

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

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S.C. SUPREME COURT

Certiorari to Florence County

Honorable George M. McFaddin, Circuit Court Judge

MELVIN DURANT,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2024-000120

APPENDIX

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State of South Carolina	)	Court of General Sessions
	)	Twelfth Judicial Circuit
County of Florence	)	Case No. 2015-GS-21-00211

State of South Carolina,	)	

Plaintiff,	)	

-vs-	)	

Transcript of Record

Melvin Durant,	)	

Defendant.	)	

Florence, South Carolina

B E F O R E:

The Honorable D. Craig Brown, Judge

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

David Richardson, Esquire
Attorney for the Plaintiff

William "Vick" Meetze, Esquire
Attorney for the Defendant

Krystal J. Smith
Court Reporter

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E X H I B I T S

<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID.</u>	<u>EV.</u>

(No Exhibits Presented)

1 JUNE 14, 2016

2 (WHEREUPON, the proceedings began at 11:44 a.m.)

3 MR. RICHARDSON: Melvin Durant. It's his motion. May it
4 please the Court, Your Honor.

5 Before you is Melvin Durant. He's got a true-billed
6 indictment, 2015-GS-21-211, for attempted murder. He's first
7 up on the trial list Monday. He's represented by Mr. Meetze.

8 It's my understanding that there is a defense motion.

9 Also, now may be as good as time as any for a status
10 conference as far as what I've offered and the defendant's
11 intention. My offer in the case was I think a plea to assault
12 and battery, high and aggravated nature, and Mr. Meetze has
13 let me know from very early on that Mr. Durant has wanted a
14 trial.

15 So we never really have gotten into a whole lot, but I
16 did want to put on the record what the offer was and, you
17 know, he has not accepted it up to this point. So I guess
18 today would be a good a day as any to go ahead and remove that
19 offer and get ready for Monday morning, but the defense I
20 believe has a motion.

21 THE COURT: All right. Mr. Meetze?

22 MR. MEETZE: Thank you, Your Honor. I met with Mr.
23 Durant a little bit ago and Mr. Durant is the one that wishes
24 to address the Court as it pertains to my remaining as his
25 attorney.

1 THE COURT: All right. Mr. Durant, if you'll raise your
2 right hand? Do you swear to tell the truth, the whole truth,
3 and nothing but the truth, so help you God?

4 THE DEFENDANT: Yes, sir.

5 THE COURT: All right. You're -- you can put your hand
6 down. You're Melvin Durant?

7 THE DEFENDANT: Yes, sir.

8 THE COURT: I'm happy to hear from you, sir, but I would
9 advise you to be careful what you say. I don't want you to
10 say something that could affect your case. Go ahead.

11 THE DEFENDANT: Yes, sir. As of my arrest, Your Honor,
12 on November the 12th, I recited in front of magistrate court at
13 Effingham and I was -- I was given this form for a preliminary
14 hearing and I sent it in on the 18th of November and I never
15 received my preliminary hearing through my counselor.

16 THE COURT: Well, I would assume that the State indicted
17 you prior to a preliminary hearing being set. Is that right,
18 Mr. Meetze?

19 MR. MEETZE: Your Honor, that's true. Now, I will say
20 that he filled this form out well prior to it being indicted.
21 This is a copy that we have in our office after it was sent.

22 For whatever reason, I don't know what the hold-up was
23 with -- with the mail from the jail to our office. We did not
24 receive it in our office until March the 25th of this year, and
25 it's stamped here received on that date.

1 It was actually indicted I think on March the 22nd. So
2 once it was already indicted, that was -- that was that. And
3 I've explained that to Mr. Durant.

4 THE COURT: No constitutional right to a preliminary
5 hearing, is there, Mr. Meetze?

6 MR. MEETZE: That's correct.

7 THE COURT: You understand that, Mr. Durant?

8 THE DEFENDANT: I mean no, sir, because --

9 THE COURT: Well, I just -- I just -- I can't explain it
10 any better than that. You don't have a constitution -- you
11 have a constitutional right to a jury trial --

12 THE DEFENDANT: Yes, sir.

13 THE COURT: -- but you don't have a constitutional right
14 to a preliminary hearing. Okay?

15 THE DEFENDANT: Okay.

16 THE COURT: So you're not getting a preliminary hearing
17 at this stage.

18 THE DEFENDANT: Okay.

19 THE COURT: You've already been indicted on this charge.

20 THE DEFENDANT: So the manner stated in preliminary
21 hearing, Your Honor, is you're entitled to a preliminary
22 hearing if you're indicted and you've been charged with a
23 felony.

24 THE COURT: Okay.

25 THE DEFENDANT: Yes, sir. And I -- and if I fill out

1 this paperwork as the judge give me with --

2 THE COURT: We --

3 THE DEFENDANT: -- requesting for a preliminary hearing,
4 I don't deserve a preliminary hearing? Is that what you're
5 saying?

6 THE COURT: What I'm saying is constitutionally you are
7 not entitled to have a preliminary hearing.

8 THE DEFENDANT: In this state?

9 THE COURT: Yes, sir.

10 THE DEFENDANT: Okay.

11 THE COURT: In this state, you're not constitutionally
12 entitled to a preliminary hearing. All right? Do you
13 understand that?

14 THE DEFENDANT: Yes, sir.

15 THE COURT: Okay. Next question? Do you have any other
16 questions?

17 THE DEFENDANT: Well --

18 THE COURT: Or any other motions?

19 THE DEFENDANT: Yes, sir. But he never -- out of this
20 whole application, we ain't never went through verbally and
21 then he stated to me -- well, but this -- this date right here
22 is not accurate because he showed me my --

23 THE COURT: What date?

24 THE DEFENDANT: This stamp right here that's saying that
25 they received it on the 26th of March.

1 THE COURT: That's when it was received in your office,
2 Mr. Meetze?

3 MR. MEETZE: Yes, Your Honor.

4 THE DEFENDANT: But, Your Honor, January the 8th, 2015, he
5 showed me my report --

6 THE COURT: Okay.

7 THE DEFENDANT: -- this right here, and this -- and this
8 never had a stamp on it. When I come to court for a bond
9 reduction on the 21st, I asked for a copy of this. He handed
10 me -- he had this ran off and this is my copy, and that one it
11 had the stamp on it.

12 THE COURT: Okay.

13 THE DEFENDANT: Yes, sir. I mean that's what I'm looking
14 at and then now what I'm saying is that Mr. Meetze verbally
15 told me if I wanted to, I could have filed this preliminary
16 action against me and I took my rights and then I did that and
17 then I responded. People responded and couldn't do nothing
18 about it. So I wrote Mr. Scott Floyd and let him know what
19 was going on between me and Mr. Meetze just to have fair
20 counsel.

21 THE COURT: Okay.

22 THE DEFENDANT: And then Mr. Meetze stated that, well, I
23 don't have a defense for you; so how can I go to trial with a
24 man that don't have no defense on my behalf on my defense on
25 my trial of the case? I -- if -- and you just brought me in

1 to listen at the video and audio on my arrest out of 18
2 months, and that's not getting prepared for trial. I go to
3 trial Monday and you set the trial date for July -- June the
4 20th.

5 THE COURT: Okay. Mr. Meetze?

6 MR. MEETZE: Judge, I just got the audio on June the 2nd
7 in our office. I've been out of the office from June the 3rd
8 until yesterday. So yeah, today was the first opportunity I
9 had to play it for him and that's what I did.

10 THE COURT: You did so? Okay. All right. Anything
11 else, Mr. Durant?

12 THE DEFENDANT: No, Your Honor. I just feel that my
13 rights have been violated when I had this information on
14 preliminary hearing and I was sitting waiting and this case
15 never been discussed with me with Mr. Meetze. We never set
16 down verbally and wrote any of the notes and then made no
17 defense for this trial of anything and I've been sitting in
18 Effingham since this day up until this day.

19 THE COURT: Okay.

20 THE DEFENDANT: And I don't feel like it's right. He
21 came last Friday on the 27th and made a verbal remark to the
22 officer that I don't like him, but I don't know the man well
23 enough not to dislike him. I just dislike his representation
24 of not, you know, really sitting down and going over this
25 information with me, what they got against me, what the State

1 have against me. How is you going to defend me on these
2 charges?

3 THE COURT: All right. Mr. Meetze, anything you want to
4 add?

5 MR. MEETZE: Judge, I'll say for the record that we've
6 been over the discovery in the case and he's had copies of his
7 discovery for months and months and months now.

8 THE COURT: Okay. Mr. --

9 MR. MEETZE: And I've let him know the evidence that the
10 State intends to present and I've told him the witnesses the
11 State intends to present and what we expect those witnesses to
12 testify to. I've been over that with Mr. Richardson. Mr.
13 Richardson has been very forthright with me with regards to
14 the witnesses he intends to call. So I -- I'll say that.

15 THE COURT: All right. All right. Mr. Durant, I've
16 known Mr. Meetze for a long time. I've seen him try cases.
17 He's tried cases in front of me. He's probably helped me try
18 cases when I worked part-time with the Public Defender's
19 Office --

20 THE DEFENDANT: Your Honor, may I?

21 THE COURT: -- years ago. All right.

22 THE DEFENDANT: I can understand that.

23 THE COURT: He is a very good lawyer. You're entitled --
24 constitutionally, you're entitled to a lawyer.

25 THE DEFENDANT: Yes, sir.

1 THE COURT: When a lawyer is appointed to represent you,
2 appointed counsel, you don't have a right to choose which
3 appointed counsel you want to represent you. Okay?

4 Now, if you wanted to hire a lawyer, you've been in jail
5 about 18 months. Is that right?

6 THE DEFENDANT: Yes, sir.

7 THE COURT: You've had every right to hire a lawyer, if
8 you were able, over the last 18 months.

9 THE DEFENDANT: But I wasn't able to.

10 THE COURT: Okay. Well -- and you've -- because you
11 weren't able, Mr. Meetze was appointed and he's represented
12 you. I'm not exactly sure when he was appointed to represent
13 you, but he has represented you for some time. You may not
14 like exactly how he represents you, but he's a trained lawyer.
15 He does a very good job for his clients.

16 And it's something I used to tell my clients all the
17 time. I don't make the facts. When I represented criminal
18 defendants, I don't make the facts, but I've got to deal with
19 them. Mr. Meetze didn't make the facts in this case, but he's
20 got to deal with them, and he'll do the best that he can and
21 he will do a fine job for you. You might not like it how he
22 handles it, but I promise you he'll be -- he'll be more
23 prepared and he'll do a fine job for you. It may not turn out
24 how you want it to, but he'll do a good job for you.

25 THE DEFENDANT: Your Honor, I understand about the

1 turning out, but, Your Honor, from your point of view or
2 anybody's point of view, somebody representation is that you
3 don't go around and talk about your client to an officer and
4 that officer come back and make --

5 THE COURT: Well --

6 THE DEFENDANT: -- a verbal remark. You know, it's hard
7 to trust a man like that. I mean if I'd have made that
8 comment about you and I'm representing you, you might feel
9 some type of what. That's what I'm saying. That's all I'm
10 saying and I'm -- you know, it's hard to trust that.

11 THE COURT: Well, I --

12 THE DEFENDANT: And then when you tell me, well, I don't
13 care to file a verbal action against me when I'm just asking
14 you to leave the question about the rights I'm supposed to
15 have because of the paperwork I have. I mean what more am I
16 supposed to do?

17 THE COURT: Well, from the --

18 THE DEFENDANT: I mean --

19 THE COURT: From the --

20 THE DEFENDANT: -- just I feel like that's right.

21 THE COURT: Well, from the standpoint that this could be
22 construed as a motion to relieve Mr. Meetze as your attorney,
23 I've heard nothing here that would warrant the removal of him
24 as your lawyer. Therefore, your case is going to trial
25 Monday.

1 THE DEFENDANT: Uh-huh.

2 THE COURT: Okay? Your case is going to trial Monday.
3 The State has indicated that they have made an offer in this
4 case. That that offer I assume at the close of business today
5 will be withdrawn.

6 THE DEFENDANT: Okay.

7 THE COURT: All right. If it's withdrawn, that means
8 that you can either go to trial Monday or you can plead
9 Monday, whatever you so desire, but if you decide to plead
10 after today, there will be no offer. It will be without
11 recommendation or negotiation.

12 THE DEFENDANT: Yes, sir.

13 THE COURT: All right?

14 THE DEFENDANT: Yes, sir.

15 THE COURT: Very good. Thank you.

16 MR. MEETZE: Thank you.

17 (WHEREUPON, the proceedings ended at 11:55 a.m.)

18

19 --- END REQUESTED TRANSCRIPT ---

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I do further certify that I am neither of kin, counsel,
nor interest to any party hereto.

Court Reporter

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State of South Carolina	)	Court of General Sessions
	)	Twelfth Judicial Circuit
County of Florence	)	Case No. 2015-GS-21-00211

State of South Carolina,	)	
	)	
Plaintiff,	)	
	)	
-vs-	)	Transcript of Record
	)	
Melvin Durant,	)	
	)	
Defendant.	)	
	)	

June 20-21, 2016
Florence, South Carolina

B E F O R E:

The Honorable D. Craig Brown, Judge; and a jury

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

David Richardson, Esquire
Attorney for the Plaintiff

William Vickery Meetze, Esquire
Attorney for the Defendant

Krystal J. Smith
Court Reporter

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1 JUNE 20, 2016

2 (WHEREUPON, the proceedings began at 12:33 p.m.)

3 THE COURT: All right. Is the State ready to proceed?

4 MR. RICHARDSON: Yes, sir, Your Honor.

5 THE COURT: Is defense counsel ready to proceed?

6 MR. MEETZE: We are, Your Honor.

7 THE COURT: All right. If you'll call your case, Mr.
8 Richardson.

9 MR. RICHARDSON: Yes, sir, Your Honor. This is 2015-GS-
10 21-211, the State of South Carolina versus Melvin Durant.

11 THE COURT: All right. Ladies and gentlemen, the State
12 of South Carolina has called the case of the State versus Mr.
13 Melvin Durant. Mr. Melvin Durant is charged by an indictment,
14 which I hold in my hand, with the offense of attempted murder.
15 The indictment reads as follows.

16 That Melvin Durant did in Florence County on or about
17 November 12, 2014, with intent to kill Wiley Jones attempt to
18 kill the victim with malice aforethought, either expressed or
19 implied, by stabbing the victim with a knife in violation of
20 Section 16-3-29 of the South Carolina Code of Laws.

21 Ladies and gentlemen, to this charge, Mr. Durant has pled
22 not guilty. Therefore, the State of South Carolina bears the
23 burden of proving his guilt beyond a reasonable doubt.

24 Now, before we move forward with selecting a jury, there
25 are some questions that I need to ask of you all. Please

1 listen very carefully to these questions.

2 Is there any member of the jury panel that's ever been
3 related by blood, connected by marriage, had a close personal,
4 business or social relationship with Mr. Melvin Durant or Mr.
5 Wiley Jones? If so, please stand.

6 (WHEREUPON, no one stood.)

7 THE COURT: All right. Mr. Richardson?

8 MR. RICHARDSON: Yes?

9 THE COURT: Did you give me a list of witnesses?

10 MR. RICHARDSON: I handed one up to the clerk and the
11 court reporter and I don't have an additional copy.

12 THE CLERK: Do you want me to give him mine?

13 THE COURT: All right. The following, ladies and
14 gentlemen, is a list of potential witnesses in this case.

15 Mr. Jimmy Cantey of the Florence Police Department; Sam
16 Ervin, Florence Police Department; Mark Happ, Florence Police
17 Department; Tim Matthews of the Florence Police Department;
18 Frank Mizell, Florence Police Department; Howard Wynn,
19 Florence Police Department; Jennifer Clayton with SLED, also
20 known as South Carolina Law Enforcement Division; Michael
21 Jordan; Tommy Nesmith; and Carl Wheeling.

22 Those are potential witnesses that may be called in this
23 case, ladies and gentlemen. Is there any member of the jury
24 panel that has ever been related by blood, connected by
25 marriage, had a close personal, business or social

1 relationship with any of those potential witnesses in this
2 case? If so, please stand.

3 (WHEREUPON, one person stood.)

4 THE COURT: All right. Tell me your name and number,
5 please, ma'am.

6 JUROR NUMBER 151: Victoria Taylor, 151.

7 THE COURT: And whom off of that list?

8 JUROR NUMBER 151: Frank Mizell.

9 THE COURT: In -- in what capacity do you know --

10 JUROR NUMBER 151: He was a former employer.

11 THE COURT: How long -- of you?

12 JUROR NUMBER 151: Uh-huh.

13 THE COURT: How long ago was that?

14 JUROR NUMBER 151: About seven years.

15 THE COURT: All right. If you were selected as a juror
16 in this case, do you believe that you could be fair and
17 impartial to both the State and the defense?

18 JUROR NUMBER 151: Yes.

19 THE COURT: Thank you. You may be seated. All right.
20 If at this time the attorneys would introduce themselves?

21 MR. RICHARDSON: Yes, sir.

22 THE COURT: The State going first, followed by defense
23 counsel.

24 MR. RICHARDSON: Yes, Your Honor. My name is David
25 Richardson. I'm an assistant solicitor here in the Twelfth

1 Circuit, which covers Florence and Marion County, and seated
2 next to me is the solicitor, Ed Clements.

3 THE COURT: Mr. Meetze?

4 MR. MEETZE: My name is Vick Meetze. I work in the
5 Public Defender's Office for both Florence and Marion Counties
6 and I represent Melvin Durant in this case.

7 THE COURT: All right. Is there any member of the jury
8 panel that's ever been related by blood, connected by
9 marriage, had a close personal, business or social
10 relationship or ever been represented by any of the attorneys
11 involved in this case? If so, please stand.

12 (WHEREUPON, no one stood.)

13 THE COURT: Bear with me just a minute, ladies and
14 gentlemen, please.

15 All right. Has any member of the jury panel or their
16 immediate family ever been or currently employed by any city,
17 county, state or federal law enforcement agency? If so,
18 please stand.

19 (WHEREUPON, several people stood.)

20 THE COURT: Tell me your name and number, please, ma'am.

21 JUROR NUMBER 122: Eda Negron-Oliver, 122.

22 THE COURT: And with what agency?

23 JUROR NUMBER 122: I work for the Federal Bureau of
24 Prisons.

25 THE COURT: All right. If you were selected as a juror

1 in this case, do you believe you could be fair and impartial
2 to both the State and the defense?

3 JUROR NUMBER 122: Yes, sir.

4 THE COURT: Thank you, ma'am. You may be seated. Tell
5 me your name and number, please, ma'am.

6 JUROR NUMBER 93: Rebecca Cain, 93. And my husband
7 worked for Florence County EMS.

8 THE COURT: All right. If you were selected as a juror
9 in this case, do you believe you could be fair and impartial
10 to both the State and the defense?

11 JUROR NUMBER 93: Yes, sir.

12 THE COURT: Thank you. You may be seated. Yes, ma'am?

13 JUROR NUMBER 68: Number 68. Taft Guiles -- he's my
14 uncle. He's a judge here in the city.

15 THE COURT: All right. If you were selected as a juror
16 in this case, do you believe you could be fair and impartial
17 to both the State and the defense?

18 JUROR NUMBER 68: Yes, sir.

19 THE COURT: Thank you. You may be seated. Yes, sir?

20 JUROR NUMBER 103: Number 103, Kyle Lewis. My father
21 works for the Florence County Sheriff's Office.

22 THE COURT: Currently?

23 JUROR NUMBER 103: Yes, sir.

24 THE COURT: If you were selected as a juror in this case,
25 do you believe you could be fair and impartial to both the

1 State and the defense?

2 JUROR NUMBER 103: Yes, sir.

3 THE COURT: Thank you. You may be seated. Yes, ma'am?
4 Your name and number, please?

5 JUROR NUMBER 33: Hilda Coker, 33. My nephew, Caleb
6 Carlson, works for the Florence County police.

7 THE COURT: All right.

8 JUROR NUMBER 33: City.

9 THE COURT: City?

10 JUROR NUMBER 33: City. I'm sorry.

11 THE COURT: What was his name again? Coker?

12 JUROR NUMBER 33: Caleb Carlson.

13 THE COURT: It doesn't appear that he's involved in any
14 way in this case. If you were selected as a juror in this
15 case, do you believe you could be fair and impartial to both
16 the State and the defense?

17 JUROR NUMBER 33: Yes, I could.

18 THE COURT: Thank you, ma'am. You may be seated. Yes,
19 ma'am? Your name and number?

20 JUROR NUMBER 128: It's 128, Angela Parsons. My brother
21 is a police officer with Francis Marion Police Department.

22 THE COURT: All right. If you were selected as a juror
23 in this case, do you believe you could be fair and impartial
24 to both the State and the defense?

25 JUROR NUMBER 128: Yes, sir.

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

2 All right. Is any member of the jury panel or their
3 immediate family currently or previously employed by any city,
4 county, state or federal prosecutor's office? If so, please
5 stand.

6 (WHEREUPON, one person stood.)

7 THE COURT: Yes, ma'am? Your name and number, please?

8 JUROR NUMBER 135: Padmaja Rao, 135. My brother is a US
9 attorney.

10 THE COURT: Where?

11 JUROR NUMBER 135: In Washington, DC.

12 THE COURT: All right. If you were selected as a juror
13 in this case, do you believe you could be fair and impartial
14 to both the State and the defense?

15 JUROR NUMBER 135: Yes, sir.

16 THE COURT: Thank you, ma'am. You may be seated.

17 All right. Has any member of the jury panel or their
18 immediate family currently or previously volunteered with any
19 law enforcement agency or prosecutor's office? If so, please
20 stand.

21 (WHEREUPON, no one stood.)

22 THE COURT: All right. Has any member of the jury panel
23 or their immediate family ever been the victim of a violent
24 crime? If so, please stand.

25 (WHEREUPON, two people stood.)

1 THE COURT: All right. Tell me your name and number,
2 please, ma'am.

3 JUROR NUMBER 122: Eda Oliver, 122, and my brother was a
4 murder victim.

5 THE COURT: All right. If you were selected as a juror
6 in this case, do you believe you could be fair and impartial
7 to both the State and the defense?

8 JUROR NUMBER 122: Yes, sir.

9 THE COURT: Thank you. You may be seated. Yes, sir,
10 your name and number, please?

11 JUROR NUMBER 149: Chris Stratton, 149.

12 THE COURT: All right.

13 JUROR NUMBER 149: I was the victim of an armed robbery.

14 THE COURT: All right. If you were selected as a juror
15 in this case, do you believe you could be fair and impartial
16 to both the State and the defense?

17 JUROR NUMBER 149: Yes, sir.

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

19 All right. Has any member of the jury panel formed or
20 expressed an opinion about any issue or matter involved in
21 this case? If so, please stand.

22 (WHEREUPON, no one stood.)

23 THE COURT: All right. Is any member of the jury panel
24 aware of any bias or prejudice toward either the State or the
25 defendant in this case? If so, please stand.

1 (WHEREUPON, no one stood.)

2 THE COURT: Is there any member of the jury panel who is
3 a member of or contributor to any group which has as its
4 primary concern the promotion of law enforcement? These
5 groups might include but certainly are not limited to MADD,
6 SADD, or CAV, Citizens Against Violent Crime. If so, please
7 stand.

8 (WHEREUPON, no one stood.)

9 THE COURT: All right. Does any member of the jury panel
10 know of any reason, any reason whatsoever, why he or she
11 should not serve as a juror in this case, with particular
12 emphasis being placed upon your ability to be fair and
13 impartial to both the State and the defense? If so, please
14 stand.

15 (WHEREUPON, no one stood.)

16 THE COURT: All right. Does the State have any
17 additional voir dire?

18 MR. RICHARDSON: No, sir.

19 THE COURT: Defense counsel?

20 MR. MEETZE: Nothing further, Your Honor.

21 THE COURT: All right. Madam Clerk, if you'd generate me
22 a list, please, ma'am? Five and five on the strikes.

23 MR. RICHARDSON: Can we approach, Your Honor?

24 THE COURT: Yes.

25 (WHEREUPON, a bench conference was held in the presence

1 of the jury panel but out of the hearing of the jury
2 panel off the record.)

3 (WHEREUPON, there was a pause in the proceedings.)

4 THE CLERK: Are you ready?

5 THE COURT: Yes, ma'am.

6 THE CLERK: When I call your name, if you'll just come up
7 to the podium right here. Number 83, Tyshawn Hines.

8 (WHEREUPON, a black male came forward.)

9 THE CLERK: What say the State?

10 MR. RICHARDSON: Please excuse the juror for purposes of
11 this trial only.

12 THE CLERK: You've been excused from this trial only,
13 sir. You may return to your seat. 164, Ellerbe Woodberry.

14 (WHEREUPON, a black male came forward.)

15 THE CLERK: What say the State?

16 MR. RICHARDSON: Please present Mr. Woodberry.

17 THE CLERK: What say the defendant?

18 MR. MEETZE: Please swear Mr. Woodberry.

19 THE CLERK: Please have a seat in the jury box, sir. 90,
20 Eric Johnson.

21 (WHEREUPON, a black male came forward.)

22 THE CLERK: What say the State?

23 MR. RICHARDSON: Please present Mr. Johnson.

24 THE CLERK: What say the defendant?

25 MR. MEETZE: Please swear Mr. Johnson.

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

2 165, Bettie Wright.

3 (WHEREUPON, a black female came forward.)

4 THE CLERK: What say the State?

5 MR. RICHARDSON: Please present Ms. Wright.

6 THE CLERK: What say the defendant?

7 MR. MEETZE: Please swear Ms. Wright.

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

9 62, Rebecca Gamble.

10 (WHEREUPON, a black female came forward.)

11 THE CLERK: What say the State?

12 MR. RICHARDSON: Please present Ms. Gamble.

13 THE CLERK: What say the defendant?

14 MR. MEETZE: Please swear Ms. Gamble.

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

16 Number 7, Launeal Black.

17 (WHEREUPON, a black female came forward.)

18 THE CLERK: What say the State?

19 MR. RICHARDSON: Please present Ms. Black.

20 THE CLERK: What say the defendant?

21 MR. MEETZE: Please swear Ms. Black.

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

23 126, Terry Owens.

24 (WHEREUPON, a white male came forward.)

25 THE CLERK: What say the State?

1 MR. RICHARDSON: Please present Mr. Owens.

2 THE CLERK: What say the defendant?

3 MR. MEETZE: Please swear Mr. Owens.

4 THE CLERK: Please have a seat in the jury box, sir. 42,
5 Roberta Cumbee.

6 (WHEREUPON, a white female came forward.)

7 THE CLERK: What say the State?

8 MR. RICHARDSON: Please excuse the juror for purposes of
9 this trial.

10 THE CLERK: You've been excused from this trial only,
11 ma'am. You may return to your seat. 95, Gregory Keith.

12 (WHEREUPON, a black male came forward.)

13 THE CLERK: What say the State?

14 MR. RICHARDSON: Please present Mr. Keith.

15 THE CLERK: What say the defendant?

16 MR. MEETZE: Please swear Mr. Keith.

17 THE CLERK: Please have a seat in the jury box, sir.
18 151, Victoria Taylor.

19 (WHEREUPON, a white female came forward.)

20 THE CLERK: What say the State?

21 MR. RICHARDSON: Please present Ms. Taylor.

22 THE CLERK: What say the defendant?

23 MR. MEETZE: Please excuse Ms. Taylor.

24 THE CLERK: You've been excused from this trial only,
25 ma'am. You may return to your seat. 64, Stacey Gray.

1 (WHEREUPON, a white female came forward.)

2 THE CLERK: What say the State?

3 MR. RICHARDSON: Please present Ms. Gray.

4 THE CLERK: What say the defendant?

5 MR. MEETZE: Please swear Ms. Gray.

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

7 103, Kyle Lewis.

8 (WHEREUPON, a white male came forward.)

9 THE CLERK: What say the State?

10 MR. RICHARDSON: Please present Mr. Lewis.

11 THE CLERK: What say the defendant?

12 MR. MEETZE: Please excuse Mr. Lewis.

13 THE CLERK: You've been excused from this trial only,

14 sir. You may return to your seat. 143, Trudy Singletary.

15 (WHEREUPON, a black female came forward.)

16 THE CLERK: What say the State?

17 MR. RICHARDSON: Please present Ms. Singletary.

18 THE CLERK: What say the defendant?

19 MR. MEETZE: Please swear Ms. Singletary.

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

21 59, Wendy Ford.

22 (WHEREUPON, a black female came forward.)

23 THE CLERK: What say the State?

24 MR. RICHARDSON: Please present Ms. Ford.

25 THE CLERK: What say the defendant?

1 MR. MEETZE: Please swear Ms. Ford.

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

3 137, Alycia Sansbury.

4 (WHEREUPON, a black female came forward.)

5 THE CLERK: What say the State?

6 MR. RICHARDSON: Please present Ms. Sansbury.

7 THE CLERK: What say the defendant?

8 MR. MEETZE: Please swear Ms. Sansbury.

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

10 136, Nina Russell.

11 (WHEREUPON, a white female came forward.)

12 THE CLERK: What say the State?

13 MR. RICHARDSON: Please present Ms. Russell.

14 THE CLERK: What say the defendant?

15 MR. MEETZE: Please excuse Ms. Russell.

16 THE CLERK: You've been excused from this trial only,

17 ma'am. You may return to your seat. 122, Eda Negron.

18 (WHEREUPON, a Hispanic female came forward.)

19 THE CLERK: What say the State?

20 MR. RICHARDSON: Please present Ms. Negron-Oliver.

21 THE CLERK: What say the defendant?

22 MR. MEETZE: Please excuse Ms. Oliver.

23 THE CLERK: You've been excused from this trial only,

24 ma'am. You may return to your seat. 20, Tommy Cantrell.

25 (WHEREUPON, a white male came forward.)

1 THE CLERK: What say the State?

2 MR. RICHARDSON: Please present Mr. Cantrell -- Dr.
3 Cantrell.

4 THE CLERK: What say the defendant?

5 MR. MEETZE: Please present Dr. Cantrell.

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

7 THE COURT: One or two alternates?

8 MR. RICHARDSON: One should be fine.

9 THE COURT: Mr. Meetze?

10 MR. MEETZE: I think so, yeah.

11 THE COURT: One and two on the strikes.

12 THE CLERK: 70 -- I'm sorry. Yeah. 72, Carroll Harrell.

13 THE COURT: 74.

14 THE CLERK: 74. I'm sorry.

15 (WHEREUPON, a white male came forward.)

16 THE CLERK: What say the State?

17 MR. RICHARDSON: Please present Mr. Harrell.

18 THE CLERK: What say the defendant?

19 MR. MEETZE: Please swear Mr. Harrell.

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

21 THE COURT: All right. Are there any matters of law that
22 we need to take up with regard to jury selection from the
23 State?

24 MR. RICHARDSON: No, sir.

25 THE COURT: Defense counsel?

1 MR. MEETZE: No, Your Honor.

2 THE COURT: All right. Ladies and gentlemen, those of
3 you who are seated in the jury box, what I am going to do at
4 this time is I am going to release you all for lunch. I'm
5 going to ask that you be back in your jury room at 2:45 -- at
6 2:45.

7 During your break or after I release you from here, do
8 not -- do not discuss this case with anyone. You know very
9 little about this case. You are not to discuss this case at
10 all with anyone until you are instructed to do so by the
11 Court.

12 Furthermore, you're instructed not to do any independent
13 investigation on your own. You are to decide this case based
14 solely upon the evidence and testimony that's presented in
15 this courtroom and nowhere else.

16 At this time, again, I'm going to excuse you all until
17 2:45. Please be back here at 2:45.

18 MR. CLEMENTS: May I approach, Your Honor?

19 THE COURT: Yes.

20 (WHEREUPON, the jury exited the courtroom at 12:56 p.m.)

21 (WHEREUPON, a bench conference was held off the record.)

22 THE COURT: All right. Ladies and gentlemen, those of
23 you who are seated out in the audience, you all were not
24 selected as jurors in this case. That does not mean that
25 you're not going to get selected this week on a jury.

1 What I'm going to do at this time is I am going to
2 release you all for the balance of the day. Okay? What I
3 need you to do tonight after six o'clock -- that piece of
4 paper that's got -- that was given to you or sent to you
5 should have a telephone number on it.

6 THE CLERK: I'll give it to them outside.

7 THE COURT: I stand corrected. My clerk over here has a
8 piece of paper that's got a telephone number on it.

9 You're instructed to call that number tonight after six
10 o'clock. There will be a recording that will give you
11 instructions on what you are to do with regards to tomorrow
12 and possibly the remainder of the week, but make sure you call
13 that number after six o'clock tonight, but before nine o'clock
14 in the morning. Okay? Before nine o'clock in the morning to
15 make sure if you're instructed to be here you'll know. Okay?

16 Again, thank you for being here. Madam Clerk, you can
17 hand those out as they exit the courtroom. You all have a
18 good rest of the day.

19 (WHEREUPON, the jury panel was excused at 12:58 p.m.)

20 THE COURT: All right. Anything from the State at this
21 time?

22 MR. RICHARDSON: Judge, you know we've got to do the
23 *Jackson v. Denno*. The only thing that I can think of -- Mr.
24 Meetze and I are getting together. I've got some of the NCICs
25 for some of the witnesses we can go over to determine

1 impeachable offenses. I think that's all I have for the
2 moment.

3 THE COURT: All right. What about -- is the defendant on
4 bond?

5 MR. MEETZE: No, Your Honor.

6 THE COURT: He's not on bond? Okay. All right.
7 Anything from you at this time, Mr. Meetze?

8 MR. MEETZE: No, sir, Your Honor.

9 THE COURT: All right. Two o'clock.

10 MR. MEETZE: Sure.

11 MR. RICHARDSON: That's fine.

12 (WHEREUPON, there was a break in the proceedings from
13 12:59 p.m. until 2:07 p.m., after which the proceedings
14 resumed as follows.)

15 THE COURT: All right. Is the State ready to proceed?

16 MR. RICHARDSON: Yes, sir.

17 THE COURT: Is defense counsel ready to proceed?

18 MR. MEETZE: Yes, Your Honor.

19 THE COURT: All right.

20 MR. RICHARDSON: Your Honor, first, if it please the
21 Court, we'll do the *Jackson v. Denno* hearings. The State
22 would call Mark Happ to the stand.

23 THE CLERK: Please place your left hand on the Bible and
24 raise your right hand. Do you swear the testimony you give in
25 this case will be the truth, the whole truth, and nothing but

MARK HAPP - DIRECT BY MR. RICHARDSON

1 the truth, so help you God?

2 THE WITNESS: I do.

3 THE CLERK: Please be seated and state your full name for
4 the record.

5 THE WITNESS: Mark Richard Happ.

6 MARK HAPP, being first duly
7 sworn, testified as follows:

8 DIRECT EXAMINATION

9 BY MR. RICHARDSON:

10 Q: All right. Officer Happ, back on November 12th, 2014, did
11 you respond to a call at the transitional shelter or homeless
12 shelter on Jarrett Street here in Florence?

13 A: Yes, I did.

14 Q: And what was the nature of that call?

15 A: I responded to a stabbing call.

16 Q: Okay. When you arrived, did you -- who did you speak
17 with?

18 A: I believe when I first arrived I spoke with the
19 responding officer, Officer Cantey. Jimmy Cantey.

20 Q: Okay. And was a suspect already in custody at that
21 point?

22 A: Yes, he was.

23 Q: All right. Was that Melvin Durant?

24 A: It was.

25 Q: And what did you then do with Mr. Durant?

MARK HAPP - DIRECT BY MR. RICHARDSON

1 A: When I responded, I was the corporal on-duty, the
2 supervisor. And so to allow Officer Cantey to proceed with
3 his investigation and speak to witnesses and that kind of
4 thing, I had transferred custody to me and placed Mr. Durant
5 in the back of my police car and stood by with him while the
6 investigation was taking place.

7 Q: Okay. And this -- where you were located -- that was in
8 Florence County, city of Florence?

9 A: City of Florence on Jarrett Street --

10 Q: Okay.

11 A: -- was the incident location.

12 Q: All right. So when you had Mr. Durant in your custody
13 there near your car, did you have an opportunity to speak with
14 him?

15 A: I did.

16 Q: Okay. And was that memorialized on your DVR?

17 A: Yes, it was.

18 Q: Okay. And I want to show you what has been marked for
19 identification only as State's 1 and ask if you can ID that?

20 A: This is a CD of the audio from my digital voice recorder.

21 Q: Have you reviewed the contents of that very disk?

22 A: Yes, I have.

23 Q: All right. And is the contents of this disk a true and
24 accurate representation of your conversation with Mr. Durant
25 on the evening of November 12th, 2014?

MARK HAPP - DIRECT BY MR. RICHARDSON

1 A: Yes, sir, it is.

2 Q: All right.

3 MR. RICHARDSON: Your Honor, I'd ask to put this into
4 evidence for the purposes of this hearing only at this time
5 and publish it to you.

6 THE COURT: All right.

7 MR. MEETZE: No objection, Your Honor.

8 THE COURT: All right. Go ahead.

9 (WHEREUPON, State's Exhibit Number 1, an audio CD, was
10 played in open court, not transcribed herein, after which
11 the proceedings resumed as follows.)

12 MR. RICHARDSON: All right.

13 BY MR. RICHARDSON:

14 Q: Corporal Happ, you mentioned at the beginning of that
15 tape that Mr. Durant was in custody and you read him Miranda
16 warnings; is that correct?

17 A: I did.

18 Q: Did you read those off a card or by memory or how did you
19 do that?

20 A: Off my Miranda card.

21 Q: Okay. And you keep that with you all the time?

22 A: I do.

23 Q: All right. And he acknowledged that he understood the
24 rights you presented to him?

25 A: That is correct.

MARK HAPP - DIRECT BY MR. RICHARDSON

1 Q: Okay. At any point in time during that night, did he ask
2 for an attorney to be present?

3 A: Not in my presence.

4 Q: Okay. Where were you exactly located when you were
5 talking to him on this tape? Not in the car, but somewhere
6 near your car?

7 A: Right next to my police car.

8 Q: Okay.

9 A: I believe they had walked him out from the back of the
10 shelter around to the front where I was parked. Then I took
11 custody of him from Officer Cantey.

12 Q: Okay. Was anybody else around you when you were talking
13 to him?

14 A: There were people, police officers, coming and going.
15 There were several county officers there as well for a time,
16 but I don't remember who they were.

17 Q: Okay. But nobody kind of engaged with y'all standing
18 there observing you talk to him?

19 A: No, no.

20 Q: All right. Was there anything about his physical
21 condition or your perception of his mental condition that gave
22 you any pause with respect to him knowing what he was doing
23 there talking to you?

24 A: No.

25 Q: Okay. So he seemed responsive to the questions you asked

MARK HAPP - DIRECT BY MR. RICHARDSON

1 him?

2 A: Yes.

3 Q: Okay. At any point in time, did he ask you to terminate
4 the conversation, that he didn't want to talk to you anymore?

5 A: No, he did not.

6 Q: He had just been placed into police custody at this
7 point; right?

8 A: That's correct.

9 Q: Okay. A few minutes prior?

10 A: That's correct.

11 Q: Did he appear to be in need of any sort of medical
12 attention or anything at that point in time?

13 A: No.

14 Q: I noticed -- it's sounded like on the tape that you were
15 in the process of or trying to adjust handcuffs or something
16 of that nature. Is that accurate?

17 A: Yes. By my recollection, I think I had mentioned a
18 deputy's name in there. I think some county officers
19 responded with the initial responding officer, Cantey, at the
20 time and I believe one of the deputy's handcuffs was on him
21 when I took custody, and I swapped his handcuffs out so he
22 could leave and put my own handcuffs on the defendant.

23 Q: Okay.

24 A: That's what I was doing.

25 Q: Did you do anything off tape to pressure, threaten,

MARK HAPP - DIRECT BY MR. RICHARDSON

1 coerce Mr. Durant into speaking with you that evening?

2 A: No.

3 Q: So is what we heard on that tape kind of the beginning of
4 your interaction with Mr. Durant that evening?

5 A: That's correct.

6 MR. RICHARDSON: Okay. Please answer any questions Mr.
7 Meetze may have for you.

8 THE COURT: Mr. Meetze?

9 MR. MEETZE: Thank you. May it please the Court.

10 CROSS-EXAMINATION

11 BY MR. MEETZE:

12 Q: How long had you been there when -- prior to talking with
13 Mr. Durant?

14 A: I believe it was not too long after I rolled up that they
15 brought him around the front. So I would say within a few
16 minutes.

17 Q: You weren't the first person --

18 A: I was not the first --

19 Q: -- to respond?

20 A: -- officer from the City of Florence on scene, no.

21 Q: There were already officers there? Had you had an
22 opportunity to speak to any of the responding officers prior
23 to speaking to Mr. Durant?

24 A: I don't recall having a long conversation. From what I
25 understand -- remember of it, you know, Officer Cantey and

MARK HAPP - CROSS BY MR. MEETZE .

1 whoever else was there -- I couldn't tell you right now, but
2 they did -- they brought him around from the back of the
3 shelter. I was parked out front. There may have been a
4 conversation between myself and Officer Cantey as to can you
5 -- can I put him in your car while I continue the
6 investigation? That's what I recall happened.

7 Q: And they put him in your car you said?

8 A: Yeah.

9 Q: All right.

10 A: Yeah. Because I mean -- I'm sorry. Yes.

11 Q: I'm sorry. Go ahead.

12 A: Officer Cantey brought him already in custody, already in
13 handcuffs, around to the front of the building where I was
14 parked on the street and, you know, wanted to be able to
15 continue the investigation and go inside and talk to witnesses
16 and that kind of thing. So I don't know if I volunteered or
17 he asked me if I could, but that's what happened.

18 Mr. Durant was placed in my custody while he continued
19 the investigation. Per policy, you know, I searched him
20 before I put him in the car and everything and read him his
21 Miranda, but that occurred just outside the vehicle. Then he
22 was placed in the car.

23 Q: You had gotten -- you were called to the scene; correct?
24 You got a radio dispatch of some kind?

25 A: I don't know if I specifically was dispatched because I'm

MARK HAPP - CROSS BY MR. MEETZE

1 a supervisor; so I don't necessarily get the actual dispatch
2 calls. Probably the unit assigned to that district, but that
3 would be something that I would typically respond to as a
4 supervisor. But I couldn't tell you how far away I was coming
5 from, but I didn't get there first.

6 Q: Gotcha. Now, in talking to Mr. Durant, you could tell
7 that he had been drinking?

8 A: That was my impression.

9 Q: All right. And there was another -- of course, you're a
10 trained law enforcement officer and you've reached supervisory
11 level; is that correct?

12 A: Yes, sir.

13 Q: So obviously as a law enforcement officer, you -- through
14 experience, much experience, you can recognize somebody that
15 has been drinking; correct?

16 A: That's correct.

17 Q: And you could recognize somebody that's been drinking to
18 a point where they're intoxicated?

19 A: That's correct.

20 Q: And in this case, Mr. Durant had been drinking to that
21 level? That would be your observation?

22 A: I know he had been drinking. You know, I could tell that
23 his words were slurred when he spoke, but I didn't do any kind
24 of testing to say what his level of intoxication was. I
25 didn't have any prior experience with him, but I could tell he

MARK HAPP - CROSS BY MR. MEETZE

1 had been drinking.

2 Q: All right. But it's certainly possible he could've been
3 to a level of being intoxicated?

4 A: Oh, absolutely.

5 Q: Okay. And, you know, I think in the statement he gave to
6 you he referenced to being at 413; is that right?

7 A: Correct.

8 Q: And that's an address on Church Street?

9 A: Correct.

10 Q: And that's a reference to a location that he had been
11 drinking; is that right?

12 A: I believe that's what he told me, yeah.

13 Q: Okay.

14 A: Something about doing shots.

15 Q: But you had not had a chance to speak really with other
16 officers that had already been there and had already been
17 investigating the matter? Like you said, you got there and
18 within -- within just a couple minutes you were talking with
19 Mr. Durant?

20 A: Correct.

21 Q: Okay.

22 MR. MEETZE: I don't have any further questions, Judge.

23 MR. RICHARDSON: Your Honor, with respect to that
24 statement, I don't have any additional questions for him.

25 There was a second statement that was provided in his vehicle,

MARK HAPP - REDIRECT BY MR. RICHARDSON

1 but taken by Investigator Wynn. And I didn't know if you
2 wanted me to split up.

3 I can -- I intended to ask this officer some preliminary
4 questions about, you know, the video emanating from his
5 vehicle even though he wasn't the one doing the statement. I
6 probably should've done it all at one time, but I would like
7 to, if the Court will allow, ask him some questions about the
8 second statement, just camera equipment in his car and that
9 sort of thing.

10 MR. MEETZE: Judge, I don't have an objection to that.
11 I'll just say from a standpoint of any argument that I make I
12 would prefer to make it after the Court has seen all of the
13 statements that the State intends to admit and all that.

14 THE COURT: Okay. Go ahead, Mr. Richardson.

15 MR. RICHARDSON: Thank you, Your Honor.

16 REDIRECT EXAMINATION

17 BY MR. RICHARDSON:

18 Q: All right. Corporal, I want to show you -- before I do
19 that, you had your car there; correct?

20 A: That is correct.

21 Q: And eventually you put Mr. Durant in your vehicle?

22 A: That is correct.

23 Q: And as Mr. -- excuse me. Is your vehicle equipped with
24 an in-car camera?

25 A: It was.

MARK HAPP - REDIRECT BY MR. RICHARDSON

1 Q: And is it one of those that can turn around in the car
2 and face the occupants and record audio?

3 A: Yeah. It actually has two -- two cameras, one that faces
4 forward and you can switch back and forth. You don't have to
5 actually turn it around, but it has a backseat view as well.

6 Q: And at some point, did you leave Mr. Durant in the car so
7 that Investigator Wynn could speak to him?

8 A: I did.

9 Q: All right. Now I'm going to show you -- and after
10 Investigator Wynn spoke to him, did you then get back in your
11 car and speak with Mr. Durant --

12 A: I did.

13 Q: -- to some extent?

14 A: Yes, I did.

15 Q: Okay. I'm going to show you what's marked as State's 2
16 for identification. If you could, take a look at that. And
17 do you recognize it?

18 A: I do.

19 Q: And what is it?

20 A: That would be the disk containing my in-car video and
21 audio.

22 Q: Okay. And does this disk contain a true and accurate
23 representation of what you recall taking place in your car
24 that night?

25 A: Yes, it does.

MARK HAPP - REDIRECT BY MR. RICHARDSON

1 Q: All right. And when Investigator Wynn was talking with
2 Mr. Durant, were you standing right there or had you walked
3 off?

4 A: I typically don't stand over the shoulders of an
5 investigator when they're questioning a suspect. So I had
6 walked a short distance away, but I wasn't -- wasn't within
7 earshot of what they were saying.

8 Q: Okay.

9 MR. RICHARDSON: I think that's all the questions I have
10 for you with respect to the in-car.

11 THE COURT: All right. Mr. Meetze?

12 MR. MEETZE: I don't have any questions, Your Honor.

13 THE COURT: Sir, you may step down. Thank you.

14 THE WITNESS: Thank you, Your Honor.

15 MR. RICHARDSON: I'd call Investigator Howard Wynn.

16 THE COURT: All right.

17 THE CLERK: Sir, if you would, please place your left
18 hand on the Bible and raise your right hand. Do you swear the
19 testimony you give in this case will be the truth, the whole
20 truth, and nothing but the truth, so help you God?

21 THE WITNESS: Yes, ma'am, I do.

22 THE CLERK: Please be seated and state your full name for
23 the record.

24 THE WITNESS: Howard Wynn.

25 HOWARD WYNN, being first duly

HOWARD WYNN - DIRECT BY MR. RICHARDSON

1 sworn, testified as follows:

2 DIRECT EXAMINATION

3 BY MR. RICHARDSON:

4 Q: Investigator Wynn, were you the on-call investigator for
5 the Florence Police Department on November 12th, 2014?

6 A: Yes.

7 Q: And did you have an opportunity to respond out to the
8 homeless shelter on Jarrett Street?

9 A: Yes, sir.

10 Q: For a call? And was that the same stabbing incident
11 Officer Happ just testified about?

12 A: Yes, sir.

13 Q: When you arrived on scene, what did you do when you got
14 there?

15 A: When I first pulled up, the first person I met with was
16 Corporal Happ.

17 Q: Okay. And what was the purpose of that meeting?

18 A: He pretty much briefly told me what he had, what they was
19 dealing with.

20 Q: All right. So you got kind of a lay of the land, so to
21 speak?

22 A: Yes, sir.

23 Q: And did you have an opportunity to interact with Mr.
24 Durant?

25 A: Yes, sir, I did.

HOWARD WYNN - DIRECT BY MR. RICHARDSON

1 Q: When you first saw him, where was he located?

2 A: In the back seat of Corporal Happ's patrol car.

3 Q: All right. And did you take a statement from him at that
4 time?

5 A: Yes, sir.

6 Q: Okay. And I'll show you what's been marked as State's 2
7 for ID. Have you reviewed the contents of that disk?

8 A: Yes, sir, I have.

9 Q: And what is it?

10 A: It's a video -- an in-car video camera of Officer Happ's
11 patrol car and where I conducted my interview with Melvin
12 Durant.

13 Q: All right. Is this a true and accurate representation of
14 what happened that evening?

15 A: Yes, sir.

16 Q: All right.

17 MR. RICHARDSON: Your Honor, I'd like to enter this as an
18 -- into evidence for the purposes of this hearing only and
19 publish it to you now.

20 THE COURT: All right. Mr. Meetze?

21 MR. MEETZE: No objection, Your Honor.

22 THE COURT: All right.

23 MR. RICHARDSON: And, Your Honor, before we start, the
24 video itself is about 30 minutes long, but the first 13
25 minutes is by my recollection basically Mr. Durant sitting in

HOWARD WYNN - DIRECT BY MR. RICHARDSON

1 the car by himself most of the time with not much going on.

2 So I would intend to play beginning at the 13-minute mark

3 through I think like the 33-ish minute mark is when it ends.

4 MR. MEETZE: That's no problem, Your Honor.

5 THE COURT: All right. Go ahead.

6 (WHEREUPON, State's Exhibit Number 2, in-car video, was

7 played in open court, not transcribed herein, after which

8 the proceedings resumed as follows.)

9 BY MR. RICHARDSON:

10 Q: Investigator Wynn, was that interaction you had on the
11 videotape there the complete interaction you had with Mr.
12 Durant that night?

13 A: Yes, sir.

14 Q: All right. So did he appear to be to a level of
15 intoxication or have any sort of physical or mental issues
16 that you perceived that would have given -- that would have
17 given you pause as far as speaking with him and getting a
18 statement from him that night?

19 A: No.

20 Q: Did he appear to you to understand the nature of your
21 questions and provide valid responses to you?

22 A: Yes, sir.

23 Q: Okay. When you came up to -- you said when you came up,
24 he was already in the back of the patrol car?

25 A: That's correct.

HOWARD WYNN - CROSS BY MR. MEETZE

1 Q: All right.

2 MR. RICHARDSON: I believe that's all the questions I
3 have at this time.

4 THE COURT: Mr. Meetze?

5 MR. MEETZE: Thank you, Your Honor. May it please the
6 Court.

7 CROSS-EXAMINATION

8 BY MR. MEETZE:

9 Q: Investigator Wynn, you talked to Mr. Durant that night
10 obviously face-to-face?

11 A: Yes, sir.

12 Q: And you reviewed that video that was just played in court
13 prior to coming here today; correct?

14 A: Yes, sir.

15 Q: And, of course, we just all saw it right here; is that
16 right?

17 A: Yes, sir.

18 Q: And it's clear that Melvin Durant is under the influence
19 of alcohol during that conversation; correct?

20 A: Yeah. He did consume alcohol. Yes, sir.

21 Q: Right. Now, obviously he wasn't tested and it's one
22 person's opinion versus another as to any level of
23 intoxication, but in listening to him talk, he certainly has
24 what you have been trained to recognize as cues for
25 intoxication; correct?

HOWARD WYNN - CROSS BY MR. MEETZE

- 1 A: Yeah. He did have slurred speech.
- 2 Q: Throughout the whole video?
- 3 A: Yes.
- 4 Q: Okay. Now, when you first started talking with him, you
- 5 went over his Miranda rights; correct?
- 6 A: Yes, sir.
- 7 Q: And initially he said he did not want to talk to you;
- 8 correct?
- 9 A: He said no. If -- if memory serves me correctly and off
- 10 the video, he said no.
- 11 Q: Right. And that was -- no was in response to would you
- 12 like to talk to me now or would you like to answer questions
- 13 and he said no and then you -- is that correct?
- 14 A: He did say no. Yes, sir.
- 15 Q: Right. And then you responded -- after he said no, you
- 16 continued speaking to him by saying you don't, sort of with an
- 17 inflection in your voice as if --
- 18 A: Yeah.
- 19 Q: As if it would be a question; correct?
- 20 A: I did ask him something or I told him something to make
- 21 sure he understood what I was reading to him.
- 22 Q: Right. And what you told him was -- you said -- when he
- 23 said no, you said you don't? Is that --
- 24 A: It's possible.
- 25 Q: -- correct?

HOWARD WYNN - CROSS BY MR. MEETZE

1 A: It's possible.

2 Q: Okay. Well, we just listened to it. You don't recall
3 whether that's what you said or not?

4 A: No, I do not.

5 Q: Okay. And after that, he again said no, but he continued
6 talking at that point in time and he eventually in that string
7 of interaction with you said he would answer your questions;
8 correct?

9 A: Yeah, something to that effect. Yes, sir.

10 Q: Okay. That -- you -- were you -- you weren't the first
11 officer to arrive on the scene?

12 A: No, sir, I was not.

13 Q: And you were not -- was it Officer Cantey the first
14 officer on the scene or do you know?

15 A: I -- I have no idea.

16 Q: Was Officer Cantey there before you got there?

17 A: Yes. He was there before I got there.

18 Q: So he had been conducting an investigation prior to you
19 getting there?

20 A: Yes, sir.

21 Q: And you were the on-call investigator on this evening?

22 A: Yes, sir, I was.

23 Q: And when you arrived, you were the only investigator
24 there?

25 A: There was a crime scene invest -- detective also on-call.

HOWARD WYNN - CROSS BY MR. MEETZE

1 Q: Okay.

2 A: And he later responded to the scene, but as far as a
3 criminal investigator, yes, sir, I was the only one.

4 Q: Okay. And when you got there, you spoke to the other
5 officers that had responded prior to you; correct?

6 A: The officers I spoke with was Corporal Mark Happ and
7 Jimmy Cantey.

8 Q: Okay.

9 A: Those were the only two officers I spoke with.

10 Q: And that was to get an understanding of where things were
11 in the investigation; correct?

12 A: Yes, sir.

13 Q: All right. Now -- but once you're there, you take over
14 as sort of the lead investigator; correct?

15 A: Yes.

16 Q: Okay. As part of you investigating, you speak to the
17 officers that were there, like you just said. You review
18 their reports and all of that; correct?

19 A: No. I don't review any reports.

20 Q: Did -- when you spoke with Officer Cantey when he got
21 there -- when you got there, did he tell you that both parties
22 were extremely intoxicated?

23 A: I don't recall him saying whether they was extremely
24 intoxicated or not. I do know both of them consumed alcohol.

25 Q: Okay.

HOWARD WYNN - CROSS BY MR. MEETZE

1 MR. MEETZE: I beg the Court's indulgence.

2 THE COURT: Yes, sir.

3 MR. MEETZE: May I approach the witness, Your Honor?

4 THE COURT: Yes.

5 MR. MEETZE: All right.

6 BY MR. MEETZE:

7 Q: Do you recognize these documents?

8 A: Yes. That's the incident report.

9 Q: And that's documents commonly used with your office?

10 A: Yes.

11 Q: Who did that incident report?

12 A: Cantey.

13 Q: And how many pages is that incident report?

14 A: Two.

15 Q: All right. On the second page about three lines from the
16 bottom towards the end, the sentence that starts with the word
17 both, what does that sentence indicate?

18 MR. RICHARDSON: Your Honor, I think this probably calls
19 for hearsay.

20 THE COURT: I'm going to allow it.

21 MR. RICHARDSON: Okay.

22 THE COURT: Right now.

23 BY MR. MEETZE:

24 A: Yeah. It says both parties involved were extremely
25 intoxicated at the time of the incident.

HOWARD WYNN - CROSS BY MR. MEETZE

1 Q: Okay. Now, I'll take that back from you.

2 A: Okay.

3 Q: Now, when I asked you just a second ago when you talked
4 to Officer Cantey if he had told you that both parties were
5 extremely intoxicated, you said you did not recall; is that
6 correct?

7 A: Yeah. I said I can't recall.

8 Q: Right.

9 A: I can't say for certain, but --

10 Q: But it is in his incident report; correct?

11 A: Yes, it is.

12 Q: So it's certainly possible that he did --

13 A: Yeah, it's possible.

14 Q: -- inform that to you?

15 A: Yes, sir.

16 Q: Okay.

17 MR. MEETZE: I don't have any further questions, Your
18 Honor.

19 THE COURT: Mr. Richardson, anything else?

20 MR. RICHARDSON: No redirect.

21 THE COURT: Sir, you may step down.

22 MR. RICHARDSON: That's all our witnesses for this
23 hearing.

24 THE COURT: All right. Mr. Meetze?

25 MR. MEETZE: Your Honor, we would ask that these

1 statements be excluded.

2 The first statement that we heard today, Your Honor, I
3 would ask that it be excluded based on evidence that Mr.
4 Durant was extremely intoxicated to a point where he was not
5 capable of a free and voluntary waiver of his Miranda rights
6 and fully understanding those rights at the time he was
7 questioned.

8 With regards to the second statement, Your Honor, I would
9 include the same argument with regards to the intoxication,
10 but I would add that Mr. Durant, when asked if he wanted to be
11 questioned after hearing Miranda rights, said no and at that
12 point the questions did not stop and they are supposed to at
13 that point in time.

14 Officer Wynn -- Investigator Wynn kept on talking with
15 him until eventually he did say that he would answer
16 questions. Those are my arguments with regards to the
17 statements in general.

18 Your Honor, in the video that we just watched, I would
19 also add if the Court believes that in general they are
20 admissible, I would say towards the end when Officer Happ gets
21 back in his car, he has further conversation with Mr. Durant.
22 Some of that conversation -- a good bit of that conversation
23 is regards to evidence in the case that was not seen or
24 perceived by Officer Happ, which I think would be hearsay, and
25 would certainly say that that part with Officer Happ when he's

1 talking about the witness saw you carrying the knife and
2 whatever else he said, those of that nature, that that part
3 would be inadmissible if in general the Court finds that the
4 statements themselves are admissible.

5 THE COURT: Mr. Richardson?

6 MR. RICHARDSON: Your Honor, to state the intoxication
7 point, I don't believe evidence of intoxication makes the
8 statement per se involuntary. I think you have to look at it
9 on a case-by-case basis, the specifics of the case.

10 In this particular one, he indicated to law enforcement
11 that he understood his Miranda rights. He agreed to speak
12 immediately with Corporal Happ in the first audio or the first
13 clip we heard. He denied any involvement in the activities
14 that evening and stuck with that story. He did admit to
15 having a knife earlier in the day, which he said fell out of
16 his pocket. And of course, that statement was rather brief.

17 Then with respect to Investigator Wynn's interaction with
18 Mr. Durant, he did initially say no, but in the same stream --
19 I mean it's pretty much the same sentence, basically a run-on
20 sentence, and they're talking over one another as I recall at
21 one point or very close to it, but he does agree without any
22 sort of provocation or anything like that to talk with
23 Investigator Wynn about the case and on they went from there.

24 Similarly, he denied any involvement. So he -- and he
25 also had -- he said the knife was left at his cousin's house.

1 So he had a different place for the knife, but still he was
2 distancing himself from involvement in a crime.

3 I think based on his ability to recognize the situation
4 he was in -- in fact, there was one point where he gives
5 Investigator Wynn information where to locate the knife and
6 Investigator Wynn says something that appeared to me to
7 indicate he was going to go check on that to try to verify the
8 information and shut the door, and then Mr. Durant utters
9 several expletives, as if his story were about to be checked
10 up on and it may not be accurate.

11 But I think the content of his statement shows that he
12 did know what he was doing because he was providing denials
13 about every accusation they made at him, and I would ask that
14 the Court find those statements to be voluntary.

15 THE COURT: What says the State with regards to the
16 latter portion after Corporal Happ got back in the car after
17 Officer -- Investigator Wynn talked to the defendant?

18 MR. RICHARDSON: Your Honor, Miranda is not an issue.
19 He's been Mirandized twice. The intoxication thing is the
20 same. I think the only issue would be with respect to the
21 hearsay and it reminds me of situations where you're sitting
22 in an interview room trying to elicit a statement from a
23 suspect and you say X says this. Well, you know, what do you
24 have? So basically in an effort to elicit a statement.

25 THE COURT: I mean there's some case law that's come out,

1 has it not, in the last year that says you can't do that.

2 MR. RICHARDSON: Well --

3 THE COURT: Is it not?

4 MR. RICHARDSON: I'm -- it may have. I'm not familiar
5 with it.

6 MR. MEETZE: It may have, Your Honor.

7 MR. RICHARDSON: But in any event, we can redact that
8 last portion and just keep it to the section where Wynn is
9 speaking with him.

10 THE COURT: There is some case law. I don't know the
11 case right off the top of my head, but there's some case law
12 that's been out within the last year that specifically
13 addresses that issue that says it is hearsay, as Mr. Meetze
14 has objected to. I'll have my law clerk look for it, but in
15 the meantime I want you to plan on redacting that portion.

16 With regards to the remainder of the statements given by
17 the defendant, I do find that, first of all, he was in custody
18 for purposes of Miranda. Second of all, that the State has
19 provided sufficient evidence to show that his statement was
20 knowingly, freely, voluntarily given.

21 There is no case law out there that I'm aware of that
22 specifically says that signs of intoxication are per se
23 prohibitive of the admissibility of a statement. There is
24 some case law out there which says -- *US v. Pelton*, 835 F.2d
25 1067, which was a Fourth Circuit case, and *State v. Saxon*, 201

1 S.E.2d 114, which is a 1973 case, and *State v. Crawley*, 562
2 S.E.2d 683, which says that the fact that the defendant
3 exhibits symptoms of drug withdrawal when she confesses does
4 not alone render her statement involuntary.

5 I do not find simply signs of intoxication or some
6 evidence of intoxication -- that alone does not render the
7 statement by the defendant involuntary. Furthermore, in
8 viewing the tape, as well as listening to the audio and
9 watching the video, the defendant clearly was appropriately
10 responsive to the questions that were asked of him by Officer
11 Happ -- Corporal Happ.

12 Furthermore, with the issue with regards to Investigator
13 Wynn reading the defendant his rights for the second time and
14 the defendant saying he did not want to talk, the Court finds
15 that the defendant continued to initiate conversation with the
16 investigator, showing a willingness to further discuss the
17 investigation with the officer.

18 Therefore, I believe the State has proven by a
19 preponderance of the evidence that such statements are
20 admissible in this situation, but your objection is so noted.

21 MR. MEETZE: Thank you, Your Honor.

22 THE COURT: All right. Mr. Richardson, anything further?

23 MR. RICHARDSON: No, sir, not with respect to those
24 findings, but with respect to the last part of the video with
25 Corporal Happ, I would just plan for trial purposes to --

1 THE COURT: All right.

2 MR. RICHARDSON: -- cut the video at the conclusion of
3 Investigator Wynn's --

4 THE COURT: Okay.

5 MR. RICHARDSON: -- statement.

6 THE COURT: All right.

7 (WHEREUPON, there was a pause in the proceeding as the
8 Court conferred with the law clerk, after which the
9 proceedings resumed as follows.)

10 THE COURT: Anything else?

11 MR. MEETZE: I don't have anything further, Your Honor.

12 THE COURT: All right. Anything before I bring the jury
13 in?

14 MR. RICHARDSON: Your Honor, we've gone over the NCICs of
15 the two witnesses that have them in my case and I think we've
16 come to an agreement on what can be brought out on
17 impeachment. I don't know if we want to --

18 MR. MEETZE: Like he said, I don't know if it needs to be
19 put on the record.

20 THE COURT: Y'all have come to an agreement on them
21 though?

22 MR. MEETZE: We've agreed to it.

23 THE COURT: As long as you've agreed to it, that's fine.
24 All right?

25 All right. I'm going to stand down for just a second.

1 Five minutes. Five minutes and we'll bring the jury in from
2 over there. We're going to put them straight in the jury box.
3 All right? And we'll start going.

4 (WHEREUPON, there was a break in the proceedings from
5 3:08 p.m. until 3:20 p.m., after which the proceedings
6 resumed as follows.)

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

9 MR. RICHARDSON: No, sir.

10 THE COURT: Defense counsel?

11 MR. MEETZE: Nothing, Your Honor.

12 THE COURT: All right. If you'll bring me the jury,
13 please. You've got them in there?

14 THE BAILIFF: Yes, sir.

15 THE COURT: Oh, okay. Well, hold on just a minute. Hold
16 on, Mr. Sammy. Can the lawyers approach a minute?

17 (WHEREUPON, a bench conference was held as follows.)

18 THE COURT: One of the jurors -- Juror Number 7, Ms.
19 Launeal Black, told one of the bailiffs that she's supposed to
20 work the polls tomorrow, the election polls. Is the runoffs
21 tomorrow?

22 MR. RICHARDSON: I think so.

23 THE COURT: She didn't say nothing to anybody and she was
24 asked why she didn't say anything and somebody said -- well,
25 she said one of the bailiffs told her that wasn't a good

1 enough reason. So I mean what do y'all want me to do with
2 her?

3 MR. RICHARDSON: I don't care if you seat the alternate.

4 MR. MEETZE: That's fine. You know, I mean it just puts
5 us in a bind if something were to happen, but --

6 THE COURT: Well, let me call her out here.

7 MR. MEETZE: We could go forward today with the ones we
8 have. Of course, if we ask her to check to see if they could
9 run the polls without her? You really can. I've run those
10 polls before. You need one person and I'm sure they've got
11 more than that.

12 THE COURT: What do y'all want to do?

13 MR. RICHARDSON: Well, we can keep her. That would be
14 good. That way if somebody else got screwed up, we wouldn't
15 be stuck.

16 THE COURT: Well, she's going to stay right now.

17 (WHEREUPON, the bench conference ended.)

18 (WHEREUPON, there was a pause in the proceedings as the
19 Court conferred with the clerk off the record.)

20 THE COURT: All right. If you'll bring me the jury,
21 please?

22 THE BAILIFF: All of them?

23 THE COURT: All of them.

24 THE BAILIFF: Okay, sir.

25 (WHEREUPON, the jury entered the courtroom at 3:23 p.m.)

1 THE COURT: All right. All jurors are present. Madam
2 Clerk, would you swear the jury, please?

3 THE CLERK: If all of you will please stand and raise
4 your right hand?

5 (WHEREUPON, all jurors complied.)

6 THE CLERK: You shall well and truly try and a true
7 deliverance make between the State of South Carolina and the
8 defendant at the bar, whom you shall have in your charge, and
9 a true verdict render according to the law and evidence, so
10 help you God.

11 Please be seated.

12 THE COURT: All right. Ladies and gentlemen, we are
13 about to try the case of the State of South Carolina versus
14 Mr. Melvin Durant, but before we begin this trial I want to
15 tell you that this trial probably will be different from what
16 you might expect. Many people do not have the chance to
17 attend actual court sessions as you are now and may think from
18 watching television or movies or reading books that trials are
19 always full of high drama, intense action, and riveting
20 circumstances.

21 Now, while all of these things may be true at times,
22 ladies and gentlemen, this trial is not for entertainment. It
23 is a fundamental part of our democracy, a search for the truth
24 in an effort to make sure that justice is done between the
25 parties before the Court. Searching for the truth and making

1 sure that justice is done is often slow, deliberate, and
2 repetitive, the opposite of what you may have seen on
3 television or in movies or read in books.

4 This courtroom is a place of honor dedicated to the
5 protection and preservation of citizens' rights through what
6 many have called the greatest justice system ever created.
7 The attorneys, ladies and gentlemen, appearing before you are
8 advocates for the parties that they represent, but first and
9 foremost, they are officers of the Court, sworn to uphold the
10 integrity and fairness of our judicial system and to help you
11 in the search for the truth. You should expect them to be
12 professional, competent, and ethical in the representation of
13 their clients' interest.

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

22 The defendant in this case, ladies and gentlemen, is
23 charged by an indictment in this court with the crime of
24 attempted murder, the elements of which will be explained to
25 you later. The indictment, ladies and gentlemen, is simply

1 the charging document by which this case is brought into this
2 court, and it is not, in any sense, evidence of any of the
3 allegations that it contains.

4 The defendant has pled not guilty to this indictment.
5 Therefore, the State of South Carolina has the burden of
6 proving each of the elements of the indictment beyond a
7 reasonable doubt, and it will be your duty to decide whether
8 the State has met that burden. Your purpose as jurors is to
9 find and determine the facts.

10 You are the sole judge of the facts. If at any time I
11 make any comment regarding the facts, you must disregard it.
12 You are to determine the facts from the testimony that you
13 hear and the other evidence introduced in this courtroom. It
14 is up to you to determine the inferences which you feel may
15 properly be drawn from the evidence. It is especially
16 important that you perform your duty of determining the facts
17 diligently and conscientiously because ordinarily there is no
18 way to correct an erroneous determination of the facts by a
19 jury.

20 Now, on the other hand and with equal emphasis, the same
21 law that makes you the judge of the facts makes me the judge
22 of the law. The law as given by the Court is the only law
23 that you may consider. You must accept and follow it, even
24 though you may disagree with it. I cannot, ladies and
25 gentlemen, tell you what I think the facts are, and you cannot

1 disagree with me about what the law is or should be.

2 Your job is to take the law as I give it to you and apply
3 it to the facts as you find them from the testimony of the
4 witnesses and any other evidence that is introduced. After
5 doing that, you will render your verdict, a true and just
6 verdict, under the solemn oath that you just took as jurors.

7 Now, until I tell you to begin your deliberations, you
8 must not discuss this case with anyone, including your fellow
9 jurors, friends, family members, and anyone involved in this
10 case. The attorneys and parties in this case have been
11 advised that they are not to talk to you at all. So if you
12 see anyone involved in this case and they do not speak to you,
13 they are not being unfriendly. They are simply following this
14 Court's instructions.

15 Now, during your deliberations, you may only discuss the
16 case in the jury room with your fellow jurors because they
17 have seen and heard the same evidence that you have. You must
18 not discuss the case with anyone other than your fellow jurors
19 until you have returned a verdict and the case is at an end.

20 I remind you that you must decide this case based solely
21 on the evidence presented here in this courtroom. This means
22 that during the trial you must not conduct any independent
23 research about the case, the facts of the case, the evidence
24 presented in the case, or the people or organizations involved
25 in any way in the case.

1 Please do not try to find out information from any source
2 outside of this courtroom. In other words, you must not look
3 at dictionaries or other reference materials, search the
4 Internet, websites or blogs, or use any other electronic tools
5 to get information about this case to help you decide the
6 case. You may not use computers, telephones, cell phones,
7 smart phones, tablets, the Internet or other tools of
8 technology with communication capabilities at any time while
9 you are in the courtroom or during your deliberations.

10 Now, during your breaks for meals or overnight, if
11 necessary, you may use those devices. However, you may not
12 use them to communicate with anyone about the case until the
13 case is over. This means you must not use phone calls,
14 emails, text messages, instant messages, Twitter, or any blog,
15 chat room, or website, including Facebook, Google Plus,
16 Myspace, Linked, YouTube, or any social media websites to send
17 or receive information about this case. This includes
18 information about a party, a witness, an attorney or a court
19 officer, news accounts about the case, research on topics
20 raised, any topics you may think would be helpful in deciding
21 the case or any testimony presented by any witness.

22 During the trial, do not read, listen to or watch any
23 news reports about the case, if there are any. This includes
24 anything that may be in the newspapers or on the Internet,
25 radio, or television. You must not, ladies and gentlemen,

1 consider anything that you may have read or heard about the
2 case outside of this courtroom, whether before or during the
3 trial. Information on television, radio, the Internet or from
4 other sources might be wrong or incomplete.

5 In our judicial system, it is important that you are not
6 influenced by anything or anyone outside of this courtroom.
7 If you become aware of another juror's violations of these
8 instructions, please inform the Court immediately.

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

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

24 What the attorneys tell you during their opening
25 statements, ladies and gentlemen, is not evidence in this

1 case. It is only their contention as to what the issues are.
2 The evidence in this case will be presented to you by the
3 testimony of sworn witnesses from this witness stand, together
4 with any exhibits that may be introduced into evidence during
5 the course of this trial.

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

13 The reason for this is because you are the judge of the
14 facts in this case and sometimes when I am discussing matters
15 of law with the attorneys, it may be necessary for me to make
16 some comment as to the facts in connection with ruling whether
17 or not a particular law applies. I am not supposed to tell
18 you what I think the facts are; so I will excuse you from the
19 courtroom while these discussions take place so that in no way
20 will you be influenced by anything that I might say or do in
21 connection with the facts.

22 Now, in determining what the true facts are in this case,
23 ladies and gentlemen, you must decide whether or not the
24 testimony of the witnesses is believable. It will be my
25 responsibility to rule as a matter of law as to whether

1 certain testimony is admissible or not. But once the
2 testimony is admitted, whether or not you believe it is solely
3 for you to determine.

4 Now, in deciding whether to believe a witness, you have
5 the right to consider the interest of any witness, the bias of
6 any witness, the prejudice of any witness, the opportunity for
7 the witness to have seen the matters and things about which
8 the witness may testify, and the way the witness acts on the
9 witness stand. You have the right to consider anything that
10 is in the record that will help you evaluate the testimony of
11 the witnesses.

12 That means that it is your duty -- it is your duty to pay
13 close attention to these witnesses, to observe the witnesses,
14 to listen to the witnesses, and to pay close attention to the
15 attorneys and to the Court. Please do not let your thoughts
16 wander, but give strict attention to the testimony in this
17 case so that at the end of all the testimony, after the
18 arguments of counsel and the charge on the law by the Court,
19 you will then be in a position to determine what the true
20 facts are and to apply the law to those facts and thus render
21 a true and just verdict.

22 Now, later in this case, ladies and gentlemen, a
23 foreperson will be selected to preside over deliberations in
24 the jury room. It will be the foreperson's added
25 responsibility to be the jury's spokesperson here in court.

1 It will also be the foreperson's duty to write the verdict,
2 but I will give the foreperson further instructions about that
3 at the conclusion of the case.

4 Now, in order to preserve everyone's rights, I will give
5 the parties an opportunity to object to anything that I have
6 said. Any exception or objection to anything that I have said
7 to the jury by the State?

8 MR. RICHARDSON: No, Your Honor.

9 THE COURT: Defense counsel?

10 MR. MEETZE: Nothing, Your Honor.

11 THE COURT: All right. Ladies and gentlemen, we will now
12 begin the trial of this case. The State is so recognized for
13 opening statement. Mr. Richardson?

14 OPENING STATEMENT ON BEHALF OF THE STATE

15 MR. RICHARDSON: Thank you, Your Honor. Mr. Meetze.

16 What is the value of a life? That's a question that
17 we're not really allowed to answer as citizens in this country
18 because we can't take lives. People offend us all the time,
19 say things to get us mad, cut us off in traffic, upset us in
20 our homes, all kind of things that make us mad, but we can't
21 kill those people.

22 We can't try to kill those people and that's the order of
23 society. We are a society of laws. There are federal laws,
24 state laws, all kind of laws that we have to follow every day.
25 And not only do we have to follow them, we get benefit from

1 them because other people have to follow them. Only in rare
2 circumstances are we allowed to take a life, like a self-
3 defense kind of situation, but this is not that.

4 This particular case took place on Jarrett Street here in
5 the city of Florence, Florence County, at a homeless shelter,
6 and several of the witnesses, as well as the defendant, were
7 living in that shelter back in November of 2014.

8 Wiley Jones, who is the victim in this case, was a
9 resident there, as was Melvin Durant, the defendant. Melvin
10 Durant, this particular evening, was upset with Wiley Jones.
11 At some point that evening, Mr. Jones went into the restroom
12 at the homeless shelter to use it. Mr. Durant followed him
13 into that restroom and surprise attacked him with a knife, and
14 he went to town on him, opened him up pretty good in multiple
15 locations on his body.

16 One thing keeps this case as an attempted murder instead
17 of a murder. One thing kept Wiley Jones alive that night.
18 And that was the presence of a guardian angel, if you will, a
19 fellow by the name of Carl Wheeling, who was also a resident
20 at that shelter, and he heard commotion coming from that
21 bathroom. He made a conscious decision to take a step inside
22 to see what was going on and he caught the hand, the wrist, of
23 Melvin Durant as he's coming down again with that knife. He
24 was able to hold him just long enough for Mr. Jones to escape
25 that bathroom. He let Mr. Durant go. He goes running out

1 after him.

2 Luckily again for Mr. Jones, when he exited the place, he
3 went one way and when Mr. Durant came out, he went the wrong
4 way. Police got there in time to prevent any further
5 interaction.

6 So the question you have to determine in this case is do
7 you believe beyond a reasonable doubt that Mr. Durant
8 attempted to murder Mr. Jones. And in order to help you
9 answer that question, we have -- by we, I mean the State --
10 have evidence to show you. That comes in the form of
11 testimony from witnesses.

12 We've got several law-enforcement witnesses. We've got
13 several witnesses from the scene that night who lived in the
14 shelter. We've got photographs. We've got some video. We've
15 got some audio. We've got some DNA. We've got the weapon.
16 We got a bunch of stuff to show you. So we're going to put
17 that all in your lap and ask you to make that determination.

18 And I believe that once you have reviewed all of the
19 evidence that we have to show you and heard all the testimony
20 that we have to present, you'll have more than enough to find
21 that Mr. Durant did indeed attempt to murder Mr. Jones in that
22 bathroom that night. Thank you.

23 THE COURT: Mr. Meetze.

24 OPENING STATEMENT ON BEHALF OF THE DEFENDANT

25 MR. MEETZE: Thank you, Your Honor. Good afternoon,

1 ladies and gentlemen.

2 As I told you earlier, my name is Vick Meetze and I work
3 in the Public Defender's Office here in Florence. We handle
4 cases in both Florence and Marion Counties and it's certainly
5 my pleasure to be here today on behalf of and representing
6 Melvin Durant.

7 Now, I'm not going to rehash -- try not to rehash a lot
8 of what you've already heard. The one thing I will remind you
9 of is that what I'm saying to you now and what Mr. Richardson
10 just got through saying to you and what the judge instructed
11 you just a little bit ago -- nothing that we say in front of
12 you is evidence in the case.

13 So at this point in time, you've got no evidence in this
14 case in front of you. Certainly there will be evidence
15 presented and once it's presented -- once all of it is
16 presented is when you, the jurors, are able to get together
17 and deliberate and make a decision as to what happened in the
18 case.

19 Now, Mr. Richardson has told you what he intends and
20 expects the evidence to show, but that's all that is. That's
21 his expectation and it's his job to get up here and tell you
22 that. He does a very good job. Mr. Richardson and I have
23 worked together on any number of cases, but that's all it is.
24 It's just him telling you what he expects the evidence to
25 show.

1 Evidence will only be entered through testimony of
2 witnesses that get on this witness stand or exhibits that may
3 be presented or things of that nature. So at this point in
4 time, you still don't have anything to consider.

5 What I will tell you here is, as you've heard, in a
6 criminal case anybody charged is presumed innocent. That's a
7 principle of our law that is as solid as any rock there is.
8 There's nothing more solid in our law than the principle of
9 the presumption of innocence.

10 So what that means is that as he sits here, right here,
11 Mr. Durant is as innocent as anybody else in this courtroom,
12 and that innocence remains cloaked around him until such time
13 as he can be proven guilty beyond a reasonable doubt, which
14 brings me to a second principle of law, one that you will hear
15 any number of times. You've heard it already, but you'll hear
16 it a number of times throughout the trial and that is proof
17 beyond a reasonable doubt.

18 That's the burden placed on the State in a criminal case.
19 It's a very high burden and it's a very high burden for a very
20 good reason. And that is because in criminal court you're
21 dealing with the most important thing that you can deal with
22 and that's people's lives, people's very liberties, and it
23 doesn't get any more important than that.

24 We're in Circuit Court. There's two branches of Circuit
25 Court. One is called the Court of Common Pleas, also known as

1 civil court, and then we're in -- you have the Court of
2 General Sessions or criminal court, which is where we are now.

3 Both branches have jury trials, but in civil court the
4 burden of proof is different. The burden of proof in a civil
5 case is called by a preponderance of the evidence. And in
6 reaching a verdict in a civil case when there's a wreck,
7 somebody's injured, and you're trying to determine who's at
8 fault, who may be liable for those injuries, juries are -- the
9 evidence is presented and you think of a set of scales. If
10 once all of the evidence is presented, if the scales tilt ever
11 so slightly in one party's favor, then that's the party that
12 is ruled in favor of. It's -- like I said, it's a more likely
13 than not.

14 And not that money and things like that are not
15 important. It certainly is, but it's not as important as
16 people's liberty. In civil court, typically you're dealing
17 with injuries and damages and trying to make people whole from
18 financial situations where they lost money because they've had
19 to pay medical bills and they've lost work and things like
20 that.

21 In General Sessions Court, that's not the case. Like I
22 said, we're dealing with people's lives and we're dealing with
23 people's very liberty, and it doesn't get any more serious
24 than that. It doesn't get any more real than that. And
25 that's why the burden of proof in a criminal case is that much

1 more high, proof beyond a reasonable doubt.

2 If you think of those same scales in a case -- in a
3 criminal case, the State would have to present evidence and
4 present evidence and present evidence to where those scales
5 are tilted extremely in their favor in order for a verdict of
6 guilt beyond a reasonable doubt to be rendered. And again,
7 that's because of what we deal with in criminal court.

8 Ladies and gentleman, you're going to hear a good bit of
9 evidence. There will be -- it's not going to -- I don't
10 anticipate the trial lasting very long, but as Mr. Richardson
11 indicated, there could be testimony regarding DNA. There
12 could be testimony -- exhibits presented. Certainly, you're
13 going to be charged on the law and some of the laws that could
14 be charged to you can get somewhat technical and things like
15 that.

16 So certainly we appreciate your service and appreciate
17 your attention in this case. And -- and at the close of the
18 case, I'll be able to come back before you and at that time
19 I'll be asking that you render a verdict in this case that
20 speaks the truth, and that would be a verdict of not guilty.
21 Thank you.

22 THE COURT: Mr. Richardson, call your first witness,
23 please.

24 MR. RICHARDSON: Thank you, Your Honor. We'd call Carl
25 Wheeling.

CARL WHEELING - DIRECT BY MR. RICHARDSON

1 THE CLERK: Sir, if you'd please place your left hand on
2 the Bible and raise your right hand? Do you swear the
3 testimony you give in this case to be the truth, the whole
4 truth, and nothing but the truth, so help you God?

5 THE WITNESS: I do.

6 THE CLERK: Please be seated and state your full name for
7 the record.

8 THE WITNESS: Carl Langley Wheeling.

9 MR. RICHARDSON: Thank you, Your Honor.

10 CARL WHEELING, being first duly
11 sworn, testified as follows:

12 DIRECT EXAMINATION

13 BY MR. RICHARDSON:

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

15 A: I'm 61.

16 Q: Okay. And what town do you currently live in?

17 A: Columbia, South Carolina.

18 Q: How long have you been there?

19 A: One year.

20 Q: Okay. Back in November of 2014, where did you live?

21 A: There in the shelter, the transitional shelter.

22 Q: Okay. And that's on Jarrett Street?

23 A: That is correct.

24 Q: All right. Is that in Florence County?

25 A: That is correct.

CARL WHEELING - DIRECT BY MR. RICHARDSON

1 Q: And is there a proper name for it? What's the -- is it
2 -- is it called something other than the transitional shelter
3 or that's just what you know it as?

4 A: I think it's the Pee Dee Transitional Shelter is the
5 formal name.

6 Q: Okay.

7 A: Yeah.

8 Q: So is it a place where folks who are down on their luck
9 or that have no place to stay will go for a period of time?

10 A: Yes, it is. It's a homeless shelter and what it is --
11 it's male as well as female and it's designed for those who
12 are down on their luck, don't have a place to stay, and they
13 allow you -- it gives you time to make that transition back
14 into the real world.

15 Q: Okay. And you were a resident there back in November --

16 A: Yes, I was.

17 Q: -- of 2014?

18 A: Yes, I was.

19 Q: And aside from being a resident, did you have any sort of
20 supervisory authority or anything of that nature?

21 A: It was never supervisory, but I was considered sort of in
22 charge after hours, after the staff had left. And what I was
23 delegated to do is just to keep the director informed of, you
24 know, fights, arguments, people coming in after hours, after
25 curfew hours, which was ten o'clock, and just sort of keep the

CARL WHEELING - DIRECT BY MR. RICHARDSON

1 peace. You know, I had no powers to make anybody do anything,
2 but --

3 Q: You were the classroom monitor?

4 A: Absolutely, absolutely.

5 Q: Okay. So on this particular evening, November 12th, what
6 do you recall about Melvin Durant in the shelter?

7 A: Okay. I remember it being in the evening. I was sitting
8 on -- we -- our spaces are divided into cubicles with a
9 curtain across the entrance. I was sitting there in my little
10 cubicle and I got a knock on the -- on the door there. Well,
11 the curtain. And it was Mr. Durant.

12 He came in and he said I would like to talk with you. He
13 said, you got a minute, can you sit down and talk with me?
14 Can I sit down and talk? I said, sure, of course. He came in
15 and right off the bat, you know, the alcohol -- the smell of
16 alcohol was overwhelming, speech slurred, and he was highly
17 agitated. Those are the things that I remember.

18 So in the back of my mind, you know, he seemingly wanted
19 to talk; so I let him talk. I just sat there and let him talk
20 through it because I felt like this was the only way to let
21 him talk himself through it and calm him down.

22 And from -- and at that point, he said that himself and
23 Wiley Jones -- they had been to some house. And it's across
24 from 413 and what it is is it's a bunch of little shotgun
25 houses there and he said they were all sitting around. Wiley

CARL WHEELING - DIRECT BY MR. RICHARDSON

1 offered to buy him drinks and they were sitting around the
2 table and he said Mr. Jones, the victim, was going around the
3 table and was bragging about the money he had.

4 And so -- and this seemed to agitate him a lot. Why, I
5 don't know. But he said he told -- he pulled him to the side
6 and said, Mr. Jones -- he said, Wiley, this is not polite for
7 you to be in somebody else's home and to be flashing this
8 money around. So -- and he said from there they had a -- they
9 had a few words.

10 And at the end of this, he had talked himself down. He
11 was very calm, but he did say -- he said now -- he's sort of
12 giving me notice, but he said, now, Wiley had been -- he said
13 Wiley had been messing with him. What this mean, I do not
14 know, but he says if this continues, there's going to be a
15 problem.

16 And I -- and he said -- and I think he used the word
17 hurt. I'm going to hurt him if he continues to pick or poke
18 at me. Some people say kill, but I never heard the word kill
19 come from his mouth. It was more if there's a problem, I'm
20 going to hurt him.

21 So after we had -- and I think that was the last of the
22 conversation and he thanked me for listening. He got up. He
23 walked toward the curtain. When he got to the curtain and
24 pulled it back, there was Mr. Wiley Jones standing there,
25 which apparently he had been standing there through the whole

CARL WHEELING - DIRECT BY MR. RICHARDSON

1 conversation of him talking to us -- him talking to me.

2 And so Wiley Jones at that moment says, I thought we were
3 going to leave this outside. I didn't -- we had done
4 discussed not to bring this in here. And they had a few more
5 words and the last thing I know, one went one way, one went
6 the other way, and in about five minutes, I got -- I walked
7 outside and I walked into a TV lounge. And while I was
8 standing there in the TV lounge, I heard a rumble in the
9 bathroom, and a rumble sounds like individuals fighting.

10 So I was -- well, at that point, then I went inside and,
11 when I walked inside the door, I was kind of mortified at what
12 I saw because at that moment I walked in -- because I remember
13 seeing Mr. Durant. He had Wiley Jones. With his left hand,
14 he was holding him up against the urinal. His right hand --
15 he had the knife clenched with the blade in a downward
16 position. And Wiley is kind of tall. He's taller than
17 Melvin.

18 And at that -- and what he was doing -- essentially, he
19 was jumping up and reaching over, which would have caught him
20 right here or in the back. So I had a -- I saw him --
21 actually the blade hit Wiley about twice.

22 And so I was just out of major heart -- open-heart
23 surgery. So I -- I had to make a quick decision because I
24 didn't know whether I was strong enough to fend him off of
25 Wiley without compromising and jeopardizing my own self

CARL WHEELING - DIRECT BY MR. RICHARDSON

1 because I was not healed at that moment. I still had gauze
2 and everything. But like I said, it was just a split second
3 that I had to think and then react.

4 So what I did -- the hand that he had up with the blade
5 in, I grabbed him on the arm and stopped the thrust so he was
6 unable to stab him anymore, and I held him. And although it
7 seemed like five minutes at the time, it was probably no more
8 than a minute and a half, if it was that long, that I held his
9 arm.

10 So when I thought about it, I didn't see Mr. Jones. And
11 what he had done -- during the time that I grabbed his arm and
12 stopped Melvin from attacking him, that gave him time to ease
13 out of the bathroom and he must've gone outside.

14 So I eased off Melvin's arm. I let him go. He didn't
15 offer any resistance -- not a lot of resistance and when I let
16 him go -- let his arm go, he left out of the bathroom.

17 So at that particular moment, I called the shelter
18 director and notified her of what had transpired, and so she
19 said she was on her way. And then I went outside to see where
20 -- one, where Wiley was and again where Melvin was because I
21 didn't know whether Melvin had chased him out there.

22 And when I -- when I walked outside, I went around the
23 long way to the front because by that time I saw the ambulance
24 and there was a squad car out front. And I saw Mr. Riley --
25 Wiley Jones. He was crouched down up under the tree and he

CARL WHEELING - DIRECT BY MR. RICHARDSON

1 was holding his wounds, but at that time, like I said, the
2 ambulance was there. They were treating him. So then I went
3 around to the back again and so I was just standing up because
4 most all the residents was out there and the policemen and
5 everybody. There was a barrage of people out there.

6 So somewhere from around the back corner, Melvin Durant
7 -- he appeared and he was calm and he was -- he was walking
8 like nothing had ever happened. And the policeman at that
9 time -- although they knew the name of the person, I don't
10 think they knew who he actually was. But when he walked up,
11 they asked him what his name was. Are you Melvin Durant? And
12 then at that time, they arrested him. They kind of threw him
13 up on the hood of the squad car and handcuffed him and that's
14 it.

15 Q: Okay. And do you see Mr. Durant in the courtroom today?

16 A: Yes, I do.

17 Q: Could you point him out?

18 A: Yes, sir. Right here. (Indicating.)

19 Q: All right.

20 MR. RICHARDSON: I'd ask that the record reflect he
21 pointed out the defendant.

22 Q: Mr. Wheeling, I want to show you a few exhibits here.

23 THE COURT: Have you already gone through the exhibits?

24 MR. MEETZE: Yes, sir.

25 MR. RICHARDSON: All right.

CARL WHEELING - DIRECT BY MR. RICHARDSON

1 BY MR. RICHARDSON:

2 Q: Mr. Wheeling, I'm going to show you several exhibits here
3 that are marked as follows and ask if you can identify them.

4 One is State's Exhibit 5, State's Exhibit 7, 8, 9, 10, 11, and
5 12. If you could, take a look at these and let me know if you
6 recognize what those are and call them out by number if you
7 recognize them.

8 A: Okay. These brick steps are the side steps to the side
9 emergency entrance and fire entrance of the shelter.

10 Q: Okay. Is that Number 12 you're looking at there?

11 A: Yes, it is.

12 Q: Okay.

13 A: Okay. This is in the back leading out of the dining hall
14 and these steps on the opposite side are the stairway --
15 stairwells to the females' dorm.

16 Q: That's Number 11?

17 A: Yes.

18 Q: Okay.

19 A: This is a shot from the exit door to the dining room
20 looking down toward the end of the dining room leading into
21 the TV room.

22 Q: That's Number 10?

23 A: Right. This is a picture here of the back door leading
24 to the outside.

25 Q: Okay. And that's Number 9?

CARL WHEELING - DIRECT BY MR. RICHARDSON

1 A: Correct. This is a picture of the back door walking out
2 of the dining room, again opposite side, steps to the female
3 and there's an alley in between.

4 Q: Okay. That's Number 8?

5 A: Correct. This is a photo of the men's restroom from the
6 perspective of you walking in through the door with the sinks
7 on the right and the urinals on the left.

8 Q: Okay. That's Number 7?

9 A: Uh-huh. And these are the two urinals in the men's
10 restroom, of which Mr. Durant had Wiley up against the one on
11 the right.

12 Q: Okay. And that's Number 5?

13 A: Correct.

14 Q: Do all of these photographs truly and accurately depict
15 what that shelter looked like on the evening this occurred?

16 A: Yes, they do.

17 Q: All right.

18 MR. RICHARDSON: Your Honor, at this time, I'd ask that
19 State's 5, 7, 8, 9, 10, 11, and 12 to be entered into
20 evidence.

21 MR. MEETZE: No objection, Judge.

22 THE COURT: Without objection, so admitted.

23 (WHEREUPON, State's Exhibits Number 5, 7, 8, 9, 10, 11,
24 and 12, all photographs, were admitted into evidence.)

25 MR. RICHARDSON: Your Honor, if I may pull up our screen

CARL WHEELING - DIRECT BY MR. RICHARDSON

1 here and publish those to the jury so that Mr. Wheeling can
2 explain to them what he just explained looking at the photos?

3 THE COURT: All right. Mr. Meetze, if you need to get up
4 and move, feel free to.

5 MR. MEETZE: Thank you, Your Honor.

6 THE COURT: Go ahead, Mr. Richardson.

7 MR. RICHARDSON: Thank you, Your Honor.

8 BY MR. RICHARDSON:

9 Q: All right. Mr. Wheeling, I'm showing you what's been
10 entered into evidence as State's Number 5. If you could,
11 explain to us what we're looking at and what's significant
12 about it?

13 A: Okay.

14 THE COURT: Hold on a minute. Hold on a minute. What's
15 that?

16 THE COURT REPORTER: Is that Number 5? That was the last
17 one.

18 THE COURT: Yeah. He went through them in reverse order.

19 THE COURT REPORTER: Okay.

20 THE COURT: Okay? He went through them 12, 11, 10, 9, 8,
21 7, 5. That was his last one. Mr. Richardson is picking back
22 up on 5. Is that right?

23 MR. RICHARDSON: Yes, sir.

24 THE COURT: All right.

25 MR. RICHARDSON: All right.

CARL WHEELING - DIRECT BY MR. RICHARDSON

1 BY MR. RICHARDSON:

2 Q: Mr. Wheeling, if you could, tell us what we're looking at
3 and what took place there?

4 A: Okay. The urinal on the right is the one that Melvin
5 Durant had Wiley Jones backed up, and he was backed up with
6 his back -- Mr. Jones had his back up against the urinal and
7 he was in a defensive posture here because while Melvin was
8 stabbing, I think that he was trying to keep from getting
9 stabbed in the face or in the immediate chest, but he was
10 offering no resistance. And that's when Mr. Melvin Durant
11 just kept chopping at him.

12 Q: So you did not see Mr. Jones possess a weapon?

13 A: No, no. No weapon.

14 Q: Okay.

15 A: He had nothing.

16 Q: Okay. So -- all right. This is State's Number 7 that's
17 already in evidence. What is it we're looking at here?

18 A: Okay. We are looking from the entrance perspective into
19 the men's restroom and on the right there, as you see, are the
20 sinks, but directly across, which you can't see, are the
21 urinals that we just saw in the previous picture.

22 Q: So if you were to walk -- finish walking through that
23 threshold and hang a left, you'd be looking at the picture we
24 just saw?

25 A: Absolutely.

CARL WHEELING - DIRECT BY MR. RICHARDSON

1 Q: Okay. And this is State's 10. If you could, explain
2 this to us and try to tell us where the bathroom is in
3 relation to it?

4 A: Okay. The white door that you see in the forefront,
5 that's the exit door to the dining facility, which you can see
6 further down the hall there. You see the dining facility on
7 the right. The door all the way at the end leads into the
8 men's TV room and as soon as you enter that door to the
9 immediate right would be the restroom.

10 Q: Okay. So where you can see how that second exit sign is
11 glowing in the back, that's where the -- to the right there
12 would be the bathroom?

13 A: Yes, sir.

14 Q: So if you're going to come out of the back door of the
15 facility, you've got to come from that second exit sign --
16 exit sign area down this hallway and come out this door we're
17 standing in?

18 A: Correct.

19 Q: This is State's 11. Can you tell us what we have here?

20 A: Okay. On your left, you have the door that leads into
21 the dining hall that we just looked at. Across the right,
22 which where you see the wood hand railing and the brick steps,
23 that leads to the female dorm. And straight ahead leads to
24 the backyard, which is the parking area.

25 Q: Okay. And what in the backyard -- what's behind the

CARL WHEELING - DIRECT BY MR. RICHARDSON

1 shelter?

2 A: Housing Authority. There's a fence there. There's a
3 park -- there's your parking area. Then right ahead at the
4 front of the vehicles, there's a fence that separates the
5 shelter from Housing Authority.

6 Q: Okay. All right. This is Number 8 that's in evidence.
7 Will you explain that one to us?

8 A: Okay. Now this picture -- the angle that it's taken from
9 -- this picture was taken from the parking spaces toward the
10 dining hall entrance on the right, female accommodations on
11 the left, and right where the picture frame that you see in
12 the back all the way to the back there on the female
13 dormitory, to the -- a sharp right and there's an alley that
14 you can take and walk through that alley, which would take --
15 which is a shortcut many of the residents use to get to the
16 front yard quicker.

17 Q: So you mean right here?

18 A: Yes, sir.

19 Q: Where this siding changes?

20 A: Right.

21 Q: There's a space here?

22 A: There's a space that's an alley.

23 Q: Okay. That's how you can get to the front yard?

24 A: Yes, sir.

25 Q: State's 12?

CARL WHEELING - DIRECT BY MR. RICHARDSON

1 A: Okay. Those are the steps on the far -- looking from --
2 looking at the shelter from the front all the way to the left-
3 hand side of the shelter, those are the steps that lead up
4 into the men's lounge. And this -- and this door is never
5 open. It's more or less a fire exit.

6 Q: Okay. And State's 9? What are we looking at?

7 A: This is the back door that takes you outside and, from
8 this perspective, you would be in the dining room hallway
9 right at the door.

10 Q: Okay. All right. Mr. Wheeling, thank you very much.
11 Please answer any questions Mr. Meetze may have for you.

12 A: Okay.

13 THE COURT: Cross-examination?

14 MR. MEETZE: Thank you, Your Honor.

15 CROSS-EXAMINATION

16 BY MR. MEETZE:

17 Q: Good afternoon, Mr. Wheeling.

18 A: Good afternoon.

19 Q: You spoke with police officers when they got to the
20 facility that night?

21 A: I did.

22 Q: And do you recall how many folks you spoke with?

23 A: The black gentleman in the dark suit -- he asked me some
24 questions. And I think that one of the first responders that
25 got there first.

CARL WHEELING - CROSS BY MR. MEETZE

1 Q: And do you recall speaking to one of the first responders
2 that got there?

3 A: Yes.

4 Q: Right. Do you recall his name?

5 A: I do not.

6 Q: Could it have been an Officer Cantey? Is that possible?

7 A: Let's see. He looks familiar, yes.

8 Q: Okay.

9 A: Yes, he does.

10 Q: Well -- and you talked to him and told him what you saw;
11 correct?

12 A: Correct.

13 Q: Okay. And you didn't see anything that happened prior to
14 Mr. Durant, according to your testimony, coming back to the
15 facility?

16 A: No.

17 Q: And talking to you?

18 A: No.

19 Q: Now, he indicated to you that something had occurred,
20 according to your testimony, outside of the facility at
21 wherever they had gone?

22 A: Yes.

23 Q: Do you know where they were?

24 A: We had -- the director launched her own investigation in
25 --

CARL WHEELING - CROSS BY MR. MEETZE

1 Q: Well, I don't mean to cut you off.

2 A: Okay.

3 Q: If you don't know, then that's fine.

4 A: Okay.

5 Q: All right.

6 A: No.

7 Q: Mr. Durant didn't tell you --

8 A: No.

9 Q: -- where they were?

10 A: Oh, yes, he did. Yes, he did.

11 Q: Okay.

12 A: He told me he was at a little house there. Like I said,

13 a little shotgun -- there's a series of little shoddy-looking

14 houses right beside 413, which is a drug -- I think drug and

15 alcohol recovery and it's named 413, but the houses are sort

16 of right beside it.

17 Q: All right. And you said when he came back when he talked

18 to you, the first thing you noticed was an overwhelming odor

19 of alcohol?

20 A: Yes.

21 Q: Okay. And that he was highly agitated?

22 A: Yes.

23 Q: And he explained to you why he was highly agitated?

24 A: Yes.

25 Q: Now, did he indicate to you -- ever indicate to you -- I

CARL WHEELING - CROSS BY MR. MEETZE

1 know you testified that this was over -- he was agitated over
2 his perception of Mr. Jones flashing money and things like
3 that and that not being appropriate. Did he make any kind of
4 -- did he tell you anything about cigarettes?

5 A: No. No, he did not.

6 Q: Nothing about that? All right.

7 A: Only that Mr. Jones -- and the way he stated it was
8 constantly messing with him. He kept -- he repeated that a
9 couple of times.

10 Q: I gotcha. And you testified that Mr. Durant came and he
11 spoke to you in your little area with the curtain pulled;
12 correct?

13 A: Correct.

14 Q: And it was certainly your belief -- you had no reason to
15 believe anything other than that being a private conversation
16 between the two of you; correct? Is that right?

17 A: That's correct.

18 Q: Okay. And you testified that when Mr. Durant was done
19 speaking with you and he left, it became apparent to both of
20 you that Mr. Jones had been standing there listening; correct?

21 A: All the time, yes.

22 Q: And you've glossed over it a little bit and I think your
23 testimony was that Mr. Jones said something to him along the
24 lines of I thought we were going to leave this outside?

25 A: Yes, sir.

CARL WHEELING - CROSS BY MR. MEETZE

1 Q: And basically not bring it back into here?

2 A: Yes, sir.

3 Q: And I think your testimony earlier was that they
4 exchanged words?

5 A: Yes.

6 Q: Okay.

7 A: There was some words exchanged.

8 Q: But when you talked to Officer Cantey, you told him --
9 you went into a little bit more detail than that; correct?

10 A: And I could have because it was fresh -- fresh then and
11 --

12 Q: Right.

13 A: It's been a year since then.

14 Q: And not necessarily a lot of detail, but -- and do you
15 recall the argue -- you say -- your testimony earlier was that
16 they had some words. Do you recall classifying it as an
17 argument?

18 A: I think, you know, Mr. Jones had a smirk, you know, he --
19 but, like I said, Melvin Durant -- he was agitated and
20 Melvin's voice was agitated. He was agitated. So he was loud
21 enough where, yes, it would have seemed like an argument.

22 Q: In fact, did you tell Officer Cantey that after the
23 suspect -- after Mr. Durant realized that Mr. Jones had been
24 listening that a heated argument between the two occurred?

25 A: Well, like I said, it was loud. But heated in the sense

CARL WHEELING - CROSS BY MR. MEETZE

1 of to the point that it would be physical, no.

2 Q: No, sir. I'm not asking you to characterize it as that,
3 but heated to the point of them -- first of all, I'm asking
4 you did you characterize the argument to Officer Cantey as a
5 heated argument? That's what --

6 A: And -- and I probably did, yes.

7 Q: Okay. Sure. And no, heated just means two people angry;
8 correct?

9 A: Correct.

10 Q: Okay. Now, you testified just now that after that heated
11 exchange between the two, one went one way and one went the
12 other way; correct?

13 A: Correct.

14 Q: All right. And then you testified that you went into --
15 I think you called it the TV room?

16 A: Well, I actually went back into my area for about three
17 or four minutes.

18 Q: For a little bit, but I mean -- yes, sir. But I meant --

19 A: And then I eventually wound up in the TV room.

20 Q: And that you heard a commotion?

21 A: I heard a rumble, yes.

22 Q: You did not see either one of them go into the bathroom?

23 A: I did not.

24 Q: Is that your testimony?

25 A: I did not.

CARL WHEELING - CROSS BY MR. MEETZE

1 Q: Okay. I just wanted to make -- be clear on that. Did
2 you -- do you recall whether or not you gave any written
3 statements to the police?

4 A: I did not.

5 Q: You did not?

6 A: I did not.

7 Q: Okay. All the statements that you made were oral
8 statements; is that correct?

9 A: Correct.

10 Q: And again, once -- according to your testimony, when you
11 grabbed Mr. Durant, Mr. Jones left and sometime after that --
12 and you said it seemed like five minutes, but it might have
13 been as short as less than a minute and half?

14 A: Absolutely.

15 Q: But at some point in time, Mr. Durant left?

16 A: Right.

17 Q: And you didn't see what happened after that?

18 A: No.

19 Q: Okay.

20 A: No.

21 Q: So that's when your -- anything that you saw or perceived
22 or anything like that ended at that point; correct?

23 A: Correct.

24 Q: Okay. When they got into this heated argument, you don't
25 recall anything specific that was said necessarily outside of

CARL WHEELING - CROSS BY MR. MEETZE

1 -- I mean you said that Mr. Jones said I thought we were going
2 to leave this on the outside. Other than that, anything?

3 A: No.

4 Q: But certainly -- and like you said, it's been a good bit
5 of time that's passed already; right?

6 A: Right.

7 Q: You didn't write anything down for the police?

8 A: I did not.

9 Q: And as time goes forward, our memories don't get better,
10 do they?

11 A: That's correct.

12 Q: They just get -- they get worse. You don't remember as
13 well things that happened 18 months ago as you remember the
14 things that happened two days ago?

15 A: Absolutely. Some degradation.

16 Q: And so it's certainly possible that at the time you may
17 have remembered the things that were said during the argument;
18 correct?

19 A: Maybe. Yes.

20 Q: But we don't know that for sure?

21 A: Right.

22 Q: All right.

23 MR. MEETZE: I don't have any further questions, Judge.

24 THE COURT: Mr. Richardson?

25 MR. RICHARDSON: No redirect and I'd ask that Mr.

TOMMY NESMITH - DIRECT BY MR. RICHARDSON

1 Wheeling be excused.

2 THE COURT: Any objection?

3 MR. MEETZE: No, Your Honor.

4 THE COURT: Sir, you may step down. You're free to go.

5 Thank you for being here. Have a nice day.

6 THE WITNESS: Thank you.

7 THE COURT: Call your next witness.

8 MR. RICHARDSON: We'd call Tommy Nesmith.

9 THE CLERK: Sir, please place your left hand on the Bible
10 and raise your right hand. Do you swear the testimony you
11 give in this case to be the truth, the whole truth, and
12 nothing but the truth, so help you God?

13 THE WITNESS: I do.

14 THE CLERK: Please be seated and state your full name for
15 the record.

16 THE WITNESS: Tommy L. Nesmith.

17 MR. RICHARDSON: All right.

18 TOMMY NESMITH, being first duly
19 sworn, testified as follows:

20 DIRECT EXAMINATION

21 BY MR. RICHARDSON:

22 Q: Mr. Nesmith, can you tell us how old you are?

23 A: I am 52 years old.

24 Q: Okay. And do you live here in Florence?

25 A: Yes, sir.

TOMMY NESMITH - DIRECT BY MR. RICHARDSON

1 Q: All right. Back in November of 2014, were you living at
2 the transitional shelter on Jarrett Street?

3 A: Yes, sir, I was.

4 Q: Okay. So did you know Mr. Durant and Mr. Jones and Mr.
5 Wheeling?

6 A: Yes, sir.

7 Q: Okay. On the night of November the 12th, what do you
8 remember about seeing Mr. Durant?

9 A: The only thing I remember about seeing Mr. Durant -- he
10 came outside and threw a knife across the fence.

11 Q: All right. And where were you located?

12 A: I was outside smoking a cigarette at the time.

13 Q: Now, were you in the back of the facility?

14 A: The back of the facility. Yes, sir.

15 Q: Okay. And let me show you, if I can, something that's
16 already in evidence. This is State's 11. It's already in
17 evidence. Do you recognize this viewpoint?

18 A: Yes, sir. That's coming right in the back door off the
19 men's side going into upstairs into the women's side and the
20 entrance going to the backyard.

21 Q: So that's aimed out towards the backyard?

22 A: It's aimed out towards the backyard.

23 Q: All right.

24 A: Yes, sir.

25 Q: So you were back in there somewhere smoking a cigarette?

TOMMY NESMITH - DIRECT BY MR. RICHARDSON

1 A: Yes, sir.

2 Q: And so did you see Mr. Durant come out the back door?

3 A: Yes, sir.

4 Q: Okay. And so he would've had to have walked down this

5 pathway?

6 A: Yes, sir.

7 Q: And what did you observe him do?

8 A: He come outside. He stand beside me because I give him a

9 cigarette and he took the knife and throw the knife across the

10 fence like that.

11 Q: All right. And we're talking about the fence that

12 separates --

13 A: Yes, sir.

14 Q: -- the shelter from the Housing Authority?

15 A: Yes, sir.

16 Q: Okay. Did he say anything to you about what had just

17 happened?

18 A: No, sir.

19 Q: So you just saw him throw it?

20 A: Yes, sir.

21 Q: All right. And I'm going to ask you -- well, what did

22 you do later with respect to that knife?

23 A: About three days later, I went and I retrieved the knife.

24 Q: All right. Where did you find it?

25 A: Behind the Housing Authority.

TOMMY NESMITH - DIRECT BY MR. RICHARDSON

1 Q: Behind the -- the --

2 A: Behind the Housing Authority.

3 Q: Okay. So it was over that fence?

4 A: It was over the fence. It was between -- you got a fence

5 like this separating the shelter and the Housing Authority,

6 and you got another fence coming like that, and it was between

7 the back of the fence behind the Housing Authority.

8 Q: All right. So you -- had you just seen kind of the

9 general direction he through it?

10 A: Yes, sir.

11 Q: So you went back there looking for it?

12 A: Yes, sir.

13 Q: Three days later?

14 A: Yes, sir.

15 Q: And what -- what caused you to go three days later?

16 A: Because other people was being accused of having the

17 knife at the time.

18 Q: So you knew the direction it was thrown?

19 A: I knew the direction it was thrown.

20 Q: All right. So you found it and what did you do with it?

21 A: I give it to the victim, Wiley Jones.

22 Q: Okay. And I want to show you a couple of items here that

23 have been marked. This one is State's 3 and one is State's 4

24 for identification. Can you take a look at those and tell me

25 if you recognize them?

TOMMY NESMITH - DIRECT BY MR. RICHARDSON

1 A: That's the knife right there.

2 Q: All right.

3 A: I can't -- the knife is turned the opposite direction.

4 So it's hard to --

5 Q: But you're sure about Number 4?

6 A: I'm sure that's the knife right there.

7 Q: Okay. Is this what the knife looked like when you picked
8 it up?

9 A: Yes, sir.

10 Q: All right.

11 MR. RICHARDSON: Your Honor, I'd asked for State's 4 to
12 be entered into evidence.

13 THE COURT: Any objection?

14 MR. MEETZE: No, Your Honor.

15 THE COURT: Without objection, State's Exhibit Number 4
16 so admitted.

17 (WHEREUPON, State's Exhibit Number 4, a photograph, was
18 admitted into evidence.)

19 MR. RICHARDSON: Okay.

20 BY MR. RICHARDSON:

21 Q: I'm going to -- is this the picture you just looked at?

22 A: Yes, sir.

23 Q: And when you picked the knife up, do you remember that --
24 that red stain being on it?

25 A: That was on the knife when I picked it up.

TOMMY NESMITH - DIRECT BY MR. RICHARDSON

1 Q: It was?

2 A: Yes, sir.

3 Q: And was it -- was it dried on there?

4 A: Yes, sir.

5 Q: Okay. So after you turned it over to Mr. Jones, do you
6 know what he did with it?

7 A: No, sir. Not at that point in time.

8 Q: All right. Very good. Please answer any questions Mr.
9 Meetze may have.

10 THE COURT: Cross-examination?

11 MR. MEETZE: Thank you, Your Honor.

12 CROSS-EXAMINATION

13 BY MR. MEETZE:

14 Q: Mr. Nesmith, you indicated that you went back three days
15 later?

16 A: Yes, sir.

17 Q: Could it have been four days?

18 A: No, sir. It was three days.

19 Q: All right. The -- and you took what you found at the
20 Housing Authority -- you took to Wiley Jones?

21 A: Yes, sir.

22 Q: And he's the victim in this case?

23 A: Yes, sir.

24 Q: All right. And you indicated through your testimony you
25 saw Mr. Durant throw the knife in that direction; correct?

TOMMY NESMITH - CROSS BY MR. MEETZE

- 1 A: Yes, sir.
- 2 Q: But you didn't go pick it up then?
- 3 A: No, sir.
- 4 Q: All right. It didn't dawn on you to pick it up then?
- 5 A: No, sir.
- 6 Q: Just sometime later, at least three days, you go over
- 7 there looking for it and then you find the knife that you've
- 8 identified in that picture; correct?
- 9 A: Yes, sir.
- 10 Q: And you give that to Wiley Jones; correct?
- 11 A: Yes, sir.
- 12 Q: All right. Mr. Nesmith, you've got prior criminal
- 13 convictions on your record?
- 14 A: Yes, sir.
- 15 Q: Back in 2009, you got a conviction for indecent exposure;
- 16 is that correct?
- 17 A: Yes, sir.
- 18 Q: And also in 2012, you got a conviction for aggravating
- 19 stalking -- aggravated stalking; is that correct?
- 20 A: Yes, sir.
- 21 Q: And your testimony is the knife went -- after you found
- 22 it, you took it to Mr. Jones?
- 23 A: Yes, sir.
- 24 Q: You didn't give it to anyone else?
- 25 A: No one else.

WILEY JONES - DIRECT BY MR. RICHARDSON

1 MR. MEETZE: I don't have any further questions, Your
2 Honor.

3 MR. RICHARDSON: No redirect and I ask that he be
4 excused.

5 THE COURT: Sir, you may step down. You're free to go.
6 Thank you for being here.

7 THE WITNESS: Thank you, sir.

8 THE COURT: Call your next witness.

9 MR. RICHARDSON: We'd call Wiley Jones.

10 THE CLERK: Sir, please place your left hand on the Bible
11 and raise your right hand. Do you swear the testimony you
12 give in this case to be the truth, the whole truth, and
13 nothing but the truth, so help you God?

14 THE WITNESS: Yes, I do.

15 THE CLERK: Please be seated and state your full name for
16 the record.

17 THE WITNESS: My full name is Wiley E. Jones.

18 WILEY JONES, being first duly
19 sworn, testified as follows:

20 DIRECT EXAMINATION

21 BY MR. RICHARDSON:

22 Q: All right. Mr. Jones, where do you live now?

23 A: Ohio.

24 Q: All right. The state of Ohio?

25 A: Yes, sir.

WILEY JONES - DIRECT BY MR. RICHARDSON

1 Q: All right. And how long have you been living in Ohio?

2 A: Almost a year now.

3 Q: All right. So back in November of 2014, were you living
4 at the transitional shelter here in Florence?

5 A: Yes, sir.

6 Q: All right. So you're familiar with Mr. Nesmith, Mr.
7 Durant, Mr. Wheeling, and folks --

8 A: Yes, sir.

9 Q: -- we've had in here so far? This evening of November
10 the 12th -- we've heard testimony from Mr. Wheeling already
11 about some discord between you and Mr. Durant. Based on your
12 recollection, what was the nature of the problem between you
13 two guys leading up to this night?

14 A: To be honest, I really can't tell you what problem Mr.
15 Durant had with me or what problem I had with him. It's like
16 I come from the north and I'm here in the south and my point
17 of views in life is different and theirs is different. So we
18 kind of clashed on not a lot of things, but on things. I got
19 my opinion and they have theirs.

20 Q: Okay. So for whatever reason, it's safe to say y'all
21 weren't getting along very well this day or these days leading
22 up to this incident?

23 A: Yeah.

24 Q: Had there been any acts of violence prior to this
25 stabbing incident between you two guys?

WILEY JONES - DIRECT BY MR. RICHARDSON

1 A: No. Just -- no.

2 Q: Okay.

3 A: No.

4 Q: Mr. Wheeling mentioned you standing outside of his little

5 living area there at the curtain --

6 A: Uh-huh.

7 Q: -- while Mr. Durant and Mr. Wheeling were having a

8 conversation about you bothering Mr. Durant. Do you recall

9 that?

10 A: Yes, sir.

11 Q: All right. And do you remember standing out there and

12 hearing some of that?

13 A: Yes, sir.

14 Q: And what was your recollection? When that curtain opened

15 up and Mr. Durant came out of there, what do you recall about

16 your interaction with him there?

17 A: I asked Mr. Durant -- I thought we wasn't going to bring

18 our problems into the facility because the facility is low

19 tolerance. So if me and him have a problem with each other,

20 we go to the director. The director, if she can't settle it,

21 she'll put us back out on the street. So I asked Mr. Durant

22 could you not bring this back into the facility. Them are the

23 only words I said to Mr. Durant.

24 Q: Okay. And did he at that moment say anything back to you

25 that you recall?

WILEY JONES - DIRECT BY MR. RICHARDSON

1 A: Not that I recall because -- no. I went to -- I went to
2 go to the restroom. After I spoke with him, then I went to
3 the restroom then.

4 Q: Okay. And what was your purpose in going to the restroom
5 at that point?

6 A: I had to use the restroom.

7 Q: All right. Were you -- is there showers and all kinds of
8 stuff in there?

9 A: Yeah.

10 Q: So you're just going in there to use the restroom?

11 A: Yes, sir.

12 Q: So when you walk into the bathroom, take us through what
13 you do?

14 A: It's a stand-up urinal; so I stood. I'm standing there,
15 you know, about to take a little -- about to go to the
16 restroom and relieve myself. I felt someone behind me. It
17 was Mr. Durant with a knife and he just started stabbing me
18 and stabbing me. My back was turned towards the wall. So I
19 turned around and looked at him and I put my hands up, you
20 know, and I asked him why did you stab me. And --

21 Q: Well, you said your back was --

22 A: Like, the urinal --

23 Q: Yeah.

24 A: I was using the bathroom; so my --

25 Q: So you were looking at the urinal?

WILEY JONES - DIRECT BY MR. RICHARDSON

1 A: Yeah. And he was behind me.

2 Q: Okay.

3 A: And he stabbed me a couple times and in getting stabbed

4 -- I've never been stabbed or shot; so I was in shock. So the

5 only thing I did was went into defensive mode because I

6 finally turned around to look at him. I put my hands up and I

7 asked him why did he stab me. He said I told you to leave me

8 alone. I ran out the bathroom. I looked behind me. He was

9 maybe five -- maybe ten steps behind me. I went to the left

10 and I hear him screaming off to the right. There's a little

11 cubbyhole that I crossed in and fell out in the yard. Well, I

12 called 9-1-1 and told them what happened.

13 Q: Do you recall Mr. Wheeling coming in the bathroom?

14 A: Yeah. Yes, I do.

15 Q: All right. So by the time Mr. Wheeling came in the

16 bathroom, had you already been hit with the knife?

17 A: Yeah, several times. Yes.

18 Q: Okay. And what do you recall Mr. Wheeling doing when he

19 came in?

20 A: After -- after -- after Mr. Durant stabbed me, I turned

21 around and looked at him and I asked him why did you stab me.

22 Why are you stabbing me? And --

23 Q: Was it in that calm a voice?

24 A: No, no, no. But I asked him and, like, he didn't care.

25 So he was going to stab me again and Mr. -- Mr. Carl gripped

WILEY JONES - DIRECT BY MR. RICHARDSON

1 his wrist. And when he did that, I was penned up; so I
2 scooted away and I ran out the facility. I looked behind me
3 and I seen -- you know what? I didn't see him. I seen an
4 orange shirt that he was wearing, and I looked and I was
5 scared then; so I really panicked and I ran outside and just
6 hit 9-1-1 and just --

7 Q: So when you got out, you had to run out that back door?

8 A: Yes, sir.

9 Q: And your options -- when you hit that back door, you go
10 left or right?

11 A: Yeah.

12 Q: So if you come out that back door and take a left, which
13 way -- where are you headed?

14 A: I'm headed to the parking lot.

15 Q: To the back parking lot?

16 A: Yes.

17 Q: If you take a right?

18 A: There's a little -- there's a little slide place. You
19 know, everyone can't fit through there. Only, you know -- so
20 I was able to slide through it.

21 Q: And you got out to the front yard?

22 A: Yeah.

23 Q: So the last time you saw him, he was running behind you
24 in the hallway?

25 A: Yeah. No. He wasn't running at full speed. He was

WILEY JONES - DIRECT BY MR. RICHARDSON

1 coming. He was coming in the same direction I was.

2 Q: He still had the knife with him?

3 A: Yes, sir. The knife was down to his -- his side.

4 Q: Okay. Once the -- so you called 9-1-1 from your own

5 phone?

6 A: Yeah. Like Mr. Carl stated, he -- he called the director

7 of the facility. Why, I don't know, when you just witnessed a

8 stabbing; so I called 9-1-1 for myself. I saved -- I saved --

9 well, Mr. Carl saved me too, but, you know, I called 9-1-1

10 myself.

11 Q: You had to be proactive?

12 A: Yeah.

13 Q: So did the police get there pretty quickly?

14 A: Yes, sir.

15 Q: And had you had any other interactions with Mr. Durant by

16 the time they got there or were you still separate from him?

17 A: Yeah. I was separate, but he was yelling expletives,

18 just he was in a rage. That's the word. He was in a rage.

19 Q: So you heard him yelling things?

20 A: The lady on the 9-1-1 -- she was like, is that him? I'm

21 like, yes, that is him.

22 Q: All right. Do you remember anything specific about the

23 words he was saying when he was yelling?

24 A: I told you. I told y'all. I told y'all. I told y'all.

25 I told y'all. That's all he kept saying. I told y'all. I

WILEY JONES - DIRECT BY MR. RICHARDSON

1 told y'all.

2 Q: Okay. And when -- did EMS get there?

3 A: Yes, sir.

4 Q: Did they take you to the hospital?

5 A: Yes, sir. Fifty-two staples and stitches.

6 Q: So did -- so they had to use staples and stitches on you?

7 A: Yes, sir.

8 Q: Did they put any sort of anesthetic on your body?

9 A: Yeah, they did. They numbed me. They took proper

10 procedures. Yes.

11 Q: So they numbed you up a little bit?

12 A: Yes, sir.

13 Q: All right. I want to show you a couple photographs of --

14 this is State's 13 and 14, and ask you if you recognize those

15 there?

16 A: Yes, sir.

17 Q: And what are those photographs of?

18 A: Me stabbed, cut up.

19 Q: Is this an accurate representation of what you looked

20 like that night after the stabbing?

21 A: Yes, sir.

22 Q: Okay.

23 MR. RICHARDSON: Your Honor, I'd asked to put 13 and 14

24 into evidence.

25 MR. MEETZE: No objection.

WILEY JONES - DIRECT BY MR. RICHARDSON

1 THE COURT: Without objection, so admitted.

2 (WHEREUPON, State's Exhibit Number 13 and State's Exhibit
3 Number 14, photographs, were admitted into evidence.)

4 MR. RICHARDSON: May I publish these, if I might, Your
5 Honor?

6 BY MR. RICHARDSON:

7 Q: Mr. Jones, right here -- is this your left shoulder area
8 we're looking at?

9 A: Yes, sir.

10 Q: All right. Is that series of things there all caused by
11 the stabbing by Mr. Durant?

12 A: Yes, sir.

13 Q: And this is State's 13. Is this a photo of your back and
14 the stab wounds suffered?

15 A: Yes, sir.

16 Q: Okay. Do you recall about how many times -- in that
17 incident that stabbing was going on, how many times he came
18 down on you with that knife?

19 A: No. I didn't count them, but the physician the night at
20 the hospital told me seven times.

21 MR. MEETZE: Objection, Your Honor.

22 THE COURT: Objection sustained.

23 BY MR. RICHARDSON:

24 Q: Based on your examination of your own body, do you
25 remember how many puncture wounds or cuts or anything you had?

WILEY JONES - DIRECT BY MR. RICHARDSON

1 A: I witnessed four of my own that I --

2 Q: So you saw four?

3 A: Yeah.

4 Q: Different wounds on your body?

5 A: Yeah. But some was -- some wasn't -- didn't need staples
6 or stitches. Some was scrapes, like nicks or whatnot, but
7 actual puncture wounds -- there was four.

8 Q: State's Number 4 -- it's already in evidence. Do you
9 recognize that?

10 A: Yes, I do.

11 Q: And what is that?

12 A: That's the knife that Melvin Durant had the night that he
13 stabbed me.

14 Q: Okay. And how did you come into contact with this knife
15 afterwards?

16 A: It was at the facility. Mr. Durant had a -- well, yeah,
17 Mr. Durant had a female that was on the women's side. So
18 everyone was saying that the knife was here, the knife was
19 there.

20 MR. MEETZE: Objection, Your Honor.

21 A: Well, I was --

22 THE COURT: Hold on a minute. Objection sustained. Go
23 ahead.

24 BY MR. RICHARDSON:

25 Q: Well, at some point in time, did somebody bring you --

WILEY JONES - DIRECT BY MR. RICHARDSON

1 A: Yes.

2 Q: -- this knife?

3 A: Mr. Tommy Nesmith did, yes.

4 Q: Okay. And when you got the knife, did it look just like
5 it did in this picture with the red stain on the end and
6 everything?

7 A: Yes, it did.

8 Q: And was that substance there on the end of that knife
9 dried on there?

10 A: Yes, it was.

11 Q: All right. And when you got that knife from Mr. Nesmith,
12 what did you do with it?

13 A: I took it to the director of the shelter and told him
14 that Tommy found the knife, and they called the police.

15 Q: All right.

16 MR. RICHARDSON: I beg the Court's indulgence one moment.

17 THE COURT: All right.

18 BY MR. RICHARDSON:

19 Q: Do you see Mr. Durant in the courtroom here today?

20 A: Yes, I do.

21 Q: Would you point him out to us?

22 A: (Indicating.)

23 Q: And is he the individual who stabbed you in that shelter
24 that night?

25 A: Yes, he is.

WILEY JONES - DIRECT BY MR. RICHARDSON

1 Q: Please answer any questions Mr. Meetze may have for you.

2 A: Absolutely.

3 THE COURT: Cross-examination?

4 MR. MEETZE: I beg the Court's indulgence.

5 CROSS-EXAMINATION

6 BY MR. MEETZE:

7 Q: Mr. Jones, you and Mr. Durant went out on this night;
8 correct?

9 A: You said we went out?

10 Q: Yeah. Did you all go out drinking?

11 A: Well, actually -- actually, I just got off work. You
12 have to work to be at the shelter. So I got off work and seen
13 Mr. Durant and asked Mr. Durant would he like to have a couple
14 drinks with me. So yes.

15 Q: Right. Okay.

16 A: Yes.

17 Q: And -- and at some point in time over that while y'all
18 were out, you got into an argument?

19 A: No, it wasn't an argument. Mr. Durant likes to be an
20 authority figure. So he's telling me how to spend my earned-
21 hard money. So the conflict was I could spend it the way I
22 wanted to. You don't have to tell me. And he got offended by
23 what I just told you. He got offended by it.

24 Q: And you indicated earlier in your testimony that this had
25 been sort of an ongoing thing between the two of you?

WILEY JONES - DIRECT BY MR. RICHARDSON

1 A: No. Not just with him. My two witnesses too. Like, if
2 you ask me for something and I say no, then you look at me
3 like, uh, but if I say yeah, you're my friend. So the
4 altercation is just you dislike what I say, I dislike what you
5 say. We'll go our separate ways.

6 Q: And later on that evening at the shelter --

7 A: Uh-huh.

8 Q: -- y'all got into a further argument?

9 A: Huh-uh. I just asked him -- I thought what me and you
10 had going on in the streets -- we wasn't going to bring it to
11 the facility. Them the only words I said to him. There was
12 no heated exchange. There was no argument back and forth,
13 none of that.

14 Q: Okay. Now, when you -- you say you got a knife from Mr.
15 Nesmith; is that correct?

16 A: Yes, sir.

17 Q: And at some point in time, an officer came?

18 A: Immediately.

19 Q: Immediately?

20 A: Yeah. She dialed 9-1-1.

21 Q: And they came; correct?

22 A: Yeah.

23 Q: And you told that officer that you found the knife on the
24 table beside 411 Jarrett Street; correct?

25 A: I don't recall that.

WILEY JONES - DIRECT BY MR. RICHARDSON

1 Q: You don't recall that? All right.

2 A: I know Mr. Nesmith told me that he didn't want to be
3 involved in it. So when he gave it to him -- when he gave me
4 the knife, I told Ms. -- I might have did tell Ms. Nash that,
5 yeah, I found it. I might have did tell her that not to
6 involve Mr. Nesmith in it. I might have, but I'm not sure.

7 Q: All right. And that's fine. My question to you is did
8 you also tell the officer that reported -- that showed up to
9 collect that that you found the knife? That you found the
10 knife on a table at 411 Jarrett Street?

11 A: I'm not sure. I might have, but I'm not sure.

12 Q: Okay. Of course -- and if you did say that, that was not
13 true?

14 A: I didn't hear you.

15 Q: If you did tell the officer that, that's not true,
16 correct?

17 A: That I found it?

18 Q: Right.

19 A: Yeah. Because I didn't find it.

20 Q: And if you told the director that, Ms. Nash, it's not
21 true as well; correct?

22 A: Yeah, correct. But once again, it's a low tolerance at
23 the facility and so I didn't want to get Mr. Nesmith kicked
24 out on the altercation me and Durant had because eventually
25 they got rid of all three of us.

WILEY JONES - DIRECT BY MR. RICHARDSON

1 Q: And when officers came to McLeod to speak with you, you
2 refused to speak with them; is that correct?
3 A: No. I spoke with them.
4 Q: At first?
5 A: I spoke with the gentleman over there to your -- to my
6 left.
7 Q: You didn't at first tell them you didn't want to speak
8 without a lawyer present?
9 A: Maybe so. I was -- I was discombobulated. I was
10 confused. I wanted to go home. I might have. I got stabbed.
11 I probably did. A lot of things I might've said that night,
12 but I know I got stabbed by Melvin Durant.
13 Q: Now, you ended up -- as you just said, you went to the
14 emergency room?
15 A: Uh-huh.
16 Q: And you've identified pictures of that. And you went to
17 the emergency room at about 7:30 on the evening of the 12th; is
18 that right?
19 A: It was 7:01 I believe.
20 Q: 7:01?
21 A: Yeah.
22 Q: Sometime around there?
23 A: Yeah.
24 Q: And you were discharged just a little bit after midnight
25 --

WILEY JONES - DIRECT BY MR. RICHARDSON

1 A: Yeah.

2 Q: -- on the 13th. So you were there about five to five-and-
3 a-half hours?

4 A: Probably so.

5 Q: At the emergency room?

6 A: Yes.

7 Q: Okay. Now, you've got a prior drug trafficking
8 conviction?

9 A: Yeah. Ten years ago. Yeah. That's why I came to South
10 Carolina to Florence to change my life, but ten years ago,
11 yeah, 2006.

12 MR. MEETZE: I don't have any further questions.

13 THE WITNESS: I know.

14 MR. RICHARDSON: Nothing further, Judge.

15 THE COURT: Sir, you may step down. Thank you.

16 THE WITNESS: Thank you, sir.

17 THE COURT: Can y'all approach a minute?

18 (WHEREUPON, a bench conference was held in the presence
19 of the jury but out of the hearing of the jury off the
20 record.)

21 THE COURT: All right. Ladies and gentlemen, what we are
22 going to do at this time is we are going to stop for this
23 afternoon. I'm going to ask you to be back in your jury room
24 tomorrow morning at 9:30 -- at 9:30 and we'll resume the trial
25 of this case as promptly at that time as possible.

1 Do not -- do not discuss this case at all with anyone.
2 Do not do any independent investigation on your own. As I
3 told you in my opening charge to you, you are to decide this
4 case based solely upon the evidence and testimony that's
5 presented in this courtroom and nowhere else.

6 You all have a good evening and I will see you tomorrow
7 morning at 9:30.

8 THE BAILIFF: Follow me, please.

9 (WHEREUPON, the jury exited the courtroom at 4:47 p.m.)

10 THE COURT: All right. Anything from the State before we
11 break for the balance of the day?

12 MR. RICHARDSON: No, sir.

13 THE COURT: Defense counsel?

14 MR. MEETZE: Nothing, Your Honor.

15 THE COURT: All right. 9:30 in the morning. Thank you.

16 (WHEREUPON, the proceedings adjourned for the day at 4:48
17 p.m.)

18 JUNE 21, 2016

19 (WHEREUPON, the proceedings resumed at 9:41 a.m. with the
20 defendant and his counsel present.)

21 THE COURT: All right. Anything before I bring the jury
22 out, Mr. Richardson?

23 MR. RICHARDSON: No, sir.

24 MR. MEETZE: No, Your Honor.

25 THE COURT: All right. Bring me the jury, please.

1 THE BAILIFF: Yes, sir.

2 (WHEREUPON, the jury entered the courtroom at 9:42 a.m.)

3 THE COURT: Mr. Richardson?

4 MR. RICHARDSON: Yes, sir?

5 THE COURT: Come here a minute, please.

6 (WHEREUPON, a bench conference was held in the presence
7 of the jury but out of the hearing of the jury off the
8 record.)

9 THE COURT: All right. Good morning, ladies and
10 gentleman. I hope you all had a nice evening last night and
11 are ready to proceed here this morning. At this time, we're
12 going to continue the trial of the case.

13 Mr. Richardson, you're so recognized. Call your next
14 witness, please.

15 MR. RICHARDSON: Thank you, Your Honor. We'd call Sam
16 Ervin.

17 THE CLERK: Sir, if you will, please place your left hand
18 on the Bible and raise your right hand. Do you swear the
19 testimony you give in this case will be the truth, the whole
20 truth, and nothing but the truth, so help you God?

21 THE WITNESS: I do, ma'am.

22 THE CLERK: Please be seated and state your full name for
23 the record.

24 THE WITNESS: Samuel Ervin.

25 SAMUEL ERVIN, being first duly

SAM ERVIN - DIRECT BY MR. RICHARDSON

1 sworn, testified as follows:

2 DIRECT EXAMINATION

3 BY MR. RICHARDSON:

4 Q: Officer Ervin, are you with the Florence Police
5 Department?

6 A: Yes, sir.

7 Q: And how long have you been with them?

8 A: About three years.

9 Q: And what are your job duties with the department?

10 A: I'm a patrol officer. I respond to 9-1-1 calls.

11 Q: Okay. And so three years -- you've been there three
12 years; so November of 2014, you were already there working as
13 an officer?

14 A: Yes, sir.

15 Q: Did you have an opportunity to respond to a call at the
16 homeless shelter back in November of 2014, a few days after
17 another incident had taken place there?

18 A: Yes, sir.

19 Q: And what was the nature of the call you responded to?

20 A: A Mr. Jones called in to say that he had recovered a
21 knife that was used in a stabbing case earlier.

22 Q: All right. And what -- what did you do in response?

23 A: I went out there and collected the knife from the
24 director at the homeless shelter there.

25 Q: Okay.

SAM ERVIN - DIRECT BY MR. RICHARDSON

1 A: And logged it into evidence as well.

2 Q: I am going to show you State's Exhibit 4. I think it's

3 already in evidence. Do you recognize that?

4 A: Yes, sir. That's the knife we logged in.

5 Q: All right. So that's the knife you picked up from the

6 homeless shelter?

7 A: Yes, sir.

8 Q: And that red stain -- do you recall that being on it?

9 A: Yes, sir. It was there.

10 Q: All right. And when you picked it up, what did you do

11 with it?

12 A: I put it into a brown paper bag and took it to evidence

13 and logged it in.

14 Q: Okay. And describe the evidence log-in process to us.

15 How does that work?

16 A: I fill out an evidence log sheet that basically describes

17 the item, what's on it, and it just goes into a locker that is

18 locked up and secured until the evidence custodian can come

19 get it out and take it into the evidence room proper I guess.

20 Q: Okay. So when you put in that locker, the only person

21 that has access to it would be the evidence custodian?

22 A: Yes, sir.

23 Q: And when you put it in, how does the evidence custodian

24 get it out? Or do you know?

25 A: I believe he has a key. He's the only one with the key

SAM ERVIN - DIRECT BY MR. RICHARDSON

1 to it and he gets it out and logs it into a bin somewhere in
2 the evidence room.

3 Q: Okay. That knife -- did you put it in the paper bag
4 where you picked it up or --

5 A: Yes, sir. I didn't touch it at all. I used my gloves to
6 pick it up and put it into that bag.

7 Q: So you didn't do anything with it between the homeless
8 shelter and the police department to manipulate it, mess with
9 it?

10 A: No, sir.

11 Q: Nothing? You just turned it in?

12 A: Yes, sir.

13 MR. RICHARDSON: All right. Thank you. Please answer
14 any questions that Mr. Meetze may have for you.

15 THE COURT: Cross-examination?

16 MR. MEETZE: Thank you, Your Honor.

17 CROSS-EXAMINATION

18 BY MR. MEETZE:

19 Q: Officer Ervin, as you said, your role in this was very
20 minimal?

21 A: Yes, sir.

22 Q: You were dispatched out to pick up some evidence; is that
23 correct?

24 A: Yes, sir.

25 Q: And that's what you did; is that right?

SAM ERVIN - CROSS BY MR. MEETZE

1 A: Yes, sir.

2 Q: And you got there -- Mr. Jones did tell you that he found
3 the knife; correct?

4 A: He did. Yes, sir, until he was corrected.

5 Q: And that was not true?

6 A: Right.

7 MR. MEETZE: I don't have any further questions.

8 THE COURT: Any redirect?

9 MR. RICHARDSON: No, sir.

10 THE COURT: Sir, you may step down. Thank you.

11 MR. RICHARDSON: And I ask that he be excused.

12 THE COURT: Any objection? Mr. Meetze, any objection to
13 him being excused?

14 MR. MEETZE: I'm sorry, Your Honor. No, sir.

15 THE COURT: All right. Sir, you're excused. You're free
16 to go. Thank you for being here.

17 THE WITNESS: Thank you.

18 THE COURT: Call your next witness, please.

19 MR. RICHARDSON: I'd call Jimmy Cantey.

20 THE CLERK: Please place your left hand on the Bible and
21 raise your right hand. Do you swear the testimony you give in
22 this case will be the truth, the whole truth, and nothing but
23 the truth, so help you God?

24 THE WITNESS: I do.

25 THE CLERK: Please be seated and state your full name for

JIMMY CANTEY - DIRECT BY MR. RICHARDSON

1 the record.

2 THE WITNESS: Jimmy Cantey.

3 JIMMY CANTEY, being first duly
4 sworn, testified as follows:

5 DIRECT EXAMINATION

6 BY MR. RICHARDSON:

7 Q: Officer Cantey, are you with the Florence Police
8 Department?

9 A: Yes, sir.

10 Q: And how long have you been there?

11 A: I've been there going on ten years.

12 Q: All right. And what are your job responsibilities?

13 A: Currently, I'm assigned to the criminal investigation
14 division of the police department.

15 Q: Back in November of 2014, what were your job
16 responsibilities?

17 A: I was on patrol.

18 Q: All right. And is that similar to what Mr. Ervin has
19 testified about, responding to 9-1-1 calls?

20 A: Yes, it is.

21 Q: And did you have an opportunity to respond to a 9-1-1
22 call on November 12th, 2014?

23 A: Yes, I did.

24 Q: And where did you go?

25 A: It was 411 Jarrett Street, which is a homeless shelter in

JIMMY CANTEY - DIRECT BY MR. RICHARDSON

1 the city of Florence.

2 Q: All right. Is that also in Florence County?

3 A: Yes, it is.

4 Q: Okay. And what did you -- what information did you
5 receive? I guess what was the nature of the call?

6 A: The call I received was in reference to a stabbing. The
7 actual victim had called in 9-1-1 and dispatch had given the
8 call to me.

9 Q: And what did you do? Or what time of day or night do you
10 recall getting there?

11 A: It was around seven p.m., maybe a little after seven p.m.

12 Q: So it would have been nighttime I guess?

13 A: Yes.

14 Q: That time of year? And what did you do upon arrival?

15 A: When I got there, I observed Mr. Jones, the victim, up
16 under a tree in the front yard. He was bleeding from his neck
17 and his left arm area and advised that he had been stabbed.

18 Q: Okay. And what took place then?

19 A: I asked him if the person that stabbed him was still
20 there or who stabbed him and he said the guy had an orange
21 shirt on and his name was Melvin. I then located a subject in
22 the backyard that had an orange shirt on who was detained at
23 that time so we could figure out who he was and conduct an
24 investigation.

25 Q: All right. Once you detained Mr. Durant, what did you do

JIMMY CANTEY - DIRECT BY MR. RICHARDSON

1 with him from that point?

2 A: At that point, he was placed in the rear of another
3 officer's vehicle to secure him so we could make sure the
4 scene was also secured.

5 Q: Okay. Did you take a look at the inside of the place or
6 the perimeter of the place to look for any blood or weapons or
7 anything like that?

8 A: We checked the parking lot for the knife that was
9 supposed to be involved. At that time, we did not locate a
10 knife. I walked through the inside of the residence from
11 where they were sleeping to the back exit door that leads to
12 the parking lot. There were some small blood droplets between
13 the restroom and the back door.

14 Q: Okay. And did you identify any witnesses?

15 A: I did. I spoke to Carl Wheeling.

16 Q: Okay. And did he have a conversation with you about what
17 he observed?

18 A: He did. What he told me he observed -- he -- the -- Mr.
19 Jones and Mr. Durant were in an argument over something that
20 happened earlier in the day. They had separated. Mr. Jones
21 went into the restroom. Mr. Durant went into the restroom
22 behind him. Mr. Wheeling said he heard a commotion coming
23 from the restroom and when he opened the door to see what was
24 going on, he observed Mr. Durant punching and stabbing Mr.
25 Jones.

JIMMY CANTEY - DIRECT BY MR. RICHARDSON

1 Q: And did you notify investigations at that point to come
2 out?

3 A: Yes, we did. Investigator Wynn arrived on scene and took
4 over the investigation.

5 Q: All right. Is that pretty much the extent of what you
6 did there that evening?

7 A: Yes, sir.

8 MR. RICHARDSON: All right. Please answer any questions
9 Mr. Meetze may have for you.

10 THE COURT: Cross-examination?

11 MR. MEETZE: Thank you, Your Honor. May it please the
12 Court.

13 CROSS-EXAMINATION

14 BY MR. MEETZE:

15 Q: Officer Cantey, how are you doing this morning?

16 A: How are you, sir?

17 Q: And is officer all right?

18 A: Yes, sir.

19 Q: I don't --

20 A: Yes, sir, that's fine.

21 Q: You just testified as to your involvement in this case.
22 Were you the first responder to get there from the police
23 department?

24 A: Yes, I was.

25 Q: Okay. And your -- you've been now in law enforcement for

JIMMY CANTEY - CROSS BY MR. MEETZE

1 ten years. I guess back then you had been in law enforcement
2 or here in Florence for about eight-and-a-half years?

3 A: Yes, sir.

4 Q: And to be a police officer or law enforcement officer of
5 any kind, you go through a lot of training; correct?

6 A: Yes, sir.

7 Q: You've got to go to through training to even become a
8 police officer; is that right?

9 A: Yes, sir.

10 Q: And you continue training throughout your career; is that
11 right?

12 A: Yes, sir.

13 Q: And, of course, like a lot of jobs, being a police
14 officer, there's a lot of on-the-job training, so to speak?

15 A: Yes, there is.

16 Q: Always stuff to learn in other words?

17 A: Yes.

18 Q: Part of what you're trained to do is how to investigate a
19 crime scene and things like that; correct?

20 A: Yes, sir.

21 Q: You're taught how to collect evidence; correct?

22 A: Yes, sir.

23 Q: And how to preserve evidence?

24 A: Uh-huh.

25 Q: Correct?

JIMMY CANTEY - CROSS BY MR. MEETZE

1 A: Yes, sir.

2 Q: How to interview witnesses; correct?

3 A: Yes, sir.

4 Q: How to preserve their testimony or statements that they

5 make to you; correct?

6 A: Yes, sir.

7 Q: And typically when somebody -- when you interview a

8 witness, what they tell you may go into an incident report;

9 correct?

10 A: Yes, sir.

11 Q: And you did an incident report in this case; correct?

12 A: Yes, sir.

13 Q: And the incident reports are extremely important in your

14 job; correct?

15 A: Yes, sir.

16 Q: And because that's -- you know, cases may come up for

17 trial way on down the road; correct?

18 A: Yes, sir.

19 Q: And incident reports help us with our memory and things

20 like that?

21 A: Yes, sir.

22 Q: Because our memories sort of fade as time goes on?

23 A: Yes, they do.

24 Q: So we need to memorialize what we hear and see and what

25 people tell us at the time it's happening so our memories will

JIMMY CANTEY - CROSS BY MR. MEETZE

- 1 stay as fresh as possible as time goes on; correct?
- 2 A: Yes, sir.
- 3 Q: And so for that reason, it's important for incident
- 4 reports and things like that to be as detailed as possible;
- 5 correct?
- 6 A: Yes, sir.
- 7 Q: And that's for any number of reasons, not just to help
- 8 people's memories, but folks are going to be reviewing those;
- 9 correct?
- 10 A: Yes, sir.
- 11 Q: You have supervisors on your job; correct?
- 12 A: Yes, sir.
- 13 Q: And a lot of times they'll review incident reports that
- 14 you've done; correct?
- 15 A: Yes, sir.
- 16 Q: Obviously, the Solicitor's Office, attorneys for folks
- 17 charged with crimes -- they are going to be getting those
- 18 documents and needing to review those documents; correct?
- 19 A: Yes, sir.
- 20 Q: And you did -- like I said, you did an incident report in
- 21 this case; correct?
- 22 A: Yes, sir.
- 23 Q: And it chronicles what your investigation told you?
- 24 A: Yes, sir.
- 25 Q: And what you learned from the investigation that you did

JIMMY CANTEY - CROSS BY MR. MEETZE

1 was that -- from what witnesses you talked to, that Mr. Durant
2 and Mr. Jones had been in an argument?
3 A: Yes, sir.
4 Q: All right. And that it had been sort of carried on from
5 one location to another; correct?
6 A: Yes, sir.
7 Q: And that it was a heated argument?
8 A: Yes, sir.
9 Q: And that both Mr. Jones and Mr. Wiley were extremely
10 intoxicated?
11 A: Yes, sir.
12 Q: Okay. And all of that you got through the investigation
13 that you did?
14 A: Yes, sir.
15 Q: All right. Outside of -- I think you indicated you were
16 the first responder. You located a potential -- you talked to
17 the victim first?
18 A: Yes, sir.
19 Q: You located a potential suspect; correct?
20 A: Yes, sir.
21 Q: You spoke with Mr. Wheeling; correct?
22 A: Yes, sir.
23 Q: And outside of that, that was pretty much the end of -- I
24 guess Investigator Wynn had gotten there and he sort of took
25 over things from there?

JIMMY CANTEY - CROSS BY MR. MEETZE

1 A: Yes, sir.

2 Q: Okay. All right.

3 MR. MEETZE: I don't have any further questions, Your
4 Honor.

5 THE COURT: Any redirect?

6 MR. RICHARDSON: Nothing further. I'd ask that he be
7 excused.

8 THE COURT: Any objection, Mr. Meetze?

9 MR. MEETZE: No, sir, Your Honor.

10 THE COURT: Sir, you may step down. You're free to go.
11 Thank you for being here.

12 THE WITNESS: Thank you.

13 MR. RICHARDSON: Your Honor, we'd call Mark Happ.

14 THE COURT: All right.

15 THE CLERK: Sir, if you'd please place your left hand on
16 the Bible and raise your right hand? Do you swear the
17 testimony you give in this case to be the truth, the whole
18 truth, and nothing but the truth, so help you God?

19 THE WITNESS: I do.

20 THE CLERK: Please be seated and state your full name for
21 the record.

22 THE WITNESS: My name is Mark Richard Happ.

23 MARK HAPP, being first duly
24 sworn, testified as follows:

25 DIRECT EXAMINATION

MARK HAPP - DIRECT BY MR. RICHARDSON

1 BY MR. RICHARDSON:

2 Q: All right. Officer Happ, how long have you been with
3 Florence police?

4 A: A little over twelve years.

5 Q: Okay. And what are your job responsibilities?

6 A: A corporal on A squad on the patrol side, which means I'm
7 a --

8 Q: Okay.

9 A: -- first-line supervisor.

10 Q: All right. So you're kind of a supervisor on the -- on
11 the road, so to speak?

12 A: That's correct.

13 Q: All right. And were you in that position back in
14 November of 2014?

15 A: Yes, I was.

16 Q: Okay. Did you respond to the shelter on Jarrett Street
17 that evening?

18 A: I did.

19 Q: Okay. What did you do upon arrival?

20 A: I wasn't the first one on scene, and the defendant was
21 already detained by the time I pulled up in front of the
22 shelter. And Officer Cantey brought the defendant over to my
23 car and I believe he asked to have me take custody of him
24 while he continued his investigation. That would free him up,
25 and that's what I did.

MARK HAPP - DIRECT BY MR. RICHARDSON

1 Q: Okay. So you had Mr. Durant there next to your vehicle?

2 A: Yeah. He was brought to me in handcuffs already
3 detained.

4 Q: All right. And at that point, did you initiate a
5 conversation with him?

6 A: I did. Since he had been already detained, I first read
7 him his Miranda rights and he said he understood his rights
8 and he agreed to talk to me and I started a conversation with
9 him outside the police car while he was being searched before
10 being put in the police car.

11 And he had another officer's handcuffs on him at the time
12 and I believe it was from Florence County, and I changed out
13 the handcuffs so that officer could leave because, you know,
14 it wasn't their case and they didn't need to be there anymore.
15 And then I spoke with him briefly and then placed him in the
16 back of the police car awaiting the arrival of Sergeant Wynn.

17 Q: All right. And when you were talking to him, were you
18 wearing any sort of equipment on your uniform that could
19 record a conversation?

20 A: Yeah. We have digital voice recorders. I had one in my
21 pocket, which is typical for us, and by policy we activate on
22 scene and it was running.

23 Q: Okay. And you had that on when you talked with him?

24 A: Yes, sir.

25 Q: Okay. I'm going to show you what's been marked as

MARK HAPP - DIRECT BY MR. RICHARDSON

1 State's 1 for identification at this point. Do you recognize
2 that?

3 A: Yes, sir, I do.

4 Q: Okay. And what is that?

5 A: That is the CD disc of the audio from my personal digital
6 voice recorder.

7 Q: Okay. So you've reviewed the content?

8 A: I have.

9 Q: And is it a true and accurate representation of your
10 conversation with Mr. Durant there on the scene that night?

11 A: Yes, sir, it is.

12 MR. RICHARDSON: Your Honor, I'd asked for State's 1 to
13 be entered into evidence.

14 MR. MEETZE: No objection, Your Honor.

15 THE COURT: All right.

16 MR. MEETZE: I say that. Pursuant to --

17 THE COURT: Subject to prior objection.

18 MR. MEETZE: -- same objection. And I apologize.

19 THE COURT: So noted for the record. Over objection.

20 (WHEREUPON, State's Exhibit Number 1, an audio CD, was
21 admitted into evidence.)

22 MR. RICHARDSON: Your Honor, may we go ahead and publish
23 this one?

24 THE COURT: Yes, sir.

25 (WHEREUPON, State's Exhibit Number 1, an audio CD, was

MARK HAPP - DIRECT BY MR. RICHARDSON

1 played in open court, not transcribed herein, after which
2 the proceedings resumed as follows.)

3 BY MR. RICHARDSON:

4 Q: Officer Happ, when you met with Mr. Durant, was he having
5 any sort of medical emergencies or any sort of problems that
6 would have given you pause in talking to him?

7 A: No, sir.

8 Q: Was he able to stand and walk on his own and that sort of
9 thing?

10 A: Yes.

11 Q: And was he able to respond to your questions --

12 A: Yes, he was.

13 Q: -- appropriately?

14 A: Yes.

15 Q: All right. And you read him his -- the Miranda warnings
16 that we heard on the tape. That was off -- how did you do
17 that?

18 A: I carry a card in my pocket at all times that has the
19 Miranda on it inside my business card holder. I read it to
20 him off of that.

21 Q: Okay. And at no time did he ask to stop the questioning
22 or anything like that?

23 A: No, sir.

24 Q: I want to -- now, you have -- you had your car out there;
25 correct?

MARK HAPP - DIRECT BY MR. RICHARDSON

1 A: That's correct.

2 Q: And is your car equipped with a video camera?

3 A: It was.

4 Q: All right. And is it one that can turn around and look
5 inside the car at the occupants?

6 A: Yeah. It has two views, forward through the dash or
7 through the windshield and then also in the rear prisoner
8 compartment.

9 Q: Okay. And after you talked to -- this statement we just
10 heard -- did that occur outside the car?

11 A: Yes, it did.

12 Q: Okay.

13 A: Before he was placed into the car.

14 Q: All right. So after he talked to you outside of the car,
15 was he placed in your car?

16 A: Correct. In the backseat.

17 Q: All right. I want to show you what's been marked as
18 State's 2 for ID. Do you recognize that?

19 A: Yes, sir.

20 Q: And what is it?

21 A: That is a CD of my in-car video.

22 Q: All right.

23 MR. RICHARDSON: Very good. Please answer any questions
24 that Mr. Meetze may have for you at this time.

25 THE COURT: Cross-examination?

MARK HAPP - CROSS BY MR. MEETZE

1 MR. MEETZE: Thank you, Your Honor.

2 CROSS-EXAMINATION

3 BY MR. MEETZE:

4 Q: Officer Happ, how are you doing?

5 A: Good. Good morning.

6 Q: You got on the scene subsequent to the other officers.

7 Officer Cantey was already there at least; correct?

8 A: That's correct.

9 Q: And you didn't -- other than the conversation you had
10 with Mr. Durant that was just played, you didn't do any other
11 investigation in this case?

12 A: No. I did not participate in any other facets of the
13 investigation.

14 Q: You didn't speak to any other witnesses?

15 A: No, sir.

16 Q: You didn't collect any evidence?

17 A: No, I did not.

18 Q: You did a supplemental report that's strictly based on
19 the involvement that you've testified to?

20 A: That's correct.

21 Q: You didn't personally witness anything that happened;
22 correct? As far as in the incident?

23 A: No, I did not.

24 Q: Okay.

25 MR. MEETZE: I don't have any further questions, Your

HOWARD WYNN - DIRECT BY MR. RICHARDSON

1 Honor.

2 MR. RICHARDSON: Nothing further and I ask that he be
3 excused.

4 THE COURT: Sir, you may step down. Thank you. Any
5 objection to him being excused?

6 MR. MEETZE: No, Your Honor.

7 THE COURT: You're free to go. Have a nice day.

8 THE WITNESS: Thank you, Your Honor.

9 MR. RICHARDSON: We'd call Howard Wynn.

10 THE CLERK: Sir, if you will, please place your left hand
11 on the Bible and raise your right hand. Do you swear the
12 testimony you give in this case to be the truth, the whole
13 truth, and nothing but the truth, so help you God?

14 THE WITNESS: Yes, ma'am, I do.

15 THE CLERK: Please be seated and state your full name for
16 the record.

17 THE WITNESS: Howard Wynn.

18 MR. RICHARDSON: All right.

19 HOWARD WYNN, being first duly
20 sworn, testified as follows:

21 DIRECT EXAMINATION

22 BY MR. RICHARDSON:

23 Q: Investigator Wynn, are you with the Florence Police
24 Department?

25 A: Yes, sir, I am.

HOWARD WYNN - DIRECT BY MR. RICHARDSON

1 Q: How long have you been working there?

2 A: Right at 14 years.

3 Q: Okay. And what are your job responsibilities there now?

4 A: Currently, I'm a sergeant on patrol.

5 Q: Okay. And back in November of 2014, what were your job
6 responsibilities?

7 A: Criminal investigator.

8 Q: All right. So you recently got -- what? -- a promotion
9 to patrol?

10 A: Yes, sir.

11 Q: Okay. Were you the on-call investigator on the night of
12 November 12th, 2014?

13 A: Yes, sir, I was.

14 Q: Okay. And just briefly describe to us what a -- what an
15 investigator is, does, and what being on call means.

16 A: Pretty much -- well, a police officer has got a lot of
17 duties and responsibilities, but our main goal is to serve and
18 protect the public. As a criminal investigator, I'm
19 responsible for investigating crimes and solving crimes.

20 Being on call -- normally you have investigators assigned
21 for day shift and you have one investigator assigned for night
22 shift and after hours in case something happens at nighttime.
23 That particular night, I was the on-call investigator.

24 Q: And did you respond out to the shelter on Jarrett Street?

25 A: Yes, sir, I did.

HOWARD WYNN - DIRECT BY MR. RICHARDSON

1 Q: And what was going on out there when you arrived?

2 A: When I arrived on scene, the first officer I met with was
3 Corporal Happ. He was standing by his vehicle. When I met
4 with him, he pretty much told me he had the defendant, Melvin
5 Durant, detained. He was suspected of stabbing the victim,
6 Wiley Jones.

7 Q: Okay. And what did you do from there?

8 A: After I met with Corporal Happ, I met with Jimmy Cantey.
9 He was actually inside of the facility, probably coming out
10 the door meeting me. He told me what he had also and we
11 entered the facility, where we were approached by Carl
12 Wheeling.

13 Q: All right. So you met with several of the witnesses out
14 there?

15 A: I met with Carl and another individual and that's all I
16 recall meeting with.

17 Q: All right.

18 A: By name.

19 Q: Did you have an opportunity to talk to Mr. Durant on the
20 scene?

21 A: Yes, sir, I did.

22 Q: Okay. And when you talked to him, where was he located?

23 A: In the backseat of Corporal Happ's patrol car.

24 Q: All right. I want to show you State's 2 that's marked
25 for identification at this point. Are you familiar with that?

HOWARD WYNN - DIRECT BY MR. RICHARDSON

1 A: Yes, sir, I am.

2 Q: And what is it?

3 A: In-car video of Corporal Happ's patrol car.

4 Q: All right. And does this show your conversation with Mr.
5 Durant?

6 A: Yes, sir, it does.

7 Q: Is it a true and accurate representation of your
8 conversation with him that night?

9 A: Yes, sir.

10 Q: All right.

11 MR. RICHARDSON: Your Honor, I'd ask for State's 2 to be
12 put in evidence.

13 MR. MEETZE: Pursuant to previous objections.

14 THE COURT: Subsequent to previous objections, so noted
15 for the record, but overruled. You can put it in. So
16 admitted.

17 (WHEREUPON, State's Exhibit Number 2, a video disc, was
18 admitted.)

19 MR. RICHARDSON: Thank you, Your Honor. If we could go
20 ahead and publish it?

21 THE COURT: All right. Go ahead.

22 (WHEREUPON, State's Exhibit Number 2, a video on disk,
23 was played in open court, not transcribed herein, after
24 which the proceedings resumed as follows.)

25 BY MR. RICHARDSON:

HOWARD WYNN - DIRECT BY MR. RICHARDSON

1 Q: All right. Sergeant Wynn, you met with him pretty much
2 directly after Corporal Happ did?

3 A: Yes, sir.

4 Q: And was -- did you observe any, you know, medical issues,
5 physical or whatever, that Mr. Durant was having that would
6 have given you pause about talking to him?

7 A: No, sir.

8 Q: All right. Did he appear to be able to appropriately
9 answer questions you were asking him?

10 A: Yes, sir.

11 Q: And once you finished talking with him, what did you do
12 then?

13 A: After I spoke with Melvin Durant, I want to say a crime
14 scene investigator -- he was notified to process the scene and
15 shortly thereafter I went to the hospital and met with the
16 victim, Wiley Jones.

17 Q: All right. And after that, did you do any -- was that
18 pretty much the extent of it or did you do anything else?

19 A: For the most part, yes, sir, that's the extent of it.

20 MR. RICHARDSON: Please answer any questions Mr. Meetze
21 may have.

22 THE COURT: Cross-examination?

23 MR. MEETZE: Thank you, Your Honor.

24 CROSS-EXAMINATION

25 BY MR. MEETZE:

HOWARD WYNN - CROSS BY MR. MEETZE

- 1 Q: Investigator Wynn, you're the lead investigator on this
2 case?
- 3 A: Yes, sir.
- 4 Q: All right. Which pretty much means you -- once you got
5 there, you took charge --
- 6 A: Correct.
- 7 Q: -- of everything; correct?
- 8 A: Yes, sir.
- 9 Q: And I think you indicated you've been in law enforcement
10 for twelve years or just Florence for twelve years?
- 11 A: Fourteen. Then, it was roughly around twelve years or
12 so.
- 13 Q: Okay. Fourteen now?
- 14 A: Yes, sir.
- 15 Q: All right. And obviously, as a law enforcement officer,
16 you go through a lot of training?
- 17 A: Yes, sir.
- 18 Q: Correct? And you're trained in how to take control of a
19 crime scene; correct?
- 20 A: Yes, sir.
- 21 Q: And how to interview witnesses?
- 22 A: Yes, sir. Correct.
- 23 Q: How to collect evidence; correct?
- 24 A: Yes.
- 25 Q: And how to preserve that evidence?

HOWARD WYNN - CROSS BY MR. MEETZE

- 1 A: Yes, sir.
- 2 Q: How to take statements from witnesses; correct?
- 3 A: Yes, sir.
- 4 Q: And how to preserve those; correct?
- 5 A: Yes, sir.
- 6 Q: You also do incident reports; is that right?
- 7 A: Yes, sir.
- 8 Q: All right. And all of that -- throughout your career,
- 9 you're trained on all of that; correct?
- 10 A: Yes, sir.
- 11 Q: And your training continues as you move on in your
- 12 career. You have to get continued training; correct?
- 13 A: Yes, sir.
- 14 Q: Because things change, laws change, and you've got to be
- 15 on top of all of that as part of your responsibilities;
- 16 correct?
- 17 A: Yes, sir.
- 18 Q: All right. In this case, you spoke with Mr. Durant;
- 19 correct?
- 20 A: Correct.
- 21 Q: And that was just played. You were able to search him?
- 22 A: No, I did not search Melvin Durant.
- 23 Q: You were able to view him; correct?
- 24 A: Yes.
- 25 Q: He did not have any blood on him?

HOWARD WYNN - CROSS BY MR. MEETZE

1 A: Not that I recall. No, sir.

2 Q: Okay.

3 A: But his hands were -- like I said, he was handcuffed in
4 the back of a car. It was dark. No, sir, not that I recall.

5 Q: Certainly, as the lead investigator, you would know
6 whether or not there was any evidence in this case that
7 contained Mr. Durant's blood; correct?

8 A: Yes.

9 Q: All right.

10 A: Yes.

11 Q: And there's nothing of that nature; correct?

12 A: No. No, sir, not to my knowledge.

13 Q: And there was no evidence taken from Mr. Durant that
14 contained Mr. Jones's blood; correct?

15 A: No, sir.

16 Q: Okay. He didn't have any -- to your knowledge as the
17 lead investigator, he didn't have any cuts, scrapes or
18 anything on his hands or anywhere?

19 A: Not to my knowledge.

20 Q: Okay. Once you arrived as the on-call investigator and
21 you indicated you spoke with Officer Happ and Officer Cantey
22 and talked to Mr. Durant and then talked to Mr. Jones, did you
23 go to McLeod to talk to him?

24 A: Yes. I met with Wiley Jones, the victim. I met with him
25 at McLeod Hospital.

HOWARD WYNN - CROSS BY MR. MEETZE

1 Q: After -- after that, that's when you -- that was --
2 that's all you did with regards to investigation. At that
3 point in time, you started doing your reports and things like
4 that?

5 A: Well, for the most part. Like I said, I met with
6 Corporal Happ. After I met with him, I met with Cantey and we
7 met with Carl Wheeling, who was over the facility at night.
8 And then I met with Melvin Durant. After I met with Melvin
9 Durant, I went to McLeod Hospital and met with the victim.

10 Q: And after all that is when you started compiling --

11 A: Yes. Yes, sir.

12 Q: -- your report?

13 A: Yes, sir.

14 Q: Okay.

15 MR. MEETZE: I don't have any further questions, Your
16 Honor.

17 THE COURT: Any redirect?

18 MR. RICHARDSON: No, Your Honor.

19 THE COURT: Sir, you may step down. Thank you.

20 THE WITNESS: Okay.

21 MR. RICHARDSON: Your Honor, we'd call Tim Matthews.

22 THE COURT: All right.

23 THE CLERK: Please place your left hand on the Bible and
24 raise your right hand. Do you swear the testimony you give in
25 this case to be the truth, the whole truth, and nothing but

TIM MATTHEWS - DIRECT BY MR. RICHARDSON

1 the truth, so help you God?

2 THE WITNESS: I do.

3 THE CLERK: Please be seated and then state your full
4 name for the record.

5 THE WITNESS: Tim Matthews.

6 TIM MATTHEWS, being first duly
7 sworn, testified as follows:

8 DIRECT EXAMINATION

9 BY MR. RICHARDSON:

10 Q: Investigator Matthews, could you tell us how long you've
11 been with the Florence Police Department and what you do
12 there?

13 A: I've been with the department for about eight years now.
14 I'm with the crime scene unit. We're called out to process
15 scenes and process evidence, collect it, log it into evidence.

16 Q: And did you have those responsibilities back in November
17 of 2014?

18 A: I did.

19 Q: Did you respond out to the shelter on Jarrett Street on
20 November 12th?

21 A: I did.

22 Q: And what did you do when you arrived?

23 A: I arrived on scene. I spoke with Officer Cantey when I
24 first arrived on scene. He briefed me on what happened. And
25 then after I spoke with him, he walked me through the scene

TIM MATTHEWS - DIRECT BY MR. RICHARDSON

1 and then I began processing the scene. I photographed it and
2 then I collected swabs from the blood that was left in the
3 bathroom, the dining room hall, and the exterior wall of the
4 dining room hall.

5 Q: So you went looking for blood spots or droplets or what
6 have you?

7 A: Yes.

8 Q: I want to show you what's marked as State's 6. It's for
9 identification only right now. If you could, take a look at
10 that.

11 A: Yes.

12 Q: Do you recognize it?

13 A: Yes, I do.

14 Q: And what is that?

15 A: That was the blood that was found on the bathroom sink.

16 Q: All right. That's in the bathroom of the shelter?

17 A: Yes, sir.

18 Q: All right. And this photograph is an accurate depiction
19 of what you saw?

20 A: Yes.

21 Q: Okay.

22 MR. RICHARDSON: Your Honor, if we could move State's 6
23 into evidence?

24 THE COURT: Any objection?

25 MR. MEETZE: No, Your Honor.

TIM MATTHEWS - DIRECT BY MR. RICHARDSON

1 THE COURT: Without objection, State's Exhibit Number 6
2 admitted into evidence.

3 (WHEREUPON, State's Exhibit Number 6, a photograph, was
4 admitted into evidence.)

5 MR. RICHARDSON: All right.

6 BY MR. RICHARDSON:

7 Q: If you could -- so when you went into the bathroom, which
8 direction, if you recall, were the sinks? It may help you to
9 look at State's 7.

10 A: As you enter the bathroom, they're on the right side.

11 Q: Okay. And are those sort of across the room from the
12 urinals?

13 A: Yes, it is.

14 Q: Okay. And you collected blood from this surface right
15 here?

16 A: Yes, I did.

17 Q: And how did you collect it?

18 A: I used a cotton-tipped swab.

19 Q: Where else in the place did you collect blood?

20 A: From the hallway of the dining hall and then on the
21 exterior wall of the dining hall on the outside.

22 Q: Okay. This is State's 8. Is that --

23 A: Yes.

24 Q: -- where you collected some?

25 A: Yes.

TIM MATTHEWS - DIRECT BY MR. RICHARDSON

1 THE COURT: Hold on. Has that been admitted into
2 evidence?

3 MR. RICHARDSON: Yes, sir.

4 THE COURT: Okay.

5 BY MR. RICHARDSON:

6 Q: So this would be the exterior wall you were talking
7 about?

8 A: Yes.

9 Q: All right. Is this the spot --

10 A: Yes, it is.

11 Q: -- right there? All right. And at the end of this wall
12 here before you get to this wall, is there a pathway there or
13 do you recall?

14 A: I believe so.

15 Q: Okay. So you got it from the sink, the floor inside?

16 A: Yes.

17 Q: That wall there. Is there any other places?

18 A: No, I don't believe so.

19 Q: Okay. Let me show you State's 18 for identification at
20 this point. Can you take a look at it?

21 A: These are the swabs that I collected from the incident
22 location.

23 Q: All right. And when you got those swabs, what did you do
24 with them when you were finished there at the scene?

25 A: I take them back to our lab. I secure them in a locker

TIM MATTHEWS - DIRECT BY MR. RICHARDSON

1 and then I put them in a package and they are sent to SLED for
2 testing.
3 Q: Okay. Is the package you put them in contained in that
4 --
5 A: Yes.
6 Q: -- clear plastic?
7 A: Yes. The manila -- manila envelope there.
8 Q: So when you finish doing what you're doing with the
9 swabs, you put them in that manila envelope and log them into
10 evidence?
11 A: Yes.
12 Q: And then somebody will take them?
13 A: Yes. Once I log them into evidence, then an evidence
14 custodian will transport them to SLED.
15 Q: Okay. And these are the swabs from the incident
16 location?
17 A: Yes.
18 Q: Did you also take swabs from a knife?
19 A: I did.
20 Q: Is that contained in here as well?
21 A: That may be what's behind the swabs from the incident
22 location.
23 Q: That second envelope in there?
24 A: Yes.
25 Q: And did you do the same routine with that?

TIM MATTHEWS - DIRECT BY MR. RICHARDSON

1 A: I did. I photographed the knife and then I collected the
2 swabs of blood from it using cotton-tipped swabs, and then
3 they were sent to SLED.

4 Q: I want to show you State's 3 for identification. Do you
5 recognize that?

6 A: I do.

7 Q: All right. What is it?

8 A: That is the knife that was logged into evidence by
9 patrol.

10 Q: Okay.

11 MR. RICHARDSON: Your Honor, I'd ask for State's 3 to be
12 put in evidence.

13 THE COURT: Any objection?

14 MR. MEETZE: No objection.

15 THE COURT: Without objection, Number 3 admitted into
16 evidence.

17 (WHEREUPON, State's Exhibit Number 3, a photograph, was
18 admitted into evidence.)

19 BY MR. RICHARDSON:

20 Q: I'm going to show you State's 4. Is this the opposite
21 view of the knife?

22 A: It is.

23 Q: And was that red stain on there when you got it?

24 A: Yes, it was.

25 Q: And is that where you took the swab from?

TIM MATTHEWS - DIRECT BY MR. RICHARDSON

1 A: Yes.

2 Q: Did you also meet with the victim in the case?

3 A: I did. After going to the scene, processing the scene,
4 and collecting the evidence from there, then I went to the
5 hospital and met with him.

6 Q: Okay. And when you were there with him at the hospital,
7 did you take any swabs?

8 A: I took a buccal swab or an oral swab from him for a --
9 it's used for a known standard against any other DNA testing.

10 Q: All right. So the swabs you took were from the location
11 that night, the knife a few days later, and from the victim?

12 A: Yes.

13 Q: And all those swabs were packaged into evidence?

14 A: Yes, they were, and they were sent to SLED for testing.

15 Q: Okay. And this is State's 17 for identification. Is
16 that --

17 A: That's the buccal swab, the oral swab that I collected
18 from Mr. Jones at the hospital.

19 Q: Okay. In similar manila packaging?

20 A: Yes.

21 Q: Okay. So you don't put it in the clear plastic? You
22 just put it in the manila?

23 A: I just put it in the manila.

24 Q: Okay. I'll show you State's 19. Do you recognize this?

25 A: I do.

TIM MATTHEWS - DIRECT BY MR. RICHARDSON

1 Q: And what's -- what's in there?

2 A: That is the knife that was collected by patrol that I
3 processed.

4 Q: Okay.

5 MR. RICHARDSON: And, Your Honor, if we could move
6 State's 19 into evidence?

7 THE COURT: Any objection?

8 MR. MEETZE: No objection.

9 THE COURT: Without objection, so admitted.

10 (WHEREUPON, State's Exhibit Number 19, a knife, was
11 admitted into evidence.)

12 BY MR. RICHARDSON:

13 Q: And are you in a position where you could remove it from
14 the bag and show it to the jury?

15 A: I can.

16 (WHEREUPON, State's Exhibit Number 19 was opened and the
17 knife removed by the witness.)

18 BY MR. RICHARDSON:

19 Q: All right. Can you un --

20 (WHEREUPON, the folding knife blade was opened by the
21 witness.)

22 BY MR. RICHARDSON:

23 Q: Okay. Okay. So once you took the swabs to SLED or took
24 the swabs and put them in evidence, you had the knife in
25 evidence, you took those photographs, is there anything else

TIM MATTHEWS - DIRECT BY MR. RICHARDSON

1 that you did with respect to the case?

2 A: No.

3 Q: Thank you, sir. Please answer any questions Mr. Meetze
4 may have for you.

5 A: Yes, sir.

6 THE COURT: Cross-examination?

7 MR. MEETZE: Thank you, Your Honor.

8 CROSS-EXAMINATION

9 BY MR. MEETZE:

10 Q: Officer Matthews, you work with the -- as you said, the
11 crime scene?

12 A: Yes, sir.

13 Q: With the police department?

14 A: Yes, sir.

15 Q: That's sort of like the CSI --

16 A: Yes, it is.

17 Q: -- team I guess, so to speak, if we're going to try to
18 put forth a familiar reference I guess?

19 A: Yes, it is.

20 Q: I don't know if that bothers you or not --

21 A: No.

22 Q: -- to be sort of linked with that, but that's what you do
23 though?

24 A: Yes, you're right.

25 Q: And is that -- you've done that your entire career with

TIM MATTHEWS - CROSS BY MR. MEETZE

1 the police department?

2 A: I've been with the unit for about three years now.

3 Q: All right. And during that course of time, you've had an
4 opportunity to process numbers of crime scenes?

5 A: Yes, I have.

6 Q: Things like that. And your job here was to collect
7 evidence; correct?

8 A: Yes, it is.

9 Q: You didn't do the actual testing or anything like that?

10 A: No. We just package it and send it to SLED. They
11 actually do the testing there.

12 Q: And you -- you don't send the items. You just send the
13 swabs that you collect?

14 A: Yes. We just take the swabs from it.

15 Q: So for example, the knife didn't go to SLED, just the
16 swabs?

17 A: No, it did not.

18 Q: You did not -- you were not given or did not collect any
19 samples from any of Mr. Durant's clothing or anything like
20 that?

21 A: No, I did not.

22 Q: You didn't take pictures of him or anything like that?

23 A: No, I did not.

24 Q: No evidence from his clothing or person or anything like
25 that?

TIM MATTHEWS - CROSS BY MR. MEETZE

1 A: No.

2 Q: That you were --

3 A: No, sir.

4 Q: -- asked to look at it and collect anything like that?

5 A: No, sir.

6 Q: Okay. You got there and you were taken through the

7 scene, but you didn't see actually anything that happened in

8 this case?

9 A: No, I did not.

10 Q: You were there, as you said, to collect evidence and

11 eventually package it properly so that it can be sent to SLED?

12 A: Yes, sir.

13 Q: Once you did that, your responsibility with regard to the

14 case, outside of showing up here today, was done?

15 A: Yes, sir.

16 Q: Okay.

17 MR. MEETZE: I don't have any further questions.

18 THE COURT: Any redirect?

19 MR. RICHARDSON: No, sir.

20 THE COURT: Sir, you may step down. Thank you.

21 THE WITNESS: Thank you, Your Honor.

22 MR. RICHARDSON: I ask that he be excused.

23 THE COURT: Any objection?

24 MR. MEETZE: No, Your Honor.

25 THE COURT: Sir, you're excused. You're free to go.

1 Thank you for being here. Have a nice day.

2 MR. RICHARDSON: We'd call Frank Mizell.

3 THE COURT: Well, ladies and gentleman, we are going to
4 take a break at this time. I'm going to ask you to step to
5 the jury room. Do not discuss the case. I'll get you back
6 out here as quickly as possible.

7 While you all -- while you all are back in the jury room,
8 I would like for you all to do something for me. If you all
9 would, go ahead and select a foreperson. I will tell you that
10 Mr. Harrell, Carroll Harrell, cannot be the foreperson, but if
11 you all would select a foreperson, write it on a piece of
12 paper, give it to the bailiff when you all come back out, and
13 the foreperson will be seated where this young lady is in the
14 green dress -- green blouse when you come back out.

15 That will be the foreperson's seat throughout the
16 remainder of the trial. As you all come in and out of the
17 courtroom, you may sit where you so desire. However, the
18 foreperson will be seated in that particular seat right there
19 throughout the remainder of the trial.

20 Please step to the jury room. Select your foreperson.
21 I'll get you back out here as quickly as possible. Do not
22 discuss the case.

23 (WHEREUPON, the jury exited the courtroom at 10:39 a.m.)

24 THE COURT: All right. We'll stand down for just a few
25 minutes.

1 (WHEREUPON, there was a break in the proceedings from
2 10:39 a.m. until 10:56 a.m., after which the proceedings
3 resumed as follows.)

4 THE COURT: All right. Anything from the State before I
5 bring the jury back out?

6 MR. RICHARDSON: No, sir.

7 THE COURT: Defense counsel?

8 MR. MEETZE: No, sir, Your Honor.

9 THE COURT: All right. If you'll bring me the jury,
10 please?

11 THE BAILIFF: Yes, sir.

12 (WHEREUPON, the jury entered the courtroom at 10:57 a.m.)

13 (WHEREUPON, the jury foreperson note was marked as
14 Court's Exhibit Number 1.)

15 THE COURT: All right. It looks like Dr. Cantrell is
16 going to be the foreperson of this jury. He is seated in the
17 appropriate seat. Doctor, that will be your seat throughout
18 the remainder of the trial.

19 We are at this time going to continue the trial of this
20 case. The State is recognized. Call your next witness,
21 please.

22 MR. RICHARDSON: Thank you, Your Honor. We'd call Frank
23 Mizell.

24 THE CLERK: Please place your left hand on the Bible and
25 raise your right hand. Do you swear the testimony you give in

FRANK MIZELL - DIRECT BY MR. RICHARDSON

1 this case to be the truth, the whole truth, and nothing but
2 the truth, so help you God?

3 THE WITNESS: I do.

4 THE CLERK: Please be seated and state your full name for
5 the record.

6 THE WITNESS: Frank Mizell.

7 FRANK MIZELL, being first duly
8 sworn, testified as follows:

9
10 DIRECT EXAMINATION

11 BY MR. RICHARDSON:

12 Q: All right. Tell us what you do for a living?

13 A: I am the evidence custodian with the Florence Police
14 Department.

15 Q: And tell us what those responsibilities entail?

16 A: We maintain the records and the evidence in these cases
17 until either time where the case is dismissed or brought to
18 court.

19 Q: And were you doing this job back in November of 2014?

20 A: Yes, sir, I was.

21 Q: Explain to us, if you will, the nature of the evidence
22 box at the Florence Police Department, how things are put in
23 it, how things are removed from it, and what you do with it?

24 A: Yes, sir. We have approximately 25 lockers. Each locker
25 has an individual lock. There's only two sets of keys that

FRANK MIZELL - DIRECT BY MR. RICHARDSON

1 can open those locks. I have one. The other is a spare set
2 that is maintained inside the evidence room. So unless you
3 have access to the evidence room, you can't even get to the
4 spare keys.

5 The officer logs in the evidence. We have an evidence
6 form that they fill out describing the incident and the
7 evidence that's being logged in. They place it inside a
8 locker. They lock it. They have no access to it after that.
9 So if there's additional evidence that has to be logged in,
10 they have to actually use a separate locker.

11 Q: So if an officer comes in -- let's say in this case Tim
12 Matthews just testified that he brought some swabs in and he
13 put them in a locker.

14 A: Yes, sir.

15 Q: So when he would approach the locker, would it, like, be
16 a door on a locker that's open already?

17 A: Yes. It's an actual locker. The door opens, it closes,
18 and then there's an individual lock that's inside the locker.

19 Q: So he would put the item in the locker, close it, and put
20 this lock on it?

21 A: Yes, sir.

22 Q: And at that point, only you can get that lock open?

23 A: Yes, sir.

24 Q: All right. In this particular case, did you handle some
25 items of evidence that were placed in a locker?

FRANK MIZELL - DIRECT BY MR. RICHARDSON

1 A: Yes, sir.

2 Q: And I'll show you State's 17 --

3 A: Yes, sir.

4 Q: -- for identification only at this point. If you'd take

5 a look at that?

6 A: Yes, sir.

7 Q: And do you recognize it?

8 A: Yes, sir, I do.

9 Q: What is it?

10 A: It is a manila envelope that was logged in by Officer

11 Matthews with buccal swabs. They place them in the manila

12 envelopes and then they put a seal on them that they initial

13 and date. It's tamper resistant. If anybody touches it, it

14 tears and it cannot be just replaced.

15 Q: And State's 18 for identification?

16 A: Also same manila envelopes that were logged in by Officer

17 Matthews.

18 Q: All right. So these were all the swabs that Investigator

19 Matthews just testified about that he took?

20 A: Yes, sir.

21 Q: Now, you mentioned when you take them out of the evidence

22 locker, they're only in this manila envelope?

23 A: Yes, sir.

24 Q: Not this clear plastic?

25 A: No, sir.

FRANK MIZELL - DIRECT BY MR. RICHARDSON

1 Q: So when you get it out, what did you do with it?

2 A: I take them and I log them into our computer system, and
3 I have a special locker that all our evidence that's going to
4 SLED go into, and we try to go to SLED every -- approximately
5 once every two weeks. So all of the evidence that's going to
6 SLED gets collected in one spot. It gets logged out on the
7 day that I'm taking it to SLED. I deliver it to SLED. They
8 sign for it from me and then I bring back any evidence that
9 they have that's been processed.

10 Q: When you remove the manila envelopes from the locker --

11 A: Yes, sir.

12 Q: -- initially, do you do anything to that manila envelope
13 to open it, unseal it, tamper with it, mess with it?

14 A: No, sir. That's why they have the tamper-resistant tape
15 on it that they initial and date.

16 Q: All right. So Tim Matthews taped it, initialed it, dated
17 it, so you knew who dropped it off and who sealed it?

18 A: Yes, sir.

19 Q: All right. And you did not open any of those?

20 A: No, sir.

21 Q: So you took them to SLED?

22 A: Yes, sir.

23 Q: And when you -- when you take them, that's in Columbia;
24 correct?

25 A: Yes, sir.

FRANK MIZELL - DIRECT BY MR. RICHARDSON

1 Q: When you take them there, what do you -- what do you do
2 when you go inside the building?

3 A: We usually get assigned to one of the processing agents
4 that's at SLED. We go in and we individually hand them each
5 case that's being submitted. Depending on what type of case
6 it is, as to how they seal it. These cases, they take the
7 manila envelope and they place them in a heat-sealed pack.
8 They heat seal them. At that time, I initial and date when I
9 submitted it and then I also sign and date on the form, and
10 then they process it from there.

11 Q: So you actually eyeball them putting those manila
12 envelopes in those plastic bags and sealing them?

13 A: Yes, sir.

14 Q: So you did not observe anybody open the manila envelopes,
15 tamper with anything inside?

16 A: No, sir.

17 Q: And you may recall or you may not. Do you recall exactly
18 who you gave those to that day?

19 A: No, sir. Again, they have four agents up there and
20 depending on the workload as to which one you get on each
21 occasion.

22 Q: Okay. That would be their records and not yours as to
23 who you dropped them off with?

24 A: Yes, sir.

25 Q: Is that the extent of what you did in this case in terms

FRANK MIZELL - DIRECT BY MR. RICHARDSON

1 of evidence?

2 A: As to delivering it, yes, sir.

3 Q: Okay.

4 MR. RICHARDSON: Very good. Please answer any questions
5 that Mr. Meetze may have for you.

6 THE COURT: Mr. Meetze?

7 MR. MEETZE: Thank you, Your Honor. Just briefly.

8 CROSS-EXAMINATION

9 BY MR. MEETZE:

10 Q: You never went to the crime scene in this case?

11 A: No, sir, I did not.

12 Q: Other than retrieving that evidence from the evidence
13 lockers that they were in and couriering them to SLED, that's
14 pretty much the extent of your involvement?

15 A: Yes, sir, it was.

16 Q: Did you go pick them up?

17 A: Yes, sir, I did. I was the one that retrieved them when
18 they were -- when they were done with them.

19 Q: Sure.

20 A: When they were done processing.

21 Q: And that was I guess officially the end of your
22 involvement once you got them back here?

23 A: Yes, sir. I take them. Again, I return them to the
24 evidence room and I place them wherever we have all the other
25 evidence located; so they're easily accessed.

FRANK MIZELL - CROSS BY MR. MEETZE

1 Q: So any substantive issues with regards to what happened
2 in this case, you've got no idea?

3 A: No, sir, I do not.

4 Q: I gotcha. Thank you very much.

5 A: Thank you.

6 MR. RICHARDSON: No further questions, Judge. I'd ask
7 that he be excused.

8 THE COURT: Any objection?

9 MR. MEETZE: No, Your Honor.

10 THE COURT: Sir, you may step down. Thank you.

11 THE WITNESS: Thank you.

12 MR. RICHARDSON: We'd called Jennifer Clayton.

13 THE CLERK: Please place your left hand on the Bible and
14 raise your right hand. Do you swear the testimony you give in
15 this case will be the truth, the whole truth, and nothing but
16 the truth, so help you God?

17 THE WITNESS: I do.

18 THE CLERK: Please be seated and state your full name for
19 the record.

20 THE WITNESS: Jennifer Clayton, C-l-a-y-t-o-n.

21 JENNIFER CLAYTON, being first
22 duly sworn, testified as follows:

23 DIRECT EXAMINATION

24 BY MR. RICHARDSON:

25 Q: Ms. Clayton, tell us where you work and what you do

JENNIFER CLAYTON - DIRECT BY MR. RICHARDSON

1 there?

2 A: I'm currently employed by the South Carolina Law
3 Enforcement Division, also known as SLED. And I am a forensic
4 DNA analyst, which means when evidence is submitted to SLED
5 that may contain DNA, either from blood, semen, saliva or just
6 skin cells that may have been left behind on an item, I will
7 attempt to develop a DNA profile from that item.

8 I will also attempt to develop a DNA profile from known
9 standards. Those are standards or samples that are taken
10 directly from a particular individual. That way I know the
11 DNA profile developed from that item came from a particular
12 individual. And then I will attempt to compare those two
13 profiles, the profile from the evidence and the profile from
14 the standard, to determine if the individual that submitted
15 the standard could have contributed DNA to the item of
16 evidence.

17 Q: It sounds like you've got to go to school for that.

18 A: I do.

19 Q: All right. Where did you go to school for it and what
20 kind of degrees do you have to have for it?

21 A: I earned a Bachelor's of Science in Biology from the
22 University of North Carolina at Chapel Hill. I have also
23 taken classes at NC State and USC. My coursework includes
24 molecular biology, genetics, biochemistry, and statistics.

25 I also completed an internship with the North Carolina

JENNIFER CLAYTON - DIRECT BY MR. RICHARDSON

1 State Bureau of Investigation's Molecular Genetics Department,
2 which is the equivalent of SLED's DNA Department. I
3 originally hired on with SLED as a forensic technician in the
4 DNA Department and then was hired as a DNA analyst.

5 Q: How long have you been doing that?

6 A: I've been a DNA analyst for approximately twelve years.

7 Q: And do you have to attend trainings, keep up to speed on
8 new developments, that sort of thing?

9 A: Yes. We are required to have continuing education every
10 year to make sure that we don't fall behind in the science.

11 Q: And have you ever testified in court as an expert witness
12 before?

13 A: Yes, I have.

14 Q: And in what area?

15 A: Forensic DNA analysis and serology. Serology is testing
16 for body fluids, such as blood, semen or saliva.

17 Q: And about how many times, if you recall, have you
18 testified as an expert?

19 A: Approximately 45 times.

20 MR. RICHARDSON: Your Honor, at this time, I'd ask that
21 she be qualified as an expert in forensic DNA analysis.

22 THE COURT: Any objection?

23 MR. MEETZE: No, Your Honor.

24 THE COURT: Ladies and gentlemen, let me give you this
25 charge real quick.

JENNIFER CLAYTON - DIRECT BY MR. RICHARDSON

1 Normally when a person testifies, they cannot give
2 opinion testimony. Normally, they must testify as to what
3 they either saw, heard or sensed by smell or something of that
4 nature. However, there is an exception when someone is
5 qualified as an expert because of education or experience. In
6 that situation, they are permitted to give their opinion in
7 certain areas, if the Court qualifies them that way.

8 This particular individual is going to be qualified as an
9 expert in the field of forensic DNA analysis to give opinion
10 testimony in that area. That does not mean -- that does not
11 mean that you must accept the opinion, but it is evidence for
12 you to use in any way that you see fit and give it the weight
13 and credibility that you believe is appropriate.

14 You may continue.

15 MR. RICHARDSON: Thank you, Your Honor.

16 BY MR. RICHARDSON:

17 Q: Ms. Clayton, with respect to this particular case, did
18 you have an opportunity to review some swabs sent to SLED by
19 the Florence Police Department?

20 A: Yes, I did.

21 Q: Now, explain to us how -- when a packet of swabs gets
22 dropped off by Frank Mizell, how do they get to you?

23 A: When evidence is submitted to SLED -- thousands of pieces
24 of evidence are submitted to SLED every year and the majority
25 of evidence is stored in their Evidence Control Department

JENNIFER CLAYTON - DIRECT BY MR. RICHARDSON

1 until it is time to analyze the evidence.

2 So once a case is assigned to me, I retrieve the
3 evidence. I go down to the Evidence Control Department and an
4 evidence custodian or evidence technician from our Evidence
5 Control Department will retrieve the evidence from whatever
6 shelf it's stored on and then we'll perform a person-to-person
7 transfer. I will take custody of the evidence at that time
8 and that transfer is -- is tracked in our computer system.

9 Q: And when you're dealing with items like swabs of what is
10 suspected to be blood, items that could easily be mistaken one
11 for another or, you know, fungible items I guess is the word
12 commonly used, how do you ensure that there is no tampering
13 or, you know, mess ups along the way before it gets you?

14 A: Whenever I first open evidence, the first thing I do is
15 an inventory that involves checking the items that are
16 submitted against the description in the computer to make sure
17 that the evidence that's submitted is, in fact, what the
18 paperwork says was submitted. And I also check to make sure
19 there's no indication of tampering with the evidence. It
20 doesn't look like the evidence has had, you know, anything
21 spilled on it. It doesn't look like anybody's broken any
22 seals or anything like that. As long as the evidence
23 descriptions match and there appears to be no indication of
24 tampering, then I can begin my analysis.

25 Q: I want to show you two exhibits here, State's 17 and 18,

JENNIFER CLAYTON - DIRECT BY MR. RICHARDSON

1 both for identification, and 18 has I think two envelopes in
2 it. If you could, take a look at those and tell me if you
3 recognize those items?

4 A: Okay. I do. This pouch -- it's identified with the SLED
5 lab number. Every case that's submitted to SLED has a unique
6 number assigned to it and this is the SLED lab number for this
7 case. I also recognize my date and initials from when I
8 resealed the heat-sealed pouch.

9 Additionally, on the actual envelope inside, I wrote the
10 lab number, the item numbers that are contained in that
11 envelope, and my initials. There's another envelope behind
12 it. I can't actually read it, but it should be Item Number 4,
13 and they were all packaged in the same heat-sealed pouch. So
14 I would have also written the item number, the lab number, and
15 my initials on that item as well.

16 And the same is true for this item. This is SLED Item
17 Number 5. It has the lab number on it, the item number, the
18 date, and my initials of when I resealed it. And again, the
19 lab number, the item number, and my initials on the actual
20 envelope inside the heat-sealed pouch.

21 Q: So the one you're holding know that you just described is
22 State's 17 and the one you described before that was State's
23 18?

24 A: That's correct.

25 Q: Okay. When you received these things, they were sealed

JENNIFER CLAYTON - DIRECT BY MR. RICHARDSON

1 in the packaging that we see here?

2 A: That's correct.

3 Q: And does SLED have a way of determining who all within
4 SLED has handled these items before they get to you?

5 A: Yes. We have an electronic system that we use to track
6 all transfers between individuals and from an individual to a
7 storage location.

8 Q: Okay. And do we call that, like, a verified chain of
9 custody?

10 A: That would be our internal chain of custody. That's
11 correct.

12 Q: I want to show you State's 16 for identification. If you
13 could, take a look at that.

14 A: This is a printed copy of our internal chain of custody.

15 Q: And is that the complete chain of custody on those two
16 packets of items we have here?

17 A: Yes. It tracks it from the time that it was submitted by
18 Frank Mizell. Is that how you pronounce that?

19 Q: Mizell.

20 A: Mizell. Frank Mizell until the time that Frank Mizell
21 picked it up once analysis was complete.

22 Q: And is that a document that you keep up with as part of
23 your job duties at SLED to ensure who has handled the items
24 you're testing?

25 A: Well, it's maintained electronically. So as each

JENNIFER CLAYTON - DIRECT BY MR. RICHARDSON

1 individual handles an item, it is recorded in our computer
2 system, and then it can be retrieved as a printout.

3 MR. RICHARDSON: Your Honor, at this time, I'd ask for
4 State's 16, the chain of custody, be entered into evidence.

5 MR. MEETZE: No objection, Your Honor.

6 THE COURT: So admitted.

7 (WHEREUPON, State's Exhibit Number 16, chain of custody,
8 was admitted into evidence.)

9 MR. RICHARDSON: Thank you.

10 BY MR. RICHARDSON:

11 Q: And could you tell us the names of the people at SLED who
12 handled these items before you?

13 A: Yes. The only individual at SLED that handled the item
14 before I originally took custody of it was Dodi Yarborough.
15 She took custody of it from Frank Mizell and then she placed
16 it on a storage shelf in our Evidence Control Department. And
17 then later she retrieved it from that shelf and transferred
18 the item to me for analysis.

19 Q: And when you got it, it was completely sealed, unopened
20 from when she sealed it in front of Frank Mizell?

21 A: That's correct.

22 Q: Okay. Now, back to the swabs. When you got the packets,
23 you obviously would've had to open them to do any testing. So
24 what did you do with them?

25 A: In the case of the evidence, there was a request for

JENNIFER CLAYTON - DIRECT BY MR. RICHARDSON

1 blood testing, and so I performed a presumptive test, which
2 indicates the presence of blood on an item. And then I moved
3 to DNA analysis and attempted to develop a DNA profile from
4 both the evidence and from the buccal swabs that were
5 submitted.

6 Q: Explain to us, if you will, the testing procedure that
7 you do for DNA?

8 A: For DNA analysis, the first step is what's called
9 extraction. That's separating the DNA from everything else,
10 from other components of the blood, from the cotton swab that
11 it was collected on, so that I have a tube that contains only
12 the DNA. And then the instruments that we use -- they have a
13 target amount of DNA. If there's too much DNA in the sample,
14 then it will give poor results. And if there's not enough DNA
15 in the sample, then it will not give a result at all.

16 So the next step is to quantitate the DNA to determine
17 how much DNA is present and then at that point, if necessary,
18 I make adjustments to the concentration of the sample. And
19 then I do an amplification step, which takes -- makes copies
20 of the sections of the DNA that we test.

21 And at that point, I put it on our final machine, which
22 yields a DNA profile. And a DNA profile is reported as a
23 sequence of numbers and, with the exception of identical
24 siblings, no two individuals are born with the same DNA
25 profile.

JENNIFER CLAYTON - DIRECT BY MR. RICHARDSON

1 Q: Okay. So the point of testing for DNA is, with the
2 exception of twins, we all have different DNA?

3 A: That's correct. Everyone has a unique DNA profile.

4 Q: So you did this testing on these swabs and did you
5 generate a report with your -- what you tested and the results
6 therefrom?

7 A: Yes, I did.

8 Q: I'm going to show you State's 15. If you can, identify
9 that?

10 A: This is a copy of the report that I issued. However, it
11 does appear to be missing a portion of the table on the third
12 page.

13 Q: With respect to what was tested and what your final
14 conclusions were, does that report contain those?

15 A: Yes, it does.

16 Q: All right.

17 MR. RICHARDSON: Your Honor, I'd ask that State's 15 be
18 placed into evidence.

19 THE COURT: Any objection?

20 MR. MEETZE: No, Your Honor.

21 THE COURT: So admitted.

22 (WHEREUPON, State's Exhibit Number 15, DNA analysis
23 report, was admitted into evidence.)

24 MR. RICHARDSON: All right.

25 BY MR. RICHARDSON:

JENNIFER CLAYTON - DIRECT BY MR. RICHARDSON

1 Q: Ms. Clayton, if you could, tell us I guess by item number
2 what you tested and then the results?

3 A: Okay. The first item that I tested was SLED Item Number
4 1, which was swabs from a restroom. I tested it for the
5 possible presence of blood. And the presumptive testing for
6 blood was positive, which means blood was indicated on that
7 item.

8 I then took it to DNA analysis and the DNA profile
9 developed from that item matches the DNA profile of Wiley
10 Jones. The probability of randomly selecting an unrelated
11 individual having a DNA profile matching this item is
12 approximately one in 28 quintillion.

13 What that statistic means is that if you were to go out
14 into the population and just choose any one person at random
15 that's unrelated to the individual that actually left the
16 stain, the probability that that individual would have that
17 same DNA profile is approximately one in 28 quadrillion --
18 sorry -- one in 28 quintillion, meaning it's very, very
19 unlikely that you could choose someone at random that would
20 just happen to have the same DNA profile.

21 Q: Okay. And while we're at it, the swabs that you tested
22 --

23 MR. RICHARDSON: If I could go ahead and move 17 and 18
24 into evidence?

25 THE COURT: Any objection?

JENNIFER CLAYTON - DIRECT BY MR. RICHARDSON

1 MR. MEETZE: No, Your Honor.

2 THE COURT: 17 and 18 admitted into evidence without
3 objection.

4 (WHEREUPON, State's Exhibit Number 17 and State's Exhibit
5 Number 18, swabs, were admitted into evidence.)

6 MR. RICHARDSON: Thank you, Your Honor.

7 BY MR. RICHARDSON:

8 Q: So we have one in whatever quintillion from the blood in
9 the bathroom. What was your next item?

10 A: The next item I tested was swabs from a dining room.
11 Again, I tested it for blood. The presumptive testing for
12 blood was positive, meaning blood was indicated on that item.
13 The DNA profile from that item also matches the DNA profile of
14 Wiley Jones and, again, the probability of randomly selecting
15 an unrelated individual having a DNA profile matching this
16 item is approximately one in 28 quintillion.

17 Q: And the DNA profile of Wiley Jones -- was that developed
18 from the buccal swab taken from him?

19 A: That's correct. A buccal swab is just a swab that's
20 taken from the inside of the cheeks, and it collects skin
21 cells that have come loose on the inside of the cheek and
22 contains the DNA of that individual.

23 Q: So you then compared his standard taken from his mouth to
24 these items that you're listing now, bathroom and other
25 places?

JENNIFER CLAYTON - DIRECT BY MR. RICHARDSON

1 A: That's correct.

2 Q: I'm sorry I keep interrupting you. What's the next item
3 on your list?

4 A: The next item I tested was SLED Item Number 3, which was
5 swabs from an exterior wall. And again, blood was indicated
6 on that item, and the DNA profile developed from that item
7 matches Wiley Jones. And again, the probability of randomly
8 selecting an unrelated individual having a DNA profile
9 matching this item is approximately one in 28 quintillion.

10 Q: Okay. And is there another item or was that the last
11 one?

12 A: There was one more.

13 Q: Okay.

14 A: There was swabs from a knife blade. That was SLED Item
15 Number 4. Blood was indicated on that item as well. The DNA
16 profile developed from Item 4, which would be the knife blade,
17 also matches the DNA profile of Wiley Jones, and the
18 probability of randomly selecting an unrelated individual
19 having a DNA profile matching this item is approximately one
20 in 28 quintillion.

21 Q: So all the blood that was picked up on the swabs from the
22 various locations in your analysis and expert opinion was
23 whatever quintillion probability that it belonged to Wiley
24 Jones?

25 A: It was approximately one in 28 quintillion that if you

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1 chose an individual at random that that profile would match
2 this item. So it's not that -- it's not the probability that
3 he matches it. It's the probability that if you chose a
4 random individual just by chance he would match it.

5 Q: So --

6 A: I know it's a fine distinction, but --

7 Q: So if we threw a dart into a crowd of 29 quintillion
8 people, there would be one -- I mean if it randomly hit
9 somebody? Is that accurate or I'm just messing it all up?

10 A: Well, it's really -- the number is independent of the
11 population, but yes, if you were just to go into a crowd of
12 any size and just to choose someone at random, just walk up to
13 an individual and say I would like to test you, the
14 probability that they would have that same DNA profile is
15 approximately one in 28 quintillion, meaning it's very
16 unlikely. I believe the probability of winning the jackpot is
17 one in 240 million right now, which means you're much, much
18 more likely to win the jackpot than you are to pick someone at
19 random that what just happen to have the same DNA profile.

20 Q: How many zeros comes after the 28 in quintillion?

21 A: When you're counting, it's hundreds, thousands, millions,
22 billions, trillions, quadrillions, quintillions. So it would
23 be the number 28 with 18 zeros behind it would be 28
24 quintillion.

25 Q: Okay.

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1 MR. RICHARDSON: Your Honor, I just checked with the
2 court reporter. We'd move 15 into evidence.

3 MR. MEETZE: No objection.

4 THE COURT: Without objection.

5 (WHEREUPON, State's Exhibit Number 15, DNA analysis
6 report, was admitted into evidence again.)

7 MR. RICHARDSON: I believe that's all the questions I
8 have for Ms. Clayton at this time.

9 THE COURT: All right. Mr. Meetze?

10 MR. MEETZE: Yes, sir.

11 CROSS-EXAMINATION

12 BY MR. MEETZE:

13 Q: Good morning. How are you doing, Ms. Clayton?

14 A: I'm doing well. Thank you.

15 Q: The testing that you did on the samples that you received
16 was short tandem repeat PCR DNA analysis?

17 A: That's correct.

18 Q: All right. And PCR stands for polymorphic chain
19 reaction?

20 A: Polymerase chain reaction.

21 Q: Okay. When you do that type of analysis, isn't it true
22 that you're not comparing 100 percent of the DNA from your
23 sample to 100 percent of DNA from the known sample?

24 A: That's correct. We test -- the kit that we use tests 15
25 locations. The majority of DNA is very similar between

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1 individuals. So for both time expedience and cost, the
2 scientific community has chosen 15 locations that have a high
3 amount of variability between individuals, and those are the
4 -- well, there's more locations, but the kit we use tests 15
5 of those locations and those are the results that are
6 reported.

7 Q: And you say the scientific community has come up with 15
8 locations for you to test. Those 15 locations comprise a
9 very, very small percentage of the entire strand of DNA;
10 correct?

11 A: That's correct.

12 Q: I mean when we say very small, less than one percent?

13 A: I don't know the exact percentage, but that is probably
14 accurate.

15 Q: And that -- and I'm going to -- I may ask questions that
16 shows how little I know about what you do and everything; so
17 please forgive me if I sound unintelligent. But when you say
18 the 13 sites that you test, is that 13 genes from a stem -- a
19 DNA stem or exactly what are those 15 sites?

20 A: The 15 locations that we test are non-coding genes, as in
21 they don't determine eye color, hair color, anything like
22 that. They are locations that are -- have a high amount of
23 variability between individuals and so therefore can develop a
24 unique profile for an individual.

25 Q: And so it's a gene or even something smaller than a gene

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1 that you're testing?

2 A: It is a very small piece of DNA, relative to an entire
3 strand of DNA. That's correct.

4 Q: All right. And are you aware -- do you know the number
5 of genes in a DNA?

6 A: I believe the estimate now is 23,000. It was at one time
7 considerably larger than that, but they have reassessed their
8 estimate.

9 Q: It's still a good bit more than --

10 A: Oh, correct.

11 Q: -- the 15?

12 A: It's considerably more than the 15 locations that we
13 tested. Correct.

14 Q: So really what you're talking about with the 15 then is
15 just a vast majority of generic material is not used for
16 comparison?

17 A: Right. We just use a -- as I said before, for cost and
18 time issues, we just chose 15 locations that have unique --
19 unique results for individuals in most of those locations.

20 Q: And when you are doing your analysis and, you know, we
21 may not have used -- but you don't actually -- you can't
22 actually see the 15 sites? You're not looking at them with
23 your eyes?

24 A: No, no. DNA is obviously extremely small. It's
25 contained in cells in the body, which just to see a cell you

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1 would need a microscope to be able to see a cell, and DNA is
2 much, much smaller than a cell. So no, I cannot visualize
3 DNA.

4 Q: And like you said, even with a microscope, you don't
5 visualize it?

6 A: I do not, no. I do believe there are some high-powered
7 microscopes with some advanced technology that can do some
8 detection of DNA.

9 Q: Okay. And the genetic material that you receive and
10 test, in this case blood or whatever it may be, the cells
11 contained on those swabs or those pieces of evidence are not
12 alive; correct?

13 A: Not at the time that I receive them. They would not be,
14 no.

15 Q: Right. And so you have to somehow get them to replicate?

16 A: No. I don't cause the DNA -- I don't cause the cells to
17 replicate. The process we use is called DNA amplification or,
18 as he said earlier, it's short tandem repeat polymerase chain
19 reaction DNA analysis.

20 And what that means is that it tests these certain
21 locations. We have the kits that we use. The kits contain
22 probes that are specific for the locations that we use. The
23 DNA -- DNA is double-stranded; so the test that we use causes
24 the DNA to melt into two strands and then that strand is
25 copied. And that copy of the strand has a fluorescent dye on

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1 it and so we go through this process over and over and over
2 again. It goes through a cycle. It becomes two strands. It
3 melts again. It becomes one strand and makes another copy and
4 does this over again so that we can make detectable copies of
5 the locations that we're interested in.

6 The locations that we test are tagged with fluorescent
7 dye and then we can run it on our final instrument, which has
8 a laser which excites the fluorescent dye on the DNA and then
9 it passes by a camera, which can then detect the fluorescence
10 from the pieces of DNA.

11 Q: So you add a fluorescent dye that sort of causes these
12 not-living cells to replicate? Is that -- I don't know if
13 that's the right word or not.

14 A: Well, the cell itself does not replicate. They -- at the
15 point that we do the amplification step, the DNA has already
16 been extracted from the cell. So the tube that we're using
17 for amplification only contains the DNA in liquid and then we
18 add to that our -- what's called a reaction mix, which
19 contains the nucleotides that we need to build the DNA
20 strands, and the probes, which have the fluorescent dye in
21 them to detect the DNA strands, and then the polymerase, which
22 is another protein that actually causes the nucleotides to be
23 added to the strand. We don't actually replicate the cells
24 themselves. We only replicate sections of the DNA.

25 Q: And it's these -- you said you build up these cells or

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1 these sections, and that built-up part or whatever -- that's
2 what the computer reads; correct?

3 A: The computer detects -- or the instrument detects the
4 final product, yes. Once the DNA copying or the polymerase
5 chain reaction portion of the analysis is complete, the final
6 instrument detects the DNA and then translates -- uses a
7 computer program to translate that information into numbers
8 and those numbers are what's reported as the DNA profile.

9 Q: And the computer reads those; correct?

10 A: Yes, that's correct.

11 Q: All of this is done --

12 A: The instrument detects it and then the computer
13 translates the information from the instrument.

14 Q: Now -- and there's -- because you can't see these and,
15 like you said, you don't see them with the microscope, there's
16 no way for you to go behind the computer and double check the
17 computer's work individually?

18 A: No. If I'm understanding your question correctly, I
19 cannot look at the DNA itself. So is that -- is that what
20 you're asking?

21 Q: Yeah. You can't manually compare the DNA using a
22 microscope or anything like that?

23 A: Right. That's correct. I can't hold one piece of DNA up
24 and look at another piece of DNA and see if those two pieces
25 of DNA are the same. I have to depend on our validated

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1 testing methods and use the results that come from those.

2 Q: And in this case, the computer came up with a probability
3 of one in 28 quintillion -- I don't know the right word. You
4 --

5 A: Yes.

6 Q: Is it one in 28 quintillion probability that a randomly-
7 selected person would have the same genetic profile; correct?

8 A: That would be a separate computer that we use, but yes.
9 I did use a computer to calculate that statistic. The
10 instrument that we use to develop the DNA profile is called a
11 capillary electrophoresis instrument. I would then use the
12 computer to -- from that instrument to determine the DNA
13 profile. That DNA profile is then entered into a different
14 program which is used to calculate the statistic of one in 28
15 quintillion.

16 Q: And, of course, as you have testified to already, 28
17 quintillion is a gigantic number?

18 A: That's correct. Twenty-eight quintillion is a very, very
19 large number. One in 28 quintillion is a very, very, very
20 small probability.

21 Q: In fact, 28 quintillion is almost incomprehensible?

22 A: It is not a number that most people work with. That's
23 correct.

24 Q: In fact, when you're dealing with probability of someone
25 else having genetic material that is the same and you apply

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1 those kinds of numbers, that's actually more people than have
2 ever lived on the face of the earth?

3 A: Twenty-eight quintillion is probably more people than
4 have ever lived on the earth. That's correct.

5 Q: Certainly more than currently live on the earth?

6 A: Certainly. The current population I believe is estimated
7 to be approximately seven billion.

8 Q: And as you said, you would still have to go to trillion,
9 quadrillion, before you're even sniffing quintillion?

10 A: That's correct.

11 Q: So it's, like I said, a very incomprehensible number when
12 you're dealing with humans. All right.

13 MR. MEETZE: I don't have any further questions, Your
14 Honor.

15 THE COURT: Mr. Richardson?

16 MR. RICHARDSON: No, sir.

17 THE COURT: All right. Ma'am, you may step down. Thank
18 you.

19 MR. RICHARDSON: We'd ask that she be excused.

20 THE COURT: Any objection?

21 MR. MEETZE: No, Your Honor.

22 THE COURT: Without objection, you are excused. You're
23 free to go. Have a nice day.

24 MR. RICHARDSON: The State rests, Judge.

25 THE COURT: All right. Can the lawyers approach a

1 minute, please?

2 (WHEREUPON, a bench conference was held in the presence
3 of the jury but out of the hearing of the jury off the
4 record.)

5 THE COURT: All right. Ladies and gentlemen, the State
6 has rested its case. What I am going to do at this time is I
7 am going to let you go to lunch. Okay? There are some
8 matters of law that we need to take up outside of your
9 presence and, rather than have you sit back in that jury room
10 right now while we do that, I'm going to let you go to lunch.

11 I'm going to ask that you be back here at 1:30 -- at
12 1:30. That should give us enough time to handle what -- the
13 matters of law that we need to deal with. And so when you get
14 back here at 1:30, we'll be able to resume as promptly at that
15 time as possible without you all having to wait to come out
16 here. Okay?

17 Please go to lunch. Do not discuss the case. Do not do
18 any independent investigation on your own. I'll see you back
19 at 1:30.

20 THE BAILIFF: Follow me, please.

21 (WHEREUPON, the jury exited the courtroom at 11:35 a.m.)

22 THE COURT: All right. Mr. Meetze, have you got any
23 motions?

24 MR. MEETZE: Judge, at this time, we'd make a motion for
25 a -- for the record, we'd make a motion for a directed verdict

1 based on the evidence that's presented does not in the light
2 -- taken in the light most favorable -- most favorable to the
3 State does not rise to a level of substantial circumstantial
4 or direct evidence that could sustain a conviction in this
5 case.

6 THE COURT: Mr. Richardson, anything in reply?

7 MR. RICHARDSON: Well, Your Honor, we've got an
8 eyewitness who caught the defendant in the act of stabbing.
9 We've got DNA proof the victim's blood was in the bathroom
10 when the stabbing occurred. We've got a witness who saw the
11 defendant throw the knife. We've got the knife. I think
12 there's a heap of evidence.

13 THE COURT: With all due respect, Mr. Meetze, I'm going
14 to respectfully deny your motion for a directed verdict. The
15 law requires that the evidence be viewed in the light most
16 favorable to the State.

17 Having viewing -- having viewed the evidence in the light
18 most favorable to the State, I believe that there is
19 substantial circumstantial evidence, but not only that, there
20 is direct evidence -- direct evidence of the defendant having
21 allegedly committed this offense. Therefore, I believe the
22 State has produced sufficient evidence for it to go to the
23 jury. I'm therefore respectfully denying your request for a
24 directed verdict.

25 Now, before we go any further, I am going to advise Mr.

1 Durant of his rights with regards to testifying. Mr. Durant,
2 if you would, stand, please, sir. Raise your right hand to be
3 sworn. Do you swear to tell the truth, the whole truth, and
4 nothing but the truth, so help you God?

5 THE DEFENDANT: Yes, sir.

6 THE COURT: All right. You are Melvin Durant?

7 THE DEFENDANT: Yes, sir.

8 THE COURT: You can put your hand down, Mr. Durant. At
9 this time, I'm going to explain to you certain of your rights.
10 If you do not understand anything that I say to you, please
11 let me know. If you want me to explain anything in more
12 detail, please let me know as well. Do you understand that,
13 sir?

14 THE DEFENDANT: Yes, sir.

15 THE COURT: We have now reached the stage of the trial
16 where you may present your defense. You have the right to
17 claim the protections given to you by the Fifth Amendment to
18 the Constitution, which states in part that no person -- no
19 person shall be compelled in any criminal case to be a witness
20 against himself. This means that you cannot be required to
21 testify in this case. You have the right to testify on your
22 own behalf. However, no one -- and I repeat, no one can make
23 you testify. This is a personal right and no one can waive
24 this right except you.

25 Now, if you decide to testify, you will be subject to the

1 same rules that govern other witnesses and you may be examined
2 and cross-examined on any relevant issue in this case.

3 In addition, if you have any convictions involving
4 dishonesty or false statement or for crimes punishable by
5 imprisonment for more than one year and the Court determines
6 that the probative value of admitting this evidence outweighs
7 its prejudicial effect to you, the prosecutor or the solicitor
8 will be able to introduce your record to attack your
9 credibility.

10 If you decide to testify, this decision on your part must
11 be freely, voluntarily, and intelligently made, with knowledge
12 of the protections given to you by the Fifth Amendment and the
13 consequences of your decision to testify.

14 If you decide not to testify, I will instruct the jurors
15 that they cannot -- that they cannot give the fact that you
16 did not testify any consideration whatsoever and that there is
17 to be absolutely no prejudice to you because you did not
18 testify.

19 Now, it's left entirely up to you whether or not you
20 testify. You may talk with your attorney, your family,
21 friends or anyone else, but the final decision or the ultimate
22 decision as to whether or not you testify is left entirely up
23 to you.

24 Do you understand, Mr. Durant, what I've explained to
25 you?

1 THE DEFENDANT: Yes, sir.

2 THE COURT: Do you have any questions about what I have
3 explained to you?

4 THE DEFENDANT: No, sir.

5 THE COURT: Have you spoken to your lawyer whether or not
6 you should testify in this case?

7 THE DEFENDANT: Yes, sir.

8 THE COURT: Do you wish to talk to your lawyer anymore at
9 this time?

10 THE DEFENDANT: Not about the matter, sir. Thank you.

11 THE COURT: All right. Do you wish to testify in the
12 trial of your case?

13 THE DEFENDANT: I plead the Fifth, sir.

14 THE COURT: Sir?

15 THE DEFENDANT: I plead the Fifth.

16 THE COURT: All right. Very well. All right. Anything
17 else at this time, Mr. Meetze?

18 MR. MEETZE: No, Your Honor.

19 THE COURT: All right. Sir, you may be seated. Thank
20 you very much.

21 THE DEFENDANT: You're welcome.

22 THE COURT: All right. Bryant has a copy of what he's
23 done on the charge. I have gone through it briefly. However,
24 there are some things that I see that need to be in there.
25 Bear with me just a minute.

1 (WHEREUPON, there was a pause in the proceedings.)

2 THE COURT: On page -- when you get to page 7 where it
3 talks about prior inconsistent statements, I don't think you
4 need that in there. I think it needs to be a prior statement
5 by the defendant. I don't recall any prior inconsistent
6 statements. Mr. Richardson? Mr. Meetze?

7 MR. RICHARDSON: Your Honor, the two statements that were
8 put in -- he had some discrepancies in those, but he didn't
9 testify.

10 THE COURT: Right.

11 MR. RICHARDSON: So there's no point in having this.

12 MR. MEETZE: No, sir. And I agree. And none of the
13 State's witnesses -- and I know I questioned Mr. Wheeling
14 about what he told the police, but I think his testimony was
15 that he may not specifically remember saying --

16 THE COURT: Right.

17 MR. MEETZE: -- that they were in a heated argument.

18 THE COURT: He didn't deny it.

19 MR. MEETZE: He didn't deny it and he said in thinking
20 back he probably did tell him that.

21 THE COURT: Yeah.

22 MR. MEETZE: So yeah, I don't think there's any prior
23 inconsistent statements in this case.

24 THE COURT: So that needs to come out. Prior record of
25 witness needs to be in there. Let's see.

1 All right. Statement of defendant. Prior record of
2 witness. Those need to be in there. Expert witness charge.
3 This police officer charge that's on page 8 -- I'm taking that
4 out. I'm not leaving that in there. Page 10, defendant's
5 decision not to testify.

6 Then you get into intent on page 10 and attempt on page
7 11. I guess if you all look at page 10, 11, 12, 13, 14,
8 that's where you get into the meat of the charge.

9 Bryant, any of that stuff on self-defense, it's out.
10 It's not in there. There's none of that in here.

11 There's been an issue in prior -- previously on the
12 attempted murder charge. Specific intent is required I think
13 under the law. Are you looking at that?

14 MR. RICHARDSON: Do you mean with respect to the
15 otherwise depraved heart sort of --

16 THE COURT: With the -- there's been an issue that came
17 up before whether or not specific intent was an element of
18 attempted -- or an element of attempted murder, and there's
19 some case law that says it absolutely is. Specific intent.
20 And, Mr. Jupertinger, as he's standing in the doorway over
21 there -- because he and I have had this discussion before.

22 MR. JEPERTINGER: It's State -- I think it's State
23 against King.

24 THE COURT: Yep. The Court of Appeals case. It is. But
25 look at that. The meat of this charge goes, like I said, from

1 page 10 through page 15. Bryant had some stuff in here on
2 self-defense, but there's not any self-defense issues in this
3 case.

4 MR. RICHARDSON: There's a mutual combat. I guess that's
5 part of the self-defense.

6 THE COURT: Yeah. None of that goes in there.

7 MR. MEETZE: All right. And, of course, this charge on
8 14 at the top that's highlighted says specific intent to kill
9 is not an element of attempted murder. I would guess that --

10 THE COURT: Where is that?

11 MR. MEETZE: Top of page 14.

12 THE COURT: Yeah. And that's -- and I struck that on my
13 --

14 MR. MEETZE: Okay.

15 THE COURT: I struck that. That needs to come out of
16 there.

17 MR. MEETZE: Judge, I think based on the law and the way
18 it reads, I think that sort of the lesser includeds on down
19 the line, even beyond assault and battery of a high and
20 aggravated nature, would be appropriate. Both assault and
21 battery of a high and aggravated nature and assault and
22 battery first degree requires great bodily injury or an act
23 that causes a substantial risk of -- well, great bodily injury
24 means any bodily injury which causes a substantial risk of
25 death or which causes serious permanent disfigurement or

1 protracted loss or impairment of the function of a bodily
2 member or organ.

3 And there's no testimony that he's had any protracted or
4 loss of impairment of a function of a bodily member. I mean
5 the only testimony was that he was treated at the hospital
6 with two staples and some stitches and he was there about
7 five-and-a-half hours. There's no testimony as to any kind of
8 a follow-up. There's nothing. The jury was able to observe
9 him walk, stand, talk. There was nothing that indicates
10 anything like that and that's a very high standard as far as
11 an injury goes. I think a reasonable jury could find that the
12 injuries that he sustained in this are not -- don't reach that
13 level.

14 And also, in the part that says would be likely to cause
15 great bodily injury, certainly, Judge, nobody is going to deny
16 that a knife is a deadly weapon, but not every knife attack is
17 a deadly attack. Not every knife attack rises to the level of
18 that. He was cut on his upper back and his arm. And
19 certainly I think a reasonable jury could determine that based
20 on the injuries he sustained that that knife was not used in a
21 manner that was likely to produce great bodily injury.

22 Also, assault and battery second degree requires moderate
23 bodily injury, which is physical injury that involves
24 prolonged loss of consciousness. That's not here.

25 Or that causes temporary or moderate disfigurement or

1 temporary loss of the function of a bodily member or organ.

2 That's not here.

3 Or injury that requires medical treatment when the
4 treatment requires the use of reasonable or general anesthesia
5 or the injury results in a fracture or dislocation. There's
6 no evidence of anesthesia or any of that. Well, he said they
7 numbed him up I guess to put the stitches in. There was
8 testimony as far as that goes.

9 It says moderate bodily injury does not include one-time
10 treatment and subsequent observation for scratches, cuts,
11 abrasions, bruises, burns, splinters, and other minor injuries
12 that do not ordinarily require extensive medical treatment.
13 So again, I would say that based on the definition of moderate
14 bodily injury, a reasonable jury could infer that this injury
15 does not rise to that either.

16 So, you know, the law says that all of these assault and
17 batteries are all lesser includeds all the way down to assault
18 battery third degree. And I would submit that based on the
19 evidence here that we have, which essentially the extent of
20 his injuries that are in evidence is he was at the hospital
21 for about five to five-and-a-half hours, he got two staples
22 and stitches to repair it. There is -- there was no testimony
23 even as to any kind of medications he had to take afterwards,
24 pain meds or anything like that.

25 So the law says that from attempted murder on down,

1 everything is a lesser included all the way to assault and
2 battery third, and I would submit that charging each of those
3 lesser includeds would be appropriate in this case.

4 THE COURT: Mr. Richardson?

5 MR. RICHARDSON: Judge, you know, he's only charged with
6 the attempted murder. That's all it's been from the
7 beginning. The focus has been on not necessarily the
8 injuries, but the conduct leading up to the attack and the
9 nature of the attack and the prevention of further attack.
10 And that's been my focus on the case.

11 I don't know what level the injuries would rise to
12 because from my perspective the level of injuries don't
13 particularly matter, you know, when I'm trying to prove
14 attempted murder. So my position -- I just prefer that the
15 Court charge attempted murder.

16 I think the other stuff may serve to confuse the jury
17 when we start getting into terms like great bodily injury,
18 moderate bodily injury, and all this kind of stuff that hasn't
19 been addressed at all during the case. So that would be my
20 position on that issue.

21 Also, I don't know if it's been brought up yet or not,
22 but on page 13 of your charge, the shaded portion about malice
23 may be inferred from conduct showing a total disregard for
24 human life, the *State v. Belcher* charge, I do think that that
25 would be appropriate in this case because there's been no

1 claim of self-defense or mutual combat or anything of that
2 nature. So I think the *Belcher* charge would be appropriate.

3 THE COURT: Yeah.

4 MR. MEETZE: Judge?

5 THE COURT: Yes, sir?

6 MR. MEETZE: With regards to all of that, with regards to
7 it just only being charged as attempted murder, I certainly
8 think based on the evidence that we have here, testimony was
9 that they were in a heated argument. You know, part of what
10 makes manslaughter manslaughter is the heat of passion. All
11 right? And heat of passion doesn't include malice.

12 And certainly I think it's reasonable for a jury to
13 believe that there's no malice in this case. I think that it
14 can be reasonably argued that had Mr. Jones not been
15 eavesdropping on Mr. Durant's conversation with Mr. Wheeling
16 that we wouldn't even be here. Not to blame him obviously,
17 but in any situation, any little thing that can be done
18 different would be -- can change things, and that's one that
19 could change things.

20 I certainly think that based on the evidence here, both
21 of them were intoxicated. Both of them were in an argument
22 that had lasted for an extended period of time. Officers
23 testified there was a fight, arguing and all outside of the
24 location, then back inside of the location. Testimony was
25 that they had a heated argument after Mr. Durant's

1 conversation with Mr. Wheeling. I think those kind of things
2 rise to provocation and -- and heat of passion, which doesn't
3 include malice.

4 And so I think it's very reasonable for this jury to find
5 that there's no malice here, which takes us out of attempted
6 murder, which then brings into play the lesser-included
7 offenses. And I think those are all appropriate charges and I
8 think the *Belcher* case says that if the charge could be
9 mitigated in any way -- it doesn't have to be just self-
10 defense. If it could be mitigated in any way to any kind of a
11 lesser offense, then you do not get the charge of a use of a
12 deadly weapon -- being able to infer malice by use of a deadly
13 weapon.

14 And I certainly think that based on the evidence here
15 that lesser-included offenses are appropriate. So the *Belcher*
16 charge would not be appropriate and, again, I think the lesser
17 includeds -- based on the law and based on the way it's worded
18 and read and the extent of the injuries have to be to live up
19 and to rise to those. I think that the lesser includeds
20 should go on all the way down to assault and battery third
21 degree.

22 THE COURT: Well, I think there's certainly -- some
23 lesser includeds need to be in there. The question is whether
24 or not it goes all the way down the line. And I'm going to
25 look at the statute and look and see exactly what they say.

1 And I'm required certainly to charge that which the evidence
2 requires. And I'll take a look at it and let you know.

3 All right? Anything else?

4 MR. MEETZE: No, sir, Your Honor.

5 MR. RICHARDSON: No, sir.

6 THE COURT: All right. If you all will be back here at
7 one o'clock and we'll finish that out at that time. All
8 right?

9 MR. MEETZE: Thank you, Your Honor.

10 (WHEREUPON, there was a break in the proceedings from
11 11:56 a.m. until 1:05 p.m., after which the proceedings
12 resumed as follows.)

13 THE COURT: All right. Mr. Richardson, anything?

14 MR. RICHARDSON: I was going to talk about the charge.

15 THE COURT: Well, let me throw -- throw this out. In
16 looking at the statute, here's what my thoughts are, and then
17 I'll hear from you all. Okay?

18 Certainly, attempted murder -- I believe that under
19 Section 16-3-600 -- let's see. I think that ABHAN would be an
20 appropriate charge under subsection (B)(1), which reads as
21 follows:

22 A person commits the offense of assault and battery of a
23 high and aggravated nature if the person unlawfully injures
24 another person.

25 I don't think there's any question there was injury.

1 And great bodily injury to another person results or the
2 act is accomplished by means likely to produce death or great
3 bodily injury.

4 Now, I don't know that subsection (a) of (B)(1) is
5 appropriate because there hasn't been any testimony as to that
6 as far as what the extent of the great bodily injury was
7 supposed to have been. Does that make sense, Mr. Richardson?

8 MR. RICHARDSON: Yes, sir.

9 THE COURT: Mr. Meetze?

10 MR. MEETZE: Yes, Your Honor.

11 THE COURT: So I think it would just be (B)(1)(b) because
12 the act is accomplished by means likely to produce death or
13 great bodily injury, period. Are you on the same page with
14 that, Mr. Richardson? Mr. Meetze?

15 MR. RICHARDSON: Sure. I have no problem with that.

16 THE COURT: Mr. Meetze?

17 MR. MEETZE: Um --

18 THE COURT: I mean it's not an or here because nobody --
19 no medical testimony to the effect that it was great bodily
20 injury as defined by the statute.

21 MR. MEETZE: I understand. I'm just thinking.

22 THE COURT: Well, process it. Okay?

23 Now, the problem I have here -- if you jump down to
24 subsection (C)(1), which is assault and battery first degree,
25 it is worded differently than these other sections within that

1 16-3-600.

2 And by that, I mean it says under subsection (C)(1):

3 A person commits the offense of assault and battery in
4 the first degree if the person unlawfully injures another
5 person, which you have, but then it goes on to say and -- and
6 the act -- and it gets into the nonconsensual touching, which
7 that's not an issue here -- and -- or it occurred during the
8 robbery, burglary, kidnapping or theft. None of that is
9 applicable to this case.

10 MR. MEETZE: Right.

11 THE COURT: You jump down to subsection (b), (C)(1)(b),
12 offers or attempts to injure another person with the present
13 ability to do so and the act is accomplished by means likely
14 to produce death or great bodily injury.

15 There's no offer or attempt to injure another person.
16 The testimony has been that there were injuries.

17 And then it goes on to say -- and is accomplished --
18 well, let me see here. No robbery, burglary, kidnapping or
19 theft. Let me see.

20 You know, having said that, I think I'm going to back up
21 a little bit on that. Under (C)(1), if you read it as follows
22 here, taking away (a) -- subsection (a), subparts (i) and
23 (ii), which are not applicable at all here. Listen to this.

24 A person commits the offense of assault and battery in
25 the first degree if the person unlawfully offers or attempts

1 to injure another person with the present ability to do so and
2 the act is accomplished by means likely to produce death or
3 great bodily injury.

4 Do you understand what I'm differentiating here? One
5 says -- for instance, under (B)(1), the ABHAN, has -- in fact,
6 has injuries.

7 MR. MEETZE: Right.

8 THE COURT: The (C)(1) does not specify that there are --
9 injuries actually occurred. It says offers or attempts to
10 injure. Does that make sense?

11 MR. MEETZE: It does.

12 THE COURT: I mean I don't see how anyone can look at the
13 evidence in this case and say he didn't get injured.

14 MR. MEETZE: I don't either, but I don't think that the
15 statute -- I don't think (C)(1) -- I don't think the
16 legislature would have intended for (C)(1) -- I mean the way
17 -- and I may be wrong. If I am, I apologize, judge.

18 THE COURT: No, that's --

19 MR. MEETZE: But if (C)(1) would only apply for an offer
20 and attempt but where no one was actually injured, I just
21 don't think that the legislature would have written a statute
22 to have intended that. I think that's almost an
23 interpretation that brings about an absurd result. I think --

24 THE COURT: Well, I mean you see -- well, go ahead. I'm
25 sorry.

1 MR. MEETZE: And, you know, because it's obviously a
2 charge that carries a substantial potential penalty and I
3 think that it's -- you know, I just don't think that it's a
4 situation where (C)(1) would only apply -- assault and battery
5 first degree only apply if nobody was injured at all.

6 But that's my position and, of course -- and then back --
7 you know, I mean I know we haven't gotten to (B)(1), but
8 assault and battery second degree includes injury. It
9 includes both injury or the offer and attempt.

10 THE COURT: Well, listen, I'm not arguing with you.

11 MR. MEETZE: Sure.

12 THE COURT: I'm just giving you a literal --

13 MR. MEETZE: I understand.

14 THE COURT: I mean if they intended that, then why didn't
15 they put the same language in (C)(1) in essence?

16 MR. MEETZE: That's a good question, Judge.

17 THE COURT: You know, it just --

18 MR. MEETZE: I mean I understand it.

19 THE COURT: And there's been disputes about this statute
20 since they enacted it with the problems of it.

21 MR. MEETZE: Right.

22 THE COURT: And to my knowledge, nothing has been done to
23 clean it up.

24 MR. MEETZE: Not that I see. I see things. I see some
25 different language in some of these definitions of injuries,

1 but very minor from what I can tell.

2 THE COURT: I mean it differentiates. If you look at
3 (C)(1)(a), I mean that's where it gets into the injury.

4 MR. MEETZE: Right.

5 THE COURT: As opposed to (D)(1).

6 MR. MEETZE: Right. (C)(1)(a) requires I guess an injury
7 if the act is accompanied by any of those, you know, just
8 happened during a robbery and, of course, like I say, none of
9 that applies. So (a)(i) and (ii) just don't apply in this
10 case.

11 THE COURT: No.

12 MR. MEETZE: And (B)(2) does not apply in this case.

13 THE COURT: Correct. If anything applies here, I mean
14 only of which would be (B)(1), and that's --

15 MR. MEETZE: And it's -- you know -- you know, ABHAN
16 under this law requires an injury of some kind.

17 THE COURT: Right.

18 MR. MEETZE: And -- well, it requires an injury of some
19 kind, but assault and battery first degree is still a lesser-
20 included offense of ABHAN, even though under this reading
21 assault and battery first degree doesn't list an injury. It
22 just lists an offer or attempt.

23 But I still think in order for it to be -- and the law
24 says it is a lesser included of ABHAN. So I think under this
25 situation, with the law saying it's a lesser included, it

1 would be applicable to include it as a lesser in this offense
2 because there's nothing in there -- in ABHAN, the language
3 about the nonconsensual touching or it being a felony
4 involved. So the only way to me that it could be a lesser
5 included is in a situation like this. And if the law says
6 it's a lesser included, then I think it would apply in this
7 case.

8 THE COURT: Let me ask you this. In looking at -- in
9 looking at subsection (b)(i) of (C) -- all right?

10 MR. MEETZE: Yes, sir.

11 THE COURT: Is that not just the definition of assault?

12 MR. MEETZE: Just the (b)?

13 THE COURT: Yeah. Just (b), which would be applicable
14 here, but --

15 MR. MEETZE: Under the old assault.

16 THE COURT: Well, right. There's no battery within that
17 part as it's defined as assault and battery.

18 MR. MEETZE: That's right, but we don't work -- we work
19 under this statute now, which includes them both in one, and
20 it goes back to the confusing part, Judge. You're right.
21 This statute has been confusing from the -- from the start,
22 particularly with the definitions and different things like
23 that, but Mr. Richardson may remember better than me because
24 he was like the guru when this first came out. The earlier
25 versions didn't have anything about the nonconsensual touching

1 and things like that, did it?

2 MR. RICHARDSON: But it did. They had nonconsensual
3 touching, but I think it said of an adult.

4 MR. MEETZE: Right.

5 THE COURT: That's right.

6 MR. RICHARDSON: And they changed that language later on
7 --

8 MR. MEETZE: True.

9 MR. RICHARDSON: -- to reflect a person.

10 MR. MEETZE: But --

11 MR. RICHARDSON: But we know, like you said, with respect
12 to this being a lesser-included offense, I think it's fact
13 specific because the nonconsensual touching thing obviously
14 wouldn't be a lesser included in what we've got.

15 THE COURT: Right.

16 MR. RICHARDSON: So I think you have to look at the
17 literal meaning of the words. And the assault and battery
18 first makes a distinction between injury and then an offer or
19 attempt. They put them in two separate sections.

20 So in this case -- like, for example, if you had an
21 attempted murder case where somebody shot at somebody and
22 missed. Well, the person has no injury, but there was an
23 offer or an attempt. So I think that would fit.

24 But in this one, we do have injury. So I think the
25 injury section would be the one that would potentially be the

1 lesser included, but we don't have the nonconsensual or
2 whatever the other thing was. So I think your reading of it
3 is correct as it's written. Who knows if that's the way --
4 you know, if it'll be that way forever? That's the way it is
5 now.

6 MR. MEETZE: Judge, as you know and as we all know, the
7 cardinal rule of statutory interpretation is to give words
8 their plain and ordinary meaning, but that's --

9 THE COURT: That's what I'm trying to do, and in doing
10 that, it don't make any sense.

11 MR. MEETZE: But you have to -- I know it. But you have
12 to do it and you have to look at all of the statute, at least
13 all of the statute that's applicable. So I think that
14 includes (3) -- (C)(3), which is assault and battery in the
15 first degree is a lesser included offense of assault and
16 battery of a high and aggravated nature.

17 There's -- there's no circumstance where the
18 nonconsensual touching part of assault and battery first
19 degree would be a lesser-included offense because none of
20 those are elements of ABHAN. Only (C)(1) would be -- would
21 have the potential of being a lesser-included offense. And if
22 ABHAN has to require an injury and you read (C)(1) as not --
23 as excluding an injury, only --

24 THE COURT: But for in those situations.

25 MR. MEETZE: Right. And then, you know, I think if you

1 read both of those sections, if you read (C)(1)(b)(i) in
2 conjunction with (C)(3), there has to be a certain offense
3 where it's a lesser included, and that's the only section that
4 really can be. So again, I'm going to say that it should also
5 be a lesser included in this matter.

6 THE COURT: All right.

7 MR. MEETZE: And, of course, Judge, as you know, it's an
8 any evidence standard and on the decision whether to charge or
9 not charge, I think that there is evidence.

10 THE COURT: Well, the only problem, like I said, that I
11 have with it is that under (C)(1)(b) you never get to the
12 injury part. All right. Looking at (D)(1), I mean I believe
13 that (D)(1)(a) could be. I mean it's certainly a lesser
14 included.

15 All right. I'll plug in what I think is appropriate and
16 y'all can make your objections.

17 MR. RICHARDSON: All right. Judge, I had one other
18 thing.

19 THE COURT: Yes?

20 MR. RICHARDSON: In looking at your attempted murder
21 charge?

22 THE COURT: Yes?

23 MR. RICHARDSON: The express malice is defined pretty
24 typically I guess. I have a copy of a charge that was used in
25 previous trials that we use as kind of a standard.

1 THE COURT: Okay.

2 MR. RICHARDSON: But there isn't much in the way of a
3 definition of inferred or implied malice, and the charge that
4 I have that we've used or that has been used in trials in the
5 past has a more thorough definition of implied malice. And it
6 says implied malice may be found to exist when circumstances
7 demonstrate a wanton or reckless disregard for human life or
8 when a reasonably prudent person would have known that
9 according to common experience there was a plain and strong
10 likelihood that death would follow the contemplated act.

11 And I'd just ask that that be put in there in addition to
12 what you have because what you have really goes right into the
13 inferred malice based on the use of a deadly weapon and --

14 THE COURT: Okay. Mr. Meetze?

15 MR. MEETZE: Judge, I think it -- I think the charge you
16 have is fine, obviously excluding the malice may be inferred
17 by use of a deadly weapon. I think that the *Belcher* case and
18 its paraphrase right here where the evidence presented that
19 would reduce -- we don't need to go any further there.

20 THE COURT: Well, I mean I'm not going to have that --

21 MR. MEETZE: Right.

22 THE COURT: -- case cite in there. Give me that language
23 or give it to my law clerk, Mr. Richardson, and I'll take a
24 look at it. I'm going to go back here and finish this charge.

25 All right. We'll stand down for just a minute.

1 (WHEREUPON, there was a break in the proceedings from
2 1:23 p.m. until 1:30 p.m., after which the proceedings
3 resumed as follows.)

4 THE COURT: All right. What I have -- my law clerk is
5 back there working on this charge. I told him to work on it
6 while you all do closing arguments. We have to take a break
7 after you all finish closing arguments and then I'll make sure
8 the charge is in order and bring them back in and charge them.
9 All right? Is that all right with you, Mr. Richardson?

10 MR. RICHARDSON: Sure.

11 THE COURT: Mr. Meetze?

12 MR. MEETZE: Sure.

13 THE COURT: How long do you all expect on closing
14 arguments, Mr. Richardson?

15 MR. RICHARDSON: Ten -- 15 minutes tops.

16 MR. MEETZE: Probably a little longer than that, Judge,
17 with all of the different charges on the law that --

18 THE COURT: All right.

19 MR. MEETZE: -- I intend to try to go over with them as
20 best I can.

21 THE COURT: All right. Anything else before I bring the
22 jury out, Mr. Richardson?

23 MR. RICHARDSON: No, sir.

24 THE COURT: Mr. Meetze?

25 MR. MEETZE: No, sir, Your Honor.

1 THE COURT: Bring me -- we got them all?

2 THE BAILIFF: Yes, sir.

3 MR. MEETZE: Just a reminder. Should I rest before we
4 bring them out?

5 THE COURT: Yeah. Why don't you rest and just make a
6 note for the record that you renew all prior motions and I'll
7 make my rulings. The rulings will remain the same and I'll
8 tell them, you know, they've heard all the evidence and we're
9 going to move into closing arguments and then my charge.

10 MR. MEETZE: I'll do that, Your Honor. For the record,
11 the defense rests at this time.

12 THE COURT: Well, wait until they come out.

13 MR. MEETZE: Okay. Gotcha.

14 THE COURT: You've got to rest in front of them.

15 MR. MEETZE: I gotcha.

16 THE COURT: Go ahead. Bring them out, please.

17 (WHEREUPON, the jury entered the courtroom at 1:39 p.m.)

18 THE COURT: All right. Ladies and gentlemen, I hope you
19 all had a nice long lunch and are ready to proceed here this
20 afternoon.

21 Before we broke for lunch, the State rested its case. At
22 this time, I am going to recognize defense counsel. Mr.
23 Meetze, you're so recognized.

24 MR. MEETZE: Thank you, Your Honor. Your Honor, at this
25 time, the defense rests.

1 THE COURT: All right.

2 MR. MEETZE: Your Honor, at this time, I would just renew
3 all previous motions and objections for the record.

4 THE COURT: All right. For the record, the Court's prior
5 rulings remain the same.

6 Ladies and gentlemen, you all have heard all of the
7 testimony that you're going to hear in this case. That which
8 remains is closing arguments by the counsel -- by counsel.
9 The State will close first, followed by defense counsel, and
10 then I will charge you on the law applicable to this case.

11 Before we begin closing arguments, let me remind you,
12 ladies and gentlemen, that closing arguments is not evidence.
13 It is not evidence in this case.

14 Mr. Richardson, you're so recognized.

15 CLOSING ARGUMENT ON BEHALF OF THE STATE

16 MR. RICHARDSON: Thank you, Your Honor. Mr. Meetze.

17 I think it's pretty clear what happened as far as the
18 facts go. We've had ample testimony about what happened in
19 the bathroom, what happened after the bathroom, before the
20 bathroom, and then what the police did and the SLED analyst.
21 Not a whole lot of wiggle room in terms of what literally took
22 place with these people involved in this incident.

23 Carl Wheeling, who was our first witness, did an
24 outstanding job of explaining exactly what occurred in that
25 bathroom and also standing up and demonstrating it to you.

1 And I think, to paraphrase him, he heard this noise in the
2 bathroom, knowing that these two guys had some ill will with
3 one another. Mr. Durant was upset with Mr. Jones at least.

4 So knowing this goes on, he hears this rumbling coming
5 from the bathroom. He steps in and I think he said he saw him
6 come down on him blade down with the knife at least twice
7 before he was able to get there and catch his arm before it
8 came down again. And he said Mr. Durant, who was the shorter
9 of the two individuals, was jumping to come down on him as if
10 to aim for the chest or the back.

11 And we saw some of the injuries that Mr. Jones suffered
12 in those photographs. Grisly looking things. I'm not going
13 to throw them back on you on the big screen here, but you'll
14 have the pictures that are in evidence to look at if you wish,
15 along with a trashcan I guess. But anyway, it was -- I mean
16 the description of it is extremely violent.

17 Mr. Jones told you similarly that he was outside that
18 curtain, you know, when Mr. Durant was talking to Mr.
19 Wheeling. They had a few words there and Mr. Jones goes in to
20 use the bathroom. Now, he says he started off at the urinal
21 and was using it. He was there to use the bathroom and got
22 sneak attacked from behind, at which point he turned, did the
23 defensive posture, and got caught, you know, in the front, got
24 caught in the arm. I'm not sure how he got hit in the back,
25 whether that was from the initial, you know, when his back was

1 to him or what.

2 And then Mr. Wheeling comes in and obviously prevents
3 further damage or death by stopping that knife from coming
4 down again and holding him there for what he says he thought
5 was maybe about a minute and a half so that Mr. Jones could
6 get away. He was clearly trying to kill him and I say that to
7 say what is the foreseeable consequence of coming down on
8 somebody with a knife at all, much less that many times?

9 I mean Mr. Jones indicated he had four puncture wounds
10 and other scratches and abrasions on his body, and that's just
11 before Mr. Wheeling caught his arm. I mean this easily could
12 be a murder case you're sitting on right here but for Carl
13 Wheeling.

14 That's why I argue to you that this is an attempted
15 murder. Mr. Durant tried to get it done, but he got held up.
16 And we, you know, went the extra mile so to speak, the police
17 collecting the blood and sending it off to SLED and, of
18 course, every last drop came back to the victim.

19 So this wasn't some mutual-combat situation. This wasn't
20 some self-defense situation. This was a sneak attack trying
21 to kill this guy for what sounds like, you know, rather
22 childish reasons, but you know alcohol gets involved maybe.

23 Who knows what was going on with those two guys before?
24 That doesn't really matter. What matters is the actions taken
25 by the defendant. You don't resolve your conflicts with folks

1 by trying to carve them open, but that's what happened in this
2 case.

3 We've got the knife. We had Mr. Nesmith testify that he
4 saw Mr. Durant chunk the knife over the fence behind the
5 property. So I mean guilt is all over Mr. Durant in terms of
6 committing this act.

7 So what you have to determine then is the law that
8 applies to this act. I strenuously argue to you it's an
9 attempted murder, as is charged. But I caution you because at
10 the conclusion of the closings here when the judge gives you
11 the law, he's going to give you not only the law on attempted
12 murder, but our assault and battery statutes as well, a number
13 of them from top to bottom in our Code of Laws. And those are
14 called included offenses or lesser-included offenses of the
15 attempted murder.

16 And each of those different assault and battery levels
17 have different elements or things, different sorts of injuries
18 that have to be present. It's very injury focused. And I
19 don't want you to get confused by that by looking at Mr.
20 Jones's arm and his back and thinking about injuries because
21 for attempted murder, injuries don't really matter. You know,
22 if somebody fires a gun at you and misses, you're not going to
23 have an injury. That doesn't mean they didn't try to kill
24 you.

25 So in a case like this, you know, what if Mr. Durant had

1 run in that bathroom, but Mr. Wheeling got there in time
2 before the first knife swing came down and caught him? He's
3 still trying to kill him, but there wouldn't be any injuries
4 because he didn't strike him. So the injuries are completely
5 irrelevant.

6 What we're looking at is the intent of Mr. Durant here.
7 And that is where we get into the definition of attempted
8 murder, and the law and the statute reads a person who with
9 intent to kill attempts to kill another person with malice
10 aforethought, either express or implied.

11 So we've got a person, Mr. Durant, who intends to kill
12 Mr. Jones with malice aforethought, either express or implied.
13 Now, that's the legalese part of this.

14 Malice is ill will towards somebody, dislike, hatred.
15 You've got a problem with somebody. And it can be either
16 expressed -- I'm going to kill you -- or implied, meaning you
17 can look at the actions taken by the individual and say he's
18 trying to kill him.

19 And that's what we've got in this case. Running in that
20 bathroom and carving away, aiming at his chest and his back,
21 causing him grisly injuries, but it's implied malice. He had
22 a problem with him right before. We know that. There's ill
23 will there. He acted on that.

24 Now, I don't know and the evidence isn't clear whether he
25 already had the knife on him or if he had to go to his bedroom

1 or, you know, bed and get it. We don't know that, but Mr.
2 Jones had enough time to go from wherever they had words to
3 the bathroom and start -- you know, begin to use it before Mr.
4 Durant enters that bathroom and sneak attacks him.

5 So malice aforethought. Aforethought, of course, means
6 beforehand. So you have to have malice right before the
7 attack and during the attack, and I think that is abundantly
8 clear here. We have the testimony that they had problems.
9 This wasn't an accident. You know, he didn't pick the wrong
10 guy. Everybody knew each other. They all testified. Mr.
11 Wheeling, Jones, Nesmith, everybody knew everybody.

12 So that's what I caution you on. When you hear these
13 other laws being read to you about terms like great bodily
14 injury, moderate bodily injury, and even the word injury,
15 completely irrelevant to why we're here. We're here because
16 of his intent, his evil intent, his hatred towards this guy
17 and his actions that he took to show him his displeasure.

18 Now, the judge is going to also tell you the law with
19 respect to a number of things, but one in particular I want to
20 talk to you about is reasonable doubt. Reasonable doubt is
21 the highest burden in the law in terms of, you know, proving
22 something. I can't just make you think, yeah, you know, maybe
23 he did it. It has to be more than that. You have to be
24 what's called firmly convinced that he did this stuff. That's
25 why we present all this evidence to you to show that it's not

1 some maybe.

2 And I argue to you now that the evidence in this case is
3 way past beyond a reasonable doubt for this attempted murder.
4 It's -- I mean we've got everything from a factual standpoint.
5 We've got eyewitnesses, we've got DNA, we've got the weapon,
6 blood on the weapon, you know, statements made by the
7 defendant that were inconsistent.

8 If you listen to the first statement we played for you
9 through Officer Happ's voice recorder, if you pay close
10 attention -- you can listen to these again if you want to. He
11 asks him -- well, first, you know, he denies this even
12 happening, which is ridiculous, but he denied it even taking
13 place.

14 But he did acknowledge that he had a knife earlier in the
15 day. So Officer Happ asked him where is that knife. If you
16 listen carefully on there, you'll hear what sounds to me like
17 it fell out my pocket. Well, he goes from Happ's custody and
18 then he's put in the back of the car, and Investigator Wynn
19 starts talking to him and he's asking him similar questions.
20 Well, what happened to the knife? Well, it's in a case at my
21 cousin's house. So he's distancing himself from the weapon.
22 Of course, we know through Tommy Nesmith that he chunked it
23 over the fence in the backyard.

24 But he's showing through these denials of anything
25 happening and distancing himself from the weapon a

1 consciousness of guilt here. You know, he's running from this
2 by telling the police these misleading things. So we have
3 that, in addition to all the overwhelming evidence.

4 Really, Carl Wheeling makes the whole case. I mean I
5 probably could've rested yesterday after the first three
6 witnesses because Carl Wheeling -- you know, him coming in and
7 catching it happen and his testimony about, you know, stopping
8 him, that -- there's an attempted murder going on and that
9 prevents the murder going on and that's as plain as I can
10 explain it to you.

11 So I just ask you, when you hear the law, listen to it
12 carefully and just use your common sense. I mean that's what
13 it all comes down to. Use your common sense and apply it to
14 the facts of this case and there's only one reasonable
15 conclusion. Mr. Durant was trying to kill this guy, you know.

16 So I can't put it any plainer than that. So I thank you
17 for listening, and go back in that room and go through all
18 this stuff. If you need to listen to anything again, you
19 certainly can. Look at all the pictures. Discuss it. And
20 I'm sure after you do that and apply your common sense to it,
21 the only logical conclusion here is attempted murder. Thank
22 you.

23 THE COURT: Mr. Meetze?

24 CLOSING ARGUMENT ON BEHALF OF THE DEFENDANT

25 MR. MEETZE: Thank you, Your Honor. Mr. Richardson.

1 I told you at the beginning of the case and you've heard
2 a number of times you can only make decisions and deliberate
3 once you've heard all the evidence and you've heard the
4 arguments from the lawyers and you've gotten the charge on the
5 law. So we -- we're heading in that direction. You've gotten
6 all of the evidence. You've heard from Mr. Richardson.
7 You're going to hear from me now.

8 The only thing left will be to hear the charges on the
9 law from the judge and then the case will be in your hands,
10 but just because it won't be around -- won't be too much
11 longer before you have that doesn't mean that the different
12 parts that are still going on in this trial are not very, very
13 important because they are. Because just having the evidence
14 is not enough. You have to have that in conjunction with the
15 law that the judge will charge to you to be able to see how to
16 apply the evidence that you have received to the law that the
17 judge is going to charge you.

18 And the judge is going to charge on a number of different
19 laws and certainly I appreciate your patience and your
20 attention, and it'll be required for a little while longer
21 because some of the law can be -- like a lot of things I
22 suppose, it's not always written the way you would like it to
23 be written to be able to understand it entirely, but that's
24 just how things are.

25 Nothing is always black-and-white. There sometimes can

1 be gray and that's why we have charges and that's why we --
2 that's why we have laws and arguments and interpretations and
3 things like that, and that's why Mr. Richardson and I get to
4 stand up here and talk to y'all about the evidence and give
5 you our feelings as to what the evidence has shown.

6 As I told y'all earlier, in criminal court proof beyond a
7 reasonable doubt is required to find somebody guilty of any
8 criminal offense, and that is a very, very high burden, and
9 you'll be charged on the law as to what that means exactly.
10 I'll submit to you that proof beyond a reasonable doubt does
11 not require proof that overcomes any and all doubt. That
12 certainly would be an extreme burden, but it's a -- it comes
13 up just short of that. It's not too far off from that. It's
14 very important because of what we deal with here in General
15 Sessions court, in criminal court. It doesn't get any more
16 important than that.

17 And, you know, we started this thing right around a day
18 ago, right around 24 hours. So from the standpoint of this
19 trial, it's not a very long trial. You know, you see trials
20 from other states and things like that. They can last four --
21 five -- six months, which is just unbelievable for me to even
22 comprehend because here that's just not reality. Obviously,
23 it is in some places and how folks can do that I don't know,
24 but here a day trial is certainly not a long trial, but it's
25 not unusual. The length of a trial doesn't matter either.

1 It's still extremely important to both sides and again
2 certainly everybody appreciates what you all are here and the
3 purpose y'all are serving.

4 Mr. Richardson tells you or told you that, if it weren't
5 for Mr. Wheeling, Mr. Durant would be charged with murder.
6 Well, let me tell you what that is. That's speculation.
7 Nobody can stand here and tell you that for sure. That's pure
8 speculation. We don't know it.

9 Obviously, what we say is not evidence, but he wants you
10 to use your common sense and I would echo that, and certainly
11 common sense says we don't know what would have happened in
12 that bathroom had Mr. Wheeling not gone in there and to do so
13 is merely speculative. And speculation -- there's really no
14 room for that in a court of law. We deal with evidence. We
15 deal with facts. We deal with what we know, and not what we
16 speculate on.

17 Another thing that I will tell you is to that. Let's
18 just say, for example, Mr. Richardson alluded to the same
19 thing in his opening statement and here when he talked to you
20 that the only thing that keeps this from being a murder charge
21 is that Mr. Jones did not die, and obviously common sense
22 tells you that in order to have a murder charge at all you do
23 have to have a deceased individual and we don't have that
24 here. So certainly murder is not appropriate.

25 But because it's been mentioned to you and I've sort of

1 explained to the law on that and it's similar to attempted
2 murder and that the only difference is with attempted murder
3 and with murder -- the difference is with attempted murder you
4 don't have a deceased person, with murder you do. Otherwise,
5 murder is the intentional killing of an individual with malice
6 aforethought. Attempted murder is attempting to kill somebody
7 with malice aforethought.

8 The key in both of those is the malice. Mr. Richardson
9 focused on that and obviously that's the important part
10 because every killing -- intentional killing of somebody under
11 our law is not murder. Every intentional killing is not
12 murder, even killings that aren't justifiable in another way,
13 like by self-defense or stand your ground or something like
14 that. We have those laws that can justify killings.

15 I'm not about talking about that. There are unlawful
16 intentional killings that aren't murder because there are
17 unlawful intentional killings that don't have malice
18 accompanying that killing.

19 The same thing here. You have a charge of attempted
20 murder, but you can only have attempted murder if you find
21 that there is malice. An example of a murder -- excuse me.
22 An example of an intentional killing that would not be a
23 murder is in a situation where there's what's called under our
24 law sudden heat of passion with sufficient legal provocation.
25 All right?

1 What that means is in a situation where you've got two
2 people that are mad at each other and tempers rage and, as a
3 result of that rage, somebody flies off the handle and commits
4 an intentional act where someone dies. All right?

5 That's provocation. That's sudden heat of passion.
6 That's not malice. In those circumstances, we have laws that
7 cover that. Voluntary manslaughter is an intentional killing
8 of another human being with sudden heat of passion and
9 sufficient legal provocation.

10 And I submit to you that's what we have here, and the
11 testimony is clear. Mr. Wheeling testified, of course, it was
12 a long time ago. His testimony and his statement to the
13 police was an oral statement. It wasn't written down. So he
14 didn't have a hundred percent memory on what he told them, but
15 when I asked him if he could remember telling him that he saw
16 the two in a heated argument, heated meaning an elevated, a
17 serious argument with one another. They're both really mad.
18 You're not heated if you're not both really mad at each other.

19 And he says, yeah, I probably said that and, of course,
20 the officer that he said that to was Officer Cantey, and
21 Officer Canty did not hesitate. His investigation was that --
22 and he determined through his investigation that these two
23 were in a heated argument with one another.

24 And this is an argument that had been ongoing, and even
25 Mr. Jones told you, you know, and, you know, if you remember

1 testimony differently than what I say to you, obviously your
2 memories are the ones to go on with regards to that, but Mr.
3 Jones told you from here that, you know, he's from somewhere
4 else. He's from maybe Ohio or somewhere up north or whatever
5 and people do act different and things like that and folks
6 down here are different. And he said that a number of people
7 at this transitional shelter had problems with him.

8 So he certainly gave indication that any sort of ill --
9 any sort of animosity between Mr. Durant and Mr. Jones was
10 sort of ongoing, but on this particular evening you heard
11 testimony that there was a call that they had gotten into it
12 with one another wherever they went out drinking and then when
13 they both got back to the shelter, however they got back --
14 whether it was together or separately is not really clear from
15 the testimony, but Mr. Wheeling told you that Mr. Durant came
16 in there to talk to him about what happened. You heard
17 testimony that, you know, you've got to act in a particular
18 way in order to be able to keep your spot at the shelter.

19 So Mr. Durant came in to tell Mr. Wheeling what happened.
20 That, you know, they had gotten into it out there and Mr.
21 Wheeling testified that he had sort of calmed down at that
22 point in time and at that point in time you can certainly
23 infer that it was over. However, as Mr. Durant got up to
24 leave from his conversation with Mr. Wheeling, he pulled back
25 the curtain and he sees Mr. Jones has been there eavesdropping

1 on his conversation.

2 And you couple already being mad at somebody, two people
3 already being mad at each other, already had gotten into it
4 outside, couple that with alcohol, which certainly common
5 sense tells you people that have been drinking too much --
6 their emotions can be raised to a much higher level than they
7 would ordinarily be raised if they hadn't been drinking. And
8 testimony from Officer Cantey through his investigation was
9 that he determined that both parties were extremely
10 intoxicated is what his testimony was.

11 So you've got that coupled with -- with the intoxication.
12 He sees that Mr. Jones has been eavesdropping on his
13 conversation with Mr. Wheeling and then that sends him back to
14 a level of anger that led to what happened happening, and that
15 is not malice. That is not malice. That's heat of passion.
16 That's provocation.

17 I'm not saying anything that happened was appropriate,
18 not necessarily lawful, but it's not attempted murder. If
19 there's no malice, there's no attempted murder, and the facts
20 of this case do not rise to attempted murder because there is
21 not malice in this case.

22 This is -- you know, of course, it's something to be
23 inferred from the facts of this case, but I certainly submit
24 you that it can be inferred that we wouldn't be here if Mr.
25 Jones hadn't have been eavesdropping. Mr. Wheeling said Mr.

1 Durant had calmed down. He was fine at that point in time.

2 Not to necessarily, like I said, blame the victim in that
3 case. We all make decisions every day. Sometimes we make
4 decisions we regret. Sometimes decisions lead to things that
5 we don't anticipate and we go, oh, I shouldn't have done that.

6 So certainly eavesdropping on a conversation should not
7 have resulted in Mr. Jones suffering injuries that he
8 suffered, but we never will know what would've happened. And
9 that's because the actions that took place, the things that
10 took place, took place as a result of the heat of passion, the
11 anger in that moment that was there and, like I said, it was
12 from both parties. So when one person is mad at another
13 person, common sense will tell you it doesn't calm down from
14 there. It only gets higher and higher.

15 It's certainly unfortunate, but there's no malice there.
16 You have heat of passion. You've got provocation. That led
17 to what happened.

18 So you've already heard that based on our law and based
19 on the evidence that you have, you're going to hear charges on
20 a number of different kinds of law, and I'm going to do my
21 best to explain some of those -- to explain those to you for
22 your consideration.

23 The first of those is called assault and battery of a
24 high and aggravated nature. Now, assault and battery of a
25 high and aggravated nature -- I will tell you that under the

1 law a person commits the offense of assault and battery of a
2 high and aggravated nature if the person unlawfully injures
3 another person and the act is accomplished by means likely to
4 produce death or great bodily injury.

5 Now, likely to produce death or great bodily injury. In
6 this case, Mr. Jones was stabbed. As far as the pictures go
7 -- and you'll have the pictures to look at, and he testified
8 that there were some cuts and scrapes on other parts of his
9 body, but you can see two primary -- what I would say primary
10 injuries, one on the top of his back and one on his arm. And
11 both appeared to be more slashing than stabbing wounds. Okay?
12 But a slash to the upper back, a slash to the arm being the
13 primary injuries.

14 And I submit to you that, you know, just because you use
15 a knife -- and I'm not going to sit here and try to argue with
16 you that somebody can't be killed with a knife. That's
17 ridiculous. But I can say to you and I do submit to you that
18 not every attack with a knife is an attack that's likely to
19 produce great bodily injury.

20 Let me define for you under the law what great bodily
21 injury is. Great bodily injury means bodily injury which
22 causes a substantial risk of death or which causes serious
23 permanent disfigurement or protracted loss or impairment of a
24 function of a bodily member or organ.

25 Slashes that cause deep gashes in the top of his back and

1 top of his arm is not that type of injury that's going to
2 cause that type of injury, what would be classified under our
3 law as great bodily injury. It's just not.

4 And I submit to you the force and the injury that
5 happened here is -- is what it is. It's an injury that -- and
6 testimony was that this was -- you know, he was stabbing or
7 slashing with this knife or whatever it was, but what it
8 produced was a hospital visit for about five to five-and-a-
9 half hours that required two staples and stitches.

10 There's no testimony at all in regards to any injury
11 beyond that. No testimony as to any kind of even follow-up
12 care, whether he was prescribed any kind of medication or
13 anything. There's nothing. The only testimony was that I
14 went to the hospital. They gave me a few staples and
15 stitches.

16 And, you know, that's -- you know, using a knife doesn't
17 mean that automatically -- oh, it was a knife, automatically
18 somebody who injured somebody with a knife, that injury is of
19 the type that is likely to cause great bodily injury, likely
20 to cause substantial risk of death or which causes serious
21 permanent disfigurement or protracted loss or impairment of a
22 bodily function. There's just no evidence to that in this
23 case that what was done was likely to cause any of that and I
24 submit to you based on that that this is not assault and
25 battery of a high and aggravated nature.

1 So you also have assault and battery in the first degree.
2 Assault and battery in the first degree: a person commits the
3 offense of assault and battery in the first degree if a person
4 unlawfully offers or attempts to injure another person with
5 the present ability to do so and the act is accomplished by
6 means likely to produce death or great bodily injury.

7 Again, same argument. Still requires an injury or an
8 attempt to cause an injury that is likely to cause great
9 bodily injury, likely to produce great bodily injury. So you
10 go from -- well, in both of them, you know, likely to produce
11 great bodily injury. It's just not that kind of an injury and
12 the actions that occurred were not likely to. Stabbing
13 somebody in the top of the back and slicing somebody on the
14 top of the back and slicing them on the arm is not likely to
15 produce that kind of injury.

16 If somebody pulled out a rifle and aims it and fires it
17 and it just happened to miss the person, if that bullet hits
18 him in the chest or something like that, that's likely to
19 produce death. If somebody wants to run over somebody with a
20 car and they've got a bead on them and they're heading for
21 them and they're driving at a reasonably fast rate of speed
22 and the guy dives out of the way at the last minute, all
23 right, that's something that's likely to produce death or
24 great bodily injury.

25 Just because somebody is attacked with a knife doesn't

1 mean that that's a situation likely to produce death or great
2 bodily injury. So I submit to you that assault and battery in
3 the first degree is also not appropriate in this case.

4 You'll also be charged on the law of assault and battery
5 in the second degree. That law says that if a person
6 unlawfully injures another person or offers or attempts to
7 injure another person with the present ability to do so and
8 moderate bodily injury to another person results or moderate
9 bodily injury to another person could have resulted.

10 Moderate bodily injury is defined as a physical injury
11 that involves prolonged loss of consciousness -- there's no
12 evidence of that -- or that causes temporary or moderate
13 disfigurement or temporary loss of the function of a bodily
14 member or organ -- there's no evidence of that -- or injury
15 that requires medical treatment when the treatment requires
16 the use of regional or general anesthesia.

17 There was testimony obviously that there were staples
18 used to close the wound, as well as stitches, and I do think
19 Mr. Jones testified that in order to perform that on him they
20 did I think numb him up or whatever they do. So certainly a
21 reasonable person could find that based on the facts and based
22 on the law of assault and battery in the second degree that --
23 that that could fit moderate bodily injury.

24 The rest of the definition of moderate bodily injury says
25 results -- the injury results in a fracture, dislocation.

1 There's no fracture or dislocation here.

2 So that's at least a possibility. And you also have the
3 option of assault and battery in the third degree, which makes
4 it unlawful -- assault and battery third degree is the person
5 unlawfully injures another person or offers or attempts to
6 injure another person with the present ability to do so.

7 It's also obviously arguable on assault and battery in
8 the second degree that simply suturing somebody up with
9 stitches is not what's contemplated by our legislature when
10 they enacted the law. All right? That it should be something
11 more than that for even moderate bodily injury, but you
12 certainly can read and tell by the definitions and you'll hear
13 those charged to you as well and those definitions will be
14 given to you as part of your charge. It's still -- it's
15 substantial injury, for someone to be injured to a level that
16 would be considered under our law moderate bodily injury.

17 So certainly, at the most, that's what this case is. I
18 submit to you that it is not attempted murder because there is
19 no malice. Unfortunately, you've got two people that went out
20 and had too much to drink. That's where your problems start
21 right there. All right?

22 They get into an argument while they're out drinking.
23 They come back to their residence. Things seem to be calmed
24 down, but they're heightened back up again to a level where
25 one may fly off the handle and do something that is certainly

1 not appropriate and it shouldn't have happened, but it doesn't
2 make it malice.

3 So it's not attempted murder. It's provocation. It's
4 heat of passion, which makes it an assault and battery, and I
5 submit to you that it's certainly no worse than assault and
6 battery in the second degree. And certainly it's certainly
7 possible that it is assault and battery in the third degree,
8 but assault and battery of a high and aggravated nature and
9 first degree assault and battery, which require a likelihood
10 to produce great bodily injury -- great bodily injury under
11 our law is extreme injuries which are just not likely with the
12 actions that were done here.

13 And an injury that the -- when you have actual injury
14 that occurs and the extent of the injury is -- and, of course,
15 I don't want it to happen to me obviously, but the extent of
16 the injury is a five to five-and-a-half hour stay at the
17 hospital with no follow-up and stitches and a couple of
18 staples is nothing coming remotely close to great bodily
19 injury and nothing coming remotely close to even being likely
20 to cause great bodily injury.

21 Just because you actually had an injury here -- you know,
22 those situations I submit to you under this law are for when
23 in a situation where somebody tries to injure somebody, but
24 they really don't carry it out. It's not -- you know, it's
25 like the example of a car. All right? The person wasn't

1 actually injured, but had they been, it would've been bad.

2 This is a case where the person was actually injured. We
3 got -- you get to see the pictures. You can see the injury.
4 The injuries are not that level, not even close. So I submit
5 to you the assault and battery of a high and aggravated nature
6 and assault and battery in the first degree are also not
7 appropriate in this case, and certainly we are asking for a
8 verdict in this case that would be more consistent with the
9 facts in this case and that would be at worst assault and
10 battery in the second degree, but assault and battery in the
11 third degree would also be appropriate.

12 So we're asking you to bring back a verdict that speaks
13 the truth and it's certainly a verdict of one of those two
14 things. We certainly appreciate your attention and
15 consideration in this case. Thank you.

16 CHARGE ON THE LAW

17 THE COURT: All right. Ladies and gentlemen of the jury,
18 it's now my duty as the trial judge under the Constitution of
19 this state to charge and instruct you on the law applicable to
20 this case. It is your duty as jurors to accept and apply the
21 law as I will now state it to you.

22 Furthermore, it is your exclusive duty to decide all the
23 issues of fact in this case and to determine the effect,
24 value, weight, and truth of the evidence. Both the State and
25 the defendant have a right to expect that you will carefully

1 consider and evaluate the evidence and apply the law of this
2 case to it so that in the end both the State of South Carolina
3 and the defendant will receive a fair and impartial trial.

4 I want you to understand that when I use the word
5 defendant, I refer to Mr. Melvin Durant.

6 The charge alleged in the indictment is for one count of
7 attempted murder. To this charge, the defendant has entered a
8 plea of not guilty. This plea of not guilty places the burden
9 of proof on the State to prove the guilt of the defendant to
10 you, the jury, beyond a reasonable doubt.

11 I remind you, ladies and gentlemen, that the fact that
12 the defendant was arrested, charged, and indicted in this case
13 is not evidence in this case and cannot be considered by you
14 as evidence of guilt in this case, nor does it create any
15 presumption or inference of guilt.

16 The indictment is simply the formal written instrument
17 which contains the charge made against the defendant. It is
18 the formal document by which this case is brought into this
19 court.

20 It is vital to understand that the defendant is presumed
21 under the law to be innocent of this charge. The defendant
22 has no obligation to prove his innocence. It is a fundamental
23 rule of our law that a defendant, irrespective of the
24 seriousness of the charge against him, is always presumed
25 innocent of the crime for which he is charged unless and until

1 his guilt has been proven by evidence that satisfies you, the
2 jury, beyond a reasonable doubt.

3 The presumption of innocence is not a mere legal theory
4 or a legal phrase. The presumption of innocence is very
5 important and you, ladies and gentlemen, need to understand
6 that this presumption accompanies the defendant from the time
7 of his arrest and appearance in this court and continues with
8 the defendant even after you retire to the jury room to
9 deliberate. In other words, the defendant receives the
10 benefit of the presumption of innocence until the very end of
11 this trial when you, the jury, will deliberate upon the
12 evidence and decide whether the State has proven his guilt
13 beyond a reasonable doubt.

14 Now, what is a reasonable doubt in the law? A reasonable
15 doubt, ladies and gentlemen, is the kind of doubt that would
16 cause a reasonable person to hesitate to act. Proof beyond a
17 reasonable doubt is proof that leaves you firmly convinced of
18 the defendant's guilt.

19 Now, there are very few things in this world that we know
20 with absolute certainty. So even in criminal cases, the law
21 does not require proof that overcomes every possible doubt.
22 However, if, based on your consideration of the evidence, you
23 are firmly convinced that the defendant is guilty of the crime
24 charged, you must find him guilty. If, on the other hand, you
25 think there is a real possibility that he is not guilty, you

1 must give him the benefit of the doubt and find him not
2 guilty.

3 Please understand, ladies and gentlemen, that reasonable
4 doubt may arise from evidence which has been presented in the
5 case or from the lack of evidence in the case. It is your
6 responsibility to determine whether or not reasonable doubt
7 exists as to the guilt of the defendant.

8 I charge you that the defendant is entitled to every
9 reasonable doubt arising in the whole case. If upon any issue
10 of fact essential to conviction and a verdict of guilty you
11 have a reasonable doubt as to how that issue should be
12 resolved, it would be your duty to resolve that reasonable
13 doubt in favor of the defendant.

14 Now, during this trial, ladies and gentlemen, you and I
15 have had separate duties to perform. As the trial judge, it
16 is my responsibility to preside over this trial, and I also
17 have the duty to rule upon the admissibility of the evidence
18 offered during the course of this trial.

19 In that regard, you are to consider only the competent
20 evidence before you and you are to disregard from your mind
21 any testimony ordered stricken from the record of this case
22 during the progress of the trial, if there was any. And you
23 are to consider only the testimony which is been presented
24 from this witness stand, together with any exhibits admitted
25 into the record of this case and any stipulations of counsel

1 made into the record.

2 Furthermore, I have the additional duty to charge you on
3 the applicable law of this case and, in that regard, I am the
4 sole judge of the law in this case. It is your duty to accept
5 and apply the law as I state it to you. If you have any
6 preconceived ideas as to what the law is or what the law
7 should be and it does not agree with what I tell you the law
8 is, you are obligated under your oath to abandon these
9 preconceptions because you are sworn to accept and apply the
10 law precisely as I state it to you.

11 In this trial, you are the sole and exclusive judge of
12 the facts and I am the judge of the law. Do not infer that I
13 have any opinion about the facts in this case from anything
14 that I have said during the course of this trial in ruling
15 upon the admissibility of evidence or otherwise or from
16 anything that I say during the course of this charge to you.

17 In this regard, the law simply does not permit me to have
18 an opinion about the facts. As jurors, it is your duty alone
19 to determine the effect, value, weight, and truth of the
20 evidence presented during the course of this trial.

21 Now, in determining what the facts of this case are, you
22 must judge the credibility, which simply means the
23 believability of the witnesses and the value of weight to be
24 given to their testimony. You alone must decide the force,
25 effect, and truth of the testimony.

1 Now, in making this decision, there are many things that
2 you may and should take into consideration, such as the
3 appearance and manner of the witness on the stand, a
4 characteristic often referred to as the demeanor of the
5 witness. Was the witness forthright or hesitant? Was the
6 witness's testimony consistent or did it contain
7 discrepancies? What was the ability of the witness to know
8 the facts about which he or she testified? Did the witness
9 have a cause or reason to be biased and prejudiced in favor of
10 the testimony he or she gave? Was the testimony of the
11 witness corroborated or made stronger by other testimony and
12 evidence or was it made weaker or impeached by such other
13 testimony and evidence?

14 As jurors, please understand that you have the right to
15 believe a small portion of a witness's testimony and discard
16 the larger portion or vice versa. You may believe all of a
17 witness's testimony or none. You may believe the testimony of
18 a single witness against that of many witnesses or the other
19 way around.

20 In exercising your mental processes and attempting to
21 decide the truth, the law simply requires that you exercise
22 your good judgment, your common sense, your sense of logic and
23 reason, and your experiences in life. You then apply these
24 attributes to the evidence and apply the law as I state it to
25 you and thus arrive at a verdict.

1 Now, there are two types of evidence, ladies and
2 gentlemen, which are generally presented during a trial:
3 direct evidence and circumstantial evidence.

4 Direct evidence is the testimony of a person who claims
5 to have actual knowledge of a fact, such as an eyewitness. It
6 is evidence which immediately establishes the main fact to be
7 proved.

8 Circumstantial evidence is proof of a chain of facts and
9 circumstances indicating the existence of a fact. It is
10 evidence which immediately establishes collateral facts from
11 which the main fact may be inferred. Circumstantial evidence
12 is based on inference and not on personal knowledge or
13 observation.

14 The law makes absolutely no distinction between the
15 weight or value to be given to either direct or circumstantial
16 evidence, nor is a greater degree of certainty required of
17 circumstantial evidence than of direct evidence. You should
18 weigh all of the evidence in this case. If after weighing all
19 the evidence you are not convinced of the guilt of the
20 defendant beyond a reasonable doubt, you must find the
21 defendant not guilty.

22 Now, ladies and gentlemen, during the course of the
23 trial, you heard testimony from individuals who had a prior
24 criminal record. An individual who has a prior or a past
25 criminal record is competent to testify during a trial. A

1 past record does not affect the ability of that witness to
2 testify. The past record may only be considered by you, if at
3 all, in determining the witness's believability. Remember,
4 ladies and gentlemen, you are the sole judge of the facts in
5 the case and of the believability of any and all of the
6 witnesses.

7 Now, in this case, ladies and gentlemen, you heard the
8 testimony of someone who was qualified as an expert. The
9 rules of evidence -- as I previously told you before, the
10 rules of evidence ordinarily do not permit witnesses to
11 testify to opinions or conclusions.

12 An exception to this rule exists for witnesses that we
13 call expert witnesses. A witness who by education and
14 experience has become an expert in some art, science,
15 profession or calling may state an opinion as to relevant and
16 material matter in which the witness claims to be an expert
17 and may also state the reasons for the opinion.

18 You should consider any expert opinion received in
19 evidence in this case and, like any other evidence, give it
20 the weight that you think it deserves. If you decide that the
21 opinion of an expert witness is not based on sufficient
22 education and experience or if you conclude that the reasons
23 given in support of the opinion are not sound or that the
24 opinion is outweighed by other evidence, you may disregard the
25 opinion entirely.

1 Furthermore, an expert witness's testimony is to be given
2 no greater weight than that of other witnesses simply because
3 the witness is an expert. Furthermore, you are not required
4 to accept an expert's opinion, even though it is not
5 contradicted.

6 Now, ladies and gentlemen, in this case, the defendant
7 chose not to testify. I instruct you and I emphasize that the
8 fact that the defendant did not testify is not a factor to be
9 considered by you in any way in your deliberations and in your
10 consideration on the question of the guilt or innocence of the
11 defendant. It must not be considered by you in any manner
12 whatsoever.

13 A defendant has the constitutional right to remain
14 silent, and the assertion of this right must not be considered
15 by you in your deliberations. I repeat, under your oath, you
16 are to draw no conclusion whatsoever from the fact that the
17 defendant in this case did not testify. The fact that this
18 defendant did not testify should not even be discussed in the
19 jury room.

20 The burden of proof, as I have stated to you, is on the
21 State. The defendant is not required to prove his innocence.
22 The burden of proof remains on the State to prove guilt beyond
23 a reasonable doubt.

24 Now, ladies and gentlemen, in order to establish criminal
25 liability, criminal intent is required. For example, the

1 mental state required to be proven by the State for a
2 particular crime might be purpose, intent, knowledge,
3 recklessness or criminal negligence. Criminal intent must be
4 proven by the State beyond a reasonable doubt.

5 Criminal intent is always a matter that must be
6 determined by the jury from the circumstances surrounding the
7 situation. There is no way, ladies and gentlemen, to prove
8 intent to a mathematical certainty. There is no way that
9 medical science can dissect a person's brain and determine
10 what the person had in mind. So the law says that criminal
11 intent may be inferred from the circumstances shown to have
12 existed. This is how you make a determination of whether or
13 not the element requiring intent was present.

14 It is not necessary to establish intent by direct and
15 positive evidence, but intent may be established by inference
16 in the same way as any other fact by taking into consideration
17 the acts of the parties and all the facts and circumstances of
18 the case. Criminal intent is a mental state, a conscious
19 wrongdoing.

20 It is up to you to determine what the defendant intended
21 to do based on the circumstances shown to have existed.
22 Criminal intent can arise from action or a failure to act. It
23 may arise from negligence, recklessness or an indifference to
24 duty or to consequences that is considered by the law to be
25 the equivalent of criminal intent.

1 Now, an attempt, ladies and gentlemen, is an effort to
2 accomplish a crime which does not succeed. An attempt
3 includes a specific intent to do a particular criminal act,
4 along with an act falling short of the act intended.

5 The State must show more than mere preparation and
6 intent. There must be some overt act committed in the effort
7 to commit the crime. Intent means intending the result which
8 actually occurs, not accidentally or involuntary. It may be
9 shown by acts and conduct of the defendant and other
10 circumstances from which you may naturally and reasonably
11 infer intent.

12 Now, the defendant, ladies and gentlemen, is charged with
13 attempted murder. In order to prove this crime, the State
14 must prove the defendant attempted to kill another person with
15 malice aforethought, either express or implied.

16 Malice is hatred, ill will, or hostility towards another
17 person. It is the intentional doing of a wrongful act without
18 just cause or excuse and with an intent to inflict an injury
19 or under circumstances that the law will infer an evil intent.

20 Malice aforethought does not require that malice exist
21 for any particular time before the act is committed, but
22 malice must exist in the mind of the defendant just before and
23 at the time of the act is committed. Therefore, there must be
24 a combination of the previous evil intent and the act.

25 Malice aforethought may be expressed or inferred. These

1 terms, expressed and inferred, do not mean different kinds of
2 malice, but merely the manner in which malice may be shown to
3 exist. That is either by direct evidence or by inference from
4 the facts and circumstances which are proved.

5 Express malice is shown when a person speaks words which
6 express hatred or ill will for another or when the person
7 prepared beforehand to do the act which was later
8 accomplished. For example, lying in wait for a person or any
9 other acts of preparation going to show that the deed was
10 within the defendant's mind would be expressed malice. Malice
11 may be -- malice may be inferred from conduct showing a total
12 disregard for human life or when circumstances demonstrate a
13 wanton or reckless disregard for human life.

14 If facts are proved beyond a reasonable doubt sufficient
15 to raise an inference of malice to your satisfaction, this
16 inference would be simply an evidentiary fact to be considered
17 by you, the jury, along with the other evidence in the case,
18 and you may give it the weight that you decide it should
19 receive.

20 A specific intent to kill is an element of attempted
21 murder. Intent means intending the result which actually
22 occurs, not accidentally or involuntary. Intent may be shown
23 by acts and conduct of the defendant and other circumstances
24 from which you may naturally and reasonably infer intent.

25 Evidence of the character of the act, the character of

1 the instrument used, the manner in which it was used, the
2 purpose to be accomplished and the resulting wounds or
3 injuries may be considered in determining the intent with
4 which the act was committed. Intent may also be inferred when
5 it is demonstrated that the defendant voluntarily and
6 willfully commits an act, the natural tendency of which is to
7 destroy another's life.

8 Assault and battery. Ladies and gentlemen, if you find
9 -- I'm going to start charging you on what is called lesser-
10 included offenses. Okay?

11 The first lesser-included offense is assault and battery
12 of a high and aggravated nature. If you find, ladies and
13 gentlemen, that the State has failed to prove that the
14 defendant committed the offense of attempted murder, you may
15 then or you must then consider whether the State has proven
16 beyond a reasonable doubt that the defendant committed the
17 lesser-included offense of assault and battery of a high and
18 aggravated nature.

19 A person commits the offense of assault and battery of a
20 high and aggravated nature if the person unlawfully injures
21 another person and the act is accomplished by means likely to
22 produce death or great bodily injury.

23 Now, if you find the State has failed to prove beyond a
24 reasonable doubt that the defendant committed assault and
25 battery of a high and aggravated nature, you must then

1 determine whether the State has proven beyond a reasonable
2 doubt that the defendant committed the lesser-included offense
3 of assault and battery in the first degree.

4 A person commits the offense of assault and battery in
5 the first degree if the defendant unlawfully offers or
6 attempts to injure another person with the present ability to
7 do so and the act is either accomplished by means likely to
8 produce death or great bodily injury.

9 Now, if you find the State has failed to prove beyond a
10 reasonable doubt that the defendant committed assault and
11 battery in the first degree, you must then determine whether
12 the State has proven beyond a reasonable doubt that the
13 defendant committed the lesser-included offense of assault and
14 battery in the second degree.

15 A person commits the offense of assault and battery in
16 the second degree if the defendant unlawfully injured another
17 person or offered or attempted to injure another person with
18 the present ability to do so and moderate bodily injury to
19 another -- to another person results or moderate bodily injury
20 to another person could have resulted.

21 Now, if you find the State has failed to prove beyond a
22 reasonable doubt that the defendant committed assault and
23 battery in the second degree, you must then determine whether
24 the State has proven beyond a reasonable doubt that the
25 defendant committed the lesser-included offense of assault and

1 battery in the third degree.

2 A person commits the offense of assault and battery in
3 the third degree if the defendant unlawfully injured another
4 person or offered or attempted to injure another person with
5 the present ability to do so.

6 Now, the last few offenses are lesser-included offenses
7 that I charged you on, ladies and gentlemen. There were a
8 couple terms that were used within those charges, one being
9 great bodily injury and moderate bodily injury. As those
10 terms are used in this charged -- charge, they are defined as
11 follows.

12 Great bodily injury is defined as bodily injury which
13 causes a substantial risk of death or which causes serious,
14 permanent disfigurement or protracted loss or impairment of
15 the function of a bodily member or organ.

16 Moderate -- moderate bodily injury is defined as physical
17 injury requiring treatment to an organ system of the body
18 other than the skin, muscles and connective tissues of the
19 body except when there is penetration of the skin, muscles and
20 connective tissues that require surgical repair of a complex
21 nature or when treatment of the injuries requires the use of
22 regional or general anesthesia.

23 Now, ladies and gentlemen, I am now drawing near the end
24 of my charge to you and I want you to clearly understand that
25 you, ladies and gentlemen, are not partisans or advocates for

1 the State of South Carolina or the defendant. It is your --
2 your duty by your joint deliberations to determine the truth
3 in this case, giving the defendant the benefit of every
4 reasonable doubt on each and every issue.

5 Then to the facts which you determine to be true, ladies
6 and gentlemen, you should take and apply the law which has
7 been given to you by this Court and thus arrive at a verdict
8 which speaks the truth in this case. In fact, the word
9 verdict, which has a Latin derivative, means a true saying.
10 Thus, when you have accomplished these responsibilities, you
11 will have satisfied your oath as jurors and you will have
12 discharged your duty to this Court.

13 Now, once you retire to the jury room, the bailiff will
14 give the verdict form to you, Mr. Foreman. When you, the --
15 when you, the jury -- when you, the jury, arrive at a verdict
16 as to the offense charged in this case, you, Mr. Foreman, will
17 select the verdict as to the charge on the verdict form.

18 If the State has failed to prove the guilt of the
19 defendant beyond a reasonable doubt, your verdict will be not
20 guilty. Likewise, if the State has proven the guilt of the
21 defendant beyond a reasonable doubt, your verdict will be
22 guilty.

23 Now, once a decision has been made, the foreman will
24 check whichever choice is the verdict of the jury as to the
25 charge. The verdict, ladies and gentlemen, that you render in

1 this case -- the verdict that you render, ladies and
2 gentlemen, must be the verdict of each and every juror. It
3 must be your unanimous verdict. All twelve jurors must agree
4 on the verdict which you authorize the foreman to write for
5 the jury.

6 Ladies and gentlemen, I want you to further understand
7 that the order in which the choices of verdict appear on the
8 verdict form are not suggestive of any verdict on the part of
9 this Court. The verdict in this case, ladies and gentlemen,
10 is to be determined by you, the jury, not the Court.

11 Furthermore, ladies and gentlemen, please understand that
12 even though I will give the verdict form to the foreman, it is
13 not his verdict alone. It must be the verdict of all twelve
14 of you, and I emphasize again that it must be unanimous.

15 I am also, ladies and gentlemen, going to give you all a
16 copy of these instructions in written form. During your
17 deliberations, you may refer to the instructions to guide your
18 decision-making. You must consider, ladies and gentlemen, the
19 instructions as a whole and not follow some and ignore others.

20 Please, Mr. Foreman, when you all return a verdict,
21 please return these instructions to the Court at that time as
22 well. What I am going to do now, ladies and gentlemen, is I
23 am getting ready to ask you to retire to the jury room, but
24 hold on just a minute here.

25 On the verdict form, Mr. Foreman and ladies and gentlemen

1 of the jury, there are five -- five questions on here. All
2 right?

3 The first question deals with the charge of attempted
4 murder. And it's got in bold below each question, but on the
5 first question, for instance, it says as to the charge of
6 attempted murder, we, the jury, unanimously find the
7 defendant, Melvin Durant, either guilty or not guilty.

8 If you were to find Mr. Durant guilty and you were to
9 check that box, that would be the end of your deliberations.
10 You would sign and date the verdict form. If you were to find
11 Mr. Durant not guilty, then you go to the next question.

12 And you go through likewise on question two. If you were
13 to find him guilty on question two after not -- after having
14 found him not guilty on question one, if you were to find him
15 guilty as to the lesser-included of assault and battery of a
16 high and aggravated nature, you would mark guilty, sign and
17 date.

18 If you were to find Mr. Durant not guilty, then and only
19 then would you move to the next question. I hope I'm clear on
20 what I am explaining there.

21 The only situation wherein you continually move down the
22 lesser-included offenses is if you find the defendant not
23 guilty on one of the questions, on the first question for
24 instance. Only then would you move to question two. I think
25 it's very self-explanatory on the verdict form.

1 Now, what I'm going to ask you all to do is to retire to
2 your jury room, but do not -- do not begin your deliberations
3 until you're instructed to do so. The law, ladies and
4 gentlemen, requires that I consult with the attorneys to make
5 sure that I have not left anything out of these instructions.

6 Now, once I have consulted with the attorneys, the items
7 of evidence will be brought in to you, along with the verdict
8 form and a copy of these instructions, and Mr. Sammy will
9 instruct you to begin your deliberations.

10 During your deliberations, ladies and gentlemen, if you
11 have any questions, Mr. Foreman, it will be your
12 responsibility to reduce such question to writing, knock on
13 the door, let the bailiff know that you have a question, give
14 it to him, and he'll get it to me and I'll answer it however
15 the Court deems appropriate.

16 Likewise, when you all have reached a verdict in this
17 case and you have filled out the verdict form, signed and
18 dated the verdict form, knock on the door, let the bailiff
19 know that you've reached a verdict, and we will get you back
20 into the courtroom as quickly as possible.

21 Before I let you retire to the jury room, does everyone
22 on the jury feel okay? Does anyone not feel well? All right.
23 I'm going to ask that you step to the jury room, but do not
24 begin your deliberations.

25 (WHEREUPON, the jury exited the courtroom at 2:48 p.m.)

1 THE COURT: Mr. Meetze, Mr. Richardson, y'all come on up
2 here for a minute, please.

3 (WHEREUPON, a bench conference was held off the record,
4 after which the proceedings resumed as follows.)

5 THE COURT: While they're up here, any exception or
6 objection to the charge by the State?

7 MR. RICHARDSON: No, sir.

8 THE COURT: Defense counsel?

9 MR. MEETZE: No, Your Honor.

10 THE COURT: Okay.

11 (WHEREUPON, a bench conference was held off the record,
12 after which the proceedings resumed as follows.)

13 MR. MEETZE: I don't have any objection to the verdict
14 form, Judge.

15 THE COURT: All right. Make sure they've got all the
16 items of evidence over there.

17 MR. RICHARDSON: Judge, you want me to keep the knife out
18 here?

19 THE COURT: Yeah. Just tell them if they need to see the
20 knife, they can come back in here and see it.

21 MR. RICHARDSON: Okay. This is everything.

22 MR. MEETZE: If they want to rehear the tapes or
23 whatever, we can just bring them out here.

24 THE COURT: Yes.

25 MR. RICHARDSON: Leave the tapes out or send them back?

1 THE COURT: I mean you can send them back, but just tell
2 them -- Mr. Sammy, tell them the knife is out here. If they
3 want to see that knife, then they can come back out here and
4 see it. Likewise, if they want to hear any of the audio or
5 see any of the video that we can bring them back out here and
6 show it to them.

7 THE BAILIFF: Okay.

8 THE COURT: Hold on just a minute before you go back
9 there. I've got to get this charge -- one correction to this
10 charge.

11 (WHEREUPON, there was a pause in the proceedings, after
12 which the proceedings resumed as follows.)

13 THE COURT: All right. Here you go.

14 (WHEREUPON, jury deliberations began at 2:51 p.m.)

15 THE COURT: Hey, get my alternate out. Tell him to get
16 the alternate out. Mr. Harrell. Mr. Carroll Harrell is the
17 alternate.

18 (WHEREUPON, the alternate juror was released at 2:53
19 p.m.)

20 THE COURT: All right. We'll stand at ease.

21 (WHEREUPON, there was a break in the proceedings from
22 2:53 p.m. until 3:34 p.m., after which the proceedings
23 resumed as follows.)

24 THE COURT: All right. I've received a note from the
25 jury, which I have shared with the attorneys back in chambers.

1 It simply says clarify between high and aggravated -- high and
2 aggravated and first degree.

3 After discussing this with the attorneys, I'm going to
4 bring the jury back into the courtroom and simply offer to
5 charge them on those two offenses. All right?

6 I'm going to mark this note as a Court's exhibit. Bring
7 me the jury, please, sir.

8 (WHEREUPON, the jury note was marked as Court's Exhibit
9 Number 2.)

10 (WHEREUPON, the jury entered the courtroom at 3:35 p.m.)

11 THE COURT: All right. Mr. Foreman and ladies and
12 gentleman of the jury, I received your note asking the Court
13 to clarify between high and aggravated and first degree.

14 All that I can do for you -- I've given you -- I've
15 charged you on the law as it relates to each of those
16 offenses, lesser-included offenses of attempted murder. I
17 mean I've given you a copy of the instructions that I read to
18 you. All that I can do is reread what the law is under those
19 charges of which I have given you. All right?

20 Assault and battery of a high and aggravated nature is --
21 occurs when a person commits the offense of assault and
22 battery of a high and aggravated nature -- let me start over.
23 All right?

24 A person commits the offense of assault and battery of a
25 high and aggravated nature if the person unlawfully injures

1 another person and the act is accomplished by means likely to
2 produce death or great bodily injury.

3 That is the definition of assault and battery of a high
4 and aggravated nature. Assault and battery in the first
5 degree is as follows.

6 A person commits the offense of assault and battery in
7 the first degree if the defendant unlawfully offers or
8 attempts to injure another person with the present ability to
9 do so and the act is either accomplished by means likely to
10 produce death or great bodily injury.

11 All right. I have read you the law as it relates to
12 those two charges, which you, Mr. Foreman, inquired about.
13 And I have previously defined great bodily injury as it is to
14 be applied to those respective offenses.

15 At this time, I'm going to ask you to return to your jury
16 room and continue with your deliberations.

17 (WHEREUPON, the jury exited the courtroom at 3:37 p.m.)

18 THE COURT: Any exception or objection to anything that I
19 have said to the jury from the State?

20 MR. RICHARDSON: No, sir.

21 THE COURT: Defense counsel?

22 MR. MEETZE: No, Your Honor.

23 THE COURT: We'll stand at ease.

24 (WHEREUPON, there was a break in the proceedings from
25 3:37 p.m. until 3:48 p.m. after which the proceedings

1 resumed as follows.)

2 THE COURT: All right. It's my understanding the jury
3 has got a verdict. Anything from the State before I bring the
4 jury back out?

5 MR. RICHARDSON: No, sir.

6 THE COURT: Defense counsel?

7 MR. MEETZE: Nothing, Your Honor.

8 THE COURT: All right. If you'll bring me the jury,
9 please.

10 THE BAILIFF: Yes, sir.

11 (WHEREUPON, the jury entered the courtroom at 3:48 p.m.)

12 THE COURT: All right. Madam Clark?

13 THE CLERK: Mr. Foreman, have you reached a verdict?

14 THE FOREMAN: Yes, we have.

15 (WHEREUPON, the verdict form was passed by the clerk to
16 the Court.)

17 THE COURT: All right. The verdict form appears to be in
18 order. Madam Clark, would you publish the verdict, please?

19 VERDICT

20 THE CLERK: The State of South Carolina, County of
21 Florence, in the Court of General Sessions, Indictment Number
22 2015-GS-21-211, the State of South Carolina versus Melvin
23 Durant.

24 As to the charge of attempted murder of Wiley Jones, we,
25 the jury, unanimously find the defendant, Melvin Durant, not

1 guilty.

2 As to the charge of assault and battery of a high and
3 aggravated nature, we, the jury, unanimously find the
4 defendant, Melvin Durant, guilty.

5 Dated -- Tommy Cantrell, Foreperson, signed -- I'm sorry.
6 dated June 21st, 2016, signed Tommy Cantrell, Foreperson.

7 Members of the jury, if this is your verdict, please
8 raise your right hand?

9 (WHEREUPON, all jurors complied.)

10 THE COURT: All right. Anything from the State at this
11 time?

12 MR. RICHARDSON: No, sir.

13 THE COURT: Defense counsel?

14 MR. MEETZE: No, sir, Your Honor.

15 THE COURT: All right. Ladies and gentleman of the jury,
16 I want to thank you for your service and your attentiveness
17 throughout the trial of this case. You all have performed
18 your responsibilities as jurors.

19 I told you when we started this trial yesterday not to
20 discuss the case at all -- not to discuss the case at all
21 until you were instructed to do so. When I release you here
22 today, you can talk about the case if you so desire. Okay?
23 If you so desire. No one can make you talk about the case.

24 If you -- if someone approaches you to talk about the
25 case and you tell them you don't want to talk about it and

1 they don't leave you alone, you let the Court know and I
2 promise you we'll get it taken care of from up here. Okay?

3 When I release you here today -- well, do they need to be
4 back in the morning, Mr. Jепertinger?

5 MR. JEPERTINGER: I would say no, Judge.

6 THE COURT: All right. Call back -- do this for me.
7 Call back that number tonight after six o'clock. Call that
8 number back tonight after six o'clock. Madam Clerk, if you --

9 THE CLERK: Do you all have the number? If they don't,
10 I've got it.

11 THE COURT: Okay.

12 THE CLERK: I've got it.

13 THE COURT: She's got it right here for you. Call that
14 number back tonight after six o'clock and it'll give you
15 instructions as to what you are to do with regards to tomorrow
16 and possibly the rest of the week. But make sure you call
17 that number back after six.

18 Anything else from the State at this time?

19 MR. RICHARDSON: No, sir.

20 THE COURT: Defense counsel?

21 MR. MEETZE: Nothing.

22 THE COURT: Now, after you all have fulfilled your
23 responsibilities as jurors, what will take place at this point
24 will be sentencing, and that will be conducted by me. I will
25 tell you that if you wish to leave at this time, you can

1 leave. If you wish to stay for sentencing, you may stay for
2 sentencing as well. That is left entirely up to you.

3 If you wish to leave, now is your time to leave.
4 Otherwise, we're going to move forward straight into
5 sentencing. Okay?

6 (WHEREUPON, two jurors exited the courtroom.)

7 THE COURT: Mr. Richardson, are you ready?

8 MR. RICHARDSON: Yes, sir. May it please the Court, Your
9 Honor.

10 THE COURT: Yes, sir.

11 MR. RICHARDSON: Before you is Melvin Durant. As the
12 Court is aware, he was just found guilty of assault and
13 battery of a high and aggravated nature. That is a zero to
14 20-year offense. I've got the appropriate boxes checked on
15 the sentencing sheet. It's a violent offense. It's a serious
16 offense. It's a lesser included of what he was charged with.

17 He does have a prior record, Your Honor. He had a
18 trespass in '88, DUS in '88, trespass in --

19 THE COURT: Hold on. Slow down. All right? All right.
20 Trespass and DUS, driving under suspension.

21 MR. RICHARDSON: Trespass in '89, assault and battery
22 with intent to kill in '89.

23 THE COURT: All right.

24 MR. RICHARDSON: Trespass in '90.

25 THE COURT: All right.

1 MR. RICHARDSON: Probation revocation in '91.

2 THE COURT: All right.

3 MR. RICHARDSON: Two counts of DUS in '92.

4 THE COURT: All right.

5 MR. RICHARDSON: A DUS in '94.

6 THE COURT: All right.

7 MR. RICHARDSON: A DUS in '96.

8 THE COURT: All right.

9 MR. RICHARDSON: Assault and battery of a high and
10 aggravated nature in 2006.

11 THE COURT: All right.

12 MR. RICHARDSON: Criminal domestic violence in 2008.

13 THE COURT: All right.

14 MR. RICHARDSON: A DUI in 2011.

15 THE COURT: All right. Anything further from the State?

16 MR. RICHARDSON: No, sir, Your Honor.

17 THE COURT: All right. Mr. Meetze, happy to hear from
18 you, sir.

19 MR. MEETZE: Thank you, Your Honor. May it please the
20 Court.

21 Your Honor, Mr. Durant has been incarcerated since his
22 arrest back on November the 12th of 2014. That's 588 days.

23 Your Honor, recognizing he does have some prior record,
24 we would just point out to the Court that the majority of the
25 more serious stuff is ten years old or older. Mr. Durant has

1 been very involved in his case. We've meant any number of
2 times down at the jail. He's certainly remorseful for having
3 been here and certainly is here to ask the Court for mercy in
4 this matter.

5 Certainly, you've heard the facts of the case. This case
6 was tried here over the last day and certainly we're asking
7 for whatever mercy the Court believes is appropriate in this
8 matter. He's I think 50 --

9 THE DEFENDANT: Three.

10 MR. MEETZE: Fifty-three years old?

11 THE DEFENDANT: Right.

12 MR. MEETZE: And his life has been full of ups and downs
13 and certainly that's no excuse, but we would just ask for
14 mercy in this case.

15 THE COURT: All right. Thank you, Mr. Meetze. Mr.
16 Durant, anything you wish to say, sir?

17 THE DEFENDANT: Yes, sir. And I would like to apologize
18 to the Court for being here today and taking up the jurors'
19 time. Thank you all for y'all deliberation and having
20 patience to be here to listen to everything that went on.

21 THE COURT: Please direct your comments to me, Mr.
22 Durant.

23 THE DEFENDANT: Oh, I'm sorry. I appreciate the jury. I
24 appreciate you, Judge, and if you really can take it into
25 consideration and look like all my past in this case in the

1 sentencing and I apologize for being here. I'm trying to get
2 my life together, which that's what I was always doing, but
3 things happen. Like I said, it's just another bad day in the
4 world. But I apologize for being in your court and I hope not
5 to see you again.

6 THE COURT: This prior assault and battery with intent to
7 kill back in '89, that would fall within the three-strike
8 rule, Mr. Meetze?

9 MR. MEETZE: It would actually fall -- my understanding
10 of the law is that it would fall within both the two- and
11 three-strikes law.

12 THE COURT: I'm sorry?

13 MR. MEETZE: It's my understanding and belief based on
14 the law it would fall within both the two- and three-strikes
15 law.

16 THE COURT: All right.

17 MR. MEETZE: I think on that particular charge he got a
18 probationary sentence, but --

19 THE COURT: It still falls within.

20 MR. MEETZE: It does not change the nature of the
21 conviction.

22 THE COURT: All right. All right. Mr. Durant, it's --
23 what I see day in and day out in the courtroom, especially in
24 criminal court, the pattern in your life of drugs --

25 THE DEFENDANT: Yes, sir.

1 MR. RICHARDSON: -- and alcohol has kept you in and out
2 of the system for almost 30 years -- 30 years.

3 THE DEFENDANT: I am --

4 THE COURT: Since '88. Since '88.

5 THE DEFENDANT: Yes, sir.

6 SENTENCE

7 THE COURT: And so -- all right. On Indictment 2015-GS-
8 21-00211, the defendant is committed to the State Department
9 of Corrections for a period of 20 years. Give him credit for
10 588 days. Good luck to you, Mr. Durant.

11 MR. RICHARDSON: Judge, is that 588?

12 THE COURT: It's 588 days, yes, sir. All right. Mr.
13 Meetze, anything at this time? Anything further?

14 MR. MEETZE: No, sir, Your Honor.

15 THE COURT: All right. Ladies and gentleman, again,
16 thank you for your service. Some of you may have some
17 questions. I'm not exactly sure. I'll just kind of leave it
18 at that.

19 What he was convicted of, the assault -- I will say a
20 couple things. Assault and battery high and aggravated nature
21 is considered under South Carolina law to be a serious
22 offense, as well as a violent defense. Under that law, if the
23 fact that it's a serious offense --

24 MR. MEETZE: Actually, most serious offense.

25 THE COURT: It's a most serious offense. It falls under

1 the three-strike rule -- two-strike rule in South Carolina.
2 If you're convicted of two most serious offenses in this state
3 and the State has properly noticed an individual of their
4 intent to seek life, the Court has no alternative but to give
5 life. All right?

6 Mr. Durant has a prior -- as you heard his prior record,
7 prior assault and battery with intent to kill, as well as a
8 previous assault and battery of a high and aggravated nature.
9 Those are things that very rarely come out during the course
10 of a trial that a jury hears because the law does not want
11 that in any way to prejudice a defendant and a jury to come to
12 a conclusion that, if he did it in the past, he did it this
13 time too. Okay?

14 So very -- under very rare exceptions does a prior record
15 of a defendant come in during the course of a trial because it
16 doesn't want -- the law does not want a jury to be influenced
17 in any way based upon someone's prior record, especially when
18 prior offenses are similar to what they're currently charged
19 with.

20 But in situations wherein individuals are charged or have
21 a prior record involving any crimes of dishonesty -- any
22 crimes of dishonesty, the rules permit those to come in.

23 But anyway, I want to thank you for your service. Call
24 that number back tonight after six o'clock and it'll give you
25 instructions on what you're to do. Thank you very much.

1 (WHEREUPON, the remaining jurors exited the courtroom.)

2 (WHEREUPON, the proceedings ended at 4:03 p.m.)

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4 --- END REQUESTED TRANSCRIPT ---

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1	State of South Carolina	)	
2		)	Certificate
3	County of Florence	)	

I, the undersigned, Krystal J. Smith, Notary Public and Official Court Reporter for the Twelfth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing pages, numbered 1 through 264 constitute a true, accurate, and complete Transcript of Record of all the proceedings had and evidence introduced in the hearing of the above captioned case, relative to appeal, in the Court of General Sessions for Florence County, South Carolina, on the 20th and 21st days of June, 2016.

14 I do further certify that I am neither of kin, counsel,
15 nor interest to any party hereto.

17 s/Krystal J. Smith

18	Court Reporter

20	Florence, South Carolina

21	October 7, 2016

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Florence County

D. Craig Brown, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

MELVIN DURANT,

APPELLANT

APPELLATE CASE NO 2016-001390

FINAL BRIEF OF APPELLANT

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STATEMENT OF ISSUES ON APPEAL

I. Did the trial judge err in permitting the prosecution to introduce a statement allegedly made by Appellant during custodial interrogation in light of the totality of the circumstances, including his extreme intoxication, demonstrating the statement was not made pursuant to a voluntary, knowing, and intelligent waiver?

II. Did the trial judge err in permitting the prosecution to introduce a statement allegedly made by Appellant during custodial interrogation where the evidence demonstrated Appellant invoked his right to silence, was extremely intoxicated, and the officer promised to help Appellant if he agreed to cooperate?

STATEMENT OF THE CASE

On March 12, 2015, a Florence County grand jury indicted Appellant for attempted murder (2015-GS-21-00211). R. 202-203. The state, represented by David Richardson, called the case to trial before the Honorable D. Craig Brown and a jury on June 20-21, 2016. R. 1. William Vickery Meetze represented Appellant. R. 1. The jury acquitted Appellant of attempted murder, but found him guilty of the lesser-included offense of assault and battery of a high and aggravated nature (ABHAN). R. 192, l. 20 – R. 193, l. 6. Judge Brown sentenced Appellant to twenty years' imprisonment. R. 198, ll. 7-10; R. 204.

On June 24, 2016, Appellant served his notice of appeal. This brief follows.

STATEMENT OF FACTS

In November 2014, Wiley Jones and Appellant were living in a transitional shelter in Florence, South Carolina. R. 66, ll. 3-8. The Pee Dee Transitional Shelter was a place for “folks who [were] down on their luck or [who had] no place to stay.” R. 38, ll. 8-12. The shelter provided its residents with “time to make that transition back into the real world.” R. 38, ll. 13-14. While in the shelter, Wiley and Appellant did not get along. R. 66, ll. 9-19. In fact, Wiley did not get along with a lot of people during this time. R. 66, ll. 14-19; R. 76, l. 24 – R. 77, l. 5. Wiley explained the problem: “It’s like I come from the north and I’m here in the south and my point of views in life is different and theirs is different. So we kind of clashed on not a lot of things, but on things. I got my opinion and they have theirs.” R. 66, ll. 15-19.

On November 12, 2014, Jones invited Appellant out for drinks. R. 76, ll. 7-14. According to Wiley, Appellant was telling Wiley how to spend his “earned-hard money.” R. 76, ll. 20-21. A conflict arose because Wiley believed he could spend his money the way he wanted. R. 76, ll. 21-22. Wiley claimed Appellant got offended by Wiley’s refusal to accept Appellant’s financial advice. R. 76, ll. 21-23.

When Appellant returned to the shelter, he immediately went to talk to Carl Wheeling, who was a resident of the shelter. R. 39, ll. 5-12. Although Wheeling did not act in a supervisory capacity, he was “considered sort of in charge after hours, after the staff had left.” R. 38, ll. 19-22. It was his duty “to keep the director informed of ... fights, arguments, people coming in after hours, after curfew hours, which was ten o’clock, and just sort of keep the peace.” R. 38, ll. 22 – R. 39, l. 1. Wheeling was sitting in his “little cubicle,” which was separated by a curtain from other areas. R. 39, ll. 7-10. Appellant knocked on the curtain and explained he wanted to speak to Wheeling. R. 39, ll. 10-12.

As soon as Appellant entered the cubicle, Wheeling was overwhelmed by the odor of alcohol.¹ R. 39, ll. 14-16. Wheeling noticed Appellant's speech was slurred and he was "highly agitated." R. 39, ll. 16-17. According to Wheeling, Appellant stated that he and Wiley Jones had gone to a house across from 413, where Wiley offered to buy him drinks. R. 39, l. 22 – R. 40, l. 1. Wiley started walking around "bragging about the money he had." R. 40, ll. 2-3. Viewing Wiley's behavior as impolite, Appellant pulled Wiley to the side to let him know that it was "not polite for [him] to be in somebody else's home ... flashing this money around." R. 40, ll. 6-8. Thereafter, the two men had a few words. R. 40, ll. 8-9. Appellant also told Wheeling that Wiley "had been messing with him" and that if it continued, there would "be a problem." R. 40, ll. 13-15. Wheeling thought Appellant "used the word hurt" in describing the problem. R. 40, ll. 16-20.

When Appellant finished telling this story to Wheeling, he was "very calm." R. 40, ll. 10-11. Appellant thanked Wheeling for listening and pulled back the curtain to leave. R. 40, ll. 21-24. Wiley was standing there wearing a smirk on his face – "he had been standing there through the whole conversation of [Appellant] talking to [Wheeling]." R. 40, l. 23 – R. 41, l. 1; R. 54, l. 18; see also, R. 67, ll. 4-23. Wiley confronted Appellant regarding his discussion with Wheeling, stating, "I thought we were going to leave this outside. ... [W]e had done discussed not to bring this in here." R. 41, ll. 2-4; R. 77, ll. 9-11. Thereafter, the two men had a heated argument. R. 54, ll. 3-25; R. 92, ll. 7-8. Wheeling saw the two men walk in opposite directions after this exchange. R. 41, ll. 5-6.

Wiley told the jurors that he went to the restroom after this exchange. R. 68, ll. 1-3. While standing at a urinal, Wiley "felt someone behind" him. R. 68, ll. 14-16. He claimed that

¹ The first responding officer, Jimmy Cantey, told the jurors that Appellant and Wiley were "extremely intoxicated." R. 92, ll. 9-11.

someone was Appellant and that Appellant started stabbing him with a knife. R. 68, ll. 16-18.² Wiley also told the jurors that he had his back “turned towards the wall” so he “turned around and looked” at Appellant. R. 68, ll. 18-20. Wiley claimed Appellant said, “I told you to leave me alone.” R. 69, ll. 7-8.

Minutes after seeing the two men leave his cubicle, Wheeling “heard a rumble in the bathroom.” R. 41, ll. 8-9. He went inside to investigate. R. 41, ll. 10-11. Wheeling claimed he saw Appellant holding Wiley “up against the urinal” with his left hand. R. 41, ll. 13-14. He also claimed he saw Appellant with a knife in his right hand. R. 41, ll. 14-17. Wheeling, who was weak from a recent open-heart surgery, grabbed Appellant by the arm. R. 41, l. 22 – R. 42, l. 6. This allowed Wiley to walk away. R. 42, ll. 10-13. Wheeling released Appellant, who also walked out of the bathroom. R. 42, ll. 14-16.

Initially, Wiley did not mention Wheeling’s presence in the restroom; instead, he simply said that he “ran out the bathroom.” R. 69, l. 8. However, when the solicitor asked about Wheeling, Wiley recalled Wheeling entered the restroom and grabbed Appellant’s wrist. R. 69, l. 13 – R. 70, l. 1. Wiley “scooted away” and “ran out the facility.” R. 70, ll. 1-2.

Wheeling called the shelter director to notify her of the commotion. R. 42, ll. 17-18; R. 71, ll. 6-7. Wiley called 911. R. 69, ll. 11-12; R. 70, ll. 5-6; R. 71, ll. 7-10. By the time Wheeling walked outside, the ambulance and police had arrived. R. 42, ll. 22-24; see also, R. 71, ll. 13-14. Emergency medical personnel treated Wiley, who was crouched down under a tree. R. 42, l. 24 – R. 43, l. 2. The police “threw [Appellant] up on the hood of the squad car and handcuffed him.” R. 43, ll. 12-14.

² Photographs of Wiley’s injuries were admitted into evidence. R. 73, l. 13 – R. 74, l. 1; State’s Exhibit #13; State’s Exhibit #14.

Tommy Nesmith also lived in the shelter in November 2014. R. 59, ll. 1-3. Nesmith claimed that on the night of November 12, 2014, Appellant walked outside to where Nesmith was standing near the rear of the shelter. R. 59, ll. 7-12. Nesmith was smoking a cigarette, and gave a cigarette to Appellant. R. 59, ll. 11-12; R. 60, ll. 7-10. Nesmith claimed Appellant “threw a knife across the fence.” R. 59, ll. 7-10. Three days later, Nesmith retrieved the knife, which was behind the Housing Authority. R. 60, ll. 21-25. Nesmith recalled “other people [were] being accused of having the knife” and these accusations sparked his investigation. R. 61, ll. 15-17. Upon finding the knife, Nesmith gave it to Wiley. R. 61, ll. 20-21; R. 74, l. 25 – R. 75, l. 3.

Wiley gave the knife to the shelter’s director and claimed that he explained to the director that Nesmith had found the knife. R. 75, ll. 11-14. The director called 911, and the police arrived immediately.³ R. 75, l. 14; R. 77, ll. 17-22. Later, in his testimony, Wiley admitted that Nesmith did not want to be involved so Wiley may have told the director that he, Wiley, found the knife. R. 78, ll. 1-6. Wiley also admitted that he may have told the police officer the same thing – that he, Wiley, found the knife. R. 78, ll. 7-25. After the police received the knife from Wiley and the shelter’s director, forensic testing was conducted. SLED’s forensic DNA analyst determined a swab from the knife revealed the presence of blood and Wiley’s DNA. R. 138, ll. 14-20.

³ In direct contradiction to Wiley’s testimony, the responding officer, Sam Ervin, testified that “A Mr. Jones called in to say that he had recovered a knife that was used in a stabbing case earlier.” R. 81, ll. 19-21.

ARGUMENT

I. The trial judge erred in permitting the prosecution to introduce a statement allegedly made by Appellant during custodial interrogation in light of the totality of the circumstances, including his extreme intoxication, demonstrating the statement was not made pursuant to a voluntary, knowing, and intelligent waiver.

Relevant facts

When Mark Happ of the Florence Police Department arrived at the transitional shelter, another officer already had a suspect – Appellant – in custody. R. 3, ll. 10-24. Happ and Appellant initially stood outside of Happ’s car. R. 4, ll. 12-15; R. 6, ll. 4-7. The ensuing conversation was captured on Happ’s digital voice recorder. R. 4, ll. 12-20; State’s Exhibit #1. Happ advised Appellant of his rights, and then began interrogating him. R. 5, ll. 14-22.

Happ claimed there was nothing about Appellant’s “physical condition” or “mental condition” that gave him “any pause with respect to him knowing what he was doing there talking” to Happ. R. 6, ll. 20-24. Happ further claimed Appellant “seemed responsive” to his questions and never asked to terminate the interrogation. R. 6, l. 25 – R. 7, l. 5. According to Happ, Appellant did not “appear to be in need of any sort of medical attention or anything.” R. 6, ll. 11-13.

Happ was aware that Appellant had been drinking alcohol that evening.⁴ R. 10, ll. 6-8. Happ acknowledged that Appellant’s “words were slurred when he spoke.” R. 10, ll. 20-23. Happ did not conduct “any kind of testing to say what his level of intoxication was,” but it was obvious Appellant “had been drinking.” R. 10, l. 20 – R. 11, l. 1. According to Happ, it was “absolutely” possible that Appellant was “to the level of being intoxicated.” R. 11, ll. 2-4. In

⁴ The first officer on the scene described Appellant as “extremely intoxicated.” R. 22, ll. 11-25; see also, R. 92, ll. 9-11.

talking to Happ, Appellant stated he had been drinking – “[s]omething about doing shots” – at a house on Church Street. R. 11, ll. 5-14.

The audio recording confirmed obvious signs of Appellant’s intoxication, including the slurring of words and confusion at times. State’s Exhibit #1. The recording also revealed Appellant was questioned prior to the advisement of rights, specifically about a knife. State’s Exhibit #1. When Appellant initially stuttered and answered in a confusing fashion, Happ directed Appellant to a call the police received earlier in the evening at another location. State’s Exhibit #1. At times, Appellant was completely incoherent. State’s Exhibit #1. During these times, Happ would pose more direct questions to Appellant. State’s Exhibit #1.

At the conclusion of the pre-trial hearing, defense counsel moved to exclude the first statement made to Happ. Specifically, defense counsel argued the evidence showed Appellant “was extremely intoxicated to a point where he was not capable of a free and voluntary waiver” of his rights “and fully understanding those rights at the time he was questioned.” R. 24, ll. 2-7.

The solicitor argued “evidence of intoxication” did not make the statement “per se involuntary.” R. 25, ll. 6-8. According to the state, Appellant indicated he understood his rights and agreed to speak with Happ. R. 25, ll. 10-13. During that statement, Appellant “denied any involvement in the activities that evening and stuck with that story.” R. 25, ll. 13-14. While speaking with Happ, Appellant “did admit to having a knife earlier in the day, which he said fell out of his pocket.” R. 25, ll. 14-16.

After hearing the arguments of counsel, the judge stated he was unaware of any case law “that specifically says that signs of intoxication are per se prohibitive of the admissibility of a statement.” R. 27, ll. 21-23. According to the judge,

There is some case law out there which says - - US v. Pelton, 835 F.2d 1067, which was a Fourth Circuit case, and State v. Saxon, 201 S.E.2d 114, which is a

1973 case, and State v. Crawley, 562 S.E.2d 683, which says that the fact that the defendant exhibits symptoms of drug withdrawal when she confesses does not alone render her statement involuntary.

R. 27, l. 23 – R. 28, l. 4. The judge did “not find simply signs of intoxication or some evidence of intoxication - - that alone does not render the statement by [Appellant] involuntary.” R. 28, ll. 5-7. The judge concluded that Appellant “clearly was appropriately responsive to the questions that were asked of him by Officer Happ – Corporal Happ.” R. 28, ll. 7-11. In conclusion, the judge held Appellant’s statement to Happ was admissible. R. 28, ll. 18-20.⁵

Discussion

The Fifth Amendment provides that no person shall be compelled to be a witness against himself in a criminal matter. U.S. Const. amend. V. Based on the Fifth Amendment’s protection, the United States Supreme Court held that in criminal prosecutions, statements by the accused are not admissible unless the prosecution demonstrates the use of procedural safeguards. Miranda v. Arizona, 384 U.S. 426, 444 (1966). However, the required use of these safeguards is required only when the accused is in custodial interrogation. State v. Kennedy, 325 S.C. 295, 303, 479 S.E.2d 838, 842 (Ct. App. 1996). The United States Supreme Court defined custodial interrogation as “questioning initiated by law enforcement officers after a person has been taken into custody or otherwise deprived of his freedom of action in any significant way.” Miranda, 384 U.S. at 444.

In Jackson v. Denno, 378 U.S. 368, 376 (1964), the United States Supreme Court held that “a defendant in a criminal case is deprived of due process of law if his conviction is founded, in whole or in part, upon an involuntary confession, without regard for the truth or falsity of the confession.” To introduce a statement produced during custodial interrogation, the prosecution

⁵ Defense counsel renewed his objection when the prosecutor offered the audio recording as an exhibit during the trial. R. 96, ll. 16-18. The judge overruled the objection and permitted the recording to be introduced along with Happ’s testimony regarding the statement. R. 96, l. 19.

must prove by a preponderance of the evidence that the statement was made freely and voluntarily, and taken in compliance with Miranda, *supra*. State v. Von Dohlen, 322 S.C. 234, 243, 471 S.E.2d 689, 694 (1996); State v. Goodwin, 384 S.C. 588, 601, 683 S.E.2d 500, 507 (Ct. App. 2009); State v. Miller, 375 S.C. 370, 378, 652 S.E.2d 444, 448 (Ct. App. 2007); State v. Compton, 366 S.C. 671, 680, 623 S.E.2d 661, 666 (Ct. App. 2005); State v. Crawley, 349 S.C. 459, 463, 562 S.E.2d 683, 685 (Ct. App. 2002).

The waiver has two distinct dimensions. It must be “voluntary in the sense that it was the product of a free and deliberate choice rather than intimidation, coercion, or deception,” and it must be “made with a full awareness of both the nature of the right being abandoned and the consequences of the decision to abandon it.” Moran v. Burbine, 475 U.S. 412, 421 (1986); *see also* State v. Middleton, 288 S.C. 21, 25, 339 S.E.2d 692, 694 (1986). It is not enough that the interrogator advised the suspect of his rights and the suspect made an uncoerced statement. The prosecution must show that the accused understood the rights. Berghuis v. Thompkins, 560 U.S. 370, 384 (2010) (citing Colorado v. Spring, 479 U.S. 564, 573-575 (1987); Connecticut v. Barrett, 479 U.S. 523, 530 (1987)).

In South Carolina, a court must examine the totality of the circumstances surrounding the custodial statement. The examining court must answer the question: Did totality of the circumstances surrounding the custodial statement defeat the defendant’s will? State v. Moses, 390 S.C. 502, 513, 702 S.E.2d 395, 401 (Ct. App. 2010).

Courts have recognized appropriate factors that may be considered in a totality of the circumstances analysis: background; experience; conduct of the accused; age; maturity; physical condition and mental health; length of custody or detention; police misrepresentations; isolation of a minor from his or her parent; the lack of any advice to the accused of his constitutional rights; threats of violence; direct or indirect promises, however slight; lack of education or low intelligence; repeated and prolonged nature of the questioning; exertion of improper influence; and the use of physical punishment, such as the deprivation of food or sleep.

Id. at 513-514, 702 S.E.2d at 401 (internal citations omitted); see also Withrow v. Williams, 507 U.S. 680, 693-694 (1993). The test requires consideration of “totality of all the surrounding circumstances – both the characteristics of the accused and the details of the interrogation.” Dickerson v. United States, 530 U.S. 428, 434 (2000)(citations omitted); see also State v. Miller, 375 S.C. 370, 384, 652 S.E.2d 444, 451 (Ct. App. 2007).

Intoxication

Over four decades ago, the South Carolina Supreme Court held “[t]he fact that one is intoxicated at the time a confession is made does not necessarily render him incapable of comprehending the meaning and effect of his words.” State v. Saxon, 261 S.C. 523, 529, 201 S.E.2d 114, 117 (1973). According to the Court, “proof that an accused was intoxicated at the time he made a confession does not render the statement inadmissible as a matter of law, unless the accused’s intoxication was such that he did not realize what he was saying.” Id. Further, the Court stated that “[p]roof of intoxication, short of rendering the accused unconscious of what he is saying, goes to the weight and credibility to be accorded to the confession, but does not require that the confession be excluded from evidence.” Id. Nevertheless, after making these pronouncements of the law, the Court ruled as follows:

While there is testimony that [Saxon] had been drinking rather heavily and was not acting normally, there is other testimony from which the conclusion may be reasonably drawn that he was not drunk and fully comprehended what he was doing and saying. In fact, [Saxon] testified, and the inferences to be drawn from his own testimony amply support the conclusion that his statement was understandingly and voluntarily given. The testimony was properly admitted in evidence.

Id. at 529-530, 201 S.E.2d at 117. Thus, the Court analyzed the evidence to determine whether there was evidence that Saxon was “not drunk and fully comprehended what he was doing and saying.” This holding contradicted the legal principles previously enunciated, which suggested that

unless an individual were intoxicated to the point unconsciousness, then any statements made by the individual were not *per se* inadmissible. The Court's holding in the case rested upon its view that evidence existed in the record that Saxon "was not drunk and fully comprehended what he was doing and saying."

Three years after Saxon, the South Carolina Supreme Court had the opportunity to examine another case in which a statement was allegedly made while the defendant was intoxicated. State v. Collins, 266 S.C. 566, 225 S.E.2d 189 (1976). Collins and a co-defendant were charged with armed robbery of a local store. Id. at 568, 225 S.E.2d at 190-191. There was no dispute that on the day of the robbery, the men "had been drinking heavily." Id. at 568, 225 S.E.2d at 191. Collins was arrested on the day of the robbery for public drunkenness. Id. at 569, 225 S.E.2d at 191. A detective questioned Collins concerning the robbery about an hour after his arrest. Id. According to the detective, he "determined, by means of a field sobriety test, that [Collins] was capable of and did understand his rights before questions were asked." Id. To the contrary, the officer who arrested Collins "stated that in his opinion, [Collins] was still intoxicated" after being questioned. Id. at 569-570, 225 S.E.2d at 191.

In deciding whether the trial judge abused his discretion in determining the statement by Collins was voluntarily and knowingly given, the South Carolina Supreme Court cited Saxon, supra, for the proposition that "[p]roof of accused's intoxication, short of rendering him unconscious of what he is saying, does not require in every case, that statements he made while in that condition be excluded from evidence." Id. at 572-573, 225 S.E.2d at 193. However, the Court based its ruling on the fact that "[t]he evidence, including the condition of the defendant presented a factual situation which the judge determined unfavorably to the defendant." Id. at 573, 225 S.E.2d at 193. See also, Gladden v. Unsworth, 396 F.2d 373, 381 (9th Cir. 1968)(ordering the state court to

conduct a hearing on the voluntariness of Unsworth's statements where the undisputed evidence showed he was "in a state of gross intoxication" at the time of the making of the statements); Reddish v. State, 167 So.2d 858, 863 (Fla. 1964)(holding a defendant's confessions "should not be permitted to stand as evidence against" the defendant where the "totality of all the circumstances, such as the man's physical condition, in combination with the impact of narcotics, as well as the lack of clear-cut testimony regarding his mental condition at the time he gave the statements" meant the confessions "were not obtained in a manner consistent with constitutional standards against compulsive self-incrimination"); State v. Young, 875 P.2d 1119, 1123 (N.M. Ct. App. 1994)(remanding where the trial court erroneously determined the defendant's intoxication was irrelevant to the issue of waiver because "voluntary intoxication is relevant to determining whether a waiver was knowing and intelligent"); State v. Bramlett, 609 P.2d 345, 350 (N.M. Ct. App. 1980) overruled on other grounds by Armijo v. State Through Transp. Dep't, 737 P.2d 552 (N.M. Ct. App. 1987)(holding the contradictory testimony from the officers that the defendant was too intoxicated to be released and was detained for his own protection, but was not so intoxicated that he could not provide a knowing waiver of his constitutional rights "offends the standards of fundamental fairness under the due process clause" "and is unworthy of the degree of belief necessary to sustain a finding of voluntary waiver").

To the extent, this Court determines that Saxon stands for the proposition that intoxication short of unconsciousness may *never* render a statement involuntarily made, Appellant argues against precedent. Appellant urges this Court to review the entire Saxon opinion, which demonstrates the South Carolina Supreme Court determined the trial judge did not abuse his discretion in finding Saxon's statement was voluntary because there was evidence in the record that Saxon was not intoxicated and fully understood what he was doing and saying. The only evidence

in the record was that Appellant was extremely intoxicated at the time Happ interrogated him. There was no contradictory evidence as there was in Saxon, supra. The prosecution presented no contrary evidence that Appellant was not extremely intoxicated, and all of the evidence, including the voice recorder and the video, corroborated Appellant's version that he was extremely intoxicated at the time he gave a statement to Happ, and as a result, in viewing the totality of the circumstances, Appellant's statement was inadmissible.

II. The trial judge erred in permitting the prosecution to introduce a statement allegedly made by Appellant during custodial interrogation where the evidence demonstrated Appellant invoked his right to silence, was extremely intoxicated, and the officer promised to help Appellant if he agreed to cooperate.

Relevant facts

Appellant incorporates the relevant discussion of the facts presented in Issue I, supra. While Appellant remained handcuffed in Happ's car, Howard Wynn, an investigator, arrived on the scene. R. 16, ll. 1-2. Happ's car was equipped with a camera that permitted audio and video recording of the inside and the outside of the car. R. 12, l. 23 – R. 13, l. 5. When Wynn arrived, he began speaking to Appellant through the rear window, and Happ's camera captured the interrogation. R. 13, ll. 9-21; R. 16, ll. 6-15; State's Exhibit #2.

When Wynn warned Appellant of his rights pursuant to Miranda and asked if Appellant wanted to speak to him, Appellant said he did not. R. 19, ll. 4-14; State's Exhibit #2. When Appellant clearly, unambiguously, and unequivocally stated he did not want to speak to Wynn, Wynn responded by saying, "you don't, sort of with an inflection in [his] voice as if ... it would be a question." R. 19, ll. 15-21; State's Exhibit #2. Only after Wynn challenged Appellant's invocation of his right to silence did Appellant succumb and agree to waive his constitutional right and answer Wynn's questions. R. 20, ll. 5-9.

Although Wynn acknowledged Appellant had consumed alcohol prior to the interrogation, Wynn maintained his belief that Appellant did not "appear to be to a level of intoxication" that would have given Wynn "pause as far as speaking with him and getting a statement form him that night." R. 17, ll. 14-19; R. 18, ll. 18-20; R. 21, ll. 20-24. Wynn even noted Appellant's slurred speech during their interaction. R. 18, l. 21 – R. 19, l. 3.

During the interrogation, Wynn told Appellant that what he was saying was not 100% true and he knew this to be the case based on what individuals inside the transitional shelter told him. State's Exhibit #2. Wynn told Appellant that he could not help Appellant if Appellant did not tell him the truth. State's Exhibit #2.

Defense counsel moved to exclude Appellant's second statement based upon Appellant's extreme intoxication and his invocation of his right to silence when Wynn sought a waiver of that right. R. 24, ll. 8-13. The Constitution mandated Wynn stop his interrogation when Appellant invoked his right to silence. R. 24, ll. 11-13. However, "Wynn kept on talking with him until eventually he did say that he would answer questions." R. 24, ll. 14-17. The prosecutor admitted Appellant "initially" said "no" when Wynn asked if he wanted to speak to Wynn. R. 25, ll. 17-18. According to the prosecutor, however, "in the same stream - - I mean it's pretty much the same sentence, basically a run-on sentence, and they're talking over one another as I recall at one point or very close to it, but he does agree without any sort of provocation or anything like that to talk to Investigator Wynn about the case and on they went from there." R. 25, ll. 17-23. In the solicitor's view, Appellant "denied any involvement" and said he left his knife at his cousin's house. R. 25, ll. 24-25. Per the solicitor,

[B]ased on [Appellant's] ability to recognize the situation he was in - - in fact, there was one point where he gives Investigator Wynn information where to locate the knife and Investigator Wynn says something that appeared to me to indicate he was going to check on that to try to verify the information and shut the door, and then [Appellant] utters several expletives, as if his story were about to be checked up on and it may not be accurate.

R. 26, ll. 3-10. In conclusion, the solicitor argued that "the content of his statement shows that he did know what he was doing because he was providing denials about every accusation they made at him." R. 26, ll. 11-14.

After noting that Appellant was in custody, which was not disputed, the judge found the state “provided sufficient evidence to show that his statement was knowingly, freely, voluntarily given.” R. 27, ll. 16-20. After ruling on the intoxication aspect of the argument, discussed supra, the judge found that although Appellant clearly told Wynn he did not want to talk, Appellant “continued to initiate conversation with the investigator, showing a willingness to further discuss the investigation with the officer.” R. 28, ll. 12-17. Thus, the judge ruled the statement was admissible. R. 28, ll. 18-20.⁶

In his closing argument, the solicitor relied heavily on Appellant’s statements to law enforcement as ammunition for a conviction. R. 154, l. 6 – R. 155, l. 3. According to the solicitor, Appellant’s denial of stabbing Wiley was “ridiculous.” R. 154, ll. 11-13. Additionally, the solicitor told the jurors to pay close attention to Appellant’s statement to Happ wherein he admitted to having a knife earlier in the evening. R. 154, ll. 14-15. The solicitor claimed Appellant told Happ the knife fell from his pocket, but that he told Wynn that he left the knife at his cousin’s house. R. 154, ll. 15-21. According to the solicitor, Appellant was “distancing himself from the weapon” and this was evidence of consciousness of guilt. R. 154, l. 21 – R. 155, l. 1. The solicitor, using Appellant’s statements to police, argued Appellant was “running from this”: “But he’s showing through these denials of anything happening and distancing himself from the weapon a consciousness of guilt here. You know, he’s running from this by telling the police these misleading things.” R. 154, l. 24 – R. 155, l. 2.

Discussion

Appellant incorporates the relevant discussion of the law presented in Issue I, supra.

⁶ Defense counsel renewed his objection when the prosecutor offered the video of Wynn’s interrogation of Appellant during the trial. R. 103, l. 13. The judge overruled the objection. R. 103, ll. 14-16.

Invocation of right to silence

The United States Supreme Court held that “[i]f [an] individual indicates in any manner, at any time prior to or during questioning, that he wishes to remain silent, the interrogation must cease. ... [A]ny statement taken after the person invokes his privilege cannot be other than the product of compulsion, subtle or otherwise.” Miranda, 384 U.S. at 473-474. If a suspect invokes his right to silence, the interrogators must scrupulously honored. Michigan v. Mosley, 423 U.S. 96, 103 (1975); State v. Benjamin, 345 S.C. 470, 476, 549 S.E.2d 258, 261 (2001). A suspect invokes his right to silence by clearly articulating his desire to end the interrogation and must do so “unambiguously.” Berghuis, 560 U.S. at 381; Davis v. United States, 512 U.S. 452, 459 (1994); State v. Reed, 332 S.C. 35, 42, 503 S.E.2d 747, 750 (1998).

Our state supreme court noted with approval that other courts have set forth five factors to analyze to ascertain whether the defendant’s right to cut off questioning was scrupulously honored. The first is whether the police warned the defendant of his Miranda rights at the first interrogation. The second is whether the police immediately stopped the interrogation when the defendant indicated he did not want to answer questions. The third is whether the police resumed questioning only after passage of a significant period of time. The fourth is whether the police provided a second set of Miranda warnings prior to the second interrogation. Finally, the fifth factor is whether the second interrogation was restricted to a crime that had not been the subject of the earlier interrogation. Benjamin, 345 S.C. at 476-477, 549 S.E.2d at 261. The Court made clear, however, that these “factors are not exclusively controlling, nor do they establish a test which can be woodenly applied.” Id. at 477, 549 S.E.2d at 261. “Rather, the factors provide a framework for determining whether, under the circumstances, an accused’s right to silence was scrupulously honored.” Id.

Applying the factors to the instant matter requires reversal of Appellant's conviction and remanding of the case for a new trial. During the first interrogation, Happ advised Appellant of his rights, and Appellant waived those rights, agreeing to speak with Happ. Additionally, Wynn advised Appellant of his rights. However, when Appellant clearly, unambiguously, and unequivocally invoked his right to silence, Wynn challenged his invocation. Wynn did not immediately cease the interrogation as the Constitution requires. Instead, Wynn confronted Appellant regarding his invocation. This confrontation and the resumption of questioning occurred within seconds of Appellant's invocation – not after the passage of a significant period of time. Wynn did not advise Appellant of his rights again; instead, when Appellant told Wynn that he did not want to speak to him, Wynn said he was going to ask him a couple of questions. Only then did Appellant acquiesce. The entire questioning by Wynn concerned the stabbing at the transitional shelter – not a separate incident.

Promise of help

“A statement may not be ‘extracted by any sort of threats or violence, [or] obtained by any direct or implied promises, however slight, [or] obtained by the exertion of improper influence.’” State v. Miller, 375 S.C. 370, 386, 652 S.E.2d 444, 452 (Ct. App. 2007)(quoting State v. Rochester, 301 S.C. 196, 200, 391 S.E.2d 244, 247 (1990)).

It is not enough that a defendant previously waived his rights to silence. Rochester, 301 S.C. at 200, 391 S.E.2d at 246. “[A] voluntary waiver continues” only “until the individual being questioned indicates that he wants to revoke the waiver and remain silent or circumstances exist which establish that his ‘will has been overborne and his capacity for self-determination critically impaired.’” Id. (quoting State v. Moultrie, 273 S.C. 60, 62, 254 S.E.2d 294, 295 (1979)). A confession may not be induced by any sort of threats or violence, or obtained by any direct or

implied promises, however slight, or by the exertion of improper influence. Id. (citing Hutto v. Ross, 429 U.S. 28, 30 (1976)). When a statement induced by a promise of lenience is so connected with the inducement as to be a consequence of the promise, the statement is involuntary and inadmissible. Id. at 200, 391 S.E.2d at 246-247 (citing State v. Peake, 291 S.C. 138, 352 S.E.2d 487 (1987)).

The South Carolina Supreme Court held the state failed to meet its burden of showing a defendant's statement was voluntary and not the product of the officer's promise of leniency where the officer "made a suggestion" to the defendant that the state "would not ask for the death penalty" in his case and that the officer "would call the solicitor and have him put it in writing to that effect." Peake, 291 S.C. at 139, 352 S.E.2d at 487. The officer testified that he essentially guaranteed the defendant that the state would not seek the death penalty if he gave a statement. Id.

In Rochester, a polygraph examiner told the suspect that it would be in his best interest to tell the truth. Rochester, 301 S.C. at 199, 391 S.E.2d at 246. Almost immediately thereafter, the suspect gave a detailed confession. Id. According to the South Carolina Supreme Court, "[t]he polygraph examiner's statement was not on its face an inducement or hope of lighter punishment. Standing alone, the polygraph examiner's comment did not constitute the kind of hope of reward or benefit condemned by this Court in Peake." Id. at 200-201, 391 S.E.2d at 247.

Wynn clearly promised Appellant help if Appellant would speak to him. This offer of help is particularly troubling in light of Appellant's invocation of his right to silence, which Wynn failed to honor as required by the Constitution. Wynn did not advise Appellant that it would be in his best interest to tell the truth as the polygraph examiner in Rochester, supra, did. Rather, Wynn offered Appellant help if Appellant would tell him the truth about what happened. This offer of help is more akin to the promise not to seek the death penalty in Peake, supra, because it was the officer

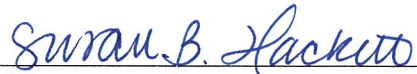
affirmatively extending assistance to Appellant concerning the criminal matter in exchange for Appellant waiving his constitutional right to silence.

Totality of the circumstances

Examining the totality of the circumstances surrounding Appellant's statement to Wynn requires reversal as Appellant's statement was not made pursuant to a knowing and voluntary waiver of his constitutional right to silence. Wynn's failure to scrupulously honor Appellant's invocation of his right to silence – not once, but twice – shows the futility of any resistance to law enforcement or the exercise of his constitutional right. Wynn was aware of Appellant's state of extreme intoxication. Rather than wait to interrogate Appellant when he was less inebriated, Wynn chose to interrogate Appellant immediately – seizing upon his discombobulation resulting from the over-consumption of alcohol. Compounding the failure to honor the invocation, Wynn first took advantage of Appellant's intoxicated state and then made him an irresistible offer of help if only he agreed to cooperate with the police. The trial judge erred in allowing the state to introduce the statements made by Appellant to Wynn where the state failed to carry its burden of proving by a preponderance of the evidence that Appellant's waiver was knowing and involuntary.

CONCLUSION

Appellant respectfully requests this Court reverse his conviction and remand the case for a new trial.



Susan B. Hackett
Appellate Defender

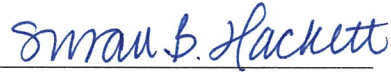
ATTORNEY FOR APPELLANT

This 14th day of September, 2017.

CERTIFICATE OF COUNSEL

The undersigned certifies that to the best of my ability this Final Brief of Appellant complies with Rule 211(b), SCACR, and the April 15, 2014 order from the South Carolina Supreme Court entitled "Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings."

September 14, 2017



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STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Florence County

D. Craig Brown, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

MELVIN DURANT,

APPELLANT

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true copy of the Final Brief of Appellant in the above referenced case has been served upon William M. Blich, Esquire, at the Rembert C. Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201, this 14th day of September, 2017.

Susan B. Hackett
Susan B. Hackett
Appellate Defender
ATTORNEY FOR APPELLANT

SUBSCRIBED AND SWORN TO before me
this 14th day of September, 2017.

Sean Flynn (L.S)
Notary Public for South Carolina
My Commission Expires: October 30, 2022.

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Florence County
Honorable D. Craig Brown, Circuit Court Judge
Appellate Case Tracking No. 2016-001390

The State,

Respondent,

vs.

Melvin Durant,

Appellant.

FINAL BRIEF OF RESPONDENT

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STATEMENT OF ISSUES ON APPEAL

The trial court did not abuse its discretion in admitting Appellant's statements to Officer Happ and Investigator Wynn. The trial court properly concluded the statements were knowingly and voluntarily made by Appellant, and his intoxication did not render them involuntary. Further, the trial court properly found Investigator Wynn did not violate Appellant's right to remain silent. (Appellant's Issues I and II).

STATEMENT OF THE CASE

The State agrees with Appellant's procedural Statement of the Case.

STATEMENT OF FACTS

On November 12, 2014, Wiley Jones and Appellant lived at the Pee Dee Transitional Shelter in Florence, South Carolina. (T.98; R.66). Jones and Appellant did not really get along. (T.98; R.66). However, that night Jones asked Appellant if he wanted to go get some drinks. Appellant tried to tell Jones how he should be spending his money, and when Jones didn't agree, Appellant became offended. (T.108; R.76).

Appellant and Jones went back to the shelter. Appellant found Carl Wheeling, who was a resident of the shelter but also the person responsible for keeping the director informed of what happens after hours. (T.70-71; R.38-39). Appellant told Wheeling that he and Jones had been drinking and Jones was bragging about his money. According to Wheeling, this bothered Appellant and caused words between him and Jones. (T.72; R.40). Additionally, Wheeling said Appellant told him that Jones had been "messing with him" and that if it continues "there's going to be a problem." According to Wheeling, Appellant said he was going to "hurt" Jones. (T.72; R.40).

When Appellant left from the cubicle where Wheeling talked with him, Jones was standing there listening. (T.72-73; R.40-41). Jones indicated he thought Appellant was "going to leave [their problems] outside" and not bring them into the shelter. (T.73; 99; R.41; 67). According to Wheeling, Jones and Appellant went their separate ways. Jones indicated he went to the bathroom after talking with Appellant. (T.100; R.68).

Jones testified he was standing at a urinal when someone came in behind him. It was Appellant. Appellant had a knife and started stabbing Jones. (T.100; R.68). He stabbed him multiple times in the back. (State's Exhibits 13 and 14; R.____). Jones said he got turned around

and asked Appellant why he stabbed him, and Appellant responded "I told you to leave me alone." (T.101; R.69).

While Wheeling was passing through the TV lounge, he heard a "rumble" in the bathroom "like individuals fighting." (T.73; R.41). When he entered, he was "mortified at what [he] saw." Wheeling testified: "I remember seeing [Appellant]. He had Wiley Jones. With his left hand, he was holding him up against the urinal. His right hand - - he had the knife clinched with the blade in a downward position." (T.73; R.41). Wheeling indicted Appellant "was jumping up and reaching over, which would have caught [Jones] right her or in the back. So I had - - I saw him - - actually the blade hit Wiley about twice." (T.73; R.41). Jones was offering no resistance, but was trying to prevent being stabbed in the face or chest. (T.79; R.47). According to Wheeling, Jones did not have a weapon. Wheeling said Appellant "just kept chopping at [Jones]." (T.79; R.47).

Wheeling, who had recently had heart surgery, made a quick decision. He grabbed Appellant's arm holding the knife as he was about to thrust it into Jones again. He held Appellant so he could not stab Jones and allowed Jones to escape. (T.74; 101-102; R.42; 69-70). Jones got out of the bathroom. (T.74; 102; R.42; 70). After Jones left, wheeling released Appellant and went to call the shelter director. (T.74; R.42).

Jones ran out the back door and headed to the parking lot to get away from Appellant. (T.102; R.70). As he left, he saw Appellant still holding the knife down to his side. (T.103; R.71). Jones called 911. EMS arrived and took Jones to the hospital where he had to have fifty-two staples and stitches to close his wounds. (T.104; R.72).

Wheeling saw Jones being treated by EMS when he arrived outside after calling the director. (T.74-75; R.42-43). He said Appellant came around from the back corner of the

shelter. He said Appellant seemed calm and was “waking like nothing had ever happened.” (T.75; R.43).

Tommy Nesmith lived at the transitional shelter with Appellant and Jones on November 12, 2014. He was outside smoking a cigarette, when he saw Appellant exit the shelter. He saw Appellant throw a knife over the fence at the back of the facility. (T.91; R.59). Nesmith went and retrieved the knife a couple days later from the other side of the fence. (T.92; R.60). He went and got the knife because other people were being accused of having the knife and he knew where it was thrown. (T.93; R.61). Nesmith gave the knife to Jones. (T.93; R.61). The knife had a red stain on it when Nesmith found it. (T.94-95; R.62-63). Jones took the knife to the director of the shelter. (T.107; R.75).

Jennifer Clayton, a forensic DNA analyst from SLED, tested several swabs from the restroom, dining room, and exterior wall of the transitional shelter along with the knife blade. (T.163; 172-175; State’s Exhibit 15; R.127; 136-139; 199-201). The swabs and knife all contained blood and the DNA from the blood matched Jones with a probability of randomly selecting an unrelated individual having the same DNA profile as one in 28 quintillion. (T.174-175; R.138-139).

ARGUMENT

- I. The trial court did not abuse its discretion in admitting Appellant's statements to Officer Happ and Investigator Wynn. The trial court properly concluded the statements were knowingly and voluntarily made by Appellant, and his intoxication did not render them involuntary. Further, the trial court properly found Investigator Wynn did not violate Appellant's right to remain silent. (Appellant's Issues I and II).**

The trial court did not abuse its discretion in finding Appellant knowingly and voluntarily made his statements to Officer Happ and Investigator Wynn. Appellant's voluntary intoxication did not render the statements involuntary. Further, Investigator Wynn did not violate Appellant's right to remain silent because Appellant continued contact with Investigator Wynn. The trial court, after considering the totality of the circumstances, properly admitted Appellant's statements to Officer Happ and Investigator Wynn.

In criminal cases, the appellate court sits to review errors of law only. State v. Wilson, 345 S.C. 1, 5, 545 S.E.2d 827, 829 (2001). This Court is bound by the trial court's factual findings unless they are clearly erroneous. State v. Baccus, 367 S.C. 41, 48, 625 S.E.2d 216, 220 (2006). The circuit court must examine the totality of circumstances surrounding the statement and determine whether the State has carried its burden of proving the statement was given voluntarily. State v. Miller, 375 S.C. 370, 382, 652 S.E.2d 444, 450 (Ct. App. 2007). The trial court's factual conclusions as to the voluntariness of a statement will not be disturbed on appeal unless so manifestly erroneous as to show an abuse of discretion. State v. Kennedy, 333 S.C. 426, 429, 510 S.E.2d 714, 715 (1998). When reviewing a trial court's ruling concerning voluntariness, the appellate court does not reevaluate the facts based on its own view of the preponderance of the evidence, but simply determines whether the trial court's ruling is supported by any evidence. State v. Saltz, 346 S.C. 114, 136, 551 S.E.2d 240, 252 (2001).

A statement obtained as a result of custodial interrogation is inadmissible unless the suspect was advised of and voluntarily waived his rights under Miranda v. Arizona, 384 U.S. 436 (1966). In order to introduce into evidence a confession, the State must prove by a preponderance of the evidence that the statement was made freely and voluntarily, and, if the result of custodial interrogation, was taken in compliance with Miranda. See State v. Goodwin, 384 S.C. 588, 601, 683 S.E.2d 500, 507 (Ct. App. 2009). To determine the voluntariness of a statement, the circuit court must first conduct an evidentiary hearing, outside the presence of the jury, where the State must show the statement was voluntarily made by a preponderance of the evidence. State v. Simmons, 384 S.C. 145, 162, 682 S.E.2d 19, 28 (Ct. App. 2009). “The trial judge’s determination of the voluntariness of a statement must be made on the basis of the totality of the circumstances, including the background, experience, and conduct of the accused.” State v. Saltz, 346 S.C. 114, 136, 551 S.E.2d 240, 252 (2001) (citing Schneckloth v. Bustamonte, 412 U.S. 218 (1973)).

In Miranda v. Arizona, the United States Supreme Court (USSC) created procedural safeguards to protect an individual’s right against compelled self-incrimination, holding:

[W]hen an individual is taken into custody or otherwise deprived of his freedom by the authorities in any significant way and is subjected to questioning . . . [h]e must be warned prior to any questioning that he has the right to remain silent, that anything he says can be used against him in a court of law, that he has the right to the presence of an attorney, and that if he cannot afford an attorney one will be appointed for him prior to any questioning if he so desires.

Miranda, 384 U.S. 436, 478–79. Failure to comply with these constitutional safeguards renders the person’s statements inadmissible against that person. Id. The USSC has embraced a flexible approach regarding Miranda warnings whereby courts consider the totality of the circumstances. See Wyrick v. Fields, 459 U.S. 42, 47–49 (1982). The waiver must also be made with the full

awareness of the nature of the right being abandoned and the consequences of the decision to abandon it. Moran v. Burbine, 475 U.S. 412, 421 (1986). The trial judge's determination of whether a statement was knowingly, intelligently, and voluntarily made requires an examination of the totality of the circumstances surrounding the waiver. State v. Doby, 273 S.C. 704, 708, 258 S.E.2d 896, 899 (1979). The critical question is whether the defendant's "will has been overborne [or] his capacity for self-determination **critically impaired**" Schneckloth v. Bustamonte, 412 U.S. 218, 225 (1973) (emphasis added).

Effect of Intoxication

In reviewing a statement given by someone intoxicated, the South Carolina Supreme Court has stated:

The fact that one is intoxicated at the time a confession is made does not necessarily render him incapable of comprehending the meaning and effect of his words. Therefore, proof that an accused was intoxicated at the time he made a confession does not render the statement inadmissible as a matter of law, unless the accused's intoxication was such that he did not realize what he was saying. Proof of intoxication, short of rendering the accused unconscious of what he is saying, goes to the weight and credibility to be accorded to the confession, but does not require that the confession be excluded from evidence.

State v. Saxon, 261 S.C. 523, 529, 201 S.E.2d 114, 117 (1973).

In the instant case, the trial court conducted a Denno¹ hearing outside the presence of the jury. The court heard from both investigators and was able to review the audio recording by Officer Happ and in-car camera recordings of the statement given to Investigator Wynn. (State's Exhibits 1 and 2). Appellant maintained his intoxication rendered his statements involuntary, while the State asserted he knowingly and voluntarily gave his statements to both officers and

¹ Jackson v. Denno, 378 U.S. 368 (1964).

that his intoxication did not arise to the level in which he would not have understood his rights or what he was saying.

Officer Happ testified he read Appellant his Miranda rights and then had a conversation with him next to his patrol vehicle. (T.27-28; R.5-6). He testified he did not threaten, pressure, or coerce Appellant. (T.29-30; R.7-8). Further, he indicated there was nothing about Appellant's physical or mental condition that gave him any pause in regard to Appellant's ability to knowingly and voluntarily give a statement. (T.28; R.6). Additionally, he noted Appellant was responsive to the questions being asked. (T.28-29; R.6-7). Officer Happ did acknowledge that Appellant had been drinking. (T.32-33; R.10-11). Appellant's statement was recorded on Officer Happ's digital voice recorder and played for the trial court. (State's Exhibit 1).

Investigator Wynn testified he took a statement from Appellant while Appellant was in the back seat of Officer Happ's vehicle. It was recorded by Officer Happ's in-car camera and played for the trial court. (State's Exhibit 2). Investigator Wynn was asked: "So did he appear to be to a level of intoxication or have any sort of physical or mental issues that you perceived that would have given . . . you pause as far as speaking with him and getting a statement from him that night?" Investigator Wynn responded: "No." (T.39; R.17). Investigator Wynn indicated Appellant understood the nature of the questions and provided valid responses. (T.39; R.17). Investigator Wynn acknowledged Appellant had been drinking and had slurred speech. (T.40-41; R.18-19). Investigator Wynn indicated he spoke with the first officer on the scene, Officer Cantey, who informed him both the victim and Appellant had been drinking. However, Investigator Wynn did not remember Officer Cantey describing Appellant as "extremely intoxicated." (T.43; R.21). Investigator Wynn did admit Officer Cantey's incident report described both the victim and Appellant as extremely intoxicated. (T.44-45; R.22-23).

This case is similar to several considered by the South Carolina Supreme Court and other courts. In addition to Saxon, the South Carolina Supreme Court has clearly indicated intoxication does not per se render a statement involuntary. In State v. Bellue, 259 S.C. 487, 193 S.E.2d 121 (1972), the defendant contended “by reason of the use of drugs he lacked capacity to understand the Miranda warnings and to volunteer a statement.” Id. at 494, 193 S.E.2d at 123. The defendant presented the testimony of Dr. Pat Elam, general practitioner at the South Carolina Department of Corrections and clinical consultant to a drug abuse program. Dr. Elam examined the defendant in Columbia two days after he was arrested. He testified that in his opinion the defendant was “not normal” at the time of the confessions. The State presented the testimony of two police officers who indicated the defendant was normal at the time of the confession. The South Carolina Supreme Court indicated the trial court held a proper Denno hearing. The Supreme Court found no error when the trial court “made his independent determination of voluntariness and then allowed the jury to make their independent determination.” Id. at 495, 193 S.E.2d at 123.

In State v. White, this Court held that a suspect voluntarily waived his Miranda rights when he was in hospital bed on four point restraints and had been given sodium pentothal five hours prior to the questioning. State v. White 311 S.C. 289, 294-95, 428 S.E.2d 740, 743 (Ct. App. 1993). This Court stated: “The fact that he had been under medication and was strapped to his bed was, at best, only a circumstance the trial court was to consider in determining voluntariness.” Id. at 294-295, 428 S.E.2d at 743; *see also* Colorado v. Connelly, 479 U.S. 157, 107 S.Ct. 515, 93 L.Ed.2d 473 (1986) (holding coercive police activity is a necessary predicate to a finding that a confession is not voluntary, and a defendant’s mental condition by itself and apart from official coercion does not dispose of the issue of voluntariness).

The Supreme Court considered a variation of the question in State v. Morgan, 282 S.C. 409, 319 S.E.2d 335 (1984), when a trial judge instructed the jury regarding the effect of intoxication on the voluntariness of a statement. The first question by the jury was: “Is a person legally responsible for statement he makes while under the influence?” In response, the judge stated: “... voluntary intoxication is never a defense to the commission of a crime. Since that is true, I tell you—charge you that a person is legally responsible for a statement he makes while under the influence.” Id. at 413, 319 S.E.2d at 337. The judge had conducted a hearing and concluded that the Defendant’s statement was voluntary even though he was intoxicated. The Court concluded the charge was not in error citing, *inter alia*, to Saxon. Id.

Other courts have also found intoxication does not render a statement involuntary. See People v. Veloz, 946 P.2d 525, 532-533 (Colo. App. 1997) (finding intoxicated defendant who was “stumbling around” and “extremely intoxicated” was properly advised of his rights and made statements voluntarily); State v. Finson, 447 A.2d 788, 792 (Me. 1982) (Even though defendant was “heavily intoxicated” the Court found “A person under the influence of alcohol is not necessarily incapable of waiving his constitutional rights or giving a voluntary statement, if despite the degree of intoxication he is aware and capable of comprehending and communicating with coherence and rationality.”); U.S. v. Phillips, 506 F.3d 685 (8th Cir. 2007) (waiver was voluntary despite defendant’s claimed intoxication from four ecstasy pills and a cup of brandy); United States v. Curtis, 344 F.3d 1057 (10th Cir. 2003) (found waiver knowing and voluntary even though defendant was “a little punchy,” laid his head on the table, closed his eyes at times, and had bloodshot eyes when under the influence of marijuana, crack cocaine, and alcohol).

In the instant case, a review of the statements given indicated Appellant was responsive to all questions; spoke coherently when answering the questions; and while he slurred his speech

on occasion, he never appeared to be “critically impaired” such that he was not aware of what he was doing. In his statement to Investigator Wynn he even corrects several statements made by Wynn and indicates he remembers everything he has done that night even though he had been drinking. He denied involvement in the stabbing to both Officer Happ and Investigator Wynn. Further, he indicated he no longer had a knife that he had earlier, once saying it fell out of his pocket and the second time indicating it was at his cousin’s house. Appellant indicated he had been in trouble before, indicated clearly he understood his rights, and knowingly and voluntarily gave statements to Officer Happ and Investigator Wynn. (State’s Exhibits 1 and 2). Appellant was not “critically impaired,” but instead, he was aware enough of the situation to deny involvement in the stabbing and to formulate a story regarding what happened to the knife he had on his person. The trial court, after considering the totality of the circumstances, did not err in finding Appellant’s intoxication did not rise to the level necessary to render his statements involuntary.

Right to Remain Silent

Additionally, the trial court properly determined the statement to Investigator Wynn was not taken in violation of Appellant’s right to remain silent. As part of Miranda’s warnings, a person subject to custodial interrogation must be given the right to remain silent and not answer questions of the officer. “Once warnings have been given, the subsequent procedure is clear. If the individual indicates in any manner, at any time prior to or during questioning, that he wishes to remain silent, the interrogation must cease.” Miranda, 384 U.S. at 473. Interrogation is the express questioning, or its functional equivalent which includes “words or actions on the part of the police ... that the police should know are reasonably likely to elicit an incriminating response.” State v. Sims, 304 S.C. 409, 417, 405 S.E.2d 377, 381 (1991) (citing Rhode Island v.

Innis, 446 U.S. 291, 301, 100 S.Ct. 1682, 1690, 64 L.Ed.2d 297, 308 (1980)). However, “[i]f an accused makes a statement concerning the right to counsel ‘that is ambiguous or equivocal’ or makes no statement, the police are not required to end the interrogation, or ask questions to clarify whether the accused wants to invoke his or her Miranda rights.” Berghuis v. Thompkins, 560 U.S. 370, 381 (2010).

After Investigator Wynn read Appellant his Miranda rights, he asked Appellant if he wanted to talk with him. Appellant responded: “No, sir.” In order to verify what Appellant stated, Investigator Wynn responded: “You don’t?” He did not continue the interrogation by asking any questions intended to elicit an incriminating response. He simply intended to verify Appellant’s response. Appellant then again stated “No” but continued by asking Investigator Wynn was speaking with him and what Investigator Wynn wanted. Investigator Wynn indicated he just wanted to ask him a couple questions. Appellant then stated: “Ok, Ok, I mean I ain’t trying to be funny.” Investigator Wynn tells him: “That’s fine, that’s your right I mean if you don’t want to talk to me about it.” Appellant then stated: “I can talk to you. I don’t mind talking to you.” Investigator Wynn then asks: “So you understand what is going on?” Appellant interrupts saying he understands what is going on and then continues to answer questions asked by Investigator Wynn.

Investigator Wynn reasonably needed to clarify Appellant’s response that he did not want to talk with him because Appellant had already given a statement to another officer and was placed in the vehicle to speak with Investigator Wynn. As the Ninth Circuit has explained: “There is a critical distinction between, on the one hand, an inquiry for the limited purpose of clarifying whether the defendant is invoking his right to remain silent or has changed his mind regarding an earlier assertion of the right and, on the other hand, questioning aimed at eliciting

incriminating statements concerning the very subject on which the defendant has invoked his right.” United States v. Lopez-Diaz, 630 F.2d 661, 665 (9th Cir. 1980); see also, United States v. Gordon, 895 F.2d 932, 940 (4th Cir. 1990) (allowing police to ask only limited questions to clarify invocation by a defendant of his or her right to remain silent).

As a result, the trial judge who considered all the testimony, listened to argument of counsel, and examined the recorded statements properly determined intoxication did not render the statements *per se* involuntary. In reviewing the totality of the circumstances, the trial court did not abuse his discretion in finding Appellant’s statements to Officer Happ and Investigator Wynn were knowing and voluntary.

Harmless Error

Finally, any error in the admission of either statement or even both statements is entirely harmless in light of the overwhelming evidence presented in this case and the fact Appellant does not confess to the crime and instead denies involvement in his statements. See State v. Garner, 304 S.C. 220, 222, 403 S.E.2d 631, 632 (1991) (holding improperly admitted evidence was harmless error given the overwhelming evidence of guilt).

The police received a call about an earlier dispute on Church Street which Appellant admitted was between him and Jones. In the phone call, it was reported Appellant had a knife. (State’s Exhibit 2). During the actual incident, the victim clearly identified Appellant as his attacker, indicating he was stabbed multiple times while in the restroom. An eye witness, Wheeling, that served as a resident supervisor of the shelter entered the restroom and witnessed Appellant stabbing Jones. Both Jones and Wheeling identified Appellant in court as the person with the knife stabbing Jones. Finally Nesmith identified Appellant as the person who exited the shelter and disposed of the knife by throwing it over the fence. Nesmith retrieved the knife, gave

it to Jones who turned it into the director of the shelter. DNA testing on the knife matched blood on the knife and blood on the wall of the shelter to Jones.

In the statements, Appellant admitted the argument at 413 Church Street, but continuously denied involvement in the stabbing. He admitted he had a knife earlier in the night as reported by the caller, but indicated it was either lost (State's Exhibit 1) or at his cousin's house. (State's Exhibit 2). He never confessed and only maintained his innocence in the statements.

As a result, the admission of the statements could not have been unduly prejudicial even if they were improperly admitted. Further, based on the overwhelming evidence presented, any error in their admission was entirely harmless.

CONCLUSION

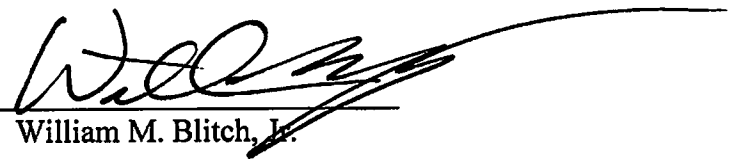
For all the foregoing reasons, it is respectfully submitted that the judgment and conviction of the lower court be affirmed.

Respectfully submitted,

ALAN WILSON
Attorney General

WILLIAM M. BLITCH, JR.
Assistant Attorney General
S.C. Bar No. 15608

E.L. CLEMENTS, III
Solicitor, Twelfth Judicial Circuit

BY: 
William M. Blitch, Jr.

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ATTORNEYS FOR RESPONDENT

September 13, 2017

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Florence County
Honorable D. Craig Brown, Circuit Court Judge
Appellate Case Tracking No. 2016-001390

The State,

Respondent,

vs.

Melvin Durant,

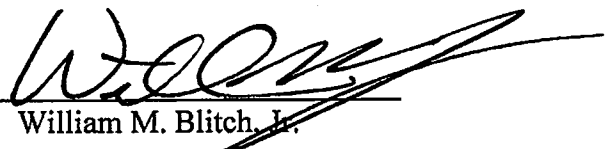
Appellant.

CERTIFICATE OF COUNSEL

The undersigned certifies that this Final Brief of Respondent complies with Rule 211(b), SCACR, and the April 15, 2014, order from the South Carolina Supreme Court entitled "Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings."

ALAN WILSON
Attorney General

WILLIAM M. BLITCH, JR.
Assistant Attorney General

BY: 

William M. Blitch, Jr.

Office of the Attorney General
Post Office Box 11549
Columbia, SC 29211
(803) 734-3727

ATTORNEYS FOR RESPONDENT

September 13, 2017

**THIS OPINION HAS NO PRECEDENTIAL VALUE. IT SHOULD NOT BE
CITED OR RELIED ON AS PRECEDENT IN ANY PROCEEDING
EXCEPT AS PROVIDED BY RULE 268(d)(2), SCACR.**

**THE STATE OF SOUTH CAROLINA
In The Court of Appeals**

The State, Respondent,

v.

Melvin Durant, Appellant.

Appellate Case No. 2016-001390

Appeal From Florence County
D. Craig Brown, Circuit Court Judge

Unpublished Opinion No. 2019-UP-083
Submitted January 1, 2019 – Filed February 20, 2019

AFFIRMED

Appellate Defender Susan Barber Hackett, of Columbia,
for Appellant.

Attorney General Alan McCrory Wilson and Assistant
Senior Attorney General William M. Blich, Jr., both of
Columbia; and Solicitor Edgar Lewis Clements, III, of
Florence, all for Respondent.

PER CURIAM: Melvin Durant appeals his conviction for assault and battery of a
high and aggravated nature (ABHAN). On appeal, Durant argues the trial court

abused its discretion by admitting two statements he made to law enforcement. We affirm¹ pursuant to Rule 220(b), SCACR, and the following authorities:

1. As to whether the trial court erred in admitting Durant's statement to Corporal Happ: *State v. Baccus*, 367 S.C. 41, 48, 625 S.E.2d 216, 220 (2006) ("In criminal cases, the appellate court sits to review errors of law only."); *State v. Moses*, 390 S.C. 502, 510-11, 702 S.E.2d 395, 399 (Ct. App. 2010) ("[T]he trial [court's] ruling as to the voluntariness of [a] confession will not be disturbed unless so erroneous as to constitute an abuse of discretion." (quoting *State v. Myers*, 359 S.C. 40, 47, 596 S.E.2d 488, 492 (2004))); *State v. Miller*, 375 S.C. 370, 378-79, 652 S.E.2d 444, 448 (Ct. App. 2007) ("When reviewing a trial [court's] ruling concerning voluntariness, the appellate court does not re-evaluate the facts based on its own view of the preponderance of the evidence, but simply determines whether the trial [court's] ruling is supported by any evidence."); *Miranda v. Arizona*, 384 U.S. 436 (1966) (holding that, before police questioning can take place, an accused must be warned he has the right to remain silent and the right to an attorney; he must be afforded the "[o]ppportunity to exercise these rights . . . throughout the interrogation"; and after these warnings, he may "knowingly and intelligently waive these rights and agree to answer questions or make a statement"); *State v. Franklin*, 390 S.C. 535, 540, 702 S.E.2d 568, 571 (Ct. App. 2010) ("A statement obtained as a result of custodial interrogation is inadmissible unless the suspect was advised of and voluntarily waived his rights under *Miranda*" (alteration by court) (quoting *State v. Aleksey*, 343 S.C. 20, 30, 538 S.E.2d 248, 253 (2000))); *Moses*, 390 S.C. at 513, 702 S.E.2d at 401 (providing the State must show the waiver (1) was "voluntary in the sense that it was the product of a free and deliberate choice rather than intimidation, coercion, or deception"; and (2) was "made with a full awareness of both the nature of the right being abandoned and the consequences of the decision to abandon it" (quoting *Berghuis v. Thompkins*, 560 U.S. 370, 382-83 (2010))); *State v. Goodwin*, 384 S.C. 588, 601, 683 S.E.2d 500, 507 (Ct. App. 2009) ("The test of voluntariness is whether a defendant's will was overborne by the circumstances surrounding the giving of a confession."); *Moses*, 375 S.C. at 513-14, 702 S.E.2d at 401 ("Courts have recognized appropriate factors that may be considered in a totality of the circumstances analysis: background; experience; conduct of the accused; age; maturity; physical condition and mental health; length of custody or detention; police misrepresentations; isolation of a minor from his or her parent; the lack of any advice to the accused of his constitutional rights; threats of violence; direct or indirect promises, however slight; lack of education or low intelligence; repeated

¹ We decide this case without oral argument pursuant to Rule 215, SCACR

and prolonged nature of the questioning; exertion of improper influence; and the use of physical punishment, such as the deprivation of food or sleep."); *id.* at 514, 702 S.E.2d at 401 ("[N]o single factor is dispositive and each case requires careful scrutiny of all surrounding circumstances."); *State v. Saxon*, 261 S.C. 523, 529, 201 S.E.2d 114, 117 (1973) ("The fact that one is intoxicated at the time a confession is made does not necessarily render him incapable of comprehending the meaning and effect of his words."); *id.* ("[P]roof that an accused was intoxicated at the time he made a confession does not render the statement inadmissible as a matter of law" but rather "goes to the confession's weight and credibility.").

2. As to whether the trial court erred in admitting Durant's statement to Investigator Wynn: *Moses*, 390 S.C. at 510-11, 702 S.E.2d at 399 ("[T]he trial [court's] ruling as to the voluntariness of [a] confession will not be disturbed unless so erroneous as to constitute an abuse of discretion." (quoting *Myers*, 359 S.C. at 47, 596 S.E.2d at 492)); *Miller*, 375 S.C. at 378-79, 652 S.E.2d at 448 ("When reviewing a trial [court's] ruling concerning voluntariness, the appellate court does not re-evaluate the facts based on its own view of the preponderance of the evidence, but simply determines whether the trial [court's] ruling is supported by any evidence."); *Franklin*, 390 S.C. at 540, 702 S.E.2d at 571 ("A statement obtained as a result of custodial interrogation is inadmissible unless the suspect was advised of and voluntarily waived his rights under *Miranda*" (alteration by court) (quoting *Aleksey*, 343 S.C. at 30, 538 S.E.2d at 253)); *Moses*, 390 S.C. at 513, 702 S.E.2d at 401 (providing the State must show the waiver (1) was "voluntary in the sense that it was the product of a free and deliberate choice rather than intimidation, coercion, or deception"; and (2) was "made with a full awareness of both the nature of the right being abandoned and the consequences of the decision to abandon it" (quoting *Berghuis*, 560 U.S. at 382-83)); *Miller*, 375 S.C. at 380, 652 S.E.2d at 449 ("Volunteered statements, whether exculpatory or inculpatory, stemming from custodial interrogation or spontaneously offered up, are not barred by the Fifth Amendment.").²

² This court finds Durant's contention that his statement was involuntary because Investigator Wynn improperly promised to help him is unpreserved for appellate review. *See State v. Dunbar*, 356 S.C. 138, 142, 587 S.E.2d 691, 693 (2003) ("In order for an issue to be preserved for appellate review, it must have been raised to and ruled upon by the trial [court]."); *id.* at 142, 587 S.E.2d at 693-94 ("Issues not raised and ruled upon in the trial court will not be considered on appeal."); *id.* at 142, 587 S.E.2d at 694 ("A party may not argue one ground at trial and an alternate ground on appeal.").

AFFIRMED.

LOCKEMY, C.J., and THOMAS and GEATHERS, JJ., concur.

RECEIVED
FEB 20 2019
APPELLATE DEFENSE

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

County of FLORENCEMELVIN DURANT #1063

Full name and prison number (if any) of Applicant

v.

State of South Carolina

APPLICATION FOR

POST-CONVICTION RELIEF

2019 DEC 11 PM 1:12
 BONIS FOLIOS 071111
 CCOP & GS
 FLORENCE COUNTY, SC

FILED

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 Lee Correctional Institution 990 Wisnuck Highway, Bishopville, South Carolina 29010
2. Name and location of Court which imposed sentence Florence County Court OF general Sessions Florence, South Carolina
3. Name(s) of co-defendant(s) (if any) None
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) 2015-95-21-00211 - Attempted murder
 - (b) _____

The date upon which sentence was imposed and the terms of the sentence:

(a) June 21, 2016 Twenty (20) years

(b) _____

(c) _____

6. Check whether a finding of guilty was made:

(a) after a plea of guilty _____

(b) after a plea of not guilty ☒ _____

(c) after a plea of nolo contendere _____

7. Did you appeal from the judgment of conviction or the imposition of sentence?

Yes I did

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. Affirmed

ii. _____

iii. _____

(c) the date of each such result:

i. _____

ii. _____

iii. _____

(d) if known, citations of any written opinion or orders entered pursuant to such results:

i. _____

ii. _____

iii. _____

9. If you answered "no" to (7), state your reasons for not so appealing:

(a) N/A

(b) _____

- (c) _____
10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:
- (a) Attachment 10.a + 11 + 10 is the page
- (b) _____
- (c) _____
11. State concisely and in the same order the facts which support each of the grounds set out in (10):
- (a) _____
- (b) _____
- (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? _____
- (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. _____

10(a): Applicant was denied the right to effective assistance of counsel--guaranteed by the Sixth and Fourteenth Amendments to the United States Constitution and by Article I, §§ 3 and 14 of the South Carolina Constitution--during the guilt-or-innocence phase of his trial.

11(a): Supporting facts: Trial counsel performance during the guilt-or-innocence phase was both unreasonable and prejudicial, see *Strickland v. Washington*, 466 U.S. 668 (1984), counsel acts or omission included, but are not limited to the following:

- 1) Counsel fail to object to the charge of (ABHIAN) after the Judge admonished the Jury on (Abhian-Assault/bat 1st degree) (see Tr. p. 252-253, & lines 24-25) (At 252 & 253-261-4th-9)
- 2) Counsel failed to adequately to investigate the facts surrounding the charge of ~~murder~~ Appellate Attempted murder NO 2015-GS-21-00211 That was ~~the~~ TRUE BILL.
- 3) Prosecutor of the State did admitted on Record from his perspective, HE didn't think the relevancy of the injury really matters (Tr. p. 194) 5-Thur-20).
- 4) Here, we find "an abuse of discretion" where evidence was grounded in factual conclusion, without evidentiary support, *State v. Hill*, 315 S.C. 269, 269, 439 S.E.2d 848, 859, (1993) Trial Court is required to charge a Jury on lesser included offense if there is evidence of a lesser.

(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 they have not

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) (10) (a) First Collateral Attack
 (b) _____
 (c) _____

17. Were you represented by an attorney at any time during the course of:

(a) your arraignment and plea? N/A
 (b) your trial, if any? Yes I Was
 (c) your sentencing? Yes I Was
 (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? Yes I Was
 (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed?
N/A

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. William K. Meetz 180 North Tryon Street,
MSC-N, Florence South Carolina 29501
 ii. Susan B. Hackett, post office Box 11589,
Columbia, South Carolina 29211
 iii. _____

- (b) the proceedings at which each such attorney represented you:

i. Trial and Sentencing
 ii. South Carolina Court
 iii. _____

State clearly the relief you seek in this application.

VACATE Sentence

20. Are you now under sentence from any other court that you have not challenged?

NO, I AM NOT

STATE OF SOUTH CAROLINA

County of

FLORENCE

VERIFICATION

I, MELVIN DURANT #177063, 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.

Melvin Durant

SWORN to and subscribed before me this 4th day of Dec, 2019.

Shemou Mike (L.S.)
Notary Public

My Commission Expires:

09/04/2029

2019 DEC 11 PM 1:12
FILED
CLERK OF COURT
FLORENCE COUNTY, SC

**APPLICATION TO PROCEED WITHOUT PAYMENT
OF COSTS AND AFFIDAVIT
IN SUPPORT THEREOF**

I, MELVIN DURANT #177063, 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.

Melvin Durant
Applicant

SWORN or affirmed to and subscribed before me this
4th day of Dec, 2009.

James McFelle
Notary Public

My Commission Expires: 09/04/2029

2009 DEC 11 PM 1:12
CLERK OF SUPERIOR COURT
CCGP & CS
FLORENCE COUNTY, SC

FILED

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF FLORENCE	)	FOR THE TWELFTH JUDICIAL CIRCUIT
	)	
Melvin Durant, #177063,	)	2019-CP-21-3468
	)	
Applicant	)	
	)	
v.	)	RETURN
	)	(Counsel Appointed)
State of South Carolina,	)	
	)	
Respondent.	)	
	)	

2020 JUN 12 PM 3:43
DORIS FOLLOS CHARRA
CCCP & GS
FLORENCE COUNTY, SC

FILED

In response to Melvin Durant's (Applicant) action for post-conviction relief (PCR) commenced December 11, 2019, the State makes this return:

I. Procedural History

Applicant is confined in the South Carolina Department of Corrections (SCDC) pursuant to orders of commitment of the Florence County Clerk of Court. Applicant was indicted at the March 2015 term of the Florence County Grand Jury for attempted murder (2015-GS-21-00211). Applicant was represented by Deputy Public Defender W. Vickery Meetze. Assistant Solicitor David Richardson prosecuted the case.

Applicant proceeded to a jury trial on June 20-21, 2016, before the Honorable D. Craig Brown. The jury convicted Applicant of the lesser-included offense of assault and battery of a high and aggravated nature (ABHAN). Judge Brown sentenced Applicant to 20 years' imprisonment. Applicant appealed.

On appeal, Applicant was represented by Appellate Defender Susan B. Hackett who briefed the following issues:

- I. Did the trial [court] err in permitting the prosecution to introduce a statement allegedly made by [Applicant] during custodial

interrogation in light of the totality of the circumstances, including his extreme intoxication, demonstrating the statement was not made pursuant to a voluntary, knowing, and intelligent waiver?

- II. Did the trial [court] err in permitting the prosecution to introduce a statement allegedly made by [Applicant] during custodial interrogation where the evidence demonstrated [Applicant] invoked his right to silence, was extremely intoxicated, and the officer promised to help [Applicant] if he agreed to cooperate?

The case was submitted on briefs, and the court of appeals affirmed. *State v. Durant*, Op. No. 2019-UP-083 (S.C. Ct. App. filed Feb. 20, 2019). Thereafter, Applicant petitioned for rehearing; however, the court of appeals denied Applicant's petition. *State v. Durant*, S.C. Ct. App. Order filed Apr. 19, 2019. Applicant then petitioned for a writ of certiorari to the Supreme Court; however, the Supreme Court denied certiorari. *State v. Durant*, S.C. Sup. Ct. Order filed Aug. 16, 2019. The case was remitted back to the circuit court August 16, 2019.

II. Facts

On November 12, 2014, Applicant and Wiley Jones got into a heated argument at the transitional shelter where they both lived. Trial Tr. 72. Following the argument, Applicant followed Jones into the restroom. Trial Tr. 100. Shortly thereafter, a director at the shelter, Carl Wheeling, heard a commotion coming from the restroom. Trial Tr. 73. Wheeling entered the restroom and witnessed Applicant using his left-hand to pin Jones up against the urinal while using his right-hand to stab Jones with a knife. Trial Tr. 73. Wheeling testified he saw Applicant stab Jones about twice in the back. Trial Tr. 73. Wheeling testified he grabbed Applicant's arm to stop him from stabbing Jones again, allowing Jones to escape the bathroom. Trial Tr. 73. Wheeling called the shelter director, and by the time he walked outside to check on Applicant and Jones, an ambulance and a police car had arrived. Trial Tr. 73.

Jones was transported to McLeod Hospital by EMS for treatment of his injuries. Trial Tr. 104. His injuries consisted of severe lacerations to his upper-back and left-arm. Trial Tr. 104. Shortly after the assault, Applicant walked outside and another resident at the living facility observed Applicant holding a knife and speaking about Jones. Trial Tr. 91. Soon after, Applicant was arrested at the scene by law enforcement. Trial Tr. 120. After being *Mirandized* and interviewed, Applicant admitted to attacking Jones with a knife. Trial Tr. 129.

III. Current Application

Applicant timely commenced this PCR action on December 11, 2019. Applicant asserts he is being held in custody unlawfully, alleging:

1. Ineffective assistance of counsel:
 - a. "Counsel fail[ed] to object to the charge of ABHAN after the judge admonished the jury on ABHAN Assault/battery [first] degree."
 - b. "Counsel failed to adequately investigate the facts surrounding the charge of attempted murder."

Applicant requests relief in the form of a new trial.

Attached to this return and incorporated herein are the Florence County Clerk of Court records, Applicant's SCDC records, the trial transcript, Applicant's appellate records, and the records of this PCR action.

IV. Response to Allegations of Ineffective Assistance of Counsel

Applicant's allegations of ineffective assistance of trial counsel are without merit. To establish ineffective assistance of counsel, the PCR applicant must prove (1) counsel's performance fell below an objective standard of reasonableness, and (2) the applicant sustained prejudice as a result of counsel's deficient performance. *Strickland v. Washington*, 466 U.S. 668, 687–88 (1984); *Cherry v. State*, 300 S.C. 115, 117–18, 386 S.E.2d 624, 625 (1989).

Strickland requires trial counsel must be given leeway to make reasonable strategic decisions. No particular set of detailed rules for counsel's conduct can satisfactorily take account

of the variety of circumstances faced by defense counsel or the range of legitimate decisions regarding how best to represent a criminal defendant. *Strickland*, 466 U.S. at 688-89. "Representation is an art, and an act or omission that is unprofessional in one case may be sound or even brilliant in another." *Id.* at 691. Therefore, judicial scrutiny of counsel's performance must be highly deferential. *Id.* at 689. Where counsel articulates a valid strategic reason for his action or inaction, counsel's performance should not be found ineffective. *Roseboro v. State*, 317 S.C. 292, 294, 454 S.E.2d 312, 313 (1996); *Underwood v. State*, 309 S.C. 560, 562, 425 S.E.2d 20, 22 (1992); *Stokes v. State*, 308 S.C. 546, 548, 419 S.E.2d 778, 779 (1992). Courts must be wary of second guessing counsel's trial tactics; and where counsel articulates a valid reason for employing such strategy, such conduct is not ineffective assistance of counsel. *Whitehead v. State*, 308 S.C. 119, 122, 417 S.E.2d 529, 539 (1992). In making a fair assessment of attorney performance, a court must make every effort to "eliminate the distorting effects of hindsight, to reconstruct the circumstances of counsel's challenged conduct, and to evaluate the conduct from counsel's perspective at the time." *Strickland*, 466 U.S. at 689.

Applicant cannot satisfy either requirement of *Strickland*. However, the record likely does not refute or disprove Applicant's allegations of ineffective assistance of trial counsel; therefore, the State requests an evidentiary hearing to fully resolve the issues. *See Sharper v. State*, 279 S.C. 264, 265, 305 S.E.2d 247, 248 (1983) (providing an evidentiary hearing shall be held when a PCR application "alleges specific instances of ineffective assistance of counsel which are not conclusively refuted by the record before the lower court").

V. Any Future 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. *See* Rule 11, SCRCP. *Pro se* filings will not be considered at the PCR hearing. The State reserves the right to request that any amendments withheld until the last minute be stricken because of undue prejudice to the State pursuant to *Love v. State*, 428 S.C. 231, 834 S.E.2d 196 (2019), or, alternatively, the State will request a continuance in the matter. *See Id.* at 245, 834 S.E.2d at 203 (Kittredge, J., dissent) (“If, however, the proposed amendment . . . would truly prejudice the State, the better course of action would be to continue the matter and thus remove any possibility of prejudice resulting from the belated amendments.”).

Pursuant to section 17-27-150 of the South Carolina Code, 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. Further, the State requests that all potential exhibits and materials used to produce potential expert witness testimony be sent to the State well in advance of the evidentiary hearing. As noted above, the State 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 the State. *See Love*, 428 S.C. 231, 834 S.E.2d 196.

VI. Any and All other Allegations

Each and every allegation contained within the application not expressly admitted, qualified, or explained in this return is hereby denied.

VII. Conclusion

WHEREFORE, the State requests an evidentiary hearing be held on the claims of ineffective assistance of counsel.

Respectfully submitted,

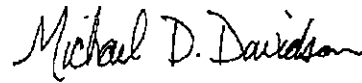
ALAN WILSON
Attorney General

W. JEFFREY YOUNG
Chief Deputy Attorney General

MEGAN HARRIGAN JAMESON
Senior Assistant Deputy Attorney General

MICHAEL D. DAVIDSON
Assistant Attorney General

By:



ATTORNEYS FOR RESPONDENT
Office of the Attorney General
Post Office Box 11549
Columbia, SC 29211

June 8, 2020

FILED

STATE OF SOUTH CAROLINA)

2020 JUN 12 PM 3:43 THE COURT OF COMMON PLEAS

COUNTY OF FLORENCE)

DORIS POUROS O'HARA

2019-CP-21-3468

- CCCP & GS

Melvin Durant, #177063

FLORENCE COUNTY, SC

Applicant,)

vs)

AFFIDAVIT OF SERVICE BY MAIL

State of South Carolina,)

Respondent,)

1. Undersigned is counsel of record for the Respondent in the above-captioned action.
2. Pursuant to the South Carolina Supreme Court's Order "RE: Operation of the Trial Courts During the Coronavirus Emergency" (Appellate Case No. 2020-000447), dated April 3, 2020), "a lawyer admitted to practice law in this state may serve a document on another lawyer admitted to practice law in this state using the lawyer's primary email address listed in the Attorney Information System (AIS)."
3. Undersigned has served a copy of the **Return** in the above-captioned matter on opposing counsel by emailing a copy to the email address as listed in the AIS:

Joshua A. Bailey, Esquire
jbailey@pcedclawyers.com

DATED this the 8th day of June, 2020.

s/ Michael D. Davidson
 Michael D. Davidson, Attorney
 For Respondent

STATE OF SOUTH CAROLINA
COUNTY OF FLORENCE

MELVIN DURANT, # 177063,

PETITIONER,

-VS-

STATE OF SOUTH CAROLINA,

RESPONDENT.

CERTIFIED: A TRUE COPY
Doris Poulos O'Hara
CLERK OF COURT C.P. & G.S.
FLORENCE COUNTY, S.C.

IN THE COURT OF COMMON PLEAS
TWELFTH JUDICIAL CIRCUIT

DOCKET NO.: 2019-CP-21-3468

AMENDED APPLICATION FOR
POST-CONVICTION RELIEF

2022 NOV 29 AM 10:29
DORIS POULOS O'HARA
CCCP & GS
FLORENCE COUNTY, SC

FILED

Petitioner, by and through counsel, submits the following:

1. **Place of Detention:** Lee Correctional Institution.
2. **Name and Location of Court Which Imposed Sentence:** Twelfth Circuit Court of General Sessions for Florence County.
3. **Name(s) of Co-Defendant(s):** None.
4. **The Indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:**
 - (a) Indictment Number: 2015-GS-21-211 for ABHAN
5. **The Date upon which sentence was imposed and the terms of the sentence:**
 - (a) Petitioner was sentenced to 20 years on June 21, 2016
6. **Check whether a finding of guilty was made:**
 - (a) After a plea of guilty _____
 - (b) After a plea of not guilty x
 - (c) After a plea of nolo contendere _____
7. **Did you appeal from the judgment of conviction or the imposition of sentence?**
 - (a) Yes.
8. **If you answered "yes" to (7), list:**
 - (a) Name of each Court to which you appealed: South Carolina Court of Appeals

- (b) **The result in each such Court to which you appealed:** Affirmed.
- (c) **The date of each result:** February 20, 2019
- (d) **If known, citations of any written opinion or orders entered pursuant to such results:** Appellate Case No.: 2016-001390

9. **If you answered "no" to (7), state your reasons for not so appealing:** N/A

10. **State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:**

- (a) Petitioner's right to the effective assistance of counsel, as guaranteed by the Sixth and Fourteenth Amendments to the United States Constitution and Article I, §§ 3 and 14 of the South Carolina Constitution was violated by Petitioner's trial counsel when he failed to raise and preserve for appellate review Investigator Wynn's promise to help Petitioner if Petitioner did not tell him the truth.
- (b) Petitioner's right to the effective assistance of counsel, as guaranteed by the Sixth and Fourteenth Amendments to the United States Constitution and Article I, §§ 3 and 14 of the South Carolina Constitution was violated by Petitioner's trial counsel when he failed to object to the trial court's jury charge on Assault and Battery of a High and Aggravated Nature.

11. **State concisely and in the same order the facts which support each of the grounds set out in (10):**

- (a) During an interrogation of Petitioner, Investigator Wynn informed Petitioner that he could not help Petitioner if Petitioner did not tell him the truth. Petitioner's trial counsel challenged the admissibility of Petitioner's statements based upon extreme intoxication and Petitioner's invocation of his right to remain silent. However, trial counsel did not move to exclude on the promise of help made by Investigator Wynn pursuant to State v Miller, 375 S.C. 370, 386, 652 S.E.2d 444, 452 (Ct. App.

2007) (quoting State v Rochester, 301 S.C. 196, 200, 391 S.E.2d 244, 247 (1990)

“A statement may not be ‘extracted by any sort of threats or violence, [or] obtained by any direct or implied promises, however slight, [or] obtained by the exertion of improper influence.”)

- (b) Petitioner was indicted for Attempted Murder. During a charging conference, the prosecutor stated “[j]udge, you know, he only charged with the attempted murder. That’s all it has been from the beginning.” Attempted Murder requires the specific intent to kill. An ABHAN charge is appropriate when the evidence demonstrates the defendant lacked the requisite intent to kill. State v. Hilton, 284 S.C. 245, 249, 325 S.E.2d 575, 577 (Ct. App. 1985).

12. Prior to this application have you filed with respect to the conviction:

- (a) Any petition in State Court under South Carolina Law: None other than the appeal.
- (b) Any petition in State or Federal Court 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
- (b) The name and location of the Court in which each was filed:
- i. N/A
- (c) The disposition thereof:

i. N/A

(d) The date of each such disposition:

i. N/A

(e) If known, the citations of any written opinions or ordered entered pursuant to each such disposition:

i. N/A

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

(b) The proceedings in which each ground was raised:

i. N/A

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) Petitioner's Application for Post-Conviction Relief is the first proceeding in which he may allege ineffective assistance of counsel.

17. Were you represented by an attorney at any time during the course of:

(a) Your arraignment and plea? N/A

(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. William V. Meetze, 180 N. Irby Street, Florence, SC 29501
 - ii. Susan B. Hackett, PO Box 11589, Columbia, SC 29211
- (b) The proceedings at which each such attorney represented you:
- i. Petitioner was represented by Mr. Meetze at trial and sentencing.
 - ii. Petitioner was represented by Ms. Hackett on appeal.
19. State clearly the relief you seek in filing this application:
- (a) Vacate conviction and sentence and for a new trial to be ordered.
20. Are you now under sentence from any other court that you have not challenged?
- (a) Petitioner is not under any other sentence.

Dated this 28th day of November, 2022 at Florence, South Carolina.

Respectfully submitted,



JOSHUA A. BAILEY
SC Bar No.: 76965
Attorney for the Petitioner

SNOW AND BAILEY LAW FIRM, P.A.
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(E): jbailey@peedeelawyers.com

State of South Carolina	)	In the Court of Common Pleas
	)	Twelfth Judicial Circuit
County of Florence	)	Case No. 2019-CP-21-03468
	)	
Melvin Durant,	)	
	)	
Applicant,	)	
	)	
-vs-	)	Transcript of Record
	)	
State of South Carolina,	)	
	)	
Respondent.	)	
	)	

December 14, 2022
 Florence, South Carolina

B E F O R E:

The Honorable George M. McFaddin, Jr., Judge

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

Joshua Bailey, Esquire
 Attorney for the Applicant

Danielle Dixon, Esquire
 Attorney for the Respondent/State

Krystal J. Smith
 Official Circuit Court Reporter III

I N D E X

<u>WITNESS/DESCRIPTION</u>	<u>PAGE NUMBER</u>
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Direct Examination by Mr. Bailey.....	6
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William "Vick" Meetze	
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Under Advisement.....	21
Court Reporter Certification.....	22

E X H I B I T S

<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID.</u>	<u>EV.</u>

(No Exhibits Presented)

COURT REPORTER LEGEND

dashes	--	intentional or purposeful interruption
		or change in thought
ellipses	. . .	trailing off
[ph]		phonetically written
[sic]		written as said

1 DECEMBER 14, 2022

2 (WHEREUPON, the proceedings began at 11:49 a.m.)

3 THE COURT: All right. I'm ready.

4 MS. DIXON: May it please the Court.

5 THE COURT: Yes, ma'am.

6 MS. DIXON: Danielle Dixon, assistant attorney general
7 for the State of South Carolina. This is the case of Melvin
8 -- Melvin Durant versus State, Docket Number 2019-CP-3468
9 [sic].

10 Mr. Durant is serving a 20-year sentence. He was
11 indicted by the Florence County Grand Jury in March of 2015
12 for attempted murder. That is Indictment Number 2015-GS-21-
13 211. That indictment arose from the November 12th, 2014,
14 stabbing of Wiley Jones.

15 Mr. Durant proceeded to a jury trial before the Honorable
16 D. Craig Brown June 20th through 21st of 2016. He was
17 represented by Mr. Meetze, and David Richardson represented
18 the State. He was convicted of the lesser-included offense of
19 assault and battery of a high and aggravated nature and
20 sentenced to 20 years.

21 He filed a direct appeal, which was perfected by Susan
22 Barber Hackett of the Appellate Defense, and the Court of
23 Appeals affirmed on the merits in an unpublished opinion, and
24 the remittitur was sent August 16th, 2019. He timely filed
25 this PCR application December 11th, 2019, raising allegations

1 of ineffective assistance of counsel. The State filed a
2 return, and at this time I will turn it over to Mr. Bailey to
3 set forth the grounds he's going to go forward on today.

4 THE COURT: All right, ma'am. Thank you.

5 Mr. Bailey?

6 MR. BAILEY: Thank you, Your Honor. May it please the
7 Court.

8 Judge, as indicated in the amended application for post-
9 conviction relief, we had two grounds, Your Honor. First, Mr.
10 Durant alleges that his constitutional rights were violated
11 when Mr. Meetze failed to raise and preserve for appellate
12 review investigators -- Investigator Wynn's promise to help
13 Mr. Durant if Mr. Durant did not assist him by providing a
14 statement. Also, Your Honor, that his constitutional rights
15 were violated when Mr. Meetze failed to object to the trial
16 judge's use of assault and battery of a high and aggravated
17 nature during charge.

18 THE COURT: All right, sir.

19 MR. BAILEY: At this time, Your Honor, we would call Mr.
20 Durant in the courtroom.

21 THE COURT: All right. Mr. Durant.

22 MR. BAILEY: I'm sorry, Your Honor. Mr. Durant had a
23 stroke while he's been incarcerated, so he moves a little
24 slow.

25 THE APPLICANT: Yeah.

MELVIN DURANT - DIRECT BY MR. BAILEY

1 THE COURT: That's fine. We're okay.

2 THE CLERK: Mr. Durant, if you could, place your left
3 hand on the Bible, raise your right hand as much as you can.
4 You can place your stuff down. Do you swear or affirm that
5 the testimony you give will be the truth, the whole truth, and
6 nothing but the truth, so help you God?

7 THE APPLICANT: Yes, ma'am.

8 THE CLERK: Thank you.

9 THE COURT: Yes, sir.

10 MR. BAILEY: Thank you, Your Honor. May it please the
11 Court.

12 MELVIN DURANT, being first duly
13 sworn, testified as follows:

14 DIRECT EXAMINATION

15 BY MR. BAILEY:

16 Q: Mr. Durant, if you will, please, for identification
17 purposes, state your South Carolina Department of Corrections
18 identification number, sir?

19 A: 17763.

20 Q: And, Mr. Durant, you are currently serving a sentence of
21 20 years for assault and battery of a high and aggravated
22 nature conviction?

23 A: Yes, sir.

24 Q: And that conviction arose out of Florence County;
25 correct?

MELVIN DURANT - DIRECT BY MR. BAILEY

1 A: Yes, sir.

2 Q: Now, you were originally charged with attempted murder;
3 is that correct?

4 A: Yes, sir.

5 Q: And it is true that you did not plead guilty and
6 proceeded to trial; correct?

7 A: No, sir. I mean, yes, it's truth.

8 Q: You went to trial?

9 A: Yes, sir.

10 Q: All right. Now, Mr. Durant, we've alleged two
11 constitutional violations on your behalf?

12 A: Yes, sir.

13 Q: The first involves Investigator Wynn in his interaction
14 with you. Do you recall that?

15 A: Yes, sir.

16 Q: All right. Now, do you recall at trial that your
17 attorney moved to suppress your statement based upon
18 intoxication?

19 A: Yes, sir.

20 Q: And his allegation was that your statement was
21 involuntary because you were intoxicated at the time that you
22 made it; correct?

23 A: Yes, sir.

24 Q: Now, throughout the course of this case and based on our
25 allegation, did Investigator Wynn make a statement to you

MELVIN DURANT - DIRECT BY MR. BAILEY

1 about helping you if you made a statement?

2 A: Yes, sir, he did.

3 Q: And after Investigator Wynn made that statement to you,
4 is that when you made a statement that incriminated yourself?

5 A: No, I didn't incriminate myself, sir. I made the
6 statement when he occurred to me, you know, foul language, and
7 I responded back to that foul language. That was the only
8 thing -- it was the only words to say.

9 Q: But there was a statement attributed to you that was used
10 at trial; correct?

11 A: Yes, sir.

12 Q: And what was that statement?

13 A: Well, he asked me if I would cooperate with him, he'll --
14 he'll help me the best he can, but first I have to respond to
15 his questions. Well, first to see the question to speak with
16 him. I said no.

17 Q: But then he continued to question you; isn't that
18 correct?

19 A: Yes, sir.

20 Q: And those responses were used against you at trial; is
21 that correct?

22 A: Yes, sir.

23 Q: And at no time did Mr. Meetze in moving to suppress your
24 statements argue that your responses to Investigator Wynn were
25 based upon a promise to help?

MELVIN DURANT - DIRECT BY MR. BAILEY

1 A: No, sir.

2 Q: And it is your opinion that that violated your
3 constitutional rights?

4 A: Yes, sir.

5 Q: And that Mr. Meetze was ineffective for not making that
6 argument on your behalf?

7 A: Yes, sir.

8 Q: Okay. Now, we've also alleged that your constitutional
9 rights were violated because Mr. Meetze did not object to the
10 trial judge's use of the jury charge for assault and battery
11 of a high and aggravated nature?

12 A: Yes, sir.

13 Q: In your opinion, why should he have objected to that
14 charge?

15 A: Because the State never produced evidence for assault and
16 battery high and aggravated charge, and -- and the charge
17 wasn't in the indictment. I was indicted for attempted
18 murder. Also acquitted of attempted murder. So I felt like
19 they were on different standards for a lesser-included being
20 charged after I was acquitted on the true-billed indictment.

21 Q: And is it your position here today, Mr. Durant, that Mr.
22 Meetze's failure to object to that charge violated your
23 constitutional rights?

24 A: Yes, sir.

25 Q: And based on his failure to object, Mr. Durant, that his

MELVIN DURANT - DIRECT BY MR. BAILEY

1 representation of you at trial was ineffective?

2 A: Yes, sir.

3 Q: All right.

4 MR. BAILEY: I don't have any -- any more questions for
5 you, Mr. Durant. Please answer any questions Ms. Dixon has
6 for you. Okay?

7 THE APPLICANT: Yes, sir.

8 THE COURT: And Ms. Dixon?

9 CROSS-EXAMINATION

10 BY MS. DIXON:

11 Q: Mr. Durant, how are you doing today?

12 A: Oh, good. I could be doing a little better. Thanks.

13 Q: Could be doing better? I hear you. I understand. I
14 feel the same sometimes, especially today.

15 A: Okay.

16 Q: I just want to make sure before we go any further that --
17 and I know that your lawyer has discussed this with you, but I
18 want to make sure that you do, in fact, understand the type of
19 relief that the judge could potentially grant to you today.

20 Do I need to speak a little bit louder?

21 A: No. No, ma'am. I can hear you.

22 Q: Okay. And so the only thing the judge can do today -- he
23 can vacate your conviction, but what will happen is the State
24 can come back and retry you on what you were originally
25 indicted for. Do you remember what you were originally

MELVIN DURANT - CROSS BY MS. DIXON

1 indicted for?

2 A: Attempted murder.

3 Q: Attempted murder. Has anyone ever told you the maximum
4 sentence for attempted murder?

5 A: 30 years.

6 Q: 30 years? And what is the sentence you're currently
7 serving?

8 A: 20.

9 Q: 20? So you do understand that if you were to get a new
10 trial and subsequently be convicted of your original -- what
11 you were originally indicted for, which is attempted murder,
12 that you could face up to 30 years' imprisonment?

13 A: Yes, ma'am, I could, but I have a question on that. But
14 in case law -- I read the case law and there's a law out
15 there. If you was acquitted of an indictment, a true-billed
16 indictment, there's no longer evidence of that indictment and
17 there's no legal standards of the indictment.

18 Q: You were -- so you were acquitted? Okay.

19 A: Yes, ma'am. I'm not guilty of the charge.

20 Q: All right. Well, moving on to your allegation about
21 Investigator Wynn promising you something. And what was the
22 specific promise that he made?

23 A: He stated that if I was willing to help him and tell him
24 the truth about the matter, he was still investigating and
25 he'll be leaning on me and he'll -- he'll do the best he can

MELVIN DURANT - CROSS BY MS. DIXON

1 at court or trial or -- and here I said, well, I don't have
2 anything to tell you.

3 Q: Okay. And prior to you making a statement, did the
4 officer read to you what's called the Miranda warnings?

5 A: Yes. That's afterwards.

6 Q: After you made the statement, they read the Miranda
7 warnings?

8 A: He read -- he read me Miranda rights first. Then he made
9 those.

10 Q: He -- he read you the Miranda --

11 A: Yeah.

12 Q: -- rights first?

13 A: Yes.

14 Q: And as part of the Miranda rights, it begins -- and you
15 would agree, it begins you have the right to remain silent;
16 correct?

17 A: Right.

18 Q: Anything you say can and will be used against you in a
19 court of law?

20 A: Yes, ma'am.

21 Q: And it does, in fact, tell you at that time anything you
22 say can and will be used against you?

23 A: Yes.

24 Q: And you were advised of that?

25 A: Yes.

MELVIN DURANT - CROSS BY MS. DIXON

1 Q: Okay. And in terms of -- I think you had at some point
2 alleged failure to investigate. Is there anything specific
3 you asked Mr. Meetze to investigate?

4 A: No, ma'am.

5 Q: All right.

6 MS. DIXON: Nothing further.

7 THE COURT: Mr. Bailey?

8 MR. BAILEY: I have no additional questions for Mr.
9 Durant.

10 THE COURT: All right. Mr. Durant, you may come down,
11 sir.

12 THE APPLICANT: Thank you, sir.

13 MR. BAILEY: Your Honor, that'll be the applicant's case.

14 THE COURT: Yes, sir.

15 MS. DIXON: Your Honor, the State will call Vick Meetze.

16 THE COURT: Okay.

17 MS. DIXON: How are you doing?

18 THE WITNESS: I'm good. Do I need to be sworn again?

19 THE COURT: Let's do that.

20 MS. DIXON: Oh, he needs to be sworn again?

21 THE COURT: Just in case.

22 THE WITNESS: Okay.

23 THE COURT: And we should.

24 THE CLERK: Do you swear or affirm that the testimony you
25 give will be the truth, the whole truth, and nothing but the

WILLIAM "VICK" MEETZE - DIRECT BY MS. DIXON

1 truth, so help you God?

2 THE WITNESS: I do.

3 THE COURT: Proceed, ma'am.

4 WILLIAM "VICK" MEETZE, being
5 first duly sworn, testified as follows?

6 DIRECT EXAMINATION

7 BY MS. DIXON:

8 Q: Mr. Meetze, how are you today?

9 A: I'm good.

10 Q: Good. Do you recall your representation of Mr. Durant?

11 A: I do.

12 Q: And do you recall how many times you met with him?

13 A: I don't recall a specific number, but I think that I
14 represented him for 18 months to two years or so, and over
15 that period of time we met any number of times. There may be
16 gaps where you don't see him for a particular period of time,
17 but we met, certainly -- I don't know -- five, ten times,
18 somewhere in that range, I would guess, if not more. I mean,
19 I don't remember, but we met a number of times.

20 Q: Okay. And do you recall what evidence the State had
21 against him?

22 A: The evidence the State had against Mr. Durant was Mr.
23 Durant, I think, was living in some kind of a -- I don't want
24 to mischaracterize it, but like a group home type setting and,
25 apparently, the victim, Mr. Jones, was also there. They had

WILLIAM "VICK" MEETZE - DIRECT BY MS. DIXON

1 gotten into some kind of an argument with one another sometime
2 that day, and Mr. Jones went into the restroom and Mr. Durant
3 followed him in there.

4 Mr. Jones says that Mr. Durant stabbed him. The person
5 that sort of, I guess, ran the group home in some form or
6 fashion saw Mr. Durant follow Mr. Jones into the bathroom and
7 after that heard a commotion. So he went in there and also
8 witnessed the attack where Mr. Jones was being stabbed in the
9 upper arm and back and neck area by Mr. Durant. And Mr. Jones
10 identified Mr. Durant as the person, and the other gentleman
11 also did and saw Mr. Durant run out with the knife in his hand
12 and that kind of thing.

13 Mr. Durant -- the only really -- to me, the only really
14 incriminating thing that came out of the statement that was
15 admitted, I think, was that he did not admit committing any
16 kind of assault. He did admit to having had the knife in his
17 possession earlier in that day, but not at the time of the
18 assault. I think that was the most incriminating that the
19 statement got that was admitted.

20 Q: Gotcha. And did you review all of this evidence with Mr.
21 Durant?

22 A: Yes.

23 Q: Did you engage in any plea negotiations with the State?

24 A: I really did not. Mr. Durant was never in -- of the
25 mindset of -- of -- of any kind of plea negotiations. He -- I

WILLIAM "VICK" MEETZE - DIRECT BY MS. DIXON

1 mean, he was from day one, I didn't do it, I didn't do it, and
2 that was always his posture. And, you know, he -- our
3 conversations never entered that realm either, and Mr. Durant
4 and I never discussed working anything out. Mr. Richardson
5 and I never discussed it.

6 Q: So he wasn't really interested in a plea then?

7 A: He never gave me that indication.

8 Q: Gotcha. And let's see, in terms of his allegation that
9 you didn't argue about Investigator Wynn's promise, is that an
10 issue that he raised to you at any time?

11 A: I don't believe he did. I certainly don't recall him
12 bringing that issue up with me. Had he done so, I would have
13 informed him that the law allows police officers to not be a
14 hundred percent truthful with you when you're --

15 Q: Right.

16 A: -- taking a statement and things like that. Not -- it
17 doesn't always happen that way and certainly -- but I -- he
18 never said to me that Mr. Wynn made any -- Officer Wynn made
19 any promises to him in trying to elicit any kind of a
20 statement from him.

21 Q: And in terms of the -- your failure to object to the
22 lesser-included offense of ABHAN, are you familiar with the
23 assault and battery statute and the attempted murder statute?

24 A: I am.

25 Q: And are you aware of whether there are any -- by statute,

WILLIAM "VICK" MEETZE - DIRECT BY MS. DIXON

1 any lesser-includes to attempted murder?

2 A: There are. Assault and battery of a high and aggravated
3 nature is one. Assault and battery, first degree, is one.
4 Assault and battery, second degree, is one. And I believe
5 assault and battery, third degree, is one. I think they all
6 go down the line, are all listed in the statute as lesser-
7 includes of attempted murder and of each other, sort of.

8 Q: Gotcha. Based on that, did you see any reason to object
9 to that charge?

10 A: I did not. And, you know, based on the evidence, really
11 that was -- I mean, my -- my feeling was that that was the
12 best way that I could maybe help Mr. Durant in trial was to
13 hopefully get -- now, I was hoping to get a lesser conviction
14 than assault and battery of a high and aggravated nature, but
15 I thought that -- that maybe the jury landing somewhere down
16 that -- that line was -- was the best way to try to help him,
17 and that was -- that was my strategy, essentially.

18 Q: Right. And the jury did, in fact, acquit him of --

19 A: Of attempted murder.

20 Q: -- attempted murder?

21 A: They did.

22 MS. DIXON: Nothing further.

23 THE COURT: All right. Mr. Bailey?

24 MR. BAILEY: Thank you, Your Honor.

25 CROSS-EXAMINATION

WILLIAM "VICK" MEETZE - CROSS BY MR. BAILEY

1 BY MR. BAILEY:

2 Q: Mr. Meetze, when you and the Court and Mr. Richardson
3 were discussing the jury charges, specifically the lesser-
4 includeds of attempted murder, did you consult with Mr. Durant
5 about whether or not he wanted you to include these lesser-
6 includeds?

7 A: I don't know if I did or not. So I don't -- I don't
8 know. I may not have.

9 Q: Okay.

10 A: But I may have, but I don't know. But I do think that
11 would have been a trial strategy, which is the lawyer's call
12 and not the client's either way. But I mean, if -- if he says
13 I didn't, then he very well may be right. I may not have.

14 Q: Based on your review of the evidence leading up to trial
15 and then through the trial itself, did you think the State was
16 going to be able to convict Mr. Durant of attempted murder?

17 A: I didn't know that they would be able to convict him of
18 attempted murder. I probably thought that would have been a
19 stretch, but I did think they were going to convict him of
20 something and I wanted it to be something less than ABHAN, and
21 I just felt like that was the best strategy from a -- from a
22 defense standpoint, based on the evidence they had with, you
23 know, basically two eyewitnesses.

24 Q: And Mr. Richardson, who was prosecuting the case, he told
25 the judge during the charging conference that they were just

WILLIAM "VICK" MEETZE - CROSS BY MR. BAILEY

1 trying the case on attempted murder; isn't that correct?

2 A: I think so.

3 Q: And because there was some discussion about injuries, and
4 that's why Mr. Richardson said they weren't getting into the
5 injuries because we wanted attempted murder and only attempted
6 murder?

7 A: Right.

8 Q: But Mr. Durant could have said I only want the attempted
9 murder jury charge to go to the jury. Would you agree with
10 that?

11 A: He could have said that.

12 Q: But that was not -- you don't recall if that was
13 discussed before?

14 A: I don't recall if that was discussed with him.

15 Q: Okay.

16 A: It may not have been. It may have been, but I don't
17 recall specifically.

18 Q: Okay. And in -- in the State's case, they didn't ask the
19 jury to come back for anything less than attempted murder, did
20 they?

21 A: No, I don't think so.

22 MR. BAILEY: I have no further questions for Mr. Meetze,
23 Your Honor.

24 DIRECT BY THE COURT

25 THE COURT: So at the charging conference, attempted --

WILLIAM "VICK" MEETZE - DIRECT BY THE COURT

1 assault and battery high and aggravated was not discussed?

2 THE WITNESS: It was discussed. We asked for it, I feel
3 sure.

4 THE COURT: Okay.

5 THE WITNESS: Because I was asking, I mean -- and the
6 judge charged -- he charged all the way down the line, I
7 believe.

8 MR. BAILEY: He did, Your Honor.

9 THE COURT: That's all right. That's good.

10 MR. BAILEY: And our allegation is that Mr. Durant should
11 have been consulted, and he would have said he didn't want the
12 assault and battery of a high and aggravated nature charge.

13 THE COURT: I see. All right. Thank you.

14 MR. BAILEY: Thank you, Mr. Meetze.

15 THE COURT: The State?

16 MS. DIXON: One moment, Your Honor.

17 Nothing further.

18 THE COURT: Okay. Anything else?

19 MR. BAILEY: Nothing from the applicant.

20 THE COURT: You may step down. Thank you, Mr. Meetze.

21 THE WITNESS: Thank you, Your Honor.

22 THE COURT: Anyone else, Ms. Dixon?

23 MS. DIXON: No, sir.

24 THE COURT: All right. Mr. Durant?

25 THE APPLICANT: Yes, sir.

1 THE COURT: I've got a lot of these this week.

2 THE APPLICANT: Yes, sir.

3 THE COURT: It'll be a few days, maybe a week or two
4 before you hear from me.

5 THE APPLICANT: Yes, sir.

6 THE COURT: All right, sir. Have a good Christmas.

7 THE APPLICANT: Merry Christmas to you and your family,
8 sir.

9 THE COURT: Thank you, sir.

10 THE APPLICANT: And to all of you all.

11 THE COURT: Yes, sir.

12 (WHEREUPON, the proceedings ended at 12:11 p.m.)

13

14 --- END REQUESTED TRANSCRIPT ---

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State of South Carolina	)	
	)	Certificate
County of Florence	)	

I, the undersigned, Krystal J. Smith, Notary Public and Official Court Reporter III for the Twelfth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing pages, numbered 1 through 21, constitute a true, accurate, and complete Transcript of Record of all the proceedings had and evidence introduced in the hearing of the above captioned case, relative to appeal, in the Court of Common Pleas for Florence County, South Carolina, on the 14th day of December, 2022.

I do further certify that I am neither of kin, counsel,
nor interest to any party hereto.

s/Krystal J. Smith

Court Reporter

Florence, South Carolina

May 7, 2024

FORM 4

STATE OF SOUTH CAROLINA
COUNTY OF FLORENCE
IN THE COURT OF COMMON PLEAS

FILED

JUDGMENT IN A CIVIL CASE
CASE NUMBER 2019CP2103468

Melvin Durant

2023 DEC 27 PM 12:54 South Carolina State Of

PLAINTIFF(S)

DOUGLAS O'HARA
ROBERT A. G.S. DEFENDANT(S)

Submitted by:

FLORENCE COUNTY, SC Attorney for: ☐ Plaintiff ☐ Defendant
☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

- ☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☐ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. ☐ See Page 2 for additional information.
- ☐ **ACTION DISMISSED (CHECK REASON):** ☐ Rule 12(b), SCRPC; ☐ Rule 41(a), SCRPC (Vol. Nonsuit);
☐ Rule 43(k), SCRPC (Settled); ☐ Other: _____
- ☐ **ACTION STRICKEN (CHECK REASON):** ☐ Rule 40(j) SCRPC; ☐ Bankruptcy;
☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other: _____
- ☐ **STAYED DUE TO BANKRUPTCY**
- ☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other: _____

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☐ See attached order: (formal order to follow) ☐ Statement of Judgment by the Court:

ORDER INFORMATION

This order ☐ ends ☐ does not end the case.

Additional Information for the Clerk: _____

INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. Note: Title abstractors and researchers should refer to the official court order for judgment details.

E-Filing Note: In E-Filing counties, the Court will electronically sign this form using a separate electronic signature page.

Circuit Court Judge

Judge Code

12/27/2023

Date

For Clerk of Court Office Use Only

This judgment was entered on December 27, 2023, and a copy mailed first class or placed in the appropriate attorney's box on December 27, 2023, to attorneys of record or to parties (when appearing pro se) as follows:

Joshua A. Bailey PO Box 555 Florence, SC 29503

D Russell Barlow II PO Box 11549 Columbia, SC 29211

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Court Reporter

Doris Poulos O'Hara - Clerk of Court**Court Reporter:**

E-Filing Note: In E-Filing counties, the date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgement to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRCP.

ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

STATE OF SOUTH CAROLINA
COUNTY OF FLORENCE

Melvin Durant, 177063

Applicant,

v.

State of South Carolina,

Respondent.

CERTIFIED: A TRUE COPY

CLERK OF COURT IN THE COURT OF COMMON PLEAS
FLORENCE COUNTY, SOUTH JUDICIAL CIRCUIT

Case No.: 2019-CP-21-3468

ORDER OF DISMISSAL

2023 DEC 27 PM 12:15
RECORDED & INDEXED
FLORENCE COUNTY, SC

FILED

This matter is before the Court by way of an application for post-conviction relief (PCR) filed by Melvin Durant (Applicant) on December 11, 2019. Respondent filed a return requesting an evidentiary hearing. On December 14, 2023, an evidentiary hearing convened before the Honorable George M. McFaddin, Jr. Applicant was present and represented by Joshua A. Bailey, Esquire. Assistant Attorney General Danielle Dixon represented Respondent. Applicant and trial counsel Vick Meetze testified at the hearing. Following a thorough review of the records before this Court and the testimony and evidence presented at the evidentiary hearing, this Court finds Applicant did not meet his burden of proof. Thus, this Court denies relief and dismisses this application with prejudice.

PROCEDURAL HISTORY

Applicant is presently confined in the South Carolina Department of Corrections serving a twenty-year sentence. In March 2015, the Florence County Grand Jury indicted Applicant for attempted murder (2015-GS-21-211). On June 20-21, 2016, Applicant proceeded to a jury trial before the Honorable D. Craig Brown. Deputy Public Defender W. Vickery Meetze represented Applicant, and Assistant Solicitor David Richardson prosecuted the case. The jury convicted Applicant of the lesser-included offense of assault and battery of a high and aggravated nature (ABHAN), and Judge Brown sentenced him to twenty years.

Applicant filed a notice of appeal, which was perfected by Appellate Defender Susan B. Hackett. On appeal, Applicant argued the trial court erred in permitting the prosecution to introduce Applicant's custodial statement. The Court of Appeals affirmed. *State v. Durant*, Op. No. 2019-UP-83 (S.C. Ct. App. Filed Feb. 20, 2019). Applicant filed a petition for rehearing, which was denied. Applicant then petitioned for a writ of certiorari in the South Carolina Supreme Court, which was also denied. The remittitur was sent August 16, 2019.

SUMMARY OF PERTINENT TRIAL TESTIMONY

At trial, the State presented evidence that Applicant and Wiley Jones got into an argument at a transitional shelter on November 12, 2014. Carl Wheeling, a resident of the shelter, testified Durant was complaining about Jones that evening and said he was going to hurt Jones. Wheeling stated Jones overheard the statement, and Jones and Applicant began arguing. He stated they walked off; about five minutes later, Wheeling heard "a rumble in the bathroom, . . . like individuals fighting." He went into the bathroom and saw Durant holding Jones against a urinal; Applicant had a knife and stabbed Wiley twice. Wheeling grabbed Applicant's arm to stop him from stabbing Jones again, which allowed Jones to escape. (R. 39-42).

Tommy Nesmith, another resident, testified he saw Applicant go outside and throw a knife across a fence. Nesmith stated he retrieved the knife a few days later and gave it to Jones. He recalled the knife had a red stain dried on it. (R. 59-63). An expert in DNA analysis later determined DNA from the substance on the knife matched Victim's DNA. (Tr. 174).

Jones testified he and Applicant had been arguing that evening. Jones went into the bathroom and shortly thereafter "felt someone behind" him. He stated Applicant began stabbing him. Jones called 911 and was transported to the hospital, where he was treated for four puncture wounds. (R. 65-75).

Shortly after the assault, Applicant was arrested at the scene by law enforcement. After

being *Mirandized*, Applicant spoke to Corporal Mark Happ and Investigator Howard Wynn and denied being involved. (R. 25-26). His statements were entered at trial over objection.

ALLEGATIONS RAISED AND RELIEF SOUGHT

In his PCR application, Applicant alleges he is being held in custody unlawfully for the following reasons:

1. Ineffective assistance of counsel:
 - a. "Counsel fail[ed] to object to the charge of ABHAN after the judge admonished the jury on ABHAN Assault/battery [first] degree."
 - b. "Counsel failed to adequately investigate the facts surrounding the charge of attempted murder."

Prior to the evidentiary hearing, Applicant filed an amended application alleging trial counsel was ineffective for failing to:

- a. Preserve for appellate review Investigator Wynn's promise to help Petitioner if Petitioner did not tell the truth;
- b. Object to the ABHAN charge.

At the PCR hearing, Applicant proceeded on the allegations in his amended application.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has had the opportunity to review the records before it, including the Florence County Clerk of Court records of the underlying conviction, Applicant's records from the South Carolina Department of Corrections, the trial transcript, Applicant's appellate records, and the records from this PCR action. This Court has further had the opportunity to observe the witnesses presented at the hearing, closely pass upon their credibility, and weigh their testimony accordingly. After a careful review based on the Strickland standard set forth below, this Court finds Applicant has failed to carry his burden of proof. Below are this Court's findings of fact and conclusions of law as required by section 17-27-80 of the South Carolina Code (2017).

Ineffective Assistance of Counsel

The Sixth Amendment to the United States Constitution guarantees a defendant the right



to effective assistance of counsel. U.S. Const. amend. VI; Strickland v. Washington, 466 U.S. 668 (1984); Lomax v. State, 379 S.C. 93, 665 S.E.2d 164 (2008). In a PCR action, an applicant bears the burden of proving the allegations in his application. Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). When the application alleges ineffective assistance of counsel, the 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, 466 U.S. 668. 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, 466 U.S. 668. First, an applicant must prove counsel’s performance was deficient. Id.; Cherry v. State, 300 S.C. 115, 117, 386 S.E.2d 624, 625 (1989). Under this prong, courts measure 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 an 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). The applicant must overcome this presumption to receive relief. Cherry, 300 S.C. at 118, 386 S.E.2d at 625. Second, a PCR applicant must prove that counsel’s deficient performance prejudiced the applicant such that “there is a reasonable probability that, but for counsel’s unprofessional errors, the result of the proceeding would have been different.” Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625.

Investigator Wynn’s promise to Petitioner

Applicant first contends counsel was ineffective for failing to preserve an objection to the admissibility of his statement based upon a promise made by Investigator Wynn. Specifically,



he asserts Investigator Wynn informed him he could not help if Applicant did not tell him the truth. Applicant acknowledges counsel challenged the statement based upon Applicant's intoxication and invocation of his right to remain silent but avers counsel should have also moved to suppress the statement based upon the promise of help made by Investigator Wynn. This Court finds Applicant has failed to prove counsel was ineffective in this regard.

At the PCR hearing, Applicant testified counsel moved pretrial to suppress his statement based upon Applicant's intoxication, but the trial court denied that motion. When asked whether Investigator Wynn said he would help Applicant if he made a statement, Applicant responded that Investigator Wynn stated he would help Applicant the best he could. Counsel testified Applicant never told him that any promises were made to him.

This Court finds credible counsel's foregoing testimony that Applicant never told him any promises were made to him. Likewise, this Court finds not credible Applicant's testimony that Investigator Wynn stated he would help Applicant the best he could. Ultimately, this Court finds Applicant did not prove Investigator Wynn offered leniency in exchange for a statement. Thus, counsel was not deficient.

Further, Applicant did not enter the recording of his statement to Investigator Wynn at the PCR hearing, making this Court unable to discern what prejudicial effect—if any—this statement had.¹ Finally, even if Investigator Wynn informed Applicant he could not help Applicant if he did not tell the truth—as alleged in the amended application—this statement does not rise to the level of a promise of leniency that would require suppression of Applicant's statement. See State v. Rochester, 301 S.C. 196, 200, 391 S.E.2d 244, 246–47 (1990) (“A statement induced by a promise of leniency is involuntary only if so connected with the inducement as to be a consequence of the promise.”); id. (finding polygraph examiner's

¹ The trial court also admitted a prior statement Applicant made to Corporal Happ, which is not challenged in this PCR application. (R. 4-5, 16-17). According to the solicitor, Applicant denied involvement during both statements. (R. 25-26).

statement to defendant that it would be in his best interest to tell the truth was not a promise of leniency that induced the confession and thus did not require suppression of statement); contra State v. Peake, 291 S.C. 138, 139, 352 S.E.2d 487, 488 (1987) (finding officer's statement to defendant that State would not seek death penalty if he provided statement was a promise of leniency that induced the confession and thus required suppression of statement). The alleged statement here (that Investigator Wynn could not help Applicant if he did not tell the truth) is more akin to the statement in Rochester, which did not rise to the level of a promise of leniency. Thus, it is not reasonably likely the trial court would have suppressed this statement based on this specific argument or that this issue would have been reversed on appeal had this argument been preserved. Based on the foregoing, Applicant did not prove deficiency or prejudice, and this claim is denied.

Failed to object to ABHAN charge

Applicant next contends counsel was ineffective for not objecting to the court's decision to charge ABHAN. This Court finds Applicant has failed to prove counsel was ineffective in this regard.

At the PCR hearing, Applicant testified counsel should have objected to the ABHAN charge because the evidence did not support it. Counsel relayed he believed Applicant would be convicted of something, and he hoped to get a conviction on a lesser-included offense.

This Court finds counsel's foregoing testimony credible. Further, this Court finds counsel articulated a reasonable strategy in requesting and not objecting to the ABHAN charge. Specifically, counsel relayed he believed Applicant would be convicted of something. Due to the evidence presented by the State, this was a reasonable belief. Counsel articulated a reasonable strategy in requesting the lesser-included offenses in the hope the jury would convict

Applicant of a lesser-included offense rather than attempted murder.² This was a valid, reasonable strategy, and counsel was not ineffective.

CONCLUSION

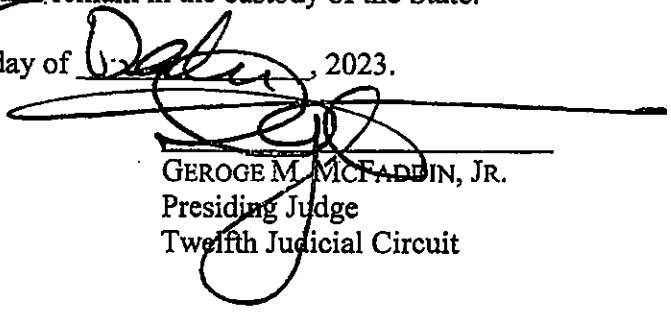
Based on the foregoing, this Court finds and concludes Applicant has not established any constitutional violations or deprivations that would require this Court to grant relief. Thus, this application is denied and dismissed with prejudice.

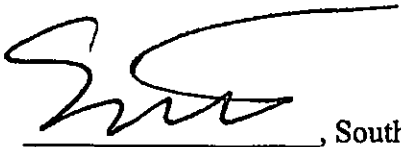
Should Applicant wish to secure appellate review, he must file and serve a notice of appeal within thirty days of receipt by counsel of written notice of entry of judgment. See Rule 203, SCACR. Applicant has the right to an appellate counsel's assistance on appeal. Austin v. State, 305 S.C. 453, 409 S.E.2d 395 (1991). If Applicant wishes to appeal, PCR counsel must serve and file a notice of appeal on Applicant's behalf. Rule 71,1(g), SCRCP. Attention is directed to Rule 243, SCACR, for appropriate procedures for appeal.

IT IS THEREFORE ORDERED:

1. This application for PCR is denied and dismissed with prejudice; and
2. Applicant shall be remanded to and remain in the custody of the State.

AND IT IS SO ORDERED THIS 15 day of October, 2023.


 GEROGE M. MCFADDIN, JR.
 Presiding Judge
 Twelfth Judicial Circuit


 _____, South Carolina

FILED
 2023 DEC 27 PM 12:15
 CLERK OF COURT
 JUDICIAL CIRCUIT 12
 CHARLOTTE COUNTY, SC

² AHAN is a lesser-included offense of attempted murder. S.C. Code Ann. § 16-3-600(B)(3).

WITNESSES

Howard Wynn Florence Police Department

David A Richardson

ARREST WARRANT NUMBER

2014A2120201631

ACTION OF GRAND JURY

TRUE BILL

Vernita J. [Signature]

Foreperson of Grand Jury

Date: 2-12-15

VERDICT

Foreperson of Petit Jury

Date:

DOCKET NO. 2015-GS-21-00211

The State of South Carolina

County of

FLORENCE

COURT OF GENERAL SESSIONS

MARCH TERM 2015

THE STATE

vs.

MELVIN DURANT

Indictment for

ATTEMPTED MURDER

FILED
2015 MAR 12 AM 11:49
CONNIE REEL-SHEARIN
CLERK & GS
FLORENCE COUNTY, SC

STATE OF SOUTH CAROLINA)
COUNTY OF FLORENCE)

INDICTMENT FOR
ATTEMPTED MURDER

At a Court of General Sessions, convened on MARCH 12, 2015 the Grand Jurors of FLORENCE County present upon their oath:

COUNT ONE- ATTEMPTED MURDER

CDR: 3410 16-03-0029

That Melvin Durant did in Florence County on or about November 12, 2014, with intent to kill Wiley Jones, attempt to kill the victim with malice aforethought, either expressed or implied, by stabbing the victim with a knife, 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.



E.L. Clements, III
TWELFTH CIRCUIT SOLICITOR

STATE OF SOUTH CAROLINA

COUNTY OF Florence
 STATE VS.
Melvin Durant

AKA:

SID#:

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

In disposition of the said indictment comes now the Defendant who was
 TO: Assault/ Assault & Battery of a High & Aggravated Nature 0-20

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2015-GS-21-00211A/W#: 2014A2120201631Date of Offense: 11/12/2014S.C. Code §: 16-03-0029CDR Code #: 3410**RECEIVED**SENTENCE JUN 30 2016**SC Court of Appeals**☒ CONVICTED OF ☐ PLEAS

in violation of § 16-03-0600(B)(1) of the S.C. Code of Laws, bearing CDR Code # 3411
☐ NON-VIOLENT ☒ VIOLENT ☒ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS(CSC ☐ §17-25-45
 w/minor 1st or Lewd Act)

The charge is: ☐ As Indicted, ☒ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)

The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

Richardson, David A

SC Bar#

Defendant

Attorney for Defendant

SC Bar#

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,
 for a determinate term of 20 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years
 and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment
 of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for _____

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of
 probation, which are incorporated by reference.

☐ CONCURRENT or ☐ CONSECUTIVE to sentence on:

☒ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied
 by the State Department of Corrections. 588 days

☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal
 Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered

Total: \$ _____ plus 20% fee: \$ _____

Payment Terms:

☐ Set by SCDPPPS

Recipient:

*Fine:

§ 14-1-206 (Assessments 107.5 %)	\$	\$
§ 14-1-211(A)(1) (Conv. Surcharge)	\$100	\$ <u>100.00</u>
§ 14-1-211(A)(2) (DUI Surcharge)	\$100	\$
§ 56-5-2995 (DUI Assessment)	\$12.	\$
§ 56-1-286 (DUI Breath Test)	\$25	\$
Proviso 47.9 (Public Def/Prob)	\$500	\$
§ 14-1-212 (Law Enforce. Funding)	\$25	\$
§ 14-1-213 (Drug Court Surcharge)	\$150	\$
§ 50-21-114(BUI Breath Test Fee)	\$50	\$
§ 56-5-2942(J) (Vehicle Assessment)	\$40/ea	\$
Proviso 90.5 (SCJA Surcharge)	\$5	\$ <u>5.00</u>
3% to County (if paid in installments)	\$	\$ <u>3.15</u>
TOTAL	\$	\$ <u>108.15</u>

PTUP

_____ days/hours Public Service Employment

Obtain GED ☐

Attend Voc. Rehab. or Job Corp. _____

May serve W/E beginning _____

Substance Abuse Counseling ☐Random Drug/Alcohol testing ☐

Fine may be pd. in equal, consecutive weekly/monthly
 pmts. of \$ _____ beginning _____

\$ _____ paid to Public Defender Fund

Other: _____

☐ Appointed PD or appointed other counsel
 § 47.12 requires \$500 be paid to Clerk
 during probation.

Clerk of Court/ Deputy Clerk

Court Reporter:

SCCA/217 (03/2011)

Presiding Judge

Judge Code: 2160Sentence Date: 6-21-16

CERTIFIED TRUE COPY
Chris H. Smith
 CLERK OF COURT C.P. & G.S.
 FLORENCE COUNTY, SC.