

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

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S.C. SUPREME COURT

Certiorari to Newberry County

Honorable B. Alex Hyman, Circuit Court Judge

MATTHEW L. JACKSON,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT.

APPELLATE CASE NO. 2024-000923

APPENDIX

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[DEFENSE EXHIBIT 1 (CD) IS ON FILE WITH THIS COURT]

1 The evidentiary record in this case is now
2 closed. Ladies and gentlemen, what we have left to
3 do is a very, very important part of the case in that
4 the lawyers will make their closing arguments and
5 then I will charge you the law applicable to this
6 case. The lawyers need some time to work on their
7 closing arguments. I need to take some time to
8 review with the lawyers my proposed charge on the
9 law. So even though we have periodically kept you
10 back in that jury room maybe a little longer than we
11 would like, maybe a little longer than you would
12 like, what I'm going to do, I'm going to send you on
13 home for a real early lunch break and have you back
14 here at twelve o'clock.

15 I know it may be too early for you to eat lunch,
16 but I just don't want to have you sitting back here.
17 We just need some time to get things ready to where
18 the lawyers will charge you -- I mean, argue their
19 closing arguments, which is the last time that they
20 have to advocate for their respective sides. So
21 closing arguments are very important and, certainly,
22 the charge on the law is very important. So we need
23 to put all that together.

24 So I'm going to go ahead and release you now,
25 but if you'll be back at twelve o'clock and then we

1 will -- we'll hit the ground running and move forward
2 to where we can get this case in your hands for a
3 verdict, okay. So see you back at 12:00. I know
4 that's a little awkward time, but we're doing the
5 best we can.

6 (WHEREUPON, the jury left open court at
7 approximately 10:37 a.m.)

8 THE COURT: Okay, we're going to get you a draft
9 of the proposed charge. And as I indicated to you
10 yesterday evening, I know that we need to discuss
11 lesser included offenses. We need to discuss
12 self-defense. All that's going to be in there. We
13 certainly can take it out, whatever, modify it,
14 whatever we need to do. So we'll get that to you in
15 just a few minutes, all right.

16 Y'all want hard copy or an email?

17 MR. DANIEL: Your Honor, you can email it to me
18 and I'll print off copies.

19 MR. VERNER: I am so vividly familiar with the
20 Court's typical charges, Judge, is that really the
21 self-defense and lesser included --

22 THE COURT: Well, we're going to give you the
23 whole thing.

24 You make everybody copies, Beth?

25 THE CLERK: Yes, sir.

1 THE COURT: We'll just give you hard copies.

2 MR. SCOTT: Thank you, Your Honor.

3 (WHEREUPON, a lunch break was taken.)

4 THE COURT: All right, ready for closings?

5 MR. VERNER: Yes, sir, Your Honor.

6 MR. SCOTT: (Attorney nods.)

7 THE COURT: All right, Madam Bailiff.

8 (WHEREUPON, the jury came into open court at
9 approximately 12:33 p.m.)

10 THE COURT: Jury is back in the courtroom.

11 Ladies and gentlemen, the lawyers will now give
12 their closing arguments to you. As I indicated
13 before the break, this is the last time, last
14 opportunity they have to advocate for their
15 respective sides. So please give both lawyers your
16 undivided attention. After the closing arguments,
17 we'll probably take a short break before we go into
18 the charge on the law.

19 Solicitor Scott, you ready, sir?

20 CLOSING STATEMENT

21 MR. SCOTT: Yes, sir, Your Honor. May it please
22 the Court.

23 It's an attempted murder case, as you heard. So
24 we've been here since Monday. A little bit, we met
25 Monday, then we kind of started Tuesday, here we are

1 Thursday. And that's what it all boils down to right
2 there.

3 You know, I was thinking about it. You ever
4 heard don't take a knife to a gunfight? What does
5 that mean? That means don't show up unprepared.
6 What does it tell you when you take a knife to a
7 fistfight? It shows a level of preparedness, it
8 shows malice, it shows intent to do harm. When you
9 show up to what should have been a fistfight, really
10 shouldn't have been any encounter. But when you show
11 up to an unarmed man with a knife, what does that
12 tell you? That's the definition of malice. Malice
13 is evil, ill will towards another person. Reckless
14 disregard for somebody else's life. Taking a weapon
15 against an unarmed man. That's the way it happened.

16 This is what I do for a living, y'all. I don't
17 know how many people sat in the same seats and looked
18 at my face when I had to argue a case like this or
19 whatever crime we're trying. Life is terrifying. I
20 mean, as long as I've been doing this, about 15, 16
21 years, it becomes apparent at some point that life is
22 terrifying. Maybe it's like Jayla, my assistant
23 sitting here, says, maybe life is just a matter of
24 instances. Sometimes it breaks our way, sometimes it
25 breaks the other way. Sometimes the beast is on our

1 side, sometime they're against us.

2 But you never know when you're going to catch
3 the bad side of things or the good side. You never
4 really know what the guy walking down the sidewalk
5 right beside you is capable of. You never know what
6 the person behind you in the checkout line at the
7 grocery store has a gun or can do or will do. You
8 don't know when you're going to but up against
9 somebody like Matthew Jackson. And you don't know
10 what will set them off. And you don't know what
11 innocent interaction you may have thought you had
12 with him, he thought otherwise. He's going to take
13 it with him. He's going to stew on it. Somebody
14 like him can't control their compulsions and they act
15 on these things.

16 So that's what happened June 6th this past year.
17 Tony Jackson, he didn't know, he didn't know what a
18 guy like Matthew Jackson is capable of. I hope most
19 people don't interact with somebody like that. Tony
20 didn't know that day. Tony is a working man. We
21 talked about that a little bit. He doesn't sit on
22 his butt and collect a check. He works. He
23 provides. He is a contributing member of Newberry
24 County. And when he's not working, he enjoys time
25 with his family. That's how June 6th started.

1 That's how he had hoped.

2 He went to work, got off. Instead of sitting
3 around, he took his kids down to the lake to a place
4 they always enjoyed going many times before. They
5 had gone, had so many good times, like with the Bogey
6 brothers. This was supposed to be a nice summer day,
7 supposed to be fishing, supposed to be swimming,
8 grilling out time with family and friends. That's
9 how it was supposed to be. But we know how it turned
10 out.

11 We don't really know how Matthew Jackson got
12 down there, do we? We don't really know why he was
13 there. Tony, Ashleigh, the kids were all there. The
14 Bogey brothers, they talk about they were swimming,
15 they were fishing, camping, whatever. We don't
16 really know why Matt was there or how he got there.
17 He did show up Saturday. Not dressed for swimming.
18 No fishing gear in hand. We don't really know why he
19 was there, but he was there, nevertheless.

20 And they talk about the first time they see him,
21 he's not really doing anything to draw their
22 attention other than he's just wearing all white.
23 He's kind of leaning against the dock, he's kind of
24 just watching. Maybe he's watching them, maybe he's
25 just watching the lake, but no real apparent reason

1 he's there other than just kind of hanging out.

2 And we hear about MINOR 1. We hear about -- how
3 many times did you hear about her sitting kind of
4 under the pine tree and everybody else is in the
5 water. She's in her bathing suit. And at some
6 point, Tony looks up and he sees this man he's never
7 seen before walking from the pier towards MINOR 1.
8 And the next thing he sees is the man leaning down
9 and hugging MINOR 1. And like any man, like any
10 father, he wants to know who the hell is this man
11 hugging my daughter without talking to me first? I
12 don't recognize him. Who is it? He decides to walk,
13 like I hope any father would, and approaches Matt.
14 What are you doing hugging my daughter? What are you
15 doing?

16 I disagree with the Defense attorney's opening
17 statement that he was on the bullhorn calling him a
18 pervert, that's kind of ridiculous. Everybody --
19 that was an opening statement. You heard no evidence
20 of that. It didn't happen that way. But he did
21 approach him and he talked about what he said, had
22 words with him, who are you, what you doing?

23 The way it sounds, it fairly quickly is
24 diffused. Ashleigh gets out the water when she sees
25 who it is. It's okay, Tony. The girls know him.

1 That's Matt. He lives with my ex. They're around
2 him from time to time, it's okay. Ends with a
3 handshake. That's what Alexis says, that's what Tony
4 says, that what Ashleigh says, it ends with a
5 handshake.

6 But that's what's terrifying. They thought it
7 was fine, it was diffused, it was over. But they
8 don't know what's going on in this man's mind.
9 Because I submit to you right then, he felt
10 disrespected. He felt like he wasn't treated like
11 Matt Jackson should be treated. How dare he tell me
12 I can't hug that girl, I know that girl. How dare he
13 insinuate that I'm an pedophile.

14 So when John Platts is coming to the boat ramp,
15 as he's passing him on that road, he testified that
16 he sees Matt Jackson walking up the road, animating
17 on the phone. He looks like he's upset about
18 something. I submit to you he was not happy with the
19 way he was treated, disrespected. He can hug that
20 little girl if he wants to.

21 So he goes to Buffalo Creek. We don't know what
22 he was doing there. He says he drank a beer. We
23 don't know who all he talked to. We don't know what
24 all he -- what plans went through his mind, but he
25 was planning. He was scheming. And he was stewing.

1 He was stewing on that black man telling him he can't
2 hug that little girl. How dare he tell him.

3 He calls his mother, Sheila Norton. His own
4 lawyer calls her a crazy lady. He calls the crazy
5 lady. She comes and picks him up from Buffalo creek.
6 You heard him in his statement, he was pissed. After
7 Tony told him he couldn't hug that girl, he was
8 pissed.

9 Okay. It's like Garrett Lominack, the
10 lieutenant, was questioning, asking him, Man, why did
11 you go back? And that's what we can't get really a
12 straight answer because he knows he shouldn't have
13 gone back. He knows, you'll hear him, he seems
14 educated in the law. Because he talks about I did
15 not have intent. I did not have intent. Well, why
16 did you go back there? They keep asking him that.
17 That's when he really struggles. In his interview,
18 he struggles a little bit with this. Well, my mom
19 showed up and then it's just crazy because all of a
20 sudden, my cousin and my friends showed up, too. And
21 they were going there, too. And I was looking for my
22 mom's pants. I wanted to find my mom's pants.
23 That's what I was doing.

24 He went back down there -- after you just talked
25 about all these people threatening you, on a bullhorn

1 threatening you, so you go back down to look for
2 pants. Is that a smart idea, Matt? Oh, oh, oh. And
3 then when we get down there, I jumped out of my mom's
4 car and got in Cam's car.

5 Why did you do that?

6 Well, I was going to talk to some girls, man. I
7 was going to talk to some girls.

8 I thought you were getting pants.

9 No, man, I was going to talk to some girls.

10 They say, Okay, why did you need all those
11 people with you?

12 He went, I was going to get pot. I was going
13 down there to get pot, yeah, that's what I was doing.

14 Well, wait a minute, a little while ago, you
15 were talking about when you went down there another
16 thing that upset you was Tony, Ashleigh, all of them
17 smoking pot, carrying on and drinking? So now you're
18 telling me you were going down there to buy pot?

19 Oh, no, no, I was going down there to meet some
20 people and they were going to take me to Newberry,
21 that's where I was going to get some pot.

22 They say, Okay, well, the knife, what inspired
23 you to arm yourself with a knife?

24 Because he admits he gets it out of his mother's
25 car.

1 It's just, I mean, sometimes -- and they want to
2 make it about well, R.J. and Ashleigh had
3 difficulties in the past and they had custody issues.
4 And that's not what it was about. That's called a
5 red herring. Y'all familiar with that term? A red
6 herring is a distraction. It's something to throw
7 you off or take your eye off the ball. A red herring
8 is simply just a fish you can smoke and it turns
9 reddish-brown when it's smoked. A different -- I
10 have read different origins to that term. Sometimes
11 on prolonged fox hunts, they train dogs to follow a
12 herring, that's how they're trained to track
13 something, the smell of fish. So it's something easy
14 for them to pick up on when you train an animal. On
15 prolonged fox hunts, sometimes they'll do it over
16 here just to throw them off the scent. Sometimes
17 I've heard of bandits back in the old days, throw off
18 their own scent, lead them astray with herring.

19 But in a trial, you see red herrings pop up from
20 time to time. Certainly, R.J. R.J., he's not on
21 trial here, he is a red herring. DSS actions is a
22 red herring. I submit to you why else would they
23 bring those up? What does that have to do with Tony
24 getting stabbed by Matt Jackson that day? Nothing.
25 They're decoys, distractions.

1 But his statements are just so wild and they
2 make no sense. And what does he do after the
3 stabbing? You know, the Defense attorney also said
4 nobody from the -- the victims, they didn't call law
5 enforcement. They just go to the hospital. We've
6 heard the 911 tape. The first thing they do, they've
7 got nothing to hide. They call the cops, say,
8 there's been a stabbing. We don't have time for an
9 ambulance, the cops said, just throw him on a blanket
10 and we'll escort you. The cops, right when they get
11 there, they go straight to the hospital.

12 What does Matthew Jackson do? Does he call the
13 police? No. He's getting his momma and says take my
14 ass to Sumter, I'm getting out of here. He knows,
15 okay. He doesn't think he just stabbed a man in
16 self-defense, he knows what he did was wrong. A man
17 who stands and stabs another man in self-defense has
18 nothing to hide. In fact, they should call the
19 police and say I just had to protect myself with a
20 knife. It was self-defense, let me tell my story.
21 No, they spent two days trying to get in contact with
22 him. It takes law enforcement in Sumter County to
23 arrest him in Sumter County and bring him back to
24 Newberry.

25 That's when y'all hear that interview. That was

1 something, wasn't it? By the way, y'all get to
2 listen to that as many times as you want when y'all
3 go to deliberate. Forty-five minutes or so, I think
4 it is. We listened to it yesterday. That really was
5 something.

6 One thing you get to do here is to judge
7 somebody's credibility in a case like this. Y'all
8 are going to determine whether he seemed credible in
9 the video. Y'all are going to determine whether any
10 part of his story makes any sense at all. Okay.

11 Then you get to Tony's version. Was he crazy?
12 Maybe he got a little agitated. I don't know what
13 it's like to be the victim of something like this,
14 getting stabbed. While you're out there with your
15 family minding you're own business, then have to sit
16 up here and have somebody question you why you did
17 this, why you did that? And you're saying, what did
18 I do? I'm the victim here.

19 In a trial, sometimes there's a victim
20 [indiscernible], sometimes you try to flip the roles
21 and try to -- roles are reversed from what the victim
22 should be, so he got agitated. But I submit to you
23 his testimony made sense. His testimony dovetailed
24 with Ashleigh's testimony, with John Platts'
25 testimony, Alexis' testimony, Ayleah's testimony.

1 They were consistent. And it fits the evidence that
2 we have. It fits of the law enforcement
3 investigation.

4 By the way, we've got independent witnesses,
5 people that aren't with Tony. People who just
6 happened to be out there that day. People who wanted
7 to have a good time at the lake, too. It's like
8 Steven Reed said, that shouldn't have happened out
9 there that day. That was a place that most people
10 went to relax and have a good time and not to witness
11 something like that.

12 I mean, their own witness, Christy Eigner, said
13 those kids were traumatized. Because Matthew Jackson
14 perceived some slight. Because Matthew Jackson
15 thought it was appropriate to take a knife to what
16 could have just been a fistfight, but shouldn't have
17 been anything at all. He should have stayed over at
18 Buffalo Creek. And when he called his momma, he
19 should have gone home.

20 But the problem with him -- do you remember his
21 reaction with law enforcement? He's spinning his
22 wheels, trying to figure out what his story is.
23 Matt, we've got independent witnesses, man.

24 He says, Oh, who? Who?

25 I want y'all to watch his reaction when he first

1 learns of other people who saw this thing. Because
2 they don't have a dog in this fight.

3 Steven Reed, this man right here, he's out there
4 smoking a cigarette and sees what he sees. What's
5 his connection to Tony? He just happened to see what
6 he saw. The Bogey brothers over here, sitting on the
7 picnic table waiting for their ride home, they knew
8 of Tony, seen him before and his wife out there
9 before because they go out there a lot. But they saw
10 what they saw. They don't have a dog in this fight.
11 Their version of events was consistent with Tony and
12 what everybody else said.

13 So what we're going to have to do is figure out
14 what he's guilty of. I submit to you it's attempted
15 murder. That's what he's charged with. The way
16 these things work, you go to trial on a crime and
17 sometimes there's what's called lesser included
18 offenses. And we're telling y'all what he's charged
19 with, but you get to consider some things on down the
20 line. What you're going to consider is attempted
21 murder, okay. That's the charge we're attempting to
22 prove. Attempted murder is a person who with intent
23 to kill attempts to kill another person with malice
24 aforethought either expressed or implied. That's
25 attempted murder.

1 Okay. Let me ask you something. What are your
2 intentions when you take a knife and you thrust it in
3 somebody else? What are your intentions? Is that
4 not just a complete and utter reckless disregard for
5 human life? What is the natural outcome of stabbing
6 somebody with any kind of knife? I mean, when
7 somebody opens up veins in their wrist, it doesn't
8 take a cut that deep and they're dead if it's long
9 enough. When you're in a rural area like that Sunset
10 boat ramp, who knows how long it's going to take you
11 to get medical assistance if the cut's deep enough.

12 You think Matthew Jackson is thinking well, I'm
13 just going to give him some little flesh wounds, I
14 don't mean a whole lot of harm? No. His intent --
15 if he died, Tony Jackson bleeds out there that day,
16 he leaves all those kids without a dad, they have to
17 sit there and watch him die, what's he guilty of?
18 Murder, right? He has attempted -- he wasn't
19 successful, thank goodness, it's attempted murder,
20 okay. That is the logistical outcome and the
21 logistical verdict that we're going to ask y'all.
22 They want out by acquittal. But, as an alternative,
23 they would like you to go down, down, down and find
24 him guilty of what what's called a lesser included
25 offense.

1 The next one down is ABHAN, that stands for
2 assault and battery of a high and aggravated nature.
3 You're going down the ladder, lesser charges as you
4 go down. Then from there, all the way down to
5 something called A and B second. Remember, his
6 mother who was out there that day? I think she's
7 over there beside me in the pink. Remember her out
8 there and the story about her flying in that Grand
9 Marquis, sliding in there, jumping out and socking
10 that girl right in the face, pulling on her hair?
11 She was charged with assault and battery second,
12 okay. That ain't what Matt's guilty of. All right.
13 Well, they're going to ask you well, if you won't
14 acquit him, how about A and B second. Everybody will
15 be happy with that, that will be great. That is
16 totally inappropriate. Okay.

17 Let me work through the charges, what they mean.
18 All right. Attempted murder, I've got it up there.
19 It's got some words that we don't always use
20 everyday. A lot of people talk about malice
21 aforethought. We're going to talk about malice
22 aforethought. We're going to talk about implied
23 malice or expressed malice. Those are some legal
24 terms. And when the screen comes back on, I'll work
25 through here. Perfect timing. Tell you what, let me

1 move on. I know y'all are getting tired of this.

2 Got the boat ramp, right? How many times have I
3 had to draw this. You've heard the testimony. Okay.
4 You got the dock down here. Got the boat ramp here.
5 Picnic tables over here, right, because that's where
6 the three Bogey brothers was sitting there waiting.
7 Remember Steven Reed's house up here? This is down
8 at the lake right here. Porta-potties are right over
9 here.

10 Now, what we heard was earlier in the day, this
11 is kind of where they spend the daylight hours, the
12 early daytime, kind of where the pine tree is, sort
13 of a landmark. That's where the Chrysler 300 was,
14 that's where the motorcycle was. Then they're
15 getting ready to leave. Sounds like people who went
16 to the boat ramp was familiar with this motorcycle.
17 It doesn't sound like it was very reliable. He says
18 he's gotten rid of it since then.

19 And as he's leaving, it stalls out. He's got
20 the motorcycle somewhere up here. And John Platts is
21 saying, Man, Tony, get rid of this thing. You can't
22 even drive it up the hill here. It's not reliable.
23 Let's jump it off. John Platts has his truck right
24 here. That's what he testified to. He's got his
25 wife -- they're leaving, I think, kind of in a single

1 file and she's behind him. All right, this is Ashley
2 Platts. John Platts' truck. Got this Chrysler
3 350 -- or 300, I'm sorry. I think the passenger side
4 was Ayleah, you know, she was 17, I think, at the
5 time. Alexis was driving. The kids were all in the
6 back of the car. Right?

7 Okay, as they're up here working on the bike, a
8 crazy lady, that was their words, crazy lady over
9 there flying in in the Grand Marquis. Stops
10 somewhere right in that vicinity, general vicinity.
11 Maybe she is crazy, but she's out raising cane.
12 Nobody knows why she's there. She hadn't been there
13 earlier in the day.

14 You know, Tony mentioned this before, he
15 mentioned it yesterday. Maybe she was a distraction.
16 I don't know. Maybe she was a decoy. Because it
17 certainly got people's attention when Sheila Norton
18 comes driving in raising cane, smacks a 17 year old
19 right in the face, pulls her head, they're down on
20 the ground. Her sister is trying to help her. I
21 mean, maybe she is a very effective decoy. Because,
22 you know, by the time Tony sees Matt, he's coming up
23 the hill. Matt had come in, I believe in the black
24 Malibu, just behind the Marquis. Parked over here.
25 He didn't see the Bogey brothers. Very surprised

1 when we learned of independent witnesses. They saw
2 him.

3 Gets out of the back, the rear passenger. He's
4 moving this, okay that's what all the testimony was.
5 He's not up here. This is where the women are.
6 There's a Ayleah, that's where she got punched in the
7 face. Fighting somewhere up here, okay. All he had
8 to do was -- if his true intention was to help out
9 his mother or break up a fight, hadn't already
10 testified he had those prior difficulties during the
11 day. He doesn't. He's working his way up the hill
12 directly towards Tony. Because remember, Tony,
13 earlier had made the statement, hey, man, I'm sorry.
14 I didn't know who you were. You can't ever be too
15 careful. I didn't know if you were some pervert or
16 pedophile or something. That's not really how
17 Matthew Jackson heard it. He heard this man accused
18 me of being a pedophile, nobody disrespects Matthew
19 Jackson like that.

20 He's coming up the hill. John Platts, his
21 observation is he was moving deliberately with a hand
22 behind his back. Tony's testimony was he was moving
23 in such a manner after seeing his mother show up and
24 get in this fight, he's moving at me with a purpose.
25 Okay. I seen him earlier in the day and all ended

1 well. Apparently not. His kids are up here. So
2 he's coming down here. He's going to come down and
3 head it off, so he thought. There's no heading off
4 because as they met somewhere in here, the testimony
5 is consistent with Matt Jackson threw the first blow,
6 okay. Tony, to him, it was a fistfight. Okay, we're
7 going to do this, let's do it. I didn't want to
8 fight you, I have no reason to fight you, but if
9 you're throwing blows, I will, too.

10 The thing is, they spent so much time with the
11 stupid glasses, okay? Are they broken, did they get
12 stomped on? Did they get driven over? Does it
13 matter? If Tony's punched in the face, we'll tell
14 him as a prosecutor, you hit the guy back. Okay. So
15 if he did punch him in the eye and he did break the
16 lens from punching him in the eye, I submit to you he
17 deserved it. Here's the booking photo. After they
18 finally tracked him down in Sumter, that's what he
19 looked like. I guess that's his eye right there, but
20 this lens would have been over. It doesn't look any
21 worse for the wear to me. So if there's this viscous
22 attack, I can't tell.

23 But did he not deserve it? If he's throwing the
24 first blow. That's what those two, **J.B.** and
25 **N.B.** said, and Steven Reed saw him,

1 independent witnesses. People with Tony, they
2 certainly saw it. Matt Jackson is there for a reason
3 because he's got that knife in his hands. Platts saw
4 him walking and he's swinging. He's swinging like
5 that. And he thinks he's hitting him, he thinks he's
6 hitting with his fists. That gets his adrenaline up,
7 he's fighting back and moving across the parking lot.
8 Tony said they started somewhere up here. They're
9 kind of marching down that way fighting and
10 scuffling.

11 And at some point when the adrenaline kind of
12 wears off, Matt is backing away from him, he realizes
13 he's cut. What a hopeless feeling, I suppose. I
14 mean, if you're in this rural area and your gut is
15 cut open and you're bleeding all down your pants and
16 shirt, I don't know what he thought would happen to
17 him. Thankfully, he had good friends like John
18 Platts and people who could load him up and get him
19 to the hospital as quickly as possible.

20 What Matt does is he leaves there and -- you'll
21 have to watch the video. Either he rides with
22 Cameron Goff, his cousin, or gets back in the car
23 with his mom. He plays musical chairs with cars, I
24 don't know why. Gets in one of their cars, but he
25 doesn't go to the hospital, he doesn't go to the

1 police station. He goes to the Frayed Knot. That's
2 another bar on the lake in Chapin. That's where he
3 goes after stabbing a man.

4 Then, according to his own testimony, he gets a
5 shower and he tells his mom to take him to Sumter.
6 That's his testimony. That's his words. Does not
7 call 911, does not call the police to tell them about
8 his self-defense story. He's gone. He hides because
9 he knows what he did is wrong. Gets rid of the knife
10 somewhere along the way, wonder why he did that. He
11 got rid of the knife. That's what it is. That's the
12 case. I mean, y'all heard it I don't know from how
13 many people. That's attempted murder. Attempted
14 murder.

15 Malice aforethought. What is that? Either
16 expressed or implied.

17 Walter, go to the next screen.

18 What is malice aforethought? This is a legal
19 term of art, I guess. And I guess what you hear on
20 TV is premeditated murder. We don't have
21 premeditated murder in South Carolina. We have
22 malice aforethought. Malice is define as hatred, ill
23 will or hostility towards another person. It is an
24 intentional doing of a wrongful act without just
25 cause or excuse and with an intent to inflict injury

1 under the circumstances that the law will infer evil
2 intent. Okay.

3 The State's position is that when you leave what
4 you consider -- the first encounter, we'll call it.
5 We considered that kind of a -- you hear -- you get
6 to hear his mind set in the interview. Because up
7 until then, you heard other people's observations of
8 him. Their observations were everything seemed all
9 right with them, but you never know what the other
10 guy is thinking. He kind of tells law enforcement
11 what he was thinking. That was that they were
12 yelling at him, they were threatening him. That was
13 in his mind.

14 So he leaves there and the malice aforethought,
15 the malice comes in, the evil intent comes in with
16 him going back there, okay. Him going back there
17 shows his intent to do harm. Him going back there
18 armed with a knife that he secured from his mother's
19 car, it wasn't just in his pocket. It wasn't like
20 he's getting plummeted and he just reached in his
21 pocket as a last resort and he's cutting this guy.
22 He's armed himself going to a fistfight, okay? That
23 is the definition of malice aforethought. Okay.

24 Next one.

25 How can malice be shown? Either expressed or

1 implied, expressed or inferred. This a lot I know,
2 but this is legalese. Expressed or inferred do not
3 mean different kinds of malice, it's just different
4 ways of showing malice. It can either be direct
5 evidence or by inference or facts and circumstances
6 which are proven. Expressed malice is shown when a
7 person speaks words that express hatred or ill will
8 for another or when the person prepared beforehand to
9 do the act which was later accomplished. Preparation
10 during that cooling off period when he should have
11 just got his wits about him, you know, talked it out
12 with somebody else and said, you know, he ain't worth
13 it, I'm not going back down there. That's the
14 preparation. Preparation is calling mother, calling
15 Cameron Goff, Casey Gregory, whoever else to go down
16 there with him and pose for him, said he had back up.
17 The preparation is getting that knife out of his
18 mother's car by his own admission. That is how
19 malice is assumed. Malice may be inferred from
20 conduct showing total disregard for human life.
21 Stabbing somebody is total disregard for human life,
22 it's outright hostility.

23 I want to show you this. I think we're all
24 fairly aware of the dangers of puncturing somebody in
25 their stomach. Y'all saw the scars on Tony. You saw

1 the deep wounds right here. Saw they had to cut him
2 open in the belly button, down in the pelvic region
3 to make sure he wasn't bleeding internally. That's
4 because there's so much going on right here. You've
5 got your intestines, you got your spleen, your
6 kidneys and you're getting all cut up in the back,
7 stabbed in the back. There's a lot going on. That
8 is a total reckless disregard for human life when
9 you're stabbing somebody where all your organs are.

10 Next one.

11 This one is step down, okay? But you'll get to
12 consider -- I submit to you -- the proper charge is
13 attempted murder, but I submit to you, the best way I
14 can explain this to y'all if he died out there day it
15 would have been a murder. He lives, so it's
16 attempted murder. I've got to explain these things
17 because the Judge is going to charge you on lesser
18 included assault and battery of a high and aggravated
19 nature, next one down.

20 Definition, I submit that offense, if you
21 unlawfully injure another person, we have that, and
22 great bodily injury to another personal results,
23 okay. We agree we do have great bodily injury. We
24 agree he was lucky he didn't die. He was lucky he
25 wasn't murdered. Then Subsection B, the act is

1 accomplished by means likely to produce death or
2 great bodily injury. The difference of this and
3 attempted murder is the attempted murder, you've got
4 that malice aforethought. Premeditation aspect.
5 You've got the planning, you've got arming yourself
6 with a knife. So really malice aforethought makes a
7 difference.

8 That's why we say this would be okay if he -- I
9 think a good scenario would be if he did have a knife
10 in his pocket and as a last resort, just stabs him if
11 it was already in there. He goes and arms himself
12 with it for a reason. Because he had planned, he had
13 prepared to stab this man. Malice aforethought is
14 what makes it attempted murder, not assault and
15 battery of a high and aggravated nature. But you
16 will have an opportunity to consider this as part of
17 your verdict.

18 Next one down, and this one goes two or three
19 levels down the prong, but this will your final
20 charge, assault and battery second degree. Again,
21 this is what his mother was charged with for socking
22 that girl right in the face. That was a punch in the
23 face. Totally different from what Matt Jackson did,
24 but the law says you get to consider this. After
25 hearing all the facts, you think this is an

1 appropriate charge, you can consider this. This is
2 when somebody assaults somebody else. There is
3 physical contact. You either offer, attempt to
4 injure another person with the present ability to do
5 so. Then just moderate bodily injury happens, okay.
6 This is akin to me taking a stick and hitting you in
7 the leg with it real hard, something like that.
8 Moderate bodily injury, okay.

9 I submit to you, when you've got to be driven
10 Newberry Memorial because you can't even wait for the
11 ambulance because your scared you're going to bleed
12 to death and Newberry Memorial takes a look at your
13 injuries and says we ain't equipped to handle this,
14 let's send him down to Richland Memorial. Got to
15 take him by ambulance down to Richland Memorial and
16 they've got to staple you up, clean your wounds out
17 and staple you up. They've got to put you under
18 anesthesia. You have to be in the intensive care
19 unit. And then they have to cut you open to make
20 sure you're not bleeding internally. I submit to you
21 that is great bodily injury, that takes it out of the
22 realm of moderate bodily injury. You can't even go
23 back to work. He said he went back to work October.
24 He still to this day is not feeling right. His body
25 doesn't work like it used to. It hurts when he

1 moves. It hurts when he picks things up. He's
2 messed up pretty bad. It wholly takes it out of this
3 realm, but you will get to consider that.

4 Next.

5 He's claiming self-defense, so I have to address
6 it. I give it no credence, but I have to address it
7 because he said he was defending himself. Nevermind
8 what the independent witnesses say. Nevermind what
9 the evidence says. Nevermind him admitting to
10 harming himself before he went out there. But he has
11 raised that, so I will address it. There are four
12 elements of self-defense. You have to meet all four
13 elements. If any one of them -- any one of them is
14 flawed, you do not have a self-defense claim.

15 Okay. Number one he fails immediately. You
16 cannot be at fault in bringing on the difficulty.
17 Does any of this occur, again, if he just kept his
18 butt up at Buffalo Creek? Does any of this occur if
19 instead of telling his mom hey, this guy was
20 disrespecting me, take me back down there to the boat
21 ramp? No, it all occurs because Matt Jackson can't
22 keep his cool and can't let a perceived slight go,
23 get it out of your head, he can't. Some people
24 aren't capable of doing that and some people aren't
25 capable of stopping before they act on any

1 information they may have.

2 You know, most people are born with a mechanism
3 if right before they do something, they're going to
4 regret it, they stop and go -- think in their mind
5 and think better of themselves and say I'm not going
6 to do that. I'm going to let it slide. Some people
7 aren't born with that and they act. So he fails the
8 number one requirement of self-defense. He cannot be
9 without -- or he cannot be in fault in bringing on
10 the difficulty. He is the sole reason for the
11 difficulty.

12 Number two, the Defendant has to be in actual
13 imminent danger of losing his life or sustaining a
14 serious bodily injury or he actually believed he was
15 in imminent danger of losing his life or serious
16 bodily injury. Again, he took a knife to a
17 fistfight. I don't know -- they made a big deal
18 about Tony being this hulk, this monstrous, body
19 building beast, who is this hulk of a man. He's a
20 nice guy, but I don't see him as some physical
21 specimen that just would be capable of crushing
22 somebody with their hands. Somebody, who in a
23 fistfight, would cause you to lose your life.

24 Number three is if he actually is basing it on
25 number two, that he felt he was danger of losing his

1 life or sustaining great bodily injury from a
2 fistfight, then he has to show -- or it has to be
3 shown that a reasonable ordinary person would have
4 thought the same thing. So he can say I thought I
5 was going to die in this fistfight. Well, you have
6 to say would a normal person think that? No, I don't
7 think a normal person in their approaching Tony
8 Jackson thinks he's going to kill them with his bare
9 hands. But again, that's not how it happened. He
10 brought on the difficulty, he threw the first blow.
11 He does not get self-defense.

12 Number four, he had to have no other probable
13 means of avoiding the danger.

14 Self-defense, I've have got to address it only
15 because he brings it up. Do not consider it, it is
16 not a valid defense.

17 What's the next slide, Walter?

18 Standard of proof in this case. Burden of
19 proof -- every case I try here, whether it be a
20 murder, whether it be a rape, whether it be a
21 stabbing at a boat ramp, I've got to prove to you
22 beyond a reasonable doubt. Here's what's different,
23 in the same courtroom they have civil trials, too.
24 This is a criminal trial. In South Carolina, you
25 have common pleas and general sessions. General

1 sessions is criminal cases. In a civil case, if
2 y'all were sitting on civil jury, you just have to
3 say well --

4 By the way, in a civil case, it's about money.
5 This case ain't money. Nobody is getting money here.
6 We're trying to say is he guilty of a crime or not?
7 All right. This isn't a money case like a civil
8 case. A civil case is about money. One side is a
9 little bit more right than the other side. That's
10 what it is. The scales tipping one way or the other,
11 that's a civil case. That's not what we're dealing
12 with here. I've got to prove his guilt criminally
13 beyond a reasonable doubt.

14 Does that mean beyond all doubt? There's going
15 to be something in every case I'm never going to be
16 able to answer for. Because necessarily, I was not
17 at the scene of the crime when the crime happened.
18 Otherwise, I would be a witness, okay. So just like
19 you, I will never know 100 percent of what happened
20 that day. I can talk to you, you and you and anybody
21 else that was out there and get your version.
22 Sometimes they mesh almost perfectly, sometimes
23 they're wildly different versions. But I don't have
24 to be 100 percent certain of every single fact to get
25 an idea.

1 A reasonable doubt doesn't require that. It
2 means if you have a doubt, it has to be reasonable
3 and based on logic, okay? I mean, you reasonably
4 believed that Matt Jackson was not at fault here. If
5 so, what is your reason attached to that? Because by
6 his own admission, he thought there was some kind of
7 disagreement. By his own admission, he armed himself
8 with a knife and goes back.

9 So to find him guilty -- or to find him not
10 guilty, you have to have a reasonable doubt. There's
11 no reasonable doubt there. That is the standard. It
12 means if you have a doubt that is reasonable and
13 based on logic, you should find him not guilty.
14 Okay. But if the doubt is not reasonable or if your
15 doubt is not really logical, you find him guilty.
16 Again, you have to be 100 percent certain of
17 everything, no, that's not what reasonable doubt
18 requires. It doesn't require absolute certainty and
19 the Judge is going to tell you that. I think he's
20 going to give you a printed out instruction of his
21 jury charges.

22 Criminal cases does not require proof that
23 overcomes every possible doubt. Based on your
24 consideration of the evidence, you are firmly
25 convinced. That's the best way I can describe it.

1 He's going to say it twice when he reads you what
2 reasonable doubt is, firmly convinced he did what I'm
3 alleging, firmly convinced he did what Tony Jackson
4 said he did and what all those witnesses said he did
5 and find him guilty. That's what beyond a reasonable
6 doubt is. The Judge is going to instruct you on
7 that. That's a very important point of law because
8 that's the standard of proof, that's my burden of
9 proof. Beyond a reasonable doubt.

10 Next.

11 We've been over this.

12 Just click through it, Walter.

13 You've got the motorcycle again. You've the
14 Bogey brothers sitting right here on this bench
15 waiting on a ride. You've got Steven Reed's house.
16 This is going to represent John Platts' truck where
17 he was jumping off the bike. This is going to be the
18 Chrysler 300. That right there is going to be Ashley
19 Platts' silver Trail Blazer. This is, essentially,
20 where they are when Sheila comes sliding in, okay,
21 and initiates the melee. And really, I submit to you
22 Tony Jackson, what he observed and what he thought,
23 it seems consistent. She was probably just some kind
24 of decoy, some kind of smoke bomb they set off so he
25 can creep up from the car he came in, this black

1 Malibu, and catch Tony offguard. Catch him while
2 he's kind of distracted by the fighting of women over
3 here.

4 Next.

5 Don't follow the red herrings. Don't be the
6 hound who is following the target, trying to keep
7 your eye on the ball, then he gets set off to the
8 side by the red herring. DSS has nothing to do with
9 this case. I don't think R.J. has anything to do
10 with the case. R.J.'s is Ashleigh's ex, the little
11 girls' dad. The classic red herring, N.B. , the
12 younger kid yesterday, they asked, well, isn't
13 it true that the day before or day after that you
14 were smoking pot out in the woods? What does that
15 have to do with the price of tea in China? Can y'all
16 connect it with this case in any way? No. It's a
17 distraction.

18 And he's going to argue after me, maybe there's
19 some more, maybe not. I noticed a few during the
20 trial. Those are red herrings. They have nothing to
21 do with June 6th at the boat ramp. They are designed
22 to throw you off the trail. Don't follow them.
23 Don't follow the red herring.

24 What else, Walter?

25 Listen to his recorded interview, okay. Just

1 listen to him, watch his demeanor during this thing.
2 He is all over the place. He cannot square on any
3 one direction, he's all over the place. He has not
4 given a cogent, a halfway believable or consistent
5 story. I challenge you to listen to his words. Ask
6 yourself if they make any sense.

7 Is that it, Walter?

8 He tells you some things. I mean, sometimes
9 there's -- I don't know he knows what he's saying,
10 but he did say some things to get in the mind of
11 Matthew Jackson. Self-defense, he obliterates that
12 at the 46-minute mark. He says, I had too much pride
13 to take an ass whooping. He's whipping my ass, I had
14 too much pride. Not that I was in fear of my life.

15 Steven Reed said it, That shouldn't have
16 happened out there that day. I mean, it really
17 shouldn't have. Like I said, you don't know what's
18 in the mind of the guy right beside you. Y'all
19 probably know that. Maybe it's just -- I disappoint
20 myself sometimes. I blame it on the job, but I've
21 become more cynical with this job seeing things like
22 this, what other people are capable of.

23 Unlike Taylor, I don't necessarily gravitate
24 [indiscernible] but the sports movies, after he kind
25 of quoted, I went back and looked it up -- Pacino is

1 this kind of grizzled, older coach, he seems to be.
2 He does give this riveting speech at a football game.
3 I thought it was a little bit over the top for a
4 football game, but he tries to apply. His quote is,
5 Find out life is a game of vengeance, so is football.
6 Because in any game, life or football, the margin of
7 error is so small. He says, I mean one half a step
8 too late or too early, you don't quite make it, one
9 half second too slow, too fast, you don't quite catch
10 it. Then he says, The inches we need are everywhere
11 around us. They're in every break of the game, every
12 minute, every second.

13 And to me, that's what separates this case from
14 a murder. That's what separates Tony sitting here
15 today looking for a little justice. We hope, that's
16 all we ask for is justice in this case and the truth.
17 And then him being dead. Just a matter of inches.
18 Because one way here, one way there, one artery here,
19 one vein there. You either make it or you're six
20 feet under. Sometimes life is just a game of inches.
21 Luckily, they broke his way that day. But where
22 would we be, where would he be today had it not? We
23 would be in a murder trial.

24 I may get up -- depends on what he says. I'll
25 have an opportunity to get up to respond to some of

1 what he says. But may hear from me briefly once
2 more. I thank you, guys. I thank you for sitting
3 under that cold vent. I told you it was going to be
4 cold. Maybe one day, they'll get it fixed. I thank
5 y'all for being attentive. I thank you for
6 listening. I thank you for your reasonable and
7 logical attention in this matter. You, after all,
8 have to live in Newberry to serve on this jury. You
9 represent the common collective consciousness of
10 Newberry County. What value does Newberry County
11 hold? How does Newberry County -- through the eyes
12 of Newberry County residents, how do they view a
13 crime like this? How do they view the evidence
14 presented? What would they do with it? I ask you as
15 a solicitor here in Newberry County to find him
16 guilty, to told him accountable for what he did that
17 day and all the lives affected by it. I ask you,
18 find him guilty after careful deliberation, after
19 careful review of the evidence, find him guilty of
20 attempted murder, no less. Thank you.

21 THE COURT: Thank you, Solicitor.

22 Mr. Verner, you ready for yours?

23 MR. VERNER: Walter, I'm not going to need the
24 TV. You can turn it off.

25 May it please the Court, Your Honor?

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THE COURT: Yes, sir.

CLOSING STATEMENT

MR. VERNER: Mr. Foreman, members of the jury, I'll try to be a little bit briefer. First and foremost, what the role is of the jury. Members of the jury, there's nothing new you're doing. The jury system you're doing -- the jury system, basically, means instead of the Judge or a king or the State making a decision about an individual or a subject's guilt, he puts it to the citizens in the area. That's different sizes of juries, different -- it goes back to Biblical times, Socrates, those types of jury trials where somebody's faith is put up to the public as opposed to king or Caesar making the decision.

In our Constitution and it's been -- what you're doing is not new. They've been trying people like this for thousand years, since Magna Carte. Before the State or the government can take somebody's life or liberty or property, though this is not a civil case, this is life and liberty case, this an attempted murder charge, the State has to convince 12 people who live in the community without any reasonable possible doubt that the man is guilty of what the State is alleging they did. It's not an

1 academic debate where engineers and teachers come
2 together and try to solve a math equation, you
3 weren't there last year. I wasn't there. We're
4 after the fact.

5 And the only burden is on the State if they try
6 a case, they have to produce -- the burden of proof
7 is two things. It's the burden of production and the
8 burden of persuasion. Production means that they
9 have evidence, they have witnesses, they have a duty
10 to produce them in court and make them testify under
11 oath or be presented to the jury. And then
12 persuasion, which means after they produce the
13 evidence and the witnesses, they have to persuade the
14 jury that all of their allegations are true beyond a
15 reasonable doubt. The jury is not here to find the
16 truth, the jury is here to protect a citizen from
17 being wrongfully convicted. That is your only role
18 in the case.

19 I disagree with Mr. Scott in this sense that --
20 and it's kind of a simplistic argument. If Tony had
21 been killed at the scene, he's saying well, it's
22 automatically murder. Not necessarily. If you find
23 that it was a premeditated murder or a malice
24 aforethought murder, then it's murder. If y'all had
25 decided this was a heat of a passion killing, then it

1 would not be a murder. So that's not even a
2 conclusion.

3 I take exception -- and I will be brief, but
4 there are no independent witnesses in this case. I
5 stand by my opening argument. We know for a fact --
6 and I'm not saying DSS is a party to the case, but
7 that is just the underlying bad feelings for you. It
8 is just part of the case and that is relevant to the
9 issue of these witnesses' credibility. Has that
10 affected the people's willingness to be completely
11 candid? There were no independent witnesses before
12 you. They were all the Cockrell sisters and Tony and
13 their friends, the Platts.

14 The two kids, I think that they were as close to
15 neutral as anybody, but they have for years been
16 hanging out with the Platts and Tony and his family.
17 If I saw a fight and it involved my friend
18 beforehand, I would certainly see it from his
19 perspective. That's what these kids are.

20 And the same way with Mr. Reed, he's not an
21 independent, just good ole' boy sitting out there on
22 the porch. He's -- as Tony was talking about,
23 they're talking on Facebook after the fact. He sees
24 them all the time. He's going to continue to see
25 them and have to deal with them. I think he was

1 trying to be neutral, but I think he was also doing
2 it in a way where these are my friends and these are
3 the people I will continue to see.

4 And I'm going to go over some issues on their
5 case. I will tell you, I don't want you to find
6 lesser included charges. That's the Judge and you
7 and your decision. If they are presented to you,
8 then I have to argue them to you. I think -- I
9 submit to you this is a clear self-defense case.

10 And how do I know that? Because if the shoes
11 were on the other foot and the State was trying to
12 convince you beyond a reasonable doubt that Tony had
13 Matt on the ground, would you be willing to find
14 beyond a reasonable doubt that that fact was true? I
15 think you would.

16 And it's just for several reasons. Tony,
17 multiple times, initially said, I had the man on the
18 ground. And then you combine that with Matt's
19 statement a day after the fight. And this is untrue
20 and you saw Matt's testimony where they say he tried
21 to run away, he don't contact the police. He
22 produced the phone to Garrett Lominack, you see it in
23 his statement, where he said, you know, I did call
24 you, here's my phone. And he shows Garrett the
25 number. The very next day, I tried to call you at

1 eleven o'clock the next morning. And you see Garrett
2 Lominack, Lieutenant, said, That's true. I didn't
3 get the call, though. So that is untrue for the
4 Solicitor to say that he ran and didn't try to get to
5 the police himself the next morning.

6 And I think you can make this case up. The
7 interview before he's got a lawyer, before he's
8 coordinated with friends, before he's seen anybody,
9 he is -- he calls the police the next day, says I'm
10 coming in to turn myself in. He calls from Sumter.
11 They know he's in Sumter. They go ahead and arrest
12 him. They don't want to take the chance that he goes
13 back on his word and doesn't show up. So they go
14 ahead and call Sumter and say he's at his uncle's
15 house, please arrest him. And I don't blame them.
16 But he had called them and said, I'm coming in. It's
17 potentially a big case. They call Sumter and say,
18 We've got a wanted suspect up there, please go ahead
19 and pick him up and they do. And the following day,
20 he brings him back and gives a statement. No lawyer,
21 hadn't met a lawyer, nobody he's consulted with.
22 Within 24, 48 hours after the June 6th incident is
23 Matthew's statement completely unrehearsed. He's not
24 a sophisticated guy. And I think the case is right
25 there in Matthew's statement.

1 How does Matthew even know about a bullhorn? If
2 it didn't happen, how does he know the very next day
3 that there's a bullhorn? He doesn't hang out with
4 Tony. There hadn't been months preparing for the
5 defense before the bullhorn comes in. He tells them
6 the very next day.

7 I will talk to you about the charges. It's not
8 attempted murder. And the Solicitor, I think, it's a
9 fairly minor point, but he says expressed or implied.
10 That's not malice aforethought, expressed or implied,
11 it's actually expressed malice. We'll get the
12 Judge's written charges. Expressed malice means
13 there has to be something open and obvious, like, I'm
14 going to kill you. Expressed. He's laying in wait
15 is the example the Judge uses for expressed malice.
16 That there's something an objective person can look
17 at his actions and tell he's got the intent to murder
18 somebody.

19 And it is -- premeditated murder is murder.
20 It's aforethought. It's the intention, I hate that
21 person, I want to kill him. And the Judge is going
22 to charge you that it has to be a specific intent to
23 kill you. It can't be we're just going to get in a
24 fight and you might get really hurt and die. It
25 means I want him dead. My whole intention is to kill

1 him. Not to hurt him, kill him, put a bullet through
2 somebody's brain. That is a specific intent to kill.
3 You get in a fight and somebody hits his head and he
4 falls down in and of itself is not a specific intent
5 to kill.

6 It's so clear, I wonder why I have to argue it,
7 but you don't go looking for a fight, to start a
8 fight wearing your glasses. You don't go starting,
9 looking for a fight -- he's got one eye. As you
10 heard Deputy Cook testify, last year Tony was
11 equivalent in size of Mr. Cook, Deputy Cook. He
12 testified he's 280-pounds. Tony Jackson was a big
13 man. He's still a big man. He's lost some weight,
14 but he was literally almost twice the size of Matt
15 Jackson. Then you get to look at all the other
16 things. He has all of his friends, John Platts can
17 dance and smile and say I'm not really a big fellow.
18 You saw him. He is a large man. And there is a
19 group of people.

20 You don't keep an old timey -- you don't go
21 intending to kill somebody with a one-inch blade in
22 your pocket, a fingernail knife. It just makes no
23 sense that there's any attempted murder in this case.
24 There's no plan. There's no -- I mean, I just submit
25 to you that keeping an old timey knife -- and he

1 didn't get it out of his mom's car, that's a knife he
2 keeps in his pocket. He says that at first. Just,
3 it boggles my mind if keeping a fingernail knife in
4 your pocket is equivalent of putting a gun in your
5 pocket or lying in wait for somebody in an ambush
6 style. That is just such an awfully low hurdle
7 through attempted murder that I keep a fingernail
8 knife in my pocket and that in and of itself is
9 attempted murder. It just doesn't rise to the level
10 of carrying a gun, lying in wait, poisoning somebody.
11 And it has to be malice. It has to be with specific
12 intent. I want him to be dead. It can't just be I
13 wanted to end the fight, it's I wanted him dead at
14 the end of the day. I don't see how the evidence
15 will convince you beyond a reasonable doubt that this
16 is an attempted murder case.

17 I submit to you the assault and battery of a
18 high and aggravated nature would not be doing justice
19 in this case. And I submit to you the only reason
20 why it's self-defense, it is a defense of any of
21 them, it is a defense of all of them. I'm going to
22 get to self-defense in a second. And the Solicitor
23 talks about well, the lady was charged with assault
24 and battery second degree. She was charged with it.
25 Yeah, she was charged with it, but was she found

1 guilty of it, did she plead guilty of it, was there
2 charges below that? She can be just like her son.
3 She might have been charged pretty high and the duty
4 is now to whittle out where the truth is.

5 One problem, though, is for them to get to great
6 bodily injury, they have to have some kind of
7 evidence that this was a life-threatening injury. So
8 there are really only two ways. It's permanent great
9 disfigurement or the likelihood that he's going to
10 die. The Solicitor got this would have, could have,
11 should have argument to you, you know, if he had
12 died, this would be murder. Would have, could have,
13 should have. If the knife had gone deeper, if the
14 knife was bigger, if it was a razor. That is a
15 wonderful would have, could have, should have case
16 and your job is to find out what did happen. It's
17 not a would have, could have, should have. It's not
18 I threw a rock up in the air and it would have, could
19 have, should have landed on somebody's head. It's I
20 threw the rock and did injure somebody.

21 If there was not self-defense in this case, I do
22 submit to you that assault and battery second degree
23 would be the appropriate conviction rate, charge, at
24 least, because it specifically defines the injuries
25 that Tony Jackson got. I put my paper down, but

1 assault and battery second, basically, requires
2 moderate bodily injury, which means that you get a
3 permanent scar, but it's not a great bodily scar, or
4 that when it's injury to your skin, it requires
5 anesthesia as part of surgery. Correct, that's
6 exactly what we have here.

7 The only surgery done on Mr. Jackson was
8 exploratory to make sure it did not hit any veins or
9 arteries or organs, and it did not. But that was
10 exploratory surgery. That wasn't because of the
11 injuries, that was to make sure they weren't more
12 serious. It was surgery that required general
13 anesthesia to put him -- for the stitches that he
14 picked up. He got five stitches on his worst wound,
15 but it did require anesthesia. And that's exactly
16 how the Judge is going to define moderate bodily
17 injury to you. There has been no medical testimony
18 at all. They are perfectly capable at all times of
19 getting a doctor or some kind of medical personnel in
20 here to tell you. If there was an organ harmed, I
21 promise you, you would have heard that. I do think
22 it is a self-defense case.

23 I do submit to you what the evidence shows
24 happened is Matt shows up at the boat ramp, he's got
25 his dress whites on, he's got his polo shirt and he's

1 going to meet these girls. And they admit -- all the
2 people I called out, they said yeah, that they were
3 there. In fact, they say he was on the dock talking
4 to friends. Said that the children run up and hug
5 him. Tony knows who he is. Tony admitted that's the
6 same guy I saw with R.J. just two weeks ago riding by
7 my house scouting on us, seeing what we're doing for
8 R.J. They knew who he was. Tony, by his own
9 admission to the medical doctor, had been drinking
10 gin and beer. I submit probably a little bit more
11 than he has indicated.

12 And here's an issue. Why would somebody working
13 as a driver for about a year for Pepsi and he's been
14 drinking heavily at the lake and he falls off of a
15 bicycle, got a little bit of a scar, and the hospital
16 says it's not a knife scar, on his elbow, you think
17 they might be leary to get a DUI on a commercial
18 driver's license? I do. And you think that his
19 girlfriend and her sisters might be willing to say it
20 didn't happen quite that way? I don't think that's
21 really relevant to the case, but I think it's
22 relevant to the issue of whether they've given you a
23 truthful story in the beginning.

24 Matt gets to the place, he's looking to hang out
25 with his friends and the girls. Tony sees him. Tony

1 know he's a big guy. Tony intimidates Matt. There's
2 no question, Tony is much bigger young man than Matt.
3 Tony intimidates Matt. I think it's very possible --
4 I don't understand how Matt would know that there was
5 even a bullhorn out there unless a bullhorn was used.
6 Of course, they're not going to admit it. But I
7 don't know how the facts show any other way, but Matt
8 knew to mention it, by the way. Tony starts woofing
9 at Matt. I think Matt is sore and I think he leaves.
10 As he testified, I didn't walk down the road. I
11 walked through the trees so they wouldn't see me
12 leaving and it wouldn't go beyond that.

13 He goes to the bar about a mile away, Buffalo
14 Creek, calls his mom to come get him. That's just
15 another indication that it's not -- you don't call
16 your mom to go commit a murder. He calls his mom to
17 pick him up. And she does. She gets there about an
18 hour later. He's also got his smart phone on him and
19 he's called his cousin, Cameron, who's already
20 independently been at the lake. They all admit it.
21 Cameron has already been at the landing earlier in
22 the day. Casey was there earlier hanging out.
23 They're friends with Casey.

24 And I think Matt has -- and he showed his phone
25 to the deputies. He has contacted Casey and said,

1 yeah, they're threatening me, I'm getting the hell
2 out of here. Cameron says, Well, you know, I'm
3 already behind your mom, I'll meet you there. Mom
4 shows up, picks him up at the Buffalo Room. Tony
5 admitted that Cameron had come by there first on his
6 own. Remember when he talked about, at first, the
7 black car came by itself, came about halfway down the
8 road and then backed back out when they saw Tony?
9 That was Cameron.

10 Then Cameron's still there. Matt and his mother
11 drive up in the white car. Matt sees his friends, he
12 gets out of his mother's car and gets in with
13 Cameron. I do think that they were there the day
14 before. Everybody admits that, that they were there
15 at the lake the day before. The woman wants to go
16 back and get her shoes -- I mean, her Gap pants.
17 Matt doesn't think that's a good idea. But she is
18 one of those mothers that they are threatening my
19 son, I'm going to find out what's happening.

20 And she drives up and they follow her. And the
21 first thing she does -- I think that's exactly true
22 what happened. She is an a irate mother, what's been
23 going or here, and I do think that this verbal
24 confrontations starts with Ms. Sheila. She knows
25 these girls. They know each other. When then start

1 ya-yaing back and forth, Matt walks over there to
2 pull his mother away and he gets cold-cocked. He
3 gets sucker punched. He gets knocked on the ground
4 immediately.

5 There's just no way the story happens the way
6 Tony says it does because he's up here where the road
7 and the parking lot meet each other with the bike.
8 He says the fight happened down here. You remember
9 the boy with the blond hair, Bogey, you remember they
10 said the fight actually happens in the grassy area.
11 Tony says no, the fight happened right here in the
12 middle of the road in the parking lot where the momma
13 was. It's clear that Tony approached Matt and not
14 the other way around.

15 I think that blond-haired kid seemed like he was
16 trying to play it pretty straight, and I think he
17 did. He said clearly the fight happened closer to us
18 at the table, it didn't happen at the car. All of
19 the witnesses say that Tony came down to meet Matt.
20 But the only difference is before the dust had
21 settled, they're worried about oh, my God, they're
22 going to now call DSS. We've got child endangerment
23 allegations against us. Or they're saying we started
24 the fight. And I submit to you that they all rallied
25 the troops. That's exactly what has happened here.

1 They are all friends. I wouldn't want my best friend
2 in this situation to go down. They did it. Then
3 they start making allegations about well, maybe they
4 had guns, too. If people had guns out there, Garret
5 Lominack would have charged them.

6 If this woman was a decoy and just -- that was
7 just completely made up. Just looking for answers.
8 If they thought the woman was a decoy at all, she'd
9 be charged with a greater offense. She would be
10 charged just like Matt. If you're a decoy, you're as
11 guilty is the principle. If they thought that for
12 even a second, she would be charged with a more
13 serious offense. They don't. That's just something
14 Tony made up off the fly yesterday.

15 If I can, I'm just going to just briefly recount
16 some things and then I'm through. Tony Jackson, he
17 was interviewed three times. He was interviewed
18 while he was being treated by the triage staff, he
19 was interviewed a couple days later after he came
20 home and then he testified yesterday. A couple days
21 after the incident, he came in and spoke to Garrett
22 Lominack. He says and he acknowledged he says, He
23 never got a lick in on me at all. R.J. doesn't like
24 me around his kids. Then he talked about how he saw
25 Matt and R.J. riding by his house about two weeks

1 before. He talks about how Matt at the scene had
2 told Ashleigh, R.J. is going to get those kids. Why
3 are they trying to say that we're guilty of child
4 endangerment? But at the interview with Garrett
5 Lominack, he says he never hit me at all. He never
6 even got a single lick in against me.

7 He also -- and you've got the video from Deputy
8 Cook's dash cam. Does he appear that he doesn't know
9 what's going on? He's certainly aware enough to know
10 that somebody's got to get my bike at the scene. His
11 version of the story was -- at that time was that
12 Matt punched my old lady, then six or seven people
13 slid in that were going to jump us and jumped out of
14 car. Interesting, I had Matt on the ground. He
15 wouldn't hit me. Then that's when he said he got
16 stabbed. The same day, within an hour of the fight,
17 I had him on the ground. But I mean, they don't want
18 to acknowledge that anymore. It can't just be I had
19 him on the ground because of this fight, then he cut
20 me. Just to make sure that nobody is going to get in
21 trouble on their end, I never had him on the ground.
22 He testified he never had him on the ground. He
23 twice told cops he did. And maybe he made a mistake,
24 maybe he made a mistake how it's figured out.

25 Look at Matthew Jackson's interview. He shows

1 the injuries. He shows a bloody arm. He shows
2 bloody knees. He shows bloody hands. And then when
3 he stood in front of you the other day, Garrett
4 Lominack said, I do see a black line under his right
5 eye. And I put him as close to you as I could, put
6 him up there. And Garrett says he does appear to
7 have a black mark under his right eye.

8 But now, it's the Solicitor well, I don't care.
9 And then that's just -- these are coming back to you.
10 Well, maybe these got run over by a car or maybe
11 somebody stepped on them. I don't know if y'all have
12 had glasses before or stepped on glasses or
13 particularly have a car run over glasses, then both
14 sides would be bent up. Or my most problem with
15 glasses is they break right here at the ear piece.
16 That's where glasses break when they get run over or
17 stepped on. When a 280-pound guy punches you in the
18 face viciously, that's what happens to your head.
19 And you go and you hit the ground. Then he starts
20 wailing on you and maybe his buddy, John Platts,
21 starts wailing on you, then you get desperate and you
22 pull a knife and you cut them to get them off.

23 What's the other evidence that you see that
24 Matt's story might be true? The 20-dollar bill in
25 his pocket is on the ground. And I'll -- he's

1 getting beat. What other reason is that 20-dollar
2 bill on the ground? You're on the ground, you're
3 trying to protect your head and you got people
4 kicking you and hitting you and you just empty your
5 pocket and you grab something. That's exactly how
6 that 20-dollar bill next to his glasses got on the
7 ground.

8 Thank you, April.

9 Would a reasonable person who's on the ground
10 getting beaten around a crew of people and kicked --
11 and you saw the injuries on him. Would just an
12 average person of ordinary courage who's on the
13 ground taking a beating like that fear that he is in
14 danger of getting seriously hurt? That's all you
15 have to find. If that is true, you've got a duty to
16 find him not guilty. That is self-defense. If a
17 reasonable person would believe that he's got a
18 chance of being -- reasonable chance of being
19 seriously injured, he's entitled to defend himself.
20 He's entitled to defend himself with deadly force.
21 If he believes -- a reasonable person would believe
22 he's in danger of getting seriously injured. If you
23 are on the ground taking a beating, getting your ass
24 whooped, you've got a duty to defend yourself.

25 And to this extent, the Solicitor says well, he

1 has to show you that he was without fault from
2 starting the fight or he has -- he doesn't. That's
3 exactly backwards. The State has to prove beyond a
4 reasonable doubt that it wasn't self-defense. You
5 don't have to prove I defended myself in
6 self-defense. The Judge decides if there's any
7 evidence that there is self-defense, then the State
8 has to disprove self-defense. The burden is not on
9 Matt like the prosecutor said. The burden is on the
10 State to prove beyond any possible doubt that this
11 might have been self-defense. And I don't know what
12 more self-defense is than you being on the ground
13 taking a beating and then you cut somebody with a
14 fingernail knife. That just has all of the marks of
15 self-defense on it.

16 And I understand -- I wouldn't be happy -- if I
17 was Tony Jackson, I wouldn't be happy about getting
18 cut, whether I started the fistfight or not. If it
19 started out as a fistfight, I wouldn't be happy about
20 getting cut. And I completely understand that. The
21 very quote from the Solicitor, Did he not deserve it
22 if he's throwing the first blow? Remember Mr. Scott
23 said that about Matt Jackson? His very words, Did he
24 not deserve it if he's throwing the first blow? And
25 that's exactly the shoe on the other foot. If Tony's

1 the one who threw that first punch, did he not
2 deserve it if he's the one throwing the first punch?
3 This is exactly -- Mr. Scott and I see eye-to-eye on
4 that.

5 And they didn't go to the bar. The Solicitor
6 said well, then they went to the Frayed Knot
7 afterwards. That's not Matt's statement. Matt's
8 statement is we left and we went to the parking lot
9 of the Frayed Knot and I got back in my mom's car and
10 she took me home. So there's no -- the illusion that
11 they went out drinking and celebrating a whooping,
12 that's not true. The statement is, We met up in the
13 parking lot of the Frayed Not because I left in
14 Matt's car.

15 So -- and also, the Solicitor is saying well, he
16 got rid of the knife. Garrett Lominack's testimony,
17 and you see the statement, Garrett says, Where's the
18 knife? Matt's in jail at that point. You see the
19 chains around his chest. Matt says, I don't have it,
20 but it might be -- and you see them then start going
21 to different section where Matt's trying to say where
22 he might have left the knife.

23 And here's the problem, his statement's the same
24 throughout. Matt's statement, they say it changes
25 all through it and it really doesn't. Here's the

1 problem about the case, when their side tells the
2 police they're worried about getting charged and the
3 DSS child endangerment, so they say at first it's a
4 group attacked. You heard Tony say that -- his first
5 statement was that Casey and Cameron also attacked
6 him. Then later on, he backed off that and said it
7 was only Matt. But his initial statement, remember,
8 was that Casey and Cameron attacked me.

9 What Garrett Lominack and the deputies are
10 concerned of is these people have said well, there
11 were guns and there were six or seven people and they
12 came out all of a sudden and attacked us. That's
13 what Garrett thinks Matt's trying to conceal. That's
14 when they say we don't believe your story, they think
15 Matt is trying to cover for Cameron or Casey or some
16 other people. And Matt's not a part of that. He's
17 not in the loop on that. He doesn't understand that
18 they think other people were involved because he
19 hasn't heard their side of it.

20 Matt says, I don't understand what y'all are
21 talking about. This was just me and him. I was
22 there, I admit it, and my mom, what are y'all talking
23 about?

24 And Garrett said, We want to know more.

25 Garrett thinks that this -- the allegations were

1 that this was a gang of people and that there were
2 guns and whatnot. He doesn't realize that this was
3 just two people fighting at the lake.

4 But I submit to you, Matt's story is almost
5 virtually identical throughout the whole thing. I
6 think at some points when we did change his story in
7 minor parts, he's trying to guess to see what Garrett
8 is trying to ask for. You know, Garrett says, you
9 know, you're not telling me everything. And then
10 says, Well, maybe I got the knife out of my mom's
11 car. He's guessing after that point. But his story
12 is, essentially, the same throughout.

13 The only thing I would just like to close on is
14 you can be drinking -- and was the lady, the hair
15 company, testimony, you think that she was a
16 fairly -- that was probably the most honest person
17 y'all heard from. I was only there after the fact,
18 all I know is they had been drinking. Of course,
19 they don't even admit that much. We were barely
20 drinking. We weren't just partying ourselves. And
21 they were all drinking gin out of a bottle. When
22 Ashleigh said -- you know, was there marijuana out
23 there, when I asked her was there marijuana, she
24 said, Well, that wasn't me. It may not have been.
25 But that's part of what -- they're having -- the

1 parents are partying, too. They're drinking. Tony's
2 drinking. Tony's drinking gin straight out of the
3 bottle. Seagram's. He's been there for hours at the
4 lake drinking.

5 It just strikes me, for John Platts' testimony,
6 the big guy who says he's just an average, small guy,
7 by the time he testified to you, it was just that
8 Cameron and Casey might have been mean mugging, you
9 know, giving mean faces during the fight when
10 everybody saw they virtually had no role at all. If
11 they did, they would be charged. If there was any
12 evidence they had guns or weapon or were a part of
13 this, I would be defending them. But I just think a
14 reasonable person like me, if I was involved -- I've
15 seen fights before. I've seen fistfights before all
16 the time. If I saw a fight with guns involved in it,
17 that would stand out to me a little bit more and I
18 would be telling you guys, there was a fight there,
19 but there were guns there, too. I just question why
20 that fact didn't get brought out. Nobody thought to
21 mention to you that yeah, we saw people with guns out
22 there, too. Well, maybe they were just mean mugging.
23 It's just the best friend of Tony.

24 J.B. [REDACTED], they had known him for years, the
25 kids. He acknowledges they had been drinking all

1 day. The only thing -- when you look at that
2 overhead, the only issue I've got with J.B. is look
3 how far away the picnic table is from the actual
4 parking lot. They might have been there and they
5 seem to have been there, but they were not closely
6 involved in it.

7 Steven Reed, I wish I could tell you something
8 specific about him, the good ole boy drinking or
9 smoking a cigarette on the upstairs balcony. Well,
10 first off, here's just one thing, he says clearly the
11 fight happened in the top left-hand corner of the
12 parking lot between Matt and Tony. Tony's version
13 has it actually in the middle of the parking lot and
14 the Bogey boys actually have it in the bottom
15 right-hand corner. So he's got the wrong area of the
16 fight. And he remembers for a fact, remember, he
17 said it several times, he remembers Tony pushing that
18 bike up the hill. I was laughing. Do you remember,
19 I clearly saw him pushing the bike up the hill and I
20 was laughing, thinking that bike's gone out again.
21 Tony's version, my girlfriend in the bathing suit was
22 riding on the back of it and I drove it up the hill.
23 One of those guys is wrong.

24 And just other inconsistencies, that the trees
25 never really -- that winter doesn't look any

1 different than fall or summer out there at the lake.
2 Apparently, I don't cut dead trees out around my
3 house. The fact that he's Facebook friends and
4 didn't really acknowledge that. That he sees him --
5 he knows Tony well enough to know when we talk about
6 the guy with a bullhorn, well, that's Tony. I don't
7 know these guys at all, but when I hear talk about
8 the guy with the bullhorn, I know they're talking
9 about Tony.

10 The fact that the State is saying that they have
11 other witnesses, but because somebody is in jail or
12 in a rehab program, they're unavailable. Don't worry
13 about what these guys have because it's impossible
14 for us to get somebody out of jail and get them to
15 the courthouse to testify. That's just not true.

16 Just Antonio, he's not just aware of the DSS
17 case, he's a main part in it. You think that
18 fighting over children sometimes can't raise bad
19 blood between mom and dad. Now, you get DSS involved
20 and allegations of bad behavior or drug use, you
21 don't think that creates some animosity or bias
22 against people, I do. I do think -- I don't know how
23 the DSS -- I'm not asking you to say it's a red
24 herring or find somebody guilty or not guilty because
25 there is a DSS case. I'm just asking you to consider

1 that when you consider people's credibility or
2 trustworthiness, you factor everything in
3 consideration about whether there was prior bad blood
4 between these people. Tony's own version, that I
5 remember Matt just two weeks ago was riding by my
6 house with Russell.

7 Attempted murder. If y'all have found that this
8 was a planned, cold-blooded, I specifically want the
9 man dead, y'all have a duty to find that man guilty.
10 I'm sorry, I've tried a lot of case here in Newberry.
11 I do other cases. The Solicitor tries a lot of cases
12 that move on through. It's an important deal for
13 Matthew Jackson, who grow up here in Newberry. But
14 the lawyers and the cops and everybody else, we move
15 on, we've got other cases to try. You've got a sworn
16 oath that you will hold the State to the burden of
17 beyond a reasonable doubt. Attempted murder is not
18 even close. Even if Tony Jackson, God forbid, had
19 been killed, this would not be a murder case, this
20 would be a heat of a passion case. And in a murder
21 case, self-defense is a defense of that. It's just
22 not even close to an attempted murder case.

23 I submit to you, they, by they, I mean Tony and
24 the Cockrell sisters, want you to convict somebody
25 that they don't like and they're willing to give you

1 untrue testimony. Their version of the facts have
2 changed dramatically. All of them have given
3 different versions of the case. You can look on the
4 videotape and you can see that their testimony has
5 changed. Tony's version has changed three times,
6 each time minimizing his role, each time it's
7 greater. And they want you to convict somebody of
8 attempted murder and they're willing to lie to get
9 that done. And that is a problem.

10 I submit to you it is not assault and battery of
11 a high and aggravated nature. They have given you no
12 evidence at all that this is a life-threatening
13 injury. I saw the scars on the man. They have to
14 convince you that those are great, severe
15 disfigurement.

16 You got assault and battery second, that says
17 that if somebody has scars on them and they require
18 an anesthesia to fix the scars on you, that is
19 assault and battery second degree by definition. A
20 scar is putting scars on somebody from cutting them
21 and then requiring anesthesia to put stitches or
22 sutures on you is assault and battery second by
23 definition. The Judge is going to give you that
24 statute. If there was no self-defense in this case,
25 I would be arguing this is an assault and battery

1 second degree.

2 I don't see how y'all even get to that charge
3 over the self-defense charge. I think factually that
4 would be the proper conviction. I just don't know
5 how you get to that charge over self-defense when
6 you've got a man on the ground, when you are beating
7 and we know you're beating him. You can see the
8 scars on him. They're not playing around. This
9 ain't wrestling, this ain't hair pulling, they are
10 beating him to a inch of his life. And in
11 desperation, he starts cutting with a knife in his --
12 with a fingernail knife in his pocket.

13 Without even getting to the legalese, if I saw
14 the fight as a witness, I would say well, that guy
15 was defending himself. I think any reasonable person
16 watching that fight would say well, what did that guy
17 expect if he's beating a guy on the ground like that?
18 And I'm sorry about the injury. I think Tony
19 probably is a nice guy on the whole. I do think that
20 he got inebriated, he got a little bit of bad
21 feelings from prior incidents getting ginned up in
22 him -- he's got gin in him and he took it out on
23 somebody who probably did not have the same
24 intention, did not have same intention to fight.
25 Somebody who took a beating, some smaller guy with a

1 glass eye and glasses. He's not saying I had too
2 much pride to get beat up or get my ass whipped, he
3 said I was getting my ass whipped and I defended
4 myself by cutting him. And that is the case.

5 It doesn't get any more complicated than that.
6 This is a case if we were out there as witnesses and
7 saw it, I think some of us in the jury would say I
8 think maybe the guy had it coming. It shouldn't have
9 been this way, it shouldn't have started this way. I
10 think the guy kind of had it coming, just like the
11 Solicitor said out of his own mouth.

12 Matthew -- this green line is Tony's version of
13 where the fight happened, when, clearly, he's up
14 here. He can only get to this fight by walking down
15 to Matt. Why is Matt walking from down to up?
16 Because that also his sisters -- where the sisters
17 are beating up his mother, knocking her teeth out.

18 Here's the two possibilities, and it really is
19 this simple, okay? There are two possibilities why
20 Matt took this green line. One, he's going straight
21 after Tony like Tony claims; or two, maybe he's going
22 up there to check on his mother and get his mother
23 the hell out of the fight. If it is as Tony says,
24 then you've got that fight. If it's even a
25 possibility that Matt was going up there to get the

1 girls off his mother or get his mother off the girls,
2 he's clearly entitled to a not guilty.

3 The picnic table is way over here. You can see
4 in the overhead picture. The Bogey boy is saying the
5 fight happened right over here in the edge of the
6 grass. Tony's version that it happened over here.
7 You remember the blue eyes? Who's the metal artist,
8 Mr. Reed. Where Mr. Reed says the fight happened
9 between -- this is one of those incidents there were
10 a lot of eyeballs and they all remember it
11 differently the next day. Some of them are all kind
12 of the same family, same team, been through the court
13 system before. And they have gotten together to give
14 you a slightly different version and that version
15 just coincidentally goes to her and ex's friend, who
16 they don't like. I submit to you that is
17 emphatically unfair to put somebody in prison for.

18 THE COURT: Thank you, Mr. Verner.

19 Solicitor, any brief reply argument?

20 CLOSING STATEMENT

21 MR. SCOTT: Yes, sir, just a few things, not a
22 lot.

23 I like my colleague, Charles Verner. We try a
24 lot of cases. He's right, the role of solicitor,
25 he's very good at it -- or the role of a defense

1 attorney, he's very good at it. I can put together a
2 picture, I can put together a puzzle and I turn
3 around and walk out of the room and he just scrambles
4 it up in no time. Those red herrings come about.
5 And I think he may have misremembered things or maybe
6 seen it differently than maybe I do. You guys need
7 to really rely on what you heard, not what I say or
8 not how he remembers things. But just a number of
9 things that I heard him say that was not the
10 testimony, that was not the evidence. And you are to
11 rely on the evidence, not what he says, again, not
12 what I say.

13 I do point out, it struck me when he says he did
14 not get that knife from somewhere else, he had it in
15 pocket all along. Who are we to believe, him or his
16 own client? His own client admits he retrieved the
17 knife out of the mother's car.

18 (WHEREUPON, a video was played.)

19 MR. SCOTT: I didn't get the knife until I was
20 in my mother's car.

21 So why did the Defense attorney say he had it
22 the whole time? Let's focus on the evidence that was
23 produced at trial. Focus on the evidence you're
24 going to consider right there. Drinking out of a
25 bottle, whoever said anybody was drinking straight

1 out of a bottle? We didn't hide drinking. Every one
2 of my witnesses I asked, were you drinking. Every
3 one of my witnesses, except John Platts, said yeah, I
4 was drinking. I drink gin, that's what I drink. One
5 girl, I can't remember, I think it was Ayleah, he
6 asked, were you mixing drinks? She said, I don't mix
7 drinks. We were drinking. Nobody said anything
8 about drinking out of a bottle.

9 On the ground -- and then the dollar bill flying
10 out, there was no testimony of that. That is
11 something he just concocted before you. I don't know
12 how the glasses got broken, okay. I submit to you if
13 you look at these, this is bent up. It does not look
14 like somebody got socked in the face and bent this
15 frame up here. And if it had, how is that not
16 scrapping his eye or his cheek? I don't know how
17 they got damaged. Maybe he did punch him and that
18 happened, I don't know. That doesn't look like it,
19 but that's fairly irrelevant. Because all the
20 testimony is Matthew Jackson struck him first.

21 And to say Steven Reed was not an independent
22 witness is a complete falsehood. He testified he
23 didn't know them. The only reason he knew about the
24 bullhorn was he talked hearing him warn the children
25 to get out of the way, the boat was coming in or out

1 of the water. They weren't friends, they didn't know
2 each other until afterwards. Until, sadly, Matthew
3 Jackson brought them together.

4 Bogey brothers, not there with them that day.
5 They were acquaintances who had seen each other at
6 the lake before. They were not friends. They were
7 independent witnesses. He even said he thought the
8 kid was straight up. I did, too. Did he have any
9 reason to lie? Did he have any reason to make it up?
10 No. He told law enforcement that same thing at the
11 time, the Bogey brothers did. He told Garrett
12 Lominack what he saw at the time. It's not like he
13 concocted that from the stand yesterday, half a year
14 later. That's what he's been saying the whole time.
15 Steven Reed, they called 911 right then when this all
16 happened. It's not like they colluded, they
17 conspired with Tony to come up with this story. No.

18 Falling off the bike. No testimony whatsoever
19 to that. And I don't know what that means. I think
20 they want you -- they want that story to come out
21 because they want to say he was so hammered that he
22 falls off the motorcycle. Nobody saw that happen.
23 The only person you heard that from was the Defense
24 attorney, who was not there that day. I hope not or
25 else I should have called him as a witness, but he

1 was not there that day. The only person you heard it
2 from was the Defense attorney. Nobody else said
3 that.

4 And the whole thing about the glasses. You
5 don't fight a guy wearing glasses. You don't go to a
6 fight wearing glasses. In his opening statement, he
7 said the guy is legally blind. If you're going to
8 fight and you can't see without your glasses,
9 sometimes you just got to fight with your glasses on.
10 Okay. I don't know what that proves or disproves,
11 but it's just an irrelevant part of the story that he
12 keeps harping on those stupid glasses.

13 The fingernail knife. There's been no testimony
14 about that. That comes from the Defense attorney,
15 not through evidence. I wish we had the knife here.
16 But at the 19-minute mark, what happens, they ask,
17 Where is the knife? He said, I don't know what I did
18 with it. This is two days later when he fled the
19 county, fled to Sumter, got rid of the knife. He
20 just doesn't know where it is. So in two days, he's
21 forgot what he did with it. I would be showing it to
22 you right now had he finally told law enforcement
23 where it was. He's had, this is June 6th, I don't
24 know since June 6th -- I mean, June 8th to tell law
25 enforcement where it was. We don't know where

1 because they did a good job hiding it. But I wish I
2 could show you whether it was a fingernail knife or a
3 longer knife, a box cutter. He admits that there was
4 a knife, so we know that.

5 That's why it's not A and B second, okay. Yeah,
6 maybe he's right, maybe it would be an A and B
7 second, but that pesky knife. Had he been fighting
8 fist-to-fist like his mother, maybe he would be
9 appropriately charged with A and B second. The knife
10 takes it out of the realm of assault and battery
11 second degree. And the stakes are higher when you
12 bring a knife to a fistfight.

13 Attempted murder, okay. You know, had he died
14 out there and he -- again, I think that is a good
15 logical way to look at this thing. If Tony died out
16 there and then they arrested him and he goes, well,
17 shoot, I didn't mean to kill him. You stabbed him
18 with a knife, right? Well, yeah. Well, isn't that a
19 natural consequence of stabbing somebody? Are you
20 completely shocked when somebody dies after stabbing
21 them? It is a natural outcome. It is not unexpected
22 if you stab somebody four or five times and they die.
23 You don't sit there later and go wow, I never saw
24 that coming. No, it's a natural outcome. And that's
25 why we have these graduated assault and batteries.

1 That's why he was charged with attempted murder.

2 The Judge is going read to you, this is his
3 charge, attempted murder is the performance of act or
4 acts which tends, but fails to kill a human being.
5 Stabbing has a pesky way of killing things. Any
6 living thing, you stab it and it dies, you shouldn't
7 really be all that surprised. Okay. That's
8 attempted murder. Say no, this is just assault and
9 battery second. That's the same thing his mom was
10 charged with. His mom was charged for punching that
11 girl in the face, let's charge him with that, too.
12 No.

13 He talks about the interview. Well, he didn't
14 have a lawyer. Tony didn't either when he was
15 talking to the police. You know, listen to his
16 interview, okay. Don't let his lawyer put words into
17 his mouth. Remember what you remember. Don't let
18 his lawyer tell you what you should remember and what
19 he thinks happened.

20 Tony intimidates Matt. Matt's this hulk. Not
21 Matt -- excuse me, Tony intimidates Matt. Tony's
22 this hulk. You saw him. He stood right beside me.
23 If he's so intimidated, why would he leave the scene
24 and come back later? If I'm scared of a guy, I don't
25 leave and go sit at a bar and drink at Buffalo Creek,

1 then go back to confront this guy again. I don't do
2 it if this guy intimidates me.

3 Listen to what the witnesses said. Listen to
4 what the evidence shows. Listen to what the
5 Defendant himself says. Look at him fleeing.
6 There's evidence of flight from the scene and him
7 ditching the knife. To this day, we don't know where
8 it is. Look at all that.

9 Again, I'm sorry, I'm done. Some things are so
10 obvious, I hate to belabor the point, but it is
11 crystal clear, the facts, the evidence. I'm going to
12 ask you to render the only verdict justice speaks to
13 you and that is a verdict of guilty of attempted
14 murder charge. Thank you again.

15 THE COURT: All right. Thank you, Solicitor.

16 Mr. Foreman, ladies and gentlemen of the jury, I
17 think this would be a good time to take a break.
18 We're going to take one before I bring you back out
19 for final charge on the law. Again, remind you no
20 discussion about this case yet. And we'll get you
21 back in just a little bit. But let's take us a good
22 break. I know everybody is kind of tired right now.

23 (WHEREUPON, the jury left open court at
24 approximately 2:27 p.m.)

25 THE COURT: All right. Let's take a break. Got

1 the final, final, final draft of the charge. Y'all
2 take a look at that. You can hand one out, please.

3 (WHEREUPON, a short break was taken.)

4 THE COURT: All right. Let's put on the record
5 that we had a charge conference and the position of
6 the Defense, Mr. Verner, you wanted, of course,
7 attempted murder charge, but also assault and battery
8 of a high and aggravated nature, assault and battery
9 one, two and three charged as lesser included,
10 correct?

11 MR. VERNER: I, initially -- Your Honor, my
12 position is I just want the assault and battery
13 second degree as the only lesser included.

14 THE COURT: Right. Okay.

15 MR. VERNER: But the Court indicated that it was
16 going to -- the reason for that was assault and
17 battery, the injuries, in my opinion, more
18 specifically covered the elements. The Court
19 indicated that he was going to charge on assault and
20 battery high and aggravated nature, too. I had asked
21 for assault and battery first degree. And I think
22 the Court overruled me on that one.

23 THE COURT: That's right.

24 And the State wanted just assault and battery of
25 a high and aggravated nature charge as the lesser,

1 correct?

2 MR. SCOTT: In a perfect world, but I think we
3 did have to concede that A and B second would
4 probably be an appropriate charge.

5 THE COURT: Right.

6 MR. SCOTT: Just pretty much no good argument
7 against it. So we did concede that A and B second
8 was probably appropriate. We had the issue with A
9 and B first, Your Honor.

10 THE COURT: And I, ultimately, decided not to
11 charge that. So what we have in the charge, of
12 course, is attempted murder, assault and battery of a
13 high and aggravated and assault and battery second.
14 The State also conceded to the self-defense being
15 charged, correct?

16 MR. SCOTT: Yes, sir. Just all the appellate
17 issues without failure to charge, we never saw this
18 as a self-defense case. However, he did raise in his
19 interview, taped interview, that there was some
20 possible self-defense aspect of it. So we thought
21 when the appellate courts review it, that would be
22 appropriate to charge self-defense.

23 THE COURT: All right. Very good. I did add
24 some -- you'll see it in this last charge concerning
25 malice aforethought, we inadvertently did not put in

1 the malice being implied. Certainly, I honored
2 Belcher and did not include any language about use of
3 a deadly weapon, but we did add a few little extra
4 things in the attempted murder. So we'll proceed
5 forward. And I'll give you an opportunity at the
6 conclusion of the charge to make any other notations.

7 All right. Let's bring the jury out, Madam
8 Bailiff.

9 (WHEREUPON, the jury came into open court at
10 approximately 2:54 p.m.)

11 THE COURT: The jury is back in.

12 JURY CHARGE

13 Mr. Foreman, ladies and gentlemen of the jury, I
14 now will charge you the law that is applicable to
15 this case. And you must consider the charge as a
16 whole and not focus on some portions to the exclusion
17 of other portions.

18 Once again, the indictment charges the Defendant
19 with attempted murder. I remind you, the fact that
20 the Defendant was arrested, charged and indicted in
21 this case is not evidence in this case and cannot be
22 considered by you as evidence of guilt in this case,
23 nor does it create any presumption or inference of
24 guilt. This document is simply the formal written
25 instrument which contains the charge made against the

1 Defendant. It's the formal document by which this
2 case is brought into this court.

3 The Defendant has pled not guilty to this
4 indictment and that plea puts the burden on the State
5 to prove the Defendant guilty. A person charged with
6 committing a criminal offense in South Carolina is
7 never required to prove himself innocent. I charge
8 you that it is an important rule of law that a
9 defendant in a criminal trial, no matter what the
10 seriousness of the charge may be will always be
11 presumed innocent of the crime for which the
12 indictment was issued unless guilt has been proven by
13 evidence satisfying you of that guilt beyond a
14 reasonable doubt.

15 This presumption of innocence does not end when
16 you begin your deliberations, but it accompanies the
17 Defendant throughout the trial until you reach a
18 verdict of guilt based on evidence satisfying you of
19 that guilt beyond a reasonable doubt.

20 Now, this presumption of innocence is like a
21 robe of righteousness placed about the shoulders of
22 the Defendant which remains with the Defendant unless
23 it has been stripped from the Defendant by evidence
24 satisfying you of the Defendant's guilt beyond a
25 reasonable doubt.

1 This presumption of innocence is not mere legal
2 theory, it's not just a legal phrase, it is a
3 substantial right to which every defendant is
4 entitled unless you, the jury, are satisfied from the
5 evidence of the Defendant's guilt beyond a reasonable
6 doubt.

7 Now, concerning reasonable doubt, some of you
8 may have served as jurors in civil cases where you
9 were told that it is only necessary to prove that a
10 fact is more likely true than not true, such as by
11 the greater weight or the preponderance of the
12 evidence. But in criminal cases, the State's proof
13 must be more powerful than that. It must be beyond a
14 reasonable doubt.

15 Proof beyond a reasonable doubt is proof that
16 leaves you firmly convinced of the Defendant's guilt.
17 Now, there are very few things in this world that we
18 know with absolute certainty. And in criminal cases,
19 the law does not require proof that overcomes every
20 possible doubt. If, based on your consideration of
21 the evidence, you are firmly convinced that the
22 Defendant is guilty of the crime charged, you must
23 find the Defendant guilty. If on the other hand, you
24 think there's a real possibility that the Defendant
25 is not guilty, you must give the Defendant the

1 benefit of the doubt and find him not guilty.

2 Now, I remind you once again, ladies and
3 gentlemen, during this trial, you and I have had
4 certain duties to perform. As the trial judge, it
5 has been my responsibility to preside over the trial
6 of this case and I also have the duty to rule on the
7 admissibility of the evidence offered during this
8 trial. You are to consider only the competent
9 evidence before you. If there was any testimony
10 ordered stricken from the record in this case during
11 this trial, you must disregard that testimony. You
12 are to consider only the testimony which has been
13 presented from this witness stand, any exhibits which
14 have been made part of the record in this case and
15 any stipulations of counsel.

16 I have the additional duty to charge you the law
17 that applies to this case. As the presiding judge, I
18 am the sole judge of the law in this case and it's
19 your duty as jurors to accept and apply the law as I
20 now state it to you. If you already have any ideas
21 as to what the law is or what the law ought to be and
22 it does not agree with what I now tell you the law
23 is, you must abandon your idea because you are sworn
24 to accept the law and apply the law exactly as I
25 state it to you.

1 In every case tried in this court before a jury,
2 the jury becomes the sole and exclusive judge of the
3 facts in the case. A trial judge cannot intimate,
4 state, comment on or make any statements to the trial
5 jury about the facts of the case. Since you, the
6 jury, are the sole judge of the facts of this case,
7 you are not to infer from what I have said during the
8 progress of this trial in ruling upon the
9 admissibility of evidence or otherwise, or anything
10 that I say now during the course of this instruction
11 to you, that I have any opinion about the facts of
12 this case. The law does not allow me to have an
13 opinion about the facts in this case. This is a
14 matter solely for you, the jury, to determine. As
15 jurors, it is your duty to determine the effect,
16 value, weight and truth of the evidence presented
17 during this trial.

18 Now, Mr. Foreman, ladies and gentlemen of the
19 jury, they are two types of evidence which are
20 generally presented during a trial, that being direct
21 evidence and circumstantial evidence. Direct
22 evidence directly proves the existence of a fact that
23 does not require deduction. Circumstantial evidence
24 is proof of a chain of facts and circumstances
25 indicating the existence of a fact.

1 Crimes may be proven by direct evidence,
2 circumstantial evidence or a combination of the two.
3 The law makes distinction between the weight or value
4 to be given to either direct or circumstantial
5 evidence. However, to the extent the State relies on
6 circumstantial evidence, all of the circumstances
7 must be consistent with each other and when taken
8 together, point conclusively to the guilt of the
9 accused beyond a reasonable doubt. If these
10 circumstances merely portray the Defendant's behavior
11 as suspicious, the proof has failed.

12 Once again, the State has the burden of proving
13 the Defendant guilty beyond a reasonable doubt. This
14 burden rests with the State regardless of whether the
15 State relies on direct evidence, circumstantial
16 evidence or some combination of the two.

17 Necessarily, ladies and gentlemen, you must
18 determine the credibility of witnesses who have
19 testified in this case. Credibility simply means
20 believability. It becomes your duty as jurors to
21 analyze and to evaluate the evidence and determine
22 which evidence convinces you of its truth.

23 In determining the believability of witnesses
24 who have testified in this case, you may believe one
25 witness over several witnesses or several witnesses

1 over one witness. You may believe a part of the
2 testimony of a witness and reject the remaining part
3 of the testimony of that same witness. You may
4 believe the testimony of a witness in its entirety or
5 reject the testimony of a witness in its entirety.
6 You may consider whether any witness has exhibited to
7 you any interest, bias, prejudice or other motive in
8 this case. You may also consider the appearance and
9 manner of a witness while on the witness stand.

10 Now, I instruct you and emphasize the fact that
11 the Defendant did not testify is not a factor to be
12 considered by you in any way in your deliberations
13 and in your consideration on the question of the
14 guilt or innocence of the Defendant. It must not be
15 considered by you in any manner whatsoever. A
16 defendant has the Constitutional right to remain
17 silent and an assertion of that right must not be
18 consider by you in your deliberations.

19 I repeat, under your oath, you are to draw no
20 conclusions whatsoever from the fact that the
21 Defendant in this case did not testify. The fact
22 that this Defendant did not testify should not even
23 be discussed in the jury room. The burden of proof,
24 as I have stated to you, is on the State. The
25 Defendant is not required to prove his innocence.

1 The burden of proof remains on the State to prove
2 guilt beyond a reasonable doubt.

3 Now, concerning attempted murder, which he has
4 been indicted on, in order to prove this crime, the
5 State must prove the Defendant had the specific
6 intent to kill, attempted to kill another person with
7 expressed or implied malice aforethought.

8 Malice is hatred, ill will or hostility towards
9 another person. It is the intentional doing of a
10 wrongful act without just cause or excuse and with an
11 intent to inflict an injury or under circumstances
12 the law will infer an evil intent.

13 Malice aforethought does not require that malice
14 exist for any particular time before the act is
15 committed, but malice must exist in the mind of the
16 Defendant just before and at the time the act is
17 committed. Therefore, there must be a combination of
18 the previous evil intent and the act.

19 Malice aforethought may be expressed or
20 inferred. These terms do not mean different kinds of
21 malice, but merely the manner in which malice may be
22 shown to exist by direct evidence or circumstances
23 shown to have existed. Expressed malice is shown
24 when the person speaks words which express hatred or
25 ill will for another, or when the person prepared

1 beforehand to do the act which is later accomplished.
2 For example, lying in wait for a person or any other
3 acts of preparation going to show that the deed was
4 within the Defendant's mind would be expressed
5 malice. Expressed malice is the deliberate intention
6 unlawfully to kill a human. Malice may be inferred
7 from conduct showing a total disregard for human
8 life.

9 Attempted murder is performance of an act or
10 acts which tend, but fail to kill a human being, when
11 such acts are done with expressed or implied malice.
12 The State must prove beyond a reasonable doubt that
13 the Defendant had a specific intent to commit
14 attempted murder. Specific intent means that the
15 Defendant consciously attempted the completion of
16 acts comprising the attempted offense.

17 Now, ladies and gentlemen, the lawyers have
18 already mentioned lesser included offenses. The
19 first lesser included offense is assault and battery
20 of a high and aggravated nature. If you find that
21 the State has not proven the Defendant is guilty of
22 attempted murder beyond a reasonable doubt, then you
23 must determine whether the State has proved that the
24 Defendant is guilty of assault and battery of a high
25 and aggravated nature beyond a reasonable doubt.

1 A person commits the offense of assault and
2 battery of a high and aggravated nature if the person
3 unlawfully injures another person and great bodily
4 injury to another person results or the act is
5 accomplished by means likely to produce death or
6 great bodily injury.

7 Great bodily injury means bodily injury which
8 causes a substantial risk of death or which caused a
9 serious or permanent disfigurement or protracted loss
10 or impairment of the function of a bodily member or
11 organ.

12 Secondly, assault and battery in the second
13 degree. If you find that the State has failed to
14 prove the Defendant is guilty of attempted murder and
15 assault and battery of a high and aggravated nature
16 beyond a reasonable doubt, then you can decide
17 whether the State has proved that the Defendant is
18 guilty of assault and battery in the second degree.

19 A person commits the offense of assault and
20 battery in the second degree if the person unlawfully
21 injures another person or offers or attempts to
22 injure another person with the present ability to do
23 so and moderate bodily injury to another person
24 results or moderate bodily injury to another person
25 could have resulted.

1 Moderate bodily injury means physical injury
2 that involves the long loss of consciousness, or that
3 causes temporary or moderate disfigurement or
4 temporary loss of the function of a bodily member or
5 organ or injury that requires medical treatment and
6 the treatment requires the use of regional or general
7 anesthesia or injury that results in fracture or
8 dislocation. Moderate bodily injury does not include
9 one time treatment and subsequent observation of
10 scratches, cuts, abrasions, bruises, burns, splinters
11 or any other minor injuries that do not ordinarily
12 require extensive medical care.

13 Now, the Defendant has raised what is known in
14 the law as the defense of self-defense. The law
15 recognizes the right of every person to defend
16 himself or herself or a friend, relative or another
17 from death or from sustaining serious bodily injury.
18 To do this, a person may use such force as is
19 reasonably necessary even to the point of taking
20 human life where such is reasonable.

21 The right of self-defense is founded upon
22 necessity, either actual or reasonably apparent
23 necessity. It is a complete defense to a charge of
24 attempted murder or the lesser included assault and
25 battery charges should you find that it exists based

1 upon your evaluation of the evidence produced during
2 the trial of this case. The existence of
3 self-defense entitles a person charged with the
4 commission of attempted murder or the lesser included
5 assault and battery charges to a verdict of not
6 guilty.

7 The burden of proof is not on the Defendant to
8 prove the existence of self-defense. As I've already
9 told you, the burden is always upon the State to
10 prove the Defendant's commission of the crimes
11 alleged against him beyond a reasonable doubt. This
12 would, therefore, necessarily require that the State
13 prove beyond a reasonable doubt the absence of
14 self-defense. But in order for you to consider the
15 defense of self-defense, you, obviously, must know
16 what the elements are. And there are four basic
17 elements, all of which are required before
18 self-defense may be established.

19 First element, it must be shown that the
20 Defendant was without fault in bringing on the
21 immediate difficulty which gave rise to the necessity
22 of using deadly force which resulted in the alleged
23 injuries. One claiming self-defense cannot provoke,
24 initiate or otherwise through his own fault bring
25 about a difficulty and then claim the right of

1 self-defense in the use of deadly force against an
2 attack which was caused by that provocation.

3 Second element, it must be shown that at the
4 time the act was committed, the Defendant actually
5 believed that he was imminent danger of losing his
6 life or sustaining serious bodily injury, or some
7 other person was, or that the Defendant actually was
8 in such imminent danger. And the term imminent
9 danger means immediate or present danger, not a past
10 or future danger.

11 Third element, if the defense is based upon a
12 belief of imminent danger, then it must be shown that
13 the belief was reasonable, that is a reasonably
14 prudent person of ordinary firmness and courage would
15 have entertained the same belief. If the Defendant
16 or the other person being defended actually was in
17 imminent danger, then it must be shown that the
18 circumstances were such as would warrant a person of
19 ordinary prudence and courage to inflict the fatal
20 injury in order to save themselves or some other
21 person from death or serious bodily injury. In other
22 words, must be shown that a reasonably prudent person
23 of ordinary firmness and courage if acting under the
24 same or similar circumstances would have reached the
25 same conclusion and entertained the same belief.

1 Deadly force is only appropriate when necessary
2 and may only be exercised where the Defendant
3 entertains a reasonable belief that he or some other
4 is about to sustain loss of life or suffer serious
5 bodily harm. The law of self-defense encompasses
6 preventative action taken to protect one's own life
7 without another if such action is taken in
8 anticipation of imminent danger of losing one's life
9 or sustaining serious bodily injury.

10 Words accompanied by hostile acts may, depending
11 upon the circumstances, establish a plea of
12 self-defense. A defendant has the right to act upon
13 appearances. He may be mistaken. The law does not
14 hold someone to a refined assessment of the danger as
15 might be accomplished having an adequate time to
16 reflect, provided however, that the Defendant has
17 acted as a person of ordinary reason, firmness and
18 courage would have acted or should have acted in
19 meeting the appearance of the danger. In other
20 words, one does not have to wait until his or her
21 assailant gets the advantage, for one always has the
22 right under the law of self-pervasion to prevent
23 another from getting an advantage.

24 Again, there is, however, a requirement of
25 objectivity. Any such belief must be reasonable,

1 that is a reasonable and prudent person acting under
2 the same or similar circumstances would have so
3 believed or would have also been warranted in acting
4 as the defendant did.

5 And the fourth element, it must be shown that
6 the Defendant had no other means of avoiding the
7 danger of losing his life or sustaining the
8 infliction of serious bodily injury other than to act
9 as he did under the particular circumstances as
10 existed. Because, as I have stated, self-defense is
11 founded upon necessity.

12 Now, if you have a reasonable doubt as to the
13 Defendant's guilt as it relates to a proof of
14 attempted murder or the lesser included assault and
15 battery charges after considering all the evidence
16 received during this case, including any evidence
17 related to the issue of self-defense, then it would
18 be your duty to resolve that reasonable doubt in
19 favor of the Defendant and find him not guilty.
20 Finally, you have the right to consider any prior
21 difficulties between the parties on the issue of
22 self-defense.

23 Now, Mr. Foreman, ladies and gentlemen of the
24 jury, I realize that was a lot that I just gave to
25 you. And so what I customarily do is provide a copy

1 of this written charge to you to take back to the
2 jury room and use in any manner that you feel like is
3 appropriate.

4 Now, there is a verdict form. I'm going to walk
5 down and show it to you, that you have to complete to
6 indicate your verdict in this case. Your verdict
7 must be unanimous among the 12 of you. And it cannot
8 be based upon any sympathy, passion, bias or
9 prejudice. It has to be based upon the evidence in
10 this case and the law as I have instructed it to you.
11 And when you have reached a unanimous verdict, just
12 knock on the door and let the bailiff know. So I'm
13 going to come down, I'm going to show you the verdict
14 form.

15 Mr. Foreman, this is just the name of the case,
16 the indictment number. And the first charge you look
17 at, as to the charge of attempted murder, we, the
18 jury, find the Defendant either guilty or not guilty.
19 You will put your initials on the appropriate line.

20 Now, if you find the Defendant not guilty of
21 attempted murder, then you have the right to consider
22 the first lesser include charge of assault and
23 battery of a high and aggravated nature. And if you
24 find him guilty of assault and battery of a high and
25 aggravated nature, you would put your initials on

1 that line. If you find him not guilty, then you put
2 your initials on that line. Okay?

3 Let me go back up. On the attempted murder, if
4 you find him guilty, then you stop. You don't
5 consider these. You only consider the next one if
6 you find him not guilty of attempted murder. So you
7 consider high and aggravated nature, if you find him
8 guilty of that charge, you stop. Then you if find
9 him not guilty as to assault and battery of a high
10 and aggravated nature, then you would go down to the
11 third charge, assault and battery second degree and
12 decide whether or not he is guilty or not guilty.
13 You sign it. It's already been dated for you. Okay.

14 Now, what I need to do is for all 14 of you to
15 go back in the jury room. Do not begin your
16 deliberations yet. I need to discuss with the
17 lawyers if I need to make any corrections concerning
18 this charge that I gave to you or if I need to give
19 you any additional charges, okay. If I do, if a
20 correction is needed or if additional charge is
21 needed, I'll bring you right on back out to receive
22 that. If none, then when the bailiff brings you the
23 verdict form, the charge, all the exhibits in this
24 case, that will be your queue for two things to
25 happen. One, I'll need the two alternates come out

1 in the courtroom. And two, that will be your queue
2 to begin your deliberations, but don't start yet.
3 All 14 of you go back.

4 (WHEREUPON, the jury left open court at
5 approximately 5:00 p.m.)

6 THE COURT: All right, gentlemen, as I was
7 reading this charge, it dawned on me that I did not
8 include that standard about statements of defendant.
9 Of course, we have a statement that came into
10 evidence, the interview. So if either side wants me
11 to give that where they determine -- I've already
12 made the determination because it was not contested
13 that it was voluntary, but they have to determine
14 beyond a reasonable doubt whether it was a voluntary
15 statement. If either side wants me to charge that, I
16 will. If both sides are fine with me not charging
17 then, that's fine, too. But it just dawned on me as
18 I was reading that we just inadvertently did not put
19 that in there.

20 What the State's position?

21 MR. SCOTT: Miranda is pretty clear in the
22 videos. I defer to the Defense.

23 THE COURT: Mr. Verner.

24 MR. VERNER: I'm not asking for it, Judge.

25 THE COURT: All right. Other than what we've

1 already noted on the record as far as what the State
2 wanted, the Defense wanted concerning the charge, is
3 there anything additional from the State concerning
4 the Court's charge?

5 MR. SCOTT: No, Your Honor.

6 MR. VERNER: Not concerning the charge.

7 THE COURT: Okay.

8 MR. VERNER: But I would prefer the TV to be
9 brought into the jury room so they can watch the --
10 if they wanted to.

11 THE COURT: Well, the only problem with the
12 interview is that the remaining whatever number of
13 minutes was not shown to them.

14 MR. VERNER: But it was introduced?

15 THE COURT: It was introduced. So if they want
16 to play it on their own, then what's to say that the
17 redacted portion or the unplayed portion--

18 MR. VERNER: Judge, the redacted portion, which
19 was just that I'm on probation. He talks about that,
20 that was played before them after that, so I think
21 that cat's out of the barn because it was mentioned
22 in other portions of the confession. So I don't have
23 any problem with it.

24 THE COURT: All right. Then what was not played
25 at the very end, is that of any concern?

1 MR. VERNER: It was introduced as evidence.

2 THE COURT: Well, it was introduced as evidence
3 with the redacted part, which is the unplayed part at
4 the very end. I don't know what is on there.

5 MR. SCOTT: He's talking about potentially
6 negotiating with the solicitor's office for various
7 plea agreements.

8 THE COURT: I mean, you want that to be
9 available to them if they decide to listen to the
10 whole CD?

11 MR. VERNER: Well, the full statement was
12 introduced, Judge. If they want to -- my preference
13 is if they want to review the video that they have
14 the opportunity to do it in the jury chambers as
15 opposed -- and I don't mind Mr. Bentley going back
16 there and showing them how to do it. But as opposed
17 to doing it out here, I prefer they have the
18 opportunity to do it in there.

19 THE COURT: State?

20 MR. SCOTT: I had just envisioned us playing it
21 out here for them. I mean, we didn't redact it. I
22 thought it was probably improper for them to hear
23 about how the sausage was made, plea agreements and
24 negotiating and everything. But I don't really -- if
25 it --

1 MR. VERNER: Or, Judge, if you can just give
2 them possibly the option that we've got the ability
3 to play it in here or if y'all would rather play it
4 in there.

5 THE COURT: I tell you what, let me bring them
6 out and just say when you get into your
7 deliberations, if you would rather come out here to
8 watch all or part, whatever, or if you want to do it
9 in there, just send me a note and we'll accommodate
10 however you want to do it. Let's do it that way.

11 MR. VERNER: If the Judge is going to go ahead
12 and bring them out for that point, then I would say
13 the Judge probably ought to go ahead and charge them
14 to consider the voluntariness of the statements. If
15 they're going to come out anyway, I don't see any
16 great burden.

17 THE COURT: All right. Okay.

18 MR. VERNER: Give it back to them.

19 THE COURT: I'm going to put it with the charge.
20 If read it to them, then it's going to go with the
21 charge.

22 (WHEREUPON, the jury came into open court at
23 approximately 3:17 p.m.)

24 THE COURT: All right, ladies and gentlemen,
25 there is one additional charge that I need to give

1 you. A statement made by the Defendant has been
2 admitted into evidence in this case. You must
3 determine whether the statement was made by the
4 Defendant voluntarily and of his own freewill. This
5 means that the statement was not caused by pressure,
6 force, fear, threats, coercion or intimidation or by
7 hope or a promise of leniency or a reward of any
8 kind.

9 In determining whether the statement was
10 voluntary, you can consider both the characteristics
11 of the Defendant and the details of the questioning.
12 Some of the factors that you have the right to
13 consider are as follows: Age of the Defendant, the
14 Defendant's education or lack of education, the
15 Defendant's mental ability or capacity, the
16 Defendant's IQ or intelligence, the Defendant's
17 background and environment, the place and length of
18 detention, the nature of the question, and advice or
19 lack thereof to the Defendant of his Constitutional
20 rights including, but not limited to the right to
21 remain silent, that any statement could be used
22 against him in a court of law, the right to have a
23 lawyer present, that if he could not afford a lawyer,
24 a lawyer would be appointed to represent him without
25 any cost, and that he can stop making the statement

1 at any time. You must carefully consider all of the
2 surrounding circumstances before you give any weight
3 to his statement.

4 The State has the burden of proving beyond a
5 reasonable doubt that the statement was voluntary.
6 If you determine it was, you may give the statement
7 any further consideration that you deem proper. You
8 must decide what weight, if any, should be given to
9 the statement. If you determine the statement was
10 not the free and voluntary statement of the
11 Defendant, you should not consider the statement at
12 all.

13 All right, with that said, I'm going to give you
14 one other instruction. If at any time during your
15 deliberations, you want to review some or all of the
16 two videos that are in evidence in this case, then
17 let me know whether or not you want to come out here
18 and they'll play it for you or you want this taken
19 back into the jury room and then you play it back
20 there. If you decide to take it to the jury room,
21 we'll get Mr. Bentley, who's been the IT person in
22 this case, to instruct you on how to use it. So just
23 let me know at any time. Just write it out and we
24 can accommodate your wishes if you want to at any
25 point in time take a look at those videos.

1 Okay. All right. With that said, I need the
2 two alternates to remain here. Twelve go back and
3 begin your deliberations. And Ms. Smoak, your
4 elected clerk of court, will take the exhibits back
5 to you.

6 Give you this, Mr. Foreman.

7 Okay. Begin your deliberations.

8 (WHEREUPON, the jury left open court at
9 approximately 3:21 p.m.)

10 (WHEREUPON, deliberations began.)

11 WHEREUPON, court was in recess awaiting a
12 verdict.)

13 THE COURT: We have a verdict. And while we
14 don't have that many people in the courtroom, we do
15 have a couple family members from the Defense's side,
16 at least, mom, I assume, the other lady is a family
17 member, too. Couple people on the State's side.
18 Just a standard instruction that I give, when the
19 verdict is announced, if you believe you cannot
20 control your emotions, then I would ask you to exit
21 the courtroom at this time.

22 Let's bring the jury out, Madam Bailiff. All
23 the Foreman has to have in his possession is the
24 verdict form. Of course, as you know how I do it, I
25 want to make sure that they have reached an unanimous

1 verdict, don't tell me what the verdict is, give you
2 the form, then give it to me, then I'll get it to the
3 clerk to publish it.

4 Bring them on out.

5 (WHEREUPON, the jury came into open court at
6 approximately 4:58 p.m.)

7 VERDICT

8 THE COURT: The jury is back in the courtroom.

9 Mr. Foreman, without telling me what your
10 verdict is, was and is your verdict unanimous among
11 the 12 of you?

12 MR. FOREMAN: Yes, sir, it is.

13 THE COURT: Okay. All right, if you'll hand
14 that verdict form to the bailiff, please.

15 Mr. Jackson, if you'd please stand.

16 Madam Clerk, if you will publish.

17 THE CLERK: Indictment 2018-GS-36-482, State of
18 South Carolina vs. Matthew Legrande Jackson, as to
19 the charge of attempted murder, we, the jury, find
20 the Defendant not guilty. As to the charge of
21 assault and battery of a high and aggravated nature,
22 we, the jury, find the Defendant guilty.

23 Ladies and gentlemen of the jury, if this is
24 your verdict, please indicate by raising your right
25 hand.

1 (WHEREUPON, all members of the jury raised their
2 right hand.)

3 THE COURT: Let the record reflect that all 12
4 hands have been raised.

5 Does either side wish for individual polling of
6 the jury?

7 First from the State?

8 MR. SCOTT: Not from the State, Your Honor.

9 THE COURT: Defense?

10 MR. VERNER: No, Your Honor.

11 THE COURT: Sir?

12 MR. VERNER: No, Your Honor.

13 THE COURT: Okay. All right, thank you.

14 You can have a seat back.

15 Mr. Foreman, ladies and gentlemen of the jury,
16 this has been a long week for you and it's been a
17 long week for us. What I tell jurors at the end of
18 the case, I state my appreciation not for the verdict
19 because the verdict that a jury reaches is of no
20 consequence to me whatsoever. It's important to the
21 State and the Defendant, naturally, but it's not
22 important to the Court. What is important to the
23 Court is that you perform your duties and
24 responsibilities diligently, efficiently and that you
25 pay close attention throughout the whole proceeding.

1 And you've done that. I've kept my eye on you and
2 you have paid close attention. Sometimes that's
3 hard.

4 And I told you at the outset it is so important
5 to pay close attention so you can have a good memory
6 of what has taken place, the testimony and the
7 evidence, but I realize that when you sit there, it
8 does get a little tedious and can be hard at times to
9 pay attention. But from all indications, unless you
10 got me fooled, I believe you paid very close
11 attention and I appreciate that very much.

12 And, you know, tough decision to make. No
13 question about that, but I hope that you have found
14 this experience to be an educational one, an
15 experience that you've not ever been through before.
16 I'm not sure if any of you have served on juries,
17 whether civil or criminal. I hope that it's been an
18 educational experience for you, that you learned some
19 things that maybe before you got here on Monday that
20 you did not did not know.

21 As I told you on Monday or maybe Tuesday, I
22 can't remember, we have the greatest justice system
23 anywhere in the world. And juries play a very, very
24 vital and important part of that process. You want
25 people who can be fair. You want people who can be

1 impartial and that can fairly and impartially judge
2 the evidence that is presented to them. That's so
3 important.

4 I like to shake the hands of my jury, so what
5 I'm going to do is I'm going to come down and when
6 you exit the jury box, I can shake your hand. Now, I
7 understand that we have checks. You'll probably just
8 meet them out here and give you your checks.
9 Unfortunately, state law does not provide for
10 adequate compensation for juries, so don't make big
11 plans for your check.

12 Mr. Foreman, you need to hang around for just a
13 minute because you need to sign the back of the --
14 just hang around for a minute.

15 Let me come on down. Y'all are free to leave.
16 Certainly, since this is Thursday evening, you do not
17 need to come back tomorrow.

18 (WHEREUPON, the jury left open court at
19 approximately 5:15 p.m.)

20 SENTENCING

21 MR. SCOTT: I put together the sentencing sheet
22 for the Court to review.

23 THE COURT: Okay, thank you.

24 MR. VERNER: My preference, given the time, is
25 let's do this in the morning, but I'm not -- I know

1 the victims are here now.

2 THE COURT: Yeah, I think since we've got the
3 folks, but I don't mind giving you a few minutes,
4 Mr. Verner, if you need to.

5 MR. VERNER: When the Court is ready, Judge,
6 we're ready.

7 THE COURT: Let me look at this just a minute.

8 (WHEREUPON, there was a brief pause.)

9 THE COURT: All right. Mr. Verner, if you and
10 Mr. Jackson would come up to the stand, please.

11 All right. This is the sentencing phase of this
12 case. Did either side want to look at the actual
13 verdict form that was published by the clerk?

14 MR. SCOTT: I don't need to see it.

15 MR. VERNER: At some point before I leave, I
16 will, Judge.

17 THE COURT: Look at it now.

18 MR. VERNER: Appears in order, Judge.

19 THE COURT: Very good.

20 Let the record reflect that pursuant to
21 16-23-500, because this being a violent serious
22 offense, that would prohibit any future ownership or
23 possession of any firearms.

24 I'll hear from the State first as it relates to
25 sentencing, then I'll turn it over to Mr. Verner.

1 MR. SCOTT: Judge, did you get a copy of sort of
2 the packet we put together, his prior convictions?

3 THE COURT: Right. I've got --
4 Have you seen this?

5 MR. VERNER: I have, Your Honor.

6 THE COURT: And some photographs of, I think,
7 several cases maybe that he received convictions on.

8 MR. VERNER: Well, the third one was not a --
9 that was not a conviction case.

10 THE COURT: All right. I will not consider
11 that. And just for my information, it appears that
12 Mr. Jackson appeared before me on assault and battery
13 second degree. Would that have involved the fight
14 out at the Palms restaurant?

15 MR. SCOTT: Yes, sir, Your Honor.

16 MR. VERNER: Yes, sir. And that's the first
17 photograph.

18 THE COURT: It just kind of looked familiar.

19 MR. SCOTT: Yes, sir.

20 THE COURT: Okay. Solicitor, hear from you
21 first.

22 MR. SCOTT: Your Honor, as you see, I mean, he's
23 got a history of being unable to control himself and
24 being violent towards other people. Typically, I
25 know him as somebody who takes cheap shots. That guy

1 back behind the Palms was drunk. He was cold-cocked
2 and beaten to almost being unconscious, or I think he
3 may have been unconscious. The second guy is a
4 roommate he hit with a brick. He has been accused of
5 assaulting two inmates while he's been in pretrial
6 detention.

7 Judge, I don't know if you remember this, you
8 sentenced him on the failure to stop for a blue
9 light, which, incidentally, I think he was out of
10 prison for three months when he gets in this affray
11 with Tony. At the time of the plea, we played the
12 video. He's running from the police. He T-bones a
13 van driven by a mother with small children in the
14 car. Taylor Daniel put up the plea. I remember at
15 the time him saying this guy is a homicide waiting to
16 happen. He almost proved Taylor to be prophetic.
17 And again, just inches is what we're talking about
18 here. Thankfully, Tony is sitting here beside me.
19 But he really is, I mean, I don't say that lightly.
20 He will kill somebody eventually or be killed. He is
21 just that violent.

22 You know, I think this case, they'll argue all
23 they want about the injuries and how well, he didn't
24 die. So let's reward him because Tony didn't die.
25 No, I say his history has caught up with him. Tony

1 is not the only victim here.

2 Again, these children of his, I -- those aerals
3 we took we relied on so heavily, the day, I remember
4 very clearly being out there. Tony was out there.
5 Ashleigh was out there. Their little girl, cutest
6 little three year old you've seen, she was antsy the
7 whole time. I just kept saying we're only going to
8 be here a little bit longer. She wanted to get out
9 of there. I said, What's she in a hurry for? The
10 bad memories. She said, Will daddy get another
11 booboo while we're out here? And I just remember
12 thinking that that three year old is still
13 remembering this thing. She'll always remember her
14 dad bleeding, being rushed to the hospital because of
15 him.

16 And why? Because he felt slighted. He felt
17 slighted because he, as any dad would, asked him who
18 he was when he caught him hugging the little girl.
19 And he perceived that as a slight. He perceived that
20 to be a disrespect that he didn't deserve. He goes
21 away and instead of cooling down during that cooling
22 down period, he gets worked up. He starts calling
23 other people, he starts trying to formulate a plan,
24 he arms himself.

25 Very planned, very deliberate, this is not a

1 heat of the passion type thing that he tried to
2 argue. We are -- we want the upper range of that
3 sentence. It carries zero to 20, we're looking for
4 the top part of that sentence. Because look at his
5 record. I don't think he's 30 yet, or maybe just 30,
6 and he has compiled that kind of record just proving,
7 Judge, every judge who's given him a chance, he's
8 proven them wrong. He's, basically, said somebody is
9 going to have to stop me. And he's dared all the
10 judges before him. He cannot conform himself to
11 society, Judge. I hate to say it, but sometimes
12 people just got to be warehoused until they're old
13 enough where they can't reek havoc anymore.

14 I'm done, Judge. I think Tony would address the
15 Court whenever Your Honor cares to hear from him.

16 THE COURT: I need to have you sworn in.
17 Madam Clerk.

18 THE CLERK: Raise your right hand.

19 ANTONIO JACKSON, after being duly sworn,
20 testified as follows:

21 THE COURT: Okay, Mr. Jackson, be glad to hear
22 from you, sir.

23 MR. TONY JACKSON: Well, all I want to say is,
24 you know, it has affected me tremendously, you know,
25 physically and mentally. You know, like last year, I

1 was unable to provide for all seven of our children.
2 Still to this day, I'm not, like, 100 percent back.
3 It really -- you know, it's causing me, you know,
4 what I went through on my job. I'm not physically
5 able to do what I normally do. I'm hurting, aching
6 all day every day while I'm at work. With me coming
7 home, talking with the kids and they see me barely
8 can walk sometimes, you know, that's how bad the pain
9 is. And during the course of me going back to work
10 last year, I ended up getting a hernia, which I'm
11 pretty sure I'm going to have to have surgery again
12 sometime this year. So that's all, I just wanted to
13 let you know it affected me tremendously. And my
14 family, not just me.

15 THE COURT: Thank you.

16 Mr. Verner, be glad to hear from you.

17 MR. VERNER: May it please the Court, Your
18 Honor. Matt has been in pretrial confinement since
19 June 8th, June 7th, I guess is when he was arrested.

20 THE COURT: Before you go any further, let's
21 just make sure we have an agreement as far as the
22 amount of credit.

23 You going to try to figure that up, Solicitor
24 Scott?

25 MR. SCOTT: Yes, sir, have it right for you.

1 I've got June 8th, 2018, to today is 293 days.

2 MR. VERNER: We had 294 that came up on the
3 computer.

4 MR. SCOTT: From June 8th?

5 MR. VERNER: Well, he was actually arrested the
6 day before in Sumter.

7 THE COURT: All right, very good.

8 You may proceed, Mr. Verner.

9 MR. VERNER: Judge, all I'll say is just he grew
10 up kind of in a single-mother, struggling home. When
11 he was seven years old, he was held down by some boys
12 and shot in the eye with a BB gun and that's how he
13 lost his eye. Maybe that has been part of his
14 psyche. I think he's always been a smaller -- he's
15 larger now, but I think he's always been a smaller
16 kid in a low income, single mother, almost latch key
17 type, a victim of violence, at least, in his early
18 years directed at him. And he's been in fights
19 before. I mean, I think he learned it the hard way
20 by having it directed at him and he's been acting
21 out.

22 I do still see some elements of mutual combat in
23 this case. The weapon, Your Honor, would be, by all
24 accounts, a pocket old timer knife, which would be an
25 inch-type blade, which he may very well have kept for

1 protection or combat. But the weapon itself, I don't
2 think it's a dispute would be a razor type.

3 The first fight, incident, Your Honor, would be
4 a classic fist-on-fist fight. I do see injuries, but
5 you can see the bloody knuckles on that guy and see
6 the blows he was going to. And that guy was in a
7 group directed at Matthew that ended up in the fight.
8 Almost all of Matthew assaults have been handled
9 fist-on-fist type.

10 Got a history, Judge. I don't see the
11 premeditation or even the intent initially to fight
12 when he certainly goes down there to the lake, he's
13 not looking for a fight. Obviously, something
14 happens and ends up this way. Not the shooting or
15 the laying in wait type case, I would ask the Court
16 to consider a five to ten year. This a violent,
17 non-parole case. I would ask the Court to factor
18 that in.

19 THE COURT: Okay. Anything you want to say?

20 MR. MATT JACKSON: Yes, sir. I just want to say
21 I just recently found out I have a son. He was kept
22 from me for five years. He'll be 15 when I got out,
23 that's a long time. I messed up, yeah. But this, I
24 was really thinking that something else was going to
25 happen. I was innocent. This man jumped on me. He

1 jumped on my momma, knocked three of her teeth out.
2 I was really defending myself and her. I mean, other
3 times, I was definitely dead to rights guilty. But I
4 never hit anyone with a brick or anything like that.
5 The other five guys jumped on me at the Palms. They
6 knocked my teeth out, as you can see. I don't have
7 no money to pay for those. Broke my nose, broke my
8 eye socket.

9 Your Honor, I just -- this time I'm not guilty,
10 you know. The jury found me that way, but I don't
11 understand how. He was obviously lying, all the
12 other witnesses were obviously lying. They had ten
13 months to coordinate their story. I just -- I just
14 pray you have leniency on me and have mercy and God's
15 mercy.

16 THE COURT: Everybody be at ease for just a few
17 moments.

18 MR. VERNER: Your Honor, his mother and family
19 friend are in the courtroom.

20 THE COURT: I'll be glad to hear from them if
21 they want to address the Court.

22 Come around. I need to have you sworn in,
23 ma'am.

24 SHEILA NORTON, after being duly sworn, testified
25 as follows:

1 THE COURT: State your name, please.

2 MS. NORTON: My name is Sheila Norton.

3 THE COURT: Okay. Ms. Norton, be glad to hear
4 from you.

5 MS. NORTON: Sir, he growed [verbatim] up pretty
6 tough. Like I said, I'm a single mom and I've been
7 through a lot. And I got hurt that day. I still got
8 a few teeth in my mouth that I'll lose. I have a
9 knot right here. My jaw is out of line where they
10 hurt me that day.

11 Matthew, when he went to jail, he was in
12 shackles and handcuffed and he was attacked by some
13 of his friends or relatives in the jail. That's
14 while he was shackled and handcuffed in the jail.
15 They took him out the cell and these guys attacked my
16 son. They also prior before when he went into the
17 jail, they put him in that restraining chair for like
18 hours and hours. And I don't think sending him to
19 prison is -- it's not doing him any good, sir. I
20 want him to come home and we'll leave Newberry County
21 and we'll go to another state.

22 And the victim, he came to my bond hearing two
23 days later. So I mean, he walked in there just fine.
24 And two of the girls had to be handcuffed because
25 they tried to take another person inside the jail.

1 He's all I got, sir. Please have mercy on him.

2 THE COURT: Ma'am, did you want to address the
3 Court or are you just up here for support or what? I
4 need to have you sworn in.

5 SUNNY PEREIRA, after being duly sworn, testified
6 as follows:

7 THE COURT: State your name, please.

8 MS. PEREIRA: Sunny Pereira.

9 THE COURT: Ma'am?

10 MS. PEREIRA: Sunny Pereira.

11 THE COURT: Would you spell your last name?

12 MS. PEREIRA: Yes, sir. P-E-R-E-I-R-A.

13 THE COURT: Okay, Ms. Pereira, be glad to hear
14 from you.

15 MS. PEREIRA: Matt has had a very bad past.
16 He's definitely made some mistakes, we all have.
17 This last charge, I have noticed a lot of change in
18 him. He has found God and wants to get involved in
19 prison ministry. So he is in prison trying to help
20 others and sway them in the right direction. As he
21 said, he recently found out he has a child, which
22 definitely changed his mindset a lot as well. I
23 would just ask the Court instead of prison, maybe
24 some type of help mentally for Mr. Jackson. Prison
25 is not helping him, as we see. We're still here. I

1 would just highly recommend personally some type of
2 mental help versus prison time. He's changing, he
3 really is changing.

4 THE COURT: All right thank you.

5 THE WITNESS: You're very welcome. Thank you.

6 THE COURT: Anything further from anybody else?

7 MR. SCOTT: I've been listening to his jail
8 calls, I promise you, he ain't talking about Jesus.
9 He is talking about some very unpleasant things. I
10 see no change. The child he talks about has another
11 man's name on his birth certificate. It's not his
12 child.

13 MS. NORTON: I have something else to say, sir.

14 THE COURT: Give me one second, please, and I'll
15 be glad to hear from you, ma'am.

16 (WHEREUPON, there was a brief pause.)

17 THE COURT: Yes, ma'am, what else would you like
18 to tell me?

19 MS. NORTON: Sir, 11 years ago, Newberry Police
20 Department wanted me to help them take out a person
21 making methamphetamine. Okay, I helped them. And
22 they took my child from me. This little girl missing
23 for five days with my child is what they done to me.
24 Her name is Maggie Grace, she's 13. She's very
25 beautiful. And I have not seen her in like seven

1 years. Her dad gets out of prison and moves into the
2 home with her and is still doing the drugs. They
3 made a deal with me to get me rights to get my baby
4 back to me and then didn't help me like that.

5 THE COURT: All right. Thank you, ma'am.

6 Well, let me just make a few comments before I
7 impose sentencing. This is directed to you,
8 Mr. Jackson. Once a jury renders a verdict, then I
9 consider that verdict 100 percent true and accurate.
10 The fact that you still deny any responsibility or
11 any liability and maintain your self-defense, which
12 you have every right to do, I can't consider that.
13 Because the jury has rendered a verdict and found you
14 guilty of assault and battery of high and aggravated
15 nature.

16 MR. MATT JACKSON: Yes, sir.

17 THE COURT: You know, this is -- your record
18 is -- you're 29 years old and you have built up a
19 significant record. After looking at the pictures,
20 regardless of -- I mean, punches that you received in
21 this incident at the Palm's restaurant, it may have
22 been a negotiated or recommended sentence, I don't
23 know, but looking at these pictures, I'm kind of
24 surprised that I put you on probation.

25 MR. MATT JACKSON: No, sir, it was not

1 negotiated, it was an open plea. At the time, there
2 was a lot of other things you took into
3 consideration.

4 THE COURT: It's just -- you know, I agree
5 prison does not help people in many situations. It
6 helps some, but many situations, it does not. But
7 there has to be a punish element to people who
8 consistently commit crimes. And that's what you've
9 done. You have consistently since -- well, it looks
10 like a juvenile conviction back in '03. '03, '07,
11 '08, '10, 2013, 2015, 2016, 2018, 2019. It's almost
12 on a yearly basis that you're engaging in some sort
13 of criminal activity. There's got to be a stop to
14 it. There's got to be a stop to it. Because if
15 there's not, you know, I'm pretty certain that you
16 would continue to commit criminal acts. And people
17 are getting hurt by your criminal acts.

18 I am very sorry that you have had a bad home
19 life growing up. I see that all too often and I'm
20 very sorry for that. But at the end of day,
21 Mr. Jackson, there's got to be some punishment for
22 what you have done at the end of the day.

23 All right, Mr. Jackson, sentence of the Court is
24 you be committed to the State Department of
25 Corrections for a period of 15 years and three

1 months. Give you credit for 293 days. Good luck to
2 you.

3 MR. SCOTT: Thank you, Your Honor.

4 (WHEREUPON, the proceedings were concluded.)
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CERTIFICATE OF REPORTER

STATE OF SOUTH CAROLINA)

COUNTY OF GREENVILLE)

I, APRIL P. HERRON, Official Court Reporter for the Thirteenth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the proceedings had and evidence introduced in the trial of the captioned case, relative to appeal, in the Court of General Sessions for Newberry County, South Carolina, on the 26-28 day of March, 2019.

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

August 23, 2020

APRIL P. HERRON, Court Reporter

COUNTY OF NEWBERRY
STATE VS.

MATTHEW LEGRANDE JACKSON

AKA: _____
Race: White Sex: M Age: 29
DOB: 1989 SS#: _____
Address: _____
City, State, Zip: _____
DL# _____ SID# _____

INDICTMENT/CASE#: 2018-GS-36-00482
A/W: 2018A3610100337
Date of Offense: 06/06/2018
S.C. Code §: 16-03-0029
CDR Code #: 3410

SENTENCE SHEET

0-20 yrs

*CDL Yes No CMV Yes No Hazmat Yes No

In disposition of the said indictment comes now the Defendant who was CONVICTED OF or PLEADS

TO: Assault & Battery of a High & Aggravated Nature

In violation of § 16-03-0600(B)(1) of the S.C. Code of Laws, bearing CDR Code # 3411

NON-VIOLENT VIOLENT SERIOUS MOST SERIOUS Mandatory GPS §17-25-45
(CSC w/minor 1st or CSC w/minor 3rd)

The charge is: As indicted, Lesser Included Offense, Defendant Waives Presentment to Grand Jury, _____ (def.'s initials)
The plea is: Without Negotiations or Recommendation, Negotiated Sentence, Recommendation by the State.

ATTEST:

E

Taylor Daniel, Assistant Solicitor 100588 SC Bar # _____ Defendant _____ Attorney for Defendant 10033 SC Bar # _____

WHEREFORE, the Defendant is committed to the State Department of Corrections County Detention Center, for a determinate term of 15 years 3 months days/months/years or under the Youthful Offender Act not to exceed _____ years and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and or payment of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for _____ months/years and subject to South Carolina Department of Probation, Parole and Pardon Service standard conditions of probation, which are incorporated by reference.

CONCURRENT or CONSECUTIVE to sentence on: _____

The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by the State Department of Corrections. Credit 293 days

The Defendant is to be placed on Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

Pursuant to 18 U.S.C. Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

RESTITUTION: Deferred Def. Waives Hearing Ordered PTUP _____ days/hours Public Service Employment
Total: \$ _____ plus 20% fee: \$ _____

Payment Terms: _____ Obtain GED

Set by SCDPPPS _____

Recipient: _____

*Fine: _____ \$ _____

§14-1-206 (Assessments 107.5%) \$ _____

§14-1-211 (A)(1)(Conv. Surcharge) \$100 \$ 1000

§14-1-211 (A)(2)(DUI Surcharge) \$100 \$ _____

§56-5-2995 (DUI Assessment) \$12 \$ _____

§56-1-286 (DUI Breath Test) \$25 \$ _____

Proviso (Public Def/Prob) \$500 \$ _____

§14-1-212 (Law Enforce. Funding) \$25 \$ 2500

§14-1-213 (Drug Court Surcharge) \$150 \$ _____

§50-21-114 (BUJ Breath Test Fee) \$50 \$ _____

§56-5-2942(J) (Vehicle Assessment) \$40/ca \$ _____

3% to County (if paid in installments) \$ 375

TOTAL \$ 12875

Clerk of Court/Deputy Clerk: Beverly G. Brumby
Court Reporter: April P. ...

Attend Voc. Rehab. Or Job Corp. _____

May serve W/E beginning _____

Substance Abuse Counseling

Random Drug/Alcohol Testing

Fine may be pd. in equal consecutive weekly/monthly

pmts. of \$ _____ Beginning _____

\$ _____ Paid to Public Defender Fund

Other: _____

Appointed PD or appointed other counsel, Proviso requires \$500 be paid to Clerk during probation and shall be collected before any other fees.

Presiding Judge: [Signature]

Judge Code: 2167

Sentence Date: 3/28/19

FORM 5

STATE OF SOUTH CAROLINA)

COUNTY OF)

Matthew Jackson 329032)
Full name and prison number (if any) of Applicant.)

v.)

State of South Carolina)

IN THE COURT OF COMMON PLEAS

APPLICATION FOR

POST-CONVICTION RELIEF

2020 CP-36-00111

FILED
NEWBERRY COUNTY
2020 FEB 19 AM 10:36
ELIZABETH P. FOLK
CLERK OF COURT

INSTRUCTIONS - READ CAREFULLY

In order for this application to receive consideration by the Court, it shall be in writing (legibly handwritten or typewritten), signed by the applicant and verified (notarized), and it shall set forth in concise form the answers to each applicable question. If necessary, applicant may furnish his answer to a particular question on the reverse side of the page or on an additional page. Applicant shall make clear to which question any such continued answer refers.

Since every application must be sworn under oath, any false statement of a material fact therein may serve as the basis of prosecution and conviction for perjury. Applicants should, therefore, exercise care to assure that all answers are true and correct.

If the application is taken in forma pauperis, it shall include an affidavit (attached at the back of the form) setting forth information which establishes that applicant will be unable to pay the fees and costs of the proceedings. When the application is completed, the original shall be mailed to the Clerk of Court for the County in which the applicant was convicted.

- 1. Place of detention SCDC - LEE Correctional
- 2. Name and location of Court which imposed sentence General sessions / Newberry
- 3. Name(s) of co-defendant(s) (if any) N/A
- 4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) Assault + Battery High and aggravated
 - (b) _____
 - (c) _____
- 5. The date upon which sentence was imposed and the terms of the sentence:
 - (a) 3/28/2019
 - (b) 15 years 3 months

I, Elizabeth P. Folk, Clerk of Court, Newberry, South Carolina, do hereby certify that this is a true Copy of the original on file in this office.

FEB 19 2020

Elizabeth P. Folk Revised 3/2003
Clerk of Court

(c) _____

6. Check whether a finding of guilty was made:

(a) after a plea of guilty _____

(b) after a plea of not guilty ✓

(c) after a plea of nolo contendere _____

7. Did you appeal from the judgment of conviction or the imposition of sentence?

NO

8. If you answered "yes" to (7), list:

(a) the name of each Court to which you appealed:

i. _____

ii. _____

iii. _____

(b) the result in each such Court to which you appealed:

i. _____

ii. _____

iii. _____

(c) the date of each such result:

i. _____

ii. _____

iii. _____

(d) if known, citations of any written opinion or orders entered pursuant to such results:

i. _____

ii. _____

iii. _____

9. If you answered "no" to (7), state your reasons for not so appealing:

(a) My attorney said that he would file a appeal and didnt.

(b) _____

(c) _____

10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:

(a) _____ (Additional page)

A. ineffective Counsel-Public Defender was not supposed to be able to represent me, due to the fact I had a previous ineffective counsel P.C.R. against him.

B. Prosecution showed judge pictures of crime I wasnt convicted for, during sentencing.

C. Jury was compromised by witness

D. Newberry sheriffs refused to transport two of my witnesses to court.

E. My witnesses were never subpoenaed

F. Presiding Judge had grudge against me, he stated that I should have gotten more time for a previous offense.

G. Judge failed to charge all lesser included offenses

(b) _____

(c) _____

11. State concisely and in the same order the facts which support each of the grounds set out in (10):

(a) The PCR I filed against Mr Charles Verner

(b) _____

(c) _____

12. Prior to this application have you filed with respect to this conviction:

(a) any petition in a State Court under South Carolina Law? No

(b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? No

(c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? No

(d) any other petitions, motions or applications in this or any other Court? No

13. If you answered "yes" to any part of (12), list with respect to each petition, motion or application:

(a) the specific nature thereof:

i. _____

ii. _____

iii. _____

iv. _____

(b) the name and location of the Court in which each was filed:

i. _____

ii. _____

iii. _____

iv. _____

(c) the disposition thereof:

i. _____

ii. _____

iii. _____

iv. _____

(d) the date of each such disposition:

- i. _____
- ii. _____
- iii. _____
- iv. _____

(e) if known, citations of any written opinions or orders entered pursuant to each such disposition:

- i. _____
- ii. _____
- iii. _____
- iv. _____

14. Has any ground set forth in (10) been previously presented to this or any other Court, State or Federal, in any petition, motion or application which you have filed?

NO

15. If you answered "yes" to (14) identify:

(a) which grounds have been presented:

- i. _____
- ii. _____
- iii. _____

(b) the proceedings in which each ground was raised:

- i. _____
- ii. _____
- iii. _____

16. If any ground set forth in (10) has not previously been presented to any Court, State or Federal, set forth the ground and state concisely the reasons why such ground has not previously been presented:

(a) lawyer failed to file appeal.

(b) _____

(c) _____

17. Were you represented by an attorney at any time during the course of:

(a) your arraignment and plea? yes

(b) your trial, if any? yes

(c) your sentencing? yes

- (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? NO
- (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed? NO

18. If you answered "yes" to one or more parts of (17), list:

- (a) the name and address of each attorney who represented you:
- i. Charles Verner / Public defender
 - ii. _____
 - iii. _____
- (b) the proceedings at which each such attorney represented you:
- i. Trial
 - ii. sentencing
 - iii. _____

19. State clearly the relief you seek in filing this application:

Mistrial declared, Time reconsideration.

20. Are you now under sentence from any other court that you have not challenged?

NO

STATE OF SOUTH CAROLINA)
)
County of Newberry)

VERIFICATION

I, Matthew Jackson, 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.

M. Jackson
M. Jackson

SWORN to and subscribed before me this 7
day of Jan, 2020.

Delana Eastaley (L.S.)
Notary Public

My Commission Expires: 3/3/2020

FILED
NEWBERRY COUNTY
2020 FEB 19 AM 10:36
CLARENCE A. FOLK
CLERK OF COURT



**APPLICATION TO PROCEED WITHOUT PAYMENT
OF COSTS AND AFFIDAVIT
IN SUPPORT THEREOF**

I, Matthew Jackson, hereby apply for leave to proceed in this action without prepayment of fees or costs or security therefor. In support of my application I declare under penalty of perjury that the following facts are true:

- (1) I am the applicant in this action and I believe I am entitled to redress.
- (2) Because of my poverty I am unable to pay the costs of said proceeding or give security thereof.

Matthew Jackson
Applicant

SWORN or affirmed to and subscribed before me this
7 day of Jan, 2022.

Debra Eastwood
Notary Public

My Commission Expires: 3/3/2024

FILED
HEMLOCK COUNTY
2020 FEB 19 AM 10:36
CLERK OF COURT



STATE OF SOUTH CAROLINA)
 COUNTY OF NEWBERRY)
)
)
 Matthew Jackson #329032)
)
 Applicant,)
)
 v.)
)
 State of South Carolina,)
)
 Respondent.)
 _____)

IN THE COURT OF COMMON PLEAS
 FOR THE EIGHTH JUDICIAL CIRCUIT

2020-CP-36-00111

**RETURN, PARTIAL MOTION TO
 DISMISS AND MOTION FOR A
 MORE DEFINITE STATEMENT**
 (Counsel Already Appointed)

FILED
 NOV 19 AM 10:22
 NEWBERRY COUNTY
 CLERK OF COURT

In response to the post-conviction relief application filed on February 19, 2020, by Applicant Matthew Jackson, Respondent the State of South Carolina would show this Court:

I. Procedural History

Applicant is incarcerated with the South Carolina Department of Corrections. In September 2018, the Newberry County Grand Jury indicted Applicant for Attempted Murder (2018-GS-36-00482). Applicant was represented by Assistant Public Defender Charles Verner. Deputy Solicitor Dale Scott and Assistant Solicitor Taylor Daniel of the Eight Circuit Solicitor’s Office prosecuted the case.

On March 26, 2019, Applicant proceeded to a jury trial before the Honorable Donald B. Hocker, where he was convicted of the lesser included offense of Assault and Battery of a High and Aggravated Nature. Judge Hocker sentenced Applicant to fifteen years and three months imprisonment. Applicant did not appeal his conviction or sentence.

II. Summary of Facts Giving Rise to the Conviction

On June 6, 2018, Victim Tony Jackson was at Sunset Boat Dock with his girlfriend Ashleigh Cockrell, their two daughters, his girlfriend’s sisters, Alexis Cockrell and Ayleah Cook, two family friends, John and Ashley Platts, and their children. Tr. 83-87. Applicant arrived at the

dock and approached Victim's Family. Tr. 91. Victim and Applicant had a verbal interaction where Victim told Applicant to stop touching or hugging his daughter. Tr. 91-95. Applicant left the dock after speaking with Victim. Tr. 96. Later that day, as victim and his family prepared to leave, Applicant returned with his mother (Sheila Jackson) and three friends, later identified as Cameron Goff, Casey Gregory and B.J. Lipscomb. Tr. 102-104, 108-109, 385-386. A fight began between Sheila Jackson and Ayleah Cook. Tr. 105-107. During the fight between Sheila Jackson Ayleah Cook, Applicant attacked Victim. Tr. 110. During this altercation, Victim was cut multiple times with a knife. Tr. 110-111, 235. Victim was taken to the hospital by John Platts to treat his wounds. Tr. 111. Victim had to be transported to Richland County due to the severity of his injuries. Tr. 46. Victim suffered muscular issues and developed a hernia as a result of his injuries. Tr. 441. Applicant and Sheila Jackson fled the scene before law enforcement arrived. Tr. 111, 219. Applicant was later arrested in Sumter, South Carolina. Tr. 345.

III. Allegations in Application and Relief Sought

In his application for post-conviction relief, Applicant alleges that he is being held in custody unlawfully for the following reasons:

- 1) "Ineffective Assistance of Counsel-
 - (a) "Public Defender was not supposed to be able to represent me due to the fact I had a previous ineffective counsel PCR against him."
 - (b) "My witnesses were never subpoenaed."
 - (i) "Newberry Sheriffs refused to transport two of my witnesses to court."
 - (c) "My attorney said that he would file appeal and didn't."
- 2) Prosecutorial Misconduct-
 - (a) "Prosecution showed judge pictures of crime I wasn't convicted for during sentencing."
- 3) "Jury was compromised by witness."
- 4) Judicial Misconduct-
 - (a) "Presiding Judge had grudge against me, he stated that I should have gotten more time for a previous offense."
 - (b) "Judge failed to charge all lesser included offenses."

As requested relief, Applicant requests a mistrial be declared, and time reconsideration.

For the purpose of this Return, Respondent attaches as exhibits and incorporates the Newberry County Clerk of Court records regarding the subject convictions, Applicant's record from the South Carolina Department of Corrections, and the trial transcript. Respondent reserves the right to amend this Return upon receipt of any relevant materials.

IV. Response to Allegations of Ineffective Assistance of Counsel

Applicant alleges he is entitled to post conviction relief based on ineffective assistance of counsel. Specifically, Applicant asserts his public defender should not have been able to represent him because he had previously filed a PCR action challenging counsel's prior representation on an unrelated case. Additionally, Applicant alleges his witnesses were never subpoenaed. Applicant also alleges his counsel never filed an appeal in this case. Respondent submits Applicant's allegations are without merit.

The Sixth and Fourteenth Amendments to the United States Constitution guarantee Applicant, like all other defendants, the right to "assistance by an attorney, whether retained or appointed, who plays the role necessary to ensure that the trial is fair." Strickland v. Washington, 466 U.S. 668 (1984). Ordinarily, PCR allegations are centered upon an allegation that the applicant did not receive *effective* assistance of counsel guaranteed by the Sixth Amendment. See generally S.C. Code Ann. §17-27-20(A) (enumerating allegations cognizable in PCR actions). The allegation of denial of such representation sets forth a *prima facie* violation of this constitutional right, and raises a question of fact that can only be determined by an evidentiary hearing. Rogers v. State, 261 S.C. 288, 291, 199 S.E.2d 761, 762 (1973).

In a post-conviction relief action, the applicant bears the burden of proving the allegations by a preponderance of the evidence—a mere allegation of ineffective assistance is not sufficient

to warrant granting relief. Rule 71.1(e), SCRCP; Butler v. State, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985). The reviewing court applies the two-part test outlined in Strickland to determine whether counsel's conduct "was so ineffective as to require reversal" of the applicant's conviction or sentence. 466 U.S. at 687. To obtain reversal of a conviction, the applicant must prove that (1) their attorney's performance fell below an objective standard of reasonableness (the performance prong) and (2) the deficient performance prejudiced the defense to the degree that it deprived the defendant of a fair trial (the prejudice prong). Id. at 690-95; Butler, 286 S.C. at 442, 334 S.E.2d at 814. The defendant's burden for proving both of these components is heavy in light of the strong presumption that counsel's conduct fell within the range of reasonable professional legal assistance. Strickland, 466 U.S. at 690. Failure to make the required showing of either deficient performance or sufficient prejudice defeats the ineffectiveness claim. Id. at 700.

The first prong—constitutional deficiency—is "necessarily linked to the practice and expectations of the legal community." Padilla v. Kentucky, 559 U.S. 356, 366 (2010). In order to prove deficient performance, the applicant must show counsel's representation fell below an objective standard of "reasonableness under prevailing professional norms." Cherry v. State, 300 S.C. 115, 117-18, 386 S.E.2d 624, 625 (1989). The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. Butler, 286 S.C. at 442, 334 S.E.2d at 814.

Strickland, however, "does not guarantee perfect representation [—] only a 'reasonably competent attorney.'" Harrington v. Richter, 562 U.S. 86, 110 (2011) (quoting Strickland, 466 U.S. at 687). Representation is constitutionally ineffective only if counsel's conduct "so undermined the proper functioning of the adversarial process: that the defendant was denied a fair proceeding. Strickland, 466 U.S. at 686. Just as there is "no expectation that competent counsel

will be a flawless strategist or tactician, an attorney may not be faulted for a reasonable miscalculation or lack of foresight or for failing to prepare for what appear to be remote possibilities.” Harrington, 562 U.S. at 110.

Accordingly, “[j]udicial scrutiny of counsel’s performance must be highly deferential, as it is all too tempting for a defendant to second-guess counsel’s assistance after conviction or an adverse sentence, and it is all too easy for a court, examining counsel’s defense after it has proved unsuccessful, to conclude that a particular act or omission of counsel was unreasonable.” Strickland, 466 U.S. at 689; see also Yarborough v. Gentry, 540 U.S. 1, 6 (2003) (“The Sixth Amendment guarantees reasonable competence, not perfect advocacy judged with the benefit of hindsight.”). Thus, a fair assessment of attorney performance requires every effort be made to eliminate the distorting effects of hindsight, to reconstruct the circumstances of counsel’s challenged conduct, and to evaluate the conduct from counsel’s perspective at the time. Strickland, 466 U.S. at 689. Because of the difficulties inherent in making such an evaluation, the reviewing court must indulge in a “strong presumption that counsel’s conduct falls within the wide range of reasonable professional assistance.” Butler, 286 S.C. at 445, 334 S.E.2d at 816. The applicant must overcome this presumption to receive relief. Cherry, 300 S.C. at 118, 386 S.E.2d at 625.

A reviewing court “must judge the reasonableness of counsel’s challenged conduct on the facts of the particular case, viewed at the time of counsel’s conduct.” Strickland, 466 U.S. at 690. An applicant making a claim of ineffective assistance “must identify the acts or omissions of counsel that are alleged *not* to have been the result of reasonable professional judgment.” Strickland, 466 U.S. at 690 (emphasis added). The reviewing court must then “determine whether, in light of all the circumstances, the identified acts or omissions were outside the wide range of professionally competent assistance.” Id.

The Strickland standard must be applied with scrupulous care, lest “intrusive post-trial inquiry” threaten the integrity of the very adversary process the right to counsel is meant to serve. 466 U.S. at 689-90; see also Harrington, 562 U.S. at 105 (cautioning that an ineffective assistance of counsel claim could potentially function as a way to escape rules of waiver and forfeiture and raise issues not presented at trial). Even under *de novo* review, the standard for judging counsel’s representation is a most deferential one. Harrington, 562 U.S. at 105. Unlike a later reviewing court, the attorney observed the relevant proceedings; knew of materials outside the record; and interacted with the client, opposing counsel, and the judge. Thus, the question is whether an attorney’s representation amounted to incompetence under “prevailing professional norms,” *not* whether it deviated from best practices or most common custom. Id. (quoting Strickland, 466 U.S. at 690) (emphasis added).

The second, or “prejudice” prong of Strickland is rooted in the very purpose of the Sixth Amendment guarantee of counsel—to ensure a defendant has the assistance necessary to justify reliance on the outcome of the proceeding. Id. at 691-92. In order to prove prejudice, an applicant must demonstrate counsel’s deficient performance prejudiced the applicant such that “there is a reasonable probability that, but for counsel’s unprofessional errors, the result of the proceeding would have been different.” Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625. A reasonable probability is a probability “sufficient to undermine confidence in the outcome. Strickland, 466 U.S. at 694. In determining prejudice, the reviewing court must consider the totality of the evidence before the jury. Id. at 695.

Thus, it is not enough “to show the errors had some conceivable effect” on the outcome of the proceeding—counsel’s errors must be “so serious as to *deprive the defendant of a fair trial.*” Id. at 687 (emphasis added). “An error by counsel, even if professionally unreasonable, does not

warrant setting aside the judgment of a criminal proceeding if the error had no effect on the judgment.” *Id.* at 668. Moreover, the South Carolina Supreme Court has repeatedly held a PCR applicant must produce the testimony of a favorable witness or otherwise offer the testimony in accordance with the rules of evidence at the PCR hearing in order to establish prejudice. *Bannister v. State*, 333 S.C. 298, 303, 509 S.E.2d 807, 809 (1998).

The performance and prejudice standards, however, “do not establish mechanical rules; [t]he ultimate focus of inquiry must be on the fundamental fairness of the proceeding whose result is being challenged.” *Strickland*, at 696. Moreover, “there is no reason for a court deciding an ineffective assistance claim to approach the inquiry in the same order or even to address both components of the inquiry if the defendant makes an insufficient showing on one.” *Id.* at 697. The court “need not determine whether counsel’s performance was deficient before examining the prejudice suffered by the defendant as a result of the alleged deficiencies. *Id.* If it is easier to dispose of an ineffectiveness claim on the ground of lack of sufficient prejudice, the court may evaluate the prejudice prong only. *Id.*

Prior PCR Claim against Trial Counsel

Applicant’s allegations his trial counsel was ineffective because he represented Applicant at trial after Applicant filed a PCR application against Counsel from a prior case is without merit. “A defendant who shows that a conflict of interest actually affected the adequacy of his representation need not demonstrate prejudice in order to obtain relief.... But until a defendant shows that his counsel actively represented conflicting interests, he has not established the constitutional predicate for his claim of ineffective assistance.” *Duncan v. State*, 281 S.C. 435, 438, 315 S.E.2d 809, 811 (1984). Applicant has failed to allege how Counsel’s representation suffered during his trial as a result of the PCR action he filed three years earlier. Counsel litigated

the case to a verdict for a lesser included charge of Assault and Battery of a Highly Aggravated Nature (ABHAN). Applicant had no issue with Counsel's representation and it benefitted him by Counsel lobbying to include the lesser included charge of ABHAN and Assault and Battery Second Degree. Applicant was ultimately unsuccessful on his previous PCR claim against Counsel, and Applicant has failed to make any efforts to terminate Counsel as his attorney through the course of Counsel's representation. There is no evidence on the record that shows Counsel's performance was affected by the prior PCR action Applicant filed. Applicant has failed to show Counsel represented conflicting interests, or Counsel failed to adequately represent Applicant, therefore Applicant's claim of ineffective assistance of counsel is without merit.

Failure to Subpoena Witnesses

Applicant's allegation Counsel was ineffective for failing to subpoena witnesses is without merit. Respondent interprets Applicant's claim as trial counsel was ineffective for refusing to subpoena witnesses who are currently incarcerated, or in a court ordered rehabilitation facility. However, Applicant has not specified which witnesses were not subpoenaed or transported¹. In a post-conviction proceeding, the burden is on the applicant to prove the allegations in his application. Butler, 286 S.C. at 442, 334 S.E.2d at 814. The Uniform Post-Conviction Procedure Act requires that the Applicant 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) (emphasis added). In an application for post-conviction relief, it is incumbent upon Applicant to make at least a prima facie showing which would entitle him to relief before an evidentiary hearing will be scheduled and held. Welch, 246 S.C. at 258.

¹ After reading the trial transcript, Respondent believes that Applicant is referring to Cameron Goff, B.J. Lipscomb and Casey Gregory. However, Respondent requests that Applicant clarify which witnesses he is referring to.

Furthermore, Rule 8(a), SCRCR, requires all civil pleadings include a “short and plain statement of the facts showing that the pleader is entitled to relief.”

Applicant has failed to state with any specificity the facts giving rise to his claims. Applicant has not stated which witnesses Counsel failed to subpoena, Applicant has merely stated counsel was ineffective for failing to subpoena his witnesses. Therefore the Respondent would seek a more definite statement from Applicant regarding the claims that Applicant’s counsel failed to subpoena Applicant’s witnesses.

Failure to File Appeal

Applicant alleges that his plea counsel failed to file a direct appeal. Counsel has a constitutionally imposed duty to consult with a defendant about an appeal when there is reason to think either (1) that a rational defendant would want to appeal, or (2) that this particular defendant reasonably demonstrated to counsel that he was interested in appealing. Roe v. Flores-Ortega, 528 U.S. 470 (2000). To show prejudice in these circumstances, a defendant must demonstrate that there is a reasonable probability that, but for counsel’s deficient failure to consult with him about an appeal, he would have timely appealed. *Id.* at 484.

In White v. State, 263 S.C. 110, 108 S.E.2d 35 (1974), the South Carolina Supreme Court held that even if the post-conviction relief court finds that Applicant never voluntarily and intelligently abandoned his appeal, the court has no jurisdiction to grant a belated appeal. Therefore, where an accused establishes in a post-conviction relief hearing that he was unconstitutionally deprived of his statutory right to a direct appeal, the South Carolina Supreme Court, upon an appeal of the post-conviction relief decision, will review the trial record and pass upon all issues properly raised and argued as if the direct appeal has been perfected.

Applicant’s allegations Counsel was ineffective are without merit. Applicant has not

provided evidence that Counsel's performance impacted his trial. Applicant has not specified which witnesses Counsel failed to subpoena. Additionally, Applicant has not shown evidence to support his allegation that Counsel failed to file an appeal on Applicant's behalf. Therefore Applicant has failed to prove the allegations contained within this application.

Nevertheless, the allegations of ineffective assistance of counsel may raise questions of fact that the record does not conclusively refute. Accordingly, Respondent respectfully requests an evidentiary hearing to fully resolve this issue. Sharper, 279 S.C. at 264, 305 S.E.2d at 247.

Response to Allegations of Prosecutorial Misconduct

Applicant further raises a claim of prosecutorial misconduct, including the solicitor's use of photographs of a crime which Applicant alleges he was never convicted. Respondent contends that this allegation is without merit.

Applicant alleges the prosecutor was improper for including a photograph for a crime which Applicant was not convicted. At sentencing, the prosecutor provided the judge with a packet and included photographs of several cases Applicant was convicted in. Tr. 605 ln. 1-7. Counsel properly objected to the introduction of one photograph stating "the third one was not a – that was not a conviction case." Tr. 605 ln. 8-9. The Court stated they will not consider the photo or case where Applicant was not convicted. Tr. 605 ln. 10-14. Applicant's counsel properly objected to the use of this photo as soon as it was presented, and the Court stated that they would not consider the photo or the case because applicant was not convicted in this case. Therefore Applicant's claim of prosecutorial misconduct is without merit.

However, the allegations of prosecutorial misconduct may raise questions of fact that the record does not conclusively refute. Accordingly, Respondent respectfully requests an evidentiary hearing to fully resolve this issue. Sharper, 279 S.C. at 264, 305 S.E.2d at 247.

V. **Response to Allegation that Jury was Compromised**

Applicant alleges the jury was compromised by an improper conversation between a juror and a witness for the State. Respondent contends this allegation is without merit.

A defendant in a criminal prosecution is constitutionally guaranteed a fair trial by an impartial jury, and in order to fully safeguard this protection, it is required that the jury render its verdict free from outside influence. State v. Carrigan, 284 S.C. 610, 613-14, 328 S.E.2d 119, 121 (Ct. App. 1985) (citing State v. Salters, 273 S.C. 501, 257 S.E.2d 502 (1979)). Nevertheless, the mere fact that some conversation occurs between a juror and a witness for the State does not necessarily prejudice a defendant. Id. (See State v. Goodwin, 250 S.C. 403, 158 S.E.2d 195 (1967)). Admittedly, the appropriate remedy for improper communication between jurors and outsiders is the declaration of a mistrial. Nevertheless, whether or not a mistrial should be declared is a matter resting within the trial court's sound discretion. State v. McDaniel, 275 S.C. 222, 224, 268 S.E.2d 585, 586 (1980).

The trial court informed both parties there was an *ex parte* communication between a witness and a juror after court had adjourned on March 27, 2019. Tr. 474. The trial court explained the witness attempted to determine the juror's opinion on the case at the time of the conversation. Tr. 474. The juror refused to answer and immediately reported the *ex parte* communication to the court the following day. Tr. 474. The trial court stated they questioned the juror about the conversation and asked if it would affect her ability to be fair and impartial, to which the juror indicated it would not. Tr. 474. The trial court was proper in using its discretion to determine whether the improper communication prejudiced the defendant. Based on the record there is no indication the juror was affected by the conversation or that her ability to be fair and impartial was affected. Therefore the trial court's decision to retain the juror and not declare a mistrial was

proper, and the applicant should not be granted post-conviction relief on this ground.

However, the allegation of a compromised jury may raise questions of fact that the record does not conclusively refute. Accordingly, Respondent respectfully requests an evidentiary hearing to fully resolve this issue. Sharper, 279 S.C. at 264, 305 S.E.2d at 247.

VI. Response to Allegations of Judicial Misconduct

Applicant raises a claim of judicial misconduct. Applicant alleges the trial court incorrectly declined to charge all lesser included offenses. Additionally, Applicant alleges the judge was biased, stating “the judge had a grudge against me, he said that I should have gotten more time for previous offenses.” However, these claims are raising trial court error, which is a direct appeal issue not proper for post-conviction relief. Accordingly, these claims should be summarily dismissed.

Applicant is asserting what he views as misconduct by the judge, which raises a direct appeal issue that is procedurally barred by S.C. Code Ann. § 17-27-20(b) (2003). Post-conviction relief is not a substitute for an appeal. Simmons v. State, 264 S.C. 417, 423, 215 S.E.2d 883, 885 (1974). PCR is only proper when the application collaterally attacks the validity of the conviction or sentence. Al-Shabazz v. State, 338 S.C. 354, 527 S.E.2d 742 (2000).

“In a direct appeal, the focus generally is upon the propriety of rulings made by the circuit court in response to a party’s motions or objections. In PCR, the focus usually is upon alleged errors made by trial or plea counsel. Therefore, when asserting the erroneous admission of evidence, a violation of a constitutional right, or other errors in a proceeding, the applicant generally must frame the issue as one of ineffective assistance of counsel.”

Id. at 363-64, 527 S.E.2d at 747. A post-conviction relief application cannot assert any issues that could have been raised at trial or on appeal. Drayton v. Evatt, 312 S.C. 4, 8, 430 S.E.2d 517, 520 (1993). Applicant could have raised these issues on appeal, and his failure to do so has waived

these allegations as grounds for relief. Thereby Applicant has failed to state a claim for which relief can be granted and Respondent submits that Applicant's allegations of judicial misconduct should be summarily dismissed as there is no genuine issue of material fact.

VII. Motion for a Partial Dismissal as a Matter of Law

Respondent moves to summarily dismiss Applicant's allegations of trial court error, as they should have been raised on direct appeal and are improper for post-conviction relief. Direct appeal issues are procedurally barred in a post-conviction relief proceeding by S.C. Code Ann. § 17-27-20(b) (2003). Post-conviction relief is not a substitute for a direct appeal. Simmons v. State, 264, S.C. 417, 215 S.E.2d 883 (1974). An application for post-conviction relief cannot assert any issues that could have been raised at trial or on direct appeal. Ashley v. State, 260 S.C. 436, 196 S.E.2d 501 (1973). Applicant's failure to raise this issue in one of those proper forums has waived this allegation as a ground for relief. Therefore, the Court should summarily dismiss this allegation.

VIII. Motion for a More Definite Statement

Respondent moves for a more definite statement as to Applicant's allegations. Applicant fails to set forth with specificity the facts and circumstances upon which his claims are based. Applicant alleges his counsel was ineffective by failing to subpoena his witnesses, however he has not stated which witnesses were not subpoenaed. Applicant has merely made a blanket statement that his counsel was ineffective for failing to subpoena his witnesses.

The Uniform Post-Conviction Procedure Act requires that the Applicant 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) (emphasis added). In an application for post-conviction relief, it is incumbent upon Applicant to make at least a prima facie showing which would entitle him to relief before an evidentiary hearing will be scheduled and held. Welch, 246 S.C. at 258.

Furthermore, Rule 8(a), SCRPC, requires all civil pleadings to include a “short and plain statement of the facts showing that the pleader is entitled to relief.”

Applicant has failed to state with any specificity the facts giving rise to his claims. Additionally, his claims are not supported by any other additional information in the application. Respondent moves pursuant to Rule 12(e), SCRPC, to require Applicant to file an additional amended or supplemental application well in advance of any evidentiary hearing scheduled in this matter. If Applicant fails to file a timely and responsive amended or supplemental application setting forth specific allegations for relief, Respondent reserves the right to move to dismiss the claims in this application.

IX. Any Future Amendments and Invocation of the Discovery Process

Applicant must specify any claims he intends to raise at the PCR evidentiary hearing. All claims should be made well in advance of the evidentiary hearing. Because Applicant has an attorney, the attorney, and not Applicant, is the only individual authorized to file amendments to this application. See Rule 11, SCRPC. *Pro se* filings will not be considered at the PCR hearing. The State reserves the right to request that any amendments withheld until the last minute be stricken because of undue prejudice to the State pursuant to Love v. State, 428 S.C. 231, 834 S.E.2d 196 (2019), or, alternatively, the State will request a continuance in the matter. See Id. at 245, 834 S.E.2d at 203 (Kittredge, J., dissent) (“If, however, the proposed amendment . . . would truly prejudice the State, the better course of action would be to continue the matter and thus remove any possibility of prejudice resulting from the belated amendments.”).

Pursuant to section 17-27-150 of the South Carolina Code, Applicant may not invoke formal discovery processes to issue subpoenas or otherwise obtain discovery materials unless granted leave from the Court upon a showing of good cause. Further, Respondent requests that all

potential exhibits and materials used to produce potential expert witness testimony be sent to the State well in advance of the evidentiary hearing. As noted above, the State reserves the right to request a continuance and oppose witness testimony and exhibits that are withheld until the last minute resulting in undue prejudice to the State. See Love, 428 S.C. 231, 834 S.E.2d 196.

X. General Denial

Respondent denies each allegation not expressly admitted, qualified, or explained.

XI. Conclusion

WHEREFORE, the Respondent respectfully requests this Court grant its partial motion to dismiss set forth in section VII, and thereafter convene an evidentiary hearing for the purpose of determining whether the Applicant's trial counsel was ineffective, and whether prosecutorial misconduct exists.

Respectfully submitted,

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Attorney General

W. JEFFREY YOUNG
Chief Deputy Attorney General

MEGAN HARRIGAN JAMESON
Senior Assistant Deputy Attorney General

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By: s/ Michael J. Neubauer
ATTORNEYS FOR RESPONDENT

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November 16, 2020

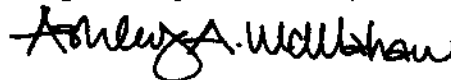
STATE OF SOUTH CAROLINA)	COURT OF COMMON PLEAS
)	FOR THE 8 TH JUDICIAL CIRCUIT
COUNTY OF NEWBERRY	)	Case No.: 2020-CP-36-00111
Matthew L. Jackson, #329032)	
)	
Applicant,	)	AMENDED POST-CONVICTION
	)	RELIEF APPLICATION
v.)	
)	
State of South Carolina.)	

The Applicant, by and through his undersigned attorney, hereby amends his PCR application filed on February 19, 2020 to add the following:

1. Ineffective Assistance of Counsel of Deputy Public Defender Charles V. Verner:
 - a. Failure to call James Gregory as a witness in the trial.
 - b. Failure to file a direct appeal from the conviction and sentence.

Applicant requests that he be permitted to amend his PCR application to conform to the evidence presented at the PCR hearing should any new or unaddressed issues arise during the course of the hearing that have not been specifically addressed in the Application. See Simpson v. Moore, 367 S.C. 587, 627 S.E.2d 701 (2006); see also Love v. State of South Carolina, 428 S.C. 231, 834 S.E.2d 196 (2019).

Respectfully submitted,



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 ATTORNEY FOR APPLICANT

FILED
 NEWBERRY COUNTY
 2023 NOV 20 AM 10:29
 ELIZABETH J. TOLSON
 CLERK OF COURT

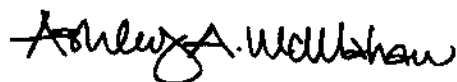
November 15, 2023

CERTIFICATE OF SERVICE

I certify that I have served this document via email to:

Zachary W. Jones
Assistant Attorney General
zacharyjones@scag.gov

This 15th Day of November, 2023.



ASHLEY A. MCMAHAN, ESQUIRE
Attorney for Applicant

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STATE OF SOUTH CAROLINA

-----x

MATTHEW JACKSON,

Petitioner,

Case No.

-against-

2020-CP-36-00111

STATE,

Respondent.

-----x

November 27, 2023

Newberry, S.C.

B E F O R E :

HONORABLE B. ALEX HYMAN

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

ASHLEY MCMAHAN

Attorney for the Petitioner

ZACARY WILLIAM JONES

Attorney for the Respondent

Aileen Butler

Official Court Reporter

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I N D E X

<u>WITNESS</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u>	<u>RECROSS</u>
MATTHEW JACKSON				
Ms. McMahan	4			
JAMES PETERSON				
Ms. McMahan	13			
JAMES GREGORY				
Ms. McMahan	15			
CHARLES VERNER				
Mr. Jones	20			
Ms. McMahan		30		

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E X H I B I T S

<u>NO.</u>	<u>DESCRIPTION</u>	<u>I.D.</u>	<u>EVD.</u>
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NO EXHIBITS RECEIVED

1 THE COURT: All right. Call your next case
2 please.

3 MS. MCMAHAN: Judge this is Matthew Jackson
4 versus state of South Carolina, 2020-CP-36-00111.
5 Mr. Jackson is present here today and at this
6 time applicant would call him to the stand.

7 MATTHEW JACKSON, called as a witness, was
8 sworn by the clerk and testified as follows:

9 DIRECT EXAMINATION

10 BY MS. MCMAHAN:

11 Q. Mr. Jackson, did you file this PCR application?

12 A. Yes, ma'am.

13 Q. And who was your attorney that represented you?

14 A. Charles Verner.

15 Q. When were you arrested?

16 A. June the 7th, 2018.

17 Q. And were you in the detention center the whole
18 time or were you out on bond?

19 A. I was in the detention center the whole time.

20 Q. And when did you first meet with Mr. Verner?

21 A. I met with Mr. Verner in February. He gave me
22 the plea and told me that they offered a zero to 20 on
23 the plea. I told him I didn't want it. He sent me back
24 to the county jail. Gave me a trial notice and then the
25 next time I'd seen him was the Friday before we went to

1 trial.

2 Q. So you met with him in February 2019?

3 A. I didn't really meet with him. I came up here
4 and he told me the plea they were offering and I
5 rejected it.

6 Q. So they transported you up here to the
7 courthouse and you were you talking to him here?

8 A. Yes, ma'am

9 Q. And what was a the plea offer again?

10 A. Zero to 20.

11 Q. Was that what you were charged with?

12 A. No, they offered to drop it down to a lesser
13 included offense of ABHAN.

14 Q. So it was to plead to assault and battery first
15 degree?

16 A. No, assault and battery, high and aggravated
17 nature. I was originally charged with attempted murder.

18 Q. Okay. And you said you didn't want that?

19 A. No, ma'am.

20 Q. And then they took you back?

21 A. Yes, ma'am, and I went to trial the next month.

22 Q. And then while were you waiting for trial did
23 you talk to Mr. Verner again?

24 A. I talked to him the Friday before we went to
25 trial. That was the the only time I ever spoke with

1 him.

2 Q. What did you guys talk about?

3 A. We talked about a witness list and my defense
4 of self-defense and that was it. He told me he would
5 come back and see me Sunday and bring me discovery. I'd
6 never seen discovery until you sent it to me this year
7 and he never called any of the witnesses that I gave him
8 the list for.

9 Q. And who were those witnesses?

10 A. Oh, I had B.J. Lipscomb, Casey Gregory, James
11 Peterson, my mother, Haven Coffey, Joysee Gagnon, Regina
12 Sly, Steven Davis.

13 There was many of them. He never contacted any of
14 those.

15 Q. So while you're talking about these witnesses,
16 just let the Court know what the brief facts of your
17 case were?

18 A. The facts was I went to the lake. I almost got
19 jumped on. I left. My mother went back down there to
20 get her pants off so I followed her down there. When I
21 got down there she was getting jumped on. When I got
22 out of the car three individuals jumped on me.

23 Q. And you were getting out of the car to what, to
24 help your mom?

25 A. Yes, I was trying to pull the girls off my mom

1 and their boyfriends jumped on me.

2 Q. So the girlfriends had jumped on your momma?

3 A. Yeah, there were three twenty something year
4 olds jumping on my fifty-year-old mom.

5 Q. Had you had words with any of of these people
6 earlier that day?

7 A. Yes, I did. They tried to jump on me and I had
8 to leave because they tried to jump on me.

9 Q. After you left how much time passed before you
10 guys came back?

11 A. It was about an hour and a half, two hours.

12 Q. This was at like a boat ramp right?

13 A. Yes, ma'am.

14 Q. Up in Prosperity?

15 A. Yes, ma'am.

16 Q. So you're at the boat ramp in Prosperity for
17 Lake Murray, right?

18 A. Yes, ma'am.

19 Q. You had words with these people and you left?

20 A. I had words with them because I was best
21 friends with the dude that jumped on me, I was best
22 friends with his baby momma's other baby daddy and they
23 were having custody battles in court so that's why they
24 threatened me.

25 Q. Okay. And then you left. An hour and a half

1 later you all come back to get your mom's clothes?

2 A. Yes, ma'am.

3 Q. And they're still there?

4 A. Yes, ma'am.

5 Q. And how many of them would you say there were?

6 A. Tony, John Platt, the other guy I can't
7 remember his name. It was Ashley, Alexis, Aleya and
8 Ashley. So it's like seven of them. Six or seven of
9 the.

10 MS. MCMAHAN: Just for the record, Your
11 Honor, not all Ashley's behave badly. I do not.

12 Q. So there were four chicks down there? Five
13 girls or four girls?

14 A. It was four girls.

15 Q. And five guys? Four guys?

16 A. Three guys.

17 Q. Okay. And all four of the girls started going
18 after your mom?

19 A. Yes, accept for Ashley. The one Ashley didn't.
20 The other Ashley did.

21 Q. So you have one good Ashley and one bad Ashley.

22 A. Yeah.

23 Q. And the one bad Ashley attacked your mom?

24 A. Yes, ma'am.

25 Q. And then how many people were in the car with

1 you when you were pulling up?

2 A. It was me, B.J., Casey and my cousin Cameron.

3 Q. Okay, where was -- when you Casey you mean

4 James Casey Gregory, right?

5 A. Yes, ma'am.

6 Q. Where was James Robert Peterson?

7 A. He had been there earlier that day and they
8 tried to jump on him and he had to leave because they
9 tried to jump on him. I was calling him just to show
10 that the mindset they were in during that day.

11 Q. And then there was another individual you
12 wanted to call as a witness but he is no longer with us,
13 right?

14 A. Yes.

15 Q. Who is that?

16 A. B.J. Lipscomb. He died.

17 Q. Did he die before the trial?

18 A. Yes, ma'am. No ma'am, he did not die before
19 the trial. He died after he was in prison.

20 Q. So when you talked to Mr. Verner did you guys
21 talk about defenses you had, like self-defense or
22 defense of others?

23 A. Yes.

24 Q. And what do you remember him telling you about
25 that?

1 A. He told me that he was going get in touch with
2 my witnesses. He was going to subpoena them and they
3 would be in court Monday, but I guess he never had time
4 because he waited until Friday to see me and we went to
5 trial Monday morning.

6 Q. And none of them were there, right?

7 A. No, he didn't contact any of them.

8 Q. Ultimately did he call any witnesses on your
9 behalf?

10 A. He called one person that wasn't there and all
11 she testified was that the people were drunk when she'd
12 seen them.

13 Q. Ultimately somebody did get hurt. It was the
14 person that you were you convicted of, right?

15 A. Yes.

16 Q. What was his name

17 A. Tony Jackson.

18 Q. And you said you didn't get your discovery from
19 Mr. Verner?

20 A. I never seen discovery until you sent it to me
21 this year and it's not even complete discovery. It's
22 just his case notes.

23 Q. Did you ever get any statements from anybody or
24 anything like that?

25 A. I'd never seen any of that. I still haven't

1 seen any of that. What he sent you and what you sent me
2 that's all I've seen.

3 Q. And when you met with him that Friday before
4 what were you guys talking about?

5 A. He just asked me what happened. I told him
6 what happened. He asked me what witnesses I wanted him
7 to call. I gave him a whole list of witnesses. He
8 called them out when he was picking the jury. Some of
9 the jury members couldn't even be on there because they
10 knew some of the witnesses, but he never contacted any
11 of the witnesses and didn't call any of them. He didn't
12 even make attempt.

13 To say his defense was inadequate would be an
14 injustice to the word inadequate. It was nonexistent.

15 Q. Mr. Jackson, how big is he compared to you?

16 A. He is like 250 pounds. I'm 140.

17 Q. So at the time he was definitely like well
18 above 200?

19 A. Yeah, like two of me.

20 Q. And the other guys that were there are they
21 bigger than you? Smaller than you?

22 A. One of them, John, was like six foot four, 260
23 pounds. Huge compared to me.

24 Q. Were they bigger than Casey and Mr. Peterson?

25 A. Yeah, bigger than them.

1 Q. You said he was like six four?

2 A. Six four, like 260. Really big guy.

3 Q. Besides that one offer from zero to twenty did
4 you ever get any other types of offer?

5 A. No, I got no offer. That was it. They offered
6 me once and then gave me a trial notice.

7 Q. So at the end of your trial were you going to
8 ask Mr. Verner to file an appeal for you?

9 A. I did ask Mr. Verner to file an appeal. He
10 assured me that he would. He even took my family, my
11 mother and my girlfriend at the time out to eat the next
12 day at La Fogata, Mexican restaurant and told them that
13 he was already filing an appeal but he never did.

14 Q. Is there anything else you want the Court today
15 -- the Court to know today about your PCR?

16 A. I feel like the reason why Charles Verner
17 didn't represent me to the fullest because I had a
18 previous ineffective claim against him that I never went
19 to court for.

20 I feel like he should not have represented me if he
21 had a conflict of interest somehow. I feel like he had
22 a grudge against me for the previous PCR and didn't
23 represent me because of that grudge.

24 Q. Okay. Answer any questions the attorney
25 general may have.

J. Peterson - Direct by Ms. McMahan

1 MR. JONES: No questions. Thank you.

2 THE COURT: All right. You may step down
3 sir. Thank you.

4 MS. MCMAHAN: Your Honor, at this time
5 applicant is is going to call Mr. Peterson. Give
6 me a second to go get them.

7 JAMES PETERSON, called as a witness, was
8 sworn by the clerk and testified as follows:

9 Q. Are you James Robert Peterson?

10 A. Yes, ma'am.

11 Q. We had a couple of James today so that's why?

12 A. Yes, ma'am.

13 Q. Do you know Mr. Jackson?

14 A. Yes, ma'am.

15 Q. And at some point were you guys down at the
16 boat ramp in Prosperity?

17 A. Yes, ma'am.

18 Q. Mr. Jackson went back there, but you were with
19 them the first time?

20 A. Yes, ma'am.

21 Q. And how many people would you say were down
22 there?

23 A. It was probably 40, 30. It was a lot of people
24 down there.

25 Q. How many of those people were having words with

1 Mr. Jackson?

2 A. Probably half.

3 Q. Did you know those folks?

4 A. I knew, yes, ma'am.

5 Q. Did you hear him yelling at them or anything?

6 A. I heard some yelling and not long after I had
7 gotten in the vehicle with Tony Brothers wife and we
8 went to her house and that was all that I had knew what
9 was going on.

10 Q. Who was yelling at who?

11 A. It was kind of back and forth, but I can't
12 really remember it's been so long, but I know it was a
13 lot of back and forth and I got in the car and we left.

14 Q. Okay, so obviously you're in the detention
15 center right now?

16 A. Yes, ma'am.

17 Q. What kind of record do you have?

18 A. It's not that a bad, but it's not that good.

19 Q. Well, obviously you have a conviction from
20 Greenville, right?

21 A. Yes, ma'am.

22 Q. What was that for drugs?

23 A. Violation of probation.

24 Q. Okay, but what were you on probation for?

25 A. It was for burglary, second.

J. Gregory - Direct by Ms. McMahan

1 Q. And you were going to rehab for that?

2 A. Yes, ma'am.

3 Q. And your currently being held on charges that
4 have not been handled, right?

5 A. Yes, ma'am.

6 Q. So is that burglary the only thing you have on
7 your rap sheet?

8 A. Yes, ma'am.

9 Q. Do you have minor ones from maybe Magistrate
10 Court?

11 A. Maybe back in the day like a disorderly conduct
12 or maybe drinking or open container.

13 Q. The main conviction you have right now is the
14 that burglary first?

15 A. Yes, ma'am.

16 MS. MCMAHAN: Answer any questions the
17 attorney general may have.

18 MR. JONES: Nothing from the State.

19 THE COURT: All right. Thank you, you may
20 step down.

21 MS. MCMAHAN: Can we get Mr. Gregory.

22 JAMES GREGORY, called as a witness, was
23 sworn by the clerk and testified as follows:

24 Q. Is your middle name Casey?

25 A. Yes.

1 Q. Do you go by Casey?

2 A. Yes.

3 Q. You know he has two James here so it's getting
4 a little confusing?

5 A. Right.

6 Q. Do you know Mr. Jackson?

7 A. I do.

8 Q. And the fight that Mr. Jackson was involved
9 with at the boat ramp, do you know anything about it?

10 A. Yeah, I was there.

11 Q. Were you there the first time and the second
12 time?

13 A. The second time.

14 Q. You rode back with him to the boat ramp?

15 A. Yes.

16 Q. What happened when you rode back to the boat
17 ramp with him?

18 A. Well, when we pulled up, I mean as soon as he
19 got out of the car there was people already. It was
20 just instant fighting.

21 Q. So were they rushing him?

22 A. Yes.

23 Q. Who were they?

24 A. I only know one of them and that was Antonio
25 Jackson.

1 Q. So you rode back with him to the boat ramp.
2 What was the reason that you all were riding back there
3 for?

4 A. Well, we was already on the way there, me and
5 another guy.

6 Q. Okay.

7 A. And I guess he was going there to met up with
8 Matt or whatever, you know what I'm saying. That's all
9 I really knew. Like -- but when we got there like his
10 mom was there. She was already getting jumped on by
11 some people and then like I said, as soon as he got out
12 he was getting jumped on.

13 Q. Do you know how many people were jumping on
14 him?

15 A. A few. I couldn't really tell. Like I stayed
16 in the car.

17 Q. So you stayed in the car and locked the doors?

18 A. Right.

19 Q. And then how long after you locked the doors
20 were the doors unlocked for them to get back in? Was it
21 a few minutes? Like an hour?

22 A. Yeah. Yeah.

23 Q. Was Mr. Jackson kind of beat up when he got
24 back in the car?

25 A. Yeah. Yes, ma'am.

1 Q. What -- how did -- where was he -- was he
2 bruised or something? Did he get beat up?

3 A. I mean, his face looked like it was bruised and
4 there was blood on him.

5 Q. Did his mom get in the car with you all?

6 A. No, I don't think so. I can't really remember.

7 Q. Well, it's been a long time.

8 A. Well, yeah, it has. Plus I've been in an
9 accident since then. No, I don't think she did.

10 Q. So the people that were at the boat ramp when
11 you all got back there what would you say like ten of
12 them or more?

13 A. It was a whole group.

14 Q. Was it girls and guys?

15 A. Uh-huh.

16 Q. And who was beating up on his momma, the girls
17 or the guys?

18 A. Girls.

19 Q. Who was beating up on him?

20 A. I mean I just seen some black dudes. I mean to
21 be honest with you, I was in the back kind of -- I
22 didn't even want to be seen there because I was on
23 probation at the time. So I didn't want my face to be
24 seen by anybody. But once it happened -- I didn't know
25 it was going to happen -- once it happened I was just,

1 you know, I was just kind of hiding my face.

2 Q. Okay. And at some point you went to rehab,
3 didn't you?

4 A. I think I did, yeah.

5 Q. You were on probation at the time. Do you know
6 what you were on probation for? Was it a drug charge?

7 A. I think so. I'm not sure. I really can't
8 remember.

9 Q. When was the accident that you had?

10 A. 2021.

11 Q. So after this whole thing is when you had an
12 accident?

13 A. And your obviously in the detention center now
14 for a reason, but absent the charge that you're in
15 detention center for, what kind of convictions do you
16 have on your rap sheet.

17 A. Like CDV maybe.

18 Q. Did you have a drug problem?

19 A. Do I have a drug problem?

20 Q. Did you ever?

21 A. I have.

22 Q. Okay. So you had a CDV and the drug conviction
23 you were on probation from or was it something else?

24 A. To be honest I can't --

25 Q. Okay, it's all right. But you remember you

1 were on probation and you weren't suppose to be involved
2 in that kind of thing?

3 A. Well, yeah, and I was suppose to report
4 immediately after it happened and then I did get
5 violated for that. For being there.

6 Q. Okay. And if you were called to testify at Mr.
7 Jackson's trial you would have just testified basically
8 to what you just told us today?

9 A. Yes, ma'am.

10 MS. MCMAHAN: Answer any questions the
11 Attorney General may have.

12 MR. JONES: I nothing from the State, Your
13 Honor.

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

15 MS. MCMAHAN: Your Honor, at this time the
16 applicant rests.

17 THE COURT: Okay.

18 MR. JONES: The State would call Mr. Charles
19 Verner.

20 THE COURT: Okay.

21 CHARLES VERNER, called as a witness, was
22 sworn by the clerk and testified as follows:

23 DIRECT EXAMINATION

24 BY MR. JONES:

25 Q. Mr. Verner, can you recite to the Court your

1 history of representation for Mr. Jackson.

2 A. I have known Matt over the years. I think I
3 represented him six times since 2006. This would have
4 been the sixth time I represented him on a criminal
5 charge.

6 Q. Do you recall how you became involved in this
7 case?

8 A. Yeah, I was actually at the jail for his bond
9 hearing the day just by coincidence. Not by plan. He
10 and his mother had both been arrested and I just
11 happened to be at the jail for the bond hearing and I
12 attended and I knew some of the people prior were out in
13 the lobby and as I recall the female victims got in a
14 fight. They tried to jump his mother or a witness
15 during the bond hearing and they were escorted out by
16 the deputies so it was kind of -- I was aware of his
17 charges from his bond hearing by coincidence and then at
18 some point I picked up representation of him.

19 Q. Do you remember about how long you were
20 representing him before his trial?

21 A. I think he got arrested June of 2018 and it
22 went to trial in March 2019, I believe. My
23 recollection.

24 Q. Did you ever go over discovery with him prior
25 to trial?

1 A. Yeah.

2 Q. Did he give a list of witnesses to contact?

3 A. I don't know if he gave a list, but he
4 certainly gave me a list of people who were potential
5 witnesses or people to talk to like there was a girl
6 named Sarah Cofee (phonetics) that we spoke to who was
7 -- she was the one who invited him over to the lake.
8 The -- I do believe that Casey and Cameron had both been
9 sent to SCDC prior to trial. I thought I had spoken to
10 Casey at the jail because he was there I think at the
11 same time Matt was. And his mother did bond out and she
12 came and spoke to me on a pretty regular basis about
13 Matt.

14 I did hear him say that I first talked to him about
15 the case the Friday before trial and that's not right at
16 all.

17 Q. And have you represented Casey and JP before?

18 A. I don't know JP. I'm sure I represented Casey
19 Gregory before and I think Cameron Goff. My
20 recollection was that none of those guys -- this was
21 incident about a fight at a boat ramp at the lake. They
22 had been pretty much at the lake all day, swimming,
23 fishing, drinking and then the fight happened kind of at
24 the very end as they are leaving. As I recall Casey and
25 Cameron and the other kid didn't get there until that

1 night at the very tail end of the fight.

2 Q. All right, and so just briefly could you
3 describe the nature of altercation?

4 A. There is some rural boat ramp. Dirt roads.
5 Has a circle on it. The -- there were plenty of people
6 out there at the docks fishing. I think there are two
7 docks side by side. One is primarily used for fishing.
8 One is primarily used for cooking out and the kids
9 swimming. Several people out there.

10 There is a black guy who was victim in the case. He
11 is a big guy. He's probably about 250 pounds who has
12 got some kids out there. Matthew is invited or told
13 that we're going to be out by a girl he's interested in,
14 Sarah Coffey. He goes out to see her.

15 As Matthew walks up in morning one of those guys --
16 I think his name was James Clatt, the victim -- one of
17 his daughters who knew Matthew, walks up and hugs
18 Matthew or high fives him or semi-hugs him on the way in
19 and that gets JP, the victim, kind of -- he goes up to
20 Matthew, the witnesses are saying, don't be touching my
21 daughter that way and Matthew saying I didn't, you know.
22 Just -- I'm not. And they're drinking. Cooking out all
23 day. JP is pretty big dude. About 260 pounds as I
24 remember.

25 Q. This is not the JP the James Peterson who just

1 came in?

2 A. No. No. No, this is the victim and he's a big
3 black guy. But he -- over the time the victim is kind
4 of -- he has got a radio he's playing. He's kind of
5 DJ'ing and at times he would get on the bullhorn and bad
6 mouth Matthew in front of everybody. I think he starts
7 calling Matthew a pedophile and you see that guy rub my
8 daughter. Stuff like that. He's kind of egging it on
9 for a while. Over a while people are coming up to

10 Matthew you need to go. This isn't a good scene.
11 Matthew had been dropped off by somebody there that day.
12 Maybe Sarah, but I can't remember. But the victim is
13 egging on and being kind of aggressively over the
14 microphone bad mouthing Matthew in front of the other
15 kids there.

16 Matthew doesn't have a way out of there. It is in
17 rural Prosperity and at some point Matthew does feel
18 uncomfortable and he starts walking away and leaving.
19 The -- he leaves before there is any kind of bad
20 altercation. A couple miles down the dirt road there's
21 a bar called Buffalo Creek and he gets there and he
22 calls his momma and says I don't have any way home. I
23 don't feel comfortable here. Can you come pick me up
24 and the mother, Sheila, takes her about three hours to
25 get there, but eventually she comes and picks up Matthew

C. Verner - Direct by Mr. Jones

1 and it was part of our case where the mother really is
2 the one who got Matthew in trouble where instead of
3 taking him home she takes him back to the boat ramp to
4 confront the people. The -- and it's just getting dark
5 at that point. Matthew and his mother arrive. I think
6 the other guys, Cameron, Casey and BJ just coincidentally
7 happen to pull up about at the same time. The -- I
8 think they're all on probation at that point and I think
9 they got violated. There was rumor they were carrying
10 guns and probably shouldn't have been out at that point.
11 I guess here is where we get into the divergence of the
12 stories.

13 Sheila, Matthew's mother, comes up and kind of
14 aggressively gets out the car and say, what's going on
15 here. What are you all doing. And she gets into a back
16 and forth with the three teenage girls and there
17 mouthing off at each other and the three teenage girls
18 go after Sheila, Matthew's mom it the -- it's not a
19 parking lot. It's just a dirt road that loops around.
20 But they start beating up momma in the road. Matthew
21 probably gets involved to pull them off of momma. About
22 that time JP also I think he's on a motorcycle or trying
23 to load it on a shed, but the bike gets knocked over or
24 something. He gets in the fight because Matthew has put
25 his hands on baby's mama pulling them off. They get

1 into a fight and then a little bit of a different
2 version, but Matthew and some witnesses saying Matthew
3 is getting beat up pretty good and then Matthew pulls
4 out a knife that he's been carrying in his pocket and he
5 slashed the guy pretty good across the back where it's
6 probably a 12 inch gash across the man's back. Which by
7 Matthew's version would be self-defense. Their version
8 and the girls testified that Matthew had pulled out the
9 knife pretty early in the fight and pretty much went
10 after the guy. So it would be a self-defense. Their
11 version of it was Matthew came after me with a knife.
12 Matthew's version of it was, I was getting beat up. I
13 thought he was going to beat me up worse.

14 Matthew is approximately one hundred pounds smaller
15 than the victim. The victim did not have any real prior
16 criminal record. But the victim and the girls testified
17 that Matthew was the one who instigated the fight with
18 the man. The man was definitely cut and then Matthew
19 jumps in the car with Cameron and Casey and they take
20 off and I guess left the county for a while.

21 Q. All right. In other words there were different
22 accounts of who started the fight?

23 A. And there were I think I counted 14 witnesses
24 and they all had slightly different versions of what
25 happened. They were out at the lake drinking all day

1 type situation.

2 Q. So is it fair to say it was chaotic situation?

3 A. It would have been really chaotic fracas at the
4 end.

5 Q. Did you intentionally perform poorly in this
6 case because you bore a grudge again Matthew for a prior
7 ineffective assistance claim?

8 A. I like Matthew. I like his mother. If he had
9 filed a PCR against me I don't hold grudges on PCR's.
10 I'm not familiar. I understand he said that he had
11 filed a PCR. I'm not familiar with it. It's very
12 likely he may have and that could be true but, I mean,
13 he was charged with attempted murder and the jury found
14 him guilty of a lesser included, so -- but no, I would
15 not have sandbagged him if I felt like I disliked him I
16 would have stepped a side.

17 I believe his version. It was very close to
18 self-defense if not self-defense. It was certainly a
19 mutual fight. Matthew did pull a knife out in a fist
20 fight. The man was about one hundred pounds bigger than
21 Matthew and the man had probably been egging him on.
22 Bad mouthing him for some period of time.

23 Q. The judge did give a self-defense instruction,
24 correct?

25 A. He did.

1 Q. All right.

2 A. And he must have charged lesser included as
3 well.

4 Q. Can you explain because you filed a motion
5 after the trial for reconsideration on sentence?

6 A. I saw the amended complaint that we didn't file
7 an appeal which surprised me because I always file
8 appeals after any loss whether I'm asked to or not. I'm
9 really surprised I did not file an appeal in this case.
10 To the extent I did not file an appeal I would -- I
11 would testify I believe that is objectively wrong. That
12 was brought up to my attention and I think what happened
13 was -- and I got the notes on it -- I had filed a Motion
14 for Reconsideration of the sentence. The judge gave us
15 time to submit affidavits. I sent the judge affidavits
16 from various family members of Matthew about asking the
17 judge to reconsider the sentence. There is no order
18 ever came back from the judge and no hearing was set,
19 but I think -- my only answer for that is, we were
20 waiting for a Motion for Reconsideration. It didn't get
21 set and then the next thing we know we're here. But I'm
22 surprised I didn't file an appeal, but I think it's
23 probably because we were initially waiting for a Motion
24 for Reconsider the sentence to file the appeal. It
25 didn't get sent and I think the duty falls on me at some

1 point ask the judge this issue is still pending. But I
2 would acknowledge an appeal was not filed and should
3 have been at some point and I think that was because we
4 never followed up on the judge setting up a followup
5 hearing.

6 I do show where I sent the judge affidavits on
7 Matthew's behalf.

8 Q. Okay. Mr. Peterson and Mr. Gregory who
9 testified here. Were you informed that they would --
10 that they would or should be witnesses to call in Mr.
11 Jackson's trial?

12 A. If they were here I would have called certainly
13 Casey Gregory or JP. One of them was on the run. I
14 can't remember whether that was Casey, but in the early
15 part of the case one of them was on run for a probation
16 violation. That might be JP and one had already been
17 sent to SCDC.

18 I thought we had requested the judge to bring one of
19 them to trial and an it didn't get brought, but I can't
20 acknowledge it. But I did speak to several other people
21 at the party on Matthew's behalf. Casey I would have
22 probably at least listed as a witness. They didn't
23 participate in the fight and didn't get there until the
24 evening to pick up Matthew or about the same time the
25 fight ended, but I would have called them as a witness.

1 That being said, you know there were 14 witnesses who
2 testified who were all there. So we had plenty of
3 witnesses in there. Obviously there were enough
4 self-defense witnesses where we got the charge from
5 judge. I probably would have call him had he not been
6 in SCDC. One of them was on the lam.

7 MR. JONES: All right. Thank you Mr.

8 Verner. That's all the questions I have.

9 CROSS EXAMINATION

10 BY MS. MCMAHAN:

11 Q. You probably already said this earlier, but
12 what were the offers given to him?

13 A. If he says it was zero to 20 ABHAN that is
14 probably correct. I thought he may have gotten
15 something better than that, but they were -- he had only
16 been in court a year or two recently on other charges.
17 I have known Matthew since 2006. He's kind of small.
18 He's picked on. He doesn't back away from fights either
19 and so he has had kind of a record for getting in
20 fights. But I think that is what they used but -- and
21 the victim's injury was pretty significant. The cut was
22 probably about 12 inches and I think as a recall now
23 that was part of what the prosecutor -- that the offer
24 was straight-up up to ABHAN, zero to twenty. I don't
25 think they ever came down lower than ABHAN offer.

1 Q. And if you already said this -- did you talk
2 about how many times you met with him prior to the
3 trial?

4 A. The -- well again, I was at his bond hearing
5 the following day, but I can not tell you. But
6 obviously once somebody gets put on the trial notice we
7 will start talking to them a lot more. But I do
8 recall -- I had known Matthew over the years and we
9 talked several times about this case. He drew me maps
10 of the boat dock. He -- his mother was coming to my
11 office almost once a week. The -- and Matthew was
12 telling me his version. So I met with him on multiple
13 occasions because he gave me his story. I would call up
14 people, but I can't give you an exact number.

15 Q. And did you go over the discovery with him here
16 or at the jail or do you remember?

17 A. I'm sure I would have done both. Whether I
18 gave him a copy of discovery I typically don't unless
19 they ask for it, but I would certainly go over what the
20 evidence is against you.

21 Q. And just when I say here, I mean the courthouse
22 just so we read this 15 years from now we're all not
23 confused about what I'm talking about.

24 Did you ask for mutual combat instruction?

25 A. I don't recall. If it's not in the transcript

1 then I didn't. The -- I don't know how mutual combat
2 would get him down to not guilty, but we certainly did
3 the -- our defense was basically self-defense.

4 The girls started the fight. Matthew got in to
5 pull his mother out of the fight. Other guy who had
6 been egging him on all day and there was some evidence
7 of that. Jumped in against Matthew. He was beating
8 Matthew up. Matthew cut him.

9 Q. Mutual combat. I mean, you eluded to earlier
10 that it was sort of a mutual combat type fight. That
11 was something you could have asked whether or not it may
12 have changed the outcome of the trial is another
13 question?

14 A. I don't believe a mutual combat charge would
15 get you out of a guilty verdict though, but I think we
16 went self-defense. I don't recall.

17 Q. And you said it was self-defense because his
18 mama was involved in the fight and stuff?

19 A. Well -- and then even after that the guy had
20 Matthew on the ground beating him up. He had broken
21 Matthew's glasses were found at the scene. I believe
22 there was evidence that Matthew's glasses had been
23 broken in half. The -- there was evidence that the guy
24 had been kind of egging him on all day. The guy was
25 clearly demonstratively bigger than Matthew.

1 Q. How good of a witness would his mom have been,
2 Mr. Jackson's mom?

3 A. The -- I thought she had testified, but I like
4 Matthew. Matthew's mom is crazy. She probably started
5 the fight initially with the other woman. She's also
6 involved in physical confrontation. The -- she would be
7 kind of a hard to control witness and I believe that
8 part of it was the mother was blaming Matthew for the
9 fight. She also had these charges pending on her that
10 were dismissed, or maybe she plead guilty to assault and
11 battery, third degree, time served. But at some point
12 Matthew's mother was blaming him as the one who started
13 the fight. But she was on his side too. But I don't
14 know now, but she was there during the trial. If she
15 didn't testify it was because I chose not to call her
16 and she would have been a hard to control witness.

17 Q. One moment.

18 A. In fact I took his mother out to lunch the day
19 of the verdict to discuss the post trial motions.

20 MS. MCMAHAN: I have nothing further if Your
21 Honor.

22 MR. JONES: Nothing further from the State
23 Your Honor.

24 THE COURT: I got a question. Do we have
25 any definitive motion on the Motion to

1 Reconsider?

2 MR. VERNER: Judge, I looked at the public
3 index and nothing has been filed. The -- I show
4 from the evidence I sent that we sent it. And I
5 remember sending it to Judge Hocker because I
6 took the mother and Matthew had a friend --

7 THE COURT: Is it showing that there's not a
8 Motion to Reconsider that's been filed or there
9 hasn't been any answer to the Motion to
10 Reconsider?

11 MR. VERNER: There was never an answer to
12 the motion, judge, and I would acknowledge at
13 some point if the judge did not give me a written
14 order and did not schedule a hearing it would
15 have been my responsibility to contact the Court
16 and I do want to say I do recall mentioning it to
17 the judge once or twice, but the fact that it
18 wasn't done I would acknowledge would be my
19 responsibility.

20 THE COURT: You may step down.

21 Okay. Any further witnesses?

22 MR. JONES: Nothing further from the State.
23 Thank you.

24 THE COURT: Any closing arguments.

25 MS. MCMAHAN: Just briefly, Your Honor. I

1 submit to you that had Mr. Gregory or Mr.
2 Peterson had been called it would have gone
3 towards Mr. Jackson's defense of self-defense
4 which could have then convinced the jury that he
5 was acting in defense of others or also of
6 himself, especially his mom. And, you know, I
7 just ask again you review the entire transcript
8 before making a decision and take all the
9 evidence that was presented and rule accordingly.

10 THE COURT: All right. Thank you.

11 MR. JONES: Yes, sir.

12 MR. JONES: Thank you, Your Honor. First, I
13 would like to -- the State will go ahead and
14 concede the appeal issue under White v State and
15 Davis v State those cases, while that's not
16 grounds for granting post conviction relief it is
17 grounds for granting a belated review of direct
18 appeal issues that could have been raised on
19 appeal and we go ahead and concede that relief.

20 As for the alleged failure to call the two
21 witnesses who came up here and testified. As to
22 the first witness, Mr. Peterson, his testimony
23 was limited to what occurred at the initial
24 confrontation before Mr. Jackson left and came
25 back which he didn't witness and since that is

1 when the actual fight occurred I would submit
2 that not only was his testimony not relevant to
3 the self-defense issue, but it mostly was
4 cumulative to other evidence already in the
5 transcript and the same I would say for Mr.
6 Gregory's testimony as far as being cumulative.
7 As Mr. Verner pointed out there were multiple
8 witnesses who testified in this case. The judge
9 did issue a self-defense instruction. Evidently
10 the jury did not agree that this was
11 self-defense.

12 I fail to see how Mr. Gregory -- there's
13 some question whether he was even available and
14 not a fugitive at the time. But even had he
15 shown up I fail to see how one additional witness
16 especially one with the record of Mr. Gregory
17 would likely have contributed to the outcome of
18 the trial in a different way. And again, that is
19 the standard.

20 It's the applicant's responsibility to prove
21 that but for counsel's deficiency the result of
22 the trial would likely have been different and I
23 don't think that this one witness's testimony
24 gets there. And again, that's even going as far
25 as to say -- that is even going beyond the

1 question whether Mr. Verner was deficient at all
2 which I would submit he was not. It's an open
3 question whether he was -- Mr. Gregory was even
4 available to testify.

5 Thank you.

6 THE COURT: I do have a question in regards
7 to Mr. Verner testified that there were 14 fact
8 witnesses in regards to eyewitness that were at
9 the boat landing. Were those all State's
10 witnesses?

11 MS. MCMAHAN: They were mostly State
12 witnesses Your Honor.

13 THE COURT: They were all State witnesses?

14 MR. JONES: I see one witness called by Mr.
15 Verner.

16 MS. MCMAHAN: Miss Eigner, Christi Eigner.
17 Mr. Verner did call her and Mr. Jackson was
18 examined by the Court but he did not testify.
19 But everybody else was called by the State.

20 THE COURT: Anything else?

21 MS. MCMAHAN: No, Your Honor.

22 THE COURT: What I'm going to do I will take
23 this one under advisement as well so I can take a
24 look at the transcript. I should have an answer
25 hopefully by the end of the week. Okay.

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MR. JONES: Thank you, Your Honor.

THE COURT: Thank you.

(END OF TRANSCRIPT)

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C E R T I F I C A T E

I, the undersigned Aileen Butler, Official Court Reporter for the 16TH Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete transcript of record of all the proceedings in the captioned case, in the Circuit Court for Newberry County, South Carolina, on the 27th day of November, 2024.

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

July 4, 2024

Aileen Butler

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF NEWBERRY	)	FOR THE EIGHTH JUDICIAL CIRCUIT
)	
Matthew Jackson, #329032	)	Case No.: 2020-CP-36-00111
)	
Applicant,)	
)	
v.)	
	)	ORDER DENYING POST-CONVICTION
State of South Carolina,	)	RELIEF AND GRANTING BELATED
	)	REVIEW OF DIRECT APPEAL ISSUES
Respondent.	)	PURSUANT TO <i>WHITE V. STATE</i>.
)	
)	
)	

This matter comes before the Court by way of an application for post-conviction relief (“PCR”) filed by Matthew Jackson (“Applicant”) on February 19, 2020, and amended on November 15, 2023. The Court convened an evidentiary hearing into the matter on November 27, 2023, at the Newberry County Courthouse. Applicant was present at the hearing and represented by Ashley A. McMahan, Esquire. Zachary W. Jones, of the South Carolina Attorney General’s Office, represented Respondent.

Applicant testified on his own behalf at the evidentiary hearing. James Casey Gregory and James Robert Peterson testified on the Applicant’s behalf. Applicant’s trial counsel, Chief Public Defender Charles V. Verner. (“Counsel”), also testified. After reviewing all records and evidence before the Court, this Court finds Applicant cannot meet his requisite burden of proof of establishing he is entitled to post-conviction relief. However, the Court finds Applicant is entitled to belated review of direct appeal issues pursuant to *White v. State*, 263 S.C. 110, 108 S.E.2d 35 (1974). The Court finds as follows:

I. PROCEDURAL HISTORY

FILED
 NEWBERRY COUNTY
 2024 NOV 28 AM 11:15
 ELIZABETH P. FOLK
 CLERK OF COURT

Applicant is incarcerated with the South Carolina Department of Corrections. In September 2018, the Newberry County Grand Jury indicted Applicant for Attempted Murder (2018-GS-36-00482). Applicant was represented by Assistant Public Defender Charles Verner. Deputy Solicitor Dale Scott and Assistant Solicitor Taylor Daniel of the Eight Circuit Solicitor's Office prosecuted the case.

On March 26, 2019, Applicant proceeded to a jury trial before the Honorable Donald B. Hocker, where he was convicted of the lesser included offense of Assault and Battery of a High and Aggravated Nature. Judge Hocker sentenced Applicant to fifteen years and three months imprisonment. Applicant did not appeal his conviction or sentence.

Factual Summary

On June 6, 2018, Victim Tony Jackson was at Sunset Boat Dock with his girlfriend Ashleigh Cockrell, their two daughters, his girlfriend's sisters, Alexis Cockrell and Ayleah Cook, two family friends, John and Ashley Platts, and their children. (Tr. 83-87). Applicant arrived at the dock and approached Victim's Family. (Tr. 91). Victim and Applicant had a verbal interaction where Victim told Applicant to stop touching or hugging his daughter. (Tr. 91-95). Applicant left the dock after speaking with Victim. (Tr. 96). Later that day, as victim and his family prepared to leave, Applicant returned with his mother (Sheila Jackson) and three friends, later identified as Cameron Goff, Casey Gregory and B.J. Lipscomb. (Tr. 102-104, 108-109, 385-386). A fight began between Sheila Jackson and Ayleah Cook. (Tr. 105-107). During the fight between Sheila Jackson Ayleah Cook, Applicant attacked Victim. (Tr. 110). During this altercation, Victim was cut multiple times with a knife. (Tr. 110-111, 235). Victim was taken to the hospital by John Platts to treat his wounds. (Tr. 111). Victim had to be transported to Richland County due to the severity of his injuries. (Tr. 46). Victim suffered muscular issues and developed a hernia as a result of his

injuries. (Tr. 441). Applicant and Sheila Jackson fled the scene before law enforcement arrived. (Tr. 111, 219). Applicant was later arrested in Sumter, South Carolina. (Tr. 345).

Present Application

In his original application for post-conviction relief, Applicant alleged that he is being held in custody unlawfully for the following reasons:

- 1) Ineffective Assistance of Counsel
 - (a) "Public Defender was not supposed to be able to represent me due to the fact I had a previous ineffective counsel PCR against him."
 - (b) "My witnesses were never subpoenaed."
 - (i) "Newberry Sheriffs refused to transport two of my witnesses to court."
 - (c) "My attorney said that he would file appeal and didn't."
- 2) Prosecutorial Misconduct
 - (a) "Prosecution showed judge pictures of crime I wasn't convicted for during sentencing."
- 3) "Jury was compromised by witness."
- 4) Judicial Misconduct
 - (a) "Presiding Judge had grudge against me, he stated that I should have gotten more time for a previous offense."
 - (b) "Judge failed to charge all lesser included offenses."

As requested relief, Applicant requested "Mistrial declared, time reconsideration."

On November 15, 2023, Applicant amended his application to raise the following claims:

- 1) Ineffective Assistance of Counsel of Deputy Public Defender Charles V. Verner
 - (a) Failure to call James Gregory as a witness in the trial.
 - (b) Failure to file a direct appeal from the conviction and sentence.

At the outset of the evidentiary hearing, Applicant raised an additional allegation of ineffective assistance of counsel for failure to call James Peterson as a witness during the trial. At the hearing, Applicant proceeded only on his allegations of ineffective assistance of counsel.¹

II. FINDINGS OF FACT AND CONCLUSIONS OF LAW

¹ As Applicant provided no evidence or argument concerning his allegations of prosecutorial misconduct, juror misconduct, or judicial misconduct, the Court deems those issues abandoned.

This Court has reviewed the testimony presented at the evidentiary hearing, observed the witnesses presented at the hearing, and weighed the testimony accordingly. Before the Court are Applicant's records from the South Carolina Department of Corrections, the transcript of Applicant's trial, the records of the Newberry County Clerk of Court regarding the subject conviction, and the original and amended applications for post-conviction relief. This Court has reviewed the records submitted to it by the parties, the legal arguments made by the attorneys, and the pleadings. Pursuant to S.C. Code Ann. § 17-27-80, this Court makes the following findings based upon all of the probative evidence presented:

Ineffective Assistance of Trial Counsel

In a PCR action, Applicant bears the burden of proving the allegations in his application. *Butler v. State*, 286 S.C. 441, 334 S.E.2d 813 (1985). Applicant must prove his factual allegations by a preponderance of the evidence. Rule 71.1(e), SCRPC. Where the application alleges ineffective assistance of counsel as a ground for relief, Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that [it] cannot be relied upon as having produced a just result." *Strickland v. Washington*, 466 U.S. 668, 686 (1984); *Butler*, 286 S.C. at 442, 334 S.E.2d at 814.

In evaluating allegations of ineffective assistance of counsel, the reviewing court applies the two-pronged test outlined in *Strickland*. First, Applicant must prove that counsel's performance was deficient. *Strickland*, 466 U.S. at 686; *Cherry v. State*, 300 S.C. 115, 117, 386 S.E.2d 624, 625 (1989). Under this prong, the court measures an attorney's performance by its "reasonableness under prevailing professional norms." *Cherry*, 300 S.C. at 117, 386 S.E.2d at 625 (quoting *Strickland*, 466 U.S. at 690). The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. *Butler*, 286

S.C. at 442, 334 S.E.2d at 814. “Counsel is strongly presumed to have rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment.” *Id.* (citing *Strickland*, 466 U.S. at 690). “When counsel focuses on some issues to the exclusion of others, there is a strong presumption that he [or she] did so for tactical reasons rather than through sheer neglect.” *Yarborough v. Gentry*, 540 U.S. 1, 5 (2003) (citing *Strickland*, 466 U.S. at 690). The Court, in determining deficiency, must affirmatively entertain the range of possible reasons counsel may have had for proceeding as they did. *Cullen v. Pinholster*, 563 U.S. 170, 196 (2011); *Harrington v. Richter*, 562 U.S. 86, 109–10 (2011). “[E]ven if an omission is inadvertent, relief is not automatic. The Sixth Amendment guarantees reasonable competence, not perfect advocacy judged with the benefit of hindsight.” *Yarborough*, 540 U.S. at 6; *see also* *Murphy v. Davis*, 901 F.3d 578, 592 (5th Cir. 2018) (“[C]ounsel’s performance need not be optimal to be reasonable.”).

Second, counsel’s deficient performance must have prejudiced Applicant such that “there is a reasonable probability that, but for counsel’s unprofessional errors, the result of the proceeding would have been different.” *Cherry*, 300 S.C. at 117–18, 386 S.E.2d at 625. A reasonable probability is “a probability sufficient to undermine confidence in the outcome.” *Strickland*, 466 U.S. at 694. “This does not require a showing that counsel’s actions ‘more likely than not altered the outcome,’ but the difference between *Strickland*’s prejudice standard and a more-probable-than-not standard is slight and matters ‘only in the rarest case.’” *Harrington*, 562 U.S. at 111–12 (quoting *Strickland*, 466 U.S. at 697). “The likelihood of a different result must be substantial, not just conceivable.” *Id.* at 112. “The prejudice analysis requires the court deciding the ineffectiveness claim to consider the totality of the evidence before the judge or jury.” *United States v. Basham*, 789 F.3d 358, 371–72 (4th Cir. 2015) (quoting *Elmore v. Ozmint*, 661 F.3d 783, 858 (4th Cir. 2011)).

Failure to call James Gregory and James Peterson at trial

Applicant alleges Counsel was ineffective for failing to call James Gregory and James Peterson to testify on his behalf at trial. The Court finds this allegation is without merit.

At the evidentiary hearing, Applicant testified he had a dispute with Victim at the boat ramp, left the area, and returned after some time with his mother. He testified that, when he arrived, his mother was attacked by multiple people. When Applicant got out of the car to help her, he was attacked by three people, and he cut Victim with the knife in self-defense during the fight. Applicant claimed Peterson was with him during the first confrontation at the boat ramp, and Gregory was present at the second confrontation that turned violent. Applicant testified he told Counsel about Peterson and Gregory as potential witnesses, but Counsel did not call them at trial.

Both Peterson and Gregory testified at the evidentiary hearing. Peterson testified he was only with Applicant the first time he went to the boat ramp. He testified there were approximately thirty or forty people present, about half of whom were having words with Applicant. Peterson heard a lot of yelling back and forth, so he got back in the car and left. Gregory testified he was present for the second confrontation between Applicant and Victim. He claimed that, when he arrived at the boat ramp, Applicant's mother was already getting beaten up by multiple girls. Gregory testified that both the Applicant and his mother were rushed by people as soon as they got out of the car and that the Applicant's mother was "jumped." He also noted that when the Applicant got back into the car, the Applicant's face was bloody and bruised. However, Gregory later testified he could not see who was attacking Applicant or how many people were fighting him because Gregory, who was on probation and afraid of getting into trouble, remained in the car hiding his face. He further noted the Applicant's mother did not get back in the car.

Counsel testified the defense theory was that Applicant did not start the fight but only became involved to defend his mother who was being attacked and that he did not pull out the knife until Victim started beating him up. There were difficulties with this theory: the fight happened at the same location as Applicant's earlier confrontation with Victim, suggesting that Applicant had returned with intent to resume the altercation; Applicant gave several inconsistent statements to police about his reason for returning to the boat ramp (Trial Tr. 406-07); there was substantial evidence that Applicant's mother started the fight by assaulting Ayleah Cook, which complicated Applicant's claim that he was justified in defending his mother (Trial Tr. 152-53; 187-88; 214; 220; 319-20; 427-28); Applicant admitted during his police interview that he had armed himself with the knife before returning to the boat ramp (Trial Tr. 369-70); and there was testimony from multiple witnesses that Applicant did not try to break up the fight between his mother and Cook, but went straight toward Victim with the knife behind his back and struck the first blow. (Trial Tr. 214-17; 221; 229; 256-57; 287-90; 313; 429-30).

The Court finds Counsel was not ineffective for failing to call Peterson and Gregory. Peterson, by his own admission, was only present for the initial verbal altercation between Applicant and Victim and was not present at the later physical fight. The Court finds his testimony mostly concerned the undisputed fact that Applicant had a verbal confrontation with the people at the boat ramp; therefore, it was merely cumulative and could not have affected the outcome of the trial. Similarly, Gregory testified merely that Applicant's mother was fighting some girls when he arrived at the scene, and that Applicant got in a fight with Victim shortly after getting out of the car. This testimony was also largely cumulative to other testimony presented at trial. Moreover, Gregory did not explain who started the fight between Applicant's mother and the girls, why Applicant returned to the boat ramp, or when Applicant took out the knife. Gregory's testimony,

therefore, would not have addressed the most serious difficulties with the defense's theory of the case. In addition, Gregory's testimony was of limited probative value because he admitted he could not see the fight in detail as he stayed in the car hiding his face.²

For these reasons, the Court finds Applicant has not met his burden of proving he was prejudiced by Counsel's failure to call Peterson and Gregory.³ Therefore, Applicant has failed to prove Counsel's performance was ineffective as to this issue.

Bias due to prior allegation of ineffective assistance

Applicant also claims Counsel was biased against him due to a previous PCR action in which Applicant claimed Counsel provided ineffective assistance. Applicant argues Counsel bore him a grudge and, consequently, did not represent him well. The Court finds this allegation is without merit. Counsel explained he had represented Applicant in six different cases since 2006. He stated he could not specifically remember the prior PCR action Applicant was talking about, but he testified that he never holds grudges against a PCR applicant if they claim that he was ineffective. The Court finds Counsel's testimony on this point credible. Moreover, the transcript of Applicant's trial reflects that Counsel energetically disputed the State's case, cross-examined the State's witnesses, and argued Applicant's version of the facts to the jury. Far from sabotaging Applicant's case, Counsel appears to have been instrumental in obtaining Applicant's acquittal on the attempted murder charge.

² This testimony was contradicted by the testimony of multiple witnesses at the scene, who testified that Gregory was standing outside the car "mean-mugging" and acting as if he had a gun. (Trial Tr. 131; 155; 189; 217-18; 223-25; 240-41; 429). Due to these discrepancies, is not likely that a jury would have found Gregory credible.

³ In addition, the Court notes that, during Applicant's trial, Counsel argued that the State could have called Gregory as a witness or introduced his recorded statement, implying that the State was not telling the jury the whole story. (Trial Tr. 385-87; 561, lines 10-15). Counsel could not have made this argument if Gregory had testified.

Accordingly, the Court finds Applicant has failed to prove Counsel's performance was ineffective as to this issue.

Failure to file notice of appeal

Finally, Applicant claims Counsel was ineffective for failing to file a notice of appeal from his conviction. The Court agrees, and finds Applicant is entitled to belated review of direct appeal issues pursuant to *White v. State*, 263 S.C. 110, 108 S.E.2d 35 (1974).

Counsel has a constitutionally imposed duty to consult with a defendant about an appeal when there is reason to think either (1) that a rational defendant would want to appeal, or (2) that this particular defendant reasonably demonstrated to counsel that he was interested in appealing. *Roe v. Flores-Ortega*, 528 U.S. 470 (2000). In *White*, the South Carolina Supreme Court held that where a PCR applicant does not voluntarily and intelligently abandon his appeal, the supreme court, upon an appeal of the post-conviction relief decision, will review the trial record and pass upon all issues properly raised and argued as if the direct appeal had been perfected. 263 S.C. 110, 108 S.E.2d 35. However, a PCR court may not grant post-conviction relief on this ground. *Davis v. State*, 288 S.C. 290, 291 n.1, 342 S.E.2d 60, 60 n.1 (1986).

At the evidentiary hearing, Counsel acknowledged that he should have filed an appeal and was surprised when, after reviewing his defense file, he realized he had not filed one. Counsel for the State conceded that, based on this testimony, *White v. State* review was merited in this case. Therefore, the Court finds Applicant has established that he did not voluntarily and intelligently abandon his right to a direct appeal and that he is entitled to *White v. State* review.

III. CONCLUSION

Based on all the foregoing, this Court finds and concludes that Applicant has not established any constitutional violations or deprivations that would require this Court to grant his application for post-conviction relief. Therefore, this application for post-conviction relief must be denied and dismissed with prejudice. However, the Court finds Applicant has established he is entitled to belated review of direct appeal issues pursuant to *White*.

This Court notifies the Applicant that he must file and serve a notice of appeal within thirty (30) days from the receipt by counsel of written notice of entry of judgment to secure the appropriate appellate review. See Rule 203, SCACR. Pursuant to *Austin v. State*, 305 S.C. 453, 409 S.E.2d 395 (1991), Applicant has a right to an appellate counsel's assistance in seeking review of the denial of PCR. Rule 71.1(g), SCRCP, provides that if Applicant wishes to seek appellate review, PCR counsel must serve and file a notice of appeal on Applicant's behalf. Applicant's attention is directed to Rule 243, SCACR, for appropriate procedures for appeal.

IT IS THEREFORE ORDERED:

1. That the Application for Post-Conviction Relief be denied and dismissed with prejudice; and
2. The Applicant be remanded to the custody of the South Carolina Department of Corrections.

AND IT IS SO ORDERED this 21 day of May, 2024.



B. ALEX HYMAN
Presiding Judge
Eighth Judicial Circuit

Conway, South Carolina