

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

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Certiorari to Horry County

Honorable Debra R. McCaslin, Circuit Court Judge

JOSHUA W. MAIDEN,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2023-000642

APPENDIX

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STATE OF SOUTH CAROLINA	)	IN THE COURT OF GENERAL SESSIONS
COUNTY OF HORRY	)	2016-GS-26-03399
STATE OF SOUTH CAROLINA,	)	
Plaintiff,	)	Transcript of Record
vs.	)	
JOSHUA WILLIAM MAIDEN,	)	April 10-12, 2017
Defendant.	)	

B E F O R E:

Honorable Larry B. Hyman, Jr.
Horry County Courthouse
Conway, South Carolina

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MOTIONS

7

1 **(APRIL 10, 2017 - 1:13 P.M. - DAY ONE.)**

2 MOTIONS:

3 THE COURT: Okay. I'll hear you, Mr. Fox?

4 MR. FOX: Judge, literally over the lunch, I had a
5 witness whose name is Eric Kennedy, and Mr. Kennedy was at --
6 this incident involves a fight and then an alleged attempted
7 murder outside of The Boathouse down at the Waterway in Myrtle
8 Beach.

9 THE COURT: Okay. I know where it is.

10 MR. FOX: So, Mr. Kennedy was someone who was there.
11 There was first an altercation between the Defendant and the
12 victim inside that continued -- they were both escorted
13 outside and another incident happened outside. Mr. Kennedy
14 was there and would corroborate, from my conversations with
15 him, Mr. Maiden's version of what happened both inside in the
16 confrontation as well as outside.

17 THE COURT: What's the problem with Mr. Kennedy?

18 MR. FOX: Mr. Kennedy is in Virginia. Mr. Kennedy has
19 been a difficult witness to locate, first of all, and then to
20 get ahold of. Mr. Kennedy also has no transportation. The
21 Defendant's mother, Ms. Auld, that's A-U-L-D, was literally on
22 her way to Salem, Virginia, which is in the Chesapeake area I
23 believe, Roanoke, to pick him up. I had a text when I left
24 court this morning from Ms. Auld saying she had heard from Mr.
25 Kennedy and he has a child in the hospital and that he would

1 not be able to attend. I believe he's a very important
2 witness. It is very last minute. And I can tell you, Judge,
3 this -- so that Your Honor -- full disclosure. Last month we
4 anticipated trying this case. At my request, the Solicitors
5 agreed not to call it, in part, because Mr. Maiden wasn't
6 brought back from SCDC due to misunderstanding.

7 THE COURT: What was he doing at SCDC?

8 MR. FOX: He's serving a sentence, an active sentence at
9 SCDC, Your Honor.

10 THE COURT: Okay.

11 MR. FOX: And at my request, rather than having to come
12 to Your Honor and make a formal request, Mr. Oskin and Mr.
13 DeBusk agreed not to call it.

14 THE COURT: Aren't they so accommodating?

15 MR. FOX: Well, I appreciate it because they could've put
16 me on the spot and made me come as I'm having to do now. So
17 I'm aware I've already asked for this to be continued once.
18 It wasn't something I could anticipate. At this point, I
19 don't know whether Mr. Kennedy will be available to come. He
20 has no transportation, so it's six hours each way to go get
21 him.

22 THE COURT: Well, tell me what Mr. Kennedy is gonna say
23 and what's the relevance of Mr. Kennedy's ---

24 MR. FOX: Very briefly, there was a fight inside.

25 THE COURT: Okay.

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MOTIONS

9

1 MR. FOX: And there's no question Mr. Maiden struck the
2 victim with a bottle. Mr. Kennedy will verify that there was
3 more. And there's actually a video, someone was on their
4 phone taping stuff going on at The Boathouse and they actually
5 caught that moment on the video.

6 THE COURT: This other third party?

7 MR. FOX: Yes.

8 THE COURT: Okay.

9 MR. FOX: That's right. The only connection is that he
10 happened to have his phone out at that moment.

11 Mr. Maiden told police in his statement, which you'll
12 hear, that during this -- that there was more to this
13 encounter than just those five or ten seconds on that video,
14 that at some point the victim told him, I'll put a bullet
15 between your eyes. That's important because with other
16 information he knows about the victim when he was outside,
17 again told police that at some point, as he was driving off,
18 the victim comes at him with an object in his hand and he
19 feared it was a gun and this lead ---

20 THE COURT: Okay.

21 MR. FOX: So, Mr. Kennedy, number one, corroborates that
22 he heard Mr. Miniet, the victim, say, I'll put a bullet
23 between your eyes, Mr. Maiden. And number two, also
24 corroborates Mr. Maiden's statement to police that when he saw
25 this man running at him, that rather than deliberately run

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MOTIONS

10

1 into him, which is what he's accused of, running over him with
2 his car, that he ducked in to avoid what he was afraid might
3 be a gunshot, and Mr. Kennedy in his conversations would be
4 able to corroborate that. So from our point of view, he's a
5 very important witness and I'm told -- and I've not spoken to
6 Mr. Kennedy or I have been in touch with him before, not
7 today, and this was from his mother just at lunchtime.

8 THE COURT: Well, when, when -- I mean, this case has
9 been on the roster how long?

10 MR. FOX: A long time.

11 MR. DEBUSK: Two months, Your Honor, at least.

12 THE COURT: Well, I don't understand if it's a
13 transportation problem, why Mr. Kennedy hasn't -- you know,
14 why is he not ---

15 MR. FOX: Well, at the moment, Judge, the information I
16 have is -- the transportation problem we had solved. The
17 issue was a child in the hospital was the immediate concern
18 that I'm told.

19 THE COURT: Well, we found out that today. So, I mean
20 there obviously wasn't any attempt to go pick him up before
21 today anyway, was there?

22 MR. FOX: Well, the issue -- there was not, knowing we
23 wouldn't need him before probably tomorrow. There was issues
24 about work and so forth. He was -- a lot of coordinating for
25 Mr. Kennedy, but we finally got to the point where he said,

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MOTIONS

11

1 look, I can be there -- if someone can come get me, I can be
2 here on Tuesday over Wednesday and that's what was happening.

3 THE COURT: Mr. DeBusk, I'll hear from you?

4 MR. DEBUSK: Your Honor, this is the same issue that's
5 gonna recur every time we call this case. This individual,
6 Mr. Kennedy, he never spoke to the police at the scene, he has
7 never been known to anyone at the scene. He's a surprise
8 witness. We've not had a chance to talk with him or even know
9 his name until today. This case has been on the trial roster
10 for months. The Defense has had plenty of opportunity to get
11 this -- to secure his attendance here, and at the last minute
12 saying he can't get him. Your Honor, this is a late hour to
13 be ---

14 THE COURT: Well, I mean, what Mr. Kennedy's supposed
15 child's illness? I mean, what are we looking at with that?

16 MR. FOX: This is what I'm told from Ms. Auld, who is the
17 Defendant's mother, who has been in touch with him that it was
18 -- the child has a heart condition of some kind and apparently
19 has been hospitalized before. I don't know any of this
20 myself.

21 THE COURT: Well, is Mr. Kennedy under subpoena? Have
22 you made efforts to have a subpoena issued ---

23 MR. FOX: He is not, Your Honor.

24 THE COURT: --- in Virginia?

25 MR. FOX: He is not. And, Judge, to be perfectly honest

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MOTIONS

12

1 with you, under these circumstances, I wouldn't be trying to
2 enforce it against a person whose child is hospitalized, to be
3 perfectly honest.

4 THE COURT: I mean, do we have an affidavit or anything?

5 MR. FOX: I do not.

6 THE COURT: I mean, do I have anything to corroborate Mr.
7 Kennedy. You said he's a difficult witness, you know, I don't
8 know if Mr. Kennedy even intends to come.

9 MR. FOX: I do not have any of that information, Your
10 Honor.

11 THE COURT: All right. I'll deny your motion to
12 continue.

13 MR. FOX: Yes, sir.

14 THE COURT: All right, Mr. DeBusk?

15 MR. OSKIN: Yes, sir, Your Honor, with regards to the
16 *Jackson v. Denno* motion, the State would call Detective Emilie
17 Hardwick.

18 THE COURT: All right.

19 CLERK: Please raise your right hand.

20 EMILIE HARDWICK, HAVING BEEN SWORN

21 TESTIFIES AS FOLLOWS:

22 CLERK: Please state your full name and spell your first
23 and last name for the Court.

24 MS. HARDWICK: I'm Detective Emilie Hardwick. I go by
25 Amy. First name is spelled E-M-I-L-I-E and the last name is

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EMILIE HARDWICK - DIRECT BY OSKIN

13

1 H-A-R-D-W-I-C-K.

2 DIRECT EXAMINATION OF EMILIE HARDWICK BY MR. OSKIN:

3 Q: Detective Hardwick, what's your occupation, ma'am?

4 A: I'm a detective with the Horry County Police Department
5 in the Major Crimes Unit currently assigned to the Homicide
6 Section.

7 Q: How long have you been with Horry County Police?

8 A: This October will be 11 years.

9 Q: Any prior law enforcement experience before ---

10 A: No.

11 Q: What's your current assignment, ma'am?

12 A: I'm a detective in the Homicide Unit and have been
13 assigned there since the fall of last year.

14 Q: You were employed with Horry County in May of last year?

15 A: Yes.

16 Q: What did -- just broadly, what are some of the duties of
17 a detective in your capacity?

18 A: Currently, I investigate all death investigations to
19 include suicides, overdoses and homicides, and attempted
20 murders that could later on go into a homicide depending on
21 the scope of the injuries. Previous to that I was in the
22 Special Victim's Unit where I investigated sexual assaults,
23 child abuse cases, and also attempted murders and elder cases
24 and then I was a Property Crimes Detective before that.

25 Q: Thank you. With regard to this case, did you have any

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EMILIE HARDWICK - DIRECT BY OSKIN

14

1 involvement in the case State v. Joshua Maiden charged with
2 attempted murder?

3 A: Yes, I was the lead investigator assigned to the case.

4 Q: Okay. And again briefly, once you're assigned to the
5 case, what happened next, what was your involvement in the
6 case?

7 A: I was called out to the incident that Sunday to respond
8 at The Boathouse in reference to the victim being ran over by
9 a vehicle and transported to Grand Strand Hospital. I
10 responded to The Boathouse; another detective went to the
11 hospital to make contact with the victim, Alex Miniet. And
12 when I went to The Boathouse, I looked at the scene, got
13 briefed by the officers about what was going on and
14 interviewed the witnesses that viewed the incident.

15 Q: Without going through the whole spiel at this time, were
16 you able to identify a suspect?

17 A: Yes.

18 Q: Who was that suspect?

19 A: Joshua Maiden.

20 Q: And were you able to locate him that night or shortly
21 thereafter?

22 A: Yes.

23 Q: And where were you able to locate him at?

24 A: He was located in the vicinity of his parents' home that
25 he was staying at for the weekend in Burning Ridge.

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EMILIE HARDWICK - DIRECT BY OSKIN

15

1 Q: Okay. At that time, did you put him under arrest?

2 A: The Central Police Officer, Central Precinct Police
3 Officers did arrest him and transport him to the M.L. Brown
4 Building to the main police department per our request.

5 Q: All right. And once you got to M.L. Brown, did you or
6 any other officers interview him?

7 A: Yes, myself and Detective King Hemingway interviewed him
8 in the interview room.

9 Q: Okay. Let's talk a little bit about the Defendant's
10 background; how old is he, if you know?

11 A: If he hasn't had a birthday yet, he's 32.

12 Q: Any idea how much education he has?

13 A: No.

14 Q: From your conversation with the Defendant that night of
15 the interview, did he appear to be able to understand the
16 English language?

17 A: Yes.

18 Q: Okay. Did he appear to understand the questions you were
19 asking?

20 A: Yes.

21 Q: Did he appear to respond appropriately ---

22 A: Yes.

23 Q: --- to your questions? Detective Hardwick, have you have
24 a chance, in your experience in law enforcement, to come
25 across people who are under the influence of alcohol or drugs?

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EMILIE HARDWICK - DIRECT BY OSKIN

16

- 1 A: Yes.
- 2 Q: And did Mr. Maiden, at this time, appear to exhibit any
3 of those symptoms?
- 4 A: No.
- 5 Q: At any point, did he state that he was under the
6 influence of any drugs or alcohol?
- 7 A: He stated that he did consume some cocaine about 4:30
8 that afternoon, and he had stopped drinking about 7:30 that
9 evening; that he was buzzed, but he was fine to answer our
10 question and to go on with the interview and that was at 23:36
11 hours.
- 12 Q: So, for non-law enforcement or military, that's 11 ---
- 13 A: 11:36, sorry.
- 14 Q: Okay. So four hours after ---
- 15 A: Uh-huh (affirmative response).
- 16 Q: --- he said he had stopped using any substances? Did he
17 -- did he show any signs at that time, in your experience, to
18 show that he was, was intoxicated?
- 19 A: No. He didn't have any slurred speech or glassy eyes and
20 he was able to follow with our questions and carry on a
21 conversation without any moments or pauses.
- 22 Q: Did he express any concern about him talking to y'all?
- 23 A: No.
- 24 Q: And he didn't have any trouble following along with you?
- 25 A: No.

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EMILIE HARDWICK - DIRECT BY OSKIN

17

1 Q: Okay. Let's get to the next portion. What, if any,
2 information did you give to the Defendant, Mr. Maiden, about
3 his rights?

4 A: I advised him of his Miranda Rights. We use the standard
5 form. And then I get his information, his name and his date
6 of birth, and then I turn it to where he can read the form as
7 I read him his rights.

8 Q: Okay. And you said a form, you have a form that you use
9 for this -- for these type of interviews?

10 A: Yes.

11 MR. OSKIN: Your Honor, at this time, I'd like to
12 introduce State's 1 for identification only?

13 THE COURT: All right.

14 STATE'S EXHIBIT NUMBER 1

15 MARKED FOR IDENTIFICATION

16 BY MR. OSKIN:

17 Q: Detective Hardwick, I'm showing you what's been marked as
18 State's Exhibit 1.

19 A: Okay.

20 Q: Are you able to recognize that, ma'am?

21 A: Yes.

22 Q: What is that?

23 A: This is the Miranda form that we went over with him and
24 that he initials that he understood his rights and then he
25 printed his name on the top right and then signed and then I

1 signed and Detective King Hemingway witnessed the signatures.
2 Q: So that's how you went over the form with him?
3 A: Uh-huh (affirmative response).
4 Q: So you told him he had the right to remain silent and
5 refuse any questions answered -- refuse to answer any
6 questions?
7 A: Yes.
8 Q: Did you tell him that anything he said could be used
9 against him in a court of law?
10 A: Yes.
11 Q: Did you tell him he had the right to an attorney?
12 A: Yes.
13 Q: Did you tell him if he couldn't afford one, one would be
14 appointed for him?
15 A: Yes.
16 Q: What, if anything, do you do with that form to get the
17 Defendant to state that he understands it? I believe you said
18 you have him initial it?
19 A: Yes, at here there's a question that says, Do you
20 understand these rights? And he initialed it yes.
21 Q: His initials are present on the form?
22 A: Uh-huh (affirmative response).
23 Q: And you signed the form you said?
24 A: Yes, I signed it.
25 Q: Okay. And that was witnessed by Detective Hemingway as

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EMILIE HARDWICK - DIRECT BY OSKIN

19

1 well?

2 A: Yes.

3 Q: At any point, did the Defendant invoke any of his rights?

4 A: No.

5 Q: Did he state at any time he wished to stop speaking with
6 you?

7 A: No.

8 Q: At any time did he request a lawyer during the interview?

9 A: No.

10 Q: Did he at any time insinuate that he wished to end the
11 conversation?

12 A: No.

13 Q: Lastly, did he in any way invoke any of the rights that
14 you went over with him?

15 A: No.

16 Q: All right. Now lastly, did you make any promises to the
17 Defendant regarding his cooperation or any threats?

18 A: No.

19 Q: Did you tell him anything about what he needed to tell
20 you?

21 A: No.

22 Q: Is there a video tape of this interview?

23 A: It's video and audio recorded.

24 MR. OSKIN: Your Honor, at this time, the State would
25 move introduce the statement?

State v. Maiden - 2016-GS-26-03399
EMILIE HARDWICK - DIRECT BY OSKIN

20

1 THE COURT: Mr. Fox?

2 MR. FOX: No questions, Your Honor.

3 THE COURT: He was introducing the statement.

4 MR. FOX: Without objection.

5 THE COURT: Okay. Go ahead.

6 STATE'S EXHIBIT NUMBER 2

7 MARKED FOR IDENTIFICATION

8 MR. OSKIN: Your Honor, if it's without objection, the
9 State would move forward to where the Defendant ends his
10 conversation?

11 MR. FOX: No objection to that, Judge.

12 THE COURT: All right. You may do so.

13 THE COURT: I can't hear it and I'm sure Kay can't.

14 MR. OSKIN: I apologize, Your Honor, we had this working
15 just a moment ago and it's decided to cease functioning.

16 THE COURT: Mr. OSKIN, did you let Mr. DeBusk bother it
17 after you got it working?

18 MR. OSKIN: No, sir, Your Honor, I apologize for the
19 situation. Your Honor, in all fairness, we'll back it up to
20 where the conversation begins.

21 Madam Court Reporter, please let me know if you need an
22 increase in volume.

23 COURT REPORTER: Actually, we are off the record while
24 this is playing and the DVD should be marked as an exhibit. I
25 don't repeat what's played on audio like that.

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EMILIE HARDWICK - DIRECT BY OSKIN

21

1 MR. OSKIN: Okay.

2 THE COURT: All right. So, if you're not gonna do it
3 all, what I want you to do is put the device in after you've
4 played it and let's put on the record where it begins, the
5 part that you're offering, and where it ends.

6 COURT REPORTER: Just recite the counter number when it
7 starts and stops. See the counter number across the top,
8 23:32:50.

9 THE COURT: All right. It's beginning at 23:33, right?

10 MR. OSKIN: Yes, sir, Your Honor.

11 THE COURT: Okay.

12 *****OFF THE RECORD*****

13 (REPORTER'S NOTE: State's Exhibit 2 published for the Court,
14 23:33:00 to 23:48:06. Not transcribed herein.)

15 **(On the Record.)**

16 MR. OSKIN: Your Honor, that concludes the first portion
17 of the interview. At this time the State would submit to the
18 Court that voluntariness has been established. There are two
19 other parts of the interview?

20 THE COURT: Are you asking me to rule on partial?

21 MR. FOX: Your Honor, there are two. This continues, for
22 some reason the video stopped. It continues -- there's no
23 break in it, but there is more to the interview, about another
24 15, 20 minutes, and we would request Your Honor hear the whole
25 thing before you issuing a ruling.

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RULING OF THE COURT

22

1 THE COURT: Okay. Let's hear it.

2 *****OFF THE RECORD*****

3 (REPORTER'S NOTE: State's Exhibit 2 published for the Court,
4 23:48:19 to 23:59:39 and 00:00:00 to 00:26:37. Not
5 transcribed herein.)

6 **(On the Record.)**

7 THE COURT: Mr. Fox, do you have any objection or, or do
8 you contest the voluntariness of this statement?

9 MR. FOX: I do not, Your Honor.

10 RULING OF THE COURT:

11 THE COURT: Okay. Well, having watched the statement,
12 having considered all the factors of the characteristics of
13 the accused, he appears to be very intelligent, very
14 articulate, there doesn't seem to be any evidence of
15 intoxication. I've considered the details of the
16 interrogation. He was certainly advised of his rights. The
17 length of detention, it's been what, 45 minutes or so, but
18 it's just been the Defendant setting forth his side. There's
19 been very little in the way of questioning by the police.
20 They've just let him tell his side of the story. Certainly,
21 there's been no deprivation of food or sleep. I think at the
22 very beginning they even asked him if he needed anything, and
23 it's apparent that he had water or some sort of beverage
24 during the interrogation. I see no evidence of coercion by
25 the police and I make a finding that it was a free and

State v. Maiden - 2016-GS-26-03399
BY THE COURT

23

1 voluntary statement. Okay? MR. OSKIN: Thank you, sir, Your
2 Honor.

3 THE COURT: Okay. All right. With that, now anything
4 else before we bring in the jury?

5 MR. DEBUSK: We're gonna move the screen back.

6 THE COURT: All right. While you do that, we'll take a
7 little brief break to run to the restroom.

8 (RECESS - 2:23 P.M.)

9 *****OFF THE RECORD*****

10 (On the Record - 2:33 P.M.)

11 (REPORTER'S NOTE: Jury enters courtroom.)

12 BY THE COURT:

13 THE COURT: Good afternoon. Good to see you again.

14 Please be seated.

15 I bet you thought we were in here just having that long
16 lunch period again, didn't you? Actually we were working on
17 this particular case. There are many things that have to be
18 done before the case is actually ready for trial. Sometimes
19 there are things that have to be done immediately prior to
20 trial and that's what we have been doing over the lunch
21 period, but I appreciate you getting back here. I apologize
22 though for the delay bringing you in.

23 We have here before us today the case of the State of
24 South Carolina versus Joshua William Maiden, M-A-I-D-E-N. Mr.
25 Maiden is seated here with his counsel, Mr. Eric Fox.

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BY THE COURT

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1 Mr. Maiden, stand up so they can see who you are.

2 Thank you.

3 Mr. Maiden is before this Court charged under an
4 indictment. Let me make one thing very clear before we go any
5 further. An indictment is nothing more than a formal document
6 that sets out a charge. It puts a Defendant on notice of the
7 charge. It is not evidence, should not be considered by you
8 as evidence. And the fact that a Defendant -- and I use that
9 word, Defendant, not as an attempt purposefully or otherwise
10 to intimate anything about Mr. Maiden's guilt or innocence.
11 It's simply that's the word that we use in the court. But
12 that indictment is not evidence and it raises absolutely no
13 indication one way or the other whether he is guilty. He
14 comes to this Court with a presumption of innocence and you
15 may base any decision you make if you're placed on this jury
16 concerning his guilt or innocence only upon the evidence you
17 hear from this witness stand. No presumption is raised at all
18 by the fact that an individual may find himself before this
19 Court.

20 Now what we are here to do this morning or this afternoon
21 is select a jury. And, as I told you this morning, we're
22 gonna talk about this particular case. Under this indictment,
23 it is alleged -- and again, I want to stress to you -- it is
24 alleged that on or about May the 22nd, 2016, the Defendant Mr.
25 Maiden committed the offense of attempted murder in that he

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1 did attempt to kill one Alexander Miniet. And the alleged
2 facts of this case arise out of an incident that allegedly
3 took place at Boathouse restaurant/bar. Some of you may be
4 familiar with it; it's down on the Waterway near the old
5 Pottery location. It is alleged that an altercation took
6 place between Mr. Maiden and Mr. Miniet and it is alleged that
7 thereafter Mr. Maiden attempted to or did run over Mr. Miniet
8 with the intent of committing murder. Now, those are the
9 basic facts of this case.

10 Now, let me tell you how we go about selecting a jury in
11 a criminal case because it's different from the way that we
12 would try and select a jury or go about the selection of a
13 jury if this were a civil case, and we talked about that this
14 morning and I explained the difference to you.

15 If this were a civil case, we have a very kind and
16 gentle way of doing it. What would happen is my Clerk or the
17 Clerk of Court down here would randomly juggle those of you
18 who have not been disqualified for service on this particular
19 case and she would put those on a list, something like this,
20 and you would be given all new numbers. And the reason you
21 would be given a new number, so you wouldn't even know if we
22 were talking about. And then the attorneys would be given
23 that list and they would sit there at the table -- and you're
24 probably all familiar with how jury selection goes. Each
25 attorney has so many strikes that they make and they would --

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1 the Plaintiff would go first and then the Defendant and they
2 would call out numbers and they would strike the witnesses
3 until they had a jury. And then jury just sits there and you
4 don't know whether you've been struck or even considered.
5 Now, isn't that a kind and gentle way to do it?

6 On the criminal side though, the juris prudence of this
7 state and the English Common Law is that your name will be
8 called at random -- again, the list is made at random -- but
9 your name will be called if you're in the top of the list at
10 least until we get our jurors, and you'll be required to come
11 right down here in front of me and turn around and face all
12 the other jurors and the parties and their attorneys. At that
13 time, the State will begin and the State will say one of two
14 things. The State will either say excuse the juror on this
15 case and, if the State says excuse the juror on this case,
16 then you'll return to your seat and you will have been struck
17 from this particular jury. If the State says, on the other
18 hand, present the juror, that means the juror is then
19 presented to the Defense, and the Defense attorney, Mr. Fox,
20 will either say excuse the juror, and it would have the same
21 effect as if the State did it, you'll return to your seat and
22 you will have been struck by the Defense. Or, Mr. Fox will
23 say swear the juror and, if he says swear the juror, you'll
24 come around here and Mr. Ropp will place you in the jury box
25 and you will sit on our jury.

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1 Now many people find that to be an intimidating process
2 and some people are embarrassed if they are struck. And
3 you're gonna notice that Mr. Oskin and Mr. DeBusk and Mr. Fox
4 are gonna sit there and they're gonna make faces and scratch
5 their heads and they're gonna look so serious and you would
6 think that they would know what they are doing, but I promise
7 you they do not. There is nothing -- and that's no reflection
8 on these fine attorneys. I tell you, as I mentioned
9 yesterday, I practiced for probably 32 years or so before I
10 went on the bench and there is nothing, nothing more difficult
11 than selecting a jury. Isn't that right, Mr. Fox?

12 MR. FOX: It is, Your Honor.

13 THE COURT: Isn't that right, Mr. DeBusk?

14 MR. DEBUSK: Yes, Your Honor.

15 THE COURT: Mr. DeBusk has been doing it a long time,
16 too. It is difficult because they know little or nothing
17 about you. Certainly, it goes almost without saying that each
18 attorney wants a juror that will be fair and impartial. They
19 want a jury that they may feel would be sympathetic to their
20 position in the case and that's what attorneys should be
21 looking for, but they have little information about you. Now
22 you send in that little form that basically says whether
23 you're married or where you live and that sort of stuff, but
24 they don't know you. You may be struck, as my friend, Judge
25 Floyd used to say because you part your hair on the left or

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1 you part your hair on the right or you got no hair to part.
2 It is basically a gut feeling that these attorneys have to
3 make very quickly when they are selecting a jury.

4 So, please, I hope you would not have your feelings hurt
5 or anything like that because you're struck. You know I
6 always tell jurors this and in fact you're probably all out
7 there sitting in that seat saying I hope I get struck. But,
8 those of you who do get an opportunity to sit on this jury, I
9 hope you will, by the end of the case, and most jurors tell me
10 they do, you will have a new appreciation not only for the
11 system but for the importance and power of a jury. Each of
12 you have an absolute constitutional right to be able to come
13 into court and participate in this procedure. You make
14 decisions that neither I can make, nor the Governor can make,
15 nor the President can make. Only a juror can make those --
16 those, those decisions and they're some of the most important
17 decisions that you will ever make in your life and I hope you
18 look on it as a right as opposed to an obligation that you
19 have to serve.

20 Now, I want to ask you some questions about your service
21 on this particular juror or jury. Now we've talked about the
22 case generally speaking. I think I've given you enough
23 information for you to kinda know about what happened. You
24 would know whether you have any knowledge concerning this
25 event. As I said, it was back May 22nd last year at The

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1 Boathouse and the allegations are that it was a dramatic
2 moment there so I'm sure that you would remember it.

3 Now it is so important that you answer my questions
4 truthfully that we're going to place you under oath again.
5 That's a unique thing about jurors, and I think it points to
6 how important jurors are. You know, this morning you took an
7 oath to tell the truth when you were answering your qualifying
8 questions. Now, you're taking an oath concerning your answers
9 to questions concerning this particular case, and if you get
10 on the jury, you take an oath again that you will well and
11 truly try the case. A witness only has to swear one time;
12 jurors swear three. Does that say something about the
13 significance and the importance of a juror?

14 Now, Madam Clerk, would you please administer before I
15 begin the questions?

16 CLERK: Please stand and raise your right hand.

17 (REPORTER'S NOTE: Jury is duly sworn.)

18 CLERK: Please be seated.

19 THE COURT: Please be seated.

20 Mr. Fox, Mr. DeBusk, do you have a witness list for me?

21 MR. DEBUSK: I have put it on the ---

22 THE COURT: Have you? Okay. I'm sorry. My mistake, I
23 just did not see it.

24 VOIR DIRE:

25 THE COURT: Okay. Has anyone of you ever had a close

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VOIR DIRE

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1 personal or social relationship or are you related by blood or
2 marriage or have you been related by marriage to either the
3 Defendant in this case, Mr. Maiden, or the alleged victim in
4 this case, Mr. Miniet? Anyone know these people or have any
5 connections or dealings with them or are related or otherwise?

6 And there's no response.

7 You'll hear me say that. I'll ask you a question and if
8 there is no response, I'll say there's no response. That's
9 because Ms. Richardson here is a Certified Court Reporter.
10 She works for the State of South Carolina. We have here what
11 we call a Court of Record. Everything that is said, whether I
12 say it or a witness or whatever, has to be recorded. You
13 might have noticed that she was down there this morning during
14 the jury qualification taking everything down. Sometimes, I
15 wish she wouldn't take everything that I say down, but she
16 does. But, that's her purpose and that's why she's here. So
17 if I ask a question to someone and there's no verbal response,
18 I always have to say let the record show and that's what I'm
19 referring to when I say that.

20 Now, has anyone of you, I'll ask the same question, been
21 related by blood or marriage, either now or formerly, or have
22 you any personal or social relationship whatsoever with any of
23 the following people who are potential witnesses in this case?
24 Now, when I say potential witnesses, I require these attorneys
25 to give me the names of anybody that they think might possibly

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1 testify. All of these people -- or I will be very surprised
2 if all of them testify, but you know, you may hear a name and
3 then you say, well, what happened to that witness. It's
4 probably nothing; that it doesn't mean a thing. It's just
5 that I want -- if there's anybody that might possibly know, we
6 want to know if anybody on the jury might know them. But do
7 you have any personal relationship, are you related by blood
8 or marriage, do you have a social relationship with any of the
9 following witnesses: Matt Chiviattoni -- is that correct, Mr.
10 DeBusk?

11 MR. DEBUSK: Yes, Your Honor.

12 THE COURT: Okay. That's obviously a good ole Horry
13 County name. Henry Tripp Cohen; Randy Melko; Officer Bill
14 Dietzl, he is with the Horry County Police Department; Amy
15 Hardwick, again with the Horry County Police Department;
16 Robbie Caulder, again with the Horry County Police Department;
17 Sara Goodman, who's with SLED; Alexander Miniet and we've
18 spoken of him earlier; Sharon Lilly, who is with the Horry
19 County Police Department; Renee Hardwick, who is a 911
20 Dispatcher; Quan Pratt; Ryan Matthews; of course, Mr. Maiden,
21 Joshua Maiden; Aaron Kennedy or Tracy Stevens. Is anyone
22 related by blood or marriage, do you have a close personal or
23 social relationship with any of these potential witnesses that
24 I have indicated?

25 And there's no response to that.

1 Now, the attorneys in this case are Mr. Seth Oskin.
2 Stand up Mr. Oskin. Mr. Oskin is with the Solicitor's office
3 here in the Fifteenth Judicial Circuit. He's been there for
4 about three years?

5 MR. OSKIN: I believe I'm right at two, Your Honor.

6 THE COURT: About two years; he's been here about two
7 years.

8 He's there with Mr. George DeBusk. Mr. DeBusk has been
9 here a long time. Mr. DeBusk is also one of our senior
10 solicitors. Mr. DeBusk, you're like number two man there
11 aren't you now; you're second longest serving?

12 MR. DEBUSK: Never quite sure. Close.

13 THE COURT: Close. He's been there a long time.

14 Mr. Eric Fox, Mr. Fox is with the Fifteenth Circuit
15 Public Defender's office and he likewise is a senior member of
16 our bar.

17 Is anyone related by blood or marriage, do you have a
18 close personal or social relationship with or have you been --
19 and I wouldn't imagine that you have, because these are public
20 lawyers, have any of you ever been represented by any of the
21 attorneys or do you have any reason to believe that because of
22 any relationship that you or your family might have with these
23 attorneys, that you could not be fair in this case?

24 And there was no response to that.

25 Has anyone on this jury panel formed an opinion about any

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1 issue or matter involving this case -- and I'm sure you
2 probably don't know a whole lot about that, but what I'm
3 asking you is this, have you even considered this case in that
4 past? Have you discussed this case with anybody? Have you
5 read anything about this case? Do you know anything about
6 this case?

7 Yes, sir, stand and give me your name.

8 JUROR 14: Al Sieffert.

9 THE COURT: All right. Mr. Sieffert?

10 JUROR 14: Yes.

11 THE COURT: Just out of an abundance of caution, how
12 about let me have you come around here ---

13 JUROR 14: Sure.

14 THE COURT: --- and you kind of tell me what you might
15 know because otherwise everybody on the jury is gonna know.
16 (REPORTER'S NOTE: A bench conference was held on the record
17 in the presence of but out of hearing of the Jury.)

18 THE COURT: Yes, sir?

19 JUROR 14: The only thing I know about it, I -- I live
20 not far from there. Okay? And I saw, I believe, an article
21 in the paper looking for witnesses or information about this
22 incident that happened at The Boathouse.

23 THE COURT: But other than that, do you know anything
24 about the case?

25 JUROR 14: No, just what I've read in the paper that, you

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VOIR DIRE

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1 know, there was an altercation.

2 THE COURT: Do you know whether it's true or not true?

3 JUROR 14: I don't know the facts.

4 THE COURT: Would the fact that you were exposed to that
5 cause you to form an opinion in this matter?

6 JUROR 14: No. I just wanted to be honest and tell you
7 that I did see it in the paper.

8 THE COURT: Can you set it aside and be fair to both
9 sides?

10 JUROR 14: Sure enough, yeah.

11 THE COURT: And give both the State and the Defense a
12 fair trial?

13 JUROR 14: Yes, sir.

14 THE COURT: Well have a seat and stay with us.

15 JUROR 14: Okay.

16 THE COURT: All right. Now, I asked you on this morning
17 if any of you had been on the Grand Jury in the last three
18 years and you all answered negatively, that is you could not
19 have been on the Grand Jury when this indictment was issued.
20 Is that correct? Is there anyone who may have been on the
21 Grand Jury in the last year?

22 And there is no response to that.

23 Is there any member of the jury panel who is a member or
24 contributor, supporter of a group which has its primary
25 concern the promotion of law enforcement or victim's rights?

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VOIR DIRE

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1 And again, there's absolutely nothing wrong with these groups
2 at all or your participation in them, but we would just like
3 to know. Groups like that would be MADD or SADD or CAVE,
4 which I think is Citizens Against Violent Crimes, things like;
5 anything like that?

6 And there's no response.

7 Does any member of this jury panel know any reason
8 whatsoever why he or she should not serve as a juror on this
9 case with particular emphasis being placed on your ability to
10 be fair and impartial to both the State and the Defense?
11 That's what we're seeking, a fair and impartial jurors.

12 And there's no response.

13 Anything further, Mr. Fox?

14 MR. FOX: No, Your Honor.

15 THE COURT: Anything further, Mr. DeBusk?

16 MR. DEBUSK: No, Your Honor.

17 THE COURT: Very well.

18 All right. Let's begin the process. Again, as your name
19 is called, come forward, stand right here ---

20 MR. DEBUSK: Your Honor, may we approach briefly?

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

23 THE COURT: All right. If you would, give us a name.

24 And again, I will say, if you have personal effects with
25 you, bring them up because if we put you in the jury box, you

JURY SELECTION

1 won't actually go back to your seat. Okay? A jacket or your
2 purse or whatever. Okay?

3 It's five and five.

4 JURY SELECTION:

5 CLERK: Number 293, Phillip Roberts.

6 What say the State?

7 MR. OSKIN: Please present the juror.

8 CLERK: Defense?

9 MR. FOX: Please swear the juror.

10 CLERK: Please be seated in our jury box.

11 THE COURT: Now see what a good job Mr. Roberts did?

12 Right on the jury there. Exactly right.

13 CLERK: Number 180, Derrick Jordan.

14 What say the State?

15 MR. OSKIN: Please present the juror, Your Honor.

16 CLERK: Defense?

17 MR. FOX: Your Honor, if we could put it on the record
18 later, I'd ask this juror, based on information we have, be
19 excused for cause.

20 THE COURT: All right.

21 MR. FOX: I believe he's a relative of someone that's
22 employed with the Solicitor's office.

23 THE COURT: All right. Mr. Jordan, isn't Gayle Jordan
24 your ---

25 JUROR 180: My aunt.

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1 THE COURT: She's your aunt?

2 JUROR 180: Yes, sir.

3 THE COURT: All right. I'll tell you what I'm gonna do.
4 I'm going to stand you aside on this case. I'll let the Court
5 strike you because we have an interest in making sure that
6 there's not even the appearance that anybody might be
7 influenced, not that you would, Mr. Jordan, but I'm gonna
8 allow you to return to your seat. Thank you.

9 CLERK: Juror 196, Maria Lane.

10 MR. OSKIN: Please present the juror, Your Honor.

11 CLERK: Defense?

12 MR. FOX: Please swear this juror.

13 CLERK: Please be seated in our jury box.

14 Number 359, Vickie Vandyke.

15 What say the State?

16 MR. OSKIN: Please present the juror, Your Honor.

17 CLERK: Defense?

18 MR. FOX: Please seat this juror.

19 CLERK: Please be seated in our jury box.

20 399, Wayne Zehr.

21 What say the State?

22 MR. OSKIN: Please present the juror.

23 CLERK: Defense?

24 MR. FOX: Please excuse this juror.

25 CLERK: You're excused from this particular case. You

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JURY SELECTION

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1 can just stay at your seat.
2 Number 290, Rochelle Ripley.
3 What say the State?
4 MR. OSKIN: Please present the juror.
5 CLERK: Defense?
6 MR. FOX: Please swear this juror.
7 CLERK: Please be seated in the jury box.
8 Number 208, Robert Leeper.
9 What say the State?
10 MR. OSKIN: Please present the juror.
11 CLERK: Defense?
12 MR. FOX: Please excuse this juror.
13 CLERK: You're excused from this particular case.
14 43, Kerry Brown.
15 What say the State?
16 MR. OSKIN: Please present this juror.
17 CLERK: Defense?
18 MR. FOX: Please swear this juror.
19 CLERK: Please be seated in the jury box.
20 173, Sally Howard.
21 What say the State?
22 MR. OSKIN: Please present the juror.
23 CLERK: Defense?
24 MR. FOX: Please swear this juror.
25 CLERK: Please be seated in the jury box.

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1 214, Wesley Lewis.
2 What say the State?
3 MR. OSKIN: Please excuse the juror from this matter.
4 CLERK: You're excused from this particular case.
5 122, Sharon Forbes.
6 What say the State?
7 MR. OSKIN: Please present the juror.
8 CLERK: Defense?
9 MR. FOX: Please seat this juror.
10 CLERK: Please be seated in the jury box.
11 235, Kimberly McGraw.
12 What say the State?
13 MR. OSKIN: Please present the juror.
14 CLERK: Defense?
15 MR. FOX: Please excuse this juror.
16 CLERK: You're excused from this particular case.
17 182, John Judy.
18 What say the State?
19 MR. OSKIN: Please present the juror.
20 CLERK: Defense?
21 MR. FOX: Please swear this juror.
22 CLERK: Please be seated in the jury box.
23 321, Alfred Sieffert.
24 What say the State?
25 MR. OSKIN: Please present the juror.

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1 CLERK: Defense?

2 MR. FOX: Please swear this juror.

3 CLERK: Please be seated in the jury box.

4 134, Bryson Gillig.

5 What say the State?

6 MR. OSKIN: Please present this juror.

7 CLERK: Defense?

8 MR. FOX: Please excuse this juror.

9 CLERK: You're excused from this particular case.

10 7 -- I can't -- I don't even want to screw it up for you.

11 THE COURT: Layveleta.

12 CLERK: What say the State?

13 MR. OSKIN: Please excuse the juror from this particular

14 matter.

15 CLERK: You're excused from this particular case.

16 286, Sunday Reiser.

17 What say the State?

18 MR. OSKIN: Please present the juror.

19 CLERK: Defense?

20 MR. FOX: Please swear this juror.

21 CLERK: Please be seated in the jury box.

22 287, Diana Rettig.

23 What say the State?

24 MR. OSKIN: Please present this juror.

25 CLERK: Defense?

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1 MR. FOX: Please seat this juror.

2 CLERK: Please be seated in the jury box.

3 188, Jill Kouche.

4 What say the State?

5 MR. OSKIN: Please excuse the juror from this matter.

6 CLERK: You're excused from this particular case.

7 239, Marlene Melendez.

8 What say the State?

9 MR. OSKIN: Please present this juror.

10 CLERK: Defense?

11 MR. FOX: Please excuse this juror.

12 CLERK: You're excused from this particular case.

13 339, Mary Stout.

14 What say the State?

15 MR. OSKIN: Please present the juror.

16 MR. FOX: Please swear this juror.

17 CLERK: Please be seated in the jury box.

18 THE COURT: All right. Let's do two alternates, 22
19 through 24 will be your first alternate. I give each one
20 strike. And then 25 through 27 and I'll give you one strike
21 each. Okay? Let's do the first one again striking from 22 to
22 24.

23 Mr. DeBusk, you strike first.

24 MR. DEBUSK: I'm sorry, Your Honor, pardon me?

25 THE COURT: All right. Our next jurors are 22, 23 and 24

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1 on the left-hand side. You see those numbers?

2 MR. FOX: I don't have 24, Your Honor.

3 MR. OSKIN: 23 has been excused, Your Honor.

4 MR. DEBUSK: I think we're looking at a different list.

5 MR. FOX: We don't have the same list.

6 THE COURT: Well, they should have the same list that I
7 have. It's been the same so far.

8 MR. DEBUSK: We only have the list of the full jury.

9 THE COURT: All right. Let's just call the witnesses.

10 All right. Can you do that? Go ahead.

11 CLERK: Just keep calling?

12 THE COURT: Ayars.

13 CLERK: Michael Ayars, Number 12.

14 What say the State?

15 MR. OSKIN: Please excuse this juror.

16 CLERK: You're excused from this particular case.

17 135, Juan Gonzalez.

18 What say the State?

19 MR. OSKIN: Please present the juror.

20 CLERK: Defense?

21 MR. FOX: Please excuse this juror.

22 CLERK: You're excused from this particular case.

23 72, Jing Collins.

24 What say the State?

25 MR. OSKIN: Please present the juror.

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1 CLERK: Defense?

2 MR. FOX: Please excuse this juror.

3 CLERK: You're excused from this particular case.

4 MR. DEBUSK: Your Honor?

5 THE COURT: Mr. Fox?

6 MR. FOX: I'm sorry, is it 1 and 1, Your Honor?

7 THE COURT: Yes.

8 MR. FOX: I'm sorry. I was thinking two and one.

9 THE COURT: I'm gonna allow the strike being there was
10 some confusion. Call the next witness -- next juror then.

11 CLERK: 348 ---

12 THE COURT: I'll give Mr. DeBusk two strikes as well.

13 MR. FOX: Yes, sir.

14 CLERK: 348, Russell Tindal.

15 What say the State?

16 MR. OSKIN: Please present this juror.

17 CLERK: Defense?

18 MR. FOX: Swear the juror.

19 CLERK: Please be seated in the jury box.

20 THE COURT: Okay. One strike each next three witnesses,
21 I mean jurors. Go ahead and call the names.

22 CLERK: 22, Logan Bell.

23 What say the State?

24 MR. OSKIN: Please present the juror.

25 CLERK: Defense?

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1 MR. FOX: Please swear the juror. THE COURT: Very well.

2 CLERK: Please be seated in the jury box.

3 THE COURT: All right. Mr. Fox, will there be a
4 challenge to this panel?

5 MR. FOX: Not from the Defense, Your Honor.

6 THE COURT: The State, will there be a challenge to the
7 panel?

8 MR. OSKIN: No challenge, Your Honor.

9 BY THE COURT:

10 THE COURT: Okay. Very well. We have our jury and two
11 alternates. The rest of you are certainly excused, but you
12 are welcome to stay if you want, But, if you wish to, you may
13 leave. Please call back after 6:00 today. All right? Thank
14 you.

15 (REPORTER'S NOTE: Remaining Jury Venire exit courtroom. 3:08
16 P.M.)

17 THE COURT: Okay. Ladies and gentlemen, you have been
18 selected as our jurors and, as I mentioned a moment ago, you
19 have to take another oath.

20 So, Madam Clerk, would you?

21 CLERK: Please stand and raise your right hand?

22 (REPORTER'S NOTE: Jury panel duly sworn.)

23 THE COURT: Was there anyone who did not take the oath?

24 (REPORTER'S NOTE: No response.)

25 THE COURT: And all parties have affirmed that they did.

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1 Please have a seat.

2 Ms. Brown, I'm going to ask you to serve as our Forelady.
3 I would ask you to always occupy that seat as we come and go
4 from the courthouse or courtroom. Always come back to that
5 seat so we'll be able to identify you. You are the liaison
6 between the Court and the jury. If you need anything, if any
7 problem arises, if you need to communicate with the Court, you
8 will always have Mr. Ropp or one of these deputies available
9 to you, always, and you just need to pass a note to them and
10 they will bring it to me and I will certainly address any
11 issues that you may have. Of course, at the end of the trial,
12 you will preside over the deliberations in this particular
13 case.

14 Now, Mr. Tindal and Mr. Bell, you are the alternates that
15 were selected and I would ask you to always take those two
16 seats. Take any one you want, but always the two on the end;
17 that's where the alternates sit. The rest of you can sit
18 anywhere you like when you come and go from the courtroom.

19 I mentioned something yesterday about how I try my cases.
20 In a moment, I'm gonna make some opening remarks to you and
21 I'm gone let the attorneys make their opening statements to
22 you and we'll get on with the case, but I'm gonna give you a
23 break in just a minute. But, before we get started, let me
24 again stress upon you that you are the most important
25 component of this trial. A trial is nothing more than an

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1 orderly way in which we transmit information to a jury. I
2 mean, that's what it is. It's a transfer of information, a
3 providing of information to the jury because the jury has to
4 make a decision at the end of the case as to how the case will
5 be resolved. If you uncomfortable or distracted, you cannot
6 give your attention to what's going on. So, if you become
7 uncomfortable, if you need to refresh yourself, do not
8 hesitate to raise your hand let me know. I promise you, we
9 will take a break if that occurs. If you want to bring in a
10 bottle of water or something in the courtroom with you, that's
11 perfectly all right. Mr. Ropp will make sure you have it. I
12 don't mind your doing that at all.

13 Again, I just ask that you always try to pay attention.
14 If -- and let me tell you what these lawyers are gonna do,
15 they're gonna put probably pictures or something up there for
16 you to look at and then stand right in front of it. It's just
17 something about us lawyers, we just can't help it. You will
18 do it every time. Won't you, Mr. DeBusk?

19 MR. DEBUSK: Absolutely, Your Honor.

20 THE COURT: Well, you just do.

21 Look, if you can't see, that lawyer who's standing in
22 front of it wants to know. He's trying to explain something
23 to you and if you can't see what he's showing you, then the
24 message doesn't get across. Don't hesitate; raise your hand
25 and say the attorney is blocking me, I can't see. Or, if you

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1 can't hear a witness or, or if we have a tape or anything like
2 that going, if you can't hear it, raise your hand. We only
3 want to get this information to you and that's what's
4 important about these proceedings. So, don't hesitate to let
5 us know that you can't hear or see what's going on.

6 Now, Mr. Ropp, I'm gonna let you take these folks back,
7 familiarize them with the jury room. Make sure that
8 everything that they need is back there, anything that they
9 want, and we'll bring -- let them refresh themselves and we'll
10 bring them back in in just a few moments. Okay?

11 (REPORTER'S NOTE: Jury exits courtroom. 3:14 P.M. The
12 following takes place outside the presence of the Jury.)

13 THE COURT: All right, gentlemen, let's take -- let's
14 take about 10 minutes or so, 15 minutes and get ready and
15 we'll bring the jury back in. All right?

16 (RECESS - 3:15 P.M.)

17 *****OFF THE RECORD*****

18 (On the Record. 3:28 P.M.)

19 (REPORTER'S NOTE: Jury enters courtroom. 3:30 P.M.)

20 THE COURT: All right. We have our alternates and our
21 jury here.

22 Ladies and gentlemen, we're back to begin this case.
23 Before we get started, I want to talk to you a few moments
24 about what you can expect and what would be expected of you
25 and what your duties are gonna be and what these attorneys are

1 supposed to be doing.

2 You know, you can't turn on the T.V. without some kind of
3 T.V. program involving a trial or getting ready for a trial or
4 things like that. It's gotten so I can't even find American
5 Pickers on T.V. for the shows are about trials. Let me say
6 this, every one of those just seem to be suspenseful and
7 action packed and just a thrill a minute, everything --
8 there's a surprise witness. In reality, that's not the case.
9 That's not how it generally works. I'm not saying that this
10 case wouldn't be that way, but I'm telling you that from my
11 experience, most cases -- well, jurors find most cases to be
12 slow and repetitive and that's because the search for the
13 truth is often slow and repetitive. A trial is not
14 entertaining. A trial is a search for the truth. And during
15 that trial, you're gonna see these attorneys do their job.
16 They're under an oath to conduct themselves ethically and
17 professionally, as I am. I also am under an oath to conduct
18 the trial and oversee the trial in an ethical and professional
19 manner. But you know, you as jurors have now been sworn and
20 it's likewise your job to conduct yourselves in an ethical and
21 professional manner and to take your job seriously because
22 these are very, very serious matters.

23 During this trial your job as a jury is to find the
24 truth. You as jurors are what we call the sole judge of the
25 facts. Evidence -- and the facts of a case in almost every

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1 case, there's differences between the evidence. You have to
2 sort it all out and determine what the facts are and you can
3 only use in that determination what you hear from this witness
4 stand. You must put aside any opinions or prejudices or
5 biases that you may have. You must base your decision as to
6 what actually occurred here on the evidence, the sworn
7 evidence that you hear from this witness stand and nothing
8 more. You were sworn not to do any independent research. You
9 know, since we got these cell phones and smartphones and
10 computers, we have to be very careful that witnesses -- I
11 mean, jurors aren't out there Googling the location or looking
12 up old news reports, if there were any news reports -- and I
13 don't know whether there were any news reports about this case
14 or not -- but it would be improper for you to do that. It's
15 likewise improper for you to even discuss the case with
16 anyone, including among yourselves, until you have heard all
17 the evidence. You know it's so easy, my law clerk, Ms. Smith
18 and I, we'll walk back there in the office sometimes when we
19 take a break and we'll say, oh, we like this witness or we
20 didn't like that witness or we believe this witness or we
21 don't believe that witness. It's all right for us to do it
22 because we don't participate in the process of determining the
23 effect, the value, the credibility of the witnesses. But if
24 you engaged in that, you might commit yourself in front of all
25 your other jurors to a particular witness or a particular

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1 piece of evidence and that would make it difficult for you to
2 change your mind as you heard the other side of the story.
3 So, don't do that. Think of something else to talk about when
4 you go in that jury room until you are given the entire case.
5 Now, at the end of this case, you're gonna be asked to
6 deliberate. I tried to think of an example that will help
7 jurors understand what that process actually means. It's
8 really sort of a three-part process. First of all, you have
9 to determine what the facts are and we just talked about that.
10 Now you're probably sitting there saying well, Judge, yeah,
11 you said look at the evidence and determine what the facts
12 are. You know when you were selecting us as jurors, you were
13 talking about how the attorneys didn't know any of us or
14 anything about us. Well, we don't know much about these
15 witnesses. How are we to determine what witnesses to believe
16 or not to believe? Well, let me tell you about that, you can
17 employ any device that you believe will lead you to the truth
18 because the truth is no different here than it is out there on
19 Second Avenue outside the courtroom. You can consider whether
20 a witness has had an opportunity to see or hear what that
21 witness says he or she heard or saw. You can consider a
22 witnesses' interest, prejudice, bias in the case. You can
23 consider a witness' intelligence. You can consider anything
24 including a witness' demeanor or appearance on the stand in
25 determining what the credibility or what credibility that

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1 witness should be given. In the end, you are the sole judge
2 of the facts. If I say or do anything during this trial that
3 might suggest to you that I have an opinion about the truth of
4 a witness or the credibility of a witness or a piece -- or
5 importance of a piece of evidence, it's unintentional. Please
6 disregard it. I don't have the right to have such an opinion.
7 I would never in any trial attempt to convey my thoughts to
8 the jury and I certainly would not in your case.

9 Once the facts are determined, you also need the law and
10 that's the easy part of the case because just like you are
11 sole judges of the facts, I am the sole judge of the law and
12 you must apply the law as I will give it to you at the end of
13 this trial. I will tell you the law that you must apply and
14 whether you agree with it or not, you are bound under your
15 oath to apply the law precisely as I give it to you because
16 that's exclusively my job.

17 And the third part of the process or the deliberation
18 process is that you bring them together. Think if you will
19 about a big mill with great big gears. One gear is
20 constructed by the jury; that's the facts. The other is the
21 law and that culmination of the deliberation process is where
22 you bring the two together and you see how they fit. This is
23 a criminal case and in a criminal case the burden is entirely
24 upon the State to prove to you beyond a reasonable doubt that
25 the Defendant has committed the offense that he is charged

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1 with. The Defendant has no obligation to defend himself and
2 he comes into this courtroom with a presumption, a legal
3 presumption that he is innocent until the State strips away
4 that presumption. It protects him and you must keep that in
5 mind.

6 Now, let me tell you a little bit about how the case will
7 proceed. In just a moment, these attorneys are gonna have an
8 opportunity to make what we call an opening remark. It will
9 begin with the State. Mr. DeBusk or Mr. Oskin will have an
10 opportunity to come up here and talk to you about the case.
11 Now, what they say -- remember it's not coming from the
12 witness stand -- what they say, is not evidence. It's merely
13 an overview of what they believe that they can show in this
14 case and why that would support a conviction of the Defendant
15 for the offense that he is charged.

16 Now following that, the Defense as an opportunity -- they
17 don't have to, but I suspect Mr. Fox will probably will come
18 up and he also has an opportunity, again, to set forth what
19 his position, his client's position is in the case and what he
20 may or may not want to share, he may just talk to you about
21 what the State can't show. But again, just like the State,
22 what Mr. Fox says is not evidence in the case.

23 Following that, the State will have the opportunity and
24 the obligation to present witnesses. As a witness is
25 presented, the State's attorneys will have an opportunity to

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1 directly examine them, to elicit from them such information as
2 they feel is important in this case. As each witness is
3 directly examined, Mr. Fox will have the opportunity to cross
4 examine, to challenge, to confront, that same witness and it
5 will go like that until such time as the State says, we rest,
6 and that means the State will have completed its case.
7 Thereafter, Mr. Fox again will have the opportunity, but not
8 the obligation, to put up witnesses on behalf of the Defendant
9 and the same process will be followed, direct examination,
10 cross examination, until such time as the defense says, we
11 rest.

12 Now, let me tell you about that process. While that's
13 going on, you're gonna hear these State's attorneys and Mr.
14 Fox start asking questions and you'll know where they're going
15 with that, but they'll ask 10 questions before they get to the
16 ultimate question and you're gonna want to hop across that bar
17 and just choke the living daylight out of them and say why
18 don't you ask the question you mean. Or, during the trial,
19 you may see Mr. DeBusk stand up and say, Your Honor, we object
20 or Mr. Fox stand up and say, Your Honor, we object. Please do
21 not hold that against any of these attorneys. The conduct of
22 a trial is controlled by various specific rules of evidence
23 and procedure. When I was a young lawyer and when I was in
24 law school and they were teaching these things to me, I would
25 say, that is the most ridiculous rule I have ever heard; I

1 cannot believe that we have to do that. But you know after
2 about 40 years, I'd try a case and all of a sudden, something
3 will come up and just like that, a light will come on and say,
4 ah, now I see why we have that rule. These rules are tried
5 and tested through centuries of use not only in the American
6 courts but the English courts going back again for centuries
7 and they work. The main thing that they teach you in law
8 school is how you have to present this evidence. So, when you
9 hear one of these attorneys ask 10 questions to get to one,
10 he's doing it because he's required to do it. That's the only
11 way; it's called laying the foundation, laying the basis. He
12 has to do that. Whenever an attorney questions the relevance
13 or the method or the procedure being used to enter evidence,
14 he must, under the rules and ethically he's required to stand
15 up and say I object. It's not that anyone is trying to keep
16 anything from you, that's not the case at all, it's what
17 they're required to do. So, even though you want to jump
18 across and choke them, please understand that they're doing
19 what they're supposed to do, they're doing what's required and
20 they're doing what they are trained to do.

21 At the end of all the evidence, when both sides have
22 rested, the attorneys will have an opportunity to do what we
23 call closing arguments and they'll sum up. Therein they talk
24 about what evidence has been presented, what evidence has been
25 offered to you, and what significance they place on that

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1 evidence and why that evidence is important to this particular
2 case. Again, that's their position; it's not evidence and you
3 don't consider it as evidence.

4 Following that, I will charge you on the law. That is I
5 will tell you what law you must apply to -- when you've
6 decided the facts, what you will apply to those facts to reach
7 a verdict. And again, you have to be guided by the law that I
8 give you -- that I give to you.

9 Again, let me stress upon you, you should not discuss the
10 case with anyone, not even the -- you know, it's so hard to go
11 home and you've got your husband, your wife, your significant
12 other there and they say, what you been doing? That's the
13 question I always hated to hear especially about 1 o'clock in
14 the morning from my wife, but I'm sure they're gonna ask you.
15 Just tell them, give me day, wait until I get through with
16 this case and I'll tell you all about it, and that's perfectly
17 all right. Again, don't do any independent research in this
18 case at all.

19 What I intend to do is allow these attorneys to do their
20 openings. That should bring us around to 4:30 or later and
21 then I'm gonna let you go home rather than try to go into the
22 evidence today and we'll start that first thing in the
23 morning.

24 Again, we want to thank you in advance for your attention
25 in this case. As I said, it's a very important case,

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1 important to the State, it's important to the Defendant, and
2 you are going to be asked to make one of the most important
3 decisions you ever will be asked to make.

4 Now, anything further from the State?

5 MR. DEBUSK: No, Your Honor.

6 THE COURT: Anything further from the Defense?

7 MR. FOX: No, Your Honor.

8 THE COURT: All right. Mr. DeBusk, Mr. Oskin, who will
9 open?

10 MR. DEBUSK: I will, Your Honor.

11 THE COURT: All right. Very well, Mr. DeBusk.

12 MR. DEBUSK: Thank you, Your Honor. May it please the
13 Court?

14 OPENING BY DEBUSK:

15 MR. DEBUSK: Ladies and gentlemen, you're gonna hear a
16 case this week about attempted murder. That's what it sounds
17 like, trying to kill someone. And, usually that involves some
18 sort of weapon. Sometimes it involves the hands used as a
19 deadly weapon to choke somebody, sometimes a knife, sometimes
20 a gun. This case involves 4600 pound bullet, a 4,600 pound
21 bullet in the form of a white Ford Escape SUV driven by the
22 Defendant, Mr. Maiden. He ran over a fellow named Alexander
23 Miniet in a fit of anger and tried to kill him. The only
24 reason you'd run over somebody right over the top of his body,
25 tire marks over the top of his back. You'll get to see all

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1 that. What was it over? Some disagreement. The two of them
2 didn't like each other very much. You see, Mr. Miniet had
3 fathered a baby by a lady and Mr. Maiden happened to be in a
4 relationship with that lady when the baby was born. So, there
5 is bad blood between them, they say.

6 So, on the night of May 22nd of last year, fate found
7 them together at The Boathouse bar down on the Waterway near
8 Myrtle Beach where 501 goes into Myrtle Beach. They had
9 resumption of ill will in the bar with a little fight. And
10 during the course of that, the Defendant took a beer bottle
11 and smashed it in Mr. Miniet's face causing an injury. That
12 fight attracted the attention of the bar personnel, the
13 bouncers. The bouncers came in and says we're not having
14 that in The Boathouse; it's not that kind of place. These big
15 guys that are paid to keep the peace. They grabbed Mr.
16 Miniet, they grabbed Mr. Maiden and they throwed them out of
17 there. Took them off the property. They took Mr. Maiden
18 first. Mr. Maiden gets in his 4600 pound bullet and he pulls
19 up to the stop sign there across the street from -- see you
20 have to park across the street because they were having a
21 concert. Overflow parking is across the street. And just as
22 the -- as the bar personnel escort Mr. Miniet out and he walks
23 to the street to cross where his car is, Mr. Maiden pulls up,
24 he sees him. At this time, what's Mr. Miniet doing? Well,
25 you're gonna hear it. He's on the phone with 911 calling the

1 police. He said, I want you to come over here and have this
2 guy arrested; he hit me in the face with a beer bottle. He's
3 right here, right across the street. As he's walking in the
4 street going towards his car, out comes the 4600 pound bullet
5 and hits him right before he walks into the opposite lane of
6 traffic, knocks him back several feet. He's on the ground.
7 You'll hear the witness described hearing the motor racing in
8 Mr. Maiden's car as he goes forward and slams into him. He's
9 on the ground. You'll hear those witnesses say they heard the
10 motor rev again and he rolled right over the top of his body
11 with wheel of his car, missing his head and his neck and
12 certain death by mere inches over some disagreement. He'd
13 already gotten a lick in or hit him in the face with a bottle
14 and decided he was gonna end it right there. And then Mr.
15 Miniet -- fortunately, you'll get him testify, too. You'll
16 get to hear from the bar personnel who escorted him off; they
17 were still standing there watching him. You'll get to hear
18 them tell what they saw. There were some others that were
19 standing that just happened to be in the area and saw what
20 happened. You'll see the injuries to Mr. Miniet.

21 You'll hear about some scientific evidence, some blood
22 that was found on the hood of Mr. Maiden's car, the blood of
23 the victim, Mr. Miniet. You'll get to hear what they were
24 saying as the bar personnel were with them from a bunch of
25 witnesses that were completely unbiased; they don't have a dog

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1 in the fight. Their only job was to keep the peace at the
2 bar. They don't care what the disagreement was between them.
3 You'll hear what they have to say, what they did, and what the
4 Defendant did, and you're gonna hear all of that from the
5 stand here.

6 The State will present most of it because that's our
7 burden. Just as the Judge told you, it's the State's burden.
8 Mr. Oskin and I, we're Solicitors; that means we're the State.
9 It's our burden and we take it seriously. That is the most
10 important constitutional protection every citizen has to be
11 assumed guilty until proven innocent -- assumed innocent until
12 proven guilty. That presumption, we take it seriously. So,
13 we ask you to be very careful and listen to that evidence
14 we're gonna present to prove the Defendant guilty of attempted
15 murder.

16 At the end, you have to come back and render a verdict.
17 The Judge is gonna tell you that it has to be proof beyond a
18 reasonable doubt. He'll tell you exactly what attempted
19 murder is and it has to be proven by proof beyond a reasonable
20 doubt. But he won't be able to draw you a picture of
21 reasonable doubt. He won't be able to give you a scientific
22 formula for reasonable doubt because reasonable doubt is
23 something that comes from y'all as representatives of this
24 community, cross section of this community, you decide whether
25 the proof is sufficient to punish the Defendant for his deeds.

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1 For now, all we can ask is when you come back tomorrow
2 and pay careful attention to what the witnesses, listen to
3 every detail. It won't be that challenging. If can watch an
4 episode of any of your favorite television shows, Walking
5 Dead, anything, and follow the plot, you'll be able to follow
6 the plot of this. Listen carefully to the details. Remember
7 them. In the end, you have to put it all together and render
8 a just verdict.

9 Now, I'll just thank you for your attention. I'll come
10 back and talk to you again at the end of the trial.

11 Thank you.

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

13 OPENING BY FOX:

14 MR. FOX: I'll put a bullet right between your eyes.
15 That's what Alex Miniet said to Joshua Maiden before this
16 incident. That would likely get your attention under any
17 circumstances, but if you were also aware that the person
18 making that statement to you was a convicted -- had been
19 convicted of being a felon in possession of a firearm, a
20 criminal record that barred him by law of possession of a
21 weapon and had a reputation of carrying a weapon, that would
22 certainly get your attention. That influenced everything that
23 happened afterwards. There definitely was a fight inside the
24 bar. They definitely didn't like each other a little bit more
25 than just a little quarrel over a baby momma. Bad enough that

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OPENING BY FOX

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1 Mr. Miniet would say I will kill you. He said, I'll pull the
2 bullet right between your eyes.

3 Ladies and gentlemen, this is not a who-done-it. We
4 know, no question, Alex Miniet was hit by Mr. Maiden's car
5 outside The Boathouse, but it is a why-it-happened and how-
6 did-it-happened. Why did I happen? How did it happen? The
7 State will try to convince you that this was done with the
8 intent to kill Mr. Moniet.

9 The law -- and the Judge will give you the law at the end
10 of the case. He will read exactly what these things mean.
11 But attempted murder, is what it sounds like, is an attempt to
12 kill somebody. It's not an attempt to hurt somebody. It's
13 not an attempt to be reckless. It is more than recklessness.
14 It's not carelessness; it's not an accident. It is specific
15 intent to end another individual's life and that's what they
16 have to show in this case. I believe that after you hear
17 everything and place it in context, there's not that intent.
18 It's a horrible event. It really should never have gotten
19 anywhere near this. I believe responsibility flowed both ways
20 in this. It never should've gotten there, but it was not done
21 with an attempt to kill anybody.

22 Four hundred -- 4,600 pound bullet. Well, that would not
23 be pleasant to be hit by a 4600 pound bullet, but if you knew
24 someone was firing at a firing range and you ran in front of
25 the line of fire to put yourself at risk, that may be a whole

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1 different picture than someone trying to hit you with this
2 4600 pound bullet. I believe the testimony will show from the
3 same witnesses that Mr. DeBusk has referenced that, yes, these
4 individuals, Mr. Maiden and Mr. Moniet, were lead outside
5 after their fight inside, they're escorted out. Get out of
6 here; no more of that. You'll hear that Mr. Maiden was
7 cooperative, gave them no further trouble, went straight to
8 his car. And Mr. Miniet was being lead out shortly after. As
9 soon as he saw Mr. Maiden -- and they know each other,
10 remember, he knew the car, he knew the man, that he broke free
11 and ran in the path of Mr. Maiden's car. He put himself right
12 in the line of fire so to speak. So, this is what the
13 evidence is going to be about. I believe when you hear
14 everything and hear the law that the Judge will describe to
15 you, will give to you to put in those gears to make your
16 decision and render your verdict that there is not a specific
17 intent to kill anyone.

18 Thank you.

19 THE COURT: All right. Mr. DeBusk, you were much briefer
20 than I thought. Did you have a witness you could call?

21 MR. DEBUSK: Yes, Your Honor, I do have a witness.

22 THE COURT: Well let's do a witness then. It's not even
23 4:00 yet.

24 MR. DEBUSK: The State calls Martha Carmichael, please.

25 THE COURT: Okay. Come around, Ms. Carmichael and be

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MARTHA CARMICHAEL - DIRECT BY DEBUSK

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1 sworn.

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

4 MARTHA GENEVA CARMICHAEL, HAVING BEEN
5 SWORN TESTIFIES AS FOLLOWS:

6 CLERK: Once you're seated, state your full name and
7 spell your first and last name for the Court.

8 MS. CARMICHAEL: Martha Geneva Carmichael, Martha, M-A-R-
9 T-H-A, Carmichael, C-A-R-M-I-C-H-A-E-L.

10 DIRECT EXAMINATION OF MARTHA CARMICHAEL BY MR. DEBUSK:

11 Q: Ms. Carmichael, who is your employer?

12 A: Horry County Government.

13 Q: What's your position; what do you do?

14 A: I'm the Training Officer for Horry County 911, Records
15 Custodian.

16 Q: As part of that, I'll just ask you are you the Records
17 Custodian?

18 A: Yes, sir.

19 Q: Would you explain to the jury what that means?

20 A: We're responsible for maintaining the 911 calls for 60
21 days by law of the State.

22 Q: Where do you maintain those records?

23 A: They're archived on a recording.

24 Q: Is it tapes or computer?

25 A: Computerized.

1 Q: As part of your job, did you review some tapes in this
2 particular case?

3 A: Yes, sir.

4 Q: Let me show you what's been marked as State's Exhibit 3
5 and ask if you recognize that.

6 A: Yes.

7 Q: What is that?

8 A: That's a CD of a call made from May the 22nd of 2016.

9 Q: And based on listening to that call, can you tell if that
10 was a actual call made to the Horry County 911 and preserved
11 for purposes of records?

12 A: Yes, sir.

13 Q: Okay. State's Exhibit 4 and ask if you recognize that?

14 A: Yes, sir.

15 Q: What is that?

16 A: It's a second recording of a call on May the 22nd, 2016.

17 Q: And again, those are true and correct copies based on
18 what you have in your records at 911; is that correct?

19 A: Yes, sir.

20 Q: Thank you.

21 Your Honor, we would offer State's 3 and 4 into evidence
22 at this time.

23 THE COURT: Have you seen that or heard that, Mr. Fox?

24 MR. FOX: I have, Your Honor, without objection.

25 THE COURT: All right. Without objection, then it's

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MARTHA CARMICHAEL - DIRECT BY DEBUSK

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1 admitted.

2 STATE'S EXHIBITS 3 AND 4

3 ADMITTED INTO EVIDENCE

4 MR. DEBUSK: May I publish, Your Honor?

5 THE COURT: Certainly.

6 MR. DEBUSK: Thank you.

7 *****OFF THE RECORD*****

8 (REPORTER'S NOTE: State's 3 published. Not transcribed
9 herein.)

10 **(On the Record.)**

11 MR. DEBUSK: For the record, Your Honor, that was State's
12 Exhibit 3.

13 THE COURT: Is that the end of it or did have some
14 technical difficulties.

15 MR. DEBUSK: That's where it ends.

16 THE COURT: Okay. All right.

17 MR. DEBUSK: It just cuts off, I think, Your Honor.

18 *****OFF THE RECORD*****

19 (REPORTER'S NOTE: State's 4 published. Not transcribed
20 herein.)

21 **(On the Record.)**

22 MR. DEBUSK: Your Honor, for the record, that was State's
23 Exhibit 4.

24 THE COURT: Was that different from 3?

25 MR. DEBUSK: Yes, Your Honor. They are separate -- each

1 call is on a separate disc.

2 THE COURT: All right. Mr. Fox, had you seen that? Did
3 you have any objection to that?

4 MR. FOX: None, Your Honor.

5 THE COURT: Okay. All right.

6 MR. FOX: I understand it was two separate exhibits.

7 THE COURT: I didn't know they had been marked
8 separately. Okay. So, 3 and 4 are in. Right, Ms.
9 Richardson?

10 COURT REPORTER: Yes, sir.

11 BY MR. DEBUSK:

12 Q: Thank you, Ms. Carmichael. Please answer any questions
13 the Defense may have.

14 MR. FOX: I have no questions for this witness.

15 THE COURT: Ms. Carmichael, you may step down. Thank
16 you.

17 MR. DEBUSK: We'd ask her to be excused?

18 THE COURT: Any objection?

19 MR. FOX: No, sir.

20 THE COURT: You're released from your subpoena, Ms.
21 Carmichael.

22 MR. DEBUSK: That's all we have at the moment, Your
23 Honor.

24 BY THE COURT:

25 THE COURT: Okay, ladies and gentlemen, I miscalculated.

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1 I actually thought this would take us a little longer and I
2 try not to keep a jury past 5 o'clock on Mondays particularly
3 because -- I don't like to do it anytime but particularly
4 because you're not prepared; you don't know you're on a jury.
5 So, I'm gonna let you go.

6 Bobby, if you'd take them back to the jury room, make
7 sure they know where to come in the morning. Bobby, are you
8 gonna have for them?

9 BAILIFF: Biscuits?

10 THE COURT: Ms. Brown, do you want biscuits or doughnuts?

11 JUROR 43: I'm sure we'll take whatever.

12 THE COURT: Well, Bobby, have biscuits for them. Okay?

13 BAILIFF: Yes, sir.

14 THE COURT: All right. He'll have that for you in the
15 morning when you get here. Try to get here about 9 o'clock
16 and that'll give you time to have some refreshments and some
17 coffee and be ready for us. Okay?

18 Thank you.

19 (REPORTER'S NOTE: Jury exits courtroom. 4:04 P.M. The
20 following takes place outside the presence of the Jury.)

21 THE COURT: All right, gentlemen. In the morning I want
22 to be ready to go at 9:00. Okay? Whatever it takes -- get
23 here when you please. I just want to go at 9:00. All right?

24 MR. DEBUSK: Yes, sir.

25 MR. FOX: Yes, sir.

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1 THE COURT: All right. Anything else we need to do?

2 MR. FOX: I don't believe so, Your Honor.

3 THE COURT: Okay. Very well.

4 (RECESS - 4:07 P.M.)

5 END OF DAY ONE.

6 APRIL 11, 2017 - DAY TWO

7 THE COURT: Okay. Mr. DeBusk, you ready to go?

8 MR. DEBUSK: Your Honor, the State's ready.

9 THE COURT: How about it, Mr. Fox?

10 MR. FOX: Ready, Your Honor.

11 THE COURT: All right. Get me a jury if they're ready to
12 come in.

13 (REPORTER'S NOTE: Jury enters courtroom. 9:42 A.M.)

14 THE COURT: All right. I see that we have all our jurors
15 and our Forelady.

16 Ms. Brown, Is there anything I can do for you or anything
17 you need?

18 JUROR 43: No, sir. Thank you for breakfast.

19 THE COURT: Ready to go. Okay. Thank you.

20 Mr. DeBusk, you may proceed.

21 MR. DEBUSK: Your Honor, the State calls Henry Cohen.

22 CLERK: Please raise your right hand.

23 HENRY CONNER COAN, III, HAVING BEEN

24 SWORN TESTIFIES AS FOLLOWS:

25 CLERK: Please state your full name and spell your first

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HENRY CONNER COAN - DIRECT BY DEBUSK

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1 and last name.

2 MR. COAN: Henry Conner Coan, III, H-E-N-R-Y C-O-A-N.

3 DIRECT EXAMINATION OF HENRY CONNER COAN BY MR. DEBUSK:

4 Q: Mr. Coan, you go by Henry or you go by another name?

5 A: Tripp.

6 Q: Do you live here in Horry County?

7 A: Yes, sir.

8 Q: And what's your occupation; how do you make a living?

9 A: I'm one of the owners of The Boathouse.

10 Q: What's The Boathouse?

11 A: It's a restaurant bar and grill on the Waterway over near
12 Myrtle Beach.

13 Q: Where is it located if you're on, say, 501?

14 A: It's at the 501 Bridge where the bridge crosses the
15 Waterway, we're right beside the, the Clarion Resort, the
16 hotel that's there.

17 Q: Is that where the old -- close to where the old amusement
18 park used to be?

19 A: Yeah.

20 Q: I'm showing you State's Exhibit 6 and ask if you
21 recognize that?

22 A: It appears to be an aerial view of The Boathouse and some
23 of the parking lots that we utilize.

24 Q: Okay. Is that a fair and accurate representation of the
25 layout ---

1 A: Yes, sir.

2 Q: --- as it would've been last May?

3 A: Yes, sir.

4 THE COURT: Mr. Fox, have you seen that?

5 MR. FOX: I have, Your Honor.

6 THE COURT: Are you offering it, Mr. DeBusk?

7 MR. DEBUSK: Yes, Your Honor.

8 THE COURT: Mr. Fox, what do you say?

9 MR. FOX: I do not have any objection to that.

10 THE COURT: All right. Without objection, it's admitted.

11 That would be State's ---

12 COURT REPORTER: Number 6.

13 MR. DEBUSK: 6.

14 THE COURT: Number 6, thank you.

15 STATE'S EXHIBIT NUMBER 6

16 ADMITTED INTO EVIDENCE

17 BY MR. DEBUSK:

18 Q: Mr. Coan, just briefly, what's the dark area up here?

19 A: That's the Intracoastal Waterway.

20 Q: And your restaurant is -- the restaurant is right on the

21 Waterway?

22 A: Yes, sir.

23 Q: I'll get back to that in a moment. Now what, I'm sorry.

24 Now is probably the proper time to do it, so --

25 Your Honor, may the witness approach the ---

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1 THE COURT: Certainly.

2 Q: Mr. Coan, will you show the jury the limits of the actual
3 property of The Boathouse?

4 A: Right here about two feet off the edge of the building
5 there's a property line here and, of course, the road, the
6 waterway, and over to right about there's a ditch line comes
7 right through there.

8 Q: So, all this parking, that belongs to The Boathouse?

9 A: This is The Boathouse parking in these areas.

10 Q: So, when you have a large crowd, you would have this
11 area, your customers can park in these areas?

12 A: Yes, sir.

13 Q: Do you remember March 22nd -- I'm sorry -- May 22nd of
14 last year?

15 A: Yes, sir.

16 Q: Was that a night with a big crowd?

17 A: Yes, sir.

18 Q: Was there a particular reason? Was there something going
19 on?

20 A: The -- Tone Loc was playing. It's ---

21 Q: It was a popular band?

22 A: Yes, sir.

23 THE COURT: Can you hear him, Ms. Richardson?

24 COURT REPORTER: Can you put him on that side so I can
25 see his face, please?

1 BY MR. DEBUSK:

2 Q: Actually, I think that -- you can go ahead and have a
3 seat so they can hear you. We'll come back to this in a
4 moment.

5 Now, on that night, on May 22nd, were you at The
6 Boathouse?

7 A: Yes, sir.

8 Q: What is your involvement when you're at The Boathouse?

9 A: Kind of a jack-of-all-trades. I mean, you know, you're
10 doing everything from washing dishes to assisting in, in
11 running food, restocking and in, in crowd control issues as
12 well.

13 Q: Basically when something needs to be done, you do it?

14 A: Yes.

15 Q: Okay. Did you witness a fight between the Defendant and
16 another individual?

17 A: I personally did not see the fight.

18 Q: Did you become aware of such a fight?

19 A: Yes, sir.

20 Q: How did you become aware?

21 A: One of the security guys as they were taking the
22 gentlemen out, grabbed me and I went with them to the front
23 door.

24 Q: When there is a fight in The Boathouse, what is your
25 policy?

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1 A: We disburse and then send the, the folks involved out at
2 different times so that we don't have another fight in the
3 parking lot is what we try to hope to avoid.
4 Q: So you stop the fight?
5 A: Yes, sir.
6 Q: And you secure the people involved as far as you can
7 determine, and you escort them out?
8 A: Yes, sir.
9 Q: Is that what happened this night?
10 A: To the best of my knowledge, yes, sir.
11 Q: Okay. Do you know -- were you with one of the
12 participants in the fight when they went out?
13 A: Whenever I got to the front door, the -- Alex, I think,
14 the gentleman ---
15 Q: You're indicating ---
16 A: The gentleman, yes, sir, this guy.
17 Q: This man right here in the front seat?
18 A: Yes, sir. Was at the front door. This gentleman over
19 here was already ---
20 THE COURT: And you're referring to which gentleman?
21 A: The gentleman in the white shirt.
22 THE COURT: Let the record reflect he indicated the
23 Defendant. Okay.
24 A: Had already been taken or was through the parking lot and
25 I assumed had left.

1 Q: What was Mr. Miniet doing, the individual that ---

2 A: He had been, as I later found out, he had been hit, I
3 believe with a beer bottle. He was asking for a hat that
4 apparently he -- that had been lost during the scuffle and he
5 was on the phone calling Horry County Police is what he
6 indicated.

7 Q: Did you hear him speaking to police on the phone?

8 A: I heard him speaking to someone, I assumed it was the
9 Horry County Police.

10 Q: Sorry, but I'm gonna ask you to come down again. You'll
11 get your exercise this morning.

12 A: No worries.

13 Q: Could you indicate on this map for the jury where the
14 front entrance was?

15 THE COURT: Mr. DeBusk, so that the record is complete,
16 would you please have him mark the, the locations he's
17 indicating. Can you do that on the exhibit?

18 MR. DEBUSK: Yes, Your Honor, we can.

19 BY MR. DEBUSK:

20 Q: Where is the front entrance?

21 A: This concrete strip right here.

22 Q: Could you put a little arrow there to ---

23 THE COURT: Could we put like an A or 1 or something like
24 that.

25 MR. DEBUSK: Okay. He's placed a 1 ---

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1 THE COURT: Okay. So we know where he's talking about.

2 MR. DEBUSK: --- at the spot of the front entrance.

3 BY MR. DEBUSK:

4 Q: From where you met them at the front entrance, where did
5 they go?

6 A: He ---

7 Q: Mr. Miniet?

8 A: Yes -- was on the phone, hung around the front entrance
9 for a while and then he and Matthew Chiviattoni, who is one of
10 the security personnel that we employ, went walking across the
11 parking lot.

12 Q: Okay. Where were they headed to; do you know?

13 A: I do not. I assumed he was walking him to his car. I
14 don't know that. But Vince Richardson, who's another security
15 personnel, he and I walked out through this way, roughly out
16 through this way. We got to about here.

17 THE COURT: Okay. Have him again show?

18 Q: With the marker, put a number 2 where you were standing.

19 A: (Witness complies.)

20 Q: Okay. What did you see?

21 A: At that point, Mr. Miniet was standing in the middle of
22 the road. There was a truck -- there's a stop sign here.

23 There was a truck sitting at that stop sign ---

24 Q: Do you remember what kind of truck it was?

25 A: It wasn't a full-size truck; it was a smaller truck.

1 Q: A pickup truck, an SUV?

2 A: Yes, a pickup truck and it, it -- it was a lighter color.

3 STATE'S EXHIBIT NUMBER 10

4 MARKED FOR IDENTIFICATION

5 Q: I'm going to show you State's Exhibit 10 and ask you if
6 that -- if you recognize that?

7 A: I was gonna say it was a Ford but, I mean, yeah, I mean
8 don't have a problem saying that was the vehicle that was
9 across the street.

10 Q: Is that a truck or an SUV?

11 A: Well, that's -- it has four doors to it, so it's an SUV I
12 suppose in the real world.

13 MR. DEBUSK: That was State's Exhibit 10, Your Honor.
14 We'll place that into evidence with a subsequent witness once
15 it's been ---

16 THE COURT: You're just identifying it?

17 MR. DEBUSK: We just identified it at this time.

18 THE COURT: Okay.

19 BY MR. DEBUSK:

20 Q: Okay. What happened after you saw Mr. Miniet in the
21 middle of the road and the truck at the stop sign?

22 A: Mr. Miniet begins to walk toward the truck.

23 Q: Was he walking or running?

24 A: I think he was walking.

25 Q: Walking.

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1 A: He was walking toward the truck and the truck pulls out
2 and goes directly at him and hits him.

3 Q: Did it accelerate? Did you hear the engine racing?

4 A: Yes, sir, you heard -- you heard the engine rev and go
5 forward. He hits him, the truck stops, and you hear the
6 engine accelerate again and goes over the top of him.

7 Q: Was this an accidental ---

8 MR. FOX: Objection, that calls for a conclusion, Judge.

9 THE COURT: I'm gonna sustain the objection. He can
10 testify as to what he observed, what he heard.

11 BY MR. DEBUSK:

12 Q: From what you saw, would that truck have been able to
13 pull out without hitting the individual in the road?

14 A: Absolutely.

15 Q: Was that individual running past the truck?

16 A: No, sir.

17 Q: Did, did the truck, from what you saw, appear to aim at
18 the individual in the street?

19 A: Yes, sir.

20 MR. FOX: Objection.

21 THE COURT: Did it travel in his direction?

22 BY MR. DEBUSK:

23 Q: Did it travel directly at the victim?

24 A: Yes.

25 Q: When the truck first made contact, what happened to the

1 victim?

2 A: He fell down. He got bumped back and fell.

3 Q: So he was on the ground?

4 A: Yes.

5 Q: Do you recall if he was on his back or on his front?

6 A: On his back.

7 Q: Okay. And what happened next?

8 A: The truck accelerated and ran over him.

9 Q: Did the tire go over the victim?

10 A: Yes.

11 Q: What did the truck do after it ran over the victim the

12 second time?

13 A: All this takes place roughly probably -- I probably need

14 this marker again.

15 Q: Yes.

16 A: All this takes place roughly -- the first collision, I

17 guess is 3, takes place about here. Mr. Miniet gets bumped

18 back, runs over again at 4.

19 Q: Okay.

20 A: And the truck ends up -- the truck ends up in the parking

21 lot over here.

22 Q: Very close to where you were standing?

23 A: Yes.

24 Q: What did you?

25 A: I tried to grab ahold of the driver's side door to get

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1 the guy out because there was a line of people up here by this
2 point coming in and my fear was that, after witnessing that,
3 that if he turns this way he's gonna run over a bunch of
4 people. So, I tried to get the door open to get him out. He
5 slammed it -- slammed it in reverse and went back out and, at
6 that point, I ran behind him and got the license plate and
7 called it in to 911.

8 Q: From where you saw where he stopped at the stop sign to
9 where he hit him the first time, would he have been able to
10 turn down either one of these lanes of travel and gone in
11 either direction without hitting that individual?

12 A: Yes, sir.

13 Q: So he had to aim at that individual to hit him?

14 A: Yes, sir.

15 MR. FOX: Objection.

16 THE COURT: I'll allow that.

17 BY MR. DEBUSK:

18 Q: Where was Mr. Matthew Chiviattoni when the first strike
19 occurred?

20 A: Chiv was back behind him a little bit over this way.

21 Q: In the road?

22 A: Yes, but not right beside him. They had come in at more
23 of an angle and Mr. Miniet was ahead of Mr. Chiviattoni and
24 Chiv -- Mr. Chiviattoni was back and to the left -- or to the
25 right following him.

1 Q: From specifically -- in general, when you have parking
2 over here, how, how do people access it? Do you have one-way
3 traffic or can they go in and out?

4 A: These are both -- my understanding is that they're both
5 two-way streets.

6 Q: So, he could've gone in either direction?

7 A: Oh, yeah. I mean there's -- this comes out here, this
8 can go out over here, this can go out back here by the old
9 Burger King or there's another -- several exits on that end as
10 well.

11 Q: So there were multiple different directions even at the
12 point of here where he could've gone and not hit him; is that
13 correct?

14 A: Yes, sir.

15 Q: And he could've pulled out and backed up and gone a
16 different direction -- I mean he could've -- here he could've
17 backed up and gone back got out in a different direction; is
18 that correct?

19 A: Yes, sir.

20 Q: Okay. Thank you. Please -- I'll show you some other
21 exhibits, State's 7, 8 and 9 and ask if you recognize those.

22 A: Yes, sir. This is The Boathouse. In the picture of the
23 driveway that we were just looking at in 7, this is a picture
24 of the roadway that night and another angle of the roadway.

25 Q: Now, are do those fairly and accurately represent the

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1 scene that night?

2 A: Yes, sir.

3 Q: Does that show how well it was lit?

4 A: Yes, sir.

5 Q: Were there overhead streetlights that lit the area?

6 A: Yes, sir. Well, they're not necessarily on the street,
7 per say, but they are in the parking -- in both the parking
8 lots on either side of the road.

9 Q: And the light overflows into the road?

10 A: Yes, sir.

11 Q: So you were able to see what was going on?

12 A: Yes, sir.

13 MR. DEBUSK: Your Honor, the State offers 7, 8 and 9 into
14 evidence.

15 MR. FOX: Without objection, Your Honor.

16 THE COURT: Without objection, they're admitted.

17 STATE'S EXHIBIT NUMBERS 7, 8, AND 9

18 ADMITTED INTO EVIDENCE

19 BY MR. DEBUSK:

20 Q: Now after the SUV struck Mr. Miniet, where did it go?

21 A: Once again, it came up into our parking lot. At which
22 time as he stopped and went backwards very quickly and it,
23 excuse me, turned and went, I guess it would be north on
24 Fantasy Harbor Boulevard, which would be past the hotel and
25 underneath the bridge.

- 1 Q: Underneath 501?
- 2 A: Yes, sir.
- 3 Q: What happened to the victim, where was he?
- 4 A: He was laying in the street at this point, facedown.
- 5 Q: What was his condition? Was he conscious?
- 6 A: He was conscious. I mean, as far as his overall
- 7 condition, I'm not -- don't know that I'm qualified to, to
- 8 assess that, but he looked to be in a lot of pain and he
- 9 looked to be hurt pretty bad from what I could tell.
- 10 Q: Did anyone summon help for him?
- 11 A: Yes, sir. I mean, I was on the phone with 911 as soon as
- 12 I got the license plate number. And the guy in the vehicle
- 13 had left, and the Horry County Police were there within, I'm
- 14 guessing, a minute to a minute and a half. There were -- Mr.
- 15 Chiviattoni was with him. I went down the road with a
- 16 flashlight to try and divert traffic from coming into the area
- 17 because it was in that curve and whatnot. And we really
- 18 didn't have anywhere for the traffic to go, so I was trying to
- 19 cut the traffic off before it got there.
- 20 Q: And I think you testified that the victim had already
- 21 been calling the police before the accident happened, right?
- 22 A: That's what he said; yes, sir.
- 23 Q: Okay. Did the police ask you questions?
- 24 A: Yes, sir.
- 25 Q: Did you give a statement?

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1 A: Yes, sir.

2 Q: Okay. And you gave them that license number?

3 A: Yes, sir; on the 911 call, I believe it will have it on
4 there.

5 Q: You immediately gave the license number of the white SUV
6 that hit the victim to the police?

7 A: Yes, sir.

8 Q: Okay. Let me ask you one last question. Before this
9 happened, had you ever met either the Defendant, Mr. Maiden,
10 or the victim, Mr. Miniet, before?

11 A: I personally don't think I've seen either one of them
12 ever before.

13 Q: Do you know anything about their relationship?

14 A: No, sir. At the time, no. I mean, I've heard rumors
15 after the fact that there was ---

16 Q: But at the time you didn't know?

17 A: At the time, I knew absolutely nothing.

18 Q: In the leased parking area, were any of the exits chained
19 off or monitored or were they all open?

20 A: To the best knowledge, they were all open.

21 Q: Thank you. Please answer any questions Defense might
22 have.

23 THE COURT: Mr. Fox?

24 CROSS EXAMINATION OF HENRY CONNER COAN BY MR. FOX:

25 Q: Mr. Coan, what time of the evening was this that you

1 walked out and all these things happened in the parking lot?
2 A: It was around dusk.
3 Q: Okay. So, the street lights, were they on?
4 A: At the time that it happened, I can't testify to yes or
5 no.
6 Q: Okay. What about Mr. Maiden's headlights on his SUV?
7 A: Once again, I can't definitively say yes or no.
8 Q: It was outside with you when Mr. Chiviattoni, Matt
9 Chiviattoni ---
10 A: Yes, sir.
11 Q: --- from The Boathouse?
12 A: Yes, sir.
13 Q: Quan Pratt?
14 A: Yes, sir. Well, he didn't -- well, no. Mr. Pratt's
15 involvement was in the fight inside and in taking them to the
16 door. He never came into the parking lot other than to, to
17 the door part. He, he then went back to the backyard where
18 the show -- where the band was playing.
19 Q: How about Mr. Matthews, Ryan Matthews?
20 A: Ryan Matthews -- Ryman Matthews was the barback that
21 initially witnessed the, the, the fight, the punch -- punches
22 inside.
23 Q: He also did not come outside?
24 A: No, sir.
25 Q: And then Vince Richardson, he was outside?

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- 1 A: Yes, sir.
- 2 Q: Okay. Is Vince Richardson still an employee of The
3 Boathouse?
- 4 A: Yes, sir.
- 5 Q: So you see him how often? Everyday?
- 6 A: Once a week.
- 7 Q: Once a week?
- 8 A: Yes, sir.
- 9 Q: So, what you saw, this whole incident occurred once
10 everyone got into the parking lot, correct?
- 11 A: Yes, sir.
- 12 Q: Okay. So, you didn't yourself see anything happen
13 inside?
- 14 A: No, sir.
- 15 Q: You didn't see any pushing or punches back and forth
16 between Mr. Maiden and Mr. Miniet?
- 17 A: No, sir.
- 18 Q: You didn't see Mr. Miniet push Mr. Maiden?
- 19 A: No, sir.
- 20 Q: You didn't hear him call him different names, pussy,
21 bitch, things like that?
- 22 A: No, sir.
- 23 Q: You didn't hear him say -- Mr. Miniet, you didn't hear
24 him say he'd put a bullet between Mr. Maiden's eyes?
- 25 A: No, sir.

1 Q: Thank you, no further questions.

2 MR. DEBUSK: One quick question on redirect.

3 THE COURT: All right.

4 REDIRECT EXAMINATION OF HENRY CONNER COAN BY MR. DEBUSK:

5 Q: Mr. Coan, talking about the lighting, when you saw this,
6 was there plenty enough light to see?

7 A: Yes, sir.

8 Q: So, you were able to see it whether it was from the
9 lights in the parking lot or daylight, there was plenty enough
10 light to see what happened?

11 A: Yes, sir.

12 Q: Thank you. No further questions.

13 THE COURT: Any recross?

14 MR. FOX: None, Your Honor.

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

16 MR. DEBUSK: May Mr. Coan be excused from his subpoena?

17 THE COURT: Mr. Fox, do you have any objection to that?

18 MR. FOX: No, Your Honor.

19 THE COURT: Mr. Coan, you're excused and released from
20 your subpoena.

21 MR. COAN: Thank you, sir.

22 THE COURT: Mr. DeBusk? Mr. Oskin?

23 MR. OSKIN: Your Honor, the State would next call Mr.
24 Randy Melko.

25 THE COURT: All right. Is he present?

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1 MR. OSKIN: Yes, sir. The witnesses are being
2 sequestered.

3 THE COURT: Okay. I didn't know there was a sequester
4 order.

5 MR. DEBUSK: By consent, Your Honor. THE COURT: Okay.

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

8 RANDY MELKO, HAVING BEEN SWORN

9 TESTIFIES AS FOLLOWS:

10 CLERK: Please have seat. You need to state your full
11 name and spell your first and last name for the Court.

12 MR. MELKO: My name is Randy Melko, R-A-N-D-Y, M-E-L-K-O.

13 DIRECT EXAMINATION OF RANDY MELKO BY MR. OSKIN:

14 Q: Mr. Melko, how old are you, sir?

15 A: Fifty-three years old.

16 Q: Are you currently employed?

17 A: I am.

18 Q: Who are you employed by, sir?

19 A: I'm employed by the Horry County School District.

20 Q: Okay. What's your position with Horry County Schools?

21 A: I'm a math teacher at Socastee High School.

22 Q: Have you lived in Myrtle Beach for the past couple of
23 years?

24 A: Sixteen years.

25 Q: Okay. Were you at The Boathouse Bar and Grill on May

1 22nd of 2016?

2 A: Yes, I was.

3 Q: About what time did you get to The Boathouse that night?

4 A: Approximately 6:30.

5 Q: What were you there for that night?

6 A: The, The Boathouse has a concert series during the summer
7 on Sundays, and I typically like to go listen to the band.

8 So, you know, on occasion I make my way over there; so, I was
9 there to listen to a band.

10 Q: How long were you there?

11 A: About 90 minutes.

12 Q: All right. When you left the bar, about what time was
13 it?

14 A: It was somewhere near 8 o'clock.

15 Q: All right. Did you ever observe anything particular as
16 you were leaving the bar, anything out of the ordinary?

17 A: I was just heading out the door, and I was in the parking
18 lot and was headed towards my car, which was parked on the
19 other side of the road there in the outlet parking lots that
20 are across the street. As I was still up near the top of The
21 Boathouse parking, I heard tires squeal and I looked up and I
22 saw out in the road that the SUV had -- I looked up to see an
23 SUV run into a, a person that was walking across the street.

24 Q: Okay. Were you able to see that person that was walking
25 across the street?

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1 A: Yes, I could see that person as they were there, yes.

2 Q: Court's indulgence, Your Honor.

3 Mr. Melko, I'm showing you what's been entered into
4 evidence as State's Exhibit 6, are you able to recognize this
5 at all?

6 A: That's The Boathouse Bar and Grill and the surrounding
7 area.

8 Q: That's the bar you were at that night, sir?

9 A: Yes, sir.

10 MR. OSKIN: Your Honor, if I could have the witness leave
11 the witness stand to point out ---

12 THE COURT: Certainly.

13 BY MR. OSKIN:

14 Q: Mr. Melko, from a prior testimony -- I'm gonna have you
15 mark RM1, that's your initials. Okay? I'm gonna have you
16 mark on this exhibit where you were when you left the bar --
17 where you were standing when you saw what you just explained.
18 Okay?

19 A: I was (indicating) ---

20 Q: A little louder for the Court Reporter -- let me trade
21 places. I apologize.

22 THE COURT: Our Court Reporter has to record your
23 responses and if she can't hear, she has difficulty doing
24 that.

25 A: Gotcha.

1 Q: For the jury as well.

2 A: This looks to be the entrance to the -- to the bar and I
3 had come out this way, and I was making my way across the
4 parking lot, and I was probably right around in this area when
5 I witnessed this.

6 Q: Okay. And you witnessed a person walking in the street?

7 A: I looked up to see the car come from -- that was at this
8 -- seemed to be at that intersection there and came out across
9 the road as I looked up and saw him strike the individual out
10 here in the middle of the street.

11 Q: Would you able to recognize the individual that got
12 struck if you saw him today?

13 A: I would not.

14 Q: Okay. What did the driver of the SUV do once he struck
15 the person the first time?

16 A: When he struck the individual, the individual was knocked
17 back onto the pavement, and then the SUV then accelerated and
18 went over top of the individual that was laying on the ground.
19 He was over top of the person and backed up off of him.

20 Q: What happened next from there?

21 A: And at that point, he then turned and came up into the
22 parking lot of The Boathouse. I think I -- there was one car
23 parked right here on the edge. I jumped into that -- behind
24 that car because he was coming up within probably not too far
25 away from where you're standing now, within 20 feet of where I

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1 was standing.

2 Q: All right. Just to make sure I have it right for this
3 jury, he was struck by the vehicle twice?

4 A: Yes, sir.

5 Q: Once the driver got into the parking lot of The
6 Boathouse, what then happened?

7 A: Well, he got to the top of the parking lot and stopped
8 right there, and then he proceeded to back down the way he
9 entered the parking lot, backed out into the street, and then
10 turned left and then left down this road at a very high rate
11 of speed.

12 Q: Okay. What did you do next after the driver had left the
13 scene?

14 A: Well, at that time, I believe -- I believe it was a
15 Boathouse employee had gotten his license plate. I was trying
16 to read the license plate of the car and I only got a partial,
17 a couple of the letters, but I heard that a Boathouse employee
18 was yelling the license plate number. I kind of walked down
19 towards the street. There were a handful of people around the
20 individual that was lying on the ground. I kind of observed
21 that and I just waited to see, you know, exactly what was
22 happening. It was my understanding that the emergency
23 personnel were called and, and so I stood around there for
24 about five minutes or so, and then I proceeded to my car and I
25 left and went home.

1 Q: To break that up just a little bit -- and I may've missed
2 this. The vehicle itself, you were able to see the vehicle;
3 do you remember what type vehicle it was?
4 A: I believe it was a white SUV.
5 Q: I'm showing you what's been entered into evidence as
6 State's Number 10. Do you recognize that vehicle?
7 A: It looks like that vehicle, yes.
8 Q: Did you see the victim do anything after he'd been
9 struck? My apologies?
10 A: At that point, he was laying on the ground. At one
11 point, he seemed to be attempting to get up off the ground,
12 but it was unable to.
13 Q: And you said he appeared injured?
14 A: Yes, sir.
15 Q: How badly in your opinion?
16 A: I mean, there was -- he had a lot of blood coming and
17 appeared to be blood on the pavement as well.
18 Q: So your testimony was that medical personnel arrived and
19 at that point you went home?
20 A: I heard the sirens. I'm not sure that the personnel were
21 there at that point, but I left, but I know that they were on
22 the way.
23 Q: From your observations at the scene, what did you expect
24 happened to the victim in that case?
25 A: I, I expected the next day to read that he had passed

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1 away. I thought there was no way that he was gonna survive.

2 I mean, it just looked bad, that did, that bad.

3 Q: I understand. You may return to your seat please, Mr.
4 Melko.

5 Mr. Melko, when this individual was struck and you saw
6 the vehicle strike him, did he seem to be -- was there any
7 other way for him to leave that parking lot or is that ---

8 A: Well, he came out to the, to the road, I mean, you
9 obviously could've turned right, could've turned left. So I,
10 you know, I guess which way, you know -- if I was coming out
11 there, I would've turned right because that's the way I was
12 going to go home. I'm not really sure what options he had.

13 Q: Did it appear to you that he had aimed at the person in
14 the street?

15 A: Well, I guess, like I said earlier, what caught my
16 attention was the tires squealed, then I looked up and saw him
17 -- saw the impact of the individual. So, I mean just, I don't
18 think you usually squeal your tires leaving a stop sign or
19 making a turn onto another road.

20 Q: All right. This may be -- in your opinion, was that
21 striking of the victim in this case, was that incidental or
22 intentional?

23 MR. FOX: Objection, Your Honor.

24 THE COURT: That would call for a conclusion that I don't
25 think the witness could make. He can testify as to what he

1 observed and the facts that he observed.

2 BY MR. OSKIN:

3 Q: Were you able to see the driver in this vehicle?

4 A: I, I can't say that I got a good luck at, at the person
5 at all, so, no.

6 Q: No further questions. Please answer any questions from
7 Mr. Fox.

8 CROSS EXAMINATION OF RANDY MELKO BY MR. FOX:

9 Q: Mr. Melko, you say what got your attention was hearing
10 the tires squeal first, correct?

11 A: Yes, sir.

12 Q: And when you looked up the collision was getting ready to
13 happen, correct?

14 A: Yes, sir.

15 Q: Okay. So, you didn't see the lead up of the moments
16 prior to that where Mr. Miniet was ---

17 A: No, sir.

18 Q: You don't know if he put himself in the path of that
19 vehicle, randomly tried to stop the vehicle, not in front?

20 A: He was in the middle of the road at that point, sir.

21 Q: And you're sure that not only did Mr. Maiden's car hit
22 Mr. Miniet, but that he backed up over him; put it in reverse
23 and went back over him?

24 A: He, he, he was knocked forward so then he ran forward
25 onto him, and then once the car was over top of him, then

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1 backed up off of him.

2 Q: Okay. Now, this isn't the first -- today is not the
3 first time you've given a sworn statement surrounding this
4 case, correct? You've been deposed, correct?

5 A: Yes, sir.

6 Q: Okay. Do you remember giving that deposition?

7 A: Yes, sir.

8 Q: Or that statement, I'm not sure it was actually a
9 deposition, but who was that given to?

10 A: It was given to Mr. Doug Thornton.

11 Q: And how do you know Mr. Doug Thornton?

12 A: He is an attorney; that's all I know. I don't know him
13 personally.

14 Q: Okay. Did you contact him or did he get in touch with
15 you?

16 A: Somedays after this incident, there was an ad put in the
17 Sun Newspaper asking if anybody had witnessed this event, and
18 so I contacted him to say, yes, I was there and I witnessed
19 it.

20 Q: Okay. And at some point, you met him and gave -- wrote
21 out a statement, correct?

22 A: Yes, sir.

23 Q: Okay. Do you remember saying anything about squealing
24 tires in that statement?

25 A: I'm gonna say it's not in that statement, no.

1 Q: Okay. But today you remember squealing tires?

2 A: Yes, sir.

3 Q: Okay. Now, you've described what's a pretty intense
4 event. You stated that from your own observation, Mr. Miniet
5 certainly appeared to be badly hurt. Did you stick around to
6 talk to law enforcement?

7 A: I did not.

8 Q: But you did take the initiative to contact Mr. Miniet's
9 attorney?

10 A: Yes, sir.

11 Q: You were inside Boathouse for about an hour and a half
12 you said?

13 A: Not necessarily inside, but it happens out in the back on
14 the hill, so I was within the confines of The Boathouse, yes,
15 sir.

16 Q: Did you see any altercation between Mr. Miniet and Mr.
17 Maiden inside?

18 A: I did not.

19 Q: Okay. So you didn't see any pushes or words exchanged?

20 A: No, sir.

21 Q: Didn't hear Mr. Miniet threaten to put a bullet between
22 Mr. Maiden's eyes?

23 A: I, I had never seen the two people before in my life and
24 I did not see them prior to this incident.

25 Q: Okay. So your total involvement was what you saw when

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1 you were leaving?

2 A: Yes, sir.

3 Q: Thank you, sir.

4 THE COURT: Mr. Oskin? MR. OSKIN: Very briefly, Your
5 Honor.

6 REDIRECT EXAMINATION OF RANDY MELKO BY MR. OSKIN:

7 Q: To clarify the contact between the vehicle and the
8 individual, Mr. Miniet. You said you saw the person get
9 struck by the vehicle two times?

10 A: I saw him get struck and then as he was laying on the
11 ground, the vehicle went over top of him.

12 Q: Okay. In regards to how you got involved in this case
13 ---

14 A: Purely happenstance. I was walking out of the bar at
15 that time.

16 Q: Yes, I understand that, sir. With regards to not talking
17 to law enforcement that night, was that because, in your
18 opinion, the scene was secure?

19 A: At that point, like I say, my thought was the -- I knew
20 somebody had the license plate number and people were tending
21 to the victim. I do not have any medical expertise. I was of
22 no use for that, so I didn't really feel a need to stand
23 around and gawk at, at the scene. Also, I fairly shaken up,
24 so I didn't feel a need to stick around. I figured I would --
25 if it was needed, I could contact people if I felt that was

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RANDY MELKI - RECROSS BY FOX

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1 something that had to be done.

2 Q: I certainly understand. Thank you, Mr. Melko.

3 RECROSS EXAMINATION OF RANDY MELKO BY MR. FOX:

4 Q: Just one follow up. Did you ever contact the police
5 afterwards?

6 A: I did not.

7 Q: thank you.

8 THE COURT: You may step down. Thank you.

9 MR. OSKIN: Your Honor, the State would request that Mr.
10 Melko be released from his subpoena.

11 MR. FOX: No objection.

12 THE COURT: You're released from your subpoena. Thank
13 you, sir.

14 MR. DEBUSK: Your Honor, the State calls William Dietzl
15 with Horry County Police Department.

16 CLERK: Please raise your right hand and place your left
17 hand on the Bible.

18 WILLIAM DIETZEL, HAVING BEEN SWORN

19 TESTIFIES AS FOLLOWS:

20 CLERK: When you're seated, if you'll state your full
21 name and spell your first and last name for the Court.

22 MR. DIETZEL: My name is William Dietzel, W-I-L-L-I-A-M,
23 D-I-E-T-Z-E-L.

24 DIRECT EXAMINATION OF WILLIAM DIETZEL BY MR. DEBUSK:

25 Q: Officer Dietzel, who is your employer?

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WILLIAM DIETZL - DIRECT BY DEBUSK

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- 1 A: Horry County Police Department.
- 2 Q: And what's your rank?
- 3 A: I'm a Lance Corporal.
- 4 Q: Lance Corporal Dietzel, how long have you been with the
- 5 Horry County Police?
- 6 A: It will be six years next month.
- 7 Q: Okay. Are you familiar with The Boathouse?
- 8 A: I am.
- 9 Q: Where is it located?
- 10 A: 201 Fantasy Harbor Boulevard, Myrtle Beach Section of
- 11 Horry County.
- 12 Q: So, it's in Horry County?
- 13 A: Yes, sir.
- 14 Q: Okay. Were you on duty on May of 2016?
- 15 A: I was.
- 16 Q: May 22nd, specifically?
- 17 A: Yes, sir.
- 18 Q: Did you respond at The Boathouse that evening?
- 19 A: I did.
- 20 Q: What was the date, if you recall?
- 21 A: Officer Williams arrived on scene and requested a
- 22 supervisor respond to the scene. That evening I was the
- 23 acting supervisor. I responded to the scene per his request.
- 24 Q: Okay. What was your role at the scene?
- 25 A: I was the supervisor. At that time, I was to assist

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1 Officer Williams with setting up the crime scene and start
2 calling for additional resources, detectives or crime scene
3 investigators.

4 Q: What does setting up the crime scene entail?

5 A: We were to rope off Fantasy Harbor Boulevard because we
6 had found the victim in the middle of Fantasy Harbor
7 Boulevard.

8 Q: Well, let me ask you this.

9 A: Sure.

10 Q: Was the victim on site when you arrived?

11 A: When I arrived, the victim was being loaded onto the
12 ambulance by paramedics.

13 Q: Was it obviously where he had fallen?

14 A: Yes.

15 Q: What there to indicate his location?

16 A: There was a pool of blood in the middle of the street.

17 Q: So, you and Officer Williams roped off the area and
18 established a perimeter?

19 A: Correct.

20 Q: Okay. If you could step down -- I'll move this closer to
21 them.

22 A: Yes, sir.

23 Q: I'll put this a little closer so the jury can see it.

24 Would you indicate where you saw the victim being loaded onto
25 the ambulance?

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WILLIAM DIETZL - DIRECT BY DEBUSK

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- 1 A: Somewhere in here.
- 2 Q: Okay. Somewhere in the road?
- 3 A: Uh-huh (affirmative response).
- 4 Q: Okay. Thank you. Were you able to see the condition of
- 5 the victim?
- 6 A: I did not see the condition of the victim, no.
- 7 Q: He was under the care of EMS at that time?
- 8 A: Correct.
- 9 Q: Was the individual transported from the scene?
- 10 A: Correct.
- 11 Q: Did you know where he was transported to?
- 12 A: I believe Grand Strand.
- 13 Q: At any point, did you call in detectives?
- 14 A: Yes.
- 15 Q: Okay. What would be the difference between your role and
- 16 the detectives roles on the scene?
- 17 A: Detectives are able to collect further evidence,
- 18 interview further and do more follow-up investigations than we
- 19 can do. Our main responsibility is to go to back to the road
- 20 and answer some more calls for service.
- 21 Q: Now, during the process of establishing the scene and
- 22 everything, did you or Officer Williams take statements from
- 23 witnesses?
- 24 A: Officer Williams did.
- 25 Q: Those were turned over to the detectives?

1 A: Correct.

2 Q: And the detectives would have assumed responsibility for
3 the investigation?

4 A: Correct.

5 Q: Okay. When did you leave the scene?

6 A: After -- we had called Central Precinct to let them know
7 that we were looking for this person and this kind of car
8 wearing this clothing and advised about where he had -- we
9 were told he was going. The officers at Central Precinct said
10 they had located that person and put him in custody. We
11 relayed that information to the detectives and then they
12 responded back out once they -- till they know longer needed
13 help, they were done with the scene, we could take down the
14 scene, and that's when I left.

15 Q: And you took down the tape and reopened the road?

16 A: Correct.

17 Q: Thank you. Please answer any questions the Defense might
18 have.

19 THE COURT: Mr. Fox?

20 MR. FOX: No questions of this witness, Your Honor.

21 THE COURT: You may step down. Thank you, sir.

22 Mr. DeBusk, you gonna need this witness?

23 MR. DEBUSK: No, Your Honor, we'd ask that he be excused
24 from his subpoena.

25 THE COURT: Mr. Fox?

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1 MR. FOX: No objection.

2 THE COURT: You're released from your subpoena. Thank
3 you, sir.

4 MR. DIETZEL: Thank you, sir. MR. OSKIN: Your Honor, the
5 State would next call Detective Amy Hardwick.

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

8 EMILIE HARDWICK, HAVING BEEN SWORN

9 TESTIFIES AS FOLLOWS:

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

12 MS. HARDWICK: My name is Emilie Hardwick. I go by Amy
13 and Emilie is E-M-I-L-I-E; Hardwick is H-A-R-D-W-I-C-K.

14 DIRECT EXAMINATION OF EMILIE HARDWICK BY MR. OSKIN:

15 Q: Detective Hardwick, how long have you been with Horry
16 County Police?

17 A: Almost 11 years.

18 Q: Any previous law enforcement experience before that?

19 A: No.

20 Q: And you said you're currently a detective?

21 A: Yes.

22 Q: How long have you been a detective, ma'am?

23 A: I've been a detective since 2013.

24 Q: Were you on duty on May 22nd of 2016?

25 A: I was the on-call detective for that weekend and I was

1 called out to ---

2 Q: Is that what it sounds like then, just on-call, are you
3 working at home or you at the office?

4 A: No, I'm at home on the weekends. We're on on-call, so
5 it's kind of like a standby status. If a event occurs then --
6 that requires our assistance, then we get called out and then
7 we go on the clock then and then respond to the incident.

8 Q: Thank you. Did you have the opportunity to respond to
9 The Boathouse Bar and Restaurant with regard to someone being
10 ran over by a vehicle?

11 A: Yes.

12 Q: When did you arrive on scene for that?

13 A: What time?

14 Q: Yes, ma'am?

15 A: I'm not sure. I got -- I got the -- I'm not exactly sure
16 of the time, but then I -- it was probably around 9 o'clock or
17 so, because it does take me a little while to get there from
18 where I live. It takes me about an hour to get to the beach.

19 Q: Okay. Without telling me what anyone said, what did you
20 learn once you arrived on the scene?

21 A: What did I learn?

22 Q: Yes, ma'am, without telling me what anybody said.

23 A: I was briefed by the officers on scene as our standard
24 protocol is to see what was going on. And I was briefed by
25 the responding officers that the victim had been struck by a

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1 vehicle and that he had been transported to the Grand Strand
2 Medical Center for treatment. At -- we had another detective
3 also responding that went directly to the Grand Strand
4 Hospital. I was also advised that there were several people
5 who witnessed the incident that worked at The Boathouse and
6 that they had them standing by for interviews.

7 Q: Based on your initial investigation, were you able to
8 identify a suspect or determine a suspect?

9 A: After doing some interviews, we were -- I was able to
10 identify the suspect and after getting briefed by Detective
11 Hemingway from the hospital.

12 Q: Who was that suspect?

13 A: Joshua Maiden.

14 Q: Is he the Defendant here today?

15 A: Yes.

16 Q: Were you able to get a description of the vehicle used in
17 this incident?

18 A: They told us it was a white SUV and two of the witnesses
19 was able to provide a tag. They gave me the tag. The tag had
20 actually been relayed through our dispatch center, what we
21 call a BOLO, which is be on the lookout and officers working
22 in what we call the Central Precinct area which is the Conway
23 area, did locate the vehicle in the Burning Ridge Community.

24 Q: Detective Hardwick, I'm showing you what's been marked as
25 State's Exhibit Number 10?

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EMILIE HARDWICK - DIRECT BY OSKIN

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1 A: Uh-huh (affirmative response).

2 Q: Are you able to recognize that vehicle?

3 A: This was the vehicle that was recovered from the Burning
4 Ridge community that did have the same tag that was BOLO'd
5 out, which was the F -- FXB331.

6 MR. OSKIN: Your Honor, at this time, the State would
7 move Exhibit Number 10 into evidence.

8 THE COURT: Mr. Fox?

9 MR. FOX: No objection.

10 THE COURT: Without objection.

11 STATE'S EXHIBIT NUMBER 10

12 ADMITTED INTO EVIDENCE

13 BY MR. OSKIN:

14 Q: Detective Hardwick, I think I heard you, did you say
15 where that vehicle was located?

16 A: It was located at the clubhouse in the Burning Ridge
17 community.

18 Q: Was there any connection to the Burning Ridge clubhouse
19 or this community?

20 A: The -- the Defendant's parents live in that community and
21 he was actually located a short distance from his parents'
22 residence walking down the road when he was detained by
23 officers.

24 Q: And the car was parked at the clubhouse, not at his
25 parents' residence?

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1 A: Correct.

2 Q: Did you meet the victim in this case, Mr. Miniet, during
3 this part of the investigation or afterwards?

4 A: I didn't meet with him until the next day.

5 Q: Where did you meet with Mr. Miniet?

6 A: I met with him at Grand Strand Regional Center.

7 Q: Is this in fact Mr. Miniet in court today?

8 A: Yes.

9 Q: Once you met with him at Grand Strand, did you notice or
10 learn of any injuries that he had sustained from this
11 incident?

12 A: Yes, when I met with him, that's when I got the, the
13 extent of his injuries.

14 Q: What were they, ma'am?

15 A: They consisted of a broken jaw; a broken left arm; had
16 staples in the left hip from a laceration; a fractured
17 vertebrae by his shoulder blades, which was 1, 2, and 3; a
18 cracked sternum; four cracked ribs; and lacerations to the
19 face, hands; and a sliced liver.

20 MR. OSKIN: Court's indulgence, Your Honor, while these
21 exhibits are marked.

22 BY MR. OSKIN:

23 Q: Detective Hardwick, I'm showing you what's been marked as
24 State's Exhibit 11, 12, 13 and 14. Will you turn those
25 around and look at them please, ma'am?

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1 A: And these are photographs that I took of the victim at
2 the hospital.

3 Q: That was going to be my next question. Thank you. Those
4 are the photos you took?

5 A: Uh-huh (affirmative response).

6 THE COURT: Mr. Fox?

7 MR. FOX: Without objection.

8 THE COURT: All right. Mr. Oskin, before publication, if
9 you'll allow me to preview?

10 MR. OSKIN: Yes, sir.

11 THE COURT: I'll allow publication. Thank you.
12 They're admitted.

13 STATE'S EXHIBIT NUMBERS 11, 12, 13 AND 14

14 ADMITTED INTO EVIDENCE

15 MR. OSKIN: We'd move to publish these to the jury.

16 THE COURT: Very well.

17 BY MR. OSKIN:

18 Q: Detective Hardwick, I'm showing you what's been marked as
19 State's Exhibit Number 15. Were you able to recognize that?

20 A: This is a photograph that I took at the crime scene.

21 Q: At The Boathouse that night?

22 A: At The Boathouse in the roadway, yes.

23 Q: Once you responded?

24 A: Uh-huh (affirmative response). That's a photograph of
25 some blood.

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1 MR. OSKIN: Your Honor, the State would move State's
2 Exhibit Number 15 into evidence.

3 THE COURT: Mr. Fox?

4 MR. FOX: No objection.

5 THE COURT: Without objection.

6 STATE'S EXHIBIT NUMBER 15

7 ADMITTED INTO EVIDENCE

8 BY MR. OSKIN:

9 Q: Let's transition back to the vehicle, Detective Hardwick
10 ---

11 A: Okay.

12 Q: --- and follow it chronologically. Did you obtain a
13 search warrant for the vehicle that was used in this incident?

14 A: I did. I obtained one on the 25th of May.

15 Q: And did you execute that search warrant, ma'am?

16 A: I did.

17 Q: Was that vehicle towed and impounded by the Horry County
18 Police?

19 A: It was. It was towed on the 22nd, the date that it was
20 recovered from Burning Ridge. It was towed by Squeaky's and
21 then it was taken to our impound lot and placed underneath a
22 shed so it would be protected from the weather.

23 Q: Okay. And once it was impounded, did you photograph the
24 vehicle?

25 A: I photographed the vehicle on the 25th when I did the

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1 execution of the search warrant.

2 Q: Detective Hardwick, I'm showing you Exhibit 16 through
3 19. Are the photos you mentioned you took?

4 A: Yes.

5 Q: And that's of what vehicle?

6 A: This is of the vehicle that was driven by Joshua Maiden
7 and it shows the same registration as the registration with
8 the South Carolina license plate number as given by the two
9 witnesses on scene.

10 Q: That was the vehicle found at Burning Ridge?

11 A: It was found at the clubhouse.

12 MR. OSKIN: Your Honor, at this time, the State would
13 move to enter State's Exhibit 16, 17, 18 and 19 into evidence.

14 THE COURT: Mr. Fox?

15 MR. FOX: Without objection.

16 THE COURT: Without objection, they're admitted.

17 STATE'S EXHIBIT NUMBERS 16, 17, 18 AND 19

18 ADMITTED INTO EVIDENCE

19 BY MR. OSKIN:

20 Q: Did you collect any items from the vehicle, Detective
21 Hardwick?

22 A: I did. I collected the broken lens on the front of the
23 vehicle that had some staining consistent to that of dried
24 blood, and I also collected a DNA swab from the hood of the
25 car that also had the same brown, reddish stain consistent to

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EMILIE HARDWICK - DIRECT BY OSKIN

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1 that of blood.

2 Q: Would you please explain to the jury the process you used
3 to collect DNA from this vehicle?

4 A: We use what's called DNA swabs. We will wet the tip of
5 the swab, it looks like a Q-tip, with some sterile water and
6 then we'll rub it onto the staining and then we'll place it
7 into a cardboard box and then seal it up and then that
8 evidence will be submitted to SLED, our state agency in
9 Columbia for DNA analysis.

10 Q: Detective Hardwick, I'm showing you what's been pre-
11 marked as State's Exhibit 20, Number 21, Number 22. Are you
12 able to recognize that?

13 A: Yes, these are all photographs that I took of the vehicle
14 with the -- of the staining prior to any marking, and then I
15 did it with the marking and it kind of puts it to scale.
16 There's some measurement here. And then this is the carton
17 where I collected the -- where I swabbed up here and collected
18 the possible DNA evidence.

19 Q: Okay. What is State's Exhibit Number 22?

20 A: This is the DNA swab with the blood from the hood of the
21 vehicle. You want me to open it?

22 Q: No, ma'am, not at this time.

23 MR. OSKIN: Your Honor, at this time, the State would
24 move State's Exhibit 20, 21 and 22 into evidence.

25 THE COURT: Mr. Fox? Have you shown them to Mr. Fox?

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1 MR. FOX: Without objection, Your Honor.

2 THE COURT: All right. Without objection, they are
3 admitted.

4 STATE'S EXHIBIT NUMBERS 20, 21, AND 22

5 ADMITTED INTO EVIDENCE

6 BY MR. OSKIN:

7 Q: I've got a lot in front of you, Detective Hardwick.
8 Please explain -- don't open it -- but what is this? Let's go
9 into a little further detail of what that is.

10 A: The, the swabs that were taken from the hood of the car
11 would suspect the blood from the victim and the reason why we
12 took it we were wanting to compare this DNA sample to the DNA
13 that I did take from the victim while I was at the hospital
14 interviewing him. I took the exact same swabs, did not pre-
15 wet them because I was doing what we call a buccal swab. I
16 swabbed the inside of his cheeks to get his DNA sample and
17 then that was also packaged into, you know, the same cardboard
18 container. And then when this was collected, both items were
19 sent to SLED for comparison.

20 Q: Let me just stop right there. My apologies. You would
21 recognize this?

22 A: Yes. This would be the oral swab that I collected from
23 the victim at the hospital.

24 Q: That's what you were talking about just now in your
25 testimony?

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1 A: Yes.

2 MR. OSKIN: your Honor, the State would move State's
3 Exhibit Number 23 into evidence. MR. FOX: Without
4 objection.

5 THE COURT: Without objection, it's admitted.

6 STATE'S EXHIBIT NUMBER 23

7 ADMITTED INTO EVIDENCE

8 BY MR. OSKIN:

9 Q: Detective Hardwick, after you completed this process, who
10 did you turn that DNA over to?

11 A: I turn it into our Crime Scene, Property and Crime Scene
12 personnel, which would've been Sharon Lilly. Sharon Lilly and
13 Donna Bell is the ones who work and take in the initial
14 evidence. And then from there, they will either store it or
15 if it needs to be sent to SLED, they'll gather all the items
16 that need to be collected to SLED and then another crime scene
17 investigator will transport our evidence to SLED for
18 processing.

19 Q: Detective Hardwick, I thank you for your explanation.
20 Please answer any questions Mr. Fox may have for you.

21 THE COURT: Mr. Fox?

22 CROSS EXAMINATION OF EMILIE HARDWICK BY MR. FOX:

23 Q: Detective Hardwick, in addition to collecting samples you
24 just testified to, you also interviewed or you had interviews
25 with several witnesses in connection with this?

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- 1 A: Yes, sir.
- 2 Q: 'Cause you were lead investigator, correct?
- 3 A: Correct.
- 4 Q: It would've been your job to basically coordinate
- 5 everything, gather information that other officers had
- 6 obtained and have it in useable fashion, correct?
- 7 A: Yes, sir.
- 8 Q: Okay. And you yourself interviewed Mr. Miniet, Miniet?
- 9 A: Uh-huh (affirmative response); I did.
- 10 Q: And you interviewed at some point Mr. Maiden, correct?
- 11 A: Correct.
- 12 Q: Okay. Did you interview Vince Richardson, who was from
- 13 The Boathouse, or was that another officer?
- 14 A: I interviewed him.
- 15 Q: Okay. And he -- and what he said, he claimed to be an
- 16 eyewitness to what happened outside, correct?
- 17 A: Correct.
- 18 Q: Okay. From the different people you interviewed, the
- 19 people who were outside, did you have any information that Mr.
- 20 Miniet in fact ran or got in front of Mr. Maiden's vehicle?
- 21 A: Mr. Richardson, or Vincent Richardson, was the person I
- 22 did interview. He stated that he had witnessed ---
- 23 MR. OSKIN: Objection to any hearsay, Your Honor.
- 24 THE COURT: Ask that question again?
- 25 BY MR. FOX:

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1 Q: I asked if you had any information during the course of
2 your investigation from the different people that you
3 interviewed from or that you had collected, whether you had
4 any information that Mr. Miniet may have put himself in front
5 of the vehicle?

6 A: Mr. Richardson did state that he ---

7 MR. OSKIN: Objection, Your Honor.

8 THE COURT: I'm gonna allow it.

9 A: Mr. Richardson stated that he seen Alex run up to Josh's
10 vehicle and hit the hood.

11 BY MR. FOX:

12 Q: Okay. Now, you spoke with -- well I'll get to Mr. Maiden
13 in a moment. Have you heard the two 911 calls?

14 A: Yes, I heard ---

15 Q: One from Mr. Miniet?

16 A: Yes, sir.

17 Q: And then there was a cab driver, correct?

18 A: Correct.

19 Q: Was that cab driver ever interviewed?

20 A: No, sir.

21 Q: Okay. He gave his name on the 911 call, did he not?

22 A: I believe so.

23 Q: Okay. But there was never any -- as far as you know, he
24 was never located or interviewed?

25 A: No, sir.

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1 Q: Okay. But he was someone who claimed to be an eyewitness
2 to these events?

3 A: Yes, sir, on the 911 call.

4 Q: Now Mr. Maiden was located that same evening, correct?

5 A: Correct.

6 Q: Okay. And he was taken into custody, took him to the
7 police station. He was read his rights and he spoke with
8 y'all, correct?

9 A: Correct.

10 Q: That was you and another detective?

11 A: Yes, Detective King Hemingway.

12 Q: Okay. And he was asked about what happened?

13 A: Correct.

14 Q: And he told you about the prior altercation inside?

15 MR. OSKIN: Objection, Your Honor, hearsay.

16 THE COURT: I'm gonna allow him to ask the question.

17 BY MR. FOX:

18 Q: Mr. Maiden told you about his, on this evening, prior
19 altercation with Mr. Miniet?

20 A: Yes, sir.

21 Q: Kind of a running feud for a while?

22 A: Yeah, they had exchanged some words, some shoving.

23 Q: Had to be separated on one occasion?

24 A: That's what he said.

25 Q: Right. And then later they found themselves in the same

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1 location ---

2 MR. OSKIN: Object. May we approach, Your Honor?

3 THE COURT: Let's send the jury out for just a moment.

4 (REPORTER'S NOTE: Jury exits courtroom. 10:46 A.M. The
5 following takes place outside the presence of the Jury.)

6 THE COURT: Okay.

7 MR. OSKIN: Mr. Fox is merely testifying for the
8 Defendant. The Defendant is present. He's able to testify
9 ---

10 THE COURT: I understand. I'm giving you some leeway,
11 but you're getting kind of far afield in this. Okay?

12 MR. FOX: Yes, sir.

13 THE COURT: Let's try to stay within the bounds of proper
14 cross.

15 MR. DEBUSK: And we never went into the statement on
16 direct. We didn't even talk about him ---

17 THE COURT: It doesn't make any difference. It doesn't
18 make any difference; he's still on cross. I'm gonna let him
19 -- I'm gonna give him substantial leeway, but still let's
20 don't get into hearsay.

21 Let me ask you something, Mr. Fox, I sent the jury out
22 and we're gonna have a break. From your opening, it would
23 appear to me that the fact that your client's car struck the
24 Defendant is undisputed?

25 MR. FOX: That's correct.

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1 THE COURT: The circumstances ---

2 MR. FOX: That's correct.

3 THE COURT: --- and defenses are still ---

4 MR. FOX: Yes, sir.

5 THE COURT: But, the fact that that was the vehicle that
6 struck Mr. Maiden -- or Mr. Miniet is undisputed?

7 MR. FOX: Yes, sir.

8 THE COURT: So, Mr. DeBusk, Mr. Oskin, is it necessary
9 then that we bring the records custodian, I mean the evidence
10 custodian and the SLED folks here to testify that the blood
11 matches up if I can simply tell the jury that at this point
12 it's undisputed that was the vehicle that struck, the
13 circumstances are contested. Would you have any objection to
14 that Mr. Fox?

15 MR. FOX: I want to hold the State to their burden of
16 proof and if they want to put it in evidence, I want them to
17 lay the proper foundation and put it in, even if it's not
18 something that ultimately I'm contesting. I know that's a
19 little ---

20 THE COURT: So, you want them to do it?

21 MR. FOX: I do.

22 THE COURT: Okay. Very well. I was just thinking that
23 we might limit it to the issues that we're ---

24 MR. FOX: As you see, I have very few questions.

25 THE COURT: All right. All right. I'll tell you, how

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1 much more do you have of this witness, Mr. Fox? I can bring
2 the jury back in and we can complete this witness and then
3 take a break or we can just take a break.

4 MR. FOX: Why don't we go ahead and do it? I mean, it's
5 not long.

6 THE COURT: All right. Let's bring the jury back in.
7 Okay?

8 MR. FOX: It won't be more than five or ten minutes.

9 THE COURT: That's all right.

10 (REPORTER'S NOTE: Jury enters courtroom. 10:50 A.M.)

11 THE COURT: All right. You may continue, Mr. Fox.

12 BY MR. FOX:

13 Q: Detective, I'm gonna jump back and summarize. You had a
14 chance to speak with Mr. Maiden, correct?

15 A: Yes.

16 Q: Okay. And he -- and he agreed to speak with you?

17 A: Yes.

18 Q: Okay. And he described the events both outside The
19 Boathouse as well as what happened inside, correct?

20 A: Correct.

21 Q: And part of that he described sort of an ongoing
22 altercation with Mr. Miniet?

23 MR. OSKIN: Objection, Your Honor.

24 THE COURT: I will allow that. We've had testimony
25 concerning that already.

1 BY MR. FOX:

2 Q: And did he also include statements to you that from his
3 point of view, Mr. Maiden felt he had been threatened?

4 A: Yes.

5 Q: Okay. Now with regard to your interview with Mr. Miniet,
6 that was the next day?

7 A: Yes.

8 Q: In the hospital?

9 A: Yes.

10 Q: Okay. He was awake?

11 A: Yes.

12 Q: He was alert?

13 A: Yes.

14 Q: Okay. He was able to talk?

15 A: Yes.

16 Q: Memory was clear?

17 A: Yes.

18 Q: Okay. He was able to speak with you?

19 A: Yes.

20 Q: And the interview went on for 45 minutes or so, did it
21 not?

22 A: Yeah.

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

24 THE COURT: All right. Any redirect?

25 MR. OSKIN: Yes, Your Honor, briefly.

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EMILIE HARDWICK - REDIRECT BY OSKIN

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1 STATE'S EXHIBIT NUMBER 24

2 MARKED FOR IDENTIFICATION

3 REDIRECT EXAMINATION OF EMILIE HARDWICK BY MR. OSKIN:

4 Q: Detective Hardwick, I'm showing you what's been marked as
5 State's Exhibit Number 24, do you recognize what that is
6 without saying what's on it?

7 A: Yes, this is a witness statement form.

8 Q: From which witness?

9 A: Vincent Richardson.

10 MR. OSKIN: At this time, Your Honor, the State would
11 wish to move State's Exhibit Number 24 into evidence.

12 MR. FOX: Objection.

13 THE COURT: Pardon?

14 MR. FOX: Objection.

15 THE COURT: And I would sustain the objection. I'm not
16 gonna allow that.

17 MR. DEBUSK: Under the rule of completeness, he wanted -
18 --

19 THE COURT: I'm not gonna allow that hearsay statement
20 put in without the person's being here. The person can appear
21 and testify.

22 MR. DEBUSK: Your Honor, the statement is already in
23 evidence.

24 THE COURT: No, it's not. That's my ruling. It's not
25 admitted.

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1 MR. OSKIN: Nothing further from this witness, Your
2 Honor.

3 THE COURT: All right. Mr. Fox? MR. FOX: Nothing
4 further.

5 THE COURT: You may step down, Detective Hardwick.

6 BY THE COURT:

7 THE COURT: All right, Mr. Ropp, it's about 11 o'clock.
8 Let's let the jury take a mid-morning break. Okay?

9 We're at ease for about 10 or 15 minutes.

10 (REPORTER'S NOTE: Jury exits courtroom. 10:54 A.M.)

11 **(RECESS - 10:54 A.M.)**

12 *******OFF THE RECORD*******

13 **(On the Record. 11:06 A.M.)**

14 THE COURT: Bring our jury in.

15 (REPORTER'S NOTE: Jury enters courtroom. 11:07 A.M.)

16 THE COURT: Okay. We've got everybody back in.

17 Mr. DeBusk, if you would?

18 MR. OSKIN: I apologize, Your Honor, may I ---

19 THE COURT: Yes.

20 MR. OSKIN: At this time, the State would call Mr. Matt
21 Chiviattoni.

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

24 MATTHEW JOHN CHIVIATTONNI, HAVING
25 BEEN SWORN TESTIFIES AS FOLLOWS:

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MATTHEW CHIAVATTONI - DIRECT BY OSKIN

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1 CLERK: If you'll state your full name and spell your
2 first and last name for the Court.
3 MR. CHIVIAATTONI: Spell my first and last name? CLERK:
4 Uh-huh (affirmative response).
5 MR. CHIVIAATTONI: You got it. Matthew John Chiviattoni,
6 M-A-T-T-H-E-W, C-H-I-V-I-A-T-T-O-N-I.
7 DIRECT EXAMINATION OF MATTHEW JOHN CHIVIAATTONI BY MR. OSKIN:
8 Q: Mr. Chiviattoni, how old are you, sir?
9 A: Twenty-seven.
10 Q: Are you currently employed?
11 A: I am.
12 Q: Who are you employed by?
13 A: Boathouse, Tony's American Tavern.
14 Q: Okay. What do you do?
15 A: At the bars or in general?
16 Q: At the bar, yes, sir?
17 A: Security.
18 Q: Okay. Any other employment?
19 A: North Carolina National Guard.
20 Q: Were you employed by The Boathouse on May 22nd of 2016?
21 A: I was.
22 Q: Were you working that day?
23 A: Yes, I was.
24 Q: Okay. Please describe to this jury some of your duties
25 as security for the bars, specifically Boathouse?

1 A: The Boathouse, most of the time it just deals with taking
2 out a lot of trash cans, but we're there in the case of any
3 fights break out, pretty much to separate them, escort them
4 out front.

5 Q: Did a fight break out that night on May 22nd?

6 A: Yes, sir.

7 Q: How did you respond to that fight, sir?

8 A: The initial fight, I was not the first to it. By the
9 time I got over there, we were already working on separating
10 them and I believe one of them got dragged or they both got
11 separated and dragged out to the front.

12 Q: Do you recognize the Defendant as being involved in that
13 fight?

14 A: I do.

15 Q: I'm showing you what's been marked as State's Exhibit
16 Number 5, are you able to recognize this?

17 A: Yeah.

18 Q: What is that?

19 A: It's a video of the initial fight inside.

20 Q: The fight you were just describing?

21 A: Yes.

22 Q: That you witnessed?

23 A: Yes.

24 Q: And that was at The Boathouse?

25 A: Yes.

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1 MR. OSKIN: Your Honor, at this time, the State would
2 wish to move State's Exhibit Number 5 into evidence and
3 publish it to the jury.

4 MR. FOX: I just want to make sure, he said -- his
5 testimony was that he witnessed this fight, correct?

6 THE COURT: That's my understanding.

7 MR. FOX: Okay.

8 A: If I can clarify that? They were fighting when I got to
9 them.

10 MR. FOX: But I'm not sure the foundation has been laid
11 for it. Is he trying to admit the video at this point?

12 BY MR. OSKIN:

13 Q: Let me ask some additional questions, Mr. Chiviattoni.
14 Do you appear in this video?

15 A: I do.

16 Q: Are you able to recognize yourself in this video?

17 A: Yeah.

18 MR. OSKIN: At this time, Your Honor, the State would
19 wish to move State's Exhibit Number 5 into evidence?

20 THE COURT: Mr. Fox?

21 MR. FOX: I guess I would object still without more
22 information about who took it, where it's been since, who's
23 had control of it, is this complete; so, I would have concerns
24 about ---

25 THE COURT: Ask him where it came from, how was it

1 available, some of those questions, some background questions,
2 Mr. Oskin.

3 BY MR. OSKIN:

4 Q: Mr. Chiviattoni, to your knowledge, where did this video
5 come from?

6 A: One of the patrons at the bar.

7 Q: What was this patron doing at the bar on Sunday?

8 A: I mean, he was there for Sunday Funday, the concert.

9 Q: All right.

10 THE COURT: Let's send the jury out, Mr. -- Mr. Ropp,
11 please take the jury out a moment.

12 (REPORTER'S NOTE: Jury exits courtroom. 11:11 A.M. The
13 following takes place outside the presence of the Jury.)

14 THE COURT: All right. Now, Mr. Oskin, what I
15 understand is this witness -- this is not the security videos
16 at the bar that this witness would have any knowledge of.
17 This was a video that at some time he was made aware of that
18 came from some outside source, that being a patron; is that
19 correct?

20 MR. OSKIN: That would be correct, Your Honor. However,
21 it's a fair and accurate representation of the events that
22 happened. He's able to identify himself and ---

23 THE COURT: And he says he was just there some of the
24 time.

25 MR. FOX: Well, Judge, again, and I think to go further

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1 ---

2 THE COURT: I mean, we don't know whether it's been
3 edited or anything like that.

4 MR. FOX: I understand it came to law enforcement from
5 pulling it off of Facebook. Again, I don't know what it
6 looked like before it was put to Facebook; I don't know how it
7 looked like when it was on the phone when it was taken.

8 THE COURT: We don't even know who the patron is?

9 MR. FOX: We do. We do know who the patron is.

10 THE COURT: But he's not here to say I was there, this is
11 what I observed, it has not been altered, or anything like
12 that? We don't have any of that?

13 MR. OSKIN: What's the question, Your Honor? I
14 apologize.

15 THE COURT: We don't have anyone to say, I took it, that
16 I have not altered it, and it's a fair representation of what
17 I observed? We're just gonna have this witness say that
18 somebody showed it to me and somebody else made it and I don't
19 know.

20 MR. OSKIN: Your Honor, again, we submit that the witness
21 has testified that it is a fair and accurate representation of
22 the fight ---

23 THE COURT: He testified, it's my understanding, he
24 wasn't even there all the time.

25 MR. OSKIN: Your Honor, if we can view this in camera?

1 THE COURT: Let's look at it.

2 MR. OSKIN: I believe you'll be able to understand his
3 discrepancy with that.

4 BY MR. OSKIN:

5 Q: Mr. Chiviattoni, are you able to see the screen?

6 A: I am.

7 MR. OSKIN: Judge, are you able to see it as well?

8 THE COURT: I can.

9 (REPORTER'S NOTE: State's 5 published for the Court outside
10 of the Jury's presence. Not transcribed herein.)

11 *****OFF THE RECORD*****

12 (On the Record.)

13 Q: Is that you, Mr. Chiviattoni?

14 A: I am -- you'll see me in a second.

15 Q: With the beard?

16 A: Right -- that's me right there with the black shoes on
17 that's kind of coming through the crowd as the camera dropped.
18 God, I forgot how dumb this guy was.

19 Q: I believe it was before this point?

20 A: Yeah, 'cause you can kinda see my feet coming through the
21 crowd.

22 Q: Is this you in the ---

23 A: Nah, see the -- yeah, those ones right there.

24 THE COURT: So that's you coming on the scene after the
25 fight began?

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1 A: When they were on the ground.

2 BY MR. OSKIN:

3 Q: Where were you standing before?

4 A: The far side of the tiki bar.

5 THE COURT: Well, did you see the fight start or not?

6 A: The initial contact with the bottle, I did not see it. I
7 got there when they were on the ground.

8 THE COURT: No, I'm gonna require further authentication
9 of this. Who made it? I mean ---

10 MR. DEBUSK: Your Honor, we have an individual that
11 appeared in the entire fight -- that's ---

12 THE COURT: Who made this video? I mean, and where has
13 it been and has it been altered or has it been ---

14 MR. DEBUSK: Your Honor, we can -- a later witness who
15 appears in that entire video can say that that's a fair and
16 accurate representation of what happened. He can say that all
17 those -- and it has not been altered.

18 THE COURT: What the purpose in offering this?

19 MR. OSKIN: We been speaking about the initial fight,
20 Your Honor.

21 THE COURT: It was a fight. Okay. Right?

22 MR. OSKIN: That's correct.

23 THE COURT: Is that disputed?

24 MR. OSKIN: The severity of the injuries at least to the
25 basis for the entire testimony of the victim of the State's

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1 basis for this case. The victim struck him with a bottle as
2 he's leaving.

3 THE COURT: I don't see that. Play it back and show me.

4 MR. OSKIN: From which part, Your Honor?

5 THE COURT: Anything you want to show me about somebody
6 getting hit with a bottle and then what's there?

7 MR. OSKIN: We'll start from the beginning.

8 *****OFF THE RECORD*****

9 (REPORTER'S NOTE: State's 5 published to the Court. The
10 following takes place outside the presence of the Jury.)

11 **(On the Record.)**

12 BY MR. OSKIN:

13 Q: Where are you at? Is that you right there?

14 A: Yeah, that's me right there.

15 MR. OSKIN: Your Honor, this initial contact from the
16 Defendant to the middle of making this video, this further
17 video will show, if the Court is -- would like to see that,
18 he's asking for the number. He's actually giving his cell
19 phone number to the person that took this video. From there
20 he's escorted out to the bar. I think this goes directly --
21 and once he's in Mr. Chiviattoni's custody, he becomes in
22 contact with 911. It goes directly to negate the Defense's
23 possible claim of intent, that he did not have intent to
24 strike him and negates any testimony about him being armed
25 with a weapon, about him going after the driver that, the

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1 Defendant. It sets up the whole basis for which prior
2 testimony has already shown, try to get the license plate
3 number of that car, he was not armed or trying to do anything
4 like that. This is where it starts; this is the start of
5 their meeting that night.

6 THE COURT: Tell me where it shows he's not armed. I
7 think the best evidence that he's not armed is he's laying in
8 the street and he's not armed. This video doesn't show that.

9 MR. DEBUSK: Your Honor, it also goes -- Mr. Fox already
10 spoke about certain threats that were allegedly made by the
11 victim towards the Defendant. This, this tape goes to that as
12 well. It's presence or absence as well.

13 THE COURT: In what respect?

14 MR. FOX: --- at the very end, it doesn't show ---

15 THE COURT: I'm concerned that I don't have the person
16 who's making the video, I don't know who this idiot that's
17 doing the yelling trying to sell the caps and the walkie-
18 talkies is; I don't have a clue who he is. I've got real
19 questions about his veracity. I mean he's trying to sell the
20 bouncers walkie-talkie on the video and he's not here. I'm
21 not gonna allow it.

22 MR. DEBUSK: Your Honor ---

23 THE COURT: That's my ruling. I'm not allowing it.

24 MR. DEBUSK: Would you reconsider ---

25 THE COURT: I'm not allowing it. That's clear. How many

1 times have I got to say it? It's not authenticated. You
2 bring in the person who made and I'll reconsider it.

3 Bring the jury back in.

4 (REPORTER'S NOTE: Jury enters courtroom. 11:23 A.M.)

5 THE COURT: All right. Proceed.

6 BY MR. OSKIN:

7 Q: Mr. Chiviattoni, I believe you were testifying that you
8 broke up a fight that occurred?

9 A: Yes, sir,

10 Q: Okay. Can you identify the Defendant as being involved
11 in that fight?

12 A: Yes, sir.

13 Q: Did you see the victim that was involved in that fight?

14 A: Yes, sir.

15 Q: Do you see him present in the courtroom today?

16 A: Yes, sir.

17 Q: Will you please point him out for the jury?

18 THE COURT: He's indicated the person who's been seated
19 behind the State's attorneys. Go ahead.

20 BY MR. OSKIN:

21 Q: Once they were broken up, what happened? Were they
22 escorted out?

23 A: Once they were broken up, we escorted them out front at
24 which time I did not see him. I was staying with him and I
25 was walking with him. He seemed very concerned more of

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MATTHEW CHIAVATTONI - DIRECT BY OSKIN

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1 custody for his child, and he called 911 while we were look --
2 walking across or walking across the street. He wanted to
3 identify his license plate number to give it to police. At
4 that time, we were crossing the street, he pulls up ---

5 THE COURT: Now you -- he -- indicate who now.

6 A: Him, (indicating).

7 THE COURT: The Defendant?

8 A: Yes. I'm sorry, sir. The Defendant pulls up, stops real
9 quick. He had his phone in his hand and he pointed to him, I
10 remember him saying, That's him right there. At which point
11 he accelerated, hit him ---

12 THE COURT: Again, tell us who he is?

13 A: The Defendant.

14 THE COURT: We have a record here ---

15 A: Yeah.

16 THE COURT: That when you read it back ---

17 A: Gotcha.

18 THE COURT: When you have two people you refer to as he,
19 it's very difficult.

20 A: Gotcha. I apologize, sir.

21 THE COURT: All right.

22 A: Okay. Well, the Defendant, after stopping, accelerated
23 into Alex, hit him about I'd say five or ten feet in front of
24 the vehicle and then continued over top of him. At which
25 after he pulled into the parking lot, turned around, came out

1 and took off.

2 Q: I understand that's generally what happened. Now we're
3 gonna break that down a little bit. Okay, sir?

4 A: Yep.

5 Q: Why are two individuals who get in a fight at your bar,
6 why are they escorted out separately?

7 A: In order to keep them from fighting on the way out the
8 bar.

9 Q: Okay. And you said you personally escorted out Mr.
10 Miniet?

11 A: I did. I was with him up until the entire time from the
12 front door out.

13 Q: You stated he was talking about custody ---

14 A: Yeah, he was more worried about custody and getting a
15 license plate number for law enforcement.

16 Q: While you were -- was he in your physical custody? Did
17 you have like your arms around him escorting him out?

18 A: He was very polite and courteous the whole time. He
19 never gave us any issues. He was just really concerned about
20 getting the license plate number.

21 Q: Okay. So while he was doing that, did you hear any
22 threatening gestures he was making towards the Defendant, any
23 threatening gestures at all, first towards the Defendant?

24 A: No.

25 Q: Was he making any threatening gestures at all?

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1 A: No. The only thing he ever said even in the direction of
2 the Defendant was, that's him, and pointed at him.

3 Q: That was before he got struck the first time by the
4 vehicle?

5 A: That was right before he got the initial struck by the
6 vehicle.

7 Q: How far were you from the victim and Defendant in this
8 case when you got hit by the car the first time?

9 A: Fifteen, twenty feet.

10 Q: Okay. Were you able to see the Defendant driving the car
11 at that time?

12 A: I was.

13 Q: Were you able to see his posture in the car?

14 A: Yes.

15 Q: Where was his eyes, where was his head; was he looking
16 directly ahead, was he ducking down? What was he doing?

17 A: It was straightforward the entire time. It's not like he
18 looked around to try to make an escape in any way. He never
19 broke eye contact and just continued to stare forward.

20 Q: Never broke contact with Mr. Miniet?

21 A: Correct.

22 Q: It was near his vehicle?

23 A: Correct.

24 Q: In your employment there, are you aware of any other
25 exits to leave the parking lot there?

1 A: That parking lot is an abandoned mall. It's probably got
2 a good 20 exits around it.

3 Q: Court's indulgence. Mr. Chiviattoni, if the Court will
4 allow it, I'm gonna have you step off the witness stand,
5 please, sir?

6 A: Yes, sir.

7 Q: I need you to stand here so the Court Reporter can hear
8 you. Stand here, sir. Now here with your initials, MC, I
9 want you to mark where you first saw them, the victim and the
10 Defendant, where you began escorting them out, with MC1,
11 please, with that pen?

12 A: Initial like inside?

13 Q: When the victim first came into your custody; I believe
14 you testified that it was outside?

15 A: Yeah. Initially, there was a fight right about -- you
16 said write my initials?

17 Q: MC1, yes, sir.

18 A: Right about here. They were broken up. We escorted
19 them ---

20 Q: If you can draw a line to show, I know that the building
21 is there, but I believe you'll be able to determine that it's
22 going through the inside?

23 A: We escorted them through there, out to the front.

24 Q: Uh-huh (affirmative response). What kind -- what kind of
25 doors are there when you leave The Boathouse? Like two basic

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MATTHEW CHIAVATTONI - DIRECT BY OSKIN

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- 1 doors, a double door, a long slide door?
- 2 A: It's like the door with a wall and another door right
3 next to it.
- 4 Q: Okay.
- 5 A: You push it to open.
- 6 Q: You walked out with the victim ---
- 7 A: Yeah, I walked him to make sure ---
- 8 Q: Mark where you guys were initially and mark them with
9 MC2.
- 10 A: Okay. Well, this is -- I mean, this is where we started.
- 11 Q: All right.
- 12 A: I continued to walk him, like I say, the entire time he
13 was worried about child custody and getting the license plate
14 number to report to law enforcement.
- 15 Q: No threats?
- 16 A: No, he was very ---
- 17 Q: How about, I'll put a bullet between your eyes; did he
18 ever say anything like that?
- 19 A: No.
- 20 Q: Okay.
- 21 A: For getting into a fight in there, he was actually pretty
22 calm the entire time.
- 23 Q: Okay.
- 24 A: We continued this way, began to walk across the street.
- 25 Q: Where was the vehicle at when you first saw it?

1 A: Just draw a little box?

2 Q: That's fine. Just mark it with a V.

3 A: He was pulling over this way from this direction.

4 Q: Where was the vehicle at when it first made contact with

5 the victim in this case? Just draw an X and circle that X?

6 A: Right around right here.

7 Q: Okay. Real quick while I have you, I'm showing you

8 what's been entered into evidence as State's Exhibit Number

9 10. Do you recognize that?

10 A: Yep.

11 Q: What is that?

12 A: It's the vehicle.

13 Q: It's the vehicle you saw that night?

14 A: The one that the Defendant was driving.

15 Q: That struck our victim in this case? Yes, sir?

16 A: Yes.

17 Q: All right. So you've drawn where the initial contact was

18 and you're, you're -- did you say 20 to 30 feet max away?

19 A: Where I was -- I was probably about right here. Actually

20 I was back a little bit this way, somewhere in there.

21 Q: Okay. Please -- having the first contact -- let's make

22 sure we get this right. The driver of the vehicle, the

23 Defendant, what was his posture in that vehicle?

24 A: From what I saw, it was very aggressive. He did not look

25 fearful at all. He looked very angry.

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MATTHEW CHIAVATTONI - DIRECT BY OSKIN

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- 1 Q: And you said you know there's multiple other exits the
2 way to leave there?
- 3 A: Yeah, I mean all he had to do is he couldn't have went
4 this way, because I was in the center of the road. So there
5 were two lanes right here he could've pulled out of fast. He
6 could've backed up and went this way, went through this way,
7 and there's a kinda mall right here with parking lots
8 everywhere and there's exits all over the place.
- 9 Q: If I could have you return to your seat, sir. If you'll
10 return that to the Court Reporter, I do appreciate it?
- 11 A: Yes, sir.
- 12 Q: Let's just -- I know you saw everything. What did the
13 victim do after he was hit by the vehicle the second time?
- 14 A: After he got ran over?
- 15 Q: Yes, sir. Did you respond to him?
- 16 A: Yes, I ran up to him to try to keep him from moving. He
17 ---
- 18 Q: Was he laying in the middle of the road at this time?
- 19 A: Oh yeah, he was looking rough. It was -- you could
20 definitely tell there was a lot of bodily injury to him.
- 21 Q: Now you said that you were in the National Guard?
- 22 A: Correct.
- 23 Q: Any prior military experience with that?
- 24 A: Four years of active duty before that with a deployment
25 to Afghanistan.

1 Q: Deployed to Afghanistan. Okay. Not to bring up bad
2 subjects, but you're used to traumatic situations?

3 A: Yeah.

4 Q: You've seen those before, correct?

5 A: Yes, sir.

6 Q: How did Mr. Miniet compare to any of those traumatic
7 situations you've seen overseas?

8 A: Watching him get run over is probably one of the worse
9 things I've had to watch. It was -- it was pretty bad.

10 Q: What did you think was gonna happen to him after he was
11 hit the second time?

12 A: After he got ran over, I thought he was dead. I thought
13 by the time I walked up to him, I was like there's no way he's
14 gonna be alive.

15 Q: Was there any blood on the scene?

16 A: Yeah.

17 Q: How much?

18 A: I mean, he was bleeding from his multiple spots on his
19 head. I remember his arm specifically was very -- I'm sorry
20 -- very swollen; it appeared to be broken. He -- I mean he
21 was in rough shape.

22 Q: Did you notice any damage to his face?

23 A: Yeah, I mean there was blood all over his face and just
24 ---

25 Q: I know you said he got ran over by a car, did you see any

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MATTHEW CHIAVATTONI - DIRECT BY OSKIN

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1 type of road rash, tire marks, were any of those visible at
2 this point?

3 A: From -- I don't really recall tire marks or anything. I
4 just remember getting there and trying to keep him from moving
5 because he never lost consciousness.

6 Q: He was trying to get up?

7 A: No, he was kind of rolling around a little bit though. I
8 was trying to get him to stop in case of any a neck injury or
9 anything.

10 Q: Did he say anything to you at that time about getting hit
11 or who had hit him?

12 A: Yeah, he multiple times said I just got ran over and kept
13 saying the Defendant's name.

14 Q: What is his name, the Defendant's name?

15 A: The Defendant's name?

16 Q: What is the name Mr. Miniet was saying when he was laying
17 there after he had just been ran over?

18 A: Joshua Maiden.

19 Q: All right. Lastly, sir, you had a full visual from
20 beginning to end. Very brief, the fight occurs. It's your
21 job as a security at The Boathouse, you're part of breaking it
22 up?

23 A: Yes, sir.

24 Q: Mr. Miniet is in your physical custody?

25 A: Yes, sir.

1 Q: You escort him out to the point outside the bar where he
2 gets immediately struck by a vehicle twice thereafter,
3 correct?

4 A: Correct, as soon as we off The Boathouse property.

5 Q: And while he was in your physical custody, you never
6 heard him say any threats at all?

7 A: Not at all. I mean, like I said, I was honestly
8 impressed for somebody that just got hit in a bar. His major
9 concerns, like I say, he kept saying we're getting full
10 custody of the kid or kids -- I can't remember if it was one
11 or two at the time -- but his main concerns were custody and
12 getting a license plate.

13 Q: Did he ever ask you to call 911 or was he on the phone?

14 A: He called 911.

15 Q: Was he on the phone, to your knowledge, before he got
16 struck?

17 A: Yes, he was on the phone pretty much from on the way out
18 the door.

19 Q: Was that phone to his ear when he was talking, was it on
20 speakerphone, where was his hand?

21 A: His hand was right about this area.

22 Q: Where was his off hand?

23 A: His off hand, before he got struck, it was pointing at
24 the vehicle.

25 Q: So he's like this?

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MATTHEW CHIAVATTONI - CROSS BY FOX

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1 A: He was like -- he was on -- whoops, too close. Sorry
2 about that.

3 Q: Put your -- go ahead.

4 A: He was on the -- his posture was this way before he got
5 struck.

6 Q: And that's the victim's posture right before he gets hit?

7 A: Correct.

8 Q: Correct. Okay. And lastly, the Defendant's posture was
9 hands on the steering wheel looking directly at him?

10 A: Yes, he did not break eye contact and he did not look
11 fearful.

12 Q: There were multiple other ways to leave?

13 A: Yes.

14 Q: Nothing further. Please answer any questions for Mr.
15 Fox.

16 A: Yes, sir.

17 CROSS EXAMINATION OF MATTHEW CHIVIAATTONI BY MR. FOX:

18 Q: At the time you walked out with Mr. Miniet, Mr. Maiden
19 was already across to the other parking lot, correct; he was
20 already in his car by that point?

21 A: Yes, sir.

22 Q: All right. At that point, Mr. Miniet was just walking
23 with you, what reason would Mr. Maiden have had to leave any
24 other way? They were 50 feet, 100 feet away from each other,
25 weren't they, when you came out the door?

- 1 A: When we actually came out of the door?
- 2 Q: Yeah. When you walked -- when you exited The Boathouse
- 3 ---
- 4 A: Yes, sir.
- 5 Q: --- and first came out that door into The Boathouse
- 6 parking lot, Mr. Maiden wasn't in The Boathouse parking lot,
- 7 correct?
- 8 A: Correct, sir.
- 9 Q: He wasn't -- you didn't see him in the street?
- 10 A: Correct, sir.
- 11 Q: The first time you saw him, he was in his vehicle,
- 12 correct?
- 13 A: That's correct, sir.
- 14 Q: Now, how far did you walk with Mr. Maiden -- I'm sorry --
- 15 Mr. Miniet before during their separation? You said you were
- 16 15, 20 feet away when he got hit?
- 17 A: Well, once -- once we were off Boathouse property, it's
- 18 really not our responsibility, however, because the incident
- 19 had ensued inside, I was walking with him in the event that
- 20 they're -- him trying to recover, I'm sorry, the victim trying
- 21 to recover the license plate, in case they got into another
- 22 fight in the parking lot.
- 23 Q: So, Mr. Miniet was very interested in getting that
- 24 license plate number?
- 25 A: To report the police, correct?

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MATTHEW CHIAVATTONI - CROSS BY FOX

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1 Q: He knew Mr. Maiden was, he kept saying his name. He knew
2 who that person was already, correct?

3 A: Correct, and he gave the name to law enforcement.

4 Q: Yeah. So, the license plate, why did he need that?

5 A: If it wasn't his vehicle, if he was driving someone
6 else's vehicle.

7 Q: But Mr. Miniet managed to get 15 or 20 feet separation
8 from you and get in front of that car, correct?

9 A: I wouldn't say he was in front of the car; he was
10 crossing the street, sir.

11 Q: Okay. But he got 15 or 20 feet away from you?

12 A: Yes, sir, because I can't keep my hands on him once we're
13 off of Boathouse property.

14 Q: He was eager to confront Mr. Maiden?

15 A: I would say to get the license plate, not really to
16 confront. He was very calm the entire time.

17 Q: Okay. He was calm. He was excited on the phone with the
18 police, with 911?

19 A: He actually seemed pretty calm when he was talking to
20 them.

21 Q: You couldn't hear the other end of the conversation when
22 the cop said, calm down; you couldn't hear that end, could
23 you?

24 A: I just heard him talking. He seemed relatively, I mean
25 ---

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MATTHEW CHIAVATTONI - CROSS BY FOX

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- 1 Q: Okay. Now, we could do this without you coming down --
2 well, you need to come down to the map, please. Can you still
3 see the X you drew?
- 4 A: Yes, sir, here.
- 5 Q: And that's where the collision was?
- 6 A: Approximately.
- 7 Q: Approximately. So, in other words, if I'm coming this
8 way, pretty much dead on in the right lane, if you were
9 leaving, forget the reasons why, if you were driving out of
10 this exit, no matter which way you're gonna turn, that X is
11 right in what would be the right lane of this road, as it goes
12 toward The Boathouse?
- 13 A: It was a little more in the road. It wasn't really -- he
14 wasn't in the entrance of that actual road right there.
- 15 Q: Okay. And you came in -- I'm sorry -- the fight that was
16 inside, you kinda got in the tail end of that, correct?
- 17 A: Correct, they were on the ground wrestling.
- 18 Q: They were already on the ground. So, you had not heard
19 anything that was said before, correct?
- 20 A: Correct.
- 21 Q: Do you know what time Mr. Miniet got to The Boathouse
22 that night?
- 23 A: I do not recall; there was a lot of people there.
- 24 Q: Do you know what time Mr. Maiden got there?
- 25 A: I do not recall.

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MATTHEW CHIAVATTONI - CROSS BY FOX

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1 Q: Do you have any idea whether they spoke to each other in
2 any way, shape or form before you got involved?

3 A: I do not recall.

4 Q: You didn't see them?

5 A: I seen him around -- yeah, I saw him around there, but my
6 initial majority of work with them was when they were on the
7 ground by the tiki bar.

8 Q: Right, I understand. So, any words they exchanged
9 before, you did not hear?

10 A: No, sir.

11 Q: Any comments that were made, either way, you did not
12 hear?

13 A: No, sir.

14 Q: Any pushes or shoves between them, you didn't see?

15 A: No, sir, except for ---

16 Q: The end, the very end?

17 A: The video, yeah.

18 Q: And no question in your mind that Mr. Miniet had the
19 phone in his hand and was pointing?

20 A: Correct, sir. He was -- had the phone like this and said
21 that's him right there.

22 Q: Thank you.

23 THE COURT: Redirect?

24 MR. OSKIN: Very briefly.

25 REDIRECT EXAMINATION OF MATTHEW CHIVIAATTONI BY MR. OSKIN:

1 Q: Again, to reiterate, the driver of the vehicle, the
2 Defendant, Mr. Maiden, looking directly at ---

3 MR. FOX: That's outside the scope of my cross.

4 THE COURT: I haven't heard the question.

5 MR. FOX: The same question he's asked three times.

6 THE COURT: Let me hear the question.

7 MR. FOX: Yes, sir.

8 THE COURT: Mr. Oskin?

9 MR. OSKIN: Yes, sir, briefly.

10 BY MR. OSKIN:

11 Q: Mr. Fox talked about the driver being in the vehicle,
12 correct?

13 A: Correct.

14 Q: All right. Before that you testified about how people
15 are escorted separately, correct?

16 A: Correct.

17 Q: So, that's why you would be ahead of the victim in this
18 case that you were escorting out?

19 A: Correct. Generally, if there's a fight, we will let one
20 person -- we will escort them off the property and then hold
21 the other person back at least a minute or two to keep
22 separation from them.

23 Q: And as you're escorting, you walked out -- he walked out
24 calmly, you testified?

25 A: Yes, like I said, for someone who just got in a fight --

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MATTHEW CHIAVATTONI - REDIRECT BY OSKIN

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1 I've broken up a lot of fights, and he was probably one of the
2 more calm people I've seen after a fight.

3 Q: What's the lighting like at this time?

4 A: I believe the sun was starting to go down.

5 Q: But you were able to see everything clearly, the victim,
6 the driver of the vehicle?

7 A: Oh, yeah, because it wasn't dark until right around when
8 the cops and EMS finally arrived.

9 Q: And you testified, and even on cross examination, you
10 pointed out that he was on the telephone and he pointed to the
11 driver ---

12 A: And said, that's him.

13 Q: And said that's him right there?

14 A: Correct?

15 Q: Is that correct? Did you notice any weapons or anything
16 on the victim at that time?

17 A: No, sir.

18 Q: And you also testified that you responded to him after he
19 was hit?

20 A: Yes, sir. I stayed next to him until the EMS came.

21 Q: Did you see any firearms around the victim at that time?

22 A: No, sir.

23 Q: Did he turn any firearms over to EMS or anything like
24 that?

25 A: No, sir.

1 Q: You would notice what a firearm looked like, wouldn't
2 you, because of your military experience?

3 A: Yes, sir.

4 Q: Also during cross examination, you indicated on the map
5 where the vehicle was?

6 A: Yes, sir.

7 Q: Correct? From what you observed, would you have pulled
8 out any other way as opposed to striking the victim?

9 A: Correct, he could have immediately pulled left and gone
10 left, he could've backed up and gone out any of the other,
11 there's got to be at least 15 or 20 exits in that mall parking
12 lot.

13 Q: And those are routes indicated on that map that you
14 authenticated, identified and drawn, correct?

15 A: The lines that I drew that I walked with him? Correct.

16 Q: Last point, your observation, the driver was looking
17 directly at him, correct?

18 A: Correct.

19 Q: So he wouldn't -- he would have absolutely had to see him
20 before making contact.

21 MR. FOX: Objection, that calls for conclusion and that
22 question has been asked several times.

23 THE COURT: All right. I'm gonna let him respond.

24 MR. FOX: Yes, sir.

25 A: Correct, I couldn't see him. He did not appear fearful.

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MATTHEW CHIAVATTONI - REDIRECT BY OSKIN

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1 He did not look for another way out. He kept looking forward
2 the entire time.

3 BY MR. OSKIN:

4 Q: Nothing further, Mr. Chiviattoni.

5 THE COURT: Recross?

6 MR. FOX: Nothing further, Your Honor.

7 THE COURT: You may step down. Thank you, sir.

8 MR. CHIVATTONI: Thank you, sir.

9 MR. OSKIN: Your Honor, the State would ask that Mr.
10 Chiviattoni be excused for his subpoena.

11 THE COURT: Do you have any further need for Mr.
12 Chiviattoni?

13 MR. FOX: No, Your Honor.

14 THE COURT: Mr. Chiviattoni, you are released from your
15 subpoena. Thank you, sir.

16 MR. CHIVATTONI: Thank you.

17 THE COURT: Next witness?

18 MR. DEBUSK: We call Sharon Lilly.

19 CLERK: Please raise your right hand and place your left
20 hand on the Bible.

21 SHARON LILLY, HAVING BEEN SWORN

22 TESTIFIES AS FOLLOWS:

23 CLERK: Please state your full name and spell your first
24 and last name for the Court.

25 MS. LILLY: Sharon Lilly, S-H-A-R-O-N, L-I-L-L-Y.

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SHARON LILLY - DIRECT BY DEBUSK

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1 DIRECT EXAMINATION OF SHARON LILLY BY MR. DEBUSK:

2 Q: Ms. Lilly, who is your employer?

3 A: I work at Horry County Police.

4 Q: And what are your duties?

5 A: Evidence.

6 Q: What do you do with the evidence?

7 A: I log it in when the officers turn it in and store it for
8 court.

9 Q: Okay. Let me show you State's Exhibits 22 and 23 and ask
10 you if you recognize these?

11 A: Yes, sir, they were turned in my Detective Amy Hardwick
12 and I logged them in and mailed them to SLED.

13 Q: What did you do with it once you logged it in?

14 A: We have a special holding vault for SLED property, and I
15 placed it in SLED holding and it's held there until the
16 investigator took it to SLED.

17 Q: Was it secure there?

18 A: Yes, sir.

19 Q: Do you know who picked it up?

20 A: Robbie Caulder.

21 Q: During the period it was in your custody and control and
22 in that safe, was it altered or changed in any way?

23 A: No, sir.

24 Q: How was it packaged, in those manila envelopes?

25 A: Manila envelopes and it had a seal on the back.

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SHARON LILLY - DIRECT BY DEBUSK

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1 Q: Were they in the plastic packaging yet?

2 A: No, sir.

3 Q: They were in a manila envelope and they were safe and
4 secure?

5 A: They were in the plastic when they come back from SLED.

6 Q: Okay. And when you got it from ---

7 A: Detective.

8 Q: --- it was taken by Robbie Caulder?

9 A: Robbie Caulder, yes, sir.

10 Q: Thank you. Please answer any questions Defense has for
11 you.

12 MR. FOX: No questions.

13 THE COURT: You may step down. Thank you, Ms. Lilly.

14 MS. LILLY: Thank you.

15 THE COURT: Any further needs with Ms. Lilly?

16 MR. DEBUSK: No, Your Honor, we ask that she be excused.

17 THE COURT: Ms. Lilly, you're released from your
18 subpoena. Thank you.

19 MS. LILLY: Thank you.

20 MR. DEBUSK: The State calls Robbie Caulder.

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

23 JOHN CAULDER, HAVING BEEN SWORN

24 TESTIFIES AS FOLLOWS:

25 CLERK: Please state your full name and spell your first

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ROBBIE CAULDER - DIRECT BY DEBUSK

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1 and last name for the Court.

2 MR. CAULDER: John Caulder, C-A-U-L-D-E-R.

3 DIRECT EXAMINATION OF JOHN CAULDER BY MR. DEBUSK:

4 Q: Officer Caulder, who is your employer?

5 A: Horry County Police Department.

6 Q: What are your duties with Horry County Police Department?

7 A: I'm the Senior Investigator in Crime Scene.

8 Q: What does a crime scene investigator do?

9 A: We respond and process scenes ranging from burglaries to
10 violent incidents.

11 Q: Do you have any responsibilities for transporting
12 evidence at times?

13 A: Yes, sir; we do.

14 Q: What do you do with it?

15 A: Basically, we take the evidence from the Horry County
16 Police Department and transport it to the SLED's laboratory in
17 Columbia.

18 Q: I'm showing you what's been marked as State's Exhibits 22
19 and 23 and ask if you recognize this?

20 A: Yes, sir, these are our packaging inside of a SLED
21 envelope.

22 Q: Now, you've probably handle many of these packages in the
23 course of a week, right?

24 A: Yes, sir.

25 Q: Is there specific labeling on these packages to identify

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1 them?

2 A: Yes, sir. It has the -- it has my initials around the
3 top where they seal it at SLED in Columbia. It also has my
4 name and the date that I sealed it.

5 Q: Where did you obtain these packages?

6 A: From the evidence section at the Horry County Police
7 Department.

8 Q: And what did you do with it?

9 A: Transport them to SLED in Columbia.

10 Q: When you got them to SLED, what did you do with them?

11 A: I handed them to an evidence personnel there that
12 collects or takes in -- evidence intake.

13 Q: And when you package them, what -- or when you pick them
14 up, how are they packaged?

15 A: They are originally packaged in the little brown
16 envelopes.

17 Q: And what do they do? Do they alter the packaging at
18 SLED?

19 A: When I take them there, no, they just place them inside
20 of this plastic container, seal it and then I initial it and
21 date it and then fill this information here out.

22 Q: Is that what is so-called tamper indicative packaging?

23 A: That's correct.

24 Q: Okay. You -- during the time they were in your custody
25 and control, did you alter them or change them in any way?

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1 A: No, sir.

2 Q: Did you open the manila envelope in any way?

3 A: No, sir.

4 Q: And they were in the sealed condition in that plastic bag
5 with your initials on the seal when you drove them up to SLED;
6 is that correct?

7 A: That is correct.

8 Q: Thank you. Please answer any questions the Defense has
9 for you.

10 MR. FOX: No questions, Your Honor.

11 THE COURT: You may step down, Mr. Caulder.

12 MR. CAULDER: Thank you, Your Honor.

13 THE COURT: Thank you.

14 MR. DEBUSK: We'd ask that Mr. Caulder be released, Your
15 Honor.

16 THE COURT: Any objection?

17 MR. FOX: No objection.

18 THE COURT: Mr. Caulder, you are released from your
19 subpoena. Thank you, sir.

20 MR. CAULDER: Thank you, Your Honor.

21 MR. DEBUSK: Your Honor, may we approach on scheduling?

22 THE COURT: Yes, sir.

23 (REPORTER'S NOTE: A bench conference was held off the record
24 in the presence of but out of hearing of the Jury.)

25 THE COURT: All right. Ladies and gentlemen, our next

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1 witness, I believe, is coming in from Columbia. I'm gonna let
2 you go to lunch now until about 1:30. I ask you to be back in
3 your jury room at 1:30.

4 Mr. Ropp, take them out.

5 Please don't discuss the case with anyone or allow anyone
6 to discuss it with you. Thank you.

7 (REPORTER'S NOTE: Jury exits courtroom. 11:49 A.M.)

8 THE COURT: All right. We're at ease until 1:30.

9 (RECESS - 11:50 A.M.)

10 *****OFF THE RECORD*****

11 (On the Record. 1:28 P.M.)

12 BY THE COURT:

13 THE COURT: All right, gentlemen, I -- before we bring
14 the jury in, I want to revisit or clarify my ruling on the
15 admissibility of the tape and hear input from the attorneys,
16 and I'm talking about the tape that shows the fight. First,
17 let me say that what occurred, who was the aggressor, has
18 become an issue in this trial. Defense has raised the issue,
19 it's been discussed, been alleged that the victim made a
20 threat to kill the Defendant. That's very clear that the
21 Defense has taken that position, which gives rise, it gives
22 rise to the defense of self-defense. And Mr. Fox, based on
23 your examination now, I would assume that that is the position
24 that you're taking; is that correct?

25 MR. FOX: Certainly it dovetails into the -- our

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1 contention that this was not an intentional act. It arises to
2 self-defense, but certainly this was not a deliberate attempt
3 to harm anyone, and his state of mind in the outside is
4 influenced by what happened inside.

5 THE COURT: That state of mind, whether it be the state
6 of mind necessary to give rise and to the support the defense
7 of self-defense or to negate intent in either case becomes
8 relevant to this inquiry. It becomes relevant to the jury's
9 deliberation.

10 Now, I am always concerned when we're talking about
11 another or other bad acts. What occurred inside and nothing
12 was separate -- let me change that -- was separate from what
13 occurred from the testimony I've heard, five minutes, within
14 five minutes or so, what occurred outside. We must look at
15 it, first of all, from a 403 analysis. I think it is
16 certainly arguable that the prior bad act, if we want to
17 describe it as a prior bad act, is 404(b) material. If it
18 meets the *Lyle* type test, we used to refer to *State v. Lyle*,
19 but now we refer to 404(b) because the *Lyle* factors have now
20 been included in 404(b), which is a deviation from the federal
21 rule 404(b). It distinguishes South Carolina jurisprudence
22 and federal jurisprudence.

23 Okay. In that regard, Mr. DeBusk, Mr. Oskin, tell me for
24 what purpose the video tape would be offered.

25 MR. DEBUSK: Your Honor, relating to Rule 404(b), it's

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1 absence of the statement, it is intent. Intent -- the whole
2 question here is whether he was trying to kill him when he ran
3 over him.

4 THE COURT: I understand.

5 MR. DEBUSK: The analysis shows by hitting him in the
6 face with a bottle causing, there's been testimony,
7 significant injuries. It goes to whether he had malice five
8 minutes later when he ran over him in the parking lot or in
9 the street.

10 THE COURT: What is the State's position or how does the
11 issue of credibility come into play in that issue?

12 MR. DEBUSK: It also does, Your Honor, as to whether or
13 not certain threats were made during the aftermath of the
14 fight. This video shows that.

15 THE COURT: And that was the point that I was trying to
16 make.

17 MR. DEBUSK: It goes to that as well, but it goes to
18 both, Your Honor.

19 THE COURT: All right. If we look at 404 or 403, I think
20 that we have relevance. The issue is whether or not, whether
21 or not the probative value is substantial, substantially
22 outweighed, not by prejudice, but unfair, unfair prejudice and
23 that's been defined by our Courts as being prejudice which may
24 lead or produce an undue tendency to result or suggest a
25 decision on an improper basis. Unfair prejudice.

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1 At -- I'm -- as I said, I'm concerned that we have -- my
2 view of the tape would suggest that, and this is just my view,
3 the jury may look at it otherwise, but my view of the -- of
4 the tape suggests that the Defendant was the aggressor. Okay?
5 If the jury sees that and they were to take my view of it, and
6 I think it's a pretty reasonable view, would the jury not then
7 perhaps have a tendency to believe that if the Defendant
8 attacked him five minutes earlier, he would have attacked him
9 purposely five minute later. I can see that as, as the
10 prejudice here. I see that is the problem and that's always
11 the case when we have similar acts, similar acts involving the
12 same parties, suggestion or proof of one suggests that the
13 other occurred. When that's not necessarily something the
14 jury should consider. You're offering it to show absence a
15 mistake and intent.

16 MR. DEBUSK: Intent, yes.

17 THE COURT: And there's a collateral issue as to the
18 credibility and that's really not before us yet, because the
19 Defendant may not testify that he heard the victim say he was
20 gonna shoot him. His attorney has alluded to it. In fact,
21 his attorney has said it, but I haven't heard any evidence to
22 that.

23 MR. DEBUSK: Your Honor, what you were arguing as
24 prejudice, I would say is the probativity. The probativity is
25 here. The question is whether he acted with malice when he

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1 ran him over with the truck. Mr. Fox has certainly argued
2 accident ---

3 THE COURT: We're on the same page.

4 MR. DEBUSK: You've got intent.

5 THE COURT: Mr. DeBusk, I recognize the attack here is
6 evidence of intent to attack later. I understand that. But,
7 it also may have that collateral unfair prejudice of
8 suggesting that because he attacked him earlier, then he
9 certainly would've attacked him later and, and that is what is
10 not permitted. It -- we have a fine line there and I
11 understand ---

12 MR. DEBUSK: I would further argue, Judge, part of the
13 res gestae, this was all the same incident. Even though the
14 bouncers intervened and moved it outside ---

15 THE COURT: That is another issue.

16 MR. DEBUSK: --- it's res gestae and part of the same
17 incident.

18 THE COURT: The res gestae, the telling of the story, and
19 I think that any prejudice is offset by the fact that we have
20 heard about this. There's been no objection to it. We know
21 about the fight. Mr. Fox talked about it in his opening. We
22 know that there was a fight.

23 MR. DEBUSK: Yes, sir.

24 MR. FOX: Judge, my issue with -- well, I agree with all
25 those things -- part of the trick is I think we're a little

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1 bit cart ahead of the horse because there's still -- there
2 hasn't been testimony yet, evidence, but I believe -- of
3 course, you don't have this ruled on yet, but I believe there
4 may be testimony that it's not this short incident here, that
5 there was prior. My questions have alluded there was an
6 ongoing thing. And part of my problem with this video is that
7 it doesn't show everything. We've got still the same issue
8 that Your Honor had when they attempted to put it in evidence,
9 which is foundational.

10 THE COURT: And I think that my ruling on that issue is
11 absolutely correct. We had a witness who could not say that
12 he saw everything that was on the tape. He says I came on the
13 scene later. We don't know when he came on the scene. We
14 don't have the author of the tape who can say it is a
15 complete, fair and unaltered tape of what occurred; we haven't
16 heard that. And, the witness -- the only identifying, the
17 thing that the witness did is at the end or after the
18 altercation when they're all on the floor breaking it up and
19 I'm watching security fight with the Defendant is the witness
20 says that's my shoe. There's no question in my mind that this
21 witness cannot testify or establish the authenticity of that
22 document. However, however, there were a lot of people there
23 and if the State can produce a witness who says that's me, I
24 was there the whole time and this is the complete and accurate
25 depiction of what occurred, then I think the State has

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1 overcome that hurdle.

2 MR. DEBUSK: We have such a witness we can proffer, if
3 you'd like.

4 THE COURT: You haven't yet. I mean, you might get to
5 that, but ---

6 MR. DEBUSK: If you'll hear it in the form of a proffer,
7 we can proffer it right now or we can wait until we get to it.

8 THE COURT: Well, just wait till you get to it. I mean,
9 that's what I want -- I want to hear foundational testimony.
10 I do not think that the last witness was in a position to be
11 able to authenticate that particular document.

12 Now I will say this, I have seen it. I have seen it. I
13 do know the issues involved in this case. I believe that
14 although -- and I want to preface it by saying, I understand
15 the prejudice that could arise from the entry of this tape
16 primarily based upon the fact that it appears to show
17 aggression by the Defendant five minutes before the attack
18 that we're talking about. And, there is a possibility the
19 jury could make a leap from the fact that he appears to be the
20 aggressor here to say, well, he was obviously then the
21 aggressor five minutes later. I have problem with that. But,
22 the question is whether or not the prejudicial value or the
23 prejudice substantially outweighs or -- excuse me; I'm sorry.
24 The prejudice substantially outweighs the probative value. I
25 think it is probative, probative to show intent in the -- from

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1 what I am hearing, I believe that that is the basis, one way
2 or the other, whether it's intent or whether it establishes
3 self-defense. It, it is highly probative in that regard, the
4 fact that a fight occurred -- it's probative also as to the
5 credibility of -- well, the witness has not testified, but
6 that's a side issue -- or the Defendant has not testified, but
7 that's a side issue. But I think based upon 404(b) it is
8 admissible. I think under 403 that the probative value is not
9 substantially outweighed by the danger of unfair prejudice.
10 We have talked about this fight. I mean, it has been
11 discussed. And I would say at this juncture, that it meets
12 403, that it fits 404(b), that the remaining issue is whether
13 or not you can authenticate it. Okay. All right?

14 MR. DEBUSK: Understood, Your Honor.

15 THE COURT: All right. Let the jury in.

16 And I further believe that there is consideration of res
17 gestae, too.

18 MR. DEBUSK: Thank you, Your Honor.

19 (REPORTER'S NOTE: Jury enters courtroom. 1:45 P.M.)

20 THE COURT: All right. We have everyone back in the
21 courtroom.

22 Mr. Oskin or Mr. DeBusk?

23 MR. DEBUSK: Thank you, Your Honor.

24 The State calls Sara Goodman from SLED.

25 CLERK: Please raise your right hand and place your left

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SARA GOODMAN - DIRECT BY DEBUSK

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1 hand on the Bible.

2 SARA GOODMAN, HAVING BEEN SWORN

3 TESTIFIES AS FOLLOWS:

4 CLERK: If you'll state your full name and spell your
5 first and last name for the Court.

6 MS. GOODMAN: Sure. My name is Sara Goodman, G-O-O-D-M-
7 A-N.

8 DIRECT EXAMINATION OF SARA GOODMAN BY MR. DEBUSK:

9 Q: Ms. Goodman, who is your employer?

10 A: I'm employed by the South Carolina Law Enforcement
11 Division commonly known as SLED.

12 Q: What's your job there?

13 A: I am Forensic Scientist, assigned to the DNA Casework
14 Department.

15 Q: Tell me about your training and your qualifications in
16 the area of DNA analysis?

17 A: So, I have a Bachelor's Degree from Erskine College in
18 Biology and a Master's in Science, and a Forensic Science
19 Degree from Arcadia University, which is in Glenside,
20 Pennsylvania. And then upon employment at SLED, I received
21 training for about a year by a court qualified analyst which
22 included training in practical laboratory experience and
23 online courses and reading. And, our practical laboratory
24 training included practice samples and training samples in
25 cases in both serology and DNA analysis. And then at the end

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1 of my training, I successfully completed a series of
2 competency tests which included written exams, an oral test, a
3 practical laboratory exam and report writing tests which --
4 all of which included serology and DNA analysis. And I'm also
5 required to complete eight hours of continuing education each
6 year.

7 Q: So, you were both trained and tested for proficiency?

8 A: Yes.

9 Q: And is your lab certified for proficiency?

10 A: Yes.

11 Q: Proficiency?

12 A: Yes, sir, we have proficiency tested twice a year.

13 Q: Okay. And do you work under the direction of more
14 experienced analysts?

15 A: I do. We are trained by other court qualified analysts.

16 Q: So, you've been thoroughly trained both in serology and
17 DNA. Just tell the jury briefly what those two are.

18 A: Serology is the study and classification of body fluids
19 such as blood or saliva in their relation to a crime, and DNA
20 is a chemical that's present in your body, in every cell
21 except for red blood cells. We get half of our DNA from our
22 mom and half from our dad. And at our lab, we test for DNA at
23 15 different locations plus a gender marker, which makes up a
24 DNA profile.

25 Q: Are DNA profiles sometimes called a DNA fingerprint?

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1 A: Yes.

2 Q: And it's unique -- generally unique to an individual?

3 A: Yes, with the exception of identical twins.

4 MR. DEBUSK: Your Honor, at this time, we'd off Ms.
5 Goodman as an expert in DNA and serology?

6 THE COURT: Mr. Fox?

7 MR. FOX: Just a couple follow-up questions.

8 VOIR DIRE EXAMINATION OF SARA GOODMAN BY MR. FOX:

9 Q: Ms. Goodman, have you ever been qualified as an expert in
10 court in South Carolina before?

11 A: I have not.

12 Q: Have you ever testified as an expert or not in serology
13 and DNA evidence in court in South Carolina?

14 A: I have not.

15 MR. FOX: Your Honor, we would object to her
16 qualifications.

17 BY THE COURT:

18 THE COURT: All right. I am going to qualify her. The
19 fact that she may or may not have testified at this point is
20 really not relevant in my view to her qualifications. I think
21 she's well qualified to testify as an expert in the field of
22 DNA analysis.

23 Ladies and gentlemen, normally a, a, a witness may not
24 testify in this state as to opinion. There is an exception
25 for what we call expert witnesses, that is a witness who has

1 established through experience, education, otherwise a
2 particular expertise in some art, science, or particular
3 field. If a person is qualified as an expert, that person may
4 give an opinion and may give the reasons for that opinion.
5 However, let me tell you -- and I'll reiterate this at the end
6 of this case -- the mere fact that a person has been accepted
7 by the Court as an expert in a particular field, does not mean
8 that that person is more entitled to be believed by you than a
9 lay person or anyone else. And, if the reasons given by that
10 person for its or his or her opinions are not sound or for any
11 reason you feel that they are not supported by the evidence,
12 you may reject it or you may believe it; it's entirely up to
13 you. You, the jury, are the sole judges of all the evidence
14 and you will give an expert's opinion the same weight that you
15 might give or you will measure it in the same way that you
16 would measure a lay person's testimony. And the fact that
17 it's not contradicted does not mean that you have to accept
18 it. You give it such weight as you believe that it deserves.

19 All right, Mr. DeBusk.

20 MR. DEBUSK: Thank you, Your Honor.

21 DIRECT EXAMINATION OF SARA GOODMAN BY MR. DEBUSK:

22 Q: Ms. Goodman, I'm going to show you what's been marked as
23 State's 22 and 23 and ask if you recognize these.

24 A: Yes, I do.

25 Q: What are they?

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SARA GOODMAN - DIRECT BY DEBUSK

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1 A: These are evidence that I worked in this case so this is
2 an -- our laboratory number L1608391, Item 1, and our
3 laboratory number L1608391, Item 2.

4 Q: What are Item 1 and Item 2?

5 A: So, Item 1 -- may I refer to my report?

6 Q: Yes.

7 A: Item 1 is labeled as buccal swabs from Alexander Miniet
8 and Item ---

9 Q: Before you move on, what's a buccal swab and what's its
10 purpose?

11 A: A buccal swab is a known standard that we use as a
12 comparison standard and it is taken by taking a sterile swab,
13 which is kind of like a large Q-tip and rubbing it on the
14 insides of a person's cheek, and we use known standards to
15 compare them to evidence.

16 Q: And on that swab to the cheek, you would have the DNA
17 from the cells from the cheek?

18 A: Correct.

19 Q: Okay. And what's Item 2?

20 A: Item 2 is swabs of reddish brown stain from the hood of
21 Joshua Maiden's vehicle.

22 Q: Let's talk about Item 2 first. What did you with Item 2?

23 A: So, I tested Item 2 for blood. There was a request from
24 the submitting agency for a test of blood. So, I
25 presumptively tested that for blood and it was positive. So,

1 then I generated a DNA profile from that item.

2 Q: Let me ask you something, didn't you say in the --
3 earlier that red blood cells don't have DNA. What is it in
4 the blood that you get DNA from?

5 A: So, blood has red blood cells and white blood cells and
6 platelets and white blood cells have DNA. So that's what we
7 get the DNA from off of blood.

8 Q: So, it's from the nucleus of those white blood cells that
9 there is actually DNA?

10 A: Correct.

11 Q: Okay. And you're looking at nuclear DNA; is that
12 correct?

13 A: Correct.

14 Q: Now, what analysis did you do on 1 and 2 after you
15 determined there was blood present on the swab?

16 A: I generated a DNA profile from both of these items.

17 Q: Okay. What does that entail?

18 A: So, we take both of these items in the lab and, through a
19 series of chemicals and machines, we will separate the DNA off
20 of the item and do several different processes. We will
21 generate a DNA profile using our different chemicals and
22 machines.

23 Q: And how many -- you have different spots on the various
24 chromosomes that you look at it, right?

25 A: Yes.

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1 Q: Is your technique particular to those individual spots on
2 each and every person?

3 A: Yes. So, we look at 15 locations on the DNA and a gender
4 marker. So all of the DNA profiles that we generate, we look
5 at those same locations.

6 Q: So, you look at the same locations on each chromosome --
7 each person you analyze?

8 A: Correct, yes.

9 Q: These are the generally accepted methods that are used
10 throughout the nation; is that correct?

11 A: Yes.

12 Q: What did you determine from your analysis of the blood
13 and the buccal swab?

14 A: I determined that the DNA profile developed from Item 2
15 matches the DNA profile of Alexander Miniet. The probability
16 of randomly selecting an unrelated individual having a DNA
17 profile matching this item is approximately 1 and 45
18 sextillion.

19 Q: Can you tell us how much a sextillion is?

20 A: So, there's approximately seven and a half billion people
21 in the world so that would be around 600 million times the
22 world population.

23 Q: So, in your expert opinion, does the blood from the
24 buccal swab match the blood from the swab?

25 A: In my opinion, yes, it does.

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SARA GOODMAN - CROSS BY FOX

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1 Q: Thank you. Please answer any questions Defense may have
2 for you.

3 THE COURT: Mr. Fox?

4 CROSS EXAMINATION OF SARA GOODMAN BY MR. FOX:

5 Q: Ms. Goodman, you would have no idea of knowing how the
6 blood got on the vehicle or the circumstances that it got
7 there?

8 A: No, I would not.

9 Q: Or anything that led up to that event?

10 A: No.

11 Q: It's simply your job to compare the blood taken from that
12 and compare it to a known sample, correct?

13 A: Correct.

14 Q: Thank you very much.

15 MR. DEBUSK: Nothing further, Your Honor. We'd ask that
16 Agent Goodman be released from her subpoena.

17 MR. FOX: No objection.

18 THE COURT: You are released from your subpoena. Thank
19 you.

20 MS. GOODMAN: Thank you.

21 MR. OSKIN: Your Honor, if we may approach?

22 THE COURT: All right.

23 (REPORTER'S NOTE: A bench conference was held off the record
24 in the presence of but out of hearing of the Jury.)

25 THE COURT: Bobby, would you take the jury out for just a

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1 moment. I have a matter that I need to take up.

2 (REPORTER'S NOTE: Jury exits courtroom. 1:56 P.M. The
3 following takes place outside the presence of the Jury.)

4 THE COURT: Okay.

5 MR. OSKIN: Your Honor, the next witness in the State's
6 case will be the victim in this case, Mr. Alexander Miniet.
7 The State would like to address the Defendant's prior criminal
8 record at this time.

9 THE COURT: All right.

10 MR. OSKIN: The Defendant has a 2009 felony conviction
11 from the State of Pennsylvania, violation of a Controlled
12 Substance Drug and Cosmetic Act. He has a felony possession
13 of marijuana in 2014 from the State of North Carolina, it's a
14 felony conviction as well. Possession of a firearm by a felon
15 in 2014 in the State of North Carolina.

16 THE COURT: The same time as the possession of a firearm?

17 MR. OSKIN: Same time as possession of marijuana, yes,
18 sir.

19 THE COURT: He has no South Carolina charges?

20 MR. OSKIN: No South Carolina prior record, no, sir.

21 THE COURT: All right. So, you've told me. What about
22 it?

23 MR. OSKIN: I'd put the Defense Counsel on notice that --
24 they can review the NCIC if they need to.

25 MR. FOX: And, Your Honor, I've had an opportunity to do

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SARA GOODMAN - CROSS BY FOX

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1 that previously and ---

2 THE COURT: Well, I think they all fall within the
3 timeframe and would be admissible for the purposes of
4 impeachment, would they not?

5 MR. OSKIN: I certainly understand that.

6 MR. FOX: And I don't see any -- Your Honor, these would
7 be the ---

8 THE COURT: All within 10 years, all carry more than one
9 year, right?

10 MR. OSKIN: Yes, sir, Your Honor.

11 THE COURT: Okay. All right. Was that it?

12 MR. OSKIN: Yes, sir.

13 THE COURT: Okay. Mr. Fox, you happy?

14 MR. FOX: I'm happy, Your Honor.

15 THE COURT: Do you have it?

16 MR. FOX: I have it and I'm happy and ready to roll.

17 THE COURT: Okay. All right.

18 MR. DEBUSK: Your Honor, if I could have the Court's
19 indulgence one moment so I can make sure the audio visuals are
20 working?

21 MR. DEBUSK: Just in case, Your Honor. We're ready now.

22 (REPORTER'S NOTE: Jury enters courtroom. 2:00 P.M.)

23 THE COURT: Mr. DeBusk?

24 MR. OSKIN: Yes, sir, Your Honor.

25 The State would call Mr. Alexander Miniet.

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ALEXANDER MINIET - DIRECT BY OSKIN

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

3 ALEXANDER MINIET, HAVING BEEN SWORN
4 TESTIFIES AS FOLLOWS:

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

7 MR. MINIET: Alexander Miniet, A-L-E-X-A-N-D-E-R, M-I-N-
8 I-E-T.

9 DIRECT EXAMINATION OF ALEXANDER MINIET BY MR. OSKIN:

10 Q: Good afternoon, Mr. Miniet. How old are you, sir?

11 A: Twenty-eight years old.

12 Q: Are you currently employed?

13 A: Yes.

14 Q: By whom?

15 A: Redline Power Sports.

16 Q: What do you do at Redline?

17 A: I'm a Products Specialist.

18 Q: Mr. Miniet, before we get started, do you have any prior
19 criminal record?

20 A: Yes, I do.

21 Q: What is that?

22 A: 2009, possession of marijuana in my apartment that I
23 lived in in a school zone; and 2014 possession of marijuana
24 and I was also in possession of a firearm.

25 Q: Were you in Horry County on May 22nd of 2016?

1 A: Yes, I was.

2 Q: Tell me about that day. Did you go to The Boathouse that
3 day?

4 A: Yes, I did.

5 Q: Why were you there?

6 A: Monitoring my five-month-old son that was brought to the
7 bar.

8 Q: All right. What's your son's name?

9 A: MINOR .

10 Q: Who is the mother of that child?

11 A: Victoria Hubbard.

12 Q: Who was Victoria with at the bar that night?

13 A: Joshua Maiden.

14 Q: You say you're there to monitor your child; were you
15 there by yourself?

16 A: Yes, I was.

17 Q: Now, you said that he dated the mother of your child.
18 Can you explain a little more about that? What I mean here is
19 prior knowledge of the Defendant until this night.

20 A: Victoria and I split up before MINOR was born and she was
21 dating Joshua Maiden, and then they had had a relationship
22 prior to Victoria and I getting together.

23 Q: Any sort of relationship with him before your son's birth
24 or after?

25 A: No. I mean, he was -- he was her boyfriend, but no

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1 issues, no nothing.

2 Q: So, you're there that night to check on your son ---

3 A: Uh-huh (affirmative response).

4 Q: --- who was at a bar on a Sunday night. Did you
5 encounter the Defendant that night ---

6 A: Yes.

7 Q: --- at The Boathouse bar? When was the first time you
8 encountered the Defendant that night?

9 A: I was on the phone walking towards the restroom. He ---

10 Q: Help us about a little bit -- it seems like a big bar,
11 from earlier testimony. The bathroom, is the bathroom outside
12 or is the bathroom inside?

13 A: Well, they have porta johns outside by the volleyball --
14 by the volleyball set up, and I was walking towards the porta
15 johns when Mr. Maiden came up to me and made contact with me
16 for the first time.

17 Q: Okay. Did you say anything to him after this initial
18 contact, and what did you say?

19 A: Contact by -- he touched me on the shoulder, I looked
20 over and he said, exact words were, Are we cool? And my exact
21 words were to him, I have nothing to say to you. Just leave
22 me alone.

23 Q: You were only there to check on the status of your son?

24 A: Yes.

25 Q: And that wasn't the last time you ran into him ---

- 1 A: No, it was not.
- 2 Q: --- that night, was it?
- 3 A: No.
- 4 Q: When's the next time you ran into him there?
- 5 A: Right after I had said that to him, I proceeded to the
6 restroom, came back, and then I was met with him and one other
7 person.
- 8 Q: Was this after you used the bathroom outside?
- 9 A: Yeah, the porta johns. I went back over by the outside
10 bar and that's when I was approached by Mr. Maiden and an
11 unknown gentleman.
- 12 Q: Okay. What happens once they approach you?
- 13 A: Some words were crossed; exact words, I'm not sure. Mr.
14 Maiden wasn't in my face or anything like that at that very
15 moment. I was more worried about the other guy who was, you
16 know, putting his hands on me and I repeated to say, Get your
17 hands off of me. And, then I got struck with a beer bottle.
- 18 Q: This was outside at The Boathouse?
- 19 A: Uh-huh (affirmative response).
- 20 Q: Mr. Miniet, I'm showing you what's been marked as State's
21 Exhibit Number 5. Are you able to recognize that and see what
22 that is?
- 23 A: Yes.
- 24 Q: What is that?
- 25 A: This is the live Facebook feed that was recorded before,

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1 during, and the whole separation of the fight.

2 Q: Okay. And during this, what the feed contains, is this a
3 fair, accurate -- fair and accurate representation of what
4 occurred that night?

5 A: Absolutely.

6 Q: And you were there present the whole time in this video?

7 A: Yes, I was.

8 Q: Was any alterations or any edits been done to it to your
9 knowledge?

10 A: No, sir.

11 MR. OSKIN: Your Honor, at this time, the State would
12 like to offer State's Exhibit Number 5 into evidence?

13 MR. FOX: Objection, Your Honor, no testimony that he
14 took it, where it was from the time it was taken, how it was
15 taken, what mechanism, phone, recorder, et cetera, how it got
16 put to Facebook, what it might've looked like before, there's
17 been none of that. All he knows is he seen it.

18 THE COURT: I think the end product is what's important
19 here, and he says he has seen it, he's familiar with it and
20 it's a fair and accurate depiction of what occurred, and I
21 would allow it.

22 STATE'S EXHIBIT NUMBER 5

23 ADMITTED INTO EVIDENCE

24 MR. OSKIN: Court's indulgence while we set up the
25 technology.

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1 THE COURT: And I have previously discussed the relevancy
2 and the 403 issues on this particular piece of evidence.

3 MR. OSKIN: If you will patient for one second while we
4 set up the technology there.

5 Your Honor, if the witness may step off the bench?

6 THE COURT: Certainly.

7 (REPORTER'S NOTE: State's Exhibit 5 published for the jury.
8 Not transcribed herein.)

9 MR. OSKIN: I would pause this, Your Honor, to give
10 Defense Counsel time to see it in its' entirety. I would like
11 for you to stand over here so the Court Reporter can hear you.
12 I apologize for playing musical chairs here.

13 Jury, are you able to see the screen in its entirety?

14 THE COURT: Is it back far enough for the jury -- for all
15 the jurors to see it?

16 MR. FOX: I don't think the cord will allow it to go any
17 further back.

18 MR. OSKIN: Any issues -- better now?

19 BY MR. OSKIN:

20 Q: Mr. Miniet, I'm gonna stand a little closer to you. In
21 the beginning, while this video starts, I'm gonna have you
22 identify yourself as soon as you see yourself. Okay?

23 A: I'm in that corner in the red shirt with the hat on, just
24 pulled a cigarette out of my mouth. This is me right here.

25 Q: All right. Who is the gentleman in the plaid shirt?

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1 A: That is Joshua Maiden. And this is an unknown accomplice.

2 Q: Okay. I'll continue with the video.

3 (REPORTER'S NOTE: State's 5 published for the jury. Not
4 transcribed herein.)

5 MR. OSKIN: Your Honor, if I may restart it; it glitched.

6 THE COURT: I'm sorry.

7 MR. OSKIN: I'm gonna restart it. It glitched. Let the
8 record reflect he has identified himself and the Defendant on
9 the video. We'll let it play all the way through.

10 (REPORTER'S NOTE: State's 5 published to the jury. Not
11 transcribed herein.)

12 BY MR. OSKIN:

13 Q: All right, Mr. Miniet, you may return to your seat, sir.

14 All right. Mr. Miniet, that was a fair and accurate
15 representation of the second encounter with the Defendant you
16 had?

17 A: Yes.

18 Q: You said someone was in front of you; what did you tell
19 them?

20 A: I told him, Get your hands -- I don't want to curse, but
21 I told him, Get your f-ing hands off of me. And as I was
22 taking a cigarette out of mouth, I wasn't prepared for what
23 was about to happen.

24 Q: And what did happen next?

25 A: I was hit -- blindsided with a beer bottle.

1 Q: Walk me through this a little bit. To the best of your
2 memory, once you were struck -- in the video we see you fall
3 forward. How did you react? Were you knocked out at that
4 point or were you ---

5 A: I mean, I definitely saw lights, but my first instinct
6 was self-defense, to just get out of that corner, because I
7 was backed into that corner.

8 Q: Okay. I believe the video shows that you ---

9 A: I fell back into the wall and the wall actually kept me
10 on my feet, and that's when I presumed to move forward and
11 when I moved forward, we tripped over the garbage can and ---

12 Q: What do you remember next after you were on the ground?

13 A: I just started getting choked out by security.

14 Q: Were you escorted out of the building? I believe that's
15 what the video showed.

16 A: Yes.

17 Q: Was the Defendant in this case, was he escorted out ahead
18 of you, behind you?

19 A: He was escorted out ahead of me.

20 Q: Okay.

21 A: I didn't see him after I was choked out.

22 Q: Okay.

23 A: Yeah, they pulled him away and I was -- the next time I
24 saw him was, I mean ---

25 Q: We'll get there.

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- 1 A: Okay.
- 2 Q: Let's finish being escorted out to the parking lot. Were
3 you escorted out through the entire bar?
- 4 A: Yes.
- 5 Q: By staff security?
- 6 A: Uh-huh (affirmative response).
- 7 Q: I think you already said, you didn't have any friends
8 present with you?
- 9 A: No, sir.
- 10 Q: No friends were following you out?
- 11 A: No, sir.
- 12 Q: Okay. Were you escorted out of the bar or out onto the
13 -- where the street meets the bar there or where it meets the
14 bar parking lot? I apologize.
- 15 A: Well, I was held with, you know, almost bear hugged all
16 the way through the inside up those outside stairs through the
17 inside bar and then out the main doors.
- 18 Q: What's your main concern as you're being escorted out of
19 the bar?
- 20 A: One, were they calling me an ambulance because my teeth
21 were under my tongue and, two, my son, you know. I was
22 concerned about was my son with them.
- 23 Q: Because you had observed him earlier ---
- 24 A: Uh-huh (affirmative response).
- 25 Q: --- with Ms. Hubbard, I believe?

1 A: Yes.

2 Q: And Mr. Maiden. Did The Boathouse call 911 for you or
3 did you have to call 911?

4 A: I actually asked one of the security guards that had me
5 bear hugged if they were calling 911 for me and he
6 specifically said no. So, then as soon as I got to the door
7 where they let me go and I started walking to the parking lot,
8 I called 911 for myself.

9 Q: Okay. And you were in that parking lot, what happens
10 next?

11 A: One of the security guards followed me over to and I told
12 them to follow me because my car is in the parking lot across
13 the street and I wanted to make sure, you know, nothing else
14 was going to happen. When I got to the street, I noticed his
15 car was still there, as I was on the phone with 911, and I
16 wanted to wait and see his license plate.

17 Q: Okay. I'm gonna show you what's been entered into
18 evidence as State's Exhibit Number 10. Do you recognize that?

19 A: Absolutely.

20 Q: What is that?

21 A: That is a Ford Escape.

22 Q: A Ford Escape, is that the vehicle you saw that night,
23 sir?

24 A: Yes, sir.

25 Q: Okay. And you said your intention was to get his license

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1 plate number and you were on the telephone with 911?

2 A: Yes, sir.

3 Q: Okay. At any time you were in the custody of the

4 security guard, did you make any threats?

5 A: No, sir.

6 Q: Did you make any specific threats to Mr. Maiden?

7 A: No, sir.

8 Q: You didn't specifically say I'll put a bullet between

9 your eyes?

10 A: No, sir.

11 Q: Were you armed with a weapon that night at all?

12 A: No, sir

13 Q: So, your true intention when you -- when you went to his

14 car, what was that?

15 A: When I went to his car?

16 Q: I apologize. What was your intention when you were

17 walking towards the vehicle?

18 A: Well, my intention was to get a license plate, but I

19 wasn't walking towards his vehicle. When he was pulling out

20 of that parking lot ---

21 Q: Uh-huh (affirmative response).

22 A: --- I -- what I saw was him going to make a right. When

23 I was on the phone with the dispatcher, I was expecting him to

24 turn right to go out towards the outside of Fantasy Harbor

25 Boulevard, and I was gonna see the back license plate.

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1 Q: That's how you would've been able to obtain the license
2 plate number?

3 A: Uh-huh (affirmative response).

4 Q: What happened next?

5 A: Tires squealed in acceleration, almost like a burn out.
6 And the last thing I remember was dropping my phone and
7 putting my hand on headlights.

8 Q: What's your next memory after getting hit that first
9 time?

10 A: Waking up. It was already dark outside and trying to
11 roll over and see my arm snapped in two.

12 Q: So, that's all you recall being struck by the vehicle was
13 the initial contact?

14 A: Yes, sir. Yeah, it was the initial contact and the
15 waking up from the aftermath.

16 Q: Did you later learn you had been struck by the vehicle
17 twice?

18 A: Yeah.

19 Q: Back up to the bar scene just a little bit. Did you get
20 medical treatment that night?

21 A: Yes, I did.

22 Q: Did you go to the hospital?

23 A: Yes.

24 Q: What injuries did you sustain?

25 A: When I arrived to the emergency room, after CAT scans, x-

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1 rays, everything, they told me that I had a cracked sternum,
2 fractured 3 vertebrae, a few ribs, my left humerus was
3 completely snapped into, my left collar bone, my jaw was gonna
4 need constructive surgery, and some liver lacerations that
5 they were worried about internal bleeding.

6 Q: Did you have any type of road rash or anything?

7 A: Oh, yeah, I mean, I was all scabbed up. My back, my side
8 was stapled shut, I still have some scarring on my chest.

9 Q: Now, Mr. Miniet, this was not an attempt to bring up any
10 bad feelings, but I'm gonna show you what's been entered into
11 evidence as State's 11, 12, 13, and 14. I'll have you look at
12 those and see if you recognize those. What do those photos
13 depict, sir?

14 A: Those are me.

15 Q: You mentioned an injury to your jaw; where did -- where
16 did that injury come from?

17 A: It came from the glass bottle.

18 Q: What kind of treatment did you have to receive after the
19 extent of these injuries?

20 A: After about two days, they finally brought me into the
21 oral surgeon. I've got two titanium plates and a couple of
22 screws across my lower mandible.

23 Q: And how about the rest of your body? I know you said --
24 did say your left humerus, sir?

25 A: Yeah, I mean I was in a back brace for almost four

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1 months, in a sling for a little bit longer than that. I had
2 severe nerve damage to my left arm. I couldn't use my hand
3 from May until September is when my fingers started moving.
4 I still have nerve damage. As far as my jaw, I'm still am
5 numb here, there's no nerve endings in this lower part of my
6 face and just day-to-day pain.

7 Q: Mr. Miniet, at this time please answer any questions from
8 Mr. Fox.

9 THE COURT: Mr. Fox?

10 CROSS EXAMINATION OF ALEXANDER MINIET BY MR. FOX:

11 Q: You say you went to The Boathouse. While you were there,
12 did you see any friends, anybody you normally hang out with?

13 A: No, as my concern was not to hang out.

14 Q: It was just to check on your son?

15 A: Uh-huh (affirmative response).

16 Q: Did you drink anything while you were there?

17 A: I did have one or two beers.

18 Q: All right. Was your son there?

19 A: Yes, he was.

20 Q: With his mother, correct?

21 A: He was with his mother and Joshua Maiden.

22 Q: He seemed to be fine?

23 A: Yeah.

24 Q: Why did you feel like you needed to go check up on him?

25 A: Why?

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1 Q: Yes, sir?

2 A: Well he was four-and-a-half, almost five months, and he
3 was at a bar. I was just a concerned father.

4 Q: I understand. Now, this wasn't the first time -- when
5 did you and -- and let me back up just a second. When did you
6 and Victoria have your relationship, this was in May 2016?

7 A: Uh-huh (affirmative response).

8 Q: When was your relationship with Victoria?

9 A: Victoria and I met May 2015, May 5th, Cinco de Mayo, and
10 then we dated briefly or a couple of months. When we found
11 out she was pregnant, our relationship went kind of downhill
12 and it was a mutual breakup. You know, just what's best for
13 our son.

14 Q: And you came to learn during that time -- and this was
15 before -- you broke up before your son was born, correct?

16 A: Uh-huh (affirmative response).

17 Q: Okay. And during that time she got back together with
18 Mr. Maiden, correct?

19 A: Yes.

20 Q: And in fact, you didn't care for that fact very much, did
21 you?

22 A: I mean, I didn't care that they were dating. I wasn't
23 opposed to it.

24 Q: You didn't like that another man was gonna be involved
25 with your son?

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- 1 A: Negative.
- 2 Q: That didn't bother you at all?
- 3 A: No, it didn't.
- 4 Q: Did you ever see Josh and Victoria out and around Myrtle
5 Beach during those months?
- 6 A: Yes, we actually met up at a car show.
- 7 Q: A car show. Any other times?
- 8 A: There was -- no, that was it. That was the first time I
9 had a conversation with Joshua Maiden.
- 10 Q: You never saw them after that at House of Blues?
- 11 A: House of Blues was actually prior. That was while
12 Victoria and I were dating.
- 13 Q: She was there with Mr. Maiden?
- 14 A: Uh-huh (affirmative response).
- 15 Q: How did that make you feel, you were dating and she was
16 there with him?
- 17 A: Well, we had just broken up and she was there with Joshua
18 Maiden.
- 19 Q: Okay. Did you have any confrontation with him at that
20 time?
- 21 A: Some words were crossed, but it was just mainly on, you
22 know, make sure she's all right, don't hurt her, and that was
23 it, and I left.
- 24 Q: Did you ever go around his place where he works?
- 25 A: No, sir; I don't even know where he works.

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1 Q: You went there and asked for him and they called him, and
2 he came to wait on you?

3 A: I don't even know where Joshua Maiden worked.

4 Q: This night, he at some point approached you and said, are
5 we cool or words to that effect?

6 A: Uh-huh (affirmative response).

7 Q: And your response basically was, I don't have anything to
8 say?

9 A: Yeah. Please leave me alone.

10 Q: Now, that wasn't the end of it, was it?

11 A: No, it was not.

12 Q: And I'm talking before we get to the video ---

13 A: Uh-huh (affirmative response).

14 Q: --- there was further altercation between the two of you
15 before that, correct?

16 A: Yes.

17 Q: There were words exchanged?

18 A: No.

19 Q: No words?

20 A: No words were exchanged.

21 Q: Pushing and shoving between the two of you?

22 A: After I had told Joshua Maiden that I have nothing to say
23 to him, I was shoved.

24 Q: All right. And that wasn't the last time, I think you
25 were separated -- actually, the bouncer at that point said ---

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- 1 A: I actually asked the bouncer -- I asked the bouncer to
2 keep him away from me because he was going to create trouble.
- 3 Q: Now, so y'all went to different ends of the bar, correct?
- 4 A: I presumed to go to the porta johns and then returned
5 back to the place where I was monitoring my son from that
6 corner of that one bar where that tree is.
- 7 Q: How was that -- how were you monitoring your son?
- 8 A: I was just making sure that, you know, somebody was
9 there. You think two adults drinking with a four-month-old
10 there; anybody can just come by and pick up your son.
- 11 Q: All right. Now, they got you two apart. I want to make
12 sure I get the -- you all were out back, at the bar out
13 behind?
- 14 A: Yes.
- 15 Q: On the lawn and the waterway down there behind The
16 Boathouse, correct?
- 17 A: Uh-huh (affirmative response).
- 18 Q: Okay. So, you approached after being separated, after
19 you asked the bouncers, to keep y'all away, you approached Mr.
20 Maiden and told him, You better be good to my boy; you better
21 watch out, watch out for him, correct?
- 22 A: No, sir.
- 23 Q: Never did that?
- 24 A: No, he had already pushed me. I told the bouncers to
25 keep him away from me. My main concern was no longer Joshua

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1 Maiden, it was just my son.

2 Q: In fact, there was a girl there that tapped Joshua on the
3 shoulder and let him know you were behind him, correct?

4 A: I have no recollection of that.

5 Q: No recollection of that. And y'all start jawing each
6 other again, correct?

7 A: No, sir.

8 Q: So, that was at it. Now, you never shoved him?

9 A: After I was shoved, I did shove him back and that's when
10 the bouncers came over and I asked them to keep him away from
11 me.

12 Q: I'm talking about after that?

13 A: No, sir.

14 Q: Never shoved him when this other person was there, the
15 person in that video in the black shirt?

16 A: When that person was there in the video in the black
17 shirt, I was more concerned about that guy because Joshua
18 Maiden had his back towards me.

19 Q: So, this went on before -- we seen when that starts. In
20 fact you can hear the genius who is narrating that thing say
21 fight, fight before it pans over to you, correct?

22 A: Yeah, on the video you can hear that.

23 Q: Something happened before what you see in that video?

24 A: Well, the video shows me getting pushed by the guy, the
25 gentlemen in the black shirt.

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1 Q: He pushed you why? In response to something you had
2 done, correct?

3 A: Could've been anything. It could've been the fact that
4 we were pushing each other prior and then when I came over to
5 that tree, that spot where I was standing, they both came up
6 to me. Of course, one person pushed the other and I'm
7 defending myself at that point with my back to the wall.

8 Q: So you're just there watching your son. But, there was
9 certainly something before what you see in that video?

10 A: If you're talking about when he came over and put his
11 hand on my shoulder and asked if we were cool, that's what --
12 that's what was before. That's what was before.

13 Q: I'm talking about right before. I'm talking about ---

14 A: Right before ---

15 Q: --- please let me finish my question. When the man says
16 fight, fight, he's reacting to something, right?

17 A: Yeah, I was being double-teamed by two people.

18 Q: We don't see that. Where were you being double-teamed?
19 I see what happens but when were you being double-teamed?

20 A: I was cornered.

21 Q: You were cornered. Did you ever -- you were coming back.
22 You raised your hand. You can see that in the video; you
23 raised your hand to the other guy?

24 A: What that video shows is I was slapping his hands away
25 from me and telling him -- you can hear me saying keep your

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1 hands off of me in that video.

2 Q: You were upset. At one point, did you offer to put a
3 bullet between Mr. Maiden's eyes?

4 A: Those words never came out of my mouth.

5 Q: Never came out of your mouth, but we know, people know
6 you like to carry weapons illegally, correct?

7 A: That weapon was actually in a safe in a house that I was
8 squatting in.

9 Q: Wait. You pled -- you were found guilty of possession of
10 a firearm by a felon, which means you had a felony conviction
11 that barred you from lawfully owning a weapon, correct?

12 A: Yes.

13 Q: All right. That didn't bother you; you did it anyway?

14 A: No, that's -- that gun was in a safe in a house I was
15 squatting in. Being convicted of a felony, being around a
16 firearm is an issue for being a felon.

17 Q: Now, you also don't mind making threats when people
18 aggravate you, do you?

19 A: I don't know what threats you're talking about.

20 Q: Who is Tracy Stevens?

21 A: Tracy Stevens?

22 Q: Do you know Victoria Hubbard's mother?

23 A: Yes.

24 Q: You ever communicated with her?

25 A: Yes.

1 Q: Communicated with her through social media?

2 A: We've communicated through social media, text messages;
3 that's my son's grandmother.

4 Q: Right. Do you recall after the incident at the House of
5 Blues having conversation -- I won't say conversation; it was
6 through social media. Do you recall being in touch with Ms.
7 Stevens around October 2015 around the time of the House of
8 Blues concert?

9 A: And I let her know that Victoria was back with Josh
10 because she did not approve of that.

11 Q: That's not all you said. You said, I know -- didn't you
12 tell her, it's okay, he's a dead man? Do you remember telling
13 her that?

14 A: I don't remember telling her that, but if that's what you
15 have there then ---

16 Q: Do you remember telling her I'm really close to Hell's
17 Angels, do you remember telling her that?

18 A: I mean, if that's what you're ---

19 Q: I'm -- close to Hell's Angels?

20 A: I mean, that's just being upset.

21 Q: Just being upset. So when you're upset, you say that guy
22 is a dead man; I'm close to Hell's Angels? Why would you say
23 Hell's Angels? Why not any other group? Because they're a
24 scary ass bike club?

25 A: I mean, where in that does it say I'm gonna put a bullet

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1 in anybody's head?

2 Q: That's not my question. Did you tell him you're the
3 president of the La Familia Chapter of Myrtle Beach?

4 A: That is just a motorcycle club. There's two members.

5 Q: Right. Is that anything like Hell's Angels?

6 A: No, nothing like Hell's Angels.

7 Q: I want to put this kid six feet under. Do you remember
8 telling her that?

9 A: No.

10 Q: If he touches her, I'll kill him. Do you remember
11 telling her that?

12 A: He has a history of beating her and that was -- she was
13 pregnant with my son.

14 Q: So -- and I almost grabbed my knife and cut him?

15 A: I don't recall having a knife.

16 Q: Put him six feet under; I could kill him; I'm close to
17 Hell's Angels; I could've killed him; I'll put a knife in him.

18 A: Okay.

19 Q: And this was before your encounter with Mr. Maiden at The
20 Boathouse that night?

21 A: Yes, that was at least maybe a year prior.

22 Q: That was October 2015, wasn't it?

23 A: October 2015, if that's what those state. Now, as far as
24 had we communicated between that, Joshua Maiden, Victoria, I
25 and my girlfriend at the time have walked around. Joshua

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1 Maiden and I have shaken hands since that date. There has not
2 been any issues.

3 Q: Now you testified today that you heard squealing tires?

4 A: Uh-huh (affirmative response).

5 Q: Do you recall speaking with Detective Hardwick at the
6 hospital?

7 A: Yes.

8 Q: And that was the day after, correct?

9 A: Yes, it was.

10 Q: Would it surprise you to learn that there was no mention
11 in your statement you heard any squealing tires?

12 A: Do I recall not saying that to her? No, I do not recall
13 not saying there were squealing tires.

14 Q: When you walked out being escorted, you saw Josh's car,
15 besides wanting his license plate -- what did you have in your
16 hand?

17 A: A cell phone.

18 Q: Okay. And when you saw him, you ran towards his vehicle,
19 didn't you?

20 A: I did not run towards his vehicle.

21 Q: You got close enough to put your hands on it?

22 A: As far as running up to the vehicle, I do not recall
23 running up to the vehicle. I was waiting for him to make a
24 right so I could see the back license plate.

25 Q: But you separated yourself from the bouncers?

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1 A: Because at the curb, that's where they stopped following
2 me.

3 Q: Which curb?

4 A: The curb right into The Boathouse, where I started
5 crossing the street.

6 Q: All right.

7 A: When I started to cross the street is when they stopped
8 following me.

9 Q: You put yourself right in front of Mr. Maiden?

10 A: No, sir.

11 Q: Court's indulgence?

12 Thank you. No further questions.

13 MR. OSKIN: Briefly, Your Honor.

14 REDIRECT EXAMINATION OF ALEXANDER MINIET BY MR. OSKIN:

15 Q: Mr. Miniet, let's focus on this encounter, let's clear up
16 that just a little bit. They make it sound like it's three,
17 but really you're saying there's two, right, the initial
18 conversation, the push, and then the fight; is that correct?

19 A: Uh-huh (affirmative response).

20 Q: As you were separated by the bouncers after that initial
21 push?

22 A: Yes.

23 Q: It's no secret you don't like Mr. Maiden and vice versa,
24 correct?

25 A: No, I mean ---

1 Q: This is because of a girl; these things happen.

2 A: Well, no, it wasn't because of a girl. That happened,
3 you know, just -- I couldn't even explain.

4 Q: Let me rephrase it. A girl who is the mother of your
5 child ---

6 A: Yes.

7 Q: Which brings another host of issues.

8 A: Yes.

9 Q: Okay. We'll leave that at that. After the first push,
10 the encounter, the second encounter begins the fight, correct?

11 A: Yes.

12 Q: The second encounter before you were escorted out the
13 door?

14 A: Uh-huh (affirmative response).

15 Q: On the video, that this jury has seen, you hear somebody
16 on the video say, there's a fight. Did you testify earlier
17 that you had a cigarette in your mouth and you were taking it
18 out to get your hands ---

19 A: Yes.

20 Q: --- free?

21 A: Uh-huh (affirmative response).

22 Q: Were you just focused on the guy in front of you?

23 A: I was focused on the gentleman in the black shirt.

24 Q: All right. So, you weren't able to notice the Defendant
25 peek around both corners to make sure the coast was clear

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1 before he drills you with a beer bottle, correct?

2 A: No, all I saw was his back, the back of his shirt was all
3 I saw.

4 Q: And just to reiterate, that night you were there by
5 yourself?

6 A: Uh-huh (affirmative response).

7 Q: No weapon on you?

8 A: Nothing.

9 Q: You said the felony conviction with the weapon, you were
10 squatting in a house. I think I know what that means. Please
11 explain that to the jury what squatting in a house means?

12 A: Basically, I wasn't on a lease. It was somebody else's
13 house that was on the lease and I was just paying them a
14 portion of the rent just to be able to stay there until I
15 found my own place.

16 Q: It's your testimony that gun was in a safe?

17 A: Yes.

18 Q: Let's talk about La Familia. You said La Familia is a
19 motorcycle club. How many people are in that club?

20 A: Well, it's non-existent here anymore and there was only
21 two; me and a friend of mine that I worked with at Redline.

22 Q: You and a friend. Okay. Did you guys ever wear any
23 colors, patches, jackets or anything like that?

24 A: We wore motorcycle vests with the patch that was a New
25 York City Skyline with the American Flag on it.

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ALEXANDER MINIET - RECROSS BY FOX

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1 Q: My Spanish or Italian isn't the best; La Familia means
2 what?

3 A: The family.

4 Q: Okay. Were you wearing those colors or patches or vests
5 or anything that night?

6 A: No, sir.

7 Q: I believe the video indicates you might have a red shirt
8 on?

9 A: Uh-huh (affirmative response).

10 Q: And a hat; do you remember what kind of hat that was?

11 A: That was a hat that I had gotten at a music festival.

12 Q: As you were exited the bar after being escorted out, I
13 believe you testified that you came on the side of the vehicle
14 and you thought the car was gonna exit to the right so you
15 could get the license plate number?

16 A: Yes.

17 Q: Is that correct? During that time, Mr. Miniet, was there
18 enough room between you and the vehicle for the vehicle to
19 pass you without striking you?

20 A: Absolutely.

21 MR. OSKIN: Nothing further, Your Honor.

22 RECROSS EXAMINATION OF ALEXANDER MINIET BY MR. FOX:

23 Q: You filed a lawsuit against The Boathouse and Mr. Maiden
24 after this incident?

25 A: Yes, I did.

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1 Q: And named Mr. Coan as one of the Defendants, the owner?

2 A: I believe so.

3 Q: Okay. Thank you.

4 MR. OSKIN: Nothing further.

5 THE COURT: You may step down, sir.

6 MR. MINIET: Thank you, Your Honor.

7 COURT REPORTER: I'll take those, sir. Thank you.

8 MR. OSKIN: At this time, Your Honor, the State would
9 rest its case in chief.

10 BY THE COURT:

11 THE COURT: Very well. Mr. Ropp, take the jury back to
12 the jury room. I have some matters I have to take up at this
13 time.

14 (REPORTER'S NOTE: Jury exits courtroom. 2:35 P.M. The
15 following takes place outside the presence of the Jury.)

16 THE COURT: All right, Mr. Fox?

17 MR. FOX: Your Honor, at this time, I'd make a motion for
18 a directed verdict on the indictment of attempted murder.

19 There has not been a showing of any specific intent.

20 Specifically, with regard to *State v. King*, which is from
21 2015, which one of the holdings is there must be a specific
22 intent to commit murder as an element of attempted murder.

23 THE COURT: All right, Mr. Fox, I think there is
24 significant evidence in which the jury could make that
25 finding. We've got a situation where the evidence in the

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1 light most favorable to the State would show that not only was
2 he struck once and was run over then by a vehicle, a squealing
3 of tires. We're talking about using that vehicle to strike
4 the Defendant. There's evidence of prior assault in the same
5 evening by the Defendant. I think there's certainly evidence
6 that overcomes the *King* case and supports the State's case.
7 There is evidence which would require this to be taken to the
8 jury.

9 Now, Mr. Fox, tell me about your plans for your defense.
10 Will you put up a defense?

11 MR. FOX: I do need to speak with Mr. Maiden at this
12 juncture.

13 THE COURT: Do you need a few moments to discuss his
14 testimony with him?

15 MR. FOX: I do, Your Honor.

16 THE COURT: Okay.

17 MR. FOX: Because that would be the juncture where we are
18 now. Mr. Kennedy -- not being able to get a continuance
19 yesterday, Mr. Kennedy will not be here and that would be my
20 other witness. So, if Mr. Maiden chooses not to testify, we
21 won't be putting up any evidence.

22 THE COURT: Okay. All right. I'll give you some time to
23 talk to Mr. Maiden about that.

24 MR. FOX: Yes, sir.

25 THE COURT: All right. Let's take a break.

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1 (RECESS - 2:38 P.M.)

2 *****OFF THE RECORD*****

3 (On the Record. 2:54 P.M.)

4 THE COURT: Mr. Fox, will your client testify?

5 MR. FOX: He indicates that he will, Your Honor.

6 THE COURT: All right. Please stand, Mr. Maiden.

7 Place him under oath.

8 CLERK: Please raise your right hand.

9 JOSHUA MAIDEN, HAVING BEEN SWORN

10 TESTIFIES AS FOLLOWS:

11 THE COURT: Mr. Maiden, at this time, I'm going to
12 explain to you certain rights. I'm sure you've discussed this
13 with Mr. Fox, but I want to go over them with you and if you
14 don't understand anything that I say, please let me know and
15 if you want me to explain anything in a more detailed fashion,
16 let me know; you understand?

17 MR. MAIDEN: Yes, Your Honor.

18 THE COURT: Okay. Now we've reached the stage in this
19 trial where you may present your defense. You have a right to
20 claim the protection given you by the Fifth Amendment to the
21 Constitution of the United States which says in part, no
22 person shall be compelled in any criminal case to be a witness
23 against himself. Basically, that means that you cannot be
24 required to testify in this case and that applies whether or
25 not you call any other witness; do you understand that?

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1 MR. MAIDEN: Yes, Your Honor.

2 THE COURT: You have the right to testify in your own
3 defense. However, as I said, no one can make you testify and
4 this is a personal right that you have that no one can waive.
5 Your attorney can't waive, I can't waive it, no one can waive
6 it but you; you understand that?

7 MR. MAIDEN: Yes, Your Honor.

8 THE COURT: Now, if you decide to testify, you understand
9 that you'll be subject to the same rules that govern other
10 witnesses and you may be examined and cross examined on any
11 relevant issue in this case. In addition, if you have any
12 convictions involving dishonesty or false statements or crimes
13 punishable by imprisonment for more than one year and this
14 Court determines that the probative value of admitting this
15 evidence outweighs its prejudicial effect, the Solicitor MR.
16 Mr. DeBusk or Mr. Oskin will be able to introduce your record
17 to attack your credibility, that is your believability. If
18 you decide to testify, this decision on your part must be
19 freely, voluntarily, and intelligently made with knowledge of
20 the protections given you by the Fifth Amendment and the
21 consequences of your decision to testify. Do you understand
22 that?

23 MR. MAIDEN: Yes, sir.

24 THE COURT: If you decide not to testify, I would
25 instruct the jury that they could not give the fact that you

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1 did not testify any consideration whatsoever and that there
2 was to be absolutely no prejudice to you because you did not
3 testify. It's left entirely up to you whether or not to
4 testify. And you have had some time now during our last break
5 to talk with your attorney, family, friends, and you still may
6 talk with them if you desire or anyone else that might give
7 you good advice, but the final decision is left entirely up to
8 you. Do you understand everything I've explained to you?

9 MR. MAIDEN: Yes, sir.

10 THE COURT: Do you have any questions about what I've
11 explained to you? I'll be glad to explain it further.

12 MR. MAIDEN: No, sir.

13 THE COURT: All right. Now you have discussed this with
14 your attorney; is that correct?

15 MR. MAIDEN: That is correct.

16 THE COURT: And it is my understanding from your attorney
17 that you wish to testify; is that correct?

18 MR. MAIDEN: That is correct.

19 THE COURT: I want you to know that up until the time
20 that you take the stand and decide to testify, the fact that
21 you may tell me now that you want to testify, you can withdraw
22 that. I'm not suggesting that you should or that's the thing
23 for you to do. I'm just saying that you have that option.
24 Just because you say right now that you want to testify,
25 doesn't mean you can't withdraw; you understand me?

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1 MR. MAIDEN: Yes, sir.

2 THE COURT: Now do you wish to discuss this any further
3 with Mr. Fox?

4 MR. MAIDEN: No, sir.

5 THE COURT: So, I'm understanding you wish to testify?

6 MR. MAIDEN: That is correct.

7 THE COURT: Now, Mr. Fox has discussed with you -- it's
8 my understanding you're presently incarcerated; is that
9 correct?

10 MR. MAIDEN: Correct.

11 THE COURT: And that would suggest to me that you do have
12 some criminal conviction. I do not know what, but I
13 understand that you do; is that right?

14 MR. MAIDEN: Correct.

15 BY THE COURT:

16 THE COURT: All right. Now, Mr. DeBusk, would you tell
17 me if any relevance that would have in this case?

18 MR. DEBUSK: There is multiple convictions, Your Honor.

19 THE COURT: All right. Tell me the ones that you intend
20 to use.

21 MR. DEBUSK: Yes, Your Honor. From the State of
22 Virginia, conviction date November 13th, 2006, felony eluding
23 police, endanger of person or a police car, which he was
24 sentenced to one year and three months active.

25 THE COURT: Okay.

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1 MR. DEBUSK: Which carries it into 10 years. At the same
2 time, we have a larceny misdemeanor, which he received 12
3 months, which carries into the, again, the 10 years.

4 THE COURT: That carries how much?

5 MR. DEBUSK: He got 12 months, Your Honor. I'm not sure
6 what the charge carries. He was sentenced to 12 months.

7 THE COURT: Okay.

8 MR. DEBUSK: From August 1st of 2011 in North Carolina,
9 manufacturing marijuana, felony level. From 2016 in Marion
10 County, assault and battery first degree. Your Honor, that's
11 the current charge for which he's currently incarcerated, and
12 in all due candor to the Court, that involved him running over
13 an individual ---

14 MR. FOX: Your Honor, I don't want to get into the facts
15 of that and prejudice anything -- if he's got ---

16 THE COURT: We don't have the jury here. I'll hear Mr.
17 DeBusk. It's not gonna go before the jury. I understand.
18 I'm not making the decision -- yes, sir?

19 MR. DEBUSK: Just for the Court to make a decision about
20 admissibility, it did involve him striking another individual
21 with a vehicle ---

22 THE COURT: Okay.

23 MR. DEBUSK: --- in Marion County. From April 29th, 2015
24 in Horry County, he has a receiving stolen goods, misdemeanor
25 level. We'd argue that's a crime of falsehood. From December

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1 2nd, 2011 in Maryland, obstruction and hindering, a
2 misdemeanor, we'd argue that's a crime of falsehood. From
3 Delaware in September 18th of 2013, criminal mischief less
4 than 1,000.

5 THE COURT: Is that relevant?

6 MR. DEBUSK: Sir?

7 THE COURT: Is that offense relevant?

8 MR. DEBUSK: We would argue Your Honor, that it would be.

9 THE COURT: Let's hear it. I mean, I asked you what you
10 intend to use.

11 MR. DEBUSK: Yes, Your Honor, for impeachment. We would
12 argue, again, the criminal mischief, even though it's a
13 misdemeanor, it carries a year and we would argue that ---

14 THE COURT: Oh, okay. All right. I did not know that.
15 Okay.

16 MR. DEBUSK: I'm sorry, Your Honor. From June 5th, 2008
17 again criminal mischief less than 1,000. From March 22nd,
18 2008, two charges for reckless endangerment first degree
19 causing substantial risk of injury or death. Again, Your
20 Honor, those two charges involved the Defendant striking --
21 trying strike another vehicle -- individuals with a vehicle.
22 So, and then from March 5th, 2008, assault third degree,
23 causing -- recklessly causing physical injury for which he
24 received one year suspended to one year probation. From July
25 19th, 2007 a theft less than 1,000, again one year suspended

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1 to probation. From March 30th, 2005, resisting arrest, again
2 one year suspended. They're all from the State of Delaware.
3 Then finally, Your Honor, May 12th, 2004 there's an attempted
4 robbery second degree which the Defendant received five years
5 suspended to one year of partial confinement and one year of
6 close supervision. According to his NCIC, on July 11th, 2007
7 that same case was brought back before the Delaware Court for
8 a probation violation, apparently, after he was released from
9 imprisonment in Virginia, and so that would bring it back
10 within the 10 years.

11 THE COURT: All right. Mr. Fox, what do you say about
12 that array?

13 MR. FOX: Criminal mischief, I'm sure carries more than a
14 year, but I don't know what criminal mischief in another state
15 carries.

16 THE COURT: Well, how about that, Mr. DeBusk, the
17 criminal mischief?

18 MR. DEBUSK: I believe it carries a year, Your Honor.

19 THE COURT: Well, doesn't it -- it requires that it carry
20 more than a year or that if it involved dishonesty or false
21 statement?

22 MR. DEBUSK: I'm sorry, Your Honor, I thought it carried
23 over a year or more.

24 MR. FOX: More than a year.

25 THE COURT: More than a year.

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1 MR. DEBUSK: All right. Then it would carry a year, Your
2 Honor.

3 THE COURT: Okay.

4 MR. FOX: Judge, the -- I'm sorry. There's a 2005 that I
5 didn't catch.

6 THE COURT: What was the 2005?

7 MR. DEBUSK: Resisting arrest, Your Honor, from the State
8 of Delaware.

9 THE COURT: Well, what does that carry?

10 MR. DEBUSK: I'm not sure, Your Honor. He received one
11 year suspended.

12 MR. FOX: We have no showing that it carries -- could've
13 gotten more than a year.

14 THE COURT: Well, if you don't have any evidence that
15 it's more than a year, I won't allow it.

16 MR. FOX: The same thing with the 2007 less than 1,000.
17 I'm not sure what the possible sentence is on that.

18 THE COURT: That would be basically a petty larceny in
19 this state, Mr. DeBusk?

20 MR. DEBUSK: Well, it carries a year, Your Honor, at
21 least a year I know.

22 THE COURT: I understand, but nothing to indicate that it
23 carries more than a year. And that's the threshold, I
24 believe; isn't it?

25 MR. DEBUSK: I would argue that it's a crime of

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1 falsehood, Your Honor.

2 THE COURT: That -- how about that, Mr. Fox?

3 MR. FOX: Dishonesty can be something that he can be
4 impeached on, Your Honor.

5 THE COURT: All right, sir. And that goes to
6 credibility.

7 MR. FOX: There was also a 2015 that, I'm sorry, I just
8 ---

9 MR. DEBUSK: Receiving stolen goods, South Carolina,
10 Horry County, receiving stolen goods less than 1,000. It's a
11 misdemeanor level, Your Honor, but again, we would argue a
12 crime of falsehood.

13 MR. FOX: I have an issue with that. Judge, everything
14 else I think -- I don't have a quarrel with.

15 THE COURT: It my understanding receiving stolen goods is
16 an intent statute, is it not, Mr. DeBusk? You have to
17 knowingly ---

18 MR. DEBUSK: Yes, Your Honor; it is.

19 THE COURT: And I would think that that would show
20 dishonest; so, I'll allow that as well.

21 MR. FOX: Yes, sir.

22 MR. DEBUSK: Criminal mischief, Your Honor?

23 THE COURT: Yes.

24 MR. DEBUSK: Just to be sure now, may I briefly run
25 through it again, Your Honor?

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1 THE COURT: Okay. Listen very carefully, Mr. Fox, and
2 let's make sure we're on the same page.

3 MR. FOX: Yes, sir.

4 MR. DEBUSK: 2006, Virginia, felony eluding police, a
5 fine that carries over to 10 years. 2006, grand larceny in
6 Virginia, which is a misdemeanor in Virginia, but I will argue
7 again a crime of falsehood, 12 months carries it over to the
8 10 years. August 1st, 2011, North Carolina, manufacturing
9 marijuana a felony level. 2016, Marion County, South
10 Carolina, assault and battery first degree. 2015, Horry
11 County, receiving stolen goods. 2011, Maryland, obstruction
12 and hindering. 2008, Delaware, two counts of reckless
13 endangerment first with great substantial risk of death.
14 2008, assault third degree, with reckless -- recklessly
15 causing physical injury. 2007, theft less than 1,000. I
16 think we said the 2005 resisting arrest was out, Your Honor.

17 THE COURT: Right.

18 MR. DEBUSK: And then attempted robbery second degree
19 from 2004 the sentence carrying it into the 10 years.

20 MR. FOX: The only question I would have for the 2008 A&B
21 third, is that South Carolina?

22 MR. DEBUSK: No, that's from Delaware.

23 MR. FOX: From Delaware is what a assault and battery
24 third would carry and ---

25 THE COURT: How about that one, Mr. DeBusk?

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1 MR. DEBUSK: He received a year suspended to a year
2 probation, Your Honor.

3 THE COURT: So, we -- in South Carolina it would carry 30
4 days?

5 MR. FOX: Yes, sir.

6 THE COURT: I would not allow that.

7 MR. DEBUSK: So, assault third is out; yes, Your Honor.

8 THE COURT: Okay. Unless you have something that it was

9 ---

10 MR. DEBUSK: Yes, sir.

11 THE COURT: All right.

12 MR. FOX: Your Honor, I believe that's all they can use.

13 THE COURT: Is that correct?

14 MR. DEBUSK: Yes, Your Honor.

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

16 You will have no other witnesses? I notice you had
17 several listed?

18 MR. FOX: Yes, sir, and it would be Mr. Maiden.

19 THE COURT: And that would be it?

20 MR. FOX: Yes, sir.

21 THE COURT: Okay. What I intend to do is finish up with
22 this witness. I'll release the jurors. We will hear motions
23 again. Then I'm gonna have a charge conference. You both
24 know my policy on charges. I always give the jury a written
25 transcript of my charge. I'll have that prepared. Elizabeth

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1 will email it to each of you this evening or this afternoon,
2 once it's prepared. I want to hear you at 9:30 in the morning
3 on additions, deletions to the charge. I want to have that
4 charge agreed upon or any motions concerning that charge on
5 the record before the jury comes back in. It's fair to you to
6 know how I will charge so that you can argue appropriately.
7 I'll allow you to argue and then I will charge the jury.

8 Any objection to that procedure, Mr. Fox?

9 MR. FOX: None, Your Honor.

10 MR. DEBUSK: None, Your Honor.

11 THE COURT: Very well. Okay.

12 If you would, you ready for my jury?

13 (REPORTER'S NOTE: Jury enters courtroom. 3:09 P.M.)

14 THE COURT: All right. We have everyone in.

15 Mr. Fox?

16 MR. FOX: The Defense would call Joshua Maiden.

17 CLERK: Please raise your right hand.

18 JOSHUA MAIDEN, HAVING BEEN SWORN

19 TESTIFIES AS FOLLOWS:

20 CLERK: Please state your full name and spell your first
21 and last name for the Court.

22 MR. MAIDEN: Joshua Maiden, J-O-S-H-U-A; last name is M-
23 A-I-D-E-N.

24 DIRECT EXAMINATION OF JOSHUA MAIDEN BY MR. FOX:

25 Q: Mr. Maiden, how old are you?

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- 1 A: I'm sorry?
- 2 Q: How old are you?
- 3 A: Thirty-three.
- 4 Q: And where do you live?
- 5 A: I was living in Charleston at the time of the incident.
- 6 Q: Presently you're in the Department of Corrections,
- 7 correct?
- 8 A: Correct.
- 9 Q: And you're serving a sentence for assault and battery
- 10 first degree?
- 11 A: Correct.
- 12 Q: You have some other matters on top of those, now you have
- 13 some other convictions in your ---
- 14 A: Yes, sir; I do.
- 15 Q: You have an eluding the police in 2006?
- 16 A: I do.
- 17 Q: And along with that same date, a grand larceny?
- 18 A: Correct.
- 19 Q: You have a theft charge in 2007?
- 20 A: Correct.
- 21 Q: Manufacturing marijuana in 2011?
- 22 A: Correct.
- 23 Q: Another assault charge -- well, you mentioned the one
- 24 from 2016, that's the assault you're currently in ---
- 25 A: Yes, sir.

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- 1 Q: --- SCDC for? Receiving stolen goods in 2015?
- 2 A: Yes.
- 3 Q: Obstructing and hindering in 2011?
- 4 A: Correct.
- 5 Q: Attempted robbery way back in 2004?
- 6 A: Correct.
- 7 Q: And something from another state called reckless
8 endangerment with substantial risk of death in 2008?
- 9 A: Correct.
- 10 Q: All right. So, all those are yours. Now, let's start at
11 the beginning. You -- at the time this happened in May of
12 last year, who were you dating?
- 13 A: Victoria Hubbard.
- 14 Q: Okay. And what is Ms. Hubbard's connection, if any, with
15 Mr. Alex Miniet?
- 16 A: She has a son in common with him.
- 17 Q: Okay. And are you aware, from your own interaction with
18 Ms. Hubbard, around the time when she was with Mr. Miniet?
- 19 A: Yes.
- 20 Q: Okay. Were you still dating her at the time?
- 21 A: We were off and -- we were off and on. At one point, we
22 were off. That was when Mr. Miniet and her had got together
23 and had the relationship. After they had split up, we did
24 work things out and got back together.
- 25 Q: Roughly when was that when you got back together?

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- 1 A: That was around October.
- 2 Q: Okay. When did y'all learn that she was pregnant?
- 3 A: I had already -- was already aware that she was pregnant
- 4 when we got back together.
- 5 Q: Okay. So by October 2015, you were aware that she was
- 6 pregnant and when was her child born?
- 7 A: January 26th.
- 8 Q: Okay. So she would have been several months pregnant in
- 9 October?
- 10 A: Correct.
- 11 Q: Okay. Do you know if Mr. Miniet was aware of that fact?
- 12 A: Yes, he was.
- 13 Q: Okay. Was he aware that it was his child?
- 14 A: He was.
- 15 Q: Okay. So you and Victoria, Ms. Hubbard, were back
- 16 together in October. What was -- did you know Alex Miniet?
- 17 A: No, I did not.
- 18 Q: Okay. When did you first meet him?
- 19 A: When he showed up at the House of Blues while her and I
- 20 were out on a date.
- 21 Q: Okay. And do you remember when that was roughly?
- 22 A: It was about mid-October. We went to the House of Blues
- 23 to see a band called Avenged Sevenfold. We arrived early so
- 24 that way we could have dinner. We sat down in the dining area
- 25 at the House of Blues prior to going into the concert.

- 1 Q: Okay. Did you see Mr. Miniet that night?
- 2 A: I did.
- 3 Q: And where was that?
- 4 A: While we were having dinner, he showed up with other
- 5 members of La Familia. They came in and sat down at the bar.
- 6 He kind of looked around for a moment and then once he
- 7 realized where we were sitting, he came over and sat down at
- 8 the table with her and I.
- 9 Q: How did you know that they were members of La Familia?
- 10 A: Because they all had on their jackets.
- 11 Q: How many members were there?
- 12 A: There was him and four other people; two were prospects.
- 13 Q: More than two?
- 14 A: Correct.
- 15 Q: Four is more than two?
- 16 A: Yes.
- 17 Q: All right. So they were wearing their colors?
- 18 A: Yes, sir.
- 19 Q: Okay. So you say now he come over and sit near you
- 20 himself or did they all come over?
- 21 A: No, he came over by himself and literally sat down at our
- 22 table.
- 23 Q: Was he invited over?
- 24 A: No, he was not.
- 25 Q: What did he say when he sat down?

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1 A: He said ---
2 MR. OSKIN: Objection, Your Honor, calls for hearsay.
3 MR. FOX: Fair enough.
4 BY MR. FOX:
5 Q: Did he -- were there any communications between you; did
6 y'all say anything to each other?
7 A: There was. When ---
8 Q: What was the -- was it a friendly nature?
9 A: It was not a friendly nature, no.
10 Q: Okay. Who spoke first?
11 A: He did.
12 Q: Okay. How would characterize what he was saying, was it
13 directed towards you or Ms. Hubbard?
14 A: It was directed toward Ms. Hubbard.
15 Q: And how would you characterize the way it was directed
16 towards her?
17 A: It was confrontational.
18 Q: Any insults?
19 A: I mean -- yes. I took it as an insult.
20 Q: Okay. Anything directed towards you?
21 A: No, not at first.
22 Q: Okay. Ever?
23 A: Toward the end of it there was, yes.
24 Q: How long was this encounter?
25 A: Approximately, five minutes. Towards the end of it, we

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1 stood up and I like -- it got to the point where I thought it
2 was going to become physical. We both stood up from the table
3 and she asked me to sit back down and I did.

4 Q: Okay. Did it become physical?

5 A: No.

6 Q: Okay. Did he leave at some point?

7 A: Yes, he did.

8 Q: Okay. And was that it for that night at House of Blues?

9 A: No, it was not. When they left, they went in the area
10 that's in between the dining area and the concert hall;
11 there's an outside area there. Him and the rest of his club
12 sat down there while we finished eating. Then we went and got
13 in line to go inside for the concert and while we were in
14 line, they had things to say that allowed me to know that they
15 were gonna wait for us after the concert.

16 Q: And who was saying these things?

17 A: Alex.

18 Q: Any of the others?

19 A: No.

20 Q: Okay. And that he was basically gonna wait for you
21 afterwards?

22 A: Correct.

23 Q: To see how you liked the show?

24 A: No, not to see how we liked the show.

25 Q: Did you take it as a threat?

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1 A: I did take it as a threat.

2 Q: Did you see him after the show?

3 A: We actually left about a half hour early in hopes of
4 missing him.

5 Q: So you missed him?

6 A: Yes.

7 Q: Okay. Were there any other times when you had any
8 encounters with Mr. Miniet?

9 A: I worked at a restaurant called T-Bonz. Mr. Miniet came
10 in one evening and requested me as his server. When they sent
11 me over to the table, I looked, I saw who it was, and I walked
12 back to my manager and said, you know, I don't want to wait on
13 him. You can do that. They don't give you hard time if for
14 one reason or another you can't wait on somebody. And when he
15 realized I wasn't gonna be waiting on him, he went ahead and
16 left. And, on his way out, he had some choice words for me.

17 Q: He was disappointed he couldn't eat at T-Bonz?

18 A: No, I think he was just trying to get under my skin.

19 Q: Okay. So what was being said was directed towards you?

20 A: Absolutely.

21 Q: How would you characterize what he was saying?

22 A: I mean, you know, I get called a pussy ---

23 MR. OSKIN: Objection, Your Honor.

24 THE COURT: What's your objection?

25 MR. OSKIN: Hearsay.

1 THE COURT: I'll allow it.

2 A: I was called a pussy. I was called a bitch as well.

3 BY MR. FOX:

4 Q: Okay. And this was at T-Bonz?

5 A: Correct.

6 Q: Okay. Was that kind of language similar to what you had
7 heard at the House of Blues?

8 A: Yes, it was.

9 Q: And roughly when was the T-Bonz incident?

10 A: I want to say late November.

11 Q: Was there anything then before The Boathouse evening?

12 A: No.

13 Q: And then the child was born in January, correct?

14 A: Yes, sir.

15 Q: Okay. And did you see Alex around the birth of the
16 child?

17 A: Yeah, actually when the baby was born -- the baby was
18 actually like the common denominator. At that point, you
19 know, the issues that he and I had between us, they went out
20 the window. All right. We were -- Victoria and myself and
21 him discussed it as co-parenting, you know, trying to get
22 along for the baby's sake. And, you know, he had stated
23 earlier that we went to a car show at one point and that's
24 true. We did. We all got together and we, you know, went to
25 a car show. We, you know, we put our differences behind us.

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1 We had no problems for months.

2 Q: When did that -- did that change? Did that ever change?

3 A: Yeah, it did change. Ms. Hubbard actually filed for
4 what's called FI Assistance, which is where the State helps
5 provide funds to help take care of a child. When she filed
6 for the FI Assistance, the State asked who the father was and
7 then they automatically file child support.

8 Q: So, as the natural father, Mr. Miniet then was on the
9 hook for repaying the State for the assistance they or at
10 least the assistance the state was providing Ms. Hubbard?

11 A: Correct. And then continuing child support from that
12 point forward.

13 Q: Okay. And that's done, what, they serve legal papers on
14 him?

15 A: Yes.

16 Q: So what changed after he was served with those papers?

17 A: After he was -- what changed wasn't necessarily between
18 he and myself. They started the fight at first. Me and him,
19 we had no communication at all. We did not talk whether it be
20 through the phone, through the internet, anything. We had no
21 communication, and that's what struck me as odd the day that
22 we were out at The Boathouse.

23 Q: So, tell me about going to The Boathouse.

24 A: At that point, I was living in Charleston. I came up
25 that weekend kind of to have a family weekend. My daughter

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1 was in from North Carolina, and we had MINOR, which is Ms.
2 Hubbard and Mr. Miniet's son. We, you know, went to the beach
3 and did things like that. And then on Sunday, it's what they
4 call Sunday Funday. We would go to the concerts. They have
5 an area that's what they call the family section. It is off
6 to the side so you're not right in front of the loud speakers.
7 There are other children that are there and, you know, we were
8 just having a good day.
9 Q: Were you or either Ms. Hubbard getting drunk?
10 A: I was drinking, yes. She was not.
11 Q: She was not. She was watching after MINOR?
12 A: Correct.
13 Q: Did you see Mr. Miniet at some point that evening?
14 A: I didn't see him initially. Initially, I saw the other
15 members of his club.
16 Q: How do you know they were members of his club?
17 A: Because they had on what they call their colors, their
18 black leather jackets that says La Familia on the back.
19 Q: So you saw them and in what context, what happened?
20 A: At first, they didn't say anything to me. I mean, they
21 saw where I was. And then, periodically, one would walk by.
22 They would eyeball me and make the same sort of statements
23 that Alex himself had made on prior occasions calling me a
24 pussy or a bitch or a piece of shit, things of that nature.
25 Q: They wouldn't make any physical ---

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1 A: No physical threats.
2 Q: Okay. So just obnoxious?
3 A: Correct.
4 Q: But nothing physical?
5 A: Correct.
6 Q: Okay. At some point, did you see Mr. Miniet?
7 A: I did.
8 Q: Tell me about the first time you saw him.
9 A: I left the family area and I walked up to the bar. When
10 I got up to the bar, I was over by the volleyball court, which
11 is ---
12 Q: One moment. I'm gonna get you to point, even though this
13 is above from above just so the jury can understand where --
14 with the Court's permission, if the witness can come down?
15 May the witness come down, Your Honor?
16 THE COURT: Yes, sir.
17 Q: Just kind of stand on that side so the Court Reporter can
18 see you. All right. Now, obviously, this is The Boathouse,
19 correct?
20 A: Yes, sir.
21 Q: This is the lawn back here?
22 A: Correct.
23 Q: Point then -- this doesn't show it, but from above point
24 along where the bars are in back when you're outside?
25 A: In the back, the bar is right here in this general area.

1 Q: Okay.

2 A: That's the volleyball court there.

3 Q: Okay. Is there another bar or they just have the one?

4 A: Outside it's just that one bar. They do have what's
5 called a beer tub that is stationed across from the bar.

6 Q: Okay. So, you started to tell me when you first saw Mr.
7 Miniet?

8 A: Yes, sir. I went from down here, which is the family
9 area off to the side of the stage, I went up here to the
10 corner where the volleyball court is. All right.

11 Q: This is also the end of the bar?

12 A: Correct.

13 Q: Okay.

14 A: While I was up there, you know, I wasn't paying that much
15 attention to what was going on around me, then I looked and I
16 saw Mr. Miniet. He was looking at me and he said something
17 which I was unable to determine at the time. And I did ask
18 him, I said, Are we good? And he said you just better be
19 taking care of my son. It was not what he said, it was the
20 manner in which he said it, and at that point, I did reply,
21 Fuck you, too, excuse my language.

22 Q: Okay. Then what happened then?

23 A: At that point, he shoved me and I did shove him back, and
24 immediately the bouncer came over and separated the two of us.
25 They sent Mr. Miniet along his way over here to where the

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1 porta potties were and they told me to go to the end of the
2 bar and order my drink there.
3 Q: Okay. So, basically just a chest push kind of thing?
4 A: Correct.
5 Q: Nobody fell down?
6 A: Nobody fell down.
7 Q: Nobody punched anybody at that point?
8 A: No, sir.
9 Q: The bouncers immediately saw it?
10 A: Correct.
11 Q: Okay. So, now you're back around the corner?
12 A: Yeah, I'm back down here.
13 Q: Okay. Did you see Mr. Miniet again?
14 A: Yes, I did. I was sitting there -- well, standing at the
15 bar; they don't have seating. While I was standing there ---
16 Q: You can take your seat. Okay. I'm sorry. You started
17 saying you were standing at the bar?
18 A: Correct.
19 Q: And?
20 A: I was standing at the bar there and there was a young
21 lady behind me, her name is Katie. And when Mr. Miniet came
22 from his return from the bathroom, he came down to that end of
23 the bar where I was standing at. She tapped me on my back and
24 when I turned around, Alex was standing there. And
25 immediately, he was running his mouth to me and I was 100

1 percent running my mouth right back to him.

2 Q: You guys weren't talking about the Tone Loc concert?

3 A: No, we were not. We were -- we were throwing insults
4 back and forth at one another.

5 Q: Okay. Did that encounter get physical?

6 A: Not at that point. There was -- the gentleman that was
7 in the black shirt in the video, he is an acquaintance, just
8 somebody I know from being at The Boathouse. While Alex and
9 myself were going back and forth, that individual actually
10 came over and put his hands on my back and directed me to
11 start walking away. When I started walking away, that was
12 when Mr. Miniet said that he was going to put a bullet between
13 my eyes and it did infuriate me. All right. I turned around,
14 I took about two steps toward him and that was when Alex came
15 at me and he shoved me. When he shoved me, it was right here
16 in this general area and the one hand did hit my jaw. At that
17 point, the individual in the video grabbed ahold of Alex and
18 he threw him up into the corner and then that was where the
19 video actually began from.

20 Q: Okay. So, the video shows after y'all pushed each other,
21 a few minutes before, then separated?

22 A: Correct.

23 Q: It's after he's come back to where you are ---

24 A: Correct.

25 Q: --- the girl tapped you on the back. It's after y'all

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1 started jawing each other again?

2 A: Correct.

3 Q: It's after you say he's threatened you?

4 A: Correct.

5 Q: And he and James -- you've pushed each other, so at the
6 beginning -- you could hear that video from the defense table,
7 couldn't you?

8 A: Yes, I could.

9 Q: Okay. And you hear at some point the person taking the
10 video say, fight, fight?

11 A: Correct.

12 Q: Okay. Would that have been the part, the point where ---

13 A: That's where Alex had shoved me and James had grabbed
14 ahold of him and pushed him back toward that corner, yes.

15 Q: So, the difficulties between you two -- forget the
16 previous, the difficulties in that moment start before what
17 you see on that video?

18 A: That is correct.

19 Q: All right. No question you struck him with a bottle?

20 A: That is correct.

21 Q: How did that come about?

22 A: Him and James were actually the ones that were having the
23 altercation at that point. Me and -- even though he put his
24 hands on me, James threw him into the corner. I didn't want
25 any of us to be kicked out of the bar. I, you know, Victoria

1 was down there with the baby. So, at that point, I did tell
2 James to chill. When I said chill to him, I walked up and I
3 did turn towards James, which had my back toward Mr. Miniet.
4 They had said a couple of things back and forth and then he
5 looked away. When he turned over and looked at me, he told me
6 that I would get mine and that was when I struck him with the
7 bottle.

8 Q: And we see the aftermath of that, correct?

9 A: Correct.

10 Q: Okay. The bouncers separated everybody?

11 A: Correct.

12 Q: Okay. What happened to you?

13 A: I was on my back; Alex tackled me. I put my arms around
14 him kind of like to hold him in a bear hug so that way he
15 couldn't get leverage to be able to swing. As soon as the
16 bouncers got over and they did separate us, they took me --
17 actually, quite similar to him, they put me in a headlock.
18 They drug me away. I was rendered unconscious for a moment.
19 When I came through, I was just at the bottom of the stairs
20 which lead into the restaurant part of The Boathouse. They
21 told me that I wasn't welcome, that I needed to leave the
22 premises. So at that point, I left and started to head toward
23 my vehicle.

24 Q: Okay. Now, I'm gonna get you to come back down again.

25 Now were you being escorted -- as you were coming out -- this

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1 is the front, correct?

2 A: Correct.

3 Q: And the exit the front is where the blue line is?

4 A: Yes, sir.

5 Q: Okay. Were you being escorted at that point?

6 A: I was escorted to this point here, to the point where I
7 got ---

8 Q: Where was Alex at that point?

9 A: I assume he was still back here someplace.

10 Q: Okay. They got you to the parking lot and then be gone,
11 don't darken the door any more tonight, correct?

12 A: Correct.

13 Q: Okay. Where did you go? Where did you go?

14 A: I went to my vehicle, which was parked over here.

15 Q: Okay. Now, is there anything -- can you tell, is there
16 anything different in this photograph from how it looked in
17 May last year?

18 A: This -- the Tone Loc concert was actually, they had very
19 full attendance. So, at that point, all parking here was
20 completely used up, all of this parking was completely used
21 up, and the other individuals started parking over at the far
22 parking lot down there. So, what they had done was over here
23 there was a chain across that and a chain that went halfway
24 across this entrance here. So that way, if a car came out, a
25 spot was available the man -- the gentleman that was working

1 there would allow one car to go in to fill that spot.

2 Q: Are these the only two entrances into this parking area?

3 A: Correct.

4 Q: What's all the way around bordering it at the road?

5 A: Curbing.

6 Q: Okay. So, you couldn't just turn off into those?

7 A: No.

8 Q: So, you went and got to your car, correct?

9 A: Correct.

10 Q: Now, where was Victoria?

11 A: Victoria was still down here. At this point, she had no

12 involvement in anything. I'm not even sure if she knew what

13 had happened at that point.

14 Q: She did not see the fight inside?

15 A: No, she did not.

16 Q: And the bouncers rushed you out and you weren't gonna get

17 the chance to stop and talk?

18 A: Correct.

19 Q: Okay. So, you came out here and went to your car and

20 then what happened?

21 A: When I went to leave, I came out from right here and I

22 made the right, which sent me coming up this way.

23 Q: Any reason you didn't go the other way?

24 A: Well, the way that I normally would go home would be to

25 come out, turn and go down here underneath the drawbridge and

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1 it allows me to go straight and then pick up 501 down there.

2 Q: As you pulled out and made this turn, could you see Alex?

3 A: I did see Alex when he started coming from down this way.

4 He was with another individual at that point.

5 Q: How far down Pottery Drive -- how far down Pottery Drive
6 were you?

7 A: The actual -- the depiction the earlier witness put on
8 here about the V where the vehicle was, was where I was and
9 Alex was over in this general area.

10 Q: Okay. And he was with somebody else?

11 A: Yeah, I thought he was with two bouncers, not just one.

12 Q: But with ---

13 A: Correct.

14 Q: What happened when you saw him?

15 A: When I was coming up here approaching the stop sign, I
16 did begin to slow down. At that point, when Mr. Miniet
17 realized that it was me, he was standing directly next to the
18 two individuals that were walking him out. When he noticed
19 that it was me, he took off for being between the two of them
20 and ran from here to where -- where the X is. And in the
21 course of him running toward that position and me coming out
22 ---

23 Q: Let me ask you just a second before you -- you were
24 continuing to move; we see this little triangle here?

25 A: Yes.

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1 Q: So, you spot Mr. Miniet down here roughly in the middle
2 of the road, but you were continuing to move toward the
3 intersection, correct?

4 A: Correct.

5 Q: Okay. So, you were basically -- before you saw him do
6 anything, you were closing that distance between you two?

7 A: Correct.

8 Q: Okay. I'm sorry. Go ahead.

9 A: When Mr. Miniet saw me, he began to run at the vehicle
10 and he did run at it from an angle. At which point, my
11 concern was to, to try and get away. When he'd started to run
12 and I noticed that he had something in his hand. All right?
13 Because of his earlier threat that he was going to put a
14 bullet between my eyes, I was -- my concern was that he had a
15 handgun, so I did step on the gas. All right? I did not duck
16 down completely, I ducked down so that way I was more behind
17 my steering wheel, making myself a smaller target. When I got
18 up to here, when I was down, I felt the impact at which point
19 was when I did collide Mr. Miniet. At that point, it was
20 shock, you know, I froze. My ---

21 Q: What happened when you came in contact -- when your
22 vehicle came in contact with Mr. Miniet?

23 A: I assumed that it -- it pushed him forward, you know, and
24 I'm assuming that now, but I was -- my foot was still on the
25 accelerator. I did not know that it had pushed him out in

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1 front of the vehicle. And, at that point, that I felt the
2 motion that felt like I had rolled over top of him. I think,
3 you know, as I said, I was panicked so my foot remained on the
4 accelerator. And as the witness earlier stated, I went
5 completely straight and stopped right here just inside of the
6 actual Boathouse parking lot.

7 Q: Now this Fantasy Harbor Boulevard, its two lanes on each
8 side, correct?

9 A: Correct.

10 Q: And what amounts to another lane in the middle, the
11 median about as wide as the one -- so, it's basically five
12 lanes wide?

13 A: Correct.

14 Q: So, you had enough momentum and enough on the gas that
15 you continued right up into The Boathouse parking lot?

16 A: After I felt the initial bump from running over top of
17 him, the -- like I said, it was pure shock, you know, I -- it
18 felt like an eternity but I know it was a split second and I
19 continued forward. I didn't want to turn the wheel. I didn't
20 know where he was in reference to after I had just hit him.

21 Q: But you continued up into the parking lot. How did you
22 get out of there?

23 A: Once I got here, I stopped just inside of the entrance.
24 At that point, I did see a couple of individuals running
25 toward the vehicle. I was not sure who they were in relation

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1 to the incident or anything else. Being panicked, I did put
2 the vehicle in reverse. I backed up to here, then I proceeded
3 to leave in that direction.

4 Q: While in reverse, did you come anywhere near Mr. Miniet?

5 A: No, I did not.

6 Q: Did you try to hit him again?

7 A: No, I did not.

8 Q: If Melko thinks he saw you run back over him; he's
9 mistaken?

10 A: He is mistaken.

11 Q: So, where did you go after the incident? Did you stop to
12 see what happened to Mr. Miniet?

13 A: I did not.

14 Q: Why?

15 A: Well, at that point, I was panicked, you know, I had no
16 idea what was going on. But after the people were running
17 toward the vehicle with everything else, I did not know if
18 they were friends or possibly members of La Familia and it was
19 a panic, a panicked moment. So, I did flee the scene.

20 Q: And where did you go?

21 A: I stopped at a gas station, which was literally right
22 around the corner. I did ask if they had a phone.

23 Q: Why did you need a phone?

24 A: Because during the fight inside, my phone went flying,
25 which I later found that Mr. Miniet had picked up.

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- 1 Q: So, you did not have your phone with you?
- 2 A: No, I did not.
- 3 Q: Okay. Did you buy a phone?
- 4 A: I did. When I stopped at the gas station, they were on
- 5 the -- they said that they did not have a pay phone.
- 6 Q: Why did you want a pay phone?
- 7 A: Well, at that point, I was actually looking to contact
- 8 Ms. Hubbard.
- 9 Q: But you weren't able -- you couldn't use a payphone?
- 10 A: No, I could not. They did not have one.
- 11 Q: Okay. What did you do after that?
- 12 A: At that point, I left the gas station and my mother lives
- 13 in a neighborhood that's close to the Walmart. I was headed
- 14 towards her home.
- 15 Q: Which Walmart?
- 16 A: It's the one by Carolina Forest.
- 17 Q: Okay. So back up 501?
- 18 A: Correct.
- 19 Q: Towards Conway, okay. So you drove from down there by
- 20 the waterway close to 17 back up towards Conway?
- 21 A: Correct.
- 22 Q: Okay. And I'm sorry, you stopped at Walmart?
- 23 A: I ran into Walmart, I purchased a cell phone, excuse me,
- 24 and as soon as I purchased the cell phone, I left and drove to
- 25 my mother's neighborhood.

1 Q: What happened when you got to the neighborhood?

2 A: When I got to my mother's neighborhood, I actually parked
3 the vehicle up at the clubhouse. You know, I did have alcohol
4 in the vehicle. I had been drinking, so I did not want to
5 pull up to the house driving the vehicle.

6 Q: Did you encounter law enforcement at some point?

7 A: I did. After I had parked the vehicle, I was walking
8 down the road and law enforcement came.

9 Q: They take you into custody?

10 A: They did.

11 Q: They take you to the police station?

12 A: They did.

13 Q: They interview you?

14 A: Yes; they did.

15 Q: They read you your Miranda Rights?

16 A: They did.

17 Q: Did you agree to talk to them?

18 A: I did.

19 Q: Did you tell them substantially what you told the jury
20 here today?

21 A: I did.

22 Q: Did you tell them that Mr. Miniet threatened you?

23 A: I did.

24 Q: That he threatened to put a bullet between your eyes?

25 A: I did.

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- 1 Q: Did you describe the prior difficulties you had with him?
- 2 A: I did.
- 3 Q: Did you tell them that you had been drinking?
- 4 A: I did.
- 5 Q: Did you tell them that you hit him with your car?
- 6 A: I did.
- 7 Q: You did not deny hitting him with your car?
- 8 A: Correct.
- 9 Q: Do you happen to know how much your car weighs?
- 10 A: Approximately 2900 pounds.
- 11 Q: Not 4600?
- 12 A: Not 4600.
- 13 Q: The moment you saw -- back at The Boathouse, pulling out,
- 14 the moment you saw Mr. Miniet, what was your intention?
- 15 A: To flee, to get away. He was not in front of me at that
- 16 point in time. Mr. Miniet was actually off to the side with
- 17 the bouncers. There was nothing in my path that would, you
- 18 know, that I could have possibly hit. I strictly stayed
- 19 forward and I thought I was gonna be able to squeeze by before
- 20 he could get in front of me because he was coming from an
- 21 angle. It was actually the driver's side headlight is
- 22 ultimately what -- the section of the vehicle that hit him.
- 23 Q: He was coming from your front and to the left?
- 24 A: Correct.
- 25 Q: But on course would have intercepted -- if you would have

1 stayed still, would've intersected with you?

2 A: Correct.

3 Q: You were moving, of course?

4 A: Yes.

5 Q: Mr. Maiden, please answer any questions the Solicitor has
6 for you.

7 A: Yes, sir.

8 CROSS EXAMINATION OF JOSHUA MAIDEN BY MR. OSKIN:

9 Q: Mr. Maiden, you have felony convictions in four different
10 states; is that correct?

11 A: That is correct.

12 Q: Let's focus on the night that you struck Mr. Miniet. The
13 alleged threat you said that he made, was that before you hit
14 him with the beer bottle?

15 A: That was before.

16 Q: You were angry with him when you hit with the beer
17 bottle?

18 A: I was, yes.

19 Q: And you also thought this guy had a gun before you hit
20 him with the beer bottle?

21 A: Yes.

22 Q: So, essentially you say him and the guy in the black
23 shirt were pushing each other?

24 A: Correct.

25 Q: This is before you hit him with the bottle?

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- 1 A: That he -- that was -- he put his hands on me when he
2 shoved me. And then James, the other gentleman that was in
3 the black shirt, grabbed ahold of him and slammed him up
4 against the side of The Boathouse.
- 5 Q: So, you brought a beer bottle to a shoving match? Once
6 you cracked him in the face, which you did with the beer
7 bottle, correct?
- 8 A: Yes.
- 9 Q: All right. And then you were escorted out of the bar?
- 10 A: Yes.
- 11 Q: Where did you go after you were escorted out of the bar?
- 12 A: To my vehicle.
- 13 Q: What vehicle was that?
- 14 A: It's the Ford Escape.
- 15 Q: So you're in your vehicle, you're about to leave the
16 parking lot?
- 17 A: Correct.
- 18 Q: Mr. Miniet comes on the left?
- 19 A: Correct.
- 20 Q: And you strike him with your vehicle at that time?
- 21 A: When he ran in front of the vehicle, yes.
- 22 Q: Would you say you struck -- he came up to you from your
23 left side?
- 24 A: Yes, he came from my left.
- 25 Q: He came from your left and you straight hit him. And

1 after you hit him that first time, you hit him again and
2 proceeded straight into The Boathouse parking lot?

3 A: It was all the same motion. As I stated, my -- the
4 moment I was panicked. My foot never came off the
5 accelerator. When I struck him, he apparently had bounced
6 forward and as my vehicle continued forward, it went over top
7 of him.

8 Q: You went straight over him again and into The Boathouse
9 parking lot. What do you do once you're in The Boathouse
10 parking lot?

11 A: I came to a complete stop.

12 Q: You came to a complete stop. At that time, didn't people
13 try to -- Boathouse staff try to get you out of the vehicle,
14 correct?

15 A: There were people that were not dressed in Boathouse
16 staff such as Mr. Coan, that testified earlier, that ran up
17 and tried to open my door. At which point, I did put it in
18 reverse and backed out of the parking lot.

19 Q: It was Mr. Coan who came up to your door?

20 A: Mr. Coan did come up to one of the doors, yes.

21 Q: So, in two separate motions, you hit him, hit him again,
22 go into the parking lot, but you're saying it was out of
23 shock; it was out of you don't know?

24 A: As I said, I was trying to get out of the situation. I
25 was trying to flee, you know, get away from it before he could

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1 make his way over to where I was at.

2 Q: So you stayed in the parking lot then to make sure
3 everything was okay once you figured out that you hit
4 something?

5 A: No, absolutely not. Absolutely not, sir.

6 Q: You fled to your mother's neighborhood; that's the
7 Burning Ridge community, I believe?

8 A: It is.

9 Q: And you parked the car at the clubhouse and not her
10 house, correct?

11 A: Correct.

12 Q: And you say that's because you were drinking and you had
13 alcohol in the vehicle. Surely, your mom knows you drink?

14 A: Yeah, there was an open bottle and there was also
15 marijuana in the vehicle.

16 Q: Okay. And as you are walking to your mom's house, the
17 officers find you at that time, correct?

18 A: Correct.

19 Q: Did they take you into custody at that point?

20 A: They did.

21 Q: You didn't make any call to police after you'd struck Mr.
22 Miniet, did you?

23 A: No, I did not.

24 Q: Why did you not do that?

25 A: Even after I purchased the cell phone, the cell phone

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1 policy was actually through Ms. Hubbard's name. In order for
2 me to have the new sim card applied into the cell phone, she
3 had to call and actually have it activated.

4 Q: You just said you lost your cell phone at The Boathouse.

5 A: Correct.

6 Q: I don't know which cell phone you're talking about?

7 A: I also said that I had stopped at Walmart and purchased
8 one.

9 Q: You never called 911 to report this accident?

10 A: No, by the time I purchased the phone and went to the
11 neighborhood and parked the vehicle, the police were there.

12 Q: You were drunk and panicking this night, correct?

13 A: Correct.

14 Q: But you thought through this well enough in order to go
15 purchase a new cell phone?

16 A: Correct.

17 Q: But not to go to the gas station -- what about this gas
18 station you were talking about; you said you went there as
19 well?

20 A: Yes, I did. I stopped ---

21 Q: You didn't call from the gas station?

22 A: I couldn't make a call; they did not have a pay phone.

23 Q: If you were so concerned about calling, you could have
24 called 911 on the store's phone, correct?

25 A: Possibly. I did not ask ---

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1 Q: You weren't that concerned? When you left that bar --
2 you testified that you had been drinking at The Boathouse,
3 correct?

4 A: That is correct.

5 Q: You testified you were in shock, you had been drinking,
6 told officers that you had a good buzz when you left the bar,
7 correct?

8 A: Correct.

9 Q: So, therefore you hit Mr. Miniet when you were drunk
10 leaving that bar, correct?

11 A: Correct.

12 Q: Some loose ends here. You told the detectives that Alex
13 had his biker buddies and they were out there at the bar and
14 they were out there with him before you struck him with the
15 vehicle; is that correct?

16 A: I -- yes, they were there. Whether or not they were
17 there with Alex, I can't say for sure, but they were there.

18 Q: You testified that two motorcycle club guys wearing
19 black, wearing patches, wearing vests, correct?

20 A: Correct.

21 Q: But it was actually security staff with him wearing
22 bright neon shirts?

23 A: Okay.

24 Q: But you mistook that for biker -- biker guys, didn't you?

25 A: As I had said, I didn't know who everybody was that was

1 involved. It was a heat of the moment. There was a lot of
2 commotion going on and I did panic and I fled the scene.

3 Q: That second time you hit him, you saw him before you hit
4 him again, correct?

5 A: No, I did not.

6 Q: You just testified that you sat there and you kept your
7 eye level of what was ahead of you and you ran straight
8 forward, correct?

9 A: I struck him, my foot remained on the accelerator. I did
10 not know where he landed at. The vehicle proceeded to go
11 forward and it did go over top of him. I did not know he was
12 in front of me.

13 Q: Exactly, but it just so happened, he was in front of your
14 car when you ran over him again. When you were leaving that
15 parking lot, you know you left straight ahead towards the
16 victim, but you testified that you were trying to leave to
17 your right?

18 A: It was -- leave to my left.

19 Q: You just testified earlier saying you tried to leave to
20 your right?

21 A: When I showed -- when I showed on the diagram, when I got
22 to the end, you make a left to go under the drawbridge, which
23 is where I said that I would leave.

24 Q: You testified, right; right, left. Some people think
25 that -- regardless whether you turned right or left, you were

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1 in the act of turning, correct, that's your testimony?

2 A: Where I was at was the very end of the road,
3 approximately where the stop sign would be at. At that point,
4 you would still go forward. At that -- at that instant, that
5 was when we actually had the impact when I struck Alex. When
6 he was hit, I did not know where he went. From where he hit
7 at, which would be on, as I said, the headlight area on the
8 driver's side. I assumed that he would be to my left, so I
9 didn't want to turn the vehicle to the left. I proceeded
10 forward with my foot on the accelerator and that was when I
11 felt the bump of me going over top of him.

12 Q: That sure is an awful lot to think about for a guy who is
13 in shock and drunk and doesn't know what he just hit or what
14 he just did. That's surely a lot of analyze at the same time.

15 A: That's why I continued straight forward.

16 Q: But you still -- you testified that you still thought
17 about all that but you just drove forward?

18 A: Yeah, I was in shock. I kept my foot on the accelerator.
19 I did not have the time to think to turn the wheel or anything
20 else. I continued straight forward.

21 Q: Okay. You didn't do what you were thinking about doing?

22 A: Correct.

23 Q: You did the opposite which was hit the victim a second
24 time.

25 A: Inadvertently.

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JOSHUA MAIDEN - REDIRECT BY FOX

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1 Q: No further questions from the State.

2 THE COURT: Redirect?

3 REDIRECT EXAMINATION OF JOSHUA MAIDEN BY MR. FOX:

4 Q: There were not two distinct collisions with Mr. Miniet,
5 were there?

6 A: No.

7 Q: It was a continuation, correct?

8 A: Correct.

9 Q: Right, left -- maybe I had it wrong. I think what you
10 testified, you turned right out of the parking lot with the
11 intention of then turning left ---

12 A: Correct.

13 Q: --- on Fantasy Harbor Boulevard?

14 A: That is correct.

15 Q: Now, anybody ever charge you with DUI out of this
16 incident?

17 A: No, I was never given a breathalyzer, a DUI test or ---

18 Q: So no one was worried about that that night, correct?

19 A: No.

20 Q: And did anyone, the police ever charge you with hitting
21 Mr. Miniet with the bottle?

22 A: No, they did not.

23 Q: Did they charge you with assault of any kind?

24 A: No, they did not.

25 Q: Thank you.

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BY THE COURT

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1 MR. OSKIN: Nothing further from the State. THE COURT:
2 All right, sir, you may step down.

3 MR. FOX: The Defense will rest.

4 BY THE COURT:

5 THE COURT: Very well. Ladies and gentlemen, that
6 concludes the testimony for this case. I have several matters
7 that I have to take up at this point in time, plus we have to
8 discuss my charge at the end of arguments. As I indicated to
9 you at the beginning of the trial, after the evidence closes,
10 the attorneys would have an opportunity to make -- we've
11 always called it arguments, I like to refer to it as
12 summations where they sum up for you and then I will charge
13 you with the law. I'll tell you that I have adopted a policy
14 almost 10 years ago. I don't think any other judge does it,
15 but I realize that we often take you for granted. We assume
16 that we can bring you as lay persons into this setting by
17 virtue of the fact that you're qualified as jurors, that means
18 you haven't had a lot of experience with the Court. But we
19 assume that I can charge you on the law and many times very
20 complex issues and expect you to retain it, go in the jury
21 room and reach a decision based on the law. So, what I do is
22 I always prepare a transcript of my charge and that sometimes
23 takes some time. So what I'm going to do -- and I'll have
24 that transcript for you during your deliberations.

25 I'm going to send you home this evening and ask you not

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BY THE COURT

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1 to discuss the case with anyone, not to do any independent
2 research whatsoever. Be back in here at 9:30 in the morning.
3 At that time, the attorneys will sum up, I will charge you and
4 as I said, I will provide you with a copy of my charge that
5 I'll have prepared for you. All right?

6 Mr. Ropp, if you would -- Mr. Ropp, please have something
7 for them in the morning.

8 (REPORTER'S NOTE: Jury exits courtroom. 3:51 P.M. The
9 following takes place outside the presence of the Jury.)

10 THE COURT: All right, gentlemen, before I hear the final
11 motions, I want to make sure that the record is clear as far
12 as my 609 rulings on the admissions of the convictions. Of
13 course, 609 requires an analysis similar to a 403 standard.
14 Of course, it's different in the 609 and 403 in that the 609
15 evidence probative value of something must outweigh the
16 prejudicial effect.

17 But at any rate, I certainly have made that -- did give
18 those considerations. I think there is such dissimilarity in
19 the charges and the number of charges that it would not have
20 great prejudicial value on the Defendant to admit those prior
21 convictions, but I think they are certainly relevant in this
22 case. Because what we have here is, I think, a self-defense
23 or intent defense in that all boils down to credibility.

24 There was evidence of the victim's prior criminal record
25 elicited by the Defense. That was -- that's been put up and

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BY THE COURT

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1 the victim and the Defendant are the primary witnesses or
2 given the significant testimony concerning what occurred and
3 they're diverse, so I think credibility is a very important
4 issue in this particular case. I will however instruct the
5 jury that they may consider the Defendant's prior criminal
6 record solely for the purpose of determining his credibility.

7 All right, Mr. Fox, I'm sure you have a motion. I just
8 want to make sure that's in the record.

9 MR. FOX: Yes, sir. At the conclusion of the Defense
10 case, and all the testimony and evidence in this case, I would
11 renew my motion for a directed verdict for the reasons we set
12 forth before. I don't believe the specific intent to cause
13 the death to Mr. Miniet has been proven beyond a reasonable
14 doubt.

15 THE COURT: All right. And for the same reasons, I would
16 deny your motion respectfully.

17 Gentlemen, I want to go right into a charge conference
18 with you. Why don't we do this. Let's retire to chambers
19 where we can discuss it and we'll come back in and put
20 whatever on the record, anything you want on the record
21 concerning the charge. Let's try to hash it out. And I have
22 -- Elizabeth has been working on it. She'll share what she
23 has with you and we'll come back and put our -- any objections
24 you may have on the record as to what we can hash out. Okay?

25 Come on back, gentlemen.

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CHARGE CONFERENCE

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1 (RECESS - 3:55 P.M.)

2 *****OFF THE RECORD*****

3 END OF DAY TWO.

4 APRIL 12, 2017 - DAY THREE - 9:32 A.M.

5 (REPORTER'S NOTE: The following takes place outside the
6 presence of the Jury.)

7 CHARGE CONFERENCE:

8 THE COURT: All right. Gentlemen, we had a lengthy
9 conference following court yesterday about the charge and I
10 think we had input from everybody and I believe we've reached
11 an agreement on the charge. Ms. Smith sent you copies of it.
12 There are a couple of very minor things that have been
13 changed. Where we talk about the indictment not being
14 evidence, that had murder in it and we changed that to
15 attempted murder. On attempted murder, fourth paragraph,
16 there was an or there that should not have been in, that's on
17 Page 10 and we corrected that. And on the last page, where we
18 instruct the jury to sign, I think it had sign the back of the
19 indictment, but we changed that to verdict form.

20 Mr. Fox had indicated that he wanted a more updated
21 circumstantial evidence definition which that was just an
22 oversight and we have included the, the latest language
23 concerning that.

24 Anything further from the State concerning the charge,
25 proposed charge?

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CHARGE CONFERENCE

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1 MR. DEBUSK: No, Your Honor.

2 THE COURT: Okay. Mr. Fox, have you had a chance to
3 review those things that I just spoke about?

4 MR. FOX: I have, Your Honor, and I have no exceptions or
5 additions.

6 THE COURT: You're satisfied with the charge then?

7 MR. FOX: I am.

8 THE COURT: I will not have to send the jury out for
9 that. Okay.

10 All right. Let's bring our jury in.

11 Mr. Fox, you waive the requirement that they open as to
12 the law?

13 MR. FOX: I do, Your Honor.

14 THE COURT: All right. And Mr. Oskin, you will -- you
15 will be giving the summation for the State; is that right?

16 MR. OSKIN: That's correct, Your Honor.

17 THE COURT: One, one thing, did you have a chance to look
18 at the verdict form, Mr. Fox?

19 MR. FOX: I have not.

20 THE COURT: Mr. DeBusk, while they're bringing the jury,
21 perhaps we can look at it.

22 (REPORTER'S NOTE: A bench conference was held off the
23 record.)

24 THE COURT: So, we are on board with the verdict form,
25 Mr. DeBusk; is that correct, Mr. DeBusk?

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CLOSING BY FOX

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1 MR. DEBUSK: That's correct, Your Honor.

2 THE COURT: Mr. Fox?

3 MR. FOX: All right. Very well.

4 (REPORTER'S NOTE: Jury enters courtroom. 9:37 P.M.)

5 THE COURT: All right. Good morning. I hope you had a
6 restful evening. As I said on yesterday, all the evidence is
7 in in this case and today we will be hearing from the
8 attorneys, their summations, and that will be followed by my
9 charge on the law. I will begin summation with Mr. Oskin,
10 excuse me, Mr. Fox, excuse me. The traditions of our court
11 are that the party with the burden of proof -- and I'll
12 explain that a little more when I charge you -- the party with
13 the burden of proof argues last and, in this case, it would be
14 Mr. Oskin.

15 Mr. Fox, are you prepared to go forward?

16 MR. FOX: Prepared, Your Honor.

17 THE COURT: Very well.

18 CLOSING BY MR. FOX:

19 MR. FOX: Good morning, ladies and gentlemen.

20 JURY: Good morning.

21 MR. FOX: This is the last time to address you directly.
22 Obviously, you've sat through two days of testimony and
23 instructions from the Judge and you heard me on Monday. It's
24 pretty clear what's at issue. What the issues are, but
25 obviously there are certain things I would like to call your

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CLOSING BY FOX

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1 attention to. First and foremost, attempted murder, that's
2 what Mr. Maiden is charged with and that's what the State has
3 to prove beyond a reasonable doubt that he did and it's very
4 much if I have ask all of you to give me just off the top of
5 your head what that is in the law, you would probably come up
6 with something like he's trying to kill somebody and that's
7 exactly what attempted murder is.

8 In South Carolina that law that requires a specific
9 intent to cause death. It doesn't include behaving recklessly
10 in a way that may cause death, it doesn't include taking
11 carefully in a manner that -- when it causes death in an
12 accident. It means a specific intent to the action that
13 occurred here today, driving a car with specific intent, not
14 just to hit or hurt but to kill Alex Miniet. Now, obviously
15 you cannot read Mr. Maiden's mind and so the law allows and
16 what you have here is circumstantial circumstances. The
17 State, I believe -- I do not pretend to speak for Mr. Oskin,
18 he does not my help, but the rules say I've got to get up and
19 argue first and then he gets to argue and I don't get to get
20 back up. So, I've got to anticipate some of the arguments the
21 State is gonna make.

22 I anticipate they will say, well, what are the
23 circumstances? First of all, look at how badly Mr. Miniet was
24 hurt. Look at his injuries, very bad injuries. He must've
25 had the intent to kill. There are witnesses and we'll talk

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1 about the witnesses, but basically look at all the
2 circumstances and what you have is Mr. Maiden's car made
3 contact with Mr. Miniet. He had very bad injuries, there had
4 to be an intent to kill. Well, I would submit that that's not
5 that simple. There's no question bad injuries and there's no
6 question that Mr. Maiden was driving the vehicle struck Mr.
7 Maiden -- or rather Mr. Miniet.

8 Now, excuse me. Thank you. I believe there's no
9 specific intent on the part of Mr. Maiden to kill Mr. Miniet,
10 and I say that for several reasons. You have to look at the
11 entire picture of what's happening. I think you have to start
12 back even with incidents that occurred previously. I do not
13 like to play those down, but as you heard Mr. Maiden testify
14 that on several occasions in the months leading up to this,
15 that Mr. Miniet managed to find himself at the same location
16 as Joshua Maiden sometimes with Victoria Hubbard, who is the
17 at the center of all this, who is the mother of Mr. Miniet's
18 child, at the House of Blues where he shows up -- Mr. Miniet
19 shows up with his friends, acquaintances, gang members,
20 however you what to characterize them. Alex or Joshua says
21 they were in vests, in colors of La Familia -- but shows up at
22 the House of Blues and basically makes things uncomfortable.
23 He doesn't assault him but there are words exchanged, there
24 are names called. He makes it very obvious. They keep their
25 eye -- they keep walking by, they plant themselves in the area

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1 between where Joshua and Victoria are eating and where they
2 need to go into the concert, and this happened a couple other
3 times. Mr. Miniet comes to his workplace and asks for a table
4 in his section. And when Joshua goes out there, he calls him
5 names.

6 The evening of this incident at The Boathouse, he's got a
7 very dramatic video, and it is dramatic, but it shows you a
8 very small section of the dispute that was going on. I
9 believe a couple of idiots, we okay, no, we're not okay,
10 puffing up, bumping chests, literally pushing each other back
11 and forth, words. Mr. Miniet, he says he wasn't there with
12 anybody. Joshua said, well, there are a couple of guys with
13 La Familia vests on that kept coming by looking at me and
14 calling me names, pussy, bitch, different things. Got no idea
15 whether Alex knew that or instructed them to do that or not,
16 but it happened and he was there. It became a pushing match.
17 They were separated, right, and this is all before that video
18 starts.

19 At some point, there's another fellow involved, the guy
20 in the black t-shirt that you see, who kind of invites himself
21 in. The dispute at that point is more between Alex Miniet and
22 that fellow, and you see what Josh has done. But Josh tells
23 you that the threat he heard, I'll put a bullet between your
24 eyes, was before that. It wasn't after; it was before. This
25 is all part of the context of what's going on. The man has

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1 stalked him around Horry County before and he's threatened
2 him. He just conveniently shows up in places where Joshua is
3 and makes crude comments, makes threatening comments, insults
4 him. And on this night, it's more of the same to the point of
5 I'll put a bullet between your eyes. And then you see what
6 happens. The fight is mostly between, or at least the
7 altercation at that point, was between this fellow in the
8 black shirt and Miniet, but Josh is right there and you can
9 see him strike him. He was never charged with that. It
10 doesn't matter. It is what it is.

11 From there is where we get to outside. Outside, you have
12 different witnesses saying different things. There are
13 certainly witnesses from The Boathouse who can say I saw Mr.
14 Maiden in the car. I saw Mr. Miniet. And it appeared that he
15 drove right at him, went over him and he ran over him again.
16 But you also heard Detective Hardwick, if you recall,
17 Detective Hardwick said that during the course of her
18 investigation, part of her job was to either speak to or view
19 the witness statements from everybody that was there. If you
20 recall, she said we did have information from witnesses that
21 were there that said Mr. Miniet ran to and in front of the
22 vehicle with his phone out. They were not in court, but that
23 information was there and available to law enforcement.
24 Miniet, when he saw the vehicle, understandably upset, quite
25 frankly upset about being hit under the chin with that bottle,

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1 wants to get his license plate number; not a problem, but when
2 he sees it, he takes off across the street, runs into the path
3 of the vehicle and puts himself in harm's way. There is
4 information -- witnesses say, and I agree, there are other
5 witnesses that say, it sure looked like ran right at him.

6 Some of those, I think you can discount right off the
7 top. Mr. Melco a very nice man, the teacher from Socastee. I
8 don't think Mr. Melco really paid any attention or knew what
9 was going on. He said, I was looking down until right at the
10 moment and did not see what happened. So he did not see
11 whether or not he ran in front of him. He says he looked up
12 just in time to the collision. He was convinced that Mr.
13 Maiden later backed up over Alex Miniet. Nobody else said
14 that, not even Alex Miniet said that, but was sure that not
15 only was he run over but that he was backed over again.

16 He didn't bother to stick around and tell the police
17 that. I saw an ad in the paper from the civil attorney suing
18 The Boathouse. He decided at that point he would get involved
19 but never did contact the police about that. He's just wrong.
20 Nothing he says matches up with anybody else. I think Mr.
21 Melco, you can safely set aside as a witness.

22 The other witnesses, any witness, as a jury, you can
23 decide if they've got any motive to lie. I don't think you've
24 heard any lies up here this week, or maybe to exaggerate or be
25 more definite in their testimony, if they're bias. All right.

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1 Every witness, you're allowed to evaluate that. What possible
2 bias would be the bouncers or Mr. Coan from The Boathouse
3 have. Well, maybe their employer, the owner, their business
4 is being sued and, if that suit is successful, if we are to
5 blame or if The Boathouse is to blame for not providing proper
6 security or not cutting someone off that should have been cut
7 off because they were drinking too much, then we have
8 liability and there goes my job, there goes my business.

9 Do they not have a motive to make sure that the person at
10 fault is the guy who has no connection to The Boathouse or
11 it's all in -- it's all that guy. We couldn't have done
12 anything different and it's got to be Maiden; it's all him. I
13 just don't think you have any evidence that this was an
14 intentional act to run this man over.

15 The Judge is gonna instruct you -- if he wanted to kill
16 him -- all right, you may even believe he intended to hit him.
17 But, you got to believe not only did he intend to hit him but
18 he did that with the intent to end the man's life. It's a
19 very high bar to cross.

20 The Judge is gonna instruct you, you actually have a
21 couple of options in this case. If you believe beyond a
22 reasonable doubt, the Judge will define that's one way to find
23 that you are firmly convinced based on what you've heard here,
24 not about what you think happened, not on what could've
25 happened, not on how it might have been, but based on what

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1 you've heard from the witness stand or the evidence that's
2 been introduced. If you're firmly convinced it was attempted
3 murder, well, that's it; it stops. You're the jury, the
4 finder of the facts; you don't have to go any further. But,
5 the Judge is gonna give you and charge you on what are called
6 lesser included offenses and there will be two of those.

7 The first one is assault and battery of a high and
8 aggravated nature. Okay. Again, it's a lot like you think it
9 is. First, you've got to have the assault and the battery.
10 Well, you hit a man with your car, there's probably assault
11 and battery. What makes it high and aggravated? Well, this
12 is statutory. This is defined and it's not what you think it
13 should be or what you think it might be; this is what it is --
14 and the Judge is gonna read this to you and he will give you
15 and provide you with a copy of his charge so you'll be able to
16 look at this in black-and-white back in the jury room.

17 Assault and battery of a high and aggravated nature requires
18 what South Carolina defines as great bodily injury. Again, if
19 I ask you just off the top of your head, what is great bodily
20 injury? Well, anything serious might be -- but this is what
21 it specifically says, substantial risk of death. Nobody, no
22 doctor, not even Alex himself, testified that he was ever at
23 risk of death. I'm not saying there weren't bad injuries, but
24 nobody, no doctor came in here and said, boy, this was life
25 threatening. We had him, you know, it was code blue, or

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1 whatever it is in the ER and, you know, we're giving him --
2 you know, kiss of life, pumping, all of that stuff, there's
3 none of that. And even Alex never said, man, I was at death's
4 door. No substantial risk of death. Serious permanent
5 disfigurement or protracted loss of impairment or function of
6 a bodily organ. Alex testified what his injuries are. You
7 can decide whether those things rise to that level. Here's
8 the third option you've got. All right? That other lesser
9 included, you have attempted murder, you've got ABHAN,
10 aggravated assault. I just defined to you what the
11 legislature in South Carolina characterizes as great bodily
12 injury for ABHAN. The other is assault and battery second
13 degree, still an assault and battery, still involves serious
14 injuries, but they called it moderate bodily injury, but this
15 is how it defines it. If I asked you what moderate is, you'd
16 say well not so bad, in between, but listen to how they define
17 moderate bodily injury. Prolonged loss of consciousness, he
18 says he lost consciousness; causes temporary or moderate
19 disfigurement; temporary loss of the function of the body
20 member or organ; injury that requires medical treatment under
21 general or regional anesthesia; results in a fracture or
22 dislocation. That is the exact description of the injuries
23 that Alex Miniet had. That's statutory. That's not what I
24 think it should be when I think a moderate injury is. It's
25 not a definition you would apply out on the street in your

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1 everyday life. It's a definition called a term of art. A
2 term of art, assault and battery second degree with moderate
3 bodily injury -- and you've heard about how very serious those
4 injuries can be; fractures, temporary loss of the use of limb,
5 things that require you to be put under and operated on,
6 screws in your jaw. I believe that that is exactly where
7 we're at. That does not absolve Mr. Maiden from his
8 responsibility for causing these injuries; that does not
9 absolve Mr. Maiden from his responsibility in driving that
10 vehicle.

11 Now I believe you have ample evidence to conclude that
12 this was a series of unfortunate events that culminated into
13 an accident. Mr. Maiden should not have hit him with that
14 bottle. It is perhaps understandable under all the
15 circumstances including the consumption of alcohol but, once
16 he got outside, he was escorted out, he went to his car, he
17 got in his car as instructed and was leaving. No one denies
18 that. People have suggested, well, he could've gone this back
19 way and the other way, but he testified because of the concert
20 the back ends of the parking lot were roped off or chained off
21 and he gave you specifics, look, they're only letting one car
22 in and one car out. All right? The back side was chained
23 off. I had to go out the one entrance. The way home is there
24 to the main road across from The Boathouse and to the left,
25 back under the bridge. At the time he was in his car and

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1 coming out, he hadn't seen Alex. He sees Alex as he's
2 approaching the intersection. Alex is running at him at an
3 angle. He's already moving. He sort of ducks down because as
4 the witness has said, one, Josh says he threatened me before.
5 I know he's a record for that sort of thing. I know he likes
6 to brag about his association with Las Familia, a little bit
7 more about that. He made a threat inside, followed me around,
8 I was a little bit scared; so, yeah, I ducked down and hit it
9 thinking I'd go by him and did a horrible, horrible thing.
10 Could he have stopped and gone the other way? I suppose so,
11 but he had no reason to think the man was gone run right in
12 front of him. So, I think there's ample evidence to support
13 just a finding this was an accident, not intentional in any
14 way, but I also believe that he believed that he didn't think
15 there was an intention to hit him, that it was not --
16 certainly not attempted murder, and that the injuries under
17 the definitions the law provides are more appropriate for
18 assault and battery in the second degree than for aggravated
19 assault.

20 Now, there's a few little -- I don't know if they're side
21 issues, but it goes to Mr. Maiden's frame of mind. Mr. Miniet
22 said, well, you know, I was just looking after my kid. I just
23 wanted to make sure everything was okay. I didn't take
24 anybody with me. Mr. Maiden says there sure were some people
25 there, you know, with your organization that kept coming by,

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1 had flags, et cetera, and they've done it before and I
2 recognized them. Yeah, La Familia, that may be family in
3 Spanish, of course, that's what Charles Manson called his
4 followers, too, not that Alex Miniet is Charles Manson, but
5 having an innocuous name isn't exactly an indication of the
6 type of group. How do we know how Mr. Miniet feels about La
7 Familia? Well, communications with and what his mindset is,
8 the type of person he is and his communications with Tracy
9 Stevens -- Tracy Stevens is the mother of Victoria Hubbard,
10 who is his child's mother. In communications with Tracy
11 Stevens shortly after this House of Blues incident, he
12 admitted all this. He said, I was mad. He said, I'd like to
13 put him six feet under, I'd like to cut him, I wish I had
14 pulled my knife, I'm close to Hell's Angels. I mean, I don't
15 know La Familia. I don't know if they're any kind of hard
16 ass group or not, but he certainly wants everyone to think
17 they are. You don't draw out the name Hell's Angels if you
18 don't want people to think I'm tough, don't mess with us.

19 He certainly happy to portray the image to even someone
20 he's got no beef with, that he is more than happy to hurt
21 somebody or threaten somebody that he feels threatened by in
22 any way, shape or form. And the only threat that Joshua
23 Maiden had to him was that he was involved with his child's
24 mom and with his child. I understand that may not be
25 pleasant. I understand that that would make you angry. Being

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1 angry with that situation and taking the step of threatening
2 somebody on multiple occasions and not just, hey, take care of
3 my kid, but I'll cut you or I'll kill you or I'll put you six
4 feet under, I'd like to put a bullet between your eyes, that's
5 a whole other thing. And don't mess with me because I'm La
6 Familia and we close to Hell's Angels. There's only one
7 message being sent by all that. So, all of this stewed and is
8 in the air when we get to The Boathouse and the altercations
9 happen inside and what little tiny bit of that you see in that
10 video and what you can't see because it's not recorded
11 outside, all of that is there and I think it very much goes to
12 whether Mr. Maiden had the intent to hit this man with a
13 specific purpose of killing him. I just don't think you have
14 any evidence of that. And I believe that if you read and
15 carefully look at and apply the elements regarding bodily
16 injury, great bodily injury versus moderate bodily injury --
17 and moderate bodily injury is not described moderate injury;
18 those are some serious injuries. There's no question Mr.
19 Miniet was seriously hurt. That's not an issue at all. The
20 question is, Where does it fit into the law? If you believe
21 this was an accident -- frankly, if you believe there is an
22 intent to kill, it doesn't matter if he injured him at all.
23 If you believe there was a specific intent by Mr. Maiden to
24 kill Mr. Miniet, you don't even have to worry about injuries.
25 It doesn't require that. If you don't believe there is

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1 specific intent, that's when you got to start worrying about,
2 okay, where do these injuries fall in. I think it's perfectly
3 legitimate, based on the evidence you've heard, the
4 surrounding circumstances, to come to the conclusion that this
5 was a series of unfortunate events that resulted in a horrible
6 accident and that there is no criminal activity here. Not
7 every action, not every bad thing that happens in the world is
8 a crime. We tend to want to make it so. It gives us closure
9 in events. We don't like to think that bad things might go
10 without some kind of resolution, but guess what, bad things
11 happen.

12 It's easy in hindsight to look at what Mr. Maiden,
13 could've, would've, should've done in that particular
14 circumstance, but even under the State's witnesses' version
15 of location and events -- and you'll be able to see this much
16 better and nobody disputes that Mr. Maiden was on Pottery
17 Drive heading towards Fantasy Harbor Boulevard in the right
18 lane, which is where he should've been and that the collision
19 occurred either right at or just outside of the intersection,
20 right in that right lane because he'd been going straight. No
21 indication that he had to come across the median to hit him or
22 veer into the other lane. The State's own witnesses say that
23 one right there as if he'd been going straight in his own lane
24 preparing to turn. Some of the State's own witnesses, at
25 least as part of the investigation, but you heard the

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1 testimony from Detective Hardwick say, she corroborates what
2 Josh said that Miniet ran into him, ran in front of the car,
3 that's what Josh said, cell phone out. He threatened to shoot
4 me and hinted that he might have something; he might have a
5 gun. He never declared he saw a gun. Clearly, he didn't have
6 a gun.

7 I'm gonna jump back -- I'm almost done. When I was
8 talking to you about The Boathouse witnesses and why they
9 might have a motive to again, not lie, but maybe push things
10 one way as opposed to another, make a more definite --
11 Chiviattoni, the bouncer who came out, they guy who's been in
12 Afghanistan, Chiviattoni said, oh, this was the calmest guy
13 I'd ever been around, for someone who had just been thrown out
14 of the bar, and he was so calm and collected. Well, you heard
15 the 911 call. One of the first things the officer on the
16 other end of that line said was, calm down, calm down. I
17 understand why he would be. My point is not that he shouldn't
18 have been; my point is even Mr. Chiviattoni trying to shave
19 things a little more one way or the other because that's in
20 his best interest, that's in his bosses' best interest. I
21 don't think he told you any lies, but lies and witnesses,
22 that's one example.

23 Ladies and gentlemen, that's all I have to say. I think
24 it's very clear there was no demonstration that this was a
25 specific intent to kill the man. Again, more than intent to

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1 even hit him, more than intent to hurt him. Intent to kill
2 the man, that is the purpose. There's no evidence of that.
3 And I think if you'll then go down and carefully read through,
4 I believe, the correct is this was a serious -- it was a
5 series of very unfortunate events all preventable on both
6 sides. Mr. Maiden bears the bulk of the responsibility
7 because he's the one in the car at the end, but no reason
8 these two should have ever gotten to the point with they were
9 fighting inside. It's silliness. But, that there was no
10 intent to harm. Mr. Maiden said that. And by the way, Amy
11 Hardwick verified these things, that Josh, when he was
12 arrested, Mirandized, agreed to speak with them and said
13 virtually what he said here in court yesterday. He laid out
14 the background between them, laid out the situation, laid out
15 what he was thinking at the time it happened, and it was
16 exactly like Josh testified here. I believe a not guilty on
17 all counts would be fully supported by the evidence. But, if
18 you feel that there was an intentional act, then I think it is
19 much more appropriately assault and battery second degree
20 because the definition of moderate bodily injury fits almost
21 perfectly with what you have here. Okay? Moderate as defined
22 under this statute; not moderate, what your everyday thinking
23 that term means. Moderate bodily injury describes some very
24 serious injuries.

25 Thank you.

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1 MR. DEBUSK: Your Honor, may we approach briefly on a
2 collateral matter?

3 THE COURT: Yes, sir.

4 (REPORTER'S NOTE: A bench conference was held off the record
5 in the presence of but out of hearing of the Jury.)

6 THE COURT: Mr. Oskin?

7 MR. OSKIN: Yes, sir, may it please the Court? I beg the
8 Court's indulgence?

9 THE COURT: Yes, sir. While you do that, let me step out
10 for just a moment with my clerk.

11 **(RECESS - 10:02 A.M.)**

12 *******OFF THE RECORD*******

13 **(On the Record. 10:05 A.M.)**

14 THE COURT: Please be seated.

15 Are we ready?

16 MR. OSKIN: Yes, sir, Your Honor.

17 THE COURT: I'm sorry.

18 MR. OSKIN: May it please the Court?

19 THE COURT: Yes.

20 CLOSING BY OSKIN:

21 MR. OSKIN: A 4600-pound bullet; see the weight of the
22 vehicle right there. It's what the Defendant used when he
23 struck the victim in this case, twice. It was a carefully
24 aimed shot by the Defendant. Aimed towards the victim, Mr.
25 Miniet, the first shot knocked him down; he looks at him again

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1 and strikes him the second time with that 4600 pound bullet.

2 MR. FOX: Your Honor, I'm going to object to that. That
3 is not evidence. He's characterizing the size and weight of
4 this vehicle. When it's opening argument it's the one thing
5 -- the only testimony about the weight of the vehicle came
6 from the Defendant, but at this point -- it might be a small
7 point but it exaggerates the weight and ---

8 THE COURT: We've heard that, Mr., Mr. Fox. These are
9 closing arguments; I'm gonna give him some latitude as I gave
10 you.

11 MR. FOX: Yes, sir.

12 MR. OSKIN: You're free to look at the picture entered
13 into evidence about the weight of this vehicle.

14 With that bullet, he strikes the victim twice. Think of
15 it as him reloading his gun. That's the vehicle, he's
16 reloading it, it's aimed at its intended target and strikes
17 him the second time. That's him pulling the trigger again,
18 running him over, putting tire tracks on his body, supported
19 by State's 13. This is road rash from the vehicle. Inches
20 in either direction of this victim being struck would've
21 certainly ended in death; inches up, would've smashed his
22 skull and inches below would've smashed his stomach, mashing
23 his insides, breaking his back. However, he still incurred
24 grievance injury from the scene. Injuries aren't a part of
25 attempted murder, but they're here. He had multiple broken

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1 ribs, a broken arm, broken sternum, lacerated liver. Says
2 permanent damage in his left arm, which he testified to. Had
3 his ribcage not sustained the weight of the vehicle, this
4 would be a murder trial, not an attempted murder trial.

5 What if this 4600-pound bullet came from a weapon; I've
6 alluded to it. If that weapon was fired twice at someone and
7 didn't even strike that victim, it's intended target, it would
8 be attempted murder. Here you have the bullet, it's aimed at
9 the victim and it strikes him twice. That's no doubt
10 attempted murder. I want you to be able to make that easy
11 comparison here. But for the victim, Alexander Miniet's will
12 to live, this would be a murder trial. However, the State
13 stands before you with the burden of proof with intent he
14 committed attempted murder beyond a reasonable doubt.

15 What is attempted murder? Attempted murder is the
16 attempt to kill another with malice aforethought. Malice
17 aforethought can be expressed or implied.

18 Let's talk about the intent to kill another. The intent,
19 as the State submitted through its evidence and testimony of
20 the witnesses, is when he struck the victim, Mr. Miniet, with
21 the vehicle not once but also a second time. Who is another?
22 Let's just say easy comparison here. The Defendant, Mr.
23 Miniet, with malice aforethought -- what is malice? Malice is
24 hatred, ill will, hostility towards another. Couple that with
25 the intention of doing a wrongful act to that person without

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1 just cause or justification with an intent to inflict wrongful
2 injury. Aforethought, that's the time the evil was conceived.
3 It doesn't have to be premeditated; it can be. Here the State
4 submits that it was. The initial strike, as testimony
5 supports, looking at directly at the victim again and running
6 over him again, aforethought. It can be either expressed or
7 implied. Expressed in this scenario would be, I'm going to
8 run you over. We don't have testimony of that but you can
9 imply it because he did run him over with that vehicle after
10 hitting him with it the first time. That's malice
11 aforethought. That's entirely supported by the facts in this
12 case. When you compare the evidence and the facts in this
13 case, attempted murder is the only charge that applies and
14 will return the proper verdict of guilty for attempted murder.

15 Let's recap some of those facts starting with the
16 Defendant. Defendant, the man with felony convictions across
17 multiple states, took the stand and while his convictions
18 should only be used for you to be able to judge his
19 credibility, he took the stand. And if you believe him, he
20 hopes to get away with trying to kill someone. Is that motive
21 for him to take the stand and lie? You bet. He's trying to
22 protect himself.

23 You heard testimony that the Defendant was scared of Mr.
24 Miniet, knew Mr. Miniet, knew he was in some biker gang, which
25 Mr. Miniet testified consisted of two people. Mr. Miniet

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1 works at Redline Sports. That's a motorcycle, ATV, those
2 types of not-quite extreme sports but, you know jet skis, to
3 put it into context. That's where he's employed. So, he's
4 probably familiar with motorcycles. Those are distractions
5 that simply were not true and there's no evidence that
6 supports that. Mr. Miniet, I believe that he'll tell you that
7 La Familia wears colors, wears patches, wears -- Mr. Miniet,
8 as you can reference on the video was wearing a red shirt. He
9 was in that bar that day by himself. Surely, if he's part of
10 a biker gang that the Defendant has accused him of, it's a big
11 bad biker gang with all these dudes around him, and he's no
12 less the president. This bad biker gang, which is non-
13 existent, is gonna let him be backed into a corner by two men
14 and struck, pushed and drilled in the face with a bottle
15 without immediately reacting? Simply not gonna happen. You
16 saw who broke that fight up. Security broke that fight up.
17 No one swarmed to his aid, no one was there peeling those men
18 off of him that attacked him, nobody was there for him because
19 he was there by himself doing what he told you he was doing,
20 he was checking on his kid who was at The Boathouse Bar with
21 the Defendant and Ms. Hubbard, the mother of his child. They
22 weren't in some family fun space; they were surrounded as the
23 video would imply by a bunch of other adults of age drinking,
24 Sunday Funday.

25 You hear about this prior animosity between the Defendant

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1 and the victim. I want to talk about the previous encounter
2 only supported by the Defendant and although it's not his
3 burden to prove anything, let's focus on the evidence we do
4 have at hand to prove our burden. I think if you will recall
5 his testimony, Mr. Maiden stated, the Defendant stated, once
6 the baby was born in January, everything was cool. All the
7 animosity had ceased. I believe he somehow was under the
8 assumption that he was gonna be involved in co-parenting with
9 this child as long as, as well as Mr. Miniet. Alleged non-
10 existent threats in October, he states and provided the
11 animosity had ceased in January and you have this incident,
12 this intentional striking on May 22nd.

13 And then he testified about -- the Defendant in this case
14 testified that he was angry with Mr. Miniet. That's proven
15 because he cracked him the face with a beer bottle. If you
16 can see that again, you will see that again. It just doesn't
17 all add up that you're afraid of some president of some biker
18 club, some guys threatening you, you let your bar associate
19 fight him, for the video shows Mr. Miniet was smoking a
20 cigarette at this time. You'll hear him. He says get off me;
21 get your hands off me, get away from me. Does that sound like
22 anything someone had just thrown a punch would say, get off
23 me. Mr. Miniet -- that's not what occurred, not what
24 occurred at all. What you will see, because you did hear the
25 Defendant say that he was angry. This is your corner. What

1 does he do; he has a beer bottle in his hand right here. He
2 looks to his left, he looks to his right, the coast is clear,
3 boom, drills him in the face right there. The victim falls
4 backwards, falls forward, lands on him. They're pretty much
5 simultaneously separated by security. All these proclaimed
6 fears and allegations of a biker gang, a guy associated with
7 bad ass dudes, I think was the comment, and that he might've
8 had a gun or he carried a gun; I knew he was carrying a gun,
9 whichever he's trying to make it fit. That's what he did that
10 night that this all happened.

11 The evidence proves that the Defendant intended to finish
12 the job he started after he cracked the victim in the face,
13 Mr. Miniet, with a beer bottle that night. They were
14 immediately escorted out, into the vehicle, separately. The
15 Defendant is in his vehicle, he saw his opportunity to strike
16 the victim, Mr. Miniet, and he does that. He blasts him into
17 the road and he runs straight at him again and hits him a
18 second time trying to finish the job. That's intent.

19 What did he do after that? Let me pause for a second.
20 I'll show you that leaving of the initial parking lot. Okay?
21 This is a small to-scale -- it's actually a Jeep Cherokee,
22 it's a Ford Focus for the purposes of this, okay? The
23 Defendant testifies that he's up here and that he was trying
24 to turn left. I want you to think about when you're driving
25 real quick and you make a left turn. Okay? If the driver's

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1 gonna be making a left turn, you turn like that into the road.
2 What happened here, he struck and drives straight into the
3 parking lot after he was hit the first time. Hadn't he
4 actually -- and I think he testified -- I know he testified he
5 panicked and he was driving straight forward, he didn't know
6 what to do, he was in shock. He just drove straight. He
7 didn't put on -- he didn't stop, he just moved forward. Had
8 he intended to turn left like he said, he would've gone this
9 way either into the neighboring hotel or more likely into the
10 waterway if he was doing what you believed his client said.
11 Right there, you can't believe his mindset there and if you
12 can't believe that, you can't believe anything the Defendant
13 took the stand and said.

14 Let's also shed light on the truth of what happened after
15 that. That he got out of there, he was shocked, whatever it
16 was. He went to his mom's house, he was so cooperative with
17 law enforcement. Get his story on. That's not what happened
18 at all. He didn't stay to report anything. He fled, another
19 important factor. Once he got to his mom's neighborhood, he
20 didn't drive to mom's garage, driveway, home. He said he had
21 open containers. Also, with prior felony convictions, I
22 believe mom's aware of the situation. He hides his vehicle at
23 the club house and he walks on foot trying to get to the
24 house. I submit to you that's inferring guilt. Law
25 enforcement finds him at this time and from the time that he's

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1 in custody to the time he gives a statement, he had enough
2 time to come up with a story that he was gonna tell her that
3 night and it's the same exact story for the most part that he
4 gave you from this stand. However, I submit to you that
5 simply all it was. It was a story not supported by anything
6 at all and the facts given by these witnesses.

7 Let's focus on the witnesses the State put up to prove
8 this burden, non-biased witnesses with no friends to reward,
9 no enemies to punish, truly no dog in the fight for the
10 circumstances of this scenario. You have Randy Melko, soft-
11 spoken guy, math teacher at Socastee. He's out having a beer.
12 In an hour and a half, he said he was drinking a beer for
13 thirty minutes. He tried to leave the scene. He was trying
14 to leave the scene, he was trying to leave the bar to return
15 home. Mr. Fox would have you believe that the Defendant
16 didn't see anything; he was leaving, he didn't know. He saw
17 him back over him; he did testify to that. The most important
18 thing he testified to is that he saw the victim get struck by
19 the vehicle twice and that it sure seemed intentional. When
20 he left that scene, the scene was surrounded by law
21 enforcement, by medical personnel, figured they had it covered
22 and he fully expected to wake up the next morning and read the
23 newspaper article or something online where the victim in this
24 case, Mr. Miniet, died from what was intentionally done to
25 him.

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1 Let's back up there just a little bit. Let's talk about
2 the first piece of evidence you heard. If the battle is
3 intent in this case, then we have more than overcome our
4 burden to prove that, again, through unbiased witnesses. The
5 cabdriver who heard the call. He says I was sitting here
6 something to the effect of -- and you can -- certainly, don't
7 take my word for it, replay the video, hear -- hear what the
8 cabdriver said. I'm sitting here at The Boathouse and I just
9 saw a man get ran over by a car intentionally. Dispatch goes,
10 Intentionally? And he goes, Intentionally. That's another
11 witness, unbiased, no dog in the fight, cabdriver trying to
12 take some people from The Boathouse home and calls in to
13 report it.

14 Tripp Coan, owner of The Boathouse, Mr. Fox would have
15 you believe he's only up here to cover his own ass, to avoid
16 any civil suit. That's not what happened. Remember his
17 testimony. I think he explained his policy about fights, how
18 they're broken up, how they get them off the property, and why
19 they get them off the property. This makes sense for a
20 business that has a ton of people there, they can't have
21 fights and disruption; you can't have that. It's bad for
22 business, it's bad for them, it's against the law; get them
23 off your property. So, he tells you they have security guards
24 remove them from the property, which they did. He's in the
25 parking lot of the car -- of the bar, I apologize, and he sees

1 the car driven by the Defendant strike the victim the first
2 time and hit him that second time, insists it was intent to
3 kill. Hit him, knowing he was down. And, Mr. Coan testified
4 that the engine accelerated again in direct contrast with Mr.
5 Maiden's story that he never let his foot off the gas, hit him
6 again. He described what he saw at the scene as grievous
7 injuries.

8 Let's talk about that civil suit again real quick. I'm
9 not a civil attorney, obviously, but if there's any civil suit
10 where he ran himself in front of the vehicle as they would
11 have you believe, that would end any civil suit, and it's that
12 simple. I'm not gonna talk about civil law anymore, because
13 it's again a distraction. That would end any suit he would
14 have if he put himself in the line of that vehicle.

15 Let's talk about Matt Chiviattoni, a witness at first
16 Defense Counsel wasn't even gonna talk about, and when it came
17 back to him, he again tried to imply he was biased. I submit
18 to you that Matt Chiviattoni is the key witness to this case.
19 He was with the victim in this case from the time that fight's
20 broken up, he escorts him out, he has physical control of him
21 as he stated. He's hearing everything he's saying, he said he
22 was concerned about the custody of the child, the child that
23 you know that he has from his testimony and from the
24 Defendant's testimony. He was worried about his son at a bar,
25 bunch of adults drinking, being around a man who was drinking

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1 that night and admitted to doing cocaine later. And he asked
2 Mr. Chiviattoni and the bar staff if they were gonna call 911.
3 It's not their policy, they're breaking up the fight, they
4 don't take sides. But who did call 911? Mr. Miniet did. I
5 want you to hear that phone call again. He says, I'm at The
6 Boathouse. I just got hit in the face with a bottle. I want
7 this guy arrested and I need EMS, might need EMS. That's
8 proven by the call. Mr. Chiviattoni submitted and testified
9 he was on the phone and he pointed to the car saying that's
10 him. He was under the impression, as was Mr. Coan, that he
11 was trying to get a license plate number, which they all were.
12 That's what Mr. Miniet said he was trying to do. Mr.
13 Chiviattoni said that his injuries that night were some of the
14 most brutal -- one of the most brutal things he ever saw.
15 This is a man who's in the National Guard, he's been deployed
16 to Afghanistan, vast experience in these scenarios. That's
17 another reason I want you to trust his perspective more so
18 than anyone else's under this situation, a highly stressful
19 situation. His focus was 100 percent. He knew what was going
20 on. He told you before the second strike that the driver of
21 this vehicle, the Defendant, looked directly at him, didn't
22 duck down, didn't move around, didn't -- looked directly at
23 the victim, Mr. Miniet, and hit him again after hitting him
24 the first time. The best they could have done, Mr.
25 Chiviattoni, was try to save some bias about his employment.

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1 Mr. Chiviattoni testified that he was employed by Tony's, The
2 Boathouse, other bars and the National Guard. He's not
3 worried about a gig once a week on Sunday Funday's. He said
4 he'd tell the truth and that's what he did. He also said
5 there's no biker guys with him there. There was no one with
6 Mr. Miniet at that bar. There's certainly no one with him as
7 he exited the parking lot. He -- and he was wearing a bright
8 neon yellowish green shirt; that's what security was wearing.
9 The Defendant would have you believe those bikers were wearing
10 black, wearing patches, wearing whatever; not existent, not
11 there. He was wearing neon that night and the victim was
12 wearing red. It's irrelevant what he was wearing because
13 these people don't exist and, again, a distraction.

14 Let's get back to Mr. Miniet. Mr. Miniet could have
15 easily got on that stand and lied. He didn't do that. He
16 said after he got hit by the vehicle the first time, the next
17 thing he remembers was him waking up with people around him
18 and that was it before he went to the hospital. That's all he
19 remembered. He didn't remember getting hit the second time by
20 the vehicle, but he did. Mr. Miniet has a little bit of a
21 criminal record, possession of a marijuana, possession of a
22 gun that was inside a house locked inside a safe, not on his
23 person as the Defendant and Defense Counsel wants you to
24 believe even when he was convicted and not -- he certainly
25 didn't have a gun on him that night supported by all the

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1 facts. But the Defendant was scared of Mr. Miniet. No
2 threats made by him. As Mr. Chiviattoni said, concerned about
3 the child and who was calling 911 so he could get a little bit
4 of medical help.

5 I'll again show you -- I'll show you this situation where
6 the Defendant was so afraid.

7 (REPORTER'S NOTE: State's 5 published for the Jury. Not
8 transcribed here.)

9 MR. OSKIN: He's terrified. That's a man who's terrified
10 of this man allegedly. I just don't -- it's not proven.
11 Quite the opposite. He also testified he was angry. That's
12 why he hit with the beer bottle and, as I stated earlier, he
13 intended to finish the job when he got in that vehicle, saw
14 the opportunity to strike Mr. Miniet. That's where malice
15 aforethought came in. Remember, I said it doesn't have to be
16 premeditated; it can be. At this time it was premeditated to
17 even hit him. He collectively paused for a moment. Every
18 eyewitness sees him pause and hears him accelerate a second
19 time directly towards the victim, straight at him, and into
20 the parking lot as he testified, not the left that he claims
21 he was trying to make. That's intent. That's the difference
22 maker in this case. That's what the background is. And
23 there's your intent supported by every eyewitness to the
24 event. Mr. Maiden lied about I was trying to leave this
25 parking lot here. The rest of his story was completely false

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1 as well.

2 Let's talk about these charges. Assault and battery
3 second, Defense Counsel would have you believe that that's the
4 proper verdict, moderate bodily injury here, nothing happened,
5 nothing to see. That's immediately discredited because the
6 victim testified he has permanent damage in his arm. He
7 wasn't able -- he's still regaining function on it. They will
8 open it and figure out how to -- with permanent nerve damage
9 that affects a limb. That's within the language. Throws
10 assault and battery second out.

11 Assault and battery of a high and aggravated nature,
12 that's an assault that occurs that's likely to result in great
13 bodily injury or death; there's not intent in there. They'd
14 have you to believe that if you don't think it's A&B second,
15 it's this. But, it's not ABHAN because you have the intent.

16 So, attempted murder is the intentional killing of
17 another with malice aforethought and you take this all into
18 effect. I want you to look at all this evidence. Don't trust
19 it because I'm standing up here saying it. Remember
20 everything you heard on that stand, these photos from the
21 scene, and the people who were there. Most importantly, Matt
22 Chiviattoni, who saw him from the time the fight was broken up
23 until he was loaded in the ambulance to leave after being
24 struck by the vehicle twice intentionally. He was with him
25 the whole time. That's who I want you to trust in addition to

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1 everyone else who saw the same thing, that he intentionally
2 looked at him, struck him twice, heard the tires squealing,
3 heard the car accelerate twice. That's what you remember
4 because that's what the evidence tells you from the stand.

5 Once you to do that, review the evidence in its entirety
6 and, again, not because I said it but you have it here. We've
7 gone over it here. This man was not making threats. This man
8 intentionally hit him because he wanted to finish the job that
9 he started in the bar. When you come back out and deliver
10 your verdict, I trust that the evidence would have shown you
11 and convinced you firmly convinced beyond a reasonable doubt
12 that the Defendant, Joshua Maiden, is guilty of attempted
13 murder.

14 THE COURT: Thank you.

15 MR. FOX: Your Honor, I have, forgive me, but I have a
16 matter of law that I need to take up before you charge the
17 jury.

18 THE COURT: All right. And I was gonna give the jury a
19 break. Okay?

20 MR. FOX: Okay.

21 (REPORTER'S NOTE: Jury exits courtroom. 10:36 A.M. The
22 following takes place outside the presence of the Jury.)

23 BY THE COURT:

24 THE COURT: All right.

25 MR. FOX: Your Honor, two -- two matters with respect to

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1 the close that I want to raise objections to on the record.
2 First was his mention that the Defendant was using cocaine
3 that night. That was not actually in evidence. He did
4 testify on the stand he had been drinking. It was in his
5 interview with Detective Hardwick but that was not evidence at
6 the trial. He did not say -- no one asked him if he used
7 cocaine, the inference being he used cocaine and that's
8 illegal, you're a bad man, you're a wild man. I think that's
9 improper and extremely prejudicial.

10 THE COURT: Well, if it was not testified to, I can
11 assure you that the jury will be instructed not to consider
12 it, not to consider anything that didn't come from the witness
13 stand.

14 MR. FOX: Well, the problem is, they may or may not
15 remember that particular thing.

16 THE COURT: And I have pointed it out to them several
17 times during this trial, that openings and closings are not
18 evidence, nothing they say is evidence and that -- unless it
19 comes from the witness stand and I'll reiterate that.

20 MR. FOX: Yes, sir, I'd like to have that objection
21 noted. The second is with regard to the Solicitor's comments
22 with regard to the witness Chiviattoni. I'll preface that
23 with saying here is a man -- in so many words, I didn't get
24 exactly what he said down, but here's a man you can trust,
25 he's a veteran, he's in the National Guard, and you should

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1 give his -- he didn't say to give his testimony more weight,
2 but that was a clear implication he was improperly bolstering
3 that witness, Your Honor. I think that's also objectionable
4 and should be --- THE COURT: All right, sir.

5 MR. FOX: And request a mistrial on both of those
6 objections.

7 THE COURT: And I would deny your motion for mistrial as
8 to those matters.

9 MR. FOX: Yes, sir.

10 THE COURT: Mr. Fox, I have changed the assault and
11 battery of a high and aggravated nature charge that -- and we
12 did have the common law charge described in the charges to the
13 jury. I changed it to the statutory and the -- what I have
14 substituted is: A person who commits the offense of assault
15 and battery of a high and aggravated nature, if the person
16 unlawfully injures another person and (a) great bodily injury
17 to another person results or (b) the act accomplished by means
18 likely to produce death or great bodily injury. Great bodily
19 injury means bodily injury which causes substantial risk of
20 death or which causes serious permanent disfigurement or
21 protracted loss or impairment of a function of a bodily member
22 or organ.

23 MR. FOX: Yes, sir.

24 MR. DEBUSK: I probably did not catch that before. I
25 guess we've all been practicing so long, we remember that --

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1 it looked so familiar.

2 THE COURT: Yeah, it's the same -- is that what you
3 wanted, Mr. Fox?

4 MR. FOX: It is, Your Honor.

5 THE COURT: All right. Very well. All right. Let's
6 take a break. The arguments were -- you know, we've had the
7 jury in here for over an hour. Let's, let's all take an
8 opportunity to do a short break and we'll come back.

9 **(RECESS - 10:36 A.M.)**

10 *****OFF THE RECORD*****

11 **(On the Record. 10:40 A.M.)**

12 (REPORTER'S NOTE: Jury enters courtroom. 10:40 A.M.)

13 CHARGE TO JURY:

14 THE COURT: All right. We have all our jurors and our
15 alternates back in the courtroom. I hope you've had an
16 opportunity to refresh yourselves.

17 As I indicated to you earlier, we have now heard closing
18 remarks or summations and I remind you that summations are
19 like opening remarks; they're not evidence. The attorneys may
20 comment on what they believe that they have heard, but you can
21 only consider what you recall from the witness stand. That is
22 the only evidence upon which you may base any verdict in this
23 case.

24 As I said earlier, I will provide you with a written
25 transcript of my charge. Our Supreme Court has approved my

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1 doing that, but I have to give you a verbatim part. So,
2 rather than talk to you as I have throughout this trial, just
3 without any notes or anything, I'm going to have to read my
4 charge to you and that doesn't mean that you don't have to pay
5 any attention to me, because I'm gonna give you a copy of it.
6 I ask you to please listen carefully to what I have to say
7 because it is very important and it's the law that you must
8 apply in this case.

9 Now I remind you that during this trial, you and I have
10 certain duties to perform. As Trial Judge it is my duty or
11 responsibility to preside over the trial of the case and I
12 also have the duty to rule on the admissibility of the
13 evidence offered during this trial. You are to consider only
14 the competent evidence before you. If there was any testimony
15 ordered stricken from the record in this case during this
16 trial, you must disregard that testimony. You are to consider
17 only the testimony which has been presented from this witness
18 stand, any exhibits which have been made a part of the record
19 in this case and any stipulations and agreements of counsel.

20 I have the additional duty to charge you the law
21 applicable to the case. As Presiding Judge, I am the sole
22 judge of the law in this case and it is your duty as jurors to
23 accept and apply the law as I now state it to you. If you
24 already have an idea as to what the law is or what the law
25 ought to be and it does not agree with what I now tell you the

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1 law is, you must abandon this idea because you are sworn to
2 accept the law and apply the law exactly as I state it to you.
3 In every case tried in this court before a jury, the jury
4 becomes the sole and exclusive judge of the facts in a case.
5 A Trial Judge cannot intimate, state, comment on or make any
6 statement to a trial jury about the facts in a case. Since,
7 you, the jury, are the sole judges of the facts in this case,
8 you are not to infer from what I have said during the progress
9 of this trial in ruling on the admissibility of evidence or
10 otherwise or anything that I say now during the course of this
11 instruction to you that I have any opinion about the facts in
12 this case. The law does not allow me to have an opinion about
13 the facts in this case. This is a matter solely for you, the
14 jury, to determine. As jurors, it is your duty to determine
15 the effect, the value, weight and truth of the evidence
16 presented during this trial.

17 Now, the Defendant has pled not guilty to the indictment
18 and that puts the burden on the State to prove the Defendant
19 guilty. A person charged with committing a criminal offense
20 in South Carolina is never required to prove himself innocent.
21 I charge you that it is an important rule of the law that the
22 Defendant in a criminal trial, no matter what the seriousness
23 of the crime may be, or the charge may be, will always be
24 presumed to be innocent of the crime for which the indictment
25 was issued unless that -- unless guilt has been proved by

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1 evidence satisfying you of that guilt beyond a reasonable
2 doubt. This presumption of innocence does not end when you
3 begin your deliberation, but it accompanies the Defendant
4 throughout the trial until you reach a verdict of guilt based
5 on evidence satisfying you of that guilt beyond a reasonable
6 doubt. The presumption of innocence is like a robe of
7 righteousness placed about the shoulders of the Defendant
8 which remain with the Defendant until it has been stripped
9 away by evidence satisfying you of the Defendant's guilt
10 beyond a reasonable doubt. The presumption of innocence is
11 not a mere legal theory. It is not just a legal phrase. It's
12 a substantial right to which every Defendant is entitled
13 unless you, the jury, are satisfied from the evidence of the
14 Defendant's guilt beyond a reasonable doubt.

15 Now the indictment in this charge -- in this case,
16 charges the Defendant with attempted murder. I'll remind you
17 the fact that the Defendant was arrested, charged and indicted
18 in this case is not evidence in the case and cannot be
19 considered by you as evidence of guilt in the case nor does it
20 create any presumption or inference of guilt. The indictment,
21 the document is simply the formal written instrument which
22 contains the charges made against the Defendant. It is the
23 formal document by which the case is brought into the court.

24 Now the State has the burden of proving the Defendant's
25 guilt beyond a reasonable doubt. Some of you may have served

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1 as jurors in civil cases where were you told that it's only
2 necessary to prove that a fact is more likely true than not
3 true, such by the greater weight or preponderance of the
4 evidence. In criminal cases, the State's proof must be more
5 powerful than that, it must be beyond a reasonable doubt. Now
6 proof beyond a reasonable doubt is proof that leaves you
7 firmly convinced of the Defendant's guilt. There are very few
8 things in this world that we know with absolute certainty and,
9 in criminal cases, the law does not require proof that
10 overcomes every possible doubt. If, based on your
11 consideration of the evidence, you are firmly convinced that
12 the Defendant is guilty of the crime charged, you must find
13 the Defendant guilty. If on the other hand, you think that
14 there is a real possibility that the Defendant is not guilty,
15 you must give the Defendant the benefit of the doubt and find
16 him not guilty.

17 There are two types of evidence which are generally
18 presented during a trial, direct evidence and circumstantial
19 evidence. Direct evidence directly proves the existence of a
20 fact and does not require deduction. Circumstantial evidence
21 is proof of a chain of facts and circumstances indicating the
22 existence of a fact. Crimes may be proved by circumstantial
23 evidence. The law makes no distinction between the weight or
24 value to be given either direct or circumstantial evidence.
25 However, to the extent the State relies on circumstantial

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1 evidence, all the circumstances must be consistent with each
2 other and, when taken together, point conclusively to the
3 guilt of the accused beyond a reasonable doubt. If these
4 circumstances merely portray the Defendant's behavior as
5 suspicious, the proof has failed. The State has the burden of
6 proving the Defendant guilty beyond a reasonable doubt. This
7 burden rests on the State regardless of whether the State
8 relies on direct evidence, circumstantial evidence or a
9 combination of the two.

10 Necessarily, you must determine the credibility of
11 witnesses who have testified in the case. Credibility simply
12 means believability. It becomes your duty as jurors to
13 analyze and evaluate the evidence and determine which evidence
14 convinces you of its truth. In determining the believability
15 of witnesses who have testified in this case, you may believe
16 one witness over several or several over one. You may believe
17 a part of the testimony of a witness and reject the remaining
18 part of the testimony of that same witness. You may believe
19 the testimony of a witness in its entirety or reject the
20 testimony of a witness in its entirety. You may consider
21 whether any witness has exhibited to you any interest, bias,
22 prejudice, or other motive in this case. You may also
23 consider the appearance and manner of a witness while on the
24 witness stand.

25 Now, evidence of prior convictions of a crime or crimes

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1 by a witness or the accused should only be considered by you
2 on the question of the witness' or the accused's credibility
3 or believability and for no other purpose.

4 The rules of evidence ordinarily do not permit witnesses
5 to testify to opinions or conclusions. An exception to the
6 rule exists where witnesses we call expert witnesses, a
7 witness who by education and experience has become an expert
8 in some art, science, profession or calling, may state an
9 opinion as to relevant and material matters in which the
10 witness claims to be an expert and may also state the reasons
11 for those opinions. You should consider any expert opinion
12 received in evidence in this case and like any other evidence,
13 give it the weight you think it deserves. If you decide that
14 the opinion of an expert witness is not based on sufficient
15 education and experience or you conclude that the reasons
16 given in support of the opinion are not sound or that the
17 opinion is outweighed by other evidence, you may disregard it
18 entirely. An expert witness' testimony is to be given no
19 greater weight than that of other witnesses simply because the
20 witness is an expert. Further, you're not required to accept
21 an expert's opinion even though it's not contradicted.

22 The Defendant is charged with attempted murder. In order
23 to prove this crime, the State must prove the Defendant
24 attempted to kill another person with malice aforethought,
25 either expressed or implied. Malice is hatred, ill will or

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1 hostility towards another person. It is the intentional doing
2 of a wrongful act without just cause or excuse and with an
3 intent to inflict an injury or under circumstances that the
4 law will infer an evil intent. Malice aforethought does not
5 required that malice exists for any particular time before the
6 act is committed, but malice must exist in the mind of the
7 Defendant just before and at the time the act is committed.
8 Therefore, there must be a combination of the previous evil
9 intent and the act. Malice aforethought may be expressed or
10 inferred. These terms expressed and inferred do not mean
11 different kinds of malice, but merely the manner in which
12 malice may be shown to exist. That is either by direct
13 evidence or by inference from the facts and circumstances
14 which are proved. Expressed malice is shown where a person
15 speaks words which express hatred or ill will for another or
16 when a person prepared beforehand to do the act, which was
17 later accomplished. For example, lying in wait for a person
18 or any other act of preparation going to show that the deed
19 was in the Defendant's mind would be expressed malice. Malice
20 may be inferred from conduct showing a total disregard for
21 human life. If facts are proved beyond a reasonable doubt
22 sufficient to raise an inference of malice to your
23 satisfaction, this inference would simply -- would be simply
24 an evidentiary fact to be considered by you, the jury, along
25 with other evidence in the case and you may give it the weight

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1 that you decide it deserves or should receive. Specific
2 intent means that the Defendant consciously intended the
3 completion of the acts of comprising the attempted murder
4 offense. In other words, the completion of such act is the
5 Defendant's purpose.

6 A person commits the offense of assault and battery of a
7 high and aggravated nature if the person unlawfully injures
8 another person and (a) great bodily injury to another person
9 results; or (b) the act is accomplished by means likely to
10 produce death or great bodily injury. Great bodily injury
11 means bodily injury which causes a substantial risk of death
12 or which causes serious permanent disfigurement or protracted
13 loss or impairment of the function of a bodily member or
14 organ.

15 If you find that the State has failed to reach its burden
16 of proof as to assault and battery of a high and aggravated
17 nature, you may consider a lesser included offense of assault
18 and battery in the second degree. A person commits the
19 offense of assault and battery in the second degree if the
20 person unlawfully injures another person or offers or attempts
21 to injure another person with the present ability to do so and
22 either moderate bodily injury to another person results or
23 moderate bodily injury to another person could have resulted.
24 Moderate bodily injury means physical injury that involves
25 prolonged loss of consciousness or that causes temporary or

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1 moderate disfigurement or temporary loss of the function of a
2 bodily member or organ or injury that requires medical
3 treatment when the treatment requires the use of a regional or
4 general anesthesia or injury that results in a fracture or
5 dislocation. Moderate bodily injury does not include one-
6 time treatment and subsequent observations of scratches, cuts,
7 abrasions, bruises, burns, splinters or other minor injuries
8 that do not require extensive medical care.

9 Now, ladies and gentlemen, there are four possible
10 verdicts which you may find in this case. You may find the
11 Defendant not guilty. You may find the Defendant guilty of
12 attempted murder. You may find the Defendant guilty of
13 assault and battery of a high and aggravated nature or you may
14 find the Defendant guilty of assault and battery in the second
15 degree and there's no significance whatsoever to the order in
16 which I state these possible verdicts. It just simply means
17 that I've got to state one before the other.

18 I want to remind you that any verdict in this case must
19 be a unanimous verdict. Madam Forelady, when I send you into
20 the jury room, I will send you in with a verdict form, and let
21 me just take a moment with that verdict form. I tried to make
22 something that would be simple and easy to follow. We begin
23 with the greater offense and the verdict form reads as
24 follows: As to the charge of attempted murder, we, the jury,
25 unanimously find -- and then I put circle one and I have

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1 guilty and not guilty. And again, there's no significance;
2 it's the way, the order that they're placed. It's just we have
3 to place one. You will consider that charge first. Then you
4 will circle your verdict. Below that you will see, If you
5 found the Defendant guilty of attempted murder, stop your
6 deliberations here, because if you have found him guilty of
7 that, the greater offense, you need not consider a lesser
8 offense. Okay?

9 If you have found him not guilty, then you may consider
10 the charge of assault and battery of a high and aggravated
11 nature, which is the next lesser offense. If you find him
12 guilty of that, again, under there you will see a paragraph
13 that says, stop your deliberations. You don't go down to the
14 third lower offense.

15 If you found him not guilty, then you may consider the
16 offense of assault and battery in the second degree. And
17 again it would be guilty or not guilty. I want to emphasize
18 the fact you may find him not guilty of anything and, on the
19 other hand, you could find him guilty of any of these charges,
20 but not all of these charges, you understand? Okay?

21 All right. Now, Mr. Ropp, I'm going to let you take this
22 jury into the jury room. Again, I'm gonna ask you not to
23 begin your deliberations yet. If I send in the exhibits, the
24 verdict form and your copy of my charge, that's your signal to
25 go forward with your deliberations. Failing that, I may have

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1 to bring you back into the courtroom and give you further
2 instruction, but if I -- I don't think I'll have to, but if I
3 send in the documents, the exhibits, that means proceed.
4 Okay? All right. And if you've reached a verdict, you need
5 only knock on the door and inform Mr. Ropp when that occurs.
6 Oka?

7 Mr. Ropp, would you take the jury into their jury room.
8 (REPORTER'S NOTE: Jury exits courtroom. 11:01 A.M. The
9 following takes place outside the presence of the Jury.)

10 BY THE COURT:

11 THE COURT: Bobby, make sure that the two alternates are
12 segregated.

13 DEPUTY: You want them back now?

14 THE COURT: No, just off to the side for right now.

15 Mr. DeBusk?

16 MR. DEBUSK: Your Honor, there was one spot that I think
17 was cured by your verdict form when you forgot to say between
18 attempted murder and ABHAN that if you --- THE COURT: And
19 that's because we changed ---

20 MR. DEBUSK I think it was cured by the -- by the ---

21 THE COURT: Okay.

22 MR. FOX: No exceptions, Your Honor.

23 THE COURT: Gentlemen, would you come and make sure that
24 you have all of your exhibits, put them together.

25 Kay, mark my charge as Court's 1.

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1 COURT'S EXHIBIT NUMBER 1

2 ADMITTED INTO EVIDENCE

3 MR. FOX: And it has the updated ABHAN language in that.

4 THE COURT: That's the one I just read.

5 MR. FOX: Yes, sir.

6 THE COURT: And so that would go into the jury with the
7 verdict form.

8 MR. FOX: Okay.

9 (REPORTER'S NOTE: Counsel reviews and stipulates to exhibits
10 to be submitted to jury.)

11 THE COURT: You got it all, Kay?

12 COURT REPORTER: Yes, sir.

13 THE COURT: Everybody agree?

14 MR. FOX: Yes, sir.

15 MR. DEBUSK: Yes, sir.

16 THE COURT: Okay. Good. Then we're at ease.

17 Bobby, let them know. I'll tell you what, bring my
18 alternates back.

19 MR. ROPP: Okay.

20 (REPORTER'S NOTE: Juror Numbers 348 and 22 enter courtroom.)

21 THE COURT: Yes, sir. Thank you so much for your
22 service. Once deliberations begin, I excuse jurors because I
23 hate to interject you into a deliberation after two or three
24 hours. That means they'd have to start back at the beginning
25 and go forward again, so you're released. You're certainly

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VERDICT OF JURY

1 welcome to hang around and see what happens, but you are now
2 released from your service. Thank you so much. We appreciate
3 it. Okay.

4 (REPORTER'S NOTE: Alternates leave courtroom. Deliberations
5 commence 11:05 A.M.)

6 **(RECESS - 11:05 A.M.)**

7 *******OFF THE RECORD*******

8 **(On the Record.)**

9 (REPORTER'S NOTE: Jury enters courtroom. 12:02 P.M.)

10 VERDICT OF JURY:

11 THE COURT: Okay. It looks like we have everyone back
12 in.

13 Madam Forelady, I'm informed that you've reached a
14 verdict?

15 JUROR 43: Yes, sir, we have.

16 THE COURT: Is that a unanimous verdict?

17 JUROR 43: Yes, sir.

18 THE COURT: all right. Would you give that verdict form
19 to Mr. Ropp, please? Thank you.

20 All right, Madam Clerk, would you please publish the
21 verdict?

22 CLERK: Indictment number 2016-GS-26-03399, State of
23 South Carolina versus Joshua William Maiden, as to the charge
24 of attempted murder, we, the jury, unanimously find the
25 Defendant not guilty.

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MOTIONS

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1 As to the charge of assault and battery of a high and
2 aggravated nature, we, the jury, unanimously find the
3 Defendant guilty.

4 Signed by Foreperson Kerry Brown, dated April 12th, 2017.

5 THE COURT: Is there any request for an individual
6 polling of the jury from the State?

7 MR. DEBUSK: No, Your Honor.

8 THE COURT: From the Defense?

9 MR. FOX: No, Your Honor.

10 THE COURT: Very well. All right. Any reason we cannot
11 proceed with sentencing?

12 MR. FOX: Your Honor, we have a few post-trial motions.

13 THE COURT: Oh, yes. Perhaps we should do that.

14 Mr. Ropp, would you take the jury back to their jury room
15 for just a moment, please?

16 (REPORTER'S NOTE: Jury exits courtroom. 12:04 P.M. The
17 following takes place outside the presence of the Jury.)

18 THE COURT: While there was no need for that, Mr. Fox, I
19 still would think it is the better policy.

20 MR. FOX: Yes, sir. I think so.

21 MOTIONS:

22 MR. FOX: Yes, sir, Judge, now that we have a verdict in
23 this case, I would renew previous motions and ask for a new
24 trial based a couple of matters of law that I believe are in
25 error. The first being going back to Monday and my request

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MOTIONS

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1 for a continuance based on the inability of our witness Aaron
2 Kennedy to be present due to an emergency situation. We
3 would've expected Mr. Kennedy -- did expect based on my
4 conversations with him to testify and corroborate much of Mr.
5 Maiden's testimony regarding events inside The Boathouse,
6 specifically hearing the threat by Mr. Miniet to put a bullet
7 between Mr. Maiden's eyes, as well as this witness'
8 observation of what happened outside that Mr. Miniet ran in
9 front of the vehicle. I believe it was error for the Court to
10 deny us that continuance. We believe this was a credible
11 witness.

12 The second issue would be we believe it was error to
13 allow the video inside the club. Initially, Your Honor would
14 not admit it because of foundational issues. That really is
15 the basis of this objection. We understand Your Honor weighs
16 the issue regarding its probative value but we believe even
17 through Mr. Miniet that that did not lay the proper foundation
18 given the fact that he was not the person who took this video,
19 there's no showing of how that video came into being, who did
20 it, how it was done, where it was obtained or the portion we
21 saw here. No testimony that it may not have been altered in
22 some way, so we believe there was error to admit that video.
23 And then, once in, we believe that led to the very substantial
24 risk that the jury would've engaged in an improper reasoning
25 that, well, he appeared to be the aggressor in the video and

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MOTIONS

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1 therefore he must've been the aggressor outside. So again we
2 believe it was error to admit that video.

3 Finally, Your Honor, in Mr. Oskin's closing argument,
4 there was mention, I do believe it was inadvertent, but
5 regardless, he did mention that Mr. Maiden had been using
6 cocaine on the date of the incident. That was not in
7 testimony, not anything that was in evidence, and we believe
8 that was highly prejudicial. And we also believe the
9 Solicitor improperly bolstered their witness, Mr. Matthew
10 Chiviattoni by referring to his service in the military and
11 National Guard and that, therefore, he was somehow -- like I
12 said, this is the key witness and that somehow he was a more
13 believable witness because of his military and National Guard
14 service.

15 For all of those reasons, we would ask for a new trial,
16 Your Honor.

17 THE COURT: All right. I'll hear from you Mr. DeBusk or
18 Mr. Oskin, either one.

19 MR. DEBUSK: Thank you, Your Honor. As to the
20 evidentiary hearings during the course of the trial, the tape,
21 that was, Your Honor, was well covered on the record.

22 The individual who authenticated the tape appeared on
23 that video, during the whole period of the video, and I think
24 he testified it was a fair and accurate representation and had
25 not been altered and showed the incident as it happened. So,

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MOTIONS

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1 the -- and the balancing test was made clearly on the record
2 and it was admissible, I would argue, Your Honor, it was part
3 under res gestae and also under Rule 404(b).

4 As to the statements in closing, Your Honor, the cocaine
5 statement, that actually had been on the record early in the
6 trial, but not before the jury. That was simply an error on
7 behalf of Mr. Oskin. It was not evidence, it was not
8 presented as evidence. The jury knew and was instructed
9 carefully, only to take what came from the stand as evidence
10 and were instructed that twice during, during the final
11 instructions, Your Honor. I believe that would cure the
12 issue.

13 And as to bolstering Mr. Chiviattoni, what I heard Mr.
14 Oskin say was that Mr. Chiviattoni was a witness that remained
15 calm during that because of his National Guard experience.
16 That he was the guy that was calm during it because he had
17 been stressful situations before and was able to ---

18 THE COURT: That was likewise my understanding. All
19 right. I would respectfully deny your motion for a new trial.
20 I think that I was very careful in admitting the video tape.
21 I disallowed it until I was certain that it could be properly
22 authenticated. I do not believe that there was improper
23 bolstering of the witness. My understanding of the testimony,
24 how I took it was that this was a witness who is used to or is
25 accustomed to stressful situations like this and would have a

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1 cool head and would make a proper observation. I think that
2 that is certainly what occurred.

3 So, we had the bolstering, we had the admission of the
4 tape and what was the third issue?

5 MR. FOX: The denial of the continuance for our witness
6 here.

7 THE COURT: And as to the continuance, there were no -- I
8 think continuances are controlled by Rules 16 and 40. That's
9 a civil rule, but I think it's admissible, but pertains as
10 well to the General Sessions Court. There were no affidavits,
11 there was nothing to support the necessity of, of this
12 witness, no affidavits as to what he would testify to and most
13 importantly, he was not subpoenaed. The case had been
14 scheduled for some time, it had been on the docket, no one was
15 taken by surprise. The case had lasted for three days. It
16 was an ample opportunity to make arrangements for someone to
17 look after his child, if there was a sick child. There again,
18 I don't know whether there was or were not. But at any rate,
19 there was ample opportunity to make some arrangement to get
20 him here. He was six hours away, but aside from that some --
21 there appears to have been no effort to get him here. So ---

22 MR. DEBUSK: Additionally, Your Honor, the threat did
23 come into evidence. It was placed into evidence and it would
24 have made more of a difference had this been a self-defense
25 case, but it was not argued or presented as a self-defense

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BY THE COURT

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1 case, but as an accident.

2 THE COURT: What now?

3 MR. DEBUSK: The case was presented as an accident.

4 Defense was accident here, not self-defense. So that would
5 make that particular witness even less pertinent to the case
6 in chief.

7 THE COURT: Yes, sir.

8 MR. DEBUSK: Thank you, Your Honor.

9 THE COURT: Yes, sir. All right. So I would, for the
10 reasons stated on the record during the trial and my comments
11 upon motion, I would deny your motion for a new trial.

12 All right. What else do you have for me, Mr. Fox?

13 MR. FOX: No further motions, Your Honor.

14 BY THE COURT:

15 THE COURT: All right. Bring the jury back in.

16 I would correct the statement I made earlier, Mr. Fox.

17 The rule concerning continuance is Rule 7(b), Rule 7(b).

18 (REPORTER'S NOTE: Jury enters courtroom. 12:13 P.M.)

19 THE COURT: Mr. DeBusk, I will hear you on sentencing.

20 MR. DEBUSK: Thank you, Your Honor. The victim is
21 present. He does not wish to address the Court. He feels
22 that the facts of this case stand for itself. He has been
23 present throughout the trial and is familiar with the case. I
24 would, however, like to go into the prior record of the
25 Defendant.

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BY THE COURT

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1 THE COURT: All right. I would like you to do so.

2 MR. DEBUSK: Specifically, a couple of charges that were
3 very similar to this one. First, though we went through his
4 records some during the course of the trial, we did not go
5 through all charges because some were not admissible for
6 purposes of impeachment. So I would like to go through the
7 entire -- that starts in 2006 in the State of Virginia with
8 possession of marijuana; 2006 eluding police, felony in the
9 State of Virginia; and also State of Virginia, grand larceny
10 also from 2006 and then from 2015 in Virginia, defrauding a
11 hotel or restaurant. From the State of North Carolina in
12 2011, manufacturing marijuana. From the State of South
13 Carolina in 2016 was an assault first charge, which he's
14 currently serving a sentence of five years. I want to come
15 back to that charge in a moment if I can, Your Honor.

16 THE COURT: Did that occur before or after this charge?

17 MR. DEBUSK: That occurred -- the incident date was in
18 February. He was out on bond for that charge when this
19 happened.

20 THE COURT: When this charge occurred? Okay.

21 MR. DEBUSK: Yes, Your Honor. Assault and battery third
22 degree also from the State of South Carolina in 2015 and
23 receiving stolen goods 2,000 or less from 2015. From the
24 State of Delaware, Your Honor -- I'm sorry, the State of
25 Maryland, from the State of Maryland in 2011, obstructing and

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BY THE COURT

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1 injuring; criminal mischief under 1,000, that was in 2013;
2 from the State of Delaware in 2011, criminal mischief under
3 1,000; in 2004, careless driving; in 2008, reckless
4 endangering, first degree, a substantial risk of death to
5 another, two counts. I'll come back to that one in a moment
6 as well, Your Honor. From 2008, driving a vehicle under the
7 influence of alcohol and drugs; from 2008, DUI; I'm sorry,
8 that might have been the same charge, Your Honor, I apologize.
9 From 2008, assault third degree and intentionally and
10 recklessly causing physical injury; from 2006, theft under
11 1,000 from the State of Delaware; from 2005 in the State of
12 Delaware, resisting arrest; 2004, attempted robbery second
13 degree -- owner or another to deliver property. I'm sorry;
14 there are server several traffic offenses here. Possession of
15 drug paraphernalia 2003 in the State of Delaware; 2002 in
16 Delaware, offensive touching; 2002, underage possession of
17 alcohol; 2002 assault third degree and intentionally and
18 recklessly causing harm to another; 2002, disorderly conduct;
19 2001, criminal mischief under 1,000. The remainder seem to be
20 traffic charges, Your Honor.

21 I'd like to go back, if I could, to that charge in
22 Delaware 2008 for reckless endangering. I have a case report
23 here I'd like to proffer to the Court.

24 THE COURT: All right.

25 MR. DEBUSK: Back in 2008, the Defendant had gone to a

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BY THE COURT

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1 house of a current boyfriend of a former girlfriend of his and
2 did hit him with a vehicle, an SUV.

3 THE COURT: When now?

4 MR. DEBUSK: Tried to run down him and another individual
5 there and then, in another scene, tried to run down two more
6 individuals associated with the case.

7 THE COURT: That was when?

8 MR. DEBUSK: 2008 in Delaware, Your Honor.

9 THE COURT: Okay.

10 MR. DEBUSK: That charge resulted in his being imprisoned
11 on the probation violation. And then the charge in Marion
12 County, South Carolina that occurred last February.

13 THE COURT: That would've been three months, four months
14 before this charge?

15 MR. DEBUSK: A charge he was out on bond for when this
16 one happened. He went to a store in Marion County pursuant a
17 sales job, an attempt to sell them a point-of-sale machine.
18 When the owners refused to purchase the machine, he threw a
19 pen at one of the owners and then went out and slammed the
20 door and caused them to break. The other owner pursued him
21 into the parking lot where the Defendant hit him with his
22 vehicle. When the individual tried to escape, he backed up
23 and tried to hit him again. I'd like to proffer both of these
24 to the Court, Your Honor. This is ---

25 THE COURT: And he was on bond for that charge when this

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BY THE COURT

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1 charge occurred?

2 MR. DEBUSK: Yes, Your Honor; he was on bond. I would
3 argue this is the third time he assaulted someone ---

4 THE COURT: Vehicular assault.

5 MR. DEBUSK: --- with a vehicle. There are other
6 assaults, but this is the third time at least with a vehicle.

7 THE COURT: How many assaults has he had?

8 MR. DEBUSK: At least five, Your Honor, different
9 degrees. He was on bond for a charge in chasing someone with
10 a vehicle in Marion County when this one occurred. He has
11 served -- he is currently serving five years on that charge.
12 I would argue, Your Honor, that any sentence he receives today
13 should be consecutive to that charge because he was on bond
14 for the other charge when he did this one.

15 Thank you for listening, Your Honor.

16 THE COURT: All right. Mr. Fox, what can you say?

17 MR. FOX: Well, Judge, as for as the record, it speaks
18 for itself, but I can say Josh -- his mother would've been
19 here to speak, she simply did not feel that she could bear to
20 be here whenever the outcome. You notice that she's been here
21 on the front row throughout the trial. This is what she tells
22 me what Josh has told me.

23 THE COURT: Let me ask you this, did she tell you how
24 many times she's had to bond him out of jail for committing
25 criminal offenses?

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BY THE COURT

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1 MR. FOX: No, Judge, that wasn't part of my preparation.
2 I'm aware of what his record was.

3 THE COURT: I understand.

4 MR. FOX: That's not something -- I wouldn't suggest that
5 she's proud of this, but what she will tell you if you'll
6 allow me to continue is ---

7 THE COURT: Certainly.

8 MR. FOX: --- that Josh has been diagnosed and this is not
9 offered and wasn't offered at trial because it wouldn't be an
10 excuse for what happened, he's diagnosed by medical
11 professionals of being bi-polar about two years ago. On his
12 medication, he does very well. He's very much like he was
13 this week; he's calm, cool and collected. When he's not on
14 his medication, he's extremely impulsive. This is something
15 very classic of symptoms for someone with this diagnosis. It
16 starts in the late teenage years and that's when his record
17 starts and you'll notice an awful lot of this. Still his
18 record, an awful lot of that goes back to the 2000, 2002, 2003
19 when he was a teenager. It doesn't change it; it's still
20 there.

21 THE COURT: How old is he now?

22 MR. FOX: He is 32 -- 33, Your Honor. But, that his
23 history. He also in October of 2015, a few months before this
24 incident, was accosted, mugged and beaten pretty severely
25 coming out of the Kangaroo gas station. I'm not sure where

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BY THE COURT

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1 that came from, but he was beaten fairly badly, needed medical
2 treatment, and has been diagnosed with PTSD after that. And
3 again, he's responsible for what he will be sentenced for what
4 this is, but I think Your Honor needs to be aware of that. I
5 can't really comment, the incidents prior involving vehicles
6 are what they are in both instances including in Marion. That
7 Judge, that Solicitor was fully aware of his record, was fully
8 aware of the particulars of the case and, at least initially
9 put him on probation. So we just bring those to your
10 attention.

11 THE COURT: We got a probationary sentence, did he
12 violate his bail?

13 MR. FOX: I understand.

14 THE COURT: All right, sir. Anything further, Mr. Fox?

15 MR. FOX: No, sir.

16 THE COURT: Would your client have anything he wants to
17 say, Mr. Fox?

18 MR. FOX: Yes, Your Honor, he would like to address the
19 Court.

20 THE COURT: Okay.

21 MR. MAIDEN: Your Honor, I would like to express my
22 sincerest apologies to Mr. Miniet. As I stated earlier, it
23 was not my intention to try to harm him. I'm sorry that that
24 was the result, and I understand that I have been found guilty
25 and I have to accept the consequences.

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BY THE COURT

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1 THE COURT: Mr. Maiden, let me ask you, how many times
2 have your parents had to bail you out of jail for your
3 actions?

4 MR. MAIDEN: The last two times they have. Prior to
5 that, I was always able to do it myself.

6 THE COURT: Well, how many times do you think that you've
7 been arrested over the last 15 years?

8 MR. MAIDEN: Over a dozen, sir.

9 THE COURT: Mr. Maiden, you pled guilty to essentially
10 the same set of facts, vehicular assault, that occurred just
11 three months earlier. You were on bond for that when this
12 occurred, were you not?

13 MR. MAIDEN: That is correct, sir.

14 THE COURT: And then there was the incident involving a
15 vehicular assault, girlfriend/boyfriend situation that
16 occurred how many years earlier, Mr. DeBusk?

17 MR. DEBUSK: In 2008, Your Honor.

18 THE COURT: In 2008. I mean, were you tried for that or
19 did you plead guilty?

20 MR. MAIDEN: I pled guilty and got a probationary
21 sentence.

22 THE COURT: And every time you've been placed on
23 probation, you've been revoked?

24 MR. MAIDEN: Not every time, but the majority of the
25 time, yes.

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SENTENCE OF THE COURT

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1 THE COURT: So, probation doesn't work for you, Mr.
2 Maiden. And, Mr. Maiden, obviously you are dangerous. This
3 -- the people of this State deserve protection from people
4 just like you. I don't know what your problems are. All I
5 know is you're a danger.

6 SENTENCE OF THE COURT:

7 THE COURT: The sentence of this Court is that you be
8 confined to the State Department of Corrections for 20 years
9 and that is consecutive to the charge -- I mean, to the
10 sentence you are presently serving.

11 Thank you, sir.

12 MR. DEBUSK: Thank you, Your Honor.

13 THE COURT: Ladies and gentlemen of the jury, I want to
14 thank you for your service in this case. You are probably
15 sitting there wondering why didn't we know all this stuff.
16 You didn't know it because it may have prejudiced you in your
17 view of the evidence in this case and so for those reasons, or
18 for that reason, we don't allow jurors to hear some of the
19 really bad things that may pertain to a particular defendant.
20 We bend over backwards -- and I hope you understand that after
21 this experience to make sure that every defendant gets a fair
22 trial, and I think you have given him a fair trial. Some of
23 you may be sitting there thinking this is a young man and,
24 Judge, your sentence is too harsh. This is a young man who
25 will kill somebody one day in my view. It's gonna -- it's a

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SENTENCE OF THE COURT

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1 pattern. It's gonna repeat itself and I'm gonna do everything
2 I can to protect the people of this State and the only way I
3 can do that is to incarcerate him. I have given him the
4 maximum sentence. It is a sentence, I believe, Mr. DeBusk,
5 it's eighty-five percent.

6 MR. DEBUSK: Yes, Your Honor.

7 THE COURT: He has no possibility of parole. Thank you
8 again for your attendance. I hope that you, now that you've
9 served on a jury, appreciate your right as citizens, not only
10 to participate in this process, but to know that you are also
11 protected by this process in the event that you may find
12 yourself designated as a defendant or your family. I hope you
13 will leave here with an understanding that our court systems
14 are here not only to protect the people of the State, but to
15 protect those who have been accused as well.

16 Thank you again for your kind attention in this matter.
17 This will count for your service for the next three years.
18 You can claim it as an exemption. Of course, after a year,
19 you might be called. You would -- you would be disqualified
20 for one year, but for the next three, you could -- you could
21 claim it. Thank you again. No one can criticize what you've
22 done. You know, I told you not to discuss it with anybody.
23 You can discuss it with anyone you want to now or not. It's
24 entirely up to you. If you don't want to talk about it and
25 anybody approaches you, you tell them you don't want to talk

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SENTENCE OF THE COURT

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1 about it. If that's not good enough for them, let me know and
2 I'll take care of it. Okay?

3 Mr. Ropp?

4 MR. ROPP: Yes, sir.

5 THE COURT: Take the jury to their jury room and you're
6 done for the week.

7 (REPORTER'S NOTE: Jury exits courtroom. The following takes
8 place outside the presence of the Jury.)

9 THE COURT: All right. All right, Mr. DeBusk, does that
10 conclude us?

11 MR. DEBUSK: That concludes it, Your Honor. Thank you.

12 THE COURT: Okay. All right. Thank you.

13 MR. FOX: Thank you, Your Honor.

14 **ADJOURNED - 12:28 P.M.**

15 **END OF DAY THREE.**

16

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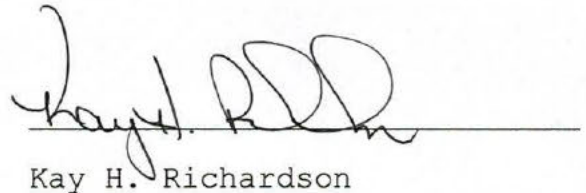
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C E R T I F I C A T E

I, the undersigned, Kay H. Richardson, Official Court Reporter for the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the hearing held in the case of State of South Carolina versus Joshua William Maiden, held in the Court of General Sessions for Horry County, Horry County Courthouse, Conway, South Carolina, on April 10-12, 2017.

I do hereby certify that I am neither of kin, counsel, nor interest to any party hereto.

A handwritten signature in black ink, appearing to read "Kay H. Richardson", is written over a horizontal line.

Kay H. Richardson

Official Court Reporter

June 12, 2017.

FORM 5

STATE OF SOUTH CAROLINA)

County of Horry)Joshua Maiden 370533)

Full name and prison number (if any) of Applicant)

v.)

State of South Carolina)

IN THE COURT OF COMMON PLEAS

20 19 CP26 46de1APPLICATION FOR
RELIEF
FROM
POST-CONVICTION
RELIEF

2019 JUL 24 AM 8:08

HORRY COUNTY

INSTRUCTIONS - READ CAREFULLY

In order for this application to receive consideration by the Court, it shall be in writing (legibly handwritten or typewritten), signed by the applicant and verified (notarized), and it shall set forth in concise form the answers to each applicable question. If necessary, applicant may furnish his answer to a particular question on the reverse side of the page or on an additional page. Applicant shall make clear to which question any such continued answer refers.

Since every application must be sworn under oath, any false statement of a material fact therein may serve as the basis of prosecution and conviction for perjury. Applicants should, therefore, exercise care to assure that all answers are true and correct.

If the application is taken in forma pauperis, it shall include an affidavit (attached at the back of the form) setting forth information which establishes that applicant will be unable to pay the fees and costs of the proceedings. When the application is completed, the original shall be mailed to the Clerk of Court for the County in which the applicant was convicted.

1. Place of detention Broad River Correctional Institution
2. Name and location of Court which imposed sentence General Sessions
Conway SC
3. Name(s) of co-defendant(s) (if any) N/A
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) 2016-GS-26-D3399 ABHAN
 - (b) _____

- (c) _____
5. The date upon which sentence was imposed and the terms of the sentence:
- (a) April 12 2017
- (b) 20 Years Consecutive
- (c) _____
6. Check whether a finding of guilty was made:
- (a) after a plea of guilty _____
- (b) after a plea of not guilty Jury trial
- (c) after a plea of nolo contendere _____
7. Did you appeal from the judgment of conviction or the imposition of sentence?
Yes
8. If you answered "yes" to (7), list:
- (a) the name of each Court to which you appealed:
- i. South Carolina Court of appeals
- ii. _____
- iii. _____
- (b) the result in each such Court to which you appealed:
- i. Dismissed
- ii. _____
- iii. _____
- (c) the date of each such result:
- i. October 1 2018
- ii. _____
- iii. _____
- (d) if known, citations of any written opinion or orders entered pursuant to such results:
- i. N/A
- ii. _____
- iii. _____
9. If you answered "no" to (7), state your reasons for not so appealing:
- (a) N/A
- (b) N/A

- (c) _____
10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:
- (a) Ineffective assistance of Counsel
- (b) Prosecutorial Negligence
- (c) _____
11. State concisely and in the same order the facts which support each of the grounds set out in (10):
- (a) Please See Attached
- (b) Please See Attached
- (c) _____
12. Prior to this application have you filed with respect to this conviction:
- (a) any petition in a State Court under South Carolina Law? NO
- (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? NO
- (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? NO
- (d) any other petitions, motions or applications in this or any other Court? NO
13. If you answered "yes" to any part of (12), list with respect to each petition, motion or application:
- (a) the specific nature thereof:
- i. N/A
- ii. _____
- iii. _____
- iv. _____
- (b) the name and location of the Court in which each was filed:
- i. N/A
- ii. _____
- iii. _____
- iv. _____

Page 3 Continued

11. (A) 1.) Counsel was ineffective for failing to inform me of Lesser included Charges in a timely manner.

2.) Counsel was ineffective for failing to share all evidence with me, prior to arraignment,

3.) Counsel was ineffective for failing to properly prepare trial by contacting witnesses well in advance, obtaining affidavits, and issuing subpoenas as directed

4.) Counsel was ineffective by confusing Defendant and Victims Names several times during trial, showing how unprepared and familiar He was with the case.

5.) Counsel was ineffective for possessing a DVD of "Evidence" in my case for 6 months before I had to point out that the State provided a Disc to someone elses Case, to which Defense Counsel was oblivious.

11. (B) 1.) The State was negligent by providing Discovery to someone elses case. It was labled with my Name and Case Number. This Prevented me From seeing important evidence and being able to make an informed Decision while a plea was still available. When the Correct Disc was shared with me, trial was then imminent.

(c) the disposition thereof:

- i. N/A
- ii. _____
- iii. _____
- iv. _____

(d) the date of each such disposition:

- i. N/A
- ii. _____
- iii. _____
- iv. _____

(e) if known, citations of any written opinions or orders entered pursuant to each such disposition:

- i. N/A
- ii. _____
- iii. _____
- iv. _____

14. Has any ground set forth in (10) been previously presented to this or any other Court, State or Federal, in any petition, motion or application which you have filed?

NO

15. If you answered "yes" to (14) identify:

(a) which grounds have been presented:

- i. N/A
- ii. _____
- iii. _____

(b) the proceedings in which each ground was raised:

- i. N/A
- ii. _____
- iii. _____

16. If any ground set forth in (10) has not previously been presented to any Court, State or Federal, set forth the ground and state concisely the reasons why such ground has not previously been presented:

(a) N/A
(b) _____
(c) _____

17. Were you represented by an attorney at any time during the course of:

(a) your arraignment and plea? Yes
(b) your trial, if any? Yes
(c) your sentencing? Yes
(d) your appeal, if any, from the judgment of conviction or the imposition of sentence? Yes
(e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed?
NO

18. If you answered "yes" to one or more parts of (17), list:

(a) the name and address of each attorney who represented you:
i. Eric Fox Po Box 16666 Conway SC 29526
ii. _____
iii. _____
(b) the proceedings at which each such attorney represented you:
i. Arraignment, Trial & Sentencing
ii. _____
iii. _____

19. State clearly the relief you seek in filing this application:

I ask that the Verdict be set aside and a New Trial Set, or My Sentence be reduced to the Plea offered by the State.

20. Are you now under sentence from any other court that you have not challenged?

NO

20 19 CP26 4661

STATE OF SOUTH CAROLINA)

County of Richland)

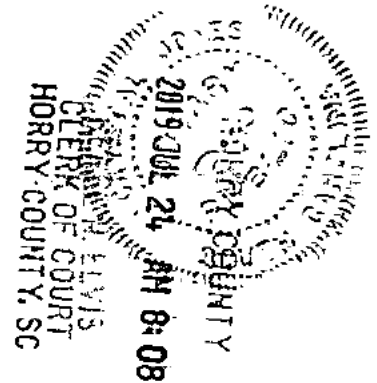
VERIFICATION

I, _____, being duly sworn upon my oath, depose and say that I have subscribed to the foregoing application; that I know the contents thereof; that it includes every ground known to me for vacating, setting aside or correcting the conviction and sentence attacked in this application; and that the matters and allegations therein set forth are true.

SWORN to and subscribed before me this 15th day of July, 2019.

Cynthia Jones (L.S.)
Notary Public

My Commission Expires: July 22nd, 2026



APPLICATION TO PROCEED WITHOUT PAYMENT
OF COSTS AND AFFIDAVIT
IN SUPPORT THEREOF

2019 CP26 46661 - -

I, Joshua Maiden, hereby apply for leave to proceed in this action without prepayment of fees or costs or security therefor. In support of my application I declare under penalty of perjury that the following facts are true:

- (1) I am the applicant in this action and I believe I am entitled to redress.
- (2) Because of my poverty I am unable to pay the costs of said proceeding or give security thereof.

Joshua Maiden
Applicant

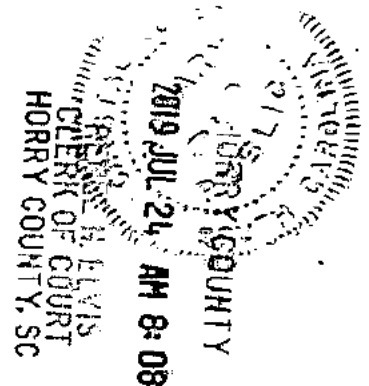
SWORN or affirmed to and subscribed before me this

15th day of July, 2019.

Cynthia Jones
Notary Public

My Commission Expires:

July 22nd, 2026



STATE OF SOUTH CAROLINA

COUNTY OF HORRY

Joshua Maiden,
S.C.D.C. No. 370533,

Applicant,

v.

State of South Carolina,

Respondent.

) IN THE COURT OF COMMON PLEAS
) FOR THE FIFTEENTH JUDICIAL CIRCUIT
)) Case No.: 2019-CP-26-4661
)
)) RETURN
) (Counsel Appointed)
)
)
)
)
)
)FILED
HORRY COUNTY
2020 MAR -3 P 1:09
RENEE N. ELVIS
CLERK OF COURT
HORRY COUNTY, SC

In response to the application for post-conviction relief filed by Joshua Maiden (Applicant) on July 24, 2019. Respondent would show this Court the following:

I. PROCEDURAL HISTORY

Applicant is confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Horry County Clerk of Court. Applicant was indicted at the August 2016 term of the Horry County Grand Jury for attempted murder (2016-GS-26-3399). J. Eric Fox represented Applicant, and Seth A. Oskin and George H. DeBusk, of the Fifteenth Circuit Solicitor's Office, prosecuted the case.

On April 10-12, 2017, Applicant proceeded to trial before the Honorable Larry B. Hyman and a jury. The jury found Applicant guilty of the lesser-included charge of assault and battery of a high and aggravated nature (ABHAN). Judge Hyman sentenced Applicant to imprisonment for

twenty years, to be served consecutively to the five-year sentence he was already serving for first-degree assault and battery.¹

Applicant filed a timely notice of appeal and a direct appeal was perfected by Chief Appellate Defender Robert M. Dudek, who raised the following issue pursuant to Anders:²

Whether the [trial] court erred in reversing its earlier exclusion, and admitting a Facebook video, State's exhibit 5, of the drunken patrons of the Boathouse, where there was no foundation as to the completeness or accuracy of the Facebook video which included Appellant and Alexander Miniet in an altercation, and where the unduly prejudicial effect of the drunken video outweighed its probative value under Rule 403, SCRE?

By opinion decided December 5, 2018, the South Carolina Court of Appeals dismissed Applicant's appeal by unpublished opinion and affirmed Applicant's conviction. State v. Maiden, Op. No. 2018-UP-442 (S.C. Ct. App. filed December 5, 2018). The Remittitur was issued on December 31, 2018.

II. STATEMENT OF THE FACTS

On May 22, 2016, Applicant was dating Victoria Hubbard. Victoria had a son, who was five months old at the time, with the victim in this case, Alex Miniet (Miniet). R. 218, 11. 10-16. Applicant had dated Victoria before her brief relationship with Miniet, but they reconciled after she split up with Miniet. R. 218, 11. 20-24.

On the night of the incident at the Boathouse on Highway 501 in Myrtle Beach, Miniet testified that he was walking to a Porta John by the volleyball courts when he saw appellant come up to him. Miniet testified Applicant "touched me on the shoulder, I looked over and he

¹ At the time of trial, Applicant was already incarcerated in SCDC after pleading guilty to a similar charge in Marion County (2016-GS-33-0394). He is not challenging the Marion County conviction or sentence in this action.

² Anders v. California, 386 U.S. 738 (1967).

said, exact words were, 'Are we cool?' And my exact words were to him, 'I have nothing to say to you. Just leave me alone.'" R. 177, 11. 17-22. Miniet claimed he was at the Boathouse that night to watch Applicant and Victoria with his five month-old son. R. 177, 11. 23-24.

It was undisputed that Miniet and Applicant fought at one point at the Boathouse that evening, and Applicant hit Miniet with a bottle during the altercation. Miniet admitted he had threatened to kill Applicant in the past, but he claimed he only meant he would harm Applicant if Applicant hit Victoria. R. 197, 1. 2 - 198, 1. 2. After the fight inside the Boathouse, both Applicant and Miniet were escorted from the bar. Miniet testified Applicant then deliberately hit him with a car and ran over him in the parking lot. R. 198, 1. 10 - 202, 1. 20. Applicant conversely testified he thought Miniet was approaching him with a gun, so he ducked down behind the steering wheel and inadvertently accelerated. According to Applicant, he did not intend to hit or run over Miniet, and he was very frightened at the time. R. 236, 1. 9 -237, 1. 20.

The judge charged the jury that the State had to prove a specific intent to kill in order to convict Applicant of attempted murder. The jury found Applicant not guilty of attempted murder but guilty of the lesser-included offense of ABHAN. Judge Hyman sentenced Applicant to the maximum sentence of twenty years' imprisonment, based in part on Applicant's history of "vehicular assault." R. 317, 11. 7-10.

III. CURRENT APPLICATION

In his post-conviction relief application, Applicant alleges he is being held unlawfully for the following reasons:

1. Ineffective Assistance of Counsel
 - a. "Counsel was ineffective for failing to inform me of lesser-included charges in a timely manner;"

- b. "Counsel was ineffective for failing share all evidence with me prior to arraignment;"
- c. "Counsel was ineffective for failing to properly prepare [for] trial by contacting witnesses well in advance, obtaining affidavits, and issuing subpoenas as directed;"
- d. "Counsel was ineffective for confusing Defendant and Victim's names several times during trial, showing how unprepared and familiar (sic) with the case he was;"
- e. "Counsel was ineffective for possessing a DVD of "evidence" in my case for 6 months before I had to point out that the State provided a disc to someone else's case, to which Defense Counsel was oblivious."

2. "Prosecutorial Negligence"

- a. "The State was negligent by providing discovery to someone else's case. It was labeled with my name and case number. This prevented me from seeing important evidence and being able to make an informed decision while a plea was still available. When the correct disc was shared with me, the trial was then imminent."

Applicant requests relief as follows:

- "I ask that the verdict be set aside and a new trial set, or my sentence be reduced to the plea offered by the State."

Attached to and incorporated herein are the records of the Horry County Clerk of Court regarding the subject conviction, Applicant's records from the South Carolina Department of Corrections, the trial transcript, Applicant's appellate records, and the current application for relief. Respondent reserves the right to amend this Return upon receipt of relevant information.

IV. RESPONSE TO ALLEGATION OF INEFFECTIVE ASSISTANCE OF COUNSEL

Ineffective Assistance of Trial Counsel, Generally

Applicant's allegations of ineffective assistance of counsel are without merit. In a PCR action, Applicant bears the burden of proving the allegations in his application. Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where the application alleges ineffective assistance of counsel as a ground for relief, Applicant must prove "counsel's conduct so undermined the proper functioning of the adversarial process that [it] cannot be relied upon as having produced a just

result.” Strickland v. Washington, 466 U.S. 668, 686 (1984); Butler, 286 S.C. at 442, 334 S.E.2d at 814.

In evaluating allegations of ineffective assistance of counsel, the reviewing court applies the two-pronged test outlined in Strickland. First, Applicant must prove counsel’s performance was deficient. Strickland, 466 U.S. at 686; Cherry v. State, 300 S.C. 115, 117, 386 S.E.2d 624, 625 (1989). Under this prong, the court measures an attorney’s performance by its “reasonableness under prevailing professional norms.” Cherry, 300 S.C. at 117, 386 S.E.2d at 625 (quoting Strickland, 466 U.S. at 690). The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. Butler, 286 S.C. at 442, 334 S.E.2d at 814. “Counsel is strongly presumed to have rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment.” Id. (citing Strickland, 466 U.S. at 690). “When counsel focuses on some issues to the exclusion of others, there is a strong presumption that he [or she] did so for tactical reasons rather than through sheer neglect.” Yarborough v. Gentry, 540 U.S. 1, 5 (2003) (citing Strickland, 466 U.S. at 690).

After an adverse verdict at trial even the most experienced counsel may find it difficult to resist asking whether a different strategy might have been better, and, in the course of that reflection, to magnify their own responsibility for an unfavorable outcome. Strickland, however, calls for an inquiry into the objective reasonableness of counsel’s performance, not counsel’s subjective state of mind. Id. at 688; Harrington v. Richter, 562 U.S. 86 (2011). The Court, in determining deficiency, must affirmatively entertain the range of possible reasons counsel may have had for proceeding as they did. Cullen v. Pinholster, 563 U.S. 170, 196 (2011); Harrington v. Richter, 562 U.S. 86, 109-10 (2011). “[E]ven if an omission is inadvertent, relief is not automatic. The Sixth Amendment guarantees reasonable competence, not perfect advocacy judged

with the benefit of hindsight.” Yarborough 540 U.S. at 6; see also Murphy v. Davis, 901 F.3d 578, 592 (5th Cir. 2018) (“[C]ounsel’s performance need not be optimal to be reasonable.”). Applicant must overcome this presumption to receive relief. Cherry, 300 S.C. at 118, 386 S.E.2d at 625.

Second, counsel’s deficient performance must have prejudiced Applicant such that “there is a reasonable probability that, but for counsel’s unprofessional errors, the result of the proceeding would have been different.” Id. at 117-18, 386 S.E.2d at 625. “The prejudice analysis requires the court deciding the ineffectiveness claim to consider the totality of the evidence before the judge or jury.” United States v. Basham, 789 F.3d 358, 371-72 (4th Cir. 2015) (quoting Elmore v. Ozmint, 661 F.3d 783, 858 (4th Cir. 2011)). With respect to prejudice, an applicant must demonstrate “a reasonable probability that, but for counsel’s unprofessional errors, the result of the proceeding would have been different. A reasonable probability is a probability sufficient to undermine confidence in the outcome.” Strickland, 466 U.S. at 694. It is not enough “to show that the errors had some conceivable effect on the outcome of the proceeding.” Id. at 693. Counsel’s errors must be “so serious as to deprive the defendant of a fair trial, a trial whose result is reliable.” Id. at 687; Harrington, 562 U.S. at 86.

Applicant can satisfy neither requirement of the Strickland test. However, the allegations of ineffective assistance of counsel probably raise questions of fact that the record does not conclusively refute. Accordingly, Respondent respectfully requests an evidentiary hearing to fully resolve this issue. See Sharper v. State, 279 S.C. 264, 265, 305 S.E.2d 247, 248 (1983) (“Where an application for post-conviction relief alleges specific instances of ineffective assistance of counsel which are not conclusively refuted by the record before the lower court, a question of fact is raised which can only be resolved by an evidentiary hearing.”).

V. RESPONSE TO "PROSECUTORIAL NEGLIGENCE"

Applicant further alleges "prosecutorial negligence" in that the State provided "discovery to someone else's case. It was labeled with my name and case number. This prevented me from seeing important evidence and being able to make an informed decision while a plea was still available. When the correct disc was shared with me, the trial was then imminent."

Respondent interprets this as an allegation of prosecutorial misconduct. Post-conviction relief is not a substitute for an appeal. Simmons v. State, 264 S.C. 417, 423, 215 S.E.2d 883, 885 (1974). A post-conviction relief application cannot assert any issues that could have been raised at trial or on appeal. Drayton v. Evatt, 312 S.C. 4, 8, 430 S.E.2d 517, 520 (1993). Applicant could have raised this issue on appeal. The failure to do so has waived this allegation as grounds for relief. Regardless, it is applicant's burden to prove actual prosecutorial misconduct. Alabama v. Smith, 490 U.S. 794, 109 S. Ct. 2201 (1989).

Notwithstanding the procedural bar to this claim, Respondent submits that Applicant provides no evidence to suggest prosecutorial impropriety. By his own admission, the State corrected its mistake and provided Applicant with the correct documents prior to the beginning of his trial. Section 17-27-70(c) of the South Carolina Code of Laws authorizes the court to "grant a motion by either party for summary disposition of [an] application when it appears from the pleadings ... that there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law." Therefore, Respondent submits this allegation should be summarily dismissed.

VI. PROCEDURE FOR AMENDMENTS AND INVOCATION OF DISCOVERY

Applicant must specify any claims he intends to raise at the PCR evidentiary hearing. All claims should be made well in advance of the evidentiary hearing. Because Applicant has been

appointed an attorney, the attorney, and not Applicant, is the only individual authorized to file amendments to this application. Rule 11(a), SCRCP. *Pro se* filings will not be considered at the PCR hearing. State v. Devore, 416 S.C. 115, 123, 784 S.E.2d 690, 694 (Ct. App. 2016) (*Pro se* filing a nullity where person was represented by counsel); Miller v. State, 388 S.C. 347, 697 S.E.2d 527 (2010) (“Since there is no right to ‘hybrid representation’ that is partially *pro se* and partially by counsel, substantive documents, with the exception of motions to relief counsel, filed *pro se* by a person represented by counsel are not to be accepted unless submitted by counsel.”).

Respondent reserves the right to request that any amendments withheld until the last minute be stricken because of undue prejudice to Respondent, or in the alternative continue the matter to permit adequate time to investigate and address the claims. See Mangal v. State, 421 S.C. 85, 805 S.E.2d 568 (2017) (“In most PCR cases. . . we have refused to excuse the pleading and issue-preservation requirements that apply in all civil cases.”); Love v. State, 428 S.C. 231, 834 S.E.2d 196 (2019) (“When analyzing the substance of a proposed amendment and any prejudice the State might suffer, a PCR court should consider all relevant circumstances, including, but not limited to, the timing of the motion, the complexity of the new issue, the degree of surprise to the State, the need for and availability of necessary witnesses to defend against the claim, and whether the substance of the proposed amendment is readily apparent from the underlying plea or trial record.”); see also Rules 15(a)-(b), SCRCP (explaining how to amend a pleading).

Pursuant to section 17-27-150 of the South Carolina Code of Laws, Applicant may not invoke formal discovery processes to issue subpoenas or otherwise obtain discovery materials unless granted leave from the Court upon a showing of good cause. Furthermore, Respondent requests that all potential exhibits and materials used to produce potential expert witness testimony be sent to Respondent well in advance of the evidentiary hearing. Respondent reserves the right

to request a continuance and oppose witness testimony and exhibits that are withheld until the last minute resulting in undue prejudice to Respondent, pursuant to Love as discussed above.

VII. DENIAL OF ALL OTHER ALLEGATIONS

Respondent denies each allegation not expressly admitted, qualified, or explained.

VIII. CONCLUSION

WHEREFORE, Respondent respectfully requests that this Court convene an evidentiary hearing on the allegations of ineffective assistance of counsel.

Respectfully submitted,

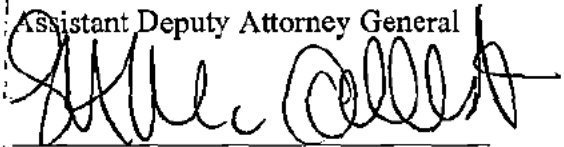
ALAN WILSON
Attorney General

W. JEFFREY YOUNG
Chief Deputy Attorney General

MEGAN HARRIGAN JAMESON
Senior Assistant Deputy Attorney General

LINDSEY A. MCCALLISTER
Assistant Deputy Attorney General

By:


ATTORNEYS FOR THE STATE
Office of the Attorney General
P.O. Box 11549
Columbia, S.C. 29211

3/2, 2020

1 STATE OF SOUTH CAROLINA **TRANSCRIPT OF RECORD**
2 COUNTY OF HORRY case No. 2019-CP-26-04661
3 **ORIGINAL - PCR**

4 -----
5 January 5, 2023

6 **BEFORE:** The Honorable Debra McCaslin

7 -----
8 JOSHUA W. MAIDEN,
9 Applicant,
10 vs.

11 THE STATE OF SOUTH CAROLINA,
12 Respondent.
13 -----

14
15 APPEARANCES:

16
17 James Falk, Esq.
18 Appearing for the Applicant.

19 Chelsey Marto, Esq.
20 Appearing for the Respondent.

21 Official Court Reporter
22 Natalie Dahl, RPR
23
24
25

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1 NOTE: Pursuant to Rule 607 (h)(1)(B), SCACR
2 "A COURT REPORTER SHALL RECEIVE THE FEE OF \$1.00
3 PER PAGE FOR FURNISHING A COPY OF A PREVIOUSLY
4 PREPARED TRANSCRIPT." All requests for a copy of
5 the enclosed transcript shall be sent to: Natalie
6 Dahl, RPR, P.O. Box 762, Conway, SC 29526
7 P-R-O-C-E-E-D-I-N-G-S

8 THE COURT: Call your case.

9 MS. MARTO: Good morning. May it please the
10 Court. We're here in the case of Joshua Maiden
11 versus State of South Carolina, 2019-CP-26-4661.
12 He is presently confined in the South Carolina
13 Department of Corrections. He was indicted
14 August 2016 for attempted murder. Eric Fox
15 represented him, and Seth Oskin prosecuted the
16 case.

17 April 10th through the 12th, 2017, proceeded
18 to trial before Judge Hyman. The jury found
19 Applicant guilty of the lesser included of ABHAN,
20 and he was sentenced to 20 years imprisonment,
21 consecutive to the five-year sentence he was
22 already serving for first degree assault and
23 battery.

24 He filed a timely notice of appeal perfected
25 by Bob Dudick, who filed an Anders brief and
26 opinion decided December 5, 2018. The Court of
27 Appeals dismissed it by unpublished opinion, and
28 the remittitur was issued December 31, 2018.

1 Application was filed July 24, 2019, and the
2 State's return made March 2, 2020.

3 With that, I'll turn it over to Mr. Falk.

4 THE COURT: Mr. Falk, did you explain what
5 can happen during a post-conviction relief hearing?

6 MR. FALK: Yes, Your Honor.

7 THE COURT: Mr. Maiden, let me go over it
8 with you quickly. When you ask for post-conviction
9 relief, only two things can happen, okay. If I
10 deny your post-conviction relief, you are going to
11 go back and serve out the rest of your sentence; do
12 you understand?

13 MR. MAIDEN: Yes, ma'am.

14 THE COURT: If I grant your post-conviction
15 relief, that means I'll vacate your conviction and
16 send the case back to the State, meaning you are
17 starting over from scratch. It doesn't mean that
18 your charges go away. In fact, whatever charges
19 you had originally -- I think they told me the jury
20 found you guilty of ABHAN and you were charged with
21 attempted murder. The attempted murder comes back
22 into play. You will face that charge all over
23 again, along with any other charges that were
24 either reduced or dismissed. Do you understand
25 that?

1 MR. MAIDEN: Yes, ma'am.

2 THE COURT: You don't get to just walk out of
3 jail.

4 MR. MAIDEN: Understood.

5 THE COURT: Knowing that, you still wish to
6 go forward?

7 MR. MAIDEN: Yes, ma'am.

8 THE COURT: Okay. Mr. Falk, you can call
9 your first witness.

10 MR. FALK: We call Joshua Maiden.

11 THE COURT: Mr. Maiden, come up and get sworn
12 by the clerk.

13 (JOSHUA MAIDEN, having been duly sworn,
14 testified as follows:)

15 THE WITNESS: Joshua Maiden, M-A-I-D-E-N.

16 **DIRECT-EXAMINATION**

17 **BY MR. FALK:**

18 **Q** Mr. Maiden, can you tell me what happened at
19 -- this case started at trial; is that correct?

20 **A** My case went through trial, yes.

21 **Q** And who was representing you?

22 **A** Mr. Fox was appointed to represent me at
23 trial.

24 **Q** What was the result?

25 **A** I was found not guilty of the attempted

1 murder charge, but I was found guilty of a lesser
2 included charge of high and aggravated assault.

3 Q Were you aware that there was a possibility
4 to be charged on a lesser included offense?

5 A It was explained on March 16th, which was
6 four days prior to my original scheduled trial;
7 however, it was continued until April 10th.

8 Q Were there any type of -- so you originally
9 thought that you were going to go to trial on a
10 murder charge?

11 A Attempted murder, yes.

12 Q Attempted murder. Can you explain the
13 general context of how the charges arose? This
14 occurred at a bar?

15 A Yeah. I was at the Boathouse here in Myrtle
16 Beach. I was involved in an altercation inside the
17 -- I was intoxicated. On the way out, I was taken
18 out of the bar by staff. They escorted me to my
19 vehicle and asked me to leave. I got in my
20 vehicle, and as I was driving away, the gentleman I
21 had the altercation with inside was being escorted
22 out, and he made a threat that he was going to put
23 a bullet between my eyes. When he saw me coming
24 out, he took off running towards my vehicle. I saw
25 something in his hand, didn't know what it was. I

1 hit the gas, ducked down, and ended up striking the
2 gentleman with my vehicle as I was going by.

3 Q Were there settlement offers made in this
4 case prior?

5 A Yeah. He received \$300,000.

6 Q I'm sorry. Were there plea settlement
7 offers?

8 A Oh, I was offered an ABHAN plea for 12 years.

9 Q And you wound up with a 20-year sentence?

10 A Correct.

11 Q When the plea was made to you -- when the
12 offer of 12 years was made, you thought that they
13 had to prove an attempted murder charge?

14 A Yeah. The whole reason I was interested in
15 taking it to trial is when the definition of
16 attempted murder was given to me, they said that
17 there had to be malice aforethought. What occurred
18 was an accident. I didn't mean to hit him with the
19 vehicle. I didn't feel that the State could meet
20 the burden of proof to show that there was malice
21 aforethought. And for -- I honestly felt they
22 overcharged me. For that reason, I wanted to have
23 a trial.

24 Q What you are telling the Court is you are not
25 aware that you could have been charged with assault

1 and battery first, assault and battery of a high
2 and aggravated nature, any of those lesser
3 included --

4 **A** Not at that time, no.

5 **Q** Had you been aware of that, would that have
6 affected whether or not you would have taken a
7 plea?

8 **A** Absolutely. I mean, fact of the matter -- I
9 never denied striking the gentleman with the
10 vehicle. I mean, I was guilty of a lesser charge,
11 you know. I didn't debate that. But, you know, I
12 didn't know that I was going to trial on not just
13 the attempted murder, but several other charges.

14 **Q** So it's your testimony you were not made
15 aware of what a lesser included offense was?

16 **A** Not at the time that my arraignment occurred
17 and I had the opportunity to accept the plea.

18 **Q** Who is Aaron Kennedy?

19 **A** The individual that I know. He was present
20 at the Boathouse the day of the incident. He was
21 inside. When the initial night happened inside, he
22 was right there. He was present to witness the
23 fight. He heard the threat, and he was also out in
24 the parking area. We were all being escorted out
25 at the same time.

1 **Q** Did you want him to testify as a witness?

2 **A** Yes. I provided Mr. Fox with Mr. Kennedy's
3 contact information. It was actually given to
4 himself by myself and by my mother. She did a lot
5 of the go-between since I was incarcerated, as far
6 as providing him with the names and any other
7 evidence that we were able to gather before the
8 trial.

9 **Q** What did you believe he would testify to?

10 **A** That he heard the threat of Mr. Minett
11 (phonetic) telling me he would shoot me. He
12 witnessed him when we were in the parking lot, you
13 know, running out in front of my vehicle. Not that
14 I wanted to run him down, but he ran in front of
15 the vehicle. I didn't know at the time that it was
16 a cell phone in his hand. I just saw there was
17 something in his hand, and it was dusk.
18 Mr. Kennedy was present for all of that.

19 He did, eventually, speak with Mr. Fox.
20 Someone from his office reached out. It was the
21 beginning of March, I believe, that they made
22 contact. Mr. Fox told me at that time that
23 Mr. Kennedy's testimony would be very beneficial
24 for my defense.

25 **Q** Mr. Fox told you that?

1 **A** Yes. He told that to the judge as well. It
2 is in the transcript.

3 **Q** How about Ms. Stevens?

4 **A** Ms. Stevens is the -- there is a woman
5 involved in the case. She is the mother of the
6 mutual woman between the gentleman and myself. It
7 is actually his ex-mother-in-law. She provided
8 text messages where he was telling her he was going
9 to kill me, that he was going to put me six feet
10 under. He is affiliated with the Hells Angles.

11 **Q** Was this before the bar incident?

12 **A** This was all before the bar incident.

13 **Q** So you knew the victim in this case before?

14 **A** Yes, I did.

15 **Q** So this wasn't just some fight that started?

16 **A** No. He and the young lady I was dating had a
17 child together. They were having issues, as far as
18 child support and custody. It was messy between
19 them. Because she and I were together, he was not
20 happy about it.

21 **Q** So you believe that Ms. Stevens could have
22 testified to some ill-will?

23 **A** Absolutely.

24 **Q** That he had prior to?

25 **A** Absolutely. Yes, sir.

1 **Q** Who is Vince Richardson?

2 **A** Vince Richardson is a member of the security
3 staff at the Boathouse. He was actually the member
4 of staff that was working the front door. So when
5 we were escorted out, he was the one walking us
6 outside to our vehicles.

7 **Q** What do you think he could have added to the
8 story?

9 **A** Well, Mr. Richardson was literally feet away
10 when everything occurred. In the testimony that he
11 -- not the testimony, but in the statement that he
12 provided to the police, he said that the victim in
13 this situation ran in front of the vehicle. So,
14 you know, basically that. That, you know, I didn't
15 go after him with the vehicle. I went following
16 the only exit out of the parking area, and that he
17 ran in front of the vehicle.

18 **Q** Did you have discussions with Mr. Fox about
19 subpoenaing Vince Richardson and Tracey Stevens?

20 **A** Mr. Richardson was -- I'm not sure what the
21 correct term would be, but it was a witness that
22 was on scene interviewed by first responders there.
23 He was actually on the State's list, but he was
24 also the only individual that -- anyone whose
25 version of events didn't fit the State's version,

1 they didn't call. They only called those whose
2 statements fit the version they wanted to show.

3 Q So Richardson wasn't available --

4 A Yeah, he was available. He still worked at
5 the Boathouse.

6 Q Was he in court?

7 A No.

8 Q But he was subpoenaed by the State?

9 A No, he was not subpoenaed by the State
10 either.

11 Q But you wanted him subpoenaed?

12 A Yes.

13 Q So did you have a conversation with Mr. Fox
14 about subpoenaing Mr. Richardson?

15 A Yes.

16 Q And did you have a conversation with Mr. Fox
17 about subpoenaing Tracey Stevens?

18 A He had Ms. Stevens' name and information.
19 The day of the trial, when the defense -- we gave
20 our list of witnesses to the State, Aaron Kennedy's
21 name was on it, as well as Ms. Stevens. But, no,
22 she was never subpoenaed.

23 Q A continuance was granted at one time; is
24 that correct?

25 A I asked -- the original trial date was

1 scheduled for March 20th. There was a
2 miscommunication, and I was supposed to be
3 transported back to J. Reuben Long on
4 March 7th so we could start preparing for trial.
5 For one reason or another, it didn't occur. I
6 wasn't transported until March 15th.

7 The very next day, Mr. Fox met with me. At
8 that point, he said, yes, he spoke with
9 Mr. Kennedy, and his statement would be beneficial.
10 He told me about -- actually explained the lesser
11 inclusions, the possibility, and that was all in the
12 short period of time between then and the 20th.

13 I believe it was March 17th that I actually
14 received a notice that we would not go to trial on
15 March 20th and that we did not have a date for
16 the new trial at that point.

17 It was -- I was later informed, I think on
18 March 31st, that trial would begin on
19 April 10th.

20 **Q** The trial commenced on April 10th?

21 **A** It did.

22 **Q** And was there a motion for a continuance made
23 at that time?

24 **A** When -- leading up to that point, for the
25 original trial date, my witnesses had made

1 themselves available to come and give their
2 testimony.

3 Mr. Kennedy, at that time, lived out of
4 state. He was in Roanoke, Virginia. So he would
5 have to take off of work, arrange for child care
6 and get transportation down to testify. As I said,
7 three days before the trial, it was rescheduled.
8 He had already taken off from work and everything
9 else. So he basically missed a day out of work.

10 When I received my new trial date on the
11 31st, contact was not made with Mr. Kennedy until
12 April 3rd. At that point, Mr. Kennedy said that
13 he was not going -- he didn't believe he would be
14 able to make it. He had to have two weeks off --
15 or in advance to request from work. He would have
16 to get child care again, and he said that more than
17 likely he could not make it.

18 At that point, I immediately asked Mr. Fox to
19 request a continuance. I did this by a telephone
20 call at first. Mr. Fox just told me, no, he
21 wouldn't do that because it was already continued
22 once. So I asked him, Could you at least send a
23 subpoena so that way Mr. Kennedy has something he
24 can show his boss, so that way -- even though he
25 doesn't have two weeks, he could get off to come?

1 Mr. Fox said he wouldn't issue the subpoena because
2 Mr. Kennedy lived out of state and he couldn't
3 force an out-of-state subpoena.

4 So I asked him if he would obtain an
5 affidavit. Mr. Fox told me that we could not use
6 an affidavit in court because the State couldn't
7 cross examine a piece of paper.

8 So, at that point, I felt like everything I
9 was asking for was being shot down. When I got off
10 of the telephone, I immediately put all of those
11 requests on the paper and had it faxed over to his
12 office. So I have a physical copy of that.

13 Q But, earlier, you testified that Mr. Fox
14 testified that -- saying that Mr. Kennedy would be
15 a valuable witness?

16 A Yeah. Yeah. It's in the transcript.

17 Q So there was a continuance at the beginning?

18 A April 10th, the day trial was set to begin,
19 Mr. Fox ultimately asked for a continuance on the
20 day of trial when everyone was ready to go instead
21 of asking for it in advance. I just felt like it
22 was a time that was the most inconvenient to be
23 asking for the continuance. Everyone was there and
24 ready to go.

25 Q Was Tracy Stevens there?

1 **A** No. There was no witnesses on my behalf
2 there at that time.

3 **Q** Okay. Now, did Mr. Fox explain to you kind
4 of the difference in some of these lesser included
5 offenses and it has to do with the amount of injury
6 sustained?

7 **A** Correct. The way it was explained to me is
8 that in a situation where a lesser included charge
9 is a possibility, the description of the injuries
10 would determine which of the lesser included
11 charges would actually be -- should be applied.

12 **Q** And was there any medical proof put on at the
13 trial regarding the extent of his injuries?

14 **A** During the trial, there was no medical expert
15 that testified, and there was no medical
16 documentation at all ever put before the Court.

17 The only conversation regarding injuries came
18 from Mr. Minett where he gave a listing of his
19 injuries, and then Detective Hardwick also gave
20 testimony to his injuries. While the majority of
21 them did match, not all of them. For example, he
22 said he had a broken collarbone. He said he had a
23 broken arm. The number of ribs was different.
24 There was no way they both could be correct.

25 **Q** Was there -- did you have any evidence --

1 personal evidence regarding the extent of his
2 injuries?

3 **A** Part of Mr. Minett's testimony is that the
4 accident occurred on May 23rd of 2016. At trial,
5 Mr. Minett testified that with all of the injuries
6 that he sustained, he was in a back brace for four
7 months and an arm sling a little longer than that.

8 Through Tracy Stevens, Mr. Minett's
9 ex-mother-in-law, she provided a photograph that he
10 posted to social media on June 22nd. In that
11 photograph, Mr. Minett is on the beach having
12 family day. You can clearly see in the picture
13 that there is no back brace. There is no arm
14 sling.

15 I've personally had a broken collarbone.
16 When you have a broken collarbone, you are not
17 lifting your arms up past your shoulders, and in
18 the photograph, he's leaned up on the back of a
19 cooler with his arms up around his mother and
20 father in the picture.

21 **Q** Do you believe that -- did you say Mr. Fox
22 had a copy of the photo before the trial?

23 **A** Yes, he did. It was given by my mother, who
24 is in the courtroom today, and he also received a
25 copy of it from myself. I had a copy that I took.

1 with me to court that day.

2 Q Did you have Mr. Fox -- if he could get
3 Mr. Minett's medical records?

4 A I didn't ask him to. I guess I was wrong to
5 do so. I just kind of assumed that either the
6 State would put them forth or Mr. Fox would have
7 requested it. I mean, it is kind of an important
8 piece in the case.

9 Q Was there a time that Mr. Fox reviewed all of
10 the discovery?

11 A Mr. Fox did receive discovery. While I was
12 waiting to meet with Mr. Fox, I received my copy of
13 it. However, there was a DVD that was included
14 that I was unable to have because I was at J.
15 Reuben Long, so that DVD had to remain with
16 Mr. Fox. It was listed with my name. It said it
17 had victim's injuries, witness statements, some
18 other stuff on it.

19 I expressed to Mr. Fox at that point that I
20 wanted to look at that DVD and view it. He said it
21 was not a problem, he would have someone bring it
22 up so I could see it. We had met in July. At the
23 end of September, I believe it was, a
24 representative for Mr. Fox' office came up with the
25 DVD for me to review it. He put it into his

1 laptop, set it all up, pressed play. I watched it
2 for about 10, 15 minutes before I pointed out, You
3 do realize this is not me, correct? He asked me
4 what I meant, and I said this is not me.

5 At that point, he turned the laptop to him.
6 He fast forwarded through it a couple different
7 spots, asked me to look at it again. Once again, I
8 reiterated it was not me.

9 At that point, he ejected the DVD out of his
10 laptop, looked at it. It did have my name on it,
11 had the other information. So at that point, he
12 packed up his belongings and said he would have to
13 go back to the office to figure what was going on.

14 Q So was it that -- the Public Defender's
15 Office mislabeled it, or mislabeled from the State?

16 A I personally can't say.

17 Q I mean, you said they were going to look at
18 it to find out?

19 A I was told they would have to look into it to
20 find out.

21 Q Did you get information?

22 A Yeah. I finally got to see that DVD three
23 days before trial.

24 Q What was on the DVD?

25 A There were the interviews from the witnesses,

1 there were 911 calls, there was -- basically
2 everyone's interview, right. And, again, the 911
3 calls and other pieces of information. All of
4 which I -- up to that point, I had never heard,
5 never had an opportunity to hear. I believe I had
6 three or four different requests asking to see it
7 even after it was -- that we discovered that we had
8 been in possession with the wrong DVD the whole
9 time.

10 I made more requests to Mr. Fox on paper
11 asking to view it, if he had gotten it, figuring
12 out if they provided the correct DVD. When we met
13 in -- when we met at arraignment, Mr. Fox told me
14 that he was in possession of the DVD at that point;
15 however, I was not able to actually view that until
16 March 17th.

17 Q So was there stuff on this DVD that you wish
18 you had seen prior to your arraignment?

19 A Absolutely.

20 Q What was that?

21 A Well, I mean, not just on that, but my
22 arraignment was held on February 23rd. In the
23 transcript from my arraignment, the Solicitor told
24 the judge -- he voluntarily offered the information
25 that he turned over the last bit of supplemental

1 discovery on February 3rd of 2017. So he was
2 saying he turned it over 20 days prior.

3 On February 28th, Mr. Fox filed a motion
4 for supplemental discovery, and as a result of that
5 motion, on March 7th, I received the witnesses I
6 never heard of, the 911 tapes that I wasn't aware
7 existed at that time. There were two separate
8 ones, as well as other evidence that, you know --
9 and it was all after my arraignment on
10 February 23rd. That was on March 7th.

11 Q Was any evidence -- my question is: Had you
12 had it at your arraignment, what about that
13 evidence would have made you inclined to have taken
14 the offer?

15 A Well, I mean, yeah. Again, the fact of the
16 matter was, after seeing the actual interviews and
17 the things that people said versus things that were
18 typed out were not identical, you know. It was
19 very similar, but it sounded bad. To be rolling
20 the dice on possibly getting 25 years, I mean, you
21 know, if I had that evidence, you know, ahead of
22 time, I would have taken the plea.

23 Q Did the statements that you just testified
24 to, those statements that you could see, audio
25 statements or video statements, did those witnesses

1 testify at the trial?

2 **A** Yeah, some of them testified at trial. Not
3 all of them. Again, the ones that testified that
4 he ran in front of my vehicle were never called to
5 testify.

6 **Q** But you said some of the statements made it
7 sound bad?

8 **A** Correct.

9 **Q** Those people testified?

10 **A** They testified, yes.

11 **Q** What are some other issues that you had to
12 consider with Mr. Fox? I guess we addressed the
13 point you wanted to have a different defense where
14 witnesses were going to be called?

15 **A** Correct.

16 **Q** And you wanted witnesses to be called that
17 would testify to some prior ill-will?

18 **A** Ill-will, as well as the threat that was
19 placed to me just prior. The State used a video
20 from the fight that incurred indoors that led us to
21 being ejected from the bar. But the way the video
22 started, you could hear in the background they're
23 yelling, Fight. Fight. Fight. A camera turns and
24 then picks up what was occurring inside.

25 They did not pick up the parts where he

1 actually shoved me and made the threat that he was
2 going to put a bullet between my eyes. You know,
3 it would have been very beneficial, as Mr. Fox
4 said -- he believed that Mr. Kennedy was an
5 important witness for the defense. So, you know, I
6 felt that it was pretty important, because I would
7 have been able to show the credibility to the
8 threat that ultimately led up to everything.

9 Q And you wanted Mr. Richardson to testify?

10 A Yeah. Yeah. He's been with the Boathouse
11 for a long time. He's a very credible individual.
12 For him to see exactly what occurred, to have been
13 -- he was probably, if not the closest, he was the
14 second closest person to the entire incident.

15 You know, for him to have said that, you
16 know, Mr. Minett ran in front of the vehicle, you
17 know, in my opinion, it goes to show that had he
18 not ran in front of the vehicle, he wouldn't have
19 been struck with it.

20 Q During the course of the trial, did Mr. Fox
21 cross examine Mr. Minett?

22 A He did.

23 Q Did he challenge him on the extent of his
24 medical injuries?

25 A No. He didn't ask him -- as far as I can

1 recall, he didn't ask him anything about his
2 injuries.

3 Q So he never asked him about whether or not he
4 was able to go to the beach with his family?

5 A No. The photograph that was provided by my
6 mother from Ms. Stevens was never introduced to
7 dispute his claims of being in a back brace, not
8 being able to move, having to go to physical
9 therapy to, you know, be able to do the most basic
10 of tasks. I mean, it was 30 days later, and he was
11 on the beach having family day.

12 Q What other concerns did you have with
13 Mr. Fox' representation?

14 A Well, when I was made aware and actually
15 explained -- he explained the possibility of the
16 lesser included charges. He said that we would be
17 able to ask for an "all or nothing," you know. He
18 said that he believed that the State wanted all or
19 nothing. I said good, because that is what I
20 wanted.

21 When we actually had the trial, on the third
22 day, the judge said that he would meet with the
23 Solicitor and Mr. Fox in his chambers. Mr. Fox
24 came out and sat next to me and said, The judge
25 decided to include some additional charges for the

1 jury.

2 Prior to going back into chambers, the judge
3 even said that he -- they would discuss it and they
4 would come back out and put any objections on the
5 record, if there were any. They came back out.
6 The judge included ABHAN and assault second for the
7 jury to consider. Mr. Fox didn't object to it,
8 which I didn't understand.

9 You know, as I said, we originally said we
10 would ask for all or nothing. He never put an
11 objection on the record for it. And, you know,
12 once the judge did decide to include the lesser
13 included possibilities, he included ABHAN and
14 assault second, but assault one was never put in,
15 which was also a lesser charge of attempted murder
16 under 16-3-29. So he kind of just didn't pick all
17 of them, just picked two and said, Here, you can
18 consider these two, which, again, I don't
19 understand. If you are going to include, you know,
20 one lesser, you might as well include them all.

21 Q So he included second, but not first?

22 A Correct.

23 Q What was your understanding of the penalties
24 for second?

25 A Second, I believe, was a maximum of three

1 years, and then you have ABHAN, and that was three
2 years non-violent, and then you had ABHAN, 20 years
3 violent, and assault one would have been a
4 possibility of ten years. I'm not sure if it is
5 violent or non-violent.

6 Q But not 85 percent?

7 A Then it is non-violent.

8 Q Did you have some concern during the trial
9 about Mr. Fox confusing people's names?

10 A Yeah. It occurred three, four different
11 times, called me by the wrong name, you know. I
12 understand mistakes happen, and he corrected a
13 couple of times, and a couple of times he didn't.
14 He may have been caught up in the moment or, you
15 know -- I hate to say it, but not entirely
16 prepared. I mean, the fact of the matter is he
17 still got my name wrong a couple of times.

18 Q Did you put up a defense?

19 A The only defense that was put up was me.

20 Q So you testified?

21 A I did.

22 Q Was your strategy -- did you and Mr. Fox talk
23 about you testifying?

24 A We did.

25 Q So was it always your strategy that you were

1 going to testify?

2 A Yes.

3 Q So there was no question about that?

4 A Correct.

5 Q So you were always going to put up a defense?

6 A Correct. We were always going to have me
7 testify.

8 Q Did you understand the significance of a
9 defendant calling witnesses on his behalf or
10 putting up a defense as far as closing arguments
11 go? Was that ever explained to you?

12 A I don't know what you mean. It may have
13 been. I don't want to say yes or no.

14 Q So you had talked about a trial strategy of
15 "all or nothing"? When was that discussed?

16 A When it was explained to me, I believe that
17 was March 17th. As soon as it was explained to
18 me, like exactly what it is and the details, I was
19 so concerned I actually asked him at that point,
20 you know, Hey, can you see if the State would be
21 willing to do the plea? I asked him to see if they
22 would do ten years.

23 Q You had not gone -- you did not have in your
24 mind this "all or nothing" strategy at the time of
25 your arraignment; is that correct?

1 **A** At the time of the arraignment, no.

2 **Q** At the time of the arraignment, you thought
3 you were being charged with --

4 **A** I thought I had attempted murder that I was
5 going to have to disprove, the malice aforethought.

6 **Q** Are there other concerns about Mr. Fox you
7 want to address?

8 **A** Mr. Fox spoke well on my behalf. He spoke
9 well during the trial, you know. I appreciate the
10 work that he did put into it, I just feel that
11 there were several areas that were lacking, such as
12 not issuing a single subpoena. I mean, when he
13 asked for the continuance, the very first thing the
14 judge asked was, Are your witnesses under subpoena?
15 He said, No, Your Honor. And the judge said, Do we
16 at least have affidavits? And, again, he said, No,
17 Your Honor. And then, ultimately, the judge said,
18 No, I'm not going to grant the continuance, and the
19 trial began.

20 **Q** When you woke up that morning, you thought
21 you were going to trial on that case, or just
22 another hearing?

23 **A** No. I was going to trial.

24 MR. FALK: Nothing further.

25 THE COURT: Okay.

CROSS EXAMINATION

BY MS. MARTO:

Q Good morning, sir.

A Good morning.

Q So when did you find out that you were going to -- the jury was going to be charged on a lesser included?

A Third day of trial.

Q Was that after the charge conference?

A Yes.

Q And the charge conference was held in chambers?

A Yes, ma'am.

Q Were you present for that?

A No, I was not.

Q Now, Mr. Vince Richardson, was he initially going to be a State's witness?

A I believe he was. He was interviewed by the police officers that responded to the scene. His statement was taken and provided in my discovery as evidence by the State.

Q Do you recall whether or not the State was going to enter that statement in?

A No, I do not.

Q You thought that he would be a favorable

1 witness to you?

2 A Yes, ma'am.

3 Q Again, was he one of the witnesses that you
4 thought would testify concerning the victim running
5 out in front of the car?

6 A Yes, ma'am, that he ran up to the front of
7 the vehicle as I was leaving. I can't remember
8 what was said exactly, but I know he said that the
9 victim ran at my vehicle.

10 Q You don't have a copy of the transcript
11 handy?

12 A No, ma'am, sorry.

13 MS. MARTO: Any objection to me providing
14 one?

15 MR. FALK: Not at all.

16 Q (MS. MARTO:) If you could, flip to Page 121.

17 A Yes, ma'am.

18 Q If you could, start with Line 4. Read it
19 quietly to yourself up through Line 23.

20 A Okay.

21 Q Would you agree that the State tried to enter
22 Mr. Richardson's statement?

23 A I do.

24 Q And Mr. Fox objected?

25 A Yes, ma'am.

1 **Q** Because he was not present, correct?

2 **A** I believe the judge said that he was not
3 going to allow it because he wasn't present.

4 **Q** And, again, Mr. Fox did ask for a continuance
5 based upon Mr. Stevens --

6 **A** Mr. Kennedy.

7 **Q** Mr. Kennedy.

8 Did you think you were able to go to trial
9 that date absent -- with the exception of
10 Mr. Kennedy being present?

11 **A** With the exception of any -- I had faith in
12 Mr. Fox that he issued subpoenas and obtained
13 medical documentation and reviewed it, you know.
14 I'm no medical expert or law expert, you know.
15 Mr. Fox was going to represent me. I just assumed
16 that he had the experience to know to have
17 subpoenaed those items.

18 **Q** How do you think the medical records would
19 have been favorable to you?

20 **A** I mean, they may or may not have, but --
21 again, as I mentioned earlier, there was testimony
22 given by the victim and testimony by Detective
23 Hardwick. Yes, a lot of the injuries matched up,
24 but not all matched exactly. One said broken
25 collarbone, one said broken arm. Close, but not

1 the same. Any of that confusion could have been
2 cleared up had medical documentation been provided.

3 And the other big part is, you know, having
4 the photograph of Mr. Minett on the beach 30 days
5 after the accident after he's claiming to have
6 these injuries, but no documentation -- I don't
7 doubt that he looked bad. He had road rash. I
8 never denied that, right. But it was in his
9 benefit to embellish the severity of his injuries
10 because he had a pending litigation against myself
11 and the Boathouse.

12 Q Do you think it was in the detective's best
13 interest to embellish, as you said, the injuries
14 that were sustained?

15 A No. But I was involved at a mugging at a gas
16 station in October when I was a victim. At that
17 time I was beaten with a crowbar severely. At that
18 time a detective came in and spoke to me. All they
19 ever did was ask me what my injuries were. They
20 never asked me to sign medical documents for them
21 to review it or anything else.

22 So, you know, it was the same police
23 department. So, you know, in my mind, I wonder
24 that if it held true for me, maybe it was a common
25 practice. She very well could have asked him, hey,

1 what are your injuries, and went off of that,
2 versus actually having documentation provided by
3 the hospital saying his injuries are this, this,
4 and this.

5 Q In both tellings of the injuries, both people
6 said they were pretty significant?

7 A Yes, ma'am.

8 Q And there were quite a few injuries?

9 A Yes, ma'am.

10 Q So you saw all discovery in this case prior
11 to trial, correct?

12 A Yes, I did. But there was a good bit of it
13 that I did not see until after the arraignment
14 where the plea offer was taken off of the table. I
15 know I was told that I had until the end of the day
16 to make a decision on whether or not I wanted to
17 accept the plea. The Solicitor, at that point,
18 said, No, Your Honor, he has until he walks out of
19 this courtroom. The evidence that was supplied to
20 me up to that point, I said I didn't want to accept
21 the plea.

22 But, then again, I received on
23 March 7th supplemental discovery that was told to
24 the Court that I already had, which through date
25 stamps at the prison I can show you that I never

1 had it.

2 So, I guess, to answer the question, yes, I
3 had it prior to trial; but, no, I didn't have it
4 prior to my arraignment where I would have had the
5 opportunity to have accepted the plea, you know,
6 based off of what I saw.

7 Once I got to see everything, I felt it was
8 in my best interest to settle with the plea. I
9 asked Mr. Fox if he could speak to the Solicitor,
10 and he said, No, trial was imminent. There was no
11 plea offer available.

12 Q Did you have an interest in pleading straight
13 up without any negotiation or recommendation from
14 the State?

15 A I'm not sure I understand.

16 Q Were you interested in pleading even if there
17 wasn't a deal on the table?

18 A Originally, no. Because my original charge
19 was attempted murder. I knew there was not malice
20 aforethought, so I wasn't, in my heart, concerned
21 with, you know, accepting a plea on that. But once
22 I was made aware of the lesser included
23 possibility, on top of receiving all of this
24 additional discovery after my arraignment, that is
25 why at that point I said, you know, I wanted to see

1 if they'd let me take the plea. Again, I was told
2 there was no plea offer available. Trial was
3 imminent.

4 Q So you stated that you wanted a plea because
5 you knew about the lesser includeds; is that right?

6 A When it was explained to me -- I believe it
7 was March 17th or 16th, one of the two, when it
8 was explained that this is what it is, this is how
9 it happened. They don't always happen, and they
10 might do it, might not do it. Learning that that
11 was a possibility, I was very concerned. And then
12 -- actually, it was March 16th, because the
13 following day, March 17th, the representative
14 from Mr. Fox' office came from the jail with the
15 correct DVD, and I actually was able to view it.

16 As soon as I saw the DVD, on top of what I
17 learned the previous day, when I went back to my
18 unit, I called Mr. Fox and I told him I was
19 interested in taking a plea if he would contact the
20 Solicitor. At that point, he said that no plea
21 offer was available; trial was imminent.

22 Q So, earlier, you testified you didn't know
23 you could be convicted under a lesser included
24 until the day of trial?

25 A No. I think you misunderstood. What I said

1 was I was made aware they would be doing it until
2 after the charge conference. I was -- it was
3 explained to me again on March 16th, you know, in
4 detail where he said this is what it is, this is
5 your charge, these are the lesser charges, it is a
6 possibility. That is when it was explained. But
7 being made aware that they were going to do lesser
8 included charges was not until the third day of
9 trial.

10 Q Have you asked Mr. Fox about entering the
11 picture of the beach?

12 A I mean, I provided it to him. I just kind of
13 assumed that it would be -- especially after
14 Mr. Minett gave testimony that he was in a back
15 brace for four months and in an arm sling a little
16 longer, and the photograph is date stamped for 30
17 days after the accident, and he's on the beach with
18 no back brace, no arm sling, exhibiting movements
19 that would not be possible with the injuries that
20 he claimed that he had.

21 Q You also testified at trial that the victim
22 threatened you?

23 A Yes, ma'am.

24 Q Mr. Fox pretty heavily cross examined the
25 victim in this case on that issue?

1 **A** Yes, ma'am.

2 **Q** Did Mr. Fox tell you whether he objected to
3 the lesser charges being charged to the jury?

4 **A** He didn't tell me if he objected to it in
5 chambers, but I know when we came back -- or when
6 they came back from chambers into the courtroom, he
7 did not object on the record. And if you look in
8 the transcript, the judge even said before the
9 charge conference that they would go back, discuss
10 it, and they could put any objections on the
11 record.

12 So he may have objected in the chambers, but
13 he didn't do it in the record.

14 **Q** You said that your trial strategy was "all or
15 nothing" approach; is that correct?

16 **A** That was what we were going -- what I was
17 told we would ask for. And, again, he even said
18 that that is what the State was looking at, all or
19 nothing. I felt that was in my best interest.

20 **Q** That is why you objected to the plea
21 agreement?

22 **A** I rejected it, yeah. I mean, that, and the
23 combination of not feeling the State could meet the
24 burden of proof of malice aforethought. With the
25 evidence I provided up to that point, you know, I

1 felt that at that point in time that would have
2 been my -- in my best interest. You know, once I
3 learned of the other possibilities and received the
4 correct DVD, you know, after the wrong one was
5 supplied to me, you know....

6 Q Again, you got the correct DVD about a month
7 before trial?

8 A I'm not sure when they received it. It
9 wasn't shared with me until March 17th.

10 Q And you were charged previous to that?

11 A That was what the charge was -- it was not a
12 situation where someone was run over. A gentleman
13 stood in front of the vehicle, was refusing to
14 move. All I did was put it in drive and roll
15 forward, all right. It bumped his knee. He had a
16 telephone in his hand. He slammed it down on my
17 hood. Technically, he was bumped with a vehicle.
18 He wasn't ran over with a vehicle or anything like
19 that. I understand it can look bad, but it's two
20 different things.

21 Q Were you accused of doing that once, or were
22 there other instances prior to this trial?

23 A I had a big blowup in Delaware when I was 20,
24 21 years old. It was several people versus me. In
25 order to get out of there, I put the car in drive,

1 hit the vehicle in front of me, put it in reverse,
2 hit the vehicle behind me. I never hit anybody or
3 anything like that. There was vehicle damage, but
4 they were trying to block me in so I couldn't get
5 away.

6 Q In this case, you were thrown out of the bar?

7 A Yes, ma'am.

8 Q Because you were both fighting?

9 A Yes, ma'am.

10 Q And you hit him in the face with a beer
11 bottle?

12 A Yes, ma'am.

13 Q And the bar was pretty crowded that night?

14 A Yes, ma'am.

15 Q There was testimony that you hit the victim
16 twice, correct?

17 A I can't recall. I struck the victim one time
18 with a bottle. He struck me prior to that. That
19 is why he was grabbed and thrown into the position
20 when I hit him, but there -- that was the first
21 time I made contact with him.

22 Q Yeah, but when you hit him with your vehicle,
23 you backed up and hit him again?

24 A I did not back up and hit him again, no.
25 When it all occurred, my vehicle is moving forward.

1 I struck him with a vehicle. He ultimately went
2 forward -- he went forward, and the vehicle
3 continued over the top of him. It wasn't like I
4 struck him, stopped, reversed, struck him again,
5 then left. It was all one motion. Even the victim
6 never said that he was struck twice.

7 Q Turn to Page 91. Start with Line 2. It
8 looks like Randy Melco (phonetic) testified that
9 you hit him with the vehicle twice?

10 A That was his testimony. Mr. Melco was not
11 right there, if you read his testimony. The staff
12 at the Boathouse were right there when it occurred.
13 None of them said that that was what happened. The
14 victim never said that is what happened. The only
15 individual that did was Randy Melco, who was a
16 patron at the bar also drinking, that gave his
17 testimony from the other side of the parking lot.
18 I mean, nice guy, but not exactly credible. He
19 didn't even give his statement to first responders.
20 He didn't stick around. He gave his statement
21 weeks later after he saw an ad in the newspaper for
22 possible witnesses.

23 Q So it is your testimony that none of the
24 employees at the Boathouse said you hit him twice?

25 A I don't believe so. I mean, the fact of the

1 matter is he was struck with the vehicle. I
2 continued forward, right. It was all the same
3 motion. Front tire, back tire, both went over, all
4 right. As far as actually striking him twice, that
5 did not occur.

6 Q So, to clarify, you ran him over after he had
7 fallen to the ground, correct?

8 A I don't want it to be misunderstood. The
9 vehicle was moving forward. As the vehicle moved
10 forward, he was in front. When he was struck with
11 the vehicle, it propelled him forward. The vehicle
12 continued over the top of him. If that is what you
13 mean by him being struck twice, then I guess,
14 technically, he was struck twice, right. But it
15 was all the same motion. This all happened in
16 seconds. This was not a prolonged event. It was
17 nothing that happened (indicates) that quick. I
18 mean, that quick and it was over.

19 I felt the contact with the vehicle, and as
20 quickly as I felt the contact, I felt the bloop,
21 bloop, and I continued on.

22 Q If you knew you hit a person and ran him
23 over, why didn't stop?

24 A I was intoxicated. I was not using the best
25 of judgment. I knew I shouldn't be behind the

1 wheel. Hindsight is always 20/20. I should have
2 stayed, but I panicked and, you know, I left. I
3 went to my mother's neighborhood. The police
4 officers came. I didn't want to embarrass her in
5 front of the neighbors with them taking me out, so
6 I walked down the street. Officers were standing
7 there. I walked up, you know, hands up, here you
8 go, here I am, and they took me into custody.

9 MS. MARTO: Nothing further.

10 THE COURT: Redirect?

11 MR. FALK: I should have addressed his other
12 claim, Your Honor. If I could have prosecutorial
13 negligence, was the other claim, if I could ask him
14 questions on that as well?

15 THE COURT: Sure.

16 **REDIRECT EXAMINATION**

17 **BY MR. FALK:**

18 **Q** Let me go back to your testimony on the day
19 of the arraignment. I believe you testified that
20 on the day of the arraignment you knew that you
21 were charged with attempted murder?

22 **A** Yes, sir.

23 **Q** And you did not know that you could also be
24 convicted of a lesser included offense on the day
25 of the arraignment?

1 **A** Correct.

2 **Q** Because Ms. Marto asked you about the
3 all-or-nothing strategy. You really didn't have an
4 all-or-nothing strategy on the day of the
5 arraignment?

6 **A** Not on the day of the arraignment, no.

7 **Q** Because there was no "nothing," right?

8 **A** As far as I knew, it was just attempted
9 murder. Mr. Fox -- we spoke one time, and that was
10 in July. In between July and my arraignment, we
11 never spoke. I wrote five letters, never received
12 a single response to any letter I wrote, to any of
13 the faxes I sent from J. Reuben Long to his office.
14 I received no responses.

15 **Q** So as of the day of the arraignment, as far
16 as discovery, you obviously hadn't seen the
17 mislabeled DVD?

18 **A** Correct.

19 **Q** But I believe you testified when you were
20 talking about stamps, there was other discovery
21 that you received after the arraignment?

22 **A** Correct. Witnesses. Randy Melco, for one.
23 The one the young lady just brought up, I had never
24 heard of him, never reviewed a statement from him.
25 The 911 tapes, I never heard them or had

1 transcripts, as well as the incident she was asking
2 me about where I put my vehicle in drive and struck
3 the vehicle. They sent me a copy of that report
4 from Delaware indicating that they planned on using
5 that as well. All of that was a concern.

6 Q So as far as the day of the arraignment --

7 MR. FALK: May I have a moment, Your Honor?

8 THE COURT: You may.

9 (A brief pause in the proceedings while
10 Mr. Falk and Ms. Marto confer.)

11 MR. FALK: I have the arraignment transcript.
12 Was that provided to you all?

13 THE COURT: No.

14 Q (MR. FALK) On the day of the arraignment,
15 you were advised that the offer was going to expire
16 that day; is that correct?

17 A That is correct, yes.

18 Q On the day of the arraignment, the State --
19 or Mr. Oskin said he sent the last bit of
20 supplemental discovery on February 3rd?

21 A Correct.

22 Q That was February 3rd, before the
23 arraignment?

24 A Yes, 20 days prior.

25 Q And you had received all of the discovery?

1 **A** No, sir.

2 **Q** Mr. Oskin was asked, "And you sent him all of
3 the discovery?"

4 And Mr. Oskin replied, "Yes, sir, including
5 witnesses"?

6 **A** Correct.

7 **Q** But your testimony is that there was
8 witnesses you didn't know about on the day of the
9 arraignment?

10 **A** Correct. Yeah. They were on the motion that
11 was filed by Mr. Fox on February 28th. As a
12 result of that -- I believe I sent you the copy of
13 that motion. As a result of that, there were --
14 Randy Melco was a witness, and it had other things
15 listed as evidence that was being included -- I'm
16 not sure of the term, but as a result of the
17 motion.

18 **Q** So is the fact that there is -- that
19 Mr. Oskin testified to the Court that he provided
20 all of the discovery, including the witnesses, is
21 that really the basis for your -- the way you
22 phrased "prosecutorial negligence"?

23 **A** Part of it. The other part was the DVD. I
24 mean, that was all information provided from the
25 State, you know. I don't want to sound like a

1 jerk, but it was their responsibility to provide
2 the DVD.

3 Q As far as -- but we don't know whether or not
4 the prosecution provided the DVD in time, and there
5 was a mislabeling at the PD's office or --

6 A Correct. I wasn't aware that was even a
7 possibility. If it is, I apologize to Mr. Oskin
8 for, you know, assuming it was on their behalf.
9 Fact of the matter is, I was provided the wrong
10 DVD.

11 Q So even if the DVD is not an issue, there is
12 clearly evidence that was provided after the
13 arraignment that was used at trial?

14 A Correct.

15 Q And you -- is your testimony that you wish
16 you would have known about this before the
17 arraignment?

18 A Absolutely. The judge even asked me if I
19 reviewed all of the evidence against me, thinking
20 that that was the evidence against me, I told him,
21 yes, I had.

22 Then I received more evidence against me, new
23 witnesses, and that is actually specifically what
24 -- if I may, to continue with what you started, "I
25 sent the last bit of supplemental discovery on

1 February 3rd. I would like to add it to the
2 roster for the March term, but I'll certainly talk
3 to Mr. Fox about any other cases."

4 At that point, the judge asked him, So you
5 sent him all of the discovery?"

6 Mr. Oskin said, "Yes, sir, including
7 witnesses."

8 The Court asked if that would possibly be
9 used at trial, and Mr. Oskin said, Yes, sir.

10 The judge asked him, Do you want to swear to
11 that?

12 At that point, Mr. Fox spoke up and said,
13 Judge, the only issue is that Mr. Maiden has been
14 incarcerated at SCDC, and I haven't been able to
15 review that with him.

16 So, you know, I'm not quite sure how to take
17 all of that. You know, I mean, he said that it was
18 all turned over on February 3rd, but I have the
19 date stamp showing it wasn't even filed until
20 February 28th.

21 Then Mr. Fox is saying that he has evidence
22 that he hasn't been able to share with me. So, I
23 mean, any way you look at it, I did not have all of
24 the evidence against me to make that informed
25 decision.

1 **Q** One way or the other, whether he did not have
2 -- you did not see the video, the mislabeled video,
3 you did not see it before the arraignment?

4 **A** Correct.

5 MR. FALK: No further questions.

6 THE COURT: What day was the arraignment?
7 You call it an arraignment, and I call it something
8 else.

9 THE WITNESS: February 23rd, ma'am.

10 MR. FALK: Before Judge Hyman.

11 Nothing further.

12 THE COURT: Anything else?

13 MS. MARTO: No questions, Your Honor.

14 THE COURT: Can I let Mr. Maiden step down?

15 MS. MARTO: Yes, Your Honor.

16 MR. FALK: We rest our case.

17 THE COURT: State.

18 MS. MARTO: We call Eric Fox to the stand.

19 (ERIC FOX, having been duly sworn, testified
20 as follows:)

21 **DIRECT EXAMINATION**

22 **BY MS. MARTO:**

23 **Q** You represented Mr. Maiden in these criminal
24 proceedings?

25 **A** I did. I was appointed in June of 2016.

1 **Q** Was that relatively early on in the case; do
2 you remember?

3 **A** I don't recall exactly when he was arrested,
4 but, yes.

5 **Q** Do you recall how many -- roughly, how many
6 times you met with him?

7 **A** Total? Probably four or five all total, and
8 that would include times when we met at the
9 courthouse during arraignment and times prior to
10 trial.

11 **Q** In broad strokes, what did you roughly
12 discuss during those?

13 **A** Sorry?

14 **Q** In broad strokes, what all did you discuss in
15 those meetings?

16 **A** Well, we had -- he had been -- I first met
17 him in August of 2016. I usually wait,
18 particularly in more serious cases, until we have
19 some, at least, basic discovery. Discovery is an
20 ongoing obligation from the State and not unusual
21 to get things all along. But, generally speaking,
22 up front we'll get the police reports and
23 framework, at the very least, and sometimes that is
24 it. That was provided to Mr. Maiden before I went
25 out and met with him in August.

1 At that meeting in August, it was a lengthy
2 meeting. I don't know if we went page by page. We
3 did not talk about the video and mislabeled disk in
4 a minute, but we had a very extensive conversation,
5 because at that point, we knew the basics. We knew
6 what he was accused of, generally who the witnesses
7 were, and what they said. We knew the extent of
8 the injuries alleged. And Mr. Maiden, as you could
9 tell, is a very good historian. He has a very good
10 memory and very specific, and he was able to go
11 really point by point.

12 He was very clear from day one that he did
13 not intend to plead. I doubt, at that time, if we
14 would have talked about lesser included offenses,
15 that would not have been the time to do it. Then,
16 I believe, one more time he went to SCDC, so there
17 was communication only through mail, and then when
18 he was brought back.

19 Q Did he ever ask you about a plea offer?

20 A We discussed the offer was a cap of ten on
21 ABHAN. Under that scenario, we could have tried to
22 argue for all the way down to probation. We
23 discussed what that meant. I know we discussed the
24 elements of what ABHAN was, what attempted murder
25 was. I don't know that we discussed lesser

1 includeds in term of trial, what could come up in
2 trial at that point, but we discussed those things.

3 Mr. Maiden was insistent from day one to the
4 end of trial he didn't do anything wrong. I was --
5 he didn't use word the "victim," but, you know,
6 this guy has been a problem in my life way back
7 before this day and, you know, I reacted reasonably
8 at the time, under the circumstances.

9 He was never interested in the plea. Never
10 gave me any indication at any point that he wished
11 to enter a plea to anything.

12 Q How much of the discovery that you received
13 did you share with Mr. Maiden?

14 A Everything that we received, eventually. So
15 there was, again, what I called the written
16 discovery, police reports, et cetera, statements
17 that were written. Those things were provided as
18 soon as we got in the summer of 2016. There was a
19 disk that had a video of -- surveillance video from
20 the bar that was mislabeled. I did not realize
21 that at the time. I had an investigator go out and
22 show him, and it was mislabeled.

23 What it showed was the back area, outside
24 area of the Boathouse bar. It was important only
25 because you could -- if you knew who they were, you

1 could identify Mr. Maiden and Mr. Minett as being
2 there at the same time, but it didn't show the
3 altercation. There was no video from the front
4 where the incident occurred.

5 Q Was the correct video ever shown to
6 Mr. Maiden?

7 A Yes.

8 Q How long have you been practicing criminal
9 law?

10 A Criminal law, since 1994.

11 Q In your experience, is it atypical for
12 discovery to come in batches?

13 A That is pretty usual. Not uncommon.

14 Q Were there any red flags shown to you in
15 receiving discovery after the arraignment?

16 A What I recall -- so we did have the
17 arraignment, and so now I know for sure that trial
18 is imminent. I always go back through as trial
19 approached and make sure I have everything I expect
20 to have. I might have overlooked something. So
21 that is where that supplemental discovery motion
22 was filed, the end of February. For recordings of
23 witness statements, we had the statements, we had
24 some cases written out, and some cases it was the
25 police narrative of that. There was eight or nine

1 things I requested, and I think some -- the
2 response is, Here are the things we have. So we
3 did get some things later, and that is what was
4 taken out to Mr. Maiden in early March.

5 So some of the actual recordings, but the
6 information contained therein, we had from the
7 beginning. He was aware of the basics of what
8 these witnesses would say.

9 Q Again, in your experience, is it atypical to
10 get discovery that close to trial?

11 A Not completely, because the Solicitor,
12 although they have their obligation, I've had
13 plenty of experience where they have to get it from
14 the police, to begin with. I know, personally,
15 there have been times where they say -- I've been
16 there when they made the request to the police,
17 Make sure we have everything they need, and the
18 police say, Yes, you have everything. Then the
19 week we walk into court or the day of trial, they
20 say, Oh, we found this in our desk. I'm not sure
21 -- not to take their side, but it is not unusual,
22 and sometimes they are hamstrung by what law
23 enforcement does or doesn't do.

24 Q Do you recall discussing any potential
25 witness with Mr. Maiden?

1 **A** Absolutely.

2 **Q** Who did you consider calling?

3 **A** Obviously, Mr. Kennedy. So the problem or
4 the issue with Mr. Kennedy was he was out of state.
5 I was constantly told, You need to talk to
6 Mr. Kennedy. An investigator did reach him fairly
7 early on in September or October. And Mr. Kennedy,
8 from my point of view, always had a reason why he
9 wasn't available to talk or come down. So I did
10 not speak to him probably until February, but I was
11 told, you know, a lot of this -- Mr. Maiden is
12 correct, it was coming from his mother because he
13 was in SCDC. So his mother would call and say, I
14 have spoken to Mr. Kennedy, or here is a new
15 number, here is a good time to call, whatever. It
16 never seemed to work. Mr. Kennedy is expecting
17 your call on such-and-such time or day. Never
18 could get him.

19 When I finally did, he was initially --
20 always cooperative, initially kind of enthusiastic,
21 but once I made it clear that he had to come back
22 to South Carolina and testify, he was not as -- his
23 memory did not seem to be as sharp. He seemed to
24 equivocate and, frankly, reminded me of some of my
25 clients when they are trying to avoid being in

1 court. But he did indicate that if he had to, he
2 would come down. But I began to be concerned
3 because he was far less definitive as we talked
4 than when I first talked to him.

5 Q So fair to say you didn't call him because
6 you felt he would be unreliable?

7 A Mr. Maiden was understandably adamant that
8 this is a helpful witness, and I agreed. If he
9 would say what we want him to say or what you
10 expect him to say, then, yes, that would be good.
11 That would be important.

12 So, certainly, we followed up and talked to
13 him and discussed getting him down here. There was
14 the problem with the trial being delayed initially.
15 He was assuring me -- I was getting assurances he
16 would be here in February. When it got moved --
17 or, rather, in March when it got moved, not so
18 much. I did have real concerns. It wasn't
19 definite I would put him on the stand. I certainly
20 wanted him down here, but I was concerned, because
21 in my experience, as a defense lawyer, when you put
22 up something half way, that is almost worse than
23 not. It can backfire.

24 Q If you weren't sure about him as a witness,
25 why did you move to continue the case?

1 **A** Out of caution, and also because Mr. Maiden
2 was very insistent, and I understood that. I mean,
3 I didn't disagree with that. He very much wanted
4 him there.

5 You know, the other problem with Mr. Kennedy,
6 there was always something new with him. He
7 started a new job, that is not convenient. I have
8 a transportation problem. It got to the point
9 where Mr. Maiden's mother was going to get him and
10 drive him down herself. And then the word we got
11 was, I have a child sick in the hospital. Well,
12 that is serious, and I don't know if that was the
13 case, but there was a series of things where he had
14 roadblocks to willingly come down.

15 **Q** Did you consider issuing him a subpoena?

16 **A** I didn't. Bottom line is, I didn't. I
17 wasn't sure that I would use him as a witness. I
18 was worried, from my perspective, of his wavering.

19 Frankly, at the end, it was late in the day,
20 but I didn't.

21 **Q** And you weren't sure that he would help your
22 case?

23 **A** I wasn't convinced in the end he would be
24 helpful. I was worried that if he got here, he
25 would back up or retract and not come at all. I

1 want a cooperative witness on my side. That is not
2 always possible, but for what he would testify to,
3 I want his cooperation.

4 Q Any other witnesses you thought about
5 calling?

6 A Mr. Maiden mentioned the female who had
7 possession of the picture of Mr. Minett on the
8 beach. And the problem -- and I explained it -- I
9 had no -- it was a picture. It was Mr. Minett on
10 the beach. I had no way of timing it. It was
11 posted to social media and had a generic, hey,
12 family time, family celebration, something like
13 that. I knew when it was posted, but I had no way
14 and no one that could authenticate or put a date on
15 it. I didn't think it would be admissible.

16 Q Were there any other witnesses you considered
17 calling?

18 A No, not that I recall.

19 Q When did you discuss lesser included offenses
20 and jury charges with Mr. Maiden?

21 A At some point, I don't recall the exact time.
22 I know we had an extensive discussion. It is kind
23 of a ladder of all the attempted assaults,
24 attempted murder, all the way down.

25 Weirdly, assault and battery first has a

1 quirk in there, and it is either attempted sexual
2 assault or offering to be sexual assault and
3 battery first is offering to do something by means
4 that likely results in death, but not actually the
5 assault itself.

6 So in some situations like this, you jump
7 from ABHAN to second degree, and that is the
8 situation we had here. So that is why A&B first
9 wasn't on the table. We discussed that as a
10 possibility. We did discuss should it be all or
11 nothing. That was more, from a layman's point of
12 view, his approach, I didn't do anything wrong,
13 sorry he was hurt. So we did discuss it.

14 **Q** Do you recall you asked for the lesser
15 included, or did the State?

16 **A** I don't recall specifically, but I believe
17 that the judge did that based on the evidence
18 presented at trial, which the Court can do. And
19 Mr. Maiden is correct, he and I discussed if we
20 want to go all or nothing and not guilty. I do not
21 recall requesting that.

22 I believe Judge Hyman did it based on the
23 testimony, because the severity of the injuries
24 was -- there was no question that he was driving
25 the car. No question that Mr. Minett was struck.

1 The circumstances and Mr. Maiden's belief of what
2 was going on was critical, and also the extent of
3 the injuries.

4 Q Do you think the lesser includeds were
5 appropriate in this case?

6 A I think they were legally justified, yes.

7 Q Do you think objecting to the judge's
8 decision would have been successful?

9 A I don't. And I may have agreed that that was
10 okay, but I don't recall, honestly.

11 Q Did you ever consider subpoenaing the medical
12 records of the victim?

13 A No -- well, I did not. I thought that would
14 be in my favor because there wasn't medical -- and
15 I believe I argued that, that there wasn't medical
16 testimony. Mr. Minett testified this is what has
17 happened to me. I know I cross examined officers
18 about his state of mind and his ability -- even on
19 the day of the incident -- to answer their
20 questions, and he was coherent and not under
21 medication and not with tubes running all over him
22 and all of that. So I know we explored that, but I
23 did not subpoena the records.

24 Q Do you think it would have been helpful to
25 the defense?

1 **A** Might have. One of the issues is it could
2 have happened -- I felt they had not established
3 great bodily injury as defined. It is in the
4 statute, this is what it is, and that is what I
5 argued. I felt they hadn't done it, so I wasn't
6 going to introduce any record, and I didn't think I
7 needed to, to the contrary.

8 **Q** You stated that Mr. Maiden's point throughout
9 was that the victim had made previous threats to
10 him?

11 **A** Yes.

12 **Q** Did you explore this during your cross
13 examination of witnesses?

14 **A** I believe I did, yes.

15 MS. MARTO: Nothing further.

16 **CROSS EXAMINATION**

17 **BY MR. FALK:**

18 **Q** Mr. Fox, if you could, clarify the decision
19 not to subpoena Aaron Kennedy. Was that a trial
20 strategy, or why did you not do that?

21 **A** I guess it was strategy. I had concerns that
22 he would be -- that he would say what Mr. Maiden --
23 and I have no doubt that he told Mr. Maiden and his
24 family these things, that he heard this comment
25 from Mr. Minett, this is what I saw, but he

1 wouldn't do that with me. So I was very concerned
2 about that.

3 I would have been more than happy for
4 Mr. Maiden's mother to bring him down and have a
5 face-to-face conversation, so that if I wanted him
6 to testify, there he was. But I would -- I guess
7 it was a strategic decision not to pursue a
8 subpoena.

9 Q Maybe I misunderstood. I thought you said
10 the first time he was very solid, and then his
11 story tended to change?

12 A He got mushy, is how I put it. As soon as I
13 indicated, hey, you need to testify in court -- he
14 said the reason he didn't stick around and talk to
15 police that night -- he didn't stick around and
16 talk to police. He saw it, heard Mr. Minett
17 threaten his friend, to put a bullet through his
18 eyes, he says, then this horrible thing happened,
19 accident or not, and police are there, and he just
20 leaves. That concerned me.

21 He says, I don't like the police. I don't
22 like courts. So he made it clear he would come
23 here only reluctantly, and then he began to back
24 off, Well, you know, we were all drinking. I got
25 the impression that he threatened him -- and I'm

1 paraphrasing, but he just began to retreat from
2 what he initially told me, and that gave me
3 concern. That is a not unusual. A lot of people
4 don't want to be up here in court, but that was a
5 red flag to me, and that pattern continued. I
6 talked to him a total of three times, I think; but
7 that pattern continued.

8 Q But you represented to the Court that he was
9 an essential witness or an important witness?

10 A Well, he was potentially an important
11 witness, and I did feel like I would -- I had to at
12 least -- and at Mr. Maiden's request -- make the
13 effort to get it continued.

14 Q What about Tracy Stevens?

15 A She was with the picture, correct?

16 Q Yeah.

17 A As I said on direct examination, I just --
18 that is what she knew and, you know, she was
19 basically -- had seen a picture on social media. I
20 just didn't have a way to authenticate it or truly
21 date it, other than when it was posted, which is
22 not the same as when it may have been produced.

23 MR. FALK: The photographs he's referring to,
24 I'm not going to enter it as an exhibit.

25 THE COURT: Okay.

1 **Q** (MR. FALK) But this is the photograph that
2 we're talking about?

3 **A** It is, and I think that is Mr. Minett sitting
4 up on top of -- it's been several years. I'm not
5 sure if he's the gentleman sitting lower or -- I
6 think he's the gentleman with the shades, but he's
7 in that picture.

8 **Q** And he is at the beach?

9 **A** At the beach, and appears perfectly fine.

10 **Q** No body cast?

11 **A** No. No obvious injuries, smile on his face.

12 **Q** Can you explain, as far as the lesser
13 included offenses, what was your testimony about
14 assault and battery first?

15 **A** My reading -- so assault and battery first is
16 either -- and I'm going off of memory -- an assault
17 that occurs with sexual intent; this clearly was
18 not that. And then the B section, or an offer to
19 commit an assault and battery with the present
20 ability to do so or a means likely to produce --
21 I'm not sure if it says serious bodily injury or
22 death, but the key word was an offer to do this
23 thing. In other words, a threat or an assault to
24 do this thing. You know, I'm going to get you with
25 this ax or something, and I have an ax in my hand.

1 Technically, that is not what happened here.
2 There was not an offer. There was, in fact, a
3 battery. The question was: What were the
4 circumstances? Did he intend -- he was accused of
5 attempted murder, did he have a specific intent to
6 kill anyone? Even if not, what was the level of --
7 were there any injuries, and then what is the
8 level?

9 So I agreed with the judge. I do not believe
10 that assault and battery first actually was legally
11 justified as an option.

12 Q But that was discussed in the plea (sic)?

13 A You mean in the charge conference?

14 Q Charge conference, yes.

15 A Yes. I don't recall if it was suggested that
16 it would be charged, you know. I don't recall if
17 the State or -- I know the State didn't request it.
18 I did not request it, and I don't think the judge
19 suggested that he would.

20 Q Sorry. I thought you just testified that you
21 agreed with the judge?

22 A I agreed with his decision not to charge A&B
23 first.

24 Q I see. But --

25 A Again, I didn't think it fit.

1 **Q** So were you in any communication with
2 Mr. Maiden while in the detention center? Was he
3 writing you?

4 **A** He did.

5 **Q** You testified that from day one he did not
6 want to plea?

7 **A** That was my strong impression, yes.

8 **Q** I'll show you three letters here. Can you
9 identify those?

10 **A** First one appears to be a letter from
11 Mr. Maiden dated August 28th.

12 **Q** You might not remember the particular letter,
13 but do you have any doubt that that was a letter
14 from Mr. Maiden?

15 **A** No.

16 **Q** If you could, read that paragraph right
17 there.

18 **A** "When you speak to my solicitor, please
19 inquire about a suspended sentence if I pleaded
20 guilty to any of my time if it was suspended to
21 probation."

22 That is true. It is correct to say he was
23 interested if he could get time served or
24 probation. The Solicitor's Office -- and he did
25 repeat that option to me more than once. The

1 Solicitor's Office was very clear that would never
2 be an option; in part, because they were aware of
3 pervious incidents, although they couldn't use that
4 at trial. They were aware of previous allegations
5 of vehicular assaults.

6 Probation was never an option, from their
7 point of view. Although, there was the cap of
8 the -- offer of a cap of ten, which would have
9 allowed us to argue for probation.

10 Q I'll show you another letter on September
11 2nd, second to the last paragraph; is that similar?
12 You can just skim through it.

13 A Yes. I mean, I have no doubt -- again, he
14 asked, I think, specifically for time served, or if
15 it was probation, he would be amenable to.

16 Q If you could look at one more letter at the
17 third paragraph here. Mr. Maiden was serving
18 another charge at the time?

19 A Yes.

20 Q So that is where he was -- so he's also
21 trying to get some kind of an offer about having
22 the time run concurrent?

23 A He did. And he says, "I'll be willing to
24 take a five-year negotiated agreement to run
25 concurrent."

1 It is not nothing -- again, I think the State
2 saw that as -- they were interested in additional
3 time, but he did indicate a willingness to plead if
4 it would not add any time to the sentence, that is
5 correct. But absent that, he was very clear that
6 there would be a trial.

7 **Q** What is the story about the DVD labeling?

8 **A** That would be labeled in the Solicitor's
9 Office. You know, when we get it, it is typically
10 labeled. I mean, human error does happen.

11 Ideally, I wish someone -- including myself
12 -- would have looked before it went out. But it is
13 not uncommon that we get a disk in. Usually, the
14 quicker and more efficient way in my office is to
15 have an investigator go and show something, because
16 it might be lengthy. If it needs to be two, three
17 hours, an investigator has the time to do that.

18 I think the error was in the Solicitor's
19 Office in the labeling. When we pick up discovery,
20 it is a cart full, you know. So for it to go into
21 a wrong file, that happens sometimes. Sometimes it
22 is mislabeled. I'm sorry I didn't catch it before
23 it was shown.

24 **Q** There is no doubt that he didn't see that
25 video prior to his arraignment?

1 **A** I believe that -- I can't say. He says he
2 did not, and I have no reason to doubt that.

3 Again, it simply showed the fact that he was
4 there, which he admitted to, and the fact that
5 Mr. Minett was there. That was the sole purpose of
6 that video.

7 **Q** I'm not sure every county runs it the same
8 way, so explain -- you all up here typically have
9 what you are calling an "arraignment," and the
10 charges are read, and an offer is made at that
11 time?

12 THE COURT: I got confused on that, too.
13 Because I did an arraignment -- let me interject,
14 because it kind of messes me up when you keep
15 saying "arraignment."

16 What it is is a rejection of the offer on the
17 record. Why this county calls it an arraignment --
18 an arraignment, to me, is a warrant is going to be
19 served, and I'll read the charge, and the client or
20 defendant is going to plead guilty or not guilty.
21 That is an arraignment.

22 Here, an arraignment is a rejection of the
23 offer on the record. He's already been arrested.
24 Discovery has been going.

25 It took me a little while. I'm sorry to

1 interject, but for the record, this record, for any
2 other Court, when we had been talking about an
3 "arraignment," it is really just a formal rejection
4 of the offer, the plea offer, on the record.

5 MR. FOX: That is exactly right. And why
6 Horry County terms it that way, I don't know.

7 THE COURT: They made me do one yesterday,
8 and I said this is not an arraignment.

9 A So the offer is there. It's been out there.
10 There is not a formal process. I have great
11 heartburn over arraignments myself. From my point
12 of view, it is often done at the whim of the
13 solicitor.

14 Not every case gets arraigned. Typically,
15 more serious ones do, in a case like Mr. Maiden's
16 usually will be. But when that happens, you know,
17 there is no judicial mechanism or timeline. It is
18 when the Solicitor feels like it. So when they
19 feel, in my view, to apply pressure to my client,
20 that is what they do. There is no question, in my
21 mind, that that is what they were doing with
22 Mr. Maiden.

23 Now, the offer was out there, and we
24 discussed the offer, but it is done, in my mind, to
25 put -- and does put -- a great deal of pressure on

1 a defendant to decide right now, and that's exactly
2 what happened in this case.

3 Q (BY MR. FALK) Is it typical -- is the
4 practice that all discovery is provided before this
5 date when he comes back in?

6 A Yes. Being an ongoing obligation, it is not
7 unheard of for things to come in afterwards, but,
8 yes, that's the goal for sure.

9 Q I'm curious, I haven't tried a case, I don't
10 know, but how does it work? If you get more
11 evidence to come in, can you go back and get that
12 offer?

13 A Absolutely. Most solicitors understand,
14 because more often than not, it is because of
15 something law enforcement has failed to do. We're
16 lucky in this county that solicitors really don't
17 play hide-the-ball. They have pretty much an
18 open-file policy. As they get things, it generally
19 comes to us in a timely fashion. It is much better
20 than other counties I've encountered.

21 So, yes, where we do get things, if there was
22 any indication that we might have a meeting of the
23 minds when we got discovery later, I have no doubt
24 that Mr. Oskin and Mr. DeBusk would have an open
25 mind about me going back to them. We weren't at

1 that place, so.

2 Q It is Mr. Maiden's testimony that once he saw
3 that, he wanted to plea.

4 A That is not the impression I had, but I can't
5 read his mind. The discovery we got after the
6 arraignment, the rejection of the plea offer --
7 "accumulative" is not the right word, but we
8 already had that information in written form. This
9 was some of the recordings. The 911 call, there
10 wasn't anything to that. I mean, it was there, but
11 it was just, We need someone over at the Boathouse.
12 There's been an accident. Someone has been hurt.
13 Just very generic, nothing that incriminating. I
14 don't even recall if they played it at the trial.

15 And the other -- there was not new
16 information that was coming out, but he certainly
17 has a right to hear, so that is why he did hear it,
18 but it was after the arraignment.

19 Q Did your investigator talk to Vince
20 Richardson, who was described as the Boathouse --

21 A I'm glad you brought that up. I went myself
22 with an investigator down to the Boathouse to get
23 the lay of the land, take a look for myself. That
24 would have been probably January or February, when
25 I knew trial was approaching, but also to try to

1 talk to -- because I think there were four or five
2 bouncers, the manager who came out, Mr. Richardson,
3 so several.

4 They were most uncooperative. They didn't
5 want to speak to anyone under any circumstances.
6 One of them literally hid in the back and refused
7 to come out. I could hear him back there. They'd
8 say, I'll go get -- I don't remember the witness,
9 but I don't believe it was Mr. Richardson. One of
10 the bouncers -- two no longer worked there. One
11 worked there, but that wasn't his day, of course.
12 Someone was in the back. They claimed they would
13 go back and have him come out, but you could hear
14 them talking in back and refused to come out.

15 So the bottom line is we couldn't make
16 contact with Mr. Richardson.

17 Q But he made a statement to law enforcement
18 about --

19 A I believe he did. And I was hopeful that he
20 would be -- and, of course, the State is under no
21 obligation to call him. He was on their witness
22 list, but he was not called, and I had not had any
23 previous contact with him.

24 Q But this is a witness that is going to be,
25 kind of, locked in? Had you subpoenaed him, you

1 could have called him?

2 A Yes.

3 Q And he had already given a statement to law
4 enforcement, so if he wanders, you have a prior
5 statement that you could challenge him with?

6 A Yes.

7 Q So was this a trial strategy decision not to
8 call him?

9 A Yes. I mean, once we were unable to make
10 contact or run him down, you know, yes.

11 Again, I don't want someone on the stand --
12 obviously, I would have talked to him before
13 putting him on the stand, but not knowing where he
14 was going to go -- but you are right, he had given
15 a statement, and if he had wandered, I had that to
16 impeach him with.

17 Q I read the transcript from the pretrial
18 hearing or the September reject hearing. Does a
19 solicitor usually represent to the Court that he
20 has turned everything over?

21 A He did. He made that statement.

22 Q Is it your testimony that anything that came
23 in after that was just accumulative?

24 A Now, Mr. -- there was Mr. Melco, who did
25 testify. He was a teacher at Socastee High School.

1 I'm trying to remember if he -- I believe that he
2 was referenced in police reports, and as trial
3 approached, the Solicitor went back, or maybe he
4 came forward, I don't recall. But he came forward
5 very late and said, Oh, I happened to have been
6 there. In relation to the civil case, there was
7 some kind of notice he saw in the paper, and then
8 for -- again, didn't stick around that night of the
9 incident to talk to law enforcement. But, you
10 know, a year or two years later he came forward and
11 approached -- I don't know if it was law
12 enforcement or the Solicitor's Office. That was
13 turned over to us, and that was after the
14 arraignment.

15 Q You would admit that after the arraignment,
16 you filed a motion for supplemental discovery?

17 A I did. I did.

18 Q Going into the trial, was the strategy an
19 all-or-nothing strategy?

20 A Well, it was one of the possibilities.
21 Generally speaking, one of the few advantages of
22 being a defense attorney is going second. We can
23 see how things play out, and sometimes later. So I
24 know that in closing, at the end, in my close, I
25 asked for assault and battery second, which is a

1 three-year offense less than what he was doing, and
2 I felt it was reasonable.

3 Number one, I thought the evidence supported
4 that. And, number two, I thought that might be a
5 good compromise. I was confident it wouldn't be
6 attempted murder because, clearly, there was no
7 intent to kill anyone.

8 I know -- we definitely talked some,
9 Mr. Maiden and I. You know, someone had been hurt
10 at his hand, and it was going to be hard to get all
11 the way to not guilty, just nothing. That would be
12 a reach, in my opinion. But we did discuss whether
13 to make that reach, for sure. Clearly, in closing,
14 I argued more towards the assault and battery
15 second.

16 Q Was there any reason for the judge charging
17 on ABHAN?

18 A Well, to protect the record, certainly. I
19 thought it was legally justified, so I didn't.
20 But, you know, sometimes you have to make an
21 objection even knowing that they won't be granted.

22 Q There was no doubt that there was prior
23 animosity between the victim and --

24 A None. I mean, Mr. Maiden testified to it.
25 They had a female in common and a child -- but,

1 anyway, yes, there is no doubt there was prior
2 animosity.

3 MR. FALK: Your Honor, no further questions
4 at this time.

5 THE COURT: Any redirect?

6 MS. MARTO: No redirect, Your Honor.

7 THE COURT: I have a couple.

8 THE WITNESS: Yes, ma'am.

9 **EXAMINATION**

10 **BY THE COURT:**

11 Q I know when I get reading to do my jury
12 charge, I listen to all of the testimony. I assume
13 that is what the judge did in this case, as far as
14 lesser includeds?

15 A Yes.

16 Q Because I didn't see anywhere where anyone
17 consented or, if you did, I didn't read it. It
18 could have been that you did, but the judge was
19 going to charge it anyway?

20 A Yes. I honestly don't recall the conference.
21 I know there was discussion on what should be
22 charged. I don't recall making a specific request
23 myself. I feel confident the State didn't.

24 Q I feel confident they didn't either. That is
25 normally not what happens.

1 **A** Yes.

2 **Q** Okay. And the other thing, this photograph,
3 it was a third-party photographer, is what you are
4 telling me? It wasn't a photograph that she took
5 off of her Facebook, on her phone, that she made,
6 that was sent to her?

7 **A** That's my understanding. Something she saw
8 on Facebook or whatever.

9 **Q** So authentication was a real problem with the
10 photograph?

11 **A** I felt like it was, absolutely.

12 **Q** Because you have to have someone to testify
13 to say, yes, I know this person that sent it, I can
14 ID these, I was there, or something?

15 **A** Yeah. To me, the bigger issue was the
16 timing, the "when." When was the photograph taken?
17 Someone could have said that is Mr. Minett there,
18 but when it was actually taken was an issue.

19 **Q** And then Mr. Kennedy -- because I read the
20 trial transcript, and I have no doubt that your
21 client wanted Mr. Kennedy to be there. It appears
22 from the transcript he did.

23 Number one, he is out of state. Number two,
24 it looks like you had contact with Mr. Kennedy, in
25 reading this transcript. Looks like he says at one

1 point he would come if he had transportation?

2 A Yes.

3 Q Which it appears that your office was going
4 to make some kind of transportation to get him
5 there?

6 A Mr. Maiden's mother was going to do that.

7 Q And then the issue comes up of my child is
8 sick, I can't come?

9 A Yes.

10 Q So he's kind of going, like you said --

11 A Yes.

12 Q -- mushy. You did make a good faith basis to
13 the judge to ask for a continuance on behalf of
14 Mr. Maiden. In fact, I think it was the
15 defendant's mother who told you that morning that
16 he said he was -- you didn't get to talk to him,
17 she did?

18 A That's correct, at that point.

19 Q And said that his child was sick?

20 A Yes, ma'am.

21 Q Well, I mean, you know, you can only do so
22 much.

23 As far as discovery is concerned, I deal with
24 discovery issues every day of my life. As you
25 know, there is a continuing duty to turn over

1 discovery, not only to the State, but also for the
2 defense. I understand that normally it goes all
3 the way up to the trial.

4 A Yes, ma'am.

5 Q But when you started trial, did you have all
6 of the discovery that you know of provided by the
7 State to you?

8 A I did. I would say in context, you know, I
9 have practiced and worked with Mr. DeBusk and
10 Mr. Oskin for a long time. Mr. Oskin worked in my
11 office as an intern. They have their role, it's
12 adversarial, but when they tell me something as
13 officers of the Court, I can trust them. So I do
14 believe that --

15 Q They are officers of the court.

16 A Right. And they are on the record. But they
17 tell me -- like if we are out in the hall, Look,
18 you have everything that we have, I believe that in
19 that moment, but it can change.

20 Q Right.

21 A So I had no reason when they said that in
22 court to doubt them, but when I pointed out, hey
23 here are some things I think I need to have, they
24 immediately got on it, and I have them.

25 Q Right. So no issues before you started trial

1 with discovery?

2 A No, ma'am, not from my point of view.

3 Q Also, because the arraignment keeps messing
4 me up, when -- I guess in this county they bring
5 people in to reject the offer?

6 A Yes.

7 Q You thoroughly went over the 85 percent rule
8 with him, what this was carrying, that was the end
9 of the deal, it was over, if he accepts it, you
10 can't have buyer's remorse, so to speak, and that
11 day you went over all of the consequences of not
12 taking the plea with him?

13 A Yes.

14 THE COURT: That's all I have.

15 You all, can I excuse Mr. Fox?

16 MS. MARTO: Yes, Your Honor.

17 THE COURT: Thank you. You have another
18 witness?

19 MS. MARTO: Our quickest witness.

20 THE COURT: We'll take a 10-minute break and
21 come back. Is it okay with the court reporter if
22 we do the last witness? We'll come back in ten
23 minutes.

24 COURT REPORTER: That's perfect.

25 (A recess was taken.)

1 THE COURT: Call your next witness.

2 MS. MARTO: We call Seth Oskin to the stand.

3 (SETH OSKIN, having been duly sworn,
4 testified as follows:)

5 THE WITNESS: Seth Oskin, O-S-K-I-N.

6 DIRECT EXAMINATION

7 BY MS. MARTO:

8 Q Good afternoon.

9 A Good afternoon.

10 Q You were the primary prosecutor on this case?

11 A That's correct.

12 Q Were you involved in the case when the
13 initial discovery was given to your office?

14 A Let me check the file.

15 Yes, I would have been, as well as my senior
16 attorney at that time, George DeBusk.

17 Q Do you recall, timeline wise, when you would
18 have given that discovery to defense?

19 A Initial discovery was sent on July 18th of
20 2016. The incident occurred in May of 2016.

21 Q Was discovery an ongoing process in this
22 case?

23 A Yes, ma'am, I would say it was. You had
24 initial police reports, incident reports,
25 defendant's NCIC, photos from the scene, such as

1 that.

2 As discovery continued, we did have video
3 interviews, other statements from the scene. I
4 even got a civil affidavit in regards to Mr. Randy
5 Melco, and that was -- a supplemental request of
6 Mr. Fox.

7 Q Do you recall when the turn-around rate you
8 had for turning things over to the defense was?

9 A I try to fill a request as soon as they are
10 made to me by the defense. It looks like I had
11 discovery completed within a week of the request,
12 roughly, seven to ten days. It could be off by a
13 few days, but relatively quick.

14 Q Do you recall ever intentionally withholding
15 discovery in this case?

16 A Absolutely not.

17 Q Do you recall Vince Richardson?

18 A I remember Vincent Richardson listed as an
19 employee of the Boathouse Bar, which is where this
20 occurred.

21 Q Did you attempt to secure him as a witness?

22 A My office did attempt to secure him as a
23 witness.

24 Q Were those successful?

25 A No, ma'am.

1 **Q** Do you recall why?

2 **A** The address we had for him was not the
3 address that he was living at, so he would not
4 return phone calls, could not even find him to
5 serve a subpoena.

6 Typically, I reach out to witnesses or
7 victims or witnesses and meet with them, serve them
8 a subpoena at that time. You don't have to serve a
9 victim with every subpoena, you know, people you
10 think will show up. But as a general course, serve
11 subpoenas, do that so you can make them come, if
12 they don't want to. I was never able to do that
13 with Mr. Richardson.

14 **Q** Did you ever attempt to secure the medical
15 records in this case?

16 **A** I don't believe that we did. I saw photos
17 from the scene from the hospital where Mr. Minett
18 was in the hospital. I don't recall him signing
19 any HIPAA releases to get medical records in this
20 case.

21 **Q** Did you think that that was a necessary step
22 to take in this case?

23 **A** I did not, based off of the injuries
24 reported, the broken bones, broken ribs, photos
25 from the hospital. I believe the victim testified

1 to lung damage -- I could be wrong on that.

2 Q You participated in the charge conference,
3 correct?

4 A Yes, ma'am, I did.

5 Q Do you recall who suggested or requested the
6 lesser included offenses?

7 A I recall Judge Hyman steering that decision,
8 mentioning assault and battery of a high and
9 aggravated, as well as AB two. I know I wouldn't
10 have liked the assault and battery second lesser
11 included. I may have argued against that. I
12 thought it would be disingenuous to argue against
13 the ABHAN since I offered him a cap of 12 on ABHAN.
14 Judge Hyman firmly told me that that is what he was
15 going to do.

16 Q Did Mr. Fox ever indicate to you Mr. Maiden
17 was interested in taking an actual possible plea
18 offer you would entertain?

19 A Not one I would entertain, no, ma'am. He
20 said he would take time served to go concurrent
21 with the time he was doing on AB one out of Marion
22 County, or probation.

23 Q Did you see the photograph at the beach of
24 the victim in this case?

25 A I want to say that Mr. Fox turned it over to

1 me once he was aware of it. I know that is
2 something that the State -- or my office found. I
3 knew it existed. I certainly know that I would
4 have objected to it for foundation or timing of the
5 authentication. I think I had seen the photo or
6 was made aware, but I know I didn't find it or turn
7 it over myself.

8 Q Do you think your objection would have been
9 successful?

10 A I do. I think it is easy to post photos on
11 Facebook. You can copy a photo from your high
12 school graduation or any other time. I couldn't
13 just put up a Facebook photo as a member of the
14 State without someone to authenticate it.

15 MS. MARTO: Nothing further, Your Honor.

16 THE COURT: Any cross?

17 **CROSS EXAMINATION**

18 **BY MR. FALK:**

19 Q So Detective Hardwick interviewed Mr. Minett
20 at the scene, as far as knowing what the injuries
21 were?

22 A I believe so. Either at the scene or at the
23 hospital.

24 Q Yeah. You would admit that Mr. Minett was in
25 the middle -- also a plaintiff in a civil action?

1 **A** Sure. Yeah. I got the civil affidavit, as I
2 said.

3 **Q** So, obviously, Mr. -- you would admit he may
4 have a motive to exaggerate his injuries; would you
5 not?

6 **A** I don't know about a motive to lie.

7 **Q** I said "exaggerate."

8 **A** Okay. I know he made a claim against the
9 Boathouse, I'll give you that.

10 **Q** And the claim was, obviously, based on his
11 pain and suffering?

12 **A** I have not seen a copy of the suit. That is
13 standard, I'm sure.

14 **Q** Right.

15 Now, do you have an explanation -- I mean,
16 you were here all morning hearing about the
17 mislabeled DVD?

18 **A** I don't know why the public defender would
19 have shown him a mislabeled DVD. I don't know --
20 I'm unclear if the DVD --

21 **Q** His testimony is that it had Maiden's name on
22 it, but it was not -- didn't relate to this case.
23 So when you send discovery or to the public
24 defender, do you label them?

25 **A** I think, at that time, with everything on a

1 disk, it probably would have been labeled "State
2 versus Maiden."

3 You know, discovery is prepared and copied by
4 administrative staff. It could have been an error.
5 I don't know if it was the Boathouse scene or a
6 video from something related to the case, but it
7 doesn't show Mr. Maiden. I'm not sure what video
8 he saw at the jail at the time. That is not
9 intentional, absolutely.

10 Q Do you know when you attempted to turn that
11 video over, was it before his arraignment?

12 A There is two videos. There is a video of
13 surveillance footage from the Boathouse itself that
14 shows Mr. Maiden and Mr. Minett and another
15 individual in the general same area.

16 There is a second video, cell phone video,
17 that shows the initial fight, striking of
18 Mr. Minett by Mr. Maiden. So I'm not clear which
19 video you are talking about.

20 I believe Mr. Fox said it was just the
21 Boathouse video that showed them there in the same
22 area.

23 Q Well, Mr. Maiden testified as to the disk
24 that he did not see prior to the arraignment and,
25 you know, witnesses testifying. So would one of

1 those witness statements -- or you could hear
2 witnesses speaking on either of the videos?

3 A There was a video of a fight where someone
4 said like, World star fight. I don't know that
5 that video came into evidence. I'm not sure if
6 that is what that witness said at that time.

7 Q But Mr. Maiden had all of the discovery prior
8 to when he rejected the plea offer?

9 A He had everything but the recorded interviews
10 of Anthony Pratt, Richardson, Matthews, and Cohn
11 (phonetic), as far as I recall.

12 Q And --

13 A On February -- sent a video that Mr. Fox
14 received on February 7th and it -- here you go.

15 "February 7. Mr. Fox: Got video. All it
16 shows is a bunch of drunks at Boathouse. In the
17 end, one says he ran over."

18 I said: "There are an abundance of drunks.
19 You should see footage of a fight and Maiden
20 striking a guy in a red shirt with a bottle. They
21 go to the ground, are picked up and escorted out
22 around the 3:10 to 4:30 mark -- showing him which
23 part of the video to look at -- we can get together
24 and see any differences in the disk at your
25 convenience. It was copied from Facebook, a link

1 off of Facebook, so that may potentially be a
2 problem. Either way, I'm happy to review it with
3 you."

4 Q Do you have a record of the discovery that
5 was turned over after February 23?

6 A Sure. You said after February 23rd?

7 Q Yes.

8 A Yes, I have my records.

9 Q It was supplied after February 23rd?

10 THE WITNESS: I'm trying to organize by
11 dates, Court's indulgence.

12 THE COURT: Take your time.

13 A Okay. Starting with March 3rd, that would
14 have been -- as Ms. Marto asked me earlier, that
15 would have been about the interviews requested from
16 Mr. Fox. So I turned those over to him on
17 March 3rd, made sure they had the appropriate
18 victim redactions, photos. That was sent over.

19 Also on March 3rd, I sent over an eight-page
20 state police report. I believe that was from his
21 Connecticut incident of striking another person
22 with a vehicle.

23 March 6th I sent over a list of proposed
24 witnesses with telephone numbers and addresses. I
25 wouldn't have done that in the initial discovery

1 because of the Victim Bill of Rights and protecting
2 my witnesses up until the time of trial. Not
3 having numbers and addresses out there, but when I
4 knew I was going to trial, he was entitled to them,
5 so I got it to him.

6 The SLED chain of custody, there may have
7 been -- I'm not sure what that was on, honestly.

8 March 8, I send the affidavit of Randy Melco
9 that I referenced from the civil case.

10 Mr. Melco also had drawn a diagram of the
11 place. As part of that, I sent that over on
12 March 27th.

13 April 3rd, Horry County Police Evidence
14 Record to show the chain of custody for any
15 proposed evidence I would have admitted. I don't
16 think there was a whole lot of tangible evidence
17 here.

18 April 6th, I sent over the Marion County
19 incident report from the case he pled guilty to on
20 assault and battery first. We were not going to
21 seek to introduce that into trial under Lyle, but I
22 wanted to turn it over to use it at potential
23 sentencing.

24 Q Do you know -- so the Marion County incident,
25 was that a plea or was that -- do you have a record

1 of that? Based on your record from Marion County,
2 is it similar type of conduct?

3 A Striking another individual with a car? Yes.
4 I believe he pled to assault and battery first,
5 five years.

6 Q Do you know why he was able to plead to
7 assault and battery first on that charge?

8 A That is what the Solicitor offered him, I
9 guess. That is not what he was offered here.

10 MR. FALK: No further questions.

11 MS. MARTO: No redirect.

12 THE COURT: Can I let the witness step down?
13 You are excused. Thank you.

14 THE WITNESS: Thank you, ma'am.

15 MS. MARTO: No further witnesses, Your Honor.

16 THE COURT: Okay. Any arguments from either
17 side?

18 MR. FALK: We can submit a proposed order,
19 but no additional arguments.

20 THE COURT: I'll take it under advisement and
21 ask both sides to submit an order by January 27th.
22 Thank you.

23 (Whereupon, the hearing concluded.)
24
25

1 CERTIFICATE OF REPORTER

2 State of South Carolina)

3 County of Horry)

4

5 I, Natalie Dahl, Official Court Reporter for

6 the State of South Carolina, do hereby certify that

7 the foregoing is a true, accurate and complete

8 Transcript of Record of the proceedings had and

9 evidence introduced in the trial of the captioned

10 case, relative to appeal, in the Court of Common

11 Pleas for Horry County, South Carolina, on the 5th

12 day of January, 2023.

13 I do further certify that I am neither of

14 kin, counsel, nor interest to any party hereto.

15

16 May 30, 2023.

17 *Natalie Dahl, Registered Professional Reporter*

18 _____

19 Natalie Dahl, RPR

20 Court Reporter

21

22

23

24

25

STATE OF SOUTH CAROLINA)
COUNTY OF HORRY)
)
Joshua Maiden, #370533,)
Applicant,)
)
v.)
)
State of South Carolina,)
Respondent.)
_____)

IN THE COURT OF COMMON PLEAS
FOR THE FIFTEENTH JUDICIAL CIRCUIT

Case No.: 2019-CP-26-4661

ORDER OF DISMISSAL

FILED
HORRY COUNTY
2023 MAR 27 P 2:18
RENEE N. ELVIS
CLERK OF COURT
HORRY COUNTY, SC

This matter comes before the Court on the application for post-conviction relief filed by Joshua Maiden (“Applicant”) on July 24, 2019. The State (“Respondent”) filed its return on March 2, 2020. An evidentiary hearing in this matter was held before this court at the Horry County Courthouse on January 5, 2023. Applicant was represented by James K. Falk, Esquire and Respondent was represented by Assistant Attorney General Chelsey F. Marto of the South Carolina Attorney General’s Office. Following a thorough review of the record in its entirety and the testimony and evidence presented at the evidentiary hearing, this Court finds that Applicant has failed to prove that he is entitled to post-conviction relief and denies the application with prejudice.

Procedural History

Applicant is confined in the South Carolina Department of Corrections. Applicant was indicted at the August 2016 term of the Horry County Grand Jury for attempted murder (2016-GS-26-3399). J. Eric Fox (“counsel”) represented Applicant, and Seth A. Oskin and George H. DeBusk, of the Fifteenth Circuit Solicitor’s Office, prosecuted the case. On April 10-12, 2017, Applicant proceeded to trial before the Honorable Larry B. Hyman and was found guilty of the lesser-included charge of assault and battery of a high and aggravated nature (ABHAN). Applicant

was sentenced to twenty years, to be served consecutively to the five-year sentence he was already serving for first-degree assault and battery.

Applicant filed a timely notice of appeal. Chief Appellate Defender Robert M. Dudek represented Applicant on appeal and filed a brief pursuant to *Anders v. California*, 386 U.S. 738 (1967). By opinion decided December 5, 2018, the South Carolina Court of Appeals dismissed Applicant's appeal by unpublished opinion and affirmed Applicant's conviction. *State v. Maiden*, Op. No. 2018-UP-442 (S.C. Ct. App. filed December 5, 2018). The remittitur was issued on December 31, 2018.

Summary of Relevant Facts

On May 22, 2016, Applicant was dating Victoria Hubbard. Victoria had a son, who was five months old at the time, with the victim in this case, Alex Miniet (Miniet). (R. 218). Applicant had dated Victoria before her brief relationship with Miniet, but they reconciled after she split up with Miniet. (R. 218).

On the night of the incident at the Boathouse on Highway 501 in Myrtle Beach, Miniet was walking by the volleyball courts when Applicant approached him and "touched me on the shoulder, I looked over and he said, exact words were, 'Are we cool?' And my exact words were to him, 'I have nothing to say to you. Just leave me alone.'" (R. 177). Miniet claimed he was at the Boathouse that night to watch Applicant and Victoria with his five-month-old son. (R. 177).

It was undisputed that Miniet and Applicant fought at one point at the Boathouse that evening, and Applicant hit Miniet with a bottle during the altercation. Miniet admitted he had threatened to kill Applicant in the past, but he claimed he only meant he would harm him if he hit Victoria. (R. 197-98). After the fight inside the Boathouse, both Applicant and Miniet were

escorted from the bar. Miniet testified Applicant then deliberately hit him with his car and ran over him in the parking lot. (R. 198-202). Applicant testified he thought Miniet was approaching him with a gun, so he ducked down behind the steering wheel and inadvertently accelerated. According to Applicant, he did not intend to hit or run over Miniet, and he was very frightened at the time. (R. 236-37).

The judge charged the jury on attempted murder and the lesser-included offense of ABHAN. The jury found Applicant not guilty of attempted murder but guilty of the lesser-included offense of ABHAN. Judge Hyman sentenced Applicant to the maximum sentence of twenty years' imprisonment, based in part on Applicant's history of "vehicular assault." (R. 317).

Current Action Before this Court

In his current PCR application, Applicant alleges he is being held in custody unlawfully because of:

1. Ineffective Assistance of Counsel

- a. "Counsel was ineffective for failing to inform me of lesser-included charges in a timely manner;"
- b. "Counsel was ineffective for failing share all evidence with me prior to arraignment;"
- c. "Counsel was ineffective for failing to properly prepare [for] trial by contacting witnesses well in advance, obtaining affidavits, and issuing subpoenas as directed;"
- d. "Counsel was ineffective for confusing Defendant and Victim's names several times during trial, showing how unprepared and familiar (sic) with the case he was;"
- e. "Counsel was ineffective for possessing a DVD of "evidence" in my case for 6 months before I had to point out that the State provided a disc to someone else's case, to which Defense Counsel was oblivious."

2. "Prosecutorial Negligence"

- a. "The State was negligent by providing discovery to someone else's case. It was labeled with my name and case number. This prevented me from seeing important evidence and being able to make an informed decision while a plea was still available. When the correct disc was shared with me, the trial was then imminent."

FILED
HONORARY COUNTY
2023 MAR 27 P 2:28
REBECCAH N. ELVIS
CLERK OF COURT
HONORARY COUNTY, S

At the PCR hearing, Applicant proceeded forward on the following allegations:

1. Ineffective Assistance of Counsel:

- a. Failure to convey to Applicant that he could be convicted of a lesser-included offense.
- b. Failure to call witnesses Aaron Kennedy and Vince Richardson.
- c. Failure to request and obtain a continuance.
- d. Failure to obtain the victim's medical records.
- e. Failure to ensure Applicant was shown all discovery and that all discovery shown pertained to his case.
- f. Failure to cross-examine the victim about his injuries and a picture of him being on the beach.
- g. Failure to enter a picture of the victim on the beach.
- h. Failure to object to the lesser-included offense instructions.
- i. Failure to secure a more favorable plea offer.

2. Prosecutorial misconduct.

- a. Failure to turn over all discovery prior to the arraignment.

All other allegations raised in his initial application and amendments are deemed waived and abandoned and, accordingly, will not be addressed in this order.

Summary of the Testimony Presented at Evidentiary Hearing

Applicant Testimony

Applicant stated he was found guilty of the lesser-included offense of ABHAN at trial. He testified he was offered a twelve-year plea to ABHAN, but wanted to proceed to trial because he did not think the State could prove malice. He did not think he could be found guilty of a lesser-included offense at trial.

Applicant testified that he wanted his counsel to call two witnesses on his behalf, Aaron Kennedy and Vince Richardson. Aaron Kennedy was an eyewitness to the fight, heard the victim threaten him, and saw him run out in front of his vehicle. He testified that he told Counsel about this witness and thought he would be helpful. He also wanted witness Vince Richardson called at trial because he was working the front door and could have added that the victim ran in front of the vehicle. Applicant stated that Richardson was on the State's witness list but was not

subpoenaed by the State. He also wanted a continuance because witness Aaron Kennedy was not available.

Applicant stated that he talked to Counsel about the lesser-included offenses and how it depended, in part, on the injuries sustained. Despite that, there was no medical proof presented at trial, but there was lay witness testimony concerning the extent of the injuries. He stated he assumed Counsel would attempt to obtain the medical records, but he did not. Also at trial, Applicant wanted a photograph of the victim on the beach after the incident without a brace introduced, but Counsel did not ask about his injuries or the beach picture.

He also testified that Counsel showed him a video from his discovery, but stated it did not pertain to his case. He stated he needed to make multiple requests to get the correct video. Applicant stated he was provided some discovery after the arraignment.

In retrospect, Applicant stated he wished he had pled. He also testified that he made a counteroffer of ten years to his plea offer. He proceeded to trial because he thought he would be going for an all or nothing strategy. He testified that the parties met with the Judge in chambers and after the in-chambers meeting, the Judge announced he would be charging on ABHAN and second-degree assault and battery.

On cross-examination, Applicant stated that he found out that the lesser-included offense instructions would be charged on the third day of trial. Applicant acknowledged that Richardson was on the State's witness list, but he thought he would be helpful to establish the victim ran out in front of his car. He agreed that the State tried to enter Richardson's witness statement and Counsel objected and the objection was sustained. He acknowledged that his Counsel asked the Court for a continuance which was denied. He stated that he was unsure if the medical records would be helpful but wanted them subpoenaed regardless. Applicant claimed that the two

witnesses that described the victim's injuries provided different injuries when asked to list them. However, he acknowledged that both witnesses described similar injuries and both lists were detailed. Applicant stated he received all discovery before trial, just not all before the arraignment. Applicant asked for a plea deal after the Court announced it would charge the jury on lesser-included instructions, but no plea offers were available at that time. Counsel extensively cross-examined the victim about any alleged threats he made against Applicant. Regarding the discovery mix-up, Applicant acknowledged that he was shown the correct video about a month before trial. Applicant had two different prior incidences where he hit individuals with a car and drove off. Applicant admitted that he got into a fight with the victim, during which he hit the victim in the face with a beer bottle and hit him with his car once and then kept driving forward, rolling on top of him. He stated he drove away because he was drunk and not making good decisions as a result.

Counsel Testimony

Counsel testified he met with Applicant four to five times, including court dates and also communicated with him by mail. He stated that they discussed the discovery, the State's witnesses, the theory of the case, and the extent of the injuries the victim sustained and the lesser-included charge of ABHAN. He testified the Applicant was not interested in a plea unless he was guaranteed time served, a probation-only sentence, or if it ran concurrent to the sentence he was already serving. Applicant rejected an offer for a cap of ten years on ABHAN.

As to the video provided in discovery, counsel testified he was provided with the wrong video but was eventually provided with the correct video after contacting the prosecutor about the mix up. Applicant was able to review the videotape before trial. Counsel has been practicing since 1994 and stated it is not uncommon to receive discovery in batches. He testified that he thought some discovery may not have been turned over before the arraignment, but that is not uncommon.

Counsel testified that he discussed obtaining the medical records with Applicant. He stated it was in Applicant's favor not to produce the medical records because he did not believe the State could prove great bodily injury.

Counsel testified that the picture of the victim on the beach would not be admissible. He stated that he could not authenticate the picture, nor was it date or time stamped.

Counsel and Applicant discussed calling Kennedy as witnesses. Counsel testified that Kennedy always had a reason for not being able to make it to trial. He decided not to call Kennedy to testify because of how his story changed throughout their conversations over time. He stated that his proffered testimony became less favorable to the defense with time and elected not to call him to testify because he thought that the testimony may prove to be detrimental. Additionally, Counsel testified that he was unavailable to testify at the trial because every time he called him, he offered an excuse as to why he could not come to trial. Counsel also testified that he moved for a continuance, but it was denied.

Counsel testified that Richardson was a state's witness and not favorable to the Applicant. He stated he went with an investigator to talk to Richardson, who was uncooperative and no longer worked at the bar. He stated he decided not to subpoena Richardson as a trial strategy because he was an uncooperative witness. Further, he was listed as a state witness.

He also testified that the jury charge of ABHAN, which was a lesser included offense, was legally justified based on the testimony presented at trial and an objection to this charge would be unsuccessful.

Prosecutor Testimony

Assistant Solicitor, George H. DeBusk also testified at the evidentiary hearing. He testified that discovery was ongoing and he tries to turn discovery around as soon as a request is received and usually provides it to defense counsel within seven to ten days. He testified he did not know why the video disc provided to counsel was mislabeled but provided the correct copy as soon as he was made aware of the mistake. He testified he tried to subpoena Richardson as a State witness, but he could not locate him. He also testified that he did not try to subpoena the victim's medical records and was aware of the beach picture. He stated he would have objected to this picture being entered as evidence as it could not be authenticated. He stated that the Court informed the parties in chambers that he was going to charge the lesser included offense of ABHAN. Applicant never requested a plea offer the State would entertain.

Findings of Fact and Conclusions of Law

This Court has had the opportunity to review the record in its entirety and has heard the testimony and arguments presented at the PCR hearing. Before this Court are the Horry County Clerk of Court Records, Applicant's South Carolina Department of Corrections Records, the trial transcript, direct appeal records, and this PCR action's records. This Court has further had the opportunity to observe each witness who testified at the hearing, and to closely pass upon their credibility. This Court has weighed the testimony accordingly. Set forth below are the relevant findings of fact and conclusion of law as required by South Carolina Code Annotated Section 17-27-80 (2003).

Ineffective Assistance of Counsel

In a PCR action, the applicant bears the burden of proving allegations contained in the application. *Butler v. State*, 286 S.C. 441, 334 S.E.2d 813 (1985). When an applicant asserts

ineffective assistance of counsel as a ground for relief, the applicant must show “counsel’s conduct so undermined the proper functioning of the adversarial process that [it] cannot be relied upon as having produced a just result.” *Strickland v. Washington*, 466 U.S. 668, 686 (1984); *Butler*, 286 S.C. at 442, 334 S.E.2d at 814. Ineffective assistance of counsel is governed by the Sixth Amendment, as explained by the United States Supreme Court in *Strickland v. Washington*.

Pursuant to the first prong of the *Strickland* analysis, the applicant must prove defense counsel’s performance was deficient. *Id.* at 686; *Cherry v. State*, 300 S.C. 115, 117, 386 S.E.2d 624, 625 (1989). To show deficiency, the applicant must prove by a preponderance of the evidence that counsel’s actions fell outside of the zone of “reasonableness under prevailing professional norms.” *Strickland*, 466 U.S. at 688. See also Rule 71.1(e), SCRPC (“The applicant has the burden of establishing his entitlement to relief by a preponderance of the evidence.” Reasonableness is determined by the “variety of circumstances faced by defense counsel or the range of legitimate decisions regarding how to best represent a criminal defendant,” and the scope of the reasonableness inquiry is limited to facts counsel had available at the time of representation. *Id.* at 689. “Counsel is strongly presumed to have rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment.” *Yarborough v. Gentry*, 540 U.S. 1, 5 (2003) (citing *Strickland*, 466 U.S. at 690). Judicial scrutiny of counsel’s performance remains highly deferential towards defense counsel with a strong presumption that counsel acted competently, because competent representation may be executed in virtually “countless” ways. *Strickland*, 466 U.S. at 688-89.

Second, counsel’s deficient performance must have prejudiced the applicant so that “there is a reasonable probability that, but for counsel’s unprofessional errors, the result of the proceeding would have been different.” *Cherry*, 300 S.C. at 117-18. “A reasonable probability is a probability

sufficient to undermine confidence in the outcome.” *Strickland*, 466 U.S. at 694. The court makes this determination based upon the totality of the evidence. *Id.* at 695. Realistically, this matters “only in the rarest case” because “[t]he likelihood of a different result must be substantial, not just conceivable.” *Harrington v. Richter*, 562 U.S. 86, 111-12 (2011) (quoting *Strickland*, 466 U.S. at 697).

The standards do not establish mechanical rules; the ultimate focus of inquiry must be on the fundamental fairness of the proceeding whose result is being challenged. *Strickland*, 466 U.S. at 696. A court need not first determine whether counsel’s performance was deficient before examining the prejudice suffered by the defendant as a result of the alleged deficiencies; it is easier to dispose of an ineffectiveness claim on the ground of lack of sufficient prejudice, that course should be followed. *Id.* at 696-97.

Failure to Communicate/Object to Lesser-Included Charges Instructions

Applicant claims Counsel was ineffective for failure to communicate or object to lesser-included offense instructions. Applicant clarified at the PCR hearing, stating that he was familiar with the lesser-included offenses instructions, but that he did not think they would be given. Counsel also credibly testified that he discussed the lesser-included offenses with Applicant prior to trial. Thus, this Court finds that Applicant knew these offenses existed.

Further, both Counsel and Prosecutor acknowledged that the testimony presented supported a lesser-included charge of ABHAN and ultimately the judge would decide. Counsel credibly testified that he did not object to the Judge’s decision to charge the lesser-included offense because an objection would not be sustained as the testimony supported the charge. Counsel is not deficient for failure to object on that basis, and because there is no deficiency, there can be no prejudice. Accordingly, relief is denied.

Failure to Call Aaron Kennedy

Applicant claims Counsel was ineffective for failure to call Aaron Kennedy to testify. At a minimum, counsel must interview potential witnesses and make independent investigations regarding the facts and circumstances of the case. *Ard v. Catoe*, 372 S.C. 318, 642 S.E.2d 590 (2007). To show counsel was ineffective by failing to call a witness, the witness(es) must be produced at the PCR evidentiary hearing or their testimony must otherwise be presented, consistent with the rules of evidence. *Glover v. State*, 318 S.C. 496, 498-99, 458 S.E.2d 538, 540 (1995). Mere speculation regarding the witness's testimony is insufficient to establish prejudice. *State*, 315 S.C. 385, 434 S.E.2d 266 (1993).

"In most PCR cases in which the applicant seeks relief for trial counsel's failure to call witnesses, the PCR court's analysis—and the analysis by the appellate court—is focused on the strategic considerations of counsel in balancing the potential benefits of calling a particular witness against the identifiable risks." *Buckson v. State*, 423 S.C. 313, 320, 815 S.E.2d 436, 440 (2018).

Counsel's performance is not deficient if he decided not to present a witness as a tactical and strategic move, nor if the witness was unlikely to appear or present testimony that could have made a difference at trial. *See e.g. Smith v. State*, 404 S.C. 493, 502, 745 S.E.2d 378, 383 (2012) (finding that counsel was not deemed ineffective when petitioner failed to introduce any evidence that established prejudice to the petitioner); *Edwards v. State*, 392 S.C. 449, 457-58, 710 S.E.2d 60, 65 (2011) (stating that counsel was not ineffective because the witness could not withstand cross-examination due to his prior vacillation and the cumulative nature of his testimony and he knew the petitioner's statement to the police would be entirely consistent with the supposed witness's statement at trial); *Glover*, 318 S.C. 496, 498, 458 S.E.2d 538, 540 (1995) (finding that

counsel was in deficient by failing to call all alibi witnesses when two witnesses who testified did not establish the alibi).

On the other hand, prejudice will generally be found if the testimony was significant and favorable enough to the Applicant so that the trial proceedings results may have been different because of the testimony. *See e.g. Lounds v. State*, 380 S.C. 454, 670 S.E.2d 646 (2008) (finding that counsel was deficient by failing to call witnesses, for no other reason than lack of preparation, that may have corroborated the defendant or bolstered his credibility so that the findings at trial could have been favorable to the defendant); *Thomas v. State*, 308 S.C. 123, 477 S.E.2d 531 (1992) (finding that uncalled witness' testimony would have cast doubt on the sole witness' identification of the petitioner and, thus, would have made a difference at trial).

Counsel credibly testified he decided not to call Kennedy to testify because of how his story changed throughout their conversations over time. He stated that this proffered testimony became less favorable to the defense with time and elected not to call him to testify because he thought that the testimony may prove to be detrimental. Additionally, Counsel credibly testified that he was unavailable to testify at the trial because every time he was asked, he offered an excuse. Deciding not to call this witness was reasonable and Counsel is not found deficient as a result. Additionally, because there is no deficiency, there is no prejudice. Accordingly, relief is denied.

Failure to Call Vince Richardson

Applicant claims Counsel was ineffective for failure to call Vince Richardson. Prosecutor credibly testified that he sought to subpoena this witness but could not locate him. Counsel credibly testified he located him, but that he was uncooperative, and Counsel did not want to subpoena a hostile witness. This is a reasonable decision, and no prejudice can be found flowing therefrom. Accordingly, relief is denied.

Failure to Obtain a Continuance

Applicant claims Counsel was ineffective for failure to obtain a continuance because Kennedy was not present for trial. However, Counsel did move for a continuance, which was denied. Counsel is not deficient for failure to guarantee a favorable outcome on his client's request. Additionally, there has been no showing that a continuance would have changed the outcome at trial. Accordingly, relief is denied.

Failure to Secure Medical Records

Applicant claims Counsel was ineffective for failure to secure the victim's medical records. However, Counsel articulated a reasonable trial strategy in stating that he did not subpoena the records because it was more favorable to the defense that this evidence was not entered. Specifically, he testified that he did not think the State met its burden of proof in showing great bodily injury. Additionally, there is no showing that the records were in any way favorable to Applicant. Counsel is not deficient for failure to procure evidence suspected to be unfavorable to his client and presenting that evidence in court. Additionally, these records were not sent to the Court, and there has been no showing that these records would have changed the trial outcome. Accordingly, relief is denied.

Failure to Procure and Show all Discovery

Applicant claims Counsel was ineffective for failure to procure and show all discovery. Applicant, Prosecutor, and Counsel all credibly testified that all discovery was shared with the defense prior to trial. Further, they confirmed that the correct video was ultimately shown to Applicant. Applicant's concern is seemingly rooted in the fact that he was not shown every piece of evidence prior to the arraignment. However, as Counsel confirmed, this is not uncommon, and this Court finds it is not a basis for granting relief. Accordingly, because Applicant was shown all

discovery prior to trial the claim is without merit and relief is denied accordingly.

Failure to Enter Beach Picture

Applicant claims Counsel was ineffective for failure to enter a picture of the victim at the beach at trial. Counsel and Prosecutor both credibly testified that this could not be entered because there was no known timeline on when it was taken, and it could not be properly authenticated. Further, Prosecutor credibly testified that he would have objected to the photograph and that objection most likely would have been sustained. Counsel is not deficient for failing to enter an inadmissible piece of evidence and, because the objection would have been sustained, the photograph would not have been entered. Accordingly, there is no prejudice. Thus, relief is denied on this ground.

Failure to Cross-Examine Victim

Applicant claims Counsel was ineffective for failure to cross-examine the victim about the extent of his injuries and the beach picture. As stated above, the picture was not admissible at trial and Counsel is not deficient nor was Applicant prejudiced on this ground. Concerning the injuries, Applicant has failed to show why Counsel was deficient for failure to pursue this line of questioning or how it was preferable over Counsel questioning the victim about his history with Applicant, their fight, and any threats he may have made toward Applicant. Additionally, Applicant has failed to show how a different cross-examination strategy would have led to a different outcome at trial. Accordingly, relief is denied.

More Favorable Plea Offer

Applicant claims Counsel was ineffective for failure to procure a more favorable plea offer. However, Applicant had no constitutional right to a plea offer, nor was the State required to keep the offer open in this case. "Prosecutors have broad powers in the plea bargain process[.]" *Reed v.*

Becka, 333 S.C. 676, 684, 511 S.E.2d 396, 400 (Ct. App. 1999); *see Collins v. State*, 422 S.C. 250, 261, 810 S.E.2d 871, 877 (2018) (“[T]he decision whether to revive the expired plea offer rested exclusively with the solicitor.”); *State v. Langford*, 400 S.C. 421, 436 n.6, 735 S.E.2d 471, 479 n.6 (2012) (stating “[u]ndoubtedly, the solicitor has discretion in choosing how to proceed with a case, including whether to prosecute in the first place and whether he brings it to trial or offers a plea bargain”); *see also Weatherford v. Bursey*, 429 U.S. 545, 561 (1977) (finding “there is no constitutional right to plea bargain; the prosecutor need not do so if he prefers to go to trial”).

Here, Counsel credibly testified that Applicant was only open to a plea offer that would not require he serve additional prison time. Additionally, Prosecutor credibly testified that Applicant never indicated he was willing to take a plea deal that the State was willing to consider. Counsel is not deficient for failure to convince the State to change its mind concerning plea offer leniency. Accordingly, relief is denied.

Prosecutorial Misconduct

Applicant claims prosecutorial misconduct for failure to turn over evidence. *Brady*¹ violations occur if four conditions are met: “the evidence was favorable to the accused”, “it was in the possession of or known to the prosecution”, “it was suppressed by the prosecution”, and “it was material to guilt or punishment.” *Gibson v. State*, 334 S.C. 515, 524, 514 S.E.2d 320, 324 (1999). Whether a *Brady* violation is material and, thus, sufficient to warrant relief, is contingent on where there is a “reasonable probability that, but for the government's failure to disclose *Brady* evidence, the defendant would have refused to plead guilty and gone to trial.” *Id.* at 325. Further, whether a mistrial is warranted remains contingent on “(1) the cumulative effect

¹ *Brady v. Maryland*, 373 U.S. 83 (1963).

of such misconduct; (2) the strength of the properly admitted evidence of the defendant's guilt; and (3) the curative actions taken by the court.” *State v. Inman*, 395 S.C. 539, 565, 720 S.E.2d 31, 45 (2011) (quoting *United States v. Anwar*, 428 F.3d 1102, 1112 (8th Cir. 2005)).

Applicant acknowledged he received all discovery before trial. This was supported by Counsel’s and Prosecutor’s testimonies. Applicant claims he was not given some discovery until after the arraignment, but the State is not required to ensure every piece of evidence in a case is turned over before the arraignment. Still, Prosecutor testified that, according to his notes, he turned all discovery in the case over roughly seven to ten days after the request was made. Thus, this Court finds a *Brady* violation did not occur and Applicant is not entitled to relief accordingly.

Conclusion

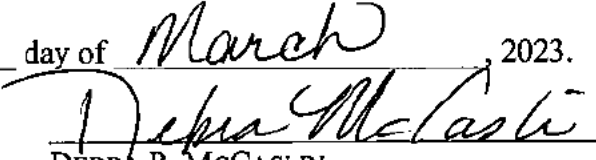
Based on all the foregoing, this Court finds and concludes that Applicant has not established any constitutional violations or deprivations that would require this Court to grant his application. Therefore, this PCR application must be denied and dismissed with prejudice.

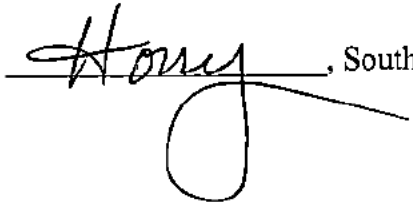
This Court notifies the Applicant that he must file and serve a notice of appeal within thirty days of receipt by counsel of the judgment entry’s written notice to secure appropriate appellate review. *See* Rule 203, SCACR. Pursuant to *Austin v. State*, 305 S.C. 453, 409 S.E.2d 395 (1991), an Applicant has the right to appellate counsel’s assistance in seeking review of the denial of PCR. Rule 71.1(g), SCRCR provides that if the Applicant wishes to seek appellate review, PCR counsel must serve and file a notice of appeal on Applicant’s behalf. Your attention is directed to South Carolina Appellate Court Rule 243 for appropriate appellate procedures.

IT IS THEREFORE ORDERED:

1. The PCR application be denied and dismissed with prejudice; and
2. Applicant be remanded to the custody of Respondent.

AND IT IS SO ORDERED this 22 day of March, 2023.


DEBRA R. MCCASLIN
Presiding Judge
Fifteenth Judicial Circuit

, South Carolina.

FILED
HORRY COUNTY
2023 MAR 27 P 2:18
RENEE N. ELVIS
CLERK OF COURT
HORRY COUNTY, SC

WITNESSES

Nathan Williams Horry County Police Department

Dudley

ARREST WARRANT NUMBER

2016A2610201240
 CDR: 3410 16-03-0029
 DOA: 5/23/2016

ACTION OF GRAND JURY

TRUE BILL

Bob Harris
 Foreperson of Grand Jury
 Date: AUG 11 2016

VERDICT

Foreperson of Petit Jury
 Date:

DOCKET NO. 2016-GS-26-03399

The State of South Carolina
 County of Horry

Seth Osklin

16H02576

COURT OF GENERAL SESSIONS

AUGUST, 2016 TERM

THE STATE

vs.

Joshua William Malden
 Wilcot Branch Ct
 Conway, SC 29526-1205

W/M

DOB: 1984
 SSN: [REDACTED]

ATTORNEY: J. Eric Fox

Indictment for

ATTEMPTED MURDER

Jimmy A. Richardson, II, Solicitor

ORIGINAL

CERTIFIED COPY

RENEE N. ELVIS
 CLERK OF COURT
 HORRY COUNTY, SC

STATE OF SOUTH CAROLINA)

COUNTY OF HORRY)

INDICTMENT

At a Court of General Sessions, convened on August 11, 2016, the Grand Jurors of Horry County present upon their oath:

ATTEMPTED MURDER

CDR: 3410 16-03-0029

That **Joshua William Maiden** did, in Horry County, on or about May 22, 2016 with intent to kill Alexander Minet, attempt to kill the victim with malice aforethought, either expressed or implied in violation of Section 16-3-29, 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

RENEE R. ELVIS
CLERK OF COURT
HORRY COUNTY, SC

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