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SC Court of Appeals

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Florence County

Honorable DeAndrea G. Benjamin, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

ROBERT LEE CARTER, JR.

APPELLANT

APPELLATE CASE NO. 2022-000396

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INDEX

INDEX	i
TRIAL TRANSCRIPT DATED MARCH 14-16, 2022	1
DEFENSE RENEWAL OF ALL PRETRIAL MOTIONS BY MS. NEYLE	40
DEFENSE MOTION TO SEQUESTER WITNESSES BY MS. NEYLE	40
COLLOQUY WITH DEFENDANT REGARDING PLEA OFFERS	41
DEFENSE MOTION TO SUPPRESS BODY-WORN CAMERA FOOTAGE UNDER RULE 403	50
ARGUMENT IN REPLY TO DEFENSE MOTIONS BY MR. SCRUGGS	50
PROSECUTION MOTION FOR AN EVIDENTIARY HEARING BY MR. SCRUGGS	51
TESTIMONY	
KAITLYN SULLIVAN (<i>IN-CAMERA</i>)	
Direct Examination by Mr. Scruggs	53
Cross-Examination by Ms. Neyle	61
CONTINUED ARGUMENT IN REPLY BY MR. SCRUGGS	63
REBUTTAL BY MS. NEYLE	67
REPLY BY MR. SCRUGGS	68
COURT’S DECISION DENYING DEFENSE MOTION TO SUPPRESS	71
COURT’S DECISION GRANTING DEFENSE MOTION TO SEQUESTER	71
OPENING STATEMENT BY MS. LEFRIDGE	80
OPENING STATEMENT BY MS. NEYLE	82
TESTIMONY	
SARAH BENNETTS	
Direct Examination by Ms. Lefridge	83
Cross-Examination by Ms. Neyle	85
LEVI JAMES	

Direct Examination by Ms. Lefridge.....	87
KAITLYN SULLIVAN	
Direct Examination by Ms. Lefridge.....	91
Cross-Examination by Ms. Neyle	98
HELEN BRYANT	
Direct Examination by Mr. Scruggs.....	100
Cross-Examination by Ms. Neyle	110
MATTHEW FRYE	
Direct Examination by Mr. Scruggs.....	112
Cross-Examination by Ms. Neyle	119
JOHN DAVIS	
Direct Examination by Mr. Scruggs.....	120
Cross-Examination by Ms. Neyle	131
STEVEN STARLING	
Direct Examination by Mr. Scruggs.....	134
Cross-Examination by Ms. Neyle	148
JASON VAUGHN	
Direct Examination by Mr. Scruggs.....	152
Cross-Examination by Ms. Neyle	156
Redirect Examination by Mr. Scruggs	157
FRANK MIZELL	
Direct Examination by Mr. Scruggs.....	158
Cross-Examination by Ms. Neyle	162
DOCTOR BRADLEY RUSSELL	
Direct Examination by Ms. Lefridge.....	163
Cross-Examination by Ms. Neyle	176
Redirect Examination by Ms. Lefridge	178
CATHERINE LEISY	
Direct Examination by Ms. Lefridge.....	179
Cross-Examination by Ms. Neyle	198
Redirect Examination by Ms. Lefridge	203
DEFENSE RENEWAL OF ALL PRIOR MOTIONS BY MS. NEYLE	204
DEFENSE MOTION FOR A DIRECTED VERDICT AS TO ATTEMPTED MURDER CHARGE BY MS. NEYLE.....	205

DEFENSE MOTION FOR A DIRECTED VERDICT AS TO CRIMINAL CONSPIRACY CHARGE BY MS. NEYLE.....	205
ARGUMENTS IN REPLY BY MR. SCRUGGS.....	205
COURT’S DECISION DENYING MOTION FOR DIRECTED VERDICT AS TO ATTEMPTED MURDER CHARGE	208
COURT’S DECISION DENYING MOTION FOR DIRECTED VERDICT AS TO CRIMINAL CONSPIRACY CHARGE	209
DEFENSE MOTION FOR A DIRECTED VERDICT AS TO ARMED ROBBERY CHARGE BY MS. NEYLE	209
COURT’S DECISION DENYING MOTION FOR DIRECTED VERDICT AS TO ARMED ROBBERY CHARGE	209
COLLOQUY WITH DEFENDANT	209
STATE RESTS	212
DEFENSE RESTS	213
CLOSING ARGUMENT BY MR. SCRUGGS	228
CLOSING ARGUMENT BY MS. NEYLE	248
VERDICT	282
DEFENSE RENEWAL OF ALL MOTIONS AND OBJECTIONS.....	286
DEFENSE MOTION FOR A NEW TRIAL BY MS. NEYLE	286
COURT’S DECISION DENYING MOTION FOR A NEW TRIAL	286
SENTENCING	289
SENTENCE SHEET- ABHAN	291
SENTENCE SHEET- ARMED ROBBERY	293
SENTENCE SHEET- CONSPIRACY	295
INDICTMENT.....	297
CERTIFICATE OF COUNSEL	299

[STATE'S EXHIBIT #1 (BODY CAMERA FOOTAGE) IS ON FILE WITH THIS COURT]

STATE OF SOUTH CAROLINA	)	
	)	GENERAL SESSIONS COURT
COUNTY OF FLORENCE	)	2019-GS-21-01497
	)	
	)	
	)	
THE STATE,	)	
PLAINTIFF,	)	
	)	
vs.	)	TRANSCRIPT OF RECORD
	)	
ROBERT LEE CARTER, JR.,	)	
DEFENDANT.	)	
_____	)	

March 14-16, 2022
Florence, South Carolina

B E F O R E:

THE HONORABLE DEANDREA G. BENJAMIN, JUDGE.

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

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ELIZABETH NEYLE, ESQ.
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Attorney for the Defendant

Proceedings Recorded by DCRP
Transcribed by Penny M. Johnson

I N D E X

(PW) - Denotes Plaintiff's Witness

(DW) - Denotes Defense Witness

Page No.

(IC) KAITLYN SULLIVAN:

Direct Examination by Mr. Scruggs..... 53

Cross-Examination by Ms. Neyle..... 61

Opening Statement by Ms. Lefridge..... 80

Opening Statement by Ms. Neyle..... 82

(SW) SARAH BENNETTS:

Direct Examination by Ms. Lefridge..... 83

Cross-Examination by Ms. Neyle..... 85

(SW) LEVI JAMES:

Direct Examination by Ms. Lefridge..... 87

(SW) KAITLYN SULLIVAN:

Direct Examination by Ms. Lefridge..... 91

Cross-Examination by Ms. Neyle..... 98

(SW) HELEN BRYANT:

Direct Examination by Mr. Scruggs..... 100

Cross-Examination by Ms. Neyle..... 110

(SW) MATTHEW FRYE:

Direct Examination by Mr. Scruggs..... 112

Cross-Examination by Ms. Neyle..... 119

(SW) JOHN DAVIS:

Direct Examination by Mr. Scruggs..... 120

Cross-Examination by Ms. Neyle..... 131

(SW) STEVEN STARLING:

Direct Examination by Mr. Scruggs..... 134

Cross-Examination by Ms. Neyle..... 148

(SW) JASON VAUGHN:

Direct Examination by Mr. Scruggs..... 152

Cross-Examination by Ms. Neyle..... 156

Redirect Examination by Mr. Scruggs..... 157

(SW) FRANK MIZELL:

Direct Examination by Mr. Scruggs..... 158

Cross-Examination by Ms. Neyle..... 162

	<u>Page No.</u>
<u>(SW) BRADLEY RUSSELL, M.D.:</u>	
Direct Examination by Ms. Lefridge.....	163
Cross-Examination by Ms. Neyle.....	176
Redirect Examination by Ms. Lefridge.....	178
<u>(SW) CATHERINE LEISY:</u>	
Direct Examination by Ms. Lefridge.....	179
Cross-Examination by Ms. Neyle.....	198
Redirect Examination by Ms. Lefridge.....	203
Closing Argument by Mr. Scruggs.....	228
Closing Argument by Ms. Neyle.....	247
Charge on the Law by the Court.....	252

E X H I B I T S

<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID.</u>	<u>EVD.</u>
(State's Exhibits)			
1 (IC)	CD		60
1	Body Cam		96
2	N/A		
3	Aerial Map		105
4	Anatomical Drawing	170	
5	Anatomical Drawing	170	
6	911 Call		90
7	CAD Report		88
8	Photograph		95
9	Photograph		95
10	Photograph		95
11	Photograph		95
12	Body Camera Footage		118
13	Photograph		126
14	Photograph		127
15	Sunglasses		110
16	Golden Corral Receipt		154
17	Blue Jeans Swab		184
18	Nike Shoe Swab		184
19	Pocketknife Swab		184
20	Leonard Carter's Hands Swab		184
21	Thomas McElveen's Swab		184
22	Robert Carter's Swab		184
23	Leonard Carter's Swab		184
24	DNA Extracts		186
25	Pocketknife		117
26	Photograph		125
27	Shoes		131
28	Report		188
29	SLED Chain		183
(Court's Exhibits)			
1	Jury Charge		175
2	Jury Question		277
3	Jury Question		278

All Exhibits were retained by the Clerk of Court for Florence County.

P R O C E E D I N G S

1
2 THE COURT: Ladies and gentlemen, it is a pleasure to
3 be with you here today. To my right is my law clerk,
4 Chandler Soapes, and then we have our court reporter who is
5 taking down everything that we are saying. So, I will ask
6 that you speak loudly so that we will have an accurate
7 record. This is a court of record.

8 It's my understanding they have already been qualified;
9 is that correct?

10 THE CLERK: Yes, ma'am.

11 THE COURT: So at this time, we are picking a jury.
12 And there's a series of questions that I need to ask of you
13 to determine if you can be fair and impartial in this trial.
14 If there is any question that I ask that you do not
15 understand, please stand up and I will ask the question
16 again. If there's any question that you do not wish to
17 answer in front of the entire panel, I will give you an
18 opportunity to speak with me privately. And I remind you
19 that you're still under the oath that you took earlier.

20 All right, ladies and gentlemen of the jury, I have in
21 my hand the indictment in this case. This is the case of
22 The State of South Carolina vs. Robert Lee Carter, Jr. This
23 is the indictment that I have in my hand. I'll go ahead and
24 tell you, the indictment is the charging paper. The
25 Defendant in this case has pled not guilty and this matter

1 is before you for trial.

2 What I am about to read to you are the allegations in
3 the case that have to be proved by the State. I want to
4 make sure you're clear that these are clearly allegations
5 and the State has to prove the elements of each of these
6 charges beyond a reasonable doubt.

7 So the indictment, once again, is 2019-GS-21-1497, The
8 State of South Carolina, County of Florence in the Court of
9 General Sessions, The State vs. Robert Lee Carter, Jr. This
10 is an indictment for armed robbery, attempted murder and
11 criminal conspiracy.

12 As to count one, armed robbery, the allegations read,
13 that Robert Lee Carter, Jr., did in Florence County on or
14 about May 21st, 2019, while armed with a deadly weapon,
15 to-wit, a knife, take and carry away personal property of
16 Thomas McElveen from or in the immediate presence of Thomas
17 McElveen with the intent to deprive Thomas McElveen of
18 possession by use of force, threats or intimidation in
19 violation of Section 16-11-330(a) of the South Carolina Code
20 of Laws.

21 Count two reads: Attempted murder that -- the
22 allegations read that Robert Lee Carter, Jr., did in
23 Florence County on or about May 21st, 2019, with intent to
24 kill Thomas McElveen, attempt to kill the victim with malice
25 aforethought in violation of Section 16-3-29 as amended in

1 the South Carolina Code of Laws.

2 And count three, criminal conspiracy, that Robert Lee
3 Carter, Jr., did in Florence County on or about May 21st,
4 2019, combine with Leonard Allen Carter and/or with other
5 persons for the purpose of accomplishing a criminal or
6 unlawful object or an object that is neither criminal nor
7 unlawful through criminal or unlawful means, to-wit, armed
8 robbery, in violation of Section 16-17-410 of South Carolina
9 Code of Laws 1976, as amended.

10 Once again, ladies and gentlemen of the jury, these are
11 the allegations in the indictment. My first question to
12 you, is there any member of the jury panel who is familiar
13 with this case in any way whatsoever based on what I've just
14 read? If so, I'll ask that you please stand.

15 (There was no response.)

16 THE COURT: We'll start with the Defendant in this
17 case.

18 I'll ask Mr. Robert Lee Carter, Jr., to please stand
19 and turn around and face the jury.

20 (Defendant stands.)

21 THE COURT: Thank you. Yes, sir, you may be seated.

22 And then our victim, Thomas McElveen.

23 MR. WHITE: He's not present, Your Honor.

24 THE COURT: Okay.

25 Is there any member of the jury panel related by blood

1 or marriage to either the Defendant in this case, Mr. Robert
2 Lee Carter, Jr., or Thomas McElveen? If so, please stand.

3 (There was no response.)

4 THE COURT: Has anyone ever had a close personal,
5 social or business relationship with Mr. Robert Lee Carter,
6 Jr. or Thomas McElveen?

7 Yes, sir, your juror number?

8 POTENTIAL JUROR: I employed someone by the name of
9 Thomas McElveen in my business. It may not be the same
10 person.

11 THE COURT: What's your juror number?

12 POTENTIAL JUROR: 111.

13 THE COURT: And where do you work? You said you
14 employed?

15 POTENTIAL JUROR: I own a restaurant here in Florence.

16 THE COURT: All right. Sir, would the fact that you
17 may have employed Mr. McElveen, would that affect your
18 ability to be fair and impartial in this trial?

19 POTENTIAL JUROR: No, ma'am.

20 THE COURT: Thank you.

21 Anyone else?

22 (There was no response.)

23 THE COURT: All right. The following is a list of
24 potential witnesses in the case:

25 If any of the witnesses are in the courtroom, I'll ask

1 that the witnesses please stand when your name is called.

2 John S. Davis; Kaitlyn Morris-Sullivan; Helen Bryant;
3 Ashley Anderson; Jessica Coker; Sarah Bennetts; Brian
4 Carroway; Matt Frye; Steven Starling; Catherine Leisy,
5 L-E-I-S-Y; and Dr. Bradley Russell.

6 Once again --

7 MR. WHITE: Your Honor, if I may, there are a few other
8 individuals --

9 THE COURT: Yeah, I'll go back.

10 John Davis is with the Florence Police Department;
11 Kaitlyn Sullivan is with the Florence Police Department;
12 Helen Bryant is with the Florence Police Department; Ashley
13 Anderson with the Florence Police Department. The next four
14 are Florence Police Department: Steven Starling; Matthew
15 Frye; Christopher Russell is with the Florence Police
16 Department; Frank Mizell; Levi James and Elisha Smith are
17 Florence County 911; Jessica Coker, formerly Florence County
18 EMS; Brian Carroway, Florence County EMS; Dr. Bradley
19 Russell with MUSC Florence; Sarah Bennetts from Marion,
20 South Carolina; Jason Vaughn, Columbia, South Carolina; and
21 Katherine Leisy with the South Carolina Law Enforcement
22 Division.

23 Is there any member of the jury panel related by blood
24 or marriage, who has a close personal, social or business
25 relationship with any of the names that I have just called?

1 If so, please stand.

2 (There was no response.)

3 THE COURT: At this time, I am going to ask the
4 attorneys to stand and introduce themselves and anyone at
5 their table.

6 We'll start with the State.

7 MR. SCRUGGS: Thank you, Your Honor. May it please the
8 Court.

9 Good afternoon, ladies and gentlemen of the jury. My
10 name is Jamie Scruggs. I'm an assistant solicitor here in
11 Florence County. My co-counsel on this case is Danielle
12 Lefridge. Also, seated at the table is the elected
13 Solicitor Ed Clements. Thank you.

14 THE COURT: Thank you.

15 Yes, ma'am.

16 MS. NEYLE: Thank you, Your Honor. May it please the
17 Court.

18 Good afternoon. My name is Elizabeth Neyle. I'm an
19 attorney in the Florence County Public Defender's Office.
20 Sitting with me is Scott Floyd, the chief public defender.
21 Together, we represent Mr. Robert Carter, who you just met.

22 THE COURT: Thank you.

23 Has any member of the jury panel ever been represented
24 by any of the attorneys involved in this case or anyone in
25 their office? If so, please stand.

1 (There was no response.)

2 THE COURT: Is any member of the jury panel related by
3 blood or marriage to any of the -- or has a close personal,
4 business or social relationship with any of the attorneys
5 involved in this case or anyone in their office? So that
6 would be anyone in the solicitor's office or anyone in the
7 public defendant's office.

8 Yes, sir.

9 POTENTIAL JUROR: No. 170. I know someone with a
10 social relationship in the solicitor's office.

11 THE COURT: Who is the person?

12 POTENTIAL JUROR: Mr. Tim Suggs.

13 THE COURT: And the fact that you have a personal
14 relationship, friendship, I guess, with Mr. Suggs, would
15 that affect your ability to be fair and impartial in this
16 trial?

17 POTENTIAL JUROR: No, ma'am.

18 THE COURT: Thank you, Juror No. 170.

19 Yes, ma'am.

20 POTENTIAL JUROR: Juror No. 48. I know Susan McGill in
21 the solicitor's office.

22 THE COURT: Y'all are friends?

23 POTENTIAL JUROR: My husband works with her.

24 THE COURT: What does your husband do?

25 POTENTIAL JUROR: He's an attorney.

1 THE COURT: Would that affect your ability to be fair
2 and impartial in this trial?

3 POTENTIAL JUROR: No, ma'am.

4 THE COURT: Thank you.

5 Yes, ma'am.

6 POTENTIAL JUROR: Relationship with Ed Clements.

7 THE COURT: And your number?

8 POTENTIAL JUROR: 70.

9 THE COURT: And the fact that you know socially the
10 Solicitor, would that affect your ability to be fair and
11 impartial in this trial?

12 POTENTIAL JUROR: No, ma'am.

13 THE COURT: All right. Thank you.

14 Yes, ma'am.

15 POTENTIAL JUROR: No. 25. I used to go to church with
16 Ed Clements.

17 THE COURT: All right. And the fact that you and the
18 Solicitor attended church together, would that affect your
19 ability to be fair and impartial in this trial?

20 POTENTIAL JUROR: No, ma'am.

21 THE COURT: Thank you.

22 Anyone else?

23 (There was no response.)

24 THE COURT: Is there any member of the jury panel who
25 has formed or expressed an opinion about any issue or matter

1 involved in this case?

2 (There was no response.)

3 THE COURT: Is there any member of the jury panel aware
4 of any bias or prejudice towards the State or the Defendant
5 in this case?

6 (There was no response.)

7 THE COURT: Is there any member of the jury panel who
8 is a member of or contributor to any group which has its
9 primary concern with the promotion of law enforcement or
10 victim's rights? These groups would include, but certainly
11 are not limited to, MADD, Mother's Against Drunk Driving,
12 SADD, Students Against Drunk Driving, CAV, Citizens Against
13 Violent Crime. Any group where you contribute to the
14 promotion of law enforcement or victim's rights? If so,
15 please stand.

16 (There was no response.)

17 THE COURT: And I always ask, is there any member of
18 the jury panel who is a member of or contributor to any
19 groups with prisoner rights, such as the Innocence Project?

20 (There was no response.)

21 THE COURT: Has any member of the jury panel heard
22 about this case on the news or on social media?

23 (There was no response.)

24 THE COURT: Has any member of the jury panel ever
25 served in the military?

1 Yes, ma'am.

2 POTENTIAL JUROR: Juror No. 106, I served 14 years in
3 the National Guard.

4 THE COURT: Would that affect your ability to be fair
5 and impartial in this trial?

6 POTENTIAL JUROR: Yes.

7 THE COURT: Thank you.

8 Yes?

9 POTENTIAL JUROR: 103, I served 12 years in Army
10 National Guard and I served in Desert Storm.

11 THE COURT: And would that affect your ability to be
12 fair and impartial in this trial?

13 POTENTIAL JUROR: No.

14 THE COURT: Thank you.

15 The next question, is there any member of the jury
16 panel who have any close friends or relatives who are law
17 enforcement officers or employed by any law enforcement
18 agency?

19 We'll start over here. Yes, ma'am?

20 POTENTIAL JUROR: No. 88, my dad is at the Sumter
21 Police Department.

22 THE COURT: And would that affect your ability to be
23 fair and impartial in this trial?

24 POTENTIAL JUROR: No.

25 THE COURT: Thank you.

1 In the red, yes?

2 POTENTIAL JUROR: Juror 113, my husband works for
3 Florence County.

4 THE COURT: Sheriff's department or police department?

5 POTENTIAL JUROR: Magistrate.

6 THE COURT: And would that affect your ability to be
7 fair and impartial in this trial?

8 POTENTIAL JUROR: No, ma'am.

9 THE COURT: Thank you.

10 Yes, sir?

11 POTENTIAL JUROR: No. 56. My father is a retired
12 detective for Kershaw County.

13 THE COURT: And would that affect your ability to be
14 fair and impartial in this trial?

15 POTENTIAL JUROR: No, ma'am.

16 THE COURT: Thank you.

17 Yes, sir?

18 POTENTIAL JUROR: 147, retired law enforcement.

19 THE COURT: You, yourself?

20 POTENTIAL JUROR: Yes, ma'am.

21 THE COURT: And where did you retire from?

22 POTENTIAL JUROR: Darlington.

23 THE COURT: And would that affect your ability to be
24 fair and impartial in this trial?

25 POTENTIAL JUROR: No, ma'am.

1 THE COURT: Thank you.

2 POTENTIAL JUROR: 140, deputy sheriff for Aiken County.

3 THE COURT: And would that affect your ability to be
4 fair and impartial in this trial?

5 POTENTIAL JUROR: No, ma'am.

6 THE COURT: Thank you, sir.

7 Anyone else?

8 (There was no response.)

9 THE COURT: Does any member of the jury panel have any
10 close friends or relatives that have been arrested for a
11 crime?

12 Let me get you to stand up and give me your number.
13 Yes, sir, your juror number?

14 POTENTIAL JUROR: 140.

15 THE COURT: And it was a friend, a relative?

16 POTENTIAL JUROR: Myself.

17 THE COURT: And when was that, sir?

18 POTENTIAL JUROR: Early 2006, misdemeanor.

19 THE COURT: And would that affect your ability to be
20 fair and impartial in this trial?

21 POTENTIAL JUROR: No, ma'am.

22 THE COURT: Thank you, Juror 140.

23 Yes, sir?

24 POTENTIAL JUROR: 45.

25 THE COURT: Was it you, a family member or a close

1 friend?

2 POTENTIAL JUROR: A very close friend.

3 THE COURT: And when was that?

4 POTENTIAL JUROR: About two months ago.

5 THE COURT: Here in Florence?

6 POTENTIAL JUROR: Yes.

7 THE COURT: What was the friend charged with?

8 POTENTIAL JUROR: Possession of a stolen firearm.

9 THE COURT: And that case is still pending?

10 POTENTIAL JUROR: Yes.

11 THE COURT: Would that affect your ability to be fair
12 and impartial in this trial?

13 POTENTIAL JUROR: Yes.

14 THE COURT: Thank you.

15 Yes, sir?

16 POTENTIAL JUROR: My uncle --

17 THE COURT: What's your juror number?

18 POTENTIAL JUROR: 85.

19 THE COURT: You say your uncle?

20 POTENTIAL JUROR: Yes.

21 THE COURT: And he was arrested for what?

22 POTENTIAL JUROR: Drugs.

23 THE COURT: Drug possession or a gun?

24 POTENTIAL JUROR: Drug.

25 THE COURT: Was that recently?

1 POTENTIAL JUROR: About a month ago.

2 THE COURT: About a month ago, so it's still pending.
3 Is that here in Florence County?

4 POTENTIAL JUROR: Yes.

5 THE COURT: And would that affect your ability to be
6 fair and impartial in this trial?

7 POTENTIAL JUROR: No.

8 THE COURT: Thank you.

9 Yes, ma'am?

10 POTENTIAL JUROR: Family member.

11 THE COURT: What's your number?

12 POTENTIAL JUROR: 168.

13 THE COURT: And you said it was a family member. Do
14 you remember what they were charged with?

15 POTENTIAL JUROR: Drug related.

16 THE COURT: And was that recently? Is that still
17 pending?

18 POTENTIAL JUROR: No, ma'am. It was in 2013.

19 THE COURT: Would that affect your ability to be fair
20 and impartial in this trial?

21 POTENTIAL JUROR: No.

22 THE COURT: Thank you.

23 The next question is, have you or any member of your
24 immediate family ever been the victim of a crime?

25 We'll start on this side. Right here in the front.

1 Yes, ma'am?

2 POTENTIAL JUROR: No. 88, my mother was robbed at
3 gunpoint.

4 THE COURT: And would that affect your ability to be
5 fair and impartial in this trial?

6 POTENTIAL JUROR: Yes.

7 THE COURT: Thank you.

8 Yes, ma'am?

9 POTENTIAL JUROR: Juror No. 115, my mother was raped
10 and I was assaulted.

11 THE COURT: And would that affect your ability to be
12 fair and impartial in this trial?

13 POTENTIAL JUROR: Yes, ma'am.

14 THE COURT: Thank you.

15 Yes, sir, in the green?

16 POTENTIAL JUROR: Juror 144. I was shot three times.

17 THE COURT: And, sir, would that affect your ability to
18 be fair and impartial in this trial?

19 POTENTIAL JUROR: Yes.

20 THE COURT: Thank you.

21 POTENTIAL JUROR: No. 68, my son was murdered.

22 THE COURT: I'm sorry to hear that, ma'am. Would that
23 affect your ability to be fair and impartial in this trial?

24 POTENTIAL JUROR: Yes.

25 THE COURT: Thank you.

1 Yes, sir?

2 POTENTIAL JUROR: Juror No. 60, I was pistol whipped.

3 THE COURT: Would that affect your ability to be fair
4 and impartial in this trial?

5 POTENTIAL JUROR: Yes.

6 THE COURT: Thank you.

7 In the back?

8 POTENTIAL JUROR: 25. We had checks stolen and cashed.

9 THE COURT: Would that affect your ability to be fair
10 and impartial in this trial?

11 POTENTIAL JUROR: No.

12 THE COURT: Thank you.

13 Yes, ma'am?

14 POTENTIAL JUROR: No. 39, my nephew was killed in the
15 line of duty.

16 THE COURT: And, ma'am, would that affect your ability
17 to be fair and impartial in this trial?

18 POTENTIAL JUROR: No.

19 THE COURT: Thank you.

20 Has any member of the jury panel ever had a negative
21 experience with law enforcement or has any member of the
22 jury panel ever filed a complaint or lawsuit against any
23 branch of law enforcement?

24 Yes, ma'am?

25 POTENTIAL JUROR: Yes, my daughter, many years ago,

1 when she was in high school was accused of hitting a car.

2 THE COURT: Would that affect your ability to be fair
3 and impartial in this trial.

4 POTENTIAL JUROR: No.

5 THE COURT: Thank you.

6 Does any member of the jury panel have any close
7 friends or relatives who have been prosecuted by the 12th
8 Circuit Solicitor's Office either in Florence or Marion
9 County?

10 (There was no response.)

11 THE COURT: Does any member of the jury panel prescribe
12 to a religion, philosophy or school of thought which
13 prevents you from holding another person in judgment?

14 (There was no response.)

15 THE COURT: And I asked this question earlier, but it's
16 a little different. But is there any member of the jury
17 panel employed by any city, county, state or federal law
18 enforcement agency, either in the present time or in the
19 past? So I didn't ask about past. If there's anyone who
20 did not stand up earlier.

21 (There was no response.)

22 THE COURT: Is any member of the jury panel related by
23 blood or marriage or a close friend to any person employed
24 by any city, county, state or federal law enforcement
25 agency, either at the present time or in the past?

1 Yes, ma'am?

2 POTENTIAL JUROR: No. 70, my dad was employed by the
3 federal government.

4 THE COURT: And would that affect your ability to be
5 fair and impartial int his trial?

6 POTENTIAL JUROR: No, ma'am.

7 THE COURT: Thank you.

8 Yes, ma'am?

9 POTENTIAL JUROR: My brother is retired from the
10 Florence Sheriff's Department.

11 THE COURT: What's your number?

12 POTENTIAL JUROR: 39.

13 THE COURT: Would that affect your ability to be fair
14 and impartial in this trial?

15 POTENTIAL JUROR: No.

16 THE COURT: Thank you.

17 Is there any member of the jury panel employed by any
18 city, county, state or federal prosecutor's office, either
19 at the present time or in the past?

20 (There was no response.)

21 THE COURT: The federal prosecutor's office would be
22 the U.S. Attorney's Office and the state would Attorney
23 General's Office, and any other solicitor's office? The
24 12th Circuit Solicitor's Office or any other solicitor's
25 office?

1 (There was no response.)

2 THE COURT: Is there any member of the jury panel
3 related by blood or marriage or a close personal friend to
4 any person employed by any city, county or federal
5 prosecutor's office, either present or in the past?

6 (There was no response.)

7 THE COURT: Does any member of the jury panel volunteer
8 with any law enforcement agency or prosecutor's office,
9 either in the present time or in the past?

10 (There was no response.)

11 THE COURT: Is there any member of the jury panel
12 related to or a close friend to any person who volunteers
13 with any law enforcement agency or prosecutor's office,
14 either at the present time or in the past?

15 (There was no response.)

16 THE COURT: Is there any member of the jury panel who
17 lobbies on behalf of victim's rights or tougher penalties
18 for criminal offenders?

19 (There was no response.)

20 THE COURT: Is any member of the jury panel a member of
21 or does any member of the panel contribute money to any law
22 enforcement organization, such as the Fraternal Order of the
23 Police, South Carolina Law Enforcement Officer's
24 Association, or the South Carolina Trooper's Association?

25 (There was no response.)

1 THE COURT: Does any member of the jury panel or your
2 immediate family have a close personal or social
3 relationship with Thomas Marty McElveen or any member of his
4 family?

5 (There was no response.)

6 THE COURT: Does any member of the jury panel know of
7 any reason whatsoever as to why he or she should not serve
8 as a juror in this case with a particular emphasis being
9 placed on your ability to be fair and impartial to both the
10 State and the Defendant in this case?

11 Yes, sir?

12 POTENTIAL JUROR: Do you want me to say it out loud?

13 THE COURT: No. I'll have you come up and we'll
14 discuss it.

15 POTENTIAL JUROR: I knew what the charges were before
16 you ever read the charges.

17 THE COURT: Why?

18 POTENTIAL JUROR: Because I could look at him and tell.

19 THE COURT: So that would affect your ability to be
20 fair and impartial?

21 POTENTIAL JUROR: It probably would. I said murder or
22 attempted murder before you even read the charges.

23 THE COURT: Who did you say it to?

24 POTENTIAL JUROR: The guy sitting right beside me.

25 THE COURT: All right. So we probably need to bring

1 him. When you go back, tell him to come on up.

2 POTENTIAL JUROR: All right.

3 THE COURT: What's your juror number?

4 POTENTIAL JUROR: No. 5.

5 THE COURT: Thank you.

6 Let me have you come on up, sir.

7 (Juror No. 82 approaches.)

8 THE COURT: The last guy that came up, he had a
9 conversation with you. I guess he was trying to predict
10 what the Defendant was charged with?

11 POTENTIAL JUROR: Yes.

12 THE COURT: Would that affect your ability to be fair
13 and impartial in this trial?

14 POTENTIAL JUROR: No, ma'am.

15 THE COURT: What's your juror number?

16 POTENTIAL JUROR: 82.

17 THE COURT: Thank you.

18 (Sidebar conference.)

19 THE COURT: Is there any member of the jury panel who
20 has heard anything today or anything that's been said today
21 or you overheard anything in the audience that would affect
22 your ability to be fair and impartial in this trial? If so,
23 please stand.

24 (There was no response.)

25 THE COURT: All right. Thank you.

1 Let me see the attorneys one more time.

2 (Sidebar conference.)

3 THE COURT: All right. Are we ready?

4 THE CLERK: Yes, ma'am.

5 When I call your name if you'll come up to the front,
6 bring all your belongings with you, just like we did over
7 there.

8 Juror No. 116, Emily Myers.

9 (Juror No. 116 comes forward.)

10 THE CLERK: What says the State?

11 MR. SCRUGGS: Please present Ms. Myers.

12 THE CLERK: What says the Defendant?

13 MS. NEYLE: Please present Ms. Myers.

14 THE CLERK: Please have a seat in the jury box, ma'am.

15 Juror No. 165, Michael Vernon.

16 (Juror No. 165 comes forward.)

17 THE CLERK: What says the State?

18 MR. SCRUGGS: Please present Mr. Vernon.

19 THE CLERK: What says the Defendant?

20 MS. NEYLE: Please present Mr. Vernon.

21 THE CLERK: Please have a seat in the jury box, sir.

22 Juror No. 61, Diane Cole.

23 (Juror No. 61 comes forward.)

24 THE CLERK: What says the State?

25 MR. SCRUGGS: Please present Ms. Cole.

1 THE CLERK: What says the Defendant?

2 MS. NEYLE: Please excuse this juror.

3 THE CLERK: You've been excused in this trial, ma'am.

4 You may return to your seat.

5 Juror 168, Adele Weatherford.

6 (Juror No. 168 comes forward.)

7 THE CLERK: What says the State?

8 MR. SCRUGGS: Please present Ms. Weatherford.

9 THE CLERK: What says the Defendant?

10 MS. NEYLE: Please excuse this juror.

11 THE CLERK: You've been excused from this trial, ma'am.

12 You may return to your seat.

13 Juror No. 107, Jason Messerby.

14 (Juror No. 107 comes forward.)

15 THE CLERK: What says the State?

16 MR. SCRUGGS: Please present Mr. Messerby.

17 THE CLERK: What says the Defendant?

18 MS. NEYLE: Please excuse this juror.

19 THE CLERK: You've been excused from this trial, sir.

20 You may return to your seat.

21 Juror No. 143, Alphonso Singletary.

22 (Juror No. 143 comes forward.)

23 THE CLERK: What says the State?

24 MR. SCRUGGS: Please present Mr. Singletary.

25 THE CLERK: What says the Defendant?

1 MS. NEYLE: Please seat Mr. Singletary.

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

3 Juror No. 128, William Powers.

4 (Juror No. 128 comes forward.)

5 THE CLERK: What says the State?

6 MR. SCRUGGS: Please present Mr. Powers.

7 THE CLERK: What says the Defendant?

8 MS. NEYLE: Please seat Mr. Powers.

9 THE CLERK: Sir, please have a seat in the jury box.

10 Juror No. 140, Kenny Sherwood.

11 (Juror No. 140 comes forward.)

12 THE CLERK: What says the State?

13 MR. SCRUGGS: Please excuse Mr. Sherwood.

14 THE CLERK: You've been excused from this trial, sir.

15 You may return to your seat.

16 Juror No. 46, Brian Edding.

17 (Juror No. 46 comes forward.)

18 THE CLERK: What says the State?

19 MR. SCRUGGS: Please excuse Mr. Edding.

20 THE CLERK: You've been excused from this trial, sir.

21 You may return to your seat.

22 Juror No. 54, Sherry Ford.

23 (Juror No. 54 comes forward.)

24 THE CLERK: What says the State?

25 MR. SCRUGGS: Please present Ms. Ford.

1 THE CLERK: What says the Defendant?

2 MS. NEYLE: Please seat Ms. Ford.

3 THE CLERK: Please have a seat in the jury box, ma'am.

4 Juror No. 171, Aria Weldon.

5 (Juror No. 171 comes forward.)

6 THE CLERK: What says the State?

7 MR. SCRUGGS: Please present Mr. Weldon.

8 THE CLERK: What says the Defendant?

9 MS. NEYLE: Please excuse Mr. Weldon.

10 THE CLERK: You've been excused from this trial, sir.

11 You may return to your seat.

12 Juror No. 121, Jennifer Owens.

13 (Juror No. 121 comes forward.)

14 THE CLERK: What says the State?

15 MR. SCRUGGS: Please excuse Ms. Owens.

16 THE CLERK: You've been excused from this trial, ma'am.

17 You may return to your seat.

18 Juror No. 111, Travis Miller.

19 (Juror No. 111 comes forward.)

20 THE CLERK: What says the State?

21 MR. SCRUGGS: Please present Mr. Miller.

22 THE CLERK: What says the Defendant?

23 MS. NEYLE: Please excuse Mr. Miller.

24 THE CLERK: You've been excused from this trial, sir.

25 You may return to your seat.

1 Juror No. 29, Ashley Coe.

2 (Juror No. 29 comes forward.)

3 THE CLERK: What says the State?

4 MR. SCRUGGS: Please present Ms. Coe.

5 THE CLERK: What says the Defendant?

6 MS. NEYLE: Please excuse this juror.

7 THE CLERK: You've been excused from this trial, ma'am.

8 Please return to your seat.

9 Juror No. 138, Jason Scott.

10 (Juror No. 138 comes forward.)

11 THE CLERK: What says the State?

12 MR. SCRUGGS: Please present Mr. Scott.

13 THE CLERK: What says the Defendant?

14 MS. NEYLE: Please seat Mr. Scott.

15 THE CLERK: Please have a seat in the jury box, sir.

16 Juror No. 10, Herbert Bine.

17 (Juror No. 10 comes forward.)

18 THE CLERK: What says the State?

19 MR. SCRUGGS: Please present this juror.

20 THE CLERK: What says the Defendant?

21 MS. NEYLE: Please present the juror.

22 THE CLERK: Please have a seat in the jury box, sir.

23 Juror No. 39, Pamela Cruz.

24 (Juror No. 39 comes forward.)

25 THE CLERK: What says the State?

1 MR. SCRUGGS: Please present Ms. Cruz.

2 THE CLERK: What says the Defendant?

3 MS. NEYLE: Please excuse Ms. Cruz.

4 THE CLERK: You've been excused from this trial, ma'am.

5 You may return to your seat.

6 Juror No. 94, Carl Jordan.

7 (Juror No. 94 comes forward.)

8 THE CLERK: What says the State?

9 MR. SCRUGGS: Please excuse Mr. Jordan.

10 THE CLERK: You've been excused from this trial, sir.

11 You may return to your seat.

12 Juror No. 1, Bridgett Adams.

13 (Juror No. 1 comes forward.)

14 THE CLERK: What says the State?

15 MR. SCRUGGS: Please present Ms. Adams.

16 THE CLERK: What says the Defendant?

17 MS. NEYLE: Please seat Ms. Adams.

18 THE CLERK: Please have a seat in the jury box, ma'am.

19 Juror No. 167, Alia Watson.

20 (Juror No. 167 comes forward.)

21 THE CLERK: What says the State?

22 MR. SCRUGGS: Please present Ms. Watson.

23 THE CLERK: What says the Defendant?

24 MS. NEYLE: Please seat Ms. Watson.

25 THE CLERK: Please have a seat in the jury box, ma'am.

1 Juror No. 137, Amy Scott.

2 (Juror No. 137 comes forward.)

3 THE CLERK: What says the State?

4 MR. SCRUGGS: Please present Ms. Scott.

5 THE CLERK: What says the Defendant?

6 MS. NEYLE: Please excuse this juror.

7 THE CLERK: You've been excused in this trial, ma'am.

8 You may return to your seat.

9 Juror No. 98, Ruthie Leget.

10 (Juror No. 98 comes forward.)

11 THE CLERK: What says the State?

12 MR. SCRUGGS: Please present Ms. Leget.

13 THE CLERK: What says the Defendant?

14 MS. NEYLE: Please seat Ms. Leget.

15 THE CLERK: Please have a seat in the jury box, ma'am.

16 Juror No. 117, Shelton Myers.

17 (Juror No. 117 comes forward.)

18 THE CLERK: What says the State?

19 MR. SCRUGGS: Please present Mr. Myers.

20 THE CLERK: What says the Defendant?

21 MS. NEYLE: Please excuse Mr. Myers.

22 THE CLERK: You've been excused from this trial, sir.

23 You may return to your seat.

24 Juror No. 90, Richard Johnson.

25 (Juror No. 90 comes forward.)

1 THE CLERK: What says the State?

2 MR. SCRUGGS: Please excuse Mr. Johnson.

3 THE CLERK: You've been excused from this trial, sir.

4 You may return to your seat.

5 Juror No. 149, Sharon Stone.

6 (Juror No. 149 comes forward.)

7 THE CLERK: What says the State wish to challenge this
8 juror for cause?

9 MR. SCRUGGS: No, ma'am.

10 THE CLERK: What says the Defendant?

11 MS. NEYLE: Please seat Ms. Stone.

12 THE CLERK: Please have a seat in the jury box, ma'am.

13 Juror No. 62, Courtney Godwin.

14 (Juror No. 62 comes forward.)

15 THE CLERK: Does the State wish to challenge this juror
16 for cause?

17 MR. SCRUGGS: No, ma'am.

18 THE CLERK: What says the Defendant?

19 MS. NEYLE: Please excuse this juror.

20 THE CLERK: You've been excused from this trial, ma'am.
21 You may return to your seat.

22 Juror No. 147, Toby Stevens.

23 (Juror No. 147 comes forward.)

24 THE CLERK: Does the State wish to challenge this juror
25 for cause?

1 MR. SCRUGGS: No, ma'am.

2 THE CLERK: Does the Defendant wish to challenge this
3 juror for cause?

4 MS. NEYLE: No, ma'am.

5 THE CLERK: Please have a seat in the jury box.
6 Juror No. 25, Ada Calder.

7 (Juror No. 25 comes forward.)

8 THE CLERK: What says the State?

9 MR. SCRUGGS: Please present Ms. Calder.

10 THE CLERK: What says the Defendant?

11 MS. NEYLE: Please excuse Ms. Calder.

12 THE CLERK: You've been excused from the trial, ma'am.
13 You may return to your seat.

14 Juror No. 12, William Bissell.

15 (Juror No. 12 comes forward.)

16 THE CLERK: What says the State?

17 MR. SCRUGGS: Please excuse Mr. Bissell.

18 THE CLERK: You've been excused from this trial, sir.
19 You may return to your seat.

20 Juror No. 103, Robin McGee.

21 (Juror No. 103 comes forward.)

22 THE CLERK: Does the State wish to challenge this juror
23 for cause?

24 MR. SCRUGGS: No, ma'am.

25 THE CLERK: What says the Defendant?

1 MS. NEYLE: Please excuse this juror.

2 THE CLERK: You've been excused from this trial, ma'am.
3 You may return to your seat.

4 Juror No. 82, Henry James.

5 (Juror No. 82 comes forward.)

6 THE CLERK: Does the State wish to challenge this juror
7 for cause?

8 MR. SCRUGGS: No, ma'am.

9 THE CLERK: Does the Defendant wish to challenge this
10 juror for cause?

11 MS. NEYLE: No, ma'am.

12 THE CLERK: Please have a seat in the jury box, sir.

13 Juror No. 53, Susan Fields.

14 (Juror No. 53 comes forward.)

15 THE CLERK: What says the State?

16 MR. SCRUGGS: Please present Ms. Fields.

17 THE CLERK: What says the Defendant?

18 MS. NEYLE: Please seat Ms. Fields.

19 THE CLERK: Please have a seat in the jury box, ma'am.

20 THE COURT: All right. Any objections or exceptions to
21 jury selection from State or the Defense?

22 MR. SCRUGGS: No, Your Honor.

23 MS. NEYLE: No, Your Honor.

24 THE COURT: All right. Ladies and gentlemen of the
25 jury, what we're going to do is have you all -- on that

1 sheet of paper that you were given, there should be a number
2 to call back. There will be a message on there to give you
3 instructions as to what you are to do after six o'clock this
4 evening. So please call that number back for instructions.
5 It will either say come back in the morning, come back
6 tomorrow afternoon. But there will be instructions on
7 there, so make sure that you call back.

8 So for those of you who were not selected, you will
9 come back -- you will call that number and it will give you
10 instructions as to when you are to come back to court.

11 THE CLERK: It's just a recording. You can call back
12 any time after six o'clock tonight. It's just a recording
13 and we will tell you what to do from there.

14 THE COURT: All right. Thank you for your
15 participation this morning.

16 (Jury panel was excused.)

17 THE COURT: Ladies and gentlemen of the jury, for those
18 of you who were selected, the bailiffs are going to show you
19 the jury room. I know it is lunchtime for sure. So what we
20 are going to do -- actually, we are going to release you for
21 the afternoon. There's some matters that I need to take up
22 with the attorneys before we get started, so I'm going --
23 it's probably going to take the majority of the afternoon
24 and I would not like to have you all sitting back in the
25 jury room. So we are going to let you go about your

1 business for the afternoon.

2 Just a couple of things I need to discuss with you
3 before that happens: You all have those badges, those
4 yellow badges. When you're in the courthouse, around the
5 courthouse, please keep the badges on so no one will speak
6 in front of you. Sometimes you may see some of the
7 attorneys in the hallway and they will not talk to you
8 because they have been instructed not to do so. So if you
9 see any witnesses, attorneys, any parties involved in this
10 case and they don't speak to you, it's not because they're
11 being rude or anything, it's just because they know that
12 I've instructed them not to. If anyone tries to speak to
13 you, please let the bailiffs know as soon as possible as
14 soon as you return and I will hand it from there.

15 Please do not do any research regarding this case. I
16 don't know if there's anything out there on social media, on
17 the internet or anything, but please do not do any
18 independent research regarding this case. You have told me
19 that you can be fair and impartial jurors and part of being
20 fair and impartial jurors is only considering what
21 information you have received in this court.

22 As we know, sometimes things that are on the internet,
23 on social media are sometimes incorrect or maybe incomplete
24 and that is why we want you to make your decision in this
25 case based on everything that is presented to you in this

1 courtroom. So do not do any independent research on any of
2 the parties, attorneys, the Court, anything regarding this
3 case.

4 Please do not discuss the case with anyone. When you
5 get home, I'm sure your family members will ask well, what
6 kind of case is it? Did you get picked? Please do not
7 discuss anything with them regarding the case. It would
8 also be improper for you to form any opinion in your minds
9 as to the innocence or guilt of the Defendant in this case.
10 It would also be improper for you to speak to any of your
11 fellow jurors regarding anything in this case before you're
12 instructed to deliberate.

13 So, basically, when you leave here, think about
14 something about other than this courtroom and talk about
15 something else. Like I said, you can go on your computers,
16 but do not do any research or anything regarding -- or your
17 personal devices, your phones, but do not do any research
18 regarding this case.

19 So we will see you all back at 9:30 in the morning. We
20 will be ready to start then, 9:30 in the morning.

21 You all are to show them where they are to return.

22 Any questions?

23 (There was no response.)

24 THE COURT: See you all in the morning at 9:30. Thank
25 you.

1 (The jury exits the courtroom at 1:38 p.m.)

2 THE COURT: All right. Any objections or exceptions?

3 MR. SCRUGGS: None from the State, Your Honor.

4 MS. NEYLE: No, Your Honor.

5 THE COURT: Just real quick, I need to put on the
6 record because I'm not sure if the recording was able to
7 pick it up. The strikes for cause were Juror 106, 45, 85,
8 88, 115, 144, 68, 60 and 5.

9 Anything else we need to put on the record?

10 (There was no response.)

11 THE COURT: Y'all want to take a lunch break and then
12 come back and argue motions?

13 MR. SCRUGGS: Judge, I know when we were back in
14 chambers, the Defense mentioned about having the Jackson V.
15 Denno hearing. The State does not plan to introduce any
16 statement of the Defendant in its case in chief. I don't
17 think we need to have a Jackson V. Denno, but there may be
18 some other stuff the Defense needs to address at pretrial.
19 I just wanted to give the Court a heads up about that.

20 THE COURT: Any other pretrial motions from the State?

21 MR. SCRUGGS: None from the State.

22 MS. NEYLE: Judge, I would have a few. But I will say
23 the State gave me a video that has been redacted, Your
24 Honor. I would just ask for the lunch period to review it
25 and address that after lunch.

1 THE COURT: So we want to...

2 MR. SCRUGGS: Your Honor, would you like to come back
3 at three o'clock?

4 THE COURT: I was going to say about an hour, so about
5 2:45.

6 How long is the video?

7 MS. NEYLE: I think it's only about 15 minutes or so.

8 THE COURT: So we'll take about an hour and come back
9 about 2:45.

10 (Lunch recess.)

11 THE COURT: All right. We're back on the record on
12 Robert Lee Carter, Jr.

13 It is my understanding the State does not have any
14 motions; is that correct?

15 MR. SCRUGGS: That's correct, Your Honor.

16 THE COURT: I'll be glad to hear from the Defense.

17 MS. NEYLE: Thank you, Your Honor.

18 Judge, just for housekeeping, I'd like to just renew
19 all my prior motions, including Rule 5 and Brady, Judge.
20 I'd also like to make a motion to sequester witnesses. I
21 believe the State has a pretty streamlined number of people
22 they intend to call tomorrow, but I would just like that on
23 the record to sequester any witnesses.

24 Judge, I also want to put Mr. Carter's plea offers on
25 the record. Mr. Carter was offered a number of plea offers

1 and I'd just like to put those on the record, Your Honor.
2 He received a cap of ten-year offer initially when I first
3 began representing him and he refused that offer, Judge.

4 In anticipation of his case being brought to court in
5 this March term, Judge, he was offered a plea offer of five
6 years to attempted armed robbery, Your Honor. Even though
7 it would be a violent and most serious crime, with all the
8 credit Mr. Carter has had sitting in the jail, he would
9 have, essentially, maxed out next year. He refused that
10 offer, Judge.

11 The subsequent offer last week that I received from the
12 State is for ten-year armed robbery sentence, Judge, and he
13 has declined that offer as well. I just wanted to put those
14 on the record.

15 His brother and his co-defendant, Leonard Carter, pled
16 last week.

17 THE COURT: Mr. Carter, let me get you to stand up.
18 Do you need to go talk to him?

19 THE DEFENDANT: Ma'am, I speak openly on the record?

20 THE COURT: No, let me get you to raise your right
21 hand.

22 ROBERT LEE CARTER, JR.,

23 after being duly sworn, testified as follows:

24 THE COURT: You can put your hand down.

25 Yes, sir. So there's some questions -- you heard the

1 plea offers.

2 Sounds like there's three of them, right?

3 MS. NEYLE: Yes, Your Honor.

4 THE COURT: The latest one was?

5 MS. NEYLE: The last one was for armed robbery, ten
6 years and Mr. Carter indicated he wanted to go to trial.
7 There was an offer made to his brother of an eight-year
8 sentence, a nonviolent offense, and I had spoken with Mr.
9 Carter if that was something he was interested in. He
10 initially --

11 THE DEFENDANT: Oh, my God.

12 MS. NEYLE: -- indicated that he was and I went to the
13 State and they said there was no such offer for him and I
14 communicated that with him.

15 THE COURT: All right, sir, that is your understanding
16 of the offers?

17 THE DEFENDANT: No, ma'am. No, ma'am. I have a text
18 that shows that I was offered an eight nonviolent and I
19 accepted the eight nonviolent. We have a text between the
20 two of us, the attorney and myself, stating that they
21 declined the eight nonviolent and the five violent. I have
22 a text on -- we get tablets now at the jail and I have a
23 text that will clearly show that between my attorney and
24 myself. I can clearly have it subpoenaed and show you right
25 now.

1 MS. NEYLE: Judge, Mr. Carter is mistaken --

2 THE DEFENDANT: No, I'm not mistaken.

3 THE COURT: Hold on, Mr. Carter, hold on.

4 THE DEFENDANT: I'm sorry, Your Honor.

5 MS. NEYLE: As of last week, every plea offer or
6 attempt to talk with the State about any kind of plea offer
7 was rejected by Mr. Carter. He indicated he did not want
8 any of those offers and he wanted to go to trial. And
9 that's why we're here today, Judge.

10 THE COURT: Mr. Carter, so what offer is it that you
11 want?

12 THE DEFENDANT: Your Honor, I have declined a 12
13 violent back in 2020. I declined a ten violent in '21.
14 Recently -- that was prior -- the 12 years was my prior
15 attorney, Ms. Tamara Greer. Then I had -- then when Ms.
16 Neyle took over my case, the State offered me a ten violent,
17 which I turned down, five violent, which I turned down.

18 The first week of court, Ms. Neyle came to me and
19 stated that the State -- or that she -- would I accept an
20 eight-year nonviolent or a five-year violent? We discussed
21 -- I asked Ms. Neyle, I said, Which one do you think I would
22 get out first on? And just because I don't want a violent
23 strike on my record, I just went ahead -- because I am ready
24 to get this over with. I've been sitting in the county for
25 three years. I accepted an eight-year nonviolent sentence.

1 Again, Ms. Neyle wrote -- I have it on record on my
2 tablet where she states -- the conversation between her and
3 I the very next day that the eight years nonviolent or the
4 five-year violent is no longer part of the negotiation. And
5 I can clearly prove that, Your Honor. I don't have the
6 tablet with me, but I can clearly prove that by the tablet,
7 if need be.

8 THE COURT: Are there any offers on the table right
9 now?

10 MR. SCRUGGS: Judge, if I can just clarify, the only
11 offer that was on the table from the State last week was to
12 plead to a five-year on a no parole, 85 percent violent
13 attempted armed robbery. That was due to expire at the end
14 of last week if not accepted by entry of a guilty plea.
15 That was not accepted.

16 I believe Ms. Neyle asked us to consider an eight-year
17 nonviolent plea offer, but we declined to do so given the
18 allegations against Mr. Robert Carter in this case. I
19 believe the eight years that he's referring to was --

20 THE COURT: Was a counteroffer that came from her to
21 you all, but they declined it?

22 MR. SCRUGGS: Right.

23 THE COURT: So he declined the five-year violent?

24 MR. SCRUGGS: That's correct.

25 THE COURT: You agree with that?

1 THE DEFENDANT: I do agree with that, yes, ma'am, I'm
2 sorry.

3 THE COURT: But then you gave a counteroffer to the
4 State and it sounds like the State declined your
5 counteroffer?

6 THE DEFENDANT: No, ma'am. Ms. Neyle told me that the
7 State offered my brother an eight-year nonviolent sentence.
8 She came to me and discussed it the day of in question. She
9 even had it written on paper, Would you take the eight years
10 violent, would you take the eight years nonviolent or five
11 years violent? Now, I was aware of the five-year violent on
12 paper, but this was an offer that to me, with my lack of
13 knowledge of the law, was a legitimate offer from the State.

14 THE COURT: It sounds like it was you all making a
15 counteroffer to the State.

16 THE DEFENDANT: I wasn't making any counteroffer,
17 ma'am, that was what was offered to me and I accepted that.
18 Again, I don't have it here, but I do have it. I do have it
19 saved and I can more than show you clearly that that was
20 what was --

21 THE COURT: So you're saying today that you're willing
22 to plead to the eight-year nonviolent or five-year violent?

23 THE DEFENDANT: That was the offer that Ms. Neyle had
24 offered at that point and I took the eight-year nonviolent.

25 MS. NEYLE: Your Honor, I explained to him that I

1 learned of the co-defendant being offered an eight-year
2 nonviolent. I asked him if he was willing to take that. He
3 indicated yes. I then went to the State, as Mr. Scruggs
4 said, and asked them if they would be willing to offer him
5 the same as his brother. They indicated no, Your Honor. So
6 I communicated that with Mr. Carter via our Smart Inmate
7 system. It's kind of like a texting on the web system, Your
8 Honor. And he indicated, After talking to you, I decided I
9 did not want the plea of eight years or five.

10 So he has rejected all plea offers or even attempts to
11 make --

12 THE DEFENDANT: That was the only -- and I did that
13 after, after -- I did that after they declined the offer.
14 After she texted me and told me that the offer was off the
15 table, I said, Well, I'm trying to be considerate. I've got
16 stuff right here, ma'am. If I read it to you, you would
17 throw this whole case out today. But I was being
18 considerate because I'm ready to get it behind me and was
19 willing to take the eight years.

20 The text that she is talking about was after the State
21 had declined the eight years. So I said, Well, forget about
22 that five years and forget about the eight years. We'll
23 just go to trial. That's what I said. And that will be in
24 the text. But if you read the prior text, you will see the
25 whole fact of why it led to that.

1 We're here today -- I heard you ask the State where is
2 the victim? The victim is dead. I can't even face my
3 accuser, ma'am. That's my 6th Amendment right. And I have
4 made that abundantly clear. This man has made so many
5 inconsistent statements in this paperwork that --

6 THE COURT: Back to the offer.

7 THE DEFENDANT: Yes, ma'am. Yes, ma'am.

8 THE COURT: I just want to make sure I'm clear, are you
9 -- I can't even tell if the offer is still on the table.

10 MR. SCRUGGS: Again, eight years was never -- an
11 eight-year offer was never made by the State. It sounds
12 like Ms. Neyle in her conversations with her client had
13 agreed that he would accept eight years if it was offered by
14 the State and she made efforts to try and convince us to
15 agree to that, but we declined to do that. The only offer
16 on the table last week was a violent, no parole five years.
17 That was rejected.

18 THE COURT: So he's got to serve 85 percent on the
19 five. So how much more time would he have?

20 MS. NEYLE: He would be out next year in 2023.

21 THE COURT: And then on the eight years, he's got to
22 serve how much time?

23 MS. NEYLE: He would have been parole eligible as of
24 2021 and maxing out next year as well.

25 THE DEFENDANT: Ma'am, on the eight-year nonviolent,

1 the reason I accepted that, of course, it's a nonviolent
2 offense, but the SCDC system gives what they call a
3 six-month furlough on a nonviolent sentence, which would
4 allow you to get out six months early. I would initially
5 have to serve another six months, seven months with the time
6 that I have already been in the county. And because of my
7 work, I just don't want a violent charge.

8 THE COURT: I just need to make sure you understand
9 these charges carry on an armed robbery a minimum of ten
10 years, a maximum of 30.

11 THE DEFENDANT: Yes, ma'am.

12 THE COURT: The attempted murder carries 30 years.

13 THE DEFENDANT: Yes, ma'am.

14 THE COURT: And the conspiracy carries ten. So if you
15 -- I mean, five. If you get convicted of all, you're
16 looking at a maximum of 65 years, definitely a minimum of
17 ten because of the armed robbery. Do you understand that?

18 THE DEFENDANT: Yes, ma'am.

19 THE COURT: And at this point, he's rejected it, so --
20 and like I said, the State doesn't seem like they're putting
21 any offers.

22 MR. SCRUGGS: Currently, as of right now, there's no
23 plea offer on the table.

24 THE COURT: So if he wants to plead, he has to plead
25 straight up I guess is what you're --

1 MR. SCRUGGS: Right. We have not had any discussions
2 about trying to work the case out since he rejected the five
3 years last week and when they asked for the eight years
4 nonviolent.

5 THE COURT: So any plea would have to be a straight up
6 plea, do you understand that, meaning, you would just have
7 the plea, no recommendations, but the armed robbery does
8 carry eight years.

9 THE DEFENDANT: Yes, ma'am.

10 THE COURT: Thank you.

11 MS. NEYLE: Your Honor, as the State told you before we
12 broke for lunch, they are not intending to introduce any
13 statement of Mr. Carter, therefore, we wouldn't need any
14 Denno hearing, Your Honor.

15 It's also my understanding, with the victim passing
16 away, there was a video identifying -- where the victim
17 identified Mr. Carter and his brother as the ones that
18 attacked him, and that was at the hospital. I have spoken
19 with the State and they indicated they do not plan to
20 introduce that identification video. So at this time, we
21 wouldn't have any identification issues pretrial. I just
22 wanted to put that on the record.

23 There is some body camera footage that the State does
24 intend to introduce and that would be body-worn camera
25 footage of an Officer Morris, now, she goes by Officer

1 Sullivan. She was the first responding officer. It is
2 video footage. They have redacted some pieces of it and I
3 looked at it during lunch, Your Honor, but it details the
4 victim being on the scene and the officer asking a series of
5 questions and the victim making some statements about what
6 happened to him, Your Honor.

7 I would ask that that footage be excluded. It's
8 hearsay, Judge. It's an out-of-court statement being
9 offered for the truth of the matter. It also violates Mr.
10 Carter's right to confront his accusers pursuant to the 6th
11 Amendment of the U.S. Constitution, Article 1, Section 14 of
12 the South Carolina Constitution, Judge. Mr. McElveen is not
13 here. We can't cross-examine him on the stand. The jury
14 can't assess his credibility in court, Judge, and it
15 violates that Constitutional right.

16 I would also argue that it's unduly prejudicial
17 pursuant to Rule 403. The jury can't see Mr. McElveen,
18 assess him on the stand.

19 And for those reasons, I would ask that you exclude
20 that body-worn camera footage.

21 THE COURT: Yes, sir.

22 MR. SCRUGGS: Judge, the -- if I can, too, I want to
23 circle back -- I'll circle back to Ms. Neyle's argument.
24 When we first started, she brought up -- her first two
25 motions that she brought up were renewing Rule 5 and Brady.

1 The State has turned over everything it is required. We met
2 with Ms. Neyle sometime last week and did an open-file
3 review of the file that we had. So we've complied with
4 that.

5 With regard to her motion to sequester, we don't have
6 an issue with that. Generally, there's an exception for the
7 investigator who worked the case, which in this case is John
8 Davis. I'd ask that we be allowed that exception if we
9 wish.

10 But with regard to the statements made by Mr. McElveen
11 to Officer Morris, now Sullivan, these statements were
12 recorded on her body cam. The statements were made mere
13 minutes after the attack by the Carter brothers. And
14 speaking to the law at issue, these are non-testimonial
15 statements. They're made in response to pretty standard
16 questions from the officer.

17 And those questions are made to number one, assess the
18 situation and determine what medical needs Mr. McElveen may
19 have and, generally, just what happened. And also, law
20 enforcement is trying to figure out okay, we've got two guys
21 on the loose, we need to find them. One of them has a knife
22 and could be a danger to the other public.

23 What I propose we do, Your Honor. Officer Sullivan is
24 here in the courthouse. I propose that we call her and have
25 a short evidentiary hearing so that we can develop a record

1 on this issue. I also have on my laptop the body-worn
2 camera footage. The footage itself is only 15 minutes, but
3 I think the relevant portions are probably in the first five
4 minutes. So we propose to call Officer Sullivan and play
5 that body-worn camera.

6 The State's position, this is non-testimonial
7 statements under Crawford. And the second part of the
8 inquiry is do these statements that are non-testimonial fall
9 within a recognized exception to the hearsay rules. The
10 State would argue that they do, that that fall into the
11 excited utterance exception to the hearsay rule. But the
12 State would just request the opportunity to be heard after
13 the testimony.

14 If I may, Your Honor, I've got a copy of a South
15 Carolina court decision that's relevant to these issues. I
16 would like to go ahead and hand it up to the Court so the
17 Court can review as we go forward. I'll provide a copy to
18 Ms. Neyle as well. But the case in question is State of
19 South Carolina vs. Brian Ladner, L-A-D-N-E-R, and that's 644
20 S.E.2d 684 and 373 S.C. 103.

21 May I approach, Your Honor?

22 THE COURT: Yes.

23 MR. SCRUGGS: If I may go ahead and bring in Officer
24 Sullivan? Also, I don't have a copy of this case, but I
25 think it's going to be relevant as well. It's a United

1 States Supreme Court case, Michigan vs. Bryant. That case
2 citation is 562 U.S. 344, 2011.

3 THE COURT: Are you ready?

4 MR. SCRUGGS: The State is ready. The State would call
5 Kaitlyn Sullivan to the stand, please.

6 THE CLERK: Ma'am, please place your left hand on the
7 Bible and raise your right.

8 KAITLYN SULLIVAN,

9 after being duly sworn, testified as follows:

10 THE CLERK: Please be seated on the witness stand and
11 state your full name for the record.

12 THE WITNESS: Kaitlyn Sullivan.

13 DIRECT EXAMINATION

14 BY MR. SCRUGGS:

15 Q Officer Sullivan, in May of 2019, were you employed
16 with the City of Florence Police Department?

17 A Yes.

18 Q What was your rank with the police department at the
19 time?

20 A I was a patrol officer with the City at the time.

21 Q What are the general duties as a patrol officer?

22 A We respond to the various calls for service as well as
23 first responders.

24 Q On May 21st of 2019, were you dispatched to an area on
25 David H. McLeod Boulevard in reference to an individual who

1 had been assaulted?

2 A Yes.

3 Q Around what time were you dispatched?

4 A 1958, which is 7:58 at night.

5 Q Do you recall or does the report state at what time you
6 arrived on scene?

7 A According to my report, it says I arrived at 20:01,
8 which is 8:01.

9 Q Okay. Is that roughly three or four minutes after you
10 were dispatched?

11 A That's right.

12 Q Can you tell the Court what you encountered and where
13 exactly in that area you responded to?

14 A When I got dispatched to the call, it was near Golden
15 Corral, kind of where the gym is, a little bit ways down
16 from the gym, Planet Fitness, I think it is. When I arrived
17 on scene, a white male was kind of staggering around. His
18 face was bloody and bruised and swollen.

19 Q And let me back up a little bit. Can you describe to
20 the Court the -- just in broader detail, is this a
21 commercial area of Florence County?

22 A Yes.

23 Q Are there numerous stores and restaurants and other
24 retail locations in this area?

25 A Yes, there's many.

1 Q Next to Golden Corral, is there a strip mall that runs
2 perpendicular to that restaurant?

3 A Yes.

4 Q Approximately how many stores do you think are in that
5 strip mall?

6 A If I had to guess, maybe ten or less, or more.

7 Q Okay.

8 A There's quite a bit.

9 Q Also, in this area, is there a parking lot that
10 services all those restaurants and retail stores?

11 A Yes.

12 Q Dispatch informed you that the attack occurred outside
13 Golden Corral; is that right?

14 A That's right.

15 Q Where did you locate Mr. McElveen?

16 A A little bit away. Up towards where the Toys-R-Us was,
17 but not that close to Toys-R-Us, kind of by that strip mall
18 area.

19 Q And you mentioned a strip mall, is that the same strip
20 mall that runs perpendicular --

21 A That's right.

22 Q -- to Golden Corral?

23 A That's right.

24 Q When you approach Mr. McElveen, can you describe to the
25 Court his general demeanor?

1 A He was very out of breath. He was very stressed. I
2 mean, you could tell something definitely had happened to
3 him. He had been attacked based on his appearance.

4 Q Did he have trouble standing?

5 A Yes, he did. He was staggering.

6 Q And when you encountered him, did you try to get him to
7 explain to you what happened?

8 A Yes.

9 Q Can you tell the Court what he told you occurred?

10 A I'm sorry, can you repeat that?

11 Q Can you tell the Court what he told you happened to
12 him?

13 A He told me he had been attacked by two males and
14 proceeded to give me a brief description of them of what he
15 could remember.

16 Q Can you tell the Court the description that he gave you
17 of the two assailants?

18 A According to my report, he said they were -- one
19 appeared to be Native American in a red shirt and the other
20 man was a white male wearing rainbow-colored sunglasses.

21 Q Were you able to observe any visible wounds or
22 lacerations that he had?

23 A Yes. When I pulled up on scene, I could see his face
24 was bloody and bruised and swollen as well as he lifted up
25 his shirt and there were three stab wounds.

1 Q What was your response when you saw that he had those
2 stab wounds? Did you call for emergency medical assistance?

3 A I immediately called for EMS.

4 Q After he gave you the description of the two
5 assailants, did he tell you what direction they went?

6 A Yes.

7 Q What direction did they go?

8 A He said they went down David McLeod towards Woody Jones
9 and Beltline.

10 Q And, also, just kind of taking a bird's eye view of
11 this area, can you tell the Court what is across the street
12 -- across David McLeod Boulevard from the Golden Corral and
13 this strip?

14 A There is a mall. There is a Buffalo Wild Wings. There
15 is various other restaurants, Chick-Fil-A, Texas Roadhouse.

16 Q Is it fair to say this is probably the most
17 commercialized area of Florence County?

18 A Yes, it is.

19 Q When you were given the description of the two
20 assailants, did you relay this information to dispatch?

21 A I did.

22 Q Why did you do that?

23 A So the other units that are on my shift could be on the
24 lookout for these two men.

25 Q When you -- now, you gave the description of the two

1 assailants to dispatch; is that correct?

2 A One of the units on my shift asked and I remember
3 saying the description that Mr. McElveen gave me.

4 Q You were the first responder on scene; is that correct?

5 A Yes.

6 Q And when you were responding to Mr. McElveen, was one
7 of your purposes to provide aid to him and figure out what
8 happened?

9 A Yes.

10 Q Was another purpose of getting this information from
11 him about the assailants to help prevent or respond to an
12 emergency situation that may endanger the lives of other
13 people?

14 A Yes.

15 Q Do you recall if this happened on a Friday night?

16 A I can't recall if it did.

17 Q This is around eight o'clock in a heavily
18 commercialized area of Florence County. Were you concerned
19 and did you relay this information to try and prevent any
20 other harm that may occur to other people?

21 A Yes.

22 MR. SCRUGGS: Beg the Court's indulgence one moment.

23 (Pause.)

24 BY MR. SCRUGGS:

25 Q Let me turn now toward the kind of mechanics of your

1 body camera. In May of 2019, were you issued a
2 body-wearable camera?

3 A Yes.

4 Q Can you explain to the Court about how to use that,
5 when it comes on and that kind of thing?

6 A Yes. When we are dispatched to any call or have any
7 contact with anybody that we may get out with, we always
8 turn on the body camera and we record it from when we have
9 that contact until when we leave.

10 Q Okay.

11 A And we do that and categorize them for purposes such as
12 court, like today.

13 Q And was your body cam utilized during this encounter
14 with Mr. McElveen?

15 A Yes.

16 MR. SCRUGGS: Your Honor, if I may approach?

17 Q When your body camera is utilized, how is that
18 transferred to a storage retention database?

19 A After every shift that we have, you would take your
20 body camera and would download it into a port located at the
21 City Center after it was categorized and downloaded. In
22 cases such as this, it would go back and pull it and put it
23 on a disk.

24 Q Okay. And that was done in this case as well?

25 A Yes.

1 Q I'm handing you what's been marked as State's Exhibit 1
2 for purposes of this hearing. Have you had a chance to
3 review the contents of this CD?

4 A Yes.

5 Q Do the contents of this CD accurately reflect your
6 encounter with Mr. McElveen on May 21, 2019?

7 A Yes.

8 MR. SCRUGGS: Your Honor, at this time, for purposes of
9 this hearing, I would move State's Exhibit 1 into the record
10 and ask that it be published to the Court.

11 THE COURT: Any objection?

12 MS. NEYLE: No, Your Honor.

13 THE DEFENDANT: I object, Your Honor.

14 THE COURT: No, sir, we're not going to do this. You
15 don't get to object. You have an attorney representing you,
16 so no blurting out now or during the trial. So unless I ask
17 you to speak, you cannot speak and no blurting out during
18 the trial.

19 THE COURT: Any objection from the Defense for the
20 purposes of this hearing?

21 MS. NEYLE: No objection.

22 THE COURT: All right.

23 (State's Exhibit No. 1 admitted into evidence.)

24 MR. SCRUGGS: I'm sorry, Your Honor, it worked 30
25 minutes ago.

1 (Pause.)

2 MR. SCRUGGS: I don't know why it's not working, but I
3 could hand up -- if it's okay with the Defense, I could hand
4 up a copy to Your Honor to play on your laptop for viewing
5 if you'd like to.

6 THE COURT: I don't have a CD on mine.

7 (Pause.)

8 MR. SCRUGGS: Sorry about that, Your Honor. Ms. Neyle
9 has kindly loaned me her laptop to play this, but we'll have
10 this figured out by tomorrow.

11 THE COURT: Please do.

12 (State's Exhibit No. 1 played for the Court.)

13 MR. SCRUGGS: Your Honor, I have no further questions
14 at this time for Officer Sullivan.

15 THE COURT: Yes ma'am.

16 MS. NEYLE: Thank you, Your Honor.

17 CROSS-EXAMINATION

18 BY MS. NEYLE:

19 Q Officer Sullivan, you said you responded to the scene
20 and Mr. McElveen wasn't at the Golden Corral?

21 A No, he was not.

22 Q And he was located near King's Beauty?

23 A That's right.

24 Q And that's in the strip mall behind Golden Corral?

25 A That's right.

1 Q And you said there's a large parking lot separating the
2 two?

3 A Well, there's a huge parking lot that kind of connects
4 into Golden Corral parking lot.

5 Q So Mr. McElveen would have had to have left the Golden
6 Corral and walked through that parking lot?

7 A Yes.

8 Q And as part of your investigation, I saw that you asked
9 questions of Mr. McElveen about what happened?

10 A Yes.

11 Q And you wrote them down in your notepad as part of your
12 investigation?

13 A Yes.

14 Q And he said that his attackers had left Golden Corral?

15 A Yes.

16 Q And what was the direction he said they went in?

17 A He said they headed down -- he motioned past Golden
18 Corral, which I know that part of the city, they went down
19 towards Woody Jones and Beltline.

20 Q So that would have been the opposite direction of Mr.
21 McElveen?

22 A Yes, ma'am.

23 MS. NEYLE: Your Honor, I have no further questions.

24 THE COURT: Thank you.

25 MR. SCRUGGS: Your Honor, that's all the testimony we

1 have to offer on this issue. I'd ask that Officer Sullivan
2 be excused from the witness stand.

3 THE COURT: You may step down.

4 MR. SCRUGGS: Your Honor, if I may approach? I've got
5 a copy of the Supreme Court case that I mentioned earlier,
6 which is Michigan vs. Bryant, 562 U.S. 344.

7 Your Honor, the testimony from Officer Sullivan and the
8 body camera footage that the Court observed, I'll start
9 first with the testimonial versus non-testimonial. The
10 State would argue that this is non-testimonial evidence
11 under Crawford. United States Supreme Court has said that
12 statements are non-testimonial if made in the course of
13 police interrogation when circumstances subjectively
14 indicate that the primary purpose of the interrogation is to
15 enable police assistance to meet an ongoing emergency. I'm
16 quoting from the Ladner case, which I handed up earlier, but
17 summarizing the Supreme Court's holding.

18 It then goes on to say they are testimonial when the
19 circumstances objectively indicate there's no such ongoing
20 emergency and the primary purpose of the interrogation is to
21 establish or prove past events potentially relevant to later
22 criminal prosecution.

23 As the Court can see from the testimony of Officer
24 Sullivan and the body camera footage, Officer Sullivan
25 responded within minutes, in fact, three minutes of being

1 dispatched to respond to this assault. The assault occurred
2 outside Golden Corral, which shares a parking lot with the
3 store that Mr. McElveen ultimately ended up in front of.

4 Mr. McElveen -- and these factors I think are relevant
5 to determining whether this is a testimonial or
6 non-testimonial statement. But Mr. McElveen is in a public
7 location. He's not in a police interrogation room. He is
8 visibly staggering, disheveled and in pain. As soon as
9 Officer Sullivan arrives there, he lifts his shirt up to
10 show three stab wounds and then proceeds to outline -- give
11 the basic details of what happened as well as a description
12 of his two assailants. As I stated, this is not a formal
13 written or oral statement given for the purposes of
14 gathering evidence that can be used in a later court
15 proceeding.

16 This situation is very similar to the facts that the
17 Supreme Court addressed in Michigan vs. Bryant. That case
18 involved a victim that had been shot and when law
19 enforcement responded, they found him lying on the ground
20 next to his car in a gas station parking lot, which is
21 analogous to this present situation. They're both public
22 places.

23 The Supreme Court notes that the victim in that case
24 had a gunshot wound to his abdomen, appeared to be in great
25 pain and spoke with difficulty. The police asked him what

1 happened, who shot him and where the shooting had occurred.
2 The victim then responded to those inquiries from law
3 enforcement and, unfortunately, died a short time later.

4 In looking at the circumstances around this, Officer
5 Sullivan testified that she was worried, basically, about
6 two things: Obviously, the medical condition of the victim.
7 That's manifest not by her tending to him and calling for
8 backup and also calling for emergency medical services. You
9 can see from the body camera that they arrived just a few
10 minutes later and take him to -- put him on a stretcher and,
11 ultimately, take him to the hospital.

12 She also testified that law enforcement is obviously
13 worried and that there's an ongoing emergency when these two
14 suspects who just attacked one individual with a knife and
15 robbed him are, essentially, unaccounted for. This is a
16 heavily commercialized area of Florence County and I think
17 objectively speaking, law enforcement was worried about that
18 ongoing emergency situation. This was a random attack that
19 occurred and they had to get the word out and find the
20 suspects.

21 So I think that objectively shows there's two primary
22 concerns of law enforcement, treating Mr. McElveen and
23 apprehending these two suspects before they can cause or
24 present a danger to anyone else in that area showed that
25 these are non-testimonial statements. They're made in

1 response to an ongoing emergency situation that poses risks
2 for Mr. McElveen and the public at large.

3 If the Court finds these are non-testimonial
4 statements, which I believe is evidenced by the testimony in
5 the body cam. The second inquiry is whether these
6 statements fall into an exception to the hearsay rule. And
7 I would argue that they do, they fall into excited
8 utterances.

9 There are three elements that have to met. The first
10 is, the statement must relate to a startling event or
11 condition. The second element is the statement must have
12 been made while the declarant was under the stress of
13 excitement and the stress of excitement must have been
14 caused by the startling event or condition.

15 I believe all three elements have been met here. You
16 could see from the body cam footage and you heard from
17 Officer Sullivan's testimony, in fact, she said that he
18 appeared stressed. He looked disheveled. This had just
19 occurred minutes before. And the statement that he made,
20 obviously related to the startling event because he
21 described what happened as well as a description of the two
22 assailants.

23 Secondly, the statement was made while Mr. McElveen was
24 still under the stress of the event. It was just minutes
25 after the incident and you can tell his demeanor from the

1 video footage.

2 And lastly, he is under the stress of the excitement
3 caused by the attack of two assailants, of Robert and
4 Leonard Carter.

5 So the State would argue in summary these are
6 non-testimonial statements. They do not violate
7 confrontation clause. And secondly, they fit into a firmly
8 established exception to the hearsay rule and all those
9 elements are met.

10 Thank you.

11 THE COURT: Thank you.

12 Yes, ma'am?

13 MS. NEYLE: Thank you, Judge.

14 Regarding whether or not it's testimonial, Judge,
15 Officer Sullivan testified they utilized their body camera
16 footage to utilize for court sometimes, Your Honor. And I
17 would point to State v. Brockmeyer, 406 S.C. 324, it's a
18 2013. The Court must look at the primary purpose of the
19 statement and if it is being used as an out-of-court
20 substitute for trial testimony. And I think that's what
21 this video is being used as. It's being used as a
22 substitute for testimony, Judge, and I believe it's
23 testimonial.

24 I further point to the questions that Officer Sullivan
25 was asking and noting in her notepad, this was part of her

1 investigation. These statements were taken as part of an
2 investigatory context, Judge. So for those reasons, I would
3 argue that it's testimonial.

4 In regard to the hearsay exception of the excited
5 utterance, the second prong where the statement must have
6 been made while the declarant was under the stress of the
7 excitement, however short this walk from the Golden Corral
8 to King's Beauty, I would argue that lessened that time for
9 the stress of excitement, Judge. I believe that broke the
10 chain and I would ask you exclude that argument.

11 THE COURT: Thank you.

12 Any response?

13 MR. SCRUGGS: Just briefly, Judge, Officer Sullivan was
14 not the investigator on this case. I know this wasn't
15 brought up in testimony, but she was the first responder to
16 the crime scene. Her main role is not to gather evidence
17 that can be used later in a prosecution. She's there to
18 meet an ongoing emergency situation.

19 With regards to the victim moving away from where he's
20 attacked, number one, that's probably a natural response
21 that anyone would have. If they were attacked in a place,
22 in a certain location, you would probably want to get to
23 safety and get as far away from that as you can.

24 Secondly, the inquiry isn't whether there's a broken
25 chain just by moving, essentially, down the parking lot,

1 it's whether he was still under the stress of the startling
2 event at the time he made those statements. You can clearly
3 see that on body camera just from his demeanor. He's
4 disheveled. He can barely stand up.

5 So, again, I don't want to beat a dead horse, but that
6 would be my response.

7 THE COURT: I've taken a look at Michigan V. Bryant.
8 It's a 2011 case. It's actually a very good opinion
9 explaining testimonial versus non-testimonial. The Supreme
10 Court's opinion is that if it is an ongoing -- to enable
11 police assistance, we hold that the circumstances of the
12 interaction between, in this case, Covington and the police,
13 objectively indicate that the primary purpose of the
14 interrogation was to enable police assistance to meet an
15 ongoing emergency.

16 Here, we have a victim, which there is clearly an
17 emergency going on. He has difficulty standing up because
18 he's been stabbed. When she asked his name, she had to ask
19 several times. He could hardly speak. She had to ask him
20 several times for his name. I think she told him to catch
21 his breath because he -- and then he eventually gave his
22 first name and then a couple minutes later, he was able to
23 give his last name. It was given in a public place. This
24 is not a statement that was given at the police station.
25 She called EMS. The other officers that respond came and

1 put gloves on and was checking out the stab wounds on his
2 body.

3 So this Court finds that clearly there was an ongoing
4 emergency. The questions -- actually, the majority of the
5 video and questions asked were regarding his physical
6 health. They do ask questions regarding a description and
7 which way the alleged defendants -- well, I don't want to
8 use the word defendants, the perpetrators, the alleged
9 perpetrators were headed and how they looked in an attempt
10 to -- in this case, it appears in an attempt to apprehend
11 anyone for purposes of, I guess, safety to others.

12 So for those reasons and in reading Michigan vs.
13 Bryant, 562 U.S. 344, 2011, I do not find that the
14 statements are testimonial in nature. Actually, the facts
15 in that case and this case are pretty similar. So in terms
16 of it being testimonial, I do find that it is not. It is
17 non-testimonial and that the statements in the video were
18 used for purposes of rendering aid.

19 As to hearsay exceptions, I think the State stated
20 excited utterance. The victim here was clearly under the
21 stress of the circumstances and the conditions. Once again,
22 the victim stated that he could hardly breathe. She told
23 him to just slow down and catch his breath. He had just
24 walked from over across the parking lot. Once again, he had
25 difficulty even giving his name. He's clearly still within

1 the excitement of the event or condition.

2 So therefore, under 803(2), the Court will allow the
3 video in as a hearsay exception. The video is
4 non-testimonial and admitted under 803(2) as an excited
5 utterance.

6 Any other pretrial motions?

7 MR. SCRUGGS: Not from the State, Your Honor.

8 MS. NEYLE: None from the Defense.

9 THE COURT: Thank you.

10 So we're going to start at 9:30 in the morning with
11 openings.

12 And you will have witnesses lined up for the entire
13 day?

14 MR. SCRUGGS: That's correct, Your Honor. We've got
15 the vast majority of our witnesses scheduled to come in in
16 the morning and then we'll have the doctor in the afternoon.
17 Wednesday morning, we have the SLED DNA analyst who will be
18 coming in. And, Judge, Ashley Anderson was on the State's
19 potential witness list. We are not going to be calling him
20 as a witness. So we do anticipate him being in the
21 courtroom.

22 THE COURT: Okay. And yes, the motion to sequester
23 witnesses is granted, so you all will need to -- anyone who
24 is testifying will need to be out of the courtroom.

25 MR. SCRUGGS: And would Your Honor consider allowing us

1 to have our investigator --

2 THE COURT: If he's the lead investigator on the case,
3 I think the rules allow for the lead investigator to be in
4 the courtroom, but other than that, no one else can.

5 MR. SCRUGGS: Thank you, Your Honor.

6 MS. NEYLE: Thank you, Your Honor.

7 THE COURT: You need to speak to your attorney and then
8 speak to me.

9 THE DEFENDANT: I need -- what I need to say is not
10 being said. My life is -- I'm facing 65 years here and --

11 THE COURT: I understand what you're facing, yes, sir.

12 THE DEFENDANT: It could be grave danger for me. We've
13 just heard this whole statement and not one identification
14 has been made. I've been identified as a Hispanic male in a
15 red shirt. I'm certainly not Hispanic. And also Native
16 American in a red shirt.

17 THE COURT: All right. Thank you.

18 MS. NEYLE: I'll be glad to speak to him after Your
19 Honor adjourns for the day.

20 THE COURT: All right. And let me speak to the
21 attorneys. Let me see y'all in the office.

22 TUESDAY, MARCH 15, 2022

23 THE COURT: All right. Are we ready?

24 MR. SCRUGGS: The State is ready to proceed, Your
25 Honor.

1 MS. NEYLE: The Defense is ready.

2 THE COURT: Let's bring the jurors on in.

3 (The jury enters the courtroom at 9:55 a.m.)

4 THE COURT: Good morning, ladies and gentlemen of the
5 jury. I hope you had a restful evening. At this time, we
6 are ready to begin this case, the case of the State of South
7 Carolina vs. Robert Lee Carter, Jr.

8 At this time, I'm going to ask the clerk to administer
9 the oath.

10 (The jury is sworn.)

11 THE COURT: If there is anyone who did not accept the
12 oath, I will ask you to remain standing.

13 (There was no response.)

14 THE COURT: Let the record reflect that all the jurors
15 have accepted the oath.

16 Ladies and gentlemen of the jury, what I will now say
17 is intended to serve as an introduction to the trial of this
18 case. These remarks are not a charge on the law in this
19 case. I will instruct you on the law applicable to this
20 case at the end of the trial before you retire to consider
21 your verdict. This is merely an explanation of the
22 procedure that we will follow in the trial of this case so
23 that you may better understand what may be happening.

24 You are not to take any notes during the trial. Once
25 again, the Defendant in this case is charged by an

1 indictment filed in this court with the following crimes:
2 Count one, armed robbery; count two, attempted murder; count
3 three, criminal conspiracy, the elements of which I will
4 explain to you later.

5 The indictment in this case, as I told you on
6 yesterday, is simply the charge by which this case is
7 brought into court. It is not in any sense evidence of any
8 of the allegations that it contains. The Defendant in this
9 case has pled not guilty to this indictment. The State
10 therefore has the burden of proving each of the elements of
11 the indictment beyond a reasonable doubt and it will be your
12 duty, ladies and gentlemen of the jury, to decide whether
13 the State has met that burden.

14 Your purpose as jurors is to determine the facts. You
15 are the sole judges of the facts. If at any time I make any
16 comment regarding the facts, you must disregard it. You are
17 to determine the facts from the testimony you hear and the
18 other evidence introduced in court. It is up to you to
19 determine the inferences which you feel may properly be
20 drawn from the evidence.

21 It is especially important that you perform your duty
22 of determining the facts diligently and conscientiously
23 because ordinarily there is no way to correct an erroneous
24 determination of the facts by a jury.

25 On the other hand and with equal emphasis, the same law

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

12 Until I tell you that you may begin to deliberate, you
13 must not discuss this case with anyone, including your
14 fellow jurors, friends, family members and anyone involved
15 in the case. As I told you on yesterday, the attorneys and
16 the parties in this case have been advised that they are not
17 to talk to you at all. So if you see anyone involved in the
18 case and they do not even say hello, they are not being
19 unfriendly or rude, they are just following my instructions.

20 You must decide this case solely on the evidence
21 presented in this courtroom. That means that during the
22 trial, you must not conduct any independent research about
23 this case, the facts of the case, the evidence presented in
24 this case or the people or organizations involved in any way
25 in the case. Please do not try to find out information from

1 any source outside of the courtroom.

2 In other words, you must not look at dictionaries or
3 other reference materials, search the internet, websites or
4 blogs or use any other electronic tools to get information
5 about this case or to help you decide the case. You may not
6 use computers, telephone, cell phones, smart phones,
7 tablets, the internet or other tools of technology with
8 communication capabilities at any time while you're in the
9 courtroom or during your deliberations.

10 During your breaks for meals or overnight, if
11 necessary, you may use these devices. However, you must not
12 use these devices to communicate with anyone about the case
13 until the case is over. This means you must not use phone
14 calls, e-mails, text messages, instant messages, twitter,
15 chat rooms, any other social medial sites, Facebook,
16 MySpace, LinkedIn, YouTube -- there's no many, I can't name
17 them all -- to send or receive information about this case.
18 This includes any information about a party, a witness, an
19 attorney or a court officer, news accounts the case,
20 research on any topics raised, any topics you may think
21 would be helpful in deciding the case or any testimony
22 presented by any witness.

23 Once again, during the trial, do not read, listen to or
24 watch any news reports about this case. This includes
25 anything that may be in the newspaper or on the internet,

1 radio or television. You must not consider anything you may
2 have read or heard about the case outside the courtroom,
3 whether before or during the trial. Information on TV and
4 the radio, as I told you yesterday, the internet and from
5 other sources might be wrong or incomplete. In our judicial
6 system, it is important that you are not influenced by
7 anything or anyone outside of this courtroom. If you become
8 aware of another juror's violations of these instructions,
9 please inform me immediately.

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

19 In just a moment, the solicitor will make what is
20 called an opening statement in which the solicitor will
21 explain to you the issues in the case or, at least, what the
22 solicitor thinks the issues are in the case. The attorney
23 for the defendant will also make an opening statement,
24 although she is not required to do so.

25 What the attorneys tell you during their opening

1 statements is not evidence in this case. It is only their
2 contention as to what the issues are. The evidence in this
3 case will be presented to you by the testimony of sworn
4 witnesses from the witness stand and/or by exhibits that may
5 be introduced into evidence.

6 From time to time during the trial, you may hear one of
7 the lawyers say something like Your Honor, I believe we have
8 a question of law or a matter of law to discuss with you or,
9 Your Honor, may we approach the bench. Sometimes, I, myself
10 might find it necessary to excuse you from the courtroom for
11 a short while so the attorneys and I can discuss a matter of
12 law.

13 The reason for this is because you're the judges of the
14 facts in this case and sometimes when I am discussing a
15 matter of law, it is necessary for me to comment on some
16 fact in connection with ruling on whether or not a
17 particular law applies. I am not supposed to tell you what
18 the facts are in the case, so I will excuse you from the
19 courtroom so you will not be influenced by anything that I
20 may say or do in ruling on particular issue.

21 Ladies and gentlemen of the jury, you must decide
22 whether or not the testimony of the witness is believable.
23 It will be my responsibility to rule as a matter of law as
24 to whether certain testimony is admissible at all or not,
25 but once the testimony is admitted, whether or not you

1 believe it is solely for you to determine.

2 In deciding whether to believe a witness, you have the
3 right to consider the interest of any witness, the bias of
4 any witness, the prejudice of any witness, the opportunity
5 for the witness to have seen the matters and things about
6 which the witness may testify and the way the witness acts
7 on the witness stand.

8 You have a right to consider anything that is in the
9 record that will help you evaluate the testimony of the
10 witnesses. That means that it is your duty to pay close
11 attention to these witnesses, to observe the witnesses, to
12 listen to the witnesses and to pay close attention to the
13 attorneys and the court.

14 Please do not let your thoughts wander, but give strict
15 attention to the testimony in this case so that at the end
16 of all the testimony, after the arguments of counsel and the
17 charge on the law by the Court, you will be able to apply
18 the law to those facts and render a verdict.

19 In order to preserve everyone's rights, I will give the
20 parties an opportunity to object to anything I have said.

21 Any objections or exceptions to my introduction?

22 MR. SCRUGGS: None from the State.

23 MS. NEYLE: No, Your Honor.

24 THE COURT: Thank you.

25 Ladies and gentlemen of the jury, at this time, you

1 will hear from Mr. Scruggs on behalf of the State and then
2 you will hear from Ms. Neyle on behalf of the Defendant.

3 MR. SCRUGGS: Your Honor, Ms. Lefridge will be
4 addressing the jury for opening statements.

5 THE COURT: I'm sorry, Ms. Lefridge will be doing
6 opening statements.

7 Yes, ma'am.

8 OPENING STATEMENT BY MS. LEFRIDGE

9 MS. LEFRIDGE: Everyone goes through hard times. I
10 know I have. I'm sure each of you have. I know for sure
11 that in May of 2019, the victim in this case, Thomas
12 McElveen, had. He was homeless, living on the street. He
13 didn't have a big house. He didn't have a fancy car, have a
14 large bank account. That didn't make him a bitter man,
15 didn't make him an angry man, didn't make him a mean man.
16 In fact, he engaged in polite conversation with those he
17 passed on the street and he continued about his day.

18 This is a case about a man trying to live his best
19 life. And this is a case about robbing someone for what
20 little bit they have. Ultimately, this is a case about
21 senseless violence.

22 In May of 2019, Mr. McElveen was making his way down
23 David H. McLeod Boulevard near Golden Corral. He happened
24 upon two strangers, said what he thought would be a normal
25 conversation, hi, how are you and then he would continue on

1 his way. However, that was not what happened. Mr. McElveen
2 was suddenly attacked by those two individuals. He was
3 stabbed, robbed and beaten.

4 You will hear from a witness, who upon seeing the
5 attack immediately called 911. She was able to give a
6 description of the two suspects. You will hear from law
7 enforcement that upon their arrival as to what Mr.
8 McElveen's appearance was and you will hear that even though
9 he laid actively bleeding, he was able to give a description
10 to law enforcement that led them to shortly thereafter find
11 those two subjects, one of which, the Defendant, still had
12 in his possession the knife used to stab Mr. McElveen.

13 You will hear from the ER doctor as to the severity of
14 the injuries Mr. McElveen suffered. And you will hear from
15 an expert in DNA that will testify the blood recovered on
16 the knife matched that of Mr. McElveen.

17 And you may ask yourselves, what offense did Mr.
18 McElveen commit to cause two complete strangers to rob him,
19 to beat him and to stab him? Well, ladies and gentlemen,
20 these individuals didn't know each other. They weren't
21 friends. This was purely a random act of violence. Mr.
22 McElveen did not have much, but the Defendant thought what
23 Mr. McElveen had should be his. And he didn't just stop at
24 robbing him, he then beat him severely and stabbed him three
25 times.

1 Ladies and gentlemen, this is a case about a man trying
2 to live the best life he could. This is a case about
3 robbing someone of what little they have. Ultimately,
4 ladies and gentlemen, this is a case about senseless
5 violence.

6 MS. NEYLE: May it please the Court?

7 THE COURT: Yes, ma'am.

8 OPENING STATEMENT BY MS. NEYLE

9 MS. NEYLE: My client, Robert Carter, as he sits before
10 you is an innocent man. The State has charged him with this
11 offenses and the State must prove that he committed them
12 beyond a reasonable doubt. Robert doesn't have to prove
13 anything.

14 This case is going to take you back to May 21st of 2019
15 to an incident that happened at the Golden Corral off
16 Hoffmeyer Boulevard. You'll learn of a man named Thomas
17 Marty McElveen who was stabbed and robbed. He described his
18 attackers, a Native American man and a white man. And law
19 enforcement started searching the City of Florence and by
20 the CVS off of Second Loop, they found two men, brothers,
21 Robert and Leonard Carter. They detained them, arrested
22 them and charged them with these offenses.

23 There is more to the story and that's why we're here
24 today. And after you hear the testimony and consider all
25 the evidence, you will find Robert not guilty.

1 Thank you.

2 THE COURT: All right. I am going to ask the State to
3 call your first witness.

4 MS. LEFRIDGE: Thank you, Your Honor. The State would
5 call Sarah Bennetts.

6 THE CLERK: Ma'am, please, place your left hand on the
7 Bible and raise your right hand.

8 SARAH BENNETTS,

9 after being duly sworn, testified as follows:

10 THE CLERK: Have a seat on the witness stand and state
11 your full name for the record.

12 THE WITNESS: My name is Sarah Bennetts.

13 DIRECT EXAMINATION

14 BY MS. LEFRIDGE:

15 Q Ms. Bennetts, can you tell the Court where you're from?

16 A Marion.

17 Q And that's in South Carolina?

18 A Yes.

19 Q About how far away is that from Florence?

20 A About 27 miles.

21 Q And would you say that you frequent Florence?

22 A Not anymore.

23 Q Well, let me take you back to 2019. In 2019, was it
24 common for you to come to the Florence area?

25 A Yes.

1 Q And I'm going to ask you about an event that happened
2 in May of 2019. Do you recall anything specific that
3 happened on that date?

4 A Well, my husband and I were eating dinner. Got
5 finished eating and I went outside to smoke a cigarette
6 while I was waiting for my husband in the bathroom. And I
7 just walked to the end of the sidewalk to light my cigarette
8 and realized there was a beating going on in front of me.
9 So I called 911.

10 Q Yes, ma'am. Now, I know this has been a long time ago
11 and it's not likely you remember everything that happened
12 back then, but was this -- would you say this was something
13 unusual, for you to call 911?

14 A Absolutely.

15 Q And that's why you remember it?

16 A Yeah.

17 Q And when you saw this beating, did you immediately call
18 911?

19 A I think I probably looked around to see if there was
20 anybody else around, but I guess I just -- I had my phone
21 with me, so I called.

22 Q And you reported to 911 what you were seeing?

23 A Yes, I did.

24 Q Did you give a description of the suspects to 911?

25 A I gave a description of what they had on and what they

1 appeared to look like at that time.

2 Q And you would say that incident was actively occurring
3 while you were on the phone?

4 A Yes, it was.

5 Q So your description would have been an accurate
6 description?

7 A As far as I remember, yeah.

8 Q And I know you said you were eating with your husband,
9 do you recall what restaurant that was at?

10 A Golden Corral.

11 Q Is that the one off of David H. McLeod Boulevard?

12 A Yes.

13 Q Right across from the mall?

14 A Uh-huh.

15 MS. LEFRIDGE: Thank you. No further questions.

16 Please answer any questions the Defense may have.

17 THE COURT: Yes, ma'am.

18 CROSS-EXAMINATION

19 BY MS. NEYLE:

20 Q Good morning, Ms. Bennetts.

21 A Good morning.

22 Q When you were smoking your cigarette outside, was the
23 fight already in progress?

24 A I think it was. I don't remember seeing them coming
25 up. I think they were just there.

1 Q And you called 911?

2 A Yes.

3 Q And you described the men that were attacking another
4 man as Latino?

5 A I did.

6 Q I believe you said they may be Mexican?

7 A Right.

8 Q You didn't hear anything?

9 A No.

10 Q You didn't see any weapons?

11 A No.

12 Q These Latino men that were attacking another man, did
13 you see them eating in the Golden Corral when you were in
14 there?

15 A Not to my knowledge.

16 MS. NEYLE: Your Honor, I have no further questions.
17 Thank you.

18 THE COURT: All right. Thank you.

19 Redirect?

20 MS. LEFRIDGE: Nothing further, Your Honor.

21 THE COURT: All right. You may step down.

22 Any objection to this witness being excused?

23 MS. LEFRIDGE: None from the State, Your Honor.

24 MS. NEYLE: No, Your Honor.

25 THE COURT: Thank you.

1 Call your next witness.

2 MS. LEFRIDGE: Thank you, Your Honor. The State would
3 call Levi James.

4 THE CLERK: Sir, please place your left hand on the
5 Bible and raise your right hand.

6 LEVI JAMES,

7 after being duly sworn, testified as follows:

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

10 THE WITNESS: Levi James.

11 DIRECT EXAMINATION

12 BY MS. LEFRIDGE:

13 Q Thank you, Mr. James. Can you please tell the Court
14 where you're currently employed?

15 A Florence County Emergency Management 911 Center.

16 Q And how long have you been employed there?

17 A About five and a half years.

18 Q And what is your job title?

19 A I'm the public information officer. I collect data
20 from the 911 center, send it to the solicitor's office, law
21 enforcement, anybody who needs records from my department.

22 Q And is there a system that records or tracks incoming
23 calls to 911?

24 A Yes.

25 Q And what is that system called?

1 A It's 911 recording system. It records all our radio
2 traffic and also our 911 telephone calls.

3 Q And is there a report made of each 911 call?

4 A Yes.

5 Q And how are those reports generated?

6 A Once someone calls into the 911 center, deems it's an
7 emergency or they need some kind of law enforcement or First
8 Responder assistance, we generate a CAD report stating the
9 time and date, what's going on, general basic information.

10 Q And do you have access to those reports?

11 A Yes.

12 Q I'm going to show you what has been marked as State's
13 Exhibit 7. Do you recognize this?

14 A Yes.

15 Q And how do you recognize this?

16 A It's a CAD report from my office.

17 Q And is it what all CAD reports look like?

18 A Yes.

19 MS. LEFRIDGE: Your Honor, the State would move to have
20 the CAD report entered into evidence.

21 THE COURT: Any objection?

22 MS. NEYLE: No, Your Honor.

23 THE COURT: State's 7 will be entered without
24 objection.

25 (State's Exhibit No. 7 admitted into evidence.)

1 BY MS. LEFRIDGE:

2 Q So can you tell us, according to the CAD report, what
3 time did this incident get reported to 911?

4 A 1957.

5 Q And can you tell us what time law enforcement first
6 responded?

7 A Law enforcement was dispatched shortly after at 1958.

8 Q Thank you. I'm also going to show you another exhibit
9 that's been marked as State's 6. Do you recognize this?

10 A Yes.

11 Q How do you recognize this?

12 A It's a disc with 911 call on it from my office.

13 Q And you've listened to this disc?

14 A Yes.

15 Q And this disc is a fair and accurate recording of what
16 the 911 call sounded like?

17 A Yes.

18 Q Have there been any alterations or deletions made?

19 A No.

20 Q Thank you.

21 MS. LEFRIDGE: The State moves to enter into evidence
22 State's Exhibit 6, Your Honor.

23 THE COURT: Any objection?

24 MS. NEYLE: No, Your Honor.

25 THE COURT: It will be entered without objection.

1 (State's Exhibit No. 6 admitted into evidence.)

2 MS. LEFRIDGE: Your Honor, the State would move to
3 publish what has been marked as State's Exhibit 6 to the
4 jury, Your Honor.

5 THE COURT: Yes, ma'am.

6 BY MS. LEFRIDGE:

7 Q Mr. James, I'm going to play that 911 call.

8 A Okay.

9 (State's Exhibit No. 6 published for the jury.)

10 Q Mr. James, I'm sure you listened to that call and it
11 seemed to be a disconnect between the first phone call. Is
12 it common that y'all call people back if the line gets
13 disconnected?

14 A Yes. If all the information hasn't already been
15 provided in the first call, it's routine that we call back.

16 MS. LEFRIDGE: Thank you. No further questions.

17 MS. NEYLE: Your Honor, I have no questions of this
18 witness.

19 THE COURT: Okay. You may step down.

20 Call your next witness.

21 MS. LEFRIDGE: Thank you, Your Honor. At this time,
22 the State would call Kaitlyn Sullivan.

23 THE CLERK: Ma'am, place your left hand on the Bible
24 and raise your right.

25 KAITLYN SULLIVAN,

1 after being duly sworn, testified as follows:

2 THE CLERK: Have a seat in the witness stand and state
3 your full name for the record.

4 DIRECT EXAMINATION

5 BY MS. LEFRIDGE:

6 Q Thank you, Officer Sullivan. Can you please tell the
7 Court where you're currently employed?

8 A Florence County Sheriff's Office and I'm a corporal.

9 Q And were you employed with Florence County Sheriff's
10 office back in 2019?

11 A Yes -- no, in 2019, I was with the City.

12 Q And what were some of your job duties when you were
13 employed with the City in 2019?

14 A When I was with the City, I was a patrol officer on the
15 road and we served as First Responders and answering various
16 calls for service.

17 Q And do you recall an incident that occurred on May
18 21st, 2019?

19 A Yes.

20 Q And did that incident happen at 2510 David H. McLeod
21 Boulevard?

22 A Yes.

23 Q Is that in the City of Florence?

24 A That was in the City of Florence.

25 Q And that's in Florence County?

1 A Yes.

2 Q I'm going to show you what has been marked as State's
3 Exhibit 3. Do you recognize what this is?

4 A Yes.

5 Q What is it?

6 A It looks to be a map area of directly where the call
7 was that day.

8 Q I'm going to ask you to step off the witness stand.

9 A (Witness complies.)

10 Q Could you please point to where Golden Corral area is?

11 A Golden Corral is right here.

12 Q You said you recalled an incident that happened that
13 day. Can you tell the Court a little bit about what
14 happened?

15 A I was dispatched to a fight in progress at about 1958
16 hours, which is 7:58 at night, and I got there about 2001,
17 which is 8:01 at night. A man stated he had been robbed and
18 beaten up.

19 Q And when you responded, was he still in that area?

20 A A little bit away from Golden Corral, but he was
21 roughly in the area.

22 Q And when you made it on scene, was there something you
23 noticed immediately about the victim?

24 A Yes. When I saw him and I exited my vehicle, his face
25 was very bruised, it was bloody.

1 Q Did he show you any other wounds or --

2 A Yes. As soon as I said what happened, he lifted up his
3 shirt and he had a couple --

4 MS. NEYLE: Your Honor, I just want to note my prior
5 objection for the record.

6 THE COURT: The objection is overruled, but noted for
7 the record.

8 THE WITNESS: He had a couple stab wounds to his chest.
9 BY MS. LEFRIDGE:

10 Q And did you speak with him about the incident?

11 A Yes.

12 Q Can you tell us what he told you happened?

13 A He said that he was on his bike by Golden Corral and
14 these two men approached him, kicked the bike out from under
15 him and started to beat him.

16 Q Did he tell you why he thought this happened?

17 A No.

18 MS. NEYLE: Objection, speculation.

19 THE COURT: Sustained.

20 BY MS. LEFRIDGE:

21 Q Did he tell you anything else that happened? He stated
22 he was beaten?

23 A Yes.

24 Q And were you the first law enforcement officer on the
25 scene?

1 A Yes.

2 Q Did you have other law enforcement respond?

3 A Yes.

4 Q And why did you have other law enforcement respond?

5 A Based on the situation with two individuals who left
6 the scene that had just beaten up a man, we need to have
7 other units to look out for them.

8 Q And did the victim tell you that the two people that
9 attacked him took anything from him?

10 A Yes.

11 Q And what did he say?

12 A He said they took his money.

13 Q Do you know about how much money he had with him?

14 A He said about \$60.

15 Q I'm going to show you what has been marked State's 8,
16 9, 10 and 11. Do you recognize these?

17 A Yes.

18 Q How do you recognize those?

19 A That is the individual from that night.

20 Q And do these fairly and accurately depict what you saw?

21 A Yes.

22 Q And what do they show?

23 A They show various stab wounds on his chest.

24 Q And have there been any alterations or deletions made
25 to these?

1 A No, ma'am.

2 MS. LEFRIDGE: Your Honor, the State would move to have
3 Exhibits 8 through 11 entered into evidence.

4 THE COURT: Any objection?

5 MS. NEYLE: No, Your Honor.

6 THE COURT: They will be entered without objection.

7 (State's Exhibit Nos. 8 through 11 admitted into
8 evidence.)

9 BY MS. LEFRIDGE:

10 Q And I just want to ask again, this is the man that you
11 saw and you spoke with when you responded?

12 A Yes.

13 Q And these are the various injuries that he showed you?

14 A Yes.

15 Q And based off these injuries and his physical
16 appearance, did you have EMS respond?

17 A Yes.

18 Q How did you let dispatch know you needed EMS to
19 respond?

20 A As soon as he lifted up his shirt -- even when I did
21 see his face, I called EMS immediately and I requested them
22 hot, which means to come in quick.

23 Q And you would request them to come in hot for what type
24 of incidents?

25 A The stab wounds to his chest, I didn't know how deep

1 they were.

2 Q I'm also going to show you what has been marked as
3 State's Exhibit 1. You recognize this?

4 A Yes.

5 Q And how do you recognize this?

6 A That is my body cam footage.

7 Q And have you seen this video?

8 A Yes.

9 Q And is it a fair and accurate depiction of what
10 happened that day?

11 A Yes.

12 Q Has there been any deletions or alterations made?

13 A No.

14 MS. LEFRIDGE: Your Honor, State moves to enter State's
15 Exhibit 1 into evidence, Your Honor.

16 THE COURT: Any objection?

17 MS. NEYLE: None other than my prior objection.

18 THE COURT: All right.

19 MS. LEFRIDGE: The State would also move to publish it
20 to the jury at this time, Your Honor.

21 THE COURT: Yes ma'am.

22 (State's Exhibit No. 1 admitted into evidence and
23 published to the jury.)

24 BY MS. LEFRIDGE:

25 Q After viewing that video, do you still agree that's a

1 fair and accurate representation of what happened that day?

2 A Yes.

3 Q Just a couple more questions. When you first responded
4 and you were on scene, were you able to identify who the
5 victim was?

6 A Yes, after asking what his name was, he actually gave
7 me his middle name, Marty, not his first name, so I asked if
8 his ID was still in his wallet, and it was and I got it.

9 Q And what was his name?

10 A Thomas Marty McElveen.

11 Q And have you since this incident separately learned
12 that the victim in this case has passed away due to
13 unrelated causes?

14 A Yes.

15 Q And when you first responded and he showed you his
16 wounds, what did he say caused this?

17 A Two men had stabbed him.

18 Q And he gave you a description of those men?

19 A Yes.

20 Q What was that description?

21 A According to my report, what I wrote was there were two
22 men, one appeared to be Native American in a red shirt and
23 the other man was a white male wearing rainbow-colored
24 sunglasses.

25 MS. LEFRIDGE: Beg the Court's indulgence.

1 (Pause.)

2 MS. LEFRIDGE: No further questions. Please answer any
3 the Defense might have.

4 THE COURT: Yes, ma'am.

5 CROSS-EXAMINATION

6 BY MS. NEYLE:

7 Q Officer Sullivan, in the report that you prepared
8 regarding this case, you described Mr. McElveen as extremely
9 disoriented?

10 A Yes.

11 Q You said he couldn't give you an exact description of
12 the suspects in your report?

13 A Not immediately.

14 Q The description you did get was of a Lumbee Indian
15 gentleman?

16 A That's what he kept saying.

17 Q And another white man, a white guy, right?

18 A Yes.

19 Q And he said they took how much money from him?

20 A He said approximately 50 to \$60.

21 Q Okay. He even told you he thought one of their names
22 was Billy?

23 A That's what he said.

24 Q And he thought one was wearing a gray shirt?

25 A Yes.

1 Q He said he thought he had stabbed one of them back?

2 A Yes.

3 Q This area around Golden Corral, is there a wooded area
4 next to Golden Corral?

5 A Yes.

6 Q Is that an area known to have homeless people living in
7 it?

8 A Yes.

9 Q And as you see in that video, another officer took
10 photos of Mr. McElveen?

11 A Yes.

12 Q And he was being loaded onto the EMS stretcher?

13 A Yes.

14 Q And as you see from that video, there wasn't an
15 immediate rush to get him to the hospital, was there?

16 A No.

17 MS. NEYLE: Your Honor, I have no further questions.

18 THE COURT: Redirect?

19 MS. LEFRIDGE: Nothing further, Your Honor.

20 THE COURT: You may step down.

21 Any objection to this witness being excused?

22 MS. LEFRIDGE: None from the State, Your Honor.

23 MS. NEYLE: None from the Defense.

24 THE COURT: Thank you.

25 Call your next witness.

1 MR. SCRUGGS: Your Honor, at this time, the State calls
2 Helen Bryant.

3 Your Honor, may we approach briefly on scheduling?

4 THE COURT: Yes.

5 (Sidebar conference.)

6 THE CLERK: Ma'am, place your left hand on the Bible
7 and raise your right hand.

8 HELEN BRYANT,

9 after being duly sworn, testified as follows:

10 THE CLERK: Have a seat in the witness stand and state
11 your full name.

12 DIRECT EXAMINATION

13 BY MR. SCRUGGS:

14 Q Good morning, Officer Bryant. How are you doing?

15 A Good, how are you?

16 Q Are you currently employed with the Florence Police
17 Department?

18 A I am.

19 Q What's your current rank and duties?

20 A Currently, I'm assigned to the uniform patrol division
21 and we respond to any call for service that comes through
22 the dispatch center.

23 Q Okay. And in 2019, were you also employed by the
24 Florence Police Department?

25 A Yes.

1 Q On May 21st of 2019, did you respond to a dispatch call
2 regarding an assault and robbery that occurred at the Golden
3 Corral?

4 A I did.

5 Q Do you recall what time that call came from dispatch?

6 A I believe it came out right around eight o'clock at
7 night.

8 Q Okay. Did you arrive at the Golden Corral location
9 just a few minutes later?

10 A Yes, I did.

11 Q Did you initially respond to the location where the
12 victim, Mr. Thomas McElveen, was located?

13 A I did.

14 Q And where was he located when you responded?

15 A I don't recall actually seeing him, but we were told it
16 was at the Golden Corral or right behind the Golden Corral.
17 I think I responded to that general area to look for
18 suspects.

19 Q I know this is a familiar part of Florence County, but
20 could you just generally describe to the jury what that area
21 is and what kind of commercial restaurants and locations are
22 located there?

23 A Sure. Where the Golden Corral is located is kind of a
24 strip mall where the old Wal-Mart used to be, old Wal-Mart
25 spot and then there's several other different businesses.

1 There's a long strip mall with different businesses. And
2 that is directly across the street off of David McLeod
3 Boulevard from Magnolia Mall. So, basically, just business,
4 commercial-type shopping, that sort of thing. There's also,
5 I believe, the rail trail that cuts through the wooded area
6 that's there as well.

7 Q Probably one of the most commercialized areas in
8 Florence County?

9 A Yes.

10 Q When you initially responded, did you check the area
11 around Golden Corral and the Phoenix Mart for these two
12 suspects?

13 A I did.

14 Q Did you find anything?

15 A I did not find anyone matching the description that we
16 were given.

17 Q And what descriptions were you given of these two
18 suspects?

19 MS. NEYLE: Objection, hearsay.

20 MR. SCRUGGS: Judge, this is not offered for the truth
21 of the matter asserted. It's narrative and as well, if the
22 Court deems it hearsay, it's a hearsay exception under
23 excited utterance or present sense impression.

24 THE COURT: The objection is overruled.

25 BY MR. SCRUGGS:

1 Q Officer, can you give the description you were given of
2 the two suspects?

3 A We were told -- or I was told that it was two males,
4 possibly Hispanic, maybe American Indian, one was wearing a
5 red shirt, one was wearing a blue shirt and one of the
6 subjects had some rainbow lens colored sunglasses.

7 Q Okay. You mentioned that when you first got there, you
8 checked the immediate area and you didn't see anybody
9 matching that description; is that right?

10 A Yes.

11 Q Can you tell the jury what you did after you left the
12 scene?

13 A Once I left the scene there, I kind of expanded my
14 search out a little further and just still had officers on
15 scene dealing with the call, so I drove around the area
16 within a mile or two of that area still looking for the
17 suspects, anybody that might have been walking or anybody
18 that came close to that description.

19 Q At some point, did you notice two individuals walking
20 down Second Loop Road that matched the description you were
21 given?

22 A Yes.

23 Q And at this point, I'd like for you to come down.

24 A (Witness complies.)

25 Q What I've got here on this easel is what's marked as

1 State's Exhibit 3. Do you recognize this area?

2 A Yes.

3 Q First, I'd like for you to point out to the jury if you
4 can the initial location that you responded to?

5 A This is David McLeod Boulevard and Golden Corral would
6 be located right here.

7 Q You mentioned that you located or saw two suspects
8 matching the description given. Was that on Second Loop
9 Road?

10 A Yes.

11 Q Can you show the jury on the map just an approximate
12 location of where on Second Loop you encountered them?

13 A This is Second Loop Road here. It was somewhere about
14 right here, I believe about where the trees kind of clear
15 up. This is a CVS. It was behind the CVS. I believe it
16 was about right here.

17 Q What direction were they walking?

18 A They were headed east.

19 Q And this map right here, is this an accurate aerial map
20 of this area of Florence County?

21 A It appears to be, yes.

22 MR. SCRUGGS: Your Honor, at this time, the State would
23 move into evidence what's been marked as State's Exhibit 3.

24 THE COURT: Any objection?

25 MS. NEYLE: No, Your Honor.

1 (State's Exhibit No. 3 admitted into evidence.)

2 BY MR. SCRUGGS:

3 Q You can return to your seat.

4 A (Witness complies.)

5 Q If you can at this point -- you mentioned that you saw
6 two individuals matching the description traveling east on
7 Second Loop. What did you do next?

8 A I was actually headed the same direction, so I got on
9 the radio and advised my dispatch that I had just seen what
10 I thought were two subjects matching that description and my
11 intention was to turn around and stop and get out and make
12 contact with those two subjects. So I turned around in
13 traffic and then came back and stopped back right where they
14 were walking on the sidewalk.

15 Q And could you tell the jury -- I know you mentioned
16 they matched the description, but could you describe what
17 these two individuals looked like?

18 A One of the individuals, like I said, was wearing a red
19 shirt, one was wearing a blue shirt. Both of them had
20 darker skin that from a distance could have been considered
21 Hispanic or American Indian, but upon closer contact with
22 them, within a couple of feet, it appeared that they were
23 just real sunburned. It appeared to me that they looked
24 real similar to some of the homeless people we had seen in
25 the area over the years. They had dirty clothing, grass

1 stains on their jeans and shoes and dirt and appeared they
2 had either been walking for a while or, possibly, homeless.

3 Q You mentioned you called for backup?

4 A Yes.

5 Q Did other officers arrive on scene?

6 A Yes.

7 Q Now, let me back up just a little bit. Do you recall
8 what time you encountered these two individuals?

9 A I believe it was about 40 minutes or so after the
10 initial call, so around 8:00, 8:35, 8:40.

11 Q When other officers arrived on scene, did you observe a
12 search of their person?

13 A Yes.

14 Q And what officers responded to the scene if you can
15 recall?

16 A Officer Frye, Officer Rebel, Investigator Davis,
17 Lieutenant Mims and I believe Officer Frye may have had a
18 trainee with him. I'm not sure. I think he just was there,
19 but Officer Frye and Rebel I believe were the ones that
20 initially responded to me.

21 Q Did the two individuals have any backpacks or anything
22 on their persons?

23 A Yes. I noticed that when I got out with them that they
24 did have a couple of bags with them.

25 Q Okay. Do you recall what color they were?

1 A I believe a black bag or duffel bag or backpack. I
2 believe it was a black bag.

3 Q Do you recall if one of the individuals had a pair of
4 sunglasses?

5 A Yes. I believe it was Mr. Leonard Carter that had the
6 sunglasses, the rainbow-lens sunglasses. I don't know if he
7 was wearing them or they were sitting on top of his head.

8 Q You mentioned Mr. Leonard Carter. Were you able to
9 ascertain when you spoke with these individuals who they
10 were?

11 A Yes. I asked them if they had any form of
12 identification and they both provided -- I don't remember if
13 it was -- one of them provided a birth certificate and
14 social security card and I think the other had an ID that
15 identified them as who they were.

16 Q Can you tell the jury who they were?

17 A Yes, through their identification, they were identified
18 as Robert Carter and Leonard Carter and they advised they
19 were brothers.

20 Q When other officers arrived on scene, did you observe
21 them take any items off of the two individuals?

22 A Yes. I had asked them if they had any weapons on their
23 person and they said feel free to search us. Maybe not in
24 those words, but they told us we could search them. I
25 believe Officer Rebel and Officer Frye searched them. And

1 while they were searching them, I heard, I believe it was
2 Mr. Robert Carter state that he did have a knife in his back
3 pocket.

4 Q Okay.

5 A Again, had a bag and several other things in their
6 pockets, things I would consider what homeless people would
7 carry. You know, receipts and papers and just random
8 miscellaneous things from what I remember.

9 Q Do you recall if they had any U.S. currency on their
10 persons?

11 A They did, yes.

12 Q And I believe you said a receipt was recovered as well?

13 A I believe so, yes.

14 Q Were all these items seized and taken into possession
15 by law enforcement?

16 A Yes. They were placed in a plastic bag, which is
17 generally what we do, and I believe they were given to me
18 and I placed them in my car until turning them over to
19 Investigator Davis.

20 Q So you took possession of the items seized from the
21 Carters?

22 A Yes.

23 Q And you turned them over to Officer Davis?

24 A Yes.

25 MR. SCRUGGS: May I approach, Your Honor?

1 THE COURT: Yes.

2 (Sidebar conference.)

3 BY MR. SCRUGGS:

4 Q Officer Bryant, you mentioned that you were present
5 while these individuals were searched; is that correct?

6 A Yes.

7 Q And you also observed what they were wearing when you
8 first responded and encountered them; is that correct?

9 A Yes.

10 Q You mentioned that one of them had on a pair of
11 sunglasses?

12 A Yes.

13 MR. SCRUGGS: Your Honor, may I approach the witness?

14 THE COURT: Yes.

15 Q I'm showing you what's been marked as State's Exhibit
16 15. Do you recognize that?

17 A I do.

18 Q Would you tell the jury what that is?

19 A These are the sunglasses that Mr. Leonard Carter was
20 wearing when I approached them on that date.

21 Q And are those sunglasses in substantially the same
22 condition as they were when you saw them on May 21st, 2019?

23 A They are.

24 MR. SCRUGGS: Your Honor, at this time, the State would
25 enter into evidence State's Exhibit No. 15.

1 THE COURT: Any objection?

2 MS. NEYLE: No, Your Honor.

3 THE COURT: Will be entered without objection.

4 (State's Exhibit No. 15 admitted into evidence.)

5 MR. SCRUGGS: Your Honor, I have no further questions.

6 THE COURT: Thank you.

7 Are y'all done with the board here?

8 MR. SCRUGGS: Yes, ma'am, and I'll move it out of the
9 way unless Ms. Neyle is going to use it.

10 MS. NEYLE: No, thank you.

11 CROSS-EXAMINATION

12 BY MS. NEYLE:

13 Q Good morning, Officer Bryant.

14 A Morning.

15 Q When you stopped Robert and Leonard, that was a stop
16 without incident, correct?

17 A Correct.

18 Q They cooperated with you?

19 A Yes.

20 Q They didn't run away?

21 A No, they did not.

22 Q They answered your questions?

23 A They did.

24 MR. NEYLE: I have no further questions.

25 MR. SCRUGGS: No redirect, Your Honor.

1 THE COURT: You may step down.

2 Any objection to this witness being excused?

3 MR. SCRUGGS: No, ma'am.

4 MS. NEYLE: No, Your Honor.

5 THE COURT: You're free to leave then.

6 Ladies and gentlemen of the jury, at this time, we're
7 going to go ahead and take our morning break. I usually do
8 a morning break, an afternoon break and then we'll do a
9 lunch break. So we'll take about 10 to 15 minutes for you
10 to refresh yourselves and then we'll receive you back into
11 the courtroom. Thank you.

12 (The jury exits the courtroom at 11:08 a.m.)

13 THE COURT: Are we ready to bring them in?

14 MR. SCRUGGS: Yes, Your Honor.

15 (The jury enters the courtroom at 11:37 a.m.)

16 THE COURT: We'll ask the State to call your next
17 witness.

18 MR. SCRUGGS: Thank you, Your Honor. The State calls
19 Matthew Frye.

20 THE CLERK: Sir, please, place your left hand on the
21 Bible and raise your right hand.

22 MATTHEW FRYE,

23 after being duly sworn, testified as follows:

24 THE CLERK: Take a seat on the witness stand and state
25 your full name for the record.

1 THE WITNESS: Matthew Frye.

2 DIRECT EXAMINATION

3 BY MR. SCRUGGS:

4 Q Officer Frye, good morning.

5 A Morning.

6 Q Are you currently employed with the Florence Police
7 Department?

8 A I am.

9 Q What's your current rank?

10 A Corporal.

11 Q Can you tell the jury what your duties are currently at
12 the Florence Police Department?

13 A As of right now, I'm a corporal in the traffic unit,
14 but I work traffic and patrol given what day it is.

15 Q In May of 2019, were you also employed by the Florence
16 Police Department?

17 A I was.

18 Q On May 21st, 2019, did you respond to a call involving
19 an assault and robbery that occurred at the Golden Corral?

20 A I did.

21 Q Where at first did you respond to?

22 A Near the Golden Corral on David McLeod Boulevard.

23 Q Okay. Were you given a general description of the
24 suspects and what happened?

25 A I was. I don't remember some of it, but I was.

1 Q A short time after you responded, were you advised
2 through dispatch that Officer Kelly Bryant had gotten out
3 with two suspects matching the description of the
4 assailants?

5 A I was.

6 Q Did you respond to that location?

7 A I did.

8 Q Where was that location?

9 A It was on Second Loop Road just before you get to the
10 CVS.

11 Q When you got there, were there other officers on scene?

12 A There were, Officer Bryant and I believe Officer Rebel
13 was already there.

14 Q Were they out with two individuals?

15 A They were.

16 Q Can you describe to the jury the appearance of those
17 two individuals that they had stopped?

18 A Both were white males. One was wearing like a red tee
19 shirt, one was wearing a dark-colored tee shirt, both had
20 blue jeans on.

21 Q And at this time that you responded, were you in
22 possession of a body wearable camera?

23 A I was.

24 Q Sometimes called a BWC?

25 A Yes, sir.

1 Q Can you explain to the jury just how that works when it
2 comes to all that kind of stuff?

3 A Generally, when we respond to a call, once we arrive
4 and we kind of see who we're going to meet with or whatever,
5 we'll go ahead and hit the button on the front and that
6 activates the recording portion of it, and then it just
7 stays on until we're done with the entirety of the call.

8 Q Was your body camera activated during this encounter
9 with these two individuals?

10 A It was.

11 Q While you were on scene, did you determine or did
12 someone tell you who these two individuals were?

13 A They fit the description given by dispatch and Officer
14 Bryant had obtained their IDs.

15 Q At some point, did you search the suspects?

16 A I did.

17 Q Can you tell the jury what you recovered from these two
18 individuals?

19 A Individually, I can't remember what came out of each
20 person's pocket, but I know I pulled out a wad of money out
21 of various pockets of one suspect, and then there was like a
22 pack of cigarettes and a receipt and then some more money
23 out of another suspect's pocket, a smaller amount of money,
24 and a pocketknife.

25 Q You mentioned a receipt.

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

2 THE COURT: Yes.

3 BY MR. SCRUGGS:

4 Q I'm showing you what's been marked for identification
5 purposes only as State's Exhibit 16. Do you recognize that?

6 A I do.

7 Q Can you just generally tell me what that is?

8 A It's a receipt from the Golden Corral that was removed
9 from one of the suspect's pockets.

10 MR. SCRUGGS: Beg the Court's indulgence.

11 (Pause.)

12 Q Officer Frye, I'm also going to hand you what's been
13 marked as State's Exhibit 25. Do you recognize that
14 packaging?

15 A I do.

16 Q What does it state on the front?

17 A Pocketknife.

18 Q Is it sealed?

19 A It is.

20 Q Can you explain what that evidence tape is on the back?

21 A The red evidence tape is used just to seal the envelope
22 that contains the evidence so no one -- to prove that no one
23 has tampered with it and no one has opened it.

24 Q And you stated that you pulled a knife off of one of
25 the individuals; is that right?

1 A Ye, sir.

2 Q Do you remember which individual you recovered the
3 knife from or what he was wearing?

4 A I believe the knife came out of the pocket of the
5 suspect wearing a red shirt because it was with a big wad of
6 money.

7 Q At this time, I would ask you to open that package.
8 I've got a pair a gloves if you would like some -- or I've
9 got one glove?

10 A Sure.

11 Q And when you recovered that knife from the individual
12 wearing the red shirt, did you open the knife?

13 A I initially didn't, but I did once the investigator was
14 on scene.

15 Q Let me ask you this, what kind of knife is it?

16 A It's a folding pocketknife, silver.

17 Q Did you at some point after you recovered the knife
18 open that pocketknife?

19 A I did.

20 Q Did you observe any substances or what you thought
21 could be substances on the knife?

22 A Once I opened it, on the blade, I did observe what
23 appeared to be blood, dried blood on the blade of the knife.

24 Q And what do you have in your hand?

25 A The silver knife.

1 Q The silver knife from State's 25, is that the knife
2 that you recovered from the individual wearing a red shirt?

3 A It is.

4 Q Is it in substantially the same condition it was on the
5 night of May 21st, 2019?

6 A It is.

7 MR. SCRUGGS: Your Honor, at this time, the State would
8 move into evidence State's Exhibit 25.

9 THE COURT: Any objection?

10 MS. NEYLE: No, Your Honor.

11 THE COURT: Entered without objection.

12 MR. SCRUGGS: If you will, just please put that back in
13 the bag.

14 (State's Exhibit No. 25 admitted into evidence.)

15 BY MR. SCRUGGS:

16 Q You stated your body camera was activated during this
17 encounter?

18 A Yes, sir.

19 Q Did your body camera capture the search of the two
20 suspects?

21 A It did.

22 Q What I'm showing you is marked as State's Exhibit 12.
23 Do you recognize that?

24 A Yes, sir.

25 Q What is that?

1 A It is the disc that our video is transferred to once it
2 is uploaded to our computer system.

3 Q Does that disc contain footage of your body wearable
4 camera from the night of May 21st, 2019?

5 A It does.

6 Q Have you had a chance to view that footage?

7 A I have.

8 Q Does that footage fairly and accurately depict what
9 occurred on May 21st, 2019?

10 A Yes, sir.

11 MR. SCRUGGS: Your Honor, at this time, the State would
12 enter into evidence State's Exhibit 12.

13 THE COURT: Any objection?

14 MS. NEYLE: No, Your Honor.

15 THE COURT: Entered without objection.

16 MR. SCRUGGS: Your Honor, at this time, the State would
17 ask the Court to publish State's Exhibit 12.

18 THE COURT: Yes, sir.

19 MR. SCRUGGS: And I do want to note for the record that
20 this footage is going to be played on mute without any sound
21 and the Defense is aware of that.

22 MS. NEYLE: I have no objection, Your Honor.

23 (State's Exhibit No. 12 admitted into evidence and
24 published to the jury.)

25 BY MR. SCRUGGS:

1 Q Officer Frye, after the search, does the footage reveal
2 you counting the money that was recovered?

3 A It does.

4 Q Does it also depict you placing those items recovered
5 into bags?

6 A Yes, sir.

7 Q After all the items were placed in those two bags, did
8 you transfer custody of those bags containing the personal
9 effects seized from the Carters to Officer Helen Bryant?

10 A I did.

11 MR. SCRUGGS: I have no further questions, Your Honor.

12 CROSS-EXAMINATION

13 BY MS. NEYLE:

14 Q Corporal Frye, how much money did you count?

15 A I don't remember. I generally just count it to make
16 sure that it's all in order and can be placed in the bag
17 without being crumpled up and stuff.

18 Q You first responded to the parking lot behind Golden
19 Corral?

20 A Yes ma'am.

21 Q And did you take possession of a bicycle owned by Mr.
22 McElveen?

23 A Not right then. I mean, I might have done it there,
24 but I know I didn't log it in until much later.

25 Q So his bicycle was placed into evidence?

1 A It was.

2 MS. NEYLE: Your Honor, I have no further questions.
3 Thank you.

4 THE COURT: Thank you.

5 MR. SCRUGGS: No redirect, Your Honor.

6 Your Honor, I'd ask that Officer Frye be released from
7 his subpoena.

8 THE COURT: Any objection to this witness being
9 excused?

10 MS. NEYLE: No, Your Honor.

11 THE COURT: You're free to leave, sir.

12 THE WITNESS: Thank you.

13 THE COURT: Call your next witness.

14 MR. SCRUGGS: Thank you, Your Honor. At this time, the
15 State would call Investigator John Davis.

16 THE CLERK: Sir, please, place your left hand on the
17 Bible and raise your right hand.

18 JOHN DAVIS,

19 after being duly sworn, testified as follows:

20 THE CLERK: Have a seat on the witness stand and state
21 your full name for the record.

22 THE WITNESS: John Davis.

23 DIRECT EXAMINATION

24 BY MR. SCRUGGS:

25 Q Good afternoon, Investigator Davis. How are you doing?

1 A Good, sir.

2 Q If you could, please, just explain to the jury what
3 your current job entails and where you're currently
4 employed?

5 A I recently took a promotion to the codes enforcement
6 unit. At the time of the incident, I was an investigator
7 with the City of Florence.

8 Q Generally, can you explain what an investigator does?

9 A Yes, sir. An investigator usually gets called by the
10 law enforcement in patrol division who were the initial
11 responders to the 911 call. An investigator would come
12 secondary to a patrol finding an incident or getting out to
13 an incident. Typically, if an incident is going to take a
14 long period of time or there's a lot of factors involved, an
15 investigator gets called to handle that if it appears the
16 incident is going to take more than a day or more than a few
17 hours to investigate.

18 Q On May 21st, 2019, were you notified of an aggravated
19 assault and robbery?

20 A Yes, sir, I was contacted by Sergeant Anderson for the
21 City of Florence, who was the patrol supervisor at the time.

22 Q Were you the on-call investigator for that day?

23 A I was, I was on duty that day.

24 Q Were you given information or a description of the two
25 suspects in this case?

1 A Not initially. Sergeant Anderson called me and said
2 that the crime had occurred and told me the incident
3 location, so I responded to the incident location at the
4 Golden Corral first. It was at that time, I spoke with
5 Officer Bryant -- it was Officer Morris that was on scene at
6 the time taking the report and she had given me the details
7 of who we were looking for.

8 Q About 30 or 40 minutes later after you responded to
9 Golden Corral, were you notified that Officer Bryant had
10 encountered two individuals that matched the description of
11 the suspects?

12 A Yes, I heard over my police radio that Officer Bryant
13 was getting out on Second Loop Road near Jeffrey Street with
14 two subjects that matched the description given.

15 Q Did you then respond to that location?

16 A I did. I left Golden Corral and responded Jeffrey
17 Street and Second Loop Road.

18 Q Can you give the jury a description of the two suspects
19 that Officer Bryant was out with?

20 A Yes, sir. Two white male subjects, both very tanned
21 and burnt about the face and arms by the sun. The Defendant
22 was wearing a red tee shirt and the co-defendant was wearing
23 a blue tee shirt. Both of them had on blue jeans. I don't
24 recall the shoes of the co-defendant, but the Defendant here
25 today was wearing white Nike shoes.

1 Q And you mentioned the Defendant, is the Defendant
2 you're referring to Robert Carter, Jr.?

3 A Yes, sir.

4 Q Is the individual that you encountered on May 21st,
5 2019, and identified as Robert Carter, is he in the
6 courtroom today?

7 A Yes, sir, he's sitting over there.

8 MR. SCRUGGS: Please let the record reflect that he
9 pointed to the Defendant sitting next to his attorney.

10 THE COURT: So noted for the record.

11 BY MR. SCRUGGS:

12 Q Let me back up a little bit. While y'all were out on
13 scene with these two suspects, did you observe Officer Frye
14 conduct a search of the two individuals?

15 A I think I showed up after the search of their persons
16 had been conducted, but Officer Frye and Rebel had walked me
17 through what had been recovered off of them.

18 Q And the items that were recovered from both Mr. Robert
19 Carter and Mr. Leonard Carter, were they transferred to your
20 custody by Officer Helen Bryant?

21 A No, sir. Our policy at the police department is if
22 we're taking somebody anywhere, the property remains with
23 them. So Officer Bryant would have transported them to the
24 City Center for me to interview them in our recorded
25 interview room, so, therefore, their bags would have stayed

1 in her patrol vehicle with them while they were transported
2 with her.

3 Q Let me ask it this way, at some point, did you review
4 the items that had been seized from the two cars?

5 A I did. Initially, on the scene there on Second Loop
6 Road, I observed the knife and we observed -- or Corporal
7 Frye had pointed out what he believed was blood on the
8 blade, which made us further scrutinize the Defendant and
9 co-defendant. We actually took our flashlights and looked
10 at every article of clothing, all up and down them. That
11 was when we discovered that there was some bloody-looking
12 drops on the gray/white shoes of the Defendant here today.
13 So that made us want to call crime scene out, which met us
14 at the City Center for the recorded interview room.

15 Q What other items did you review that were recovered
16 from the Carters?

17 A Not a whole lot, just the stuff that was significant,
18 so the blade, the shoes. And they showed me the cash. The
19 cash was significant because the victim of the crime had
20 told us between 50 and \$60 was removed from him when he was
21 assaulted. So the amount of money that the Defendant and
22 co-defendant had on them was significant because it was
23 approximately \$54 based on what I wrote in my report.

24 Q So the money that was recovered from the Carters
25 totaled approximately \$54?

1 A Yes, sir.

2 MR. SCRUGGS: Your Honor, may I approach the witness?

3 THE COURT: Yes.

4 Q Investigator Davis, I'm showing you what's been marked
5 as State's Exhibit 26. Do you recognize that?

6 A Yes, sir. These were the items that were seen on
7 Frye's body worn camera and also the items that I had in my
8 possession when we were in the interview room.

9 Q And those were the items that were recovered from
10 Leonard Carter and Robert Carter?

11 A Yes, sir, they were.

12 Q Is that an accurate photograph of the items that were
13 recovered on May 21st, 2019, from the Carters?

14 A It is. This is sitting on the table outside of our
15 interview room. These photographs would have been taken by
16 Crime Scene Investigator Starling.

17 MR. SCRUGGS: Your Honor, at this time, I would move
18 State's Exhibit 26 into evidence.

19 THE COURT: Any objection?

20 MS. NEYLE: No, Your Honor.

21 THE COURT: All right. It will be admitted without
22 objection.

23 (State's Exhibit No. 26 admitted into evidence.)

24 BY MR. SCRUGGS:

25 Q And at some point after you arrived on scene, both

1 Leonard Carter and Robert Carter were identified; is that
2 correct?

3 A Yes, sir.

4 Q What I'm showing you first has been marked as State's
5 Exhibit 13. Do you recognize that?

6 A Yes, sir, that's Leonard Carter, the co-defendant, that
7 was him seated in the interview room. That photograph was
8 likely taken by me with my work cell phone.

9 Q Can you describe what he's wearing?

10 A He's wearing a blue short-sleeved tee shirt and blue
11 jeans.

12 Q Does that photograph accurately depict Mr. Leonard
13 Carter and what he was wearing and what he appeared to look
14 like on May 21st, 2019?

15 A Yes, sir.

16 MR. SCRUGGS: Your Honor, at this time, the State would
17 move State's Exhibit 13 into evidence.

18 THE COURT: Any objection?

19 MS. NEYLE: No, Your Honor.

20 THE COURT: Entered without objection.

21 (State's Exhibit No. 13 admitted into evidence.)

22 BY MR. SCRUGGS:

23 Q I'm next going to show you what's been marked as
24 State's Exhibit 14. Do you recognize that?

25 A Yes, sir, that's Robert Carter, the Defendant. That's

1 in a room adjacent to our interview room, and that
2 photograph was also likely taken by me with my work cell
3 phone.

4 Q Okay.

5 A He's wearing a red tee shirt and darker blue jeans.

6 Q Okay. Does that photograph accurately depict Robert
7 Carter on May 21st, 2019?

8 A Yes, sir, it does.

9 MR. SCRUGGS: Your Honor, at this time, the State would
10 move into evidence Exhibit 14.

11 THE COURT: Any objection?

12 MS. NEYLE: No, Your Honor.

13 THE COURT: Entered without objection.

14 (State's Exhibit No. 14 admitted into evidence.)

15 BY MR. SCRUGGS:

16 Q I'm also going to show you what's been previously moved
17 into evidence as Exhibit 25, State's Exhibit 25. Could you
18 remove that from the envelope and tell me what it is?

19 A Yes, sir. It appears to be the silver pocketknife that
20 was shown to me on the hood of Officer Bryant's car that
21 night. This was the knife that we observed to be red blood
22 droplets that we later tested, Investigator Starling tested.

23 Q Thank you. Now, let me ask you this, you mentioned
24 that Mr. Robert Carter was wearing blue jeans when you
25 encountered him on the afternoon of the 21st, May 21st, 2019

1 -- evening, excuse me. Did you spot any potential blood
2 spots on his blue jeans?

3 A No, not on the blue jeans. I was later told by
4 Investigator Starling that --

5 MS. NEYLE: Objection.

6 THE COURT: Sustained.

7 Q Let me ask you this, did you personally observe any
8 blood stains?

9 A I personally didn't.

10 Q With regards to the white shoes that Robert Carter was
11 wearing, did you observe any potential blood stains on those
12 shoes?

13 A I did, yes, sir.

14 Q And, also, the same evening, did you have a chance to
15 observe Leonard Carter?

16 A I did, yes, sir.

17 Q Did you examine his hands?

18 A I believe I looked at both of their hands, but I don't
19 know that I identified anything on them at the time.

20 Q Okay. This all occurred on May 21st, 2019. A few days
21 later on May 24th, 2019, did you request and receive a
22 search warrant from the municipal court to obtain buccal
23 swabs from Mr. Robert Carter and Mr. Leonard Carter?

24 A I did. I met with the municipal judge to get those
25 items signed and then handed them to Investigator Starling

1 to serve.

2 Q And, just generally, can you explain to the jury what a
3 buccal swab is and how you -- what it's used for?

4 A Yes, sir. So because we had suspected blood evidence
5 on the blade and on the shoes, what we need to do is
6 determine whose blood that is. So in this case, the
7 Defendant and co-defendant were being accused of committing
8 a crime against our victim, we needed to know our victim's
9 blood sample as a known standard to compare against the
10 blood on the blade and on the shoes. We also need to know
11 the Defendant's and co-defendant's known blood standard to
12 also compare against the blood on the shoe to make sure that
13 it's not the Defendant's blood.

14 So the search warrant would have covered us recovering
15 DNA samples from the victim and from both the Defendant and
16 co-defendant to compare against the blood that we found --
17 or what we believed was blood on the shoe and on the blade.

18 Q And, also, are you aware of whether a buccal swab was
19 done on the victim, Thomas McElveen, in this case?

20 A I believe it was done on the date of the incident by
21 Investigator Starling.

22 Q On May 31st, 2019, did you obtain a second search
23 warrant from the municipal court?

24 A On May 31st?

25 Q Yes.

1 A I don't recall.

2 Q Let me ask you this, did you obtain a second search
3 warrant sometime later for the Defendant's clothing and
4 personal items that were seized?

5 A Yes, sir, I would have. During Investigator Starling's
6 further investigation in his lab where he uses alternative
7 light sources to reveal things you can't see with the naked
8 eye, I believe it was at that time that he had requested to
9 me a new search warrant to get us a sample of what he
10 believed was blood on the Defendant's clothes.

11 MR. SCRUGGS: Beg the Court's indulgence.

12 (Pause.)

13 MR. SCRUGGS: Your Honor, may I approach?

14 THE COURT: Yes.

15 BY MR. SCRUGGS:

16 Q Investigator Davis, I'm showing you what's been marked
17 as State's Exhibit 27. Can you open that bag and tell me
18 what's in there?

19 A Those are the white Nike shoes that were recovered from
20 Robert Carter.

21 Q Could you pull those out of the bag, please?

22 A (Witness complies.)

23 Q And are those the shoes that you observed on May 21st,
24 2019, that Mr. Robert Carter was wearing?

25 A Yes, sir, they appear to be.

1 Q Do they appear to be in substantially the same
2 condition that they were in that night?

3 A Yes, sir, they do.

4 MR. SCRUGGS: Your Honor, at this time, the State would
5 move into evidence State's Exhibit 27.

6 THE COURT: Any objection?

7 MS. NEYLE: No, Your Honor.

8 THE COURT: Exhibit 27 will be entered without
9 objection.

10 (State's Exhibit No. 27 admitted into evidence.)

11 MR. SCRUGGS: No further questions, your Honor. Thank
12 you.

13 THE COURT: Thank you.

14 CROSS-EXAMINATION

15 BY MR. NEYLE:

16 Q Investigator Davis, there were quite a few officers on
17 the scene, correct?

18 A Yes, ma'am.

19 Q Approximately how many?

20 A Five to six.

21 Q And were they all outfitted with body-worn cameras?

22 A If they're in the uniform patrol division, they should
23 have been.

24 Q So Officer Sullivan had a born-worn camera as we saw,
25 correct?

1 A Morris, yes.

2 Q And Mr. McElveen told Officer Morris, now Sullivan,
3 that he thought he had stabbed one of his assailants. When
4 you searched Mr. Carter, did you see any stab wounds on him?

5 A No, that information doesn't ring a bell with me. I
6 don't know that I've ever heard that.

7 Q So you did not observe any stab wounds on Robert
8 Carter?

9 A No, we didn't observe any injuries. Matter of fact,
10 when we look at the hands, you know, we're looking for
11 defensive or combative injuries on the hands based on what
12 the victim had alleged occurred to him, but I didn't see any
13 significant injuries that would have caused an injury to
14 either of the Defendants.

15 Q The area of the Golden Corral, it's a heavily
16 commercial area, correct?

17 A Yes.

18 Q Did you obtain any video footage of the Golden Corral
19 restaurant?

20 A No, I did not.

21 Q Did you look for any video footage of any other
22 surrounding businesses?

23 A No. I had actually put that on the patrol officers
24 that were in that area and they said there was no video.

25 Q Do you know which stores they went to look for?

1 A They responded to Golden Corral originally, Deputy
2 Brumbles was in the area and said that he had observed the
3 Defendant's descriptions in those parking lot areas around
4 Phoenix Mart, around Golden Corral earlier in the day. So
5 patrol officers were sent over towards Phoenix Mart to see
6 if they had video, but, apparently, the video only looked
7 down at the gas pumps and inside the store. I don't know if
8 they reviewed the video to see if the Defendant's
9 description ever walked into the store or not, but I was
10 told there wasn't any video to capture there.

11 Q Did you look for any video footage of the route going
12 from Golden Corral to the CVS on Second Loop?

13 A No, I didn't.

14 Q Your investigation pretty much ended after the Carter
15 brothers were arrested, correct?

16 A It did.

17 MR. NEYLE: Your Honor, I have no further questions.

18 THE COURT: Thank you.

19 Redirect?

20 MR. SCRUGGS: No questions, Your Honor.

21 THE COURT: You may step down, sir.

22 Call your next witness.

23 MR. SCRUGGS: Your Honor, at this time, the State calls
24 Steven Starling.

25 THE CLERK: Sir, please, place your left hand on the

1 Bible and raise your right hand.

2 STEVEN STARLING,

3 after being duly sworn, testified as follows:

4 THE CLERK: Have a seat on the witness stand and state
5 your full name for the record.

6 THE WITNESS: Steven Starling.

7 DIRECT EXAMINATION

8 BY MR. SCRUGGS:

9 Q Officer Starling, good afternoon. How are you doing?

10 A Good.

11 Q Would you please tell the jury your current rank and
12 position with Florence Police Department?

13 A I'm a lieutenant with the City of Florence Police
14 Department. Currently, I work for our support service
15 division, mainly, in our IT department under logistics and
16 procurement aspects.

17 Q Were you called to respond to the City Center of the
18 police department on May 21st, 2019, in reference to an
19 assault and robbery that occurred earlier that day?

20 A Yes.

21 Q Do you recall around what time you got to the police
22 department?

23 A According to my report, it was about ten o'clock.

24 Q And what were you initially called to the police
25 department for?

1 A I believe Corporal Davis, Sergeant Davis at the time
2 had responded to the incident and he requested that I come
3 because of possible evidence that he had collected from the
4 scene that he would like me to look at or examine, maybe
5 collect.

6 Q What items -- when you got to the City Center, do you
7 recall what items you began to review for potential
8 substances or evidence?

9 A Yeah. If you don't mind, I'll just reflect on my
10 report.

11 Q Sure.

12 A Initially, it was to look at what appeared to be or
13 what Sergeant Davis thought might have been blood on a shoe
14 from one of the Defendants. I did observe that evidence,
15 which did appear to be consistent with what could be blood.
16 I do have a process of testing that. At that time, it was a
17 small sample, and as to not completely consume what might
18 have been blood with this testing, I advised him I'd like to
19 collect and then later collect a sample at that time.

20 Q And were there other items that had been recovered from
21 the two suspects in this case at the City Center?

22 A Yeah, there was two bags, a black backpack and a green
23 backpack, which had several personal items. Let's see,
24 sunglasses, things of that nature, just personal effects
25 that were collected by Sergeant Davis -- or they were in his

1 possession.

2 Q Were there also an amount of U.S. currency that had
3 been recovered?

4 A I believe there was. At that time, I didn't go through
5 the property. I kind of just saw it. I mean, I was going
6 to be collecting it and securing it. I believe there was
7 some money in that property, though.

8 Q And you mentioned storing it. The items that were
9 received, were they turned over to you?

10 A Yes. I collected everything that was there that night
11 from Sergeant Davis.

12 Q And when you collect those items and process them, do
13 you make notes or record what you are taking into custody?

14 A Yeah, as far as I could. In this case -- again, I'll
15 reflect on my report. I collected a black bag containing
16 personal effects, a green bag containing personal effects,
17 and then a bag, which had a small amount of cash, a receipt
18 and a silver pocketknife. Those are the notes of what I
19 collected that evening.

20 Q And when they were taken into your possession, did you
21 package them or store them?

22 A Because I had requested a search warrant be obtained,
23 they were collected as is and stored in a secured locker in
24 a secured room as is. So in the bag that I collected them
25 in is how they were collected that night and stored.

1 Q You mentioned they were stored in a locker. It would
2 have been locked, correct?

3 A Correct, which was also in a secured area of the
4 building, so really three secured locations.

5 Q On that day as well, let's shift your focus a little
6 bit, did you respond to the hospital and collect a buccal
7 swab from the victim in this case?

8 A I did, shortly after I collected the property from
9 Sergeant Davis.

10 Q You said you obtained a buccal swab from the victim,
11 Mr. Thomas McElveen; is that correct?

12 A That is.

13 MR. SCRUGGS: Your Honor, may I approach the witness?

14 THE COURT: Yes.

15 BY MR. SCRUGGS:

16 Q I'm showing you what's been marked for identification
17 purposes as State's Exhibit 21. Can you tell me what that
18 is?

19 A This is a manilla envelope which would contain -- it
20 says the buccal swab from Thomas McElveen collected on
21 5/21/19, without opening it. It does have my seal on it and
22 my initial, but the package inside should be in a white
23 envelope containing said sample from the victim.

24 Q Let me back up a little bit. When you obtain a buccal
25 swab sample from an individual, in this case, Mr. McElveen,

1 can you describe for the jury how you do that?

2 A Yes. So, in this case in particular, it was a little
3 different just because of the state of the victim. In a
4 normal situation, with victims and defendants, again, it's
5 different because of consent. But with the victim, I would
6 just advise them what I would like to do, which is collect a
7 swab of their buccal tissue, which is inside of the cheek.
8 And I would just simply -- it's basically a Q-tip, stick
9 inside of the cheek, couple swabs and then package that
10 sample securely where it can't be contaminated.

11 In this case, again, because of his condition, I
12 advised the victim that I would like to do that. He was
13 coherent enough to open his mouth and let me do that, but
14 beyond that, there wasn't much of a conversation.

15 Q When you collect a buccal swab, and particularly this
16 one, explain to the jury how you package that.

17 A So we use what's called a capture, it's a sterile
18 cotton-tip swab. These swabs are long plastic-stemmed
19 swabs, again, like a Q-tip, have a cotton tip on the end.
20 They also have a plastic covering that covers that.

21 So when you get them, they're in a sterile container in
22 a package. They're opened at that point, uncapped, the
23 collection is made. As I said, you collect a small swab
24 from inside the mouth. Then at that point, I close the cap
25 over the cotton tip, again, just to keep from being

1 contaminated. That is now placed inside of a white envelope
2 and sealed. Then that white envelope is placed inside of a
3 manilla envelope and also sealed with evidence tape. So
4 again, a little more of a security, a contamination
5 protocol.

6 Q Okay. And are those methods used to prevent tampering
7 and cross-contamination?

8 A They are.

9 Q If you'll look at the back of that envelope. Is there
10 an evidence seal on that?

11 A There is.

12 Q Are those your initials?

13 A They are.

14 Q And is that the date -- can you tell me the date you
15 sealed that?

16 A Yes, it's 6/3 of '19, which I initialed by and it's
17 written again underneath that, mostly because my handwriting
18 is sloppy. So I initial if I make a change or adjustment so
19 it's more legible, but I've initialed by that as well.

20 Q After you place that in an envelope and seal it, where
21 is it sent next?

22 A In this particular case and depending on how much other
23 evidence I have to process, once it's packaged like this, it
24 will go back in my storage locker until all of my evidence
25 is ready to be logged into our evidence room.

1 Q And once all your evidence is ready, you mentioned
2 logging it into the evidence room, is it then transferred to
3 the custody of the evidence custodian?

4 A It is.

5 Q And who is that person?

6 A Frank Mizell.

7 Q And did you do that with regard to Mr. McElveen's
8 buccal swab?

9 A I did.

10 Q You mentioned -- well, are you aware that Investigator
11 Davis got a search warrant on May 24th for buccal swabs from
12 Mr. Leonard Carter and Mr. Robert Carter?

13 A Yes, I indicated in my report that I received search
14 warrants on the 24th.

15 Q Did you execute those search warrants?

16 A I did. Myself and another crime scene technician that
17 worked underneath me went to the jail and collected those
18 that same day.

19 MR. SCRUGGS: Your Honor, may I approach the witness?

20 THE COURT: Yes.

21 Q I'm showing you for identification purposes State's
22 Exhibit 22 and State's Exhibit 23. Can you tell me what
23 those are?

24 A So one would be Robert Lee Carter, Jr. It says buccal
25 swab collected 5/24/19 at 1:52, and it is sealed and signed

1 by myself. And then the second was for Leonard Allen
2 Carter, same date, at 1:35. It says it's a buccal swab
3 signed and sealed by myself.

4 Q Again, I know you generally described the process, but
5 can you in detail describe to the jury what you did in
6 executing that search warrant against both Robert and
7 Leonard Carter?

8 A So as I stated, it's a little different procedure with
9 defendants. In this case, I received search warrants,
10 which, basically, is an order signed by a judge stating to
11 collect the buccal swabs. They cannot refuse to give it at
12 the time.

13 So I went to the jail -- these conversations were
14 recorded. I go over the search warrant with the defendant.
15 I read it to them as well as let them see the copy as we go
16 over it. Explain to them how I'm going to collect it and
17 the procedure for that. Then I do the same process of
18 sterile cotton-tip swab, swab in the mouth, seal it in an
19 envelope in front of the Defendant.

20 I believe in this case, without opening this, the
21 normal procedure for myself is have the defendant initial or
22 sign the inner envelope to state that they witnessed me
23 closing the envelope in their presence.

24 Q And did you follow those procedures in obtaining the
25 buccal swab from Mr. Robert Carter and Mr. Leonard Carter?

1 A Yes.

2 Q About a week later on May 31st, or shortly
3 thereafter -- excuse me, were you aware on May 31st that a
4 second search warrant was obtained by Investigator Davis for
5 personal effects obtained from the Carters.

6 A Yes, I received a search warrant from Sergeant Davis on
7 the 31st.

8 Q Was the actual collection and the execution of the
9 search warrant, was that done on June 3rd, a few days later?

10 A It was.

11 Q Can you detail what items you reviewed and what
12 generally you were looking for?

13 A Yes. On the initial night that I responded to the
14 incident, I noticed there was possible evidence on the
15 Defendant's clothing. I requested that clothing be
16 collected at the jail when they were transporting him and
17 brought back for processing. I could take photos and
18 inspect them a little further to see if there is any
19 evidence, DNA, blood evidence, anything of that nature.

20 So on this date, I went through the items I had
21 collected from Sergeant Davis, including the green and black
22 backpack, personal effects, the small amount of cash, the
23 pocketknife and also went through the clothing as well,
24 photographing and detailing any evidence I believed I
25 located, including blood, and then also process them with

1 different methods as I went through the items.

2 Q The items that you thought had blood on them, did you
3 obtain -- did you use swabs to try and collect a sample from
4 those?

5 A I did.

6 Q Can you describe how you do that?

7 A In this particular case, again, I noticed there was
8 something on the shoe, which I believe is the first thing I
9 did test. There was a small stain that was red consistent
10 with the appearance of blood. At first, I did not believe
11 there was enough to do a sample and a test, so I took my
12 sample first and then anything remaining, I tested. I did
13 that using a chemical test called phenol saline presumptive
14 blood test kit.

15 Q Did you -- let me go through these in order. Did you
16 swab from the blue jeans recovered from Mr. Robert Carter?

17 A Yes.

18 Q And showing you what's been marked State's Exhibit 17,
19 do you recognize that?

20 A I do.

21 Q What is that?

22 A This is, again, an envelope which is labeled swab from
23 blue jeans belonging to Robert Lee Carter, Jr. I've
24 indicated that it was positive for phenol, which would
25 indicate that my presumptive blood test showed that it was,

1 indeed, human blood. That was marked 6/3 of '19 and it was
2 sealed by myself.

3 Q Was that swab packaged -- can you give me in detail how
4 it was packaged once you obtained the sample?

5 A Yes, it's the same procedure as doing the buccal swabs.
6 It's the same kind of capture sterile cotton-tip swab. Once
7 it's swabbed, I close the cap, put it in a white envelope
8 and seal it and put it inside this manilla envelope, again,
9 to further prevent contamination.

10 Q Now showing you what's been marked for identification
11 purposes as State's Exhibit 18. Do you recognize that?

12 A I do.

13 Q What is that?

14 A It's a swab stain from the Nike positive for phenol,
15 again, indicating that the presumptive test indicated blood
16 was present. And it was signed and dated by myself on 6/3
17 of '19.

18 Q And that was a swab from the white Nike shoes belonging
19 to Robert Lee Carter, Jr.

20 A Correct.

21 Q Was that swab packaged in the same way you described
22 previously for other items?

23 A Yes.

24 Q And sealed?

25 A Uh-huh.

1 Q And you initialed and dated that as well?

2 A I did.

3 Q Now showing you what's been marked as State's Exhibit
4 19. Do you recognize that?

5 A I do.

6 Q What is that?

7 A It's a swab from a pocketknife, also, positive for
8 phenol, indicating blood was present. Dated by myself on
9 6/3/19 and initialed as well.

10 Q Does that package contain the swab that you used to get
11 a sample from the knife?

12 A It does.

13 Q Was it packaged in the same manner as you described
14 earlier with regard to the other items?

15 A Yes, sir.

16 Q Was it sealed by yourself?

17 A It was.

18 Q Was it initialed and dated?

19 A Yes.

20 Q I want to ask you, too, about Mr. Leonard Carter. When
21 he was taken to the City Center on May 21st, 2019, did you
22 observe or were you made aware of possible blood stains on
23 Leonard Carter's hands?

24 A Yes, I was. Sergeant Davis located that and notified
25 me that he believed blood might be on his hands.

1 Q Okay. Did you try to obtain a sample from his hands?

2 A I believe I did. I know I took photos. Let me refer
3 to my report. I did. At the risk of that evidence possibly
4 being destroyed in his processing at the jail or over time,
5 I went ahead and collected that swab from his hands at that
6 time.

7 Q Can you describe how you collected -- how you used the
8 swab to get the sample from his hands?

9 A Yes. So same as a buccal test, using the same sterile
10 capture swab. In this instance, in particular, and in most
11 cases when blood has dried, it's a little hard to collect on
12 just a swab, so I use purified ionized water to wet the swab
13 itself, just with a drop of water, and then collect that
14 sample, as much as I can, usually not much aggressive
15 rubbing, but rubbing until I get a stain transferred to the
16 Q-tip.

17 Q And after you obtain that sample, do you use the same
18 methods that you've outlined before in terms of packaging?

19 A Yes.

20 Q I'm showing you what's been marked as State's Exhibit
21 20. Can you tell me what that is?

22 A It's a -- says possible swab for blood stains on hands
23 of Leonard Allen Carter, 5/21/19, signed by myself on 6/3 of
24 '19.

25 Q And would that swab have been packaged in a similar

1 manner to the other swabs taken in this case?

2 A It would. This one is indicated it was collected on
3 the 21st and sealed on the 3rd because initially it was
4 placed in this envelope and then stored with other evidence.
5 Then all the evidence would have been sealed before going to
6 our evidence room.

7 Q And with regard to all these items, when you took the
8 swabs of these items and also when the physical items were
9 collected, did they remain either in your custody or within
10 a locked storage box at the City Center?

11 A Yes. So with regards to everything that I collected,
12 it was -- I believe the clothing which I requested was
13 collected at the jail was logged in by another officer that
14 evening. But other than that, every item that I had was
15 given to me and logged in a secured area until I processed
16 it.

17 Q I want to go back a little bit in time to May 21st of
18 2019. You stated that you went to the hospital and obtained
19 a buccal swab from the victim, Mr. Thomas McElveen?

20 A Correct.

21 Q When you entered the hospital room, did you recognize
22 Mr. McElveen?

23 A I did.

24 Q And how did you recognize him?

25 A Mr. McElveen is the cousin of my wife.

1 Q Did you have any knowledge at that time whether he was
2 homeless or not?

3 A To my best understanding, he was. I had no personal
4 relationship or contact with the victim on any occasion. So
5 I believed him to be homeless. I would see him frequently
6 begging around town, around outside stores, but even at that
7 time, I had no contact with him because I had no
8 relationship with him.

9 Q Did you have a close personal relationship with him?

10 A Not at all.

11 Q You just merely recognized him?

12 A I just knew who he was.

13 MR. SCRUGGS: No further questions, Your Honor.

14 THE COURT: Yes, ma'am.

15 CROSS-EXAMINATION

16 BY MS. NEYLE:

17 Q Lieutenant Starling, when you recognized Mr. McElveen
18 as the cousin of your wife, correct?

19 A Correct.

20 Q You didn't recuse yourself from this case?

21 A No, I believe I called Sergeant Davis just to advise
22 him that I did know the victim in this case. However, I had
23 already involved myself in the case to collect the evidence
24 that I had gotten from him and because I had no personal
25 relationship with him or any bias whatsoever in my opinion,

1 I continued myself on the case.

2 Q Regarding the knife that was collected, in your report,
3 you said there was small blood stains on the blade. Where
4 exactly were those stains on the blade?

5 A Can I refer to my report just to make sure?

6 Q Yes.

7 A I don't indicate where on the blade they were located,
8 however, I did take detailed photographs. If there was any
9 indication, it would be on my photographs.

10 Q Were they visible by the eye or did you have to run
11 them under a light?

12 A No, I indicated that I observed what appeared to be
13 small blood stains, but I also indicate that I was not sure
14 if it was blood and if there was enough to test.

15 Q So you then swabbed the entire blade, correct?

16 A I did. There was another substance on the blade, which
17 to me --

18 MR. SCRUGGS: Your Honor, may we approach real quick?

19 (Sidebar conference.)

20 THE COURT: Yes, ma'am.

21 BY MS. NEYLE:

22 Q I believe I had asked you if you had swabbed the entire
23 blade?

24 A That's correct.

25 Q Did you swab it once or did you use the double swab

1 technique?

2 A I'm sorry?

3 Q Did you swab it one time?

4 A I swabbed the entire blade thoroughly.

5 Q Once?

6 A Well, I'm sure I used the back and forth motion.

7 Q So you used one swab?

8 A I used one sterile swab, correct.

9 Q And your report indicated after you swabbed the entire
10 blade, you still observed small dots on the blade?

11 A Correct.

12 Q Where were those?

13 A Again, I'd have to refer to my photos to know exactly
14 where they were at on the blade.

15 Q Your report indicates you went through the property and
16 there was money, correct?

17 A Yes.

18 Q Approximately how much money?

19 A According to my report, it was approximately \$42 in
20 different denominations.

21 Q The bicycle that was owned by Mr. McElveen taken into
22 evidence, was that ever swabbed?

23 A No, not to my knowledge.

24 Q And you don't use a body camera, do you?

25 A No, ma'am.

1 MS. NEYLE: Your Honor, I have no further questions.
2 Thank you.

3 THE COURT: Redirect?

4 MR. SCRUGGS: Nothing on redirect, Your Honor.

5 THE COURT: All right. Sir, you may step down.
6 Any objection to this witness being excused?

7 MS. NEYLE: No, Your Honor.

8 MR. SCRUGGS: No, Your Honor.

9 THE COURT: You're free to leave.

10 All right. Ladies and gentlemen of the jury, it is
11 about 12:50, so I think this is a good time for us to go
12 ahead and take our lunch break. We'll start back around two
13 o'clock.

14 Enjoy your lunch. Please do not discuss the case.
15 Thank you.

16 (The jury exits the courtroom at 12:50 p.m.)

17 THE COURT: We'll take a break and we'll start back
18 around two o'clock.

19 Mr. Carter, please, if you're holding up papers, hold
20 them down. We don't want the jury to see anything that they
21 don't need to be seeing.

22 THE DEFENDANT: I apologize to the Court, ma'am.

23 THE COURT: I'm not saying you intentionally did, I'm
24 just saying we don't want them to see anything that is not
25 in evidence that they're not supposed to see. So just try

1 not to hold it up.

2 THE DEFENDANT: I'll be sure I don't do that.

3 THE COURT: Thank you, sir.

4 (Lunch recess.)

5 THE COURT: Are we ready?

6 MR. SCRUGGS: The State's ready, Your Honor.

7 MS. NEYLE: We are, too.

8 THE COURT: All right. Bring them on in.

9 (The jury enters the courtroom at 2:13 p.m.)

10 THE COURT: I hope you had a good lunch. We are ready
11 to continue with our case.

12 We will ask the State to call their next witness.

13 MR. SCRUGGS: Thank you, Your Honor, may it please the
14 Court. The State calls Jason Vaughn.

15 THE CLERK: Sir, please, place your left hand on the
16 Bible and raise your right.

17 JASON VAUGHN,

18 after being duly sworn, testified as follows:

19 THE CLERK: Take a seat on the witness stand and state
20 your full name for the record.

21 THE WITNESS: Jason Paul Vaughn, Sr.

22 DIRECT EXAMINATION

23 BY MR. SCRUGGS:

24 Q Mr. Vaughn, how you doing? Good afternoon.

25 A Good. Good afternoon to you.

1 Q Can you start off by telling the jury where you're
2 currently employed?

3 A I work for Golden Corral, I'm the general manager.

4 Q Is that at the Florence location?

5 A Yes, it is.

6 Q How many Golden Corrals are in Florence County?

7 A Only one.

8 Q Where is that located?

9 A 2510 David H. McLeod Boulevard.

10 Q And I want to ask you what may seem like a very simple
11 question, but if you could just explain how it works. When
12 a person comes in and buys a meal at Golden Corral, does
13 your business regularly print receipts verifying that?

14 A Yes.

15 Q And what information is generally included on those
16 receipts?

17 A The amount of guests on the receipt, if it's breakfast,
18 lunch or dinner and then what beverage they have, whether it
19 be water, fountain drink or tea.

20 Q Do your receipts also generally record the location of
21 the Golden Corral?

22 A Yes, store number 0928 will be on the receipt.

23 Q Does it also include the date and time the receipt was
24 printed?

25 A Yes.

1 Q Do you keep copies of receipts in the regular course of
2 business at the Golden Corral?

3 A Yes, we do.

4 Q I'm going to show you what's been marked previously as
5 State's Exhibit 16. Can you tell me what that is?

6 A This is a receipt from Golden Corral store number 0928,
7 Florence, South Carolina.

8 Q Does that receipt accurately reflect what is a Golden
9 Corral receipt?

10 A Yes, it does.

11 MR. SCRUGGS: At this time, the State would move
12 Exhibit 16 into evidence.

13 THE COURT: Any objection?

14 MS. NEYLE: No, Your Honor.

15 THE COURT: It will be entered without objection.

16 (State's Exhibit No. 16 admitted into evidence.)

17 MR. SCRUGGS: And with the Court's permission, I'd like
18 to publish this to the jury.

19 THE COURT: Yes, sir.

20 (State's Exhibit No. 16 was published to the jury.)

21 BY MR. SCRUGGS:

22 Q Mr. Vaughn, are you able to see that on the screen?

23 A Yes.

24 Q First, will you tell the jury and kind of indicate on
25 the receipt -- in fact, if you'll actually step down and

1 come stand with me, I'll have you point out where the
2 relevant parts are on the receipt.

3 A (Witness complies.)

4 Q First, can you show us where the receipt indicates
5 where the restaurant location is at?

6 A Right here, 0928, Florence, South Carolina.

7 Q And does the receipt indicate whether this was a
8 dine-in or take-out order?

9 A Well, this is a dine-in because it has the price of the
10 meal. If not, it would say to go on the receipt. It says
11 dine-in right here.

12 Q Does the receipt indicate the date that this receipt
13 was printed?

14 A Yes, it does. 5/21/2019 at 7:04 p.m.

15 Q You can go back and have a seat, please.

16 A (Witness complies.)

17 Q And let me ask you this for those of us who,
18 unfortunately, haven't been to Golden Corral in a while, how
19 does it work at Golden Corral? Are you seated by a server
20 and you place an order? Do you pay first? Do you pay
21 after? How does it work at Golden Corral?

22 A When you walk in the door, what you'll do is you'll
23 have the fountain drink machine in front of you. You'll
24 make your drink. You'll go up to the cashier, tell him or
25 her how many is in the party. It will print the receipt

1 out. You'll seat your own self unless it's busy on a
2 Saturday or Sunday and we usually have to seat you. You
3 will sit down and then the server will come up. They're
4 supposed to verify the receipt and see how many people is in
5 the party and what they're drinking, whether it be water,
6 coffee, tea, fountain drinks.

7 Q So at Golden Corral restaurant, you have to pay before
8 you eat?

9 A Yes.

10 Q Golden Corral, is that an all you can eat buffet?

11 A Yes, it is.

12 MR. SCRUGGS: I have no further questions for Mr.
13 Vaughn.

14 THE COURT: Any cross?

15 CROSS-EXAMINATION

16 BY MS. NEYLE:

17 Q Mr. Vaughn, the receipt that Mr. Scruggs just showed
18 you, how many does that indicate were in the party?

19 A One person.

20 Q And Golden Corral has cameras in your restaurant,
21 correct?

22 A Yes.

23 Q Interior cameras?

24 A Interior and exterior.

25 Q They're actually two cameras that are facing Hoffmeyer

1 Road on the exterior?

2 A Yes.

3 Q Did law enforcement ever ask you to provide any video
4 footage from that night?

5 A I was not there at the store at the time.

6 MS. NEYLE: I have no further questions, Your Honor.

7 THE COURT: Thank you.

8 Redirect?

9 REDIRECT EXAMINATION

10 BY MR. SCRUGGS:

11 Q And just to clarify, your location of Golden Corral is
12 on David H. McLeod Boulevard, not Hoffmeyer, right?

13 A No, sir. And I'm not that familiar with the Florence
14 area. I live in Columbia, South Carolina.

15 Q But the store's address --

16 A Yes, 2510 David H. McLeod Boulevard.

17 MR. SCRUGGS: No further questions, Your Honor.

18 THE COURT: You may step down.

19 Any objection to this witness being excused?

20 MR. SCRUGGS: None from the State.

21 MS. NEYLE: No, Your Honor.

22 THE COURT: Sir, you're free to leave.

23 All right. Call your next witness.

24 MR. SCRUGGS: Thank you, Your Honor. At this time, the
25 State calls Frank Mizell.

1 THE CLERK: Sir, please, place your left hand on the
2 Bible and raise your right hand.

3 FRANK MIZELL,

4 after being duly sworn, testified as follows:

5 THE CLERK: Please have a seat on the witness stand and
6 state your full name for the record.

7 THE WITNESS: Frank Mizell.

8 DIRECT EXAMINATION

9 BY MR. SCRUGGS:

10 Q Good afternoon, Officer Mizell. Could you start off by
11 telling the jury first where you're employed and what your
12 job entails?

13 A Yes, sir. I work for the Florence City Police
14 Department. I am the evidence custodian. I take control
15 over the evidence once the officers log it in and I maintain
16 it until it goes to Court or the case is disposed of or if
17 the evidence gets returned to the person they're taken from.

18 Q And you're responsible for all types of evidence; isn't
19 that right?

20 A Yes, sir.

21 Q Including drugs, firearms, DNA evidence, essentially,
22 any item that could be used as evidence; is that right?

23 A Yes, sir.

24 Q Can you explain the process of what happens when
25 another officer who's working a case gathers evidence and

1 logs it into evidence? Take it from that point and tell us
2 what happens next.

3 A Typically, the evidence is brought into our department.
4 We have a series of lockers or if I'm there, sometimes the
5 evidence is given to me directly. They're secured in
6 lockers. Once the officer turns them over, they don't have
7 access to them. At that point, I remove them from the
8 evidence lockers, log them into our system. We have several
9 areas where evidence gets logged into. Such as evidence
10 that goes to SLED, we have a specific locker that the
11 evidence goes in there and sits until the time for me to
12 take them to SLED.

13 Q Is it fair to say that once evidence is logged in and
14 sent to you, that is your evidence and you're responsible
15 for it?

16 A Yes, sir.

17 MR. SCRUGGS: If I may, Your Honor, approach the
18 witness?

19 THE COURT: Yes, sir.

20 BY MR. SCRUGGS:

21 Q Officer Mizell, I'm going to show you several items
22 that are marked for identification purposes only. Let's
23 just do these one at a time. First is State's Exhibit No.
24 17. Do you recognize that?

25 A Yes, sir.

1 Q Can you tell me what it is?

2 A It's a swab, from the description on here, from blue
3 jeans that were logged in on this case.

4 Q Next one is State's Exhibit 18 for identification
5 purposes. Do you recognize that?

6 A Yes, sir.

7 Q What is that?

8 A It is a swab from a stain from a Nike shoe.

9 Q Next one is State's Exhibit 19 for ID purposes. Do you
10 recognize that?

11 A Yes, sir, I do.

12 Q What is that?

13 A It's also a swab from a pocketknife.

14 Q State's Exhibit 20 for identification purposes. Do you
15 recognize that?

16 A Yes, sir.

17 Q What is that?

18 A It's also a swab from a blood stain on the hands of a
19 gentleman.

20 Q And is the person's name listed?

21 A Yes, sir, it's Leonard Allen Carter.

22 Q Next I'm showing you State's Exhibit 21. Do you
23 recognize that?

24 A Yes, sir.

25 Q What is that?

1 A It's a buccal swab from a Thomas McElveen.

2 Q Okay. Next is State's 22, do you recognize that?

3 A Yes, sir.

4 Q What is that?

5 A It's also a buccal swab from a Robert Lee Carter, Jr.

6 Q And lastly, State's Exhibit 23, do you recognize that?

7 A Yes, sir.

8 Q What is it?

9 A It's a buccal swab from a Leonard Allen Carter.

10 Q Okay. All these items, were they received by you in
11 this case?

12 A Yes, sir.

13 Q In your role as evidence custodian?

14 A Yes, sir.

15 Q When they were logged into evidence, what did you do
16 with them?

17 A They were secured in our locker after they were logged
18 into our system.

19 Q Were they maintained and secured when they were in your
20 custody?

21 A Yes, sir.

22 Q What is the next step in your process in this case?
23 What did you do with these items next?

24 A I contacted SLED and we set up a date and time for me
25 to bring all of our evidence to them. At that time, I'll

1 come in, I'll gather up all of our SLED evidence, place them
2 in my vehicle, drive them to SLED, take them directly from
3 my vehicle into SLED. Get inside their system. They have a
4 secured area also that has lockers. We time stamp
5 everything that comes in. It goes into a secure locker.
6 It's locked shut. We have no access to it once we lock it.
7 It's then turned over to SLED, it's their property at that
8 point.

9 Q And that's what you did in this case?

10 A Yes, sir.

11 Q From the time that you received this evidence when it
12 was logged in until you took it to SLED, was it in your
13 custody and control?

14 A Yes, sir.

15 Q Was it secure?

16 A Yes, sir.

17 MR. SCRUGGS: I have no further questions.

18 THE COURT: Any cross?

19 CROSS-EXAMINATION

20 BY MR. NEYLE:

21 Q Officer Mizell, you took these swabs to SLED?

22 A Yes, ma'am.

23 Q You didn't take the actual items that were swabbed, you
24 just took the swabs?

25 A Correct.

1 MS. NEYLE: Your Honor, I have no further questions.

2 THE COURT: Thank you.

3 MR. SCRUGGS: No redirect.

4 THE COURT: Sir, you may step down.

5 MR. SCRUGGS: Your Honor, may Officer Mizell please be
6 released from his subpoena?

7 THE COURT: Any objection to Officer Mizell being
8 excused?

9 MS. NEYLE: No, Your Honor.

10 THE COURT: Sir, you're free to leave.

11 Call your next witness.

12 MS. LEFRIDGE: Thank you, Your Honor. At this time,
13 the State would call Dr. Bradley Russell.

14 THE CLERK: Sir, please, place your left hand on the
15 Bible and raise your right hand.

16 BRADLEY RUSSELL, M.D.,

17 after being duly sworn, testified as follows:

18 THE CLERK: Please take a seat on the witness stand and
19 state your full name for the record.

20 THE WITNESS: I'm Bradley Russell. I am from Florence,
21 South Carolina.

22 DIRECT EXAMINATION

23 BY MS. LEFRIDGE:

24 Q Good afternoon, Dr. Russell. Thank you for being here.
25 Can you tell the jury what you do for a living? What's your

1 profession?

2 A I'm an ED physician at MUSC Florence.

3 Q And are you licensed in South Carolina?

4 A I am.

5 Q How long have you been practicing in South Carolina?

6 A Finished medical school in 1998 and completed residency
7 in 2002, have been fully licensed since 2001, so 21 years.

8 Q Let's back up a little bit to your education. What
9 type of education did you have to get? You got undergrad
10 and then?

11 A So I got an undergraduate degree from the Citadel and
12 then medical degree from Medical University of South
13 Carolina, then did a family medicine residency and board
14 certified in family medicine. I have been practicing in the
15 emergency department since October of 2001.

16 Q And have you always been at MUSC, what used to be
17 Carolinas, in the emergency department?

18 A I first started at Carolina Pines just moonlighting
19 while I was finishing residency and then went to Carolinas
20 in October of 2002. I have been on staff there pretty much
21 full time, except for a stint from 2008 through 2014. I was
22 at Lake City Community Hospital and then McLeod. But during
23 that time, I maintained privileges at Carolinas and worked
24 there part time.

25 Q So since approximately 2002ish, you've been working in

1 some capacity at an emergency department?

2 A Yes.

3 Q And in order to practice in the emergency department,
4 is that a specialization, is that a general practice?

5 A So, at MUSC Florence, we've got six full time ED
6 physicians. Three did emergency medical residencies, three
7 did family medicine residencies. I'm probably one of the
8 few remaining family medicine doctors who does emergency
9 medicine, but you maintain certifications in advanced cardio
10 life support, pediatric advanced life support, advanced
11 trauma life support and you have credentials to practice
12 that way.

13 Q And in the emergency department at MUSC, can you give
14 us what type of cases you typically see?

15 A Undifferentiated chest pain, abdominal pain, headaches,
16 trauma, respiratory illnesses, just a variety of everything
17 from cardiac arrest presenting from traumas or nontraumatic
18 cardiac arrest to people coming in who have an ingrown
19 toenail.

20 Q So would it be fair to say that since 2001, you've been
21 working in some capacity dealing with traumatic injuries?

22 A Absolutely.

23 Q And during your years of practice, if you had to guess,
24 how many trauma patients do you think you've --

25 A Hundreds.

1 MS. LEFRIDGE: Your Honor, at this time, the State
2 would move to qualify the witness as an expert in traumatic
3 injury.

4 THE COURT: Any voir dire?

5 MS. NEYLE: No, Your Honor. I have no objection.

6 THE COURT: All right.

7 Ladies and gentlemen of the jury, normally, a person
8 cannot give opinion testimony. Normally, when a person
9 testifies, they must testify as to what they either saw,
10 heard or sensed by smell or something of that nature.
11 However, there is an exception when someone is qualified
12 because of education or experience. They are permitted to
13 give their opinion in certain areas if the Court qualifies
14 them that way.

15 This witness will be qualified in the area of traumatic
16 injury to give opinion testimony in that area. That does
17 not mean that you must accept the opinion, but it is
18 evidence for you to use in any way you see fit and give it
19 the weight and credibility you believe is appropriate.

20 Thank you.

21 BY MS. LEFRIDGE:

22 Q Dr. Russell, I'm going to take you back to 2019. On
23 May 21st of 2019, did you have occasion to treat a patient,
24 Mr. Thomas McElveen?

25 A I have his medical record from that encounter in front

1 of me, and yes, I did.

2 Q And where did you see him?

3 A In the emergency department at MUSC Florence.

4 Q Can you describe his condition when you saw him?

5 A I'll be honest, I do not have a specific recollection
6 of his appearance, but from my documentation here, it seems
7 that he had some head and facial trauma and he had three
8 penetrating wounds to his thorax.

9 Q And what did you do when you treated Mr. McElveen?

10 A So, initially, you want to assess the stability of the
11 patient, you know, airway, breathing, circulation, that kind
12 of stuff. And based on my documentation, he was
13 neurologically intact. He was able to talk to me, so he was
14 perfusing his brain, his airway was intact. I just wanted
15 to look for any things that might need immediate
16 stabilization, so you do a head-to-toe survey.

17 He had some massive contusions to his face. I was
18 worried about his eyes and potential, you know, traumatic
19 brain injury or head bleed. And then the penetrating wounds
20 to his thorax, those could be immediate life threats as
21 well, so to address those, you know, you would worry about
22 whether there's a cardiac injury. There's something called
23 cardiac tamponade where you can bleed into the sac around
24 the heart. And if that's not evacuated emergently, the
25 person can have cardiac arrest.

1 Also, if there's a collapsed lung, you can have a
2 pneumothorax that creates something called a tension
3 pneumothorax where the lung falls away from the chest and
4 with each breath, you pump more air into the chest and you
5 can shift the heart over and cut off blood flow to the
6 heart. And that can cause cardiac arrest and imminent
7 death.

8 So I took an ultrasound to the bedside and looked at
9 his heart. I did not see any fluid around the heart and did
10 not see evidence of a collapsed lung or blood in the
11 abdomen. Any one of those things would have, more or less,
12 necessitated some type of surgical intervention imminently.

13 So from there, I contacted -- I knew the person was, at
14 least, stable enough to get some formal imaging, so I asked
15 that we contact our cardiothoracic surgeon on call, who was
16 Dr. Greg Jones, for the potential need of emergent heart
17 and/or lung surgery. And then Dr. Mark Pack was the general
18 surgeon on call, I asked that he be contacted because there
19 was the potential for intraabdominal injury as well.

20 I sent the patient over to the CT scan and, basically,
21 he got a CAT scan from the top of his head to the bottom of
22 his pubic bone to look at head, face, neck, chest, abdomen,
23 pelvis because he potentially had injuries to all those
24 areas that needed to be evaluated.

25 Q Okay. So when you first do your examination of

1 McElveen, you noticed injuries to his face and those were
2 cause for concern because of potential for traumatic brain
3 injury?

4 A And intraocular injury, too, but, certainly, those did
5 have the capacity to cause a brain injury.

6 Q And then next, you noticed the three stab wounds that
7 he had on his torso area?

8 A Yes.

9 Q And those, particularly one caused you great concern
10 and you immediately did an ultrasound?

11 A Yes.

12 Q And the other -- his injuries were still concerning
13 enough for you to contact the on-call general surgeon?

14 A And the cardiothoracic surgeon.

15 Q And the cardiothoracic surgeon. Thank you. So I'm
16 going to show you what has been marked as State's -- they're
17 in evidence as State's Exhibit 8, 9, 10 and 11. Do you
18 recognize those?

19 A To be honest, no, I don't.

20 Q Okay. Here's some different pictures. Do you
21 recognize the injuries?

22 A In our get-together before this case, I did see these
23 photographs of the stab wounds to the thorax area, yes.

24 Q And these are, to your recollection, what you observed
25 that day that caused you concern?

1 A Those are consistent with what I documented.

2 MS. LEFRIDGE: Your Honor, may I publish these to the
3 jury?

4 THE COURT: Are they in?

5 MS. LEFRIDGE: They're in.

6 THE COURT: Okay.

7 (State's Exhibit Nos. 8 through 11 published to the
8 jury.)

9 (State's Exhibit Nos. 4 and 5 marked for
10 identification.)

11 BY MS. LEFRIDGE:

12 Q Dr. Russell, let me show you what has been marked as
13 State's Exhibit 5 for demonstrative purposes only.

14 MS. NEYLE: Your Honor, may we approach?

15 THE COURT: Yes, ma'am.

16 (Sidebar conference.)

17 THE COURT: All right. Ladies and gentlemen of the
18 jury, I'm going to send y'all out for a brief moment while
19 we -- there's a matter of law I need to take up outside of
20 your presence. We'll see you in about five or ten minutes.

21 (The jury exits the courtroom at 2:44 p.m.)

22 THE COURT: So there's an objection to the
23 demonstrative pictures. We'll probably need to mark those
24 as Court Exhibits.

25 MS. LEFRIDGE: They're marked, Your Honor, as State's

1 Exhibit 4 and State's Exhibit 5.

2 THE COURT: For ID?

3 MS. LEFRIDGE: For demonstrative purposes, yes.

4 MS. NEYLE: Your Honor, I would object to these two
5 images being shown to the jury. They're rather large
6 images. They're graphic and they show the interior of the
7 body. Judge, considering their size and their graphic
8 nature, I think they're prejudicial for the jury to see,
9 Judge.

10 The State is also showing the actual photos of Mr.
11 McElveen's injuries. I believe those are sufficient. And
12 the doctor has testified as to those stab wounds and their
13 relation in the body. I would argue these photos, their
14 size, their graphic nature, I think they're highly
15 prejudicial.

16 THE COURT: Yes, ma'am.

17 MS. LEFRIDGE: Your Honor, I do not think that they're
18 graphic images. They're anatomical drawings found in any
19 common science textbook, even in elementary school, Your
20 Honor. They are blown up purely so the members of the jury
21 can see when the doctor explains what organs were in the
22 area. When we look at the pictures of Mr. McElveen, we can
23 clearly see a stab wound, but we cannot see what is
24 underneath. Mr. Russell has the expertise to tell us what
25 could have potentially been damaged, the severity of those

1 injuries, those stab wounds in the various different parts
2 of his body.

3 And the one that I believe is marked as State's Exhibit
4 4 is a close-up of the heart area because as Mr. Russell
5 explained, there are a lot of different parts to the heart.
6 There's an outer sac, things like that that the jury might
7 not be aware of, and this will help in his testimony, Your
8 Honor.

9 THE COURT: Anything else?

10 MS. NEYLE: No, Judge. I believe his testimony would
11 be sufficient. The pictures are just not needed. They're
12 graphic and prejudicial.

13 THE COURT: All right. I'm going to overrule your
14 objection. I do find that the probative value outweighs any
15 prejudicial effect. If you look at State's 5 for
16 demonstrative purposes or ID purposes, it's a photo of the
17 body that you often see in a doctor's office. Same thing
18 with 4, similar to something that would be pulled out of a
19 textbook, an anatomy textbook.

20 So I don't find that the blowups are graphic. I
21 further find that we will allow them to be -- you to
22 question him. Obviously, I'm not going to allow them to be
23 entered into the record, but you can use them for
24 demonstrative purposes.

25 MS. LEFRIDGE: Thank you, Your Honor.

1 THE COURT: You're not trying to enter them, are you?

2 MS. LEFRIDGE: No, ma'am.

3 THE COURT: Okay. We can bring them back in.

4 But your objection is noted for the record.

5 MS. NEYLE: Thank you, Your Honor.

6 (The jury enters the courtroom at 2:49 p.m.)

7 THE COURT: Yes, ma'am.

8 BY MS. LEFRIDGE:

9 Q Dr. Russell, on the screen, I have one of the injuries
10 that Mr. McElveen suffered when you saw him back in May of
11 2019. If you wouldn't mind coming off of the stand and
12 approach the drawing of the human body and kind of explain
13 to the jury what organs are in the area.

14 A So the three stab wounds were, basically, one to the
15 right anterior lateral lower chest wall. Depending on the
16 respiratory cycle, when you breath, the diaphragm will push
17 the liver down and the lungs will expand and will go back
18 up. So there is some fluid in here. So depending on the
19 trajectory of the injury and the respiratory cycle, you have
20 a variety of stuff that could be injured.

21 So this one over here, the liver, bowel, lung and all
22 these various arteries that could have been injured, kidney,
23 possibly, but less likely. The parasternal stab wound could
24 be the arteries, the lung, heart, blood vessels. That would
25 be the most greatly concerning one.

1 And then there was another wound lateral on the chest
2 that could affect the lung or -- there are arteries that run
3 under each rib, so it's conceivable -- unlikely you get a
4 spleen injury, but it's possible you could injure the spleen
5 there as well.

6 Q As you explained, the injuries that Mr. McElveen
7 suffered with these stab wounds could have injured, I
8 believe you said the liver, potentially, kidney, heart,
9 lungs?

10 A And bowel.

11 Q And bowel. Can you tell us what would result if those
12 organs were injured?

13 A Bleeding, so there would be hemorrhage. You know, that
14 wouldn't necessarily be imminent life threatening in
15 moments, but, you know, bowel injuries are often -- bowel
16 injuries are sometimes missed and those can -- if you have a
17 -- they're hard to detect on CAT scan. If you did have a
18 bowel injury that was missed, you have the potential to leak
19 bowel contents into your abdomen and it become septic and
20 die from that in a delayed fashion of, you know, about 24
21 hours.

22 Q If you'll look at the screen, this is one of the stab
23 wounds that Mr. McElveen suffered to his chest. Earlier,
24 you stated that it could have caused damage to the heart?

25 A Yes.

1 Q If you don't mind coming back down.

2 A (Witness complies.)

3 Q If you could please tell the jury based off of that
4 stab wound, what could have been injured?

5 A Penetrating injury to the thorax, in the box, between
6 the nipples, between the clavicles and costal margin,
7 sternal margin because that's a high likelihood of a cardiac
8 injury. So this one was, you know, right about here. So
9 you certainly get the threat of -- a cycling up and down
10 trajectory, you could certainly have a cardiac injury. 80
11 percent of the cardiac injuries are lethal. If you're
12 stabbed in the heart, there's a one in five chance that
13 you'll even make it to the hospital.

14 Q So based on your review of Mr. McElveen's injuries,
15 there were a number of internal organs that could have been
16 damaged or lost function based off of these stab wounds?

17 A Yes.

18 Q And would you say that any of those injuries could have
19 caused a substantial risk of death?

20 A Absolutely, yes.

21 Q Can you say that they could have caused protracted loss
22 or impairment of a major function of the organ?

23 A Yes.

24 MS. LEFRIDGE: Beg the Court's indulgence.

25 (Pause.)

1 MS. LEFRIDGE: Nothing further, Ms. Russell. Please
2 answer questions the Defense might have.

3 THE COURT: Yes ma'am.

4 CROSS-EXAMINATION

5 BY MS. NEYLE:

6 Q Dr. Russell, these three wounds, they were
7 approximately one centimeter each?

8 A Ballpark.

9 Q And there was minimal bleeding?

10 A Correct.

11 Q These weren't deep penetrating wounds, were they?

12 A Thankfully, they were not.

13 Q And you mentioned the kidney, liver, heart, arteries,
14 spleen, lung, bowel. None of those were penetrated?

15 A The imaging -- not that there was evidence of on the
16 imaging that I had. The only thing -- it's unlikely. The
17 only thing I couldn't say definitively would be no bowel
18 injury. The patient got transferred to McLeod because of
19 his facial trauma, so I'm sure he would have been observed.
20 I don't know if he went on to develop any peritonitis from a
21 bowel injury, but he did not have any other injuries to his
22 thorax.

23 Q Okay. There was blood work taken at the hospital?

24 A Yes.

25 Q That blood wasn't tested for any illegal drugs in Mr.

1 McElveen's system?

2 A No, we, typically, don't have -- the blood tests for
3 substance use is a sent out test. It's not something we
4 would get routinely. It wouldn't have any bearing on his
5 care.

6 Q His blood wasn't tested if he had any alcohol in his
7 system?

8 MS. LEFRIDGE: Objection, Your Honor, relevance.

9 MS. NEYLE: I think it's relevant to what was in his
10 system --

11 THE COURT: Objection is overruled.

12 THE WITNESS: I routinely don't get those things. As a
13 matter of fact, unless someone has unconsciousness that I
14 can't explain otherwise, or they're kind of fraught with
15 reliability problems, but I do not see a result for alcohol
16 in the labs that I have.

17 BY MS. NEYLE:

18 Q And Mr. McElveen in the hospital, he was asked his pain
19 level, correct?

20 A That is part of the nursing assessment, so I'm certain
21 that -- I would imagine that was asked of him. I don't have
22 the nursing notes, so I don't know what number he may or may
23 not have given for his pain.

24 Q Did he lose consciousness at any point?

25 A My documentation says that there was reported transient

1 loss of consciousness by the paramedics.

2 Q He didn't stop breathing, though, did he?

3 A No.

4 Q And he was treated by you and discharged that night?

5 A He had some bleeding behind his left eye that would be
6 concerning for a potential eye threatening complication. We
7 don't have facial trauma or ophthalmology at Carolinas and
8 now MUSC Florence, so we transferred him to McLeod where
9 both of those services are available.

10 MS. NEYLE: I have no further questions.

11 THE COURT: Redirect?

12 REDIRECT EXAMINATION

13 BY MS. LEFRIDGE:

14 Q Dr. Russell, you testified that he had injuries to his
15 face, including his eye?

16 A The eyeball -- well, the eye socket, yeah.

17 Q And that injury alone, could that have caused
18 protracted loss of sight?

19 A Yes.

20 Q And is the eye classified as an organ?

21 A Yes.

22 Q And it could have impaired the function of that organ?

23 A Yes.

24 Q And although there was no damage to the heart or liver,
25 it's your opinion that those injuries could have caused

1 substantial risk of death?

2 A Yes.

3 MS. LEFRIDGE: Thank you. No further questions.

4 THE COURT: Any recross?

5 MS. NEYLE: No, Your Honor.

6 THE COURT: Thank you. You may step down, Doctor.

7 Any objection to this witness being excused?

8 MS. LEFRIDGE: None from the State, Your Honor.

9 MS. NEYLE: No, Your Honor.

10 THE COURT: Thank you. You're free to leave.

11 THE WITNESS: Thank you.

12 THE COURT: Call your next witness.

13 MS. LEFRIDGE: Thank you, Your Honor. The State would
14 call Catherine Leisy.

15 THE CLERK: Ma'am, please, place your left hand on the
16 Bible and raise your right.

17 CATHERINE LEISY,

18 after being duly sworn, testified as follows:

19 THE CLERK: Please be seated on the witness stand and
20 state your full name for the record.

21 THE WITNESS: Catherine Leisy, L-E-I-S-Y.

22 DIRECT EXAMINATION

23 BY MS. LEFRIDGE:

24 Q Would you please tell the jury what is your current
25 occupation?

1 A I work for the South Carolina Law Enforcement Division,
2 more commonly referred to as SLED. I'm a forensic scientist
3 assigned to the DNA casework unit.

4 Q And how long have you been employed with SLED?

5 A 15 years.

6 Q What are some of your duties and responsibilities?

7 A My responsibilities include processing forensic cases,
8 issuing reports based on the results and conclusions drawn
9 in those cases and testifying to those reports as necessary.
10 I also assist in certain quality assurance responsibilities
11 within the laboratory and assist in the training of
12 lesser-experienced analysts and in training solicitors
13 around the State in our analysis methods.

14 Q Can you explain your educational background?

15 A I have a Bachelor of Science Degree in genetic
16 engineering from Cedar Crest College in Allentown,
17 Pennsylvania. I also have approximately four years of
18 experience as a forensic DNA analyst at a private testing
19 facility known as Orchid Cellmark that was located in
20 Germantown, Maryland where my responsibilities were
21 essentially the same as they are here at SLED.

22 Q And did your formal education include the study of DNA?

23 A Yes, it did.

24 Q Have you testified before today as an expert in DNA?

25 A I have.

1 Q Approximately how many times?

2 A I've testified on more than 50 occasions throughout the
3 State of South Carolina as well as jurisdictions in
4 California, Massachusetts, New Jersey, the District of
5 Columbia, U.S. Federal Court here in Florence and military
6 court marshall in Fort Jackson in Columbia.

7 MS. LEFRIDGE: Your Honor, at this time, the State
8 would move to have Ms. Leisy qualified as an expert in DNA
9 analysis.

10 THE COURT: Any voir dire?

11 MS. NEYLE: No, Your Honor.

12 THE COURT: Any objection?

13 MS. NEYLE: No, Your Honor.

14 THE COURT: Ladies and gentlemen of the jury, Ms. Leisy
15 will be qualified as an expert in DNA analysis to give
16 opinion testimony in that area. This is evidence for you to
17 use in any way that you see fit and give it the weight and
18 credibility you believe is appropriate.

19 Thank you.

20 BY MS. LEFRIDGE:

21 Q Ms. Leisy, if you could, explain what happens when you
22 receive evidence from law enforcement? Like Florence Police
23 Department, if they were to send you evidence, please
24 explain that process to us.

25 A When evidence is logged in, it is assigned a unique

1 SLED lab number so that we can identify a case as it travels
2 throughout the laboratory. Each item within that case is
3 also assigned a unique item number that goes along with the
4 prescription that is provided to us by the submitting
5 agency.

6 Those items are submitted either in a box, a sealed
7 envelope or what we refer to as heat-sealed pouch, which is
8 really just a plastic bag that once an item is placed
9 inside, it's sealed so that we can maintain the integrity of
10 the item within the pouch.

11 And then any seal on a container is dated and initialed
12 by the individual who has closed that container. That way,
13 we can tell who has been in the pouch and we can make sure
14 that none of the evidence has been tampered with.

15 Each item within each case is assigned a unique bar
16 code. It's just like a bar code you would see on your
17 groceries. It's something that we can scan so that our
18 computer system keeps track of where that item goes within
19 the laboratory. So once it's logged in, it can be
20 transferred into our storage location, which has a bar code.

21 When I'm ready to work that case, I then take physical
22 custody of the item and scan the bar code along with the bar
23 code that is assigned to myself so that the computer can
24 track that the evidence is now in my custody and we know
25 exactly where it is as it travels throughout the laboratory.

1 Q I'm going to show you what has been marked as State's
2 Exhibit 29. Do you recognize this?

3 A I recognize this document as a copy of SLED's internal
4 chain. So this, as I mentioned, is a list of where each
5 item is at any given time as it traveled throughout the
6 laboratory and it does contain the SLED lab number that has
7 been assigned to this case.

8 Q And this is a complete chain?

9 A It appears to be, yes. It's all the items that I had.

10 Q And has there been any alterations, deletions made to
11 this that you can tell?

12 A No, not that I can tell.

13 MS. LEFRIDGE: Your Honor, the State would move to have
14 Exhibit 29 entered into evidence.

15 THE COURT: Any objection?

16 MS. NEYLE: No, Your Honor.

17 THE COURT: Entered without objection.

18 (State's Exhibit No. 29 admitted into evidence.)

19 BY MS. LEFRIDGE:

20 Q I'm also going to show you a variety of bags. So it's
21 State's Exhibit 17, 18, 19, 20, 21, 22 and 23. Do you
22 recognize these?

23 A I do, and I can recognize the items again by the
24 sticker that's been affixed with the bar code, the SLED lab
25 number, my initials are present on the envelopes, the item

1 descriptions are present and, as you can see, there's
2 evidence tape across the seals with dates and initials.

3 Q And you said that there's tape that seals them?

4 A Correct.

5 Q And each of them have initials and a date. Are those
6 your initials?

7 A Correct. So after I took a cutting of each item that I
8 tested, I placed yellow SLED evidence tape across the
9 cutting that I made to open the envelope. And then added my
10 initials and the date of October 25th, 2021, as the date
11 that I sealed that envelope.

12 Q Thank you. And have these been altered or opened or
13 anything that you can tell after you handled them October
14 25th?

15 A They don't appear to have been altered, no.

16 MS. LEFRIDGE: Your Honor, the State would move to have
17 Exhibit 17 through 23 admitted into evidence.

18 THE COURT: Any objection?

19 MS. NEYLE: No, Your Honor.

20 THE COURT: They will be entered without objection.

21 (State's Exhibit Nos. 17 through 23 admitted into
22 evidence.)

23 BY MS. LEFRIDGE:

24 Q I'm going to show you what's been marked as State's
25 Exhibit 24. Can you explain what that is?

1 A This is a heat-sealed pouch. As I referenced earlier,
2 many of our items come in placed within this pouch. It's
3 sealed across the top or along the edge, wherever an opening
4 has been made, and the date and initials are placed when the
5 seal is made.

6 This particular heat-sealed pouch contain what we refer
7 to as DNA extracts. So during the testing process, if I
8 take a cutting, say, from a swab, I extract the DNA from
9 that item. Essentially, I'm just removing and isolating the
10 DNA that I'm going to test. So the end result is that we
11 have a small amount of liquid in these plastic tubes and the
12 DNA is suspended within that liquid.

13 Once testing is complete, these tubes and these
14 extracts need to be returned with the evidence. So the
15 process that we go through is that we dry the liquid down.
16 We seal the tubes in a plastic pouch. We give it its own
17 item number so that it can also be tracked in our chain of
18 custody just as the original items were, place it in a pouch
19 and then return it with the items that were submitted for
20 testing.

21 Q Has this been altered in any way?

22 A It does not appear to have been.

23 MS. LEFRIDGE: The State would move to have Exhibit 24
24 admitted into evidence.

25 THE COURT: Any objection?

1 MS. NEYLE: No, Your Honor.

2 THE COURT: It will be entered without objection.

3 (State's Exhibit No. 24 admitted into evidence.)

4 BY MS. LEFRIDGE:

5 Q So when you obtain a DNA extract, walk us through that
6 process.

7 A So, essentially, what we're trying to do with forensic
8 DNA testing is develop a DNA profile from an unknown
9 biological material left on an item of evidence or at a
10 crime scene and compare it to the DNA profile of a known
11 individual to try and determine whether or not that
12 individual may have been a contributor to that material.

13 So when an item is submitted, as I mentioned, the first
14 step is doing an extraction. So we're really just removing
15 the DNA from that item and isolating it in our DNA extract.

16 The next step is a quantitation step. It's a simple
17 step that tells us just generally how much DNA is present in
18 total. It also gives us an amount of how much of that DNA
19 is male. We need to target a specific amount of DNA as we
20 go forward so it's important we know how much DNA we have.

21 The next step is a process called Polymerase Chain
22 Reaction, or PCR. And that's just a process that allows us
23 to make copies of the specific locations of DNA that we're
24 interested in testing. Those locations are called short
25 tandem repeats, or STRs. And in a short tandem repeat, a

1 short core unit of DNA repeats a certain number of times.

2 So let's say in this copy of DNA that I inherited from
3 my father at a particular location, he has ten repeat units.
4 The copy that I inherited from my mother has 11 repeat
5 units. So my DNA types at location are ten and 11. We're
6 just counting that number of repeats. And that's the
7 information for that location.

8 So the overall collection of this information at all
9 the locations we test is what we refer to as a DNA profile.
10 And by comparing the profile of an item of evidence to the
11 profile of a known individual, we can tell whether or not we
12 have consistency between those two profiles, whether the
13 individual would be excluded. We're basically just
14 comparing all of that information in the profiles.

15 Q Let me show you another document that's been marked as
16 State's Exhibit 28. Do you recognize this?

17 A I recognize this as a copy of the report that I issued
18 for the work and the results that I obtained in this case.

19 Q And have there been any alterations to this report?

20 A Not that I can tell.

21 MS. LEFRIDGE: Your Honor, the State would move to have
22 Exhibit 28 moved into evidence.

23 THE COURT: Any objection?

24 MS. NEYLE: No, Your Honor.

25 THE COURT: All right. It will be entered without

1 objection.

2 (State's Exhibit No. 28 admitted into evidence.)

3 MS. LEFRIDGE: At this time, the State would ask if we
4 could publish this to the jury, Your Honor?

5 THE COURT: All right.

6 (State's Exhibit No. 28 published to the jury.)

7 BY MS. LEFRIDGE:

8 Q All right. I'm going to take you step-by-step through
9 this DNA report. For those of us who are not familiar with
10 how these reports are written, we'll just start by having
11 you explain what are these comparison standards that we see
12 on the first page?

13 A So a comparison standard would be also referred to as a
14 known standard. That's a sample that has been collected
15 from a known individual. We develop a profile from that
16 sample and then we use that profile as their known to
17 compare to evidentiary profiles or the profiles that we're
18 developing from the evidence in the case.

19 So, for example, SLED item 5 would be buccal swabs from
20 Thomas Marty McElveen. Buccal swabs just refer to a type of
21 collection with a sterile cotton swab that looks just like a
22 Q-tip. We rub it against the inside of someone's cheek and
23 collect cells from the inside of their mouth and then use
24 those cells to develop a profile for comparison.

25 So for this particular item, it does indicate that the

1 profile that was developed is suitable for use as a known
2 standard for Mr. McElveen.

3 I also received SLED item 6, which were buccal swabs
4 from Robert Carter, Jr., and SLED item 7, buccal swabs from
5 Leonard Carter. Those were also sets of buccal swabs and I
6 was also able to develop profiles suitable for comparison
7 from those items.

8 Q Let's go to the next page. Can you walk us through
9 these items?

10 A So this section list all the items of evidence that
11 were submitted in this case. The first being SLED item 1,
12 which was identified by the submitting agency as a swab from
13 blue jeans belonging to Robert Carter, Jr. I did attempt to
14 develop a DNA profile from this item, but no profile was
15 developed after testing.

16 Q Thank you. And let's move to item 3. Can you explain
17 what item 3 is?

18 A SLED item 3 was identified by the submitting agency as
19 swab from pocketknife blade belonging to Robert Carter, Jr.
20 I was able to develop a DNA profile that was suitable for
21 comparison from this item. I interpreted this profile as a
22 mixture of DNA from two individuals.

23 So once we develop a mixture and we have this
24 evidentiary profile that's suitable for comparison, we
25 compare it to the known standards that we have, so the

1 profile from each of the known individuals.

2 So for this particular item, because the information I
3 had indicated that it belonged to Robert Carter, Jr., I did
4 the first comparison against Mr. Carter. So we perform what
5 is referred to as a likelihood ratio. A likelihood ratio is
6 just comparing two possible explanations for a given event
7 and the value that we determine provides support for which
8 of those two possible explanations is more likely to give us
9 that event.

10 So in a case like, I've got this mixture I'm
11 interpreting as being from two individuals. I need to come
12 up with two possible explanations for how that profile was
13 developed.

14 So as we go down to proposition set one, under item 3,
15 you'll see the letters HP, that's, basically, our first
16 possible explanation for how we developed this profile. So
17 because I'm comparing Robert Carter, Jr., my first possible
18 explanation is that Robert Carter, Jr. and an unidentified
19 unrelated individual contributed to the mixture. And I have
20 to add that unidentified unrelated individual because,
21 again, it's a mixture of two people. So this possible
22 explanation is that it is Robert Carter, Jr. and another
23 unidentified unrelated individual who are contributing to
24 the mixture.

25 If you look at the one below that, you'll see the

1 letters HP. This is, basically, just our second possible
2 explanation for this possible mixture. And the second
3 possible explanation is that it is two unidentified
4 unrelated individuals contributing to the mixture. So it is
5 not including Robert Carter, Jr.

6 So after determining our calculation and our likelihood
7 ratio value, it was determined that this particular DNA
8 profile is approximately 1.4 quintillion times more likely
9 if Robert Carter, Jr. and an unidentified unrelated
10 individual contributed to the mixture than if two
11 unidentified unrelated individuals contributed to the
12 mixture. And the larger that number is that's calculated,
13 the stronger the support is for the possible explanation.

14 Q Thank you. And when we go down to proposition set two,
15 can you explain that a little bit?

16 A So proposition set two is a little bit different.
17 Again, because the information received indicated that the
18 item belonged to or was taken from the person of Robert
19 Carter, Jr. and because I have such strong support for the
20 explanation for the profile that it could be Robert Carter,
21 Jr. contributing, I can, essentially, assume him as a
22 contributor in the second proposition set. It's safe to say
23 that if the item does belong to him, we would expect to see
24 his DNA there. So that is then taken into consideration
25 when we do comparisons for Thomas McElveen and for Leonard

1 Carter.

2 So as you go down through proposition set two, the
3 first line indicates again it's still being interpreted as a
4 two-person mixture. I am assuming that Robert Carter, Jr.
5 is contributing to this mixture. So now my two possible
6 explanations in comparison for Mr. McElveen would be that
7 Robert Carter, Jr. and Thomas McElveen contributed to the
8 mixture. My second possible explanation is that Robert
9 Carter, Jr. and an unidentified unrelated individual
10 contributed to the mixture.

11 And it was determined that the DNA profile is
12 approximately 48 septillion times more likely if Robert
13 Carter, Jr. and Thomas McElveen contributed to the mixture
14 than if Robert Carter, Jr. and an unidentified unrelated
15 individual contributed to the mixture.

16 Q And those are pretty large numbers. Do you have a
17 system that your office uses to identify those statistical
18 values in wording?

19 A We do. Reports include a table that includes what we
20 call a verbal equivalent. It, basically, just gives some
21 idea as to the level of strength or support for a particular
22 explanation. And for our reporting any ratio value of one
23 million or greater provides very strong support, which is
24 the strongest category that we report. And these numbers
25 are quite a bit larger than one million.

1 Q So based off of that, you are able to say in your
2 expert opinion that there is very strong support that the
3 DNA recovered from the knife was that of Robert Carter, Jr.
4 and Thomas McElveen?

5 MS. NEYLE: Objection, leading.

6 THE COURT: Sustained. Please rephrase the question.

7 Q Based off of the results that you received, what is
8 your expert opinion as to the likelihood of the results in
9 proposition set two?

10 A I would say that this analysis provides very strong
11 support for the possible explanation that I would see this
12 DNA profile if Robert Carter, Jr. and Thomas McElveen
13 contributed to the mixture rather than Robert Carter, Jr.
14 and an unidentified unrelated individual contributed to the
15 mixture.

16 Q And just for clarification, these items -- this is
17 referred to item number 3, which is what? If you could
18 please tell the Court again.

19 A SLED item 3 was identified as swab from pocketknife
20 belonging to Robert Carter, Jr.

21 Q Thank you. And move to item 4. If you could go over
22 what we see here in item 4, please.

23 A SLED item 4 was identified as swab from the hands of
24 Leonard Carter. The first step that I did for this
25 particular item was a preliminary serological test. It's

1 just a simple test that looks for the possible presence of
2 blood. That test did give a positive result indicating the
3 possible presence of blood on this item.

4 I was able to develop a partial DNA profile that was
5 suitable for comparison. And when we refer to partial, it
6 just means that there was not enough DNA for all the
7 locations to get results or the DNA may have been degraded
8 or broken down. I don't have a full profile, but I do have
9 enough DNA information to make a comparison.

10 So if we go down to proposition set one, again, using
11 the likelihood ratio analysis method. This DNA profile was
12 interpreted as a mixture originating from two individuals.
13 I performed comparisons using Thomas McElveen, Leonard
14 Carter and Robert Carter, Jr. to this profile.

15 So our first possible explanation or HP is going to be
16 that our person of interest, each of those individuals and
17 an unidentified unrelated individual contributed to the
18 mixture. Our second possible explanation being that it's
19 two unidentified unrelated individuals contributing to the
20 mixture.

21 And based on those interpretations, the DNA profile is
22 approximately 63 quintillion times more likely to be Thomas
23 McElveen and an unidentified unrelated individual
24 contributing to the mixture than two unidentified unrelated
25 individuals contributing to the mixture. And comparison

1 with Leonard Carter, it was determined that the DNA profile
2 was approximately five times more likely if Leonard Carter
3 and an unidentified unrelated individual contributed than
4 two unidentified unrelated individuals contributed. And
5 Robert Carter, Jr. is excluded as a contributor under the
6 listed propositions.

7 Q Can you explain what it means when someone is excluded
8 as a contributor to the mixture?

9 A With likelihood ratios, if we've done a calculation, it
10 just means that the support is so strong for that second
11 possible explanation that it's two unidentified unrelated
12 individuals that it allows us to exclude that person as a
13 possible contributor to that mixture.

14 Q And based off of this number 63 quintillion, can you
15 tell the jury what that would mean based off of the chart's
16 verbal wording that SLED uses?

17 A Using my verbal equivalency, again, this analysis would
18 provide very strong support that I would see this DNA
19 mixture if Thomas McElveen and an unidentified unrelated
20 individual contributed to the mixture rather than two
21 unidentified unrelated.

22 MS. LEFRIDGE: Beg the Court's indulgence for one
23 moment.

24 (Pause.)

25 Q Ms. Leisy, when we went over the chart that SLED now

1 uses, very strong support, is that the highest level that
2 SLED uses?

3 A Yes, it is.

4 Q And with DNA -- where does DNA come from, could you
5 tell us?

6 A So DNA stands for deoxyribonucleic acid. It's the
7 genetic material found in all of our body's cells with the
8 exception of our red blood cells. DNA is packaged in
9 structures called chromosomes, which contain our genes. And
10 genes are simply strands of DNA that determines our
11 characteristics, such as our height or eye color. We
12 inherit one-half DNA from our mother and one from our
13 father, therefore, has two copies of every gene. And
14 approximately 99.9 percent of an individual's DNA is
15 identical to that of everyone else's, and it's the variation
16 in that remaining 0.1 percent that we test that allows us to
17 tell people apart.

18 Q And quickly, if you could, look at proposition set two,
19 item 4 and explain that a little bit to the jury.

20 A So proposition set two under the swab from the hands of
21 Leonard Carter, because when I did comparisons with Thomas
22 McElveen and Leonard Carter and received what we consider
23 inclusionary likelihood ratio values, meaning their values
24 support that first possible explanation that we might be
25 seeing this mixture because they are one of the

1 contributors, we then have to run a calculation using those
2 two people together to see if the puzzle pieces fit.

3 So I've got this two-person mixture and I've got two
4 people who are giving me LR supporting their possible
5 contribution to the mixture, I need to run them together.
6 So that's what was done under proposition set two.

7 So if you look through that section, again, it's still
8 being interpreted as a mixture originating from two
9 individuals. I know for my first possible explanation
10 considering that it is Thomas McElveen and Leonard Carter
11 contributing to the mixture. My second possible explanation
12 would be that it is two unidentified unrelated individuals
13 contributing to the mixture. And it was determined that the
14 DNA profile is approximately 2.2 sextillion times more
15 likely if it is Thomas McElveen and Leonard Carter
16 contributing to the mixture than if it's two unidentified
17 unrelated individuals contributing.

18 One important thing to note when we do this calculation
19 is that when the two individuals that were comparing show a
20 very large disparity in their individual LRs, it's important
21 to know that when we run them together.

22 So, again, if you look at that first proposition set,
23 the LR value for Thomas McElveen is 63 quintillion and the
24 LR value for Leonard Carter is only five. So when we run
25 the two of them together on the proposition set two, we

1 receive this very large likelihood ratio value of 2.2
2 sextillion. The reason that number is so large is because
3 Thomas McElveen's number is so large by itself. It's,
4 essentially, influencing that number and making that number
5 very large.

6 So when we're just considering Leonard Carter as a
7 possible contributor, it's appropriate to use the LR value
8 of five. This proposition set two is just telling you that
9 it makes sense potentially for these two individuals to be
10 contributing to this profile, but in considering by himself,
11 it's appropriate to use the first likelihood ratio.

12 MS. LEFRIDGE: Thank you. No further questions.
13 Please answer any questions the defense might have.

14 THE COURT: Yes, ma'am.

15 CROSS-EXAMINATION

16 BY MS. NEYLE:

17 Q Good afternoon.

18 A Good afternoon.

19 Q Your time at SLED, you know of a document called the
20 Evidence Submission Manual?

21 A Yes, ma'am.

22 Q And that's a manual that suggest to local agencies how
23 to best collect evidence, correct?

24 A It is. It's a guideline that helps make suggestions
25 how to collect evidence and how best to submit it to the

1 laboratory.

2 Q And these are SLED's recommendations to the local
3 agencies?

4 A Yes, ma'am.

5 Q And they recommend when you're dealing with dried blood
6 to use the double-swab technique?

7 A Any time we're dealing with a dried material, we
8 suggest using what is referred to as a double-swab
9 technique. And what that means is that you use two sterile
10 cotton swabs. The first would be soaked in either a sterile
11 butter or sterile buffer. That would then be rubbed against
12 the material that you're trying to collect. And then you
13 would go behind that with a dry cotton swab, sterile swab
14 and help collect more material. Again, it's a
15 recommendation. It may work with just one swab, it's just
16 something that we suggest that can help.

17 Q Looking at the item of evidence number 3, the swab from
18 the pocketknife blade belonging to Robert Carter, you
19 received one swab?

20 A Yes, that's correct.

21 Q So the Florence City Police didn't employ the
22 double-swab technique, did they?

23 A Based on this information, it would not appear so, but
24 I don't have their notes or their records as to exactly what
25 was done.

1 Q And SLED also recommends that the items be sent to
2 them, correct, for analysis?

3 A Typically, when we're dealing with larger items, we
4 recommend the submitting agency bring us the item and we can
5 swab it, we can screen it or whatever needs to be done.
6 But, also, the items of evidence are, essentially, the
7 property of the submitting agency. If they're comfortable
8 collecting the evidence themselves, taking the swabs
9 themselves, that's fine. It's really up to them as to how
10 they want to handle it.

11 Q And you didn't receive the items in question for this
12 case, did you?

13 A That's correct. We only received swabs that were
14 collected prior.

15 Q And number 1, the swab from the blue jeans belonging to
16 Robert Carter, there was no DNA profile developed, correct?

17 A That's correct.

18 Q And the same with 2, the swab from the Nike shoe
19 belonging to Robert Carter, Jr., no DNA profile developed?

20 A That's correct.

21 Q Regarding the likelihood ratios, that's calculated
22 using the STR mix, correct?

23 A Yes, that's correct.

24 Q And that's a computer program?

25 A It is. So it's spelled STRmix, we pronounce it star

1 mix. STRmix is a software program that performs an analysis
2 technique called probabilistic genotyping. It breaks down,
3 essentially, the DNA profile from an item of evidence into
4 all the possible combinations that could explain it and then
5 it allows us to compare the DNA of known individuals to that
6 information to determine the likelihood ratio value and
7 determine is it more likely that we would see this profile
8 if they contributed.

9 Q And STRmix is a newer program, correct?

10 A We went online in STRmix, I believe, all of 2018.

11 Q I'm going to direct your attention to number 3 items of
12 evidence HP. What does HP stand for?

13 A The technical term for HP is hypothesis for the
14 prosecution. Typically, when you're making a likelihood
15 ratio and you've got your two possible explanations, the
16 more formal way to display is HP, hypothesis for the
17 prosecution, and HD, your second possible explanation,
18 hypothesis for the defense. Those are just your two sort of
19 alternate hypotheses or possible explanations. We really
20 chose to go with this nomenclature and this lettering
21 because it was consistent with how the STRmix documentation
22 printed out the results.

23 Q So hypotheses?

24 A Correct, it's just different hypotheses, which just
25 means possible explanation or scenario.

1 Q Regarding this analysis, how is an unrelated individual
2 defined? And I ask that because we're in Florence County,
3 we may be related to someone and we don't know it. We're a
4 small community. How is that defined?

5 A Unidentified unrelated, we're assuming that this other
6 individual has just been randomly selected from a
7 population. And we don't know who it may be, so we don't
8 know if there may be a possible relation. STRmix can
9 calculate likelihood ratios involving closer siblings if
10 there is a concern about that, but it's, basically, just a
11 randomly selected person.

12 Q So a random person?

13 A Correct.

14 Q Regarding these numbers of the quintillion, septillion,
15 the STRmix software generates that?

16 A That's correct.

17 Q Okay. Is there any way for you to manually go behind
18 the program and check it manually?

19 A We have done hand calculations as part of our training,
20 that's been done in validation studies. The level of math
21 that would be required to go back and re-perform the
22 calculation itself for each item or each comparison that we
23 do, it just wouldn't be possible.

24 But the system itself has been in place since 2014. It
25 was first validated by the U.S. Army Criminal Investigations

1 laboratory. It's been extensively validated and there have
2 been numerous articles that have been peer reviewed and
3 published in scientific journals. It's a widely accepted
4 statistical analysis method now around the world.

5 Q But you did not manually check it, did you?

6 A I did not check each individual number on this, no,
7 ma'am.

8 MS. NEYLE: I have no further questions for you. Thank
9 you, Ms. Leisy.

10 THE COURT: Redirect?

11 REDIRECT EXAMINATION

12 BY MS. LEFRIDGE:

13 Q Just one question. Ms. Leisy, if you received
14 something from local law enforcement that was insufficient
15 for testing, how would you prepare your report to reflect
16 that?

17 A Insufficient in what way?

18 Q If they attempted to get a DNA swab, but it was
19 conducted and did not reveal any sort of DNA profile, if it
20 wasn't sufficient to develop anything, what would your
21 report reflect?

22 A It would be similar to what's reflected for items one
23 and two, that no DNA profile was developed. If there were
24 too small amount of information to be -- or no material of
25 biological evidentiary value found. But when we make an

1 attempt to develop a profile and there's just not quality
2 DNA present or no DNA present, we report that no DNA profile
3 was developed.

4 Q And in item number three, there was DNA present on that
5 item?

6 A There was. From item three, there was a profile
7 suitable for comparison. And, again, it was interpreted as
8 a mixture originating from two individuals.

9 MS. LEFRIDGE: Thank you. No further questions.

10 THE COURT: Any recross?

11 MS. NEYLE: No, Your Honor.

12 THE COURT: All right. You may step down.

13 Any objection to this witness being excused?

14 MS. LEFRIDGE: None from the State, Your Honor.

15 MS. NEYLE: None from the Defendant.

16 THE COURT: You're free to leave. Thank you.

17 Ladies and gentlemen of the jury, at this time, this is
18 a good time for us to go ahead and take our afternoon break.
19 We'll take about ten minutes. Thank you. Please do not
20 discuss the case.

21 (The jury exits the courtroom at 3:38 p.m.)

22 MS. LEFRIDGE: The State rest.

23 THE COURT: All right. Any motions?

24 MS. NEYLE: Yes, Your Honor, at this time, I would like
25 to renew all prior motions and objections, Your Honor. I

1 would also make a motion for a directed verdict. The State
2 has failed to present evidence with an intent to kill
3 necessary for an attempted murder charge, Your Honor. I
4 would submit the wounds that we learned about from Mr.
5 McElveen were approximately one centimeter. They were to
6 the torso. All the evidence presented showed that he didn't
7 suffer injuries causing death, Your Honor. I don't believe
8 there was an intent to kill. I understand there was
9 circumstantial evidence presented, Judge, but I don't think
10 it's risen to the level of substantial circumstantial
11 evidence necessary to overcome a directed verdict motion.

12 I would also make the motion for a directed verdict as
13 to the criminal conspiracy. I don't think the State has
14 presented any evidence in the record as to a conspiracy
15 between Mr. Carter and his brother, Leonard.

16 THE COURT: Yes, sir.

17 MR. SCRUGGS: Thank you, Your Honor, may it please the
18 Court. Judge, in an attempted murder case, the State has to
19 prove that the Defendant attempted to kill the victim with
20 specific intent either implied or expressed malice. I would
21 ask the Court to look at the totality of the circumstances
22 we have here.

23 Just breaking down this attack on Mr. McElveen, first
24 thing you look at is, you had two individuals attacking one
25 person. Instead of just using fists, Mr. Robert Carter

1 chose to introduce a knife into the mix, which is defined as
2 a deadly weapon. Of course, our current juris prudence says
3 that the Court cannot charge in its jury charges that the
4 use of a deadly weapon -- that they may infer malice from
5 the use of a deadly weapon, but it's certainly proper for
6 the Court to consider and for the State to argue here at the
7 directed verdict stage according to State V. Burdette. And
8 I would ask the Court to consider a deadly weapon was used
9 in this.

10 And continuing the attack, as they approached the
11 victim, Mr. Carter would have had to remove the knife and
12 unfold the knife. During the attack, Mr. McElveen was
13 stabbed not once, not twice, but three times. He was
14 stabbed in what we refer to as his critical mass. He was
15 stabbed in the area of his body where his most critical
16 organs were located.

17 The Court has heard testimony from Dr. Russell, which I
18 think provides supporting and corroborating evidence for the
19 type of risks that Mr. McElveen was at because of the
20 Defendant's actions. Dr. Russell testified that vital
21 organs were at risk of being hit. He mentioned arteries,
22 lung, heart, bowels, arteries that run under each rib. He
23 noted that one of the injuries was, essentially, in the box
24 area, which is between the nipples and clavicles and noted
25 that a number of internal organs could have been hit from

1 that blow and could have posed a substantial risk of death.

2 Your Honor, sometimes in attempted murder cases, you
3 rarely have a Defendant express -- use expressed malice.
4 You rarely have a defendant say I'm going to kill you, I
5 hate you or words to that effect. And our Court of Appeals
6 in State vs. Taylor, which is 434 S.C. 365, noted in its
7 opening paragraph actions can speak louder than words. And
8 I think that situation applies here in terms of attempted
9 murder. And the Court and the jury can look at the
10 characteristics of the attack and infer the necessary
11 implied malice. So I believe that we have met and presented
12 evidence sufficient on the attempted murder charge.

13 In terms of armed robbery, Mr. McElveen stated himself
14 that he was robbed. He said that he was -- had about 50 or
15 \$60 that was taken from him. A corresponding close amount
16 of money was found from the Carters and this robbery
17 occurred while Mr. Carter was armed and while he was using
18 that deadly weapon.

19 And, lastly, with regard to the criminal conspiracy,
20 that's two people agreeing on a criminal act and agreeing to
21 commit a criminal act. Again, I would mention what I said
22 with attempted murder, actions speak louder than words.
23 These two individuals approached Mr. McElveen together and
24 from the testimony of the woman who called 911, Ms.
25 Bennetts, what you heard from the 911 call, what the victim

1 told you, they, essentially, pounced on him together with
2 fists and knife. And I believe that is evidence sufficient
3 here at the directed verdict stage on all three counts for
4 this case to go to the jury.

5 THE COURT: Thank you.

6 Yes, ma'am, any response?

7 MS. NEYLE: I have nothing further, Judge.

8 THE COURT: I think based on the circumstantial
9 evidence before the Court that there is an issue of fact as
10 to the intent to kill element for attempted murder. The
11 testimony of the doctor, the testimony -- I mean, the
12 exhibits that are in evidence, the number of times that he
13 was -- based on the testimony, the number of times that he
14 was cut or stabbed are issues of fact for the jury to
15 decide. So in the light most favorable to the nonmoving
16 party, as to that issue, the motion is denied.

17 As to the criminal conspiracy, the law says that it
18 does not have to be expressly -- doesn't have to be any
19 agreement, does not have to be any overt acts needed to show
20 or establish a conspiracy, that the conduct alone could rise
21 to the level of the conspiracy.

22 So I am going to -- based on the circumstantial
23 evidence that there were two people -- I think the first
24 witness's testimony, Ms. Bennetts, that there were two
25 people. The audiotape -- video tape that's in the record

1 where the victim states there was two people. I do find
2 that there's sufficient evidence -- that there is sufficient
3 evidence for that reason to survive a motion for a directed
4 verdict. So I will deny the motion for the directed verdict
5 as to criminal conspiracy.

6 MS. NEYLE: And, Judge, just to protect the record, I
7 just want to also make a motion for directed verdict as to
8 the armed robbery, Judge. That their evidence presented has
9 not risen to the level to sustain a directed verdict.

10 THE COURT: And once again, I think because there's
11 circumstantial evidence in the record regarding the robbery
12 that that is sufficient to go before the jury as an issue of
13 fact for the jury to decide. So I will respectfully deny
14 the motion as to the armed robbery.

15 So now we are at the point of the trial where I need to
16 advise Mr. Carter of his rights.

17 Let me get you to raise your right hand.

18 ROBERT LEE CARTER, JR.,

19 after being duly sworn, testified as follows:

20 THE COURT: Mr. Carter, at this time, I am going to
21 explain to you certain of your rights. If you do not
22 understand anything I say, please let me know. If you want
23 me to explain anything in more detail, please let me know.
24 Do you understand?

25 THE DEFENDANT: I do.

1 THE COURT: We have now reached the stage of the trial
2 where you may present your defense. You have the right to
3 claim protections given to you by the Fifth Amendment to the
4 Constitution of the United States. This amendment states in
5 part: No person shall be compelled in any criminal case to
6 be a witness against himself.

7 This means that you cannot be required to testify in
8 this case. You have the right to testify on your own
9 behalf, however, no one can make you testify. This is a
10 personal right and no one can waive that right except for
11 you.

12 If you decide to testify, you will be subject to the
13 same rules that govern other witnesses and you may be
14 examined and cross-examined on any relevant issue in this
15 case.

16 In addition, if you have any convictions involving
17 dishonesty or false statements or for crimes punishable by
18 imprisonment for more than one year and this Court
19 determines that the probative value of admitting this
20 evidence outweighs its prejudicial effect to you, the
21 solicitor will be able to introduce your record to attack
22 your credibility.

23 If you decide to testify, this decision on your part
24 must be freely, voluntarily and intelligently made with the
25 knowledge of the protections given to you by the Fifth

1 Amendment and the consequences of your decision to testify.

2 If you decide not to testify, I will instruct the
3 jurors that they cannot give the fact that you did not
4 testify any consideration whatsoever, and that there is to
5 be absolutely no prejudice to you because you did not
6 testify. It is left entirely up to you whether or not you
7 testify. You may talk with your attorney, your family and
8 friends or anyone else, but the final decision will be left
9 entirely up to you.

10 Do you understand what I have explained to you?

11 THE DEFENDANT: I do, Your Honor.

12 THE COURT: Do you have any questions about what I have
13 explained to you?

14 THE DEFENDANT: No, ma'am, I don't.

15 THE COURT: And have you discussed with your lawyers
16 whether or not you should -- and don't tell me what they
17 said to you, but have you all discussed whether or not you
18 should or should not testify?

19 THE DEFENDANT: We have, Your Honor.

20 THE COURT: All right. And do you need additional time
21 to speak with your attorneys?

22 THE DEFENDANT: I do not.

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

24 Ms. Neyle, does your client wish to testify?

25 MS. NEYLE: If I may just have one minute.

1 THE COURT: And I did not go over his record. We
2 probably need to put that on the record if he has one.

3 MS. NEYLE: Your Honor, Mr. Carter does not intend to
4 testify.

5 THE COURT: Okay. All right.

6 Ms. Neyle, do you have any witnesses that you wish to
7 call?

8 MS. NEYLE: No, Your Honor.

9 THE COURT: I'll bring the jurors back in. You all can
10 rest on the record and then I'll ask you -- I'll explain to
11 them that he doesn't have to call any witnesses, the burden
12 is on the State and all that good stuff and then -- and then
13 I will probably send them home and then we can talk about
14 the charge. I'll probably just have them come back at 11:00
15 for closing arguments and the charge. If we can order lunch
16 or something, I'll do that. Hopefully, start around 11:00.
17 But we'll talk about the jury charge once I release them.

18 You can bring them back in.

19 (The jury enters the courtroom at 3:54 p.m.)

20 THE COURT: All right. I'm going to ask the State to
21 call their next witness.

22 MR. SCRUGGS: Thank you, Your Honor. At this time, the
23 State rest.

24 THE COURT: Thank you.

25 Ladies and gentlemen of the jury, the State has rested

1 their case. They have no further witnesses. At this time,
2 I will explain to you that the Defense -- as I told you
3 early on, the burden is upon the State to prove the
4 Defendant guilty beyond a reasonable doubt.

5 Under our Constitution, the Defendant does not have to
6 present a case, nor does the Defendant have to testify. But
7 if they do choose to do so, I give them the opportunity to
8 do it now, but do understand that the burden is not on the
9 Defense. The burden is on the State to prove the Defendant
10 guilty beyond a reasonable doubt and the Defendant does not
11 have to present a case, but if he does wish to do so, now is
12 the time to do so.

13 I will ask Ms. Neyle if they wish to present a case?

14 MS. NEYLE: No, Your Honor, we do not.

15 THE COURT: Thank you.

16 So the State has rested and the Defense has also
17 rested. So, ladies and gentlemen of the jury, we are at the
18 point in the trial where we are ready for closing arguments
19 and the charge on the law, but not today. We will start
20 tomorrow because that will take some time. You will hear
21 closing arguments from both sides and then you will have the
22 charge on the law, so that will take us well into the
23 evening, past five o'clock, and I am not going to keep you
24 all that late this evening because it's not necessary today
25 to do that.

1 So I am going to release you for the evening. You do
2 have all the evidence in the case, but you do not have the
3 law and you do not have the closing arguments of the
4 parties, so my instructions are the same, please do not
5 discuss this case with anyone. Do not discuss it with each
6 other, any family members or friends. When you leave the
7 courtroom, think about something else, talk about something
8 else and we will see you in the morning.

9 There are some matters of law that we will be preparing
10 for the jury charge, so we're going to start a little bit
11 later. I'm going to have you all come in at 11:00 in the
12 morning. When you get here, the clerk's office -- I don't
13 know if they'll give you menus, but we're going to order
14 lunch for you tomorrow so you can have your lunch while you
15 are deliberating.

16 One other housekeeping matter, Juror No. 147, I'm going
17 to ask that you serve as our foreman. I'll give you some
18 instructions tomorrow as to what your responsibilities are
19 and the bailiffs will show you where you need to sit as the
20 foreman.

21 Thank you. Have a wonderful evening.

22 (The jury exits the courtroom at 3:59 p.m.)

23 THE COURT: Any objections or exceptions to my comments
24 to the jury?

25 MR. SCRUGGS: Not from the State.

1 MS. NEYLE: No, Your Honor.

2 THE COURT: Y'all want to take a break and then talk
3 about jury charges or we can go over them right now. She
4 has a draft. I can have her e-mail those to you if y'all
5 want to take about five or ten minutes. This is a draft, so
6 take a look at it, see what needs to be taken out, what you
7 all can't agree on, what you can agree on. There's also a
8 draft verdict form.

9 (Short recess.)

10 THE COURT: Any motions?

11 MS. NEYLE: Your Honor, at this time, I would renew all
12 my prior motions and objections, including my previous
13 directed verdict motions.

14 THE COURT: Objections are preserved for the record
15 and, obviously, the motions are denied as previously denied
16 for the reasons that they are genuine issues of fact for the
17 jury to decide.

18 Let's take a look at the jury charge. Like I said, we
19 can make any changes that are necessary or any additions.
20 So the first page and the second page are just the usual --

21 Did you all get a copy of it?

22 MR. SCRUGGS: Yes, ma'am. Thank you, Your Honor.

23 MS. NEYLE: Yes, Your Honor.

24 THE COURT: So I'll just keep moving and y'all stop me.

25 Page 3 is direct and circumstantial evidence, and I think

1 that that's the correct updated circumstantial evidence.
2 Credibility of witnesses. Expert witnesses. Multiple
3 charges here, armed robbery, attempted murder and criminal
4 conspiracy. That's Page 7.

5 If there are no changes, I'm going to keep going.
6 Presumption of innocence, Page 8. Reasonable doubt, page 9
7 and 10. Criminal intent -- let me make sure. I think --

8 Did y'all see that we put the specific intent language
9 in there on Page 12, 13 --

10 MR. SCRUGGS: Your Honor, with regard to Page 12, under
11 attempted murder, the only addition I was going to suggest
12 is in that first paragraph of attempted murder at the end
13 where it says attempted to kill another person with malice
14 aforethought, I was going to request changing that period to
15 a comma and putting either expressed or implied.

16 THE COURT: Does it say that in here further down? I
17 mean, I know that's the --

18 MR. SCRUGGS: It mentioned expressed later on Page 12,
19 but I don't think it says implied anywhere.

20 THE COURT: Ms. Neyle, any position?

21 MS. NEYLE: I would ask you keep that as it is, Judge.
22 Would you entertain any other lesser-includeds, Judge?

23 THE COURT: Yeah, if y'all --

24 MS. NEYLE: I would ask you to consider the
25 lesser-includeds of ABHAN, assault and battery in the first

1 degree and assault and battery, second, Judge. I think
2 there's enough evidence in the record to support ABHAN as a
3 lesser included, Judge, and assault and battery first,
4 evidence of injuring another and occurring during the
5 commission of a robbery. So I think assault and battery in
6 the first degree would be appropriate, Judge.

7 Regarding assault and battery, second, I think it would
8 be a jury question as to whether or not Mr. McElveen's
9 injuries were moderate bodily injury. I would ask that you
10 entertain that lesser included as well.

11 MR. SCRUGGS: And I missed the first part, but I think
12 you were asking for the lesser-included offenses on assault.
13 The language I requested on the attempted murder is straight
14 from the statute itself, malice aforethought, either
15 expressed or implied. So I would request that being there.

16 With regard to the request for lesser-included charges,
17 I believe Ms. Neyle is correct when it comes to ABHAN.
18 Assault and battery first mentions an injury that occurs
19 during the course of a robbery is one of the elements that
20 assault and battery first could be proven.

21 I would object to the assault and battery second being
22 charged to the jury for consideration because there is no
23 dispute in the evidence over the injury or potential injury
24 that the victim received in this incident. Assault and
25 battery second deals with moderate bodily injury or the

1 potential for moderate bodily injury. There were no
2 concessions on cross-examination from the doctor that this
3 could have been a lesser degree of bodily damage nor did the
4 Defense call any expert witnesses that could have refuted
5 Dr. Russell's testimony. His testimony was that he could
6 have been in danger of losing his life or great bodily
7 injury. So there's literally no evidence in the record to
8 support an assault and battery second degree charge.

9 MS. NEYLE: Judge, if I may, looking at the assault and
10 battery second charge that I have, they discuss moderate
11 bodily injury being physical injury requiring treatment to
12 an organ system of the body other than the skin muscles and
13 connective tissues of the body except when there's
14 penetration of the skin muscles and connective tissues that
15 require surgical repair of a complex nature or when
16 treatment of the injuries requires the use of regional or
17 general anesthesia.

18 To my recollection, there's been no evidence from Dr.
19 Russell that there was any surgical repair or complex nature
20 or using regional or general anesthesia, Judge.

21 THE COURT: I think -- and let me go back. I do know
22 the statute says expressed or implied, so I will add that
23 language in there at the top of attempted murder. But let
24 me look at that case that came out -- you know which case
25 I'm thinking about, they said no inference. The Supreme

1 Court on the inference case, actually, the case that
2 happened in Five Points, Judge Hood's case, I can't think of
3 the name of it right now.

4 MR. SCRUGGS: It's Smith, I believe, State v. Smith.

5 THE COURT: Yeah. Let me take a look at that case just
6 to be sure that -- the expressed I'm not concerned about,
7 the implied, I am. I just want to make sure. I know the
8 word in defining specific intent, it talks about not using
9 the word inference.

10 MR. SCRUGGS: And, Judge, I'd ask the Court also to
11 look at State v. Taylor. It's a 2021 Court of Appeals case,
12 434 S.C. 365.

13 THE COURT: Give me the cite one more time.

14 MR. SCRUGGS: It's 434 S.C. 365. And it addresses on
15 the last page, it says, again, as we already noted, we
16 understand implied malice as prohibited in King to mean
17 malice implied by the law, not malice expound by the jury
18 based on the circumstances. Again, neither King nor any
19 other case holds an intent to kill cannot be shown through
20 circumstantial evidence. And this is a copy I can hand up
21 to the Court.

22 And, of course, the Court can't charge the use of a
23 deadly weapon, that malice can be applied through that --

24 THE COURT: I don't have that in there.

25 MR. SCRUGGS: Right. But I think it's certainly

1 grounds for the State to argue in closing, that the jury can
2 consider that as circumstantial evidence.

3 THE COURT: Let me get back to you on that issue
4 regarding adding expressed or implied. I just want to look
5 at the case.

6 And the on the assault and battery second, I don't
7 recall that there was any testimony that there was any
8 surgery or that there was any anesthesia, so I think -- and
9 the doctor even testified that -- I don't know if he said
10 thank goodness or thank -- but he did testify that,
11 basically, there could have been injuries which would
12 support the assault and battery first and ABHAN and
13 attempted -- there could have been, but in terms of the
14 injuries that he had, I think he said thank goodness or
15 we're lucky that he didn't, so I think because of that, the
16 assault and battery second would be appropriate to charge
17 under the lesser-included.

18 So as of right now, I plan on charging that one as a
19 lesser-included. So the ABHAN, A&B first, A&B second. So
20 we'll have to do the verdict form over.

21 MS. NEYLE: And, Judge, I would also ask you to
22 consider strong armed robbery. I point to Ms. Bennetts'
23 testimony. She was asked if she saw any weapons and she
24 said she didn't. So I think there's enough evidence to go
25 forward with strong armed robbery charge.

1 MR. SCRUGGS: And, Judge, Ms. Bennetts' testimony is
2 just one piece of the puzzle. I mean, the overwhelming
3 evidence that's in the record that's not refuted is that he
4 was attacked with a knife that was used in the course of
5 this robbery. You hear it from his own words on the body
6 cam, it's evidenced by his visible wounds and it's confirmed
7 by the DNA testimony from Ms. Leisy that a knife was used.

8 So I would object to a strong armed robbery charge on
9 this. I think just the overwhelming evidence and there's
10 not enough evidence in the record to support charging that.

11 MS. NEYLE: Judge, I think the standard is any evidence
12 and I think the jury needs to make that determination.

13 THE COURT: Yeah, but I think the evidence that,
14 obviously, he was cut, he says with a knife. Other than her
15 saying that she did not see a knife, I don't know if that's
16 evidence that rises to the level of a strong armed robbery.
17 I don't even know if she testified she saw the robbery, she
18 testified to the assault and battery.

19 MR. SCRUGGS: Right, she saw it actively happen in
20 progress. She didn't give a lot of details. Not seeing
21 something is different than refuting.

22 THE COURT: I'm not going to charge the strong armed
23 robbery unless you -- if you have some case law, I'll take a
24 look at it again in the morning.

25 Same for you all on the A&B second, but as of right

1 now, I'm going to charge the A&B second. Based on the
2 doctor's testimony, there was no testimony regarding surgery
3 or anesthesia or anything of that nature being used.

4 MS. NEYLE: Thank you, Judge.

5 THE COURT: And then I'll take a look at -- I mean, I
6 know that's what the statute says regarding expressed or
7 implied, but I just need to take a look at that case.

8 You said it was Smith or King?

9 MR. SCRUGGS: King is the 2017 case that --

10 THE COURT: Oh, I know which one is King. Actually, I
11 sat on King, so I guess I need to go back and look at that
12 one. I sat on King as a visiting judge. But the case I'm
13 referring to is an attempted --

14 MR. SCRUGGS: The one at Five Points.

15 THE COURT: The Five Points.

16 MR. SCRUGGS: I think it's State v. Smith. It's a 2020
17 case.

18 THE COURT: Yeah. I'll take a look at those and Taylor
19 just so -- because there was lots of conversation about the
20 whole inference by the Supreme Court, so I just want to make
21 sure before we add that, although I do know that's what the
22 statute says.

23 Page 13. What about Page 14, anything we need to
24 charge? That's just the armed robbery.

25 MR. SCRUGGS: I didn't see anything with armed robbery,

1 Judge, that I thought needed to be changed.

2 THE COURT: Conspiracy.

3 MR. SCRUGGS: Nothing from me on that.

4 MS. NEYLE: None from me, Judge.

5 THE COURT: We put in mere presence. I'm assuming the
6 Defense wants that.

7 MS. NEYLE: Yes, Your Honor.

8 THE COURT: Failure of Defendant to testify. Hand of
9 one. Actually, I usually put hand of one and mere presence
10 together. And then the last part was just the regular
11 language about unanimous verdict and all of that.

12 So we'll have to do the verdict form over to add the
13 lesser-included. And I will -- we'll try to e-mail that
14 out tonight with an updated copy. So what I'll do is we'll
15 add the lesser-included, the jury charge and send it over
16 tonight sometime. You all take a look at it again because I
17 know we kind of all rushed through it, and see if we need to
18 add anything.

19 I should be able to get here by 10:30 in the morning,
20 so let's plan to meet at 10:30. The jury comes in at 11:00.

21 Madam Clerk, you will get them some lunch?

22 THE CLERK: Yes, ma'am.

23 THE COURT: And then, hopefully, we'll start around
24 11:00.

25 MR. SCRUGGS: Would you like us to come to chambers or

1 the courtroom at 10:30?

2 THE COURT: We can come in here since we have to put it
3 on the record anyway.

4 MR. SCRUGGS: Sure.

5 THE COURT: And closings, obviously, they get last.
6 You're going to open and close in full?

7 MR. SCRUGGS: Yes, ma'am.

8 THE COURT: All right. Y'all have a good evening.
9 (Court was adjourned for the day.)

10 WEDNESDAY, MARCH 16, 2022

11 THE COURT: All right. You should have gotten the
12 updated jury charge.

13 MS. NEYLE: Yes, Your Honor.

14 MR. SCRUGGS: Yes, we received it.

15 THE COURT: I know there's two issues we need to --
16 well, there was one. I don't know if you all have any other
17 changes, but as to adding the language expressed or implied,
18 after reading State vs. King again, the court says in there
19 that if it's a specific intent crime that you can't -- the
20 malice can't be implied. That was my understanding of it.

21 So I'm not going to put that extra language in there
22 regarding expressed or implied. Because I'm not sure how
23 you can have implied malice if it's saying -- and I know
24 you're saying that the conduct is implied. I guess that's
25 what the State is asking, is that the conduct itself -- you

1 can imply from the conduct. And it says: One cannot
2 attempt to kill another with implied malice because there's
3 no such criminal offense as an attempt to achieve an
4 unintended result.

5 MR. SCRUGGS: Judge, I point the Court's attention,
6 there are two lines in the Taylor decision, which was
7 decided in September of 2021, it says -- and this is 434
8 S.C. 365, on Page 370, it says: Even so, and critically, in
9 parentheses, nothing in King or any other case prevents a
10 jury from being charged that it can look at a defendant's
11 actions and imply or infer from those actions that the
12 defendant, in fact, had the specific intent to kill.

13 THE COURT: Now, that's a Court of Appeals case, right?

14 MR. SCRUGGS: That's correct, but it's interpreting
15 King.

16 THE COURT: I know, but King is Supreme Court and so is
17 Smith. So I guess what I'm saying is it's probably pending
18 before the Supreme Court, I'm assuming Taylor may be, I
19 don't know.

20 MR. SCRUGGS: But there's also a State Supreme Court
21 case from Burdette -- well, it's not specifically on this
22 point, but it notes towards the end of that opinion that the
23 State can argue circumstantial evidence in the context of a
24 deadly weapon that the defendant, through his conduct had
25 the requisite intent. I understand what the Court is saying

1 about the Taylor case, but I would just point out that even
2 though that's a lower court, they're interpreting the law as
3 handed down --

4 THE COURT: I understand, from King.

5 MR. SCRUGGS: And it's more recent.

6 THE COURT: Yes, ma'am.

7 MS. NEYLE: Judge, I would ask that you keep as you
8 have it proposed. I think --

9 THE COURT: I'm going to leave it that way. You can go
10 ahead and finish making your argument, I'm sorry.

11 MS. NEYLE: I think Taylor and Smith are pretty fact
12 specific and they're very different than the facts of this
13 case and I just ask that you keep what you have.

14 THE COURT: All right. I'm not going to add that
15 language in there. We'll wait and see what they have to
16 say.

17 MR. SCRUGGS: Right. And, Judge, I understand the
18 Court's ruling, but, of course, the State can argue in its
19 closing that the circumstances and the actions of the
20 Defendant present the requisite intent.

21 THE COURT: I think you can argue it, but I don't think
22 I can charge it.

23 MR. SCRUGGS: Thank you, Your Honor.

24 THE COURT: Anything else?

25 I have a copy of the verdict form for you all, also.

1 MS. NEYLE: Your Honor, Mr. Scruggs and I spoke about
2 the verdict form. I think we both --

3 I don't want to speak for you.

4 But I think we both have concerns about the language
5 with the attempted murder.

6 THE COURT: Yeah, look at this one. We changed it
7 around. It's always --

8 MR. SCRUGGS: What we've done in the past sometimes is,
9 like, put in parentheses, like, if you find him guilty, go
10 to question 5. If not guilty, go to question 2. And then
11 have the same thing on these 2 through 4.

12 THE COURT: You in agreement with that?

13 MS. NEYLE: I think that makes it a little more clear.

14 THE COURT: That's why I put that phrase. And I
15 usually go over it with them, but we can leave that in
16 there. I mean, if everybody agrees with it, I don't have a
17 problem with it.

18 MR. SCRUGGS: So on 1, it would be if guilty, go to
19 question 5; if not guilty, go to 2.

20 THE COURT: Yeah.

21 MR. SCRUGGS: And as to 2 through 4, it would be the
22 same as to guilty, but if they find not guilty, they would
23 --

24 THE COURT: Give her a second to get that together.
25 The jury is still coming in.

1 Those are the only changes y'all had?

2 MR. SCRUGGS: Yes, Your Honor.

3 MS. NEYLE: Yes, Judge.

4 THE COURT: Do y'all want me to leave that last little
5 phrase in there?

6 MR. SCRUGGS: I think that will be fine.

7 MS. NEYLE: I have no objection to that last phrase.

8 (Pause.)

9 THE COURT: Are y'all ready?

10 MR. SCRUGGS: The State's ready.

11 MS. NEYLE: Yes, Your Honor.

12 THE COURT: Let's bring them in.

13 (The jury enters the courtroom at 11:21 a.m.)

14 THE COURT: Good morning, ladies and gentlemen of the
15 jury. I hope you had a restful evening. At this time, we
16 are ready to begin with our closing arguments. First, you
17 will hear from Mr. Scruggs on behalf of the State and then
18 you will hear from Ms. Neyle on behalf of the Defendant,
19 then you will hear from me with the charge on the law.
20 Please pay close attention to the attorneys. Thank you.

21 Yes, sir.

22 CLOSING ARGUMENT BY MR. SCRUGGS

23 MR. SCRUGGS: Thank you, Your Honor, may it please the
24 Court.

25 Opposing counsel.

1 Mr. Foreman, members of the jury, this is a case about
2 senseless violence, about a man struggling just to get by,
3 trying to live his best life. Also, about that man over
4 there, Robert Carter, Jr., who on May 21st, 2019, decided
5 that what he wanted and what he needed was more important
6 than anybody else.

7 What I'd like to do today with my time with you is go
8 over three things. First, I'd like to summarize the
9 evidence that you've heard from witnesses on the stand and
10 exhibits the State has presented. Then I'd like to go over
11 what I anticipate the Defense is going to talk about with
12 you in their closing statement. And lastly, I want to touch
13 on the law that the Judge is going to charge to you at the
14 conclusion and talk about how the facts and evidence
15 presented fit and mesh with that law that is relevant here
16 today.

17 This case was presented to you, essentially, in
18 chronological order. The main reason we did that is because
19 this case is like a chain. There are links to that chain
20 that fit together and go together. And what you've heard
21 from this witnesses, you've heard a link of the chain one by
22 one by one. And the evidence that has come from that
23 witness stand show facts and circumstances that not only
24 link together, but they strengthen the link in the chain
25 that comes before it and corroborates that other evidence.

1 I want to start first where we began, the 911 call from
2 Sarah Bennetts outside the Golden Corral while she was
3 taking a smoke break around 7:58 p.m. She called and said
4 there's a fight going on here at the Golden Corral. Two
5 guys beating up on another one, somebody is going to get
6 killed. She got disconnected, they called her back and 911
7 tries to get as much information out of her as they can.
8 Obviously, this is going really fast and she's trying her
9 best to give whatever information that will be helpful to
10 law enforcement.

11 She gives a description of the two assailants. Two
12 guys, looked to be Latino or Mexican. But most importantly
13 for her testimony, one had a blue shirt, the other one had a
14 red shirt, okay? Remember that. She then goes on to say
15 both of them have blue jeans on and they've got backpacks.
16 They left the scene on foot headed toward David McLeod
17 Boulevard. She even gives a description of the victim. He
18 was on a bicycle, gray shirt, white or gray hat. He was at
19 Golden Corral. Now, he's gone and he's in front of Catos.

20 Next witness was the 911 operator. You hear her
21 recorded 911 call. What we just went over.

22 The next witness is Kaitlyn Sullivan, then Kaitlyn
23 Morris with the City of Florence Police Department. She was
24 dispatched at 7:58, got there three minutes later, at 8:01.
25 Where is the victim? He's in front of Catos, just like

1 Sarah Bennetts said. He says, Thomas McElveen says, They
2 robbed and stabbed me. Two guys, one looked like a Lumbee
3 Indian and a white guy. Stole all the money out of my
4 wallet.

5 He gave some further descriptions, dark-haired guy,
6 goatee, mustache. Here's the important part, he said
7 something that Sarah Bennetts didn't catch, rainbow-tinted
8 sunglasses. Right here. State's Exhibit 15. We'll come
9 back to that in a minute. He says I was stabbed with a
10 knife and I think they stole 50 to 60 bucks off me. That
11 occurs a little bit after 8:00 p.m.

12 Then Helen Bryant comes on scene. She responds first
13 to David McLeod Boulevard where the victim is. She goes and
14 checks around Golden Corral and Phoenix Mart, which is the
15 convenience store right in that same area, negative results.
16 What does she do? She heard what Sarah Bennetts said, they
17 were on foot, so she expands her search.

18 And this is important. You hear it a lot in real
19 estate, location, location, location. Where does she find
20 them? Just over on Second Loop Road heading east, heading
21 away from the way they came. What does she see? Red shirt,
22 blue shirt. It's starting to get a little bit dark by this
23 point. It's around 8:40, okay, just about 35, 40 minutes
24 after this attack happened.

25 She tells dispatch, hey, I'm going to make contact with

1 these two guys that fit the description. Timeline and
2 location, okay. They're on Second Loop heading way about
3 35, 40 minutes after the attack on foot. Timeline and
4 location are important details.

5 She gets out, identifies these two guys as Leonard
6 Carter and Robert Carter, Jr. What does Robert Carter have
7 on his head? Rainbow-tinted sunglasses. Just like the
8 victim said one of his assailants was wearing. She told you
9 in her testimony the general complexion. Leonard's
10 complexion was a little bit dark. They both appeared to be
11 sunburnt, had been out in the sun and had a darker
12 complexion.

13 The next person who arrives on scene is Officer Frye.
14 You got to see his body wearable camera, or BWC, from when
15 he responded on scene. What do you see? Blue shirt,
16 sunglasses, red shirt. He proceeds to search both of them.
17 And what a coincidence, there's a knife in Robert Carter's
18 back pocket. He opens it up. What a coincidence, there's
19 blood on the pocketknife.

20 You could see on the body cam him pulling out cash.
21 This cash isn't crisp. It doesn't look like it came
22 straight from a bank. It's not folded up nicely. It's
23 wadded up. It's crumbled up. And it's that way because
24 they grabbed it from the victim, Thomas McElveen, and
25 stuffed it in their pockets. What you also see Officer Frye

1 recover is a receipt for Golden Corral. We'll come back to
2 that in a minute.

3 Jason Vaughn, who you heard from yesterday afternoon,
4 is the manager at the Golden Corral restaurant in Florence.
5 He came in and I showed him the receipt from the Golden
6 Corral, which is in evidence and will go back to the
7 evidence room with you.

8 Three important things on that receipt, okay? First
9 thing is, it list the store, it list the number for the
10 store and the address, which is Florence. There's only one
11 Golden Corral, unfortunately, in Florence County. Second
12 thing it list is the date, May 21st, 2019. It also mentions
13 the time, which I believe is a little after seven o'clock at
14 night.

15 Now, you may ask, why did we bring this guy all the way
16 from Columbia who's busy at work at Golden Corral for him to
17 testify? And one main thing I asked him is, At Golden
18 Corral, when do you get your receipt? You get it when you
19 first come in. You pay first and then you eat. Anybody who
20 is going to go in Golden Corral, they're going to pay first
21 and then they're going to eat. That receipt is going to
22 note the time that they paid, not when they left.

23 So that's why there's a span of time between that
24 receipt time and the attack occurs around 7:58. Plenty of
25 time for somebody to go in, pay and then eat. I think you

1 can eat as much as you want to at Golden Corral. It's all
2 you can eat.

3 One thing I will tell you, we don't know whose receipt
4 that was. Why is it important to you? Because it shows
5 that the Carters were on the scene May 21st, 2019, within 40
6 to 50 minutes of the attack. It's another link in the chain
7 for you to consider.

8 Investigator Davis, after Officer Bryant encounters
9 these two guys on Second Loop, comes onto the scene. Law
10 enforcement starts to notice some potential DNA or blood
11 evidence on Leonard Carter's hands, obviously, the knife
12 that we've talked about already, suspected blood on the
13 white Nike shoes that Robert Carter is wearing and potential
14 blood evidence on the jeans.

15 So he goes -- he knows he's got some work to do. He's
16 got to start gathering evidence. He gets a search warrant
17 for buccal swabs for both Leonard and Robert Carter and then
18 he gets a search warrant about a week later to get swabs
19 from the items recovered, that's the knife, the blue jeans,
20 the swab from Leonard Carter's hands and the shoes.

21 And he gathers all that, gets a search warrant, then he
22 calls Sergeant Starling, who is the one who actually goes
23 out and does the actual work of collecting this. Sergeant
24 Starling, also, on the day that this happened visits the
25 hospital and gets a buccal swab from the victim so that,

1 eventually, when this gets sent to SLED, they can do the
2 work that they need to do.

3 And I know a lot of that was tedious with me standing
4 up here handing packet after packet after packet. The
5 purpose of that is to show y'all starting with Starling to
6 then Frank Mizell, who works in evidence. When that
7 evidence is gathered, it's packaged, tamper-proof and stored
8 in a secure box. It's transferred down to Frank Mizell, who
9 takes it to SLED.

10 You also heard from Dr. Russell, who was qualified as
11 an expert in traumatic injury. He's been a doctor for 21
12 years working in the emergency department. He told you a
13 lot of things, a lot of things with a lot of big words, but
14 here's, essentially, what he said. The organs in our body
15 are fluid and it depends on our respiratory cycle kind of
16 how those organs are moving in our body. He examined the
17 three stab wounds that Thomas McElveen had on his torso, on
18 his chest and said that those stab wounds could have hit
19 vital organs like the lungs or the heart. He further said
20 80 percent of cardiac injuries are fatal on scene.

21 He told you from this stand that after examining Mr.
22 McElveen that he was at substantial risk of either death or
23 great bodily injury. He also mentioned that he observed the
24 injury on Mr. McElveen's eye. And he noted on that injury
25 alone that the injury to the eye could have caused

1 protracted loss of sight. He reported that Mr. McElveen had
2 reported transient loss of consciousness. This was a big
3 deal. This was an emergency situation with some very
4 serious wounds and particularly serious consequences.

5 The last witness you heard from was Catherine Leisy
6 from SLED. She told you first that based on the buccal
7 swabs that she got from Mr. McElveen and from the two
8 Carters that they were able to develop a DNA standard for
9 Mr. McElveen and the Carters.

10 She talked to you a little bit about how SLED goes
11 about comparing those known DNA standards to other items of
12 evidence and how they compare that. They were able to
13 develop a DNA standard from two of the four pieces of
14 evidence submitted to SLED that were seized from the
15 Carters.

16 The first one was the knife that was taken from Robert
17 Carter's back pocket. They were able to develop a DNA
18 profile for that. The first proposition that they ran the
19 numbers on was Robert Carter, Jr. -- was a mixture of Robert
20 Carter, Jr. and one unidentified individual. And they found
21 that it was approximately 1.4 quintillion times more likely
22 that Robert Carter, Jr. and this unidentified individual
23 contributed to the mixture than if two unidentified
24 individuals contributed to that mixture.

25 Most people don't know what quintillion means.

1 Quintillion has 18 zeros that follow the number. If you had
2 18 zeros -- if you had one and 18 zeros in your bank
3 account, you'd be the richest person on earth ever, okay.
4 That's a lot of zeros.

5 The second proposition that they ran was Robert Carter,
6 Jr. -- a mixture of Robert Carter, Jr. and Thomas McElveen,
7 the victim. And they found that it was 48 septillion, which
8 is 24 zeros, times more likely than if it was Robert Carter,
9 Jr. and an unidentified individuals.

10 The second DNA profile they were able to develop came
11 from Leonard Carter's hands, dried blood on Leonard Carter's
12 hands. The first proposition they ran was with Thomas
13 McElveen and an unidentified individual. They found that
14 that DNA profile is approximately 63 quintillion times more
15 likely than if two unidentified random individuals
16 contributed to that mixture. They ran a second one, the
17 second proposition using Thomas McElveen and Leonard Carter,
18 a mixture of those two, and found it's approximately 2.2
19 sextillion, which is 21 zeros, times more likely than if two
20 unidentified individuals contributed to that mixture.

21 On that last proposition, Ms. Leisy noted that that
22 number on that last proposition, Thomas McElveen and Leonard
23 Carter, was a little bit higher because of the high number
24 under the first proposition.

25 But these are very big numbers showing a mixture of two

1 people, Robert Carter -- three people, Robert Carter,
2 Leonard Carter and Thomas McElveen. Another coincidence? I
3 don't think so.

4 The last thing I would note about Ms. Leisy is she told
5 you that those numbers met their highest standards that they
6 have and it falls in the category of very strong support.
7 Very strong support is anything over one million times.
8 We're talking quintillion, septillion, sextillion, a lot
9 higher than one million. This is another piece of the
10 puzzle, another chain in the link.

11 I'd like to talk a little bit what I anticipate the
12 Defense will talk to you about in their closing. I'll start
13 with kind of where I left off with the summary. Ms. Leisy
14 said these numbers that we run are hypotheses. Well, that
15 should come as no surprise to any of us. This is science
16 and that's what scientists do.

17 You may recall at some point in intermediate school or
18 middle school you learned about the scientific method,
19 right? Well, how do you learn about the scientific method?
20 The scientific method says that you test things, you test
21 certain hypotheses and come up with the most likely result.
22 Well, that's the same thing they do here. As I stated, all
23 that evidence that came from SLED, I want you to view it in
24 context of everything else you've heard. Consider it all
25 together and how it all fits together.

1 Another thing they may bring up is SLED's
2 recommendation to law enforcement to use a double swab
3 rather than a single swab. A few things I want to point out
4 with that. Number one, that's just a recommendation from
5 SLED. SLED doesn't have control over local law enforcement.
6 It's just a recommendation to local law enforcement. Ms.
7 Leisy herself said local law enforcement develops their own
8 standards and policies for how to collect evidence. She
9 told you if something is submitted to her that she can't
10 test, she's not going to test it.

11 Another thing that the Defense may bring up was there
12 was a point in both Investigator Davis' testimony and
13 Sergeant Starling's testimony where they testified to the
14 amount of money seized from both Defendants. I believe
15 Sergeant Starling said \$46 and Investigator Davis said \$54.
16 I don't know why those numbers are different.

17 If you're concerned about that amount, what I suggest
18 is to look again at Office Frye's body cam because he pulls
19 all the money out from both suspects and places it on the
20 hood of his truck. His body cam is recording all of this.
21 You can see where he goes back over to the car and he starts
22 to count the money. You can see how much money is from
23 that. And if that's a concern for you, I would suggest to
24 review that video again.

25 You also see that he places some money in one bag and

1 some money in another bag. Could that be the reason why
2 there's a disparity in those numbers? Maybe so. But again,
3 just another piece of the link, just another piece of the
4 puzzle.

5 Sergeant Starling testified on direct and it's
6 something that we brought out because we wanted y'all to
7 know. When he was called to the hospital to collect the
8 buccal swab from the victim, Thomas McElveen, and he walked
9 in, he recognized him. Now, he told you, he said, I really
10 have no close personal relationship with him, but I
11 recognized him because I'm related by marriage to him, he's
12 related to my wife.

13 Now, what did he do then? He told Investigator Davis,
14 disclosed that relationship. He didn't hide it. It didn't
15 affect any of his work. He just came in solely to collect
16 the evidence. He has no bias in any way towards this case.
17 How do we know that? Because it's back up by what he did,
18 disclosure to his supervisor and he told you himself on
19 direct examination.

20 Lastly, they're interrelated and they come from the
21 initial crime scene. There's no surveillance tape that we
22 presented. I suspect the Defense will bring that up with
23 you. Investigator Davis testified that he asked the patrol
24 officers to check around the locations, Phoenix Mart, all
25 those areas to try and get video footage. Unfortunately,

1 they weren't able to do so. That does not change any of the
2 evidence that you heard in this case, though.

3 And the last thing is the description initially given
4 by Sara Bennetts and the victim. They were described as
5 Hispanic, Latino, Indian. Well, I want to remind y'all that
6 this attack occurred in mere seconds, okay? You're not
7 going to get everything a hundred percent right. And Sarah
8 Bennetts and the victim are just doing the very best they
9 can. What they were able to get out are descriptions that
10 ultimately led law enforcement to the Carters. And the
11 physical evidence recovered from the Carters corroborate
12 that hey, these are the right guys.

13 Those are some of the things that I think the Defense
14 may try to argue with you. What I want to point out,
15 though, is nothing that I've gone over breaks -- nothing
16 that we've gone over just now that I anticipate being
17 brought up, none of that breaks the chain here. Everything
18 that was submitted to y'all from that evidence stand is just
19 a chain that leads one things to another. The initial
20 description leads to finding these guys. Finding these guys
21 confirms that description. And then they have all the
22 physical evidence on them.

23 The last thing I want to go over with y'all is the law
24 that applies to this case. Mr. Carter is indicted for
25 attempted murder. The State has to prove that Mr. Carter

1 intended to kill the victim with specific intent, attempted
2 to do that with malice aforethought.

3 Now, y'all know this, we can't get in somebody's head
4 and we can't get inside Mr. Carter's brain and go back to
5 May 21st, 2019 and figure out what intentions he had. Well,
6 what do we do? We look at his actions. Y'all have heard it
7 a million times I'm sure, that actions speak louder than
8 words. And that's what you got to go on in this case.

9 With regards to intent, let's break this assault down a
10 little bit. It happened really fast, but I want to slow it
11 down when we're talking about intent. First thing I want
12 you to note, okay, you've got two guys versus one. It's not
13 a fair fight to begin with.

14 Robert Carter then decides to introduce a knife into
15 the mix, which is a deadly weapon. So instead of just going
16 with fists, he makes a conscious decision to pull out a
17 pocketknife, okay. A pocketknife, you've then got to unfold
18 the blade, right, and lock it. He then during the course of
19 this assault while Mr. McElveen is getting pummeled in the
20 head and the torso, he stabs him not once, not twice, but
21 three times.

22 While I was thinking about that, it kind of reminded me
23 of a bad day for our country, 911. Everybody in here
24 probably remembers where they were on September the 11th,
25 2001. I'm a younger guy, I was in ninth grade in history

1 class. And I remember when the first plane hit the tower.
2 I'm sure y'all do, too. You know, somebody came in the
3 classroom and told our teacher. It was a big deal. And the
4 teacher talked to us about it. Horrible accident, right?
5 Man, I'm never going to fly again. Did the pilot made a
6 mistake, all this kind of stuff.

7 Then about a half hour later, the second plane hits a
8 second tower. You start to think this doesn't sound like
9 somebody messed up, right. Then you go on through the
10 morning, a plane hits the Pentagon and a fourth plane
11 crashes in a field in Pennsylvania. There's an intent
12 behind this. There's a plan behind this. This was a
13 prearranged attack. Same thing here. He chose to stab him
14 not once, not twice, but three times.

15 Another thing I want you to think about, think about
16 how he used the knife, okay? These aren't slash wounds.
17 These are puncture, penetration wounds, all three of them.
18 Another detail, where does he use the knife? He doesn't use
19 it on the victim's arms, on his face, on his legs. He goes
20 for critical mass, where everybody's vital organs are.
21 Those are all details you need to break down when you
22 consider intent, an intent to kill.

23 There's also other circumstances that I believe support
24 attempted murder and when you talk about intent. You saw
25 the victim just a few minutes after this happened on Kaitlyn

1 Sullivan's body cam. He's disheveled, he's disoriented, but
2 he knows he's in trouble. He knows that this is serious.
3 How do we know that? This guy is in his late 40s, but he
4 still ask for his mamma. He says, Can you call my mamma?
5 Can you call my friend?

6 Kaitlyn Sullivan in the first few minutes there, she
7 calls the EMTs. She says, Get them here hot. She says that
8 means quick. Everybody knew that this was a serious
9 situation and this guy needed help.

10 The Judge is also going to charge you on three
11 lesser-included offenses for attempted murder. The next
12 lesser-included offense for attempted murder is what's
13 called assault and battery of a high and aggravated nature.
14 It, essentially, means that the Defendant caused an unlawful
15 injury on another person and that the injury either caused
16 great bodily injury or could have caused great bodily
17 injury.

18 And the Judge is going to define great bodily injury
19 for you, but I want to go over it here with you right now.
20 Great bodily injury means bodily injury which causes a
21 substantial risk of death or which causes serious permanent
22 disfigurement or protracted loss or impairment of the
23 function of a bodily member or organ. You heard testimony
24 from Dr. Russell. He testified about the risk specifically
25 of death or great bodily injury.

1 Now, the Judge is going to charge you on two more
2 lesser-included offenses, but I want to argue to you that
3 the State -- the State's argument is that given the nature
4 of this attack and the injuries that resulted or could have
5 resulted that the most relevant are attempted murder and
6 assault and battery of a high and aggravated nature.

7 Now, the two other lesser-included offenses that the
8 Judge will charge you as below ABHAN, or assault and battery
9 of a high and aggravated nature, is assault and battery
10 first degree. That, essentially, means that a person caused
11 an injury to another person and it occurred during the
12 course of a robbery or other serious felony. But,
13 obviously, it was a robbery going on in this case.

14 The last lesser-included offense is assault and battery
15 second degree, which says that a person commits that offense
16 when they cause injury to another and moderate bodily injury
17 either occurred or could have occurred.

18 Now, the Judge is going to go into more detail with you
19 over what those definitions mean, but the State would argue
20 that the most relevant, which is supported by the mountain
21 of evidence in this case, would be attempted murder and
22 assault and battery of a high and aggravated nature.

23 The State has also charged Mr. Carter with armed
24 robbery. Armed robbery, essentially, means that a robbery
25 occurs where an individual takes something of value from

1 another person and during the course of that robbery, a
2 deadly weapon is used. Deadly weapon can mean a number of
3 things, one of which is a knife.

4 The evidence that supports the armed robbery is
5 obviously the crumbled up money that was found from both
6 Leonard and Robert Carter, the knife in his back pocket.
7 And you heard it from the victim's mouth himself, the victim
8 said, They stabbed and robbed me.

9 The last charge you have to consider is criminal
10 conspiracy. It's just, essentially, a combination between
11 two or more persons for the purpose of accomplishing an
12 unlawful act or a lawful act by unlawful means. In this
13 case, both Leonard Carter and Robert Carte combined
14 together, their actions were in tandem and those actions
15 evidenced by themselves a conspiracy to rob and assault Mr.
16 McElveen.

17 The Judge is also going to charge you what we call the
18 hand of one is the hand of all. And it, essentially, says
19 that where two people act together that each one of them
20 individually are responsible for the actions of the other.

21 Ladies and gentlemen, I want to thank you sincerely for
22 your attention. Thankfully, this has been a rather short
23 trial, but I want to thank you for your service for coming
24 in. It's a hard task.

25 If you will remember on Monday, the Judge gave

1 exemptions to those people who recently served on a jury in
2 the last few years here in circuit court. And the reason
3 for that is because the legislature recognizes that this is
4 a hard task. We take you out of your normal everyday lives,
5 plop you right in the middle of a legal controversy. So I
6 want to thank you from the State of South Carolina for your
7 service here today and your attention.

8 Ladies and gentlemen, the evidence that has been
9 submitted both by testimony and the tangible pieces of
10 evidence establish beyond a reasonable doubt that Mr. Robert
11 Carter, Jr. committed the offenses of attempted murder,
12 armed robbery, criminal conspiracy on May 21st, 2019. On
13 that day, Mr. Carter didn't think Sarah Bennetts would care
14 about what she just saw. He didn't think that law
15 enforcement would care either. And today, he hopes that you
16 don't care.

17 Ladies and gentlemen, thank you for your service. I
18 submit to you that the evidence speaks for itself and shows
19 conclusively that Mr. Carter is guilty beyond a reasonable
20 doubt of the charged offenses.

21 Thank you.

22 THE COURT: Thank you.

23 Yes, ma'am.

24 OPENING STATEMENT BY MS. NEYLE

25 MS. NEYLE: May it please the Court.

1 Ladies and gentlemen, yesterday and today, the State
2 got up here and they began by telling you about Mr. McElveen
3 back on May 21st, 2019, how he started that day. They said
4 he was homeless, not a bitter man, going about his day,
5 making polite conversation, living his best life, as they
6 said, before he encountered senseless violence.

7 The truth of the matter is, we don't know how Mr.
8 McElveen started his day, what he did that day. He's not
9 been here to testify this week. Unfortunately, he's passed
10 away for completely unrelated reasons to what happened back
11 in May of 2019. It's unfortunate that he's no longer here,
12 but that's of no fault to Robert or anyone else in this
13 room.

14 We did see a video of Mr. McElveen where he described
15 the two men that attacked him. One of them a Native
16 American man, one might be wearing a gray shirt. He thinks
17 one of their names is Billy. He even says he thinks he
18 stabbed one. None of that applies to Robert and his
19 brother. Two white men were found miles away off Second
20 Loop, away from the Golden Corral.

21 Judge Benjamin is going to charge you on the law that
22 you as a jury must determine the credibility of the
23 witnesses who have testified on that witness stand this
24 week. You didn't have that opportunity to see Mr. McElveen
25 on the stand this week.

1 When I first spoke with you yesterday morning, I said
2 the State has to prove this case beyond a reasonable doubt.
3 They have not done that. They haven't produced a single
4 person on that witness stand identifying Robert as one of
5 the men that attacked Mr. McElveen.

6 The Florence City Police failed in the busiest
7 commercial area in Florence County, stores, restaurants
8 everywhere to get a single piece of video footage. In this
9 day and age, there's videos everywhere. I was trying to
10 count the number of cameras in this very courtroom. They're
11 here. They didn't bother to get any video footage. They
12 didn't even ask Golden Corral if they had video footage,
13 interior or exterior.

14 Instead, they're pointing to a Golden Corral receipt
15 for a party of one. All that proves is that's a Golden
16 Corral receipt for a party of one. Yet, Robert was with his
17 brother, Leonard. Video footage would have shown beyond a
18 reasonable doubt who was there at Golden Corral. They
19 didn't bother to get it.

20 The State, as they've told you, has DNA, DNA collected
21 by an officer related to Mr. McElveen by marriage. He
22 should have conflicted himself from this case, but he
23 didn't. And you don't see any body camera footage of him
24 collecting the evidence, swabbing. You don't see that. He
25 testified he swabbed Robert's shoe because it had a blood

1 stain on it and the presumptive test came back as positive
2 for blood. They sent it to SLED, no DNA profile was
3 developed.

4 Mr. McElveen said these two men grabbed his bike.
5 Well, if they grabbed his bike, their DNA would have been on
6 that bike. And they took that bike into evidence, but they
7 didn't bother to swab it or send it off to SLED for testing.

8 They talked about seeing the knife and there was blood
9 on the knife, but Lieutenant Starling couldn't tell you
10 where the blood was. He just said he saw it, but he
11 couldn't tell you where.

12 And you heard from Ms. Leisy at SLED. She told you
13 about these numbers and likelihood ratios using the STRmix
14 program. It's not just science. That's a computer program,
15 not able to be manually checked, using confusing language
16 about propositions and numbers that are not real world.
17 Septillion, quintillion, those are big numbers produced by a
18 computer program to impress you and confuse you.

19 The State has charged Robert with attempted murder,
20 which requires a specific intent to kill. And in
21 determining that intent, you can look at the resulting
22 wounds and injuries that Mr. McElveen had. On Officer
23 Sullivan's body camera, you can see his wounds. There's
24 minimal bleeding. He's able to walk and talk. You see EMS
25 arrive at King's Beauty. They're not rushing Mr. McElveen

1 off to the hospital. They even allowed an officer to take
2 pictures of Mr. McElveen before taking him to the hospital.

3 Dr. Russell testified that he assessed Mr. McElveen and
4 all his injuries. He list a lot of possibilities, collapsed
5 lung, cardiac issues. Mr. McElveen suffered from none of
6 those. There were three one-centimeter wounds, minimal
7 bleeding. They're not deep penetrating wounds. Didn't
8 touch any of those organs.

9 These wounds were physical injuries requiring medical
10 treatment. He didn't require surgery. He wasn't put under
11 anesthesia. Dr. Russell didn't even testify if he had to
12 stitch those wounds. These wounds aren't consistent with an
13 attempted murder. They're moderate bodily injuries
14 consistent with an assault.

15 The State has charged Robert with armed robbery. And
16 to that, they point to the video of Mr. McElveen saying he
17 was robbed, but that's the only evidence. They point to the
18 money, Investigator Davis saying they found approximately
19 \$54. I believe Lieutenant Starling said he noted in his
20 report, there was \$42. These amounts are important, these
21 differences. The State has to prove this beyond a
22 reasonable doubt. They're the State and these discrepancies
23 are not acceptable.

24 The State has also charged Robert with criminal
25 conspiracy. Just because Robert and Leonard were brothers

1 and were found together doesn't mean they conspired and
2 committed this crime.

3 Mr. Scruggs, again, talking about the case, about the
4 911 caller, Ms. Bennetts. Ms. Bennetts and Mr. McElveen are
5 the only people that saw what happened that night. She got
6 on that witness stand yesterday, Mr. Carter in the
7 courtroom, at no point did she from the witness stand with
8 Mr. Carter right there, at no point did the State ask and at
9 no point did she say that's the man that did that. The
10 State talks about breaking the chain and the chain they've
11 established, that broke the chain. She was there. She saw
12 what happened and she didn't say he did it. He was here.

13 And ladies and gentlemen, that's because Robert was not
14 one of the two men that robbed and stabbed Mr. McElveen.
15 And I ask that you go back in that jury room and find Robert
16 not guilty.

17 Thank you.

18 CHARGE ON THE LAW

19 THE COURT: Ladies and gentlemen of the jury, you have
20 received all of the evidence, you have heard the arguments
21 of the parties and now it is my opportunity, time to
22 instruct you as to the law.

23 I remind you that during this trial, you and I have
24 certain duties to perform. As a trial judge, it is my
25 responsibility to preside over the trial of this case and I

1 also have the duty to rule on the admissibility of evidence
2 offered during this trial.

3 You are to consider only the competent evidence before
4 you. If there was any testimony ordered stricken from the
5 record during this trial, you must disregard that testimony.
6 You are to consider only the testimony which has been
7 presented from the witness stand, any exhibits which have
8 been made a part of the record and any stipulations of
9 counsel.

10 I have the additional duty to charge you the law
11 applicable to this case. As the presiding judge, I am the
12 sole judge of the law of this case. It is your duty as
13 jurors to accept and apply the law as I now state it to you.
14 If you already have any idea as to what the law is or what
15 the law ought to be and it does not agree with what I now
16 tell you the law is, you must abandon this idea because you
17 are sworn to accept the law and apply the law exactly as I
18 state it to you.

19 In every case tried in this court before a jury, the
20 jury becomes the sole and exclusive judge of the facts in a
21 case. A trial judge cannot state, comment on or make any
22 statement to a trial jury about the facts in the case.

23 Since you, the jury, are the sole judges of the facts
24 in this case, you're not to infer from what I have said
25 during the progress of this trial in ruling upon the

1 admissibility of evidence or otherwise or anything that I
2 say now during the course of these instructions that I have
3 any opinion about the facts in this case. The law does not
4 allow me to have an opinion about the facts in this case.
5 This is a matter solely for you, the jury, to determine. As
6 jurors, it is your duty to determine the effect, value,
7 weight and truth of the evidence presented during the trial.

8 You must not consider as evidence any statement of
9 counsel made during the trial. Statements of counsel do not
10 constitute evidence, rather counsel is articulating the
11 position and contention of his or her client. This rule
12 applies to the opening statement of counsel and the closing
13 arguments.

14 Mr. Foreman and ladies and gentlemen of the jury, there
15 are two types of evidence which are generally presented
16 during a trial: Direct evidence and circumstantial
17 evidence. Direct evidence directly proves the existence of
18 a fact and does not require deduction. Circumstantial
19 evidence is proof of a chain of facts and circumstances
20 indicating the existence of a fact.

21 Crimes may be proven by circumstantial evidence. The
22 law makes no distinction between the weight or value to be
23 given to either direct or circumstantial evidence. However,
24 to the extent the State relies on circumstantial evidence,
25 the circumstances must be consistent with each other and

1 when taken together, point conclusively to the guilt of the
2 accused beyond a reasonable doubt. If these circumstances
3 merely portray the Defendant's behavior as suspicious, the
4 proof has failed.

5 The State has the burden of proving the Defendant
6 guilty beyond a reasonable doubt. The burden rest with the
7 State regardless of whether the State relies on direct
8 evidence, circumstantial evidence or some combination of the
9 two.

10 Necessarily, you must determine the credibility of
11 witnesses who have testified in this case. Credibility
12 simply means believability. It becomes your duty as jurors
13 to analyze and to evaluate the evidence and determine which
14 evidence convinces you of its truth.

15 In determining the believability of witnesses who have
16 testified in this case, you may believe one witness over
17 several witnesses or several witnesses over one witness.
18 You may believe a part of the testimony of a witness and
19 reject the remaining part of the testimony of that same
20 witness. You may believe the testimony of a witness in its
21 entirety or reject the testimony of a witness in its
22 entirety.

23 You may consider whether any witness has exhibited to
24 you an interest, bias, prejudice or other motive in this
25 case. You may also consider the appearance and manner of a

1 witness while on the witness stand and whether the testimony
2 of the witness was corroborated and made stronger by other
3 testimony and evidence or was it made weaker and impeached
4 by other testimony and evidence presented.

5 Ladies and gentlemen of the jury, as I told you during
6 the trial, the rules of evidence ordinarily do not permit
7 witnesses to testify to opinions or conclusions. An
8 exception to the rules exist for witnesses we call expert
9 witnesses. A witness who by education and experience has
10 become an expert in some art, science, profession or calling
11 may state an opinion as to relevant and material matters in
12 which the witness claims to be an expert and may also state
13 the reason for the opinion.

14 You should consider any expert opinion received in
15 evidence in this case and like any other evidence, give it
16 the weight you think it deserves. If you decide that the
17 opinion of an expert witness is not based on sufficient
18 education and experience or if you conclude that the reason
19 given in support of the opinion are not sound or that the
20 opinion is outweighed by other evidence, you may disregard
21 that opinion entirely.

22 An expert witness' testimony is to be given no greater
23 weight than that of other witnesses simply because the
24 witness is an expert. Further, you are not required to
25 accept an expert's opinion even though it is not

1 contradicted.

2 The indictment in this case alleges several different
3 offenses against the Defendant. The charges are: Count
4 one, armed robbery; count two, attempted murder; and count
5 three, criminal conspiracy. The indictment charges three
6 separate and distinct offenses. You must decide each charge
7 separately on the evidence and the law applicable to it
8 uninfluenced by your decision as to any other charge. The
9 Defendant may be convicted or acquitted on any or all of the
10 offenses charged. You will be asked to write a separate
11 verdict of guilty or not guilty for each charge.

12 Ladies and gentlemen of the jury, the indictment that
13 charges the Defendant with armed robbery, attempted murder
14 and criminal conspiracy, I remind you that the fact the
15 Defendant was arrested, charged and indicted in this case is
16 not evidence in this case and cannot be considered by you as
17 evidence of guilt in this case, nor does it create any
18 presumption or inference of guilt. The indictment is simply
19 the formal written instrument which contains the charges
20 made against the Defendant. It is the formal document by
21 which this case is brought into court.

22 In this case, the Defendant has pled not guilty to the
23 indictment. That puts the burden on the State to prove the
24 Defendant guilty. A person charged with committing a
25 criminal offense in South Carolina is never required to

1 prove himself innocent.

2 I charge you that it is an important rule of the law
3 that the defendant in a criminal trial, no matter what the
4 seriousness of the charge may be will always be presumed to
5 be innocent of the crime for which the indictment was issued
6 unless guilt has been proven by evidence satisfying you of
7 that guilt beyond a reasonable doubt.

8 This presumption of innocence does not end when you
9 begin your deliberations, but it accompanies the Defendant
10 throughout the trial until you reach a verdict of guilt
11 based on evidence satisfying you of that guilt beyond a
12 reasonable doubt.

13 The presumption of innocence is like a robe of
14 righteousness placed about the shoulders of the Defendant,
15 which remains with the Defendant until it has been stripped
16 by evidence satisfying you of the Defendant's guilt beyond a
17 reasonable doubt.

18 The presumption of innocence is not a mere legal
19 theory. It is not just a legal phrase. It is a substantial
20 right to which every defendant is entitled unless you, the
21 jury, are satisfied from the evidence of the Defendant's
22 guilt beyond a reasonable doubt.

23 You may ask what is a reasonable doubt in the law? A
24 reasonable doubt is the kind of doubt that would cause a
25 reasonable person to hesitate to act.

1 The State has the burden of proving the Defendant
2 guilty beyond a reasonable doubt. Some of you may have
3 served as jurors in civil cases where you were told that it
4 is only necessary to prove that a fact is more likely true
5 than not true, such as by the greater weight or
6 preponderance of the evidence. In criminal cases, the
7 State's proof must be more powerful than that. It must be
8 beyond a reasonable doubt. Proof beyond a reasonable doubt
9 is proof that leaves you firmly convinced of the Defendant's
10 guilt.

11 There are very few things in this world that we know of
12 with absolute certainty. And in criminal cases, the law
13 does not require proof that overcomes every possible doubt.
14 If convinced that the Defendant is guilty of the crime
15 charged, you must find the Defendant guilty. On the other
16 hand, if you think that there is a real possibility that the
17 Defendant is not guilty, you must give the Defendant the
18 benefit of the doubt and find him not guilty.

19 Next, we'll talk about criminal intent. In order to
20 establish criminal liability, criminal intent is required.
21 For example, the mental state required to be proven by the
22 State for a particular crime might be purpose, intent,
23 knowledge, recklessness or criminal negligence. Criminal
24 intent must be proved by the State beyond a reasonable
25 doubt. Criminal intent is always a matter that must be

1 determined by the jury from the circumstances surrounding
2 the situation.

3 There is no way to prove intent to a mathematical
4 certainty. There is no way medical science can dissect a
5 person's brain and determine what the person had in mind, so
6 the law says that criminal intent may be inferred from the
7 circumstances shown to have existed. This is how you make a
8 determination of whether or not the element requiring intent
9 was present. It is not necessary to establish intent by
10 direct and positive evidence, but intent may be established
11 by inference in the same way as any other fact by taking
12 into consideration the act of the parties and all the facts
13 and circumstances of the case.

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

21 The Defendant in this case, as we have said, is charged
22 with attempted murder. In order to prove this crime, the
23 State must prove the Defendant attempted to kill another
24 person with malice aforethought. Malice is hatred, ill will
25 or hostility towards another person. It is the intentional

1 doing of a wrongful act without just cause or excuse and
2 with an intent to inflict an injury.

3 Malice aforethought does not require that malice exist
4 for any particular time before the act is committed, but
5 malice must exist in the mind of the Defendant just before
6 and at the time the act is committed. Therefore, there must
7 be a combination of the previous evil intent and the act.

8 Malice is shown when a person speaks words which
9 express hatred or ill will for another or when the person
10 prepared beforehand to do the act which was later
11 accomplished. For example, lying in wait for a person or
12 any other acts of preparation going to show that the deed
13 was within the Defendant's mind would be malice.

14 A specific intent to kill is an element of attempted
15 murder. Specific intent means intending a certain result to
16 actually occur, not accidentally or involuntarily. Intent
17 may be shown by acts and conduct of the Defendant. Evidence
18 of the character of the act, the character of the instrument
19 used, the manner in which it was used, the purpose to be
20 accomplished and the resulting wounds or injuries may be
21 considered in determining the intent with which the act was
22 committed. Intent may also be shown when it is demonstrated
23 that the Defendant voluntarily and willfully commits an act,
24 the natural tendency of which is to destroy another's life.

25 Attempt. An attempt is an effort to accomplish a crime

1 which does not succeed. An attempt includes a specific
2 intent to do a particular criminal act along with an act
3 falling short of the act intended. The State must show more
4 than mere preparation and intent. There must be some overt
5 act committed in the effort to commit the crime. Intent
6 means intending the result which was supposed to occur, not
7 accidentally or involuntary. Intent may be shown by acts
8 and conduct of the Defendant.

9 Ladies and gentlemen of the jury, if you find that the
10 State has failed to prove that the Defendant committed
11 attempted murder, you may consider whether the State has
12 proved beyond a reasonable doubt that the Defendant
13 committed assault and battery of a high and aggravated
14 nature, assault and battery first and assault and battery
15 second degree. Included within the offense of attempted
16 murder are the lesser-included offenses of assault and
17 battery of a high and aggravated nature, assault and battery
18 first degree and assault and battery second degree.

19 So now I'm going to read -- these are the
20 lesser-included offenses of attempted murder, and I will
21 read each of the statutes separately for you.

22 Assault and battery of a high and aggravated nature,
23 Section 16-3-600(b): A person commits the offense of
24 assault and battery of a high and aggravated nature if the
25 person unlawfully injures another person, and (a) great

1 bodily injury to another person results; or (b) the act is
2 accomplished by means likely to produce death or great
3 bodily injury. Great bodily injury means bodily injury
4 which causes a substantial risk of death or which causes
5 serious permanent disfigurement or protracted loss or
6 impairment of the function of a bodily member or organ.

7 Assault and battery first degree is Section
8 16-3-600(c): One, a person commits the offense of assault
9 and battery in the first degree if the person unlawfully
10 injures another person and the act occurred during the
11 commission of a robbery, burglary, kidnapping or theft; two,
12 a person may also commit the offense of assault and battery
13 in the first degree if the person unlawfully offers or
14 attempts to injury another person with the present ability
15 to do so and the act either is accomplished by means likely
16 to produce death or great bodily injury or occurred during
17 the commission of a robbery, burglary, kidnapping or theft.

18 Once again, great bodily injury means bodily injury
19 which causes a substantial risk of death or which causes
20 serious permanent disfigurement or protracted loss or
21 impairment of the function of a bodily member or organ.

22 Assault and battery second degree, 16-3-600(d): A
23 person commits the offense of assault and battery in the
24 second degree if the person unlawfully injures another
25 person or offers or attempts to injure another person with

1 the present ability to do so and moderately bodily injury to
2 another person results or moderate bodily injury to another
3 person could have resulted.

4 Moderate bodily injury means physical injury requiring
5 treatment to an organ system of the body other than the
6 skin, muscles and connective tissues of the body, except
7 when there is penetration of the skin, muscles and
8 connective tissues that require surgical repair of a complex
9 nature or when the treatment of the injuries requires the
10 use of regional or general anesthesia.

11 Next, we'll talk about armed robbery. The Defendant in
12 this case is charged with armed robbery. In order to prove
13 this offense, the State must first prove beyond a reasonable
14 doubt that the Defendant took personal property from the
15 person or presence of another person. Property is in the
16 presence of a person if it is within the person's reach,
17 inspection, observation or control so that the person could,
18 if not overcome with violence or prevented by fear keep
19 possession of the property.

20 The State must also prove beyond a reasonable doubt
21 that the Defendant carried the property away intending to
22 permanently deprive the owner of the property and to keep
23 the property for the Defendant's own use. The slightest
24 removal of the property or the complete possession of the
25 property even for an instance by the Defendant is sufficient

1 to show a taking and carrying away of property. The taking
2 and carrying away of the property must have been done with
3 violence or by putting the owner of the property in fear of
4 violence.

5 Finally, the State must prove beyond a reasonable doubt
6 that the Defendant was armed with a deadly weapon during the
7 robbery. A deadly weapon is any article, instrument, a
8 substance which is likely to cause death or great bodily
9 harm.

10 Whether an instrument has been used as a deadly weapon
11 depends on the facts and circumstances of each case. The
12 following are examples of instruments which may be a deadly
13 weapon: A pistol, a shotgun, a rifle, a dirk, a dagger, a
14 knife, a slingshot, metal knuckles, a razor, gasoline, a
15 fire bomb, a Molotov cocktail and lighter fluid. A gun may
16 be a deadly weapon even if it is not operating.

17 The last charge on the indictment is conspiracy,
18 Section 16-17-410. The Defendant is charged with
19 conspiracy. The State must prove beyond a reasonable doubt
20 that the Defendant combined with one or more persons for the
21 purpose of committing an unlawful act or committing a lawful
22 act by unlawful means.

23 There must be a mutual understanding, agreement or
24 common intention or plan. Mere passive knowledge of or
25 consent to the criminal conduct of another is not enough to

1 make a person a conspirator. There must be guilty knowledge
2 and participation.

3 Similarly, the mere fact that the Defendant may have
4 associated with another person or met with another person
5 and discussed common aims or interests does not necessarily
6 establish proof of the existence of a conspiracy or that the
7 Defendant was involved in a conspiracy. On the other hand,
8 it is not necessary that the agreement be a formal one, that
9 it be in writing, that the person hold a meeting and
10 expressly state the terms of the common plan or that the
11 agreement be stated in words between them.

12 The agreement of a criminal conspiracy may come into
13 being through an implied mutual understanding. The willful,
14 intentional and knowing adoption by two or more persons of a
15 common plan is sufficient. No overt acts need to be shown
16 to establish a conspiracy. A conspiracy may be shown by
17 circumstantial evidence and the conduct of the parties.

18 In order to convict the Defendant of conspiracy, the
19 State must prove beyond a reasonable doubt not only that the
20 Defendant knew of the unlawful conduct, but that the
21 Defendant agreed to combine with the other person for the
22 purpose of accomplishing the unlawful conduct.

23 Ladies and gentlemen of the jury, mere presence at the
24 scene is not sufficient to prove someone guilty of a crime.
25 A defendant's presence where a crime is being committed or

1 mere association with a person who commits a crime does not
2 make a defendant an accomplice or an aider and abetter of
3 the person committing the crime. The burden is on the State
4 to prove every element of the crime charged.

5 If you find after reviewing all of the evidence that
6 the State has proved that the Defendant was only present at
7 the scene of a crime and that they have not proved beyond a
8 reasonable doubt any other participation in the crime, then
9 you must find the Defendant not guilty. The law is that
10 proof of at the scene of the crime is not sufficient to find
11 someone guilty.

12 Next, we'll talk about the hand of one, hand of all.
13 If a crime is committed by two or more people who are acting
14 together in committing a crime, the act of one is the act of
15 all. A person who joins with another to commit an unlawful
16 act is criminally responsible for everything done by the
17 other person which happens as a probable and natural
18 consequence of the acts done in carrying out the common plan
19 and purpose.

20 For example, two people can be guilty of killing
21 another person when only one of the two had a gun, there was
22 only one bullet and only one of the two fired the shot that
23 caused the death. If two or more people are together,
24 acting together, assisting each other in committing the
25 offense, the act of one is the act of all. Or as it is

1 sometimes said, the hand of one is the hand of all.

2 Prior knowledge that a crime is going to be committed
3 without more is not sufficient to make a person guilty of a
4 crime. Mere knowledge that another person is going to
5 commit a crime, even if the defendant is present when a
6 crime is committed is not sufficient to convict the
7 defendant as a principle. Guilt as a principle is shown by
8 actual and constructive presence at the scene as a result of
9 prior arrangement. Therefore, a finding of a prior arranged
10 plan or common scheme is necessary for a finding of guilt as
11 a principle. The State must prove beyond a reasonable doubt
12 that the theory of the hand of one is the hand of all.

13 A principle in a crime is one who either actually
14 commits the crime or who is present aiding, abetting or
15 assisting in committing a crime. When a person does an act
16 in the presence of and with the assistance of another, the
17 act is done by both. Where two or more acting with a common
18 plan or intent are present at the commission of a crime, it
19 does not matter who actually commits the crime, all are
20 guilty. The hand of one is the hand of all.

21 Present at the commission of a crime means to be
22 sufficiently near to aid and abet and assist in the
23 commission of the crime. However, mere presence at the
24 scene of a crime is not sufficient to convict one as a
25 principle on the theory of aiding and abetting.

1 Intent is also a necessary element, for there must have
2 been a common design or intent to commit the crime and the
3 crime must have been committed pursuant thereto with the
4 person aiding and abetting by some overt act. Intent means
5 intending the result which actually occurs, not accidentally
6 or involuntarily. Intent may be shown by acts and conduct
7 of the Defendant and other circumstances from which you may
8 naturally and reasonably infer intent. The State must prove
9 these elements beyond a reasonable doubt.

10 Ladies and gentlemen of the jury, I instruct you and
11 emphasize the fact that the Defendant did not testify is not
12 a factor to be considered by you in any way in your
13 deliberations and in your consideration on the question of
14 guilt or the innocence of the Defendant. It must not be
15 considered by you in any manner whatsoever. A defendant has
16 the Constitutional right to remain silent and the assertion
17 of this right must not be considered by you in your
18 deliberations.

19 I repeat, under your oath, you're to draw no
20 conclusions whatsoever from the fact that the Defendant in
21 this case did not testify. The fact that the Defendant did
22 not testify should not even be discussed in the jury room.
23 The burden of proof, as I have stated to you, is on the
24 State. The Defendant is not required to prove himself
25 innocent. The burden of proof remains on the State to prove

1 guilt beyond a reasonable doubt.

2 Ladies and gentlemen of the jury, the State and the
3 Defendant are entitled to the individual opinion of each
4 juror on the issues of fact in this case. It is the duty of
5 each of you to consider and weigh all of the evidence in the
6 case and from such evidence to determine, if you can, the
7 question of the guilt or innocence of the Defendant.

8 There is nothing peculiarly different in the way a jury
9 would consider the evidence in a criminal case from that in
10 which all reasonable persons treat any question depending on
11 what evidence is presented to them. You're expected to use
12 your good sense, consider the evidence in the case for only
13 the purpose for which it has been admitted and give it a
14 reasonable and fair construction in the light of your common
15 knowledge of the natural tendencies and inclinations of
16 human beings.

17 Your verdict in this case will be one of two forms. If
18 from the evidence and the law, you find the Defendant is not
19 guilty of the crime charged, you will circle not guilty on
20 the verdict form, Mr. Foreman, that I will give you and you
21 will sign your name.

22 If on the other hand, you find that the Defendant is
23 guilty based upon the evidence and the law which you have
24 heard, you will circle guilty on your verdict form and the
25 Foreman will sign his name.

1 Your verdict must be unanimous and it must be guilty or
2 not guilty. The law requires that a jury verdict be
3 unanimous, which means that all the jurors must agree. The
4 only two forms of the verdict are guilty or not guilty.

5 Mr. Foreman, once the jury reaches a verdict of not
6 guilty or guilty, you will circle the verdict on the face of
7 the verdict form and sign under the verdict indicating that
8 that is the verdict of all jurors.

9 I will give you a copy of these instructions in written
10 form. During your deliberations, you may refer to the
11 instructions to guide your decisionmaking. You must
12 consider these instructions as a whole and not follow some
13 and ignore others. Then at the end of the deliberations,
14 you will return the instructions to the bailiff and we will
15 have -- instructions to the bailiff along with your verdict
16 form and then we will have you back in the courtroom.

17 Mr. Foreman, my law clerk is going to hand you a
18 verdict form.

19 All right. You have the verdict form there. It reads:
20 State of South Carolina, County of Florence, in the Court of
21 General Sessions of the 12th Judicial Circuit, indictment
22 2019-GS-21-01497, the State of South Carolina vs. Robert Lee
23 Carter, Jr., Defendant, verdict form.

24 So it says: Please circle the appropriate verdict
25 below and follow the accompanying instructions carefully.

1 As to the indictment alleging attempted murder, we, the
2 jury, unanimously find the Defendant, and you will circle
3 guilty or not guilty. And I had to put one before the
4 other. Please do not infer that I have any position.

5 If you find the Defendant guilty, you will go to
6 question number 5. If you find the Defendant not guilty on
7 this charge, you will go to question 2. Remember in the
8 jury charge, I told you there were lesser-included offenses
9 of attempted murder.

10 So question 2 says: As to the lesser-included charge
11 of assault and battery of a high and aggravated nature, we,
12 the jury, unanimously find the Defendant, and you will
13 circle guilty or not guilty. If you find the Defendant
14 guilty, you will go to question number 5. If you find the
15 Defendant not guilty on this lesser-included charge, you
16 will go to question number 3.

17 And that question reads: As to the lesser-included
18 charge of assault and battery first degree, we, the jury,
19 unanimously find the Defendant, once again, you will circle
20 guilty or not guilty. If you find the Defendant guilty, you
21 go to question 5. If you find the Defendant not guilty on
22 this charge, you go to question 4.

23 Question 4 reads: As to the lesser-included charge of
24 assault and battery second degree, we, the jury, unanimously
25 find the Defendant, you will circle not guilty or guilty.

1 If you find the Defendant guilty, go to question 5. If you
2 find the Defendant not guilty, go to question 5.

3 You can find -- as to attempted murder, you can find
4 the Defendant not guilty of all of the above, but can only
5 find him guilty of either attempted murder or one of its
6 lesser-included offenses.

7 Question number 5: As to the indictment alleging armed
8 robbery, we, the jury, unanimously find the Defendant, you
9 can circle, once again, not guilty or guilty. And as to
10 number 6: As to the indictment alleging criminal
11 conspiracy, we, the jury, unanimously find the Defendant not
12 guilty or guilty, and you will circle it.

13 At that point, you will stop your deliberations. You
14 will knock on the door and let the bailiffs know that you
15 have reached a verdict.

16 I am going to send you all back -- you will hand that
17 back because I am going to mark it as an exhibit. We'll
18 mark it as a Court's Exhibit afterwards. Do not begin your
19 deliberations until you have received all of the evidence.
20 So we've got to gather the evidence, so give us a second,
21 gather the evidence.

22 If they need to see the video again or hear the 911, do
23 y'all have the ability for them to do that in the jury room?

24 MR. SCRUGGS: No, ma'am. They need to come out here
25 and we can play again.

1 THE COURT: So Mr. Foreman, they're going to give you a
2 notebook. If you have any questions, you send that back,
3 sign your name to the question. The questions have to come
4 from you. Sign your name, put your jury number on there.

5 If you all wish to see the video or hear the audio
6 again, we'll have to bring you back in the courtroom to do
7 that. Just give the bailiffs a note and then we'll bring
8 you back in.

9 Do not begin your deliberations until you have received
10 the exhibits, the jury charge and the verdict form. Once
11 you receive that, you may begin. I think lunch will be
12 delivered around 1:00 if it's not back there already. You
13 are more than welcome to begin -- to eat your lunch while
14 you are deliberating, however, if one person leaves out of
15 the room, you have to stop until they return from the
16 restroom and continue your deliberations. Remember the
17 verdict has to be unanimous, so everyone has to be in the
18 jury room.

19 Oh, and the last thing, don't -- sometimes jurors like
20 to send out notes saying we are -- with a count of how many
21 in favor. Do not send that out to the Court. Thank you.
22 We'll send you back.

23 THE DEFENDANT: Excuse me, Your Honor, can I ask a
24 question?

25 THE COURT: No.

1 (The jury exits the courtroom at 12:47 p.m.)

2 THE COURT: Mr. Carter, you can't blurt out while the
3 jury is still in the courtroom. If you have a question, ask
4 your attorneys and they will relay the question to me. You
5 speak through your attorneys. We can't have you blurting
6 out in front of them. You don't want them inferring
7 anything based on you.

8 THE DEFENDANT: I mean, the evidence that hasn't been
9 presented --

10 MS. NEYLE: Judge, just for the record, I just want to
11 note my objection on the jury charge and ask you for the
12 strong armed robbery.

13 THE COURT: Yes, ma'am.

14 MR. SCRUGGS: And Judge, I just want to note my
15 objection to the language requesting either expressed or
16 implied malice.

17 THE COURT: Expressed and implied, all right.
18 The objections are noted for the record.

19 MR. SCRUGGS: Thank you.

20 THE COURT: All right. Y'all take a look at the
21 exhibits. Here's the verdict form and the charge.

22 We do mark the jury charge as a Court Exhibit, I'm not
23 sure which one it is.

24 (Court's Exhibit No. 1 marked for identification.)

25 THE COURT: And if you can give my law clerk your

1 number, we will call.

2 (Alternates enter the courtroom.)

3 THE COURT: All right. I want to thank you all for
4 your service. You were selected as our alternates and as
5 you can see, thankfully, all 12 of our jurors have returned,
6 so we will no longer need your services. You can, however,
7 wait on your lunch.

8 You can at this point talk to anyone you wish about the
9 case. You are free to leave for the rest of the week. And
10 as somebody said earlier, you will not have to serve in this
11 court for the next three years unless you choose to do so
12 after one year. It does not protect you from federal court,
13 municipal court and magistrate's court, but you will not
14 have to serve in this court for the next three years unless
15 you choose to.

16 Y'all have a wonderful day. Like I said, you can talk
17 to anyone you wish. You can grab your lunch and take it if
18 you want to. If you want to hang around here and see what
19 they come up with, you're more than welcome to do so.

20 ALTERNATE JUROR: Oh, we can wait?

21 THE COURT: Yeah, if you want to. I don't know how
22 long they'll be, but if you want to wait and see --

23 ALTERNATE JUROR: So we can just sit out in the --

24 THE COURT: He'll show you where you can sit.

25 Thank you all for your service.

1 (Alternates were released.)

2 THE COURT: All the exhibits are there. We will go
3 ahead and send it back to the jury. So we'll note that we
4 sent it back to the jury at 12:53. You can instruct them
5 they can begin their deliberations.

6 (Jurors begin deliberations 12:53 p.m.)

7 THE COURT: Good job to all of you.

8 (Court in recess awaiting a verdict.)

9 THE COURT: Let me mark this as Court's Exhibit 2.

10 (Court's Exhibit No. 2 marked for identification.)

11 THE COURT: So the question is, which is Court Exhibit
12 No. 2, how deep did the knife penetrate the victim?

13 Obviously, I can't answer the question, so all I can do
14 is offer them to play back testimony. And the only
15 testimony that I can think of that would be able to discuss
16 that would be the doctor.

17 MR. NEYLE: Your Honor, I believe I asked him about
18 one-centimeter wounds. I think that was the only
19 information about the wounds.

20 MR. SCRUGGS: Yeah, I remember that. I don't know that
21 there was any other testimony about the depth or -- I don't
22 know if that referred to the width or the depth.

23 THE COURT: It would be for them to decide, I guess. I
24 can just say we can play back the testimony of the doctor.
25 I mean, I don't know if I should direct them there or not.

1 I could just ask -- usually, I just ask if they wish to have
2 testimony played back, then I can play the testimony back.
3 They just have to let me know which testimony -- who they
4 want heard -- to hear again.

5 MR. SCRUGGS: I think the only relevant person would be
6 the doctor.

7 THE COURT: Yeah, but I don't think I can direct them
8 towards the doctor. They've got to ask for it.

9 They didn't ask for the doctor's testimony, so.
10 Let's bring them in.

11 THE BAILIFF: They have another question.

12 THE COURT: Okay. Let's see.

13 What's the maximum and minimum time -- we'll mark this
14 as Court's Exhibit 3.

15 (Court's Exhibit No. 3 marked for identification.)

16 THE COURT: What's the maximum and minimum time for
17 attempted and for ABHAN?

18 Obviously, I can't discuss that with them. I will let
19 them know that they don't need to be concerned about any
20 sentencing. That's what I'll say.

21 You can bring them in.

22 (The jury enters the courtroom at 2:52 p.m.)

23 THE COURT: All right. Mr. Foreman and members of the
24 jury, I received your two questions. I've marked the first
25 one as Court's Exhibit 2. It says: How deep did the knife

1 penetrate the victim?

2 I can't remember. I told you, this is an issue of fact
3 for the jury to decide, so I cannot answer that question for
4 you. However, what I can do is play back any testimony that
5 you wish to have heard. So if there's a particular witness
6 that you wish to have the testimony replayed, we can play it
7 back for you. I don't have an actual transcript. She will
8 have to find it on the recording and we can play back the
9 testimony for you. You just need to let me know which
10 testimony you need to hear back.

11 THE FOREMAN: The doctor.

12 THE COURT: Okay. And then your next question is
13 what's the maximum and minimum time for attempted murder and
14 assault and battery of a high and aggravated nature?

15 Once again, that is an issue of law, so that is for the
16 Court to decide and not for you all to concern yourselves
17 with any sentencing.

18 Thank you. I'm going to send you back into the jury
19 room. We will need to find the doctor's testimony and then
20 we'll bring you back out once we do. Thank you.

21 (The jury exits the courtroom at 2:54 p.m.)

22 MS. NEYLE: The question was about how deep the wound
23 was. I would ask that the doctor's testimony be confined to
24 that specific issue, Judge, so they are not hearing the
25 entire testimony.

1 THE COURT: I have to play what they ask for. I don't
2 believe he was that long, was he?

3 MR. SCRUGGS: I think it was probably about 30 minutes,
4 maybe less.

5 THE COURT: The problem is, I can't direct them --

6 MS. NEYLE: I understand, Judge.

7 THE COURT: -- to the answer. I mean, I can't give
8 them the answer and I definitely can't direct them to the
9 answer. Obviously, I don't want to hear it over again.
10 Usually, they'll say can we have cross-examination or direct
11 examination. I guess we need to ask.

12 That was on your cross?

13 MS. NEYLE: Yes, Your Honor, during my cross.

14 THE COURT: Okay. Let me ask him -- you can bring him
15 in and I need to ask him if they need to hear the entire
16 testimony of the doctor.

17 THE BAILIFF: All of them?

18 THE COURT: No, just him, the Foreman.

19 MR. SCRUGGS: And, Judge, just briefly, the State
20 doesn't have an objection to just the cross being played.

21 MS. NEYLE: I think that would be fine, Judge.

22 THE COURT: I can ask him does he want it all or does
23 he want just the cross.

24 (The Foreman enters the courtroom.)

25 THE COURT: Mr. Foreman, the doctor's testimony, I did

1 not ask you, did you want to hear the entire testimony or --

2 THE FOREMAN: No, ma'am. I think he was asked how deep
3 the wound was.

4 THE COURT: So what I'll do is we're going to play the
5 cross-examination for you and if you need more, you let me
6 -- if you need more of the testimony, you let me know.

7 THE FOREMAN: Okay.

8 THE COURT: Thank you. We'll send you back out and
9 then have you back in.

10 (The Foreman exits the courtroom.)

11 (The jurors entered the courtroom at 3:10 p.m.)

12 (The requested testimony was played back for the jury.)

13 (The jury exits the courtroom at 3:15 p.m.)

14 (Court in recess awaiting a verdict.)

15 THE COURT: All right. They have a verdict. Please no
16 outburst when the jury comes in and the verdict is read from
17 anyone in the courtroom.

18 I'll bring them in. We'll have the clerk read the
19 verdict and then if you all want me to have them polled, we
20 can do that, also.

21 (The jury enters the courtroom at 3:36 p.m.)

22 THE COURT: Mr. Foreman, it's my understanding you all
23 have reached a verdict?

24 THE FOREMAN: Yes, ma'am.

25 THE COURT: And is that verdict unanimous?

1 THE FOREMAN: Yes, ma'am.

2 THE COURT: I'm going to ask you to hand it to the
3 bailiff, who will hand it up to me and I'll pass it on to
4 the clerk.

5 Thank you.

6 I will ask the clerk to publish the verdict.

7 THE CLERK: State of South Carolina, County of
8 Florence, State of South Carolina vs. Robert Lee Carter,
9 Jr., in the Court of General Sessions in the 12th Judicial
10 Circuit, indictment number 2019-GS-21-01497.

11 As to the indictment alleging attempted murder, we, the
12 jury, unanimously find the Defendant not guilty. As to the
13 lesser-included charge of assault and battery of a high and
14 aggravated nature, we, the jury, unanimously find the
15 Defendant guilty.

16 As to the indictment alleging armed robbery, we, the
17 jury, unanimously find the Defendant guilty.

18 As to the indictment alleging criminal conspiracy, we,
19 the jury, unanimous find the Defendant guilty.

20 Dated March the 16th, 2022, signed by Foreman Toby
21 Stevens.

22 THE COURT: Thank you.

23 Anything else for the jury before I release them?

24 MR. SCRUGGS: Not from the State, Your Honor.

25 MS. NEYLE: Your Honor, I ask to poll the jury.

1 THE COURT: Madam Clerk, can you poll the jury by
2 number?

3 THE CLERK: Juror No. 116, Emily Myers, please stand --

4 THE COURT: Just by number. Just call the juror
5 number.

6 THE CLERK: Juror No. 116, is this your verdict, was
7 this your verdict and is it still your verdict? Please
8 respond by saying yes.

9 JUROR NO. 116: Yes.

10 THE CLERK: Juror No. 165, is this your verdict and was
11 this your verdict?

12 JUROR NO. 165: Yes.

13 THE CLERK: Juror No. 143, was this your verdict and is
14 this still your verdict?

15 JUROR NO. 143: Yes.

16 THE CLERK: Juror No. 128, was this your verdict and is
17 this still your verdict?

18 JUROR NO. 128: Yes.

19 THE CLERK: Juror No. 54, was this your verdict and is
20 this still your verdict?

21 JUROR NO. 54: Yes.

22 THE CLERK: Juror No. 138, was this your verdict and is
23 this still your verdict?

24 JUROR NO. 138: Yes.

25 THE CLERK: Juror No. 10, was this your verdict and is

1 this still your verdict?

2 JUROR NO. 10: Yes, ma'am.

3 THE CLERK: Juror No. 1, was this your verdict and is
4 it still your verdict?

5 JUROR NO. 1: Yes.

6 THE CLERK: Juror No. 167, was this your verdict and is
7 it still your verdict?

8 JUROR NO. 167: Yes.

9 THE CLERK: Juror No. 98, was this your verdict and is
10 it still your verdict?

11 JUROR NO. 98: Yes.

12 THE CLERK: Juror No. 149, was this your verdict and is
13 it still your verdict?

14 JUROR NO. 149: Yes.

15 THE CLERK: Juror No. 147, was this your verdict and is
16 it still your verdict?

17 JUROR NO. 147: Yes.

18 THE COURT: Thank you.

19 Ladies and gentlemen of the jury, thank you for your
20 service here this week. As you can see, there are matters
21 that arise in this courtroom and courtrooms all across the
22 country that cannot be resolved without the assistance of 12
23 citizens like you.

24 On behalf of all the parties here, I do want to thank
25 you for your service. You all have been attentive and

1 paying attention throughout the trial and taking it serious,
2 so I do want to thank you for your service here.

3 Now, you can talk to anyone you wish to about the case,
4 or you don't have to speak to anyone at all. You can do any
5 research or anything else you want to do regarding the case.

6 Let me see you all one second.

7 (Sidebar conference.)

8 THE COURT: The State is prepared to proceed with
9 sentencing. If you would like to stay, you can. If you do
10 not wish to stay, you can leave.

11 So once again, thank you. If you need a work excuse --

12 Where do they need to go, Madam Clerk?

13 She has the work excuses. She'll see you all in the
14 back room.

15 If they want to come back in for sentencing, they can.
16 They can come back in and sit in the jury box.

17 Thank you. As I told our alternates, you do not have
18 to serve for another three years in this court. However,
19 that does not protect you from federal court, municipal
20 court or magistrate's court, but in this court, you do not
21 have to choose for another three years unless you choose to
22 serve.

23 (The jury exits the courtroom at 3:42 p.m.)

24 THE COURT: All right. We'll take a five-minute break
25 while he's getting the sentencing sheets.

1 MS. NEYLE: Your Honor, would you like me to renew all
2 my motions at this time?

3 THE COURT: Yes, ma'am, I'm sorry.

4 MS. NEYLE: Judge, at this time, I would renew all my
5 prior motions and objections. I'd also make a motion for a
6 new trial based on the evidence that's been presented by the
7 State is weak.

8 MS. LEFRIDGE: Your Honor, the State feels there was
9 sufficient evidence to find him guilty.

10 THE COURT: I am going to deny the motion for a new
11 trial, but your motions -- there was sufficient evidence
12 before the jury to render a verdict as they did, but your
13 motions are all preserved for the record.

14 MS. NEYLE: Thank you, Your Honor.

15 THE COURT: We'll take five minutes.

16 (Short recess.)

17 THE COURT: You may be seated.

18 MR. SCRUGGS: Your Honor, I have the sentencing sheets
19 ready, may I approach?

20 THE COURT: Yes, sir. I'll be glad to hear from you.

21 MR. SCRUGGS: Thank you, Your Honor, may it please the
22 Court. Of course, the Court has heard the facts that came
23 out at trial about this assault. One thing I would like to
24 note and emphasize to the Court, this was obviously an
25 assault that didn't have to involve a knife, but the

1 Defendant chose to introduce that into this assault and
2 robbery. This was also an attack on a vulnerable person who
3 was defenseless against this and, as we stated in our trial,
4 just kind of struggling on the edge of society and was
5 targeted by Mr. Carter and his brother.

6 If it pleases the Court, I can go through Mr. Carter's
7 prior criminal record at this time.

8 THE COURT: Yes, sir.

9 MR. SCRUGGS: Your Honor, Mr. Robert Carter's criminal
10 record in South Carolina begins in 1996. He was convicted
11 of burglary second degree violent. He got a 15-year
12 sentence suspended to five years probation. Public
13 disorderly conduct in 1996. In 1997, he was convicted of
14 possession of a stolen vehicle. He got a YOA sentence not
15 to exceed six years. In 1999, another public disorderly
16 conduct.

17 In 2000, the use of vehicle without permission. In the
18 same year, a criminal domestic violence first offense. In
19 2003, he was convicted of another burglary second degree,
20 but it was nonviolent. He was sentenced to 15 years
21 suspended to six months and two years probation. In 2004,
22 he was convicted of malicious injury to personal property.
23 In 2006, he was convicted of a third burglary. This was a
24 nonviolent second degree burglary. In 2007, criminal
25 domestic violence first offense. In 2007, public disorderly

1 conduct, possession of marijuana first offense, possession
2 of drug paraphernalia. In 2008, receiving stolen goods
3 between 1,000 and \$5,000. Also, in 2008, giving false
4 information, drinking alcohol in public, DUS third or more,
5 resisting arrest, operating an uninsured motor vehicle.
6 2013, he was placed on probation for a conviction of grand
7 larceny valued between 1,000 and 5,000. In 2014, looks like
8 he was convicted of breaking into motor vehicle. This was
9 either done at the same time or shortly thereafter, a
10 violation of his probation. That is his South Carolina
11 record.

12 He also has an out-of-state record from Georgia. Looks
13 like he pled guilty in 2010 to burglary and criminal
14 trespass in Georgia. He got, I believe, a prison sentence
15 and followed by seven years probation. He is banished from
16 the State of Georgia, accept for Richmond County.

17 Conviction in Florida for burglary of conveyance, grand
18 theft and fleeing or alluding a marked patrol car. And
19 that's from 2008.

20 Your Honor, I believe that's it, but as you can see,
21 he's got an extensive criminal history, including, I
22 believe, three or four burglaries from South Carolina and a
23 burglary from out of state.

24 So, Your Honor, we would ask for a significant prison
25 sentence. This is at a time when violent crime is on the

1 rise here in Florence County, across the state and across
2 the nation, unfortunately. We ask the Court to send a
3 message. Thank you.

4 THE COURT: Thank you.

5 Yes, ma'am, Ms. Neyle.

6 MS. NEYLE: Thank you, Your Honor. Mr. Carter is 45
7 years old. He has an eighth grade education. He was born
8 and raised in Florence County. He's from Johnsonville.
9 Judge, he's a pipe welder by trade and he's a father to an
10 adult daughter with whom he recently reconciled with, Judge.
11 He's had some previous drug addiction and mental health
12 issues, Judge, but in my course of representing him, I
13 haven't had any concerns about his mental health, Judge.

14 He is entitled to 1,030 days jail credit. I ask he be
15 given that jail credit and be as merciful as possible.

16 THE COURT: Let me have you stand up, Mr. Carter.

17 On indictment 2019-GS-21-1497, as to count one, so you
18 will be sentenced to the State Department of Corrections for
19 16 years. On indictment 2019-GS-21-1497, 16 years for count
20 two, which is the ABHAN. On indictment 2019-GS-21-1497,
21 five years. All sentences will run concurrent. You will be
22 given credit for the 1,030 that you have served.

23 Thank you. Good luck to you, sir.

24

25

CERTIFICATE OF REPORTER

STATE OF SOUTH CAROLINA)
COUNTY OF AIKEN)

I, PENNY M. JOHNSON, do hereby certify that the foregoing transcript is a true and correct record of the recorded proceedings; that said proceedings were transcribed to the best of my ability from the audio recording and supporting information; and that I am neither counsel for, related to, nor employed by any of the parties to this case, and I have no interest, financial or otherwise, in its outcome.

August 7, 2022

Penny M. Johnson
Penny M. Johnson
Official Court Reporter

STATE OF SOUTH CAROLINA

COUNTY OF Florence

STATE

VS.

Robert Lee Carter Jr

AKA:

City, State, Zip:

SID#

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2019-GS-21-01497AW#: 2019A2120200927Date of Offense: 5/21/2019S.C. Code §: 16-03-0029CDR Code #: 3410

SENTENCE SHEET

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐In disposition of the above indictment comes now the Defendant who was ☒ CONVICTED OF or ☐ PLEADSTO: Assault/ Assault & Battery of a High & Aggravated Nature (0-2 yrs)In violation of § 16-03-0600(B)(1) of the S.C. Code of Laws, bearing CDR Code # 3411☐ NON-VIOLENT ☒ VIOLENT ☒ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS ☐ § 17-25-45(CSC w/minor 1st or CSC w/minor 3rd)The charge is: ☐ As indicted, ☒ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (def.'s initials)The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

[Signature] 100889 [Signature] 100635
 Solicitor SC Bar # Defendant Attorney for Defendant SC Bar #

WHEREFORE, the Defendant is committed to the ☒ State Department of Correction ☐ County Detention Center,for a determinate term of 16 days/months/years/Time Served ☐ Youthful Offender Act not to exceed yearsand/or to pay a fine of \$; provided that upon the service of days/months/years/Time Served and or paymentof \$, plus costs and assessments as applicable*; the balance is suspended with probation for

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

The sentence shall run

☒ 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.1030 days/months☐ To include time spent on monitored house arrest prior to trial and sentencing.☐ The Defendant Shall be Released from County Detention Center.

Pursuant to 18 U.S.C. § 922 and § 16-25-30 it is unlawful for a person convicted of a violation of § 16-25-20 or § 16-25-65 (Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

STATE VS. Robert Lee Carter Jr INDICTMENT/CASE#: 2019-GS-21-01497

SPECIAL CONDITIONS:

☐ PTUP after _____ months/years

And Other Terms Listed Below:

- ☐ Substance Abuse Counseling ☐ Completion of GED ☐ Random Drug/Alcohol Testing
- ☐ Attend Voc. Rehab. Or Job Corp ☐ No Contact with Victim ☐ Domestic Violence Intervention Program
- ☐ Mental Health Counseling ☐ May serve W/E beginning: _____
- ☐ Sex Offender Registry pursuant to S.C. Code § 23-3-430 ☐ Public Service Employment _____ days/hours
- ☐ Central Registry of Child Abuse and Neglect pursuant to S.C. Code § 17-25-135.
- ☐ Other: _____

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered

Total \$ _____ plus 20% fee: _____ \$ _____

Payment Terms: _____ ☐ Set by SCDPPPS

Recipient: _____

*Fine:

Fine may be pd. in equal consecutive weekly/monthly pmts. of \$ _____ Beginning _____

\$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	\$
\$14-1-212 (Law Enforce. Funding)	\$25	\$ 25.00
\$14-1-213 (Drug Court Surcharge)	\$150	\$
\$34-11-70(b)and(c), and 34-11-90(c)and(d) (Admin Fraud Check Court Costs)	\$41	\$
\$50-21-114 (BUI Breath Test Fee)	\$50	\$
\$56-5-2942(J) (Vehicle Assessment)	\$40/ea	\$
3% to County (if paid in installments)	TBD	\$ 3.75

- ☐ Appointed PD or appointed other counsel, Proviso requires \$500 be paid to Clerk during probation and shall be collected before any other fees
- ☐ § 17-3-30(B) Unpaid Application Fee to be paid to the Public Defender Fund

\$500	\$
TBD	\$ 40.00
TOTAL	\$ 168.75

Clerk of Court/Deputy Clerk: E. Raper

Court Reporter: Digital by Raper

Presiding Judge: _____

Judge Code: 2161

Sentence Date: 3-16-22

STATE OF SOUTH CAROLINA

COUNTY OF Florence

STATE

VS.

Robert Lee Carter Jr

AKA:

SID#

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2019-GS-21-01497

ANW#: 2019A2120200928

Date of Offense: 5/21/2019

S.C. Code §: 16-11-0330(A)

CDR Code #: 0139

SENTENCE SHEET

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

In disposition of the above indictment comes now the Defendant who was ☒ CONVICTED OF or ☐ PLEADS

TO: Robbery / Armed Robbery, robbery while armed or allegedly armed with a deadly weapon (10-30 yrs)

In violation of § 16-11-0330(A) of the S.C. Code of Laws, bearing CDR Code # 0139

☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☒ MOST SERIOUS ☐ Mandatory GPS ☐ § 17-25-45

(CSC w/minor 1st or CSC w/minor 3rd)

The charge is: ☒ As indicted, ☐ Lesser Included Offense. ☐ Defendant Waives Presentment to Grand Jury. (def.'s initials)

The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTESI:

Solicitor

SC Bar #

Defendant

Attorney for Defendant

SC Bar #

WHEREFORE, the Defendant is committed to the ☒ State Department of Correction ☐ County Detention Center,

for a determinate term of 16 days/months/years/Time Served ☐ Youthful Offender Act not to exceed years

and/or to pay a fine of \$; provided that upon the service of days/months/years/Time Served 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.

The sentence shall run

☒ 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.

7 1030 days months

To include time spent on monitored house arrest prior to trial and sentencing.

☐ The Defendant Shall be Released from County Detention Center.

Pursuant to 18 U.S.C. § 922 and § 16-25-30 it is unlawful for a person convicted of a violation of § 16-25-20 or § 16-25-65 (Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

STATE VS. Robert Lee Carter Jr INDICTMENT/CASE#: 2019-GS-21-01497

SPECIAL CONDITIONS:

☐ PTUP after _____ months/years

And Other Terms Listed Below:

- ☐ Substance Abuse Counseling ☐ Completion of GED ☐ Random Drug/Alcohol Testing
☐ Attend Voc. Rehab. Or Job Corp ☐ No Contact with Victim ☐ Domestic Violence Intervention Program
☐ Mental Health Counseling ☐ May serve W/E beginning: _____
☐ Sex Offender Registry pursuant to S.C. Code § 23-3-430 ☐ Public Service Employment _____ days/hours
☐ Central Registry of Child Abuse and Neglect pursuant to S.C. Code § 17-25-135.
☐ Other: _____

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered

Total \$ _____ plus 20% fee: _____ \$ _____

Payment Terms: _____ ☐ Set by SCDPPPS

Recipient: _____

***Fine:**

Fine may be pd. in equal consecutive weekly/monthly pmts. of \$ _____ Beginning _____

§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	\$	
§14-1-212 (Law Enforce. Funding)	\$25	\$	25 ⁰⁰
§14-1-213 (Drug Court Surcharge)	\$150	\$	
§34-11-70(b)and(c), and 34-11-90(c)and(d) (Admin Fraud Check Court Costs)	\$41	\$	
§50-21-114 (BUI Breath Test Fee)	\$50	\$	
§56-5-2942(J) (Vehicle Assessment)	\$40/ea	\$	
3% to County (if paid in installments)	TBD	\$	375
☐ Appointed PD or appointed other counsel, Proviso requires \$500 be paid to Clerk during probation and shall be collected before any other fees	\$500	\$	
☐ § 17-3-30(B) Unpaid Application Fee to be paid to the Public Defender Fund	TBD	\$	
TOTAL		\$	128.75

Clerk of Court/Deputy Clerk: E. Ragan
 Court Reporter: Digital Reporter

Presiding Judge: VPB
 Judge Code: 2161
 Sentence Date: 3-16-22

STATE OF SOUTH CAROLINA

COUNTY OF Florence

STATE

VS.

Robert Lee Carter Jr

~~SECRET~~

[REDACTED]
 [REDACTED]
 [REDACTED]
 [REDACTED]
 [REDACTED] SID# [REDACTED]

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2019-GS-21-01497

AW#: 2019GS2101497A

Date of Offense: 5/21/2019

S.C. Code §: 16-17-0410

CDR Code #: 0049

SENTENCE SHEET

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

In disposition of the above indictment comes now the Defendant who was ☒ CONVICTED OF or ☐ PLEADS

TO: Conspiracy / Criminal Conspiracy, Common Law conspiracy defined (0-5 yrs)

In violation of § 16-17-0410 of the S.C. Code of Laws, bearing CDR Code # 0049

☒ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS ☐ § 17-25-45
(CSC w/minor 1st or CSC w/minor 3rd)

(CSC w/minor 1st or CSC w/minor 3rd)

The charge is: ☒ As indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (def.'s initials)

The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

	100889			100635
Solicitor	SC Bar #	Defendant	Attorney for Defendant	SC Bar #

WHEREFORE, the Defendant is committed to the ☒ State Department of Correction ☐ County Detention Center,

for a determinate term of 5 days/months/years/Time Served ☐ Youthful Offender Act not to exceed years

and/or to pay a fine of \$ 100; provided that upon the service of 30 days/months/years/Time Served and or payment of \$ 100; plus costs and assessments as applicable*; the balance is suspended with **probation** for 30

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

The sentence shall run

☒ 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.
1030 (days/months)

1030 days/months

☐ To include time spent on monitored house arrest prior to trial and sentencing.

☐ The Defendant Shall be Released from County Detention Center.

Pursuant to 18 U.S.C. § 922 and § 16-25-30 it is unlawful for a person convicted of a violation of § 16-25-20 or § 16-25-65 (Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

STATE VS. Robert Lee Carter Jr INDICTMENT/CASE#: 2019-GS-21-01497

SPECIAL CONDITIONS:

☐ PTUP after _____ months/years

And Other Terms Listed Below:

- ☐ Substance Abuse Counseling ☐ Completion of GED ☐ Random Drug/Alcohol Testing
☐ Attend Voc. Rehab. Or Job Corp ☐ No Contact with Victim ☐ Domestic Violence Intervention Program
☐ Mental Health Counseling ☐ May serve W/E beginning: _____
☐ Sex Offender Registry pursuant to S.C. Code § 23-3-430 ☐ Public Service Employment _____ days/hours
☐ Central Registry of Child Abuse and Neglect pursuant to S.C. Code § 17-25-135.
☐ Other: _____

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered

Total \$ _____ plus 20% fee: _____ \$ _____

Payment Terms: _____ ☐ Set by SCDPPPS

Recipient: _____

*Fine:

Fine may be pd. in equal consecutive weekly/monthly pmts. of \$ _____ Beginning _____

§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	\$
§14-1-212 (Law Enforce. Funding)	\$25	\$ 25.00
§14-1-213 (Drug Court Surcharge)	\$150	\$
§34-11-70(b)and(c), and 34-11-90(c)and(d) (Admin Fraud Check Court Costs)	\$41	\$
§50-21-114 (BUI Breath Test Fee)	\$50	\$
§56-5-2942(J) (Vehicle Assessment)	\$40/ea	\$
3% to County (if paid in installments)	TBD	\$ 3.75
☐ Appointed PD or appointed other counsel, Proviso requires \$500 be paid to Clerk during probation and shall be collected before any other fees	\$500	\$
☐ § 17-3-30(B) Unpaid Application Fee to be paid to the Public Defender Fund	TBD	\$

TOTAL \$ 128.75

Clerk of Court/Deputy Clerk:
Court Reporter:

E. R. R. R.
Digital CP Reporter

Presiding Judge:
Judge Code:
Sentence Date:

1/13
2161
3-16-22

WITNESSES

John S. Davis Florence Police Department

RECEIVED
MAR 29 2012
SC Court of Appeals

Ryan White

ARREST WARRANT NUMBER

2019A2120200928 2019A2120200927
2019GS2101497A

ACTION OF GRAND JURY

TRUE BILL

Foreperson of Grand Jury
Date: 9/26/2019

VERDICT

Foreperson of Petit Jury

Date:

DOCKET NO. 2019-GS-21-01497

The State of South Carolina

County of

FLORENCE

COURT OF GENERAL SESSIONS

SEPTEMBER TERM 2019

THE STATE

vs.

ROBERT LEE CARTER, JR.

Indictment for

ARMED ROBBERY;
ATTEMPTED MURDER; AND
CRIMINAL CONSPIRACY

2019 SEP 27 11:11
FILED

RECEIVED

STATE OF SOUTH CAROLINA)

INDICTMENT FOR

MAR 29 2022

COUNTY OF FLORENCE

SC Court of Appeals

ARMED ROBBERY;
ATTEMPTED MURDER; AND
CRIMINAL CONSPIRACY

At a Court of General Sessions, convened on SEPTEMBER 26, 2019 the Grand Jurors of FLORENCE County present upon their oath:

COUNT ONE- ARMED ROBBERY

CDR: 0139 16-11-0330(A)

That ROBERT LEE CARTER, JR. did in Florence County on or about May 21, 2019, while armed with a deadly weapon, to wit: a knife, take and carry away personal property of Thomas McElveen from or in the immediate presence of Thomas McElveen with intent to deprive Thomas McElveen of possession by use of force, threats or intimidation, in violation of Section 16-11-0330(A), S. C. Code of Laws, 1976, as amended.

COUNT TWO- ATTEMPTED MURDER

CDR: 3410 16-03-0029

That ROBERT LEE CARTER, JR. did in Florence County on or about May 21, 2019, with intent to kill Thomas McElveen, attempt to kill the victim with malice aforethought, in violation of Section 16-3-29, S. C. Code of Laws, 1976, as amended.

COUNT THREE - CRIMINAL CONSPIRACY

CDR: 0049 16-17-0410

That ROBERT LEE CARTER, JR. did in Florence County on or about May 21, 2019 combine with Leonard Allen Carter, and/or with other persons, for the purpose of accomplishing a criminal or unlawful object or an object that is neither criminal nor unlawful through criminal or unlawful means, to wit: Armed Robbery, in violation of Section 16-17-410, S. C. Code of Laws, 1976, as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.



E.L. Clements, III
TWELFTH CIRCUIT SOLICITOR

CERTIFICATE OF COUNSEL FOR APPELLANT

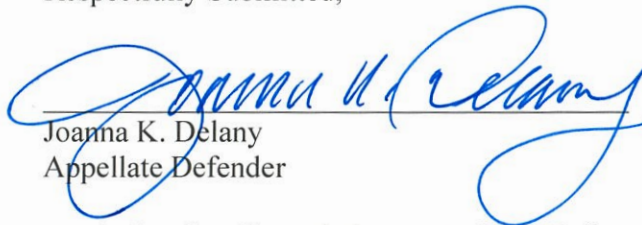
Counsel for appellant certifies that this Record on Appeal contains all material proposed to be included by any of the parties and not any other material and that this Record on Appeal complies to the best of my ability with the April 15, 2014 order from the South Carolina Supreme Court entitled "Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings."

Respectfully Submitted,

RECEIVED

Dec 09 2022

SC Court of Appeals



Joanna K. Delany
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589

ATTORNEY FOR APPELLANT

This 9th day of December, 2022.

RECEIVED

Dec 09 2022

SC Court of Appeals

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Florence County

Honorable DeAndrea G. Benjamin, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

ROBERT LEE CARTER, JR.

APPELLANT

APPELLATE CASE NO. 2022-000396

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 William M. Blich, Jr., Esquire, at the primary email address listed within the Attorney Information System (AIS), this 9th day of December, 2022.



Joanna K. Delany
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, S.C. 29211-1589

ATTORNEY FOR APPELLANT