

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

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S.C. SUPREME COURT

Certiorari to Chesterfield County

Honorable Michael S. Holt, Circuit Court Judge

GARY MOORE,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2024-000459

APPENDIX

ROBERT M. DUDEK
Chief Appellate Defender

ALAN WILSON
Attorney General

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589
(803) 734-1330

MARK FARTHING
Senior Assistant Deputy Attorney General
Rembert Dennis Building
1000 Assembly Street, Room 519
Columbia, SC 29201
(803)734-4117

ATTORNEY FOR PETITIONER

ATTORNEYS FOR RESPONDENT

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2 STATE OF SOUTH CAROLINA) GENERAL SESSIONS
3 COUNTY OF CHESTERFIELD) CASE NO. 2015-GS-13-0398
4 STATE OF SOUTH)
CAROLINA,)
5) Transcript of Record
Plaintiff,)
6)
vs.)
7) Date: February 17,
GARY MATTHEW MOORE,) 2016
8)
Defendant.

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13 B E F O R E:

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15 THE HONORABLE ROGER E. HENDERSON

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22 Denise J. Lauder, RPR

23 Ninth Judicial Circuit

24

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1 A P P E A R A N C E S

2

3 REPRESENTING THE PLAINTIFF:

4 KERNARD REDMOND, DEPUTY SOLICITOR

5 401 West Main Street

6 P.O. Box 868

7 Dillon, SC 29536

8 (843) 774-1448

9

10 MARY T. JOHNSON-LEE, DEPUTY SOLICITOR

11 137 Main Street

12 Chesterfield, SC 29707

13 (843) 623-3265

14

15 REPRESENTING THE DEFENDANT:

16 LARRY W. KNOX, ESQUIRE

17 164 Main Street

18 Chesterfield, SC 29709

19 (843) 623-3512

20

21

22

23

24

25

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1 (The following proceedings were held
2 February 17, 2016, Chesterfield County Circuit
3 Court, at 1:24 p.m.)

4 (STATE EXH. 1, Copy of statement, was
5 marked for identification.)

6 (STATE EXH. 2, Copy of statement, was
7 marked for identification.)

8 (STATE EXH. 3, Copy of statement, was
9 marked for identification.)

10 (STATE EXH. 4, Copy of Miranda card,
11 was marked for identification.)

12 (STATE EXH. 5, Copy of CD, was marked
13 for identification.)

14 MS. JOHNSON-LEE: This is the State v.
15 Gary Matthew Moore, 2015-GS-13-0398, indictment for
16 attempted murder, true billed December 1, 2015.
17 Mr. Moore has asked for a Duncan Hearing under the
18 Protection of Persons and Property Act pursuant to
19 15-11-410SC of the South Carolina Code of Laws.

20 At this time, I will turn it over to
21 his attorney, Mr. Larry Knox.

22 THE COURT: Okay. Mr. Knox.

23 MR. KNOX: Thank you, Your Honor. May
24 it please the Court.

25 We are seeking a -- we are having a

1 hearing on section 16-11-440 subsection C, immunity
2 hearing from prosecution based on the fact that the
3 defendant used self defense and that he was in a
4 place that he was lawfully -- he was in a place
5 where he had to be and he was attacked so,
6 therefore, we think that he should be immune from
7 this prosecution.

8 Also, Your Honor, there's another
9 issue. I was just handed a disk and I believe it's
10 a witness statement on this disk. And back on
11 July 21st, 2015, I put in a request for Rule Five.
12 I was just given this. I don't know whether or not
13 they plan to call this witness today, but I haven't
14 even had a chance to look at it, haven't gone over
15 it with my client so, therefore, I'm going to ask
16 that the Court exclude the State from using this
17 witness because it was supposed to be given to me
18 pursuant to Rule Five and I asked for it back in
19 July, and then 15 minutes before this hearing I was
20 given a copy of it.

21 MS. JOHNSON-LEE: If I may, Your Honor,
22 and I actually talked to Mr. Knox earlier today and
23 told him, throughout the incident report it refers
24 to an individual named Steven, L-U, last name
25 unknown, this individual who pulled the defendant

1 off of the victim, but he left the store prior to
2 law enforcement getting there to interview him.

3 When I was meeting with law enforcement
4 over the past month getting ready for a trial
5 and/or stand your ground hearing, I asked them to
6 go find this person. Your Honor, they did find Mr.
7 Steven Hooks and they served the Subpoena on
8 Mr. Hooks, and Investigator Burns can testify, it
9 was within the last couple of weeks. They did
10 bring him in and interview him in an abundance of
11 precaution and Mr. Hooks came to the courthouse
12 yesterday and I talked with him.

13 And I told Mr. Knox earlier today
14 exactly what Mr. Hooks had told me. And I did not
15 know until he came that they did out of an
16 abundance of caution interview him about what he
17 did, and they brought me the video this afternoon.
18 So within 30 minutes of me having it, Mr. Knox came
19 in and it was in his hands.

20 Mr. Hooks' first name is throughout the
21 incident report and of course he's on the video
22 that's going to be played. You can see what he did
23 and his testimony is going to be basically what you
24 see on the video.

25 THE COURT: So he's not here today.

GARY MOORE - DIRECT EXAM BY MR. KNOX

1 MS. JOHNSON-LEE: He is here today.

2 THE COURT: So he can testify.

3 MS. JOHNSON-LEE: Yes, sir.

4 THE COURT: Without using the
5 statement.

6 MS. JOHNSON-LEE: Correct.

7 MR. KNOX: Withdraw the request.

8 THE COURT: Okay. I was under the
9 impression he wasn't here. He is here, that's
10 fine. That will take care of that issue.

11 All right. Mr. Knox, ready to proceed?

12 MR. KNOX: Yes, sir. I call Mr. Gary
13 Moore to the stand, please.

14 GARY MATTHEW MOORE,
15 being first duly sworn, testified as follows:

16 THE CLERK: Please be seated.

17 DIRECT EXAMINATION

18 BY MR. KNOX:

19 Q. Mr. Moore, state your name for the
20 record, please.

21 A. Gary Moore.

22 Q. And where do you live, Mr. Moore?

23 A. [REDACTED] Highway 265, Ruby, South Carolina.

24 Q. And that's in Chesterfield County?

25 A. Yes.

GARY MOORE - DIRECT EXAM BY MR. KNOX

1 Q. And on or about July 14, 2015, where
2 were you living then?

3 A. The same residence.

4 Q. Same residence. Now, I want to take
5 you back to the date in question, July 14, 2015.
6 Did you have an occasion to visit a convenience
7 store in Jefferson, South Carolina?

8 A. Unfortunately.

9 Q. And --

10 A. Yes, sir.

11 Q. Answer yes or no.

12 A. Yes, sir. Yes, sir.

13 Q. Thank you. Where is that convenience
14 store located; do you know?

15 A. Sir, it's approximately three, four
16 miles from my home. But, more importantly, it was
17 about three miles from the job site that I was
18 currently working on at that time.

19 Q. And did you visit that convenience
20 store on that day?

21 A. Yes, sir.

22 Q. And what was the reason for your visit
23 to that convenience store?

24 A. I didn't have enough fuel to make it
25 back to Chesterfield and also a pack of cigarettes

GARY MOORE - DIRECT EXAM BY MR. KNOX

1 and Mountain Dew.

2 Q. So you went there to make some
3 purchases?

4 A. Yes, sir. I had already parked at the
5 pump, but they didn't have a prepaid card so I had
6 to walk inside to pay for fuel.

7 Q. And what happened when you came into
8 the convenience store?

9 A. I walked up to the door, spoke to the
10 kid who was running the produce stand. I walked
11 into the store which was dimly lit, very dark. I
12 walked straight into the first aisle that led to
13 the drinks and proceeded to go down the aisle to
14 get a soda.

15 Q. Did you go to the case to -- did you
16 actually get a soda?

17 A. No, sir, I didn't make it to the soda.

18 Q. What was the reason you didn't you make
19 it?

20 A. A gentleman's voice that I'd heard
21 before said, I told you I was going to kill you.

22 THE COURT: Can you back away just a
23 little bit from the microphone.

24 THE WITNESS: I heard a voice from
25 behind me state, I told you I was going to catch

GARY MOORE - DIRECT EXAM BY MR. KNOX

1 you somewhere you little B I T C H.

2 BY MR. KNOX:

3 Q. In relationship to the voice that you
4 heard, where were you at in the convenience store
5 at that time?

6 A. I was approximately three feet from the
7 drink cooler.

8 Q. Is that in the rear of the store or --

9 A. Yes, sir.

10 Q. About how far away is that from the
11 counter?

12 A. Approximately 15, 18 feet.

13 Q. Now, you said -- earlier you said you
14 came into the convenience store and you spoke to
15 somebody selling produce?

16 A. Outside, yes, sir.

17 Q. That was outside the convenience store.
18 When you entered the convenience store, did you see
19 anyone in the convenience store?

20 A. No. No, sir, I really couldn't make
21 out anybody. My eyes were adjusting to the
22 darkness of the store. I mean, I made out shapes,
23 but nothing more than that. I couldn't see
24 anybody.

25 Q. You didn't see anyone attending the

GARY MOORE - DIRECT EXAM BY MR. KNOX

1 front counter?

2 A. I'm sure the lady was there, but I
3 couldn't see it. I mean, it was just -- it was
4 dark.

5 Q. Now, this voice that you heard, do you
6 know whose voice it was?

7 A. Yes, sir.

8 Q. Whose voice was it?

9 A. Mr. Wallace, sitting there.

10 Q. And he's sitting in the back?

11 A. Right there with the Navy blue shirt
12 on.

13 Q. Could you describe him please?

14 A. Yes, sir. Scruffy mustache, white
15 hair, blue outfit, green pen in his pocket, and a
16 set of glasses.

17 Q. Okay. What were the words of his
18 voice?

19 A. He just basically said, I told you I
20 was going to catch you somewhere, you little bitch,
21 or excuse me. It was -- I mean, I knew it was him.
22 It's not the first time I've had this fellow, you
23 know, trying to --

24 Q. Okay. Now, what did you do when you
25 heard those words from that voice?

GARY MOORE - DIRECT EXAM BY MR. KNOX

1 A. I turned around and tried to see. Like
2 I said, my vision still wasn't the best then, but I
3 knew who it was. There wasn't a doubt in my mind.

4 Q. So you turned around?

5 A. I turned around.

6 Q. And you saw him?

7 A. I said, Mr. Wallace. And I think the
8 other fellow was coming down the aisle with him.
9 Mr. Wallace had already come about four feet down
10 that aisle or so, blocking my only route for
11 escape. I went back towards him. I tried to go
12 around him to get past him. He slaps me upside the
13 head.

14 I attempted to push him off the aisle.
15 He grabbed me by the hair of my head and snatched
16 me down to the ground with him and the good
17 samaritan proceeded to choke me around my neck,
18 yanking around my throat choking me.

19 Q. Now, you said he slapped you?

20 A. Yes, sir.

21 Q. What part of your body did he slap you
22 on?

23 A. Side of my face, knocked my hat off.

24 Q. How far away from you was he when he
25 slapped you?

GARY MOORE - DIRECT EXAM BY MR. KNOX

1 A. Arm's reach.

2 Q. Would you say about a foot or so?

3 A. Two foot.

4 Q. Arm's length?

5 A. Yes, sir.

6 Q. Okay. And what did you do when he
7 slapped you?

8 A. I tried to push him and the other
9 fellow who was basically blocking my exit, I tried
10 to push them on up to the counter where there was
11 an open area so that I could exit out of the door
12 that I came in, which is the only exit that I know
13 of.

14 Q. Were you guys entangled when you tried
15 to push him or were you still separated?

16 A. We were still separated.

17 Q. Now, after the slap and you pushed him,
18 what happened after that?

19 A. Mr. Wallace reached up with both hands
20 and grabbed me by the -- at the time I had long
21 hair. He grabs with both hands full of the hair on
22 my head. He snatches me down onto the ground on
23 top of him at which point the other fellow started
24 choking me around my neck.

25 Q. You said he grabbed your hair. Did

GARY MOORE - DIRECT EXAM BY MR. KNOX

1 grab the front of your hair or the back of your
2 hair?

3 A. Both sides here. (Indicating)

4 Q. Up on the sides of your head?

5 A. On the side of my head.

6 Q. Your hair was much longer than it is
7 now?

8 A. Yes, sir. It was approximately 18
9 inches long, if not longer.

10 Q. And you said you both stumbled to the
11 ground?

12 A. No, sir, he pulled me with him to the
13 ground.

14 Q. So he like -- (Indicating)

15 A. Yes, sir.

16 Q. And what happened when you hit the
17 ground?

18 A. I hit my head pretty decent. Before I
19 could even get my wits about me, I realized there
20 was another fellow who's got both of his hands
21 around my neck choking me, jerking against Mr.
22 Wallace, jerking down and trying to twist my neck
23 at the same time.

24 Q. Now, this other fellow, had you ever
25 seen him before?

GARY MOORE - DIRECT EXAM BY MR. KNOX

1 A. No, sir.

2 Q. Did you know who he was?

3 A. No idea.

4 Q. Okay. Now, did you eventually get up?

5 A. No, sir. As the fellow who was choking
6 me around my neck, he was holding me so that Mr.
7 Wallace could get out from underneath me. At that
8 point I was starting to black out, and that's when
9 the incident we're here for happened.

10 Q. What happened when you started to black
11 out?

12 A. Only thing I had -- I couldn't get my
13 arm up to get my hands to him because of the fellow
14 who had me around the neck, I reached into the
15 sheath. It's a flat top, you know, knife holder I
16 kept for 30 years. I opened it up and, you know, I
17 started -- I mean, I couldn't see where I was
18 getting or who I was getting, but, you know, I
19 repeatedly stabbed trying to get these people off
20 of me.

21 Q. Okay. Now, you said you reached into
22 some type of knife holder?

23 A. Yes, sir. I have it.

24 Q. Do you have that knife holder with you?

25 A. Yes, sir. It's the same as every

GARY MOORE - DIRECT EXAM BY MR. KNOX

1 country boy in South Carolina has ever had. It's
2 just a leather holder.

3 Q. What type of work do you do, or were
4 you doing at that time?

5 A. Construction work.

6 Q. Okay. And do you use that knife --

7 A. Yes, sir.

8 Q. -- in your employment?

9 A. I use it to open shingle packs, bundles
10 of materials, open boxes, chisel our door jams at
11 times with it. It's got a lot of uses.

12 Q. And at the time you went to get that
13 knife, to retrieve that knife, did you have to
14 leave the store to get it?

15 A. Sir?

16 Q. Did you have to leave the store to get
17 it?

18 A. No, sir.

19 Q. It was already on your person?

20 A. Yes, sir, I couldn't move; they had me
21 pinned down. He had me by the hair of the head
22 down, the other fellow had more than -- I mean, I
23 think there was a video. The fellow back there, he
24 had me around the neck choking me. I couldn't go
25 towards him or away from him because they were both

GARY MOORE - DIRECT EXAM BY MR. KNOX

1 on me.

2 Q. Now, why did you feel as though you
3 needed to use your knife?

4 A. Well, I didn't know what they were
5 going to do after that fellow choked me out. I
6 mean, honestly, this fellow, he tried to attack me
7 with an axe handle. He tried to kill me that one
8 time. I mean, the fellow jumped on me in a
9 magistrate's office in front of Officer Hutchinson
10 back there. You know, I mean, this fellow is --
11 something's not right. Do you understand? I'm
12 scared of that fellow. I don't know what he's
13 going to do to me when I'm unconscious.

14 Q. You were afraid of him?

15 A. Very.

16 Q. What was the basis of your fear of him?

17 A. Well, he's told me on multiple
18 occasions that he was going to get me or kill me.
19 He told the police that he was going to get me and
20 kill me, and here it was, I'm in a store and he's
21 got me by the hair of the head down on the ground
22 with his partner there choking me. I mean, if
23 that's not -- that's as close as I've been. I
24 mean, I don't -- I don't want to get any closer to
25 being killed than that.

GARY MOORE - DIRECT EXAM BY MR. KNOX

1 Q. So you feared for your life?

2 A. Without any doubt.

3 Q. Okay. Now, you said that you-all -- he
4 wasn't a stranger to you, was he?

5 A. No.

6 Q. You said that you had some encounters
7 in the past?

8 A. Yes, sir.

9 Q. And you stated that you had an
10 encounter where an axe handle was involved?

11 A. Yes, sir. That was actually the very
12 beginning of this. My wife or fiancée, excuse me,
13 doesn't care for Mr. Wallace. She had told her
14 mother she didn't want him at the house where we
15 were staying, which is our residence. She asked
16 Mr. Wallace to come and get his things.

17 While Mr. Wallace was there, you know,
18 he began berating her mother, spitting in her face,
19 you know, just being bullyish, and my wife was
20 going to call the law. I told, Charles, I said,
21 Buddy, just leave. We don't need the law called
22 out here, just go.

23 Mr. Wallace cussed and made reference
24 and he jumped in his truck and acted as if he was
25 leaving. He pulls up to the porch that I'm sitting

GARY MOORE - DIRECT EXAM BY MR. KNOX

1 on, I'm holding my son. He hops out of his truck,
2 he reaches in to grab a rifle or some firearm, it
3 might have been a shotgun, but the passenger
4 wouldn't let him get it out. So I see that. I
5 immediately take my three-year-old and I throw him
6 to his mother and I got off of that porch just in
7 case anything bad happens that my kids don't go
8 with me.

9 All right. Mr. Wallace gets out, he
10 comes forward -- reaches in his pockets first as if
11 he was feeling for his Hawkbill that he always
12 showed me. And then you see it go across his face,
13 oh, I got something better for you. He reaches
14 into the back of his truck and takes off an axe
15 handle that he had just bought and he proceeded to
16 try to beat me about the head and face with it. I,
17 of course, ducked it and moved.

18 He became agitated from not hitting me
19 so he did about 2,000 damage to my vehicle, beat
20 the windows and doors and mirrors off of it. My
21 wife was calling the law and he decided to leave
22 before the law came.

23 Q. So how long was that before the
24 incident that happened last July?

25 A. Sir, I would have to refer back to the

GARY MOORE - DIRECT EXAM BY MR. KNOX

1 statements or to see the actual reports, but it was
2 probably about two months before he attacked me in
3 the courtroom.

4 Q. Now, it's your testimony that he
5 attacked you with an axe handle?

6 A. Yes.

7 Q. But he couldn't get to you, he couldn't
8 contact you, so he started beating your truck?

9 A. Yes. I mean, that's what the deputy
10 basically explained. I never --

11 MR. REDMOND: Your Honor, I would
12 object to anything that a deputy or anybody else
13 said.

14 THE COURT: Sustain the objection.
15 Don't tell us what someone else said.

16 THE WITNESS: Okay. What was the
17 question?

18 BY MR. KNOX:

19 Q. The question is, did he attack your
20 property?

21 A. Yes, sir.

22 Q. And what was that property?

23 A. First myself and then my work
24 materials, my work transportation, my vehicles.

25 Q. You said -- it's your testimony that he

GARY MOORE - DIRECT EXAM BY MR. KNOX

1 broke your windshield?

2 A. Yes, sir.

3 Q. And he broke your mirror?

4 A. Yes, sir.

5 Q. And what were -- where were you at the
6 time?

7 A. On the opposite side of the van so he
8 couldn't hit me.

9 Q. Whose property were you on at that
10 time?

11 A. Well, it was where my fiancée and I
12 were staying with her mother at the time.

13 Q. So you were at your mother-in-law's
14 property?

15 A. Uh-huh.

16 THE COURT: Say yes or no.

17 THE WITNESS: Yes, sir.

18 BY MR. KNOX:

19 Q. Why was Mr. Wallace there?

20 A. To retrieve his things so that he could
21 move on back to his house.

22 Q. And did that -- how was that matter
23 resolved with the breaking of the windshield and
24 mirror?

25 A. Well, I actually came down and spoke

GARY MOORE - DIRECT EXAM BY MR. KNOX

1 with multiple officers, the detective there, I
2 spoke with him trying to seek some kind of help as
3 far as getting a warrant or some kind of something
4 done. He stated that it was his first week back
5 and referred me to Mr. Davis, the detective. But,
6 yeah, we seeked (sic) all the help we could get.
7 We were afforded nothing, they told us that it
8 would take care of itself at magistrate court.

9 Q. Did you go to magistrate court?

10 A. Yes, sir.

11 Q. What happened there?

12 A. I stood in the back talking to the
13 secretary until 9:00. When I walked around the
14 front of the building for the Judge to come in,
15 Mr. Wallace started throwing chairs out of the way
16 and coming towards me in a manner to fight. Once
17 again, luckily for me, Mr. Hutchinson, the officer
18 back there, he grabbed Mr. Wallace, before he was
19 able to do any harm to me.

20 Q. So it's your testimony that he, after
21 trying to attack you and rendering damage to your
22 personal property at your mother-in-law's property,
23 when you went to the magistrate court he attacked
24 you again?

25 A. Yes, sir, he attempted to.

GARY MOORE - DIRECT EXAM BY MR. KNOX

1 Q. He tried to?

2 A. Like I said, Mr. Hutchinson saved me
3 back there on that one. I didn't have nowhere to
4 go. I mean, he was bearing down on me and nobody
5 in there was going to help. So like I said, Mr.
6 Hutchinson grabbed Mr. Wallace before he could
7 actually attack me, but he wasn't more than a few
8 feet from doing so.

9 Q. Let's go back to the attack at your
10 mother-in-law's place. At that time, did you try
11 to resist the attack or anything like that?

12 A. No, sir, I just tried to stay away from
13 the end of the axe handle.

14 Q. And in the Court's -- magistrate's
15 courtroom, did you try to resist the attack?

16 A. No, sir, I did not.

17 Q. And at that time that you were at your
18 mother-in-law's place, were you carrying that knife
19 with you?

20 A. Yes, sir. I've had this knife since I
21 was six years old.

22 Q. And at the time you were in the
23 magistrate's office, did you have that knife with
24 you?

25 A. Yes, sir.

GARY MOORE - DIRECT EXAM BY MR. KNOX

1 Q. So what ultimately happened with the --
2 what he did at the magistrate's office?

3 A. Well, they detained Mr. Wallace and
4 told us to come back after lunch and they would
5 sort it out then. I came back after lunch,
6 Mr. Faulkenberry said that.

7 MR. REDMOND: I would object.

8 THE COURT: Don't tell us what
9 Mr. Faulkenberry said.

10 THE WITNESS: All right. Well, after
11 lunch Faulkenberry ruled in my favor for the amount
12 of \$500 which paid for my windshield and mirrors,
13 and I asked him for a restraining order.

14 BY MR. KNOX:

15 Q. Did you actually get a restraining
16 order?

17 A. No, sir. I was told at the last --

18 MR. REDMOND: Objection.

19 THE COURT: Again --

20 BY MR. KNOX:

21 Q. You didn't get a restraining order?

22 A. No, sir.

23 Q. Now, you said this happened in the
24 courtroom. In terms of the incident that happened
25 last July, how far away was that incident?

GARY MOORE - DIRECT EXAM BY MR. KNOX

1 A. Well, I took the job on the road so I
2 didn't have to be here, and it was actually after I
3 had come back home. I think I had been home for
4 approximately a month or two before he finally
5 crossed paths with me at that store.

6 Like I said, I stayed -- after this
7 incident happened, I took a job out of state so
8 that I don't have to be, you know, in the vicinity
9 of this area to avoid these people, or Mr. Wallace
10 in particular. But like I said, I do have to come
11 home from time to time, I can't stay gone forever.

12 Q. Let's go back to the store on July 14th
13 of last year. When you went into that convenience
14 store, upon your arrival, did you see Mr. Wallace?

15 A. No, sir.

16 Q. And did you go to that convenience
17 store with the intent to hurt anybody?

18 A. No, sir. I went for fuel and
19 cigarettes.

20 Q. What was your intent in going to that
21 convenience store?

22 A. To get enough fuel to get back to
23 Chesterfield. You know, honestly, I generally buy
24 my fuel from the same place. I wouldn't have even
25 been there that day if I had -- I had my trucks not

GARY MOORE - DIRECT EXAM BY MR. KNOX

1 stalled on the way to work that morning.

2 Q. Had you been to that convenience store
3 before?

4 A. I think maybe four or five times in the
5 past year. I only go to that store when working
6 near it.

7 Q. Those four or five times prior to July
8 last year, had you ever seen Mr. Wallace at that
9 convenience store?

10 A. No.

11 Q. So that was the first time, July 14,
12 2015 that you saw Mr. Wallace at that particular
13 convenience store?

14 A. Yes, sir.

15 Q. Now you said some words were said by
16 Mr. Wallace?

17 A. Yes, sir.

18 Q. Did you respond or reply to those
19 words?

20 A. No, sir. Just like I said, he told me
21 he was going to get me, he told the police he was
22 going to get me, I believed him. He jumped on me
23 in the courtroom. I mean, there was nothing left
24 to say. Every step he took towards me was one step
25 closer for me to be able to run out of that

GARY MOORE - DIRECT EXAM BY MR. KNOX

1 building.

2 The only door to get out was the door I
3 came in and I tried to get -- I went back up
4 towards him, he slapped me. Instead of getting
5 around him to leave, had he not put his hands on me
6 and drug me to ground, I would have walked out of
7 that store and risked running out of gas on the way
8 to Chesterfield.

9 Q. Now, that convenience store, was that
10 opened to the general public?

11 A. Yes, sir.

12 Q. Did you feel you had a right to be
13 there?

14 A. Yes, sir.

15 Q. Now, you said that they blocked you or
16 he blocked you from leaving?

17 A. Yes, sir.

18 Q. Do you know if any other exits -- back
19 exits to that convenience store?

20 A. The only one that I could think of
21 would be about 60 foot away on the entire other end
22 of the store. I think I've seen them taking the
23 trash out or something out of them. I think that's
24 one of their doors, not for the public.

25 Q. That was the only path outside of that

GARY MOORE - DIRECT EXAM BY MR. KNOX

1 convenience store?

2 A. Yeah. It was about 50 foot past the
3 first exit that I came in.

4 Q. But you never did make it out?

5 A. I didn't get to the first one.

6 Q. Now, after the stabbing, what did you
7 do?

8 A. Well, the first thing I did when I --
9 Mr. Wallace, I think it was the fourth time after I
10 stuck him with that knife, he loosened his grip on
11 one side of my hair, and I ripped the other side
12 out. All right. I pushed my hair back out of my
13 face so I could see. I backed my way to the door.
14 I heard that gal back there talking about, somebody
15 get the gun, get the gun.

16 And so I held the door closed with my
17 hand and watched for about one minute just to make
18 sure these people weren't coming about behind me,
19 and I immediately dialed 911. And I stayed on the
20 phone with her for about 20 minutes or so until the
21 deputies finally arrived.

22 Q. Okay. Now, you called 91?

23 A. Yes, sir.

24 Q. And the deputies came?

25 A. Yes, sir.

GARY MOORE - DIRECT EXAM BY MR. KNOX

1 Q. Were you there when the deputies
2 arrived?

3 A. Yes, sir. I actually flagged Mr.
4 Hutchinson down as he pulled in.

5 Q. What did you do when the deputies came?

6 A. I explained to them that I had just
7 been attacked by several people inside. I actually
8 recognized Mr. Hutchinson from the second time that
9 this man attacked me. So I explained to him it was
10 the same person. And he said, well, hang out right
11 here.

12 And I want to say at that time he said
13 to -- he was going to handcuff me and put me in the
14 car for my protection because Mr. Wallace's family
15 was showing up. You know, there was about five or
16 ten of his family members showed up actually before
17 the deputies got there and I was kind of worried
18 about that. And he stuck me in the back of his car
19 for my protection.

20 Q. Did you still have the knife in your
21 possession at that time?

22 A. Yes, sir. Mr. Hutchinson actually
23 opened the car door back up and because I told him
24 that I had it in the sheath. And he actually
25 opened the car back up and took it out of my

GARY MOORE - DIRECT EXAM BY MR. KNOX

1 pocket, this little pocket here (indicating), after
2 I had already been handcuffed.

3 Q. Did he take the container that the
4 knife was in?

5 A. Sir?

6 Q. Did he take the sheath?

7 A. No, sir, he just took the knife.

8 Q. And did you receive any injuries from
9 this encounter?

10 A. I had my hair ripped out. My doctor --
11 I went to my doctor afterwards. I couldn't -- for
12 some reason I couldn't get to go then. I actually
13 did go to the doctor after I was released the
14 following day. And he said that I showed signs of
15 concussion, I had some -- I had a lot of swelling
16 from this area of the neck where he had my head
17 about turned around in a circle.

18 Also, you know, some of the bruises
19 started to show around my neck where the fellow was
20 helping me, I reckon.

21 Q. Now, besides law enforcement, did
22 anyone else show up to the scene?

23 A. Not that I know of, other than his
24 family and friends.

25 Q. And at some point in time, did

GARY MOORE - DIRECT EXAM BY MR. KNOX

1 emergency medical services show up?

2 A. Yes, sir, I asked to see them. Once
3 they had everybody situated, I asked if it was
4 possible for me to see them. I mean, I was still a
5 little foggy, still a little blurry. You know, my
6 neck -- I have COPD. My breathing still wasn't
7 doing quite the best just from being choked, but I
8 did ask to see the emergency personnel. They
9 stated that, you know, well, I wasn't complaining
10 about it a few minutes ago so I'll be all right.

11 Q. So you never was examined by the
12 emergency medical personnel?

13 A. No, sir.

14 Q. Now, do you know where Mr. Wallace was
15 when you left the store?

16 A. When I left the store?

17 Q. Yes, sir.

18 A. Still inside.

19 Q. Still inside. Did he ever come
20 outside?

21 A. No, sir.

22 Q. Now, this other fellow that you
23 mentioned, you didn't know him?

24 A. No, sir.

25 Q. Now, you are saying that he attacked

GARY MOORE - DIRECT EXAM BY MR. KNOX

1 you also?

2 A. I'm saying that when Mr. Wallace
3 snatched me down to the ground, another person
4 proceeded to grab me around my neck and got me
5 down. And they had it good and they were yanking
6 up on me as Mr. Wallace was yanking down on by the
7 hair of my head. So there was two. I don't know
8 what that fellow's name was. I mean, I wouldn't
9 even know him, to be honest, if I saw him because I
10 didn't see him then.

11 Q. Did you think this person was coming to
12 your aid or to Mr. Wallace's aid?

13 A. Hey, there was no way possible. I
14 mean, if that person was helping me, then that was
15 -- that was about the least help I have ever
16 received in my life.

17 Q. Do you think that the person was trying
18 to break up that encounter?

19 A. I think that person knows the other
20 person.

21 MR. REDMOND: Objection; calls for
22 speculation.

23 THE COURT: I'll sustain it. You can't
24 tell us what you think somebody else's thoughts
25 are.

GARY MOORE - CROSS EXAM BY MR. REDMOND

1 MR. KNOX: Okay. No further questions.
2 Answer any questions the State may have.

3 MR. REDMOND: May it please the Court.

4 THE COURT: Yes, sir.

5 CROSS-EXAMINATION

6 BY MR. REDMOND:

7 Q. I'm going to hit some of the high
8 points that you made. It won't take us too long.

9 You mentioned going to the doctor,
10 something about a concussion. What's your doctor's
11 name and would you give me permission to get your
12 medical records?

13 A. Yeah, by all means, his name is David
14 Brock.

15 THE COURT: Back up a little bit.

16 THE WITNESS: He's at the Care South in
17 Cheraw.

18 Q. David Brock?

19 A. He recommended an MRI, but I don't have
20 the \$450 to pay to cover it. So I don't know the
21 complete extent of the damage, but, yeah, they do
22 medicate me for it.

23 Q. Okay. Let me ask you this: When you
24 went, do you remember when it was that you went?

25 A. It was approximately within a few days

GARY MOORE - CROSS EXAM BY MR. REDMOND

1 of leaving the county jail.

2 Q. Oh, a few days later?

3 A. Well, I mean, it was --

4 Q. All right. Fair enough, but we can
5 check on that. So, in other words, you denied
6 medical attention at that time --

7 A. No, sir, I did not ever deny medical
8 attention --

9 Q. But you weren't examined by EMS?

10 A. I was denied medical attention by
11 Mr. Officer there. The people at the Chesterfield
12 County Jail said I did need attention so they did
13 take pictures and they did assist in medical
14 treatment.

15 Q. Okay. But you weren't examined by EMS?

16 A. No, sir.

17 Q. You got medical treatment. When was
18 the medical treatment that was done by the jail?

19 A. You would have to talk to them, sir.

20 Q. Well, I mean, you were the one that
21 went. You just said you had medical treatment as
22 it relates to the folks at the jail.

23 A. Well, last time I checked, you don't
24 get medical slips when you leave the jail. They
25 hand you a receipt for the money you have in your

GARY MOORE - CROSS EXAM BY MR. REDMOND

1 account.

2 THE COURT: Back off from that mic.

3 THE WITNESS: Okay. I mean, I don't
4 need it. I mean, like I said, they don't hand me a
5 medical -- but they did took numerous pictures.
6 They also felt that it was necessary for me to also
7 shower down and they clothed me and put me in the
8 med cell that night because they didn't feel that I
9 was in good enough shape to be in the regular
10 holding.

11 Q. Okay. You weren't in the regular
12 holding cell, but, like I said, at the end of the
13 day once you got out of jail -- do you remember how
14 long it was before you got out of jail?

15 A. It was within a day or two. I mean,
16 they do -- you have to make appointments.

17 Q. So it was within a day or two, but you
18 just said it was within several days before you
19 went to Dr. Brock, right?

20 A. Well, sir, if you want to postpone
21 this --

22 THE COURT: Just answer the questions.

23 THE WITNESS: I would just rather give
24 the man the exact date so that we don't have to
25 keep --

GARY MOORE - CROSS EXAM BY MR. REDMOND

1 THE COURT: Just answer his question,
2 Mr. Moore.

3 BY MR. REDMOND:

4 Q. You said several days. All I'm asking
5 you is, didn't you just testify that it was several
6 days after you got out of jail?

7 A. Several could be anything, three or
8 less.

9 Q. All right. But you spent a day in
10 jail, I believe?

11 A. I think two.

12 Q. Two days in jail?

13 A. I think it was about two.

14 Q. Okay. Fine, fair enough. Now, let's
15 get to the incident itself. When you were I guess
16 in the store and being encountered -- and, again,
17 the record will be clear, but at one time I was
18 under the impression that you were claiming that
19 both Mr. Wallace and this other individual were
20 blocking your escape, since you were the one that
21 brought up this escape issue, but then I guess it
22 become more -- I think when Mr. Knox was asking you
23 about this other person, it really wasn't clear.
24 So let me try to clarify what was going on.

25 Isn't it true that the initial

GARY MOORE - CROSS EXAM BY MR. REDMOND

1 engagement was between you and Mr. Wallace?

2 A. Yes.

3 Q. There was no other third party; it was
4 you and Mr. Wallace?

5 A. The other fellow was standing about two
6 feet behind him to his right, which would have been
7 the opposite side of the aisle he was standing on;
8 therefore, I had no clear shot at the aisle. At
9 that point that fellow had not put his hands on me,
10 but that fellow was still within a few feet of Mr.
11 Wallace heading in the same direction Mr. Wallace
12 was and he was also blocking the same aisle.

13 Q. But since you brought it up and your
14 credibility is the issue, if you were as afraid as
15 you say you were -- and I've been scared before.
16 If you were that scared fearing for your life, do
17 you really think it's reasonable you would not have
18 tried to run past or push the person out of the way
19 so you could have escaped?

20 A. Well, you can watch the video and see
21 that's exactly what I did.

22 Q. That's not what you said.

23 A. All right.

24 Q. But we'll get to that. Anyway, let's
25 talk about where you were -- I guess he was on top

GARY MOORE - CROSS EXAM BY MR. REDMOND

1 of you, he being -- I mean, you were on top of Mr.
2 Wallace. How many times did -- let me ask you
3 this: The person that was -- that was choking you,
4 were they behind you or in front of you as they
5 were choking you?

6 A. Mr. Wallace had me head down basically
7 to his chest. The fellow, as I remember, was kind
8 of off to the right, my right of me, towards the
9 cash register side, which is the same side he was
10 on the whole time when I was -- I could not exit
11 that aisle.

12 Q. Are you left- or right-handed?

13 A. I'm right-handed.

14 Q. Okay. So make sure I get this right,
15 you were on top of the victim, and to defend
16 yourself -- now mind you, in talking with you and
17 the fear that you've discussed comes from being
18 choked as you said. Weren't any stab wounds to the
19 person that was to your right. The only person
20 that got stabbed was Mr. Wallace; isn't that true?

21 A. I cut at everything there.

22 Q. Isn't it true that Mr. Wallace was the
23 only person stabbed?

24 A. No, actually it's not.

25 Q. So you're saying that somebody else got

GARY MOORE - CROSS EXAM BY MR. REDMOND

1 stabbed too?

2 A. I'm telling you that that man sitting
3 right there, the officer told me that morning.

4 Q. I don't want to talk about what
5 somebody told you.

6 A. I didn't remember. I tried to cut all
7 the people on me.

8 Q. Let me make it easy for you; if you
9 don't know, say you don't know.

10 A. Okay.

11 Q. I'm not trying to trick you.

12 A. You go ahead.

13 Q. Okay. So let's start back again.

14 A. Go ahead.

15 Q. From your own knowledge, if that helps
16 you, the only person that you know that you stabbed
17 was Mr. Charles Wallace; isn't that true?

18 A. That's what I was told, yes, sir.

19 Q. The person that was underneath you as
20 opposed to the person that was choking you -- Mr.
21 Wallace was not choking you. You've never
22 testified he was choking you. He grabbed you by
23 the hair and he supposedly pulled you down where
24 you were on top of him.

25 Let's talk about that. And without

GARY MOORE - CROSS EXAM BY MR. REDMOND

1 getting into any details, but, again, since there
2 was certain issues that were brought up on direct
3 -- I've been in fights before. Most of us have
4 been in fights before. Just from a strategic
5 standpoint, is it wise if -- the person I'm
6 engaging with, is it wise for me to grab them and
7 pull them down where they have the advantage being
8 on top of me?

9 A. Sir, I'm not an expert fighter. I take
10 it how it comes and Mr. Wallace snatched me down to
11 the ground. I assumed that was -- I guess that's
12 the way he does things.

13 Q. I can't even get you to agree with me
14 that if --

15 A. No, I don't --

16 THE COURT: Wait a minute. Wait a
17 minute. One at a time; court reporter can't take
18 down two people speaking at one time. I can't
19 understand --

20 THE WITNESS: You're asking me to --

21 THE COURT: Wait, a minute, sir. I'm
22 talking to you.

23 THE WITNESS: Go ahead.

24 THE COURT: You listen to my
25 instructions.

GARY MOORE - CROSS EXAM BY MR. REDMOND

1 THE WITNESS: Yes, sir.

2 THE COURT: Let him complete the
3 question before you start to answer. Mr. Redmond
4 will let you complete your answer before he asks
5 the next question. That's the way we're going to
6 do this. Do you understand?

7 THE WITNESS: Yes, sir.

8 MR. REDMOND: And as I understand as
9 well, Your Honor.

10 BY MR. REDMOND:

11 Q. Now, as I was saying, can I at least
12 get you to agree with me, at least from a practical
13 standpoint, I mean, carrying a knife around and
14 whatnot, like a country boy as you described
15 yourself, can't we agree that just from a strategic
16 advantage in a fighting situation -- I would prefer
17 if somebody is going to be on the ground and
18 somebody is going to be on, wouldn't you prefer to
19 be the person on the top than the person on the
20 ground? Could I at least get you to agree with
21 that?

22 A. No, sir.

23 Q. Okay. Fair enough. You don't agree,
24 fair enough.

25 A. I can't -- I have -- I cannot judge

GARY MOORE - CROSS EXAM BY MR. REDMOND

1 what that person thinks, and I'm not sitting here
2 trying to pretend whether I'm some good fighter or
3 not. If I was in the same situation, I would have
4 done whatever I had to to protect myself just like
5 Mr. Wallace I reckon he was doing. I can't speak
6 for him.

7 Q. Just like he was doing?

8 A. I can't speak for him.

9 Q. So you just said, just like he was
10 doing, referring to him feeling the need to protect
11 himself?

12 A. No, sir, that's what you're saying.
13 What I'm saying is I cannot speak on why Mr.
14 Wallace decided to snatch me to the ground instead
15 of anything else. Now, I mean, we can sit here and
16 swap words all you want to. There is a video that
17 shows exactly what happened.

18 Q. And that's fair.

19 A. You can just play that video and we can
20 quit trying to tie up all the words and stuff
21 because that's really not what it's about.

22 Q. Let me --

23 A. I was attacked by this man multiple
24 times. I don't -- like the officer said, I didn't
25 even remember everything that happened for three or

GARY MOORE - CROSS EXAM BY MR. REDMOND

1 four days. That's what happened from what I
2 understand.

3 Q. You remember enough to cry out that you
4 were a victim at the time. You told the officers
5 you were a victim. That's the first thing out of
6 your mouth, you were a victim.

7 A. What would you do?

8 THE COURT: Sir, don't ask him any
9 questions. Just answer his questions.

10 THE WITNESS: Okay.

11 BY MR. REDMOND:

12 Q. So this person that was choking you
13 that had nothing to do with what was going on, but
14 they were choking you which is interesting and the
15 Court can take that into consideration, but you
16 sitting here telling me -- and trying to be
17 eloquent, I'll give you that, but you're sitting
18 here trying to frame it as if you were the victim.
19 That this, I think, 56-year-old -- how old are you?

20 A. I'm 35 years old.

21 Q. And Mr. Wallace is I think 56, 57 years
22 old. So he's got you by 20 some-odd years. Okay.
23 That's one thing I want to make sure the record is
24 clear of. The second thing is, that as it relates
25 to the incident itself, and this is what -- I'm not

GARY MOORE - REDIRECT EXAM BY MR. KNOX

1 trying to trick you. We're just trying to put it
2 all in its proper perspective. You have no
3 recollection of stabbing the person that was
4 supposedly choking you when you described your fear
5 as it relates to being choked. Can we agree on
6 that?

7 A. Yes, sir.

8 Q. Fair enough.

9 MR. REDMOND: Beg the Court's
10 indulgence. That would be all the questions I have
11 at this particular time.

12 THE COURT: Mr. Knox, any redirect?

13 MR. KNOX: Yes, sir.

14 REDIRECT EXAMINATION

15 BY MR. KNOX:

16 Q. Mr. Moore, when this incident happened,
17 did you have fear for your life?

18 A. I had a fear for my life prior to this
19 incident.

20 Q. We're talking about at the time --

21 A. Yes, sir. I thought between the two of
22 those fellows they were going to kill me. I did.
23 I mean, when your lights is about to go out, man, I
24 mean, I wish I could do what it's -- you know, as
25 methodically as the State requires for everything

GARY MOORE - RECROSS EXAM BY MR. REDMOND

1 to be labeled, but when your lights are going out
2 and there's multiple people that's got ahold of
3 you, you do what you have. Like I said, I can't
4 answer to what minutes or what hour or what second,
5 but I reasonable feared that they were going to
6 kill me in that store.

7 Q. And you knew Mr. Wallace?

8 A. Yes, sir.

9 Q. And you didn't know the second person?

10 A. No.

11 Q. And you did not know the intent of the
12 second person?

13 A. No, sir.

14 Q. All you were trying to do was free
15 yourself and leave?

16 A. Yes.

17 Q. And in doing that you took the knife
18 out that you had and you defended yourself with
19 that knife?

20 A. Yes, sir.

21 MR. KNOX: Thank you. No further
22 questions.

23 RECROSS-EXAMINATION

24 BY MR. REDMOND:

25 Q. Just to follow up on that last set of

GARY MOORE - RECROSS EXAM BY MR. REDMOND

1 questions and I think we've established, but just
2 to be clear, that the second person who was choking
3 you wasn't -- again, the only person that you
4 remember vividly stabbing several times is the
5 victim that was underneath you, that being Mr.
6 Wallace?

7 A. Mr. Wallace wasn't underneath me when
8 he was getting stabbed. Mr. Wallace was being
9 pulled out from underneath me by the fellow who had
10 me around the neck when he started getting stabbed.
11 The reason -- that's a two-handed knife. It has a
12 lot to do with the reason why I didn't start
13 right-handed. You know, I was trying to keep from.

14 Q. You have an explanation for everything.
15 I'll give --

16 A. Well, it's common sense.

17 MR. REDMOND: Oh, I'm sorry, let me
18 mark this first. I'll just mark the box as State's
19 1, please. Oh, I'm sorry there's already been some
20 marked. That will be State's 6.

21 (STATE EXH. 6, Knife, was marked for
22 identification.)

23 BY MR. REDMOND:

24 Q. Since you have an explanation for
25 everything let's just narrow it down. Again, you

GARY MOORE - RECROSS EXAM BY MR. REDMOND

1 have no recollection of stabbing the person that
2 was choking you. The only person you recall
3 stabbing was the person that initially ended up
4 underneath you?

5 A. Yes, sir.

6 Q. Thank you. Fair enough?

7 Look at State's 6. Is that the knife?

8 A. Yes, sir.

9 MR. REDMOND: Okay. Your Honor, at
10 this time we're marking it as --

11 MR. KNOX: I would like to see the
12 knife.

13 MR. REDMOND: Oh, I'm sorry.

14 At this time I'm not seeking to
15 introduce it. It's marked for ID purposes, but I
16 will confer with Ms. Johnson Lee and we
17 subsequently may move the knife into evidence.

18 MR. KNOX: Without objection for
19 identification.

20 MR. REDMOND: Beg the Court's
21 indulgence one more time.

22 That's all the questions I have at this
23 time.

24 THE COURT: All right. You can step
25 down.

CHARLES WALLACE - DIRECT EXAM BY MR. KNOX

1 MR. KNOX: Defense calls Mr. Charles
2 Wallace.

3 CHARLES WALLACE,
4 being first duly sworn, testified as follows:

5 THE CLERK: Be seated and state your
6 full name.

7 THE WITNESS: My name is Charles
8 Wallace.

9 DIRECT EXAMINATION

10 BY MR. KNOX:

11 Q. Mr. Wallace, where do you live?

12 A. [REDACTED] Hancock Road.

13 Q. Back on July 14, 2015, where were you
14 living?

15 A. Living with his mother-in-law.

16 Q. You were living with his mother-in-law?

17 A. Yes.

18 Q. And was Mr. Moore --

19 A. No, he was not living there.

20 Q. Okay. Now you heard Mr. Moore testify
21 about --

22 A. All he --

23 THE COURT: Sir. Sir, let's get
24 something straight before we start. Let him ask
25 the question completely before you start to answer.

CHARLES WALLACE - DIRECT EXAM BY MR. KNOX

1 THE WITNESS: Yes.

2 THE COURT: And he'll let you answer
3 before he asks another one.

4 THE WITNESS: Okay. Okay.

5 MR. KNOX: Thank you, Your Honor.

6 BY MR. KNOX:

7 Q. Mr. Wallace, you heard Mr. Moore
8 testify about an incident that happened at your
9 mother-in-law's?

10 A. Yes, sir.

11 Q. Can you tell the Court what happened
12 with that incident from your point of view?

13 A. Why don't we Subpoena his
14 mother-in-law --

15 THE COURT: Answer his question.
16 Answer his question. He asked you what your
17 perspective of the incident was, your side of the
18 story is with that.

19 THE WITNESS: He's the one that pulled
20 the stick. So I just reached back and got an axe
21 handle and he run with the stick. He ain't nothing
22 but a coward. It takes a coward man to stab a man
23 in the back.

24 BY MR. KNOX:

25 Q. Okay. You still haven't answered the

CHARLES WALLACE - DIRECT EXAM BY MR. KNOX

1 question. What did you do with the axe handle?

2 A. What do you mean, what did I do with
3 it? I put it back on the back of my truck.

4 Q. What did you do with it before you put
5 it on the back of the truck?

6 A. I tried to -- I was going to knock his
7 brains out if I had caught him.

8 Q. Instead of knocking his brains out,
9 what did you do with the axe handle?

10 A. Well, ask him what did he not have --

11 THE COURT: No, sir. No, sir. No,
12 sir. You answer his question. Answer his
13 question.

14 BY MR. KNOX:

15 Q. When you decided to knock his brains
16 out --

17 A. What does this got to do with this here
18 stabbing?

19 THE COURT: Sir, let's get something
20 straight right now. He has the right to ask you
21 questions. You have to respond to them; whether
22 you like the question or not, you give an answer.
23 Do you understand?

24 THE WITNESS: Okay. Okay.

25 THE COURT: You don't do it with an

CHARLES WALLACE - DIRECT EXAM BY MR. KNOX

1 attitude. Do you understand? Is that clear?

2 THE WITNESS: Yes, sir.

3 BY MR. KNOX:

4 Q. Okay. Before you decided to knock his
5 brains out but you didn't, what did you do with the
6 axe handle after that, sir?

7 A. I knocked his windshield out.

8 Q. You knocked his windshield out. And
9 did you do anything else to his vehicle?

10 A. No, I didn't do nothing else to his
11 vehicle.

12 Q. Do you have a right to knock his
13 windshield out?

14 A. No, I didn't have no right to knock his
15 windshield out.

16 Q. So why did you do it?

17 A. Because I couldn't catch him.

18 Q. So instead of taking your frustrations
19 out on him, you took your frustrations out on his
20 property?

21 A. Well, we went to court with that --

22 Q. Just answer the question, yes or no,
23 sir.

24 A. Yes.

25 Q. You took your frustrations out on his

CHARLES WALLACE - DIRECT EXAM BY MR. KNOX

1 property. Now the second incident that Mr. Moore
2 referred to was in the magistrate court. Do you
3 recall that incident?

4 A. Yeah, I recall it.

5 Q. What happened in the magistrate court?

6 A. Nothing. He come in there acting big,
7 like he's so stuff and all this here, and I went
8 towards him, and then the officer back yonder, the
9 judge told him to carry me out and put me in the
10 cell.

11 Q. So you tried to approach him inside the
12 magistrate court?

13 A. Yeah. Yeah.

14 Q. Why were you trying to approach him?

15 A. I can't stand him.

16 Q. You can't stand him. So, basically,
17 you was going to knock his brains out, you tore up
18 his car and you attacked him in the magistrate's
19 office because you can't stand him?

20 A. I didn't attack him in the magistrate's
21 office.

22 Q. Beg your pardon?

23 A. I did not attack him in no magistrate's
24 office.

25 Q. But you tried?

CHARLES WALLACE - DIRECT EXAM BY MR. KNOX

1 A. I went towards him.

2 Q. You went towards him in the
3 magistrate's office because you can't stand him; is
4 that correct?

5 A. Yeah.

6 Q. So you already had bad blood for Mr.
7 Moore, didn't you, sir?

8 A. I got bad blood? No, I can't stand
9 him.

10 Q. You can't stand him. When you saw him
11 on July 14, 2015, at a convenience store, could you
12 stand him then?

13 A. No. I can't stand him today.

14 Q. You couldn't stand him back on July 14,
15 2015?

16 A. No.

17 Q. Did you attack him in that store?

18 A. Yeah, we went at it in the store.

19 Q. No. I didn't ask you did we go at it,
20 I said, did you attack him at the store, sir.

21 A. Yes.

22 Q. You slapped him?

23 A. Yeah.

24 Q. Did you have reason to slap him?

25 A. I thought I did.

CHARLES WALLACE - DIRECT EXAM BY MR. KNOX

1 Q. Why? Because you couldn't stand him?

2 A. That might have been what it was.

3 Q. Okay. So you slapped him without
4 provocation or cause; is that correct, sir?

5 A. No. He come in running his mouth to
6 me.

7 Q. Okay. So we add another variable to
8 this. You can't stand him, he was running his
9 mouth, so you slapped him?

10 A. Yeah.

11 Q. And you-all were in a public place?

12 A. Yeah.

13 Q. When this happened?

14 A. Yeah.

15 Q. And when Mr. Moore came in there, he
16 hadn't done anything to you, did he?

17 A. Nothing, but run his mouth to me.

18 Q. Run his mouth. What did he say, do you
19 recall what he said?

20 A. No. I could care less what he said.

21 Q. Did he threaten your life?

22 A. No, but -- he ain't threatened my life,
23 but, you know -- yeah, he threatened my life, he
24 stabbed me.

25 Q. I'm talking about from the

CHARLES WALLACE - DIRECT EXAM BY MR. KNOX

1 conversation. We're talking about words now.
2 We're not talking about your physical acts. We're
3 talking about words. With his words did he
4 threaten you?

5 A. No, but he was running his mouth.

6 Q. Did he talk about your momma?

7 A. I don't know what all he said. He was
8 running his mouth.

9 Q. Did he talk about your wife?

10 A. No.

11 Q. Your children?

12 A. No.

13 Q. Okay.

14 A. I ain't got no kids so he couldn't be
15 talking about no kids.

16 Q. So how long was Mr. Moore in that
17 store, that convenience store, when you went up to
18 him and slapped him?

19 A. The time he come in, he went to running
20 his mouth. And he said there were several of them
21 on the outside. Wasn't nobody out there but one
22 man outside.

23 Q. So he was running his mouth. How long
24 was it he was running his mouth, sir?

25 A. Who?

CHARLES WALLACE - DIRECT EXAM BY MR. KNOX

1 Q. Mr. Moore.

2 A. At the time he walked through the door,
3 he was running his mouth.

4 Q. Was that directed at you?

5 A. Yes.

6 Q. How do you know it was directed at you?

7 A. Who else would he have been talking to.

8 Q. Did he say, Charles Wallace?

9 A. No, but I know who he was talking to,
10 referring to.

11 Q. Was there anyone else in the store?

12 A. The lady.

13 Q. So you went up to him and slapped him;
14 is that correct? Is that your testimony?

15 A. Yeah.

16 Q. Because you had all of this -- was it
17 because you had all of this pent-up anger and vile
18 in you, that the next time that you would see Mr.
19 Moore that you was going to --

20 A. No. I did not know have all this viled
21 up.

22 Q. But you can't stand him?

23 A. No, I can't stand him.

24 Q. You can't even stand him while he's
25 here?

CHARLES WALLACE - DIRECT EXAM BY MR. KNOX

1 A. No, I can't stand him.

2 Q. So because you couldn't stand him back
3 on July 14, 2015, you casually went up there and
4 smacked him?

5 A. Yes, sir.

6 Q. Did you think about the consequence of
7 you walking up to somebody, a grown man, and
8 slapping him in the face? Did you think about the
9 consequences?

10 A. No, I didn't think about it.

11 Q. So you did it, you wasn't even
12 thinking. Did you think that you might get
13 stabbed?

14 A. No. Did I, I would have done
15 different.

16 Q. What would you have done if you thought
17 you were going to get stabbed?

18 A. Huh?

19 Q. What would you have done if you thought
20 you were going to get stabbed?

21 A. I would have done something different.

22 Q. But that doesn't negate the facts.

23 A. It takes a coward man to stab a man in
24 the back.

25 Q. What type of man would walk up to

CHARLES WALLACE - CROSS EXAM BY MR. REDMOND

1 somebody and just slap him in the face?

2 A. To me, if you're man enough to run your
3 mouth, then you're man enough to tote an ass
4 whipping.

5 Q. You wanted to give him an ass whipping;
6 is that correct?

7 A. Exactly right.

8 Q. And you got your ass whipped; is that
9 correct?

10 A. I didn't get whipped.

11 MR. KNOX: No further questions, sir.

12 THE WITNESS: I don't call being
13 stabbed in the back being whipped.

14 THE COURT: Mr. Redmond.

15 MR. REDMOND: May it please the Court,
16 Your Honor.

17 THE COURT: Yes, sir.

18 CROSS-EXAMINATION

19 BY MR. REDMOND:

20 Q. I understand you've got hard feelings
21 toward the defendant, but let me ask you this: At
22 any time did you ever present any weapon to him --

23 A. No.

24 Q. -- in the store that day? Just answer
25 my question.

CHARLES WALLACE - CROSS EXAM BY MR. REDMOND

1 A. No, I did not show no weapon to him.

2 Q. Did you do anything other than -- and
3 how did you hit him? When you hit him --

4 A. He said I slapped him. You all heard
5 him say I slapped him.

6 Q. Yes. Okay. So you didn't punch him,
7 you slapped him?

8 A. That's what he said, I slapped him.

9 Q. Do you recall from your own
10 recollection --

11 A. I don't know what I done to him.

12 Q. Okay. But if he had to -- let me ask
13 you this: Isn't it true that if he had not said
14 anything to you, then you would have never had a
15 reason --

16 A. Well, he knowed my truck when he pulled
17 up. He knowed there was bad blood between me and
18 him. Why did he even come in the store? He should
19 have went on down the road.

20 Q. Well, that's -- now, you said he knew
21 your truck. You were driving your truck that day?

22 A. Yes.

23 Q. And I believe, if I remember correctly,
24 you were already in the store --

25 A. Yes.

CHARLES WALLACE - CROSS EXAM BY MR. REDMOND

1 Q. -- at the time --

2 A. I had been there for a few minutes, had
3 called his mother-in-law to come. She had -- we
4 were going to get us a sandwich at this store.

5 Q. And then after that is when the
6 defendant comes in to the store?

7 A. Yeah.

8 Q. Now, do you understand that some people
9 might say, well, you shouldn't have hit him?

10 A. Yeah. Yeah.

11 Q. But at any time, did you do anything
12 that would cause him to use deadly force against
13 you?

14 A. No.

15 Q. Did you present a weapon?

16 A. No.

17 Q. Did you -- I guess, did you punch him
18 repeatedly?

19 A. No.

20 Q. To your recollection?

21 A. No.

22 Q. So based on what he said, you were in
23 here when he testified -- you got stabbed six,
24 eight times --

25 A. Four times.

CHARLES WALLACE - CROSS EXAM BY MR. REDMOND

1 Q. Over an open-handed slap?

2 A. Four times.

3 Q. Did you ever grab him by the hair? Do
4 you recall pulling him down on the floor?

5 A. Yes, I pulled him down.

6 Q. And did that -- at what point did that
7 happen?

8 A. When we were fighting.

9 Q. Okay. Now, at the time you were
10 fighting --

11 A. And he said there was another man
12 involved. I don't know who the other man -- where
13 he comes up with this other man.

14 Q. So, and that's what I want to clarify.
15 When there's this fight going on between you-all,
16 what was -- all right. You slap him. What did he
17 do after you slapped him. Take us through what you
18 remember occurred with the fight.

19 A. Well, we fell to the ground and -- and
20 the young man came in, and Mr. Moore told him to
21 get me off of him, you know. And so the boy broke
22 us up. I told the boy not let him up because I
23 knowed he had that knife on his side.

24 Q. So then what happened? Do you remember
25 what --

CHARLES WALLACE - CROSS EXAM BY MR. REDMOND

1 A. Just soon as he comes up, he went to
2 stabbing. He even stabbed the little boy in the
3 arm.

4 Q. Okay. But how many times did he get
5 stabbed versus how many times did you get stabbed?

6 A. Who?

7 Q. You.

8 A. I got stabbed four times.

9 Q. And where were you stabbed?

10 A. Two times in the back and two times in
11 the side.

12 Q. Okay. To the best you can remember,
13 was this after you-all had -- and, again, I'm knew
14 to this case. This is the first time I think you
15 and I have talked, so I'm just learning the case
16 today, so bear with me. But -- so this other
17 person gets -- intervenes, and you were in the
18 process of getting up or had you already gotten up
19 when you were stabbed? Let's make sure we're clear
20 on that?

21 A. We got -- we got up and he -- he come
22 stabbing just as soon as he got up off the ground,
23 he pulled the knife out and went to stabbing at
24 somebody.

25 Q. And, of course, you saw the knife that

CHARLES WALLACE - CROSS EXAM BY MR. REDMOND

1 we were --

2 A. I didn't see it.

3 Q. I'm going to show you State's Exhibit
4 Number 1. If you don't recognize it, that's fine,
5 but does this look like the knife that he had?

6 A. I don't know what kind of knife he had.

7 Q. You just know you got stabbed?

8 A. Right. I got signs to show.

9 Q. And do you recall -- and, again, I know
10 I'm asking you -- I might be asking you more than
11 you can remember, but if you can remember, do you
12 recall where you got stabbed first and where you
13 were at the time that you were getting stabbed?

14 A. Just as soon as we got up, wherever we
15 landed at, just as soon as we got up, he come up --
16 come up stabbing when this young boy made us break
17 up.

18 Q. So this person, this other person was
19 trying to break up --

20 A. Yeah. He had nothing to do with it
21 whatsoever.

22 Q. So the fight is in the process of being
23 broken up, you're standing up. You got hit in the
24 gut first?

25 A. I think so.

CHARLES WALLACE - CROSS EXAM BY MR. REDMOND

1 Q. Do you recall what you were doing or
2 how --

3 A. I think I turned -- I think I turned
4 and he stabbed me twice in the back.

5 Q. Okay. And, again, at the time you were
6 stabbing -- and this is important, because like I
7 said, I'm just learning this case so bear with me.
8 If I understand you correctly, the fight -- the
9 incident was actually ending, in the process of
10 being broken up --

11 A. Right.

12 Q. -- at the time the stabbing occurred?

13 A. Exactly right.

14 Q. And you had no weapon. And just to be
15 clear, when you went down on the floor, was he --
16 were you the only one doing anything or were
17 you-all tussling or were both of you engaged --

18 A. We was both engaged.

19 Q. What we call mutual combat?

20 A. Right.

21 Q. But even though you admit that you
22 popped him in the head first, slapped him, but once
23 you slapped him, he engaged and you-all were
24 engaged in a tussle?

25 A. Right.

CHARLES WALLACE - REDIRECT EXAM BY MR. KNOX

1 Q. For lack of a better term?

2 A. Right.

3 Q. And you-all ended up on the ground?

4 A. Yes.

5 Q. Then, as this good samaritan -- I think
6 even the defendant called him a good samaritan. As
7 this good samaritan comes, you're in the process of
8 being -- you-all were being broken up, and then he
9 comes up with the knife.

10 So let me ask you this: So this was
11 not a situation where you hit him and then he
12 stabbed you. You hit him, you-all engaged, fell
13 down, and as it's being broken up, that's when you
14 got stabbed?

15 A. That's when he done the stabbing.

16 MR. REDMOND: Beg the Court's
17 indulgence?

18 THE COURT: Yes, sir.

19 MR. REDMOND: That would be all the
20 questions I have at this time.

21 THE COURT: Mr. Knox.

22 REDIRECT EXAMINATION

23 BY MR. KNOX:

24 Q. Mr. Wallace?

25 A. Yeah.

CHARLES WALLACE - REDIRECT EXAM BY MR. KNOX

1 Q. Your testimony was that you knew that
2 Mr. Moore had that knife?

3 A. Yeah. I seen it on him when he come in
4 the store.

5 Q. So you observed him coming into the
6 store; is that correct?

7 A. Yeah.

8 Q. And he didn't do anything to you, did
9 he?

10 A. Nothing, but run his mouth.

11 Q. So you were the aggressor by slapping
12 him first; is that correct?

13 A. I assume so.

14 Q. You saw that he had a knife on him and
15 you slapped him anyway; is that correct, sir?

16 A. Yes, sir.

17 Q. And who determined that the fight was
18 over?

19 A. When somebody -- if you and me went
20 down fighting right here, and somebody broke me and
21 you up, wouldn't you think -- you would assume it's
22 broke up?

23 Q. Okay. That's a fair question, but I'm
24 not the witness, you are.

25 THE COURT: Just answer the question.

CHARLES WALLACE - REDIRECT EXAM BY MR. KNOX

1 Don't ask any questions.

2 BY MR. KNOX:

3 Q. Now, sir, it was your testimony that
4 the so-called good samaritan got cut also; is that
5 correct?

6 A. He did.

7 Q. So not only you were cut --

8 A. He got nicked on his arm, I think.

9 Q. So Mr. Moore was stabbing just trying
10 to get free; is that correct?

11 A. I guess, I don't know what he was -- I
12 don't know. He was just stabbing is all I know.

13 Q. And isn't it in his attempt to free
14 himself --

15 A. He was already free.

16 Q. -- you and the good samaritan got
17 stabbed?

18 A. I said he was already -- he was already
19 free. I mean. When he went to doing the stabbing.

20 Q. Now, who determined that he was already
21 free?

22 A. I presumed he was free when the boy
23 broke -- got us up off of one another.

24 Q. When was the good samaritan stabbed?
25 Was he stabbed after all this was over or while he

STEVEN HOOKS - DIRECT EXAM BY MR. REDMOND

1 was on top --

2 A. While he was breaking us up.

3 Q. Okay. So he jumped into a hornet's
4 nest?

5 A. I guess he did.

6 Q. And he got stung?

7 A. I guess he did.

8 MR. KNOX: Okay. No further questions.

9 THE COURT: Anything else, Mr. Redmond.

10 MR. REDMOND: No further questions.

11 THE COURT: You can step down.

12 MR. KNOX: That's all from the defense,

13 Your Honor.

14 MR. REDMOND: State would call Steve
15 Hooks.

16 THE COURT: All right.

17 STEVEN HOOKS

18 being first duly sworn, testified as follows:

19 DIRECT EXAMINATION

20 BY MR. REDMOND:

21 Q. How are you doing?

22 A. Fine.

23 Q. State your full name for the record.

24 A. Steven Hooks.

25 Q. Okay. And where do you live,

STEVEN HOOKS - DIRECT EXAM BY MR. REDMOND

1 Mr. Hooks?

2 A. Antioch Church Road, [REDACTED]

3 Q. And I just want to say that I like your
4 hoodie?

5 A. I didn't mean to wear it like that.

6 Q. I'm a Carolina fan so --

7 A. I was working.

8 Q. But, anyway, moving on to the serious
9 matter that we're here for, do you recall an
10 incident on July 14, 2015, at the --

11 A. McCormick's.

12 Q. Do you recall that?

13 A. Well, it's been so long I kind of
14 forgot about it.

15 Q. Well, you've been in here and heard
16 some of the discussions and whatnot and -- well,
17 let me ask you this: When you were Subpoenaed you
18 give a statement about what you could remember
19 happening?

20 A. As much as possible.

21 Q. Okay. And I will just ask you, what --
22 to the best of your recollection, what do you
23 remember occurring as it relates to what you
24 observed in your role?

25 A. Well, every day I come in that store to

STEVEN HOOKS - DIRECT EXAM BY MR. REDMOND

1 get my afternoon stuff. So I don't pay much
2 attention. I wave at the lady at the counter, and
3 as soon as I come in, I come around the corner to
4 get my beverage and go to the counter to pay for
5 it. The next thing I know -- I'm leaning down
6 because what I had to get was on the bottom. I'm
7 5, 5, I can't hardly see over the racks, and I hear
8 something. And I kind of looked up and the Lance
9 cracker rack was pulled over. And I thought some
10 kid had pulled over, you know, no big deal. As I
11 started walking up the aisle I see two fellows on
12 the ground. By the time I get closer and closer, I
13 see blood. And I think his name is Gary --

14 Q. Gary and Charles. Mr. Wallace.

15 A. And I thought they was just tussling,
16 you know. I was like, let's break it up, because
17 the lady at the cash register, she was screaming.
18 So I reached down and I think I grabbed Gary, and
19 finally got them broke up. The next thing I know,
20 blood was everywhere. That's about as far as I can
21 remember.

22 Q. Did you get nicked or anything?

23 A. Yeah, just a little.

24 Q. So you did get nicked?

25 A. Ain't no big deal.

STEVEN HOOKS - DIRECT EXAM BY MR. REDMOND

1 Q. Where were you nicked at?

2 A. Right there (indicating), just a
3 little --

4 Q. Okay. Let me ask you this: Were you
5 choking anybody?

6 A. As far as I can remember, I was trying
7 to get them --

8 Q. Get them separated.

9 A. -- separated.

10 Q. So, in other words, you were not -- you
11 were doing what you could to get them separated.
12 You didn't actually take -- get -- you did not take
13 sides for lack of a --

14 A. I don't even know these fellows.

15 Q. You were just trying to get it ended?

16 A. Yes.

17 Q. Okay. And do you remember -- or to the
18 best of your recollection, who did you actually get
19 off of whom or how did you break up the fight if
20 you can remember? What means did you use to break
21 up the fight?

22 A. Just grabbed the first one to pull,
23 because it happened right there in front of the
24 cash register.

25 Q. Okay. And do you remember which one

STEVEN HOOKS - DIRECT EXAM BY MR. REDMOND

1 you pulled? I think you might have mentioned you
2 pulled the defendant?

3 A. (Indicating)

4 Q. Mr. Moore?

5 THE COURT: Let the record reflect he's
6 pointing to Mr. Moore.

7 THE WITNESS: See, I don't know them.

8 BY MR. REDMOND:

9 Q. And just to be clear for the record --
10 thank you for reminding me -- at the defense table,
11 is that the individual that you recognized as
12 pulling up, to the best of your recollection?

13 A. No, sir. I even spoke to him yesterday
14 outside smoking a cigarette. I didn't know who he
15 was.

16 Q. Did you remember Mr. Wallace?

17 A. No.

18 Q. But you pulled one of them off, and I
19 think you -- well, let me ask you this: The person
20 you pulled off, did they have dark or light hair,
21 older or younger?

22 A. Actually, I thought he was the older
23 guy. I kind of remember him because I helped him
24 to the bathroom to get the bleeding stopped. I
25 don't remember -- I don't know their names or

STEVEN HOOKS - DIRECT EXAM BY MR. REDMOND

1 anything.

2 Q. But at the time that you -- what were
3 you doing when you got nicked if you can remember?
4 What were you doing when you got nicked -- what
5 were you doing in the process of doing it that
6 caused you to get nicked in the arm?

7 A. I don't remember, to tell you the
8 truth. It just happened.

9 Q. Okay.

10 A. Maybe he did think somebody else was
11 trying to help him out, whatever.

12 Q. But you didn't choke anybody?

13 A. I don't remember if I did. If it is,
14 it's on tape.

15 Q. And let me ask you this: When you say
16 it's on tape, you're talking about the tape from
17 the store?

18 A. Yeah.

19 Q. Let's try to narrow down what you do
20 remember. At the time you saw them both on the
21 floor and you said had already seen blood; is that
22 correct?

23 A. (Nodding)

24 Q. Okay. And the second thing I wanted to
25 ask you about that, when you encountered them, and

STEVEN HOOKS - DIRECT EXAM BY MR. REDMOND

1 just to be blunt, did it just seem like two guys
2 fighting?

3 A. Yes.

4 Q. And I stress two guys fighting because
5 they were both fighting, they were both engaged in
6 a fight. At that time, did you observe anything
7 that made you think that, okay, somebody here's in
8 danger of losing their life, or were you just like,
9 okay, this is aggravating, let me get this
10 separated?

11 A. Yes, because I seen so much blood. I
12 didn't know what blood it was or whose blood it
13 was. I just knew somebody was getting hurt.

14 Q. And when you -- and just to clarify my
15 last question, when you saw somebody getting hurt,
16 you tried to separate the fight and you got nicked,
17 somehow in the course of that you got nicked. You
18 don't remember -- and I just want to make sure, you
19 don't remember which person you actually pulled up?

20 A. Well, didn't you say you had long hair?
21 That's how I kind of remember that.

22 Q. Just for clarification, you can't ask
23 him direct questions.

24 A. Oh, I'm sorry.

25 Q. That's okay. You didn't know that, but

STEVEN HOOKS - DIRECT EXAM BY MR. REDMOND

1 the person you pulled had long hair, that was the
2 person you pulled off?

3 A. I believe so.

4 Q. Okay. So you were trying to pull the
5 defendant off and you indicated you saw a lot of
6 blood and it was the victim here, Mr. Wallace, that
7 you had to help to the bathroom because he had been
8 was cut?

9 A. Yeah. After --

10 Q. After --

11 A. -- everything was done.

12 Q. And I guess after everything was over
13 and done with, what did you do at that point?

14 A. I believe I stayed around for a few
15 minutes after -- a couple of ladies helped -- went
16 back into the bathroom with him and helped stopped
17 the bleeding. I was standing at the counter and I
18 felt something running down my arm, it was just a
19 little bit of blood. You know how that feels --

20 Q. Okay.

21 A. -- warm. And I helped them pick up the
22 crackers and stuff because it was scattered
23 everywhere and customers were trying to come into
24 the store.

25 Q. Let me ask you this: You said that you

STEVEN HOOKS - DIRECT EXAM BY MR. REDMOND

1 were on a -- did this happen on a different aisle?

2 Based on what you testified to, you were on a
3 different aisle than when it started?

4 A. Yeah. When you walk in the door, come
5 down the first aisle, take a left, what I needed
6 was on that first aisle. I think there's another
7 aisle and another aisle and then you have the
8 drinks, and the Gatorade is here. The cash
9 register is here. (Indicating) I went down this
10 aisle. I don't know what happened there. The next
11 thing I know, they was on the floor.

12 Q. Which aisle was it they were on the
13 floor?

14 A. In between aisle one and aisle two, I
15 would guess you would call it.

16 THE COURT: In between what?

17 THE WITNESS: Well, they don't have
18 numbers on the aisles, but the first aisle and the
19 second aisle and the cash register was right there
20 in the middle.

21 BY MR. REDMOND:

22 Q. So you weren't there. You weren't even
23 in the same area as they were when everything got
24 started?

25 A. No, sir.

STEVEN HOOKS - DIRECT EXAM BY MR. REDMOND

1 MR. REDMOND: Beg the Court's
2 indulgence.

3 BY MR. REDMOND:

4 Q. Did you ever hear the defendant say
5 anything? I guess, you know, the person with the
6 long hair, do you recall him saying anything?

7 A. No. I never did see him.

8 Q. I'm talking about after you got them
9 separated or during, do you remember hearing
10 anything or hear them say anything?

11 A. No. I was more thinking of --

12 Q. The dude that had been cut?

13 A. Yeah.

14 Q. Fair enough. Did you ever see the
15 knife?

16 A. No, sir.

17 Q. Okay.

18 A. They was two guys on the ground.

19 Q. Okay. All right. Let me ask you this:
20 Can you -- did you ever see any of the wounds being
21 inflicted or was your attention elsewhere? Did you
22 ever see any active stabbing take place?

23 A. No, not really because it was -- just
24 went blank on me, you know what I'm saying?

25 MR. REDMOND: Beg the Court's

STEVEN HOOKS - CROSS EXAM BY MR. KNOX

1 indulgence.

2 BY MR. REDMOND:

3 Q. But, again, to be clear, you were not
4 on the same aisle as the defendant and Mr. Wallace
5 when everything got started?

6 A. Correct. I was at the end of it.

7 Q. How tall are you?

8 A. 5, 5.

9 Q. And how much do you weigh?

10 A. 140.

11 MR. REDMOND: That's all the question I
12 have, Your Honor.

13 THE COURT: Mr. Knox.

14 CROSS-EXAMINATION

15 BY MR. KNOX:

16 Q. Mr. Hooks?

17 A. Yes.

18 Q. You were not in a position to see who
19 started all this?

20 A. No, sir.

21 Q. Okay. Now, the person that you grabbed
22 you identified as having long hair; is that
23 correct?

24 A. Yes.

25 Q. How did you pull or got them separated?

STEVEN HOOKS - CROSS EXAM BY MR. KNOX

1 What did you do?

2 A. I just grabbed, just grabbed. You know
3 what I'm saying? They were kind of bear-hugged
4 together and all that.

5 Q. What part of the body did you grab from
6 the person you grabbed?

7 A. I was trying to grab his shoulder. I
8 didn't pull no hair and I don't remember choking
9 nobody.

10 Q. So you grabbed him around the shoulder?

11 A. Somewhere up about here or something.

12 (Indicating)

13 Q. Now, do you recall how long the hair
14 was?

15 A. Not really.

16 Q. Okay. Could you have grabbed hair
17 while you were grabbing at his shoulder?

18 A. No. Well, it's -- I guess it's long
19 enough to be noticed that it was long hair.

20 Q. Beg?

21 A. It was long.

22 Q. Could you have mistakenly grabbed the
23 hair while you trying to grab the shoulder?

24 A. Probably so.

25 Q. That's possible. And you said you

STEVEN HOOKS - CROSS EXAM BY MR. KNOX

1 walked up to the scene, and they were already on
2 the floor when you walked up to the scene?

3 A. Yes.

4 Q. And when you walked up to the scene, it
5 was your testimony that you already saw blood; is
6 that correct?

7 A. Yeah. By the time I set my box down
8 and I got about from -- from here to that wall
9 right there, you could see little small blood
10 there.

11 Q. So Mr. Moore and Mr. Wallace was
12 already engaged when you came?

13 A. Correct.

14 Q. They were on the floor?

15 A. Correct.

16 Q. And you saw blood?

17 A. Yes.

18 Q. Meaning that somebody had gotten
19 stabbed?

20 A. Somewhere.

21 Q. On the floor?

22 A. I didn't know which one it was. I was
23 just trying to break them up.

24 Q. And when you saw this, you just wanted
25 to break them up?

STEVEN HOOKS - CROSS EXAM BY MR. KNOX

1 A. Yes.

2 Q. And when were you cut, did you notice?

3 A. I wasn't notice until everything was
4 over with.

5 Q. You couldn't feel being cut or anything
6 while you were trying to break them up?

7 A. No. My heart was racing, you know?

8 Q. So you only noticed that you were cut
9 afterwards?

10 A. Yes.

11 Q. But it is your testimony that they were
12 already engaged, both on the floor. Do you
13 remember who was on top?

14 A. I believe they was on their sides.

15 Q. On the sides?

16 A. That's the only one I could get the
17 first one, you know.

18 Q. You already saw blood on the floor?

19 A. By that time, yes, sir.

20 Q. They were already engaged?

21 A. Yes.

22 Q. When you separated the two gentlemen,
23 what happened after that?

24 A. I can't think of their names -- Greg,
25 he went out the door.

STEVEN HOOKS - REDIRECT EXAM BY MR. REDMOND

1 Q. Mr. Moore went out --

2 A. Mr. Moore went out the door.

3 Q. Once you got them disengaged and they
4 both were off the floor, did you see anyone stab
5 anybody?

6 A. No.

7 MR. KNOX: Thank you. No further
8 questions.

9 REDIRECT EXAMINATION

10 BY MR. REDMOND:

11 Q. Let me ask you this: The first blood
12 that you saw -- and Mr. Knox asked something that I
13 meant to hit on. So the blood you saw on the floor
14 was even -- something happened -- is it fair to say
15 that something happened even before you made it
16 around to try to separate them?

17 A. Correct.

18 Q. There was something that had happened
19 that resulted in the victim bleeding before you
20 even got around?

21 A. Correct.

22 Q. So -- and as there were already
23 injuries -- were there already injuries based on
24 the blood that you saw? Were there already
25 injuries inflicted on the victim prior to you even

STEVEN HOOKS - REDIRECT EXAM BY MR. REDMOND

1 putting a hand on either one of them? In other
2 words, before you got there to separate them, there
3 was already blood on the floor?

4 A. Correct.

5 Q. So, in other words, they had already
6 been --

7 A. I guess they had scrabbled for like a
8 couple of seconds; you know what I'm saying?

9 Q. Say that one more time?

10 THE COURT: I couldn't hear you.

11 THE WITNESS: Probably wrestled for a
12 little bit because the aisle was probably from here
13 to that green chair.

14 BY MR. REDMOND:

15 Q. But the point is, the bottom line is,
16 there was blood -- something had happened causing
17 the blood before you laid a hand on either one of
18 them to try to separate them?

19 A. Yes.

20 Q. And I think there was another thing
21 that you were asked concerning the -- I guess what
22 took place afterwards. Do you recall how the
23 defendant was acting after everything was over
24 with, after you get them separated? Did you pay
25 any attention to how --

MELISSA ANN GRIFFIN - DIRECT EXAM BY MS. JOHNSON-LEE

1 A. I didn't pay no attention. I was
2 trying to get him to the bathroom to stop the
3 bleeding.

4 Q. So, in essence, after you got there and
5 with everything that you observed, your primary
6 attention at that time was on the victim, the
7 person that had been stabbed?

8 A. Carried him to the bathroom and got
9 some towels.

10 MR. REDMOND: Beg the Court's
11 indulgence.

12 That would be all the questions I have.

13 THE COURT: You can step down. Thank
14 you.

15 THE WITNESS: Thank you.

16 MS. JOHNSON-LEE: Melissa Ann Griffin.

17 MELISSA ANN GRIFFIN

18 being first duly sworn, testified as follows:

19 THE CLERK: State your name and
20 address.

21 THE WITNESS: My name is Melissa Ann
22 Griffin, I live at 300 Virgil Griffin Road,
23 Pageland.

24 DIRECT EXAMINATION

25 BY MS. JOHNSON-LEE:

MELISSA ANN GRIFFIN - DIRECT EXAM BY MS. JOHNSON-LEE

1 Q. Where do you work?

2 A. I work at McCormick's Grill and
3 Grocery.

4 Q. How long have you worked there?

5 A. I would say between five years in the
6 last -- I maybe worked there three-and-a-half-years
7 and then I maybe stopped working for about a year
8 and then come back.

9 Q. And you are here today per Subpoena; is
10 that correct?

11 A. Yes, ma'am.

12 Q. Now, were you at work on July 14th of
13 2015?

14 A. Yes, ma'am.

15 Q. Okay. Were you there when the incident
16 occurred between Gary Moore and Mr. Wallace?

17 A. I was.

18 Q. What were you doing in the store that
19 day as part of your job?

20 A. I run the register.

21 Q. Okay. Did you check out either one of
22 them at the register that day?

23 A. No. It all happened so fast
24 Mr. Charles was already in the store. Mr. Gary
25 come in and they made eye contact, that's all I

MELISSA ANN GRIFFIN - DIRECT EXAM BY MS. JOHNSON-LEE

1 seen because I have to answer phones and do lottery
2 also. And I didn't hear anybody say anything to
3 anybody, it was just on.

4 Q. Describe what you mean by, it was on.

5 A. They was fighting. They was on the
6 floor and by the time I got around -- I had grabbed
7 the phone to call 911, thinking if I threatened,
8 you know, to call the police, they would stop
9 fighting. Well, they kept fighting.

10 Q. Did you see either one of them on top
11 of the other one?

12 A. It was back and forth. I don't know.
13 I can't really -- I mean, it's been awhile.

14 Q. Did you see one of them start bleeding?

15 A. Yeah.

16 Q. Who did you see bleeding?

17 A. I don't know. I just seen blood.

18 Q. Do you recognize the two individuals
19 here today, the defendant and then Mr. Wallace over
20 here?

21 A. Yes, ma'am.

22 Q. Do you remember which one of them was
23 bleeding?

24 A. After he left the store, Gary, he was
25 bloody. We started taking his shirt off and

MELISSA ANN GRIFFIN - DIRECT EXAM BY MS. JOHNSON-LEE

1 getting towels for him.

2 Q. You're referring to Mr. Wallace?

3 A. I mean, yes, Mr. Wallace. I'm sorry,
4 I'm nervous.

5 THE COURT: Don't be nervous. Just
6 relax. Nobody is going to bother you.

7 BY MS. JOHNSON-LEE:

8 Q. Did you see anybody help stop the
9 fight?

10 A. Steven was trying, because, like he
11 said, there was four aisles. He was toward the
12 back and they was right here, kind of at the soda
13 machines that stack right there -- I mean, the
14 sodas that are stacked there, right near the
15 register.

16 Q. Okay. When you saw Steven come up, the
17 fight was already on?

18 A. Yeah. I was maybe three foot from
19 them, holding the phone, you know, telling them I'm
20 calling the police.

21 Q. Did you ever see Steven try to choke
22 either one of them?

23 A. He was -- he was trying to pull maybe
24 Gary off.

25 Q. Okay. And is that how they finally got

MELISSA ANN GRIFFIN - CROSS EXAM BY MR. KNOX

1 separated, was it Steven pulling --

2 A. I believe -- I believe so.

3 Q. Okay. Now, what did Gary do after
4 Steven got them separated?

5 A. I told him he needed to leave the
6 store. He held the door shut for about 30 seconds,
7 and he said that I told you you'd get what you
8 deserve. That's all I heard.

9 Q. Did you tell Gary not to leave the
10 premises?

11 A. I did, and he said he wasn't going
12 anywhere. I looked out the door and he was walking
13 towards his vehicle towards the lower end, that's
14 the diesel pumps. The regular pumps are kind of in
15 front of the store.

16 MS. JOHNSON-LEE: Okay. Thank you. I
17 don't have any further questions.

18 THE COURT: Okay. Mr. Knox.

19 CROSS-EXAMINATION

20 BY MR. KNOX:

21 Q. Ms. Griffin.

22 A. Yes, sir.

23 Q. You said you heard Mr. Moore say
24 something as he was leaving?

25 A. No, sir; he was already outside of the

MELISSA ANN GRIFFIN - CROSS EXAM BY MR. KNOX

1 doors.

2 Q. So the fight was over?

3 A. Uh-huh.

4 Q. And he was outside the door?

5 A. Yeah. I was trying to hold them so no
6 other customers or him come back in the store. And
7 he hollered -- well, not loud, but said, you got
8 what you deserved. And I told him not to go
9 nowhere and he said he wouldn't.

10 Q. Who was he talking to?

11 A. I don't know. I guess he was talking
12 go Mr. Wallace.

13 Q. You guess?

14 A. Yes, sir.

15 Q. Was there anyone on the outside of the
16 store?

17 A. There was a lot of people on the
18 outside.

19 Q. So he could have been talking to
20 anybody?

21 A. No. He was looking through the door.

22 Q. Looking through the door at who?

23 A. I was the only one standing at the
24 door. I'm assuming he was talking to Mr. Wallace.

25 Q. Was Mr. Wallace still there or had

MELISSA ANN GRIFFIN - CROSS EXAM BY MR. KNOX

1 he --

2 A. He was inside the store.

3 Q. -- or taken to the bathroom?

4 A. He was in the store and I guess they
5 was taking him to the bathroom.

6 Q. Did he yell or did he say --

7 A. He didn't yell like at the top of his
8 voice. He just told him, just said --

9 Q. What did he say?

10 A. You got what you deserved.

11 Q. And you didn't see who started the
12 fight?

13 A. No, because I was coming around when
14 just scuffling and there was lottery tickets and
15 another machine here so you can't constantly see
16 there. So by the time I come around, they was
17 already on the floor scuffling.

18 Q. So you didn't see anybody getting
19 stabbed?

20 A. Huh-huh.

21 THE COURT: Say no, please.

22 THE WITNESS: No.

23 MR. KNOX: Thank you, Ms. Griffin.

24 THE COURT: Ms. Lee:

25 MS. JOHNSON-LEE: No other questions.

TIM HUTCHINSON - DIRECT EXAM BY MS. JOHNSON-LEE

1 THE COURT: You can step down.

2 You may be excused, Ms. Griffin.

3 MS. JOHNSON-LEE: I think we're going
4 to call Tim Hutchinson next.

5 TIM HUTCHINSON,
6 being first duly sworn, testified as follows:

7 DIRECT EXAMINATION

8 BY MS. JOHNSON-LEE:

9 Q. State your name for the record.

10 A. Tim Hutchinson.

11 Q. And you're employed with the
12 Chesterfield County Sheriff's Office?

13 A. Yes, ma'am.

14 Q. How long have you been with the
15 Chesterfield County Sheriff's Office?

16 A. Since August 12, 2009.

17 Q. 2009?

18 A. Yes, ma'am.

19 Q. And did you work for any law
20 enforcement agencies prior to that?

21 A. Yes, ma'am; I worked in Anderson County
22 for over 15 years.

23 Q. Okay. And did you go to the South
24 Carolina Criminal Justice Academy?

25 A. Yes.

TIM HUTCHINSON - DIRECT EXAM BY MS. JOHNSON-LEE

1 Q. Are you a Class 1 Certified Officer?

2 A. Yes, ma'am.

3 Q. And you were also a Class 1 Certified
4 Officer in North Carolina prior to coming to South
5 Carolina?

6 A. Yes.

7 Q. Okay. Now, what is your -- what are
8 your job duties with the Chesterfield County
9 Sheriff's Office?

10 A. I'm sergeant over what we call D.
11 Shift, D. Squad, however you want to put it. On
12 the shift I answer calls for service that come out
13 through our dispatch center, property chase,
14 anything that requires law enforcement.

15 Q. On July 14, 2015, were you dispatched
16 to McCormick's Grocery and Grill at 309 Kirkley
17 Road, Chesterfield County?

18 A. Yes, ma'am.

19 Q. What was that dispatch called in
20 reference to?

21 A. Initially, the call came out I believe
22 as a fight call inside a store.

23 Q. And when you arrived at the store, were
24 you first one as far as law enforcement to get
25 there?

TIM HUTCHINSON - DIRECT EXAM BY MS. JOHNSON-LEE

1 A. Yes, ma'am.

2 Q. Okay. What did you see upon arrival?

3 A. Well, while in route to the store,
4 dispatch came over the radio and updated and said
5 that they were getting EMS in route to the store,
6 that somebody had been cut, stabbed, or something
7 like that. They wasn't sure. So we picked up and
8 turned our lights and sirens on and got to the
9 scene as fast we could.

10 Q. And about how long was it before you
11 arrived there?

12 A. Anywhere from -- from initial dispatch
13 10, 15 minutes at the most.

14 Q. When you got there, what did you see?

15 A. McCormick's, if you're not familiar
16 with it, if you come on Kirkley Road, if you're
17 facing the store, it's like a convenience store.
18 It's got a liquor store set off to the right side
19 of it. There's gas pumps in the front and there's
20 another set of gas pumps off to the right side of
21 those. It's got like two small pumps, I think
22 they're like diesel or kerosene pumps. And then
23 over -- still in the same parking lot, over to the
24 far right, there is what used to be a bar back in
25 the day in the same parking lot.

TIM HUTCHINSON - DIRECT EXAM BY MS. JOHNSON-LEE

1 Q. Okay. Did you see Mr. Gary Moore upon
2 arrival?

3 A. Yes, ma'am. He was over -- there was a
4 white I think it was a Ford truck with a red dump
5 bed on the back of it and he was standing to the
6 rear of it while I was approaching and was talking
7 on a cell phone.

8 Q. Where was that truck located?

9 A. In front of the diesel pump.

10 Q. How far is the diesel pump from the
11 entrance to the grocery?

12 A. Roughly, in the courtroom, if I had to
13 measure it, probably from here maybe to the back
14 wall from the front door of the store.

15 Q. Okay. Now, did he try to approach you?

16 A. Yes. As I was pulling up and getting
17 out of my patrol vehicle, he started walking
18 towards me as I was walking towards him, but he was
19 kind of flagging me over to where he was.

20 Q. Okay. And what did he tell you upon
21 arrival?

22 A. That he was a victim and -- I guess he
23 was still on the phone with 911, or somebody. I
24 didn't know who he was on the phone with, but for
25 my safety and his, I asked him to hang the phone

TIM HUTCHINSON - DIRECT EXAM BY MS. JOHNSON-LEE

1 up. While I was standing there talking to him
2 outside the store, a white female opened up the --
3 where you actually -- the front entrance of the
4 store, opened up the door, I don't even know who
5 she was, and hollered out to where -- across the
6 parking lot that -- and pointed out to my direction
7 towards where me and Mr. Moore were standing and
8 made the statement, that's the one that stabbed
9 him, or something of that nature.

10 Q. Okay. Now, did you retrieve any type
11 of weapon from Mr. Moore?

12 A. Yes.

13 Q. How did you find out he had a weapon?

14 A. He told me about it.

15 Q. What did he say?

16 A. He told me that -- like I said, I guess
17 it was 911 he was talking to. He told me that they
18 told him to put the knife back up, and after I
19 handcuffed him and told him he was being retained
20 for investigation purposes, I read him his Miranda
21 Rights and went to place him in the front seat of
22 my patrol car, he told me it was on his right side,
23 which I did retrieve it out of the case and secured
24 it.

25 Q. Was it the same type case that he was

TIM HUTCHINSON - DIRECT EXAM BY MS. JOHNSON-LEE

1 displaying earlier in the Court a sheath?

2 A. Yes.

3 Q. And so you took the knife and you
4 secured that?

5 A. Yes, ma'am.

6 Q. Okay. Did you go into the store?

7 A. Yes, ma'am.

8 Q. All right. What did you see upon going
9 into the store?

10 A. If you walk in McCormick's Grocery,
11 when you walk in the actual front door of the
12 store, there's a cash register to your right and
13 there's several small aisles lined up I guess you
14 could say at an angle, and they have different food
15 and candy and stuff on them; and to the far back
16 wall, there's a beer cooler I believe; and then
17 straight in front of you there's a drink cooler,
18 juices, whatever. And there's like, it might be
19 five aisles. I haven't never counted them. In the
20 front of those aisles, is like a display. They
21 have like crackers and stuff on them, like metal
22 racks. When I walked in the store, there was a big
23 spot of blood in the front of the cash register
24 area that I guess is maybe six by six -- maybe
25 bigger than that. Just a estimate, eight-foot by

TIM HUTCHINSON - DIRECT EXAM BY MS. JOHNSON-LEE

1 eight-foot area open in front of the cash register
2 that people stand around and walk in. And there
3 was a large area of blood right there.

4 Q. Okay. And were there crackers and
5 things on the floor?

6 A. Yes, ma'am.

7 Q. Did it look like a fight had taken
8 place?

9 A. Yes, ma'am. Something took place and
10 knocked the rack over.

11 Q. Did you see Charles Wallace at some
12 point?

13 A. Yes, ma'am; later on.

14 Q. Where was he located?

15 A. In the bathroom.

16 Q. And describe his appearance.

17 A. When I walked to the bathroom area,
18 because there was several people inside the store
19 and they were telling me he was in the bathroom,
20 and I didn't know if there was a possible another
21 suspect, a victim, or what it was. So I made my
22 way that way to secure anybody else that, you know
23 -- and went in. And I didn't know Mr. Wallace,
24 I've never seen his appearance before. But I went
25 in there, he was kind of white, almost like --

TIM HUTCHINSON - DIRECT EXAM BY MS. JOHNSON-LEE

1 almost the color of a piece of paper white. There
2 was two white females in there with him and both of
3 them had like -- one of them had a rag to his front
4 stomach, chest area and one of them had a rag to
5 his back, probably about the middle ways of your
6 back area. And they were holding him, like
7 pressure on him, and they said he had been stabbed.
8 So at that time I told EMS we needed them there as
9 quickly as they could get there.

10 Q. Did you see the stab wounds?

11 A. Yes, ma'am.

12 Q. Do you know how many stab wounds you
13 saw personally?

14 A. I do remember seeing two and a
15 laceration to his back.

16 Q. Okay. I want to show you a page of
17 five photographs and ask if you recognize these.

18 A. Yes, ma'am. These are pictures that I
19 took that day.

20 MS. JOHNSON-LEE: I would like to have
21 these marked for identification. I'm sorry I
22 didn't do it beforehand.

23 (STATE EXH. 7, Pictures, was marked for
24 identification.)

25 THE COURT REPORTER: Number 7.

TIM HUTCHINSON - DIRECT EXAM BY MS. JOHNSON-LEE

1 BY MS. JOHNSON-LEE:

2 Q. I'm handing you what's been marked as
3 State's Exhibit Number 7. You said you took those
4 five photographs on that one page?

5 A. Yes, ma'am.

6 Q. Did you take those on July 14, 2015?

7 A. Yes, ma'am.

8 Q. And are they an accurate representation
9 of the scene that you witnessed that particular day
10 and time?

11 A. Yes, ma'am.

12 Q. And those were taken while you were on
13 that call?

14 A. Yes, ma'am.

15 Q. Okay. And approximately what time was
16 that call?

17 A. I don't recall. It was in the evening.
18 It was probably between 4:00 and 6:00 p.m. because
19 we got off at 6:00 that evening.

20 Q. Okay. And please describe what those
21 photographs depict.

22 A. The first picture is -- it's got number
23 14 on this piece of paper, is the license tag of
24 the truck where Mr. Moore was standing when I
25 approached the store. It's the license tag of the

TIM HUTCHINSON - DIRECT EXAM BY MS. JOHNSON-LEE

1 truck that he was standing beside.

2 The second picture is number 14 on
3 here. It's an overall picture of McCormick's Store
4 the day of the incident and the vehicles in the
5 parking lot. The third picture, number 15, is the
6 area right in front of the cash register when you
7 walk in McCormick's front door and the blood that
8 was on the floor that I seen when I walked in the
9 door. The fourth picture, which is number 16, is
10 some more blood on the floor in front of the cash
11 register area and like chips and stuff like that on
12 the floor and the rack that it was sitting on at
13 the end of one of the aisles. And number 17 is
14 just a picture from the other side of it taken back
15 towards the front door.

16 Q. Does it show the distance between the
17 diesel fuel area where Mr. Moore's truck was
18 located and the entrance to the store?

19 A. Yes, ma'am.

20 Q. And are there some vehicles in front of
21 the store?

22 A. Yes, ma'am.

23 MS. JOHNSON-LEE: I would like to have
24 this put into evidence as a State's exhibit.

25 MR. KNOX: No objection.

TIM HUTCHINSON - DIRECT EXAM BY MS. JOHNSON-LEE

1 THE COURT: Without objection, admitted
2 into evidence.

3 BY MS. JOHNSON-LEE:

4 Q. And did you interview -- after you put
5 Mr. Moore in the car and Mirandized him, did you do
6 any subsequent interviews of him yourself?

7 A. No, ma'am.

8 Q. Did you do any interviews of Mr.
9 Wallace?

10 A. No, ma'am, not that I recall. Only
11 thing that I done was, once the EMS got there, I
12 did get in the back of the ambulance and tried to
13 get some photographs of the wounds and see exactly
14 how bad his condition was. So, by that time I had
15 called for our investigation unit, and Detective
16 Burns and Detective Perry were already out and they
17 told me they were on their way and I was just
18 trying to figure out more information so I could
19 give them in case they had to leave with Mr.
20 Wallace, which, like I said, I didn't know his name
21 at the time, before they arrived.

22 Q. Okay. And are you aware whether or not
23 Mr. Wallace was subsequently air lifted to
24 Charlotte?

25 A. Yes, ma'am, the paramedic that was

TIM HUTCHINSON - DIRECT EXAM BY MS. JOHNSON-LEE

1 working on the truck that day actually called my
2 cell phone and told me they were going to air lift
3 him from over near the Smokehouse Grill. They were
4 going to air lift him to Charlotte.

5 Q. The landing zone was set up there?

6 A. Yes. There's a fire department right
7 across the road from there.

8 Q. Taking you back to sometime prior to
9 that, were you involved in any sort of case at the
10 magistrate court with Judge Faulkenberry that
11 involved Gary Moore and Charles Wallace?

12 A. Not that I recall.

13 Q. Did you ever witness any type of
14 incident between -- that you recall, between Mr.
15 Wallace and Mr. Moore?

16 A. Not that I recall.

17 MS. JOHNSON-LEE: Okay. No further
18 questions. Answer any questions that Mr. Knox has
19 please.

20 MR. KNOX: No questions.

21 THE COURT: You can step down. Thank
22 you.

23 MR. REDMOND: Beg the Court's
24 indulgence.

25 THE COURT: Your Honor, in the interest

GREG BURNS - DIRECT EXAM BY MS. JOHNSON-LEE

1 of time, because it is after 4:00 p.m., we do have
2 a video that's marked as a State's exhibit. There
3 were other items that were on that disk as well,
4 but specifically we would be looking at the
5 in-store video that was captured on the cell phones
6 of Officers Burns and Perry from the Sheriff's
7 Office. In the interest of time, if the defense
8 would stipulate to that coming into evidence, we
9 could just play the video for the Court without
10 having to put the officers on the stand.

11 THE COURT: Mr. Knox.

12 MR. KNOX: Your Honor, I have seen the
13 video. My only concern is that it was taken by a
14 hand-held device. It's a video of a video and I
15 would like to, you know, authenticate the video.

16 MS. JOHNSON-LEE: Okay. We would call
17 investigator Greg Burns, Your Honor.

18 THE COURT: Okay.

19 (Off-the-record conference.)

20 GREG BURNS,
21 being first duly sworn, testified as follows:

22 DIRECT EXAMINATION

23 BY MS. JOHNSON-LEE:

24 Q. State your name for the record.

25 A. Greg Burns.

GREG BURNS - DIRECT EXAM BY MS. JOHNSON-LEE

1 Q. Where are you employed?

2 A. Chesterfield County Sheriff's Office.

3 Q. What is your current job title with the
4 Sheriff's Office?

5 A. I'm a criminal investigator.

6 Q. Okay. How long have you been an
7 investigator?

8 A. August 2014.

9 Q. Okay. And how long have you been with
10 the Sheriff's Office?

11 A. I started working at the county jail
12 January 19th, 2007. I became a deputy
13 October 2009.

14 Q. Okay. And do you have any prior law
15 enforcement before the jail?

16 A. No, ma'am. United States Navy.

17 Q. You were a graduate of the Criminal
18 Justice Academy in South Carolina?

19 A. Yes, ma'am.

20 Q. And you are a Class 1 Certified
21 Officer?

22 A. Yes.

23 Q. Did you receive any training to be an
24 investigator?

25 A. Yes.

GREG BURNS - DIRECT EXAM BY MS: JOHNSON-LEE

1 Q. What type of training did you receive
2 to be an investigator?

3 A. I went down to Lawrenceville, Georgia
4 to do the basic detective course. I also went down
5 to Myrtle Beach and did the homicide investigative
6 course, and also went to school for crime scene
7 investigation.

8 Q. Okay. Now, did you respond to the
9 scene of McCormick's Grocery July 14, 2015, in
10 relation to the incident that we are here for
11 today?

12 A. Yes.

13 Q. Who went with you?

14 A. I was in my vehicle by myself. I was
15 being followed by Investigator Perry.

16 Q. Tim Perry?

17 A. Yes, ma'am.

18 Q. And do you recall approximately what
19 time you arrived at the scene?

20 A. I think it was around 1700 hours, 5:00
21 p.m.

22 Q. What did you see when you arrived?

23 A. When I arrived, I saw Officer
24 Hutchinson's vehicle, the vehicle belonging to Mr.
25 Moore parked next to the diesel pump, several

GREG BURNS - DIRECT EXAM BY MS. JOHNSON-LEE

1 vehicles parked out front and one other patrol car
2 belonging to Detective Johnson.

3 Q. Was the victim still at the scene when
4 you arrived?

5 A. No, ma'am.

6 Q. Was the defendant still at the scene
7 when you arrived?

8 A. Yes, ma'am. He was currently sitting
9 in the vehicle front passenger street of Officer
10 Hutchinson's vehicle.

11 Q. Did you talk to him there at the scene?

12 A. No, ma'am.

13 Q. What did you do at the scene?

14 A. I took pictures. I went inside -- I
15 took photographs of the outside area of the place.
16 I walked inside took picture of the inside area. I
17 also took photos of the knife that investigator
18 Perry retrieved from Officer Hutchinson.

19 Q. Let me show you what is marked for
20 identification as State's Exhibit 6. Does that
21 appear to be the knife that you took photos of that
22 was retrieved?

23 A. Yes, ma'am.

24 Q. Did you and Investigator Perry
25 ascertain as to whether there was any in-store

GREG BURNS - DIRECT EXAM BY MS. JOHNSON-LEE

1 video at the time of the incident between Mr. Moore
2 and Mr. Wallace?

3 A. Yes, ma'am.

4 Q. Okay. Were you able to download any
5 in-store video?

6 A. No, ma'am. Their system doesn't allow
7 you to download it.

8 Q. What did you do?

9 A. We used the sheriff's department cell
10 phone to record the video onto the cell phone.

11 Q. Okay. And have you also then
12 downloaded the video from the cell phone to an
13 actual disk?

14 A. Yes, ma'am. Transferred it from my
15 cell phone to the desk top and burned it to a disk.

16 Q. I'm going to show you what is marked as
17 State's Exhibit 5 for identification. Do you
18 recognize that disk?

19 A. Yes, ma'am.

20 Q. Okay. And is this the disk to which
21 the cell phone video of the in-store video was
22 downloaded?

23 A. Yes.

24 Q. Now, there are so many other items on
25 the disk also?

GREG BURNS - DIRECT EXAM BY MS. JOHNSON-LEE

1 A. Yes, ma'am.

2 Q. Okay. Have you watched the videos
3 since you downloaded it to the disk?

4 A. Once I downloaded it, I put it back
5 into the computer to make sure that it worked
6 properly.

7 Q. And did it work properly?

8 A. Yes, ma'am.

9 Q. Did you do anything to change the video
10 or to alter it in any way?

11 A. No, ma'am.

12 Q. Is it an accurate representation?

13 A. Yes, ma'am.

14 Q. Now was there any issue between you
15 downloading on your cell phone versus Investigator
16 Perry doing anything on his cell phone recording
17 that from that in-store camera?

18 A. No, ma'am.

19 Q. At this time, I would move to have
20 State's Exhibit 5 put into evidence. I'm showing
21 it to Mr. Knox?

22 MR. KNOX: Your Honor, at this time I
23 would object to the video being entered into
24 evidence. And my grounds for objection is that he
25 said that he used you a Department issued cell

GREG BURNS - DIRECT EXAM BY MS. JOHNSON-LEE

1 phone to make a recording of the actual store
2 video. And I think that the better evidence would
3 be the State Department issued cell phone instead
4 of something that's been transferred by this
5 officer to a disk.

6 THE COURT: What was on the cell phone
7 has been downloaded to the disk; is that correct?

8 THE WITNESS: Yes, sir.

9 THE COURT: Is there any alteration
10 whatsoever from the cell phone recording to this
11 disk recording?

12 THE WITNESS: No, sir.

13 THE COURT: It is the exact same.

14 THE WITNESS: Yes, sir.

15 THE COURT: I will respectfully
16 overrule your objection, Mr. Knox, as far as it
17 being able to be used as a disk. Any other
18 objection to that?

19 Is there any questions you want to ask
20 this officer concerning the taking of it? I will
21 give you a chance to examine him now.

22 MR. KNOX: No questions.

23 THE COURT: Admitted into evidence.

24 MS. JOHNSON-LEE: At this point I would
25 request to publish the video to the Court.

GREG BURNS - CROSS EXAM BY MR. KNOX

1 MS. JOHNSON-LEE: Beg the Court's
2 indulgence. It was working earlier, as the Court
3 saw.

4 (Video being played in open court.)

5 BY MS. JOHNSON-LEE:

6 Q. Now, Investigator, there's some voices
7 discussing the video as it's being recorded. Whose
8 voices are those discussing it?

9 A. Myself and Investigator Tim Perry and
10 the store owner Keith McCormick.

11 MS. JOHNSON-LEE: That's all the
12 questions I would have. Please answer any that Mr.
13 Knox has.

14 THE WITNESS: Yes, ma'am.

15 THE COURT: Mr. Knox.

16 CROSS-EXAMINATION

17 BY MR. KNOX:

18 Q. Detective, thank you for your service
19 to Chesterfield County. I have a couple of
20 questions about the video. Can you replay it
21 please?

22 (Video playing in open court.)

23 Q. Can you stop it right there? Is this
24 the actual store video here?

25 A. Yes, sir.

GREG BURNS - CROSS EXAM BY MR. KNOX

1 Q. And can you identify this person in the
2 plaid shirt?

3 A. No, sir.

4 Q. You don't know who it is?

5 A. No, sir.

6 Q. Okay. Roll it.

7 (Video playing in open court.)

8 Q. Okay. At this point someone is saying,
9 we don't see the parties, the guys who are
10 fighting. Whose voice is that?

11 A. Investigator Tim Perry.

12 Q. Okay.

13 (Video playing in open court.)

14 Q. Okay. Now, whose voice was it that
15 said it was a link pass?

16 A. Investigator Tim Perry.

17 Q. Okay.

18 (Video playing in open court.)

19 Q. Okay. And whose voice was that, that
20 said he got stabbed already?

21 A. That was my voice.

22 Q. That was your voice. Okay. Play it.

23 (Video playing in open court.)

24 Q. Can you run it one more time.

25 (Video being played in open court.)

GREG BURNS - CROSS EXAM BY MR. KNOX

1 Q. Now, when I was looking at it earlier,
2 I think I heard a voice that said that the old man
3 hit him, slapped him, or something?

4 A. Yes, sir. That's when you asked me
5 about -- I told you that was the voice of
6 Investigator Tim Perry.

7 Q. That was Detective Perry's voice?

8 A. Yes, sir.

9 Q. He was looking at the video and he made
10 the statement that the old man slapped him or hit
11 him?

12 A. Yes, sir.

13 MR. KNOX: Thank you. No further
14 questions.

15 MS. JOHNSON-LEE: No redirect, Your
16 Honor.

17 THE COURT: You may step down.

18 THE WITNESS: Thank you.

19 MS. JOHNSON-LEE: At this point we have
20 no further witnesses, Your Honor.

21 THE COURT: Anything else from the
22 defendant, Mr. Knox?

23 MR. KNOX: Nothing from the defense,
24 Your Honor.

25 THE COURT: Okay. Do you wish to make

1 any type of closing statement, Counsel? It's not
2 necessary.

3 MR. KNOX: Yes, Your Honor, I would.
4 Your Honor, this is an immunity hearing, and the
5 standards for judgment is preponderance of the
6 evidence. We have heard the testimony, we have
7 seen the evidence, and the Court has viewed a video
8 of the incident. And under the statute 16-11-440,
9 subsection C, it states in part that a person who
10 is not engaged in an unlawful activity and who was
11 attacked in another place where he has the right to
12 be, including but not limited to his place of
13 business, has no duty to retreat and has the right
14 to stand his ground and meet force with force,
15 including deadly force if he reasonably believes it
16 is necessary to prevent death or great bodily
17 injury to himself or another person, or to prevent
18 the commission of a violent crime as defined in
19 section 16-160.

20 Your Honor, I think the evidence has
21 clearly shown that Mr. Moore, the defendant, had a
22 right to be in that store. He was not engaged in
23 any unlawful activity. By the victim's own words,
24 the victim started the altercation by slapping him.
25 Mr. Moore protected himself, tried to defend

1 himself, he had a knife on him, which he always
2 carried, which, by the way, the victim said he saw
3 Mr. Moore with that knife on when he came into the
4 store.

5 Also, Your Honor, under self defense we
6 can take into account the relationships between
7 these parties, whether or not they were bad acts in
8 the past, and it was clearly by the testimony and
9 by the victim's own words that he couldn't stand
10 Mr. Moore. That every time he sees him he gets
11 under his skin, that he attacked him on one
12 occasion where he tried to hit him with an axe
13 handle, and he couldn't hit him with the axe handle
14 so he tore up his car.

15 On the second occasion they were in the
16 magistrate's office, and he saw Mr. Moore and he
17 tried to approach or attack Mr. More.

18 And I submit to Your Honor that I think
19 on this occasion back July 14, 2015, he saw an
20 opportunity -- that individual saw an opportunity,
21 he saw Mr. Moore, he had all of this pent up rage
22 and anger in him, and he went to him without
23 provocation and slapped Mr. Moore in the face. And
24 as a result, they engaged in combat. And as a
25 result, the victim was stabbed by the

1 If there's a material issue of material fact -- if
2 there is an issue of material fact, then it should
3 go to the jury. And it's almost the same in this
4 situation under Curry. We've got the defendant's
5 version of what happened. That, I think we can all
6 agree, was very different from the victim's version
7 of what transpired.

8 And then you have, I'm sorry, I can't
9 remember the young lady's name who testified, as it
10 relates to something along the lines that he had it
11 coming, whatever he said, back through the door to
12 Ms. Griffin.

13 When you add all of that together,
14 there is a material diversion of the facts, and in
15 Curry that's exactly what the Court indicated, that
16 the events leading up to the point that was
17 relevant to the Duncan hearing, were not contested
18 but then once the events occurred that gave rise to
19 the death in Curry, you had witnesses saying
20 different things; and the Court said, that presents
21 the quintessential jury question. And I believe
22 that's the situation we have here. And so I just
23 want to put that as a matter of law to address that
24 first.

25 As it relates to the facts themselves,

1 and I forgot to mention the video, because the
2 video is extremely telling, I believe. And even
3 though it's clear looking at it from the computer,
4 even standing up there viewing it you can see what
5 transpired. And I always use in these hearings,
6 the difference between fear and anger. And I think
7 that gets to a jury question.

8 Is it fear that the defendant was
9 engaged in or based on what you see in that video
10 based on what you've heard in the testimony was it
11 actual anger. The defendant did a great job of
12 trying to portray himself as the victim, had an
13 explanation for everything. If I'd sneezed, he
14 probably would have had an explanation for why I
15 sneezed.

16 But there was a lot that he left out
17 that you see in the video as it relates to after
18 Mr. Hooks intervenes. He's still going at the
19 victim. He's still going, and you see what I think
20 we can all agree were probably thrusting motions
21 that resulted in the victim being stabbed. So I
22 think that is a material issue of fact.

23 So when you look at it in the totality
24 of circumstances, the facts as they stand and have
25 been testified to here today do leave that

1 quintessential jury question where the defendant
2 would not be entitled to immunity.

3 We don't contest the fact that he had a
4 right to be in that store. There was no testimony
5 that he was barred from the store. So clearly I
6 think we are under 16-11-440(C), but as it relates
7 to him being able to -- to -- to be entitled to
8 that immunity, we have a situation where the facts
9 do not meet. There are differences, in fact, from
10 again the defendant, Mr. Wallace, Ms. Griffin, and
11 especially with that video.

12 And -- and going back to the Douglas
13 case, which is a Chesterfield County case, one of
14 the things that we've always said that makes it
15 difficult in Duncan situations, is where you have a
16 one-on-one situation, there are no witness and one
17 of the parties is dead, then it's on us to try to
18 rebut when we don't have anything to rebut with.

19 Here, the State has presented testimony
20 and evidence that I contend clearly rebuts what the
21 defendant has indicated and proffered in his
22 particular case in chief. So with that, Your
23 Honor, we would respectfully rely on Curry, there
24 is a quintessential jury question here based upon
25 the differences in the testimony.

1 Mr. Wallace doesn't -- I mean, he
2 admits -- and that's another thing, when it comes
3 to credibility -- and I'll be honest, it was
4 interesting. I was learning this case as we went
5 along. As the Court probably could tell, I'm
6 learning as I'm going along, but he was very, very
7 forthright. Very forthright. And he did
8 acknowledge that his actions were not all correct,
9 but that is not the standard that automatically
10 entitles this defendant to use deadly force.

11 And I think, again, when you look at
12 the nature of what happened with the reaction, I
13 think when it comes to a reasonableness standard,
14 one of the hallmarks of our criminal justice system
15 is that reasonableness is usually left in the hands
16 of the jury. And, again, that would be further why
17 I would state this is, in fact, the quintessential
18 jury question and we would respectfully request
19 that the defendant's motion be denied.

20 THE COURT: Thank you.

21 All right. Counsel, I'm going to take
22 this matter under advisement and think about it
23 overnight. As a matter of fact, I may want to see
24 that video one more time. It's in evidence.

25 MR. REDMOND: It is in evidence, sir.

1 THE COURT: All right. I will let you
2 hear from me hopefully tomorrow, if not by the end
3 of the week anyway. So I will contact counsel and
4 they can come over so I can put it on the record.

5 (These proceedings were concluded at
6 4:42 p.m.)

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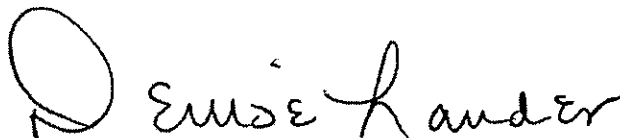
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CERTIFICATE OF REPORTER

I, Carol Denise Lauder, Registered Professional Reporter and Notary Public for the State of South Carolina at Large, do hereby certify that the foregoing transcript is a true, accurate, and complete record.

I further certify that I am neither related to nor counsel for any party to the cause pending or interested in the events thereof.

Witness my hand, I have hereunto affixed my official seal this 25th day of July, 2016 at Charleston, Charleston County, South Carolina.



S/Denise Lauder
Carol Denise Lauder
Registered Professional
Reporter, CP
My Commission expires
August 2, 2017

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VOIR DIRE

6

1 (First Day, April 4, 2016)

2 THE COURT: Good morning.

3 JURORS: Good morning.

4 THE COURT: And thank you for reporting this morning.
5 We have disposed of several matters. I appreciate your
6 patience with this. We're ready to move on and we need to
7 seat a jury.

8 The case that the court is calling to trial is
9 entitled the State of South Carolina versus Gary Moore, who
10 is present in court. He's charged with the grand jury of
11 Chesterfield County with the offense of attempted murder,
12 under statutory code 16-3-29 of the South Carolina Code of
13 Laws of 1976, as amended.

14 Mr. Moore is present and has enter a plea of not
15 guilty. Mr. Moore, I need for you to stand and face the
16 jury so I can see if anybody might be related to you.

17 (Whereupon, Mr. Moore stands and faces the jury)

18 **VOIR DIRE**

19 Thank you, sir. And that is the first question, do I
20 have anybody on the jury panel who is related by blood or
21 by marriage or has any business, social, religious or
22 fraternal relationship with Mr. Moore, if so, we need you
23 to stand at this time?

24 (Whereupon, several jurors stand)

25 THE COURT: All right. I'm going to step over to the

VOIR DIRE

7

1 court reporter's desk. If counsel would approach, I need
2 for y'all to come up one at the time so we can get that on
3 the record.

4 THE CLERK: Christopher Jenkins.

5 THE COURT REPORTER: Chris Jenkins. What number?

6 THE CLERK: Sixty-five, Christopher Jenkins.

7 (Whereupon, the juror complies)

8 THE COURT: Good morning.

9 POTENTIAL JUROR 65: Good morning.

10 THE COURT REPORTER: Come back here a little bit
11 please.

12 THE COURT: She's got to hear everything we say but we
13 don't want - - -

14 POTENTIAL JUROR 65: The reason I can't do this trial
15 is because I'm related to him.

16 THE COURT: How are you related to him or somebody - -
17 -

18 POTENTIAL JUROR 65: His mother, we're first cousins.

19 THE COURT: I gotcha. So you are, if I'm correct on
20 my kinship thing, you - - he would be your first cousin
21 once removed - - -

22 POTENTIAL JUROR 65: Second cousin.

23 THE COURT: That's what everybody thinks but it's
24 really a first cousin once removed. Okay. Thank you.

25 THE BAILIFF: Juror number 146.

1 (Whereupon, the juror complies)

2 THE COURT: He's out.

3 MR. KNOX: He's out.

4 THE COURT: Blood related.

5 (Whereupon, the judge indicates juror number 65 was
6 stricken from the list)

7 THE COURT: Good morning.

8 POTENTIAL JUROR 146: Good morning.

9 THE COURT: How are you?

10 POTENTIAL JUROR 146: Fine.

11 THE COURT: She's got to hear everything you say. How
12 does that question apply?

13 POTENTIAL JUROR 146: Mr. Moore, is married to my
14 first cousin. His ex-wife is married to my first cousin.
15 I don't know if that's a conflict of interest or anything
16 like that.

17 THE COURT: We can - - as far as that initial answer
18 with the fact that, that relationship is there, if you are
19 to be seated on the jury, could you be fair and impartial
20 to both the State and Mr. Moore?

21 POTENTIAL JUROR 146: Yes, sir. I believe so. Yes,
22 sir.

23 THE COURT: Okay Thank you.

24 POTENTIAL JUROR 146: Take a seat there?

25 THE COURT: That would be fine.

VOIR DIRE

9

1 THE BAILIFF: Juror number 7.

2 (Whereupon, the juror complies)

3 THE COURT: Good morning. She's got to hear
4 everything we say. How does that question apply?

5 POTENTIAL JUROR 7: Personal friend. As a matter
6 fact, he was out at my sister's Saturday.

7 THE COURT REPORTER: I can't hear him.

8 THE COURT: Personal friend. He was out at his
9 sister's this past Saturday?

10 POTENTIAL JUROR 7: Yes, sir.

11 THE COURT: I have a question. If you were to be
12 seated on this jury, could you be both fair to the State
13 and Mr. Moore?

14 POTENTIAL JUROR 7: I am familiar with the case. Yes,
15 I could.

16 THE COURT: Okay.

17 POTENTIAL JUROR 7: I just wanted to state that I am a
18 friend and I didn't want to be a bad part of the jury. Do
19 you know what I mean?

20 THE COURT: That's all right. You think about it and
21 if you want to change your answer, be sure and let us know,
22 okay.

23 POTENTIAL JUROR 7: I don't think I need to be on this
24 jury knowing him. I don't think I would be a good juror to
25 this case.

1 THE COURT: All right. I'm going to ask you again, if
2 you were to be seated on this jury could you be both fair
3 to the State and Mr. Moore?

4 POTENTIAL JUROR 7: I don't think so knowing him
5 personally. I don't think I would be.

6 THE COURT: Okay. Thank you, sir.

7 THE BAILIFF: Juror number 27.

8 (Whereupon, the juror complies)

9 THE COURT: Good morning. How are you?

10 POTENTIAL JUROR 27: Good morning.

11 THE COURT: How does that question apply?

12 POTENTIAL JUROR 27: He and my son went through school
13 together.

14 THE COURT: He and your son went through school
15 together?

16 POTENTIAL JUROR 27: All the way through school, yes.
17 And they had confrontations at school.

18 THE COURT: Okay. I have a simple question for you.
19 With that relationship, if you were to be seated on this
20 jury, could you be both fair and impartial to the State and
21 Mr. Moore?

22 POTENTIAL JUROR 27: I don't - - I don't think so.

23 THE COURT: Okay. All right. Thank you.

24 POTENTIAL JUROR 27: Thank you.

25 THE COURT: You heard what she said.

VOIR DIRE

11

1 MR. KNOX: Yes.

2 THE COURT: Did you hear her?

3 MRS. JOHNSON-LEE: I didn't hear a thing.

4 THE COURT: She said her son had confrontations with
5 him and that's why she can't be fair and impartial.

6 THE COURT: This is going to be the same question
7 except potential witnesses. I'm going to call these names
8 and then I'll pose the question. If these folks are
9 present if they would stand please. Some of them are not
10 going to be here until they're called. Under normal
11 circumstances that's the way it works. Caroline Tyler,
12 Craig Burns, Tim Perry, Tim Hutchinson, Melissa Ann
13 Griffin, Charles Wallace, Carolyn Melton, Russell Horton,
14 Steven Hooks, Justin Threatt, Marie K. Deese, Debra
15 McCormick, Dana Tarlton, Clayton Kerns and any additional
16 witnesses, potential witnesses from the State or defense?

17 MRS. JOHNSON-LEE: None from the State.

18 MR. KNOX: None from the defense, Your Honor.

19 THE COURT: Same question. Anybody related by blood
20 or by marriage or have any business, social, religious, or
21 fraternal relationship with any of those individuals? Yes.

22 POTENTIAL JUROR 85: I'm related to Craig Burns.

23 THE COURT: And what is that relationship?

24 POTENTIAL JUROR 85: He's my uncle.

25 THE COURT: What is your juror number?

1 POTENTIAL JUROR 85: Eighty-five.

2 THE COURT: Eighty-five? Counsel, I'll take care of
3 that one.

4 Ladies and gentlemen, looking at the indictment, it
5 alleges that on or about July 14, 2015, with specific
6 intent to kill or attempt to kill, Charles Wallace - - let
7 me start over on that. That the defendant, Gary Moore, did
8 in Chesterfield County on or about July 14, 2015, with the
9 specific intent to kill or attempt to kill, Charles Lynn
10 Wallace, with malice or forethought, either expressed or
11 implied, to wit: the defendant did during a physical
12 altercation with the victim, stabbed said victim with a
13 knife four times in violation of section 16-3-29 of the
14 South Carolina Code of Law, 1976, as amended.

15 My question to you is, does anybody have any personal
16 knowledge of this alleged offense or you have developed any
17 opinion or belief concerning this case from such knowledge
18 or from any other source, if so, I need for you to stand
19 but don't make a comment unless we ask you to come forward.
20 (Whereupon, no one is standing)

21 Does anybody on the panel know of any personal reason
22 through bias, through prejudiced, or through any moral
23 belief, whatever it may be, that you could not be a fair
24 and impartial juror to both the State and Mr. Moore, if so,
25 please stand or raise your right hand but don't make any

VOIR DIRE

13

1 comment?

2 (Whereupon, no one is standing)

3 And I know that I've asked this question yesterday - -
4 yes, your name please?

5 POTENTIAL JUROR: Laura Avery.

6 THE COURT: If you'll come up please.

7 (Whereupon, the juror complies)

8 THE COURT: Good morning. She's got to report what
9 your response is.

10 POTENTIAL JUROR: Mr. Kinard, his mother and I, are in
11 the same sorority. I don't know what that would make me -
12 - I just wanted you to be aware. Don't know how you feel
13 about it. Your mom and I were in the same sorority so I
14 don't know what that makes our relationship - - -

15 MR. REDMOND: The same as my mother? Oh, you know my
16 mom?

17 POTENTIAL JUROR: You know all these years I know you
18 don't - - -

19 MR. KNOX: He's your neighbor so I don't want you.

20 THE COURT: Would that - - -

21 POTENTIAL JUROR: It wouldn't but I wanted the Court
22 to know.

23 THE COURT: I think you answered the question but I've
24 to pose it?

25 POTENTIAL JUROR: Okay.

1 THE COURT: The fact that you have that relationship
2 with the deputy solicitors mother, would that affect your
3 ability to be fair and impartial if seated on this case?

4 POTENTIAL JUROR: No, sir, it would not.

5 THE COURT: Thank you for letting us know.

6 THE BAILIFF: Juror number 136.

7 (Whereupon, the juror complies)

8 THE COURT: She's got to hear everything we say.

9 POTENTIAL JUROR 136: A while ago what name did you
10 call out, was it, David Tarlton?

11 THE COURT: Was it David Tarlton, counsel?

12 MRS. JOHNSON-LEE: Dana.

13 THE COURT: Dana Tarlton.

14 POTENTIAL JUROR 136: Okay. My name is David. I was
15 just going to make sure.

16 THE COURT: Okay. Give the man a heartache.

17 (Whereupon, there was laughter)

18 THE COURT: I'll just ask right here, maybe we can
19 finish up the questions. I know I asked this twice
20 yesterday but I have to ask you again. Anybody presently
21 represented or represented in the past by the Solicitor's
22 office, Mr. Redmond, Mary Thomas Lee, or Mr. Larry Knox, if
23 so we need to know that at this time?

24 (Whereupon, no one is standing)

25 THE COURT: Does anybody know of any reason whatsoever

VOIR DIRE

15

1 why you should not be seated on this jury or if you could
2 not be fair and impartial to everyone involved then you
3 should've already told us about that but we need to know
4 that now?

5 (Whereupon, no one is standing)

6 THE COURT: Any further inquiries from the State?

7 MRS. JOHNSON-LEE: No, Your Honor.

8 THE COURT: From the defense?

9 MR. KNOX: No, Your Honor.

10 THE COURT: Okay. Five and five, Madam Clerk.

11 MR. KNOX: Your Honor, may we approach?

12 THE COURT: Yes, sir.

13 (Whereupon, a bench conference was held)

14 THE COURT: I ask if anybody knew anything about this
15 case. Does anybody have any knowledge about anything,
16 about the allegations of this case from Facebook,
17 newspaper, or any other source?

18 (Whereupon, a juror stands)

19 THE COURT: You can come on up here please.

20 THE BAILIFF: Juror number 146.

21 (Whereupon, the juror complies)

22 THE COURT: How does that apply?

23 POTENTIAL JUROR 146: Well, me and Mr. Moore are
24 friends on Facebook and like I told you before my cousins
25 married to his ex-wife, hearsay or whatnot, you know, I

THE SELECTION OF THE JURY

16

1 read it in the paper. I followed it up on social media. I
2 mean, I also know the owner of the store.

3 THE COURT: Okay. Based on what you've read and
4 heard, if you were to be seated on this jury, could you be
5 fair and impartial to both the State and the defendant?

6 POTENTIAL JUROR 146: Yes, sir, I could.

7 THE COURT: Okay. Thank you. Will that do it? I
8 just had a note passed up to me from the City of
9 Chesterfield that someone complained that they were being
10 harassed here at the courthouse. Does anybody have any
11 knowledge are called into the police department, and I'm
12 talking to everybody in the courtroom?

13 (Whereupon, no one is standing)

14 THE COURT: Has anybody been harassed by anybody for
15 any reason or anything?

16 (Whereupon, no one is standing)

17 THE COURT: In twenty-five years I've never had a note
18 like that. We've had bomb threats before but I've never
19 had one quite like that. If we can get some of the
20 bailiffs to check outside and see if something is going on?

21 THE DEPUTY: Judge, he's gone over to the other
22 building to see if there's another building besides this
23 building.

24 THE COURT: Now we're dealing with two buildings.
25 We're separate from the building behind us here and it

THE SELECTION OF THE JURY

17

1 could be something over there and that does happen over
2 there. It's probably what it is. Okay.

3 THE SELECTION OF THE JURY:

4 THE CLERK: When I call your name please come forward
5 and bring all your personal items with you. Um, 107, Mark
6 J. Morton.

7 (Whereupon, a white male come forward)

8 THE CLERK: What saith the State?

9 MR. REDMOND: Beg the Court's indulgence.

10 MRS. JOHNSON-LEE: Please excuse this juror for this
11 case.

12 THE CLERK: Number 124, Bryce A. Ryschon.

13 (Whereupon, a white male comes forward)

14 THE CLERK: What saith the State?

15 MRS. JOHNSON-LEE: Please excuse the juror from this
16 case.

17 THE CLERK: Number 20, Teresa L. Burch.

18 (Whereupon, a black female comes forward)

19 THE CLERK: What saith the State?

20 MRS. JOHNSON-LEE: Please present the juror.

21 THE CLERK: The defense?

22 MR. KNOX: Please seat the juror.

23 THE CLERK: Have a seat in the jury box please.
24 Number 129, Margaret M. Sellers.

25 (Whereupon, a white female comes forward)

THE SELECTION OF THE JURY

18

1 THE CLERK: What saith the State?

2 MRS. JOHNSON-LEE: Please seat the juror.

3 MR. KNOX: Please excuse the juror.

4 THE CLERK: You may return to your seat. Number 32,
5 Angela H. Demby.

6 (Whereupon, a white female comes forward)

7 THE CLERK: What saith the State?

8 MRS. JOHNSON-LEE: Please present the juror.

9 THE CLERK: Defense?

10 MR. KNOX: Please excuse the juror.

11 THE CLERK: You may return to your seat. Number 87,
12 Jonathan M. Mangum.

13 (Whereupon, a white male comes forward)

14 THE CLERK: What saith the State?

15 MRS. JOHNSON-LEE: Please present the juror.

16 THE CLERK: Defense?

17 MR. KNOX: Please seat the juror.

18 THE CLERK: Have a seat in the jury box please.
19 Number 112, Michael J. Pate.

20 (Whereupon, a white male comes forward)

21 THE CLERK: What saith the State?

22 MRS. JOHNSON-LEE: Please present the juror.

23 THE CLERK: Defense?

24 MR. KNOX: Please seat the juror.

25 THE CLERK: Have a seat in the jury box please.

THE SELECTION OF THE JURY

19

1 Number 12, Monica L. Boelk.

2 (Whereupon, a white female comes forward)

3 THE CLERK: What saith the State?

4 MR. REDMOND: Beg the Court's indulgence.

5 MRS. JOHNSON-LEE: Please present the juror.

6 THE CLERK: Defense?

7 MR. KNOX: Please seat the juror.

8 THE CLERK: Have a seat in the jury box please.

9 Number 121, Pamela S. Rivers.

10 (Whereupon, a white female comes forward)

11 THE CLERK: What saith the State?

12 MR. REDMOND: Beg the Court's indulgence.

13 MRS. JOHNSON-LEE: Please excuse the juror on this
14 case.

15 THE CLERK: Okay. Number 3, Amy R. Alexander.

16 (Whereupon, a white female comes forward)

17 THE CLERK: What saith the State?

18 MRS. JOHNSON-LEE: Please present the juror.

19 THE CLERK: Defense?

20 MR. KNOX: Please excuse the juror.

21 THE CLERK: You may return to your seat. Number 83,
22 Melissa Louallen.

23 (Whereupon, a black female comes forward)

24 THE CLERK: What saith the State?

25 MRS. JOHNSON-LEE: Please seat the juror.

THE SELECTION OF THE JURY

20

1 THE CLERK: Defense?

2 MR. KNOX: Please seat the juror.

3 THE CLERK: Have a seat in the jury box. Number 28,
4 Ray P. Davis, Sr.

5 (Whereupon, a black male comes forward)

6 THE CLERK: What saith the State?

7 MR. REDMOND: Beg the Court's indulgence.

8 MRS. JOHNSON-LEE: Please present the juror.

9 THE CLERK: Defense?

10 MR. KNOX: Please seat the juror.

11 THE CLERK: Have a seat in the jury box please.

12 Number 146, Jared K. White.

13 (Whereupon, a white male comes forward)

14 THE CLERK: What saith the State?

15 MRS. JOHNSON-LEE: Please excuse the juror.

16 THE CLERK: You may return to your seat. Number 108,
17 Randy S. Morton.

18 (Whereupon, a white male comes forward)

19 THE CLERK: What saith the State?

20 MRS. JOHNSON-LEE: Please present the juror.

21 THE CLERK: Defense?

22 MR. KNOX: Please seat the juror.

23 THE CLERK: Have a seat in the jury box please.

24 Number 101, Margaret L. Miller.

25 (Whereupon, a black female comes forward)

THE SELECTION OF THE JURY

21

1 THE CLERK: What saith the State?

2 MRS. JOHNSON-LEE: Please present the juror.

3 THE CLERK: Defense?

4 MR. KNOX: Beg the Court's indulgence.

5 THE CLERK: What did you say, sir?

6 MRS. GADDY: Beg's the Court's indulgence.

7 THE CLERK: Okay. I'm sorry.

8 MR. KNOX: Please seat the juror.

9 THE CLERK: Have a seat in the jury box please. Um,
10 79, Thomas B. Kopchick.

11 (Whereupon, a white male comes forward)

12 THE CLERK: What saith the State?

13 MRS. JOHNSON-LEE: Please present the juror.

14 THE CLERK: Defense?

15 MR. KNOX: Please seat the juror.

16 THE CLERK: Have a seat in the jury box please.

17 Number 91, Julia M. McKenize.

18 (Whereupon, a white female comes forward)

19 THE CLERK: What saith the State?

20 MRS. JOHNSON-LEE: Please present the juror.

21 THE CLERK: Defense?

22 MR. KNOX: Please excuse the juror.

23 THE CLERK: You may return to your seat. Number 22,
24 Terri G. Byrd.

25 (Whereupon, a white female comes forward)

THE SELECTION OF THE JURY

22

1 THE CLERK: What saith the State?

2 MRS. JOHNSON-LEE: Please present the juror.

3 THE CLERK: Defense?

4 MR. KNOX: Please seat the juror.

5 THE CLERK: Have a seat in the jury box please.

6 Number 71, Steven L. Jones.

7 (Whereupon, a white male comes forward)

8 THE CLERK: What saith the State?

9 MR. REDMOND: Beg the Court's indulgence.

10 MRS. JOHNSON-LEE: Please excuse this juror.

11 THE CLERK: You may return to your seat please.

12 Number 115, Jeremy R. Ratliff.

13 (Whereupon, a black male comes forward)

14 THE CLERK: See cause for challenge?

15 MR. KNOX: Please seat the juror.

16 THE CLERK: They haven't said anything yet.

17 MR. KNOX: They're not challenging it?

18 MRS. JOHNSON-LEE: Please seat the juror.

19 THE CLERK: And you said seat the juror also?

20 MR. KNOX: (Shaking of the head, yes)

21 THE CLERK: Okay, 125, Jessica A. Sandifer.

22 (Whereupon, a white female comes forward)

23 THE CLERK: any cause for challenge?

24 MRS. JOHNSON-LEE: Please seat the juror.

25 THE CLERK: Defense?

THE SELECTION OF THE JURY

23

1 MR. KNOX: Please seat the juror.

2 THE CLERK: Have a seat in the jury box. Number 109,
3 Sarah J. Mullis.

4 (Whereupon, a white female comes forward)

5 MR. KNOX: This is the alternate.

6 THE COURT: Yeah, this is the alternate. Less seat
7 in alternate. Yes, sir.

8 MRS. JOHNSON-LEE: What was that number again?

9 THE CLERK: It's 109.

10 MRS. JOHNSON-LEE: Thank you, ma'am.

11 THE CLERK: This would be the alternate. What saith
12 the State?

13 MR. REDMOND: Beg the Court's indulgence.

14 MRS. JOHNSON-LEE: Please present the juror.

15 THE CLERK: Defense?

16 MR. KNOX: What was the jurors number?

17 THE CLERK: 109.

18 MR. KNOX: Please seat the juror.

19 THE CLERK: Have a seat in the jury box.

20 THE COURT: Thank you. Any matters concerning jury
21 selection?

22 MRS. JOHNSON-LEE: None from the State.

23 MR. KNOX: None from the defense, Your Honor.

24 THE COURT: To the panel out at the courtroom, to
25 thank you for coming in and helping us this morning. The

1 good news is will be off for the rest of the afternoon but
2 we need you to call in after six tonight to get an update.
3 Hopefully, the situation outside has been resolved. It
4 wasn't anything going on in the courtroom. It was somebody
5 arguing outside in the parking lot so that was what that
6 was about. So all that should be cleared up. Thank y'all
7 so much. Call in after six.

8 (Whereupon, the jury panel is excused)

9 THE COURT: Any matters before we swear the jury?

10 MR. KNOX: No.

11 THE COURT: Mrs. Margaret Lockhart Miller. I'm going
12 to appoint you foreperson of the jury. We would take a
13 break in just a minute or two and when we come back if
14 you'll take this end chair over here please. Okay. Madam,
15 Clerk, if you'll administered the oath we'll get started.

16 THE CLERK: Ladies and gentlemen please stand and
17 raise your right hand.

18 (Whereupon, the jury complies)

19 THE CLERK: Do you solemnly swear or affirm that you
20 shall well and truly try, and true deliverance make,
21 between the State of South Carolina, and the defendant at
22 bar, you shall have in charge, and a true verdict render,
23 according to the law and evidence, so help you God. Please
24 say, "I do", if you do.

25 (Whereupon, the jury all says, "I do")

INSTRUCTIONS BY THE COURT

25

INSTRUCTIONS BY THE COURT:

THE COURT: I just have a few brief remarks to make to you to let you know how we are going to proceed and then I'll turn it over to counsel who will proceed with the case after I get through.

As you've heard the defendant, Mr. Gary Moore, is charged in the bill of indictment with the offense of attempted murder. In South Carolina the burden is on the State of South Carolina to prove a case beyond a reasonable doubt. In my closing charge to you, I will give you an explanation of reasonable doubt.

The first thing that will happen, both sides will be given an opportunity to make an opening statement to you. This will be a brief and effect outline of the case that they will be presenting to you. They do not have to make an opening statement but, if they so desire, they can.

After that, will come the evidentiary portion of the trial where you will receive the evidence. Evidence may be testimony from this witness stand. It could be the occupants. It could be physical type items. What ever the evidence is, it is crucial that you listen and observe the evidence because you are the finders of the facts in this case. No one else in this courtroom including me will be involved in the fact finding. I am the judge of the law. The Constitution of the State of South Carolina requires

1 that I sit here as a neutral referee and rule on the
2 admissibility issues and any procedural issues. I do not
3 get involved with the facts. I apply the law or give you
4 the law to apply to the facts and that will come in the
5 judge's charge to the jury at the conclusion of the case.
6 So, basically, a brief explanation of that is, you listen
7 and observe the evidence. You decide what the facts are.
8 And then apply the law of the case that I give to you and,
9 thus, reach your final verdict.

10 After the evidence portion is completed in the case,
11 will come closing arguments. That's where counsel from both
12 sides will be given ample opportunity to argue their
13 position in the case and they made mention, they may repeat
14 or quote the evidence, whatever it may be, but what they
15 say is not necessarily evidence but that's where y'all as
16 fact finders and as the jurors you have to ensure that you
17 base your decisions on whatever the evidence was because
18 what the attorneys say may not necessarily be the evidence,
19 okay? But they do certainly have a right to try to
20 persuade you in their closing arguments to see the points
21 that they see.

22 After that, will come the judge's charge of the law
23 where I will give you the applicable law of the State of
24 South Carolina. Only after all of those phases are
25 complete, will you be asked to deliberate. So with that

INSTRUCTIONS BY THE COURT

27

1 said, what that means is, I have to instruct you at this
2 time do not deliberate this case until that time comes
3 along with what I've already discussed with some of you
4 yesterday. Do not allow anybody to approach you about this
5 case and discuss it with you in any form or fashion.
6 During the trial of this case avoid any press coverage,
7 avoid any Internet reviews, avoid anybody trying to contact
8 you or pass information to you on this. Do not do any
9 independent research. That would be against the justice
10 system that we have patterned in this country. The case is
11 to be decided on what's presented in court and not what
12 y'all might find from any independent research or what
13 somebody might try to approach you about.

14 Each courthouse is different about cell phones. You
15 can't be using the cell phones while you're back in the
16 jury room. I think here in Chesterfield County, every
17 courthouse I've been to is different, but most of them when
18 deliberation time comes, they'll put the phones in a box
19 and keep them in there so they won't be anybody trying to
20 call you or cause any interference so I'll defer to Madam
21 Bailiff to what they desire about that. But you can't be
22 using any cell phones during the progress of the trial.
23 We'll be taking breaks so if you need for emergency purpose
24 or some special purpose to make a call just let us know and
25 we'll arrange for that. When we take breaks, if you smoke,

1 we'll let you go outside and take a smoke break, okay?

2 When you are asked to deliberate this case, whatever
3 your verdict is, it will have to be a unanimous verdict.
4 So any time during deliberations and I'll speak to you
5 about this later, if you don't have all twelve deliberating
6 jurors present, you have to seize your deliberations until
7 you get all twelve back. So if someone takes a restroom
8 break or whatever just stop what you're doing until
9 everybody gets back, okay?

10 Now, I don't have a whole lot a problem with this in
11 the morning hours but sometimes after lunch, if you like
12 me, and you eat probably too much lunch, is tempting to go
13 to sleep. Please do not do that too me. If you feel like
14 that you're going to doze off, let me know, let the Madam
15 Bailiff know and we'll take a Coca-Cola or coffee break,
16 okay, and try to handle it that way but please do not doze
17 off.

18 If y'all would give your undivided attention to
19 counsel and to the witnesses and to the evidence that's all
20 we can ask for, okay? With that said, we will proceed
21 unless counsel tells me - - -

22 MR. KNOX: Your Honor, if I could, outside of the
23 jury, am I allowed to address the Court?

24 THE COURT: Yes. Sure. You want to approach or do
25 you want me to ask them to step back?

INSTRUCTIONS BY THE COURT

29

1 MR. KNOX: You can ask them to step back and then we
2 can go from there.

3 THE COURT: I tell you what and then we can arrange
4 the seating too. If y'all would step back to the jury
5 room, we'll get started in just a minute.

6 (Whereupon, the jury exits the courtroom 11:30 a.m.)

7 THE COURT: Mr. Knox?

8 MR. KNOX: Your Honor, as you know there was a Duncan
9 hearing in this matter back in February and the ruling by
10 the Court was that the motion was denied. We moved for any
11 motion to have the matter proceed based on the, "stand your
12 ground." At this point in time, I'm going to renew my
13 objection to the Court's decision to preserve for that.

14 THE COURT: Certainly and who was it that ruled on
15 that so we can have that for the record for court - - -

16 MR. KNOX: It was Judge Henderson who ruled in this
17 case.

18 THE COURT: Okay. And do you happen to remember who
19 the court reporter was because that always helps to - - -

20 MR. KNOX: I believe it was - - -

21 THE COURT: Was it Mrs. Carter?

22 MR. KNOX: I believe she's in family court?

23 THE BAILIFF: Lisa Carter.

24 MR. KNOX: Lisa Carter.

25 THE COURT: Mrs. Carter. Okay. So noted.

1 MR. KNOX: Thank you.

2 THE COURT: Thank you. Anything else?

3 MR. KNOX: That's all.

4 THE COURT: You can - - you can bet somebody's taking
5 a restroom break so let's just stand at ease for about five
6 minutes. Everybody relax for about five minutes.

7 (Whereupon, the Court took a short break at 11:33 a.m.)

8 THE COURT: Is everybody ready?

9 MRS. JOHNSON-LEE: Yes, Your Honor.

10 MR. KNOX: Yes, Your Honor.

11 (Whereupon, the jury enters the courtroom at 11:44 a.m.)

12 THE COURT: Have we got everybody?

13 THE BAILIFF: We should.

14 THE COURT: Yeah. Okay. Solicitor?

15 **OPENING STATEMENT BY MRS. JOHNSON-LEE:**

16 MRS. JOHNSON-LEE: May it please the Court? Counsel?
17 Ladies and gentlemen of the jury, we're here today because
18 on July 14, 2015, which was just under a year ago, the
19 victim, Charles Wallace, was stabbed four times by the
20 defendant, Gary Moore. They were at the McCormick
21 convenience store up in the Jefferson area of Chesterfield
22 County. The victim, Charles Wallace, was in there first.
23 The defendant came into the store and began saying some
24 kind of words, apparently they were inflammatory words, to
25 the victim. The victim grabbed him. They began a physical

OPENING STATEMENT BY MR. KNOX

31

1 altercation, knocking down some things in the store. But
2 during the physical altercation the defendant, Gary Moore,
3 pulled out a knife and began cutting Mr. Wallace, the
4 victim. A good samaritan pulled them apart. And after he
5 pulled them apart, the crucial thing in this case is that,
6 the Defendant kept thrusting that knife. The victim was
7 cut in the back, punctured his lung. He had to be
8 airlifted to Charlotte for life-saving treatment. That's
9 the key in this case. I appreciate you being here today
10 and I just ask that you listen to all of the testimony real
11 close and look at the evidence. The testimony that you
12 hear is evidence also. It's called testimonial evidence
13 and it's just as important as any physical items. You're
14 going to have the knife. They're going to be other items,
15 physical evidence that you're going to see and we're going
16 to ask that once you hear what everybody has to say and
17 once you look at all the evidence, that you find the
18 defendant, Gary Moore, guilty. He's charged with attempted
19 murder because we believe that is what he was attempting to
20 do was to kill the victim when he continued thrusting that
21 knife at him after the good samaritan pulled them apart.

22 Thank you.

23 OPENING STATEMENT OF MR. KNOX:

24 MR. KNOX: Madam Solicitor and ladies and gentlemen of
25 the jury, I have a very different take on what happened

1 back in July of last year. You've heard the solicitor say
2 that Mr. Moore attempted to kill the victim. But from my
3 perspective I'm going to tell you what I think this case is
4 about. This case is about a God-given right. And that
5 God-given right is the right to self-defense that each one
6 of you, including me, and everyone else in this courtroom
7 have that right. That right wasn't given by the State of
8 South Carolina. It wasn't given by United States of
9 America. It was given to us by God and you carry that
10 right around with you no matter where you are.

11 Back in July of last year my client, this guy right
12 here, Mr. Moore, the defendant, came into a store in
13 Jefferson. He had been working all day long. He went to
14 go and get something to quench his thirst. He walked into
15 this convenience store. The victim was already there. He
16 went to the back of the store to go to the cooler to get a
17 beverage. As he was coming up to the front to pay for that
18 beverage he was sucker punched. She said there was an
19 altercation. It was an altercation. He slapped my client
20 and in doing so my client fell to the floor. But the
21 victim jumped on top of my client and began punching my
22 client. When all that was happening my client tried to
23 defend himself, which as I stated earlier, he has a God-
24 given right to do that. Also my client is a construction
25 worker and he wears this knife that he use in his trade.

OPENING STATEMENT BY MR. KNOX

33

1 You'll see that knife as it's introduced into evidence.
2 The victim knows my client. He knew that my client had
3 that knife. He saw that knife on my client. Yet he still,
4 he went up to my client and slapped him. Now, what would
5 give him courage enough to go and slap somebody that he
6 knows is carrying a knife.

7 Now, it's not that these two people just by chance met
8 each other that day. These two people have a history and
9 one of - - and part of that history is that, earlier in
10 that year, last year, the victim attacked my client with an
11 ax handle. And, in doing so, he didn't hit my client,
12 instead my client, with a pickup truck, my client was on
13 his own property, he went to that pickup truck and
14 commenced to breaking out the windshield of my client's
15 truck. As a result, there were civil charges filed. They
16 had to go to court and the victim had to pay for the damage
17 that was done to Mr. Moore's pickup truck.

18 Now, ever since that happened there's been bad blood.
19 And on that day when Mr. Moore came into that convenience
20 store, the victim saw his chance, he saw his chance to get
21 even and he went up to Mr. Moore and he slapped him. Now,
22 you're going to notice the difference in age between Mr.
23 Moore, the defendant and the alleged victim. Yet he still,
24 he went up to my client and he slapped him. Slapped him so
25 hard that he fell to the ground. Altercations - - yes, a

1 bystander came by and try to break it up. You'll hear
2 testimony from that bystander. Our contention is that he
3 did not intentionally or deliberately start stabbing the
4 victim, he was defending himself.

5 Now, the defendant, I'm sorry, the victim can't start
6 this altercation by slapping him and then tell the
7 defendant how to defend himself. I think you can defend
8 yourself by all means necessary. He did not leave to go
9 out to the store to get the weapon, he already had
10 something on him that he could use to repel the attack.
11 And when the bystander jumped in, he thought he was being
12 further attacked by another purpose, by another person. He
13 did not know the intention of that bystander. All he knew
14 was that he went to get this person who attacked him prior,
15 who did damage to his vehicle at his own property, he
16 wanted to get this person off of him. This is what this
17 case is about. This case is not about attempted murder.
18 This case is about self-defense, the God-given right that
19 each one of us have. So I would like for you to find a
20 verdict of not guilty. Thank you.

21 THE COURT: Ladies and gentlemen of the jury, I know
22 we're not that far into the trial but it is right at 12
23 o'clock and we have some other matters that have nothing to
24 do with this case, scheduled with some folks from out of
25 town, I need to go ahead and handle those. So what we're

1 going to do is we're going to break for lunch now and I'm
2 going to make it a little longer break than we normally do.
3 We usually try to hold it to an hour, sometimes an hour and
4 a half, because of situations like this. So if I can get
5 y'all to be back here at 1:20, that will give me time,
6 hopefully, that I can handle these matters and then the
7 court staff can have a lunch break to. Those of you from
8 the area know they're various restaurants around town but
9 if you would go ahead and go to lunch and be back in the
10 jury room at 1:20 and we will resume the trial then. If
11 everybody else remained seated, we're going to let the jury
12 go to lunch but we will keep working as soon as they are
13 clear.

14 (Whereupon, the jury exits the courtroom at 11:50 a.m.)

15 THE COURT: Okay. The jury is clear. A bond has
16 risen in this matter but I'm not going to - - I'm not going
17 to have him taken into custody because I will handle it
18 this way. Mr. Moore, you understand that if you were not
19 to come back there could be all kind of problems and that
20 would be the worst thing that you could do because you want
21 your day in court, I know. So if you'll make sure you stay
22 in touch with your attorney and we'll be back at 1:20 to
23 resume this case.

24 MR. REDMOND: And, Your Honor, before we break given,
25 the amount of traffic on Facebook yesterday and I'm just

1 asking, I'm putting it out there and still trying to think
2 through it as I'm speaking but because at least one of the
3 jurors, even though not on this case, mentioned having
4 access to social media and what was put on social media as
5 it relates to the case. I wonder if, the Court, could at
6 least give some kind of admonition to the defendant as it
7 relates to that activity now that we've started the trial,
8 the jury was sworn, we've actually begun this trial.

9 THE COURT: Yeah, and it'll be blanket. I don't mind
10 doing that. Everybody involved in this case, you're hereby
11 ordered to stay off social media and stay away from any
12 press media until this case is concluded, okay, because we
13 don't want any contamination and have to try the case over
14 again. Okay? It's so ordered.

15 MRS. JOHNSON-LEE: Thank you, Your Honor.

16 (Whereupon, the Court broke for lunch)

17 (Whereupon, Court reconvened at 1:22 p.m.)

18 THE COURT: Anything before we get started?

19 MRS. JOHNSON-LEE: No, Your Honor.

20 MR. KNOX: No, Your Honor.

21 THE COURT: Bring them in.

22 (Whereupon, the jury entered the courtroom at 1:24 p.m.)

23 THE COURT: Solicitor?

24 MR. REDMOND: May it please the Court?

25 THE COURT: Yes, sir.

1 MR. REDMOND: The State calls Mr. Charles Wallace.

2 THE CLERK: Put your left hand on the Bible and raise
3 your right. You swear that your testimony be the truth,
4 the whole truth, and nothing but the truth so help you God?

5 MR. WALLACE: Yes, ma'am.

6 THE COURT: Please turn around and be seated.

7 CHARLES WALLACE, first being
8 duly sworn, testified as follows:

9 DIRECT EXAMINATION BY MR. REDMOND:

10 Q. Mr. Wallace, state your name for the record?

11 A. May name is Charles Lynn Wallace.

12 Q. And if you would speak about that loud so that I, I'm
13 standing here and they too, the ladies and gentlemen of the
14 jury, will be able to hear you, okay. So where do you live
15 Mr. Wallace?

16 A. Um, [REDACTED] Hancock Road, Mount Croghan's, South Carolina.

17 Q. And - - let me ask you this, how old are you?

18 A. I'm fifty-seven years old.

19 Q. And at the time this incident occurred, how old were
20 you?

21 A. Fifty-six.

22 Q. And do you know the defendant, Gary Moore?

23 A. Yeah, I know him.

24 Q. And how do you know him?

25 A. I was - - I was living with his mother, his future

1 mother-in-law.

2 Q. And about how long would you say you have known him?

3 A. Ever sense - - ever since her daughter had been going
4 with him. I don't know how long that has been. Well, I
5 know five years as they've got youngins, five and three, I
6 think.

7 Q. About five years, you think?

8 A. Yeah.

9 Q. Now - - and we'll get into the comments made in
10 defenses opening argument, we'll get to that later but
11 let's talk about the date of the incident. Could you tell
12 us what you were doing that day leading up to the incident?

13 A. You talking about at the store?

14 Q. Yes, sir.

15 A. I came - - we were working right below the store and I
16 came up to the store, was gonna get something to eat, and I
17 called his ma-in-law, future ma-in-law, to come eat. And
18 so they was on their way down to eat with me and Gary come
19 in there running his mouth.

20 Q. Now, let me stop you there - - and just to be clear,
21 this happened on 14th of July of 2015?

22 A. Yes, sir.

23 Q. Now - - and at which store was it that you had stopped
24 to ?

25 A. At McCormick's next to Jefferson.

1 Q. Okay.

2 A. On Peach Orchard Road.

3 Q. And at that time - - let me ask you this and - - what
4 were you driving?

5 A. A 1982 Chevrolet pickup, blue.

6 Q. Many 1982 pickups on the road right now?

7 A. Not that many. They some but not that many.

8 Q. And this is important, did the defendant know what you
9 drove?

10 A. Sure he knows both of my trucks. I ain't got the two
11 trucks. He's seen them thousands of times.

12 Q. And was the defendant there when you got to the store?

13 A. No, I was there first.

14 Q. All right. Fair enough. Now, and I interrupted you.
15 So you get to the store and you call his future mother-in-
16 law about coming to get some burgers, I think you said?

17 A. Yeah.

18 Q. And then what happened?

19 A. He was running his mouth to me and so I reached and
20 grabbed him. Me and him went to struggle and the little
21 boy - - me and him went to the ground and then there was
22 this little boy, broke us up, and he come, commencing to
23 stabbing somebody.

24 Q. Now, let's go back just a little bit to make sure we
25 go through this carefully so the ladies and gentlemen of

1 the jury will understand what happened. So you were in the
2 store?

3 A. Yes.

4 Q. And where about in the store were you? I want to make
5 that clear.

6 A. I was standing at - - up there toward the cash
7 register.

8 Q. And so who approached whom? Did you approach the
9 defendant or did he approach you?

10 A. He come in running his mouth as he come in, as he come
11 into the store, to me.

12 Q. Okay. So as he came into the store, was he already,
13 when you say running his mouth, was he directing that at
14 you?

15 A. I don't know nobody else he could've been talking to.

16 Q. Did he come up to you at some point?

17 A. Yeah. He come right by me, went toward the beers, the
18 beer cooler.

19 Q. And then what took place leading up to when you
20 indicated that you grabbed him and y'all went to the floor?

21 A. Well, you know, like I said, he was running his mouth
22 to me and I just reached and grabbed him and me and him
23 went to the ground.

24 Q. Now, do you remember what he was saying to you?

25 A. Not exactly but, you know, he was mumbling, mumbling

1 stuff to me.

2 Q. And, again - - and it was mentioned in the defense's
3 opening statement, did y'all have, I guess, issues, for a
4 lack of a better term, between the two of you ?

5 A. Before?

6 Q. In other words, do y'all have bad blood between the
7 two of you from before?

8 A. We had been to court before.

9 Q. And we'll get into that in a little while. So - - and
10 also to make sure we're clear, did you start saying
11 anything to him or did he approach you and was talking to
12 you?

13 A. He approach me.

14 Q. Now, then we would be talking about the fact that at
15 some point you grabbed him?

16 A. Yes.

17 Q. And was you grabbing him as he was continuing to talk
18 junk to you?

19 A. Yeah.

20 Q. And did you intend on taking him to the floor or did
21 y'all just fall onto the floor?

22 A. We fell to the floor.

23 Q. Now, this is important too, when you grabbed him did
24 he - - was this basically a one-sided situation or was he
25 fighting back?

1 A. Well, I mean, he - - he fought back at me - - he
2 slapped back at me.

3 Q. So it was - - would it be, what we call, mutual
4 combat? In other words, both of you were tussling?

5 A. Yeah. Well, he - - like I said, he fought back at me.
6 He struck me side the head here.

7 Q. And so - - and any time during this, did you have any
8 kind of weapon on you?

9 A. I had - - I didn't have no weapon on me - - I mean, I
10 had one on me but I didn't pull no weapon, no.

11 Q. So you didn't pull any weapon?

12 A. No.

13 Q. And what weapon did you have?

14 A. I have my pocketknife.

15 Q. But did you ever take out your pocketknife?

16 A. No, I never took out a pocketknife.

17 Q. Was that - - -

18 A. I - - I - - where I come - - where I come from, if
19 you're man enough to run your mouth, you ought to be man
20 enough to back it up.

21 Q. In other words, back in the day when you settled - - -

22 A. Exactly right.

23 Q. In other words, don't bring a knife to a fist fight?

24 A. Exactly right.

25 Q. And was there a knife introduced by somebody at some

1 point?

2 A. He pulled - - yeah, he pulled a knife and stabbed me.

3 Q. And we'll get into that. You mentioned that. Will
4 work our way towards that in a little while. So your - -
5 you mentioned somebody else coming in and getting involved
6 to try to separate y'all?

7 A. Yeah. Steven, a little boy, I - - I just met - - that
8 one time is the first time I had seen that little boy.

9 Q. Okay.

10 A. A young man, you know.

11 Q. Well, let me ask you this, this is something else
12 that's important. Was he involved in the argument or the
13 fight between you and the defendant?

14 A. He - - that boy didn't know me or Gary, neither one.

15 Q. Was he just trying to break y'all up?

16 A. Yeah, because Gary told him to get me off from him.

17 Q. And who got up first? After the gentleman intervened,
18 who actually stood up first, you are Mr. Moore?

19 A. I don't - - I don't know.

20 Q. Okay. What happened when you stood up?

21 A. Well, the little boy was between us and he went to
22 stabbing. The little boy, he got cut too in the process.

23 Q. So you weren't the only one that was cut?

24 A. No.

25 Q. Now, as far as you know, was his cut serious?

1 A. Nah. I don't think his was very serious, you know, it
2 might've - - probably needed a stitch or two but I don't
3 think he went and got no stitches.

4 Q. Now, did you need just a stitch or two or did you need
5 - - -

6 A. I needed a bunch.

7 Q. And will get to that. So you're engaged in a fight,
8 you stand up, I think you said, and, again let's go through
9 that part again. At the point that y'all were getting
10 broken up - - -

11 A. Yeah.

12 Q. - - - by this third-party, tell us what happened?

13 A. What you mean? What you mean like - - -

14 Q. In other words, what happened once you got up - - once
15 the fight was breaking up, tell us again - - -

16 A. Well, like I said, Steven was in between me and him
17 and he was steady stabbing at me the whole time.

18 Q. Do you recall about how many times you got stabbed?

19 A. Four times.

20 Q. And where were you stabbed?

21 A. Two times in the back and two times in the side.

22 Q. Now, after you got stabbed and I think that's where I
23 stopped you, after you got stabbed what happened? To the
24 best that you can remember.

25 A. At that point, he went out - - he went out the door

1 and the little - - the girl that was running the cash
2 register told him he better not leave. So at that time,
3 one of the cooks in there carried me to the bathroom and
4 put towels on me to stop, try to stop the bleeding.

5 Q. And is that where you were when law enforcement
6 arrived, in the bathroom?

7 A. Yeah. They got me out the bathroom. The Griffin - -
8 the Deese girl and Debra, the one that owns it, was in the
9 bathroom with me with towels on me.

10 Q. And, I guess, after you - - after law enforcement got
11 there, did you require medical treatment?

12 A. Yeah - - -

13 Q. In other words, did you have to go to the hospital?

14 A. Yeah.

15 Q. All right. Tell us about the - - let me ask you like
16 this. Where did you end up going to the hospital? Where
17 did you end up at?

18 A. At Charlotte hospital.

19 Q. At CMC Lane in Charlotte?

20 A. Yeah.

21 Q. And what were the nature of your injuries to the best
22 that you can tell us?

23 A. I had a punctured lung and three stab, I mean, four
24 stab wounds. And, you know, they had to cut me open to
25 make sure that there wasn't no - - that, that knife hadn't

1 hit something on the inside.

2 Q. So you actually had to have surgery?

3 A. Yeah.

4 Q. As a result. And how long did you stay in the
5 hospital?

6 A. From Tuesday until Saturday.

7 Q. So about, I guess, four or five days - - -

8 A. Yeah.

9 Q. At the hospital?

10 A. And at any point during this and I skipped this but
11 this is also important, at any point during the exchange or
12 altercation, I think I ask you this but just in case I
13 didn't, did the third-party, the young man you were
14 referring to, did he assault either one of y'all?

15 A. Not that I know of. Not that I know of.

16 Q. Now, in the State - - in the defense opening, he
17 mentioned something about an incident from earlier in 2015
18 involving an ax handle, do you recall that?

19 A. Yes, sir.

20 Q. And when I mentioned bad blood between y'all, we want
21 to tell the jury the whole story so let's talk about that a
22 little bit.

23 A. I was living with his ma-in-law and she run me off on
24 account of him and his girlfriend and I was up there
25 gett'in some of my stuff and this mouth right here, run his

1 mouth and then pulled a stick and then the chicken shit
2 bastard run.

3 Q. All right. Now, let me stop you there. Who pulled
4 the stick?

5 A. He pulled it to start with.

6 Q. And who started the altercation there in 2015 earlier,
7 the one you were describing?

8 A. Mr. Moore.

9 Q. And he grabbed the stick, you said?

10 A. Yeah.

11 Q. Okay, then. Tell us what happened else happened that
12 night?

13 A. And the chicken shit bastard run.

14 Q. Say that one more time. I couldn't - - -

15 COURT REPORTER: I need him to say that again.

16 Q. Could you repeat that?

17 A. I said he run.

18 Q. He ran?

19 A. Yeah.

20 Q. Okay. So he started running. And so what did you do?

21 A. Well, when he grabbed the stick I just backed up and
22 grab the ax handle out of the back of my truck.

23 Q. And, again, where did this happen?

24 A. At his mother-in-law's - - ma-in-law's yard.

25 Q. And were you living there at the time?

1 A. I had been living there.

2 Q. And was he living there at the time?

3 A. Yeah, cause he didn't have no where else to go.

4 Q. And so after that incident, I think it was also
5 mentioned about having to go to court, I think Mr. Knox
6 mentioned something about a civil case. Did you do any
7 damage, I think, I guess to a vehicle or something?

8 A. I knocked his windshield out of his vehicle, out of
9 his van.

10 Q. And so - - but again and this is important, an
11 important point, this was treated as a civil case? In
12 other words, you had to go to court on a civil case because
13 of the damage done to the car, vehicle?

14 A. Yeah, I guess that's what you call it. But this was
15 fifteen months before this here stabbing.

16 Q. Okay.

17 A. This was in April of 2014.

18 Q. Oh okay. I said 2015, so this happened in 2014. And
19 again to be clear, were you at that store, McCormick's,
20 before the defendant arrived?

21 A. Yes.

22 Q. Were you looking to start any problems with the
23 defendant?

24 A. No, I was not.

25 Q. Who started the altercation at the store that resulted

1 in you being stabbed?

2 A. Mr. Moore, running his mouth.

3 Q. Did you have a weapon that you ever presented during -

4 - -

5 A. No, I didn't have no weapon.

6 Q. And were you stabbed? Were you stabbed?

7 A. Was I stabbed?

8 Q. Yeah.

9 A. Four times.

10 Q. By whom?

11 A. Mr. Moore.

12 MR. REDMOND: I beg the Court's indulgence. I beg the
13 Court's indulgence, I apologize. That would be all the
14 questions I have at this time. Would like to reserve the
15 right to recall the witness just in case we might need to
16 get into some photographic evidence.

17 CROSS EXAMINATION BY MR. KNOX:

18 Q. Mr. Wallace?

19 A. Yes, sir.

20 Q. I want you to recall some testimony that you gave in
21 this court under oath, do you remember that, about a couple
22 of months ago?

23 A. What do you mean under oats?

24 Q. Yeah, you were under oath about a couple of months
25 ago, right?

1 A. Yeah. Yeah.

2 Q. And you testified about some things, right?

3 A. Yeah.

4 Q. All right. I want you to clear your mind and recall
5 that testimony. Now, is it true, that in that testimony
6 you said that you hated Mr. Moore?

7 A. I don't like him.

8 Q. No. In that testimony, your testimony under oath, was
9 it that you hated Mr. Moore?

10 A. I said I don't like him.

11 Q. Are you sure?

12 A. Yeah, I don't like him.

13 Q. Now, you're under oath today, aren't you?

14 A. Yes.

15 Q. Now, if we get that transcript - - -

16 A. Well, can get whatever you want. I don't like him. I
17 don't like him today.

18 Q. No. Wait - - -

19 A. Would you like somebody if they stabbed you?

20 Q. No, we're not talking about that, sir. We're talking
21 about, you raised your hand, put your hand on the Bible,
22 you took that witness stand a month and a half ago and you
23 testified that you hated Mr. Moore, is that correct, sir?
24 True or not? Yes or no?

25 A. No. I can't recall that if I - - -

1 Q. You can't recall it, can you? But did you - - now, -
2 - -

3 A. I don't like him. No, I don't like him.

4 Q. You don't like him?

5 A. No, I don't like him.

6 Q. Okay. Now, when did you first not like Mr. Moore?

7 A. When he run - - the first time he pulled a stick on
8 me.

9 Q. Now, take you back to that testimony. In that
10 testimony, you never mentioned anything about Mr. Moore
11 pulling a stick on you, did you, sir?

12 A. You didn't ask me what started it.

13 Q. But I ask you - - your testimony was and you can
14 correct me if I'm wrong, that you grabbed an ax handle out
15 of your truck and you started chasing Mr. Moore, is that
16 your same testimony today, sir?

17 A. He's the one who pulled the stick. He pulled - - he
18 pulled a stick on me first and I just backed up and got an
19 ax handle out the back of my truck.

20 Q. Did he hit you with a stick?

21 A. No, because he know I'd had something to keep him from
22 hitting me.

23 Q. Did you hit him with the stick?

24 A. No, I didn't hit him because I couldn't catch them.

25 Q. If you had caught him, would you have hit him with the

1 stick?

2 A. I'm sure I probably would've.

3 Q. What did you do, instead, with the stick, sir?

4 A. I knocked his windshield out of his vehicle.

5 Q. Did his windshield do anything to you, sir?

6 A. No, it didn't do nothing to me.

7 Q. It was parked on his property where he was living, is
8 that correct, sir?

9 A. It was on his ma-in-law's property.

10 Q. But he was staying there, is that correct, sir?

11 A. I guess he was. I don't know whether he was or not.

12 Q. Were you staying there, sir?

13 A. No, I had been staying there.

14 Q. Were you staying there that day that you attacked him

15 - - -

16 A. No. I was there get'in some of my belongings.

17 Q. Now, describe the ax handle that you used to attack
18 his windshield?

19 A. A regular ax handle.

20 Q. Was it has - - what type of wood was it, do you know
21 what type of wood it was?

22 A. No.

23 Q. Pine?

24 A. An ax handle is not made out of pine. They made out
25 of oak.

1 Q. What are they made out of, sir?

2 A. They made out of oak or hickory.

3 Q. Oak or hickory. How long was it?

4 A. Probably, what, three foot; three and half foot; four
5 foot.

6 Q. How heavy was it?

7 A. An ax handle ain't that heavy.

8 Q. Two or three pounds?

9 A. Huh?

10 Q. Two or three pounds?

11 A. Probably. I want to say probably two pounds.

12 Q. About as heavy as a baseball bat?

13 A. Nah. It ain't heavy as a baseball bat.

14 Q. But you were going to take that - - it's your
15 testimony that you were going to take that ax handle made
16 out of hickory or oak and if you could've caught Mr. Moore
17 you would have hit him with it?

18 A. Yeah. I probably would, yeah.

19 Q. Because you hate him?

20 A. I don't - - I don't like him. No, I don't like him.

21 Q. So you have a strong dislike of him?

22 A. Yeah.

23 Q. Now, back to that same testimony, was it not your
24 testimony that you were at that convenience store first?

25 A. Yes.

1 Q. And that Mr. Moore came in?

2 A. Yeah.

3 Q. Without provocation or cause, just cause, you went and
4 you said, this is your statement, "that you slapped Mr.
5 Moore," is that correct?

6 A. Yeah. Well, yeah, I slapped him.

7 Q. And, if you remember correctly, sir, and I think I ask
8 you, had he said anything to you, what was your testimony?

9 A. I - - no - - he had - - he run his mouth to me when he
10 come into the store. That's the reason I slapped him.
11 They ain't nobody going to do nothin to you for no reason
12 at all now.

13 Q. What did you - - -

14 A. You got - - eight - - anybody with any common sense
15 knows that nobody ain't gonna do nothin to you - - -

16 Q. Well, what - - -

17 A. - - - unless you cause them to do something to you.

18 MR. REDMOND: I'm actually having trouble
19 understanding. They are kind of talking over each other
20 now.

21 Q. What did he say to you, sir?

22 A. I don't know what - - just mumbling. Mumbling.

23 Q. He was mumbling. Could you hear what the words were?

24 A. He calling me names. I know what he was calling.

25 Q. What names did he call you?

1 A. Well, I - - probably, SOB's and everything else.

2 Q. Mmm, hmm. Now, why would he call you names such as
3 those?

4 A. Because he wasn't satisfied with the adjustment he got
5 for his windshield.

6 Q. Did he tell you he was not satisfied with - - -

7 A. Yeah, see cuz, he had about a \$2,500 bill wrote up in
8 the windshield wasn't but \$500.

9 Q. So, it's your testimony that he was mad about a bill?

10 A. He was mad cuz the bill, yeah.

11 Q. So back in July of last year, he came to a store - - -

12 A. Not - - -

13 Q. - - - call you these names because of that bill?

14 A. Not in 2015. This was in 2014.

15 Q. No, I said in 2015 when he came into the store?

16 A. Oh, yeah. Yeah.

17 Q. And he was mad with you about something that happened
18 fourteen months ago - - -

19 A. Yeah.

20 Q. - - - that's you say - - -

21 A. Yeah.

22 and started calling you names?

23 A. Yeah.

24 Q. And he never did touch you, did he, sir?

25 A. No, but he would've of if I hadn't of backed up and

1 got that ax handle, equalizer, he probably would.

2 Q. We're not talking about that, we're talking about July
3 of last year. He never did touch you, did he, sir?

4 A. Yeah. Me and him were on the floor wrestling.

5 Q. Before you slapped him, he never' touched you, did he,
6 sir?

7 A. Nah. He hadn't - - he hadn't touch me but he was
8 running his mouth to me.

9 Q. And you walked up to him and you slapped him?

10 A. Well - - no, if I think - - if you're man enough to
11 run your mouth to somebody, you ought to be man enough to
12 back it up.

13 Q. So you took it upon yourself to say that this person
14 was running their mouth so you had a right to slap him in
15 his mouth, is that correct, sir?

16 A. Is I got a right to slap him?

17 Q. Mmm, hmm.

18 A. Well, I don't know if I had a right to slap him but I
19 - - I - - me and him got into it.

20 Q. But you did slap him?

21 A. Right.

22 Q. And he had not touched you either, sir?

23 A. No, but he was running his mouth to cause the
24 accident.

25 Q. How far away was he from you, sir, when he was running

1 his mouth?

2 A. He come right by me.

3 Q. Right by you. Now, I'm sort of confused, if he walked
4 by you, how did you find yourself in a position to slap
5 him?

6 A. Because when he come back from towards the beer cooler
7 is when we got into it.

8 Q. Oh, okay. Now, I'm glad you brought that up. He came
9 into the store and as I told the jury in my opening, he
10 went back to the beer cooler, didn't he?

11 A. No, you said drank cooler.

12 Q. Well, drink cooler, whatever, well, beverage cooler.

13 A. Yeah.

14 Q. He went back to the beverage cooler, did he, sir?

15 A. I said that's where he was headed to, yeah.

16 Q. So you watched him every step of the way from the time
17 that he came through that door to the time that he walked
18 back - - -

19 A. No. I - - -

20 Q. - - - to the beverage cooler - - -

21 A. He never did make it to the - - -

22 Q. Wait a minute, sir. Let me finish, sir. To the time
23 he walked back to the beverage cooler, you watched him,
24 didn't you?

25 A. Yeah, I watched him.

1 Q. Mmm, hmm. And is it your testimony that he was
2 talking trash - - -

3 A. Yeah.

4 Q. - - - to you?

5 A. Yeah.

6 Q. From the time that he entered that store and walked
7 back to the beverage cooler?

8 A. Yeah.

9 Q. Okay. Was there anyone else in the store besides
10 yourself, sir?

11 A. Was anybody else in the store?

12 Q. Yes, sir.

13 A. Yeah, the ones that work in there and this little ole
14 boy, well I didn't even know he was in there but he was in
15 there in one of them other lines, aisles.

16 Q. So there were other people in the store?

17 A. The ones work there.

18 Q. How do you know Mr. Moore wasn't talking to the other
19 people?

20 A. I wouldn't think he would be cussin, cussin at them
21 women. I wouldn't think he would be that bad to be cussin
22 at them women.

23 Q. But you knew that he was talking to you?

24 A. Yeah, exactly right.

25 Q. Did he call your name out? Did he say - - -

1 A. Nah.

2 Q. - - - Charles Wallace?

3 A. He didn't have to call my name. He didn't have to
4 call my name.

5 Q. Let me finish, sir. Did he say Charles Wallace you're
6 an SOB, did he say that?

7 A. Nah. He didn't have to call my name. I knew who he
8 was cussin.

9 Q. You knew who he was cussing?

10 A. Yeah. Exactly right.

11 Q. Because you all had an altercation, is that correct,
12 sir?

13 A. Yeah.

14 Q. For a windshield?

15 A. He got paid for his windshield.

16 Q. You had to pay him some money for his windshield?

17 A. Exactly right.

18 Q. And from the time he came into that store, you watched
19 him?

20 A. Yeah, I - - I watch - - if I had trouble with you I
21 would be watching you to.

22 Q. And, let's get back to the slapping. Now, when he
23 came back from the beverage cooler - - -

24 A. Yeah.

25 Q. - - - what did he do? Did he do anything to you?

1 A. He never did go to - - like I said, he come in the
2 store running his mouth to me. He was headed towards the
3 beverage cooler and I stopped him.

4 Q. You stopped him. Why did you stop him?

5 A. Well, like I said he was cussin at me.

6 Q. Cussing at you. How did you stop him, did you stand
7 and put your hand on your hips to block him? Did you,
8 sir??

9 A. No, I didn't stand - - -

10 Q. How did you stop him? Tell these people, the jury,
11 how did you stop him?

12 A. I reached and grabbed him.

13 Q. You reached and you grabbed him. In other words, you
14 assaulted him, didn't you, sir? Didn't you, sir?

15 A. Yeah, I assaulted - - I - - -

16 Q. You assaulted him, didn't you, sir? Say it.

17 A. Yes, I assaulted him.

18 Q. You assaulted him. And you put your hands on him,
19 didn't you, sir?

20 A. Yes.

21 Q. That was a battery too, wasn't it, sir?

22 A. Was what?

23 Q. A battery?

24 A. A battery?

25 Q. Yes. You place your hands on him, didn't you, sir?

1 A. Yeah, I put my hands on him.

2 Q. So you assaulted and you committed a battery upon him,
3 didn't you, sir?

4 A. I don't know what you call a battery.

5 Q. Forget about the battery. You put your hands on him.
6 What happened after that, sir?

7 A. Me and him went to the ground, fighting.

8 Q. Okay. Now, did you slap him before you went to the
9 ground?

10 A. Yeah, I carried him to the ground.

11 Q. So he was minding his business; went back to the
12 coolers; you stopped him before he got back to the coolers;
13 you grabbed him and assaulted him; you put your hands on
14 him, that was a battery; then you slapped him; is that
15 correct, sir?

16 A. I guess so.

17 Q. You guess so. Is that an affirmative answer?

18 A. You said a battery, I mean, I guess if that's what you
19 want to call a battery.

20 Q. Now, you know Mr. Moore, don't you sir?

21 A. Do I know him?

22 Q. Yeah, do you know him?

23 A. I know - - I know he's a coward. I do know that much.

24 Q. So he's a coward?

25 A. Well, he must. If a man stick a knife in you, he's

1 got to be a coward, ain't he?

2 Q. But did he start this, sir?

3 A. It don't make no difference who started it.

4 Q. Don't make any difference who started it?

5 A. It didn't make no difference who started it, I mean,
6 just because I slapped him that gives them the right to
7 stick me with a knife.

8 Q. What was your expectation when you slapped him? What
9 did you expect him to do?

10 A. Fight me like a man.

11 Q. Did you expect him to kiss you?

12 A. Yeah, I expected him to kiss me.

13 Q. Mmm, hmm. But he didn't, did he?

14 A. No.

15 Q. Now, you know Mr. Moore, don't you?

16 A. Do I know him?

17 Q. Yeah, you know him.

18 A. Yeah, I told you I've been knowing him five years,
19 five or six years.

20 Q. You know what type of work he does, don't you, sir?

21 A. I know he's a messer, I know that much. A pedlar. He
22 makes - - every job he goes on, he makes a mess. I knows
23 that much.

24 Q. Now, don't like the work that he does. Has he ever
25 done any work for you?

1 A. No, he ain't never done nothing for me. But I know
2 some he has done some work for and he run him off.

3 Q. Now, he knew that he had a knife on him, didn't you,
4 sir?

5 A. I don't know, I mean, I'm sure I seen the knife on
6 him. I told that little boy that he had a knife on him.

7 Q. In your testimony at the previous hearing, you said
8 that you knew that he always carried a knife, didn't you,
9 sir?

10 A. I didn't say I always know he carried no knife.

11 Q. But you knew that he carried a knife?

12 A. I seen that knife on him - - I seen that knife,
13 something on him that day.

14 Q. Did you ever see him with that knife before?

15 A. No, I never seen him with that knife on him.

16 Q. He came into the convenience store?

17 A. Yeah.

18 Q. He already had that knife with him?

19 A. Yes.

20 Q. Went back to the cooler?

21 A. Yeah.

22 Q. You stopped him before he got there?

23 A. Yeah.

24 Q. You put your hands on him?

25 A. Yeah.

1 Q. You grabbed him?

2 A. Yeah.

3 Q. You slapped him?

4 A. Yeah.

5 Q. And you knew that he had the knife on him?

6 A. We went to the ground. I put it to you like that.

7 Q. Well, let's get this straight. Did you or did you not
8 slap him?

9 A. I'm sure I put my hands on him, yes.

10 Q. You slapped him?

11 A. Didn't he - - didn't he put his hands on me?

12 Q. Did you slap him, sir?

13 A. I'm sure I did.

14 Q. You told several things?

15 A. I told you I slapped him.

16 Q. I beg your pardon.

17 A. Yes, I slapped him.

18 Q. You slapped him. And then you all fell to the ground?

19 A. I slapped him. I know I slapped him one time, I know.

20 Q. Did you slap him to the ground?

21 A. Nah. We fell to the ground.

22 Q. How did you fall to the ground?

23 A. We were fighting at one another. Both of us fell to
24 the ground.

25 Q. What were you - - so after you slapped him, did he

1 slap back at you? Did he hit you back?

2 A. Yes, he hit me.

3 Q. And you all fell to the ground?

4 A. Yes.

5 Q. And you said that somebody came in and broke y'all up?

6 A. Yes.

7 Q. When you got up, you were stabbed?

8 A. When we got - - when the little boy broke us up, he
9 come up with a knife, started stabbing.

10 Q. Now, if you recall back to your testimony, didn't you
11 say that you were stabbed why you were on the floor?

12 A. No, I didn't say no time I was stabbed on the floor.

13 Q. How do you know that you are not stabbed while you
14 were on the floor?

15 A. I'm sure I could have felt if a knife went in me if I
16 - - I didn't get stabbed until the little boy broke us up
17 and we come up, he come up with a knife, went to stabbing.

18 Q. And was anybody in between you and Mr. Moore?

19 A. Yes, the little ole boy, the young boy.

20 Q. And did the young boy get stabbed?

21 A. Yeah, he got cut. He didn't get stabbed, he got cut.

22 Q. He got cut. So Mr. Moore was swinging that knife, he
23 was just swinging that knife, is that correct? He was just
24 thrusting that knife? And not only did you get cut or
25 stabbed, someone else got cut also?

1 A. He got scratched. Yeah, he got a little nick on him.

2 Q. Now, was it not your testimony in the previous hearing
3 that you did not know that you had been stabbed?

4 A. I didn't know that I have been stabbed, sure, I know I
5 have been stabbed.

6 Q. When did you know that you were stabbed?

7 A. When - - when, like I said, when as soon as the little
8 boy broke us up, he come up stabbing at somebody.

9 Q. So it's your testimony that you did not get stabbed
10 until after the fight was broken up?

11 A. The fight wasn't broken up. He just got us up off the
12 floor.

13 Q. So when you got stabbed you all were still fighting?

14 A. Yes.

15 Q. And so the fight had not ended, you all were still
16 fighting. Now, do you think that Mr. Moore was defending
17 himself from your aggression?

18 A. I don't know why he would - - -

19 MR. REDMOND: I'm going to object. That's actually a
20 statement on the ultimate issue, he just - - -

21 THE COURT: Better rephrase that one.

22 Q. Did you think Mr. Moore was trying to defend himself?

23 MR. REDMOND: Your Honor, again, and it calls for
24 speculation too on somebody - - -

25 THE COURT: You can't do that.

1 Q. When you were being stabbed by Mr. Moore, the fight
2 was still continuing, is that right, sir?

3 A. I assume it was.

4 Q. And you set up this thing in motion by slapping him,
5 is that correct, sir?

6 A. Me and him was fighting, yes.

7 MR. KNOX: Thank you. No further questions.

8 **REDIRECT EXAMINATION BY MR. REDMOND:**

9 Q. Actually I do have some questions because I want to
10 make sure that things, not just characterize, because the
11 comment that Mr. Knox just made "set in motion" let's talk
12 about that real quick. What actually set this whole chain
13 of events in motion. Was the defendant at that store when
14 you got there to get some burgers?

15 A. No, he was not there.

16 Q. So when the defendant got there, so when you got there
17 and I'm just going to ask you, did you have the defendant
18 on your mind when you got into that store?

19 A. No, I didn't have him on my mind.

20 Q. Once he entered the store who started talking? Who
21 started the negative exchange between y'all?

22 A. Mr. Moore running his mouth to me.

23 Q. Had the defendant not said anything to you, would you
24 have said anything to him?

25 A. And I probably wouldn't done a thing to him.

1 Q. And when he continued to talk to you and you were, I
2 guess, the term was assault and battery, whether you were
3 assaulting and battering, whether you assault and battered
4 him, you admit that you grabbed him - - -

5 A. Exactly right.

6 Q. - - - it wasn't just slapping him?

7 A. Exactly right.

8 Q. But at any time did you, I guess, present any weapon
9 or anything - - well, I think you said earlier, it was just
10 gonna to be a, I guess - - -

11 A. Man-to-man. I figured it to be man-to-man.

12 Q. Okay.

13 A. He can run his mouth but he must couldn't back his
14 mouth up.

15 Q. But the key part in this is, had he not run his mouth
16 would any of this be done?

17 A. Nothing would have been said - - I wouldn't have said
18 a word to him, would've done nothing to him.

19 Q. Now, when, I guess, you were ask about what took place
20 as particular, are you aware that the store had video? In
21 other words, are you aware that there was a video of what
22 transpired at the end of the time - - -

23 A. Nah. I'm sure I - - well, I know they had video but I
24 didn't know that it showed everything that we done, you
25 know, I didn't know about that.

1 Q. And you were ask a question by Mr. Knox as to whether
2 or not the fight was still going on but could we both agree
3 that, I guess, whatever we see on the video, will
4 accurately show what was taking place - - -

5 A. Exactly right.

6 Q. - - - when you were stabbed?

7 A. Exactly right.

8 Q. So, in other words, if, from what you can recall and
9 what's on the video, would it be fair to say that what's on
10 the video accurately shows what actually happened - - -

11 A. Exactly right.

12 Q. - - - at the time you were stabbed?

13 MR. REDMOND: I beg the Court's indulgence.

14 Q. And getting back, you are asked the question on cross
15 about what happened in 2014, I want to touch on that real
16 quick. Now, you were asked about whether or not you had
17 said certain things previously as it relates to the stick,
18 I guess, the defendant having the stick. And again just to
19 be clear, who even in that situation, started the incident
20 that occurred in 2014?

21 A. Mr. Moore.

22 Q. Who was the person that actually introduced some type
23 of weapon in that incident?

24 A. Mr. Moore pulled the stick first.

25 Q. And would it be fair to say, and this is interesting,

1 that you said that you did chase him with the ax handle - -
2 -

3 A. Exactly right. I chased him.

4 Q. Because you were mad?

5 A. Exactly right.

6 Q. Now, he was trying to get away or the fight, you know,
7 was over, do you understand had you caught him and hit him
8 that you would've been in trouble?

9 A. Well, at the time I wasn't even thinking about it.

10 Q. Exactly. You weren't thinking about it because you
11 were so mad?

12 A. Exactly right.

13 Q. So you weren't defending yourself at the time that you
14 chased him with the ax handle, you were mad and that's why
15 you chased him, right?

16 A. Yep.

17 Q. And you understand you would've been in trouble if you
18 had caught him and hit him with the ax handle?

19 A. Yes.

20 Q. Would it be fair to say that at the time you were
21 stabbed in the store, the defendant was mad, his state of
22 mind, he was mad at that time?

23 A. He was mad because he probably didn't get what he
24 asked for. He had a bill run up about \$2,500, I think, and
25 the windshield wasn't but \$500. We went in front of a

1 judge, Rickey Faulkenberry for that. And Rickey told him
2 if you want any more, all this other stuff you come up
3 with, you're going to have to go somewhere else besides
4 here, you ain't get nothing here.

5 Q. And a big deal has been made about 2014 but again,
6 this was a civil case, you were never charged with anything
7 in that case?

8 A. No.

9 MR. REDMOND: I beg the Court's indulgence. That's
10 all the questions I have.

11 THE COURT: Anything?

12 **RE-CROSS EXAMINATION BY MR. KNOX:**

13 Q. Mr. Wallace?

14 A. Yes.

15 Q. You are not charged - - -

16 A. No.

17 Q. - - - in this incident either, were you?

18 A. No, I wasn't charged in this.

19 Q. But it's your testimony that you committed an assault
20 and battery upon Mr. Moore and the State didn't charge you,
21 did they?

22 A. No, I don't guess they charge me.

23 Q. You have not been charged, have you, sir?

24 A. No.

25 Q. Now, would it be fair to say that you were trying to

1 dictate the rules by which you all were going to fight?

2 A. I don't understand what you're talking about.

3 Q. Let me put it this way, when you slapped him, did you
4 tell him the only thing that you can do to me is slap me
5 back?

6 A. No, I didn't tell him that.

7 Q. Did you tell him that he couldn't use a weapon against
8 me to repel for slapping?

9 A. No, I didn't tell him not to use no weapon because I
10 didn't use no weapon.

11 Q. Now, it's your testimony because you didn't use a
12 weapon, he didn't have a right to use a weapon?

13 A. Well, I don't, you know, I don't think a person
14 fighting you fair, I don't think you should pull a knife or
15 a stick or whatever out and use it on the other person.

16 Q. Now, did you tell him I'm going to slap you but I want
17 a fair fight?

18 A. I didn't tell him I was going to slap him.

19 Q. You didn't tell him you were going to slap him. You
20 didn't tell him that you wanted a fair fight, did you?

21 A. Well, he run his mouth like he wanted some so I gave
22 him some.

23 Q. So he wanted some so you served him up?

24 A. Yeah.

25 Q. You tact it real good, didn't you?

1 A. No. I must not - - if I had it to do over it probably
2 would be different.

3 Q. You probably would've killed him, wouldn't you?
4 Wouldn't you, sir?

5 A. If I had, had a gun that day I probably would have
6 shot him right there when he stabbed me. I probably
7 would've dropped him.

8 Q. You would have killed him, wouldn't you?

9 A. The undertaker probably would - - -

10 Q. Because you would just that mad, wouldn't you, sir?

11 A. Wouldn't you be mad if a man put four holes in you,
12 huh?

13 Q. But you started it, sir, didn't you?

14 A. No, I didn't start it. He started it with his mouth.

15 Q. But you started the fight, didn't you, sir?

16 A. No, I didn't start it. He started it with his mouth.

17 Q. Did you think about the possible consequences?

18 A. No, I didn't think about no consequences.

19 Q. Did you think that you could've gotten hurt? Did you
20 think about that, sir?

21 A. No, I didn't think about it.

22 Q. Did you think you could have got stabbed?

23 A. No, I didn't think about it.

24 Q. Did you think you could have got shot? You didn't
25 think about those things, did you?

1 A. No, I didn't think about it.

2 Q. You just thought about slapping Mr. Moore, is that
3 correct, sir?

4 A. I'm - - yeah, I said me and him fight.

5 MR. KNOX: Thank you. No further questions.

6 A. I said me and him was fighting.

7 THE COURT: Anything further?

8 MR. REDMOND: Just brief. A couple of questions real
9 quick.

10 **REDIRECT EXAMINATION BY MR. REDMOND:**

11 Q. He was asking you what you were thinking about at the
12 time, and again, when he started mouthing off at you, and
13 again, getting back to what started, the fact that he
14 started mouthing off at you, is that what got you angry?

15 A. Exactly right.

16 Q. And even though that you were asked whether or not you
17 thought he would have a knife or anything of that nature,
18 was there any reason that you had to believe based on, you
19 know, I guess what was taking place that this was going to
20 be anything other than a fistfight?

21 A. No, I didn't think it would be nothing but a
22 fistfight.

23 Q. And at any time did you present any weapon or anything
24 that would've made him fear for his life?

25 A. No, I did not pull no, nothing on him.

1 Q. And again this is a key part, fear versus anger, was
2 he fearful, did he seem fearful or did he seem angry?

3 A. Well, if I was running - - if I was cussin at you,
4 wouldn't you be mad - - wouldn't that bolt you into wanting
5 to slap, fight?

6 MR. KNOX: Objection, Your Honor. He's questioning
7 the prosecutor prior to answering.

8 Q. I can't answer any questions but I'll ask you a
9 question like this. So the words that he was using, did it
10 make you feel like he wanted to fight?

11 A. Yes.

12 MR. REDMOND: That'd be all the I have.

13 THE COURT: Anything else?

14 MR. KNOX: No further questions.

15 THE COURT: You may step down. Watch your step over
16 there.

17 MR. REDMOND: My next witness, judge, if we could take
18 about a five minute rest break.

19 THE COURT: You got it.

20 MR. REDMOND: Thank you.

21 THE COURT: Let's take five or ten minutes. Y'all
22 step back to the room.

23 (Whereupon, the jury exits the courtroom at 2:04 p.m.)

24 (Whereupon, the State during break marks exhibits 1 through
25 15 for purpose of Identification Only)

1 (Whereupon, the Court reconvenes at 2:21 p.m.)

2 THE COURT: Are we ready?

3 MRS. JOHNSON-LEE: Yes, Your Honor.

4 MR. KNOX: Yes, Your Honor.

5 (Whereupon, the jury enters the courtroom at 2:22 p.m.)

6 THE COURT: Solicitor?

7 MRS. JOHNSON-LEE: Melissa Ann Griffin.

8 THE CLERK: Place your left hand on the Bible and
9 raise your right. Do you swear that your testimony will be
10 the truth, the whole truth, and nothing but the truth so
11 help you God?

12 MS. GRIFFIN: Yes, ma'am.

13 THE CLERK: Please have a seat.

14 MELISSA ANN GRIFFIN, first being
15 duly sworn, testified as follows:

16 **DIRECT EXAMINATION BY MRS. JOHNSON-LEE:**

17 Q. State your name for the record.

18 A. Melissa Ann Griffin.

19 Q. Do you live here in Chesterfield County?

20 A. What now?

21 Q. Do you live here in Chester County?

22 A. I do. No, I live in Pageland.

23 Q. Where do you work at?

24 A. McCormick's Grill.

25 Q. That also known as McCormick's Grocery?

1 A. Mmm, hmm.

2 Q. You need to say yes or no.

3 A. Yes.

4 Q. How long have you worked at McCormick's?

5 A. A couple of years.

6 Q. Were you working in July of last year, 2015?

7 A. Yes, ma'am.

8 Q. And were you working on the day when something
9 happened between the defendant, Gary Moore, and Mr. Charles
10 Wallace?

11 A. Yes, ma'am.

12 Q. Can you tell the jury what you witnessed that day at
13 the store?

14 A. I was working the register. Like Mr. Wallace said he
15 was already in the store leaning kind of on the ice cream
16 machine, it's right in front of the register. And then Mr.
17 Moore had come in. I didn't hear anything. I don't know
18 what was said. I just seen - - they just started fighting.

19 Q. Could you tell who hit who first?

20 A. I was trying to get on - - I was on the phone with 911
21 so I was coming around.

22 Q. Let's back up just a second. Did you call 911 before
23 anybody hit anybody?

24 A. No. I just called 911 because there was - - they were
25 looking at each other, you know what I'm saying.

1 Q. What was the first thing you saw happening between the
2 two of them, were they looking at each other?

3 A. I remember Mr. Gary coming in; they kind of looked; he
4 went halfway down the candy aisle; he never went for no
5 drink or anything; and he come back and it was just on.

6 Q. And what happened when it, "was on"? Describe to the
7 jury.

8 A. They was fighting. They was on the ground. Licks
9 passing back and forth because like a stupid I was standing
10 right there on the phone thinking if I threaten that the
11 cops were coming they would quit but they didn't.

12 Q. So you called 911 yourself?

13 A. Mmm, hmm.

14 Q. And who are you telling that you're calling 911?

15 A. I told both of them.

16 Q. Do you remember specifically - - -

17 A. I didn't say no name. I just said, "hey, y'all if you
18 don't quit I'm gonna call 911 and I was on the phone with
19 them."

20 Q. Did you hold the phone up so that they could see that
21 you were on it?

22 A. Well, I don't think they was paying no attention to
23 me.

24 Q. Now, did you see how the fight ended?

25 A. They was - - -

1 Q. Who stopped it?

2 A. I remember Steven, he's a customer that comes in there
3 pretty regular and I take my vehicle to his worker place to
4 be worked on, and I guess he heard me with the commotion
5 and he come up there trying to break it up.

6 Q. And did they break apart?

7 A. After a little bit, yeah. And they was kind of
8 standing up and then that's when I seen Mr. Wallace
9 bleeding and I kind of shoved Gary out the door and was
10 holding the door and told him not to go nowhere because I
11 had already called the cops and he said, that he wasn't
12 going nowhere.

13 Q. And what do you mean you are holding the door after
14 you shoved him out?

15 A. Because I didn't want him to come back in the store.
16 I was scared.

17 Q. Did he try to come back while you were holding the
18 door?

19 A. Uh, uh.

20 COURT REPORTER: You need to say yes or no.

21 A. Oh, I'm sorry. No, I don't think.

22 Q. And which one of the two of them were bleeding?

23 A. Charles was.

24 Q. Did you see where the blood was coming from?

25 A. I just seen the front. It was coming down from this

1 side because I said, "Oh my God, he's bleeding"!

2 Q. Was there a lot of blood or just a little bit?

3 A. Yeah, there was a lot of blood.

4 Q. And what did you do after holding your door shut?

5 A. I don't know. I can't remember. I'm sorry.

6 Q. That's okay. Did you know Gary Moore before this
7 incident?

8 A. I just seen him maybe once or twice in the store.

9 Q. And in the two years you've been there, you've only
10 seen him once or twice there?

11 A. Yes, ma'am.

12 Q. And how often did you - - were you used to seeing
13 Charles Wallace there?

14 A. I've seen him a couple of times come and eat.

15 Q. And did you write a statement for law enforcement
16 about what happened?

17 A. I did.

18 Q. I'm going to show you what's been marked for
19 identification as State's Exhibit One, do you recognize
20 that document?

21 A. Yes, that's my document that I wrote.

22 Q. And you wrote this for the Chesterfield County
23 Sheriff's office?

24 A. Yes, ma'am.

25 Q. And is this a complete and truthful statement about

1 what you witnessed that day?

2 A. Yes, ma'am.

3 MRS. JOHNSON-LEE: At this time, I'd moved to admit
4 this document into evidence as State's Exhibit One.

5 MR. KNOX: Your Honor, I'm going to object to that
6 being admitted into evidence. She's on the witness stand,
7 she's already testified as to what happened and that will
8 only cancel the testimony so I don't think it's admissible,
9 Your Honor.

10 THE COURT: Sustained.

11 (Whereupon, the Voluntary Statement of Melissa Griffin has
12 been marked and entered into evidence as State's Exhibit
13 No. 1)

14 Q. The man that helped that you were holding the door
15 shut for - - -

16 A. Gary?

17 Q. - - - Mr. Moore, the defendant, did you hear him say
18 anything outside the door?

19 A. That Charles got what he deserved.

20 MRS. JOHNSON-LEE: Thank you, ma'am. No further
21 questions.

22 **CROSS EXAMINATION BY MR. KNOX:**

23 Q. Ms. McCormick, at the - - -

24 A. I'm a Griffin, not McCormick.

25 Q. Beg your pardon? I'm sorry, that's the store name.

1 I'm sorry. Ms. Griffin?

2 A. Mmm, hmm.

3 Q. Ms. Griffin, at the prior hearing your testimony was
4 that you did not hear Mr. Moore say anything when he came
5 into the store.

6 A. I think they asked me last time and I told them just
7 that too.

8 Q. That Mr. Moore didn't say anything?

9 A. No, that he said that he got what he deserved.

10 Q. No, I'm talking about when he came into the store, not
11 when - - -

12 A. I didn't hear anything.

13 Q. You do not hear anything?

14 A. No, because, you know what I'm saying, there's the
15 phone and I'm - - I just watch people come in. I don't pay
16 attention to what they're saying.

17 Q. Did you see Mr. Moore entered the store?

18 A. I did.

19 Q. And was he having a conversation with anyone in the
20 store?

21 A. No, he had just walked in and that's when him and
22 Charles kind of looked at each other.

23 Q. They looked at each other?

24 A. Mmm, hmm.

25 Q. As you can recall, were there any words ever passed

1 between the two of them?

2 A. I can't remember hearing anything.

3 Q. You can't remember hearing anything. And how far were
4 you away from Mr. Wallace?

5 A. Probably three feet counting the counter in between
6 us.

7 Q. So the counter - - so you could see Mr. Wallace?

8 A. Mmm, hmm.

9 Q. And you can hear Mr. Wallace?

10 A. He was leaning up against the ice cream machine, yes.

11 Q. Did Mr. Wallace say anything to Mr. Moore?

12 A. I didn't hear anything. I can't remember if words
13 were said or not.

14 Q. And you can't remember whether or not Mr. Moore said
15 anything to Mr. Wallace?

16 A. Right. I can't remember them saying anything. I just
17 remember them looking at each other.

18 Q. They were looking at each other?

19 A. Mmm, hmm.

20 Q. Now, how big is your store?

21 A. There's a store out front and then there's a grill and
22 a dining area in the back.

23 Q. Now, when you enter your store how far is it between
24 the entrance and the coolers in the back?

25 A. Okay. There's beer coolers back here; the drink

1 machines are here; there's aisles, three aisles, that-a-
2 way; and he maybe stepped three feet into the store and
3 he's right there.

4 Q. Where in the store?

5 A. At the ice cream machine, you know what I'm saying?

6 Q. Who Mr. Moore or Mr. Wallace?

7 A. Mr. Moore when he walks in.

8 Q. He takes about three steps into the store?

9 A. Mmm, hmm. He turns and goes about halfway between the
10 candy aisle like you're going to the beer and then he comes
11 back and then - - -

12 Q. So he goes toward the beverage - - -

13 A. There - - no, the drinks are over here. The beer is
14 right there. He went halfway down the candy aisle and then
15 come back and then - - -

16 Q. And then he came back - - -

17 A. - - - and that's when everything happened.

18 Q. Did you see anything after that?

19 A. Did I see anything?

20 Q. Mmm, hmm.

21 A. That's when it all happened.

22 Q. Did you see who started it?

23 A. No, sir.

24 Q. Exactly what did you see?

25 A. I seen Mr. Gary walk in the door, they looked at each

1 other, and then it was just, didn't take like, seem like a
2 second and then they were already fighting.

3 Q. They were already fighting. And you testified on
4 direct that Mr. Moore got up, I'm sorry, when Mr. Wallace
5 got up he was bleeding?

6 A. Uh, huh.

7 COURT REPORTER: It's yes or no.

8 A. Oh, I'm sorry, yes.

9 Q. Did you see Mr. Moore stab Mr. Wallace once he got up?

10 A. It just happened so fast. I was scared. You know.

11 Q. No, ma'am, that wasn't the question I ask you - - -

12 A. I understand that but you got to understand it's been
13 a year since this has happened.

14 Q. What if you don't know, say you don't know.

15 A. Okay, I don't know.

16 Q. And you did see Mr. Moore, I'm sorry, Mr. Wallace
17 bleeding?

18 A. Mmm, uh.

19 Q. When he got up?

20 A. Yes, when he stood up.

21 Q. Meaning that he probably got stabbed while he was
22 down?

23 A. Maybe, I don't know.

24 Q. Thank you.

25 MR. KNOX: No further questions.

REDIRECT EXAMINATION BY MRS. JOHNSON-LEE:

Q. Did the store have a video system?

A. Yes, ma'am.

Q. Had you watch the video of what happened?

A. I only seen like a minute of it. I really didn't care to watch it.

Q. Thank you, ma'am.

MRS. JOHNSON-LEE: No further questions.

MR. KNOX: No re-cross.

MRS. JOHNSON-LEE: May this witness be excused?

MR. KNOX: No objection.

THE COURT: No objection.

MRS. JOHNSON-LEE: Next we would call Marie Kay Deese

CLERK: Place a left on the Bible and raise right. Do you swear to tell the truth, the whole truth, and nothing but the truth so help you God?

MS. DEESE: I do.

MARIE KAY DEESE, first being duly sworn, testified as follows:

DIRECT EXAMINATION BY MRS. JOHNSON-LEE:

Q. Good afternoon.

A. Hey.

Q. Would you please state your name for the record?

A. Kay Deese.

Q. Is your full name Marie Kay Deese?

1 A. Yes, ma'am.

2 Q. And you live here in Chesterfield County?

3 A. I live in Jefferson.

4 Q. And where do you work?

5 A. At McCormick's Grill.

6 Q. How long have you worked at McCormick's?

7 A. Soon be three years.

8 Q. Three years. Were you working on the day that this
9 incident happened between Mr. Wallace and Mr. Moore in July
10 of 2015?

11 A. Yes, ma'am.

12 Q. Tell the jury what you witnessed that day.

13 A. I was sitting up front with Melissa and I seen Stevie
14 pull into the parking lot so I went to the grill because he
15 always comes to the grill and I'm the cook. And when I
16 walk back there I heard Melissa say, "y'all can't be doing
17 that in here." And I turned back around, I didn't see
18 anybody. So I walked up front and I looked over the
19 counter where there was Mr. Moore, Mr. Wallace and they
20 were on the floor.

21 Q. And what were they doing on the floor?

22 A. They were fighting.

23 Q. Did you hear anything said before that fight?

24 A. No, ma'am.

25 Q. Did you see who threw the first lick?

1 A. No, ma'am.

2 Q. Did you witness the end of the fight?

3 A. Yes, ma'am.

4 Q. How did it end?

5 A. I come around the counter, me and Melissa, come around
6 the counter. Stevie comes, I thought he came in the door,
7 but he was already in the store and he reaches down and he
8 grabs Mr. Moore by the arm or whatever and he jerks him up
9 and when he did he said, "man you just cut me!" And he
10 went to the door, Mr. Moore did, and was standing there and
11 I seen he had the knife in his hand. Charles got up off
12 the floor and I seen the blood just pouring and I told
13 Melissa I said, "call the law", I said, "because he's got a
14 knife and he has stabbed Charles." And he went out the
15 door from then we got Charles in the bathroom and took care
16 of him.

17 Q. Did you see the wounds on Charles when you got him to
18 the bathroom?

19 A. Yes, ma'am.

20 Q. Where did you see the wounds at?

21 A. On his back and on his side.

22 Q. And was there a lot of blood?

23 A. Yes, ma'am.

24 Q. At any point in time, did Charles began passing out or
25 or appear to be passing out?

1 A. Yes.

2 Q. Is there a video system and store?

3 A. Yes, ma'am.

4 Q. Have you seen the video from that day?

5 A. No, ma'am.

6 Q. Did you hear the defendant say anything, yourself?

7 A. Not one word.

8 Q. And you said you sell Stevie, is that Steven Hooks?

9 A. Yes, ma'am.

10 Q. You said you saw him yank the defendant up - - -

11 A. Mmm, hmm.

12 Q. - - - first? Was the defendant on top of Mr. Wallace?

13 A. Yes, ma'am.

14 Q. Thank you, ma'am.

15 MRS. JOHNSON-LEE: I beg the Court's indulgence.

16 That's all the questions I have. If you'll answer any

17 questions from anybody first.

18 Q. I'm sorry.

19 MRS. JOHNSON-LEE: Thank you.

20 **CROSS EXAMINATION BY MR. KNOX:**

21 Q. Ms. Deese, is it your testimony you saw Mr. Wallace on
22 the floor bleeding?

23 A. Yes, sir.

24 Q. Did you see any stabbing happened after they were
25 standing?

1 A. No, sir.

2 Q. Thank you.

3 MR. KNOX: No further questions.

4 THE COURT: Anything further?

5 **REDIRECT EXAMINATION BY MRS. JOHNSON-LEE:**

6 Q. If you didn't witness it, the video would show
7 something. Would it be more accurate to say that the video
8 did, correct - - -

9 MR. KNOX: That would call for speculation - - -

10 Q. - - - to state what happened?

11 MR. KNOX: - - - Your Honor. That's an improper
12 question.

13 THE COURT: Sustained.

14 MRS. JOHNSON-LEE: That's all. The State would call
15 Tim Hutchinson.

16 CLERK: Place your left hand on the Bible and raise
17 right. Do you swear to tell the truth, the whole truth,
18 and nothing but the truth so help you God?

19 MR. HUTCHINSON: I DO.

20 TIM HUTCHINSON, first being
21 duly sworn, testified as follows:

22 **DIRECT EXAMINATION BY MRS. JOHNSON-LEE:**

23 Q. State your name for the record.

24 A. Tim Hutchinson.

25 Q. And where are you employed?

1 A. Chesterfield County Sheriff's office.

2 Q. What is your job at the Chesterfield County Sheriff's
3 office?

4 A. Sergeant over patrol.

5 Q. How long have you been a sergeant over patrol?

6 A. One and half years.

7 Q. Four and half years?

8 A. One and half.

9 Q. How long have you been a law-enforcement officer with
10 the Sheriff's office?

11 A. Twenty-one years. Not this - - seven years with
12 Chesterfield County, fifteen with North Carolina.

13 Q. And where in North Carolina?

14 A. Anson County

15 Q. Was that Anson County Sheriff's office?

16 A. Yes, ma'am. In the town of Wadesboro.

17 Q. And what was your job duties with the Sheriff's office
18 in North Carolina in the own of Wadesboro?

19 A. I was on patrol with the Sheriff's office and patrol
20 with the Wadesboro Police Department and worked as a
21 narcotics investigator for the town of Wadesboro.

22 Q. Are you a graduate of both the North Carolina and
23 South Carolina Criminal Justice Academy's?

24 A. Yes, ma'am. And hold both certifications still to
25 this date.

1 Q. So you are a Class I certified officer?

2 A. Yes, ma'am.

3 Q. Were you working on July 14, 2015 at around 4:54 in
4 the afternoon?

5 A. Yes, ma'am.

6 Q. Did you receive a call or hear a call go out to report
7 to McCormick's Grocery in the Jefferson area of
8 Chesterfield County?

9 A. Yes, ma'am.

10 Q. And did you respond?

11 A. Yes, ma'am.

12 Q. What was the nature of the call that went out?

13 A. I don't recall exactly how it first came out. I
14 believe it was an assault or a fight. I can't remember
15 exactly what communications gave out to us but while we
16 were, me and another officer, were responding they upgraded
17 it and said somebody had been cut, stabbed or something
18 like that over the radio.

19 Q. What did you see when you first got to McCormick's
20 Grocery?

21 A. McCormick's Grocery is a convenience store/liquor
22 store/gas, get anything you want there pretty much.
23 There's a store part and in the middle there's like a small
24 liquor store over to the far parking lot it's like where it
25 used to be, like a, club. When I pulled up, there was a

1 couple of cars there at the gas pumps and the diesel pump
2 set off, if you're facing the front of the store to the
3 right side, there was one vehicle sitting there at the
4 diesel pumps when I pulled up.

5 Q. What kind of vehicle was at the diesel pump?

6 A. I couldn't see anything but the back of it, it was
7 like a dunk bed on a truck.

8 Q. And did you see anybody outside of the store?

9 A. Yes, ma'am.

10 Q. What did you see?

11 A. I seen, at that time, a white male standing by the
12 truck at the diesel pumps.

13 Q. Do you know who that person is now?

14 A. Yes, ma'am.

15 Q. Who is that?

16 A. Gary Moore.

17 Q. What was he doing?

18 A. He was - - had - - appeared to be on a cell phone and
19 was flagging me like to come over to where he was so that's
20 what I done.

21 Q. And did you see anybody else at the store at that
22 time?

23 A. No, I didn't - - when he started flagging me to where
24 he was my attention was on him at that time.

25 Q. And did you go talk to him?

1 A. Yes, ma'am.

2 Q. All right. Tell the jury what he told you.

3 A. When I pulled up and got out of my patrol car he was
4 on his cell phone. He - - I don't - - I assume it was our
5 911 dispatch that he was talking to. He made the statement
6 that he was a victim. At which time, I told him to hang up
7 his phone, come over to me. A white female, I cannot
8 describe her to this day, I just remember her being a white
9 female, stuck her head out of the store and made the
10 statement and pointed at Mr. Moore who was standing
11 probably a foot or so in front of me that he's the one that
12 stabbed the man in the store.

13 Q. What did you do at that point?

14 A. At that time, I told Mr. Moore I was placing him in
15 handcuffs for my safety and his and he was being detained
16 until someone else could get there and we can do an
17 investigation.

18 Q. To give him any Miranda warnings?

19 A. Yes, ma'am.

20 Q. And what are Miranda warnings?

21 A. It's warnings of his rights to counsel or anything
22 before we ask you any questions pertaining to the incident
23 that he's being charged with.

24 Q. Did he tell you anything about a knife?

25 A. Yes, ma'am.

1 Q. What was the conversation about the knife?

2 A. When I was putting him in the front passenger seat in
3 my patrol car, he told me that the dispatcher or whoever it
4 was on the phone, told him to put his knife up and he
5 pointed and said it was on his right side and there was
6 like a leather sheath at which time I opened up the sheath,
7 retrieved a folded up like a buck knife or pocketknife and
8 at that time laid it on top of my car until I could secure
9 him in the seatbelt.

10 Q. And did you at some point secure that knife to turn
11 over to anybody else at the sheriff's office?

12 A. Yes, ma'am.

13 Q. And did you, in fact, turn that knife over to anybody
14 else at the sheriff's office?

15 A. Yes, ma'am.

16 Q. Now, what did you do after you secure the knife and
17 secured Mr. Moore in your vehicle?

18 A. Walked inside the store.

19 Q. And what did you see when you walked inside the store?

20 A. In front of the cash register, when you walk to the
21 left, they're several aisles of different things, candy,
22 groceries, about anything you want in there, there's an
23 open area in front the cash register. At that time I
24 looked on the floor and there was approximately a 2 foot by
25 2 foot section of blood on the floor and then a trail going

1 back towards the bathroom area.

2 Q. Did you take pictures of anything in the store?

3 A. Yes, ma'am.

4 Q. Did you take pictures of anything outside of the
5 store?

6 A. Yes, ma'am.

7 Q. And what things did you photograph inside the store?

8 A. The bloody area in front of the cash register at the
9 front of the store. Pretty much all of the blood I seen on
10 the floor and the blood inside the bathroom where Mr.
11 Wallace, well, I didn't know it was Mr. Wallace at the time
12 but, the gentleman that I seen in there later on found out
13 to be Mr. Wallace, but where he was at took pictures of the
14 bathroom.

15 Q. And did you also use your body cam to video anything?

16 A. Just all of the - - I had it on the whole time from
17 the time I pulled up until the time we left, yes, ma'am.

18 Q. Now, you said you went into the bathroom, what did you
19 see in the bathroom?

20 A. When I walked in the bathroom while I was waiting on
21 some more officers to get there, walked in the bathroom
22 area at that time there was two white females and one white
23 male in there and the two white females had rags, like big
24 clumps of rags, holding on his back area and he appeared to
25 be real white in color, gray n color almost.

1 Q. Did you make any contact with EMS about coming to the
2 scene?

3 A. Yes, ma'am. They had already been dispatched and
4 whenever I had seen that I went ahead and told EMS to
5 respond on in.

6 Q. Did you see any wounds on Mr. Wallace?

7 A. I seen one wound at that time because it was only me
8 there and I was trying to get photographs and everything
9 and once the ambulance arrived and another deputy actually
10 arrived, I got in the back of the ambulance and talked to
11 the paramedic and got one photograph of one of the wounds.

12 Q. Now, do you have any personal knowledge where the
13 victim was taken from the scene by EMS?

14 A. I actually asked the paramedic on the ambulance
15 because I called for an investigator to respond to the
16 scene and they hadn't gotten there yet and I asked the
17 paramedics where they were going so I could informed the
18 investigators once they got on the scene, yes, ma'am.

19 Q. And where was he being taken?

20 A. Over on 151, the highway, they have a like a landing
21 pad for a helicopter and they were going to take him over
22 there and load him on the helicopter and send him to
23 Charlotte.

24 Q. He was airlifted to Charlotte?

25 A. Yes, ma'am.

1 Q. I'm going to show you what's been marked for
2 identification State's Exhibit fourteen and fifteen. Do
3 you recognize those photographs?

4 A. Yes, ma'am.

5 Q. And how is it that you recognize those photographs?

6 A. Those are the photographs that I took on that day at
7 McCormick's Grocery.

8 Q. And are those photographs an accurate representation
9 of how the scene looked at McCormick's Grocery on July 14,
10 2015?

11 A. Yes, ma'am. That was approximately maybe five minutes
12 after everything had happened. I ran back to my vehicle
13 and got my camera and started taking pictures.

14 MRS. JOHNSON-LEE: At this time I'd move to have those
15 two photographs put into evidence.

16 MR. KNOX: No objection.

17 THE COURT: In without objection.

18 (Whereupon, the Incident Images (13-17) Photo has been
19 marked and entered into evidence as State's Exhibit No. 14)

20 (Whereupon, the Incident Images (7-12) has been marked
21 and entered into evidence as State's Exhibit No. 15)

22 Q. All right. Looking at photograph fourteen - - -

23 MRS. JOHNSON-LEE: Your Honor, may I have them come
24 down in front of the jury? The pictures are kind of small.

25 THE COURT: Sure.

1 Q. I need you to come in front of the jury just to point
2 out what in these photographs. If you would bring both of
3 those with you, sir.

4 (Whereupon, the witness complies)

5 Q. And just starting at one and then kind of walking
6 down, if you could point out each picture and then show
7 them, describe what that picture details.

8 A. The first picture here is going to be the rear of Mr.
9 Moore's truck and the license plate on it. The second
10 picture is - - -

11 Q. Can you just kind of walked down each picture and show
12 them each one?

13 A. The second picture right here, is going to be the
14 front of McCormick's and the car was right there at me.
15 This third picture right here, is going to be the area
16 where the cash register that I was talking about. And this
17 is going to be also the front of the cash register area.
18 It's like a - - -

19 COURT REPORTER: I can't hear him.

20 A. These pictures right here are just blood and spots
21 inside the store. Like I said, as I was walking through
22 there leading up to the bathroom - - -

23 COURT REPORTER: Stop. I can't hear anything.

24 A. These first couple of pictures are blood, like spots
25 on the ground leading up to the bathroom where Mr. Wallace

1 was that day. And in this other picture, number four, it's
2 the front of the store and Mr. Wallace's blue Chevrolet
3 truck sitting out front. The last picture is a far-off
4 picture of Mr. Moore's truck with the dunk bed that was
5 right by the diesel pumps where Mr. Moore was parked.

6 Q. What is the approximate distance from the front of the
7 store out to the diesel pumps where Mr. Moore's truck was
8 parked?

9 A. In yardage or feet?

10 Q. Either.

11 A. Maybe twenty yards, fifty at the most.

12 Q. Now, in front of the store you got a photograph of the
13 blue, a back of a blue pickup truck, did you say that, that
14 pickup truck, right in front of the store, was the victim,
15 Charles Wallace's?

16 A. Yes, ma'am. If you look at the picture before that,
17 you can actually see that it's right in front of the door
18 going into McCormick's Grocery.

19 Q. So someone would have to go past that, at least at
20 some point, to get into the store?

21 A. Yes, ma'am, to be able to go in the front door.

22 Q. Now, inside the you got some photographs of some
23 things knocked over - - -

24 A. Yes, ma'am.

25 Q. - - - and there's some blood on the floor, is that

1 your understanding that, that is where the fight place?

2 A. Not that, that is where the fight took place but
3 that's where they ended up and Mr. Wallace started losing
4 blood.

5 Q. I'm going to hand you now what's been marked as
6 State's Exhibit's Number Sixteen inside the box. Could you
7 please look at that item, do you recognize that knife?

8 A. Yes, ma'am.

9 Q. Does that appear to be the knife that you retrieved
10 from Mr. Gary Moore on July 14, 2015?

11 A. Yes, ma'am. But when I retrieved it from him it was
12 closed.

13 Q. Who opened that knife?

14 A. Investigator Perry.

15 Q. Could you show that knife?

16 (Whereupon, the witness complies)

17 Q. Thank you.

18 MRS. JOHNSON-LEE: At this time I'd move to put the
19 knife into evidence.

20 MR. KNOX: No objection.

21 THE COURT: In without objection.

22 (Whereupon, the Knife has been marked and entered into
23 evidence as State's Exhibit No. 16)

24 Q. And it did appear that there was some blood on that
25 knife?

1 A. Yes, ma'am.

2 Q. Did Gary Moore make any other statements to you that
3 day?

4 A. Not that I recall. The only statements that he made
5 to me was when I first pulled up that he was the victim and
6 that they told him to put his knife up.

7 Q. Now, did you at some point, turned the case over to
8 the investigators?

9 A. Yes, ma'am.

10 Q. And do you recall which investigators came out?

11 A. Investigator Perry and investigator Burns that sitting
12 back there beside Ms. Tyler or he was.

13 Q. Is there anything else that you did in this case?

14 A. No. Once Sergeant Johnson arrived on scene we
15 transferred Mr. Moore out of my vehicle into his and he
16 transported him to the jail after being Mirandized once
17 again.

18 MRS. JOHNSON-LEE: I beg the Court's indulgence one
19 moment. Thank you. Please answer any questions Mr. Knox
20 has.

21 A. Okay.

22 CROSS EXAMINATION BY MR. KNOX:

23 Q. Sergeant, first of all I want to thank you for your
24 fine services to Chesterfield County as a law enforcement
25 officer. I really appreciate that.

1 A. Yes, sir.

2 Q. But I have a few concerns.

3 A. Okay.

4 Q. And the first concern is that, when you approach the
5 scene you spoke with Mr. Moore, is that correct?

6 A. Yes, sir.

7 Q. And I think he indicated to you that he was the
8 victim?

9 A. Yes, sir. Yes, sir.

10 Q. And what did you take that to be?

11 A. That he can possibly be a victim.

12 Q. That it was possible that he could be a victim. Then
13 he told you that he had stabbed someone?

14 A. No, he never told me he stabbed anyone.

15 Q. Now, did you investigate whether or not he was,
16 indeed, the victim?

17 A. Did I investigate?

18 Q. Yes.

19 A. Well, like I said earlier in my previous statement,
20 while I was talking to him, a white female came from inside
21 the store and hollered out across the parking lot, "he's
22 the one that stabbed," whatever she said, I don't recall
23 the exact words, but pointing towards Mr. Moore said, "he's
24 the one that stabbed him." At which time, I was the only
25 deputy on the scene and for my safety and everybody else's

1 I didn't know what was going on, at that time, I placed Mr.
2 Moore in handcuffs, telling him that he was being detained
3 until we can conduct an investigation and Mirandized him.

4 Q. Now, did you ever follow up on his conversation that
5 he was a victim?

6 A. No. I just photograph, took care of the scene until
7 the investigators got there and then I turned the scene
8 over to them.

9 Q. Now, I noticed on your photographs you said that Mr.
10 Wallace was the victim, how did you determine that Mr.
11 Wallace was the victim?

12 A. I never said Mr. Wallace was a victim. I said - - -

13 Q. On the photographs it says, victim's blood or
14 something - - look at the photos.

15 A. No, sir. I said that there was spots of blood leading
16 towards the bathroom where Mr. Wallace was.

17 Q. And officer - - Sergeant, it says right here primary
18 victim, Charles Lynn Wallace, is that correct?

19 A. Yes, sir.

20 Q. How did you determine that Mr. Wallace was the victim?

21 A. You have to have a victim on the report and he was the
22 only one with stabbed wounds at the time it was listed. He
23 was the victim of a stabbing, not of an assault or anything
24 like that, it was a stabbing that he was a victim of.

25 Q. But Mr. Moore told you that he was the victim?

1 A. Yes, sir, he did.

2 Q. And you didn't believe him, did you?

3 A. Did I not believe him?

4 Q. Mmm, hmm.

5 A. I didn't have no reason not to.

6 Q. But you didn't do any follow-up as far as he was
7 concerned as a victim?

8 A. No, sir.

9 Q. If someone were to call you, call law enforcement and
10 say, "hey I'm a victim", what would you do with him, would
11 you completely ignore him?

12 A. No, sir.

13 Q. Would you investigate it?

14 A. Well, at this point and like I testified just a few
15 minutes earlier was because the nature of the scene I
16 called investigators to it and told them what I had. I had
17 to do an interview with the investigators and everyone and
18 then at that time the investigation was turned over to them
19 due to the nature of the incident and my part was done and
20 turned over to them and so if he was a victim they would've
21 been the ones to take that on and not me. I turned the
22 case over to them.

23 Q. Did you ever see the video?

24 A. No, sir.

25 Q. You've been here earlier when you heard Mr. Wallace

1 testify, weren't you?

2 A. Yes, sir.

3 Q. And he testified that he slapped Mr. Moore?

4 A. That's what he testified, yes, sir.

5 Q. Right. And based on that would Mr. Moore be a victim?

6 A. Yes.

7 Q. Thank you.

8 MR. KNOX: No further questions.

9 MRS. JOHNSON-LEE: I beg the Court's indulgence.

10 **REDIRECT EXAMINATION BY MRS. JOHNSON-LEE:**

11 Q. When you arrived on the scene, who was the person
12 standing outside the store?

13 A. The person that was outside standing or the person
14 that was outside standing motioning for me?

15 Q. The person outside by the truck on the telephone that
16 claimed he was the victim?

17 A. Mr. Moore.

18 Q. Did he have any apparent injuries on him?

19 A. Not that I seen.

20 Q. Who was on the floor in the bathroom in the store?

21 A. I didn't know his name at the time but it was Mr.
22 Wallace that testified earlier.

23 Q. And he was the one with the apparent injuries?

24 A. Yes, ma'am.

25 Q. Did you see at least one stab wound on him?

1 A. Like I said, I didn't - - they were holding pressure
2 on with a big towel and I ran out to my vehicle and
3 retrieved my camera and the paramedics arrived on the scene
4 and I asked them if I could have a quick picture, you know,
5 what they had so I could document it.

6 Q. Who was bleeding profusely?

7 A. Mr. Wallace.

8 Q. Who was white and gray in color?

9 A. Mr. Wallace.

10 Q. Who was in the bathroom with blood pouring out of him?

11 A. Mr. Wallace.

12 Q. And who did not have any blood or any apparent
13 injuries on him?

14 A. Mr. Moore.

15 Q. In looking at this case as a whole, who was the victim
16 in this case?

17 A. In my opinion, would be Mr. Wallace.

18 Q. Thank you, sir.

19 MR. KNOX: Nothing further, Your Honor.

20 THE COURT: Thank you very much.

21 MRS. JOHNSON-LEE: Can this witness be excused?

22 MR. KNOX: Without objection.

23 MRS. JOHNSON-LEE: No, wait just a moment. We would
24 reserve the right to recall Mr. Hutchison if he could just
25 stay.

1 THE COURT: Okay.

2 MRS. JOHNSON-LEE: Steven Hooks.

3 CLERK: Place your left and on the Bible and raise
4 your right. Do you swear your testimony to be the truth,
5 the whole truth, and nothing but the truth so help you God?

6 MR. HOOKS: I do.

7 STEVEN HOOKS, first being
8 duly sworn, testified as follows:

9 **DIRECT EXAMINATION BY MRS. JOHNSON-LEE:**

10 Q. Please state your name for the record?

11 A. Steven Michael Hooks.

12 Q. Mr. Hooks, do you live here in Chesterfield County?

13 A. Yes, ma'am.

14 Q. Were you at McCormick's Grill or Grocery on July 14,
15 2015?

16 A. Yes, ma'am.

17 Q. Do you remember about what time you got into the
18 store?

19 A. Well, not really because I don't watch my watch so
20 much but I would say about 5:54, 4:54, something like that.

21 Q. Afternoon?

22 A. Yes, ma'am.

23 Q. And what was your purpose in going to the store that
24 day?

25 A. I go there every evening because it's on my way home

1 and I get my beverage, you know, a couple of cigarettes and
2 Ms. Deese will give me an egg roll or something, then I go
3 home.

4 Q. Before that date, did you know Gary Moore?

5 A. No, ma'am.

6 Q. Before that date, did you know Charles Wallace?

7 A. No. No, ma'am.

8 Q. What happened in the store that day that you
9 witnessed?

10 A. Well, my fiancé pick me up at work and we stopped in
11 there and I said let me go in here and get my stuff so I
12 walked through the door and there's a first aisle that goes
13 where I want to go. And I opened the door and I picked my
14 stuff up and about the time, I turned around this cracker
15 aisle, I mean, cracker stand fell over. I said, what if
16 some kid knocked it over or something. There's a bunch of
17 crackers on there. So I went walking up through there
18 about five or six feet and I see two men on the floor and
19 then I seen the blood. So Mr. Moore and Mr. Wallace was on
20 the floor so I grabbed Mr. Moore to try to break them apart
21 from each other. And then the next thing I know, it went
22 so fast, Mr. Moore was out the door and I helped Mr.
23 Wallace to the bathroom.

24 Q. Did you hear anything being said between the two of
25 them prior to seeing them on the floor?

1 A. No, ma'am, just a bunch of grunting when they were on
2 the floor.

3 Q. When you saw them on the floor, did it appear that
4 they were equally engaged in the fight?

5 A. To my knowledge it was like a bear hug, you know,
6 something like that. It happened so fast and the floor was
7 slick, so

8 Q. Why did you grab Mr. Moore first as opposed to Mr.
9 Wallace?

10 A. Because when I come down the aisle Mr. Moore was the
11 first one to the edge of the aisle and the first one I
12 could grab, that's the one I grabbed.

13 Q. And did you pull him off or away from Mr. Wallace?

14 A. I don't know, equally, I guess. Maybe he was getting
15 off or I was pulling him off, either way.

16 Q. Now, did you see either one of them with a weapon?

17 A. Not to my knowledge. Like I said, it was going so
18 fast and when it was about over with I just happened to
19 look down and I got me a nick.

20 Q. Do you know, at the time, where that nick came from?

21 A. Not really. But after the incident was over with Mr.
22 Wallace was pretty bad hurt.

23 Q. Did you see any injuries on Mr. Moore as you were
24 pulling him up?

25 A. No, ma'am, because he went out the door, you know.

1 Q. He went out the door?

2 A. Yeah.

3 Q. As he was going out the door, did you see any injuries
4 on him?

5 A. No, ma'am.

6 Q. You said you did see injuries Correct. o Mr. Wallace?

7 A. Yes, ma'am.

8 Q. What did you see on Mr. Wallace?

9 A. Well, let's see, Ms. Deese, my fiancé because my
10 stepdaughter, well I call her my stepdaughter, she was in
11 the store and she seen - - she jumped over and went out the
12 door. She was scared. She ain't but fourteen years old.
13 She went out there and told my fiancé - - -

14 Q. Don't say anything said, okay?

15 A. Okay.

16 Q. Thank you. But she did run out the door?

17 A. Yes. She got out of the way.

18 Q. Did you have a dog in this fight at all? In other
19 words, did you have any reason to be involved in this
20 fight?

21 A. No. I know Melissa she was hollering, she was
22 screaming to the top of her lungs and stuff like that so I
23 was just trying to help out, you know.

24 Q. So you were just a good samaritan?

25 A. I guess.

1 Q. And got a cut on your arm in the process?

2 A. Yeah. No big deal.

3 Q. Did you see where Mr. Wallace went after you helped
4 him up off the floor?

5 A. Where Mr. Wallace went?

6 Q. Yes.

7 A. To the bathroom.

8 Q. Did you go back there?

9 A. Yes, ma'am.

10 Q. Did you see any of his injuries?

11 A. Yes, ma'am.

12 Q. What did you see?

13 A. On his back. Two on the back and two on his side, I
14 think.

15 Q. Was there a lot of blood?

16 A. Yeah.

17 Q. Did he, at any point, appear as though he was going to
18 pass out?

19 A. Yeah. I had to smack him on the face to wake him up a
20 little bit.

21 Q. Thank you.

22 MRS. JOHNSON-LEE: I beg the Court's indulgence.

23 Thank you. That's all the questions I have. Answer any
24 questions Mr. Knox has for you.

25 MR. KNOX: Your Honor, may we approach?

1 THE COURT: Yes, sir.

2 (Whereupon, a bench conference was held)

3 THE COURT: Are you okay?

4 (Whereupon, the Court was talking to a juror)

5 THE COURT: You needs some coffee?

6 (Whereupon, the juror answers by the nod of the head)

7 THE COURT: Okay. Let's take a break and get some
8 coffee. Thank you, Mr. Knox.

9 (Whereupon, the jury exits the courtroom at 3:11 p.m.)

10 THE COURT: Everyone stand at ease for a minute.

11 (Whereupon, the Court went back on the record at 3:20)

12 THE COURT: All right. We're back on the record and
13 it's not clear on the record what transpired but Mr. Knox
14 caught that one of the jurors apparently had nodded off. I
15 had been watching but it did happened. Obviously, she had
16 nodded off. I was hoping that she was just squinting from
17 the sun coming in here but I can inquire, Mr. Knox
18 certainly, at this time. You're the one that saw it. I
19 don't know how long it went on. I'm sure if anybody on the
20 Court's staff had noticed it, they would've caught it too
21 but you certainly have a right to request the Court at this
22 time to relieve her and we move the alternate up but that
23 would be your call and I will certainly consider it.

24 MR. KNOX: Can I confer with my client?

25 THE COURT: Yes, sir.

1 MR. KNOX: Your Honor, we will keep her at this time.
2 It appears that she was probably squinting as opposed to
3 sleeping.

4 THE COURT: And we do have a problem here, and
5 hopefully, one day will get corrected. All right.
6 (Whereupon, the jury enters the court at 3:20 p.m.)

7 THE COURT: Ms. Burch, we couldn't tell if you nodded
8 off on us or whether you were, because all thIS sun coming
9 in, did you miss any of the testimony?

10 MS. BURCH: No.

11 THE COURT: Are you okay?

12 MS. BURCH: Huh,huh.

13 THE COURT: I was almost tempted about thirty minutes
14 ago to send out to my car to get my sunglasses. I
15 apologize for this but certain times of the year it is
16 really a problem and I know you're suffering from it too.
17 I wish there was something we could do but I'm afraid of
18 heights and I'm not going to climb up there.

19 Solicitor, you may proceed. Oh, no, I'm sorry, Mr.
20 Knox, whoever was up.

21 **CROSS EXAMINATION BY MR. KNOX:**

22 Q. Mr. Hooks, I think you testified that you pulled Mr.
23 Moore off of Mr. Wallace, is that correct?

24 A. Yes, sir. I believe he was - - well, he was the one -
25 - like the rack is right there, I could see the back of him

1 right there and when I did - - -

2 Q. Was he the first one you got to?

3 A. Yes, sir.

4 Q. And at that time did you see any weapon?

5 A. Not offhand.

6 Q. Did you see him stab him?

7 A. No, sir.

8 Q. And once you pulled Mr. Moore away from Mr. Wallace
9 was the fight over?

10 A. Yes, sir.

11 Q. And what did Mr. Moore do after that?

12 A. It happened so fast, I believe, he went out the door.

13 Q. He left the scene, went out the door?

14 A. Yes, sir.

15 Q. Did he ever come back in?

16 A. No, ma'am. No, sir.

17 Q. Thank you.

18 MR. KNOX: No further questions.

19 MRS. JOHNSON-LEE: No further questions.

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

21 MRS. JOHNSON-LEE: May this witness be excused?

22 MR. KNOX: No objection.

23 THE COURT: The witness is excused. You may stay or
24 leave.

25 MRS. JOHNSON-LEE: The State calls Justin Threatt.

1 CLERK: Place a left on the Bible and raise your
2 right. Do you swear to tell the truth, the whole truth,
3 and nothing but the truth so help you God?

4 MR. THREATT: Yes.

5 JUSTIN THREATT, first being
6 duly sworn, testified as follows:

7 **DIRECT EXAMINATION BY MRS. JOHNSON-LEE:**

8 Q. Please state your name for the record.

9 A. Justin Threatt.

10 Q. And where you employed?

11 A. First Health of the Carolina EMS, Chesterfield.

12 Q. Do you live here in Chesterfield County?

13 A. No, ma'am, I do not.

14 Q. How long have you worked for First Health?

15 A. Approximately a little over four years.

16 Q. And do you work in Chesterfield County?

17 A. Yes, ma'am.

18 Q. How long have you worked for First Health in
19 Chesterfield County?

20 A. Approximately a little over four years.

21 Q. Were you working on July 14th of the year 2015?

22 A. Yes, ma'am.

23 Q. And did you receive a call to go to McCormick's Grill
24 and Grocery in the Jefferson area of Chesterfield County?

25 A. Yes, ma'am.

1 Q. What was the nature of that call?

2 A. I can't remember. As Mr. Hutchison said, I can't
3 remember how dispatch put it out. I can't remember if they
4 put it out as a fight or altercation, assault I'm not sure
5 how it come out as far as dispatch wise.

6 Q. But you did respond to that scene?

7 A. Yes, ma'am.

8 Q. What did you find upon responding to the scene?

9 A. Upon arriving on scene which we staged prior to that
10 after law enforcement secured the scene; we went in. I was
11 met by Mr. Hutchison upon our arrival. He told us that the
12 person we were coming to see was in the restroom and he had
13 been bleeding.

14 Q. Did you going to the restroom?

15 A. Yes, ma'am, I did.

16 Q. What did you find?

17 A. Mr. Wallace was sitting on a commode, I believe.
18 There were two other ladies in the restroom and they were
19 holding pressure on his wounds to keep him from bleeding
20 and we bandaged them to secure the rest of the bleeding for
21 them to stop.

22 Q. What did you do at that point?

23 A. We bandaged them; stop the bleeding; we assisted him
24 in standing; he began sitting him our stretcher and we took
25 him outside to our truck so we could better take care of

1 him.

2 Q. And who is we?

3 A. My partner and myself.

4 Q. Who is your partner?

5 A. Russell Horton.

6 Q. Did you look at any of the wounds on his body or
7 ascertain what type of immediate treatment you needed to
8 do?

9 A. Yes, ma'am.

10 Q. And what did you find as far as his wounds?

11 A. There were two wounds on the left side of his back and
12 two wounds on the left front side of his abdomen area.

13 Q. Did he appear as to whether he had lost a good amount
14 of blood?

15 A. When we got there we noticed that there was blood in
16 front of the cash register. The patient appear to be
17 sweating and pale at that point in time when we got there.
18 So as far as how much he lost I'm not sure but there was a
19 good amount of blood on the floor.

20 Q. And what is the significance to be sweating and to his
21 color?

22 A. As far as the color and the sweating, when everybody
23 goes into shock that is part of it's compensation measure.

24 Q. Did it appear that he was going into shock?

25 A. At that point in time, yes, ma'am.

1 Q. And what did you do as a result of that?

2 A. We bandaged his wounds; took him to the truck;
3 monitored his vitals; we called a helicopter due to the
4 time of the day it was; knew that he needed to go to a
5 trauma facility; the closest one around is Charlotte and at
6 5 o'clock in the afternoon it was going to take longer for
7 us to drive to Charlotte than it was to fly him to
8 Charlotte.

9 Q. And so did you set up a landing zone or have someone
10 set up a landing zone?

11 A. Yes, ma'am, we did.

12 Q. And where was that at?

13 A. It was at Sandhill Volunteer Fire Department Station
14 3, which is located on 151.

15 Q. And did you actually assist in transporting him on to
16 the helo flight to Charlotte?

17 A. Yes, ma'am.

18 Q. Were you able to determine, from your experience, what
19 he would have been stabbed with?

20 A. No, ma'am. I have no clue other than when we got on
21 scene I'd ask Mr. Hutchison or officer Hutchison about, you
22 know, if he knew what he got stabbed with or whatever and
23 he showed or he told us that it was a knife that had about
24 a three to four inch long blade.

25 Q. And were these penetrated injuries?

1 A. They appear to be.

2 Q. The level of service, did it include advanced life
3 support?

4 A. Yes, ma'am.

5 Q. And were his wounds consistent with needing advanced
6 life support?

7 A. Yes, ma'am.

8 Q. Was he able to sign any of the documents that First
9 Health normally has patients sign?

10 A. We didn't get him to sign due to the patient care. He
11 probably could have signed them but as far as us, we took
12 him to the helicopter, to the helo pad, the helicopter was
13 landing and we transferred him so quick it was just easier
14 for us to get the RN to sign for us that was on the
15 helicopter.

16 MRS. JOHNSON-LEE: I beg the Court's indulgence.
17 That's all the questions I have. Please answer any
18 questions Mr. Knox has.

19 MR. KNOX: No questions.

20 THE COURT: Thank you, sir. You may step down. You
21 need to get back to work?

22 MR. THREATT: No, sir.

23 MRS. JOHNSON-LEE: Mr. Horton is in the courtroom but
24 we will not call him because his testimony will be
25 duplicated so we'd asked that both of them be excused.

TIM PERRY- DIRECT EXAMINATION BY JOHNSON-LEE

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1 THE COURT: Okay. You're free to go or you can stay.

2 MRS. JOHNSON-LEE: Tim Perry.

3 CLERK: Place your left hand on the Bible and raise
4 your right. You swear your testimony to be the truth, the
5 whole truth, and nothing but the truth so help you God?

6 MR. PERRY: Yes, ma'am.

7 TIM PERRY, first being
8 duly sworn, testified as follows:

9 **DIRECT EXAMINATION BY MRS. JOHNSON-LEE:**

10 Q. Please state your name for the record?

11 A. My full name is James Timothy Perry but verbally I go
12 by Tim Perry.

13 Q. And who are you employed with?

14 A. Chesterfield County Sheriff's office.

15 Q. What is your current job there?

16 A. Currently I handle and perform the civil process
17 papers for Chesterfield County.

18 Q. Previously were you an investigator with the Sheriff's
19 office?

20 A. Yes.

21 Q. And was there an interruption in your service between
22 the investigator and working in the process division?

23 A. Yes.

24 Q. And what did you do during the intermission?

25 A. I tried to be a schoolteacher.

1 Q. And where was that at?

2 A. Chesterfield High School.

3 Q. Now what is your background in law enforcement?

4 A. Roughly about thirty years. I started with the South
5 Carolina Highway Patrol. I did that for twenty-five years.
6 The latter part of that I was actually involved in the
7 accident reconstruction MAIT team as some of you may be
8 familiar with which was a more specific investigative type
9 unit that dealt with a very wide variety of unique things
10 dealing with automobile collisions. But I had the pleasure
11 of dealing with murder scenes, helping and assisting of
12 other agencies, and being able to map catalog collection of
13 evidence, airplane crashes and just other general stuff.
14 Our field was kind of unique. Also I've worked with the
15 sheriff's office after I retired from the highway patrol.
16 I did civil process shortly and then became, I was the
17 investigator for the Fourth Circuit Judicial Solicitors
18 Office for about two years. And then from that I got back
19 into law enforcement again and here I am.

20 Q. And were you working as an investigator on July 14,
21 2015?

22 A. Yes, I was.

23 Q. Now, how long were you still with the sheriff's office
24 prior to teaching during that time period?

25 A. Actually that very week. This occurred on the 14th,

1 which was a Tuesday of that week and that following
2 Thursday was actually the last day that I worked with the
3 agency.

4 Q. Now, how did you become involved with this particular
5 case?

6 A. Myself and investigator Burns just happened to be at
7 the office trying to clear up on some other matters when
8 apparently we overheard the call and with the urgency with
9 the matter of what it happened in reference to a fight with
10 a knife involved and a person that was severely injured.

11 So I followed officer or investigator Burns to the
12 locations which was McCormick's Grocery located at the
13 intersection of Peach Orchard Road and Kirkley Road in the
14 Jefferson area.

15 Q. Now, what did you observe when you arrived at
16 McCormick's?

17 A. As we pulled in, got out immediately to define what
18 officer Hutchinson had already had a person already held
19 and was in the, I believe, in the other patrol vehicle I
20 think it was officer Robert Johnson, I believe it was, was
21 there and he had already placed him in his car. So we went
22 in, immediately tried to go ahead and see what the scene,
23 we wanted to check everything out to see what our
24 disposition was. I go into the store, as I walk into the
25 store I see one of the ladies that work there, she has a

1 mop, she's actually cleaning up the area. I kinda caused
2 her to stop and ask her what are you doing. She indicated
3 well, we were told that it was okay to clean up. They had
4 already lifted the racks and stuff was kind of already kind
5 of just cleaned up and put up. So I immediately just told
6 them, kinda hold off on that. I went outside and met with
7 officer Hutchinson again and ask him, has anybody been
8 interviewed or anything on that part, who all and so
9 immediately upon that he had indicated, no. So immediately
10 I jumped into the part of trying to perform and take part
11 of interviews with the people that may have witnessed or
12 saw what had happened which happened to be Ms. Griffin,
13 Melanie. I think it was the young lady, Mr. Deese and then
14 I think it was Ms. Debra McCormick and the other ladies and
15 also in that time the owner of the store had come in and
16 that's when we learned, of course, there was a video system
17 and he allowed me to view that, myself an officer Burns, he
18 allowed us to view the video.

19 Q. Now, did you ascertain as to whether or not the store
20 itself had a video system in place?

21 A. I did and, of course, they'd indicated that it does
22 but they would have to wait on the owner and, of course,
23 she shortly arrived thereafter.

24 Q. Did you watch the video at the store of what occurred
25 between Mr. Wallace and Mr. Moore?

1 A. Yes.

2 Q. And what did you see on the video?

3 A. On the video, now, this was in his office he has a
4 little screened area assigned to his recording system there
5 that he has. We were able to see because there were
6 multiple cameras that he has for the store but the best
7 when we got was the one that's actually where the cashier
8 is at behind her and looks through an open area to an aisle
9 of the store. In watching that, we observed an individual,
10 they were a couple of individuals moving around but then
11 finally I see an individual and the person identified that,
12 that's the man there. As he comes in, we see him slowly
13 come in as far as walking through, then he makes a left to
14 go up one of the aisles or proceed down one of the aisles
15 and, in doing so, immediately behind him was another
16 gentleman which was the victim here today, Mr. Wallace,
17 apparently come up behind him and we saw him take one of
18 his hands and go upward as if going up to perhaps to get
19 the attention of the first individual. And in doing so,
20 you can see the action of the first individual immediately
21 turn, apparently rush the individual which was the, Mr.
22 Wallace. As he rushes him you can see where they get
23 caught up and it was like Mr. Wallace goes backwards down
24 into the floor and the other, the first individual is now
25 on top of him in the floor, and you can see kind of the

1 menagerie of arms and hands and some, the things they were
2 kind of moving around. So that's what my primary was to
3 try to document that event since that seemed to be, that
4 was the focus of this.

5 Q. And did you see the end of the video?

6 A. Towards the end of, you see a third person get
7 involved to the melee and in doing this, you see the person
8 he's more inclined with the person that's on top, which was
9 Mr. Moore, as he is attempting to pull him up and away
10 from. And as he's getting him up, then you see as the
11 other gentleman is trying to get up as well, you see Mr.
12 Moore with his action of still kinda of in a thrusting
13 motion or swinging, prodding, and apparently that was where
14 the part shortly to that you start to see the issues with
15 it looks like blood, things, you start to see that.

16 Q. Now, this particular video system at the store was it
17 capable of being downloaded onto some other system?

18 A. Now, that I tried. I had a flash drive system because
19 he had a nice system in this store and upon me trying to
20 download to capture all of this information, we were able
21 to code it to where it would download but every time I
22 attempted to do that part, where I guess to format, it
23 would not allow me to do that. It would not allow it to
24 capture or re-paste or whatever, go to my flash drive. I
25 couldn't - - I couldn't do anything with it. So based on

1 that and while I was there that's when I made the choice to
2 try to use my cell phone that I had, my work cell phone
3 which was an iPhone 4, to try to utilize the video system
4 of it to try to capture this part of the video to document
5 this event, but, unfortunately, the battery life, it had
6 been a long day that day, the phone was not keeping up and
7 I ended, actually ended up using investigator Burns' work
8 phone to capture the video.

9 Q. So it was downloaded on investigator Burns' cell
10 phone?

11 A. Well, yes, we captured it from the viewing screen in
12 Mr. Keith McCormick's office and then from there later it
13 was downloaded from Mr. Burns' work phone to our work
14 computers and placed on DVD.

15 Q. Now, at some point, did you take possession of the
16 knife in this case?

17 A. I did. We learned, of course, the knife, the
18 individual, we learned through deputy, Officer Hutchinson
19 that the knife, the person he had a knife on him. The
20 knife was retrieved from him and in doing so, I wanted to
21 see the knife to document that and therefore there were
22 some photographs taken of it because I actually ended up, I
23 opened it up to see what is the disposition of it. When I
24 opened it up it's a - - is a locked blade type knife. It's
25 one of the nicer, it's a full handle type, the one that you

1 would have to, probably I would say four and half to five
2 inch type, probably pull out, maybe got a four and half
3 inch blade on it that locks out. When I did that, of
4 course, immediately you can see some red coloration, some
5 fluid or some residue upon the blade. So at that time I
6 left it like that in that position and it was documented
7 and taken into custody for evidence and placed into our
8 evidence, you know, there's my box.

9 Q. I'm going to hand you what's marked as State's Exhibit
10 Sixteen.

11 A. Yes. Thank you.

12 Q. Will you take that out and tell the jury that, that is
13 the knife you received from Sergeant Hutchinson?

14 (Whereupon, the witness complies)

15 A. What I am looking at here is a box. I recognize the
16 writing on it. This is my writing and my notes for which I
17 did for packaging and being able to secure that because
18 once this was done, the knife was placed in this very box,
19 we have a locked evidence system there, it's kind of what
20 we refer to as a drop box area for our other evidence
21 technicians when they do come in, the documentation with
22 it, they'll be able to catalog it and secure it for us. So
23 this is the actual box and, yes, this is the knife. It's
24 still in the open position in which I left it. And, of
25 course, you can see upon the blade area a little residue

TIM PERRY- DIRECT EXAMINATION BY JOHNSON-LEE

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1 that's still upon it. And this is a Buck, Buck lock blade
2 knife.

3 Q. Thank you. Now, did you also take possession of a
4 shirt or some type of clothing?

5 A. Yes. We learned that apparently the individual, Mr.
6 Wallace, upon after, the other individuals there, the young
7 ladies that actually worked in the store, discovered it,
8 the bleeding and the wounds upon Mr. Wallace they took him
9 into the bathroom area and tried to help him out or clean
10 him up, apparently, but they could not stop the bleeding.
11 He had on like this, they indicated a shirt, and the lady
12 told me that they had put it, it might be in the trash can
13 in that restroom. So, of course, when in to discover that.
14 We could see the blood, some areas in there, where
15 apparently on the toiletry area, the seat cover, there was
16 some stuff on the wall, a bunch of, looks like, paper
17 towels I guess they had been trying to use them I guess to
18 try to wipe up the blood or keep, you know, bleeding. But
19 that was where he was at, they said, until EMS officials
20 came in. So I went ahead, at that time, brought it to
21 investigator Burns' attention about that because we wanted
22 to go and collect that as well and that was collected.

23 Q. So you collected it and notified investigator Burns?

24 A. Yes. We were both in there in the bathroom area when
25 it was collected.

1 Q. What was done with the shirt?

2 A. Actually, I had a, what they call a grocery bag, you
3 know - - yeah, right there and it was placed in that
4 grocery bag.

5 Q. All right. Did you do anything additional with this
6 case after leaving McCormick's Grocery that day?

7 A. As far as with the scene there, other than that it was
8 just getting the interviews with the people that were
9 involved that saw. The young lady that was the actual
10 clerk that was behind, at the register area when the fight
11 or disturbance there took place. And then I think that was
12 Ms. Griffin and then Ms. Deese and Ms. McCormick. As far
13 as anything else with that other than help document, it
14 might've been a couple of pictures that were taken plus
15 with the video, trying to get that captured for what I
16 could and until the next day I assisted officer Burns with
17 the interview with Mr. Moore.

18 Q. Thank you.

19 MRS. JOHNSON-LEE: Answer any questions Mr. Knox has
20 please.

21 A. All right. Thank you.

22 **CROSS EXAMINATION BY MR. KNOX:**

23 Q. Detective Perry, you said that, that knife was
24 retrieved from Mr. Moore by Mr. Hutchinson, Sergeant
25 Hutchinson?

1 A. That is - - that is correct. Because that is how I
2 took possession of it, was from Mr. Hutchinson.

3 Q. Was anything else retrieved besides that knife?

4 A. As far as from officer Hutchinson, no, not at that
5 time because the only thing was with a knife, we learned of
6 that, I wanted to know where it was at. He had identified
7 he had it secured in his vehicle and then we went out. And
8 then, of course, he identifies that for me and I went ahead
9 and took possession of it and placed it into, I think - - -

10 Q. So Mr. Moore didn't try to hide that knife or keep it
11 away from law enforcement?

12 A. Well, now I was not present when officer Hutchinson
13 and Mr. Moore actually met, I was not present at that time.

14 Q. Now, I don't think I heard you clearly and you can
15 correct me if I'm wrong, did you say that's typical of a
16 knife used in a trade or business?

17 A. No, I never did comment to that but I will say that
18 the Buck knife, this particular knife, I actually have a
19 knife somewhat myself, an old Buck, that somewhat similar
20 to this that my father gave me years back.

21 Q. Mmm, hmm.

22 A. It seemed to be what they called, a lot of people used
23 to call them like old skinning type knife or multi-purpose
24 type knife.

25 Q. So it could be used in a trade or business?

1 A. Yes, it could be. But the best thing about it when I
2 look at the blade and you can see how the blade it's still
3 got a nice form, it's not like really chewed up, messed up
4 where somebody's probably been doing a whole lot of stuff
5 with it.

6 Q. And is it illegal to carry this type of knife in South
7 Carolina?

8 A. No, sir. You would be allowed. You could carry that.
9 It's a locked blade knife. I mean, it's not like a
10 switchblade.

11 Q. And is it normally carried by a person inside of their
12 holster - - -

13 A. It could. A carrying holster type for it that's not
14 uncommon.

15 Q. It's attached to a belt?

16 A. Yeah. Yes, sir, you can do that.

17 Q. And a person can carry that knife in plain view?

18 A. He could. Yes, he could.

19 Q. Now, you said that you were present and you observed
20 the store video?

21 A. Yes. Once we learned of that I did go back in. I
22 wanted to take notice and observe that.

23 Q. And you and Detective Burns made a video from a
24 department issue cell phone?

25 A. Yes, sir.

1 Q. What type of cell phone wasn't it?

2 A. Iphone 4.

3 Q. Iphone 4. And who actually did the recording, did you
4 or did Detective Burns?

5 A. I did. I was the one that held the phone in the
6 position to capture the screen.

7 Q. And on that recording, you and Detective Burns was
8 doing a play-by-play on what was actually happening,
9 weren't you?

10 A. Yes, because the phone itself with its record mode it
11 has an audio and with the video and you could hear - - -

12 Q. If they actually saw the video there's no voice,
13 there's no audio?

14 A. That is correct. There is no audio with the actual
15 store video.

16 Q. So you and Detective Burns supplied the audio, is that
17 true?

18 A. Yeah, because as we were observing that, there were
19 some commentaries that we made, yes.

20 Q. You made commentary like you were a news reporter or
21 something like that?

22 A. Not so much in, I guess, narrating anything but being
23 able to identify what we were seeing or what happened?

24 Q. Well, why didn't you just record it and make no
25 comment?

1 A. I guess it's because of the moment of what's going on.
2 Sometimes you will just do things without thinking, sir.

3 Q. You were overcome with excitement?

4 A. I wouldn't say it's excitement though, but it's just
5 that the commentaries that would be made would, because me
6 and him in our business, our job.

7 Q. Does your department have procedures for making a
8 video?

9 A. Not specifically other than when we have - - we do
10 have video equipment we have would have been furnished.
11 But I did not have my video camera with me because another
12 officer had it.

13 Q. But you did have a department issued cell phone?

14 A. Yes.

15 Q. Are there any standards, procedures that you have to
16 use when you use that phone to make a recording?

17 A. At that time, not anything directly, hard wrote down.
18 It was just that I knew that I wanted to capture this
19 episode before anything may happen to this, not knowing
20 what could happen to that store in the next twenty-four
21 hour. So, therefore, to avoid that, that's why I captured
22 it the best way that I could.

23 Q. But you wanted to do more than just capture it, didn't
24 you?

25 A. I don't know, I mean, - - -

1 Q. You wanted to supply some sound to it, didn't you?

2 A. Now, when my comments that were made were based on
3 what I was just observing. Now, I wasn't trying to narrate
4 or edit this, that was not being done.

5 Q. Well, wasn't one of the comments that you or Detective
6 Burns made was that, "see, the old man hit him", do you
7 remember saying that?

8 A. Yes. That was the part that I was talking about where
9 you can see it's like at that time Mr. Wallace had come up
10 to him and you could see the hand go up towards the head
11 area of Mr. Moore.

12 Q. And this was as when Mr. Moore was entering the store,
13 is that correct?

14 A. Apparently, he had already entered into the store but
15 as, just right after he had turned to go down an aisle,
16 yes, sir.

17 Q. So on your video that you all supplied the voice to,
18 you were saying, "see, he hit him", meaning that Mr.
19 Wallace hit Mr. Moore?

20 A. Yes. We saw that something took place because it
21 immediately got the attention of Mr. Moore because then you
22 see his response.

23 Q. Otherwise, Mr. Moore was minding his business until
24 that incident happened?

25 A. Yes. Based on watching the video you would see Mr.

1 Moore, yeah, just basically, come in and walk and then go
2 down the aisle and then you'd see Mr. Wallace come up and
3 then the action take place.

4 Q. And you thought that was very important, right?

5 A. Well, at that moment the capture that was the main
6 event is you would probably describe or I would refer to.

7 Q. And - - -

8 A. That's what took place and it seemed to be that was
9 where the extent of where the injuries came from.

10 Q. And that's why said, "see, he hit him"?

11 A. Well, we were trying to see exactly because we were
12 not there, unfortunately, at the time it took place. So,
13 therefore, using this video which captured this event to
14 allow us the ability to now see what did happen. Was there
15 provocation? Was there something here that created and
16 started this, other than did somebody doing something to
17 somebody on purpose?

18 Q. Now, you have stated - - your testimony is you have
19 over thirty years in law enforcement?

20 A. Yes, sir.

21 Q. Now, when someone hits someone, is that considered a
22 battery?

23 A. Technically.

24 Q. Technically. How about untechnically, would that be
25 considered a battery, lawfully, with that be considered a

1 battery?

2 A. Well, if you technically by the way the law would have
3 it, if, let's say for example, me and you were to meet and
4 I took one of my hands and decide to shrug you into your
5 shoulder, even though that motion when I shrugged you, you
6 didn't wish for that to happen, okay. So, therefore, I've
7 encroached upon you and, therefore, initiated some action
8 that was probably unprovoked or uncalled for.

9 Q. And that is a battery, isn't that, sir?

10 A. Yes, sir, it would be.

11 Q. It is a battery. And if someone had a battery
12 committed upon them, would that person be considered a
13 victim?

14 A. Well, I guess you might say if they complained.

15 Q. No, I want you to say, would that person be considered
16 a victim?

17 A. The way I would look at a victim would be if the
18 person if he wanted to complain about it, then he would be,
19 obviously, shown as the victim.

20 Q. But Mr. Moore did complain to the first officer who
21 arrived on the scene that he was the victim, is that
22 correct?

23 A. That was a comment made. Yes, sir. I overheard that
24 on the video.

25 Q. And the Chesterfield County Sheriff's Department never

1 did follow up on the complaint, did you?

2 A. Well, sir, at the time, not knowing exactly what may
3 have transpired and just like with the deputy, Hutchinson,
4 when he first got there, you don't know exactly what is now
5 happened. You have to now, it's like a puzzle, you've got
6 to put things together. You got a person whose approached
7 you that he's a victim, okay, well that's fine but not
8 knowing what all's happened you've got somebody coming out
9 trying, makes a comment because that was on the same video,
10 that as the person that stabbed the person in the store.
11 So you need to secure things. Let's just go ahead, like
12 the old saying, I guess there's two sides to every coin,
13 let's go ahead and work this thing and let's see exactly
14 what extent of this.

15 Q. Right. Now, the missing piece to a puzzle, excuse me,
16 was the video, is that correct?

17 A. Well, the video was very substantial in being able to
18 show the interior area of the store what transpired.

19 Q. But you did make a comment that, "see, he hit him"?

20 A. Yes, there was a comment. Yes, sir.

21 Q. And that is a battery?

22 A. Technically, yes, sir.

23 Q. And that was never investigated by the Chesterfield
24 County Sheriff's Department?

25 A. I wouldn't say not investigated but my thing would be

1 as far as to the provocation of that, would that give a
2 person the extent to kind of overboard or go, I mean, now,
3 if he probably turned around and slapped the man back then
4 that would be what we would refer to our mutual combat
5 standards, but that seemed to go in much more escalation
6 beyond that point.

7 Q. But nothing can change the fact, you or anyone else
8 here today can change the fact, that on that video if it's
9 shown that they will see Mr. Wallace hitting Mr. Moore
10 which started this chain of events, is that correct?

11 A. Yes. You're going to see that Mr. Wallace takes one
12 of his hands, goes up to the head area of Mr. Moore, you
13 will see that. And - - -

14 Q. And you were so impressed by that, that you had to
15 give audio to that to describe what exactly was happening,
16 isn't that correct?

17 A. Well, it's not that I was directly giving audio for it
18 it was just that something I observed and I commented about
19 it.

20 Q. But the store video didn't have any audio?

21 A. No, it did not. It was my referral to officer Burns
22 to indicate what was being viewed.

23 Q. Thank you.

24 MR. KNOX: No further questions.

25 THE COURT: Anything else?

1 MRS. JOHNSON-LEE: Just a few questions, Your Honor.

2 REDIRECT EXAMINATION BY MRS. JOHNSON-LEE:

3 Q. Mr. Knox ask you about whether or not on the video it
4 appeared that the defendant was minding his own business
5 but it also made it clear, there's no audio on that video
6 at the store, is that correct?

7 A. Correct.

8 Q. So you couldn't hear watching the video anything that
9 Mr. Moore may or may not have said to Mr. Wallace that
10 initiated this entire chain of events, is that correct?

11 A. Correct.

12 Q. Now, he also question you about on the video some
13 things that you said, that you and Mr. Burns while watching
14 the video, towards the end of the video, did one of you
15 also make a statement about the thrusting action of Mr.
16 Moore?

17 A. That may have been me that made that comment, I
18 believe because he was already - - both - - everybody was
19 in an upright up on their feet whenever - - yeah.

20 Q. Now - - could you repeat that part?

21 A. Everybody was already up on their feet. You had the
22 individual, that third person, Mr. Hooks, who'd come in and
23 actually pulled Mr. Moore up and got back to get him off,
24 and then you see the other vehicle as he's getting up, the
25 other person, Mr. Wallace, and then you see the action

1 between them that's still continuing and apparently that
2 was during that episode is when Mr. Hook got a, got a
3 punctured mark, I believe it was is right inner arm.

4 Q. Now, Mr. Knox also keeps questioning you about what
5 makes a victim, what kind of conduct makes a victim and you
6 referenced on approaching somebody maybe pushing them. And
7 he said, "that made the person a victim," and you said,
8 "yes." If I were to walk over here to my deputy solicitor
9 and I do that do him, have I just committed a battery upon
10 the deputy solicitor?

11 A. Technically, if that was an unwanted suggested that
12 you did - - -

13 Q. Did he know I was going to do that?

14 A. No, he did not.

15 Q. So is that a battery?

16 A. Technically, yes.

17 Q. So, technically, to Mr. Knox's question, what I just
18 did to the deputy solicitor made him a victim, didn't?

19 A. Yes.

20 Q. Now, does he then have the right to pull a knife out
21 of his jacket and start stabbing me over my body?

22 A. No. I think that would have certainly been the
23 overrated part.

24 Q. And that then created me to be the victim?

25 A. Yes. That would change the roles there.

1 Q. Thank you.

2 MRS. JOHNSON-LEE: No further questions.

3 RE-CROSS EXAMINATION BY MR. KNOX:

4 Q. Detective, you said that an unwanted touching is a
5 battery?

6 A. From my best interpretation of how I read the statutes
7 with what goes on between assaults, a battery, and stuff,
8 if a person - - like to make a victim, technically, a
9 victim would be somebody who would probably be so
10 intimidated or perhaps fearful of an individual or because
11 he may feel that the person is going to do something to
12 him, I guess an intimidation or he may do something to that
13 person that would cause either to be hurt, harmed, as far -
14 - that's the way I look upon as to a victim but - - -

15 Q. In your opinion as a detective who watched the video,
16 who investigated this, when Mr. Wallace struck, an actually
17 touch, Mr. Moore, in your opinion, was that a battery?

18 A. Once again, technically, yes, because I, you know, I
19 guess Mr. Moore probably didn't want him to do that but
20 when he did, of course, then you immediately see the
21 response of Mr. Moore.

22 Q. So it was an unwanted touching?

23 A. Well, I was not there. I didn't - - other than that,
24 other than what was later indicated that he upon, I guess
25 with that movement or what took place, and apparently he

1 indicated in the later interview that Mr. Wallace was
2 coming up behind him and he heard that voice and then
3 apparently with that movement or that gesture or - - I
4 couldn't tell you if it was a slap or if - - I could not
5 tell you that, but you can see the hand from Mr. Wallace go
6 to the head area of Mr. Moore but then you - - -

7 Q. But it's pretty imminent from you watching that video
8 - - -

9 A. That's something to place.

10 Q. - - - that Mr. Moore didn't want to be touched by Mr.
11 Wallace?

12 A. Well, based on information - - -

13 MRS. JOHNSON-LEE: Objection. Speculation.

14 THE COURT: He can't speak for what was in his mind.

15 A. Yeah.

16 Q. Thank you.

17 MR. KNOX: No further questions.

18 MRS. JOHNSON-LEE: No further questions, Your Honor.

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

20 A. All right.

21 MRS. JOHNSON-LEE: Your Honor, we've got one short
22 witness before we take a break to set up the video.

23 THE COURT: All right.

24 MRS. JOHNSON-LEE: Caroline Tyler.

25 THE CLERK: Place your left on the Bible and raise

1 right. Do you swear the testimony you'll give will be the
2 truth, the whole truth, and nothing but the truth so help
3 you God?

4 MS. TYLER: Yes, ma'am.

5 CAROLINE TYLER, first being
6 duly sworn, testified as follows:

7 DIRECT EXAMINATION BY MRS. JOHNSON-LEE:

8 Q. State your name for the record.

9 A. Caroline Tyler.

10 Q. And who are you employed by?

11 A. The Chesterfield County Sheriff's office.

12 Q. And what is your job at the sheriff's office?

13 A. I am the evidence tech.

14 Q. Evidence tech is that short for evidence technician?

15 A. Yes, ma'am.

16 Q. What is your job as the evidence technician?

17 A. Once an officer goes out to a crime scene and secures
18 any evidence that is collected they then turn it into me
19 and I secure it in our evidence locker until it's needed
20 for court.

21 Q. Now, the night that we have been holding up in the
22 courtroom, did you take possession of that knife?

23 A. I did. Yes, ma'am, it was dropped into evidence.

24 Q. Was that from Tim Perry?

25 A. Yes, ma'am.

1 Q. And what did you do with that knife once he came into
2 your possession?

3 A. I logged in our system, barcoded it, and it's put on a
4 shelf until it's time for court.

5 Q. Now, there was reference by Tim Perry to a shirt and I
6 am pointing to a bag here.

7 A. Yes, ma'am.

8 Q. How did that shirt first come into your possession?

9 A. Investigator Burns brought it and because it was
10 bloody. We have a drying rack in our procedure is to allow
11 the shirt to dry before it's bag so it does not mildew so I
12 hung the shirt. Once the shirt was dry then investigator
13 Burns and I bagged it up.

14 Q. And that would be the bag it's in now?

15 A. Yes, ma'am.

16 Q. Now, when it was brought to you, was it just handed to
17 you like a bloody wet shirt was?

18 A. No, ma'am.

19 Q. Was it bagged in something else when it came to you?

20 A. It was.

21 Q. And so you take it out and you dry it for how long?

22 A. As long as it takes for it to allow the blood to dry.

23 Q. And that was how long this particular case?

24 A. We allowed it to dry for about at least a month.

25 Q. And then you put it into this bag here?

1 A. Yes, ma'am.

2 Q. And you brought this to court today?

3 A. Yes, ma'am.

4 Q. And is this your evidence seal on it?

5 A. Yes, ma'am.

6 Q. And is the evidence seal tampered resistant?

7 A. Yes, ma'am.

8 Q. And is also marked biohazard?

9 A. Yes, ma'am.

10 Q. Thank you. And before it was bagged up was the shirt
11 photographed?

12 A. I'm not sure if investigator Burns photographed it.
13 Once we bagged it, we did document the damage to the shirt
14 and I assisted him in photographing it at that time.

15 Q. I'm going to show you what's been marked for
16 identification, four, five, six, seven, eight, nine, ten,
17 eleven, and twelve. Can you identify those photographs?

18 A. Yes, ma'am. This is the shirt that stated that was
19 worn by Charles Wallace at the crime scene. And each
20 number is the amount of times that the shirt had a mark in
21 it as to where it appeared to be a mark with a knife.

22 Q. And how many total cut marks were on the shirt itself?

23 A. Eight.

24 Q. And you assisted in marking on those photographs all
25 eight areas where the shirt had cut marks?

1 A. Yes, ma'am.

2 MRS. JOHNSON-LEE: At this time I would move to have
3 all those photographs put into evidence for the State.

4 MR. KNOX: No objection.

5 THE COURT: In without objection.

6 MRS. JOHNSON-LEE: And that would be five, excuse me,
7 it would be four through twelve.

8 (Whereupon, the Photo has been marked and entered into
9 evidence as State's Exhibit No. 4)

10 (Whereupon, the Photo has been marked and entered into
11 evidence as State's Exhibit No. 5)

12 (Whereupon, the Photo has been marked and entered into
13 evidence as State's Exhibit No. 6)

14 (Whereupon, the Photo has been marked and entered into
15 evidence as State's Exhibit No. 7)

16 (Whereupon, the Photo has been marked and entered into
17 evidence as State's Exhibit No. 8)

18 (Whereupon, the Photo has been marked and entered into
19 evidence as State's Exhibit No. 9)

20 (Whereupon, the Photo has been marked and entered into
21 evidence as State's Exhibit No. 10)

22 (Whereupon, the Photo has been marked and entered into
23 evidence as State's Exhibit No. 11)

24 (Whereupon, the Photo has been marked and entered into
25 evidence as State's Exhibit No. 12)

1 MRS. JOHNSON-LEE: That would be all the questions I
2 have. Answer anything Mr. Knox has.

3 A. Yes, ma'am.

4 MR. KNOX: No questions.

5 THE COURT: Thank you, ma'am.

6 MRS. JOHNSON-LEE: At this time we'll take a break,
7 Your Honor, because we need to set up the television for
8 the next witness.

9 THE COURT: Anybody needs some coffee or Coca-Cola or
10 anything just let the Madam Bailiff know. We've got a
11 fresh pot of coffee made. Y'all step back.

12 (Whereupon, the jury exits the courtroom at 3:50 p.m.)

13 THE COURT: As soon as you get through with the
14 photographs, y'all may step back. Court will be in recess
15 for about ten minutes.

16 (Whereupon, the Court took a break)

17 THE COURT: Are we ready?

18 MRS. JOHNSON-LEE: Yes, Your Honor.

19 MR. KNOX: Yes, Your Honor.

20 (Whereupon, the jury enters the courtroom at 4:00 p.m.)

21 THE COURT: Because of the sun and the video screen if
22 everybody will go as far as my right, your left, it may
23 help some.

24 (Whereupon, the jury complies)

25 THE COURT: All right. We got that. I'm going to

1 come around and go over where Ms. Driggers is. You may
2 proceed.

3 MRS. JOHNSON-LEE: Graig Burns. We're need to
4 introduce it through deputy Burns, Your Honor.

5 THE COURT: Oh, okay. Sorry. Go ahead.

6 THE CLERK: If you'll raise - - you solemnly swear or
7 affirm the testimony you're about to give the Court is the
8 is the truth, the whole truth, and nothing but the truth so
9 help you God?

10 MR. BURNS: Yes, sir.

11 THE COURT: You may be seated.

12 MRS. JOHNSON-LEE: Mr. Knox just advised me that he
13 would stipulate to the video coming in as evidence so we'll
14 can go ahead and publish that to the jury and that would be
15 exhibit number - - -

16 COURT REPOTER: Thirteen.

17 MRS. JOHNSON-LEE: - - - thirteen.

18 THE COURT: Investigator, you can be just comfortable
19 right there because they may have some questions after we
20 see this. If you're comfortable there, just stay there.

21 MR. BURNS: Yes, sir.

22 (Whereupon, the DVD/Store Video has been marked and entered
23 into evidence as State's Exhibit No. 13)

24 GRAIG BURNS, first being
25 duly sworn, testified as follows:

DIRECT EXAMINATION BY MRS. JOHNSON-LEE:

Q. Investigator Burns, if you could please state your name for the record.

A. My complete name is Graig Cornelius Burns.

Q. Who are you employed by?

A. Chesterfield County Sheriff's office.

Q. And what is your job there currently?

A. I'm a criminal investigator.

Q. How long have you been an investigator?

A. August, 2014.

Q. And what is your prior background with the Sheriff's office?

A. I was patrol officer for several years and I left the patrol office and became a canine officer for four year and then until August, 2014 I became a criminal investigator.

Q. Now are you a graduate of the South Carolina Criminal Justice Academy?

A. Yes, ma'am.

Q. You are a Class I certified officer?

A. Yes, ma'am.

Q. And what sort of in training do you have to be an investigator with the Chesterfield County Sheriff's office?

A. I've attended school in Georgia for crime scene investigator. Basic detective school at Lawrenceville, Georgia. I've also attended a class in Myrtle Beach on

1 crime scene and homicide. The class also has in-house
2 classes on the proper way of handling evidence, how to
3 photograph a crime scene, as well as proper documentation
4 and report right.

5 Q. How did you become to be involved in this case what
6 we're here for today?

7 A. I was at the office finishing up a case and the call
8 came across the radio per Sergeant Hutchinson to dispatch
9 that he needed an investigator at McCormick's. And due to,
10 it was my call week, I was still at the office so I got in
11 my vehicle and I told investigator Perry did he want to go,
12 so he got into his vehicle and followed me and we proceeded
13 to McCormick's.

14 Q. and what did you do upon arrival at McCormick's?

15 A. When I arrived at McCormick's me and investigator
16 Perry both spoke with officer Hutchinson and ask him what
17 was going on and I could tell he had a young, someone
18 detained in the back seat of Robert Johnson's vehicle. And
19 he said this is the person that he had gotten a knife off
20 of him, the young man that he had in his vehicle. And then
21 I surveyed the scene to see all what was out there and
22 looked around and then I had my camera with me when I got
23 out of the vehicle.

24 Q. Now, was the victim, Mr. Wallace, still present at the
25 scene when you arrived?

1 A. No, ma'am. I got a phone call when I was in route
2 saying that he was flown, airlifted, already to Charlotte.

3 Q. Did you see the knife in this case?

4 A. Yes, ma'am.

5 Q. When was the first time you saw the knife?

6 A. The first time I saw the knife was when investigator
7 Perry brought it to the back of my patrol truck.

8 Q. Did y'all open it up?

9 A. Yes, ma'am.

10 Q. The knife that is shown in the courtroom today, have
11 you seen that as it's been held up?

12 A. Yes, ma'am.

13 Q. And does that appear to be the same knife you saw that
14 night?

15 A. Yes, ma'am.

16 Q. Now, have you done any photographs or anything with
17 that knife after it came back into the possession of
18 Sheriff's office's evidence room?

19 A. No, ma'am.

20 Q. Now, there is a shirt in question. Did you ever come
21 into possession of the victim shirt in this case?

22 A. Yes, ma'am.

23 Q. And how did that shirt come to be in your possession?

24 A. While I was taking photographs inside the store of
25 what was not already cleaned up, I went to the restroom

1 area where Mr. Wallace was at and I noticed the shirt in
2 the trash can. I photographed it while it was in the trash
3 can. I had a brown bag with me. I removed the shirt from
4 the trash can and placed it in that bag and sealed the bag.

5 Q. And what did you do with it from that point?

6 A. I took the shirt to the Chesterfield County evidence
7 locker, unsealed the bag in the presence of investigator
8 Perry, opened it up along with investigator, evidence tech,
9 Caroline Tyler, and we placed it on a hanging rack so it
10 could dry out because it was still wet with blood.

11 MRS. JOHNSON-LEE: I have a bag that I need to have
12 marked as an exhibit for the State, madam, court reporter.

13 Q. You and Ms. Tyler?

14 A. Yes, ma'am.

15 Q. Was it then put into this bag?

16 A. Yes, ma'am.

17 Q. Would this be the same bag it came to her in?

18 A. No, ma'am.

19 Q. Okay. So this is a different bag?

20 A. Yes, ma'am.

21 Q. Did you mark this bag with the writing after it was
22 sealed up by Ms. Tyler after it was dried out?

23 A. I marked the bag with the writing prior to placing the
24 shirt in. I filled everything out because it's nice and
25 flat. I didn't have to worry about no bumps and stuff in

1 the bag. Then once I filled everything out, I went over to
2 the dry rack, retrieved the shirt, we photographed it,
3 labeled it, and then we folded it up and placed it in the
4 bag.

5 Q. Thank you.

6 MRS. JOHNSON-LEE: At this time I would move to put
7 this shirt into evidence.

8 MR. KNOX: No objection.

9 THE COURT: In without objection.

10 (Whereupon, the Shirt has been marked and entered into
11 evidence as State's Exhibit No. 17)

12 MRS. JOHNSON-LEE: If I may, Your Honor, I want to ask
13 the investigator if you would open the bag.

14 THE COURT: Okay.

15 MR. BURNS: May I stand, Your Honor?

16 THE COURT: Sure

17 MRS. JOHNSON-LEE: If you'll step down here once you
18 take the shirt out please.

19 (Whereupon, the witness complies)

20 Q. And if you could please explain to the jury how the
21 shirt is marked?

22 A. Right now the shirt is marked, first of all, biohazard
23 tag because of the blood to let everybody know if the shirt
24 if sent off, anyone that's going to come in contact with
25 it, it's possible biohazard on the shirt. Then next label

1 is, we took some paper, scotch tape and we labeled each
2 stabbed mark, cut into the shirt with a piece of paper with
3 a number to it, to identify how many times the shirt had
4 been cut by the knife. And you can see there's six times
5 on the front of the shirt. And you can see there's two
6 more to the back of the shirt to indicate the location.
7 Now, you know, when I first got the shirt I thought maybe
8 the shirt might have been balled up, he might've had double
9 stab wounds but when we straighten it out and looked at the
10 ones on the front, it actually showed that each one of
11 these actually did which were separate stab wounds.

12 Q. And because they're individual stab wounds that
13 doesn't mean that's how many times the knife actually went
14 through the body, is that correct?

15 A. Correct. It show how many times the knife had struck
16 that shirt.

17 Q. Thank you. You also assisted in photographing those
18 same cut marks on the shirt, is that correct?

19 A. Yes, ma'am.

20 Q. And I'm going to hand you exhibits, four through
21 twelve, are those the photographs you assisted in taking
22 with Ms. Tyler?

23 A. Yes, ma'am.

24 Q. Now, you also watched a video at the store, is that
25 correct?

1 A. Yes, ma'am.

2 Q. And was that video taken by your cell phone?

3 A. Yes, ma'am.

4 Q. And what was the reason for taking it with the cell
5 phone?

6 A. Because we were unable to download it due to the
7 system that Ms. McCormick has. It wouldn't allow us to
8 download it to a USB drive.

9 MRS. JOHNSON-LEE: If I could asked the investigator
10 to come back down and play the video again and let him
11 point out certain things on the video. If you'll come
12 down. You can come right here, please.

13 (Whereupon, the witness complies)

14 Q. If you please point out to the jury the significant
15 portions of the video.

16 (Whereupon, the video was played for the jury)

17 A. This is - - the young lady who testified earlier - -
18 right here - - -

19 (Whereupon, the solicitor was trying to arrange it so that
20 the jury could see the video while Mr. Burns was explaining
21 the video while it was being played, very difficult to
22 hear)

23 THE COURT: Y'all make sure you're lined up where the
24 jury can see now.

25 A. Can everybody see now. Was I blocking it out earlier?

1 I apologize.

2 COURT REPORTER: I need to hear it too.

3 (Whereupon, the video was being played without audio)

4 Q. You said this was Ms. Griffin with the hair - - right
5 there?

6 A. Yeah. This is Ms. Griffin, the first young lady the
7 cashier that testified earlier who called 911. You can see
8 it took place. Are you following me right? And this is
9 them right here, Mr. Moore came in and made a left and
10 right here is one entrance, candy rack and there's another
11 candy rack. Mr. Moore went left and Mr. Wallace was
12 standing right here. So he walked past Mr. Wallace and as
13 soon as he gets about I'd say ten steps inside the aisle,
14 Mr. Wallace approaches him from the rear. It appears that
15 Mr. Wallace did something to him to touch the back of his
16 head, shirt, shoulder or something. And right here you
17 notice that once Mr. Wallace touched him, Mr. Moore turned
18 around. Mr. Moore went after him in an aggressive manner,
19 grabbing him and taking him to the floor. And you'll
20 notice Mr. Moore on top and that's Mr. Wallace's legs and
21 both parties actively engaged into the fight. Pause right
22 here. And you see right here Mr. Hooks came in and
23 separated both parties, Mr. Wallace and Mr. Moore and here
24 you see, Mr. Moore still has Mr. Wallace by his shirt with
25 his left hand. Start it. And here, if you look Mr.

1 Wallace is trying to get away. It appears Mr. Wallace was
2 trying to get away from the item he was being stuck with
3 that's why he's going around in circles. And you notice
4 Mr. Wallace pulled his shirt up, you see where he stabbed
5 Mr. Wallace in the ribs and stuck him in the back. Mr.
6 Hooks did receive a small cut to his inside of his left
7 forearm. It didn't require any medical attention or
8 anything like that. See he was stuck. This puncture wound
9 right here was the one that cause the lungs to collapse,
10 this one right here, the other one on this side. He had
11 two more, right here, indicating two marks on his back that
12 indicates the seven or eight how the shirt was labeled.
13 Then at this time Mr. Moore is outside of the door and the
14 young lady is standing between the two. And one thing that
15 I think is significance in this, when Mr. Moore comes in,
16 Mr. Wallace has, this is Mr. Wallace vehicle and everybody
17 who knows Mr. Wallace knows this is his vehicle including
18 Mr. Moore. And you notice when Mr. Moore comes in he
19 speaks to someone over here but he walks up to him - - -

20 MR. KNOX: Your Honor, I'm going to object to that.
21 There was no testimony that Mr. Moore knew that, that was
22 Mr. Wallace's vehicle. I think that is something that he
23 is indicating that he knew it. That has not been proven on
24 the witness stand. No witness has said that Mr. Moore knew
25 what vehicle that Mr. Wallace was driving.

1 MR. REDMOND: Mr. Wallace actually testified to that,
2 Your Honor. I asked him specifically about when we went
3 into the fact that the defendant, he said he knew both of
4 his vehicles. That has been put in the record.

5 THE COURT: Okay. On that one, I'll overrule it. You
6 certainly may argue that point later on but what I can
7 remember, I'll overrule that one. Go ahead.

8 A. I believe that Mr. Moore's vehicle was parked - - -

9 Q. Don't - - don't say anything you believe.

10 A. Okay.

11 Q. Just say what happened on the tape.

12 A. Mr. Moore leaves his vehicle here and walks passed the
13 gas pump, walked in between these two vehicles, and this
14 burgundy van actually belongs to the good samaritan, Mr.
15 Hooks, and this belongs to Mr. Wallace.

16 Q. Is that Mr. Moore approaching?

17 A. This is Mr. Moore approaching, right here. And you
18 can also tell that this is Mr. Moore, the same individual
19 that was fighting in the video he's wearing that same
20 shirt, design on the back of it and you'll see Mr. Moore
21 when he turns - - -

22 Q. Now, some time in the video can you see the thrust
23 after they're being pulled apart?

24 A. Yeah. The parts that you see once they stood up
25 that's what I mean, I see Mr. Wallace going around in

1 circles attempting to get away from Mr. Moore and the
2 object he had in his hand. There's no camera on the door
3 of the store so you can't tell what Mr. Moore is doing at
4 this time, standing, talking, we don't know. And you'll
5 see Mr. Moore - - this is Mr. Moore leaving, headed back
6 out to the parking lot area by his truck on his cell phone
7 and that's when the patrol pulled up.

8 Q. Thank you. Did you attempt to interview the
9 defendant?

10 A. Not on the day of the incident happened.

11 Q. At some other point, did you attempt to interview him?

12 A. Yes, ma'am. The next morning.

13 Q. And did he give a statement?

14 A. Yes, ma'am.

15 Q. And what was his statement?

16 A. One of the things that Mr. Moore stated was that he
17 pulled up there to get gas because he says he goes to that
18 store a lot to purchase fuel, he said he was working in the
19 area. He said that when he came into the store he spoke to
20 someone, he spoke to the cashier and the people inside the
21 store. He said he went down the isle to get him a Red
22 Bull, a drink, and he said that he heard this voice behind
23 him, he knew who it was and when he turned around he saw
24 Mr. Wallace standing there, had his pathway blocked. He
25 said then Mr. Wallace - - he felt it was time for him to

1 leave but he said something came over him and he said the
2 next thing that he know, that he's on the floor and licks
3 are being passed between him and Mr. Wallace. Mr. Wallace
4 pulled his hair and he showed me a spot on the right side
5 of his temple where he said the hair was pulled out of his
6 head. But I had the nurse at the jail to look at his head
7 and they said there was no hair particles pulled from his
8 head.

9 Q. Did he say anything about the stabbing?

10 A. He said - - I asked him did he know he stabbed Mr.
11 Wallace. He stated, "yes." I asked him how many times?
12 He said, he can't - - he don't know but he know it was more
13 than once.

14 Q. Did he tell you where the knife came from?

15 A. He said he had it on his - - he carries it all the
16 time on his pouch on his right hand side.

17 Q. Did he tell you how he opened it?

18 A. Yes, ma'am. He said he took it out and put it on his
19 right pants leg and open the knife.

20 Q. Did he say what point he did that?

21 A. He didn't say what point he did that but he did make
22 mentioned he said that he felt like Mr. Wallace was
23 attempting to hurt him.

24 Q. And did he give you any reason why he felt that way?

25 A. He said they had a long-running fuel between him and

1 Mr. Wallace that took place over the past year or two.

2 Q. That he - - going back a minute, he said that goes to
3 that store a good bit?

4 A. Yes, ma'am.

5 Q. Thank you, sir.

6 MRS. JOHNSON-LEE: I beg the Court's indulgence. No
7 further questions. Answer any questions that Mr. Knox has
8 for you.

9 A. Yes, ma'am.

10 **CROSS EXAMINATION BY MR. KNOX:**

11 Q. Mr. Burns, were you, I'm sorry, Detective Burns, were
12 you the one that made the video from your cell phone?

13 A. He use my cell phone. He held it in his hand,
14 investigator Perry did.

15 Q. And is your voice on the video?

16 A. Along with Mr. Perry's.

17 Q. And what - - what statement did you make?

18 A. One time I said, "bam, there he goes". I think one
19 time I also stated, "he was only in the store a few seconds
20 before the fight broke out." I also stated that, "you see
21 that he had been stabbed, he's bleeding".

22 Q. Now, when you say that he was only in the store for a
23 few seconds, who are you referring to?

24 A. Mr. Moore because Mr. Wallace was already in the
25 store.

1 Q. And when you say "bam, there he goes", what are you
2 referring to?

3 A. The fight breaking out.

4 Q. Did anyone in your presence make a statement that,
5 "the old man hit him"?

6 A. No, sir.

7 Q. Did somebody pass - - did someone pass the first lick?

8 A. Say that again.

9 Q. Can we replay the video?

10 A. No. Just ask the question. I understand what you're
11 saying.

12 Q. Well, we're going to replay the video with the audio
13 and I want you to listen very carefully. Can we do that?
14 (Whereupon, the video was being prepared to be played
15 again)

16 Q. Detective Burns, is this the actual video that was
17 taken?

18 A. Yes, sir.

19 Q. Has that video been altered in any way?

20 A. No, sir.

21 Q. Has the audio been altered in any way?

22 A. No, sir.

23 Q. And you were in the courtroom earlier today when
24 Detective Perry says that he said on the video, that he
25 made the statement, "that the old man struck him." Did you

1 recall that what Detective Perry testified to?

2 A. Yes, sir.

3 Q. And - - -

4 A. I said, earlier as well, that it appeared that Mr.
5 Wallace reached up and grabbed his shoulder, his head or
6 something as well.

7 Q. Did you hear that on the video?

8 A. No, sir.

9 Q. Was it actually recorded?

10 A. Was what recorded?

11 Q. The statement by Mr. Perry that Mr. Wallace hit Mr.
12 Moore?

13 A. Not from what I can tell from the video, no, sir.

14 Q. No. Not from that video but the State, through the
15 discovery process, gave me a video where it is clearly
16 stated on the video. So again, I ask you has this video
17 been altered in any way?

18 A. And again I'll tell you, sir, no, it hasn't.

19 Q. Has the audio been altered in any way?

20 A. Again, no, sir, it hasn't.

21 Q. Now, have you, in your investigation, have you seen
22 any other videos from the store?

23 A. I seen the video that was played during the discovery
24 hearing.

25 Q. Now, in the discovery hearing was the statement made

1 by one of you, either yourself or Detective Perry, that
2 they saw Mr. Wallace hit Mr. Moore?

3 A. The video I saw from the discovery hearing matches the
4 video that was played today, sir.

5 Q. You didn't answer the question.

6 A. I did answer your question, sir.

7 Q. No. I'm going to ask the question again. Did the
8 video at the discovery hearing, was the voice either of
9 yourself or Detective Perry on there stating that he saw
10 Mr. Wallace hit Mr. Moore or something to that effect?

11 A. I don't recall.

12 Q. Now, you don't recall.

13 A. I recall the same exact video.

14 Q. Now, why did you feel as though you had to describe
15 what happened while you were recording the video?

16 A. Say that again, sir.

17 Q. Why did you feel that you had to describe what's
18 happening while you were recording the video?

19 A. Oh, I wasn't describing what happened to the video.
20 Me and my partner was having a discussion about what was
21 taking place on the video while we was recording it.

22 Q. And in that discussion was it ever said between the
23 two of you that Mr. Wallace hit Mr. Moore?

24 A. Not in the store, I don't recall. I know we talked
25 about it when we got back to the office but I don't recall

1 us discussing that statement being made in the store.

2 Q. You don't recall that discussion being had while you
3 were recording the video?

4 A. I recall everything that was said on the video that
5 was played today is what me and my partner discussed loud
6 and clear.

7 Q. And again it's your testimony that this is the exact
8 same video that you all gave in the discovery process?

9 A. The same video that I turned over to the solicitors
10 office that was downloaded and gave - - it was the video
11 that they turned over to you.

12 Q. Did you turn the discovery over to the solicitor,
13 yourself?

14 A. Yes, sir.

15 Q. Is that the exact same video that you gave to the
16 solicitor that they gave to me in my request for discovery?

17 A. Yes, sir, but there's only one video that was made.

18 Q. And it was made from your cell phone?

19 A. Yes, sir.

20 Q. Do you have that cell phone?

21 A. Yes, sir. But that video is not on my cell phone.

22 Q. What happened to the video?

23 A. It's on my computer at my work office computer. It
24 was downloaded from my cell phone and placed on my work
25 computer.

1 Q. Do you have that work computer?

2 A. On my desk.

3 Q. Is there anyway you can bring that to court so we can
4 take a look at that?

5 A. A desktop computer?

6 Q. I beg your pardon.

7 A. The computer?

8 Q. Yes.

9 A. Nah. I can download it to another disk.

10 Q. Is it a laptop?

11 A. No, sir. It's a desktop.

12 Q. I beg your pardon.

13 A. It's a desktop.

14 Q. Does it have a hard drive?

15 A. Yes.

16 Q. So if - - can you download it to the hard drive and up
17 loaded to a disk, is that correct?

18 A. Yes, sir. That's the same way we did it to that disk
19 right there.

20 Q. Now, this is very important officer Burns because
21 there seems to be a discrepancy in what I heard what's on
22 the video as well as to what Detective Perry testified to
23 what he said on the video.

24 A. Okay.

25 Q. And now you can't recall those statements by Mr.

1 Perry?

2 A. My answer to that is, if Mr. Perry said it and Mr.
3 Perry testified to it then that was Mr. Perry's statement.
4 If I don't recall that part. I recall my actions, my
5 statement that was made on the video.

6 Q. Were you in there with Mr. Perry when this video was
7 being played?

8 A. Yes, sir.

9 Q. The entire time?

10 A. Yes, sir.

11 Q. And at no time did you happen to hear Detective Perry
12 say that Mr. Wallace hit Mr. Moore?

13 A. I didn't hear him. I don't recall that.

14 Q. And you don't recall seeing any video where that's
15 been recorded in audio?

16 A. No, sir.

17 Q. Now, you also, when you were going through this video,
18 you said you saw Mr. Moore making some thrusting motions?

19 A. What I said is, it appeared that Mr. Moore is making a
20 motion towards Mr. Wallace while he's trying to go into a
21 circling motion trying to get away from him.

22 Q. And did he appear to have a weapon in his hand?

23 A. Say that again.

24 Q. Did he appear to have a weapon in his hand?

25 A. It's not clear on the video.

1 Q. That wasn't the question. You know, you want to
2 answer the question that you want to answer. Answer the
3 questions that I ask.

4 Q. I answer the questions to the best of my ability.

5 A. Did he have a weapon in his hand?

6 A. It's not clear on the video.

7 Q. So it is your testimony that he did not have a weapon?

8 A. That is not my testimony.

9 Q. What is your testimony?

10 A. My testimony - - whatever Mr. Moore had in his hand
11 Mr. Wallace was trying to get away from it. I cannot make
12 out a hundred percent that it was a knife, a stick, a bat
13 or a honey bun. I could not make it out a hundred percent
14 so that's why I say it's not clear on the video whether he
15 had a knife or not.

16 Q. Now, from the video did it appear that Mr. Moore had
17 touched Mr. Wallace in any way other than when he they were
18 on the ground?

19 A. Yes, sir.

20 Q. When did the touching occur?

21 A. When Mr. Moore walked down the aisle and turned
22 around.

23 Q. After the fight or before the fight?

24 A. Prior to the fight.

25 Q. That Mr. Moore touched Mr. Wallace?

1 A. Mr. Wallace touch Mr. Moore first.

2 Q. The question I ask you was, on the video, did it
3 appear that at any time did Mr. Moore touch Mr. Wallace?

4 A. Yes, sir.

5 Q. When - - when on the video can you tell me?

6 A. On the video Mr. Moore touch Mr. Wallace. When he
7 walked down the aisle it appeared Mr. Wallace touched him
8 or said something to him to irritate him, Mr. Moore turned
9 around and they simultaneously grab each other and they
10 went to the floor with Mr. Moore on the top.

11 Q. Now, on that video, did you see any stabbing by
12 anyone?

13 A. No, sir. It's not - - like I said earlier, it's not
14 clear when they stood up that he had a weapon in his hand
15 or not.

16 Q. When he stood up and pulled his shirt up he had some
17 type of wounds, is that correct?

18 A. Yes, sir.

19 Q. Now, did those wounds occur while he was standing or
20 while he was on the floor?

21 A. It's not a hundred percent clear but it appears he was
22 standing.

23 Q. When he pulled his shirt up?

24 A. It appears that he, the wounds - - it appeared that
25 Mr. Wallace obtain those ones when he was in that circular

1 motion trying to get away from Mr. Moore.

2 Q. So it's your testimony that after everything was over
3 or appeared to be over that Mr. Moore stabbed Mr. Wallace?

4 A. From my point of view, yes.

5 Q. From your point of view. Is that what you actually
6 saw?

7 A. Yes, it appears on the video that once the fight was
8 broken up they were standing up that Mr. Moore continued
9 and stabbed Mr. Wallace.

10 Q. But you said it was not clear.

11 A. It's not clear that he had a weapon in his hand.

12 MRS. JOHNSON-LEE: Your Honor - - -

13 THE COURT: Whoa! Whoa! This is questions and
14 answers. Were not going to sit here and argue, okay?

15 Q. But you did not see a knife in Mr. Moore's hand?

16 A. Not clear on the video.

17 Q. Not clear on the video. Now, Mr. Moore - - when did
18 Mr. Wallace pull his shirt up? Was Mr. Moore already in
19 the store or had he left the store?

20 A. From the video it appears that Mr. Moore was out of
21 the store.

22 Q. Now, when Mr. Moore left the store he went to his
23 truck, is that what the video shows?

24 A. The video shows that he went outside the door for a
25 moment, for a while. He was not seen at all on video and

1 then it shows he's walking across the parking lot on his
2 cell phone.

3 Q. On his cell phone. He was on his cell phone?

4 A. Yes, sir.

5 Q. Did he tried to allude law enforcement in any way?

6 A. No, sir.

7 Q. Did he tried to hide the weapon or anything?

8 A. No, sir.

9 Q. And did he cooperate fully with law enforcement?

10 A. Yes, sir.

11 Q. And did he tell you that he was a victim?

12 A. No, sir.

13 Q. And in your investigation, did he tell you that Mr.
14 Moore hit him, I mean, that Mr. Wallace hit him?

15 A. Yes, sir.

16 Q. Thank you.

17 MR. KNOX: No further questions.

18 MRS. JOHNSON-LEE: Briefly, Your Honor.

19 **REDIRECT EXAMINATION BY MRS. JOHNSON-LEE:**

20 Q. How many times did you and investigator Perry try to
21 record or actually record that store video to one of the
22 cell phones?

23 A. I would say approximately four to five different
24 times.

25 Q. And was it with your phone and his phone?

1 A. Yes, ma'am.

2 Q. And this disk that's in evidence that's been played,
3 how many different videos are listed on this disk?

4 A. Four.

5 Q. And how many did we just play over and over in here?

6 A. Four.

7 Q. Now, how many did we just play - - -

8 A. Oh, one.

9 Q. But they're four separate ones on there?

10 A. Yes, ma'am.

11 Q. And that's an evidence?

12 A. Yes, ma'am.

13 Q. And the jury can look at that in the back if they need
14 to?

15 A. Yes, ma'am.

16 MRS. JOHNSON-LEE: No further questions.

17 MR. KNOX: No follow-up questions.

18 THE COURT: You may step down. All right, unless
19 somebody convinces me differently, it's after five, we've
20 had two long days.

21 MR. REDMOND: Yes. It's been long day, judge, and I
22 got to pick up my daughter because I got trouble yesterday
23 so if I may go ahead and leave, I apologize, but - - -

24 THE COURT: Only if we get to leave.

25 (Whereupon, there was laughter in the courtroom)

1 MR. REDMOND: I'm sorry.

2 THE COURT: Okay. Remember my instructions. Don't
3 let anybody contact you in any way. No independent
4 research. It's been a long day for you. Y'all get a good
5 night sleep and since Chesterfield County is about the
6 third largest county and I know some of you have to drive a
7 long way, we'll start at ten in the morning since we've had
8 two long days. See you then. Everybody else remained
9 seated while the jury departs for the evening.

10 (Whereupon, the jury exits the courtroom at 5:05 p.m.)

11 (Court is adjured for the day at 5:08 p.m.)

12 -End of transcript-

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CERTIFICATE

I, the undersigned Hattie O. Gordon, Official Court Reporter for the Fourth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete excerpt of transcript of record of all the proceedings had and evidence introduced in the hearing of the captioned cause, relative to appeal, in the Fourth Circuit Court for Chesterfield County, South Carolina, on the 5th day of April, 2016.

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

A handwritten signature in black ink, appearing to read 'Hattie O. Gordon', is written over a horizontal line.

Hattie O. Gordon

Circuit Court Reporter

July 29, 2016

In Circuit Court of the
Fourth Judicial Circuit
2015-GS-13-0398

The State,

Plaintiff,

vs.

Gary Matthew Moore,

Defendant.

Transcript of Record

(VOLUME II)

Chesterfield, South Carolina
April 5th and 6th, 2016

B E F O R E:

The Honorable Paul M. Burch

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

Mrs. Johnson-Lee, Esquire
Mr. Kenard Redmond, Esquire
Attorney for Plaintiff

Mr. Larry Knox, Esquire
Attorney for Defendant

Hattie O. Gordon
Circuit Court Reporter

1 (Second Day- April 6, 2016)

2 (Whereupon, everyone has appeared and the Court reconvened
3 at 10:00 a.m.)

4 THE COURT: All right, sir?

5 MR. REDMOND: Your Honor, yesterday after I left that
6 based on what I have been informed, I haven't had a chance
7 to - - I think it involves some of the issues that were
8 raised regarding discovery and the video, I think, there
9 was some questions or issues that came up. I was not
10 present but based on what I've been informed I think it is
11 something that probably does need to be address and I'll
12 just allude to the parties since I was not here for that
13 part of it.

14 MRS. JOHNSON-LEE: It was during the cross-examination
15 of investigator Burns, he was questioned about a video that
16 either had been changed or defense not having been provided
17 all the discovery and after the trial was over we put Mr.
18 Knox's copy of the Rule 5 video into the computer and
19 showed him all four of those videos are on his as well.
20 It's the same video, it's being copied over and over again
21 as an investigator Burns testified to, but, obviously
22 they're not going to have the exact same conversation as
23 they're copying the video over and over and over again. So
24 all the Rule 5 was turned over but there was that
25 questioning during the cross-examination of Graig Burns

1 what was indicated to the jury that they did not have a
2 complete file but, in fact, they realize now they do.

3 THE COURT: Okay.

4 MR. KNOX: May I address the Court, Your Honor? Your
5 Honor, that's not completely all of it. My concern was
6 that there are four separate versions of the same video.
7 That one we had in the stand your ground hearing, a
8 different video was presented and shown to the Court.
9 Based on that, I stipulated to that particular video. When
10 the videos was shown yesterday that video was excluded by
11 the prosecution. After we rested yesterday I took a look
12 at that, I had him go over with me, and the video that I
13 was referring to was on the discovery that I received.

14 THE COURT: Okay.

15 MR. KNOX: But that video was not played for the jury
16 and the reason that I'm concerned about it because the
17 question that I put to Detective Burns was, did someone say
18 that, "see, he slapped him", on the version that I saw at
19 the stand your ground hearing, that audio was clearly
20 present on that particular video and I don't want the jury
21 to believe that I'm losing my mind or something like that -

22 - -

23 THE COURT: Okay.

24 MR. KNOX: - - - or trying to pull something over on
25 the State because I saw that video, me and my client saw

1 that video. That video was not played yesterday, at least,
2 not that version of it.

3 MRS. JOHNSON-LEE: And just to make the record
4 completely clear, there are four copies of that video.
5 It's the same video over and over that they're copying.
6 The State was only playing the video for what's on the
7 video. If you recall we actually had the sound turned
8 down. The defense attorney asked for the sound to be
9 turned up so the jury could hear the background
10 conversation. We didn't care about the background
11 conversation. We were only playing a video that depicted
12 what was on the video at McCormick's Grocery. So if he
13 wants to play the other's, they're in evidence.

14 THE COURT: Well, wait a minute now, let's try to
15 simplify this as much as we can. Now, have y'all rested in
16 front of the jury.

17 MR. REDMOND: Not yet.

18 MRS. JOHNSON-LEE: Not yet.

19 THE COURT: The simplest thing to do to solve this is
20 for us to put Detective Burns back on the stand and let's
21 got all the straight and then y'all can argue whatever
22 points you want to argue about it during closing arguments
23 but we don't need to leave this thing up in the air. I
24 agree with both of you especially Mr. Knox on that.

25 MR. KNOX: Thank you, Your Honor.

1 MRS. JOHNSON-LEE: We'll bring the TV around and let
2 him set it back up, Judge.

3 THE COURT: So we can just reopen that part of the
4 testimony and try to get this resolved.

5 MR. KNOX: Thank you, Your Honor.

6 MR. REDMOND: Your Honor, in a way to - - and, I
7 guess, it might be able to be done during the course of the
8 questioning but one of the things in representation that
9 was made, if my recollection is correct is that, that had
10 not been turned over. I think just in fairness to the
11 State if there's, I guess, if there's a way to address that
12 the fact that it was turned over, it was just in one group
13 of four separate videos. It just happened to not be the
14 one that was played for them yesterday. I just wanted to
15 make sure that the jury wasn't left with the impression
16 that, oh, we didn't give him something, overnight he got
17 it, and now we're playing what he got. I just wanted to
18 make it clear that everybody already had it, we're just
19 playing, I guess, whatever it was that he wants to play
20 that he, in fact, had already received from the State.

21 THE COURT: Well, do both sides agree to let me make a
22 brief statement to the jury that because it's been
23 confusion over the videos and the discovery that we're
24 going to reopen this to clarify, is that okay?

25 MR. KNOX: I think that would be very appropriate.

1 MR. REDMOND: I think that would be appropriate,
2 Judge. Thank you.

3 THE COURT: Mr. Burns, if you would return to the
4 stand. I remind you you're still under oath.

5 MR. BURNS: Yes, sir.

6 (Whereupon, the jury enters the courtroom at 10:10 a.m.)

7 THE COURT: Good morning.

8 THE JURY: Good morning.

9 THE COURT: Thank you for reporting this morning.
10 It's been called to my attention by counsel that there has
11 been some confusion about the video and the discovery in
12 this case and I want them to correct me if I make any
13 misstatement about this but there's four different videos
14 here, the videos are the same. The issue was over the
15 audio. It's explained to me by counsel that there is some
16 difference in the audio on these versions. So because of
17 that confusion counsel's, both sides have agreed, that I
18 will reopen the redirect and the re-cross so we can
19 hopefully clear that up for everybody, okay? Have I
20 misstated anything?

21 MR. KNOX: You did it correctly, Your Honor.

22 THE COURT: All right.

23 **CONT- REDIRECT EXAMINATION BY MRS. JOHNSON-LEE:**

24 Q. Investigator Burns, how many different versions or
25 attempts did you and Tim Perry make to try to use your

1 phones to make copies of the McCormick's video?

2 A. There's a total of four, ma'am.

3 Q. And were all four of those downloaded to video?

4 A. Yes, ma'am.

5 Q. And they were turned over to us and the defense?

6 A. Yes, ma'am.

7 Q. And all four of them, are on this tape that is an
8 evidence, is that correct?

9 A. Yes, ma'am.

10 MRS. JOHNSON-LEE: Your Honor, at this time we would
11 like to just go ahead and publish all four of the videos.

12 THE COURT: Any objection?

13 MR. KNOX: No objection, Your Honor.

14 THE COURT: All right.

15 (Whereupon, the video was played for the jury all the way
16 through)

17 Q. And were those all of the attempts to make videos of
18 the incident on video?

19 A. Yes, ma'am.

20 Q. And are those accurate representation of your attempts
21 to make videos of the in-store video?

22 A. Yes, ma'am.

23 Q. And, obviously, y'all didn't have the exact same
24 conversations and say the same words each time you were
25 trying to record, is that correct?

1 A. That's correct, ma'am.

2 Q. Thank you.

3 MRS. JOHNSON-LEE: Answer any questions Mr. Knox ask.

4 A. Yes, ma'am.

5 CONT- RE-CROSS EXAMINATION BY MR. KNOX:

6 Q. Detective Burns, yesterday only two videos were
7 played, is that correct? Only two videos were played
8 yesterday, is that correct?

9 A. Possible. I thought it was only one, the longest
10 version, but it might have been two.

11 Q. Might've been two. But you knew that they were four
12 versions of this yesterday, didn't you?

13 A. When they pulled up on the screen right there, yes,
14 sir, I did.

15 Q. And you knew in one of those versions, you had made
16 the statement about what you had seen the old man do or one
17 of the people involved in this, you had made the statement
18 on the video of what you had seen or what you thought you
19 had seen, is that correct?

20 A. I gave you an accurate statement of what I said on the
21 video each time.

22 Q. Do what?

23 A. I gave you an accurate statement of what I said on the
24 video each time.

25 Q. What did you say on the video?

1 A. I said, "bam, there they go". I also stated that, "he
2 was in the store's ten seconds before the fight started."
3 Also stated that, "it seemed like they simultaneously
4 pushed each other." I also said that, "you can see right
5 there, he's already been stabbed." Those are my
6 statements.

7 Q. Now, those words were the only words that you said on
8 the video?

9 A. Yeah, I also stated that, "he's outside the door may
10 be talking to somebody but we don't see him yet". Then
11 also said, "there he go right there pulling up, getting out
12 his of truck".

13 Q. Now, so the other voice is not your voice?

14 A. The only statements I made was, "bam, there he go",
15 "bam, the fight just start ten seconds inside the store".

16 Q. So the other statements were made by someone else
17 other than yourself?

18 A. Yes.

19 Q. Was that made by your partner, Detective Perry?

20 A. Me - - - officer Perry was in the room the room
21 together, yes, sir.

22 Q. It was made by Detective Perry. I think yesterday I
23 ask you, did you or Detective Perry make any additional
24 statements - - -

25 A. And I said - - -

1 Q. - - - you said, "no".

2 A. I said I didn't recall.

3 Q. You didn't recall. Now, does this refresh your
4 memory?

5 A. Yes, sir.

6 Q. So Detective Perry and yourself made statements?

7 A. Yes.

8 Q. And the statements that Detective Perry made was
9 something to the effect - - I have it written down - -
10 "that a lick was passed", did you hear that?

11 A. Yes, sir.

12 Q. And on the second video that was shown this morning a
13 statement was made that, "he actually smacked him".

14 A. That's what it sounded like.

15 Q. That's what it sounded like. Is that what you saw on
16 the video?

17 A. What I saw on the video was that Mr. Wallace made a
18 gesture towards Mr. Moore. Like I said yesterday, he might
19 have grabbed him, hit him but I wasn't a hundred percent
20 sure what his final, was a hit or a grab but I know he made
21 a motion toward Mr. Moore.

22 Q. So you and your partner saw two different things in
23 that video?

24 A. Yes, sir, very possible.

25 Q. Thank you.

1 MR. KNOX: No further questions.

2 **REDIRECT EXAMINATION BY MRS. JOHNSON-LEE:**

3 Q. Who was the third person whose voice was on there, was
4 it the store owner?

5 A. It's the owner, Keith McCormick.

6 Q. And on the video, did it show the defendant still
7 stabbing the victim after the good samaritan pulled him off
8 of him?

9 A. In the video it appears that Mr. Wallace was in a
10 motion trying to get away from Mr. Moore while the good
11 Samaritan was in between them. And in my recollection or
12 from what I could tell, it was like he was in a circular
13 motion trying to get away from him and whatever Mr. Moore
14 was doing Mr. Wallace didn't want no parts of it.

15 Q. Thank you.

16 MRS. JOHNSON-LEE: No further questions.

17 MR. KNOX: Just briefly.

18 **RE-CROSS EXAMINATION BY MR. KNOX:**

19 Q. So, your testimony is, it's not that you said that Mr.
20 Moore was stabbing Mr. Wallace, is that correct?

21 A. Say that one more time, sir.

22 Q. That Mr. Moore was not stabbing Mr. Wallace, that's
23 your testimony?

24 A. That's not my testimony.

25 Q. What did - - -

1 A. What I said, the video is not a hundred percent clear
2 to see what's in his hand and what I said, whatever action
3 Mr. Moore was doing, Mr. Wallace was trying to get away
4 from it.

5 Q. But you're not clear or certain whether or not that
6 action or motion was Mr. Moore stabbing Mr. Wallace?

7 A. I'm clear on that, that once Mr. Moore stopped and was
8 separated fully, Mr. Wallace was bleeding and it appears to
9 be the stab wounds that I recorded in a video and on the
10 shirts.

11 Q. Thank you, Detective Burns.

12 A. Yes, sir.

13 **REDIRECT EXAMINATION BY MRS. JOHNSON-LEE:**

14 Q. And as a result of your investigation, was it
15 determined that the victim was, in fact, stabbed four times
16 with one puncturing his lung?

17 A. Yes, ma'am.

18 Q. Thank you.

19 MRS. JOHNSON-LEE: No other questions.

20 THE COURT: Will that do it?

21 MR. KNOX: (Shaking of the head, yes)

22 THE COURT: All right. You may step down. We need
23 that screen anymore?

24 MRS. JOHNSON-LEE: No, Your Honor. And the State rest
25 at this time.

1 THE COURT: All right. Ladies and gentlemen of the
2 jury, if you'll step back to your room, I have to take up
3 possible matters of law at this time and we'll get this
4 cleared out of the way.

5 (Whereupon, the jury exits the courtroom at 10:31 a.m.)

6 **MOTION TO HAVE DISMISSED BY MR. KNOX:**

7 MR. KNOX: Your Honor?

8 THE COURT: Okay.

9 MR. KNOX: May it please the Court? Your Honor, I
10 would like to to make a motion to have this matter
11 dismissed. It is apparent that the State has not prove
12 each and every element of the crime of attempted murder in
13 this situation nor have they proven that my client did not
14 have self-defense. It's up to the State to disprove self-
15 defense. We don't have to do anything in terms of proving
16 that my client used self-defense. But besides that it is
17 apparent that they have not proved attempted murder in this
18 situation, Your Honor.

19 MR. REDMOND: May it please the Court? As it relates
20 to self-defense, I guess, the State standard, as I
21 understand it, the defense has to proffer self-defense
22 which they did in opening but as it relates to evidence
23 there's nothing in the record. We would contend as it
24 relates to self-defense that they should decide proffer to
25 self-defense and, obviously, it's our burden to disprove

1 that. That's the way I understand it. But as it relates
2 to the actual charge of attempted murder I think,
3 obviously, there's testimony in the record, the video
4 reflecting what transpired, the nature of the injuries, the
5 life-threatening injuries to Mr. Wallace. I think the
6 State has, and like most favorable to the State, based on
7 the evidence that is in the record I think that we have
8 presented enough to go forward and have this jury decide
9 this issue. Thank you.

10 THE COURT: Well, certainly with the evidence that's
11 been presented I really believe this issue is for the jury
12 decision. I'd be abusing my discretion if I stepped in
13 this matter, you know, from what is before the Court.
14 Certainly, I'll entertain the appropriate charges when the
15 time comes. I don't have any choice in this. I'll just
16 have to deny the motion.

17 MR. REDMOND: Thank you, Your Honor.

18 MR. KNOX: Thank you, Your Honor. Your Honor, may
19 have a minute with my client to advise him of his right not
20 to testify?

21 THE COURT: Yes, sir. Court will stand at ease for a
22 few minutes.

23 (Whereupon, Mr. Knox takes the time to talk with his
24 client)

25 MR. KNOX: Your Honor, we are ready for the Court to

1 question the defendant about his rights to testify.

2 **DEFENDANT'S RIGHT TO TESTIFY QUESTIONED BY THE COURT:**

3 THE COURT: Mr. Moore, if I could have you undivided
4 attention please.

5 MR. MOORE: Yes, sir.

6 THE COURT: Counsel, has advised me that he just
7 discuss with you, your Fifth Amendment Rights of the United
8 States Constitution which there is a similar counterpart
9 provision in our State Constitution about your right to
10 remain silent.

11 MR. MOORE: Yes, sir.

12 THE COURT: Anyone in the United States who's charged
13 with a crime has that constitutional right to remain
14 silent. In other words, you cannot be forced into a
15 situation of self-incrimination. Now, if you decide to
16 testify which has to be your decision and yours alone. It
17 has to be freely, voluntarily and intelligently made. You
18 need to fully understand that you will be treated as any
19 other witness and you can be impeached and cross-examined
20 just as any other witness under our rules of procedure and
21 evidence.

22 MR. MOORE: Yes, sir.

23 THE COURT: If you elect not to testify, I will
24 instruct the jury that you have the constitutional right to
25 remain silent and that's your election not to testify

1 cannot even be discussed in the jury room. It cannot be
2 used to mitigate against you or hold anything against you
3 in any way because that is a very solid constitutional
4 principle within our legal field, legal system. So, I ask
5 you, do you understand everything Mr. Knox's has explained
6 to you?

7 MR. MOORE: Yes, sir, I do.

8 THE COURT: Do you understand what I just discussed
9 with you?

10 MR. MOORE: Yes, sir.

11 THE COURT: Do you have any questions?

12 MR. MOORE: No, sir.

13 THE COURT: Okay. Have you reached a decision as to
14 whether you wish to testify or not?

15 MR. MOORE: Yes, sir, I have.

16 THE COURT: And what is that decision?

17 MR. MOORE: I will not be testifying. I think the
18 Court has showed everything it needs to hear in this
19 matter. I don't see any reason why I should waste any more
20 of this Court's valuable time. That way we can just go on
21 and do the closing and let the jury decide and I can get on
22 back to work, sir.

23 THE COURT: Your decision is yours alone and you
24 understand everything that has been advised to you by
25 counsel and by the Court and this decision is your freely,

1 voluntarily made?

2 MR. MOORE: Yes, sir, it is.

3 THE COURT: Nobody has promise you anything or
4 threaten you or insisted that you take the route that
5 you're taking?

6 MR. MOORE: No, sir, nobody has.

7 THE COURT: Very good. Thank you.

8 MR. KNOX: Thank you, Your Honor.

9 THE COURT: Now, this came up a few weeks ago in a
10 trial and I have not had the chance to follow-up on it but
11 I'm sure y'all are aware now that the rules have changed.
12 Let me back up, that there is a definite change in the
13 works. We're going to have to determine if the time is run
14 on it or not but the rule change that's been proposed, it
15 had not been adopted about a month ago is, that in closing
16 arguments it works this way if the rule has been adopted.
17 We may have to take a few minutes if y'all don't know a
18 definite answer about this because I haven't had a chance
19 to check on it in the last week. But the State opens and
20 under the way we've always done it, the State's required to
21 make an opening statement and the defense gets the final
22 argument. Well, that's been changed now, if this thing has
23 been adopted. I understand there was no objection to it
24 entered at the time that the Chief Justice advised us.
25 But, the State has the opening on the law and then the

1 defense gets to open in full on their case and then the
2 State get's the last say only as to what the defense may
3 raise strictly restricted to that. So can either one of
4 you advise the Court at this time if that rule has
5 officially been adopted, otherwise, we're going to have to
6 make a call.

7 MR. REDMOND: And, judge, I think we're going to have
8 to make a call. I am aware of that discussion, it actually
9 came up a few weeks ago during the trial I had in
10 Bennettsville. And as you said at that time wasn't but I
11 do not know whether or not the rule has taken affect so,
12 unfortunately, we may need to call.

13 THE COURT: Do y'all have an availability to call
14 someone on either side because it would take me a little
15 while to trace things - - -

16 MR. REDMOND: I can call the Prosecution Commission,
17 either Mark Rappoport or Amy Clifford. I can go call them
18 right now.

19 THE COURT: If y'all would accomplish that - - can
20 both of you go do that so you'll be together?

21 (Whereupon, the Court allowed the solicitor to make the
22 call along with Mr. Knox)

23 MR. REDMOND: Yes, sir. I was going to - - I've
24 talked with Amy Clifford with Prosecution Commission and
25 she indicated that they actually had a hearing yesterday

1 regarding Rule 21, I think it's House Rule 21, and that it
2 has not passed and that, which she actually went on to tell
3 Mr. Knox and I that based on what occurred at the hearing
4 yesterday it appears that there was opposition from the
5 defense bar and the solicitor that represented the
6 Association. Well, actually they are against the bill so
7 it's a longshot that the bill is going to pass in her
8 opinion. But it is not in effect.

9 THE COURT: Good. Thank you for taking care of that.
10 Well, y'all proceed as we always have. Anything else?

11 MR. REDMOND: Instructions I guess - - -

12 THE COURT: Oh, yeah, yeah, yeah. If y'all got
13 anything you want to pass up, I've been working a little
14 bit up here.

15 MR. KNOX: Your Honor, based on the evidence have you
16 considered the charge of self-defense or a charge on
17 reputation?

18 THE COURT: What's that on?

19 MR. KNOX: Reputation of the victim.

20 THE COURT: Okay. Have you got one on that?

21 MR. KNOX: Yes. I have the Honorable Judge - - -

22 THE COURT: Do y'all have any?

23 MRS. JOHNSON-LEE: I've not printing any out. The
24 standards, Your Honor, on malice, express and implied and
25 circumstantial evidence would be what request.

1 THE COURT: We need to get that what you discuss with
2 us.

3 MR. KNOX: Your Honor, I had - - I'm going to request
4 a charge for standing your ground. Back in early February
5 we had a hearing on that. That motion was denied but for
6 preservation of the record I'm again going to ask for a
7 charge on stand your ground.

8 THE COURT: Based on that previous hearing and what
9 y'all have advised me about it would be improper for me to
10 do that. That would be, in effect, possibly altering
11 previous traditional decision so I'm going to take the safe
12 route on that one. Your motion is noted but I would deny
13 that request.

14 MR. KNOX: Thank you, Your Honor. And just for the
15 purposes of, not to be disrespectful to the Court, I
16 strongly object to, Your Honor.

17 THE COURT: So noted.

18 MR. REDMOND: And, Your Honor, as our understanding,
19 and I apologize I was sidetracked as I tend to get
20 sometimes while y'all were at the sidebar, but I don't know
21 if lesser included offenses had been discussed and I just
22 wanted to make sure the record was preserved. I just
23 wanted to approach that issue at this time.

24 THE COURT: Y'all approach just a minute on that.
25 Let's talk about that appear just a second please.

1 (Whereupon, a bench conference was held)

2 THE COURT: All right. The request in regards to that
3 issue, let me make that clear, no request to charge in
4 regards to that issue, solicitor, from the defense.

5 MR. REDMOND: And just for the record and seeing this
6 happen in PCR hearings and I'm not being presumptuous but
7 again to preserve the record depending on the outcome. I
8 would ask the Court to consider querying the defendant as
9 it relates to the lesser included issue because I've
10 actually seen that come into play in future hearings to
11 make sure he understands and that this is his decision not
12 to get a lesser included.

13 THE COURT: I understand that. That's the trial
14 strategy and just to protect the record Mr. Knox have you
15 discuss that with Mr. Moore?

16 MR. KNOX: Give me a minute to discuss it with him,
17 Your Honor.

18 MR. REDMOND: Thank you, Your Honor.

19 (Whereupon, the defense lawyer takes a moment to confer
20 with his client)

21 MR. KNOX: Your Honor, I have discussed it with my
22 client.

23 THE COURT: Okay. Mr. Moore, you understand your
24 attorney - - -

25 MR. MOORE: Yes, sir.

CLOSING ARGUMENTS BY MRS. JOHNSON-LEE:

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1 THE COURT: - - - discussion on that?

2 MR. MOORE: Yes, sir.

3 THE COURT: Do you have any questions?

4 MR. MOORE: No, sir.

5 THE COURT: And you agree with his trial strategy on
6 this?

7 MR. MOORE: Yes, sir.

8 THE COURT: That's all we need to know. Thank you.

9 All right. Yo ready? Who's going - - -

10 MRS. JOHNSON-LEE: Yes, Your Honor.

11 THE COURT: Bring them in.

12 (Whereupon, the jury enters the courtroom at 10:50 a.m.)

13 THE COURT: All right. Counsel?

14 **CLOSING ARGUMENTS BY MRS. JOHNSON-LEE:**

15 MRS. JOHNSON-LEE: May it please the Court? Counsel?
16 Good morning.

17 THE JURY: Good morning.

18 MRS. JOHNSON-LEE: Gary Moore is charged with
19 attempted murder of Charles Wallace. Now, the State has to
20 provide to you certain elements in order for you to find
21 Mr. Moore guilty of attempted murder. We have to prove
22 that there was attempt to kill Mr. Wallace. That there was
23 malice either expressed or implied aforethought involved in
24 that attempt to kill and that specific intent to kill. And
25 I want to go through the law a little bit and explain how

1 the State has proven that we've met all of those elements
2 for you.

3 Now, in this particular case you saw the fight
4 multiple times on the video and you heard from the victims
5 as well as law enforcement officers. There had been a
6 history according to the victim between these two. There
7 had been a previous incident in 2014 when the victim went
8 to the home where he used to live with the mother-in-law or
9 his girlfriend's mother of the defendant. He's going to
10 get his clothes. They had some sort of verbal altercation
11 and as a result you heard the victim say that the defendant
12 initiated something physical by grabbing a stick, the
13 defendant, Gary Moore, initiated that and as a result the
14 victim grabbed an ax handle off of his truck and goes to
15 chasing him. Can't catch him so he goes and beats the
16 window out of his vehicle. He was very forthcoming about
17 that. There was no excuse for that, none whatsoever. But
18 he was very forthcoming about it, told you what he did and
19 he had to pay for the window.

20 Now, fast-forward to the year, July, 2015. The victim
21 is inside McCormick's Grill. He has a blue truck which is
22 very distinctive, it's parked out front, right outside the
23 front door. There is a photograph in evidence that's part
24 of State's Exhibit Fifteen where you see that blue truck
25 right out front. Now, you see a red truck to the right of

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1 it as you saw on the video, at the time of the actual
2 incident that other vehicle wasn't there. It was just one
3 vehicle on one side and then the victims blue truck, that
4 distinctive blue truck parked right outside that front
5 door. Now, Gary Moore new what the victims vehicle looked
6 like. They had that prior altercation. The victim stated,
7 actually live with either his girlfriend or wife's mother.
8 He knew that vehicle. And it's on the video when he pulls
9 up at the store in his big truck and parts way out by the
10 diesel tanks and comes walking up to the front of the
11 store. You've got a burgundy colored vehicle and then
12 you've got the victims vehicle and there's nothing over
13 here. And as he's walking up he doesn't walk through the
14 clear path towards the front door of the store to come in.
15 You see him as he's walking up he specifically goes around
16 and goes up the space between the victims vehicle and that
17 other vehicle which we learned later in the hearing belong,
18 in the trial, belong to Steven Hooks. He's only in the
19 store about ten seconds or so as you saw repeatedly from
20 the video. Now, the victim again he's very honest, he's
21 very forthcoming, he doesn't like the defendant. They had
22 that prior history where one chased the other with a stick
23 and the other chased the other one with the ax handle and
24 him busting out his window. There's bad blood there but
25 still Gary Moore went into the store seeing that truck

1 there knowing maybe this is Charles Wallace's vehicle
2 parked out here, I've got bad blood with them. We chased
3 each other before. He busted my windshield out but I'm
4 still going on into the store. I'm going to walk right
5 past his vehicle to go in that door and there is. And what
6 does he do? He started mouthing off at him.

7 Now, does that justify Charles Wallace and going up to
8 him and either smack him or push him or grab him or
9 whatever he did? No, it didn't. But also this is the key
10 point, when Wallace did that to him, did Gary Moore turn
11 around and say, "I ain't having none of this and walk out
12 that store?" No. You saw on the video they go down, they
13 go to fighting. That fight was really fast and you saw it
14 but yet he still had time to take that knife out of the
15 sheath, open that knife up on his pants and go to jabbing.

16 The good samaritan in this case, Steven Hooks, who
17 ain't got no beef with either one of them, he goes over
18 there and on the video you remember seeing him, he is
19 tugging at Gary Moore, trying to pull Gary up off of
20 Charles Wallace. And you can look at the video how ever
21 many times you want in the back. Start it, stop it, pause
22 it, whatever you want to do that's evidence and you can
23 take it back and look at it. But if you remember he's
24 yanking on him trying to get the defendant off of the
25 victim and as he gets him up, you see the victim kind of

1 standing around and you can see, if you look close, that
2 thrust is still going. He's still stabbing Charles - -
3 Gary Moore is still stabbing Charles Wallace. And we know
4 this, not only because you can see on the video but,
5 because the good samaritan got a cut on his arm in the
6 process. He's already pulled Gary Moore up. Gary's still
7 cutting and even cuts the good samaritan on his own and he
8 didn't file charges or anything. What was Gary Moore's
9 intent? He intended to kill Charles Wallace. He was
10 looking for a fight. Why did he go into the store knowing
11 that Charles is in there because he sees his vehicle? Why
12 do you go in running at the mouth at him? Knowing this man
13 who previously responded to his grabbing a stick, by
14 grabbing an ax handle of his own. Why did he go in there
15 knowing he's there? He's looking for that fight. He
16 starts the fight with him running his mouth. Again, it
17 does not justify Wallace hitting him or shoving him or
18 slapping him or whatever he did. But, you know, even cops
19 can't use greater force than is necessary. If someone - -
20 if you go slap a police officer, he can't shoot you dead.
21 If you go shove a police officer, he can't shoot you dead
22 because it does, he better be in here being charged
23 himself. Gary Moore ain't got no more authority than a
24 police officer does. This was suppose to be a fight and he
25 pulls out a knife but he didn't just in the fight, he kept

1 going at it. You saw the shirt, the shirts got eight
2 different cuts in it. The back of the shirt, seven and
3 eight, the victims lung was punctured with one of these
4 cuts to the back. Six other ones to the front and side.
5 Gary is swinging that knife. He cuts that shirt eight
6 separate times and actually cuts the body, stabs the body
7 four times. He's lucky the victim did not die. Now, that
8 hospital saved his life once he was airlifted there or we'd
9 be here for a totally different case.

10 Now, the malice aforethought. Malice is something
11 that could be inferred from the brutal conduct or the
12 excessive force of Gary Moore. Gary was acting
13 dangerously. He was acting recklessly. He was brutal.
14 There had been former grudges, former hatred between these
15 two and so he's got that knife and he is acting cruel and
16 vindictive. He is cutting and he is stabbing and he is
17 jabbing and he is thrusting. One, two, three, four, five,
18 six, seven, eight. He's trying to kill the man. An
19 aforethought, the malice has to be aforethought. There is
20 no time for aforethought. A forethought could be at the
21 moment the stabbing began is when that malice could have
22 been. Malice aforethought. That could be at the moment he
23 pulled that knife out and started stabbing. That's the
24 law. The judge is going to charge you what the law is in
25 this case.

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1 You've seen the evidence, the knife. I'm not going to
2 touch it because I don't have a glove on but we'll send
3 gloves back there to - - we'll bring you out and let you
4 look at the knife. There's still some of the blood on it.
5 The video you can take back there. The photographs that
6 are in evidence. And one thing I also to look at when you
7 look at the photographs that Tim Hutchinson took. Remember
8 they were on the floor when the cutting began. They were
9 standing up when the final thrust took place. After
10 they're pulled apart, this is the key thing, after they're
11 apart, after that good samaritan, he finally yanks Gary
12 Moore up off of Charles Wallace, Gary is still trying to
13 get, cutting the good samaritan in the process, and you see
14 on the video the victim trying to swirl around to get away
15 from him. Look on these photographs at the pattern of
16 blood. It's not smeared like they're rolling around in it
17 those are droplets. If those final cuts had took place
18 while they were on the floor that blood would be smeared
19 but it's not. That's blood, dropped, because he still
20 thrusting and stabbing after they were up and pulled apart.
21 He was still going for the kill. He was acting
22 dangerously. There's been no evidence in the State's case
23 of self-defense. None. We asked that when you go back
24 there and you look at this evidence and you talk about it
25 that you find the defendant guilty of attempted murder

1 because that's clearly what this is.

2 Now, we have to prove it to you beyond a reasonable
3 doubt. And a reasonable doubt doesn't mean beyond any
4 doubt because we can doubt anything, it's beyond a
5 reasonable doubt. And I believe that once you go back
6 there and you discuss this case you're going to find the
7 defendant guilty as indicted and that's what I ask and
8 that's what Charles Wallace ask and I thank you for your
9 time.

10 THE COURT: Mr. Knox?

11 **CLOSING AGRUMENTS BY MR. KNOX:**

12 Thank you, Your Honor. Ladies and gentlemen of the
13 jury? Mr. and Mrs. Solicitor? Mr. Solicitor? Mrs.
14 Solicitor? Ladies and gentlemen, I want to first of all
15 thank you all for being here for these two days but you are
16 superstars of our criminal justice system. Without you
17 there could be no justice in America when a person wanting
18 a jury trial. So it's not about me, it's not about the
19 prosecution, it's not about judge, it's all about you at
20 this time because you are the sole determining of what the
21 facts are about in this case.

22 Over the past two days you've seen a lot of facts and
23 you've seen a lot of evidence. The prosecution just gave
24 you her version of what the facts are and in two seconds
25 I'm going to give you my version of what I think the facts

1 are. The judges is the soul purveyor on what the law is.
2 At the end of this he will give you instructions as to what
3 the law is.

4 Now, if you note from yesterday when I started this
5 trial in my opening statement I said this is a case about
6 self-defense. I also told you that the defendant is going
7 to the convenience store and he was attacked by Mr.
8 Wallace. Now, the prosecution would have you believe it
9 was a fight. Well, let me tell you what I think a fight
10 is, a fight is that, I can remember when I was in grade
11 school on the playground met at the flagpole and we agreed
12 to fight. Well, in this situation that didn't happen. Mr.
13 Moore was brutally attacked by Mr. Wallace. Now, I don't
14 know of anything more personal than someone smacking you in
15 the face. That's very personal. I mean, my whole body is
16 not Temple of God but if someone's slapped me in the face
17 that is so offensive I cannot tell you what I would do. So
18 I can tell you what Mr. Moore did. Another God-given
19 right, the right to self-defense. He defended himself from
20 that brutal attack. If you recall the testimony of Mr.
21 Wallace he did admit that he slapped him Mr. Moore. "Why
22 did you slap Mr. Moore?" "Because he was running his
23 mouth."

24 Now, everybody who testified except for Mr. Wallace
25 said that Mr. Moore was talking trash. The young lady who

1 was the cashier who called 911, she was about three feet
2 from Mr. Wallace. Her testimony was, "I did not hear
3 anything." "I did not hear anything." "I did not hear Mr.
4 Moore say anything." Who are you going to believe? Mr.
5 Wallace or a third-party who didn't have a dog in the fight
6 who stated that she didn't hear anything. I choose to
7 believe her. I mean, she was very believable when she
8 testified. All she wanted to do was get these people out
9 of there, get this guy some help. Ten seconds. Ten
10 seconds. He was in the store for ten seconds and he was
11 attacked and that's not the situation where there was no
12 provocation, I mean, do you know how fast ten seconds is?
13 Ten seconds is over. The last time I spoke to you til now
14 is ten seconds ago. That's real fast. Now, if he was
15 talking junk, what could he have said it ten seconds that
16 would set Mr. Wallace off to go over there and slap him?
17 Mr. Wallace's testimony was that he didn't make it down the
18 aisle. I came over there, I pulled him, pushed him and I
19 slapped him. Also, this knife, Mr. Wallace new that Mr.
20 Moore carried that knife because he's a construction
21 worker. That was a tool that was used in his trade. He
22 already had it on him. He didn't have to roll back to get
23 it out. When he was brutally attacked and this person who
24 had violated him he started to defend himself and in that
25 process, he used whatever available means that was

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1 necessary. Now, the solicitor spoke about what police
2 officers do in that situation. Police officers are trained
3 to use whatever force that is necessary to repel and attack
4 and nine times out of ten they will be acquitted, if
5 indicted. Most of the time they're not even indicted. So,
6 yes, they have a right to repel an attack with everything
7 that they carry with them, a gun, a nightstick, billy club,
8 anything that they have they can use it to repel an attack
9 because if you don't think that they won't use anything
10 that they have go out and slap a police officer and see
11 what happens and when you do tell me about it. Because
12 some very bad things are going to happen to you. That's
13 right, the prosecution said, he no better than a police
14 officer. They tried to make a big deal about he knew that
15 Mr. Wallace was in there. So what! So what! He did not
16 go in there with the intention to have a confrontation with
17 Mr. Wallace. He went in there to buy a beverage. He had
18 been working all day. He was going to the cooler to get a
19 beverage. You know, if he had any ill will towards Mr.
20 Wallace, do you think he would come in there in front of
21 all of these people to do something or would he have laid
22 and wait until Mr. Wallace come outside of the store and
23 attack him. Or, better yet, at the beginning of those six
24 seconds he could have went right up to Mr. Wallace and
25 slapped him just like Mr. Wallace did him but he didn't.

1 He was about his business of being in that store that is he
2 was buying a beverage. He never did get that opportunity
3 to purchase that beverage because he was brutally attacked.
4 The videos, yesterday you saw two videos. Today you saw
5 four videos. Four different videos of the same event. And
6 then you have the two lead detectives, Detective Burns and
7 Detective Perry, giving play-by-play like it's worldwide
8 federation or something. This is serious business. They
9 are investigators. They're suppose to seek the truth.
10 They up there talking about, "Bam, he got slapped." "Wow,
11 did you see that." What type of behavior is that for
12 investigators in an attempted murder charge. Also Mr.
13 Burns, in his interview with Mr. Moore, stated to him, Mr.
14 Moore stated to him, that he thought he was going to be
15 hurt. That's why he did what he did. Mr. Wallace
16 testified that he did commit a battery upon, even though he
17 claimed that he doesn't know what a battery is, that he did
18 commit a battery upon Mr. Moore. Was there an
19 investigation? No charges were brought against Mr. Wallace
20 for the battery that the police officers witnessed
21 themselves on the video and they made a comment about it.
22 How's that for justice? How is that for our law
23 enforcement? To see an act of crime and not do anything
24 about it. Then they go and edit the video with their
25 voices. Trying to influence whomever, I don't know who

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1 they were trying to influence, but the videos speaks for
2 themselves. I asked Detective Burns, "Did you see the
3 knife in Mr. Moore's hand? "He wasn't sure," he said, "he
4 wasn't clear that he did." But they had already come to
5 the conclusion that Mr. Moore came there to attack Mr.
6 Wallace and to stab Mr. Wallace. That's not what happened.
7 Believe me that's not what happened. The evidence shows
8 what happened. The video shows what happened.

9 About this bad blood, now, Mr. Wallace said that, that
10 incident with the ax handle happened about fifteen months
11 ago prior to the incident that happened in July. Well,
12 when you go to court, you get a decision, that's suppose to
13 be closure to that particular incident. The closure was
14 that Mr. Wallace had to pay for the damage that he did to
15 Mr. Moore's property. Now, forward.

16 Now, fourteen months later when this incident happened
17 back in last July, did Mr. Moore bring that up? It was Mr.
18 Wallace's testimony that Mr. Moore was mad about the
19 outcome of case. He's caring this baggage for fourteen
20 months. It built up in him like cancer. It was eating
21 away at him. And he saw his opportunity back in July, 2015
22 to do something about anguish that was building up in him.
23 "I'm going to get him. I'm going to get." He
24 miscalculated. Because in his attempt to get Mr. Moore, he
25 got stabbed. So, play with fire, you get burnt and that's

1 exactly what happened to Mr. Wallace. He got burnt.

2 Now, he wants you good people to say that Mr. Moore
3 tried to kill him. Think about that. Attempted murder.
4 He wasn't trying to kill anybody. He wanted to remove
5 whatever was happening to him and leave the store.

6 Now, let's talk about the good samaritan. His
7 testimony was that he saw these two people on the floor.
8 He came over and pulled the one that was closest to him
9 which happens to be Mr. Moore. He pulled him away. I
10 asked him, "What did Mr. Moore do after that?" "He got up
11 and he ran out of the store." Simple as that. After they
12 were broken up, Mr. Moore fled. If he wanted to kill him
13 he could've stayed in there to finish the job. He fled.
14 What did he do when he went outside? He went out, he
15 called law enforcement. He was on, you saw him, he was on
16 his cell phone. He didn't run away. He wasn't trying to
17 hide. He didn't have the knife. He gave the knife to law
18 enforcement. He cooperated with law enforcement. That's
19 what he did. Nothing can change that. That's not even
20 acknowledged because that's exactly what happened.

21 Now, you may not like Mr. Moore, you may not like Mr.
22 Wallace but it has nothing to do with that. It has to do
23 with fair play and living in a civil society. A society
24 where we can walk, go and come, without the interference of
25 the government or from our other fellow citizens. The

1 government couldn't have done what Mr. Wallace did to Mr.
2 Moore. What gives Mr. Wallace the right to do that to Mr.
3 Moore. He can't do it. There are better ways to settle
4 differences. If he wasn't satisfied with what happened, he
5 could've taken it before this Court. Also, I want you to
6 recall his testimony. He said that if he had a weapon he
7 would have killed Mr. Moore because he can't stand the man.
8 You've got that much anger built in you that if you had a
9 weapon, you would have killed someone. So who has the
10 malice, Mr. Moore or Mr. Wallace? You decide that.

11 Not one witness said that they heard any words passed
12 between Mr. Wallace and Mr. Moore. That's very important
13 because I think what the State is trying to say is that the
14 conversation is so provocative that it triggers something
15 in Mr. Wallace. That's not true. Because the only one
16 that said that was Mr. Wallace. Unfortunately, there is no
17 sound on the store video where you can probably hear, there
18 was a conversation but that troubles me because what they
19 actually saw and what they actually recorded was two
20 different things. They supplied commentary. They supplied
21 play-by-play to influence whoever looks at that video.
22 They had a chance to look at it. They looked at it at
23 least five times and made little comments and everything so
24 - - believe me, I don't even know why they did that. All
25 they had to do was take the video of the video and that

1 would've been it. They shouldn't have commented on it.

2 So again I ask you that when you go back in the jury
3 room to deliberate that you consider all of the facts, that
4 you consider the testimony from all of the witnesses and
5 when you do that I'm pretty sure that you return a verdict
6 of not guilty. Thank you.

7 THE COURT: Thank you, solicitor, counsel. All right.
8 Ladies and gentlemen of the jury, we've been in here for
9 some time now. Does anybody need a brief recess because
10 the next phase is the judge's charge of the law? It's
11 probably gonna take about a half an hour so do we need to
12 take - - does anybody need a break?

13 (Whereupon, the jury gives no response)

14 THE COURT: Everybody is okay. Okay. We'll get
15 started. Will y'all secure the doors. We don't need any
16 traffic in and out. If anybody wants to come in, tell them
17 to come on.

18 **THE JURY CHARGE:**

19 Now, that you've heard all of the evidence and the
20 arguments of the attorneys it's my duty to instruct you on
21 the law which applies to the case. These instructions will
22 be in three parts. First, the instructions on general
23 rules that define and control the jury's duties. Second,
24 the instructions is state the rules of law that you must
25 apply, for example, what the State must prove in this case.

1 And third, some rules for your deliberations.

2 It is your duty to find the facts from all the
3 evidence in the case. To those facts you must apply the
4 law as I give it to you. You must follow the law and you
5 shall not be concerned with what the law should be but what
6 the law is and you must not be influenced by any personal,
7 likes or dislikes, opinions, or prejudices or undue
8 sympathy. That means that you must decide the case solely
9 on the evidence before you and according to the law. You
10 will recall that you took an oath promising to do just that
11 at the beginning of this trial.

12 In following my instructions you must follow all of
13 them and not single out some and ignore others. They're
14 all equally important. And you must not read into these
15 instructions or into anything that I may have said or done
16 or any suggestions as to what the verdict you should
17 return. That is a matter entirely for you to decide
18 because our constitution requires that. I am not allowed
19 to have an opinion as to the facts of this case. You and
20 you alone are the judges of what the facts are. You decide
21 what the facts are by evaluating or weighing the evidence
22 you have heard during the trial.

23 Now, there is no way for you to weigh evidence in the
24 literal sense. I can't give you a set of scales. It is
25 entirely a mental process and you weigh and evaluate the

1 evidence by simply using your good sense and sound
2 judgment.

3 All of you are aware that this is a criminal case.
4 The bill of indictment charges the defendant with attempted
5 murder. I remind you that the fact that the defendant was
6 arrested, charged, and indicted in this case is not
7 evidence in the case and cannot be considered by you as
8 evidence of guilt in the case nor does it create any
9 presumption or inference of guilt. The document that I
10 have up here that we call an indictment is simply the
11 formal written instrument which contains the charges made
12 against the defendant and it is the document by which the
13 case is brought into the court.

14 The defendant has pled not guilty to the indictment
15 and that plea puts the burden on the State to prove the
16 defendant guilty. A person charged with committing a
17 criminal offense in South Carolina is never required to
18 prove himself innocent. I charge you that it is an
19 important rule of the law that the defendant in a criminal
20 trial no matter what the seriousness of the charge may be, will
21 always be presumed to be innocent of the crime for which
22 the indictment was issued unless guilt has been proven by
23 evidence satisfying you of that guilt beyond a reasonable
24 doubt. The presumption of innocence does not end when you
25 begin your deliberations. But it accompanies the defendant

1 throughout the trial until you reach a verdict of guilt
2 based on evidence satisfying you of that guilt beyond a
3 reasonable doubt. And I'm going to give you a further
4 explanation of the meaning of reasonable doubt in just a
5 few minutes.

6 The presumption of innocence is like a robe of
7 righteousness placed about the shoulder of a defendant
8 which remains with the defendant until he has been stripped
9 or that has been stripped from the defendant by evidence
10 satisfying you of the defendant's guilt beyond a reasonable
11 doubt. The presumption of innocence it's not a mere legal
12 theory and it is not just a legal phrase. It is a
13 substantial right that which every defendant is entitled
14 unless you, the jury, are satisfied from the evidence of
15 the defendant's guilt beyond a reasonable doubt.

16 Necessarily you must determine the credibility of
17 witnesses who have testified in the case. Credibility
18 simply means believability. It becomes your duty as jurors
19 to analyze and to evaluate the evidence and to determine
20 which evidence convinces you of its truth. And in
21 determining the believability of a witnesses who have
22 testified in the case you may believe one witness over
23 several witnesses or several witnesses over one witness.
24 You may believe a part of the testimony of a witness and
25 reject the remaining part of the testimony of that same

1 witness. You may believe the testimony of the witness and
2 its entirety or reject the testimony of a witness and its
3 entirety. You may consider whether any witness has
4 exhibited to you any interest, bias, prejudice or other
5 motive in the case. You may also consider the appearance
6 in a manner or the manner of a witness while on the witness
7 stand.

8 I instruct you and emphasize that the fact that the
9 defendant did not testify is not a factor to be considered
10 by you in any way in your deliberation and in your
11 consideration on the question of the guilt or the innocence
12 of the defendant. It must not be considered by you in any
13 manner whatsoever. A defendant has the constitutional
14 right to remain silent and the insertion of this right must
15 not be considered by you in your deliberations. I repeat
16 under your oath, you are to draw no conclusion whatsoever
17 from the fact that the defendant in this case did not
18 testify. The fact that this defendant did not testify
19 should not even be discussed in the jury room. The burden
20 of proof as I have stated to you is on the State. The
21 defendant is not required to prove his innocence. The
22 burden of proof remains on the State to prove guilt beyond
23 a reasonable doubt.

24 I remind you that, that during this trial you and I
25 have certain duties to perform. As the trial judge it is

1 my responsibility to preside over the trial of this case
2 and I also have the duty to on the admissibility of the
3 evidence offered during the trial you are to consider only
4 the competent evidence before you. If there was any
5 testimony ordered stricken from the record in this case
6 during the trial, you must disregard that testimony.

7 Everybody okay? Do I need to take a brief recess?
8 Everybody's fine?

9 (Whereupon, the jury gives no verbal answer)

10 You are to consider only the testimony which has been
11 presented from this witness stand. Any exhibits which have
12 been made a part of the record in the case in any
13 stipulations of counsel. I have the additional duty to
14 charge you the law applicable to the case and as the
15 presiding judge, I am the sole judge of the law in this
16 case and it's your duty as jurors to accept and apply the
17 law as I state it to you. If you already have any ideas to
18 what the law is or what the law ought to be and it does not
19 agree with what I now tell you the law is, you must abandon
20 this idea or preconception because you are sworn to accept
21 the law and apply the law exactly as I state it to you. In
22 every case tried in this court before a jury, the jury
23 becomes the sole and exclusive judge of the facts in the
24 case. The trial judge cannot animate, state, comment on,
25 or make any statement to a trial jury about the facts in a

1 case. Since you, the jury, are the sole judge of the facts
2 in the case, you are not to infer from what I have said
3 during the progress of this trial and ruling upon the
4 admissibility of evidence or otherwise or anything that I
5 say now during the course of this instruction to you that I
6 have any opinion about the facts in this case. The law
7 does not allow me to have an opinion about the facts. This
8 is a matter solely for you, the jury, to determine. As
9 jurors it's your duty to determine the effect, value, and
10 weight and truth of the evidence presented during the
11 trial.

12 Now, you heard me use the term, reasonable doubt. The
13 State has the burden of proving the defendant beyond a
14 reasonable doubt. Some of you may have served as jurors in
15 civil cases where you were told that it is only necessary
16 to prove that a fact is more likely true than not true.
17 That's sometimes said in the term that is used in civil
18 court that it is by the greater weight or the preponderance
19 of the evidence. In criminal cases the State's proof must
20 be more powerful than that. It must be beyond a reasonable
21 doubt.

22 Proof beyond a reasonable doubt is proof that leaves
23 you firmly convinced of the defendant's guilt. They are
24 very few things in this world that we know with absolute
25 certainty and in criminal cases the law does not require

1 proof that overcomes every possible doubt. If based on
2 your consideration of the evidence, you are firmly
3 convinced that the defendant is guilty of the crime
4 charged, you must find the defendant guilty. If on the
5 other hand, you think there's a real possibility that the
6 defendant is not guilty, you must give the defendant the
7 benefit of the doubt and find him not guilty.

8 I am now going to instruct you as to the statutory
9 law. Give me just a second. All right. I charge you from
10 Section 16-3-29 of the Code of Laws of 1976, as amended as
11 to the charge of attempted murder. A person who with
12 intent to kill, attempts to kill another person with malice
13 aforethought either expressed or implied commenced the
14 offense of attempted murder.

15 What is malice? Malice is defined in the law of
16 homicide as a term of art. Malice does not necessarily
17 mean an actual intent to kill. It is a technical term
18 importing wickedness and excluding just cause or legal
19 excuse. It is something which springs from wickedness,
20 from depravity, from a depraved spirit, from a heart devoid
21 on social duty, and fatally bent on mischief. The words
22 express or inferred malice do not means different kinds of
23 malice but merely the manner in which the only kind of
24 malice known to law may be shown to exist. Malice may be
25 expressed as where previous threats of vengeance or lying

1 and wait or other circumstances so directly that intent to
2 kill was entertained. Malice may be inferred where though
3 no express intent to kill is proved by direct evidence, it
4 may be inferred from the facts and circumstances which are
5 proved. Malice may be inferred from the willful,
6 deliberate and intentional doing of an unlawful act without
7 just cause for legal excuse.

8 Now, as to the word, intent, let me discuss that with
9 you. In order to establish criminal liability, criminal
10 intent is required. For example, the mental state required
11 to be proven by the State for a particular crime might be
12 purpose intent, knowledge, recklessness, or criminal
13 negligence. Criminal intent must be proven by the State
14 beyond a reasonable doubt. Criminal intent is also a
15 matter that must be determined by the jury from the
16 circumstances surrounding the situation. There is no way
17 to prove intent to a mathematical certainty. There is no
18 way medical science can dissect a person's brain and
19 determine what the person had in mind. So the law says
20 that criminal intent may be inferred from the circumstances
21 shown to have been existing or to have existed. This is
22 how you make a determination of whether or not the element
23 requiring intent was present. It is not necessary to
24 establish intent by direct and positive evidence but intent
25 may be establish by inference in the same way as any other

1 fact by taking into consideration the acts of the parties
2 and all the facts and circumstances of the case. Criminal
3 intent is a mental state, a conscious wrongdoing. It is up
4 to you to determine what the defendant intended to do based
5 on the circumstances shown to have existed. Criminal
6 intent can arise from action or a failure to act. It may
7 arise from negligence, recklessness, or indifferent to duty
8 or to the consequences that is considered by the law to be
9 the equivalent of criminal intent.

10 All right. During the trial of the case you heard the
11 issue of self-defense raised or mention. I need to speak
12 with you about that. Once again, a defendant is not
13 required to prove anything in a case. It is up to the
14 State to prove a case beyond a reasonable doubt. And in
15 dealing with self-defense, the State must prove to you and
16 some times the word, disprove to you, is used but I think
17 probably the easiest way to explain it is, the State has
18 the burden of proving that self-defense did not exist.
19 Self-defense is a complete defense. If established, you
20 must find the defendant not guilty. Generally, the
21 elements required by law to establish self-defense include
22 the following: the defendant must be without fault in
23 bringing on the difficulty. The defendant must have
24 actually believed he was in imminent danger of losing his
25 life or sustaining serious bodily injuries or he actually

1 was in such imminent danger. In his defense or if a
2 defendant's defense is based upon a belief of imminent
3 danger a reasonable prudent person of ordinary firmness and
4 courage would have entertained the same belief. If the
5 defendant actually was in imminent danger the circumstances
6 were as such, as would warrant a person of ordinary
7 prudence, firmness, and courage to strike a blow or fire a
8 shot or whatever in order to save himself from serious
9 bodily harm or losing his own life. The defendant had no
10 other probable means of avoiding the danger of losing his
11 own life or sustaining seriously bodily injury to act as he
12 did in the particular incidences. These are the elements
13 of self-defense.

14 Let me speak with you about imminent danger. A
15 defendant must have believed he was in imminent danger, not
16 that he was actually in such danger. The test is that a
17 defendant had the right to act on appearances and under the
18 circumstances as they appeared to him. If you believed
19 that he was in such danger and a reasonable prudent man of
20 ordinary firmness and courage, would have entertained the
21 same belief. In considering the actions of the defendant,
22 a jury is warranted in considering the propensity for acts
23 of violence of a victim. If the defendant knew the victim
24 was of such propensity then, the defendant would be
25 warranted in construing the victim's actions more harshly

1 and acting upon hostile appearances more readily than he
2 would have been entitled to, to a man who was not of such
3 propensity.

4 If you have a reasonable doubt of the defendant's
5 guilt after considering all of the evidence including the
6 evidence of self-defense then you must find the defendant
7 not guilty. On the other hand, if you have no reasonable
8 doubt of the defendant's guilt after considering all of the
9 evidence including the evidence of self-defense, then you
10 must find him guilty.

11 Now, I will to talk to you about the forms of the
12 verdict in the case. If the State has failed to prove the
13 guilt of the defendant beyond a reasonable doubt your
14 verdict would be two words, not guilty. If the State has
15 proved the guilt of this defendant beyond a reasonable
16 doubt your verdict will be one word, guilty. You are in no
17 way to give any weight as to how I numerically quoted these
18 possible verdicts to you. The verdict that you render in
19 this case must be the verdict of each and every juror.
20 That is the twelve deliberating jurors. It must be your
21 unanimous verdict. All twelve must agree on the verdict
22 which you authorized, Madam Forelady, to write for the
23 jury. Madam Forelady, on the back of this indictment you
24 will see in the bottom left corner the word, verdict. Once
25 the jury has reached a verdict, it would be your duty to

1 write in the appropriate verdict, sign your name, and date
2 this, what ever the date of the verdict is. Knock on the
3 door and we will receive the verdict. Okay?

4 Once again in your deliberations if somebody needs to
5 step out for a break, smoke break, restroom break, whatever
6 it may be, seize your deliberations and do not resume those
7 until all twelve are back. When you go back, and this very
8 seldom happens but I have to cover this, because it has
9 happened. If you go back and you have a juror that says I
10 absolutely am not going to deliberate this case,
11 immediately notify me of that because that's why we have an
12 alternate. Okay? I think I have covered everything I
13 needed to cover with you. Madame Bailiff will be stationed
14 outside the door if you need any assistance on anything.
15 Before I send the exhibits back to you and the verdict form
16 on the back of the indictment, I've got to check in one
17 last time with counsel and make sure I've covered
18 everything that we should've of covered with you in the
19 charge. And we also have to check and make sure all the
20 exhibits are there and then once we send those back to you,
21 you may begin your deliberations at that time. If y'all
22 will step back, I need the alternate to remain with us just
23 a minute or two please. We'll be back with you in just a
24 few minutes.

25 (Whereupon, the jury exit the courtroom at 11:53 a.m.)

1 THE COURT: Counsel, anything concerning the charge or
2 anything?

3 MRS. JOHNSON-LEE: Nothing from the State.

4 MR. KNOX: Nothing from the defense, Your Honor.

5 THE COURT: Any concerns about the juror?

6 MR. KNOX: We've been watching - - -

7 THE COURT: I don't think she fell asleep but,
8 obviously she - - -

9 MR. KNOX: No. I have no concerns about that, Your
10 Honor.

11 THE COURT: If y'all would - - -

12 MR. REDMOND: I beg the Court's indulgence.

13 MRS. JOHNSON-LEE: The State is satisfied that, that
14 juror will be fine, Your Honor.

15 THE COURT: I had my attention, of course, on the
16 charge. Did she actually fall asleep?

17 MADAM BALILIFF: No.

18 MR. REDMOND: What I saw today, it looked like she was
19 - - at one point, she looked like she was engaged. I had
20 not seen anything today. I recall what happened yesterday.

21 THE COURT: Okay.

22 MR. REDMOND: But today, from what I saw, she seemed
23 to be paying attention.

24 MR. KNOX: Well, Your Honor, I do that all the time at
25 church and my wife thinks I'm asleep but I'm not asleep. I

1 hear everything the preacher says.

2 THE COURT: That's a good way to get pinched. If
3 y'all will check off on the exhibits, we'll put them to
4 work. And while you're coming up, thank you so much for
5 getting the case presented.

6 (Whereupon, exhibits were checked and given to the
7 bailiff)

8 THE COURT: Court is in recess for however long unless
9 we get a verdict.

10 (Whereupon, deliberations starts at 12:00 p.m.)

11 (Whereupon, the jury has a question for the Court)

12 THE COURT: Okay. We have a question that was sent
13 out. What is the attempted murder statute? What qualifies
14 a person to be charged with attempted murder? What is the
15 difference between premeditation intent? So I will try to
16 attempt to clarify as much of that as I can. Now, on that
17 second question there's nothing I can really charge on that
18 because that would put me in the position of possibly
19 commenting on the facts. So let's see what we can do.
20 Bring them in.

21 MRS. JOHNSON-LEE: Judge, did you - - and I don't
22 recall but, did the initial malice charge have the
23 definition of aforethought in it that you read earlier?
24 Since aforethought and premeditated to a layperson it
25 sounds like they could be similar. I'm just wondering if

1 the question is actually what, and I don't want to question
2 the jury, I don't know what their question really is, but
3 if we can give them the definition of aforethought since
4 that, actually, is part of the element of premeditated,
5 excuse me, of attempted murder. It's not premeditated it's
6 malice aforethought.

7 THE COURT: All right. It's taking me a minute here.
8 Madam Court Reporter, will you go back online and get me a
9 definition for aforethought.

10 COURT REPORTER: Yes, sir.

11 MR. REDMOND: Your Honor, this is out of the
12 Prosecutor's Deskbook. The definition of aforethought
13 coming out of the State v. Cooper case and State v. Fuller,
14 the cites are 46, S.E. 2d 545 in 1948 and State v. Fuller
15 is 93, S.E. 2d 463 and that's a 1956 case. That just
16 simply, for the record, says aforethought is the time in
17 which evil is conceived. There's no particular length of
18 time prior to the killing, now, obviously, we'd have to
19 change that word, but there's no particular length of time
20 prior to the killing for malice to exist to be malice
21 aforethought. So just for the Court's consideration.

22 MR. KNOX: Your Honor, what was the specific question
23 that the jury wanted answered? Did they state they wanted
24 the definition of malice aforethought?

25 THE COURT: What is the attempted murder statute? What

1 qualifies a person to be charged with attempted murder?
2 Which I can't get into that. What is the difference
3 between premeditation and intent?

4 MR. KNOX: Well, they - - -

5 THE COURT: Now, I have to say this, I define malice
6 but I did not define aforethought and it is in the statute
7 but premeditation is not. But if they want to know the
8 difference I think they're entitled to know the difference
9 between premeditation even though it's not mentioned in the
10 statute an intent, because there must be some confusion in
11 their mind about what the difference in the two is.

12 MR. KNOX: Your Honor, I think I'm going to need to
13 respectfully object to that. I think that they should go
14 with the charges you gave to them, that goes with the
15 offense. And I think that's going to change things up a
16 little bit.

17 THE COURT: All right. I'll try to sort this out and
18 then make sure if there's an objection, we'd renew it after
19 I'd do it to preserve it, okay? Okay. Bring them in.

20 (Whereupon, the jury enters the courtroom at 1:57 p.m.)

21 THE COURT: I've got your note and your questions.
22 Some I can answer and some I can't so I will try to do the
23 best I can. What is the attempted murder statute? Section
24 16-3-29 of the Code of Law, State of South Carolina, 1976,
25 as amended, is entitled attempted murder. A person who

1 with intent to kill attempts to kill another person with
2 malice aforethought either expressed or implied commenced
3 the offense of attempted murder. Elements of that offense
4 as far as definition, the term malice aforethought. Malice
5 aforethought is an essential element of this crime. What
6 is malice? Malice is defined in the law of homicide as a
7 term of art. Malice does not necessarily mean an actual
8 intent to kill. It is a technical term importing
9 wickedness and excluding just cause or legal excuse. It is
10 something which springs from wickedness, from depravity,
11 from a depraved spirit, from a heart devoid of social duty
12 and fatally bent on mischief. The words express or
13 inferred malice do not mean different kinds of malice but
14 merely the manner in which the only kind of malice known to
15 the law may be shown to exist.

16 Now, to point out to you in that definition the word,
17 inferred, means the same thing as implied which in the
18 actual statute it uses the term, implied. That is to say
19 either by direct evidence or by inference, malice may be
20 expressed as where previous threats of vengeance or lying
21 and wait or other circumstances show directly that and
22 intent to kill was entertained. Malice may be inferred or
23 implied where though no expressed intent to kill is proved
24 by direct evidence. It may be inferred from the facts and
25 circumstances which are proved. Malice may be inferred

1 from the willful, deliberate, and intentional doing of an
2 unlawful act without just cause or legal excuse. In other
3 words, in its general signification malice means, the doing
4 of a wrongful act intentionally without justification or
5 legal excuse.

6 All right. I apologize because the word aforethought
7 is in the statute and I did not cover that in the original
8 charge so let me speak with you about that.

9 Aforethought. Aforethought is the time is when evil
10 is conceived. There is no particular length of time prior
11 to the crime that may be concerned for malice to exist to
12 be malice aforethought.

13 Now, as to intent. Criminal intent is a state of mind
14 that operates jointly with an act or admission in the
15 commission of a crime. Criminal intent is a mental state
16 of conscious wrongdoing. Intent includes those
17 consequences which (a) represent the very purpose for which
18 an act is done; or, (b) are known to be substantially
19 certain to result regardless of desire.

20 What is the difference between premeditation and
21 intent? Well, I just defined intent for you. But nowhere
22 in the statute does it mention premeditation but, I
23 certainly do not mind giving you a standard definition of
24 premeditated or premeditation since you inquired about the
25 difference. Premeditation is defined as think out or plan.

1 But once again that is not, that term is not in that
2 statue.

3 Now, as far as that second question, what qualifies a
4 person to be charged with attempted murder? There is no
5 way I can answer that. I would possibly be put in the
6 position of commenting on the facts and I can't do that.
7 That's not permissible. It's charged as I charged you.
8 That is the jury's duty in a trial is to find the facts,
9 I'm just the judge of the law. Okay? If y'all would step
10 back, I may have to bring you back in if counsel wants me
11 to cover something else but you may step back to your room.

12 (Whereupon, the jury exits the courtroom at 2:05 p.m.)

13 (Whereupon, the Jury Question has been marked and entered
14 into evidence as Court's Exhibit No. 1)

15 THE COURT: Okay. Any exceptions or additions? I
16 tried to be as simple as I could from what I had.

17 MRS. JOHNSON-LEE: Nothing from the State?

18 MR. KNOX: Your Honor, the only thing I want to do is
19 I'm going to object to the part of you giving the jury the
20 definition of premeditation for the record?

21 THE COURT: Okay. So noted. And, I guess, to make
22 the record straight, I'm going to deny the motion on that
23 based on my explanation that, that is not a term used
24 within the statute.

25 MR. KNOX: I understand that.

VERDICT

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1 THE COURT: But since they asked what the difference
2 was. If you would tell them they can continue their
3 deliberations, we'll stand at ease.

4 (Whereupon, the jury returned to deliberations at 2:07
5 p.m.)

6 THE COURT: All right. They say they have a verdict.
7 Bring them in.

8 (Whereupon, the jury enters the courtroom at 2:32 p.m.)

9 **VERDICT**

10 THE COURT: All right. Madam Clerk?

11 THE CLERK: Madam Forelady, have you reached a
12 decision?

13 FORELADY: Yes, ma'am.

14 THE CLERK: If you please pass it to the bailiff.
15 (Whereupon, the forelady complies)

16 THE COURT: Signed and dated. You may publish the
17 verdict.

18 THE CLERK: The State of South Carolina versus Gary
19 Moore, case number 2015-GS-13-398, we the jury find him
20 guilty, find the defendant, Gary Moore, guilty, April 6,
21 2016. Is this still your verdict?

22 FORELADY: Yes, ma'am.

23 THE CLERK: Is it still the verdict of all twelve?
24 (Whereupon, the jurors all agree)

25 THE COURT: Counsel, anything further of the jury?

VERDICT

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1 MR. KNOX: Not from the defense, Your Honor.

2 MRS. JOHNSON-LEE: Not from the State, Your Honor.

3 THE COURT: Ladies and gentlemen of the jury, I want
4 to sincerely thank you for your service this week. It's
5 often not easy to have to serve on a jury that's the way
6 our country is set up its criminal justice system. Is
7 patterned after the English system and we carried that over
8 to our colonies and into the states as they were formed and
9 as it stands and in most states is twelve jurors serve and
10 some as low as six and I think there's a few that have
11 eight to serve. So I appreciate y'all coming together and
12 coming down and helping us resolve this matter. Something
13 I do need to apologize to you for to protect myself as well
14 as Madam Clerk, we are embarrassed over the amount of jury
15 pay but we cannot control that, that is up to county
16 government specifically county councilman. I certainly
17 would not blame y'all, in any way, if you approach some of
18 them and tell them that it needs to be increased because
19 there's a great difference between pay for state and county
20 service than it is in the federal system. We've talked to
21 them and, hopefully, one day the financial resources will
22 allow for an increase in the jury pay. But you will get an
23 expense check and that - - give them ten days or so?

24 THE CLERK: No. They got it right now.

25 THE COURT: Oh, okay. Y'all are a step ahead of me.

1 THE CLERK: We don't mess around.

2 THE COURT: Very good. Got your expense check. I
3 know it's not much for a long several days for you, but we
4 do appreciate you helping us. Good news is you won't be
5 asked to serve until, possibly, next year and, of course,
6 you get an exemption but if you are asked to serve I would
7 encourage you to come and help us.

8 Thank you very much. Y'all are dismissed. I haven't
9 made any decision at this time. The next phase of the
10 trial is what we call mitigation and sentencing but I've
11 got to hear from counsel and then I have several avenues
12 that I may take in finishing up the trial on that. But if
13 you'd like to stay and watch anything that goes on after
14 this, you're welcome to but, otherwise, it's a very nice
15 day out there and y'all are welcome to go. You don't need
16 to worry about coming back. If we need a jury there's
17 enough left that we can work with so we won't tax y'all
18 with having to come back. Any questions? Hope to see you
19 again. Thank you very much.

20 (Whereupon, the jury exits the courtroom at 2:37 p.m.)

21 THE COURT: Anything before we move on to mitigation
22 and sentencing?

23 MRS. JOHNSON-LEE: Nothing prior sentencing.

24 MR. KNOX: Nothing from the defense, Your Honor.

25 THE COURT: You going to secure the defendant?

1 Solicitor? I'm ready.

2 MRS. JOHNSON-LEE: Yes, Your Honor, he does have some
3 prior record. It's nothing of significant. An assault
4 and battery, South Carolina, 2009. He actually has, it
5 looks like a bench warrant out of Tennessee for leaving the
6 scene of an accident, some other traffic offenses and a
7 resisting arrest and then he has a prior drug convictions
8 out of the State of New York.

9 THE COURT: specifically?

10 MRS. JOHNSON-LEE: Your Honor, the drug conviction
11 from New York is criminal possession of controlled
12 substance, fifth degree. It shows that he was sentenced,
13 it was probation for five years suspended to six months.

14 THE COURT: Fifth degree.

15 MRS. JOHNSON-LEE: Fifth degree and then an unlawful
16 possession of marijuana.

17 THE COURT: Anybody with the State's side want to be
18 heard?

19 MR. WALLACE: Judge, Your Honor, I'm glad it's over
20 with.

21 MRS. JOHNSON-LEE: Judge, the State would just asked
22 for a significant sentence on this matter.

23 THE COURT: Anything else from the State?

24 MRS. JOHNSON-LEE: No, Your Honor.

25 THE COURT: From the defense?

1 MR. KNOX: Yes, Your Honor. Your Honor, if it pleases
2 the Court? As well as my representation, my condolences to
3 Mr. Moore and his family. He's married. He has two
4 children. He has worked every day since I have been
5 representing him. Currently he is working in the State of
6 Texas. He's an accomplished construction worker. He has
7 his own business. And in his business he hires people
8 through the Department of Probation. I don't know if it's
9 here in Chesterfield County or someplace else but he hires
10 people to work off any probation fines . I think they are
11 some mitigating circumstances of these two people who have
12 a history and eventually it was going to happen something
13 like this. It's unfortunate that my client didn't use
14 better judgment in how to bring about a peaceful resolution
15 to this. I think both of them had bad attitudes. One
16 get's slapped in the face and I don't know how a reasonable
17 person would respond to that but the jury saw fit that he,
18 Mr. Moore, over responded. And I'm pretty certain based on
19 his abilities to comprehend and to assess the totality of
20 the situation he did what he thought was best.

21 THE COURT: All right. Mr. Moore, anything you would
22 like to add?

23 MR. MOORE: Yes, sir. I try to avoid this incident.
24 After it started I actually went working back on the road
25 away from my family. I was only called, at the time of

1 this incident, for a month to do job I was obligated to
2 which was in that area and I did not at any time see his
3 vehicle. I was accustomed to the white vehicle he has
4 parked outside. I had no knowledge of that blue vehicle.
5 Had I known that, I would've never went to that store. All
6 right. I moved slam out of the state to try to keep this
7 from happening. I did. I don't sleep in the same house
8 with my family every night so that I could avoid this
9 because, you know, it was inevitable. Every time this
10 gentleman saw me, you know, at my home, at the courthouse,
11 at Mr. Huckleberry's office, this gentleman attack me. I
12 knew that wasn't going to change and I did everything I
13 could in my power to make the necessary arrangements so
14 that I didn't have to be here and subject to this
15 environment, myself or my family to these dealings. I am a
16 business owner like Mr. Knox stated. I have worked with
17 the probation department here to give some of the guys,
18 that was the state park. I do employee a lot of the people
19 to try to give him a second chance. Yes, I have been in
20 trouble as a young man and I've paid dearly for my
21 transgressions. But I've been home eight years now and
22 I've done the best that any man could be asked to do. I've
23 raised my family. I put my fiancé, back here, through
24 college. I recently acquired a job that actually turned
25 our lives around and gave us a way out of here away from

1 this environment so that we didn't ever have to have this
2 happen. And I just asked that, you know, that you, if at
3 all possible, possibly even review my interview when all
4 this took place. I have no malicious intent. All I wanted
5 to do was avoid this. I really did. I have two young sons
6 that worship me and that's what my life is about. That's
7 what it's been about for the last five years and I think if
8 you ask around, I have family here, that will speak and
9 tell you the same thing. I am not the child I was in my
10 20's when I was getting in trouble. I have never in my
11 life bothered, instigated anything with any person. That's
12 not who I was raised to be. That's not who my grandma made
13 me to be. Now, I do apologize for the transgression of my
14 youth but I'm not that young man anymore. I'm grown. You
15 know, I take responsibility for the things that I do and I
16 do try my best to make the best choices for my family each
17 day. Now, that day I felt my life was in jeopardy. I
18 mean, I've known Mr. Wallace for years and he stated to you
19 that he did have his knife in his pocket and he also told
20 me and my fiancé, back here, that he would get me with that
21 knife. I was in fear for my life. I tell you that as a
22 man. I am not lying and I have not lied during the course
23 of any of this investigation. I just ask that, you know,
24 take into account the facts that were presented here, the
25 testimonies of the witnesses who were there and that were

1 not partial and that you grant me a favorable sentence so
2 that I can continue keep my fiancé in college and to raise
3 my sons. I am not a habitual felony offender. I'm not a
4 violent offender. And I have really done everything I
5 could to change my life to be a better man. I'm sorry
6 that, you know, that the jury, you know, didn't see what I
7 saw or felt, but, you know, I can't control that. But I do
8 ask you to be considerate of all the things and all the
9 work I've done to support this community. I - - because
10 normally I get the aid of my kids, out of the programs
11 around here, we do community service in the neighborhoods
12 around this neighborhood. One of my attendance here, Mr.
13 Larry, is a percipient of those deeds. I've never asked
14 for a public recognition. I was just trying to pay back to
15 my community for the transgression of my youth. I stand
16 here before you as a man and I'd asked for you to weigh all
17 of these things and to allow the people that I've mentioned
18 to see what they have to say because no voices on our side
19 have ever been heard. Thank you.

20 THE COURT: All right. At this time, I want to go
21 ahead and cover something on the record. As you know, you
22 stand convicted of the indicted crime. You have appellate
23 rights. Appellate rights run ten days after her sentencing
24 as far as filing a notice of appeal, if you so desire. If
25 you let that time period get by after actual sentencing you

1 would lose your appellate rights so I needed to speak with
2 you about that. Counsel, if you so desire to do that, will
3 assist you and obtain appellate rights or appellate counsel
4 by the normal process is to file a notice of appeal and
5 then the ones that specialize and so the attorneys that
6 specialize will help with the appeals, would come in, it's
7 the normal practice they do. Mr. Wallace raised his hand
8 so I know he's wanting to add something and I always allow
9 the victim side especially after conviction to have a say.
10 Yes, sir?

11 MR. WALLACE: He said - - -

12 THE COURT: If he needs to say something, let him say
13 it.

14 MR. WALLACE: Judge, Your Honor, he says his youngins,
15 they is his youngins but mine and your tax dollars is
16 feeding them. Why - - if the youngin are going by Steen
17 and he's a Moore and she's a Melton, so that means mine and
18 your tax dollars are feeding them.

19 THE COURT: All right. To make sure I understand the
20 family situation. Mr. Moore, you have two children?

21 MR. MOORE: Four, sir.

22 THE COURT: Four children. What are their ages?

23 MR. MOORE: My daughter is seventeen this year. My
24 son is currently, well currently trying to get out of child
25 protective services in New York State. My five-year-old

SENTENCING

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1 and my two-year-old live with me in the home with their
2 mother. Like I said, I provide for them. We don't receive
3 any assistance. I make more than the minimum wage.
4 Actually, this week we were going to actually get our first
5 ever insurance through a company I work for out of Texas.
6 And, like I said, that company is holding my job until I
7 get back there, if you see fit. Like I said, we've done
8 really well. My construction company is doing well locally
9 and it will continue to do so. I have employees that's
10 been running that company for the past year and a half
11 while I've been on the road to making wages to pay for my
12 family. I am an accomplished welder and a pipe fitter. I
13 just recently acquired the job that I have now, TIC, which
14 is a very great outfit. It's an equal opportunity employer
15 and it's through the government, actually. Just received
16 life insurance for the first time in my life. Just
17 received insurance on my children for the first time in my
18 life. My family is actually doing really well other than
19 this incident that I came home to because I'd obligated
20 myself to build that man's addition on his home over off of
21 Sting Road.

SENTENCING:

22
23 THE COURT: All right. Mr. Hembaris, I don't think
24 you're going to want to hear what I'm going to do but
25 because of the uniqueness of the situation and there had

1 been prior difficulties and because of what's been related
2 to me especially about family familiar factors here, I want
3 you to interview the appropriate parties here on both sides
4 and get me a pre-sentence investigation report, the
5 recommendation. I think certainly from what I hear there
6 needs to be more input from the others that can be affected
7 by this case on both side.

8 MR. HEMBARIS: Yes, sir.

9 THE COURT: Now, I apologize for this next statement I
10 have to make to you but I will be here tomorrow. I know
11 you can't probably complete that, that quickly but I will
12 be back here next week for civil and I will keep this term
13 opened. I will not sign a deal on this term. Is that - -
14 would that be too much of a rush next week?

15 MR. HEMBARIS: I will do my best, Your Honor.

16 THE COURT: Sheriff, Mr. Moore will be held here until
17 we can complete that. You know, I have to review all of
18 that and make a final decision then. Okay?

19 MR. KNOX: Thank you, Your Honor.

20 MRS. JOHNSON-LEE: Thank you, Your Honor.

21 (Court is adjourned at 3:00 p.m.)

22 (CONCLUSION OF THE HEARING ON APRIL 6, 2016)

23

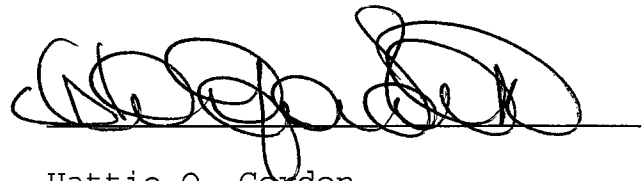
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CERTIFICATE

I, the undersigned Hattie O. Gordon, Official Court Reporter for the Fourth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete excerpt of transcript of record of all the proceedings had and evidence introduced in the hearing of the captioned cause, relative to appeal, in the Fourth Circuit Court for Chesterfield County, South Carolina, on the 6th day of April, 2016.

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

A handwritten signature in black ink, appearing to read 'Hattie O. Gordon', written over a horizontal line.

Hattie O. Gordon

Circuit Court Reporter

July 29, 2016

STATE OF SOUTH CAROLINA)
) COURT OF COMMON PLEAS
COUNTY OF CHESTERFIELD) 2015-GS-13-0398

STATE OF SOUTH CAROLINA)
) PLAINTIFF
) vs.) TRANSCRIPT OF RECORD
)
) GARY MOORE)
) DEFENDANT)

April 11, 2016
 Chesterfield, South Carolina

B E F O R E:

THE HONORABLE PAUL M. BURCH, JUDGE.

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

MARY THOMAS JOHNSON LEE, ASSISTANT SOLICITOR
 Attorney for the State

KERNARD E. REDMOND, DEPUTY SOLICITOR
 Attorney for the State

LARRY W. KNOX, ESQUIRE
 Attorney for the Defendant

ROBERT LEE, Undersheriff, Chesterfield County S.O.

HATTIE O. GORDON
 Circuit Court Reporter

I N D E X

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EXHIBITS

NO EXHIBITS WERE MARKED OR ADMITTED INTO THE RECORD

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COLLOQUY

1
2 THE COURT: Ordered a pre-sentence investigation on
3 Mr. Moore last week and that's what we're back on. We
4 need everybody on that case in, Mr. Moore. We got
5 everybody we need on this case in? I forgot the
6 paperwork.

7 Madam Clerk, call the roll in the jury room so we can
8 proceed. I ordered a pre-sentence investigation, and
9 Agent In Charge Hamberas has taken care of that. I
10 appreciate him working on this, and I know he had to work
11 over the weekend and get this completed. I thank him for
12 this.

13 Mr. Hamberas, anything for the record?

14 MR. HAMBERAS: No, sir, Your Honor.

15 THE COURT: Anything further from the State? .

16 MS. JOHNSON LEE: I think the Undersheriff wanted to
17 address the Court, but nothing from the Solicitor's
18 Office.

19 THE COURT: Sheriff.

20 MR. LEE: Your Honor, our recommendation stands at 20
21 years. I just want to put that on the record.

22 THE COURT: All right. Mr. Knox, anything from the
23 Defense?

24 MR. KNOX: Nothing more, Your Honor. I know that we
25 discussed under the statute that he cannot get probation,

1 but I would ask the Court to considering all the factors,
2 the facts in the pre-sentencing report, and the facts that
3 were adjudicated at trial that the Court be as lenient as
4 possible.

5 THE COURT: Okay. I've read over the report.
6 Probation and Parole is not allowed to make an actual what
7 I would call an iron clad recommendation. I understand
8 that, but I've looked over the record and, of course,
9 listened very carefully to the testimony. Such an
10 unfortunate situation.

11 One of you attorneys I think used the term,
12 'culmination of a perfect storm' about this. I think
13 somebody mentioned that during the trial, or maybe I just
14 thought that.

15 MR. KNOX: I think I did, Your Honor.

16 THE COURT: Two gentlemen got together after some
17 disputes over their relationship through marriage as I
18 understand it, some kinship in there. And it's
19 unfortunate that they locked horns down there at
20 McCormick's Grocery down there on that day.

21 Mr. Moore, I'm not going to sit up here and preach a
22 sermon to you or anything. I've looked at this and,
23 obviously, it's not a situation that involved any
24 calculated premeditation that was planned out way ahead of
25 time. Such as lying in wait as that term is used under

1 the law.

2 I think it's just that you two ran up on each other
3 at a place and a time and things just deteriorated and
4 resulted in almost being killed here. It's
5 just by the grace of God that he made it. If they hadn't
6 had a helicopter available it may not have turned out as
7 fortunate as he did on that.

8 So, obviously, no pre-planned, premeditation, but
9 can't ignore the fact that his truck was parked out there.
10 Once you walked in and saw him. You almost got too close
11 together. You got some record there and it's been a lot
12 of law enforcement involved in here. Seems like some
13 angering management issues. With all those factors I'm
14 going to follow my traditional path on a case such as
15 this.

16 I basically, when you got mitigating factors and
17 aggregating factors sometimes I adopt an approach of
18 looking for a middle ground and adding and subtracting
19 accord to mitigation.

20 SENTENCE OF THE COURT

21 So with all that said sentence of the Court, Mr.
22 Moore, is that you be confined in the State Department of
23 Corrections for a period of 18 years. Do I have a jail
24 time calculation? Jail credit.

25 MR. REDMOND: I'm sorry, sir.

1 THE COURT: Jail time? Jail credit?

2 MR. REDMOND: I do not have the jail time
3 calculations. Beg the Court's indulgence. Your Honor,
4 I've got from the 14th to the 16th. I forget if they
5 count that as two or three days, but it looks like he made
6 bond on the 16th of July 2016. The incident was on the
7 14th.

8 THE COURT: All right. And then this trial was
9 concluded on Wednesday?

10 MR. REDMOND: Yes, sir.

11 THE COURT: Credit for nine days. All right.

12 MR. REDMOND: Thank you, Your Honor.

13 THE COURT: Once again, appellate rights run ten days
14 to get a Notice of Appeal filed after today's date.

15 MR. REDMOND: Thank you, Your Honor.

16 MR. KNOX: Thank you, Your Honor.

17 END OF TRANSCRIPT OF RECORD

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**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.

Gary Moore, Appellant.

Appellate Case No. 2016-000779

Appeal From Chesterfield County
Roger E. Henderson, Circuit Court Judge
Paul M. Burch, Circuit Court Judge

Unpublished Opinion No. 2019-UP-234
Submitted February 1, 2019 – Filed June 26, 2019

AFFIRMED

Tricia A. Blanchette, of Law Office of Tricia A.
Blanchette, LLC, of Leesville, for Appellant.

Attorney General Alan McCrory Wilson and Assistant
Attorney General Mark Reynolds Farthing, both of
Columbia; and Solicitor William Benjamin Rogers, Jr.,
of Bennettsville, for Respondent.

PER CURIAM: Affirmed pursuant to Rule 220(b), SCACR, and the following
authorities:

1. As to whether the trial court erred in finding Moore was not entitled to immunity from prosecution under the Protection of Persons and Property Act: *State v. Curry*, 406 S.C. 364, 370, 752 S.E.2d 263, 266 (2013) ("A claim of immunity under the Act requires a pretrial determination using a preponderance of the evidence standard, which [the appellate] court reviews under an abuse of discretion standard of review."); *State v. Douglas*, 411 S.C. 307, 316, 768 S.E.2d 232, 238 (Ct. App. 2014) ("[U]nder this standard, 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'" (quoting *State v. Mitchell*, 382 S.C. 1, 4, 675 S.E.2d 435, 437 (2009))); *Curry*, 406 S.C. at 371, 752 S.E.2d at 266 ("Consistent with the Castle Doctrine and the text of the Act, a valid case of self-defense must exist, and the trial court must necessarily consider the elements of self-defense in determining a defendant's entitlement to the Act's immunity. This includes all elements of self-defense, save the duty to retreat."); *id.* at 372, 752 S.E.2d at 267 ("While the Act may be considered 'offensive' in the sense that the immunity operates as a bar to prosecution, such immunity is predicated on an accused demonstrating the [necessary] elements of self-defense to the satisfaction of the trial court by the preponderance of the evidence."); *id.* at 371 n.4, 752 S.E.2d at 266 n.4 (specifying the second and third elements of self-defense that must be demonstrated for immunity under the Act are as follows: "Second, the defendant must have actually believed he was in imminent danger of losing his life or sustaining serious bodily injury, or he actually was in such imminent danger. Third, if his defense is based upon his belief of imminent danger, a reasonably prudent man of ordinary firmness and courage would have entertained the same belief. If the defendant actually was in imminent danger, the circumstances were such as would warrant a man of ordinary prudence, firmness and courage to strike the fatal blow in order to save himself from serious bodily harm or losing his own life." (quoting *State v. Davis*, 282 S.C. 45, 46, 317 S.E.2d 452, 453 (1984))); *id.* at 372, 752 S.E.2d at 267 (providing when a claim of self-defense presents a "quintessential jury question," immunity from prosecution is not warranted); S.C. Code Ann. § 16-11-440(C) (2015) ("A person who is not engaged in an unlawful activity and who is attacked in another place where he has a right to be . . . has no duty to retreat and has the right to stand his ground and meet force with force, including deadly force, *if he reasonably believes it is necessary to prevent death or great bodily injury to himself . . .*" (emphasis added)).

2. As to whether the trial court erred by failing to grant Moore a directed verdict: *State v. Weston*, 367 S.C. 279, 292, 625 S.E.2d 641, 648 (2006) ("When reviewing a denial of a directed verdict, [the appellate court] views the evidence and all reasonable inferences in the light most favorable to the state."); *id.* at 292-

93, 625 S.E.2d at 648 ("If there is any direct evidence or any substantial circumstantial evidence reasonably tending to prove the guilt of the accused, the [appellate court] must find the case was properly submitted to the jury."); *State v. Oates*, 421 S.C. 1, 19, 803 S.E.2d 911, 921 (Ct. App. 2017) ("[O]ur well-established directed verdict standard is not altered by a defendant's claim of self-defense."); *Curry*, 406 S.C. at 371 n.4, 752 S.E.2d at 266 n.4 (noting the second and third elements required by law to establish a case of self-defense include as follows: "Second, the defendant must have actually believed he was in imminent danger of losing his life or sustaining serious bodily injury, or he actually was in such imminent danger. Third, if his defense is based upon his belief of imminent danger, a reasonably prudent man of ordinary firmness and courage would have entertained the same belief. If the defendant actually was in imminent danger, the circumstances were such as would warrant a man of ordinary prudence, firmness and courage to strike the fatal blow in order to save himself from serious bodily harm or losing his own life." (quoting *Davis*, 282 S.C. at 46, 317 S.E.2d at 453)).

3. As to whether the trial court committed reversible error in response to a jury question: *State v. Taylor*, 356 S.C. 227, 231, 589 S.E.2d 1, 3 (2003) ("To warrant reversal, a trial judge's charge must be both erroneous and prejudicial."); *State v. Middleton*, 407 S.C. 312, 317, 755 S.E.2d 432, 435 (2014) ("When considering whether an error with respect to a jury instruction was harmless, we must 'determine beyond a reasonable doubt that the error complained of did not contribute to the verdict.'" (quoting *State v. Kerr*, 330 S.C. 132, 144-45, 498 S.E.2d 212, 218 (Ct. App. 1998))); *id.* ("In making a harmless error analysis, our inquiry is not what the verdict would have been had the jury been given the correct charge, but whether the erroneous charge contributed to the verdict rendered." (quoting *Kerr*, 330 S.C. at 145, 498 S.E.2d at 218)).

AFFIRMED.¹

HUFF, THOMAS, and KONDUROS, JJ., concur.

¹ We decide this case without oral argument pursuant to Rule 215, SCACR.

STATE OF SOUTH CAROLINA

COUNTY OF CHESTERFIELD

GARY MOORE,

Plaintiff(s)

vs.

State of South Carolina

Defendant(s)

IN THE COURT OF COMMON PLEAS

CIVIL ACTION COVERSHEET

2020 - CP - 13 - 090

APPLICATION FOR
POST-CONVICTION RELIEF

Submitted By: Dayne C. Phillips, Esq.
 Address: 1614 Taylor Street, Ste. D.,
Columbia, SC 29201

SC Bar #: 77712
 Telephone #: (803) 807-0234
 Fax #: (803) 380-8035
 Other: 803-272-4503
 E-mail: dayne@pricebenowitz.com

NOTE: The coversheet and information contained herein neither replaces nor supplements the filing and service of pleadings or other papers as required by law. This form is required for the use of the Clerk of Court for the purpose of docketing. It must be filled out completely, signed, and dated. A copy of this coversheet must be served on the defendant(s) along with the Summons and Complaint.

DOCKETING INFORMATION (Check all that apply)

*If Action is Judgment/Settlement do not complete

- ☐ JURY TRIAL demanded in complaint. ☐ NON-JURY TRIAL demanded in complaint.
☐ This case is subject to **ARBITRATION** pursuant to the Court Annexed Alternative Dispute Resolution Rules.
☐ This case is subject to **MEDIATION** pursuant to the Court Annexed Alternative Dispute Resolution Rules.
☐ This case is exempt from ADR. (Proof of ADR/Exemption Attached)

NATURE OF ACTION (Check One Box Below)

Contracts ☐ Constructions (100) ☐ Debt Collection (110) ☐ General (130) ☐ Breach of Contract (140) ☐ Fraud/Bad Faith (150) ☐ Failure to Deliver/ Warranty (160) ☐ Employment Discrim (170) ☐ Employment (180) ☐ Other (199) _____	Torts - Professional Malpractice ☐ Dental Malpractice (200) ☐ Legal Malpractice (210) ☐ Medical Malpractice (220) Previous Notice of Intent Case # 20 ____ -NI- ____ - ☐ Notice/ File Med Mal (230) ☐ Other (299) _____	Torts - Personal Injury ☐ Conversion (310) ☐ Motor Vehicle Accident (320) ☐ Premises Liability (330) ☐ Products Liability (340) ☐ Personal Injury (350) ☐ Wrongful Death (360) ☐ Assault/Battery (370) ☐ Slander/Libel (380) ☐ Other (399) _____	Real Property ☐ Claim & Delivery (400) ☐ Condemnation (410) ☐ Foreclosure (420) ☐ Mechanic's Lien (430) ☐ Partition (440) ☐ Possession (450) ☐ Building Code Violation (460) ☐ Other (499) _____
Inmate Petitions ☒ PCR (500) ☐ Mandamus (520) ☐ Habeas Corpus (530) ☐ Other (599) _____	Administrative Law/Relief ☐ Reinstatement Drv. License (800) ☐ Judicial Review (810) ☐ Relief (820) ☐ Permanent Injunction (830) ☐ Forfeiture-Petition (840) ☐ Forfeiture-Consent Order (850) ☐ Other (899) _____	Judgments/Settlements ☐ Death Settlement (700) ☐ Foreign Judgment (710) ☐ Magistrate's Judgment (720) ☐ Minor Settlement (730) ☐ Transcript Judgment (740) ☐ Lis Pendens (750) ☐ Transfer of Structured Settlement Payment Rights Application (760) ☐ Confession of Judgment (770) ☐ Petition for Workers Compensation Settlement Approval (780) ☐ Other (799) _____	Appeals ☐ Arbitration (900) ☐ Magistrate-Civil (910) ☐ Magistrate-Criminal (920) ☐ Municipal (930) ☐ Probate Court (940) ☐ SCDC (950) ☐ Worker's Comp (960) ☐ Zoning Board (970) ☐ Public Service Comm. (990) ☐ Employment Security Comm (991) ☐ Other (999) _____
Special/Complex /Other ☐ Environmental (600) ☐ Pharmaceuticals (630) ☐ Automobile Arb. (610) ☐ Unfair Trade Practices (640) ☐ Medical (620) ☐ Out-of State Depositions (650) ☐ Other (699) _____ ☐ Motion to Quash Subpoena in an Out-of-County Action (660) ☐ Sexual Predator (510) ☐ Pre-Suit Discovery (670) ☐ Permanent Restraining Order (680)			

Submitting Party Signature: Dayne PhillipsDate: January 24, 2020

Note: Frivolous civil proceedings may be subject to sanctions pursuant to SCRCP, Rule 11, and the South Carolina Frivolous Civil Proceedings Sanctions Act, S.C. Code Ann. §15-36-10 et. seq.

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS	
	)		
COUNTY OF CHESTERFIELD	)	FOURTH JUDICIAL CIRCUIT	
	)		
Gary Moore,	)	Case No. 2020-CP- 13-090	
	)		
Applicant,	)		
	)		
v.	)	APPLICATION FOR	
	)	POST-CONVICTION RELIEF	
	)		
State of South Carolina,	)		
	)		
Defendant.	)		

Honorable Paul M. Burch
 Clerk of Court
 Chesterfield County, S.C.

2020 JUN 27 PM 1:07

As required by Rule 71.1(b), SCRCF, this application is in conformity with Form 5 of the SCRCF Appendix of Forms.

1. Place of Detention: Applicant is detained in the South Carolina Department of Corrections at Broad River Correctional Institution, 4460 Broad River Road, Columbia, SC 29210.
2. Name and location of Court which imposed sentence: Chesterfield County Court of General Sessions, 200 W. Main St., Chesterfield, SC 29709.
3. Name(s) of co-defendant(s) (if any): None.
4. The indictment number(s) upon which and the offenses for which sentence was imposed:
 - (a) 2015-GS-13-0398 (Attempted Murder).
5. The date upon which the sentence was imposed and the terms of the sentence:
 - (a) April 11, 2016.
 - (b) Eighteen (18) year sentence for Attempted Murder.
6. A finding of guilty was made:
 - (a) After a trial by jury before the Honorable Paul M. Burch (April 5-6, 2016).
 - (b) Prior to trial, the Honorable Roger E. Henderson found that Applicant was not entitled to immunity from prosecution under the Protection of Persons and Property Act (S.C. Code § 15-11-410). Duncan hearing occurred on February 17-18, 2016.

7. Did you appeal from the judgment of conviction and/or the imposition of the sentence?

(a) Yes.

8. If you answered "yes" to number (7), list:

(a) The name of each Court to which you appealed:

i. South Carolina Court of Appeals.

(b) The result in each Court to which you appealed:

i. Affirmed conviction and sentence (S.C. Court of Appeals).

(c) The date of each result:

i. June 26, 2019 (Unpublished Opinion).

(d) If known, citations of any written opinions or ordered entered pursuant to such result:

i. State v. Gary Moore, Op. No. 2019-UP-234 (S.C. Ct. App. filed June 26, 2019).

9. If you answered "no" to number (7), state your reasons for not appealing:

(a) Not applicable. Applicant filed a Direct Appeal of his conviction and sentence.

10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:

- (a) Trial Counsel denied Applicant's right to effective assistance of counsel as guaranteed by the Sixth and Fourteenth Amendments to the United States Constitution and Article I, Sections 3 and 14 of the South Carolina Constitution. See S.C. Code § 17-27-20(A)(1), (4), and (6). Specifically, Trial Counsel's unreasonably deficient performance prejudiced Applicant because there is a reasonable probability that, but for Trial Counsel's errors, the result of the proceeding would have been different. See Strickland v. Washington, 466 U.S. 668 (1984).
- (b) Appellate Counsel denied Applicant's right to effective assistance of counsel as guaranteed by the Sixth and Fourteenth Amendments to the United States

2019 JAN 27 PM 1:07
 State C. App.
 Clerk of Court
 CHRISTOPHER COURT (S.C.)

Constitution and Article I, Sections 3 and 14 of the South Carolina Constitution.

2020 JAN 27 PM 1:07

Wanda C. Hill
CLERK OF COURT
CHESTERFIELD COUNTY, S.C.

Specifically, Appellate Counsel's unreasonably deficient performance prejudiced

Applicant because there is a reasonable probability that, but for Trial Counsel's
errors, the result of the proceeding would have been different. See Strickland v.

Washington, 466 U.S. 668 (1984); Evitts v. Lucey, 469 U.S. 387 (1985); Simpkins v.

State, 303 S.C. 364, 401 S.E.2d 142 (1991).

11. State concisely and in the same order the facts which support each of the grounds set out in number (10):

(a) Trial Counsel's acts or omissions of ineffective assistance of counsel include but are not limited to the following allegations:

(i) Trial Counsel failed to conduct a reasonable investigation and to develop all available, relevant, and admissible or mitigating evidence in preparation of Applicant's defense. See Wiggins v. Smith, 539 U.S. 510 (2003).

(ii) Trial Counsel failed to object to the Trial Court's application of an incorrect evidentiary standard based upon a misunderstanding and misapplication of State v. Curry, 406 S.C. 364, 371, 752 S.E.2d 263, 266 (2013) as advanced by the State, rather than making findings of fact and conclusions of law based upon the preponderance of the evidence standard as required by law. See, e.g., State v. Cervantes-Pavon, 426 S.C. 442, 827 S.E.2d 564 (2019).

(iii) Trial Counsel failed to object to the Trial Court's failure to make full and complete findings of fact and conclusions of law for the elements of self-defense as applied under a claim pursuant to the Protection of Persons and Property Act.

(iv) Trial Counsel's "trial strategy," which he conveyed to the Trial Court and Applicant during trial, to not seek jury instructions for the lesser-included offenses of Assault

2020 JAN 27 PM 1: 07

Wanda C. Mills
CLERK OF COURT
CHESTERFIELD COUNTY, S.C.

and Battery of a High and Aggravated Nature, and especially First Degree Assault

and Battery, was objectively unreasonable given the facts and circumstances of the

case. See *Roseboro v. State*, 317 S.C. 292, 294, 454 S.E.2d 312, 313 (1995) (finding

“counsel must articulate a valid reason for employing a certain strategy to avoid a

finding of ineffectiveness, and where counsel articulates a strategy, it is measured

under an objective standard of reasonableness”); *Stacy v. Solem*, 801 F.2d 1048, 1051

(8th Cir. 1986) (finding that “labeling counsel's actions as “trial strategy” does not

automatically immunize an attorney's performance from sixth amendment

challenges.”).

- (v) Trial Counsel failed to request a jury instruction regarding specific intent to kill pursuant to *State v. King*, 422 S.C. 47, 810 S.E.2d 18 (2017).
- (vi) Trial Counsel failed to object to the Trial Court's confusing jury instructions regarding intent where the charged offense required the specific intent to kill, yet where the instruction included language of far lower, “general intent” standards such as recklessness and criminal negligence. See, e.g., *State v. King*, 422 S.C. 47, 810 S.E.2d 18 (2017).
- (vii) Trial Counsel failed to investigate and obtain any medical records or photographs for diagnosis and treatment of Applicant's injuries by either the detention center or Applicant's personal physician where the Applicant indicated at his immunity hearing that he was seen by both when testifying about injuries he received at the hands of his attacker, and where the State elicited testimony to the contrary from an officer during Applicant's trial. See *Lounds v. State*, 380 S.C. 454, 670 S.E.2d 646 (2008); *McKnight v. State*, 378 S.C. 33, 46, 661 S.E.2d 354, 360 (2008); *Von*

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Wanda C. Miles
CLERK OF COURT
CHESTERFIELD COUNTY, S.C.

Dohlen v. State, 360 S.C. 598, 607, 602 S.E.2d 738, 743 (2004); Reeves v. State, 415 S.C. 366, 782 S.E.2d 747 (Ct. App. 2015).

- (viii) Trial counsel failed to use the Incident Report dated 04/2014 during either the immunity hearing or the trial where Applicant was attacked not only by the "victim" Wallace in the present case but also by several other assailants in concert with Wallace at that time, and where Applicant believed the third party pulling him from behind while he fought with Wallace in the present case was likewise working in concert with Wallace to attack him when showing Applicant's response to the attack was reasonable.
- (ix) Trial Counsel failed to object during the immunity hearing when the State elicited legal opinion testimony from a lay witness striking at the heart of the ultimate issue of self-defense by asking, "... at anytime did you do anything that would cause [Applicant] to use deadly force against you?"
- (x) Trial Counsel failed to object during the immunity hearing when the State elicited legal opinion testimony from a lay witness striking at the heart of the ultimate issue of self-defense by asking if Applicant was involved in "what we call mutual combat?"
- (xi) Trial Counsel failed to move to sequester any of the witnesses for either the immunity hearing or trial where the State repeatedly referred to prior witness testimony when questioning later witnesses.
- (xii) Trial Counsel failed to obtain either the audio recording from Applicant's civil summary court proceeding in 2014 against Wallace, or the booking report from Wallace being ordered to jail by the Magistrate Judge for attempting to assault

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Wanda C. Miles
CLERK OF COURT
CHESTERFIELD COUNTY, S.C.

Applicant at that hearing where Wallace denied details of the incident at Applicant's present trial, and where the deputy denied any knowledge of the incident at the present trial as well.

- (xiii) Trial Counsel failed to quash the jury pursuant to Baston where the State utilized four (4) of its five (5) statutory strikes to strike white males from the petit jury.
- (xiv) Trial Counsel failed to object pursuant to Rules 701 and 702, SCRE, or Ford v. Watson, to medical opinion testimony by the EMS technician regarding medical signs and appearances of shock, as well as whether certain wounds were consistent with those needing advanced life support where the State never offered the witness as an expert in any field, no voir dire of the witness was performed, and the trial judge made no findings qualifying the witness as an expert required under his gatekeeping role.
- (xv) Trial Counsel failed to object under Rules 701 and 702, SCRE, and State v. Ellis, 345 S.C. 175, 547 S.E.2d 490 (2001) to opinion testimony of Sgt. Hutchinson regarding crime scene reconstruction where the State gave leading questions suggesting specifically where in McCormick's Grocery the fight started based upon location of blood on the floor.
- (xvi) Trial Counsel failed to object as both leading and giving opinion testimony on an ultimate issue in fact when Sgt. Hutchinson was asked, "In looking at the case as a whole, who was the victim in this case?" to which he answered, "In my opinion, would be Mr. Wallace."
- (xvii) Trial counsel failed to object under Rules 701 and 702 to Inv. Tim Perry's testimony on redirect examination when the State elicited opinion testimony on

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Wanda C. Miles
CLERK OF COURT
CHESTERFIELD COUNTY, S.C.

whether a person in a given scenario would be deemed a "victim," where the facts were similar to the present case, where Inv. Perry was not qualified as an expert witness, and where the opinion testimony touched on the ultimate issue in the case.

- (xviii) Trial counsel failed to object under hearsay and the Sixth Amendment Confrontation Clause during the immunity hearing where the State obtained testimony from a deputy as to what an EMS technician allegedly said about Wallace's medical condition and subsequent airlift to a hospital in Charlotte, and where the deputy had no first-hand knowledge of either.
- (b) Appellate Counsel's acts or omissions of ineffective assistance of counsel include but are not limited to the following allegations:
- (i) Appellate Counsel failed to file a Petition for Rehearing in the Court of Appeals to preserve Applicant's ability to file a Petition for Writ of Certiorari to the Court of Appeals in the South Carolina Supreme Court on the issues of whether the Trial Court erred in finding Applicant was not entitled to immunity from prosecution under the Protection of Persons and Property Act, whether the Trial Court erred by failing to grant Applicant's motion for a direct verdict, and whether the Trial Court erred in his response to a jury question.
- (ii) In the event Trial Counsel properly preserved the issue of whether the Trial Court applied the incorrect evidentiary standard on a misunderstanding and misapplication of f State v. Curry, 406 S.C. 364, 371, 752 S.E.2d 263, 266 (2013) in his closing statement to the Trial Court at the immunity hearing, Appellate Council failed to raise and argue this issue of the Trial Court applying an incorrect

2020 JAN 27 PM 1: 07

Wanda C. Miles
CLERK OF COURT
CHESTERFIELD COUNTY, S.C.

evidentiary standard, rather than making findings of fact and law based upon the preponderance of the evidence standard as required by law. See, e.g., State v. Cervantes-Pavon, 426 S.C. 442, 827 S.E.2d 564 (2019).

- (iii) In the event Trial Counsel properly preserved the issue of whether the Trial Court failed to make full and complete findings of facts and conclusions of law for the elements of self-defense as applied under a claim pursuant to the Protection of Persons and Property Act at the immunity hearing, Appellate Counsel failed to raise and argue this issue of the Trial Court's failure to make full and complete findings of fact and conclusions of law for the elements of self-defense.

12. Prior to this application, have you filed with respect to this conviction:

- (a) Any petition in a State Court under South Carolina Law? Applicant filed a Direct Appeal before the S.C. Court of Appeals.
- (b) Any petition in State or Federal Courts for Federal Habeas Corpus or Post-Conviction Relief? No. Applicant has not previously filed an application for Post-Conviction Relief or Petition for Writ of Habeas Corpus in either state or federal court.
- (c) Any petition in the Supreme Court of the United States for certiorari other than petitions, if any, already specified in number (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 number (12), list with respect to each petition, motion, or application:

- (a) The specific nature thereof: Not applicable.
- (b) The name and location of the Court in which each was filed: Not applicable.
- (c) The disposition thereof: Not applicable.
- (d) The date of each such disposition: Not applicable.

14. Has any ground set forth in number (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 number (14), identify:
- (a) The grounds which have been presented:
- i. Not applicable.
- (b) The proceedings in which each ground was raised:
- i. Not applicable.
16. If any ground set forth in number (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) Post-Conviction Relief is the proper forum and remedy for these allegations because the grounds for relief presented in this application are evidence of ineffective assistance of counsel, issues not preserved for appellate review, and/or were not appropriate to raise or were not properly raised on Direct Appeal.
17. Were you represented by an attorney at any time during the course of:
- (a) Your plea hearing? Not applicable.
- (b) Your trial? Yes.
- (c) Your sentencing? Yes.
- (d) Your appeal, if any, from the judgment of conviction and/or imposition of the sentence? Yes.
- (e) Preparation, presentation or consideration of any petitions, motions, or application with respect to this conviction, which you filed? Yes.
18. If you answered "yes" to one or more parts of number (17), list:
- (a) The name and address of each attorney who represented you:
- (i) Larry Knox, 164 Main St., Chesterfield, SC 29709.

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 Judge C. F. Hines
 Clerk of Court
 Chesterfield County, S.C.

(ii) Tricia Blanchette, Esq., P.O. Box 2147, Leesville, SC 29070.

(iii) Dayne C. Phillips, 1614 Taylor Street, Ste D., Columbia, SC 29201.

(b) The proceedings at which each attorney represented you:

(i) Larry Knox represented Applicant at the immunity hearing and trial.

(ii) Tricia Blanchette represented Applicant on direct appeal.

(iii) Dayne C. Phillips is currently representing Applicant on this application for Post-Conviction Relief.

19. State clearly the relief you seek in filing this application:

Applicant seeks Post-Conviction Relief by vacating his convictions and sentences and remanding the indictments for a new trial based on ineffective assistance of trial and appellate counsel.

20. Are you now under sentence from any other court that you have not challenged?

No. Applicant is not under sentence from any other court.

[Verification Page to Follow]

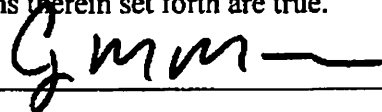
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 CLERK OF COURT
 CHRISTIAN COUNTY, S.C.

STATE OF SOUTH CAROLINA)

County of Chesterfield)

VERIFICATION

I, Gary Moore, being duly sworn upon my oath, depose and say that I have subscribed to the foregoing application; that I know the contents thereof; that it includes every ground known to me for vacating, setting aside or correcting the conviction and sentence attacked in this application; and that the matters and allegations therein set forth are true.

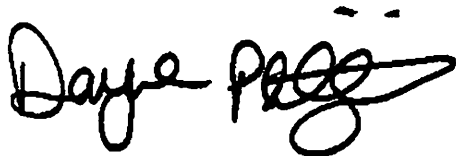


SWORN to and subscribed before me this 21
day of JANUARY, 2020

 (L.S.)
Notary Public

LISA BROWN-ALSTON
Notary Public, State of South Carolina
My Commission Expires 2/5/2023

My Commission Expires: 2/5/2023



Wanda C. Pegg
CLERK OF COURT
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■ DCP

STATE OF SOUTH CAROLINA
COUNTY OF CHESTERFIELD

Gary Moore, #367744,
Applicant,

v.

State of South Carolina,
Respondent.

IN THE COURT OF COMMON PLEAS
FOR THE FOURTH JUDICIAL CIRCUIT

Case No. 2020-CP-13-090

**RETURN AND MOTION FOR A
MORE DEFINITE STATEMENT**

NOW COMES Respondent, making its return to the post-conviction relief (hereafter "PCR") application filed on January 27, 2020 by Gary Moore (hereafter "Applicant").

Respondent respectfully offers the following in support of its return:

I. Procedural History

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment from the Chesterfield County Clerk of Court. During its April 2016 term, the Chesterfield County Grand Jury indicted Applicant for attempted murder (2015-GS-13-0398). Applicant was represented by Larry W. Knox, Esquire. Mary Thomas Johnson-Lee and Kenard Redmond, Esquires, of the Fourth Circuit Solicitor's Office prosecuted the case. On April 11, 2016, Applicant appeared before the Honorable Paul M. Burch, circuit court judge, and a jury. Applicant was found guilty as indicted and Judge Burch sentenced Applicant to eighteen years' imprisonment.

Applicant timely filed a notice of appeal on April 14, 2016. Applicant was represented by Tricia Blanchette, Esquire. The South Carolina Court of Appeals affirmed the conviction and sentence by unpublished opinion, filed June 26, 2019, *State v. Moore*, 2019-UP-234 (S.C. Ct. App. filed June 26, 2019). The remittitur was issued July 15, 2019.

II. Statement of Facts

According to Applicant at the immunity hearing, he entered the convenience store on the date of the incident, and claimed he was walking down one of the store's aisles to get a soda when Charles Wallace (hereafter "Victim"), stated he would kill him and told him he would catch him somewhere. (R. 263-266). In response, Applicant asserted he turned around, saw Victim blocking his only escape route along with another individual, and tried to go around Victim. (R. 266-67, 292). At that point, Applicant stated Victim slapped his face and when he attempted to push Victim away, Victim pulled him to the ground by his hair. (R. 267). After that, Applicant claimed the other individual began choking him while he was on top of Victim on the ground, he began to pass out from being choked, and he responded by pulling out his knife and stabbing at the men to get them off him. (R. 267-70, 272, 293-94). Once Victim had been stabbed, Applicant asserted he broke free, left the store, called 911, waited for law enforcement to arrive, and reported he was the victim of an attack. (R. 283-84). Applicant claimed he was then handcuffed, taken to jail, and sustained injuries, including swelling and hair loss, which was documented by photographs. (R. 284-285, 289). Applicant stated he thought he would be killed and supported this claim by referencing two prior incidents where Victim allegedly tried to attack him.¹ (R. 273-77).

Additionally, Victim testified about the details of the incident. (R. 37-76, 303-22). During his testimony, Victim stated he slapped Applicant that he wanted to give him an "ass whipping," with an open hand at the convenience store on the date of the incident but explained he did this

¹ Regarding the first incident, Applicant alleged Victim attempted to attack him with an axe handle and damaged his vehicle at his fiancée's mother's house. (R. 273-276). Regarding the second incident, Applicant claimed Victim moved towards him in an aggressive manner at a magistrate's court proceeding but was stopped by a law enforcement officer. (R. 277).

because Applicant started making derogatory comments when he entered the store.^{2 3} (R. 39-40, 55-56, 308-09, 311, 313, 315-16). Subsequent to the slap, Victim stated Applicant engaged him in a fight, they began “tussling,” and he pulled Applicant to the ground. (R. 40-43, 315-19). Thereafter, Victim indicated a young man came over to break up the fight, everyone stood back up, and Applicant stabbed him multiple times while the fight was winding down. (R. 43-44, 316-22). Victim stated he needed a “bunch” of stitches from the wounds sustained. (R. 44-45).

Steven Hooks, who was the individual who intervened when the fight broke out, also testified at trial. (R. 109-10, 324-67). During his testimony, Hooks recounted that he saw Applicant and Victim “tussling” on the floor of the convenience store, he grabbed Applicant by the shoulder, pulled him up, and stopped the fight, and Applicant then left the store. (R. 109-10, 324-32, 334-37). Once Applicant was gone, Hooks indicated he helped Victim to the bathroom because Victim was cut, and he noticed he had also received a small “nick” during the skirmish. (R. 110-12, 325, 330, 336).

Melissa Ann Griffin, an employee at the convenience store, testified that Victim was in the store when Applicant entered, the two made eye contact, and then “it was just on.” (R. 78, 340-41). At that point, she stated the two began fighting, dropped to the floor, she threatened to call 911 to encourage the men to stop, and Hooks intervened and separated them. (R. 77-79, 341-344). After that, Griffin asserted Applicant exited the store, held the store’s door closed from the outside, and shouted to Victim he got what he deserved. (R. 79-81, 343-44).

² Victim acknowledged he damaged Applicant’s vehicle on a prior occasion and attempted to “knock [Appellant’s] brains out” with an axe handle at Applicant’s fiancée’s mother’s house, but he explained he did so after Applicant first brandished a stick. (R. 51-52, 304-06). Regarding the second prior incident, Victim stated he approached Applicant during a magistrate’s court proceeding and was restrained by an officer. (R. 307).

³ During his testimony, Victim indicated Applicant knew he was inside of the store prior to the incident because his truck was parked outside. (R. 39, 314).

Sergeant Tim Hutchinson and Investigator Greg Burns of the Chesterfield County Sheriff's Office testified about their responses to the incident. (R. 92-108, 150-74, 346-47, 359-60). During his testimony, Sergeant Hutchinson stated he encountered Applicant in the store's parking lot after responding to the scene of the stabbing and Applicant immediately claimed to be a victim. (R. 94, 102, 346-50). Hutchinson further testified he found Victim inside the store with stab wounds to his back and stomach, and he indicated Victim was ultimately transported to a hospital by helicopter due to the severity of his injuries. (R. 96-100, 352-57). Meanwhile, Investigator Burns testified he responded to the store after the stabbing and used his cell phone to record the surveillance footage of the incident because it could not be downloaded from the store's surveillance equipment. (R. 152-74, 360-65). A recording of the footage was admitted into evidence and played for the circuit court judge.⁴ (R. 152-74, 360-65).

III. Current Action before the Court

In his PCR application, Applicant, through Counsel, alleges he is detained unlawfully for the following reasons (excerpts verbatim):

1. "Trial Counsel denied Applicant's right to effective assistance of counsel as guaranteed by the Sixth and Fourteenth Amendments to the United States Constitution and Article 1, Sections 3 and 14 of the South Carolina Constitution. *See* S.C. Code 17-27-20(A), (4) and (6). Specifically, Trial Counsel's unreasonably deficient performance prejudiced Applicant because there is a reasonable probability that, but for Trial Counsel's errors, the result of the proceeding would have been different, *see Strickland v. Washington*, 466 U.S. 668 (1984)."
 - a. "Trial Counsel's acts or omissions of ineffective assistance of counsel include but are not limited to the following allegations:"

⁴ In the recording, Victim appears to approach Applicant shortly after Applicant entered the convenience store and slap at him. (State's Ex. # 13 (Recording of Incident)). Immediately after that, Applicant appears to tackle Victim to the ground, and the two men briefly struggle with one another on the ground before Hooks intervenes. (State's Ex. # 13). After intervening, Hooks does not appear to choke Applicant by the neck at any point and, instead, appears to pull at Applicant's arm to separate the men. (State's Ex. # 13). Thereafter, the men appear to get to their feet, and Applicant appears to strike at Victim and Hooks several times before running out of the store. (State's Ex. # 13).

- i. "Trial counsel failed to conduct a reasonable investigation and to develop all available, relevant and admissible or mitigating evidence in preparation of Applicant's defense. *See Wiggins v. Smith*, 539 US 510 (2003)."
- ii. "Trial Counsel failed to object to the Trial Court's application of an incorrect evidentiary standard based upon a misunderstanding and misapplication of *State v. Curry*, 406 S.C. 364, 371, 752 S.E.2d 263, 266 (2013) as advanced by the State, rather than making findings of fact and conclusions of law based upon the preponderance of the evidence standard as required by law. *See .e.g. State v. Cervantes-Pavon*, 426 S.C. 442, 827 S.E.2d 564 (2019)."
- iii. "Trial Counsel failed to object to the Trial Court's failure to make full and complete findings of fact and conclusions of law for the elements of self-defense as applied under a claim pursuant to the Protection of Persons and Property Act."
- iv. "Trial Counsel's 'trial strategy' which he conveyed to the Trial Court and Applicant during trial, to not seek jury instructions for the lesser-included offenses of Assault and Battery of a High and Aggravated Nature, and especially First Degree Assault and Battery, was objectively unreasonable given the facts and circumstances of the case. *See Roseboro v. State*, 317 S.C. 292, 294, 454 S.E.2d 312, 313 (1995) (finding 'counsel must articulate a valid reason for employing a certain strategy to avoid a finding of ineffectiveness, and where counsel articulates a strategy, it is measured under an objective standard of reasonableness.'): *Stacy v. Solem*, 801 F.2d 1048, 1051 (8th Cir. 1986) (finding that 'labeling counsel's actions as 'trial strategy' does not automatically immunize an attorney's performance from sixth amendment challenges.')"
- v. "Trial Counsel failed to request a jury instruction regarding specific intent to kill pursuant to *State v. King*, 422 S.C. 47, 810 S.E.2d 18 (2017)."
- vi. "Trial Counsel failed to object to the Trial Court's confusing jury instructions regarding intent where the charged offense required the specific intent to kill, yet where the instruction included language of far lower, "general intent" standards such as recklessness and criminal negligence. *See e.g., State v. King*, 422 S.C. 47, 810 S.E.2d 18 (2017)."
- vii. "Trial Counsel failed to investigate and obtain any medical records or photographs for diagnosis and treatment of Applicant's injuries by either the detention center of Applicant's personal physician where the Applicant indicated at his immunity hearing that he was seen by both where testifying about injuries he received at the hands of his attacker, and where the State elicited testimony to the contrary from an officer during Applicant's trial. *See Lounds v. State*, 380 S.C. 454, 670 S.E.2d 646 (2008); *McKnight v. State*, 378 S.C. 33, 46, 661 S.E.2d 354, 360 (2008); *Von Dohlen v. State*, 360 S.C. 598, 607, 602 S.E.2d 738, 743 (2004); *Reeves v. State*, 415 S.C. 366, 782 S.E.2d 747 (Ct. App. 2015)."
- viii. "Trial Counsel failed to use the Incident Report dated 04/2014 during either the immunity hearing or the trial where Applicant was attacked not only by the 'victim' Wallace in the present case but also by several other

assailants in concert with Wallace at this time, and where Applicant believed the third party pulling him from behind while he fought with Wallace in the present case was likewise working in concert with Wallace to attack him when showing Applicant's response to the attack was reasonable."

- ix. "Trial Counsel failed to object during the immunity hearing when the State elicited legal opinion testimony from a lay witness striking at the heart of the ultimate issue of self-defense by asking, "... at any time did you do anything that would cause [Applicant] to use deadly force against you?"
- x. "Trial Counsel failed to object during the immunity hearing when the State elicited legal opinion testimony from a lay witness striking at the heart of the ultimate issue of self-defense by asking if Applicant was involved in 'what we call mutual combat?'"
- xi. "Trial Counsel failed to move to sequester any of the witnesses for either immunity hearing or trial where the State repeatedly referred to prior witness testimony when questioning later witnesses."
- xii. "Trial Counsel failed to obtain either the audio recording from Applicant's civil summary court proceeding in 2014 against Wallace, or the booking report from Wallace being ordered to jail by the Magistrate Judge for attempting to assault Applicant at the hearing where Wallace denied details of the incident at Applicant's present trial, and where the deputy denied details of the incident at Applicant's present trial, and where the deputy denied any knowledge of the incident at the present trial as well."
- xiii. "Trial Counsel failed to quash the jury pursuant to Batson where the State utilized four (4) of its five (5) statutory strikes to strike white males from the petit jury."
- xiv. "Trial Counsel failed to object to Rules 701 and 702, SCRE, or *Ford v. Watson*, to medical opinion testimony by the EMS technician regarding medical signs and appearances of shock, as well as whether certain wounds were consistent with those needing advanced life support where the State never offered the witness as an expert in the field, no *voir dire* of the witness was performed, and the trial judge made no findings qualifying the witness as an expert required under his gatekeeping role."
- xv. "Trial Counsel failed to object under Rules 701 and 702, SCRE, and *State v. Ellis*, 345 S.C. 175, 547 S.E.2d 490 (2001) to opinion testimony of Sgt. Hutchinson regarding crime scene reconstruction where the State gave leading questions suggesting specifically where in McCormick's Grocery the fight started based upon location of blood on the floor."
- xvi. "Trial Counsel failed to object as both leading and giving opinion testimony on an ultimate issue in fact when Sgt. Hutchinson was asked, 'In looking at the case as a whole, who was the victim in this case?' to which he answered, 'In my opinion, would be Mr. Wallace.'"
- xvii. "Trial Counsel failed to object under Rule 701 and 702 to Inv. Tim Perry's testimony on redirect examination when the State elicited opinion testimony on whether person in a given scenario would be deemed a

‘victim,’ where the facts were similar to the present case, where Inv. Perry was not qualified as an expert witness, and where the opinion testimony touched on the ultimate issue in the case.”

- xviii. “Trial Counsel failed to object under hearsay and the Sixth Amendment Confrontation Clause during the immunity hearing where the State obtained testimony from a deputy as to what an EMS technician allegedly said about Wallace’s medical condition and subsequent airlift to a hospital in Charlotte, and where the deputy had no first-hand knowledge of either.”
- 2. “Appellate Counsel denied Applicant’s right to effective assistance of counsel as guaranteed by the Sixth and Fourteenth Amendments to the United States Constitution and Article I, Sections 3 and 14 of the South Carolina Constitution. Specifically, Appellate Counsel’s unreasonably deficient performance prejudiced Applicant because there is a reasonable probability that, but for Trial Counsel’s errors, the result of the proceeding would have been different. *See Strickland v. Washington*, 466 U.S. 668 (1984); *Evitts v. Lucey*, 469 U.S. 387 (1985); *Simpkins v. State*, 303 S.C. 364, 401 S.E.2d 142 (1991).”
 - a. “Appellate Counsel’s acts or omissions of ineffective assistance of counsel include but are not limited to the following allegations:”
 - i. “Appellate Counsel failed to file a Petition for Rehearing in the Court of Appeals to preserve Applicant’s ability to file a Petition for Writ of Certiorari to the Court of Appeals in the South Carolina Supreme Court on the issues of whether the Trial Court erred in finding Applicant was not entitled to immunity from prosecution under the Protection of Persons and Property Act, whether the Trial Court erred by failing to grant Applicant’s motion for a direct verdict, and whether the Trial Court erred in his response to a jury question.”
 - ii. “In the event Trial Counsel properly preserved the issue of whether the Trial Court applied the incorrect evidentiary standard on a misunderstanding and misapplication of *State v. Curry*, 406 S.C. 364, 371, 752 S.E.2d 263, 266 (2013) in his closing statement to the Trial Counsel at the immunity hearing, Appellate Counsel failed to raise and argue the issue of the Trial Court applying an incorrect evidentiary standard, rather than making findings of fact and law based upon the preponderance of the evidence standard as required by law. *See, e.g., State v. Cervantes-Pavon*, 426 S.C. 442, 827 S.E.2d 564 (2019).”
 - iii. “In the event Trial Counsel properly preserved the issue of whether the Trial Court failed to make full and complete findings of fact and conclusions of law for the elements of self-defense as applied under a claim pursuant to the Protection of Persons and Property Act at the immunity hearing, Appellate Counsel failed to raise and argue this issue of the Trial Counsel’s failure to make full and complete findings of fact and conclusions of law for the elements of self-defense.”

Attached to and incorporated herein are Applicant’s Chesterfield County Clerk of Court

Records, Applicant's South Carolina Department of Corrections Records, the Record on Appeal, the direct appeal records, and the current PCR application. Respondent reserves the right to amend this return upon receipt of additional relevant information.

IV. Argument

Ineffective Assistance of Counsel, Generally

In a PCR action, the applicant bears the burden of proving allegations contained in the application. *Butler v. State*, 286 S.C. 441, 334 S.E.2d 813 (1985). When an applicant asserts ineffective assistance of counsel as a ground for relief, the applicant must show "counsel's conduct so undermined the proper functioning of the adversarial process that [it] cannot be relied upon as having produced a just result." *Strickland v. Washington*, 466 U.S. 668, 686 (1984); *Butler*, 286 S.C. at 442, 334 S.E.2d at 814. Ineffective assistance of counsel is governed by the Sixth Amendment, as explained by the United States Supreme Court in *Strickland v. Washington*.

Pursuant to the first prong of the *Strickland* analysis, the applicant must prove defense counsel's performance was deficient. *Id.* at 686; *Cherry v. State*, 300 S.C. 115, 117, 386 S.E.2d 624, 625 (1989). To show deficiency, the applicant must prove by a preponderance of the evidence that counsel's actions fell outside of the zone of "reasonableness under prevailing professional norms." *Strickland*, 466 U.S. at 688. *See also* Rule 71.1(e), SCRPC ("The applicant has the burden of establishing his entitlement to relief by a preponderance of the evidence."). Reasonableness is determined by the "variety of circumstances faced by defense counsel or the range of legitimate decisions regarding how to best represent a criminal defendant," and the scope of the reasonableness inquiry is limited to facts counsel had available at the time of representation. *Id.* at 689. "Counsel is strongly presumed to have rendered adequate assistance

and made all significant decisions in the exercise of reasonable professional judgment.”

Yarborough v. Gentry, 540 U.S. 1, 5 (2003) (citing *Strickland*, 466 U.S. at 690). Judicial scrutiny of counsel’s performance remains highly deferential towards defense counsel with a strong presumption that counsel acted competently, because competent representation may be executed in virtually “countless” ways. *Strickland*, 466 U.S. at 688-89.

Second, counsel’s deficient performance must have prejudiced the applicant so that “there is a reasonable probability that, but for counsel’s unprofessional errors, the result of the proceeding would have been different.” *Cherry*, 300 S.C. at 117-18. “A reasonable probability is a probability sufficient to undermine confidence in the outcome.” *Strickland*, 466 U.S. at 694. The court makes this determination based upon the totality of the evidence. *Id.* at 695. Realistically, this matters “only in the rarest case” because “[t]he likelihood of a different result must be substantial, not just conceivable.” *Harrington v. Richter*, 562 U.S. 86, 111-12 (2011) (quoting *Strickland*, 466 U.S. at 697).

The standards do not establish mechanical rules; the ultimate focus of inquiry must be on the fundamental fairness of the proceeding whose result is being challenged. *Strickland*, 466 U.S. at 696. A court need not first determine whether counsel’s performance was deficient before examining the prejudice suffered by the defendant as a result of the alleged deficiencies; if it is easier to dispose of an ineffectiveness claim on the ground of lack of sufficient prejudice, that course should be followed. *Id.* at 696-97.

Ineffective Assistance of Trial Counsel

Failure to Investigate

Applicant alleges ineffective assistance of counsel for “failure to investigate.” *Strickland* makes clear that defense counsel “has a duty to make reasonable investigations or to make a

reasonable decision that makes particular investigations unnecessary.” 466 U.S. at 691. When highlighting failure to investigate as a ground for a larger ineffective assistance of counsel claim, judicial determination of this claim’s validity is evaluated for “reasonableness [under] all the circumstances” with “a heavy measure of deference to counsel’s judgments” applied. *Id.*

However, counsel is required to, at minimum, “interview potential witnesses and make an independent investigation of the facts and circumstances of the case”, *Ard v. Catoe*, 372 S.C. 318, 331-32, 642 S.E.2d 590, 597 (2007) (quoting *Troedel v. Wainwright*, 667 F.Supp. 1456, 1461 (S.D.Fla.1986), *aff’d*, 828 F.2d 670 (11th Cir.1987)), including aggressively re-examining all the government’s forensic evidence and conducting analyses of all other available forensic evidence.” *Id.* (quoting *American Bar Association Guidelines For The Appointment And Performance Of Defense Counsel In Death Penalty Cases*, reprinted in 31 Hofstra L.Rev. 913, 1015 (2003) (emphasis added)).

Counsel is not obligated to “investigate lines of defense that he has chosen not to employ at trial.” *Strickland*, 466 U.S. at 682 (quoting *Washington v. Strickland*, 693 F.2d 1243, 1255 (5th Cir. 1982)). Further, “[w]hen counsel focuses on some issues to the exclusion of others, there is a strong presumption that he [or she] did so for tactical reasons rather than through sheer neglect.” *Yarborough*, 540 U.S. at 5 (citing *Strickland*, 466 U.S. at 690). To demonstrate prejudice, Applicant was required to present the evidence or witnesses he alleges Counsel did not properly investigate. *Glover v. State*, 318 S.C. 496, 498-99, 458 S.E.2d 538, 540 (1995).

Investigate and Develop Evidence

Applicant alleges that Counsel was ineffective for failure to “investigat[e] and to develop all available, relevant and admissible or mitigating evidence in preparation of Applicant’s defense. *See Wiggins v. Smith*, 539 U.S. 510 (2003).” However, he does not state what Counsel

did not investigate and develop, what evidence would have been unearthed if Counsel had conducted a more thorough investigation into the case, or how it would have impacted trial and sentencing proceedings. Thus, a more definite statement is needed on this ground for Respondent to ascertain whether or not this allegation has merit.

Medical Records and Photographs

Applicant claims "Trial Counsel failed to investigate and obtain any medical records or photographs for diagnosis and treatment of Applicant's injuries by either the detention center or Applicant's personal physician where the Applicant indicated at his immunity hearing that he was seen by both where testifying about injuries he received at the hands of his attacker, and where the State elicited testimony to the contrary from an officer during Applicant's trial." However, because Applicant has failed to present the medical records and photographs, state what the records consisted of, state the impact the records would have had at trial, or specifically how Counsel was deficient for failing to procure them, a more definite statement is needed for Respondent to ascertain whether or not the allegation has merit.

Obtain Audio Recordings

Applicant contends that "Counsel failed to obtain either the audio recording from Applicant's civil summary court proceeding in 2014 against Wallace, or the booking report from Wallace being ordered to jail by the Magistrate Judge for attempting to assault Applicant at the hearing where Wallace denied details of the incident at Applicant's present trial, and where the deputy denied details of the incident at Applicant's present trial, and where the deputy denied any knowledge of the incident at the present trial as well." However, Applicant does not explain what these the recording or the report consisted of, how Counsel's action was unreasonable, or how the trial proceedings would have been different had Counsel requested the items. Thus,

without more, Applicant has not met his burden of proof and relief should be denied on this ground.

Failure to Move Court

Move to Sequester

Applicant alleges "Counsel failed to move to sequester any of the witnesses for either immunity hearing or trial where the State repeatedly referred to prior witness testimony when questioning later witnesses." However, he does not state what impact, if any, sequestering would have had at trial, why the alleged failure was not a part of a valid trial strategy, what witnesses specifically were impacted by the failure to move to sequester, what testimonies elicited would not have been admitted if witnesses were sequestered, why Counsel was unreasonable or otherwise deficient in failing to sequester, or what impact the failure to sequester had on the trial or immunity proceeding results. *See Stokes v. State*, 308 S.C. 546, 548, 419 S.E.2d 778, 779 (1992) (where "counsel articulates a valid reason for employing certain strategy, such conduct will not be deemed ineffective assistance of counsel"). Thus, a more definite statement is needed for Respondent to ascertain whether or not the allegation has merit.

Move to Quash Jury

Applicant alleges Counsel was ineffective for failing "to quash the jury pursuant to *Batson* where the State utilized four (4) of its five (5) statutory strikes to strike white males from the petit jury." "The Equal Protection Clause of the Fourteenth Amendment to the United States Constitution prohibits the striking of a venire person on the basis of race or gender." *State v. Shuler*, 344 S.C. 604, 615, 545 S.E.2d 805, 810 (2001). "The purposes of *Batson* and its progeny are to protect the defendant's right to a fair trial by a jury of the defendant's peers, protect each venire person's right not to be excluded from jury service for discriminatory reasons, and

preserve public confidence in the fairness of our system of justice by seeking to eradicate discrimination in the jury selection process.” *State v. Haigler*, 334 S.C. 623, 628–29, 515 S.E.2d 88, 90 (1999) (internal citations omitted). “When one party strikes a member of a cognizable racial group or gender, the trial court must hold a *Batson* hearing if the opposing party requests one.” *Shuler*, 344 S.C. at 615, 545 S.E.2d at 810.

In *Purkett v. Elem*, 514 U.S. 765, 767(1995), the Supreme Court of the United States explained the proper procedure for a *Batson* hearing as follows:

Under our *Batson* jurisprudence, once the opponent of a peremptory challenge has made out a prima facie case of racial discrimination (step one), the burden of production shifts to the proponent of the strike to come forward with a race-neutral explanation (step two). If a race-neutral explanation is tendered, the trial court must then decide (step three) whether the opponent of the strike has proved purposeful racial discrimination.

514 U.S. at 767.

Step two of this process does not demand an explanation that is persuasive or even plausible. *State v. Cochran*, 369 S.C. 308, 314, 631 S.E.2d 294, 298 (Ct. App. 2006) (quoting *Purkett*, 514 U.S. at 767–68). In step two, “the proponent of the strike does not carry ‘any burden of presenting reasonably specific, legitimate explanations for the strikes.’” *Id.* (internal citations omitted). “Therefore, ‘[u]nless a discriminatory intent is inherent’ in the explanation provided by the proponent of the strike, ‘the reason offered will be deemed race neutral’ and the trial court must proceed to the third step of the *Batson* process.” *Id.* (quoting *Purkett*, 514 U.S. at 768).

“At step three, the opponent of the strike must show the reason offered, though facially race-neutral, was actually mere pretext to engage in purposeful racial discrimination.” *Cochran*, 369 S.C. at 315, 631 S.E.2d at 298 (internal citation omitted). “The burden of persuading the court that a *Batson* violation has occurred remains at all times on the opponent of the strike.” *Haigler*, 334 S.C. at 629, 515 S.E.2d at 91. “This burden is generally established by showing

similarly situated members of another race were seated on the jury.” *Cochran*, 369 S.C. at 315, 631 S.E.2d at 298. However, the uneven application of a neutral reason does not automatically result in a finding of invidious discrimination if the strike's proponent provides a race or gender neutral explanation for the inconsistency. *State v. Kelley*, 319 S.C. 173, 460 S.E.2d 368 (1995) (finding the State provided a racially neutral explanation for why the solicitor did not strike a juror with similar characteristics to one previously stricken); *see Purkett*, 514 U.S. at 768, (during step three, “persuasiveness of the justification becomes relevant.”); *see also State v. Geddis*, 313 S.C. 37, 437 S.E.2d 31 (1993); *State v. Wilder*, 306 S.C. 535, 413 S.E.2d 323 (1991).

The ultimate question which the trial court resolves under the third step is whether the movant has met his burden in demonstrating purposeful discrimination. *State v. Casey*, 325 S.C. 447, 454, 481 S.E.2d 169, 173 (Ct. App. 1997) (internal citations omitted). The trial court's determination is dependent on whether minimum quantum of evidence has been produced that facially neutral explanation for peremptory strike was mere pretext, as ruling turns on examination of totality of facts and circumstances in record, including credibility and demeanor of strike's proponent and plausibility of neutral but otherwise unpersuasive reason. *Id.* The trial court's finding of purposeful discrimination rests on its evaluation of demeanor and credibility. *Edwards*, 384 S.C. at 509, 682 S.E.2d at 823. “Often the demeanor of the challenged attorney will be the best and only evidence of discrimination, and an ‘evaluation of the [attorney's] mind lies peculiarly within a trial [court's] province.’” *Id.* (quoting *Hernandez v. New York*, 500 U.S. 352, 365 (1991)). The trial court must often base its decision on credibility determinations, and its rulings on discrimination are accorded great deference on appeal. *State v. Casey*, 325 S.C. 447, 454, 481 S.E.2d 169, 173 (Ct. App. 1997) (citing *State v. Green*, 306 S.C. 94, 409 S.E.2d

785 (1991) (finding that absent showing that solicitor intentionally exercised strike because of discriminatory reasons, trial court's findings that strike was not racially motivated should be given great deference on appeal)). However, where the trial court's findings are not supported by evidence in the record, such findings will be overturned. *Casey*, 325 S.C. at 454, 481 S.E.2d at 173 (citing *State v. Grate*, 310 S.C. 240, 423 S.E.2d 119 (1991)). When the opponent of the strike proves the proponent of the strike practiced purposeful racial discrimination, the trial court must quash the entire jury panel and initiate another jury selection de novo." *Cochran*, 369 S.C. at 315, 631 S.E.2d at 298.

"If a trial court improperly grants the State's *Batson* motion, but none of the disputed jurors serve on the jury, any error in improperly quashing the jury is harmless because a defendant is not entitled to the jury of her choice." *State v. Edwards*, 384 S.C. 504, 509, 682 S.E.2d 820, 823 (2009). "However, if one of the disputed jurors is seated on the jury, then the erroneous *Batson* ruling has tainted the jury and prejudice is presumed in such cases 'because there is no way to determine with any degree of certainty whether a defendant's right to a fair trial by an impartial jury was abridged.'" *Id.* (quoting *State v. Rayfield*, 369 S.C. 106, 114, 631 S.E.2d 244, 248 (2006)). "The proper remedy in such cases is the granting of a new trial." *Id.*

Though Applicant alleges that Counsel was ineffective for moving to quash the jury when the State used peremptory strikes on primarily white males, he does not state what evidence existed, if any, that the State was striking these individuals because of race or gender, why Counsel was unreasonable for failing to raise a *Batson* issue, or why the court would have found no racially neutral explanation existed. Thus, without more, Applicant has failed to meet his burden of proof in bringing this claim and, thus, relief should be denied on this ground.

Failure to Object

Applicant makes many allegations concerning Counsel's failure to object to various testimonies, exhibits, and pieces of evidence. Whether failure to object to testimony constituting deficient performance generally hinges on whether or not a valid trial strategy was utilized. See *Thompson v. State*, 423 S.C. 235, 241, 814 S.E.2d 487, 490 (2018) (finding Counsel was deficient because the failure to object was not related to an otherwise valid trial strategy); *Stokes v. State*, 308 S.C. 546, 548, 419 S.E.2d 778, 779 (1992) (where "counsel articulates a valid reason for employing certain strategy, such conduct will not be deemed ineffective assistance of counsel").

EMS Medical Opinion Testimony

Applicant alleges "Counsel failed to object to Rules 701 and 702, SCRE, or *Ford v. Watson*, to medical opinion testimony by the EMS technician regarding medical signs and appearances of shock, as well as whether certain wounds were consistent with those needing advanced life support where the State never offered the witness as an expert in the field, no *voir dire* of the witness was performed, and the trial judge made no findings qualifying the witness as an expert required under his gatekeeping role."

At trial, the EMS technician stated "the patient appear[ed] to be sweating and pale at that point when we got there. So far as how much blood he lost, I'm not sure but there was a good amount of blood on the floor." (R. 118). He then stated that that is typically seen in people going into shock. Respondent contends that deciding not to object to the second sentence was likely a strategic move, given that the first sentence is arguably more incriminating than the second, and moving to object, even if the objection was sustained, probably would have drawn more attention to the injury inflicted on Victim as described and probably would not have changed the jury's

decision to find Applicant guilty as charged. Additionally, Applicant does not specifically state what impact Counsel's inaction had on trial proceedings, what difference the objection would have had upon the trial outcome, or how he was unreasonable for failing to object. Thus, Respondent claims that Applicant likely cannot meet his burden of proof on this claim, but also requests an evidentiary hearing to fully resolve the matter.

Sgt. Hutchinson Testimony

Crime Scene Reconstruction

Applicant alleges "Counsel failed to object under Rules 701 and 702, SCRE, and *State v. Ellis*, 345 S.C. 175, 547 S.E.2d 490 (2001) to opinion testimony of Sgt. Hutchinson regarding crime scene reconstruction where the State gave leading questions suggesting specifically where in McCormick's Grocery the fight started based upon location of blood on the floor." However, he fails to state why Counsel was deficient for failing to object, how failure to object was not a part of a valid trial strategy, or how the results of the proceedings would have been different but for the alleged deficiency. In fact, Respondent contends that given the wealth of the evidence against Applicant at trial, including multiple people who witnessed the fight and the stabbing, even if an objection was sustained regarding *where* in the store the stabbing took place, this would not have changed the results of the proceedings because it would no way diminish the overwhelming evidence *that* the fight took place presented that still would have come in. Thus, Respondent contends that relief should be denied on this ground.

Victim Identification

Applicant alleges "Counsel failed to object as both leading and giving opinion testimony on an ultimate issue in fact when Sgt. Hutchinson was asked, 'In looking at the case as a whole, who was the victim in this case?' to which he answered, 'In my opinion, would be Mr.

Wallace.” However, he did not state why the question should have been objected to, if Counsel would have succeeded on the objection, why Counsel was unreasonable for failing to object, how the failure to object was not a part of a valid trial strategy, or how the objection would have changed the results or the proceedings. As stated above, Respondent contends that even if the objection was sustained, given the wealth of the evidence against Applicant, this objection most likely would not have changed the results of the proceedings. Instead, the jury likely would have discovered quite easily that a victim was involved, given the nature of an attempted murder case, and that the victim was likely Victim, given that he had been identified as having stab wounds all over his body. Additionally, objecting to this likely would have drawn even more attention to the issue which Counsel probably wanted to avoid, strategically speaking. Thus, Respondent contends Applicant has not met his burden of proof on this claim and, consequently, relief should be denied on this ground.

Investigator Perry

Applicant alleges “Counsel failed to object under Rule 701 and 702 to Inv. Tim Perry’s testimony on redirect examination when the State elicited opinion testimony on whether person in a given scenario would be deemed a ‘victim,’ where the facts were similar to the present case, where Inv. Perry was not qualified as an expert witness, and where the opinion testimony touched on the ultimate issue in the case.” However, Applicant does not specifically state why the testimony elicited was improper, why it should have been objected to, why questioning the failure to question the investigator’s expertise was not a part of a valid trial strategy, why Counsel’s failure to object was unreasonable, or how the results of the proceeding would have been different. As previously mentioned, given how much other evidence incriminating in nature to Applicant was brought in at trial, it is unlikely that an objection, even if sustained, would have

affected the trial proceedings. Additionally, Counsel likely could have considered not objecting here was a valid trial strategy, indicating he was not deficient on this ground. Thus, Respondent contends relief should be denied on this ground, but requests an evidentiary hearing be held to fully resolve the issue.

Deputy Testimony

Applicant alleges "Counsel failed to object under hearsay and the Sixth Amendment Confrontation Clause during the immunity hearing where the State obtained testimony from a deputy as to what an EMS technician allegedly said about Wallace's medical condition and subsequent airlift to a hospital in Charlotte, and where the deputy had no first-hand knowledge of either." Respondent's understanding of the testimony in question consists of Hutchinson stating that the EMS found Victim was stabbed or cut and that he was airlifted to the hospital. Because at the immunity hearing specifically, Applicant, Wallace, and Griffen recognized that Victim had been stabbed with a knife, the testimony that would not have come in if the objection was sustained would have been cumulative. Additionally, the fact that Victim was airlifted to the hospital is not of consequence and would not have changed the results of the proceedings in determining whether Applicant was entitled to immunity. Presumably understanding any objection on these bases would have been to irrelevant or cumulative information that would not have changed the results of the proceedings, Counsel acted reasonably in not making a fruitless objection a part of his strategy. Thus, Applicant cannot meet either prong on this issue and relief should be denied on this ground.

Lay Witness Testimony

Deadly Force

Applicant alleges "Trial Counsel failed to object during the immunity hearing when the

State elicited legal opinion testimony from a lay witness striking at the heart of the ultimate issue of self-defense by asking, ‘. . . at any time did you do anything that would cause [Applicant] to use deadly force against you?’” This question was asked in a series of other similar questions concerning whether the victim had a weapon or punched Applicant repeatedly. (R. 315). Thus, Respondent contends that essentially the same testimony would have been elicited even if this question was objected to. Counsel, presumably understanding this, probably did not object because of a valid trial strategy and based upon the understanding that the question, in context, would not have elicited any testimony that would have changed the results of the proceeding. Thus, relief should be denied on this ground.

Mutual Combat

Applicant alleges Counsel failed to object during the immunity hearing when the State elicited legal opinion testimony from a lay witness striking at the heart of the ultimate issue of self-defense by asking if Applicant was involved in ‘what we call mutual combat?’” At trial, the State followed the question up with “In other words, both of you were tussling?” (R. 42). This is not a legal opinion and something the lay witness involved in the fight could speak about. Thus, the same answer would have been elicited even if Counsel objected here. Counsel presumably understood that objecting would not have made a difference at trial and, thus, the decision not to object was presumably a part of a larger trial strategy. Thus, Respondent contends that Counsel was not deficient, Applicant was not prejudiced, and this allegation is likely without merit.

Trial Court’s Self-Defense Findings

Applicant claims Counsel was ineffective for failure to object to the Court’s failure to make full and complete findings of fact and conclusions of law for the elements of self-defense as applied under a claim pursuant to the Protection of Persons and Property Act. However,

Applicant fails to state what was incomplete or missing, why Counsel should have objected, why Counsel acted unreasonably, or how it would have changed the results of the proceedings. Thus, a more definite statement is needed.

Erroneous Standard at Trial

Applicant contends Counsel was ineffective for failing to “object to the Trial Court’s application of an incorrect evidentiary standard based upon a misunderstanding and misapplication of *State v. Curry*, 406 S.C. 364, 371, 752 S.E.2d 263, 266 (2013) as advanced by the State, rather than making findings of fact and conclusions of law based upon the preponderance of the evidence standard as required by law. *See e.g. State v. Cervantes-Pavon*, 426 S.C. 442, 827 S.E.2d 564 (2019).” The judge denied immunity because “the slap which was admitted by Mr. Wallace was not of the nature that Mr. Moore should have believed he was going to have to take action to prevent death or great bodily injury” and “[a]s a matter of fact, [his] review of the tape once the slap occurred, Mr. Moore appeared to become the aggressor in this situation.” (R. 380). Thus, even if the standard articulated by the State was incorrect in some way, there is no indication the judge used the standard when reaching his decision or that, even if he specifically applied the standard Applicant now seeks, that a different conclusion would be reached. Not only is there no indication, but Respondent holds it is highly unlikely, given that the judge identified Applicant as the aggressor and stated the force used was unreasonable. Thus, relief should be denied on this ground.

Confusing Jury Instructions

Applicant alleges Counsel was ineffective for failing to object to “the Trial Court’s confusing jury instructions regarding intent where the charged offense required the specific intent to kill, yet where the instruction included language of far lower, “general intent” standards

such as recklessness and criminal negligence.” “In determining whether a defendant was prejudiced by improper jury instructions, the court must find that, viewing the charge in its entirety and not in isolation, there is a reasonable likelihood that the jury applied the improper instruction in way that violates the Constitution.” *Battle v. State*, 382 S.C. 197, 203, 675 S.E.2d 736, 739 (2009).

The judge made clear in jury instructions that criminal intent is required to find someone guilty of attempted murder. (R. 218-20). Though he stated that intent can *arise* from negligence, recklessness, or indifference, the judge made clear that more is needed to determine if someone acted with criminal intent. He also clearly stated that intent is a different mental state than knowingly, recklessly, and negligently. (R. 219). Specifically, the judge defined it as a “conscious wrongdoing.” (R. 219-20). Respondent contends that the judge was very clear in showing that criminal intent was required; not just negligence or recklessness. Thus, there is not a reasonable likelihood that the instruction was construed in a way that violated the constitution and, consequently, relief should be denied on this ground.

Failure to Use Incident Report

Applicant alleges “Trial Counsel failed to use the Incident Report dated 04/2014 during either the immunity hearing or the trial where Applicant was attacked not only by the ‘victim’ Wallace in the present case but also by several other assailants in concert with Wallace at this time, and where Applicant believed the third party pulling him from behind while he fought with Wallace in the present case was likewise working in concert with Wallace to attack him when showing Applicant’s response to the attack was reasonable.” However, he does not state why it was unreasonable for Counsel to decide not to enter the report, why the decision could not have been part of a reasonable trial strategy, what information was on the report that could not have

come in through other means, or how the decision not to admit the report impacted trial or immunity hearing proceedings. Further, Applicant seemingly testified on this issue at the immunity hearing, where the judge rejected his defense concerning being pulled from behind. (R. 267-70, 272, 293-94, 380). Thus, Respondent contends relief should be denied on this ground.

Failure to Seek Jury Instructions

Applicant contends Counsel was ineffective for failing to request jury instructions for lesser included offenses and based upon a specific intent to kill. Concerning deficiency, Counsel must articulate a valid reason for employing a certain strategy, which is measured under an objective standard of reasonableness. *Roseboro v. State*, 317 S.C. 292, 294, 454 S.E.2d 312, 313 (1992). Counsel is not ineffective for failing to request a lesser included offense jury instruction when there is no evidence that the defendant committed the lesser, as opposed to the greater offense. *Bozeman v. State*, 307 S.C. 172, 176, 414 S.E.2d 144, 146 (1992).

In determining whether a defendant was prejudiced by improper jury instructions, the court must find that, viewing the charge in its entirety and not in isolation, there is a reasonable likelihood that the jury applied the improper instruction in a way that violates the Constitution. *Battle v. State*, 382 S.C. 197, 203, 675 S.E.2d 736, 740 (2009). The law to be charged must be determined from the evidence presented at trial. *State v. Knoten*, 347 S.C. 296, 302, 555 S.E.2d 391, 394 (2001).

Lesser-Included Offenses

Applicant alleges Counsel's decision not to seek jury instructions for the lesser included offenses of assault and battery of a high and aggravated nature, and especially first degree assault and battery, was unreasonable. However, he does not state why this instruction was improper, why Counsel was unreasonable, what evidence exists indicating he was guilty of this offense, as

opposed to the greater offense, or how the jury's application of the instructions violated the constitution. Thus, without more, Applicant has not met his burden of proof in showing why this was ineffective and, thus, relief should be denied on this ground.

Specific Intent to Kill

Applicant alleges Counsel was ineffective for failure request a jury instruction regarding specific intent to kill. However, he does not state why this instruction was proper, why the instruction given was incorrect, or how the jury's application of the instructions violated the constitution. Thus, without more, Applicant has not met his burden of proof in showing why this was ineffective and, thus, relief should be denied on this ground.

Ineffective Assistance of Appellate Counsel

A defendant is constitutionally entitled to effective assistance of appellate counsel. *Evitts v. Lucey*, 469 U.S. 387 (1985). "Generally, in analyzing a claim of ineffective assistance of appellate counsel, this Court applies the *Strickland* test just as it would when analyzing a claim of ineffective assistance of trial counsel. *Bennett v. State*, 383 S.C. 303, 309, 680 S.E.2d 273, 276 (2009). Applicant must show appellate counsel's performance was deficient, and he was prejudiced by the deficiency. *Gilchrist v. State*, 364 S.C. 173, 612 S.E.2d 702 (2005); *Anderson v. State*, 354 S.C. 431, 581 S.E.2d 834 (2003); *Thrift v. State*, 302 S.C. 535, 537, 397 S.E.2d 523, 525 (1990).

Appellate counsel has a professional duty to choose among potential issues according to their merit. *Jones v. Barnes*, 463 U.S. 745 (1983). Where the strategic decision to exclude certain issues on appeal is based on reasonable professional judgment, the failure to appeal all trial errors is not ineffective assistance of counsel. *Tisdale v. State*, 357 S.C. 474, 476, 594 S.E.2d 166, 167 (2004) (quoting *Jones v. Barnes*, 463 U.S. 745, 754 (1983)) ("For judges to second-

guess reasonable professional judgments and impose on . . . counsel a duty to raise every 'colorable' claim suggested by a client would disserve the very goal of vigorous and effective advocacy. . . ."))).

When a claim of ineffective assistance of counsel is based upon neglecting to file a merits brief, Applicant must show that appellate counsel unreasonably failed to discover non-frivolous issues and file a merits brief raising them, and a reasonable probability that, but for his counsel's unreasonable failure to file a merits brief, he or she would have prevailed on his appeal. *Smith v. Robbins*, 528 U.S. 259, 285 (2000). Applicant must show that a reasonably competent attorney would have found one non-frivolous issue warranting a merits brief, and that the issue identified would have won on appeal. *Id.* at 288.

Failure to Petition for Rehearing

Applicant alleges Counsel was ineffective for "failure to file a petition for rehearing in the Court of Appeals to preserve Applicant's ability to file a petition for writ of certiorari on the issues of whether the Trial Court erred in finding Applicant was not entitled to immunity from prosecution under the Protection of Persons and Property Act, whether the Trial Court erred by failing to grant Applicant's motion for a direct verdict, and whether the Trial Court erred in his response to a jury question." However, Applicant does not state why Appellate Counsel should have petitioned, why deciding not to file a petition on these grounds was unreasonable, or how that issue would have won on appeal. Respondent contends that, given that these same issues were raised on direct appeal and denied on their merits, it is unlikely they would have prevailed on appeal if the petition for rehearing was filed. Thus, relief should be denied on this ground.

Failure to Raise and Argue Evidentiary Standard was Incorrect

Applicant claims "[i]n the event Trial Counsel properly preserved the issue of whether

the Trial Court applied the incorrect evidentiary standard on a misunderstanding and misapplication of *State v. Curry*, 406 S.C. 364, 371, 752 S.E.2d 263, 266 (2013) in his closing statement to the Trial Counsel at the immunity hearing, Appellate Counsel failed to raise and argue the issue of the Trial Court applying an incorrect evidentiary standard, rather than making findings of fact and law based upon the preponderance of the evidence standard as required by law. *See, e.g., State v. Cervantes-Pavon*, 426 S.C. 442, 827 S.E.2d 564 (2019).” However, Applicant does not state why Appellate Counsel should have raised this issue, why this issue was stronger than the other issues raised on appeal, why deciding not to raise this issue was unreasonable, or how that issue would have won on appeal. Additionally, as stated above, the immunity hearing judge denied immunity because “the slap which was admitted by Mr. Wallace was not of the nature that Mr. Moore should have believed he was going to have to take action to prevent death or great bodily injury” and “[a]s a matter of fact, [his] review of the tape once the slap occurred, Mr. Moore appeared to become the aggressor in this situation.” (R. 380). Thus, even if the standard articulated by the State was incorrect in some way, there is no indication the judge used the standard when reaching his decision or that, even if he specifically applied the standard Applicant now seeks, that a different conclusion would be reached. Not only is there no indication, but Respondent holds it is highly unlikely, given that the judge identified Applicant as the aggressor and stated the force used was unreasonable and, consequently, this issue would not have won on appeal. Thus, relief should be denied on this ground.

Failure to Raise and Argue Self-Defense

Applicant contends that “[i]n the event Trial Counsel properly preserved the issue of whether the Trial Court failed to make full and complete findings of fact and conclusions of law for the elements of self-defense as applied under a claim pursuant to the Protection of Persons

and Property Act at the immunity hearing, Appellate Counsel failed to raise and argue this issue of the Trial Counsel's failure to make full and complete findings of fact and conclusions of law for the elements of self-defense." However, Applicant does not state why Appellate Counsel should have raised this issue, why this issue was stronger than the other issues raised on appeal, why deciding not to raise this issue was unreasonable, or how that issue would have won on appeal. Thus, a more definite statement is needed for Respondent to ascertain whether or not the allegation has merit.

Still, the ineffective assistance of trial and appellate counsel allegations probably raise questions of fact that the record does not conclusively refute. Accordingly, Respondent respectfully requests an evidentiary hearing to fully resolve this issue. *See Sharper v. State*, 279 S.C. 264, 265, 305 S.E.2d 247, 248 (1983) ("Where an application for post-conviction relief alleges specific instances of ineffective assistance of counsel which are not conclusively refuted by the record before the lower court, a question of fact is raised which can only be resolved by an evidentiary hearing.").

V. Motion for a More Definite Statement

Respondent moves for a more definite statement regarding Applicant's allegations. Applicant alleges that both trial and appellate counsel were ineffective on a number of different grounds. However, he does not explain exactly what Counsel did that constituted ineffective assistance of counsel, nor satisfactorily substantiate his claims with sufficiently detailed explanations. Applicant fails to set forth with specificity any facts and circumstances upon the claim is based. The Uniform Post-Conviction Procedure Act requires that applicants must "specifically set forth the grounds upon which the application is based." Section 17-27-50 of the Code of Laws of South Carolina (1976). In an application for post-conviction relief, it is

incumbent upon applicants to make at least a *prima facie* showing which would entitle him to relief before an evidentiary hearing will be scheduled and held. *Welch v. MacDougall*, 246 S.C. 258, 143 S.E.2d 455 (1965); *Blandshaw v. State*, 245 S.C. 385, 140 S.E.2d 784 (1965). The Supreme Court of South Carolina has provided that:

[M]ere allegations of incompetency or ineffectiveness of counsel will not ordinarily suffice as grounds for a new trial under the Post-Conviction Procedure Act. The bare assertion by the appellant that he was deprived of counsel is insufficient.

Coardes v. State, 262 S.C. 493, 497, 206 S.E.2d 264, 265 (1974).

Furthermore, Rule 8(a), SCRCP, requires all civil pleadings include “a short and plain statement of the facts showing that the pleader is entitled to relief.” Respondent moves pursuant to Rule 12(e), SCRCP, to require Applicant to provide a more definite statement of his claims. Respondent moves to require Applicant to file an additional amended application well in advance of any evidentiary hearing concerning this matter. If Applicant fails to file a timely and responsive amended application setting forth specific allegations for relief, Respondent reserves the right to move to dismiss the allegation.

VI. Other Allegations Denied

Each and every other allegation in Applicant’s PCR application not explicitly admitted, qualified, or explain in this return is hereby denied by Respondent.

VII. Assertion of Rights to Notice of Amendments, Experts

Applicant should raise any claims he intends to raise at the PCR evidentiary hearing well in advance of the hearing. Here, Applicant’s retained attorney is the only individual authorized to file amendments to this application, given his representative capacity, Rule 11(a), SCRCP and *pro se* filings will not be considered at the PCR hearing. *State v. Devore*, 416 S.C. 115, 123, 784 S.E.2d 690, 694 (Ct. App. 2016) (*Pro se* filing is a nullity where person was represented by

counsel); *Miller v. State*, 388 S.C. 347, 697 S.E.2d 527 (2010) (“Since there is no right to ‘hybrid representation’ that is partially *pro se* and partially by counsel, substantive documents, with the exception of motions to relief counsel, filed *pro se* by a person represented by counsel are not to be accepted unless submitted by counsel.”).

Respondent reserves the right to request that any amendments withheld until the last minute be stricken because of undue prejudice to Respondent or, in the alternative, continue the matter to permit adequate time to investigate and address the claims. *See Mangal v. State*, 421 S.C. 85, 805 S.E.2d 568 (2017) (“In most PCR cases . . . we have refused to excuse the pleading and issue-preservation requirements that apply in all civil cases.”); *Love v. State*, 428 S.C. 231, 242, 834 S.E.2d 196, 201 (2019) (“When analyzing the substance of a proposed amendment and any prejudice the State might suffer, a PCR court should consider all relevant circumstances, including, but not limited to, the timing of the motion, the complexity of the new issue, the degree of surprise to the State, the need for and availability of necessary witnesses to defend against the claim, and whether the substance of the proposed amendment is readily apparent from the underlying plea or trial record.”); *see also* Rules 15(a)-(b), SCRPC (explaining how to amend a pleading). Pursuant to Section 17-27-150 of the South Carolina Code of Laws, Applicant may not invoke formal discovery processes to issue subpoenas or otherwise obtain discovery materials unless the Court grants leave upon good cause shown. Furthermore, Respondent requests that all potential exhibits and materials used to produce potential expert witness testimony be sent to Respondent well in advance of the evidentiary hearing. Respondent reserves the right to request a continuance and oppose witness testimony and exhibits withheld until the last minute resulting in undue prejudice to Respondent.

VIII. Conclusion

WHEREFORE, Respondent requests that the Court require Applicant to provide a more definite statement and then hold an evidentiary hearing regarding Applicant's allegations.

Respectfully submitted,

ALAN WILSON
Attorney General

W. JEFFREY YOUNG
Chief Deputy Attorney General

MEGAN HARRIGAN JAMESON
Senior Assistant Deputy Attorney General

CHELSEY F. MARTO
Assistant Attorney General

By: s/ Chelsey F. Marto
ATTORNEYS FOR RESPONDENT

Office of the Attorney General
Post Office Box 11549
Columbia, South Carolina 29211
Telephone: (803) 734-3737

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STATE OF SOUTH CAROLINA

COUNTY OF CHESTERFIELD

GARY MOORE,

Plaintiff(s)

vs. 2021 AUG 20 A 11:00

State of South Carolina

Christy F. Gaddy

CLERK OF COURT

CHESTERFIELD COUNTY, S.C.

Submitted By: Dayne C. Phillips, Esq.

Address: 1614 Taylor Street, Ste. D.,

Columbia, SC 29201

419

IN THE COURT OF COMMON PLEAS

CIVIL ACTION COVERSHEET

2020 - CP - 13 - 090

AMENDED APPLICATION FOR
POST-CONVICTION RELIEF

SC Bar #: 77712

Telephone #: (803) 807-0234

Fax #: (803) 380-8035

Other: 803-272-4503

E-mail: dayne@pricebenowitz.com

NOTE: The coversheet and information contained herein neither replaces nor supplements the filing and service of pleadings or other papers as required by law. This form is required for the use of the Clerk of Court for the purpose of docketing. It must be filled out completely, signed, and dated. A copy of this coversheet must be served on the defendant(s) along with the Summons and Complaint.

DOCKETING INFORMATION (Check all that apply)

**If Action is Judgment/Settlement do not complete*

- ☐ JURY TRIAL demanded in complaint. ☐ NON-JURY TRIAL demanded in complaint.
☐ This case is subject to ARBITRATION pursuant to the Court Annexed Alternative Dispute Resolution Rules.
☐ This case is subject to MEDIATION pursuant to the Court Annexed Alternative Dispute Resolution Rules.
☐ This case is exempt from ADR. (Proof of ADR/Exemption Attached)

NATURE OF ACTION (Check One Box Below)

Contracts

- ☐ Constructions (100)
☐ Debt Collection (110)
☐ General (130)
☐ Breach of Contract (140)
☐ Fraud/Bad Faith (150)
☐ Failure to Deliver/
Warranty (160)
☐ Employment Discrim (170)
☐ Employment (180)
☐ Other (199)

Torts - Professional Malpractice

- ☐ Dental Malpractice (200)
☐ Legal Malpractice (210)
☐ Medical Malpractice (220)
Previous Notice of Intent Case #
20____-NI-_____
☐ Notice/ File Med Mal (230)
☐ Other (299)

Torts - Personal Injury

- ☐ Conversion (310)
☐ Motor Vehicle Accident (320)
☐ Premises Liability (330)
☐ Products Liability (340)
☐ Personal Injury (350)
☐ Wrongful Death (360)
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☐ Condemnation (410)
☐ Foreclosure (420)
☐ Mechanic's Lien (430)
☐ Partition (440)
☐ Possession (450)
☐ Building Code Violation (460)
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☐ Permanent Injunction (830)
☐ Forfeiture-Petition (840)
☐ Forfeiture-Consent Order (850)
☐ Other (899)

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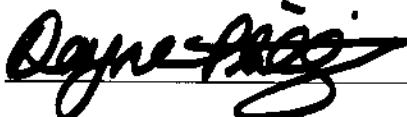
- ☐ Death Settlement (700)
☐ Foreign Judgment (710)
☐ Magistrate's Judgment (720)
☐ Minor Settlement (730)
☐ Transcript Judgment (740)
☐ Lis Pendens (750)
☐ Transfer of Structured
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☐ Worker's Comp (960)
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☐ Automobile Arb. (610)
☐ Medical (620)
☐ Other (699)
☐ Sexual Predator (510)
☐ Permanent Restraining Order (680)
☐ Pharmaceuticals (630)
☐ Unfair Trade Practices (640)
☐ Out-of State Depositions (650)
☐ Motion to Quash Subpoena in
an Out-of-County Action (660)
☐ Pre-Suit Discovery (670)

Submitting Party Signature: 

Date: August 17, 2021

Note: Frivolous civil proceedings may be subject to sanctions pursuant to SCRCP, Rule 11, and the South Carolina Frivolous Civil Proceedings Sanctions Act, S.C. Code Ann. §15-36-10 et. seq.

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF CHESTERFIELD	)	FOURTH JUDICIAL CIRCUIT
	)	
Gary Moore,	)	Case No. 2020-CP-13-090
	)	
Applicant,	)	
	)	
	)	
v.	)	AMENDED APPLICATION FOR
	)	POST-CONVICTION RELIEF
State of South Carolina,	)	
	)	
Defendant.	)	
	)	

As required by Rule 71.1(b), SCRPC, this application is in conformity with Form 5 of the SCRPC Appendix of Forms.

1. Place of Detention: Applicant is detained in the South Carolina Department of Corrections at Broad River Correctional Institution, 4460 Broad River Road, Columbia, SC 29210.
2. Name and location of Court which imposed sentence: Chesterfield County Court of General Sessions, 200 W. Main St., Chesterfield, SC 29709.
3. Name(s) of co-defendant(s) (if any): None.
4. The indictment number(s) upon which and the offenses for which sentence was imposed:
 - (a) 2015-GS-13-0398 (Attempted Murder).
5. The date upon which the sentence was imposed and the terms of the sentence:
 - (a) April 11, 2016.
 - (b) Eighteen (18) year sentence for Attempted Murder.
6. A finding of guilty was made:
 - (a) After a trial by jury before the Honorable Paul M. Burch (April 5-6, 2016).
 - (b) Prior to trial, the Honorable Roger E. Henderson found that Applicant was not entitled to immunity from prosecution under the Protection of Persons and Property Act (S.C. Code § 15-11-410). Duncan hearing occurred on February 17-18, 2016.

7. Did you appeal from the judgment of conviction and/or the imposition of the sentence?
- (a) Yes.
8. If you answered "yes" to number (7), list:
- (a) The name of each Court to which you appealed:
- i. South Carolina Court of Appeals.
- (b) The result in each Court to which you appealed:
- i. Affirmed conviction and sentence (S.C. Court of Appeals).
- (c) The date of each result:
- i. June 26, 2019 (Unpublished Opinion).
- (d) If known, citations of any written opinions or ordered entered pursuant to such result:
- i. State v. Gary Moore, Op. No. 2019-UP-234 (S.C. Ct. App. filed June 26, 2019).
9. If you answered "no" to number (7), state your reasons for not appealing:
- (a) Not applicable. Applicant filed a Direct Appeal of his conviction and sentence.
10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:
- (a) Trial Counsel denied Applicant's right to effective assistance of counsel as guaranteed by the Sixth and Fourteenth Amendments to the United States Constitution and Article I, Sections 3 and 14 of the South Carolina Constitution. See S.C. Code § 17-27-20(A)(1), (4), and (6). Specifically, Trial Counsel's unreasonably deficient performance prejudiced Applicant because there is a reasonable probability that, but for Trial Counsel's errors, the result of the proceeding would have been different. See Strickland v. Washington, 466 U.S. 668 (1984).
- (b) Appellate Counsel denied Applicant's right to effective assistance of counsel as guaranteed by the Sixth and Fourteenth Amendments to the United States

Constitution and Article I, Sections 3 and 14 of the South Carolina Constitution. Specifically, Appellate Counsel's unreasonably deficient performance prejudiced Applicant because there is a reasonable probability that, but for Trial Counsel's errors, the result of the proceeding would have been different. See *Strickland v. Washington*, 466 U.S. 668 (1984); *Evitts v. Lucey*, 469 U.S. 387 (1985); *Simpkins v. State*, 303 S.C. 364, 401 S.E.2d 142 (1991).

11. State concisely and in the same order the facts which support each of the grounds set out in number (10):

(a) Trial Counsel's acts or omissions of ineffective assistance of counsel include but are not limited to the following allegations:

(i) Trial Counsel failed to conduct a reasonable investigation and to develop all available, relevant, and admissible or mitigating evidence in preparation of Applicant's defense. See *Wiggins v. Smith*, 539 U.S. 510 (2003).

a. Counsel's failure to investigate and present the Victim's prior statements that he wanted to injure / kill Applicant.

b. Counsel's failure to investigate and present the 911 audio recording to discredit the credibility of the State's witnesses and arguments.

c. Counsel's failure to investigate and present pictures of the knife in comparison to the bodycamera video recording to discredit the credibility of the State's witnesses and arguments.

d. Counsel's failure to investigate whether the video recordings admitted at trial had been altered.

e. Counsel's failure to investigate and present Applicant's rights under the South Carolina Victim's Bill of Rights as a prior victim.

- (ii) Trial Counsel failed to present and argue that the State violated of the S.C. Victim's Bill of Rights when Applicant was a victim of a prior incident with the Victim.
- (iii) Trial Counsel failed to object to the Trial Court's application of an incorrect evidentiary standard based upon a misunderstanding and misapplication of State v. Curry, 406 S.C. 364, 371, 752 S.E.2d 263, 266 (2013) as advanced by the State, rather than making findings of fact and conclusions of law based upon the preponderance of the evidence standard as required by law. See, e.g., State v. Cervantes-Pavon, 426 S.C. 442, 827 S.E.2d 564 (2019).
- (iv) Trial Counsel failed to object to the Trial Court's failure to make full and complete findings of fact and conclusions of law for the elements of self-defense as applied under a claim pursuant to the Protection of Persons and Property Act.
- (v) Trial Counsel's "trial strategy," which he conveyed to the Trial Court and Applicant during trial, to not seek jury instructions for the lesser-included offenses of Assault and Battery of a High and Aggravated Nature, and especially First Degree Assault and Battery, was objectively unreasonable given the facts and circumstances of the case. See Roseboro v. State, 317 S.C. 292, 294, 454 S.E.2d 312, 313 (1995) (finding "counsel must articulate a valid reason for employing a certain strategy to avoid a finding of ineffectiveness, and where counsel articulates a strategy, it is measured under an objective standard of reasonableness"); Stacy v. Solem, 801 F.2d 1048, 1051 (8th Cir. 1986) (finding that "labeling counsel's actions as "trial strategy" does not automatically immunize an attorney's performance from sixth amendment challenges.").

- (vi) Trial Counsel failed to request a jury instruction regarding specific intent to kill pursuant to State v. King, 422 S.C. 47, 810 S.E.2d 18 (2017).
- (vii) Trial Counsel failed to object to the Trial Court's confusing jury instructions regarding intent where the charged offense required the specific intent to kill, yet where the instruction included language of far lower, "general intent" standards such as recklessness and criminal negligence. See, e.g., State v. King, 422 S.C. 47, 810 S.E.2d 18 (2017).
- (viii) Trial Counsel failed to investigate and obtain any medical records or photographs for diagnosis and treatment of Applicant's injuries by either the detention center or Applicant's personal physician where the Applicant indicated at his immunity hearing that he was seen by both when testifying about injuries he received at the hands of his attacker, and where the State elicited testimony to the contrary from an officer during Applicant's trial. See *Lounds v. State*, 380 S.C. 454, 670 S.E.2d 646 (2008); *McKnight v. State*, 378 S.C. 33, 46, 661 S.E.2d 354, 360 (2008); *Von Dohlen v. State*, 360 S.C. 598, 607, 602 S.E.2d 738, 743 (2004); *Reeves v. State*, 415 S.C. 366, 782 S.E.2d 747 (Ct. App. 2015).
- (ix) Trial counsel failed to use the Incident Report dated 04/2014 during either the immunity hearing or the trial where Applicant was attacked not only by the "victim" Wallace in the present case but also by several other assailants in concert with Wallace at that time, and where Applicant believed the third party pulling him from behind while he fought with Wallace in the present case was likewise working in concert with Wallace to attack him when showing Applicant's response to the attack was reasonable.

- (x) Trial Counsel failed to object during the immunity hearing when the State elicited legal opinion testimony from a lay witness striking at the heart of the ultimate issue of self-defense by asking, "... at anytime did you do anything that would cause [Applicant] to use deadly force against you?"
- (xi) Trial Counsel failed to object during the immunity hearing when the State elicited legal opinion testimony from a lay witness striking at the heart of the ultimate issue of self-defense by asking if Applicant was involved in "what we call mutual combat?"
- (xii) Trial Counsel failed to move to sequester any of the witnesses for either the immunity hearing or trial where the State repeatedly referred to prior witness testimony when questioning later witnesses.
- (xiii) Trial Counsel failed to obtain either the audio recording from Applicant's civil summary court proceeding in 2014 against Wallace, or the booking report from Wallace being ordered to jail by the Magistrate Judge for attempting to assault Applicant at that hearing where Wallace denied details of the incident at Applicant's present trial, and where the deputy denied any knowledge of the incident at the present trial as well.
- (xiv) Trial Counsel failed to quash the jury pursuant to Baston where the State utilized four (4) of its five (5) statutory strikes to strike white males from the petit jury.
- (xv) Trial Counsel failed to object pursuant to Rules 701 and 702, SCRE, or Ford v. Watson, to medical opinion testimony by the EMS technician regarding medical signs and appearances of shock, as well as whether certain wounds were consistent with those needing advanced life support where the State never offered the witness

as an expert in any field, no *voir dire* of the witness was performed, and the trial judge made no findings qualifying the witness as an expert required under his gatekeeping role.

- (xvi) Trial Counsel failed to object under Rules 701 and 702, SCRE, and State v. Ellis, 345 S.C. 175, 547 S.E.2d 490 (2001) to opinion testimony of Sgt. Hutchinson regarding crime scene reconstruction where the State gave leading questions suggesting specifically where in McCormick's Grocery the fight started based upon location of blood on the floor.
- (xvii) Trial Counsel failed to object as both leading and giving opinion testimony on an ultimate issue in fact when Sgt. Hutchinson was asked, "In looking at the case as a whole, who was the victim in this case?" to which he answered, "In my opinion, would be Mr. Wallace."
- (xviii) Trial counsel failed to object under Rules 701 and 702 to Inv. Tim Perry's testimony on redirect examination when the State elicited opinion testimony on whether a person in a given scenario would be deemed a "victim," where the facts were similar to the present case, where Inv. Perry was not qualified as an expert witness, and where the opinion testimony touched on the ultimate issue in the case.
- (xix) Trial counsel failed to object under hearsay and the Sixth Amendment Confrontation Clause during the immunity hearing where the State obtained testimony from a deputy as to what an EMS technician allegedly said about Wallace's medical condition and subsequent airlift to a hospital in Charlotte, and where the deputy had no first-hand knowledge of either.

(b) Appellate Counsel's acts or omissions of ineffective assistance of counsel include but are not limited to the following allegations:

- (i) Appellate Counsel failed to file a Petition for Rehearing in the Court of Appeals to preserve Applicant's ability to file a Petition for Writ of Certiorari to the Court of Appeals in the South Carolina Supreme Court on the issues of whether the Trial Court erred in finding Applicant was not entitled to immunity from prosecution under the Protection of Persons and Property Act, whether the Trial Court erred by failing to grant Applicant's motion for a direct verdict, and whether the Trial Court erred in his response to a jury question.
- (ii) In the event Trial Counsel properly preserved the issue of whether the Trial Court applied the incorrect evidentiary standard on a misunderstanding and misapplication of f State v. Curry, 406 S.C. 364, 371, 752 S.E.2d 263, 266 (2013) in his closing statement to the Trial Court at the immunity hearing, Appellate Council failed to raise and argue this issue of the Trial Court applying an incorrect evidentiary standard, rather than making findings of fact and law based upon the preponderance of the evidence standard as required by law. See, e.g., State v. Cervantes-Pavon, 426 S.C. 442, 827 S.E.2d 564 (2019).
- (iii) In the event Trial Counsel properly preserved the issue of whether the Trial Court failed to make full and complete findings of facts and conclusions of law for the elements of self-defense as applied under a claim pursuant to the Protection of Persons and Property Act at the immunity hearing, Appellate Counsel failed to raise and argue this issue of the Trial Court's failure to make full and complete findings of fact and conclusions of law for the elements of self-defense.

12. Prior to this application, have you filed with respect to this conviction:
- (a) Any petition in a State Court under South Carolina Law? Applicant filed a Direct Appeal before the S.C. Court of Appeals.
 - (b) Any petition in State or Federal Courts for Federal Habeas Corpus or Post-Conviction Relief? No. Applicant has not previously filed an application for Post-Conviction Relief or Petition for Writ of Habeas Corpus in either state or federal court.
 - (c) Any petition in the Supreme Court of the United States for certiorari other than petitions, if any, already specified in number (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 number (12), list with respect to each petition, motion, or application:
- (a) The specific nature thereof: Not applicable.
 - (b) The name and location of the Court in which each was filed: Not applicable.
 - (c) The disposition thereof: Not applicable.
 - (d) The date of each such disposition: Not applicable.
14. Has any ground set forth in number (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 number (14), identify:
- (a) The grounds which have been presented:
 - i. Not applicable.
 - (b) The proceedings in which each ground was raised:
 - i. Not applicable.
16. If any ground set forth in number (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) Post-Conviction Relief is the proper forum and remedy for these allegations because the grounds for relief presented in this application are evidence of ineffective assistance of counsel, issues not preserved for appellate review, and/or were not appropriate to raise or were not properly raised on Direct Appeal.
17. Were you represented by an attorney at any time during the course of:
- (a) Your plea hearing? Not applicable.
- (b) Your trial? Yes.
- (c) Your sentencing? Yes.
- (d) Your appeal, if any, from the judgment of conviction and/or imposition of the sentence? Yes.
- (e) Preparation, presentation or consideration of any petitions, motions, or application with respect to this conviction, which you filed? Yes.
18. If you answered "yes" to one or more parts of number (17), list:
- (a) The name and address of each attorney who represented you:
- (i) Larry Knox, 164 Main St., Chesterfield, SC 29709.
- (ii) Tricia Blanchette, Esq., P.O. Box 2147, Leesville, SC 29070.
- (iii) Dayne C. Phillips, 1614 Taylor Street, Ste D., Columbia, SC 29201.
- (b) The proceedings at which each attorney represented you:
- (i) Larry Knox represented Applicant at the immunity hearing and trial.
- (ii) Tricia Blanchette represented Applicant on direct appeal.
- (iii) Dayne C. Phillips is currently representing Applicant on this application for Post-Conviction Relief.
19. State clearly the relief you seek in filing this application:
- Applicant seeks Post-Conviction Relief by vacating his convictions and sentences and

remanding the indictments for a new trial based on ineffective assistance of trial and appellate counsel.

20. Are you now under sentence from any other court that you have not challenged?

No. Applicant is not under sentence from any other court.

2021 AUG 20 A 11: 00
Christy F. Gaddy
CLERK OF COURT
CHESTERFIELD COUNTYS.C.

STATE OF SOUTH CAROLINA	)	In The Court General Sessions
	)	Fourth Judicial Circuit
COUNTY OF DARLINGTON	)	2020-CP-13-090

GARY MOORE,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	
	)	Transcript of Record
THE STATE,	)	
	)	
Defendant.	)	
	)	
_____	)	

Darlington, South Carolina
 March 14, 2022
 WebEx

B E F O R E:

The Honorable Michael S. Holt

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

Mr. Dayne C. Phillips, Esquire
 Attorney for Plaintiff

Ms. Chelsey F. Marto, Esquire
 Attorney for Defendant

Lisa S. Carter
 Circuit Court Reporter

I N D E X

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1 P-R-O-C-E-E-D-I-N-G-S

2 THE COURT: All right. Court will come to order.
3 This hearing is being conducted by WebEx. This is
4 2020-CP-13-090. It's in the matter Dane, I'm sorry,
5 Mr. Gary Moore. Mr. Moore is present in this WebEx
6 hearing. It's my understanding he's at Broad River
7 Correctional Institution. Mr. Dane Phillips, on
8 behalf of Mr. Moore, Ms. Chelsey Marto who's present
9 in the courtroom. She's in an adjoining room. And
10 then, also, I have Mr. Larry Knox, who is -- Mr.
11 Larry Knox is present. Ms. Tricia Blanchette is
12 present and Ms. Mary Thomas Johnson-Lee is also
13 present. There's also an additional person, Trenia,
14 Trenia Freeman who is online with us as well.

15 All right. Mr. Phillips, you representing Mr.
16 Moore?

17 MR. PHILLIPS: Yes, Your Honor.

18 THE COURT: Okay. And Ms. Marto, you are here on
19 behalf of the State. Ms. Marto, is there anything
20 you need put on the record before we get started?

21 MS. MARTO: Yes, Your Honor. I'll go through a
22 brief procedural history first.

23 THE COURT: Yes, ma'am. Go ahead.

24 MS. MARTO: Yeah. May it please, the Court?

1 We're here today in the case of Gary Moore. Docket
2 number 2020-CP-13-090. He's presently confined to
3 the South Carolina Department of Corrections pursuant
4 to orders of commitment from the Chesterfield County
5 Clerk of Court. During the April, 2016 term he was
6 indicted for attempted murder. He was represented by
7 Mr. Larry Knox and Mary Thomas Johnson-Lee and
8 Kernard Redmond prosecuted the case.

9 On April 11, 2016, applicant appeared before the
10 Honorable Paul M. Burch and a jury and he was found
11 guilty as indicted and sentenced to 18 years in
12 imprisonment. He filed a notice of appeal April 14,
13 2016 and was represented by Ms. Tricia Blanchette.
14 The South Carolina Court of Appeals affirmed the
15 conviction and sentence by own published opinion
16 filed June 26, 2019. The remittur was issued July 15,
17 2019. The application for Post-Conviction Relief was
18 filed on January 27, 2020 and the return was made
19 December 21, 2020. And with that I'll turn it over
20 to Mr. Phillips to go over the allegations he's seek
21 to raise in this case.

22 THE COURT: Mr. Phillips?

23 MR. PHILLIPS: Thank you, Your Honor.

24 Specifically, you know, with the broad allegations we
25 are alleging ineffective assistance of trial counsel

1 as well as appellate counsel, specifically, that
2 trial counsel denied applicant's right to effective
3 assistance of counsel as guaranteed by the Sixth and
4 Fourteenth Amendments to the United States
5 Constitution, Article 1, Sections 3 and 14 of the
6 South Carolina constitution. Specifically, trial
7 counsel's -- specifically, trial counsel's
8 unreasonably deficient performance felt below in an
9 objective standard of reasonableness under prevailing
10 professional norms and prejudiced applicant because
11 there is a reasonable probability that, but for trial
12 counsel's errors, the result of proceeding would have
13 been different specifically, citing Strickland vs.
14 Washington which established the standard for
15 ineffective assistance of counsel claims. Therefore,
16 the counsel's conduct so undermine the proper
17 functioning of the adversarial process that the trial
18 cannot be relied on as having produced a just result.

19 As far as appellant counsel, the allegation is
20 that it's provided that appellant right to effective
21 assistance of counsel extends the as guaranteed by
22 the Sixth and Fourteenth Amendment of the United
23 States Constitution as well as Article 1, Sections 3
24 and 14 of the South Carolina Constitution to
25 appellate counsel as well. Specifically, appellate

1 counsel's unreasonably deficient performance
2 prejudiced the applicant because there's a reasonable
3 probability that, but for counsel's errors, the
4 result of proceeding would have been different.
5 Again, citing Strickland vs. Washington as well as
6 the Evitts vs. Lucy. As far as the specific
7 allegations, I'll go through those, for the first
8 kind of umbrella allegation as trial counsel failed
9 to conduct a reasonable investigation and develop all
10 available relevant and admissible or mitigating
11 evidence in preparation for applicants defense,
12 citing Wiggins vs. Smith of the United States Court
13 Case 539 US 510 it's a 2003 case. I can certainly go
14 into the State prodigy, but for the allegations that
15 the sub issues that go under that as counsel's
16 failure to investigate, present victim prior
17 statements that he wanted to kill applicant,
18 counsel's failure to investigate and present the 911
19 audio recording to discredit the credibility of the
20 State's witnesses arguments.

21 Counsel's failure to investigate and present
22 pictures of the knife in comparison to the body
23 camera video recording to discredit the credibility
24 of the State's witnesses arguments.

25 Counsel's failure to investigate whether the

1 video recordings admitted at trial had been altered.

2 Counsel's failure to investigate and present
3 applicant's right under the South Carolina Victims
4 Bill of Rights as a prior victim.

5 Next issue or our next allegation, Your Honor,
6 that trial counsel failed to present and argue during
7 the trial that the State had violated the Victims
8 Bill of Rights when applicant was a victim of the
9 prior incident with the victim, the alleged
10 complaining witness in this case.

11 Next allegation is trial counsel failed to object
12 to the trial court's application of an incorrect
13 evidentiary standard based upon a misunderstanding
14 and misapplication of State vs. Curry. That's 406
15 S.C. 364. It's a 2013 case regarding the protection
16 of person's and property act as advanced by the State
17 rather than making findings of facts, specific
18 findings of facts and conclusions of law based on
19 the preponderance of evidence standard as required by
20 law citing State vs. Cervantes-Pavon. That's 426
21 S.C. 442. That's a 2019 case that clarify the law on
22 that issue.

23 Next allegation is that trial counsel failed to
24 object to the trial court's failure to make a full
25 and complete findings of fact and conclusions of law,

1 and conclusions of law for the elements of self-
2 defense as applied under the claim pursuant to the
3 protection of persons and property act.

4 Next allegations is that trial counsel's
5 strategy, trial strategy that was conveyed to the
6 trial court and applicant during trial to not seek
7 jury instructions for the lesser included offenses of
8 assault battery of a high and aggravated nature and
9 especially for first degree, or assault battery,
10 first degree was objectively unreasonable given the
11 facts and circumstances of the case. Citing Roseboro
12 vs. State essentially, that counsel must articulate a
13 valid reason for employing a certain strategy to
14 avoid finding ineffectiveness, however, where the
15 counsel articulates strategy its measured, measured
16 under objective standard of reasonableness. And then
17 Stacy vs. Solem. It's a 801 F.2d 1048. It's an Eighth
18 Circuit case. Finding that labeling counsel's
19 actions as trial strategies does not automatically
20 immunize an attorney's performance under the, um,
21 from the Sixth Amendment challenges.

22 Next allegation is that trial counsel failed to
23 request a jury instruction regarding the specific
24 intent to kill. Citing State vs. King. That's 422
25 S.C. 47. It's a 2017 case. I believe it came out

1 right after, a few months after this case, but
2 specifically that attempted murder is a specific
3 intent crime. That there was a a failure on trial
4 counsel's part to request a jury instruction for the
5 specific intent to kill.

6 Next allegation is that trial counsel failed to
7 object to the trial court's confusing jury
8 instructions regarding intent where the charge
9 defense required specific intent to kill yet where
10 the instruction included language of a far lower
11 "general intent" standards such as recklessness and
12 criminal negligence referencing back to State vs.
13 King.

14 Next to allegations that trial counsel failed to
15 investigate and obtain any medical records or
16 photographs regarding diagnosis or treatment
17 regarding applicant's injuries either by the
18 detention center or applicant's personal physician
19 where applicant indicated that at the immunity
20 hearing that he was seen by both when testify
21 regarding his injuries that he had received during
22 the the incident where the State elicited testimony
23 from the contrary of an officer during applicant's
24 trial.

25 Next allegation is trial counsel failed to use

1 the incident report, incident Reports, excuse me,
2 from April, 2014 during the immunity hearing or trial
3 noting where applicant was attacked not only by Mr.
4 Wallace, the victim in the present case, but also by
5 several other assailants in concert with Mr. Wallace
6 the complaining witness and where applicant believed
7 that the third-party pulling from him, pulling him
8 from behind while being fought with Wallace in the
9 present case was likewise working in concert with
10 Wallace to attack him when showing his response to
11 the attack with reasonable.

12 Next allegation is that trial counsel failed to
13 object during the immunity hearing. The State
14 elicited an illegal opinion testimony from a lay
15 witness striking at the heart of the ultimate issue
16 of self-defense by asking "at any time did you do
17 anything that would cause," and again, I'm just by
18 "[Applicant] to use deadly force against you?"

19 Next allegation is that trial counsel failed to
20 object during the immunity hearings when the State
21 elicited illegal opinion testimony from a lay witness
22 striking at the heart of the ultimate issue of self-
23 defense by asking applicant wasn't, whether if
24 applicant was involved in "what we call mutual
25 combat?"

1 Next allegation is that trial counsel failed to
2 move to sequester of the witnesses for either the
3 immunity hearing or trial where the State repeatedly
4 referred to prior witness testimony when questioning
5 later witnesses.

6 Next allegation is trial counsel failed to obtain
7 either the audio recording from applicant's civil
8 summary court proceeding in 2014 against Wallace, or
9 booking report from Wallace being ordered to the jail
10 by a magistrate judge for attempting to assault
11 applicant during that hearing where Wallace denied
12 details of the incident at applicant's trial and
13 where the Deputy denied any knowledge of the incident
14 at the trial as well.

15 Next allegation is trial counsel failed to quash,
16 move to quash the jury pursuant to Batson where the
17 State utilized four of it's five statutory strikes to
18 strike white males from the petit jury.

19 Trial counsel failed to object pursuant to Rule
20 701 and 702 of the South Carolina Rules of Evidence
21 or argue under Ford vs. Watson to medical opinion
22 testimony by the EMS technician regarding medical
23 signs and appearances of shock as well as other
24 certain wounds that were consistent with those
25 needing advanced life support where the State never

1 offered the witness as an expert in any field or any
2 voir dire of the witness was performed, and the trial
3 judge made no finding qualifying the witnesses as an
4 expert under his gatekeeping role.

5 The next allegation is trial counsel failed to
6 objective under Rules 701 and 702 of the South
7 Carolina Rules of Evidence also citing State vs.
8 Ellis. That's 345 S.C. 175. It's a 2001 opinion from
9 our Supreme court. He failed to object under Rule 701
10 and 702 to an opinion testimony of Sergeant
11 Hutchinson regarding crime scene reconstruction where
12 the State provided leading questions suggesting
13 specifically where in the grocery store the fight
14 started based on the location of the blood on the
15 floor.

16 Next allegation is that trial counsel failed to
17 object to both leading and opinion testimony on the
18 ultimate issue of fact when Sergeant Hutchinson
19 testified and was asked "in looking at the case as a
20 whole, who was the victim in the case?" His
21 response, "in my opinion would be Mr. Wallace."

22 Next allegation is that the trial counsel failed
23 to object under Rule 701 and 702 to Investigator Tim
24 Perry's testimony on redirect examination when the
25 State elicited opinion testimony on whether the

1 person in a given scenario would be deemed "a
2 victim", where the State, where the facts were
3 similar to the present case and where Investigator
4 Perry was not qualified as an expert witness, and
5 where the opinion testimony touched on the ultimate
6 issue of fact in this case.

7 Next allegation is that trial counsel go to
8 object under hearsay and the Sixth Amendment
9 Confrontation Clause during the immunity hearing
10 where the State obtained testimony from a deputy as
11 to what an EMS technician allegedly said about
12 Wallace's medical condition and subsequent airlift
13 to a hospital in Charlotte, and where the deputy had
14 no first hand knowledge of either.

15 Now, as far as ineffective assistance of
16 appellate counsel, appellate counsel failed to file a
17 petition for rehearing in the Court of Appeals to
18 preserve applicant's ability to file a petition for
19 writ of certiorari to the Court of Appeals and the
20 Supreme Court on the issues of whether trial court
21 erred and finding applicant was not entitled to
22 immunity from prosecution under the protection of
23 persons and property act, and whether the trial court
24 erred in failing to grant applicants motion for a
25 directed verdict, and whether the trial court erred

1 in his response to a jury, and so the trial court's
2 response to a jury question.

3 The next allegations in the event trial counsel
4 properly preserved the issue of whether the trial
5 court applied an incorrect evidentiary standard on a
6 misunderstanding of, excuse me, a misapplication of
7 State vs. Curry in his closing statement to the trial
8 court at the immunity hearing. Applicant's counsel
9 failed to raise and argue this issue to the trial
10 court applying an incorrect standard rather than
11 making findings of fact, and conclusions of law based
12 on the preponderance of evidence standard.

13 The same thing, is that in the event trial
14 counsel properly preserved the issue of whether the
15 trial court failed to make full and complete findings
16 of fact and conclusions of law for the elements of
17 self-defense as implied under the claim pursuant to
18 the protections of persons and property act at the
19 immunity hearing. Appellant's counsel failed to
20 raise and argue this issue of the trial court's
21 failure to make those full and complete specific
22 findings of fact.

23 Those are the allegations, Your Honor.

24 THE COURT: Thank you, sir. Anything else before
25 you started?

1 MR. PHILLIPS: No, Your Honor.

2 MS. MARTO: No, Your Honor.

3 THE COURT: All right. Okay. Mr Phillips, how
4 many witnesses do we have, sir?

5 MR. PHILLIPS: We have Mr. Moore and then I'll be
6 happy to call I know from a time issue Ms. Blanchette
7 had, had a scheduling conflict, I think, it's getting
8 pretty close to this afternoon so be happy to take it
9 whichever order, Your Honor, deems necessary. But be
10 happy to call Ms. Blanchette. I don't have a
11 preference as far as calling attorney/witnesses on
12 the applicant's behalf.

13 THE COURT: All right, sir. Ms. Blanchette, you
14 have an issue that you need to get to shortly?

15 MS. BLANCHETTE: Your Honor, I did -- I might have
16 something at two o'clock and four o'clock. So this
17 was originally this morning, I can rearrange the two
18 o'clock matter if needed. I cannot for the four
19 o'clock with this notice.

20 THE COURT: Well, he indicates he can call you out
21 of order if that'll work for you.

22 MS. BLACHETTE: It will, Your Honor. If that
23 works for you.

24 THE COURT: Yes, ma'am. Certainly. I want to
25 accommodate you if I can. All right. Mr. Phillips,

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1 you can call your first witness.

2 MR. PHILLIPS: Thank you, Your Honor. At this
3 time, the applicant would call Tricia Blanchette.

4 THE COURT: Ms. Blachette, do you swear or affirm
5 to tell the truth, the whole truth, and nothing but
6 the truth so help you God?

7 MS. BLANCHETTE: I do, Your Honor.

8 THE COURT: Thank you, ma'am. Just state your
9 name for the record.

10 MS. BLANCHETTE: Yeah. It's Tricia A. Blanchette,
11 B-l-a-n-c-h-e-t-t-e.

12 THE COURT: Thank you, ma'am. You're witness,
13 sir.

14 MR. PHILLIPS: Thank, Your Honor,

15 TRICIA BLANCHETTE, first being
16 duly sworn, testified as follows:

17 Direct Examination by Mr. Phillips:

18 Q. Good afternoon, Ms. Blanchette.

19 A. Good afternoon.

20 Q. Would you explain how you got involved in this
21 case?

22 A. Yes. I got involved in this case because Mr.
23 Moore reached out to me regarding representation to
24 for a direct appeal. And I began communication with
25 him and ultimately, took over representation of his

1 appeal and perfected the appeal on his behalf.

2 Q. And you, ultimately, decided after reviewing the
3 trial trans or the immunity hearing transcript or the
4 trial transcript what issues to raise on direct
5 appeal?

6 A. I did. I reviewed all the materials available.
7 Mr. Moore also had a lot of documents that he
8 obtained, I would say what was a majority of his
9 attorney's file, and I actually turned everything
10 over that was in my file to Mr. Phillips on August
11 28, 2019. But it appears that I had nine large
12 mailing envelopes that contain case documents in
13 paper and electronic format. They were received both
14 from my client and his spouse at the time a CD
15 provided by the Charleston County Clerk of Court,
16 colored copies of the pictures from the Chesterfield
17 County Clerk of Court and then, additional materials,
18 obviously, the transcripts and those things. In this
19 case, I did have the opportunity to go to the
20 Chesterfield County Clerk of Court myself once I was
21 retained because I was informed that I needed to go
22 there to get copies of all of the exhibits. Upon
23 arrival they had already copied those, but I did take
24 the better part of a day to verify in the interest of
25 my client to verify that those were, in fact, the

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1 exhibits in the file.

2 Q. And what you had provided and what you had
3 received, there was no additional investigation. In
4 other words, you didn't give find documents as part
5 of your representation as an appellate counsel?

6 A. Mr. Phillips, I think as you know, in South
7 Carolina we're a preservation state, as I like to
8 call it, so I do not create a new record for a direct
9 appeal. I am bound by the record as it was created
10 by trial counsel. So some of these additional things
11 I did review them to get context. But the items that
12 would be able to be included in the record on appeal
13 would just merely be the pre-trial transcript, the
14 trial transcripts and the court exhibits. Now, Mr.
15 Moore had a lot of concerns. He had a lot of
16 concerns regarding preservation of evidence and
17 investigation that was not completed. So I did meet
18 with him and a private investigator, Peter Skidmore,
19 during the course of our presentation and put him in
20 touch with him, and did some things that kind of went
21 more into the world of Post-Conviction Relief to make
22 sure that his concerns were being addressed, but they
23 weren't actions that I was taking that was relevant
24 to what I present on appeal.

25 Q. Now, as far as the Court of the Appeals issue

1 their opinion, was there ever any discussion
2 regarding filing the petition for rehearing?

3 A. Yes. Fortunately, and when the decision came
4 down because we never know when the decisions are
5 gonna come down, when that decision came I'd already
6 set up a visit to see other individuals at Broad
7 River Correctional Institution, and so I was able to
8 add Mr. Moore to that visit. So I met with him on
9 July 9, 2019 in person and I have notes in front of
10 me today from that meeting, where we went over the
11 decision, we went over the briefs. And we reached
12 the conclusion that mostly because of the strength by
13 nature of the decision that he did not want me to
14 further address the appeal. So petition for
15 rehearing writ of cert, essentially, I have a note
16 that say, "doesn't want to waste any more time on the
17 direct appeal ready to move to PCR." If I calculated
18 my days correctly at that point, I would have still
19 had two days to file a petition for rehearing. So I
20 was able to meet with him in person, discussed the
21 ruling, go over everything prior to the date that the
22 petition for rehearing would have been due. Based
23 upon that meeting, it was my clear understanding he
24 did not want me to file anything further so I did
25 not at that time. I actually put him in touch with

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1 several potential attorneys for Post-Conviction
2 Relief assistant.

3 Q. Thank you. As far as reviewing those issues, did
4 you ever have discussions with him about matters that
5 were un-preserved?

6 A. I don't know that we went to specific matters
7 that were un-preserved. I didn't explained to him my
8 strategy and the issues that were raised and why I
9 was raising that. I also let him know that I had
10 sought out assistance like I do from some colleagues,
11 um, one being Brent Stephens who is a public defender
12 in Orangeburg. Because I knew he had recently handled
13 a similar case in the trial court and had some briefs
14 and different things from him. So we did discuss the
15 issues that I was gonna raise and how and why I was
16 raising them. But I didn't go into which issues I
17 was not raising and why, if that's what you're
18 asking.

19 Q. Yes. And so as to say, a specific, you can tell
20 me whether -- I don't want to, obviously, put words
21 in your mouth, as to the specific issue, the ruling
22 from the court during the immunity hearing, was it
23 your belief that the issue regarding the legal
24 standard that was provided by the judge, because
25 there's a different judge as you know that presided

1 over the immunity hearing versus the actual trial,
2 but the trial judge or, excuse me, the immunity
3 hearing judge, the legal standard that was provided
4 to that, was it your opinion that that was not
5 properly preserved for appellate review for you to
6 raise that on direct appeal? And I can rephrase. I
7 put that in a....

8 A. I think -- I think I'm tracking with you. This
9 -- this case was unique in that we had an immunity
10 hearing. The judge said he was gonna come back on
11 the record and rule. We do have a one page ruling,
12 but Mr. Moore, I believe will testify today that he
13 was not present for that and it doesn't appear to be
14 a full ruling on the record. And then they come back
15 on at the trial and discuss the fact that a ruling
16 had been made. But Judge Henderson was immunity
17 hearing judge and then Judge Burch was the trial
18 judge. At no times were arguments made by trial
19 counsel regarding the proper standard or if the court
20 has ruled and I'm just referencing, you know, the
21 transcripts here. I did not see that where that had
22 been preserved for me to be able to argue. I was a
23 little confused by the ruling is because even Mr.
24 Moore and I, I have a footnote in there that I looked
25 for additional transcript to see if there was a

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1 further ruling put on the record by the immunity
2 hearing judge and I checked with all the court
3 reporters, there was not. But I, I don't disagree
4 that the ruling was incomplete, but as far as that
5 being preserved, I don't think was because that,
6 there's this argument that's absent, but it seems
7 there a little void in the record.

8 Q. And would that, I mean, in a case given where you
9 raised that the protection of persons that there was
10 immunity as far as the first issue that you raised on
11 direct appeal given that that being one of your
12 issues, this would have been a very significant issue
13 that you raised if it was preserved?

14 A. I mean, on appeal when you, especially if it's an
15 oral argument, if you're trying to argue a different
16 argument when the, there might be trial attorney
17 argued, you're gonna get killed on preservation. You
18 can't change courses for an appeal. So I'm stuck
19 with the record as it is. Now, in the appeal, and
20 maybe this is where I'm a little confused by your
21 questions and by the allegations, I did argue that
22 preponderance of the evidence standard and that the
23 case should be reversed because the judge, it did not
24 meet the preponderance of the evidence standard. So
25 that standard is argued all throughout the appeal.

1 But as far as trial counsel making a specific
2 argument that I couldn't hear, I, that was not in the
3 transcript.

4 Q. Now, as far as, again, I guess, this is in the
5 same thing, the specific findings of fact and
6 conclusions of law regarding the elements of self-
7 defense and you just touched on it I believe probably
8 in full through your testimony, there was not any
9 additional findings of fact or conclusions of law the
10 elements of self-defense, is that fair to say in your
11 review of the record?

12 A. In that take, and Mr. Moore and I talked about
13 it, about strategy and I actually didn't leave it to
14 just the immunity hearing record, I also discussed in
15 great detail, if you look at the brief, the trial
16 record. And incorporated the issue of the directed
17 verdict regarding self-defense as well as the
18 supplemental jury instructions because I think they
19 all go hand in hand to show that immunity should have
20 been granted in this case. And, I'm sorry, I digress
21 from your original question. If I didn't answer the
22 question please let me.

23 Q. No, you did. As far as your specific review
24 there was, I guess, in your review had to come across
25 911 recordings in preparation for the direct appeal?

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1 A. Mr. Phillips to be fair, since I turned everything
2 over to you back in 2019, I haven't received anything
3 back. So what I have are my notes and then the file
4 provided to me by the Attorney General's Office so I
5 cannot answer that under oath with certainty.

6 Q. Sure. You state as far as your notes or memory
7 is concerned not necessarily whether you have
8 possession of it, is there anything in your notes or
9 based on your memory of having reviewed the 911
10 recordings that were in the case file?

11 A. I do not have a specific note and since I don't
12 have my case file I can't confirm that I have
13 reviewed it.

14 Q. As far as, and again in the same thing, incident
15 reports from prior incidents between Mr. Moore and
16 Mr. Wallace, do you have anything in your notes or
17 based on memory regarding incident reports that were
18 contained in the case file?

19 A. I do have notes on a number of discovery
20 documents turned over to me by the client and by Ms.
21 Melton, but again, I turned those contents over to
22 you so I can't confirm that.

23 Q. And I guess the last question again with the same
24 thing, as far as medical records are concerned, is
25 there any notes that you have or based on your memory

1 of a medical records of related to the injuries are,
2 essentially, what Mr. Moore went to receive treatment
3 after the incident?

4 A. Again, unfortunately, based upon the fact that I
5 turn that information over to you I can't confirm
6 that I have reviewed those.

7 Q. Based on your notes were there, and again I think
8 you might have answered this already, was there any
9 specific issues that you have noted that you would
10 have raised that were significant that you were
11 unable to raise because they were un-preserve? You
12 touched on it, I just want to make sure that ---

13 A. Yeah. If I can have just a moment.

14 Q. Of course.

15 A. And to be completely candid, I did not make a
16 list of un-preserved issues in this case. I think in
17 the PCR application it goes through a number of those
18 in great length. What I can say is I do regret there
19 was not a better record from which to present this
20 appeal. And that is why I tried to incorporate both
21 the immunity hearing record and the trial record to
22 show the court that immunity should have been
23 granted. There was testimony that came out at trial
24 that did not come out of the immunity hearing. So if
25 we're talking about strict preparation and what I

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1 could argue I, essentially, was arguing un-preserved
2 issues by trying to bring in the trial record to
3 further bolster the testimony that was elicited ad
4 the evidence given at the immunity hearing. Because
5 in my opinion in handling this case, what the State
6 presented at trial was more than what was presented
7 to the court at the immunity hearing when the defense
8 was trying to get immunity. As far as other un-
9 preserved issues, um, that's just not something I've
10 given notice that I needed to be prepared on today
11 and I did not already have a list of those.

12 Q. And in doing your research and filing this brief,
13 you would agree that under the case law that one,
14 there needs to be specific findings of fact and
15 conclusions of law by a judge who presides over a
16 immunity hearing?

17 A. Yeah, I would agree. And that's why I went down
18 the vain with Mr. Moore that maybe there was another
19 hearing, something more full on the record, but then
20 I believe it's one page that we had subsequent to the
21 initial hearing.

22 Q. And that immunity hearing can only -- or the
23 judge -- the judge who presides over immunity
24 hearing, their decision can only be based on the
25 evidence presented at the immunity hearing and that's

1 why you were saying that when you had to bring in
2 arguments and testimony from the trial that we're,
3 essentially, arguing un-preserved issues, is that a
4 another way to say it?

5 A. I think I may have not fully explained that. If
6 you look at the arguments attached to my brief I do
7 stick to only what, you know, a preferred act
8 immunity hearing and go through the prongs based upon
9 that. But I do a comparison and in discussion and
10 incorporate some of the testimony evidence, you know,
11 brought forth at trial to give the Court of Appeals
12 the full picture. Most importantly, what I was
13 trying to show with some of the inconsistencies and
14 to attack the credibility of the witnesses and how
15 there was a difference from the immunity hearing to
16 the trial as well. So I wouldn't say so much un-
17 preserved by trying to give them the full picture
18 even though it went beyond the scope of just
19 reviewing the immunity hearing.

20 MR. PHILLIPS: Thank you, Your Honor. No further
21 questions of this witness.

22 THE COURT: Okay. Ms. Marto?

23 MS. MARTO: Yes, Your Honor.

24 **Cross-Examination by Ms. Marto:**

25 Q. Hey, Ms. Blachette. Thank you for being here

1 today.

2 A. You're welcome.

3 Q. So out of the preserved issues, you chose the
4 issues you thought would stand the greatest length
5 with success on direct appeal, correct?

6 A. That is correct.

7 Q. Based upon your experience as an attorney?

8 A. I based it on my experience and reaching out to
9 colleagues to get some advice on the immunity issue
10 because it is a newer issue in our courts. And then
11 also I regularly met with Mr. Moore at the prison and
12 spoke with him on the phone.

13 Q. Okay. So Mr. Moore signed off on the chosen
14 issues, correct?

15 A. I involved him in the discussion but, ultimately,
16 the decision is made by myself.

17 Q. Now, you received a copy of trial counsel's
18 folder, correct?

19 A. Again, since I turned my file over to Mr.
20 Phillips in August of 2019, I just have the file
21 released and then I listed the items that I provided
22 to him. I did not, specifically, based upon my
23 notes, request specific files. But I was provided,
24 like I said, these nine large mailing envelopes
25 indicating case documents in paper and electronic

1 format from the Ms. Melton and it's my understanding
2 she received those from trial counsel. But I did not
3 get them directly, myself.

4 Q. And everything that you received a copy of, did
5 you review?

6 A. I did, yes.

7 Q. Okay. Now, Mr Moore's conviction was affirmed
8 upon appeal, correct?

9 A. Yes.

10 Q. And, ultimately, the decision not to seek a
11 petition for rehearing was Mr. Moore's decision
12 because he wanted to go to PCR instead?

13 A. That was his decision based upon my advice. We
14 met in person, we discussed it and it was his
15 decision. When I left, it was my understanding I was
16 not to file a petition for rehearing.

17 Q. If he had specifically requested a petition for
18 rehearing would you have filed one?

19 A. Yes. I had ample time at that point. You know, I
20 did explain to him that I did not think it would be a
21 strong petition, you know, I can even say I
22 discouraged him against it. But we ultimately
23 reached that decision based on my notes together that
24 he wanted to pursue PCR at that point.

25 Q. Okay. And then any issue you knew was entirely

T. Blanchette- Cross-Examination by Mr. Marto

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1 un-preserved you wouldn't have brought up on appeal,
2 correct?

3 A. Correct. In South Carolina, you know, I like to
4 call it the preservation state because that's the
5 easiest way to say it. But if an issue isn't
6 preserved the preservation just isn't making the
7 making the objection won. There's multiple phases in
8 the trial where you have to renew those. You have to
9 make those arguments. If you can't properly
10 preserve, it can essentially be a waste of your
11 limited pages that you get on appeal. And here we
12 had three viable issues that I thought worked very
13 well together. So to raise any additional issues
14 that were not preserved even to potentially just set
15 that up for PCR, it seemed like it would distract
16 away from the three issues that we can have.

17 MS. MARTO: No further questions, Your Honor.

18 THE COURT: Okay. Mr. Phillips, anything else from
19 this witness?

20 MR. PHILLIPS: No, Your Honor.

21 THE COURT: All right. Okay. Ms. Blanchette,
22 thank you for your time today. I understand you have
23 some other matters to take care of. Good luck to
24 you.

25 MS. BLANCHETTE: Thank you, Your Honor. If I may

1 be excused.

2 THE COURT: Yes, ma'am, you're excused.

3 MS. BLANCHETTE: I appreciate it.

4 THE COURT: Okay. All right. Mr. Phillips, your
5 next witness, sir.

6 MR. PHILLIPS: Thank you, Your Honor. The
7 applicant would call himself, Gary Moore.

8 THE COURT: All right. Mr. Moore, can you hear the
9 court?

10 MR. MOORE: Yes, sir.

11 THE COURT: Okay. And Mr. Moore, I have a court
12 reporter -- I'm recording this hearing through my
13 device but I have a court reporter that's also so I
14 do want to speak as loud and as clear as you can.
15 All right. Mr. Moore, do you swear or affirm to tell
16 the truth, the whole truth, and nothing but the truth
17 so help you God?

18 MR. MOORE: Yes, sir.

19 THE COURT: All right. Thank you. Your witness,
20 Mr. Phillips.

21 MR. PHILLIPS: Okay. Thank you, Your Honor.

22 GARY MOORE, first being
23 duly sworn, testified as follows:

24 Direct Examination by Mr. Phillips:

25 Q. Mr. Moore, you can hear me okay?

G. Moore- Direct Examination by Mr. Phillips

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1 A. Yes, sir.

2 Q. Make sure you can hear me to tell me, we'll make
3 sure that you're be able to provide adequate
4 responses. If you could explain how your
5 representation or how you went to seek representation
6 with Mr. Knox?

7 A. Well, I had know Mr. Knox previously. He had
8 handled a matter with my father-in-law. So I had,
9 I've known Mr. Knox previously from that incident.
10 The reason I went to acquire for this trial.

11 Q. And how many times did you meet with him in
12 preparation for the trial?

13 A. I want to say one time in person.

14 Q. How many times did you speak with him about the
15 case over the phone?

16 A. I -- I -- I really couldn't say accurately. I
17 would say a couple times, two times.

18 THE COURT: Mr. Moore, Mr Moore, if you could
19 speak directly to wherever the microphone is on your
20 end just so that we pick you up more clearly. We can
21 hear you but it's just sounds like you're a little
22 distance from the microphone. So if you could find
23 the microphone wherever you are and speak directly to
24 it.

25 A. Okay.

1 Q. Mr. Moore, are you watching us on a different
2 screen?

3 A. Yes, sir. Watching on one screen and looking at
4 another.

5 Q. Okay. Just trying to make sure that -- make sure
6 you, although, you're looking at one screen what Your
7 Honor is saying is make sure you speak towards the
8 I'm assume a laptop or a camera there.

9 A. Okay.

10 Q. All right. Now, with that meeting, you said you
11 had one meeting with Mr. Knox in person. Could you
12 specifically say what you went over with him during
13 that meeting?

14 A. All right. One more time, Dayne. It's kind of
15 loud here.

16 Q. You said you met with Mr. Knox one time prior to
17 trial, can you go over what you discussed with him
18 during that meeting?

19 A. We looked at discovery that was supplied by the
20 State. There was three videos that we looked at.
21 And we listened to the audio from those three videos.
22 He told me not to worry about it at that point
23 because the police officers were heard in the
24 background that, um, that the victim had struck me,
25 unprovoked and told me that the video showed the man

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1 attacking me and that the audio from the police says
2 that I was being attacked and he told me not worry
3 about.

4 Q. Was that meeting before the immunity hearing? In
5 February or after?

6 A. That was -- that video -- it's kind of hard to
7 remember 'cause I was out of town but I want to say
8 that that was before it. It was -- after he waived
9 the immunity or after he waived the preliminary
10 hearings but before the immunity hearing, I'm pretty
11 sure when we receive the discovery.

12 Q. You didn't meet with him anymore after the
13 immunity hearing?

14 A. I was -- after the community hearing I went back
15 to Texas that following day and spoke with him from
16 the phone, the phone after that.

17 Q. Now, as far as - before I forget it's on top of
18 mind, when the judge who presided over the immunity
19 hearing, you were not present for the second day when
20 the ruling was issued?

21 A. No, sir.

22 Q. How did you learn about the ruling?

23 A. I want to say I received a call from Mr. Knox.

24 Q. And during that meeting what all did you and he
25 discussed besides the discovery?

1 A. Well, just the conditions leading up to that
2 point. The fact that I've been attacked numerous
3 times by the Wallace's. We had talked -- we'd talked
4 about the the amount of time that the State had
5 recorded that, um, the audio or video. I mean, other
6 than the fact that, you know, just told me, you know,
7 to avoid the situation, you know, the best he could
8 but, you know, being that all the evidence showed
9 that I was attacked unprovoked in a place that I had
10 the right to be. Now, most of the discussion was
11 just to avoid the situation. Stay away, you know,
12 Mr. Wallace and that it would be taken care of in
13 court. I was told that it would be thrown out at the,
14 at the the stand your ground hearing.

15 Q. Did you review the prior incident reports with
16 him regarding the incidents with Mr. Wallace?

17 A. No. I never reviewed them with Mr., Mr Knox. I
18 did provide -- I did provide -- I did give them to
19 him, but we never do them together.

20 Q. So you, specifically, gave Mr. Knox the incident,
21 the prior incident reports regarding the incident ---

22 A. Yes, sir.

23 Q. --- with Mr. Wallace? When did you give him
24 those?

25 A. At the time when we went for the discovery. The

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1 same day I went to discovery, I brought everything
2 with me that I had. This incident had been going on
3 with Mr. Wallace for about two years. I've been
4 being attacked by him so I had a pretty good pack of
5 papers leading up to this attack. And I supplied
6 those to Mr. Knox the day that he supplied me with my
7 copy of discovery.

8 MR. PHILLIPS: Your Honor, If I may, will you
9 allow me to share the screen?

10 THE COURT: Yes, sir. You do whatever you want
11 to do.

12 MR. PHILLIPS: Well, unfortunately, I don't have
13 that capability. I think one of those will have to
14 be given permission to do that on whoever's
15 controlling the ---

16 THE COURT: What are you asking me to do, Mr.
17 Phillips? I don't, I don't understand.

18 MR. PHILLIPS: So I want to be able to pull up the
19 incident report so I can, ultimately, share the, you
20 know, and move to admit them into evidence as
21 exhibits. But I wanted to show -- I wanted to try to
22 lay the foundation of it first.

23 THE COURT: Now, you're operating way outside my
24 capacity. I'm conducting the hearing. I don't know
25 what, what means you want to produce these documents.

1 This is a virtual hearing so, you know, it's gonna be
2 difficult to do this stuff.

3 MS. MARTO: Your Honor, I know in the past when
4 it comes to PCR hearings when individuals want to
5 enter an exhibits, we generally just recommend that
6 everybody be emailed the exhibits as opposed to
7 sharing the screen. I don't know if that's a
8 plausible option but....

9 MR. PHILLIPS: If the State does not object, Your
10 Honor, I'll go ahead and pull them, I'll say the
11 necessary parts for the record and we'll go from
12 there. So give me one moment, Your Honor.

13 Q. And Mr. Moore, you specifically provided Mr. Knox
14 with the incident report dated April 6, 2014 where
15 that incident report shows that you called the
16 sheriff's office to report an assault where you were
17 the, to say that you were the victim? I'll just read
18 it, " to file a report of assault. The victim stated
19 that on the night of 4/4/14 around the time of 22:30
20 hours, he stopped at Bo Hammond's Bar near Jefferson.
21 That the suspect, Jaime Wallace, asked him to walk
22 outside. The victim did. The suspect asked did he
23 want to fight. He told him no. Ultimately, it goes
24 through a specific altercation with Jaime Wallace."
25 Did you provide that incident report to Mr. Knox?

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1 A. Hold on!

2 Q. I'm sorry, I see somebody walked into your room
3 in the background.

4 A. Yeah. Yeah.

5 MR. MOORE: I apologize, Your Honor.

6 A. All right.

7 Q. A specific incident report dated April 6, 2014 in
8 regards to Jaime Wallace, did you provide that
9 regarding an altercation with Jaime Wallace where you
10 were listed as the victim, did you provide that Mr.
11 Knox?

12 A. Yes, sir.

13 MR. PHILLIPS: Your Honor, at this time the
14 applicant would move to admit this incident report
15 into evidence as applicant Exhibit Number 1?

16 THE COURT: Ms. Marto?

17 MS. MARTO: No objection, Your Honor.

18 THE COURT: Y'all are gonna have to send that ---

19 MR. PHILLIPS: And I'll email it based on that to
20 Your Honor, if the court reporter -- I guess, do we
21 not have a court ---

22 THE COURT: We have a court reporter. She'll need
23 to make it an exhibit.

24 MR. PHILLIPS: Your Honor, I believe you're on
25 mute. I'm unable to hear you.

1 THE COURT: We have a court reporter. She's
2 gonna have to get that. So if you email it to me and
3 my law clerk we'll ensure that she gets it and that
4 will be Petitioner's Number 1.

5 MR. PHILLIPS: Thank you, Your Honor.

6 (Whereupon, the Incident Report has been marked and
7 entered into evidence as Applicant's No. 1)

8 Q. And then Mr. Moore, you also -- did you also
9 provide Mr. Knox's an incident report dated April 17th
10 where you were listed as the victim and Charles
11 Wallace was listed as the suspect in the case?

12 "Specifically, that all the listed date and time
13 officers responded to a list location reference to a
14 dispute. After speaking with the victim he stated
15 the offender had came over to get some of his
16 belongings that he had left. He stated that him and
17 the offender started a fuss about, didn't state what
18 about. Then the victim then advanced officers that
19 the offender went to the edge of the roadway, at the
20 end of the driveway, started reaching into his
21 pocket, that he was trying to get a knife.

22 Ultimately, he got an axe handle and busted your
23 windshield out." Did you provide that incident
24 report?

25 A. Yes, sir.

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1 Q. And to be specific, this is the incident report
2 where the alleged victim from this case, because --
3 the complaining witness from this case is the same
4 suspect, Charles Wallace, that's listed in this
5 incident report where he tried to attack you with an
6 axe handle and busted out your windshield?

7 A. Yes, sir.

8 MR. PHILLIPS: Your Honor, at this time, I would,
9 the applicant would move the April 17, 2014 incident
10 report into evidence as Applicant's Exhibit Number
11 2.

12 THE COURT: Any objection, Ms. Marto?

13 MS. MARTO: No objection, Your Honor.

14 THE COURT: All right. So ordered. That'll be
15 Applicant's Number 2, be submitted by email.

16 (Whereupon, the Incident Report has been marked and
17 entered into evidence as Applicant's No. 2)

18 MR. PHILLIPS: Thank you, Your Honor. Give me one
19 moment.

20 Q. During your meeting with Mr. Knox, did y'all
21 review the 911 calls?

22 A. No, sir. Never the 911 calls.

23 Q. And so you remember calling 911 in this case?

24 A. Yes, sir, I do.

25 Q. All right.

1 MR. PHILLIPS: And, Your Honor, this would be
2 another exhibit. This is an audio recording,
3 obviously, in a virtual nature it makes things
4 difficult to. If the State doesn't have any objection
5 and it was, I believe, part of the record, we would
6 move to admit the 911 recording of the applicant in
7 evidence as the Applicant's Exhibit Number 3.

8 MS. MARTO: No objection, Your Honor.

9 THE COURT: Without objection. It's so ordered.
10 (Whereupon, the Audio Recording of 911 Calls has been
11 marked and entered into evidence as Applicant's No.
12 3)

13 Q. And in that audio recording, Mr. Moore, you
14 remember -- so I guess, you said you'd never discuss
15 that with Mr. Knox?

16 A. No, sir. I discovered the 911 audio tape after
17 my incarceration. It was provided with the discovery
18 by the State.

19 Q. So never discussed? Never reviewed? And never
20 presented at trial?

21 A. No, sir.

22 Q. And in that 911 recording this occurs literally
23 moments after the incident for what you were
24 ultimately convicted?

25 A. Oh, the 911 tape you can hear it occurring as the

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1 tape as being played. As it's recording you can
2 actually hear the event taking place in the
3 background.

4 Q. And I'm not referring to the, inside the store,
5 ah, the 911 recording from when you called 911
6 outside of the store?

7 A. So that again Dayne.

8 Q. The 911 -- there's two 911 recordings, one for
9 the lady calling from the store; and, the other one
10 is where once you went outside you called 911.
11 That's the 911 recording I'm referencing?

12 A. Yes, sir. Yes, sir. I was -- I did call
13 separately.

14 Q. Okay. And you said that Mr. Knox never discussed
15 that with you as far as trying to present that at
16 your immunity hearing or trial in your defense?

17 A. No, sir.

18 Q. And in that 911 recording, you do, basically,
19 give a recap, you know, you recount the events as
20 they happened to the 911 operator?

21 A. Yes, sir.

22 Q. Okay. And she, basically, through a q&a you
23 explained what had just happened in your own words,
24 is that a fair ---

25 A. Yes, sir.

1 MR. PHILLIPS: Your Honor, I think we had that
2 marked and admitted as Applicant's Exhibit Number 3
3 without objection.

4 THE COURT: Yes, sir.

5 Q. Mr Moore ---

6 THE COURT: That was the 911, correct?

7 MR. PHILLIPS: Yes, of Mr. Moore. That's correct,
8 Your Honor THE COURT: Yes. Yes. Thank you.

9 Q. Now, Mr. Moore, did you ever discuss with Mr.
10 Knox anything regarding getting medical records, um,
11 after the incident?

12 A. Nothing only, other than the fact that I had a
13 report taken at the jail and that I had went to see
14 my follow up provider.

15 Q. As far as you're going to see the follow up
16 provider regarding that part, you had discussed that
17 with Mr. Knox?

18 A. Yes, sir. I told him that I had went to Jeff
19 Brock after I'd gotten out of the county jail.

20 Q. About how long after you -- I mean, you informed
21 him of that medical visit, did you provide any other
22 specific information? I guess, let me rephrase, you
23 specifically told him that you went visited Dr. Brock
24 regarding the injuries that happened to you from that
25 incident?

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1 A. Yes, sir.

2 Q. And what did the doctor say to you regarding
3 that?

4 A. The doctor had recommended that I get a MRI, I
5 think, it's a MRI scan or further a scan due to the
6 signs of a concussion.

7 MR. PHILLIPS: Your Honor, at this time, again
8 we're not sharing the screen, but I would asked that
9 this be provided under sealed in case there's any
10 sensitive information and I'll actually make sure
11 that's redacted, Your Honor. But the applicant would
12 move to mark into evidence or move into evidence
13 Applicant's Exhibit Number 4 which is the treatment
14 record from Dr. Brock dated July, 20, 2015.

15 MS. MARTO: No objection.

16 THE COURT: All right. Without objections. It's
17 so ordered.

18 (Whereupon, the Medical Records has been marked and
19 entered into evidence as Applicant's No. 4)

20 Q. And ultimately, the impressions that were
21 provided in that record, Mr. Moore, was that you had
22 head trauma and PTSD?

23 A. Yes, sir.

24 Q. Now, during that meeting, again, you said you met
25 with him for the immunity hearing, was there any

1 discussions regarding that you being elicited as a
2 prior victim as far as the Victim's Bill of Rights?

3 A. I mentioned it, I mean, most every time. I
4 couldn't understand why I was continuously being
5 prosecuted despite being the man's victim. But I
6 was, I was told or that, basically, that I mean, to
7 be honest after the immunity hearing I was,
8 basically, told by my lawyer, Mr. Knox, there that
9 these people were gonna do what they wanted to do,
10 regardless.

11 Q. So you and him had discussed that you had been
12 listed on two different occasions as a, a victim
13 dealing with Mr. Charles Wallace?

14 A. Yes, sir. Probably more times than that but, yes,
15 sir.

16 MR. PHILLIPS: Your Honor, at this time the
17 applicant would move or would mark as Applicant's
18 Exhibit Number 5, and would move to admit into
19 evidence a Victim, Chesterfield County Sheriff's
20 Office Victim's Bill of Rights information report
21 listing the defendant as Charles Wallace and the
22 victim as Gary Moore.

23 MS. MARTO: No objection, Your Honor.

24 THE COURT: Without objection. It's so ordered.
25 (Whereupon, the Chesterfeild County- Victim's Bill of

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1 Rights has been marked and entered into evidence as
2 Applicant's No. 5)

3 Q. Mr. Moore, when you were ultimately interviewed
4 by law enforcement they took photos of you?

5 A. Yes, sir.

6 Q. And what all did they take photos of?

7 A. My -- the hair where I had the hair ripped out in
8 a few different places. And just the different marks
9 I had all over me from where I'd been assaulted.

10 Q. Did you ever discuss that with Mr. Knox as far as
11 trying to use that at the immunity hearing or the
12 trial?

13 A. I mean, Mr., Mr. Knox was aware of the pictures.
14 I'd mentioned it because of the tactics taken by Mr.
15 Burns. But it was never discussed as any kind of
16 strategy as far as court.

17 MR. PHILLIPS: Your Honor, at this time I'd like
18 to mark as Applicant's Exhibit Number 6, the photos
19 that were taken of Mr. Moore during his interview at
20 the sheriff's department.

21 MS. MARTO: No objection.

22 THE COURT: Without objection. Plaintiff's six.
23 (Whereupon, the Photos has been marked and entered
24 into evidence as Applicant's No. 6)

25 Q. Now, reviewing the evidence, did you review the

1 body cam footage with Mr. Knox or did Mr. Knowx
2 review the body cam footage with you?

3 A. No, sir. I never saw the body cam footage until
4 after I was incarcerated.

5 Q. So it's your testimony that that wasn't presented
6 at trial either?

7 A. No, sir.

8 MR. PHILLIPS: Your Honor, I'd like to mark as
9 Applicant's Exhibit Number 7, the body worn camera
10 video recording into evidence as Applicant's Exhibit
11 Number 7 ---

12 THE COURT: Ms. Marto?

13 MR. PHILLIPS: --- officer, from Officer
14 Hutchinson, to be specific.

15 MS. MARTO: No objection, Your Honor.

16 THE COURT: Without objection. It's so ordered.
17 Plaintiff's Number 7.

18 (Whereupon, the Body Video Cam has been marked and
19 entered into evidence as Applicant's No. 7)

20 MR. PHILLIPS: Thank you, Your Honor.

21 Q. And Mr. Moore, after reviewing that video, what
22 importance of that video do you see now?

23 A. Notice that, that when I entered my knife to
24 Officer Hutchinson that my knife was clean, that it
25 didn't have any blood or any fluids on it. Also

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1 noticed that, that some of the events that they said
2 that had taken place, you know, didn't, didn't
3 happen, I guess, you would say the way they stated
4 that they were. Also that, um, it gave clear proof
5 of the cleanliness of the weapon prior to the
6 relinquishing it to the sheriff's department.

7 MR. PHILLIPS: And Your Honor, I don't -- I have
8 two screen shots, one, of the knife sitting in
9 Officer Hutchinson's chair of his patrol car as well
10 as a zoomed in picture of the closed locked blade
11 knife. I would like to move those into evidence as
12 Applicant's Exhibits Number 8 and 9.

13 MS. MARTO: No objection.

14 THE COURT: Without objection. It's so ordered.
15 (Whereupon, the Photo has been marked and entered
16 into evidence as Applicant's No. 8)
17 (Whereupon, the Photo has been marked and entered
18 into evidence as Applicant's No. 9)

19 MR. PHILLIPS: Thank you, Your Honor.

20 Q. Now, during your preparation during this meeting
21 was there any other discussion regarding the
22 magistrate court incident that, that occurred with
23 Mr. Wallace?

24 A. Yeah. I had -- I had informed Mr. Knox that after
25 the initial attack by Mr. Wallace where he tried to

1 attack me with the ax handle, um, I was scheduled to
2 appear at magistrate court. Upon entering
3 magistrates court, I was attacked again by Mr.
4 Wallace at which point the officer, which I spoke of,
5 Mr. Hutchinson, detained Mr. Wallace and actually
6 broke us up. Mr. Wallace, after going back to the
7 judge's chambers, he kept, you know, telling the
8 judge that he was gonna catch me and kill me
9 somewhere. And finally the judge had enough and
10 locked him up for the time being, you know. I did
11 make Mr. Knox aware of this incident as well. Also
12 obtained a, I want to say it was a roster showing
13 that Mr. Wallace was detained that morning. And I
14 also presented that to Mr. Knox as well.

15 Q. And what was the discussion that you had with him
16 regarding that? You informed him on that, was there
17 any discussion regarding preparation for the immunity
18 hearing to use that in your defense?

19 A. Can you repeat that last question Dayne? I
20 didn't catch you.

21 Q. What discussion did you have with -- you
22 informed him of, of that and you provided him with
23 those documents, what discussions did you have with
24 him beyond that in preparation for your immunity
25 hearing?

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1 A. It was, I mean, it was -- nothing -- nothing was
2 really, you know, discussed or anything like thatt in
3 preparation for trial. We saw -- I saw Mr. Knox when
4 he received the discovery and I was, basically, told
5 not to worry about it that the man admitted to trying
6 to kill me. That he had videos of him sneaking up
7 behind me and trying to kill me. He had, you know,
8 the audio police saying that they had tried to kill
9 me so, you know, there was really no preparation for
10 a trial. You know, I mean, there was absolutely, I
11 mean, I can't think of any preparation for a trial at
12 all now that I've been through the system, I know a
13 little more about what you're asking for. I mean,
14 short of that thirty minute discussion the day we
15 received the discovery, I mean, there was no
16 preparation for anything. You know, from what he,
17 you know, conveyed to me he had them hands down and
18 there was nothing to worry, there wasn't nothing to
19 talk about. Just needed to be there when a call for
20 court.

21 Q. And again, with your kind of, you said said what
22 you provided, so he was aware of how to get that
23 information? You had provided him specifically with
24 a roster?

25 A. Yes, sir. I -- I had -- I had provided Mr. Knox

1 with everything that I provided to you and Ms.
2 Blanchette, you know, to boot. I've been very, you
3 know, I've saved every piece of correspondence
4 dealing with Mr. Wallace and the Wallace family. And
5 I had every bit of as made available to Mr. Knox the
6 day that we looked at that discovery. So, I mean, I
7 provided -- I don't -- I can't honestly think of
8 anything that Mr. Knox would've provided himself to
9 be honest.

10 Q. And just to be clear, the document that you're
11 referring to is from the Pageland Magistrate
12 regarding where he was charged with malicious injury
13 to personal property?

14 A. Yes, sir.

15 Q. Is that what you're referring to?

16 A. Yes, sir.

17 Q. All right.

18 MR. PHILLIPS: Your Honor, at this time, we'd move
19 into evidence as Applicant's Exhibit Number 10 as the
20 Pageland Magistrate case history for the case number
21 2014A1310100007 dated September 9, 2014 and say,
22 essentially, a disposition sheet for a malicious
23 injury to personal property listed as the defendant
24 is Charles Wallace.

25 MS. MARTO: No objection.

1 THE COURT: Without objection. It would
2 Plaintiff's Number 10.

3 (Whereupon, the Pageland Magistrate Court Disposition
4 9/9/14 has been marked and entered into evidence as
5 Applicant's No. 10)

6 Q. And again, you said you found out you weren't
7 there for the following day from the immunity hearing
8 when the ruling was made and you said you were
9 notified, how again? I apologize I want to make sure
10 I got this.

11 A. Mr., Mr. Knox contacted me, I want to say
12 sometime maybe that week or the week of or the
13 following week. I was just told that I wasn't
14 granted immunity and that to be ready for court.

15 Q. And no further in person meetings prior to the
16 trial?

17 A. No, sir. I was -- I was in Texas at the time.

18 Q. Did Mr. Knox ever tell you that you needed to
19 come back to meet with him to prepare?

20 A. No, sir. I came home the night before court.

21 Q. As far as the Duncan Hearing is concerned during
22 that actual hearing, was there any discussion or
23 preparation for your testimony during that hearing?

24 A. Say that again, sir?

25 Q. Before the immunity hearing when you met with

1 him, did y'all go over strategy for that hearing or
2 prepared you to testify at that hearing?

3
4 A. I mean, there was no nothing to prepare for that
5 we saw. I mean, I was, I was innocent. I didn't --
6 I didn't do anything guilty, you know, I mean, we
7 just -- I would just advise to tell the truth and,
8 you know, there was no prepping or no strategy or
9 anything like that. I mean, the man ---

10 Q. Just let me be specific, did you and him discuss
11 your right to testify at that hearing what the
12 purpose of the immunity hearing, did y'all review
13 that? Was there ever discussion about whether to
14 pursue the immunity hearing versus save it for self-
15 defense case at trial? What discussions did you have
16 about that in that one meet?

17 A. The only thing I knew of the immunity hearing was
18 that it was supposed to bar me from prosecution.
19 That was -- from my understanding it was supposed to
20 be just a hearing and it was supposed to be over.

21 Q. Now, regarding actually being in trial, was there
22 a discussion about any specific legal matters
23 admissibility of evidence, specifically, I know one
24 of the issues that you've, that you've raised and
25 pushed is regarding video recordings that were

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1 admitted into trial?

2 A. Yes sir. On the end of the first date, I had, I
3 had said something to Mr. Knox. There was a fourth
4 video provided by the State that day where it showed
5 a whole different event. It showed me in the victim
6 going around in circles. And it was a lot longer
7 than the other three videos. And so I'd mentioned it
8 to Mr. Knox there and told him I said, hey, look, I
9 said, you know, this is criminal. Somebody has
10 altered these tapes. And at which point, I accused
11 the State of being guilty of misconduct in office.
12 And at that time started, Ms. Lee started threatening
13 Mr. Knox that if he made that statement again that he
14 would, that, you know, she would be suing. At that
15 point, Mr. Knox, you know, he stopped anything he
16 had. He didn't even -- he wouldn't even address the
17 fourth video anymore. If you read the transcripts.

18 Q. He did raise the issue initially after that and
19 there was a discussion on the record regarding the
20 number of videos.

21 A. I can't hear you from -- what's that ---

22 Q. I said there was in the trial transcript the
23 discussion, like when this issue was raised to the
24 trial court, there was a discussion between Mr. Knox
25 and the trial judge and the prosecutor's office

1 regarding the number of video recordings that the
2 officers had made. Does that, I mean, that's fair to
3 say, right? There was a discussion about ---

4 A. Yes, sir. Yes, sir.

5 Q. All right. And when you say that there wasn't any
6 further investigation done on his part regarding, say
7 the fourth video, what specifically did you tell him
8 or did y'all discuss regarding three video recordings
9 versus four?

10 A. I told him sitting there at that trial that the
11 one tape was about ten seconds longer. It was also
12 brighter. It also showed me and a six foot man going
13 around in circles in a four foot area. And I told
14 him that that was possible because I had been in that
15 store. Mr. Knox, you know, he told me and his exact
16 words to me, was that he had to continue to work with
17 Ms. Thompson-Lee and Mr. Conrad for four or five
18 years until his retirement and that he couldn't make,
19 he wouldn't make comments like that on my behalf.

20 MR. PHILLIPS: Just a moment, Your Honor.

21 Q. Mr. Moore, is there anything else specifically
22 regarding ineffective assistance of counsel that I
23 haven't specifically addressed or asked regarding the
24 allegations that you've presented as ineffective
25 assistance of counsel?

G. Moore- Cross-Examination by Mr. Marto

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1 A. I mean, there's nothing -- there's nothing that I
2 could personally think. I'm a layman. I just note
3 that I didn't receive any kind of, I wouldn't say --
4 the man did nothing that I could see, you know, he
5 didn't, didn't researching any evidence. He didn't
6 provide any evidence. Didn't provide any witnesses.
7 I mean, I'm still trying to figure out how I got
8 here.

9 Q. Was there other witnesses that you told him to
10 meet with?

11 A. I mean, there was -- there was -- there was
12 numerous witnesses. I mean, every person who had
13 been privileged to all of the information or to all
14 the stuff that I've been subjected to, you know, Mr.,
15 Mr., Mr., Mr Knox is familiar with Ms. Thompson-Lee.
16 I mean, he's -- he understands all the underlying
17 things that, you know, that goes on there.

18 MR. PHILLIPS: So there's no -- no other further
19 issues, Your Honor. No further questions of Mr.
20 Moore at this time.

21 THE COURT: All right. Ms. Marto?

22 MS. MARTO: Yes, Your Honor.

23 **Cross-Examination by Ms. Marto:**

24 Q. Now, it's your intention Mr. Moore, that you only
25 met with Mr. Knox one time and had two additional

1 phone calls?

2 A. Approx -- approximately

3 Q. Did you feel prepared for trial at that point?

4 A. The only time we prepared for trial was before
5 the hearing, the immunity hearing. We never prepared
6 for a trial. We met the one time we reviewed the
7 discovery that was provided. And after that there
8 was no more meetings for any sort of trial purposes
9 or immunity purposes or anything else.

10 Q. Did you voice that -- did you have any concerns
11 about that in the way it would play out at trial?

12 A. I didn't think I was ever gonna go to trial.

13 Q. What did you think was gonna happen with your
14 case?

15 A. That Mr. Knox would get my immunity. I was -- I
16 was in a place I had right to be being attacked by
17 two persons and having them hollering to a third
18 person to get a pistol. I mean, yeah, I was under
19 the impression that, that kind of person has a right
20 to defend himself and I was advised to go home and
21 not to worry about it.

22 Q. And then after you lost the immunity hearing, did
23 you reach out to Mr. Knox or did you ---

24 A. I spoke -- I spoke to Mr. Knox on the phone when
25 he was advising me that, that the immunity hearing

1 didn't go our way.

2 Q. Okay. Did you talk about the trial after that or
3 no?

4 A. Basically, we didn't speak about the trial, but
5 we, you know, did speak on, you know, basically the
6 situation there in Chesterfield and that was, you
7 know, the dealings with, the dealings with the
8 sheriff's department, the solicitor's office, you
9 know, these people are gonna do what they want, you
10 know, and that was kind of about all that he and I
11 discussed.

12 Q. Okay. Did y'all discussed the discovery
13 together or no?

14 A. We discussed the discovery only on the initial
15 date.

16 Q. Okay. Now, what in the discovery did you
17 discuss?

18 A. Well, specifically, the only thing we actually
19 looked at all in the discovery was the three store
20 videos that were supplied during our, our discovery.
21 During our discovery hearing we only received three
22 videos. And on those three videos each one shows me
23 being attacked by Mr. Wallace. And on each one of
24 those three videos you hear the store, the police
25 narrated it saying that the victim has, has just come

1 up and attacked the other victim or you hear the
2 older guy attacks the younger guy, or see he's not in
3 the store three seconds before he's attacked. So,
4 you know, at that point, with all -- with all video
5 evidence on our side and with all the audio from the
6 police, and the police officers on our side, there
7 really wasn't a whole lot that I thought, you know,
8 according to Mr. Knox that needed to be reviewed.

9 Q. So are you stating that there were four separate
10 videos and you were only provided three of them?

11 A. Yes, sir.

12 Q. Do you recall Mr. Knox stating that he had
13 received four separate videos at the trial?

14 A. No. Mr. Knox, he worded, he worded around it. He
15 knows -- he stated in his testimony that the three
16 that we received. Mr. -- there's -- there's -- it's
17 in the testimony fairly clear.

18 Q. Do you have a copy of the trial transcript by
19 chance?

20 A. I do, but not in my hand.

21 Q. Okay. Well, I'm looking at Page 177 and it
22 looks like Mr. Knox stated that "my concern is that
23 there are four separate versions of the same video.
24 That one we had in the stand your ground hearing, a
25 different video is presented and showed to the

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1 court." And then he went on to talk about how there
2 were different versions and he wanted all of those
3 versions to be admitted at the trial, do you recall
4 that now or no?

5 A. Oh, I recall that. That was the second day of
6 trial because the previous day I had made such a
7 scene about the fourth video not matching the first
8 three. Yeah, I do recall that. But the fourth video
9 that didn't match was not on the discovery received
10 by myself or Mr. Knox.

11 Q. Or Mr. Knox is stating that he had received it
12 would you conceive that?

13 A. No. Mr. Knox ---

14 Q. Okay.

15 A. I mean, he couldn't have. It's impossible so....

16 Q. Okay. Now, you stating you were unaware of the
17 two 911 calls in this case, is that correct?

18 A. Ma'am?

19 Q. You're stating that you were unaware of the two
20 911 calls placed in this case, is that correct?

21 A. No. I'm not stating that.

22 Q. Well, you were at trial, you haven't received
23 them?

24 A. Ma'am, you're not making any sense.

25 Q. Did you and Mr. Knox meet and discuss the 911

1 calls?

2 A. No. Me and Mr. Knox did not. I did not receive
3 the 911 tapes until after I was incarcerated.

4 Q. Were you incarcerated before the trial?

5 A. No. I was not.

6 Q. Okay. So did you know that two 911 called were
7 placed or no?

8 A. I knew that I called 911.

9 Q. And so ---

10 A. I knew that I did.

11 Q. You knew the contents of that tape, correct ---

12 A. Yes, sir.

13 Q. --- because you were the one giving it? did you
14 know that the store clerk had called?

15 A. I knew that she had said that she was on the
16 phone with them, but I didn't know that she had
17 called until after I had come to prison and was able
18 to receive the 911 audios through the FOIA process.

19 Q. Okay. But you were aware that she stated that she
20 had called 911, is that what you're saying?

21 A. Yes.

22 Q. Okay. Now, you didn't review any videos with Mr.
23 Knox or did you?

24 A. I reviewed the three videos that Mr. Knox and I
25 received through the discovery process. The fourth

1 video is the reason, and it not matching the first
2 three, is the reason I made such an ordeal at day one
3 of the trial. That's the reason you hear Mr. Knox
4 talking about the four versions.

5 Q. Okay.

6 A. It was because when I saw that fourth version in
7 trial I noticed that it didn't match the other three
8 and I immediately said something about it. I told
9 Mr. Knox I said that, that's, that that is a crime
10 that whoever made that third, that fourth video had
11 committed a crime and that was misconduct in office.
12 At which point, Ms. Lee started threatening Mr. Knox
13 that nobody better be making that comment or she's be
14 suing them.

15 Q. Okay. Now, Mr. Wallace did testify about the
16 incident involving the acts at trial, correct?

17 A. Yes, ma'am.

18 Q. Okay. And....

19 MS. MARTO: One moment, Your Honor.

20 Q. And you had seen the photographs of, I guess, the
21 knife in this incident before trial?

22 A. No, ma'am. I saw that also once I was
23 incarcerated.

24 Q. But you were aware -- I mean, since it was your
25 knife and it was in your ---

1 A. Ma'am, the only thing that I saw in discovery was
2 three videos that me and Mr. Knox looked at. Nothing
3 else. I never saw no pictures. I never saw no
4 videos. I never saw any statements. I never saw
5 anything at all other than the three store videos
6 until after I was incarcerated in Broad River.

7 Q. And did you ask for Mr. Knox to provide you with
8 more discovery, at that point?

9 A. I asked for Mr. Knox the same thing any person
10 would, you know, hey, can I have this? You know, can
11 I have a copy of that? I mean, I had already been
12 keeping records of these people, these people
13 attacking me. So naturally I was keeping further
14 records of these people attacking me. You see, I
15 mean, all this stuff, you know, I don't -- I was -- I
16 was under the impression that I was not in the wrong
17 that I was the victim of this man, that I had been
18 attacked multiple times. I was in a place I had the
19 right -- I mean, I was -- I was not prepared for
20 this. I was a business owner. A father. I mean,
21 this is -- this is not where I had any intentions of
22 going and I took the advice of Mr. Knox that I didn't
23 have anything to worry about, you know, and so I
24 ended up in prison before I realized I had anything
25 to worry about.

1 Q. So Mr. Knox just told you that you would be let
2 off and so there was no point in reviewing your case
3 more than you did that
4 couple of times you talked?

5 A. Yes, ma'am. Yes, ma'am. Mr. Knox said I was in
6 a place I had a right to be. I didn't bring any
7 trouble on myself. And that I had to right to
8 protect myself even up to deadly force. I have that
9 God given right. And that was -- that was the end of
10 it. There was nothing more to it than that.

11 Q. And you felt comfortable going to trial based
12 upon that assumption, you were that confident in your
13 case?

14 A. I was trying to figure out where I'd went wrong
15 to start with. I mean, I didn't understand why I was
16 even charged. But from what I was explained to that
17 it was a technicality and that, you know, I just had
18 to play the game.

19 Q. Okay. But you do acknowledge that it was your
20 knife, right?

21 A. Yes, ma'am. It was my knife.

22 Q. And you used it on Mr. Wallace?

23 A. Yes, ma'am. I protect myself against Mr. Wallace,
24 his, and his two assailants.

25 Q. After he slapped you once?

1 A. While he had me, choking me and holding my hand
2 down while his partner was assaulting me from behind,
3 yes, ma'am. I was being attacked by two multiple
4 people while they were hollering to a third person to
5 get a firearm. So yes, ma'am, I was defending myself
6 against three people.

7 Q. Did the second person involved admit that he was
8 in cahoots with the victim?

9 A. He admitted that he had his hands around my
10 throat and that he got cut.

11 Q. He admitted he got cut, did he state that he was
12 trying to break up the incident or that he was trying
13 to attack you?

14 A. At the time of trial he said he was trying to
15 break it up. But at that time -- at that time, we
16 didn't have the audio, the audio of the 911 tape. He
17 was actually hollering to the clerk, that was who he
18 was hollering to get the pistol from. You see, these
19 -- all three of your State's witnesses are all in
20 this together and I'm the only odd person out here.
21 You see, Mr., Mr. Wallace knew that man. Mr., Mr.,
22 Mr. Hooks knew the woman. I was the only person in
23 that store who didn't know anybody.

24 Q. Did Mr. Hooks ever state that he knew Mr.
25 Wallace?

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1 A. Yes. They know each other. Yes, ma'am. And
2 it's -- it's in the 911 audio if you want to listen
3 to it.

4 MS. MARTO: One moment, Your Honor.

5 A. Mr. Hooks also went on to state that he was
6 inebriated at the time when he put his hands around
7 my pro tem was choking me. And that the reason he
8 wouldn't be hanging out for police was because he had
9 been drinking. He fled the scene and didn't wait on
10 the police, the invest -- take his report.

11 Q. Who was that?

12 A. That's Mr. Hooks, the good Samaritan. Yes, we
13 have a lot more -- I have a lot more evidence than I
14 had at the time of the trial.

15 Q. Looking at Page 109 of the trial transcript and
16 it states, its direct examination of Mr. hooks, it
17 states, starting with Line 4, "before that date, did
18 you know Gary Moore? No, ma'am. Before that date,
19 did you know Charles Wallace? No, ma'am." And then
20 he goes on to state that "he was trying to break the
21 fight up." Do you recall him testifying to that?

22 A. Yes, ma'am, I do. I also recall that the audio
23 that we're trying to get you to play will show you
24 that it's, you know, it completely contradict that.
25 That that was story given at the time of trial. But

1 it's not an accurate assessment of what happened.
2 All the new evidence provided by Garrett's (ph)
3 discovery, the audio tapes that are enhanced now
4 where you can actually hear what was happening. The
5 videos that have been enhanced, you can see all this
6 stuff for yourself now. I've told the sheriff's
7 department at the time of this incident what had
8 happened and that I had been attacked by multiple
9 people on that somebody was hollering to get a weapon
10 to an unknown third-party. I made everyone aware of
11 this at the time when I was arrested six years ago
12 and nobody wanted to listen. And so now it's my day
13 for people to finally see this.

14 Q. And now that you, essentially, made the argument
15 at the immunity hearing, correct?

16 A. Ma'am?

17 Q. You, essentially, made the argument that these
18 people were piling up against you at the immunity
19 hearing, correct?

20 A. No, ma'am. The video did.

21 Q. No, but you also made that argument at the
22 immunity hearing, correct?

23 A. Yes. When I was -- when I was interviewed.

24 Q. Okay. And then, even with that testimony, the
25 judge declined to grant immunity, correct?

1 A. Yes, ma'am. The judge - the reason the judge
2 declined, if I recall correctly, was because at the
3 time it was a quintessential jury question because we
4 didn't have any audio that would tell who was telling
5 the truth, me or the victim, Mr. Wallace. Well,
6 since we found that audio, audio tape and had it
7 enhanced, I do believe that that would act as a, you
8 know, clear, you know, a clear line to show who
9 actually was telling the truth at the time of
10 immunity, Mr. Wallace or myself. If you refer to the
11 911 audio tape you'll see that it backs up every word
12 that said verbatim down to every letter. And you'll
13 find that the State's, you know, Mr. Wallace and
14 their, their witnesses it no longer makes any sense
15 once you apply the proper State evidence.

16 Q. And you're stating that the 911 call does that?

17 A. Yes, ma'am, it does.

18 Q. The 911 call that you, yourself, placed?

19 A. No. The one that, um, that the cashier was
20 speaking. You can hear every, everything that
21 happened in the background during this whole incident
22 as she spoke with the 911 operator. That very audio
23 will contradict every witness that the State
24 presented as well.

25 Q. The 911 call contradict all of the State's

1 witnesses?

2 A. Yes, ma'am. Ms. -- Mr. Hooks, Mr. Hooks, you
3 know, he stated that he was breaking it up, but what
4 he didn't to the State was that he was actually drunk
5 and that was why he fled. So therefore, I don't, I
6 don't think that his, his recollection of this
7 incident, you know, being that he was intoxicated,
8 um, you know, in cahoots with his multiple friends
9 would have anything to do with it. Ms. um, the
10 cashier lady made a very derogatory comment that
11 stated that I told her that he got what he deserved.
12 But if you hear in the 911 tape you hear that I
13 actually apologized to her. I stated that I was
14 sorry that somebody got what they deserved.
15 Everything -- everything that I stated in my
16 interview you can now hear in that audiotape. You
17 know, I was -- I was being attacked by multiple
18 people, unprovoked. And they were hollering to a
19 third unknown party to get a firearm. At that point,
20 I felt that my life was in danger. I was being
21 choked by one person. I was beaten by another. And
22 they were hollering to an unknown third-party to get
23 a firearm.

24 Q. Now, there one individual that testified in the
25 State's case in chief also placed a 911 call,