

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

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SC Court of Appeals

Appeal from Sumter County
Honorable R. Kirk Griffin, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

DAVID L. HILL, JR.,

APPELLANT.

APPELLATE CASE NO. 2021-000749

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THE FOLLOWING EXHIBITS ARE ON FILE WITH THIS COURT:
STATE’S EXHIBIT NOS. 6-A, 6-B, 7-A, 7-B, 8-A, 8-B, (PHOTOGRAPHS),
STATE’S EXHIBIT NO. 32 (PHOTOGRAPH), STATE’S EXHIBIT NO. 33 (VIDEO),
STATE’S EXHIBIT NO. 35 (PHOTOGRAPH AND DISK),
STATE’S EXHIBIT NO. 36 (911 CALL),
STATE’S EXHIBIT NO. 38 (BODY CAMERA VIDEO)

STATE OF SOUTH CAROLINA))
COUNTY OF SUMTER)) COURT OF GENERAL SESSIONS

STATE OF SOUTH CAROLINA)

STATE,)

TRANSCRIPT OF RECORD
20-GS-43-0245

v.)

DAVID L. HILL, JR.,)

DEFENDANT.)

May 24-26, 2021
Sumter, South Carolina

B E F O R E :

THE HONORABLE R. KIRK GRIFFIN, JUDGE;
AND JURY

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

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Assistant Solicitor

SHAUN C. KENT, ESQ.
JOHN "JACK" FURSE, ESQ.
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Attorneys for Defendant

FRANCES B. RAY, RPR
Circuit Court Reporter

1 THE COURT: All right. I've been
2 presented the indictment 2020-GS-43-245, the State
3 of South Carolina v. David L. Hill, Jr. The
4 Defense in this matter has requested a formal
5 arraignment as to each charge, so we will proceed
6 with that procedure.

7 Mr. Hill, if you'd stand up for me
8 please. Raise your right hand for me.

9 WHEREUPON,

10 **DAVID L. HILL, JR.,**
11 having been duly sworn by the Court, testified as
12 follows:

13 THE COURT: All right, Mr. Hill, you
14 can put your hand down. You have been indicted
15 under indictment 2020-GS-43-245 for five separate
16 charges. I'm gonna go over each of those charges
17 with you individually. At the end of my reading
18 of the charge as to each count, I'm going to ask
19 you questions. It's basically gonna be how do you
20 plead, guilty or not guilty. And if you need to
21 confer with your lawyer at any time as we go
22 through this process, you just let me know, okay?

23 THE DEFENDANT: Yes, sir.

24 THE COURT: All right, sir. Count 1
25 is for attempted murder. It states that you did

1 in Sumter County on or about July 7th, 2018, with
2 intent to kill, attempt to kill another person,
3 that person being Roger Goden, with malice
4 aforethought, either expressed or implied, by
5 intentionally driving a vehicle into the victim in
6 violation of Section 16-3-29 of the Code of Laws
7 of South Carolina. You understand that charge?

8 THE DEFENDANT: Yes, sir.

9 MS. MCELVEEN: Your Honor, this is the
10 date -- that's the first four charges of the ones
11 that have the date incorrect, one year difference,
12 so it should be July 7th, 2019. I just want to
13 make sure that's correct for the arraignment.

14 THE COURT: Okay. As to each of the
15 charges, the date of -- alleged date of offense is
16 July 7, 2019. There has been a scrivener's error
17 as to four of the five counts which state 2018.
18 The State has made a motion to amend the
19 indictment to cure this scrivener's error. Do you
20 understand that?

21 THE DEFENDANT: Yes, sir.

22 THE COURT: Any objection from the
23 Defense with regard to the indictment?

24 MR. KENT: No, Your Honor. Just to
25 cover on the record, the solicitor sent an email

1 to myself, cocounsel Mr. McMillan, as well as to
2 the Court. She then contacted me directly. She
3 gave us ample opportunity to know about the
4 scrivener's error, and we discussed that in full
5 detail with our client and contacted Ms. McElveen
6 again and told her that we had no concerns about
7 it whatsoever. He's been informed. He's been
8 told all of the law applicable, what we could and
9 could not do. He understands, and he told us he
10 had no problem going forward with the amended
11 date.

12 THE COURT: So Mr. Hill, as to count
13 1, attempted murder, how do you plead?

14 THE DEFENDANT: Not guilty.

15 THE COURT: All right. Count 2 is
16 domestic violence in the second degree. It states
17 that you did in Sumter County on or about July
18 7th, 2019, inflict physical harm or injury to a
19 household member, or offer or attempt to cause
20 such with apparent present ability under
21 circumstances reasonably creating fear of imminent
22 peril; and either you, the defendant, actually
23 inflicted physical harm or injury to the household
24 member or offered or attempted to cause such harm
25 or injury with the apparent ability -- apparent

1 present ability under circumstances reasonably
2 creating fear of imminent peril; and either the
3 defendant was in the process of violating a
4 protective order; defendant knew or should have
5 known the def-- the victim is or was pregnant; a
6 minor was present or perceived the event; the
7 offense was committed during a robbery, burglary,
8 kidnapping, or theft; the offense was committed by
9 impeding the victim's breathing or air flow or the
10 offense was committed using physical force or
11 threat of such force to block a person's access to
12 a phone or electronic communication device with
13 the purpose of preventing or interfering with a
14 report to law enforcement or request for
15 assistance from emergency medical assistance in
16 violation of Section 16-25-20 of the South
17 Carolina Code of Laws. How do you plead to that
18 charge?

19 THE DEFENDANT: Guilty.

20 THE COURT: Count 3 is assaulting an
21 officer while resisting arrest. It states that
22 you did in Sumter County on or about July 7th,
23 2018 [sic], knowingly and willfully resist -- or
24 excuse me, knowingly, willfully, did assault,
25 beat, or wound Officer Rutan, a law enforcement

1 officer of this state while resisting the efforts
2 of the officer to make a lawful arrest and you
3 knew or, reasonably should have known, that
4 Officer Rutan was a law enforcement officer, in
5 violation of Section 16-9-320(b) of the Code of
6 Laws of South Carolina. How do you plead to that
7 charge?

8 THE DEFENDANT: Not guilty.

9 THE COURT: Count 4, resisting are--
10 or assaulting officer while resisting arrest
11 states that you did on or about July 7th, 2019,
12 knowingly and willfully assault, beat, or wound
13 Officer McKnight, a law enforcement officer of
14 this state, while resisting the efforts of that
15 officer to make a lawful arrest and you knew, or
16 reasonably should have known, that Officer
17 McKnight was a law enforcement officer, in
18 violation of Section 16-9-320 of the Code of Laws
19 of South Carolina. How do you plead to that
20 charge?

21 THE DEFENDANT: Not guilty.

22 THE COURT: And lastly, count 5,
23 assault and battery in the first degree, it states
24 that you did in Sumter County on or about July
25 7th, 2019, unlawfully injure and/or attempt to

1 injure another person, specifically Trenton Brown,
2 with the present ability to do so and the act was
3 accompanied by means likely to produce death or
4 great bodily -- likely to produce death or great
5 bodily injury in violation of Section 16-3-600 of
6 the Code of Laws of South Carolina. How do you
7 plead to that charge?

8 THE DEFENDANT: Not guilty.

9 THE COURT: All right. How, Ms.
10 McElveen, do you suggest we proceed? I would
11 suggest that we sentence Mr. Hill on the domestic
12 violence charge after trial. Obviously this plea
13 is gonna change the way that the case is
14 presented, so that's my fault so I'm open to
15 suggestions from either side.

16 MS. MCELVEEN: Your Honor, I would
17 suggest that we enter a plea and defer sentencing
18 on that charge until the conclusion. That way he
19 can't then say that he does not want to trigger
20 the pleading more of domestic violence and thereby
21 undoing whatever opportunity he had to present
22 that evidence during trial. We request that
23 sentencing be deferred on that charge.

24 THE COURT: Well, I mean, he's entered
25 his plea. Now we haven't gone through the formal

1 plea colloquy. I guess we would likely need to do
2 that before the trial is started, but I don't want
3 to necessarily do it while we've got that jury
4 sitting there so.

5 MR. KENT: If I may, Your Honor.

6 THE COURT: Yes, sir.

7 MR. KENT: One, just to cover, just
8 to make sure we're covered on the record. We
9 appreciate the Court giving us notice of a formal
10 arraignment. We discussed this with Mr. Hill on
11 several occasions, what he chose to plead to or
12 not plead to, and we informed him that he has a
13 constitutional right to plead straight up guilty
14 to any of his charges. He informed us that he was
15 thinking about pleading guilty; and I told him, of
16 course, until the formal arraignment he could
17 change his mind at any point in time. Again, what
18 I confirmed with him in the hallway and earlier
19 this morning, he still wished to tender a guilty
20 plea to this charge in full and total. He also
21 explained to me that he had -- that he would ask
22 the Court for the maximum sentence to the charge
23 allowable in the law understanding what has
24 happened in this situation. I understand the
25 solicitor's concerns; and candidly, sometimes I

1 share in those concerns. I'd ask that the plea
2 and sentencing happen right now.

3 I understand we have a jury waiting,
4 but these are still his constitutional rights,
5 still him preparing the jury. I'd ask that you
6 plea and sentence now. I don't think -- I don't
7 see how it hamstrings the case. I've done the
8 research. I had Mr. McMillan, the two minions in
9 the back as well, we've done the legal research.
10 I don't see how it would hamstring him being
11 sentenced or anything of that nature, and so I
12 join in the request of the solicitor that he --
13 that we do it now so there's no question. Because
14 I do understand her concern because she is right,
15 the sentencing sheets aren't signed at this point
16 in time. At the end of trial there could be a big
17 old trick, which I don't think it is, but she ---

18 THE COURT: Ms. McElveen, do you have
19 a sentence sheet for domestic violence?

20 MS. MCELVEEN: No, Your Honor. I
21 asked which charge to prepare sentencing sheets
22 for, and I was not told by defense that I should
23 prepare any.

24 THE COURT: Okay. Well ---

25 MS. MCELVEEN: I can go do that -- we

1 could ask for sentencing be deferred though.

2 THE COURT: If you can have -- if you
3 can potentially call ---

4 MS. MCELVEEN: Yes.

5 THE COURT: Call Mr. Brown in your
6 office and have him print a sheet for domestic
7 violence second degree.

8 MS. MCELVEEN: Yes, Your Honor.

9 THE COURT: We can do the plea
10 colloquy; and if he's asking for the maximum, I
11 don't know, I mean, I don't know why sentencing
12 would need to be deferred. You know, I assume
13 that -- that obviously that the witnesses involved
14 with the domestic violence wouldn't need to be
15 part of the trial anymore given, or unless, you
16 know, for some reason that became an issue at some
17 point as the testimony unfolded so.

18 MS. MCELVEEN: Your Honor, we would
19 still plan on calling her as a witness just to
20 show the pre-meditation component for the
21 attempted murder.

22 THE COURT: We'll have to cover that
23 issue when we get there.

24 MS. MCELVEEN: Yes, Your Honor. Thank
25 you. If -- you don't mind if I use my phone to

1 ----

2 THE COURT: Yeah, go ahead.

3 MR. KENT: We could, Judge, I mean, I
4 know there's a concern about the jury sitting. We
5 can pick a jury and sentence him if that's what
6 we're worried about them just sitting there. I
7 mean, we can just leave this charge to the jury.

8 THE COURT: Yeah, that's what I plan
9 on -- we can get through ---

10 MR. KENT: Jury selection, let them
11 go.

12 THE COURT: We can get through the
13 questions with regard to me accepting his plea
14 rather quickly.

15 MR. KENT: Yes, sir.

16 THE COURT: And I can fill out the
17 sentence sheet later, and that's not gonna be a
18 problem.

19 All right, Ms. McElveen, are we ready
20 to proceed?

21 MS. MCELVEEN: We will be in one
22 second. Yes, you can go ahead with the plea, yes,
23 sir, and we'll have the sentencing sheet for Your
24 Honor.

25 THE COURT: All right. Mr. Kent ---

1 MS. MCELVEEN: Wait, Your Honor. May
2 I go get the victim?

3 THE COURT: Yes.

4 (Pause.)

5 MS. MCELVEEN: Your Honor, Ms.
6 Jennifer Hill, the victim on the domestic violence
7 charge, is present in the courtroom.

8 THE COURT: All right. If we could
9 ask the Defense counsel to please come in.

10 (Pause.)

11 MR. KENT: Judge, if you'd give me two
12 seconds. I just want to go over the sheets.

13 THE COURT: Yes, sir.

14 (Pause.)

15 (Attorney Kent confers with defendant.)

16 MR. KENT: Judge, for the record,
17 we've been presented the sentencing sheet with
18 regard to indictment 2020-GS-43-0245. As
19 mentioned a moment ago, the defendant's -- the
20 attorney for the defendant has been indicated as
21 John Loudon Furse; however, I'll be signing for
22 him. It doesn't have my bar number; it has his,
23 if that's okay. And I present that to the Court
24 at this point.

25 THE COURT: Yes, sir. All right, Mr.

1 Kent, you represent David L. Hill, Jr., on the
2 charge of domestic violence in the second degree.

3 MR. KENT: Your Honor, I represent
4 him, along with Mr. McMillan, who is behind me.
5 Yes, Your Honor.

6 THE COURT: Have you explained to him
7 the nature of this charge, the possible penalty he
8 could receive, and his constitutional rights with
9 regard to a jury trial?

10 MR. KENT: In much detail, yes, Your
11 Honor.

12 THE COURT: All right. He's
13 understood those conversations?

14 MR. KENT: I believe that he has, Your
15 Honor.

16 THE COURT: And you are David L. Hill,
17 Jr., sir?

18 THE DEFENDANT: Yes, sir.

19 THE COURT: Today are you under the
20 influence of any drugs or alcohol?

21 THE DEFENDANT: No, sir.

22 THE COURT: Have you ever received any
23 treatment for any mental health issues which would
24 impair your ability to understand what you're
25 doing?

1 THE DEFENDANT: No, sir.

2 THE COURT: Domestic violence in the
3 second degree carries a maximum penalty of up to
4 three years in prison and/or a fine of up to
5 \$5,000. You understand that's the maximum charge?

6 THE DEFENDANT: Yes, sir.

7 THE COURT: You understand that
8 domestic violence is the type of charge in South
9 Carolina that your prior record could impact
10 future charges and future penalties you could
11 receive if you ever receive another conviction for
12 domestic violence?

13 THE DEFENDANT: Yes, sir.

14 THE COURT: Basically, that your
15 charge could be enhanced by degree, and enhancing
16 the charge by degree subjects you to further more
17 severe penalties. You understand that?

18 THE DEFENDANT: Yes, sir.

19 THE COURT: When you plead, sir, you
20 give up certain constitutional rights. First, you
21 give up your right to remain silent because you're
22 admitting your guilt. Next, you give up your
23 right to a jury trial. In a jury trial the State
24 would have the burden of proving you guilty beyond
25 a reasonable doubt to all twelve jurors. In that

1 jury trial you'd have the right to confront or to
2 question the State's witnesses against you. You'd
3 have the right to call witnesses to testify for
4 you, and you'd have the right to present defenses
5 to this charge. But when you plead guilty, you
6 give up those jury trial rights, you waive all
7 your defenses, and there will not be a jury trial.
8 You understand that?

9 THE DEFENDANT: Yes, sir.

10 THE COURT: Now earlier I read you the
11 charge on the indictment. Just for the record
12 we're gonna do that again. As to count 2 of the
13 indictment, which is 2020-GS-43-0245, domestic
14 violence in the second degree, you understand that
15 charge?

16 THE DEFENDANT: Yes, sir.

17 THE COURT: And how do you plead?

18 THE DEFENDANT: Guilty.

19 THE COURT: And Mr. Hill,
20 understanding that there are no recommendations,
21 no plea offers or anything of that nature in this
22 case, has anybody promised you anything to get you
23 to plead guilty to this charge?

24 THE DEFENDANT: No, sir.

25 THE COURT: Has anybody forced or

1 threatened you to get you to do this?

2 THE DEFENDANT: No, sir.

3 THE COURT: Are you doing this freely
4 and voluntarily?

5 THE DEFENDANT: Yes, sir. \

6 THE COURT: You satisfied with the
7 services of Mr. Kent and Mr. McMillan?

8 THE DEFENDANT: Yes, sir.

9 THE COURT: They've done everything
10 you asked them to do to represent you on this
11 particular charge?

12 THE DEFENDANT: Yes, sir.

13 THE COURT: And you're pleading guilty
14 to domestic violence second degree because you
15 are, in fact, guilty?

16 THE DEFENDANT: Yes, sir.

17 THE COURT: Sir, you have ten days
18 from today's date to appeal this plea and the
19 sentence I give you; but if you want to appeal,
20 you must file an appeal, that appeal in writing,
21 with the Sumter County Clerk of Court. You
22 understand that?

23 THE DEFENDANT: Yes, sir.

24 THE COURT: All right. Ms. McElveen
25 is going to give me the facts as to the domestic

1 violence charge and then I'm going to come back to
2 you.

3 MS. MCELVEEN: Your Honor, on July
4 7th, 2019, Mrs. Hill was at the house with Mr.
5 David Hill who had recently lost a friend or an
6 acquaintance. He started drinking heavily. He
7 made Mrs. Hill get in the car. He had her drive
8 around to the cemeteries, get out, walk around,
9 talked about sacrificing her, talked about the
10 need for -- had a strange obsession with death,
11 kept telling her he was going to release her soul
12 in 2019 and his in 2020. She saw the situation
13 escalating. He was making understood threats to
14 kill her in her mind for sure; and when presented
15 with the opportunity to stop at a gas station, she
16 did.

17 At that point Mr. Hill began a verbal,
18 more verbal argument with her, started beating her
19 about the face and head, repeatedly wrapping his
20 hand around her hair, his hand around her hair,
21 and beating her while he was in the passenger seat
22 and she was in the driver's seat. A good
23 Samaritan approached, distract him for a moment.
24 Ms. Hill took the opportunity to run inside the
25 gas station and call police for help. And

1 Ms. Hill is present. I don't know if she wishes
2 to address the Court, but I know Your Honor
3 would -- if she had the opportunity she may wish
4 to.

5 THE COURT: All right. I will give
6 her that opportunity here in a few minutes.

7 Mr. Hill, if you'd stand up for me
8 please. You heard the facts as recited by the
9 Solicitor with regard to the domestic violence in
10 the second degree charge?

11 THE DEFENDANT: Yes, sir.

12 THE COURT: You agree that those facts
13 as recited are substantially correct?

14 THE DEFENDANT: Yes, sir.

15 THE COURT: I find there's a
16 substantial factual basis for your plea. I find
17 your decision to plead guilty to this charge is
18 freely, voluntarily, intelligently made. You've
19 had the advice of counsel, of attorneys with whom
20 you're satisfied, and I will accept the plea.

21 Before I hear from the Defense,
22 Ms. Hill, is there any anything you'd like to tell
23 me, ma'am?

24 THE VICTIM: No, Your Honor.

25 THE COURT: All right. Thank you,

1 ma'am.

2 Mr. Kent.

3 MR. KENT: And not much whatsoever.

4 Your Honor. I appreciate the Court's use of the
5 word "substantially correct." The reason that we
6 say that is we understand we still have a trial.
7 I understand the Court -- I understand the
8 Prosecution would not be able to use his plea
9 colloquy during the trial. But the reason we say
10 the words substantially correct is we agree with
11 everything dealing with the domestic violence.

12 That being said, as far as prior
13 criminal record, the only thing on Mr. Hill's
14 record is a disorderly conduct. All that being
15 said, when he discussed this with me, he looked at
16 the evidence, looked at the facts. He was
17 apologetic for what had happened to Ms. Hill. He
18 felt -- remorse is the easiest way to describe it.
19 Explained to me that he wanted to plead guilty to
20 that charge. That's why we went back and forth to
21 that. After deciding to plead guilty, I talked to
22 him back and forth about what type of sentence.
23 He made it clear that he would be asking for the
24 maximum sentence allowable under the law to this
25 charge, and that's what we would ask for, Your

1 Honor. I know that's a strange request, but we'd
2 ask for the three years.

3 THE COURT: All right. Can anyone
4 tell me how many days he has done?

5 MR. KENT: It's pretty close to 23
6 months. That's an exact number.

7 MS. MCELVEEN: Same date, Your Honor.
8 July 7th.

9 MR. KENT: 2019.

10 THE COURT: All right. Well, I'll put
11 that he's given credit since 7 -- is it July 7th?

12 MS. MCELVEEN: Yes, Your Honor.

13 THE DEFENDANT: July 7th, 2019. Yes,
14 Your Honor.

15 THE COURT: All right. Mr. Hill, is
16 there anything that you want to tell me, sir?

17 THE DEFENDANT: No, sir.

18 THE COURT: All right. On indictment
19 number 2020-GS-43-0245 as to the count of domestic
20 violence in the second degree, the State of South
21 Carolina v. David L. Hill, Jr. Mr. Hill, the
22 sentence of the Court you be committed to the
23 State Department of Corrections for a determinate
24 term of three years and you are given credit for
25 the time you've served. That sentence started on

1 July 7th, 2019. And that is the sentence of the
2 Court as to this charge.

3 MS. MCELVEEN: Your Honor, may we
4 request a permanent restraining order for
5 Ms. Hill? She has also served the defendant with
6 divorce papers which he refuses to sign in jail.
7 She feels afraid for her life and upon his
8 release.

9 THE COURT: Okay. We'll take up any
10 collateral matters with regard to the plea at the
11 conclusion of trial. I don't want to ---

12 MS. MCELVEEN: Yes, sir.

13 THE COURT: I don't want to use any --
14 or keep the jury sitting out there any longer than
15 we actually have to.

16 And one more thing, Mr. Hill, you
17 understand that because of this conviction you
18 will be unable at least under the federal law, you
19 will be unable to possess any firearms of any sort
20 and/or any ammunition. You understand that?

21 THE DEFENDANT: Yes, sir.

22 THE COURT: That goes along with the
23 domestic violence conviction.

24 THE DEFENDANT: Yes, sir.

25 THE COURT: All right.

1 MR. KENT: Your Honor, at that point
2 in time, understanding there's not a formal notice
3 requirement to Lyle, we would ask the State of
4 South Carolina are there any prior bad act
5 evidence that it would intend on utilizing against
6 Mr. Hill; and, if so, which Lyle analysis would
7 they be utilizing it for?

8 MS. MCELVEEN: Your Honor, we don't
9 plan on introducing any prior bad acts except I
10 know that Mr. Kent has pled his client guilty to
11 the domestic violence. That would be a part of
12 the facts of this case, and it would certainly
13 paint the scene in a mental intent and mental
14 state of his client. It would not be excluded
15 other than res gestae kind of approach to this
16 offense. We do not plan on bringing in the other
17 offenses unless the door were opened.

18 MR. KENT: I'm comfortable at this
19 point in time that'll be the separate motion that
20 Mr. Furse will be arguing, but at this point --
21 I'm sorry, Judge.

22 THE COURT: At least for the record,
23 evidence of other bad acts may be an integral part
24 of the crime charged, it may be needed to help the
25 jury understand the context message in which the

1 crime occurred; and as such, when the evidence,
2 number one, furnishes part of the context, and
3 two, is necessary to a full presentation of the
4 case or so intimately connected with the
5 explanation of the crime charged and is so much a
6 part of the setting the case to prove it's
7 appropriate and complete the story of the crime,
8 those are the three parts of proof under res
9 gestae. That's State v. King, 334 SC 504, S.E.2d
10 578, and also State v. McGee, 408 SC 278, 758
11 S.E.2d 730, that's a Court of Appeals case from
12 2014. I don't know if y'all want to proffer the
13 testimony that the State intends to allege which
14 surrounds the domestic violence component of this
15 case. You know, I can't say because I don't know
16 what is alleged to have occurred on the evening at
17 least at this point so.

18 MR. KENT: Your Honor, we would
19 probably toward the end with the mes-- with the
20 motion that Mr. Furse, we would ask that the
21 testimony be proffered in light of the fact that
22 some of this has already been pled guilty to so
23 make sure it falls into the relevant case. And
24 the rest of the motions will not take long. This
25 is more just housekeeping.

1 THE COURT: Okay. Well, let's proceed
2 with the easy matters first and we'll circle back
3 to the res gestae issues towards the end.

4 MR. KENT: Your Honor, the -- my
5 understanding from the State of South Carolina at
6 best there will be three lay witnesses. The lay
7 witnesses be that of Jennifer Hill, Mr. Goden and
8 Mr. Brown. They have provided us criminal record.
9 I think you gave it to us on Friday. We're not
10 complaining about it, but we just -- we've gotten
11 the criminal records of these witnesses. If the
12 State can go forth on what they believe are
13 admissible on the criminal records of these
14 individuals, that way we don't have to waste time
15 in case they testify, if we'd be able to get into
16 that. And, Your Honor, I understand there might
17 be something on somebody's criminal record that
18 will outside of the ten year window potentially,
19 and I understand that there is a written
20 requirement that we intend on utilizing something
21 on outside of the ten year window as to
22 cross-examine a witness. Understanding that we
23 just received this on Friday, we'd ask that the
24 Court waive the written requirement depending on
25 what the Solicitor sees fit to introduce.

1 THE COURT: Thank you, Ms. McElveen.
2 And I'm gonna think about Ms. Hill's
3 conviction ---

4 MR. KENT: Yes, sir.

5 THE COURT: --- with regard to the
6 contraband.

7 MR. KENT: And, Your Honor, this may
8 or may not come up, but sometimes and I'm trying
9 cases with multiple attorneys and multiple
10 associates, the State of South Carolina will make
11 reference to the fact that the defendant has a lot
12 of attorneys or high price attorneys or something
13 of that nature. I make a motion in limine that
14 that not be allowed to be mentioned for the direct
15 comment on his constitutional right to hire an
16 attorney.

17 MS. MCELVEEN: Your Honor, I certainly
18 don't know, luckily, the fee schedule for Mr. Kent
19 nor Mr. McMillan. I probably cannot afford it. I
20 do probably know that, but I don't know -- Your
21 Honor, we don't -- we do plan on referring to
22 his -- we may refer to his attorneys because there
23 are more than one, but we certainly don't plan on
24 attacking him for having a legal defense team
25 equivalent to OJ Simpson.

1 THE COURT: Well, this would be the
2 converse of what prosecutors here sometimes is
3 the -- well, they've got all the resources of the
4 State of South Carolina. I've heard that more
5 than once in this particular courtroom. But I
6 agree with Mr. Kent, the fact that he has
7 obviously able and I'm assuming well compensated
8 counsel, there's no real relevance to anything
9 other than the fact he's got two good lawyers with
10 two good associates. So I'm sure Ms. McElveen
11 will play it by the book and not make any
12 references. But in terms of referring to the fact
13 he has attorneys, that's fair game; but, you know,
14 she knows, she knows the -- what I'm getting at
15 with my ruling.

16 MS. MCELVEEN: Yes, Your Honor.

17 THE COURT: So don't make any comment
18 on the fact that he -- that he's obviously well
19 represented. That would be a comment on his right
20 to be -- of his right to counsel.

21 MS. MCELVEEN: Yes, Your Honor. And I
22 also -- the opposite side of that, we also make a
23 motion that they not be able to bring up they have
24 all the State resources.

25 THE COURT: I don't think it ---

1 MR. KENT: I don't think you've got a
2 constitutional right to that.

3 THE COURT: I don't think I want ---

4 MS. MCELVEEN: I'm having ---

5 THE COURT: --- to go that far,
6 Ms. McElveen. If they choose to make that
7 assertion ---

8 MS. MCELVEEN: Thank you for reminding
9 them of that argument, Your Honor.

10 MR. KENT: They might as well object
11 that he's going to do it at some point in time.
12 Your Honor, we have two motions remaining. One
13 will be handled by Mr. Furse. The second, I think
14 Ms. McElveen and I will be able to discuss it
15 because it's kind of interesting with this case.
16 Usually, I would ask at this point in time are
17 there any statements they intend on utilizing
18 against Mr. Hill. I think there's some questions
19 about -- and I don't think she anticipates any
20 actual written statements or tangible statements;
21 but there's some statements that are in some of
22 the of videos and so that's something we're going
23 to have to talk through. But I think we can talk
24 through that while Mr. Furse is arguing his
25 motion.

1 And then additionally, Your Honor,
2 there's just a lot of videos in this case. I
3 mean, they're not very lengthy. I think it's
4 about three-and-a-half hours of video.

5 MR. MARVIN MCMILLAN: That's the 17
6 body cam.

7 MR. KENT: There's just a bunch of
8 body cams; and there's going to be some
9 information and some things that we would want
10 excluded from those videos and body cams, just
11 things that are just not relevant. And what we
12 would ask, Your Honor, depending on the State's
13 position is -- and I know we don't like when we
14 ask the judge to do this -- it's just to look at
15 them before we argue the motion because it's going
16 to be easier if you reviewed and looked at all the
17 videos; otherwise, we'll be sitting here for a
18 while. But that might change depending on
19 Mr. Furse's motion. Thank you, Your Honor.

20 THE COURT: All right. Ms. McElveen,
21 and I'm not going to hold you to this because I
22 know sometimes trial strategy changes depending on
23 how the evidence comes in, what is your, at least,
24 tentative plan with regard to the body cam videos?
25 Have you -- I assume you're not just going to put

1 them in and press play on each one so enlighten me
2 a little bit as to what your plan is with regard
3 to the body cams.

4 MS. MCELVEEN: Your Honor, the three
5 victims will be present, present to testify. They
6 do give statements at the scene to officers on
7 body worn cameras, but they can also testify to
8 that themselves. We would -- there -- there is a
9 scene where the defendant is captured and put in
10 custody, body worn cameras on officers when they
11 approach, a scuffle, and then waiting and he is
12 very -- even though handcuffs get on, he continues
13 to resist arrest by not getting in a car
14 willingly; and then while driving down the road
15 kicking the car, banging his head against it. He
16 continues to resist his arrest while in the back
17 of the car. We do plan on playing that body worn
18 camera, but that officer -- he's making threats to
19 the officer threatening to kill him, telling him
20 other things about how he hopes things happen to
21 his family members. We would assert that's still
22 part of the resisting arrest. He is not
23 compliant. Even though he is in handcuffs he's
24 continuing to resist that arrest and trying to
25 escape the law at that point and trying to not be

1 captured, although he is technically still in the
2 back seat of a car. We do plan on using that body
3 worn camera footage.

4 THE COURT: And I think the video
5 statements of the three victim witnesses would
6 only be relevant if they testify inconsistent with
7 their prior statement, so I guess I'm probably
8 more concerned with the second video that you
9 referenced, and I mean, I guess I'll be glad to
10 watch it. It may, may make it easier if I can
11 watch it and then we get together tomorrow morning
12 at 9 to discuss it.

13 MS. MCELVEEN: Yes, Your Honor.

14 MR. KENT: And Judge, I agree with
15 that. It's just we can go back and forth on
16 what's in there, what's not. Our position is very
17 simple. Everything that they need to prove their
18 case is captured and then there's some extraneous
19 information that's unnecessary that almost argue
20 some type of Lyle prior bad act evidence that this
21 guy just did some really stupid stuff and we want
22 to use it to show that he's a jerk, not to show
23 that he's completed any other crimes that we
24 accuse him of, we just want to show hey, he's a
25 bad person and said some really dumb stuff. I

1 just don't know the relevance.

2 THE COURT: Well, if you can provide
3 me the copy of that, we'll -- I will review the
4 video that is -- captures the arrest and the
5 subsequent acts after he's placed in the car.
6 Like I said, I think the statements will only
7 become relevant if there's impeachment under 613.

8 MR. MARVIN MCMILLAN: Judge, I'm
9 somewhat familiar with those body worn cameras as
10 well. Let me just clear this up. There's 17 body
11 worn cameras. They don't give the officers'
12 names; but each officer's camera is assigned a
13 number, as you know.

14 THE COURT: Right.

15 MR. MARVIN MCMILLAN: And there's a
16 lot of repetitive ones in there. The way they
17 were sent to us by the Solicitor's Office, they're
18 in different segments. For example, one is an
19 hour and ten minutes long. The same officer may
20 be in another scene at the Citgo Station, might be
21 four minute video. So the two DVDs that we have
22 that we were supplied by the Solicitor's Office,
23 one has 12 videos on it. Am I right on that,
24 Hugh? And the other has five. An hour and ten
25 minute video, he is arrested within the first two

1 minutes; he's in the car. He's handcuffed.
2 You'll see that. The rest of it is he's saying he
3 can't breathe, and he is cussing and storming and
4 I don't think it's going to be an issue. He was
5 intoxicated, okay? However, the question at that
6 point is all the rest of that information as
7 Mr. Kent just said is not relevant to whether or
8 not he resisted arrest. Some of the other tapes
9 that we talked about are the other officers
10 responding. It's dark, some spinning around, you
11 can't really see. But at the end of the day, the
12 arrest is a two minute event on Officer Rutan's
13 video. And I'll give you both videos. I just
14 give you a feel for what we're addressing. The
15 rest will be shown for nothing more than inflaming
16 this jury, be prejudicial against Mr. Hill.
17 There'd be absolutely no cause for it.

18 THE COURT: So you think that entire
19 video would be an hour and ten minutes long?

20 MR. MARVIN MCMILLAN: It is.

21 MR. KENT: Yes, sir.

22 THE COURT: Okay. I don't mind, ---

23 MR. KENT: Thank you, Judge.

24 THE COURT: I don't mind watching it.

25 I think I need to get a full flavor of it. He may

1 say -- it may be one of those extremely conscious
2 things that some things aren't relevant and then
3 he may pop in with something that's relevant, so I
4 think I would be watching it in its entirety
5 before I make any ruling.

6 MR. KENT: Thank you, Judge. And then
7 our final motion as I mentioned to you would be,
8 as you're aware earlier this morning we pled
9 guilty to the charge of domestic violence second
10 degree. Our client, I'm sorry, Mr. Hill
11 specifically asked for the maximum sentence on the
12 charge. As a result, there are some information.
13 She provided an eight page statement to law
14 enforcement, will be ready to testify. We spent
15 the lunch break going through the testimony on
16 what we believe should not be admissible, and
17 Mr. Furse at this point in time will argue that
18 motion.

19 THE COURT: All right. Mr. Furse.

20 MS. MCELVEEN: Your Honor, would you
21 like me to pass up a disk I have. It's got this
22 video. It's the one ending in 2319 that we plan
23 on introducing as the continuing to resist arrest.
24 It ends in 2319. There are a lot on there.

25 THE COURT: And Ms. McElveen, can you

1 remember, can you tell me what driver is needed to
2 play this? Will it play on Windows media or?

3 MS. MCELVEEN: I just clicked on it
4 and it played. I think I might have used the IC
5 player, the safety cone, but it's number 2319.

6 THE COURT: I have the IC media player
7 on my computer; however, I don't have my drive up
8 here right now.

9 MS. MCELVEEN: Yeah.

10 THE COURT: I'll review it over the
11 evening; and if I can't, I'll watch it before I
12 make a ruling on that so. It shouldn't be a
13 problem. All right, folks. ---

14 MS. MCELVEEN: Your Honor, there are
15 sections -- I did mark down where he makes the
16 threatening comments so we could jump to those
17 comments. Obviously, the first one looked also
18 like the 12 minute mark, 15 minute mark. When his
19 mom and dad show up he gets very docile and calm;
20 but when he gets put back in the car, the
21 threatens to kill the officer starting at 36
22 minutes and then he threatens to kill McKnight at
23 56 minutes.

24 MR. KENT: Your Honor, I have no
25 objection if you just want to email the Court a

1 document of what they can follow as long as you
2 include those in it and that will be easier. I
3 have no objection.

4 MS. MCELVEEN: Because we can show it
5 for those time clips?

6 MR. KENT: Just so you can say this is
7 what I'm intending and utilizing. That way we use
8 it to follow. I have no objection.

9 THE COURT: Yeah. If you got ---

10 MS. MCELVEEN: I'll just tell you what
11 time to ---

12 THE COURT: ---of the portions that
13 you believe are relevant, I'd be happy to -- it
14 would actually help me tremendously to kind of a
15 road map as to what we're looking for. I'm going
16 to watch the whole thing regardless, but it would
17 help me to focus my attention. So if you'll
18 provide that to the Court and provide it to Mr.
19 Kent and Mr. McMillan, that would assist me
20 greatly.

21 MS. MCELVEEN: Thank you, Your Honor.
22 And also, at one point they do get a knife out of
23 his pocket that we might ask to include that, but
24 anyways. Thank you, Your Honor.

25 THE COURT: All right.

1 Mr. Furse.

2 MR. FURSE: Thank you, Your Honor.
3 May it please the Court. Again, this is just --
4 this is a motion to exclude the testimony of
5 Jennifer Hill. As the Court is aware, Ms. Hill
6 was the victim on the domestic violence second
7 degree charge in this case to which Mr. Hill very
8 recently pled guilty in open court. Your Honor,
9 I'm -- we're making this motion on several
10 grounds: The first being relevance and the second
11 would be 403 criminal rule, I mean, South Carolina
12 Rule of Evidence 403 analysis. It'd be
13 impermissible character evidence and then finally
14 prior bad act evidence that would not meet the
15 standard under Lyle. Prior to getting into law,
16 Judge, I will just sort of provide a factual
17 summary of what we believe the testimony would be.

18 Your Honor, earlier on the day of this
19 incident on July 7th of 2019, there's going to be
20 testimony that Mr. Hill became intoxicated and
21 that he and his wife left their house here in
22 Sumter with Ms. Hill driving, and they left the
23 house. And when they left, Mr. Hill was in
24 somewhat of incoherent state. I believe Mrs. Hill
25 would testify that he was acting and behaving

1 oddly. But at some point they were driving around
2 Sumter and they end up -- they have some
3 discussion about where they're going; but they end
4 up in a cemetery, or at least in one cemetery but
5 potentially multiple cemeteries. And while
6 they're at the cemetery, they both get out of the
7 vehicle; and while they're out of the vehicle
8 Mr. Hill allegedly said, states among other
9 things, I'm going to set your soul free -- to
10 Jennifer -- and you're not leaving here except in
11 a body bag. I believe that would be the
12 testimony. And Mrs. Hill -- I think there was
13 some actions of pouring some sort of liquor drink
14 on to a grave among some other activities in the
15 grave yard, and I think there's -- would be
16 potential testimony of him directly saying, I'm
17 going to F-ing kill you. I believe that would be
18 the testimony, Your Honor.

19 At this point the allegations are that
20 Mrs. Hill became fearful. And they got back in
21 the car and drove to the nearest gas station,
22 which was a Citgo gas station. And then while at
23 the gas station, an argument, a fight broke out
24 between them during which the domestic violence
25 occurred, Judge, that he pled guilty to. There

1 were punches and slaps and he grabbed her hair and
2 took her, took her cellphone, or at least tried to
3 take her cellphone. And then during that,
4 Mrs. Hill gets out of the vehicle, runs into the
5 gas station into the interior of the gas station.
6 At some point during the incident between Mr. and
7 Mrs. Hill, Roger Goden is alerted. He hears the
8 incident occurring. He hears a horn blowing. He
9 hears yelling, screaming from Mrs. Hill. He comes
10 to the scene in some way to help or to find out
11 what was going on, and he hears it and sees what's
12 happened. And I think his presence could have
13 helped Mrs. Hill get away.

14 At some point subsequent to Mrs. Hill
15 leaving and going inside the gas station, the
16 incident between Mr. Hill and Mr. Goden occurs.
17 That's when the vehicle strikes Mr. Goden and also
18 strikes the vehicle that Mr. Brown, that Trenton
19 Brown is occupied in. Mr. Hill then leaves the
20 scene. He drives off in the scene -- from the
21 scene, and is subsequently arrested some distance
22 away from this gas station resulting in another
23 charge of resisting arrest.

24 But, Your Honor, in light of the
25 guilty plea regarding the domestic violence, the

1 testimony that Mrs. Hill would provide, any
2 testimony she would provide regarding anything
3 that happened in the graveyard, Judge, would not
4 be relevant to the crimes of attempted murder and
5 assault and battery first degree that Mr. Hill is
6 charged with, or the resisting arrest case as well
7 that Mr. Hill is charged with, Your Honor. I
8 believe the State is going to argue that there's
9 evidence that he developed the proper mens re to
10 the intent to commit these crimes while out in the
11 graveyard. There's evidence of his mental state,
12 of his mens rea of his intent to kill; but Your
13 Honor, that argument suggests that the intent to
14 harm another, testimony of the intent to harm
15 another person can be imputed on a complete
16 stranger. Mr. Hill had never met Mr. Goden or
17 Mr. Brown, and therefore, any sort of mens rea he
18 developed in relation to Mrs. Hill would not be
19 relevant to any later mens re that he develops
20 against Mr. Goden; and therefore, it would not be
21 relevant testimony.

22 And further, Your Honor, as far as a
23 res gestae argument, Mr. Goden is -- he saw -- he
24 saw the incident between Mr. and Mrs. Hill. He's
25 going to testify to that. He says that on body

1 worn camera. And he also going to say, we
2 believe, that Mr. Hill said, "You want some too,"
3 before driving the car and before allegedly
4 striking. Your Honor, that is evidence of the
5 proper mens re. I mean, that's certainly going to
6 be offered as the evidence of proper mens re.

7 Judge, further Mrs. Hill, Jennifer
8 Hill, in her statement she goes into the gas
9 station during the incident in question and is not
10 a witness. She does not see the incident, the
11 car -- the car wreck. She doesn't see it. And
12 so, Your Honor, as far as her ability to testify
13 as to what happened regarding that car incident,
14 she just isn't a fact witness to that event,
15 Judge, and therefore, shouldn't be able to testify
16 about it. Your Honor, if you do consider her
17 testimony from the graveyard or from their prior
18 car ride to be relevant to the case, Your Honor, I
19 would suggest that it is -- its probative value is
20 certainly outweighed by its prejudicial effect,
21 Judge. Prejudicial effect of these comments of
22 "I'm going to set your soul free, I'm going to
23 F-ing kill you, you're not leaving unless it's in
24 a body bag," are -- everyone would agree they're
25 highly prejudicial statements. They're going to

1 inflame this jury and what probative value do they
2 actually have. We have witnesses -- the State has
3 witnesses who are going to testify that Mr. Hill
4 did, in fact, hit Mrs. Hill so there's not
5 going -- and he pled guilty to that, Judge. He
6 pled guilty to that. So the fact that he had --
7 that he was angry at Mrs. Hill, that he was upset
8 with her, that he was threatening to hurt her, is
9 not relevant to the actual charge of attempted
10 murder, Judge; and therefore, we're asking that it
11 be suppressed. Further, we believe this evidence
12 is going to be characterized by the State as
13 character evidence that he -- this is the person
14 that David Hill is and he is conforming to that
15 character when he acted at this gas station and,
16 Judge, that is improper, and we're asking that it
17 be suppressed.

18 And finally, Judge, this is a bad -- a
19 prior bad act. This -- these occurrences that
20 happened in the graveyard in the cemetery are
21 prior bad acts. They're gonna be attempted to be
22 used by the State to show that he was acting in a
23 similar fashion here at the gas station. And,
24 Judge, for those reasons we're asking that the
25 testimony of Mrs. Hill be excluded.

1 Alternatively, if Your Honor is inclined to allow
2 her to testify, we do further request that her
3 testimony be limited to just what occurred at the
4 Citgo gas station, Your Honor, because anything
5 prior to that would be irrelevant. Judge, we
6 believe that would be the only potential relevant
7 testimony she could offer to this.

8 THE COURT: Thank you, Mr. Furse.

9 MR. FURSE: Thank you, Judge.

10 THE COURT: Ms. McElveen.

11 MS. MCELVEEN: Yes, Your Honor.

12 Looking at Rules 403 and 404 I don't think 609
13 comes in yet because obviously the defendant would
14 be the one testifying if that were the case. But
15 obviously, the testimony of Ms. Hill is very
16 relevant. It shows the mental state that he has
17 at the time that he commits this offense. It's
18 what sets these wheels in motion. Ms. Hill is
19 escaping him at the gas station and is beating her
20 when Roger Goden approaches. It goes towards the
21 fact that he is premeditated malice. He may have
22 transferred that intent to Mr. Roger Goden, but
23 the intent to murder Ms. Hill could have been
24 transferred to Mr. Roger Goden when he steps in
25 and tries to intervene as a good Samaritan. The

1 statements of the graveyard shows determination to
2 do whatever necessary to carry out this plan. The
3 fact that these two other individuals got in his
4 way of carrying out that plan and his previous
5 statements, again, are admissible to show the
6 malice component. Under Rule 403, obviously it
7 can be -- it's relevant, Your Honor, the State's
8 position because it sets everything in motion as
9 the beginning of the whole incident. But it also,
10 it can be excluded if its probative value is
11 substantially outweighed by the danger of unfair
12 prejudice, confusion of the issues are misleading
13 the jury. If anything, it helps lead the jury to
14 what really happened and talk about exactly the
15 events that occurred that day to lead into him
16 pinning Mr. Goden against a car with his vehicle
17 and attempting to kill him. He makes statements
18 also at the scene of the gas station to show that
19 he transferred that intent about saying, asking
20 Mr. Goden if now he wants some too. So the intent
21 was transferred verbally at the scene to kill
22 Mrs. Hill to kill Mr. Roger Goden.

23 Also, under 404(b), the other crimes
24 are admissible to show motive, identity, existence
25 of a common scheme or plan, the absence of mistake

1 or accident or intent. And, Your Honor, we take
2 the position that his intent to kill, again,
3 Ms. Hill, was obviously an issue; but these
4 comments he made in the graveyard. Also, his
5 motive is made clear with the issues made with the
6 statements made in the graveyard and at the scene;
7 and it's also, frankly, a little bit of a common
8 scheme or plan, this anger issues transferred
9 between two people. Your Honor, his rage
10 continued. We very much feel that those
11 statements that are part of the entire truth that
12 happened that day, and they should not be excluded
13 just because he decided to enter a -- request a
14 formal arraignment and plead guilty to the
15 domestic violence. It does not exclude the fact
16 that this really happened. It's an ongoing course
17 of conduct that continued from one scene to
18 another, never stopped. He never broke the chain
19 of rage and anger and desire to kill somebody from
20 Mr. Hill during this sequence of events, Your
21 Honor.

22 THE COURT: Mr. Furse.

23 MR. FURSE: If I may, Your Honor,
24 certainly -- the State is going to be able to
25 prove that Mr. Hill was acting violently toward

1 Mrs. Hill. He pled guilty to that charge and
2 there's going to be an abundant evidence of that.
3 I don't see how it's relevant to the attempted
4 murder as to how Mr. Hill became angry at
5 Mrs. Hill. And then further, I don't see how that
6 anger can be -- how the motive evidence of motive
7 can be developed from anything that happened in
8 that graveyard towards an individual that he had
9 never -- towards individuals that he had never
10 met, hadn't seen, didn't know he was going to see
11 that night, Judge. Therefore, it's just -- it's
12 not necessary to prove why Mr. Goden was there,
13 why Mr. Brown was there. The prejudicial effect
14 is dramatic, Judge, and I just, I think the
15 probative value is just extremely lacking.

16 MR. MARVIN McMILLAN: Court's
17 indulgence, Your Honor.

18 THE COURT: Yes, sir, Mr. McMillan.

19 MR. FURSE: And Judge, this is a case
20 that I show the State, Your Honor. There's a
21 case, I think State v. Williams, Judge, that just
22 came out where attempted murder is a -- it's a
23 specific intent crime, and it talks about how the
24 State of South Carolina, the Supreme Court has not
25 ruled on whether the specific intent can be

1 transferred to another individual, Judge, and it
2 just states that they haven't made that decision
3 yet. On general intent crimes I think the ruling
4 is that it is, but there's certainly a much higher
5 mens re on an attempt crime. Our court system has
6 certainly made that very clear in recent rulings,
7 including King, and I just want to make you aware
8 of that case, Judge.

9 THE COURT: What I'm looking for, I'm
10 having trouble with my computer as usual, there's
11 a case and it involved the young lady who was shot
12 by a stray bullet at Five Points and I believe the
13 State attempted to use a transferred intent theory
14 in that case and I believe that was overturned.
15 But I'm trying to look, to locate it right now,
16 because I know that was one of the issues. A
17 specific intent crime, could that specific intent
18 be -- threshold be met using doctrine of
19 transferred intent. So if you'll bear with me for
20 a few moments to see if I can -- I found the Court
21 of Appeals opinion on that, but I know there's a
22 Supreme Court opinion as well.

23 MS. MCELVEEN: Your Honor, State v.
24 Smith?

25 MR. MARVIN MCMILLAN: Last name

1 started with a "B" if I remember correctly.

2 MS. MCELVEEN: Your Honor, I have it
3 as 430 SC 226, State v. Michael Juan Smith, and it
4 was decided December. It was heard -- well, it
5 was heard December 12th, 2019. The opinion came
6 out in 2020 where the victim was shot by
7 Mr. Michael Smith at Five Points. He did not
8 intend to harm her; but he was -- claimed he was
9 acting in self-defense, Your Honor.

10 MR. FURSE: And Judge, I do think
11 we've confused the issues here. Transferred
12 intent is when there's -- and you can stop me if
13 you don't want me to talk, Judge.

14 THE COURT: No, keep talking.

15 MR. FURSE: Transferred intent is when
16 it -- for instance, someone, there would be two
17 people in a home and an individual wanted to kill
18 one of those people and shoots and accidentally
19 misses and hits the other. There's just no
20 evidence of that in this case so I just don't
21 know...

22 THE COURT: Well, I was just doing
23 that research because Ms. McElveen said
24 transferred intent a few times in her response to
25 your motion, and I want to make sure.

1 MS. MCELVEEN: Your Honor, I don't
2 know -- I don't necessarily mean I shot one person
3 and I was trying to shoot another person. I say
4 more like a transferred statement malice, an anger
5 that transfers from one person. The object of his
6 rage transferred from Jennifer Hill to Roger Goden
7 when Roger Goden intervened and was able to let
8 Ms. Hill get away that day. The fact that Ms.
9 Hill ran from the car, she's got to discuss why
10 she ran from the car. She also made the 911 call,
11 and she states over and over again, "He's trying
12 to kill me." Your Honor, the fact that he then
13 does try to kill Roger Goden by pinning him
14 between two cars, there's attempted murder
15 component that was aimed at Roger Goden; but the
16 malice and anger and rage started in that
17 graveyard, escalated, and when it was interfered
18 with by Mr. Goden, his rage turned to Mr. Goden.
19 It's one stream of conduct that is uninterrupted,
20 and all the truth should be told to the jury so
21 they know exactly the level of rage and malice
22 we're dealing with.

23 THE COURT: But since this is a
24 specific intent crime, doesn't that specific
25 intent have to -- doesn't the intent have to be

1 specifically for the victim who was the alleged
2 victim of the attempted murder? I mean, his ---

3 MS. MCELVEEN: Yes, it does, but I'm
4 saying the acts that happened before that. Just
5 because that happened before that, the fact that
6 he changed his anger to Mr. Goden it is still a
7 part of how we got to this point, how we got to
8 this truth about how, why Ms. Hill is running from
9 the car, why she calls 911 and says he's going to
10 kill me. It's all a part of the same truth. It's
11 not like it's a separate instance. Specific
12 intent was there for Mr. Goden. He makes that
13 clear on scene but...

14 THE COURT: Well, I think she can
15 testify that he was acting erratically. I think
16 she can testify as to we were driving in the car
17 together, he'd been drinking. I think she can
18 testify to those things, but I -- the things I'm
19 struggling with, the statements I'm gonna set your
20 soul free, you're leaving in a body bag, and I'm
21 going to F-ing kill you, I don't know how those
22 statements could be relevant to the specific
23 intent to kill Roger Goden. I think I probably
24 need to hear her testimony before I make a final
25 decision so I'll be happy for her to take the

1 stand and proffer this testimony. I feel like I
2 need to hear the testimony and context of the
3 facts of the case before I make a ruling; but I
4 will say at least at this point those statements
5 in the cemetery, I mean, those would go towards
6 his intent to her, but I'm struggling to find a
7 connection to the -- how those statements are any
8 evidence of specific intent to kill Roger Goden.
9 So if we could have Ms. Hill come to the stand and
10 be sworn, Ms. McElveen.

11 MS. MCELVEEN: Yes, Your Honor.

12 THE CLERK: Ma'am, raise your right
13 hand. State your name.

14 THE WITNESS: Jennifer Hill.

15 WHEREUPON,

16 **JENNIFER HILL,**

17 having been duly sworn by the clerk, testified
18 as follows:

19 THE CLERK: Thank you much. Watch
20 yourself. State your full name for the record,
21 spell your last name please.

22 THE WITNESS: Jennifer Hill, H-I-L-L.

23 **DIRECT EXAMINATION**

24 BY MS. MCELVEEN:

25 Q Ms. Hill, can you please tell us,

1 THE COURT: All right. Mr. McMillan,
2 Mr. Kent.

3 MR. FURSE: No questions, Your Honor.

4 THE COURT: All right. Thank you,
5 ma'am. You can step down. \

6 THE WITNESS: Thank you.

7 THE COURT: Anything else from the
8 Defense, Mr. Furse, in response to the proffer?

9 MR. FURSE: No, Your Honor. We'd rest
10 on our previous arguments.

11 THE COURT: All right. I'm not gonna
12 keep Ms. Hill from testifying; however, I am going
13 to keep any of the statements about "I'm gonna set
14 your soul free, you're leaving in a body bag, and
15 I'm going to kill you." She can testify as to
16 his -- whether she believed he was angry or in a
17 rage, as Ms. McElveen stated; but those
18 statements, I'm not going to allow. She can
19 testify as to his mood in the vehicle and because
20 of that she got out of the vehicle. But, you
21 know, I don't see where those statements with
22 regard to the domestic violence charge are
23 relevant to prove any actions with regard to the
24 specific intent to kill Roger Goden. She can
25 testify as to how he appeared that day; but as far

1 as the injuries she received for the domestic
2 violence, he's pled guilty to that and she can
3 testify as to her thought of how he was acting.
4 And, but I don't think the -- she can testify that
5 she thought it was odd that they drove to a
6 cemetery, but I don't -- I don't think the direct
7 statements about what he was going to do to her or
8 that she was going to die in 2019 are relevant to
9 prove intent of what he did when they got to the
10 gas station.

11 MS. MCELVEEN: Your Honor, I just want
12 to make sure. Any injury that occurred to her at
13 the gas station, though, that other witnesses saw
14 and she then fled from the car, that's ---

15 THE COURT: If another witness -- they
16 can testify as to what they saw but, and she can
17 testify as to, you know, I was, because of the way
18 he was acting I was fearful and I got out of the
19 car, I think that's fine. That doesn't comment on
20 his -- on the actual domestic violence charge.
21 That's just her state of mind. But if another
22 witness saw it, it's -- I mean, it's their
23 observation. They can't testify as to domestic
24 violence, but they can -- if the witness saw her
25 run from the vehicle, they can testify to that.

1 MS. MCELVEEN: But -- okay, so she
2 can't testify to the fact that she was being
3 actively battered when a good Samaritan came up at
4 the gas station. At what point ---

5 THE COURT: He can -- the samaritan
6 can testify as to what he saw. I just, I don't
7 want to run the risk of her saying anything about
8 domestic violence or the charge; but if --
9 Mr. Goden, I'm assuming, is the good Samaritan.

10 MS. MCELVEEN: Right, correct.

11 THE COURT: He can testify as to, I
12 saw this happening, that's the reason I
13 intervened; but, you know, you're going to have to
14 tread lightly with her testimony as far as what
15 happened.

16 MS. MCELVEEN: I thought -- I
17 understand the statements about what he's going
18 to -- how he's going to kill her ---

19 THE COURT: Right.

20 MS. MCELVEEN: --- are not allowed.
21 But she can testify the fact that they were
22 drinking, she said he was agitated, they went to
23 the cemetery, he made comments that made her
24 worry, his tone of voice had changed, she could
25 tell he was upset ---

1 THE COURT: I think that's -- I
2 believe that falls in the res gestae. I mean,
3 it's not, it's not fair to the State -- for the
4 State to be limited to I got out of the car and
5 then this happened. There's got to be some
6 setting of the stage but, you know, like I said,
7 her testimony about the domestic violence, you
8 know, I'm keeping that out. She can testify as to
9 his demeanor in the vehicle and why she got out of
10 the car, I was afraid, you know, whatever she's
11 going to say. But, you know, you can tie it
12 together with the good Samaritan's testimony.

13 MS. MCELVEEN: So she can't testify
14 about what happened at the gas station, but the
15 two others can?

16 THE COURT: And they can tes-- they
17 weren't in the vehicle. All they can say is, I
18 heard this commotion and I intervened. But I want
19 to keep, keep it free from her testimony about the
20 charge that he's already pled guilty to.

21 MS. MCELVEEN: But they saw the
22 commotion too so I don't understand how she --
23 Your Honor, and with all due respect, I don't --
24 how can she not testify about what happened to her
25 as a witness, but people who see it -- she can't

1 testify, but they can about seeing ---

2 THE COURT: Well, I mean ---

3 MS. MCELVEEN: --- domestic violence.

4 THE COURT: I mean, I -- I'm trying
5 to -- I'm trying to make a ruling that allows for
6 the scene to be set and I could just rule that
7 anything regarding what happened in the car is out
8 because he's already pled guilty to it. I don't
9 think you want me to do that, do you?

10 MS. MCELVEEN: I'm not -- first of
11 all, Your Honor, I'm not trying to threaten the
12 Court or anything ---

13 THE COURT: I didn't take it as a
14 threat.

15 MS. MCELVEEN: --- or say -- I'm just
16 asking for specifics so that we don't, she doesn't
17 say something wrong when she's on the stand. Her
18 whole statement, though, that she gave officers,
19 it says the scene is full of what happened all
20 day. I mean, ---

21 THE COURT: Well ---

22 MS. MCELVEEN: --- she wrote that
23 statement so how do you ---

24 THE COURT: Well, you're not going to
25 put the paper statement in, are you?

1 MS. MCELVEEN: I was, yes, sir.

2 THE COURT: That's hearsay.

3 MS. MCELVEEN: How is the jury going
4 to believe that these two officers, these two
5 gentlemen are seeing her being beaten if she's not
6 allowed to say it herself. Why -- the jury can
7 hear two will say, I watched her get beaten in the
8 car; but she's not allowed to say it herself, how
9 is the jury supposed to understand the whole scene
10 if you're unable to paint the scene but we
11 can't -- she can't say I was being beaten but we
12 have two people saying she's getting beaten in a
13 car. And see -- I think it affects her
14 credibility. If she's not allowed to say some
15 part of the truth, it affects her credibility to
16 the jury where she's prohibited from telling part
17 of her truth when two other people are going to
18 say, I watched her getting beat in the car.

19 THE COURT: Well, I mean, if she's
20 questioned on that, then it opens the door. You
21 see what I'm saying? If she -- if the Defense
22 questions her about what happened in the car, then
23 the door is open; but I'm just trying to keep this
24 clear of any violation of 404. I mean, this is,
25 this is a ---

1 MS. MCELVEEN: I would say the
2 probative value substantially outweighs any
3 prejudice because it paints the motive, the
4 intent, the scene, the story of what happened.
5 It's a clear exception under Rule 403 and 404,
6 404(b). It may ought to be admissible to show
7 motive, identity. Identity is another issue. The
8 existence of a common scheme or plan, the act of
9 mistake or accident or intent. I mean, frankly,
10 the fact that she's the one who can identify the
11 defendant at the scene, the other people can't.
12 She's the one that identifies him. So the fact
13 that it's her husband who is beating her shows
14 motive for why he commits the acts against the
15 other people. Identity, she identifies the
16 defendant.

17 THE COURT: I don't, I don't think it
18 does. I don't think you can show motive for a
19 specific intent -- at least with attempted murder.
20 I don't think you can show motive of a specific
21 intent crime with how this witness acted with
22 another person. I just, I don't, I don't think
23 the case law says that. I mean, identity is not
24 an issue. I mean, she's going to be able to say,
25 I was in the car with David Hill. I mean, this

1 isn't -- at least based on what I've heard, this
2 isn't a whodunit so I don't see how identity gets
3 you there. A common scheme or plan would have to
4 be evidence that he committed this crime and he
5 committed others that are so similar that it ought
6 to be let in. So I don't think that, I don't
7 think that gets you there. I don't think there's
8 been an issue of mistake. So really, the only --
9 the only part of 404(b) that I see that even
10 applies, is intent. But if I let her tell the
11 whole story from beginning to end, including the
12 charge he's already pled guilty to, I mean, I
13 don't see how that's not reversible error.

14 MS. MCELVEEN: We're not -- I
15 understand the comments in the graveyard are
16 you're saying are not relevant, I understand that.
17 I'm at the actual scene of the offense, what leads
18 the two other gentlemen or the one gentleman to
19 intrude. It's hard to tell a jury, yeah, you
20 should believe her or believe them when she's not
21 even able to say I was victimized in the car, but
22 they're saying she was victimized in the car. So
23 the jury -- well, the jury, you're not asking the
24 questions. They're the ones that determine
25 credibility; and if she's not saying I was being

1 victimized on the car when Roger Goden approached,
2 how is she going to be deemed credible if she
3 can't tell the whole truth. See what I'm -- I
4 don't know to -- I'm worried about the
5 on-the-scene incident because that's what leads
6 Mr. Goden to intervene. And if they're gonna say
7 it, it's hard to tell a jury you need to believe
8 her if she's not able to say I was being
9 victimized in a car. If she can't say that's why
10 he intervened and then their story changes, then
11 the jury is making a decision on her credibility
12 based upon her not being able to tell the truth
13 and complete truth. I think a jury will come to
14 that conclusion.

15 THE COURT: I understand. I
16 understand, Ms. McElveen.

17 Anything else from the Defense?

18 MR. FURSE: Nothing further, Your
19 Honor.

20 MR. KENT: Your Honor, if I may just
21 briefly.

22 THE COURT: Yes, sir.

23 MR. KENT: And not to interrupt Mr.
24 Furse's argument, just to keep it very simple.
25 From the testimony I just heard from Ms. Hill, the

1 Solicitor is missing one major point. Ms. Hill
2 did not see the alleged crime occur. She
3 mentioned that she went inside the store and
4 didn't see anything happen so she didn't see
5 anything. So this whole, "They won't believe her
6 believability," she can't testify to anything
7 about the intent charge anyway. She wouldn't be
8 able to say, I saw it, I saw the car move, or
9 anything of this nature. So when the Solicitor
10 offers -- so when the Solicitor offers the jury
11 won't believe, the jury won't believe, I think the
12 Court has offered a very simple resolution that
13 makes perfect sense. Two individuals who saw
14 something happen in the car, and that's why we got
15 involved. That doesn't change anything so we
16 agree with the Court's direction.

17 THE COURT: Well, I think -- and I
18 think the Solicitor is going to have to come up
19 with an explanation as to -- you know, obviously
20 something happened while they were in the car,
21 that's why she got out of the car. I don't want
22 there to be any mention of the specifics; but I
23 think she can testify, we had an argument, we had
24 an altercation, we had something, you know, but
25 not go to the specific details of the crime that

1 he's already pled guilty to. I think that would
2 be the safest direction to go in. That she can
3 testify that we -- something happened in the car
4 that I felt I needed to get away from, but not the
5 specific facts of what he's already entered a
6 guilty plea to. I think that's the -- I think
7 that's the way around it. And certainly, the
8 other witnesses can testify to what they saw. If
9 Mr. Goden says, I saw them swinging at each other
10 in the car, that's -- that's, in my mind that's
11 different than her saying it because she's the
12 victim of the domestic violence and he's already
13 pled guilty and been sentenced to that so. You
14 know, I don't know what Mr. Goden is going to say;
15 but, you know, I just don't want us to get into
16 the specifics of the crime that he's already
17 entered a plea to.

18 And I, you know, I'm trying to come up
19 with a common sense ruling that will keep us clear
20 of any violations of 404. And, you know, it's
21 kind of hard to make a anticipatory ruling. I
22 mean, I've given y'all my thought process on where
23 I think this is going; but obviously, Mr. Kent,
24 Mr. McMillan, if, you know, these objections will
25 obviously need to be raised again if we get -- if

1 you feel we're going down a road that is leading
2 towards the introduction of inadmissible evidence.
3 So I think I've been about as clear as I can be
4 with, you know, the limited, the limited bits of
5 factual information I know about this case so.

6 MR. KENT: Thank you, Judge.

7 THE COURT: All right.

8 MR. KENT: Judge, that will be the
9 extent of our motions. I think you covered
10 everything that we have on our list. My
11 understanding is that you're going to review the
12 body worn camera tonight, which is
13 approximately -- that you're going to review the
14 body worn camera tonight. My understanding the
15 jury is coming back at 9:30 so it's possible one
16 of us are a tad bit early. Your Honor, just for
17 housekeeping matter, I know you haven't heard
18 anything about it. I don't think it's going to be
19 admissible. I think Bronwyn is going to --
20 because we had mentioned prior bad acts, there was
21 some question about Google searches and I did
22 mention the Google searches. Is that correct?

23 MS. MCELVEEN: That's correct.

24 MR. KENT: And there are some question
25 about a separate firearm. I'm assuming you're not

1 getting into the separate AK-40?

2 MS. MCELVEEN: That's correct, unless
3 the door is opened.

4 MR. KENT: Unless the door --
5 completely understand. Unless the door is opened.
6 But there is some Google searches that was on his
7 phone. The State has informed they're not going
8 to be getting into anything about Google searches.
9 There's some question about other firearms. There
10 won't be any mention that the State will be
11 getting into other firearms. I know she mentioned
12 that the knife was found on the scene. I don't
13 have any objection the knife was found, the knife
14 was found, so if they get into it, they get into
15 it. Just to cover myself. The knife was found at
16 the scene.

17 Oh, yes, Your Honor, one last matter.
18 There are videos, of course, that are being
19 offered by the State of South Carolina.
20 Specifically, there is actually a video of the
21 incident from the Citgo gas station. As with any
22 trial, I would ask before a witness testifies,
23 that the videos speak for themselves, that the
24 witnesses not be allowed to narrate and say what
25 they think the video shows, especially an officer.

1 Just we would ask that any evidence offered that
2 the video would speak for itself and I'm an
3 officer and say I think the car is doing this or I
4 think the car is doing this. I would just ask
5 that beforehand, before any witness testifies,
6 that any video offered, that video speak for
7 themselves since they are a self-authenticating
8 document and there's no necessity of a witness
9 explaining anything on the video.

10 MS. MCELVEEN: The officer may explain
11 just where a car is pulling up, that the Dodge
12 Durango is seen in the top corner; but that's all
13 we would expect to need to point out.

14 THE COURT: Well, I will reserve any
15 rulings on that until ---

16 MR. KENT: That's fine, Your Honor,
17 just wanted to cover myself on the record. Thank
18 you, sir.

19 THE COURT: In going back to the prior
20 ruling, I think we're losing sight of the fact
21 that in this whole issue about the domestic
22 violence, I mean, Mr. Hill is on -- is gonna be on
23 trial for two counts of assaulting an officer, one
24 count of attempted murder and one count of assault
25 and battery in the first degree. So I understand

1 the State's argument with regard to the domestic
2 violence, but, you know, those -- the elements of
3 what happened in the car he's not on trial for,
4 and I think that's -- I wish I had said that prior
5 to making my ruling. I think it would have made
6 it a little bit clear, more clear, because he's --
7 he's already been convicted of the domestic
8 violence so those, those issues regarding the
9 domestic violence are, while I think part of them
10 are intertwined with the remainder of the case,
11 you know, Ms. Hill's credibility with regard to
12 what happened in connection with domestic violence
13 isn't an issue in this case because that matter
14 has already been adjudicated. So anything else?

15 MR. KENT: Nothing further, Judge. I
16 think I've covered all my motions.

17 MS. MCELVEEN: Your Honor, I just want
18 to make sure. She can say that they were involved
19 in an altercation in the car when a good Samaritan
20 intervened on her behalf?

21 THE COURT: I will allow that.

22 MS. MCELVEEN: Okay, thank you. I
23 just wanted to be clear of the parameters so I
24 knew exactly where we would stop.

25 THE COURT: I think that is -- that

1 falls within res gestae under the case law. You
2 know, I think that will establish a chain of
3 things that occurred which led to Mr. Goden
4 becoming involved in this situation when he had
5 no, as far as I know, no prior connection or
6 knowledge to these folks. So I think we're all on
7 the same, at least on the same page. Whether
8 everybody agrees with the ruling, you know.

9 MR. KENT: Judge, that would also
10 exclude the pictures, correct? There would not be
11 a point of publish pictures. I mean, I agree with
12 the there was an altercation inside the car,
13 somebody saw the publishing of pictures with no
14 ---

15 THE COURT: I mean, I think the
16 pictures would be part of the prior bad act ---

17 MR. KENT: Thank you.

18 THE COURT: --- and part of the crime
19 that he's already been adjudicated and sentenced.
20 So, like I said, ---

21 MS. MCELVEEN: Your Honor, that could
22 be -- the door could be opened.

23 THE COURT: It could be, but I mean,
24 he ---

25 MR. KENT: That'd be really, really

1 stupid.

2 THE COURT: Like I said, he's not
3 on -- he's not on trial for what occurred in the
4 car. He's on trial for what happened after she
5 got out of the car.

6 MS. MCELVEEN: Yes, sir. Thank you.

7 MR. KENT: Thank you, Judge.

8 THE COURT: All right.

9 MR. KENT: What time do you want us
10 here in the morning?

11 THE COURT: 9 a.m.

12 MR. KENT: 9 a.m.?

13 MS. MCELVEEN: Your Honor, I'll touch
14 in email, and include Mr. Kent, about the time on
15 that video by Officer Rutan, the time as to, you
16 know, where to jump.

17 THE COURT: And for the record,
18 whatever, whatever I can do to assist in getting a
19 little bit more air conditioning in this room for
20 tomorrow, I will do my best.

21 MS. MCELVEEN: Thank you.

22 THE COURT: All right. We will be in
23 recess till 9 a.m.

24 (WHEREUPON, State Exhibits 5 through
25 31 were marked for identification only.)

1 (Court was adjourned and resumed on May 26, 2021
2 at 9:09 a.m.)

3 THE COURT: Okay. We were talking
4 about waiving your client's presence as far as
5 about arguing motions, so I've had opportunity to
6 watch the relevant portions of the video that is
7 at issue in this case. I'll be happy to hear any
8 motions at this time.

9 MR. KENT: Thank you, Your Honor. As
10 we mentioned yesterday, we appreciate the Court
11 taking an opportunity to look at the video, taking
12 opportunity to review the videos in this
13 situation. I won't belabor the point on our
14 motions. Candidly, we believe there's a lot of
15 information that's simply extraneous to the charge
16 that the State is willing or intending on proving.
17 Candidly, I don't even know if it's relevant. I
18 understand the State sent a motion to the Court
19 last night and it's attempted to argue that it was
20 a continuing nature of continuing of resisting
21 arrest. I think that would fly in the face of
22 what is specifically mentioned in the indictment,
23 the indictment at what we were prepared for, what
24 the client was prepared for, what all of the
25 attorneys are prepared for, is the argument that

1 Mr. Hill hit, beat, or attempted to wound and
2 which is specifically mentioned in the indictment,
3 the two officers. That's why there's two separate
4 indictments. It's very interesting there's two
5 separate indictments for these officers. The
6 reason there's two separate indictments, the
7 allegation is that he tried to hit and fight two
8 separate officers. It's actually mentioned in
9 some of the tapes. So what they're now trying to
10 do is say, okay, well, we have a hit, but how can
11 we make Mr. Hill look worse, oh wait, he says a
12 bunch of vail, nasty stretch to all of the
13 officers out there, not just these two who are hit
14 which goes in the face of what's actually
15 mentioned inside of the indictment. It's not
16 necessary. A lot of it occurs after the arrest
17 has already been completed. And so that would be
18 our position. It's simply it's just unnecessary,
19 it's cumbersome, it doesn't go to the face of the
20 indictment. And the prejudicial impact, it's far
21 outweighed by any probative value that it could
22 occur because the arrest has already been
23 completed and the resisting aspects of it are
24 already completed. Thank you, Judge.

25 THE COURT: Ms. McElveen.

1 MS. MCELVEEN: Yes, Your Honor. Under
2 16-9-320 subsection B which is what he's charged
3 under in the indictment, it is also -- it's not
4 just beating or wounding an officer, it's also
5 assaulting. As Your Honor is well aware,
6 assaulting is also threats that are made;
7 therefore, any threats that were continued to be
8 made while transporting him to the jail and while
9 trying to place him in the car, that would be
10 continuing of a resisting arrest and the
11 assaulting of an officer. The assault being, Your
12 Honor, could be verbal threats, not just a
13 battery. There was a battery but the threats
14 accompanied it. He threatened to kill McKnight
15 and Rutan, specifically Rutan on the way to the
16 jail and then McKnight when he gets out of the
17 jail. Your Honor, we take the position that those
18 statements and those threats that were made in
19 that car ride and at the scene are full a part of
20 proving the case and with regard to the assaulting
21 the officer because threats were made, not just a
22 battery.

23 THE COURT: Okay.

24 MR. KENT: Just simply, as you
25 understand the case law on assaults also

1 specifically require a present ability to carry
2 out the assault. Thank you.

3 (Defendant enters courtroom.)

4 THE COURT: All right. I've watched
5 the video. I think that one issue that I saw, at
6 least prior to him being placed in the car was the
7 fact that he kept asking for his Miranda rights.
8 That goes directly towards whether he knew or
9 should have known these individuals were law
10 enforcement officers, so I'm going to allow the
11 portion of the tape at the scene of the arrest.
12 Now there are some parts of that where the
13 officers make statements talking about what the
14 charges are going to be. Those, those parts
15 obviously cannot come in, but I think the -- his
16 actions at the scene prior to being placed in the
17 vehicle are certainly relevant to further issues
18 of whether he knew or should have known these
19 folks were law enforcement officers. The
20 statements asking for Miranda warnings certainly
21 is evidence that he knew these folks were law
22 enforcement officers and not other folks. It's a
23 direct element of the offense charged so I'm going
24 to allow that.

25 Ms. McElveen, I just caution you, make

1 sure that none of the extraneous statements by the
2 officers in terms of the charges, things of that
3 nature. Once he's in the vehicle -- I think Mr.
4 Kent is correct -- the assaults, he's handcuffed,
5 they go through -- they go through a lot of effort
6 to make sure that he's handcuffed, go through a
7 lot of effort to make sure that he's comfortable.
8 You know, I think anything in the vehicle --
9 unless there are statements while he's in the
10 vehicle that could be deemed as admissions, I
11 don't think any of that is necessarily relevant to
12 the resisting arrest charge even though --
13 Ms. McElveen, your point is well taken about the
14 assault, but I don't think the officer is in any
15 danger once he is in the car behind the partition
16 so I don't think that portion is relevant. Now if
17 he had been charged with threatening the life of a
18 public official, that might have changed the
19 analysis but. So, anything prior to him being
20 placed in the car I believe is relevant subject to
21 my caution about any extraneous information.

22 MS. MCELVEEN: Yes, Your Honor. Thank
23 you.

24 MR. KENT: Thank you, Your Honor.

25 MS. MCELVEEN: And so we will plan to

1 play the tape through about the 16 minute 50
2 second mark.

3 THE COURT: And, Ms. McElveen, you
4 don't intend to play the portion of the tape where
5 the officer is in the convenience store asking
6 about where -- if the clerk at the convenience
7 store knows anything? I mean, you're not gonna
8 play that part, are you?

9 MS. MCELVEEN: No, sir. I think it
10 starts the 2 minute mark when Mr. ---

11 THE COURT: Right.

12 MS. MCELVEEN: --- Officer Rutan gets
13 out with the defendant laying out on the ground.
14 And then I would stop it, I guess, at the 16
15 minute and 45 second mark, and we would not
16 include the part about the threatening to kill
17 Rutan, Officer Rutan, or threatening to kill
18 Officer McKnight at the jail.

19 THE COURT: And certainly don't
20 include, there was a -- someone from in the
21 neighborhood talking about any attempted burglary.
22 Obviously, that's not a part of this, of this
23 case. I can't remember exactly where that fell in
24 the video; but obviously, that is not relevant to
25 this matter of this hearing charge.

1 MS. MCELVEEN: Your Honor, I see the
2 32 minute 32 second mark, that's when Rutan starts
3 talking about charges with Officer Kouris (ph) and
4 that would be way before we stop it. I did mark
5 that just because I thought that was relevant.
6 And Your Honor, just to make sure, I just want to
7 make sure, the part where he's hitting his head
8 against the car and kicking the car and when
9 Officer Rutan has to stop the car and strap his
10 ankles, Your Honor still takes the position that
11 that's not resisting arrest when he's ---

12 THE COURT: I mean, he's already, he's
13 already under arrest at that point. I mean, he's
14 handcuffed in the vehicle. I mean, it's -- the
15 arrest has been made at that point. I mean,
16 he's -- he's obviously fi-- you know, he's
17 obviously upset that he's been placed under
18 arrest; but, you know, the -- in my view, the
19 resisting arrest is resisting the efforts of the
20 officer to place him under arrest. Once he's --
21 once he is in handcuffs and in the back of a
22 patrol car, I just don't think -- I think that,
23 the criminal act has been completed once the
24 officers are able to effect the arrest so. I just
25 feel like that would be -- I don't know what

1 probative value it has. I mean, he's continuing
2 to struggle and obviously unhappy about being
3 arrested, but I think the criminal offense has
4 been completed once they -- once they get him
5 quote/unquote under arrest so I just think it
6 would be more prejudicial than probative at that
7 point.

8 MS. MCELVEEN: Thank you, Your Honor.

9 THE COURT: All right. And folks, I
10 want to go back on the issues of the prior
11 convictions, the 609 analysis of the contraband
12 charge for Ms. Hill and then the two convictions
13 which were noted that might be used in an effort
14 to impeach the witness Mr. Goden. Going to the
15 contraband charge, the law requires in 403
16 analysis when a person -- a witness other than the
17 accused has a conviction that is sought to be used
18 under Rule 609 the court has to find that the
19 probative value substantially outweighed by the
20 danger of unfair prejudice make an analysis under
21 State v. Colf. That's C-O-L-F. That is at 337
22 S.C. 622. There's a five factor test. Of course,
23 State v. Colf, in looking at this as far as the
24 probative value versus the prejudice, Ms. Hill,
25 based upon the defendant's guilty plea to that

1 Honor. One, I did not put this on the record
2 yesterday and I apologize. When Ms. -- I went
3 through discovery list with all the information
4 that Ms. McElveen had given me, she had also given
5 us the 911 tape. I just had forgotten to mention
6 the 911 tape yesterday, even though there are
7 witnesses that deal with the 911 tape. My
8 understanding if a motion is necessarily be heard,
9 and this becomes difficult, the 911 tape is an
10 initial call, if I'm not mistaken, from Ms. Hill
11 calling about the domestic violence on the 911
12 tape and then later it delves into what happens at
13 the allegation of the attempted murder. I think
14 it's necessary, I mean, our position of course,
15 and Mr. McMillan is prepared to argue that motion
16 if that tape needs to be sufficiently redacted for
17 any information whatsoever about the domestic
18 violence call. So in other words, the 911 tape
19 starts with Ms. Hill calling about the domestic
20 violence call which, of course, we've already
21 ruled on is out; and then it gets into the matters
22 dealing the information and things that happened
23 to Mr. Goden. So our position would be based upon
24 the Court's ruling yesterday, based upon the plea,
25 any information extraneous about the domestic

1 violence call other than there was an altercation
2 in the car, would not be probative of anything and
3 would go against the Court's ruling at this point.
4 And if we need more additional argument if
5 necessary, Mr. McMillan is prepared to argue. And
6 I apologize, I should have brought that up
7 yesterday.

8 MS. MCELVEEN: Your Honor, we take
9 position that we plan on playing this 911 call.
10 It's how the police officers arrived at the scene.
11 Ms. Hill is the one that placed that call from
12 inside the gas station. It is an excited
13 utterance and a hearsay exception of the excited
14 utterance. Clearly under State -- actually, oddly
15 enough, State v. Hill, the one that idea --
16 presents the idea of the excited utterance; but
17 then also looking at the totality of the
18 circumstances, elements that must be met per State
19 v. Stalmaker. Your Honor, I'm sorry, I don't know
20 exactly how it's spelled. Stalmaker I believe.
21 Statement must relate to a startling event or
22 condition. That's certainly present here. Must
23 have been made while the declarant is under the
24 stress of excitement. It's clearly met here and
25 it must be caused by the startling event or

1 condition, and that's clearly met here. The fact
2 that she calls, Your Honor, she calls for Mr.
3 Goden and for herself; but the fact that's how
4 officers got there, that's how ambulances arrived.
5 And there at no point did she go out from
6 underneath the stress of this event -- there's no
7 way you can claim it's anything but excited
8 utterance.

9 THE COURT: Well, I don't think he's
10 making the argument that it's not an excited
11 utterance.

12 MR. KENT: Sure, it is, I agree.

13 THE COURT: He's making the argument
14 that based upon the plea this would be further
15 evidence of a prior bad act, if I'm antici--
16 without him actually saying that, I think that's
17 the core of his argument as to why it shouldn't be
18 admitted. How long is the recording?

19 MS. MCELVEEN: It's pretty quick, Your
20 Honor. I have it here. And the call -- actually,
21 Your Honor, she starts with saying he's trying to
22 kill me, he's trying to kill me, but she's
23 screaming. And then she asks where we are. It
24 kind of goes into information. They say we're,
25 come -- you know, and they -- it doesn't -- she

1 doesn't say he beat me about the head, I'm married
2 to him, he's committing a domestic violence. You
3 know, it doesn't go to that per the elements of a
4 domestic violence. It just really attracts
5 attention to what's happening and asks them to
6 bring officers and help at the scene.

7 THE COURT: I think I need to listen
8 to it before I can make a ruling.

9 Mr. HUGH MCMILLAN: It's a 2 minute
10 video, Your Honor, and as stated, Ms. Hill, when
11 the phone call begins is stating he's trying to
12 kill me, he's trying to kill me. Again, Ms. Hill
13 was inside the Citgo. That was the testimony we
14 heard yesterday. Did not see the charges that
15 we're here for today of the attempted murder and
16 assault and battery. She, her statements in its
17 entirety are he's trying to kill me, hurry up,
18 please, he's trying to kill me. She doesn't even
19 know where she's at. And then we believe it's a
20 clerk grabs the phone. He goes into some
21 allegations regarding the domestic violence as
22 well and then tells the 911 operator about what
23 happened as far as the allegations of the
24 attempted murder and assault and battery. It's a
25 2 minute video. Our argument is that it's a

1 relevancy issue at the front end and the
2 statements by Ms. Hill were -- are very similar to
3 the ones that were excluded in yesterday's
4 pretrial motions. So, Your Honor, for those
5 reasons, relevancy issue and also a 403 balancing.
6 There's no probative value, as has been stated
7 many times, that domestic violence has been pled
8 to so it offers nothing but prejudice towards our
9 client, Your Honor.

10 THE COURT: I understand your
11 argument, but I need to hear it for myself before
12 I ---

13 Mr. HUGH MCMILLIAN: Yes, sir.

14 THE COURT: --- make an educated
15 decision.

16 (911 tape was played.)

17 THE COURT: I think based on my prior
18 rulings from yesterday, I don't see any problem
19 with playing the recording from the time when the
20 clerk gets on the phone. He's relaying present
21 sense impression of what has happened at the
22 scene. Assuming the appropriate foundation can be
23 laid to and authenticating the recording, you
24 know, I think it's admissible under that theory;
25 but the statements from Ms. Hill would not be. So

1 you can start it from the point in time when the
2 clerk gets on the phone relaying what his present
3 sense impression of what occurred that evening, so
4 I think that is certainly relevant to show why law
5 enforcement arrived on the scene and I believe
6 it's consistent with my rulings from yesterday.

7 MS. MCELVEEN: Yes, Your Honor. Thank
8 you very much. I have to listen to it again to
9 make sure that I know the exact time to start it.
10 I'm sorry, I just do a quick listening at the desk
11 here.

12 THE COURT: And are you planning on
13 calling Ms. Skipper?

14 MS. MCELVEEN: Yes, sir.

15 THE COURT: Because based on the way
16 I've ruled, I don't think that Ms. Hill -- since
17 it's gonna be another person's voice, you would
18 need Ms. Skipper to lay the appropriate foundation
19 to get it in, so that may change. I don't know
20 when Ms. Skipper is coming; but, you know, it may
21 be something we don't have to do right now since
22 we got a jury waiting.

23 MS. MCELVEEN: Yes, sir. So I believe
24 we may go over -- I think went over photographs
25 just for ease and convenience to pre-mark them,

1 the record have to make sure they -- I don't
2 anticipate, but they still have to have an
3 opportunity to look at.

4 THE COURT: The photographs have been
5 pre-marked. They are not admitted into evidence
6 at this time.

7 MS. MCELVEEN: Your Honor, if I may
8 keep these. I'll try not to pull a John Meadors
9 and keep evidence at my -- in my folder when I
10 leave this courtroom. But I do want to make sure
11 I reference the right State's exhibit numbers when
12 I'm showing them to the witnesses.

13 (WHEREUPON, State Exhibit Nos. 32
14 through 35 were marked for identification only.)

15 THE COURT: Anything else before we
16 bring in the jury?

17 MS. MCELVEEN: Your Honor, I just want
18 to make sure we do -- I just don't know -- I want
19 to make sure as to Ms. Hill, she's allowed to talk
20 about his mental state that day and the fact that
21 she had reason to leave the house, went to a
22 cemetery, no statements, just felt uncomfortable,
23 left that scene, was in fear, and then went to the
24 gas station and a physical altercation ensued in
25 the car that attracted attention to others.

1 THE COURT: I would just say an
2 altercation. Mr. Goden can testify as to what he
3 saw with regard to what happened in the car; but
4 as far as what she says, she can -- she can say an
5 altercation. She can say I was screaming, you
6 know, but just stay away from the ---

7 MS. MCELVEEN: Domestic violence.

8 THE COURT: --- domestic -- no
9 uttering. Because, again, we're -- that's --
10 while that's a part of this case, it is not a
11 charge that's currently pending. He's been
12 convicted of that so I just want to make sure that
13 we keep the record clear in that regard. I
14 understand that it is a part of how this process
15 unfolded, but just be careful about that. But
16 like I said, Mr. Goden can testify as to what
17 attracted his attention to that vehicle because,
18 you know, the -- what actually happened beyond
19 attracting his attention is at this point somewhat
20 irrelevant because of the plea; but he can testify
21 I heard a commotion, I heard screaming, you know,
22 whatever he saw, heard, sensed.

23 MS. MCELVEEN: Whatever he saw. He
24 has no limitation on what he can say -- well,
25 within the rules of the rule.

1 THE COURT: I mean, he -- again, I
2 would caution you. You know, he doesn't need to
3 go into the details of -- you just need to be
4 careful in -- let the jury know why he went over
5 there without getting into the specific details.
6 I mean, he -- you don't need to say I saw him --
7 and I don't know if this even occurred, but. If
8 there was a punch, he doesn't need to necessarily
9 say I saw him punch. He can just say I saw this,
10 saw her in this altercation, I went over there.
11 Because that's really what you're trying to do, I
12 would imagine, is to explain to the jury why he
13 became involved in this situation, not the
14 specific facts of what occurred because, you know,
15 he wasn't in the car. He can only testify as to
16 what ---

17 MS. MCELVEEN: If he saw an assault
18 taking place he's allowed, or a battery taking
19 place, he's allowed to say what he saw which drew
20 his attention to come over because that's what
21 drew his attention.

22 THE COURT: Well...

23 MS. MCELVEEN: A physical encounter
24 ---

25 THE COURT: Without knowing what he

1 saw and heard, I can't really -- I would just --
2 Mr. Kent, if she's -- if you feel like something
3 is gonna be objectionable, you just have to
4 object. I can't make ---

5 MR. KENT: I can't -- I understand,
6 Your Honor. Just for the record I want -- for the
7 record I want to make it clear if another court is
8 reading this, our objection is standing. We
9 understand the Court's ruling. We think it can be
10 comported with, but this is not a domestic
11 violence trial.

12 MS. MCELVEEN: Right.

13 MR. KENT: And my fear is that the
14 State of South Carolina might be trying to delve
15 into a domestic violence trial when it's not
16 necessary. I think the Court's ruling is careful.
17 And I understand we could open the door. The
18 witness can get on the stand and say, I saw an
19 altercation between two people and I went to get
20 involved and see what happened. That gets what
21 they need to get. As long as we don't object, how
22 do you know the altercation, how do you know
23 what's going on, that's how the door is opened.
24 But if they start getting into facts, I'll tell
25 you an objection is coming, Your Honor. If they

1 start getting into the background about domestic
2 violence ---

3 THE COURT: Well, I think the
4 specifics of -- I think he can testify that he saw
5 two people in an argument, two people in an
6 altercation, two people, and I heard -- I'm
7 assuming he heard screaming. I mean, he -- he can
8 testify to that. But as far as I saw him punch
9 her in the face, that might be a problem because
10 his, his involvement -- and it's hard for me to
11 articulate it without -- I don't know, obviously
12 don't know the facts of this case. I'm just
13 making ---

14 MS. MCELVEEN: But, Your Honor, he
15 would be ---

16 THE COURT: --- educated guesses. But
17 you know, it's like Mr. Kent said, domestic
18 violence is not, is not a charge on this
19 indictment anymore.

20 MS. MCELVEEN: At the same time, Your
21 Honor, the way he asserted himself, though, is
22 because he saw her getting beat. I mean, he
23 saw -- that is why he introduced himself because
24 he saw her in danger.

25 THE COURT: Well, he can explain. He

1 can use the word altercation as to why he -- I
2 mean, ----

3 MS. MCELVEEN: Can he say physical
4 altercation because an altercation can be verbal
5 and that -- he wouldn't concern himself in a fight
6 where they're screaming at each other. They were
7 ----

8 MR. KENT: Your Honor -- and I'm
9 sorry. I have no problem if they need to use the
10 word "physical altercation." My concern is that
11 if they go any deeper in this and try to turn this
12 into a domestic violence card, that will be my
13 objection. They use the word DV and this is why
14 he got involved ---

15 THE COURT: I understand.

16 MR. KENT: I'm just doing this for the
17 record. I will 100 percent object if it goes that
18 far. This is not a domestic violence trial.

19 THE COURT: I understand. And I
20 think, I think if that is the extent of the
21 description, you know -- now if he says I heard, I
22 heard raised voices, things like that, that's
23 perfectly fine; but physical altercation I think
24 is an appropriate description because the
25 specifics gets into prior bad acts and we -- we

1 haven't subjected this to a -- it hasn't been
2 presented in a Lyle scenario technically so I
3 just -- I don't want us to get anywhere close to
4 the Lyle issues so I think physical altercation
5 and then his I heard her scream, I heard X, Y, Z,
6 is allowable. Just be careful in terms of the --
7 be careful in terms of eliciting facts that would,
8 that you would try to elicit if you were trying to
9 prove domestic violence from an eyewitness.

10 MS. MCELVEEN: I'm just asking I wish
11 to tell what he saw first hand, witness, and why
12 he intervened. I feel like if he's the one who's
13 the victim today in the attempted murder, he's
14 allowed to say exactly what he saw, exactly what
15 he heard, exactly why he intervened.

16 THE COURT: But those, those --
17 exactly what he saw, those aren't elements of the
18 attempted murder. I mean, he, he's -- he's
19 responding as a good Samaritan to this situation.
20 What actually happened isn't relevant to proving
21 attempted murder. It's relevant to proving why he
22 became involved in this situation, but the -- if,
23 for example, if he had brass knuckles, if the
24 defendant had had brass knuckles and hit the
25 victim with that, that wouldn't be relevant to the

1 elements of proving attempted murder. So in my
2 thought process, you need to be able to get into
3 the context of why he, why he became involved in
4 this situation; but the specifics of what actually
5 happened in the car, bear no real relation to
6 proving the elements of attempted murder. So the
7 way to describe, I mean, it just seems like we
8 keep arguing over this; but the specific acts are
9 not relevant to proving attempted murder. They're
10 not relevant to proving assault while resisting
11 arrest, and they're not -- they're not relevant to
12 proving assault and battery in the first degree.
13 Why he became involved is the issue, not what
14 happened in the car. So a physical altercation
15 describes what brought his attention, why he came
16 over there. The specifics of the physical
17 altercation don't necessarily prove anything other
18 than I became involved and then because of my
19 involvement this happened to me.

20 MS. MCELVEEN: Okay. But, Your Honor,
21 if I -- you said what actually happened is not the
22 issue in the attempted murder, but his credibility
23 is; and if he can't tell the whole truth about
24 what happened, and I know that he ---

25 THE COURT: Well, if they challenge

1 his credibility on what happened in the car, then
2 they're opening the door to everything that
3 happened so. If they challenge his credibility on
4 that issue, I can -- I will tell you they have
5 opened the door. And Mr. Kent knows that, he's
6 sitting here nodding his head. If they challenge
7 his credibility on that issue, that will change
8 the complexion of this 180 degrees so.

9 MS. MCELVEEN: Can he say what -- when
10 he walked up, what drew his attention, the
11 position of the female halfway out of the car? I
12 mean, can he talk about what visual cues he had
13 that he needed to intervene?

14 MR. KENT: Your Honor, we are offering
15 the fact there truly was a physical altercation.
16 I think they're trying to go so far to turn this
17 into a DV trial. There was a physical
18 altercation. We're not going to challenge it. If
19 we do, it does open the door. There was a
20 physical altercation, it drew his eyes to it, he
21 went, got involved, that's what happened. That's
22 the case. They're relying on res gestae case law
23 which says -- and they use res gestae but they
24 didn't give the full court's definition. The
25 definition is inextricably intertwined for a full

1 presentation of the case. It's not just
2 tangentially weigh in. This thing about we're
3 challenging the credibility and we need it, they
4 don't. They're trying to try a DV trial in an
5 attempted murder trial. That will be our
6 objection. I think we have bent over backwards to
7 say they can say there was a physical altercation.
8 And we have heard from the, if you allow the 9-1-1
9 operator, there's going to be more descriptions
10 there if they want to get in other descriptions
11 but. This witness went up, he saw a physical
12 altercation, he got involved. If I challenge it,
13 he gets to get into everything he wants. If I
14 don't, that's it. But that's not the portion of
15 the trial that the Court should concern with. And
16 it scares me that the State wants to get in it so
17 bad and that renews our objection why it shouldn't
18 be allowed because this tells me what they're
19 trying to go. They're trying to try a DV trial to
20 prejudice the jury about what happened to Jennifer
21 Hill.

22 MS. MCELVEEN: Your Honor, I just want
23 to make sure that no attempt of self-defense is
24 going to be made, that no attempt that he's not
25 telling the full truth, that's not -- that's what

1 I want to make sure happened. By him not being
2 able to tell the whole thing of what he saw ---

3 THE COURT: As I stated, if they ---

4 MS. MCELVEEN: --- he'll open the
5 door.

6 THE COURT: If they challenge his
7 credibility on those issues surrounding why he
8 became involved in this case, then that's going to
9 open the door to the whole, the whole story, all
10 the details. It's, you know -- and I'm just
11 trying to make rulings that will keep this trial
12 clean and afford the State and the Defense a fair
13 trial.

14 MS. MCELVEEN: Yes, Your Honor. Thank
15 you.

16 THE COURT: All right.

17 MR. KENT: We have a jury. The only
18 thing that I am concerned with -- and I don't
19 think I should be -- when they were discussing --
20 we already beat Jennifer Hill will be allowed to
21 testify, there's gonna be a question about his
22 mental status. I heard them say his mental status
23 and how he was acting. I'm a little worried about
24 the phrase mental status because then it's --
25 because we don't want to open the door.

1 THE COURT: Well, she's ---

2 MR. KENT: How do you know or what do
3 you know.

4 THE COURT: She's not an expert as far
5 as mental state, but she can testify if in her lay
6 opinion he was drunk.

7 MR. KENT: I agree.

8 THE COURT: He was acting unusual. I
9 mean, obviously, she's his spouse. She will know
10 when he's normal, when he's not. But as far as,
11 you know, any technical ---

12 MR. KENT: The phrase "mental status"
13 is what I'm concerned with I guess, Your Honor.

14 THE COURT: --- medical type
15 statements, I would just say that she -- if he was
16 drunk, she can certainly testify that he appeared
17 drunk, he'd been drinking all day ---

18 MR. KENT: Right. I can't object to
19 that, no, sir.

20 THE COURT: --- he was acting
21 unusual ---

22 MR. KENT: Can't object.

23 THE COURT: --- different than normal
24 ---

25 MR. KENT: Can't object.

1 THE COURT: --- things that a spouse
2 would know about another. But, you know, just
3 stay away from any technical, technical terms
4 which would venture towards opinion type testimony
5 that would be improper lay opinion.

6 MS. MCELVEEN: Yes, sir.

7 MR. KENT: And finally, Judge, now
8 that we're about to begin to start, we have been
9 making pretrial motions for a day-and-a-half now.
10 At this point in time we will renew all pretrial
11 motions. I don't think there's a lot of them, but
12 we will renew all of our pretrial motions. We
13 would ask that those motions be continuing during
14 the course of trial. Some courts say that we
15 don't have to make the objections contemporaneous
16 with if it comes up during trial, even though
17 we've had pretrial motions. With the Court's
18 permission, we would like to make them
19 contemporaneous if something comes up, unless the
20 Court sees fit that we don't need to.

21 THE COURT: Well, I think just to be
22 on the safe side, if you think something comes up
23 during the course of trial that I've already ruled
24 on.

25 MR. KENT: Yes, sir.

1 THE COURT: But if you think it needs
2 to be objected to, make it contemporaneously, that
3 way you are safe.

4 MR. KENT: Thank you, Judge.

5 THE COURT: That way, if another judge
6 or another panel of judges is reviewing this
7 record, it'll be absolutely clear and then we
8 won't have any issues in that regard. So if you
9 feel that something, even though I will -- and I
10 know all of your prior objections and they are
11 preserved for the record, if you feel that
12 something comes up during the trial that requires
13 an objection, make it so the record will be clear.

14 MR. KENT: Thank you, Judge. And I
15 anticipate my opening statement being 10, maybe
16 10, maybe 15 minutes at the longest. I'm assuming
17 after the State has -- or after the State goes,
18 we'll just go into witnesses and go straight
19 towards lunch then?

20 THE COURT: Yes. We're going to keep
21 going. Anything else before?

22 MR. KENT: He told me there's an
23 imaginary line that I can't go past. I don't see
24 that imaginary line.

25 THE CLERK: I'll remind you.

1 masks off, and obviously they will get no closer
2 to you than that rope thing there so.

3 Ms. McElveen, you may take your mask
4 down as you present your opening statement.

5 MS. MCELVEEN: Thank you, Your Honor.

6 Good morning again. Thank you so much
7 for being here. Your role in this case is the
8 biggest one of all. You are the fact finders.
9 You're the ones who sit and determine who's
10 telling the truth, who has a reason to lie, who
11 doesn't have a reason to lie. You have to process
12 a lot of information, and we understand that.

13 This is a case about a good Samaritan,
14 people we need more of, someone who will step in
15 and help when help is needed. And that good
16 Samaritan is our victim Mr. Roger Goden in the
17 yellow shirt. Another good Samaritan we have
18 present is Mr. Trenton Brown in the white short
19 sleeved shirt on the first row. Mr. Goden saw
20 that Ms. Hill needed help. She was involved in an
21 alternation, a fight, in her car with the
22 defendant seated with glasses. At that point Mr.
23 Goden realized that she needed help. He
24 approached the car. He tried to de-escalate the
25 situation; he tried to calm things down. As

1 Ms. Hill ran from the car, he eventually turned to
2 leave and walk away from Mr. Hill. At that point
3 you'll hear testimony that Mr. Hill at the gas
4 station took his car and drove around it,
5 accelerated to pin Mr. Goden against another car.
6 Inside of that other car was Mr. Trenton Brown,
7 the gentleman in the white shirt. This is their
8 case today; it's their day in court.

9 Ladies and gentlemen, you guys have
10 the hardest job and most important one. It is my
11 job to put forth all of the evidence allowed
12 within the law for you to make your decision as
13 easy as I can make it. There's never a clear cut
14 case, TV is misleading, but we hope to make that
15 case as clear as we can today. You'll hear from
16 eyewitnesses at the scene. You'll hear a portion
17 of the 911 call. We will give you everything we
18 can to try to make your job as easy as it can be,
19 but we realize that your job is never easy. We
20 appreciate your time.

21 Mr. Hill is charged with attempted
22 murder in regards to the case against Mr. Roger
23 Goden, our good Samaritan in yellow. You'll hear
24 from Mr. Goden himself about what he saw, what he
25 did, what he heard. You'll also hear from Mr.

1 Trenton Brown about what he saw and what he heard,
2 and from another eyewitness, Mr. Bauler, who's
3 also here, and he will testify about what he saw
4 and what he heard. You'll hear from police
5 officers who come to the scene. You'll have the
6 ability to weigh the evidence and decide who has a
7 reason to tell the truth, who has a reason to lie,
8 and that determination is on you. I will do the
9 best job I can in giving you all the tools you
10 need to make those determinations, and I just
11 appreciate your time and your attention today.

12 Yesterday this courtroom was very hot.
13 It seems to be cooler today. But after lunch I
14 know it is hard to be warm and sit still, so if
15 you need a break, please just indicate to the
16 Court. We want you to have your attention and be
17 awake. We want to have your attention and be
18 awake so just let the judge know if you to need a
19 little bit of a break. Thank you for serving.
20 It's such an important role for us, for the State,
21 and most importantly for these two victims here
22 today. Thank you for your service. We will get
23 moving with this case very quickly, and I'm
24 excited to address you again at the end. Thank
25 you.

1 THE COURT: Thank you, Ms. McElveen.

2 Opening statement from the Defense.

3 Mr. Kent.

4 MR. KENT: Thank you, Your Honor, if
5 it please the Court.

6 THE COURT: Yes, sir.

7 MR. KENT: Ms. McElveen.

8 About, I guess about four or five
9 years ago -- I'm married by the way. Four or five
10 years ago I used to go home and every day I work
11 and I live on a golf course. There was a golf
12 tournament happening and my wife, myself -- and we
13 don't have any kids, but we got two Pomeranians so
14 they're kind of like our kids. So we are walking
15 on the golf course and the two of us, we're just
16 talking and walking, and there's a golf tournament
17 going on. And so while the golf tournament was
18 going on, there's four individuals -- for anybody
19 that's not familiar with golf, there's four
20 individuals, two in one cart and two in the other.
21 The safest thing to assume is that these golfers
22 had been playing golf the entirety of the day,
23 middle of the summer, and let's say had been
24 heavily embodied. And so as we're driving, one of
25 the golf balls comes just rushing past my wife and

1 a kid on golf with a VI4 as the golf ball comes
2 rushing passed somebody, so we don't hear
3 anything. So as the golfers come driving up, one
4 of them -- and I'll never forget his face -- looks
5 at my wife and she's, of course, shook up, and he
6 makes a pretty derogatory comment shall we say.
7 He said something to the effect of "Your poor wife
8 shouldn't have been on the damn course." People
9 don't know me know I have a bit of a temper, and
10 you can imagine my wife very upset. So me and
11 this guy are getting into it, just candidly.
12 We're getting into it. You don't talk to my wife
13 like that. Of course, I wasn't saying it that
14 polite. You know, all I was saying was some
15 words, let's just say my momma wouldn't be too
16 proud of. So as we're going back and forth
17 yelling, yelling, and yelling, I finally said,
18 man, you need to get the F out of here. Now, as
19 I'm saying this trying to be the man, trying to be
20 the stud to stand up for my wife, I swing my hand
21 back and I guess who I strike: My wife. Needless
22 to say, the attention to the young man who is mad
23 at me went quickly away to my angry Russian wife
24 who went in the house kept screaming you hit me on
25 purpose. I slept on the couch for the next

1 week-and-a-half. I kept telling her, honey, I
2 didn't mean to do it, it was an awful accident.
3 She didn't want to hear it because she needed
4 emotions to calm down. She needed things to calm
5 down so she could calm down.

6 Ladies and gentlemen, through all the
7 evidence you're going to hear, this case is about
8 accidents versus intent. I introduced myself to
9 y'all yesterday. My name is Shaun Kent. I
10 practice law in Manning, South Carolina, and have
11 done so for the last 20 years. I'm going to
12 introduce you to some people in the courtroom just
13 so you know who everybody is. Sitting at the
14 table who is going to be assisting me is my dear
15 friend and co-counsel Marvin McMillan. As he told
16 you, they call him Chip. Behind him is his son
17 who is an associate at his law firm. And behind
18 me is Jack Furse who also practices with me in
19 Manning, South Carolina. The four of us are
20 charged with a responsibility of presenting to you
21 our friend and representing our dear friend David
22 Hill. David Hill's parents are back there on the
23 first row. You can see them.

24 If you'd raise your hand real quick,
25 momma.

1 That's his momma. That's his daddy.
2 I just swear to you they like each other. I don't
3 know why they're that far away from each other,
4 but they actually do like each other and those are
5 his parents.

6 This is not going to be a complicated
7 case. We are in a strange nuance of what's going
8 on in America for the last year-and-a-half. This
9 is the first case I've had to try in the last two
10 years, and it's been very interesting seeing
11 everybody in mask, seeing what's going on in
12 America, seeing the hostility that's going on back
13 and forth. It's just fun to come back in to a
14 jury system where we can actually decide things
15 based upon truth and based upon evidence and based
16 upon facts that are going to be put in on that
17 stand.

18 The Solicitor gave you a rendition of
19 the facts of what she believes that the State is
20 going to prove and here comes a big shock. I'm
21 not gonna disagree with a lot of it; we're just
22 not. So this is not going to be a very long
23 trial. And I believe we're not gonna disagree
24 with a lot of it, We're just not. A lot of what
25 they said happened, happened. So you say what are

1 we here for? We'll, you're not here for
2 who-dun-it. You're not here for what happened.
3 You're here for the why. Accident versus intent.
4 You're here to figure out what was going through
5 David Hill's mind on that day. Accident versus
6 intent. And that's what we're going to present to
7 you. You're going to hear stories about drunken
8 individuals talking entirely too much saying
9 things shouldn't have been said, and you have to
10 delve into somebody's mind to figure out what
11 their intent was. Accident versus intent.

12 I try a lot of cases; I really do. I
13 try civil cases and I try criminal cases. They're
14 two totally different things. Civil cases, of
15 course, when you're suing somebody for an
16 accident. When you say you have done something
17 wrong but it was not on purpose and this was an
18 awful accident; and as a result of this accident
19 for what happened, you need to give me money. And
20 we represent people a lot of that time in this
21 courthouse. Now we get to the world of crime, and
22 that's intentional acts. That's you did this on
23 purpose, you tried to hurt me, you hate me, you
24 wanted me to die. Intent. The judge is going to
25 talk to you the difference between general intent

1 and specific intent because that's what the State
2 of South Carolina has to prove that David Hill, my
3 friend, sitting here, had a specific intent to
4 kill somebody, that it wasn't civil, that it
5 wasn't money exchanged hands, that this wasn't an
6 accident, but this was an intentional act, that
7 this is on purpose, that his ultimate goal was to
8 kill somebody. I need to make sure y'all hear
9 that carefully because when you listen to the
10 evidence that's what must be proved. His ultimate
11 goal is to kill somebody. That's it, not up.
12 General, not a "we think." We must know for a
13 fact that his intent was to kill somebody, that
14 there is no civil remedies, there are no money
15 exchanged hands, anything of that nature; that
16 this was their intent. And we believe we're going
17 to be able to show this to you; that this was a
18 civil action; that this was a civil dispute and
19 that's all this was. And it's been handled as a
20 civil dispute. Accidents versus intent.

21 So all I'm asking you as members of
22 the jury who are sitting here who I can't tell you
23 how proud I am of the system because of what's
24 going on with COVID and wearing the masks,
25 everybody separating, that you actually took the

1 time to show up and do your jury duty because
2 that's a hard thing to do right now. So at the
3 conclusion of this trial after listening to all
4 witnesses, listening to how they testify, ask that
5 simple question: Was it an accident, was it
6 intentional? Ask yourself this question: Did the
7 witness believe it was an accident or did he
8 believe it was intentional?

9 And then after we get past the
10 attempted murder charge, after we get past it,
11 there's another charge you're going to have to
12 deal with. It's called resisting arrest. And
13 you're gonna hear a tape. You're going to hear
14 and you're going to see a drunken video on the
15 tape talking with their friends. A couple of
16 minutes ago I talked to you about everything
17 that's going in society, what's happening in the
18 world and what we're forced to watch now. And not
19 just with our mask and our COVID, but what's going
20 with officers and police officers all over the
21 country, we're watching. We're watching them in
22 Minnesota. We're watching them in Charleston,
23 watching them in Georgia, watching them
24 everywhere. And unfortunately, right now we have
25 targets on the back of police officers. Police

1 officers are some of my dearest friends on the
2 planet.

3 Melton Burnish, I don't know where
4 Officer Melton -- Melton right here in front.
5 These are some of the best people I possibly know.
6 But let's make this clear, there's a target on
7 police officers' backs right now, and it's not
8 fair. And so what we count on our officers doing
9 is de-escalating situations. I think we can all
10 agree with that. We want an officer who
11 de-escalates a situation, not makes it worse the
12 second they get to some place. So I want you to
13 watch information and ask yourself do we have
14 officers who de-escalated situations or raised
15 them because, as you know, when dealing with
16 somebody who is intoxicated, when dealing with
17 somebody you're yelling at and watching somebody
18 call your wife a whore, when somebody picking on
19 your little Pomeranians, that alcohol just goes to
20 you and me to be the person who de-escalates the
21 situation. Accidents versus intent. Thank you so
22 much for your time. I look forward to talking to
23 you.

24 THE COURT: Thank you, Mr. Kent.

25 Ms. McElveen, before the State calls

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1 its first witness we're going to distribute the
2 note pads and pens to the jury.

3 MR. KENT: Your Honor, may we
4 approach, myself and Ms. McElveen?

5 THE COURT: Yes.

6 (WHEREUPON, counsel approached the
7 bench for an off-the-record discussion.)

8 MS. MCELVEEN: Your Honor, the State
9 would call Jennifer Hill.

10 THE COURT: Ms. Hill, please come
11 around to be sworn.

12 THE CLERK: Raise your right hand
13 please. State your name.

14 THE WITNESS: Jennifer Hill.

15 WHEREUPON,

16 **JENNIFER HILL,**

17 having been duly sworn by the clerk, testified
18 as follows:

19 THE CLERK: Thank you much. Walk
20 around, watch yourself coming up the ramp.

21 THE COURT: Ms. Hill, you may take
22 your mask down as you testify.

23 THE CLERK: State your name for the
24 record please and spell your last name. Speak
25 loud.

SW - J. HILL - DIRECT

1 THE WITNESS: Jennifer Hill, H-I-L-L.

2 **DIRECT EXAMINATION**

3 BY MS. MCELVEEN:

4 Q Good morning, Ms. Hill.

5 A Good morning.

6 Q Can you tell me, what is your
7 relationship to the defendant?

8 A I'm his wife.

9 Q Are you still his wife? Have you --
10 are you still together or?

11 A No, ma'am. I am currently his wife;
12 however, I've been attempting to get him to sign
13 divorce paper well over about two years now.

14 Q So you have served divorce papers?

15 A Yes, ma'am.

16 Q Can you -- were you married to him on
17 July 7th, 2019?

18 A Yes, ma'am.

19 Q Can you tell me a little bit about
20 that day, what started the -- this incident? Can
21 you tell me a little bit about that day, what you
22 did before, kind of how the day progressed for you
23 and Mr. Hill?

24 A That morning we went to church. I got
25 dressed. He didn't want to go to church, but he

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1 ended up coming. We were sitting in church, and
2 the pastor made reference to Madalyn O'Hair who
3 then he sat beside me and Googled Madalyn O'Hair

4 ---

5 MR. MARVIN MCMILLAN: Judge, I object.

6 MR. KENT: We have a motion, Your
7 Honor.

8 THE COURT: Motion that needs to be
9 taken up ---

10 MR. MARVIN MCMILLAN: Yes, sir.

11 THE COURT: --- without presence of
12 the jury? All right.

13 MS. MCELVEEN: Your Honor, I can fix
14 this. May I try to attempt to ---

15 THE COURT: Let's -- we need to put it
16 on the record first. Ladies and gentlemen of the
17 jury, this is one of those situations where we
18 have a matter of law that must be considered
19 outside of your presence so I'm going to send you
20 to the respective jury rooms, ask that you leave
21 your notes in the courtroom. I can't imagine
22 you've taken many notes anyway. We will take up
23 this matter of law and bring you back to the
24 courtroom as soon as we possibly can. Remember to
25 not begin your deliberations, don't discuss this

1 case amongst yourselves or do any research about
2 this case in any means whatsoever. Thank you very
3 much.

4 (WHEREUPON, the jury was removed from
5 the courtroom at 10:33 a.m.)

6 MR. KENT: Thank you, Your Honor. By
7 way of motion, at this point in time we move for a
8 mistrial. I know it's an extreme motion; however,
9 we've spent a day-and-a-half going over what
10 specifically should be mentioned and not be
11 mentioned by witnesses. First, as you -- as
12 mentioned during the State's opening statement
13 they specifically they referred to it as a fight.
14 As I mentioned to you in, at side bar, we put that
15 motion on the record that that's oddly specific
16 where we said we're not going to mention certain
17 things. The witness hasn't been on the stand for
18 two seconds. She's already mentioning Google
19 searches. She's mentioning Google searches in
20 church, also something that we made a motion
21 about. The State said we're not going to be
22 getting into those. I'm starting to see a pattern
23 that we spent all this time in painstaking detail
24 talking about what wouldn't and wouldn't be
25 mentioned and in less than two seconds two things

1 have already been mentioned.

2 I know this goes to the extreme; but
3 for the record, at this point in time I make a
4 motion for mistrial that I believe that the State
5 intentionally going against what the Court's
6 rulings were, not to mention, not to inquire, and
7 not to get into that information. Thank you, sir.

8 MR. MARVIN MCMILLAN: Judge, if you
9 would let me expand on that. The reference to the
10 Madalyn O'Hair incident because we've been
11 afforded this statement that the State took from
12 Mrs. Hill, an eight page written statement. In
13 that statement it makes -- and as part of the
14 prior bad acts and part of the plea, Ms. Hill
15 represents that the preacher mentioned a Madalyn
16 O'Hair who was apparently some atheist who was
17 killed by some group and later dismembered. They
18 discussed it at church and DJ supposedly looked on
19 the phone to see who that was. This goes exactly
20 back to, as Mr. Kent just said, Your Honor's
21 ruling. And here I am less a minute into her
22 testimony having to stand up, having to object,
23 almost goading us into having to make this
24 mistrial motion. It has nothing to do with the
25 underlying charge. Mrs. -- she said she can fix

1 it. Well, it's hard to fix something that's
2 already come out.

3 THE COURT: Well, the jury doesn't
4 know anything other than that -- and I don't know
5 who Madalyn O'Hair is. I don't think the jury has
6 been -- I understand the reason behind the motion.
7 I understand that the Google searches are not
8 relevant to the issues, but I don't think the jury
9 has been prejudiced by -- at this point by the
10 answer of the witness so I will -- Ms. McElveen,
11 I'll be glad to hear from you. I don't think that
12 we've -- I certainly don't think we've reached a
13 mistrial status because the objection was made
14 before any real details were revealed; but I'll be
15 happy to hear anything you'd like to put on the
16 record.

17 MS. MCELVEEN: Your Honor, we feel the
18 same way. And as you know, we proffered testimony
19 and there was no mention of a Google search. I
20 think the church can just be breezed over. In
21 future testimony we will instruct our witness to
22 not go into such detail. Frankly, I don't really
23 know who Madalyn O'Hair is either even as a
24 prosecutor, so I don't think that there's been
25 much damage done. However, Your Honor, as to the

1 altercation, the word of altercation versus fight,
2 I believe they're synonyms and ---

3 THE COURT: Well, ---

4 MS. MCELVEEN: And fight is more
5 understandable to a jury. It can be verbal,
6 physical, I mean, whatever. They're different
7 types of fights so I don't see the error using the
8 word fight instead of altercation. A jury -- a
9 juror may not understand the word altercation.

10 THE COURT: Well, since it was in
11 opening statement it's not evidence. It wasn't
12 presented from the witness stand. My closing
13 remarks will inform the jury that things that the
14 lawyers say are not evidence. I would just,
15 again, reiterate the facts behind what occurred in
16 the car are not elements of the offenses for which
17 the defendant is on trial. Altercation,
18 disagreement, synonyms of that nature, but fight
19 gets closer to domestic violence land so. Again,
20 he's not on trial for domestic violence; he's on
21 trial for attempted murder. He's on trial for
22 assaulting officers while resisting arrest and
23 assault and battery in the first degree, so the
24 physical altercation which the Defense has agreed
25 is an appropriate description, I don't know that

1 the jury could misinterpret that so I would -- I
2 would suggest, and I'm certainly not trying to put
3 parameters on how attorneys try the case, but I
4 will -- that is, if the jury doesn't understand
5 the phrase "physical altercation," that's a pretty
6 common, pretty common phrase, pretty common
7 description of when people have disagreements so I
8 think that would be the appropriate way to
9 describe it. So based on all that, I don't think
10 we've reached the point where a mistrial is
11 appropriate, but I would caution all witnesses to
12 testify pursuant to the rules which were made
13 yesterday in the pretrial hearing.

14 MR. KENT: Thank you, Your Honor. We
15 appreciate and understand the Court's ruling. And
16 in case another court is reading this at a later
17 point in time, we would not -- we would not
18 request a curative instruction or anything to the
19 jury because we believe that would bring attention
20 to something that doesn't need attention brought
21 to it so even though we've made our objection, we
22 would not request a curative instruction. We
23 would ask that we just glance over it and the
24 Court not address it with the jury, just bring
25 them back in and just start from where we stopped.

1 THE COURT: Does the State have any
2 opinion as to Mr. Kent's request that the Court
3 not give a curative instruction?

4 MS. MCELVEEN: No, we take no
5 position. Whatever the Court deems appropriate,
6 Your Honor.

7 THE COURT: I find that I agree with
8 Mr. Kent that a curative instruction would at this
9 point in time bring more attention to this matter;
10 and given the fact that the objection was made
11 contemporaneously before any real evidence of
12 these Google searches was presented to this jury,
13 I agree with Mr. Kent. I think any further
14 comment would -- would not be the best course of
15 action so we'll just resume. When I bring the
16 jury in, I will thank them for their patience with
17 us; and Ms. McElveen, I will recognize you to
18 resume your direct examination.

19 MS. MCELVEEN: Yes, Your Honor. Thank
20 you.

21 MR. KENT: Thank you, Your Honor.

22 THE COURT: Bring us the jury please.

23 THE CLERK: Yes, Your Honor.

24 (WHEREUPON, the jury was returned to
25 the courtroom at approximately 10:42 a.m., and the

1 following proceedings commenced in open court.)

2 THE COURT: Ladies and gentlemen,
3 thank you for your patience with us. We're now in
4 position to resume the State's direct examination.

5 Ms. McElveen.

6 MS. MCELVEEN: Yes, Your Honor.

7 BY MS. MCELVEEN:

8 Q Ms. Hill, going back to your
9 testimony, after church what type of mood was Mr.
10 Hill in?

11 A After church he was in a kind of okay
12 mood, just watching TV. That went on for a couple
13 of hours, and then I got up to start doing laundry
14 and getting prepared for the week. This is on a
15 Sunday. And he went off on the other side of the
16 house doing whatever. I didn't know until about
17 an hour in that he was drinking. And I could tell
18 because when he drinks he starts pretty much
19 following me around, pretty much on my heels, I
20 am, you know, the worst wife in the world, and you
21 know, I don't do anything right. He started
22 bringing up his dead grandfather, his dead
23 friends, just kept getting worse. The
24 conversation just kept getting worse. I tried to
25 keep him calm. And then after about another hour

1 of that, I realized this isn't going to calm down,
2 he is not going to stop drinking. He had a gallon
3 of Crown, and there was only about a inch left in
4 the bottle at this point. So in my mind I knew I
5 had to get out of the house, and I -- it took me
6 about 30 minutes to try to persuade him to get out
7 the house so I said -- because he kept making
8 references to his dead friend, he couldn't get a
9 tattoo for her and he couldn't pour out liquor at
10 her grave and he couldn't do, you know, say what
11 he wanted to her. So I said, hey, you know, I'll
12 take you, I will take you there, I will get you in
13 the car and drive you there, you can say what you
14 want to say to her, I'll stay in the car, I won't
15 intervene. And in my mind I was going to take him
16 there, drop him off, call his parents, and leave.
17 And so, finally he agreed, and I got him in the
18 car and we were coming up Pinewood Road in front
19 of Swan Lake and we turned by the fairground to
20 Sumter Cemetery; that's where we were going. And
21 he told me to stop, he wanted to write some things
22 on the bottle. He did pour the remaining liquor
23 into a bottle for her. We stopped there briefly
24 and then we never actually made it to the
25 graveyard that she was at. He had -- he was

1 pretty much directing my steps at that point
2 telling me where to go and then we ended up at the
3 gas station.

4 Q May I ask, was he agitated?

5 A He was extremely agitated. He was --
6 he was all over the place. He was mad at me one
7 minute, then he was laughing and giddy the next
8 minute and then back to mad and angry. I was very
9 scared. I didn't know what to do. This is Sunday
10 night at around 9:00. I was very thankful that
11 the store was open and that I was able to get to
12 the store. When I arrived at the store my -- I
13 stopped and I said, you know, you're scaring me,
14 you need -- if you want to go, hey, you can walk,
15 I will wait on you, you know, you would just go,
16 just get out the car and you go. He didn't. And
17 so in my mind I said, okay, I'm going to try and
18 get out of the car and go into the store; and when
19 I did, it was an altercation in the car. And when
20 I did, I just -- I didn't make it all the way out
21 of the car. I was just screaming at that point.
22 I finally made it into the store, and I was
23 yelling for someone to call 911, and the guy was
24 standing there with the phone and I asked him to
25 call 911. I was just screaming call 911.

1 Q So he was agitated that day and upset
2 and angry?

3 A Yes, ma'am. Very much.

4 Q And intoxicated?

5 A Very intoxicated, which is not, not
6 unusual. I mean, he drinks a lot, often.

7 Q This Frederick Citgo, is that on South
8 Guignard?

9 A Yes, ma'am.

10 Q Here in the city of Sumter, correct?

11 A Yes, ma'am.

12 Q And is your husband in the courtroom
13 today? Can you identify him?

14 A Yes, ma'am. That is him.

15 MR. MARVIN MCMILLAN: Your Honor, we
16 stipulate this is the defendant.

17 THE COURT: All right. Thank you,
18 Mr. McMillan. So stipulated.

19 MS. MCELVEEN: Thank you very much.
20 Beg the Court's indulgence one minute.

21 BY MS. MCELVEEN:

22 Q Let me just ask one more question.
23 Ms. Hill, did you know Mr. Goden before that night
24 of July 7th, 2019?

25 A No, ma'am.

SW - T. BROWN - DIRECT

1 Q Did you know Mr. Trenton Brown before
2 that night on July 7th, 2019?

3 A No, ma'am.

4 Q Okay. Did you see Mr. Goden approach
5 the car?

6 A No, ma'am.

7 Q Okay. Thank you. I have no further
8 questions for you at this time. Thank you.

9 MR. MARVIN MCMILLAN: Court's
10 indulgence at this time?

11 THE COURT: Yes, sir.

12 MR. MARVIN MCMILLAN: Judge, we don't
13 have any questions for this witness.

14 THE COURT: Thank you, Mr. McMillan.

15 Ms. Hill, you may step down.

16 MS. MCELVEEN: Roger Goden.

17 THE CLERK: Sir, raise your right
18 hand. State your name.

19 THE WITNESS: Roger Goden.

20 WHEREUPON,

21 **ROGER GODEN,**

22 having been duly sworn by the clerk, testified
23 as follows:

24 THE COURT: Mr. Goden, you may pull
25 your mask off while you're testifying.

SW - T. BROWN - DIRECT

1 THE WITNESS: Thank you, sir.

2 THE CLERK: State your full name and
3 spell your last name for the record please.

4 THE WITNESS: Roger Goden, G-O-D-E-N.

5 BY MS. MCELVEEN:

6 Q Good morning, Mr. Goden.

7 A Good morning.

8 Q Can you tell me a little about
9 yourself, where are you from and where did you go
10 to school and just tell me a little?

11 A I'm from Sumter, South Carolina. I
12 went to school in the Sumter school district.

13 Q Okay. And what high school did you go
14 to?

15 A Sumter High.

16 Q Sumter High?

17 A Yes, ma'am.

18 Q Did you play any sports or?

19 A I played football.

20 Q What position did you play?

21 A Linebacker.

22 Q Did you have any -- did you do well in
23 that I'm sure?

24 A I was excellent, ma'am.

25 Q And so you stayed in Sumter?

SW - T. BROWN - DIRECT

1 A Yes, ma'am, I did.

2 Q What are you doing now?

3 A I work at Meritor. It's a brake shop,
4 a plant that makes brakes for tractor-trailer in
5 Manning, South Carolina.

6 Q Wonderful. You go there, you go to
7 work there. How long have you worked there?

8 A I worked there -- I've been able to go
9 back to work for the past ten months and I worked
10 there ten months.

11 Q And so you had a pause in your ability
12 to work?

13 A Yes, ma'am.

14 Q On July 7th, 2019, it was a Sunday
15 night. Tell me a little bit about what led you to
16 the scene, why you were coming there.

17 A Yes, ma'am. Actually, I was getting
18 in the bed getting ready for work. At the time I
19 worked for a moving company that moved people
20 that's on the base, military people, and I was
21 about to lay down. My niece was down here from
22 Texas and it was just a lot going on, as everyone
23 know in Sumter at that time. So I was about to
24 lay down, but she told me that she needed gas so I
25 met her at the gas station to pump her gas.

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1 Q So you were meeting your niece to help
2 her pump gas ---

3 A Yes, ma'am.

4 Q --- that night?

5 A Yes, ma'am.

6 Q Did you arrive on foot or by car?

7 A Actually, the gas station from my
8 mother's house is like from here to the outside
9 door so I walked there.

10 Q And when you were walking there did
11 you hear anything or ---

12 A When I got to the middle of the path I
13 heard a -- just a horn, someone laying on the horn
14 like, buhhhh, just laying on it for the longest
15 and screaming and yelling help, help, help.

16 Q So you heard a lot of screaming. Was
17 it a female's voice or a male's voice?

18 A It was a female's voice.

19 Q When you approached the gas station,
20 did you see the car, where all the noise was
21 coming from?

22 A Yes, ma'am. It was coming from a
23 Durango.

24 Q Can you tell me what -- was the
25 Durango -- what sort of activity was happening

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1 with the Durango? Was it -- the horn was honking,
2 what else was happening?

3 A The Durango was parked at the gas pump
4 and she was still holding the horn. When I say
5 holding the horn, she was holding the horn, help,
6 help, help. So I see it and I see that it's a
7 physical altercation that's in the truck, so I
8 come across and I tapped the front of the truck.
9 When I tapped the front of the truck she jumped
10 out of the truck and ran.

11 Q So when you tapped the front of the
12 truck, were you on the -- were you tapping the
13 front of the passenger side or the driver's side?

14 A I tapped the closest part. That would
15 be the passenger side that I can get to.

16 Q And there was -- there's a male.
17 There was a man in that side?

18 A The male was on the passenger side and
19 the female was on the driver's side trying to get
20 out of the truck.

21 Q What happened when you tapped on the
22 truck? You ---

23 A When I tapped on the truck, he kind of
24 like look at me for a split second. When he did,
25 she jumped out of the truck and ran.

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1 Q What happened? What did he do next?

2 A He climbed across the seat to the
3 driver's seat.

4 Q And did you -- did you guys ever --
5 what happened after that?

6 A When he climbed across the driver's
7 seat, I went to the driver's door because =I at
8 first I thought he was trying to go behind her.
9 So when I tapped on the driver's door I said, man,
10 the police just left from over there, man, you
11 better get out of here. So when I told him that
12 he told me he was a seven time felon. When he did
13 that, he got out of the truck, he kind of sized me
14 up. And when he got out of the truck to size me
15 up, I kind of noticed that he had a tear drop
16 under his eye. Where I'm from, the neighborhood
17 that I'm from ---

18 MR. KENT: Objection, Your Honor.

19 THE COURT: Hold on one second.

20 THE WITNESS: If you have tear drop

21 ---

22 THE COURT: Hold up.

23 MR. KENT: Objection.

24 THE COURT: Hold up.

25 THE WITNESS: I'm sorry.

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1 MR. KENT: Calls for speculation,
2 inadmissible hearsay, I can keep going.

3 MS. MCELVEEN: Your Honor, the witness
4 is testifying about what -- a sign on his face
5 indicates to him from his knowledge in life. It
6 doesn't -- it's not calling for speculation. He's
7 not saying anything -- he just knows that was his
8 assessment of the scene and that's how he was
9 gaging the level of what he needed to do next.

10 THE COURT: Right. He -- I'm going to
11 sustain the objection. He can testify as to how
12 his appearance made him feel, but not testify as
13 to any meaning of any symbol that may have been on
14 the defendant's body.

15 MS. MCELVEEN: Thank you, Your Honor.
16 BY MS. MCELVEEN:

17 Q So you noticed a tear drop tattoo on
18 his face?

19 A Yes, ma'am.

20 Q What happened next?

21 A And I just noticed that he was just
22 agitated. And what he did was, he kind of sized
23 me up and down and then he turned and looked back
24 in the truck like he was searching for something.
25 I then stepped to the side. I didn't know what he

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1 was searching for, but I didn't want him to come
2 out with something to harm me so I -- that's why I
3 stood there, so instead of walking off or running
4 off for him to do something when I turned my back.
5 So at that point he kind of just -- he just kept
6 mumbling stuff and he -- when he got back in the
7 truck he just hold his foot on the gas. He was
8 trying to get the truck in park. So when I turned
9 to walk away he was like, oh, you want some too,
10 you want some too? And two seconds later I was
11 pinned against another car.

12 Q So you turned and walked away
13 towards -- away from him to go into the store?

14 A Yes, ma'am.

15 Q And then ---

16 A No, I turned the -- because Mr. Brown
17 was parked. I know Mr. Brown. We're from the
18 same neighborhood. Mr. Brown was parked kind of
19 like behind him. So I turned to go to Mr. Brown
20 and that's who car he pinned me in between Mr.
21 Brown's car.

22 Q So you turned to walk away and
23 then ---

24 A Yes.

25 Q --- the Durango ---

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1 A Yes, ma'am.

2 Q --- pulled up pinning you?

3 A Yes, ma'am.

4 Q Did you -- and you heard him yell what
5 again?

6 A He said that you want -- he asked me
7 did I want some too.

8 Q And you heard him yell that? It was
9 ---

10 A Yes, sir.

11 Q --- right before he pinned you between
12 the two cars?

13 A Yes, ma'am.

14 Q What sort of -- what happened next?
15 After you were pinned between the cars what
16 happened?

17 A When he pinned me between the car the
18 only thing I kind of felt was him like -- and it's
19 crazy and it's so ironic. When I looked up at
20 him, like, I could see in his eyes, like, he was
21 just trying to -- when he hit the car, he didn't
22 just hit the car and stop. He hit the car and
23 kind of kept pushing on the gas, and I could just
24 see in his eyes, like, he -- this dude is really
25 trying to hurt me, you know.

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1 Q Did you think he was trying to kill
2 you?

3 A Yes, ma'am.

4 Q What happened -- what kind of injuries
5 did you sustain? What happened after -- did he
6 leave, did he stay there, what happened?

7 A He kind of -- he kind of -- he sit
8 there and he, I guess he backed up a little bit
9 and then he came back for it, hit the car again,
10 and then he kind of -- he sped off into the night
11 like he did nothing.

12 Q What happened to you?

13 A My foot was -- my foot was done. It
14 was -- it was -- my foot was messed up.

15 Q Any other parts of your body messed
16 up?

17 A Yes, ma'am. From where he hit me, my
18 leg has a big old burn on it from where it got
19 caught on the radiator of his car. And I actually
20 had to -- in order to get out of it, I had to pull
21 my leg off the radiator because it was literally
22 stuck on the radiator.

23 Q What sort of shoes were you wearing
24 that night?

25 A I was wearing some Nike slides. I was

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1 about to get in the bed.

2 (Attorneys confer.)

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

4 THE COURT: Yes, sir.

5 (Pause.)

6 MR. KENT: Your Honor, I have been
7 handed by the State of South Carolina pictures
8 labeled State's Exhibit 11-B, State's Exhibit 13
9 -- oh, I'm sorry, they're back and forth so let me
10 start over. Your Honor, 11-A and 11-B, which are
11 back and front, 13-A and 13-B which are back and
12 front, 14-A, 14-B which are back and front.
13 Picture 15, which is just a picture of the front.
14 Picture 16 which is just a front picture. Picture
15 18 which is just a front picture. My
16 understanding the State of South Carolina has
17 informed me these are not pictures taken from a
18 video, but pictures taken from a crime scene tech
19 or something of that situation. Based upon what
20 they were used for, we have no objection with them
21 being introduced at this point in time. They have
22 not laid the foundation with the individual who
23 has taken the pictures; we still have no
24 objection.

25 MS. MCELVEEN: Thank you.

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1 THE COURT: So for the record, State's
2 11-A and B, 13-A and B, 14-A and B, 15, 16, 18 are
3 admitted without objection.

4 MS. MCELVEEN: Thank you, Your Honor.

5 (WHEREUPON, State Exhibits Nos. 11-A,
6 11-B, 13-A, 13-B, 14-A, 14-B, 15, 16 and 18 were
7 admitted into evidence.)

8 BY MS. MCELVEEN:

9 Q Looking through these, can you tell me
10 if these are an accurate representation of the
11 scene and where your slides ended up, where your
12 shoes ended up that night?

13 A Yes, ma'am. This, I mean, this is my
14 slides. Yes, ma'am. Yes, ma'am.

15 MS. MCELVEEN: Your Honor, we'd like
16 to publish these to the jury at this time.

17 THE COURT: You may.

18 MS. MCELVEEN: Thank you.

19 THE WITNESS: Mrs., you know how when
20 they say that when you're in trouble got sends
21 10,000 angels? Like, I'm a witness to that that
22 night because to be honest with you, before he hit
23 me, I guess it was a lady standing beside me.
24 She's from the neighborhood. And I often -- I
25 think what saved my life that night is because I

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1 tried to save her in which I didn't even know it
2 was me that needed saving. But before the truck
3 hit me, she was standing beside me and her legs
4 was like moving super fast; I'm talking about like
5 almost like cartoon status, moving super fast. So
6 I remember looking down at her and I said, Sko
7 (ph), why are your legs moving so fast. She said,
8 Roger, the truck is about to hit you. So when the
9 truck hit me, just looking at those pictures how
10 my slides got cut, she told me to turn to the
11 side. When I turned to the side, that put my back
12 up against Trenton's car or to the effect where it
13 would hit me, I mean, where it would hit my back
14 instead of my side. So as she hit -- as the car
15 hits me into Trenton's car, I guess what saves me,
16 I'm trying to push the car back because I'm seeing
17 her get hit, not myself, you know. And it's so
18 crazy, like, I felt nothing until it was over, you
19 know. Like that split second I felt nothing. The
20 only thing I saw was her. Even -- even after it
21 was over with I went to her, and I said, is your
22 foot okay. She says, it's not my foot, it's your
23 foot. So...

24 BY MS. MCELVEEN:

25 Q That's not Mrs. Hill. That was

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1 another lady?

2 A That was another lady at the scene,
3 yes, ma'am.

4 Q So you thought you were -- at that
5 point she was being hit, but really ---

6 A Yes, ma'am.

7 Q --- you were the one?

8 A Yes, ma'am.

9 Q And you saw Mr. Hill's eyes and anger?

10 A Yes, ma'am.

11 Q And you heard him say, "Oh, you want
12 some of this too"?

13 A Yes, ma'am.

14 MS. MCELVEEN: Your Honor, we'd like
15 to publish these pictures to the jury.

16 THE COURT: You may.

17 BY MS. MCELVEEN:

18 Q So Mr. Hill -- I mean, Mr. Goden, this
19 is where your shoes ended up in close -- and
20 that's -- whose car is that?

21 A This is Mr. Brown's car.

22 Q That's Trenton Brown's car? And
23 that's you were going over to talk to when ---

24 A Yes, ma'am.

25 Q --- you were hit?

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1 A Yes, ma'am.

2 Q And those are the same -- the same
3 location of the car, correct?

4 A Yes, ma'am. You can see where the
5 radiator bust loose. That's where all that fluid
6 was where my leg was pinned on the radiator.

7 Q That's all the fluid on the ground?

8 A Yes, ma'am.

9 Q And that's your, again, your slides
10 cut in half?

11 A Yes, ma'am.

12 Q What happened after your foot was
13 mangled? Were there any other injuries?

14 A My finger was bust open real bad from
15 where my finger was caught in between Trenton's
16 car and his car.

17 MS. MCELVEEN: And Your Honor, we
18 would like to enter State's Exhibit 32 to show
19 that.

20 MR. KENT: Your Honor, I would object
21 to State 32.

22 THE COURT: You would object?

23 MR. KENT: Yes, Your Honor, I would
24 object to introduction of State's Exhibit 32.
25 It's taken from the body cam. It's a still from

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1 the body can not taken from the crime scene tech
2 or anybody out there. It would be taken from an
3 impermissible video at this point in time.

4 THE COURT: Well, ---

5 MS. MCELVEEN: Your Honor, we ---

6 THE COURT: Ms. McElveen, hand him the
7 photograph and see if you can lay the appropriate
8 foundation.

9 MS. MCELVEEN: Yes, Your Honor.

10 BY MS. MCELVEEN:

11 Q Is this -- can you tell me, is this a
12 picture of you at the scene that day?

13 A Yes, ma'am.

14 Q And is that a picture of your finger?

15 A Yes, ma'am.

16 MS. MCELVEEN: Your Honor, we'd like
17 to enter State's Exhibit 32 into the record and
18 publish it to the jury.

19 MR. KENT: Your Honor, I guess our
20 objection so long as the introduction of the video
21 doesn't stipulate -- introduction of the picture
22 doesn't stipulate that we acquiesce the
23 introduction of a video that it was taken from.

24 THE COURT: Understood.

25 MR. KENT: Thank you, Judge.

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1 THE COURT: He's testified that it is
2 a picture of his finger taken at the scene so I
3 believe the appropriate foundation has been laid
4 and I will admit State's -- you said 32?

5 MS. MCELVEEN: Yes, Your Honor.

6 THE COURT: State's 32 is admitted
7 over Defense objection.

8 (WHEREUPON, State Exhibit No. 32 was
9 admitted into evidence.)

10 MS. MCELVEEN: Thank you, Your Honor.
11 And if I may, I don't really know, is there any
12 way I can change to dot cam so I can switch to
13 that picture without publishing other pictures,
14 Mr. Campbell? Beg the Court's indulgence.

15 Okay, Mr. Campbell, I think I have it
16 fixed now so that it can be shown.

17 BY MS. MCELVEEN:

18 Q And that's your, appears to be your
19 middle finger, Mr. Goden?

20 A Yes, ma'am, it is.

21 Q And tell me about your foot. Did you
22 have medical treatment? I'm not trying to show
23 pictures of something that will make people ill,
24 but can you tell us a little about your injury of
25 your foot.

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1 A It was to the bone. I had to -- I had
2 to wear a wound vac for eight months, nine months.
3 And what a wound vac is, it does, it suck the good
4 tissue from the bone wherever and brings it to the
5 top. It was so severe that I had to get -- I
6 had -- they had to use a woman's umbilical cord to
7 get the skin from it to do skin drafts to put on
8 my foot.

9 Q So you've had followup surgeries?

10 A I had two surgeries. I had the first
11 surgery they did that morning, and I got released
12 from the hospital about four days later. And then
13 I went home and my leg was hurting so bad like I
14 -- it was hurting superbad. So then I went back
15 to my doctor's appointment that Monday and they
16 admitted me back in the hospital because he said
17 that I had -- it had got a infection in it from
18 whatever. It still had gravel in it from where
19 they had sewed it up and all so that made it
20 infected, and they had to reopen it again.

21 Q And that -- all your surgeries
22 happened at Tuomey?

23 A Yes, ma'am, they did.

24 Q Can you tell us, was the bone broken
25 or was it just the skin down to the bone or?

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1 A The skin down to the bone.

2 Q So the gash was to the bone?

3 A Yes, ma'am, it was.

4 Q And you said you had burns on your
5 foot too?

6 A On my legs and my -- on my foot as
7 well.

8 Q Radiator pushing against it?

9 A From the gravel and the radiator. The
10 burns from my leg is from the gravel. The burns
11 in the cut from on my foot is from -- the burn
12 from the, on my leg, is from the radiator and the
13 burns and stuff on my foot is from the gravel of
14 my foot scraping across the ground.

15 Q Because you lost your shoes?

16 A Yes, ma'am.

17 Q Knocked out of your shoes?

18 A Yes, ma'am.

19 Q Mr. Goden, where did you go after
20 being -- when he left, where did you go? Lay
21 down, wait? What did you do? Wait for EMS?

22 A Yes, ma'am. I couldn't go nowhere. I
23 couldn't move.

24 Q So ---

25 A So I laid -- and it was so crazy that

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1 as soon as -- as soon as he pulled off and went
2 down the street my niece pulled up. That's who
3 holding me in this picture, my niece.

4 Q So your niece did end up coming there
5 and ---

6 A Yes, ma'am.

7 Q --- found you in this state, correct?

8 A Yes, ma'am. I'm talking about seconds
9 after he left, she pulled up.

10 Q Did EMS come and treat you and what
11 ---

12 A Yes, ma'am, EMS came.

13 Q And they took you to the hospital?

14 A Yes, ma'am. They took me straight to
15 the hospital.

16 Q Roger, you -- you heard -- you
17 heard -- again, you stated you heard him yell,
18 "You want some of this too," and you saw his eyes?

19 A Yes, ma'am.

20 Q You think he intended to kill you that
21 night?

22 A I know he wanted to kill me. From his
23 actions and his body language, I know he wanted to
24 kill me. And I believe he wanted to kill me so
25 bad because, you know, he wanted to go in the

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1 store to do whatever. I don't know what he wanted
2 to do in the store, but he was -- like, you could
3 see his level of rage that's amplified because,
4 you know, I kind of spoiled his plan.

5 Q Thank you, Mr. Goden. Hold on one
6 second.

7 MS. MCELVEEN: I beg the Court's
8 indulgence.

9 THE COURT: Yes, ma'am.

10 BY MS. MCELVEEN:

11 Q And Mr. Goden, just quick followup.
12 Did you know Mr. Hill before that night?

13 A No, ma'am. I know neither one of
14 them.

15 Q You didn't know Mrs. Hill?

16 A Mr. Hill or Mrs. Hill.

17 Q And you just are good Samaritan?

18 A I just saw someone in help and in need
19 and I helped her, you know. Like, she was yelling
20 for help, you know. Like, everybody else was just
21 standing there, like, what do we do, you know.
22 And it sound kind of crazy that I almost did that.
23 When I was little I had this crazy thing about if
24 I died I wanted to die saving someone's life, and
25 I didn't even know how close I came to that that

1 night, you know.

2 Q Yes, sir. I'm glad you're here to
3 testify today.

4 A Yes, ma'am.

5 Q Very glad. Mr. Goden, please answer
6 any questions Defense may have.

7 A Yes, ma'am.

8 Q I appreciate you being here. I'm glad
9 you're here to testify. Thank you so much.

10 A Thank you.

11 THE COURT: Cross-examination.

12 **CROSS-EXAMINATION**

13 BY MR. KENT:

14 Q Mr. Goden, how are you doing, sir?

15 A I'm doing fine, sir.

16 Q We have not had the opportunity to
17 meet.

18 A No, sir. How are you doing?

19 Q As you mentioned, you're from Manning.

20 A Yes, sir.

21 Q You work in Manning.

22 A Yes, sir.

23 Q I'm surprised we haven't run into each
24 other or crossed paths.

25 A Yes, sir.

SW - R. GODEN - CROSS

1 Q Mr. Goden, I want to go over since we
2 haven't had an opportunity to talk. I want to go
3 over a few rules, okay?

4 A Yes, sir.

5 Q Rule one, Frances will tell you that I
6 speak entirely too fast sometimes, as she nods
7 head. So apologetically, if I speak entirely too
8 fast and you have a problem, you can't understand
9 what I'm saying, just ask me and I'll repeat my
10 question. Is that fair?

11 A Yes, sir.

12 Q Number two, she cannot take down head
13 -- and you've done a great job, but I still go
14 through this. She can't take down head nods and
15 shakes so make sure you answer the way you've been
16 answering ---

17 A Yes, sir.

18 Q --- from the State.

19 A Yes, sir.

20 Q And something just happened there.
21 She can't take when we talk at the same time.

22 A Yes, sir.

23 Q Okay. So if you'll give me
24 opportunity to ask my question, I'll give you
25 plenty of opportunity to answer the question. Is

1 that fair?

2 A Yes, sir.

3 Q Okay. And I don't have a lot, Mr.

4 Goden. First of all, I am very sorry about what
5 happened to you. There's no doubt about it, this
6 happened, agreed?

7 A Yes, sir.

8 Q You were hit?

9 A Yes, sir.

10 Q On your foot?

11 A Yes, sir.

12 Q And you needed medical care?

13 A Yes, sir. I wasn't -- I wasn't hit on
14 my foot. I was hit on my body, but my foot was
15 injured.

16 Q Your foot was injured?

17 A Yes, sir.

18 Q Mr. Hill was the one who hit you?

19 A Yes, sir.

20 Q You were hit from a Durango?

21 A Yes, sir.

22 Q You were doing nothing wrong out there
23 that day?

24 A No, sir.

25 Q You don't know David?

SW - R. GODEN - CROSS

1 A No, sir.

2 Q You have no -- before this you had no
3 problems with him?

4 A No, sir.

5 Q He had no problems with you?

6 A No, sir.

7 Q You don't know Jennifer Hill?

8 A No, sir.

9 Q You have no problems with her?

10 A No, sir.

11 Q She has no problems with you?

12 A No, sir.

13 Q Couldn't have picked each other out of
14 a lineup before what happened that day?

15 A No, sir.

16 Q And from your testimony you approached
17 the vehicle?

18 A Yes, sir.

19 Q Tapped on the window?

20 A Tapped on the hood.

21 Q Tapped on the hood?

22 A Yes, sir.

23 Q At that point in time, according to
24 your testimony he got out of the vehicle and sized
25 you up?

SW - R. GODEN - CROSS

1 A No, sir. She got out of the vehicle
2 and ran in the store.

3 Q And at some point in time he got out
4 of the vehicle and sized you up?

5 A Yes, sir.

6 Q You were hit, you were struck, you
7 were in a lot of pain. There's no doubt about it.

8 A Yes, sir.

9 Q You went to the hospital?

10 A Yes, sir.

11 Q And I think you also testified that
12 while you were there -- and I want to make sure I
13 get the words correctly -- that you heard him rev
14 his engine.

15 A Yes, sir.

16 Q Because he was trying to get it in
17 park or something. I think that was your exact
18 testimony.

19 A No, he had it in park. He was trying
20 to get it in gear.

21 Q Okay. But he was having trouble
22 getting -- whatever he was doing he was revving it
23 trying to get in of park, out of park, something
24 of that nature?

25 A If you watch the video he was drunk,

SW - R. GODEN - CROSS

1 sir, so he was just doing all kind of stuff.

2 Q He was just doing crazy stuff that
3 crazy drunk folks do?

4 A Yeah.

5 Q After this accident -- you have
6 referred to this as an accident before, would you
7 agree with me there?

8 A No, sir.

9 Q You've never called this case an
10 accident?

11 A No, sir. How?

12 Q You would never have called it an
13 accident?

14 A No, sir.

15 Q You would agree with me if you would
16 have called it an accident, it would be an
17 accident?

18 A Yes, sir.

19 Q You hired a lawyer as a result of this
20 case?

21 A Yes, sir, and I couldn't get anything
22 because he pur-- they specific -- the South
23 Carolina rule is, I guess, because they -- how it
24 was explained to me that it's a bunch of scamming
25 and stuff going on so South Carolina made it a

1 rule if someone purposely hit you, then your case
2 is automatically -- he automatically didn't have
3 insurance.

4 Q Agree that there was an intentional
5 act ---

6 A Yeah.

7 Q --- insurance would not cover it?

8 A Yes.

9 Q You hired George ---

10 A So the insurance did not cover it.

11 Q You hired George Sink?

12 A Yes, sir.

13 Q You settled the case with George Sink?

14 A Yes, sir.

15 Q You got money from George Sink?

16 A I got the minimum because, like I
17 said, the state minimum because he purposely hit
18 me.

19 Q Well, let's go back. But you got
20 money?

21 A Yes, sir.

22 Q You filed a lawsuit?

23 A Yes, sir.

24 Q You signed paperwork?

25 A Yes, sir.

SW - R. GODEN - CROSS

1 Q You signed paperwork from George
2 Sink's office?

3 A Yes, sir.

4 Q And that paperwork, because as you
5 just said, if it was an intentional act, they
6 wouldn't have paid you anything?

7 A That's false, sir. Being that the
8 settlement was worth \$500,000, being that it was
9 an intentional act, the state minimum is 25,000
10 and that's what I received.

11 Q That's what you believe the law to be?

12 A That's what -- yes, that's what the
13 lawyer stated to me.

14 Q You agree that you signed a piece of
15 paper?

16 A I did.

17 Q A release?

18 A I did.

19 Q And in the release you told the court
20 and told the world that this was an accident?

21 A No, sir, I didn't.

22 Q Have you seen the release that you
23 signed?

24 A No, sir. Yeah, I seen the release
25 because I signed it, but ---

SW - R. GODEN - CROSS

1 Q You signed it?

2 A Yes, sir, I did.

3 Q You signed the release. And in the
4 release it mentions the word "accident" about 15
5 times that you signed to get the money?

6 A I didn't -- I didn't notice that,
7 sir.

8 Q But it's your signature, correct?

9 A It is my signature, sir.

10 Q And it refers to the accident on that
11 day?

12 A Sir, I have \$80,000 in medical bills
13 so ---

14 Q \$68,000 to be exact.

15 A How much?

16 Q 68,000. You have a bunch of bills.
17 There ain't no doubt about that.

18 A Yes, sir. So, you know, I needed -- I
19 needed my bills paid is what ---

20 Q I don't disagree with a word that
21 you're saying.

22 A Yes, sir.

23 Q I'm not against you. I don't disagree
24 with you. One hundred percent ---

25 A I didn't go out that night looking for

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1 a settlement.

2 Q I know you didn't.

3 A Yes, sir.

4 Q You didn't do this. You didn't ask
5 for any of this.

6 A Yes, sir.

7 Q And I'm not disagreeing with you.

8 A Yes, sir.

9 Q My point is, you did hire a lawyer?

10 A Yes, sir.

11 Q You did sign ---

12 A Because I needed that.

13 Q You needed it?

14 A Yes, sir.

15 Q I'm a lawyer. I like when people hire
16 us.

17 A Yes, sir.

18 Q But you needed a lawyer?

19 A Yes, sir.

20 Q you signed paperwork?

21 A Yes, sir.

22 Q The paperwork says this was an
23 accident?

24 A I didn't know that because I wouldn't
25 have signed that paperwork.

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1 MR. KENT: May I approach the witness,
2 Your Honor?

3 THE COURT: Yes, sir.

4 BY MR. KENT:

5 Q That piece of paper that I put in
6 front of you, that's the piece of paper that you
7 signed?

8 A Yes, sir, it was.

9 Q And that's the piece of paper that we
10 have referenced?

11 A Yes, sir.

12 Q And the piece of paper is dated March
13 16th, 2020?

14 A Yes, sir.

15 Q At the top of the piece of paper is a
16 full release receipt?

17 A Yes, sir, it does.

18 Q And in this piece of paper it
19 references the automobile accident of July 7th,
20 2019?

21 A Yes, sir, it does.

22 Q And would you agree with me, this is
23 not a long piece of paper. This is a one page
24 piece of paper?

25 A Yes, sir, but I signed many papers

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1 that day.

2 Q Okay.

3 A Not just this paper.

4 Q And I'm just talking about this one.

5 A Okay. All right.

6 Q And there are about -- follow me from
7 the beginning, Roger.

8 A Yes, sir.

9 Q I'm sorry, Mr. Goden. I apologize. I
10 don't want to disrespect you.

11 A You're fine, sir.

12 Q There are 1, 2, 3, 4, 5, 6 paragraphs
13 in here, Mr. Goden?

14 A Yes, sir.

15 Q And would you disagree with me -- or
16 have you had an opportunity to review it or read
17 it in front of you? Take your time and read it
18 and let me know when you've made yourself familiar
19 with it.

20 A Yes, sir.

21 Q So you're familiar with it now?

22 A Yes, sir.

23 MR. KENT: Your Honor, at this point
24 I'd like to make this as Defense Exhibit No. 1. I
25 can keep asking questions further if you feel more

1 comfortable.

2 MS. MCELVEEN: State -- no objection,
3 Your Honor.

4 MR. KENT: It will easier to reference
5 too so Madam Court Reporter -- remember, I talk
6 too fast.

7 THE COURT: Defense No. 1 is admitted
8 without objection.

9 (WHEREUPON, Defense Exhibit No. 1 was
10 marked for identification and admitted into
11 evidence.)

12 BY MR. KENT:

13 Q I just handed you what's been marked
14 Defense Exhibit No. 1. Would you agree that is
15 substantially similar to the document you were
16 just looking at?

17 A It's the exact same document, sir.

18 Q Okay. And remember, I had mentioned
19 to you there were several paragraphs included
20 inside of this document?

21 A It is, sir.

22 Q And you -- Roger, you -- and I
23 apologize I keep calling you Roger. I'm sorry,
24 Mr. Goden.

25 A You're fine, sir. You can call me

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1 Roger

2 Q Okay. Roger, you'd agree with me that
3 this is your signature at the bottom of the
4 document?

5 A It is, sir.

6 Q And I understand what you're going
7 back and forth, but you had a lawyer -- you hired
8 a lawyer to represent your interest ---

9 A Yes, sir.

10 Q --- because you had a bunch of medical
11 bills, correct?

12 A Yes, sir.

13 Q I mean, a bunch of them.

14 A A lot.

15 Q And as a result of this document as we
16 read from paragraph 1, this is a release and it
17 discharges from liability is what it says in
18 there, correct?

19 A Yes, sir.

20 Q And it also says, "The undersigned
21 understands and agrees that said payment is the
22 sole consideration for this release."

23 MS. MCELVEEN: Your Honor, I think
24 that this could be published to the jury on the
25 DotCam. Mr. Kent does not need to give a

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1 narration with his flourishes ---

2 MR. KENT: Oooh, flourishes, ---

3 MS. MCELVEEN: --- of the document.

4 MR. KENT: --- is a word.

5 MS. MCELVEEN: They could easily read
6 it themselves by putting it up on a DotCam. It is
7 in evidence, and certainly they don't need the
8 Defense attorney to read it to them, Your Honor.

9 MR. KENT: Your Honor, the wonderful
10 thing she just stated is it's in evidence and this
11 is cross-examination.

12 THE COURT: Well, I'm gonna overrule
13 the objection, but just read the document as it's
14 written without any emphasis and...

15 BY MR. KENT:

16 Q Roger, where I was -- and I apologize
17 and I'll try to read without any emphasis. I'm
18 going to read it first and you agree or disagree
19 with me if this is what it states. "The
20 undersigned understands and agrees that said
21 payment is the sole consideration for this release
22 and is in the full settlement of all claims
23 resulting from said accident and warrants that no
24 promise or inducement has been offered or made
25 except as herein set forth. That this release is

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1 executed without reliance upon any statement or
2 representation by any of the parties released
3 herein or by their representatives or physicians
4 concerning the nature and extent of the injuries
5 and damages of either of them with the legal
6 liability therefore. That the undersigned is of
7 legal age and legal competent to execute this
8 release and accept his full responsibility." That
9 is the paragraph that I just read?

10 A Yes, sir.

11 Q And you agree that what I just read
12 had the word "accident" in it at least one time?

13 A At least one time, sir.

14 Q Okay. And then if we skip the next
15 line and go to the next paragraph. "The
16 undersigned understands that the parties hereby
17 release admit no liability of any sort by reason
18 of said accident and agrees that the said payments
19 and settlement has been made and compromise to
20 terminate further controversy respecting all
21 claims or damages, that the undersigned had
22 previously asserted or that the undersigned or his
23 or their personal representatives might thereafter
24 assert because of said accident." You'd agree
25 with me in that paragraph, Roger, accident is now

1 mentioned two times?

2 A Agree.

3 Q Okay. And then the last paragraph.

4 "You understand, agrees to indemnify and hold
5 harmless the released parties and their insured,
6 including all legal fees and expenses incurred due
7 to a claim, demands, action or cause of action,
8 pursued by anyone after execution of the release
9 were to rise from injuries or damages to the
10 undersigned because of said accident." You'd
11 agree that is mentioned one more time?

12 A I agree that this is a form that has
13 to be done, yes, sir.

14 Q Okay. Let me get that back from you
15 so I don't lose it.

16 MS. MCELVEEN: Your Honor, may we
17 approach, or may I approach defense attorney?

18 MR. KENT: Yeah, okay.

19 (Attorneys confer.)

20 BY MR. KENT:

21 Q And Roger, and just I want to make
22 sure because I don't want to pull words or
23 anything out of your mouth I know they're gonna
24 ask. You signed a bunch of other documents?

25 A Yes, sir, I did.

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1 Q Okay. And I don't want to pretend
2 that we didn't. I just have offered you one page
3 of that document ---

4 A Yes, sir.

5 Q --- that you have signed. And as a
6 matter of fact, what's been included in Defense
7 Exhibit No. 1, it says page 1 of 2?

8 A Yes, sir.

9 Q And you signed this, good gosh, almost
10 a year ago, March 2020?

11 A Yes, sir.

12 Q Do you have any independent
13 recollection what page 2 was?

14 A No, sir.

15 Q And I -- and you have -- you were
16 represented by a lawyer, George Sink Law Firm?

17 A Yes, sir.

18 Q Not me, but we'll get into that later.
19 But you were represented by a law firm?

20 A Yes, sir.

21 Q You spoke to the law firm?

22 A Yes, I did.

23 Q You met with them on several
24 occasions?

25 A I met with them once.

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1 Q One time?

2 A Yes, sir.

3 Q You met with him one time and talked
4 to them and they signed?

5 A Yes, sir.

6 Q And no matter what is ever said,
7 whatever is done, you still went through this
8 event?

9 A Yes, sir.

10 Q You were hurt?

11 A Yes, sir.

12 Q You went to the hospital?

13 A I did.

14 Q And thankfully you're here with us
15 today?

16 A Thankfully, yes, sir.

17 Q Thank you, Roger. It's a pleasure to
18 meet you. If you're in Manning, you come visit
19 sometime.

20 A Yes, sir.

21 THE COURT: Redirect, Ms. McElveen.

22 **REDIRECT EXAMINATION**

23 BY MS. MCELVEEN:

24 Q Mr. Goden.

25 A Yes, ma'am.

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1 Q So basically, you have medical bills
2 from this incident?

3 A Yes.

4 Q How many children do you have?

5 A I have four kids.

6 Q And you work hard, right?

7 A Yes, very hard.

8 Q I know, you do. With this release,
9 basically if you had said it was an accident and
10 it was unintentional, you would have gotten up to
11 \$500,000?

12 A \$500,000, yes, ma'am.

13 Q But you told the truth and you said it
14 was intentional and you only got \$25,000, right?

15 A I only got 17,000. That each dime
16 went in my rent because it was behind because I
17 couldn't work.

18 Q And so you were out of work?

19 A Yes, ma'am.

20 Q Because of your foot?

21 A Yes, ma'am.

22 Q Medical bills growing?

23 MR. KENT: Objection to the leading,
24 Your Honor.

25 THE WITNESS: And still in debt right

1 now.

2 THE COURT: Sustained.

3 BY MS. MCELVEEN:

4 Q And still in debt right now?

5 A Yes, ma'am.

6 Q And you could have lied and gotten up
7 to \$500,000?

8 A Yes, ma'am.

9 Q But you told the truth and you got 17?

10 A Yes, ma'am.

11 Q Thank you. I have no further
12 questions.

13 THE COURT: Any recross, Mr. Kent?

14 MR. KENT: Just one moment.

15 THE WITNESS: Yes, sir, I'll wait.

16 MR. KENT: I know.

17 MS. MCELVEEN: Your Honor, did Defense
18 ever find page 2 of that document?

19 MR. KENT: I don't think there is.
20 That's what we were getting on.

21 MS. MCELVEEN: That's page 1 of 2.

22 THE COURT: Hold on, let's not argue
23 about the discovery on the record. Let's let ---

24 MR. KENT: And I'm still confused.

25 THE COURT: --- them make the decision

1 as to ---

2 MR. KENT: I know it's -- just give me
3 a couple of seconds.

4 Mr. Goden, that's all the questions I
5 have. I'm sorry to ---

6 THE WITNESS: I was waiting on you.

7 MR. KENT: I know you were waiting on
8 me. Just come to Manning. Throw me some
9 barbecue.

10 THE COURT: All right. Mr. Goden, you
11 may step down.

12 THE WITNESS: Thank you.

13 THE COURT: It's probably a good time
14 for us to stand up and stretch our legs so we're
15 gonna take our mid morning break, and I'm gonna
16 have you go to your jury room. Remember, do not
17 begin any deliberations, any discussion about this
18 case at this time. Do not do any research about
19 any matter that's been presented so far in this
20 trial, and we will resume this trial at 11:45.
21 You may go to your jury room.

22 (WHEREUPON, the jury was removed from
23 the courtroom at 11:30 a.m.)

24 THE COURT: We'll be in recess until
25 11:45.

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1 (WHEREUPON, a recess was taken from the
2 proceedings.)

3 THE COURT: Are we ready for the jury?

4 MS. MCELVEEN: Yes, sir.

5 MR. MARVIN MCMILLAN: Yes, sir.

6 THE COURT: Bring us the jury please.

7 (WHEREUPON, the jury was returned to
8 the courtroom at approximately 11:51 a.m., and the
9 following proceedings commenced in open court.)

10 THE COURT: Ms. McElveen, you may call
11 your next witness.

12 MS. MCELVEEN: Yes, Your Honor. The
13 State would call Trenton Brown.

14 THE CLERK: Sir, raise your right
15 hand. State your name.

16 THE WITNESS: Trenton Brown.

17 WHEREUPON,

18 **TRENTON BROWN,**

19 having been duly sworn by the Clerk, testified
20 as follows:

21 THE CLERK: Thank you much. Step
22 around. Watch your step coming up the ramp.

23 THE COURT: Mr. Brown, you can take
24 your mask down as you testify.

25 THE WITNESS: Yes, sir.

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1 THE CLERK: State your name for the
2 record and spell your last name please.

3 THE WITNESS: Trenton Brown,
4 B-R-O-W-N.

5 **DIRECT EXAMINATION**

6 BY MS. MCELVEEN:

7 Q Good morning, Mr. Brown.

8 A Good morning.

9 Q Can you tell us a little bit about
10 yourself, where are you from, and what do you do
11 and tell us about yourself.

12 A From here. Lived in New York City a
13 couple of years with my dad. I work for Fedex and
14 I go to school for engineering.

15 Q Wonderful. Where did you go to
16 school?

17 A I'm going -- I'm applying for USC,
18 next course.

19 Q Wonderful.

20 A Yes.

21 Q You're currently working at Fedex?

22 A Yes, ma'am.

23 Q You're from Sumter though?

24 A Yes, ma'am.

25 Q Did you know -- did you know

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1 Ms. Jennifer Hill before this night?

2 A No, ma'am.

3 Q Did you know Mr. David Hill before
4 this night?

5 A No, ma'am.

6 Q Did you know Mr. Roger Goden before
7 this evening?

8 A Yes, ma'am.

9 Q And how did you know Mr. Goden?

10 A From the neighborhood, growing up.

11 Q Wonderful, thank you. Can you tell us
12 a little bit about what you did and what you saw
13 or what happened July 7th, 2019, at that Frederick
14 Citgo?

15 A Well, I was at my grandmother's house
16 on Feagin Street, and it was kind of late and in
17 her house she only got like ---

18 Q Hold on one second.

19 MS. MCELVEEN: Your Honor, may I
20 adjust the microphone so that he's more audible?

21 THE COURT: You may.

22 BY MS. MCELVEEN:

23 Q Sorry. Talk slowly.

24 A Can you hear me now?

25 Q Yes, that's wonderful. Thank you.

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1 A So I went to the store because I was
2 thirsty and my grandmother only have like healthy
3 stuff in her refrigerator. Went to the store and
4 got me, like, a Pepsi or whatever. So I came up
5 outside and I parked behind, behind the gas
6 station, not on the side to where the gas pumps
7 at. I always park behind it. So when I walk out
8 with my drink, I heard like a recess, like a whole
9 bunch of kids hollering and screaming. So I when
10 looked behind the building, like a trash can and
11 another building back there, liquor store, I guess
12 the sound waves was traveling from the gas pump to
13 my side. So I walked around behind my car. I
14 look to the gas pump where the truck was at, the
15 Durango was at. Then I seen a physical
16 altercation where she's getting ---

17 Q Saw a physical altercation?

18 A Yeah, attack, whatever. And I got in
19 my car, pulled back around slowly, not fast, but
20 slowly. And I pulled back around to where my
21 hood, where my front of my car was like parallel
22 to the gas pumps. And then I, when I looked,
23 that's when I seen Mr. Roger over there walking
24 towards the Durango. And as I pulled around I
25 said -- I noticed her run into inside the store.

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1 So when I pulled up, then I backed up. I said,
2 you know what, let me take my phone out and start
3 recording just in case it get worse. I know I'm
4 recording my own self if I get hit. So as I'm
5 looking and I seen Roger and Mr. Hill going back
6 and forth and then Mr. Hill got in the truck,
7 tried to size Roger up. Roger stepped back. He
8 said, "Hey, bro, just chill it bro." He pull his
9 pants up. "Just chill it, bro. You want to just
10 chill and relax and stop hitting that woman." I
11 said, "Roger, you good?" He said, "Nah, man,
12 talking about F-ing hitting that woman like that
13 hitting for no reason."

14 Q Hold on. You just -- you heard Mr. --
15 you saw Mr. Goden approach the car, and you heard
16 Mr. Goden and Mr. Hill arguing, correct?

17 A Yes, ma'am.

18 Q Don't go into too much detail for
19 please on what the content of that argument was,
20 but can you just tell me you thought -- you could
21 tell they were arguing physically?

22 A Yes, ma'am.

23 Q Mr. Goden and Mr. Hill?

24 A Yes.

25 Q And what -- did you see Mr. Goden walk

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1 away from the car? At what point did -- you saw
2 Ms. Hill already run inside?

3 A Yes, ma'am. She ran inside already.
4 And when I -- I say, Roger, are you good? That's
5 when Roger come -- he turned his body towards
6 me ---

7 THE COURT: Hold on one second. Let's
8 not -- don't testify about what someone else told
9 you. Testify about what you did in response to
10 what you heard.

11 BY MS. MCELVEEN:

12 Q Yes. When you -- when Mr. Goden turns
13 to talk away ---

14 A Uh-huh,

15 Q --- or when you attract his attention,
16 does he come towards you? Does Mr. Goden come
17 towards you?

18 A He proceeded to walk towards my car
19 when I asked, are you good, and that's when he
20 explained what was going on. And as he walking
21 towards me, that's when he said, "What, what
22 nigger, you want some too, nigger. You can get it
23 too. You can get it too. F-U," and just next
24 thing I know he just -- you can hear the engine
25 like, uhh, uhh, uhh. And when he said that, you

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1 can get it too, you want some too, nigger, you can
2 get it too, when he did that he just "rr" spin
3 tire, and then I just seen headlights and I just
4 got hit. And then the first hit, like my body
5 just, in the car, jump up on the car and fell back
6 down. Then the second hit, I felt it; but then I
7 just went black. When I finally came to, like
8 glass inside the car, everybody is out on the
9 side. I try with my door -- the door couldn't
10 open so I had to climb through the passenger side
11 to get out. When I climbed out I fell and I know
12 I'm like -- knot on my head and my leg was real
13 bruise up. So I walked around the car. Then I
14 seen the impact of my side, my driver's side,
15 passenger side. The hood just smash in with the
16 blood on the ground, the fluid on the ground, a
17 piece of sandal right here, a sandal right here,
18 and then I -- as I'm limping and walking towards
19 the store where he was at, you can see the blood
20 trail and he hollering. His ankle was just like
21 ripped off, like, just hanging and the blood just
22 squirting out. You can see like the bone and all
23 that. I think his finger was all, like, ripped up
24 and everything. And by the time I got my senses
25 what's going on, that's when the EMS, the police

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1 cars, and all that was on the scene.

2 Q So you were sitting in the car?

3 A I was sitting in the car pulling
4 around. I wouldn't say being nosey but; being
5 nosey, I wanted to see what was going on. I
6 thought it was like a whole bunch of kids
7 screaming. But it wasn't kids screaming, it was
8 actually her screaming. When I pulled around the
9 wipers on the truck going real fast. The horn she
10 was tooting; but she was already, you know, inside
11 the store. And that's when he, I guess, climbed
12 in front from the passenger side to the driver's
13 side and try to hit the gas and try to floor it
14 but. Well, I would have try to broke it up; but
15 unfortunately, he got tapped and smashed in my
16 car.

17 Q And so he, Mr. Goden actually got
18 pinned between your car, ---

19 A Yeah, pinned between my car, yes,
20 ma'am.

21 Q --- right? And you happened to be
22 seated and got T-boned, correct?

23 A T-boned, yes, ma'am.

24 Q If I may ask you, I'm gonna hand you
25 what's been marked as State's Exhibit 34. Roger

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1 Goden said -- I want to make sure you said you
2 started recording a little bit of a video?

3 A I started recording because he was
4 hitting her; and by the time my footage came out,
5 he already had released her already so I didn't
6 get her actually -- I didn't get him actually
7 hitting her.

8 Q Okay.

9 A I got the act ---

10 Q Hold on. You just ---

11 MR. KENT: Your Honor.

12 MS. MCELVEEN: Hold on one second.

13 MR. KENT: Your Honor, may we
14 approach?

15 THE COURT: Yes, sir.

16 (WHEREUPON, counsel approached the
17 bench for an off-the-record discussion.)

18 BY MS. MCELVEEN:

19 Q Okay. Mr. Brown, not focusing on what
20 happened to Mrs. Hill, focusing on what happened
21 on Mr. Goden alone, you took a video as Mr. Goden
22 is approaching his car, correct?

23 A Yes, ma'am.

24 Q And you took a -- or was at his car,
25 correct?

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1 A Yes. The video, when I start
2 recording he was already at his vehicle on the
3 driver's side.

4 Q So you started recording late in the
5 interaction?

6 A Once I noticed. When I came out the
7 store and I peeked around, I stand in front of a
8 good -- I'm looking ---

9 Q Hold on. Hold on.

10 A Okay.

11 Q Mr. Goden, you see him approach the
12 car?

13 A Yes.

14 Q To try to help, correct?

15 A Uh-huh, yes, ma'am.

16 MR. KENT: Object to the leading, Your
17 Honor. That's fine, Your Honor.

18 THE COURT: I'm going to give her a
19 little way, a little leeway on the leading.

20 MR. KENT: I understand.

21 BY MS. MCELVEEN:

22 Q So you saw -- I'm sorry, you approach
23 -- Mr. Goden, you see him approach the car?

24 A Yes.

25 Q At some point into that interaction

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1 between Mr. Goden and Mr. Hill, you do quick, a
2 brief recording, correct?

3 A Yes, ma'am.

4 Q Okay.

5 MS. MCELVEEN: I would like to, Your
6 Honor, play that video at this time and publish it
7 to the jury.

8 MR. KENT: One moment, Your Honor, I'm
9 thinking.

10 THE COURT: Yes, sir.

11 MR. KENT: That's why you see the
12 smoke. No objection, Your Honor.

13 THE COURT: All right. Is the video
14 just in digital form, or ---

15 MS. MCELVEEN: Your Honor, it's ---

16 THE COURT: --- do we have a tangible
17 copy of it? I just need to know how ---

18 MS. MCELVEEN: I have a copy that I'm
19 putting into evidence, but I have it up on the
20 screen to play from my computer at this point.

21 THE COURT: Okay. So let's mark the
22 tangible ---

23 MS. MCELVEEN: Yes, sir.

24 THE COURT: --- exhibit please.

25 MS. MCELVEEN: Thank you, Your Honor.

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1 Your Honor, I'm handing a tangible copy of the
2 video to be marked as State's Exhibit 33, and we
3 would like to publish 33 to the jury at this time.

4 THE COURT: State's 33 is admitted
5 without objection. It may be published to the
6 jury.

7 MS. MCELVEEN: Thank you, Your Honor.

8 (WHEREUPON, State Exhibit No. 33 was
9 marked for identification and admitted into
10 evidence.)

11 (Publishing of State's Exhibit 33.)

12 BY MS. MCELVEEN:

13 Q Mr. Brown, is that the video you took
14 that day?

15 A Yes, ma'am. Where's the sound at?

16 Q Hold on, let me get it for you. And
17 this is where Mr. Goden has already approached
18 Mr. Hill's car?

19 A Yes, ma'am.

20 Q Okay.

21 A And right there he's trying to -- he's
22 trying to calm him down right there.

23 Q So the ---

24 A And that's the second impact right
25 there. You heard it.

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1 Q And you lose control of your phone at
2 a certain point ---

3 A Yes, ma'am.

4 Q --- upon impact?

5 A The phone was in the passenger side
6 once I came back to and looked for it and realized
7 where it was at.

8 Q And your window was up?

9 A It was like cracked like half way. It
10 wasn't all the way down; it was like half way.

11 Q Thank you. And Mr. Goden, I would
12 like to -- Mr. Brown, I'm sorry. I'd like to
13 present to you State's Exhibit 34.

14 MR. KENT: 34 has just been played so
15 it's a screen cap from that video.

16 THE COURT: Any objection to it being
17 admitted?

18 MR. KENT: No objection, Your Honor.

19 THE COURT: State's 34 is admitted
20 without objection.

21 (WHEREUPON, State Exhibit No. 34 was
22 admitted into evidence.)

23 BY MS. MCELVEEN:

24 Q So, is that a screen shot from your --
25 from your video, Mr. Brown?

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1 A Yes, ma'am.

2 Q And it does show -- what is it? Is
3 that what you were witnessing yourself?

4 A Yeah. He was trying to de-escalate
5 it. When you see him like that, he had ---

6 MR. KENT: Your Honor, calls for
7 speculation, just what does it show.

8 THE WITNESS: He had just got back in
9 his vehicle.

10 THE COURT: Hold on. Mr. Brown, hold
11 on one second. He can testify as to what he
12 observed. I'll sustain the objection. You can
13 rephrase your question so a manner that wouldn't
14 call for speculation.

15 MS. MCELVEEN: Yes, Your Honor.

16 BY MS. MCELVEEN:

17 Q Is this a still frame of the middle of
18 the interaction with Mr. -- between Mr. Hill and
19 Mr. Goden?

20 A Yes, ma'am.

21 Q And that's Mr. Goden and Mr. Hill
22 speaking at the door of the Durango?

23 A Yes, ma'am.

24 Q And that's before Mr. Goden walks
25 away. But you put your phone down, don't you,

SW - T. BROWN - DIRECT

1 during the video?

2 A Yes.

3 Q You can't see Mr. Goden walk away over
4 the car approaching, right?

5 A Once I noticed the headlights, I guess
6 I was panicked and the phone just flew out my hand
7 from there.

8 Q Yes, sir. But you were concerned
9 enough to capture this part ---

10 A Yes.

11 Q -- before -- okay.

12 A Before I started recording, I was
13 behind the store when I noticed what was going on.
14 Then I said to myself, let me go ahead and start
15 recording just in case it get worse. By the time
16 I started recording, she was already inside the
17 store and I only have these two going back and
18 forth, you know.

19 Q Thank you.

20 A Yes.

21 Q You're doing great. Thank you. I'm
22 going to show you State's Exhibits ---

23 MR. KENT: Your Honor, I've been
24 handed State's Exhibit 9-A.

25 MS. MCELVEEN: 9-A and B, Your Honor.

SW - T. BROWN - DIRECT

1 MR. KENT: 10-A and 10-B, 12, 17, and
2 28. Those are pictures, I'm assuming, taken by a
3 crime tech. We have no objection with their
4 placement into evidence.

5 THE COURT: All right. So State's 9-A
6 and B, 10-A and B, 12, 17, and 28 are admitted
7 without objection.

8 MS. MCELVEEN: Thank you, Your Honor.

9 (WHEREUPON, State Exhibits Nos. 9-A,
10 9-B, 10-A, 10-B, 12, 17, and 28 were admitted
11 into evidence.)

12 BY MS. MCELVEEN:

13 Q And can you identify these pictures.
14 Are these pictures of your car and the damage and
15 on scene and what happened to your car, as you
16 review them?

17 A Yes, that's my car. Her name is
18 Sabrina. It's an Infiniti.

19 Q What happened to your car after this
20 incident? Was it ---

21 A It was total loss. It got towed.

22 Q It was a total loss?

23 A Yes, ma'am.

24 Q And I see -- were your air bags
25 deployed?

SW - T. BROWN - DIRECT

1 A Yes, ma'am, from the driver's side to
2 the back side, the front rows and air bags in the
3 floorboard.

4 Q And the window was smashed?

5 A Yes, ma'am, inside the car.

6 Q I see, I think your driver side, your
7 rearview mirror's dangling?

8 A Yes, ma'am, it's smashed from the
9 impact. The air bags out in front and also in the
10 back were the windows up in the back seat. You
11 can't see the air bags in the back. And the air
12 bags on the floorboard also, but you can't see
13 that either. So I had to climb through the
14 passenger side to get out.

15 Q Hold on.

16 MS. MCELVEEN: So, Your Honor,
17 publishing these the jury.

18 BY MS. MCELVEEN:

19 Q This is the damage that's done to your
20 car, Mr. Brown?

21 A Yes, ma'am.

22 Q And you were sitting in this driver's
23 side where the air bags were deployed, is that ---

24 A Yes, ma'am.

25 Q --- accurate? And is that -- was the

SW - T. BROWN - DIRECT

1 slide outside of your door?

2 A The sandal?

3 Q The slide, the shoe? Yeah, sandal,
4 yes, sir.

5 A Yes, ma'am. On the outside, yes,
6 ma'am.

7 Q Okay.

8 A It was outside the driver door.

9 Q And Mr. Brown, what happened -- you
10 stayed, did you stay on scene or did you leave,
11 what happened?

12 A I stayed on the scene toward the end.
13 I didn't go to the hospital right away because, I
14 guess I was shaken up. But they insist I go to
15 hospital, but I didn't go. I went the next
16 morning. But I stayed on scene just to see what
17 was going on and the process of the situation.

18 Q What did -- what happened at the
19 hospital? Why did you go to the hospital? What
20 hurt? What sort of injuries did you sustain?

21 A I had a small concussion on my head,
22 my left side, and an abrasion on my right -- my
23 left leg on the calf part. It was like a real
24 bruise and irritated. Prior to that I already had
25 nerve damage from that, from a previous situation;

SW - T. BROWN - DIRECT

1 but the impact, when I got hit, it re-acted my
2 nerve pain and my nerve damage in my left leg.

3 Q So, but it's all on your left side?

4 A Left side, yes, ma'am.

5 Q And the concussion was on your left
6 side?

7 A Yes, ma'am.

8 Q You got treated and released another
9 day you said?

10 A Yes, at Clarendon Memorial. Clarendon
11 Memorial Hospital.

12 Q Yes, sir. Your air bags deployed,
13 though, and it sounds like they did your job,
14 correct?

15 A Yes.

16 Q They did their job?

17 A They did, yes, ma'am.

18 MS. MCELVEEN: I beg the Court's
19 indulgence one second.

20 THE COURT: Yes, ma'am.

21 BY MS. MCELVEEN:

22 Q I'm just going to followup a little
23 bit with the -- once you saw the interaction
24 between Mr. Goden and Mr. Hill, you didn't know
25 Mr. Hill before this incident, correct?

SW - T. BROWN - DIRECT

1 A No, ma'am.

2 Q Can you identify him today? Is he
3 present in the courtroom?

4 A Yes, ma'am. He has on glasses.

5 Q Was he wearing glasses that night?

6 A No, ma'am.

7 Q What did you hear him say to Mr. Goden
8 as Mr. Goden was walking away from the car? What
9 did you hear him say? Was it ---

10 A He said "F-U nigger, you want some
11 too, nigger, you can get it too." And then the
12 revving and then spin tires, and then I got hit.

13 Q Okay. So did you -- was Mr. Hill
14 intentionally trying to hurt Mr. Goden?

15 MR. KENT: Objection, Your Honor.
16 That's the entire reason we're here.

17 MS. MCELVEEN: Your Honor, may I
18 rephrase the question?

19 THE COURT: I'm gonna sustain Mr.
20 Kent's objection. You can rephrase your question.

21 MR. KENT: Thank you, Judge.

22 MS. MCELVEEN: Thank you, Your Honor.

23 BY MS. MCELVEEN:

24 Q Was the vehicle directed in the same
25 -- at Mr. Goden when it -- when he turned around

SW - T. BROWN - DIRECT

1 that gas pump, did it direct to Mr. Goden?

2 A Yes, ma'am.

3 Q And Mr. Goden ---

4 A He made a sharp, a sharp left turn,
5 like a hard left turn real fast.

6 Q So he made a hard left turn to get
7 around the pump to hit Mr. Goden?

8 A if he had turn the wheel any harder,
9 he would have hit the gas pump so he turned the
10 wheel hard to spin tires to impact my car.

11 Q Okay. So he had to go around that gas
12 pump and intentionally turn to ---

13 A Yes, ma'am.

14 Q ---to hit Mr. Goden?

15 A 'Cause there was a exit straight in
16 front of him. He could have kept going straight
17 out.

18 Q I'm sorry, you said there was an exit
19 straight ahead of him?

20 A there was an exit straight -- yeah,
21 straight ahead from the gas pump.

22 Q So he could have just gone straight
23 out of that ---

24 A Yes, ma'am.

25 Q --- exit to leave?

SW - T. BROWN - DIRECT

1 A But he say, "You want some too nigger,
2 you can get it too, I got something for you, man,
3 F-U," and he just hit the gas.

4 MS. MCELVEEN: Your Honor, I beg the
5 Court's indulgence one second.

6 BY MS. MCELVEEN:

7 Q So I'm going to hand you State's
8 Exhibit 26, a picture that we ---

9 MR. KENT: No objection, Your Honor.

10 THE COURT: State's 26 is admitted
11 without objection.

12 MS. MCELVEEN: Thank you, Your Honor.

13 (WHEREUPON, State Exhibit No. 26 was
14 admitted into evidence.)

15 BY MS. MCELVEEN:

16 Q Looking at this picture -- and I'm
17 gonna actually -- I'm going to show you something
18 fancy if you don't mind one second.

19 MS. MCELVEEN: Would you mind turning
20 off the camera for a second so I can -- I want to
21 make sure.

22 BY MS. MCELVEEN:

23 A So, Mr. Brown, your car is seen in the
24 background of this picture?

25 A Yes, ma'am.

SW - T. BROWN - DIRECT

1 Q And the gas pump that's on the
2 left-hand side, that's where Mr. Hill was parked.
3 That's where the Durango was?

4 A Yes, ma'am.

5 Q And so instead of going straight
6 ahead, you're saying he had to turn to hit your
7 vehicle and hit Mr. Goden?

8 A Yes, ma'am.

9 Q Is that correct?

10 A Yes, ma'am. If my car wasn't there in
11 the area right there, he would have just hit him
12 and kept dragging him through the parking lot.
13 But I guess my car was there at the right time,
14 but I guess wrong place wrong time, right time and
15 place. You get it?

16 Q Yes, sir.

17 A But if my car wasn't there, he would
18 have got dragged to the other exit instead of my
19 car being a shield blocking him.

20 Q But again, there was an exit straight
21 ahead ---

22 A Straight ahead, yes, ma'am.

23 Q --- he could have easily gone out?

24 A Yes, ma'am.

25 MS. MCELVEEN: Your Honor, ---

SW - T. BROWN - CROSS

1 BY MS. MCELVEEN:

2 Q I think at this point, if you can
3 answer any questions the Defense may have.

4 A Yes, ma'am.

5 Q I'd appreciate it.

6 A Yes, ma'am.

7 Q Thank you.

8 THE COURT: Cross-examination.

9 MR. KENT: Thank you, Judge.

10 **CROSS-EXAMINATION**

11 BY MR. KENT:

12 Q Trenton, how are you doing, sir?

13 A I'm well.

14 Q We met a little bit yesterday,
15 correct?

16 A Yes, sir.

17 Q We talked briefly. I think I
18 complimented your necklace. Trenton, I don't have
19 too many questions, but I want to make sure; but
20 before we go through, I want to make sure that
21 same admonitions I always give. Madam Court
22 Reporter is taking down every word you're saying
23 so make sure you speak loud enough and clear
24 enough so she can understand.

25 A Yes, sir.

SW - T. BROWN - CROSS

1 Q And, too, you speak fast, the same way
2 I speak fast so let's try not to talk over one
3 another.

4 A Yes, sir.

5 Q And if you promise to give me an
6 opportunity to finish my question, I will give you
7 an opportunity to answer it. Is that fair?

8 A Yes, sir.

9 Q And first, I want to go back over your
10 testimony just briefly to make sure I'm correct.
11 Is that fair?

12 A Yes, sir.

13 Q. First you testified that you do not
14 know David Hill.

15 A I do not.

16 Q You do not know Jennifer Hill?

17 A I do not.

18 Q You do know Roger Goden?

19 A I do.

20 Q The night in question, you were not
21 going there to meet David Hill?

22 A No, sir.

23 Q You were not going there to meet
24 Jennifer Hill?

25 A No, sir.

SW - T. BROWN - CROSS

1 Q You were not going there to meet Roger
2 Goden?

3 A No, sir.

4 Q You drove up for something completely
5 unrelated, same thing. You wanted a coke, no
6 healthy food?

7 A Yes, sir.

8 Q While you got into the parking lot you
9 saw an altercation between Mr. Hill and Mrs. Hill?

10 A When I walk out the gas station ---

11 Q When you walk out the gas station you
12 saw an altercation?

13 A Yes, sir.

14 Q After witnessing the altercation you
15 felt something -- and I'm going from your
16 testimony -- something else might be coming up
17 because you saw Mr. Goden walk towards the
18 vehicle?

19 A I watched him at the vehicle as I was
20 coming around the store.

21 Q As he was coming around?

22 A Yeah.

23 Q And at that point in time you decided
24 to pick up your cellphone, record in case it
25 started because you heard the heated conversation?

SW - T. BROWN - CROSS

1 A I had made a decision once I back
2 inside my car to start recording.

3 Q Once you got back inside your car ---

4 A Yes.

5 Q --- you made the decision to start
6 recording?

7 A Yes.

8 Q And that is the recording that we saw?

9 A Yes.

10 Q And that is a recording that the State
11 of South Carolina played?

12 A By the time I got back around she was
13 already going inside the store.

14 Q She was already gone?

15 A I wanted to get her on video getting
16 assaulted, but I didn't.

17 Q Okay.

18 A At the time ---

19 Q And at that point in time, again,
20 remember I said, if you give me time to answer my
21 question, I promise you I'll give you time to
22 answer, okay. You don't have to anticipate my
23 answer -- questions. Is that fair?

24 A I wasn't, but go ahead.

25 Q Okay. And so you started recording by

SW - T. BROWN - CROSS

1 the time Ms. Hill went into the store?

2 A Yes.

3 Q And that was your testimony, that
4 immediately you saw her, you were trying to get a
5 copy of the altercation, you did not, but you
6 started recording after she was in the store?

7 A Yes.

8 Q And in the video that we see, we see a
9 video of Mr. Goden standing directly next to the
10 vehicle of David Hill?

11 A Yes, sir.

12 Q And we have you recording right there?

13 A Yes, sir.

14 Q And your video has sound?

15 A Yes, sir.

16 Q And you'd agree with me on the sound
17 that we witnessed, the information that the
18 testimony that you've given about F-U, N word, and
19 things of that nature aren't on that video?

20 A You can't hear it; that's right.

21 Q You can't hear it.

22 A Exactly.

23 Q It's not on -- we don't hear it
24 anywhere on there. We can blow it up, you don't
25 hear that language?

SW - T. BROWN - CROSS

1 A Exactly.

2 Q Okay. And you'd agree with me from
3 the way the video looks, the two of them are
4 talking. There's no swinging. There's no
5 fighting. David Hill is inside the vehicle. Are
6 you rolling your eyes?

7 A I'm looking at the picture.

8 Q Okay. David Hill is inside the
9 vehicle?

10 A Uh-huh.

11 Q Is that a yes?

12 A Yes, sir.

13 Q And Mr. Goden is outside?

14 A From the picture, he just sat back
15 inside the truck.

16 Q David Hill was inside of the vehicle?

17 A Yes.

18 Q And Mr. Goden is outside the vehicle?

19 A Yes.

20 Q The two of them are talking, but we
21 don't see any hand flailing in your video of
22 yelling or anything of that nature at that point
23 in time?

24 A From what you saw, yes, sir.

25 Q From what we saw in the video ---

SW - T. BROWN - CROSS

1 A Yes, sir.

2 Q --- that we saw?

3 A Yes, sir.

4 Q And then the video goes real quick?

5 A 'Cause I got hit real quick.

6 Q Yeah, it went very quickly.

7 A Yes.

8 Q Okay. And then it went quickly, then
9 your car was struck?

10 A Yes, sir.

11 Q And then your testimony is that you
12 suffered some injuries?

13 A Uh-huh. Yes, sir.

14 Q Yes? And as a result of the injuries,
15 the very next day you went to the hospital?

16 A Yes, sir.

17 Q You went to the hospital and you had a
18 concussion?

19 A Yes, sir.

20 Q You had injuries on your left side?

21 A Yes, sir.

22 Q You went to Clarendon Behavioral --- or
23 Clarendon Health, correct?

24 A Memorial Hospital.

25 Q Clarendon Memorial, Manning also?

SW - T. BROWN - CROSS

1 A Manning.

2 Q Okay. Had some chiropractic care as
3 well?

4 A Yes, sir.

5 Q Which chiropractor did you go to?

6 A Harkey?

7 Q Harkey?

8 A Uh-huh.

9 Q Where is he at?

10 A In Sumter.

11 Q Okay. So you went to Dr. Harkey in
12 Sumter, had your medical bills, and then you too
13 hired a civil lawyer?

14 A Yes, sir.

15 Q You also hired George Sink?

16 A Hired him before my medical bills
17 came, yes, sir.

18 Q Okay. You had about \$7,000 in medical
19 bills, somewhere around there? Does that sound
20 familiar?

21 A Not quite sure. I don't remember.

22 Q That's fine. Hired George Sink, also
23 signed the release?

24 A Yes, sir.

25 Q And you heard the question that I

SW - T. BROWN - CROSS

1 asked of Mr. Goden, your release also mentioned
2 the word "accident" several times?

3 A Could have, yes, sir.

4 Q Are you familiar with it?

5 A Long time, I don't remember.

6 Q Yeah, I understand. Would you agree
7 with me that it was probably like January of 2020?

8 A Possibility, not quite sure.

9 MS. MCELVEEN: Your Honor, may we
10 approach?

11 THE COURT: Yes.

12 (WHEREUPON, counsel approached the
13 bench for an off-the-record discussion.)

14 BY MR. KENT:

15 Q Trenton, I apologize. When we were
16 talking a few minutes ago, I think I had mentioned
17 that you had signed something back in like January
18 15th, 2020. Does that sound about familiar?

19 A I don't remember.

20 Q Okay. I'm gonna show you a document
21 and you take an opportunity to review it if you
22 don't mind. And tell me one -- before you answer
23 any questions, tell me, are you familiar with the
24 document?

25 A What's this document you gave me?

SW - T. BROWN - CROSS

1 Q Are you familiar with what I just
2 handed you?

3 A What did you give me? What is it?

4 Q A piece of paper with your name signed
5 on to the bottom of it that says Full Release and
6 Settlement. Are you familiar with that? Have you
7 ever seen that before? Is that your signature at
8 the bottom?

9 A Yes, sir.

10 Q Okay. So are you familiar with that
11 document?

12 A Now I have it in my presence.

13 Q Okay. Is that your signature at the
14 bottom of the document?

15 A Yes, sir.

16 Q Okay. And so you did sign this piece
17 of paper?

18 A Yes, sir.

19 MR. KENT: At this point in time, Your
20 Honor, I'd like to move this into evidence as
21 Defense Exhibit No. 2.

22 THE COURT: Any objection?

23 MS. MCELVEEN: Your Honor, we'd like
24 to note our objection of the incomplete document
25 as one of two pages, there's no second page; but

SW - T. BROWN - CROSS

1 besides that, Your Honor...

2 THE COURT: All right. I will note
3 your objection. State's -- excuse me, Defense 2
4 is admitted without objection.

5 (WHEREUPON, Defense Exhibit No. 2 was
6 marked for identification and admitted into
7 evidence.

8 BY MR. KENT:

9 Q Trenton, I'm going to switch with you.
10 She's just marked this one, you understand? But
11 before I go further, is that substantially
12 similar? The one I've just handed you that she
13 just marked, is that the same as the document that
14 I'm talking to you from?

15 A You took it too fast. I ---

16 Q I know. I told you I go too fast.

17 A Yes, sir. Yes.

18 Q It's the same document?

19 A Yes.

20 Q Okay. I'm going to take the unmarked
21 one because I'm going to be asking you questions
22 about Defense Exhibit No. 2. This is a document
23 that you signed?

24 A Yes, sir.

25 Q And there are not a lot questions.

SW - T. BROWN - CROSS

1 You were hurt that day. I'm not even trying to
2 say you were not hurt. You were hurt?

3 A Yes, sir.

4 Q Your vehicle was hit?

5 A Yes, sir.

6 Q It was struck?

7 A Yes, sir.

8 Q It was not your fault?

9 A Yes, sir.

10 Q Mr. Hill struck your car?

11 A Yes, sir.

12 Q You didn't ask for it?

13 A No, sir.

14 Q You didn't want it?

15 A No, sir.

16 Q And you had to go to a hospital?

17 A Yes, sir.

18 Q And you had to get treated?

19 A Yes.

20 Q And as a result you had to hire a
21 lawyer?

22 A Yes, sir

23 Q To try to -- you had bills ---

24 A Uh-huh. Yes, sir.

25 Q ---that had to be taken care of.

SW - T. BROWN - CROSS

1 A Yes, sir.

2 Q And it would have been unfair if you
3 had to pay your bills?

4 A Yes, sir

5 Q And so you hired Mr. Sink's law firm?

6 A Uh-huh, yes, sir.

7 Q Yes, sir. And as a result they got
8 you some money?

9 A Yes, sir.

10 Q And you signed the document that I've
11 handed you, Defense Exhibit No. 1?

12 THE COURT: No. 2, Mr. Kent.

13 MR. KENT: I told you -- everybody
14 catches me.

15 BY MR. KENT:

16 Q Defense Exhibit No. 2, you signed that
17 document that I ---

18 A Yes, sir.

19 Q --- put in front of you?

20 A Yes, sir.

21 Q And you've had opportunity to read it?

22 A No, I can't.

23 Q Take your time and let me know when
24 you've read it and are familiar with it so I can
25 ask you some questions about it.

SW - T. BROWN - CROSS

1 A You can ask. I can read as you ask.

2 Q Okay. Do you agree with me that at
3 least four times in the document the word
4 "accident" is used?

5 A Yes.

6 Q Okay. And I don't want to be unfair
7 to you, Mr. Brown, this says page 1 of 2. I
8 haven't given you a second page. Correct?
9 There's a page missing. It says one of two?

10 A It does.

11 Q And I just don't know, do you -- I
12 mean, this is from a long time ago. Do you know
13 what the second page would have been?

14 A I thought you would have it.

15 Q Me too.

16 A It's not here. I'm not quite sure.

17 Q But you don't know what the second
18 page is, correct?

19 A No, sir.

20 MR. KENT: Beg the Court's indulgence
21 for one moment.

22 THE COURT: Yes, sir.

23 BY MR. KENT:

24 Q Just to make sure I recap, you don't
25 know the Hills?

SW - T. BROWN - REDIRECT

1 A No, sir.

2 Q They don't know you?

3 A No, sir.

4 Q You have provided a cellphone video?

5 A Yes, sir.

6 Q Which is about as accurate as to what
7 happened that night?

8 A Just about, yes, sir.

9 Q Yeah, because it's a video. It's not
10 your memory, not my memory, not his memory. It's
11 a video of what happened?

12 A Yes, sir.

13 Q And if we turn it up we can't hear a
14 lot of the -- we don't hear the F-U, N word, and
15 things of that nature on the video as we just went
16 through?

17 A Yes, sir.

18 Q You don't hear it on that video?

19 A I don't hear it, no, sir.

20 Q Okay. Thank you so much. That's all
21 the questions I have.

22 THE COURT: Any redirect?

23 MS. MCELVEEN: Yes, Your Honor.

24 **REDIRECT EXAMINATION**

25 BY MS. MCELVEEN:

1 Q Mr. Brown, this civil lawsuit issue in
2 regarding your injuries, at any point were you
3 told did it have anything to do with the criminal
4 case?

5 A Ma'am?

6 Q Did anything with this document with
7 George Sink have to do with the criminal case at
8 all?

9 A No, ma'am.

10 Q And so, by no means did you tell Mr.
11 Sink that he did this as an accident or anything
12 like that?

13 A No, ma'am. No, ma'am.

14 Q There are two cars involved and
15 thus -- and your car was totaled?

16 A Yes, ma'am

17 Q And you had medical bills, correct?

18 A Yes, ma'am.

19 Q And so nothing about this settlement
20 has anything to do with criminal court at all,
21 correct?

22 A No, ma'am. No, ma'am.

23 Q And you are a victim of assault and
24 battery in the first degree?

25 A Yes, ma'am.

SW - A. BAULER - DIRECT

1 Q Thank you. I have no further
2 questions for you at this time.

3 THE COURT: Any recross, Mr. Kent?

4 MR. KENT: No, Your Honor.

5 THE COURT: All right. Thank you,
6 Mr. Brown. You can step down.

7 THE WITNESS: Okay.

8 THE COURT: If the lawyers would
9 approach.

10 (WHEREUPON, counsel approached the
11 bench for an off-the-record discussion.)

12 THE COURT: Ms. McElveen.

13 MS. MCELVEEN: Yes, Your Honor. We
14 call Andrew Bauler to the stand.

15 THE CLERK: Sir, raise your right
16 hand. State your name.

17 THE WITNESS: Andrew Bauler.

18 WHEREUPON,

19 **ANDREW BAULER,**
20 having been duly sworn by the clerk, testified
21 as follows:

22 THE CLERK: Thank you much. Step
23 around, watch your step coming up. State your
24 name for the record and spell your last name
25 please, and you can pull your mask down.

SW - A. BAULER - DIRECT

1 THE WITNESS: Andrew Bauler,
2 B-A-U-L-E-R.

3 **DIRECT EXAMINATION**

4 BY MS. MCELVEEN:

5 Q Yes, Mr. Bauler, I know you want to
6 keep your mask on. Can you tell us why?

7 A I had some dental work done, some
8 wisdom teeth cut out.

9 Q You had your wisdom teeth cut out?

10 A Yes, ma'am.

11 Q And when was that?

12 A Yesterday.

13 Q Thank you, sir.

14 MS. MCELVEEN: Your Honor, is it okay
15 if he keeps his mask on? He's got packing in it.

16 THE COURT: As long as we can hear him
17 and understand what he's saying, that's fine.

18 Mr. Bauler, just to the best of your
19 ability try and enunciate. I know you've had some
20 dental work done, but we just need to make sure
21 that the record is accurate.

22 MS. MCELVEEN: Yes, sir, Your Honor.
23 Beg the Court's indulgence.

24 BY MS. MCELVEEN:

25 Q Mr. Bauler, can you tell us a little

SW - A. BAULER - DIRECT

1 bit, where are you from and where you work, and
2 kind of a little bit about yourself?

3 A I'm from Sumter. I've been at the
4 Marathon Gas Station for about nine years. That's
5 about it, like.

6 Q And that's the Frederick Citgo?

7 A Yes, ma'am.

8 Q On Guignard Drive, right?

9 A Yes, ma'am.

10 Q Is that in the city of Sumter?

11 A Yes, ma'am.

12 Q Can you please tell us a little bit,
13 are there videos that are kept of the gas station?

14 A Yes, ma'am, up to a certain -- I think
15 it's like 30 days.

16 Q And were you present the night of July
17 7th, 2019?

18 A Yes, ma'am.

19 Q Did you know Mr. Hill before that
20 incident?

21 A No, ma'am.

22 Q Did you know Ms. Hill before that
23 incident?

24 A No, ma'am.

25 Q Did you know Roger Goden?

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1 A Yes, ma'am.

2 Q How?

3 A Customer.

4 Q He comes in the store?

5 A Yes, ma'am.

6 Q And did you know Trenton Brown before
7 that?

8 A Yes, ma'am.

9 MS. MCELVEEN: Beg the Court's
10 indulgence.

11 BY MS. MCELVEEN:

12 Q And you know that this gas station
13 maintains videos, like you said, for 30 days,
14 correct?

15 A Yes, ma'am.

16 Q And you know that law enforcement came
17 and collected a video of this incident from July
18 7th?

19 A Yes, ma'am.

20 MS. MCELVEEN: Your Honor, I would
21 like to play the video at this time. It was
22 collected from the gas station.

23 (Attorneys confer.)

24 MS. MCELVEEN: Your Honor, if it
25 please the Court, I was gonna mark this as

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1 evidence No. 34 --

2 THE COURT: It's already State's 34, I
3 believe.

4 THE COURT REPORTER: No, no.

5 MS. MCELVEEN: Not according to Ms.
6 Ray.

7 THE COURT REPORTER: That was the
8 wrong number you stated earlier.

9 MS. MCELVEEN: Your Honor, Mr. Brown's
10 video is No. 33.

11 MR. MARVIN MCMILLAN: The still was
12 the 34.

13 MS. MCELVEEN: The still frame is 34.
14 So State's Exhibit 35. And we would in the sake
15 of time like to ask if we can fast forward into
16 the video until the relevant part, the Durango
17 pulls up, and then there's a little bit of a break
18 where nothing's obviously happening. And then we
19 would fast forward to the point where you see
20 activity from the car.

21 MR. KENT: That is my understanding as
22 well. Of course, the entire vide is in -- well,
23 could be placed in evidence; but I understand the
24 State is just gonna fast forward so we're not
25 watching the full 13 minute video with nothing

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1 happening so we would just go to the relevant
2 parts.

3 THE COURT: So without objection we
4 will publish the relevant portions of the video
5 which are contained in State's 35.

6 MR. MARVIN MCMILLAN: I believe it's
7 all in evidence, correct, the entire length of the
8 video?

9 THE COURT: The video is in evidence;
10 but as far as publication to the jury, we'll
11 publish the relevant portions.

12 MS. MCELVEEN: I beg the Court's
13 indulgence. I can't get it to play. I'm gonna
14 forward it to the 22 minute mark, sorry.

15 THE COURT: Yes, ma'am.

16 BY MS. MCELVEEN:

17 Q Mr. Bauler, is this an accurate
18 representation of the gas station that night?

19 A Yes, ma'am.

20 Q And which pump does the Durango pull
21 up to?

22 A The one on the far side.

23 Q So is it this one?

24 A Yeah, the far side. Yes, ma'am.

25 Q Okay.

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1 MS. MCELVEEN: Your Honor, at this
2 point I would like to play the video.

3 THE COURT: Yes, ma'am.

4 (State Exhibit No. 35 was published.)

5 BY MS. MCELVEEN:

6 Q Is that the Durango?

7 A Yes, ma'am.

8 MS. MCELVEEN: And Your Honor, for the
9 sake of time, if I may fast forward to the next
10 time there's some activity that's relevant to this
11 case.

12 THE COURT: Yes, ma'am.

13 BY MS. MCELVEEN:

14 Q Mr. Bauler, the Durango sat at the gas
15 station for a long time; is that correct?

16 MR. KENT: Your Honor, I'm gonna
17 object to the narration. This is a video. This
18 is basically done as a business record. The video
19 speaks for itself.

20 MS. MCELVEEN: Okay.

21 MR. KENT: I wouldn't want the witness
22 to narrate what he assumes on what he thinks. The
23 video speaks for itself and the jury can see the
24 video.

25 THE COURT: Now if he were -- if he

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1 were watching this unfold he could narrate but,
2 you know, in realtime; but if you'd just play the
3 relevant portions. If it's something that he
4 witnessed contemporaneously with the video being
5 made, I think he could elaborate; but absent that,
6 just have it played.

7 MS. MCELVEEN: Your Honor, if I may
8 ask before I hit play, if I may ask Mr. Bauler
9 some questions.

10 BY MS. MCELVEEN:

11 Q Did you observe the Durango sitting
12 there in the gas station?

13 A Yes, ma'am.

14 Q Was your attention drawn to that
15 vehicle, ---

16 A No, ma'am.

17 Q --- that car?

18 A No, ma'am.

19 Q You didn't hear anything or ---

20 MR. KENT: Object to leading, Your
21 Honor.

22 BY MS. MCELVEEN:

23 Q Did you hear anything?

24 A The only thing I heard was she was
25 yelling and screaming, help me, he's going to kill

1 me; and that's when she run to the door and come
2 inside, can I get a phone call.

3 MR. KENT: Your Honor.

4 THE COURT: I understand.

5 MS. MCELVEEN: Should I approach, Your
6 Honor?

7 THE COURT: No, I think I'd rather ---

8 MR. KENT: Outside the presence of the
9 jury, please, sir.

10 THE COURT: I think we're going to
11 have to send the jury to the jury room.

12 Ladies and gentlemen, leave your notes
13 in your seats. Please don't begin deliberations
14 on this case. At this time you have not heard all
15 the evidence in this case. Please do not do any
16 research. We will bring out back out as soon as
17 we can. Thank you.

18 (WHEREUPON, the jury was removed from
19 the courtroom at 12:40 p.m.)

20 MR. KENT: If I may, Your Honor.

21 THE COURT: Yes, sir.

22 MR. KENT: Your Honor, I have lost
23 count on the number of times that I've had to make
24 this objection. The Court has made a pretrial
25 ruling. We've argued about this for a

1 day-and-a-half. I made pretrial ruling again this
2 morning. The Court clarified the decision three
3 separate times. The Court has had several bench
4 trials. I've made it clear that I'll be
5 objecting. I made a mistrial where it came close.
6 We now have a witness who has not only come close
7 to the line, but basically kicked it over and has
8 specifically said in front of this jury, "He's
9 going to kill me." We had -- we actually
10 specifically talked about the 911 call. This
11 information was not being relevant whatsoever. I
12 have been painful in my objections in protecting
13 the record to make sure none of this language can
14 come in whatsoever. It is now not only in -- and
15 because of the small one this is like the death of
16 a thousand cuts. They're trying to try a CDV
17 trial; and slowly but surely, they keep mentioning
18 things that each witness now, except for -- with
19 the exception of Roger Goden, every single witness
20 has crossed the line a little bit more on the
21 Jennifer Hill commentary.

22 I would renew my motion for mistrial.
23 And I understand the State is going to say, hey, I
24 can't control my -- that's their job. Their job
25 is to control their witnesses with the Court's

1 ruling. And it'd be one thing if we just had this
2 ruling yesterday and only yesterday. We have had
3 bench trial after bench trial after bench trial
4 ---

5 THE COURT: Bench conference you mean?

6 MR. KENT: Bench conference after
7 bench conference after bench conference to say
8 that the kill language, the removal, all of this
9 language is not appropriate for this trial because
10 it's not a CDV trial. That's our motion, Your
11 Honor. I think it stands for itself. You have
12 warned the State to stay away from this language,
13 to be very careful. It started out with
14 altercation, then went to the word physical
15 altercation, then they mentioned the word fight,
16 and after the word fight it goes a little bit
17 further. Then it talks about hit and now we're to
18 the point kill, so what's the next witness going
19 to say, Your Honor. This is pervasive and it's a
20 bell that can't be un-rung. We make our motion
21 for mistrial, Your Honor.

22 THE COURT: Ms. McElveen.

23 MS. MCELVEEN: Yes, Your Honor. The
24 jury knows, as -- Your Honor did say that physical
25 altercation. You referred to physical altercation

1 at the beginning and said that we could use that.
2 They did use that. Mr. Bauler, I did tell, warn
3 him only to use the word physical altercation or
4 above in regards to witnessing the physical acts.
5 Your Honor, quite frankly, you allowed -- his 911
6 call is going to come in and he's giving
7 information at the scene. But Mr. Bauler
8 certainly was not trying to mis-try this case by
9 any stretch of the imagination, but I know that --
10 I think the bell can be unrung, quite frankly,
11 Your Honor, with a curative instruction from Your
12 Honor. I think that Your Honor is being
13 wonderfully cautious with your rulings in regards
14 to protecting the record. But the fact is that
15 that's what he personally witnessed. He did -- he
16 did witness that, and she's -- she runs in to get
17 help from him. It's an excited utterance. I know
18 it's under prior bad acts too, but he's offering
19 it more for the fact of showing what drew his
20 attention. I should have directed his question
21 more with -- but I was also being objected to for
22 leading so I can't ---

23 MR. KENT: So don't lead.

24 MS. MCELVEEN: I can't ask questions
25 and then, that are open-ended, and yet, then keep

1 a witness in line.

2 MR. KENT: If I may, Your Honor.

3 THE COURT: Yes, sir.

4 MR. KENT: One of my other concerns is
5 it's not the rules of evidence or whatever is
6 violated, it's the Court made a ruling and we're
7 all understanding that it's sort of like there's a
8 rules to the game and we're all being told to play
9 by certain rules and the State of South Carolina
10 is saying, well, we'll interpret the rules how we
11 see fit. We will try cases differently based upon
12 what witnesses can and can't say. I'm under the
13 impression that this witness is not going to get
14 out on the stand and blurt out something about
15 kill because if I knew that, then I'd have more
16 objections about the video coming in through this
17 witness and maybe requirement of the clerk or
18 somebody of this nature. That's why we also say
19 we don't want narration. We want this witness
20 simply to say -- and they're calling this witness
21 as a business record exception. A witness can get
22 the video in is what they told the Court. So
23 under that theory, the witness should have said,
24 here is the video, this is what it shows. The
25 additional information is violative of the Court's

1 directive, not the rules of evidence, not anything
2 of that nature, it's violative of the Court's
3 order. And by violating the Court's order, it has
4 put Mr. Hill at a disadvantage because he's trying
5 his case in a very specific way. And so if they
6 can tiptoe, kick the rules down and simply ignore
7 them, it puts him at a disadvantage and completely
8 puts his defense at a disadvantage.

9 Now their request of a curative
10 instruction, as you remember on the record I made
11 it very clear, I'm supposed to have a curative
12 instruction that talks about something that we're
13 not talking about? You can't fix it by saying,
14 hey, everybody, disregard the fact that they said
15 kill, disregard the fact Jennifer Hill's
16 testimony. It's already in there; it's replete
17 throughout the entire testimony. They messed up,
18 and not just once, not just twice, through opening
19 statement, through every single witness they've
20 called. Thank you, sir.

21 MS. MCELVEEN: Your Honor, I stand by
22 the fact that a fight is a synonym for an
23 altercation and could be verbal, not physical as
24 well, easily. However, I know that Mr. Bauler was
25 told that he couldn't narrate the video. It's

1 been clear that if he witnessed it, so at that
2 point, the question of whether he witnessed it is
3 opened and then he answered the question, Your
4 Honor. We -- I can ask him more directly if the
5 horn was honking and hear yelling, if he witnessed
6 it, but that's -- he was an eyewitness. I mean,
7 that's all there is to it, Your Honor.

8 THE COURT: But if he was inside the
9 store when all this was happening, is there any
10 way that he heard any of these -- any of these
11 statements as they were being made?

12 MS. MCELVEEN: Yes, sir, Your Honor.
13 He was out -- he had come outside the door and
14 checked, from what I understand, a few times
15 because there was a little bit of a -- the
16 attention had been brought by -- there was some
17 people that had kept popping out in the video
18 previously and you could kind of see people
19 looking. There were yells that were attracting
20 attention of other people too, so he was aware of
21 the yelling. The attention had already been
22 brought to that vehicle; and Your Honor, he heard
23 the yelling himself. Grant it, he was inside when
24 she ran inside the -- he went back inside and then
25 she ran inside the store and that's when he gave

1 her a phone and all that but. He did witness some
2 of the yelling that would draw his attention and
3 confirmed that Roger Goden approached and that
4 would be why that he would have had his attention
5 drawn too, so it supports the credibility of Mr.
6 Goden.

7 THE COURT: Y'all just give me a
8 minute.

9 MS. MCELVEEN: Thank you.

10 (Pause.)

11 THE COURT: With a quick review of the
12 case law as far as mistrials -- and this is State
13 v. Johnson, 334 South Carolina 78. Also
14 referencing State v. Crim, 327 S.C. 254 --
15 mistrial should not be ordered in every case where
16 incompetent evidence is received and later
17 stricken out. An instruction disregarding
18 objectionable evidence usually cures any error in
19 its admission. Factors to be considered in
20 ordering a mistrial based on improperly admitted
21 testimony include the character of the testimony,
22 the circumstances under which it was offered and
23 the nature of the case, and other testimony in the
24 case. The only factor of those four that bothers
25 me is "the other testimony in the case." I don't

1 know how many times I can say it. This is not a
2 domestic violence case. I know the domestic
3 violence is interwoven into the events of this
4 evening; but it keeps, it keeps creeping into the
5 testimony on direct examination.

6 That being said, I think I can cure
7 this witness' testimony. He obviously wasn't
8 present during the pretrial hearings. He
9 obviously is not used to testifying in trial.
10 He's not a law enforcement officer. So I think
11 his, his error in mentioning the -- Ms. Hill's
12 statement, was not intentional. I'm gonna order
13 his last statement stricken from the record, and
14 that is pursuant to the case law that I have
15 cited. I understand the Defense -- I understand
16 the reasoning for the motion and it's -- candidly,
17 it's a very close call. But, you know, if this
18 were another situation where another individual
19 were familiar with testifying and had made this
20 mistake, it may be another issue. But again, if
21 his purpose is to introduce this video, I think we
22 just need to play the video and let the video
23 speak for itself. Any, any commentary may lead us
24 directly down the same path.

25 So Mr. Kent, I note your objection;

1 it's preserved for the record. But based on State
2 v. Johnson, State v. Crim, and State v. Howard
3 which is at 269 S.C. 481, I believe I can order
4 his testimony stricken from the record and cure
5 that improperly admitted evidence. But again,
6 this is just a general comment. Remember, the
7 offenses that are being tried are: Attempted
8 murder, assault and battery first degree, and two
9 counts of resisting, assault while resisting
10 arrest, a domestic violence. And what was said by
11 Mr. Hill to Mrs. Hill are not an issue in the case
12 before the Court. I think we have -- I think
13 evidence has been presented which sets the scene
14 for why they were together and how Ms. Hill's
15 presence led to these other offenses allegedly
16 being committed; but I don't think it -- that
17 evidence is before the Court and does not need to
18 be elicited from other witnesses.

19 MR. KENT: Thank you, Your Honor. May
20 it please the Court, I believe I understand the
21 Court's ruling. We will work in tow with it.
22 What I would request, Your Honor, I understand
23 that you are going to stricken that last comment
24 from the record. What I would ask is, since this
25 is the last witness before lunch -- not that I

1 have time to research or reverse your decision, I
2 understand your decision -- but if we choose to
3 ask for a curative instruction or something to
4 protect Mr. Hill's rights. that we have
5 opportunity to present it after lunch. I just
6 wanted time to think about it ---

7 THE COURT: I understand.

8 MR. KENT: --- right now. But I have
9 asked permission that even though we have gotten
10 past this issue, that after the lunch time hour we
11 put forth I want a curative instruction, something
12 to be read to the jury. Of course, as you
13 understand my fear is the word "kill" being used
14 with several witnesses and about Jennifer Hill and
15 the word "kill" is very specific in light of the
16 fact in that this is an attempted murder charge.
17 So I may want a curative instruction be read to
18 the jury.

19 THE COURT: Understood. And I will --
20 I find that you have preserved your right to
21 request a specific curative instruction. When the
22 jury is brought back in, I will advise them that
23 Mr. Bauler's last statement is stricken from the
24 record and is not to be considered.

25 MS. MCELVEEN: Yes, Your Honor. We'll

1 just ask about the video and he is the voice on
2 the 911 call on the second half of the 911 call.

3 THE COURT: All right.

4 MS. MCELVEEN: And Your Honor, may I
5 approach my witness to make sure that -- can I
6 just make sure that nothing about what Ms. Hill
7 said when she runs in ---

8 THE COURT: I'll ---

9 MR. KENT: She's still testifying.

10 MS. MCELVEEN: I know, but I don't
11 know -- can I have some lenience in the leading to
12 prevent this?

13 THE COURT: Let me make a statement.

14 Mr. Bauler, the -- your testimony
15 cannot contain any hearsay information. Hearsay
16 is basically something that someone else said that
17 is offered for the truth of that statement so just
18 be cautious in your testimony in relaying things
19 that other people have said. So that is -- that
20 is the general blanket admonition against hearsay
21 testimony. And like I said before, if his purpose
22 is to authenticate the video and to authenticate
23 the 911 call by recognizing his own voice, then
24 those items of evidence speak for themselves. It
25 shouldn't require any embellishment or commentary

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1 because I think if we go down that path, it can
2 lead to nothing but problems so.

3 We're going to bring this jury back
4 in. It's 1:00. This is -- I thought it might be
5 a good idea to break for lunch; but that being
6 said, let's go ahead and bring them back so we can
7 handle this witness and then break for lunch.
8 Bring us the jury.

9 (WHEREUPON, the jury was returned to
10 the courtroom at approximately 1:00 p.m., and the
11 following proceedings commenced in open court.)

12 THE COURT: Ladies and gentlemen of
13 the jury, the last statement by the witness has
14 been stricken from the record and it is not in
15 evidence and is not to be considered by you in
16 your deliberations in this case.

17 Ms. McElveen, direct examination.

18 MS. MCELVEEN: Yes, Your Honor.

19 BY MS. MCELVEEN:

20 Q Mr. Bauler, I'm going to play the
21 video from the gas station where you work.

22 A Yes, ma'am.

23 Q Thank you, sir.

24 (State's Exhibit No. 35 was published.)

25 BY MS. MCELVEEN:

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1 Q Is that an accurate representation of
2 the scene that night at your store?

3 A Yes, ma'am.

4 Q Were you also -- is your voice heard
5 on the 911 call?

6 A Yes, ma'am.

7 MS. MCELVEEN: Your Honor, we'd like
8 to publish that 911 call for the jury at this
9 time.

10 MR. KENT: Your Honor, subject to our
11 earlier objection.

12 THE COURT: Do we have a tangible copy
13 of that item so we can mark it?

14 MS. MCELVEEN: I will make one. It is
15 actually only -- it was over email, so I will burn
16 a copy of it and bring it up to Your Honor.

17 THE COURT: So that would be State's
18 30---

19 MS. MCELVEEN: 6.

20 THE COURT REPORTER: Yes, sir.

21 THE COURT: All right. Let's just
22 make a note of that. State's 36 is admitted over
23 the objection of the Defense.

24 (Publishing of State's Exhibit No. 36 began.)

25 MS. MCELVEEN: Hold on, stop, stop,

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1 stop.

2 MR. KENT: Your Honor, ---

3 MS. MCELVEEN: I ---

4 MR. KENT: Your Honor, I have a
5 matter.

6 MS. MCELVEEN: No, no. Your Honor,
7 all we heard was 911, what's your emergency.
8 That's all we heard at this time.

9 THE COURT: All right. Let's -- Mr.
10 Kent, she's right. There's ---

11 MR. KENT: Yes, Your Honor.

12 THE COURT: We heard the 911
13 operator's voice. Let's make sure it's queued to
14 the appropriate spot.

15 MR. KENT: I'd just like, when proper,
16 place on the record.

17 THE COURT: Yes, sir.

18 MR. KENT: Thank you.

19 (State's 36 was published.)

20 BY MS. MCELVEEN:

21 Q Mr. Bauler, that's your voice on the
22 911 call?

23 A Yes, ma'am.

24 Q Thank you.

25 MS. MCELVEEN: I have no further

1 questions for this witness.

2 MR. KENT: No questions, Your Honor.

3 THE COURT: All right. Thank you, Mr.
4 Bauler. You may step down.

5 Any objection to Mr. Bauler being
6 released in this case?

7 MR. KENT: None on behalf of Mr. Hill,
8 Your Honor.

9 MS. MCELVEEN: Thank you, Your Honor.

10 THE COURT: All right, Mr. Bauler, you
11 are free to go.

12 All right, ladies and gentlemen, it is
13 now 1:10. We're going to break for lunch. I'm
14 going to send you to your jury room briefly and
15 then you're free to leave the courthouse and enjoy
16 your lunch hour. In about 20 minutes -- we're
17 going to resume this case at 2:30. And just
18 remind you, do not begin your deliberations. Do
19 not discuss this case anyone. Do not attempt to
20 do any research by any means at all, including on
21 your cellphone or anything of that nature while
22 you're on this lunch recess and we'll have you
23 back and we'll start this case at 2:30. Thank you
24 very much. And leave your notes in your seat
25 please.

1 (WHEREUPON, the jury was removed from
2 the courtroom at 1:10 p.m.)

3 THE COURT: All right, Mr. Kent, so
4 we don't forget, let's put whatever matter you
5 have on the record please.

6 MR. KENT: Your Honor, this would not
7 be a continuation of mistrial motion or any of
8 this nature; but that being said, for the record,
9 when the State of South Carolina went to cue up
10 the 911 call, I don't know if it's the fault of
11 anybody of anything of that nature, at the
12 beginning of the 911 call playing there was moved
13 to be excluded, we all know it was Jennifer Hill's
14 voice. I'm quite sure the jury doesn't know that
15 it's Jennifer Hill's voice as she's screaming in
16 the background. That being said, Your Honor, and
17 I just want for the record just go again with our
18 cumulative argument, these cumulative mistakes
19 through every single witness just keep adding up.
20 And just, if I choose to make it again, you
21 understand that I'm making it again, but this goes
22 again with our cumulative argument.

23 THE COURT: I understand. And just so
24 the record is clear, a portion of the excluded
25 portion -- a portion of the excluded portion of

1 the 911 tape was played; however, I don't believe
2 there was any prejudice based on that erroneous
3 playing of the excluded portion. All that was
4 said was -- you could clearly hear the 911
5 operator. You could hear a female voice in the
6 background, but I don't believe that there was
7 anything other than what Mr. Kent may have
8 accurately described as screaming. She didn't say
9 I've been hit by my husband, I've been the victim
10 of domestic violence. It was just screaming in
11 the background. I don't think that any prejudice
12 arose from that. Understand no error in the
13 State's part so I note your objection and I don't
14 feel that that would be cause for a mistrial. But
15 I do understand that you're making a motion that's
16 cumulative in nature.

17 MR. KENT: And Your Honor, here's the
18 concern and make sure -- I don't think I've
19 articulated it properly. I'm being punished for
20 being smart enough to object quickly, and so it
21 seems as though that I'm hiding things from the
22 jury. That's the problem, that I have to keep
23 objecting in front of this jury as if I'm trying
24 to hide stuff. And so what the State stop -- the
25 State of South Carolina said, hey, let's try this,

1 he'll just object and it'll be okay. There comes
2 a point where it looks like the Defense is hiding
3 something from the jury that we don't want them to
4 hear. That's my problem.

5 THE COURT: I understand the nature of
6 your objection. I understand that that's the
7 cumulative, the cumulative effect of your
8 objections, and I understand that. And based upon
9 my prior rulings, I'm gonna overrule your
10 objection and we will resume this case at 2:30.

11 (WHEREUPON, State Exhibit No. 36 was
12 marked for identification and admitted into
13 evidence.)

14 (Whereupon, a lunch break was taken.)

15 (WHEREUPON, State Exhibit No. 37 was
16 marked for identification only.)

17 MR. KENT: Judge.

18 THE COURT: Yes.

19 MR. KENT: Before the lunch break I
20 asked you about the possibility of curative
21 instruction, and I'm not specifically saying that
22 we're requesting this. We're at this point in
23 time, however, over the lunch time hour I drafted
24 something. I've shown it to the State. I know
25 we're not in a position to talk about it right

1 now, but I'd ask you to review it and maybe when
2 we take a quick break we all decide if it's
3 necessary.

4 THE COURT: Okay.

5 MR. KENT: Thank you, sir.

6 MR. MARVIN MCMILLAN: Your Honor,
7 while Ms. McElveen is setting up, I spoke before
8 we began -- I think we're at that stage where
9 officers will be called as witnesses. I know Your
10 Honor has already ruled as it relates to the time
11 period on, and the admissible part of the two
12 officers who are the alleged victims of the
13 resisting arrest charge and you put some
14 parameters on the time frame of Officer Rutan.
15 Some of these other officers, we've been given
16 like 17 body worn cameras. And one of the
17 officers in the courtroom now is Officer Salmon.
18 I know Officer Salmon. She said she's not
19 intending to introduce that. But I guess so we
20 don't have to keep standing up and doing this
21 before the jury comes, I don't know of any reason
22 why he and the body cam videos would come in on
23 any of the other responding officers, whether they
24 are responding to the Citgo station or the
25 location on Lawson Court simply because it would

1 before the jury came in.

2 MS. MCELVEEN: If you don't mind, let
3 me run downstairs, if you don't mind.

4 (Pause.)

5 (WHEREUPON, State Exhibit No. 38 was
6 marked for identification only.)

7 THE COURT: Are we ready for the jury?

8 MS. MCELVEEN: I believe so, Your
9 Honor. If I can make sure that my computer is
10 actually detects a disk drive because sometimes it
11 does not.

12 (Pause.)

13 MR. MARVIN MCMILLAN: I believe you
14 indicated on the Officer Rutan that the stop time
15 is on -- this is going to be, I think it's 16:45.
16 Is that the number that ---

17 THE COURT: Well, the number Ms.
18 McElveen sent yesterday as far as her -- it's two
19 minutes from one video begins not at the clock at
20 the top, but as it plays down at the bottom. So
21 she had intended two minutes until -- what was
22 it -- 18 minutes?

23 MR. MARVIN MCMILLAN: 16:45. See what
24 you have, Bronwyn, because there's a point at
25 19:20 that you addressed as well. Your Honor,

1 that may be coming over.

2 THE COURT: Right.

3 MR. MARVIN MCMILLAN: That was what we
4 were taking before that.

5 THE COURT: Yeah.

6 MS. MCELVEEN: Your Honor, we would be
7 stopping at around 16:50 or so, 16.

8 MR. MARVIN MCMILLAN: Okay.

9 MS. MCELVEEN: Yeah, 16:50.

10 MR. MARVIN MCMILLAN: Starting about
11 two -- realizing that's the counter time, not ---

12 THE COURT: That is the player's
13 counter time, not the time stamp on the actual
14 video.

15 MS. MCELVEEN: Correct. Yes, Your
16 Honor.

17 THE COURT: Okay.

18 MR. MARVIN MCMILLAN: I think the
19 reason for starting at two, I think, that's the
20 first part, Citgo station.

21 THE COURT: Correct.

22 MR. MARVIN MCMILLAN: Right, okay.

23 THE COURT: The beginning of the CD
24 contains the officer questioning the clerk about
25 has he seen the suspect and ---

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1 MR. KENT: Or Kangaroo, wherever it
2 was.

3 THE COURT: Inside the gas station ----

4 MR. MARVIN MCMILLAN: Sure.

5 THE COURT: ---convenience store.

6 Folks, we're ready for the jury. Go ahead and
7 bring us the jury.

8 (WHEREUPON, the jury was returned to
9 the courtroom at approximately 2:53 p.m., and the
10 following proceedings commenced in open court.)

11 THE COURT: All right. Ms. McElveen,
12 you can call your next witness.

13 MS. MCELVEEN: Your Honor, the State
14 would call James Salmon to the stand.

15 THE CLERK: Can I get you to raise
16 your right hand and state your name.

17 THE WITNESS: Officer James Salmon.
18 WHEREUPON,

19 **JAMES SALMON,**
20 having been duly sworn by the clerk, testified
21 as follows:

22 THE CLERK: Thank you much, sir. Step
23 around, come up. State your name for the record
24 and spell your last name please.

25 THE WITNESS: Officer James Salmon,

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1 S-A-L-M-O-N.

2 **DIRECT EXAMINATION**

3 BY MS. MCELVEEN:

4 Q I think it's obvious from your
5 uniform. Where do you work?

6 A City of Sumter Police Department.

7 Q And what is your job duty and your
8 rank?

9 A I'm a officer first class patrol
10 officer?

11 Q Did you -- were you working on July
12 7th, 2019?

13 A Yes. Yes, ma'am.

14 Q And did you respond for a call for
15 service on July 7th, 2019, to the Frederick Citgo?

16 A Yes, ma'am.

17 MS. MCELVEEN: Your Honor, I'm gonna
18 hand him...

19 (Attorneys confer.)

20 BY MS. MCELVEEN:

21 Q Officer Salmon, I'm handing you
22 State's Exhibits No. 31, 29, 30, 27, 5-A and B,
23 33, and 35. Can you please take a second to look
24 through those and tell me if that's an accurate
25 representation of the scene you observed that day

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1 ---

2 A Yes, ma'am.

3 Q --- upon your arrival?

4 A Yes, ma'am.

5 Q And so all those exhibits do
6 accurately reflect the scene that you showed that
7 day?

8 A Yes, ma'am.

9 MS. MCELVEEN: Your Honor, we'd like
10 to enter those exhibits and publish them to the
11 jury at this time. We've provided them to Defense
12 in discovery and on multiple occasions.

13 MR. MARVIN MCMILLAN: Bronwyn, let me
14 see them one more time.

15 MS. MCELVEEN: Okay.

16 MR. MARVIN MCMILLAN: Court's
17 indulgence. They haven't been introduced yet.
18 Your Honor, I wanted the opportunity to review
19 each one of them.

20 THE COURT: Understood, Mr. McMillan.

21 MR. MARVIN MCMILLAN: Thank you. And
22 Your Honor, for the record, I have been handed
23 5-A, 33. That's State's Exhibit 5-A, 33, 35 --
24 there may be a B. There is a B on the back. 27,
25 30, 29, and 31, only the ones A and B. No

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1 objection.

2 THE COURT: All right. State's 31,
3 29, 30, 27, 5-A and B, 33, and 35 are admitted
4 without objection.

5 (WHEREUPON, State Exhibits Nos. 5-A,
6 5-B, 27, 29, 30, 31, 33, and 35 were admitted into
7 evidence.)

8 MS. MCELVEEN: Thank you, Your Honor.

9 BY MS. MCELVEEN:

10 Q Speaking as to only the male, what
11 happened with the male victims, can you please
12 tell me a little bit about what you encountered
13 when you walked up, the state Mr. Goden was in,
14 the state that Mr. Trenton Brown's car was in, and
15 we'll go on from there after that. Can you just
16 kind of talk about what you initially saw when you
17 walked up.

18 A Okay.

19 MS. MCELVEEN: Your Honor, I would
20 like to publish some of these pictures, too, while
21 he's speaking, Your Honor.

22 THE COURT: Just make sure that when
23 you post the picture you refer to the exhibit
24 number.

25 MS. MCELVEEN: Yes, Your Honor.

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1 BY MS. MCELVEEN:

2 Q This is State's Exhibit No. -- Your
3 Honor, this is State's Exhibit No, 35. And is
4 that you, Mr. Salmon?

5 A Yes, it is, ma'am.

6 Q Can you tell me a little bit about
7 what you saw as it regards to the -- to Mr. Goden
8 and Mr. Brown?

9 A Okay. When I arrived on scene Mr.
10 Goden was laying on the ground being held by a
11 female. He was -- appeared to be in great pain.
12 He was screaming a lot. My first concern was to
13 make sure EMS was in route to check on him. I did
14 see blood by his foot. He had a obvious foot
15 injury of some sort. It appeared to be some sort
16 of cut, but he didn't offer any help with what was
17 going on because he was in too much pain, laying
18 there in pain. Made contact with Mr. Brown who
19 was seated in his black -- I believe it was an
20 Infinity on the side. He filled in a lot of the
21 blanks for me as to what happened. He was still
22 seated in the driver's seat of his car. Air bags
23 deployed. Obvious damage to the driver's side of
24 the vehicle.

25 Q And was -- and you said his air bags

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1 were deployed?

2 MS. MCELVEEN: Your Honor, I'd like to
3 show ---

4 BY MS. MCELVEEN:

5 Q I'm sorry, Officer Salmon, is this
6 Mr. Roger Goden -- this is State's Exhibit 33 --
7 as he appeared that day as well?

8 A He was a lot louder at the time, but,
9 yes, in pain. Yes.

10 Q You said he was very loud, screaming?

11 A Yes.

12 Q And in a lot of pain?

13 A Yes, ma'am.

14 MR. MARVIN MCMILLAN: Your Honor,
15 object to any leading nature. We've got a
16 professional witness here.

17 THE COURT: All right. Ms. McElveen,
18 don't ask questions that suggest the answer.

19 MS. MCELVEEN: Yes, sir.

20 BY MS. MCELVEEN:

21 Q I'm showing you State's Exhibit 31.
22 This is the scene also that you pulled up on. Is
23 that -- well, what is that depicting?

24 A That is unfolding the scene.

25 Supervisors are on scene. EMS has arrived. I

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1 believe Mr. Goden was in the first one there. We
2 had a second EMS arrive to check out Mr. Brown as
3 well.

4 Q I'm showing you State's Exhibit 29.
5 What does that depict? What are these images
6 depicting?

7 A Mr. Brown's black -- like I said, I
8 believe it was Infinity. I'm not positive on
9 that. But it was the black vehicle that he was in
10 with the damage to the driver's side, as well as
11 the air bag deployment.

12 Q And were there a pair -- were Mr.
13 Goden's shoes nearby?

14 A In that top picture you can see just
15 the tip of the slide style shoe that Mr. Goden was
16 wearing.

17 Q I'm changing it to Exhibit 27. Can
18 you see those more clearly there?

19 A Yes. The one shoe is completely
20 intact. The other shoe has been sliced in half,
21 and part of the shoe is there.

22 MS. MCELVEEN: And I'm going to ask to
23 mark this as State's 38.

24 THE COURT REPORTER: 39.

25 MS. MCELVEEN: 39.

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1 (WHEREUPON, State Exhibit No. 39 was
2 marked for identification only.)

3 BY MS. MCELVEEN:

4 Q I don't know if you carry a knife on
5 you, but...

6 A I don't have one.

7 Q If I may ask our evidence tech to open
8 this bag for you to review these items in here.
9 Can you confirm that this case number is the one
10 associated with this incident?

11 A Yes, ma'am.

12 Q And if you can open the bag without
13 touching the items inside for your -- for
14 cleanliness sake. Can you tell us what those
15 items are.

16 A Yes, ma'am. It appears to be the same
17 Nike slide that are in the picture with a red Nike
18 writing on a white top with a black sole.

19 Q Thank you. If you don't mind, since
20 he provided gloves I'm happy to pull it out. But
21 if you can put on the gloves and pull them out and
22 show the jury.

23 MS. MCELVEEN: Your Honor, I would
24 like to publish these to the jury at this time.

25 THE COURT: Has number 39 been

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1 offered?

2 MS. MCELVEEN: Yes, sir, I'm offering
3 it now.

4 MR. MARVIN MCMILLAN: Judge, we don't
5 have any objection.

6 THE COURT: All right.

7 MR. MARVIN MCMILLAN: And I hadn't
8 seen her reference any chain of custody, but we're
9 not raising that issue.

10 MS. MCELVEEN: It's not tangible.

11 THE COURT: Right.

12 MR. MARVIN MCMILLAN: It's just to
13 help you.

14 THE COURT: State's 39 is admitted
15 without objection.

16 MS. MCELVEEN: Thank you, Your Honor.

17 MR. MARVIN MCMILLAN: Is it 39 or 38,
18 I apologize?

19 MS. MCELVEEN: I think it's 39. The
20 Rutan video is 38.

21 (WHEREUPON, State Exhibit No. 39 was
22 admitted into evidence.)

23 MS. MCELVEEN: May we...

24 THE COURT: Yes, ma'am.

25 THE WITNESS: The one full slide and

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1 the two partials.

2 BY MS. MCELVEEN:

3 Q Thank you very much. Sorry to put you
4 in that position to have to handle evidence. And
5 these are the slides that were collected at the
6 scene that were Mr. Goden's?

7 A Yes, ma'am.

8 Q If I may ask, what was the state of --
9 did you see any evidence, any evidence that the
10 Durango involved, Mr. Hill involved in this
11 incident? Do you have any evidence that he
12 accelerated or was there any sort of evidence left
13 that would indicate that the Durango had made a
14 quick turn or sharp turn or hit the gas or
15 anything?

16 A First of all, it was Mr. Brown's
17 testimony as to that's ---

18 MR. MARVIN MCMILLAN: I'm going to
19 object to any hearsay, Your Honor.

20 THE WITNESS: Okay.

21 THE COURT: Sustained.

22 MR. MARVIN MCMILLAN: I would ask that
23 his testimony be limited to his observations.

24 THE COURT: Sustained.

25 BY MS. MCELVEEN:

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1 Q So besides what Mr. Brown told you at
2 the scene ---

3 A Okay.

4 MR. MARVIN MCMILLAN: Objection, Your
5 Honor. Objection to her response to my objection.

6 THE COURT: Ask the question phrased,
7 what did he see that may have led to that?

8 BY MS. MCELVEEN:

9 Q What did you see that would lead you
10 to think that there was acceleration?

11 A There was scuff marks on the pavement
12 which I photographed from commonly seen as tire
13 marks where a vehicle accelerates a burnout mark,
14 so to speak.

15 MS. MCELVEEN: Your Honor, I'm handing
16 him State's Exhibits 20, 21, 22, 23, 24, and 25.

17 BY MS. MCELVEEN:

18 Q Can you identify those please?

19 A No. 23 shows the best way -- I'm
20 sorry, 22 and 23 show where the vehicle would have
21 been coming from and headed towards.

22 MR. MARVIN MCMILLAN: Your Honor, I'm
23 -- and I apologize to keep objecting. He can
24 testify that he saw skid marks there. He can't
25 testify, unless he saw it, what vehicle it came

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1 from, how long it had been there, so I'd ask that
2 he just be restricted to testify as to what either
3 he photographed or what he observed, that being
4 skid marks, or as he referred to them as scuff
5 marks.

6 THE COURT: Sustained.

7 MR. MARVIN MCMILLAN: Thank you.

8 BY MS. MCELVEEN:

9 Q Your Honor -- I mean, Officer Salmon,
10 are those pictures the pictures that you took?

11 A Yes, ma'am.

12 MS. MCELVEEN: We'd like to publish
13 those to the jury at this time, Your Honor.

14 THE COURT: Hand them to Mr. McMillan,
15 let him review them.

16 MS. MCELVEEN: Your Honor, I believe
17 they were...

18 MR. MARVIN MCMILLAN: But they're
19 not -- I'm sorry. I don't have numbers on the one
20 side so I can't match them up for you. No
21 objection. The photographs speak for themselves,
22 Your Honor.

23 THE COURT: All right. State's 20
24 through 25 are admitted without objection.

25 (WHEREUPON, State Exhibits Nos. 20

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1 through 25 were admitted into evidence.)

2 MS. MCELVEEN: Thank you, Your Honor.

3 BY MS. MCELVEEN:

4 Q And ---

5 MR. MARVIN MCMILLAN: Ms. McElveen,
6 can I beg you to tell me those numbers again,
7 please.

8 MS. MCELVEEN: 20 through 25.

9 MR. MARVIN MCMILLAN: 22 through 25?

10 MS. MCELVEEN: 20 through 25.

11 BY MS. MCELVEEN:

12 Q And I'm showing you some of those
13 exhibits now on the screen, Officer Salmon. I
14 believe we're showing you State's 24 and State's
15 25 on the screen right now. Can you point out
16 where you see the skid marks, and I think you can
17 interact with that screen and circle them.

18 A Okay.

19 Q I believe if you touch the screen
20 it'll allow you to circle them.

21 A (Complies.)

22 Q Thank you. I know it's hard with the
23 gloves on probably, too. And so you photographed
24 those after assessing the scene and ---

25 A Yes, ma'am.

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1 Q --- taken out the sequence of events,
2 took pictures of those?

3 A Yes, ma'am.

4 Q Thank you. I'm going to also show you
5 State's Exhibits No. 22 and 23. Can you do the
6 same -- I don't know how that will do. Thank you.
7 Can you do the same thing, indicate where the skid
8 marks are there?

9 A (Complies.)

10 Q And -- thank you very much. And then
11 in regards to the location -- in regards to this
12 location ---

13 MS. MCELVEEN: I know these are all in
14 evidence by now, Your Honor.

15 BY MS. MCELVEEN:

16 Q Where was -- where were those skid
17 marks compared to where Trenton Brown's car is in
18 this picture, which I believe is State's Exhibit
19 No. -- I believe it's State's Exhibit No. 26. Can
20 you show me where those skid marks would have
21 been -- I know it's the edge of the photo, but
22 where they would have been in comparison to Mr.
23 Trenton Brown?

24 A I would say just below the photo.

25 Q So can you identify where underneath

4 Q Right. Like, kind of like below --
5 can you underline where they would be underneath?

7 | Q Great. Thank you so much.

8 MS. MCELVEEN: Beg the Court's
9 indulgence.

11 Q Did you observe any blood at the
12 scene?

14 Q Where was the blood?

15 A Generally in the area Mr. Goden and a
16 trail also to the black vehicle of drops.

17 Q And that being the car?

18	A	Not in the car.

19 Q Not the Durango. It was not on
20 scene -- Mr. Trenton Brown's car?

21 A I knew nothing about a Durango. I
22 didn't have any contact with the Durango. This
23 is, yeah, Mr. Brown's car.

24	0	Wonderful.

25 MR. MARVIN MCMILLAN: Your Honor, I've

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1 been presented, for the record, photograph 8-A,
2 8-B, 19, 7-A, 7-B, and 6-A and 6-B. We've had a
3 lot of photographs. My objection would be that
4 these are redundant, they're repetitive. It
5 appears to be -- we're not disputing there was a
6 spot of blood, spots of blood on the scene, but
7 we're now getting into probably eight to ten
8 photographs of the blood at the scene. So I don't
9 think -- I don't think more pictures of it is
10 necessary or relevant.

11 MS. MCELVEEN: Your Honor, there are
12 six pictures. There are three -- four different
13 spots photographed over six pictures.

14 MR. MARVIN MCMILLAN: I'm talking
15 about previous exhibits already introduced, Your
16 Honor.

17 MS. MCELVEEN: We have not.

18 THE COURT: Hold on a second. These
19 photographs are -- purport to show -- he just
20 testified there was a trail of blood from the car
21 to where he found Mr. Goden. Is that what these
22 photographs will depict?

23 MS. MCELVEEN: Yes, sir.

24 THE COURT: All right. Mr. McMillan,
25 I'm going to overrule your objection.

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1 MR. MARVIN MCMILLAN: Okay.

2 BY MS. MCELVEEN:

3 Q Can you please identify this is an
4 accurate representation of what you observed as
5 far as the blood on that day? \

6 A Yes, ma'am.

7 MS. MCELVEEN: Your Honor, we'd like
8 to publish these to the jury at this time.

9 THE COURT: Mr. McMillan, subject to
10 your previous objection, ---

11 MR. MARVIN MCMILLAN: Yes, sir.

12 THE COURT: --- do you have any other
13 objections to 8-A, 8-B, 19, 7-A, 7-B, 6-A and 6-B
14 being admitted in addition to your prior
15 objection?

16 MR. MARVIN MCMILLAN: None.

17 THE COURT: All right. For the
18 record, 8-A 8-B, 19, 7-A, 7-B, 6-A and 6-B are
19 admitted over Defense's objection.

20 (WHEREUPON, State Exhibits Nos. 6-A,
21 6-B, 7-A, 7-B, 8-A, 8-B, and 19 were
22 admitted into evidence.)

23 MS. MCELVEEN: Thank you, Your Honor.
24 We are currently displaying 8-A and B, Exhibit 19,
25 and Exhibit 7-A at this time on the screen.

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1 BY MS. MCELVEEN:

2 Q Is that -- can you tell us, those
3 pictures, when were those pictures taken compared
4 to when Mr. Goden was there? Was Mr. Goden still
5 on scene or ---

6 A No, ma'am. This is after Mr. Goden
7 would have been transported.

8 Q Transported?

9 A To Prisma Health Tuomey.

10 Q By ambulance, is that correct?

11 A Yes. Yes, ma'am.

12 Q Thank you.

13 MS. MCELVEEN: Beg the Court's
14 indulgence. Your Honor, I believe those are all
15 the questions I have for Officer Salmon. If he
16 can answer any questions Defense counsel may have.

17 (Attorneys confer.)

18 **CROSS-EXAMINATION**

19 BY MR. MARVIN MCMILLAN:

20 Q Officer, I've just got very few
21 questions for you. How long have you been with
22 Sumter Police Department?

23 A I actually graduated at the Academy
24 three years ago today.

25 Q Okay. So you've been with us ever

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1 since, right?

2 A Yes, sir. Yes, sir.

3 Q Seems like you've been around longer
4 than that. I remember -- I see you all the time.

5 A Thank you, sir.

6 Q That night when you responded at the
7 scene, it was after midnight when you got there;
8 was it not? It was already July 8th?

9 A May I see my incident report? I don't
10 believe so.

11 Q Okay. I was looking at your incident
12 report. It looks like it was dated July 8th and
13 so I just assumed midnight had come around. It
14 could be when you were filling out your paperwork.
15 Could it be that?

16 A Yes, it could definitely.
17 Occasionally we'll fill out paperwork after the
18 fact.

19 Q I think it goes without saying --

20 MR. MARVIN MCMILLAN: Ms. McElveen,
21 could you pull that up for me? 23. Put 23 --
22 there you go. Thank you.

23 BY MR. MARVIN MCMILLAN:

24 Q Now I've got, first of all, I've got
25 some red arrows on these photographs. They

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1 weren't on anything that I've seen. Did you put
2 those red arrows on there?

3 A No, sir.

4 Q Okay. They're not on the 23, but it
5 doesn't really matter. But you -- one of the
6 things you were attempting to do was take the
7 photographs of, you refer to them as scuff marks
8 ---

9 A Okay.

10 Q --- at the scene. All right. Now
11 you're doing the investigation that you're
12 assigned to do. The Dodge Durango was no longer
13 there. Am I correct?

14 A Correct.

15 Q When you arrived? You never saw that
16 vehicle at the Citgo station that night?

17 A That is correct.

18 Q Okay. Was any kind of testing done
19 between the tires of the Dodge Durango and the
20 scuff marks to see if any of the composite or
21 anything is, in fact, those scuff marks made from
22 that vehicle?

23 A Not by me, sir.

24 Q By anybody?

25 A Not to my knowledge. Not to my

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1 knowledge.

2 Q I haven't heard about it. Has anyone
3 attempted to do that that you are aware of?

4 A That I'm aware of, no, sir.

5 Q Okay. You didn't put those red marks
6 on there, but ignoring them. Look -- you've
7 got -- is your screen, is there a screen right in
8 front of you that you can see a little easier?

9 A Yes, sir. Yes, sir.

10 Q It looks like one of the marks that
11 it's pointing to knowing any vehicle has got a
12 left tire and a right tire, there's a scuff mark
13 that appears -- you see the Coke sign that says
14 \$1.25 advertised in the sale of some special on
15 Coca Cola products?

16 A Yes, sir.

17 Q Okay. You see that scuff mark that
18 appears to run underneath that? See the dark
19 line? As a matter of fact it was like, when you
20 get to the crack of the concrete it looks like
21 there's a weed or something growing up through the
22 seam of the concrete.

23 A That does not appear to me to be a
24 tire mark.

25 Q What do you purport that to be?

1 A A shadow of some sort.

2 Q From -- do you know?

3 A No.

4 Q --- what?

5 A No, sir. No, sir, I would have no
6 idea.

7 Q Okay. Well, if that purported to be a
8 shadow, you're basing just on your observation of
9 that picture?

10 A Yeah, just ---

11 Q As you look at it now?

12 A The only tire marks that I can see are
13 where the arrows are pointing to.

14 Q Okay, all right. And those scuff
15 marks there, were they the only scuff marks in
16 that area or here we are on light colored concrete
17 in that area? Is it just from your belief that
18 that is scuff marks that could have come from the
19 Durango so you photographed it?

20 A That is correct.

21 Q Thank you.

22 A Yes, sir.

23 Q Oh, and one final question, I
24 apologize. You said something about a trail of
25 blood leading up to Mr. Trenton Brown's vehicle.

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1 Now let's say from where any of those red arrows
2 are, there's no trail of blood from that area, the
3 area that you have the scuff marks photographed?
4 There's no trail of blood from there over to where
5 Trenton Brown's vehicle is? I mean, drop, drop,
6 drop, or puddle, puddle, puddle. It was all where
7 the two vehicles collided; is that correct?

8 A That is correct.

9 Q Okay. So where's the trail, I guess,
10 is what I'm struggling from? Could it have been
11 from after he was injured over to the door?

12 A Yes. Well ---

13 Q Or do you know?

14 A My observation, I wouldn't necessarily
15 call it a trail.

16 Q Okay.

17 A You know, due to the amount of blood
18 it wasn't superfluous.

19 Q Sure.

20 A You saw the pictures of the pool.
21 There were drops leading from the black car, from
22 Mr. Brown's car to where Mr. Goden was lying.

23 Q Okay. But no trail from where ---

24 A The scuff marks.

25 Q Your investigation would have led that

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1 the Durango may have been earlier in the night to
2 Mr. Brown's vehicle?

3 A That is correct.

4 Q Okay, thank you.

5 MR. MARVIN MCMILLAN: No further
6 questions, Your Honor.

7 THE COURT: Thank you, Mr. McMillan.
8 Any redirect?

9 MS. MCELVEEN: If I just may quickly.

10 **REDIRECT EXAMINATION**

11 BY MS. MCELVEEN:

12 Q Officer Salmon, the question was asked
13 about comparing skid marks between the Durango and
14 the car. Was identity an issue at all? Did they
15 know who did this already ---

16 A Yes.

17 Q --- when you showed up?

18 A Yes.

19 Q The perpetrator had been identified?

20 A Yes.

21 Q And there was no question in y'all's
22 mind who did this?

23 A Yes.

24 Q Thank you. I have no further
25 questions.

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1 MR. MARVIN MCMILLAN: Just object.
2 It would be on the ultimate issue. My objection
3 in regard to the last two questions, leading and
4 going toward the ultimate issue, Your Honor.

5 THE COURT: Overruled.

6 MR. MARVIN MCMILLAN: Thank you.

7 MS. MCELVEEN: Thank you, Your Honor.
8 And Your Honor, may we release Officer Salmon. He
9 is on maternity leave, Your Honor, and came in.
10 May we release him from his subpoena?

11 THE COURT: Any objection?

12 MR. MARVIN MCMILLAN: No objection.

13 THE COURT: No objection? Officer
14 Salmon, you are free to go.

15 THE WITNESS: Thank you, Your Honor.

16 MS. MCELVEEN: Your Honor, at this
17 time the State would like to call Zachary Rutan.

18 THE CLERK: Raise your right hand.
19 State your name.

20 THE WITNESS: I. Zachary Rutan.

21 WHEREUPON,

22 **ZACHARY RUTAN,**
23 having been duly sworn by the clerk, testified
24 as follows:

25 THE CLERK: Thank you much. Watch

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1 your step up the ramp. State your name for the
2 record and spell your last name please.

3 THE WITNESS: I. Zachary Rutan,
4 R-U-T-A-N.

5 **DIRECT EXAMINATION**

6 BY MS. MCELVEEN:

7 Q Good afternoon. Can you tell me -- I
8 know you're wearing a sheriff's uniform right now.
9 Can you tell me where you work now, but where you
10 used to work back in -- on July 7th, 2019?

11 A Yes, ma'am. At that time I was
12 working for the Sumter Police Department.

13 Q And where do you work now?

14 A I currently work for the Sumter County
15 Sheriff's Office.

16 Q How long have you been in law
17 enforcement?

18 A Since March 2016.

19 Q 2016. Where are you from?

20 A Well, I was born in Germany, moved
21 around a lot, and back in 2008 I resided here and
22 been here ever since.

23 Q Wonderful thing. So you were working
24 with the police department on July 7th, 2019?

25 A Yes, ma'am.

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1 Q Did you have the opportunity to
2 respond to a call for service July 7th at ---

3 A Yes, ma'am.

4 Q --- the Frederick Citgo? Can you tell
5 us what you saw in regards to the two gentlemen
6 and the car, the scene, and kind of what you did
7 at the scene and that kind of information?

8 A On that night whenever we received
9 that disturbance call, I believe me and Salmon
10 arrived at the same time. At that point we just
11 started going to each victim and just trying to
12 check on the welfare of them and trying to gather
13 the whole story of what happened.

14 Q Did you -- what state was Mr. Goden
15 in?

16 A He was in a very hurt state. His foot
17 was pretty mangled at that point, a little bit of
18 blood come -- well, I wouldn't say a little bit.
19 A good amount of blood was coming out of his foot,
20 and I knew -- from the looks of it he could not
21 get up at all.

22 Q So he was on the ground unable to ---

23 A Yes, he was on the ground near the
24 entrance to the gas station.

25 Q I'm going to show you State's Exhibit

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1 33 just to confirm that this is kind of the state
2 you saw him in.

3 A Yes, ma'am.

4 Q Is that correct? And then also
5 State's Exhibit 35?

6 A Yes, ma'am.

7 Q Was he making, was he making any
8 sounds? What -- about ---

9 A He was screaming in pain.

10 Q Screaming?

11 A There was not a whole lot I could get
12 out of him just because, I mean, he was in so much
13 pain where a lot of what he was saying was just
14 about his lower extremities.

15 Q And there was -- you said there was
16 blood and ---

17 A Yes. There was blood near and around
18 his foot area.

19 Q And can you tell us about Trenton
20 Brown's car?

21 A Yes. Trenton Brown's car, I don't
22 know the exact make or model of it, but from about
23 the B pillar in between the driver's area and the
24 rear passenger was extremely dented in and air
25 bags were deployed.

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1 Q Is this -- is this an accurate
2 image -- and I'm showing State's Exhibit 17. Is
3 this an accurate image of Mr. Brown's car at the
4 scene?

5 A Yes, ma'am.

6 MS. MCELVEEN: And I'm sorry, Your
7 Honor, that was actually State's Exhibit 28 that
8 I'm showing.

9 BY MS. MCELVEEN:

10 Q Have you had the occasion to arrive at
11 scenes where cars have been T-boned ---

12 A Yes.

13 Q --- frequently?

14 A Yes.

15 Q And in your -- you've been in law
16 enforcement for a long time. Oftentimes is there
17 great bodily jury with a T-bone accident?

18 MR. MARVIN MCMILLAN: Your Honor, I'm
19 going to object. I don't think there's been
20 foundation laid for him to testify in regard to
21 the severity or level of injury.

22 THE COURT: Sustained.

23 BY MS. MCELVEEN:

24 Q How many motor vehicle accidents have
25 you had the opportunity to respond to?

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1 A I can't really put a number on it.
2 I -- a lot.

3 Q Dozens, hundreds?

4 A Probably hundreds.

5 Q Hundreds. Looking at the state of
6 this car, have you seen cars like this before?

7 A Yes.

8 MR. MARVIN MCMILLAN: Your Honor, may
9 we object and approach.

10 THE COURT: Yes, sir.

11 (WHEREUPON, counsel approached the
12 bench for an off-the-record discussion.)

13 BY MS. MCELVEEN:

14 Q Did the car appear to be a total loss?

15 MR. MARVIN MCMILLAN: Same objection,
16 Your Honor.

17 BY MS. MCELVEEN:

18 Q Was the car drivable?

19 MR. MARVIN MCMILLAN: Same objection.

20 THE COURT: Y'all come up here please.

21 (WHEREUPON, counsel approached the
22 bench for an off-the-record discussion.)

23 BY MS. MCELVEEN:

24 Q Officer Rutan, could you open the
25 doors on Trenton Brown's car ---

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1 A No.

2 Q --- on the driver's side?

3 A No.

4 Q No. You said air bags were deployed,
5 correct?

6 A Yes, ma'am.

7 Q What was the status of the driver's
8 side window?

9 A It was busted out.

10 Q Sorry, can you talk in the mic.

11 A It was busted out.

12 Q Okay. So was Mr. Brown at the scene?

13 A Yes.

14 Q What did you do after you made contact
15 and assessed the scene? What happened next?

16 A Oh, after I checked on Mr. Brown and
17 Mr. Goden, at that point I went over to Officer
18 Salmon and he asked me, hey, do you want to go
19 look for the guy who did this or do you want to
20 stay here with me? I said I want to go look out,
21 I want to go find this guy.

22 Q So you identified who penetrated this
23 crime?

24 A Yes.

25 Q And what were you on the lookout for?

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1 A I was on the lookout for a black
2 Durango.

3 Q What did you do to locate the Durango?

4 A I believe the last location the
5 Durango left, the last information that we got was
6 down West Oakland westbound so we went out towards
7 that area and started canvassing the area; and
8 then dispatch, or I believe, it was either another
9 officer or dispatch advised that the Durango had a
10 tracker on it. And at that point it said that it
11 was near the medical park ---

12 Q Can you talk in the mic.

13 A I'm sorry. I believe at that point --
14 whenever we found out that the Durango had a
15 tracker, that it was tracking towards the medical
16 park on Liberty Street near Swan Lake.

17 Q So what did you do?

18 A So at that point I believe me and a
19 couple other officers went towards the last known
20 area and we located the vehicle, and it was off,
21 nobody was around it. And about that same time
22 that we located Durango we started getting prowler
23 calls and alarm calls. It might have been just
24 the ---

25 MR. MARVIN MC MILLAN: Your Honor,

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1 based on your previous ruling, objecting hearsay,
2 please.

3 THE COURT: Sustained with regard to
4 the nature of the calls they received.

5 BY MS. MCELVEEN:

6 Q So you started getting calls alerting
7 that there was some activity in that area?

8 A That somebody was knocking on doors.

9 MR. MARVIN MCMILLAN: Same objection,
10 Your Honor.

11 THE COURT: I think that's being
12 offered for why, why he's doing what he's doing,
13 not necessarily for the truth of the matter
14 asserted so I'll overrule the objection on that
15 ground.

16 MS. MCELVEEN: Thank you, Your Honor.

17 BY MS. MCELVEEN:

18 Q So after you started getting calls
19 about someone knocking on doors, what did you do?

20 A At that point me and other responding
21 officers, we started canvassing that area because
22 we had a slight suspicion that the suspect might
23 have been walking down Liberty Street westbound or
24 towards Pinewood or Second Mill.

25 Q So he was not in the car?

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1 A He was not -- there was nobody at the
2 car or around the car.

3 Q And it matched the tag that ---

4 A Yes.

5 Q --- you --- \

6 A It matched the tag that we ran and it
7 came back to the same suspect that we were looking
8 for.

9 Q And that is?

10 A David Hill.

11 Q Wonderful. And so what happened next?
12 What did you do? What happened?

13 A At that point we kept -- there was one
14 house on the corner of Lawton Circle closest to
15 Second Mill. We did not get a call from that
16 house, so at that point I thought he might have
17 been walking towards another gas station so I went
18 down towards the Circle K I believe it was at the
19 time right across from the Bi-Lo. And I made
20 contact with the clerk and I gave him the
21 descriptors of the gentleman we were looking for,
22 and at that time he said he did not see it. So
23 based upon the calls that we were getting, I went
24 to that final house; and at that time, whenever I
25 went walking from Lawton Circle into that yard, I

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1 saw David Hill laying on his back with his arms
2 spread out.

3 Q What sort of condition was he in?

4 A He was very intoxicated and just
5 noncompliant.

6 Q Was he fully dressed?

7 A No. He had his shirt off and he was
8 only wearing, I believe, a pair of shorts at the
9 time.

10 Q You said he was noncompliant?

11 A Yes.

12 Q Can you tell us a little bit about
13 your approach, what happened, who was with you,
14 all of that?

15 A Yes. At that time, whenever I
16 looked -- I had my flashlight out, and whenever I
17 saw him I drew my service weapon and started
18 giving him directions to roll over. At that point
19 I kind of got on the -- or, I got on the radio and
20 notified other officers where I was and where to
21 come to give me some help. At that point I kept
22 him at gun point until Officer McKnight and
23 Officer Broadway arrived. And at that point we
24 moved in and I took a knife out of his pocket,
25 threw it across the yard, and holstered my weapon

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1 and began to wrestle with the sub--- with David
2 because he would not give us his hands.

3 And in the mix of the altercation that
4 we got into, we were in a big mud puddle
5 underneath, half way underneath a boat, and I was
6 positioned on his right-hand side. He was face
7 down. I was on towards his right side of his back
8 and trying to get his right hand, and at that
9 point he was elbowing me and I think -- he was
10 trying to punch McKnight because McKnight was
11 trying to control his head. And in the midst of
12 him trying to strike McKnight, he was also
13 striking me in the rib cage. And at that point I
14 tazed him in his right lateral area, and after the
15 taze he decided to give us his hands and we were
16 able to put him in cuffs.

17 Q And did he continue to make threats
18 and ---

19 A So ---

20 Q --- verbally assault you guys?

21 A So, after we finally got him arrested
22 and we were able to put him in my back seat, I
23 believe his parents came up; and at that point he
24 calmed down for a little bit. He was talking to
25 them. He was still extremely intoxicated at that

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1 point, but he was talking back and forth through
2 his parents. And after I left that scene and
3 began to go towards the jail, he kept trying to
4 kick out my back glass in my patrol car.

5 MR. MARVIN MCMILLAN: Your Honor, may
6 we object, approach please?

7 THE COURT: Yes, sir.

8 (WHEREUPON, counsel approached the
9 bench for an off-the-record discussion.)

10 BY MS. MCELVEEN:

11 Q Officer Rutan, while you were on scene
12 with him before you put him in the car, he's
13 making threats to you guys; is that correct?

14 MR. MARVIN MCMILLAN: Objection, Your
15 Honor. May we take up a matter outside the
16 presence of the jury?

17 THE COURT: Yes, sir.

18 Ladies and gentlemen of the jury, I'm
19 going to have to send you to your jury room at
20 this point in time. Again, we need to take up a
21 matter of law outside of your presence. Please
22 leave your notes in your seats. Please don't
23 begin any deliberations. Please do not discuss
24 this case amongst yourselves or with anybody else.
25 We'll get you back out as soon as we possibly can.

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1 (WHEREUPON, the jury was removed from
2 the courtroom at 3:46 p.m.)

3 MR. MARVIN MCMILLAN: May it please
4 the Court, Your Honor.

5 THE COURT: Mr. McMillan.

6 MR. MARVIN MCMILLAN: Your Honor, on
7 behalf of Mr. Hill we move -- this would be our
8 third motion for mistrial. I have been goaded
9 into making this motion; I have no other choice.
10 I don't take a motion for mistrial lightly. We,
11 beginning yesterday, we made numerous motions in
12 limine regarding a number of matters, including
13 the matter of any tapes and the limitation of any
14 testimony on the resisting arrest charge. Your
15 Honor took under it advisement, viewed the
16 videotape, came in and specifically ruled this
17 morning that the testimony related to the
18 resisting arrest would run on the videotape
19 beginning at 2 minutes and ending at 16 minutes
20 and 50 seconds. That being the case, in Your
21 Honor's ruling you reference Miranda. You
22 referenced that he was -- and he never was
23 Mirandised. And Your Honor also ruled that
24 anything beyond that, any misbehaving, bad
25 language or otherwise, was not resisting arrest,

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1 may have not been obeying the instruction of law
2 enforcement, may have been threatening of public
3 official, but it was not resisting arrest.
4 Then -- and I'm not going to the cumulative effect
5 now on our first two motions. I'm not going to go
6 into that now. Ms. McElveen asked the question
7 quickly about trying to kick out the windows, and
8 kicking out the windows was long after the period
9 of which he was arrested and placed in the patrol
10 car. In regard to that, I placed my objection on
11 the record and Your Honor ruled on that. With
12 that ruling, she comes back up here and asked the
13 question. Now we're gonna start -- well, let's
14 talk about stuff before he started kicking out
15 your windows in the patrol car. That's when I
16 stood up and said I have a motion outside the
17 presence of the jury. Intentionally, willfully
18 repeated that same statement again, and there's
19 only one reason that would be done: For this jury
20 to hear that. There's nothing favorable about
21 someone -- valid law enforcement officer saying he
22 tried to kick my windows out. Your Honor had
23 ruled that wasn't coming in.

24 MS. MCELVEEN: Your Honor, I did not
25 say that.

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1 MR. MARVIN MCMILLAN: Threats, or
2 threats, either one. All those were beyond the
3 time limitation that Your Honor ruled would be
4 admissible only up to the point that the video
5 tape shows him being placed in the patrol car. We
6 now find ourselves having to ask this jury to
7 leave the room, request a mistrial, whether or not
8 a cumulative instruction can be given. The
9 question is a cumulative instruction can't repair
10 us up to the level we are at now. It looks
11 like -- I think I stood up five times during her
12 direct examination. I think most of them were
13 sustained. She's leaving me no choice but to
14 object. They -- she's asking questions that the
15 Court has ruled on are not admissible. I don't
16 think this can be cured. I'm asking -- you know
17 the series we just went through -- that that
18 coupled with the motion earlier today for
19 mistrial, two motions earlier today for a
20 mistrial, that this case be mis-tried with
21 prejudice, jeopardy is attached, we have no other
22 choice.

23 MS. MCELVEEN: Your Honor, I believe I
24 asked going back to the scene before he's placed
25 under arrest was he making threats to officers. I

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1 did not say anything about before he's kicking out
2 windows of your car. I said, let's go back to the
3 scene before he's under arrest, was he making
4 threats to you officers, which is clearly covered
5 under the resisting arrest and assaulting an
6 officer. I said, let's go back to that scene
7 before he's under arrest, was he making threats to
8 officers. I do not talk about getting in the car
9 and kicking it out. I had gone back to before
10 he's even in the car. I was asking officer about
11 on scene prior to arrest.

12 THE COURT: Madam court reporter, can
13 you read back the last question that Ms. McElveen
14 asked.

15 Not that I am questioning you, Ms.
16 McElveen, I just want the record to be clear.

17 (Court reporter read back the last question.)

18 MR. MARVIN MCMILLAN: But that was not
19 in response to anything that was previously
20 objected to or anything that was previously asked.
21 I don't, -- Judge, we're trying to limit this ---

22 THE COURT: I understand.

23 MR. MARVIN MCMILLAN: --- to that
24 portion of that tape.

25 THE COURT: I understand.

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1 MR. MARVIN MCILLAN: And she's trying
2 to expand beyond that.

3 THE COURT: Well, I think the
4 difference is on the scene versus in the vehicle.
5 I certainly rule that any of the -- any of the
6 defendant's actions once he was in the vehicle and
7 under arrest is inadmissible; that's clear. I
8 don't necessarily view the assault part of the
9 statute for assaulting while resisting arrest as
10 the threats, I don't think the threats are
11 necessarily material to whether that count on the
12 indictment is proven; but I mean, there is
13 evidence on the portion of the tape that I ruled
14 admissible where he does make threats to the
15 officers. That part I ruled admissible so I don't
16 think her last question is outside my ruling; but,
17 like I stated before, once he's in handcuff, in
18 handcuffs, and once he's placed in the back of the
19 patrol car, he is under arrest. I could be wrong,
20 but I don't think you can -- once he's arrested,
21 whether he talks a lot and threatens the officer,
22 if he's under arrest he's no longer resisting
23 arrest. Now he may very well be threatening the
24 life of a public official, but that's not charged
25 on this indictment. So I don't believe the last

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1 question raises grounds for mistrial. I think
2 there is a good faith basis for the question. I
3 would say that I don't think the threats are
4 necessarily an element of this offense because if
5 the jury doesn't believe that he beat or wounded
6 either of these officers while resisting arrest, I
7 don't know that they're gonna make that leap,
8 well, just because he was mouthing off that he's
9 assaulted an officer. But those are factual
10 questions for the jury.

11 But I want to be clear with regard to
12 Officer Rutan's testimony, anything once --
13 anything beyond the point of the tape that I ruled
14 inadmissible is inadmissible, so I think the
15 question that was asked, the way it was phrased is
16 a valid question; and whether those threats on
17 scene are viewed as an assault of the officer,
18 that's a fact for the jury to determine.

19 MR. MARVIN MCMILLAN: And Judge, while
20 I'm here then, allow me to -- part of my motion
21 for mistrial is the objection that I made. We had
22 bench conference regarding her question about
23 kicking out of the windows, which is beyond the
24 scope, nobody disputes that, at the time he was
25 placed in the police car. And it was the State's

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1 position, well, I thought we just couldn't show
2 that part of the video, I didn't know I couldn't
3 ask the question trying to get a truthful answer
4 out of him. That in and of itself would be
5 grounds for a mistrial for asking that question.
6 That's the basis for my mistrial as well.

7 THE COURT: I understand.

8 MR. MARVIN MCMILLAN: Not just this
9 last question. It's, you know, at this point I
10 had to make it.

11 THE COURT: Well...

12 MR. MARVIN MCMILLAN: Clearly beyond
13 the ruling that you made this morning.

14 THE COURT: I don't believe the
15 officer answered that question. I think the
16 objection precluded that answer. I don't think --
17 I don't think it has risen to the level of extreme
18 remedy of a mistrial with regard to that
19 particular question. I just, again, I think
20 sometimes focus on the actual elements of the
21 offenses that are being tried in this case I think
22 we're getting a little far field so. Mr.
23 McMillan, I'm going to respectfully deny your
24 motion for mistrial and -- so my ruling is clear,
25 any threats, foul language, the actions of

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1 Mr. Hill after he's placed in the patrol car
2 beyond the time, the time stamps that we addressed
3 earlier today and actually right before we resumed
4 court after lunch, that those -- those issues, I
5 would say, are more prejudicial than probative
6 after he's been arrested and placed in the car so
7 those issues are out, just so the record is clear.

8 MR. MARVIN MCMILLAN: Thank you,
9 Judge.

10 MS. MCELVEEN: Thank you, Your Honor.

11 THE COURT: All right. Mr. Tomlin,
12 please bring us the jury.

13 (WHEREUPON, the jury was returned to
14 the courtroom at approximately 3:57 p.m., and the
15 following proceedings commenced in open court.)

16 (WHEREUPON, counsel approached the
17 bench for an off-the-record discussion.)

18 THE COURT: Ms. McElveen.

19 MS. MCELVEEN: Yes, sir.

20 BY MS. MCELVEEN:

21 Q So, back to the scene where you found
22 the defendant. Can you tell me again about --
23 what can you tell about how he was resisting
24 arrest?

25 A Well, at first he wouldn't listen to

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1 my lawful commands; and then whenever we went
2 hands-on with him, he kept rolling and almost
3 wrestling with us to try to get his hands from
4 underneath him.

5 Q And did he ever make contact with you
6 guys and ---

7 A Yes.

8 Q --- beat or wound you?

9 A At the end of the struggle I felt an
10 elbow going into my rib cage, and it would be the
11 hand that I was trying to get a hold of and it was
12 coming forward and what I suspect was hitting
13 Officer McKnight.

14 Q Did you transport the defendant to the
15 detention center?

16 A I did.

17 Q I'm going to hand you State's Exhibit
18 No. 37, what's been marked as 37.

19 MR. MARVIN MCMILLAN: May we approach?

20 THE COURT: Yes, sir.

21 (WHEREUPON, counsel approached the
22 bench for an off-the-record discussion.)

23 BY MS. MCELVEEN:

24 Q Officer Rutan, you said you did put
25 the defendant -- you put him in the jail?

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1 A Yes.

2 Q You transported him?

3 A Yes.

4 Q Do you see the defendant here today?

5 A Yes.

6 Q Where is he seated?

7 A He is sitting between -- I'm not sure
8 your name, sir. In between ---

9 MR. MARVIN MCMILLAN: We'll stipulate
10 this is him.

11 THE WITNESS: He's sitting over there
12 with the greenish/turquoise mask with glasses on.

13 BY MS. MCELVEEN:

14 Q Did he have glasses on that night?

15 A No, ma'am.

16 MS. MCELVEEN: Beg the Court's
17 indulgence one second. Your Honor, we would like
18 to publish ---

19 BY MS. MCELVEEN:

20 Q Officer Rutan, were you wearing body
21 worn camera that night?

22 A Yes, ma'am.

23 MS. MCELVEEN: Your Honor, we would
24 like to publish that body worn camera footage at
25 this time.

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1 THE COURT: Okay. And what exhibit is
2 that please?

3 MS. MCELVEEN: That is Exhibit No. 38
4 I believe. Yep, State's Exhibit 38, Your Honor.

5 THE COURT: Mr. McMillan.

6 MR. MARVIN MCMILLAN: Subject to our
7 earlier objection, Your Honor.

8 THE COURT: State's 38 is admitted
9 over Defendant's objection.

10 (WHEREUPON, State Exhibit No. 38 was
11 admitted into evidence.)

12 MS. MCELVEEN: Thank you, Your Honor.

13 THE COURT: Hold on one second.

14 MR. MARVIN MCMILLAN: It's not
15 playing.

16 MS. MCELVEEN: Oh, it's not playing
17 up there?

18 (Pause.)

19 MS. MCELVEEN: Sorry, Your Honor.

20 (State's Exhibit No. 38 was published.)

21 MS. MCELVEEN: Your Honor, I'm fast
22 forwarding forward per the Court's ruling. Your
23 Honor, we would stop the video at that point.

24 THE COURT: All right.

25 BY MS. MCELVEEN:

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1 Q Officer Rutan, please answer any
2 questions the Defense may have.

3 A Yes, ma'am.

4 MS. MCELVEEN: Thank you.

5 MR. MARVIN MCMILLAN: May it please
6 the Court, Your Honor.

7 THE COURT: Yes, sir.

8 **CROSS-EXAMINATION**

9 BY MR. MARVIN MCMILLAN:

10 Q Good afternoon. Officer Rutan, let's
11 start off with this understanding.

12 A Yes, sir.

13 Q Everybody on this side are in support
14 of you guys, okay?

15 A Yes, sir.

16 Q You've got a difficult job and it
17 seems like your job and everyone's who in law
18 enforcement job has gotten a lot harder in the
19 last couple of years.

20 A Yes, sir.

21 Q You can't dispute that, can you?

22 A No, sir.

23 Q I'd worry if you were my son and you
24 had the job that you have. I want you to
25 understand that. Fair enough?

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1 A Yes, sir.

2 Q Okay. We're going back two years.

3 A Yes, sir.

4 Q Going back to July 7th, 2019. At that
5 time you were with the police department?

6 A Yes, sir.

7 Q And you were born in Germany. I guess
8 you were a military brat?

9 A Yes, sir.

10 Q Okay. Shaw Air Force Base brought
11 your family here?

12 A Yes, sir.

13 Q Good, good. In 2019, in July of 7,
14 summer time, how long had you been with the Sumter
15 Police Department?

16 A At that point three years. Two of
17 those I was actually in the police force. One of
18 those years I was in Afghanistan.

19 Q Okay. You ever have any military
20 police training? You have any of that? You have
21 any military background in law enforcement?

22 A Just basic combat. That's...

23 Q But before you guys can get out in the
24 field and do what you do, do this difficult job,
25 you have to go through a great deal of training at

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1 the Academy, correct?

2 A Yes, sir.

3 Q Okay. Part of what you learn at the
4 Academy is how to deal with situations just like
5 we just saw on that 16 minutes of tape. You agree
6 with that?

7 A Yes, somewhat.

8 Q For me -- and I'd be so brave to say
9 for the people on the jury, most of us have never
10 seen an incidence or incident like that that we
11 just saw. Every case is different. But this is
12 not the first time that you came up against a
13 grossly intoxicated person who didn't want to
14 listen to you or do what you told him to do. Is
15 that a fair statement?

16 A Yes, sir.

17 Q Okay. Not that I'm glad that you have
18 seen this a lot, but I'm glad that people like you
19 see it and are trained to handle it. Part of what
20 you are trained, and even more so now, is to
21 de-escalate, de-escalate the situation as quickly
22 as possible, calm things down, right?

23 A Yes, sir.

24 Q Okay. You're not arresting people at
25 that time who are simply following all the rules.

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1 Today we've got a lot of rules in the courtroom;
2 we follow them. And everything else we do in life
3 people set rules and follow them. But when you
4 come in situations like that, you're not known for
5 having rule followers most of the time, are you?

6 A No, sir.

7 Q I saw your tape. I don't want you to
8 think I'm being critical, but the first thing I
9 see is the tape is ---

10 MS. MCELVEEN: Objection, Your Honor.
11 If I may ask that he ask a question instead of
12 testifying about what he sees.

13 MR. MARVIN MCMILLAN: Well, I ---

14 MS. MCELVEEN: The jury gets to see it
15 themselves. If he can just ask questions.

16 THE COURT: He's on cross. He can ask
17 leading questions. Overruled.

18 MR. MARVIN MCMILLAN: Thank you.

19 BY MR. MARVIN MCMILLAN:

20 Q Well, let me rephrase. One of the
21 things you told Ms. McElveen is that he was drunk?

22 A Yes, sir.

23 Q He was very drunk. You agree with me
24 on that?

25 A Yes, sir.

SW - Z. RUTAN - CROSS

1 Q Okay. He's laying on his back. The
2 first time I see Mr. Hill, he's laying on his
3 back. Pretty big boy. No shirt on, hand
4 stretched out, and it looks like he's laying in
5 water. Is that a mud puddle there by a jon boat.
6 What is that?

7 A I want to say maybe 5, 10 feet. From
8 his feet, 5 or 10 feet from his feet there was a
9 large mud puddle underneath that boat.

10 Q It was a wet area where he was?

11 A Yes, sir.

12 Q But he's laying there hands back, you
13 shined your light on him?

14 A Uh-huh.

15 Q I wouldn't want to be there, don't
16 misunderstand me. You've got your gun out. And
17 one of the first things you say to him I think
18 before he says anything to you is, roll the F
19 over. Correct?

20 A Yes, sir. I told him to roll over,
21 then I said roll the F over.

22 Q Okay. And at that point he had
23 not -- other than laying there -- done anything
24 threatening to you other than lay there. and I
25 know you were looking for him.

SW - Z. RUTAN - CROSS

1 A Not at that point, but due to the
2 circumstances why we were looking for him, we were
3 all anticipating that something might happen; and
4 I'd rather have my gun out just in case he was to
5 decide to get up and fight us, than not have it
6 out.

7 Q I understand. That's what he saw and
8 that's what he heard?

9 A Yes.

10 Q And I heard you say on direct
11 examination you found a knife and you threw it
12 away. But isn't it true on that tape that Mr.
13 Hill tells you that he has a knife in his left
14 pocket?

15 A Yes, sir. I do believe he told us
16 that he had a knife on his left ---

17 Q He never attempted to go for that
18 knife or reach for that knife to threaten you in
19 any way with that knife, did he?

20 A No, sir, he did not.

21 Q Okay. It looks like you may have
22 stepped back for a moment and waited on someone
23 else to respond.

24 A Yes, sir. At that point I was waiting
25 for Officer Broadway and McKnight to assist me on

SW - Z. RUTAN - CROSS

1 scene.

2 Q Okay. And they did?

3 A Yes, sir.

4 Q Prior to that time did Mr. Hill, other
5 than lay on his back, leave his hands like they
6 are, do anything other than not roll over for you?

7 A At that point he was just getting
8 noncompliance early and he wouldn't listen to what
9 I was saying.

10 Q And the noncompliance was not rolling
11 over?

12 A Yes, sir.

13 Q Okay. Now once Officer Broadway
14 arrived and Officer McKnight arrived, you three
15 guys -- you can't see much after that because ---

16 A Yes, sir.

17 Q --- there is, there's a tussle ensuit,
18 right?

19 A Yes, sir.

20 Q The tussle was to get his hands behind
21 his back?

22 A Yes, sir.

23 Q Three officers and Mr. Hill?

24 A Yes, sir.

25 Q Isn't it true that at one time you

1 mentioned an elbow in your side or something?

2 A Yes, sir.

3 Q Isn't it true that you thought that
4 might have been McKnight's elbow that hit you in
5 the side?

6 A I don't believe so.

7 Q Okay. Well, the main goal at that
8 time was to get TJ Hill rolled over and handcuffs
9 on him?

10 A Yes, sir.

11 Q Okay. That was done and that was
12 probably done in -- I'm trying my best to time
13 it -- 30 seconds once you three men approach, one
14 you three officers approached him and kind of
15 where it went -- where it blacked out, correct?

16 A I don't know the exact timeframe; I
17 wasn't timing it. But if you said it was 30
18 seconds, I -- at that time it could have been a
19 minute, it could have been two minutes. I'm ---

20 Q Whatever it is.

21 A Yes, sir.

22 Q Okay. Now any point after that he was
23 in handcuffs?

24 A Yes, sir.

25 Q Other than him being drunk, rude and

SW - Z. RUTAN - CROSS

1 crude, using language that I don't hear every day,
2 but you dealing with drunks, you hear that and you
3 at that point somewhat ignore it; do you not?

4 A Yes, sir.

5 Q You would rather him settle down and
6 end it and everything be lovely, right?

7 A I think at that point we were just
8 waiting on EMS and letting him...

9 Q Okay. Now he was tazed?

10 A Yes, sir.

11 Q Okay. He was tazed because he
12 wouldn't roll over?

13 A He was tazed because he wouldn't give
14 me his hand.

15 Q Okay. Well, didn't you want him on
16 his stomach to get his hands? What I'm saying
17 roll over, in that part of it, didn't you want to
18 be able to deal with his hands behind his back?

19 A Are you speaking initially or during
20 in talking ---

21 Q At any time. Where did you want his
22 hands when he was handcuffed?

23 A I wanted them in the small of his back
24 behind him.

25 Q Okay. When EMS responded, they

SW - Z. RUTAN - CROSS

1 checked him out, was he ever taken to the hospital
2 to be checked?

3 A He was not. EMS personnel came and
4 gave him a refusal form.

5 Q And that -- and you and the other
6 officers, they relied on Mr. Hill's decision, I
7 don't need health care, I don't need medical care,
8 in that grossly intoxicated state?

9 A I believe that point, yes, sir.

10 Q Isn't it normal when someone's been
11 tazed, rightfully or wrongfully, they go to the
12 emergency room?

13 A Well, it depends on what the tazing
14 was because this one was a dry stun or dry stun
15 with no probes deployed.

16 Q Which means you stuck the gun in him,
17 the two probes of the gun?

18 A No, sir. So the probes are removed so
19 they're -- if I may, can I show...

20 Q No, you may not. Leave it there.

21 A Well, I mean, I was wanting to show
22 how I can -- so with the tazer there's a cartridge
23 with the tazer, or the probes for the tazer
24 deploy.

25 Q Sure.

SW - Z. RUTAN - CROSS

1 A You can remove that; and whenever you
2 remove that, it's just like a, simply a tazer with
3 two probes ---

4 Q Well, that's what I meant. Two
5 probes. Two prongs or probes, whatever.

6 A Uh-huh.

7 Q Two metal things touching and it
8 creates the shots.

9 A Yes, two metal things. They don't ---

10 Q If I said ---

11 A They don't shoot out. I took that
12 part off.

13 Q It was basically the end of your stun
14 gun touching it.

15 A Yes. It was basically just like,
16 basically a stun gun touching, yes, sir.

17 Q But regardless, he didn't get any
18 medical care?

19 A Well, whenever EMS came they checked
20 him out to make sure that he wasn't in distress
21 and checked his vitals I believe.

22 Q Was ever consideration on your part to
23 go get the level of his intoxication checked just
24 in case he didn't have any deadly amount of
25 alcohol in his system?

SW - Z. RUTAN - CROSS

1 A I think at that point we were still
2 trying to calm everything down and get everything
3 under control to a point where we were able to
4 transport him to the jail.

5 Q One of the things that did appear to
6 calm him down some -- and I don't know if that was
7 you that was talking or not -- his parents came
8 up?

9 A Yes, sir.

10 Q Okay. And they asked can we talk to
11 him, can we calm him down?

12 A Yes, sir.

13 Q And they did?

14 A Yes, sir.

15 Q Okay, all right.

16 MR. MARVIN MCMILLAN: Court's
17 indulgence?

18 THE COURT: Yes, sir.

19 BY MR. MARVIN MCMILLAN:

20 Q Officer Rutan, I appreciate your time.

21 A Yes, sir.

22 Q Thank you. No further questions.

23 THE COURT: Ms. McElveen, any
24 redirect?

25 MS. MCELVEEN: Your Honor, nothing

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1 from the State.

2 THE COURT: You may step down.

3 MS. MCELVEEN: Your Honor, may Officer
4 Rutan be free of his obligation to be here?

5 THE COURT: Any objection to Officer
6 Rutan ---

7 MR. MARVIN MCMILLAN: I'm sorry, I was
8 talking to him.

9 MS. MCELVEEN: Is he free to go?

10 MR. MARVIN MCMILLAN: Yes, no
11 objection.

12 MS. MCELVEEN: Thank you.

13 THE COURT: You're free to go, sir.
14 Thank you for being here.

15 MS. MCELVEEN: Your Honor, at this
16 time the State calls Officer Broadway.

17 THE CLERK: Raise your right hand.
18 State your name.

19 THE WITNESS: Ernest Broadway.

20 WHEREUPON,

21 **ERNEST BROADWAY,**
22 having been duly sworn by the clerk, testified
23 as follows:

24 THE CLERK: Thank you much. Watch
25 your step on the ramp. State your name for the

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1 record and spell your last name please.

2 THE WITNESS: Ernest Broadway.

3 B-R-O-A-D-W-A-Y.

4 **DIRECT EXAMINATION**

5 BY MS. MCELVEEN:

6 Q Officer Broadway, and I keep asking
7 you guys in uniforms, where do you work and what
8 do you do?

9 A Work at the Sumter Police Department
10 in the warrants division.

11 Q And how long have you worked there?

12 A I've worked with the Sumter Police
13 Department for four years.

14 Q And what are your job duties?

15 A Right now it's just serving warrants.

16 Q And what were your duties back in July
17 7th, 2019?

18 A I was on shift, on patrol, on C-shift
19 on patrol, normal calls that come in.

20 Q And I hate to ask, can you make sure
21 to speak into the microphone?

22 A Yes, ma'am.

23 Q Thank you. Did you have the
24 opportunity to respond to Frederick Citgo on July
25 7th, 2019?

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1 A Yes.

2 Q Can you tell us about what you
3 observed in regards to the victim Roger Goden?

4 A The first thing I observed was the
5 back half of his foot was hanging off, and I
6 noticed a black in color car that was damaged
7 badly on the driver's side. And I just went there
8 to see exactly what the call was and see how we
9 can help.

10 Q What was Mr. Goden's state like when
11 you saw him, how was he?

12 A He was in extreme pain.

13 Q How did you know that?

14 A Because he was yelling and screaming
15 and, like I say, the bottom half of his foot was
16 hanging off.

17 Q Was his foot in a natural position?
18 Can you tell us more about that injury that you
19 observed?

20 A No, there was nothing natural about
21 it. It was an intentional act.

22 Q What sort of -- you say you saw the
23 back. Was his foot placed straight, was it at an
24 angle, how was his foot?

25 A He was laying on the sidewalk and the

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1 underside of his foot was just hanging off. I
2 don't know, I mean. It looked like a banana peel.

3 Q Did it appear that Mr. Goden could
4 walk?

5 A No, he couldn't walk.

6 Q And you said he was howling at the
7 scene, he was screaming?

8 A Yes, ma'am.

9 Q What did you do after seeing that
10 injury? What was your -- what was another role
11 you had at the scene? What did you do in regards
12 to this incident?

13 A After we found out the circumstances
14 and who we were supposed to be looking for, we
15 left the area just to look for Mr. Hill.

16 Q And did you find him? Did you -- can
17 you tell us about what you did and how you located
18 him and what you observed?

19 A Yes, ma'am. First we found the car to
20 start with on Liberty Street. It was a dark
21 colored Dodge Durango I believe, had front-end
22 damage on it and it was parked in one the little
23 office buildings on the left before you get to
24 Swan Lake, maybe where the metal park Pharmacy is
25 now, or in that area. It was parked unattended,

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1 and we started searching the area trying to locate
2 Mr. Hill.

3 Q Let me go back. Unattended means
4 nobody is at the car, correct?

5 A That's correct.

6 Q And you said there was front-end
7 damage to the vehicle?

8 A Yes, ma'am.

9 Q Okay, thank you. Keep going after
10 that, sorry.

11 A We started searching the area looking
12 for Mr. Hill. And there was a few calls that came
13 in to dispatch about someone walking in the area,
14 in the area we were searching for him at, and
15 located -- Officer Rutan actually located him at
16 the corner of Lawton Circle and Liberty Street.

17 Q Were you a part of placing him under
18 arrest?

19 A Yes, ma'am.

20 Q What was his demeanor when you guys
21 were trying to place him under arrest?

22 A He was drunk, and it was obvious he
23 wasn't listening to Rutan's orders before myself
24 and McKnight got there. And as soon as we -- as
25 soon as I pulled up, McKnight was pulling up right

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1 along with me. As I was approaching him, I told
2 him to put his hands behind his back, roll over,
3 roll over, you know, put your hands behind your
4 back; he never did. So we all move in and try to
5 get him to roll over and put his hands behind his
6 back.

7 Q Did they -- what happened? Was he
8 compliant or was there a struggle?

9 A No, there was a struggle and he was
10 resisting, didn't want to listen and just
11 struggling with officers on the ground.

12 Q I think I -- well, in the video we
13 heard someone say too many. Is that your voice?

14 A That was me, yes.

15 Q What did you mean?

16 A Officer Rutan pulled his tazer out and
17 I said, no, no, no, too many 'cause -- talking
18 about us. Three of us on top of him is too many
19 to be shooting a, you know, probes and the wires
20 going over and getting all of us. So that's when
21 I got up off. Rutan then took the cartridge off
22 and then what he was talking about dry stunning
23 him without the probes attached.

24 Q Thank you. So you were present for
25 him engaged in the physical altercation with

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1 Officers Rutan and McKnight?

2 A That's correct.

3 Q Thank you. If you can please answer
4 any questions the Defense may have.

5 A Okay.

6 **CROSS-EXAMINATION**

7 BY MR. KENT:

8 Q Mr. Broadway, how are you?

9 A I'm good. How are you?

10 Q We know each other; don't we?

11 A Yes, sir.

12 Q I'd say we know each other fairly
13 well?

14 A Yes, sir.

15 Q How long have I known you now? Almost
16 20 years?

17 A Yeah, been a good while.

18 Q As a matter of fact, and just to make
19 sure, you started over in Clarendon County?

20 A Yes.

21 Q And that's how we know each other,
22 from the Manning area?

23 A That's right.

24 Q Known you in city police and so forth
25 and you've actually attended some seminars that

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1 I've taught and helped with the County?

2 A Yes, sir.

3 Q And I've been to a bunch of seminars
4 that you guys have learned and talked with the
5 County because they teach y'all how to be good law
6 enforcement officers over there and over here?

7 A Yes, sir.

8 Q They teach you about -- it's probably
9 the hardest things y'all do at your job is dealing
10 with people?

11 A Correct.

12 Q And trying to deal with people
13 courteously. I think we've had that conversation
14 before actually.

15 A Correct.

16 Q And what we do is we try to deal with
17 people courteously so they deal with us
18 courteously back?

19 A That's correct.

20 Q Is that fair? And you've heard
21 questions and things. As officers we don't want
22 to escalate situations, we want to try to
23 de-escalate situations; is that a fair statement?

24 A Correct.

25 Q God, I've had so many cases with you.

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1 I've had cases with you involving intoxicated
2 individuals, non-intoxicated individuals. Would
3 you agree with me there?

4 A I assume so.

5 Q Yeah. And you've handled cases with
6 intoxicated individuals and non-intoxicated
7 individuals?

8 A Yes, sir.

9 Q And it's hard dealing with someone
10 when they're intoxicated?

11 A Yes, sir.

12 Q They have trouble listening. They
13 have trouble paying attention. So you, as
14 officers, have to try to de-escalate situations
15 when people are intoxicated?

16 A Yes, sir.

17 Q And you were in here a few moments ago
18 when cocounsel was asking questions. We didn't
19 get blood alcohol level or anything of that nature
20 from Mr. Hill that night, correct?

21 A Not to my knowledge.

22 Q Not to your knowledge. And we don't
23 know what it was or anything of that nature?

24 A No, sir.

25 Q And there's no doubt about it,

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1 Mr. Hill was tazed that night?

2 A Excuse me?

3 Q He was tazed?

4 A Yes, sir.

5 Q And he was dry stunned?

6 A Dry stunned with ---

7 Q Were you ever tazed? Just asking.

8 Sometimes they make officers get tazed before
9 they ---

10 A Yes. Yes, sir.

11 Q That ain't fun, is it?

12 A No, sir.

13 Q They make you get tazed and I think I
14 saw the video where you're locked down and you
15 fall down. It's not enjoyable?

16 A No, sir.

17 Q And it's one of the things they do is
18 they have you officers get tazed so you understand
19 the use of force so you don't use it on
20 individuals. Is that fair? Not so you don't use
21 it, so you know what it's like before you use it
22 on somebody ---

23 A Correct.

24 Q --- so you, yourself, have experienced
25 it. Are you familiar -- do you know if Rutan or

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1 have they done that over Sumter County? Do they
2 have to get tazed before they can use a tazer?

3 A They -- I'm sure they do.

4 Q And finally, there's a bunch of
5 questions about the resisting and hitting and so
6 forth. You're not here to testify about
7 anybody -- you're not mentioned, you're not one of
8 the officers in the indictment who specifically
9 mentioned, correct?

10 A Correct.

11 Q You were simply a witness as to what
12 happened?

13 A Yes, sir.

14 Q You went out to the crime scene?

15 A I did.

16 Q And you were trying to arrest
17 Mr. Hill?

18 A That's correct.

19 Q You're one of the three officers who
20 are trying to arrest Mr. Hill?

21 A That's correct.

22 Q You were there when they were
23 attempting to taze him?

24 A Correct.

25 Q You saw the video that the State of

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1 South Carolina played?

2 A Yes, sir.

3 Q You heard the bad language on
4 everybody's part?

5 A Yes, sir.

6 Q Officers, as well as Mr. Hill?

7 A Yes, sir.

8 Q And that's not language we like either
9 way, but we heard bad language. Usually that's
10 part of the job. You'd agree with me there?

11 A I agree.

12 Q And then I want to make sure just
13 because I got confused. When they were talking
14 about the tazing and you said too many, too many,
15 can that electricity or something -- and I'm not
16 that smart. Does it -- if someone tazes with
17 three prongs, all y'all about to get shot? And
18 just explain that.

19 A I don't trust electricity, put it that
20 way.

21 Q Me neither. But go ahead. So you
22 just don't trust -- you're like, look, all of us
23 are here, y'all slow down.

24 A Me personally, it's a tool for law
25 enforcement to use. It's a great tool, but how it

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1 works I couldn't tell you.

2 Q And let's use a little more common
3 sense. What also scares me, y'all were in a mud
4 puddle?

5 A Yes.

6 Q And I don't know much, but there's
7 electricity and water and y'all are doing that,
8 isn't that a little bit scary?

9 A (There was no response.)

10 Q Thank you, Officer. That's all the
11 questions I have.

12 THE COURT: Any redirect,
13 Ms. McElveen?

14 MS. MCELVEEN: Nothing, Your Honor.

15 THE COURT: You may step down.

16 Mr. McMillan.

17 (WHEREUPON, counsel approached the
18 bench for an off-the-record discussion.)

19 THE COURT: Ladies and gentlemen of
20 the jury, a scheduling matter, I've been informed
21 by lawyers that since it's getting late in the
22 day, that now would be an appropriate time for us
23 to break for the evening so we're going to do
24 that. Ladies and gentlemen, I'd ask that you
25 leave your notebooks or your notes in the chairs,

1 THE CLERK: Raise your right hand,
2 ma'am. State your name.

3 THE WITNESS: Melissa Coker Timmons.
4 WHEREUPON,

5 **MELISSA C. TIMMONS,**
6 having been duly sworn by the clerk, testified
7 as follows:

8 THE CLERK: Thank you much. Come up
9 the ramp. Watch yourself coming up, ma'am. State
10 your name for the record and spell your last name
11 please.

12 THE WITNESS: Melissa Coker Timmons,
13 T-I-M-M-O-N-S.

14 **DIRECT EXAMINATION**

15 BY MS. MCELVEEN:

16 Q Good morning, Ms. Timmons.

17 A Good morning.

18 Q Can you tell me where are you from and
19 a little bit about yourself?

20 A I was raised in Sumter, South
21 Carolina. I wasn't born here. I'm 45. I have
22 four children. I work two jobs.

23 Q What two jobs do you work?

24 A I work part-time Sumter County EMS and
25 full time at Colonial.

1 Q Colonial Family Practice?

2 A The Urgent Care.

3 Q Okay, wonderful. Thank you. Were you
4 working at Sumter County EMT on Sunday, July 7th,
5 2019?

6 A I was.

7 Q And I hate to ask, can you speak into
8 that mic?

9 A I was.

10 Q Okay. I just want to make sure they
11 can hear you without trying too hard to hear you.
12 Can you tell us about what you found and who you
13 treated at the scene?

14 A I don't recall the whole call. I've
15 referred back to the report several times since
16 I've gotten it and read it. It's been two years.
17 I've got a lot going on. I've got a little one,
18 grandchildren, a lot going on, two jobs.

19 MS. MCELVEEN: Your Honor, may we --
20 we would like to mark this as State's exhibit for
21 identification only and ask her if she would like
22 to refresh her recollection with her report.

23 MR. KENT: I don't have a problem, but
24 I'm kind of confused. I don't know if we've
25 gotten to that point yet. If she's saying she

1 doesn't remember, she needs to refresh her memory.

2 THE COURT: Okay. Ask her direct
3 questions ---

4 MS. MCELVEEN: I will.

5 THE COURT: --- about the incident;
6 and if she needs the report to refresh her
7 recollection, ---

8 MS. MCELVEEN: Yes, sir.

9 THE COURT: --- we'll cover it that
10 way.

11 BY MS. MCELVEEN:

12 Q Okay. So COVID has happened, you said
13 your two children, you work, all this?

14 A COVID's happened, it's been a crazy
15 year working with Urgent Care with the unknown of
16 COVID. I had COVID myself with my three year old.
17 I was out of work for ten days. A lot's been
18 going on so.

19 Q We understand. We appreciate you
20 being here.

21 A Thank you.

22 Q After referring to your report, what's
23 the name of the patient you treated that evening?

24 A I don't remember his name.

25 MS. MCELVEEN: Your Honor, may we --

1 would it help ---

2 THE WITNESS: I'm so sorry.

3 BY MS. MCELVEEN:

4 Q It's okay. Would it help to refresh
5 your recollection with your report?

6 A Please.

7 MS. MCELVEEN: Your Honor, may I?

8 THE COURT: Yes, ma'am.

9 MS. MCELVEEN: I think we'll mark it
10 for identification purposes only.

11 (WHEREUPON, State Exhibit No. 40 was
12 marked for identification only.)

13 MS. MCELVEEN: Your Honor, I'm handing
14 the witness the State's exhibit for identification
15 purposes only, State's Exhibit 40.

16 BY MS. MCELVEEN:

17 Q So ---

18 A His name is Roger Goodson [sic].

19 Q And Mr. Goden is ---

20 A Goden.

21 Q What did you find on him when you saw
22 him?

23 A He was laying on the ground at the
24 store on the sidewalk outside of the door.

25 Q And what did you guys do? What did

1 you do?

2 A We got him on our stretcher, got him
3 in our truck, tended to his wounds, and an IV was
4 started by my partner, and he was transported to
5 the ER Tuomey at the time.

6 Q And ---

7 A I think it was Tuomey, or Prisma.

8 Q Prisma Health Tuomey or Tuomey
9 Hospital. You said you started an IV. What sort
10 of medications did you administer? Did he appear
11 to be in pain? Let me just ask that.

12 A He -- yes, he appeared to be in pain,
13 and according to the chart he was very agitated.

14 Q Was he -- what do you mean by
15 agitated?

16 A In pain.

17 Q Where were his injuries?

18 A Right foot. And I'm trying to
19 recollect the picture. The right middle finger.

20 Q Okay. And he had -- tell me about his
21 foot.

22 A Was bleeding, open, appeared to be an
23 open fracture.

24 Q You could see bone?

25 A I don't recall if you could see bone.

1 Q And did you administer any pain
2 medicine?

3 A I did not. My partner Steve did.

4 Q What does -- what did your partner
5 Steve administer to him?

6 A Morphine, 10-milligrams.

7 Q And what did you do after y'all
8 administered Morphine and got him stable, what'd
9 y'all do?

10 A We would have closed -- wrapped, added
11 padding and wrapped his leg in Ace bandages and to
12 control bleeding.

13 Q And then he would be taken to the
14 hospital?

15 A Yes.

16 Q Thank you. I have ---

17 MS. MCELVEEN: Beg the Court's
18 indulgence one second.

19 BY MS. MCELVEEN:

20 Q I have no further questions. Please
21 answer any questions Defense may have for you.
22 Thank you, Ms. Timmons.

23 A Thank you. You're welcome.

24 MR. KENT: Your Honor, I have no
25 questions for this witness.

1 THE COURT: All right. Ms. Timmons,
2 you can step down. Thank you very much.

3 MS. MCELVEEN: Your Honor, may she be
4 released from her subpoena so she can go back
5 to -- she may want to sit here and sleep for a
6 while, though, it sounds like.

7 MR. KENT: No objection on behalf of
8 Mr. Hill.

9 THE COURT: Ms. Timmons, you may step
10 down and you are free to go. Thank you very much.

11 THE WITNESS: Thank you.

12 MS. MCELVEEN: Thank you, Ms. Timmons.
13 Your Honor, at this point the State would rest.

14 THE COURT: All right. Thank you, Ms.
15 McElveen.

16 Ladies and gentlemen of the jury,
17 court procedure requires at this moment in time,
18 since the State has rested its case, for me to
19 take up some matters of law outside of your
20 presence so we're going to follow similar
21 procedure to what we did yesterday. I'm going to
22 send you to your jury room and ask you to leave
23 your notes in your seats. Please do not begin
24 your deliberation. Do not discuss this case among
25 yourselves. Do not seek to do any research by any

1 THE COURT: All right, sir. Thank you
2 very much.

3 THE DEFENDANT: Thank you.

4 MR. MARVIN MCMILLAN: Thank you,
5 Judge.

6 THE COURT: I believe we've adequately
7 covered that issue. We will be in a brief recess
8 until Mr. McMillan, Mr. McMillan, the younger,
9 comes back into the courtroom from his family
10 court hearing. Is there any -- are there any
11 other matters we can take up while we've got some
12 time?

13 MR. KENT: I guess I can take up ---

14 THE COURT: We can probably talk at
15 least preliminarily about jury charge. I know you
16 may not have had time to prepare any, but ---

17 MR. KENT: I can cover some of the
18 housekeeping matters other than directed verdict
19 motion just so they're covered for the record,
20 Your Honor.

21 THE COURT: All right, that'd be fine.

22 MR. KENT: At this point in time, Your
23 Honor, in light of the fact that the State of
24 South Carolina has concluded their case, on behalf
25 of Mr. Hill, what we will do is renew all motions

1 made, not only pretrial, we will renew all motions
2 made during the course of trial. By my count last
3 evening, candidly, we made approximately four
4 motions for mistrial. Our motions for mistrial
5 were based upon the fact that we were basically
6 required to object numerous times in front of the
7 jury. We felt as though after a point in time
8 that would get to the point in which it appears as
9 though we are hiding something from the jury. You
10 gave the opportunity to based upon the number of
11 objections we had to make, gave the opportunity
12 over the lunch break to make a decision over
13 whether or not we would request a curative
14 instruction. I've gone back and forth with
15 Mr. Hill and Mr. McMillan to discuss if we still
16 wanted the curative instruction. I gave you a
17 copy of it yesterday. I've already given a copy
18 to the Solicitor. She had opportunity to review
19 it yesterday.

20 Your Honor, at this point in time
21 before we begin our case we would ask that that
22 curative instruction be read to the jury. We
23 thought about it long and hard just to make sure
24 the record is protected. We thought about it very
25 carefully. If another court is reading this

1 hearing down the road, we would like to say that
2 this is a trial decision that we have decided
3 upon. I know I've made several objections during
4 the course of the trial and sometimes I'm worried
5 about making objections that it appears as though
6 you're trying to hide and give the jury too much
7 information.

8 But based upon the position that we
9 have found ourselves in, based upon things that we
10 believe that the State of South Carolina has done,
11 we have no avenue but to request a curative
12 instruction. I'd like to make this very clear for
13 the record. We don't believe a curative
14 instructions cures. We still would like to
15 maintain our motions and maintain our objections
16 so I don't want a court down the road saying that
17 we have acquiesced by acknowledging or supporting
18 a curative instruction. We believe we're in a
19 position that this is our only avenue so. At this
20 point in time I think I've said entirely too much
21 stuff at the same time; but I renew all of my
22 motions, renew all of my pretrial motions, and
23 request a curative instruction be given before we
24 start our case. And then, as you mentioned,
25 you'll give us an opportunity to go on directed

1 verdict motion.

2 THE COURT: Thank you, Mr. Kent.

3 MR. KENT: Thank you, Judge.

4 THE COURT: I will certainly note that
5 all of the objections made during the course of
6 trial are preserved for any further review. I
7 will deny those motions based upon the reasoning
8 in my prior rulings.

9 And Ms. McElveen, let me hear from you
10 with regard to the proposed curative instruction
11 that the Defense has requested.

12 MS. MCELVEEN: Your Honor, I think the
13 curative instruction is exactly what's ordered in
14 State v. Johnson, 334 S.C. 78, an instruction to
15 disregard objectionable evidence usually cures any
16 error in its admission. Your Honor, we would
17 understand that there should be a curative
18 instruction in this case. It's hard -- it's
19 surely not intentional, but it's hard when the
20 facts are inextricably intertwined in its
21 continuous course of conduct with which we did the
22 best we could and I'm sorry that they felt the
23 need to make a motion for a mistrial. But we do
24 feel that the Court's curative instruction would
25 fix any sort of error or prejudice because this

1 jury seems to be paying great attention, Your
2 Honor.

3 THE COURT: All right. I have
4 reviewed the curative instruction that has been
5 presented by the Defense. I think it is a fair,
6 fair recitation of the issue that is before the
7 Court and this jury with regard to the domestic
8 violence charge which was a part of this
9 indictment. It has been -- or, the defendant has
10 entered a guilty plea to that domestic violence
11 charge and been sentenced. And based upon my view
12 of the facts in this case there was some -- there
13 was a basis for allowing the State to at least set
14 the table for why these folks were together, why
15 Ms. Hill was at the scene. I think the curative
16 instruction is warranted given some of the answers
17 to the questions that the witnesses made in
18 response to Ms. McElveen, and I certainly feel
19 that those witnesses -- you know, obviously they
20 aren't trained in the law as we are, and I think
21 the mistakes were not intentional on the witness'
22 behalf so I will read the curative instruction
23 prior to the Defense's, beginning of their
24 presentation of their case.

25 MR. KENT: And Judge, that will be

1 placed in as a Court's exhibit I'm assuming, or
2 will that be evidence ---

3 THE COURT: I will make it a Court's
4 exhibit. I obviously don't want to send it back
5 with the jury with the evidence, but I will make
6 it Court's whatever the next number is; and it'll
7 be a part of the record in this case but not part
8 of the evidence that goes back to the jury.

9 MR. KENT: Thank you, Judge. And
10 since we're waiting, we might as well do a couple
11 of things. Clearly at this point in time there's
12 no doubt that we have put in evidence. I think we
13 have put in two pieces of evidence if not
14 mistaken, Ms. Ray? So I don't think the Supreme
15 Court switches on order I would assume that the
16 State can open full on the law if they choose. We
17 would have to open in full and they will conclude.

18 THE COURT: All right. I think
19 they'll open in full. You will close and ---

20 MR. KENT: And then they can rebut.

21 THE COURT: -- they can rebut what has
22 been raised in your closing. I think that's the
23 status of -- I can't remember the case name that
24 gave us kind of a road map for that procedure, but
25 I think that's where we are in terms of the fact

1 proceed and not, you know, not take any unwanted
2 breaks since they have been in the jury room for
3 about an hour now. So if anybody needs to step
4 out to use the restroom, this is specifically
5 aimed at the attorneys because you folks in the
6 gallery can come and go as you please. Are we
7 ready to go forward?

8 MR. KENT: We are, Your Honor, on
9 behalf of Mr. Hill.

10 THE COURT: State ready?

11 MS. MCELVEEN: Yes.

12 MR. KENT: Judge, and I want to make
13 sure for clarification, before we start our case
14 you will be reading the curative instruction to
15 the jury.

16 THE COURT: Yes, sir, I got it right
17 here.

18 MR. KENT: Okay.

19 (WHEREUPON, the jury was returned to
20 the courtroom at approximately 10:59 a.m., and the
21 following proceedings commenced in open court.)

22 THE COURT: Ladies and gentlemen of
23 the jury, thank you for your patience as we
24 handled those matters of law that are required
25 outside your presence. Ladies and gentlemen, as

1 you know, the State has rested its case in this
2 matter and now is the time, if the Defense so
3 chooses, for the defense to -- the defendant to
4 present a defense in this matter. Before any
5 further testimony is taken, I must make this
6 instruction to you. Ladies and gentlemen, the
7 State and the Defense both agree that David Hill
8 and Jennifer Hill were involved in a physical
9 altercation on July 7th, 2019. That matter has
10 been resolved. I instruct you that the result of
11 that case should have no bearing on your decision.
12 I further instruct you it would be inappropriate
13 to discuss the altercation between David Hill and
14 Jennifer Hill during your deliberations.

15 MR. KENT: Thank you, Your Honor.

16 THE COURT: Mr. Kent.

17 MR. KENT: Your Honor, Defense would
18 put a case on at this point in time. With the
19 Court's permission, we would like to call our
20 first witness.

21 THE COURT: Yes, sir.

22 THE CLERK: Sir, raise your right
23 hand. State your name.

24 THE WITNESS: Patrick J. McLaughlin.

25 WHEREUPON,

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1 **PATRICK J. MCLAUGHLIN,**
2 having been duly sworn by the clerk, testified
3 as follows:

4 THE CLERK: Thank you much, sir. Step
5 around, come up the ramp. State your name for the
6 record and spell your last name please.

7 THE WITNESS: Patrick J. McLaughlin,
8 M-C-L-A-U-G-H-L-I-N.

9 **D I R E C T E X A M I N A T I O N**

10 BY MR. KENT:

11 Q Mr. McLaughlin, how are you doing,
12 sir?

13 A Doing well.

14 Q Before we get going any further I want
15 to do some housekeeping matters, if that's okay.

16 A Yes, sir.

17 Q I know you know me very well, and you
18 know I speak very fast, as does the court
19 reporter. So if at any point in time I speak
20 entirely too fast and you cannot understand one of
21 my questions, simply ask me to repeat it.

22 A I will.

23 Q No. 2, I know you've done this before
24 so at any point in time -- Madam Court Reporter
25 can't take down head nods and shakes so make sure

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1 you speak affirmatively and clearly so she can
2 take down the words that you're saying.

3 A I will do my best.

4 Q And finally, Mr. McLaughlin, she can't
5 take down if we talk over one another as you know,
6 so if you'll give me an opportunity to ask my
7 questions I'll give you plenty of opportunity to
8 answer my questions.

9 A Yes, sir.

10 Q So first let's get into some
11 background. Who are you?

12 A My name is Patrick McLaughlin. I
13 practice law in Florence, South Carolina, with the
14 Wukela Law Firm.

15 Q How long have you been practicing law?

16 A I was sworn in in May of 2005, so
17 we're looking at 16 years.

18 Q In that 16 years can you tell us a
19 little bit about your practice of law, your
20 history. What do you basically do?

21 A I work with the Wukela Firm in
22 Florence. We're primarily a -- we're trial
23 lawyers, and we primarily represent folks from the
24 plaintiffs or the claimants side. People get
25 injured, people seeking disability payments,

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1 things like that, we represent the folks making
2 claims.

3 Q And Patrick, so you do a lot of
4 personal injury work. Is that the easiest way to
5 put it?

6 A Primarily. I -- when I first started
7 my practice I did a lot more criminal defense. It
8 was probably about, probably about 60/40, 60 of
9 civil work, 40 percent on the criminal defense
10 side. Over the last probably eight years that has
11 dwindled down on the criminal defense side to
12 where I do more and more civil litigation:
13 Primarily personal injury work, car wrecks,
14 premises liability cases, you get hurt in Walmart,
15 something like that. And I also do a lot of civil
16 rights litigation. Somebody's got a -- some type
17 of claim against a jail or prison or against law
18 enforcement, I handle a lot of those claims.

19 Q In dealing with civil litigation and
20 personal injury work, what type of education,
21 CLEs, college, law school, helps you in that
22 field?

23 A I mean, after regular education you
24 have to get in to law school. I went to the
25 University of South Carolina, got a bachelor of

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1 arts. I think I graduated undergrad in '97.
2 Chased a job when I first got out. I had been in
3 history so I didn't know what I wanted to do, had
4 a good job offer. I was out of school for a
5 little while, worked for a company and moved
6 around a little bit for them and then decided to
7 go back and go to law school in, I think, 2002.
8 Wound up graduating from the University of South
9 Carolina School of Law in December of 2004, got
10 sworn in that following May, May of 2005. Since
11 then I've been pretty active.

12 I was a lot more active in criminal
13 defense associations when I did a lot more
14 criminal defense work. Probably the largest one
15 here in the state is SCACDL, which is the South
16 Carolina Association of Criminal Defense Lawyers.
17 I was pretty active in that; I was a board member.
18 I was president of that organization I think maybe
19 in 2012 or so. I've been an active member of an
20 organization that is now called the South Carolina
21 Association of Justice, used to be called South
22 Carolina Trial Lawyers Association. It's
23 primarily thought of as the association here in
24 South Carolina for folks who do a lot of
25 plaintiff's work, represent plaintiffs or

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1 claimants, folks like I told y'all our law firm
2 represents, as opposed to there's another
3 organization for insurance defense lawyers. So
4 I've been members of those organizations, a host
5 of other small -- other ones not necessarily
6 relative to South Carolina, kind of national. But
7 they -- we have requirements to go to CLEs every
8 year to keep our education up and I, of course, do
9 those and attend conferences and seminars put on
10 by those organizations.

11 Q Now, Patrick, we were talking about
12 you dealing with personal injury work. Have you
13 tried any personal injury cases?

14 A I would say that the majority of the
15 cases I wind up trying are gonna be civil cases,
16 personal injury cases.

17 Q Can you give us an estimate in your 16
18 years how many personal injury cases you have
19 tried?

20 A I don't know. You know, the
21 interesting thing is that you don't try as many
22 cases as folks used to anymore. We had a judicial
23 conference in 2018 in Florence that I hosted a
24 panel of lawyers for the judges; and I think the
25 average from everybody that was on that panel, a

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1 lot of good trial lawyers, was that they try maybe
2 about two a year. And these are very aggressive
3 trial lawyers, and I'd say that's probably about
4 the height of it when you talk about trying civil
5 cases so. It, maybe trying common pleas, civil
6 cases, maybe 20, 25. The majority of those cases
7 resolve.

8 MS. MCELVEEN: Your Honor, may we
9 approach.

10 THE COURT: Yes, ma'am.

11 (WHEREUPON, counsel approached the
12 bench for an off-the-record discussion.)

13 BY MR. KENT:

14 Q Mr. McLaughlin, I was interrupted when
15 you were bragging on your stellar story that you
16 would continue to -- you were telling me that you
17 had tried about 25 cases.

18 A Well, probably somewhere along in
19 Common Pleas looking at that average; and that's
20 about, about right for I what I do. But like I
21 said, the majority of your Common Pleas cases are
22 gonna resolve, your civil cases. I tell clients
23 when they come in that 95 percent of civil cases
24 resolve without having to go to trial.

25 Q Now I want to ask you, no more math.

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1 You've been practicing law 16 years and we talked
2 about trials. How many cases, personal injury, do
3 you think you handled?

4 A I have no idea what the exact number
5 would be. I mean, I believe I've got probably 100
6 and something open files right now and by far the
7 vast majority of them are going to be civil cases,
8 and that's kind of been standard since maybe the
9 second or third year I was practicing law so I've
10 carried that type of caseload.

11 Q Do other attorneys ever contact you,
12 ask you for advice and questions about civil
13 litigation?

14 A Sure, a lot. And I in turn call other
15 attorneys and ask them as well, but yeah, it's
16 a -- South Carolina is a very small bar. You get
17 to know -- you know everybody all over. And good
18 attorneys, you find out who they are and you ask
19 them for advice. And I've been fortunate enough,
20 I guess, to have some folks think that I'm a good
21 attorney, I'm very appreciative of that.

22 Q Have judges ever asked for your advice
23 on civil litigation?

24 A We're lucky -- I'm lucky to practice
25 over in Florence. We've got a lot of local judges

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1 there who are very good judges; and like any good
2 judge, when they have questions or they have
3 unique issues come up with them, they'll reach out
4 to folks to talk and get ideas and I've been
5 fortunate enough to have a few of my local judges
6 do that for me.

7 Q And now doing very poor math, you have
8 told me that you handled or tried approximately 25
9 cases, approximately 100 cases a year, give or
10 take open cases, so is it safe to assume that you
11 handled close to 1000 cases?

12 A If that's how the numbers work out,
13 yes.

14 Q In those 1000 cases, have you had
15 opportunity to review and look at policies?

16 A In --

17 Q Insurance policies?

18 A Yes. Yes.

19 Q Could you tell the jury what an
20 insurance policy is?

21 A A insurance policy is a contract
22 between you and the insurance company where they
23 lay out the insurance coverage they're gonna give
24 you, and they lay out how much they're gonna
25 charge you for it and then they insert a whole

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1 bunch of language in there to one day argue with
2 you about whether or not they got to pay you. So
3 that's pretty much what a policy is.

4 Q You've had opportunity to look at,
5 review, and challenge policies in your 16 years of
6 practice?

7 A It is -- primarily that's what a civil
8 litigation lawyer is gonna do the majority of the
9 time. You spend time looking at policies, trying
10 to find policies. When you find them, trying to
11 see if you can get to the coverage in them,
12 arguing about what that coverage is, that's what
13 the job is.

14 Q Have you had to in your 16 years of
15 practice in over 1000 cases, you've had to look at
16 and interpret policies?

17 A Yes.

18 Q You have interpreted policies in
19 court?

20 A Yes.

21 Q In front of judges?

22 A Yes.

23 Q You have -- one of the questions I've
24 asked you earlier is other attorneys have asked
25 you information about interpreting policies. Have

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1 you offered information to other attorneys about
2 interpretation of policies?

3 A Yes.

4 Q And the judge questions, have judges
5 ever asked you about interpretation of policies?

6 A Well, yeah. Whenever you argue it
7 they're asking you for your opinion on it, sure.

8 MR. KENT: Your Honor, at this point
9 in time we would offer Patrick McLaughlin as an
10 expert in the field of civil litigation and policy
11 interpretation.

12 MS. MCELVEEN: Your Honor ---

13 MR. KENT: And we have no problem with
14 voir dire if the State would like to voir dire on
15 those areas.

16 MS. MCELVEEN: Your Honor, the State
17 would like object as to the relevance factor that
18 we've brought up as to what civil litigation or
19 insurance policies. We would object to just the
20 relevance frankly, Your Honor. I guess, I don't
21 know if a proffer would be appropriate, something
22 I don't want to...

23 THE COURT: Ladies and gentlemen of
24 the jury, we've reached another point in this case
25 where I need to take up a matter of law outside of

1 ask if you have any voir dire for the witness; and
2 then based on your answer, we'll either hear the
3 questions or I will qualify him as an expert in
4 the fields that he has been tendered as an expert
5 in.

6 MR. KENT: Thank you, Your Honor.

7 MS. MCELVEEN: Thank you, Your Honor.

8 THE COURT: Bring us the jury please.

9 (WHEREUPON, the jury was returned to
10 the courtroom at approximately 11:38 a.m., and the
11 following proceedings commenced in open court.)

12 THE COURT: Thank you for your
13 patience as we sorted through that matter of law.

14 Mr. Kent.

15 MR. KENT: Your Honor, at this point
16 in time -- Your Honor, at this point in time we
17 would offer Patrick McLaughlin as an expert in the
18 field of civil litigation and policy insurance,
19 policy interpretation.

20 THE COURT: Any voir dire, Ms.
21 McElveen?

22 MS. MCELVEEN: Your Honor, may I just
23 ask one question.

24 THE COURT: Yes. Yes, ma'am.

25 VOIR DIRE EXAMINATION

1 BY MS. MCELVEEN:

2 Q How many times have you testified in
3 court on this matter as an expert?

4 A First time.

5 Q You never have testified on this
6 before?

7 A No, ma'am.

8 Q Thank you.

9 A You're welcome.

10 MS. MCELVEEN: No further questions.

11 THE COURT: All right. Ladies and
12 gentlemen, normally a person cannot give opinion
13 testimony. Normally when a person testifies they
14 must testify as to what they either saw, heard, or
15 sense by smell, or something of that nature.
16 However, there's an exception when someone is
17 qualified because of their education or
18 experience. They are permitted to give their
19 opinion in certain areas if the Court qualifies
20 them that way. This witness will be qualified in
21 the area of civil litigation and insurance policy
22 interpretation to give opinion testimony in those
23 areas. That does not mean you must accept the
24 opinion but is evidence for you to use in any way
25 you see fit and give the weight and credibility

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1 you believe is appropriate.

2 Mr. Kent.

3 MR. KENT: Thank you, Your Honor.

4 BY MR. KENT:

5 Q Mr. McLaughlin, now that we've gone
6 through your history -- I'm gonna be very open and
7 honest with the jury. The two of us know each
8 other.

9 A Yes, we do.

10 Q And would you consider -- I was gonna
11 say we're good friends, but would you consider us
12 good friends?

13 A Very good friends.

14 Q And have known each other in excess to
15 the 16 years that you've been practicing law?

16 A Yes.

17 Q That being said, are you here
18 testifying as my friend or as an expert witness?

19 A I'm here to give truthful and accurate
20 testimony; and as much as I like you and as much
21 as I think of you, I like my law license a lot
22 better than that.

23 Q That being said, when you are engaged
24 as a witness or an expert -- well, tell me the
25 process. What happened? Did you send us a letter

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1 to pay? I mean, just so the jury knows.

2 A You asked me if I would be willing to
3 review a insurance policy and some settlement
4 paperwork and potentially give an opinion on it
5 and potentially come to trial and testify, and I
6 told you I would. You wanted to know what I would
7 charge for that. I told you what my hourly rate
8 would be and I sent you a retainer to basically
9 hire me. It's not very different -- rarely --
10 don't do a lot of hourly work just because of the
11 nature of representing folks in personal injury.
12 We usually do it on contingency, but you often
13 have to argue about whether or not you should be
14 paid for different things over the course of
15 litigation and you have to have a basis for a good
16 hourly rate. And I sent you a retainer very
17 similar to what I would send any client; but it
18 was just offer professional opinions, not for
19 legal representation.

20 Q And that was signed and you have been
21 paid and retained to be here today?

22 A Yes.

23 Q Mr. McLaughlin, I want to talk to you
24 very generically first utilizing your expert
25 opinion about civil litigation and insurance

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1 policies.

2 A Okay.

3 Q You had mentioned to the jury
4 insurance policies. Generically, what are they?
5 I mean, why do we have them?

6 A Well, it defines the amount of
7 coverage a insurance company is gonna provide and
8 the conditions under which they will pay out that
9 money.

10 Q Are insurance companies required no
11 matter what, hey, you got in an accident, here's
12 my money; is that a requirement?

13 A Well, you know, dependent -- they're
14 supposed to pay it out pursuant to the policy; but
15 as you can imagine, that's where the rubber meets
16 the road a lot of times. Insurance companies,
17 they're not gonna want to pay out money if they
18 don't have to and they're gonna fight paying it
19 out. And a lot of what you do from the plaintiff
20 side of civil litigation is trying to explain to
21 them why they have to pay coverage or why that
22 policy which is a contract, if they don't pay,
23 then they are violating that contract.

24 Q And policies can be pretty
25 substantial, right?

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1 A Yes.

2 Q Some in excess of 30, 40, 50 pages?

3 A Yes.

4 Q And people like you review the
5 policies and look and see if they should be paid?

6 A Yes.

7 Q And insurance companies try not to
8 pay?

9 A Yes.

10 Q In policies there are things called
11 exclusions?

12 A There are.

13 Q Could you explain to the jury what an
14 exclusion in a policy is?

15 A Well, an exclusion is gonna be where
16 one of those little terms or conditions of a
17 policy that an insurance company is gonna write
18 into it to try to say when they don't have to pay
19 you.

20 Q You have not been in the course of
21 trial. In the policies are there things about an
22 accident sometimes and intentional acts?

23 A Yes, there -- there will be things in
24 policies where they try to exclude intentional
25 acts.

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1 Q What does that mean, exclude an
2 intentional act?

3 A They don't want to pay for it.

4 Q And that's written in the policy?

5 A Yes.

6 Q Is there a reason why they don't pay
7 for intentional acts, or do you have any clue or
8 it's just written in the policy and it's a
9 contract?

10 A Well, I'm sure insurance companies
11 would have an opinion about it; but my opinion is
12 they put them in there to try to get out paying
13 them.

14 Q And in your expert opinion, are these
15 exclusions, are they legal? Have the Supreme
16 Court looked at them? Are those legal documents
17 that keep exclusions of?

18 A Well, it depends on what the policy is
19 insuring, what the coverage is for as to
20 whether -- I mean, but yeah, there's valid
21 exclusions to coverage, but it depends on what the
22 policy is for, what the interest is that it is
23 insuring and whether or not -- you know, sometimes
24 insurance companies have exclusions in a policy;
25 but the way the law works is if they don't just

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1 get to exclude whatever they want to. There may
2 be law in whatever jurisdiction you're in that
3 says you've got to offer coverage for this type of
4 harm or loss and so you don't get to exclude it.
5 You can put it in your policy all you want to; but
6 if, you know, it's oftentimes policies will have
7 exclusions in them but those exclusions may be
8 found to con-- to be contradicted by state law
9 where the loss was suffered or where the policy is
10 being interpreted at and they don't get to not pay
11 that money.

12 Q And let me get, let me offer you an
13 example. Maybe this -- sometimes I've heard
14 things like suicide preventions. Like, you can't
15 kill yourself and collect insurance. Have you
16 seen something, is that a type exclusion?

17 A Well, they certainly may very well
18 argue that it was an intentional act of that.
19 There is -- of course, there's a lot of other
20 issues with being able to successfully pursue
21 coverage over suicide, whether or not case law
22 interprets that as well, whether or not it can be
23 a break in the causal link chain so.

24 Q And still talking generically,
25 Patrick, there is a difference between a crime and

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1 an accident; is that correct?

2 A Well, sure. I mean ---

3 Q Well, let me make it even more
4 different. There's a difference between criminal
5 actions and civil actions.

6 A Sure, yes.

7 Q Can you explain the difference between
8 criminal actions and civil actions. You mentioned
9 you do both.

10 A I mean, you know in a criminal act
11 you're gonna have to prove -- the State's gonna
12 have to prove mens rea, a mental state. You know,
13 you ---

14 MS. MCELVEEN: Your Honor, I thought
15 he was testifying about civil. Your Honor, we are
16 here in a criminal case. We are all experts. All
17 of the court personnel in here are experts in
18 criminal law under these qualifications. We
19 certainly -- he's an expert in civil law and
20 insurance policy review of some sort, and I think
21 we're kind of going outside of the realm when we
22 start talking about criminal court and all that.

23 THE COURT: I think he can testify as
24 to the general differences between criminal and
25 civil court so I'll overrule the objection, but he

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1 was tendered as an expert in civil litigation.

2 MR. KENT: Very generic question, Your
3 Honor.

4 THE COURT: Yes, sir.

5 BY MR. KENT:

6 Q Mr. McLaughlin, you were ---

7 A Well, and so, like, you run a red
8 light and you run into somebody. Technically
9 speaking, that's a criminal act and you could be
10 charged criminally with that and then there would
11 be a certain level of proof that whoever is
12 prosecuting had to prove for you to be found
13 guilty of that crime versus you could still be,
14 yeah, I ran the red light, I'm sorry, it was an
15 accident, I made a mistake, you know, I didn't
16 catch it, phone rang, or whatever. And, you know,
17 a lot of those things would be the same proving
18 them, right, that you ran the red light but.
19 Civilly speaking, that's just negligence, you
20 know. It's just, we can be held accountable in
21 civil court for simply making a mistake. You
22 know, regular folks can do that. That's what
23 negligence is.

24 Q And now let's talk about that.

25 Regular folks can be held for making a mistake.

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1 How do we hold regular folks accountable for
2 making mistakes with insurance policies? Is that
3 through money?

4 A Well, I mean, you hold them
5 accountable by making a claim against them and
6 either that claim gets resolved and, if so, that's
7 great; if not, you wind up filing a lawsuit and
8 potentially one day sitting in a courtroom like
9 this and asking jurors to decide.

10 Q So generically speaking, when someone
11 was in an accident, in the civil arena, you
12 mentioned they file a claim. Explain that to me.

13 A I mean, the first step is gonna be
14 that you're gonna -- you may do it on your own,
15 but you may hire a lawyer and at some point
16 there's gonna be a communication either by you or
17 someone on your behalf like a lawyer with an
18 insurance company. Hey, John Doe, you guys have a
19 policy of insurance on John Doe's car, John Doe
20 ran the red light, hit me, I had to go to the
21 hospital, I got hurt, I need to be compensated for
22 what I went through when John Doe ran the red
23 light.

24 Q And tell me about insurance amounts,
25 the amount of money on insurance policies.

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1 A Well, here in South Carolina
2 there's -- we have mandatory minimums. If any of
3 y'all have cars and y'all drive, y'all know you
4 got to have insurance and in South Carolina you
5 have to have -- the mandatory minimum limits are
6 25/50/25. 25,000 in bodily injury coverage per
7 person, 50,000 per occurrence. So that means if
8 you had five people in the car and they were all
9 hurt, the most that they're gonna pay out for
10 bodily injury is going to be 50,000. And then you
11 also have to have 25,000 in property damage.

12 Q So a person gets involved in an
13 accident, they file a claim, and then they check
14 the amount of insurance. Am I following what your
15 testifying is?

16 A Sure.

17 Q And then is that when we look at the
18 policy and determine the amount of insurance or
19 any exclusions?

20 A Well, you know, the first thing you're
21 at you're allowed -- if a lawyer gets the case,
22 you, you get a copy of your accident report. You
23 do a little affidavit and you send it in to John
24 Doe's insurance company, and they've got to give
25 you what's called the Dec sheet, the declarations

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1 page. They've got to tell you how much insurance
2 there is, and that's the first step. And
3 depending on how much coverage there is and how
4 much you think the claim is worth, you may
5 immediately -- let's say that the person only had
6 the mandatory minimum limits, right, and there was
7 only one person there, and so they've got the
8 25/50/25 policy. And let's say the person who's
9 making the claim, say they're represented by a
10 lawyer. Say I'm representing them and is Jane
11 Smith. Well, I know Ms. Smith was in the hospital
12 for a week so I know her medical damages are
13 gonna, are gonna far exceed that mandatory minimum
14 limits, right? You stay in the hospital a week,
15 you're gonna have \$100,000 worth of treatment.
16 And so if I get that dec sheet back and I see it's
17 mandatory minimum limits, I'm immediately
18 demanding that they tender over those limits to
19 Ms. Smith immediately. And then I'm gonna go out
20 and try to see if I can find more coverage to be
21 able to get from Ms. Smith. I may not need their
22 policy at that point in time which is why I gave
23 that example because if the amount of money is so
24 little there and they know it -- let's say that
25 this is, State Farm is the carrier. State Farm

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1 knows that there's not a good liability argument,
2 they can't contest that their insurer was at
3 fault, they know that the damages are gonna far
4 exceed the coverage that's there, State Farm is
5 not going to argue over that. They're gonna
6 tender those limits right away, and I'm gonna move
7 on and I'm gonna look for some more coverage.

8 Let's say it's a case where maybe you
9 don't have that many, that much damages that you
10 can put up and you've got a lot of coverage out
11 there, then maybe it doesn't resolve that quickly.
12 Maybe you got to argue about it. Maybe you got a
13 lot of, lot of damages, and then you've got a lot
14 of coverage sitting there; and then at that point
15 in time the insurance company may want to try to
16 start saying, depending on what kind of accident
17 it was, what kind of incident it was, they may
18 start trying to argue with you about, well, we
19 don't really think you can get to this coverage.

20 Q And that's what's gonna be my next
21 question.

22 A And that's when you say, well, what's
23 your basis for that and they would say, well, our
24 policy excludes this, this, and this; and you're
25 gonna say, well, let me see the policy, I want to

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1 see your basis for that.

2 Q And so the insurance company, -- let
3 me follow. Accident happens, person visits
4 lawyer, determine the amount of insurance -- or
5 determine the amount of injuries, determine the
6 amount of the insurance. And sometimes you're
7 telling me the insurance company can say we're not
8 paying, we got coverage but we're not paying?

9 A Oh, yeah, sure.

10 Q And they'll send you a letter, like,
11 we're not paying. Does that go to the exclusions
12 we're talking about, this was an intentional act,
13 we're not gonna pay you?

14 A Oh, well, no. Sometimes they just
15 we're not gonna pay you.

16 Q Right. But following with the
17 intentional act provision, have you gotten letters
18 where they said we're just not gonna pay you for
19 exclusions in the policy?

20 A Yeah, sure. I've gotten those letters
21 before.

22 Q And then it's your job to look at the
23 policy and see what the exclusion is.

24 A Yeah.

25 Q Is that when y'all get to court and

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1 fight sometimes or?

2 A A lot of this stuff, it will drag out
3 over the course of a while; but usually you wind
4 up having arguments in where it's not juries
5 around. You're coming making legal arguments in
6 front of a judge and you're arguing over things;
7 and eventually kind of over the course of
8 preparing for trial, things get hashed out,
9 questions get answered to the point that you're
10 able to resolve it.

11 Q So let's say you work the case out.

12 A (No audible response.)

13 Q You nodded. Remember?

14 A I'm sorry. Yes.

15 Q You've worked the case out. The case
16 is determined. What do you do with the client
17 now? Do you have him sign anything?

18 A So you resolve a case, or a case like
19 that, there's gonna be settlement paperwork that
20 has to be done. In personal injury type cases
21 where you're pursuing automobile insurance,
22 generally there's -- very generally speaking,
23 there's two types of documents you execute. One
24 document, type of document we'll call a release.
25 What that document is, is it's saying, you know,

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1 we had our lady Jane Smith who was hit by John Doe
2 that ran the red light. It's just a very --
3 usually they'll be very basic documents where it
4 says Jane Smith is releasing any and all claims
5 she's got against John Doe. That's one type of
6 document.

7 The other type of document, which
8 we'll just call covenants, are they're doing some
9 -- they accomplish somewhat the same thing, but
10 they do it in a different way and there's a very
11 important reason why they do that. A release says
12 I'm releasing all my claims against John Doe. A
13 covenant says I'm not saying that I won't sue John
14 Doe, that I won't go in front of a jury and try to
15 get an award against John Doe, but what I'm saying
16 is, John Doe, I have resolved my issues with John
17 Doe, my financial issues with John Doe but I may
18 still have to go and pursue John Doe and get an
19 award from a jury because there's other insurance
20 coverage out there other than John Doe's insurance
21 that I may need to have an award from a jury to go
22 collect.

23 Q And personal assets?

24 A And personal assets.

25 Q Just because their insurance doesn't

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1 stop you from suing somebody for their house or
2 anything they have. You guys do asset search?

3 A That's right. I mean ---

4 Q What's an asset?

5 A Well, if you don't think that there's
6 gonna be enough coverage there on somebody, before
7 you were -- would ever resolve a claim, you're
8 gonna do an asset search on that person because
9 maybe they've only got the minimum limits on the
10 car, but maybe they've got assets that you can go
11 after. And if you've got somebody that's -- that
12 where the minimum coverage isn't gonna fully
13 compensate them and you got a good strong case,
14 you're duty bound as a lawyer to go after as much
15 as you can for that person.

16 Q Now correct me if I'm wrong, from your
17 testimony you're duty bound to go after if the
18 insurance doesn't cover the amount of their
19 injuries and bills?

20 A If you, if you can identify that
21 things that you think you can collect against
22 which it's -- can be difficult. You know, 'cause
23 most folks don't have a lot like that, but some
24 may.

25 Q And that's a difference between a

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1 release and a covenant?

2 A Sure, yeah.

3 Q A release releases all claims?

4 MS. MCELVEEN: Objection, Your Honor
5 leading. If you can just ask the witness to
6 testify.

7 BY MR. KENT:

8 Q What does a release do? What does a
9 release do?

10 A A release says we're done, I'm not
11 pursuing anything else. A covenant allows you
12 to -- and without trying to get too far in the
13 weeds, primarily this is done for what's called
14 underinsured motorist coverage, okay. That's --
15 we refer to that in the law as UIM, underinsured
16 motorist coverage. There's another type of
17 insurance that's somewhat similar and that's
18 uninsured motorist coverage. We refer to that as
19 UM, okay. By law, when you've got to have that
20 25/50/25 policy, that's for liability; but you
21 also have to by law, that same company that sells
22 you that coverage also has to give you UM, the
23 uninsured motorist coverage in that same amount,
24 okay. So you're all -- what that is for is that
25 the state of South Carolina thinks it's a good

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1 public policy that if somebody is hurt in a wreck
2 that there's gonna be some insurance coverage
3 there to try to make that person whole. Either
4 it's gonna be the liability insurance from the
5 person that hurt him or it's gonna be that -- the
6 person who got hurts own UM coverage, uninsured
7 motorist coverage. You do not have to have UIM by
8 law; but when you purchase your insurance,
9 whatever agency you purchase that from has to make
10 you -- the term of art is -- "a meaningful offer"
11 of UIM. And kind of what the case law has
12 determined that is, is whatever you buy in
13 liability coverage, say you get \$100,000 in
14 liability coverage from Allstate, Allstate's got
15 to offer to give you UIM coverage in that amount.
16 You ain't got to accept it, but they've at least
17 got to offer it to you. And where covenants most
18 often come into play, Jane Smith got hit when John
19 Doe ran that red light. John Doe only had 25, the
20 minimum limits when he ran the red light. Jane
21 Smith has got \$200,000 worth of medical bills,
22 another \$50,000 worth of lost wages, right? She's
23 gonna -- John Doe doesn't have anything you can go
24 after. The insurance money is going to be your
25 only realistic shot of getting any kind of

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1 compensation for Jane from John Doe. So you're
2 gonna take that 25 in liability coverage. You're
3 gonna take it on a covenant so that you can then
4 turn around, and you still have to sue John Doe;
5 but with reality, you're not -- who you're really
6 suing is Jane's own insurance company because
7 Jane's got \$100,000 in UIM coverage. And you're
8 gonna go after Jane's own coverage to try to make
9 Jane whole for what happened because there wasn't
10 enough there to make her whole from John Doe.

11 Q Patrick, in the course of your
12 practice have you found when individuals sign
13 releases, or covenants, and there's not enough
14 money there to cover their bills they get upset?

15 A Yes.

16 Q Explain that.

17 A You can imagine if, if you got a
18 minimum limits policy, so there's only 25,000, you
19 usually to go to each person in a wreck and only
20 fifty total. If those people were hurt at all,
21 they're gonna have a lot -- the medical bills are
22 almost, would almost eat up any recovery they've
23 got. If they've hired a lawyer, the lawyer is
24 gonna take a piece of it. It's pretty standard
25 now for personal injury lawyers to take -- my

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1 contract for years has been 1/3 pre-suit and 40
2 percent if I have to sue it, and I warn everybody
3 the day they sign up with me that you need to
4 assume we're suing this because I don't think you
5 can -- I don't think you can get good value in the
6 majority of cases unless you're willing to pursue
7 it in court. So that's 40 percent that's gonna
8 come out to go to the lawyer off the top and
9 whatever the lawyer's costs are. And then
10 whatever is left, that may not necessarily all go
11 to the person who is hurt either. If you've got
12 health insurance through your job, you got Blue
13 Cross Blue Shield, that's a contract you've got
14 with Blue Cross Blue Shield. None of us want to
15 lose our health insurance and we don't want to
16 violate our contract with our health insurance
17 company, so part of that contract is that Blue
18 Cross Blue Shield has a right to be reimbursed for
19 anything they paid out to pay for your medical
20 treatment. So you -- that person is gonna have to
21 negotiate the Blue Cross Blue Shield lien down.
22 If they get Medicaid or Medicare, by law the
23 lawyer's gonna have to make sure Medicaid and
24 Medicare gets made whole. So, you know, if
25 there's very little in insurance coverage it's

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1 gonna be, it's gonna be very upsetting to a client
2 when you break it all down and show them the
3 money.

4 (Ms. McElveen and Mr. Kent confer.)

5 MR. KENT: If you want to make the
6 objection, go ahead.

7 MS. MCELVEEN: Your Honor, may we
8 approach.

9 (WHEREUPON, counsel approached the
10 bench for an off-the-record discussion.)

11 BY MR. KENT:

12 Q Patrick, I was asking the question
13 about conversations with individuals when there's
14 just not enough insurance, and I want to get
15 specifically to it. That's a difficult
16 conversation for a lawyer?

17 A Yeah, because it's -- they're kind of
18 left high and dry.

19 Q Have you had opportunities where the
20 clients get mad at you when there's not enough
21 insurance?

22 A Well, I don't -- I think I'm lucky
23 enough to where I, I try to -- my motto in dealing
24 with folks is to under promise and over perform. I
25 don't want anybody -- I want to avoid people being

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1 upset by the time we resolve their case so I try
2 to be very frank and candid with them going in
3 about what is possible, what we may be able to
4 recover. So I'd like to think that I have managed
5 to avoid that a lot, but do I wind up with
6 situations where people are very upset because
7 they're ain't enough insurance for what they went
8 through, yes.

9 Q And that's why you advise them to do
10 covenants and not releases?

11 A Yes.

12 Q Because when it's a release what does
13 that mean again?

14 A Well, I mean, even if I don't kn--
15 there are times where even if I haven't been able
16 to find any other coverage to go get and there's
17 such a huge gap between what they got and what the
18 case is really worth, I'm gonna -- just as a
19 matter of course I'm not gonna let them do a
20 release because I, I may find some. I may find
21 some coverage later on so I'm not gonna let them
22 waive, waive all their claims if there's any
23 possibility that I can potentially get them
24 something else.

25 Q Patrick, in the law of South Carolina

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1 do you know, are you familiar with any law that
2 says if it's an intentional act it will only pay
3 \$25,000 in insurance?

4 A No.

5 Q Is there -- so in your expert opinion
6 that law does not exist?

7 A There's -- I think the case law has
8 been pretty firm since well before I started
9 practicing that the conduct of the insured doesn't
10 govern the ability of the person who was harmed to
11 collect.

12 Q So is it a safe assumption to say if
13 the insurance policy pays, there are no
14 exclusions?

15 A Yes.

16 Q No matter what the amount is, if they
17 pay there are no exclusions?

18 A Tell you this, if an insurance company
19 pays me money, I'm going to demand that they pay
20 me as much as I can poss-- as much as I think I'm
21 entitled to out of it. It's either all or -- it's
22 binary. Either you got -- either you're paying
23 the coverage or you're not. If you don't want to
24 pay the coverage, that's fine, we'll have that
25 fight; but if you're paying the coverage, you pay

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1 it. Now there are situations where maybe there is
2 a legitimate question of whether or not -- what
3 the total amount of coverage should be; but if
4 there is, every lawyer I know is going to say, all
5 right ---

6 MS. MCELVEEN: Objection, Your Honor.
7 He's now speaking for all other lawyers that he
8 knows.

9 MR. KENT: Your Honor, that's an
10 opinion. He's entitled to give opinion testimony,
11 and he can rely on the hearsay pursuant to State
12 versus Hutto.

13 MS. MCELVEEN: Can't hear anything
14 about what other lawyers would say if giving an
15 opinion?

16 THE COURT: He can give opinion as to
17 a general standard of practice so the objection is
18 overruled.

19 THE WITNESS: What you would do in
20 that situation, what I have done in that
21 situation, what I know colleagues have done in
22 that situation, is you say, okay, I say that
23 there's X amount of coverage available. You say
24 that there's Y amount of coverage available and Y
25 is way less than X, fine, pay me Y now, let's file

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1 a DJ action and let's let a court decide, look at
2 that insurance policy and decide how much coverage
3 there is.

4 BY MR. KENT:

5 Q Patrick, in your preparation for
6 testifying today, did I ask you to review some
7 documents?

8 A You did.

9 Q What documents did you review?

10 A I reviewed a policy, commercial auto
11 policy. I reviewed a -- two releases, one signed
12 by Mr. Brown, one signed by Mr. Goodson [sic] I
13 believe.

14 Q In reviewing those three documents,
15 did they all comport with information that you
16 have testified to today?

17 A No.

18 Q And what is the difference?

19 A The policy that I reviewed, there
20 is -- that policy provides coverage, clearly
21 provides coverage for \$300,000 based off of the
22 facts as I understand them. The -- there's an
23 argument, potentially it could -- you could argue
24 that it would provide up to 900,000 in coverage.
25 Now the insurance company would argue with you

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1 about that, but there's an argument for it; but
2 it's clear that there was at least 300,000.

3 Q And the policy that you reviewed were
4 there any intentional act exclusions?

5 A Yes.

6 Q I'm showing you what's been marked and
7 placed in evidence as Defense Exhibit No. 1 and
8 No. 2. Are those both of the releases that I had
9 you review and look at?

10 A They are.

11 Q Were they both signed?

12 A It appears so.

13 Q Is there anything through your review
14 as an expert, is anything in that policy -- and
15 I'm not asking, I'm just asking about the body of
16 the policy, that mentions intentional act or any
17 type of exclusion?

18 A No.

19 Q In either of those?

20 A No.

21 Q And those are -- and I forgot to ask
22 you. What type of documents are those? Are those
23 the releases we talked about that release
24 everything, or covenants?

25 A These are releases.

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1 Q So based upon your expert opinion, the
2 individuals in those releases did not get as much
3 money pursuant to the policies they were entitled
4 to?

5 A I certainly do not believe they did.

6 MR. KENT: Beg the Court's indulgence
7 for one moment, Your Honor.

8 THE COURT: Yes, sir.

9 BY MR. KENT:

10 Q And Patrick, I want to make sure I'm
11 clear. The policy that you reviewed only covers
12 for accidents?

13 A Yes.

14 Q And that would be the policy that was
15 referenced and mentioned for those two releases?

16 A Yes.

17 MR. KENT: Beg the Court's indulgence
18 one moment, Your Honor.

19 THE COURT: Yes, sir.

20 BY MR. KENT:

21 Q Mr. McLaughlin, thank you. That's all
22 the questions I have. Please answer any questions
23 that the State of South Carolina may have for you,
24 sir.

25 THE COURT: Ms. McElveen,

1 cross-examination.

2 **C R O S S - E X A M I N A T I O N**

3 BY MS. MCELVEEN:

4 Q Good afternoon, Mr. McLaughlin.

5 A Good afternoon.

6 Q I was wondering, did you represent Mr.
7 Goden or Mr. Trenton Brown in their civil
8 settlements?

9 A I did not.

10 Q Were you party to when their lawyer, I
11 think they testified George Sink gave them legal
12 advice?

13 A No, ma'am.

14 Q So you have no idea what George Sink
15 told these victims on their recovery amounts,
16 right?

17 A No, ma'am.

18 Q You've been in practice, I guess, 16
19 years, and would you agree with me that sometimes
20 the quality of a lawyer can vary across our
21 profession?

22 A Very much so.

23 Q And what do you mean by very much so?

24 A Like any profession you have really,
25 really good lawyers and you have okay lawyers and

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1 you have some that aren't so okay.

2 Q And I'm not asking specifically,
3 professionally about any specific lawyer, but have
4 you seen lawyers give bad legal advice?

5 A Unfortunately, yes.

6 Q And do we not, do we not have many
7 cases we can read probably monthly where lawyers
8 are punished for that or they could be punished
9 for bad legal advice?

10 A I would probably argue we don't have
11 enough.

12 Q So oftentimes they are not punished,
13 right, for bad legal advice?

14 A I'm afraid that's the case.

15 Q And so you don't know what George Sink
16 told Mr. Brown or Mr. Goden about how much they
17 could recover, right?

18 A No, ma'am.

19 Q And you looked at these releases that
20 Mr. Kent has showed you, correct?

21 A Yes, ma'am.

22 Q And you didn't talk to George Sink
23 about what he told them?

24 A No, ma'am.

25 Q And those documents, if you can look

1 at the bottom I think, can you tell me what the
2 bottom of the page says? The very last, the very
3 bottom.

4 THE COURT: Which document is that for
5 the record?

6 MS. MCELVEEN: I'm sorry, Defense
7 Exhibits No. 1 and 2.

8 BY MS. MCELVEEN:

9 Q It's says the exact same thing at the
10 very margin of the page.

11 A At the margin of the page?

12 Q The very bottom. Not margin, sorry.
13 The very bottom, the footnote area, page --

14 A I mean, I -- I'm sorry. Would you
15 mind pointing to me exactly what you want me ---

16 Q It's on page 1 of 2 ---

17 A Oh, yeah, yeah, I'm sorry. Yes, it
18 does. It does.

19 Q Did you see page 2?

20 A No, ma'am. But I can tell you that I
21 don't know what else would be on a second page
22 because if so, it maybe it would only be a notary
23 or maybe it would -- sometimes insurance companies
24 will send something where they ask, like, the
25 lawyer to sign which I ---

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1 Q You don't know what is on page 2?

2 A I don't know that. But as far as the
3 terms, in my experience the terms of the release
4 are all right here what we see because it's on the
5 document that he signed. If there are any
6 material conditions or terms other than something
7 kind of just like procedural, it would have been
8 on the page that they signed I believe. So I
9 don't know what 1 or 2 would be. I can tell you
10 this, a lot of time sometimes 2 is just a blank
11 page so. Sometimes ---

12 Q There is no page 2?

13 A Sometimes it would be, it could
14 potentially be a thing that the lawyer signs where
15 they say that they've reviewed this with the
16 person or something like that; but I don't think
17 there would be any material terms to the actual
18 release followed on a page after the person who is
19 doing the releasing signature. Does that make
20 sense?

21 Q Yes, it does.

22 A Okay.

23 Q But you're not in the George Sink
24 practice. You don't know what their form says on
25 page 2 of 2?.

1 A No, ma'am, I am not.

2 Q Okay. Do all -- you explained at
3 great length that there are two separate courts
4 between civil and criminal, correct?

5 A Yes, ma'am.

6 Q Does a civil settlement mean that
7 there's not a criminal action? I mean ---

8 A No.

9 Q There can be both, right?

10 A Yeah, absolutely.

11 Q And if a drunk driver hits and kills
12 someone, you're not saying that a person can't be
13 prosecuted for the felony DUI just because his
14 insurance company pays a claim, right?

15 A Oh, absolutely not.

16 Q An insurance payout has no impact on a
17 civil -- on a criminal case, correct?

18 A I would not say -- I would agree with
19 you strictly legally speaking. As a practice,
20 practical matter, I would disagree that I think
21 there's often interplay between the two. As
22 someone who has been on both sides of that type of
23 situation, meaning I've represented someone
24 accused of DUI while there's been a civil claim
25 made against them and I have represented somebody

DW - P. MCLAUGHLIN - CROSS

1 making a civil claim against somebody who has
2 been, who has been accused of DUI, I have to say
3 practically speaking, there is often a little bit
4 of intertwining because I have in defending people
5 worked with the plaintiffs lawyers before to try
6 to help them to the extent I can get the full
7 amount of recovery they can for their people in
8 the hopes that that will take a little bit of, for
9 lack of a better phrase, the vinegar if you will,
10 out of the victim so that if I'm able to
11 potentially reach a resolution with the State, the
12 victim would be a little bit more willing to
13 accept it because the person who had done that to
14 him had tried very hard to help them get as much
15 recovery as they could. And I've been on both
16 sides of that so I'd say practically speaking
17 there's a little bit of intertwining; but legally
18 speaking, no, one doesn't have anything to do with
19 the other.

20 Q Let's speak legally here.

21 A Okay.

22 Q There's no intertwining, correct?

23 A The---

24 Q There should be no intertwining?

25 A Yes.

1 Q And you -- again, you don't -- you're
2 not -- you were not party to what George Sink told
3 Mr. Brown or Mr. Goden?

4 A Never spoke to George Sink before in
5 my life.

6 Q So you don't know what he said to
7 them?

8 A No, ma'am.

9 Q Do you know how much George Sink
10 understands the law and the recovery amounts in
11 cases?

12 A I do not know other than what I've
13 seen on these documents, and I have concerns.

14 Q But that's not Mr. Goden or
15 Mr. Brown's fault, right? That's not their fault
16 that they are given bad legal advice; is that
17 correct?

18 A I feel -- as a lawyer who does this, I
19 was -- I felt very badly for both of those
20 gentlemen.

21 Q So you're not suggesting that we
22 punish these victims who were injured at a scene a
23 second time by saying that they're --

24 MR. KENT: Objection, Your Honor.

25 MS. MCELVEEN: --- they had bad legal

DW - P. MCLAUGHLIN - CROSS

1 advice, ---

2 MR. KENT: Objection, Your Honor.

3 MS. MCELVEEN: --- correct?

4 MR. KENT: Objection, Your Honor.

5 THE COURT: What's the nature of your
6 objection?

7 MR. KENT: Also asking for an ultimate
8 conclusion.

9 THE COURT: Rephrase your question,
10 Ms. McElveen.

11 MS. MCELVEEN: Yes, sir.

12 BY MS. MCELVEEN:

13 Q These victims in our criminal case,
14 could they be victims as well on the civil side?

15 A Oh, yes.

16 Q In your opinion are they victims on
17 the civil side?

18 A I think that they -- I ---

19 MR. KENT: Your Honor, misstatement of
20 the law, calls in crazy speculation. Your Honor,
21 there's a lot of objections.

22 THE COURT: We'll, he's an expert. He
23 can, he can answer that question.

24 MR. KENT: Yeah, he is an expert,
25 isn't he.

1 THE WITNESS: As I said, I have
2 Concerns with their settlement and I would -- I
3 would recommend that those gentlemen perhaps look
4 at those concerns going forward.

5 BY MS. MCELVEEN:

6 Q Thank you very much. And you said you
7 are a dear friend of Shaun Kent I think is the
8 word he used.

9 A I don't know if he used it, but I
10 would say that we are very close, and I consider
11 him a dear friend, yes.

12 Q And you're getting paid for this
13 testimony at an hourly rate?

14 A Yes, ma'am, because while I love my
15 dear friends, I also like money.

16 Q And what is your hourly rate?

17 A 500 an hour.

18 Q Thank you very much. I have no
19 further questions.

20 THE COURT: Redirect.

21 MR. KENT: Briefly, Your Honor.

22 **REDIRECT EXAMINATION**

23 BY MR. KENT:

24 Q I'm glad your wife's gonna know that
25 you get 500 an hour for this. Just very briefly.

DW - P. MCLAUGHLIN - REDIRECT

1 Ms. McElveen, the State of South Carolina brought
2 up felony DUIs as her example. It's a very
3 interesting example, agree? Felony DUI is --
4 aren't intentional acts. They're basically gross
5 negligence. Would you agree with me there?

6 A Yeah.

7 Q There's a difference in an intentional
8 act and a felony DUI?

9 A I believe so.

10 Q And a lot of times in policies the
11 settlement sometimes we talk about settling on
12 covenants and going to see people personally for
13 their personal assets, especially for felony DUI?

14 A Yes.

15 Q Because a lot of policies have
16 exclusions?

17 A Yeah, I -- I'd be -- I'd like to see
18 the insurance company that tried to argue that
19 they can somehow get a pay-in -- get out of paying
20 coverage over a felony DUI. I don't think that
21 argument would go very far.

22 Q But there are DUI exclusions and
23 alcohol exclusions in policies?

24 A Yeah, and ---

25 Q And we fight them?

1 A Yes, I think pretty successfully.

2 Q But you would agree with me her
3 example is drastically different than the example
4 of the case we're doing today?

5 A I think it's different, yeah.

6 Q Thank you so much. That's all the
7 questions I have.

8 MS. MCELVEEN: No further questions,
9 Your Honor.

10 MR. KENT: Your Honor, I ask that this
11 witness be excused from his subpoena and stop
12 billing me.

13 MS. MCELVEEN: Your Honor, the State
14 does not object.

15 THE COURT: I figured you might.

16 Mr. McLaughlin, thank you for being
17 here. You are free to go.

18 THE WITNESS: Thank you, Your Honor.

19 THE COURT: All right. Ladies and
20 gentlemen of the jury, we have reached -- well,
21 Mr. Kent.

22 MR. KENT: Your Honor, at this point
23 in time after the case that we just put on and
24 after discussion with Mr. Hill and Mr. McMillan,
25 the Defense would rest at this point in time.

1 THE COURT: All right, ladies and
2 gentlemen.

3 Thank you, Mr. Kent.

4 Ladies and gentlemen of the jury, it
5 is a good time for us to take a lunch recess in
6 this case so I'm going to excuse you to go to
7 lunch and ask that you be back in the courtroom at
8 2 p.m. We will resume the proceedings at that
9 time. Please leave your notes in your chair. Do
10 not discuss the case amongst yourself. Do not
11 begin your deliberations. Do not seek to do any
12 research while you're on your lunch break by any
13 means whatsoever. Have a good lunch and we will
14 see you at 2:00.

15 (WHEREUPON, the jury was removed from
16 the courtroom at 12:25 p.m.)

17 THE COURT: Ladies and gentlemen,
18 before we go any further I do need to clear
19 something up in my prior ruling with regard to the
20 expert witness testimony. I kind of blended the
21 issue of relevance and the issue of the
22 qualification of the expert witness in my ruling.
23 I want to be clear that under Rule 702 I make a
24 finding that scientific, technical, and other
25 specialized knowledge will assist trier of fact to

1 allow the State to re-call Mr. Goden and/or
2 Mr. Brown based upon issues raised in
3 cross-examination and issues raised in the
4 defense. I think the rule is pretty clear that
5 it's allowed in within the court's discretion, and
6 I'll allow the rebuttal testimony so.

7 Folks, they're coming back at 2. Just
8 in terms of timing, and it doesn't make any
9 difference to me, do y'all want to submit this
10 case to the jury this afternoon or what's ---

11 MR. KENT: It would be our preference
12 that she puts on her case, we have the charge
13 conference now, and we go right into closings and
14 get the jury case to the jury.

15 THE COURT: Okay. I just -- I mean,
16 that's fine with me. I just wanted to give
17 everybody a say. So are y'all ready to discuss
18 jury charges at this time or?

19 MR. KENT: Can we take a little break,
20 then maybe we can discuss in chambers possibly or?

21 THE COURT: That's fine.

22 MR. KENT: And then that way
23 everybody -- they can go and have lunch so they're
24 not sitting around.

25 THE COURT: That's fine. If y'all

1 want to take a few minutes and then come
2 downstairs.

3 MR. KENT: If that's okay with Your
4 Honor.

5 THE COURT: It's fine with me.

6 MR. KENT: Okay. And Ms. McElveen.
7 I'm sorry, I don't want to speak ---

8 MS. MCELVEEN: That's fine. I'm
9 hungry, but I can make it through.

10 THE COURT: Y'all will have at least
11 an hour for lunch because, like I said, I've got
12 that meeting at one so.

13 MS. MCELVEEN: That will be fine, Your
14 Honor, I'm just joking.

15 THE COURT: Y'all just come
16 downstairs. I'm in -- to my chambers, and we'll
17 discuss charges.

18 (Whereupon, a lunch break was taken.)

19 THE COURT: Folks, are there any
20 matters we need to take up before the jury comes
21 in?

22 MR. MARVIN MCMILLAN: Judge, we spoke
23 during charge conference of some possible
24 considerations on lesser included. We only had a
25 moment to do that based on it so we just still

1 need to discuss that with our client is what I'd
2 like.

3 THE COURT: I would suggest let's do
4 that before we bring the jury in. That way we can
5 at least move fairly seamlessly into remainder of
6 the day.

7 MR. MARVIN MCMILLAN: And I know
8 you'll probably give us time after argue and
9 charge on a housekeeping, we've got two tapes that
10 need to be redacted. We want to just make sure
11 nobody forgets that. The 911 tape has been
12 redacted. I would like to simply -- it's very
13 short. If I could hear it, make sure nothing
14 intentional, but begins and ends at the right
15 place. And then the Officer Rutan tape that began
16 at approximately 2 minutes run time and ended at
17 16, I'm not sure if that's been condensed down for
18 the jury. That was operated. ---

19 MS. MCELVEEN: Your Honor, I would
20 suggest if they want to view those, if they'd come
21 out, we control the start times of both of the
22 those. I wouldn't -- they're not cut in evidence
23 so we should not send them back to them so they
24 can just play at their liking.

25 MR. MARVIN MCMILLAN: Well, I'm fine,

1 but stills need to be exhibit for trial.

2 THE COURT: Well, it's -- I think
3 they've been -- the whole tapes or the whole disks
4 have been marked and admitted. And if they
5 requested to re-hear a portion, I believe we'd
6 have to bring them in the courtroom.

7 MR. MARVIN MCMILLAN: And I'm fine
8 with that.

9 THE COURT: We won't send them back
10 the mechanism to ---

11 MR. MARVIN MCMILLAN: Sure.

12 THE COURT: --- to hear any
13 inadmissible testimony or any unusual evidence.

14 MR. MARVIN MCMILLAN: And on the
15 earlier, could we have a conference room with our
16 client for a few moments, with my client for a few
17 moments on the lesser included. This is very
18 awkward, as you know.

19 THE COURT: Right, I understand that.
20 Can we have Mr. Hill taken to the attorney
21 conference room so they can speak.

22 MR. KENT: Thank you, Judge.

23 (Pause.)

24 MR. MARVIN MCMILLAN: Judge.

25 THE COURT: Yes, sir.

1 MR. MARVIN MCMILLAN: I was under the
2 impression we were going to get with him face to
3 face in one of these conference rooms here.

4 THE COURT: I don't know if the
5 security will allow that.

6 MR. MARVIN MCMILLAN: May not.
7 They've got him over there. We can't get in and
8 ---

9 MS. MCELVEEN: I can get him in, Your
10 Honor.

11 THE COURT: I don't think I can
12 deviate from the security plan. I think those
13 attorney conference rooms are there to comply with
14 what the sheriff wants.

15 MR. MARVIN MCMILLAN: We got it.

16 (Pause.)

17 THE COURT: All right. While the jury
18 is out of the room -- I know this could change
19 based upon what reply testimony may show but; just
20 for the record, the defendant is requesting lesser
21 included offenses of attempted murder to include
22 ABHAN and assault and battery in the first degree.
23 Is that correct?

24 MR. MARVIN MCMILLAN: That's assault
25 and battery second as well. Assault and battery

1 second as well, Your Honor. No, Trenton Brown is
2 assault and battery second. We've had that
3 discussion.

4 THE COURT: Right.

5 MR. MARVIN MCMILLAN: You understand
6 it. But Mr. Roger Goden, assault and battery
7 second as well.

8 THE COURT: And Ms. McElveen, let me
9 hear from the State.

10 MS. MCELVEEN: Yes, Your Honor. Beg
11 the Court's indulgence. Your Honor, as the State
12 presented to Your Honor in chambers, we were
13 requested -- we are requesting no lesser included
14 defenses. Defense counsel in his opening
15 statement said it was an intent question, whether
16 it was accidental or intentional. He said it's
17 not a question of whether it happened or who did
18 it, it's just the mental intent. Since he's
19 basically, he's claiming he's innocent of any
20 charge at all. Under State v. Drayton, 293 S.C.
21 417, the State -- the defendant is, did not need
22 to be charged with lesser included offense because
23 he was guilty of the greater offense and under his
24 version of the facts he was innocent of any
25 change. So under this version of facts, they're

1 claiming he's innocent of any charge because it
2 was an accident instead of intentional; and
3 therefore, the State is requesting that the
4 greater offense and no lesser included offense is
5 charged. Same in regards to the assault and
6 battery first degree in regards to Trenton Brown.

7 You can see another example where it
8 was not charged as a lesser included of A&B first
9 under State v. Williams, 427 S.C. 148. And we
10 are, again, Your Honor, since they're saying that
11 it was an accident so he's innocent of everything,
12 it's -- if he's -- if it's an accident and he's
13 innocent of everything, how can he be guilty of
14 assault and battery first degree or ABHAN or
15 second degree. It's all or nothing. They're
16 claiming all or nothing defense. They can't say,
17 oh, but now I want the lesser included.

18 THE COURT: What concerns me, Ms.
19 McElveen, is the portion in State v. Williams
20 which states the trial court is required to charge
21 a jury of lesser included offense if there is any
22 evidence from which it could be inferred that the
23 lesser rather than the greater offense was
24 committed. My concern in that regard is if the
25 jury says, nope, this wasn't an accident but I

1 don't believe he intended, specifically intended
2 to kill Roger Goden but I do believe he caused
3 injuries that rise to the level of assault and
4 battery high and aggravated, I think there could
5 be evidence that a jury could conclude that he's
6 guilty of the lesser, rather than the greater
7 offense. So I don't -- I don't know whether
8 denying to charge a lesser included offense would
9 be -- would require the Court to weigh the
10 evidence and make a determination that invades the
11 province of the jury. And then further, that case
12 also says an attorney whether evidence required a
13 charge on -- is required on a charge on a lesser
14 included offense, the Supreme Court will view the
15 facts in light most favorable to the defendant.

16 What -- now I understand the rationale
17 behind your argument and I'm just -- I'm
18 struggling with a case that essentially in my view
19 has a hold -- has a holding that requires me to
20 charge a lesser included if there's any evidence
21 that the jury could infer that the lesser rather
22 than the greater offense was committed on one
23 hand; and then on the other hand, kind of it's all
24 or nothing accident versus intent issue so.

25 MS. MCELVEEN: Your Honor, I guess if

1 they did not find the level of injury required
2 they would find him not guilty and that would be
3 the exclusion for that.

4 THE COURT: Right.

5 MS. MCELVEEN: And that's what, I
6 mean, they're saying it didn't happen, it
7 didn't -- it wasn't an accident. They didn't --
8 they're not claiming the injury level is
9 different, all that, that was not presented. But,
10 I mean, a jury could have the solution having a
11 not guilty on the as-charged offenses. That would
12 be the solution.

13 THE COURT: My reading of the State v.
14 Williams, I think those cases are obviously
15 decided based upon a specific set of facts which
16 is present in each. Drayton, the lesser included
17 offense analysis involved the original charge of
18 armed robbery versus the lesser included offense
19 of strong arm robbery. In that case the defendant
20 was alleged to rob another individual by using a
21 gun. The defense -- it says Drayton's statement
22 admits he had a weapon in his possession when he
23 went to the Kayo Station on the morning of
24 February 11th; however, the statement is clear at
25 no point did he remove the pistol from his pants

1 and threaten Ms. Smith with it or use the weapon
2 to obtain any money. Rather, according to
3 Drayton's version of the facts, Mr. Smith
4 voluntarily took money from the cash register and
5 gave it to him. Under the State's version of the
6 facts in the Drayton case Drayton was guilty of
7 armed robbery. Under Drayton's version he was
8 innocent of any robbery charge. I think the fact
9 that that issue was raised pursuant to the
10 defendant's own statement in that case is a
11 distinction that can be drawn to this case.

12 State v. Williams involved an
13 individual who was charged with shooting up a
14 mobile home, charged with multiple counts of
15 attempted murder, and the requested jury
16 instruction was for assault and battery in the
17 first degree. I just think these -- this factual
18 scenario is a little bit different from the
19 standpoint of the jury. It's gonna be the jury's
20 ultimate determination as to whether this was
21 intentional or an accident. And I think there is
22 evidence in the record because we're dealing with
23 degrees of injury, we're dealing with specific
24 intent crime versus a general intent crime,
25 assault and battery high and aggravated. And

1 especially in light of the law, since the trial
2 court is required to charge a jury on lesser
3 included offenses if there's any evidence from
4 which it can be inferred that the lesser rather
5 than the greater offense was committed.

6 As to the attempted murder charge, I'm
7 going to charge the lesser includeds of ABHAN and
8 assault and battery first. I don't think assault
9 and battery second based on what we've heard -- I
10 mean, and I'll be happy to hear arguments on that
11 issue; but I mean, that seems -- the level of
12 injury that has been undisputed in this case, Mr.
13 Goden described two surgeries he had to have,
14 required hospitalization. I don't think that
15 there's been any, any assertion that his injury
16 was anything less than great bodily injury. I'll
17 be happy to hear from Defense on that issue.

18 MR. MARVIN MCMILLAN: No, sir, I know
19 you've heard the evidence and the level. You
20 don't need me to sit here and tell you how I
21 interpreted what he said.

22 THE COURT: Okay. And far as ---

23 MR. MARVIN MCMILLAN: But as for
24 second on Mr. Trenton Brown, it's my understanding
25 you're going to charge that.

1 THE COURT: I believe that it's
2 warranted on that, on that evidence. My
3 recollection was he testified that he had a
4 concussion and also had some further injury to his
5 left side, which was the side his vehicle -- the
6 side of the vehicle that was struck by the
7 defendant's vehicle. I think the jury could
8 determine -- it's up to the jury to determine
9 whether that would rise to the level of great
10 bodily injury or moderate bodily injury. And
11 again, I mean, I -- the reason I'm making the
12 decision to charge lesser included is the
13 language the trial court is required to charge a
14 jury on lesser included offense if there's any
15 evidence from which it can be inferred the lesser
16 rather the greater offense was committed. We have
17 an assertion of -- we have an assertion that this
18 was an accident, but that doesn't come from any
19 witness' direct testimony. That's just a defense
20 that has been presented by the defendant's
21 lawyers. Mr. Hill obviously has not taken the
22 stand, so I think this case is distinguishable
23 from Drayton. And the language included in
24 Williams, I think it requires me if there's any
25 evidence of the lesser to submit it to the jury so

1 that's the reason for my ruling.

2 And so as to the attempted murder
3 ABHAN, A&B first, are lessers, A&B first as to
4 Trenton Brown, assault and battery in the second
5 would be a lesser. And then I believe it was all
6 consented to for the charge, the lesser included
7 of resisting arrest in addition to assaulting a
8 law enforcement officer while resisting arrest.

9 MR. MARVIN MCMILLAN: Yes, sir.

10 THE COURT: All right.

11 MR. MARVIN MCMILLAN: Thank you.

12 THE COURT: Are we ready for the jury?

13 MS. MCELVEEN: Yes, Your Honor.

14 THE COURT: Folks, do you think we're
15 going to get this case to the jury today knowing
16 it's 10 minutes to 3 and we've still got to argue
17 and charge and have them deliberate? It doesn't
18 matter to me. I just want us to all be on the
19 same sheet of music before we resume.

20 MR. KENT: I feel comfortable, Judge.
21 Just limit Ms. McElveen's closing argument to like
22 five or six minutes and I think we'll be fine.

23 MS. MCELVEEN: Your Honor, I certainly
24 don't have anything to hide. I can be very
25 upfront in my closing, but I don't know what the

1 timeline will look like, Your Honor. We certainly
2 don't want 5:00 justice to happen today, and I
3 think we all know that that is a risk.

4 MR. KENT: We'll defer to the Court's
5 decision. Whatever the Court asks us we'll go.
6 If you want to see where we are and let them put
7 on their witness, whatever the Court asks.

8 THE COURT: All right. Mr. Brown, if
9 you'd bring us the jury please.

10 MR. KENT: Judge, the only thing I
11 would ask is if we do close, I'd like the jury to
12 get the case, not close and then break and then
13 come back.

14 THE COURT: Yeah, I don't want to do
15 that either.

16 MR. KENT: Okay, thank you, sir.

17 MS. MCELVEEN: I agree.

18 (WHEREUPON, the jury was returned to
19 the courtroom at approximately 2:50 p.m., and the
20 following proceedings commenced in open court.)

21 THE COURT: Ms. McElveen, you may call
22 your first witness in reply.

23 MS. MCELVEEN: Yes, Your Honor. The
24 State would call Roger Goden.

25 THE CLERK: Raise your right hand,

SW - R. GODEN - REPLY

1 sir.

2 WHEREUPON,

3 ROGER GODEN,

4 having been duly sworn by the clerk, testified
5 as follows:

6 THE CLERK: Step around, sir. State
7 your full name and spell your last name for the
8 record please, sir.

9 THE WITNESS: Roger Goden, G-O-D-E-N.

10 D I R E C T E X A M I N A T I O N

11 BY MS. MCELVEEN:

12 Q Mr. Goden, thank you for coming back
13 to the stand. I'll be very brief.

14 A Yes, ma'am.

15 Q Are you a lawyer?

16 A No, ma'am.

17 Q Are you an expert in civil litigation
18 and insurance policy review?

19 A No, ma'am.

20 Q Did you hire George Sink?

21 A I did.

22 Q Did you trust your lawyer's advice?

23 A I did.

24 Q What impression were you given or what
25 idea -- what were you told in regards to an

SW - R. GODEN - REPLY

1 intentional act?

2 A They told me that an intentional act

3 ---

4 MR. KENT: Objection to hearsay. I
5 don't have the opportunity to cross-examine those
6 folks.

7 THE COURT: Well, Ms. McElveen, for
8 what purpose are you offering that testimony?

9 MS. MCELVEEN: The purpose is to --
10 beg the Court's indulgence. Was not offered to
11 prove the truth of the matter asserted, but --
12 well, it is, but hold on, Your Honor. Beg the
13 Court's indulgence. Your Honor, it is a prior
14 statement by a witness that's consistent with his
15 testimony if offered to rebut allegations of
16 recent provocation or improper motive, Your Honor.

17 THE COURT: Okay.

18 MS. MCELVEEN: Under South Carolina
19 Rules of 801(b).

20 MR. KENT: I don't think that
21 happened.

22 THE COURT: Well, y'all approach real
23 quick.

24 (WHEREUPON, counsel approached the
25 bench for an off-the-record discussion.)

SW - R. GODEN - REPLY

1 MS. MCELVEEN: Your Honor, if it
2 pleases the Court, we are offering that evidence
3 to show that the victim relied on his attorney's
4 advice and signed this document, not to the truth
5 of the matter asserted.

6 THE COURT: Not necessarily the truth
7 of the advice, but why he acted in the manner in
8 which he did.

9 MS. MCELVEEN: Exactly, Your Honor.

10 THE COURT: I will overrule Defense's
11 objection.

12 MS. MCELVEEN: Thank you, Your Honor.

13 BY MS. MCELVEEN:

14 Q So back to what I asked you, were you
15 told that an intentional act limited you to
16 \$25,000?

17 A Yes, ma'am. He even went into maybe
18 we could sue David Hill personally but; and he
19 made me pay him \$300 to see if David Hill had
20 anything to sue him for, you know. And, of
21 course, he came back with, no, he didn't. And so
22 I took it that it was -- that was the only way.

23 Q You assumed that was the only ---

24 A Yes, sir.

25 Q --- you could collect?

SW - R. GODEN - REPLY

1 A Yes, ma'am.

2 Q But the whole time you never -- did
3 you ever tell anybody at that office that it was
4 an accident or?

5 A No, ma'am.

6 Q Were you upfront about what really
7 happened in this?

8 A Yes, ma'am.

9 Q And have you told the truth today and
10 have you testified ---

11 MR. KENT: Objection, Your Honor.

12 THE WITNESS: Yes, ma'am.

13 THE COURT: Sustained. Don't bolster
14 your witness' testimony, Ms. McElveen.

15 MS. MCELVEEN: Yes, Your Honor.

16 BY MS. MCELVEEN:

17 Q Have you -- do you believe it's an
18 intentional act?

19 A Yes, ma'am.

20 Q Thank you.

21 MR. KENT: No questions, Your Honor.

22 THE COURT: Thank you, Mr. Goden. You
23 may step down.

24 Ms. McElveen.

25 MS. MCELVEEN: Nothing else, Your

1 Honor.

2 THE COURT: All right. Y'all approach
3 real quick.

4 (WHEREUPON, counsel approached the
5 bench for an off-the-record discussion.)

6 THE COURT: All right, ladies and
7 gentlemen. We have reached the point in this
8 trial where both sides have rested their
9 respective cases. It is now time for the
10 attorneys to make their closing arguments to you,
11 and closing arguments are exactly what they sound
12 like. In these closing arguments the lawyers
13 would get to argue to you their belief of what the
14 evidence shows. These are true arguments. I
15 remind you that what they say is not evidence, but
16 it is their impression of what the evidence shows
17 and any reasonable inferences that they would like
18 to suggest that you draw from the evidence.

19 The way we'll proceed is the State
20 will make their closing argument first, followed
21 by the Defense, and then the State will have the
22 opportunity for a brief rebuttal at the close of
23 the proceedings after the Defense has closing
24 argument. After the closing arguments of both
25 sides, then I will charge you as to the applicable

1 law of the case.

2 With that being said, Ms. McElveen,
3 you're recognized for your closing argument.

4 MS. MCELVEEN: Yes, Your Honor. If it
5 please the Court, I'm hoping to plug this in and
6 ---

7 THE COURT: Take your time getting it
8 set up.

9 (Pause.)

10 MS. MCELVEEN: Ladies and gentlemen,
11 thank you so much for your attention for these
12 last few days. As I said, your role is the most
13 important in this process. I started my case
14 telling you guys this is about a good Samaritan.
15 And in Luke Chapter 10 is where we learn about the
16 story of this good Samaritan. Oddly enough,
17 someone who is knowledgeable in the law asked
18 Jesus how they obtain heaven, how they obtain
19 lifetime, eternal life in heaven, and that's where
20 Jesus presents the idea that you're supposed to
21 learn through God with all your heart and soul and
22 strength and love your neighbor as yourself. And
23 when defining "neighbor," he tells the story of
24 the parable of the good Samaritan. And he
25 basically says is someone who helps somebody who

1 he doesn't know someone, someone in need; and
2 that, ladies and gentlemen, is what Roger Goden
3 did that day. You heard testimony that he helped
4 Jennifer Hill. He saw a need to intrude and
5 insure someone's safety and he did that. He
6 tapped on the car hood, approached from the other
7 side and that is when he started walking away.
8 David Hill takes the Durango, takes it unnaturally
9 around that gas pump pinning him between his car
10 and Mr. Trenton Brown's car. You heard about his
11 injuries. You heard that he felt like he had
12 10,000 angels there protecting him that day. You
13 know the truth, ladies and gentlemen. You heard
14 that truth. You heard eyewitnesses at the scene.
15 You heard them witness that truth as well.

16 He is charg-- Mr. David Hill is
17 charged with four different counts of: Attempted
18 murder is the first one. And it's my job to
19 present a little bit of the law to you. The judge
20 will also present the law and you'll get to hear
21 it a second time; but I have a duty to present the
22 law to you. Section 16-3-29, a person who with
23 intent to kill attempts to kill another person
24 with malice aforethought, either expressed or
25 implied, commits the offense of attempted murder.

1 They have to have the specific intent to kill that
2 other person, and we have to prove everything
3 beyond a reasonable doubt, not just any doubt, but
4 a reasonable one. And you, my friends, are the
5 reasonable people that we're asking to use your
6 common sense and make these determinations.

7 Second, Mr. Hill is charged with
8 assault and battery first degree in regards to
9 Trenton Brown who was sitting in his car when it
10 was T-boned and his -- the person he knows from
11 the neighborhood, Mr. Goden, was pinned against
12 it. A person commits the offense of assault and
13 battery in the first degree if he offers or
14 attempts to injure another person with the present
15 ability to do so and it's accomplished by a means
16 likely to produce death or great bodily injury.
17 And the statute actually defines great bodily
18 injury for you. They don't leave a lot to the
19 imagination. Substantial risk of death or which
20 causes serious permanent disfigurement or
21 protracted loss or impairment of the function of a
22 bodily member or organ.

23 He's also charged, friends, with two
24 counts of assaulting an officer engaged by serving
25 process. So it's unlawful for a person to

1 knowingly and willfully assault, beat, or wound a
2 law enforcement officer when the person is
3 resisting arrest being made by one who the person
4 knows or reasonably should know is a law
5 enforcement officer. And again, we have to prove
6 all of these beyond a reasonable doubt.

7 Going through each one of these
8 individually, on the assaulting an officer it's
9 knowingly and willfully so you have to act on your
10 own with your own knowledge, and intoxication is
11 not a defense to that knowledge. I can't say I
12 was too drunk. Knowingly and willfully assault,
13 beat, or wound. That could be in the form of
14 punches. It could be threats. It would be
15 present ability to carry those out. So any sort
16 of beating or wounding would count. A law
17 enforcement officer, they are officers in uniform
18 and clearly aware that they are law enforcement
19 officers while they're resisting arrest, while the
20 person is resisting arrest. And you saw the body
21 worn camera footage where Mr. Hill is caught at
22 the scene, and the State's position is that he is
23 actively resisting arrest.

24 The assault and battery first degree,
25 and in regards to Trenton Brown. He offers or

1 attempts to injure. So it doesn't have to mean
2 that the injury ended up being actual. It could
3 be that it could have happened, it could have
4 likely resulted in an injury. The fact that if
5 you feel he was lucky and did not get injured, the
6 fact they could have been injured is enough for
7 the statute. And it's with the present ability to
8 do so, and it's accomplished by a means likely to
9 produce death or great bodily injury. There's
10 that definition of great bodily injury.

11 Ladies and gentlemen, Trenton Brown
12 was T-boned. He was T-boned at -- and he was
13 pushed against his car. He had another man who
14 was pinned next to his car. The injury you saw,
15 his air bags were deployed, his window was broken.
16 His rearview mirror was, his side view mirror was
17 falling off. You heard testimony that he was
18 knocked unconscious, that he had a concussion, had
19 injuries to the left side; but what could have
20 happened is obviously worse and you can decide on
21 assault and battery first degree on what could
22 likely have happened if someone got T-boned by
23 another car.

24 Ladies and gentlemen, you have common
25 sense. You know what likely could have happened

1 if someone gets T-boned by a car. And finally,
2 ladies and gentlemen, as to the attempted murder
3 component, a person who with intent to kill
4 another person with malice aforethought, express
5 or implied, is guilty of attempted murder. So
6 they have to have the intent to kill somebody.
7 Ladies and gentlemen, they have to have that
8 specific intent to kill somebody. Intent can be
9 determined by looking at the entire set of
10 circumstances and they have to have malice. And a
11 lot of the facts in this case show the intent and
12 the malice together, the same time. You can
13 see -- you can infer malice from the fact that
14 this defendant had to get the car in gear, he had
15 to push down the gas, and he had to turn the car
16 at a unnatural state, he had to turn it quickly to
17 try to follow Mr. Goden. He also accelerated; we
18 saw the skid marks. And we heard his words, the
19 expressed malice he stated: "Oh, MF'r, you want
20 some too, N." That, expressed malice. He said
21 what he was thinking and intended to do. "Oh, you
22 want some too." And we have to prove that he had
23 that thought beforehand, before doing the act; and
24 again, yelling out the car saying it right before
25 impact shows that premeditation, that desire to

1 think about it in advance and make an active
2 decision to try to kill somebody. Again, we don't
3 have to prove that he did kill them or we'd be
4 here for murder. It's that it could have resulted
5 in that, in a murder, and it could have resulted
6 in death. It's not the fact that Mr. Goden had
7 10,000 angels protecting him, is not any basis on
8 which you have to find him not guilty for
9 attempted murder. If you in your common sense --
10 that's what you're bringing to the table here --
11 your intelligence, your knowledge, your
12 experience, if you know that Roger Goden could
13 have been murdered by being pinned between two
14 cars by this defendant, you can find him guilty of
15 attempted murder. You can find him guilty of
16 attempted murder.

17 Ladies and gentlemen, I think Defense
18 came up at the beginning and spoke about how it
19 was an accident. Actually, the question was
20 accident or intent, does it represent an
21 intentional act or an accident. That was what
22 Mr. Kent had gave the story of his wife,
23 accidentally hitting his wife. Nobody in that
24 situation would have thought that Mr. Kent was
25 intentionally hitting his wife. Now if Mr. Kent

1 had turned to her and said, oh, you want some of
2 this too, and then hit his wife, he might have a
3 very different opinion about if it was an accident
4 or if it was intentional. The cases here are
5 apples and oranges on that. And ladies and
6 gentlemen, you decide if you've heard any or
7 enough evidence to show that this was an accident.
8 And the State takes the position that it's not an
9 accident, it's very obviously intentional. Don't
10 be -- Defense will try to have the man behind the
11 curtain, try to hide the man behind the curtain
12 like the Wizard of Oz and say don't pay attention
13 to this guy back here, but really, that's the real
14 issue. It's the man behind the curtain here, the
15 man who really did this act, caused this
16 intentional attempted murder, and he wanted to
17 hurt Roger Goden that night and he wanted to hurt
18 Trenton Brown, was involved too, because he
19 collided with his car, he T-boned with his car.
20 He could have driven straight out of that gas
21 station; you heard that. That gas station, he
22 could have left and gone straight out. Instead,
23 he unnaturally swerved the car to try to chase Mr.
24 Goden. Mr. Goden doesn't know Mr. or Mrs. Hill.
25 He was walking down the Damascus Road, much like

1 that good Samaritan, and he got in harms way and
2 he did what was necessary in his eyes to be a good
3 neighbor.

4 Ladies and gentlemen, I have the
5 opportunity to address you again after Defense
6 presents their closing argument; I'm excited to do
7 so. I appreciate your attention. I know it's
8 been a long few days and a lot of hurry up and
9 wait. Thank you for all you're doing. I look
10 forward to addressing you again in a few minutes.

11 MR. KENT: Thank you, Your Honor. May
12 it please the Court.

13 THE COURT: Yes, sir.

14 MR. KENT: Ms. McElveen.

15 You just heard the initial
16 presentation from the State of South Carolina.
17 Let me say this, and you just heard the initial
18 presentation from the State of South Carolina.
19 It's a powerful entity. All the power, all the
20 money, all the resources of the State of South
21 Carolina, not one person, but a group. You've
22 seen law enforcement. You've seen securities and
23 individuals. You've seen people come back and
24 giving advice because this is the State of South
25 Carolina. And so when we expect the State of

1 South Carolina with all the power, with all the
2 money, with all their resources, to put a case in
3 front of us, we count on them to give us the full
4 presentation of the facts. Not the ones that they
5 want you to hear, not the ones that they think you
6 should hear, but all of them because, again, this
7 is the State of South Carolina with all their
8 power, with all their money, and with all their
9 resources. And as they sit here and they present
10 their case for you for the last day-and-a-half,
11 I've watched it. I've watched the case unfold in
12 bits and pieces because they say, let's give them
13 bits and pieces of the case because if we can
14 scare them enough, if we can make them afraid
15 enough, they'll do what we want because we are the
16 State of South Carolina with all of our power,
17 with all of our money, and all of our resources.
18 They make comments about the great and powerful Oz
19 David Hill, that David Hill was able to mastermind
20 this entire stroke of everything that happened. I
21 want you to think about this. I want you to think
22 about the common sense element that the State of
23 South Carolina has actually utilized, and I want
24 you to think about this in presentation of all the
25 evidence. So let's start at the beginning.

1 The one thing that has permeated and
2 gone throughout this entire trial is very true.
3 The only thing that is 100 percent consistent is,
4 guess what? None of these people know each other.
5 But he has malice towards Mr. Goden. He has
6 malice towards Trenton Brown. He doesn't know who
7 the hell he is. But wait a minute, oh, my God
8 we're the State of South Carolina, we have to
9 scare you, we have to confuse you so let's put
10 Jennifer Hill up here and say he has malice
11 towards her and now that malice must go towards
12 two people he has never met before in his life.
13 The State of South Carolina with all of their
14 money, with all of their power, and with all their
15 resources. Okay, now that they're sufficiently
16 scared of Jennifer Hill, let's mention a bunch of
17 stuff, let's throw a bunch of stuff in the record,
18 let's watch the Defense object and object and
19 object because if we can scare them just enough to
20 no think, gosh, maybe David Hill has some problem
21 with these two guys he's never met before. How do
22 you form malice with somebody you never met? Do
23 you have malice towards me? I don't know any of
24 you. But based upon the State of South Carolina's
25 analysis, if I walk over here and trip and fall

1 and hit you in the face, I've got malice with you.
2 Why? Because they say so because they're the
3 State of South Carolina with all their money and
4 all their power, all their resource, all this
5 technology.

6 And let's talk about all the
7 technology they put before you to show you all of
8 this wonderful evidence. Let's think about it.
9 What did you hear from the stand? You heard
10 Trenton Brown testify, remember? He got on the
11 stand. He talked to you. He told you what
12 happened. He said some awful things that David
13 Hill said. He said, "You want some of this MF'r,
14 you want some of this, N, you want some of this,
15 come get some." He said all of this wonderful
16 stuff. You remember he said it? You remember
17 that one question I asked with the great State of
18 South Carolina with all the evidence that was
19 presented? They put the video up. Mr. Brown,
20 where's the sound to it? Oh, you can't hear it on
21 there. Wait, we can't hear it. He said this
22 awful language, the nastiest stuff possible, the
23 worst thing you can say to an African/American
24 male. And it's just so happens we can't hear it
25 in the video, and he said it's not in there.

1 You'll have that evidence in the back. Ask to
2 play it, ask to hear it.

3 Remember the testimony of Mr. Brown.
4 I turned that thing on immediately and I started
5 recording. The second I saw Jennifer Hill running
6 I turned it on. So if it was said it would be on
7 the video; but dammit, it doesn't fit our
8 narrative. We have got to form malice. And he
9 doesn't know these people so randomly David, the
10 great and powerful Oz they said, has figured it
11 out. I'm going to be able to say it in such a way
12 that I whisper it and it doesn't happen on the
13 video; and not only does it happen on the video,
14 guess who else didn't hear it? Roger Goden, the
15 guy who is right next to the car. Anybody catch
16 that? Did Roger Goden get on the stand and say
17 all this nasty stuff he said about him? No. Does
18 that make a lot of sense? Guess what, we don't
19 want the truth to get into a way of a good story.

20 You heard the testimony of Roger
21 Goden. What did he tell you? This man got out of
22 the car, sized me up. I took a look at him, I
23 could tell what he wanted. He got back inside the
24 car. Man, that's some powerful testimony; it
25 really is. If we didn't have the video that the

1 State of South Carolina with all of their power,
2 money, and resources, put in for you to look at.
3 And guess what's not in that video? This man
4 getting out of the car. Let's not let truth get
5 in the way of a good story because if we can scare
6 you just enough, if we can fear you just enough,
7 if we can say people are using the N word, people
8 are hopping out of their car, you'll ignore the
9 fact there's really no evidence of it whatsoever,
10 none.

11 So what do I think happened? I think
12 it's pretty clear what happened. Something
13 happened at that gas station. Roger Goden was hit
14 and he was hurt. There's no doubt about it.
15 Trenton Brown's car was hit; he was hurt. There
16 was no doubt about it. You heard the expert.
17 What happens at that point in time when your car
18 is hit or when you were hurt, what do you do? You
19 file a lawsuit. You contacted an attorney. You
20 check and see what insurance is there. You check
21 and look at the policies. All of that stuff
22 happened. And they're exactly right, I'll say it,
23 I'll say it to them, I've said it to Roger, I've
24 said it to Trenton. They got taken advantage of
25 by an offer. That's not my issue. They got

1 \$25,000 on these bills which is absolutely
2 ridiculous. They signed a release. They on their
3 own signed a release, with their name signed on it
4 and said we release you, we release you, David
5 Hill, we leave you alone, David Hill. Wait, what
6 do you mean there's not enough money? I'm mad,
7 I'm angry, I'm feeling, I've got these damn bills
8 I got to keep paying them, and this guy, that's
9 it? He's gonna get his. This is ridiculous.
10 This is his damn fault. And it is your fault. It
11 is his fault; he did hit him. Just like with any
12 accident on the interstate at any point in time,
13 it is that person's fault and this is David's
14 fault and that's why that policy says his
15 insurance should pay. That's not what it's about,
16 though. The State of South Carolina, all their
17 money, all their power, all their resources, who
18 had to tell you about that? Because that wouldn't
19 actually fit into the narrative that they're
20 trying to tell you. God, we can't do that.

21 I put in two pieces of evidence at
22 trial. I didn't sign them. I didn't steal them.
23 I didn't have to guess them. They're signed by
24 two people, those two gentlemen right there. It
25 says "accident" in it. This whole "he's making up

1 accident," I didn't make it up; it's in the
2 witnesses' statements. But I'm being blamed for
3 it? Because it doesn't fit their narrative so
4 let's make the evil defense lawyer who came up in
5 opening statement and mentioned accident. I
6 mentioned it because it's in writing signed by two
7 individuals. It says "accident" four times in
8 here, four times in here. All the power, all
9 their money, all their resources, let's go with
10 what the State of South Carolina has presented to
11 you. An incomplete video from a gas station that
12 doesn't show what the first witness said. A video
13 with sound that completely contradicts what their
14 second witness said. What I gave you, two
15 statements that directly say this is an accident,
16 a policy that shows two young men 100 percent got
17 taken advantage of and could have gotten \$300,000.
18 I don't know about you, but that would make my
19 mad. That would make me angry, have me
20 frustrated. It had me just boiling, and it would
21 have me say whatever I needed to say on the stand
22 because it's just not fair. And everything they
23 said about that, it is not fair what they went
24 through.

25 So now let's get into the elements of

1 the offense now that you've gone through all of
2 that. We first talked about attempted murder.
3 The Solicitor and I are going to disagree a little
4 bit about her assertion of the facts. But I'm
5 definitely going to disagree with her assertion of
6 the law, and the judge will explain to you the law
7 in more detail. It does require specific intent,
8 but it requires a specific intent to carry out a
9 desired result. So it's not just that a murder
10 could have happened, a death could have happened,
11 so that makes it that. Let's not let the truth
12 get in the way of a good story so make sure you
13 listen to what the judge says the real area of the
14 law is. It requires a very specific intent. It
15 requires the State of South Carolina to prove that
16 his intent was to carry out a desired result.
17 Listen to the judge on the law and notice the
18 differences on what I've told you the law is, what
19 the judge has told you what the law is, and what
20 the State of South Carolina just told you. Let's
21 not let the truth get in the way of a good story
22 because, God, it's going to be hard to prove what
23 was in David's mind so let's adjust even the law
24 now. It requires a very specific intent which
25 they can't prove, haven't proved, and never will

1 be able to prove.

2 Now let's take it to the next part,
3 the assault and battery first degree and what
4 happened to Trenton Brown. If you remember
5 correctly, Trenton's testimony from the stand was,
6 man, I was just at the wrong place at the wrong
7 time. Had I not been there -- you remember his
8 testimony. Had I not been there, I'd have dragged
9 him down the interstate or whatever he said, or up
10 and down the parking lot had I not been there. So
11 even with Trenton Brown, you know for a fact from
12 his own testimony he had no ill will towards me
13 whatsoever, this was an accident. Had I not been
14 there, this would have never happened.

15 And then I want to get into the
16 resisting arrest. Guess what, he resisted arrest,
17 period. There's no two ways about it. He 100
18 percent resisted arrest. The judge is gonna tell
19 you there's two types of resisting arrest.
20 There's a resisting arrest -- he's going to inform
21 you about the resisting arrest A, resisting arrest
22 B. It's there, one of the two of them. That's
23 for you to decide. I'm not going to sit here and
24 lie to you and say he didn't resist arrest. I
25 wish the officer would have de-escalated the

1 situation. I wish he wouldn't have gone in there
2 blaring F this, F that. I wish it wouldn't have
3 happened; it did. David Hill did resist arrest.
4 Now is it to the level where he kicked, beat,
5 tried to hurt somebody, tried to destroy somebody?
6 No. He resisted arrest. He was trying to
7 actively not be arrested.

8 You want to know the most interesting
9 thing about the resisting arrest charge, though?
10 Remember the State of South Carolina, all its
11 money, all its power, all its resources, you ever
12 seen cops come in and out. Anybody curious why
13 one of the witnesses, one of the victims
14 specifically mentioned in the indictment, they
15 didn't even call him as a witness. The judge is
16 gonna ask you based upon their request to find
17 someone guilty or not guilty for a witness you
18 never even heard from, and they just came up here
19 from you. They sat here and talked to you. They
20 gave you all this information but never said, hey,
21 by the way, we didn't call Officer McKissick.
22 Why? Well, gosh, we don't want to explain that,
23 it goes against our narrative. Ask them when they
24 come back up here. Where's that other officer?
25 The victim, supposed victim of a crime, you just

1 chose not to call because it doesn't fit with
2 their narrative. Don't let the truth get in the
3 way of a good story. Ask yourself that because
4 this is the burden that we hold the State of South
5 Carolina to. These are the questions that we need
6 to ask the State of South Carolina. Why is a
7 victim actually not even being called to testify?
8 Doesn't that scare you a little bit that they sat
9 here when you came here in the very beginning.
10 The judge read the indictment. He read the law.
11 He read everything to you and he read that name in
12 the indictment. He specifically said that they
13 are accusing David Hill of kick, beating,
14 wounding, hurting this officer and others.
15 Remember, there's two counts. They put one
16 officer on the stand -- now follow me on this;
17 this is hilarious. They put one officer on the
18 stand and said, were you kicked? I don't know, he
19 was moving around, I think he was trying to throw
20 a punch, he might have been hitting the other
21 officer. And they put another officer on who is
22 not -- follow on this -- not the officer mentioned
23 in the indictment. All the money, all the power,
24 all the resources of the State of South Carolina
25 and they're playing a shell game with you. It's

1 just scary to me. I worry about these things.

2 I worry about Mr. Goden. I worry
3 about Mr. Brown. I worry about the advantage they
4 got taken by another law firm, another lawyer, and
5 I know they have sufficient reason to be angry.
6 That anger is ill placed. I think from the
7 testimony of Mr. Goden, he has got a line share of
8 bills and responsibility that he had to pay
9 because somebody runs him over. And so now he
10 wants his pound of flesh. More important, I think
11 the State of South Carolina is trying to get it
12 for him, rather than looking and saying this
13 really was an accident; it wasn't intentional.

14 Now the judge is gonna give you
15 certain things called lesser included offenses. I
16 have explained to you what I believe my position
17 on the case is and what I think has happened.
18 Someone can agree with me; someone can disagree
19 with me. But what the judge will do is give you
20 what they call lesser included. He will tell you
21 that if you agree with me and say I just don't
22 believe the State of South Carolina proved there
23 was any intent to kill, that I believe he proved
24 that this man had a personal vendetta and wanted
25 to see Mr. Goden die just because he doesn't know

1 him. Somebody goes in the back and said he did
2 something but it's not that hard.

3 The judge is gonna give you certain
4 other examples of the law. He's going to tell you
5 about a charge called assault and battery of a
6 high and aggravated nature. He's going to tell
7 you about a charge called assault and battery in
8 the first degree. Do I believe it's either one of
9 those? No, I don't. I'm just going to be honest
10 with you. But you may in your wisdom as a jury,
11 as 12 people sitting together, make a decision and
12 that's what you believe, and that is your right.

13 I'm working. I have lived this case
14 with my friend David, his mother, his father, his
15 sisters, about two years now. I have had
16 sleepless nights in thinking about the evidence
17 and facts. There's an old story I've heard
18 several times about a little boy and a wise old
19 man. The little boy has decided that this wild
20 old man from the village is just absolutely
21 brilliant, one of the smartest people on the
22 planet. Little boy says, I'm going to fool this
23 guy today, I'm going to trick him. And so the
24 little boy comes up with this amazing strategy.
25 He's like, what I'm going to do because nobody

1 else in the village can trick this old man. He
2 said so what I'm going to do is I'm going to get a
3 bird. I'm going to put a bird inside of my hand
4 and I'm going to take the bird and I'm going to go
5 up to the old man and I'm gonna say, old man, what
6 do I have in my hand. And he said, I don't think
7 the old man is going to guess what it is. But if
8 he guesses, then I'm going to ask him, old man,
9 what is in my hand, is it alive or if it's dead.
10 And then I'm going to look at the old man and if
11 the old man guesses whatever is in my hand is
12 alive, I'm gonna squoosh it, I'm gonna kill it.
13 I'm going to show him it's dead. And then I'm
14 going to -- if I do it a different way and say,
15 old man, what's in my hand and he says it's dead,
16 I'm going to open my hands and I'm going to let
17 the bird fly free. Genius idea he thinks. So the
18 little old boy goes inside of a field and grabs a
19 sparrow. He grabs a sparrow and he puts it in his
20 hand and he does just like I just told you. And
21 he goes up. He says, old man, what do I have in
22 my hand. The wise old man strokes his beard and
23 he says, son, you have a sparrow in your hand.
24 The boy looks startled. He says how in the world
25 did you know that? I can see the way you're

1 covering your hand and I can see the yellow leaves
2 all over your shirt, clearly a bird, a sparrow.
3 The boy takes a step back and but he's ready for
4 this part. He says, old man, is the bird alive or
5 dead? And the little boy is ready. The old man
6 takes a huge step back. He strokes his beard and
7 he looks at the boy. He says, son, it's in your
8 hands. And that's where we are. I've lived this
9 case for two years. It's now in your hands. It's
10 in your hands to make a decision.

11 The judge has told you time and time
12 again that you cannot discuss this case. You
13 cannot discuss it with yourselves. You cannot
14 discuss it with your family. So realistically,
15 tonight, maybe tomorrow, maybe in a couple of
16 months, somebody will come to you and they'll ask
17 you did you make the right decision. Maybe in a
18 month, maybe in 10 years, maybe in 15 years.
19 Maybe at that point in time you're like, I just
20 don't know. My point is, if you're going to have
21 doubts, have them now because tomorrow, 10 months
22 from now, 2 years, 20 years, it's too late for
23 David Hill.

24 I want to thank all of you for your
25 time. I want to thank all of you for your

1 attention. This has not been easy, not with
2 what's going on with COVID and not what's going on
3 in America and not what's going on being on jury
4 duty. Doesn't have the same as it used to. But
5 now what's going on in America has a lot more.
6 Thank you so much for your time, enjoy your
7 result.

8 THE COURT: Thank you, Mr. Kent.

9 MS. MCELVEEN: Ladies and gentlemen, I
10 don't think the defendant is the great and
11 powerful Oz. I think that his attorney is a great
12 and powerful Oz trying to distract you from the
13 real issues. He got real loud and really in your
14 face and really wonderful at telling these great
15 parables about hitting his wife, a bird, a smart
16 man. He is likable. Shaun Kent is a likable
17 person. The State with all of our money, power,
18 and resources, ladies and gentlemen, I don't have
19 \$500 an hour experts up here to tell you what you
20 can tell by the evidence that you see yourself,
21 your common sense. You are the experts. You are
22 the people in this case who decide the truth, and
23 that's all we're asking you to do. There's no
24 need to hide any of the truth that we have here.
25 We have three witnesses who say they saw these

1 events take place. We have the -- we have the
2 resources in that we have these strong witnesses;
3 that's what we have. We have the resources in
4 that we have you and your common sense and your
5 knowledge and your willingness to sit here on jury
6 duty; that's what we have.

7 Ladies and gentlemen, this case is
8 about Mr. Hill getting angry at Mr. Goden when he
9 stepped in as a good Samaritan and intervening.
10 He got mad. He had malice. It was quickly
11 premeditated. He gave an express exclamation
12 about how you want some too. Whatever the word
13 was he used, it was inappropriate. Whatever was
14 said, the cursing, his behavior, it was all
15 inappropriate and it was illegal. What he did is
16 he attempted to kill Roger Goden that night and he
17 also hurt Roger -- Trenton Brown and slamming him
18 and pinning Roger Goden between his car. Ladies
19 and gentlemen, that is what is at issue here.

20 Accident, accidental, or intentional,
21 Mr. Kent said that himself in his opening
22 statement. This is not a question of who did it
23 or what happened. Accidental or intentional.
24 When it comes to lesser included offenses, that's
25 what you got to decide. Think about what Defense

1 said themselves. Was this accidental or was this
2 intentional? A sheet of paper, one of two pages
3 where the second page is missing and these
4 gentlemen signed it, everybody is saying it's bad
5 legal advice. That's not an admission that it was
6 an accident. That was saying there's a car
7 accident and they're trying to have some of their
8 medical bills covered, ladies and gentlemen.

9 Mr. McLaughlin's testimony, ladies and
10 gentlemen, I think the only person that benefited
11 was Mr. McLaughlin and his wallet, was that
12 testimony, frankly. You heard from Mr. Goden. He
13 has no reason to lie, and they did not -- at the
14 scene they did not pick up their phone to call
15 their lawyers. They picked up the phone and
16 called 911. Ladies and gentlemen, Mr. Goden came
17 up here willingly. Mr. Goden is not the one that
18 filed charges. The State of South Carolina
19 brought charges after this incident happened the
20 day it happened. He was arrested and charged with
21 these offenses. Mr. Goden is not the one who
22 decides if you see through this case. Mr. Brown
23 is not the one to decide. The State decides if
24 there is enough there to proceed with the criminal
25 charges. Mr. Goden, however much he's paid, has

1 no bearing on whether we, the State, find that
2 Mr. Hill is -- should be found guilty for
3 attempted murder. Mr. Goden doesn't decide that.

4 Mr. Goden came up here willingly.
5 Mr. Goden had extreme injuries, but he's very
6 fortunate, ladies and gentlemen. He's lucky he
7 that did not die that night or get worse injuries.
8 Mr. Trenton Brown, he is lucky he did not get
9 injured more severely. They both had injuries.
10 They are serious, don't get me wrong. Mr. Goden
11 had eight to nine months with a wound vac. He had
12 two surgeries. He has a slight limp still. He
13 was out of work. He's got kids. He's got -- he
14 has suffered. He has suffered because of this.
15 He has suffered because he was a good Samaritan.
16 And I dare say, Mr. Goden is a likeable man.

17 Ladies and gentlemen, you know, you
18 can't have it both ways. You can't say -- he
19 can't say, oh, it's an accident, but if you get
20 back there and see those lesser includeds, if you
21 feel that way you should, you should give him the
22 lesser included. Ladies and gentlemen, if he's
23 guilty and you find it intentional, he should be
24 guilty of attempted murder, assault and battery
25 first degree, and assaulting an officer while

1 resisting arrest. That's up to you. But I see
2 two different arguments here. The Defense is
3 claiming, oh, it was an accident, but if you don't
4 think maybe you should think this way. Which one
5 is it? Which one is it, ladies and gentlemen?
6 You bring your common sense and your knowledge.
7 You are the ones that determine whether it was an
8 accident or whether it was an intentional act.

9 If I may, the real issues, ladies and
10 gentlemen, is credibility. Who do you believe?
11 Who has a reason to lie? You know, does Mr. Goden
12 have a reason to lie? He's not getting any money
13 out of this out of whatever happens here. He has
14 no -- Mr. Goden has no reason to lie. Mr. Trenton
15 Brown, does he have a reason to lie? Jennifer
16 Hill, does she have a reason to lie? Do all of
17 these officers have a reason to lie? Nobody knew
18 David Hill before that day. There's no reason for
19 them to lie. They just know what they saw. They
20 know what happened to them. They know their
21 victims. Ladies and gentlemen, they spoke the
22 truth. They didn't have to come. We put forth
23 every bit of evidence that we could.

24 Your Honor, the State's asking
25 permission -- if we can explain why we were -- he

1 brought up the missing officer. We would like
2 permission to explain why that officer is not
3 here.

4 THE COURT: You can argue anything
5 that's in evidence as to why that officer is not
6 here, but if the -- if your argument contains
7 facts that aren't in evidence, I'll leave that up
8 to your discretion; but you've got to argue facts.
9 Argue inferences that can be drawn that from the
10 facts that are in evidence.

11 MS. MCELVEEN: Yes, sir.

12 Ladies and gentlemen, we have all the
13 reasons why we want to bring all the witnesses up
14 here that we could, and we can't always do that.
15 Even with all the money, all the power, all the
16 resources, sometimes our witnesses are not
17 available and that's unfortunate. But you heard
18 from Officer Rutan and you heard what he saw
19 himself, and you also heard that he felt the
20 beating. He saw him punching Officer McKnight.
21 You heard that yourself. Ladies and gentlemen,
22 you don't need Officer McKnight to tell you what
23 he -- -- or has already been told to you from
24 Officer Rutan. Would we like Officer McKnight
25 back here? Yes, we would. I'm sorry he was not

1 here. But you heard from Officer Rutan about what
2 happened to Officer McKnight and Officer McKnight
3 backed up Officer Rutan on scene to help with the
4 combative, as you saw, David Hill. You saw that.
5 You saw that with your own eyes.

6 Ladies and gentlemen, accident versus
7 intent. I will just keep saying that. That is at
8 issue here. Your common sense is what's at issue
9 here. The malice, express or implied, the
10 premeditation. As loud as Mr. Kent yells, you
11 can't make up that every single person said, "Oh,
12 you want some of this, too." No matter what
13 derogatory terms were used in the middle,
14 everybody agrees he expressly voiced his malice
15 and his premeditation before accelerating that car
16 and hitting Roger Goden intentionally.

17 Ladies and gentlemen, I think that the
18 biggest piece of evidence we have is that gas
19 station video. It shows exactly what happened.
20 And that, ladies and gentlemen, is you can draw --
21 it's up to you to find the truth in this case
22 using the evidence we have provided and we have
23 been able to give you. We have given you
24 everything we can. We have done the best we can
25 with all the power and all of the money and all

1 the resources, one lawyer/four lawyers, experts/no
2 experts, a power point presentation.

3 MR. KENT: Your Honor ---

4 MS. MCELVEEN: And ladies and
5 gentlemen, we have presented to you all the facts
6 that we can present on this case. To close, I
7 would like to just play that tape again; it's very
8 simple. I just want to play, play the gas station
9 video again, and ask you, ladies and gentlemen, to
10 consider whether that's intentional or whether
11 that was an accident.

12 (State Exhibit No. 33 published to the jury.)

13 MS. MCELVEEN: Accident or
14 intentional. Driving straight out of the gas
15 station, or hitting Mr. Goden, T-boning Mr. Brown,
16 backing out, reversing, and then going out?
17 Accident or intentional, ladies and gentlemen.
18 Thank you.

19 THE COURT: Ladies and gentlemen of
20 the jury, now is the time when I will give you the
21 charge on the law. However, the charge usually
22 takes somewhere between 40 minutes or so and an
23 hour so I'm gonna -- we're gonna take a
24 brief/recess so you folks can stretch your legs,
25 get some refreshments if you need it, and we will

1 be a back in the courtroom at 3:55 when I will
2 charge you on the law in this case. If you'll
3 return to your jury room. Please don't begin your
4 deliberations. Leave your notes in your seats.
5 Do not discuss this case with anybody and do not
6 do any research about any of the facts or issues
7 which have been raised in this case, and we'll get
8 you back in about ten minutes. Thank you.

9 (WHEREUPON, the jury was removed from
10 the courtroom at 3:44 p.m.)

11 THE COURT: All right, everyone be
12 seated please.

13 Mr. Kent.

14 MR. KENT: Judge, and for the record,
15 I did make my objection contemporaneously.

16 THE COURT: I will note that, Mr.
17 Kent, you got my attention and I appreciate your
18 not disrupting the closing argument; but I do find
19 that -- well, I'll let you put the basis of your
20 objection on the record first and then we'll deal
21 with it.

22 MR. KENT: Your Honor, as you're
23 aware, I made a pretrial motion very early in the
24 trial. We actually -- in the interim we had a
25 joke about it. We had a very serious conversation

1 about it. I made a motion. One of the motions
2 was to insure that the State of South Carolina
3 would not be able to make any suggestion
4 whatsoever about the amount of attorneys Mr. Hill
5 had, he had hired high priced attorneys, or
6 anything of that nature. I made it very clear
7 that that would go against his constitutional
8 right to hire lawyers. Your Honor at the time
9 said I think that would be impermissible at best.
10 The State of South Carolina specifically asked
11 that the court, they be able to ask for the same
12 from me. I think the Court inquired at that point
13 in time, you've heard in the same courtroom
14 somebody using the phrase the power, money, and
15 resources. I made it very clear you will be
16 hearing that again, so this is not something that
17 came out of nowhere. It was specifically
18 mentioned in my closing argument, and the State
19 specifically mentioned how many lawyers he has and
20 it's one person versus the four of us. It's
21 exactly what I asked for not to happen.

22 Your Honor, we're -- I don't know how
23 many times we're going to say, hey, it's okay, you
24 can keep doing things and forcing someone to
25 object during closing. I mean, this is the fifth

1 mistrial motion that I've made. Just -- and it's
2 more cumulative than anything. I understand what
3 the Court is gonna say, it's not that bad, you
4 can't unring the bell, but won't -- the problem is
5 it's the State of South Carolina completely just
6 ignoring the Court orders and court rules. The
7 Court had specifically made a ruling and they're
8 just ignoring it. That one is as clear as
9 possible. And we're also getting to the point
10 where we have that I have to sit there and let it
11 play out because if I object early it's, well, I
12 didn't get to hear it, and I'm still the one
13 standing up and objecting so I politely stood up
14 so the Court could hear me. That might be error
15 on my part. It might potentially subject me to a
16 PCR situation ---

17 THE COURT: No.

18 MR. KENT: ---because I allowed
19 something to come out that probably shouldn't that
20 I know is impermissible.

21 THE COURT: Well, and Mr. Kent, that's
22 what I was getting at. I saw you stand. We made
23 eye contact. And when I heard the one -- the four
24 lawyers comment, you know, so in my mind, when you
25 stood up I took that to me mean you objected to

1 statement in the closing argument that you felt
2 was contrary to my prior ruling so. I don't know
3 what anybody ---

4 MR. KENT: Thank you.

5 THE COURT: --- who any -- a court or
6 panel who may be reviewing this record may think;
7 but I believe based upon what I observed in this
8 courtroom, based upon your actions in standing and
9 getting my attention, that you preserved your
10 objection to that language in State's reply
11 closing. So for whatever it's worth, I believe
12 the issue is preserved.

13 MR. KENT: Thank you, Judge.

14 THE COURT: Ms. McElveen.

15 MS. MCELVEEN: Yes, Your Honor. The
16 Defense asked that we not talk about their team;
17 but then they get up and said, oh, the State has
18 all the money, all the power, and the resources.
19 Also, at the same time, they did introduce all
20 four of their lawyers to the jury panel during
21 jury qualification and jury selection. The jury
22 knows he has four lawyers. They were introduced
23 to them during selection; that's not a surprise.
24 They've been sitting there the whole time. They
25 were all four introduced. They introduced them by

1 name. Your Honor, that's obviously already in
2 evidence that he has four lawyers. Also, opening
3 the door that we have all the money, power, and
4 resources, Your Honor, I think that opens the door
5 to us mentioning four lawyers, frankly, but.

6 THE COURT: Well, I understand where
7 you're coming from, Ms. McElveen, but I
8 specifically said that I wasn't gonna curtail
9 the -- I mean, it's just dif-- whether it's right
10 or wrong, fair or unfair, the Defense gets more
11 latitude in issues like that. And, but again, a
12 mistrial is a drastic measure. I don't think that
13 this -- that that mention would prejudice this
14 jury. Now it was against my prior ruling; but you
15 know, I think an off-handed comment that wasn't --
16 it wasn't dwelled upon by the State. I'm just not
17 going to mis-try this case right before we charge
18 the jury. You know, I think that is ultimately a
19 far too drastic remedy for a mistake in a closing
20 argument.

21 I'm gonna charge the jury that, again,
22 that what the lawyers say is not evidence. The
23 evidence has to come from the witness stand and so
24 they will make determination as to the facts that
25 come in this case. So while it was in violation

1 of my prior order, I'm just not going to mis-try
2 this case. Based upon my prior rulings earlier,
3 based on the case law about mistrials that have
4 been cited previously in the record in this case,
5 that will be my ruling on that issue. \

6 Folks, I need to take a brief recess
7 before I charge the jury. While I'm doing that,
8 we have printed proposed verdict forms. If you
9 would review them while I'm out of the courtroom.
10 They're basically outlined. The charges are
11 numbered just with numerals, not with count 1,
12 count 2, count 3 because of the break in the
13 counts on the indictment. And they basically say
14 as to the -- as to the charge I'll read it -- as
15 to the charge of attempted murder of Roger Goden,
16 we, the jury, unanimously find the defendant
17 guilty or not guilty. As to the lesser included
18 offense of assault and battery high and aggravated
19 nature, guilty or not guilty. It's pretty
20 self-explanatory, but y'all can review those and
21 we'll be prepared for the charge in a little over
22 five minutes.

23 MR. KENT: Your Honor, just real
24 quick.

25 THE COURT: Yes, sir.

1 MR. KENT: At the bench I had informed
2 you that I had something I needed to do. You said
3 you had no problem if I would step out. Mr. Furse
4 will accompany me. I've talked to my client. Of
5 course, I have able bodied cocounsel; but I may
6 not be back for the charge, but if that's okay
7 with the Court.

8 THE COURT: That's absolutely fine.

9 Mr. Hill, you understand that while
10 you've had representation of Mr. Kent throughout
11 this trial, you've also had the representation of
12 Mr. McMillan. Mr. Kent has another obligation
13 that he needs to step away from the courthouse
14 for. Do you have any problem with him leaving the
15 courtroom now that all of the evidence has been
16 admitted and the closing arguments have been made?

17 THE DEFENDANT: No, sir.

18 THE COURT: You have no objection to
19 Mr. McMillan being your only -- well, the two
20 Mr. McMillans being your representation with
21 regard to the remainder of this case as it relates
22 to the charge on the law?

23 THE DEFENDANT: I'm fine with that,
24 yes, sir.

25 MR. KENT: You think it would be

1 necessary to instruct the jury why I stepped out
2 or that Mr. Kent stepped out and take note ---

3 THE COURT: I will leave that up in
4 your discretion. My thought process would be -- I
5 would hope they're gonna pay more attention to me
6 than ---

7 MR. KENT: Judge, I'm kind of hard to
8 miss.

9 THE COURT: It's true, but I will --
10 if you would like me to do that, I will.

11 MR. KENT: Mr. McMillan will ---

12 THE COURT: Y'all talk about it and
13 let me know.

14 (WHEREUPON, a recess was taken from the
15 proceedings.)

16 THE COURT: Ladies and gentlemen of
17 the jury, now is the time that it is my duty to
18 charge you the law in this case; but before we
19 start with the charge, I want to inform you that
20 Mr. Kent and Mr. Furse, who are obviously two of
21 the defendant's lawyers, they had to step out
22 unexpectedly for a moment and they will be back as
23 soon as they possibly can.

24 Ladies and gentlemen, I remind you
25 that, during this trial, you and I have had

1 certain duties to perform. As the trial judge it
2 is my responsibility to preside over the trial of
3 this case, and I also have the duty to rule on the
4 admissibility of evidence offered during this
5 trial. You are to consider only the competent
6 evidence before you. If there was any testimony
7 ordered stricken from the record in this case
8 during this trial, you must disregard that
9 testimony. You are only to consider the testimony
10 which has been presented from the witness stand,
11 any exhibits which have been made a part of the
12 record in this case, and any stipulations of
13 counsel.

14 I have the additional duty to charge
15 you the law applicable to this case. As the
16 presiding judge, I am the sole judge of the law in
17 this case. It is your duty as jurors to accept
18 and apply the law as I now state it to you. If
19 you already have an idea as to what the law is or
20 what the law ought to be and it does not agree
21 with what I now tell you the law is, you must
22 abandon this idea because you are sworn to accept
23 the law and apply the law exactly as I state it to
24 you.

25 In every case tried in this court

1 before a jury, the jury becomes the sole and
2 exclusive judge of the facts in a case. A trial
3 judge cannot intimate, state, comment on, or make
4 any statement to a trial jury about the facts in a
5 case since you, the jury, are the sole judge of
6 the facts in this case. You're not to infer from
7 what I've said during the progress of this trial
8 in ruling upon the admissibility of evidence, or
9 otherwise, or anything that I say now during the
10 course of this instruction to you, that I have any
11 opinion about the facts in this case. The law
12 does not allow me to have an opinion about the
13 facts in this case. This is a matter solely for
14 you, the jury, to determine. As jurors, it is
15 your duty to determine the effect, value, and
16 weight of the evidence presented during this
17 trial.

18 The indictment in this case charges
19 the defendant with one count of attempted murder,
20 one count of assault and battery in the first
21 degree, and two counts of assaulting an officer
22 while resisting arrest. I remind you that the
23 fact the defendant was arrested, charged, and
24 indicted in this case is not evidence in this case
25 and not -- and cannot be considered by you as

1 evidence of guilt in this case, nor does it create
2 any presumption or inference of guilt. This
3 document is simply the formal written instrument
4 which contains the charges made against the
5 defendant. It is the formal document by which the
6 case is brought into court.

7 The indictment in this case alleges
8 that several different offenses against the
9 defendant. As I each stated -- as I stated to you
10 earlier, one count of attempted murder, one count
11 of assault and battery in the first degree, and
12 two counts of assaulting a law enforcement officer
13 while resisting arrest. Each charge is a separate
14 and distinct offense. You must decide each charge
15 separately on the evidence and the law applicable
16 to it uninfluenced by your decision as to any
17 other charge. The defendant may be convicted or
18 acquitted on any or all of the offenses charged.
19 You will be asked to write a separate verdict of
20 guilty or not guilty for each charge.

21 The defendant has pleaded not guilty
22 to this indictment and that plea puts the burden
23 on the State to prove the defendant guilty. A
24 person charged with committing a criminal offense
25 in South Carolina is never required to prove

1 himself innocent. I charge you that it is an
2 important rule of law that the defendant in a
3 criminal trial, no matter the seriousness of the
4 charge, may be -- no matter what the seriousness
5 of the charge may be, will always be presumed
6 innocent of the crime for which the indictment was
7 issued unless guilt has been proven by evidence
8 satisfying you of that guilt beyond a reasonable
9 doubt. The presumption of innocence does not end
10 when you begin your deliberations, but it
11 accompanies the defendant throughout the trial
12 until you reach a verdict of guilt based upon
13 evidence satisfying you of that guilt beyond a
14 reasonable doubt.

15 The presumption of innocence is like a
16 robe of righteousness placed about the shoulders
17 of the defendant which remains with the defendant
18 until it has been stripped from the defendant by
19 evidence satisfying you of the defendant's guilt
20 beyond a reasonable doubt. The presumption of
21 innocence is not a mere legal theory. It is not
22 just a legal phrase. It is a substantial right
23 which every defendant is entitled unless, you, the
24 jury, are satisfied from the evidence of the
25 defendant's guilt beyond a reasonable doubt.

1 What is a reasonable doubt in the law?

2 A reasonable doubt is the kind of doubt that would
3 cause a reasonable person to hesitate to act. The
4 State has the burden of proving the defendant
5 guilty beyond a reasonable doubt. Some of you may
6 have served as jurors in civil cases where you
7 were told it is only necessary to prove a fact is
8 more likely true than not true, such as by the
9 greater weight or preponderance of the evidence.
10 In criminal cases the State's proof must be more
11 powerful than that; it must be beyond a reasonable
12 doubt. Proof beyond a reasonable doubt is proof
13 that leaves you firmly convinced of the
14 defendant's guilt. There are very few things in
15 the world that we know with absolute certainty.
16 In criminal cases the law does not require proof
17 that overcomes every possible doubt. If based
18 upon your consideration of the evidence you are
19 firmly convinced that the defendant is guilty of
20 the crime charged, you must find the defendant
21 guilty. If, on the other hand, you think there is
22 a real possibility that the defendant is not
23 guilty, you must give the defendant the benefit of
24 the doubt and find him not guilty.

25 There are two types of evidence which

1 are generally presented during a trial -- direct
2 evidence and circumstantial evidence. Direct
3 evidence is the testimony of a person who claims
4 to have actual knowledge of a fact, such as an
5 eyewitness. Circumstantial evidence is proof of a
6 chain of facts or circumstances indicating the
7 existence of a fact. The law makes absolutely no
8 distinction between the weight or value to be
9 given to either direct or circumstantial evidence;
10 nor is a great degree of certainty required of
11 circumstantial evidence than of direct evidence.
12 You should weigh all of the evidence in the case.
13 After weighing all of the evidence, if you are not
14 convinced of the guilt of the defendant beyond a
15 reasonable doubt, you must find the defendant not
16 guilty.

17 In further describing these two types
18 of evidence, direct evidence and circumstantial
19 evidence -- in describing direct and
20 circumstantial evidence, direct evidence directly
21 proves the existence of a fact and does not
22 require deduction. Circumstantial evidence is
23 proof of a chain of facts or circumstances
24 indicating the existence of fact. Crimes may be
25 proven by circumstantial evidence. The law makes

1 no distinction between the weight or value to be
2 given to either direct or circumstantial evidence.
3 However, to the extent that the State relies on
4 circumstantial evidence, the circumstances must be
5 consistent with each other, and when taken
6 together, point conclusively to the guilt of the
7 accused beyond a reasonable doubt. If these
8 circumstances merely portray the defendant's
9 behavior as suspicious, the proof has failed. The
10 State has the burden of proving the defendant
11 guilty beyond a reasonable doubt. This burden
12 rests with the State regardless of whether the
13 State relies on direct or circumstantial evidence
14 or some combination of the two.

15 Ladies and gentlemen, necessarily, you
16 must determine the credibility of the witnesses
17 who have testified in this case. Credibility
18 simply means believability. It becomes your duty
19 as jurors to analyze and to evaluate the evidence
20 and determine which evidence convinces you of its
21 truth. In determining the believability of the
22 witnesses who have testified in this case, you may
23 believe one witness over several witnesses or
24 several witnesses over one witness. You may
25 believe a part of the testimony of a witness and

1 reject the remaining part of the testimony of that
2 same witness. You may believe the testimony of a
3 witness in its entirety or reject the testimony of
4 a witness in its entirety. You may consider
5 whether any witness has exhibited to you any
6 interest, bias, prejudice, or other motive in this
7 case. You may also consider the appearance and
8 manner of a witness while on the witness stand.

9 Ladies and gentlemen, the rules of
10 evidence ordinarily do not permit witnesses to
11 testify to opinions or conclusions. An exception
12 to this rule exists for witnesses we call expert
13 witnesses. A witness who by education and
14 experience has become expert in some art, science,
15 profession, or calling may state an opinion as to
16 relevant and material matter which the witness
17 claims to be an expert, and may also state the
18 reasons for the opinion. You should consider any
19 expert opinion received into evidence in this case
20 and like, any other evidence, give it the weight
21 you think it deserves. If you decide that the
22 opinion of the expert witness is not based on
23 sufficient education and experience, or if you
24 conclude that the reasons given in support of the
25 opinion are not sound, or that the opinion is

1 outweighed by other evidence, you may disregard
2 the opinion entirely. An expert witness'
3 testimony is to be given no greater weight than
4 that of other witnesses simply because the witness
5 is an expert. Further, you are not required to
6 accept an expert's opinion even though it is not
7 contradicted.

8 Ladies and gentlemen, I instruct and
9 emphasize to you the fact that the defendant did
10 not testify in this case is not a factor to be
11 considered by you in any way in your deliberation
12 and in your consideration on the question of the
13 guilt or innocence of the defendant. It must not
14 be considered by you in any manner whatsoever. A
15 defendant has the constitutional right to remain
16 silent, and the assertion of this right must not
17 be considered by you in your deliberations. I
18 repeat, under your oath, you are to draw no
19 conclusion whatsoever from the fact that the
20 defendant did not testify in this case. The fact
21 that the defendant did not testify should not even
22 be discussed in the jury room. The burden of
23 proof, as I have stated to you, is on the State.
24 The defendant is not required to prove his
25 innocence. The burden of proof remains on the

1 State until the State proves guilt beyond a
2 reasonable doubt.

3 In order to establish criminal
4 liability, criminal intent is required. For
5 example, the mental state required to be proven by
6 the State for a particular crime might be purpose,
7 intent, knowledge, recklessness, or criminal
8 negligence. Criminal intent must be proven by the
9 State beyond a reasonable doubt. Criminal intent
10 is always a matter that must be determined by the
11 jury from the circumstances surrounding the
12 situation. There is no way to prove intent to a
13 mathematical certainty. There's no way medical
14 science can dissect a person's brain and determine
15 what that person had in mind, so the law says that
16 criminal intent may be inferred from the
17 circumstances shown to have existed. This is how
18 you make determination of whether or not the
19 element requiring intent was present. It is not
20 necessary to establish intent by direct and
21 positive evidence, but intent may be established
22 by inference in the same way as any other fact by
23 taking into consideration the acts of the parties
24 and all the facts and circumstances of the case.

25 Criminal intent is a mental state, a

1 conscious wrongdoing. It is up to you to
2 determine what the defendant intended to do based
3 upon the circumstances shown to have existed.
4 Criminal intent can arise from an action or a
5 failure to act. It may arise from negligence,
6 recklessness, or an indifference to duty, or to
7 consequences that is considered by the law to be
8 the equivalent of criminal intent.

9 Ladies and gentlemen, an attempt is an
10 effort to accomplish a crime which does not
11 succeed. An attempt includes a specific intent to
12 do a particular criminal act, along with an act
13 falling short of the act intended. The State must
14 show more than mere preparation and intent. There
15 must be some overt act committed in the effort to
16 commit the crime. Intent means intending the
17 result which actually occurs, not accidentally or
18 involuntary. Intent may be shown by acts and
19 conduct of the defendant and other circumstances
20 from which you may naturally and reasonably infer
21 intent.

22 Ladies and gentlemen, the defendant in
23 this case is charged with attempted murder. In
24 order to prove this crime, the State must prove
25 the defendant acted with a specific intent to kill

1 another person and that the defendant attempted to
2 kill another person with malice aforethought,
3 either express or implied. Malice is hatred, ill
4 will, or hostility towards another person. It is
5 the intentional doing of a wrongful act without
6 just cause or excuse and with an intent to inflict
7 an injury or under circumstances that the law will
8 infer an evil intent. Malice aforethought does
9 not require that malice exist for any particular
10 time before the act is committed, but malice must
11 exist in the mind of the defendant just before and
12 at the time of the act and at the time that the
13 act is committed. Therefore, there must be a
14 combination of previous evil intent in the act.

15 Malice aforethought may be express or
16 inferred. These terms, "express" and "inferred,"
17 do not mean different kinds of malice, but merely
18 the manner in which malice may be shown to exist.
19 That is either by direct evidence or by inference
20 from the facts and circumstances which are proved.
21 Express malice is shown when a person speaks words
22 which express hatred or ill will for another or
23 when the person prepared beforehand to do the acts
24 which was -- the act which was later accomplished;
25 for example, lying in wait for a person or any

1 other acts of preparation going to show that the
2 deed was within the defendant's mind would be
3 express malice.

4 Malice may be inferred from conduct
5 showing a total disregard for human life. If
6 facts are proved beyond a reasonable doubt
7 sufficient to raise an inference of malice to your
8 satisfaction, this inference would be simply an
9 evidentiary fact to be considered by you, the
10 jury, along with other evidence in the case and
11 you may give it the weight you decide it should
12 receive. Ladies and gentlemen, I charge that you
13 may not infer malice from the use of a deadly
14 weapon.

15 If facts are proved beyond a
16 reasonable doubt sufficient to raise an inference
17 of malice to your satisfaction, this inference
18 would simply be an evidentiary fact to be
19 considered by you, the jury, along with other
20 evidence in the case and you may give it the
21 weight you decide it should receive.

22 A specific intent to kill is an
23 element of attempted murder. Intent means the --
24 intending the result which actually occurs; not
25 accidentally or involuntarily. Intent may be

1 shown by acts or conduct of the defendant and
2 other circumstances to which you may naturally and
3 reasonably infer intent. Evidence of the
4 character of the act, character of the instrument
5 used, the manner in which it was used, the purpose
6 to be accomplished and the resulting wounds or
7 injuries may be considered in determining the
8 intent with which the act is committed. Intent
9 may also be inferred when it is demonstrated that
10 the defendant voluntarily and willfully commits an
11 act, the natural tendency of which is to destroy
12 another's life.

13 Now, ladies and gentlemen, if you find
14 that the State has failed to prove beyond a
15 reasonable doubt that the defendant attempted the
16 murder of Roger Goden, you may consider whether
17 the State has proved beyond a reasonable doubt
18 that the defendant committed the lesser included
19 offense of assault and battery of a high and
20 aggravated nature. A person commits the offense
21 of assault and battery of a high and aggravated
22 nature if the person unlawfully injures another
23 person and great bodily injury to another person
24 results, or the act is accomplished by means
25 likely to produce death or great bodily injury.

1 Great bodily injury means bodily injury which
2 causes a substantial risk of death or which causes
3 serious permanent disfigurement or protracted loss
4 or impairment of the function of a bodily member
5 or organ.

6 Now ladies and gentlemen, if you find
7 that the State has failed to prove beyond a
8 reasonable doubt that the defendant attempted to
9 murder Roger Goden and also find that the State
10 has failed to prove the defendant is guilty of
11 assault and battery of a high and aggravated
12 nature as to Roger Goden, you may also consider
13 the lesser included offense of assault and battery
14 in the first degree. A person commits the offense
15 of assault and battery in the first degree if the
16 person unlawfully injures another person and the
17 act either -- and in committing the act either a
18 person causes injury which is likely to produce
19 death or great bodily injury or offers or attempts
20 to injure another person with the present ability
21 to do so and that offer or attempt could cause
22 great bodily injury. Great bodily injury, again,
23 means bodily injury which causes a substantial
24 risk of death or which causes serious permanent
25 disfigurement or protracted loss or impairment of

1 the function of a bodily member or organ.

2 Now, ladies and gentlemen, as to the
3 charge of assault and battery in the first degree
4 as to the victim Trenton Brown, he's charged with
5 assault and battery in the first degree. And a
6 person commits that offense if he unlawfully
7 injures another person and the injury causes great
8 bodily injury or either offers or attempts to
9 injure another person and that offer or attempt is
10 likely to cause -- with the present ability to do
11 so and that injury is likely to cause death or
12 great bodily injury. If you find the State has
13 failed to prove beyond a reasonable doubt that the
14 defendant committed an assault and battery in the
15 first degree against the victim Trenton Brown, you
16 may consider whether the State has proved beyond a
17 reasonable doubt that the defendant committed the
18 lesser included offense of assault and battery in
19 the second degree. A person commits the offense
20 of assault and battery in the second degree if the
21 person unlawfully injures another person or offers
22 or attempts to injure another person with the
23 present ability to do so and either moderate
24 bodily injury to another person results or
25 moderate bodily injury to another person could

1 have resulted.

2 Moderate bodily injury means physical
3 injury that involves prolonged loss of
4 consciousness or that causes temporary or moderate
5 disfigurement or temporary loss of the function of
6 a bodily member or organ or injury that requires
7 medical treatment when the treatment requires the
8 use of regional or general anesthesia or injury
9 that results in the fracture or dislocation of a
10 bodily member. Moderate bodily injury does not
11 include one-time treatment and subsequent
12 observation of scratches, cuts, abrasions,
13 bruises, burns, splinters, or other minor injuries
14 that ordinarily do not require extensive medical
15 care.

16 Ladies and gentlemen, the defendant is
17 also charged with assaulting a law enforcement
18 officer while resisting a lawful arrest. The
19 State must prove beyond a reasonable doubt that
20 the defendant knowingly and willfully assaulted,
21 beat, or wounded a law enforcement officer who is
22 serving, executing, or attempting to serve a legal
23 writ or process; or that the defendant assaulted,
24 beat, or wounded an officer when the defendant was
25 resisting arrest being made by a person the

1 defendant knew, or reasonably should have known,
2 was a law enforcement officer. Knowingly means
3 with knowledge; conscientiously done -- or
4 consciously done, excuse me. Willful means done
5 intentionally and not done by accident.

6 An assault occurs when a person
7 violently or forcefully attempts to hurt or injure
8 another person and has the present ability to
9 complete the attempted injury. An assault is the
10 intentional creation of fear of immediate bodily
11 harm. It is not necessary that the attempted
12 injury or harm actually take place. For example,
13 if I walk up to you and when we are within arm's
14 reach I draw back to hit you, that is an assault.
15 A battery is the unlawful touching of another
16 person by a person who has committed the assault.
17 An unlawful touching can be caused by a part of
18 the -- by a part of the accused or object that the
19 accused puts in motion. A battery is the
20 completion of the assault by using or applying
21 force to another person, however slight, in a
22 rude, angry, or resentful manner without legal
23 justification for doing so. Using my earlier
24 example, if I carry through with the assault by
25 hitting you, then that is a battery. A law

1 enforcement officer means a duly appointed or
2 commissioned law enforcement officer of this
3 state, county, or municipality.

4 If you find the State has failed to
5 prove beyond a reasonable doubt that the defendant
6 assaulted an officer while resisting arrest, you
7 may consider whether the State has proved beyond a
8 reasonable doubt the lesser included offense of
9 resisting arrest. Resisting arrest does not
10 include any assault on an officer. To prove
11 resisting arrest the State must prove beyond a
12 reasonable doubt that the defendant resisted a
13 lawful arrest being made by a person the defendant
14 knew, or reasonably should have known, was a law
15 enforcement officer. Again, knowingly means with
16 knowledge, consciously done. Willfully means done
17 intentionally and not done by accident. Resist
18 means to oppose, strive against, or obstruct.
19 Obstruct means to impede, hinder, or interfere
20 with. Even peaceful, nonviolent, indirect
21 obstruction of an arrest or service or execution
22 of process is considered resisting arrest. If the
23 means used are sufficient to prevent the officer
24 from making arrest, the defendant is guilty of
25 resisting arrest.

1 The defendant has raised the defense
2 of accident. An act may be excused on the ground
3 of accident if it's shown that the act was
4 unintentional, that the defendant was acting
5 lawfully, and that reasonable care was used by the
6 defendant. For example, a person lawfully armed
7 in self-defense -- if a person is lawfully armed
8 in self-defense and a gun accidentally discharges,
9 the defense of accident would apply. The burden
10 is on -- proof is on the State to prove beyond a
11 reasonable doubt that the act was not an accident
12 but was caused by the negligence or carelessness
13 on the part of the defendant or by an unlawful
14 activity by the defendant.

15 Voluntary intoxication is not a
16 defense to a crime. A person who voluntarily
17 becomes intoxicated is just as responsible for the
18 acts committed while intoxicated as when the
19 person is not intoxicated.

20 All right. Ladies and gentlemen of
21 the jury, at this time I'm going to go over the
22 verdict form in this case with you and I'm going
23 to ask my law clerk to bring it to the foreperson
24 of the jury.

25 All right. Madam Forelady, as you can

1 see, there are multiple parts to this verdict form
2 and the offenses are numbered and following the
3 numbered offense are the lesser included offenses
4 that exist in this case. So, for example, as to
5 the charge of attempted murder of Roger Goden, you
6 would consider charge number 1, the primary
7 charge. If you decided that the defendant was not
8 guilty of charge number 1, then you proceed to
9 1(a). If you find that you were guilty, you'd
10 move to charge number 2. So it's -- these -- all
11 of these charges have lesser included offenses.
12 They're all multipart. They're all multipart
13 offenses and lesser includeds so you need to --
14 based upon how you answer the first question, you
15 should proceed to the following questions and the
16 verdict form will direct you which way to go. And
17 as to the primary charge and the lesser included
18 charge, ultimately, ladies and gentlemen, the
19 defendant can't be guilty of the primary charge
20 and the lesser included offense, so that's why if
21 you find, for example, him guilty of attempted
22 murder, you move to the second question and
23 disregard the lesser included offenses.

24 Ladies and gentlemen, there's no
25 significance whatsoever in the order in which I

1 stated the possible verdicts. It's simply that
2 one verdict must be stated first. Ladies and
3 gentlemen, I remind you that your verdict must be
4 unanimous.

5 Madam Foreperson, when the jury agrees
6 on the verdict, you'll write the verdict on the
7 verdict form and let the bailiff know you have
8 reached the decision. At that point in time we
9 will receive you back in the courtroom. I, again,
10 stress to you that the verdict must be unanimous.
11 Unanimous obviously means all twelve of you must
12 agree.

13 Ladies and gentlemen, I now ask that
14 you return -- actually, the bailiff is going to
15 take you to the other courtroom. That is where
16 you will conduct your deliberations. It is large
17 and will allow for you all to be in a room
18 together so you can remain distanced. I know
19 you've been in separate rooms as we proceeded
20 through this case. At this time you can take your
21 notes with you to refer to as you deliberate; and
22 after you go to the other courtroom, do not begin
23 your deliberations. There are some matters of law
24 that I need to take up with the lawyers and also
25 the evidence which has been admitted into the

1 record in this case must be gathered. At the time
2 the bailiff brings the evidence into the room for
3 your consideration, that will be your signal to,
4 begin your deliberations. So, if you would go to
5 the jury room for me -- or follow the bailiff to
6 the other courtroom, courtroom 3-B, do not begin
7 your deliberation till you receive the evidence.
8 And if the alternate jurors could stay in this
9 courtroom with me please. Well, actually, if the
10 alternates would go at least at this point in
11 time. Just do not begin your deliberations until
12 the evidence is brought in by the bailiff. So if
13 you would follow the bailiff at this time.

14 (WHEREUPON, the jury was removed from
15 the courtroom at 4:46 p.m.)

16 THE COURT: Any objections from the
17 State with regard to the charge?

18 MS. MCELVEEN: Your Honor, just want
19 to make sure, was expert witness testimony
20 covered?

21 THE COURT: Yes.

22 MS. MCELVEEN: Thank you. Just want
23 to make sure.

24 MR. MARVIN MCMILLAN: None.

25 MS. MCELVEEN: None, Your Honor.

1 THE COURT: All right. If y'all would
2 gather the evidence. Make sure that none of the
3 evidence which was marked and not admitted is
4 included, the items to go back to the jury.

5 Mr. Tomlin, if you would bring the
6 alternates.

7 MR. MARVIN MCMILLAN: You're not
8 planning on the tapes going back unless requested;
9 is that correct?

10 THE COURT: Correct. They can't
11 listen to them back there anyway so if they
12 need -- if they need to -- if they want to listen
13 to the tape...

14 (Attorneys review exhibits.)

15 MS. MCELVEEN: Your Honor, should we
16 -- is it okay if the bailiff lets them know that
17 the videos are out here; and if they need to see
18 them, they'll have to be brought in here to play?

19 THE COURT: That suits me.

20 MS. MCELVEEN: Just so they know where
21 they are and how they can see them again. Thank
22 you.

23 (Alternates were returned to the courtroom.)

24 THE COURT: Mr. Richert and Ms. Davis,
25 as you know, you were selected as the alternates

1 for this jury and the law does not allow for the
2 alternates to participate in the deliberations if
3 all 12 principal jurors make it through the
4 entirety of trial; and so, essentially what you've
5 done this week is served as relief pitchers. If
6 you think about a baseball game, if the starting
7 pitcher throws a complete game, there's no need
8 for, to bring in a replacement. So unfortunately,
9 you won't get to deliberate in this case, but I do
10 want to tell you I appreciate your attentiveness
11 during this trial. Obviously, you were taking
12 notes and making sure that you paid attention to
13 the evidence that was admitted. So I'm going to
14 excuse the two of you for this evening, but I need
15 you to come back tomorrow morning to the jury
16 assembly room at 9:30. There is the likelihood
17 that another case may be tried this week so you'll
18 be back in the general jury panel for tomorrow.
19 So with that being said, you're free to go. Enjoy
20 your evening. If you leave your notes there, the
21 bailiff will collect them and we'll see you
22 tomorrow morning in the jury assembly room at
23 9:30. Thank you.

24 (Alternates were excused.)

25 THE COURT: All right, folks, we are

1 at ease until we hear from the jury.

2 (WHEREUPON, a recess was taken from the
3 proceedings.)

4 (WHEREUPON, counsel approached the
5 bench for an off-the-record discussion.)

6 (Mr. Kent has returned.)

7 THE COURT: Ladies and gentlemen of
8 the jury, I understand that the jury has reached a
9 verdict. Before we bring the jury in to receive
10 their verdict I need to make an announcement.
11 It's understandable that this case is -- that the
12 case is full of emotion given the nature of the
13 offense and what is alleged to have occurred.
14 However emotional a case may be, we can't allow
15 emotions to overcome the necessity for decorum in
16 the courtroom so if you are a person who believes
17 that you might not be able to control your
18 emotions regardless of what the verdict is, now is
19 the time to step out of the courtroom because I
20 can't stress enough that we're going to maintain
21 decorum when the verdict is announced. So if
22 anybody wants to avail themselves of that
23 opportunity, now is the time.

24 (Pause.)

25 THE COURT: All right. Mr. Tomlin,

1 you can bring us the jury.

2 (WHEREUPON, the jury was returned to
3 the courtroom at approximately 5:31 p.m., and the
4 following proceedings commenced in open court.)

5 THE COURT: Madam Forelady, has the
6 jury reached a verdict?

7 THE FORELADY: Yes, sir.

8 THE COURT: Is it unanimous?

9 THE FORELADY: Yes, sir.

10 THE COURT: All right. If you can hand
11 it to the bailiff please.

12 (Verdict form tendered to the Court.)

13 THE COURT: In the court of General
14 Sessions, State of South Carolina, County of
15 Sumter, on indictment number 2020-GS-43-0245, the
16 State v. David L. Hill, Jr. As to the charge of
17 attempted murder of Roger Goden: We, the jury,
18 unanimously find the defendant guilty of attempted
19 murder. As to the charge assault and battery in
20 the first degree, Trenton Brown: We, the jury,
21 unanimously find the defendant guilty of the
22 lesser included offense of assault and battery in
23 the second degree. As to the charge of assaulting
24 an officer while resisting arrest as to the victim
25 Officer Rutan: We, the jury, unanimously find the

1 defendant guilty of the lesser included offense of
2 resisting arrest. Finally, as to the charge of
3 assaulting an officer while resisting arrest of
4 Officer McKnight: We find the defendant guilty of
5 the lesser included offense of resisting arrest.
6 Signed, foreperson Paula Hutchison, dated May 26,
7 2021.

8 Does Defense request polling of the
9 jury?

10 MR. KENT: Request for polling, Your
11 Honor.

12 THE COURT: If you'd poll the jury,
13 sir, please.

14 THE CLERK: May I please the Court,
15 Your Honor.

16 THE COURT: Yes, sir.

17 THE CLERK: Ladies and gentlemen of
18 the jury, I will be calling your juror number and
19 your name. All I need from you is a yes or no
20 answer.

21 Juror No. 39, Michael Curry. Yes or
22 no.

23 JUROR CURRY: Yes.

24 THE COURT: Hold on. Ask him, ask the
25 juror is it your verdict.

1 years. The Court never penalizes a defendant for
2 exercising his right to a jury trial. It's
3 guaranteed by our Constitution. It's the bedrock
4 of our judicial system. So as y'all can tell I'm
5 -- I'm still thinking about this.

6 I am moved by the words of Mr. Goden,
7 not to make light of the injuries and financial
8 losses that Mr. Brown suffered in this case. It's
9 obvious that Mr. Goden is the one who has suffered
10 the most as a result of what happened on July 7th,
11 2019, so I've got to determine punishment versus
12 Mr. Goden's plea for leniency, and it is a
13 difficult decision.

14 With that being said, the other three
15 charges are, comparatively speaking, rather simple
16 to determine sentence. So Mr. Hill, on indictment
17 2020-GS-43-245 on the count of resisting arrest,
18 you're sentenced to the State Department of
19 Corrections for a determinate term of one year.
20 It's concurrent with all of the sentences on
21 indictment 2020-GS-43-245. That sentence start
22 date was July 7, 2019. On that same indictment on
23 the second count resisting arrest, the sentence is
24 the same: One year, State Department of
25 Corrections, current to all sentences on

1 indictment 2020-GS-43-245; sentence start date
2 7/7/2019, given credit for the time that you've
3 served.

4 On the assault and battery in the
5 second degree, committed to the State Department
6 of Corrections for a determinate term of three
7 years. It is concurrent to all the sentences on
8 indictment 2020-GS-43-245, given credit for the
9 time served from beginning 7/7/2019.

10 Folks, I know he was offered a
11 particular sentence by the Solicitor's Office in
12 an attempt to resolve this case; and frankly, it's
13 rare that a person is sentenced to less time than
14 they were offered before trial. But because of
15 the words of Mr. Goden in this case, I'm gonna do
16 something that's -- that some may consider
17 abnormal. Some may consider this sentence too
18 light. Some may consider this sentence too heavy.
19 But I've got to take what the person in this
20 courtroom has suffered the most as a result of Mr.
21 Hill's obviously really bad night, I've got to
22 take that into consideration, and it comes to the
23 forefront of my mind when I'm passing a sentence.
24 And as I said before, some people might think this
25 sentence is too light. Some people might think

1 it's too heavy. But I think taking everything in
2 consideration, taking in the injuries that Mr.
3 Goden suffered, taking into account the lack of
4 Mr. Hill having a prior criminal record, and Mr.
5 Goden's plea for leniency, taking all those things
6 into account.

7 And, Mr. Hill, on the count of
8 attempted murder on indictment 2020-GS-43-245,
9 committed to the State Department of Corrections
10 for a determinate term of 12 years. That's
11 concurrent with the sentences on indictment
12 2020-GS-43-245. Give him credit for the time he
13 served since July 7, 2019.

14 And, again, I want the record to be
15 clear, this sentence was determined taking all of
16 those factors into consideration and certainly
17 giving great weight and emphasis to the wishes of
18 Mr. Goden who was the victim of the attempted
19 murder. And that is the sentence of the Court.

20 Good luck to you, Mr. Hill.

21
22 * * * END OF REQUESTED TRANSCRIPT OF RECORD * * *
23
24
25

STATE OF SOUTH CAROLINA) IN THE COURT OF GENERAL SESSIONS
COUNTY OF SUMTER 2021 JUN -9 AM 11:54) THIRD JUDICIAL CIRCUIT

STATE OF SOUTH CAROLINA) JAMES C.) INDICTMENT NUMBER: 2020-GS-43-0245
) CLERK OF COURT
) SUMTER COUNTY, S.C.

Plaintiff,

vs.

DAVID LAVERN HILL, JR.,

Defendant.

**DEFENDANT'S MOTION FOR A
NEW TRIAL**

YOU WILL PLEASE TAKE NOTICE that the undersigned, as attorneys for the Defendant, David Lavern Hill, Jr., moves this Court for an Order granting the Defendant a new trial pursuant to Rule 29 of the South Carolina Rules of Criminal Procedure. The Defendant so moves on the following grounds:

1. Failure to Grant a Mistrial:

During the course of the trial, the Defendant, by and through his undersigned counsel made several motions for a mistrial based upon the introduction of inadmissible evidence by the State and improper arguments of the State.

In a pretrial hearing, the Court ruled, among other things, that 1) no reference shall be made to the Defendant's Google search history; 2) no reference and no statements of Jennifer Hill or the Defendant relating to the Domestic Violence charge or threats against Jennifer Hill shall be introduced; 3) Jennifer Hill's 911 call shall be redacted and her statements on the call are not admissible; 4) no statements and no reference to actions of the Defendant after he had been arrested and placed in law enforcement's vehicle shall be introduced; and 5) no reference shall be made by the State regarding the Defendant's representation or number of Defendant's attorneys during the trial of this case.

The State's first witness, Jennifer Hill, testified as to the Defendant's Google searches and the Defendant objected and moved for mistrial based upon the Court's pretrial rulings. This Motion was denied by the Court. Further, another State witness, Andrew Bauler, testified that Jennifer Hill stated that the Defendant was trying to kill her. Defendant objected and moved for another mistrial based upon the Court's pretrial rulings. This Motion was denied by the Court. During this same witness' testimony, the State introduced the 911 call and began to play the portion of the call that contained Jennifer Hill's statements. Again, Defendant objected and moved for another mistrial based upon the Court's pretrial rulings. This Motion was also denied by the Court.

Furthermore, during the testimony of State's witness, Officer Z. Rutan, the State asked the witness a question regarding the threats and actions of the Defendant kicking the windows once he was placed into the Officer Z. Rutan's vehicle. The Defendant objected and moved for a mistrial, with prejudice, as the Defendant argued he has been forced to make multiple motions for mistrial based upon the actions of the State and the State's disregard for the Court's pretrial rulings. This Motion was also denied by the Court.

In addition, during the State's closing argument, the State made reference to the Defendant's representation and resources by specifically stating he has had the representation of four attorneys. This statement by the State was again in direct violation of the Court's pretrial ruling and the Defendant objected and moved for a mistrial. This Motion was denied by the Court.

Defendant submits to the Court that a mistrial should have been granted. The State's disregard for the Court's pretrial rulings and introduction of inadmissible evidence caused the Defendant to make several, cumulative objections and motions for a mistrial. The cumulative nature of these objections and the denial of requests for a mistrial deprived the Defendant of a fair trial.

2. Admission of Evidence / Testimony:

In pretrial hearings, the Defendant moved to suppress the portions of the body worn camera video related to the charges of Assault on an Officer While Resisting Arrest that occur after the Defendant is arrested and placed in handcuffs. The Court allowed an approximate ten (10) minute portion of the video of Officer Z. Rutan that occurs after the Defendant was arrested and placed in handcuffs and suppressed the remainder of the video. The admission of this approximate ten (10) minute portion of Officer Z. Rutan's video was improper and prejudicial and deprived the Defendant of a fair trial.

Further, prior to trial, the Defendant pled guilty to the Domestic Violent charge on the indictment and moved in pretrial hearings to suppress any evidence or references to the Domestic Violent charge during the trial. The Court ruled that the State could refer to a "physical altercation," but that any further references would be improper and are not admissible. However, during the testimony of State's witness, Andrew Bauler, the Court allowed the 911 call to be introduced, against the Defendant's objection, in which Andrew Bauler gives detailed descriptions about the altercation involving the Domestic Violence charge. In addition, the State referenced the Defendant "fighting" Jennifer Hill in opening statements and Jennifer Hill was allowed to testify about the altercation. The Defendant submits that no reference whatsoever should have been made regarding the Domestic Violence charge and that the introduction of such references made in this trial were improper and deprived the Defendant of a fair trial.

Furthermore, the Defendant objected to the introduction of excessive photographs of blood on the scene during the testimony of one of the State's witness, Officer J. Salmon. The Court overruled this objection and the Defendant submits this was improper and deprived the Defendant of a fair trial.

3. Failure to Grant a Directed Verdict:

The Defendant submits that it was error to deny the Defendant's Motion for a Directed Verdict for all charges when the motion was made at the end of the State's case and the close of all evidence. In addition, and in regard to the counts of Assault and Battery 1st Degree of Trenton Brown and Assault on Officer While Resisting Arrest against Officers McKnight and Rutan, as there was no evidence to establish great bodily injury and no evidence of an assault on the officers submitted by the State and as such a directed verdict of acquittal on those charges should have been granted.

4. Failure to Charge Assault and Battery 2nd Degree as a lesser included offense as to the count of Attempted Murder:

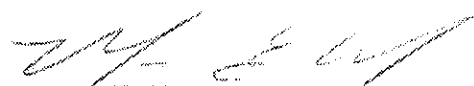
The Defendant submits that it was error for the Court to deny the Defendant's request for the lesser included offense of Assault and Battery 2nd Degree for the count of Attempted Murder in regard to Roger Gooden. The Defendant submits that the evidence presented by the State in regard to the count of Attempted Murder provided some basis on which the jury could have found the allegation to be less than Attempted Murder and the other lesser included offenses that were charged. The Defendant submits this failure to charge Assault and Battery 2nd Degree was improper and deprived the Defendant of a fair trial.

Based upon the above, the undersigned is informed and believes that all of the facts and circumstances establish that the Defendant was deprived of fair trial and the Defendant requests that the Court grant his Motion for a New Trial.

RESPECTFULLY SUBMITTED.

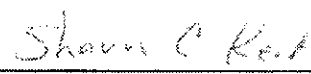
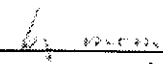
[SIGNATURES ON FOLLOWING PAGE]

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June 4, 2021
Manning, South Carolina

STATE OF SOUTH CAROLINA)
)
 COUNTY OF SUMTER) IN THE COURT OF GENERAL SESSIONS
) Indigent Number: 2020-GS-43-0245
 2021 JUL 1 AM 10 20

THE STATE,

-vs-

DAVID L HILL, JR,

Defendant.

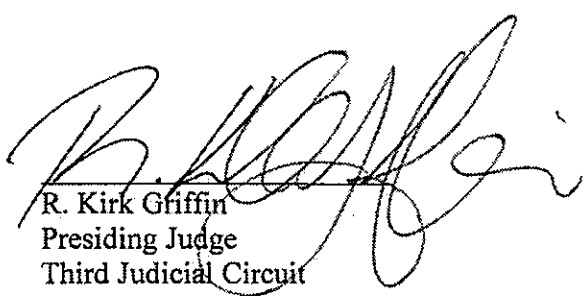
JAMES J. CAMPBELL
 CLERK OF COURT
 SUMTER COUNTY, S.C.

ORDER

This matter came before the court pursuant to a timely filed motion for a new trial under Rule 29 of the South Carolina Rules of Criminal Procedure. The Defendant, David L. Hill, Jr., was convicted of Attempted Murder, Assault and Battery in the Second Degree, and two counts of Resisting Arrest after a jury trial, which concluded on May 26, 2021. The Court decides Defendant's Motion for a New Trial without oral argument pursuant to Rule 29(a), South Carolina Rules of Criminal Procedure.

Defendant raises four grounds for new trial. Each of these grounds are based upon rulings made by the Court in a pretrial hearing or during the trial. In deciding these motions, the Court made detailed rulings at the time the motions were made. The Court relies on the prior rulings and the case law and applicable evidentiary rules cited on the record. For those reasons, Defendant's Motion for a New Trial is respectfully Denied.

AND IT IS SO ORDERED.


 R. Kirk Griffin
 Presiding Judge
 Third Judicial Circuit

July 1, 2021
 Sumter, SC

DOCKET NO. 2020-GS-43-0245

The State of South Carolina

County of SUMTER

COURT OF GENERAL SESSIONS

MARCH TERM 2020

THE STATE

vs.

DAVID L HILL JR.

Indictment for

Murder / Attempted Murder
 Domestic Violence, 2nd degree
 Resisting Arrest, assault officer (2 counts)
 Assault & Battery 2nd degree



ERNEST A. FINNEY, III, SOLICITOR

WITNESSES

John D. Melton Sumter Police Dept.

T Sims Sumter Police Dept.

Jeffery B. Hansen Sumter Police Dept.

ARREST WARRANT NUMBER

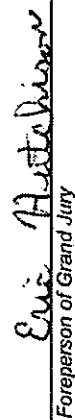
2019A4320100533 2019A4320100532

2019A4320100534

2019A4320100535 2019A4310200688

ACTION OF GRAND JURY

TRUE BILL



Foreperson of Grand Jury

Date:

3-13-20

VERDICT

Foreperson of Petit Jury

Date:

STATE OF SOUTH CAROLINA)
)
 COUNTY OF SUMTER)

INDICTMENT FOR

Murder / Attempted Murder
 Domestic Violence, 2nd degree
 Resisting Arrest, assault officer (2 counts)
 Assault & Battery 2nd degree

At a Court of General Sessions, convened on March 12, 2020 the Grand Jurors of
 SUMTER County present upon their oath:

COUNT ONE ATTEMPTED MURDER

That David L. Hill Jr. did in Sumter on or about July 7, 2018, with intent to kill, attempt to kill another person, Roger Gooden, with malice aforethought, either express or implied, by intentionally driving a vehicle into the victim; in violation of Section 16-3-29 of the Code of Laws of South Carolina (1976), as amended.

COUNT TWO DOMESTIC VIOLENCE 2nd DEGREE

That David L. Hill Jr. did in Sumter County on or about July 7, 2018, inflict physical harm/injury to a household member or offer/attempt to cause such with the apparent present ability under circumstances reasonably creating fear of imminent peril and either: Defendant actually inflicted physical harm or injury to a household member or offered/attempted to cause such harm/injury with the apparent present ability under circumstances reasonably creating fear of imminent peril, and either defendant was in the process of violating a protective order, defendant knew/should have known the victim is/was pregnant, a minor was present or perceived the event, the offense was committed during a robbery, burglary, kidnapping or theft, the offense was committed by impeding the victim's breathing or air flow, or the offense was committed using physical force or threat of such force to block a person's access to phone or electronic communication device with the purpose of preventing or interfering with a report to law enforcement or request for assistance from emergency medical assistance; in violation of Section 16-25-20, S. C. Code of Laws, 1976, as amended.

COUNT THREE RESISTING ARREST, ASSAULT OFFICER

That in Sumter County, South Carolina, on or about July 7, 2018, the Defendant, David L. Hill Jr., knowingly and willfully did assault, beat, or wound Officer Z. Rutan, a law enforcement officer of this State, while resisting the efforts of the officer to make a lawful arrest of the defendant, when he knew or reasonably should have known that Officer Z. Rutan, was a law enforcement officer, in violation of Section 16-9-320(b), Code of Laws of South Carolina, (1976, as amended).

ATTACHED TO AND BECOMING PART OF THE ORIGINAL INDICTMENT FOR 2020-GS-43-0245
WITH THE AFORESAID NAME OF DAVID L. HILL, JR SHOWN THEREON:

COUNT FOUR
RESISTING ARREST, ASSAULT OFFICER

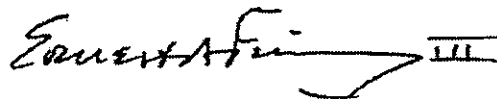
That in Sumter County, South Carolina, on or about July 7, 2018, the Defendant, David L Hill Jr., knowingly and willfully did assault, beat, or wound Officer K. McKnight, a law enforcement officer of this State, while resisting the efforts of the officer to make a lawful arrest of the defendant, when he knew or reasonably should have known that Officer K. McKnight, was a law enforcement officer, in violation of Section 16-9-320(b), Code of Laws of South Carolina, (1976, as amended).

COUNT FIVE
ASSAULT & BATTERY 1ST DEGREE

That David L Hill Jr. did in Sumter on or about July 7, 2019, unlawfully injure and /or attempt to injure another person, Trenton Brown, with the present ability to do so, and the act was accomplished by means likely to produce death or great bodily injury; in violation of Section 16-3-600(C)(1) of the 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.

Solicitor



COUNTY OF
STATESUMT
VS.

David L Hill Jr.

AKA:

Race: White Sex: M Age: 33

DOB: 1987 SS#: [REDACTED]

Address: Appaloosa Dr

City, State, Zip: Sumter, SC 291549069

DL#: [REDACTED] SID#: [REDACTED]

*CDL ☐ CMV ☐ Hazmat ☐

In disposition of the said indictment comes now the Defendant who was

TO: Murder / Attempted Murder

INDICTMENT/CASE#: 2020-GS-43-0245

A/W#: 2019A4320100533

Date of Offense: 7/7/2018

S.C. Code § : 16-03-0029

CDR Code #: 3410

SENTENCE SHEET

☒ CONVICTED OF or ☐ PLEADS

in violation of § 16-03-0029 of the S.C. Code of Laws, bearing CDR Code # 3410

☐ 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:

SCB102713

McElveen, Bronwyn K

SC Bar#

Defendant

Furse, John Loudon
Attorney for Defendant

SC Bar#

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center, for a determinate term of 12 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 SCDOC. *sentenced 7-7-2019*☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered PTUP

Total: \$ _____ plus 20% fee: \$ _____ days/hours Public Service Employment

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 (Public Def/Probation)	\$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	\$
3% to County (if paid in installments)		\$3.75

TOTAL

\$128.75

Clerk of Court/ Deputy Clerk

Court Reporter:

SCCA/217 (04/2018)

Presiding Judge

Judge Code:

Sentence Date:

☐ Appointed PD or appointed other counsel, Proviso requires \$500 be paid to Clerk during probation and shall be collected before any other fees.

Presiding Judge

Judge Code:

Sentence Date:

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF SUMTER
STATE VS.

David L Hill Jr.

AKA:

Race: White Sex: M Age: 33

DOB: 1-1987 SS#: [REDACTED]

Address: Appaloosa Dr

City, State, Zip: Sumter, SC 291549069

DL#: [REDACTED] SID#: [REDACTED]

*CDL ☐ CMV ☐ Hazmat ☐In disposition of the said indictment comes now the Defendant who was
TO: Domestic/Domestic Violence, 2nd degree

INDICTMENT/CASE#: 2020-GS-43-0245

A/W#: 2019A4320100532

Date of Offense: 7/7/2018 2019

S.C. Code § 16-25-0020(C)

CDR Code #: 3812

SENTENCE SHEET

☐ CONVICTED OF or ☒ PLEADS

in violation of § 16-25-0020(C) of the S.C. Code of Laws, bearing CDR Code # 3812

☐ 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:

McElveen, Bronwyn K

SC Bar#

Defendant

Furse, John Loudon

SCB102713

SC Bar#

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,
for a determinate term of 3 days/months/years or ☐ under the Youthful Offender Act not to exceed years
and/or to pay a fine of \$; provided that upon the service of 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 SCDOP. Since☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135. 7-7-2019

Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered PTUP

Total: \$ plus 20% fee: \$

Payment Terms:

☐ Set by SCDPPPS

Recipient:

*Fine:

§14-1-206 (Assessments 107.5 %)

§14-1-211(A)(1) (Conv. Surcharge)

§14-1-211(A)(2) (DUI Surcharge)

§56-5-2995 (DUI Assessment)

§56-1-286 (DUI Breath Test)

Proviso (Public Def/Probation)

§14-1-212 (Law Enforce. Funding)

§14-1-213 (Drug Court Surcharge)

§50-21-114 (BUI Breath Test Fee)

§56-5-2942(J) (Vehicle Assessment)

3% to County (if paid in installments)

TOTAL

days/hours Public Service Employment

Obtain GED ☐

Attend Voc. Rehab. or Job Corp.

May serve W/E beginning

Substance Abuse Counseling ☐Random Drug/Alcohol testing ☐

Fine may be pd. in equal, consecutive weekly/monthly

pmts. of \$ beginning

\$ paid to Public Defender Fund

Other:

☐ Appointed PD or appointed other counsel,
Proviso requires \$500 be paid to Clerk
during probation and shall be collected before
any other fees.

Presiding Judge

Judge Code: 2768

Sentence Date: 3-24-2021

Clerk of Court/ Deputy Clerk

Court Reporter:

SCCA/217 (04/2018)

COUNTY OF
STATE

SUMT

VS.

David L Hill Jr.

AKA:

Race: White Sex: M Age: 33

DOB: -1987 SS#: [REDACTED]

Address: Appaloosa Dr

City, State, Zip: Sumter, SC 291549069

DL#: [REDACTED] SID#: [REDACTED]

*CDL ☐ CMV ☐ Hazmat ☐

In disposition of the said indictment comes now the Defendant who was

☒ CONVICTED OF or ☐ PLEADS

TO: Resisting / Resisting Arrest; Oppose, resist, or assault law enforcement officer serving process

in violation of § 16-09-0320(A) of the S.C. Code of Laws, bearing CDR Code # 0326

☒ 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:

SCB102713

McElveen, Bronwyn K

SC Bar#

Defendant

Furse, John Louden
Attorney for Defendant

SC Bar#

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,
for a determinate term of 1 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: all sentences on 2020-65-43-245☒ The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by SCDOC.☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered PTUPTotal: \$ plus 20% fee: \$ Payment Terms: ☐ Set by SCDPPPS Recipient:

*Fine:	\$
§14-1-206 (Assessments 107.5 %)	\$
§14-1-211(A)(1) (Conv. Surcharge)	\$100
§14-1-211(A)(2) (DUI Surcharge)	\$100
§56-5-2995 (DUI Assessment)	\$12
§56-1-286 (DUI Breath Test)	\$25
Proviso (Public Def/Probation)	\$500
§14-1-212 (Law Enforce. Funding)	\$25
§14-1-213 (Drug Court Surcharge)	\$150
§50-21-114(BUI Breath Test Fee)	\$50
§56-5-2942(J) (Vehicle Assessment)	\$40/ea
3% to County (if paid in installments)	\$
TOTAL	\$128.75

Clerk of Court/ Deputy Clerk

Court Reporter:

SCCA/217 (04/2018)

INDICTMENT/CASE#: 2020-GS-43-0245

A/W#: 2019A4320100534

Date of Offense: 7/7/2018

S.C. Code § 16-09-0320(B)

CDR Code #: 0256

SENTENCE SHEET

Presiding Judge

Judge Code: 2768

Sentence Date: May 26, 2021

COUNTY OF SUMTER
STATE VS.

David L Hill Jr.

AKA:

Race: White Sex: M Age: 33

DOB: 1987 SS#: [REDACTED]

Address: Appaloosa Dr

City, State, Zip: Sumter, SC 291549069

DL#: [REDACTED] SID#: [REDACTED]

*CDL ☐ CMV ☐ Hazmat ☐

In disposition of the said indictment comes now the Defendant who was

TO: Resisting / Resisting Arrest; Oppose, resist, or assault law enforcement officer serving process

in violation of § 16-09-0320(A) of the S.C. Code of Laws, bearing CDR Code # 0326

☒ 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:

SCB102713

McElveen, Bronwyn K

SC Bar#

Defendant

Furse, John Loudon
Attorney for Defendant

SC Bar#

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center, for a determinate term of 1 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 SCDOC.☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered PTUP

Total: \$ _____ plus 20% fee: \$ _____

Payment Terms:

☐ Set by SCDPPPS

Recipient:

*Fine:

§14-1-206 (Assessments 107.5 %)	\$	
§14-1-211(A)(1) (Conv. Surcharge)	\$100	\$100.00
§14-1-211(A)(2) (DUI Surcharge)	\$100	\$
§56-5-2995 (DUI Assessment)	\$12	\$
§56-1-286 (DUI Breath Test)	\$25	\$
Proviso (Public Def/Probation)	\$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	\$
3% to County (if paid in installments)		\$3.75

TOTAL

\$128.75

Clerk of Court/ Deputy Clerk

Court Reporter:

James C. Campbell
Frances B. Ray

SCCA/217 (04/2018)

INDICTMENT/CASE#: 2020-GS-43-0245

A/W#: 2019A4320100535

Date of Offense: 7/7/2018

S.C. Code § : 16-09-0320(B)

CDR Code #: 0256

SENTENCE SHEET

☒ CONVICTED OF or ☐ PLEADS~~all sentences on indictment~~

_____ days/hours Public Service Employment

Obtain GED ☐

Attend Voc. Rehab. or Job Corp. _____

May serve W/E beginning _____

Substance Abuse Counseling ☐Random Drug/Alcohol testing ☐

Fine may be pd. in equal, consecutive weekly/monthly pmts. of \$ _____ beginning _____

\$ _____ paid to Public Defender Fund

Other: _____

☐ Appointed PD or appointed other counsel, Proviso requires \$500 be paid to Clerk during probation and shall be collected before any other fees.

Presiding Judge

Judge Code: 2768

Sentence Date: May 26, 2021

B. Hill Jr.

COUNTY OF
STATESUMT
VS.

David L Hill Jr.

AKA:

Race: White Sex: M Age: 33

DOB: [REDACTED]-1987 SS#: [REDACTED]

Address: [REDACTED] Appaloosa Dr

City, State, Zip: Sumter, SC 29154

DL#: [REDACTED] SID#: [REDACTED]

*CDL ☐ CMV ☐ Hazmat ☐

In disposition of the said indictment comes now the Defendant who was

TO: Assault / Assault & Battery 2nd Degree

INDICTMENT/CASE#: 2020-GS-43-0245

A/W#: 2019A4310200688

Date of Offense: 7/7/2019

S.C. Code § : 16-03-0600 (C) (1)

CDR Code #: 3412

SENTENCE SHEET

☒ CONVICTED OF or ☐ PLEADS

in violation of § 16-03-0600 (D) (1) of the S.C. Code of Laws, bearing CDR Code # 3413

☒ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS(CSC ☐ §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:

McElveen, Bronwyn K

SC Bar#

Defendant

Furse, John Loudon
Attorney for Defendant

SCB102713

SC Bar#

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,
for a determinate term of 3 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years
and/or to pay a fine of \$ _____; provided that upon the service of _____ 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: all sentences on indictment 2020-GS-43-245☒ The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by SCDOC. Sentence Start Date 7-7-2019☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered PTUP _____

Total: \$ _____ plus 20% fee: \$ _____

_____ days/hours Public Service Employment

Payment Terms: _____

☐ Set by SCDPPPS _____

Recipient: _____

*Fine: _____ S
 §14-1-206 (Assessments 107.5 %) _____ S
 §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 (Public Def/Probation) \$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 \$
 3% to County (if paid in installments) \$ 3.25

TOTAL \$128.25

Clerk of Court/ Deputy Clerk

Court Reporter:

SCCA/217 (04/2018)

Presiding Judge

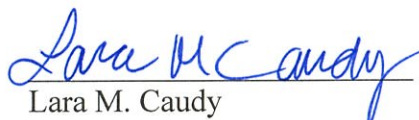
Judge Code: 2768Sentence Date: May 26, 2021

CERTIFICATE OF COUNSEL FOR APPELLANT

Counsel for appellant certifies that this Record on Appeal contains all material proposed to be included by any of the parties and not any other material and that this Record on Appeal complies to the best of my ability with the April 15, 2014 order from the South Carolina Supreme Court entitled "Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings."

RECEIVED**Sep 09 2022****SC Court of Appeals**

Respectfully Submitted,



Lara M. Caudy
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, S.C. 29211-1589

ATTORNEY FOR APPELLANT

This 9th day of September, 2022

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

RECEIVED

Sep 09 2022

SC Court of Appeals

Appeal from Sumter County

Honorable R. Kirk Griffin, Circuit Court Judge

THE STATE,

RESPONDENT,

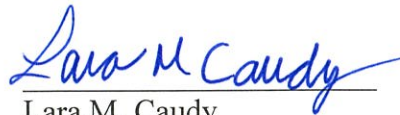
V.

DAVID L. HILL, JR.,

APPELLANT.

CERTIFICATE OF SERVICE

Pursuant to Rule 262(a)(3) and Rule 262(c)(3), SCACR, the undersigned hereby certifies a true copy of the Record on Appeal in the above referenced case has been served upon Joshua A. Edwards, Esquire, at the primary email address listed in the Attorney Information System (AIS), this 9th day of September, 2022.



Lara M. Caudy
Appellate Defender

ATTORNEY FOR APPELLANT