworn, you have taken an
12 oath to accept the law and apply the law exactly as I state
13 it to you. In every case tried in this courtroom before a
14 jury, the jury becomes the sole and exclusive judge of the
15 facts in a case.

16 A trial judge cannot intimate, state, comment on,
17 or make any statement to a trial jury about the facts in a
18 case. Since you, the jury, are the sole judge of the
19 facts, you are not to infer from what I have said during
20 the progress of this trial in ruling upon the admissibility
21 of evidence or otherwise, or anything that I say now during
22 the course of this instruction to you that I have any
23 opinion about the facts in this case. The law does not
24 allow me to have an opinion about the facts in the case.
25 This is a matter solely for you, the jury, to determine.

1 As jurors, it is your duty to determine the effect, the
2 value, the weight, and the truth of the evidence that has
3 been presented during the trial.

4 Presumption of innocence: The defendant has pled
5 not guilty to the indictments and that plea puts the burden
6 on the State to prove the defendant guilty. A person
7 charged with committing a criminal offense in South
8 Carolina is never required to prove himself innocent. I
9 instruct you that it is an important rule of the law that
10 and a defendant in a criminal trial, no matter what the
11 seriousness of the charge may be, will always be presumed
12 to be innocent of the crime for which the indictment was
13 issued unless guilt has been proven by evidence satisfying
14 you, the jury, of that guilt beyond a reasonable doubt.
15 This presumption of innocence does not end when you begin
16 your deliberations, but it accompanies the defendant
17 throughout the trial until you reach a verdict of guilt
18 based on evidence satisfying you of that guilt beyond a
19 reasonable doubt. The presumption of innocence has been
20 said to be like a robe of righteousness placed about the
21 shoulders of the defendant which remains with the defendant
22 until it has been stripped from the defendant by evidence
23 satisfying you of the defendant's guilt beyond a reasonable
24 doubt.

25 The presumption of innocence is not a mere legal

1 theory. It is not just a legal phrase. It is a
2 substantial right to which every defendant is entitled,
3 unless you, the jury, are satisfied from the evidence of
4 the defendant's guilt beyond a reasonable doubt.

5 What is a reasonable doubt in the law? A
6 reasonable doubt is the kind of doubt that would cause a
7 reasonable person to hesitate to act. The State has the
8 burden of proving the defendant guilty beyond a reasonable
9 doubt. Some of you may have served as jurors in civil
10 cases in the past, where you were told that it is only
11 necessary to prove that a fact is more likely true than not
12 true, such as by the greater weight or the preponderance of
13 the evidence. In criminal cases, the State's proof must be
14 more powerful than that. It must be beyond a reasonable
15 doubt. Proof beyond a reasonable doubt is proof that
16 leaves you firmly convinced of the defendant's guilt.

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

1 guilty.

2 Direct and circumstantial evidence: There are two
3 types of evidence which are generally presented during the
4 trial; direct evidence and circumstantial evidence. Direct
5 evidence is the testimony of the person who claims to have
6 actual knowledge of the facts such as an eyewitness or an
7 ear witness. It is evidence which immediately establishes
8 the main fact to be proven. I saw this. I heard this.
9 Something perceived by our senses.

10 Circumstantial evidence is proof of a chain of
11 facts and circumstances indicating the existence of a fact.
12 It is evidence which immediately establishes collateral
13 facts from which the main fact may be inferred.
14 Circumstantial evidence is based on inference and not on
15 personal knowledge or observation. The law, our law makes
16 absolutely no distinction between the weight or the value
17 of either direct or circumstantial evidence; nor is a
18 greater degree of certainty required of circumstantial
19 evidence than of direct evidence.

20 You should weigh all of the evidence in the case.
21 After weighing all the evidence if you are not convinced of
22 the guilt of the defendant beyond a reasonable doubt, you
23 must find the defendant not guilty. If after weighing all
24 of the evidence you are convinced of the guilt of the
25 defendant beyond a reasonable doubt, you must find the

1 defendant guilty.

2 Credibility of the witnesses: Necessarily you must
3 determine the credibility of the witnesses who have
4 testified in this case. Credibility, as you all know,
5 simply means believability. It becomes your duty as jurors
6 to analyze and to evaluate the evidence and determine which
7 evidence convinces you of its truth. In determining the
8 believability of the witnesses who have testified in this
9 case, in using your individual and your collective common
10 sense and good judgement, you may believe one witness over
11 several, or several witnesses over one. You may believe a
12 part of the testimony of a witness and reject the remaining
13 part of the testimony of that same witness. You may
14 believe the testimony of a witness in its entirety or
15 reject the testimony of a witness in its entirety. You may
16 consider whether any witness has exhibited to you any
17 interest, bias, prejudice, or other motive in this case.
18 You may also consider the appearance and manner of the
19 witness while on the witness stand. You take into account
20 anything that is in this record that will help you evaluate
21 the credibility, the believability of any or all witnesses
22 who have testified in this case. Remember -- remember, you
23 are the sole judges of the facts in the case and the
24 believability of the witnesses who have testified.

25 Expert witnesses: Normally, again, you've heard me

1 say this, a person cannot give opinion testimony. Normally
2 when a person testifies, they must testify as to what they
3 either saw, heard, sensed by smell, or something of that
4 nature. However, there is that exception when someone who
5 is qualified because of education and experience in a
6 particular art, science, craft, profession. They are
7 permitted to give their opinion in certain areas if the
8 Court qualifies them that way. That does not mean that you
9 must accept the opinion, but it is evidence for you, the
10 jury, to use in any way you see fit and give the weight and
11 credibility you think is appropriate. You do not have to
12 believe the testimony of an expert witness even -- simply
13 because the person has been qualified as an expert and even
14 though it may be un-contradicted.

15 Intent: In order to establish criminal liability,
16 criminal intent is required. For example, in some cases,
17 the mental state for a particular crime may be purpose,
18 intent, knowledge, weapons, criminal negligence. Criminal
19 intent must be proven by the State beyond a reasonable
20 doubt. Criminal intent is always a matter that must be
21 determined by the jury from the circumstances surrounding
22 the situation.

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

1 So the law says that criminal intent may be inferred from
2 the circumstances to have existed. This is how you make
3 your determination of whether or not the element requiring
4 intent was present. It is not necessary to establish
5 intent by direct, positive evidence, but intent may be
6 established by inference in the same way as any other fact
7 by taking into consideration the acts of the parties and
8 all the facts and circumstances of the case. Criminal
9 intent is a mental state, a conscious wrongdoing. It is up
10 to you to determine what the defendant intended to do based
11 on all the facts and circumstances shown to have existed.

12 Now, ladies and gentlemen, that is the general law
13 that applies to all criminal cases in South Carolina. Now,
14 the order in which I will charge first is burglary in the
15 first-degree is, of course, a statute in South Carolina.

16 The defendant is charged with first-degree
17 burglary. The State must prove beyond a reasonable doubt
18 that the defendant entered a dwelling without consent. A
19 dwelling is defined as any building or portion of a
20 building in which a person ordinarily sleeps. A building
21 constructed as a dwelling that has never been occupied
22 cannot be considered a dwelling for purposes of burglary,
23 but a building is a dwelling even if the residents are
24 temporarily absent from the building.

25 In order to prove that the defendant entered the

1 dwelling, the State does not have to show the defendant's
2 entire body entered is dwelling. The smallest entry is
3 sufficient. It may be any part of the body, such as a hand
4 or foot or even an instrument such as a hook or other
5 instrument. In addition, the State does not have to prove
6 that force was used the gain entry.

7 Next, the State must prove beyond a reasonable
8 doubt that the defendant intended to commit a crime either
9 a felony or a misdemeanor at the time of the entry. The
10 mere entry into a dwelling without consent is not burglary.
11 If the intent to commit a crime is formed after the entry,
12 it is not burglary. On the other hand, if the defendant
13 intended to commit a crime at the time of the entry, it is
14 a burglary, even if the attempt was abandoned after entry.
15 It does not matter that the intended crime was not
16 committed or complete. Intent, as I stated previously in
17 the specific -- or in the general charge on intent -- may
18 be shown by the acts and conduct of the defendant and other
19 circumstances from which you may naturally and reasonably
20 infer intent. What did the person intend to do?

21 Finally, the State must prove beyond a reasonable
22 doubt that when entering or while in the dwelling or when
23 fleeing, the defendant was armed with a deadly weapon.

24 Enter a dwelling without consent, with the intent
25 the commit a crime, armed with a deadly weapon. A deadly

1 weapon is defined as any article, instrument or substance
2 which is likely to cause death or great bodily harm.
3 Whether an instrument has been used as a deadly weapon
4 depends on the facts and circumstances of each case. The
5 following are examples of instruments which may be
6 considered deadly weapons: A shotgun, rifle, pistol,
7 dagger, knife, metal knuckles, razor, and the like are
8 examples of deadly weapons.

9 As to the issue of entering a dwelling without
10 consent, the term, quote, entering a building without
11 consent, unquote, is statutorily defined to mean: To enter
12 a building without the consent of the person in lawful
13 possession. Is question to be determined is whether or not
14 the person had lawful possession of the property with
15 rights and privileges in the property.

16 Burglary is a crime against possession and
17 habitation. It is not a crime against ownership. The
18 victim of the burglary need not be the owner of the
19 dwelling. For example, a tenant and a landlord. If -- the
20 tenant can be a victim of burglary although not the owner
21 of the building. It's a crime against possession. It is
22 sufficient if the alleged victim was the occupant and
23 possessor of the dwelling at the time.

24 You must determine under the totality of the
25 circumstances where the person was in lawful possession of

1 the dwelling. The proper test is whether under the
2 totality of the circumstances, the person had custody and
3 control and the right and expectation to be safe and secure
4 in the dwelling, such as a tenant. You must look beyond
5 legal title and ownership to evaluate the totality of the
6 circumstances in determining whether or not was a person in
7 lawful possession with the right to withhold consent.

8 Next, ladies and gentlemen, I'm going to charge
9 attempted murder and then I'm going the also charge assault
10 and battery of a high and aggravated nature and assault and
11 battery in the first-degree as lesser-included offenses.
12 First I will charge attempted murder.

13 The defendant is charged with attempted murder. In
14 order to prove this crime, the State must prove the
15 defendant attempted to kill another person with malice
16 aforethought either express or implied. Malice is defined
17 in the law as hatred, ill will or hostility towards another
18 person. It is the intentional doing of a wrongful act
19 without just cause or excuse and with an intent to inflict
20 an injury or under circumstances the law would infer an
21 evil intent.

22 Malice aforethought does not require that malice
23 exist for any particular period of time before the act is
24 committed, but malice must exist in the mind of the
25 defendant just before and at the time the act is committed.

1 Therefore there must be a combination of a previous evil
2 intent and the act. Malice aforethought may be either
3 express malice or inferred malice. These terms express
4 malice and inferred malice do not mean different kinds of
5 malice but merely the manner in which malice may be shown
6 to exist. That is either by direct evidence or by
7 inference from the facts and circumstances which are
8 proven.

9 Express malice is shown when a person speaks words
10 which express hatred or ill will for another person; or
11 when the person prepared beforehand to do the act which was
12 later accomplished. For an example of express malice,
13 lying in wait for a person or any other act with
14 preparation going to show that the deed was within the
15 defendant's mind would be express malice. Malice may be
16 inferred from conduct showing total disregard for human
17 life. If facts are proven beyond a reasonable doubt
18 sufficient to raise an inference of malice to your
19 satisfaction, this inference would be simply an evidentiary
20 fact to be considered by you, the jury, along with the
21 other evidence in the case and you may give it the weight
22 and the value you should decide it should receive.

23 The specific intent to kill is not an element of
24 attempted murder. There must be a general intent to commit
25 serious bodily injury. Intent means intending the result

1 which actually occurs. Not accidental, not involuntary.
2 Intent may be shown by acts and conduct of the defendant
3 and other circumstances, again from which you may naturally
4 and reasonably infer intent.

5 Evidence of the character of the act. The
6 character of the instrument used, the manner in which it
7 was used, the purpose to be accomplished and the resulting
8 wounds or injuries may be considered in determining the
9 intent with which the act was committed. Intent may also
10 be inferred when it is demonstrated that the defendant
11 voluntarily and willfully commits an act, the natural
12 tendency is to destroy another's life.

13 Now, in the law, there is a standard in the law
14 that the greater crime includes lesser-included offenses.
15 The great -- the highest crime in this case is the crime,
16 the personal injury, is the crime of attempted murder.
17 Under that there are two lesser-included offenses if we
18 come down the scale of seriousness. The first
19 lesser-included offense is assault and battery of a high
20 and aggravated nature. The second, as you come down to
21 here from attempted murder, assault and battery of a high
22 and aggravated nature, and then assault and battery in the
23 first-degree.

24 A person commits the offense of assault and battery
25 of a high and aggravated nature if the person unlawfully

1 injures another person and (A) great bodily injury to
2 another person results or (B) the act was accomplished by
3 means likely to produce death or great bodily injury.
4 Great bodily injury is defined under assault and battery of
5 a high and aggravated nature, means bodily injury which
6 causes a substantial risk of death or which causes serious
7 permanent disfiguring or protracts loss or impairment for
8 the function of a bodily member or organ. So that is a
9 lesser-included offense, assault and battery of a high and
10 aggravated nature is a lesser-included offense of attempted
11 murder.

12 The next, as you come down the scale,
13 lesser-included offense is assault and battery in the
14 first-degree. A person commits the offense of assault and
15 battery in the first-degree if the person unlawfully
16 injures another person and the act occurred during the
17 commission of a burglary. You'll note in that definition,
18 the term great bodily injury is not required or defined and
19 malice aforethought is not required or defined. So it's
20 attempted murder, assault and battery of a high and
21 aggravated nature, assault and battery first-degree.

22 And finally ladies and gentlemen, possession of a
23 firearm during the commission of a -- or the attempt to
24 commit a violent crime is also a statute in South Carolina.
25 The defendant is charged with possession of a firearm

1 during the commission of or an attempt to commit a violent
2 crime. The State must prove beyond a reasonable doubt the
3 defendant was in possession of a firearm or visibly
4 displayed what appeared to be a firearm during the
5 commission of a violent crime. A firearm is defined by our
6 statute as a machine gun, automatic rifle, revolver, pistol
7 or any weapon which will or is designed or may be readily
8 concerted to expel a projectile. In order to find the
9 defendant guilty of possession of a firearm during the
10 commission of a violent crime, you must first find the
11 defendant guilty of either committing a violent crime or
12 attempting to commit a violent crime. I instruct you that
13 in South Carolina burglary in the first-degree is a violent
14 crime. Attempted murder is a violent crime. Assault and
15 battery of a high and aggravated nature is a violent crime.

16 The State must prove beyond a reasonable doubt if
17 the firearm furthered, advanced or helped in the commission
18 of a violent crime.

19 Ladies and gentlemen, the defendant has brought
20 forth the issue of self-defense. He has raised that
21 defense. Self-defense is a complete defense and it is --
22 and if it is established, you must find the defendant not
23 guilty. The State has the burden of proving disproving
24 self-defense by proof beyond a reasonable doubt. If you
25 have a reasonable doubt of the defendant's guilt after

1 considering all of the evidence, including the evidence of
2 self-defense, then you must find the defendant not guilty.

3 If, on the other hand, you have no reasonable doubt
4 as to the defendant's guilt after considering all of the
5 evidence including the evidence of self-defense, then you
6 must find the defendant guilty.

7 The following elements are required to establish
8 self-testifies. First, without fault. And if y'all would
9 please continue to give me your complete and you know
10 divided attention, I assure you that the end of my
11 instruction is in sight. I have about four more pages.
12 I'll move along.

13 Without fault, first. The defendant must be
14 without fault in bringing on the difficult. If the
15 defendant's conduct is the type which was reasonably
16 capsulated to and did provoke an assault, the defendant
17 would be at fault in bringing on the difficult and would
18 not be entitled an acquittal based on self-defense. First
19 a defendant must be without fault in bringing on the
20 difficulty.

21 Next, imminent danger. Is second element of
22 self-defense is that the defendant was actually in imminent
23 danger or serious bodily injury or that the defendant
24 actually believed he was in imminent danger of death or
25 serious bodily injury. If the defendant actually was in

1 imminent danger it must be shown that the circumstances
2 would have warranted a person of ordinary firmness and
3 courage to strike the blow, to prevent or commit the
4 conduct that was committed by the defendant to prevent
5 death or serious bodily injury. If the defendant believed
6 he was in imminent danger of death or serious bodily
7 injury, it must be shown that a reasonable prudent of
8 ordinary firmness and courage would have held that same
9 belief.

10 In deciding whether the defendant actually was or
11 believed he was in imminent danger of death or serious
12 bodily injury, you should consider all of the facts and
13 circumstances surrounding the crime, including the physical
14 condition and characteristics of the defendant and the
15 victim. And find no other way to avoid the danger.

16 The final element of self-defense is that the
17 defendant had no other probable way to avoid the danger of
18 death or serious bodily injury than to act as the defendant
19 did in the circumstances.

20 That concludes the charges of burglary in the
21 first-degree, attempted murder and the lesser included
22 offenses of assault and battery of a high and aggravated
23 nature and assault and battery in the first-degree.

24 Finally, ladies and gentlemen, as to your jury
25 verdict -- as to the charge of burglary in the

1 first-degree, they're are two probable verdicts which you
2 may find in the case. Guilty of burglary in the
3 first-degree or not guilty.

4 As to the charge of attempted murder, there are
5 four possible verdicts you may find in this case: Guilty
6 of attempted murder, or guilty of assault and battery of a
7 man, or guilty of assault and battery in the first-degree,
8 or not guilty.

9 As to the charge of possession of a firearm during
10 the commission of a violent crime, there are two possible
11 verdicts you may find in this case. If you do not find the
12 defendant guilty of violent crime being either burglary in
13 the first-degree, attempted murder or assault and battery
14 of a high and aggravated nature, you must find the
15 defendant not guilty. If you find the defendant guilty of
16 a violent crime in one of those three, then your verdict
17 could be either guilty or not guilty.

18 Ladies and gentlemen, you will have this form of
19 the verdict in there with you --

20 -- Madame Forelady. And it is listed as to
21 burglary in the first-degree guilty or not guilty and as to
22 attempted murder and it has the three charges and the not
23 guilty listed and as to possession of a weapon during the
24 commission of a violent crime. And parenthetically, I have
25 placed in there which one of those charges are violent

1 crimes. If there's nothing in there parenthetically, then
2 by it's omission it means that it's not a violent crime.
3 Assault and battery in the first-degree is not considered a
4 violent crime in South Carolina.

5 Basically, ladies and gentlemen, in your
6 deliberation, you decide what the facts are as to burglary
7 in the first-degree. If the State proved its case beyond a
8 reasonable doubt or not. If based on your determination of
9 the facts in the case, you find that the State has failed
10 to prove its case, taking your facts, applying them to the
11 law as I told you the law is, you find the State has failed
12 to prove its case as to burglary in the first-degree then
13 your verdict would be not guilty, you would check to the
14 left of those two words, not guilty and circle both the
15 check mark and those two words.

16 If you find that the State has proven its case
17 beyond a reasonable doubt as to burglary in the
18 first-degree, you would check to the left guilty of
19 burglary in the first-degree, check to the left and circle
20 both the check mark and guilty of burglary in the
21 first-degree.

22 Then as to attempted murder, I have them listed in
23 the degree of seriousness, guilty of attempted murder,
24 guilty of assault and battery of a high and aggravated
25 nature, guilty of assault and battery in the first-degree

1 and not guilty. Absolutely no significance whatsoever in
2 the order in which I have listed the potential or possible
3 verdicts, only that one must be listed.

4 And then thirdly, I have listed, of course,
5 possession of a firearm during the commission of a violent
6 crime.

7 Ladies and gentlemen, your verdicts must be
8 unanimous. All twelve of you must agree. Your verdict may
9 not be based on passion, prejudice, sympathy, bias, or any
10 other motive not in evidence in the case. It must be based
11 on the evidence and reasonable inference that you may draw
12 from the evidence.

13 Once you have reached those three unanimous
14 verdicts, Madame Forelady, there is a signature line on
15 page two if you would initial page one as the presiding
16 juror and date today's date. You date it whenever your
17 deliberations have been completed. Knock on the jury room
18 door and we will then receive you back in the courtroom for
19 your verdict.

20 Two things, the law requires me to do one final
21 thing outside the presence of the jury with the attorneys
22 in case I have forgotten anything, number one. If I have,
23 I may have to bring you back out. If I do not, everybody
24 looks great, our alternate would come out, the items,
25 physical items of evidence, would be brought to your jury

1 room and you will be instructed to begin your deliberations
2 by the clerk.

3 If at any time you have any questions for me during
4 your deliberations, just please write out a note, knock on
5 the jury room door and I will respond in the manner
6 necessary. Do not begin your deliberations until you're
7 instructed to do so.

8 Thank you. Thank you very much you may go with
9 your bailiff.

10 (The jury left the courtroom at 5:07 p.m.)

11 THE COURT: Any exceptions, Solicitor?

12 MR. SLOCUM: No, sir, Judge.

13 THE COURT: Mr. Hayes.

14 MR. HAYES: Judge, I don't want to ask the Court to
15 reread it, but when the Court was indicating as to
16 specifically to attempted murder I believe I heard the
17 Court indicate that the general intent could be used to
18 determine that. I believe I would have exception to that
19 based on State versus King.

20 THE COURT: Give me a copy of King. I'm not sure
21 which King you're talking about.

22 You're talking about during my charge on attempted
23 murder or my general intent charge?

24 MR. HAYES: As to the attempted murder as it being
25 a specific intent crime.

1 Your Honor, I hate to interrupt you, may Mr. Glover
2 use the restroom?

3 THE COURT: Sir.

4 MR. HAYES: Can Mr. Glover use the restroom?

5 THE COURT: Yes, sir, just give me a moment.

6 (The defendant left the courtroom with a deputy and
7 returned.)

8 THE COURT: All right. Would you bring our jury
9 back out.

10 Wait just a minute.

11 Is this all -- is that the only exception?

12 MR. HAYES: Yes, sir.

13 THE COURT: All right. And this is -- let me find
14 that and make sure --

15 All right. You can bring the jury.

16 MR. SLOCUM: Judge, I'm sorry. Can we get a
17 clarification on what was charged and what's going to be
18 charged. I'm just confused with what Mr. Hayes is alleging
19 and what was -- what the charge is going to be.

20 THE COURT: Well, as to attempted murder, 16-3-29,
21 on the last paragraph, second page of my charge, I charge a
22 specific intent to kill is not an element of attempted
23 murder that there must be a general intent to commit
24 serious bodily injury. According to the case handed up,
25 State versus King, which was decided interestingly April

1 22, 2015 and is not final until time expires to file for
2 motions and if filed, determined -- a court of appeals
3 decision, a case tried by Judge Nicholson in Charleston
4 County. Our court of appeals ruled that an opinion written
5 by the chief judge that this -- the legislature intended to
6 require the State to include the specific intent to kill as
7 an element of attempted murder. We find the legislature
8 intended to require the State to prove specific intent to
9 commit murder as an element of attempted murder and;
10 therefore, the trial court erred in charging the jury that
11 attempted murder is a general intent crime.

12 I would much have preferred that it would have
13 already been addressed, cerciorar not granted by our
14 Supreme Court that is sometime my practice. As justice --
15 Judge Few points out in here, I -- I was always under the
16 impression that erroneously, obviously, that attempted
17 murder was a complication of common law and assault and
18 battery with intent to kill and you went from that line of
19 cases that talked about specific intent not being required,
20 that general intent was appropriate. So in my charge I
21 read specific intent to kill is not an element of attempted
22 murder. There must be a general attempt to commit serious
23 bodily injury.

24 That's my -- my thoughts are to bring the jury out
25 focus them back on attempted murder and advise that I put

1 a -- that I put a not in there and that a specific intent
2 to kill is an element of attempted murder.

3 Now, I could be -- Mr. Keller who wrote the caption
4 "catch 22," I heard him speak one time and they asked him
5 why do you call it a catch 22. He said it's just a number.
6 You can call it catch 18. So I do. It's catch 18. I may
7 lose either way. I don't know what Court of Appeals on
8 rehearing -- it's an a new opinion and I don't know what
9 the Supreme Court would be like on cerciorar.

10 So you have a position, Solicitor?

11 MR. SLOCUM: Whatever your position, that's our
12 position.

13 THE COURT: That's your position you want me to
14 focus their attention on that attempted murder?

15 MR. HAYES: Yes, sir.

16 THE COURT: All right. Thank you. If you would
17 bring the jury panel back out, Mr. Whittle.

18 THE BAILIFF: Yes, sir.

19 THE COURT: What I think I will do is charge the
20 entire attempted murder again.

21 MR. HAYES: Yeah. Yeah.

22 (The jury entered the courtroom at 5:18 p.m.)

23 **RECHARGE OF JURY**

24 THE COURT: All right. Ladies and gentlemen, I am
25 sure the last thing you wanted to do is listen to me any

1 further, but I must correct one matter and since it's
2 incapsulated in one of the causes of action, I'm going to
3 recharge you just specifically on attempted murder rather
4 than to focus it on just one aspect of attempted murder.

5 As I told you attempted murder is a statute in
6 South Carolina under 16-3-29. It was codified in 2010.
7 Prior to that there was not a codified charge of attempted
8 murder. It came out as part of a crime in 2010.

9 The defendant is charged with attempted murder. In
10 order to prove this crime, the State must prove the
11 defendant attempted to kill another person with malice
12 aforethought either expressed or implied. Again, malice is
13 hatred, ill will, hostility towards another person. It is
14 the intentional doing of a wrongful act without just cause
15 or excuse and with the intent to inflict an injury or under
16 circumstances that the law could infer evil intent. Malice
17 aforethought does not require that malice exist for any
18 particular time before the act is committed, but malice
19 must exist in the minds of -- in the mind of the defendant
20 just before and at the time the act was committed.
21 Therefore, there must be a combination of the act and the
22 previous evil intent.

23 Malice aforethought may be expressed or inferred.
24 These terms express or inferred do not mean two different
25 kinds of malice, but merely the manner in which malice may

1 be shown to exist. That is either by direct evidence or by
2 inference from the facts and circumstances which are
3 proven.

4 Express malice is shown when a person speaks words
5 which express hatred or ill will for another or when the
6 person prepared beforehand to do the act which was later
7 accomplished. For example, by lying in wait for a person
8 or any other acts in preparation going to show that the
9 deed was within the defendant's mind would be expressed
10 malice. Malice may be inferred from conduct shown --
11 showing a total disregard for human life. If facts are
12 proved beyond a reasonable doubt sufficient to raise an
13 inference of malice to your satisfaction, this inference
14 would be simply evidentiary fact to be considered by you,
15 the jury, along with the other evidence in the case and you
16 may give it the weight and the value you decide it should
17 receive.

18 The State must prove specific intent to commit
19 murder as an element of attempted murder. Intent means
20 intending the result which actually occurs, not accidental
21 or involuntarily. Intent may be shown by acts and conduct
22 of the defendant and other circumstances from which you may
23 naturally and reasonably infer intent. Evidence of the
24 character of the act, the characteristics of the instrument
25 used, the manner in which it was used, the purpose to be

1 accomplished as the resulting wounds or injuries may be
2 considered in determining the intent with which the act was
3 committed.

4 Intent may also be inferred when it is demonstrated
5 that the defendant voluntarily and willfully commits an
6 act, a natural tendency of which is to destroy another
7 person's life.

8 So I've recharged you as to the charge of attempted
9 murder. Incapsulate that, of course, with my previous
10 charge of attempted murder, assault and battery of a high
11 and aggravated nature and assault and battery in the
12 first-degree.

13 With that being said, again if you would are return
14 to your jury room momentarily. Do not discuss the case
15 until you're instructed to do so.

16 Thank you Madame Bailiff.

17 (The jury left the courtroom at 5:23 p.m.)

18 THE COURT: Anything further, Mr. Hayes?

19 MR. HAYES: No, sir.

20 THE COURT: I'm somewhat taken aback that I was not
21 familiar with this case that came out April 22nd and
22 charged the jury May 14th and did not realize that and it
23 was not brought to my attention prior to my charge. I will
24 certainly try to be better in that regard.

25 Any objections from the State?

1 MR. SLOCUM: No, sir.

2 THE COURT: Any other objections from -- by the way
3 I note that it was highlighted too.

4 Any other objections, Mr. Hayes?

5 MR. HAYES: No, sir.

6 THE COURT: All right. Are these straight? Are
7 these straight and in order? Get them to the jury.

8 We'll be awaiting our jury.

9 (The attorneys and the court reporter were putting
10 the exhibits in order.)

11 (Deliberations began at 5:28 p.m.)

12 (There was a question sent to the Court by the
13 jury.)

14 **JURY QUESTION**

15 THE COURT: All right. Court's Exhibit Number 2,
16 the first question is, What is the difference between
17 guilty of attempted murder and guilty of assault and
18 battery of a high and aggravated nature. Without -- if
19 there are no objections, I intend to recharge attempted
20 murder and assault and battery of a high and aggravated
21 nature.

22 Do you have any position on that Mr. Hayes?

23 MR. HAYES: No, sir.

24 THE COURT: Solicitor?

25 MR. SLOCUM: None from the State, Your Honor.

1 THE COURT: The second question is, Need CD player.

2 MR. SLOCUM: We can provide one for them, Judge.

3 Normally, this one here I believe is -- I want to make sure
4 I use the correct term -- cut off from any ability to get
5 on the internet. It doesn't allow it. We can only -- they
6 can only access the player or if they want to play the CD,
7 we can bring them out here and play it in open court.

8 THE COURT: You have a position, Mr. Hayes?

9 MR. HAYES: I have no objection to either, Judge.
10 I'm familiar with that computer not being able to access
11 outside information.

12 THE COURT: So you don't have any objections to the
13 computer going in there and the jury using it?

14 MR. HAYES: No, sir, I don't object to that.

15 THE COURT: And you don't object to that?

16 MR. SLOCUM: No, sir.

17 THE COURT: All right. Bring our jury out, please.

18 (The jury entered the courtroom at 6 :22 p.m.)

19 THE COURT: All right. Welcome back, ladies and
20 gentlemen. I received your note now marked Court's Exhibit
21 Number 2. The first question is what is the difference
22 between guilty of attempted murder and guilty of assault
23 and battery of a high and aggravated nature.

24 **RECHARGE OF THE JURY**

25 THE COURT: I'll recharge you on attempted murder

1 and on assault and battery of a high and aggravated nature.

2 As far as attempted murder -- and keep in mind my
3 previous charge as to issue of intent.

4 The defendant is charged with attempted murder. In
5 order to prove this crime, the State must prove the
6 defendant attempted to kill another person with malice
7 aforethought express or implied. Malice is hatred, ill
8 will, or hostility towards another person. It is the
9 intentional doing of a wrongful act without just cause or
10 excuse and with an intent to inflict an injury or under
11 circumstances that the law would infer an evil intent.

12 Malice aforethought does not require that malice
13 exist for any particular time before the act is committed,
14 but malice must exist in the mind of the defendant just
15 before and at the time the act is committed. Therefore
16 there must be a combination of the previous evil intent and
17 the act. Malice aforethought may be either express malice
18 or inferred malice. These terms express or inferred malice
19 do not mean different kinds of malice but merely the manner
20 in which malice may be shown to exist. That is either by
21 direct evidence or by inference from the facts and
22 circumstances which are proven.

23 Express malice is shown when a person speaks words
24 which express hatred or ill will for another; or when the
25 person prepared beforehand to do the act which was later

1 accomplished. For an example, lying in wait for a person
2 or any other acts of preparation going to show that the
3 deed was within the defendant's mind would be express
4 malice. Malice may be inferred from conduct showing a
5 total disregard for human life. If facts are proven beyond
6 a reasonable doubt sufficient to raise an inference of
7 malice to your satisfaction, this inference would be simply
8 an evidentiary fact to be considered by you, the jury,
9 along with the other evidence in the case and you may give
10 it the weight you decide it should receive.

11 A specific intent to kill is an element of
12 attempted murder. Intent means intending the result which
13 actually occurs. Not accidental or involuntary. Intent
14 may be shown by acts and conduct of the defendant and other
15 circumstances, from which you may naturally and reasonably
16 infer intent.

17 Evidence of the character of the act. The
18 character of the instrument used, the manner in which it
19 was used, the purpose to be accomplished and the resulting
20 wounds or injuries may be considered in determining the
21 intent with which the act was committed. Intent may also
22 be inferred when it is demonstrated that the defendant
23 voluntarily and willfully commits an act, the natural
24 tendency of which is to destroy another's life.

25 That is attempted murder. Now under the theory of

1 the greater includes the lesser. The next level down would
2 be assault an battery of a high and aggravated nature.

3 A person commits the offense of assault and battery
4 of a high and aggravated nature if the person unlawfully
5 injures another person and (A) great bodily injury to
6 another person results or (B) the act was accomplished by
7 means likely to produce death or great bodily injury. So
8 the intent required for assault an batter of a high and
9 aggravated nature is unlawful. Unlawfulness and a person's
10 great bodily injury -- does great bodily injury to another
11 person or the act was accomplished by means likely to
12 produce death or great bodily injury. Great bodily injury
13 is defined to mean bodily injury which causes a substantial
14 risk of death or which causes serious permanent disfiguring
15 or protracted loss or impairment for the function of a
16 bodily member or organ. So that is the charge of attempted
17 murder and the lesser-included offense -- both statutory
18 offenses -- of assault and battery of a high and aggravated
19 nature.

20 As to the need for a CD player, the parties have
21 agreed that the computer that is used over here, I guess
22 would be considered a secured computer that has no access
23 to the internet, something of that nature. I'm assuming
24 all or many of you would know how to use it, so --

25 The CD is in evidence?

1 MR. SLOCUM: Yes, sir.

2 THE COURT: In the jury room?

3 MR. SLOCUM: Yes, sir.

4 THE COURT: All right. We will have the bailiff
5 bring that in to you.

6 Someone can operate it, correct?

7 All right. Thank you. Thank you. If you have any
8 questions, Madame Forelady, I know you know how to write
9 me a note.

10 Thank you very much. Please continue your
11 deliberations. You may go with the bailiff.

12 (The jury left the courtroom at 6:28 p.m.)

13 THE COURT: Any exceptions, Solicitor?

14 MR. SLOCUM: None from the State, Judge.

15 THE COURT: Mr. Hayes?

16 MR. HAYES: We would just ask the Court to consider
17 re-instructing self-defense as well.

18 THE COURT: They didn't ask. I generally charge
19 the jury -- I can bring them back out and tell them the
20 entire charge. That's incapsulated inside the entire
21 charge. There is a case that had more to do with sending
22 the transcript in, Oemird, I don't know how to pronounce
23 it, O-e-m-i-r-d. But I generally charge what they ask.

24 MR. SLOCUM: The State would object to that, Judge.
25 We've answered their question.

1 THE COURT: All right. You can send that on in.
2 Let me look at that case real quick. Like I say it had to
3 be a written instruction.

4 All right. State versus Shaun Anderson, 470 SE 2d,
5 103, a 1996 case, said no negative treatment -- it is well
6 settled in South Carolina when a jury requests an
7 additional charge it is sufficient for the Court to charge
8 only those matters necessary to answer the jury's request,
9 citing State versus Barksdale. Here the trial judge gave
10 the King charge as part of his original instructions.
11 That's not the King charge I gave them today, but that's
12 the King charge I use for reasonable doubt.

13 The jury requested to recharge only the definition
14 of murder, malice, and involuntary manslaughter and the
15 recharge was properly limited to answering the jury's
16 question. We find no error.

17 So with that being said, I have answered the jury's
18 question and rely on State versus Anderson.

19 Thank you, thank you very much. We will be at
20 ease.

21 (Court was at ease awaiting the jury's verdict.)

22 (A question from the jury was sent to the Court.)

23 **JURY QUESTION**

24 THE COURT: All right. I received a note from the
25 jury, Court's Exhibit now marked Number 3. Can you give an

1 example of guilty of assault and battery of a high and
2 aggravated nature without reading the law.

3 All right. Solicitor?

4 MR. SLOCUM: Judge, I'm not sure of any other way
5 to do it other than charging what you've already read.

6 THE COURT: All right. Mr. -- thank you.

7 Mr. Hayes.

8 MR. HAYES: I agree with that, Judge.

9 THE COURT: You can bring them out.

10 (The you jury entered the courtroom at 8:01 p.m.)

11 THE COURT: All right. Madame Forelady, ladies and
12 gentlemen, welcome back. I received your question, Can you
13 give an example of guilty of assault and battery of a high
14 and aggravated nature without reading the law.

15 I think the short answer to that is no, I can't.
16 That is the development of the law given the fact that --
17 as you recall, part of my charge is duties of the trial
18 jury and duties of the trial judge, you being the judges of
19 the facts in the case and me being the judge of the law.
20 If I give an example, it would tend to give you what other
21 jurors or other juries may have found rises to the level of
22 assault and battery of a high and aggravated nature, and I
23 would not be able to control all the various factors and
24 variables and have full and complete knowledge of that,
25 number one. And number two, they frown -- maybe not as

1 strong a word as I need to use -- but they frown on us
2 giving examples because that could be interpreted as
3 somehow a comment on the facts, or a parallel, perhaps to
4 the facts in this case.

5 I can tell you the statute is, of course, one
6 person unlawfully injures another person and either great
7 bodily injury as defined by the statute is also present or
8 the act was accomplished by means likely to present death
9 or great bodily injury. But I cannot share an example
10 under the case law or one that I can formulate in my mind.
11 You determine the facts as you, the jury, find them to be
12 and you then compare that to the standards of the law, both
13 the offense as listed in the indictments and of course the
14 lesser-included offense or offenses.

15 If you find that the State has proved those
16 elements or has not proved those elements beyond a
17 reasonable doubt, based on your facts and the law as I told
18 you, you would find the defendant not guilty. If you find
19 the State has met its burden of proof and you compare those
20 facts to the standard of the law and you found the State
21 has proven its case beyond a reasonable doubt as to that
22 charge or whatever charge, you would find the defendant
23 guilty.

24 So that would be my response. I will certainly try
25 to respond to any other questions you may have. If you

1 need anything, please let me know. Thank you very much, if
2 you would please return to the jury room and continue your
3 deliberations.

4 (The jury left the courtroom at 8:06 p.m.)

5 THE COURT: All right. Any exceptions, Solicitor?

6 MR. SLOCUM: No, sir. None from the State.

7 THE COURT: Mr. Hayes?

8 MR. HAYES: No, sir.

9 THE COURT: Thank you. Thank you very much. We'll
10 be at ease awaiting our verdict.

11 (Court was at ease awaiting the jury's verdict.)

12 (It was reported to the Court that the jury
13 foreperson had made an error on the verdict form and needed
14 another one. Another one was made available to the jury.)

15 (It was reported to the Court that the jury had
16 reached a verdict at 8:18 p.m.)

17 (The jury entered the courtroom at 8:26 p.m.)

18 THE COURT: All right. Madame Clerk.

19 THE CLERK: Madame Forelady, have you reached a
20 verdict?

21 THE FOREPERSON: Yes.

22 THE CLERK: Please pass it forward with the
23 bailiff.

24 (The verdict form was handed to the Court.)

25 THE BAILIFF: Your Honor?

1 THE COURT: Yes, ma'am?

2 THE BAILIFF: That's the one that was done in
3 error.

4 THE COURT: All right. The verdict form appears to
5 be in the -- the verdict appears to be in the proper form.

6 Madame Clerk, would you publish our verdict.

7 THE CLERK: Yes, sir.

8 **VERDICT**

9 THE CLERK: Your Honor, in the State of South
10 Carolina versus David Glover, Indictment Number
11 2014-GS-02-01252, as to the charge of burglary in the
12 first-degree, We, the jury, unanimously find the defendant
13 not guilty.

14 Indictment 2014-GS-02-01254, as to the charge of
15 attempted murder, We, the jury, unanimously find the
16 defendant guilty of attempted murder.

17 Indictment 2014-GS-02-01253, as to the charge of
18 possession of a firearm during the commission of a violent
19 crime, We, the jury, unanimously find the defendant guilty
20 of possession of a firearm during the commission of a
21 violent crime.

22 Signed and dated by Vicky Johnson, May 14, 2015.

23 THE COURT: Thank you. Thank you very much, Madame
24 Clerk.

25 Anything further from the jury from the State?

1 MR. SLOCUM: No, sir, Judge.

2 THE COURT: From the defense?

3 MR. HAYES: No, sir.

4 THE COURT: All right. Thank you.

5 Madame Forelady, ladies and gentlemen of the jury,
6 momentarily, I will release you from your jury service. I
7 never criticize nor commend a jury for a verdict or the
8 verdicts they reach; however, I will say the focus and
9 attention you've shown all the parties throughout the
10 course of the trial and the focus and attention you've
11 shown the Court is greatly appreciated.

12 I realize you were the only ones in this courtroom
13 that were draftees. The last draftees left in America
14 since the early 70's. So perhaps you set the standards for
15 your community. I salute you in your civic pride in
16 fulfilling your duty as jurors and resolving this matter
17 between the State and one of its citizens. I hope you
18 never find yourself a part of the criminal justice system
19 again. However, as I say, I have not worked with a more
20 focused, hard working, more attentive, patient jury as you
21 have been. Without your participation in this county and
22 all the other 45 counties of the state week to week, these
23 parties could not be about the very important of business
24 of administering your criminal and civil justice system.
25 It's been my pleasure and honor to be with y'all in Aiken

1 County. It might not be my favorite County to work in in
2 South Carolina, but it's in the top five.

3 Thank you. Thank you very much.

4 Any further instructions from the jury from the
5 clerk's office, Madame Clerk?

6 THE CLERK: No, sir.

7 THE COURT: All right. Thank you, thank you very
8 much. You're now released from your jury service. Thank
9 you. Thank you very much.

10 (The jury left the courtroom at 8:34 p.m.)

11 THE COURT: All right. Anything further from the
12 State?

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

14 THE COURT: From the defense?

15 MR. HAYES: Judge, I would renew my motions
16 previously made through the trial. We would also ask for a
17 new trial.

18 THE COURT: All right. Thank you, thank you very
19 much. As far as renewing your motions, I would renew all
20 my previous trial rulings and my motion -- my rulings as to
21 your motion for directed verdict. Further I will
22 respectfully deny the motion for a new trial.

23 All right. Sheriff, Mr. Glover is in the custody
24 of the Aiken County Detention Center, if y'all would please
25 have him back here Monday morning.

1 Thank you, thank you very much.

2 (Court was in recess for the weekend and sentence
3 was imposed on Monday, May 18, 2015.)

4 MONDAY, MAY 18, 2015

5 MR. SLOCUM: David Glover.

6 DAVID GLOVER, was duly sworn.

7 **SENTENCE**

8 MR. SLOCUM: Your Honor, before the Court is David
9 Glover. He's represented by Mr. Dave Hayes of the public
10 defender's office. Mr. Glover is before you on two
11 indictments 2014-GS-02-1254, an indictment for attempted
12 murder. 2014-GS-02-1253, an indictment of possession of a
13 firearm during a violent crime.

14 Mr. Glover was convicted at trial last Thursday,
15 May 14, 2015 as heard before Your Honor and we are here
16 today to discuss the issue of sentencing.

17 THE COURT: Thank you. Before I get into any
18 aggravation, Solicitor, I would like to have marked for the
19 record the verdict form that Thursday was provided to me by
20 the bailiff. The jury indicated on Indictment
21 2014-GS-02-01252, the indictment for burglary in the
22 first-degree that they found Mr. Glover not guilty. The
23 second indictment, 2014-GS-02-01254, the charge of
24 attempted murder, the jury, of course had the options, four
25 possible verdicts, guilty of attempted murder or guilty of

1 assault and battery of a high and aggravated nature, or
2 guilty of assault and battery in the first-degree, or not
3 guilty. And the third indictment, possession of a weapon
4 during the commission of a violent crime, the jury found
5 the defendant guilty of possession of a firearm during the
6 commission of a violent crime.

7 As to number two, indictment on the attempted
8 murder, my instructions, they checked to the left of guilty
9 of assault and battery of a high and aggravated nature, but
10 did not circle those words as I instructed them to do.
11 It's my understanding that was not a unanimous verdict of
12 the jury. They x'd through that, the foreperson initialled
13 it, and then checked to the left of guilty of attempted
14 murder of a violent crime and circled that.

15 I sent in a second verdict form, exact duplicate of
16 the verdict form that was sent with the jury at the close
17 of the evidence and the instruction of the Court. They
18 found not guilty of burglary, guilty of attempted murder,
19 guilty of possession of a firearm during the commission of
20 a violent crime. That one was in proper form. The other
21 verdict form, I want to mark it as whatever is the next
22 court's exhibit.

23 Anything in that regard, Solicitor?

24 MR. SLOCUM: Nothing from the State, Judge. I have
25 seen the verdict form that you've referenced.

1 THE COURT: Mr. Hayes?

2 MR. HAYES: I have seen it, as well, Judge.

3 (Court's Exhibit Number 4 was marked.)

4 THE COURT: You have anything additional before
5 sentencing solicitor?

6 MR. SLOCUM: Yes, sir, I just want to notify the
7 Court that the victim, Ms. Weaver, is present and would
8 like to address the Court at the appropriate time and I'd
9 just like to thank SLED and the sheriff's department for
10 their work in this case, not just the night in question,
11 but over the past year.

12 THE COURT: All right. Thank you. Solicitor.
13 I'll be glad to hear from Ms. Weaver.

14 MR. SLOCUM: Okay.

15 THE COURT: Have her come around.

16 Good morning, Ms. Weaver. Would you state your
17 full name for the record.

18 THE VICTIM: Verne'll Weaver.

19 THE COURT: All right. I'll be glad to hear from
20 you Ms. Weaver.

21 THE VICTIM: First of all, I just want to thank God
22 that I'm still alive.

23 And David, I just want to say to you that I really
24 didn't know that you hated me so much that you would try
25 and kill me.

1 Okay. Okay. But I thank God that He has a plan
2 for my life and that after the fact he tried to kill me he
3 lied. He know I never tried to hurt him with the hammer
4 and he knew I never invited him to the house. And then he
5 acted as though he didn't care when he got on the witness
6 stand and he just lied. It just didn't seem like it
7 mattered to him.

8 But you need help. I know the rest of us, we have
9 problems that we go through. But when a person's trying to
10 take another person's life, that's a very dangerous person.
11 Not only do you need help, you should want to get help.
12 May God bless you just as He blessed me that day. I don't
13 have time to hate you. I've got too much to deal with
14 right now and I know that you hurt your family, and not
15 only did you hurt your family, but you hurt my family.

16 And I want to say this: The Bible said that we
17 don't get joy out of somebody else's pain, so I ask that
18 God have mercy on you. But He also said that we must owe
19 bay the law of the land, and you broke the law that day,
20 David.

21 That's all I have to say.

22 THE COURT: Thank you. Thank you very much,
23 Ms. Weaver.

24 Anything additional?

25 MR. SLOCUM: Nothing from the State, Judge.

1 THE COURT: Any prior criminal history?

2 MR. SLOCUM: Judge he has a 1983 shoplifting; 1996
3 criminal domestic violence; a 2012 domestic violence.
4 There's no position from the State on sentencing.

5 THE COURT: Now, the 2012 criminal domestic
6 violence, as I recall the testimony, he and Ms. Weaver were
7 together for 13 years. Was she the victim of the 2012
8 criminal domestic violence.

9 MR. HAYES: Yes, sir. My understanding the both of
10 them were arrested at his other sister's house over on the
11 corner of Barnwell -- she called the police on both of them
12 fighting in the yard and they both were arrested.

13 THE COURT: All right. Thank you.
14 Anything further, Solicitor?

15 MR. SLOCUM: No, sir, Judge, not from the State.

16 THE COURT: All right. Mr. Hayes, I'll be glad the
17 hear from you.

18 MR. HAYES: May it please the Court, Judge.
19 Mr. Glover is 54 years of age. Prior to being arrested,
20 Judge. He had worked at Rieder for about a year and then
21 was laid off. He tells me that as a machine operator.

22 At that point in time, he was on unemployment and
23 looking for work, that he has done plant work and
24 construction in the past. He was originally born in
25 Brooklyn, New York and had moved here at the age of 13. He

1 attended LBC High School and finished the 12th grade in
2 1979. In 1980, he was trained for pipe fitting.

3 Judge, he is married. He's been separated from
4 that wife for 11 years. He and his wife had three children
5 together, all of them which are grown and live in the North
6 Augusta area. Judge, he is a diabetic and he has to get
7 insulin and has been so for the last 10 years.

8 Judge, we know that we were convicted at trial.
9 It's still our position and our story -- and I know the
10 Court heard that story. Judge, what we would like the
11 Court to consider in sentencing Mr. Glover is his age and
12 his health. He is 54 years of age. Under this charge, we
13 realize that it's 85 percent, no parole and that once he
14 finishes that he will have two years of supervised release.
15 We would like to ask the Court to consider a 10 year
16 sentence, concurrent. That would put him at 62 years old,
17 if he -- if he makes it to 62. And the supervised
18 release -- and then two years of supervised release would
19 put him at 64 years of age.

20 Judge, he has been incarcerated in the Aiken County
21 jail for 373 days today and we would ask the Court to give
22 him credit for that time served.

23 THE COURT: How many days?

24 MR. HAYES: 373, Judge.

25 His sister was here throughout the trial when she

1 was able to. He has multiple sisters, but one sister was
2 here. I did not see her this morning. As well as his
3 niece and his mother. His mother was only able to handle
4 one day though -- of the trial, due to health. She said
5 that -- his sister said she would try to be here today, but
6 she was put back on nights this week and did not know if
7 she would be able to stay awake.

8 THE COURT: Thank you. Thank you very much.

9 Mr. Glover, anything you would like to say?

10 THE DEFENDANT: No, sir.

11 THE COURT: Mr. Glover, quite frankly, I found your
12 testimony to be not credible. To be incredible. No more
13 than a smoke screen and a roadblock for the jury. I tried
14 to assess the testimony elicited by the State, the
15 cross-examination on that issue by the State concerning the
16 fact that you attempted to evict Ms. Weaver three times.
17 Tracking that, I guess that was alledgedly because of drug
18 use or abuse. And, in fact, was either never successful --
19 you were never successful or withdrew the attempt to evict
20 her.

21 If that were fact, then why in the world, whether
22 she called you or you called her, but quite frankly, I
23 found it more credible that you called her. Why would you
24 agree to pick her up down the street when that would have
25 been one less problem you had. You broke up with your

1 girlfriend of 13 years and your girlfriend was using
2 cocaine and -- why make that decision to even be around
3 her. When you went back to Mae's Acres, 150 Mae's Acres,
4 you did not park your car at that residence. Your
5 testimony was that Ms. Weaver asked you not to park the car
6 there because she didn't want people up in her business.

7 I find that incredible. I think you let her out,
8 she walked back in the house and you were leaving and her
9 testimony would be credible that you then came to that
10 residence where she'd had a right to be, armed with a
11 deadly weapon. I still haven't fathomed, invited or not,
12 the jury may have believed that part of your testimony to
13 be invited, I still can't fathom why you would have a
14 deadly weapon with you to start with. That's incredible.

15 I heard the testimony of Dr. Huffman, looked at the
16 photographs, looked at the CT scans. No doubt in my mind
17 that you went there with specific intent to kill
18 Ms. Weaver, specific intent to kill Ms. Weaver. And but
19 for a centimeter or two, or less, she wouldn't be with us
20 today. She wouldn't have been able to testify. They
21 wouldn't have been able to evaluate her credibility because
22 she'd never had been up on the witness stand.

23 She is right she's so fortunate, so God blessed, to
24 still be alive and be with us today. And then her trying
25 to get away, I'm convinced if you hadn't dropped that gun,

1 it wouldn't have just been one bullet. And I'm convinced
2 if she had let go of that hammer, she wouldn't just have a
3 bullet wound, she'd have hammer injuries.

4 2014-GS-02-1254, David Glover, having been
5 convicted of attempted murder, I sentence you to the State
6 Department of Corrections for the determinate term of 25
7 years.

8 2014-GS-02-01253, David Glover having been
9 convicted of possession of a weapon during the commission
10 of a violent crime, sentence, you're committed to the State
11 Department of Corrections for a determinate term of 5
12 years. Those are to be concurrent. You will be given
13 credit for 373 days time served.

14 Good luck to you Mr. Glover.

15 * * * * * END OF TRANSCRIPT * * * * *

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1 State of South Carolina)
2 County of Aiken) **Certificate of Reporter**

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4
5
6 I, THE UNDERSIGNED, Brenda J. Sigwald, Official
7 Court Reporter for the Eleventh Judicial Circuit of the
8 State of South Carolina, do hereby certify that I reported
9 the proceedings in the captioned case in the Court of
10 General Sessions in and for the State of South Carolina on
11 the 13th, 14th and 18th days of May 2015.

12 I FURTHER CERTIFY that the foregoing pages
13 constitute a true, accurate and complete transcript of said
14 hearing.

15 I FURTHER CERTIFY that I am neither kin, counsel,
16 nor of interest to any party hereto.

17 IN WITNESS WHEREOF, I have hereunto set my hand and
18 seal at Aiken County, this 4th day of September 2015.

19
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22
23
24
25

Brenda J. Sigwald
Brenda J. Sigwald,
Court Reporter and Notary Public
For the State of South Carolina
My commission expires
January 4, 2020

FORM 5

2014A0210200489
2014A0210200488
IN THE COURT OF COMMON PLEAS

STATE OF SOUTH CAROLINA)

County of Aiken)DAVID GLOVER 364163)

Full name and prison number (if any) of Applicant)

v.)

State of South Carolina)

APPLICATION FOR
POST-CONVICTION RELIEF

INSTRUCTIONS - READ CAREFULLY

In order for this application to receive consideration by the Court, it shall be in writing (legibly handwritten or typewritten), signed by the applicant and verified (notarized), and it shall set forth in concise form the answers to each applicable question. If necessary, applicant may furnish his answer to a particular question on the reverse side of the page or on an additional page. Applicant shall make clear to which question any such continued answer refers.

Since every application must be sworn under oath, any false statement of a material fact therein may serve as the basis of prosecution and conviction for perjury. Applicants should, therefore, exercise care to assure that all answers are true and correct.

If the application is taken in forma pauperis, it shall include an affidavit (attached at the back of the form) setting forth information which establishes that applicant will be unable to pay the fees and costs of the proceedings. When the application is completed, the original shall be mailed to the Clerk of Court for the County in which the applicant was convicted.

1. Place of detention South Carolina Dept of Correction, Lieber Institute
Aiken
2. Name and location of Court which imposed sentence Aiken County Court of
General Session
3. Name(s) of co-defendant(s) (if any) N/A
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed: 2014 GS-02-01254 - Guilty of attempted murder -
(a) (25 YRS) 2014 GS-02-01253 - Guilty of Possession of a Firearm During
(b) the commission of a violent crime - (5 YRS)

- (c) _____
5. The date upon which sentence was imposed and the terms of the sentence:
- (a) MAY 18th 2018 (25 YRS)
- (b) MAY 18th 2018 (5 YEARS)
- (c) _____
6. Check whether a finding of guilty was made:
- (a) after a plea of guilty _____
- (b) after a plea of not guilty at trial
- (c) after a plea of nolo contendere _____
7. Did you appeal from the judgment of conviction or the imposition of sentence?
yes
8. If you answered "yes" to (7), list:
- (a) the name of each Court to which you appealed:
- i. SOUTH CAROLINA COURT OF APPEALS
- ii. SUPREME COURT OF SOUTH CAROLINA
- iii. _____
- (b) the result in each such Court to which you appealed:
- i. Denied
- ii. filed brief AND denied
- iii. _____
- (c) the date of each such result:
- i. Dec 13-2017
- ii. _____
- iii. _____
- (d) if known, citations of any written opinion or orders entered pursuant to such results:
- i. _____
- ii. _____
- iii. _____
9. If you answered "no" to (7), state your reasons for not so appealing:
- (a) _____
- (b) _____

- (c) _____
10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:
- (a) INEFFECT ASSISTANCE OF TRIAL COUNSEL
- (b) ILLEGAL ENHANCEMENT
- (c) _____
11. State concisely and in the same order the facts which support each of the grounds set out in (10):
- (a) ineffective assistance of counsel of failure to prepare mitigation
- (b) ineff ASSISTANCE OF COUNSEL to cumulative error
- (c) _____
12. Prior to this application have you filed with respect to this conviction:
- (a) any petition in a State Court under South Carolina Law? _____
- (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? NO
- (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? _____
- (d) any other petitions, motions or applications in this or any other Court? NO
13. If you answered "yes" to any part of (12), list with respect to each petition, motion or application:
- (a) the specific nature thereof:
- i. N/A
- ii. _____
- iii. _____
- iv. _____
- (b) the name and location of the Court in which each was filed:
- i. N/A
- ii. _____
- iii. _____
- iv. _____

(c) the disposition thereof:

i. N/A

ii. _____

iii. _____

iv. _____

(d) the date of each such disposition:

i. N/A

ii. _____

iii. _____

iv. _____

(e) if known, citations of any written opinions or orders entered pursuant to each such disposition:

i. N/A

ii. _____

iii. _____

iv. _____

14. Has any ground set forth in (10) been previously presented to this or any other Court, State or Federal, in any petition, motion or application which you have filed?

NO

15. If you answered "yes" to (14) identify:

(a) which grounds have been presented:

i. N/A

ii. _____

iii. _____

(b) the proceedings in which each ground was raised:

i. N/A

ii. _____

iii. _____

16. If any ground set forth in (10) has not previously been presented to any Court, State or Federal, set forth the ground and state concisely the reasons why such ground has not previously been presented:

(a) N/A

(b) _____

(c) _____

17. Were you represented by an attorney at any time during the course of: yes

(a) your arraignment and plea? _____

(b) your trial, if any? yes

(c) your sentencing? yes

(d) your appeal, if any, from the judgment of conviction or the imposition of sentence? yes

(e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed?

18. If you answered "yes" to one or more parts of (17), list:

(a) the name and address of each attorney who represented you:

i. DAVID HAYES Aiken public defender
LAURA R. BAER, S.C. ON INDIGENT DEFENCE

ii. DIVISION OF APPELLATE DEFENCE

iii. _____

(b) the proceedings at which each such attorney represented you:

i. GENERAL SESSION TRIAL
Appellant Court writ of certiorari

ii. The Supreme Court of South Carolina

iii. _____

19. State clearly the relief you seek in filing this application:

20. Are you now under sentence from any other court that you have not challenged?

STATE OF SOUTH CAROLINA)

County of Aiken)

VERIFICATION

I, David Glover, being duly sworn upon my oath, depose and say that I have subscribed to the foregoing application; that I know the contents thereof; that it includes every ground known to me for vacating, setting aside or correcting the conviction and sentence attacked in this application; and that the matters and allegations therein set forth are true.

David Glover

SWORN to and subscribed before me this 10th
day of November, 2018.

Luduan Bryant (L.S.)
Notary Public

My Commission Expires: May 26, 2020

APPLICATION TO PROCEED WITHOUT PAYMENT
OF COSTS AND AFFIDAVIT
IN SUPPORT THEREOF

I, DAVID GLOVER, hereby apply for leave to proceed in this action without prepayment of fees or costs or security therefor. In support of my application I declare under penalty of perjury that the following facts are true:

- (1) I am the applicant in this action and I believe I am entitled to redress.
- (2) Because of my poverty I am unable to pay the costs of said proceeding or give security thereof.

David Glover
Applicant

SWORN or affirmed to and subscribed before me this
6th day of November, 2018.

Lucyann Bryant
Notary Public

My Commission Expires: May 26, 2020

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF AIKEN	)	FOR THE SECOND JUDICIAL CIRCUIT
	)	
David Glover, SCDC #364163	)	Case No.: 2018-CP-02-266
	)	
Applicant,	)	
	)	RETURN, PARTIAL MOTION TO
	)	DISMISS, AND MOTION FOR A
v.	)	MORE DEFINITE STATEMENT
	)	
State of South Carolina,	)	
	)	
Respondent.	)	
	)	

In response to the post-conviction relief application filed November 12, 2018, by Applicant David Glover, Respondent (the State) would show this Court:

I. Procedural History

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Aiken County Clerk of Court. Applicant was indicted at the September 2014 term of the grand jury for Aiken County for attempted murder, first-degree burglary, and possession of a firearm during the commission of a violent crime. On May 13, 2015, Applicant proceeded to a jury trial before the Honorable R. Knox McMahon, circuit court judge. C. David Hayes and Michael D. Routzong of the Aiken County Public Defender's Office prosecuted the case. Assistant Solicitors Jeffrey A. Solcum, Jr., and Cassie W. Hall of the Second Circuit Public Defender's Office prosecuted the case. The jury convicted Applicant of attempted murder and possession of a firearm during the commission of a violent crime. Judge McMahon sentenced him to twenty-five years' imprisonment for the attempted murder conviction and five years' imprisonment for the possession of a firearm conviction, to be served concurrently.

Applicant filed a timely notice of appeal and an appeal was perfected on his behalf by Appellate Defender Laura R. Baer of the South Carolina Commission on Indigent Defense-Office of Appellate Defense. On appeal, Applicant argued “the trial court erred in failing to recharge the jury on self-defense where the jury was charged on both attempted murder and assault and battery of a high and aggravated nature three times during the course of the trial court’s original jury charge and re-charges, such that, under the totality of the circumstances, the jury charge was unbalanced and prejudicial to the defendant.” The South Carolina Court of Appeals affirmed in an unpublished opinion. State v. Glover, Op. No. 2017-UP-025 (S.C. Ct. App. filed Jan. 11, 2017). Applicant filed a petition for rehearing, which the Court of Appeals denied by order dated February 23, 2017. Applicant subsequently filed a petition for a writ of certiorari in the South Carolina Supreme Court, which was denied. The Remittitur was issued on January 4, 2018.

II. Summary of Facts Giving Rise to the Convictions

Applicant was indicted for attempted murder, first-degree burglary, and possession of a firearm during the commission of a violent crime after attacking his former paramour, Vernell Weaver. (Tr.11.) At trial, Weaver testified that on the day of the incident she spoke with Applicant and asked him to come pick her up from George Mackey’s house so she could retrieve some clothes from their home. (Tr.109.) Applicant agreed and after taking her home, he dropped her back off at Mackey’s house. (Tr.111.) Once inside, Weaver began making herself something to eat when she heard a banging at the door and saw Applicant standing at the door. (Tr.115.) Before she could speak, Applicant drew a gun and shot her through the neck. (Tr.115.) Weaver turned, ran into the bedroom, and dialed 911. (Tr.115.) Although she shut the door, Applicant came through the wall and the two began to tussle on the bed as Weaver attempted to wrestle the

gun away from him. (Tr.115.) However, Applicant took the gun back and attempted to shoot Weaver again in the stomach. (Tr.116.) Weaver was able to get away from him and ran through the living room, grabbing a hammer that was on the floor as she headed out of the house towards the home of Otis and Almetha Green. (Tr.117–18.)

Almetha Green then testified that she was in the kitchen when she heard Weaver yelling about having been shot as she ran towards the house. (Tr.145.) Weaver eventually reached the porch and sat in a chair, still clutching the hammer. (Tr.148–49.) Applicant, who had chased Weaver to the Green's house, tried to pull the hammer from her hand. (Tr.149.) Almetha got her husband, Otis Green, who told Applicant to leave Weaver alone and threatened to call the police. (Tr.148.) Almetha eventually called the police and Applicant ran away when he heard the sirens. (Tr.148.) Otis similarly testified that on the day of the incident he was awakened by Almetha, and he went with her to the porch to find Weaver sitting on the porch with Applicant standing over her trying to get the hammer out of her hand. (Tr.159.)

Dr. Bradford Huffman testified as an expert in oral and maxillofacial trauma and treatment. (Tr.278.) He described how when Weaver was shot, the bullet entered her right neck, passed through the floor of her mouth and her tongue, and exited through the left side of her lip. (Tr.282.) He further explained that this type of injury was associated with a high level of mortality. (Tr.285.)

Applicant testified in his own defense. He testified Weaver called him the morning of the incident about getting something to eat at the church, and they arranged for Applicant to pick her up. (Tr.312.) He claimed that on the way, Weaver requested they make a stop to pick up some crack before they returned to their shared home, where Weaver smoked the crack she had acquired. (Tr.314–15.) After that, Applicant stated he drove Weaver back to Mackey's house and

accompanied her inside where she began to smoke the remainder of her crack. (Tr.317.) Applicant claimed that once Weaver consumed all her crack she asked him for money so she could purchase more to smoke; when he responded he did not have any cash, she began to hit him and they began a physical altercation. (Tr.317–18.) Applicant maintained the fight escalated and Weaver eventually grabbed a hammer and began swinging it at him and they began to struggle over the hammer, knocking through a wall and the glass front door. (Tr.319–20.) Applicant testified he then withdrew a gun and shot at Weaver twice. (Tr.321.) He followed her into the bedroom, going through the wall because the door was locked. (Tr.322.) They continued to fight until Weaver left and ran to the neighbors' home. (Tr.326.)

The defense then rested and the trial court discussed jury charges. Ultimately, the trial court instructed the jury on burglary, attempted murder, ABHAN, first-degree assault and battery, possession of a firearm during the commission of a violent crime and self-defense. (Tr.373–82.) After sending the jury to deliberate, Applicant objected, citing State v. King, 412 S.C. 403, 772 S.E.2d 189 (Ct. App. 2015), because the trial court had charged the jury it must only find a general intent to commit serious bodily harm as opposed to a specific intent to kill. (Tr.386.) After reviewing the case, the trial court brought the jury back in and recharged it on attempted murder, this time stating that the “State must prove specific intent to commit murder as an element of attempted murder.” (Tr.391.) The jury returned to deliberations. (Tr.393.)

The jury subsequently submitted the question: “What is the difference between guilty of attempted murder and guilty of [ABHAN].” (Tr.393.) The trial court proposed recharging attempted murder and ABHAN, and neither party objected. (Tr.393.) After the court delivered its recharge and the jury exited, Applicant requested “the Court to consider re – instructing self-defense as well.” (Tr.398.) The State objected and the court ultimately declined to recharge the

jury, citing State v. Anderson, 322 S.C. 89, 94, 470 S.E.2d 103, 106 (1996), for the proposition that a trial court need only answer the questions asked. (Tr.399.)

The jury then submitted another question: “Can you give an example of guilty of [ABHAN] without reading the law.” (Tr.399–400.) After bringing the jury back, the trial court clarified it could not provide examples for fear that could be interpreted as a comment on the facts. (Tr.400–01.) Instead, the trial court reiterated the language of the statute and reminded the jury it must determine the facts and compare them to the law. (Tr.401.) Finally, the trial court reminded the jury the State must prove the elements beyond a reasonable doubt. (Tr.401.) The jury then returned to deliberations and neither party noted any objections. Tr.402.)

Ultimately, the jury found Applicant guilty of attempted murder and possession of a firearm during the commission of a violent crime, and not guilty of burglary. (Tr.403.) The trial court sentenced him to twenty-five years’ imprisonment on the attempted murder charge and five years’ imprisonment on the possession charge, to be served concurrently. (Tr.414.)

III. Allegations Raised and Relief Sought in Application

In his application for post-conviction relief, Applicant alleges that he is being held in custody unlawfully based on allegations of:

1) Ineffective Assistance of Counsel:

-“failure to prepare mitigation”

-“cumulative error”

2) Illegal Enhancement

As requested relief, Applicant states he wants his convictions overturned and remanded.

Attached herewith and incorporated herein by reference are the records of the Aiken County Clerk of Court regarding the subject convictions, the trial transcript, appellate records

including the record on appeal, and Applicant's records for the Department of Corrections. Respondent reserves the right to amend its return upon the receipt of other relevant records.

IV. Response to Allegations of Ineffective Assistance of Counsel

Applicant asserts his trial counsel was constitutionally ineffective for failing to prepare for mitigation and cumulative error. However, Applicant wholly fails to state with any specificity facts to support these vague allegations. Based on this, it is impossible for Respondent to discern how exactly Applicant believes counsel was ineffective. Accordingly, Respondent moves for Applicant, through his appointed counsel, to amend this allegation to include sufficient, specific facts to support his claim of ineffective assistance of counsel.

Applicant, like all other defendants, has a right to the assistance of effective counsel as provided by the Sixth Amendment to the United States Constitution. U.S. Const. amend. VI; Strickland v. Washington, 466 U.S. 668 (1984); Lomax v. State, 379 S.C. 93, 665 S.E.2d 164 (2008). Applicant has the burden of proving the allegations in his post-conviction relief action, and when alleging that counsel was constitutionally ineffective, he must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that it cannot be relied upon as having produced a just result." Strickland, 466 U.S. at 686

In evaluating allegations of ineffective assistance of counsel, the reviewing court applies the two-pronged test outlined in Strickland, 466 U.S. 668. First, Applicant must prove that counsel's performance was deficient. Id.; Cherry v. State, 300 S.C. 115, 117, 386 S.E.2d 624, 625 (1989). Under this prong, the court measures an attorney's performance by its "reasonableness under prevailing professional norms." Cherry, 300 S.C. at 117, 386 S.E.2d at 625 (quoting Strickland, 466 U.S. at 690). The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases.

Butler v. State, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985). “Counsel is strongly presumed to have rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment.” Id. (citing Strickland, 466 U.S. at 690). Applicant must overcome this presumption to receive relief. Cherry, 300 S.C. at 118, 386 S.E.2d at 625. Second, counsel’s deficient performance must have prejudiced Petitioner such that “there is a reasonable probability that, but for counsel’s unprofessional errors, the result of the proceeding would have been different.” Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625.

The standards do not establish mechanical rules; the ultimate focus of inquiry must be on the fundamental fairness of the proceeding whose result is being challenged. A court need not first determine whether counsel’s performance was deficient before examining the prejudice suffered by the defendant as a result of the alleged deficiencies. If it is easier to dispose of an ineffectiveness claim on the ground of lack of sufficient prejudice, that course should be followed. Strickland, 466 U.S. 668.

Counsel’s performance is accorded a favorable presumption, and a reviewing court proceeds from the rebuttable presumption that counsel ‘rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment.’” Strickland, 466 U.S. at 690. There is a strong presumption that counsel’s decisions are based on tactical strategy rather than neglect. Yarborough v. Gentry, 540 U.S. 1, 8 (2003) (quoting Massaro v. United States, 538 U.S. 500 (2003)). Indeed, trial counsel must be given leeway to make reasonable strategic decisions. “[N]o particular set of detailed rules for counsel’s conduct can satisfactorily take account of the variety of circumstances faced by defense counsel or the range of legitimate decisions regarding how best to represent a criminal defendant.” Strickland, 466 U.S. at 689. Furthermore, “representation is an art, and an act or omission that is unprofessional in one case

may be sound or even brilliant in another.” Id. at 693. “Accordingly, when counsel articulates a valid reason for employing a certain strategy, such conduct will not be deemed ineffective assistance of counsel.” Smith v. State, 386 S.C. 562, 567, 689 S.E.2d 629, 632 (2010) (citing Caprood v. State, 338 S.C. 103, 110, 525 S.E.2d 514, 517 (2000)). See also Stokes v. State, 308 S.C. 546, 419 S.E.2d 778 (1992) (holding where counsel articulates valid reasons for employing certain strategy, such conduct will not be deemed ineffective assistance of counsel); Ingle v. State, 348 S.C. 467, 470, 560 S.E.2d 401, 402 (2002) (holding counsel may avoid a finding of ineffectiveness if he articulates a valid reason for using a certain strategy). “Courts must be wary of second guessing counsel’s trial tactics; and where counsel articulates a valid reason for employing such strategy, such conduct will not be deemed ineffective assistance of counsel.” Whitehead v. State, 308 S.C. at 122, 417 S.E.2d at 531 (citing Goodson v. United States, 564 F.2d 1071 (4th Cir. 1977)).

Moreover, Strickland does not require a finding of ineffectiveness merely for deviation from some rigid rule of representation. Rather, Strickland requires the post-conviction relief applicant to prove “counsel made errors so serious that counsel was not functioning as the ‘counsel’ guaranteed the defendant by the Sixth Amendment.” Id. at 697. Therefore, the function of the post-conviction relief court is to determine if “in light of all the circumstances, the identified acts or omissions were outside the wide range of professional competent assistance” required of a criminal defense attorney.” Id. at 690.

Respondent submits Applicant cannot satisfy either requirement of the Strickland test as to any of his allegations of ineffective assistance of counsel, as the record establishes counsel preformed diligently in his representation of Applicant. However, without specific allegations of ineffective assistance of counsel, it is impossible to respond to the claim of ineffective assistance

of counsel. Accordingly, Respondent requests Applicant, through his appointed counsel, amends his application to include the specificity required to support an allegation of ineffective assistance of counsel.

V. Response to Allegation of Illegal Enhancement

In his application, Applicant alleges “illegal enhancement” as a ground for relief. However, he fails to provide any detail or explanation as to how his sentence was illegally enhanced.

Respondent submits this allegation should be summarily dismissed, as Applicant was properly sentenced within the statutory range provided for attempted murder (twenty-five years’ imprisonment) and possession of a firearm during the commission of a violent crime (five years’ imprisonment).

VI. Motion for More Definite Statement

In his application, Applicant fails to set forth with specificity the facts and circumstances upon which these constitutional violations are based. The Uniform Post-Conviction Procedure Act requires that the Applicant must “. . . specifically set forth the grounds upon which the application is based.” Section 17-27-50 of the Code of Laws of South Carolina (1976). In an application for post-conviction relief, it is incumbent upon Applicant to make at least a prima facie showing which would entitle him to relief before an evidentiary hearing will be scheduled and held. Welch v. MacDougall, 246 S.C. 258, 143 S.E.2d 455 (1965); Blandshaw v. State, 245 S.C. 385, 140 S.E.2d 784 (1965).

Applicant has failed to state with any specificity the specific facts giving rise to these allegations. Additionally, this allegation is not supported by any other additional information in the application. Respondent moves pursuant to Rule 12(e), SCRCP, to require Applicant to

provide a more definite statement of her allegations of ineffective assistance of counsel. The Uniform Post-Conviction Procedure Act requires applicants to “specifically set forth the grounds upon which the application is based.” S.C. Code Ann. § 17-27-50 (1985) (emphasis added). Furthermore, Rule 8(a), SCRCF, requires all civil pleadings include “a short and plain statement of the facts showing that the pleader is entitled to relief.” Therefore, Respondent moves to require Applicant to file an amended application well in advance of the hearing scheduled in this matter. If Applicant fails to file a timely and responsive amended application setting forth specific allegations for relief, Respondent reserves the right to move to dismiss the application.

VII. Any Future Amendments and Invocation of Discovery Process

Applicant must specify any claims he intends to raise at the evidentiary hearing. Any claims not specifically laid out in this PCR application or in amendments will be opposed by the State at an evidentiary hearing pursuant to §§ 17-27-10 to -160 of the South Carolina Code of Laws and Rule 71.1 of the South Carolina Rules of Civil Procedure. See also Rules 15(a)-(b), SCRCF. All claims should be made well in advance of the evidentiary hearing. Because Applicant has an attorney, the attorney, and not Applicant, is the only individual authorized to file amendments to this application. See Rule 11, SCRCF. *Pro se* filings will not be considered at the PCR hearing. Respondent reserves the right to request that any amendments withheld until the last minute be stricken because of undue prejudice to Respondent. See Rule 15(a), SCRCF.

Pursuant to § 17-27-150 of the South Carolina Code of Laws, Applicant may not invoke formal discovery processes to issue subpoenas or otherwise obtain discovery materials unless granted leave from the Court upon a showing of good cause. Furthermore, Respondent requests that all potential exhibits and materials used to produce potential expert witness testimony be

sent to Respondent well in advance of the evidentiary hearing. Respondent reserves the right to request a continuance and oppose witness testimony and exhibits that are withheld until the last minute resulting in undue prejudice to Respondent.

VIII. Response to Any and All Other Allegations

Each and every allegation contained within the application not expressly admitted, qualified, or explained in this return is hereby denied.

IX. Request for Applicant to file an Amended Application

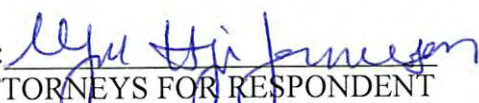
WHEREFORE, having made its return, the State requests applicant, through his counsel, amend the application to provide the required specificity for his allegation of ineffective assistance of counsel. Until Applicant files an amended application, Applicant has not shown sufficient cause to arrant an evidentiary hearing on this application and requests a hearing not be schedule until after an amended application is so filed. Additionally, Respondent moved for summary dismissal of Applicant's claim of "illegal enhancement."

Respectfully submitted,

ALAN WILSON
Attorney General

W. JEFFREY YOUNG
Chief Deputy Attorney General

MEGAN HARRIGAN JAMESON
Senior Assistant Deputy Attorney General

By: 
ATTORNEYS FOR RESPONDENT
Office of the Attorney General
P.O. Box 11549
Columbia, SC 29211

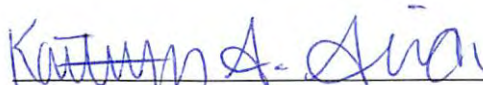
, 2019

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF AIKEN	)	
	)	
	)	2018-CP-02-02656
	)	
DAVID GLOVER, #364163,	)	
	)	
Applicant,	)	
	)	
vs	)	AFFIDAVIT OF SERVICE BY MAIL
	)	
STATE OF SOUTH CAROLINA,	)	
	)	
Respondent.	)	
	)	

1. I am an employee of the Respondent in the above-captioned action.
2. Regular communication by mail exists throughout the State of South Carolina and that this is a proper circumstance of service by mail.
3. I have this day served a copy of the **Return, Partial Motion to Dismiss, and Motion for a More Definite Statement** in the above-captioned matter on the following person by depositing same in the United States mail, postage prepaid:

Arthur K. Aiken, Esquire
Aiken & Hightower
2231 Devine Street, Suite 201
Columbia, South Carolina 29205

DATED this the 6th day of March 2019.


Kaitlyn S. Slice, Legal Assistant
For Respondent

**STATE OF SOUTH CAROLINA
COUNTY OF AIKEN**

**COURT OF COMMON PLEAS
SECOND JUDICIAL CIRCUIT**

David Glover #364163, Applicant vs. State of South Carolina, Respondent.	Case No.: 2018-CP-02-02656 AMENDMENT TO PCR APPLICATION

The Applicant, David Glover (Glover), amends his PCR Application filed in the above captioned case as follows:

10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:

Glover amends his response to item 10 to add the following:

5. Glover's rial counsel's performance was deficient because he failed to preserve for appellate review the reversible error of the trial court's failure to give a general attempt charge on the attempted murder charge, and Glover was prejudiced by that deficient performance.

6. Glover's trial counsel's performance was deficient because he failed to object the Court's instructions on implied malice, and Glover was prejudiced by that deficient performance.

7. In the jury instructions in this case, the trial court instructed the jury extensively on the law that implied malice can support a guilty verdict on an attempted murder charge. In 2017, The South Carolina Supreme Court changed the substantive law of attempted

FILED May 27 20 21

Robert J. White
C.C.P. & G.S.

Charles Griffing
Deputy Clerk

murder and held that implied malice evidence is no longer sufficient to show the specific intent to kill necessary for a finding of guilt on an attempted murder charge. State v. King, 422 S.C. 47, 810 S.E.2d 18 (2017) This law is applicable to this case under the authority of Aiken v. Byars, 410 S.C. 534, 765 S.E. 2d 572 (2014).

11. State concisely and in the same order the facts which support each of the grounds set forth in (10):

Jones amends his response to Item 11 to add the following:

See above response to Item 10,

19. State clearly the relief you seek in filing this application:

Jones amends his response to Item 19 as follows:

Order vacating convictions and sentences.

Respectfully Submitted,

AIKEN & HIGHTOWER, P.A.

BY: 

ARTHUR K. AIKEN

PO Box 90707

Columbia, SC 29290

Phone: 803-799-5205

Fax: 803-799-5206

Email: art@aikenandhightower.com

ATTORNEYS FOR APPLICANT

Columbia, South Carolina
May 24, 2021

**STATE OF SOUTH CAROLINA
COUNTY OF AIKEN**

David Glover #364163

Applicant,

vs.

State of South Carolina

Respondent.

**COURT OF COMMON PLEAS
SECOND JUDICIAL CIRCUIT**

Case Number: 2018-CP-02-02656

CERTIFICATE OF SERVICE

I certify that on May 24, 2021, I served the Applicant's Amendment to PCR Application in this case on the government by delivering a copy of the Amendment to the S.C. Attorney General's Office by mail addressed to Assistant Attorney General Michael Neubauer, PO Box 11549, Columbia, SC 29211 and by email to his email address, mchaelneubauer@scag.gov.



Arthur K. Aiken
Aiken & Hightower, PA
PO Box 90707
Columbia, SC 29290
Tel: 803-799-5205
Fax: 803-799-5206
art@aikenandhightower.com

Columbia, South Carolina
September 13, 2019

FILED May 27 20 21

Robert L. White CMP
C.C.P. & G.S.

Charlea Griffioen
Deputy Clerk

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF AIKEN	)	2018-CP-02-02656
	)	
	)	
	)	
	)	
DAVID GLOVER,	)	
APPLICANT,	)	
	)	
vs.	)	TRANSCRIPT OF RECORD
	)	
THE STATE,	)	
RESPONDENT.	)	
_____	)	

June 2, 2021
Aiken, South Carolina

B E F O R E:

THE HONORABLE JENNIFER B. MCCOY, JUDGE.

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

ARTHUR AIKEN, ESQ.
Attorney for the Plaintiff

LINDSEY A. MCCALLISTER, ESQ.
Attorney for the Defendant

Proceedings Recorded by DCRP
Transcribed by Penny M. Johnson

I N D E X

(PW) - Denotes Plaintiff's Witness
(DW) - Denotes Defense Witness

Page No.

(DW) DAVID HAYES:

Direct Examination by Ms. McCallister.....
Cross-Examination by Mr. Aiken.....
Redirect Examination by Ms. McCallister.....
Recross-Examination by Mr. Aiken.....

E X H I B I T S

(There were no exhibits submitted.)

P R O C E E D I N G S

1
2 THE COURT: We're here on case number 2018-CP-02-02656
3 in the matter of David Glover, a Post-Conviction Relief
4 matter. I'll ask the attorneys to begin by stating their
5 names and the parties they represent.

6 MS. MCCALLISTER: Good morning, Your Honor. My name is
7 Lindsey McCallister and I represent the State.

8 THE COURT: Thank you very much.

9 MR. AIKEN: Your Honor, Arthur Aiken for the Applicant,
10 David Glover.

11 THE COURT: Excellent. Good to see you again, Mr.
12 Aiken.

13 MR. AIKEN: Yes, ma'am.

14 THE COURT: What would you like to tell me?

15 MS. MCCALLISTER: Your Honor, would you like me to read
16 the procedural history?

17 THE COURT: That would be wonderful.

18 MS. MCCALLISTER: This is David Glover vs. The State of
19 South Carolina. Your Honor, Mr. Glover was indicted in
20 September of 2014 by the Aiken County Grand Jury for
21 attempted murder, first degree burglary and possession of a
22 firearm during the commission of a violent crime.

23 He proceeded to trial before Judge Knox McMahon on May
24 13th, 2015. He was represented by C. David Hayes and
25 Michael Routzong of Aiken County Public Defender's Office.

1 Assistant Solicitor Jeffery Solcum and Cassie Hall
2 prosecuted the case.

3 The jury convicted Mr. Glover of attempted murder and
4 possession of a firearm; however, they acquitted him of the
5 first degree burglary. Judge McMahon then sentenced him to
6 25 years imprisonment on the attempted murder and five years
7 on the possession of a firearm. Those sentences are to be
8 served concurrently.

9 He filed a timely notice of appeal and was represented
10 by Laura Baer of the Office of Appellate Defense. He argued
11 on appeal that the trial court erred in failing to recharge
12 the jury on self-defense when the jury was charged on both
13 attempted murder and assault and battery of a high and
14 aggravated nature three times during the course of the
15 trial.

16 The South Carolina Court of Appeals affirmed in a
17 unpublished opinion on January 11th, 2017. He then filed a
18 petition for rehearing, which was denied on February 23rd,
19 2017. He then petitioned for a writ of certiorari to the
20 South Carolina Supreme Court, which was denied, and the
21 Remittitur was issued on January 4th, 2018. He timely filed
22 this application on November 12th, 2018.

23 Mr. Glover is present in the courtroom this morning and
24 he is represented by Mr. Art Aiken. Mr. Glover originally
25 filed a pro se application, which alleged ineffective

1 assistance of counsel for failure to prepare mitigation and
2 cumulative error as well as illegal enhancement.

3 Mr. Aiken recently on May 27th filed an amended
4 application, which you should have in your packet there.
5 It's my understanding he's alleging there is issues failing
6 to preserve for appellate review the trial court's failure
7 to give a general intent charge; that counsel's performance
8 was deficient because he failed to object to the Court's
9 instructions on implied malice; and that the trial court
10 instructed the jury that implied malice could support a
11 guilty verdict on attempted murder. And he argues that that
12 was -- that was changed in 2017.

13 So it's my understanding that the allegations in the
14 amendment are the allegations that we are going forward on
15 here today. I would ask Mr. Aiken to correct that or
16 clarify that if I have stated that incorrectly.

17 MR. AIKEN: I believe I can narrow it a little bit
18 further than that, Judge. Our last ground in the amended
19 application really raises the legal issues, which is whether
20 the trial judge -- well, the trial judge instructed the jury
21 on implied malice. Our argument is there are two subsequent
22 cases: One Supreme Court, State vs. King, one Court of
23 Appeals, State vs. Shands, which, essentially, they said
24 there is no such thing as attempted murder by implied
25 malice.

1 So our argument is under Aiken v. Byars and a U. S.
2 Supreme Court case in the Teague vs. Lane, that new law
3 applies to Mr. Glover's Post-Conviction Relief action
4 because it is on collateral review. In other words, what
5 we're saying is the change in elements of attempted murder.
6 And under the current law, the charge on implied malice was
7 erroneous.

8 THE COURT: Right. Okay.

9 MR. AIKEN: So that's what we're going forward on.

10 THE COURT: That's what you're going forward on?

11 MR. AIKEN: Yes, ma'am.

12 THE COURT: Okay. I understand.

13 And just so I'm clear chronologically, what was the
14 date of his trial -- oh, I see, it was May 13th, 2015, and,
15 of course, these cases that you're citing and relying on
16 came out a couple years later in 2017; is that right?

17 MR. AIKEN: That's correct, Your Honor.

18 Who would like to call the first witness?

19 MR. AIKEN: Your Honor, our case is limited to legal
20 argument, so I don't have any witnesses. What I'd like to
21 do is give you a little more detail on what our argument is
22 than the summary I just gave you.

23 THE COURT: I'd love that. That would be great. Happy
24 to hear from you, yes, sir.

25 MR. AIKEN: Well, In the jury instructions -- well,

1 first of all, this is in part an attempted murder case. In
2 the instruction, and this is all on Pages 376 to 379 --
3 actually, there are three places where there are charges on
4 implied malice, but that's the first in the original charge,
5 376 to 379. And as Ms. McCallister mentioned, this jury was
6 recharged three times on attempted murder and assault and
7 battery of a high and aggravated nature.

8 THE COURT: Now, how is that? Did they ask questions
9 and they came back in the courtroom, that kind of thing?

10 MR. AIKEN: That's correct. They asked two questions.
11 And I'll get to that in more detail a little bit later.

12 THE COURT: Sure.

13 MR. AIKEN: But, of course, all of these charges were
14 in the context of the attempted murder count.

15 Now, since Mr. Glover's conviction, as I indicated,
16 there have been two cases dealing with the issue of whether
17 there's even such a thing as attempted murder by implied
18 malice.

19 First, there's State vs. King. And I would acknowledge
20 that State vs. King, the holding of the case is not that you
21 can't have attempted murder by implied malice. But there's
22 a footnote in that case in which --

23 THE COURT: Did you bring a copy of that?

24 MR. AIKEN: I did, Your Honor. I'll hand it up to you.

25 THE COURT: If I can follow along, that would be

1 helpful.

2 MR. AIKEN: Your Honor, it's footnote 5.

3 THE COURT: Okay.

4 Does the State have a copy?

5 MS. MCCALLISTER: Yes.

6 THE COURT: Okay. Go ahead.

7 MR. AIKEN: Well, in that case, Chief Justice Beatty
8 writes a footnote, which, basically, says I believe that
9 there is no such thing as attempted murder by implied
10 malice. In that footnote, he actually quotes a case from
11 Nevada, Keys vs. State for the proposition that one cannot
12 attempt to kill another with implied malice because there is
13 no such criminal offense as an attempt to achieve an
14 unwanted result. So that's the first indication in the case
15 law that you may not have attempted murder by implied
16 malice.

17 Then we get to the Court of Appeals case, State vs.
18 Shands. In State vs. Shands, the Court says that -- excuse
19 me, Your Honor.

20 THE COURT: How do you spell that Shands?

21 MR. AIKEN: S-H-A-N-D-S. And here's a copy of that,
22 Your Honor.

23 THE COURT: Thank you.

24 MR. AIKEN: And in that case, the Court of Appeals
25 clearly stated that the State needed to prove Shands acted

1 with expressed malice and specific intent to kill in order
2 to be found guilty of attempted murder. So that indicates
3 there is no such thing as attempted murder by implied
4 malice.

5 And it's important to note, Your Honor, that both of
6 these cases apply in this PCR. Because what's going on in
7 this PCR is collateral review. And the cases -- if you look
8 at Aiken vs. Byars, it, basically, says if we have a new
9 rule on substantive law, then that applies to cases on
10 collateral review.

11 And so our argument is this is new substantive law
12 because, after all, the statute itself says intent to kill
13 with expressed or implied malice. So this is new, new law
14 in South Carolina with a judgment that says nope, you can't
15 have implied malice sufficient to support a guilty -- a
16 conviction on attempted murder.

17 THE COURT: It actually came up last week in
18 Spartanburg County. Judge Mark Hayes would not charge
19 attempted murder because -- and it was someone pointed a gun
20 four or five feet, from what I understand, and shot. And
21 still, he relied on State V. King and he wouldn't charge the
22 jury on attempted murder.

23 So this is, certainly, something that is a hot topic
24 right now in our courts.

25 MR. AIKEN: And Your Honor, here's a copy of Aiken vs.

1 Byars, which is a South Carolina Supreme Court that states
2 for the proposition that new substantive law applies to
3 cases on collateral review.

4 In our state, we, basically, follow the authority of
5 Teague vs. Lane, which a U.S. Supreme Court case dealing
6 with this issue. And it supports that exception for changes
7 in the substantive law.

8 If you think about it, that's the just rule because
9 failure to apply this new law could mean that Mr. Glover has
10 been found guilty of an offense he didn't commit because of
11 the extensive charging, three times, of implied malice.

12 Now, then becomes the issue of prejudice. Was Mr.
13 Glover prejudiced by the error in the jury charge? And my
14 position is that he was, and I'll tell you why, Your Honor:
15 The jury came back with two sets of questions in the case.
16 Both of them had to do with the distinction between
17 attempted murder and assault and battery of a high and
18 aggravated nature. And the difference --

19 THE COURT: So they were charged on the lesser?

20 MR. AIKEN: They were.

21 THE COURT: Okay.

22 MR. AIKEN: They were charged on the lesser-included
23 offenses. As I recall, they were charged on ABHAN and
24 assault and battery first degree.

25 But the jury came back twice saying what's the

1 difference between those two things. And the point is, the
2 difference is not -- because attempted murder is intent to
3 kill with malice -- because attempted murder is assault with
4 intent to kill with malice. Assault and battery of a high
5 and aggravated nature is assault on somebody where the
6 assault is either deadly force or threat of seriously bodily
7 injury. So the distinction between a case with malice and a
8 case without malice is something the jury was struggling
9 with. So that's our position on prejudice.

10 Thank you, Judge.

11 THE COURT: Sure.

12 Happy to hear from the State?

13 MS. MCCALLISTER: Thank you, Your Honor. Your Honor,
14 I'm happy to give you some argument. I think I would like
15 to call Mr. Hayes as a witness just to have him sort of give
16 some background about the case and what his thinking was in
17 dealing with these jury instructions, and then I can give
18 some argument.

19 THE COURT: That's fine. I mean, I don't think they're
20 really arguing that he did anything wrong. It's really just
21 the change in law. But whatever the State wants to do,
22 that's fine.

23 MS. MCCALLISTER: I would call David Hayes.

24 CHARLES DAVID HAYES,

25 after being duly sworn, testified as follows:

1 THE WITNESS: I do.

2 THE COURT: Please take a seat and state your name for
3 the Court.

4 THE WITNESS: Charles David Hayes, H-A-Y-E-S.

5 MS. MCCALLISTER: May it please the Court?

6 THE COURT: Yes. Go ahead.

7 DIRECT EXAMINATION

8 BY MS. MCCALLISTER:

9 Q Mr. Hayes, you represented Mr. Glover in this case; is
10 that correct?

11 A I did.

12 Q Okay. And not to go too far into details, but this
13 case was, essentially, sort of a domestic incident between
14 Mr. Glover and a girlfriend or former girlfriend, correct?

15 A Yes.

16 Q Okay. And the former girlfriend was shot by Mr.
17 Glover, correct?

18 A Yes.

19 Q And that fact was never really in dispute that he shot
20 her?

21 A No.

22 Q Really, the only sort of dispute and the defense for
23 Mr. Glover at trial was the issue of self-defense; is that
24 right?

25 A Yes.

1 Q So Mr. Glover's story is that she was smoking crack and
2 got mad because she wanted to go get more. They got into an
3 argument. She attacked him, he shot her. She ran into the
4 bedroom. And then there was the issue of him coming through
5 the bedroom wall into the bedroom. And his story was he was
6 doing that to check on her, correct?

7 A Correct.

8 Q And her story was, essentially, the same. She just
9 sort of said he just kind of showed up, surprised her, shot
10 her. She ran into the bedroom, he came through the wall and
11 continued to try to shoot her, correct?

12 A Make sure I'm clear. Her story was that he showed up
13 at the new boyfriend's house and shot her through the door.

14 Q Okay.

15 A Tore into the house, she was retreating to the bedroom
16 and busted into the bedroom and attacked her.

17 Q Okay.

18 A Continued attacking her.

19 Q Continued to try to pull the trigger, correct?

20 A And rack the slide and then pistol whipped her.

21 Q Okay.

22 A His version was we were already at the house. She ran
23 out of cocaine, crack cocaine. I had no more money. There
24 was a hammer in a tool bag next to where they were sitting.
25 She picks it up and starts to attack him. They fell out the

1 door onto the porch and she was on top of him. He grabbed
2 -- he was trying to grab her and they were fighting. She
3 was able to recover, stand up and grab the hammer and reared
4 back to hit him with it. At that point, he pulls out his
5 pistol and it shot several shots. One of them struck the
6 door frame, one of them struck her and she retreated to the
7 bedroom.

8 Q Okay. And she called 911 from the bedroom, but doesn't
9 -- it's just kind of -- there's still some more tussle. He
10 comes in, she runs out of the house to the neighbor's. They
11 call 911 and, eventually, EMS and officers show up at the
12 neighbor's house, correct?

13 A Yes.

14 Q And so the argument at trial, really, was whether this
15 was a self-defense -- whether there was self-defense,
16 correct?

17 A Yes.

18 Q Okay. And the issue, I guess, from the defense side --
19 or the issue of self-defense is really this entry into the
20 bedroom where he comes in through the wall and is the jury
21 going to believe his side that he was trying to check on her
22 or her side that he was trying to continue to harm her?

23 A Right.

24 Q So that's the evidence -- or the two sides represented
25 to the jury at trial, correct?

1 A Yes, ma'am.

2 Q And then there's the jury charge. And the Judge
3 charges attempted murder, assault and battery of a high and
4 aggravated nature and assault and battery first; is that
5 right?

6 A I don't remember.

7 Q Okay. At the very least, the Judge charged attempted
8 murder and ABHAN, correct?

9 A I believe so, yes. And we argued for the --

10 Q I believe the jury instructions start on Page 376?

11 A Three what?

12 Q 376. Well, that's where the attempted murder starts.
13 On Page 376, you see where he says I'm going to charge
14 attempted murder and also charge assault and battery of a
15 high and aggravated nature and assault and battery in the
16 first degree as lesser-included offenses?

17 A Yes.

18 Q And you -- I believe what happened is the first time
19 you hear the jury charge, the Judge actually charged general
20 intent instruction in the attempted murder charge and you
21 objected. Then the Judge recharged with a specific intent
22 charge based on the King opinion that had just recently come
23 out a few weeks prior, the Court of Appeals King opinion?

24 A I don't know when the King -- I don't remember.

25 Q Okay.

1 A I just remember we were arguing about specific intent
2 and attempted murder.

3 Q Okay. Based on the King decision?

4 A I don't remember.

5 Q Okay. And, eventually -- I think the transcript
6 reflects that you were arguing based on the Court of Appeals
7 decision in King and the trial court agreed to give the
8 specific intent instruction, correct?

9 A He did give it, yes.

10 Q So he recharged the jury on attempted murder with
11 specific intent, correct?

12 A Yes.

13 Q He also -- and then this is the issue, he also charged
14 malice that could be expressed or implied malice, correct?
15 I believe that's on Page 376 and 377 of the transcript.

16 A He did.

17 Q And you did not object to that issue, the malice
18 charge, correct?

19 A No.

20 Q Okay. At that point, did you have any precedent or any
21 sort of case law that you could rely on to object to that
22 charge?

23 A No.

24 Q If you had case law that you could have relied on,
25 would you have objected to that charge based on the case

1 law?

2 A Yes, now, I would.

3 Q And in this case, the jury sort of wrestled with, I
4 guess, the attempted murder charge and the ABHAN charge,
5 correct?

6 A I don't know what the jury -- they had questions about
7 it, yes.

8 Q Okay. Let me rephrase that. They had questions about
9 attempted murder and ABHAN; and so, charges were given
10 several times, correct?

11 A Yes.

12 Q Okay. So, I guess, it appeared from the jury's
13 questions that there was some issue that they were
14 struggling with between those charges, correct?

15 A Yes.

16 Q And attempted murder is specific intent, correct?

17 A Yes.

18 Q And ABHAN is general intent, correct?

19 A Yes.

20 Q So in an ABHAN situation, there could be inferred or
21 implied malice, correct?

22 A Say that one more time.

23 Q If the jury had convicted him of ABHAN, they could have
24 done so through a theory of implied malice, correct?

25 A Yes.

1 MS. MCCALLISTER: I think that's all the questions I
2 have, Your Honor.

3 MR. AIKEN: May it please the Court, Your Honor? I
4 just have a few.

5 THE COURT: Sure.

6 CROSS-EXAMINATION

7 BY MR. AIKEN:

8 Q Mr. Hayes, malice is not an element of assault and
9 battery of a high and aggravated nature, is it?

10 A No.

11 Q It's not --

12 A It's a general intent crime.

13 Q Yeah, so -- but malice is not an element of that crime?

14 A No.

15 Q So the jury by its questions, is it fair to say,
16 indicated that they had some confusion or some trouble
17 distinguishing between attempted murder and assault and
18 battery of a high and aggravated nature?

19 A I don't think I can say what a jury was thinking. I
20 don't know. They had questions about it.

21 Q In the questions, did they ask for clarification
22 concerning the difference between those two crimes?

23 A They were asking to be recharged on both and what were
24 the differences.

25 Q And as I understand it, the charges for attempted

1 murder and the assault and battery offenses were, actually,
2 read to the jury three times?

3 A I don't recall. I believe that we -- I do recall
4 objecting and asking that if they were going to recharge
5 that to recharge self-defense.

6 Q And that's what became the issue on appeal, right?

7 A Right.

8 Q Okay.

9 A That we reinstructed them several times on the charge,
10 but we didn't remind them as well, in my opinion, that there
11 was a defense put up.

12 Q So they were charged multiple times on the elements of
13 attempted murder and the assault and battery offenses?

14 A Yes.

15 Q And each of those times they were charged, there was a
16 restatement of the charge on implied malice?

17 A I see where he did recharge specific intent, expressed
18 malice. He says he was going to charge attempted murder as
19 well as assault and battery of a high and aggravated nature.
20 And that was at the jury questions. And then they got into
21 the discussion about the computer. And he says they're
22 going to be charged assault and battery high and aggravated
23 nature and he's going to recharge attempted murder. And
24 then he does mention expressed or implied malice.

25 MR. AIKEN: Thank you very much, Mr. Hayes.

1 MS. MCCALLISTER: Your Honor, if I may redirect
2 briefly?

3 THE COURT: Sure.

4 REDIRECT EXAMINATION

5 BY MS. MCCALLISTER:

6 Q Mr. Hayes, I believe I asked you a bad question. So
7 for attempted murder, the jury needed to find specific
8 intent and expressed malice, correct?

9 A Yes.

10 Q And in this case, the evidence of malice came from the
11 victim's testimony that he reentered the room after she had
12 retreated and continued to fire the weapon at her, correct?

13 A It wasn't that he reentered. She retreated to the
14 bedroom and was holding the door shut, was her testimony.
15 She testified he then ran through the sheetrock wall and
16 entered into the bedroom, took the phone from her and
17 continued to beat her with the firearm and tried to rack the
18 slide and shoot her, but the magazine that holds the
19 ammunition had fallen out of the gun and she swiped it. So
20 as he was racking the gun, there was no ammunition.

21 Q Okay. So that would be where -- if the jury were going
22 to find malice, it would be from this sort of after she
23 retreated and then he comes into the bedroom, correct?

24 A They could.

25 Q And the evidence of malice, then -- I mean, would you

1 characterize pointing a gun at somebody and firing at point
2 blank range as evidence of expressed malice?

3 A Could be.

4 Q So there was evidence that the jury could find
5 expressed malice in this case to support the attempted
6 murder charge?

7 A Yes, but with her, it was -- her position of her
8 testimony was he was trying to kill her, but the gun was
9 failing and he continued to try.

10 Q Okay.

11 MS. MCCALLISTER: That's all I have.

12 MR. AIKEN: Could I ask just one question, Your Honor?

13 THE COURT: Yes.

14 RECROSS-EXAMINATION

15 BY MR. AIKEN:

16 Q Can you tell without speculation whether the jury did
17 or did not make a finding of expressed malice?

18 A No.

19 MR. AIKEN: Thank you.

20 MS. MCCALLISTER: Your Honor, I don't have any further
21 witnesses. I would just like the opportunity to make my
22 argument.

23 THE COURT: Thank you, Mr. Hayes, for your time today.

24 MR. HAYES: You're welcome.

25 THE COURT: Where is your office located?

1 MR. HAYES: I've got an office in Bamberg and Barnwell.

2 THE COURT: If you need to leave, I don't have an
3 objection to you leaving if the State's okay with it.

4 MR. AIKEN: No objection, Your Honor.

5 THE COURT: Thank you so much.

6 (Mr. Hayes leaves the courtroom.)

7 THE COURT: Yes, ma'am, I'm happy to hear from you
8 whenever you're ready.

9 MS. MCCALLISTER: Thank you, Your Honor.

10 Mr. Glover is relying on two cases: King and Shands.
11 King came out from the Supreme Court in 2017 and Shands in
12 2018. As Mr. Hayes testified, he did not have the benefit
13 of the guidance in those cases at the time of this trial in
14 2015 in order to support an objection to the malice charge.

15 And the malice charge that was given in this case on
16 Page 376, Your Honor, is the exact language of the attempted
17 murder statute. So the attempted murder statute still says
18 that a person commits attempted murder when they attempt to
19 kill another person with malice aforethought either
20 expressed or implied.

21 So what Mr. Glover is asking is for Mr. Hayes to have
22 objected to the trial court charging the exact language of
23 the statute that was in force at the time of trial. And
24 there is no requirement that Mr. Hayes be clairvoyant and
25 anticipate, you know, how that issue was going to be

1 resolved.

2 Even King itself was not final opinion at that time, it
3 was on, I believe either on rehearing or it was on petition
4 to the Supreme Court at the time of trial. So that
5 decision -- you know, getting the attempted murder charge as
6 specific intent, that decision had not even become final at
7 that point.

8 And the King decision does, you know, point to the
9 conflict in the statute, but the footnote says that it
10 accepts that language. You know, it ask the General
11 Assembly to look at changing it because it is arguably
12 inconsistent. It doesn't say that it is inconsistent, it
13 says it is arguably inconsistent.

14 And the language in Shands says, you know, that,
15 essentially, they're not sure, that it's not clear whether
16 an implied malice instruction is proper in any attempted
17 murder trial; however, it wasn't proper in Shands case. In
18 Shands case, the implied malice instruction that was given,
19 it really was more of -- it was given that implied malice
20 could -- or malice could be inferred from the use of a
21 deadly weapon and that was not given in this case.

22 So that is the difference in the State's opinion
23 between Shands and what happened in Mr. Glover's case. In
24 the Shands case, the State's argument is that to say that
25 Shands holds that you can never give an implied malice

1 instruction is overstating the holding of Shands.

2 And in any event, Your Honor, the State's argument is
3 that this is not necessarily law, it was a confusing,
4 conflicting statute that the Court has clarified now and
5 given guidance. However, I don't think Mr. Hayes can be
6 found deficient for failing to object to the exact statutory
7 language being charged, especially without the benefit of
8 King and Shands at the time. So if there's no deficiency,
9 there cannot be ineffective assistance.

10 And again, as to the prejudice, Your Honor, I would
11 argue that the malice is -- the only way the jury could have
12 found malice in this case is for it to have been expressed
13 malice. The testimony -- you know, it was really an issue
14 of credibility, did they believe him or did they believe
15 her? And her testimony was she retreated to the bedroom, he
16 busted through the drywall, the sheetrock to get into the
17 bedroom after her and continued to try to fire the weapon at
18 point blank range. I believe she said he was holding it to
19 her stomach trying to -- and she could hear him trying to
20 click it.

21 Ultimately, the jury believed her and found expressed
22 malice and a specific intent to kill because they convicted
23 him of attempted murder. I think we know that that's what
24 they found because that's the verdict that they returned.
25 So that would be --

1 THE COURT: How do you know that they found expressed
2 malice?

3 MS. MCCALLISTER: Well, I think they followed the
4 instructions that they're given and --

5 THE COURT: Because the Judge did not charge that you
6 can infer malice from a deadly weapon, is that sort of where
7 you're getting that from?

8 MS. MCCALLISTER: Yes. He did not charge that it could
9 be -- and I think the implied malice instruction was that it
10 could be from conduct showing disregard of someone's life.
11 But it would be the State's argument that holding a gun at
12 point blank range and firing it at someone is expressed
13 malice and it is, obviously, specific intent to kill.

14 So that would be the State's argument as to prejudice,
15 you know, he got what he wanted. He got the higher level of
16 intent on the specific -- on the attempted murder charge and
17 the jury found him guilty of attempted murder and not the
18 lesser-included of ABHAN.

19 THE COURT: Mr. Aiken, happy to hear from you.

20 MR. AIKEN: Your Honor, just very briefly. I can read
21 from the jury charge in this case on expressed malice
22 because I know this charge was actually in the form book for
23 the judges. The charge says expressed malice is shown when
24 a person speaks words which express hatred or ill-will to
25 another or when the person prepares beforehand to do the act

1 that was later accomplished.

2 My argument is there was no clear evidence of that
3 expressed malice.

4 Also, Your Honor, we're not saying that Mr. Hayes'
5 performance as defense counsel was deficient. We're saying
6 the law has changed since Mr. Glover's case became final on
7 appeal, that change in the law applies under Aiken V. Byars
8 to his case now on final review. That's what our argument
9 is. And that in a very real sense, he may have been
10 convicted of something he didn't commit because the elements
11 of the offense, there were alternative elements. There was
12 either expressed malice or implied malice. Implied malice
13 is out now. So you can't say necessarily the jury didn't
14 find expressed malice as opposed to implied malice.

15 Thank you, Your Honor.

16 MS. MCCALLISTER: Your Honor, if I could just answer
17 that very briefly. Again, the expressed malice charge does
18 say that if a person prepared beforehand to do the act which
19 was later accomplished. The victim's testimony was that she
20 had been dropped off, he left and then he just came back and
21 showed back up at the house and shot her through the door.

22 So again, the State would argue that there is evidence
23 of expressed malice from which the jury could have convicted
24 him of the attempted murder.

25 THE COURT: Anything else?

1 MR. AIKEN: Nothing from the Applicant, Your Honor.

2 THE COURT: Anything from the State?

3 MS. MCCALLISTER: No, ma'am.

4 THE COURT: Obviously, I'll look over this case law as
5 well as the record and I will ask your offices when I need a
6 formal proposed order.

7 MR. AIKEN: Thank you, Your Honor.

8 MS. MCCALLISTER: Thank you, Your Honor.

9 THE COURT: Thank y'all very much.

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CERTIFICATE OF REPORTER

STATE OF SOUTH CAROLINA)
COUNTY OF AIKEN)

I, PENNY M. JOHNSON, do hereby certify that the foregoing transcript is a true and correct record of the recorded proceedings; that said proceedings were transcribed to the best of my ability from the audio recording and supporting information; and that I am neither counsel for, related to, nor employed by any of the parties to this case, and I have no interest, financial or otherwise, in its outcome.

February 12, 2022

Penny M. Johnson
Penny M. Johnson
Official Court Reporter

v.
State of South Carolina,
Respondent.

ORDER OF DISMISSAL

At the close of all evidence and after hearing arguments from both sides, the Court took the matter under advisement. This Court had before it a copy of the Aiken County Clerk of Court's records regarding the subject conviction, Applicant's records from the South Carolina Department of Corrections, the application and amendment, Respondent's return, the trial transcript, and Applicant's appellate records. After a review of the record and all evidence

presented, for the reasons set forth below, this Court finds Applicant has failed to meet his requisite burden of proof and denies relief.

PROCEDURAL HISTORY

Applicant is presently confined in the South Carolina Department of Corrections. Applicant was indicted at the September 2014 term of the Aiken County Grand Jury for attempted murder, first-degree burglary, and possession of a firearm during the commission of a violent crime. C. David Hayes and Michael D. Routzong of the Aiken County Public Defender's Office represented Applicant. Assistant Solicitors Jeffrey A. Solcum, Jr., and Cassie W. Hall of the Second Circuit Public Defender's Office prosecuted the case.

On May 13, 2015, Applicant proceeded to a jury trial before the Honorable R. Knox McMahon. The jury convicted Applicant of attempted murder and possession of a firearm during the commission of a violent crime, but acquitted him of first-degree burglary. Judge McMahon sentenced him to twenty-five years' imprisonment for the attempted murder conviction and five years' imprisonment for the possession of a firearm conviction, to be served concurrently.

Applicant filed a timely notice of appeal and an appeal was perfected on his behalf by Appellate Defender Laura R. Baer of the South Carolina Commission on Indigent Defense-Office of Appellate Defense. On appeal, Applicant argued "the trial court erred in failing to recharge the jury on self-defense where the jury was charged on both attempted murder and assault and battery of a high and aggravated nature three times during the course of the trial court's original jury charge and re-charges, such that, under the totality of the circumstances, the jury charge was unbalanced and prejudicial to the defendant." The South Carolina Court of Appeals affirmed in an unpublished opinion. State v. Glover, Op. No. 2017-UP-025 (S.C. Ct. App. filed Jan. 11, 2017). Applicant filed a petition for rehearing, which the Court of Appeals

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denied by order dated February 23, 2017. Applicant subsequently filed a petition for a writ of certiorari in the South Carolina Supreme Court, which was denied. The Remittitur was issued on January 4, 2018.

SUMMARY OF FACTS SUPPORTING CONVICTIONS

Applicant was indicted for attempted murder, first-degree burglary, and possession of a firearm during the commission of a violent crime after attacking his former paramour, Vernell Weaver. Tr. p. 11. At trial, Weaver testified that on the day of the incident she spoke with Applicant and asked him to come pick her up from George Mackey's house so she could retrieve some clothes from their home. Tr. p. 109. Applicant agreed and after taking her home, he dropped her back off at Mackey's house. Tr. p. 111. Once inside, Weaver began making herself something to eat when she heard a banging at the door and saw Applicant standing at the door. Tr. p. 115. Before she could speak, Applicant drew a gun and shot her through the neck. Tr. p. 115. Weaver turned, ran into the bedroom, and dialed 911. Tr. p. 115. Although she shut the door, Applicant came through the wall and the two began to tussle on the bed as Weaver attempted to wrestle the gun away from him. Tr. p. 115. However, Applicant took the gun back and attempted to shoot Weaver again in the stomach. Tr. p. 116. Weaver was able to get away from him and ran through the living room, grabbing a hammer that was on the floor as she headed out of the house towards the home of Otis and Almetha Green. Tr. pp. 117-18.

Almetha Green then testified that she was in the kitchen when she heard Weaver yelling about having been shot as she ran towards the house. Tr. p. 145. Weaver eventually reached the porch and sat in a chair, still clutching the hammer. Tr. pp. 148-49. Applicant, who had chased Weaver to the Green's house, tried to pull the hammer from her hand. Tr. p. 149. Almetha got her husband, Otis Green, who told Applicant to leave Weaver alone and threatened to call the

police. Tr. p. 148. Almetha eventually called the police and Applicant ran away when he heard the sirens. Tr. p. 148. Otis similarly testified that on the day of the incident he was awakened by Almetha, and he went with her to the porch to find Weaver sitting on the porch with Applicant standing over her trying to get the hammer out of her hand. Tr. p. 159.

Dr. Bradford Huffman testified as an expert in oral and maxillofacial trauma and treatment. Tr. p. 278. He described how when Weaver was shot, the bullet entered her right neck, passed through the floor of her mouth and her tongue, and exited through the left side of her lip. Tr. p. 282. He further explained that this type of injury was associated with a high level of mortality. Tr. p. 285.

Applicant testified in his own defense. He testified Weaver called him the morning of the incident about getting something to eat at the church, and they arranged for Applicant to pick her up. Tr. p. 312. He claimed that on the way, Weaver requested they make a stop to pick up some crack before they returned to their shared home, where Weaver smoked the crack she had acquired. Tr. pp. 314-15. After that, Applicant stated he drove Weaver back to Mackey's house and accompanied her inside where she began to smoke the remainder of her crack. Tr. p. 317. Applicant claimed that once Weaver consumed all her crack she asked him for money so she could purchase more to smoke; when he responded he did not have any cash, she began to hit him and they began a physical altercation. Tr. pp. 317-18. Applicant maintained the fight escalated and Weaver eventually grabbed a hammer and began swinging it at him and they began to struggle over the hammer, knocking through a wall and the glass front door. Tr. pp. 319-20. Applicant testified he then withdrew a gun and shot at Weaver twice. Tr. p. 321. He followed her into the bedroom, going through the wall because the door was locked. Tr. p. 322. They continued to fight until Weaver left and ran to the neighbors' home. Tr. p. 326.

The defense then rested and the trial court discussed jury charges. Ultimately, the trial court instructed the jury on burglary, attempted murder, ABHAN, first-degree assault and battery, possession of a firearm during the commission of a violent crime and self-defense. Tr. pp. 373–82. After sending the jury to deliberate, Applicant objected, citing State v. King, 412 S.C. 403, 772 S.E.2d 189 (Ct. App. 2015), because the trial court had charged the jury it must only find a general intent to commit serious bodily harm as opposed to a specific intent to kill. Tr. p. 386. After reviewing the case, the trial court brought the jury back in and recharged it on attempted murder, this time stating that the “State must prove specific intent to commit murder as an element of attempted murder.” Tr. p. 391. The jury returned to deliberations. Tr. p. 393.

The jury subsequently submitted the question: “What is the difference between guilty of attempted murder and guilty of [ABHAN].” Tr. p. 393. The trial court proposed recharging attempted murder and ABHAN, and neither party objected. Tr. p. 393. After the court delivered its recharge and the jury exited, Applicant requested “the Court to consider re – instructing self-defense as well.” Tr. p. 398. The State objected and the court ultimately declined to recharge the jury, citing State v. Anderson, 322 S.C. 89, 94, 470 S.E.2d 103, 106 (1996), for the proposition that a trial court need only answer the questions asked. Tr. p. 399.

The jury then submitted another question: “Can you give an example of guilty of [ABHAN] without reading the law.” Tr. pp. 399–400. After bringing the jury back, the trial court clarified it could not provide examples for fear that could be interpreted as a comment on the facts. Tr. pp. 400–01. Instead, the trial court reiterated the language of the statute and reminded the jury it must determine the facts and compare them to the law. Tr. p. 401. Finally, the trial court reminded the jury the State must prove the elements beyond a reasonable doubt. Tr. p. 401. The jury then returned to deliberations and neither party noted any objections. Tr. p. 402.

Ultimately, the jury found Applicant guilty of attempted murder and possession of a firearm during the commission of a violent crime, and not guilty of burglary. Tr. p. 403. The trial court sentenced him to twenty-five years' imprisonment on the attempted murder charge and five years' imprisonment on the possession charge, to be served concurrently. Tr. p. 414.

ALLEGATIONS

In his application for post-conviction relief, Applicant alleges that he is being held in custody unlawfully based on allegations of:

1. Ineffective Assistance of Counsel
 - a. "failure to prepare mitigation"
 - b. "cumulative error"
2. Illegal Enhancement

In his amended application, Applicant alleges:

1. "Glovers' trial counsel's performance was deficient because he failed to preserve for appellate review the reversible error of the trial court's failure to give a general [intent] charge on the attempted murder charge, and Glover was prejudiced by that deficient performance."
2. "Glovers' trial counsel's performance was deficient because he failed to object to the Court's instructions on implied malice, and Glover was prejudiced by that deficient performance."
3. "In the jury instructions in this case, the trial court instructed the jury extensively on the law that implied malice can support a guilty verdict on an attempted murder charge. In 2017, the South Carolina Supreme Court changed the substantive law of attempted murder and held that implied malice evidence is no longer sufficient to show the specific intent to kill necessary for a finding of guilt on an attempted murder charge. State v. King, 422 S.C. 47, 810 S.E.2d 18 (2017). This law is applicable under the authority of Aiken v. Byars, 410 S.C. 534, 765 S.E.2d 572 (2014)."

At the call of the case, Applicant clarified he was proceeding only on the allegations of ineffective assistance of counsel listed in his amended application. Therefore, all other allegations are waived and dismissed with prejudice.

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SUMMARY OF TESTIMONY

Trial counsel, C. David Hayes (Counsel), testified this incident arose out of a domestic dispute between Applicant and the victim, who was his ex-girlfriend. Counsel explained the fact that Applicant shot the victim was not in dispute, and the only issue was whether he did so in self-defense. Counsel testified Applicant's version of the facts was that the victim was smoking crack and attacked him with a hammer, knocking him to the floor. Applicant then shot her, and she retreated to the bedroom. According to Applicant, he forced his way into the room through the wall in order to check on her. The victim, however, testified Applicant showed up at her new boyfriend's home uninvited, shot her, and then chased her into the bedroom and continued to try to fire the gun, but it jammed. The victim called 911 from the bedroom, then fled to a neighbor's home, where the neighbors called 911 again.

Counsel testified the jury was instructed on attempted murder, ABHAN, and assault and battery in the first-degree. Counsel further testified the trial judge ultimately charged specific intent based on King, but included language that malice may be express or implied, to which he did not object. Counsel explained he did not object to this language because he had no case law or precedent on which to base an objection, otherwise, he would have objected. Counsel testified the jury clearly deliberated between attempted murder and ABHAN and asked to be recharged on those issues. Counsel acknowledged the jury did not have to find malice in order to convict Applicant of ABHAN.

Counsel testified, however, the problem at trial was that Applicant broke through the wall separating the hallway from the bedroom where the victim was on the phone with 911. Counsel testified if the jury was going to find malice, in his opinion, it would have to be from Applicant's conduct in breaking into the bedroom after he shot the victim, and the jury would have to decide

if he did so to continue an attack or try to help her. Counsel explained the victim testified at trial that Applicant broke the wall, she held the gun to her stomach and tried to fire, but it did not fire and only made a clicking sound. Counsel acknowledged that, if believed, this testimony would provide the jury with a basis to find express malice.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has heard the testimony and evidence presented at the evidentiary hearing, observed the witnesses and evaluated their credibility, considered the arguments of counsel, and weighed these factors accordingly in its discussion below. Further, this Court has reviewed the Clerk of Court records regarding the subject conviction, the appellate records, and Applicant's original and amended applications, as well as the trial transcript. This Court finds the combined record from the criminal case and the testimony and evidence presented the evidentiary hearing establishes Applicant received effective assistance of counsel, and relief should be denied and this application dismissed with prejudice. Set forth below are the relevant findings of fact and conclusion of law as required by section 17-27-80 of the South Carolina Code of Laws:

Standard of Review

In a post-conviction relief action, the applicant bears the burden of proving the allegations in his application. Butler v. State, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985). Where the application alleges ineffective assistance of counsel as a ground for relief, Applicant must prove "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668 (1984); Butler, 286 S.C. at 443, 334 S.E.2d at 814. The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume counsel rendered adequate assistance and made

all significant decisions in the exercise of reasonable professional judgment. Strickland, 466 U.S. at 689. Applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 118, 386 S.E.2d 624, 625 (1989).

The reviewing court applies a two-pronged test in evaluating allegations of ineffective assistance of plea counsel. Id. at 117, 386 S.E.2d at 625. First, the applicant must prove counsel's performance was deficient. Id. Under this prong, the court measures an attorney's performance by its "reasonableness under professional norms." Id. (quoting Strickland, 466 U.S. at 688 (1984)). Second, counsel's deficient performance must have prejudiced the applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Id. at 117-18, 386 S.E.2d at 625. An applicant who pleads guilty with the advice of counsel may collaterally attack the plea only by showing (1) counsel was ineffective and (2) there is a reasonable probability that but for counsel's errors, the defendant would not have pleaded guilty and would have insisted on going to trial. Roscoe v. State, 345 S.C. 16, 20, 546 S.E.2d 417, 419 (2001) (citing Jackson v. State, 342 S.C. 95, 535 S.E.2d 926 (2000); Thompson v. State, 340 S.C. 112, 531 S.E.2d 294 (2000); Rayford v. State, 314 S.C. 46, 443 S.E.2d 805 (1994); Hill v. Lockhart, 474 U.S. 52 (1985)). An applicant alleging his guilty plea was induced by ineffective assistance of counsel must prove counsel's advice was not "within the competence demanded of attorneys in criminal cases." Lockhart, 474 U.S. at 56.

The standards do not establish mechanical rules; the ultimate focus of inquiry must be on the fundamental fairness of the proceeding whose result is being challenged. A court need not first determine whether counsel's performance was deficient before examining the prejudice suffered by the defendant as a result of the alleged deficiencies. If it is easier to dispose of an

ineffectiveness claim on the ground of lack of sufficient prejudice, that course should be followed. Strickland, 466 U.S. 668.

Allegations of Ineffective Assistance of Counsel for Failing to Object to Trial Court's Decision not to Give a General Intent Charge and Failing to Object to Charge on Implied Malice

Applicant argues his plea counsel was constitutionally ineffective for failing to object to the trial court's decision not to give a general-intent charge and to affirmatively charge implied malice. In support of this argument, Applicant cites to King and State v. Shands, 424 S.C. 106, 817 S.E.2d 574 (Ct. App. 2018). Applicant argues these cases created new substantive law which is applicable on collateral review pursuant to Aiken v. Byars, 410 S.C. 534, 765 S.E.2d 572 (2014). Specifically, Applicant quotes the King decision which states, "one cannot attempt to kill another by implied malice because there is not attempted to achieve an unwanted goal." 422 S.C. at 57, 810 S.E.2d at 23. Additionally, Applicant points to the Court of Appeals' statement from Shands that "the State needed to prove Shands acted with express malice *and* the specific intent to kill in order to be found guilty of attempted murder." 424 S.C. at 131, 817 S.E.2d at 537 (emphasis in original).

As an initial matter, the Court notes both cases cited by Applicant were not decided until well after Applicant's trial. "For an ineffective assistance claim, the PCR court must 'determine whether counsel was ineffective *at the time of the alleged error*.' Thus, the court must consider the law as it existed at the time of trial and 'not as it has evolved today. . . .' Accordingly, trial counsel will not be found deficient for failing "to be clairvoyant or anticipate changes in the law. . . ." Chappell v. State, 429 S.C. 68, 79, 837 S.E.2d 496, 501-02 (Ct. App. 2019) (internal citations omitted) (emphasis in original). Counsel is not required to be clairvoyant, and therefore, this Court finds he was not deficient.

Moreover, this Court finds the jury charge ultimately given by the trial court as to attempted murder was correct at the time of. The charge quoted directly from the statute, instructing, "[T]he State must prove the defendant attempted to kill another person with malice aforethought, either express or implied..." Tr. p. 390. While King and Shands hint at the issue of whether implied malice can be used to show specific intent, this Court finds Applicant's assertion that it can never be used is an overstatement of both King and Shands. See King, 422 S.C. at 64 n. 5, 810 S.E.2d at 27 n. 5 ("[W]e would respectfully suggest to the General Assembly to re-evaluate the language following 'malice aforethought' as the inclusion of the word 'implied' in section 16-3-29 is *arguably inconsistent with a specific-intent crime.*") (emphasis added); Shands, 424 S.C. 106, 131, 817 S.E.2d 524, 537 ("[W]e *question* whether an implied malice instruction is proper in any attempted murder trial. However, *even if an implied malice instruction was appropriate in an attempted murder case*, we do not believe it was appropriate in Shands's case.") (emphasis added). Notably, the General Assembly has yet to revise the attempted murder statute, and thus, the issue of the interplay between specific intent and implied malice remains an unsettled question in South Carolina. Even if Shands supports Applicant's position,¹ the Court finds Counsel credibly testified he had no basis to object to the charge as given, and he is not required to be clairvoyant. This Court therefore finds he was not deficient.

¹ Applicant argues King and Shands should be applied retroactively to Applicant's case on collateral review and cites Aiken v. Byars to support this argument. Aiken found the United States Supreme Court's decision in Miller v. Alabama should be applied retroactively because it announced a new substantive rule of constitutional law. Aiken, however, was not a PCR action, and it was instead brought in the Supreme Court's original jurisdiction. Moreover, there are many examples of cases in which a new rule has been applied retroactively to cases pending on direct review, but not on post-conviction relief. See, e.g., State v. Belcher, 385 S.C. 597, 612, 685 S.E.2d 802, 810 (2009) ("[T]oday's ruling is effective in this case and for all cases which are pending on direct review or not yet final where the issue is preserved.... Our ruling, however, will not apply to convictions challenged on post-conviction relief."), overruled by State v.

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Further, the Court finds, in any event, Applicant was not prejudiced by the trial court's instruction because the only evidence of malice in the case was evidence of express malice. Therefore, because the jury returned a verdict of attempted murder, and ABHAN does not require malice, the jury must have found express malice.

As Counsel explained, the issue of malice essentially came down to whose story the jury believed – the victim's testimony that Applicant showed up unannounced, shot her, and then broke down the wall to hold the gun to her stomach and fired again – or, Applicant's testimony that he shot the victim only after she initiated an unprovoked attack on him with a hammer and he was afraid for his life. As Counsel explained, even if the jury believed part of Applicant's testimony, that the victim initiated the attack, it was undisputed that she retreated to the bedroom to call 911, and Applicant followed her by breaking through the wall. The victim testified he then held the gun to her stomach and pulled the trigger multiple times, but the gun did not fire. Moreover, as the Supreme Court explained in State v. Smith,

[i]n claiming self-defense, *Smith* admitted he had an express intent to kill, but argued his intent to kill was legally justified due to an imminent threat to his life from the rival group. Thus, there was no need for the jury to infer his malice from the circumstances surrounding the shooting. Rather, the jury was faced with the choice of either believing Smith's story and finding he acted in self-defense, or believing Smith had a self-admitted intent to kill that was *not* legally justified—the very definition of express malice.

430 S.C. 226, 233, 845 S.E.2d 495, 498 (2020) (emphasis in original).

Burdette, 427 S.C. 490, 832 S.E.2d 575 (2019) ("Our ruling today is effective in this case and in those cases which are pending on direct review or are not yet final, so long as the issue is preserved. . . . However, today's ruling will not apply to convictions challenged on post-conviction relief."). Indeed, the fact that Applicant argues King and Shands are new rules supports this Court's finding that Counsel would have had to be clairvoyant in order to apply them, and thus, he was not ineffective.

"[J]urors are presumed to have followed the law as instructed to them." State v. Grovenstein, 335 S.C. 347, 353, 517 S.E.2d 216, 219 (1999). Here, the trial court correctly instructed attempted murder, as discussed above, as well as ABHAN. See Tr. pp. 378-79 ("A person commits the offense of assault and battery of a high and aggravated nature if the person unlawfully injures another person and (A) great bodily injury to another person results or (B) the act was accomplished by means likely to produce death or great bodily injury."). The jury is presumed to have followed these instructions, and therefore, because the jury had to find malice in order to convict Applicant of attempted murder. The only evidence of malice presented was that of express malice. Thus, the Court finds Applicant was not prejudiced, even the trial court's instruction was erroneous.

CONCLUSION

Based on all the foregoing, this Court finds and concludes Applicant has not established any constitutional violations or deprivations which would require this Court to grant relief. Counsel was not deficient in any manner, nor was Applicant prejudiced by her representation. Therefore, this application for post-conviction relief must be denied and dismissed with prejudice.

Applicant must file and serve a notice of appeal within thirty days from PCR counsel's receipt of written notice of entry of judgment to secure the appropriate appellate review. See Rule 203, SCACR (providing the appropriate procedure to perfect an appeal). Pursuant to Austin v. State, 305 S.C. 453, 409 S.E.2d 395 (1991), Applicant has a right to appellate counsel's assistance in seeking review of the denial of post-conviction relief. Further, Rule 71.1(g), SCRCP, provides that if Applicant wishes to seek appellate review, PCR counsel must serve and

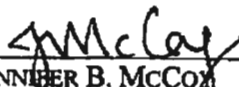
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file a notice of appeal on Applicant's behalf. Applicant is directed to Rule 243, SCACR, for the appropriate procedures for appealing a judgment in a PCR action.

IT IS THEREFORE ORDERED:

1. the Application for Post-Conviction Relief is denied and dismissed with prejudice; and
2. Applicant shall be remanded to the custody of the Respondent.

AND IT IS SO ORDERED.


JENNIFER B. MCCOY
Presiding Judge
Second Judicial Circuit

Sept. 30, 2021

WITNESSES

Aiken County Sheriff

Inv. Stuart Graybeal

Law Enforcement Case #: 14-027923

JAS

ARREST WARRANT NUMBER

FILED Sept - 4 2014
2014A0210200488

L. J. Hodard
D.C.C.P. & G.S.
Am. Sanders
Deputy Clerk

ACTION OF GRAND JURY

true bill
[Signature]
Robert Wade

Foreperson of Grand Jury
Date: September 4, 2014

VERDICT

Foreperson of Petit Jury
Date:

DOCKET NO. 2014GS0201253

The State of South Carolina

County of Aiken

COURT OF GENERAL SESSIONS

SEPTEMBER TERM 2014

THE STATE

vs.

DAVID GLOVER

CDR #: 0549

Indictment for

POSSESSION OF A FIREARM DURING
COMMISSION OF A VIOLENT CRIME

§ 16-23-0490

J. STROM THURMOND, SOLICITOR

STATE OF SOUTH CAROLINA)
)
COUNTY OF AIKEN)
)

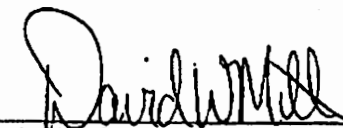
INDICTMENT FOR
POSSESSION OF A FIREARM DURING
COMMISSION OF A VIOLENT CRIME

§ 16-23-0490

At a Court of General Sessions, convened on September 8, 2014, the Grand Jurors of Aiken County present upon their oath:

That DAVID GLOVER did in Aiken County on or about May 10, 2014, possess or visibly display a firearm during the commission or attempted commission of a violent crime, to wit: Burglary in the First Degree. All in violation of Section 16-23-490, Code of Laws of South Carolina (1976), as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.



J. STROM THURMOND, SOLICITOR

STATE OF SOUTH CAROLINA

COUNTY OF Aiken

STATE VS.

David Glover

AKA:

Race: Black Sex: M Age: 54

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2014GS0201253

A/W#: 2014A0210200488

Date of Offense: 5/10/2014

S.C. Code §: 16-23-0490

CDR Code #: 0549

SENTENCE SHEET

5 yrs

*CDL Yes ☐ No ☒ CMV Yes ☐ No ☒ Hazmat Yes ☐ No ☒

In disposition of the said indictment comes now the Defendant who was

☒ CONVICTED OF or ☐ PLEADS

TO: Weapons / Poss. weapon during violent crime, if not also sentenced to life without parole or death

in violation of § 16-23-0490 of the S.C. Code of Laws, bearing CDR Code # 0549

☒ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS(CSC w/minor 1st or Lewd Act) ☐ §17-25-45The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)The plea is: ☒ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

J. A. H. P.
Blocum, Jeffrey Alan100236
SC Bar#David Glover
DefendantDan Glover
Attorney for Defendant77834
SC Bar#WHEREFORE, the Defendant, David Glover, the ☒ State Department of Corrections, ☐ County Detention Center,for a determinate term of 5 days/months/years or ☐ under the Youthful Offender Act not to exceed yearsand/or to pay a fine of \$; provided that upon the service of days/months/years and/or paymentof \$; 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 Services standard conditions of probation, which are incorporated by reference.

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on: 2014GS0201254☐ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied by the State Department of Corrections.☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ OrderedTotal: \$ plus 20% fee: \$

Payment Terms:

☐ Set by SCDPPPS

Recipient:

*Fine:

§ 14-1-206 (Assessments 107.5 %)	\$	
§ 14-1-211(A)(1) (Conv. Surcharge)	\$100	\$ 100.00
§ 14-1-211(A)(2) (DUI Surcharge)	\$100	\$
§ 56-5-2995 (DUI Assessment)	\$12	\$
§ 56-1-286 (DUI Breath Test)	\$25	\$
Proviso 47.9 (Public Def/Prob)	\$500	\$
§ 14-1-212 (Law Enforce. Funding)	\$25	\$ 25.00
§ 14-1-213 (Drug Court Surcharge)	\$150	\$
§ 50-21-114(BUI Breath Test Fee)	\$50	\$
§ 56-5-2942(J) (Vehicle Assessment)	\$40/ea	\$
Proviso 90.5 (SCCJA Surcharge)	\$5	\$ 5.00
3% to County (if paid in installments)	\$	\$ 8.90
TOTAL	\$	\$ 183.90

PTUP

 days/hours Public Service EmploymentObtain GED ☐Attend Voc. Rehab. or Job Corp. May serve W/E beginning Substance Abuse Counseling ☐Random Drug/Alcohol testing ☐Fine may be pd. in equal, consecutive weekly/monthly pmts. of \$ beginning \$ paid to Public Defender FundOther: ☐ Appointed PD or appointed other counsel.
§ 47.12 requires \$500 be paid to Clerk during probation.

Clerk of Court/ Deputy Clerk

Court Reporter:

SCCA/217 (03/2011)

Presiding Judge

Judge Code:

Sentence Date:

WITNESSES

Aiken County Sheriff

Inv. Stuart Graybeal

Law Enforcement Case #: 14-027923

JAS

ARREST WARRANT NUMBER

FILED Sept. 4 2014
2014A0210200489

L. J. Anderson
D.C.C.P. & G.S.

Anna Anderson
Deputy Sheriff

ACTION OF GRAND JURY

true bill

Robert Wade

Foreperson of Grand Jury
Date: September 4, 2014

VERDICT

Foreperson of Petit Jury
Date:

DOCKET NO. 2014GS0201254

The State of South Carolina

County of Aiken

COURT OF GENERAL SESSIONS

SEPTEMBER TERM 2014

THE STATE

vs.

DAVID GLOVER

CDR #: 3410

Indictment for

ATTEMPTED MURDER

§ 16-03-0029(A)

J. STROM THURMOND, SOLICITOR

STATE OF SOUTH CAROLINA)
)
COUNTY OF AIKEN)
)

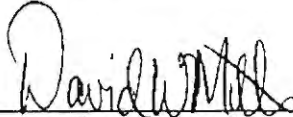
INDICTMENT FOR
ATTEMPTED MURDER

§ 16-03-0029(A)

At a Court of General Sessions, convened on September 8, 2014, the Grand Jurors of Aiken County present upon their oath:

That DAVID GLOVER did in Aiken on or about May 10, 2014, feloniously, wilfully and with malice aforethought, attempt to kill [REDACTED] by means of shooting the victim in the neck with a firearm. All in violation of Section 16-3-29 of the South Carolina Code of Laws (1976), as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.



J. STROM THURMOND, SOLICITOR

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF Aiken
 STATE VS.
David Glover

AKA:

Race: Black Sex: M Age: 54

INDICTMENT/CASE#: 2014GS0201254A/W#: 2014A0210200489Date of Offense: 5/10/2014S.C. Code § : 16-03-0029(A)CDR Code #: 3410

SENTENCE SHEET

0-30yrs

*CDL Yes ☐ No ☒ CMV Yes ☐ No ☒ Hazmat Yes ☐ No ☒
 In disposition of the said indictment comes now the Defendant who was
 TO: Attempted Murder

☒ CONVICTED OF or ☐ PLEADS

in violation of § 16-03-0029(A) of the S.C. Code of Laws, bearing CDR Code # 3410
☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☒ MOST SERIOUS ☐ Mandatory GPS(CSC ☐ §17-25-45
 w/minor 1st or Lewd Act)

The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)The plea is: ☒ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST: Docum, Jeffrey Alan 100236 SC Bar# Defendant Attorney for Defendant SC Bar#

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,

for a determinate term of 25 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 Services standard conditions of
 probation, which are incorporated by reference.

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on:

☒ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied
 by the State Department of Corrections. 373 DAYS

☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal
 Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ OrderedTotal: \$ plus 20% fee: \$ Payment Terms: ☐ Set by SCDPPPS Recipient:

*Fine:	\$	
§ 14-1-206 (Assessments 107.5 %)	\$	
§ 14-1-211(A)(1) (Conv. Surcharge)	\$100	\$ 100.00
§ 14-1-211(A)(2) (DUI Surcharge)	\$100	\$
§ 56-5-2995 (DUI Assessment)	\$12	\$
§ 56-1-286 (DUI Breath Test)	\$25	\$
Proviso 47.9 (Public Def/Prob)	\$500	\$
§ 14-1-212 (Law Enforce. Funding)	\$25	\$ 25.00
§ 14-1-213 (Drug Court Surcharge)	\$150	\$
§ 50-21-114(BUI Breath Test Fee)	\$50	\$
§ 56-5-2942(J) (Vehicle Assessment)	\$40/ea	\$
Proviso 90.5 (SCCA Surcharge)	\$5	\$ 5.00
3% to County (if paid in installments)	\$	\$ 3.90
TOTAL	\$	\$ 133.90

PTUP days/hours Public Service EmploymentObtain GED ☐Attend Voc. Rehab. or Job Corp. May serve W/E beginning Substance Abuse Counseling ☐Random Drug/Alcohol testing ☐Fine may be pd. in equal, consecutive weekly/monthly
pmts. of \$ beginning \$ paid to Public Defender FundOther:

☐ Appointed PD or appointed other counsel,
 § 47.12 requires \$500 be paid to Clerk
 during probation.

Clerk of Court/ Deputy Clerk

Court Reporter:

SCCA/217 (03/2011)

Presiding Judge

Judge Code: Sentence Date: 18 May 15