

STATE OF SOUTH CAROLINA  
IN THE COURT OF APPEALS

**ORIGINAL**

Appeal from Horry County

Benjamin H. Culbertson, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

PHILIP DAVID GUDERYON,

APPELLANT

APPELLATE CASE NO. 2017-002168

RECORD ON APPEAL

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**THE FOLLOWING EXHIBITS ARE ON FILE WITH THIS COURT:  
STATE'S EXHIBIT #7 (DVD SLED Surveillance), STATE'S EXHIBIT #8 (DVD  
Statement of Defendant); STATE'S EXHIBIT #9 (DVD SLED Video); STATE'S EXHIBIT  
#10 (DVD SLED Still Pics); STATE'S EXHIBIT #16 (Photograph)**

STATE OF SOUTH CAROLINA ) IN THE COURT OF GENERAL SESSIONS

COUNTY OF Horry ) 2016-GS-26-00382

STATE OF SOUTH CAROLINA, )

Plaintiff, ) Transcript of Record

vs. )

October 9-12, 2017

PHILIP DAVID GUDERYON, )

Defendant. )

**B E F O R E:**

Honorable Benjamin H. Culbertson  
Horry County Courthouse  
Conway, South Carolina

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

Joshua D. Holford, Esquire  
Cara J. Walker, Esquire  
**Attorney for Plaintiff**

J. Eric Fox, Esquire  
**Attorney for Defendant**

Kay H. Richardson  
**Circuit Court Reporter**

1 MR. FOX: None, Your Honor.

2 THE COURT: All right. Ladies and gentlemen, we'll begin  
3 the trial with the opening statements by the attorneys and as  
4 I told you, these opening statements are not evidence, it is  
5 just their contention as to what the issues in this case are.  
6 Ms. Walker?

7 OPENING BY WALKER:

8 MS. WALKER: Good morning. In a lot of ways, life kinda  
9 boils down to a series of decisions and consequences, cause  
10 and effect. In -- in this case, the reason why we're here  
11 this week, is because a decision made by the Defendant, Philip  
12 Guderyon.

13 Now on or about October 17th, 2015, the Defendant punched  
14 in the head the victim, Justin Hodges. This was not a bar  
15 fight, a brawl, any sort of fight that he was responding to.  
16 He just took liberty to punch the victim in the back of the  
17 head and as a result of that decision of his intentional act  
18 to punch the victim, there were serious consequences. There  
19 are very dire consequences in this decision. The consequence  
20 to Justin Hodges ended up being severe brain trauma. Justin  
21 had to undergo a number of surgeries trying to remedy the  
22 damage done by the Defendant.

23 Now it's important that I let you guys know from the  
24 outset that Justin did ultimately die as a result of his  
25 injuries. And I tell you that because where you're sitting in

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OPENING BY WALKER

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1 the jury box, it could seem pretty peculiar to hear that and  
2 wonder why you're not here for a murder trial. And my  
3 position is that it's a pretty straightforward answer. The  
4 State has a very high responsibility to make sure that each  
5 crime committed receives the appropriate charge and that each  
6 crime that our office has to prove, that we can prove each  
7 element of those crimes. And so in this case, the State does  
8 not and would not have the evidence to show that the Defendant  
9 premeditated and intended to kill the victim. However, the  
10 evidence that the State does have and will show throughout the  
11 course of this trial is that the Defendant did intentionally  
12 and unlawfully strike the victim on the head causing great  
13 bodily injury in the form of severe brain trauma. So far that  
14 might seem pretty straightforward, but you are gonna need to  
15 know a couple of other people who were there that night before  
16 you can get a better picture of everything that happened.

17 So, there was a guy named Jimer. His real name is  
18 real name is James Petrocine, but he goes by the nickname,  
19 Jimer. There's a woman, a young lady, named Mariah Stevens.  
20 Mariah was the girlfriend at the time of Justin Hodges' death.  
21 She was his girlfriend. So on October 16th, 2015, Mariah and  
22 Justin and one of Mariah's friends went out to Carlos'n  
23 Charlie's at Broadway at the Beach for a night out. They're  
24 in their mid to early 20s, they're just going out for a night  
25 of fun at Broadway at the Beach. Once they got there, they

1 started playing a game of pool, enjoying themselves, not --  
2 you know, nothing notable happened.

3 On that same night, October 16th, Jimer and a group of  
4 his friends made their way to Carlos'n Charlie's. Among that  
5 group of friends was the Defendant, Philip Guderyon. He was  
6 visiting from out of town and just along for the ride to be  
7 there with his friend, Jimer, and some of Jimer's friends.  
8 So, once everybody got to Carlos'n Charlie's, everybody's  
9 having a good time, nothing going on, nothing really  
10 noteworthy. At some point, Mariah runs into Jimer. The two  
11 of them are old acquaintances, so they greet each other, and  
12 during this greeting, this interaction, Jimer inappropriately  
13 touched Mariah.

14 Now, this happened outside of the presence of Justin, her  
15 boyfriend. He did not see it, so did not respond right away.  
16 Mariah then reports back to Justin what had happened and for  
17 intents and purposes, Justin and Jimer are not friends with  
18 each other. They don't really know each other, but no beef,  
19 no past, no history, didn't have a reason for a quarrel, but  
20 Justin understandably took exception with a guy touching his  
21 girlfriend in an inappropriate way, so he went to confront  
22 Jimer. And it's important that you know that he did so with  
23 his words. He used his words to call Jimer out on what he  
24 did. He did not go to him with physical violence. He didn't  
25 go looking for a fight; he just called him out. And it was by

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OPENING BY WALKER

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1 Jimer's own account that there was no problem, shook hands,  
2 settled it, moved on. However, it was sometime later that  
3 evening when Jimer and Justin are facing one another talking.  
4 You can see that they're having some sort of conversation that  
5 the Defendant takes it on himself to insert himself into a  
6 situation that had nothing to do with him, by coming up from  
7 behind Justin Hodges and punching him in the head. The reason  
8 why we know this happened is because we're fortunate enough in  
9 this case to have surveillance footage to share with you.  
10 And, I'd be lying if I told you that it was the best footage  
11 we've ever seen. It's pretty grainy and not the best quality,  
12 but it does depict the incident. It depicts the unprovoked  
13 attack on Justin Hodges. It shows Jimer and Justin standing  
14 there, not fighting, and the Defendant, who is later  
15 identified by his friend, Jimer, coming from behind and  
16 punching the victim.

17 So, in addition to the surveillance footage, you're gonna  
18 receive a lot of other evidence in this case. It's mainly  
19 gonna be by way of testimony from different people. You're  
20 going to hear from at least three different people who were  
21 there that night. You're gonna hear from Jimer, whose gonna  
22 give his account of everything he recalls that night. You're  
23 gonna hear from a man named David Hayes. He was one of the  
24 other individuals in the friend group with Jimer that night  
25 who was there. You're also gonna hear from Mariah Stevens.

1 You're gonna hear from her about what her experience was that  
2 night at Carlos'n Charlie's. You're also going to get the  
3 benefit of hearing from several different law enforcement  
4 officers who played key roles in developing the case and  
5 investigating it. And before the trial is over, you're also  
6 going to hear from Dr. Cheatle. Dr. Cheatle is a neurosurgeon  
7 and he is the man who performed surgery on Justin to attend to  
8 the injuries caused by the trauma from the punch to his head.

9 So, it's gonna be a lot of information, a lot of  
10 different people's names, some people have nicknames. We're  
11 gonna do our best to give you all that information as clearly  
12 and succinctly as possible so that your job as jurors is easy  
13 as possible.

14 We thank you for being here this week. I know that you  
15 all have lives that you've taken valuable time out of to be  
16 here and for that we're grateful. I just ask that you give  
17 every single bit of evidence your attention and the  
18 seriousness that it needs so that you can ultimately use it in  
19 helping to reach your decision on what happens in this case.  
20 And I'm confident though that once you've received all of the  
21 evidence at the close of the case, that the only verdict that  
22 can be reached in this case is guilty for the charge of  
23 assault and battery of a high and aggravated nature.

24 THE COURT: Mr. Fox?

25 OPENING BY FOX:

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OPENING BY FOX

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1 MR. FOX: Thank you, Your Honor, may it please the Court.

2 Good morning, ladies and gentlemen, my name is Eric Fox.

3 You've probably figured out I'm here today and this week my  
4 privilege to represent David or Philip, Philip David Guderyon  
5 is the citizen accused, the Defendant today.

6 I always like to remind jurors at the beginning that, as  
7 Judge Hyman I believe addressed you downstairs, you're in  
8 criminal court, General Sessions court. The Judge, at the end  
9 of the case, will define for you what reasonable doubt is and  
10 what the State's burden of proof is and I like to point it out  
11 right up front because we're not in civil court. We're not  
12 here over a lawsuit, we're not here over a traffic accident or  
13 a contract or suit over money; we're here on a criminal case.  
14 And the burden of proof in criminal court is the highest  
15 burden we have in our legal system.

16 In civil court if you think those scales of justice, the  
17 burden is preponderance of the evidence. So, in other words,  
18 whichever side that can tilt those scales even slightly in  
19 their favor, is entitled to a judgment in their favor.

20 Criminal court is a higher burden, beyond a reasonable  
21 doubt. You'll decide if the State has satisfied that, but it  
22 takes more than just tilting the scales; they've got to really  
23 move the scales. They've got to leave you firmly convinced  
24 of, in this case, Mr. Guderyon's guilt of assault battery of a  
25 high and aggravated nature.

1           It probably goes without saying, that if there was no  
2 dispute on what happened and how it came to happen, we  
3 wouldn't be here. So, the Solicitor stated what the State  
4 intends to try to prove and convince you all of. I don't  
5 intend to go through point by point this morning and debate  
6 all those things with you other than to say, it's just not  
7 quite that simple.

8           I think this is a bar fight. Was it a big brawl like you  
9 see in the movies or a western or something, with chairs  
10 crashing over people's head and pool cues coming out and  
11 broken bottles; no, it was nothing like that. But it was  
12 literally a fight in a bar. Two young men puffing up over a  
13 girl. One of them a good friend of Mr. Guderyon's. I think  
14 the evidence will show, he did not just come out -- the State  
15 does not have to prove motive, but ask yourself, why did he  
16 just jump up and come flying from behind and punch this guy in  
17 the back of the head, this guy that he doesn't even know.  
18 There's a reason. This is not a whodunit, all right? We know  
19 Philip punched Justin Hodges, that we know. The question is  
20 why and under what circumstances. We will offer you evidence  
21 that this was in response to a perceived threat from Mr.  
22 Hodges, self-defense, the witnesses and evidence that I  
23 believe will support that version of events. I know it will  
24 support that version of events. I'm gonna give you two words  
25 now and I'll explain them at the end of the case, Silver

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1 Blaze. All right? Just remember that phrase, Silver Blaze,  
2 all right? Sometimes what you don't see and hear is just as  
3 important as what you do. All right? A lack of evidence can  
4 be just as important as what you will have in front of you and  
5 I will tell you without boring you with the details at this  
6 point, the video that you will see is absolutely of extremely  
7 poor quality. You could certainly reach some conclusions from  
8 what you will see, but what you don't have is absolutely far  
9 more important than what you will have. Ad I'll have someone  
10 here to explain to you later in the week what it is you don't  
11 have. All right?

12 The State -- it's undisputed that Mr. Hodges was hit,  
13 that he was hurt, that he fell as a result of this hit,  
14 possibly and likely bumped his head on something or the floor,  
15 but no question he sustained injuries. You'll hear testimony  
16 from doctors as to what those injuries were and their efforts  
17 to treat those injuries and that ultimately, he passed away.  
18 That is a tragedy beyond words from such a really silly,  
19 stupid event. It never should have come to that. Nobody  
20 wanted that to happen, but here we are. I don't in any way  
21 mean to minimize the results, but you all swore an oath to be  
22 fair and impartial jurors and to decide this case on the  
23 evidence and not upon any emotion or any sympathy. That  
24 doesn't mean you don't have emotion or sympathy for the Hodges  
25 family. It simply means your verdict must be based on the

1 evidence you have in front of you and not out of the feeling  
2 of sympathy that this poor young man died.

3 In that sense, and only in that sense, the death is not  
4 material to your decision. Assault and battery of a high and  
5 aggravated nature is just that. It's unlawful assault, the  
6 Judge will define this word exactly, but it's an unlawful  
7 assault that results in great bodily injury. Death is not an  
8 element that the State has to prove to you. It's there, it's  
9 a fact to this case, but it is not something that has to be  
10 proved as far as determining whether or not they have met  
11 their burden of proof that Mr. Guderyon is guilty of assault  
12 and battery of a high and aggravated nature and it's not  
13 relevant to the issue of self-defense. You will decide that.  
14 Those are what we call factual issues. You are the finder of  
15 the facts; you decide as best you can without having been  
16 there, what the facts are.

17 I urge you to remember your oath as you go forward. It  
18 doesn't mean that you don't have sympathy, but it simply means  
19 that's not a factor in your determination of guilt or  
20 innocence in this case.

21 The last thing I would say is I would disagree with any  
22 suggestions that the State has done Mr. Guderyon a favor by  
23 not going forward with the charge involving an element of  
24 death, murder for example. And by all -- they imply that  
25 we're doing them a favor by going forward on this aggravated

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OPENING BY FOX

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1 assault instead, we're just doing our job. Mr. Guderyon was  
2 indicted for involuntary manslaughter as well, which is the  
3 unlawful killing of another with criminal negligence. We  
4 disagree that even that applies, but the State has elected to  
5 go forward on a charge of ABHAN rather than one that involved  
6 death and I simply point that out to you. They've made the  
7 election on how to proceed. They've proceeded I'm sure in the  
8 way they feel puts Mr. Guderyon with the maximum jeopardy and  
9 not out of any feeling of sympathy for him.

10 Ladies and gentlemen, I will talk to you again at the end  
11 of the case and I'll explain Silver Blaze means, and I believe  
12 after I explain that and you've heard all of the evidence and  
13 not just from the State, but from my witnesses as well, that  
14 you'll agree that the proper verdict in this case is not  
15 guilty. Thank you.

16 THE COURT: All right, ladies and gentlemen, we'll begin  
17 the evidentiary portion of the trial at this time with the  
18 State's first witness. State can call your first witness?

19 MR. HOLFORD: The State calls Jorge Estrada.

20 THE COURT: All right.

21 CLERK: Raise your right hand and place your left hand on  
22 the Bible.

23 MR. HOLFORD: Your Honor, we do have an interpreter for  
24 Mr. Estrada.

25 THE COURT: Okay. So let's -- we'll need to swear in the

1 interpreter first.

2 MERCEDES GUORDINO, HAVING BEEN DULY  
3 SWORN, INTERPRETS THE FOLLOWING TESTIMONY:

4 JORGE ESTRADA RODRIGUEZ, HAVING BEEN  
5 DULY SWORN TESTIFIES AS FOLLOWS:

6 CLERK: Please be seated. Please state your full name  
7 and spell your last name.

8 THE COURT: The interpreter will need to interpret.

9 CLERK: Okay.

10 MR. RODRIGUEZ: Jorge Alberto Estrada Rodriguez.

11 THE COURT: All right. Before we get started, ladies and  
12 gentlemen of the jury, you're about to hear testimony from a  
13 witness who will be using an interpreter. Now, some of you  
14 may have knowledge in the language, Hispanic language, Spanish  
15 or whatever the case may be. However, you cannot rely on your  
16 own knowledge. Even if you disagree with the interpreter's  
17 translation, you must accept that the translation of the  
18 witness' testimony through the translator. All right?

19 MR. HOLFORD: Thank you, Your Honor.

20 THE COURT: Go ahead.

21 DIRECT EXAMINATION OF JORGE ESTRADA RODRIGUEZ BY MR. HOLFORD:

22 Q: Mr. Estrada, can you tell us where you work?

23 A: I work for Group (inaudible). I used to work for  
24 Carlos'n Charlie's.

25 THE COURT: Okay. Hold for a second. You can either use

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JORGE ESTRADA RODRIGUEZ - DIRECT BY HOLFORD

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1 an interpreter or you can testify in English. You can't do  
2 both. Do you wish to use an interpreter or do you wish to  
3 testify in English; which do you wish to do? Explain that to  
4 him. All right. You cannot testify in English and use an  
5 interpreter. Do you wish to testify in English or through an  
6 interpreter?

7 (REPORTER'S NOTE: Responses are translated by interpreter.)

8 A: By means of the interpreter.

9 THE COURT: Okay. And you can only use the interpreter.

10 A: Okay.

11 THE COURT: All right. Let's start over.

12 BY MR. HOLFORD:

13 Q: Mr. Estrada, where do you work?

14 A: Carlos'n Charlie's.

15 Q: And were you working at Carlos'n Charlie's in November  
16 2015?

17 A: Yes.

18 Q: And the preceding month in October of 2015?

19 A: No, not at that time.

20 Q: What time did -- what years were you working in Carlos'n  
21 Charlie's?

22 A: From 2012 to 2015 when they closed.

23 Q: And does Carlos'n Charlie's -- did Carlos'n Charlie's  
24 have a video surveillance system?

25 A: Yes.

1 Q: What was your position at Carlos'n Charlie's in 2015?

2 A: The manager.

3 Q: Were you able to operate the video system?

4 A: Yes.

5 Q: Were you able to change anything about it or were you  
6 able to turn it on and off?

7 A: Yes, but no changes.

8 Q: Did officers ever come to Carlos'n Charlie's to retrieve  
9 video from your surveillance system?

10 A: Yes.

11 Q: And did you turn over a video in relation to this case?

12 A: Correct.

13 Q: But had you made any changes to that video before turning  
14 it over?

15 A: No, none.

16 Q: No further questions at this time.

17 THE COURT: Cross examination?

18 CROSS EXAMINATION OF JORGE ESTRADA RODRIGUEZ BY MR. FOX:

19 Q: Mr. Estrada, do you know who installed or set up the  
20 video system at Carlos'n Charlie's?

21 A: Since I started to work there, it was always there.

22 Q: Were you familiar with the settings on that video system?

23 A: No.

24 Q: When the police came to Carlos'n Charlie's and requested  
25 the video from October 17th, 2015, do you recall how many

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JORGE ESTRADA RODRIGUEZ - CROSS BY FOX

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1 hours of video or what the timeframe was that they requested?

2 A: I don't remember.

3 Q: But you turned over whatever it was that they requested?

4 A: Correct.

5 Q: Who was responsible for the maintenance of that -- of  
6 that system, the surveillance system?

7 A: The company.

8 Q: Do you know the name of the company?

9 A: No.

10 Q: Would they be called to come out on a regular basis or  
11 only if problems arose?

12 A: When it was needed.

13 Q: Do you recall prior to turning this -- the date when you  
14 turned over the video to the police officers, do you recall  
15 the last time that there needed to be service on this system?

16 A: No, I don't remember.

17 Q: How many cameras were in the, in the club?

18 A: More than 10 cameras.

19 Q: More than 10. All right. And I assume they were at  
20 different locations throughout the club?

21 A: Correct.

22 Q: Thank you. No further questions.

23 THE COURT: Redirect?

24 MR. HOLFORD: Nothing, Your Honor.

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

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TODD MCPHERSON - DIRECT BY HOLFORD

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1 A: Thank you.

2 THE COURT: Thank you. The State can call your next  
3 witness.

4 MR. HOLFORD: The State calls Sergeant MacPherson.

5 THE COURT: All right.

6 CLERK: Please raise your right hand and place your left  
7 hand on the Bible.

8 TODD MACPHERSON, HAVING BEEN DULY  
9 SWORN TESTIFIES AS FOLLOWS:

10 CLERK: Please state your full name and spell your last  
11 name?

12 MR. MACPHERSON: Todd MacPherson, M-A-C-P-H-E-R-S-O-N.

13 DIRECT EXAMINATION OF TODD MACPHERSON BY MR. HOLFORD:

14 Q: Mr. MacPherson, can you give the jury your rank at the  
15 moment?

16 A: I'm a sergeant with the Myrtle Beach Police Department.

17 Q: Sergeant, where are you currently -- how long have you  
18 been at Myrtle Beach Police Department?

19 A: For 20 years.

20 Q: And how long have you been a sergeant?

21 A: Just a couple of months.

22 Q: And so what was your position before becoming a sergeant?

23 A: I was a detective mostly in the violent crimes section  
24 and the property crimes section.

25 Q: And what was your position back October 16th and 17th of

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TODD MCPHERSON - DIRECT BY HOLFORD

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1 2015?

2 A: I know I was in detectives. I don't remember what  
3 section.

4 Q: And how long had you been a detective?

5 A: It was second stint as a detective. I think I was there  
6 probably five years the first time and at that time probably  
7 two years second time, so seven years total.

8 Q: And will you just tell the jury a little bit about what  
9 are your roles and responsibilities as a detective?

10 A: Investigate crimes. We work together as a team a lot.  
11 Whether you're a lead on a crime or assisting out, just try to  
12 document your findings, just gather facts and, you know, relay  
13 those facts to people in court.

14 Q: And in this case, with Philip Guderyon, were you the lead  
15 investigator?

16 A: I was not.

17 Q: What was your role in this case?

18 A: On this particular day that I was involved in this case,  
19 I was off duty, I got a phone call from my sergeant, just  
20 saying hey, you know, Detective Amick is working a case and  
21 probably needs your help. So I came in, got Detective Amick  
22 and said, what do you need me to do? He had two cell phones  
23 and relayed the information I needed to obtain search warrants  
24 on those cell phones and also asked me to go out to Carlos'n  
25 Charlie's and pick up video surveillance.

1 Q: Now, is this normal that the lead investigator would  
2 assign someone else to, to go pick up the DVD or to look at  
3 something else?

4 A: Yes, I a lot of times, there's too much, too many things  
5 going on, there's time constraints, there's just too much to  
6 do all by yourself.

7 Q: And so after Detective Amick asked you to go to Carlos'n  
8 Charlie's, what did you do?

9 A: Went out to Carlos'n Charlie's. I got up with the  
10 manager, Jorge Estrada, and he provided me with a thumb drive.  
11 But, a lot of times in our, in our job, when we get back with  
12 the thumb drive, the video doesn't play for one reason or  
13 another and -- I've known myself, I'll waste two or three  
14 hours trying to get the right player and then only to find out  
15 that the video was kind of worthless, it didn't have anything  
16 of relevance on it -- I've wasted a lot of time. So, in this  
17 case, I asked Mr. Estrada, hey, is it possible to watch this  
18 video? And I don't recall if he played it off the thumb drive  
19 or off the system, but there's a system right there, right off  
20 the kitchen, and I viewed the video. It appeared pretty low  
21 quality. It jumped around. I never initially saw any punch  
22 or anything. I saw the victim laying on his back in the  
23 nightclub and then eventually employees taking him away.

24 So, I conducted recorded interviews with Mr. Estrada and  
25 two security guards that had some involvement just because --

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1 you know, I didn't know -- it wasn't my case. I didn't know  
2 much about it and I was trying to get as much information as I  
3 could for Detective Amick. And then I took the, the thumb  
4 drive back to Detective Amick and I said, hey, you know,  
5 quality is not the best, I didn't see any assault, but I know  
6 that you can see the victim on his back and, you know, it's  
7 got -- it's got relevant information for you. And then I  
8 documented my findings and basically went home.

9 Q: Carlos'n Charlie's, where is that located?

10 A: At Broadway at the Beach.

11 Q: And what city is that in?

12 A: Myrtle Beach,

13 Q: And is that in Horry County?

14 A: It is.

15 Q: Now, you said you went out there and, and Jorge Estrada  
16 gave you a thumb drive; is that correct?

17 A: That's court.

18 Q: And so you viewed that thumb drive?

19 A: Yeah, I don't remember if it was on the system or that  
20 actual thumb drive at the time, but I wanted to view it before  
21 I took it back, just in case it didn't play.

22 Q: Did you notice when you got to Carlos and Charley's was  
23 there -- were there cameras up? Was there a surveillance  
24 system available?

25 A: They have a surveillance system right off the kitchen.

1 Q: Okay. Did you watch all of the cameras?

2 A: As far as I know. Well, I don't know what was available  
3 necessarily. I, I remember seeing, I guess, a dance floor;  
4 they had things outside, I think. I'm not sure if I saw every  
5 angle.

6 Q: But you said that the video that you got showed at least  
7 the victim laying on the floor?

8 A: Correct.

9 Q: Did you believe that what you had in your possession  
10 showed the events for the crime that we're here for today?

11 A: Yes.

12 Q: And so what do you do -- if it's on the thumb drive, it's  
13 a digital media, right?

14 A: Correct.

15 Q: And what do you do with that digital media? Where do you  
16 take that thumb drive?

17 A: Where did I take it or what would we normally do as ---

18 Q: Well, where did you?

19 A: I took it back to Detective Amick.

20 Q: Okay. And then what did you do after that? Was your  
21 involvement with this case over or ---

22 A: Pretty much, yeah. I said, hey, there's something  
23 relevant on this thumb drive. I left it with him and I went  
24 home. Basically, my errands were done; I helped him out.

25 Q: But you have viewed at least a portion of the video from

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1 that surveillance system, prior to turning it over?

2 A: Correct.

3 Q: Pretty grainy, isn't it?

4 A: Yes.

5 Q: And I believe you did so already and the jury may be able  
6 to see it in a little bit, but describe that video, what you  
7 saw?

8 A: You can tell they have, you know, almost like disco  
9 lights, flashes of lights, but the, the video seemed to not be  
10 smooth. It's almost like still photos and every once in a  
11 while, you know, you can get that disco ball effect where you  
12 couldn't see anything because it's so, so bright. It's not  
13 the clearest video but you can see, you know, the victim prior  
14 to whatever happened and then when he's laying on his back as  
15 well. So, you can, you can -- I don't know if you can  
16 identify unless you knew people intimately, you know, the  
17 people that are surrounding him, you know, it's not that kind  
18 of clarity, but you can, you can make out what happened.

19 Q: And when you take video -- is this the first time you've  
20 taken video from, from a surveillance cameras?

21 A: No.

22 Q: When you take that video, is it put into evidence?

23 A: Yes.

24 Q: And then who keeps it from there, where's that evidence  
25 stored?

1 A: At the Myrtle Beach Police Department there's a secure  
2 area and it's only the property and evidence clerks can access  
3 that area.

4 Q: Was that basically your involvement with this case?

5 A: That was it.

6 Q: No further questions at this time.

7 THE COURT: All right. Cross examination?

8 MR. FOX: Thank you, Your Honor.

9 CROSS EXAINATION OF TODD MACPHERSON BY MR. FOX:

10 Q: A little unclear, you're not sure when you went to  
11 Carlos'n Charlie's -- let's start there. You went to Carlos'n  
12 Charlie's, you met with Mr. Estrada, the manager, correct?

13 A: Correct.

14 Q: Okay. And then requested to see what he had in terms of  
15 video from the night in question, right?

16 A: Correct.

17 Q: You're not sure whether he showed you on the system or if  
18 he already had it on the thumb drive; is that correct?

19 A: Yeah, I don't remember basically how he -- how we viewed  
20 it.

21 Q: But you were able to view it there?

22 A: Correct.

23 Q: Okay. And so he must've have had -- there was a thumb  
24 drive, there had to be a computer and a monitor or something  
25 to view it on?

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1 A: Correct.

2 Q: Okay. But you ---

3 A: Well, it's a video system. Does that make sense?

4 Q: It does. So, there's some sort of monitor to allow you  
5 to see the information, correct?

6 A: Correct.

7 Q: Okay. Now, you're not sure how many camera angles you  
8 looked at; is that correct?

9 A: No, I'd say just a couple, one or two, I would imagine.

10 Q: Okay. Was it -- did you decide what to see or did you  
11 say to Mr. Estrada, show me the pool table? In other words,  
12 did you point out what you wanted or did Mr. Estrada say  
13 here's what you need to see? Does that make sense?

14 A: Yeah, I think he must've shown what, what was available.  
15 I don't think I said, you know, show me this area because I  
16 was trying to gather it all up.

17 Q: Had you made contact with him about coming to see the  
18 video or had Detective Amick done that?

19 A: Somebody else did, and Detective Amick told me.

20 Q: So, you're not sure what that conversation was ---

21 A: No.

22 Q: When you got there, Mr. Estrada had it ready for you to  
23 view; is that fair to say?

24 A: Correct.

25 Q: Okay. And what your own memory was is that you really

1 couldn't see -- you weren't able to at least, the actual  
2 punch; is that correct?

3 A: Yes, not on that and the first time -- I watched it just  
4 to see if there was relevance. I didn't see the punch that  
5 first time I viewed it.

6 Q: But you could see a person laying flat on their back?

7 A: That's correct.

8 Q: Feet straight up in the air?

9 A: I don't remember the feet being straight up in the air.

10 Q: But do you recall whether the person was on the back,  
11 face down?

12 A: On his back.

13 Q: Okay. And you also interviewed a Mr. Howell and Mr.  
14 Tupua, I believe it is, from security there at the club?

15 A: That's correct.

16 Q: And if I understand, at Carlos'n Charlie's, they contract  
17 their security out to a company; is that right?

18 A: That's correct.

19 Q: Okay. So, these individuals work for, I think it's  
20 Empire Security?

21 A: Correct.

22 Q: And they were there the night of this fight?

23 A: Yes, sir.

24 Q: Okay. And in fact, had they responded to the -- neither  
25 saw the incident; is that correct?

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1 A: That's correct.

2 Q: And they responded afterwards. It came to their  
3 attention that got a guy down on the floor, basically.

4 A: Uh-huh (affirmative response).

5 Q: That's -- is that a yes?

6 A: Yes.

7 Q: Okay. Just for the court reporter.

8 A: Okay.

9 Q: And the information they had -- their observation  
10 was he appeared to be unconscious at the time they got to him,  
11 correct?

12 A: Correct.

13 Q: So, on his back, unconscious, and they picked him up and  
14 moved him outside, did they not?

15 A: They did.

16 Q: Okay. So, they had a man -- not sure how he got in that  
17 condition, but they had a man flat on his back, unconscious,  
18 and they took the -- are they, as far as you know trained  
19 medical personnel?

20 A: I don't know.

21 Q: Would it be your experience as an officer that that would  
22 be a requirement for a security person in a nightclub?

23 A: I wouldn't think.

24 Q: But no question that they picked him up and moved him  
25 from where he was outside?

1 A: Correct.

2 Q: And that was before any medical personnel arrived, EMS or  
3 anybody else?

4 A: Correct.

5 Q: Now the video, you said it was grainy. It was more than  
6 just grainy; the quality of the picture itself is very poor,  
7 wouldn't you say?

8 A: Correct.

9 Q: And you mentioned the lights in the -- in the club, they  
10 were like a dance ball or a disco light, that type of thing?

11 A: Uh-huh (affirmative response).

12 Q: So, there were some kind of flashing or at least on and  
13 off lights that you could see?

14 A: Yes.

15 Q: Did that affect what you were able to observe in that  
16 video at times?

17 A: Yes, I would imagine, yes.

18 Q: Okay. Was that your recollection -- you watched it -- I  
19 mean, you watched it, did that affect -- did those flashing  
20 lights, when they're on, affect what you can see?

21 A: Yes.

22 Q: Okay. And that was a fairly -- not like a strobe, but it  
23 was a fairly consistent kind of pulse; is that a fair way to  
24 describe it?

25 A: Yes.

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1 Q: Okay. And it wasn't just that it was -- the image was  
2 grainy, that video appears to almost either delay or skip; is  
3 that fair to say?

4 A: Yes.

5 Q: And I think you said it almost looked like still  
6 pictures; is that correct?

7 A: Yes.

8 Q: In other words, one image would seem to be there more  
9 than an instant?

10 A: Yes.

11 Q: Okay. And of course all video is just a series of  
12 pictures; isn't that right?

13 A: I'm not an expert on video, but I would imagine.

14 Q: You've seen probably a filmstrip, it's a series of ---

15 A: Yes.

16 Q: --- played quickly, right? I mean you take a series of  
17 pictures and then how fast you play it depends on the quality  
18 of the movement?

19 A: Yes.

20 Q: Is that fair to say?

21 A: Yes.

22 Q: This appeared to you to be kind of jerky; is that fair to  
23 say?

24 A: Yes.

25 Q: Poor visual quality, grainy, problems with the lights,

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1 and then jerky or hesitant or something of that nature; is  
2 that a fair description of what you saw?

3 A: Yes.

4 Q: Thank you. I have no further questions.

5 THE COURT: All right. Redirect?

6 MR. HOLFORD: Nothing further, Your Honor.

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

8 MR. HOLFORD: The State calls Melinda Shadoan.

9 THE COURT: All right.

10 CLERK: Please raise your right hand and place your left  
11 hand on the Bible.

12 MELINDA SHADOAN, HAVING BEEN DULY

13 SWORN TESTIFIES AS FOLLOWS:

14 CLERK: Please state your full name and spell your last  
15 name.

16 MS. SHADOAN: Melinda Sue Shadoan, S-H-A-D, as in David -  
17 O-A-N, as in Nancy.

18 DIRECT EXAMINATION OF MELINDA SHADOAN BY MR. HOLFORD:

19 Q: Ms. Shadoan, what's your current rank?

20 A: I'm the property and evidence technician for the City of  
21 Myrtle Beach.

22 Q: And how long have you been employed with Myrtle Beach  
23 Police Department?

24 A: I am in my tenth year.

25 Q: Okay. Have you always done the property and evidence?

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1 A: I have not. My first four years was in the Detention  
2 Center as a jailer.

3 Q: Okay. Tell me a little bit about what you do as property  
4 and evidence technician?

5 A: We take in all the evidence and the lost and found of the  
6 city and secure it in a location, which is in my office. Me  
7 and only two other people have access to that room. We will  
8 process anything that stays in there and also take in and then  
9 bring out to either SLED or ballistics or what not or to court  
10 like today.

11 Q: Do you -- what do you personally do with the evidence  
12 once it's received?

13 A: We house it in my office and it stays in a secure location  
14 until it's needed for such cases like this.

15 Q: Is there a way that you can tell if evidence has been  
16 tampered with?

17 A: Yes, sir.

18 Q: And how is that?

19 A: There is such thing as called evidence tape and ours is  
20 the color red and it's usually in a manila envelope or a brown  
21 bag. And if even a slight chance that somebody would try to  
22 open it up, the evidence tape will tear. It's that tamper  
23 free.

24 Q: What do you do with digital media, is it stored on DVD's  
25 or CD's or thumb drives or ---

1 A: All the above.

2 Q: Okay. Do you take it in any form?

3 A: Yes.

4 Q: Do you then -- do you turn that over in the same form or  
5 do you make copies of digital media.

6 A: I don't do anything; that's not my authority to do so on  
7 my end.

8 Q: So, you just keep it and store it?

9 A: Correct.

10 Q: And then you bring whatever has been turned in to court?

11 A: Right, whatever is needed, correct.

12 Q: Was evidence turned in to you in this case?

13 A: Yes, sir.

14 Q: And, and how do you know what's kept in a certain case?

15 A: We actually have a property sheet, if you can refer to my  
16 notes, it looks like this and it shows me all the different  
17 items that are in the particular case.

18 MR. HOLFORD: Your Honor, may I approach?

19 THE COURT: Yes.

20 BY MR. HOLFORD:

21 Q: Is that a copy that you just showed me?

22 A: It is.

23 Q: Okay. So you can print multiple copies?

24 A: Yeah, I have another one right here.

25 Q: And so it's been marked now as State's 13, but what kind

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1 of information is, is on that? what can you tell from that  
2 sheet?

3 A: Well, we have the case number, we have what's called a PR  
4 Number, which is the Personal Record Number; each one has one  
5 just like a fingerprint. It actually is unique to that  
6 particular piece of evidence. The description of the  
7 evidence, its status and its location exactly where it is in  
8 my office.

9 Q: And so you keep these -- do you keep these in the regular  
10 course of business?

11 A: Yes.

12 Q: And so was evidence turned in in this case?

13 A: Yes, sir.

14 Q: And did you store it for this case?

15 A: Yes.

16 Q: And did you bring it to Court for this case?

17 A: I have.

18 MR. HOLFORD: Your Honor, at this time, I'd ask that  
19 State's 13 be entered in evidence?

20 THE COURT: Any objection?

21 MR. FOX: I'm sorry, 13 ---

22 No objection, Your Honor.

23 THE COURT: All right. State's Exhibit Number 13 is  
24 admitted into evidence without objection.

25

STATE'S EXHIBIT NUMBER 13

ADMITTED INTO EVIDENCE

1  
2 BY MR. HOLFORD:

3 Q: Now, did you bring the evidence with you to court?

4 A: I did, yes.

5 Q: Now, if I have a stack of manila envelopes, how would I  
6 be able to tell what is what?

7 A: There's labels on each one of them that are white and  
8 it's got that PR number and a group number.

9 Q: And so if I were able to -- if I were to look at a manila  
10 envelope and wondered what's inside of it, I can use this  
11 State's 13?

12 A: Correct, and that corresponds to the label that's on the  
13 actual envelope.

14 MR. HOLFORD: Your Honor, may I approach?

15 THE COURT: Yes.

16 BY MR. HOLFORD:

17 Q: Is this stack what you brought to court today?

18 A: Yes, that's all of it.

19 Q: And can you find for me Item 1 Consent Search 01?

20 A: Got it.

21 Q: Okay. And Item 2, CER photos, scene; Item 5, Miranda;  
22 Item 6, thumb drive; Item 8, CDR photos autopsy; and Item  
23 12(b), the disc. Now are able to tell exactly what's on  
24 these?

25 A: Meaning just by the ---

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1 Q: Right.

2 A: Yeah, they have the group number listed with the PR  
3 number, and then a lot of them will have exactly what it is  
4 inside, which is what is required by me to know which one to  
5 put on which envelope.

6 Q: But you were able to pretty easily pull out those  
7 envelopes based on this sheet, on State's 13, as well as what  
8 you brought to Court?

9 A: Yes.

10 Q: Okay. And all of this evidence is kept in the care and  
11 custody of Myrtle Beach Police Department?

12 A: It is.

13 Q: All right. Who has access to it?

14 A: There's only myself, two others, and my Sergeant.

15 Q: Did you manipulate any of it?

16 A: Absolutely not.

17 Q: No further questions at this time.

18 THE COURT: All right. Cross examination?

19 CROSS EXAMINATION OF MELINDA SHADOAN BY MR. FOX:

20 Q: Officer, just briefly, in regard to the -- and there's a  
21 thumb drive that you received or a zip drive; is that correct?

22 A: That would be Group 6; yes, sir.

23 Q: Okay. In other words, not a CD?

24 A: Right, there's a thumb drive inside there, right.

25 Q: But you weren't a part of collecting that, correct?

1 A: No.

2 Q: So, when you say no one tampered with that, that refers  
3 to once it's collected, there's a procedure which every  
4 officer collects that -- with any piece of evidence, there's a  
5 procedure to be able to track it and be able to verify that it  
6 hasn't been changed in any, correct?

7 A: Correct, and the evidence tape would be on there, so even  
8 I can't get into it. Correct.

9 Q: In terms of what's on that thumb drive, you have ---

10 A: I would not no, sir.

11 Q: Or what was -- you would have been no part of the  
12 decision as far as what to copy from the surveillance system  
13 and put on that file?

14 A: No, sir.

15 Q: Thank you, that's all the questions I have.

16 THE COURT: Redirect?

17 MR. HOLFORD: No redirect, Your Honor.

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

19 A: Thank you,

20 MR. HOLFORD: The State calls ---

21 THE COURT: Call your next witness?

22 MR. HOLFORD: --- the State calls Agent Shropshire.

23 CLERK: Please raise your right hand and place your left  
24 hand on the Bible.

25 HARVEY SHROPSHIRE, HAVING BEEN DULY

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1 SWORN TESTIFIES AS FOLLOWS:

2 CLERK: Please be seated. State your full name and spell  
3 your last name for the Court.

4 MR. SHROPSHIRE: Sure. Harvey Shropshire, S-H-R-O-P-S-H-  
5 I-R-E.

6 DIRECT EXAMINATION OF HARVEY SHROPSHIRE BY MR. HOLFORD:

7 Q: Agent Shropshire, where are you currently employed?

8 A: SLED.

9 Q: SLED. And how long have you been with SLED?

10 A: Eighteen years.

11 Q: Will you tell the jury a little bit about what is SLED?

12 A: SLED is the South Carolina Law Enforcement Division.  
13 We're an assisting agency for local and state as well as  
14 federal agencies.

15 Q: And in this particular case, were you called out to the  
16 scene?

17 A: No, sir.

18 Q: And did you do an investigation?

19 A: No, sir.

20 Q: So, how did you become involved?

21 A: I think the Solicitor's office, maybe two months ago,  
22 asked me to enhance a video that they had.

23 Q: And did you do that for us?

24 A: Yes, sir.

25 Q: What type of video was brought to you?

- 1 A: I think it was on the thumb drive or maybe a CD, I can't  
2 remember correctly.
- 3 Q: Was it digital media, though?
- 4 A: Yes, sir.
- 5 Q: And did you view that video?
- 6 A: As I put it in my computer to look at it, yes, sir.
- 7 Q: Now, do you know why you were asked to view that video?
- 8 A: To clarify or clear it up.
- 9 Q: And was the video upside down when it was presented to  
10 you?
- 11 A: No, sir, not in my machine, but from our understanding  
12 from the Solicitor's office that when they viewed it it was  
13 upside down.
- 14 Q: Okay. And why would that happen? Why would a video be  
15 upside down?
- 16 A: Normally, you have different DVR's or NVR's that's been  
17 manufactured by different companies. They have their own  
18 patents, and the patent sometimes won't allow you to play it  
19 on that media that it was actually recorded on.
- 20 Q: So, did you take that video and -- now you said when you  
21 look on your video, it's not upside down, right?
- 22 A: No, sir.
- 23 Q: Tell me how that could be; how I could view it on one  
24 system and it be upside down and then present it to you and it  
25 flips right side up.

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1 A: Well, like I said, the patents by whoever the  
2 manufacturer of that particular NVR or DVR, and when you play  
3 it back on that machine, it allows you to see in the true form  
4 or true fashion. When you put it on a different media or like  
5 put it on a CD or a thumb drive, if you don't load the player  
6 along with it, some of the -- are not available for it.

7 Q: And so did you then turn over to us a video that's right  
8 side up?

9 A: Yes, sir.

10 Q: And what did -- tell me about -- obviously that sounds  
11 like it could be changing it, right?

12 A: No, sir; it's not really changing it. It's not changing  
13 it at all.

14 Q: Okay. Were you able to change formatting or anything to  
15 the video?

16 A: No, sir. What we do, our machine is called a -- I think  
17 it's a StarWitness machine, what it does, it takes the  
18 original copy that you have in your hand and reload it -- it's  
19 normally loaded analog and it converts it to a digital form  
20 for enhancement. It doesn't change the original CD or DVD  
21 that's been given to us.

22 Q: So, you're not, you're not photo shopping anything?

23 A: No, sir.

24 Q: You're not adding people into the video?

25 A: No, sir.

1 Q: You weren't changing the actual what was presented to  
2 you?

3 A: No, sir, that would be enhancement; we don't do that.

4 Q: Okay. You're just making it so you can play it?

5 A: Yes, sir.

6 Q: And did you do that in this case?

7 A: Yes, sir; I did.

8 MR. HOLFORD: Your Honor, may I approach?

9 THE COURT: Yes.

10 BY MR. HOLFORD:

11 Q: I'm gonna hand you what's been marked as State's 9. Can  
12 you identify what I've handed you?

13 A: Yes, sir. I -- this is in the form of a DVD; it's a DVD-  
14 R, +R. And whenever we do enhancements on it, whatever copy  
15 we give to the person we're helping enhance the video, you  
16 initialize the date and time on it and also the type of format  
17 you might need because we also do an audio enhancement, and  
18 this particular one is the video enhancement.

19 Q: Now, you didn't have any control over what was given to  
20 you, did you?

21 A: No, sir.

22 Q: You were just asked to perform a function and you  
23 returned the product?

24 A: Yes, sir.

25 Q: Now, how can you tell that that is the DVD that you gave?

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1 A: My initials

2 Q: And is there a date on that?

3 A: Yes, sir; it is.

4 MR. HOLFORD: Your Honor, at this time, I would ask that  
5 State's 9 be entered into evidence.

6 THE COURT: Any objection?

7 MR. FOX: No objection, Your Honor.

8 THE COURT: All right. State's Exhibit 9 admitted into  
9 evidence without objection.

10 STATE'S EXHIBIT NUMBER 9

11 ADMITTED INTO EVIDENCE

12 BY MR. HOLFORD:

13 Q: And did you enhance the video?

14 A: Yes, sir; I did.

15 Q: Okay. How so? Tell the jury what you did, please.

16 A: If my memory serves me correctly, when we got the video,  
17 it was very grainy. It seemed to be inside of a club.

18 Lighting that wasn't so well; it was terrible lighting. And  
19 what we done was to zoom in on the subject that's -- that she  
20 asked me to zoom in on. And from there we clarified the  
21 video.

22 Q: Did you then take still photographs of that?

23 A: Yes, sir; I did.

24 Q: And did you --- now let me go back just briefly. I know  
25 this is probably belaboring the point, probably tech savvy at

1 this point, but I have a DVD. Now, if the thumb drive was  
2 turned over, they were put on a different type of media,  
3 correct?

4 A: Correct.

5 Q: That doesn't actually change the file or the format?

6 A: No, sir. If you want me to clarify the way we do it, the  
7 process is whoever calls has to be from a law enforcement  
8 agency. They bring it to us, whatever form of media they  
9 have. We take that form of media, we get that person to fill  
10 out a, a sheet that allows us to track whatever has been done  
11 to that particular video. Say for instance, this one, when  
12 the Solicitor's office brung it in, they had to sign out, like  
13 sign their name, a telephone number, and put the case number  
14 assigned to it as well. I also put my case number on it, too,  
15 as well, that it's from Tech Services at SLED. And we  
16 document what agency brings it in and that chain of custody  
17 never leaves that person who brings it in.

18 Q: So, I could take -- I could take a video on a thumb drive  
19 and transfer it to a number of DVDs, right?

20 A: Yes, sir.

21 Q: And it could be the same video?

22 A: Yes, sir.

23 Q: Did you also -- you said made some enhancements and did  
24 some still photographs, right?

25 A: Yes, sir.

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1 Q: Tell me about that; what is that process like?

2 A: Well, the process -- the machine it's -- like I said it's  
3 converted from analog to a digital format that the software  
4 recognize, and from that point on, we go to -- we can zoom in,  
5 zoom out a particular item they want us to zoom in on. And  
6 also, we can make it larger or we can make it to a point where  
7 it just visible. We can't add something that's not there, not  
8 with our machine, but we only enhance what's there.

9 Q: So, you can't add people to the picture, but you can  
10 enhance and try to make it clear and show them what is on it?

11 A: Correct. The software does not allow that.

12 Q: And did you turn over to us a, a DVD or a CD with those  
13 pictures?

14 A: Yes, sir.

15 MR. HOLFORD: Your Honor, may I approach?

16 THE COURT: Yes.

17 BY MR. HOLFORD:

18 Q: I'm handing you what's been marked as State's 10. Can  
19 you identify what that is?

20 A: Yes, sir. it's a CD-ROM it has SLED on it and the date  
21 and time, and also my initials, too, as well. It also state  
22 picture.

23 Q: And, so those are pictures that you took from where?

24 A: From the video that was given to me to enhance.

25 Q: And tell me the process, just briefly, between converting

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1 video into still photographs?

2 A: Well, it's basically just like everyone's telephone, you  
3 can take a picture, a snapshot of whatever you want. This  
4 software does the same thing.

5 Q: And that -- that CD has your initials on it?

6 A: Yes, sir; it does.

7 Q: And so that's what you viewed prior to trial?

8 A: Yes, sir.

9 MR. HOLFORD: Your Honor, at this time, the State would  
10 seek to introduce State's 10 into evidence.

11 MR. FOX: Your Honor, we have a matter of law we would  
12 like to take up outside of the jury's presence.

13 BY THE COURT:

14 THE COURT: All right. All right, ladies and gentlemen,  
15 I'm gonna excuse you back to the jury room for just a few  
16 minutes while we take up this matter of law. And I'll tell  
17 you why we excuse you to the jury room, it's not that we're  
18 trying to hide anything from you or keep anything from you.  
19 But, as I told you in the opening charge, you and you alone  
20 decide the facts of this case and you decide those facts based  
21 exclusively on the testimony of sworn witnesses. Well, now, I  
22 have to discuss some law that will be applied with the  
23 attorneys. Often when we discuss the law, it requires the  
24 attorneys and me to reference factual issues. Well, what we  
25 say is not evidence and we don't want you to be influenced by

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1 can see it or not.

2 MS. WALKER: Yes. We can try that or would you like us  
3 to play it for you first and then ---

4 THE COURT: No., No, I'd rather just see it in real time  
5 as the jury is seeing it.

6 (REPORTER'S NOTE: Briefly off the record to adjust video  
7 screen.)

8 THE COURT: All right. All right. All right. Anything  
9 from the State before we bring the jury in?

10 MS. WALKER: No, sir, Your Honor.

11 THE COURT: Anything from the Defense?

12 MR.+ FOX: No, Your Honor.

13 THE COURT: All right. Let's bring the jury in.

14 REPORTER'S NOTE: (Jury enters courtroom 11:56 A.M.)

15 THE COURT: Welcome back. The ruling of the Court is the  
16 Defendant's, excuse me, State's Exhibit Number 10 is admitted  
17 into evidence over the Defendant's objection.

18 PLAINTIFF'S EXHIBIT NUMBER 10

19 ADMITTED INTO EVIDENCE

20 THE COURT: All right. We can continue with direct  
21 examination.

22 MR. HOLFORD: Your Honor, at this time, the State wishes  
23 to publish State's 9, the video?

24 THE COURT: All right.

25 You want to go ahead and dim the lights?

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1 MR. HOLFORD: Yeah.

2 THE COURT: Let's go ahead and dim the lights.

3 MR. FOX: Your Honor, just as the Solicitor gets set to  
4 play, can we just -- can, Your Honor, inform the jurors if  
5 anyone can't see that they ---

6 THE COURT: Can everyone see the screen? We've kind of  
7 had to tilt it so I can see and you can see it simultaneously  
8 since we're not using the big screen behind and it's on this.  
9 So, if you cannot see it, please raise your hand.

10 (REPORTER'S NOTE: State's Exhibit Number 9 published - no  
11 audio.)

12 BY MR. HOLFORD:

13 Q: Agent Shropshire, what we just watched, is that the video  
14 we've been talking about?

15 A: Yes, sir; it is.

16 Q: And like you said before, does that appear to be jumpy  
17 like multiple stills?

18 A: Yes, sir.

19 Q: Is that how you received the video quality?

20 A: Yes, sir; it is.

21 Q: And then what we just watched, was that the enhanced  
22 version that you turned back over to me?

23 A: I believe so. We can also do it by frame by frame.  
24 That's how I get my still shots from the actual video.

25 Q: And, and you did that like we talked about with State's

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1 10, correct, and you turned over still shots?

2 A: Yes, sir.

3 Q: Now, is this also the video that you looked at and  
4 enhanced?

5 A: Yes, sir; it is.

6 Q: Is this a different camera angle?

7 A: It is.

8 Q: Now, you weren't there, you weren't present, were you?

9 A: No, sir; I was not.

10 Q: You didn't respond to the scene as we've said before?

11 A: No, sir, I live in Columbia.

12 Q: And so you don't -- you can't necessarily testify to what  
13 we're watching, can you?

14 A: No, sir.

15 Q: Just the fact that this is a video that you enhanced and  
16 turned back over?

17 A: Correct, sir.

18 Q: Was that the entirety of the videos?

19 A: I think so, what they brung to me, yes, sir, I think it  
20 was. It was -- it seemed to be recorded at maybe ten frames  
21 per second and what we did, we just slowed it down and looked  
22 at it frame by frame and that's how we came up with the  
23 different still shots.

24 MR. HOLFORD: Your Honor, at this time, the State would  
25 seek to publish State's 10?

1 THE COURT: All right.

2 BY MR. HOLFORD:

3 Q: And again, the still shots you took, you captured in  
4 individual files and turned over?

5 A: Yes, sir.

6 (REPORTER'S NOTE: State's Exhibit Number 10 published - no  
7 audio.)

8 Q: Now, we're gonna flip through the pictures, but is this  
9 one of the stills?

10 A: Yes, sir; it is.

11 Q: Now, on this picture, there appears to be a like an oval  
12 shape?

13 A: Correct.

14 Q: What is that?

15 A: That's the -- we tend to do this to put like a -- I say  
16 like a enhancement or spotlight on the situation. Whatever  
17 the problem may be, we put that spotlight on it, basically.

18 Q: Okay. So, that's drawing attention to an area?

19 A: Correct.

20 Q: And that's something you did?

21 A: Yes, sir.

22 Q: Okay. So after you took the video, you took stills and  
23 then you ---

24 A: Correct. Zoom in, zoom out, trying to add the light to  
25 the actual situation to get a better picture of what's going

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1 on.

2 Q: Now, this one just has the date stamp at the bottom,  
3 correct?

4 A: Correct.

5 Q: And so if we flip back to the last one ---

6 A: That's the zoom-in process.

7 Q: The zoom-in process?

8 A: Yes, sir.

9 Q: Zoomed into an area in a photo and then highlight it?

10 A: Highlight it, correct.

11 Q: This is a third photo. There appears to be another  
12 highlighted area?

13 A: Correct.

14 Q: Is that also zoomed in?

15 A: Yes, sir; it is.

16 Q: What, what did we just see was the change from that one?

17 A: That's -- that was a different angle of the still shot.

18 Q: Okay. Trying to enhance the ---

19 A: Correct, right.

20 Q: Again?

21 A: Again, same thing. It's zoomed in to a different spot,  
22 but it's also frame by frame, too, as well.

23 Q: And the colors look a little different in this one?

24 A: That's because the light -- the lightings in the actual  
25 facility itself. The camera is trying to focus itself on the

- 1 light versus the dark part of the actual video.
- 2 Q: And what we just saw there was a -- between this picture  
3 is a still; is that right?
- 4 A: Yes, sir.
- 5 Q: And the next one says Pic 8, so the difference between 7  
6 and 8, again we see another circle, right?
- 7 A: Correct.
- 8 Q: So, you're trying to highlight it?
- 9 A: Highlight it, yes, sir.
- 10 Q: Pic 9 again has an oval in it?
- 11 A: Correct.
- 12 Q: Pic 10 again has the oval?
- 13 A: Correct, and that's the actual picture of the person on  
14 the ground.
- 15 Q: Okay. And then there's an oval on this one?
- 16 A: Yes, sir.
- 17 Q: So, you tried to enhance that area?
- 18 A: Right. Correct.
- 19 Q: Pic 12?
- 20 A: Everyone is looking at the person that's laying on the  
21 ground.
- 22 Q: Now, this outside the oval appears to be like a black and  
23 white almost?
- 24 A: Correct.
- 25 Q: Or gray scale?

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- 1 A: Correct.
- 2 Q: And then there's a little bit of light inside?
- 3 A: Right, that's the actual video itself. It changes -- I  
4 guess the video went from a color to a dark black and white  
5 setting.
- 6 Q: And then Pic 13, there's another oval?
- 7 A: Correct.
- 8 Q: Highlighting an area?
- 9 A: Correct. Also the person laying on the floor.
- 10 Q: Pic 14, is that from that different camera angle?
- 11 A: Yes, it is. The angle towards the door where the I guess  
12 the bouncers was dragging him out.
- 13 Q: Now, I can just see at the bottom of this one of 2:06, is  
14 that a picture that appears to be zoomed in then?
- 15 A: Yes, sir, it is.
- 16 Q: And then we're back to one. So some of these, the ones  
17 with the full timestamp were the stills that you took and then  
18 the others were from the stills you zoomed in and maybe  
19 highlighted?
- 20 A: Yes, sir.
- 21 Q: And are those the stills that you took from that video we  
22 just watched?
- 23 A: Yes, it is.
- 24 Q: And is that where you turned over to us?
- 25 A: Yes, sir.

- 1 Q: Obviously, these are on a CD, right?
- 2 A: Yes, sir.
- 3 Q: And so you provided us a digital format?
- 4 A: Yes, sir.
- 5 Q: Are we also able to -- Your Honor, may I approach?
- 6 THE COURT: Yes.
- 7 Q: Are we also able to print those on photo paper?
- 8 A: Yes, sir.
- 9 Q: And would that change the picture at all?
- 10 A: No, sir; it won't.
- 11 Q: But it would allow us to actually hold the photo?
- 12 A: Yes, sir.
- 13 Q: I'm gonna hand you what's been marked State's 3, 4, and
- 14 5. Can you identify just 3, 4, and 5 are generally?
- 15 A: Sure. 4 is actual still shot of the different activities
- 16 that's going on in the video and also the victim standing with
- 17 a friend. Pic 5, same thing, same video, but it's zoomed in
- 18 to a closer angle of the victim standing with the friend. And
- 19 pic number 3 is the actual victim laying on the ground after
- 20 he'd been hit, presumably.
- 21 Q: And are those also pictures that we just saw in the
- 22 digital form?
- 23 A: Yes, sir; it is.
- 24 MR. HOLFORD: Your Honor, State would seek to introduce
- 25 3, 4, and 5 in evidence.

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1 THE COURT: Any objection?

2 MR. FOX: Same objection as previously, Your Honor, with  
3 the disc.

4 THE COURT: All right. State's Exhibits 3, 4, and 5 are  
5 admitted into evidence over the Defendant's objection.

6 STATE'S EXHIBITS NUMBERS 3, 4, AND 5

7 ADMITTED INTO EVIDENCE

8 BY MR. HOLFORD:

9 Q: And again, I don't mean to belabor this, but the circle  
10 around it is something that you have done?

11 A: Yes, sir.

12 Q: And zoomed into an area?

13 A: Right, to put emphasis on a particular area of the video,  
14 a still shot.

15 Q: 4, where you can see the time stamp, that was just photo  
16 you grabbed from the ---

17 A: Correct; yes, sir.

18 MR. HOLFORD: Permission to publish?

19 THE COURT: Yes.

20 (REPORTER'S NOTE: State's Exhibit Number 4 published.)

21 BY MR. HOLFORD:

22 Q: Now, was that your involvement in this case?

23 A: That's it, sir.

24 MR. HOLFORD: No further questions, Your Honor.

25 THE COURT: All right. You want to go ahead on cross

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1 examination of or wait until they finish.

2 MR. FOX: I will proceed, Your Honor ---

3 THE COURT: All right.

4 MR. FOX: --- they can probably handle two things at  
5 once.

6 THE COURT: All right.

7 CROSS EXAMINATION OF HARVEY SHROPSHIRE BY MR. FOX:

8 Q: Agent, did you -- you testified about what you did do in  
9 terms of reviewing this video and enhancing it in an attempt  
10 to make it clearer, better quality. Did you prepare any kind  
11 of written report to accompany that?

12 A: No, sir. The only report that's done is by when the  
13 person brings it in, we document it.

14 Q: Yes, sir. Now, when you say -- I think you testified  
15 there are approximately, in this video, approximately 10  
16 frames per second.

17 A: Uh-huh (affirmative response).

18 Q: Any video is basically a series of still pictures; is  
19 that correct?

20 A: Basically, yes, sir.

21 Q: Is there, and -- it's clear that we've seen and you've  
22 testified yourself it's a little jumpy or jerky?

23 A: Uh-huh (affirmative response); yes, sir.

24 Q: Is that due to how that system was set up? In other  
25 words, you could, generally speaking, change or adjust a video

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1 system to record at more frames per second?

2 A: Yes, sir.

3 Q: Okay. And if you increased the frames per second, you  
4 would increase the smoothness of the playback?

5 A: Correct.

6 Q: Okay. So, this is at about you think about 10 frames per  
7 second. Is there a standard or a normal that would come  
8 closer to real time?

9 A: Yes, sir. There's 32 frames per second normally. I --  
10 when we set up video systems, we suggest not going below 15  
11 frames per second. If you go under 15 frames per second, it  
12 would be like this video here. It would be like an old  
13 Chinese movie. One place, the person may be here; next  
14 minute, the person might be over here.

15 Q: Okay. So, this video itself really kind of gives you  
16 snapshots in time; would that be a fair assessment or  
17 categorization?

18 A: Yes, sir. The way they do that, they try to save space  
19 on the hard drive.

20 Q: Exactly. So for instance, a surveillance system in a  
21 club or in a gas station, Quicky Mart ---

22 A: Yes, sir.

23 Q: --- they are continuously recording so space is at a  
24 premium?

25 A: Right. Try to get more days on a hard drive.

1 Q: That's right. Since they don't need it every day, they  
2 don't need to access it every single day?

3 A: Correct, unless something happens.

4 Q: So, they're not trying to hide anything, it's just that's  
5 what they're doing to minimize cost; is that fair enough?

6 A: Basically, yes, sir, it is.

7 Q: You received just the video; is that right?

8 A: Yes, sir.

9 Q: Did you know that there were -- before you pulled stills,  
10 did you know that there were stills from that video in  
11 existence?

12 A: No, sir; I did not.

13 Q: They didn't submit those with the video?

14 A: No, sir.

15 Q: Okay. So, you basically just -- and I know this is just  
16 maybe dumbing it down -- basically, when you take a still from  
17 that video, you're basically taking a snapshot; is that a fair  
18 characterization?

19 A: Basically, we try to enhance the whole video. We try to  
20 get the best shot out of that video.

21 Q: Right. But in effect, you're stopping -- and again, that  
22 may be -- but what the jury are looking at now are -- again,  
23 I'm gone use the word snapshot -- but basically a freeze or a  
24 snap from the video?

25 A: Yes, sir; it is.

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1 Q: A moment in time?

2 A: A moment in time, yes, sir, time and date stamped.

3 Q: As you testified a few moments ago, what you don't have  
4 potentially is what happened two or three moments before that?

5 A: Only what's been brought to me, yes, sir.

6 Q: That's right. And I'm talking about generally in this  
7 video because it's set at approximately 10 frames per second,  
8 there are lapses of time.

9 A: Yes, sir, it is; yes, sir.

10 Q: And that's why when you watch the video, it appears that  
11 someone's here and then if you watch a particular person, you  
12 might see them two or three feet or more ---

13 A: Correct.

14 Q: And while you see the person that's on the ground, did  
15 you see where he fell, the actual fall?

16 A: I can't recall on that, sir. If it would have, it  
17 would've been a point of interest and I would've took a still  
18 shot of that.

19 Q: I understand. You had two views from in the club. You  
20 had the floor where the incident happened, correct?

21 A: Yes, sir.

22 Q: And then you had another camera angle we saw at the end  
23 where you could see the pool tables?

24 A: Yes, sir.

25 Q: Okay. And those are the two that you had?

- 1 A: Yes, sir.
- 2 Q: Okay. And the pool table, the one you first had, it was  
3 upside down or at least appeared upside down. Did it appear  
4 to you that way? Well, you had the equipment apparently to  
5 view it?
- 6 A: Well, when they brung it in the said the video was upside  
7 down, but when we actually loaded it in our system, it was not  
8 upside down.
- 9 Q: Because you had the proper player for that?
- 10 A: Right, yes, sir.
- 11 Q: Okay. So, you didn't have to change or do anything?
- 12 A: No, sir.
- 13 Q: Okay. You indicated and I just missed the name, you said  
14 you had a such-and-such machine that you used to play and  
15 enhance this?
- 16 A: Uh-huh (affirmative response). Yes, sir.
- 17 Q: What was the name of that machine?
- 18 A: It's called Signalscape.
- 19 Q: Signalscape?
- 20 A: Yes, sir.
- 21 Q: Okay. Thank you.
- 22 A: Uh-huh (affirmative response). That's software.
- 23 Q: That's a program in other words?
- 24 A: Yes, sir.
- 25 Q: That will read or help -- is that the program that helps

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1 you enhance it?

2 A: Both.

3 Q: Okay.

4 A: Enhance it and also converts it -- convert it to a format  
5 that the software understands.

6 Q: Right.

7 A: And you have to be certified and it's sold to law  
8 enforcement only.

9 Q: Okay.

10 A: And you have to go to school to be trained in it.

11 Q: Okay. And is that the only program out there that  
12 exists? That program is strictly for law enforcement, are  
13 there other programs you could use to ---

14 A: Yes, sir; there are.

15 Q: That's all the questions I have.

16 THE COURT: All right. Redirect?

17 MR. HOLFORD: Just briefly.

18 REDIRECT EXAMINATION OF HARVEY SHROPSHIRE BY MR. HOLFORD:

19 Q: Agent Shropshire, you just said that training is  
20 necessary to run this program. You have been through that  
21 training?

22 A: Yes, sir; I have.

23 Q: And what type of classes and training have you done to  
24 work with video enhancement?

25 A: I've got a degree in mass communication, a degree --

1 we've been trained by the FBI three weeks ago on Camtasia,  
2 also Signalscape and other programs like Video Toaster  
3 certification.

4 Q: And when did you do your Signalscape, the program you  
5 used in this case, when did you do that certification?

6 A: About 13 years ago.

7 Q: And what does the certification entail?

8 A: We have a week-long class, just -- excuse me --  
9 particular class in Cary, North Carolina, at the home or  
10 manufacturer of that Signalscape program. And we stayed there  
11 for a week and we go from one point of the software to the  
12 other point of the software learning the ins and outs of the  
13 software.

14 Q: So, you've been trained and qualified to use this  
15 software you used?

16 A: Yes, sir.

17 Q: No further questions.

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

19 Let me see the attorneys for a second.

20 (REPORTER'S NOTE: A bench conference was held off the record  
21 in the presence of but out of hearing of the jury.)

22 BY THE COURT:

23 THE COURT: All right. Ladies and gentlemen, it's about  
24 12:15 so we're gonna go ahead and break for lunch. I'm gonna  
25 allow you to go to lunch on your own today and I'm gonna ask

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JOSEPH CHEATLE - DIRECT BY WALKER

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1 (REPORTER'S NOTE: Jury enters courtroom @ 2:08 P.M.)

2 THE COURT: Ladies and gentlemen, welcome back. I hope  
3 everyone had a good lunch. We're ready to resume the trial of  
4 this case.

5 Ms. Walker, Mr. Holford, the State can call your next  
6 witness.

7 MS. WALKER: Your Honor, the State calls Dr. Joseph  
8 Cheatle.

9 THE COURT: All right. Come around and be sworn.

10 CLERK: Raise your right hand and place your left hand on  
11 the Bible.

12 JOSEPH CHEATLE, HAVING BEEN DULY  
13 SWORN TESTIFIES AS FOLLOWS:

14 CLERK: Please state your full name and spell your last  
15 name for the Court.

16 DR. CHEATLE: Cheatle, C-H-E-A-T-L-E.

17 THE COURT: All right.

18 DIRECT EXAMINATION OF DR. JOSEPH CHEATLE BY MS. WALKER:

19 Q: Dr. Cheatle, could you give me a little bit of  
20 information about your educational background?

21 A: For undergraduate, I went to University of Nebraska  
22 Lincoln, in Lincoln, Nebraska; and then from there, proceeded  
23 to medical school at University of Nebraska Medical Center,  
24 which is in Omaha, and then completed my residence in  
25 Neurological Surgery at University of Nebraska, Omaha, as

1 well.

2 Q: Okay. Did you do any sort of fellowships or residency  
3 during medical school?

4 A: I did residency after medical school. I didn't do a  
5 fellowship, I did a residency, and I was the Chief Resident at  
6 -- University of Nebraska.

7 Q: Okay. And how long have you been a neurosurgeon?

8 A: So, residency is six years, and so I was considered a  
9 neurological surgeon all six years, and then I've been  
10 practicing in private practice for the last four years now.

11 Q: Okay. And are you board certified?

12 A: I'm born eligible and what that means is for neurological  
13 surgery, you can't do your board certification or boards until  
14 your fifth year. So, you take your written boards in  
15 residency, which is passed well, but my oral boards aren't  
16 until next year.

17 Q: Okay. And have you -- do you have any sort of  
18 publications in your field?

19 A: Yes, ma'am.

20 Q: Okay. And how many?

21 A: Some I don't know; several.

22 Q: More than two?

23 A: By far, yes.

24 MS. WALKER: Your Honor, at this time, I'd like to ask  
25 that Dr. Cheatle be qualified as an expert for the purposes of

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1 this trial.

2 THE COURT: All right. In the field of?

3 MS. WALKER: Neuroscience.

4 THE COURT: All right. Any challenges or questions?

5 MR. FOX: Just two questions. Neuro surgery?

6 MS. WALKER: Uh-huh (affirmative response).

7 MR. FOX: Judge, a couple of questions.

8 THE COURT: All right.

9 VOIR DIRE OF DR. JOSEPH CHEATLE BY MR. FOX:

10 Q: Dr. Cheatle, you've indicated you are board eligible, you  
11 have to have a five-year minimum practicing, correct?

12 A: Yes, sir.

13 Q: Is there anything that you are -- until you've taken and  
14 passed the oral exams next year ---

15 A: Uh-huh (affirmative response).

16 Q: --- is there any limitation on your practice?

17 A: None whatsoever.

18 Q: And the articles that you've published, can you give us  
19 some idea the subject of those articles and what publications  
20 they've appeared?

21 A: I published in the American Journal of Pathology  
22 regarding bone flap infections. I was actually on the cover  
23 of that journal. I published things from primary CNS lymphoma  
24 and then I also did a thesis in undergraduate on things on  
25 muscular dystrophy.

1 Q: And would these, all of these publications be in the  
2 areas of neurosurgery?

3 A: Well, from basic biological sciences to neurosurgery,  
4 yes, sir.

5 Q: Okay. Thank you. No further questions, Judge. I don't  
6 have any objections.

7 BY THE COURT:

8 THE COURT: All right. I find this witness to be an  
9 expert in the field of neurosurgery. Now, ladies and  
10 gentlemen of the jury, I'll give you some instructions on  
11 expert testimony when I charge you on the law to be applied in  
12 this case. But all you need to know at this point in time, is  
13 typically, a witness can only testify as to their personal  
14 knowledge, what they saw, what they smelled, what they tasted,  
15 things of that nature, what they felt. There is an exception  
16 for witnesses who are qualified as experts, which means that  
17 in addition to testifying to his personal observations, the  
18 witness is also allowed to render an opinion in the field in  
19 which he is qualified as an expert. All right?

20 Ms. Walker?

21 BY MS. WALKER:

22 Q: Dr. Cheatle, do you remember a patient by the name of  
23 Justin Hodges?

24 A: Yes, ma'am.

25 Q: Do you remember treating him October of 2015?

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1 A: Yes, ma'am.

2 Q: What was your first contact with Justin?

3 A: Justin came in as a trauma through the Grand Strand  
4 Medical Center, which is the trauma center for the region, and  
5 he was evaluated by the Trauma Team and then determined that  
6 he needed neurosurgical care, and so I was consulted at that  
7 time. I saw him in the trauma bay.

8 Q: Okay. And what was your initial evaluation of him in the  
9 trauma bay?

10 A: He presented with a very low what's called GCS. GCS  
11 stands for Glasgow Coma Score, which was invented in Glasgow.  
12 And what it is, is basically a way for anyone on the planet to  
13 quickly and concisely explain how a person is doing and so  
14 you're scored on three measures. You're scored based on your  
15 wakefulness, which is your speech, your eye opening and motor.  
16 And so, he had a very low Glasgow Coma Score, which meant that  
17 he was in a coma, and that the lower your score, which the  
18 minimum is three, the more severe you are.

19 Q: Okay. And from there, from the trauma bay, what was your  
20 medical plan for him?

21 A: He received -- as per the trauma protocol, he received a  
22 CAT scan of basically his entire body, and his head CT showed  
23 that he had a very large subdural hematoma. Sub meaning below  
24 and dura is the fibrous covering that covers our brain. And  
25 so subdural hematoma is a kind of bleed on the surface of the

1 brain causing mass effect. In other words, it's pushing the  
2 brain over and causing also cerebral edema, which means  
3 swelling of the brain.

4 Q: Okay. And if you don't mind, I'm gonna show you this  
5 document. I'm presenting you with what's been marked State's  
6 Exhibit 14 for identification purposes.

7 A: Yes, ma'am.

8 Q: What, what is that document?

9 A: This is part of the initial trauma flow sheet. So  
10 basically, the nurse in the room is tracking everything as  
11 it's happening kind of live.

12 Q: Okay. And is there kind of a little person drawn out at  
13 the bottom right?

14 A: Yes, ma'am. There's -- on the trauma flow sheet, we mark  
15 any sites of injury that is called out so the trauma team will  
16 evaluate a patient and they'll basically call out for the  
17 nurse, who records it, wherever they see any kind of trauma.

18 Q: Okay. And what is depicted on that sheet as the site of  
19 trauma?

20 A: There's an H, which stands for hematoma, on the -- what  
21 is the left, basically occipital or back of the head area.

22 Q: Okay. And okay, I'll take that.

23 MS. WALKER: Your Honor, the State would move to have  
24 this admitted into evidence, State's Exhibit 14?

25 THE COURT: Any objection?

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1 MR. FOX: No, Your Honor.

2 THE COURT: All right. State's Exhibit 14 admitted into  
3 evidence without objection.

4 STATE'S EXHIBIT NUMBER 14

5 ADMITTED INTO EVIDENCE

6 BY MS. WALKER:

7 Q: When you said that Justin received CAT scans ---

8 A: Uh-huh (affirmative response).

9 Q: --- as part of his initial evaluation?

10 A: Yes, ma'am.

11 Q: And you already explained what they showed, but can you  
12 give me more of a visual of exactly what that looks like with  
13 your prop?

14 A: Okay. So, the -- basically what happens is this is the  
15 skull and so the CAT scan is good at looking at changes in  
16 density. So, density means basically how fit things are. So  
17 what happens is radiation just kind of pours through and the  
18 lack of radiation shows up brighter. So, what we see on his  
19 CAT scan is the skull, which is here. This is the right; this  
20 is the left. So, we saw a subgaleal hematoma. Sub meaning  
21 below, and galeal is basically the thick fibrous covering  
22 around the scalp. Okay? So, basically, it's a scalp  
23 hemorrhage on the left side, and then on the right frontal  
24 lobe is where he had his subdural hematoma, so -- over here.  
25 So, if you take off the skull flap, here is the bleed over

1 here between the skull itself and the brain so pushing the  
2 brain over. And so our brain, just like our face, is  
3 symmetrical. So, his brain was pushed over because of the  
4 bleed, which is causing then swelling on the brain.

5 Q: Okay. So, how is it -- and I'm sorry, you're gonna have  
6 to talk down to me a little bit. How is it there is a gash or  
7 something in the back of the head but then the front of the  
8 head is experiencing trauma as well?

9 A: So, your brain is essentially a bag of water, which is  
10 cerebral spinal fluid, which is salt water and it's -- it's  
11 made from blood and water is basically filtered off and it  
12 bathes our brain, and the reason for that is because our brain  
13 is relatively squishy. And so if your brain were just resting  
14 on the skull, then it would get damaged easily. So what  
15 happens is it's in a bag of water that lets it flow. And so,  
16 anytime you have an injury or a stop, just like when you're in  
17 a car and you push on the brakes real hard and the seat belt  
18 holds you, the brain does the same thing where it can  
19 basically glide and that causes what's called a contra cue.  
20 In other words, the opposite injury. So, can you have either  
21 cue, which means at the direct site, or a contra cue injury.  
22 So, what happens is that you have something that hits you, you  
23 can have the exact opposite so contra meaning opposite, cue  
24 means area of injury. You have the opposite area that  
25 actually has the hemorrhage, and so that's what it appears

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1 that happened to Justin was he had a force applied to the back  
2 of his head, but the front of his head on the exact opposite  
3 trajectory received the bleed.

4 Q: Okay. So, the back would have been the cue and the front  
5 the contra cue potentially?

6 A: Well, he didn't have any brain injury in the back. So  
7 the cue is the brain injury. So technically speaking, the  
8 back is the site of the injury and then the front is the  
9 contra cue injury. So, the injury itself where the brain  
10 injury is ---

11 Q: Okay.

12 A: --- on the front. Does that make sense?

13 Q: Yes, as much as it will for me. So, after he receives  
14 the CAT scans and those results, what was your next plan of  
15 action for him?

16 A: We proceeded emergently to surgery, where he had a --  
17 what's called a decompressive craniectomy. So, what happens  
18 is when you do surgery, have to do a craniotomy, which means  
19 you open up the skull flap. So, we opened up a skull flap  
20 where his subdural was and then because of the brain swelling,  
21 we can't put the skull flap back, because the brain is a box,  
22 right, and there's no give to it whatsoever, not like the  
23 belly or even your arm. So if you get a bruise on your arm  
24 and it swells, there's plenty of room; the skin stretches.  
25 The brain is in a solid box and so it doesn't stretch. And so

1 what we do is we give it room to swell. So, you open up an  
2 incision, you take the bone flap off and you put the bone flap  
3 in the skin underneath the belly so it's somewhere safe,  
4 prevents infection and then gives room for the brain to swell.  
5 So he then proceeded with what's called a ICP monitor. ICP  
6 stands for intracranial pressure. So I, intra, C, cranial, P,  
7 pressure. ICP monitor to monitor him since we're gonna keep  
8 him sedated, to help protect his brain and that's the way that  
9 we know basically, heartbeat by heartbeat how his brain is  
10 doing.

11 Q: Okay. And so he came out of that first surgery and what  
12 was -- I guess after that first surgery, what was his  
13 prognosis moving forward?

14 A: So it -- it's hard to know right away, right? So we  
15 don't know -- brain injury is a difficult thing to predict how  
16 well you're gonna do. We -- surgery went well, there were no  
17 complications. He did have swelling, but his ICP was okay  
18 after surgery initially, and so he went straight up to the ICU  
19 and remained in a coma at that point in time. At that point  
20 in time, he was stable, critical but stable.

21 Q: Okay. And then what was the next change?

22 A: So, he developed -- when you're in -- in the post-  
23 swelling period, which is essentially five days is the peak of  
24 swelling. So, for the next five days we keep any patient with  
25 traumatic brain injury basically intubated and sedated. So,

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1 intubated means a tube in their throat to help them breathe  
2 and sedated means that they're brain function is as low as  
3 possible. So, we, we kept them in that state to help protect  
4 the brain because any increased activity means the brain gets  
5 more blood flow and the brain essentially can't tolerate that  
6 actual blood flow because it's swollen. And so we kept him in  
7 that state, but unfortunately his ICP started elevating again  
8 and again and we were unable to, with all the medicines that  
9 are available, to get his ICP under control, so we proceeded  
10 back to the operating room.

11 Q: And what was the purpose of going back to the operating  
12 room?

13 A: So, as a last -- as a last ditch effort and as an attempt  
14 to save his life, we took him to the operating room and  
15 actually did a lobectomy. In other words, we took out brain  
16 to make more room for the brain that he had left. And so we  
17 go to the same area that he had the injury, because we figure  
18 that's probably the least healthy brain, and we actually -- I  
19 took his -- I took his frontal lobe out. I essentially did a  
20 frontal lobectomy, even though that has consequences, in an  
21 attempt to save his life. Even though I don't know how --  
22 it's hard to predict how good of a life he'll have, but at  
23 least we tried to save him. Does that make sense?

24 Q: Sure, yes. And to the best of your ability, can you say  
25 that it was possible that Justin would have survived at that

1 point?

2 A: Well, I wouldn't have taken him to surgery if I didn't  
3 think there was a chance of survival.

4 Q: Okay.

5 A: So, the -- you know, there's no indication for surgery if  
6 there is no hope for survival. I anticipated although low,  
7 that we were still gonna be able to get him through that, and  
8 I do have patients that can get through a lobectomy and  
9 survive.

10 Q: And what potentially would have been his quality of life?

11 A: So, it's hard to know for sure and it's kind of all over  
12 the map. So, we know that if you have a severe traumatic  
13 brain injury, your chances of a good outcome are lower, but  
14 that doesn't mean that there's no chance of a good outcome.  
15 So, there are patients that are able to get through horrible  
16 periods of high ICPs that can last for days and even a week or  
17 more than can and do sometimes go home with a relatively good  
18 quality of life. And what I mean by that is, they're able to  
19 essentially do what are called ADL's or activities of daily  
20 living. So, they're able to feed themselves, able to  
21 communicate with their family, they may not be perfect, but  
22 they're happy.

23 Q: Okay. So, what was the first date that you made contact  
24 with Justin?

25 A: The day he came into the hospital.

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1 Q: Would that have been October 17th?

2 A: Yeah, the day he presented, I was in the trauma bay with  
3 him.

4 Q: Okay. And from the time that he was discharged from the  
5 hospital, did you have contact with him almost every day?

6 A: Nearly every day. I -- so the way for my service works  
7 is there are two neurosurgeons at the hospital, so I see all  
8 my patients on every day that I'm on except for every other  
9 weekend. So, every other Saturday and Sunday, I don't handle  
10 my own patients; my partner does. Other than that, I see my  
11 patients every single day.

12 Q: Okay. And what was the purpose of you seeing him? Was  
13 it monitoring or ---

14 A: So, every patient that's in-patient has to be evaluated  
15 on a daily basis according to hospital by-law, but also we're  
16 checking to see how his ICP's -- his intracranial pressure is  
17 doing, his blood pressure, his oxygen stats, his neurological  
18 exams -- we do an exam on every patient every day to see if  
19 his pupils are interactive, to check his medicines and then to  
20 make the plan of care for basically the next 24 hours. And so  
21 based on his ICP, we decide whether we're gonna keep on the  
22 medicines or slowly start weaning off the medicines or add  
23 more medicines. That changes obviously with calls all day and  
24 all night, but we kind of set up the next 24-hour plan of  
25 care, and then we also talk to the family and update the

1 family usually every day, too.

2 Q: And I know one of the things I read in -- in Justin's  
3 medical records was -- and I apologize if you already went  
4 over this, but -- a vascular skull fracture?

5 A: A vascular skull fracture, so that's -- vascular is means  
6 base of the skull fracture. So, secondary most likely to the  
7 initial trauma is when that came. So, whenever -- whenever he  
8 was hit, however he was hit, he fractured -- not only did he  
9 cause a bleed but he also fractured his skull. Now the  
10 vascular skull fracture doesn't require any treatment in and  
11 of itself, and so it doesn't have a prognostic value.

12 MS. WALKER: Okay. I beg the Court's indulgence for one  
13 moment?

14 THE COURT: All right.

15 MS. WALKER: Your Honor, I also noted that move for  
16 identification purposes only.

17 THE COURT: All right.

18 STATE'S EXHIBIT NUMBER 15, 16, AND 17

19 MARKED FOR IDENTIFICATION

20 BY MS. WALKER:

21 Q: Just hold on to them if you can.

22 A: Okay.

23 Q: Are these photographs a pretty fair and accurate  
24 representation of what Justin looked like while he was in the  
25 hospital the first few days?

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1 A: Yes, ma'am.

2 Q: Okay. And did you note during your treatment of him or  
3 in those photographs, any bruising about the face, black eyes?  
4 I understand he has some medical devices on his face, but from  
5 what you can see, can you see any of that?

6 A: I don't see any obvious -- anything -- so I see the post-  
7 surgical things, but I don't see anything else, no, ma'am.

8 Q: Okay. Thank you, sir.

9 MS. WALKER: And, Your Honor, those were State's Exhibits  
10 for identification purposes, 15, 16, and 17.

11 THE COURT: All right.

12 BY MS. WALKER:

13 Q: So, in your expert medical opinion, can you determine  
14 whether Justin was struck in the back of the head or not?

15 A: He had an assault to the back of his head, yes, ma'am.

16 Q: Okay. And you've learned since your treatment of Justin,  
17 probably while he was in the hospital, that his injuries were  
18 because of an assault to the back of the head, correct?

19 A: That was the initial presentation on the trauma  
20 evaluation was that there was an assault, yes, ma'am.

21 Q: Okay. And based on your treatment of him, can you say  
22 that the assault itself was the only reason for the trauma?  
23 Would there have been other exacerbating circumstances that  
24 could have made it worse?

25 A: Okay. So, let me clarify this question. You, you're

1 asking was that the only thing that happened to him during his  
2 -- the bar incident or the restaurant incident?

3 Q: Right, would that have been ---

4 MR. FOX: Your Honor, I'm gonna object to any testimony  
5 about what may or may not have happened at the bar. He's been  
6 qualified as -- any medical issue, he can testify about ---

7 THE COURT: I sustain the objection.

8 BY MS. WALKER:

9 Q: Would a punch to the back of the head have been  
10 sufficient to cause that injury?

11 A: Yes, ma'am, a punch to the back of the head can cause a  
12 subdural hematoma; yes, ma'am.

13 Q: Okay. And is that consistent with your medical findings  
14 in this case?

15 A: It appears to be a single -- we only -- on the trauma  
16 evaluation and according to the records, there was only one  
17 single sign of assault.

18 Q: Okay. I don't have any other questions right now.  
19 Please answer anything Mr. Fox may have.

20 A: Yes, ma'am.

21 CROSS EXAMINATION OF DR. JOSEPH CHEATLE BY MR. FOX:

22 Q: Dr. Cheatle, what does, as a doctor, the term assault  
23 mean to you?

24 A: Assault means that you were -- so you were injured in  
25 some way.

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1 Q: So, just an injury in some way?

2 A: Yes, ma'am -- yes, sir.

3 Q: I don't mean this to be insulting, but you're a doctor,  
4 not a lawyer, correct?

5 A: Yes, sir.

6 Q: Okay. So, would it surprise you that in legal terms,  
7 assault is a term of art? In other words, there are terms in  
8 medicine that might be the same word as something we use in  
9 everyday language but has particular meaning used in a  
10 medical context; is that fair to say?

11 A: Yes, sir.

12 Q: Okay. Now, so again, to you, as a doctor, regarding this  
13 case, an assault is simply something that causes an injury to  
14 in this case, Mr. Hodges?

15 A: Yes, sir.

16 Q: Okay. So one possibility is human contact?

17 A: Yes, sir.

18 Q: It can also be contact with an object?

19 A: Yes, sir.

20 Q: It could be an object employed by a human being like a  
21 bat or a knife, not a knife in this case, but a bat, a blunt  
22 object or pipe wrench?

23 A: Yes, sir.

24 Q: Okay. A hard surface?

25 A: Yes, sir.

1 Q: But if a person pushed somebody with enough strength into  
2 say a brick wall behind him, could that cause this kind of  
3 injury?

4 A: Any abrupt stop in the head can cause a bleed.

5 Q: An abrupt stop of the head?

6 A: Uh-huh (affirmative response).

7 Q: Okay. Is that similar or in context to, you mentioned  
8 the seatbelt scenario, right?

9 A: Uh-huh (affirmative response)

10 Q: You're moving in a car at a certain speed, you stop,  
11 basically your body doesn't stop moving, right? The car stops  
12 but your body is moving ---

13 A: Forward momentum, yes, sir.

14 Q: Basically, that's like the Dale Earnhardt death; are you  
15 familiar with that?

16 A: No, sir.

17 Q: That's all right. Okay. So, your testimony is, to boil  
18 it down is, this injury could've been caused by a punch,  
19 correct?

20 A: Yes, sir.

21 Q: But it also could've been caused by a number of other  
22 things?

23 A: Yes, sir.

24 Q: Okay. And the only information you had was something  
25 that was indicated on -- I'll just call them trauma notes that

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1 ---

2 A: The trauma flow sheet, yes, sir.

3 Q: Did you have access to all the medical records that would  
4 have -- that would have been ---

5 A: You mean at the time of the incident?

6 Q: Yes.

7 A: Yes.

8 Q: Yes, sir.

9 A: Uh-huh (affirmative response).

10 Q: Okay. And the information that the folks in the trauma  
11 room that see him initially -- he comes into the emergency  
12 room ---

13 A: Uh-huh, (affirmative response).

14 Q: --- and placed into the ---

15 A: Trauma bay.

16 Q: --- trauma bay?

17 A: Yes, sir.

18 Q: And so he's got a team of nurses and doctors that are  
19 evaluating and they're making notes, but where would their  
20 information come from, in this case, Mr. Hodges was  
21 unconscious when he appeared at the ER?

22 A: Yes, sir.

23 Q: Okay. So, where would their information have come from  
24 in terms of ---

25 A: So, you're asking can I have a passage of information is

1 in the trauma bay?

2 Q: Specifically as to the cause, possible cause of this  
3 injury?

4 A: So the way a trauma works is you're activated as a trauma  
5 based on EMS criteria, which are set up in Horry County based  
6 on the trauma team. And so, the EMS personnel will page that  
7 this meets criteria for trauma. The trauma team meets them  
8 and is waiting for them in the trauma bay, usually presents --  
9 if they're helicoptered in or in the ambulance bay at that  
10 location and then there's a passage of information of any  
11 knowledge from the EMS personnel to the trauma personnel over  
12 a very standard kind of passage that they do, which is kind of  
13 a script.

14 Q: And generally speaking, in your experience, the EMS  
15 people would be called after the event, correct?

16 A: Of course, sir.

17 Q: Because there's no reason to call EMS before something  
18 actually happened?

19 A: That would seem obvious, yes, sir.

20 Q: Right. So, EMS wouldn't be an eyewitnesses to the event?

21 A: No, sir.

22 Q: And if you have, in this case, a patient who is  
23 unconscious, they could not have gotten any information as to  
24 the cause from Mr. Hodges in this case?

25 A: Of course, sir.

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1 Q: Okay. I need to mark these for identification.

2 COURT REPORTER: You want them separate?

3 MR. FOX: Yes, please.

4 DEFENDANT'S EXHIBIT NUMBER 1 and 2

5 MARKED FOR IDENTIFICATION

6 BY MR. FOX:

7 Q: Dr. Cheatle, I'd like to show you what's been marked as  
8 Defendant's Exhibit 1 and 2 for identification.

9 A: Yes, sir.

10 Q: And tell me if you can identify generally what they are?

11 A: They're, as marked on here, they're continuation of the  
12 trauma flow sheets, sir.

13 Q: Okay. The trauma flow sheet?

14 A: Uh-huh (affirmative response).

15 Q: Okay. And does anywhere on here indicate possible cause  
16 of the injury?

17 A: So, in the trauma flow sheet, it says that, you have them  
18 highlighted, so I'm assuming you're asking ---

19 Q: I'm not suggesting that, you know, your answer be based  
20 on -- those are for my purposes only, so your answer should  
21 come from your own knowledge. You know my highlighting is  
22 purely for my own preparation.

23 A: So in the -- in the narrative by the nurse says 30 -- 30,  
24 I'm assuming it says meter, which would be very unusual -- but  
25 30-meter fall backwards -- and I don't know if that means 30-

1 year-old male or 30-meter fall, I don't know -- but it says  
2 feel backwards, alcohol ETOH alcohol, hematoma back of head,  
3 unresponsive GCS 4.

4 Q: Okay. And that's on, which one is that?

5 A: This is on Page 31 of 1366.

6 Q: In terms of Defense Exhibit ---

7 A: Oh, I'm sorry, this Defense Exhibit Number 2, sir.

8 Q: Number 2 and then do you see in Defense Exhibit 1 any  
9 similar language?

10 A: It says again in the narrative at 0050 patient arrived  
11 via EMS. Patient fell backwards and hit back of head, hematoma  
12 to head.

13 Q: Okay. Now again, this is information that would have  
14 been obtained or put down on that trauma flow sheet from --  
15 from individuals ---

16 A: EMS. The EMS would have -- that would have been the --  
17 basically the EMS person ---

18 Q: Okay. And then that would've been provided to the trauma  
19 team at Grand Strand?

20 A: Yes, sir.

21 Q: Okay. So, EMS being the first responders to the scene,  
22 because again the trauma team doesn't go out to Broadway at  
23 the Beach to respond, correct?

24 A: Yes, sir.

25 Q: So, EMS being first responders, indicated the information

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1 they have on that sheet that they provided to the treating  
2 doctors was a fall of some type?

3 A: Uh-huh (affirmative response); yes, sir.

4 MR. FOX: One moment.

5 THE COURT: All right.

6 MR. FOX: Thank you. No further questions.

7 THE COURT: All right. Redirect?

8 MS. WALKER: Yes, Your Honor.

9 REDIRECT EXAINATION OF JOSEPH CHEATLE BY MS. WALKER:

10 Q: Dr. Cheatle, can you just, again, boil it down for me a  
11 little bit because I'm a lawyer and not as smart as you are.  
12 For the subdural hematoma, the brain bleed ---

13 A: Yes, ma'am.

14 Q: What exactly is the nature of that injury; what does it  
15 ---

16 A: A subdural -- so the pathophysiology of a subdural  
17 basically why do those happen?

18 Q: Sure.

19 A: They happen because of the ripping of a blood vessel.

20 MR. FOX: Your Honor, I'm sorry to interrupt, but I think  
21 this is beyond -- I asked no questions about this on redirect.

22 THE COURT: Sustained.

23 MR. FOX: Thank you.

24 BY MS. WALKER

25 Q: How serious -- when he came in and on these trauma bay

1 flow sheets, what -- how serious was his injury then?

2 A: He was critical. He was critical, his GCS was 4, so  
3 very, very -- the lowest is 3.

4 Q: The lowest is 3, so just what does 4 mean, I know it's  
5 low, but like you mentioned the motor ability?

6 A: So he -- 4 -- so, 1 means he has no motor, that's what --  
7 so he was intubated ---

8 MR. FOX: Your Honor, this was covered in direct and not  
9 asked on cross.

10 THE COURT: How is this responsive to what was brought  
11 out in cross that was not addressed in direct.

12 MS. WALKER: Because he was asking about the information  
13 on the flow sheets, on these trauma flow sheets. I mean  
14 that's exactly what he was asking about.

15 THE COURT: About the injury, not the -- well, I'll give  
16 you a little leeway, but recross does not mean you go through  
17 your direct examination again. It means you only address  
18 issues on his cross that you did not bring up in your direct.  
19 So, I'll give you a little leeway, but go ahead.

20 MS. WALKER: Yes, sir, Your Honor. That's my only  
21 question.

22 THE COURT: All right.

23 A: So, GCS 4 means that he's -- he's posturing. In other  
24 words, he has the lowest brain stem response for his movement  
25 and then nothing else.

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JOSEPH CHEATLE - REDIRECT BY WALKER

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1 BY MS. WALKER:

2 Q: Okay. And I mean, like Mr. Fox is getting at though --  
3 and I apologize, I did say that was my only question -- but  
4 what Mr. Fox is getting at, you know, none of the doctors or  
5 nurses, they weren't there at Carlos'n Charlie's, so they  
6 really -- they don't know what happened. You guys are  
7 attending to injuries and trying to save somebody's life,  
8 right?

9 A: The situation, the cause of it is rarely important or  
10 asked during that part, yes, ma'am.

11 Q: Okay. All right. I have no other questions.

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

13 MS. WALKER: And, Your Honor, we'd like to ask that Mr.  
14 -- Dr. Cheatle be released from his subpoena at this time.

15 THE COURT: Any objection?

16 MR. FOX: None at all.

17 THE COURT: All right. He's free to go. Thank you very  
18 much.

19 The State can call your next witness.

20 MS. WALKER: Your Honor, the State calls Sergeant Rich  
21 Arroyo.

22 THE COURT: All right.

23 CLERK: Please raise your right hand and place your left  
24 hand on the Bible.

25

RICH ARROYO, HAVING BEEN DULY SWORN

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RICHARD ARROYA - DIRECT BY WALKER

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1 TESTIFIES AS FOLLOWS:

2 CLERK: Please state your full name and spell your last  
3 name for the Court.

4 MR. ARROYO: Rich Arroyo, A-R-R-O-Y-O.

5 DIRECT EXAMINATION OF RICH ARROYO BY MS. WALKER:

6 Q: Hi. Could you please state your current position with  
7 the Myrtle Beach Police Department?

8 A: I'm a detective.

9 Q: Okay.

10 A: In investigations.

11 Q: And how long have you been with the Myrtle Beach Police  
12 Department?

13 A: About 15 and a half years.

14 Q: Okay. And in October 2015, what was your position?

15 A: I was a road supervisor.

16 Q: All right. And what would the duties of road supervision  
17 entail?

18 A: They start off simply as far as like handing out keys for  
19 the beginning of the shift, making sure all the cars are clean  
20 and organized, to doing reports, assisting officers that need  
21 help. Basically, if they get in trouble we write them up, we  
22 review video tapes, we make sure there's a quality standard in  
23 what they're doing.

24 Q: Okay. Did you have an occasion to become involved with  
25 this investigation in October of 2015?

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RICHARD ARROYA - DIRECT BY WALKER

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1 A: Yes, ma'am.

2 Q: Okay.

3 A: I was called by PFC Vasquez. He was up at Grand Strand  
4 Hospital. I believe the initial call came out something about  
5 property on an unknown male. By the time I got there, maybe  
6 an hour later -- I'm sorry, he had called me and said, hey, I  
7 think I need you to come up to the hospital. I remember going  
8 up there and like what do you -- what do you need me for? He  
9 goes, well, this guy that they brought in last night, he ---

10 MR. FOX: Objection to what another person told him, Your  
11 Honor, hearsay.

12 THE COURT: Sustained.

13 BY MS. WALKER:

14 Q: So, you got to the hospital and what did you do?

15 A: I, I went over whatever he told me and I went over it  
16 again. I spoke with the charge nurse.

17 Q: Was there -- and I'm sorry, I'm gonna interrupt you.

18 A: Uh-huh (affirmative response).

19 Q: Was there property there that was lost or had been with  
20 the victim in this case?

21 A: Correct. At this point, the gentleman at the hospital  
22 was a John Doe.

23 Q: Okay.

24 A: No one had any identification; we didn't know who he was.  
25 I came up there partially to help assist, maybe, find out who

1 he is, what's going on, and where we could find his name.

2 Q: So, at this point in your involvement in the case, were  
3 you aware that there had been an assault or anything like  
4 that?

5 A: An assault, no; not an assault, no, ma'am.

6 Q: Okay. I'm sorry, I apologize.

7 A: That's all right.

8 Q: You retrieved items from the hospital?

9 A: Yes, ma'am. While we were standing up there, the charge  
10 nurse coming by, listening to her and the doctor, the other  
11 nurses, there was a phone, two phones, two sets of keys, and I  
12 think a wallet or a change purse. And one of the phones kept  
13 chiming or binging or doing notifications. The change purse  
14 had an ID in it. We were just trying to figure out whose, and  
15 what belongs where, and how do we find this, this gentlemen's  
16 name. There were two sets of keys. And at one point, I  
17 called another office and we went down to Broadway at the  
18 Beach to hopefully find cars, maybe license plates or  
19 something like that.

20 Q: Okay. And what did you do from there? Did you find a  
21 car?

22 A: I called Officer Bellamy, we went to Broadway at the  
23 Beach, we started walking through the parking lot clicking key  
24 fobs.

25 Q: Uh-huh (affirmative response).

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1 A: And we had one vehicle, a white vehicle that chirp  
2 chirped, ran the tag, and it came back to Justin.

3 Q: Okay.

4 A: We went in the car, and I think we found a woman's purse,  
5 some miscellaneous mail, something to an Ashley, a Kaitlin,  
6 and then Justin. So I was getting, maybe this guy's name is  
7 Justin.

8 Q: And what did you do with that information?

9 A: Okay. I think we -- oh, in that case, I ran the tag with  
10 the male, got a face, and I think at this point, we had gotten  
11 on Facebook to find out who the other females were, maybe  
12 reach out to somebody. And based on the time I spent with the  
13 victim up at the hospital, to the pictures of this Justin, I  
14 think we -- I felt comfortable that it was the same person.

15 Q: Okay.

16 A: We reached out to Ashley. She called us back maybe in 10  
17 or 15 minutes and said, yeah, who's this, you know, what's  
18 going on. And then we -- I told her who I was and I explained  
19 to her that, hey, something is going on, he's up at the  
20 hospital, we're just trying to confirm who he is. She gave me  
21 a little bit of history that a lady named Kaitlyn was his  
22 roommate somewhere else and that might be why he had mail for  
23 him and her. She told me, I think at some point, she dated  
24 Justin.

25 Q: Okay. So, you started to kind of and connect the dots -

1 --

2 A: Yes, ma'am.

3 Q: --- of who this man might be?

4 A: Yes, ma'am.

5 Q: So, at what point, did you turn to Carlos'n Charlie's at  
6 Broadway at the Beach as a point of interest?

7 A: After that, I'm trying to remember how we made the  
8 connection. It might've been like a, maybe a wallet, not a  
9 wallet, I'm sorry -- a waitresses book carrier, kind of gave  
10 me the idea. Like well we parked right here. Let's kind of  
11 go investigate.

12 Q: Okay.

13 A: And at some point, we made the connection that there was  
14 a medical call here last night. While we were waiting, I was  
15 calling my sergeant let him know something's going on here.  
16 We found out this guy's name, we're still trying to make  
17 contact with somebody because we can't get hold of anybody.

18 Q: Okay.

19 A: At that point, I think Ashley had given me Justin's mom's  
20 number. So, I called her, spent some time with her. And at  
21 that time, we had already to Carlos'n Charlie's and said, hey,  
22 we'd like to -- is there any video here?

23 Q: Okay.

24 A: People were coming in for lunch, prepping for lunch, so I  
25 was on the phone. Officer Bellamy went inside. I shortly

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1 went inside. I looked around, checked where the cameras were.

2 I said, hey, do you guys have cameras?

3 Q: So, at this point, you were at Carlos'n Charlie's?

4 A: Yes, ma'am, we had parked where the white car, Justin's  
5 car, the tag that came back to Justin's car, was maybe one row  
6 off of Carlos'n Charlie's. So, we actually parked our cars in  
7 front of Carlos'n Charlie's and didn't even realize we'd be  
8 going in there.

9 Q: Okay. So once you went in there, did you meet with a  
10 manager?

11 A: Yeah, we asked for a manager. I think the manager was  
12 still doing something in the back, so I kind of just started  
13 walking around the business. People were cleaning up, mopping  
14 up. You know, I was kind of curious like I wonder if this,  
15 you know, where we need to be. I asked them I said, hey, did  
16 you guys here about a fight last night; did you hear about  
17 anyone getting hurt? No, no, I didn't see nothing.

18 MR. FOX: Objection to the responses from others.

19 THE COURT: Overruled. I'll allow that. Go ahead.

20 BY MS. WALKER:

21 Q: So, did you at some point watch the surveillance footage?

22 A: Yes, ma'am, a manager finally came in, an assistant  
23 manager.

24 Q: Okay.

25 A: And he took us to the back and we -- he didn't really

1 know much about it other than to play it and it took us  
2 forever to get back to a point of where we can watch what I  
3 was looking for. Hey, last night we had a medical call; let's  
4 see if we're related.

5 Q: Okay.

6 A: And then he showed us the video.

7 Q: Okay. And have you seen that video since -- since then?

8 A: Yes, I saw one this morning.

9 Q: Okay. And I'd like to show you what's been marked  
10 State's Exhibit 7 for identification purposes?

11 A: Yes, ma'am, that's the video I saw this morning.

12 Q: How do you know it's the one you saw?

13 A: Because I put my initials and the date on it.

14 Q: Okay. And the video that you watched this morning, was  
15 it basically the exact same thing that you saw at Carlos'n  
16 Charlie's?

17 A: I remember, I mean there was so many people in the  
18 office; there was a lot going on. I was trying to jockey for  
19 position on this little screen there. But essentially, yes,  
20 it looks -- to be honest with you, the video looks brighter or  
21 crisper to me than I remember.

22 MS. WALKER: Okay. At this point, Your Honor, we would  
23 like to introduce into evidence State's Exhibit 7?

24 THE COURT: All right. Any objection?

25 MR. FOX: This is ---

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1 MS. WALKER: It's the same surveillance video.

2 MR. FOX: Without objection, Your Honor.

3 THE COURT: All right. State's Exhibit Number 7  
4 admitted into evidence without objection.

5 STATE'S EXHIBIT NUMBER 7

6 ADMITTED INTO EVIDENCE

7 BY MS. WALKER:

8 Q: Detective, what was your purpose in watching this when  
9 you watched in October of 2015?

10 A: It was -- it was kind of like a whodunit. We've got a  
11 gentleman here who seems very well fit. I mean, I sat next to  
12 him at the hospital bed just waiting for things to happen and,  
13 I mean, he looked like a healthy young man and we're trying to  
14 figure out or I'm trying to figure out what happened here.

15 Q: Okay.

16 A: I was hoping that the video would show me something. The  
17 videos on the outside of Broadway at the Beach were not  
18 operable, it didn't have a good angle. So, I went inside and  
19 see -- see what we could find out.

20 Q: And did you see something on the video that helped  
21 further the investigation?

22 A: Yes, ma'am. While I was watching the video -- and we had  
23 to watch it 10 to 15, 20 times. It was just interesting  
24 shadowing and the digitizing of the video. I, you know, what  
25 I saw something what appeared as to someone coming up behind

1 him and the video was segmented. It was maybe like the three-  
2 second, four-second gap. We were trying to fix it and there  
3 was no fixing it, that was just how the video, excuse me, was  
4 being recorded. And I saw a man that looked like he was  
5 taking an aggressive stance behind him and the next -- the  
6 next slide or the next four-second segment showed Justin on  
7 the floor.

8 Q: Okay. But, did you know at the time that that was  
9 Justin, just by looking at the video?

10 A: No, I couldn't identify anybody. I just, you know, I had  
11 to keep asking and asking, and I again called the sergeant,  
12 which called the lieutenant and -- hey, I think I've got  
13 something here. Hopefully it's connected; I don't know if  
14 it's connected or not.

15 MS. WALKER: Your Honor, at this point, the State would  
16 request permission to publish to the jury the video.

17 THE COURT: All right. Any objection?

18 MR. FOX: No, Your Honor.

19 THE COURT: All right. I'll allow it.

20 MS. WALKER: And, Your Honor, we would ask that Detective  
21 Arroyo come down and point out what it is that he saw on the  
22 day that helped him further the investigation?

23 THE COURT: He's gonna need to be near a microphone where  
24 the court reporter can pick up his testimony.

25 MS. WALKER: Will this one suffice if we use this one?

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1 THE COURT: Yeah; that'd be fine.

2 (REPORTER'S NOTE: State's Exhibit 7 published - no audio.)

3 COURT REPORTER: Detective, it would help me if you could  
4 stand on the other side of that screen so I can see your face,  
5 please. Thank you.

6 BY MS. WALKER:

7 Q: All right. So point out the area please that was of  
8 interest to you?

9 A: Okay. I had to be explained where this camera was. I  
10 saw multiple cameras but I couldn't figure out, because we  
11 were there before lunchtime or around lunchtime and all these  
12 people were not there. This area was actually filled with  
13 dining tables while I was there.

14 Q: Okay.

15 A: So, I had to -- I had to get an orientation as to where  
16 -- where all this was going on, but I was explained that this  
17 was part of the dance floor the night before.

18 Q: Okay.

19 A: There is a camera here. And this may come up later, but  
20 the back door or the patio area would be west, northwest back  
21 here.

22 Q: Okay.

23 A: This is a picture of the dance floor/dining room in the  
24 daytime.

25 Q: Okay. Stop it there. So, what would that have been?

1 A: I mean, at this point, again, I know when we record a  
2 video, we try not to record before the incident and after the  
3 incidents we kind of get a point of reference. At this point,  
4 I probably still had no idea what I was looking at. To me, it  
5 was just people. I was trying to identify what was going on  
6 or you, know, if I -- before I went further in this video.

7 Q: So, in this frame, did you see any sort of physical  
8 altercation that at that point said, whoa, I need to pay  
9 attention?

10 A: It's hard for me to -- not standing in front of the T.V.  
11 and -- at this point, I don't -- I don't recognize anything  
12 that -- that alerted me just yet.

13 Q: Okay. What about there?

14 A: Okay. Now again, I had to watch this video multiple  
15 times and I started watching what people were doing  
16 individually. I noticed that something was going on here  
17 because two people were meeting up, but I was also watching  
18 here because it looked like they were congregating. I'm not  
19 sure if it's the next frame or the frame after that.

20 Q: Now, I think -- I think you've passed it ---

21 A: It's really hard for me to see on the side there. Okay.  
22 If we could go, I'm sorry, can we go back one more frame? All  
23 right. If you could stop it. Now, this is the frame where I  
24 started noticing it again. I had to watch the different  
25 groups and what they were doing. I notice here, I had two

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1 people pressed up against each other. I did not realize until  
2 after the fact, that this might've been Justin and this  
3 might've have been somebody else. But as I watched each  
4 individual, I noticed that this person standing here is in an  
5 offensive posture.

6 Q: Okay. And what do you mean by offensive posture?

7 A: I'm sorry. If you play sports, anything organized, took  
8 any type of martial arts, baseball, football, some people  
9 might call it a follow through. Basically, it's like a  
10 transfer of energy. This person has got a strong foot  
11 forward. This person -- this is the aftermath of what I would  
12 call a follow through. The hip's already turned, the shoulder  
13 is transferring energy to whatever is going on up there. I  
14 can't see him making contact, but it looks like either  
15 contacts have been made or he's doing the follow through at  
16 that point. Basically, spreading of the feet, balancing of  
17 the center, the core, and then the switching the hip with the  
18 energy being followed through with the arm or whatever action  
19 is going in that direction.

20 Q: And in your training as a law enforcement officer, have  
21 you taken any sort of defensive training or anything?

22 A: Yes, ma'am. At the academy, we learned offensive ground  
23 tactics and a lot of hips are used, displacement of energy,  
24 displacement of weight. Also, we had ASP training, which is  
25 the -- some people call it the baton, and they teach the

1 transfer, kind of like a baseball bat. I know it's kind of  
2 archaic to say it that way, but it's like the transfer of  
3 energy, and that is clear indication of a transfer of energy.

4 Q: Okay. So, based your experience and your training, you  
5 were able to see that and think that it was something that you  
6 should pay attention to?

7 A: Yeah, I started paying attention here because everyone  
8 has got their feet, you notice that everyone's feet are  
9 somewhat flat to the ground, shoulder distance -- shoulder  
10 distance away. There's a separation distance there. You  
11 know, there's a transfer of energy with the arm up. Something  
12 -- something happened there. It's clear to me.

13 Q: Okay. We'll finish watching.

14 A: I believe that a frame or two went by before we saw the  
15 feet and that was due to the lighting and the shadowing and  
16 all that. So, that's why we kept back and back, like how did  
17 this happen; what happened?

18 Q: Okay. And finish it out. All right. What --  
19 approximately what time and date did you view that originally?

20 A: On the first day, the 17th of October, 2015, the time, I  
21 know that people were eating lunch there. We were there from  
22 maybe 10:00 till after lunch.

23 Q: Okay.

24 A: So, I'm gonna say 10 to 2:00, maybe.

25 Q: Okay. And what further investigation did you do based

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1 off of that or anything you had learned that morning?

2 A: Well, after that video, I called my boss again, who  
3 called his boss, and that's when we realized that something  
4 happened, make the connection. I stayed at the bar while my  
5 bosses decided what they want to do, how they were gonna do  
6 it, and I continued to speak with people that were able to  
7 speak with me. I understand what the Defense is saying. I  
8 did talk -- it's part of my supplemental that I spoke with  
9 certain people and their statements where if their name was  
10 given or phone number was given and that's how I took it as  
11 far as I could without tipping my hand and interfering with  
12 the detective's case at the time.

13 Q: Okay. And that's Carlos'n Charlie's at Broadway at the  
14 Beach?

15 A: Yes, ma'am.

16 Q: Where the incident occurred?

17 A: Yes, ma'am.

18 Q: Is that in Horry County, South Carolina?

19 A: Myrtle Beach, Horry County, South Carolina, yes, ma'am.

20 Q: Okay. I don't have any other questions for you right  
21 now.

22 THE COURT: Cross examination?

23 MR. FOX: Thank you.

24 CROSS EXAMINATION OF RICH ARROYO BY MR. FOX:

25 Q: Officer, I think you testified, when you went in and were

1 looking in Carlos'n Charlie's?

2 A: Yes, sir.

3 Q: And you were looking around and you could see with your  
4 own eyes, multiple cameras around?

5 A: Yes, sir.

6 Q: Could you estimate or do you know how many cameras there  
7 were?

8 A: I'm gonna say minimum of four because I remember seeing a  
9 view towards the back door. There was a view towards like a  
10 hostess stand and I think there was a view like maybe towards  
11 the bathroom, you know, maybe four to eight.

12 Q: Okay. Do you know how many you actually -- you viewed  
13 lots of information ---

14 A: Sure.

15 Q: --- because you didn't have a specific timeframe. Do you  
16 remember how many views you actually watched there at Carlos'n  
17 Charlie's?

18 A: For sure, I watched two at Carlos'n Charlie's because I  
19 was curious how Justin ended up outside. I wanted to know if  
20 someone carried him, did EMS come in. And, there was just too  
21 many people to talk to at the time but I was curious, and at  
22 one point, I was able to see some feet. I'm not sure if they  
23 were carrying him, dragging him, but that's how he ended up  
24 outside.

25 Q: You were -- and that would be the one played previously

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1 when you were not in the courtroom, they showed the pool  
2 tables -- him being taken out through the pool table area;  
3 does that sound familiar?

4 A: There was another area. I don't know if it was used for  
5 pool tables. Like this was dining in the nighttime -- I mean,  
6 the daytime -- yeah, I'm not sure.

7 Q: No question in the video that we just watched that there  
8 was a gap between frames?

9 A: Absolutely.

10 Q: In fact, I don't know if you caught that there was a time  
11 stamp on the bottom?

12 A: Yes, sir.

13 Q: Four-second intervals, correct?

14 A: Yeah, three to four seconds is where I think what jumped  
15 from eight to eleven one time, and then I watched it another  
16 time and it was like something else.

17 Q: It's almost like the picture freezes; when a frame comes  
18 up, that picture will be there for those -- it doesn't go  
19 blank in between that four second interval. The picture comes  
20 up in that frame and then it's there until the next one comes  
21 up four seconds later?

22 A: It did give that awkward appearance. I don't know if  
23 that's the technical manner.

24 Q: Nothing technical about that, I assure you.

25 A: Right.

1 Q: Well, when you watched that video just now, there's no  
2 light spaces, no dark spaces?

3 A: No, sir.

4 Q: So, it appears a little bit jerky, but that's because  
5 it's set on that four second. Okay. So, you've testified  
6 about what caught your attention in the one frame?

7 A: Yes, sir.

8 Q: But what you don't have then is the previous frames, four  
9 seconds before, correct?

10 A: You mean prior to like the eight or eleven?

11 Q: When you talk about the man with you called it the  
12 aggressive stance ---

13 A: Right.

14 Q: --- or transfer, so there's that frame?

15 A: Right.

16 Q: The previous frame is four seconds before?

17 A: Yes, sir.

18 Q: So, what you don't have is what transpired in those four  
19 seconds, correct?

20 A: Before that, no, I wouldn't have an idea.

21 Q: And that's why when you watch this you see if you were to  
22 look at any one individual, they appear to almost jump from  
23 one -- not jump, but you see a person here and then you might  
24 see them two or three feet over in the next frame ---

25 A: Right.

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1 Q: --- because there's been a lapse and they might turn to  
2 talk to somebody or ---

3 A: Sure.

4 Q: --- take a step or two, correct?

5 A: Sure.

6 Q: So basically, there's by design, missing information, not  
7 to conceal anything but simply because that's the way the  
8 system was set up to record?

9 A: I don't know if design means in this definition, but that  
10 is the way it was set up prior to me getting there and prior  
11 to anyone -- yes.

12 Q: In other words, in a surveilling in a club like this or  
13 maybe in a convenience store where you often have continuous  
14 surveillance, that's pretty typical to intentionally set that  
15 up to not be real time to save space; is that pretty common?

16 A: I can't answer for them.

17 Q: And after the frame that, you know, caught your attention  
18 ---

19 A: Yes, sir.

20 Q: --- of the transfer of power, then because of lighting,  
21 there was a gap of two or three frames before you could see  
22 what appeared to be someone on the floor?

23 A: Right.

24 Q: So, if it's two frames, that's eight seconds, correct?

25 A: Seven to eight seconds, there's a ---

- 1 Q: Three frames?
- 2 A: Yeah, something like that, yes.
- 3 Q: And again that's because of the lighting and the  
4 conditions inside the club at the time?
- 5 A: Yes.
- 6 Q: So, you can see the posture that got your attention?
- 7 A: Uh-huh (affirmative response).
- 8 Q: As you said, you can't really see if there's -- what the  
9 result was of that, correct?
- 10 A: Yes.
- 11 Q: Okay. And then again, because of the way the system is  
12 set up to delay and because of lighting, there's some period  
13 of seconds, eight seconds or so, before you see a body on the  
14 floor, feet up, correct?
- 15 A: Yes, sir.
- 16 Q: So, it certainly appears -- I mean, you can only see it  
17 kind of from the waist down; is that fair to say?
- 18 A: Yes, sir.
- 19 Q: You can see the legs very well. You can't really see the  
20 torso or the head?
- 21 A: Correct.
- 22 Q: But it appears from his posture, he's on his back,  
23 wouldn't you say?
- 24 A: Yes, sir.
- 25 Q: Okay. Thank you. No further questions.

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MARIAH STEVENS - DIRECT BY WALKER

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1 THE COURT: Redirect?

2 MS. WALKER: I don't have any other questions.

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

4 A: Thank you, sir.

5 THE COURT: All right. The State can call your next  
6 witness.

7 MS. WALKER: The State calls Mariah Stevens.

8 CLERK: Raise your right hand and place your left hand on  
9 the Bible.

10 MARIAH STEVENS, HAVING BEEN DULY

11 SWORN TESTIFIES AS FOLLOWS:

12 CLERK: Please state your full name and spell your last  
13 name for the Court.

14 MS. STEVENS: My name is Mariah Amber Stevens, M-A-R-I-A-  
15 H, A-M-B-E-R, and Stevens us S-T-E-V-E-N-S.

16 THE COURT: All right.

17 DIRECT EXAMINATION OF MARIAH STEVENS BY MS. WALKER:

18 Q: Mariah, how old are you?

19 A: Twenty-five.

20 Q: And do you recall an incident on October 16th/17th, 2015  
21 at Carlos'n Charlie's?

22 A: Yes.

23 Q: Okay. And at that time, were you dating Justin Hodges?

24 A: Yes.

25 Q: Okay. Who had you gone to Carlos'n Charlie's with that

1 night?

2 A: With Justin.

3 Q: Okay. And what did you two do when you first got there  
4 to Carlos'n Charlie's?

5 A: We, whenever we walked in, we were gonna go play pool and  
6 stuff, but then a bunch of my friends that I knew came in so  
7 we were all talking, and I was introducing him to them, and  
8 then I went and got a drink and then -- then my other friend,  
9 Jimer came in and ---

10 Q: So, let me stop you there.

11 THE COURT: Excuse me for a minute. Can you slide a  
12 little bit closer to the microphone? There you go. Thank  
13 you. All right.

14 BY MS. WALKER:

15 Q: So at some point in the night you ran into James  
16 Petrocine, Jimer?

17 A: Uh-huh (affirmative response).

18 Q: Okay. And did anything unusual happen when you ran into  
19 him?

20 A: Yeah, he touched me, so I told him not to touch me and I  
21 went and said something to Justin, and he went and talked to  
22 him.

23 Q: So, Justin was not there when that happened?

24 A: No, he was -- I think he was over by -- because I went to  
25 go get a drink and he was over by the pool tables.

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1 Q: And what did Justin do when you told him about that?

2 A: He went over and talked to him; that was about it.

3 Q: Okay.

4 A: And we all -- I mean, they -- they even played pool with  
5 us.

6 Q: Okay. So, after Justin talked to him, you guys all  
7 played pool together?

8 A: Yeah, everything was fine.

9 Q: Okay. Did you see at any point in the evening, did you  
10 see Justin physically touch anybody in an aggressive way?

11 A: No.

12 Q: And were you there when Justin was hit?

13 A: No, I was in the bathroom because we were getting ready  
14 to leave.

15 Q: Okay. And where was the last place you saw Justin?

16 A: He was standing up next to like, like the wall towards  
17 the entrance.

18 Q: Okay.

19 A: I think he was talking to one of -- I don't know if he  
20 was talking to Jimer or who he was talking to, but he was  
21 talking to somebody I believe.

22 Q: Okay.

23 A: But I had to go to the bathroom, and I came out and he  
24 was gone.

25 Q: Okay. So, you didn't witness the actual blow?

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1 A: No, ma'am.

2 Q: Okay. But you're certain that there was no sort of  
3 physical altercation or anything?

4 A: No, nothing before that, no.

5 Q: Okay. Not from Justin or anybody?

6 A: No; uh-huh(negative response).

7 Q: Okay. And I beg the Court's indulgence?

8 THE COURT: All right.

9 Q: Okay. I don't have any other questions. If you'll  
10 answer any that Mr. Fox has, okay?

11 CROSS EXAMINATION OF MARIAH STEVENS BY MR. FOX:

12 Q: Now, how do you know Jimer Petrocine?

13 A: Just a friend.

14 Q: A friend, you ever date him?

15 A: No.

16 Q: Okay. But someone you knew before this night two years  
17 ago in October?

18 A: Yes.

19 Q: Okay. And a little confused. You say he touched you and  
20 then you went and complained to Justin. How did he touch you?

21 A: I went -- we -- I went to give him a hug and he touched  
22 my breast.

23 Q: Okay. So, you thought that was inappropriate?

24 A: Yes.

25 Q: Okay. You weren't dating, he wasn't your boyfriend?

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- 1 A: Yeah.
- 2 Q: And you didn't give him permission to feel you up like  
3 that?
- 4 A: Exactly.
- 5 Q: Okay. So, it upset you and -- I'm sorry, I don't mean to  
6 cut you off -- enough that you went and told Justin?
- 7 A: Uh-huh, (affirmative response).
- 8 Q: Please answer yes or no for the Court. So yes, you went  
9 and told Justin, and then Justin went over to Jimer?
- 10 A: Yes.
- 11 Q: Okay. You went at some point to the bathroom, correct?
- 12 A: Yes, we were getting ready to leave, and I had to go to  
13 the bathroom.
- 14 Q: What was -- what was Justin doing while you were in the  
15 bathroom?
- 16 A: He was waiting on me.
- 17 Q: Okay. Who was he talking to?
- 18 A: I think he was talking to Jimer, I don't remember.
- 19 Q: But you were in the bathroom?
- 20 A: Yeah.
- 21 Q: A regular bathroom, solid door?
- 22 A: Yeah.
- 23 Q: All right. You can't see from inside and out, right?
- 24 A: Right.
- 25 Q: Okay. So, you really don't know what Justin was doing

1 while you were in the bathroom, do you?

2 A: No.

3 Q: Okay. You don't know what Jimer was doing?

4 A: No, whenever we were getting up, when we were leaving, I  
5 told him I had to go to the bathroom. He was talking to  
6 somebody when I went to the bathroom.

7 Q: So, you did not see, you said yourself, you did not see  
8 Justin get hit?

9 A: No.

10 Q: You did not see how he got injured?

11 A: No.

12 Q: Okay. Didn't see that gentleman hit him?

13 A: No.

14 Q: Didn't see anybody hit him, did you?

15 A: No.

16 Q: Okay. Because you were in the bathroom, right?

17 A: Yes.

18 Q: Okay. So, you don't -- you just don't know what was  
19 going on during that period of time, correct?

20 A: Yes.

21 Q: Okay. Thank you. No further questions.

22 THE COURT: Redirect?

23 MS. WALKER: Nothing further, Your Honor.

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

25 All right. State can call your next witness.

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DAVID HAYES - DIRECT BY WALKER

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1 MS. WALKER: The State calls David Hayes.

2 CLERK: Please raise your right hand and place your left  
3 hand on the Bible.

4 DAVID THADEUS HAYES, HAVING BEEN DULY  
5 SWORN TESTIFIES AS FOLLOWS:

6 CLERK: Please state your full name and spell your last  
7 name for the Court.

8 MR. HAYES: David Thadeus Hayes, and last name is H-A-Y-  
9 E-S.

10 THE COURT: All right.

11 DIRECT EXAMINATOIN OF DAVID THADEUS HAYES BY MS. WALKER:

12 Q: Mr. Hayes, how old are you?

13 A: Twenty-three.

14 Q: Twenty-three. And what do you do for a living?

15 A: I do tree removal.

16 Q: Okay. Have you been doing that for a long time?

17 A: Yes, ma'am.

18 Q: About how many years have you been in that field?

19 A: Four.

20 Q: And do you have a friend named James Petrocine?

21 A: I do.

22 Q: Do you know any other names he goes by?

23 A: Jimer.

24 Q: Okay. So, were you with Jimer and other friends on the  
25 night of October 16th, 2015 and October 17th?

1 A: I was there the night in question, yes, ma'am.

2 Q: Okay. So, you were there with Jimer and some of his  
3 other friends?

4 A: Yes, ma'am.

5 Q: Okay. And did you have an opportunity to meet the  
6 Defendant in this case, Philip Guderyon?

7 A: I did.

8 Q: Okay. And is he here in the courtroom?

9 A: You know, I said earlier, I don't know if I'd be able to  
10 recognize him, but maybe. No?

11 Q: Okay. All right. But you did meet a man named Philip  
12 Guderyon that night?

13 A: I did; yes, ma'am.

14 Q: Okay. And did you guys go to Carlos'n Charlie's at  
15 Broadway at the Beach that night?

16 A: Yes, ma'am.

17 Q: Okay. And do you recall there being any sort of a fight  
18 or altercation that happened that night?

19 A: There wasn't a fight. From everything going on, all I  
20 know is apparently I was talking to my friend, I looked over  
21 and everybody is scattering, and somebody said he got hit.

22 Q: Okay.

23 A: Somebody said he fell out.

24 MR. FOX: Objection, Your Honor.

25 THE COURT: Sustained. You can't say what anybody else

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1 said.

2 A: Okay.

3 THE COURT: Unless they're here for cross examination.  
4 Only what you personally observed.

5 A: I did not see or witness any altercation.

6 BY MS. WALKER:

7 Q: Okay. And approximately how long were you at Carlos'n  
8 Charlie's with your friends?

9 A: At least a couple of hours.

10 Q: Okay. And were you -- were you at least in some contact  
11 with Jimer, kind of at all points throughout the night?

12 A: Yes, ma'am.

13 Q: Y'all were all kind of hanging out together?

14 A: Bar, dance floor, yes, ma'am, and every table on the way.

15 Q: Okay. And when you said all of a sudden people  
16 scattered, does that mean you were standing in proximity to  
17 where it happened?

18 A: I want to say I turned my head, talking to my friend  
19 Brandon, looked back, and it's like everybody was in some type  
20 of panic and that's, that's what I'm -- that's all I can  
21 really put together as far as what I remember seeing.

22 Q: Okay. Prior to that moment, had there been any sort of  
23 fight that you saw that night?

24 A: No. It all came -- it was just a -- I didn't know  
25 anybody was upset with anybody before, I guess, or after it

1 had even happened.

2 Q: Okay. I don't have any other questions right now..

3 THE COURT: Cross examination?

4 CROSS EXAMINATION OF DAVID THADEUS HAYES BY MR. FOX:

5 Q: Mr. Hayes, do you know or did you know at that time,  
6 Justin Hodges, or who he was?

7 A: I met him that night.

8 Q: Okay. And there was a disagreement between Jimer and  
9 Justin earlier that night, was there not?

10 A: That's what I hear, not what I know.

11 Q: Okay. So, you're not familiar with any disagreement over  
12 -- do you know Mariah?

13 A: Yes, sir.

14 Q: Okay. You know who she is?

15 A: Yes, sir.

16 Q: Okay. So, your testimony is you didn't witness anything?

17 A: That's correct.

18 Q: You didn't see nothing?

19 A: No, I did not.

20 Q: Didn't hear nothing?

21 A: No, I did not other than the music playing on the dance  
22 floor, you know.

23 Q: A lot of people in Carlos'n Charlie's that night, right?

24 A: Yes, sir.

25 Q: In fact, there was a -- who did you go there with?

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- 1 A: I rode with Dell, my friend Dell.
- 2 Q: Dell Staton?
- 3 A: Yes, sir.
- 4 Q: Okay. And you mentioned a guy, Brandon, who is Brandon?
- 5 A: He's one of my best friends.
- 6 Q: Brandon Brown?
- 7 A: Yes, sir.
- 8 Q: Okay. And of course, you've already mentioned Jimer?
- 9 A: Yes, sir.
- 10 Q: Philip was there, someone you ---
- 11 A: I ---
- 12 Q: Philip Guderyon was there, right?
- 13 A: Yes, sir.
- 14 Q: Okay. In fact, there was kind of a large group of people  
15 that knew each other in different combinations; is that fair  
16 to say?
- 17 A: Yes, sir.
- 18 Q: Like some people knew this group and some people maybe  
19 that guy knew this other little group and ---
- 20 A: For sure.
- 21 Q: --- and there was a lot of people on the dance floor,  
22 correct, playing pool?
- 23 A: Yeah.
- 24 Q: Having drinks?
- 25 A: Yeah.

1 Q: Moving from group to group, right?

2 A: Yes, sir.

3 Q: So, when you do that sort of thing, you don't tend to go  
4 and stay with one person?

5 A: Right.

6 Q: Did you stand and talk to just one person that night?

7 A: No, like you said, I mean, I was there with a range of  
8 people I knew.

9 Q: Okay. So, you weren't arm and arm with Jimer Petrocine  
10 the whole night?

11 A: No, sir.

12 Q: Okay. And how about was there a person there -- do you  
13 know anybody named Ryan?

14 A: I know, okay. Maybe Ryan was there. I know a Ryan  
15 Bound, I believe is his last name.

16 Q: Okay. But you don't recall whether he was there that  
17 night?

18 A: No, sir, not ---

19 Q: That's all. Thank you. No further questions.

20 THE COURT: Redirect?

21 MS. WALKER: Nothing further, Your Honor.

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

23 MR. HOLFORD: Your Honor, may we approach?

24 THE COURT: Yes.

25 (REPORTER'S NOTE: A bench conference was held off the record

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1 30-day offense. So, I don't think it would be anything that  
2 would be impeachable.

3 THE COURT: All right. Very well.

4 Anything from the State before we bring the jury in?

5 MR. HOLFORD: Nothing further, Your Honor.

6 THE COURT: Anything from the Defense?

7 MR. FOX: No, Your Honor.

8 THE COURT: All right. Let's bring the jury in.

9 (REPORTER'S NOTE: Jury enters courtroom @ 3:24 P.M.)

10 THE COURT: All right. Ladies and gentlemen, welcome  
11 back. Ms. Walker, Mr. Holford, the State can call your next  
12 witness.

13 MR. HOLFORD: Thank you, Your Honor. The State calls  
14 James Petrocine.

15 THE COURT: All right.

16 CLERK: Please raise your right hand and place your left  
17 hand on the Bible.

18 JAMES PETROCINE, HAVING BEEN DULY  
19 SWORN TESTIFIES AS FOLLOWS:

20 CLERK: Please be seated. Please state your full name  
21 and spell your last name for the Court.

22 MR. PETROCINE: My name is James J. Petrocine, Jr.;  
23 that's P-E-T-R-O-C-I-N-E.

24 DIRECT EXAMINATION OF JAMES J. PETROCINE, JR. BY MR. HOLFORD:

25 Q: Mr. Petrocine, do you go by James?

- 1 A: I go by Jimer.
- 2 Q: Jimer?
- 3 A: Yes.
- 4 Q: Do you mind if I call you Jimer or would you prefer me  
5 call you James?
- 6 A: It doesn't matter.
- 7 Q: Jimer, we've heard your name, Jimer, before. Will you  
8 tell this jury how old you are?
- 9 A: I'm 30 years old.
- 10 Q: And where do you live?
- 11 A: I live in Conway.
- 12 Q: How long have you lived here in Conway?
- 13 A: About seven years.
- 14 Q: What do you do for work?
- 15 A: I do tree work, tree removal.
- 16 Q: Okay. And how long have you been doing that?
- 17 A: About five years.
- 18 Q: Now, let me take you back to October the 16th, 2015, the  
19 reason we're here today. Do you remember that day?
- 20 A: Yes, sir.
- 21 Q: And where did you go that night?
- 22 A: We went out to Carlos'n Charlie's.
- 23 Q: All right. You said we and who was with you?
- 24 A: I was with -- I went there with just Phil and met up with  
25 a bunch of people.

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- 1 Q: Okay. You said Phil and you kind of nodded in this  
2 direction. Is Phil in the courtroom?
- 3 A: Yes, sir.
- 4 Q: Is he the Defendant?
- 5 A: Yes, sir.
- 6 Q: Do you know his last name?
- 7 A: Guderyon.
- 8 Q: Okay. Was Phil a friend of yours?
- 9 A: Yes, sir.
- 10 Q: How long had you known the Defendant?
- 11 A: A few years when I lived in Florida.
- 12 Q: Okay. And so you and the Defendant and some other people  
13 went to Carlos'n Charlie's?
- 14 A: Yeah.
- 15 Q: And how long were you there?
- 16 A: Six hours.
- 17 Q: Okay. So, you'd been there a while?
- 18 A: Yeah.
- 19 Q: Now, right around let's say late October 16th into the  
20 early morning of 2000 -- or October 17th, all in 2015, did you  
21 know Justin Hodges?
- 22 A: No, sir.
- 23 Q: Had you met him that night?
- 24 A: I met him that night.
- 25 Q: How did you come to meet him?

- 1 A: I just shook his hand by the pool table. He wasn't  
2 introduced as anybody's boyfriend or -- but I met him there as  
3 just a part of the group.
- 4 Q: Okay. Now, when you say he wasn't introduced as anyone's  
5 boyfriend, is that ---
- 6 A: Girlfriend, boyfriend.
- 7 Q: Right. Right. Who was he there with, do you know?
- 8 A: I found out later he was there with Mariah.
- 9 Q: Okay. And did you know Mariah?
- 10 A: Yes, I did.
- 11 Q: How did you know Mariah?
- 12 A: She used to date one of my friends?
- 13 Q: Okay.
- 14 A: She was part of the crew.
- 15 Q: So, you had a prior, maybe not romantic relationship, but  
16 some type of relationship with her?
- 17 A: Yes, sir.
- 18 Q: Now, what happened that night? Tell me why did you and  
19 Justin meet up?
- 20 A: Well, we were on the dance floor just hanging out and  
21 Mariah came up and we were playing with her, her boobs, and  
22 Justin grabbed my arm and said that's my girlfriend. I said  
23 well you can have your girl, and we shook hands, and then he  
24 got hit.
- 25 Q: Okay. So, he took offense you touching his girlfriend?

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1 A: Yes, sir.

2 Q: Did he hit you?

3 A: No, sir.

4 Q: Did he -- did he get a crew together to come at you?

5 A: No, sir.

6 Q: Was there some big beef?

7 A: No, sir.

8 Q: Or, or fight or altercation?

9 A: That was it.

10 Q: Now, you said you shook his hand, so did you guys, I  
11 don't know another way, colloquial term, squash it?

12 A: Pretty much, yes, sir.

13 Q: And what's that mean?

14 A: It was done; it was over with. There was no extra beef  
15 with it really.

16 Q: So, you didn't go and get a bunch of friends and attack  
17 him?

18 A: No, sir.

19 Q: He didn't get a bunch of friends and attack you?

20 A: No, sir.

21 Q: About how much time passed after you guys shook hands and  
22 ended whatever it was, before he got hit?

23 A: Before he got hit? It was like instant, I guess. It  
24 happened quick.

25 Q: Where were you in relation to Justin? Were you facing

1 him, were you beside him?

2 A: We shook hands, I kind of -- we were kind of in front of  
3 each other, but my head was turned. I felt some wind come  
4 over my shoulder and that's when I heard like a hit, and then  
5 Justin was on the ground.

6 Q: Okay. Do you know who hit Justin?

7 A: I found out later it was Philip Guderyon.

8 Q: Okay. And how did you find that out?

9 A: Either the detective or from Phil; I don't quite  
10 remember.

11 Q: Did you leave with Phil?

12 A: Yes, sir.

13 Q: And did you guys go -- where did you go after that?

14 A: We went to my house.

15 Q: Did detectives come to your house?

16 A: Yes, sir.

17 Q: And was the Defendant still there at that time?

18 A: Yes, sir.

19 Q: Did detectives question you about what happened?

20 A: Yes.

21 Q: Did you tell them?

22 A: Yes, sir.

23 Q: Did you tell them what you're telling the jury today?

24 A: Yes, sir.

25 Q: And did they eventually talk with the Defendant?

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1 A: Yes, sir.

2 Q: There was no question that day -- well, let me back up.

3 I don't want to assume anything. When did they come to your  
4 house, when did the detectives come to your house?

5 A: I'm pretty sure it was the next day at nighttime.

6 Q: Okay. So, if -- if we get into the early morning hours  
7 of the 17th, you go home, go to sleep, wake up, it's that day?

8 A: Yes, sir.

9 Q: So, later on the 17th?

10 A: Yes.

11 Q: And, so on the 17th when they come over, are they looking  
12 for you?

13 A: No.

14 Q: Were they looking for anyone?

15 A: They were looking for Phil.

16 Q: There's no question at that point, you weren't involved  
17 in an altercation with Justin?

18 A: Just what we shook hands over, that was it.

19 Q: And did you feel threatened; did Justin threaten you?

20 A: No, sir.

21 Q: Were you scared?

22 A: No, sir.

23 Q: Did you need someone to protect you?

24 A: No, sir. There was nothing to protect.

25 Q: No further questions at this time.

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1 THE COURT: Cross examination?

2 CROSS EXAMINATION OF JAMES J. PETROCINE, JR. BY MR. FOX:

3 Q: Mr. Petrocine, that day you went to the club -- met some  
4 people there but you went there with Phil; is that correct?

5 A: Yes, sir.

6 Q: Do you remember when the detectives did come to your  
7 house the next day to meet with you, you spoke with them,  
8 correct?

9 A: Yes, sir.

10 Q: And that was Detective Amick?

11 A: I'm not sure of his name.

12 Q: There were two detectives, right?

13 A: I only talked to one.

14 Q: You talked to one? Was it this gentleman seated behind  
15 the Solicitor; do you recall?

16 A: No.

17 Q: Okay. Would it -- he identified himself as a Myrtle  
18 Beach police officer; is that correct?

19 A: Yes, sir.

20 Q: Do you remember telling him that you went to the club  
21 with a person named Ryan as well as Phil?

22 A: No, sir.

23 Q: Okay. And in fact, Philip rode in the backseat because  
24 Ryan gets carsick, correct?

25 A: Okay, yes, sir. Ryan Whiteside, yes, okay.

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1 Q: Ryan Whiteside, so Ryan was with you?

2 A: Yes, he was.

3 Q: Okay. Well, I asked ---

4 A: Well, I was really drunk that night, sir, so ---

5 Q: Okay. Now, you were there, you saw Mariah, who you knew  
6 and do you recall you had stated here today, you touched her  
7 breast, correct?

8 A: Yes, sir.

9 Q: Okay. And I think do you recall telling the -- the  
10 police that her tits were hanging out and I pulled one of  
11 them; do you remember that?

12 A: Yes, sir.

13 Q: Okay. So, did you feel she was being -- and then  
14 somebody grabbed you, correct?

15 A: Someone grabbed my wrist; yes, sir.

16 Q: Okay. In fact Mariah went, you were where at that time  
17 in a club?

18 A: We were on the dance floor.

19 Q: On the dance floor. In fact, Mariah went and got Mr.  
20 Hodges from another area and came back over?

21 A: No, sir.

22 Q: Okay. But he grabbed you?

23 A: Yes, sir.

24 Q: Said huh-uh, that's my girlfriend?

25 A: Yeah.

- 1 Q: Okay. And do you recall -- now you met with the police  
2 on another occasion just a couple of months ago, correct?
- 3 A: What occasion?
- 4 Q: Another occasion you met with the police again in July  
5 and they talked with you about this case again, didn't they?
- 6 A: Yes, sir.
- 7 Q: Okay. And do you remember telling at that time,  
8 describing the first thing that came up to you was a, quote,  
9 big guy?
- 10 A: Yes, sir.
- 11 Q: Okay. So, a big guy came up, grabbed you, said that's my  
12 girlfriend, and then you were like, hey, you need to talk to  
13 her, right?
- 14 A: Uh-huh (affirmative response)
- 15 Q: Now, you mentioned Ryan Whiteside, you don't recall  
16 whether he was there or not?
- 17 A: I kind of remember now, but I didn't.
- 18 Q: Okay. Do you recall whether he was around you when this  
19 meeting with Mr. Hodges took place?
- 20 A: No, sir.
- 21 Q: But he was there at the club?
- 22 A: Yes, sir.
- 23 Q: Okay. Philip was there?
- 24 A: Uh-huh, (affirmative response).
- 25 Q: Philip was ---

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1 THE COURT: Excuse me, you need to answer yes or no so  
2 the court reporter can hear you.

3 A: Yes, sir.

4 BY MR. FOX:

5 Q: And but at the time, again, when you were interacting  
6 with Mariah and Justin took offense, Philip was not there with  
7 you at that moment, was he?

8 A: No, sir.

9 Q: Okay. In fact, he was over next to the bar, correct?

10 A: Yes, sir.

11 Q: Okay. And the bar is kind of opposite where the pool  
12 tables are?

13 A: Yes, sir.

14 Q: Like across there's a bar and then the dance area and  
15 then the pool tables on kind of the opposite side of that?

16 A: Yes, sir.

17 Q: Okay. But Philip was in the bar area when Justin said,  
18 knock it off?

19 A: Yes, sir.

20 Q: Okay. Now in your mind, things were good; you had  
21 squared it up with Justin?

22 A: Yes, sir.

23 Q: All right. Now, you testified today that you felt -- you  
24 started to turn and you felt someone come from behind you,  
25 correct?

- 1 A: Yes, sir.
- 2 Q: Okay. And there's no question in your mind that's what  
3 happened?
- 4 A: Yes, sir.
- 5 Q: Okay. And you were -- had been facing Mr. Hodges?
- 6 A: I kind of turned my hand, like after we shook hands.
- 7 Q: But you had been, when you were talking you were face to  
8 face?
- 9 A: Yes, sir.
- 10 Q: You started to turn, so if someone came from behind you,  
11 it would have been impossible to come from behind -- is that  
12 fair to say?
- 13 A: Yes, sir.
- 14 Q: And if they were close enough or you to feel them, cause  
15 a big wind, they would have had to go around you to get behind  
16 Justin Hodges?
- 17 A: Yes, sir.
- 18 Q: But what actually happened, you don't know?
- 19 A: Correct.
- 20 Q: All right. You did not see any punches thrown?
- 21 A: No, sir.
- 22 Q: Okay. You did not see what happened when this -- when  
23 the person came by you, you did not see Mr. Hodges reaction to  
24 that, did you?
- 25 A: No, sir.

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- 1 Q: And you did not see what caused Mr. Hodges to go down?
- 2 A: No, sir.
- 3 Q: Okay. When you looked back, what did you see?
- 4 A: Justin on the ground and everyone scattered, and that was
- 5 basically it.
- 6 Q: Was Justin on his side?
- 7 A: I don't recall, sir.
- 8 Q: Okay. Was he on his back?
- 9 A: I don't recall, sir.
- 10 Q: Do you recall -- well, he was on the floor?
- 11 A: Yes, sir.
- 12 Q: Was he saying anything?
- 13 A: Not that I remember, sir.
- 14 Q: Okay. Do you recall if he was moving?
- 15 A: I mean, he had stiffened up and hit the ground, so ---
- 16 Q: Now, did he -- did he stay on the ground?
- 17 A: Yes, sir.
- 18 Q: Okay. Were you there -- at some point he wasn't on the
- 19 ground, obviously because we know he ended up going to the
- 20 hospital, correct?
- 21 A: Yes, sir.
- 22 Q: Did you see how he came to leave the floor where he fell?
- 23 A: I'm pretty sure the bouncers took him out.
- 24 Q: Okay. Did you see that yourself?
- 25 A: No, sir.

- 1 Q: Okay. Well, if you didn't see it that's fine.
- 2 A: All right.
- 3 Q: So, but he was moved from where he fell; is that correct?
- 4 A: Yes, sir.
- 5 Q: Did you see him -- was that the last time you saw him?
- 6 A: Yes, sir.
- 7 Q: In that interview you had with the police in July, just a  
8 couple of months ago ---
- 9 A: Uh-huh (affirmative response).
- 10 Q: They were very interested, weren't they, in where Philip  
11 came from?
- 12 A: Yes, sir.
- 13 Q: They were very interested -- they were curious whether he  
14 was behind Justin or behind you; would that be fair to say?
- 15 A: Yes, sir.
- 16 Q: And they asked you that question repeatedly, didn't they?
- 17 A: Not that I recall.
- 18 Q: Okay. But they did ask you?
- 19 A: Yes, sir.
- 20 Q: And they had some photographs they showed you; do you  
21 recall seeing the photographs?
- 22 A: I seen a video.
- 23 Q: The video rather than the pictures?
- 24 A: Yeah, I didn't see the pictures.
- 25 Q: Okay. But they played the video, what appeared to be the

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1 surveillance video from Carlos'n Charlie's?

2 A: Yes, sir.

3 Q: Okay. And then they asked you about a portion where it  
4 appears to show someone throwing fists; is that correct?

5 A: Yes, sir.

6 Q: Okay. And then that was when they asked you, isn't it  
7 true that Mr. Guderyon came from behind Mr. Hodges?

8 A: And I said no, because the wind came from over my  
9 shoulder.

10 Q: And you in fact told them that you were positive that he  
11 was not, that he was behind you, Philip was behind you ---

12 A: Yes, sir.

13 Q: --- and not behind Hodges? Was anybody -- there was you,  
14 there was Mr. Hodges; was there anybody else right in that  
15 immediate vicinity when all this happened?

16 A: There was a few of my friends there. I can't recall  
17 exactly which ones they were because like I say, it don't  
18 happen like that and got scattered real quick, so ---

19 Q: Okay. Thank you. No further questions.

20 THE COURT: Redirect?

21 MR. HOLFORD: Yes, sir.

22 REDIRECT EXAMINATION OF JAMES J. PETROCINE, JR. BY MR.

23 HOLFORD:

24 Q: Jimer, now you've said you've seen the -- the video,  
25 right?

- 1 A: Yes, sir.
- 2 Q: I'm gonna hand you what's been entered as State's 4. Do  
3 you recognize what that photograph is?
- 4 A: It's a dance floor.
- 5 Q: Okay. So, you may not have seen this actual photograph  
6 before, right?
- 7 A: Uh-huh (affirmative response); yes, sir.
- 8 Q: I'm sorry. Is that a photograph from the video that  
9 you've seen?
- 10 A: Yes, sir.
- 11 Q: And can you show where -- point on here where you guys  
12 are?
- 13 A: Over here, this is where we normally would hang out,  
14 there's a table right over there.
- 15 Q: Okay. And so you can't say which one of these people you  
16 are, right?
- 17 A: No, sir.
- 18 Q: You weren't able to see that on the video?
- 19 A: No, sir.
- 20 Q: But you're not throwing a punch, are you?
- 21 A: No, sir.
- 22 Q: Okay. So, if we can see someone cocked back, that's not  
23 you?
- 24 A: No, sir.
- 25 Q: And you're not the one who got hit, are you?

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1 A: No, sir.

2 Q: Okay. But you can't say which one of these other people  
3 you are?

4 A: No, sir.

5 Q: And then from watching that video, you know that -- well,  
6 and you were there. You know that then Justin was laid out on  
7 the floor?

8 A: Yes, sir.

9 Q: You said he kind of stiffened up and fell back?

10 A: Yes, sir.

11 Q: Now, you had said that you had just talked to him, shook  
12 his hand, turned your head, so you didn't see exactly where  
13 the Defendant hit Justin, did you?

14 A: No, sir.

15 Q: No further questions.

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

17 State can call your next witness.

18 MR. HOLFORD: Your Honor, I would ask that James

19 Petrocine be excused from his subpoena.

20 THE COURT: Any objection?

21 MR. FOX: No, Your Honor.

22 THE COURT: He's free to go.

23 MR. HOLFORD: Thank you.

24 MS. WALKER: And the State calls Hugh Jones.

25 THE COURT: All right.

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1 CLERK: Please raise your right hand and place your left  
2 hand on the Bible.

3 HUGH JONES, HAVING BEEN DULY SWORN

4 TESTIFIES AS FOLLOWS:

5 CLERK: Please state your full name and spell your last  
6 name for the Court.

7 MR. JONES: Sure, it's Hugh Jones, J-O-N-E-S.

8 THE COURT: All right.

9 DIRECT EXAMINATION OF HUGH JONES BY MS. WALKER:

10 Q: Sergeant Jones, what is your current position with Myrtle  
11 Beach Police Department?

12 A: I'm a Sergeant with the City of Myrtle Beach Police  
13 Department. My current position is a -- I'm supervisor of a  
14 saturation squad.

15 Q: Okay. And how long have you been in that position?

16 A: Maybe a month and a half.

17 Q: All right. And before that, how long have you been with  
18 Myrtle Beach Police Department?

19 A: I've been with Myrtle Beach for approximately 16, 17  
20 years.

21 Q: Okay. And in October of 2015, what was your position  
22 with them?

23 A: I was an investigator for the violent crime unit.

24 Q: Okay. And did you have an occasion to be involved with  
25 the investigation of this case?

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1 A: Yes, ma'am; I did.

2 Q: Okay. And I guess, generally, what was your involvement  
3 with the case?

4 A: I assisted -- I was on a day off. I was called in to  
5 assist Detective Amick on this investigation.

6 Q: Okay. And did you interview anybody in connection with  
7 the case?

8 A: Along with Detective Amick, we actually interviewed  
9 probably four or five people.

10 Q: Okay. And was James Petrocine one of those people that  
11 you met with or interviewed?

12 A: Yes, ma'am.

13 Q: Okay. And in your interview with him, did he give  
14 information that led you to believe that the Defendant, Philip  
15 Guderyon was the suspect in this case?

16 A: Yes, ma'am; he did.

17 Q: Okay. And once you developed him as a suspect, what did  
18 you do next?

19 A: Basically, we took him into arrest at that time and  
20 transport him to the Myrtle Beach Police Department. Upon  
21 arriving at the Police Department, we did conduct an interview  
22 with the Defendant.

23 Q: Okay. So, there is an interview with the Defendant,  
24 Philip Guderyon?

25 A: Yes, ma'am, a recorded interview.

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1 Q: Okay. And is that audio or video recorded?

2 A: Audio recorded.

3 Q: Okay. And at the time that you took that statement, was  
4 Mr. Guderyon in custody?

5 A: Yes, ma'am; he was.

6 Q: Okay. And what day was his statement taken on?

7 A: I gonna to refer to the incident report and my notes, if  
8 you don't mind. It was October 17th of 2015.

9 Q: So, basically, the same day that everything unfolded?

10 A: Yes, ma'am. I believe it was probably -- it was  
11 approximately 10:20 that evening.

12 Q: Okay. And when you conducted the interview, who else was  
13 in the room with you?

14 A: Detective Amick.

15 Q: Okay.

16 A: And the Defendant, that was it.

17 Q: All right. So the three of you?

18 A: Yes, ma'am.

19 Q: Okay. And where did the interview take place?

20 A: Myrtle Beach Police Department inside the jail. There's  
21 a small -- basically a Datamaster recording room like if you  
22 get arrested for DUI, there's a small room where they conduct  
23 the test in that room. It's a small room with a table, I  
24 believe three chairs.

25 Q: And at any point, did Mr. Guderyon complain of being

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1 uncomfortable or needing to use the bathroom or anything like  
2 that?

3 A: No, ma'am.

4 Q: Okay. And at any point, did you notice that Mr. Guderyon  
5 had any sort of a mental or physical disability?

6 A: No, ma'am, not that I saw.

7 Q: Okay. And so when you first initiated taking a statement  
8 from him, did you read him Miranda?

9 A: Yes, ma'am. When I advised the interview was recorded  
10 and which point, I read the Miranda Warnings.

11 Q: Okay. I'd like to show you what's been marked as State's  
12 Exhibit 1?

13 A: Yes, ma'am.

14 Q: Could you tell me what that is?

15 A: Yes, ma'am, it's a City of Myrtle Beach Police Department  
16 -- it's our Miranda form where it's signed by the Defendant,  
17 it's signed by me as a witness, and dated.

18 Q: Okay. And would you mind reading through those warnings?

19 A: Sure. The top advises the City of Myrtle Beach Police  
20 Department, South Carolina, it says, your rights. It says you  
21 have the right to remain silent and refuse to answer  
22 questions. Anything you say can be used against you in a  
23 court of law. You have the right to talk to an attorney, have  
24 him or her present while you're being questioned. If you  
25 cannot afford an attorney, one will be provided at government

1 expense before questioning if you wish. If you desire to make  
2 a statement or answer questions, you have the right to stop at  
3 any time. Then it advised the above rights have been  
4 explained to me and I understand each one of them, and it says  
5 signed, and it has a place for the Defendant to sign. And at  
6 the bottom, it says witness as to the Defendant's signature,  
7 at which point I signed. Printed name of witness, I -- I  
8 printed and then the date off to the side. Also on the form,  
9 there are check marks where I went over every single one. As  
10 I read every one, I check it off once he understands. At the  
11 top, it's written, my handwriting, it's sober and the  
12 abbreviations H.S. for high school. We ask what level of  
13 education that you've completed and we make a note of it.

14 Q: So, when you said sober, does that mean that you made the  
15 observation, and the Defendant said that he was in fact sober?

16 A: Yes, ma'am. He appeared sober and I also asked him are  
17 you under the influence of any -- anything, and he advised no.

18 Q: Okay. And did the Defendant sign that?

19 A: Yes, ma'am; he did.

20 Q: And did he sign it in front of you and Detective Amick?

21 A: Yes, ma'am, as I went over the form.

22 Q: Okay. And you, you said high school, so did you cover  
23 the last grade completed with him?

24 A: Yes, ma'am. Basically, I ask what's their highest -- I  
25 don't remember exactly the way I worded it, but what's your

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1 highest level of education.

2 Q: Okay.

3 A: I believe after that question is, do you understand  
4 English, and if I say anything you don't understand, stop me  
5 and we'll talk on it and we'll straighten it out, and make  
6 sure he understands everything.

7 MS. WALKER: Okay. Your Honor, the State wishes to move  
8 State's Exhibit 1 into evidence.

9 THE COURT: Any objection?

10 MR. FOX: No, Your Honor.

11 THE COURT: State's Exhibit 1 admitted into evidence  
12 without objection.

13 STATE'S EXHIBIT NUMBER 1

14 ADMITTED INTO EVIDENCE

15 BY MS. WALKER:

16 Q: But as part of those Miranda Warnings, do you also or did  
17 you also let Mr. Guderyon know that he had the right to an  
18 attorney?

19 A: Yes, ma'am; I did.

20 Q: Okay. And at any point, did he ask to have an attorney?

21 A: He mentioned something about wanting an attorney in the  
22 beginning. We didn't ask him any questions at which point, he  
23 continued to talk and said, I know if I ask for an attorney,  
24 I'll sit here and won't be able to tell you my side. I want  
25 to tell you my side. I'm paraphrasing what he said, but it

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1 was basically I won't be able to tell you my side; I want to  
2 tell you the story of what happened. And at which point, we  
3 clarified several times, if you want an attorney, we'll stop  
4 right now, and when we're speaking, you can stop talking to at  
5 any time you want, and he advised that he wanted to go forward  
6 and speak to us at that time.

7 Q: Okay. Was there anything about his behavior that  
8 would've led you to think that his statement was not freely  
9 and voluntary?

10 A: No, absolutely not. I think at the beginning, he was  
11 pretty much leading the conversation. He was talking,  
12 talking, talking.

13 Q: Okay. And have you seen this?

14 A: Yes.

15 Q: State's Exhibit 8 for identification purposes?

16 A: Yes, ma'am.

17 Q: Okay. And what is this a copy of?

18 A: I believe that's a copy of the interview.

19 MS. WALKER: Okay. Your Honor, the State would wish to  
20 publish this to the jury at the time -- at this time? I  
21 apologize. We'd like to enter it into evidence, State's  
22 Exhibit 8.

23 THE COURT: Any objection?

24 MR. FOX: No, Your Honor, I believe that's previously  
25 been ruled on.

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1 THE COURT: State's Exhibit Number 8. I don't see where  
2 -- let me see the attorneys.

3 (REPORTER'S NOTE: A bench conference was held off the record  
4 in the presence of but out of hearing of the jury.)

5 THE COURT: All right.

6 Ms. WALKER: I'm sorry about that.

7 THE COURT: State's Exhibit 8 is admitted into evidence  
8 over Defendant's objection.

9 STATE'S EXHIBIT NUMBER 8

10 ADMITTED INTO EVIDENCE

11 MS. WALKER: Permission to publish it to the jury, Your  
12 Honor.

13 THE COURT: All right.

14 MR. FOX: Just for clarification for the record, there  
15 actually isn't an objection. The Court previously ruled but  
16 there is actually no objection to the ---

17 THE COURT: Okay. All right.

18 (REPORTER'S NOTE: State's Exhibit 9 published - not  
19 transcribed herein.)

20 BY MS. WALKER:

21 Q: Sergeant Jones, was that the entirety of the statement  
22 given by the Defendant?

23 A: Yes, ma'am; it was.

24 Q: And the other person we heard in the background -- that  
25 was you mainly talking, was it?

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1 A: Yes, ma'am.

2 Q: And who was the other law enforcement officer?

3 A: Detective Amick was also present and he was speaking in  
4 the background.

5 Q: Okay. All right. I don't have any other questions at  
6 this time.

7 THE COURT: Cross examination?

8 MR. FOX: Thank you, Your Honor.

9 CROSS EXAMINATION OF HUGH JONES BY MR. FOX:

10 Q: Mr. Jones?

11 A: Yes, sir.

12 Q: At the time you spoke with Mr. Guderyon, the decision to  
13 charge him had already been reached, had it not?

14 A: We were charging him with felony assault. At that time,  
15 I didn't know if it was going to be assault and battery high  
16 and aggravated nature, if there was a weapon used for  
17 attempted murder, if it was gone be assault 1. I didn't know  
18 which assault it was. I knew it was gonna be a felony  
19 assault.

20 Q: And as you said, in that conversation we just heard, that  
21 was based really on the severity of the injuries?

22 A: Yes. Yes, sir, that definitely had something to do with  
23 it and the fact that it -- the victim was basically  
24 blindsided.

25 Q: Well, you say he was blindsided, but you had spoken to

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1 Jimer Petrocine, hadn't you?

2 A: Yes.

3 Q: And Jimer told you repeatedly that that man came behind  
4 him, came behind Jimer. He said it was like a great wind. I  
5 felt the wind coming by me and I turned my head, didn't see  
6 the actual punch. Jimer Petrocine told you that Guderyon came  
7 behind him, not behind Hodges; isn't that right?

8 A: I remember interviewing Mr. Petrocine and he basically  
9 advised that a fight had taken place. That Philip was  
10 involved in the fight, and he advised that Philip was inside  
11 the residence at that time. At which is when we turned our  
12 attention to the Defendant. We didn't know he was inside the  
13 residence at the time.

14 Q: The point is, you had information from a witness who was  
15 there that in fact, Mr. Guderyon didn't come from behind and  
16 sucker punch this man. That was information that was at your  
17 disposal at the time you were making a charging decision, was  
18 it not?

19 A: Yes, sir.

20 Q: And the video you had seen, it may've been brief, but you  
21 had a chance to see the surveillance video before you talked  
22 to Mr. Guderyon?

23 A: Yes, sir.

24 Q: And you would have to admit, would you not, that that  
25 video from the way it's set up, has gaps?

1 A: Yes, sir.

2 Q: So, that when you what you see, and it's been played and  
3 the jury has seen it ---

4 A: Okay.

5 Q: --- but what you see is in fact a picture, a frame, and  
6 then a pause of about four seconds, and then another. So, it  
7 appeared that people, not all of them, but you see many people  
8 on the screen, they appear to, you know, some of them move a  
9 couple of feet, right, there was a four second gap?

10 A: Yes, sir.

11 Q: Moving around, people were moving across the dance floor  
12 talking to different people, I mean it's natural, right?

13 A: Yes, sir.

14 Q: So, you knew there was a gap ---

15 A: Yes, sir.

16 Q: --- in that video, so you can't see what's happening just  
17 before there's a picture that's in evidence that appears to  
18 show someone throwing a punch, but you cannot see what's  
19 happening in the four seconds prior to that, can you?

20 A: No, sir. When we saw it that day, we watched it at the  
21 annex and we saw, like you said, basically them standing there  
22 and then the Defendant throwing the punch from not where the  
23 victim's facing, kind of off to the side a little bit.

24 Q: Now, and it will speak for itself, but you reached that  
25 conclusion in your mind, you rushed to that judgment that this

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1 was a sucker punch and that influenced the charging decision;  
2 did it not?

3 A: Yes, we were -- from everything we heard, the Defendant  
4 punched the victim and caused the injury, yes.

5 Q: Okay. Well really -- withdraw that. So, Mr. Guderyon  
6 spoke to you, we've heard that.

7 A: Yes, sir.

8 Q: And he said over and over again, did he not, he felt  
9 threatened? Those were his words, threatened, he felt  
10 threatened?

11 A: Yes, sir.

12 Q: And he used the phrase that he felt he was acting in  
13 self-defense. He used that repeatedly, did he not?

14 A: Yes, sir; he did.

15 Q: And that Mr. Hodges was described as a big dude?

16 A: Yes, sir.

17 Q: And that he was aggressive?

18 A: Yes, sir; he said that.

19 Q: And in fact, I'm not positive, because I frankly can't  
20 just listening necessarily tell the difference between your  
21 voice and Detective Amick's, but during the conversation, he  
22 described what's happening, you or Detective Amick, I'm not  
23 sure what you were describing, but you've seen the video,  
24 right?

25 A: Yes, sir.

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1 Q: And in fact, one of you says with regards to Jimer and  
2 Justin Hodges ---

3 A: Okay.

4 Q: Says, yeah, they're arguing. That wasn't Philip saying  
5 that, that was, I'm not sure if it was you or Detective Amick,  
6 but one of you saying based on what we saw, it looks like  
7 Jimer and Justin Hodges are arguing.

8 A: Yes, sir.

9 Q: And just like you can't see the four seconds at least  
10 before the punch, you cannot see really about eight seconds  
11 after because of lights and so forth, there's a gap again  
12 between where you see what appears to be the punch?

13 A: Yes, sir.

14 Q: And when you see Mr. Hodges on the ground; is that  
15 correct?

16 A: Yes, sir.

17 Q: So again, the immediate aftermath, what happened when he  
18 fell, we don't know, and impossible to see if he struck his  
19 head on anything around there?

20 A: Yes, sir.

21 Q: Besides on the floor. And Mr. Guderyon indicated that  
22 how he became involved was because there was a whole bunch of  
23 people there, I mean aside from not the club in general, but  
24 there was many people in this crowd, Jimer and David Hayes and  
25 Philip and Justin Hodges, and some knew each other better than

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1 others, but it was a very large group that was there together;  
2 is that fair to say?

3 A: Yes, sir, there were a few friends there. There were  
4 several names that we had.

5 Q: And one of the things Mr. Guderyon told you was that one  
6 of the people in the group, one other thing, he said one of  
7 Jimer's friends caught his -- brought to his attention the  
8 fact that Jimer and what turned out to be Justin Hodges, were  
9 in a confrontation?

10 A: Yes, sir.

11 Q: He told you that that day when he talked to you, the day  
12 after this happened, correct?

13 A: Yes, sir.

14 Q: Thank you. That's all the questions I have.

15 THE COURT: Redirect?

16 MS. WALKER: Yes, Your Honor.

17 REDIRECT EXAMINATION OF HUGH JONES BY MS. WALKER:

18 Q: I'm pretty sure in your original interview with James  
19 Petrocine -- where were you?

20 A: We were in -- I'll refer to this and I'll give you the  
21 address. Mr. Petrocine's, which is I believe, [REDACTED]  
22 [REDACTED], it's outside Conway.

23 Q: And so -- I'm sorry to cut you off, but it's a pretty  
24 direct question. In talking to him, did he or did he not  
25 indicate that he wasn't sure where the hit came from; it

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1 may've been from behind, it may have been from the side, that  
2 perhaps it's a mischaracterization to say that he definitively  
3 said it did not come from behind?

4 A: Yes, ma'am.

5 Q: Okay. So ---

6 MR. FOX: Your Honor, I want to object just to the  
7 language of mischaracterization. That refers to ---

8 THE COURT: Sustained.

9 MR. FOX: --- and I'd ask that that be stricken. The  
10 jury ---

11 THE COURT: Strike that from the record and the reference  
12 to mischaracterization. Sustained.

13 BY MS. WALKER:

14 Q: But can you say that in Jimer's original statement to you  
15 that he did not indicate definitively whether the punch came  
16 from behind or over his shoulder or to the side?

17 A: No, ma'am, he couldn't say exactly where it came from.

18 Q: But as far as you as a law enforcement officer making a  
19 charge, requesting a warrant on this, the assault and battery  
20 of a high and aggravated nature, did you take into  
21 consideration the victim's condition?

22 A: Yes, ma'am, absolutely.

23 Q: Okay. And did it matter when requesting that warrant  
24 where he was hit from?

25 A: Yes, ma'am; it did.

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1 Q: Okay. And did anything in Jimer's original statement to  
2 you, did Jimer ever say ---

3 MR. FOX: Objection, hearsay.

4 THE COURT: Sustained.

5 BY MS. WALKER:

6 Q: So, we just heard that the Defendant was claiming self-  
7 defense. Did you have any other information that would have  
8 led you to believe self-defense was something you should have  
9 considered other than the Defendant's own statement?

10 A: Yes, ma'am. Upon completing the interviews, it was  
11 advised that it didn't appear to be a fight. There was an  
12 argument between the two. Upon interview of the Defendant,  
13 the Defendant had made comments about a fight. He also  
14 changed his story to there'd been a fight to he was basically,  
15 as soon as he saw a twitch is when he hit him. He was  
16 watching, I think his words were something to the effect of  
17 I'm always on point or on guard, something to that effect.  
18 And it changed from he was watching them argue and as soon as  
19 he saw basically a flinch, the way I took it, is when he  
20 struck the victim.

21 Q: Okay. So just to clarify because you answered yes but  
22 you explained no, so ---

23 A: My apologies.

24 Q: Was there something else other than his own statement,  
25 that led you to think that self-defense was at play here?

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1 A: Yes, ma'am, his statements, but also the video, what you  
2 see. It, it doesn't appear that there's a fight taking place,  
3 even though there's -- the victim isn't facing him or doesn't  
4 appear to be facing him when he's struck.

5 Q: Okay. So, there was nothing that led you to believe that  
6 self-defense was at play?

7 A: No, ma'am.

8 Q: Okay. All right. I don't have any other questions.

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

10 A: Thank you, sir.

11 THE COURT: Thank you.

12 BY THE COURT:

13 THE COURT: All right. Ladies and gentlemen, it's about  
14 5 to 5:00. I think we're gonna go ahead and break for the  
15 evening, let you go home for the evening and ask that you be  
16 back tomorrow morning at 9:15.

17 I caution you again, do not discuss the case even among  
18 yourselves. Don't discuss it with anyone else. Don't conduct  
19 any independent investigation. I hope everybody has a good  
20 evening and we'll see you back at 9:15 tomorrow morning.

21 Thank you very much.

22 (REPORTER'S NOTE: Jury exits courtroom @ 4:57 P.M. The  
23 following takes place outside the presence of the jury.)

24 THE COURT: Anything from the State before we recess for  
25 the evening?

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1 the -- bring the jury in and you can rest on the record, and  
2 then we'll just send them back out. Okay?

3 MS. WALKER: Okay.

4 THE COURT: All right. Let's go ahead and bring the jury  
5 in.

6 (REPORTER'S NOTE: Jury enters courtroom @ 9:57 A.M.)

7 THE COURT: Ladies and gentlemen, welcome back. I hope  
8 everybody had a good evening. We're now ready to resume the  
9 trial of the case. Thank you again for being on time. You  
10 don't know how much of assistance that is and I apologize for  
11 keeping you out so long, but there is things that we need to  
12 tend to. Just because you're in the jury room doesn't mean  
13 that we're not tending to matters and I want to apologize for  
14 keeping you so long and thank you for being prompt.

15 All right. The State can call your next witness.

16 MS. WALKER: The State does not have any other witnesses  
17 and rests the case at this time.

18 THE COURT: All right. All right, ladies and gentlemen,  
19 the State has rested their case in chief and I know this might  
20 seem silly to you, but it is procedurally, I'm gonna have to  
21 excuse you back to the jury room because now is the time of  
22 the trial after the State has rested their case where I do  
23 have to take up matters of law with the attorneys. It is  
24 something that we do in every single case and so we excuse you  
25 back to the jury room. So, you're gonna have a little bit

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1 longer break this morning than usual. Do not discuss the case  
2 even among yourselves. It's still too early for  
3 deliberations, but I'm gonna excise you back to the jury room  
4 for just a few minutes. Thank you very much.

5 (REPORTER'S NOTE: Jury exits courtroom @ 8:58 A.M. The  
6 following takes place outside the presence of the jury.)

7 THE COURT: All right. Any motions?

8 MOTIONS:

9 MR. FOX: Yes, Your Honor. At this time, I first renew  
10 the previous objections to admission of certain evidence of  
11 one being the still photographs that are in evidence, the  
12 still frames of pictures that were taken from the video. And,  
13 I renew the objection for the previously stated as well as  
14 admission of testimony regarding the death of Mr. Hodges. We  
15 renew those objections and motions and I believe those were  
16 admitted in error. And, we also move for a directed verdict  
17 at this time on the grounds that the State has not proven each  
18 element of assault battery of a high and aggravated nature  
19 beyond a reasonable doubt. They have failed to show, I  
20 believe, causation in this case. There is a maybe even  
21 Defendant's statement is, I'm not sure, I think I hit him in  
22 the face, I'm pretty sure I hit him. Even that was qualified.  
23 No other witness has been able to testify that they saw this  
24 Defendant punch Mr. Hodges. No witness has been able to  
25 testify and there's been no evidence introduced of what it is

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1 that actually led to Mr. Hodges' fall. We see him on the  
2 ground, but as Your Honor has seen in the video, there's a gap  
3 of at least four, maybe as much as eight or twelve seconds  
4 between where you could see what certainly appeared to be  
5 Guderyon swinging his arm and there is a gap of many seconds,  
6 maybe as much as twelve, but I think one officer testified  
7 eight before you see Mr. Hodges on the ground. That is a long  
8 gap to guess what may have happened in between. Both things  
9 could be true. It could be true that Mr. Guderyon did punch  
10 him in the face, but that he fell, struck his head and injured  
11 himself completely unrelated to that event. And there's no  
12 way of knowing that with the evidence that we have. Dr.  
13 Cheatile testified under my questions that he could not  
14 determine the cause. He used the word assault, but in  
15 layman's sense, when he said his definition of assault was an  
16 injury, something that caused an injury, in this case, to the  
17 head, not the legal definition that we would have to determine  
18 assault. And he said could be a punch, could be another  
19 object, it could be a hard object like hitting your head  
20 against a wall or the floor. And so with that gap and with  
21 the uncertainty of what actually caused the injury, if he'd  
22 said, nope, that's a punch to the head and that's all it could  
23 be, but that's not the testimony or evidence that's before the  
24 Court. So, they're missing a link. They've got to prove each  
25 element beyond a reasonable doubt, not each element -- well,

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1 it could be like that. And so I think there is, in the end, a  
2 fatal gap in the evidence and we would ask for a directed  
3 verdict on that ground.

4 THE COURT: All right.

5 MS. WALKER: Your Honor, the State respectfully disagrees  
6 with everything that Mr. Fox just said. We have to prove,  
7 obviously, every element of the offense, that being the  
8 unlawful injury that causes great bodily injury to somebody.  
9 So, we've heard from the Defendant's own statement, I punched  
10 this man. We see in the surveillance video, who has been  
11 identified by one of the Defendant's own childhood friends,  
12 rearing back ---

13 THE COURT: Show me that. I looked at the pictures. I  
14 mean, and this -- let me see those exhibits. I mean, I have  
15 to -- the question is whether or not there is evidence that a  
16 reasonable juror could conclude beyond a reasonable doubt,  
17 assault and battery of a high and aggravated nature. Come  
18 show me the photograph. Here are the still photographs and  
19 show me where the -- where is the drawn back punch. I've  
20 looked through those.

21 MS. WALKER: Right here, Your Honor. Right here is who  
22 Jimer identified as the Defendant.

23 THE COURT: I don't remember him identifying him as the  
24 Defendant. Where did he, in that photograph, I don't recall  
25 him saying that is the Defendant. He felt a whoosh come over

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1 his shoulder in front of the Defendant. Now, the State's  
2 whole theory has been that the Defendant sucker punched the  
3 victim from the behind, and I don't recall Jimer, Mr.  
4 Petrocine's testimony being this is a punch thrown by the  
5 Defendant hitting the victim in the back of the heard.

6 MS. WALKER: And you are correct, Your Honor, that he did  
7 not see the actual impact and did not see the Defendant behind  
8 him. However, he did say that he saw the victim stop and fall  
9 back and they both fled.

10 THE COURT: And I understand that and I agree with that.

11 MS. WALKER: Okay.

12 THE COURT: Your whole theory and your whole proof has  
13 been geared towards this Defendant coming up behind the victim  
14 and striking him in the back of the head with a sucker punch  
15 that caused the fatal blow and somehow hitting the victim in  
16 the back of the head, caused the victim to fall backwards with  
17 his feet up.

18 MS. WALKER: Yes, Your Honor.

19 THE COURT: So, I mean, I understand, it's like you're  
20 shifting gears here in the middle. Now you want to argue that  
21 he hit him in the front?

22 MS. WALKER: Not at all.

23 THE COURT: So you're still saying he hit him in the back  
24 of the head. What proof have you presented that a reasonable  
25 juror could conclude beyond a reasonable doubt that the

1 Defendant hit the victim in the back of the head causing the  
2 victim to fall backwards with his feet up?

3 MS. WALKER: Mainly Dr. Cheatle. Yes, when confronted  
4 with Mr. Fox's question that could it have been this, could it  
5 have been that, yes, he conceded, sure, an elephant could have  
6 sat on his face and killed him hypothetically speaking,  
7 anything was possible. And Dr. Cheatle said that yes, it  
8 could've been that; it could've been a variety of other  
9 things. But also when I asked him could it have been this  
10 punch to the back of the head, yes. Dr. Cheatle also pointed  
11 to the medical record that was introduced into evidence that  
12 when the victim was taken to the trauma unit that there was a  
13 gash noted on the back of his head. Dr. Cheatle also, in  
14 looking at State's Exhibits that were only for identification  
15 purposes, the pictures of the Defendant, I mean, I'm sorry, of  
16 the victim's face at the hospital, said there were no marks on  
17 his face. There are no black eyes and no indications that  
18 there had been any sort of physical contact or physical  
19 assault to the front of his face. Thereby further supporting  
20 the State's position that he was sucker punched to the back of  
21 the head.

22 THE COURT: All right. Go ahead.

23 MS. WALKER: I apologize, Your Honor.

24 THE COURT: That's all right.

25 MS. WALKER: Right. And, Your Honor, I mean, you were

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1 asking if we're changing gears here in midstream and -- and  
2 no, the State's position is still that he was punched --  
3 Justin was still punched in the back of the head. However,  
4 even if according to the Defendant's own statement he punched  
5 him in the face, it still would've been an unlawful assault  
6 because you heard from Jimer that, no, there was no fight,  
7 there was no anything that I was threatened that I felt  
8 threatened. And, the Defendant himself said, I punched him in  
9 the front of the face, and even still the injury that resulted  
10 is great bodily injury. Dr. Cheattle himself said that Justin  
11 had a Glasgow Coma Score of 3, which is the lowest score, and  
12 that is great bodily injury. We didn't have to prove that the  
13 victim died, but ultimately he did die and that -- you know,  
14 we're not relying on that as evidence of the great bodily  
15 injury; we're relying on the fact that he had the vascular  
16 skull fracture, the hematomas, the brain bleeding, the  
17 surgeries that had to go in and do a lobectomy, cut out his  
18 brain. I mean, that's great bodily injury.

19 THE COURT: As a result of the Defendant's assault?

20 MS. WALKER: Yes, sir, Your Honor.

21 THE COURT: You're saying the punch and you don't -- as I  
22 understand from your argument, you don't know whether it was  
23 to the front or to the back?

24 MS. WALKER: I believe -- I believe and what I have  
25 presented as my theory is that it is from the back. However,

1 even if a juror wants to believe the Defendant's own statement  
2 that it was to the front, which I think would be laughable if  
3 anybody was to believe anything that he said in his statement  
4 or, you know, the actual theory of his statement because it  
5 was clear that he was backtracking. He knew more at the  
6 beginning of his statement. He knew that the victim was  
7 already in brain surgery, acted like he didn't, was trying to  
8 craft some sort of a statement that created a belief that  
9 there was defense of others or self-defense, but ultimately  
10 admitted to hitting the victim. So, even if a juror was to  
11 believe that he was hit from the front, you still can't ignore  
12 the injuries. I believe that he was hit from behind. But if  
13 a juror was going to believe front, side, whatever, it's still  
14 an unlawful intentional act. He intentionally punched Justin  
15 Hodges and he admits to doing so.

16 THE COURT: All right. Anything in reply?

17 MR. FOX: Just briefly, Your Honor.

18 I'll start with the Defendant's statement. That's the  
19 State's evidence. I don't think you can pick it out. What he  
20 testified to -- the jury can believe it or not, but what he  
21 testified to was I was lawfully, I did punch the man. I'm not  
22 sure exactly how much contact I made but hit him or tried to,  
23 but it would have been lawful. You can't just say, well,  
24 here's the part we like. It's unlawful. I can understand why  
25 they don't believe him, but what he said was over and over

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1 again, I felt threatened, he was a big dude, he was  
2 aggressive, I thought it was self-defense. That's the  
3 statement. So, he doesn't admit an unlawful punch -- even if  
4 he admit or doesn't admit throwing the punch, he doesn't admit  
5 an unlawful punch. He clearly says, no, felt threatened, big  
6 guy, aggressive guy, and I was trying to intervene to avoid  
7 another situation blowing up.

8 In terms of -- I don't know that it matters front or  
9 behind, where he was hit, but it does matter what actually  
10 caused the injuries, and they just can't say that. Dr.  
11 Cheattle can only say this is what it was. It was an injury, a  
12 trauma to the back of the head, and here's the different  
13 consequence it had and this is the treatment that we had to go  
14 through as a result. But, it was very clear he could not  
15 pinpoint. Could it have been a punch? Yes, but that's  
16 guessing. It could have been a punch; it could have been any  
17 number of things as he admitted, as he stated as an expert. I  
18 don't think the lack of any injuries to the face necessarily  
19 means anything. I've been hit in the face myself and there's  
20 not always a black eye or a bruise. Sometimes, it's just your  
21 feelings that are hurt. So I don't think that's really  
22 evidence of anything in this case or lack of evidence in that  
23 respect. And even the gentlemen from SLED, Shropshire, the  
24 agent who testified about the video, said look, you've got  
25 missing information basically because it's set -- he says at

1 10 frames a second, 32 being normal. That's two-thirds that's  
2 not there. Specifically, what's happening right before and  
3 even right after. It's no dispute that it's in the moments  
4 after. Nobody says that they saw this punch. So, there's  
5 been no testimony that this man was hit in the back of the  
6 head, not from anybody. Jimer Petrocine denies even seeing a  
7 punch. I don't recall him testifying about seeing a guy but I  
8 don't dispute that. I don't recall, honestly, whether he said  
9 he saw the man fall, but nobody saw him hit. So, there's no  
10 testimony at all about the where and in fact -- in fact, well,  
11 we do have testimony, because Guderyon says I know I hit him  
12 in the front. I caught him in the face. I know I hit not in  
13 the back of the head. I know I did not come from behind him  
14 and sucker punch him. That's the only testimony you have  
15 about that and what you don't know is, in the end, what caused  
16 the man to fall and hit his head, and we don't know did the  
17 injuries come from the punch or did they come from the fall?  
18 Is there an intervening event, perhaps? Don't know; there's  
19 no way -- we'll never know. But you've got a gap of about  
20 eight to twelve seconds between the event that maybe could've  
21 caused the injury and when he fell, which also may could have  
22 caused the injury.

23 THE COURT: All right.

24 All right. We're gonna have to take a break and let me  
25 read some law and ponder this a little while.

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1 Any other motions at this time?

2 MR. FOX: I need to add, based on something the Solicitor  
3 said, getting back to the motion regarding the admission of  
4 evidence of death. I recognize this is argument at this  
5 point, but Ms. Walker said we're not relying on death as an  
6 element of ABHAN. Well, if that's the case, if the State's  
7 position is we don't need to introduce any testimony about his  
8 death to prove our case, then I would submit that's even worse  
9 to do so because they've admitted we don't need that element  
10 to get there then I think to introduce it is extremely  
11 prejudicial so I just add that to my argument on that motion  
12 regarding ABHAN.

13 THE COURT: All right. As to your motion to renew the  
14 motions to suppress, reference to the victim's death and what  
15 was the other one you ---

16 MR. FOX: Regarding the still photos, Your Honor.

17 THE COURT: The still photos, yeah. I'm gonna deny those  
18 and stick by my prior rulings. I am gonna take your motion  
19 for directed verdict under advisement and we're gonna take a  
20 short break while I -- while I look up some stuff.

21 Let's go ahead, just in the event, let me go ahead and  
22 advise your client on his right to testify so that when we  
23 come back, we can address that issue if I deny the motion for  
24 directed verdict. All right?

25 MR. FOX: Yes, sir.

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1 MR. GUDERYON: Yes, Your Honor.

2 THE COURT: Do you have any questions about what I've  
3 explained to you?

4 MR. GUDERYON: No, sir.

5 THE COURT: All right. We're gonna take a short break.  
6 I'm gonna consider this motion for a directed verdict, come  
7 back, if I deny the motion for a directed verdict, then at  
8 that time, I'm gonna ask you whether or not you wish to  
9 testify. Okay?

10 MR. GUDERYON: Yes, sir.

11 BY THE COURT:

12 THE COURT: All right, sir. Now, Mr. Fox, if your client  
13 decides, if I deny the directed verdict and if your client  
14 decides not to testify, will there be any defense?

15 MR. FOX: There will, Your Honor, and they are all  
16 present and we'd be ready to go. We'd need two minutes to set  
17 up that screen, but we would be ready to go when Your Honor  
18 comes back.

19 THE COURT: All right. Well, let's take about a 10 or  
20 15-minute break and come right back. Okay?

21 **(RECESS - 10:25 A.M.)**

22 **\*\*\*\*\*OFF THE RECORD\*\*\*\*\***

23 **(On the Record - 10:54 A.M.)**

24 THE COURT: Thank you very much. Please be seated.

25 All right. This was a close call. Mr. Fox, I'm gonna

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1 deny your motion. I've reviewed the case law and it deals  
2 with the existence of evidence and, even though the State -- I  
3 don't know that there's evidence that proves their theory or  
4 where a reasonable juror can rely upon beyond a reasonable  
5 doubt that there was a sucker punch to the back of the head,  
6 they certainly have presented evidence that there was a punch  
7 by the Defendant, that created great bodily injury to the  
8 victim and coupled with -- what was it the doctor -- well,  
9 that's substantiated by Dr. Cheattle's testimony of the great  
10 bodily injury, and Mr. Petrocine's testimony that no, there  
11 was no hassle, we shook hands, we were okay, and then I felt  
12 this whoosh come over my shoulder.

13 What I was wrestling with and I want to put it on the  
14 record is what do you do when, yes, there is enough evidence  
15 of a crime but not based upon the State's theory. I mean, I  
16 don't see where there is any evidence of a sucker punch to the  
17 back of the head, but that's the State's case, that's the  
18 State's theory, that's what the State is going on. Now, they  
19 have raised the argument in defense of the directed verdict,  
20 that it doesn't matter. Well, that hasn't been their theory  
21 at all all along. I can't find a case on point in that  
22 regard. And so based upon that, I'm gonna go ahead and I'm  
23 gonna deny your motion although it is the State's theory that  
24 there is a sucker punch to the back of the head. But I think  
25 there is enough evidence to get to the jury that there was a

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1 punch that caused -- there is evidence that it was a  
2 likelihood or did cause great bodily injury and based upon Mr.  
3 Petrocine's testimony that we were okay gets around the self-  
4 defense at this juncture.

5 Anything further from the Defense?

6 MR. FOX: No, Your Honor.

7 THE COURT: All right. Anything from the State?

8 MS. WALKER: No, Your Honor.

9 THE COURT: Anything from -- oh, first -- All right. Mr.  
10 Guderyon ---

11 MR. FOX: Judge, one ---

12 THE COURT: Okay.

13 MR. FOX: --- just kind of procedural matter. I had a  
14 witness here from the detention center, Mr. Heavener. I'd  
15 request -- I've spoken to the deputies, their policy is, you  
16 know, for safety and so forth, we got to keep him in -- in the  
17 jumpsuit, the orange jumpsuit. Certainly, we would prefer  
18 that he be allowed, we have clothes for him, that he be  
19 allowed -- he's secured downstairs, he'd be brought straight  
20 up in lock-up, he wouldn't be wandering free, but he be  
21 allowed to wear civilian clothes.

22 THE COURT: What's in the Detention Center for, is he  
23 serving a sentence or is he ---

24 MR. FOX: Pending charges.

25 THE COURT: --- pretrial detention?

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1 MR. FOX: --- no a short witness.

2 THE COURT: We'll bring him and I'll go over the  
3 questions with him before we bring the jury in after lunch.

4 MR. FOX: Okay.

5 THE COURT: All right. Let's bring the jury in.

6 (REPORTER'S NOTE: Jury enters courtroom @ 11:16 A.M.)

7 THE COURT: Ladies and gentlemen, welcome back. Again, I  
8 apologize for keeping you in the jury room for so long and I  
9 thank you for your patience. The State has presented all of  
10 their evidence to you in their case in chief and now is the  
11 time of the trial when the Defendant can present a defense, if  
12 he chooses to do so. I've been advised that they do have a  
13 witness they want to call.

14 Mr. Fox, the Defense can call your first witness?

15 MR. FOX: Thank you, Your Honor, the Defense will call  
16 Chris Watkins.

17 THE COURT: All right.

18 CLERK: Please raise your right hand and place your left  
19 hand on the Bible.

20 CHRISTOPHER JAMES WATKINS, HAVING  
21 BEEN DULY SWORN TESTIFIES AS FOLLOWS:

22 CLERK: Please state your full name and spell your last  
23 name for the Court.

24 MR. WATKINS: Christopher James Watkins, W-A-T-K-I-N-S.

25 DIRECT EXAMINATION OF CHRISTOPHER JAMES WATKINS BY MR. FOX:

1 Q: Mr. Watkins, where did you come to us from today?

2 A: I'm a private investigator and my company is Watkins  
3 Digital Forensics and Investigations out of Columbia, South  
4 Carolina.

5 Q: And how long is it that you've -- now, Watkins Digital  
6 Forensics and Investigations, that's your business?

7 A: Yes, sir.

8 Q: You started it?

9 A: I did.

10 Q: Okay. And how long has that been in operation?

11 A: I started my company January 12th of 2016. Prior to  
12 that, I was working for another investigation firm, which I  
13 began -- I got my SLED license, my private investigation  
14 license is through the South Carolina Law Enforcement  
15 Division. Got that in February of 2010.

16 Q: Give us a little sense of us what's involved to get that  
17 license from SLED?

18 A: So, SLED requires that in order for me to get my own  
19 license, I have to work under another private investigator. I  
20 worked for a firm in Columbia beginning 2010. It requires us  
21 to work under an investigator for three years. After that,  
22 we're eligible to get our own license, which I did. So, I've  
23 been a licensed private investigator for over seven years now.

24 Q: Is there any particular area of investigations that you  
25 emphasize more than others?

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CHRISTOPHER JAMES WATKINS - DIRECT BY FOX

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1 A: Yes, my firm focuses primarily in criminal defense and  
2 digital forensics, but we do handle all types of cases.

3 Q: So, you handle criminal cases like this one?

4 A: Yes, sir.

5 Q: Sometimes you also handle cases maybe in Family Court?

6 A: Occasionally, yes.

7 Q: What do you mean by digital forensics?

8 A: So, digital forensics is the area of forensic science  
9 that consists of recovery and investigation of digital  
10 evidence that's contained on digital devices such as  
11 computers, cell phones, tablets, digital video recorders,  
12 DVRs, and things like that.

13 Q: Do you have any -- in addition to your training and  
14 licensure from SLED as a private investigator, any additional  
15 training or knowledge that you've obtained over the years,  
16 specifically with regard to digital forensics?

17 A: Yes, I began learning in this field in 2007, but I did  
18 not begin professionally until 2010. I am an associate  
19 member of IACIS, which is the International Association of  
20 Computer Investigative Specialists, and I'm also a member of  
21 the Association -- the American Society of Digital Forensics  
22 and eDiscovery.

23 Q: Are you familiar -- in doing your work as a digital  
24 analyst, are you familiar the software that is generally used  
25 in the industry to do that type of work?

1 A: Yes, certainly. In order for me to do my job, I have to  
2 keep up with all the new technologies that come out that  
3 create barriers for us. So, yes, any -- any new technology, I  
4 have to be able to understand it and there are new softwares  
5 that we experiment with and utilize in order to do our job.

6 Q: It is an ongoing obligation?

7 A: It is an ongoing obligation, absolutely.

8 Q: Okay. Are you familiar with a software program that SLED  
9 uses called Signalscape?

10 A: I am familiar with it, yes.

11 Q: Okay. But is that the only -- are there other programs,  
12 other software that one can use to analyze video other than  
13 Signalscape?

14 A: Certainly, and I use several. It just depends on the  
15 case at hand and what kind of, in this case, video I'm looking  
16 at. Signalscape I believe is proprietary to law enforcement  
17 use only. I would not be able to -- even though I'm licensed  
18 through South Carolina Law Enforcement Division, I'm still  
19 considered a civilian, so I would not be able to get that  
20 particular software.

21 Q: Why do they do that; do you know?

22 A: It really depends on the company because there are --  
23 there are digital forensic software such as Incase, Access  
24 Data, these are companies and softwares that I use to analyze  
25 cell phones, computers, and they are designed for law

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1 enforcement use but I can certainly purchase a copy and  
2 subscribe to updates and training and all those things.  
3 So, it really just depends on the company. Some companies are  
4 just very strict about who they allow to use their software.

5 Q: Okay. I think you referred to something, with what  
6 software that you do use, do the companies typically provide  
7 training materials or seminars so that you can understand how  
8 to use it and keep updated with any new features?

9 A: Yes, certainly.

10 Q: And you've done that with the various software that you  
11 employ?

12 A: Yes. Again, I have to be familiar with the tools that  
13 I'm using, otherwise, I wouldn't be able to do my job  
14 properly.

15 Q: Have you ever been qualified as an expert in any of the  
16 state or federal courts in South Carolina?

17 A: Yes, I've been qualified as an expert in Digital Forensic  
18 Science in United States Federal Court, South Carolina Circuit  
19 Court, General Sessions, Common Pleas, and South Carolina  
20 Family Court.

21 Q: And could you estimate how many times that you have been  
22 so qualified?

23 A: I would estimate between 20 and 40.

24 MR. FOX: Your Honor, at this time, I would move to have  
25 this witness qualified as an expert in the field of Digital

1 Forensic Analysis?

2 THE COURT: Any challenges or questions?

3 MR. HOLFORD: A couple of questions, Your Honor.

4 THE COURT: All right.

5 VOIR DIRE OF CHRISTOPHER JAMES WATKINS BY MR. HOLFORD:

6 Q: Mr. Watkins, you said that you were an associate member  
7 of IACIS; is that right?

8 A: Yes.

9 Q: Does that require -- is that something you just pay dues  
10 and get into or does that require some training and course  
11 work beforehand?

12 A: That's a good question because this, yes, you can pay as  
13 a subscriber and get training, updates, things like that.  
14 However, as an associate member, I signed up for classes in  
15 order to get certifications in computer forensics. So that's  
16 -- that is the nature of my membership with that company, yes.

17 Q: And then I didn't catch the name of it, the other one you  
18 said you were a member of, is that similar?

19 A: It's the American Society of Digital Forensics and  
20 eDiscovery. It, it's similar in the scope that they do offer  
21 some training materials. They don't offer any avenue for  
22 earning certifications, but they do have a community of other  
23 independent examiners, such as myself, where we can discuss  
24 new technologies or issues if we ever come cross any with  
25 software or a particular case.

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1 Q: Where did you do your undergrad?

2 A: Say that again?

3 Q: Your undergraduate degree?

4 A: I attended Midlands Technical College.

5 Q: And what, what degree did you receive?

6 A: I did not obtain a degree. I studied in the field of  
7 computer science.

8 Q: And so, I guess my next question would have been did you  
9 do school after that; did you attend another school or ---

10 A: I have participated in continuing education courses,  
11 namely for -- specific to computer science, programming, a lot  
12 of the tools that I use require some programming knowledge to  
13 be proficient at it.

14 Q: How many -- how many like -- I have CLE, Continuing Legal  
15 Education; do you have any continuing education hours you have  
16 to get every year?

17 A: As far as digital forensics goes, no. It doesn't work  
18 the same way. It does as far as getting my private  
19 investigation license and keeping that up to date, but when I  
20 began studying the field of digital forensics, there was not a  
21 -- there was not a degree available during that time. There  
22 is now. They are available now, but during the time that I  
23 was studying I could not go to a college and obtain a degree  
24 in this field.

25 Q: Have you published any -- do you have any publications or

1 anything published in journals?

2 A: I did maintain a blog for a short -- for a short while  
3 pertaining to some research that I was doing in the field of  
4 computer forensics. I don't -- I don't keep up with that blog  
5 anymore, but it is still -- it does still exist; it's still  
6 available.

7 Q: And how long did you say -- you said you've been a  
8 private investigator since 2010; is that correct?

9 A: Yes.

10 Q: How long have you specifically been involved in digital  
11 forensics?

12 A: I began studying in 2007 independently. In 2010, I began  
13 professionally and the previous investigation firm that I  
14 worked with, which is Stillinger Investigations out of  
15 Columbia, South Carolina, I started their digital forensic lab  
16 and it's still operational today.

17 Q: Are there any board certifications or certifications that  
18 the State gives you as far as digital forensics?

19 A: No. However, in 2009, the Attorney General at the time,  
20 Henry McMaster, did give an opinion that any individual  
21 intending to provide digital forensic services, they need to  
22 at least be a private investigator licensed through SLED.

23 Q: And so that would be your only license is a private  
24 investigator through SLED?

25 A: That's correct.

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1 Q: One more. When you were qualified as an expert, was it  
2 specifically in digital forensics?

3 A: Yes, that's the broadened field. It covers analysis of  
4 computers, cell phones, DVR's, any medium that contains  
5 electronically stored data, as well as video enhancements or  
6 manipulation detection, audio enhancements, manipulation  
7 detection, cell phone tower analysis, theoretical locations of  
8 cell tower pings, things of that nature.

9 MR. HOLFORD: No further questions, Your Honor.

10 THE COURT: All right. Any challenges?

11 MR. HOLFORD: No, Your Honor.

12 THE COURT: All right. I find this witness to be an  
13 expert in digital forensic science and analysis.

14 Mr. Fox?

15 CONTINUATION OF DIRECT EXAMINATION OF CHRISTOPHER JAMES

16 WATKINS BY MR. FOX:

17 Q: Mr. Watkins, did I contact you about your assistance with  
18 this case?

19 A: Yes, sir.

20 Q: Okay. And did I provide you with some materials to  
21 review?

22 A: You did. You provided me with video evidence in this  
23 case.

24 Q: Okay. And that was material I had received in discovery  
25 from the State?

- 1 A: Yes, sir.
- 2 Q: Okay. And what form was that -- was the material or  
3 evidence that I sent to you?
- 4 A: It was provided on the DVD. There were two AVI files,  
5 which are video, common video format, and two NOV files, which  
6 is also in common video format. The two AVI files were or had  
7 originated from a Geovision DVR, digital video recorder  
8 surveillance video, which was extracted from the DVR from the  
9 incident location.
- 10 Q: That was at the nightclub Carlos'n Charlie's here at  
11 Broadway at the Beach?
- 12 A: Yes.
- 13 Q: Okay. From your examination, did you have any questions  
14 about -- and let me ask you, how many -- now you said there  
15 were two videos, correct?
- 16 A: Yes.
- 17 Q: Did they appear to be the same view or from different  
18 cameras?
- 19 A: Two different camera angles.
- 20 Q: Okay. Was there anything in your analysis that led you  
21 to believe there may've been more cameras available?
- 22 A: Yes. The two other files that were provided, the NOV  
23 files, these were recorded from a cell phone device, which I  
24 would imagine the investigator who went to the incident  
25 location and retrieved the video may at first have used his

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1 cell phone to record or perhaps another camera device to  
2 record the monitor connected to the DVR with the video playing  
3 back. In the top left hand corner of that monitor, which was  
4 showing the main video that, that we'll be seeing, indicated  
5 Camera 15. That tells me that the DVR has to be running at  
6 least 16 channels because typically you're gonna get either a  
7 2-channel, 4-channel, 8, 16, 32-channel DVR. I didn't have  
8 access to the DVR myself, so I can't verify that it's a 16 or  
9 32, but that -- that finding in that video would lead me to  
10 believe that it's a 16 channel Geovision DVR.

11 Q: Okay. And to clarify 16 channel would mean you can have  
12 what, that many different feeds, that many different cameras?

13 A: That many different cameras, yes.

14 Q: But you wouldn't necessarily have to have that many?

15 A: No, you can certainly run one if you like.

16 Q: Okay. Just that it was capable of that?

17 A: It was capable of that many, yes.

18 Q: Okay. Now did you -- what was my request to you -- let  
19 me rephrase that. Did you make any efforts to -- well, I'm  
20 sorry. I'll back up to the beginning. How would you describe  
21 the videos that you saw, their quality, what you were able to  
22 ---

23 A: So, the videos I received, and I'm referring to the AVI  
24 files that came directly from the DVR, they were first of all  
25 the video dimensions were 320 pixels by 240 pixels, which is

1 the smallest resolution of video that you can have on a DVR.  
2 It's -- typically you want to use this format if you're  
3 exporting for web view or it's a smaller file so you can share  
4 it easily or view it easily on the web.

5 Q: I'm gonna ask, pixels, is it generally true to say the  
6 more pixels that are there, the sharper the image?

7 A: Yes, that's absolutely correct. So, the more pixel  
8 dimensions that we have, we have a larger video, which is  
9 going to have more color information that's being recorded  
10 from the camera itself. So, what the camera is doing is it's  
11 interpreting an image and putting it into pixel format on the  
12 DVR; it's recording as a digital file. And in this case, this  
13 file size is very small, so when we attempt to zoom in or blow  
14 it up, it actually causes it to lose quality because there's  
15 not really a whole lot of pixel depth to work with in the  
16 first place.

17 Another observance that I -- observation that I made with  
18 this video is that although it was exported, exported with 30  
19 frames per second, which is a standard frame rate for DVRs,  
20 the actual number of unique frames per second was about two  
21 with a certain degree of offset.

22 Q: If you could, explain what that means exactly, 30 frames  
23 per second would be what; 30 frames of what?

24 A: 30 -- so typically when you're running the video at the  
25 standard frame rate, 30 frames per second, they're getting 30

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1 unique pictures of what you're seeing, what that camera is  
2 seeing, what's actively happening in the real world. When we  
3 lower it down as low as two frames per second, we're actually  
4 getting more of time lapse video, where we're seeing, you're  
5 literally only seeing two unique pictures per second. So,  
6 since the video is exported in 30 frames per second, we're  
7 actually seeing, per second we're seeing approximately 15  
8 copies of one unique image and then 15 copies of the other.

9 Q: Okay. So, at any given second, two frames are unique  
10 images as opposed to a possible 30; is that correct?

11 A: Yes, with a possibility of having 30, we only have two.

12 Q: Okay. Did you happen to calculate the math as a  
13 percentage what that represents?

14 A: I did. So, pertaining to the video that captured the  
15 event, this was a video that ran at 2 minutes and 24 seconds.  
16 That had a total of -- total number of frames for that video  
17 is 4,333. Of those, only 288, approximately 288, are unique.  
18 So the difference would be 4,045 frames are copies. So what  
19 we have is about 6.6 percent of video that was recorded that  
20 -- out of what could have been recorded out of what actually  
21 happened.

22 Q: So, 6 percent available so 94 percent unavailable?

23 A: Correct.

24 Q: Now, is that something that's common in that type of  
25 setup, two frames a second or less than 30, is that common in

1 nightclubs or convenience stores and places where storage and  
2 cost is a factor?

3 A: The -- this would be a good setup if you're running a 16  
4 channel DVR and you have a small hard drive fastfeed, maybe  
5 it's an 80 gigabyte hard drive, maybe it's, you know, anything  
6 less than 500 gigabytes and you're running 16 channels  
7 actively, they're actively recording, in order to let's say  
8 you wanted to record a week's worth of video. So, you have a  
9 week of footage accessible in case of an event, you can go  
10 back and review something that happened a week ago. You would  
11 want to lower your settings or adjust your settings for each  
12 camera to maximize that or get to that -- to be able to record  
13 a week's worth of video. So, in this case, if we were running  
14 16 channels and we only have an 80 gigabyte hard drive,  
15 there's theoretically, I haven't looked at the DVR, so I can't  
16 definitively say, but just theoretically, it would make sense  
17 to set the video dimensions to 240, I'm sorry, 320 pixels by  
18 240 pixels and with a frame rate of two or three. This would  
19 certainly allow you to obtain a week of video on that size  
20 hard drive.

21 Q: Given the setup we had here, this surveillance system and  
22 how it would have been the two frames a second and the pixel  
23 rate, are there any difficulties with trying to freeze a  
24 moment in that what you do have and then extrapolate from that  
25 -- in other words, screen grabs or captures -- and you had a

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1 copy of a couple of those, did you not?

2 A: Yes, I did. So, what you're asking, yes, even though we  
3 have two unique frames per second, we can zero in on one of  
4 those two frames in that second part of the video. The video  
5 that we're missing, we don't have a smooth transition of  
6 what's going on, just things that actually happened were not  
7 recorded. So, we're only able to see one of two frames  
8 approximately of each second.

9 Q: When you actually watch this video, the screen doesn't  
10 ever go blank does it or black, dark?

11 A: If you were to play back the file that was exported from  
12 the DVR, yes, that will happen, because it's rendered with a  
13 GOV codec, which is not a common codec, that's proprietary to  
14 Geovision DVRs. So, what I had to do in order to -- I do have  
15 a player that can view these smoothly, but in order to  
16 actually work with it, I had to change the codec into a format  
17 that I could actually put in the video editing and reviewing  
18 analogy software, which -- which allowed me to go frame by  
19 frame and look at each individual frame making up the 4,333  
20 frames that we had.

21 Q: I guess my -- it wasn't very clear. I understand that.  
22 My question in terms of the video that I provided you ---

23 A: Yes.

24 Q: When you put that in your computer and just play it, it  
25 appears, although it's hesitating or jerky or however you want

1 to characterize it, it goes forward and there's not -- in  
2 other words, there's not a frame and then while it waits for  
3 the next image, it doesn't go blank before that next image, it  
4 repeats the previous image; is that correct?

5 A: Yes. Yes, that's correct. That's the way it would play  
6 out, yes.

7 Q: Okay. So, in other words it's there for several seconds  
8 -- you get an image in a moment ---

9 A: Well, prior ---

10 Q: --- several seconds and then before the next image ---

11 A: Just fractions of a second. You get the same image. So  
12 as we're playing back in real time -- so the video is exported  
13 in 30 frames per second. So, what that does is that says,  
14 well we want to keep it to real time, we want second, second,  
15 second, and we want -- we want it to play back in real time.  
16 We don't want to just look at all these frames -- all the  
17 unique frames, which there's about 288. If you were to just  
18 play back 288 frames, the video would be over very quickly and  
19 you wouldn't see much of anything. So, the video actually  
20 exports it in real time, so it -- so you're actually looking  
21 at each second counts the second in real time.

22 Q: Now, did you bring your copy of that video with you  
23 today?

24 A: I did. I brought it with a laptop with the -- one of the  
25 software that I use to review and analyze video here today so

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1 that we can look at a frame-by-frame view of the video that's

2 ---

3 Q: And other than using software to help you view in a  
4 different way, did you change anything in terms of the video  
5 that was provided? Did you delete anything or add anything or  
6 alter anything?

7 A: No, and one of the things that I try to do when I get  
8 video that's low quality like this video was, I try to make  
9 some enhancements either with the lighting or the sharpness or  
10 anything that will bring things that are going on maybe in the  
11 background or maybe in the foreground, whatever it is we're  
12 trying to focus on, try to make those more pronounced. In  
13 this case, I couldn't really do that because as you'll see,  
14 there's a lot of lights going on in the club and it's causing  
15 overexposure in certain areas. So, I cannot -- and the, the  
16 video dimension also inhibits the ability to perform some of  
17 these enhancements. But the video that I have here today is  
18 just -- it is the original. There are no enhancements on it.  
19 It's playing back exactly as I received it.

20 Q: Okay. And what you have, I understand, is software to be  
21 able to illustrate some of the things you've testified about  
22 in terms of the frames per second and playback rate and that  
23 sort of thing; is that correct?

24 A: Yes.

25 Q: Okay. Your Honor, may the witness step down.

1 THE COURT: Yes, that'll be fine. Let's make sure he's  
2 got a microphone and he's facing the court reporter so the  
3 Court Reporter can pick him up.

4 MR. HOLFORD: Your Honor, is this going to be introduced  
5 into evidence before it's published? I've not seen an actual  
6 copy of what is in his DVD. I know we provided video, but if  
7 you have made enhancements, the State's never been presented  
8 with a copy of it.

9 MR. FOX: It's the same DVD I got a copy of that we were  
10 provided in discovery and this would simply be illustrating  
11 that the software he used. He didn't generate anything new;  
12 this was simply he illustrated the things he's testifying  
13 about.

14 THE COURT: Okay. So this is what was presented to you  
15 by the State and he extrapolated from that?

16 MR. FOX: That's correct.

17 THE COURT: Well, what exhibit is this?

18 MR. FOX: Well it's going to be -- it will show the  
19 software and what this witness has discussed in terms of the  
20 images he discussed, the unique frames and how many there are  
21 as opposed to the 30 frames per second and how that would  
22 look.

23 THE COURT: Okay. So this -- is this a demonstrative  
24 exhibit?

25 MR. FOX: It's a demonstrative exhibit, Your Honor.

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1 THE COURT: Okay.

2 MR. FOX: I do not intend to introduce it. ---

3 THE COURT: Okay. Well, then I'll allow it.

4 MR. FOX: Thank you, Your Honor.

5 THE COURT: Let's dim the lights.

6 BY MR. FOX:

7 Q: Mr. Watkins, can you walk us through what are we looking  
8 at?

9 A: So this is the video that we received, placed in the  
10 software. What I'm going to do is a show a frame-by-frame  
11 view. And this is beginning at almost 10 minutes after  
12 midnight and ---

13 Q: Is this the beginning of the video you were provided?

14 A: It's not the very beginning. If you would like I can  
15 start there. This is more towards the events that happened,  
16 closer to that. If you'd like me to start from the beginning  
17 I can.

18 Q: Go ahead and start at the beginning.

19 A: Okay. So as I -- the way the software is designed, as I  
20 press one of the keys to move forward in the timeline, each  
21 click is a frame. So, this is now frame 3, 4, 5, 6, 7, 8, 9,  
22 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24,  
23 25, 26, 27, 28, 29, and 30. What you should have seen there  
24 is about two or three different images. As sated before, each  
25 second is going to contain about 15 copies of one unique

1 image. So this is running at about two frames per second.

2 Q: So again, that's why you see -- the first image we saw, it  
3 just appeared to sit there and not change as you clicked  
4 through because ---

5 A: Right, because it's a copy of the first unique frame that  
6 was recorded.

7 Q: Okay.

8 A: After about 15 frames, I think it's a little more than  
9 15, we saw it change and this is consistent throughout the  
10 entire video. So, it's running about two frames per second.  
11 Now, rather than navigate frame by frame to the point of  
12 interest in the events that unfold, I'd like to fast forward  
13 to that. So, if I play this video normally we will see frame  
14 by frame by frame and it's putting the seconds down there at  
15 the bottom. But this is -- really what we're seeing again is  
16 two frames per second. Now, if I slow it down, when I say  
17 slow it down, I mean go frame by frame, so 1, 2, 3, 4, 5, 6,  
18 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22,  
19 23, 24, 25, 26, 27, 28, 29, 30. There we saw about four  
20 images within 30 seconds. So there is a degree of offset in  
21 the amount of frames. But overall, it is about two frames per  
22 second.

23 Q: It's obvious what's happening at the moment in real time  
24 is not captured by -- all that's happening is not captured by  
25 this; is that correct?

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1 A: Right. Again, we're missing about 94 percent of what's  
2 going on. So, we're only seeing the very small amount of  
3 video of what's actually happening. So, really we're just  
4 seeing just infrequent pictures. So, I'm just gonna continue  
5 to click as we progress just to show the different frames that  
6 we have and you can keep an eye on the seconds down at the  
7 bottom, too. So, what I'd like to do here is just quickly add  
8 time codes so you can kind of see the frames as well. Going  
9 back to about 10 minutes after midnight. So down at the  
10 bottom right, we now have a frame counter.

11 Q: Mr. Watkins, let me ask you this, is this again because  
12 of the few numbers of frames per second, you said it was  
13 average about two, is that why when we look at this, and we  
14 just played it through, that some individuals appear and they  
15 might be, I'm not saying this man particular, but in this  
16 frame you see they might be here and then the next time we --a  
17 new frame, he might be a couple of feet over or turned a  
18 different way or something like that?

19 A: Yes. So, we're not seeing any transitional flow of  
20 movement, we're seeing the time lapse of events.

21 Q: The time lapse. Okay. And with this video we have that  
22 was provided that came from Carlos'n Charlie's, is there  
23 anything that you could do or anyone from SLED or anybody  
24 could do digitally to fill in that gap?

25 A: No, unfortunately the video that's missing, just wasn't

1 recorded just based on the way that the DVR was set up to  
2 record. So, it's not technically any fault of the DVR, but  
3 it's just how it was set up to record. It's set to record in  
4 a time lapse fashion. That's why we have what we have.

5 Q: Okay. Thank you. If you could turn that, please ---

6 (REPORTER'S NOTE: Witness returns to witness stand.)

7 Q: So, to sum up, in your opinion, there are likely multiple  
8 cameras in that location or at least the capability for  
9 multiple cameras?

10 A: At the incident location, yes, there's certainly the  
11 capability for more cameras.

12 Q: Okay. But what you had was views from two cameras,  
13 correct?

14 A: Yes.

15 Q: And I didn't ask you this -- we don't need to go through  
16 the frame by frame. The other view -- we've seen this view,  
17 which would appear to be behind the dance floor, the open area  
18 in the club. The other camera view, was that from the same  
19 area or a different area of the club?

20 A: A different area in the club.

21 Q: And generally speaking, what did that show?

22 A: I believe the, the video was a little over a minute long.  
23 It showed security, what looked to be security personnel,  
24 staff members at this club, escorting or removing Mr. Hodges  
25 from the establishment.

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- 1 Q: Was he up and mobile?
- 2 A: He was -- appeared to be unconscious.
- 3 Q: So, when you say escorting, they weren't walking him out?
- 4 A: Correct, yes.
- 5 Q: Okay. How would you describe what they were doing?
- 6 A: They were looked to be picking him up and taking him out  
7 of the establishment.
- 8 Q: Being drug in any way?
- 9 A: I believe one individual carried the legs, the other  
10 individual carried the upper body.
- 11 Q: Okay. And that was not EMS personnel?
- 12 A: It was not, no.
- 13 Q: Okay. I'm sorry, so back to -- you had two views you  
14 were able to look at. It's your opinion that there were --  
15 the were variances on there on average two frames per second?
- 16 A: Yes.
- 17 Q: Not 10?
- 18 A: Not 10, no.
- 19 Q: And that the rate was about 30 is the standard or the  
20 normal?
- 21 A: Yes, for ---
- 22 Q: Or 32?
- 23 A: Right. The American Standard, which would be technically  
24 29.97, but we round it up to 30.
- 25 Q: Okay. Thank you. Please answer any questions the

1 Solicitor has for you.

2 THE COURT: Cross examination?

3 MR. HOLFORD: Ye, Your Honor.

4 CROSS EXAMINATION OF CHRISTOPHER JAMES WATKINS BY MR. HOLFORD:

5 Q: Mr. Watkins, I know you just went over this, but we don't  
6 actually know how many cameras there were, right, it may have  
7 had the capability of having 16?

8 A: Right, from what I saw the DVR certainly would have the  
9 capable -- the capability of at least 16 channels. I was not  
10 provided with any information about this DVR other than what  
11 I've observed through the metadata of the videos that were  
12 provided and the content from the recording of the monitor.  
13 So, I wouldn't be able to say how many were actually being  
14 utilized at this establishment during this time.

15 Q: And you never went to Carlos'n Charlie's, did you?

16 A: I did not.

17 Q: Okay. So, you haven't seen the actual DVR system, what  
18 -- what you've reviewed is what the cell phone capture of the  
19 video; is that right?

20 A: That was -- that was provided. What we just looked at  
21 was extracted directly from the DVR.

22 Q: Right, but your testimony as to it may've had 16 channels  
23 based on some cell phone capturing probably that video looking  
24 at the scene, right?

25 A: Yes and the metadata of that particular recording, that

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1 NOV file that I mentioned earlier showed a date and time of  
2 matching the date of incident at about 11:00 A.M., a little  
3 after 11:00 A.M. and the AVI files, the videos that were  
4 extracted directly from the DVR which the metadata shows the  
5 codec originating from a Geovision DVR. The metadata for  
6 that showed the date of incident around a little after 2:00  
7 P.M. So, that would lead me to believe that the individual  
8 recording the -- the NOV files is present at the location and  
9 is recording what he is seeing -- he or she is seeing on the  
10 monitor.

11 Q: And metadata, that's -- that's the information that you  
12 can pull off of the actual video, like we see a video, but  
13 there's a ton of information stored in that, right, but you  
14 can look at it and see date and time that may not actually  
15 appear on the screen, right?

16 A: I mean, I could pull it up certainly, but metadata is  
17 going to be about the file itself. Metadata is essentially a  
18 special term that means data about data, and examples would be  
19 the time and date that that video was recorded. The file  
20 size, the codec if it's video, bit rate, aspect ratio, things  
21 of that nature.

22 Q: So, that would make sense if, if the detective has  
23 testified that he went to the scene, watched the video on the  
24 actual surveillance system, maybe he took a cell phone video  
25 but then downloaded the actual?

1 A: Yes, I would agree that that's what happened, yes.

2 Q: Okay. For a second, the two frames per second. So, if  
3 we look at the clock, 1, 2, right between that 1 and 2, two  
4 pictures would have been snapped; is that right, not two  
5 frames a second?

6 A: Yes, this video does start at an offset, so we're already  
7 seeing a unique image. It's not a fraction of a second. It's  
8 not starting at the beginning of a second, so then as it's  
9 progressing because it's being rendered at real time or as  
10 close to it as possible. But there is a degree of -- there is  
11 an offset where some images or some seconds may show three, I  
12 think in that one scenario we saw four, but in the average was  
13 about two.

14 Q: So there's a -- and I know when we're talking about  
15 converting it back to playing it 30 frames a second, you  
16 actually are seeing somewhere between two and three different  
17 unique photos a second; is that right?

18 A: Yes.

19 Q: Okay. So if I'm walking one, two, three, four it would  
20 have captured only maybe six different pictures of me walking  
21 that distance as opposed to what 30 times 4?

22 A: Right. It would be a fraction of whatever movement  
23 you're capturing, yes.

24 Q: But it's still capturing that movement, is it not?

25 A: It is, but every second counts and the amount of motion

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1 and activity that happened in a second -- you'd be surprised  
2 what could happen in a second and we're dealing with fractions  
3 of a second here.

4 Q: So, it's still capturing though two frames every second  
5 so we're not missing seconds, we're missing less than half of  
6 a second?

7 A: We're missing fractions of a second.

8 Q: Okay. Do you mind pulling that video back up for me?

9 A: Not at all.

10 MR. HOLFORD: Your Honor, may he come down ---

11 THE COURT: All right.

12 MR. HOLFORD: Can we dim those lights, please?

13 THE COURT: Let them get the video up first and then  
14 we'll ---

15 BY MR. HOLFORD:

16 Q: All right. Yeah, I think this is right where we left  
17 off. So ---

18 THE COURT: Okay. Let's dim the lights.

19 Q: The date and time stamp here is 10/17/2015 at 0 -- is  
20 this right that this would be 12 o'clock, 10 minutes and 0  
21 seconds?

22 A: Yes, it's set to 24-hour time, yes.

23 Q: Okay. Can you play through this at the --- frames click?

24 A: Okay. Starting from here?

25 Q: Yeah.

- 1 A: Okay.
- 2 Q: So now we're at 10 minutes and 1 second?
- 3 A: Uh-huh, (affirmative response).
- 4 Q: Okay. So, one second is lost. And that's where you see  
5 the jump because 17:35 frame, but we're still at 1 second?
- 6 A: Uh-huh, (affirmative response).
- 7 Q: Okay. So, it captured ---
- 8 A: Yes.
- 9 Q: And I know what you were saying or I think I understand  
10 what you're saying. You're saying that it starts in the  
11 middle of a second ---
- 12 A: But the very beginning of the video begins in a fraction  
13 of a second.
- 14 Q: Okay. Okay. Can you ----
- 15 A: Continue?
- 16 Q: Yes, please. So, now we're now at 2 seconds after 10  
17 minutes and we'll switch to another frame at 17:53; is that  
18 right?
- 19 A: Yes.
- 20 Q: We're at 10 minutes and 4 seconds at this point?
- 21 A: Yes.
- 22 Q: So, it's flipping through a lot of frames but it's  
23 actually multiple frames of the same image?
- 24 A: Yes, correct.
- 25 Q: I'm sorry. Can you keep going?

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- 1 A: Yes.
- 2 Q: So, like that one, we're at 1923 frames, the picture that  
3 showed before, maybe not the frame before because this is the  
4 same frame, but we're still at 10 minutes and 7 seconds and  
5 she's moved just a little bit from the last?
- 6 A: Yes, let me back up.
- 7 Q: So, the difference between frame 1913 is still at 10  
8 minutes and 7 seconds?
- 9 A: Yes, then it's 1914.
- 10 Q: Is still 10 minutes and 7 seconds and you just -- she  
11 just appears to have jumped.
- 12 A: Yes.
- 13 Q: So, that's a fraction of a second difference?
- 14 A: Yes, correct.
- 15 Q: Okay. Do you mind going forward?
- 16 A: Yes -- I mean no.
- 17 Q: Maybe there's a way you can play ---
- 18 A: Faster.
- 19 Q: All right. So, right here where it -- will you go back  
20 to the first frame that shows this image?
- 21 A: That would be 2025.
- 22 Q: Okay. And, and the time stamp is 10 minutes and 11  
23 seconds?
- 24 A: Uh-huh, (affirmative response).
- 25 Q: So this already seen these individuals up here that --

1 you haven't been present in court today, have you?

2 A: I have not, no.

3 Q: Okay. Will you move forward through these frames to the  
4 next image? All right. So now we're at a different image,  
5 but we're still within the same second?

6 A: Yes.

7 Q: 10 minutes and 11 seconds. Okay. Can you move forward  
8 to the next frame or the next image?

9 A: Image.

10 Q: All right. So, now we have a different image and we're  
11 at 10 minutes and 12 seconds. It's hard to tell what's going  
12 on up here, isn't it?

13 A: Yes, because the lights have overexposed the, the camera  
14 in that location.

15 Q: But -- how many times have you viewed this video?

16 A: Many. I didn't do a count but many.

17 Q: Certainly, what's going on up here is different. Now  
18 we're at 10 minutes and 13 seconds which is two seconds after  
19 that 13 minutes and 11 seconds. Does this appear to be feet  
20 to you in this frame, 2080?

21 A: Yes.

22 Q: Okay. While multiple frames have elapsed up to this  
23 2080, it's only two seconds that have lapsed before you can  
24 see, because the last one was brightly lit, correct?

25 A: Correct, yes.

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1 Q: But now we see feet. Here maybe someone is laid out?

2 A: Yes.

3 Q: And can you go forward a little bit more because I think  
4 what is that gonna show? And then here so the lights have  
5 kind of gone back to give us a clear image, correct?

6 A: Yes.

7 Q: We're at 2139, at 10 minutes and 14 seconds. So, we've  
8 gone through a lot of frames, right?

9 A: A lot of frames and differing from the amount of unique  
10 frames.

11 Q: Correct. A lot of frames, but only maybe three or four  
12 unique frames from that 10 minutes and 11 seconds where we saw  
13 the people standing up?

14 A: Yes.

15 Q: And then it's more clear that someone is laying on the  
16 ground ---

17 A: Yes, in this image I would agree with that.

18 Q: Okay. So, only between that 10 minutes and 11 seconds  
19 and 10 minutes and 14 seconds, we may not have seen as many  
20 captures as we could have, that's correct?

21 A: Yes.

22 Q: But the time that's elapsed is only two or three seconds?

23 A: Four seconds if you count the 11.

24 Q: Okay. Let me ---

25 A: Have a seat or?

1 Q: Yes, please.

2 A: Okay.

3 Q: And so just to clarify, if frame 2025 was at 10 minutes  
4 and 11 seconds on that video, we have a frame at 2042 that  
5 skips to a unique image, 2058 that skips to a unique image,  
6 and then that 2076, is that the one we just looked at, which  
7 is at 10 minutes and 14 seconds; does that sound right?

8 A: Yes, that sounds right.

9 Q: Now, certainly we can't fill in those fractions of a  
10 second in between with images, that's right?

11 A: Exactly, that's right.

12 Q: But, but we are able to see those multiple snapshots per  
13 second?

14 A: Well, yes, the few that we have, yes. Those are --  
15 that's what was recorded, so that's what we get.

16 Q: No further questions.

17 THE COURT: All right. Any redirect?

18 MR. FOX: No, Your Honor.

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

20 MR. FOX: We'd ask that this witness be excused, please.

21 THE COURT: Any objection?

22 MR. HOLFORD: No objection.

23 THE COURT: All right. He's free to go.

24 Let me see the attorneys for a second.

25 (REPORTER'S NOTE: A bench conference was held off the record

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1 THE COURT: All right. Let's go ahead and bring the jury  
2 in and then when the jury gets in here, I'll tell -- Mr. Fox,  
3 I'll just say you can call your next witness and you can call  
4 the witness. He'll already be seated and we can swear him in.

5 MR. FOX: Yes, sir.

6 THE COURT: All right.

7 (REPORTER'S NOTE: Jury enters courtroom @ 2:10 P.M.)

8 THE COURT: All right. Ladies and gentlemen, welcome  
9 back. I hope everybody had a good lunch. We're ready to  
10 proceed with the trial of this case.

11 Mr. Fox, Defense can call your next witness.

12 MR. FOX: Thank you, Your Honor. The Defense calls  
13 Ambrose Heavener.

14 THE COURT: All right.

15 CLERK: Please raise your right hand.

16 AMBROSE EDWARD HEAVENER, HAVING BEEN  
17 DULY SWORN TESTIFIES AS FOLLOWS:

18 CLERK: Please state your full name and spell your last  
19 name.

20 MR. HEAVENER: It's Ambrose Edward Heavener, H-E-A-V-E-N-  
21 E-R.

22 DIRECT EXAMINATION OF AMBROSE EDWARD HEAVENER BY MR. FOX:

23 Q: Mr. Heavener, right off of the bat, speak up in a nice  
24 clear voice.

25 A: All right.

- 1 Q: So that everybody in the courtroom can hear you. Pretend  
2 you're talking to that deputy there at the back. Okay?
- 3 A: Yes, sir.
- 4 Q: The microphone will pick up everything. You don't have  
5 to lean particularly close to it. Of course, answer out loud  
6 for the court reporter. Okay?
- 7 A: Yes, sir.
- 8 Q: All right. Mr. Heavener, where did you come to us from  
9 here today?
- 10 A: J. Reuben Long.
- 11 Q: All right. And that's the detention center here in  
12 Conway?
- 13 A: Yes, sir.
- 14 Q: Okay. So that must mean you've got some kinda pending  
15 case against you?
- 16 A: Yes, sir.
- 17 Q: Okay. You've been there for a little while?
- 18 A: Yes, sir.
- 19 Q: Okay. Now during -- are you from this area?
- 20 A: Not originally, no, sir.
- 21 Q: Okay. How long have you been in Horry County?
- 22 A: Probably a few years, two or three years. I mean, I've  
23 lived over the line in North Carolina, so I drive back and  
24 forth regularly.
- 25 Q: Do you remember where you -- were you staying in this

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1 area mid-October in 2015, two years ago?

2 A: Yes, sir.

3 Q: Okay. Mr. Heavener, during your time out there at the  
4 detention center, did you ever come across or meet -- do you  
5 know Philip Guderyon?

6 A: I met him at the detention center.

7 Q: Okay. Were you in the same cell together?

8 A: No, sir.

9 Q: Okay. How was it that you crossed paths with Mr.  
10 Guderyon?

11 A: I think I originally met him whenever come in our pod and  
12 it was at a Bible study class.

13 Q: What is -- describe for those of us who haven't been  
14 incarcerated at J. Reuben, what's a pod?

15 A: There's about I think 12, 12 big cells with four people  
16 each in each cell and it's got an open block where you can all  
17 sit, watch T.V., play cards.

18 Q: Okay. And then I'm assuming then there's multiple pods  
19 throughout the ---

20 A: Yes, sir. Yes, sir.

21 Q: So, each pod has multiple cells with up to four people  
22 and then a common area in the middle?

23 A: Yes, sir.

24 Q: Okay. And so what you're saying, Mr. Guderyon was one of  
25 the 48 or so in the pod?

- 1 A: I think there's 64 in each pod.
- 2 Q: Okay. Were you -- would you say you were friends with  
3 Mr. Guderyon?
- 4 A: I mean, we were just acquaintances. I mean, we attended  
5 the same Bible study class every night.
- 6 Q: Okay. Is it -- when you're in a pod with 60-some other  
7 people, is it fair to say you're frequently gonna at least see  
8 or interact with the other people in your pod?
- 9 A: I mean, you'll see each other every day, but I mean, you  
10 don't necessarily interact with every person.
- 11 Q: Would you describe your relationship with Mr. Guderyon as  
12 more than acquaintances, pod mates?
- 13 A: Just pod mates. I mean, you know, I know him -- I knew  
14 him from there and that was about it.
- 15 Q: Okay. Are you still in the same pod?
- 16 A: Yes, sir; I believe so.
- 17 Q: Okay. Now, but not in the same cell?
- 18 A: No.
- 19 Q: All right.
- 20 A: Oh, I mean, excuse me; can I go back? Me and him are not  
21 in the same pod, if you meant that.
- 22 Q: Yeah, that's with I meant:
- 23 A: No, no. Me and him were not in the same pod.
- 24 Q: Okay. As of this day, you're -- and that's fairly common  
25 to -- different inmates get moved around from pod to pod?

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1 A: Yes, sir.

2 Q: At times and then that might be based on the number of  
3 inmates in the detention center at large?

4 A: Yes, sir.

5 Q: Okay. So, at one time you were in the same pod; today  
6 you're not?

7 A: Yes, sir.

8 Q: All right. Thank you. Now, how was it -- well, let me  
9 back this up. So, you were living in Myrtle Beach area in  
10 October of 2015, correct?

11 A: Conway.

12 Q: Conway, okay. So, were you familiar or are you familiar  
13 with Broadway at the Beach?

14 A: Yes, sir.

15 Q: Okay. And were you familiar with a club that was there,  
16 I believe since closed, called Carlos'n Charlie's?

17 A: Yes, sir.

18 Q: Okay. Did you ever go to Carlos'n Charlie's?

19 A: Yes, sir.

20 Q: Okay. And that's like night club/bar?

21 A: Yeah, mixed, both.

22 Q: Okay. They got pool tables there?

23 A: Yes, sir.

24 Q: I think you can get food if you want it?

25 A: Yes, sir.

- 1 Q: A bar for drinks?
- 2 A: Yes, sir.
- 3 Q: Okay. Dance floor?
- 4 A: Uh-huh (affirmative response).
- 5 Q: Okay. Do you recall being there when anything unusual
- 6 happened two years ago on October the 17th?
- 7 A: I recall being there when there was a altercation.
- 8 Q: And how was -- that was -- and we know it was October
- 9 17th, 2015, that's not in question in this trial, we know
- 10 that. How is that you know you were there on that night?
- 11 A: If I ain't mistaken, it was a Friday night and it's
- 12 dollar beer night. It's a regular day that people go.
- 13 Q: Okay. They do that every Friday night?
- 14 A: I believe so; yes, sir.
- 15 Q: Okay. What distinguishes this Friday night from any
- 16 other?
- 17 A: There was an altercation. That's why I remember it.
- 18 Q: Okay. What is it about the altercation that you
- 19 remember?
- 20 A: Well, it wasn't -- it wasn't really a fight per tell, it
- 21 was just, you know, standoff, with a, you know, a swing and
- 22 that was it. There was nothing really major about it, I just
- 23 remember it happening.
- 24 Q: Okay.
- 25 A: You don't -- you don't see that every day, you know, in

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1 most places.

2 Q: Okay. Now, tell us a little bit more. Where were you in  
3 the bar when you saw this altercation?

4 A: I was playing pool that night.

5 Q: Okay. Now, if you're in the pool area, then correct me  
6 if I'm wrong, then there's like a dance floor and then the bar  
7 kind of opposite the pool table area; is that right?

8 A: Yes, sir.

9 Q: Okay. So, you were on the pool table side?

10 A: Yes, sir.

11 Q: Okay. You could see -- I call it the dance floor, but  
12 the open area, you could see that?

13 A: Yes, sir.

14 Q: All right. Well, what brought your attention to this  
15 altercation?

16 A: It was people arguing, you could hear people arguing,  
17 that's what made me actually turn around and look to see what  
18 was going on.

19 Q: Okay. Could you hear what was being said?

20 A: No, sir.

21 Q: Okay. So, you heard what you took to be people arguing  
22 and you turned around. What did you see when you turned  
23 around?

24 A: I seen two people standing pretty much chest to chest,  
25 face to face, it looked like they were going at it pretty good

1 for a minute there and, you know, standing with their fists  
2 kind of balled at their sides and just looked like they were  
3 fixing to start a fight, basically.

4 Q: Did either one in fact touch or do anything physical with  
5 the other one?

6 A: Besides just being almost chest to chest, hollering at  
7 each other, not really, no, sir.

8 Q: Did it strike you as a friendly conversation?

9 A: No, sir.

10 Q: Did you see anybody shake hands?

11 A: No, sir.

12 Q: All right. So, you see these two guys in each other's  
13 face. Was that the end of it, those two guys jawing at each  
14 other?

15 A: No, sir.

16 Q: What else -- what happened after that?

17 A: After that, I knowed him now as Philip, but after that, I  
18 noticed a guy coming up from the bar side to there -- I  
19 would've been on their right; he would've been coming up to  
20 their left and kinda like get in between them, kinda trying to  
21 separate them, calm it down. I figured it was one of them's  
22 friend, you know, trying to keep the other one out of getting  
23 in trouble.

24 Q: Okay. Now, when he got up to the two guys that were  
25 arguing, were they still close proximity to each other?

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1 A: Yes, sir.

2 Q: Okay. So, they hadn't -- they hadn't moved apart or  
3 walked away from each other at that point?

4 A: No, sir.

5 Q: Okay. When the person you now know as Philip came up,  
6 did he come up with raised fists?

7 A: No, sir.

8 Q: Did he come up behind anybody?

9 A: To the left side of them.

10 Q: How would you describe the two guys that were there  
11 first? Is there anything that stood out about either of them?

12 A: One guy was rather tall; the other guy was medium height.

13 Q: So, when Philip came up, how -- where was he relative to  
14 these two?

15 A: Kinda right, you know, in between where the two of them  
16 were to the left side of them.

17 Q: Okay. And so when he got there what happened?

18 A: When he got there, from where I was standing, he was  
19 trying to get in between them, to separate them, get them to  
20 calm down. When he did ---

21 Q: Did he grab ahold of anybody, yanking on anybody?

22 A: No, it was more like trying to put your hands in between  
23 two people and get them to separate, you know, try to get them  
24 to calm down and back away from each other.

25 Q: So, what happened when he did that?

1 A: When he did, the taller fellow turned real fast toward  
2 Philip like he was gonna hit him and, from I could tell, it  
3 looked like he was about to hit him. And when that happened  
4 is when Philip swung and hit him and he fell down.

5 Q: Did the taller fellow raise his fist, raise his arm?

6 A: From where I was at, it, it -- I couldn't see directly at  
7 his fist, but it looked like he was coming around with the  
8 right hand from where I was standing.

9 Q: What was your perception of -- how would you describe the  
10 movement that that taller fellow made when Philip came up; how  
11 would you describe that?

12 A: It looked aggressively like he was gonna turn around and  
13 attack in a way.

14 Q: Was there any delay between that and Philip's response?

15 A: No, sir; Philip's response was pretty quick.

16 Q: And his response was again ---

17 A: To hit him.

18 Q: To hit him. Where did -- where did -- could you see  
19 where that blow landed?

20 A: It looked to me like it hit him on the face on the left  
21 side because he was standing on that side of him.

22 Q: Okay. At the moment and again so you've testified,  
23 Philip came up, tried to get himself between these two, the  
24 tall man made a move towards him. When Philip swung back,  
25 where was he relative to the taller fellow?

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1 A: He would have been -- well, that's when -- whenever he  
2 swung around to, to come at him or to confront him, he  
3 would've have been almost face to face with him.

4 Q: Okay. Not behind him?

5 A: No.

6 Q: And from where you were sitting, were you standing --  
7 were you standing at that time or sitting?

8 A: I was standing.

9 Q: Okay. Approximately what distance would you say that  
10 was?

11 A: I would say 10, 15 feet, maybe.

12 Q: Okay. Do you think it was as far as you and I are now?

13 A: A little more maybe.

14 Q: Okay. Do you think it was as far as the first row?

15 A: I would say maybe from here to the bailiff in the back.

16 Q: To the bailiff, okay. So, probably more than 10 feet,  
17 but okay. Okay. Were you able to -- did you have a clear  
18 line of sight, were you able to see them?

19 A: There was people, you know, in between, moving in  
20 between, but I had a pretty good sight of them.

21 Q: Did you lose sight of them during this time?

22 A: Not during -- it happened quickly, but no, not during  
23 that time.

24 Q: When Philip came up and he was trying to get the between  
25 the two, was there -- did it appear to be any kind of

- 1 conversation or argument between Philip and the other fellow?
- 2 A: No, not that I could see.
- 3 Q: So, he arrived and what happened, happened, pretty much;
- 4 is that fair to say?
- 5 A: Yes, sir.
- 6 Q: Okay. There wasn't a discussion first?
- 7 A: No.
- 8 Q: Now how many times did he hit him?
- 9 A: Just once.
- 10 Q: Did he appear to have any object in his hand?
- 11 A: No, sir.
- 12 Q: Okay. Open fist, closed fist?
- 13 A: Closed fist.
- 14 Q: And what happened after that?
- 15 A: The guy went down and that was about the end of the fight
- 16 actually or the altercation. After that the bouncers, I guess
- 17 they were, came and took the guy out the side door over there
- 18 by the pool tables.
- 19 Q: Okay. Not medical personnel?
- 20 A: No.
- 21 Q: Not EMS?
- 22 A: No.
- 23 Q: Did you stick around the bar that night afterwards?
- 24 A: I continued playing pool, yes, sir.
- 25 Q: Were you aware that the ambulance was ever called to

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1 Carlos'n Charlie's?

2 A: I had no idea there was ever an ambulance there.

3 Q: And did you see any of the people that either the,  
4 obviously the person that was knocked down you saw carried  
5 out, but the other two, Philip or the guy that had been  
6 originally in the fight, did you see them leave that night?

7 A: I didn't notice the guy that was originally there. I  
8 seen Philip later that night.

9 Q: Okay. Still at Carlos'n Charlie's?

10 A: Yes, sir.

11 Q: When did you first become aware of what had happened to  
12 the fellow that got hit?

13 A: I didn't find out about that until after I met Philip.

14 Q: Okay. How was it that that happened?

15 A: I believe he went to a bond hearing or something or a  
16 meeting with you and that's when he was in our pod. And when  
17 he came back, you know, we were doing our thing that night and  
18 I asked him, I said did you get some good news because that's  
19 what we do, you know, did you get any good news and he  
20 explained to me ---

21 Q: I don't mean to interrupt. When someone goes for any  
22 kind of hearing in court, it's common for people to say, hey,  
23 did you hear something good, or tell us what happened, that  
24 kind of thing?

25 A: Yeah.

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1 Q: So he came back and you asked him about that?

2 A: I was asking about it, and I originally didn't even know  
3 that's what he was here for until after we discussed it.

4 After we discussed it, I told him, I said, you know what, I  
5 was there the night that happened. I remember that. And  
6 after that, that's pretty much how I found out about it.

7 Q: Okay. And at some point after that, did you get in touch  
8 with me?

9 A: I did.

10 Q: Okay. Did you -- and then you and I discussed what you  
11 had seen?

12 A: Yes, sir.

13 Q: At any point from when you first met Philip to the day  
14 when you found out what -- the details of what had happened  
15 and what happened to Mr. Hodges, was the fellows name that was  
16 hit, what happened to Justin Hodges, right up through today,  
17 has Philip Guderyon suggested to you in any way what you  
18 should come testify about?

19 A: No, he never asked me -- he never asked me to testify to  
20 begin with. I just -- when I contacted you, I wanted to tell  
21 you what I seen so y'all would have whatever evidence you  
22 needed.

23 Q: Did he promise you anything if you would contact me and  
24 say anything?

25 A: No, sir.

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AMBROSE EDWARD HEAVENER - CROSS BY WALKER

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1 Q: Did he threaten you in any way?

2 A: No, sir.

3 Q: And I don't want to know anything about it, but you're in  
4 the Horry County Detention Center, correct?

5 A: Yes, sir.

6 Q: So your charges are pending here?

7 A: Yes, sir.

8 Q: And that would be being prosecuted by the Fifteenth  
9 Circuit Solicitor's office?

10 A: Yes, sir.

11 Q: Okay. And please answer any questions the Solicitor has.

12 THE COURT: Cross examination?

13 CROSS EXAMINATION OF AMBROSE EDWARD HEAVENER BY MS. WALKER:

14 Q: Hello, Mr. Heavener?

15 A: Hey, how you doing?

16 Q: All right. How are you?

17 A: I'm doing good.

18 Q: So, you've been in -- I think you've already discussed  
19 this with Mr. Fox, but you've been at J. Reuben since?

20 A: It was around March. I've been there about 19 -- 19  
21 months now.

22 Q: Okay. And your bond has been denied?

23 A: I have a bond.

24 Q: You do?

25 A: Yes, ma'am.

- 1 Q: Okay. You have a North Carolina driver's license, do you  
2 not?
- 3 A: Probably, yes, ma'am.
- 4 Q: And you spent a lot of time living in North Carolina; is  
5 that correct? You said across the border?
- 6 A: Yeah, five minutes, not even five minutes.
- 7 Q: Okay. So, do you recall being in the hospital the  
8 weekend before this event?
- 9 A: Not right off hand; it's been two years.
- 10 Q: I know, it's been a long time. So, on October 10th,  
11 2015, you don't remember being in the hospital in North  
12 Carolina?
- 13 A: Not offhand, no, ma'am.
- 14 Q: Okay. And what about being at some sort of a hearing in  
15 Whiteville, North Carolina two days after this alleged event  
16 took place?
- 17 A: Could be a possibility.
- 18 Q: Where?
- 19 A: In Whiteville.
- 20 Q: Do you remember what the nature of that proceeding was on  
21 the 19th of October?
- 22 A: It had something to do with my step-daughters.
- 23 Q: Okay. But you, you don't remember for sure?
- 24 A: I don't remember the exact date.
- 25 Q: Okay. And you don't remember being in the hospital?

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1 A: I don't remember that right offhand, no.

2 Q: Could it have been because you were in the hospital  
3 struggling with addiction issues?

4 A: In my past, I did have issues, I was -- during that time  
5 period that we're talking about, I was actually getting myself  
6 clean.

7 Q: But at that point in time, what was your drug of choice?

8 A: I smoked marijuana and I did heroin.

9 Q: So, a couple of days before, a couple of days after  
10 surrounding that time, you were in a battle with drug use?

11 A: I wasn't doing -- during that time I wasn't doing -- I  
12 don't believe I was doing anything anymore. I was actually  
13 trying to get myself off of everything.

14 Q: Even though you were in the hospital on October the 10th  
15 for a drug issue?

16 A: I don't recall that.

17 Q: Okay. So, tell me again the date that this incident  
18 happened at Carlos'n Charlie's?

19 A: The 17th, I believe.

20 Q: Okay. Of 2015?

21 A: Yes, ma'am.

22 Q: And I understand, you know, you reached out to Mr. Fox  
23 and told him you remembered being there.

24 A: Uh-huh, (affirmative response).

25 Q: And what point did you reach out to law enforcement to

1 let them know that you had information pertaining to a pending  
2 criminal case?

3 A: Well, I didn't. I didn't have no idea that it was --  
4 until I was in -- you know, I was already incarcerated when it  
5 happened. It was whenever I found out about it that it was  
6 actually a case.

7 Q: Okay.

8 A: Like I said, the night that it happened, I didn't even  
9 know anybody even went to the hospital.

10 Q: But when you did find out, did you go to the resource  
11 officers at J. Reuben and say, hey, I need -- I need to let  
12 them know I know this information?

13 A: I didn't.

14 Q: Okay. Did you ever give any sort of a written or audio  
15 statement through the Public Defender's office?

16 A: No, I didn't.

17 Q: Okay. And so you said earlier that you were never in the  
18 same cell as Philip Guderyon, however, you were in the same  
19 cell on January the 6th, 2017, Pod D-3, Cell 201D; is that  
20 correct?

21 A: For maybe an hour and that's where he first moved in that  
22 pod and then he was moved into a separate cell.

23 Q: But you were in the same cell?

24 A: Probably.

25 Q: Okay. Definitely, you were. And then at multiple

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1 points, you guys have been in the same pod, correct?

2 A: A few times, I think.

3 Q: Okay. And it was -- January 2017 were you guys in the  
4 same pod then?

5 A: I don't remember the dates. That's one thing you don't  
6 ever really remember when you're in jail.

7 Q: That's fair; I can see that. So, when you said earlier  
8 the taller fellow, which one did that -- which one was that;  
9 were you talking about the victim?

10 A: Yeah, the one that was hit.

11 Q: Okay. What else stood out to you about the appearance of  
12 either of those -- of those men?

13 A: Besides one being taller than the other, I mean that's  
14 the only difference that I saw between the two when I seen  
15 them.

16 Q: That's the only difference you saw between those two?

17 A: One was a lot bigger than the other, that's it.

18 Q: You didn't notice if one had long curly hair down to  
19 here?

20 A: I think they were wearing caps if I'm not mistaken.

21 Q: And so you said that when you looked over and you saw  
22 these two guys confronting each other; is that a fair way to  
23 put it?

24 A: Uh-huh, (affirmative response).

25 Q: Okay. So, these two guys are confronting each other and

1 you said that as you looked over and Phil was approaching ---

2 A: Uh-huh (affirmative response).

3 Q: --- that the victim had to turn?

4 A: To his left.

5 Q: To his -- so he had to turn to see Phil coming from  
6 behind?

7 A: Well, he wasn't -- he knew Phil was there before he ever  
8 turned.

9 Q: How did he -- did he have eyes in the back of his head?

10 A: No, Phil come up to the left side of him; he didn't come  
11 up behind him.

12 Q: Okay. So, but he had to turn?

13 A: He turned to face him.

14 Q: Okay. And you state that Phil didn't take any time to  
15 inquire what was going on, to ask what's going on, he just  
16 immediately punched him?

17 A: When the guy rounded on him.

18 Q: Rounded on him, what does that mean?

19 A: He turned aggressively like he was gonna hit him and  
20 that's when Phil hit him back -- hit him first.

21 MS. WALKER: I beg the Court's indulgence?

22 THE COURT: All right.

23 BY MS. WALKER:

24 Q: So, when the victim was facing the Jimer -- that's his  
25 name.

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- 1 A: Uh-huh, (affirmative response).
- 2 Q: When he was facing Jimer, in what direction did the  
3 victim allegedly turn?
- 4 A: To his left.
- 5 Q: To his left?
- 6 A: Uh-huh, (affirmative response).
- 7 Q: And from what direction was Phil allegedly coming?
- 8 A: Coming from his left from the bar.
- 9 Q: From this way as well?
- 10 A: Uh-huh, (affirmative response).
- 11 Q: Which one is it? Earlier you said that he came and got  
12 in between the two trying to break them up and then just now  
13 Justin turned, Phil's right there and boom, smack; which one  
14 is it, you think?
- 15 A: I was standing on their left. Like if you were where  
16 they're at and you're facing that wall there, I was right  
17 where I'm facing you from this way; y'all two are facing each  
18 other.
- 19 Q: But I think you said you were farther away, right?
- 20 A: Yeah, I'm further away.
- 21 Q: How far, I'm just trying to ---
- 22 A: Like I said maybe 10, 15 feet, so ---
- 23 Q: Maybe back to the doors?
- 24 A: Maybe that far; maybe not that much.
- 25 Q: Okay. So, maybe from about here?

- 1 A: Yes, ma'am.
- 2 Q: Okay. I'm facing here?
- 3 A: Uh-huh, (affirmative response).
- 4 Q: And I'm the victim?
- 5 A: The one that got hit, yes, ma'am.
- 6 Q: Okay. I'm the victim, Justin Hodges.
- 7 A: Okay.
- 8 Q: And then ---
- 9 A: The bar would be where the doors are?
- 10 Q: The bar is here?
- 11 A: Yes.
- 12 Q: Okay.
- 13 A: And that's where he came from that side to get in between
- 14 them.
- 15 Q: But that's what I'm asking. So, he did get in between
- 16 them?
- 17 A: He did come between them and that's whenever the victim
- 18 turned to his left to face him, quickly.
- 19 Q: So, he got in between them trying to break it up and
- 20 instantly punched him at the same time?
- 21 A: He had his hands out.
- 22 Q: Okay. All right. I don't have any other questions.
- 23 Thank you.
- 24 THE COURT: All right. Redirect?
- 25 MR. FOX: Just a couple.

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AMBROSE EDWARD HEAVENER - REDIRECT BY FOX

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- 1 REDIRECT EXAMINATION OF AMBROSE EDWARD HEAVENER BY MR. FOX:
- 2 Q: Mr. Heavener, when you say in between them?
- 3 A: Uh-huh (affirmative response).
- 4 Q: I'm gone have you be Mr. Petrocine. All right. So
- 5 you're -- all right. So, Mr. Hodges would have been face to
- 6 face with you, right?
- 7 A: Yes, sir.
- 8 Q: How close would you say they were?
- 9 A: They were inches away from each other.
- 10 Q: Now, when you say that Mr. Guderyon got in between, you
- 11 mean he literally stood in between the two of them?
- 12 A: No, he didn't stand in between them.
- 13 Q: Or do you mean he came up beside ---
- 14 A: Exactly.
- 15 Q: His head between their two heads; is that fair to say?
- 16 A: Yeah, just like you're coming up to my side now, he would
- 17 have come up with his hands out to try to get them to back
- 18 away from each other.
- 19 Q: Okay. So, you don't mean in between like he literally
- 20 was in between like this?
- 21 A: No. No, he didn't get between them like that. I'm just
- 22 saying he was putting his hands ---
- 23 Q: The way he was facing would be perpendicular to the way
- 24 they were facing?
- 25 A: Exactly.

1 Q: Okay. And so then when Mr. Hodges turns -- how does he  
2 turn? I'm Mr. Hodges now.

3 A: Okay. And it would've been -- I would've been on this  
4 side, he would have come from this side and you would've  
5 turned to your left ---

6 Q: Turned like this?

7 A: --- toward him.

8 Q: I gotcha. How close in proximity were Mr. Hodges and  
9 Phil?

10 A: Maybe a foot.

11 Q: Okay. Phil got close enough to ---

12 A: Separate them.

13 Q: Tried to separate them?

14 A: Exactly.

15 Q: Thank you. No further questions.

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

17 Defense can call your next witness.

18 MR. FOX: Thank you, Your Honor. Steven Sumpter.

19 CLERK: Please raise your right hand and place your left  
20 hand on the Bible.

21 STEVEN GEORGE SUMPTER, HAVING BEEN

22 DULY SWORN TESTIFIES AS FOLLOWS:

23 CLERK: Please state your full name and spell your last  
24 name for the Court.

25 MR. SUMPTER: Steven George Sumpter, S-U-M-P-T-E-R.

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1 DIRECT EXAMINATION OF STEVEN GEORGE SUMPTER BY MR. FOX:

2 Q: Mr. Sumpter, you're an Horry County person?

3 A: Yes, sir.

4 Q: Okay. How long have you lived in this area?

5 A: About 14 years, sir.

6 Q: Okay. Are you familiar with Broadway at the Beach?

7 A: Yes, sir; I am.

8 Q: Okay. Have you ever been to a place called Carlos'n  
9 Charlie's?

10 A: Yes, sir.

11 Q: Okay. And that's a nightclub down there?

12 A: Yes, sir; it is.

13 Q: I think it's closed now, isn't it?

14 A: I believe so.

15 Q: Okay. Now, do you know or have you ever seen a fellow by  
16 the name of Philip Guderyon?

17 A: Yes, sir; I have.

18 Q: Is he in the courtroom today?

19 A: Yes, sir; he is.

20 Q: Where is he?

21 A: Sitting right there.

22 Q: Okay. How is it that you know Philip Guderyon?

23 A: I was incarcerated recently for back child support and he  
24 was actually an inmate in there, also.

25 Q: Okay. And this is at J. Reuben Long ---

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- 1 A: Yes, sir.
- 2 Q: --- in Conway?
- 3 A: Yes, sir, it is.
- 4 Q: Okay. Roughly when was this?
- 5 A: I was in there for six months, so I'd say probably the  
6 past four months, three months.
- 7 Q: Were you in the same cell together?
- 8 A: Not in the same cell, in the same unit.
- 9 Q: When you say unit, is it also referred to as a pod?
- 10 A: Yes, sir.
- 11 Q: Okay. And we've already heard what a pod entails. Okay.  
12 So, you and Mr. Guderyon were in the same pod for a period of  
13 time?
- 14 A: Yes, sir.
- 15 Q: Okay. Were you aware of what his charges were?
- 16 A: Not initially, no, sir, for probably the first month or  
17 so, I'd say I didn't, you know, but people in the pod, you  
18 know, everybody talks, you know, they want to know what the  
19 other person is in there for and what not and I became aware  
20 of it, yes, sir.
- 21 Q: Okay. Would it be fair to say eventually if you're in a  
22 pod long enough, you pretty much know what everyone is in  
23 there for?
- 24 A: Yes, sir.
- 25 Q: Okay. Do people sometimes talk about one another's

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1 cases, about some of the details of the cases?

2 A: I'd say so, yeah. I tried to stay to myself pretty much.

3 Q: You mentioned you know Carlos'n Charlie's?

4 A: Yes, sir.

5 Q: Can you recall being two years ago at Carlos'n Charlie's  
6 when anything unusual happened?

7 A: Yes, sir; I was.

8 Q: Okay. Generally speaking, we'll get into in more detail,  
9 what was it that was unusual about this night?

10 A: There was fight there.

11 Q: Now, how do you know -- at some point, did you and Mr.  
12 Guderyon talk about more details about his charges?

13 A: Yes, sir.

14 Q: Okay. How did that come about?

15 A: I actually approached him because I became aware of what  
16 happened that night. I actually told him that I was there  
17 that night.

18 Q: Aware from who?

19 A: Just some of the people in the pod. You know, they told  
20 me about the incident that he was in there for and I told him  
21 that I was there also that night.

22 Q: Would that have been from Ambrose Heavener?

23 A: No, sir; I don't know him.

24 Q: Okay. So, somebody, do you remember who it was?

25 A: Offhand, it was probably a couple of different people. I

1 think it was one of my cell mates.

2 Q: And based on that, you did what?

3 A: I approached Mr. Guderyon to let him know, you know, that  
4 I was there that night and, you know, I just -- I couldn't  
5 believe that he was in there for that.

6 Q: Okay. So, obviously then you and Mr. Guderyon talked  
7 about it?

8 A: Yes, sir; we did.

9 Q: Okay. And based on that conversation, did you believe  
10 that you were there the night of the events that led to his  
11 being charged with aggravated assault?

12 A: Yes, sir.

13 Q: Okay. Now, at some point then did you contact me?

14 A: Yes, sir; I did.

15 Q: Okay. Did Mr. Guderyon tell you to contact me?

16 A: No, sir, I asked him who his attorney was so that I could  
17 give a statement to him.

18 Q: And you and I spoke?

19 A: Yes, sir; we did.

20 Q: Okay. Before you and I spoke, did Mr. Guderyon tell you  
21 what to say to me?

22 A: No, sir.

23 Q: Did he suggest in any way what you should say to me?

24 A: No, sir.

25 Q: Did he threaten you in any way to get you to speak to me?

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1 A: Absolutely not; no, sir.

2 Q: Did he promise you anything to get you to speak to me?

3 A: No, sir.

4 Q: Now, so let's step back to that night at Carlos'n  
5 Charlie's.

6 A: Yes, sir.

7 Q: How were you there?

8 A: I was out on my motorcycle just driving around and I  
9 wanted to stop for a couple of drinks down at Broadway, so I  
10 did.

11 Q: Okay. At Carlos'n Charlie's?

12 A: Yes, sir.

13 Q: And then once inside where were you?

14 A: I was sitting at the bar near the patio side.

15 Q: Okay. Now, from the bar, I'm looking from the bar,  
16 what's -- there's the bar area; what comes next?

17 A: There seemed to be a few tables and what not on the other  
18 side of the bar and then there was a few tables and there was  
19 a dance floor.

20 Q: Okay. And then beyond the dance floor?

21 A: I believe there's like pool tables or something over in  
22 the back. The place changed a couple of times, you know, from  
23 Carlos'n Charlie's to other stuff.

24 Q: And when you say you were in the bar, were you physically  
25 at the bar itself or in that area with the tables?

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- 1 A: I was sitting at the bar.
- 2 Q: Okay. And looking in what direction?
- 3 A: Towards the dance floor.
- 4 Q: Okay. What got your attention?
- 5 A: Sitting across from me who I now know as Mr. Guderyon was  
6 sitting over to my left a little bit from the bar. Somebody  
7 went up to him and sort of pushing him and had him turn around  
8 and pointing towards the back, towards the dance floor, and  
9 that just caught my eye because he was sort of in my general  
10 direction where I was looking.
- 11 Q: Okay. So what happened next? Someone approached Mr.  
12 Guderyon and got his attention?
- 13 A: Yes, sir.
- 14 Q: Pointing towards the dance floor, what did Philip do as a  
15 result?
- 16 A: I saw him get up and go towards what looked like a little  
17 commotion going on over near the dance floor. It looked like  
18 there was gonna be a fight or something or was a fight going  
19 on or something going on.
- 20 Q: How far would you say you were from where he ended up?  
21 You say he went through the bar and went on to the dance floor  
22 area, got to where you saw what looked to be some kind of  
23 commotion?
- 24 A: Uh-huh (affirmative response).
- 25 Q: How far would you say you were at that point from it?

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1 A: I'd say a little further back from where you are, I'd say  
2 maybe 20 feet, 25 feet, 30 feet.

3 Q: Okay. You could still see Philip?

4 A: Absolutely, yes, sir.

5 Q: Okay. And where did he go; what did he do?

6 A: He, he proceeded right to where it seemed to be an  
7 altercation going on and seemed to step in between two people.

8 Q: Now why did you say there seemed to be an altercation;  
9 what made you think that?

10 A: There was a large gentleman there and what seemed like,  
11 you know, a smaller guy there and they were in each other's  
12 face.

13 Q: That seems pretty self-explanatory, but what do you mean  
14 in each other's face?

15 A: They were just like jawing back and forth. You know, I  
16 couldn't hear what they were saying. There was music going on  
17 and everything, but it looked like they were discussing  
18 something pretty adamantly.

19 Q: Okay. How close would you say they were?

20 A: A foot apart, maybe a foot and a half, two feet at the  
21 most.

22 Q: Within arm's reach of each other?

23 A: Absolutely, yes, sir.

24 Q: Okay. And it appeared to be more than a pleasant  
25 conversation?

- 1 A: Yeah, it didn't look too happy.
- 2 Q: And so I think you said one fellow appeared to be a good  
3 bit bigger than the other?
- 4 A: Yes, sir.
- 5 Q: Okay. Now let's pretend you're the larger fellow. Okay?
- 6 A: Okay.
- 7 Q: Where is the bar from where you're standing?
- 8 A: He would be looking at me.
- 9 Q: Okay. So you're looking at in the general direction of  
10 the person that's a little bit taller?
- 11 A: Yeah.
- 12 Q: Okay. And then the other fellow facing him?
- 13 A: That's correct. The smaller gentleman would have had his  
14 back to me, back or side a little bit.
- 15 Q: And so then Philip came and he came from the direction  
16 you were, right?
- 17 A: Yes, sir.
- 18 Q: He would've been at least walking ---
- 19 A: He walked with his back towards me towards those two  
20 gentlemen.
- 21 Q: Okay. And then ended up where?
- 22 A: He ended up between the two of them.
- 23 Q: Now, when you say between, you mean he literally got  
24 physically right down in between the two of them?
- 25 A: He went around, there were some tables right there, too,

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1 and went around the tables and he went around the smaller  
2 gentlemen and sort of stepped between him and the larger  
3 gentleman.

4 Q: Okay. And what happened when he did that?

5 A: He put his hands up, you know, sort of to push them  
6 aside. I don't know whether he got his hands on them or not  
7 because there were other people milling around, but I had seen  
8 him put his hands up and I saw the larger gentleman take a  
9 swing at him. I don't know whether he hit him or not and all  
10 I know is Mr. Guderyon punched back and hit the larger  
11 gentleman.

12 Q: Got in between and raised his hands?

13 A: Yes, sir.

14 Q: How would you describe the manner in which he raised his  
15 hands?

16 A: He put them up like this and pushed them aside.

17 Q: In an aggressive manner?

18 A: I wouldn't say aggressive. I mean, he went in to  
19 separate them two, you know, what it seemed to me.

20 Q: Did he knock the larger fellow back in any way?

21 A: It did not appear to me.

22 Q: Did he grab hold of him?

23 A: No, sir.

24 Q: Punch him at that time?

25 A: No, sir.

1 Q: Okay. Did he do anything that you would describe as  
2 aggressive before the larger fellow swung at him?

3 A: I mean, going up into the middle of the argument, I  
4 don't, you know, how do you say aggressive, he just went in  
5 there and, you know, put his hands up to separate them. I  
6 guess you could say that's aggressive, but I don't know.

7 Q: It appeared to be in response to someone alerting him  
8 that there was this confrontation going on?

9 A: Yes, sir. The gentleman that was grabbing him and  
10 pointed to the direction, you know, and alerted him to go over  
11 that way, yes, sir. And I don't know what was said.

12 Q: Now, Mr. Guderyon, from your view, was trying to separate  
13 the two and the larger fellow swings?

14 A: Yes, sir.

15 Q: Okay. But you're not sure whether he made connection?

16 A: You know, with Mr. Guderyon like in my view, I saw the  
17 larger gentleman swing at him and, again, I don't know if he  
18 hit him or not, but it looked like he did.

19 Q: How were they oriented? The larger fellow and Philip at  
20 that moment, how are they oriented toward each other?

21 A: The smaller gentleman, Mr. Guderyon, and then the larger  
22 gentleman further away from me.

23 Q: Mr. Guderyon, so he's -- in order, he's not behind the  
24 larger fellow?

25 A: No, sir.

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- 1 Q: Okay. Are they facing each other?
- 2 A: Yes, sir.
- 3 Q: Okay. Do you know if they were directly facing or at any  
4 kind of angle?
- 5 A: They were face to face.
- 6 Q: Okay. And Philip approached, did he come from behind the  
7 larger fellow?
- 8 A: No, sir. He came -- he came around the smaller gentleman  
9 and got in between the two of them.
- 10 Q: Now, so there's a swing and Philip responds. Did  
11 Philip's punch land?
- 12 A: Yes, sir; it did.
- 13 Q: Where did it hit him?
- 14 A: It hit him right in the face. I'm not sure if it was the  
15 nose or where, but he hit him in the face.
- 16 Q: Front?
- 17 A: Yes, sir.
- 18 Q: All right. What happened then?
- 19 A: The guy just fell backwards, it looked like he was  
20 knocked out on his feet.
- 21 Q: Okay.
- 22 A: That's what kind of reminded me of the whole thing. I  
23 couldn't believe, you know, even a couple of years later I  
24 remembered that fight just like he knocked this guy out on his  
25 feet.

1 Q: Did you see the fellow actually go down?

2 A: Yeah, he went straight back.

3 Q: Okay. Did he go down in slow motion, soft landing?

4 A: It was like a sack of potatoes. He just went straight  
5 backwards. Like, you know, he had like nothing there, he's  
6 just out on his feet.

7 Q: No control of his limbs?

8 A: None whatsoever. It was like he knocked him out with one  
9 punch.

10 Q: Okay. What happened after? Did the fellow stay there,  
11 did he stay of the floor there?

12 A: He was laying down on the floor. There was a little  
13 commotion, you know, people were milling around him a little  
14 bit. People from the bar stood up, they were turning around  
15 and what not and I couldn't really see exactly what was going  
16 on on the floor, but I know there were some people just  
17 milling around. Some people backed up initially and I saw a  
18 female go over and it looked like they were checking him or  
19 something. It all happened in, you know, I'd say 30 seconds.  
20 Everything happened so quick, actually.

21 Q: Did, did -- was the fellow that went down, did he ever  
22 move from there?

23 A: Not that I noticed right off the bat, but he was moved.  
24 I saw two, I think, which are security guards or something  
25 come in after a few minutes and what not and they were taking

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1 him out.

2 Q: Were you aware that the ambulance was ever called to  
3 Carlos'n Charlie's?

4 A: Not initially, but after, within, you know, a few  
5 minutes, there was. The ambulance was outside and what not  
6 and that's when I initially started to leave. I got up and  
7 wanted to get out of there with my motorcycle. So ---

8 Q: Did you know any of the people that were involved in this  
9 whole thing?

10 A: No, sir; none whatsoever.

11 Q: Did you hear anything -- when was the first time you  
12 heard what the ultimate outcome was for Mr. Hodges is the  
13 fellow's name that was -- that went down and was injured.  
14 When was the first time you heard what happened to him?

15 A: I learned that from Mr. Guderyon. I had no idea.

16 Q: All right. Thank you. Please answer any question the  
17 Solicitor has.

18 THE COURT: Cross examination?

19 CROSS EXAMINATION OF STEVEN SUMPTER BY MS. WALKER:

20 Q: I'm gonna start with kind of the last bit that you just  
21 talked about.

22 A: Okay.

23 Q: No question the victim, Mr. Hodges, who was hit, went  
24 down immediately?

25 A: That's, that's what I heard -- that's what I saw, yes,

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1 ma'am.

2 Q: Okay.

3 A: There was no struggle or nothing.

4 Q: Okay.

5 A: It was just, you know, two punches from what I saw.

6 Q: Okay. Would it surprise you to hear that nobody else in  
7 this entire trial has said, and including the Defendant ---

8 THE COURT: Objection, Your Honor. That's pitting  
9 witnesses against each other.

10 THE COURT: Sustained. You can't pit one witness against  
11 another.

12 BY MS. WALKER:

13 Q: Are you absolutely sure that the victim threw a punch?

14 A: I saw a punch thrown, yes, ma'am.

15 Q: And -- but you called it, whatever was happening in  
16 between the victim and the third person, you called it a  
17 little commotion, right?

18 A: They seemed to be arguing about something, yes, and it  
19 was fairly quick for me when the gentlemen walked over to Mr.  
20 Guderyon, I turned also when he was pointing. I looked at  
21 what they were doing and I saw two guys arguing, what appeared  
22 to be arguing.

23 Q: Okay.

24 A: And they seemed to be adamant about something.

25 Q: Okay. Were either of them raising their fists at one

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1 another or ---

2 A: No, ma'am.

3 Q: --- so they were ---

4 A: Not that I saw.

5 Q: Okay. So there was no physical altercation between the  
6 two of them that we're actually addressing?

7 A: Not that I saw. All I saw appeared to me like a verbal  
8 argument.

9 Q: Okay. And so you and Mr. Guderyon, I believe from August  
10 21st, 2017 to October 6th, 2017 were in the same housing unit,  
11 correct?

12 A: That sounds right; yes, ma'am.

13 Q: And for pretty much that same amount of time, you guys  
14 were like one cell apart from each other?

15 A: I don't believe so. He was upstairs; I was downstairs.

16 Q: Okay.

17 A: I think he was a couple over. I think he was one over  
18 from me, but he was upstairs.

19 Q: Okay.

20 A: I was on a lower tier.

21 Q: Okay. All right. Other than contacting Mr. Guderyon's  
22 Defense attorney, did you contact law enforcement and let  
23 anybody know any of these details?

24 A: I was incarcerated and that was the only person I thought  
25 to even contact, you know, is to speak to an attorney or

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1 something. So, I asked for Mr. Guderyon's attorney's name.

2 Q: But you were discharged from J. Reuben Long ---

3 A: October 6th.

4 Q: --- you were released on October the 6th?

5 A: Yes, ma'am.

6 Q: Is that correct?

7 A: Yes, ma'am.

8 Q: Okay. And did you ever give any sort of a written  
9 statement, oral statement to an investigator, anybody?

10 A: Nobody's approached me about anything. I spoke to Mr.  
11 Fox and that was it. I didn't know who else to contact about  
12 anything.

13 Q: With all of those sheriff deputies out at J. Reuben Long,  
14 you didn't reach out to any of them and say I have crucial  
15 information on a case involving a death?

16 A: I don't know what was crucial or not. I mean, honestly I  
17 don't know, you know, I can only say what I saw and I spoke to  
18 an attorney. You know, if an investigator would have  
19 approached me, I would've given them the same statement.

20 Q: All right. I don't have any other questions. Thank you.

21 THE COURT: Redirect?

22 MR. FOX: No, Your Honor.

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

24 MR. FOX: I'd ask this witness be excused, Your Honor.

25 THE COURT: Any objection?

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1 MS. WALKER: No, Your Honor.

2 THE COURT: All right. You're free to go.

3 Defense can call your next witness.

4 MR. FOX: Defense rests, Your Honor.

5 THE COURT: All right. All right. Defense has rested  
6 their case. So, just like at the close of the State's case,  
7 now is the time of the trial where I need to take some matters  
8 of law with the attorneys. So, I'm gonna excuse you back to  
9 the jury room.

10 Please do not discuss the case even among yourselves at  
11 this point in time. We'll take a short break and bring you  
12 out in just a minute.

13 Thank you very much.

14 (REPORTER'S NOTE: Jury exits courtroom @ 2:57 P.M. The  
15 following takes place outside the presence of the jury.)

16 THE COURT: All right. Any motions?

17 MOTIONS:

18 MR. FOX: Yes, Your Honor. I renew again all previous  
19 motions and renew our motion for a directed verdict. At the  
20 conclusion of all evidence, we still have no evidence to  
21 contradict or to show that -- that the State's theory that  
22 this was a sucker punch, ambush from behind, there's not been  
23 any evidence or any witness that says that's what happened.  
24 There is evidence that Mr. Hodge's suffered an injury to the  
25 back of his head, but no evidence that that was a result of

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1 Mr. Guderyon hitting him from behind. We now have evidence  
2 specifically that Mr. Guderyon did not hit from behind but, in  
3 fact, acted in self-defense, struck Mr. Hodges in the front.  
4 We have nothing that counters that. We have placed self-  
5 defense in evidence at this point and it would be incumbent on  
6 the State to disprove self-defense, each element, beyond a  
7 reasonable doubt and I do not believe as a matter of law, that  
8 they have done or can do that, Your Honor.

9 THE COURT: All right. Motion is noted. I'm gonna deny  
10 it.

11 MR. FOX: Thank you, Your Honor.

12 THE COURT: Anything else?

13 MR. FOX: Not at this time.

14 THE COURT: All right. Do y'all have any rebuttal  
15 testimony?

16 MS. WALKER: No, Your Honor, no reply.

17 THE COURT: Okay. Rather than bringing the jury in and  
18 saying that there's no reply and sending them back out, I  
19 guess the only thing we have left now then is closing  
20 arguments and charges; is that correct?

21 MR. FOX: Yes, sir.

22 CHARGE CONFERENCE:

23 THE COURT: Okay. I've got some charges already drafted  
24 straight from the charge book. I don't think there's anything  
25 special. The only question I have is what, if any, lesser

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1 included offenses do we want charged?

2 MR. FOX: I believe obviously there has been evidence  
3 introduced for purposes of charging. The Court has evidence  
4 of great bodily injury. There's also been testimony that the  
5 jury may well reason that while, number one, Mr. Guderyon  
6 within his lawful rights in responding, but even if he were  
7 not that he intended nothing more than a simple assault or an  
8 assault of some lesser degree, as in a punch in the face is  
9 something not likely to produce the kind of injuries that did  
10 happen, and that as Dr. Cheatle testified, the injuries to Mr.  
11 Hodges, could've been -- he doesn't know. It could've been  
12 from the punch and it could also have been from the fall to  
13 the floor. And we have testimony that he did go over  
14 instantly. And so in light of that, a jury may well believe  
15 that while Mr. Guderyon was not legally justified in his  
16 assault, it is not self-defense, that he is responsible for  
17 what was intended because a punch to the face and nothing more  
18 and I think that would be a factual issue for the jury. And,  
19 so we would request all of the lesser inclusions on every -- at  
20 least second. I'm not sure that the first applies, I'd have  
21 to look at that again.

22 THE COURT: That's -- that's what I was -- a major  
23 question. You've definitely got assault and battery of a high  
24 and aggravated nature, which is the charge indicted.

25 MR. FOX: Yes, sir.

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1 THE COURT: Which means caused great bodily injury.

2 MR. FOX: Great bodily injury, yes, sir.

3 THE COURT: Assault and battery first degree doesn't  
4 require great bodily injury. It is -- so I don't know that  
5 first degree even applies. But I'm thinking that second  
6 degree, moderate bodily injury or even third degree.

7 MR. FOX: Yes, sir.

8 THE COURT: But my initial inclination I hear from the  
9 State is to charge ABHAN, assault and battery second degree,  
10 assault and battery third degree.

11 MS. WALKER: What would be the purpose for assault and  
12 battery third degree given the extent of the injuries that  
13 have been entered into evidence?

14 THE COURT: They may think that he didn't cause the  
15 injuries. When he punched the guy, the victim -- by other  
16 means. He was carried out by bouncers of something of that  
17 nature.

18 MR. FOX: Intent is an element of any crime, so they may  
19 believe he intended an assault but not an assault ---

20 MS. WALKER: Because you don't have to intend the gravity  
21 of the assault, you have to intend the assault, which he did  
22 with an intentional punch.

23 MR. FOX: It would be a factual issue as to the results  
24 ---

25 MS. WALKER: Right.

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1 MR. FOX: --- but in terms of the consequences, that  
2 would be a factual issue for the jury, I believe.

3 THE COURT: Anything else?

4 MR. FOX: No, sir.

5 THE COURT: Mr. Fox, you're wanting -- well, I'm gonna  
6 charge ABHAN. Then you're wanting assault and battery second  
7 ---

8 MR. FOX: And third.

9 THE COURT: --- and assault and battery third?

10 MR. FOX: Yes, sir.

11 THE COURT: All right. And what is the State's position  
12 as to those three charges?

13 MR. HOLFORD: Your Honor, the State's position -- and I  
14 do have the case it's *State v. Golston*, it's 399 S.C. 393,  
15 which I was looking at this morning. This is in reference to  
16 a CDVHAN and whether or not the Court was to charge CDV. The  
17 State would object to the charging of the lesser included. I  
18 believe that the element of great bodily injury has been --  
19 has been satisfied in this case, been proven beyond a  
20 reasonable doubt, and the extent of the injury is not moderate  
21 bodily injury or less than moderate bodily injury. The extent  
22 of the injury as proven can only be great bodily injury or not  
23 and so this case speaks about charging CDV in relation to  
24 CDVHAN. That Trial Court declined to charge the jury on a CDV  
25 as a lesser included and the Court found that the mere

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1 existence of evidence that Golston committed is actually in  
2 addition to other evidence, which did constitute the CDVHAN,  
3 such as beating the victim. It says rather to warrant a jury  
4 charge on the lesser offense, the evidence viewed as a whole  
5 must be such that the jury can conclude the Defendant is  
6 guilty of the lesser offense instead of the indicted offense.  
7 And that cite is *State v. Drayton* in which the Trial Judge is  
8 required to charge the jury on lesser included offense if  
9 there's evidence from which it can be inferred the lesser  
10 rather than the greater offense was committed. So, I  
11 certainly understand what the Court has previously said. The  
12 State's position would be that the jury could either find him  
13 guilty of intentionally assaulting and the resulting injury or  
14 find him not guilty of that, not necessarily find him guilty  
15 of a lesser injury. I understand what the Court has already  
16 said. I understand the Defense's position. That would be the  
17 State's position.

18 As to self-defense, the requirements are the Defendant  
19 was without fault in bringing on the difficulty. All of the  
20 evidence presented and from the witness stand has been that  
21 the Defendant himself inserted himself into this situation.  
22 He's certainly not without fault. I understand that it is the  
23 State's burden. All the Defense has to do is raise the  
24 presumption and then the State must disprove that, but the  
25 State's position would be that we have disproven the fact that

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1 the Defendant was without fault in bringing on the difficulty.  
2 By their own defense witnesses, he then inserted himself into  
3 a situation. There was no fight between those two and -- and  
4 further, *Nauful v. Milligan*, it's something I pulled from this  
5 Criminal Offense of South Carolina 3rd Edition Ferguson book,  
6 talks about provocative words by the victim will not excuse  
7 this offense. And so I believe, and the State's contention  
8 would be the State has disproved at a minimum that the  
9 Defendant was without fault in bringing on the difficulty as  
10 well as the fourth prong, the Defendant had no other probable  
11 means of avoiding the danger. He certainly didn't have to go  
12 to the situation. So, while that hasn't been raised, I  
13 acknowledge that I believe that the State has met its burden  
14 in disproving the elements. And if one of the elements of  
15 self-defense fails, I would contend that self-defense is not  
16 an appropriate charge.

17 THE COURT: All right.

18 MR. FOX: First, go back and talk about the lesser  
19 included, Judge, and statutorily, it's still based on the  
20 evidence admitted. Statutorily, assault and battery in the  
21 second degree is a lesser included offense of assault and  
22 battery of a high and aggravated nature or assault and battery  
23 first degree, which is a lesser included of ABHAN. They all  
24 stair-step below each other. That's statutory. The case  
25 cited by the Solicitor refers to criminal domestic violence

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1 and it's not the same. I understand it's got a high and  
2 aggravated part, but the elements of that are not the same.  
3 That's a particular set of circumstances you meet for that  
4 charge that don't apply here. So again, I think that's a  
5 classic factual determination for a jury to sort out. They  
6 may well decide that it is in fact ABHAN. With regard -- but  
7 they may well not.

8 Now with regard to self-defense, there absolutely is  
9 testimony that Mr. Guderyon responded at the behest of  
10 somebody else. There's an altercation described by witnesses  
11 as a fight, the confrontation, aggressive, not friendly. I  
12 know Mr. Petrocine said, no, it wasn't like that, but the  
13 witnesses this afternoon said we interpreted it as a fight  
14 about to happen or in progress and that he responded at  
15 someone else's instigation. That's the testimony is that  
16 someone came up to him, pointed it out, he had a friend  
17 involved and he went, and there's no testimony that he went in  
18 aggressively. The testimony is that he went in an effort to  
19 separate and then responded. So, it's a factual issue. The  
20 jury may reject that. I don't think it's been disproved  
21 beyond a reasonable doubt and so I think certainly, that  
22 charge is appropriate for the jury to decide.

23 THE COURT: All right. Well, I'm gonna -- I'm gonna  
24 charge ABHAN, assault and battery second degree, assault and  
25 battery third degree, and self-defense.

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1 there to be that warning.

2 THE COURT: All right.

3 MR. FOX: Okay.

4 MS. WALKER: I just don't want to object in the middle of

5 ---

6 THE COURT: I understand. I understand.

7 All right. Anything further from the State before we  
8 recess?

9 MS. WALKER: No, Your Honor.

10 THE COURT: Anything from the Defense?

11 MR. FOX: No, sir.

12 THE COURT: All right. We'll be in recess until tomorrow  
13 morning and I'll get these to you.

14 MR. HOLFORD: Thank you, Your Honor.

15 (RECESS - 3:16 P.M.)

16 END OF DAY THREE.

17 \*\*\*\*\*OFF THE RECORD\*\*\*\*\*

18 (On the Record - 9:49 A.M.)

19 OCTOBER 12, 2017 - DAY FOUR

20 (REPORTER'S NOTE: The following takes place outside the  
21 presence of the jury.)

22 MOTIONS:

23 THE COURT: All right. Ladies and gentlemen, I emailed  
24 you my proposed charges and a copy of the proposed verdict  
25 form. I know you've had an opportunity to go over it. I have

1 received some proposed additional charges from the State.

2 Did you forward those to the Defense?

3 MS. WALKER: Yes, Your Honor.

4 THE COURT: Okay. I have, first of all, I have  
5 incorporated your third request to the following extent. What  
6 I've done is on the charge regarding self-defense. Let me  
7 find it. Okay. Right after the right to act on appearances,  
8 what I've added is the, the charge that says words accompanied  
9 -- and this is part from self-defense charge as well as what  
10 you're requesting. It says words accompanied by hostile acts  
11 may, depending on the circumstances, establish self-defense.  
12 However, mere words, no matter how abusive, insulting,  
13 vexatious or threatening they may be, will not justify an  
14 assault and battery unless accompanied by an actual offer of  
15 physical violence and I've incorporated that.

16 MR. FOX: Okay. I have, excuse me, no exceptions to  
17 that, Your Honor.

18 THE COURT: All right. Now with regard to the State's  
19 other requests, it says that the State does not have to prove  
20 malice. Where in my charges do I -- do I imply that they have  
21 to prove malice?

22 MR. HOLFORD: You don't, Your Honor.

23 THE COURT: Okay. All right. Well I'm gonna leave that  
24 out because I think that's gonna confuse the jury. It's like  
25 saying you don't have to prove premeditation. Well, there's

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1 nothing in the charge where I said you had to prove  
2 premeditation. So to say you don't have to prove malice where  
3 I've never indicated that you had to prove malice, I think  
4 might just confuse the jury. So, I'm gonna leave that out,  
5 okay?

6 All right. Now I will give you two opportunities, now to  
7 raise any objections or challenges to my charges. Also after  
8 I charge the jury, I'll give you another opportunity because  
9 sometimes it does sound differently when you hear the charges  
10 read to the jury versus reading it on paper, so I'll give you  
11 two opportunities. So at this point in time, are there any  
12 additional challenges or additional charges from the State?

13 MR. HOLFORD: Your Honor, the -- I believe the State  
14 raised the challenge or we did raise the challenge yesterday  
15 to the lesser included offenses. Yesterday, I sited a case  
16 involving criminal domestic violence; may I approach?

17 THE COURT: Yes.

18 MR. HOLFORD: I did find one on *State v. Small*, it's a  
19 1992 case, 307 S.C. 92, and it deals with assault and battery  
20 of a high and aggravated nature. Of course that was under the  
21 old common law, slightly different but similar elements, and  
22 it was based on the extent of the injuries. And in that case,  
23 they said that the evidence does not warrant a charge of a  
24 lesser simple assault; it was either guilty of assault and  
25 battery high and aggravated or not guilty based on the extent

1 of the injuries. I just want to place this additional case on  
2 the record for the State's argument. Our contention would be  
3 that the serious bodily injury is present and so he's either  
4 guilty of -- or great bodily injury is present so he's either  
5 guilty of ABHAN or not guilty.

6 THE COURT: All right. Let me take a look at this.

7 All right. Mr. Fox, let me hear from you on that?

8 MR. FOX: Well, first of all, Your Honor, this is a -- a  
9 case under the old common law and the statute of assault and  
10 battery of a high and aggravated nature as it currently exists  
11 and that rules in this trial specifically says that assault  
12 and battery second degree and assault and battery third degree  
13 are lesser included offenses. I point out in terms of  
14 specifics of the case before Your Honor, the *Small* case, one  
15 of the factors you had a defendant that outweighed the victim  
16 by a substantial amount. There is no such issue here. A  
17 jury, I believe, it's a classic factual issue. The jury may  
18 well conclude that although Mr. Guderyon is responsible for  
19 the punch, that perhaps something else intervened or he is not  
20 responsible as a matter of fact for the ultimate injuries. I  
21 think that's a strict factual issue.

22 I would also raise at this point, the State of course  
23 can, nothing is final until Your Honor charges, but at this  
24 point, Your Honor, this was brought up yesterday, argued, Your  
25 Honor declined and -- the State's request and said that you

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1 would charge self-defense and so overnight, obviously our  
2 defense during the trial has gone in that direction, but in  
3 terms of preparing my closing argument and the things that I  
4 would emphasize and argue it has all been based on self-  
5 defense, at this point, that would be, I don't even know what  
6 you would call it, not just 180, I'd be spinning around and  
7 around like a top. I think it would be extremely unfair and  
8 prejudicial to my client to do that at this point.  
9 Ultimately, if Your Honor is wrong, the State can appeal just  
10 like we can.

11 THE COURT: All right. Anything in reply?

12 MR. HOLFORD: Nothing further in reply, Your Honor.

13 THE COURT: All right. I'm gonna leave it in there. I  
14 understand what you're saying. I can tell you right now, the  
15 major reason I'm doing it is, I can only think of one occasion  
16 where I refused or agreed with the State not to charge a  
17 lesser included offense and I've been reversed on appeal every  
18 time. And so it just seems like in my history and experience,  
19 if the Defense wants a lesser included offense and if there's  
20 any evidence to support it, then -- then I'm supposed to  
21 charge it. I agree with you, this *State v. Small* it kind of  
22 outlines, it says look, the person went to the hospital, they  
23 was a big disparity in the size, there was no need to charge  
24 simple assault based upon the injuries. That's what this case  
25 says. I think there is evidence to support a lesser included

1 offense and my experience is, if I don't charge it, that's  
2 gone be reversible error. So, I'm gonna go ahead and charge  
3 it.

4 MR. HOLFORD: Yes, Your Honor.

5 THE COURT: I'm gonna deny your motion.

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

7 MR. HOLFORD: Nothing further, Your Honor.

8 THE COURT: Anything from the Defense?

9 MR. FOX: Just one matter, Your Honor, also on self-  
10 defense. I don't have a case because there's surprisingly  
11 little case law on the matter. I don't object to 99 percent  
12 of the self-defense charge, it's very straightforward, it's  
13 things that we always know are there, being without fault,  
14 then bringing on the trouble and duty to retreat and  
15 proportional response. I do object to the language that  
16 refers to the Defendant having to be in fear of death or great  
17 bodily injury. Simply for this reason, number one, I think  
18 self-defense is a common law tradition in this state. I  
19 imagine it's everywhere. Murder has always been against the  
20 law, even before it was codified, and I imagine right after  
21 murder, self-defense arose. I cannot imagine that our courts  
22 think that it is the law that a person that is assaulted with  
23 something less than deadly force, a fist, does not have a  
24 right to defend himself. I think that's completely illogical.  
25 I was frankly surprised. That jumped out when I read your

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1 charge last night, that language jumped out, and I began to  
2 think back and you know, that's ever been an issue because the  
3 very few self-defense cases I have gone to trial have been  
4 involved in an alleged assault with what would be a deadly  
5 weapon, a gun or a knife or something. And so clearly there  
6 was at least arguably a fear of death or great bodily injury.  
7 Your Honor has heard the evidence. The evidence was that this  
8 was believed, from the Defense point of view, was a punch for  
9 a punch. And so I just can't imagine -- again, if you go  
10 through and read the case law, you're not gonna find many  
11 cases at all and I don't think you're gonna find one from more  
12 recently than about 2009. And basically, they just cite that  
13 same language, you know, like is in Your Honor's charge, and I  
14 understand that's a standard charge, but I think it just  
15 cannot be the case logically that a person can't resist a  
16 punch with a punch, that you've got to wait -- if you take  
17 that to a logical conclusion, if I rush up to Mr. Richardson  
18 over there, number one, I'm not a threat to anybody, but that  
19 I can punch him in the face and he can't respond; I don't  
20 think that can possibly be the law in self-defense in this  
21 state. So, I will object to just those words, fear of great  
22 bodily injury.

23 THE COURT: I understand. Yeah, I understand your  
24 argument, but I'm kinda tied by the same problem.

25 MR. FOX: Yes, sir.

1           THE COURT: Unless you find an Appellate decision that  
2 says what the charge is, this is the charge by the Appellate  
3 Courts, this is the charge that's in our charge book. Until  
4 you've got the Court of Appeals or the Supreme Court that says  
5 self-defense is available to a lesser threat, then -- what's  
6 the State's position on that? I mean, it's creating an  
7 appeal.

8           MR. HOLFORD: Your Honor, I'm looking at that applicable  
9 case law that I have in front of me and it does appear that  
10 this charge comes from a case, *State v. Long*, out of 1997. It  
11 is the same self-defense charge that I've seen in other cases  
12 that is provided in the Summary Court Judge's Bench Book,  
13 that's provided as the normal charge from either the Supreme  
14 Court and Court of Appeals, whoever does that, and the  
15 elements in that -- in that case were, you know, they listed  
16 a, b, c, d, but certainly it says Defendant actually believed  
17 he was in eminent danger of losing his life or sustaining  
18 serious bodily injury. And so I think that that is the or  
19 there. I believe if it didn't have or, then certainly I would  
20 agree with the defense that the law could not be that a person  
21 must be in fear of losing his life in every situation, but for  
22 serious bodily injury that that would be necessary and -- and  
23 that's where this comes in is ---

24           THE COURT: Well, excuse me for cutting you off, but I  
25 think I understand the argument. Is it the State's position

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1 that a person cannot defend himself unless he is in threat of  
2 a serious bodily injury? Because that's the whole argument  
3 here is I agree, the charge the appellate decisions say self-  
4 defense, you're entitled to defend yourself in cases where you  
5 reasonably fear death or serious bodily injury. I also  
6 understand the Defendant's argument now. If you're just in  
7 fear of injury, you can't defend yourself.

8 MR. HOLFORD: And, Your Honor, the State's position would  
9 be that's the difference in self-defense and mutual combat.  
10 And so the -- the legislature does not intend or envision a  
11 time where two people would not be able to be engaged in  
12 mutual combat, I think that's separate.

13 THE COURT: Mutual combat, you don't -- if it's mutual  
14 combat, that excludes self-defense. If you're engaged in  
15 mutual combat, you can't claim self-defense. The question is  
16 here if somebody puts you in fear, not of your life, not of  
17 serious bodily injury, but just in fear of injuring you, can  
18 you not defend yourself?

19 MR. HOLFORD: I believe according to the case law and  
20 what is available to us at this time in this State, that you  
21 can either be involved in mutual combat and that be a charge  
22 or -- and at that point, be precluded from self-defense or  
23 raise the self-defense argument and in the -- in the State at  
24 this time, I believe the case law is such that you must be in  
25 fear of death or serious bodily injury.

1 THE COURT: Okay. And I don't know the answer because  
2 the Appellate Court hasn't addressed it, but at least that  
3 gives you your grounds for appeal is whether or not self-  
4 defense is available to any defendant who is not in fear of  
5 death, not in fear of serious bodily injury, but is in fear of  
6 injury or moderate injury.

7 MR. FOX: I understand and that's the part -- I do  
8 understand the Court's ruling. That right to appeal is kind  
9 of a cold comfort maybe we could put that on the State and let  
10 them exercise their right to appeal if it turns out to be  
11 wrong.

12 THE COURT: Yeah, but I mean, if it's an acquittal, then  
13 the State can't appeal an acquittal. The question -- I mean  
14 basically what it boils down to is, is self-defense available  
15 for assault and battery in the second degree or is self-  
16 defense available to assault and battery in the third degree  
17 because in neither one of those, you don't have serious bodily  
18 injury and you don't have fear of death. So, that's something  
19 the Appellate Court is gonna have to answer.

20 MR. FOX: Yes, sir.

21 THE COURT: I think I know how they're gonna answer it,  
22 but they hadn't answered it yet.

23 MR. FOX: Yes, sir. Your Honor, I agree, it's a strange  
24 hole in the law right now.

25 THE COURT: That's right and that's what -- and so

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1 they're gonna have to address that. They're gonna have to say  
2 if it's serious bodily injury or it's death, then that means  
3 self-defense is not available for assault and battery second  
4 degree or simple assault and battery or any crime of assault  
5 that involves less than serious bodily injury or death.

6 So, so I'm gonna overrule your objection, but I  
7 understand your, your argument and I tend to agree with your  
8 argument, but that's not what the Appellate Courts have said.

9 MR. FOX: Yes, sir, I understand that. And no further  
10 additional requests or exceptions to Your Honor's charges.

11 THE COURT: All right. All right. Now I think we --  
12 well first let me go -- any, any further ---

13 MR. FOX: No, Your Honor.

14 THE COURT: Okay.

15 MR. HOLFORD: Nothing further, Your Honor.

16 THE COURT: All right. And I think you have agreed that  
17 the Defense will close in full?

18 MR. FOX: Yes, sir.

19 THE COURT: And then the State will close in full and  
20 that will be it, correct?

21 MR. FOX: Yes, sir.

22 THE COURT: All right. Anything further from the State  
23 before we bring the jury in?

24 MR. HOLFORD: Nothing further, Your Honor.

25 THE COURT: Anything from the Defense?

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1 MR. FOX: Thank you. May it please the Court, Your  
2 Honor?

3 THE COURT: Yes, sir.

4 CLOSING BY FOX:

5 MR. FOX: Good morning, ladies and gentlemen. I always  
6 think it's appropriate to thank you at this point for what's  
7 been a week's full worth of service. It is a duty, I think,  
8 of being a citizen in this country, a very serious one, and I  
9 that's why you swore oath after oath this week to promise to  
10 try this case as fair and impartial jurors. That's why you're  
11 here because before this case started, you knew nothing about  
12 this case. You come into it without any preconceived notions,  
13 any preconceived ideas, and I think it's the best system that  
14 there is and I truly thank you for that, whatever the outcome  
15 ends of being this week. I pay attention when we do  
16 qualifications downstairs, I pay careful attention to people  
17 that come up, not because they'd gotten a medical excuse or  
18 something, I pay attention to those people that clearly just  
19 don't want to be there. Those that get put back in the jury  
20 pool, I don't want those people. They don't want to be here;  
21 I don't want them either. So I know all of you at least said,  
22 well, I'm gonna do my duty, and I do appreciate that.

23 A lawyer that I respect most in the world, of course  
24 talking about all my cases with said, kiss this one, Eric,  
25 kiss it, and that just means keep it simple stupid. I am not

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1 gonna relive this trial line by line, testimony, you know,  
2 word for word. You all were here, You all listened to what's  
3 going on. I know you were all paying attention. So I'm not  
4 gonna go through it. There are obviously things I need to  
5 point out to you that I want you to look at. I have to,  
6 though, because we got rules here. Someone has gotta go  
7 first. All right. So the rules say since the Defense put up  
8 witnesses and introduced evidence, I got to go first. All  
9 right? So I make not intention or pretention of putting words  
10 in the Solicitor's mouth as far as what they're gonna argue to  
11 you or what they're gonna say to you. However, I don't get to  
12 get to get back up and I don't get to respond, and so I got to  
13 at least try to anticipate what they're gonna say to you.  
14 And, I simply ask you when they are up and raise a point or  
15 make an argument that you think to yourself, well, what did  
16 Mr. Fox say about that or what would Mr. Fox say about that.  
17 I want you to pay full attention to them just like I know you  
18 will to me but, again, I don't get to get back up.

19       It is a bar fight. It's a bar fight with horrific  
20 consequences. It should never have come to this; it should  
21 never have come to this, but here we are. But, that's really  
22 what it is; it's young people in a club doing what young  
23 people do. Some of them doing what they should not be doing.  
24 I cannot imagine the thought process where you go into a club  
25 and think it's okay just to grab a woman's breast and just

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1 playfully right out in the open. I can't imagine a scenario  
2 where that's okay. And I certainly understand why someone  
3 cared about that young woman and would take exception and not  
4 be happy about that. But, that's where we are.

5 Ladies and gentlemen, it's a bar fight and it's a self-  
6 defense fight, a self-defense situation. The State is  
7 desperate for this to be, in effect, a murder trial. He's not  
8 charged with murder, but it's very obvious from the way they  
9 presented the evidence and the things they -- they're  
10 desperate. So, we're saying to you, it walks like a duck and  
11 it quacks like a duck and it's yellow like a duck but we're  
12 not gonna call it a duck, and that's why they're desperate to  
13 prove to you that this was a sucker punch. They don't use  
14 that word, but that's why they've been so desperate to try to  
15 get in evidence that Philip came from behind Mr. Hodges, that  
16 he hit him in the back of the head, that he sucker punched him  
17 because we all have a natural revulsion to that. A fair fight  
18 is a fair fight and may the best man win. You know, maybe  
19 it's self-defense, maybe it's not, but all of us from the time  
20 we're on the school yard or even with our brothers in the back  
21 yard, we got just a natural rejection of the idea that you  
22 come up behind somebody without warning and just smack them.  
23 Right? One of the reasons why Pearl Harbor offends us so much  
24 is because it was a sneak attack. We were literally  
25 negotiating with those people at the moment Pearl Harbor

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1 occurred. So, it's one thing to attack a military  
2 installation at the time of war; it's another thing to do it  
3 without warning in a time of peace. So, they're desperate to  
4 make this a sneak attack, a sucker punch in the back of the  
5 head. But, you have not heard one bit of evidence, one bit of  
6 testimony or seen one bit of evidence to support that. Any  
7 witness that was there either said I didn't see it. The  
8 State's own witnesses that were there: Jimer Petrocine,  
9 Mariah Stevens, David Hayes, the three that were there in the  
10 group, the kind of bigger group that was all there that night.

11 You know, Mariah, good Lord -- you all decide who to  
12 believe and the Judge is gonna tell you that with any witness,  
13 you can believe every single word they tell you, you can  
14 reject every word and you can believe some or reject the rest.  
15 And in deciding what to do, you do what you do in your  
16 everyday life. How did this person -- did they appear to know  
17 what they were talking about; did they really have the ability  
18 to see or hear the things they said they said they did? All  
19 right? What was their demeanor? Right? The same thing you  
20 do every day in deciding if someone is BS'ing you or telling  
21 you the truth. I don't think anybody lied to you, any of the  
22 State's witnesses lied to you, but Good Lord, I'm not sure  
23 Maria Stevens knew what day of the week it was yesterday, let  
24 alone what happened two years ago at Carlos'n Charlie's, and  
25 she didn't see anything. Now, she was there to say, oh,

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1 everything was fine. Yes, the man touched me. She didn't --  
2 I understand she didn't want to say a man grabbed me by the  
3 breast and she went to Mr. Hodges, her boyfriend, and then she  
4 didn't see anything. Everything was good when I left. Okay.  
5 But she didn't see everything; she was in the bathroom. So,  
6 she didn't testify that she saw -- didn't even testify that  
7 she saw Philip. Certainly, not that he came from behind and  
8 sucker punched this poor man in the back of the head.

9 David Hayes barely wanted to acknowledge he was in the  
10 room, the courtroom, with the Defendant. Maybe he really  
11 doesn't know Mr. Guderyon; he couldn't decide. I asked him,  
12 do you know Philip? And, he kind of looked around like Philip  
13 was up there on the ceiling somewhere. No, I don't see him; I  
14 don't know him. He didn't see anything. He says he didn't  
15 see any altercation, but he also sure as heck didn't see any  
16 punch whether it came from Mr. Hodges first or from Philip.  
17 He didn't say he saw anybody get hit in the back of the head.

18 Jimer Petrocine says, everything was good, man. I just  
19 sort of casually, innocently and without any malice, touched  
20 this girl's breast and the fellow objected to that. And then,  
21 you know, then I felt a whoosh and the next thing I knew the  
22 guy's on the ground. Maybe, he was right there. Everybody  
23 pretty much agreed Jimer was right there, but it's possible he  
24 turned his head, maybe. It happened right there within inches  
25 of him, but he sure didn't say he saw anybody get hit. He

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1 says I didn't see Mr. Hodges do anything aggressive. I was  
2 cool with Mr. Hodges, but I sure as heck didn't see Philip do  
3 anything. And, he certainly said that he was sure that Philip  
4 came from behind him and not from behind Justin Hodges.

5 No witness was able to tell you that this was a sucker  
6 punch and there's nothing else that tells you it was a sucker  
7 punch. You'll have a chance to watch the video if you desire.  
8 You've already seen it. You can tell the quality it is. You  
9 can tell that it jumps a bit, and I can talk more about that.  
10 It's misleading in many ways. It's got all the information on  
11 there. You can see the people involved. You can see -- one  
12 of the versions you have is where they kind of did a little  
13 highlight, a little bubble halo kind of thing on there so you  
14 can tell like this is where I need to be looking, and you can  
15 certainly see what, you know, we can be confident that Mr.  
16 Hodges is on the ground with his feet up. It seems a little  
17 strange if you're hit with force from behind, a sucker punch,  
18 a rush that you'd fall backwards. I guess it's possible, it  
19 seems more likely if you were hit in the face, that's more  
20 likely to make you fall backwards rather than get struck in  
21 the back of the head from behind. But, he's clearly on the  
22 ground. But nobody -- you're not gonna be able to tell from  
23 that video or from -- you've got some still pictures that are  
24 in evidence. They're simply screen grabs or snapshots in  
25 effect from that video. And there's one that you can clearly

1 see a man -- you know, Officer Arroyo talked about a transfer  
2 of momentum or something like that, the punch -- you see a  
3 man, what it looks like to be the back end or the tail end or  
4 the follow through to a punch. Nobody's actually bothered to  
5 identify for you who that person is. But, it does not show  
6 where that person came from because the witness who did  
7 testify about this, Chris Watkins, my witness, said, look, you  
8 got this video. It's not that you can't tell what's going on.  
9 It's not that things are being hidden from you -- and I don't  
10 have any belief that anyone has done anything wrong with this  
11 video, that they've manipulated it to delete anything or taken  
12 anything out to mislead you. That's not the point at all.  
13 And Mr. Holford did a very good job, I thought, yesterday  
14 pointing out that even though it's only two frames per second,  
15 you can still see information and which he did that with  
16 regards to the fall. You can still see that a couple of  
17 seconds later, Mr. Hodges is on his back on the floor.

18 Mr. Watkins, qualified as an expert, which means he can  
19 give you an opinion, said, look, this system was set up to  
20 record about two frames per second. Sometimes it might  
21 actually get three. It's not always one second, one second,  
22 one second, but basically, to save space, storage space, it's  
23 not there to be a film recording in real time; it's time  
24 lapsed is the way he put it. We've only seen in school the  
25 time lapse of a flower. You know, rising up from the seed and

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1 opening up or, you know, the cocoon or the butterfly in the  
2 cocoon; it's time lapse. It's not that there's anything  
3 that's not right in there; it's just it's not everything.  
4 What did Mr. Watkins tell you? Look, this video is -- I  
5 forget exactly how long he said it was, three minutes, four  
6 minutes and said at that rate, there's this many images. But  
7 if it were set at the standard rate, it would be basically the  
8 real time rate that would look like it was live, that's 30  
9 frames per second. Now, I did the very simple math. I  
10 counted up the minutes on the video and how many frames that  
11 would be and how many you have and you've got about six  
12 percent of the information, 94 percent of what actually  
13 happened. Now again, that doesn't mean that anything is being  
14 hidden. Why is that important? It's important because what  
15 happened just before that picture that you're gonna have that  
16 shows a man swinging, what appears to be swinging his arm, is  
17 everything. Because, the witnesses who did testify about what  
18 they saw said Mr. Hodges and Mr. Petrocine were having an  
19 argument or at least some kind of confrontation enough that it  
20 drew attention. Did they come to fists -- to blows, they did  
21 not. But, the witnesses that did come in here and tell you  
22 what they saw said they were chest to chest and it sure looked  
23 like they were about to come to blows. They weren't happy  
24 with each other and it caught people's attention, and that  
25 makes sense. Which makes more sense, a man comes to you and

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1 says or your girlfriend comes to you and says that guy just  
2 grabbed my boob and you walk up and say, gosh, sir, would you  
3 please not do that again, I'm her a boyfriend. Or, does it  
4 make more sense that you would say, knock it off you stupid  
5 SOB. That doesn't mean you're gonna punch the guy and that he  
6 might fall down. Which version makes more sense? Jimer  
7 Petrocine would have you believe that this was just an  
8 innocent little thing and Mr. Hodges came up, they shook  
9 hands, you know, they're about to hug it out and go sing  
10 Kumbaya. Does that make sense?

11           What happened right before that still photo was  
12 everything, and three people, actually four gave you a  
13 different version. All right? You've got Mr. Guderyon,  
14 talked to the police, waived his right to have a lawyer,  
15 talked about getting a lawyer, and then said, no, I'll tell  
16 you what happened and said, a friend or a person in the group  
17 I was with came to me, I was at the bar, pointed out Jimer and  
18 this other dude I didn't even know except that we'd been  
19 shooting pool together, having a beer, looked like they were  
20 getting into it and I went over there to try to separate them  
21 and tell them to calm down. The man turned to me  
22 aggressively, raised his hands, believed I was gonna be hit,  
23 and he -- listen to the words he said over and over again, I  
24 felt threatened, he was aggressive, he was a big guy, felt  
25 like it was self-defense. And then how -- he said that. Now,

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1 you know, is he trying to get out -- of course he's trying to  
2 get out of trouble. He knows -- they're telling him, we're  
3 gonna put a felony charge on you because of the injuries, not  
4 because of the evidence we have in front of us, but because of  
5 the man's injuries. I mean, my God, you can't ignore the  
6 man's injuries, but the injuries don't make it so. So, that's  
7 Philip, he's the Defendant, and you can say, well, I'm not  
8 gonna believe anything he says, but he's the Defendant and  
9 he's got a motive to lie and he just wants avoid trouble. I  
10 really, really hope you analyze it more than that. If you  
11 decide that you don't believe Mr. Guderyon overall, that's  
12 fine, but don't do it just because he's the Defendant because,  
13 if you do that, then we don't need to have a jury system. If  
14 a man loses his rights to fair trial simply by being accused  
15 and the government labeled him a criminal and accuse him of a  
16 crime and he loses the right to defend himself to even be  
17 heard, then we might as well not even have a jury trial. So,  
18 if you decide and you don't believe him, that's fine, but at  
19 least do it based on the evidence and not by the fact that  
20 he's the Defendant.

21 But, we don't just have Mr. Guderyon. He's not the only  
22 one who tells you that basic story. Two other people tell you  
23 that story. They were here yesterday: Ambrose Heavener and  
24 Steven Sumpter. Now again, you're the finders of fact. You  
25 might think, I don't believe a thing either one of those

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1 people told me. I simply ask you to compare their demeanor,  
2 their testimony, their certainty about what they saw, with the  
3 say Mariah Stevens, with say David Hayes, and who did you  
4 think was a more reliable witness in terms of what happened  
5 that night. And what did both Heavener and Sumpter tell you?  
6 They said that for different reasons, there was an altercation  
7 on the dance floor that got their attention. Two people, in  
8 their opinion, were about to come to blows or at least in that  
9 chest to chest, you know toughened up stag. They figured a  
10 fight was about to happen. A man they didn't know at the  
11 time, but they learned was Philip Guderyon, came to get  
12 between them, not from behind Mr. Hodges, but from behind Mr.  
13 Petrocine. Now, they diverge a little bit. One says -- Mr.  
14 Heavener says I saw Mr. Hodges raise his hands in an  
15 aggressive manner. Mr. Sumpter was sure that he saw an actual  
16 punch or attempted punch, but both characterized it  
17 essentially the same way. There was an altercation that got  
18 our attention, Mr. Guderyon came from behind Mr. Petrocine to  
19 get in between and the first aggressive move was from Mr.  
20 Hodges. Doesn't that make more sense that the version Jimer  
21 Petrocine set out to you which was everything was cool, we  
22 shook hands, everybody was fine, there was nothing wrong.

23 Mr. Heavener and Mr. Sumpter do not know each other.  
24 They weren't there together that night; they were in different  
25 parts of the bar. One was by the bar; one was over by the

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1 pool tables. In between is the dance floor. Now, it's all  
2 fairly close, 20 feet or so but, to me, that is more credible  
3 because they are consistent with each other. They're not  
4 exact. It would be strange if they were exact in what they  
5 saw, but they are perfectly consistent with each other in all  
6 major respects. And what they say is they didn't use the word  
7 self-defense, but they are sure that Mr. Hodges committed the  
8 first aggressive act and that they were very close together  
9 before Mr. Guderyon responded.

10 There've been insinuations yesterday when they testified,  
11 that, well, you guys are in jail with Mr. Guderyon. You are  
12 in the same pod with 50 or 60 other people. So what? What  
13 possible motive would either of those men have to come into  
14 court and lie to you. What do they possibly have to gain?  
15 They don't know, other than being locked up with Mr. Guderyon,  
16 they don't know anybody in this case. What does Mr. Heavener  
17 have to gain by coming and testifying in a case being  
18 prosecuted by the very office that are prosecuting him? Who  
19 does that? Who would lie and call attention to themselves  
20 that way? Maybe you think he would. You get to determine  
21 that; I don't. Same thing with Mr. Sumpter. What did he have  
22 to gain? What in the world because he shared a pod at the  
23 jail for a few weeks. Really? You would come to court for  
24 that man and lie for him? Well, you decide. But again, I  
25 think you recall what their demeanor was, what they told you,

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1 and how they were consistent with each other and consistent  
2 with Philip. And guess what? If you don't like those two  
3 about how this all came about and about what was going on  
4 between Jimer Petrocine and Justin Hodges, if you don't like  
5 any of those three, who else told you that it looked like  
6 there was an argument going on? One of the detectives said  
7 that. That's in the statement they played when Philip talked  
8 to them, and I couldn't tell whether it was Detective Jones or  
9 Detective Amick, but one of the detectives said they're  
10 telling him, we don't think it's self-defense, we seen that  
11 video. We didn't see anybody through a punch at you. So,  
12 it's not self-defense. Well, the men had all the information  
13 they needed to make that determination but, in that  
14 conversation, they also said in describing what was going on  
15 between Petrocine and Hodges, yeah, yeah, they were arguing.  
16 It looked like they were arguing or something like that.  
17 That's not from my witness; that's from the detective. That  
18 was his impression of watching that video. There was an  
19 argument going on. It wasn't all buddy, buddy. They weren't  
20 gonna hug anything out, maybe it was gonna come to blows.  
21 But, so now you've got four different people telling you the  
22 same version of things. Now, you -- the Judge will tell you,  
23 you can dismiss those four and you can believe Jimer  
24 Petrocine. It's up to you.

25 Now, I'm not gonna get down with all the details, I've

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1 already talked more detail than I wanted to and I promised I  
2 wouldn't go on and on. I'm not gonna go through with you all  
3 the elements of the law. The Judge is gonna tell you this is  
4 what's assault and battery of a high and aggravated nature is.  
5 He's gonna instruct you on what we call lesser included, so  
6 you'll have the option -- I'm gonna ask you to find this man  
7 not guilty, but you'll have the options of assault and battery  
8 of a high and aggravated nature and then what we call the  
9 lesser included or lesser charges of assault and battery in  
10 the second degree and assault and battery in the third degree.  
11 He's also gonna instruct you on self-defense. If no one told  
12 you what self-defense was, I guarantee you all 14 of you could  
13 give a really, really accurate definition of what that is.  
14 You have a right to defend yourself from an assault. Right?  
15 In the law that the Judge will read to you, what it says is  
16 this: That a person, before they can claim self-defense, must  
17 fear that they're in -- they must be in fear of either death  
18 or serious bodily injury.

19 Now, you are the finder of facts in this case. That  
20 cannot mean, and I argue that it does not mean, that a man  
21 does not have the right to defend himself from a punch to the  
22 face. That's an absurd conclusion to that law. I guess if  
23 you literally went that route and said, well, you know, a  
24 punch, a punch is a punch, it might hurt, but generally it  
25 doesn't put you in fear of death or serious injury. You're

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1 not gonna like it, but that can't be the law. I mean, if I  
2 were to leap over this railing right now and attack you,  
3 number one, you're probably not gonna be in much fear of me  
4 about anything; but number two, are you telling me that you  
5 wouldn't be fully justified in socking me right in the face?  
6 Of course you would. I mean, that's just common sense, right?  
7 So, I know what the letter of the law says, but I don't think  
8 anyone can seriously argue to you that you have to sit back  
9 and get punched in the face and not be able to resist that.

10 Now, you have to be able to show a few things. We've  
11 raised self-defense as an issue, the burden is on the State to  
12 disprove self-defense, but there's certain things that you've  
13 got to be able to show. One is that it is without fault for  
14 bringing on the trouble. Right. I can't run up to you,  
15 threaten you, assault you and then claim -- and then when you  
16 respond, claim self-defense when I respond to your self-  
17 defense. I can't be -- I can't start the trouble and then  
18 claim self-defense. And they will say, I'm very sure, that  
19 well Philip did this. He didn't have to interject himself;  
20 there was nothing going on here. It wasn't a fight, it wasn't  
21 an argument, he didn't need to come up and interject himself  
22 into this thing. Well, I don't think coming up because he  
23 seen what looks like to be a -- about to be a physical  
24 altercation with a friend and coming up doing this, which is  
25 the testimony that you had, is, is creating trouble. If he

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1 had just stayed there and stayed out of it, he could have. He  
2 could have. But, I don't think by going in there trying to  
3 avoid further trouble, means that he brought on the trouble.  
4 What was happening was happening and, you know, then he  
5 responded to what he perceived to be a threat from Mr. Hodges.  
6 There is also what's called a duty to retreat. If you had --  
7 if I'm outside say in my front yard and someone comes down the  
8 street waving a knife and threatening me and my door is right  
9 behind me, I've got to take advantage to try to get in that  
10 door first. You know you have to take a reasonable  
11 opportunity to retreat. If someone jumps on top of you, you  
12 don't have to do that. Right? There's got to be an ability,  
13 a reasonable ability. In this case, they're inches apart, Mr.  
14 Hodges makes an aggressive move and don't respond. He might  
15 have no duty to retreat because he can't. It's not practical;  
16 he can't. And you don't have to wait to get hit or hurt to  
17 respond. All right? You don't have to stand there and say  
18 wonder if that guy is gonna hit me or not and if he does, then  
19 I'll -- you got a right to act on appearances. You've got a  
20 right to respond before your injury. Because again, that  
21 would be absurd that you wait until you were hurt before you  
22 could respond. So, I believe we meet our burden in respect to  
23 self-defense. I think it's very much common sense and, you  
24 know, I'll leave that up to you.

25 All right. So you have nothing, nothing, no testimony

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1 from any witness that was there, any the video from any  
2 source, nothing that said this was a punch from behind to the  
3 back of the head. Now, you do have evidence that Mr. Hodges  
4 suffered an injury to the back of his head and all of the  
5 resulting things that happened in terms of the hematomas and  
6 the brain swelling, and ultimately death. That came from Dr.  
7 Cheattle, also qualified as an expert. I don't question a  
8 single thing he told you. God forbid if any of my loved ones  
9 ever needed his services, that type of service, he's the man I  
10 want for sure. But, he doesn't know how the injury was  
11 caused. He said -- could it have been from a punch? It  
12 could, it could, but he also said when I asked him that type  
13 of injury could certainly come from being struck by an object,  
14 a bat or a pipe, something heavy, that or an object or, you  
15 know banging your head against something, a wall, or say a  
16 brick wall, cinderblock wall, or a hard floor. He doesn't  
17 know. He wasn't there. Could it've been a punch? It could.  
18 But, it could've been when he fell over.

19 Now self-defense, oddly enough, if you believe it's self-  
20 defense, it doesn't matter. Okay? It's a complete defense.  
21 Self-defense is a complete defense, and whether the individual  
22 gets just a black eye or whether, in this tragic case, he  
23 later expires, self-defense is a complete defense. And so if  
24 you find self-defense, as hard as that might be, that means  
25 Mr. Guderyon is not guilty.

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1 I'm not gonna ask you to deal with those lesser charges,  
2 but they're there. It would be within your rights as finders  
3 of the facts to say I'm not convinced it's self-defense, but  
4 this man, Mr. Guderyon, all he intended was the punch to the  
5 face. I mean, and the Judge will tell you, any crime requires  
6 an conscious intent to commit bad acts. The only thing that  
7 Mr. Guderyon intended, I say and I believe the evidence  
8 supports the Defendant but, regardless, when he threw that  
9 punch, all he intended was a punch to the face. And, you may  
10 well find in your own view of the facts that he's responsible  
11 for that and the subsequent fall is what it is. It can't of  
12 helped -- there's no way to sort this out. It can't of helped  
13 that the bouncers picked up that poor man like a sack of  
14 potatoes and took him outside. He was unconscious when they  
15 got there. They didn't know if he had fallen because he was  
16 drunk or because -- they didn't see it. They didn't have that  
17 information. They didn't see it. But, it can't of helped  
18 that this man unconscious with what was a head injury,  
19 regardless of how he got it, that they picked him up and moved  
20 him. That could not have been helpful, but that's what  
21 happened.

22 Now, I'm gonna finish up talking a little bit about that  
23 video again. I'm sorry. I do have to say one other thing  
24 about self-defense, which is this. I don't believe that death  
25 or great bodily injury really applies as a practical matter.

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1 All right? But we're sadly here because we know that in fact  
2 a punch can result in death or great bodily injury. All  
3 right? So, I don't agree with how that law reads but it still  
4 applies. We know unfortunately that you can be punched in the  
5 face and the end result could be death. And so, if I'm Mr.  
6 Guderyon and a man is threatening to punch me in the face, I  
7 perceive that and I believe that because he's bigger and  
8 because he's aggressive because I feel threatened. We know  
9 that in fact, although it might be unusual, we know that, a  
10 punch can cause death.

11 Now, last, let's talk about that video. What were the  
12 two words I spoke to you on Tuesday? Remember, I promised I  
13 would get back to them. Silver Blaze. Sherlock Holmes.  
14 That's the name of a story also known as the Curious Case of  
15 the Dog in the Nighttime and it's the name of a race horse,  
16 it's the subject. And in this story, Silver Blaze, a  
17 thoroughbred, is kidnapped and held for ransom right before a  
18 big race and, of course, they're gonna call Sherlock Holmes.  
19 And so Sherlock Holmes goes off into the moors and he goes to  
20 this farmhouse and does what Sherlock Holmes does. And, he  
21 notices right away -- you know, it's a basic farmyard, you  
22 know, out on English Moors and animals all around including a  
23 guard dog that lives in the stable with the stable boy near  
24 the horses. And the dog raises cane like any good guard dog  
25 will when a stranger comes up. Right? He does what guard

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1 dogs do; he barks and runs around and yelps, makes a  
2 commotion. And, in interviewing the different people,  
3 Sherlock Holmes realizes that there's something that nobody  
4 says about what happened. It happened at night. And, with  
5 all the people that were there, they described this, that and  
6 the other, but nobody says anything about the dog. And so  
7 that's the key to Sherlock Holmes, who says, it's what I don't  
8 have that is the key here. The dog didn't bark. What does  
9 that tell you? Because again, the dog is in the stables with  
10 the horse, right? It tells you it's an inside job. It tells  
11 you that whoever stole Silver Blaze was known to the dog and  
12 so the dog didn't raise a ruckus. Right? It's the evidence  
13 you don't have that sometimes is important as the evidence you  
14 do.

15 In this case, that's the video. You got what you got.  
16 It is an incomplete picture. It is six percent of what  
17 happened. It's six percent overall and it's six percent in  
18 any given moment. It is six percent of what happened. It is  
19 94 percent the dog not barking and that is critical because  
20 you what you cannot tell -- if you decide, I cannot figure out  
21 between all these witnesses, I don't trust any of them. I'm  
22 gonna look at this video and I'm gonna be able to tell what's  
23 going on. You're not. You're just not. And the critical  
24 moment, the critical moment, isn't several seconds after the  
25 punch when you see Mr. Hodges on his back on the floor; that's

1 not the critical moment. The critical moment in that still  
2 picture you're gonna have that shows a man transferring his  
3 momentum, punching, in what looks very much like the aftermath  
4 -- the critical moment is just before because we've claimed  
5 and have witnesses, several witnesses that say this was self-  
6 defense. So, you need to know what happened just before that  
7 picture. This is not a whodunit. We know who threw the punch  
8 that hit Justin Hodges; we know that. Mr. Guderyon admitted  
9 that. This is a -- this is a were you justified in doing it.  
10 And the only way you can determine that if you don't -- I  
11 think you can determine that from the witnesses, but if you  
12 don't like that then you have to go to that video and that  
13 video is got just a fraction of the information you need. And  
14 this is the best way I know to think about it, all right,  
15 video replay in football. I hate that stuff; I really do.  
16 But, it comes up in a couple of general situations. Always if  
17 the guy is in bounds or out of bounds, but the other two that  
18 are big, did the man cross the goal line, did he get the ball  
19 across the goal line. Right? If you watch football you know,  
20 you don't have to get the whole ball across. If this is the  
21 goal line, all you got to do is touch the ball to that  
22 invisible plain that goes all the way up to the heavens,  
23 right? And so sometimes the runner will be stopped and he'll  
24 reach out and just -- that's the issue. Did that ball ever  
25 crack that plain? All right. Just watched the Cowboys and

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1 Packers last weekend and that was an issue, a first down  
2 issue. But, you know, they're able to look from overhead,  
3 Ezekial Elliott was jammed up in the middle but he reached  
4 that ball out, and all he's got to do is do it for an instant,  
5 and they can look and say, okay. In that case, a snapshot is  
6 useful and determinant. He either did or he didn't. He got  
7 there or didn't. In other ways, you see all the time and they  
8 replay it over and over is whether the man made a catch.  
9 Right? Whether he was juggling the ball and sometimes it's  
10 whether he's in bounds or out of bounds and so they will slow  
11 that thing down and they will go frame by frame and you see  
12 the guy twisting and the ball might be fine or he might be  
13 bobbling it and, at any given moment, you could freeze that  
14 and then it hits the ground and the rule is, right, you got to  
15 control the ball all the way to the ground. Right? It's no  
16 good if you bobble it as you get down to the ground. And they  
17 will freeze that. If you were to take a snapshot in the  
18 middle of one of those scenarios, at any given moment, it may  
19 absolutely look like that man's got that ball just tucked as  
20 firm as can be. And if that's all you've got, you're gonna  
21 say that's a catch. All right? But if you haven't seen the  
22 whole sequence, if you haven't seen the few seconds that  
23 follow and the few seconds before, where you see the man  
24 bobbling the ball all over the place, how can you really make  
25 a determination and that's just a football game. That's just

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1 a football game. That's just -- that's just a football game.  
2 This is a criminal trial, a man on trial for his liberty. Are  
3 you gonna make a decision based on a snapshot that doesn't  
4 show you everything. Are you gonna really decide this man is  
5 guilty of an aggravated assault because of a freeze frame that  
6 doesn't show you all that you need to know to make that  
7 determination? Good Lord, I hope not.

8 You swore an oath to give this man a fair -- and  
9 everybody, not just my client -- a fair trial, fair and  
10 impartial. Justice -- doing justice doesn't always mean  
11 convicting. Doing justice is doing your very best to get it  
12 right. I'm asking you to do what may be one of the very  
13 hardest things you've ever done in your life, which is to set  
14 aside your sympathy and emotion because you promised to do  
15 that, you swore to do that, and base your verdict on the  
16 evidence. The only evidence you've got is that this was not a  
17 sucker punch, this was not an ambush from behind. You've got  
18 evidence that it was self-defense. And anything that's  
19 independent as in that video, doesn't give you enough  
20 information to make that decision.

21 So, I'm asking you to return the verdict of not guilty.

22 THE COURT: All right. Who wants to close for the State?

23 MR. HOLFORD: May it please the Court, Your Honor?

24 THE COURT: Yes, sir.

25 CLOSING BY HOLFORD:

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1 MR. HOLFORD: I'm always on point. Came up swinging.  
2 Does that sound like a fight to you? Is that a bar fight?  
3 You know the Defendant claims to be a fighter; 13 years kick  
4 boxing; he's been fighting his whole life; hands scarred from  
5 fighting. Those are his words. You know what happens in a  
6 fair fight? Boxers come up, they get the rules, touch gloves,  
7 we're both ready. Not this Defendant. He comes up swinging.  
8 He sees his friend and another guy he doesn't even know.  
9 Sure, they're arguing, they're talking, they're close; maybe  
10 their words are even heated. But the guy who is talking to  
11 him, to the victim says, we're good, we'd squashed it. No  
12 question Jimer did something inappropriate, no question; he  
13 didn't deny that. Does he want to minimize it for you? Sure,  
14 who wouldn't. Is it hidden what he did? No. Did Justin have  
15 a right to take offense? Yes. Did he? Absolutely. Were any  
16 punches thrown, did it come to blows? No, not until this  
17 Defendant injected himself into the situation, until he comes  
18 up always on point, ready; he's a fighter. What's he like to  
19 do? Fight. You know a football player, maybe when he's not  
20 playing football, maybe he's throwing a ball around in the  
21 yard. That's what football players do. A fighter, he's  
22 looking for a fight, even when one's not necessary. This is  
23 not a bar fight, this is not a self-defense case. I know that  
24 the Defendant said he was acting in self-defense. How? He  
25 walks up to the situation; it doesn't even involve him. It

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1 doesn't even involve him. The guy who it did involve said,  
2 I'm not scared; we're not fighting; we're all good. The  
3 Defendant walks up and takes a punch.

4 Now, as the State, we have to treat the evidence as it  
5 comes. What's it look like? What's our theory been? There's  
6 an injury to the back of the head, so has our theory been that  
7 he got punched in the back of the head? Absolutely. Is that  
8 what the evidence and the facts tend to prove? I would  
9 submit, yes. When you look at the video -- and I wish I could  
10 control the video; I promise you I wish it was better, but I  
11 don't do the DVR system at Carlos'n Charlie's. Myrtle Beach  
12 Police Department doesn't do the DVR system at Carlos'n  
13 Charlie's. You know, I'll tell you, there was a time before I  
14 was practicing and even now that we have cases in this  
15 courtroom, this very courtroom, where we don't have any video.  
16 And you know what? People still commit crimes whether it's  
17 captured on video or not. So, I'm gonna go along without that  
18 and then we'll come back to the video in a little bit.

19 What did you hear? You heard from Jimer, we talked about  
20 that. I want to dispense very shortly, I'll take about as  
21 much time as I hope you do in the jury room with his two  
22 buddies from jail, who January 2017 meet him in jail, meet him  
23 in the pod, they talk about their cases. They're talking  
24 about, you know, what -- what should we do? Hey, I got an  
25 idea, I was there. They seem to remember it clearer than the

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1 Defendant, clearer than Jimer, clearer than Mariah. Why would  
2 that be? Because two years after the fact, they've got their  
3 story. They've talked in the pod. They know what they need  
4 to say for their buddy, and that's what they do, they come in  
5 and say it. You know, one of them goes a step further. Not  
6 even the Defendant said that the victim ever swung at him.  
7 Are you gonna believe that testimony? Not even the Defendant  
8 said that Justin swung at him and you got your buddy coming in  
9 from jail sitting on the stand saying, oh, I saw the victim,  
10 he was -- he was taking a swing. That's the first we ever  
11 heard of that.

12 If you've fought before, you know not to hit someone in  
13 the head. Why is that exactly what happened in this case? He  
14 claims to be a fighter. He claims to be trained. He claims  
15 to have been kickboxing almost his whole life. If you're a  
16 fighter, you know not to hit someone in the head. In his  
17 case, he knew exactly where to hit the Defendant or where to  
18 hit the victim. So what happened? Jimer says, punch,  
19 stiffened up, fell back. Defendant says, I punched him and  
20 his eyes rolled in the back of his head and he fell back. The  
21 other witness says, he got punched and immediately he was out  
22 on the floor. You can see that. Is it as clear because those  
23 couple frames show life in between or not? No, but you can  
24 see that. You've heard that.

25 So, on the State's theory, what makes sense based on the

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1 doctor's testimony, what makes sense makes sense based on the  
2 injuries that the victim received to the back of his head, a  
3 blow so hard it caused his brain to go forward and bleed in  
4 the front and then have substantial injuries in the back, such  
5 substantial injuries that require cutting a part of the skull  
6 off and placing it in your stomach to the allow the brain to  
7 swell. Those substantial injuries were created from that  
8 punch. And I'll submit to you, if you don't -- if you can't  
9 get all the way there that that punch was not to the back of  
10 the head, that punch led to the fall where he hit the floor  
11 which sustained the injuries. I wasn't there. There's no way  
12 to tell. We can't tell whether the punch alone fractured the  
13 skull, pushed the brain, caused all the substantial injuries,  
14 or whether the punch did part of it and the fall that resulted  
15 from the punch caused the rest. But I'll tell you this, the  
16 victim didn't fall to the ground without that punch. It was  
17 his intention to punch him in the face; that was his  
18 intention. Did he? I submit he punched him in the back. He  
19 came up from the side. Jimer says he comes up behind him, a  
20 punch over his shoulder, I guess. It was his intention to  
21 punch him and that's what he did.

22 Now, I've made a couple of notes and the Judge will give  
23 you the law, but this is what ABHAN is. ABHAN is assault and  
24 battery of a high and aggravated nature. That's what the  
25 Defendant has been charged with. Unlawful injury to another,

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1 the intention to punch him, he does punch him, he admits he  
2 punched him, everyone else says that he punched him. GBI,  
3 great bodily injury results. Great bodily injury, the Judge  
4 will define it, it's substantial risk of death or causes  
5 serious, permanent disfigurement or protracted loss or  
6 impairment of the function of a bodily member or organ.  
7 Ladies and gentlemen, you can -- lady and gentlemen, you can  
8 use your common sense. Is a traumatic brain injury that  
9 caused cutting the skull open and allowing the brain to swell,  
10 multiple surgeries that ultimately resulted in his death, is  
11 that great bodily injury? Absolutely, a hundred percent. If  
12 that's not great bodily injury, what is? If a brain injury  
13 that ultimately leads to your death is not great bodily  
14 injury, there is no such injury.

15 This other one I included, just because it's part of the  
16 law, more likely to cause death or GBI. Well, it did, so  
17 we're up here, great bodily injury did result.

18 Now the Defense has talked a lot about self-defense.  
19 This is a shortened version. Again, the Judge will give you  
20 the law. Self-defense, this is my -- this is my note for  
21 Defendant, this is how I abbreviated Defendant. Defendant  
22 without fault; is that Defendant without fault, walking up,  
23 interjecting him into a situation he had no business being in,  
24 came up swinging, didn't even wait for Justin to square  
25 around. He says he comes up to him and Justin starts to turn.

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1 So coming up from the front and then he starts to turn away, I  
2 don't know. There are too many different sides of, of his  
3 witnesses saying he's coming up from one side, he's coming up  
4 from the left side, he says he comes up to the side, he starts  
5 to turn around, as he starts to turn, I'm already swinging.  
6 He's not without fault. Is the Defendant in danger of death  
7 or serious bodily injury? No. Would a reasonable person feel  
8 the same -- feel the same way? So, the Defendant has told  
9 you, I was in fear, I was so afraid of this guy. I walked up  
10 to the situation where he's arguing with my friend and I was  
11 so afraid of him, I had to hit him. I had to knock him out.  
12 I had to create this injury to him. Okay, he said that. But,  
13 would you feel that way? That's what this -- Would a  
14 reasonable person in the same position, feel that they were in  
15 risk of danger of death or serious bodily injury? No way to  
16 avoid it. Was there any way to avoid what happened?  
17 Absolutely. How about don't go up there and start swinging  
18 right off the bat. Is there a door, is there an escape route,  
19 is there some other way to avoid this confrontation? You know  
20 that kind of circles back to here, the Defendant's without  
21 fault. Mr. Fox told you a little bit about that, too. I  
22 can't come up and create a difficulty, create a situation,  
23 punch you and then claim, oh, that was -- I was afraid. I  
24 started it. I cannot create the situation bring on the  
25 difficulty, bring on the fault, and then say I had no way out;

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1 of course, he did.

2 Dr. Cheatle told you about the injury and I would submit  
3 to you, the State has proven beyond a reasonable doubt great  
4 bodily injury. The State has proven to you beyond a  
5 reasonable doubt that the Defendant intended to punch him, he  
6 says he did, and that intentional punch caused great bodily  
7 injury.

8 Now, you'll have the video. I said a moment ago, we'd  
9 get back to it. There's enough. There's enough evidence for  
10 you as reasonable jurors, using your common sense, to know  
11 what happened in this situation, to understand what happened  
12 in this situation. I can visualize this situation even though  
13 I wasn't there. Two guys having a disagreement, maybe bowed  
14 up at each other. Jimer says they shook hands, they were done  
15 with it, no fists being thrown, no punches being thrown, and  
16 then the Defendant comes in ready to fight, ready to swing.  
17 You can use your own common sense. Does that sound like self-  
18 defense to you? No. Does it meet the elements of self-  
19 defense? Not at all. You know, self-defense is one of those  
20 things where if you meet two but not the other two, you're  
21 out; it's got to be all four. But you do have, if you wish,  
22 this video of poor quality and snapshots from it. Do I wish  
23 they showed exactly where the strike was? Sure. Would that  
24 make this easier? Absolutely. But what we're left with, are  
25 multiple shots per second -- I understand 30 frames a second

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1 would be better, but we have multiple shots per second, so  
2 we're talking about fractions of a second. The first couple  
3 of times I looked at this picture, my attention is always  
4 drawn here. I'm like what's going on here? Nothing. It's  
5 right here that you see two guys talking, this guy's back is  
6 right here. Now, here he is, cocked back. How do we know  
7 that the guy cocked back punching someone is the Defendant?  
8 We told you it was. Everyone has told you the Defendant is  
9 the one punching the victim; that's how we know. Take a look  
10 at that. The reason we take photos afterwards to show he's  
11 laid out is because that's the immediate aftermath, the  
12 immediate aftermath of being punched. Did someone slide in  
13 after the punch and then take a bat to the back of his head?  
14 No. Did someone come in and throw a table at him in, in a  
15 fraction of less than half a second between the punch and the  
16 victim hitting the ground? No. He falls back, maybe he hits  
17 his head. It's one of two things; a blow from a trained  
18 kickboxing fighter that causes that fracture alone or a blow  
19 from that kickboxing fighter knocks him out so fast, so cold  
20 that hit to the ground exacerbates the injury. The Defendant  
21 is responsible in either situation. I cannot punch someone,  
22 have them hit the ground and then say the ground caused it,  
23 not me. The injury to the victim that caused serious bodily  
24 injury, great bodily injury, was a direct result of the  
25 Defendant's actions. And I ask that you go back in your jury

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CHARGE TO JURY

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1 room and you deliberate and you look at the facts of this  
2 case, you look at the evidence, you look at what you've heard,  
3 you remember what you've heard and what's believable. The  
4 Defendant intended to punch him. He punched the victim and  
5 the victim sustained great bodily injury. That's assault and  
6 battery of a high and aggravated nature.

7 Thank you.

8 CHARGE TO JURY:

9 THE COURT: All right. Ladies and gentlemen, all of the  
10 evidence in this case has been presented to you, the attorneys  
11 have made their closing arguments. Now is the time of the  
12 trial where I will charge you with the law to be applied in  
13 this case.

14 The indictment in this case charges the Defendant with  
15 assault and battery of a high and aggravated nature. I remind  
16 you that the fact that the Defendant was arrested, charged,  
17 and indicted in this case is not evidence in this case and  
18 cannot be considered by you as evidence of guilt in this case,  
19 nor does the Defendant's arrest, charge, and indictment create  
20 any presumption or inference of guilt. This document is  
21 simply the formal written instrument which contains the charge  
22 made against the Defendant. It is the formal document by  
23 which this case is brought into this court. The Defendant  
24 pleads not guilty to this indictment and that plea puts the  
25 burden on the State to prove the Defendant guilty.

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1           A person charged with committing a criminal offense in  
2 South Carolina is never required to prove his innocence. I  
3 charge you that an important rule of the law is that the  
4 Defendant in a criminal trial, no matter what the seriousness  
5 of the charge may be, will always be presumed to be innocent  
6 of the crime for which the indictment was issued unless guilt  
7 has been proven by evidence satisfying you of that guilt  
8 beyond a reasonable doubt. This presumption of innocence does  
9 not end when you begin your deliberations but it accompanies  
10 the Defendant throughout the trial until you reach a verdict  
11 of guilt based on evidence satisfying you of that guilt beyond  
12 a reasonable doubt. The presumption of innocence is like a  
13 robe of righteousness placed about the shoulders of the  
14 Defendant, which remains with the Defendant until it has been  
15 stripped from the Defendant by evidence satisfying you of the  
16 Defendant's guilt beyond a reasonable doubt. The presumption  
17 of innocence is not a mere legal theory. It is not just a  
18 legal phrase. It is a substantial right to which every  
19 Defendant is entitled unless you, the jury, are satisfied from  
20 the evidence of the Defendant's guilt beyond a reasonable  
21 doubt.

22           Now what is a reasonable doubt in the law? A reasonable  
23 doubt is the kind of doubt that would cause a reasonable  
24 person to hesitate to act. Proof beyond a reasonable doubt is  
25 proof that leaves you firmly convinced of the Defendant's

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1 guilt. We know very few things with absolute certainty and in  
2 criminal cases the law does not require proof that overcomes  
3 every possible doubt. If based on your consideration of the  
4 evidence, you are firmly convinced that the Defendant is  
5 guilty of the crime charged, you must find the Defendant  
6 guilty. If, on the other hand, you think a real possibility  
7 exists that the Defendant is not guilty, you must give the  
8 Defendant the benefit of that doubt and find the Defendant not  
9 guilty.

10 I remind you that during this trial, you and I have  
11 certain duties to perform. As the Trial Judge, my  
12 responsibility is to preside over the trial of this case. I  
13 also have the duty to rule on the admissibility of evidence  
14 offered during this trial. You are to consider only the  
15 competent evidence before you. If any testimony was ordered  
16 stricken from the record in the case during this trial, you  
17 must disregard that testimony. You are to consider only the  
18 testimony which has been presented from the witness stand, any  
19 exhibits which have been made a part of the record in this  
20 case, and any stipulations of counsel. I have the additional  
21 duty to charge you the law applicable to this case. As the  
22 Presiding Judge, I am the sole judge of the law of this case.  
23 Your duty as jurors is to accept and apply the law as I now  
24 state it to you. If you have any idea as to what the law is  
25 or what the law ought to be and your idea is different from

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1 what I now tell you the law is, you must disregard your idea  
2 of what the law is or ought to be because you are sworn to  
3 accept the law and apply the law exactly as I state it to you.  
4 In every case tried in this court before a jury, the jury is  
5 the sole and exclusive judge of the facts in a case. A Trial  
6 Judge cannot intimate, state, comment on, or make any  
7 statement to a trial jury about the facts in a case. Since  
8 you, the jury, are the sole judge of the facts in this case,  
9 you are not to infer from what I have said during the progress  
10 of this trial in ruling upon the admissibility of evidence or  
11 otherwise, or anything that I say now during the course of  
12 this instruction to you that I have any opinion about the  
13 facts in this case. The law does not allow me to have an  
14 opinion about the facts in this case. This is a matter solely  
15 for you, the jury, to determine. As jurors, your duty is to  
16 determine the effect, value, weight, and truth of the evidence  
17 presented during this trial.

18 Now two types of evidence are generally presented during  
19 a trial, direct evidence and circumstantial evidence. Direct  
20 evidence is the testimony of a person who claims to have  
21 actual knowledge of a fact, such as an eyewitness. It is  
22 evidence that directly proves the existence of a fact and does  
23 not require deduction. Circumstantial evidence is proof of a  
24 chain of facts and circumstances indicating the existence of a  
25 fact. Crimes may be proven by circumstantial evidence. The

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1 law makes no distinction between the weight or value to be  
2 given to either direct or circumstantial evidence. However,  
3 to the extent the State relies on circumstantial evidence, all  
4 of the circumstances must be consistent with each other and,  
5 when taken together, point conclusively to the guilt of the  
6 accused beyond a reasonable doubt. If these circumstances  
7 merely portray the Defendant's behavior as suspicious, the  
8 proof has failed. The State has the burden of proving the  
9 Defendant guilty beyond a reasonable doubt. This burden rests  
10 with the State regardless of whether the State relies on  
11 direct evidence, circumstantial evidence, or some combination  
12 of the two.

13 You should weigh all of the evidence in the case. After  
14 weighing all of the evidence, if you are not convinced of the  
15 guilt of the Defendant beyond a reasonable doubt, you must  
16 find the Defendant not guilty. However, after weighing all of  
17 the evidence, if you are convinced of the guilt of the  
18 Defendant beyond a reasonable doubt, you must find the  
19 Defendant guilty. Necessarily, you must determine the  
20 credibility of witnesses who have testified in this case.  
21 Credibility simply means believability. Your duty as jurors,  
22 is to analyze and to evaluate the evidence and determine which  
23 evidence convinces you of its truth. In determining the  
24 believability of witnesses who have testified in this case,  
25 you may believe one witness over several witnesses, or several

1 witnesses over one witness. You may believe a part of the  
2 testimony of a witness and reject the remaining part of the  
3 testimony of that same witness. You may believe the testimony  
4 of a witness in its entirety or reject the testimony of a  
5 witness in its entirety. You may consider whether any witness  
6 has exhibited to you any interest, bias, prejudice, or other  
7 motive in this case. You may also consider the appearance and  
8 manner of the witness while on the witness stand.

9 Now, one of the witnesses in this case testified in  
10 Spanish and the testimony was presented through an  
11 interpreter. Some of you may have some knowledge of Spanish.  
12 However, you cannot rely on your own knowledge of Spanish.  
13 Even if you disagree with the interpreter's translation, you  
14 must accept the translation of the witness' testimony by the  
15 interpreter.

16 The rules of evidence ordinarily do not permit witnesses  
17 to testify to a opinions or conclusions. An exception to this  
18 rule exists for witnesses we call expert witnesses. A  
19 witness, who by education and experience has become expert in  
20 some art, science, profession or calling, may state an opinion  
21 as to the relevant and material matter in which the witness  
22 claims to be the expert and may also state the reasons for the  
23 opinion. You should consider any expert opinion received as  
24 evidence in this case and, like any other evidence, give it  
25 the weight you think it deserves. If you decide that the

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1 opinion of an expert witness is not based on sufficient  
2 education and experience, or if you conclude that the reasons  
3 given in support of the opinion are not sound, or that the  
4 opinion is outweighed by other evidence, you may disregard the  
5 opinion entirely. An expert witness' testimony is to be given  
6 no greater weight of that of any other witness simply because  
7 the witness is an expert. Further, you're not required to  
8 accept an expert's opinion even though it is not contradicted.

9 Now, I instruct you and I emphasize that the fact the  
10 Defendant did not testify is not a factor to be considered by  
11 you in any way in your deliberation and in your consideration  
12 on the question of the guilt or the innocence of the  
13 Defendant. The Defendant's failure to testify must not be  
14 considered by you in any manner whatsoever. A Defendant has  
15 the constitutional right to remain silent and the assertion of  
16 this right must not be considered by you in your  
17 deliberations. I repeat, under your oath, you were to draw no  
18 conclusion whatsoever from the fact that the Defendant in this  
19 case did not testify. The fact that the Defendant did not  
20 testify should not even be discussed in the jury room. The  
21 burden of proof, as I have stated to you is on the State. The  
22 Defendant is not required to prove his innocence. The burden  
23 of proof remains on the State to prove the Defendant's guilt  
24 beyond a reasonable doubt.

25 Now, in order to establish criminal liability, criminal

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1 intent is required. For example, the mental state required to  
2 be proven by the State for a particular crime might be  
3 purpose, intent, knowledge, recklessness or criminal  
4 negligence. Criminal intent must be proven by the State  
5 beyond a reasonable doubt. Criminal intent is always a matter  
6 that must be determined by the jury from the circumstances  
7 surrounding the situation. Intent cannot be proven to a  
8 mathematical certainty. Medical science cannot dissect a  
9 person's brain and determine what the person had in mind. So,  
10 the law says that criminal intent may be inferred from the  
11 circumstances shown to have existed. This is how you make a  
12 determination of whether or not the element requiring intent  
13 was present. Intent does not have to be proven by direct and  
14 positive evidence, but intent may be established by inference  
15 in the same way as any other fact, by taking into  
16 consideration the acts of the parties and all the facts and  
17 circumstances of the case. Criminal intent is a mental state,  
18 a conscious wrongdoing. You must determine what the Defendant  
19 intended to do based on the circumstances shown to have  
20 existed. Criminal intent can arise from an action or a  
21 failure to act. It may arise from negligence, recklessness or  
22 an indifference to duty or to consequences that is considered  
23 by the law to be the equivalent of criminal intent.

24 A statement alleged to've been made by the Defendant has  
25 been admitted into evidence in this case. While the Court has

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1 determined that the statement is admissible, I instruct you  
2 that you make the ultimate decision of whether or not the  
3 Defendant made the statement. If the Defendant did make the  
4 statement, you must determine whether the statement was made  
5 by the Defendant voluntarily and of his own free will. This  
6 means that the statement was not caused by pressure, force,  
7 fear, threats, coercion, or intimidation, or by hope or a  
8 promise of leniency or a reward of any kind. In determining  
9 whether the statement was voluntary, you should consider both  
10 the characteristics of the Defendant and the details of the  
11 questioning. Some of the factors that you must consider are  
12 the age of the Defendant, the Defendant's education or lack of  
13 education, the Defendant's mental ability or capacity, the  
14 Defendant's IQ or intelligence, the Defendant's background and  
15 environment, the place and length of detention, the nature of  
16 the questioning, and the advice or lack thereof to the  
17 Defendant of his constitutional rights, including, but not  
18 limited to the right to remain silent, that any statement  
19 could be used against him in a court of law, the right to have  
20 a lawyer present, and that if he could not afford a lawyer  
21 would be appointed to represent him without any costs, and  
22 that he could stop making a statement at any time. You must  
23 carefully consider all of the surrounding circumstances before  
24 you give any weight to an alleged statement. The State has  
25 the burden of proving beyond a reasonable doubt that the

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1 alleged statement was voluntary. If you determine it was, you  
2 may give the statement any further consideration that you deem  
3 proper. You must decide what weight, if any, should be given  
4 to the alleged statement. If you determine the alleged  
5 statement was not the free and voluntary statement of the  
6 Defendant, you should not consider the statement at all.

7 As I previously instructed you, the Defendant is charged  
8 with assault and battery of a high and aggravated nature. To  
9 convict the Defendant of this crime, the State must prove  
10 beyond a reasonable doubt that the Defendant unlawfully  
11 injured another person and either great bodily injury to that  
12 person resulted or the act was accomplished by means likely to  
13 produce death or great bodily injury. Great bodily injury  
14 means bodily injury which causes a substantial risk of death  
15 or which causes serious permanent disfigurement or protracted  
16 loss or impairment of the function of a body member or organ.

17 If you find that the State has failed to prove the  
18 Defendant guilty of assault and battery of a high and  
19 aggravated nature, you must then decide whether the State has  
20 proved the Defendant guilty of assault and battery in the  
21 second degree. Included within the offense of assault battery  
22 of a high and aggravated nature is the lesser offense of  
23 assault and battery in the second degree. In this case, the  
24 crime of assault and battery in the second degree has the same  
25 elements as assault and battery of a high and aggravated

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1 nature, except that the contemplated injury is moderate bodily  
2 injury on another person rather than great bodily injury. To  
3 convict the Defendant of assault and battery in the second  
4 degree, the State must prove a reasonable doubt or must prove  
5 beyond a reasonable doubt that the Defendant unlawfully  
6 injured another person or offers or attempts to injure another  
7 person with the present ability to do so and either moderate  
8 bodily injury to another person results or moderate bodily  
9 injury to another person could have resulted. Moderate bodily  
10 injury means physical injury that involves prolonged loss of  
11 consciousness or that causes temporary or moderate  
12 disfigurement or temporary loss of the function of a body  
13 member or organ or injury that requires medical treatment when  
14 the treatment requires the use of regional or general  
15 anesthesia or injury that results in a fracture or  
16 dislocation. Moderate bodily injury does not include one-time  
17 treatment and subsequent observation of scratches, cuts,  
18 abrasions, bruises, burns, splinters, or any other minor  
19 injuries that do not ordinarily require extensive medical  
20 care.

21 If you find that the State has failed to prove the  
22 Defendant guilty of assault and battery in the second degree,  
23 you must then decide whether the State has proved the  
24 Defendant guilty of assault and battery in the third degree.  
25 Included within the offense of assault and battery of a high

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1 and aggravated nature and assault and battery in the second  
2 degree is the lesser offense of assault and battery in the  
3 third degree. In this case, the crime of assault and battery  
4 in the second degree has the same element, excuse me, the  
5 element -- the crime of assault and battery in the third  
6 degree has the same elements of assault and battery in the  
7 second degree except that it contemplates injury only and not  
8 great or moderate bodily injury. To convict the Defendant of  
9 assault and battery in the third degree, the State must prove  
10 beyond a reasonable doubt that the Defendant unlawfully  
11 injures another person or offers or attempts to injure another  
12 person with the present ability to do so.

13 The Defendant raises the defense of self-defense. Self-  
14 defense is a complete defense and, if it is established, you  
15 must find the Defendant not guilty. The State has the burden  
16 of disproving self-defense by proof beyond a reasonable doubt.  
17 If you have a reasonable doubt of the Defendant's guilt after  
18 considering all of the evidence, including the evidence of  
19 self-defense, then you must find the Defendant not guilty. On  
20 the other hand, if you have no reasonable doubt of the  
21 Defendant's guilt after considering all of the evidence,  
22 including the evidence of self-defense, then you must find the  
23 Defendant guilty.

24 The following elements are required to establish self-  
25 defense. First, the Defendant must be without fault in

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1 bringing on the difficulty. If the Defendant's conduct was  
2 the type which was reasonably calculated to and did provoke an  
3 assault resulting in death or great bodily injury, the  
4 Defendant would be at fault for bringing on the difficulty and  
5 would not be entitled to an acquittal based on self-defense.  
6 The second element of self-defense is that the Defendant was  
7 actually in imminent danger of death or serious bodily injury  
8 or that the Defendant actually believed he was in imminent  
9 danger of death or serious bodily injury. If the Defendant  
10 was actually in imminent danger, self-defense requires that  
11 the circumstances warranted a person of ordinary firmness and  
12 courage to strike the fatal blow to prevent death or serious  
13 bodily injury. If the Defendant believed he was in imminent  
14 danger of death or serious bodily injury, self-defense  
15 requires that a reasonably prudent person of ordinary firmness  
16 and courage would have had the same belief. In deciding  
17 whether the Defendant actually was or believed he was in  
18 imminent danger of death or serious bodily injury, you should  
19 consider all the facts and circumstances surrounding the crime  
20 including the physical condition and characteristics of the  
21 Defendant and the victim. The Defendant does not have to show  
22 that he was actually in danger. If the Defendant believed he  
23 was in imminent danger and a reasonably prudent person with  
24 ordinary firmness and courage would've had the same belief,  
25 then the Defendant has the right to act on appearances, even

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1 though the Defendant's beliefs may have been mistaken. You  
2 must decide whether the Defendant's fear of immediate danger  
3 of death or serious bodily injury was reasonable and would  
4 have been felt by an ordinary person in the same situation.  
5 Words accompanied by hostile acts may, depending on the  
6 circumstances, establish self-defense. However, mere words,  
7 no matter how abusive, insulting, vexatious or threatening  
8 they may be, will not justify an assault and battery unless  
9 accompanied by an actual offer of physical violence. The  
10 relative sizes, ages and weights of the Defendant and the  
11 victim may be considered in the deciding the apparent or  
12 actual need for force in self-defense and the amount of force  
13 needed.

14 The final element of self-defense is that the Defendant  
15 had no other probable way to avoid the danger of death or  
16 serious bodily injury and to act as the Defendant did in this  
17 particular instance. A person cannot be required to make an  
18 exact calculation as to the degree or amount of force which  
19 may be needed to avoid death or serious bodily harm.  
20 Therefore, in self-defense, the Defendant has the right to use  
21 the force needed to avoid death or serious bodily harm. The  
22 force used in self-defense does not have to be limited to the  
23 degree or amount of force used by the victim. The Defendant  
24 has the right to use so much force as appeared to be necessary  
25 for complete self-protection and which a person of ordinary

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1 reason and firmness would've believed to be needed to prevent  
2 death or serious bodily harm.

3 Under the law of self-defense, the Defendant may take  
4 another's life in the defense of others. The right to  
5 intervene to protect another person is subject to the same  
6 rights and limitations as the right of self-defense. The  
7 Defendant may take the life of a person who assaults a friend,  
8 relative, or bystander if that friend, relative, or bystander  
9 would've had the right of self-defense. To show that the  
10 person being defended had the right of self-defense, it must  
11 first be shown that the person being defended and the  
12 Defendant were both without fault in bringing on the  
13 difficulty. If the conduct of the person defended or the  
14 Defendant was the type which was reasonably calculated to and  
15 did provoke a deadly assault, the person would be at fault in  
16 bringing on the difficulty and would not have the right of  
17 self-defense. Therefore, the Defendant would not have the  
18 right to use deadly force in defending that person. The  
19 defense of another person is excusable if the Defendant had  
20 reasonable grounds to believe and in good faith did believe  
21 that the person being defended was in imminent danger of death  
22 or serious bodily harm from the victim. In deciding whether  
23 the person defended -- whether the person defended actually  
24 was or that the Defendant actually believed the person was in  
25 imminent danger of death or serious bodily injury, you should

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1 consider all of the facts and circumstances surrounding the  
2 crime including the physical condition and characteristics of  
3 the parties. The Defendant does not have to show that the  
4 person the Defendant defended was actually in danger. It is  
5 enough if the Defendant believed the person was in imminent  
6 danger. The Defendant has the right to act on appearances  
7 even though the Defendant's beliefs may have been mistaken.  
8 If the Defendant, excuse me, the Defendant must show that  
9 under the circumstances, as they appeared to the Defendant, the  
10 Defendant believed the person defended was in danger and that  
11 a reasonably prudent person of ordinary firmness and courage  
12 would've had the same belief under the same circumstances.  
13 You, the jury, must decide whether the Defendant's fear of  
14 immediate danger of death or serious bodily injury to the  
15 person defended was reasonable and would've been felt by an  
16 ordinary person in the same situation. The Defendant does not  
17 have to wait until the victim gets the drop on the person  
18 defended. The Defendant has the right to act under the law of  
19 self-preservation to prevent the victim from getting the drop  
20 on the person defended. Also, in order to be entitled to  
21 defend another, the person defended must have had no other  
22 probable way to avoid the danger of death or serious bodily  
23 injury and to act as the Defendant did in this particular  
24 instance, when the person being defended had no duty to  
25 retreat, the Defendant likewise would have no duty to retreat.

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1           Now there are four possible verdicts which you may find  
2 in this case. No significance should be given in which I  
3 state these possible verdicts to you. I simply have to state  
4 one first, one second, one third, and one fourth. The  
5 possible verdicts in this case are, we, the jury, find the  
6 Defendant guilty of assault and battery of a high and  
7 aggravated nature. The second possible verdict is, we, the  
8 jury, find the Defendant guilty of assault and battery in the  
9 second degree. The third possible verdict is, we, the jury,  
10 find the Defendant guilty of assault and battery in the third  
11 degree. And the fourth possible verdict is, we, the jury,  
12 find the Defendant not guilty. Ladies and gentlemen, your  
13 verdict must be a unanimous one.

14           Mr. Gray, when the jury agrees on a verdict, you will  
15 check the appropriate verdict on the verdict form, then sign  
16 your name, then knock on the door, tell the bailiff that the  
17 jury has agreed on a verdict, and we'll bring you back into  
18 the courtroom at that time.

19           Now, I'm gonna send you back to the jury room but please  
20 do not begin your deliberations at this time. I need to check  
21 with the attorneys to see if there are any additional charges  
22 that I need to give to you or any challenges to the charges  
23 I've given you. If there are and I deem them appropriate,  
24 I'll bring you back into the courtroom and I'll give you those  
25 additional charges or I'll make any corrections to the charges

1 that I deem appropriate. If there are none, then all of the  
2 exhibits and evidence will be brought back to the jury room,  
3 given to you and the bailiff will instruct you to begin your  
4 deliberations, but please do not begin your deliberations  
5 until the bailiff instructs you to do so.

6 Now, we do have lunch coming for you today. When lunch  
7 gets here, you can do one of two things. If you want to  
8 continue your deliberations while you eat lunch, you can do  
9 that. If you want to stop deliberations and eat your lunch  
10 and then resume deliberations after you finish eating your  
11 lunch, you can do that as well. The only requirement is that  
12 everybody must do the same thing. You can't have some jurors  
13 deliberate while other jurors stop deliberation. So, as a  
14 group, if you decide you want to deliberate through lunch, you  
15 can do that, or if you want to stop, eat your lunch, and then  
16 resume when everybody's finished, you can do that as well.  
17 So I'm gone send you back to the jury room, but please do not  
18 begin deliberations until the bailiff instructs you to do so.

19 (REPORTER'S NOTE: Jury exits courtroom @ 11:36 A.M. The  
20 following takes place outside the presence of the jury.)

21 MOTIONS:

22 THE COURT: Any challenges or additional charges from the  
23 State?

24 MR. HOLFORD: Your Honor, like you said before, when I  
25 read through it and then when I hear it sounds slightly

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1 different. On Page 15 in the assault and battery second  
2 degree, in the first paragraph, as I read that, it says second  
3 degree has the same elements as assault and battery of a high  
4 and aggravated nature except that the contemplated injury is  
5 moderate bodily injury so on and so forth. When I first read  
6 it, the word contemplated sounds like that's what's  
7 contemplated by the statute, but when I heard it in the charge  
8 it almost sounds as if it's saying that that was the  
9 Defendant's contemplation as to injury, and the same of  
10 assault and battery third on Page 16, it says that -- almost  
11 at the very bottom, it says the same elements as assault and  
12 battery in the second degree except that it contemplates  
13 injury only and not great or moderate bodily injury. So, I  
14 believe that -- I believe that the charge is, is correct in  
15 that what it's saying is that's what the statute contemplates,  
16 but I'm afraid if the jury hears that, they could then believe  
17 that whatever the Defendant contemplated and so they could  
18 find him guilty of a lesser included if he only intended a  
19 lesser injury, not a -- the State would object that that's not  
20 what the law is.

21 THE COURT: All right, sir. How would you want me to  
22 charge them? You want me to bring them back in and say what?

23 MR. HOLFORD: Your Honor, I would just ask that the word  
24 contemplated be removed and so that it would read except that  
25 the injury is moderate bodily injury without the word

1 contemplated and then again ---

2 THE COURT: But that kind of implies that there has to be  
3 moderate bodily injury rather than just a threat, or in my  
4 opinion it does. If we just take out contemplates, then that  
5 means you have to have moderate bodily injury rather than  
6 actual moderate bodily injury or the threat of moderate bodily  
7 injury. I mean, I understand what you're saying and I think  
8 that's the distinction between where I say except that it  
9 contemplates rather than the Defendant contemplates.

10 MR. HOLFORD: Right.

11 THE COURT: I got -- you've got your objection on the  
12 record. I'm gonna let it stand the way it is.

13 MR. HOLFORD: Yes, Your Honor.

14 THE COURT: All right. Anything else?

15 MR. HOLFORD: Nothing, Your Honor.

16 THE COURT: All right. Anything from the Defense?

17 MR. FOX: Yes, Your Honor, two matters. The first is in  
18 the self-defense section. I'm afraid I didn't mark the page,  
19 but in the imminent danger language ---

20 THE COURT: Right.

21 MR. FOX: Let me find it so that I can state it  
22 correctly. The charge in the second paragraph says, and in  
23 the second sentence of that paragraph, if the Defendant  
24 believed he was in imminent -- I'm sorry, I need to back up --  
25 actually, in the first sentence. If the Defendant was

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1 actually in imminent danger, self-defense requires the  
2 circumstances warranted of a person with ordinary firmness and  
3 courage to strike the fatal blow to prevent death or bodily  
4 injury. I think in the -- I recognize that's the charge in  
5 the charge book. I'm afraid in this case it's gonna operate  
6 potentially as a -- an unintended, but as a comment on the  
7 facts because in dispute and Your Honor has charged lesser  
8 included. So, in dispute is gonna whether, and what would be  
9 a factual issue, is whether the Defendant struck a fatal blow  
10 by saying in self-defense, he was justified in striking the  
11 fatal blow, I'm afraid it's going to be seen as again, an  
12 unintended, but a comment on the issue of whether in fact the  
13 Defendant struck a fatal blow. And so I would request that  
14 Your Honor simply remove and somehow instruct them that that's  
15 not -- the fatal blow is not -- not it. Remove that word in  
16 other words. I think under the circumstances with this case,  
17 it may tend to operate as a comment on the facts; certainly  
18 not an intended one, but again, that's a factual issue and  
19 that's how Your Honor charged, you know, it's a jury issue for  
20 y'all to decide did this man -- and again, they only have to  
21 prove great bodily injury, but in this case, the great bodily  
22 injury is a fatality, but that's something Your Honor has  
23 charged that it's within their discretion to find that he did  
24 not strike -- not responsible for a fatal blow.

25 THE COURT: All right. I'm gonna leave it as is.

1 MR. FOX: Yes, sir. And then the second is and, again,  
2 Mr. Holford and I agree, in reading your charge last night and  
3 then hearing it today, what jumped out at me was in the  
4 defense of others, Judge. Nothing incorrect in terms what was  
5 charged, that is an accurate statement of the law, the defense  
6 of others. There has not been, I don't think, any evidence  
7 introduced. Mr. Guderyon's statement of the others, the  
8 evidence we did introduce was he did go because there was an  
9 altercation, but he never testified or said I went to break  
10 up, not to break up a potential altercation, not I went to  
11 defend Jimer Petrocine. He never said that. The other  
12 witnesses didn't indicate that. It was a point of whether  
13 there was going to be an altercation, but he went to be a  
14 peacemaker but not a defender, and then we alleged he defended  
15 himself. My worry is if that remains, and I'm requesting Your  
16 Honor simply instruct the jury and under the facts of this  
17 case, defense of others is not an issue. We didn't present it  
18 that way. We didn't argue that and I don't believe there was  
19 any testimony about that and I'm afraid that it will amount to  
20 an extra burden on the Defense. He's already got to establish  
21 those four factors of self-defense and then State would have  
22 to disprove them, but now we've got to do that with regard to  
23 Mr. Petrocine as well, that we've got to not only satisfy  
24 those in regard to Mr. Guderyon, but we got to satisfy them  
25 with regard to Mr. Petrocine as well and that's not the -- it

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1 wasn't the defense, it's not the evidence that was presented,  
2 Judge, and we'd ask you to instruct them that that just  
3 doesn't apply, that you instructed them on it, but in  
4 reconsideration, that they're to disregard the defense of  
5 others.

6 THE COURT: Well, I mean, I think that there was  
7 something Mr. Petrocine said that we were standing there, he  
8 came up and said something to me, then we shook hands, and  
9 then this whoosh came over my shoulder.

10 MR. FOX: Right.

11 THE COURT: Which could be interpreted as a defense of  
12 others.

13 MR. FOX: Well ---

14 THE COURT: But I understand what you're saying in that I  
15 don't want the jury to believe that he has to prove both self-  
16 defense of himself and self-defense of another.

17 MR. FOX: Yes, sir.

18 THE COURT: That one of the is an absolute defense.

19 MR. FOX: That's right. I mean, I would request that you  
20 tell them to disregard that but, as an alternative, I would  
21 request that you explain it's either or. But, my first  
22 request would be please tell them to disregard defense of  
23 others. But, if Your Honor feels like it's justified because  
24 of that testimony, then I would ask that you clarify that it's  
25 either or, not both.

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1 THE COURT: All right. What's the State's position on  
2 that?

3 MR. HOLFORD: Your Honor, I was trying to go back to look  
4 and see what the testimony has been. Certainly, the State --  
5 Your Honor, the State would not have a problem if defense of  
6 others was stricken completely. My fear though is that at  
7 this point there might be evidence in the record, if believed  
8 by a jury, that it's appropriate. So ---

9 THE COURT: And this is the two -- the reason I put it in  
10 there is, number one, is Mr. Petrocine's testimony ---

11 MR. FOX: Yes, sir.

12 THE COURT: --- that the guy challenged me for touching  
13 his girlfriend, we shook hand and I felt this whoosh, number  
14 one. And then number two, the gentleman who testified  
15 yesterday that says that Mr. Guderyon is sitting at the bar  
16 and somebody comes up and taps him on the shoulder and says  
17 look, there's your buddy, or points him out to this perceived  
18 altercation getting ready to take place and that's when he  
19 goes over there. That's why I've added in the defense of  
20 others in the self-defense.

21 MR. FOX: Yes, sir. Again, we would -- my request would  
22 be to remove it. However, if Your Honor feels that there is  
23 evidence that would support it, I would simply then request a  
24 clarification.

25 THE COURT: Yeah. Let's put it this way. I do agree

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MOTIONS

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1 that I should bring them back in and clarify that it doesn't  
2 -- they don't have to prove both self-defense of himself as  
3 well as self-defense of another, that either one of them is an  
4 absolute defense.

5 MR. FOX: Yes, sir.

6 THE COURT: Now, if the Defense wants defense of others  
7 stricken and the State wants defense of others stricken, I'll  
8 bring them back out and tell them to totally disregard my  
9 instruction on defense of others as an absolute defense in  
10 this case.

11 MR. HOLFORD: Yes, Your Honor. If the -- if the jury is  
12 gonna be brought back in and clarify, the State would then ask  
13 that defense of others just be stricken.

14 THE COURT: Okay. And I'm gonna only do that if  
15 everybody agrees to that.

16 MR. FOX: If I understand, you're saying go ahead ---

17 MR. HOLFORD: Yes.

18 MR. FOX: You're agreeing to have it stricken?

19 MR. HOLFORD: I'm agreeing.

20 MR. FOX: Yes, sir.

21 THE COURT: Okay. So I'll bring the jury back in and say  
22 that they are -- that the parties stipulate that there is no  
23 evidence that the Defendant was acting in self-defense of Mr.  
24 Petrocine.

25 MR. FOX: Yes, sir. I believe if you would just say

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BY THE COURT

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1 defense of others, that's how you characterized it.

2 THE COURT: Defense of others. Was not acting in defense  
3 of anyone other than himself.

4 MR. FOX: Yes, sir.

5 THE COURT: And therefore, defense of others should not  
6 be considered. Is that agreeable?

7 MR. HOLFORD: Yes, sir.

8 MR. FOX: Yes, sir, it is, Your Honor.

9 THE COURT: All right. Anything else before we bring the  
10 jury back in?

11 MS. WALKER: No, sir, Your Honor.

12 MR. FOX: No, Your Honor.

13 THE COURT: All right. Let's bring the jury back in.

14 (REPORTER'S NOTE: Jury enters courtroom @ 11:47 A.M.)

15 BY THE COURT:

16 THE COURT: All right. Ladies and gentlemen, following  
17 my charges to you, the parties have acknowledged and  
18 stipulated that the Defendant did not act in defense of anyone  
19 by himself. Therefore, you should disregard my charge on the  
20 law as it pertains defense of others. In other words, I  
21 explained to you that defense of others was also including  
22 self-defense. Well, they acknowledge that the Defendant was  
23 not acting in defense of anyone but himself. Therefore self-  
24 defense applies only as to his actions regarding him defending  
25 himself. All right?

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BY THE COURT

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1 I'll excuse you back to the jury room, but please do not  
2 begin your deliberations until you're told to do so by the  
3 bailiff.

4 Thank you very much.

5 (REPORTER'S NOTE: Jury exits courtroom @ 11:49 A.M. The  
6 following takes place outside the presence of the jury.)

7 THE COURT: All right. Any further challenges or  
8 exceptions from the State?

9 MS. WALKER: No, Your Honor.

10 THE COURT: Any from the Defense?

11 MR. FOX: None, Your Honor.

12 THE COURT: All right. Let's make sure we've got the  
13 exhibits. Here's the verdict form to place with those.

14 If someone could go ahead and get Mr. Airey and Ms.  
15 Bayer, the alternates, and bring them out, please.

16 (REPORTER'S NOTE: Counsel confers and agrees on exhibits to  
17 be submitted to jury.)

18 THE COURT: Mr. Airey and Ms. Bayer?

19 MR. AIREY: Yes, sir.

20 THE COURT: All right. This is the part of the trial I  
21 always hate this. As alternates, we still have our original  
22 12 jurors. So, the law says that since we still have our 12  
23 jurors, alternates are not allowed to participate in the  
24 deliberations. I hate it because we make you sit through the  
25 whole trial, but then we don't let you make a decision in the

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BY THE COURT

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1 it on there.

2 COURT REPORTER: Okay.

3 THE COURT: All right. Tell them they can go ahead and  
4 begin their deliberations. All right.

5 (REPORTER'S NOTE: Deliberations begin @ 11:52 A.M.)

6 THE COURT: All right. Anything from the State?

7 MR. HOLFORD: No, Your Honor.

8 THE COURT: All right. Anything from the Defense?

9 MR. FOX: No, sir.

10 THE COURT: All right. I know you want to eat lunch or  
11 whatever. If you can give us your cell phone numbers or  
12 whatever, but please try to be within a 5 to 10 minute in case  
13 the jury comes out with a question or whatever because we  
14 can't address any requests from the jury unless everybody's  
15 here. So, if you go anywhere, please make sure you can get  
16 back in a 5 to 10-minute span. All right.

17 (RECESS - 11:53 A.M.)

18 \*\*\*\*\*OFF THE RECORD\*\*\*\*\*

19 (On the Record - 1:14 P.M.)

20 (REPORTER'S NOTE: The following takes place outside the  
21 presence of the jury.)

22 THE COURT: All right. As we discussed in chambers, I  
23 did get a question and a request from the jury. It says, are  
24 we to consider intent as to which level of assault this is or  
25 is the resulting harm the deciding factor? A copy of each of

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BY THE COURT

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1 the three levels of assault may also be helpful. My decision  
2 is that I'm going to first say, As to your request for a copy  
3 of the charge, the law provides that you can have a copy, but  
4 the law also mandates that I give you the entire charge. I  
5 can't pick and give you some and not give you others, I have  
6 to give you the entire charge. You have to consider the  
7 charge as a whole. You can't consider parts and not consider  
8 other parts and then return the charge when you return with  
9 your verdict.

10 As to the question regarding intent, what you must first  
11 decide is whether or not the State has proved beyond a  
12 reasonable doubt that the Defendant committed assault and  
13 battery of a high and aggravated nature. Now to convict the  
14 Defendant of assault and battery of a high and aggravated  
15 nature, the State must prove beyond a reasonable doubt that  
16 the Defendant intentionally -- how did I have that, prove  
17 beyond a reasonable doubt that the Defendant intentionally --  
18 excuse me -- I see what I did wrong. All right. To convict  
19 the Defendant of assault and battery of a high and aggravated  
20 nature, the State must prove beyond a reasonable doubt that  
21 the Defendant intended to unlawfully injure another person and  
22 either great bodily injury to that person resulted or the act  
23 was accomplished by means likely to produce death or great  
24 bodily injury. If you find the State has proved this beyond a  
25 reasonable doubt, you must find the Defendant guilty of

1 assault and battery of a high and aggravated nature. If you  
2 find the State has not proved this beyond a reasonable doubt,  
3 you then must consider whether or not the State has proved  
4 beyond a reasonable doubt that the Defendant committed assault  
5 and battery in the second degree. To convict the Defendant of  
6 assault and battery in the second degree, the State must prove  
7 beyond a reasonable doubt that the Defendant intended to  
8 unlawfully injure another person or offers or attempts to  
9 injure another person with the present ability to do so and  
10 either moderate bodily injury to another person results or  
11 moderate bodily injury to another person could have resulted.  
12 If you find the State has met that burden of proof and proved  
13 that beyond a reasonable doubt, you find the Defendant guilty  
14 of assault and battery in the second degree. If you find that  
15 the State has not proved that beyond a reasonable doubt, you  
16 then consider whether the State has proved beyond a reasonable  
17 doubt that the Defendant committed assault and battery in the  
18 third degree. To convict the Defendant of assault and battery  
19 in the third degree, the State must prove beyond a reasonable  
20 doubt that the Defendant intended to unlawfully injure another  
21 person or offer or attempted to injure another person with the  
22 present ability to do so. If you find the State has proved  
23 that beyond a reasonable doubt, you find the Defendant guilty  
24 of assault and battery in the third degree. If you find the  
25 State has not proved that beyond a reasonable doubt, you then

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BY THE COURT

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1 find the Defendant not guilty.

2 That's how I've decided to address it. If you want to  
3 place any objections or requests on the record, you can do  
4 that at this time.

5 MR. HOLFORD: Yes, Your Honor, the State would -- the  
6 State's position is that it would be proper for the Court to,  
7 since it is a matter of law, to instruct the jury that the  
8 intent lies with the unlawful injury and not necessarily with  
9 the resulting injury or the result of that injury. That's not  
10 where the intent lies.

11 I do have a question. In this, it says -- again, this is  
12 something the State raised before about contemplated injury.  
13 If the charge is going back to the jury, the way that the  
14 initial one read was that except if the contemplated injury is  
15 moderate bodily injury and that, again, suggests that the  
16 Defendant must contemplate that injury and the State would  
17 object to that. The only other thing is that there exists in  
18 the assault and battery second degree a -- I know this is  
19 minor, but there is a comma, and so it would read that the  
20 State must prove beyond a reasonable doubt the Defendant, as  
21 you read it, intended to unlawfully injure another person, or  
22 offers or attempts to commit so on, and either moderate bodily  
23 injury to another person results. However, in the assault and  
24 battery of a high and aggravated nature, the way that it's  
25 written, it says the State must prove beyond a reasonable

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BY THE COURT

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1 doubt that the Defendant -- and you're gonna add -- intended  
2 to unlawfully injure another person. I'd request that there  
3 be, if they're getting the actual written charge, a comma and  
4 either great bodily injury to that person resulted or the act  
5 was accompanied -- accomplished by means likely to produce  
6 death or great bodily injury. That way, it's not mistaken  
7 that the intent applies both to the unlawful act of injury and  
8 also to the resulting injury.

9 THE COURT: All right. All right. Anything from the  
10 defense?

11 MR. FOX: Yes, Your Honor. I would object to adding the  
12 word intent to the Court's previous charge. That was not in  
13 the original charge on assault and battery of a high and  
14 aggravated nature. Your Honor, I think it's perfectly proper  
15 to say you must take my charge in its entirety and include in  
16 the general charge on intent as a general proposition. You  
17 charged, I believe, correctly the law on assault and battery  
18 of a high and aggravated nature from the statute and I think  
19 at this point, the risk is -- and particularly as Your Honor  
20 just read it to us, placing an emphasis on that word, intent,  
21 and I'm worried that it will suggest an answer to their  
22 question although you're not directly addressing their final  
23 question which is, is the resulting harm the deciding factor.  
24 Obviously, you can't answer that question for them, again, but  
25 I'm afraid by charging the way Your Honor has proposed that it

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BY THE COURT

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1 will place, number one, just by its addition, an emphasis on  
2 it; and, number two, by reading it and emphasizing that word,  
3 that there is somehow a suggested outcome. I don't think for  
4 a minute that's Your Honor's intention to do that, but I'm  
5 afraid that would be the outcome of that. I would suggest or  
6 argue that the statute and the law is to be taken in its plain  
7 and ordinary meaning and how they interpret that is the  
8 Court's and the jury's providence. So, we'd simply take  
9 exception to the Court's proposed charge, and I think you'll  
10 probably do this, we request that note be made part of the  
11 record, of course, Your Honor.

12 THE COURT: All right. All right. Well, I understand  
13 both your arguments. I'm gonna deny y'all's request and I'm  
14 gonna go ahead and handle it the way that I originally told  
15 you, but at least you've got it now on the record what your  
16 objections are.

17 MR. FOX: And I'm sorry, for clarification ---

18 THE COURT: Yes?

19 MR. FOX: Is it your intention to also provide the entire  
20 charge?

21 THE COURT: Yeah.

22 MR. FOX: Okay.

23 THE COURT: I'm gonna give, yeah, my entire instruction  
24 from -- with everything.

25 MR. FOX: Yes, sir.

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BY THE COURT

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1 THE COURT: It goes back to them.

2 MR. FOX: Okay.

3 THE COURT: Okay. All right. Anything from the State  
4 before we bring the jury in?

5 MR. HOLFORD: No, Your Honor.

6 THE COURT: Anything from the Defense?

7 MR. FOX: No, Your Honor.

8 THE COURT: All right. Let's go ahead and bring the jury  
9 in.

10 Let me go ahead and mark this as Court's Exhibit ---

11 COURT REPORTER: 2.

12 THE COURT: 2.

13 COURT'S EXHIBIT NUMBER 2

14 MARKED FOR IDENTIFICATION

15 (REPORTER'S NOTE: Jury enters courtroom @ 1:22 P.M.)

16 THE COURT: All right. Ladies and gentlemen, welcome  
17 back -- or gentlemen, welcome back. Mr. Gray, I did receive  
18 your question and request from the jury, that being, Are we to  
19 consider intent as to which level of assault this is or is the  
20 resulting harm the deciding factor? A copy of each of the  
21 three levels of assault may also be helpful.

22 Well, first, as to your request, I will provide you with  
23 a copy of my charges. What the law requires is if you request  
24 it, I can send it back to you, but I have to send my entire  
25 charge back to you. So, you will receive a complete copy of

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BY THE COURT

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1 my charge on the law in this case. You must consider the  
2 entire charge. You can't pick parts and ignore other parts,  
3 you must consider the entire charge in your deliberations, and  
4 I will provide that to you and I ask that you return it when  
5 you come back with your verdict. Okay?

6 Now, as to your question regarding intent. I think the  
7 best way to answer that is to tell you that what you must  
8 first consider is whether or not the State has proved beyond a  
9 reasonable doubt that the Defendant committed assault and  
10 battery of a high and aggravated nature. To convict the  
11 Defendant of assault and battery of a high and aggravated  
12 nature, the State must prove beyond a reasonable doubt that  
13 the Defendant intended to unlawfully injure another person,  
14 and either great bodily injury to that person resulted or the  
15 act was accomplished by means likely to produce death or great  
16 bodily injury. If you find that the State has proved this  
17 beyond a reasonable doubt, then you find the Defendant guilty  
18 of assault and battery of a high and aggravated nature. If  
19 you find that the State has not proven this beyond a  
20 reasonable doubt you then consider whether or not the State  
21 has proved beyond a reasonable doubt that the Defendant  
22 committed assault and battery in the second degree. To  
23 convict the Defendant of assault and battery in the second  
24 degree, the State must prove beyond a reasonable doubt that  
25 the Defendant intended to unlawfully injure another person or

1 offers or attempts to injure another person with present  
2 ability to do so and either moderate bodily injury to another  
3 person resulted or moderate bodily injury to another person  
4 could have resulted. If you find that State has proved that  
5 beyond a reasonable doubt, you find the Defendant guilty of  
6 assault and battery in the second degree. If you find that  
7 the State has not proved that beyond a reasonable doubt, you  
8 then consider whether the State has proved beyond a reasonable  
9 doubt that the Defendant committed assault and battery in the  
10 third degree. To convict the Defendant of assault and battery  
11 in the third degree, the State must prove beyond a reasonable  
12 doubt that the Defendant intended to unlawfully injure another  
13 person or offers or attempts to injure another person with the  
14 present ability to do so. If you find that the State has  
15 proved that beyond a reasonable doubt, you find the Defendant  
16 guilty of assault and battery in the third degree. If you  
17 find the State has not proved that beyond a reasonable doubt,  
18 you find the Defendant not guilty. All right?

19 So, I'm gonna give you the charges, go back, continue  
20 your deliberations, and let us know when you have reached a  
21 verdict.

22 (REPORTER'S NOTE: Jury exits courtroom @ 1:27 P.M.)

23 THE COURT: All right. Anything further from the State?

24 MS. WALKER: No, Your Honor.

25 THE COURT: Anything further from the defense?

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VERDICT OF JURY

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1 MR. FOX: Nothing further, Your Honor.

2 THE COURT: All right. We'll stand in recess until we  
3 get a verdict.

4 (RECESS - 1:27 P.M.)

5 \*\*\*\*\*OFF THE RECORD\*\*\*\*\*

6 (On the Record - 1:37 P.M.)

7 VERDICT OF JURY:

8 THE COURT: The jury has reached a verdict. Anything  
9 from the State before we bring the jury in?

10 MR. HOLFORD: No, Your Honor.

11 THE COURT: Anything from the Defense?

12 MR. FOX: No, Your Honor.

13 THE COURT: All right. Let's go ahead and bring the jury  
14 in.

15 (REPORTER'S NOTE: Jury enters courtroom @ 1:38 P.M.)

16 THE COURT: All right. Mr. Gray, I understand the jury  
17 has reached a verdict; is that correct?

18 JUROR 112: Yes, sir.

19 THE COURT: All right. Have you completed the verdict  
20 form?

21 JUROR 112: Yes, I have.

22 THE COURT: All right. If you would please hand it to  
23 the bailiff.

24 All right. I'll ask the Clerk if she would please  
25 publish the verdict.

1 CLERK: Indictment number 2016-GS-26-00382, State of  
2 South Carolina, County of Horry versus Philip David Guderyon.  
3 We, the jury, find the Defendant guilty of assault and battery  
4 of a high and aggravated nature. Signed by foreperson Brent  
5 Gray dated October 12, 2017.

6 Gentlemen of the jury, if this is your verdict, so  
7 signify by raising your right hands.

8 THE COURT: All right. Let the record reflect that all  
9 jurors raised their right hand.

10 Any polling of the jury by the Defense?

11 MR. FOX: No, Your Honor.

12 THE COURT: All right. Ladies and gentlemen, excuse me,  
13 gentlemen of the jury, I appreciate your service in this case.  
14 I know it's not easy to sit on a jury, but I do want to thank  
15 you for your service. That will conclude your duty as jurors  
16 not only for this case, but for this week. We don't have any  
17 other cases to try for the remainder of this week. So I do  
18 want to thank you for your service.

19 You have a one-year disqualification from serving jury  
20 duty. You have a three-year exemption. I hope you don't  
21 exercise your exemption because we do need good jurors and I  
22 want to thank you for your service. But you're free to go for  
23 the remainder of the day and for the remainder of the week and  
24 thank you again for your service.

25 (REPORTER'S NOTE: Jury exits courtroom @ 1:40 P.M.)

## MOTIONS

1 THE COURT: All right. Any post-trial motions at this  
2 time?

3 MOTIONS:

4 MR. FOX: Yes, Your Honor. At this time, we would renew  
5 all previous motions and objections, but in this context after  
6 the jury has reached a verdict, we would move for Your Honor  
7 to set aside that verdict and grant us a new trial. Again,  
8 based on what we believe to be errors of law in several  
9 points, one being admission of -- and I won't go through each  
10 one -- but the various objections we raised on admission of  
11 evidence, still photos and things of that nature we objected  
12 to. We are also would point out that we believe that it was  
13 absolutely error for the Judge to reinstruct the jury as it  
14 did adding the word intended to the Court's assault and  
15 battery of a high and aggravated nature charge. Again, that  
16 word being left out of the original charge. Drawing emphasis  
17 just by its very inclusion indeed by the Court's, from my  
18 perspective, emphasizing that word in the reading of that and  
19 I think it is at least circumstantial evidence and maybe very  
20 direct strong evidence that my concern that that would lead  
21 the jury to an ultimate conclusion is borne out by the fact  
22 that less than five minutes after that instruction, they were  
23 back with the verdict.

24 THE COURT: All right. All right. Your motion is noted.  
25 I'm gonna deny them and stick by my prior rulings.

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SENTENCING

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1 young age, but we don't contest that those convictions exist.

2 THE COURT: All right, Mr. Guderyon, you have been found  
3 guilty by a jury of your peers on the crime of assault and  
4 battery of a high and aggravated nature. Sentence of the  
5 Court is that you be confined to the State Department of  
6 Corrections for 10 years. You'll be given credit for any time  
7 served thus far. All right?

8 MR. FOX: Thank you, Your Honor.

9 MS. WALKER: Thank you, Your Honor.

10 THE COURT: Thank you.

11 Anything further from the State at this time?

12 MS. WALKER: No, Your Honor.

13 THE COURT: Anything further from the Defense?

14 MR. FOX: No, Your Honor.

15 THE COURT: All right. We'll be in recess.

16 (ADJOURNED - 2:00 P.M.)

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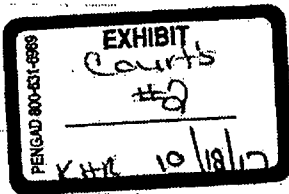
Brent Gray 112

PENGAD 800-831-6888  
EXHIBIT  
#1  
Court's  
10/11/17

Not guilty is not an option,  
therefore,  
Are we to consider "intent"  
as to which level of assault  
this is or is the resulting harm  
the ~~the~~ deciding factor?

A copy of each of the 3  
levels of assault may also  
be helpful.

Bri-ly



LADIES AND GENTLEMEN:

ALL OF THE EVIDENCE HAS BEEN PRESENTED TO YOU IN THIS CASE, THE PARTIES HAVE MADE THEIR CLOSING ARGUMENTS AND NOW IS THE TIME OF THE TRIAL WHEN I CHARGE YOU WITH THE LAW TO BE APPLIED IN THIS CASE.

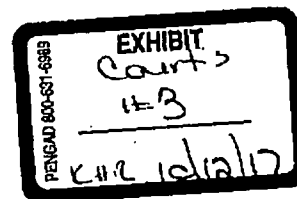
***CHARGE, ARREST, INDICTMENT NOT EVIDENCE***

THE INDICTMENT IN THIS CASE CHARGES THE DEFENDANT WITH ASSAULT AND BATTERY OF A HIGH AND AGGRAVATED NATURE.

I REMIND YOU THAT THE FACT THE DEFENDANT WAS ARRESTED, CHARGED AND INDICTED IN THIS CASE, IS NOT EVIDENCE IN THIS CASE AND CANNOT BE CONSIDERED BY YOU AS EVIDENCE OF GUILT IN THIS CASE, NOR DOES THE DEFENDANT'S ARREST, CHARGE AND INDICTMENT CREATE ANY PRESUMPTION OR INFERENCE OF GUILT. THIS DOCUMENT IS SIMPLY THE FORMAL WRITTEN INSTRUMENT WHICH CONTAINS THE CHARGE MADE AGAINST THE DEFENDANT. IT IS THE FORMAL DOCUMENT BY WHICH THIS CASE IS BROUGHT INTO THIS COURT.

***PRESUMPTION OF INNOCENCE***

THE DEFENDANT PLEADS NOT GUILTY TO THIS INDICTMENT. THAT PLEA PUTS THE BURDEN ON THE STATE TO PROVE THE



DEFENDANT GUILTY. A PERSON CHARGED WITH COMMITTING A CRIMINAL OFFENSE IN SOUTH CAROLINA IS NEVER REQUIRED TO PROVE HIS INNOCENCE.

I CHARGE YOU THAT AN IMPORTANT RULE OF THE LAW IS THAT THE DEFENDANT IN A CRIMINAL TRIAL, NO MATTER WHAT THE SERIOUSNESS OF THE CHARGE MAY BE, WILL ALWAYS BE PRESUMED TO BE INNOCENT OF THE CRIME FOR WHICH THE INDICTMENT WAS ISSUED UNLESS GUILT HAS BEEN PROVEN BY EVIDENCE SATISFYING YOU OF THAT GUILT BEYOND A REASONABLE DOUBT. THIS PRESUMPTION OF INNOCENCE DOES NOT END WHEN YOU BEGIN YOUR DELIBERATIONS, BUT IT ACCOMPANIES THE DEFENDANT THROUGHOUT THE TRIAL UNTIL YOU REACH A VERDICT OF GUILT BASED ON EVIDENCE SATISFYING YOU OF THAT GUILT BEYOND A REASONABLE DOUBT.

THE PRESUMPTION OF INNOCENCE IS LIKE A ROBE OF RIGHTEOUSNESS PLACED ABOUT THE SHOULDERS OF THE DEFENDANT WHICH REMAINS WITH THE DEFENDANT UNTIL IT HAS BEEN STRIPPED FROM THE DEFENDANT BY EVIDENCE SATISFYING YOU OF THE DEFENDANT'S GUILT BEYOND A REASONABLE DOUBT.

THE PRESUMPTION OF INNOCENCE IS NOT MERE LEGAL THEORY.

IT IS NOT JUST A LEGAL PHRASE. IT IS A SUBSTANTIAL RIGHT TO WHICH EVERY DEFENDANT IS ENTITLED UNLESS YOU, THE JURY, ARE SATISFIED FROM THE EVIDENCE OF THE DEFENDANT'S GUILT BEYOND A REASONABLE DOUBT.

***REASONABLE DOUBT***

WHAT IS A REASONABLE DOUBT IN THE LAW?

A REASONABLE DOUBT IS THE KIND OF DOUBT THAT WOULD CAUSE A REASONABLE PERSON TO HESITATE TO ACT.

PROOF BEYOND A REASONABLE DOUBT IS PROOF THAT LEAVES YOU FIRMLY CONVINCED OF THE DEFENDANT'S GUILT. WE KNOW VERY FEW THINGS IN THIS WORLD WITH ABSOLUTE CERTAINTY, AND IN CRIMINAL CASES THE LAW DOES NOT REQUIRE PROOF THAT OVERCOMES EVERY POSSIBLE DOUBT. IF, BASED ON YOUR CONSIDERATION OF THE EVIDENCE, YOU ARE FIRMLY CONVINCED THAT THE DEFENDANT IS GUILTY OF THE CRIME CHARGED, YOU MUST FIND THE DEFENDANT GUILTY. IF ON THE OTHER HAND, YOU THINK A REAL POSSIBILITY EXISTS THAT THE DEFENDANT IS NOT GUILTY, YOU MUST GIVE THE DEFENDANT THE BENEFIT OF THAT DOUBT AND FIND THE DEFENDANT NOT GUILTY.

***DUTIES OF JURY AND TRIAL JUDGE***

I REMIND YOU THAT, DURING THIS TRIAL, YOU AND I HAVE CERTAIN DUTIES TO PERFORM.

AS THE TRIAL JUDGE, MY RESPONSIBILITY IS TO PRESIDE OVER THE TRIAL OF THIS CASE. I ALSO HAVE THE DUTY TO RULE ON THE ADMISSIBILITY OF THE EVIDENCE OFFERED DURING THIS TRIAL. YOU ARE TO CONSIDER ONLY THE COMPETENT EVIDENCE BEFORE YOU. IF ANY TESTIMONY WAS ORDERED STRICKEN FROM THE RECORD IN THIS CASE DURING THIS TRIAL, YOU MUST DISREGARD THAT TESTIMONY. YOU ARE TO CONSIDER ONLY THE TESTIMONY WHICH HAS BEEN PRESENTED FROM THIS WITNESS STAND, ANY EXHIBITS WHICH HAVE BEEN MADE A PART OF THE RECORD IN THIS CASE, AND ANY STIPULATIONS OF COUNSEL.

I HAVE THE ADDITIONAL DUTY TO CHARGE YOU THE LAW APPLICABLE TO THIS CASE. AS THE PRESIDING JUDGE, I AM THE SOLE JUDGE OF THE LAW OF THIS CASE. YOUR DUTY AS JURORS IS TO ACCEPT AND APPLY THE LAW AS I NOW STATE IT TO YOU. IF YOU HAVE ANY IDEA AS TO WHAT THE LAW IS OR WHAT THE LAW OUGHT TO BE AND YOUR IDEA IS DIFFERENT FROM WHAT I NOW TELL YOU THE LAW IS, YOU MUST DISREGARD YOUR IDEA OF WHAT THE LAW IS

OR OUGHT TO BE BECAUSE YOU ARE SWORN TO ACCEPT THE LAW AND APPLY THE LAW EXACTLY AS I STATE IT TO YOU.

IN EVERY CASE TRIED IN THIS COURT BEFORE A JURY, THE JURY IS THE SOLE AND EXCLUSIVE JUDGE OF THE FACTS IN A CASE. A TRIAL JUDGE CANNOT INTIMATE, STATE, COMMENT ON, OR MAKE ANY STATEMENT TO A TRIAL JURY ABOUT THE FACTS IN A CASE. SINCE YOU, THE JURY, ARE THE SOLE JUDGE OF THE FACTS IN THIS CASE, YOU ARE NOT TO INFER FROM WHAT I HAVE SAID DURING THE PROGRESS OF THIS TRIAL IN RULING UPON THE ADMISSIBILITY OF EVIDENCE, OR OTHERWISE, OR ANYTHING THAT I SAY NOW DURING THE COURSE OF THIS INSTRUCTION TO YOU, THAT I HAVE ANY OPINION ABOUT THE FACTS IN THIS CASE. THE LAW DOES NOT ALLOW ME TO HAVE AN OPINION ABOUT THE FACTS IN THIS CASE. THIS IS A MATTER SOLELY FOR YOU, THE JURY, TO DETERMINE.

AS JURORS, YOUR DUTY IS TO DETERMINE THE EFFECT, VALUE, WEIGHT, AND TRUTH OF THE EVIDENCE PRESENTED DURING THIS TRIAL.

***DIRECT AND CIRCUMSTANTIAL EVIDENCE***

TWO TYPES OF EVIDENCE ARE GENERALLY PRESENTED DURING A TRIAL – DIRECT EVIDENCE AND CIRCUMSTANTIAL EVIDENCE.

DIRECT EVIDENCE IS THE TESTIMONY OF A PERSON WHO CLAIMS TO HAVE ACTUAL KNOWLEDGE OF A FACT, SUCH AS AN EYEWITNESS. IT IS EVIDENCE THAT DIRECTLY PROVES THE EXISTENCE OF A FACT AND DOES NOT REQUIRE DEDUCTION.

CIRCUMSTANTIAL EVIDENCE IS PROOF OF A CHAIN OF FACTS AND CIRCUMSTANCES INDICATING THE EXISTENCE OF A FACT.

CRIMES MAY BE PROVEN BY CIRCUMSTANTIAL EVIDENCE. THE LAW MAKES NO DISTINCTION BETWEEN THE WEIGHT OR VALUE TO BE GIVEN TO EITHER DIRECT OR CIRCUMSTANTIAL EVIDENCE, HOWEVER, TO THE EXTENT THE STATE RELIES ON CIRCUMSTANTIAL EVIDENCE, ALL OF THE CIRCUMSTANCES MUST BE CONSISTENT WITH EACH OTHER, AND WHEN TAKEN TOGETHER, POINT CONCLUSIVELY TO THE GUILT OF THE ACCUSED BEYOND A REASONABLE DOUBT. IF THESE CIRCUMSTANCES MERELY PORTRAY THE DEFENDANT'S BEHAVIOR AS SUSPICIOUS, THE PROOF HAS FAILED.

THE STATE HAS THE BURDEN OF PROVING THE DEFENDANT GUILTY BEYOND A REASONABLE DOUBT. THIS BURDEN RESTS WITH THE STATE REGARDLESS OF WHETHER THE STATE RELIES ON DIRECT EVIDENCE, CIRCUMSTANTIAL EVIDENCE, OR SOME COMBINATION OF THE TWO. YOU SHOULD WEIGH ALL OF THE EVIDENCE IN THE CASE.

AFTER WEIGHING ALL THE EVIDENCE, IF YOU ARE NOT CONVINCED OF THE GUILT OF THE DEFENDANT BEYOND A REASONABLE DOUBT, YOU MUST FIND THE DEFENDANT NOT GUILTY. HOWEVER, AFTER WEIGHING ALL THE EVIDENCE, IF YOU ARE CONVINCED OF THE GUILT OF THE DEFENDANT BEYOND A REASONABLE DOUBT, YOU MUST FIND THE DEFENDANT GUILTY.

***CREDIBILITY OF WITNESSES***

NECESSARILY, YOU MUST DETERMINE THE CREDIBILITY OF WITNESSES WHO HAVE TESTIFIED IN THIS CASE.

CREDIBILITY SIMPLY MEANS BELIEVABILITY.

YOUR DUTY AS JURORS IS TO ANALYZE AND TO EVALUATE THE EVIDENCE AND DETERMINE WHICH EVIDENCE CONVINCES YOU OF ITS TRUTH.

IN DETERMINING THE BELIEVABILITY OF WITNESSES WHO HAVE TESTIFIED IN THIS CASE, YOU MAY BELIEVE ONE WITNESS OVER SEVERAL WITNESSES OR SEVERAL WITNESSES OVER ONE WITNESS. YOU MAY BELIEVE A PART OF THE TESTIMONY OF A WITNESS AND REJECT THE REMAINING PART OF THE TESTIMONY OF THAT SAME WITNESS. YOU MAY BELIEVE THE TESTIMONY OF A WITNESS IN ITS ENTIRETY OR REJECT THE TESTIMONY OF A WITNESS IN ITS

ENTIRETY. YOU MAY CONSIDER WHETHER ANY WITNESS HAS EXHIBITED TO YOU ANY INTEREST, BIAS, PREJUDICE, OR OTHER MOTIVE IN THIS CASE. YOU MAY ALSO CONSIDER THE APPEARANCE AND MANNER OF A WITNESS WHILE ON THE WITNESS STAND.

### ***INTERPRETERS***

ONE OF THE WITNESSES IN THIS CASE TESTIFIED IN SPANISH AND THE TESTIMONY WAS PRESENTED THROUGH AN INTERPRETER. SOME OF YOU MAY HAVE SOME KNOWLEDGE OF SPANISH. HOWEVER, YOU CANNOT RELY ON YOUR OWN KNOWLEDGE OF SPANISH. EVEN IF YOU DISAGREE WITH THE INTERPRETER'S TRANSLATION, YOU MUST ACCEPT THE TRANSLATION OF THE WITNESS' TESTIMONY BY THE INTERPRETER.

### ***EXPERT WITNESSES***

THE RULES OF EVIDENCE ORDINARILY DO NOT PERMIT WITNESSES TO TESTIFY TO OPINIONS OR CONCLUSIONS. AN EXCEPTION TO THIS RULE EXISTS FOR WITNESSES WE CALL "EXPERT WITNESSES". A WITNESS WHO, BY EDUCATION AND EXPERIENCE, HAS BECOME EXPERT IN SOME ART, SCIENCE, PROFESSION, OR CALLING MAY STATE AN OPINION AS TO RELEVANT AND MATERIAL MATTER, IN WHICH THE WITNESS CLAIMS TO BE AN EXPERT, AND MAY ALSO

STATE THE REASONS FOR THE OPINION.

YOU SHOULD CONSIDER ANY EXPERT OPINION RECEIVED IN EVIDENCE IN THIS CASE AND, LIKE ANY OTHER EVIDENCE, GIVE IT THE WEIGHT YOU THINK IT DESERVES. IF YOU DECIDE THAT THE OPINION OF AN EXPERT WITNESS IS NOT BASED ON SUFFICIENT EDUCATION AND EXPERIENCE, OR IF YOU CONCLUDE THAT THE REASONS GIVEN IN SUPPORT OF THE OPINION ARE NOT SOUND, OR THAT THE OPINION IS OUTWEIGHED BY OTHER EVIDENCE, YOU MAY DISREGARD THE OPINION ENTIRELY.

AN EXPERT WITNESS' TESTIMONY IS TO BE GIVEN NO GREATER WEIGHT THAN THAT OF OTHER WITNESSES SIMPLY BECAUSE THE WITNESS IS AN EXPERT. FURTHER, YOU ARE NOT REQUIRED TO ACCEPT AN EXPERT'S OPINION, EVEN THOUGH IT IS NOT CONTRADICTED.

***FAILURE OF DEFENDANT TO TESTIFY***

I INSTRUCT YOU AND EMPHASIZE THAT THE FACT THE DEFENDANT DID NOT TESTIFY IS NOT A FACTOR TO BE CONSIDERED BY YOU IN ANY WAY IN YOUR DELIBERATION AND IN YOUR CONSIDERATION ON THE QUESTION OF THE GUILT OR THE INNOCENCE OF THE DEFENDANT. THE DEFENDANT'S FAILURE TO

TESTIFY MUST NOT BE CONSIDERED BY YOU IN ANY MANNER WHATSOEVER. A DEFENDANT HAS THE CONSTITUTIONAL RIGHT TO REMAIN SILENT, AND THE ASSERTION OF THIS RIGHT MUST NOT BE CONSIDERED BY YOU IN YOUR DELIBERATIONS. I REPEAT, UNDER YOUR OATH, YOU ARE TO DRAW NO CONCLUSION WHATSOEVER FROM THE FACT THAT THE DEFENDANT IN THIS CASE DID NOT TESTIFY. THE FACT THAT THIS DEFENDANT DID NOT TESTIFY SHOULD NOT EVEN BE DISCUSSED IN THE JURY ROOM. THE BURDEN OF PROOF, AS I HAVE STATED TO YOU, IS ON THE STATE. THE DEFENDANT IS NOT REQUIRED TO PROVE HIS INNOCENCE. THE BURDEN OF PROOF REMAINS ON THE STATE TO PROVE THE DEFENDANT'S GUILT BEYOND A REASONABLE DOUBT.

***INTENT***

IN ORDER TO ESTABLISH CRIMINAL LIABILITY, CRIMINAL INTENT IS REQUIRED. FOR EXAMPLE, THE MENTAL STATE REQUIRED TO BE PROVEN BY THE STATE FOR A PARTICULAR CRIME MIGHT BE PURPOSE, INTENT, KNOWLEDGE, RECKLESSNESS, OR CRIMINAL NEGLIGENCE.

CRIMINAL INTENT MUST BE PROVEN BY THE STATE BEYOND A REASONABLE DOUBT.

CRIMINAL INTENT IS ALWAYS A MATTER THAT MUST BE DETERMINED BY THE JURY FROM THE CIRCUMSTANCES SURROUNDING THE SITUATION.

INTENT CANNOT BE PROVEN TO A MATHEMATICAL CERTAINTY. MEDICAL SCIENCE CANNOT DISSECT A PERSON'S BRAIN AND DETERMINE WHAT THE PERSON HAD IN MIND, SO THE LAW SAYS THAT CRIMINAL INTENT MAY BE INFERRED FROM THE CIRCUMSTANCES SHOWN TO HAVE EXISTED. THIS IS HOW YOU MAKE A DETERMINATION OF WHETHER OR NOT THE ELEMENT REQUIRING INTENT WAS PRESENT. INTENT DOES NOT HAVE TO BE PROVEN BY DIRECT AND POSITIVE EVIDENCE, BUT INTENT MAY BE ESTABLISHED BY INFERENCE IN THE SAME WAY AS ANY OTHER FACT BY TAKING INTO CONSIDERATION THE ACTS OF THE PARTIES AND ALL THE FACTS AND CIRCUMSTANCES OF THE CASE.

CRIMINAL INTENT IS A MENTAL STATE, A CONSCIOUS WRONGDOING. YOU MUST DETERMINE WHAT THE DEFENDANT INTENDED TO DO BASED ON THE CIRCUMSTANCES SHOWN TO HAVE EXISTED.

CRIMINAL INTENT CAN ARISE FROM ACTION OR A FAILURE TO ACT. IT MAY ARISE FROM NEGLIGENCE, RECKLESSNESS, OR AN

INDIFFERENCE TO DUTY OR TO CONSEQUENCES THAT IS CONSIDERED BY THE LAW TO BE THE EQUIVALENT OF CRIMINAL INTENT.

***STATEMENT OF DEFENDANT***

A STATEMENT ALLEGED TO HAVE BEEN MADE BY THE DEFENDANT HAS BEEN ADMITTED INTO EVIDENCE IN THIS CASE. WHILE THE COURT HAS DETERMINED THAT THE STATEMENT IS ADMISSIBLE, I INSTRUCT YOU THAT YOU MAKE THE ULTIMATE DECISION OF WHETHER OR NOT THE DEFENDANT MADE THE STATEMENT. IF THE DEFENDANT DID MAKE THE STATEMENT, YOU MUST DETERMINE WHETHER THE STATEMENT WAS MADE BY THE DEFENDANT VOLUNTARILY AND OF HIS OWN FREE WILL. THIS MEANS THAT THE STATEMENT WAS NOT CAUSED BY PRESSURE, FORCE, FEAR, THREATS, COERCION, OR INTIMIDATION, OR BY HOPE OR A PROMISE OF LENIENCY OR A REWARD OF ANY KIND. IN DETERMINING WHETHER THE STATEMENT WAS VOLUNTARY, YOU SHOULD CONSIDER BOTH THE CHARACTERISTICS OF THE DEFENDANT AND THE DETAILS OF THE QUESTIONING. SOME OF THE FACTORS THAT YOU MUST CONSIDER ARE: (1) THE AGE OF THE DEFENDANT; (2) THE DEFENDANT'S EDUCATION OR LACK OF EDUCATION; (3) THE DEFENDANT'S MENTAL ABILITY OR CAPACITY; (4) THE DEFENDANT'S

I.Q. OR INTELLIGENCE; (5) THE DEFENDANT'S BACKGROUND AND ENVIRONMENT; (6) THE PLACE AND LENGTH OF DETENTION; (7) THE NATURE OF THE QUESTIONING; AND (8) THE ADVICE, OR LACK THEREOF, TO THE DEFENDANT OF HIS CONSTITUTIONAL RIGHTS INCLUDING, BUT NOT LIMITED TO, THE RIGHT TO REMAIN SILENT; THAT ANY STATEMENT COULD BE USED AGAINST HIM IN A COURT OF LAW; THE RIGHT TO HAVE A LAWYER PRESENT; THAT IF HE COULD NOT AFFORD A LAWYER, A LAWYER WOULD BE APPOINTED TO REPRESENT HIM WITHOUT ANY COST; AND THAT HE COULD STOP MAKING A STATEMENT AT ANY TIME. YOU MUST CAREFULLY CONSIDER ALL OF THE SURROUNDING CIRCUMSTANCES BEFORE YOU GIVE ANY WEIGHT TO AN ALLEGED STATEMENT.

THE STATE HAS THE BURDEN OF PROVING BEYOND A REASONABLE DOUBT THAT THE ALLEGED STATEMENT WAS VOLUNTARY. IF YOU DETERMINE IT WAS, YOU MAY GIVE THE STATEMENT ANY FURTHER CONSIDERATION THAT YOU DEEM PROPER. YOU MUST DECIDE WHAT WEIGHT, IF ANY, SHOULD BE GIVEN TO THE ALLEGED STATEMENT. IF YOU DETERMINE THE ALLEGED STATEMENT WAS NOT THE FREE AND VOLUNTARY STATEMENT OF THE DEFENDANT, YOU SHOULD NOT CONSIDER THE STATEMENT AT ALL.

***ASSAULT AND BATTERY OF A HIGH AND AGGRAVATED NATURE***

AS I PREVIOUSLY INSTRUCTED YOU, THE DEFENDANT IS CHARGED WITH ASSAULT AND BATTERY OF A HIGH AND AGGRAVATED NATURE.

TO CONVICT THE DEFENDANT OF THIS CRIME, THE STATE MUST PROVE BEYOND A REASONABLE DOUBT THAT THE DEFENDANT UNLAWFULLY INJURED ANOTHER PERSON AND EITHER GREAT BODILY INJURY TO THAT PERSON RESULTED OR THE ACT WAS ACCOMPLISHED BY MEANS LIKELY TO PRODUCE DEATH OR GREAT BODILY INJURY.

GREAT BODILY INJURY MEANS BODILY INJURY WHICH CAUSES A SUBSTANTIAL RISK OF DEATH OR WHICH CAUSES SERIOUS, PERMANENT DISFIGUREMENT OR PROTRACTED LOSS OR IMPAIRMENT OF THE FUNCTION OF A BODILY MEMBER OR ORGAN.

***ASSAULT AND BATTERY - SECOND DEGREE***

IF YOU FIND THAT THE STATE HAS FAILED TO PROVE THE DEFENDANT GUILTY OF ASSAULT AND BATTERY OF A HIGH AND AGGRAVATED NATURE, YOU MUST THEN DECIDE WHETHER THE STATE HAS PROVED THE DEFENDANT GUILTY OF ASSAULT AND BATTERY IN THE SECOND DEGREE. INCLUDED WITHIN THE OFFENSE

OF ASSAULT AND BATTERY OF A HIGH AND AGGRAVATED NATURE IS THE LESSER OFFENSE OF ASSAULT AND BATTERY IN THE SECOND DEGREE. IN THIS CASE, THE CRIME OF ASSAULT AND BATTERY IN THE SECOND DEGREE HAS THE SAME ELEMENTS AS ASSAULT AND BATTERY OF A HIGH AND AGGRAVATED NATURE EXCEPT THAT THE CONTEMPLATED INJURY IS MODERATE BODILY INJURY ON ANOTHER PERSON RATHER THAN GREAT BODILY INJURY.

TO CONVICT THE DEFENDANT OF ASSAULT AND BATTERY IN THE SECOND DEGREE, THE STATE MUST PROVE BEYOND A REASONABLE DOUBT THAT THE DEFENDANT UNLAWFULLY INJURED ANOTHER PERSON, OR OFFERS OR ATTEMPTS TO INJURE ANOTHER PERSON WITH THE PRESENT ABILITY TO DO SO, AND EITHER MODERATE BODILY INJURY TO ANOTHER PERSON RESULTS OR MODERATE BODILY INJURY TO ANOTHER PERSON COULD HAVE RESULTED.

MODERATE BODILY INJURY MEANS PHYSICAL INJURY THAT INVOLVES PROLONGED LOSS OF CONSCIOUSNESS, OR THAT CAUSES TEMPORARY OR MODERATE DISFIGUREMENT OR TEMPORARY LOSS OF THE FUNCTION OF A BODILY MEMBER OR ORGAN, OR INJURY THAT REQUIRES MEDICAL TREATMENT WHEN THE TREATMENT REQUIRES

THE USE OF REGIONAL OR GENERAL ANESTHESIA OR INJURY THAT RESULTS IN A FRACTURE OR DISLOCATION. MODERATE BODILY INJURY DOES NOT INCLUDE ONE-TIME TREATMENT AND SUBSEQUENT OBSERVATION OF SCRATCHES, CUTS, ABRASIONS, BRUISES, BURNS, SPLINTERS, OR ANY OTHER MINOR INJURIES THAT DO NOT ORDINARILY REQUIRE EXTENSIVE MEDICAL CARE.

***ASSAULT AND BATTERY – THIRD DEGREE***

IF YOU FIND THAT THE STATE HAS FAILED TO PROVE THE DEFENDANT GUILTY OF ASSAULT AND BATTERY IN THE SECOND DEGREE, YOU MUST THEN DECIDE WHETHER THE STATE HAS PROVED THE DEFENDANT GUILTY OF ASSAULT AND BATTERY IN THE THIRD DEGREE. INCLUDED WITHIN THE OFFENSE OF ASSAULT AND BATTERY OF A HIGH AND AGGRAVATED NATURE AND ASSAULT AND BATTERY IN THE SECOND DEGREE IS THE LESSER OFFENSE OF ASSAULT AND BATTERY IN THE THIRD DEGREE. IN THIS CASE, THE CRIME OF ASSAULT AND BATTERY IN THE SECOND DEGREE HAS THE SAME ELEMENTS AS ASSAULT AND BATTERY IN THE SECOND DEGREE EXCEPT THAT IT CONTEMPLATES INJURY ONLY AND NOT GREAT OR MODERATE BODILY INJURY.

TO CONVICT THE DEFENDANT OF ASSAULT AND BATTERY IN

THE THIRD DEGREE, THE STATE MUST PROVE BEYOND A REASONABLE DOUBT THAT THE DEFENDANT UNLAWFULLY INJURES ANOTHER PERSON, OR OFFERS OR ATTEMPTS TO INJURE ANOTHER PERSON WITH THE PRESENT ABILITY TO DO SO.

***SELF-DEFENSE***

THE DEFENDANT RAISES THE DEFENSE OF SELF-DEFENSE. SELF-DEFENSE IS A COMPLETE DEFENSE AND, IF IT IS ESTABLISHED, YOU MUST FIND THE DEFENDANT NOT GUILTY.

THE STATE HAS THE BURDEN OF DISPROVING SELF-DEFENSE BY PROOF BEYOND A REASONABLE DOUBT. IF YOU HAVE A REASONABLE DOUBT OF THE DEFENDANT'S GUILT AFTER CONSIDERING ALL THE EVIDENCE, INCLUDING THE EVIDENCE OF SELF-DEFENSE, THEN YOU MUST FIND THE DEFENDANT NOT GUILTY. ON THE OTHER HAND, IF YOU HAVE NO REASONABLE DOUBT OF THE DEFENDANT'S GUILT AFTER CONSIDERING ALL THE EVIDENCE, INCLUDING THE EVIDENCE OF SELF-DEFENSE, THEN YOU MUST FIND THE DEFENDANT GUILTY.

THE FOLLOWING ELEMENTS ARE REQUIRED TO ESTABLISH SELF-DEFENSE.

**(1) WITHOUT FAULT**

FIRST, THE DEFENDANT MUST BE WITHOUT FAULT IN BRINGING ON THE DIFFICULTY. IF THE DEFENDANT'S CONDUCT WAS THE TYPE WHICH WAS REASONABLY CALCULATED TO, AND DID, PROVOKE AN ASSAULT RESULTING IN DEATH OR GREAT BODILY INJURY, THE DEFENDANT WOULD BE AT FAULT IN BRINGING ON THE DIFFICULTY AND WOULD NOT BE ENTITLED TO AN ACQUITTAL BASED ON SELF-DEFENSE.

**(2) IMMINENT DANGER**

THE SECOND ELEMENT OF SELF-DEFENSE IS THAT THE DEFENDANT WAS ACTUALLY IN IMMINENT DANGER OF DEATH OR SERIOUS BODILY INJURY OR THAT THE DEFENDANT ACTUALLY BELIEVED HE WAS IN IMMINENT DANGER OF DEATH OR SERIOUS BODILY INJURY.

IF THE DEFENDANT WAS ACTUALLY IN IMMINENT DANGER, SELF-DEFENSE REQUIRES THAT THE CIRCUMSTANCES WARRANTED A PERSON OF ORDINARY FIRMNESS AND COURAGE TO STRIKE THE FATAL BLOW TO PREVENT DEATH OR SERIOUS BODILY INJURY. IF THE DEFENDANT BELIEVED HE WAS IN IMMINENT DANGER OF DEATH OR SERIOUS BODILY INJURY, SELF-DEFENSE REQUIRES THAT A REASONABLY PRUDENT PERSON OF ORDINARY FIRMNESS AND

COURAGE WOULD HAVE HAD THE SAME BELIEF.

IN DECIDING WHETHER THE DEFENDANT ACTUALLY WAS, OR BELIEVED HE WAS, IN IMMINENT DANGER OF DEATH OR SERIOUS BODILY INJURY, YOU SHOULD CONSIDER ALL THE FACTS AND CIRCUMSTANCES SURROUNDING THE CRIME, INCLUDING THE PHYSICAL CONDITION AND CHARACTERISTICS OF THE DEFENDANT AND THE VICTIM.

#### **RIGHT TO ACT ON APPEARANCES**

THE DEFENDANT DOES NOT HAVE TO SHOW THAT HE WAS ACTUALLY IN DANGER. IF THE DEFENDANT BELIEVED HE WAS IN IMMINENT DANGER AND A REASONABLY PRUDENT PERSON OF ORDINARY FIRMNESS AND COURAGE WOULD HAVE HAD THE SAME BELIEF, THEN THE DEFENDANT HAS THE RIGHT TO ACT ON APPEARANCES EVEN THOUGH THE DEFENDANT'S BELIEFS MAY HAVE BEEN MISTAKEN. YOU MUST DECIDE WHETHER THE DEFENDANT'S FEAR OF IMMEDIATE DANGER OF DEATH OR SERIOUS BODILY INJURY WAS REASONABLE AND WOULD HAVE BEEN FELT BY AN ORDINARY PERSON IN THE SAME SITUATION.

#### **WORDS ACCOMPANIED BY HOSTILE ACTS**

WORDS ACCOMPANIED BY HOSTILE ACTS MAY, DEPENDING ON

THE CIRCUMSTANCES, ESTABLISH SELF-DEFENSE. HOWEVER, MERE WORDS, NO MATTER HOW ABUSIVE, INSULTING, VEXATIOUS OR THREATENING THEY MAY BE, WILL NOT JUSTIFY AN ASSAULT AND BATTERY, UNLESS ACCOMPANIED BY AN ACTUAL OFFER OF PHYSICAL VIOLENCE.

### **SIZE AND AGE**

THE RELATIVE SIZES, AGES, AND WEIGHTS OF THE DEFENDANT AND THE VICTIM MAY BE CONSIDERED IN DECIDING THE APPARENT OR ACTUAL NEED FOR FORCE IN SELF-DEFENSE AND THE AMOUNT OF FORCE NEEDED.

### **(3) NO OTHER WAY TO AVOID DANGER**

THE FINAL ELEMENT OF SELF-DEFENSE IS THAT THE DEFENDANT HAD NO OTHER PROBABLE WAY TO AVOID THE DANGER OF DEATH OR SERIOUS BODILY INJURY THAN TO ACT AS THE DEFENDANT DID IN THIS PARTICULAR INSTANCE.

### **DEGREE OF FORCE**

A PERSON CANNOT BE REQUIRED TO MAKE AN EXACT CALCULATION AS TO THE DEGREE OR AMOUNT OF FORCE WHICH MAY BE NEEDED TO AVOID DEATH OR SERIOUS BODILY HARM. THEREFORE, IN SELF-DEFENSE, THE DEFENDANT HAS THE RIGHT TO

USE THE FORCE NEEDED TO AVOID DEATH OR SERIOUS BODILY HARM. THE FORCE USED IN SELF-DEFENSE DOES NOT HAVE TO BE LIMITED TO THE DEGREE OR AMOUNT OF FORCE USED BY THE VICTIM. THE DEFENDANT HAS THE RIGHT TO USE SO MUCH FORCE AS APPEARED TO BE NECESSARY FOR COMPLETE SELF-PROTECTION, AND WHICH A PERSON OF ORDINARY REASON AND FIRMNESS WOULD HAVE BELIEVED TO BE NEEDED TO PREVENT DEATH OR SERIOUS BODILY HARM.

#### **DEFENSE OF OTHERS**

UNDER THE LAW OF SELF-DEFENSE, THE DEFENDANT MAY TAKE ANOTHER'S LIFE IN THE DEFENSE OF OTHERS. THE RIGHT TO INTERVENE TO PROTECT ANOTHER PERSON IS SUBJECT TO THE SAME RIGHTS AND LIMITATIONS AS THE RIGHT OF SELF-DEFENSE.

THE DEFENDANT MAY TAKE THE LIFE OF PERSON WHO ASSAULTS A FRIEND, RELATIVE, OR BYSTANDER IF THAT FRIEND, RELATIVE, OR BYSTANDER WOULD HAVE HAD THE RIGHT OF SELF-DEFENSE.

TO SHOW THAT THE PERSON BEING DEFENDED HAD THE RIGHT OF SELF-DEFENSE, IT MUST FIRST BE SHOWN THAT THE PERSON BEING DEFENDED AND THE DEFENDANT WERE BOTH WITHOUT FAULT IN BRINGING ON THE DIFFICULTY. IF THE CONDUCT OF THE PERSON

DEFENDED OR THE DEFENDANT WAS THE TYPE WHICH WAS REASONABLY CALCULATED TO, AND DID, PROVOKE A DEADLY ASSAULT, THE PERSON WOULD BE AT FAULT IN BRINGING ON THE DIFFICULTY AND WOULD NOT HAVE THE RIGHT OF SELF-DEFENSE. THEREFORE, THE DEFENDANT WOULD NOT HAVE THE RIGHT TO USE DEADLY FORCE IN DEFENDING THAT PERSON.

THE DEFENSE OF ANOTHER PERSON IS EXCUSABLE IF THE DEFENDANT HAD REASONABLE GROUNDS TO BELIEVE, AND IN GOOD FAITH DID BELIEVE, THAT THE PERSON BEING DEFENDED WAS IN IMMINENT DANGER OF DEATH OR SERIOUS BODILY HARM FROM THE VICTIM.

IN DECIDING WHETHER THE PERSON DEFENDED ACTUALLY WAS, OR THAT THE DEFENDANT ACTUALLY BELIEVED THE PERSON WAS, IN IMMINENT DANGER OF DEATH OR SERIOUS BODILY INJURY, YOU SHOULD CONSIDER ALL THE FACTS AND CIRCUMSTANCES SURROUNDING THE CRIME, INCLUDING THE PHYSICAL CONDITION AND CHARACTERISTICS OF THE PARTIES.

#### **RIGHT TO ACT ON APPEARANCES**

THE DEFENDANT DOES NOT HAVE TO SHOW THAT THE PERSON THE DEFENDANT DEFENDED WAS ACTUALLY IN DANGER. IT IS ENOUGH IF

THE DEFENDANT BELIEVED THE PERSON WAS IN IMMINENT DANGER. THE DEFENDANT HAS THE RIGHT TO ACT ON APPEARANCES EVEN THOUGH THE DEFENDANT'S BELIEFS MAY HAVE BEEN MISTAKEN. THE DEFENDANT MUST SHOW THAT, UNDER THE CIRCUMSTANCES AS THEY APPEARED TO THE DEFENDANT, THE DEFENDANT BELIEVED THE PERSON DEFENDED WAS IN DANGER AND THAT A REASONABLY PRUDENT PERSON OF ORDINARY FIRMNESS AND COURAGE WOULD HAVE HAD THE SAME BELIEF UNDER THE SAME CIRCUMSTANCES. YOU, THE JURY, MUST DECIDE WHETHER THE DEFENDANT'S FEAR OF IMMEDIATE DANGER OF DEATH OR SERIOUS BODILY INJURY TO THE PERSON DEFENDED WAS REASONABLE AND WOULD HAVE BEEN FELT BY AN ORDINARY PERSON IN THE SAME SITUATION. THE DEFENDANT DOES NOT HAVE TO WAIT UNTIL THE VICTIM GETS THE DROP ON THE PERSON DEFENDED; THE DEFENDANT HAS THE RIGHT TO ACT UNDER THE LAW OF SELF-PRESERVATION TO PREVENT THE VICTIM FROM GETTING THE DROP ON THE PERSON DEFENDED.

#### **DUTY TO RETREAT**

ALSO, IN ORDER TO BE ENTITLED TO DEFEND ANOTHER, THE PERSON DEFENDED MUST HAVE HAD NO OTHER PROBABLE WAY TO AVOID THE DANGER OF DEATH OR SERIOUS BODILY INJURY THAN TO

FORM AND SIGN YOUR NAME AS FOREPERSON. THEN KNOCK ON THE JURY ROOM DOOR AND INFORM THE BAILIFF THAT YOU HAVE REACHED A VERDICT. AT THAT TIME, WE WILL RECEIVE YOU BACK INTO THE COURTROOM.

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**WITNESSES**

J. Vasquez Myrtle Beach Police Department

**ARREST WARRANT NUMBER**

A2620602471

K: 3411 16-03-0600(B)(1)

DOA: 10/19/2015

**ACTION OF GRAND JURY**

**TRUE BILL**

*Bob Harris*

Foreperson of Grand Jury

Date: JAN 21 2016

**VERDICT**

RENEE N. FLAIS  
CLERK OF COURT  
HORRY COUNTY, SC

Foreperson of Petit Jury 2017 OCT 16 AM 11:19

Date:

CERTIFIED COPY

DOCKET NO. 2016-GS-26-00362

**The State of South Carolina**

County of Horry

Martin D. Spratlin

15H05017

**COURT OF GENERAL SESSIONS**

**JANUARY, 2016 TERM**

**THE STATE**

vs.

Philip David Guderyon

W/ M

Wellington, FL

DOB:

SSN:

**ATTORNEY: W. Thomas Floyd**

**Indictment for**

**ASSAULT AND BATTERY OF A HIGH AND  
AGGRAVATED NATURE**

**Jimmy A. Richardson, II, Solicitor**

**ORIGINAL**

FILED  
HORRY COUNTY

2016 JAN 26 AM 10:02

MELANIE SINGO IS-WARD  
CLERK OF COURT

DATE RECEIVED FROM

BY

STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF HORRY )

INDICTMENT


At a Court of General Sessions, convened on January 21, 2016, the Grand Jurors of Horry County present upon their oath:

(INCIDENT DATE 6/1/2010 OR AFTER)

**ASSAULT AND BATTERY**  
**OF A HIGH AND AGGRAVATED NATURE**  
CDR: 3411 16-3-600(B)

That Philip David Guderyon did in Horry County on or about October 17, 2015 commit an unlawful act of injury to Justin Hodges which resulted in great bodily injury or the act was accomplished by means likely to produce death or great bodily injury to the victim in violation of Section 16-3-600(B), 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.

  
\_\_\_\_\_  
JIMMY A. RICHARDSON, II  
FIFTEENTH CIRCUIT SOLICITOR

CERTIFIED COPY  
2017 OCT 16 AM 11:37  
RENEE N. ELVIS  
CLERK OF COURT  
HORRY COUNTY, SC

COUNTY OF Horry  
STATE VS.

Philip David Guderyon

AKA: \_\_\_\_\_

Race: WHITE Sex: M Age: 34

DOB: \_\_\_\_\_ SS#: \_\_\_\_\_

Address: \_\_\_\_\_

City, State, Zip: Wellington, FL

DL#: G SID#: FL04392009

\*CDL Yes  No  CMV Yes  No  Hazmat Yes  No

In disposition of the said indictment comes now the Defendant who was

TO: Assault & Battery of a High & Aggravated Nature (0-20 years)

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(CSC w/minor 1st or Lewd Act)  §17-25-45

The charge is:  As Indicted,  Lesser Included Offense,  Defendant Waives Presentment to Grand Jury. (defendant's initials)

The plea is:  Without Negotiations or Recommendation,  Negotiated Sentence,  Recommendation by the State.

ATTEST Walker, Cara J. 100254 SC Bar# Defendant Attorney for Defendant SC Bar#

WHEREFORE, the Defendant is committed to the  State Department of Corrections,  County Detention Center, for a determinate term of 10 days/months/years or  under the Youthful Offender Act not to exceed X years and/or to pay a fine of \$ X; provided that upon the service of X days/months/years and/or payment of \$ X; plus costs and assessments as applicable\*; the balance is suspended with probation for X

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

CONCURRENT or  CONSECUTIVE to sentence on:  
 The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied by the State Department of Corrections.

The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135. Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

RESTITUTION:  Deferred  Def. Waives Hearing  Ordered  
Total: \$ \_\_\_\_\_ plus 20% fee: \$ \_\_\_\_\_  
Payment Terms: \_\_\_\_\_  
 Set by SCDPPPS \_\_\_\_\_

Recipient: \_\_\_\_\_

*Fine:	\$
§ 14-1-206 (Assessments 107.5%)	\$
§ 14-1-211(A)(1) (Conv. Surcharge)	\$100
§ 14-1-211(A)(2) (DUI Surcharge)	\$100
§ 56-5-2995 (DUI Assessment)	\$12
§ 56-1-286 (DUI Breath Test)	\$25
Proviso 61.6 (Public Def/Probation)	\$500
§ 14-1-212 (Law Enforce. Funding)	\$25
§ 14-1-213 (Drug Court Surcharge)	\$150
§ 50-21-114(BLT Breath Test Fee)	\$50
§ 56-5-2942(J) (Vehicle Assessment)	\$40/ea
3% to County (if paid in installments)	\$ 3.75

TOTAL: \$ 128.75 + \$40.00 = \$168.75

Clerk of Court/ Deputy Clerk Renee N. Elvis  
Court Reporter: Kay Richardson  
SCCA/217 (07/2016)

INDICTMENT/CASE#: 2016GS2600382  
A/W#: 2015A2620602471  
Date of Offense: 10/17/2015  
S.C. Code §: 16-03-0600(B)(1)  
CDR Code #: 3411

SENTENCE SHEET

CONVICTED OF or  PLEADED

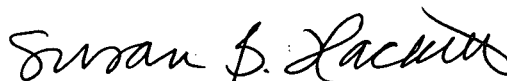
Presiding Judge Margaret Culbertson  
Judge Code: 2148  
Sentence Date: Oct. 12, 2017

FILED  
Horry County  
2017 OCT 12 PM 2:54  
2017 OCT 12 AM 11:37

## 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,



Susan B. Hackett  
Appellate Defender

South Carolina Commission on Indigent Defense  
Division of Appellate Defense  
PO Box 11589  
Columbia, S.C. 29211-1589

ATTORNEY FOR APPELLANT

This 12th day of December, 2018.

**RECEIVED**  
DEC 12 2018  
SC Court of Appeals