

STATE OF SOUTH CAROLINA  
IN THE SUPREME COURT

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S.C. Supreme Court

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Appeal from Lee County

R. Ferrell Cothran, Jr., Circuit Court Judge  
\_\_\_\_\_

TERRENCE BLACK,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

Appellate Case No. 2013-000298

\_\_\_\_\_  
APPENDIX  
\_\_\_\_\_

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STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF LEE

THE STATE OF SOUTH CAROLINA,  
PLAINTIFFS

CASE NO.08-GS-31-64

VS.

AUGUST 12, 2008  
BISHOPVILLE, S.C.

TERRANCE BLACK,  
DEFENDANT

B E F O R E :

THE HONORABLE JUDGE HOWARD P. KING, JUDGE.

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

MR. PAUL M. FATA,  
ASSISTANT SOLICITOR FOR THE STATE

MR. S. BRYAN DOBY,  
ATTORNEY FOR THE DEFENDANT

MARGARET T. SULLIVAN,  
COURT REPORTER

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1 THE COURT: ALL RIGHT, MR. FATA.

2 MR. FATA: YOUR HONOR, THE STATE CALLS  
3 INDICTMENT 2008-GS-31-64. THE STATE VERSUS  
4 TERRANCE BLACK. CHARGED WITH ASSAULT ON A  
5 CORRECTION'S OFFICER. ON THAT INDICTMENT, THE  
6 STATE WOULD GO FORWARD ON COUNTS 1. WHICH IS,  
7 THE CORRECTION'S OFFICER, ON THE CORRECTION'S  
8 OFFICER, DERRICK ANDERSON.

9 THE COURT: LADIES AND GENTLEMEN OF THE  
10 JURY PANEL, IF YOU WILL GIVE ME YOUR ATTENTION.  
11 WHAT I AM ABOUT TO TELL YOU IS NOT EVIDENCE.  
12 YOU HAVE HEARD THE STATE CALL THE CASE OF THE  
13 STATE OF SOUTH CAROLINA VERSUS TERRANCE BLACK  
14 WHO IS CHARGED IN THE BILL OF INDICTMENT WITH  
15 THE CHARGE ON A CORRECTION'S OFFICER. NOW WHAT  
16 I AM TELLING YOU IS NOT EVIDENCE IN THIS CASE.  
17 IT IS SIMPLY THE CHARGES IN THE INDICTMENT.  
18 BUT I TELL YOU THIS SO THAT YOU CAN DETERMINE  
19 IF YOU KNOW ANYTHING ABOUT THE CASE.

20 BUT THE INDICTMENT ALLEGES THAT IN APRIL  
21 OF THIS YEAR THAT MR. BLACK DID VIOLATE SOUTH  
22 CAROLINA LAW, IN THAT HE DID ASSAULT AN  
23 EMPLOYEE OF THE STATE OR LOCAL CORRECTIONS  
24 FACILITY; SPECIFICALLY, DERRICK ANDERSON OF THE  
25 LEE CORRECTIONAL INSTITUTE WHILE SAID

1 CORRECTIONAL OFFICERS WERE PERFORMING JOB  
2 RELATED DUTIES, BY STRIKING HIM ON THE HAND  
3 WITH AN EDGED WEAPON. NOW AS I SAY, THOSE ARE  
4 JUST THE CHARGES OF THE INDICTMENT. THEY ARE  
5 NOT EVIDENCE OF ANYTHING, BUT I TELL YOU THIS  
6 SO THAT YOU CAN DETERMINE IF YOU KNOW ANYTHING  
7 ABOUT THE CASE. THE DEFENDANT, MR. BLACK, IS  
8 REPRESENTED BY MR. BRYAN DOBY. MR. DOBY,  
9 INTRODUCE YOURSELF TO THE JURY. AND ANY  
10 LAWYERS IF YOU WANT TO INTRODUCE THEM WHO ARE  
11 WORKING WITH YOU. AND ALSO HAVE MR. BLACK  
12 STAND AND FACE THE JURY, PLEASE.

13 MR. DOBY: I AM BRYAN DOBY. I PRACTICE  
14 LAW HERE IN BISHOPVILLE WITH ROBERT JENNINGS  
15 AND WILL WHEELER. AND THIS IS MY CLIENT,  
16 TERRANCE BLACK.

17 THE COURT: ALL RIGHT, THANK YOU. AND  
18 MR. WHEELER IS SEATED WITH YOU. THANK YOU.  
19 THE STATE OF SOUTH CAROLINA IS REPRESENTED THE  
20 MR. BRYAN DOBY -- I MEAN, BY MR. PAUL FATA.  
21 MR. FATA, WOULD YOU STAND AND INTRODUCE  
22 YOURSELF TO THE JURY?

23 MR. FATA: MY NAME IS PAUL FATA. I  
24 PRACTICE IN THE FIRM OF FATA AND SEGARS. MY  
25 LAW PARTNER IS JAMES R. SEGARS.

1 THE COURT: BEFORE WE SELECT A JURY, I  
2 NEED TO ASK YOU SOME QUESTIONS. PLEASE GIVE  
3 YOUR ATTENTION TO THESE QUESTIONS AND IF ANY OF  
4 THEM APPLY TO YOU, THEN RESPOND ACCORDINGLY.  
5 IS ANY MEMBER OF THE JURY PANEL RELATED BY  
6 BLOOD OR CONNECTED BY MARRIAGE WITH THE  
7 DEFENDANT, TERRANCE BLACK? IF SO, PLEASE  
8 STAND.

9 (WHEREUPON, NO RESPONSE.)

10 THE COURT: THE FOLLOWING INDIVIDUALS MAY  
11 APPEAR AS WITNESSES IN THIS CASE. I WOULD ASK  
12 IF THE WITNESSES ARE PRESENT, YOU MAY STAND  
13 WHEN YOUR NAME IS CALLED. LUCINDA HODGES,  
14 DERRICK ANDERSON, CARSON TYNER, LIEUTENANT  
15 FRANKLIN RICHARDSON. INVESTIGATOR RICHARDSON,  
16 TIMOTHY SHEPPARD, JAMES CABODY, JIMMY WILLIAMS,  
17 WALTER WEBB, CAPTAIN A. YOSEMAN, SERGEANT ROY  
18 DICKSON, MARGARET BELL, LIEUTENANT J. GOODMAN,  
19 AND SAMMY MAJOR, MARION POUGH, DARYL HUGES,  
20 BARBARA SALLY, DAVID COKELY, FRANCES BOWMAN,  
21 SANDY DICKSON, AND CLEVELAND DEMAY.

22 MR. FATA: DEMERY, YOUR HONOR.

23 THE COURT: DEMERY. IS ANY MEMBER OF THE  
24 JURY PANEL RELATED BY BLOOD OR CONNECTED BY  
25 MARRIAGE TO ANY OF THE PROPOSED WITNESSES? IF

1 SO PLEASE STAND.

2 (WHEREUPON, NO RESPONSE.)

3 THE COURT: AS YOU HAVE HEARD, THE  
4 DEFENDANT IS REPRESENTED BY MR. BRYAN DOBY. IS  
5 ANY MEMBER OF THE JURY PANEL REPRESENTED NOW OR  
6 BEEN REPRESENTED WITHIN THE LAST 5 YEARS BY  
7 MR. DOBY OR ANY MEMBER OF HIS LAW FIRM? IF SO,  
8 PLEASE STAND.

9 (WHEREUPON, NO RESPONSE.)

10 THE COURT: THE STATE OF SOUTH CAROLINA IS  
11 REPRESENTED BY MR. FATA. IS ANY MEMBER OF THE  
12 JURY PANEL REPRESENTED NOW, OR BEEN REPRESENTED  
13 IN THE LAST 5 YEARS BY MR. FATA, ANY MEMBER OF  
14 HIS LAW FIRM, OR ANY MEMBER OF THE THIRD  
15 CIRCUIT SOLICITOR'S OFFICE? IF SO, PLEASE  
16 STAND.

17 (WHEREUPON, NO RESPONSE.)

18 THE COURT: IS ANY MEMBER OF THE JURY  
19 PANEL CLOSE PERSONAL FRIENDS OF ANY OF THE  
20 PARTIES, THEIR LAWYERS, OR ANY OF THE WITNESES  
21 WHO I HAVE READ OFF TO YOU? PLEASE STAND.

22 (WHEREUPON, NO RESPONSE.)

23 THE COURT: DOES ANY MEMBER OF THE JURY  
24 PANEL KNOW ANYTHING ABOUT THE FACTS OF THIS  
25 CASE AS I HAVE BRIEFLY RECITED THEM TO YOU? IF

1 SO, PLEASE STAND?

2 (WHEREUPON, NO RESPONSE.)

3 THE COURT: HAS ANY OF THE JURY PANEL  
4 FORMED OR EXPRESSED AN OPINION AS TO THE GUILT  
5 OR INNOCENCE OF THE DEFENDANT, TERRANCE BLACK?  
6 IF SO PLEASE STAND.

7 (WHEREUPON, NO RESPONSE.)

8 THE COURT: IS ANY MEMBER OF THE JURY  
9 PANEL AWARE OF ANY INTEREST, ANY BIAS OR ANY  
10 PREJUDICE FOR OR AGAINST THE DEFENDANT,  
11 TERRANCE BLACK? IF SO, PLEASE STAND.

12 (WHEREUPON, NO RESPONSE.)

13 THE COURT: CAN EACH MEMBER OF THE JURY  
14 PANEL GIVE THE STATE AND THE DEFENDANT,  
15 TERRANCE BLACK, A FAIR AND IMPARTIAL TRIAL? IF  
16 NOT, PLEASE STAND.

17 (WHEREUPON, NO RESPONSE.)

18 THE COURT: DOES ANY MEMBER OF THE JURY  
19 PANEL KNOW OF ANY REASON WHATSOEVER WHY YOU  
20 SHOULD NOT SERVE AS A JUROR IN THIS CASE? IF  
21 SO, PLEASE STAND. COME FORWARD, PLEASE.

22 THE JUROR: JOHN PETERSON.

23 THE COURT: MR. PETERSON, 151. WHAT  
24 PROBLEM DO YOU HAVE, MR. PETERSON?

25 THE JUROR: I DON'T THINK I CAN GIVE HIM A

1 FAIR TRIAL, BECAUSE I THINK I HAVE BEEN ACCUSED  
2 OF A CRIME BY THE POLICE. AND I DIDN'T COMMIT  
3 THE CRIME I WAS CHARGED WITH.

4 THE COURT: SO YOU DON'T THINK YOU CAN PUT  
5 THAT ASIDE AND GIVE HIM A FAIR TRIAL?

6 THE JUROR: NO, SIR.

7 THE COURT: THANK YOU, SIR. EXCUSE HIM  
8 FOR THIS CAUSE.

9 MR. FATA: NOT BY ME.

10 THE COURT: COME FORWARD, PLEASE, MA'AM.

11 THE JUROR: LAST NAME IS DOZIER.

12 THE COURT: MS. DOZIER.

13 THE JUROR: I AM EMPLOYED WITH THIS  
14 GENTLEMAN TO MY LEFT.

15 THE COURT: WITH THE SOLICITOR'S OFFICE.

16 THE JUROR: MR. DOBY.

17 THE COURT: YOUR NUMBER.

18 THE JUROR: 139.

19 THE COURT: THAT WOULD DISQUALIFY YOU.

20 MR. DOBY: YOUR HONOR, CAN I APPROACH JUST  
21 A SECOND?

22 THE COURT: SURE.

23 (WHEREUPON, ATTORNEYS CONFER WITH JUDGE.)

24 THE COURT: IS ANY MEMBER OF THE JURY  
25 PANEL EMPLOYED NOW, OR BEEN EMPLOYED WITHIN THE

1 LAST 10 YEARS, OR HAS A MEMBER OF YOUR  
2 IMMEDIATE FAMILY BEEN EMPLOYED BY THE SOUTH  
3 CAROLINA DEPARTMENT OF CORRECTIONS? NOW I  
4 DEFINE IMMEDIATE FAMILY AS A SPOUSE, PARENT,  
5 BROTHER, SISTER, OR CHILD. ANY MEMBER OF THE  
6 JURY PANEL WHO IS EMPLOYED NOW OR BEEN EMPLOYED  
7 WITHIN THE LAST 5 YEARS OR A MEMBER OF YOUR  
8 IMMEDIATE FAMILY CURRENTLY EMPLOYED WITH THE  
9 SOUTH CAROLINA DEPARTMENT OF CORRECTIONS? IF  
10 SO, PLEASE STAND. WE HAVE THIS LADY IN THE  
11 GREEN. FIRST, TALK TO ME A MINUTE, PLEASE.

12 THE COURT: GIVE ME YOUR NAME.

13 THE JUROR: BERNICE MCCRAY, 74.

14 THE COURT: 74.

15 THE JUROR: I HAVE A SISTER THAT'S A  
16 CAPTAIN IN THE DEPARTMENT OF CORRECTIONS NOW.

17 THE COURT: YOU'VE GOT A SISTER IN THE  
18 DEPARTMENT OF CORRECTIONS, NOW?

19 THE JUROR: YES.

20 THE COURT: WHERE IS SHE EMPLOYED?

21 THE JUROR: SHE IS EMPLOYED AT KERSHAW  
22 COUNTY CORRECTIONAL INSTITUTION.

23 THE COURT: WOULD THOSE FACTS PREVENT YOU  
24 FROM GIVING BOTH THE STATE AND THE DEFENDANT A  
25 FAIR AND IMPARTIAL TRIAL BASED ON THE EVIDENCE?

1 THE JUROR: NO, SIR.

2 THE COURT: WOULD YOU BE ABLE TO PUT THOSE  
3 FACTS ASIDE AND DECIDE THE CASE BASED UPON WHAT  
4 YOU HEAR IN THIS COURTROOM?

5 THE JUROR: YES, SIR.

6 THE COURT: AND WOULD YOU DO THAT?

7 THE JUROR: I WOULD.

8 THE COURT: THANK YOU, MA'AM.

9 THE COURT: YES, SIR. THE FELLOW IN THE  
10 YELLOW SHIRT, GIVE ME YOUR NAME.

11 THE JUROR: THOMAS HAYES.

12 THE COURT: OKAY.

13 THE CLERK: 146.

14 THE COURT: MR. HAYES, TELL US WHAT YOUR  
15 SITUATION IS.

16 THE JUROR: MY WIFE, SHE WORKED FOR THE  
17 SOUTH CAROLINA DEPARTMENT OF CORRECTIONS 5  
18 YEARS AGO.

19 THE COURT: SHE WORKED AT DEPARTMENT OF  
20 CORRECTIONS 5 YEARS AGO?

21 THE JUROR: YEAH, FOR 10 YEARS.

22 THE COURT: IS THAT HERE IN LEE COUNTY?

23 THE JUROR: SUMTER -- COLUMBIA.

24 THE COURT: SHE IS NOT EMPLOYED WITH THEM  
25 ANYMORE?

1 THE JUROR: NO, SIR.

2 THE COURT: AND WOULD THAT FACT PREVENT  
3 YOU FROM GIVING BOTH THE STATE AND THE  
4 DEFENDANT A FAIR AND IMPARTIAL TRIAL BASED ON  
5 THE EVIDENCE?

6 THE JUROR: NO, SIR.

7 THE COURT: WOULD YOU BE ABLE TO PUT THAT  
8 ASIDE AND DECIDE THIS CASE BASED ON THE  
9 EVIDENCE YOU HEAR IN THIS COURTROOM?

10 THE JUROR: YES.

11 THE COURT: AND WOULD YOU DO THAT?

12 THE JUROR: I WILL.

13 THE COURT: THANK YOU, SIR. ALL RIGHT,  
14 YES, MA'AM. THE LADY IN THE RED, PLEASE.

15 THE JUROR: SUSAN THRASHER. FOUR YEARS  
16 AGO I RETIRED FROM TEACHING AT LEE CORRECTIONS  
17 AFTER TEN YEARS.

18 THE COURT: GIVE ME YOUR NAME AGAIN.

19 THE JUROR: TRASHER, 154.

20 THE COURT: 154. AND, MS. THRASHER, YOU  
21 FORMERLY WORKED FOR THE DEPARTMENT OF  
22 CORRECTIONS. IS THAT RIGHT?

23 THE JUROR: THIRTEEN YEARS.

24 THE COURT: AND HOW LONG HAS IT BEEN SINCE  
25 YOU WORKED THERE?

1 THE JUROR: FOUR YEARS.

2 THE COURT: AND WOULD THAT FACT PREVENT  
3 YOU FROM GIVING TO BOTH THE STATE AND THE  
4 DEFENDANT A FAIR AND IMPARTIAL TRIAL BASED ON  
5 THE EVIDENCE?

6 THE JUROR: NO.

7 THE COURT: WOULD YOU BE ABLE TO PUT THAT  
8 ASIDE AND DECIDE THIS CASE BASED ON THE  
9 EVIDENCE YOU HEAR IN THIS COURTROOM?

10 THE JUROR: NO.

11 THE COURT: YOU WOULD NOT?

12 THE JUROR: NO.

13 THE COURT: YOU COULD NOT PUT THAT ASIDE?  
14 LET ME ASK THE QUESTION AGAIN.

15 THE JUROR: I CAN TRY.

16 THE COURT: LET ME ASK IT AGAIN. WOULD  
17 THAT FACT PREVENT YOU FROM GIVING BOTH THE  
18 STATE AND THE DEFENSE A FAIR AND IMPARTIAL  
19 TRIAL? WOULD THAT PREVENT YOU FROM GIVING BOTH  
20 SIDES A FAIR TRIAL?

21 THE JUROR: YES, SIR.

22 THE COURT: YOU THINK IT WOULD? YOU WOULD  
23 NOT BE ABLE TO PUT IT ASIDE?

24 THE JUROR: I WAS INVOLVED IN A HOSTAGE  
25 SITUATION.

1 THE COURT: OKAY, I UNDERSTAND. THANK  
2 YOU, MA'AM. YOU MAY BE SEATED. YES, MA'AM,  
3 THE LADY NEXT TO HER.

4 THE JUROR: JEANINE MEDLIN, 149.

5 THE COURT: I'M SORRY, I DIDN'T GET YOUR  
6 NUMBER.

7 THE JUROR: 149.

8 THE COURT: OKAY. MS. MEDLIN.

9 THE JUROR: MY FATHER IS EMPLOYED WITH THE  
10 DEPARTMENT OF CORRECTIONS FOR THIRTEEN YEARS.

11 THE COURT: CURRENTLY EMPLOYED THERE?

12 MS. MEDLIN: UH-HUH. (AFFIRMATIVE.)

13 THE COURT: HERE IN LEE COUNTY?

14 MS. MEDLIN: NO, KERSHAW COUNTY.

15 THE COURT: IN WHAT CAPACITY, MS. MEDLIN?  
16 IS HE A CORRECTIONAL OFFICER?

17 MS. MEDLIN: YES, A CORRECTIONAL OFFICER.  
18 HE WAS A TEACHER.

19 THE COURT: WOULD THAT FACT PREVENT YOU  
20 FROM GIVING BOTH THE STATE AND THE DEFENDANT A  
21 FAIR AND IMPARTIAL TRIAL BASED ON THE EVIDENCE?

22 MS. MEDLIN: NO.

23 THE COURT: WOULD YOU BE ABLE TO PUT THAT  
24 ASIDE AND DECIDE THE CASE BASED ON WHAT YOU  
25 HEAR IN THIS COURTROOM?

1 MS. MEDLIN: I WILL TRY.

2 THE COURT: YOU'VE GOT TO HAVE BETTER THAN  
3 THAT. WOULD YOU BE ABLE TO PUT IT ASIDE.  
4 COULD YOU DO THAT?

5 MS. MEDLIN: YES.

6 THE COURT: THANK YOU, MA'AM. ANY  
7 FURTHER QUESTIONS ON BEHALF OF THE STATE,  
8 MR. FATA?

9 MR. FATA: NONE ON BEHALF OF THE STATE.

10 THE COURT: ON BEHALF OF THE DEFENSE,  
11 MR. DOBY?

12 MR. DOBY: NO, SIR, YOUR HONOR.

13 THE COURT: COME FORWARD THEN, PLEASE,  
14 COUNSEL.

15 (WHEREUPON, THE ATTORNEYS APPROACH THE  
16 BENCH AND CONFER WITH JUDGE.)

17 THE COURT: ALL RIGHT, ANYTHING BEFORE WE  
18 STRIKE THE JURY ON BEHALF OF THE STATE, MR.  
19 FATA?

20 MR. FATA: NOTHING FROM THE STATE, YOUR  
21 HONOR.

22 THE COURT: ON BEHALF OF THE DEFENSE, MR.  
23 DOBY?

24 MR. DOBY: NO, SIR, YOUR HONOR.

25 THE COURT: MADAM CLERK, IF YOU WILL GIVE

1 US A JURY PLEASE.

2 (WHEREUPON, JURY IS IMPANELED.)

3 THE CLERK: JUROR NO. 120 MAURICE WILLIAMS  
4 (M-B) ACCEPTED, JUROR NO. 121 MONTRIEL WILLIAMS  
5 (M-B) STATE STRUCK, JURY 97 MICHELLE SAVORIS  
6 (F-B), ACCEPTED, JUROR 146 HAYES (M-W) DEFENSE  
7 STRUCK, JUROR NO. 133 WILLIE CANTY (M-B)  
8 ACCEPTED, JUROR NO. 113 MARY THOMAS (F-B)  
9 ACCEPTED, JUROR 115 AGRETTA WELLS (F-B),  
10 ACCEPTED, JUROR NO. 57 MATHEW ISAAC ACCEPTED,  
11 JURY NO. 85 JANIE PEEPLES (F-B) STATE STRUCK,  
12 JUROR NO. 156 SANDRA WILEY (F-B) ACCEPTED.  
13 JUROR NO. 25 KELVIN CHILDS, JR. (M-B) STATE  
14 STRUCK, JUROR NO. 155 JOHN TIDWELL (M-W)  
15 ACCEPTED, JUROR NO. 96 HAZEL SANDERS (M-B)  
16 ACCEPTED, JUROR NO. 141 CHAD FLOYD (M-W)  
17 ACCEPTED, JURY NO. 147 JERRY HORTON (M-B),  
18 DEFENSE STRUCK, JURY 43 ELIZABETH GRANTS (F-W)  
19 DEFENSE STRUCK, JUROR NO. 55 RICHARD POWELL  
20 JURY (M-W), ACCEPTED, JUROR NO. 157 TOMEKA  
21 WILSON (F-B), ACCEPTED.

22 THE COURT: COUNSEL, ONE ALTERNATE. ONE  
23 AND TWO, PLEASE.

24 THE CLERK: JUROR 13 KELVIN BRISON (M-B)  
25 STATE STRUCK, JUROR NO. 66 CECIL JOSEY, JR.

1 (M-W) DEFENSE STRUCK, JUROR NO. 12 JOHN BOLTON  
2 (M-B), ACCEPTED.

3 THE COURT: ALL RIGHT, ANYTHING WITH  
4 REGARD TO SELECTION OF THE JURY ON BEHALF OF  
5 THE STATE, MR. FATA?

6 MR. FATA: NO, SIR, YOUR HONOR.

7 THE COURT: ON BEHALF OF THE DEFENSE,  
8 MR. DOBY?

9 MR. DOBY: NO, SIR, YOUR HONOR.

10 THE COURT: COUNSEL, APPROACH JUST A  
11 MINUTE AND LET'S TALK ABOUT SCHEDULING.

12 (WHEREUPON, ATTORNEYS APPROACH THE BENCH  
13 AND CONFER WITH JUDGE.)

14 THE COURT: LADIES AND GENTLEMEN, YOU HAVE  
15 BEEN SELECTED IN THE TRIAL OF THIS CASE. WE  
16 HAVE GOT SOME MATTERS THAT WE'VE GOT TO ATTEND  
17 TO BEFORE WE CAN BE READY TO GO FORWARD WITH  
18 THIS TRIAL. WE MAY OR MAY NOT REACH ALL THOSE  
19 MATTERS THIS AFTERNOON. SO RATHER THAN KEEP  
20 YOU WAITING UNNECESSARILY IN THE JURY ROOM,  
21 WHAT I AM GOING TO DO IS TO EXCUSE YOU FOR THE  
22 REST OF THE AFTERNOON, AND ASK YOU TO COME BACK  
23 TOMORROW AROUND TEN O'CLOCK. IN JUST A MINUTE  
24 I AM GOING TO EXCUSE YOU AND HAVE YOU GO WITH  
25 MR. CAUTHREN AND ASK YOU TO REPORT BACK TO THE

1 JURY ROOM AT 10 O'CLOCK. JUST A COUPLE OF  
2 PRELIMINARY MATTERS BEFORE I EXCUSE YOU. FIRST  
3 OF ALL, DO NOT -- I KNOW YOU DON'T ANYTHING  
4 ABOUT THIS CASE EXCEPT WHAT I TOLD YOU  
5 BASICALLY WHAT THE ALLEGATIONS OF THE  
6 INDICTMENT ARE. BUT DO NOT DISCUSS THE CASE  
7 WITH ANYONE OVER THE EVENING RECESS. WHEN YOU  
8 SEE YOUR FAMILY AND YOUR FRIENDS, YOU CAN TELL  
9 THEM THAT YOU'RE SERVING ON THE JURY BUT YOU  
10 CAN'T TELL THEM ANYTHING ABOUT THE CASE,  
11 BECAUSE I TOLD YOU NOT TO. BECAUSE YOU'RE GOT  
12 TO DECIDE THIS CASE BASED UPON WHAT YOU HEAR IN  
13 THIS COURTROOM AND NOT ON THE BASIS OF WHAT  
14 ANYONE ELSE MIGHT SAY.

15 SO IT WOULD BE IMPROPER FOR YOU TO DISCUSS  
16 THE CASE WITH ANYONE AT ALL. SIMILARLY IT  
17 WOULD BE IMPROPER FOR ANYONE TO DISCUSS THE  
18 CASE WITH YOU. IF ANYONE SHOULD APPROACH YOU  
19 AND TRY TO TALK TO YOU ABOUT THIS MATTER IN ANY  
20 WAY WHATSOEVER, GET THEIR NAME AND THEIR  
21 DESCRIPTION AND REPORT IT TO THE BAILIFFS IN  
22 THE MORNING AND THEY WILL REPORT IT TO ME. AND  
23 THEN I WILL DEAL WITH THEM.

24 NOW LATER ON IN THIS CASE, SOME TIME  
25 BEFORE THIS MATTER, BEFORE YOU ACTUALLY GO TO

1 BEGIN YOUR DELIBERATIONS IN THIS MATTER, I  
2 WOULD APPOINT ONE OF THE 12 MEMBERS OF THE  
3 PRINCIPAL JURY AS THE FOREPERSON OF THE JURY.  
4 WHEN I DO THAT, THAT FOREPERSON SHOULD SIT IN  
5 THE FIRST SEAT HERE ON THE FRONT SEAT. THE  
6 ALTERNATE SHOULD ALWAYS SIT IN THE SEAT WHERE  
7 HE IS SEATED. THE REST OF THE SEATS IN THE  
8 JURY BOX ARE NOT RESERVED. AND IT DOES NOT  
9 MATTER WHAT ORDER YOU COME AND GO IN THE  
10 COURTROOM. I WOULD SIMPLY ASK THAT GO ALL THE  
11 WAY DOWN SO IT WOULDN'T BE A SITUATION OF  
12 CRAWLING OVER ONE ANOTHER. RESERVING THE FIRST  
13 SEAT ON THE FRONT ROW FOR THE FOREPERSON WHEN I  
14 NAME THAT FOREPERSON. AND THE SEAT BACK HERE  
15 FOR THE ALTERNATE.

16 NOW I'VE ALREADY TOLD YOU ABOUT, DON'T  
17 TALK WITH ANYBODY ELSE ABOUT THE CASE AND DON'T  
18 LET ANYONE ELSE TALK WITH YOU ABOUT THE CASE.  
19 ALSO WHEN YOU'RE REASSEMBLING IN THE JURY ROOM,  
20 DON'T DISCUSS THIS CASE AMONG YOURSELVES. IT  
21 WOULD BE IMPROPER FOR YOU TO DISCUSS THIS CASE  
22 AMONG YOURSELVES AT ANY TIME DURING THE TRIAL  
23 OF THIS CASE UNTIL ALL THE TESTIMONY IS IN,  
24 UNTIL THE ARGUMENTS OF COUNSEL HAVE BEEN MADE,  
25 UNTIL I TELL YOU IT IS APPROPRIATE TO BEGIN

1 YOUR DELIBERATIONS.

2 AND SO WHEN YOU ARE GATHERING IN THE JURY  
3 ROOM IN THE MORNING AND AT ANY TIME DURING THE  
4 COURSE OF THE TRIAL OF THIS CASE, YOU ARE IN  
5 THE JURY ROOM, YOU CAN TALK ABOUT ANYTHING YOU  
6 WANT TO, SPORTS, WEATHER, CHILDREN,  
7 GRANDCHILDREN, ANYTHING AT ALL. BUT DON'T TALK  
8 ABOUT THIS CASE UNTIL I TELL YOU IT IS  
9 APPROPRIATE TO DO SO. WITH THOSE ADMONITIONS  
10 THEN I AM GOING TO EXCUSE YOU NOW. I ASK YOU  
11 TO GO WITH THE BAILIFF, AND HE WILL SHOW YOU  
12 WHERE THE JURY ROOM IS. AND IF YOU WILL REPORT  
13 BACK TO THE JURY ROOM TOMORROW MORNING AT 10  
14 O'CLOCK, I WILL SEE YOU AT THAT TIME. THANK  
15 YOU.

16 (WHEREUPON, THE JURY AT 4:51 P.M. THE JURY  
17 IS EXCUSED.)

18 (WHEREUPON, THE FOLLOWING TAKES PLACE  
19 OUTSIDE THE PRESENCE OF THE JURY.)

20 THE COURT: FIRST OF ALL, I'D LIKE TO PUT  
21 ON THE RECORD, THE JURY IN THIS CASE HAS BEEN  
22 EXCUSED UNTIL TOMORROW. AND THE JURY PANEL HAS  
23 BEEN EXCUSED. AND WE ARE BACK ON THE RECORD TO  
24 TAKE CARE OF SOME MATTERS THAT WE NEED TO TAKE  
25 CARE OF. WITH REGARD TO THE JURY ITSELF BEFORE

1 WE SELECTED THE JURY, FOR THE RECORD, THIS IS  
2 TO MAKE SURE THE RECORD IS COMPLETE IN THIS  
3 MATTER, THE JURY, JUROR NO. 151, WAS EXCUSED  
4 BECAUSE THE JUROR INDICATED THAT SHE WOULD BE  
5 UNABLE TO GIVE A FAIR TRIAL. JUROR NO. 139 WAS  
6 EXCUSED BECAUSE SHE IS EMPLOYED BY MR. DOBY'S  
7 LAW FIRM. AND JUROR 154 IS ALSO EXCUSED  
8 BECAUSE SHE HAD A PROBLEM WITH GIVING A FAIR  
9 TRIAL BASED ON THE TESTIMONY. THOSE THREE  
10 JURORS WERE EXCUSED. JUROR NO. 74, I AM SORRY,  
11 154, WAS ALSO FORMERLY EMPLOYED BY THE STATE  
12 DEPARTMENT OF CORRECTIONS. JURORS NO. 74, 146  
13 AND 149 ALL HAD FAMILY MEMBERS EMPLOYED BY THE  
14 STATE DEPARTMENT OF CORRECTIONS, BUT NONE OF  
15 THEM AT LEE CORRECTIONAL INSTITUTE. THEY WERE  
16 ALL EITHER FORMERLY EMPLOYED WITH THE SOUTH  
17 CAROLINA DEPARTMENT OF CORRECTIONS, OR  
18 CURRENTLY EMPLOYED WITH THE SOUTH CAROLINA  
19 DEPARTMENT OF CORRECTIONS AT AN INSTITUTION  
20 OTHER THAN LEE CORRECTIONAL. AND ALL INDICATED  
21 THAT THEIR FAMILY RELATIONSHIP WOULD NOT  
22 PREVENT THEM FROM GIVING BOTH SIDES A FAIR AND  
23 IMPARTIAL TRIAL. AND INDICATED THEY WOULD BE  
24 ABLE TO PUT THAT ASIDE AND DECIDE THE CASE  
25 BASED ON THE EVIDENCE IN THE RECORD.

1           THOSE WERE THE STRIKES THAT THE COURT  
2           EXERCISED TO QUALIFY THE JURY IN THIS MATTER.  
3           ANY OBJECTION TO THAT PROCEDURE ON THE BASIS OF  
4           THE STATE, MR. FATA?

5           MR. FATA: NO, SIR.

6           THE COURT: MR. DOBY?

7           MR. DOBY: NO, SIR, YOUR HONOR.

8           THE COURT: THE NEXT MATTER BEFORE THE  
9           COURT IS THE MATTER WE DISCUSSED IN CHAMBERS.  
10          I DID NOT WANT TO PUT IT ON THE RECORD WITH  
11          REGARDS TO ALL THE JURORS, BUT CURRENT JURY  
12          THE DEFENSE SELECTED AND THE JURY PANEL.  
13          MR. DOBY DID INDICATE AND ASK ME IN CHAMBERS  
14          ABOUT THE DEFENDANT BEING ALLOWED TO WEAR  
15          CIVILIAN CLOTHES AND NOT BE HANDCUFFED AND  
16          RESTRAINED. AND I OVERRULED THAT MOTION ON THE  
17          BASIS THAT THIS HAPPENED AT THE CORRECTIONAL  
18          INSTITUTE.

19          THE MATTER IS GOING TO COME OUT IN THE  
20          EVIDENCE THAT THE DEFENDANT IS INCARCERATED,  
21          BUT I WILL ALLOW YOU, MR. DOBY, TO PUT YOUR  
22          POSITION ON THE RECORD.

23          MR. DOBY: WELL, YOUR HONOR, MAY IT PLEASE  
24          THE COURT, THAT WOULD BE THE CORRECT RECITATION  
25          OF MY MOTION IN CHAMBERS. YOUR HONOR, IT WAS

1 ESSENTIALLY BASED ON THE FACT THAT MY CLIENT IS  
2 IN SHACKLES AND IS WEARING HIS PRISON JUMPSUIT,  
3 GIVING THE APPEARANCE OF BEING GUILTY OF A  
4 CRIME WITHOUT BEING TRIED. AND THAT IS MY  
5 BASIS FOR THE MOTION.

6 THE COURT: I WOULD RESPECTFULLY DENY THAT  
7 MOTION, BECAUSE I DON'T SEE ANY PREJUDICE TO  
8 THE DEFENDANT. FIRST OF ALL, THE EVIDENCE IS  
9 GOING TO HAVE TO SHOW THAT HE IS OR WAS  
10 INCARCERATED AT THE TIME OF THIS EVENT, AT THE  
11 VERY LEAST. BECAUSE THE CHARGE IS ONE FOR  
12 ASSAULT ON A CORRECTION'S OFFICER. AND I  
13 DON'T SEE THAT THAT IS ANY REASON OR IN ANY  
14 PREJUDICE BY THE FACT THAT HE IS HERE AND IN A  
15 PRISON UNIFORM. AND IN RESTRAINTS. SO I  
16 WOULD RESPECTFULLY DENY THAT MOTION.

17 THE COURT: MR. FATA, I BELIEVE YOU HAVE  
18 A MOTION WITH REGARD TO THE INDICTMENT.

19 MR. FATA: YES, SIR. SINCE WE ARE GOING  
20 FORWARD ON COUNT 1, I WOULD LIKE TO AMEND COUNT  
21 1 TO REFLECT THAT THIS OCCURRED ON APRIL THE  
22 11TH AND NOT APRIL THE 10TH 2008. ALSO COUNT  
23 2, WHICH WE'RE NOT GOING FORWARD ON, I WOULD  
24 MAKE THE SAME MOTION TO AMEND TO APRIL 11TH  
25 2008, FROM APRIL 10TH 2008.

1 THE COURT: MR. DOBY.

2 MR. DOBY: YOUR HONOR, I DON'T KNOW THAT I  
3 CAN CLAIM PREJUDICE. I HAVE RECEIVED  
4 DISCOVERY, THEREFORE, THE DATE THIS ALLEGEDLY  
5 HAPPENED.

6 THE COURT: I'M SORRY.

7 MR. DOBY: I'VE RECEIVED DISCOVERY TO  
8 INDICATE WHAT DAY THIS ALLEGEDLY HAPPENED ON.  
9 BUT I MEAN, YOUR HONOR, I CANNOT CONSENT TO  
10 ALLOW.

11 THE COURT: THE DISCOVERY INDICATED THAT  
12 IT HAPPENED ON THE 11TH. IS THAT RIGHT?

13 MR. DOBY: THAT WAS THE INFORMATION THAT I  
14 RECEIVED.

15 THE COURT: ON THE DISCOVERY.

16 MR. DOBY: YES, SIR.

17 THE COURT: SO THE DATE OF APRIL 10TH OF  
18 2008, APPEARS TO BE A SCRIVENER'S ERROR. AND  
19 ALL THE DISCOVERY PRODUCED WOULD INCLUDE THE  
20 INCIDENT REPORT AND OTHER REPORTS FROM THE  
21 INSTITUTION WOULD INDICATE THAT THAT HAPPENED  
22 ON APRIL 11TH. I CANNOT SEE THAT THERE IS ANY  
23 PREJUDICE TO THE DEFENDANT. HE DID RECEIVE  
24 NOTICE THROUGH DISCOVERY. THE ACTUAL DATE OF  
25 THE OFFENSE WAS APRIL 11TH, 2008. FURTHERMORE,

1 THE INDICTMENT INDICATED ON OR ABOUT APRIL 10TH  
2 OF 2008. SINCE I CANNOT SEE ANY PREJUDICE TO  
3 THE DEFENDANT, THE COURT WILL ALLOW THE  
4 AMENDMENT ON BOTH COUNTS OF THE INDICTMENT TO  
5 SHOW THAT THE CORRECT DATE OF THE ALLEGED  
6 OFFENSES WAS APRIL 11TH OF 2008. AND THE  
7 INDICTMENT WOULD BE AMENDED TO THAT EFFECT.

8 AND I AM GOING TO PUT ON THE INDICTMENT  
9 THAT THE INDICTMENT WAS AMENDED IN OPEN COURT  
10 ON THE RECORD TO REFLECT THE CORRECT DATE WAS  
11 APRIL 11TH 2008.

12 NOW IN CHAMBERS, COUNSEL, YOU INDICATED  
13 ALSO, MR. FATA, THAT THERE WAS AN ISSUE  
14 REGARDING A STATEMENT. AND MAYBE SOME ISSUE  
15 REGARDING THE VOLUNTARINESS OF THAT STATEMENT.

16 MR. FATA: YES, SIR.

17 THE COURT: WHAT THE STATE HAS AND WHAT  
18 YOU WISH TO PROVE.

19 MR. FATA: THE STATE INVESTIGATOR GREER  
20 INTERVIEWED THE DEFENDANT ON APRIL 21ST,  
21 REGARDING THE COUNT 1 OF THE INDICTMENT. AND  
22 HE ALSO ON COUNT 2. BUT THE ONLY STATEMENT HE  
23 MADE REGARDING COUNT 1 WAS AN ORAL STATEMENT.  
24 WHAT WAS WRITTEN DOWN IS VERBATIM. "IT WAS NOT  
25 SUPPOSED TO GO DOWN LIKE THAT. ANDERSON JUST

1 GOT TOO CLOSE."

2 AND OF COURSE WE'RE PREPARED, IF MR. DOBY  
3 MAKES A JACKSON V. DENNO MOTION WE'RE PREPARED  
4 TO GO FORWARD ON THAT. I HAVE MR. GREER HERE.  
5 YOUR HONOR, IT HIGHLIGHTS HERE AT THE BOTTOM IN  
6 PARENTHESIS.

7 THE COURT: SO THE STATE PROPOSES TO OFFER  
8 IN EVIDENCE A VERBAL STATEMENT MADE TO  
9 INVESTIGATOR LLOYD GREER TO THE EFFECT THAT:  
10 "IT WAS NOT SUPPOSED TO GO DOWN LIKE THAT.  
11 ANDERSON JUST GOT TOO CLOSE."

12 DOES THE DEFENDANT CONTEST THE  
13 VOLUNTARINESS OF THAT STATEMENT, AND REQUEST AN  
14 EVIDENTIARY HEARING, MR. DOBY?

15 MR. DOBY: YES, SIR, YOUR HONOR.

16 THE COURT: THAT BEING THE CASE THEN  
17 THE -- AND HAVING REQUESTED AN EVIDENTIARY  
18 HEARING ON VOLUNTARINESS, THEN THE STATE CAN GO  
19 FORWARD AND PRESENT THE EVIDENCE THAT IT WISHES  
20 TO PRESENT REGARDING THE VOLUNTARINESS OF THE  
21 ISSUE.

22 MR. FATA: YES, SIR, YOUR HONOR. WE WOULD  
23 CALL INVESTIGATOR LLOYD GREER.

24 THE COURT: ALL RIGHT, COME AROUND, MR.  
25 GREER.

1 MR. FATA: HAVE YOU GOT YOUR COPY? YOUR  
2 HONOR, MAY I HAVE THAT? WOULD YOU MARK THAT  
3 FOR IDENTIFICATION?

4 (MIRANDA WARNING REPORT MARKED STATE'S  
5 EXHIBIT NO. 1 INTO EVIDENCE.)

6 INVESTIGATOR LLOYD R. GREER,  
7 BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

8 THE CLERK: STATE YOUR FULL NAME FOR THE  
9 RECORD.

10 A LLOYD R. GREER.

11 DIRECT EXAMINATION BY MR. FATA:

12 Q INVESTIGATOR GREER, WHAT IS YOUR  
13 OCCUPATION?

14 A I AM A STATE INVESTIGATOR FOR THE DIVISION  
15 OF INVESTIGATIONS OF THE DETECTIVE GENERAL'S OFFICE.

16 Q AND YOU WORK WHERE?

17 A I WORK, WE'RE ASSIGNED TO THE SOUTH  
18 CAROLINA DEPARTMENT OF CORRECTIONS TO INVESTIGATE  
19 CRIMES INSIDE THE INSTITUTION.

20 Q AND WHICH INSTITUTION ARE YOU ASSIGNED TO?

21 A LEE CORRECTIONAL.

22 Q AND DID YOU HAVE AN OCCASION TO DISCUSS AN  
23 INCIDENT THAT OCCURRED ON APRIL 11TH 2008, WITH THE  
24 DEFENDANT, TERRANCE BLACK?

25 A YES, I DID.

1 Q WHAT WAS THE NATURE OF THAT INCIDENT?

2 A IT WAS AN INCIDENT INVOLVING THE ASSAULT  
3 ON A CORRECTION'S OFFICER.

4 Q OKAY. AND THAT WAS OFFICER ANDERSON?

5 A DERRICK ANDERSON, YES.

6 Q AND WHAT HAPPENED TO OFFICER ANDERSON?

7 A OFFICER ANDERSON HAD RELATED TO ME THAT HE  
8 WAS ATTEMPTING TO CLOSE THE FLAP ON THE DOOR, ON THE  
9 CELL DOOR WHERE MR. BLACK WAS HOUSED. AND DURING  
10 THAT TIME IT WAS BEING HELD DOWN. AND DURING THE  
11 COURSE OF TRYING TO CLOSE THAT FLAP, HE STATED THAT  
12 MR. BLACK REACHED THROUGH THE FLAP AREA AND STABBED  
13 AT HIM WITH WHAT WE CALL A SHANK. A HOME MADE  
14 WEAPON.

15 Q DID HE ACTUALLY STAB HIM?

16 A YES, HE DID.

17 Q NOW BASED ON THAT REPORT TO YOU BY  
18 CAPTAIN, SERGEANT ANDERSON?

19 A YES, SIR.

20 Q BASED ON THAT REPORT TO BY SERGEANT  
21 ANDERSON, DID YOU INTERVIEW TERRANCE BLACK, THE  
22 DEFENDANT?

23 A YES, I DID.

24 Q I AM GOING TO SHOW YOU STATE'S EXHIBIT NO.  
25 1 FOR IDENTIFICATION. SEE IF YOU CAN IDENTIFY THAT.

1 A YES, SIR. THIS IS THE MIRANDA WARNING  
2 THAT I HAD MR. BLACK SIGN AFTER HE HAD READ THE  
3 STATEMENT.

4 Q OKAY. NOW TELL ME WHERE YOU SAID THIS  
5 DEFENDANT BLACK.

6 A YOU MEAN THE LOCATION?

7 Q THE LOCATION.

8 A IT WAS IN THE AREA WE CALL SMU. AND IT'S  
9 ASU, MEANING ADMINISTRATIVE SEGREGATION UNIT.  
10 INMATES ARE TAKEN THERE FOR LOCKDOWN FOR VARIOUS  
11 INFRACTIONS AND THINGS OF THIS NATURE.

12 Q WHAT KIND OF ROOM IS IT?

13 A WELL IT IS A BUILDING THAT HOUSES  
14 DIFFERENT INMATES. WHERE I SPOKE WITH MR. BLACK IN  
15 A CONFERENCE ROOM.

16 Q OKAY. THAT'S WHAT I -- SO YOU TOOK HIM  
17 OUT OF THE CELL?

18 A HE WAS BROUGHT TO THE CONFERENCE ROOM BY  
19 THE OTHER OFFICER.

20 Q AND CONFERENCE ROOM IS LOCATED IN THE ASU  
21 UNIT?

22 A YES, SIR.

23 Q AND TELL ME WHAT THE CONFIGURATION OF THE  
24 CONFERENCE ROOM IS.

25 A IT'S RECTANGULAR IN SHAPE. IT HAS A TABLE

1 WITH 3 TO 4 CHAIRS. PROBABLY ESTIMATE MAYBE 8 BY  
2 10.

3 Q IS IT WELL LIT?

4 A YES.

5 Q WHAT KIND OF LIGHTING DO YOU HAVE?

6 A FLUORESCENT LIGHTING.

7 Q WAS THE DEFENDANT IN HANDCUFFS AND  
8 SHACKLES AND LEG IRONS?

9 A HE WAS IN HANDCUFFS AND SHACKLED, YES.

10 Q NOW WHAT WAS THE REASON FOR THAT? WHY WAS  
11 HE CONFIGURED IN THAT FASHION?

12 A UNDER THE SOUTH CAROLINA DEPARTMENT OF  
13 CORRECTIONS POLICY ANY INMATE THAT IS REMOVED FROM  
14 THE CELLS OF SMU MUST BE HANDCUFFED AND ESCORTED BY  
15 AN OFFICER.

16 Q AND THE HANDCUFFS AND THE SHACKLES AND  
17 THAT SORT OF THING WEREN'T DESIGNED TO INTIMIDATE  
18 HIM, WERE THEY?

19 A NO, THAT'S STANDARD POLICY FOR SECURITY  
20 REASONS.

21 Q NOW WHILE HE WAS IN THAT ROOM, DID YOU DO  
22 ANYTHING TO HIM? DID YOU HIT HIM? YELL AT HIM,  
23 SCREAM AT HIM, COERCE HIM IN ANY WAY?

24 A NO, SIR.

25 Q DID YOU TALK IN A NORMAL TONE TO HIM?

1 A YES, SIR.

2 Q WAS HE FREE TO ANSWER YOU OR NOT ANSWER  
3 YOU?

4 A YES, HE WAS.

5 Q DID HE REQUEST A MEETING WITH YOU? OR DID  
6 YOU ASK HIM?

7 A I REQUESTED THAT HE MEET WITH ME.

8 Q WHAT WAS THE FIRST THING YOU DID?

9 A THE FIRST THING IS, WELL I ADVISED HIM I  
10 HAD A WARRANT FOR HIM.

11 Q FOR WHAT?

12 A ASSAULT AND BATTERY UPON A CORRECTIONAL  
13 OFFICER.

14 Q OKAY.

15 A AND THAT I WENT AHEAD AND GAVE HIM HIS  
16 MIRANDA RIGHTS.

17 Q WELL LET'S TALK ABOUT MIRANDA RIGHTS.  
18 LOOK AT STATE'S EXHIBIT NO. 1 FOR IDENTIFICATION.  
19 NOW WHAT WAS THE FIRST THING, WHAT WAS THE FIRST  
20 RIGHT YOU READ TO HIM?

21 A THAT HE HAS THE RIGHT TO REMAIN SILENT.

22 Q NOW I SEE THERE'S A T.B. ON A BLACK LINE  
23 NEXT TO THAT. WHAT DOES THAT T.B. SIGNIFY?

24 A THAT'S MR. BLACK'S INITIALS.

25 Q AND WHY DID HE PUT THEM THERE?

1           A       WHENEVER I ADVISE AN INDIVIDUAL OF THEIR  
2   MIRANDA RIGHTS, I HAVE THEM READ EACH, AFTER I HAVE  
3   EXPLAINED IT TO THEM, I HAVE THEM GO OVER THE FORM.  
4   READ EACH OF THE: "YOU HAVE THE RIGHT TO REMAIN  
5   SILENT. ANYTHING YOU SAY," AND PUT THEIR INITIAL  
6   BESIDE EACH ONE INDICATING THAT THEY UNDERSTAND  
7   THAT.

8           Q       INDICATING THAT YOU READ IT TO THEM?

9           A       YES.

10          Q       AND THEY UNDERSTAND IT.

11          A       YES.

12          Q       NOW WHEN YOU SAID YOU HAVE THE RIGHT TO  
13   REMAIN SILENT, DID IT APPEAR THAT THE DEFENDANT  
14   BLACK UNDERSTOOD WHAT YOU SAID? HE DIDN'T HAVE TO  
15   TALK TO YOU?

16          A       NO, SIR. HE UNDERSTOOD THAT.

17          Q       HE UNDERSTOOD IT. DID HE REALIZE THAT  
18   HE---

19          A       HE REALIZED THAT HE HAD THE RIGHT TO  
20   REMAIN SILENT.

21          Q       DID NOT HAVE TO---

22          A       DID NOT HAVE TO SPEAK.

23          Q       WHAT WAS THE NEXT THING YOU READ TO HIM?

24          A       "ANYTHING YOU SAY CAN AND WILL BE USED  
25   AGAINST YOU IN A COURT OF LAW."

1 Q AGAIN, DID HE INITIAL THAT LINE?

2 A YES, HE DID.

3 Q DID HE APPEAR TO UNDERSTAND THAT IF HE  
4 SAID ANYTHING THAT IT COULD COME BACK AND BE USED IN  
5 A TRIAL AT A LATER DATE?

6 A YES, HE DID.

7 MR. DOBY: YOUR HONOR, I WOULD OBJECT. I  
8 DON'T KNOW HOW THIS WITNESS CAN TESTIFY AS TO  
9 WHAT MY CLIENT UNDERSTOOD OR APPEARED TO  
10 UNDERSTAND. I THINK HE CAN TESTIFY---

11 THE COURT: HE CAN TESTIFY AS TO ANY  
12 RESPONSES TO THE QUESTIONS.

13 Q WHAT RESPONSE DID HE MAKE TO THAT QUESTION  
14 WHEN, "ANYTHING CAN BE USED AGAINST YOU IN A COURT  
15 OF LAW?"

16 A HE DIDN'T MAKE A RESPONSE.

17 Q DIDN'T MAKE A RESPONSE?

18 A NO.

19 Q DID HE DO ANYTHING TO INDICATE TO YOU THAT  
20 HE DIDN'T UNDERSTAND WHAT YOU WERE SAYING?

21 A NO, SIR, HE DID NOT.

22 Q WHAT WAS THE NEXT THING YOU READ TO HIM?

23 A THAT HE HAD A RIGHT TO SPEAK WITH AN

24 ATTORNEY FOR ADVICE BEFORE I ASKED HIM ANY

25 QUESTIONS. HAVE AN ATTORNEY PRESENT DURING

1 QUESTIONING.

2 Q DID HE REQUEST AN ATTORNEY?

3 A NO, SIR, HE DIDN'T.

4 Q DID HE DO ANYTHING TO INDICATE TO YOU THAT  
5 HE DID NOT UNDERSTAND HE COULD HAVE AN ATTORNEY?

6 A NO, SIR.

7 Q WHAT WAS THE NEXT THING YOU READ TO HIM?

8 A IF YOU HAVE NO MONEY FOR ATTORNEY'S FEES,  
9 THE COURT WILL APPOINT ONE TO REPRESENT YOU WITHOUT  
10 COST IF YOU WISH.

11 Q DID HE DO ANYTHING TO MAKE IT APPEAR THAT  
12 HE DID NOT UNDERSTAND HE COULD HAVE A COURT  
13 APPOINTED ATTORNEY?

14 A NO, SIR.

15 Q DID HE APPEAR TO UNDERSTAND THAT?

16 A YES, SIR.

17 Q AND DID HE PUT HIS INITIALS IN THE BLANK?

18 A YES, HE DID.

19 Q WHAT WAS THE NEXT THING YOU READ TO HIM?

20 A "IF YOU DECIDE TO ANSWER QUESTIONS NOW  
21 WITHOUT HAVING A LAWYER PRESENT, YOU WILL STILL HAVE  
22 THE RIGHT TO STOP ANSWERING QUESTIONS AT ANY TIME.  
23 YOU ALSO HAVE THE RIGHT TO STOP ANSWERING QUESTIONS  
24 AT ANY TIME UNTIL YOU TALK TO AN ATTORNEY."

25 Q DID HE APPEAR TO UNDERSTAND THAT?

1 A YES, SIR, HE DID.

2 Q DID HE GIVE YOU ANY INDICATION THAT HE  
3 WANTED A LAWYER PRESENT?

4 A NO, SIR.

5 Q DID HE INDICATE, GIVE YOU ANY INDICATION  
6 THAT HE WANTED TO STOP TALKING TO YOU UNTIL HE  
7 TALKED TO A LAWYER?

8 A AT ONE POINT MR. BLACK DID STATE THAT HE  
9 DIDN'T HAVE MUCH TO SAY WHERE ANDERSON WAS  
10 CONCERNED.

11 Q THAT'S NOT WHAT I ASKED YOU. THAT'S NOT  
12 WHAT I ASKED YOU. DID HE SAY, STOP I WANT TO TALK  
13 TO A LAWYER BEFORE I TALK TO YOU?

14 A NO, SIR, HE DID NOT.

15 Q DID HE -- OKAY. SO HE DID NOT INDICATE  
16 THAT HE WANTED A LAWYER, OR THAT HE WANTED TO STOP  
17 AND TALK TO A LAWYER.

18 A NO, SIR, HE DIDN'T.

19 Q WHAT WAS THE NEXT THING YOU READ?

20 A "THAT I HAVE THIS STATEMENT OF MY RIGHTS,  
21 OR HAVE HAD IT READ TO ME AND I UNDERSTAND WHAT MY  
22 RIGHTS ARE."

23 Q AND DOES HIS INITIALS APPEAR?

24 A YES, IT DOES.

25 Q DID HE MAKE INDICATION THAT HE DID NOT

1 UNDERSTAND THESE RIGHTS THAT YOU READ TO HIM?

2 A NO, SIR. I ASKED HIM IF HE UNDERSTOOD  
3 THEM AND HE SAID YES.

4 Q DID YOU HAVE ANY ID -- WELL DID ANYTHING  
5 OCCUR THAT WOULD MAKE YOU BELIEVE HE DIDN'T  
6 UNDERSTAND THESE RIGHTS?

7 A NO, SIR.

8 Q NOW I SEE A SIGNATURE ON THERE, ON THE  
9 SIGNATURE LINE. WHOSE SIGNATURE IS THAT?

10 A THAT'S MR. BLACKS.

11 Q AND DID HE SIGN THAT?

12 A YES, HE DID.

13 Q DID HE DATE IT?

14 A YES, HE DID.

15 Q NOW I SEE UNDERNEATH THAT IT SAYS, "WAIVER  
16 OF RIGHTS." WHAT IS THAT?

17 A THE TOP PORTION INDICATES THAT MR. BLACK  
18 UNDERSTOOD HIS RIGHTS. THE WAIVER OF RIGHTS IS  
19 WHERE I READ TO HIM THAT HE---

20 Q WHAT DID YOU READ TO HIM. "I AM WILLING  
21 TO MAKE A STATEMENT AND ANSWER QUESTIONS. I DO NOT  
22 WANT AN ATTORNEY AT THIS TIME. I UNDERSTAND AND  
23 KNOW WHAT I AM DOING. NO PROMISES OR THREATS HAVE  
24 BEEN MADE TO ME. NO PRESSURE OR COERCION OF ANY  
25 KIND HAS BEEN USED AGAINST ME." AT THAT TIME HE PUT

1 HIS INITIALS BESIDE THE WAIVER OF RIGHTS AND HE  
2 SIGNED AND DATED IT.

3 Q DID MR. BLACK, OR DID DEFENDANT BLACK DO  
4 ANYTHING THAT WOULD INDICATE TO YOU THAT HE DID NOT  
5 MAKE A VOLUNTARY WAIVER OF HIS RIGHTS AND AGREE TO  
6 TALK WITH YOU?

7 A NO, SIR, HE DID NOT.

8 Q DID HE APPEAR TO BE UNDER THE INFLUENCE OF  
9 ANYTHING?

10 A NO, SIR.

11 Q THAT BEING DRUGS OR ALCOHOL OR ANY KIND OF  
12 MEDICATION?

13 A NO, SIR.

14 Q DID HE APPEAR TO BE CLEAR AND COHERENT,  
15 AND HIS THOUGHT PROCESSES APPEAR TO BE IN NORMALLY  
16 FUNCTIONING?

17 A YES, SIR.

18 Q I SEE ANOTHER SIGNATURE ON THAT,  
19 UNDERNEATH WHAT YOU JUST READ, WAIVER OF RIGHTS.  
20 WHOSE SIGNATURE IS THAT?

21 A THAT IS MINE.

22 Q RIGHT HERE. RIGHT HERE.

23 A OH, I AM SORRY. THAT IS MR. BLACK'S  
24 SIGNATURE.

25 Q OKAY. AND THAT IS WHERE A SIGNED WAIVER

1 OF RIGHTS?

2 A YES, SIR.

3 Q AND IS THAT HIS DATE THERE?

4 A YES, IT IS.

5 Q AND WHO DOES THAT SIGN AS A WITNESS?

6 A MYSELF.

7 MR. FATA: YOUR HONOR, WE WOULD OFFER THIS  
8 AS STATE'S EXHIBIT 1 FOR IDENTIFICATION. AS  
9 STATE'S EXHIBIT NO. 1.

10 THE COURT: ANY OBJECTION, MR. DOBY?

11 MR. DOBY: NO OBJECTION, YOUR HONOR.

12 THE COURT: TO BE ADMITTED INTO EVIDENCE  
13 FOR PURPOSES OF JACKSON VS. DENNO HEARING AS  
14 STATE'S EXHIBIT NO. 1.

15 (WAIVER OF RIGHTS MARKED STATE'S EXHIBIT  
16 NO. 1 INTO EVIDENCE.)

17 Q NOW DID YOU TALK TO -- LET ME HAVE THAT.  
18 WOULD YOU DO THIS 2 FOR IDENTIFICATION, PLEASE,  
19 MA'AM?

20 (REPORT OF INVESTIGATIVE ACTIVITY  
21 MARKED STATE'S EXHIBIT NO. 2 FOR ID.)

22 Q NOW I AM GOING TO SHOW YOU STATE'S EXHIBIT  
23 2 FOR IDENTIFICATION, DO YOU RECOGNIZE THAT?

24 A YES, SIR, I DO.

25 Q WHAT IS THAT?

1 A IT'S THE REPORT OF INVESTIGATIVE ACTIVITY  
2 THAT I WROTE.

3 Q AS A RESULT OF WHAT?

4 A AS A RESULT OF MY INTERVIEW WITH MR.  
5 BLACK.

6 Q NOW YOU INTERVIEWED DEFENDANT BLACK FOR  
7 TWO CHARGES, RIGHT?

8 A YES, SIR, I DID.

9 Q AND THAT WAS THE STABBING OF SERGEANT  
10 TYNER.

11 A YES, SIR.

12 Q AND THE STABBING OF---

13 A SERGEANT ANDERSON.

14 Q ---OF SERGEANT ANDERSON. WHEN YOU  
15 DISCUSSED THE ISSUE OF SERGEANT ANDERSON WITH  
16 DEFENDANT BLACK, WHAT DID HE TELL YOU?

17 A AFTER HE SIGNED HIS MIRANDA WAIVER AND  
18 EVERYTHING, I ASKED HIM TO EXPLAIN WHAT HAPPENED  
19 WITH HIM AND SERGEANT ANDERSON. AND HE STATED, "I  
20 DO NOT WANT TO SPEAK ABOUT SERGEANT ANDERSON. IT  
21 WAS NOT SUPPOSED TO GO DOWN THAT WAY. ANDERSON GOT  
22 IN THE WAY."

23 Q READ EXACTLY WHAT HE WROTE DOWN THAT WAS  
24 HIS STATEMENT TO YOU.

25 A "IT WAS NOT SUPPOSED TO GO DOWN LIKE THAT.

1 ANDERSON JUST GOT TOO CLOSE."

2 Q AND THAT WAS MADE IN CONNECTION WITH WHAT  
3 ABOUT SERGEANT ANDERSON?

4 A WHEN I ASKED HIM TO EXPLAIN TO ME WHAT  
5 TOOK PLACE WITH SERGEANT ANDERSON.

6 Q OKAY, AND THAT'S WHAT HE SAID.

7 A YES, SIR. AND AFTER THAT HE SAID HE  
8 DIDN'T WANT TO TALK WITH HIS LAWYER CONCERNING THAT.

9 MR. FATA: YOUR HONOR, WE WOULD OFFER  
10 STATE'S EXHIBIT 2 FOR IDENTIFICATION INTO  
11 EVIDENCE.

12 THE COURT: MR. DOBY.

13 MR. DOBY: NO OBJECTION.

14 THE COURT: TO BE ADMITTED INTO EVIDENCE.  
15 STATE'S NO. 2 FOR PURPOSES OF JACKSON DENNO  
16 HEARING.

17 (INVESTIGATIVE REPORT MARKED STATE'S  
18 EXHIBIT NO. 2 INTO EVIDENCE.)

19 Q DID THE DEFENDANT APPEAR TO YOU TO BE  
20 COMFORTABLE IN THE ROOM WITH YOU?

21 A YES.

22 Q DID HE APPEAR TO BE UNDER ANY STRESS?

23 A NO.

24 Q ANY DURESS?

25 A NO, SIR.

1 Q WERE ANY PROMISES MADE TO HIM?

2 A NO, SIR.

3 Q WERE ANY THREATS MADE TO HIM?

4 A NO, SIR.

5 Q WAS ANY PHYSICAL VIOLENCE INFLICTED UPON

6 HIM?

7 A NO, SIR.

8 Q WAS HE DENIED THE BATHROOM USE, FOOD,

9 DRINK, TELEPHONE?

10 A NO, SIR.

11 Q AND WERE ANY THREATS MADE TO HIM IN

12 EXCHANGE FOR THAT STATEMENT?

13 A NO, SIR.

14 Q WAS THAT STATEMENT FREELY AND VOLUNTARILY

15 MADE BY THE DEFENDANT?

16 A YES, IT WAS.

17 MR. FATA: ANSWER ANY QUESTIONS THAT

18 MR. DOBY MAY HAVE.

19 THE COURT: CROSS EXAMINATION, MR. DOBY.

20 MR. DOBY: MAY IT PLEASE THE COURT.

21 THE COURT: YES, SIR.

22 CROSS EXAMINATION BY MR. DOBY:

23 Q INVESTIGATOR, IS THERE ANY KIND OF A TAPE,

24 AUDIO OR VIDEOTAPE OF THIS ALLEGED STATEMENT?

25 A NO, SIR, THERE IS NOT.

1 Q DID YOU INDICATE TO MR. BLACK THAT THIS  
2 WAS BEING TAPED IN ANY WAY?

3 A NO, SIR.

4 Q WOULD THAT HAVE BEEN STANDARD PROCEDURE TO  
5 HAVE TAPED THIS INTERVIEW?

6 A NO, SIR.

7 Q THE SEQUENCE OF THE EVENTS THAT YOU HAVE  
8 ON THIS RECORD, I GUESS, MIRANDA MEMORANDUM OF YOUR  
9 INVESTIGATION INDICATES THAT HIS MIRANDA RIGHTS WERE  
10 GIVEN TO HIM. AND THEN INMATE BLACK STATED HE DID  
11 NOT WANT TO TALK ABOUT THE INCIDENT WITH OFFICER  
12 ANDERSON. IS THAT -- WOULD BE CORRECT?

13 A YES, HE MADE THAT STATEMENT.

14 Q OKAY. SO HE SAYS I DON'T WANT TO TALK  
15 ABOUT THE INCIDENT WITH OFFICER ANDERSON. AND THAT  
16 IS DICTATED PRIOR TO THIS ALLEGED STATEMENT THAT HE  
17 MADE, IS THAT CORRECT?

18 A HE MADE THAT STATEMENT AND THEN FOLLOWED  
19 UP WITH THE STATEMENT THAT HE MADE.

20 Q WELL DO YOU RECALL THIS REPORT OF  
21 INVESTIGATIVE ACTIVITY? AND I'LL SHOW YOU A COPY  
22 THAT I RECEIVED IN THE DISCOVERY PROCESS.

23 A UH-HUH. (AFFIRMATIVE.)

24 Q AND IT INDICATES THAT THE STATEMENT MADE  
25 BY MR. BLACK WAS THAT HE DIDN'T WANT TO GIVE A

1 STATEMENT WAS IMMEDIATELY AFTER HIS MIRANDA  
2 WARNINGS. WOULD THAT BE A FAIR CHARACTERIZATION OF  
3 YOUR REPORT?

4 A IT WOULD BE A FAIR CHARACTERIZATION TO  
5 STATE THAT HE DID NOT WANT TO TALK ABOUT THE  
6 INCIDENT INVOLVING SERGEANT ANDERSON, YES.

7 Q YOUR TRAINING AS AN INVESTIGATOR AND AN  
8 OFFICER, IF SOMEONE SAYS THAT THEY DON'T WANT TO  
9 TALK ABOUT THE INCIDENT AND THEY INVOKE THEIR RIGHT  
10 TO SILENCE, YOU CAN'T GO FORWARD, IS THAT CORRECT?

11 A IF HE INVOKES HIS RIGHT TO HAVE AN  
12 ATTORNEY, I CANNOT GO FORWARD. THAT IS CORRECT.

13 Q WELL HIS RIGHT TO SILENCE IS ONE OF THE  
14 RIGHTS THAT YOU HAVE LISTED ON THE MIRANDA WARNING?

15 A THAT'S CORRECT.

16 Q AS WELL, IS THAT CORRECT?

17 A YES, SIR.

18 Q AND WOULDN'T YOUR TRAINING ALSO DICTATE  
19 THAT IF HE SAYS I WANT TO REMAIN SILENT, YOU CANNOT  
20 GO FORWARD WITH THE INTERVIEW?

21 A HE REQUESTED TO REMAIN SILENT WHERE  
22 MR. ANDERSON IS CONCERNED.

23 Q YES, SIR.

24 A YES, SIR.

25 Q AND THE STATEMENT THAT YOU ARE NOW TELLING

1 THIS COURT THAT WAS MADE WAS ABOUT THE OFFICER  
2 ANDERSON INCIDENT.

3 A YES, SIR. HE STATED THAT HE DID WANT TO  
4 SPEAK ABOUT THE INCIDENT INVOLVING MR. ANDERSON.  
5 AND THEN LATER HE FOLLOWED WITH THE STATEMENT BY  
6 STATING THAT: EXACT WORDING: "IT WAS NOT SUPPOSED  
7 TO GO DOWN THAT WAY. ANDERSON JUST GOT TOO CLOSE."

8 Q SO HE INVOKED HIS RIGHT TO SILENCE PRIOR  
9 TO THIS ALLEGED STATEMENT HE WAS GIVEN.

10 A HE MADE THAT STATEMENT AND THEN FOLLOWED  
11 IT WITH HIS OTHER STATEMENT, YES. I DID NOT  
12 QUESTION HIM CONCERNING THAT.

13 MR. DOBY: THANK YOU. THAT'S ALL I HAVE  
14 OF THIS WITNESS, YOUR HONOR.

15 THE COURT: ANYTHING FURTHER ON REDIRECT  
16 OF THIS WITNESS?

17 MR. FATA: YES, JUST ONE.

18 REDIRECT EXAMINATION BY MR. FATA:

19 Q WHEN HE SAID, I DON'T WANT TO TALK ABOUT  
20 ANDERSON, DID HE FOLLOW THAT IMMEDIATELY WITH THE  
21 STATEMENT, "IT WAS NOT SUPPOSED TO GO DOWN LIKE  
22 THAT, ANDERSON JUST GOT IN THE WAY?"

23 A YES, SIR, HE DID.

24 Q IT WAS LIKE A CONTINUUM?

25 A CONTINUOUS STATEMENT.

1 Q AND DID YOU TALK TO HIM ABOUT ANDERSON ANY  
2 MORE AFTER THAT?

3 A NO, SIR.

4 MR. FATA: NOTHING ELSE, YOUR HONOR.

5 THE COURT: MR. DOBY, ANYTHING ELSE OF  
6 THIS WITNESS?

7 MR. DOBY: NO, SIR, YOUR HONOR.

8 THE COURT: THANK YOU, SIR. MR. FATA,  
9 ANYTHING ELSE WITH REGARD TO THE ADMISSIBILITY  
10 OF THE STATEMENT ON BEHALF OF THE STATE?

11 MR. FATA: NOTHING ELSE, YOUR HONOR.

12 THE COURT: MR. DOBY, YOUR CLIENT HAS A  
13 RIGHT TO PRESENT ANY EVIDENCE IN THE COURT THAT  
14 HE WISHES TO PRESENT REGARDING THE  
15 VOLUNTARINESS ISSUE WITHOUT WAIVING HIS 5TH  
16 AMENDMENT RIGHTS. I WILL ALLOW HIM TO PRESENT  
17 ANY TESTIMONY THAT HE MAY WISH TO PRESENT ON  
18 THIS ISSUE, OR ANY EVIDENCE THAT YOU WISH TO  
19 PRESENT ON THIS ISSUE.

20 MR. DOBY: YOUR HONOR, MY CLIENT INDICATES  
21 TO ME THAT HE DOES NOT WISH TO TESTIFY.

22 THE COURT: HE DOES NOT WISH TO TESTIFY ON  
23 THE VOLUNTARINESS ISSUE. AND THERE IS NO  
24 FURTHER EVIDENCE OF THE DEFENSE REGARDING THE  
25 VOLUNTARINESS MATTER.

1 MR. DOBY: THAT IS CORRECT, YOUR HONOR.

2 THE COURT: THANK YOU, COUNSEL. IT IS  
3 AXIOMATIC THAT THE DEFENDANT IN A CRIMINAL CASE  
4 IS ENTITLED TO AN INDEPENDENT EVIDENTIARY  
5 HEARING TO DETERMINE THE VOLUNTARINESS OF  
6 STATEMENTS MADE PRIOR TO THE SUBMISSION OF SUCH  
7 STATEMENTS TO THE JURY. THE COURT MUST FIRST  
8 MAKE A FINDING AS TO THE VALIDITY OF THE  
9 STATEMENT. IF THE STATEMENT IS FOUND TO BE  
10 VALID BY THE COURT THEN IT SHOULD BE SUBMITTED  
11 TO THE JURY. AND THE COURT SHOULD ALSO ADDRESS  
12 THE ISSUE OF WHETHER IT WAS VOLUNTARILY MADE.

13 IN MAKING THE DETERMINATION, THE COURT  
14 SHOULD EXAMINE THE TOTALITY OF THE  
15 CIRCUMSTANCES, INCLUDING THE BACKGROUND,  
16 EXPERIENCE, AND CONDUCT OF THE ACCUSED  
17 SURROUNDING THE UTTERANCE. THE TESTAMENT AND  
18 ADMISSIBILITY OF THE STATEMENT IS WHETHER IT  
19 WAS KNOWINGLY, INTELLIGENTLY AND VOLUNTARILY  
20 GIVEN. A CONFESSION MAY NOT BE EXTRACTED BY  
21 ANY SORT OF THREATS OR VIOLENCE OR OBTAINED BY  
22 ANY DIRECT OR IMPLIED PROMISES. NOR BY THE  
23 EXERTION OF IMPROPER INFLUENCE. THE BURDEN IS  
24 ON THE STATE TO PROVE BY A PREPONDERANCE OF THE  
25 EVIDENCE THAT THE STATEMENT WAS VOLUNTARY AND

1 TAKEN IN COMPLIANCE OF MIRANDA.

2 THERE IS NO QUESTION THAT -- THAT HE WAS  
3 CUSTODY IN THIS SITUATION. AND CUSTODY IS  
4 ALWAYS A FACTOR TO BE CONSIDERED IN  
5 VOLUNTARINESS. BUT THERE IS NO QUESTION THAT  
6 THIS DEFENDANT WAS IN CUSTODY AT THE TIME THE  
7 STATEMENT WAS MADE. HOWEVER IN MY VIEW, THE  
8 STATE HAS PROVEN THE DEFENDANT WAS GIVEN HIS  
9 CONSTITUTIONAL RIGHTS UNDER MIRANDA AS SHOWN BY  
10 THE TESTIMONY OF THE OFFICER IN THIS CASE; AS  
11 WELL AS, THE MIRANDA RIGHTS FORM WHICH WAS  
12 EXPLAINED TO THE DEFENDANT. WHICH HE INITIALED  
13 EACH OF THE QUESTIONS REGARDING IT. AND SIGNED  
14 UNDER THE RIGHTS; THAT THE QUESTIONS WERE READ  
15 TO HIM -- I MEAN THAT THE RIGHTS WERE READ TO  
16 HIM. FURTHER UNDER THAT HE ALSO SIGNED AND  
17 INITIALED. HE WAIVED HIS RIGHTS.

18 THE COURT WOULD FIND THAT THE STATEMENT  
19 MADE BY THE DEFENDANT TO THE EFFECT THAT: "IT  
20 WAS NOT SUPPOSED TO GO DOWN LIKE THAT.  
21 ANDERSON JUST GOT TOO CLOSE."

22 I FIND THAT THE STATEMENT WAS KNOWINGLY,  
23 INTELLIGENTLY AND VOLUNTARILY MADE; THAT THE  
24 DEFENDANT WAS IN CUSTODY AT THE TIME THE  
25 STATEMENT WAS GIVEN. BUT THAT THE DEFENDANT

1 WAS GIVEN HIS MIRANDA RIGHTS. AND THE  
2 STATEMENT WAS MADE IN ACCORDANCE WITH MIRANDA.  
3 ACCORDINGLY THE STATEMENT IS THEREFORE VALID  
4 AND ADMISSIBLE IN TO EVIDENCE.

5 ALL RIGHT, WE WILL PROCEED WITH THAT  
6 TOMORROW. IS THERE ANYTHING ELSE WITH REGARD  
7 TO THIS MATTER ON BEHALF OF THE STATE THIS  
8 AFTERNOON, MR. FATA?

9 MR. FATA: NOTHING ELSE, YOUR HONOR.

10 THE COURT: MR. DOBY.

11 MR. DOBY: YES, SIR, YOUR HONOR. YOUR  
12 HONOR, THE STATE HAS ELECTED TO GO FORWARD ON  
13 ONLY ONE COUNT OF THIS INDICTMENT. YOUR HONOR,  
14 I WOULD ASK AND MAKE A MOTION TO PREVENT THE  
15 STATE FROM MENTIONING OR BRINGING UP ABOUT THE  
16 ALLEGED INCIDENT FOR WHICH WE ARE NOT GOING  
17 FORWARD.

18 YOUR HONOR, THERE ARE TWO ALLEGED ASSAULTS  
19 ON CORRECTIONAL OFFICERS COMMITTED BY MY  
20 CLIENT. I WOULD CONTEND THAT IF THE STATE IS  
21 ALLOWED TO BRING UP EVIDENCE IN REGARDS TO THE  
22 ALLEGED SECOND ASSAULT ON A CORRECTIONAL  
23 OFFICER, THAT THAT WOULD BE HIGHLY PREJUDICIAL.  
24 AND WOULD PREVENT MY CLIENT FROM OBTAINING A  
25 FAIR AND IMPARTIAL TRIAL IN THIS CASE. AND

1 THEREFORE I WOULD ASK THAT THE COURT LIMIT THE  
2 STATE MENTIONING, BRINGING UP, PRESENTING  
3 EVIDENCE IN REGARDS TO THIS ALLEGED SECOND  
4 ASSAULT ON A CORRECTIONAL OFFICER.

5 THE COURT: MR. FATA.

6 MR. FATA: YOUR HONOR, THE SECOND ASSAULT  
7 OCCURRED WHEN THE EXTRACTION TEAM WENT INSIDE  
8 THE CELL TO GET DEFENDANT BLACK OUT. I HAVE NO  
9 PLANS TO BRING ANY INFORMATION REGARDING THAT  
10 TO LIGHT. WE WILL HAVE A VIDEOTAPE. THAT  
11 OFFICER APPEARS ON THE VIDEOTAPE. BUT YOU DO  
12 NOT SEE THE OFFICER BEING STABBED. THE SHANK  
13 IS RETRIEVED FROM THE DEFENDANT WHILE HE IS  
14 BEING PLACED IN THE RESTRAINT CHAIR. THAT  
15 OFFICER IS AT THE SCENE OR BEING PLACED IN  
16 RESTRAINTS HERE.

17 I DON'T ENVISION HIM BEING REQUIRED TO  
18 TESTIFY. HE MAY TESTIFY BUT RIGHT OFF HAND I  
19 DON'T THINK HE WILL. BUT I DON'T PLAN TO BRING  
20 UP ANYTHING ABOUT SERGEANT TYNER.

21 THE COURT: ALL RIGHT.

22 MR. FATA: EVEN THOUGH HE WILL APPEAR ON  
23 THE VIDEO. HE WILL APPEAR ON THE VIDEO.

24 THE COURT: I UNDERSTAND. BUT NOT AND YOU  
25 CAN IDENTIFY IT. BUT WHAT YOU'RE SAYING YOU

1 DON'T PLAN TO INTRODUCE ANYTHING WITH REGARD TO  
2 AN ASSAULT UPON OR AN ATTACK UPON OR ANY OVERT  
3 ACTION AS FAR AS A TIME IS CONCERNED. BUT HE  
4 IS GOING TO BE ON THE VIDEO AS SIMPLY BEING IN  
5 THE AREA.

6 MR. FATA: HE WILL BE ON THE VIDEO SHOWING  
7 THEM TAKING HIM OUT OF THE CELL. HE WILL ALSO  
8 BE ON THE VIDEO SHOWING THEM PUTTING HIM IN THE  
9 RESTRAINT CHAIR. HE'LL BE ON THE VIDEO WHEN  
10 THEY UNCOVER THE SHANK.

11 THE COURT: THAT'S NOT PREJUDICIAL IS IT,  
12 MR. DOBY? THE PART THAT IS PREJUDICIAL AS FAR  
13 AS YOU ARE CONCERNED IS ANY ALLEGATIONS OF AN  
14 ASSAULT UPON OR AN ATTACK UPON AN OFFICER  
15 TYNER.

16 MR. DOBY: YES, SIR, YOUR HONOR.

17 THE COURT: I WOULD RULE THAT ANY EVIDENCE  
18 REGARDING THE ASSAULT UPON OR ATTACK UPON  
19 OFFICER TYNER IS INADMISSIBLE. HOWEVER, THE  
20 FACT THAT HE WAS A PARTICIPANT IN THE FACTS  
21 SURROUNDING THE ATTACK ON SERGEANT ANDERSON IS  
22 ADMISSIBLE. AND THAT CAN COME IN. THERE IS  
23 NO PROBLEM WITH THAT. THERE IS NOTHING TO THE  
24 EFFECT THAT HE IS HIMSELF A VICTIM IN THIS CASE  
25 OR WAS ATTACKED IN ANY WAY. ANY PROBLEM? ALL

1 RIGHT.

2 MR. DOBY: NO, SIR, YOUR HONOR.

3 THE COURT: ANYTHING ELSE, MR. DOBY?

4 MR. DOBY: NO, SIR, YOUR HONOR.

5 THE COURT: THE JURY IS NOT COMING IN  
6 UNTIL 10 O'CLOCK IN THE MORNING. WE'LL BE IN  
7 RECESS UNTIL THEN UNLESS THERE IS ANYTHING THAT  
8 THE STATE HAS. WE WILL TAKE THIS MATTER UP AT  
9 10 O'CLOCK. I WILL BE HERE AT 9:30, MR. FATA.  
10 IF YOU HAVE GOT ANY MATTERS THAT YOU WANT TO  
11 HEAR IN THE WAY OF PLEAS OR ANYTHING OF THAT  
12 NATURE BEFORE 10 O'CLOCK. THE OTHER THING,  
13 COUNSEL, I WOULD ASK YOU TO DO IN THE MORNING.  
14 YOU DON'T HAVE TO DO IT TONIGHT IF YOU DON'T  
15 WANT TO. SEE IF YOU CAN AGREE ON ANY EXHIBITS  
16 INTRODUCED. IF THERE ARE ANY EXHIBITS, GO  
17 AHEAD AND GIVE THEM TO THE COURT REPORTER. IF  
18 THEY ARE AGREED, LET HER GO AHEAD AND MARK THEM  
19 AS AN EXHIBIT. IF THERE IS ANY DISAGREEMENT  
20 ABOUT THEM, LET HER MARK THEM AS AN I.D., AND I  
21 WILL DEAL WITH THEM AT THE TIME THEY ARE  
22 OFFERED. BUT IF THERE IS NO DISAGREEMENT WITH  
23 THEM, THEY CAN GO AHEAD AND BE MARKED INTO  
24 EVIDENCE WITHOUT ANY FURTHER AUTHENTICATION.  
25 WITH THAT, WE WILL BE IN RECESS UNTIL 10 O'CLOCK. WE

1 WILL BE IN RECESS UNTIL TOMORROW.

2 (WHEREUPON, THE TRIAL COMMENCES ON

3 TUESDAY, AUGUST 12, 2008, AT 9:30 A.M.)

4 THE COURT: LET THE RECORD REFLECT

5 MR. BLACK IS PRESENT WITH HIS COUNSEL. STATE

6 IS PRESENT MR. FATA. ANYTHING BEFORE WE BRING

7 THE JURY OUT ON BEHALF OF THE STATE, MR. FATA?

8 MR. FATA: YOUR HONOR, JUST ONE THING.

9 LAST NIGHT WHEN I FINISHED, ONE OF JURORS AND

10 CAME RIDING BY ON HIS BICYCLE. I DIDN'T KNOW

11 HE WAS A JUROR. AND WHEN HE SAW ME, HE STOPPED

12 AND SAID, I NEED TO ASK YOU SOMETHING. I

13 DIDN'T RECOGNIZE HIM AS A JUROR AT THE TIME.

14 AND THEN HE SAID I WANT YOU ASK YOU SOMETHING

15 ABOUT JURY DUTY.

16 THEN I LOOKED UP AND I RECOGNIZED HE WAS

17 ON THE JURY. AND HE IS HAZEL SANDERS. NO. 96.

18 AT THAT POINT, I TOLD HIM I COULD NOT TALK TO

19 HIM. AND HE SAID OH, I AM SORRY. THEN I SAID

20 DIDN'T YOU HEAR WHAT THE JUDGE SAID. AND WE

21 DIDN'T -- THAT WAS IT. THAT WAS THE EXTENT OF

22 THE CONVERSATION. I JUST WANTED TO PUT THAT ON

23 THE RECORD AND MAKE SURE THE COURT KNOWS ABOUT

24 THAT.

25 THE COURT: ANY POSITION OR ANY COMMENTS

1 BY THE DEFENDANT, MR. DOBY?

2 MR. DOBY: NO, SIR, YOUR HONOR.

3 THE COURT: THE COURT WOULD FIND THAT THE  
4 SOLICITOR HANDLED THE MATTER VERY  
5 APPROPRIATELY. THAT THERE WAS NO CONVERSATION  
6 ABOUT THE CASE. IT WAS A CHANCE MEETING BY THE  
7 JUROR WITH THE SOLICITOR. AND THE SOLICITOR  
8 IMMEDIATELY ADVISED HIM THAT HE COULD NOT  
9 DISCUSS JURY DUTY WITH HIM. NO QUESTIONS OR  
10 NOTHING WAS ASKED ABOUT THIS PARTICULAR CASE.  
11 SO I WOULD FIND THAT, I APPRECIATE YOU PUTTING  
12 THAT ON THE RECORD. AND I DON'T FIND ANY  
13 PREJUDICE OR ANY HARM. AND WE WILL PROCEED  
14 WITH MR. SANDERS AS A MEMBER OF THE JURY.

15 MR. FATA: THE SECOND THING, YOUR HONOR, I  
16 WAS MADE AWARE OF AN ORAL STATEMENT MADE BY THE  
17 DEFENDANT. AND I REDUCED THAT TO WRITING. AND  
18 IT WAS A STATEMENT MADE AT THE TIME OF THE  
19 INCIDENT NOT SUBSEQUENT. BUT AT THE TIME THE  
20 ALLEGED STABBING TOOK PLACE. I'VE REDUCED IT  
21 TO WRITING AND I'VE PROVIDED MR. DOBY THIS  
22 MORNING WHEN I GOT HERE.

23 THE COURT: WHO WAS THE STATEMENT MADE TO?

24 MR. FATA: IT WAS MADE TO THE VICTIM,  
25 DERRICK. SERGEANT DERRICK ANDERSON.

1 THE COURT: IT WAS A VOLUNTARY STATEMENT  
2 THAT HE MADE WHEN HE WAS NOT UNDER ARREST OR  
3 ANYTHING OF THAT NATURE?

4 MR. FATA: NOT UNDER ARREST. AND HE'S  
5 STILL LOCKED UP IN HIS CELL. AND SERGEANT  
6 ANDERSON IS TRYING TO SHUT THE DOOR. AND HE  
7 SAID, "F, THAT. DO WHAT YOU GOT TO DO." AND  
8 THEN HE STUCK HIM IN THE HAND.

9 THE COURT: MR. DOBY, DO YOU HAVE ANY  
10 CONTENTION THAT THAT IS SUBJECT TO A  
11 VOLUNTARINESS REVIEW BY AN EVIDENTIARY HEARING?

12 MR. DOBY: YOUR HONOR, CAN I TALK TO MY  
13 CLIENT JUST A MINUTE. NONE AS TO THE  
14 VOLUNTARINESS, YOUR HONOR.

15 (WHEREUPON, MR. DOBY TALKS TO HIS CLIENT.)

16 THE COURT: THAT BEING THE CASE THEN THERE  
17 IS NO QUESTION THAT IT WAS MADE AND IT FALLS  
18 OUTSIDE OF THE PROTECTIONS OF JACKSON V. DENNO  
19 AND THE MIRANDA VOLUNTARINESS ISSUE. BECAUSE  
20 THE STATE AND THE DEFENSE HAS AGREED THERE IS  
21 NO QUESTION IN REGARD TO VOLUNTARINESS. THERE  
22 MAY BE SOME QUESTION AS TO WHETHER IT WAS SAID  
23 OR NOT. BUT THERE IS NOT A QUESTION AS TO  
24 VOLUNTARINESS. SO IT WOULD BE ADMISSIBLE.  
25 ANYTHING ELSE?

1 MR. FATA: THAT'S ALL FROM THE STATE.

2 THE COURT: MR. DOBY, ANYTHING ON BEHALF  
3 OF THE DEFENSE BEFORE THE JURY IS BROUGHT IN  
4 AND SWORN.

5 MR. DOBY: NO, SIR, YOUR HONOR.

6 THE COURT: BRING THE JURY IN, PLEASE.

7 (WHEREUPON, THE FOLLOWING TAKES PLACE  
8 WITHIN THE PRESENCE OF THE JURY.)

9 THE COURT: GOOD MORNING, LADIES AND  
10 GENTLEMEN, AND THANK YOU FOR YOUR PROMPTNESS IN  
11 GETTING BACK HERE. I APOLOGIZE FOR KEEPING YOU  
12 WAITING. WE ACTUALLY STARTED AT 9:30 AND HAVE  
13 BEEN WORKING SINCE THAT TIME. BUT WE ARE NOW  
14 READY TO GO FORWARD ON THIS CASE. MADAM CLERK,  
15 WOULD YOU SWEAR THE JURY?

16 (WHEREUPON, THE JURY IS SWORN.)

17 THE COURT: LADIES AND GENTLEMEN, BEFORE  
18 WE BEGIN THE ACTUAL TRIAL OF THIS CASE, I  
19 THOUGHT IT MIGHT BE HELPFUL IF I EXPLAIN TO YOU  
20 BASICALLY HOW THE TRIAL PROCEEDS. I KNOW ALL  
21 OF YOU HAVE SEEN TRIALS ON TELEVISION, BUT I  
22 THINK YOU WILL FIND IT IS A GREAT DEAL  
23 DIFFERENT IN REAL LIFE. FIRST OF ALL, THE  
24 STATE WILL MAKE AN OPENING STATEMENT. AND AN  
25 OPENING STATEMENT IS NOT EVIDENCE. IT IS

1 SIMPLY AN OUTLINE TO HELP YOU UNDERSTAND WHAT  
2 THE STATE EXPECTS THE EVIDENCE WILL SHOW. THE  
3 DEFENDANT MAY IF HE WISHES TO, PRESENT AN  
4 OPENING STATEMENT, BUT HE DOESN'T HAVE TO FOR  
5 REASONS THAT I WILL EXPLAIN LATER. FOLLOWING  
6 THE OPENING STATEMENT, YOU WILL HEAR THE  
7 TESTIMONY AND THE EVIDENCE IN THIS CASE. THIS  
8 WILL CONSIST OF THE TESTIMONY FROM THE STATE'S  
9 WITNESSES AS WELL AS ANY PHYSICAL EXHIBITS  
10 WHICH WILL BE INTRODUCED IN TO EVIDENCE.  
11 FOLLOWING THE COMPLETION OF THE TESTIMONY, THE  
12 ATTORNEYS WILL AGAIN HAVE AN OPPORTUNITY TO  
13 MAKE WHAT IS CALLED A CLOSING STATEMENT OR  
14 SUMMATION TO YOU. THIS IS AN OPPORTUNITY FOR  
15 THE ATTORNEYS TO SUMMARIZE THE CASE OF THEIR  
16 RESPECTIVE POINTS OF VIEW. AGAIN, THESE  
17 ARGUMENTS ARE NOT EVIDENCE.

18 FOLLOWING THE CLOSING STATEMENT BY THE  
19 ATTORNEYS, I WILL INSTRUCT YOU ON THE LAW OF  
20 SOUTH CAROLINA AS IT PERTAINS TO THE ISSUES  
21 THAT HAVE ARISEN IN THIS CASE. AND WHEN I HAVE  
22 COMPLETED MY INSTRUCTIONS TO YOU, YOU WILL BE  
23 PERMITTED TO BEGIN YOUR DELIBERATIONS IN ORDER  
24 TO REACH A VERDICT. NOW, LADIES AND JURY, YOU  
25 ARE NOW THE JURY IN THIS CASE. AND I WANT TO

1 TAKE A FEW MINUTES TO TELL YOU SOMETHING ABOUT  
2 YOUR DUTY AS JURORS AND TO GIVE YOU SOME BASIC  
3 INSTRUCTIONS. AT THE END OF THIS TRIAL, I  
4 WILL GIVE YOU A MORE DETAILED INSTRUCTIONS AND  
5 THOSE INSTRUCTIONS WILL CONTROL YOUR  
6 DELIBERATIONS.

7 IT WILL BE YOUR DUTY TO DECIDE FROM THE  
8 EVIDENCE WHAT THE FACTS ARE. YOU AND YOUR  
9 ALONE ARE THE JUDGES OF THE FACTS. YOU WILL  
10 HEAR THE EVIDENCE, DECIDE WHAT THE FACTS ARE,  
11 AND THEN APPLY THOSE FACTS TO THE LAW WHICH THE  
12 COURT WILL GIVE TO YOU. THAT IS HOW YOU REACH  
13 A VERDICT. IN DOING SO, YOU MUST FOLLOW THE  
14 LAW WHETHER YOU AGREE WITH IT OR NOT. YOU MAKE  
15 A DETERMINATION AS TO THE EVIDENCE, BUT I WILL  
16 GIVE YOU THE INSTRUCTIONS ON THE LAW. AND YOU  
17 MUST FOLLOW THAT LAW WHETHER YOU AGREE WITH IT  
18 OR NOT.

19 THE EVIDENCE IN THIS CASE WILL CONSIST OF  
20 TESTIMONY OF WITNESSES, DOCUMENTS AND OTHER  
21 THINGS RECEIVED IN TO EVIDENCE AS EXHIBITS AND  
22 ANY FACTS WHICH THE LAWYERS AGREE ON, OR WHICH  
23 I INSTRUCT YOU TO ACCEPT. NOW YOU SHOULD NOT  
24 TAKE ANYTHING THAT I MAY SAY OR DO DURING THE  
25 TRIAL AS INDICATING WHAT I THINK OF THE

1 EVIDENCE, OR WHAT YOUR VERDICT SHOULD BE. YOU  
2 ARE THE SOLE JUDGE OF THE EVIDENCE.

3 THE SAME LAW THAT MAKES YOU THE JUDGE OF  
4 THE FACTS, MAKES ME THE JUDGE OF THE LAW. YOU  
5 MUST TAKE THE LAW AS I GIVE IT TO YOU  
6 REGARDLESS OF WHAT YOU THINK THE LAW IS, OR  
7 WHAT THE LAW OUGHT TO BE. IF I AM WRONG ON THE  
8 LAW, THERE IS ANOTHER TIME AND PLACE FOR THAT  
9 ERROR TO BE CORRECTED. BUT FOR THIS CASE YOU  
10 MUST ACCEPT THE LAW AS I INSTRUCT IT TO YOU.  
11 NOW THIS IS A CRIMINAL CASE BROUGHT BY THE  
12 STATE OF SOUTH CAROLINA. THE STATE CHARGES THE  
13 DEFENDANT, TERRANCE BLACK, WITH THE COUNT OF OR  
14 WITH THE CHARGE OF ASSAULT UPON A CORRECTIONAL  
15 OFFICER.

16 THE CHARGE AGAINST THE DEFENDANT IS  
17 CONTAINED IN THE INDICTMENT, WHICH I HOLD IN MY  
18 HAND. THE INDICTMENT IS NOT EVIDENCE OF  
19 ANYTHING. IT IS SIMPLY A DESCRIPTION OF THE  
20 CHARGE MADE BY THE STATE AGAINST THE DEFENDANT.  
21 THE DEFENDANT HAS PLED NOT GUILTY TO THE  
22 CHARGE. AND IS PRESUMED INNOCENT UNLESS AND  
23 UNTIL PROVEN GUILTY BEYOND A REASONABLE DOUBT.  
24 A REASONABLE DOUBT IS THE KIND OF DOUBT THAT  
25 WOULD CAUSE A REASONABLE PERSON TO HESITATE TO

1 ACT. A DEFENDANT HAS THE RIGHT NOT TO TESTIFY,  
2 AND NEVER HAS TO PROVE INNOCENCE OR PRESENT ANY  
3 EVIDENCE. THE BURDEN OF PROOF IS ALWAYS ON THE  
4 STATE OF SOUTH CAROLINA.

5 NOW THERE ARE CERTAIN THINGS THAT ARE NOT  
6 EVIDENCE, AND YOU MUST NOT CONSIDER THEM AS  
7 EVIDENCE IN DECIDING THE FACTS OF THIS CASE.  
8 STATEMENTS AND ARGUMENTS OF THE ATTORNEYS ARE  
9 NOT EVIDENCE. QUESTIONS AND OBJECTIONS OF THE  
10 ATTORNEYS ARE NOT EVIDENCE. AND TESTIMONY THAT  
11 I INSTRUCT YOU TO DISREGARD IS NOT EVIDENCE.  
12 EVIDENCE MAY BE DIRECT OR CIRCUMSTANTIAL.  
13 DIRECT EVIDENCE IS TESTIMONY BY A WITNESS ABOUT  
14 WHAT THAT PERSON SAW, HEARD OR DID.  
15 CIRCUMSTANTIAL EVIDENCE IS INDIRECT EVIDENCE.  
16 THE LAW PERMITS YOU TO GIVE EQUAL WEIGHT TO  
17 BOTH. BUT IT IS FOR YOU TO DECIDE HOW MUCH  
18 WEIGHT TO GIVE TO ANY OF THE EVIDENCE.

19 THERE ARE RULES OF EVIDENCE WHICH CONTROL  
20 WHAT CAN BE RECEIVED IN TO EVIDENCE. WHEN A  
21 LAWYER ASKS A QUESTION OR OFFERS AN EXHIBIT  
22 INTO EVIDENCE AND A LAWYER ON THE OTHER SIDE  
23 THINKS THAT IT IS NOT PERMITTED BY THE RULES,  
24 THAT LAWYER MAY OBJECT. IF I OVERRULE THE  
25 OBJECTION, THE QUESTION MAY BE ANSWERED OR THE

1 EXHIBIT MAY BE RECEIVED. IF I SUSTAIN THE  
2 OBJECTION THE QUESTION CANNOT BE ANSWERED, OR  
3 THE EXHIBIT CANNOT BE RECEIVED.

4 WHENEVER I SUSTAIN AN OBJECTION TO A  
5 QUESTION OR DENY A MOTION TO ADMIT AN EXHIBIT  
6 IN TO EVIDENCE, YOU MUST IGNORE THE QUESTION OR  
7 THE EXISTENCE OF THE EXHIBIT. AND YOU MUST NOT  
8 GUESS WHAT THE ANSWER WOULD HAVE BEEN OR WHAT  
9 THE EXHIBIT WOULD HAVE SHOWN. SOMETIMES IT MAY  
10 BE NECESSARY FOR ME TO REQUEST THAT YOU LEAVE  
11 THE COURTROOM WHILE I DISCUSS WITH YOU -- WITH  
12 THE LAWYERS LEGAL QUESTIONS THAT COME UP DURING  
13 THE TRIAL. IF THIS OCCURS, YOU SHOULDN'T  
14 SPECULATE ABOUT OUR DISCUSSIONS OR THE REASONS  
15 THAT YOU WERE ASKED TO LEAVE THE ROOM.

16 THIS IS SIMPLY A PROCEDURE THAT THE LAW  
17 REQUIRES WHEN CERTAIN LEGAL ISSUES ARISE.  
18 THERE ALSO MAY BE OCCASIONS WHEN I ASK THE  
19 ATTORNEYS TO APPROACH THE BENCH SO THAT I MAY  
20 DISCUSS A LEGAL ISSUE WITH THEM IN PRIVATE. I  
21 WILL DO THIS AS OFTEN AS POSSIBLE SO THAT YOU  
22 WILL NOT BE REQUIRED TO LEAVE THE COURTROOM  
23 MORE THAN IS ABSOLUTELY NECESSARY.

24 AGAIN, IF I ASK THE ATTORNEYS TO STEP UP  
25 TO THE BENCH, OR IF I ASK YOU TO LEAVE THE

1 COURTROOM, PLEASE DON'T THINK THAT ANYBODY IS  
2 TRYING TO HIDE ANYTHING FROM YOU OR KEEP ANY  
3 EVIDENCE FROM YOU. THIS IS SIMPLY A PROCEDURE  
4 USED BY ALL LAWYERS AND BY ALL COURTS TO  
5 DETERMINE AND DECIDE THE LEGAL QUESTIONS.

6 NOW IN DECIDING THE FACTS OF THIS CASE,  
7 YOU MAY HAVE TO DECIDE WHICH WITNESSES TO  
8 BELIEVE AND WHICH WITNESSES NOT TO BELIEVE.  
9 THIS IS CALLED CREDIBILITY. YOU MAY BELIEVE  
10 EVERYTHING A WITNESS SAYS OR ONLY PART OF IT OR  
11 NONE OF IT. IN DECIDING WHETHER TO BELIEVE YOU  
12 MAY CONSIDER A NUMBER OF FACTORS; INCLUDING,  
13 THE WITNESS' ABILITY TO SEE AND HEAR AND KNOW  
14 THE THINGS THE WITNESS TESTIFIED TO. THE  
15 QUALITY OF THE WITNESS' MEMORY. THE WITNESS'  
16 MANNER OR Demeanor WHILE TESTIFYING. WHETHER  
17 THE WITNESS HAS AN INTEREST IN THE OUTCOME OF  
18 THE CASE; THAT IS, WHETHER THERE IS ANY MOTIVE,  
19 BIAS OR PREJUDICE. WHETHER THE WITNESS WAS  
20 CONTRADICTED BY ANYTHING THE WITNESS SAID OR  
21 WROTE BEFORE THE TRIAL OR BY ANY OTHER  
22 EVIDENCE. AND HOW REASONABLE WAS THE WITNESS'  
23 TESTIMONY WHEN CONSIDERED IN THE LIGHT OF OTHER  
24 EVIDENCE WHICH YOU DO BELIEVE.

25 NOW JUST A FEW WORDS TO YOU ABOUT THE

1 CONDUCT OF JURORS. SOME OF THESE THINGS I HAVE  
2 ALREADY MENTIONED TO YOU BUT THEY ARE IMPORTANT  
3 ENOUGH TO BEAR REPEATING. DO NOT TALK TO EACH  
4 OTHER ABOUT THIS CASE UNTIL THE END OF THE CASE  
5 WHEN YOU GO TO THE JURY ROOM TO DECIDE ON YOUR  
6 VERDICT. DO NOT TALK WITH ANYONE ELSE ABOUT  
7 THE CASE UNTIL THE TRIAL IS ENDED, FOLLOWING  
8 YOUR VERDICT, AND YOU HAVE BEEN DISCHARGED BY  
9 ME AS JURORS.

10 THIS MEANS DO NOT DISCUSS THE CASE WITH  
11 MEMBERS OF YOUR FAMILY, YOUR FRIENDS OR WITH  
12 ANYONE ELSE. YOU MAY TELL THEM YOU A JUROR,  
13 BUT DON'T TELL THEM ANYTHING ABOUT THE CASE  
14 UNTIL YOU HAVE BEEN DISCHARGED BY ME. THE  
15 REASON FOR THIS IS PRETTY APPARENT. YOU'VE GOT  
16 TO DECIDE THIS CASE BASED UPON WHAT YOU HEAR IN  
17 THIS COURTROOM AND NOT ON THE BASIS OF WHAT  
18 ANYONE ELSE MAY SAY. DO NOT LET ANYONE TALK TO  
19 YOU ABOUT THE CASE. IF ANYONE SHOULD TRY TO  
20 TALK TO YOU, GET THEIR NAME OR THEIR  
21 DESCRIPTION AND REPORT IT TO ME IMMEDIATELY.  
22 DO NOT READ ANY NEWS STORIES OR ARTICLES OR  
23 LISTEN TO ANY RADIO OR TELEVISION REPORTS ABOUT  
24 THE CASE. YOU ARE NOT TO CONSIDER AS EVIDENCE  
25 ANYTHING THAT YOU MAY SEE OR HEAR WHEN COURT IS

1 NOT IN SESSION. DO NOT DO ANY RESEARCH; SUCH  
2 AS, CONSULT DICTIONARIES OR OTHER REFERENCE  
3 MATERIALS AND THE INTERNET.

4 AND DO NOT MAKE ANY INVESTIGATION ABOUT  
5 THE CASE ON YOUR OWN. IF YOU NEED TO  
6 COMMUNICATE WITH ME, SIMPLY GIVE A SIGNED NOTE  
7 TO THE BAILIFF. AND THE BAILIFF WILL GIVE IT  
8 ME, AND I WILL TRY TO RESOLVE YOUR PROBLEM.  
9 AND FINALLY AND PROBABLY THE MOST IMPORTANT, DO  
10 NOT MAKE UP YOUR MIND ABOUT WHAT YOUR VERDICT  
11 SHOULD BE UNTIL YOU HAVE HEARD ALL THE  
12 TESTIMONY AND EVIDENCE IN THIS CASE AND THE  
13 INSTRUCTIONS ON THE LAW BY THE COURT. YOU WILL  
14 BE INSTRUCTED WHEN TO BEGIN YOUR DELIBERATIONS  
15 BY EITHER ME OR THE BAILIFF. ARE THERE ANY  
16 OBJECTIONS TO MY OPENING REMARKS TO THE JURY ON  
17 BEHALF OF THE STATE, MR. FATA?

18 MR. FATA: NO, SIR, YOUR HONOR.

19 THE COURT: ON BEHALF OF THE DEFENDANT,  
20 MR. DOBY?

21 MR. DOBY: NO, SIR, YOUR HONOR.

22 THE COURT: LADIES AND GENTLEMEN, THE  
23 FIRST THING THAT WE DO IS THE MATTER OF OPENING  
24 STATEMENTS. AND FOR THAT PURPOSE I WILL  
25 RECOGNIZE MR. FATA ON BEHALF OF THE STATE.

1 MR. FATA: THANK YOU, YOUR HONOR. LADIES  
2 AND GENTLEMEN OF THE JURY, MY NAME IS PAUL  
3 FATA, AND I AM AN ATTORNEY HERE IN BISHOPVILLE.  
4 AND I AM IN PRIVATE PRACTICE. BUT DURING THE  
5 TERM OF GENERAL SESSIONS I AM A SOLICITOR. AND  
6 HELP HIM MOVE HIS DOCKET AND DO PROSECUTING.  
7 THANK YOU FOR YOUR APPEARANCE TODAY. I REALIZE  
8 YOU ARE NOT HERE VOLUNTARILY. YOU DIDN'T COME  
9 DOWN TO THE COURT AND SAY, I WANT TO BE ON THE  
10 JURY. BUT SUFFICE IT TO SAY, WE'RE GLAD TO  
11 HAVE YOU HERE. AND IT IS A VERY, VERY  
12 IMPORTANT THING THAT YOU DO TODAY; IT IS TO  
13 LISTEN TO THE STATE AND TELL US WHAT HAPPENED  
14 ON APRIL 11TH, 2008, AT THE LEE CORRECTIONAL  
15 INSTITUTION ON HIGHWAY 341 HERE IN LEE COUNTY.  
16 THE, YOU'RE PROBABLY WONDERING, YOU KNOW,  
17 WHAT AM I DOING HERE. I AM NOT A LAWYER OR  
18 WHATEVER. THE JUDGE IS A LAWYER. I AM A  
19 LAWYER, THE SOLICITOR IS A LAWYER. THE  
20 DEFENDANT IS A LAWYER. WHAT AM I DOING HERE?  
21 WHY DO WE HAVE 12 CITIZENS SITTING IN THIS BOX?  
22 WELL BECAUSE WE WANT 12 CITIZENS WHO HAVE LIFE  
23 EXPERIENCES WHO CAN LOOK AT A SET OF FACTS AND  
24 APPLY THEIR COMMON SENSE TO THOSE FACTS AND  
25 SAY, YES, THIS IS PROBABLY, THIS IS WHAT

1 HAPPENED. I FEEL BEYOND A REASONABLE DOUBT  
2 THAT THIS IS WHAT HAPPENED. AND EVENTUALLY END  
3 THE CASE. TRY A CASE, AFTER THE DEFENSE  
4 FINISHES, AFTER HIS HONOR WILL GIVE YOU THE  
5 LAW, YOU WILL GO BACK IN YOUR ROOM, YOU WILL  
6 APPLY YOUR COMMON SENSE, YOUR LIFE'S  
7 EXPERIENCES, THINGS YOU PICKED UP BY LIVING  
8 EVERY DAY, GOING TO CHURCH, GOING TO SCHOOL,  
9 GOING TO WORK, AND SAY WHAT HAPPENED ON APRIL  
10 11, 2008.

11 NOW WHAT HAPPENED WITH THIS, WHAT THE  
12 EVIDENCE IS GOING TO SHOW IS THAT ON THAT DAY,  
13 SERGEANT DERRICK ANDERSON WAS WORKING AT THE  
14 SMU UNIT. AS IT'S CALLED SEGREGATION UNIT.  
15 IT'S A LOCK UP. A 23-HOUR A DAY LOCK UP. AND  
16 HE WAS ON DUTY. AND HE WAS FEEDING INMATES.  
17 SUPERVISING FEEDING INMATES. AND HOW DO THEY  
18 DO THAT? HE IS GOING TO EXPLAIN THAT THE  
19 LITTLE METAL DOOR, A FLAP, IT'S A FOOD FLAP.  
20 AND IT COMES DOWN. AND IT SLIDES THE TRAY  
21 THROUGH THERE. IT'S ABOUT YEAH TALL, AND ABOUT  
22 YEAH WIDE. HE WILL EXPLAIN ALL THAT. ANYWAY,  
23 THE EVIDENCE WILL SHOW THAT INMATE BLACK  
24 REFUSED TO SHUT THE DOOR. WHEN -- AFTER THE  
25 TRAY WAS PASSED THROUGH, HE REFUSED TO SHUT THE

1 DOOR.

2 SERGEANT ANDERSON GAVE HIM A DIRECTIVE TO  
3 SHUT THE DOOR. HE REFUSED. HE HAD A TOWEL  
4 WRAPPED AROUND WHERE TO HOLD IT OPEN. SERGEANT  
5 ANDERSON WILL EXPLAIN IT TO YOU. BUT SERGEANT  
6 ANDERSON GOES UP TO HIM, UP TO DOOR, TO PUSH IT  
7 SHUT. SERGEANT ANDERSON IS GOING TO TESTIFY AS  
8 TO WHAT INMATE BLACK SAID. AND THEN INMATE  
9 BLACK TOOK A SHANK. AND YOU WILL LEARN WHAT A  
10 SHANK IS AND WHAT A SHANK IS MADE OUT OF A LOT  
11 OF THINGS. AND STABBED SERGEANT ANDERSON IN  
12 THE PALM OF HIS HAND THROUGH THE DOOR.

13 NOW YOU WILL BE ABLE TO -- SERGEANT  
14 ANDERSON WILL TELL YOU HOW HE KNOWS INMATE  
15 BLACK. HE WILL TELL YOU HOW HE WAS ABLE TO SEE  
16 INMATE BLACK THROUGH THE DOOR, THROUGH THE  
17 WINDOW IN THE DOOR. AND HOW INMATE BLACK --  
18 AND WHAT STATEMENTS INMATE BLACK MADE. THIS IS  
19 SERGEANT ANDERSON. STAND UP, SERGEANT  
20 ANDERSON, WHO IS CHARACTERIZED AS THE VICTIM  
21 IN THIS CASE. HE'S THE INDIVIDUAL THAT WAS  
22 STABBED IN THE HAND. HAVE A SEAT.

23 YOU'RE ALSO GOING TO HEAR FROM THE SHIFT  
24 SUPERVISOR LIEUTENANT LUCINDA HODGES. STAND  
25 UP LIEUTENANT. YOU WILL SEE -- YOU CAN SIT

1 DOWN. YOU WILL SEE A VIDEO OF WHAT THEY CALL  
2 AN EXTRACTION. WHEN THEY HAVE TO GO IN AND GET  
3 INMATE BLACK OUT OF HIS CELL. AND THAT SHE  
4 SUPERVISED THE VIDEO. AND SHE NARRATED THE  
5 VIDEO AND YOU WILL SEE FOR YOURSELF. YOU WON'T  
6 SEE THE ATTACK ON SERGEANT ANDERSON, BUT YOU  
7 WILL SEE WHAT THEY HAD TO DO TO GET INMATE  
8 BLACK OUT OF THE CELL. AND HOW HE HAD THE DOOR  
9 WRAPPED UP. AND THEN YOU WILL HEAR LIEUTENANT  
10 RICHARDSON. LIEUTENANT, STAND UP. THIS IS  
11 LIEUTENANT RICHARDSON WHO WAS PART OF THE  
12 EXTRACTION TEAM. AND YOU WILL HEAR ON THE  
13 VIDEO, LIEUTENANT RICHARDSON RETRIEVED THE  
14 SHANK FROM INMATE BLACK. AND WE WILL HAVE THE  
15 SHANK AND PUT IT INTO EVIDENCE. YOU WILL SEE  
16 FOR YOURSELF THIS APPARATUS.

17 YOU WILL ALSO HEAR FROM INVESTIGATOR LLOYD  
18 GREER. STAND UP, INVESTIGATOR. OKAY, SIT  
19 DOWN. HE IS THE INVESTIGATOR FOR THE  
20 DEPARTMENT OF CORRECTIONS AND STATIONED OUT  
21 HERE AT LEE CORRECTIONAL INSTITUTE. HE WILL  
22 TELL YOU ABOUT HOW HE INVESTIGATED THIS CASE,  
23 WHAT HE DID. AND HE WILL TALK ABOUT A  
24 STATEMENT MADE BY INMATE BLACK IN RELATION TO  
25 THIS INCIDENT. AND WILL TELL YOU ABOUT HOW HE

1 GAVE HOW HE GAVE THE MIRANDA WARNINGS. WHETHER  
2 INMATE BLACK UNDERSTOOD THEM, AND THAT SORT OF  
3 THING. AND THEN HE WILL TELL YOU WHAT  
4 STATEMENT INMATE BLACK MADE ABOUT THIS  
5 INCIDENT.

6 AND THEN YOU WILL HEAR FROM NURSE DIXON,  
7 COURTNEY DIXON, NURSE, STAND. HAVE A SEAT.  
8 YOU WILL SEE HER ON THE VIDEO. AND WHAT SHE  
9 DOES IS WHEN THEY PUT THE INMATE IN THE  
10 RESTRAINT CHAIR, SHE CHECKS TO MAKE SURE THAT  
11 THE HANDCUFFS ARE NOT TOO TIGHT AND ALL THAT.  
12 BUT WHAT SHE WILL TESTIFY MAINLY IS TO THE  
13 TREATMENT THAT SHE GAVE SERGEANT ANDERSON.

14 NOW I AM GOING TO TELL YOU RIGHT UP FRONT,  
15 SERGEANT ANDERSON'S HAND WAS NOT STABBED  
16 THROUGH TO THE OTHER SIDE. IT WASN'T ABOUT TO  
17 FALL OFF. HE DIDN'T REQUIRE STITCHES. SHE IS  
18 GOING TO DESCRIBE THE WOUND. SERGEANT ANDERSON  
19 IS GOING TO DESCRIBE THE WOUND. BUT IT IS  
20 STILL AN ATTACK ON SERGEANT ANDERSON. WHO  
21 KNOWS WHAT SOME OF THE SHANKS. ANY KIND OF  
22 BODY FLUIDS OR ANYTHING LIKE THAT. IT  
23 PENETRATED HIS SECOND LAYER. NURSE DIXON IS  
24 GOING TO TELL YOU THAT IT PENETRATED HIS SECOND  
25 LAYER OF SKIN. AND IT WAS BLEEDING, AND WHAT

1 SHE DID TO TREAT THAT WOUND. OKAY, NOW YOU'RE  
2 GOING TO HAVE ALL THAT. AND APPLY YOUR COMMON  
3 SENSE TO THAT. WHAT HAPPENED.

4 AND THE DEFENSE IS GOING TO TELL YOU THERE  
5 WERE TWO GUYS IN THE CELL. THERE WERE. THE  
6 OTHER GUY DIDN'T HAVE ANYTHING TO DO WITH IT.  
7 THE OTHER GUY SAW ALL THE RUCKUS. AND CAN SEE  
8 IN THE DOOR. YOU WON'T BE ABLE TO SEE HIM,  
9 BUT THE TESTIMONY WILL BE, WHEN HE LOOKED AT  
10 THE DOOR WHEN HE WAS TOLD TO GET ON THE FLOOR,  
11 HE GOT ON THE FLOOR. BUT HE IS STANDING BACK  
12 OVER IN THE CORNER. HAD NOTHING TO DO WITH  
13 THIS. AND IS IN PLAIN VIEW. PUT YOUR COMMON  
14 SENSE TO THIS. ON APRIL 11, 2008, AT LEE  
15 CORRECTIONAL INSTITUTE, THIS INMATE STABBED  
16 SERGEANT ANDERSON IN THE HAND WITH A SHANK.  
17 AND THAT'S WHAT HE IS GUILTY OF. THANK YOU.

18 THE COURT: MR. DOBY.

19 MR. DOBY: MAY IT PLEASE THE COURT.

20 THE COURT: YES, SIR.

21 MR. DOBY: GOOD MORNING LADIES AND  
22 GENTLEMEN. MY NAME IS BRYAN DOBY. I REPRESENT  
23 MR. TERRANCE BLACK WHO IS SEATED AT THE TABLE  
24 WITH ME. OBVIOUSLY MR. BLACK IS INCARCERATED.  
25 HE IS AN INMATE AT LEE CORRECTIONAL INSTITUTE.

1 THAT SHOULD BE OBVIOUS FROM THE JUMPSUIT THAT  
2 HE IS WEARING. AND FROM THE HANDCUFFS THAT HE  
3 HAS. HE IS INCARCERATED.

4 DOES THAT MAKE HIM GUILTY OF THIS  
5 PARTICULAR CRIME? NO, IT DOES NOT. AS THE  
6 JUDGE IS PROBABLY GOING TO INSTRUCT TO YOU,  
7 WHEN SOMEONE IS ACCUSED OF A CRIME THEY COME IN  
8 TO THIS COURTROOM PRESUMED INNOCENT OF THAT  
9 CRIME. THE ONLY WAY THAT THEY ARE CONVICTED IS  
10 IF 12 PEOPLE FROM THE COMMUNITY, YOURSELVES,  
11 VOTE UNANIMOUSLY TO CONVICT, TO TELL THAT  
12 BEYOND A REASONABLE DOUBT TERRANCE BLACK DID  
13 THE CRIME HE WAS ACCUSED OF. THAT'S WHY YOU  
14 ARE HERE. BECAUSE ONLY YOU, UNDER OUR SYSTEM,  
15 THE JURY, CAN FIND SOMEONE GUILTY OF A  
16 PARTICULAR CRIME.

17 WHAT YOU CANNOT DO, AND WHAT THE JUDGE  
18 WILL INSTRUCT YOU, IS TO ASSUME BECAUSE THIS  
19 MAN IS IN A JUMPSUIT AND HE IS AT LEE  
20 CORRECTIONAL INSTITUTE, THAT HE IS GUILTY OF  
21 WHAT THEY HAVE ACCUSED HIM OF. THAT YOU  
22 CANNOT. YOU WOULD VIOLATE YOUR OATH, YOUR  
23 PROMISE TO THE COURT, AND TO OUR SYSTEM IF YOU  
24 WERE TO DO THAT. WE'RE ASKING YOU SIMPLY TO  
25 KEEP AN OPEN MIND AND LISTEN TO THE EVIDENCE.

1 AND TO APPLY THAT GOOD COMMON SENSE THAT THE  
2 SOLICITOR ALLUDED TO IN DECIDING WHETHER OR NOT  
3 TERRANCE IS GUILTY OF THIS PARTICULAR CRIME.

4 YOU'RE GOING TO HEAR SOME TESTIMONY ABOUT  
5 A SHANK.. YOU ARE GOING TO HEAR TESTIMONY FROM  
6 OBVIOUSLY A COUPLE OF DIFFERENT OFFICERS. BUT  
7 YOU ALSO GET TO USE THAT GOOD COMMON SENSE TO  
8 DETERMINE WHETHER OR NOT THE STATE HAS PROVEN  
9 BEYOND A REASONABLE DOUBT THAT TERRANCE IS  
10 GUILTY. BECAUSE AS WAS TOLD TO YOU, TERRANCE  
11 WASN'T THE ONLY ONE IN THIS CELL. WASN'T THE  
12 ONLY ONE THERE. DETERMINE WHETHER THE STATE  
13 HAS PROVEN BEYOND A REASONABLE DOUBT THE  
14 ALLEGATIONS OF THIS PARTICULAR CRIME. THAT'S  
15 ALL THEY'RE ASKING IS TO KEEP AN OPEN MIND.  
16 I'M ASKING YOU TO FORGET THAT TERRANCE WAS  
17 SITTING HERE IN A YELLOW JUMPSUIT. PRETEND  
18 LIKE HE'S WEARING A SUIT OR HE'S WEARING A PAIR  
19 OF KHAKI PANTS OR A YELLOW SHIRT. FORGET THAT  
20 HE HAS GOT HANDCUFFS ON. BECAUSE THAT IS IN  
21 FACT YOUR DUTY. THANK YOU.

22 THE COURT: CALL YOUR FIRST WITNESS.

23 MR. FATA: THANK YOU, YOUR HONOR. YOUR  
24 HONOR, THE STATE CALLS SERGEANT DERRICK  
25 ANDERSON.

1 THE COURT: SERGEANT ANDERSON, COME  
2 AROUND, PLEASE.

3 SERGEANT DERRICK ANDERSON BEING FIRST  
4 DULY SWORN, TESTIFIED FOLLOWS:

5 THE CLERK: STATE YOUR FULL NAME FOR  
6 THE RECORD.

7 A SERGEANT DERRICK ANDERSON.

8 DIRECT EXAMINATION BY MR. FATA:

9 Q SERGEANT ANDERSON, WHAT IS YOUR  
10 OCCUPATION?

11 A SERGEANT AT LEE CORRECTIONAL INSTITUTION.

12 Q HOW LONG HAVE YOU BEEN AT LEE  
13 CORRECTIONAL?

14 A SIX YEARS.

15 Q TELL US A LITTLE BIT OF YOUR BACKGROUND AS  
16 AN OFFICER. YOUR BACKGROUND AND TRAINING AND STUFF  
17 LIKE THAT.

18 A OKAY. WHEN I FIRST CAME THERE AS CAPTAIN,  
19 BECAME A CAPTAIN, I WAS IN CENTRAL, PERIOD. WAS ONE  
20 OF THE WORSEST UNIT AT LEE. SUBSEQUENTLY I WORKED  
21 THERE FOR ABOUT TWO YEARS. AFTER I FINISHED THAT I  
22 WENT STRAIGHT TO SMU. I HAVE BEEN AT SMU TWO YEARS  
23 I LEFT AND WENT TO THE POLICE DEPARTMENT. I STAYED  
24 AT THE POLICE DEPARTMENT ONE YEAR. AND I CAME BACK  
25 AND WENT STRAIGHT TO SMU WHEN I CAME BACK.

SERGEANT ANDERSON-DIRECT BY FATA

1 Q WHICH POLICE DEPARTMENT?

2 A SUMMERTON POLICE DEPARTMENT.

3 Q SUMMERTON. LET ME ASK YOU WHAT KIND OF  
4 TRAINING YOU HAD AS A CORRECTIONAL OFFICER?

5 A I HAD 101 TRAINING WITH DIFFERENT INMATES.  
6 I HAD DEFENSIVE TACTICS. INTERPERSONAL RELATIONS  
7 WITH INMATES. SMU TRAINING. I HAD ALL DIFFERENT  
8 TYPE TRAINING IN THE DEPARTMENT.

9 Q AND DID YOU GO TO THE DEPARTMENT ACADEMY?

10 A YES, SIR.

11 Q I THINK YOU CALL IT DEPARTMENT OF  
12 CORRECTIONS ACADEMY?

13 A UH-HUH. (AFFIRMATIVE.)

14 Q YOU WENT THERE AND YOU GRADUATED FROM  
15 THERE?

16 A YES, SIR.

17 Q AND YOU ARE A CERTIFIED CORRECTION'S  
18 OFFICER?

19 A YES, SIR.

20 Q AND YOU ARE A SERGEANT OUT THERE AT LEE  
21 CORRECTIONS?

22 A YES, SIR.

23 Q WERE YOU AN EMPLOYEE AND SERGEANT ON  
24 APRIL 11TH OF 2008?

25 A YES, SIR, I AM A SERGEANT.

## SERGEANT ANDERSON-DIRECT BY FATA

1 Q WERE YOU PERFORMING YOUR DUTIES AS AN  
2 CORRECTION'S OFFICER ON THAT DAY?

3 A YES, SIR.

4 Q LET ME ASK YOU, WHERE IS LEE CORRECTIONAL  
5 INSTITUTE LOCATED?

6 A IT'S 990 WASAKI HIGHWAY BISHOPVILLE, SOUTH  
7 CAROLINA.

8 Q AND WHAT COUNTY IS THAT IN?

9 A LEE COUNTY.

10 Q NOW AS A SERGEANT, WHAT IS YOUR JOB?

11 A MY JOB IS TO ASSIST THE OFFICERS. AND  
12 ALSO SUPERVISOR OF THE WINGS. WE HAVE TWO  
13 SERGEANTS. WE HAVE A NORTH WING AND A SOUTH WING.  
14 AND WE ALWAYS HAVE A SERGEANT ON EACH WING THAT  
15 RUNS THE WING.

16 Q SO ON APRIL 11, 2008, YOU WERE DOING YOUR  
17 JOB AS A SERGEANT CORRECTION'S OFFICER?

18 A YES, SIR.

19 Q AT THE TIME OF THIS INCIDENT, WHAT TIME  
20 DID IT OCCUR?

21 A I WOULD SAY AROUND ABOUT 4:45.  
22 APPROXIMATELY 4:45 AND FIVE.

23 Q IN THE AFTERNOON?

24 A YES, SIR.

25 Q AND WHAT ACTIVITY WAS TAKING PLACE?

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## SERGEANT ANDERSON-DIRECT BY FATA

1           A     ON THAT DAY WE WAS FEEDING ON THE NORTH  
2     SIDE. ME AND MY OFFICERS. AND DURING THAT TIME  
3     AFTER -- DURING THE TIME WE WAS FEEDING, I  
4     APPROACHED CELL 7.

5           Q     NOW WHEN YOU APPROACHED CELL 7, WHO IS IN  
6     CELL 7?

7           A     INMATE JERRY BYNUM AND INMATE TERRANCE  
8     BLACK.

9           Q     DID YOU KNOW BYNUM?

10          A     I KNOW BYNUM, YES.

11          Q     DID YOU KNOW BLACK?

12          A     YES, SIR.

13          Q     HOW DO YOU KNOW INMATE BLACK?

14          A     OKAY, I DEALT WITH HIM ON THE YARD. I  
15     KNOW WHAT TYPE OF PERSON HE IS. I KNOW THE  
16     INCIDENTS HE HAS BEEN IN.

17                   MR. DOBY: OBJECTION, YOUR HONOR.

18                   THE COURT: SUSTAINED.

19          Q     BUT YOU KNOW HIM FROM THE YARD?

20          A     YES, SIR. IT'S CALLED GENERAL POPULATION.

21          Q     SO YOU KNOW HIM FROM SMU?

22          A     YES, SIR.

23          Q     WHAT IS SMU ANYWAY?

24          A     IT'S A SPECIAL HOUSING UNIT WHERE WE HOUSE  
25     THE WORST OF THE WORST.

SERGEANT ANDERSON-DIRECT BY FATA

1 Q AND WHAT KIND OF PROTOCOL PROCEDURE DO YOU  
2 FOLLOW IN HOUSING THESE INMATES THERE?

3 A THEY ARE HOUSED 23 -- TWENTY-THREE HOURS A  
4 WEEK. THEY GET A BREAK AND A SHOWER.

5 Q FOR ONE HOUR.

6 A FOR ONE HOUR. BUT THE ONLY REASON WHY  
7 THEY DON'T GET IT, IF THEY DO GET IT, IS BECAUSE OF  
8 SECURITY STAFF.

9 Q NOW ON THIS DAY UNDER THIS TIME IN THE  
10 AFTERNOON, WHAT, YOU SAY YOU WERE FEEDING THE  
11 INMATES?

12 A YES, SIR.

13 Q HOW DOES THAT OCCUR? WHAT DO YOU DO?

14 A OKAY. DURING THAT TIME, I WAS -- WE WAS  
15 FEEDING THE INMATES. AND I NOTICED---

16 Q NO, TELL ME WHAT PROCEDURE DO YOU FOLLOW  
17 WHEN YOU FEED THEM? WHAT DO YOU DO, HAND THEM A  
18 PLATE OR WHAT?

19 A YEAH. WE HAND THEM THE MILK. WE DO THE  
20 MILK FIRST OR THE JUICE WHATEVER.

21 MR. FATA: CAN YOU MARK THESE FOR  
22 IDENTIFICATION FOR ME? THIS WOULD BE 3 FOR ID.  
23 YOUR HONOR, THIS WOULD BE 3 FOR IDENTIFICATION  
24 BECAUSE WE HAD THOSE OTHERS.

25 THE COURT: OKAY, STATE'S 3 FOR I.D.

## SERGEANT ANDERSON-DIRECT BY FATA

1 Q I AM GOING TO SHOW YOU STATE'S 3 FOR I.D.  
2 IF YOU WILL LOOK AT THE BOTTOM PHOTO. DO YOU  
3 RECOGNIZE THAT?

4 A YES, SIR.

5 Q WHAT IS THAT?

6 A THAT IS CELL 7. SMU.

7 Q IS THAT AN SMU CELL DOOR?

8 A YES, SIR.

9 Q AND IS THAT CELL DOOR WHERE THIS INCIDENT  
10 OCCURRED AT?

11 A YES, SIR.

12 MR. FATA: YOUR HONOR, WE WOULD MOVE THIS  
13 IN AS STATE'S EXHIBIT 3.

14 THE COURT: ANY OBJECTION, MR. DOBY?

15 MR. DOBY: NO, SIR, YOUR HONOR.

16 THE COURT: ADMITTED AS EVIDENCE AS  
17 STATE'S NO. 3 WITHOUT OBJECTION.

18 (PHOTO MARKED AS STATE'S EXHIBIT NO. 3  
19 INTO EVIDENCE.)

20 MR. FATA: YOUR HONOR, MAY HE COME DOWN  
21 AND STAND IN FRONT OF THE JURY?

22 THE COURT: YES. KEEP IN MIND, SERGEANT  
23 ANDERSON, THAT YOU ARE AWAY FROM THE MICROPHONE  
24 WHICH AMPLIFIES YOUR VOICE. YOU ARE GOING TO  
25 HAVE TO KEEP YOUR VOICE UP EVEN THOUGH YOU WILL

## SERGEANT ANDERSON-DIRECT BY FATA

1 HAVE YOUR BACK TO THE COURT REPORTER AND ME.

2 (WHEREUPON, THE WITNESS STEPS DOWN FROM  
3 THE WITNESS STAND.)

4 Q I AM GOING TO POINT OUT THE BOTTOM  
5 PHOTOGRAPH HERE. IT'S GOT THE DOOR WITH THE NUMBER  
6 7 ON IT. NOW WHAT ARE THESE TWO LONG THINGS HERE?

7 A THIS RIGHT HERE, THESE TWO LONG THINGS ARE  
8 WINDOWS THAT'S ON THE DOOR.

9 Q AND---

10 A YOU CAN LOOK INSIDE THE ROOM.

11 Q WHEN YOU LOOKED INTO THOSE WINDOWS, WHAT  
12 CAN YOU SEE?

13 A YOU CAN SEE THE BED. BOTH OF THE BEDS.  
14 THE BACK WINDOW THAT GOES OUTSIDE. AND THE TABLE  
15 THAT IS INSIDE. BASICALLY YOU CAN SEE THE WHOLE  
16 ROOM.

17 Q AND YOU CAN SEE THE WHOLE ROOM.

18 A AND THE TOILETS.

19 Q AGAIN TELL US WHAT THIS LOOKS DOWN HERE.  
20 WHAT THOSE TWO.

21 A THESE TWO, THESE RIGHT HERE ARE THE  
22 WINDOWS ON THE DOOR THAT LOOK INSIDE THE ROOM. YOU  
23 CAN SEE THE BEDS, BOTH BEDS. AND THE WINDOW THAT  
24 GOES OUTSIDE. THE TOILET. AND ALSO THE BACK TABLE.  
25 SO BASICALLY YOU CAN SEE THE WHOLE ROOM.

SERGEANT ANDERSON-DIRECT BY FATA

1 Q CAN YOU SEE THE INMATES?

2 A YES, SIR.

3 Q CAN YOU SEE WHAT THE INMATES ARE DOING?

4 A YES, SIR.

5 Q I AM GOING TO POINT TO THIS LITTLE, IT'S

6 KIND OF HARD TO SEE. BUT THIS LITTLE RECTANGLE

7 THING THAT LOCKS IN THE DOOR WITH THE HINGE ON IT.

8 WHAT IS THAT?

9 A THAT RIGHT THERE IS THE FOOD FLAP.

10 Q COME ON DOWN HERE AND LET'S LET THESE

11 FOLKS. POINT IT OUT TO THEM.

12 A THE LITTLE FLAP THAT LOCKS, THAT'S THE

13 FOOD FLAP.

14 Q AND WHY DO THEY CALL IT THE FOOD FLAP?

15 A THAT'S WHERE WE HAVE TO STICK THE FOOD

16 TRAYS IN THERE AND HAVE TO COME OUT.

17 MR. FATA: HAVE A SEAT.

18 (WHEREUPON, THE WITNESS RESUMES THE

19 WITNESS STAND.)

20 Q SO NOW HOW DOES THAT FOOD FLAP WORK?

21 A THEY HAVE A FLAP THAT IS ON TOP WITH A

22 FLIP THAT HOLDS THE FLAP UP. AND IT HAS A KEY TO

23 LOCK IT AND UNLOCK IT. BUT WHAT IT DOES WHEN YOU

24 OPEN WITH THE KEY IT COMES OUT.

25 Q DO YOU HAVE TO UNLOCK IT?

## SERGEANT ANDERSON-DIRECT BY FATA

1 A YES, SIR.

2 Q YOU HAVE TO STICK A KEY IN IT TO UNLOCK  
3 IT?

4 A YES, SIR. YOU STICK THE KEY IN IT AND  
5 UNLOCK IT. FLIP THE WEIGHT FLAP. LIFT THE FLAP UP  
6 TO LEVEL AND PULL IT OUT.

7 Q AND THEN THE LITTLE RECTANGLE OPENING FOR  
8 THE FLAP---

9 A TOWARDS.

10 Q ---COMES OUT TOWARDS YOU.

11 A YES.

12 Q AND THEN WHAT DO YOU DO?

13 A AND THEN YOU HAND THEM THE TRAY OR  
14 WHATEVER YOU'VE GOT TO GIVE THEM.

15 Q AND THEN WHAT DO YOU DO?

16 A YOU CLOSE IT BACK. BUT BEFORE YOU DO  
17 THAT, YOU HAVE TO HAVE A VISION INSIDE THE ROOM.

18 Q A VISION?

19 A YEAH.

20 Q WHAT DOES THAT MEAN?

21 A YOU KNOW, YOU'VE GOT TO LOOK INSIDE THE  
22 ROOM TO SEE WHAT IS GOING ON.

23 Q SEE WHO IS IN THERE?

24 A YEAH.

25 Q MAKE SURE IT'S THE RIGHT PEOPLE?

## SERGEANT ANDERSON-DIRECT BY FATA

- 1 A UH-HUH. (AFFIRMATIVE.)
- 2 Q AND SEE WHAT THEY'RE DOING.
- 3 A UH-HUH. (AFFIRMATIVE.)
- 4 Q YOU HAND THEM THE FOOD TRAY.
- 5 A UH-HUH. (AFFIRMATIVE.)
- 6 Q WHAT DO YOU DO, LEAVE THE FLAP OPEN?
- 7 A NO, SIR.
- 8 Q WHAT DO YOU DO?
- 9 A CLOSE IT BACK.
- 10 Q CLOSE IT BACK.
- 11 A YES, SIR.
- 12 Q DO YOU LOCK IT?
- 13 A YES, YOU CAN LOCK IT.
- 14 Q AT WHAT TIME IS IT APPROPRIATE TO HAVE THE
- 15 FOOD FLAP OPEN ACCORDING TO THE DEPARTMENT OF
- 16 CORRECTION RULES?
- 17 A AT NO TIME.
- 18 Q AT NO TIME?
- 19 A UH-HUH. (AFFIRMATIVE.)
- 20 Q WHAT ABOUT DURING FEEDING?
- 21 A JUST DURING FEEDING.
- 22 Q YOU STICK THE TRAY THROUGH. OPEN AND
- 23 STICK THE TRAY THROUGH---
- 24 A UH-HUH. (AFFIRMATIVE.)
- 25 Q AND CLOSE IT BACK UP?

## SERGEANT ANDERSON-DIRECT BY FATA

1 A YES.

2 Q ON APRIL 11, 2008, IN THE AFTERNOON AROUND  
3 FOUR, WAS AN INMATE, TERRANCE BLACK, THE DEFENDANT,  
4 WAS HE AN INMATE AT THE DEPARTMENT OF CORRECTIONS?

5 A YES, SIR.

6 Q WAS HE IN THE SMU UNIT?

7 A YES, SIR.

8 Q WHAT CELL WAS HE IN?

9 A HE WAS TO IN CELL NO. 7.

10 Q HE WAS AN INMATE AT SMU, AND IN YOUR  
11 CUSTODY?

12 A YES, SIR.

13 Q DID YOU OPEN THE FOOD FLAP DOOR?

14 A THE FOOD FLAP WAS OPEN, YES.

15 Q FOR WHAT PURPOSE?

16 A TO BE FEED.

17 Q WERE YOU ABLE TO SHUT THE FLAP?

18 A NO, SIR.

19 Q WHAT HAPPENED?

20 A DURING THE TIME WHEN I CAME BACK AROUND,  
21 DURING THE TIME I WAS FEEDING AND I CAME BACK, HE  
22 BOOST HIS SELF OUT AND TIE. FIND SOMETHING TO TIE  
23 AROUND.

24 Q WHAT DO YOU MEAN? HE BOOST HIMSELF---

25 A HE THRUST -- HE LIKE PUSHED HIS ARMS---

## SERGEANT ANDERSON-DIRECT BY FATA

1 Q THROUGH THE FLAP---

2 A ---AND WAS ABLE TO TIE HIS JUMPSUIT AROUND  
3 THE FLAP.

4 Q AND WHAT DID THAT DO? WHAT -- BY DOING  
5 THAT, WHAT HAPPENED TO THE FLAP?

6 A WE WERE NOT ABLE TO CLOSE THE FLAP BECAUSE  
7 OF THE WAY THE FLAP WHEN YOU COME OUT, AND YOU HAVE  
8 THAT LITTLE GAP BETWEEN THE DOOR AND THE FLAP, AND  
9 IT'S HARD TO SHUT BACK.

10 Q DID YOU TELL -- DID YOU GIVE THE INMATE  
11 ANY INSTRUCTIONS?

12 A I GAVE INMATE BLACK, I ASKED HIM WHAT WAS  
13 GOING ON, WHAT WAS THE SITUATION. AND I TOLD -- AND  
14 I GAVE HIM A SELF DIRECTIVE TO GET OFF THE FLAP.  
15 AND HE REFUSED. AND STATED WHAT YOU STATED ON THE  
16 PAPER, "F THAT. NOW DO WHAT YOU GOT TO DO."

17 Q SO HE MADE -- HE SAID, "F THAT, DO WHAT  
18 YOU GOT TO DO?"

19 A YES.

20 Q WHAT DID YOU DO?

21 A I WAS ATTEMPTING TO USE MY CHEMICAL  
22 MUNITION BUT I WASN'T ABLE. BUT I -- BEFORE I COULD  
23 USE MY CHEMICAL MUNITION, I WAS TRYING TO SHUT THE  
24 FLAP. AND DURING THE TIME WITH ME TRYING TO SHUT  
25 THE FLAP, HE CAME OUT WITH A SHARP METAL OBJECT,

## SERGEANT ANDERSON-DIRECT BY FATA

1 WHICH IS CALLED A SHANK, AND STABBED ME IN THE PALM  
2 OF MY HAND.

3 MR. FATA: WOULD YOU MARK THIS AS STATE'S  
4 NO. 4, PLEASE?

5 (SHANK MARKED STATE'S EXHIBIT NO. 4 FOR ID  
6 ONLY.)

7 Q I AM GOING TO SHOW YOU WHAT HAS BEEN  
8 MARKED AS STATE'S EXHIBIT NO. 4 FOR IDENTIFICATION.  
9 AND LOOK AT THAT AND SEE IF YOU RECOGNIZE THAT.

10 A YES, SIR.

11 Q WHAT IS THAT?

12 A THIS IS, TO YOU IT MIGHT LOOK AN ICE PICK  
13 OR SOMETHING. BUT IT'S A FENCE WIRE.

14 Q HAVE YOU SEEN THAT BEFORE?

15 A YES, SIR.

16 Q WHEN DID YOU SEE IT?

17 A I SEEN IT DURING THE TIME HE STABBED ME.

18 Q IN THE HAND?

19 A YES, SIR.

20 Q AND THIS IS THE SHANK?

21 A THIS IS THE WEAPON.

22 MR. FATA: YOUR HONOR, WE WOULD MOVE THIS  
23 INTO THIS EVIDENCE AS STATE'S EXHIBIT NO. 4.

24 MR. DOBY: NO OBJECTION, YOUR HONOR.

25 THE COURT: IT'S ADMITTED INTO EVIDENCE.

## SERGEANT ANDERSON-DIRECT BY FATA

1 STATE'S EXHIBIT NO. 4 WITHOUT OBJECTION.

2 Q NOW, MAY HE COME DOWN AGAIN, JUDGE?

3 THE COURT: YES.

4 (WHEREUPON, THE WITNESS STEPS DOWN FROM  
5 THE WITNESS STAND.)

6 Q NOW THE FOOD FLAP IS OPEN. TELL ME HOW,  
7 PLACE MY HANDS HOW YOU, IN THE FASHION YOU WERE  
8 GOING TO SHUT IT.

9 A PUSH.

10 Q PUSH THIS WAY. YOU WERE BELOW THE DOOR  
11 AND YOU WERE GOING TO PUSH UP?

12 A PUSH UP.

13 Q OKAY. AND HE HIT YOU LIKE THAT. AND HE  
14 -- OKAY. OKAY NOW HAVE A SEAT.

15 (WHEREUPON, THE WITNESS RESUMES THE  
16 WITNESS STAND.)

17 Q HOW DO YOU KNOW IT WAS INMATE BLACK?

18 A BECAUSE DURING THE TIME, LIKE I SAY,  
19 INITIALLY THAT YOU HAVE BEFORE YOU OPEN THE FLAP,  
20 JERRY BYNUM WAS STANDING IN THE BACK. JERRY BYNUM  
21 WAS STANDING IN THE BACK BY THE WINDOW. AND  
22 TERRANCE BLACK WAS ALREADY WAS STILL DOWN.

23 Q WHEN YOU?

24 A AND DURING THE TIME OF THAT, JERRY BYNUM  
25 WAS AT THE BACK.

## SERGEANT ANDERSON-DIRECT BY FATA

- 1 Q WHEN YOU WERE TRYING TO GET THE FLAP UP  
2 WHICH IS DOWN HERE AT THE BOTTOM, ---
- 3 A UH-HUH. (AFFIRMATIVE.)
- 4 Q ---THESE TWO WINDOWS WERE OPEN.
- 5 A UH-HUH. (AFFIRMATIVE.)
- 6 Q AND COULD YOU LOOK IN THERE WHEN YOU WERE  
7 PUTTING THE FLAP UP? COULD YOU SEE?
- 8 A YOU CAN LOOK IN. SOMETIMES YOU GOT TO  
9 LOOK IN TO KNOW WHAT IS GOING ON.
- 10 Q COULD YOU SEE INMATE BLACK?
- 11 A I COULD HAVE SEEN INMATE, YEAH.  
12 UH-HUH. (AFFIRMATIVE.)
- 13 Q AND DID YOU SEE INMATE BLACK WITH HIS HAND  
14 STABBING YOU?
- 15 A YES..
- 16 Q NOW DO YOU SEE THE INDIVIDUAL THAT YOU  
17 HAVE IDENTIFIED AS INMATE BLACK IN THE COURTROOM  
18 TODAY?
- 19 A YES, SIR.
- 20 Q WHERE IS HE?
- 21 A HE IS SITTING BY -- RIGHT THERE.
- 22 Q RIGHT THERE WHERE? DESCRIBE WHAT HE HAS  
23 ON?
- 24 A HE HAS A YELLOW JUMPSUIT.
- 25 Q SITTING NEXT TO MR. DOBY?

## SERGEANT ANDERSON-DIRECT BY FATA

1 A YES, SIR.

2 MR. FATA: YOUR HONOR, LET THE RECORD  
3 REFLECT THAT HE HAS IDENTIFIED THE DEFENDANT AS  
4 THE INDIVIDUAL, OR THE INMATE BLACK WHO STABBED  
5 HIM WITH A SHANK ON APRIL 11TH 08.

6 THE COURT: THE RECORD WILL SO REFLECT.

7 Q AFTER HE STABBED YOU IN THE HAND, WHAT DID  
8 YOU DO?

9 A I USED MY CHEMICAL MUNITION. AND I WASN'T  
10 ABLE TO SHUT THE FLAP BECAUSE OF THE JUMPSUIT THAT  
11 HE TIED ON THE FLAP. SO I USED MY CHEMICAL  
12 MUNITION. AND I WENT AND I NOTIFIED LIEUTENANT,  
13 LIEUTENANT HODGES.

14 Q YOU TOLD LIEUTENANT HODGES ABOUT IT?

15 A YES.

16 Q AND THEN YOU WENT WHERE?

17 A TO MEDICAL.

18 Q NOW DO YOU HAVE A SCAR OR ANYTHING IN YOUR  
19 HAND?

20 A NOW I DON'T BECAUSE IT HAS ALREADY HEALED  
21 UP NOW.

22 Q WAS IT BLEEDING?

23 A IT WAS BLEEDING. YES, SIR.

24 Q AND DID YOU GET TREATED FOR THE WOUND?

25 A I GOT SOME BETADINE AND SOME CLEANING.

## SERGEANT ANDERSON-DIRECT BY FATA

1 AND I GOT A TETANUS SHOT.

2 Q TETANUS SHOT. AND WHO GAVE YOU THAT?

3 A NURSE DIXON.

4 Q DOWN AT THE INFIRMARY.

5 A YEAH, THE INFIRMARY.

6 Q AFTER THAT OCCURRED AFTER YOU HAD ALL THAT

7 DONE, DID YOU COME BACK TO THE UNIT? DID YOU

8 PARTICIPATE IN THE EXTRACTION?

9 A I DIDN'T PARTICIPATE. I DIDN'T DO  
10 ANYTHING, BECAUSE THEY DIDN'T WANT ME TO COME BACK  
11 AND GET INVOLVED.

12 MR. FATA: ANSWER ANY QUESTIONS THAT

13 MR. DOBY MAY HAVE.

14 THE COURT: CROSS EXAMINATION MR. DOBY.

15 MR. DOBY: PLEASE THE COURT.

16 THE COURT: YES, SIR.

17 CROSS EXAMINATION BY MR. DOBY:

18 Q SERGEANT, HOW BIG IS THE CELL THERE AT  
19 SMU, IF YOU GO FROM THE FRONT DOOR TO THE BACK OF  
20 THE CELL?

21 A I WOULD SAY A 5 BY 10.

22 Q AND WOULD THAT BE AGAIN 10 FEET FROM THE  
23 DOOR TO THE BACK OF THE CELL OR 5 FEET?

24 A FROM THE DOOR TO THE CELL.

25 Q OKAY. SO IT'S ABOUT 5 FEET.

## SERGEANT ANDERSON-CROSS BY DOBY

- 1 A ABOUT 5 OR 10 FEET.
- 2 Q OKAY. SO WE'RE REALLY TALKING ABOUT A
- 3 VERY SMALL SPACE THAT HAS TWO INMATES?
- 4 A UH-HUH. (AFFIRMATIVE.)
- 5 Q WOULD THAT BE CORRECT?
- 6 A UH-HUH. (AFFIRMATIVE.)
- 7 Q HOW BIG IS, OR WHAT IS THE DISTANCE
- 8 BETWEEN THE FOOD FLAP AND THE BOTTOM OF THE WINDOW
- 9 AT THE DOOR THAT YOU WERE ATTEMPTING TO PUT FOOD OR
- 10 WHATEVER ELSE YOU WERE DOING IN THERE?
- 11 A FOOD FLAP. CAN YOU REPEAT THAT, SIR?
- 12 Q YEAH, THE BOTTOM OF THE WINDOW AND THE
- 13 FOOD FLAP FROM THIS PHOTOGRAPH WOULD BE HOW FAR?
- 14 A I WOULD -- OFF HAND, I DON'T KNOW THE
- 15 MEASUREMENTS, BUT IT'S ABOUT THAT FAR APART.
- 16 Q YOU'RE POINTING MAYBE TWO FEET APART.
- 17 A ABOUT THAT FAR APART, YES, SIR.
- 18 Q WOULD TWO FEET BE ABOUT RIGHT?
- 19 A PRETTY MUCH.
- 20 Q OKAY. NOW THE FOOD FLAP AS YOU INDICATED,
- 21 COMES OUT, SO THAT YOU WOULD BE ABLE TO SEE IN TO
- 22 THAT CELL---
- 23 A UH-HUH. (AFFIRMATIVE.)
- 24 Q ---YOU'VE GOT TO EVEN GET LOWER TO LOOK
- 25 UNDER THE FOOD FLAP?

## SERGEANT ANDERSON-CROSS BY DOBY

- 1 A UH-HUH (AFFIRMATIVE.) YES.
- 2 THE COURT: THE COURT REPORTER CAN'T TAKE
- 3 DOWN UH-HUH AND UH-UH.
- 4 A YES, SIR.
- 5 THE COURT: OKAY.
- 6 Q OKAY. AND SO THEN IT'S HARDER TO SEE FROM
- 7 THE FOOD FLAP THAN IT WOULD BE INTO THOSE GLASS
- 8 WINDOWS. THAT'S SIMPLY JUST BASED ON YOUR HEIGHT,
- 9 WOULD IT NOT?
- 10 A REPEAT THAT, SIR.
- 11 Q IT'S EASIER FOR YOU TO SEE IN THE WINDOWS
- 12 THAN THE FOOD FLAP SIMPLY BASED ON YOUR HEIGHT,
- 13 WOULD IT NOT?
- 14 A NAH, IT WON'T BE HARDER BECAUSE I'M
- 15 VERSATILE. I AM ABLE. I'M FLEXIBLE ENOUGH AND
- 16 DOING MY JOB: I HAVE DONE IT SO LONG.
- 17 Q YOUR OBJECT I GUESS WHEN YOU SAW THAT THE
- 18 FOOD FLAP HAD BEEN TIED IN SOME MANNER---
- 19 A UH-HUH. (AFFIRMATIVE.)
- 20 Q ---WAS IT WITH A NOTE OR WAS IT JUST SORT
- 21 OF YOU KNOW, BOPPED OPEN?
- 22 A IT WAS NOT, IT WAS JUST TIED UP TO WHERE I
- 23 WASN'T ABLE TO CLOSE IT.
- 24 Q OKAY. AND THEN IN ORDER TO GET THAT FOOD
- 25 FLAP BACK DOWN, WHICH OBVIOUSLY PROTOCOL WOULD

## SERGEANT ANDERSON-CROSS BY DOBY

1 REQUIRE YOU TO DO.

2 A UH-HUH. (AFFIRMATIVE.)

3 Q YOU HAD TO GET THAT UNTIED OR UNLOOSENED  
4 IN SOME MANNER.

5 A YES, SIR.

6 Q AND THE ONLY WAY THAT YOU COULD DO THAT  
7 WOULD THEN BE TO GET DOWN AND ACTUALLY SEE WHAT YOU  
8 HAD TO DO TO GET THAT FOOD FLAP BACK DOWN. UNTIE  
9 AND CUT, WHATEVER THE CASE MIGHT BE WITH THIS. IT  
10 WAS A TIE THAT GOES AROUND A JUMPSUIT IS THAT HOW  
11 YOU DESCRIBE IT?

12 A IT WAS A JUMPSUIT.

13 Q IT WAS A JUMPSUIT.

14 A A JUMPSUIT.

15 Q OKAY. WAS IT TIED PRETTY GOOD?

16 A IT WAS TIED PRETTY GOOD?

17 Q SO WHAT YOUR OBJECTIVE WAS TO GET DOWN AND  
18 TO HAVE THIS JUMPSUIT UNTIED SO THAT YOU COULD PUT  
19 THE FOOD FLAP DOWN?

20 A UH-HUH. (AFFIRMATIVE.)

21 Q AND THAT'S WHAT YOU WERE DOING AT THE  
22 TIME THAT YOU WERE, AS YOU DESCRIBED STABBED.

23 A UH-HUH. (AFFIRMATIVE.)

24 Q AND WERE YOU THEN LOOKING THROUGH THE FOOD  
25 FLAP, OR WERE YOU LOOKING THROUGH THE GLASS WINDOW

## SERGEANT ANDERSON-CROSS BY DOBY

1 WHEN YOU SAW WHOEVER STABBED YOU?

2 A I WAS LOOKING BOTH WAYS, BECAUSE AND I WAS  
3 GOING DOWN. GOING UP AND DOWN CHECKING THE ROOM  
4 OUT. AND JERRY BYNUM WAS STILL STANDING IN THE  
5 BACK. AND TERRANCE BLACK WAS STILL AT THE FLAP  
6 STRUGGLING WITH THE FLAP.

7 Q OKAY. SO YOU WERE GOING DOWN THEN---

8 A UH-HUH. (AFFIRMATIVE.)

9 Q ---YOU SAW MR. BYNUM IN THE BACK.

10 A UH-HUH. (AFFIRMATIVE.) YES.

11 Q MR. BLACK---

12 A YES, SIR.

13 Q ---IN THE FRONT.

14 A YES, SIR.

15 Q MR. BYNUM ABOUT 5 FEET. MR. BYNUM AS YOU  
16 DESCRIBED WAS AT THE BACK OF THE CELL.

17 A YEAH, THE BACK OF THE SELL.

18 Q OKAY. SO HE'S ABOUT 5 FEET AWAY. AND YOU  
19 WERE FIDDLING WITH THE KNOT OR DOING SOMETHING WITH  
20 THE KNOT, I ASSUME, AT THE TIME THAT YOU WERE  
21 STABBED?

22 A YES, SIR.

23 Q WAS IT ANY KIND OF PARTICULAR KNOT? I  
24 MEAN OBVIOUSLY I DON'T KNOW THAT MR. BLACK ANY KIND  
25 OF SPECIAL KNOT. BUT WAS IT A PRETTY BIG KNOT?

## SERGEANT ANDERSON-CROSS BY DOBY

1           A       IT WASN'T LIKE I SAY, IT WAS NOT ALL ABOUT  
2 THE KNOT. I WASN'T ABLE TO CLOSE THE FLAP, BECAUSE  
3 THE JUMPSUIT WAS TIED, WAS WRAPPED AROUND THE FLAP.  
4 SO I WASN'T ABLE TO CLOSE THE FLAP. BUT LIKE I  
5 SAY, JERRY BYNUM WAS STILL IN THE BACK WHEN I WAS  
6 DOING IT.

7           Q       OKAY. SO IF THIS, THE FOOD FLAP INSTEAD  
8 OF COMING OUT---

9           A       IT'S COMING OUT, YES.

10          Q       ---IS CLOSED FROM THE INSIDE.

11          A       UH-HUH. (AFFIRMATIVE.)

12          Q       SO THAT YOU'VE GOT TO PUT YOUR HANDS IN  
13 THE -- WITHIN THE CELL ITSELF IN ORDER TO GET THIS  
14 JUMPSUIT OR WHENEVER DEVICE OUT.

15          A       YOU DON'T NECESSARILY HAVE TO PUT YOUR  
16 HAND ALL THE WAY IN THE FLAP. BECAUSE IT HAS A GAP  
17 BETWEEN THE FLAP AND THE DOOR.

18          Q       OKAY. WELL DID YOU HAVE YOUR HANDS IN THE  
19 CELL AT THIS TIME?

20          A       NO, SIR.

21          Q       SO YOUR HANDS WERE OUTSIDE OF THE CELL.

22          A       IT WAS KIND OF OUTSIDE OF THE CELL. BUT  
23 LIKE I WAS SAY, I WAS TRYING TO GET THE FLAP  
24 CLOSED---

25          Q       OKAY.

## SERGEANT ANDERSON-CROSS BY DOBY

1 A ---DURING THE TIME I WAS STABBED.

2 Q OKAY. AND WHICH HAND WAS IT THAT WAS  
3 STABBED?

4 A IT WAS THIS HAND, SIR.

5 Q AND WHICH HAND WOULD THAT BE?

6 A THAT WOULD BE MY LEFT HAND.

7 Q YOUR LEFT HAND.

8 A YES, SIR.

9 Q AND I THINK YOU DESCRIBED IT, BUT CORRECT  
10 ME IF I AM WRONG. BUT I THINK YOU DESCRIBED  
11 MR. BLACK AS BEING OFF TO THE LEFT SIDE OF YOU IN  
12 THE CELL.

13 A HE WAS AT THE LEFT SIDE, BUT HE WAS ABLE  
14 TO, HE HAD THE SHANK IN THIS HAND COMING ACROSS LIKE  
15 THIS.

16 Q OKAY. WHEN DID YOU SEE HIM? DID YOU SEE  
17 HIM IN THE GLASS OR DID YOU SEE HIM THROUGH THE FOOD  
18 FLAP?

19 A I SEE HIM THROUGH THE FOOD FLAP, BECAUSE  
20 MY VISION WAS ALREADY ON JERRY BYNUM.

21 Q WAS ALREADY ON MR. BYNUM.

22 A YES, SIR.

23 Q SO YOU SAW MR. BYNUM IN THE BACK OF THE  
24 CELL.

25 A YES, SIR.

## SERGEANT ANDERSON-CROSS BY DOBY

1 Q AND YOU ALSO SAW MR. BLACK AT THE SAME  
2 TIME HE STABBED YOU?

3 A YES, SIR.

4 Q OKAY. AND HOW BIG IS THIS JUMPSUIT? I  
5 MEAN IT'S A REGULAR JUMPSUIT LIKE MR. BLACK'S GOT ON  
6 TODAY?

7 A HE'S GOT ON TODAY.

8 Q OKAY. HOW BIG IS THIS FOOD FLAP?

9 A IT'S ABOUT THAT BIG. (WITNESS  
10 INDICATING.)

11 Q YOU'RE POINTING ABOUT OR SHOWING US ABOUT  
12 A FOOT WIDE?

13 A YEAH.

14 Q AND HOW WAS IT TIED TO KEEP YOU FROM BEING  
15 ABLE TO CLOSE THAT FOOD FLAP?

16 A IT WOULD HAVE HAD TO BE -- HE WRAPPED IT  
17 AROUND, HE WRAPPED IT AROUND THE -- I GUESS WHATEVER  
18 HE HAD ON THE INSIDE AND THE FLAP.

19 Q OKAY. AND THE JUMPSUIT, AS YOU DESCRIBE,  
20 DIDN'T COVER THE FOOD FLAP.

21 A IT DIDN'T COVER THE WHOLE FOOD FLAP, IT  
22 JUST COVERED IT ENOUGH TO TIE IT TO BE ABLE TO SHUT  
23 IT.

24 Q OKAY. AND YOU WERE THEN, AS YOU DESCRIBE,  
25 WERE ABLE TO SEE MR. BLACK STAB YOU?

## SERGEANT ANDERSON-CROSS BY DOBY

- 1 A YES, SIR.
- 2 Q OKAY. DID YOU SEE THE SHANK AT THE TIME
- 3 THAT YOU WERE STABBED?
- 4 A I SAW THE SHANK, YES, SIR.
- 5 Q OKAY. YOU SAW IT, BUT YOU WEREN'T ABLE TO
- 6 AVOID THIS STABBING?
- 7 A I WASN'T ABLE NO, I WASN'T TO AVOID IT.
- 8 Q OKAY.
- 9 A NO, SIR.
- 10 Q YOUR, THEN IF I BEGIN TO CHARACTERIZE IT
- 11 CORRECTLY, YOU DIDN'T SEE THROUGH THE GLASS
- 12 MR. BLACK STABBED YOU.
- 13 A NAH, I SAW IT THROUGH THE FLAP.
- 14 Q THROUGH THE FOOD FLAP.
- 15 A WHEN HE CAME TO THE FOOD FLAP.
- 16 Q WERE YOU ABLE TO GET THE FOOD FLAP CLOSED?
- 17 A NO, SIR.
- 18 Q SO YOU LEFT?
- 19 A YES, SIR.
- 20 Q AND---
- 21 A AFTER I USED MY CHEMICAL MUNITION.
- 22 Q WHAT COLOR WAS THE JUMPSUIT?
- 23 A IT WAS YELLOW.
- 24 Q IT WAS YELLOW?
- 25 A YES, SIR.

## SERGEANT ANDERSON-CROSS BY DOBY

1 Q DID YOU RETURN BACK TO WORK THAT  
2 PARTICULAR EVENING?

3 A NO, SIR.

4 Q YOU RECEIVED SOME TREATMENT?

5 A THE TREATMENT THAT I RECEIVED WAS SOME  
6 BETADINE AND SOME CLEANING. AND I GOT A SHOT FROM A  
7 NURSE DIXON.

8 Q DID YOU TAKE PHOTOGRAPHS, OR DID ANYONE  
9 TAKE PHOTOGRAPHS OF YOUR INJURIES?

10 A NO, SIR.

11 Q DID YOU RECEIVE ANY TREATMENT OTHER THAN  
12 THAT?

13 A THAT'S IT.

14 Q DID YOU GO TO THE HOSPITAL?

15 A NO, SIR.

16 Q DO ANYTHING ELSE FOR IT?

17 A NO, SIR.

18 Q WERE YOU ABLE TO RETURN TO WORK THE NEXT  
19 DAY?

20 A YES, SIR.

21 MR. DOBY: I BEG THE COURT'S INDULGENCE  
22 JUST A SECOND, YOUR HONOR.

23 THE COURT: YES, SIR.

24 Q DID YOU OPEN THE FOOD SLAP OR DID ANOTHER  
25 OFFICER OPEN THE FOOD SLAP?

## SERGEANT ANDERSON-CROSS BY DOBY

1 A IT WAS ANOTHER OFFICER THAT OPENED THE  
2 FOOD FLAP.

3 Q AND WHO WAS THAT OFFICER?

4 A I CAN'T REMEMBER.

5 Q WAS THIS OFFICER ON THE UNIT WITH YOU  
6 ASSISTING THAT PARTICULAR EVENING?

7 A UH-HUH. (AFFIRMATIVE.)

8 Q YOU DON'T REMEMBER WHO IT IS.

9 A NAH, I SURE DON'T.

10 Q ARE THEY HERE TO TESTIFY TODAY?

11 A I DON'T KNOW.

12 Q OKAY. HOW CLOSELY WERE AT YOU AT WORK  
13 WITH THIS OTHER OFFICER?

14 A HOW CLOSE DO YOU MEAN?

15 Q WELL ARE YOU ALL DISTRIBUTING THE FOOD---

16 A YES, UH-HUH. (AFFIRMATIVE.)

17 Q ---TO THESE PARTICULAR CELLS TOGETHER?

18 A UH-HUH (AFFIRMATIVE.)

19 Q AND SO THAT OFFICER THEN WOULD HAVE BEEN  
20 ABLE TO SEE WHATEVER THE INCIDENT WAS?

21 A I DOUBT IT, BECAUSE THEY KEPT GOING.

22 Q THEY KEPT GOING.

23 A YEAH.

24 Q EVEN THOUGH YOU WERE IN YOUR WORDS, I  
25 GUESS, STRUGGLING TO GET THIS FOOD FLAP CLOSED.

SERGEANT ANDERSON-CROSS BY DOBY

1 A UH-HUH. (AFFIRMATIVE.)

2 Q THE OFFICER KEPT GOING.

3 A UH-HUH. (AFFIRMATIVE.)

4 MR. DOBY: THANK YOU. THAT'S ALL I HAVE,  
5 YOUR HONOR.

6 THE COURT: REDIRECT.

7 REDIRECT EXAMINATION BY MR. FATA:

8 Q SERGEANT, CELL NO. 7 WITH INMATE BLACK IN  
9 IT IN WAS NOT THE ONLY CELL THAT Y'ALL WERE FEEDING  
10 THAT DAY, WAS IT?

11 A NO, SIR.

12 Q HOW MANY CELLS APPROXIMATELY DO YOU TO  
13 FEED?

14 A YOU HAVE A TOTAL OF 100 CELLS:

15 Q AND DO YOU HAVE TIME FOR THREE OR FOUR  
16 OFFICERS TO BE AT EACH CELL?

17 A NO.

18 Q YOU HAVE TO SAY YES OR NO.

19 A NO, SIR.

20 Q OKAY. AND SO IS IT UNUSUAL FOR ONE  
21 OFFICER TO BE BY HIMSELF AT ONE CELL?

22 A NOT -- NO.

23 Q OKAY. SO IT'S NOT UNUSUAL FOR YOU TO BE  
24 THERE TRYING TO CLOSE THE FLAP BY YOURSELF.

25 A UH-UH. (NEGATIVE.)

SERGEANT ANDERSON-REDIRECT BY FATA

1 Q NOW MR. DOBY ASKED YOU ABOUT YOUR ABILITY  
2 TO SEE INTO THE CELL. THESE WINDOWS AT THE -- THESE  
3 LONG WINDOWS HERE, WHEN YOU ARE AT THE LONG WINDOWS  
4 HERE, CAN YOU LOOK STRAIGHT DOWN AND SEE WHOSE AT  
5 THE FOOD FLAP?

6 A AT THE LONG -- YOU'VE GOT TO REALLY GET UP  
7 ON THE FOOD -- ON THE WINDOW TO---

8 Q YEAH, WELL IF I'M STANDING AT THE DOOR---

9 A RIGHT.

10 Q ---AND I AM LOOKING DOWN IN THE WINDOW,  
11 WHAT DO YOU SEE STRAIGHT DOWN?

12 A OH, YOU CAN SEE THE FLOOR. BUT ARE YOU  
13 TALKING WITH THE FLAP OPEN OR CLOSED?

14 Q NAH, I AM TALKING ABOUT THESE WINDOWS  
15 RIGHT HERE.

16 A YOU CAN LOOK DOWN.

17 Q YOU CAN LOOK DOWN. CAN YOU SEE WHO IS AT  
18 THE FRONT OF THE DOOR AT THE BOTTOM?

19 A YEAH. UH-HUH. (AFFIRMATIVE.)

20 Q AND WITH THE FOOD FLAP OPEN, CAN YOU SEE  
21 IN THERE TOO?

22 A YEAH, WITH THE FOOD FLAP OPEN, YOU CANNOT  
23 SEE. BECAUSE YOU, IF YOU TILT IT OPEN, AND YOU  
24 DON'T WANT TO TILT IT OPEN, BECAUSE YOU MIGHT GET A  
25 SEVERE STABBING.

SERGEANT ANDERSON-REDIRECT BY FATA

1 Q YOU MIGHT GET STABBED IN THE LEG?

2 A UH-HUH. (AFFIRMATIVE.)

3 Q BUT YOU CAN SEE THROUGH THE FLAP DOOR?

4 A YES, SIR. UH-HUH. (AFFIRMATIVE.)

5 THE COURT: RE-CROSS?

6 MR. DOBY: NO, SIR, YOUR HONOR. THANK

7 YOU.

8 THE COURT: THANK YOU, SIR. YOU MAY STEP

9 DOWN.

10 MR. FATA: YOUR HONOR, WE WOULD CALL, ---

11 THE COURT: WE'VE BEEN IN THE COURTROOM A

12 LITTLE OVER TWO HOURS. SO...

13 MR. FATA: OKAY.

14 THE COURT: LADIES AND GENTLEMEN, I KNOW--

15 YOU HAVEN'T BEEN IN THE COURTROOM THIS LONG.

16 BUT WE DID START THIS MORNING AT 9:30. THE

17 COURT PERSONNEL HAS BEEN IN THE COURTROOM FOR A

18 COUPLE OF HOURS. I THINK THIS IS THE

19 APPROPRIATE TIME TO TAKE OUR MORNING BREAK.

20 AND WE ARE GOING TO DO THAT AT THIS TIME. SO

21 WE WILL TAKE ABOUT 10 OR 12 MINUTES. AND BE

22 BACK HERE SHORTLY. I WOULD TELL YOU THAT IT

23 WOULD BE IMPROPER FOR YOU TO DISCUSS THE CASE

24 AMONG YOURSELVES. RELAX IN THE JURY ROOM.

25 TALK ABOUT ANYTHING BUT THIS CASE, AND WE WILL

1 SEND FOR YOU IN ABOUT TEN MINUTES THANK YOU.

2 COUNSEL, LET'S BE READY TO START BACK AT  
3 20 MINUTES TILL 12. THANK YOU.

4 (WHEREUPON, COURT BREAKS AT 11:27 A.M.)

5 THE COURT: IN REGARDS TO THE MATTER OF  
6 THE STATE VERSUS TERRANCE BLACK, MR. BLACK IS  
7 PRESENT IN THE COURTROOM WITH HIS COUNSEL,  
8 MR. DOBY. THE STATE IS REPRESENTED BY MR.  
9 FATA. ANYTHING BEFORE WE BRING THE JURY IN,  
10 MR. FATA?

11 MR. FATA: NONE FROM THE STATE, YOUR  
12 HONOR.

13 THE COURT: MR. DOBY?

14 MR. DOBY: NO, SIR, YOUR HONOR.

15 THE COURT: ALL RIGHT, BRING THE JURY IN,  
16 PLEASE.

17 (WHEREUPON, THE FOLLOWING TAKES PLACE  
18 WITHIN THE PRESENCE OF THE JURY.)

19 THE COURT: THANK YOU VERY MUCH, LADIES  
20 AND GENTLEMEN. LET THE RECORD REFLECT THAT ALL  
21 THE JURORS ARE IN THE COURTROOM AND WE ARE  
22 READY TO PROCEED. MR. FATA, YOU MAY CALL YOUR  
23 NEXT WITNESS.

24 MR. FATA: THE STATE CALLS COURTNEY DIXON.  
25 COURTNEY DIXON, BEING FIRST DULY

1 SWORN, TESTIFIED AS FOLLOWS:

2 THE CLERK: STATE YOUR FULL NAME.

3 DIRECT EXAMINATION BY MR. FATA:

4 Q MS. DIXON, WHAT IS YOUR OCCUPATION?

5 A I AM AN LPN.

6 Q WHAT IS THAT?

7 A LICENSED PRACTICAL NURSE.

8 Q AND DO YOU -- WHERE DO YOU WORK?

9 A I WORK AT LEE CORRECTIONS.

10 Q LEE CORRECTIONAL INSTITUTE IN LEE COUNTY?

11 A YES.

12 Q HOW LONG HAVE YOU WORKED THERE?

13 A ALMOST A YEAR.

14 Q WHAT IS YOUR JOB AT LEE CORRECTIONAL  
15 INSTITUTE?

16 A I TREAT THE INMATES AND THE EMPLOYEES IF  
17 NECESSARY.

18 Q OKAY. DO YOU TREAT EVERYTHING THAT COMES  
19 IN THE DOOR?

20 A NOT MYSELF. THERE IS A WHOLE GROUP OF US.

21 Q WHAT KIND OF INJURIES DO YOU TREAT AND  
22 WHAT KIND DO SEND OUT?

23 A WE WOULD SEND OUT LIKE BROKEN BONES, HEART  
24 ATTACKS, STUFF THAT WE CANNOT HANDLE IN THE  
25 INSTITUTION.

## CYNTHIA DIXON-DIRECT BY FATA

- 1 Q DO YOU TREAT CUTS AND SCRAPES?
- 2 A YES.
- 3 Q DO YOU TREAT INFECTIONS?
- 4 A YES, SIR.
- 5 Q DO YOU TREAT A BUMP ON THE HEAD AND THAT
- 6 SORT OF THING?
- 7 A YES.
- 8 Q AND IF IT IS SERIOUS YOU SEND IT OUT?
- 9 A RIGHT.
- 10 Q WERE YOU WORKING IN THE INSTITUTION ON
- 11 APRIL 11, 2008.
- 12 A YES.
- 13 Q WHAT WERE YOU DOING ON THAT DAY?
- 14 A I WAS IN THE CLINICAL AREA.
- 15 Q OKAY. DID SOMETIME AFTER AROUND 4:30, 5
- 16 O'CLOCK, DID YOU SEE SERGEANT ANDERSON?
- 17 A YES.
- 18 Q WHY DID YOU SEE SERGEANT ANDERSON?
- 19 A HE HAD BEEN PENETRATED IN THE HAND BY AN
- 20 OBJECT BY AN INMATE.
- 21 Q AND PENETRATION, WHAT DOES THAT MEAN IN
- 22 LAYMEN'S TERMS?
- 23 A WENT THROUGH HIS SKIN.
- 24 Q MEANING, HE WAS STABBED?
- 25 A RIGHT.

CYNTHIA DIXON-DIRECT BY FATA

1 Q WHAT DID THE WOUND LOOK LIKE?

2 A IT WAS ABOUT THE SIZE OF A BALLPOINT PEN.

3 IT WENT THROUGH A COUPLE OF LAYERS OF SKIN.

4 Q AND WHAT DID YOU DO TO TREAT OR REFER OR  
5 WHATEVER?

6 A WE WASHED IT WITH SOAP AND WATER. PUT  
7 BETADINE ON IT AND ANTIBIOTIC OINTMENT, AND COVERED  
8 IT WITH A BANDAID.

9 Q WAS IT BLEEDING?

10 A YES.

11 Q DID YOU DO ANYTHING ELSE?

12 A NO, SIR. I GIVE HIM A TETANUS SHOT.

13 Q WHY DID YOU GIVE HIM A TETANUS SHOT?

14 A BECAUSE THE OBJECT COULD HAVE BEEN RUSTY.

15 Q HE COULD GET LOCK JAW?

16 A RIGHT.

17 Q COULD IT HAVE HAD OTHER STUFF ON IT?

18 A YES.

19 Q BODY FLUIDS?

20 A RIGHT.

21 MR. DOBY: OBJECTION, YOUR HONOR.

22 THE COURT: YES, SIR.

23 MR. FATA: WELL.

24 THE COURT: WAIT JUST A MINUTE. WHAT IS  
25 YOUR OBJECTION?

## CYNTHIA DIXON-DIRECT BY FATA

1 MR. DOBY: NOT RELEVANT. NO PROOF OF ANY  
2 OF THESE THINGS.

3 THE COURT: OBJECTION SUSTAINED.

4 MR. FATA: YOUR HONOR, MAY I ADDRESS THAT  
5 JUST A SECOND?

6 THE COURT: HOLD ON A MINUTE.

7 (WHEREUPON, THE ATTORNEYS APPROACH THE  
8 BENCH AND CONFER WITH JUDGE.)

9 Q NURSE DIXON, WHEN YOU -- WHEN A PATIENT  
10 COMES IN WITH A PUNCTURE WOUND OF THAT NATURE, WHAT  
11 DO YOU LOOK FOR? WHAT ARE YOU CONCERNED ABOUT.

12 A THE DEPTH OF THE WOUND. HOW IT CAN BE  
13 TREATED.

14 Q ARE YOU CONCERNED ABOUT INFECTION?  
15 ANYTHING LIKE THAT?

16 A YOU'RE ALWAYS CONCERNED ABOUT INFECTION.

17 Q FROM WHAT? WHAT WOULD YOU BE CONCERNED  
18 ABOUT? WHERE DID THE INFECTION COME FROM?

19 A IT CAN COME FROM THE OBJECT.

20 Q THE OBJECT ITSELF? ANYWHERE -- ANYTHING  
21 APPLIED TO THE OBJECT?

22 A YES.

23 Q LIKE WHAT?

24 A THE INMATE'S BLOOD WAS ON IT.

25 Q ANYTHING ELSE?

## CYNTHIA DIXON-DIRECT BY FATA

1 A OR HIS BODY FLUIDS.

2 Q OKAY. WOULD THAT BE SOMETHING YOU WOULD  
3 BE CONCERNED ABOUT?

4 A YES.

5 Q WHAT WOULD YOU DO, WHAT WOULD BE THE  
6 PRECAUTIONS THAT YOU WOULD TAKE IF YOU THOUGHT  
7 ANYTHING LIKE THAT WAS ON THERE?

8 A YOU WOULD YOU WASH A WOUND IMMEDIATELY.  
9 AND THEN THE PROTOCOL WOULD BE TO TEST THE INMATE.

10 Q OKAY. DID YOU DO THAT IN THIS CASE?

11 A NO, SIR.

12 Q DID YOU PUT ANTIBIOTICS ON IT?

13 A YES.

14 Q DID YOU BANDAGE IT?

15 A YES.

16 Q DID IT REQUIRE A STITCH?

17 A NO.

18 Q BUT THE WOUND WAS BLEEDING?

19 A YES.

20 Q AND YOU GIVE A TETANUS SHOT AND  
21 ANTIBIOTICS.

22 A YES, ANTIBIOTIC OINTMENT.

23 Q OINTMENT. DID YOU RECOMMEND ANY FOLLOW UP  
24 TREATMENT?

25 A NO, SIR:

## CYNTHIA DIXON-DIRECT BY FATA

1 MR. FATA: OKAY. ANSWER ANY QUESTIONS

2 WAIT A MINUTE LET ME SEE THAT REPORT.

3 THE COURT: CROSS EXAMINATION, MR. DOBY?

4 CROSS EXAMINATION BY MR. DOBY:

5 Q NURSE, YOU DESCRIBE THE WOUND AS A PIN  
6 NEEDLE SIZE FOR THE SECOND LAYER OF SKIN. A PIN  
7 NEEDLE SIZE, I TAKE IT IS ABOUT AS SMALL A HOLE AS  
8 YOU CAN GET.

9 A YOU CAN GET SMALLER.

10 Q YOU CAN GET SMALLER THAN THAT?

11 A UH-HUH. (AFFIRMATIVE.)

12 Q THE SECOND LAYER OF SKIN, HOW MANY LAYERS  
13 OF SKIN DO YOU HAVE?

14 A THREE.

15 Q AND SO THE SECOND LAYER OF SKIN MEANS THAT  
16 IT JUST BARELY BROKE THE SURFACE. THAT'S ALL IT  
17 WOULD TAKE TO GET TO THE SECOND LAYER OF SKIN, IS IT  
18 NOT?

19 A RIGHT.

20 Q HAVE YOU EXAMINED THIS ALLEGED WEAPON THAT  
21 THE STATE HAS INTRODUCED?

22 A I HAVE SEEN IT.

23 Q YOU HAVE SEEN IT?

24 A YES, SIR.

25 Q AND YOUR NOTES INDICATE THAT THIS IS JUST

## CYNTHIA DIXON-CROSS BY DOBY

1 A PIN NEEDLE SIZE WOUNDS TO THE SECOND LAYER OF SKIN  
2 THAT REQUIRED WASHING, AND PUT SOME OINTMENT ON IT.  
3 AND YOU JUST PUT A BANDAID ON IT?

4 A RIGHT.

5 MR. DOBY: THANK YOU, THAT'S ALL I HAVE.

6 THE COURT: REDIRECT.

7 MR. FATA: YES, YOUR HONOR.

8 REDIRECT EXAMINATION BY MR. FATA:

9 Q PIN NEEDLE SIZE, I BELIEVE YOU DESCRIBED  
10 FOR US, IS WHAT SIZE IS THAT?

11 A THE END OF A BALLPOINT PEN.

12 Q THE END OF A BALLPOINT PEN?

13 A RIGHT.

14 Q I WILL LET YOU LOOK AT MY BALLPOINT PEN.  
15 IS THAT THE SIZE?

16 A UH-HUH. (AFFIRMATIVE.) YES, SIR.

17 MR. FATA: YOUR HONOR, MAY SHE COME DOWN?

18 THE COURT: YES, SIR.

19 (WHEREUPON, THE WITNESS STEPS DOWN FROM  
20 THE WITNESS STAND.)

21 Q AND IS THIS THE SIZE OF THE PUNCTURE  
22 WOUND?

23 A YES.

24 Q AGAIN, WAS IT BLEEDING?

25 A YES, IT WAS BLEEDING.

## CYNTHIA DIXON-CROSS BY DOBY

1 Q AND YOU GAVE HIM A TETANUS SHOT AS A  
2 PRECAUTION.

3 A RIGHT.

4 Q AND ANTIBIOTIC CREAM?

5 A RIGHT.

6 MR. FATA: THANK YOU.

7 THE COURT: RE-CROSS?

8 MR. DOBY: NO, SIR, YOUR HONOR.

9 THE COURT: THANK YOU, MA'AM, YOU MAY STEP  
10 DOWN.

11 MR. FATA: YOUR HONOR, MAY THIS WITNESS BE  
12 EXCUSED? SHE NEEDS TO GET BACK TO THE  
13 INSTITUTION?

14 THE COURT: ANY OBJECTION, MR. DOBY?

15 MR. DOBY: NO, SIR, YOUR HONOR.

16 THE COURT: YOU ARE EXCUSED. THANK YOU  
17 FOR COMING.

18 MR. FATA: YOUR HONOR, THE STATE WOULD  
19 CALL LIEUTENANT LUCINDA HODGES.

20 THE COURT: COME AROUND, PLEASE, MS.  
21 HODGES.

22 THE CLERK: STATE YOUR NAME FOR THE  
23 RECORD.

24 A LUCINDA HODGES.

25 DIRECT EXAMINATION BY MR. FATA:

## CYNTHIA DIXON-CROSS BY DOBY

1 Q LIEUTENANT, WHAT IS YOUR OCCUPATION?

2 A I AM A CORRECTIONAL OFFICER AT LEE  
3 CORRECTIONAL INSTITUTE.

4 Q AND YOU ARE A LIEUTENANT?

5 A YES, SIR.

6 Q AND WHAT IS YOUR BACKGROUND, EDUCATIONAL  
7 BACKGROUND, AS FAR AS TRAINING, AND SO FORTH TO BE A  
8 CORRECTIONAL OFFICER?

9 A I'VE BEEN THROUGH THE ACADEMY. WE HAD  
10 YEARLY TRAINING. PLUS OTHER CENTRAL TRAINING WE HAD  
11 TO DO. EVERYTHING AND ANYTHING WE HAVE TO DO TO  
12 COMPLETE OUR JOB. I WENT THROUGH SUPERVISOR SCHOOL.  
13 AND ALL SORTS OF THE SCDC OFFICES I'VE BEEN PART OF  
14 IT.

15 Q ARE YOU A CERTIFIED CORRECTION'S OFFICER?

16 A YES, SIR.

17 Q YOU HAVE BEEN OUT AT LEE CORRECTIONAL  
18 INSTITUTE HOW LONG?

19 A I AM ON MY 16TH YEAR.

20 Q SIXTEEN YEARS. YOU STARTED AS A  
21 CORRECTION'S OFFICER?

22 A NO, SIR, I STARTED AS A SECRETARY.

23 Q STARTED AS A SECRETARY?

24 A YES, SIR.

25 Q AND I BELIEVE SOMETIME, AND THEN YOU WENT

## LUCINDA HODGES-DIRECT BY FATA

1 TO BECOME A CORRECTION'S OFFICER.

2 A YES, SIR.

3 Q YOU WERE A CONTRABAND OFFICER AT ONE TIME.

4 A YES, SIR.

5 Q AND WHAT IS A CONTRABAND OFFICER?

6 A A CONTRABAND SERGEANT GOES IN TO ALL THE  
7 UNITS. SEARCHES THE UNITS, SEARCHES THE INMATES,  
8 SEARCHES EMPLOYEES. AND WE ARE RESPONSIBLE FOR  
9 TRYING TO STOP ALL THE CONTRABAND COMING IN, AND THE  
10 WAY IT COMES IN TO SCDC.

11 Q I AM GOING TO SHOW YOU STATE'S EXHIBIT NO.  
12 4. IS THAT CONTRABAND?

13 A YES, SIR.

14 Q IS THAT THE KIND OF THE STUFF YOU ARE  
15 LOOKING FOR?

16 A YES, SIR.

17 Q TELL ME HOW DOES THIS GET IN THE  
18 INSTITUTION?

19 A THAT PARTICULAR KIND OF SHANK IS, WE HAVE  
20 FENCES AROUND THE INSTITUTION. AND IN SMU WE HAVE  
21 THEM AROUND THE REC. FIELDS. THEY GET THEM, THEY  
22 SPEND SOME TIME IN THE REC. FIELD. SOMETHING THEY  
23 PLAN SO THAT ONE OF THE CAGES THAT THEY ARE IN IS A  
24 DISRUPTION. SO THE OFFICER IS GOING TO WATCH HIM.  
25 WHILE THE ONE INMATE IS PLAYING WITH THE WIRE. IT

## LUCINDA HODGES-DIRECT BY FATA

1 CAN TAKE A MATTER OF WEEKS FOR THEM TO LOOSEN THE  
2 WIRE. ONCE IT'S STARTED, THEY JUST KEEP PLAYING  
3 WITH THAT PIECE OF WIRE UNTIL IT BREAKS OFF.

4 Q AND AS A CONTRABAND OFFICER, DO YOU  
5 RECOGNIZE WHAT THIS MAY HAVE BEEN EXHIBIT 4?

6 A THAT LOOKS LIKE THAT CAME FROM THE FENCE  
7 WIRE AT SMU.

8 Q AND THE FENCE WIRE YOU CAN NORMALLY  
9 SHARPEN THAT POINT ON THE END LIKE THAT?

10 A YOU MOST CERTAINLY CAN. THEY HAVE  
11 CONCRETE FLOORS AND CONCRETE BEDS AND THEY JUST SIT  
12 THERE AND SHARPEN IT.

13 Q NOW WHAT IS THAT WRAPPED AROUND THE  
14 HANDLE?

15 A IT APPEARS TO BE A SHEET. A TORE OFF  
16 PIECE OF SHEET.

17 Q AND AS A CONTRABAND OFFICER DID YOU FIND A  
18 LOT OF THESE THINGS?

19 A YES, SIR. THAT'S A COMMON TERM, SHANK, WE  
20 HAD.

21 Q NOW WHAT ARE THESE SHANKS USED FOR?

22 A DEFENSE AND OFFENSE. I MEAN A LOT OF THE  
23 INMATES IN GENERAL POPULATION HAVE THEM AS A DEFENSE  
24 SO THAT IF ANOTHER INMATE COMES THROUGH THEY HAVE  
25 GOT SOME WAY TO PROTECT THEMSELVES. OR OBVIOUSLY

## LUCINDA HODGES-DIRECT BY FATA

1 THEY ARE GOING TO USE IT AGAINST AN OFFICER OR  
2 ANOTHER INMATE TOO. IF WANT BE, THEY GET UPSET OR  
3 MAD A LOT OF THE INMATES ACTUALLY HAVE THEM.

4 Q IS A SHANK A PROBLEM IN THE INSTITUTION?

5 A YES, SIR.

6 Q NOW WERE YOU WORKING ON APRIL 11TH, EXCUSE  
7 ME, BACK UP. I AM SORRY. TELL ME YOU ARE THE  
8 LIEUTENANT OVER SMU?

9 A YES.

10 Q WHAT IS SMU?

11 A SMU IS SPECIAL MANAGEMENT UNIT. IT  
12 HOUSES THE INMATES THAT HAVE A PROBLEM IN THE  
13 GENERAL POPULATION AND NEED TO BE SEPARATED FROM  
14 THEM.

15 Q OKAY. HOW ARE THEY HOUSED AT SMU?

16 A THEY'RE IN -- MOST OF THEM NOW THEY ARE IN  
17 DOUBLE CELLS. THEY HAVE A CELL 24/7. IF WE  
18 CAN'T -- ON THE WEEKEND THEY'RE IN THE CELL 24/7.  
19 ON THE WEEK DAY THEY COME OUT FOR A SHOWER OR FOR  
20 REC. THEY DON'T HAVE BOTH AT THE SAME DAY.

21 Q HOW LONG DO THEY GET TO COME OUT?

22 A FOR AN HOUR. IF IT'S THEY'RE ON REC.,  
23 IT'S FOR AN HOUR. FOR A SHOWER IT'S 15/20 MINUTES.

24 Q AND IS IT CONSIDERED A PUNISHMENT PLACE?

25 A IT'S, WE DON'T PUNISH INMATES. IT'S JUST

LUCINDA HODGES-DIRECT BY FATA

1 FOR THEIR SAFETY AND OUR SAFETY. AND SAFETY OF THE  
2 INSTITUTION; THAT THEY GET LOCKED UP. IT'S JUST --  
3 IT'S JUST ANOTHER WAY TO CONTROL. IT'S A SAFETY AND  
4 SECURITY ISSUE CONTROL.

5 Q NOW AS A LIEUTENANT, WHAT IS YOUR JOB AT  
6 SMU?

7 A MY JOB AS A SHIFT LIEUTENANT AT SMU IS TO  
8 GO IN AND ENSURE THAT MY OFFICERS GO IN AND COME OUT  
9 SAFELY AT THE END OF THE SHIFT. WE HAVE TO MAKE  
10 SURE THAT EVERYBODY IS TRAINED, KNOW WHAT THEY HAVE  
11 TO DO. AND MAKE SURE THAT THE GENERAL WORK AT SMU  
12 GOES AHEAD. DAILY, DAILY THINGS WE HAVE TO DO.  
13 MAKE SURE THAT THOSE THINGS GET DONE.

14 Q DAILY THINGS SUCH AS WHAT?

15 A WE HAVE DISCIPLINARY UNITS IN HOUSE WHERE  
16 WHEN THEY HAVE A PROBLEM AND THEY GET CHARGED, WE  
17 HAVE HEARINGS ON THAT. WE HAVE TO ENSURE THEY GET  
18 MEDICAL. WE HAVE TO FEED THEM 3 TIMES A DAY. GIVE  
19 THEM JUICE OR MILK. THEY GET SOMETHING TO DRINK 3  
20 TIMES A DAY. JUST ANYTHING THAT COMES UP. WE  
21 HAVE -- THEY HAVE TO BE SHACKLED WHEN THEY COME OUT  
22 OF THE ROOM. NOBODY COMES OUT OF THE ROOM WITHOUT  
23 HANDCUFFS ON OR EVERYTHING ELSE. SO, YOU KNOW,  
24 THERE IS A LOT OF THINGS WE HAVE DO. AND WHEN IT  
25 COMES TO AN INMATE WE HAVE TO ENSURE THE SAFETY

## LUCINDA HODGES-DIRECT BY FATA

1 OURSELVES BEFORE ANYTHING.

2 Q WERE YOU WORKING ON APRIL 11TH OF 2008?

3 A YES, SIR.

4 Q AND YOU WERE WORKING OUT AT LEE

5 CORRECTIONAL.

6 A YES, SIR.

7 Q AT THE SMU UNIT?

8 A YES, SIR.

9 Q AND THAT'S LOCATED IN LEE COUNTY?

10 A YES, SIR.

11 Q DID YOU RECEIVE OR DID SERGEANT DERRICK

12 ANDERSON CONTACT YOU THAT AFTERNOON?

13 A I WAS, HE WAS WORKING ON THE NORTH WING.

14 I HAD BEEN ON THE SOUTH WING, BECAUSE SMU IS IN TWO

15 DIFFERENT PARTS. AS I CAME OFF THE SOUTH WING, I

16 HEARD SERGEANT ANDERSON COME UP THE NORTH WING, AND

17 HE WAS SHOUTING.

18 Q HE WAS SHOUTING.

19 A HE WAS SHOUTING HE HAD BEEN STABBED.

20 Q HE HAD BEEN STABBED?

21 A YES, SIR.

22 Q WAS HE REPORTING THAT TO YOU?

23 A AS HE WAS COMING IN, YES, SIR.

24 Q OKAY. DID YOU OBSERVE THE STAB WOUND?

25 A HE WAS HOLDING HIS HAND AT THE TIME. YOU

## LUCINDA HODGES-DIRECT BY FATA

1 KNOW, HE JUST KEPT SAYING HE HAD BEEN STABBED. HE  
2 WAS REALLY UPSET ABOUT IT. AND I TOLD HIM HE HAD GO  
3 TO MEDICAL TO GET TREATED. ANY TIME, WE HAVE ANY  
4 INCIDENTS YOU NEED TO GO TO MEDICAL.

5 Q HE SAID HE HAD BEEN STABBED. DID HE  
6 INDICATE WHO HAD STABBED HIM?

7 A YES.

8 Q WHO WAS THAT?

9 A HE SAID TERRANCE BLACK STABBED HIM. HE  
10 SAID HE SAW THE SHANK IN HIS ROOM.

11 Q WHAT DID YOU DO IN RESPONSE TO THAT?

12 A IN RESPONSE TO THAT I CONTACTED CAPTAIN  
13 NESMITH. SHE IS THE ENCORE OFFICIAL WE HAVE TO --  
14 THERE IS A CERTAIN PROCEDURE WE HAVE TO FOLLOW IN  
15 ORDER TO DO WHAT WE NEED TO DO. WE HAVE TO GET  
16 PERMISSION TO DO ANYTHING.

17 Q WHAT DID YOU NEED TO DO?

18 A WE NEEDED TO GET HIM OUT OF THE CELL.

19 Q HIM WHO?

20 A TERRANCE BLACK AND HIS ROOMMATE OUT OF THE  
21 CELL SO WE COULD CONDUCT A CELL SEARCH TO TRY TO  
22 LOCATE THE SHANK. AND BECAUSE THE OFFICER HAD BEEN  
23 ASSAULTED THEN THE PROTOCOL IS THAT WE PUT THE  
24 INMATE IN A FULL RESTRAINT CHAIR.

25 Q AND WERE YOU TRYING TO ORGANIZE AN

LUCINDA HODGES-DIRECT BY FATA

1     EXTRACTION TEAM?

2             A     YES, SIR.

3             Q     WHAT IS AN EXTRACTION TEAM?

4             A     THAT IS OBVIOUSLY WE HAD TWO INMATES IN  
5     THAT CELL.    WE WERE GOING TO NEED AT LEAST 3 OR 4  
6     INMATES ON EACH.   I MEAN 3 OR 4 OFFICERS ON EACH  
7     INMATE IN ORDER TO GO IN THE CELL AND GET THEM OUT.  
8     SO WE DON'T HAVE ENOUGH OFFICERS AT SMU TO ENABLE  
9     THAT.    WE HAVE TO CONTACT THE YARD TO HAVE THEM SEND  
10    SOME PEOPLE OVER TO ASSIST US.

11            Q     AND DID YOU ALSO HAVE TO GET  
12    AUTHORIZATION?

13            A     WE HAD TO GET AUTHORIZATION FROM THE  
14    HIGHEST RANKING OFFICIAL AT THAT TIME WHO WAS THE ON  
15    CALL OFFICIAL.   AND WE ALSO HAVE TO GO THROUGH  
16    MEDICAL TO MAKE SURE MEDICALLY THERE IS NO REASON  
17    THAT WE CAN'T GO IN AND GET HIM AND RESTRAIN HIM.

18            Q     DID YOU GET THAT AUTHORIZATION?

19            A     YES, SIR.

20            Q     AND DID YOU ORGANIZE AN EXTRACTION TEAM?

21            A     YES, SIR.

22            Q     NOW AS PART OF THAT EXTRACTION TEAM DO YOU  
23    VIDEO THAT?

24            A     YES, SIR.

25            Q     LET ME HAND YOU THAT WHILE WE'RE GETTING

## LUCINDA HODGES-DIRECT BY FATA

1 THE VIDEO OUT. WHAT IS THE SIZE OF A CELL?

2 A APPROXIMATELY 8 BY 10.

3 Q EIGHT FEET WIDE AND 10 FEET DEEP?

4 A YES, SIR.

5 Q NOW WHAT IS YOUR PROCEDURE? YOU GOT YOUR  
6 AUTHORIZATION THEN WHAT DID YOU DO? THE  
7 AUTHORIZATION TO FORM THAT EXTRACTION TEAM, THEN  
8 WHAT DID YOU DO?

9 A WE GET THE EXTRACTION TEAM TOGETHER. WE  
10 BRIEF THEM ON WHAT IS GOING ON, WHAT IS HAPPENING  
11 SO THAT WE ARE AWARE THERE IS A SHANK INVOLVED. SO  
12 THEY CAN TAKE EXTRA PRECAUTIONS. SOME OF THE  
13 OFFICERS SUIT UP. THEY GET ALL THEIR, WHICH MEANS  
14 THEY PUT THEIR MASKS ON. THEY PUT ON THE VESTS LIKE  
15 THE OFFICERS THERE HAVE ON. THE BLUE VESTS. SO TO  
16 STOP THEM FROM GETTING STABBED IN ANYWHERE IN THE  
17 UPPER BODY. THEY ARE BRIEFED. WE THEN GO ON TO  
18 THE WING WHERE THE INMATE IS. AND HE IS AGAIN GIVEN  
19 SOME DIRECTIONS TO SEE IF THEY COME UP TO THE FLAP  
20 TO BE CUFFED. WE GAVE THEM DIRECTIONS BEFORE WE DO  
21 ANYTHING. WE LET THEM KNOW WE ARE COMING. AND  
22 WHAT'S GOING ON. SO THEY HAVE A CHANCE AT THAT TIME  
23 TO BACK UP TO THE CELL TO BE CUFFED BEFORE WE DO  
24 ANYTHING.

25 Q NOW DID YOU APPROACH, YOU FORMED THE

## LUCINDA HODGES-DIRECT BY FATA

1     EXTRACTION TEAM?

2             A     YES.

3             Q     YOU APPROACHED THE CELL.  DID YOU ASK AND  
4     GAVE ANY DIRECTIVES---

5             A     I GAVE DIRECTIONS.  I GAVE BOTH INMATES IN  
6     THE CELL, DIRECTIONS TO BACK UP FROM THE FLAP TO BE  
7     CUFFED.

8             Q     AND DID THEY DO IT?

9             A     WE COULDN'T EVEN GET THE FLAP OPEN AT THAT  
10    TIME.

11            Q     WHY?

12            A     BETWEEN THE TIME THAT SERGEANT ANDERSON  
13    WAS THERE AND THE EXTRACTION TEAM GOT THERE, THERE  
14    HAD BEEN A SHEET TIED OVER THE FLAP, TO PULL.  THEY  
15    CAN'T CONTROL THE FLAP FROM INSIDE THE CELL AT THAT  
16    POINT.  SO THE SHEET WAS WRAPPED AROUND THE FLAP  
17    SEVERAL TIMES, AND THE INMATE ON THE INSIDE WAS  
18    HOLDING THE SHEET AND PULLING IT TOWARD HIM.

19            Q     SO INMATE BLACK WAS HOLDING THE SHEET ON  
20    THE INSIDE?

21            A     AT THAT TIME WE COULDN'T TELL, BECAUSE  
22    THERE WAS A TOWEL UP ON THE DOORWAYS OR THE WINDOWS.  
23    AND THEY TOTALLY BARRICADED THEMSELVES IN.  AT THAT  
24    POINT, WE DIDN'T KNOW WHAT WAS GOING ON INSIDE THE  
25    CELL.  WE CAN'T SEE ANYTHING.

LUCINDA HODGES-DIRECT BY FATA

1 Q THEN WHAT DID YOU DO?

2 A I GAVE THEM DIRECTIONS OR I GAVE THEM  
3 DIRECTIONS TO BACK UP FROM THE FLAP. NOTHING  
4 HAPPENED. AND THEN WE HAD THE VIDEO RUNNING AT THIS  
5 TIME. AT THAT TIME I GAVE AUTHORIZATION FOR THE  
6 TEAM TO GO TO GET THEM OUT.

7 Q HAVE YOU SEEN THIS VIDEO?

8 A YES.

9 MR. FATA: MARK THIS.

10 (VIDEO MARKED STATE'S EXHIBIT NO. 5 FOR  
11 ID.)

12 Q THIS IS STATE'S 5 FOR IDENTIFICATION.  
13 WHAT IS THAT?

14 A IT'S A VIDEOTAPE OF THE EXTRACTION OF  
15 INMATE TERRANCE BLACK OUT OF THE CELL AND BEING  
16 PLACED INTO THE RESTRAINT CHAIR.

17 Q IS IT AN ACCURATE DEPICTION OF THE EVENTS  
18 THAT OCCURRED DURING THAT EXTRACTION?

19 A YES, SIR. IT WAS TAKEN AT THE TIME IT WAS  
20 HAPPENING.

21 Q AND YOU WATCHED IT?

22 A YES, SIR.

23 Q LIKE I SAY, IT'S AN ACCURATE DEPICTION OF  
24 WHAT OCCURRED?

25 A YES, SIR.

LUCINDA HODGES-DIRECT BY FATA

1 MR. FATA: YOUR HONOR, WE WOULD MOVE THIS  
2 IN TO EVIDENCE AS STATE'S EXHIBIT NO. 5. AND  
3 THEN REQUEST PERMISSION---

4 THE COURT: ANY OBJECTION, MR. DOBY?

5 MR. DOBY: NO, SIR, YOUR HONOR.

6 THE COURT: ADMITTED INTO EXHIBIT AS  
7 STATE'S EXHIBIT NO. 5.

8 MR. FATA: MAY WE NOW PUBLISH IT TO THE  
9 JURY?

10 THE COURT: LADIES AND GENTLEMEN, LET ME  
11 TELL YOU WHAT THAT MEANS. WHEN THE LAWYERS ASK  
12 FOR PERMISSION TO PUBLISH AN EXHIBIT TO YOU,  
13 THE JURY, THAT'S JUST A LEGAL TERM MEANING TO  
14 SHOW. SO WHEN THE STATE JUST ASKS TO SHOW YOU  
15 THE VIDEO THAT IS IN EVIDENCE. I HAVE GRANTED  
16 THEM PERMISSION TO DO THAT. I WILL ALSO TELL  
17 YOU THAT ANYTHING THAT HAS BEEN ADMITTED INTO  
18 EVIDENCE DURING THE TRIAL OF THE CASE WILL GO  
19 WITH YOU TO THE JURY ROOM, WHEN YOU RETIRE TO  
20 DELIBERATE YOUR VERDICT. SO DO NOT BE  
21 CONCERNED IF YOU DO NOT HAVE LONG TO LOOK AT  
22 IT, OR CANNOT SEE IT AS WELL AS YOU WOULD LIKE  
23 TO WHILE YOU'RE SITTING THERE IN THE JURY BOX,  
24 YOU WILL HAVE IT WITH YOU. YOU WILL HAVE THE  
25 RIGHT TO TAKE IT TO THE JURY ROOM WITH YOU AND

LUCINDA HODGES-DIRECT BY FATA

1 VIEW IT AS LONG AS YOU MAY LIKE WHEN YOU RETIRE  
2 TO DELIBERATE YOUR VERDICT. THEY WILL SHOW IT  
3 TO YOU AT THIS TIME.

4 MR. FATA: IT WASN'T REWOUND ALL THE WAY,  
5 JUDGE, I AM DOING THAT NOW.

6 (WHEREUPON, THE VIDEO IS SHOWN TO THE  
7 JURY.)

8 Q WHO IS THAT?

9 A THAT IS BYNUM THE OTHER INMATE.

10 Q WHAT IS THAT?

11 A THAT IS THIS SHANK.

12 Q LIEUTENANT, HOW IS DOOR BEING HELD SHUT BY  
13 THE INMATE?

14 A THERE IS A CONCRETE SLAB WHICH ACTS AS A  
15 THE BOTTOM BUNK. BETWEEN THAT SLAB AND THE DOOR,  
16 PROBABLY NOT QUITE AS DEEP AS PROBABLY ABOUT 2 OR  
17 3 FEET. THE INMATE IS SITTING ON THE FLOOR WITH HIS  
18 BACK AGAINST THAT CONCRETE SLAB WITH HIS FEET BRACED  
19 UP AGAINST THE WALL. AND THEN THE SHEET THAT YOU  
20 SAW WRAPPED AROUND THE DOOR, HE'S GOT THE REST OF IT  
21 INSIDE. HE'S GOT IT WRAPPED AROUND HIS ARMS,  
22 PROBABLY, BECAUSE, YOU KNOW, THIS IS HOW WE SEEN IT.  
23 AND THAT'S THE WAY HE'S HOLDING IT BY WITH HIS FEET  
24 AND HIS HANDS BRACED UP AGAINST THAT THE DOOR. WE  
25 KNOW HIS FEET WERE BRACED AGAINST THE DOOR, BECAUSE

LUCINDA HODGES-DIRECT BY FATA

1 WE COULDN'T OPEN THE DOOR WHEN WE WENT TO GO IN,  
2 BECAUSE HIS FEET WERE BRACED UP ON THE DOOR.  
3 AND I THINK YOU HEARD ON THE TAPE WHERE LIEUTENANT  
4 RICHARDSON TOLD HIM TO MOVE HIS LEGS SO WE COULD GET  
5 IN THE DOOR WITHOUT HAVING TO BREAK HIS LEGS.

6 Q WHEN YOU OPENED THE DOOR, WHERE WAS BYNUM?

7 A BYNUM, I DID OPEN THE DOOR. LIEUTENANT  
8 RICHARDSON STATED LATER THAT BYNUM WAS LAYING DOWN  
9 IN THE BACK OF THE CELL.

10 Q SO HE WAS OBEYING YOUR DIRECTIVES?

11 A YES, SIR.

12 Q LAYING DOWN IN THE BACK OF THE CELL WHICH  
13 IS WHAT YOU TOLD HIM TO DO?

14 A YES, SIR.

15 Q NOW INMATE BLACK, THIS THING WHERE WE SAW  
16 HIM IN HIS CHAIR, TELL ME ABOUT THAT?

17 A YES, SIR. THAT'S THE FOUR POINT RESTRAINT  
18 CHAIR.

19 Q WHAT IS THE PURPOSE OF THAT?

20 A TO MODIFY BEHAVIOR.

21 Q AND WHEN HE WAS BEING PLACED IN THERE,  
22 WHAT WAS FOUND?

23 A THE SHANK.

24 Q WHERE WAS IT FOUND?

25 A IT WAS -- I DIDN'T PICK IT UP AND

## LUCINDA HODGES-DIRECT BY FATA

1 LIEUTENANT RICHARDSON DIDN'T. LIEUTENANT RICHARDSON  
2 FOUND IT IN HIS WAIST AREA.

3 Q IN THE WAIST BAND?

4 A IT WAS IN THE WAIST AREA.

5 Q I AM GOING TO SHOW YOU STATE'S EXHIBIT NO.

6 4. DO YOU RECOGNIZE THAT.

7 A YES, SIR. THAT'S THE SHANK WE REMOVED.

8 Q THIS IS THE SHANK YOU REMOVED FROM INMATE  
9 BLACK?

10 A YES, SIR.

11 Q NOW AND YOU KEEP CALLING HIM INMATE BLACK.

12 HE IS AN INMATE AT THE DEPARTMENT OF CORRECTIONS?

13 A CORRECT.

14 Q AND HE WAS AN INMATE WITH THE DEPARTMENT  
15 OF CORRECTIONS ON APRIL 11TH, 2008?

16 A CORRECT.

17 Q SERGEANT ANDERSON WAS A CORRECTION'S  
18 OFFICER AT LEE CORRECTIONS.

19 A YES, SIR, HE IS A SERGEANT.

20 Q RIGHT. AND OF APRIL 11TH, 2008, HE WAS  
21 PERFORMING HIS DUTIES AS A CORRECTION'S OFFICER?

22 A YES, SIR.

23 Q AND HOW LONG IS THE INMATE KEPT IN THE  
24 CHAIR?

25 A THE INITIAL PERIOD IS 4 HOURS. IT CAN BE

## LUCINDA HODGES-DIRECT BY FATA

1 LESS THAN 4 HOURS. OR IF THEY NEED, IF THEY HAVEN'T  
2 WE GO TO GET THEM OUT AND THEY ACT OUT MORE, WE GET  
3 PERMISSION AND THEY COME OUT FOR A 15-MINUTE BREAK.  
4 SHAKE THEIR HANDS OUT, AND THEIR FEET. AND MAKE  
5 SURE EVERYTHING IS OKAY. AND THEY SIT BACK IN IT  
6 FOR ANOTHER 4 HOURS.

7 Q AT THE BEGINNING OF THE TAPE, YOU INDICATE  
8 INMATE BYNUM SAYS HE IS NOT PARTICIPATING.

9 A THAT'S WHAT HE STATED. AND THAT'S WHAT I  
10 WAS TOLD BY SERGEANT ANDERSON.

11 Q THAT HE WAS -- THAT BYNUM WAS NOT  
12 PARTICIPATING.

13 A HE WAS NOT THE ONE AT THE DOOR. NO, SIR,  
14 HE WAS IN THE BACK OF THE CELL.

15 Q AND SERGEANT ANDERSON TOLD YOU HE WASN'T  
16 THE ONE. BYNUM WASN'T THE ONE AT THE DOOR.

17 A CORRECT.

18 Q AND AGAIN THE CELL IS 8 FEET BY 10 FEET?

19 A APPROXIMATELY, YES, SIR.

20 MR. FATA: ANSWER ANY QUESTIONS MR. DOBY  
21 MAY HAVE.

22 THE COURT: CROSS EXAMINATION MR. DOBY?

23 CROSS EXAMINATION BY MR. DOBY:

24 Q LIEUTENANT, THIS FORCED CELL EXTRACTION  
25 WAS DONE APPROXIMATELY HOW LONG AFTER THE ALLEGED

## LUCINDA HODGES-CROSS BY DOBY

1 ATTACK ON SERGEANT ANDERSON?

2 A IT WAS PROBABLY ABOUT AN HOUR OR SO. IT  
3 TAKES A WHILE TO GET EVERYBODY TOGETHER.

4 Q OKAY. AND IN THIS VIDEO YOU HAD GIVEN  
5 DIRECTIVES BOTH TO MR. BLACK AS WELL AS THE  
6 MR. BYNUM TO PUT THEIR HANDS BACK. I GUESS THEY  
7 COME TO THE FOOD FLAP OR TO THE FLAP SO THEY CAN BE  
8 HANDCUFFED?

9 A CORRECT.

10 Q MR. BYNUM DOESN'T DO THAT EITHER, DOES HE?

11 A HE COULDN'T GET TO THE CELL DOOR. WE  
12 COULDN'T OPEN THE FLAP FOR MR. BYNUM TO PUT HIS ARMS  
13 THROUGH.

14 Q OKAY WELL AND AS YOU INDICATED YOU DON'T  
15 KNOW WHAT IS GOING ON INSIDE THE CELL BECAUSE YOU  
16 CAN'T SEE INSIDE THE CELL.

17 A CORRECT. UNTIL WE OPEN THE FOOD FLAP.

18 Q OKAY. YOU INDICATED THESE SHANKS ARE  
19 COMMON AT LEE CORRECTIONAL INSTITUTE?

20 A YES, SIR.

21 Q OKAY. I MEAN THIS IS NOT UNCOMMON FOR YOU  
22 TO FIND THIS ON AN INMATE.

23 A WE DON'T LIKE TO FIND THEM ON INMATES. WE  
24 DON'T FIND THEM AS MANY IN SMU AS WE DO IN THE  
25 GENERAL POPULATION.

## LUCINDA HODGES-CROSS BY DOBY

1 Q I UNDERSTAND.

2 A WE DO -- THOSE ARE COMMON SHANKS FOR  
3 INMATES.

4 Q OKAY. AND CERTAINLY THEN AS YOU ALLEGE  
5 MR. BLACK HAD THIS ON HIM. HE WOULDN'T BE THE ONLY  
6 ONE THAT HAS HAD.

7 A I CAN'T SAY THAT, SIR. I DON'T KNOW WHO  
8 HAS THEM.

9 Q I UNDERSTAND.

10 A BECAUSE WE DON'T KNOW UNTIL WE FIND THEM.

11 Q BUT YOU INDICATED THAT THEY ARE IN FACT  
12 COMMON.

13 A YEAH, I BELIEVE SO.

14 MR. DOBY: THANK YOU. THAT'S ALL I HAVE.

15 THE COURT: REDIRECT?

16 MR. FATA: NOTHING, YOUR HONOR.

17 THE COURT: YOU MAY STEP DOWN.

18 MR. FATA: YOUR HONOR, THE STATE WOULD

19 CALL LIEUTENANT FRANKLIN RICHARDSON.

20 THE COURT: LIEUTENANT, IF YOU WOULD COME  
21 AROUND, PLEASE.

22 LIEUTENANT FRANKLIN RICHARDSON,  
23 BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

24 THE CLERK: STATE YOUR FULL NAME FOR THE  
25 RECORD.

## LIEUTENANT RICHARDSON-DIRECT BY FATA

1 A FRANKLIN RICHARDSON, JR.

2 DIRECT EXAMINATION BY FATA:

3 Q LIEUTENANT, YOU ARE A CORRECTIONAL OFFICER  
4 AT THE LEE CORRECTIONAL INSTITUTE?

5 A YES, SIR.

6 Q WHAT IS YOUR BACKGROUND IN CORRECTIONS?

7 A WELL I'VE GOT ABOUT TEN YEARS AS A  
8 SERGEANT AT LEE BACK IN 1998. I WORKED IN SMU. I  
9 STARTED OUT IN SMU. I WORKED THERE FOR 6 YEARS.  
10 AFTER SMU, I WORKED CLOSE CUSTODY, WHICH IS TELLING  
11 YOU KNOW, STEP DOWN FROM SMU. I DID TWO YEARS  
12 THERE. NOW I AM SHIFT LIEUTENANT IN THE GENERAL  
13 POPULATION OUT OF THE 1600 INMATES. AND I AM ALSO A  
14 BASIC INSTRUCTOR, TRAINING INSTRUCTOR, FIREARM  
15 INSTRUCTOR. AND I AM ALSO PART OF THE RIOT TEAM.

16 Q AND YOU ARE A CERTIFIED CORRECTION'S  
17 OFFICER?

18 A YES, SIR.

19 Q AND WERE YOU WORKING ON APRIL 11TH, 2008,  
20 HERE IN LEE COUNTY?

21 A YES, SIR, I WAS.

22 Q WERE YOU CALLED OR DID YOU RESPOND TO THE  
23 SMU UNIT?

24 A YES, SIR.

25 Q AT THE SMU UNIT?

## LIEUTENANT RICHARDSON-DIRECT BY FATA

1 A YES, SIR.

2 Q WHY DID YOU RESPOND THERE.

3 A WELL WE GOT A CALL, ON CALL, THAT THEY  
4 NEEDED SOME ASSISTANCE WITH TWO INMATES THAT  
5 BARRICADED A ROOM. AND REFUSED TO COME OUT. SO  
6 MYSELF AND THREE OF MY SERGEANTS WENT TO SMU TO  
7 ASSIST.

8 Q WHAT DID YOU FIND WHEN YOU GOT THERE?

9 A THAT INMATE TERRANCE BLACK, AND INMATE  
10 BYNUM WERE IN THE CELL. THEY REFUSED TO COME OUT.  
11 AND BY THE TIME I GOT DOWN THERE, THEY HAD A SHEET  
12 WRAPPED AROUND THE FLAP. THE DOOR WAS BARRICADED.  
13 IT HAD BEEN PUT ON THE DOOR WITH A SHEET. ONE WAS  
14 SITTING IN THE BACK WITH HIS FEET AGAINST THE DOOR.  
15 WE COULDN'T GET IN THE ROOM.

16 Q AND WERE YOU IN CHARGE OF THE FEEDING?

17 A WELL NOT NECESSARILY IN CHARGE OF THE  
18 FEEDING. I WAS A MEMBER OF THE TEAM.

19 Q NOW WE SEE THERE IS AN ATTEMPT ON THE  
20 VIDEO TO CUT THE SHEET THAT IS WRAPPED AROUND THE  
21 FOOD FLAP.

22 A YES, SIR.

23 Q WHEN THAT IS CUT AND THE FOOD FLAP, THE  
24 FOOD FLAP OPENS UP, WHO IS THAT THAT IS YELLING IN  
25 THERE TO MOVE YOUR FEET AND ALL THAT STUFF?

## LIEUTENANT RICHARDSON-DIRECT BY FATA

1 A THAT WAS ME, SIR.

2 Q THE FOOD -- WHEN YOU LOOKED IN THERE, WHAT  
3 DID YOU SEE?

4 A INMATE TERRANCE BLACK SITTING WITH HIS  
5 BACK AGAINST THE CONCRETE SLAB AND WITH HIS FEET  
6 AGAINST THE DOOR. . AND REFUSING TO MOVE.

7 Q WHAT IS INMATE BYNUM DOING?

8 A INMATE BYNUM WAS STANDING WITH HIS FEET  
9 AGAINST THE DOOR AND REFUSING TO MOVE.

10 Q WHAT WAS INMATE BYNUM DOING?

11 A INMATE BYNUM WAS STANDING AT THE BACK.  
12 THE DIRECTIVE FIRST WAS, LAY ON THE FLOOR. AND HE  
13 LAID DOWN. BUT INMATE BLACK REFUSED TO MOVE.

14 Q AND DID YOU GET THE CELL -- YOU GOT THE  
15 CELL DOOR OPEN?

16 A YES, SIR. EVENTUALLY.

17 Q SO ON THE -- LET ME BACK UP. ON THE VIDEO  
18 WERE TWO THINGS. MOVE YOUR FEET. MOVE YOUR FEET.  
19 YOU WERE DIRECTING THOSE COMMENTS TO WHO?

20 A INMATE TERRANCE BLACK.

21 Q AND DO YOU SEE HIM IN THE COURTROOM TODAY?

22 A YES, SIR.

23 Q WHERE IS HE?

24 A HE'S SITTING RIGHT HERE.

25 Q RIGHT THERE.

LIEUTENANT RICHARDSON-DIRECT BY FATA

- 1 A WITH THE YELLOW JUMPSUIT.
- 2 Q SITTING NEXT TO MR. DOBY?
- 3 A YES.
- 4 Q LET THE RECORD REFLECT TERRANCE BLACK AS
- 5 THE PERSON HOLDING HIS FEET AGAINST THE DOOR OF THE
- 6 CELL.
- 7 A THE RECORD WILL SO REFLECT.
- 8 Q AFTER YOU GOT THE DOOR OPENED, WHAT
- 9 HAPPENED?
- 10 A ONCE WE GOT THE DOOR OPEN, I WENT TO
- 11 INMATE BYNUM WHICH HE WAS ALREADY LAYING DOWN ON THE
- 12 FLOOR.
- 13 Q DID HE STRUGGLE?
- 14 A NO, HE DIDN'T.
- 15 Q WHAT DID HE DO?
- 16 A HE WAS LAYING THERE. MYSELF AND TWO MORE
- 17 TEAM MEMBERS GOT TO HIM. PUT THE RESTRAINTS ON HIM.
- 18 INMATE BLACK---
- 19 Q NOW WAIT A MINUTE. LET ME BACK UP NOW.
- 20 PUT THE RESTRAINTS ON. DID OR DID HE NOT STRUGGLE?
- 21 A NO, HE DIDN'T.
- 22 Q DIDN'T PUT UP ANY RESISTANCE?
- 23 A NO, SIR.
- 24 Q THEN WHAT HAPPENED?
- 25 A ONCE I GOT TO HIM, WE GOT, MYSELF AND TWO

## LIEUTENANT RICHARDSON-DIRECT BY FATA

1 TEAM MEMBERS GOT HIM IN THE RESTRAINTS. INMATE  
2 BLACK WAS STILL BEHIND THE DOOR. WE WERE IN THE  
3 ROOM ALREADY. AND HE HAD BEEN IN THERE TUSSLING  
4 WITH THE OTHER TEAM MEMBERS. SO EVENTUALLY THEY GOT  
5 HIM IN RESTRAINTS AND THEY GOT HIM OUT.

6 Q AND THEN, I THINK ON THE VIDEO WE SEE HIM  
7 BEING PLACED IN THE RESTRAINT CHAIR.

8 A YES, SIR.

9 Q NOW DID HE SAY, WHILE INMATE BLACK WAS  
10 BEING PLACED IN THE RESTRAINT CHAIR, DID HE SAY  
11 ANYTHING TO YOU?

12 A YES, SIR.

13 Q WHAT DID HE SAY?

14 A HE TOLD HIM TO LIFT UP HIS SHIRT. AND HE  
15 SAID, ALL HE SAID WAS LIFT UP MY SHIRT AND GET THIS  
16 FROM UNDER MY SHIRT. AND SO I LIFT UP HIS SHIRT,  
17 AND THERE IT WAS, A SHANK, A HOMEMADE KNIFE..

18 Q I GOING TO SHOW YOU STATE'S EXHIBIT NO. 4.  
19 SEE IF YOU RECOGNIZE THAT.

20 A YES, SIR.

21 Q AND WHAT IS THAT?

22 A IT'S A SHANK, A HOMEMADE KNIFE.

23 Q WHERE DID YOU GET THIS FROM? OR WHERE DID  
24 YOU FIRST SEE THIS?

25 A WELL WHEN HE TOLD ME TO LIFT HIS SHIRT UP,

LIEUTENANT RICHARDSON-DIRECT BY FATA

1 TO GET WHATEVER IT WAS UNDER THERE, I LIFTED HIS  
2 SHIRT UP, THERE IT WAS IN THE WAIST AREA.

3 Q AND THIS WAS IT?

4 A YEAH, I CONFISCATED IT FROM HIM.

5 Q DID HE SAY ANYTHING ELSE TO YOU ABOUT THE  
6 SHANK OR ANYTHING?

7 A NO, SIR.

8 Q THAT WAS IT?

9 A THAT WAS IT.

10 Q AND AGAIN WAS INMATE BLACK WITH HIS FEET  
11 AGAINST THE DOOR?

12 A YES, SIR.

13 Q IT WAS INMATE BLACK WHO WAS STRUGGLING?

14 A YES, SIR.

15 Q AND IT WAS INMATE BLACK WHO GAVE -- WHO  
16 TOLD YOU TO GET THIS OUT OF HIS WAISTBAND OR WAIST  
17 AREA?

18 A YES, SIR.

19 Q EXCUSE ME, STATE'S EXHIBIT NO. 4?

20 A YES, SIR.

21 Q TOLD YOU TO GET IT OUT OF HIS WAISTBAND  
22 AREA?

23 A YES, SIR.

24 MR. FATA: ANSWER ANY QUESTIONS MR. DOBY  
25 MAY HAVE.

LIEUTENANT RICHARDSON-DIRECT BY FATA

1 THE COURT: CROSS EXAMINATION, MR. DOBY?

2 MR. DOBY: NO, SIR, YOUR HONOR.

3 THE COURT: THANK YOU, SIR. YOU MAY STEP  
4 DOWN.

5

6 MR. FATA: YOUR HONOR, THE STATE WOULD  
7 CALL INVESTIGATOR LLOYD GREER.

8 THE COURT: INVESTIGATOR GREER.

9

INVESTIGATOR LLOYD GREER,  
10 BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

11 THE CLERK: STATE YOUR FULL NAME FOR THE  
12 RECORD.

13 A LLOYD GREER.

14 DIRECT EXAMINATION BY MR. FATA:

15 Q INVESTIGATOR GREER, WHAT IS YOUR  
16 OCCUPATION?

17 A A SENIOR INVESTIGATOR FOR THE SOUTH  
18 CAROLINA DEPARTMENT OF CORRECTIONS.

19 Q WHERE ARE YOU ASSIGNED?

20 A RIGHT NOW I AM ASSIGNED TO LEE  
21 CORRECTIONS.

22 Q HERE IN LEE COUNTY?

23 A YES, SIR.

24 Q DID YOU, TELL ME, ARE YOU A CERTIFIED  
25 POLICE OFFICER?

## INVESTIGATOR GREER-DIRECT BY FATA

1 A YES, SIR, I AM.

2 Q AND WHAT IS YOUR BACKGROUND IN LAW  
3 ENFORCEMENT?

4 A PRIOR TO COMING TO THE DEPARTMENT OF  
5 CORRECTIONS, I SPENT APPROXIMATELY 14 YEARS IN THE  
6 HARTSVILLE CITY POLICE DEPARTMENT.

7 Q AND THEN CAME TO THE DEPARTMENT -- YOU  
8 HAVE BEEN IN LEE COUNTY ALL THAT TIME?

9 A SINCE I COME TO THE DEPARTMENT OF  
10 CORRECTIONS? NO. I SPENT APPROXIMATELY 6 MONTHS  
11 IN MARLBORO COUNTY AT THE EVANS CORRECTIONAL  
12 FACILITY. AND THEN WAS TRANSFERRED OVER TO LEE  
13 CORRECTIONAL.

14 Q AND AGAIN, YOU ARE A CERTIFIED, SOUTH  
15 CAROLINA CERTIFIED POLICE OFFICER?

16 A YES, SIR, I AM.

17 Q NOW ON THE APRIL 11TH, 2008, WERE --  
18 EXCUSE ME, LET ME BACK UP. DID YOU CONDUCT AN  
19 INVESTIGATION REGARDING AN INCIDENT THAT OCCURRED AT  
20 LEE CORRECTIONAL INSTITUTE IN LEE COUNTY, SOUTH  
21 CAROLINA ON APRIL 11TH, 2008?

22 A YES, I DID.

23 Q INVOLVING INMATE BLACK AND---

24 A SERGEANT---

25 Q ---LIEUTENANT ANDERSON -- EXCUSE ME.

## INVESTIGATOR GREER-DIRECT BY FATA

1 A YES, INVOLVING INMATE BLACK, SERGEANT  
2 DIXON. AND THE INCIDENT---

3 Q AND SERGEANT ANDERSON.

4 A I'M SORRY. SERGEANT ANDERSON, WHICH  
5 OCCURRED AT THE LEE CORRECTIONAL INSTITUTION.

6 Q WHAT DID YOU DO?

7 A I WAS ADVISED THAT AN INCIDENT HAD BEEN  
8 TAKING PLACE AT THE CORRECTIONAL FACILITY BY  
9 ASSOCIATE WARDEN BELL INVOLVING AN INMATE ANDERSON.

10 Q AND WHAT WAS THE INCIDENT? WHAT DID THE  
11 INCIDENT INVOLVE?

12 A THE INCIDENT INVOLVED AN ASSAULT ON THE  
13 OFFICER. AND THAT HE HAD RECEIVED AN INJURY TO HIS  
14 LEFT HAND.

15 Q AND DID YOU GET A STATEMENT FROM SERGEANT  
16 ANDERSON?

17 A I HAD SPOKE WITH SERGEANT ANDERSON, AND HE  
18 EXPLAINED TO ME THE INCIDENT, AND THE FACTS  
19 SURROUNDING WHAT HAD TAKEN PLACE AT THE INSTITUTION.

20 Q AS A RESULT OF THAT, DID YOU HAVE A  
21 CONVERSATION WITH INMATE TERRANCE BLACK?

22 A LATER ON AFTER SPEAKING WITH OFFICER  
23 ANDERSON, AND CONCLUDING, YOU KNOW, WHAT HAD TAKEN  
24 PLACE, I SPOKE WITH TO MR. BLACK, YES.

25 Q I AM GOING TO SHOW YOU---

INVESTIGATOR GREER-DIRECT BY FATA

1 MR. FATA: MAY WE APPROACH JUST A SECOND?

2 (WHEREUPON, THE ATTORNEYS APPROACH THE  
3 BENCH AND CONFER WITH JUDGE.)

4 THE COURT: STATE'S 1 IN EVIDENCE IS  
5 ALREADY IN EVIDENCE. AND THE OFFICER MAY BE  
6 QUESTIONED ABOUT IT.

7 MR. FATA: THANK YOU, YOUR HONOR.

8 Q AS A RESULT OF YOUR INVESTIGATION, DID YOU  
9 CONDUCT AN INTERVIEW WITH INMATE TERRANCE BLACK?

10 A YES, SIR, I DID.

11 Q I AM GOING TO SHOW YOU STATE'S EXHIBIT NO.

12 1, ENTITLED IS "SOUTH CAROLINA DEPARTMENT OF  
13 CORRECTION'S OFFICE," INSPECTIVE GENERAL DIVISION  
14 OF INVESTIGATION. I GUESS IT'S THE MIRANDA  
15 WARNINGS. DID YOU GO OVER THOSE WITH MR. BLACK?

16 A YES, SIR, I DID. THIS WAS AFTER I HAD  
17 SERVED THE WARRANT ON MR. BLACK FOR THE CHARGES  
18 AGAINST HIM. AND THEN I HAD READ THE MIRANDA  
19 WARNING TO HIM.

20 Q NOW IT SAYS: "BEFORE I ASK YOU ANY  
21 QUESTIONS YOU MUST UNDERSTAND YOUR RIGHTS." AND IT  
22 HAS GOT IN BOLD, IT SAYS: "RIGHTS?"

23 A YES, SIR.

24 Q WHAT IS THE FIRST THING YOU READ TO HIM?

25 A IT SAYS, "YOU HAVE THE RIGHT TO REMAIN

## INVESTIGATOR GREER-DIRECT BY FATA

1 SILENT."

2 Q AND SEE SOME LETTERS BESIDE THAT T.B.

3 A YES, SIR. THOSE WOULD BE MR. BLACK'S.

4 TERRANCE BLACK.

5 Q AND WHY DID YOU HAVE HIM PUT THE INITIALS

6 THERE?

7 A AFTER I READ EACH STATEMENT TO HIM, I

8 THEN HAVE HIM GO OVER THAT HE UNDERSTANDS HIS RIGHTS

9 AND MARKS HIS INITIALS BESIDE IT.

10 Q YOU READ TO HIM, "YOU HAVE THE RIGHT TO

11 REMAIN SILENT?"

12 A YES, SIR.

13 Q DID HE APPEAR TO YOU TO UNDERSTAND IT?

14 A YES, SIR.

15 Q THAT HE DIDN'T HAVE TO TALK TO YOU?

16 A NO.

17 Q DID HE APPEAR TO BE UNDER THE INFLUENCE OF

18 ANY DRUGS OR ALCOHOL OR ANYTHING LIKE THAT?

19 A NO, SIR, HE DIDN'T.

20 Q UNDER THE INFLUENCE OF ANY MEDICATION?

21 A NO, SIR.

22 Q DID HE DO ANYTHING TO INDICATE TO YOU THAT

23 HE DIDN'T UNDERSTAND HE COULD BE SILENT?

24 A NO, SIR. HE DID NOT. HE INDICATED THAT

25 HE UNDERSTOOD WHAT I WAS TALKING ABOUT.

INVESTIGATOR GREER-DIRECT BY FATA.

1 Q WHAT WAS THE NEXT THING YOU READ TO HIM?

2 A "THAT ANYTHING HE SAID COULD AND WILL BE  
3 USED AGAINST YOU IN A COURT OF LAW."

4 Q AGAIN, DID HE PUT HIS INITIALS BESIDE  
5 THAT?

6 A YES, SIR, HE DID.

7 Q DID HE APPEAR TO UNDERSTAND THAT?

8 A YES, SIR, HE DID.

9 Q DID HE APPEAR -- WELL AGAIN, THROUGHOUT  
10 THIS, HE DIDN'T APPEAR TO BE UNDER THE INFLUENCE OF  
11 ANYTHING OR...

12 A NO, SIR. HE WAS VERY, YOU KNOW, ALERT AND  
13 EVERYTHING. HE UNDERSTOOD EVERYTHING THAT I TOLD  
14 HIM.

15 Q DID HE INDICATE IN ANY WAY THAT HE DID NOT  
16 UNDERSTAND, THAT HE UNDERSTOOD THAT IF HE SAID  
17 SOMETHING, THAT YOU COULD COME BACK HERE AND WE  
18 COULD USE IT IN COURT?

19 A YES, SIR, HE UNDERSTOOD THAT.

20 Q WHAT WAS THE NEXT THING YOU READ TO HIM?

21 A THAT HE HAD THE RIGHT TO SPEAK WITH HIS  
22 ATTORNEY FOR ADVICE BEFORE I ASKED HIM ANY  
23 QUESTIONS; TO HAVE AN ATTORNEY PRESENT WHILE HE WAS  
24 BEING QUESTIONING.

25 Q DID HE APPEAR TO UNDERSTAND THAT HE HAD

## INVESTIGATOR GREER-DIRECT BY FATA

1 THE RIGHT TO HAVE AN ATTORNEY?

2 A YES, SIR, HE DID.

3 Q DID HE PUT HIS INITIALS BY THAT?

4 A YES, HE DID.

5 Q DID HE DO ANYTHING TO INDICATE TO YOU THAT  
6 HE DID NOT UNDERSTAND THAT?

7 A NO, SIR, HE DIDN'T. YOU KNOW, HE DIDN'T  
8 MAKE ANY STATEMENTS THAT HE DIDN'T UNDERSTAND OR  
9 ANYTHING LIKE THAT.

10 Q WHAT WAS THE NEXT THING?

11 A "IF YOU HAVE NO MONEY FOR ATTORNEY'S FEES,  
12 THE COURT WILL APPOINT ONE TO REPRESENT YOU WITHOUT  
13 COST IF YOU WISH."

14 Q DID HE INITIAL THAT?

15 A YES, SIR, HE DID.

16 Q AND DID HE APPEAR TO UNDERSTAND?

17 A YES, SIR, HE DID.

18 Q WHAT WAS THE NEXT?

19 A "IF YOU DECIDE TO ANSWER QUESTIONS NOW  
20 WITHOUT A LAWYER PRESENT, YOU WILL STILL HAVE THE  
21 RIGHT TO STOP ANSWERING QUESTIONS AT ANY TIME. YOU  
22 ALSO HAVE THE RIGHT TO STOP ANSWERING QUESTIONS AT  
23 ANY TIME UNTIL YOU TALK TO AN ATTORNEY."

24 Q DID HE INDICATE TO YOU, EXCUSE ME. WAS  
25 THERE ANY INDICATION FROM HIM THAT HE DID NOT

## INVESTIGATOR GREER-DIRECT BY FATA

1 UNDERSTAND THAT HE COULD HAVE A LAWYER, HE COULD  
2 TALK, STOP HAVE A LAWYER? DID HE UNDERSTAND THAT?

3 A YES, SIR. HE UNDERSTOOD THAT HE COULD  
4 HAVE A LAWYER PRESENT. AND HE ALSO UNDERSTOOD THAT  
5 HE DIDN'T HAVE TO TALK TO A LAWYER.

6 Q THEN THE LAST THING YOU READ TO HIM.

7 A "THAT I HAVE READ THIS STATEMENT OF MY  
8 RIGHTS, OR HAVE HAD READ TO ME. I UNDERSTAND WHAT  
9 MY RIGHTS ARE."

10 Q DID HE INITIAL THAT?

11 A YES, HE DID.

12 Q WAS THERE ANYTHING THAT INDICATED HE DID  
13 NOT UNDERSTAND HIS RIGHTS?

14 A NO, SIR. I ASKED HIM IF HE UNDERSTOOD  
15 EVERYTHING. AND HE SAID YES, HE DID.

16 Q NOW I SEE A SIGNATURE ON THERE. WHOSE  
17 SIGNATURE IS THAT?

18 A THAT SIGNATURE IS MR. BLACK'S.

19 Q AND THAT WAS APRIL 12TH 2008.

20 A YES, SIR. APRIL 12TH 2008.

21 Q AND THEN THE NEXT HEADING IS WAIVER OF  
22 RIGHTS. WHAT IS THAT?

23 A THE WAIVER OF RIGHTS, IS THAT THE FIRST  
24 HALF THAT HE UNDERSTANDS HIS RIGHTS. AND THE SECOND  
25 HALF IS THAT HE IS WILLING TO TALK TO ME. AND THEN

## INVESTIGATOR GREER-DIRECT BY FATA

1 HE INITIALS AND SIGNS THAT AS WELL.

2 Q OKAY. AND SO WHAT DID YOU READ TO HIM?

3 A "THAT I AM WILLING TO MAKE A STATEMENT AND  
4 ANSWER QUESTIONS. I DO NOT WANT AN ATTORNEY AT THIS  
5 TIME. I UNDERSTAND AND KNOW WHAT I AM DOING. NO  
6 PROMISES OR THREATS HAVE BEEN MADE TO ME. AND NO  
7 PRESSURE OR COERCION OF ANY KIND HAS BEEN USED  
8 AGAINST ME."

9 Q DID HE INITIAL THAT?

10 A YES, I DID.

11 Q AND IS THERE A SIGNATURE UNDER THERE?

12 A YES, SIR. MR. BLACK ALSO SIGNED AND  
13 DATED.

14 Q AND THEN YOU WITNESSED IT?

15 A YES, SIR, HE DID.

16 Q IN YOUR OPINION DID MR. BLACK GIVE A FREE  
17 AND VOLUNTARY WAIVER OF HIS RIGHT TO REMAIN SILENT?

18 A YES, SIR, HE DID.

19 Q AND HE WAS NOT UNDER THE INFLUENCE OF  
20 ANYTHING THAT YOU COULD TELL?

21 A NOT THAT SHOWED OR I WAS AWARE OF, NO.

22 Q WHERE WAS THE ROOM LIKE THAT YOU  
23 INTERVIEWED INMATE BLACK?

24 A I HAD THE OFFICERS THAT WERE ON DUTY THAT  
25 DAY, BRING MR. BLACK TO A, WHAT WE CALL A CONFERENCE

## INVESTIGATOR GREER-DIRECT BY FATA

1 ROOM. IT'S A ROOM APPROXIMATELY 8 BY 10 FEET. IT  
2 HAS CHAIRS, TABLE, WHERE WE COULD SIT DOWN AND TALK.

3 Q IS IT WELL LIT?

4 A YES, SIR, IT IS.

5 Q IT IS APPROPRIATE -- IT IS AN APPROPRIATE  
6 TEMPERATURE?

7 A YES, SIR.

8 Q OKAY. NOT EXTREMELY HOT AND NOT EXTREMELY  
9 COLD. WAS HE DENIED ANY SORT OF CREATURE COMFORTS,  
10 LIKE BATHROOM BREAKS? WAS HE ALLOWED TO HAVE WATER  
11 OF WHATEVER IF HE WANTED SOMETHING TO DRINK?

12 A IF HE ASKED FOR IT, YES, SIR.

13 Q WERE ANY THREATS MADE TO HIM?

14 A NO, SIR.

15 Q ANY COERCION?

16 A NO, SIR.

17 Q ANY PROMISES MADE TO HIM?

18 A NO, SIR.

19 Q DID HE TALK TO YOU?

20 A HE MADE A COUPLE OF STATEMENTS, YES.

21 Q AND DID HE TALK TO YOU OR MAKE A STATEMENT  
22 REGARDING OFFICER ANDERSON?

23 A YES, SIR, HE DID.

24 Q I AM GOING TO SHOW YOU. IF YOU WILL READ  
25 THIS. AND WAS IT AN ORAL STATEMENT?

## INVESTIGATOR GREER-DIRECT BY FATA

1 A YES, SIR.

2 Q AND YOU JUST WROTE IT DOWN, IS THAT RIGHT?

3 A YES, SIR. WHEN I FIRST, AFTER I ADVISED  
4 MR. BLACK OF HIS RIGHTS, I ASKED HIM TO EXPLAIN WHAT  
5 TOOK PLACE WITH OFFICER ANDERSON. AT THAT TIME HE  
6 STATED, "I DO NOT WANT TO SPEAK ABOUT OFFICER  
7 ANDERSON." AND THEN RIGHT AFTER THAT STATEMENT, HE  
8 SAID, "IT WAS SUPPOSED TO GO DOWN LIKE THAT.  
9 ANDERSON JUST GOT IN THE WAY." OR "GOT TOO CLOSE."  
10 I'M SORRY.

11 Q "GOT TOO CLOSE." IT WASN'T SUPPOSED TO GO  
12 DOWN LIKE THAT. OFFICER ANDERSON JUST GOT IN THE  
13 WAY.

14 A "JUST GOT TOO CLOSE."

15 Q "JUST GOT TOO CLOSE." EXCUSE ME. "JUST  
16 GOT TOO CLOSE." AND THAT STATEMENT WAS GIVEN BY  
17 DEFENDANT BLACK.

18 A YES, SIR.

19 Q IT WAS FREELY AND VOLUNTARILY GIVEN?

20 A YES, SIR.

21 MR. FATA: ANSWER ANY QUESTIONS THAT MR.  
22 DOBY MAY HAVE.

23 THE COURT: CROSS EXAMINATION, MR. DOBY?

24 CROSS EXAMINATION BY MR. DOBY:

25 Q INVESTIGATOR, THE STATEMENT AS YOU

## INVESTIGATOR GREER-DIRECT BY FATA

1 DESCRIBE IS, "IT WAS NOT SUPPOSED TO GO DOWN LIKE  
2 THAT. ANDERSON JUST GOT TOO CLOSE."

3 A YES, SIR.

4 Q IS THAT VERBATIM?

5 A TO MY RECOLLECTION AFTER SPEAKING WITH HIM  
6 VERBATIM, YES.

7 Q IT WOULD SEEM TO ME THAT THAT STATEMENT IS  
8 TALKING ABOUT SOMEONE ELSE STABBING SERGEANT  
9 ANDERSON, BECAUSE IF MR. BLACK WAS GOING TO SAY I  
10 STABBED SERGEANT ANDERSON, IT WOULD SEEM TO ME TO  
11 SAY, I STABBED SERGEANT ANDERSON. WOULDN'T YOU  
12 EXPECT THAT SAME THING?

13 A NO, SIR. BECAUSE HE HAD MENTIONED TO ME  
14 JUST PRIOR, SECONDS BEFORE THAT STATEMENT, HE DIDN'T  
15 WANT TO TALK ABOUT THE INCIDENT INVOLVING MR. OR  
16 OFFICER ANDERSON.

17 Q OKAY. WELL HE SAID THAT. BUT THEN HE  
18 MADE THIS OTHER STATEMENT.

19 A YES, HE DID.

20 Q AND IT WAS NOT SUPPOSED TO GO DOWN LIKE  
21 THAT. IT APPEARS TO ME THAT THE SAME EXACT DATE, IT  
22 LOOKS LIKE HE'S TALKING ABOUT SOMEONE ELSE STABBED  
23 SERGEANT ANDERSON. DID YOU TAKE IT THAT WAY?

24 A NO, SIR. I TOOK IT AS -- I REALLY DON'T  
25 KNOW WHAT HE WAS IMPLYING, ONLY THAT WHATEVER HAD

## INVESTIGATOR GREER-CROSS BY DOBY

1 TAKEN PLACE AT THAT DOOR WAS NOT SUPPOSED TO GO DOWN  
2 LIKE THAT.

3 Q WELL CERTAINLY MR. BLACK HAD CONTROL OVER  
4 WHAT HE WAS DOING THAT DAY, DID HE NOT?

5 A TO MY KNOWLEDGE. I WASN'T THERE.

6 Q YOU DON'T HAVE ANY INFORMATION OTHERWISE.

7 A NO, SIR.

8 Q SO HE'S TALKING ABOUT, THE STATEMENT  
9 APPEARS TO ME, AND CAN YOU UNDERSTAND WHAT I AM  
10 TALKING ABOUT, THAT THAT APPEARS TO ME, THAT HE WAS  
11 NOT SUPPOSED TO HAVE BEEN STABBED?

12 A IF I READ THE STATEMENT, "IT WAS NOT  
13 SUPPOSED TO GO DOWN LIKE THAT," IT COULD HAVE  
14 REFERRED TO NUMEROUS THINGS; SUCH AS, THE  
15 BARRICADING. THE EXTRACTION AND EVERYTHING.

16 Q WELL IT WOULD CERTAINLY LEAD YOU TO THE  
17 CONCLUSION THAT IT WAS NOT -- THAT SERGEANT ANDERSON  
18 WAS NOT SUPPOSED TO HAVE BEEN STABBED?

19 A THAT WOULD BE ONE WAY YOU COULD LOOK AT  
20 IT, BUT THAT WAS NOT THE IMPRESSION HE GAVE ME.

21 Q WELL THINKING BACK ON IT NOW, THIS  
22 STATEMENT CAN MEAN MANY DIFFERENT THINGS?

23 A THAT IS TRUE.

24 Q ARE YOU OFFERING THIS AS A CONFESSION FROM  
25 MR. BLACK THAT HE STABBED SERGEANT ANDERSON?

## INVESTIGATOR GREER-CROSS BY DOBY

1           A     I AM SIMPLY STATING THAT HE ADMITTED IN  
2     THE STATEMENT THAT HE DIDN'T EXPECT IT TO GO DOWN  
3     LIKE THAT.

4           Q     OKAY. YOU TOOK POSSESSION OF THIS SHANK  
5     AT SOME POINT DURING---

6           A     YES, SIR.

7           Q     ---YOUR INVESTIGATION?

8           A     YES, SIR.

9           Q     AND INVESTIGATOR, WOULD IT HAVE BEEN  
10    POSSIBLE TO HAVE SENT THIS SHANK TO SLED OR SOME  
11    OTHER PLACE TO HAVE IT ANALYZED AND DETERMINE  
12    WHETHER OR NOT SERGEANT ANDERSON'S DNA IS ON THIS  
13    SHANK?

14          A     WOULD IT HAVE BEEN POSSIBLE TO DO THAT?  
15    YES

16          Q     AND IN FACT YOU SENT IT TO SLED FOR  
17    ANALYSIS DID YOU NOT?

18          A     YES, I DID.

19                MR. DOBY: THANK YOU. THAT'S ALL I HAVE.

20                THE COURT: REDIRECT?

21                REDIRECT EXAMINATION BY MR. DOBY:

22          Q     THE PURPOSE OF SENDING IT TO SLED FOR  
23    ANALYSIS WAS NOT TO CHECK FOR DNA ON MR. ANDERSON,  
24    WAS IT?

25          A     NO, SIR, IT WAS NOT.

## INVESTIGATOR GREER-REDIRECT BY FATA

1 Q NOW THE STATEMENT IS WHAT IT IS, IS THAT  
2 CORRECT?

3 A YES, SIR.

4 Q HE SAYS, "IT WAS NOT SUPPOSED TO GO DOWN  
5 LIKE THAT. ANDERSON GOT TOO CLOSE."

6 A YES, SIR.

7 Q COULD MEAN HE GOT TOO CLOSE TO HIS CELL  
8 DOOR.

9 A YES, SIR.

10 Q COULD MEAN HE GOT TOO CLOSE TO THAT SHANK.

11 A YES, SIR.

12 Q COULD MEAN ANYTHING. BUT THOSE ARE  
13 PLAUSIBLE EXPLANATIONS FOR WHAT IT MEANS?

14 A YES, SIR.

15 MR. FATA: THAT'S IT.

16 THE COURT: RE CROSS.

17 RE CROSS EXAMINATION BY MR. DOBY:

18 Q YOU'RE SAYING IT WAS NOT SENT TO SLED FOR  
19 ANALYSIS---

20 MR. FATA: YOUR HONOR, CAN WE APPROACH?

21 Q ---WITH SERGEANT ANDERSON---

22 THE COURT: WAIT JUST A MINUTE, COME UP.

23 (WHEREUPON, THE ATTORNEYS APPROACH THE

24 BENCH AND CONFER WITH JUDGE.)

25 Q INVESTIGATOR, THIS SHANK COULD HAVE BEEN

## INVESTIGATOR GREER-RECROSS BY DOBY

1 SENT TO SLED FOR ANALYSIS TO DETERMINE WHETHER OR  
2 NOT SERGEANT ANDERSON'S DNA WAS ON THE SHANK.

3 A YES, SIR, IT COULD HAVE.

4 MR. DOBY: THANK YOU, THAT'S ALL I HAVE.

5 MR. FATA: ONE QUESTION, YOUR HONOR. MAY

6 I?

7 THE COURT: ALL RIGHT.

8 REDIRECT EXAMINATION BY MR. FATA:

9 Q DID SERGEANT ANDERSON SEE WHO STABBED HIM?

10 A YES, SIR, HE DID.

11 Q AND DID HE SEE WHAT HE WAS STABBED WITH?

12 A YES, SIR, HE DID.

13 Q AND WAS THIS WEAPON RECOVERED?

14 A YES, SIR, IT WAS.

15 Q THERE WAS NO NEED TO SEND IT FOR DNA

16 ANALYSIS, WAS IT?

17 A NO, SIR, HE TOLD ME.

18 MR. FATA: THAT'S IT.

19 THE COURT: MR. DOBY.

20 MR. DOBY: NO, SIR. THANK YOU, YOUR

21 HONOR.

22 THE COURT: YOU MAY STEP DOWN. COME UP,

23 PLEASE.

24 (WHEREUPON, THE ATTORNEYS APPROACH THE

25 BENCH AND CONFER WITH JUDGE OUT OF THE HEARING

## INVESTIGATOR GREER-REDIRECT BY FATA

1 OF THE JURY.)

2 THE COURT: MR. FATA, ANYTHING ELSE FROM  
3 THE STATE?

4 MR. FATA: NO, SIR, YOUR HONOR, THE STATE  
5 RESTS.

6 THE COURT: LADIES AND GENTLEMEN, YOU HAVE  
7 HEARD THE STATE ANNOUNCE THAT THEY HAVE RESTED  
8 THEIR CASE. THAT MEANS YOU HAVE HEARD ALL OF  
9 THE TESTIMONY YOU ARE GOING GOT HEAR FROM THE  
10 STATE'S STANDPOINT AT THIS TIME. AND I HAVE  
11 CERTAIN MATTERS THAT I HAVE TO DO ON THE RECORD  
12 OUTSIDE OF YOUR PRESENCE AT THIS TIME. BUT IT  
13 IS ALSO THE LUNCH HOUR. SO WE ARE GOING TO  
14 RECESS AT THIS TIME FOR LUNCH. I AM GOING TO  
15 SEND YOU TO GET YOUR LUNCH. AND LET YOU BE --  
16 TAKE CARE OF ALL THAT. AND BE BACK IN THE JURY  
17 ROOM AT 2:30.

18 WE HAVE GOT SOME OTHER THINGS THAT WE NEED  
19 TO DO. AND WE'LL TAKE CARE OF THOSE. BUT I AM  
20 GOING TO EXCUSE YOU AT THIS TIME. ALLOW YOU TO  
21 GO GET YOUR LUNCH AND BE BACK IN THE JURY ROOM  
22 AT 2:30. I WILL TELL YOU AGAIN, AS I HAVE  
23 TOLD YOU ALL ALONG, IT WOULD BE IMPROPER FOR  
24 YOU TO DISCUSS THIS CASE WITH ANYONE DURING THE  
25 LUNCH RECESS. IT WOULD BE IMPROPER FOR ANYONE

1 TO DISCUSS IT WITH YOU, AND IT WOULD IMPROPER  
2 FOR YOU TO BEGIN ANY DISCUSSION OF THE CASE  
3 AMONG YOURSELVES. BUT IF YOU WOULD JUST FORGET  
4 ABOUT THIS CASE FOR ABOUT HOUR AND A HALF. GO  
5 GET YOUR LUNCH, AND BE BACK IN THE JURY ROOM AT  
6 2:30. AND WE WILL BE READY GO FORWARD AT THAT  
7 TIME. THANK YOU, YOU MAY GO WITH THE BAILIFF.

8 (WHEREUPON, AT ONE O'CLOCK THE JURY IS  
9 DISMISSED FOR LUNCH.)

10 (WHEREUPON, THE FOLLOWING TAKES PLACE  
11 OUTSIDE THE PRESENCE OF THE JURY.)

12 THE COURT: MR. DOBY, ANY MOTIONS ON  
13 BEHALF OF THE DEFENDANT?

14 MR. DOBY: YOUR HONOR, I WOULD ASK FOR A  
15 DIRECTED VERDICT. AND GIVEN THE EVIDENCE IN  
16 THE LIGHT MOST FAVORABLE TO THE STATE, THE  
17 STATE HAS FAILED TO CARRY ITS BURDEN OF PROOF  
18 IN THIS MATTER. AND WE WOULD ASK FOR A  
19 DIRECTED VERDICT OF NOT GUILTY.

20 THE COURT: RULE 19 OF THE SOUTH CAROLINA  
21 RULES OF CRIMINAL PROCEDURE PROVIDES THAT ON  
22 MOTION OF THE DEFENDANT THE COURT SHALL DIRECT  
23 A VERDICT IN DEFENDANT'S FAVOR ON ANY DEFENSE  
24 CHARGED IN THE INDICTMENT AFTER THE EVIDENCE ON  
25 EITHER SIDE IS CLOSED IF THERE IS A FAILURE OF

1           COMPETENT EVIDENCE.  AND AS USED IN THAT RULE  
2           COMPETENT MEANS ADMISSIBLE.

3           IT IS A FAILURE OF COMPETENT EVIDENCE  
4           TENDING TO PROVE THE CHARGE IN THE INDICTMENT.  
5           IN RULING ON THE MOTION, THE TRIAL JUDGE IS TO  
6           CONSIDER ONLY THE EXISTENCE OR NONEXISTENCE OF  
7           THE EVIDENCE AND NOT ITS WEIGHT.  THERE IS  
8           EVIDENCE IN THE RECORD THAT THERE WAS AN  
9           ASSAULT.  ALL THE ELEMENTS ARE MET.  AND ALSO  
10          EVIDENCE IN THE RECORD THAT THERE WAS AN  
11          ASSAULT UPON A CORRECTIONAL OFFICER.  IT IS FOR  
12          THE JURY TO DETERMINE THE WEIGHT TO BE GIVEN TO  
13          THAT EVIDENCE AND TESTIMONY.  AND THEREFORE THE  
14          COURT WOULD RESPECTFULLY DENY THE MOTION FOR A  
15          DIRECTED VERDICT.

16          ALL RIGHT, MR. DOBY, I WANTED TO GO AHEAD  
17          NOW, AND I WON'T REQUIRE AN ANSWER AT THIS  
18          TIME.  BUT I AM GOING TO GO AHEAD AND ADVISE  
19          THE DEFENDANT OF THIS 5TH AMENDMENT RIGHTS.  
20          GIVE HIM A CHANCE TO TALK TO YOU OVER THE LUNCH  
21          RECESS AS TO WHETHER OR NOT HE WISHES TO  
22          TESTIFY.  SO MR. BLACK, IF YOU WILL STAND WHERE  
23          YOU ARE.

24          MR. BLACK, YOU MAY BE CALLED AS A WITNESS  
25          TO TESTIFY IN YOUR OWN BEHALF.  I NOW ADVISE

1 YOU THAT YOU HAVE THE RIGHT TO REVOKE THE  
2 PROTECTIONS GIVEN TO YOU BY THE CONSTITUTION OF  
3 THE UNITED STATES AND A SIMILAR COUNTERPART  
4 PROVISION OF THE CONSTITUTION OF THE STATE OF  
5 SOUTH CAROLINA.

6 THE 5TH AMENDMENT TO THE CONSTITUTION OF  
7 THE UNITED STATES PROVIDES IN PART THAT NO  
8 PERSON SHALL BE COMPELLED IN ANY CRIMINAL CASE  
9 TO BE A WITNESS AGAINST HIMSELF. THIS  
10 PROVISION OF CONSTITUTIONAL LAW MEANS THAT YOU  
11 CANNOT BE COMPELLED OR REQUIRED TO TESTIFY IN  
12 THIS CASE. THIS IS A RIGHT OF PRIVILEGE WHICH  
13 THE LAW EXTENDS TO YOU. IT IS A PERSONAL  
14 PRIVILEGE AND NO ONE CAN WAIVE THIS RIGHT  
15 EXCEPT YOU.

16 YOU HAVE A RIGHT NOT TO TESTIFY, BUT YOU  
17 ALSO HAVE A RIGHT TO TESTIFY. THE COURT WILL  
18 GRANT YOU THE RIGHT TO CONSULT WITH YOUR  
19 LAWYER BEFORE YOU MAKE A DECISION. IF YOU  
20 ELECT NOT TO TESTIFY, YOUR FAILURE TO TESTIFY  
21 CANNOT BE USED BY THE STATE AS AN INFERENCE OF  
22 GUILT. AND YOUR FAILURE TO TESTIFY CANNOT BE  
23 CONSIDERED BY THE JURY IN ITS DELIBERATIONS.

24 IF YOU ELECT TO TESTIFY AND WAIVE THE  
25 PRIVILEGES EXTENDED TO YOU BY THE CONSTITUTION

1 OF THE UNITED STATES, I ADVISE YOU THAT YOU  
2 WOULD THEN ASSUME THE ROLE OF A WITNESS IN THIS  
3 CASE, AND YOU WOULD WAIVE OR GIVE UP YOUR  
4 CONSTITUTIONAL PRIVILEGE AGAINST SELF  
5 INCRIMINATION. THIS MEANS THAT IF YOU  
6 VOLUNTARILY TAKE THE STAND AND TESTIFY, THAT  
7 YOU WILL THEN SUBJECT YOURSELF TO THE SAME  
8 RULES THAT GOVERN OTHER WITNESSES, AND YOU MAY  
9 BE EXAMINED AND CROSS EXAMINED ON ANY RELEVANT  
10 ISSUE IN THIS CASE. AND YOU MAY BE IMPEACHED  
11 TO THE SAME EXTENT AS ANY OTHER WITNESS. ALL  
12 OF WHICH IS SUBJECT TO THE RULES OF LAW, AND  
13 THE RULES OF EVIDENCE.

14 I WOULD FURTHER ADVISE YOU THAT IF YOU  
15 ELECT TO TAKE THE WITNESS STAND AND TESTIFY,  
16 THAT THIS DECISION ON YOUR PART MUST BE MADE  
17 FREELY, VOLUNTARILY, INTELLIGENTLY AND WITH  
18 KNOWLEDGE OF THE PROTECTIONS GIVEN TO YOU BY  
19 THE CONSTITUTION AND WITH KNOWLEDGE OF THE  
20 CONSEQUENCES OF YOUR ELECTION TO TESTIFY.  
21 HAVE YOU UNDERSTOOD WHAT I HAVE EXPLAINED TO  
22 YOU?

23 THE DEFENDANT: YES, SIR.

24 THE COURT: AND DO YOU HAVE ANY QUESTIONS  
25 YOU WISH TO ASK ME ABOUT WHAT I HAVE EXPLAINED

1 TO YOU?

2 THE DEFENDANT: NO, SIR.

3 THE COURT: I WILL ALLOW YOU OVER THE  
4 LUNCH RECESS TO DISCUSS THE MATTER WITH YOUR  
5 LAWYER AND AS TO WHETHER YOU SHOULD OR SHOULD  
6 NOT TESTIFY. AND WE WILL GET AN ANSWER FROM  
7 YOU AFTER WE HAVE RECONVENED AFTER LUNCH.  
8 THANK YOU, YOU MAY BE SEATED.

9 (RIGHTS FORM, REPORT, PHOTO, SHANK, VIDEO,  
10 PREMARKED STATE'S EXHIBITS NOS. 1, 2, 3, 4, 5,  
11 INTO EVIDENCE.)

12 THE COURT: MR. DOBY, I THINK IT WOULD BE  
13 APPROPRIATE TO HAVE THE FIRST THREE OF THOSE  
14 WITNESSES HERE AT 2:30.

15 MR. DOBY: YES, SIR, YOUR HONOR. AND  
16 WE'LL GO FROM THERE.

17 MR. FATA: YOUR HONOR, I HAVE AN OBJECTION  
18 TO RELEVANCY. AND THERE IS NO VID -- YOU SAW  
19 THE VIDEO OF THE INMATES AROUND. THEY'RE ALL  
20 LOCKED IN THEIR CELL. THEY CAN'T SEE -- THE  
21 ONLY ONES THAT WOULD BE RELEVANT WOULD BE  
22 BYNUM.

23 THE COURT: I CAN'T RULE ON IT UNTIL I  
24 KNOW WHAT IS GOING TO BE PRESENTED. ALL I CAN  
25 ALLOW HIM TO CALL WHATEVER WITNESSES, AND THEN

1 THE OBJECTION CAN BE MADE AT THE TIME THE  
2 TESTIMONY IS PRESENTED. AND WE'LL SEE AT THAT  
3 TIME. THAT'S ALL. I CAN'T GIVE AN  
4 ANTICIPATORY RULING WHEN I DON'T KNOW WHAT THE  
5 PROFFERED TESTIMONY IS. SO WE'LL JUST HAVE TO  
6 WAIT AND SEE. WE'LL BE IN RECESS UNTIL  
7 2:00 O'CLOCK. WE'LL BE IN RECESS UNTIL 2:30 ON  
8 THIS CASE. THANK YOU.

9 MR. FATA: THANK YOU, YOUR HONOR.

10 (WHEREUPON, THE FOLLOWING TAKES PLACE  
11 OUTSIDE THE PRESENCE OF THE JURY.)

12 THE COURT: THIS IS THE MATTER OF THE  
13 STATE VERSUS OF TERRANCE BLACK. MR. BLACK IS  
14 PRESENT IN THE COURTROOM WITH HIS ATTORNEY.  
15 THE STATE IS PRESENT WITH MR. FATA. MR. DOBY,  
16 IS IT MR. BLACK'S POSITION TO DISCUSS OR TALK  
17 WITH THE COURT ABOUT WHETHER HE WISHES TO  
18 TESTIFY OR NOT TESTIFY IN THIS MATTER?

19 MR. DOBY: HE IS, YOUR HONOR.

20 THE COURT: MR. BLACK, COULD YOU STAND  
21 FOR JUST A MOMENT PLEASE? BEFORE WE HAD LUNCH,  
22 BEFORE WE BROKE FOR LUNCH, I TALKED TO YOU  
23 ABOUT YOUR 5TH AMENDMENT RIGHT OR YOUR RIGHT TO  
24 REMAIN SILENT. HAVE YOU HAD A CHANCE TO  
25 DISCUSS THE MATTER WITH YOUR ATTORNEY OVER THE

1 LUNCH RECESS?

2 THE DEFENDANT: YES, SIR.

3 THE COURT: HAVE YOU UNDERSTOOD YOUR TALKS  
4 WITH YOUR LAWYER?

5 THE DEFENDANT: YES, SIR.

6 THE COURT: HAVE YOU UNDERSTOOD YOUR TALKS  
7 WITH ME OR WHAT I TOLD YOU ABOUT YOUR 5TH  
8 AMENDMENT RIGHTS?

9 THE DEFENDANT: YES, SIR.

10 THE COURT: DO YOU HAVE ANY QUESTIONS  
11 EITHER OF MR. DOBY OR ME REGARDING YOUR RIGHTS  
12 TO REMAIN SILENT?

13 THE DEFENDANT: YES, SIR.

14 THE COURT: HAVE YOU MADE A DECISION AS TO  
15 WHETHER YOU DO OR DO NOT WISH TO TESTIFY IN  
16 THIS CASE?

17 THE DEFENDANT: YES, SIR.

18 THE COURT: IS THAT DECISION ON YOUR PART  
19 FREELY AND VOLUNTARILY MADE?

20 THE DEFENDANT: YES, SIR.

21 THE COURT: AND WHAT IS THAT DECISION?

22 THE DEFENDANT: NO, SIR.

23 THE COURT: YOU DO NOT WISH TO TESTIFY?

24 THE DEFENDANT: NO.

25 THE COURT: THE COURT WILL MAKE A FINDING

1 THEN THAT THE DEFENDANT HAVING BEEN ADVISED OF  
2 HIS CONSTITUTIONAL RIGHTS IN COURT AND HIS  
3 ATTORNEY HAS MADE A FREELY, VOLUNTARY,  
4 INTELLIGENT AND KNOWING DECISION TO EXERCISE  
5 THAT PRIVILEGE AND NOT TESTIFY IN THIS CASE.  
6 AND THE COURT WILL HONOR THAT DECISION. THANK  
7 YOU, SIR. YOU MAY BE SEATED.

8 MR. DOBY, WILL THE DEFENSE PRESENT ANY  
9 OTHER TESTIMONY IN THIS MATTER?

10 MR. DOBY: YES, SIR, YOUR HONOR.

11 THE COURT: ARE YOU READY TO GO FORWARD?

12 MR. DOBY: YES, SIR.

13 THE COURT: ALL RIGHT BRING THE JURY IN  
14 PLEASE.

15 (WHEREUPON, THE FOLLOWING TAKES PLACE  
16 WITHIN THE PRESENCE OF THE JURY.)

17 THE COURT: THANK YOU VERY MUCH, LADIES  
18 AND GENTLEMEN. AND WE ARE READY TO RESUME THE  
19 CASE IN WHICH YOU ARE HEARING IN THE MATTER OF  
20 STATE VERSUS TERRANCE BLACK. BEFORE LUNCH YOU  
21 HAVE HEARD THE STATE RESTED IN THIS MATTER.  
22 AND NOW THE DEFENSE WILL HAVE THE RIGHT TO  
23 PRESENT ANY EVIDENCE AND TESTIMONY THEY WISH TO  
24 PRESENT. MR. DOBY.

25 MR. DOBY: WE WOULD CALL MR. BROWN.

1 THE COURT: ALL RIGHT.

2 BERNARD BROWN, BEING

3 FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

4 THE CLERK: STATE YOUR NAME FOR THE

5 RECORD.

6 A BERNARD BROWN.

7 DIRECT EXAMINATION BY MR. DOBY:

8 Q MR. BROWN, YOU'RE OBVIOUSLY INCARCERATED

9 AT LEE CORRECTIONAL INSTITUTE NOW?

10 A YEAH.

11 Q AND WERE YOU INCARCERATED THERE ON APRIL

12 11TH, 2008?

13 A YES.

14 Q OBVIOUSLY BEING INCARCERATED YOU HAVE BEEN

15 CONVICTED OF WHAT WE WOULD ALSO CONSIDER SOME

16 SERIOUS OFFENSE, IS THAT CORRECT?

17 A A CRIME.

18 Q OKAY. DO YOU KNOW MR. BLACK, TERRANCE

19 BLACK?

20 A YES.

21 Q WERE YOU IN SMU ON APRIL 11TH 2008, IS

22 THAT WHERE YOU WERE HOUSED?

23 A YES.

24 Q DO YOU REMEMBER WHAT CELL NUMBER YOU WERE

25 IN?

## BERNARD BROWN-DIRECT BY DOBY

1 A SIX.

2 Q EIGHT?

3 A SIX.

4 Q AND DO YOU REMEMBER WHICH ONE MR. BLACK  
5 WAS IN?

6 A SEVEN.

7 Q AND OBVIOUSLY GOING DOWN THE HALL, EIGHT  
8 WOULD BE RIGHT NEXT TO SEVEN?

9 A YES.

10 Q MR. BLACK HAS BEEN ACCUSED OF AN ASSAULT  
11 ON A CORRECTIONAL OFFICER; PARTICULARLY, SERGEANT  
12 ANDERSON ON APRIL 11TH, 2008. DID YOU HAVE AN  
13 OPPORTUNITY TO SEE MR. BLACK'S CELL ON THAT  
14 PARTICULAR DAY?

15 A I AIN'T SEE NOTHING. I DON'T KNOW  
16 NOTHING.

17 Q YOU DIDN'T SEE ANYTHING?

18 A NO.

19 Q DID YOU SEE ANYBODY GET STABBED?

20 A NO. I DON'T KNOW WHY I'M HERE.

21 Q WHAT'S THAT?

22 A I DON'T KNOW WHY I'M HERE. I DON'T KNOW  
23 NOTHING. I DIDN'T SEE NOTHING.

24 Q OKAY. YOU DON'T KNOW ANYTHING ABOUT IT.

25 A NOTHING.

## BERNARD BROWN-DIRECT BY DOBY

- 1 MR. DOBY: THANK YOU. THAT'S ALL I HAVE,  
2 YOUR HONOR.
- 3 MR. FATA: NO OTHER QUESTIONS, YOUR HONOR.
- 4 THE COURT: THANK YOU, WITNESS IS EXCUSED.
- 5 MR. DOBY: MR. YOUNGER IS NEXT, YOUR  
6 HONOR.
- 7 THE COURT: WHAT'S HIS NAME?
- 8 MR. DOBY: YOUNGER, IF I'M PRONOUNCING HIS  
9 NAME CORRECTLY.
- 10 MR. FATA: YOUR HONOR, I BELIEVE IT'S  
11 YOUNGRIN.
- 12 JEFFREY YOUNGRIN,  
13 BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:
- 14 THE CLERK: STATE YOUR FULL NAME FOR THE  
15 RECORD.
- 16 A JEFFREY BRYAN YOUNGRIN.
- 17 Q MR. YOUNGRIN, YOU ARE INCARCERATED AT LEE  
18 CORRECTIONAL INSTITUTE?
- 19 A YES, SIR.
- 20 Q WERE YOU INCARCERATED THERE ON APRIL 11,  
21 2008?
- 22 A YES.
- 23 Q WERE YOU ON SMU THEN?
- 24 A YES.
- 25 Q WHAT ROOM NUMBER WERE YOU IN?

JEFFREY YOUNGRIN-DIRECT BY DOBY

- 1 A YES.
- 2 Q WHAT ROOM NUMBER WERE YOU IN?
- 3 A SEVEN. NO, SIX.
- 4 Q SIX.
- 5 A YES.
- 6 Q DO YOU KNOW WHICH ONE THAT MR. TERRANCE  
7 BLACK WAS IN?
- 8 A SEVEN.
- 9 Q DO YOU KNOW MR. BLACK?
- 10 A YES.
- 11 Q AND OBVIOUSLY 6 WOULD BE NEXT TO NUMBER 7?
- 12 A YES.
- 13 Q MR. BLACK HAS BEEN ACCUSED OF ASSAULT ON A  
14 CORRECTIONAL OFFICER ON APRIL 11TH 2008. DID YOU  
15 SEE ANYTHING THAT HAPPENED OR NOT HAPPEN ON APRIL  
16 11TH, 2008, IN REGARDS TO THAT?
- 17 A NAH, I DIDN'T SEE NOTHING.
- 18 MR. DOBY: THANK YOU. THAT'S ALL I HAVE  
19 OF THIS WITNESS, YOUR HONOR.
- 20 MR. FATA: QUESTIONS, YOUR HONOR.
- 21 THE COURT: THANK YOU. YOU MAY STEP DOWN.
- 22 MR. DOBY: MR. SUMTER.
- 23 CARLOS SUMTER, BEING FIRST  
24 DULY SWORN, TESTIFIED AS FOLLOWS:  
25 THE CLERK: STATE YOUR FULL NAME FOR THE

JEFFREY YOUNGRIN-DIRECT BY DOBY

1 RECORD.

2 A CARLOS A. SUMTER.

3 DIRECT EXAMINATION BY MR. DOBY:

4 Q MR. SUMTER, ARE YOU INCARCERATED AT LEE  
5 CORRECTION INSTITUTE?

6 A YES, SIR.

7 Q YOU OBVIOUSLY HAVE BEEN CONVICTED OF WHAT  
8 WE WOULD CONSIDER TO BE SERIOUS CRIME BEING  
9 INCARCERATED.

10 A YES.

11 Q AND WERE YOU INCARCERATED THERE ON APRIL  
12 11TH, 2008?

13 A AS OF RIGHT NOW I WOULD LIKE TO PLEA TO MY  
14 5TH AMENDMENT RIGHTS.

15 Q YOU ARE NOT GOING TO ANSWER ANY OF MY  
16 QUESTIONS?

17 A NO, SIR.

18 MR. DOBY: THANK YOU. THAT'S ALL I HAVE  
19 OF THIS WITNESS.

20 THE COURT: MR. FATA.

21 MR. FATA: EXCUSE ME, YOUR HONOR. NO  
22 QUESTIONS.

23 THE COURT: THANK YOU, YOU MAY BE EXCUSED.  
24 COME UP, COUNSEL.

25 (WHEREUPON, THE ATTORNEYS APPROACH--THE

## CARLOS SUMTER-DIRECT BY DOBY

1 BENCH AND CONFER WITH JUDGE.)

2 MR. DOBY: JERRY BYNUM.

3 JERRY BYNUM, BEING FIRST  
4 DULY SWORN, TESTIFIED AS FOLLOWS:

5 THE CLERK: STATE YOUR FULL NAME FOR THE  
6 RECORD.

7 A JERRY BYNUM.

8 DIRECT EXAMINATION BY DOBY:

9 Q MR. BYNUM, YOU ARE INCARCERATED AT LEE  
10 CORRECTIONAL INSTITUTE, IS THAT RIGHT?

11 A YES.

12 Q WERE YOU INCARCERATED ON APRIL 11TH 2008,  
13 AT LCI?

14 A YES.

15 Q AND YOU OBVIOUSLY HAVE BEEN CONVICTED OF  
16 CRIMES WHERE YOU ARE SERVING TIME, IS THAT CORRECT?

17 A YES.

18 Q AND ON THAT APRIL 11TH OF 2008, WERE YOU  
19 ON SMU UNIT?

20 A YES.

21 Q AND WAS YOUR ROOMMATE TERRANCE BLACK?

22 A YES.

23 Q MR. BLACK, HAS BEEN ACCUSED OF A CRIME OF  
24 ASSAULT ON A CORRECTIONAL OFFICER ON APRIL 11TH OF  
25 2008. YOU WERE IN THE ROOM AT THE TIME THAT HE WAS

## JERRY BYNUM-DIRECT BY DOBY

1 ACCUSED OF THAT PARTICULAR CRIME, IS THAT CORRECT?

2 A YES.

3 Q DID MR. TERRANCE BLACK STAB SERGEANT  
4 ANDERSON?

5 A I WAS ASLEEP. I DON'T KNOW NOTHING.

6 Q YOU WERE ASLEEP?

7 A YES.

8 Q YOU DIDN'T SEE ANYTHING?

9 A I DIDN'T SEE NOTHING.

10 Q KNOW ANYTHING ABOUT THIS?

11 A NO.

12 MR. FATA: THANK YOU. THAT'S ALL I HAVE  
13 OF THIS WITNESS.

14 THE COURT: THANK YOU, SIR. YOU MAY BE  
15 EXCUSED. WOULD YOU LIKE TO HAVE ALL THE  
16 WITNESSES RELEASED, MR. DOBY?

17 MR. FATA: NO OBJECTION, YOUR HONOR.

18 THE COURT: THEY ALL WILL BE RELEASED.

19 THE COURT: MR. DOBY, YOU MAY PROCEED.

20 MR. DOBY: THAT'S THE DEFENSE CASE, YOUR  
21 HONOR.

22 THE COURT: ANYTHING IN REPLY?

23 MR. FATA: NOTHING IN REPLY, YOUR HONOR.

24 THE COURT: LADIES AND GENTLEMEN, THAT'S  
25 MEANS YOU HAVE NOW HEARD ALL OF THE TESTIMONY

1 SO ALL OF THE EVIDENCE IS IN. THERE ARE ONLY  
2 TWO THINGS THAT REMAIN TO BE DONE, THOSE ARE  
3 THE ARGUMENTS OF COUNSEL AND INSTRUCTIONS ON  
4 THE LAW BY THE COURT. BUT BEFORE WE GO IN TO  
5 THOSE MATTERS, THERE ARE CERTAIN MATTERS OF LAW  
6 WHICH I NEED TO TAKE UP WITH THE ATTORNEYS, AND  
7 I HAVE TO DO THAT ON RECORD AND OUTSIDE OF YOUR  
8 PRESENCE. BUT AS SOON AS WE HAVE TAKEN CARE OF  
9 THOSE MATTERS, WE WILL GO FORWARD WITH A  
10 ARGUMENTS OF COUNSEL AND THE INSTRUCTIONS ON  
11 THE LAW BY THE COURT.

12 SO I AM GOING TO SEND YOU TO YOUR JURY  
13 ROOM BUT I AM GOING TO ASK YOU NOT TO BEGIN  
14 YOUR DELIBERATIONS JUST YET. BUT I AM GOING  
15 TO ASK YOU TO DO ONE THING WHILE YOU'RE THERE  
16 IN THE JURY ROOM. SOMETIMES I APPOINT THE  
17 FOREPERSON OF THE JURY AND SOMETIMES I LET THE  
18 JURY SELECT THEIR OWN FOREPERSON. BUT IN THIS  
19 CASE, I AM GOING TO LET YOU SELECT THE  
20 FOREPERSON OF THE JURY. SO WHILE YOU ARE IN  
21 THERE, SELECT ONE OF THE 12 MEMBERS OF THE JURY  
22 TO BE THE FOREPERSON OF THIS JURY. NOT THE  
23 ALTERNATE, HE CAN'T SERVE AS THE FOREPERSON,  
24 BUT ANY OF THE REST OF YOU CAN. WHOEVER YOU  
25 CHOOSE TO BE YOUR FOREPERSON. AND NOTIFY ME OF

1 THE FOREPERSON WHEN YOU COME BACK IN.

2 WITH THAT, I AM GOING TO ASK YOU TO GO TO  
3 YOUR JURY ROOM. DON'T BEGIN YOUR DELIBERATIONS  
4 JUST YET. I'LL SEND FOR YOU AS SOON AS WE TAKE  
5 CARE OF THESE MATTERS OF LAW. THANK YOU.

6 (WHEREUPON, THE FOLLOWING TAKES PLACE  
7 OUTSIDE THE PRESENCE OF THE JURY.)

8 THE COURT: MOTIONS ON BEHALF OF THE  
9 DEFENDANT, MR. DOBY?

10 MR. DOBY: I WOULD RENEW MY EARLIER  
11 MOTIONS, YOUR HONOR.

12 THE COURT: AGAIN UNDER RULE 19, THE JOB  
13 OF THE COURT IS TO DETERMINE THE EXISTENCE OF  
14 THE EVIDENCE NOT THE WEIGHT TO BE GIVEN TO IT.  
15 THERE IS EVIDENCE IN THE RECORD BY WHICH THE  
16 JURY COULD CONCLUDE THAT THIS OFFENSE WAS  
17 COMMITTED. AND IT'S UP TO THE JURY TO EVALUATE  
18 THE CREDIBILITY OR BELIEVABILITY OF THE  
19 TESTIMONY. AND SO THE COURT WOULD THEREFORE  
20 RESPECTFULLY DENY THE MOTION FOR A DIRECTED  
21 VERDICT. ANY SPECIAL REQUEST TO CHARGE,  
22 MR. FATA?

23 MR. FATA: NO, SIR. YOUR NORMAL CHARGE,  
24 I ASSUME, YOU'RE GOING TO CHARGE THE STATUTE.

25 THE COURT: YES, SIR. BUT NOT THE

1 PENALTY.

2 MR. FATA: NOT THE PENALTY.

3 THE COURT: RIGHT. I WILL CHARGE THE  
4 STATUTE. WHAT I WILL CHARGE AND I'VE GOT TO  
5 LOOK AT IT A LITTLE BIT. BUT I THINK THAT BY  
6 OUT OF NECESSITY, I AM GOING HAVE TO GO BACK  
7 AND CHARGE WHAT A LITTLE BIT OF WHAT THE NORMAL  
8 LAW WILL BE ON AN ASSAULT. SO THEY WILL KNOW  
9 WHAT AN ASSAULT IS. AND I'LL PROBABLY DEFINE  
10 IT IN TERMS OF ASSAULT AND BATTERY, EVEN THOUGH  
11 NO BATTERY IS THE REQUIRED UNDER THE STATUTE.

12 MR. FATA: RIGHT.

13 THE COURT: AND I WILL SO EXPLAIN IT TO  
14 THE JURY. BUT I WILL EXPLAIN ASSAULT AND  
15 BATTERY. AND THEN THE FURTHER ELEMENT IN THIS  
16 CASE BEING THAT THE INDIVIDUAL WILL BE A  
17 CORRECTIONAL OFFICER. BUT THERE ARE NO  
18 BATTERIES NECESSARY. SO REALLY THE ELEMENTS AS  
19 I SEE THEM IN THIS CHARGE ARE ASSAULT ON A  
20 CORRECTION'S OFFICER.

21 MR. FATA: AN INMATE. IT'S GOT TO BE  
22 INMATE.

23 THE COURT: THAT AN INMATE. RIGHT. THOSE  
24 THREE. ANYTHING, MR. DOBY, IN REGARD -- OF  
25 COURSE, I WILL ALSO CHARGE THE RIGHT OF THE

1 DEFENDANT NOT TO TESTIFY ON HIS OWN BEHALF.  
2 REASONABLE DOUBT WILL BE INCLUDED IN MY GENERAL  
3 CHARGE. AS WILL BE PRESUMPTION OF INNOCENCE  
4 AND BURDEN OF PROOF. AND THEN THE ACTUAL  
5 OFFENSE. DO YOU HAVE ANYTHING ELSE THAT YOU  
6 WOULD LIKE TO REQUEST?

7 MR. DOBY: NO, SIR, YOUR HONOR.

8 THE COURT: ALL RIGHT, MR. DOBY, ARE YOU  
9 GOING TO REQUIRE THE STATE TO OPEN ON THE LAW  
10 OR NOT?

11 MR. DOBY: NO, SIR, YOUR HONOR.

12 THE COURT: NOW HOW MUCH TIME DO YOU NEED?

13 MR. DOBY: JUDGE, 10/15 MINUTES.

14 THE COURT: MR. FATA?

15 MR. FATA: ABOUT THE SAME. I ASSUME I GET  
16 TO CLOSING ARGUMENTS.

17 THE COURT: YOU GET CLOSING ARGUMENTS.

18 THAT'S RIGHT. THAT'S WHY I ASKED HIM FIRST.

19 ALL RIGHT, WE'LL TAKE ABOUT, Y'ALL GET YOUR

20 THOUGHTS TOGETHER. WE'LL TAKE ABOUT A

21 10-MINUTE RECESS. AND BE READY TO START BACK

22 WITH ARGUMENTS ABOUT 5 AFTER THREE.

23 INCIDENTALLY, COUNSEL, HERE IS A VERDICT FORM

24 IF YOU WOULD LIKE TO LOOK AT IT. IT'S A VERY

25 SIMPLE VERDICT FORM. YOU'RE WELCOME TO COME UP

1 AND TOOK A LOOK AT IT.

2 (WHEREUPON, THE COURT TAKES A SHORT  
3 RECESS.)

4 THE COURT: WE ARE BACK ON THE RECORD WITH  
5 REGARD TO THE STATE VERSUS BLACK. MR. BLACK IS  
6 PRESENT WITH HIS COUNSEL, MR. DOBY. THE STATE  
7 IS REPRESENTED BY MR. FATA. ALL OF THE  
8 TESTIMONY HAS BEEN PRESENTED. AND MOTIONS  
9 WERE MADE. WE ARE NOW AT THAT STAGE OF THE  
10 TRIAL WHERE WE ARE PREPARED TO GO FORWARD WITH  
11 CLOSING ARGUMENTS AND INSTRUCTIONS. ANYTHING  
12 FROM THE STATE BEFORE WE BRING THE JURY IN,  
13 MR. FATA?

14 MR. FATA: NO, SIR.

15 THE COURT: MR. DOBY?

16 MR. DOBY: NO, SIR.

17 THE COURT: BRING THE JURY IN, PLEASE.

18 (WHEREUPON, THE FOLLOWING TAKES PLACE  
19 WITHIN THE PRESENCE OF THE JURY.)

20 THE COURT: THANK YOU VERY MUCH. AND WE  
21 ARE READY TO GO FORWARD. LET ME ASK YOU IF YOU  
22 HAVE SELECTED A FOREMAN. THAT'S YOU. GIVE ME  
23 YOUR NAME AGAIN.

24 MR. FLOYD: CHAD FLOYD.

25 THE COURT: MR. FLOYD HAS BEEN SELECTED AS

1 THE FOREMAN OF THE JURY. AND, MR. FOREMAN,  
2 AND, LADIES AND GENTLEMEN, WE ARE NOW READY TO  
3 GO FORWARD IN THIS MATTER. AND I TOLD YOU  
4 BEFORE YOU WENT OUT, THERE ARE ONLY TWO THINGS  
5 THAT REMAIN TO BE DONE. THOSE ARE THE  
6 INSTRUCTIONS OF LAW. FIRST OF ALL, THE  
7 ARGUMENTS OF COUNSEL AND THEN THE INSTRUCTIONS  
8 ON THE LAW BY THE COURT.

9 THE -- I'LL TELL YOU NOW AS I DID THE  
10 FIRST OF THIS CASE, THAT THE ARGUMENTS OF  
11 COUNSEL ARE NOT EVIDENCE IN THIS CASE. THEY  
12 ARE SIMPLY THE LAWYERS VIEWS OF WHAT THEY THINK  
13 THE EVIDENCE SHOWS. YOU WILL DECIDE THIS CASE  
14 BASED UPON THE EVIDENCE THAT YOU HEARD FROM  
15 THIS WITNESS STAND AND FROM ANY EXHIBITS THAT  
16 HAVE BEEN INTRODUCED IN TO EVIDENCE. BUT THE  
17 LAWYERS DO HAVE THE RIGHT, NOT ONLY THE RIGHT  
18 BUT THE DUTY ON BEHALF OF THEIR CLIENTS TO  
19 ADDRESS YOU NOW, AND GIVE YOU THEIR VIEWS OF  
20 WHAT THEY THINK THE EVIDENCE SHOWS.

21 WHEN THEY HAVE CONCLUDED THAT, I WILL THEN  
22 INSTRUCT YOU ON THE LAW OF SOUTH CAROLINA AND  
23 YOU WILL BE ALLOWED TO RETIRE TO YOUR JURY ROOM  
24 AND DELIBERATE YOUR VERDICT. YOU WILL HEAR  
25 FIRST FROM MR. DOBY ON BEHALF OF THE DEFENDANT.

1 AND FROM MR. FATA ON BEHALF OF THE STATE. MR.  
2 DOBY.

3 MR. DOBY: MAY IT PLEASE THE COURT.

4 THE COURT: YES, SIR.

5 MR. DOBY: LADIES AND GENTLEMEN, THIS  
6 WASN'T A LONG TRIAL. WE REALLY HAVEN'T BEEN  
7 GOING VERY LONG TODAY. THAT DOES DIMINISH THE  
8 IMPORTANCE OF NOT ONLY FOR THE STATE, BUT IT  
9 DOESN'T DIMINISH THE IMPORTANCE OF TERRANCE  
10 BLACK. BECAUSE AS I EXPLAINED TO YOU FROM THE  
11 START, YOU ARE IN THE JURY ROOM, YOU ARE THE  
12 JURY IN THIS PANEL. CHOSEN BY BOTH SIDES TO BE  
13 FAIR AND IMPARTIAL AND TO MAKE A DECISION IN  
14 THIS CASE ABOUT WHETHER OR NOT TERRANCE BLACK  
15 IS THIS GUILTY BEYOND A REASONABLE DOUBT.

16 LADIES AND GENTLEMEN, YOU ARE GOING TO GO  
17 BACK THERE AND YOU ARE GOING TO TALK ABOUT THE  
18 EVIDENCE IN JUST A LITTLE WHILE. IT WON'T TAKE  
19 VERY LONG FOR THIS PROCESS TO REACH A  
20 CONCLUSION AND THEN YOUR JOB REALLY BEGINS. I  
21 BELIEVE THAT THE REAL QUESTION IN THIS CASE CAN  
22 BE SUMMED UP IN A COUPLE OF THINGS. IS THERE  
23 REASONABLE DOUBT IN THIS MATTER? AND THE JUDGE  
24 IS GOING TO TELL YOU WHAT REASONABLE DOUBT IS.  
25 I THINK REASONABLE DOUBT CAN BEST BE SUMMED UP

1 AS A REASON TO HESITATE. A REASON TO THINK  
2 WELL, YOU KNOW, MAYBE THE STATE HASN'T PROVEN  
3 THEIR CASE BEYOND A REASONABLE DOUBT. AND  
4 THERE ARE A COUPLE OF THINGS THAT I THINK THAT  
5 YOU OUGHT TO KEEP IN MIND AND QUESTION AS TO  
6 WHETHER OR NOT RAISES REASONABLE DOUBT.

7 FIRST OF ALL, THE WOUND ITSELF. THE  
8 OFFICER TESTIFIED, THE NURSE TESTIFIED, THIS  
9 WAS JUST A SMALL WHAT I DESCRIBED WAS A  
10 PINPRICK. LOOK AT THIS SHANK. YOU'RE GOING  
11 TO HAVE THIS SHANK. IS THAT SOMETHING THAT IS  
12 GOING TO BE A PINPRICK? IT LOOKS LIKE A PRETTY  
13 SERIOUS WEAPON. IS THAT GOING TO CREATE A  
14 PINPRICK? SECONDLY, WHY DIDN'T THE STATE HAVE  
15 THIS SHANK ANALYZED FOR DNA EVIDENCE? BECAUSE  
16 LADIES AND GENTLEMEN, QUITE HONESTLY THE STATE  
17 WOULD HAVE HAD A BETTER CASE THAN THEY HAD IN  
18 FACT DONE; IF THEY HAD SOMEONE FROM SLED COME  
19 AND TELL YOU THAT SERGEANT ANDERSON'S BLOOD,  
20 SKIN, HAIR SOMETHING WAS ON THIS SHANK TO PROVE  
21 THAT IT WAS THE ONE THAT STABBED SERGEANT  
22 ANDERSON.

23 WHY HASN'T THE STATE DONE THAT? THAT'S  
24 WHAT YOU HAVE A RIGHT TO ASK. YOU HAVE A  
25 RIGHT, YOU HAVE A DUTY TO DEMAND OF THE STATE

1 TO MEET THEIR BURDEN, WHICH IS GUILTY BEYOND A  
2 REASONABLE DOUBT. THE REASON THAT'S IMPORTANT  
3 IS BECAUSE, I THINK, THAT AT LEAST ONE OF THE  
4 OFFICERS, PROBABLY ALL OF THEM CAN TELL YOU,  
5 THESE SHANKS ARE PRETTY COMMON. THE LIEUTENANT  
6 TOLD YOU THESE ARE COMMON ITEMS. I WONDER WHY  
7 THEY DIDN'T COME UP HERE AND TESTIFY AS TO  
8 WHETHER OR NOT THERE WAS A SHANK FOUND ON THE  
9 ROOMMATE, MR. JERRY BYNUM.

10 MR. BYNUM OBVIOUSLY CALLED UP HERE TO  
11 TESTIFY AS TO WHAT HE SAW OR KNEW. AND HE  
12 SAYS, I AM ASLEEP. WELL SERGEANT ANDERSON SAID  
13 HE WASN'T ASLEEP. SERGEANT ANDERSON SAYS HE  
14 WAS IN HIS CELL. YOU RECKON JERRY BYNUM HAS  
15 GOT SOMETHING TO HIDE. BECAUSE THERE WERE ONLY  
16 TWO INMATES IN THAT PARTICULAR CELL. AND IF IN  
17 FACT YOU BELIEVE THAT SERGEANT ANDERSON WAS IN  
18 FACT ASSAULTED AND STABBED, THE OTHER PART, OR  
19 ANOTHER QUESTION THAT WOULD RAISE REASONABLE  
20 DOUBT IS WHETHER OR NOT JERRY BYNUM STABBED  
21 THIS OFFICER. BECAUSE AT THE END OF THE DAY, I  
22 BELIEVE THAT TRULY THE MOST IMPORTANT TESTIMONY  
23 AND REALLY PROBABLY THE ONLY TESTIMONY THAT  
24 MATTERS IN THIS CASE WAS SERGEANT ANDERSON.

25 SERGEANT ANDERSON TOLD YOU ABOUT HIM

1 TRYING TO GET THIS FOOD FLAP OPEN. AND YOU SAW  
2 THE VIDEOTAPE. I THOUGHT IT WAS EXTREMELY  
3 INTERESTING WHEN THE FORCED CELL MOVEMENT TEAM  
4 WAS ATTEMPTING TO GET THIS FOOD FLAP OPEN. IF  
5 YOU LOOK THE OFFICER IS CONSUMED WITH GETTING  
6 THAT SHEET, THAT ITEM THAT BINDS UP THE FOOD  
7 FLAP OPEN. DO YOU THINK THAT PERSON WAS  
8 LOOKING IN THE CELL, LOOKING THROUGH THE FOOD  
9 FLAP AND CAN SEE WHAT WAS GOING ON IN THAT  
10 CELL? IT WOULD BE EXTREMELY DIFFICULT.

11 SERGEANT ANDERSON CAN'T LOOK THROUGH THAT  
12 GLASS, BE FIDDLING WITH THE FOOD FLAP, AND LOOK  
13 THROUGH THE FOOD FLAP, AND SEE WHO STABBED HIM.  
14 THAT'S WHAT THIS CASE IS REALLY ABOUT. THAT'S  
15 WHAT IT'S REALLY ABOUT. AND AT THE END OF THE  
16 DAY, LADIES AND GENTLEMEN, IF YOU CAN SAY,  
17 YEAH, THERE IS A REASONABLE DOUBT AS TO WHETHER  
18 OR NOT TERRANCE BLACK IS GUILTY IN THIS MATTER,  
19 THEN YOUR DUTY, YOUR OATH, AND YOUR OBLIGATION,  
20 IS TO PUT THAT THE STATE HAS NOT PROVEN ITS  
21 CASE, AND HE'S NOT GUILTY.

22 LET ME TELL YOU WHAT NOT GUILTY REALLY  
23 MEANS. NOT GUILTY DOES NOT MEAN THERE IS NOT  
24 THE QUESTION AS TO WHETHER OR NOT HE IS GUILTY.  
25 BECAUSE YOU CAN HAVE A QUESTION AS TO WHETHER

1 OR NOT HE'S GUILTY AND STILL FIND HIM NOT  
2 GUILTY BECAUSE THE STATE HASN'T PROVED BEYOND A  
3 REASONABLE DOUBT. IF YOU WERE TO SAY WELL IT'S  
4 A TOSS UP 50/50 WHETHER OR NOT HE'S GUILTY OR  
5 INNOCENT, THAT MEANS HE IS NOT GUILTY.  
6 BECAUSE THE BURDEN OF PROOF THAT THE STATE HAS  
7 TO HAVE IS EXTREMELY HIGH. IT'S THE HIGHEST  
8 BURDEN THAT WE HAVE IN THE LAW. IT'S THE  
9 HIGHEST BURDEN OF PROOF.

10 AND THE REASON FOR THAT IS, THAT SOMEONE  
11 THAT HAS BEEN ACCUSED OF A CRIME CAN SUFFER THE  
12 PENALTY THAT THE STATE IMPOSES IF YOU WERE TO  
13 FIND HIM GUILTY. THAT IS THE REASON THAT THE  
14 STATE HAS SUCH A HIGH BURDEN; IS TO MAKE SURE  
15 THAT WE SEND THE RIGHT PERSON FOR THIS  
16 PUNISHMENT. IF YOU HAVE THAT DOUBT, IF YOU  
17 DON'T BELIEVE THAT THE STATE HAS PROVEN ITS  
18 CASE, IF THERE ARE QUESTIONS, IF THERE ARE  
19 HOLES, IF YOU'RE JUST NOT SATISFIED BEYOND A  
20 REASONABLE DOUBT, THEN THE LAW WOULD REQUIRE  
21 YOU TO FIND MR. BLACK NOT GUILTY. THAT'S WHAT  
22 YOUR BURDEN IS, YOUR PROOF, THAT YOU CAN PUT  
23 THE STATE THROUGH.

24 NOW I AM NOT GOING TO HAVE ANOTHER  
25 OPPORTUNITY TO TALK TO YOU AGAIN. IT IS NOT

1 BEEN TREMENDOUSLY LONG TRIAL. BUT IT'S VERY  
2 IMPORTANT TO MR. BLACK.

3 AS WE INDICATED ON THE START OF THE CASE,  
4 I SIMPLY ASKED THAT YOU LISTEN TO THE EVIDENCE  
5 TO QUESTION. TO USE YOUR OWN SENSE OF  
6 QUESTIONING AND ABILITY TO DETERMINE WHETHER OR  
7 NOT THE STATE HAS PROVEN ITS CASE. I SIMPLY  
8 ASK YOU IF YOU BELIEVE THAT THE STATE HAS NOT,  
9 OR HAS NOT MET ITS BURDEN OF PROOF, FORGET  
10 MR. BLACK IS WEARING A JUMPSUIT AND HE IS IN  
11 SHACKLES, FORGET THAT. FIND HIM NOT GUILTY  
12 THAT IF THAT'S WHAT YOUR VERDICT IS. THANK  
13 YOU.

14 THE COURT: MR. FATA.

15 MR. FATA: THANK YOU, YOUR HONOR.

16 MR. FOREMAN AND LADIES AND GENTLEMEN, GOOD  
17 AFTERNOON. AND I WANT TO AGAIN, THANK YOU FOR  
18 YOUR ATTENTION. I THANK YOU FROM THE BEGINNING  
19 AND I THANK YOU NOW, BECAUSE YOU HAD TO SIT  
20 HERE AND NOT PARTICIPATE. EVEN THOUGH YOU WERE  
21 PARTICIPATING BY LISTENING AND PAYING ATTENTION  
22 AS YOU DID, BUT YOU REALLY JUST FELT LIKE  
23 PROBABLY THAT YOU DIDN'T HAVE A ROLE. NOW YOUR  
24 ROLE IS COMING UP. AND THE MOST IMPORTANT ROLE  
25 IN THIS COURTROOM TODAY WHEN YOU ARE GOING TO

1 REACH A VERDICT.

2 YOU ARE GOING TO TELL US WHAT HAPPENED ON  
3 APRIL 11TH OF 2008, OUT AT LEE CORRECTIONAL  
4 INSTITUTE. NOW REMEMBER I TALKED ABOUT COMMON  
5 SENSE IN THE BEGINNING. BUT EACH OF YOU HERE  
6 HAS A LICENSE HERE, AND YOU HAVE GOT YOUR EVERY  
7 DAY LIVES, YOU'VE GOT FAMILY, YOU'VE GOT JOBS,  
8 YOU'VE GOT CLUBS, YOU'VE GOT CHURCHES, YOU'VE  
9 GOT HOBBIES AND ALL THAT. AND YOU BRING -- AND  
10 YOU LISTEN TO THE NEWS AND YOU LISTEN TO  
11 CONVERSATIONS THAT YOU HAVE WITH PEOPLE. AND  
12 THAT GIVES YOU LIFE'S EXPERIENCES, THAT GIVES  
13 YOU COMMON SENSE AS TO WHAT WE WANT YOU TO  
14 APPLY IN THIS SITUATION.

15 BUT I WANT YOU TO CHECK YOUR COMMON SENSE  
16 AT THE DOOR. AND I DON'T WANT YOU JUST BECAUSE  
17 AND MR. DOBY TALKED ABOUT REASONABLE DOUBT,  
18 YOU'RE NOT SUPPOSED TO BE ABSOLUTELY LOOKING AT  
19 REASONABLE DOUBT, YOU ARE SUPPOSED TO TAKE ALL  
20 OF THE EVIDENCE, NOT JUST ANY ONE PIECE OF  
21 EVIDENCE AND SAY, OH, I DON'T KNOW IF I CAN  
22 BELIEVE THAT, OR I DON'T KNOW IF THAT IS  
23 CORRECT. OR THERE IS SOMETHING FUNNY ABOUT  
24 THAT. YOU TAKE ALL OF THE EVIDENCE. YOU'VE  
25 HAD 5 WITNESSES FOR THE STATE TESTIFY. WE HAD .

1 THE VICTIM TESTIFY. WE PRESENTED A VIDEOTAPE.  
2 WE PRESENTED THE SHANK ITSELF. WE PRESENTED  
3 STATEMENTS OF THE DEFENDANT. YOU JUST CAN'T  
4 JUST TAKE ANY BITTY PIECE OF EVIDENCE AND SAY,  
5 OH, I HAVE GOT A DOUBT IN THE CASE. YOUR JOB  
6 HERE IS TO SEARCH FOR THE TRUTH. WHAT REALLY  
7 HAPPENED. AND TO DO THAT YOU HAVE TO LOOK AT  
8 ABSOLUTELY EVERYTHING THAT WAS PRESENTED TO YOU  
9 IN CONTEXT, BREAK IT DOWN, AND SAY THIS IS WHAT  
10 HAPPENED.

11 NOT LET ME DEAL WITH A COUPLE OF  
12 MR. DOBY'S ARGUMENTS FIRST. HE SAYS THE STATE  
13 DIDN'T DO A DNA SAMPLE ON THE SHANK. WHY DON'T  
14 YOU DO A DNA TEST ON A PIECE OF EVIDENCE IF YOU  
15 DIDN'T KNOW IT WAS THE SHANK THAT DID IT. IF  
16 YOU WERE LOOKING FOR THE SHANK THAT STABBED A  
17 PERSON OR SOMETHING LIKE THAT. WELL IN THIS  
18 CASE WHAT DO WE HAVE? SERGEANT ANDERSON SAYS,  
19 I GOT STABBED IN THE HAND WITH HIS SHANK. I  
20 SAW INMATE BLACK STAB ME WITH THIS.

21 YOU'VE GOT LIEUTENANT RICHARDSON, AND YOU  
22 SAW IT ON THE VIDEO WHERE INMATE BLACK IS  
23 SITTING IN THE CHAIR POINTS DOWN AND SAYS, GET  
24 THIS FROM UNDER MY SHIRT. THIS SHANK WAS UNDER  
25 HIS SHIRT. WHY DO YOU NEED A DNA TEST ON THAT?

1 DO YOU NEED TO DO A DNA TEST TO TELL YOU  
2 SOMETHING THAT YOU ALREADY KNOW? NO, YOU  
3 DON'T. ALL THE EVIDENCE WAS KNOWN ABOUT THIS.  
4 SERGEANT ANDERSON SAID THAT'S WHAT STABBED HIM.  
5 THAT'S WHAT BLACK USED TO STAB ME. LIEUTENANT  
6 RICHARDSON GOT IT OUT OF HIS WAISTBAND. WHAT  
7 IS THE DNA GOING TO TELL YOU? IT'S NOT GOING  
8 TO TELL YOU ANY MORE THAN YOU ALREADY KNOW.

9 THE FOOD FLAP. MR. DOBY SAID WELL THE  
10 FOOD FLAP WAS CLOSED. YOU SAW IT ON THE VIDEO.  
11 ABSOLUTELY IT WAS CLOSED ON THE VIDEO. BUT  
12 WE'RE NOT TALKING ABOUT WHERE IT WAS ON THE  
13 VIDEO. REMEMBER SERGEANT ANDERSON SAYS, THE  
14 FOOD FLAP WAS OPEN. IT WAS WRAPPED SO IT WOULD  
15 REMAIN OPEN. AND HE WAS TRYING TO GET HIM --  
16 GET THE FLAP SHUT. AND WHEN THE FLAP WOULDN'T  
17 SHUT, HE REACHES UP AND DOWN LOOKING AND THERE  
18 IS A WINDOW AT THE TOP. THE FOOD FLAP IS OPEN.  
19 MR. DOBY TOLD YOU THE FOOD FLAP WAS CLOSED. IT  
20 WAS OPEN. HE REACHES DOWN AND I SAID, PLACE MY  
21 HAND WHERE YOU HAVE THEM, AND HE DID. AND HE  
22 PUSHED MY HANDS LIKE THIS. HE SAID I WAS  
23 FORWARD. AND THEN HERE COMES BLACK WITH THE  
24 THING ACROSS THAT WAY.

25 HE KNEW BLACK. HE HAD EVERY OPPORTUNITY

1 TO OBSERVE HIM. HE KNEW HIM WITH NO PROBLEMS  
2 WITH THAT. AND HE WAS -- HAD TWO WINDOWS IN  
3 THE CELL. AND YOU WILL SEE ON THE VIDEO,  
4 WHICH I THINK IS A BETTER SHOT OF THE CELL DOOR  
5 OF THE TWO WINDOWS. LONG WINDOWS AND THE FOOD  
6 FLAP RIGHT HERE. HE LOOKED RIGHT IN. HE  
7 LOOKED RIGHT HERE AND YOU SEE WHAT IS HAPPENING  
8 IN THERE.

9 NOW BEFORE I WENT ANY FURTHER IN THE  
10 EVIDENCE, I AM NOT GOING TO TAKE VERY MUCH  
11 LONGER. LET ME TALK TO YOU ABOUT WHAT IS AN  
12 ASSAULT ON A CORRECTION'S OFFICER. YOU ALL  
13 HEARD THE TERM ASSAULT AND BATTERY AS TWO  
14 DISTINCT CRIMES. YOU CAN HAVE AN ASSAULT AND  
15 YOU CAN HAVE A BATTERY. AN ASSAULT IS  
16 APPARENTLY IS A THREAT WITH THE APPARENT  
17 ABILITY TO CARRY IT OUT. IN OTHER WORDS,  
18 SOMEONE HAS A GUN AND POINTS IT AND SAYS, I AM  
19 GOING TO KILL YOU. THAT'S AN ASSAULT, BECAUSE  
20 I'VE GOT THE GUN. I AM MAKING THE THREATS.  
21 AND I HAVE THE ABILITY TO CARRY IT OUT BECAUSE  
22 I HAVE GOT THAT GUN POINTED AT YOU, OKAY. A  
23 BATTERY IS A TOUCHING. I COME UP HERE AND HIT,  
24 TOUCH, SLAP YOU, PUSH YOU OR WHATEVER. MADE  
25 CONTACT WITH YOU. THAT IS A BATTERY. A

1 BATTERY CAN BE ANY SLIGHTEST TOUCH OR IT CAN BE  
2 EXTREMELY BAD WHEN A PERSON IS BEATEN REALLY  
3 BAD AND BRUISED UP AND ALL THAT SORT OF THING.

4 BUT HIS HONOR IS GOING TO TELL YOU THIS,  
5 IN THE CASE OF ASSAULT ON A CORRECTION'S  
6 OFFICER, YOU DO NOT NEED A BATTERY. YOU DO NOT  
7 NEED A TOUCH. ALL YOU HAVE TO HAVE IS THE  
8 THREAT, THE APPARENT ABILITY TO CARRY IT OUT.  
9 IN THIS CASE, WE HAVE A BATTERY IN ADDITION TO  
10 THE ASSAULT. YOU HAVE THE ASSAULT WITH THE  
11 APPARENT ABILITY TO CARRY IT OUT. UNDER THE  
12 LAW, BLACK DID NOT HAVE TO MAKE CONTACT WITH  
13 THIS SHANK. BUT HE DID.

14 NOW MR. DOBY WANTS TO MAKE LIGHT OF THE  
15 FACT THAT THE NURSE DESCRIBED IT AS A PEN SIZE  
16 HOLE. AND SHE HELD UP THIS PEN TO YOU AND SAID  
17 THAT'S ABOUT THE SIZE OF THE END OF IT THERE,  
18 OF THE HOLE. NOW SHE WAS CONCERNED AND SHE  
19 TREATED HIM WITH ANTIBIOTICS. AND SHE GAVE HIM  
20 A TETANUS SHOT. AND WHO KNOWS WHAT'S ON THIS.  
21 WHO KNOWS WHAT'S ON THE END OF THAT. BODILY  
22 FLUIDS, WHATEVER. MY POINT THOUGH IS, FIRST OF  
23 ALL, IS HE COMMITTED THAT BATTERY OR AN ASSAULT  
24 ON A CORRECTION'S OFFICER.

25 HOW MANY PEOPLE WOULD TAKE LIGHT OF BEING

1 STABBED IN THE HAND WHILE THEY'RE TRYING TO  
2 KEEP ORDER IN STATE PRISON? WHILE THEY'RE  
3 TRYING TO MAKE SURE THAT PEOPLE GET FED, TAKE  
4 CARE OF EVERYBODY. AND THEY HAVE AN INMATE  
5 LIKE THIS THAT WON'T OBEY THE RULES, AND STICKS  
6 YOU IN THE HAND WITH SOMETHING THAT YOU DON'T  
7 KNOW WHERE IT IS. HOW DO YOU MAKE LIGHT OF  
8 THAT? YOU CAN'T. BLOOD WAS DRAWN. BLOOD WAS  
9 DRAWN.

10 NOW LET'S QUICKLY LOOK AT THE WITNESSES  
11 THAT TESTIFIED AND WHAT THEY SAID. BRIEFLY,  
12 SERGEANT WHO WAS THE VICTIM IN THIS CASE SAID I  
13 WAS DOING MY JOB. I'M A CORRECTION'S OFFICER.  
14 BLACK DID NOT OBEY THE RULE TO SHUT THE DOOR.  
15 I WENT TO SHUT IT, I GET STABBED IN THE HAND.  
16 I WATCHED HIM. I SAW HIM DO IT. BYNUM WHO WAS  
17 STANDING AT THE OTHER END OF A 10 FOOT CELL,  
18 DIDN'T HAVE ANYTHING TO DO WITH THAT. HE  
19 DIDN'T HAVE ANYTHING TO DO WITH IT.

20 AND YOU REMEMBER WHEN THE VIDEO STARTED,  
21 IT WAS INDICATED THAT BYNUM WAS PARTICIPATING.  
22 BUT BYNUM HIMSELF HE CAME IN HERE AND  
23 TESTIFIED. HE DIDN'T KNOW ANYTHING ABOUT IT.  
24 HE DIDN'T KNOW ANYTHING ABOUT IT. AND WHEN  
25 THEY WENT IN TO THE CELL, BYNUM OBEYED THE

1 RULES, HE LAID DOWN. BUT SERGEANT ANDERSON  
2 KNEW WHO HE SAW. AND HE WATCHED THE MAN, THE  
3 CONVERSATION WITH HIM ABOUT SHUTTING THE FLAP  
4 WERE WITH BLACK. NURSE DIXON TESTIFIED. THERE  
5 WAS IN FACT A WOUND THAT WAS BLEEDING. NO  
6 TELLING WHAT WAS IN THAT WOUND. I TREATED WITH  
7 ANTIBIOTICS. I GIVE HIM A SHOT. I'M SURE I  
8 PUT A BANDAGE ON IT, AND I SENT HIM ON HIS WAY.  
9 AND IT'S STILL A WOUND. IT'S STILL A WOUND.

10 LUCINDA HODGES, SHE WAS IN CHARGE. SHE  
11 WAS A SHIFT LIEUTENANT THAT DAY. SHE HAD  
12 GOTTEN AUTHORIZATION TO GO IN AND GET THE  
13 INMATES OUT, AND SHE NARRATED THAT VIDEO. AND  
14 YOU'LL HAVE THAT VIDEO IN EVIDENCE THAT YOU CAN  
15 WATCH. WHEN YOU COME BACK TO THE EXTRACTION,  
16 THAT FLAP DOOR WAS SHUT. AND YOU CAN SEE  
17 OUTSIDE THE FLAP DOOR, THE SHEETS WRAPPED  
18 AROUND IT AND THEY'RE HOLDING IT SHUT. THEY  
19 HAVE TO CUT THE SHEET AND SO FORTH. AND THEN  
20 YOU WILL NOTICE WHEN THE FLAP DOOR OPENS, YOU  
21 WILL SEE A PAIR OF LEGS ON THE OTHER SIDE OF  
22 THE DOOR PUSHING UP AGAINST THE DOOR.  
23 LIEUTENANT RICHARDSON, "MOVE YOUR LEGS. MOVE  
24 YOUR LEGS."

25 AND I ASKED HIM ON THE STAND, I SAID, WHO

1 ARE YOU TELLING TO MOVE HIS LEGS. I AM TELLING  
2 BLACK TO MOVE HIS LEGS. BLACK HAS GOT HIS LEGS  
3 PROPPED UP AGAINST THE DOOR SO IT WOULDN'T  
4 SHUT. AND THEN LIEUTENANT RICHARDSON  
5 TESTIFIED. AND Y'ALL SEE -- AND YOU SAW IT ON  
6 THE VIDEO. AND YOU'VE GOT BLACK IN THE CHAIR.  
7 AND THEN YOU SEE BLACK SAYS, THE OFFICER POINTS  
8 AND SAYS, SOMETHING LOOKING UNDER MY SHIRT, AND  
9 HE FOUND A SHANK UNDER MY SHIRT. AND THEN HE  
10 FOUND INVESTIGATOR GREER DURING THE  
11 INVESTIGATION OF THIS INCIDENT GAVE BLACK THE  
12 MIRANDA WARNINGS. BLACK HE DIDN'T WANT TO  
13 TALK, BUT HE MADE A STATEMENT ANYWAY. HE MADE  
14 A STATEMENT ANYWAY. HE SAID, "IT WASN'T  
15 SUPPOSED TO GO DOWN THAT LIKE. ANDERSON JUST  
16 GOT TOO CLOSE." WELL HE GOT TOO CLOSE TO THIS  
17 THING. HE GOT TOO CLOSE TO THIS.

18 MR. DOBY ON CROSS EXAMINATION TRIED TO  
19 SAY, WELL HE GOT CLOSE TO THE DOOR OR GOT TO  
20 CLOSE TO WHATEVER. AND HE GOT TOO CLOSE. THIS  
21 GUY DIDN'T WANT TO OBEY THE RULES. AND THERE  
22 WAS A CONFRONTATION AND HE INTENDED TO KEEP  
23 THAT DOOR OPEN. AND THIS IS WHAT HE DID. HE  
24 JUST REACHED OUT AND STABBED SERGEANT ANDERSON.  
25 YOU CAN'T HAVE THAT IN A PRISON. YOU WONDER

1 WHY HE SAID, WHY WOULD YOU GO IN AND GET THOSE  
2 FOLKS. WHY WOULD YOU DO THAT. LIEUTENANT  
3 HODGES SAID, WELL HE HAD A SHANK. HE'S GOT A  
4 WEAPON. YOU CAN'T ALLOW THAT IN A PRISON.  
5 IT'S A JUNGLE IN THERE. AND YOU'VE GOT TO  
6 MAINTAIN AS MUCH ORDER AS YOU CAN. IT'S  
7 DANGEROUS. IT'S A WAR ZONE FOR THOSE  
8 CORRECTION'S OFFICERS. AND THEY HAVE GOT TO  
9 MAINTAIN SOME KIND OF ORDER. THERE CANNOT BE A  
10 STABBING AND BEATING AND THAT SORT OF THING.  
11 AND THIS AS LIEUTENANT HODGES TESTIFIED IS PART  
12 OF A CHAIN WIRE.

13 HAVING SAID ALL OF THAT, APPLY YOUR COMMON  
14 SENSE TO THAT FACT. APPLY YOUR COMMON SENSE.  
15 DNA IS NOT NECESSARY. WOULDN'T ADD A THING TO  
16 THIS CASE. WHEN YOU APPLY YOUR COMMON SENSE  
17 AND YOU LOOK FOR THE TRUTH, NOT FOR A  
18 REASONABLE DOUBT, WHEN YOU LOOK FOR THE TRUTH  
19 OF WHAT HAPPENED, AND THAT'S WHAT VERDICT  
20 MEANS. THE LATIN WORD VERDICTO WHICH MEANS  
21 SPEAK THE TRUTH. WHEN YOU LOOK FOR THE TRUTH,  
22 YOU WILL FIND A VERDICT OF GUILTY. THAT'S THE  
23 ONLY VERDICT THAT IS POSSIBLE IN THIS CASE.  
24 THE ONLY VERDICT. ON APRIL 11, 2008, TERRANCE  
25 BLACK, THIS DEFENDANT HERE, TOOK THIS SHANK

1 AND STABBED SERGEANT DERRICK ANDERSON IN THE  
2 HAND, WHILE DERRICK ANDERSON WAS AN OFFICER ON  
3 DUTY, AND HE WAS AN INMATE AT LEE CORRECTIONAL  
4 INSTITUTE. HE IS GUILTY. HE IS GUILTY. AND  
5 THAT SHOULD BE YOUR VERDICT. THANK YOU.

6 THE COURT: MR. FOREMAN AND LADIES AND  
7 GENTLEMEN OF THE JURY, IF YOU WOULD GIVE ME  
8 YOUR ATTENTION. YOU HAVE FOLLOWED VERY  
9 PATIENTLY AND LISTENED VERY ATTENTIVELY TO THE  
10 THE PRESENTATION OF THE EVIDENCE IN THIS CASE.  
11 AND ALSO THE ABLE ARGUMENTS MADE BY THE  
12 SOLICITOR, MR. FATA, ON BEHALF OF THE STATE.  
13 AND, MR. DODY, ON BEHALF OF THE DEFENDANT. AND  
14 I THANK YOU FOR THAT.

15 IT NOW BECOMES THE DUTY OF THE TRIAL JUDGE  
16 UNDER THE CONSTITUTION OF THIS STATE TO CHARGE  
17 AND INSTRUCT YOU IN THE LAW APPLICABLE TO THIS  
18 CASE. AND IT IS YOUR DUTY AS JURORS TO ACCEPT  
19 AND APPLY THE LAW AS THE COURT WILL NOW STATE  
20 IT TO YOU. AND AS JURORS IT IS YOUR EXCLUSIVE  
21 DUTY TO DECIDE ALL THE ISSUES OF FACT IN THIS  
22 CASE. AND FOR THAT PURPOSE TO DETERMINE THE  
23 EFFECT AND THE VALUE, THE WEIGHT AND THE TRUTH  
24 OF THE EVIDENCE. BOTH THE STATE AND THE  
25 DEFENDANT HAVE A RIGHT TO EXPECT THAT YOU WILL

1 CONSCIENTIOUSLY CONSIDER AND EVALUATE THE  
2 EVIDENCE AND APPLY THE LAW OF THE CASE THERETO  
3 TO THE END THAT BOTH THE STATE OF SOUTH  
4 CAROLINA AND THE DEFENDANT WILL RECEIVE AND  
5 OBTAIN A FAIR AND IMPARTIAL TRIAL.

6 WHEN I USE THE DEFENDANT I REFER TO, OF  
7 COURSE, TO TERRANCE BLACK. THE STATE OF SOUTH  
8 CAROLINA BY THE BILL OF INDICTMENT, WHICH I  
9 HAVE IN MY HAND, CHARGES THE DEFENDANT,  
10 MR. TERRANCE BLACK, WITH THE OFFENSE KNOWN IN  
11 THE LAW AS ASSAULT ON A CORRECTIONAL OFFICER.  
12 THE INDICTMENT CHARGES THAT MR. BLACK DID IN  
13 LEE COUNTY ON OR ABOUT APRIL 11, 2008, VIOLATE  
14 SECTION 16-3-630 OF THE CODE OF LAWS OF SOUTH  
15 CAROLINA IN THAT HE DID ASSAULT AN EMPLOYEE OF  
16 THE STATE OR LOCAL CORRECTIONAL FACILITY;  
17 SPECIFICALLY, DERRICK ANDERSON OF THE LEE  
18 COUNTY CORRECTIONAL INSTITUTE WHILE THE  
19 OFFICERS WERE PERFORMING JOB RELATED DUTIES BY  
20 STRIKING HIM ON THE HAND WITH AN EDGED WEAPON.

21 TO THIS CHARGE AND TO THIS INDICTMENT THE  
22 DEFENDANT HAS ENTERED A PLEA OF NOT GUILTY.  
23 THIS PLEA OF NOT GUILTY BY THE STATE PLACES THE  
24 BURDEN OF PROOF ON THE STATE OF SOUTH CAROLINA  
25 TO PROVE BY EVIDENCE THE GUILT OF THE DEFENDANT

( ) 1 BEYOND A REASONABLE DOUBT BEFORE YOU THE JURY  
2 CAN FIND THE DEFENDANT GUILTY. THE DEFENDANT  
3 MR. BLACK IS PRESUMED IN THE LAW INNOCENT OF  
4 THE CHARGE CONTAINED IN THE INDICTMENT. IT IS  
5 A CARDINAL AND FUNDAMENTAL RULE OF THE LAW OF  
6 EVIDENCE THAT A DEFENDANT IRRESPECTIVE OF THE  
7 CHARGE AGAINST HIM WILL ALWAYS BE PRESUMED TO  
8 INNOCENT OF CHARGE FOR WHICH HAS BEEN INDICTED  
9 UNLESS AND UNTIL THE GUILT OF THE DEFENDANT HAS  
10 BEEN PROVEN BY EVIDENCE WHICH SATISFIES YOU THE  
11 JURY OF HIS GUILT BEYOND A REASONABLE DOUBT.

C 12 THE PRESUMPTION OF INNOCENCE IS NOT A  
13 MERE LEGAL THEORY. IT IS NOT JUST A LEGAL  
14 PHRASE. IT IS A SUBSTANTIAL RIGHT TO WHICH  
15 EVERY ACCUSED IS ENTITLED. OUR SUPREME COURT  
16 HAS DECLARED THE PRESUMPTION OF INNOCENCE IS  
17 LIKE A ROBE OF RIGHTEOUSNESS PLACED ABOUT THE  
18 SHOULDERS OF THIS DEFENDANT. AND IT REMAINS  
19 WITH HIM AND ASSIGNS TO HIM THAT CLASS, THE  
20 INNOCENT, UNTIL THAT PRESUMPTIVE ROBE OF  
21 RIGHTEOUSNESS HAD BEEN STRIPPED FROM HIS PERSON  
22 SATISFYING YOU THE JURY OF HIS GUILT BEYOND A  
23 REASONABLE DOUBT. THE PRESUMPTION OF INNOCENCE  
24 ACCOMPANIES THE DEFENDANT FROM THE TIME OF HIS  
25 ARRAIGNMENT AND APPEARANCE IN THIS COURT AND

1 CONTINUES WITH THE DEFENDANT AFTER YOU RETIRE  
2 TO YOUR JURY ROOM TO DELIBERATE YOUR VERDICT.

3 THE PRESUMPTION OF INNOCENCE CONTINUES IN  
4 EXISTENCE TO THE BENEFIT OF THE DEFENDANT UNTIL  
5 YOU THE JURY REACH THE CONCLUSION THAT THE  
6 STATE HAS PROVEN THE GUILT OF THIS DEFENDANT  
7 BEYOND A REASONABLE DOUBT. NOW WHAT IS A  
8 REASONABLE DOUBT. IT IS NOT AN IMAGINARY OR  
9 FANCIFUL DOUBT OR WEAK DOUBT. IT IS A  
10 SUBSTANTIAL DOUBT. IT IS A DOUBT WHICH THE  
11 WORDS IMPLY. A DOUBT FOR WHICH YOU CAN GIVE  
12 OR ASSIGN A REASON BASED ON THE EVIDENCE AND  
13 TESTIMONY IN THIS CASE.

14 A REASONABLE DOUBT IS NOT EVERY SORT OF  
15 DOUBT. YOU AND I KNOW FROM EVERY DAY LIFE  
16 EXPERIENCES THAT YOU MAY HAVE A SORT OF A DOUBT  
17 ABOUT ANY MATTER THAT ARISES NO MATTER HOW  
18 TRIVIAL IT MAY BE OR HOW SERIOUS IT MAY BE. A  
19 REASONABLE DOUBT IS A DOUBT WHICH MAKES AN  
20 HONEST SINCERE, CONSCIENTIOUS JUROR IN SEARCH  
21 OF THE TRUTH, HESITATE TO ACT. PROOF BEYOND A  
22 REASONABLE DOUBT IS PROOF THAT LEAVES YOU  
23 FIRMLY CONVINCED OF THE DEFENDANT'S GUILT. IF  
24 YOU HAVE A DOUBT FOR WHICH YOU CAN GIVE OR  
25 ASSIGN A REASON AS TO THE GUILT OF THE

1 DEFENDANT THEN HE IS ENTITLED TO A VERDICT OF  
2 NOT GUILTY.

3 REASONABLE DOUBT MAY ARISE FROM THE  
4 EVIDENCE IN THE CASE OR FROM THE LACK OF  
5 EVIDENCE IN THE CASE. YOU THE JURY MUST MAKE  
6 THE DETERMINATION OF WHETHER OR NOT REASONABLE  
7 DOUBT EXISTS AS TO THE GUILT OF THIS DEFENDANT.  
8 THE VERY FACT HOWEVER THAT THE JURY ENGAGES IN  
9 A FULL AND FREE DISCUSSION OF ISSUES OF GUILTY  
10 OR NOT GUILTY, WITH THE NORMAL CONVERSATION OF  
11 THE EBB AND FLOW ON THESE ISSUES DOES NOT  
12 AUTOMATICALLY MEAN THAT REASONABLE DOUBT EXISTS  
13 IN THIS CASE OR IN ANY OTHER CASE.

14 I CHARGE YOU THAT THE DEFENDANT IS  
15 ENTITLED TO EVERY REASONABLE DOUBT ARISING IN  
16 THE WHOLE CASE. IF UPON ANY ISSUE OF FACT  
17 ESSENTIAL TO CONVICTION AND A VERDICT OF  
18 GUILTY, YOU HAVE A REASONABLE DOUBT AS TO HOW  
19 THAT ISSUE SHOULD BE RESOLVED, IT WOULD BE YOUR  
20 DUTY TO RESOLVE THAT ISSUE IN FAVOR OF THE  
21 DEFENDANT. A DEFENDANT, LADIES AND GENTLEMEN,  
22 IS NOT REQUIRED TO PROVE HIS INNOCENCE. BUT  
23 THE STATE IS REQUIRED BY LAW TO PROVE EVERY  
24 ESSENTIAL ELEMENT OF THE OFFENSE CHARGED  
25 AGAINST THE DEFENDANT BY EVIDENCE WHICH

1 SATISFIES YOU THE JURY OF THE GUILT OF THE  
2 DEFENDANT BEYOND A REASONABLE DOUBT BEFORE YOU  
3 CAN CONVICT THE DEFENDANT AND FIND HIM GUILTY.  
4 IF THEN UPON THE WHOLE CASE YOU HAVE A  
5 REASONABLE DOUBT AS TO THE GUILT OR INNOCENCE  
6 OF THE DEFENDANT HE IS ENTITLED TO THAT  
7 REASONABLE DOUBT AND WOULD BE ENTITLED TO AN  
8 ACQUITTAL AND A VERDICT OF NOT GUILTY. BUT ON  
9 THE OTHER HAND, IF UPON THE WHOLE CASE YOU FIND  
10 THAT THE STATE HAS PROVEN BY EVIDENCE WHICH  
11 SATISFIES YOU THE JURY OF THE GUILT OF THE  
12 DEFENDANT BEYOND A REASONABLE DOUBT, THEN IN  
13 SUCH CIRCUMSTANCES IT WOULD EQUALLY BE YOUR  
14 DUTY TO CONVICT THE DEFENDANT AND FIND HIM  
15 GUILTY.

16 NOW, LADIES AND GENTLEMEN, I INSTRUCT YOU  
17 THAT THE INDICTMENT IN THIS CASE WHICH I HAVE  
18 IN MY HAND IS NOT EVIDENCE AND CANNOT BE  
19 CONSIDERED BY THE JURY AS EVIDENCE IN THIS  
20 CASE. THE INDICTMENT IS SIMPLY THE FORMAL  
21 WRITTEN INSTRUMENT WHICH CONTAINS THE CHARGE  
22 AGAINST THE DEFENDANT. CONTAINS THE CHARGE  
23 AGAINST THE DEFENDANT AND SERVES AS THE FORMAL  
24 DOCUMENT BY WHICH THIS CASE IS BROUGHT TO  
25 TRIAL.

1           NOW DURING THIS TRIAL, LADIES AND  
2           GENTLEMEN, YOU AND I HAVE CERTAIN DUTIES TO  
3           PERFORM. NOW AS THE TRIAL JUDGE IT IS MY  
4           RESPONSIBILITY TO PRESIDE OVER THE TRIAL OF  
5           THIS CASE. AND I ALSO HAVE TO RULE ON THE  
6           ADMISSIBILITY OF THE EVIDENCE OFFERED DURING  
7           THE PROGRESS OF THIS TRIAL. YOU ARE TO  
8           CONSIDER ONLY THE COMPETENT EVIDENCE BEFORE  
9           YOU. AND YOU ARE TO DISREGARD AND DISABUSE  
10          FROM YOUR MIND ANY TESTIMONY ORDERED STRICKEN  
11          FROM THE RECORD DURING THE PROGRESS OF THE  
12          TRIAL, IF THERE BE ANY. AND YOU ARE TO  
13          CONSIDER ONLY THE TESTIMONY WHICH HAS BEEN  
14          PRESENTED FROM THIS WITNESS STAND AND TO GET  
15          ANY EXHIBITS ADMITTED IN TO THE RECORD OF THIS  
16          CASE.

17          I HAVE THE ADDITIONAL DUTY TO CHARGE YOU  
18          THE APPLICABLE LAW OF THIS CASE. AS THE  
19          PRESIDING JUDGE, I AM SOLE JUDGE OF THE LAW.  
20          AND IT IS YOUR DUTY TO ACCEPT AND APPLY THE LAW  
21          AS I NOW STATE IT TO YOU. IF YOU HAVE A  
22          PRECONCEIVED IDEA AS WHAT THE LAW IS OR WHAT  
23          THE LAW OUGHT TO BE AND IT DOES NOT AGREE WITH  
24          WHAT I TELL YOU THE LAW IS, YOU ARE TO  
25          OBLIGATED UNDER YOUR OATH TO ABANDON THIS

1 PRECONCEPTION ON YOUR PART, BECAUSE YOU ARE  
2 SWORN TO ACCEPT THE LAW PRECISELY AS I STATE IT  
3 TO YOU.

4 IN EVERY CASE TRIED BEFORE A JURY, THE  
5 JURY BECOMES THE SOLE AND EXCLUSIVE JUDGE OF  
6 THE FACTS OF THE CASE. YOU THE JURY ARE THE  
7 JUDGE OF THE FACTS IN THIS CASE. THE COURT IS  
8 THE JUDGE OF THE LAW. THE CONSTITUTION OF THIS  
9 STATE HAS DECLARED THE TRIAL JUDGE SHALL NOT  
10 INTIMATE, STATE, COMMENT UPON OR MAKE ANY  
11 STATEMENT TO A TRIAL JURY ABOUT THE FACTS OF A  
12 CASE. SINCE YOU ARE THE SOLE JUDGE OF THE  
13 FACTS, YOU ARE NOT TO INFER ANYTHING THAT I  
14 HAVE SAID DURING THE PROGRESS OF THIS TRIAL IN  
15 RULING UPON THE ADMISSIBILITY OF THE EVIDENCE  
16 OR OTHERWISE, OR ANYTHING THAT I SAY TO YOU NOW  
17 DURING THE COURSE OF THESE INSTRUCTIONS TO  
18 YOU, THAT I HAVE AN OPINION ABOUT THE FACTS OF  
19 THE CASE. THE LAW DOES NOT PERMIT ME TO HAVE  
20 AN OPINION ABOUT THE FACTS. THAT IS A MATTER  
21 SOLELY FOR YOU THE JURY TO DETERMINE.

22 AS JURORS IT IS YOUR DUTY TO DETERMINE AS  
23 I HAVE SAID, THE EFFECT, THE VALUE, THE WEIGHT  
24 AND THE TRUTH OF THE EVIDENCE PRESENTED DURING  
25 THE COURSE OF THIS TRIAL. NECESSARILY THEN YOU

1 MUST ACCESS THE CREDIBILITY OF THE WITNESSES  
2 WHO HAVE TESTIFIED IN THIS CASE. CREDIBILITY  
3 IS SIMPLY A LEGALISTIC TERM WHICH MEANS  
4 BELIEVABILITY. IT BECOMES YOUR DUTY TO ANALYZE  
5 AND EVALUATE THE EVIDENCE. AND DETERMINE THAT  
6 EVIDENCE WHICH YOU DETERMINE TO BE TRUE OR  
7 WHICH CONVINCES YOU OF ITS TRUTH.

8 I CHARGE YOU THAT IN DETERMINING THE  
9 QUESTION OF CREDIBILITY OR BELIEVABILITY OF THE  
10 WITNESSES YOU MAY BELIEVE ONE WITNESS AS  
11 AGAINST SEVERAL WITNESSES OR SEVERAL WITNESSES  
12 AS AGAINST ONE WITNESS. YOU MAY BELIEVE A PART  
13 OF THE TESTIMONY OF A WITNESS AND REJECT THE  
14 REMAINING PART OF THE TESTIMONY OF THAT SAME  
15 WITNESS. YOU MAY BELIEVE THE TESTIMONY OF A  
16 WITNESS IN ITS ENTIRETY OR REJECT THE TESTIMONY  
17 OF A WITNESS IN ITS ENTIRETY. YOU MAY CONSIDER  
18 WHETHER ANY WITNESS HAS EXHIBITED ANY INTEREST,  
19 ANY BIAS, OR ANY PREJUDICE IN THE CASE. YOU  
20 MAY CONSIDER THE Demeanor OF A WITNESS; THAT  
21 IS, THE APPEARANCE OF A WITNESS FROM THE  
22 WITNESS STAND. AND YOU MAY CONSIDER THE  
23 OPPORTUNITY FOR KNOWLEDGE CONCERNING THOSE  
24 THINGS ABOUT WHICH A WITNESS TESTIFIED. THESE  
25 CONSIDERATIONS YOU DO NOT EXERCISE ARBITRARILY,

1 BUT IF IN YOUR GOOD JUDGMENT THERE IS SOUND  
2 REASON IN THE RECORD FOR SO DOING. BECAUSE  
3 YOUR OBJECTIVE, LADIES AND GENTLEMEN, IS TO  
4 FIND THE TRUTH WHETHER IT COMES FROM ONE OR  
5 MORE WITNESSES. AND IN DOING SO IN EXERCISING  
6 YOUR MENTAL PROCESSES AND IN DETERMINING WHAT  
7 YOU CONSIDER TO BE TRUE, THE LAW SIMPLY  
8 REQUIRES THAT YOU EXERCISE YOUR GOOD JUDGMENT,  
9 YOUR COMMON SENSE, YOUR SENSE OF LOGIC AND  
10 REASON AND YOUR EXPERTISE IN LIFE.

11 YOU THEN APPLY THESE ATTRIBUTES TO THE  
12 EVIDENCE AND DETERMINE WHAT YOU CONSIDER TO BE  
13 THE TRUTHFUL EVIDENCE. AND TO THESE TRUE STATE  
14 OF FACTS AS DETERMINED BY YOU THE JURY, YOU  
15 TAKE AND APPLY THE LAW AS THE COURT WILL GIVE  
16 IT TO YOU AND THUS ARRIVE AT A TRUE VERDICT IN  
17 THIS CASE. NOW AS I SAID, THE DEFENDANT IN  
18 THIS CASE IS CHARGED WITH THE OFFENSE OF  
19 ASSAULT UPON A CORRECTIONAL OFFICER. AND I  
20 WILL NOW DEFINE THIS OFFENSE FOR YOU AND GIVE  
21 YOU SOME MORE LEGAL INSTRUCTION. SECTION  
22 16-3-630 OF THE CODE OF LAWS OF SOUTH CAROLINA  
23 APPLIES: "A PERSON CONVICTED OF A ASSAULT UPON  
24 AN EMPLOYEE OF THE STATE AND LOCAL CORRECTIONAL  
25 FACILITY PERFORMING JOB RELATED DUTIES IS

1 GUILTY OF A CRIME. THERE ARE THREE ELEMENTS TO  
2 THIS OFFENSE. FIRST, AN ASSAULT. SECONDLY, ON  
3 A CORRECTIONAL OFFICER. AND THIRD, BY AN  
4 INMATE.

5 NOW WHAT IS AN ASSAULT? AND I AM GOING TO  
6 DEFINE FOR YOU THE TERMS OF ASSAULT AND BATTERY  
7 AND TELL YOU THAT TO VIOLATE THIS SECTION IT IS  
8 NOT NECESSARY THAT THERE BE A BATTERY, BUT I  
9 THINK IT WILL HELP YOU TO UNDERSTAND WHAT IS AN  
10 ASSAULT AND BATTERY. AN ASSAULT IS AN UNLAWFUL  
11 ATTEMPT TO OFFER OR COMMIT A VIOLENT INJURY  
12 UPON ANOTHER PERSON COUPLED WITH THE PRESENT  
13 ABILITY TO COMPLETE THE ATTEMPT OR OFFER BY A  
14 BATTERY.

15 ASSAULT HAS BEEN DEFINED AS PLACING IN  
16 APPREHENSION OF HARM. WHILE WORDS ALONE DO NOT  
17 CONSTITUTE AN ASSAULT IF BY WORDS AND CONDUCT A  
18 PERSON INTENTIONALLY CREATES A REASONABLE  
19 APPREHENSION OF BODILY HARM, IT IS AN ASSAULT.  
20 AN ASSAULT IS AN ATTEMPT TO DO VIOLENCE TO THE  
21 PERSON OF ANOTHER IN A RUDE, ANGRY OR RESENTFUL  
22 MANNER. AN ASSAULT IS THE INTENTIONAL CREATION  
23 OF FEAR OF IMMEDIATE BODILY HARM. A BATTERY IS  
24 THE USE OF FORCE AGAINST ANOTHER RESULTING IN  
25 HARMFUL OR OFFENSIVE CONTACT. IF THE

1           ASSAULT -- IT IS THE ASSAULT BROUGHT TO  
2           COMPLETION. A BATTERY IS THE UNLAWFUL TOUCHING  
3           OR STRIKING OF ANOTHER BY THE AGGRESSOR HIMSELF  
4           OR BY ANY SUBSTANCE PUT IN MOTION BY HIM, DONE  
5           WITH THE INTENTION OF BRINGING ABOUT HARMFUL OR  
6           OFFENSIVE CONTACT, WHICH IS NOT LEGALLY  
7           CONSENTED TO, BY THE OTHER. AND NOT OTHERWISE  
8           PRIVILEGED.

9           IT IS SOMETIMES DEFINED AS ANY INJURY DONE  
10          TO THE PERSON OF ANOTHER IN A RUDE, INSOLENT OR  
11          REVENGEFUL WAY. ASSAULT AND BATTERY IS AN  
12          UNLAWFUL ACT OF VIOLENT INJURY TO ANOTHER  
13          PERSON UNACCOMPANIED BY ANY CIRCUMSTANCES OF  
14          AGGRAVATION. NOW AS I TOLD YOU, THE CHARGE IN  
15          THIS CASE DOES NOT REQUIRE A BATTERY. THE  
16          STATUTE ACTUALLY AND I WILL READ THE STATUTE TO  
17          YOU AGAIN SO THAT YOU WILL UNDERSTAND EXACTLY  
18          WHAT 16-3-630 PROVIDES. I CLOSED THE BOOK.  
19          "ASSAULT UPON A CORRECTIONAL OFFICER IS DEFINED  
20          IN THE STATUTE THAT, ANYONE WHO COMMITS AN  
21          ASSAULT UPON AN EMPLOYEE OF A STATE OR LOCAL  
22          CORRECTIONAL FACILITY PERFORMING JOB RELATED  
23          DUTIES." THAT IS THE DEFINITION OF THE OFFENSE  
24          IN THIS CASE.

25                 NOW, LADIES AND GENTLEMEN, I WANT TO TELL

1 YOU NOW AND I WANT TO EMPHASIZE TO YOU THAT AND  
2 AS YOU WELL KNOW THE DEFENDANT IN THIS CASE HAS  
3 NOT TESTIFIED. THIS IS HIS CONSTITUTIONAL  
4 RIGHT. IT IS NOT A CIRCUMSTANCE YOU CAN TAKE  
5 INTO CONSIDERATION OR EVEN ALLOW TO ENTER YOUR  
6 DISCUSSIONS IN THE JURY ROOM. UNDER THE  
7 CONSTITUTION OF THE STATE OF SOUTH CAROLINA AND  
8 THE UNITED STATES CONSTITUTION, IT IS THE  
9 DEFENDANT'S CONSTITUTIONAL RIGHT NOT TO  
10 TESTIFY. THE BURDEN OF PROOF IS ON THE STATE  
11 OF SOUTH CAROLINA TO ESTABLISH THE GUILT OF THE  
12 DEFENDANT BY COMPETENT EVIDENCE BEYOND A  
13 REASONABLE DOUBT. THE FACT THAT THE DEFENDANT  
14 DID NOT TAKE THE STAND AND TESTIFY TO HIS OWN  
15 BEHALF DOES NOT CREATE ANY INFERENCE AGAINST  
16 HIM. YOU THE JURY MUST NOT PERMIT THIS FACT TO  
17 WEIGH IN THE SLIGHTEST DEGREE AGAINST THIS  
18 DEFENDANT NOR EVEN THIS FACT TO ENTER INTO YOUR  
19 DISCUSSIONS OR DELIBERATIONS IN THE JURY ROOM  
20 IN ANY MANNER WHATSOEVER.

21 NOW, LADIES AND GENTLEMEN, I HAVE ABOUT  
22 FINISHED MY INSTRUCTIONS TO YOU, BUT I WILL  
23 TELL YOU THAT YOU ARE NOT PARTISANS OR  
24 ADVOCATES FOR THE STATE OF SOUTH CAROLINA OR  
25 FOR THIS DEFENDANT. OBVIOUSLY SUCH A PERVERTED

1 SYSTEM OF JUSTICE WOULD BE INTOLERABLE. YOU  
2 HAVE BEEN SELECTED BY BOTH THE STATE AND THIS  
3 DEFENDANT AS FAIR AND IMPARTIAL JURORS. IT IS  
4 YOUR DUTY THEN BY YOUR JOINT DELIBERATIONS TO  
5 DETERMINE THE TRUTH IN THIS CASE. GIVING TO  
6 THIS DEFENDANT THE BENEFIT OF EACH AND EVERY  
7 REASONABLE DOUBT ON EACH AND EVERY ISSUE. AND  
8 THEN TO THE FACTS THAT YOU DETERMINE TO BE  
9 TRUE, YOU THEN TAKE AND APPLY THE LAW WHICH THE  
10 COURT HAS GIVEN TO YOU BY THIS COURT, BY ME,  
11 AND THUS ARRIVE AT A VERDICT WHICH DOES SPEAK  
12 THE TRUTH.

13 FOR IT HAS BEEN SAID IT IS TRUE, THAT THE  
14 WORD VERDICT HAS A LATIN DERIVATIVE. IT COMES  
15 FROM A LATIN PHRASE VEREDICTO MEANING TO SPEAK  
16 THE TRUTH. AND WHEN YOU HAVE ACCOMPLISHED  
17 THESE RESPONSIBILITIES YOU WILL HAVE SATISFIED  
18 YOUR OATH AS JURORS AND YOU WILL HAVE  
19 DISCHARGED YOUR DUTY TO THIS COURT. NOW I  
20 INSTRUCT YOU ON THE FORMS OF THE VERDICT IN  
21 THIS CASE. IF THE STATE HAS FAILED TO PROVE  
22 THE GUILT OF THE DEFENDANT BEYOND A REASONABLE  
23 DOUBT YOUR VERDICT WILL BE TWO WORDS, "NOT  
24 GUILTY." IF THE STATE HAS PROVEN THE GUILT OF  
25 THE DEFENDANT BEYOND A REASONABLE DOUBT YOUR

1 VERDICT WOULD BE ONE WORD GUILTY. THE VERDICT  
2 THAT YOU RENDER IN THIS CASE MUST BE THE  
3 VERDICT OF EACH AND EVERY JUROR. IT MUST BE  
4 YOUR UNANIMOUS VERDICT, ALL 12 JURORS MUST  
5 AGREE ON THE VERDICT THAT YOU AUTHORIZE THE  
6 FOREMAN TO WRITE.

7 NOW, MR. FOREMAN, AND, LADIES AND  
8 GENTLEMEN OF THE JURY, I HAVE PREPARED A  
9 WRITTEN VERDICT FORM FOR YOU. AND I WILL TELL  
10 YOU THAT THE ORDER IN WHICH I HAVE WRITTEN THE  
11 POSSIBLE VERDICTS ON THIS VERDICT FORM HAVE  
12 ABSOLUTELY NO SIGNIFICANCE WHATSOEVER. YOU  
13 SHOULD NOT INFERE FROM THE ORDER IN WHICH I  
14 HAVE PUT THE POSSIBLE VERDICTS ON THIS FORM  
15 THAT I HAVE ANY OPINION AS WHAT YOUR VERDICT  
16 SHOULD BE. I DO NOT. THE LAW DOES NOT ALLOW  
17 ME TO HAVE AN OPINION. BUT OBVIOUSLY WHEN I  
18 PUT SOMETHING DOWN ON PAPER, I HAVE TO PUT  
19 SOMETHING FIRST AND PUT SOMETHING SECOND.

20 BUT ACROSS THE TOP UP HERE, WE PUT DOWN  
21 THE STATE OF SOUTH CAROLINA, THE COUNTY, THE  
22 COURT, CASE NUMBER, AND THE DEFENDANT. WHICH  
23 IS THE SIMPLY THE PARTIES. THE STATE OF SOUTH  
24 CAROLINA VERSUS DERRICK BLACK. WE THE JURY BY  
25 UNANIMOUS AGREEMENT FIND THE DEFENDANT,

1 TERRANCE BLACK, ON THE CHARGE OF ASSAULT UPON A  
2 CORRECTIONAL OFFICER EITHER GUILTY OR NOT  
3 GUILTY. AND YOU PICK ONE OF THOSE EITHER BY  
4 MARKING AN X OR A CHECK. THEN SIGN YOUR NAME  
5 HERE WHEN YOU HAVE REACHED A VERDICT. NOW,  
6 LADIES AND GENTLEMEN, I AM GOING TO SEND YOUR  
7 JURY ROOM. I AM GOING TO ASK THAT YOU NOT  
8 BEGIN YOUR DELIBERATIONS JUST YET. IT MAY BE  
9 NECESSARY THAT I MAY NEED TO BRING YOU BACK  
10 INTO THE COURTROOM FOR ADDITIONAL INSTRUCTIONS.  
11 IF THAT IS NOT NECESSARY, THE BAILIFF WILL  
12 BRING YOU THE VERDICT FORM ALONG WITH THE  
13 EXHIBITS INTRODUCED THAT HAVE BEEN INTRODUCED  
14 IN THIS CASE, AND YOU WILL BE ALLOWED -- OR I  
15 WILL TELL YOU OR HE WILL TELL YOU AT THAT TIME  
16 TO BEGIN YOUR DELIBERATIONS.

17 SO I AM, EXCEPT FOR THE ALTERNATE, I AM  
18 GOING TO ASK IF YOU WILL STAY WITH ME. BUT I  
19 ASK THE 12 PRINCIPAL JURORS IF YOU WOULD GO TO  
20 THE JURY ROOM. PLEASE DON'T BEGIN YOUR  
21 DELIBERATIONS JUST YET. THANK YOU.

22 (WHEREUPON, THE FOLLOWING TAKES PLACE  
23 OUTSIDE THE PRESENCE OF THE JURY.)

24 THE COURT: ANY ADDITIONS OR EXCEPTIONS ON  
25 BEHALF OF THE STATE, MR. FATA?

1 MR. FATA: NO.

2 THE COURT: MR. DOBY?

3 MR. DOBY: NO, SIR, YOUR HONOR.

4 THE COURT: CHECK YOUR EXHIBITS, COUNSEL,  
5 AND MAKE SURE THE RIGHT EXHIBITS GO BACK TO THE  
6 JURY ROOM.

7 (WHEREUPON, ALTERNATE IS EXCUSED.)

8 (WHEREUPON, AT 3:55 P.M. JURY COMMENCES  
9 DELIBERATES.)

10 (WHEREUPON, AT 4:15 P.M VERDICT REACHED.)

11 THE COURT: ANYTHING BEFORE WE BRING THE  
12 JURY IN, MR. FATA?

13 MR. FATA: NOTHING FROM THE STATE, YOUR  
14 HONOR.

15 THE COURT: MR. DOBY.

16 MR. DOBY: NO, SIR, YOUR HONOR.

17 THE COURT: ALL RIGHT, BRING THE JURY IN.

18 (WHEREUPON, THE FOLLOWING TAKES PLACE  
19 WITHIN THE PRESENCE OF THE JURY.)

20 THE COURT: LADIES AND GENTLEMEN, THANK  
21 YOU VERY MUCH. AND, MR. FOREMAN, I UNDERSTAND  
22 YOU HAVE REACHED A VERDICT?

23 THE FOREMAN: YES, I HAVE.

24 THE COURT: WOULD YOU HAND IT UP TO THE  
25 BAILIFF, PLEASE. ALL RIGHT, FROM THE

1           STANDPOINT OF FORM, THE VERDICT APPEARS TO BE  
2           CORRECT. MADAM CLERK, MR. DOBY, WOULD YOU AND  
3           YOUR CLIENT STAND, PLEASE?

4           THE CLERK: STATE OF SOUTH CAROLINA VERSUS  
5           OF TERRANCE BLACK, WE THE JURY BY A UNANIMOUS  
6           AGREEMENT FIND THE DEFENDANT, TERRANCE BLACK,  
7           ON THE CHARGE OF ASSAULT UPON A CORRECTIONAL  
8           OFFICER, GUILTY.

9           THE COURT: AND THE VERDICT FORM IS SIGNED  
10          BY MR. FLOYD AS FOREMAN. THANK YOU, YOU MAY BE  
11          SEATED. ANYTHING WITH REGARD TO THIS MATTER  
12          BEFORE I EXCUSE THE JURY, MR. DOBY?

13          MR. DOBY: POLL THE JURY, PLEASE.

14          THE COURT: POLL THE JURY, MADAM CLERK.

15          THE CLERK: 120 MAURICE WILLIAMS, IS THIS  
16          YOUR VERDICT AND STILL YOUR VERDICT?

17          MR. WILLIAMS: YES.

18          THE CLERK: JUROR NO. 97, MICHELE VOERS,  
19          IS THIS YOUR VERDICT AND STILL YOUR VERDICT?

20          MS. VOERS: YES, SIR.

21          THE CLERK: JUROR NO. 23, WILLIE CANTEY,  
22          IS THIS YOUR VERDICT, AND STILL YOUR VERDICT?

23          MR. CANTY: YES.

24          THE CLERK: JUROR 113, MARY THOMAS, IS  
25          THIS YOUR VERDICT AND STILL YOUR VERDICT?

1 MS. THOMAS: YES.

2 THE CLERK: JUROR 115, ROBERTA WELLS, WAS  
3 THIS YOUR VERDICT AND STILL YOUR VERDICT?

4 MS. WELLS: YES.

5 THE CLERK: JUROR NO. 57, MATHEW ISAAC,  
6 WAS THIS YOUR VERDICT AND STILL YOUR VERDICT?

7 MR. ISAAC: YES.

8 THE CLERK: JUROR NO. 156, SANDA WIDEMAN,  
9 WAS THIS YOUR VERDICT AND STILL YOUR VERDICT?

10 MS. WIDEMAN: YES.

11 THE CLERK: JUROR NO. 155, JOHN SEAWELL,  
12 IS THIS YOUR VERDICT AND STILL YOUR VERDICT?

13 MR. SEAWELL: YES.

14 THE COURT: JUROR NO. 96 HAZEL SANDERS,  
15 IS THIS YOUR VERDICT AND STILL YOUR VERDICT?

16 MR. SANDERS: YES.

17 THE CLERK: JUROR NO. 141, CHAD FLOYD, IS  
18 THIS YOUR VERDICT AND STILL YOUR VERDICT?

19 MR. FLOYD: YES.

20 THE CLERK: JUROR NO. 55, MR. HOWARD  
21 JUNIOUS. IS THIS YOUR VERDICT AND STILL YOUR  
22 VERDICT?

23 MR. JUNIOUS: YES.

24 THE CLERK: JUROR NO. 157, TOMEKA WILSON,  
25 IS THIS YOUR VERDICT AND STILL YOUR VERDICT?

1 MS. WILSON: YES.

2 THE COURT: THE JURY HAS BEEN POLLED AND  
3 THE VERDICT STANDS. ANYTHING BEFORE THE JURY  
4 IS EXCUSED, MR. DOBY?

5 MR. DOBY: NO, SIR, YOUR HONOR. LADIES AND  
6 GENTLEMEN, THIS WILL CONCLUDE YOUR SERVICE IN  
7 CONNECTION WITH THIS CASE. AND I AM GOING TO  
8 EXCUSE YOU NOW FROM ANY FURTHER DUTIES WITH  
9 REGARD TO THIS MATTER. I WILL TELL YOU THAT  
10 ONCE YOU HAVE BEEN EXCUSED AS A JUROR IN THIS  
11 CASE, THERE IS NOTHING ILLEGAL ABOUT YOUR  
12 TALKING WITH ANYONE ABOUT THE CASE. IT IS A  
13 PRACTICE IN WHICH I STRONGLY DISAPPROVE AND I  
14 STRONGLY DISCOURAGE, BUT IT IT'S NOT ILLEGAL.  
15 YOU HAVE A RIGHT TO TALK WITH ANYONE, BUT YOU  
16 ALSO HAVE THE RIGHT NOT TO TALK TO ANYONE. AND  
17 IF YOU DECIDE YOU DO NOT WISH TO TALK TO ANYONE  
18 AND THEY CONTINUE TO HARASS YOU OR BOTHER YOU  
19 ABOUT IT, YOU LET THE COURT PERSONNEL KNOW, AND  
20 I WILL DEAL WITH THEM. I AM GOING TO ASK THAT  
21 YOU WILL CALL THAT NUMBER THAT YOU HAVE AFTER 6  
22 O'CLOCK TONIGHT. IF YOU DON'T HAVE IT, BE SURE  
23 TO GET IT FROM THE BAILIFF BEFORE YOU LEAVE.  
24 THERE WILL BE A MESSAGE ON THERE ABOUT YOUR  
25 REPORTING INSTRUCTIONS FOR TOMORROW. THAT IS

1 AN ANSWERING MACHINE VERY MUCH LIKE THE ONE YOU  
2 HAVE AT HOME. AND IT'S A SYSTEM, THEY'RE IN  
3 ALL COURTHOUSES BRINGING JURORS BACK AND FORTH  
4 TO THE COURTHOUSE FOR COURT WHEN NECESSARY. SO  
5 YOU CAN CALL THAT NUMBER AFTER SIX TONIGHT, ALL  
6 NIGHT LONG, AND GET YOUR RECORDING INSTRUCTIONS  
7 FOR TOMORROW. AND I WILL EXCUSE YOU AS FAR AS  
8 THIS CASE IS CONCERNED.

9 I WOULD ALSO TELL YOU THAT THE ONLY THING  
10 THAT REMAINS TO BE DONE IN THIS CASE IS THE  
11 IMPOSITION OF THE SENTENCE BY THE COURT. AND  
12 WE ARE GOING TO SENTENCE TODAY RIGHT NOW.  
13 SOMETIMES JURORS LIKE TO KNOW WHAT HAPPENS IN  
14 REGARD TO IMPOSITION OF THE SENTENCE. YOU ARE  
15 WELCOME TO STAY. IF YOU WANT TO GO I ASK THAT  
16 YOU GO OUT THIS WAY. GIVE YOUR BADGES TO THE  
17 BAILIFF. AND IF YOU WISH TO STAY FOR THE  
18 SENTENCING PHASE WE ARE GOING TO DO RIGHT NOW,  
19 JUST COME TO THE BACK OF THE COURTROOM, AND  
20 HAVE A SEAT. AND YOU ARE WELCOME TO STAY IF  
21 YOU WOULD LIKE. YOU DON'T HAVE TO. YOU CAN  
22 GO HOME. AND YOU MAY CALL THAT NUMBER TONIGHT  
23 AND GET THE REPORTING INSTRUCTIONS TOMORROW.  
24 BUT IF YOU WOULD LIKE TO STAY YOU ARE WELCOME  
25 TO DO SO JUST GO AROUND AND HAVE A SEAT IN THE

1 BACK OF THE COURTROOM. THANK YOU, YOU ARE FREE  
2 TO GO.

3 MR. DOBY: ANY MOTIONS ON BEHALF OF THE  
4 DEFENDANT?

5 MR. DOBY: I AM SORRY, YOUR HONOR.

6 THE COURT: MOTIONS ON BEHALF OF THE  
7 DEFENDANT?

8 MR. DOBY: YOUR HONOR, I WOULD RENEW MY  
9 MOTION FOR A JUDGMENT NOTWITHSTANDING THE  
10 VERDICT ON THE BASIS THAT THE STATE DID NOT  
11 PROVE THIS CASE BEYOND A REASONABLE DOUBT.

12 THE COURT: I WOULD RESPECTFULLY DENY THAT  
13 MOTION. I BELIEVE THERE WAS EVIDENCE IN THE  
14 RECORD BY THE WHICH THE JURY COULD HAVE REACHED  
15 THE CONCLUSION THAT THEY DID. AND FOR ME TO  
16 OVERRULE THE JURY'S VERDICT WOULD BE FOR ME TO  
17 IMPOSE A DIFFERENT VIEW OF THE FACTS, WHICH I  
18 CANNOT DO. THERE WAS EVIDENCE IN THE RECORD  
19 BY WHICH THE JURY COULD HAVE REACHED THE  
20 CONCLUSION THAT THEY DID, AND I WOULD  
21 RESPECTFULLY DENY THE MOTION. READY TO GO INTO  
22 THE SENTENCING PHASE, MR. FATA?

23 MR. FATA: YES, SIR.

24 THE COURT: MR. DOBY, WOULD YOU AND  
25 MR. BLACK COME AROUND PLEASE? MR. FATA,

1 ANYTHING ON BEHALF OF THE STATE?

2 MR. FATA: SERGEANT ANDERSON, DOES NOT  
3 WISH TO MAKE A STATEMENT TO THE COURT. I HAVE  
4 THE DEFENDANT'S RECORD. I CAN GAVE THAT. AND  
5 THEN WE HAVE A RECOMMENDATION ON THE SENTENCE.

6 THE COURT: YES, SIR. PRIOR RECORD.

7 MR. FATA: PRIOR RECORD IN 2000, HE'S GOT  
8 ASSAULT AND BATTERY HIGH AND AGGRAVATED NATURE,  
9 WHICH HE GOT A YOA SENTENCE FOR. IT LOOKS LIKE  
10 TWO COUNTS OF THAT. AGAIN IN 2000, HE HAD A  
11 BREAKING INTO AN AUTOMOBILE AND UNLAWFUL  
12 POSSESSION OF A HANDGUN BY A MINOR. AND IT  
13 APPEARS THAT THEY GAVE HIM FIVE ADDITIONAL  
14 YEARS. STILL IN THE -- IT'S AN MBE FIVE YEAR  
15 SENTENCE. I DON'T KNOW WHAT THAT MEANS. ALL  
16 THAT WAS CONCURRENT. OKAY.

17 HE DID HAVE A PAROLE REVOCATION IN 2002.  
18 IN 2003, HE HAD A KIDNAPPING AND THAT'S WHAT HE  
19 IS IN JAIL FOR NOW. HE WAS CONVICTED ON JULY  
20 12TH 2004. HE WAS SENTENCED TO 18 YEARS. HIS  
21 MAX OUT DATE IS, WELL HIS PROJECTED RELEASE  
22 DATE IS JANUARY 3RD, 2021. YOUR HONOR, THAT'S  
23 ALL I HAVE. THE PROBATION MAY HAVE SOME  
24 ADDITIONAL INFORMATION. DO WE HAVE ANYTHING  
25 OTHER THAN THAT?

1 PROBATION AGENT: NO, SIR.

2 THE COURT: MR. DODY, AS FAR AS YOU KNOW  
3 THAT IS HIS CRIMINAL RECORD?

4 MR. DOBY: YES, SIR, YOUR HONOR.

5 MR. FATA: THE STATE---

6 THE COURT: ALL RIGHT, I WILL TELL THE  
7 VICTIM IN THIS CASE, OF COURSE, MR. ANDERSON,  
8 AND I THINK SOLICITOR HAS ALREADY CONVEYED TO  
9 THE COURT THAT YOU DO NOT WISH TO BE HEARD.  
10 BUT UNDER THE VICTIM'S RIGHTS BILL YOU DO HAVE  
11 THE RIGHT TO BE PRESENT, NOT ONLY BE PRESENT  
12 BUT ADDRESS THE COURT, BUT IF THERE IS ANYTHING  
13 YOU WOULD LIKE TO TELL ME, I WILL BE GLAD TO  
14 HEAR FROM YOU. DO YOU HAVE SOMETHING FURTHER,  
15 MR. FATA?

16 MR. FATA: THE MAXIMUM SENTENCE IN THIS  
17 CASE IS 5 YEARS CONSECUTIVE TO WHAT HE'S  
18 ALREADY DOING. THIS IS A DANGEROUS INCI -- IF  
19 YOU HAVE EVER BEEN OUT TO THIS SMU UNIT, IT'S  
20 BEEN PRETTY TOUGH JUST GOING OUT TO THE PRISON,  
21 IN THE GENERAL POPULATION. BUT IF YOU GO TO  
22 THE SMU UNIT IT IS LIKE A ZOO OUT THERE. IN  
23 FACT, I BELIEVE YOU'RE SAFER AT RIVERBANKS ZOO  
24 THAN YOU ARE AT THE SMU UNIT.

25 FOR THAT REASON WE CAN'T HAVE INMATES

1 STABBING CORRECTION'S OFFICERS TRYING TO DO  
2 THEIR JOB. AND THE STATE WOULD REQUEST THE  
3 MAXIMUM SENTENCE EVEN THOUGH IT'S ONLY FIVE  
4 YEARS. IT WOULD CONSECUTIVE AND IT WOULD  
5 EXTEND HIS TIME IN JAIL.

6 THE COURT: MR. DOBY, I'LL BE GLAD TO HEAR  
7 FROM YOU.

8 MR. DOBY: MAY IT PLEASE THE COURT,  
9 TERRANCE TELLS ME HE'S 20 YEARS OF AGE. I'M  
10 SORRY, YOUR HONOR, HE TOLD ME HE'S 26 YEARS OF  
11 AGE. HE IS FROM HORRY COUNTY ORIGINALLY.  
12 YOUR HONOR, THANKFULLY, SERGEANT ANDERSON  
13 WANS'T HURT WORSE THAN HE WAS IN THIS MATTER.  
14 YOUR HONOR, WE COULD ASK THE COURT TO BE AS  
15 LENIENT AS POSSIBLE UNDER THESE CIRCUMSTANCES.

16 THE COURT: ALL RIGHT. MR. DOBY, I WILL  
17 BE GLAD TO HEAR FROM MR. BLACK, IF THERE IS  
18 ANYTHING HE WOULD LIKE TO TELL ME. OF COURSE  
19 TELL HIM WHATEVER HE TELLS ME GOES ON THE  
20 RECORD AND WOULD BE CONSIDERED IN CONNECTION  
21 WITH ANY APPEAL IF HE SHOULD WANT TO ENTER AN  
22 APPEAL ON THIS. SO YOU MAY WANT TO WARN HIM  
23 ABOUT THAT, BUT I WILL BE GLAD -- I WON'T HOLD  
24 IT AGAINST HIM IF HE DOESN'T WANT TO SAY  
25 ANYTHING.

1 MR. DOBY: HE INDICATES HE DOESN'T HAVE  
2 ANYTHING TO SAY, YOUR HONOR. ALL RIGHT.

3 THE COURT: ALL RIGHT, I MUST SAY THAT  
4 BASED ON THE SITUATION AND THE FACTS OF THIS  
5 CASE THAT I INTEND TO AGREE WITH THE STATE'S  
6 POSITION. FORTUNATELY THE OFFICER IN THIS CASE  
7 WAS NOT SERIOUSLY HURT. BUT THE INMATES IN OUR  
8 CORRECTIONAL INSTITUTIONS HAVE SIMPLY GOT TO  
9 OBEY THE RULES. AND THEY HAVE GOT TO DO THE  
10 THINGS THAT ARE REQUIRED OF THEM, ESPECIALLY  
11 THEY HAVE REFRAIN FROM ATTACKING THE  
12 CORRECTIONAL OFFICERS WHO ARE OUT THERE DOING  
13 THEIR DUTY.

14 AND I THINK THAT THAT MESSAGE NEEDS TO BE  
15 SENT TO LEE CORRECTIONAL INSTITUTE AND TO ANY  
16 OTHER INSTITUTION. THE SENTENCE OF THE COURT,  
17 THE DEFENDANT IS COMMITTED TO THE STATE  
18 DEPARTMENT OF CORRECTIONS FOR A TERM OF 5 YEARS  
19 CONSECUTIVE TO THE SENTENCE BEING SERVED. THIS  
20 WILL CONCLUDE THE MATTER AND THE HEARING IS  
21 OVER.

22 MR. FATA: THANK YOU YOUR HONOR.

23 -END OF REQUESTED TRANSCRIPT OF RECORD---

24  
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CERTIFICATE OF REPORTER

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STATE OF SOUTH CAROLINA       )  
  )  
COUNTY OF LEE

I, MARGARET T. SULLIVAN, OFFICIAL COURT REPORTER FOR  
THE THIRD 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, AUGUST 12TH-13TH, 2008, FOR LEE COUNTY,  
BISHOPVILLE, SOUTH CAROLINA.

I DO FURTHER CERTIFY THAT I AM NEITHER OF KIN,  
COUNSEL NOR INTEREST TO ANY PARTY HERETO.

October 18, 2008  
DATE

Margaret T. Sullivan

MARGARET T. SULLIVAN, COURT REPORTER  
MY COMMISSION EXPIRES OCTOBER 3, 2011

STATE OF SOUTH CAROLINA  
IN THE COURT OF APPEALS

---

Appeal from Lee County

Howard P. King, Circuit Court Judge

---

THE STATE,

RESPONDENT,

V.

TERRANCE BLACK,

APPELLANT

---

FINAL ANDERS BRIEF OF APPELLANT

---

LANELLE C. DURANT  
Appellate Defender

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ATTORNEY FOR APPELLANT

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<u>State v. Franklin</u> , 299 S.C. 133, 382 S.E.2d 911 (1989) .....	7
<u>State v. Kennedy</u> , 333 S.C. 426, 510 S.E.2d 714 (1998) .....	7
<u>State v. Washington</u> , 296 S.C. 54, 370 S.E.2d 611 (1988).....	6, 7

STATEMENT OF ISSUE ON APPEAL

Did the trial court err in admitting appellant's statement to the Department of Corrections investigator when the statement was not voluntarily made because appellant was incarcerated in the Department of Corrections?

STATEMENT OF THE CASE

On June 12, 2008, the Lee County Grand Jury indicted Terrance Black on the charge of assaulting a correctional officer two counts; however, the state proceeded on only the first count. On August 12, 2008, Black proceeded to trial before the Honorable Howard P. King and a jury. He was represented by S. Bryan Doby, Esquire. The jury returned a verdict of guilty as indicted. Judge King sentenced black to five years to run consecutively to the sentence he was already serving. Black's attorney filed a notice of appeal. This appeal follows.

THIS OPINION HAS NO PRECEDENTIAL VALUE. IT SHOULD NOT BE CITED OR RELIED ON AS PRECEDENT IN ANY PROCEEDING EXCEPT AS PROVIDED BY RULE 268(d)(2), SCACR.

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

The State,

Respondent,

v.

Terrance Black,

Appellant.



---

Appeal From Lee County  
Howard P. King, Circuit Court Judge

---

Unpublished Opinion No. 2010-UP-012  
Submitted January 4, 2010 – Filed January 21, 2010

---

**APPEAL DISMISSED**

---

Appellate Defender LaNelle C. DuRant, of  
Columbia, for Appellant.

Attorney General Henry Dargan McMaster, Chief  
Deputy Attorney General John W. McIntosh,  
Assistant Deputy Attorney General Salley W. Elliott,  
all of Columbia; and Cecil Kelly Jackson, of Sumter,  
for Respondent.

**PER CURIAM:** In August 2008, Terrance was sentenced to five years to run consecutively to the sentence he was already serving for assaulting a correctional officer. Black's counsel attached to the brief a petition to be relieved as counsel stating she had reviewed the record and concluded this appeal lacked merit. Black did not file a pro se brief.

After a thorough review of the record and counsel's brief pursuant to Anders v. California, 386 U.S. 738 (1967) and State v. Williams, 305 S.C. 116, 406 S.E.2d 357 (1991), we dismiss<sup>1</sup> the appeal and grant counsel's petition to be relieved.

**APPEAL DISMISSED**

**HUFF, A.C.J., GEATHERS, J., and CURETON, A.J., concur.**

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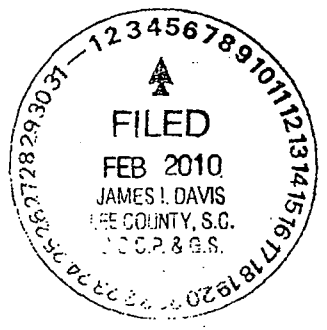
<sup>1</sup> We decide this case without oral argument pursuant to Rule 215, SCACR.

STATE OF SOUTH CAROLINA )  
 )  
 County of LEE )  
TERRENCE BLACK, #265323 )  
 Full name and prison number, if any, of applicant )  
 )  
 v. )  
State of South Carolina )  
 Name of Respondent )  
 )

In the Court of Common Pleas

10 - CP - 31 - 21

APPLICATION FOR  
 POST-CONVICTION RELIEF



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 it clear to which question any such continued answer refers.

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

If the applicant 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 applicant was convicted.

1. Place of detention PERRY CORR. INST., 430 OAKLAWN RD., PELZER  
South Carolina, 29669
2. Name and location of Court which imposed sentence LEE County Courthouse,  
Bishopville, S.C. 29010
3. The indictment number or numbers (if known) upon which and the offense or offenses for which sentence was imposed:
  - (a) 08-GS-31-64, Assault on A Correctional Officer
  - (b) \_\_\_\_\_
  - (c) \_\_\_\_\_
4. The date upon which sentence was imposed and the terms of the sentence:
  - (a) August 12, 2008 ; 5 years
  - (b) \_\_\_\_\_
  - (c) \_\_\_\_\_

5. Check whether a finding of guilty was made

(a) after a plea of guilty N/A

(b) after a plea of not guilty yes

(c) after a plea of nolo contendere N/A

6. Did you appeal from the judgment of conviction or the imposition of sentence? yes (thru trial lawyer)

7. If you answered "yes" to (6), list

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

i. The Court of Appeals

ii. \_\_\_\_\_

iii. \_\_\_\_\_

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

i. ~~denied~~ DISMISSED

ii. \_\_\_\_\_

iii. \_\_\_\_\_

(c) the date of each such result:

i. (of or about) ~~January 21, 2010~~, ~~2010~~ JANUARY 21, 2010

ii. \_\_\_\_\_

iii. \_\_\_\_\_

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

i. N/A

ii. \_\_\_\_\_

iii. \_\_\_\_\_

8. If you answered "no" to (6), state your reasons for not so appealing:

(a) N/A

(b) \_\_\_\_\_

(c) \_\_\_\_\_

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

(a) Ineffective Assistance of Counsel

(b) Prosecutorial Misconduct

(c) Newly Discovered Evidence

10. State concisely and in the same order the facts which support each of the grounds set out in (9)

(a) Counsel failed to represent client according to the Constitution.

(b) Prosecutor misled jurors in their duty to uphold the Law.

(c) New Evidence found that was not presented at trial.

11. 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 petitions in State or Federal Courts for habeas corpus or post-conviction relief?

No

(c) any petitions in the United States Supreme Court for certiorari other than petitions, if any, already specified in (7)

No

(d) any other petitions, motions or applications in this or any other Court?

No

12. If you answered "yes" to any part of (11), list with respect to each petition, motion or application:

(a) the specific nature thereof:

- i. \_\_\_\_\_
- ii. \_\_\_\_\_
- iii. N/A
- iv. \_\_\_\_\_

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

- i. \_\_\_\_\_
- ii. N/A
- iii. \_\_\_\_\_
- iv. \_\_\_\_\_

(c) the disposition thereof:

- i. \_\_\_\_\_
- ii. N/A
- iii. \_\_\_\_\_
- iv. \_\_\_\_\_

(d) the date of each such disposition:

- i. \_\_\_\_\_
- ii. \_\_\_\_\_
- iii. N/A
- iv. \_\_\_\_\_

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

- i. \_\_\_\_\_
- ii. N/A
- iii. \_\_\_\_\_
- iv. \_\_\_\_\_

13. Has any ground set forth in (9) been previously presented to this or any other Court, State or Federal, in any petition, motion or application which you have filed? NO

14. If you answered "yes" to (13), identify:

(a) which grounds have been presented:

- i. ~~\_\_\_\_\_~~
- ii. N/A
- iii. \_\_\_\_\_

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

- i. \_\_\_\_\_
- ii. N/A
- iii. \_\_\_\_\_

15. If any ground set forth in (9) 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) \_\_\_\_\_
- (b) N/A
- (c) \_\_\_\_\_

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

- (a) your arraignment and plea? N/A
- (b) your trial, if any? yes
- (c) your sentencing? yes
- (d) your appeal, if any, from the judgment of conviction or the imposition of sentence?  
yes
- (e) preparation, presentation or consideration of any petitions, motions, or application with respect to this conviction, which you filed? N/A

17. If you answered "yes" to one or more parts of (16), list:

(a) the name and address of each attorney who represented you

- i. S. Bryan Doby; Esq. Jennings & Jennings, PA P.O. Box 106
- ii. Bishopville, S.C. 29010 / Lantelle Conty Durant; South Carolina
- iii. Commission on Indigent Defense Division of Appellate Defense

(b) the proceedings at which each such attorney represented you: PO BOX 11589 Columbia, S.C. 29211-1589

- i. Trial
- ii. Appeal
- iii. \_\_\_\_\_

18. State clearly the relief you seek in filing this application.

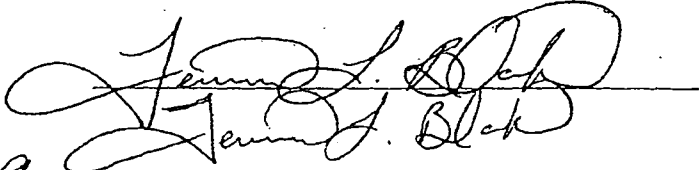
sentence and conviction be vacated.  
Reversed and Remanded for a New Trial.

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

No

STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF LEE ) VERIFICATION

I, TERRENCE BLACK, #265323, being duly sworn upon my oath, depose and say that I have subscribed to the foregoing application; that I know the contents thereof; that it includes every ground known to me for vacating, setting aside or correcting the conviction and sentence attacked in this application; and that the matters and allegations therein set forth are true.



Sworn to and subscribed before me  
This 22 day of Sep, 2009

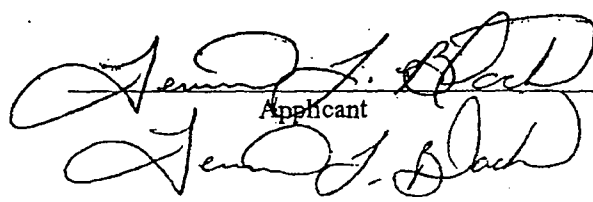
Dupe M... L.S.  
Notary Public for South Carolina

My Commission Expires JAN 28, 2018

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

I, TERRENCE BLACK, #265323, 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 or 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 proceeding or give security therefor.



Applicant

Sworn to and subscribed before me  
This \_\_\_ day of \_\_\_\_\_, 20\_\_

\_\_\_\_\_  
L.S.  
Notary Public for South Carolina  
My Commission Expires: \_\_\_\_\_

CERTIFICATE OF SERVICE

I DO HEREBY CERTIFY THAT I, TORRENCE BLACK,  
DID THIS 2<sup>ND</sup> DAY OF FEBRUARY, 2010 PUT A COPY OF  
PCR APPLICATION IN U.S. MAIL POSTAGE PRE-PAID AND  
ADDRESSED TO:

THE HONORABLE JAMES I. DAVIS  
CLERK OF COURT, LEE COUNTY  
~~PO~~ P.O. BOX 387  
BISHOPVILLE, S.C. 29010

*Terrance Black*  
TORRENCE BLACK  
**RECEIVED**

FEB 02 2010

PCI MAILROOM

NANCY MORCHANT/HOLON DAVIS  
POSTAL DIRECTOR  
PERLY CORR. INST.



STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF LEE	)	
	)	
	)	2010-CP-31-0021
	)	
Terrence Black, #265323,	)	
	)	
Applicant,	)	
	)	
v.	)	<b>RETURN</b>
	)	(Appointment of Counsel Requested)
State of South Carolina,	)	
	)	
Respondent.	)	
	)	

The Respondent, making its Return to the application for post conviction relief (PCR) filed February 4, 2010, would respectfully show this Court:

I.

The Applicant is presently confined in the South Carolina Department of Corrections.<sup>1</sup> The Applicant was indicted at the June 2008 term of the Lee County Grand Jury for two counts of Assaulting Correctional Officer (2008-GS-31-0064). Bryan Doby, Esquire, represented him. Applicant proceeded to a jury trial on Count One before the Honorable Howard P. King. Applicant was found guilty, and on August 11, 2008, Applicant was sentenced to five (5) years imprisonment, sentence to be served consecutively to the sentence now serving.

A notice of appeal was filed and an appeal perfected. The appeal was dismissed following submission of an Anders brief. State v. Black, 2010-UP-012 (S.C. Ct. App. filed January 21, 2010). The Remittitur was sent on February 8, 2010.

---

<sup>1</sup> Applicant is also serving sentences from Horry County which are not subject of this application.

Attached herewith and incorporated herein are the records of the Lee County Clerk of Court regarding the subject conviction, the Applicant's records from the South Carolina Department of Corrections, the appellate records, and the trial transcript. The Respondent reserves the right to amend this Return upon receipt of any relevant materials.

## II.

In his current Application, the Applicant alleges that he is being held in custody unlawfully for the following reasons:

1. "Counsel failed to represent client according to the Constitution."
2. "Prosecutor misled jurors in their duty to uphold the law."
3. "New evidence found that was not presented at trial."

Any claims not specifically enumerated in the PCR application or amendments will be opposed by the State at an evidentiary hearing, and the State will seek summary dismissal of vague or general claims at an evidentiary hearing. S.C. Code §17-27-50. All amendments should be made well in advance of an evidentiary hearing by counsel of record. Rule 11, SCRPC.

## III.

For purposes of this Return, Respondent interprets Applicant's first two allegations to be claims of ineffective assistance of counsel. In a post-conviction relief action, the Applicant bears the burden of proving the allegations in his application. Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where the application alleges ineffective assistance of counsel as a ground for relief, the Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668; 104 S.Ct. 2052, 2064, 80 L.Ed.2d 674, 692 (1984); Butler, 334 S.E.2d 813.

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Strickland, 466 U.S. 668. The Applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

The reviewing court applies a two-pronged test in evaluating allegations of ineffective assistance of plea counsel. First, the Applicant must prove that counsel's performance was deficient. Under this prong, the court measures an attorney's performance by its "reasonableness under professional norms." Cherry, 300 S.C. at 117, 386 S.E.2d at 625, citing Strickland. Second, counsel's deficient performance must have 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.

The Respondent submits that the Applicant cannot satisfy either requirement of the Strickland test. However, the allegation of ineffective assistance of counsel probably raises questions of fact that the record does not conclusively refute. Accordingly, the Respondent requests an evidentiary hearing to fully resolve this issue. See Sharper v. State, 279 S.C. 264, 305 S.E.2d 247 (1983).

#### IV.

A party requesting a new trial based on after-discovered evidence must show that the evidence:

- (1) Is such as would probably change the result if a new trial was had;
- (2) Has been discovered since the trial;
- (3) Could not by the exercise of due diligence have been discovered before the trial;
- (4) Is material to the issue of guilt or innocence; and,
- (5) Is not merely cumulative or impeaching.

Hayden v. State, 278 S.C. 610, 611, 299 S.E.2d 854, 855 (1983). The Respondent submits that the Applicant cannot satisfy either requirement of the Hayden test and demands strict proof thereof.

V.

Each and every allegation contained within the application not hereinbefore either expressly admitted, qualified or explained is hereby denied.

VI.

WHEREFORE, having made its Return, the State requests that an evidentiary hearing be held.

Respectfully submitted,

ALAN WILSON  
Attorney General

JOHN W. McINTOSH  
Chief Deputy Attorney General

SALLEY W. ELLIOTT  
Assistant Deputy Attorney General

MARY S. WILLIAMS  
Assistant Attorney General

By:   
ATTORNEYS FOR RESPONDENT

Office of the Attorney General  
P.O. Box 11549  
Columbia, SC 29211

*January 20, 2011*



State of South Carolina )	In the Court of General Sessions
)	Third Judicial Circuit
County of Sumter      )	2010-CP-31-00021

State of South Carolina,	)	
	)	
Plaintiff	)	
	)	
vs.	)	Transcript of Record
	)	
Terrence Black,	)	
	)	
Defendant.	)	
	)	
_____	)	

December 12, 2012  
Sumter, South Carolina

B E F O R E:

The Honorable Ferrell Cothran, Judge

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

Megan Harrigan, Esq.  
Attorney for the Plaintiff

Mark E. Schnee, Esq.  
Attorney for the Defendant

Bonnie H. Kelly, CVR  
Circuit Court Reporter

I N D E X

1					PAGE NO.
2	<u>WITNESS/DESCRIPTION</u>				
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4	Terrence Black				
5		Direct	Cross	Re-direct	Re-Cross
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E X H I B I T S

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<u>NO.</u>	<u>DESCRIPTION</u>	<u>I.D.</u>	<u>EVID</u>
C-1	One-page letter		34

1 THE COURT: Yes, ma'am.

2 MS. HARRIGAN: May it please the Court. The next  
3 matter is *Terrence Black vs. the State of South Carolina*,  
4 docket No. 2010-CP-31-0021.

5 THE COURT: Okay.

6 MS. HARRIGAN: The applicant was indicted during the  
7 June, 2008 term of the Lee County Grand Jury, with two  
8 counts of assaulting a correctional officer. Stephen Brian  
9 Doby represented him.

10 Applicant proceeded to a jury trial on one count of  
11 assaulting a correctional officer before the Honorable  
12 Howard King. Applicant was found guilty as indicted, and  
13 on August 11, 2008, he was sentenced to five years  
14 imprisonment to be served consecutively to an unrelated  
15 kidnapping charge from Horry County.

16 A notice of appeal was filed and an appeal was  
17 perfected. The appeal was dismissed following the  
18 submission of an *Anders* brief, and the remittitur was sent  
19 on February 8, 2010.

20 Applicant filed a timely application for post-  
21 conviction relief on February 4, 2010. The State made its  
22 return on January 28, 2011. And applicant is represented  
23 in this current action by Mark Schnee.

24 THE COURT: Okay.

25 MR. SCHNEE: If it please the Court, Your Honor.

DIRECT EXAMINATION BY MR. SCHNEE - TERRENCE BLACK

5

1 THE COURT: Yes.

2 MR. SCHNEE: Call Terrence Black to the stand.

3 THE COURT: Okay. If you'd come around, please, sir.  
4 Place your left hand on the bible and raise your right.

5 TERRENCE BLACK, having been first duly  
6 sworn, testifies as follows:

7 BAILIFF: State your name, please, and spell your  
8 first and last name for the record.

9 THE DEFENDANT: Terrence Black; T-e-r-r-e-n-c-e, B-l-  
10 a-c-k.

11 DIRECT EXAMINATION BY MR. SCHNEE:

12 Q Good morning, Mr. Black.

13 A Good morning.

14 Q When you were charged with this, you were incarcerated  
15 at which facility?

16 A Lee Correctional Institution.

17 Q Okay. Did you stay at Lee Correctional after that?

18 A Yes.

19 Q Okay. How many times were you -- did you meet with  
20 your attorney Mr. Doby?

21 A At Lee Correctional Institution, only once.

22 Q Okay. Any other -- did you meet him at any other time  
23 or any other places?

24 A During court.

25 Q So you met him -- your testimony's you met him once

1 before trial.

2 A No. I met him during all the little times that we  
3 went up, and they didn't never tell me -- I mean, every  
4 court term that we went up I seen him.

5 Q Okay. So you met, talked with him about the case.

6 A No. That was at Lee County. That was the only one.

7 Q You only talked with him about the case one time?

8 A Yeah.

9 Q Okay. Did you tell him what witnesses that you had  
10 that would testify on your behalf?

11 A Yes.

12 Q Okay. What witnesses did you tell him about?

13 A Carlos Sumter. Jerry ---

14 THE COURT REPORTER: I'm sorry. Carlos who?

15 THE DEFENDANT: Sumter.

16 A Jerry Bynum.

17 THE COURT REPORTER: Bonham?

18 MR. SCHNEE: Bynum; B-y ---

19 A Laquan Thompson, Jim Conyers, and a list of officers.

20 Q Okay. Now, the -- the people -- the four people that  
21 you named, those are all other inmates?

22 A Yes.

23 Q Okay. And one of them was your cell mate at the time.

24 A Yes.

25 Q And who was that?

1 A Jerry Bynum.

2 Q Okay. After this -- this incident happened that you  
3 were charged with, had you met with -- had you -- did you  
4 stay in the cell with Mr. Bynum at all?

5 A No. I was taken out of the cell and placed in another  
6 cell, a single cell.

7 Q Okay. Did you ever have an opportunity to personally  
8 talk with him about this?

9 A No. I mean, I was in another cell, but he -- he sent  
10 me a message, and basically told me that when they had  
11 brought him up, whatever, they roughed him up and all kind  
12 of stuff like that.

13 Q Okay. Now, is this before of after the trial that you  
14 received this message?

15 A This was after, right after. The same day.

16 Q Okay. And when you say "they roughed him up," what do  
17 you mean?

18 A The correctional officers that brought him up there.

19 Q Okay. Did -- did they threaten him in some way?

20 A Yeah. He said they threatened him and they also  
21 threatened him with my life also.

22 Q Okay. Now, Mr. Bynum ended up testifying in your  
23 trial?

24 A I mean, he pled the Fifth.

25 Q Okay. He -- he did answer a few questions, though,

1 did he not?

2 A Yeah. I think he -- I think he said -- he -- he  
3 basically stated that nothing happened, and -- and that he  
4 was sleep or something like that.

5 Q Okay. Now, all of this incident revolves around the  
6 incident with the food flap and in terms of food trays  
7 going in. So this was at meal time.

8 A Yes.

9 Q Okay. So it was pretty much his testimony that he  
10 just chose not to eat that day?

11 A I mean, he was shaken -- he was shook up. I mean, he  
12 -- he did -- I mean, he got up and basically pled the  
13 Fifth, because he didn't want to get hisself [sic] further  
14 involved, I guess.

15 Q Okay. Did you end up testifying at trial?

16 A No.

17 Q Why is that?

18 A Because I was asked not to.

19 Q You were asked not ---

20 A Well, I was advised that it wouldn't be in the best  
21 interest.

22 Q Okay. Who advised you of that?

23 A My lawyer.

24 Q And what did he tell you about that?

25 A I mean, the man -- basically, he -- basically, he --

1 in layman's terms, the man told me if I didn't want to look  
2 like a snitch -- he basically said there's only two people  
3 in the cell; that if I didn't do it, then my roommate had  
4 to do it. So if I didn't want to look like I was telling  
5 on somebody, then I shouldn't take the stand, because I  
6 wouldn't had no other choice but to tell what happened.

7 Q Okay. Well, let's talk about what happened. What  
8 exactly did happen that day?

9 A Well, it was on a Friday. We had just came off rec,  
10 and they came back, got us for our showers and everything  
11 like that. They put us back in the cell; they came round  
12 for count -- at the count, they came around to feed the --  
13 I mean, I -- I -- the man didn't get stabbed, you know what  
14 I'm saying?

15 I was sitting down by the door, and my roommate was  
16 sitting on my bed. But the man -- the man didn't get  
17 stabbed, period, you know what I'm saying? And the -- the  
18 -- the little mark that he did have on his hand, looked  
19 like it came from the corner of the door where he tried to  
20 slam the door -- tried to slam the flap back up or  
21 whatever.

22 Q Now -- now, part of the officer's testimony is he was  
23 trying to close the flap, and someone was trying to keep it  
24 forced open. What exactly happened with that?

25 A Oh. I had -- I basically tied a jumpsuit around the

1 flap.

2 Q Okay. And that's obviously a violation of the DOC  
3 policy ---

4 A Yeah. I -- I was trying to get a supervisor to my  
5 door.

6 Q Okay. And at some point, the officer claims he was  
7 injured.

8 A Yeah. He -- he basically tried to slam the flap up,  
9 and know what I'm saying, he -- I mean, he must have hit  
10 his hand on the corner of the flap or something. He was  
11 not stabbed though.

12 Q Okay.

13 A And -- and on top of that, I did have a weapon. And I  
14 gave them the weapon for analyst check. And the weapon  
15 came back with no chemicals on it, no kind of blood on it,  
16 or anything.

17 Q And you're aware ---

18 A But ---

19 Q --- they never sent it for a DNA test, right?

20 A Yes, I know that. But they did an analyst on the  
21 weapon.

22 And Mr. Doby -- what I -- when -- when the solicitor  
23 told Mr. Doby, it was verbally at the table during trial.  
24 And I tried to urge him to let the jury know this, but  
25 unfortunately, he didn't.

DIRECT EXAMINATION BY MR. SCHNEE - TERRENCE BLACK 11

- 1 Q Okay. Did you stab that guard with anything?
- 2 A No.
- 3 Q But you did just tie the flap down so it wouldn't
- 4 close.
- 5 A Yes.
- 6 Q And your roommate was ---
- 7 A I tied the flap before he -- before he came to the
- 8 door. Another officer opened the flap.
- 9 Q Okay. Your -- your cell mate was aware of this --
- 10 A Yeah.
- 11 Q -- obviously.
- 12 A Yeah.
- 13 Q And he would have gotten in trouble just as much as
- 14 you if -- if you had talked about this before?
- 15 A Huh?
- 16 Q Would he have gotten in just as much as trouble for
- 17 keeping it open?
- 18 A I mean, I would have pretty much took the charge.
- 19 They know it was me. They know it was me who had the flap
- 20 open.
- 21 Q Okay.
- 22 A But it's possible -- it's a possibility that he could
- 23 have got in trouble also.
- 24 Q Were you ever given an offer in this case?
- 25 A Yeah.

1 Q Do you remember what it was?

2 A I think the first time they -- the first time I think  
3 they wanted me to take five years, non-violent, plead  
4 guilty to both assault on a battery charge -- assault on a  
5 correctional officer charge. And I turned it down.

6 I think the next time they came it was three years.  
7 And the last time they came I think it was one year.

8 Q Okay. So the last offer you had was one year?

9 A Yeah. I mean, common sense would of -- if I would  
10 have -- if I would have actually did it, if I would have  
11 actually stabbed the man, I would have took one year and  
12 ran with it.

13 Q Okay.

14 A That's common sense.

15 Q You were serving an 18-year sentence at the time.

16 A Yeah.

17 Q Which is an 85 percent violent.

18 A Yeah.

19 Q And their offer was one year, non-violent.

20 A Yeah.

21 Q Which is pretty much an extra six months.

22 A Yeah.

23 Q And you turned that down.

24 A Yes, because I didn't do nothing wrong.

25 Q Are there any other issues you'd like to address with

1 the Court in terms of what happened during the trial?

2 A I mean, the witnesses that I did ask to be called  
3 during my trial, I think he interviewed two of them. The  
4 other two he didn't interview. The officers I asked to be  
5 present, which were on the rock during the time when this  
6 supposedly stabbing took place, I asked for them to be  
7 there also and none of them was there.

8 Q Okay.

9 A So he basically kind of -- and I also asked him to  
10 test Anderson's blood against the weapon, which that also  
11 never happened.

12 I mean, I asked him to do some things, and he just, I  
13 guess, came up with his own little defense or something,  
14 whatever.

15 Q Okay. Did you want to testify during your trial?

16 A I mean, I -- I think it probably would have made it  
17 better.

18 Q But ultimately you ended up not testifying. But did  
19 you feel that you had that choice, or did you feel  
20 pressured that you not testify?

21 A I mean, I'm in the South Carolina Department of  
22 Corrections, and the way he put -- the way he put it when  
23 he advised me not to, I mean, I'm not going to put myself  
24 in a situation to where I can go somewhere and get injured  
25 further for being labeled as a snitch or whatever. I mean

1 -- so I basically was looking out for the well being of  
2 myself during the time.

3 Q All right. Thank you.

4 MS. HARRIGAN: May it please the Court.

5 CROSS-EXAMINATION BY MS. HARRIGAN:

6 Q Mr. Black, you were originally facing two counts of  
7 assaulting a correctional officer, correct?

8 A Yes.

9 Q And the State only proceeded on one?

10 A Yes.

11 Q Okay. And you were accused of using a shank to stab  
12 two different officers, correct?

13 A Yes.

14 Q Okay. And you admit to having a weapon while you in  
15 the Department of Corrections, right?

16 A Yes. I -- I gave them the weapon.

17 Q Okay. And you know that that's in violation of the  
18 Department of Corrections policy.

19 A Yes.

20 Q And you do admit to tying a jumpsuit around the flap  
21 in violation of the Department of Corrections policy.

22 A Yes.

23 Q But your testimony here today is that you never  
24 stabbed the victim in this case.

25 A Yes.

CROSS-EXAMINATION BY MS. HARRIGAN - TERRENCE BLACK 15

1 Q Okay.

2 A So apparently I gotta tell you that I've been telling  
3 the truth about all the rest of it.

4 Q But you did give a statement to an investigator of the  
5 Department of Corrections about the -- about this case,  
6 didn't you, admitting your guilt?

7 A No.

8 Q You didn't give a statement to Investigator Greer?

9 A No.

10 Q Who testified at trial that you did give a statement.

11 A Yeah. He tried to testify at trial that he give a  
12 statement. I also asked -- there -- there was a tape  
13 recording of him where he came to try to interview me or  
14 whatever, and to serve me the warrant. And I tried to tell  
15 Doby that it was a tape recording. But Officer Greer  
16 denied that it was a tape recording.

17 A tape recording would have said exactly what I said.  
18 The only thing I did was basically tell him that I agreed  
19 to all the little waivers and all this little stuff right  
20 here and whatever.

21 Q And at trial, the State introduced papers where you  
22 had initialed and waived your right to remain silent and  
23 have an attorney, so that you could talk to Investigator  
24 Greer, correct?

25 A Yes.

- 1 Q And that was introduced at trial.
- 2 A Yes.
- 3 Q As well as your statement, correct?
- 4 A Yes.
- 5 Q And your statement was something like: "It wasn't  
6 supposed to go down like that. Officer Anderson just got  
7 too close," correct?
- 8 A No.
- 9 Q That -- that wasn't your statement.
- 10 A No.
- 11 Q But ---
- 12 A That's -- that's what -- that's what the investigator  
13 tried to say I said.
- 14 Q But that -- that statement was introduced into  
15 evidence at trial, correct?
- 16 A Yes.
- 17 Q Okay. And you chose not to testify at your trial on  
18 your behalf, correct?
- 19 A On advisement from my attorney.
- 20 Q And you were also advised by Judge King regarding your  
21 right to testify, correct?
- 22 A That was after my attorney -- attorney ---
- 23 Q But Judge King did advise you ---
- 24 A Yes, he did.
- 25 Q --- at length, on the record, correct?

CROSS-EXAMINATION BY MS. HARRIGAN - TERRENCE BLACK 17

1 A Yes, he did.

2 Q Okay. And your testimony today is you decided not to  
3 testify because you were afraid of your own safety,  
4 correct?

5 A Yes.

6 Q So you knowingly and intelligently made the decision  
7 not to testify at your trial, correct?

8 A My -- my lawyer advised me not to testify, and he told  
9 me the terms of if I testify vices [sic] not testifying.  
10 And I didn't testify ---

11 Q So you weighed ---

12 A --- on those terms.

13 Q You weighed the options, and you voluntarily chose not  
14 to testify at trial due to safety concerns, correct?

15 A I mean --

16 Q Yes or no.

17 A You got to talk to my lawyer about that. I mean, I  
18 did that on -- I did that on the strength of my well being.  
19 But at the same time, it was his advice.

20 Q Okay. And one of your allegations is that he didn't  
21 call numerous inmates from the Department of Corrections,  
22 right, at your trial to testify?

23 A That he didn't call numerous inmates?

24 Q That he didn't call numerous inmates. I think you  
25 said Jerry Bynum you wanted called ---

1 A Yeah. He called ---

2 Q --- as well as Carlos Sumter.

3 A No. He called Jerry Bynum and Carlos Sumter. And  
4 then he called two witnesses that he didn't even never  
5 interview in the first place. And that's Kinard Brown and  
6 Youngren.

7 THE COURT REPORTER: I'm sorry.

8 THE DEFENDANT: Youngren.

9 THE COURT REPORTER: Could you spell it?

10 THE DEFENDANT: Y-o-u-n-g-r ---

11 MS. HARRIGAN: Y-o- ---

12 THE DEFENDANT: --- r-e-n.

13 MS. HARRIGAN: Jeffrey Youngren.

14 CROSS-EXAMINATION BY MS. HARRIGAN (continues):

15 Q So he did call four witnesses on you behalf at trial,  
16 correct?

17 A Yes, he did.

18 Q And those witnesses all decided to plead the Fifth and  
19 not answer questions in regards to this incident, correct?

20 A That was simply because they were roughed up.

21 Q Okay. So these witnesses did -- did call -- your  
22 attorney did call them to the stand; they were subpoenaed,  
23 they were present in the courtroom, and they all took the  
24 stand, correct?

25 A Yes, they all took the stand.

CROSS-EXAMINATION BY MS. HARRIGAN - TERRENCE BLACK 19

1 Q Okay. And one of your allegations in your application  
2 is that -- is that was newly discovered evidence that Mr.  
3 Doby didn't present at trial, correct?

4 A Yes.

5 Q Okay. Have you brought any of this evidence to court  
6 with you today?

7 A I mean, I'm -- I'm currently under investigation at  
8 Lee Correctional Institution, and I don't have any of my  
9 paperwork.

10 Q Okay. In regards to having the weapon that you admit  
11 you had at the Department of Corrections against policy,  
12 have you had that weapon tested for the victim's DNA?

13 A I asked Officer [sic] Doby to do that.

14 Q Okay. But you haven't done that yourself.

15 A No. I tried to write SLED -- I got all this, too. I  
16 tried to write SLED, but being that I was indigent, they  
17 wouldn't -- they -- they tried to charge me and I couldn't  
18 pay them. So ...

19 Q So we don't really know what the testing would show,  
20 whether his DNA was on your homemade shank or not, correct?

21 A Officer -- officer -- I mean, my lawyer was given a  
22 verbal statement from the solicitor saying that it wasn't.

23 Q Okay. But you don't have anything to refute that.  
24 You didn't have it tested before coming to court today,  
25 correct?

1 A No.

2 Q Okay. And any additional witnesses, you haven't  
3 brought those witnesses here to testify today, have you?

4 A No. But I did ask for to have them, but ...

5 Q So we don't really know what they'd testify to today,  
6 do we?

7 A I mean, you don't.

8 Q And you don't have any evidence to present today of  
9 that.

10 A No.

11 MS. HARRIGAN: No further questions, Your Honor.

12 THE COURT: Okay. Anything else?

13 MR. SCHNEE: I have no questions for this witness.

14 THE COURT: (To the defendant) You can step down.

15 (The defendant complies.)

16 MR. SCHNEE: Call Mr. Doby to the stand.

17 THE COURT: Okay.

18 BRYAN DOBY, having been first duly sworn,  
19 testifies as follows:

20 BAILIFF: State your name, please, and spell you first  
21 and last name for the record.

22 MR. DOBY: Bryan Doby; B-r-y-a-n, D-o-b-y.

23 DIRECT EXAMINATION BY MR. SCHNEE:

24 Q Good morning, Mr. Doby.

25 A Good morning.

1 Q Just want to ask you a few questions about your  
2 representation and -- and how the trial went.

3 How many times do you think you met with Mr. Black?

4 A I -- I met Mr. Black, I believe, the first time at the  
5 preliminary hearing. I was appointed just a couple of days  
6 before the preliminary hearing it looked like. And I met  
7 with him for the first time there.

8 I also went to the institution one time, if I remember  
9 correctly, and talked with him on several occasions. He  
10 was up for trial for at least one prior term before the  
11 case was tried and -- and talked to him at least that time.  
12 And there may have been another time. My -- my notes  
13 didn't reflect another visit.

14 Q Okay. Did Mr. Black talk to you about witnesses that  
15 he wanted called?

16 A He did.

17 Q Okay. And some of those names: Boquay [phonetic]  
18 Thompson, Jerry Bynum, Carlos Sumter, those were the names  
19 he gave you?

20 A I -- I'd have to look back and see. He -- initially  
21 it was scheduled to be trial -- tried, it look like at the  
22 June term in 2008. And he gave me some witnesses, and I  
23 did an order of transport to bring those witnesses to  
24 trial.

25 And then we -- he actually added some additional

1 witnesses for the week that the case was tried.

2 Q Okay.

3 A So the order of transport the second time had some  
4 additional witnesses.

5 Q Okay. Prior to calling -- and you ended up calling  
6 some of those witnesses to trial.

7 A We did.

8 Q Okay. Did you interview them prior?

9 A I did. I talked to them when they brought them up --  
10 up to the courthouse. All of the witnesses, in my opinion,  
11 either didn't want to testify, didn't care about  
12 testifying, or didn't know anything. One of those options  
13 would probably apply to all of them.

14 Q Okay. Well, you had not -- when you in -- when you  
15 interviewed them, was it just you or did you have someone  
16 else with you?

17 A It would have been just me.

18 Q And did any of them tell you what happened at any  
19 point during their interviews?

20 A None of them told me that they knew anything about it.  
21 And some of them simply refused to talk to me.

22 Q Okay.

23 A And I relayed that to Mr. Black, and Mr. Black  
24 insisted on calling -- the ultimate number I -- I have to  
25 look back and see. Three or four, however many it -- it

1 ultimately turned out to be that we called, and they were  
2 all less than enthusiastic about testifying.

3 Q Okay. In particular, you called Jerry Bynum, which  
4 was Mr. Black's cell mate.

5 A I'd have to look back for the specific name, but I do  
6 recall his roommate was called.

7 Q Okay. And his -- the room -- the cell mate's  
8 testimony was that he was in bed asleep and saw nothing.

9 A That's what he testified to.

10 Q Okay. Had you talked to that man beforehand?

11 A The best of my knowledge, I had talked to him before -  
12 - before any of those were called. They brought them to  
13 the courthouse on that particular day that they were  
14 scheduled to testify.

15 Q Okay. Did you know that he was going to testify that  
16 he was asleep and that was -- that was his version of the  
17 events; and he knows nothing about it?

18 A He told me that before he was going testify.

19 Q Okay. And it was your decision to call him at that  
20 point?

21 A No, sir. It was Mr. Black's decision to call him.

22 Q So, it -- your testimony today is that Mr. Black  
23 forced you to call his cell mate to the stand.

24 A No, sir, he didn't force me to call him. But my  
25 conversation with Mr. Black was that these witnesses

1 weren't going to be any assistance. And he wanted them  
2 called in spite of that.

3 Q Okay. And you would agree with me that, in a case  
4 like this, when there are two people in a cell, a guard is  
5 injured, odds are one of the people in the cell did  
6 something. That -- I mean, that was the theory that --  
7 that law enforcement had the whole time, right?

8 A Well, I mean, the theory was Mr. Black had -- had  
9 assaulted the correctional officer.

10 Q Okay. And -- and your best possible defense would be  
11 to blame the other cell mate.

12 A That or the assault didn't occur, one of the two.

13 Q Okay. Well, which of those theories did you go  
14 forward with at trial?

15 A Mr. Black indicated that he did not assault anybody.

16 Q Okay. At which point you then called the cell mate,  
17 who testified that he was asleep and did not know anything.

18 A That's correct.

19 Q And that was a strategic decision that you ultimately  
20 made.

21 A Well, certainly, I -- I'm his lawyer, so I mean, I  
22 have some discretion in how I can conduct the trial. But  
23 obviously, Mr. Black has great input, and I'm bound by his  
24 desires and -- and his wants as far as which witnesses to  
25 call.

1 Q Understand completely, but ultimately it is your  
2 decision.

3 A Well, ultimately, I'm the lawyer. I mean, I'm -- I'm  
4 obviously charged with some responsibility to him.

5 Q Okay. Do you ever create a "to do" list that Mr.  
6 Black had given you, or do you ever -- you ever talk to him  
7 about anything like that?

8 A A "to do" list?

9 Q Yes, sir.

10 A No, sir. He sent me a letter one time, and it said "I  
11 want these witnesses subpoenaed and brought to trial."

12 Q Okay. There's been a discussion about DNA -- possible  
13 DNA or blood or something on that -- on that knife. Did  
14 you ever have that tested?

15 A No, did not.

16 Q Okay. Is it your understanding that there was no  
17 blood on it or there were no tests to be performed?

18 A It -- that apparently was -- was what I was told.

19 Q Okay. And that would be by the solicitor?

20 A Yes.

21 Q Okay. Do you remember if Mr. Black was given any  
22 offers?

23 A If -- if I remember correctly, I think Mr. Black  
24 correctly stated that there was an offer either for one  
25 year or two years that he rejected and chose to go to

1 trial.

2 Q Okay. All right. No further questions.

3 MS. HARRIGAN: May it please the Court.

4 THE COURT: Yes, ma'am.

5 CROSS-EXAMINATION BY MS. HARRIGAN:

6 Q Mr. Doby, how long have you been practicing law?

7 A Since 1989.

8 Q Have you had any experience defending Department of  
9 Corrections disciplinary cases such as this before?

10 A I did. I was public defender -- at least one of the  
11 number of public defenders in Lee County for probably 15/16  
12 years.

13 (Mr. Schnee and the defendant confer.)

14 A And as long as the institution had been in Lee County,  
15 we had been appointed to represent inmates charged with  
16 crimes.

17 Q Have you ever had to call inmates as witnesses at  
18 trials in these types of cases?

19 A Yes.

20 Q Often are these inmates represented by counsel?

21 A The witnesses? They are not typically represented by  
22 counsel.

23 Q Do they typically decline to speak with you?

24 A That just depends on the case. I mean, I -- I've had  
25 some -- some inmates at SCDC be willing to talk to me, and

1 some simply refuse.

2 Q And your testimony in this particular case is you did  
3 try to contact all of the witnesses that Mr. Black  
4 requested you to contact, correct?

5 A I did an order of transport and had that signed by the  
6 trial judge on two occasions, to bring whatever witnesses  
7 Mr. Black wanted to trial that day.

8 Q And you attempted -- or did interview or at least  
9 attempted to interview all of these witnesses before trial.

10 A To -- to the best of -- to the best of my ability, I  
11 attempted to speak with all of them. And it was pretty  
12 apparent that none of them were going to be of any  
13 assistance.

14 Q And did you communicate this to your client?

15 A I did.

16 Q And did he insist that you still call these witnesses?

17 A He did.

18 Q And you chose to honor your client's request and call  
19 these witnesses.

20 A I did.

21 Q And I believe you testified that you met with the  
22 applicant once while at Lee Correctional Institute, and  
23 then numerous times when he was brought to the courthouse.

24 A Yeah. The preliminary hearing, I think, was -- looks  
25 like the first time, which was a couple of days after I was

1 appointed to represent him.

2 I was appointed in May of 2008, and went to the  
3 institution again and then -- it was scheduled for trial  
4 again in June, it looked like. And I had some  
5 conversations with him there at the courthouse, because he  
6 was brought there.

7 And if I remember correctly, also had an opportunity  
8 to talk to him either the day before or maybe even a couple  
9 of days before the actual trial.

10 Q And during these discussions, were you able to go over  
11 the elements of the charge he was facing and what the State  
12 was going to be required to prove at trial?

13 A Yeah. We discussed what the charges were.

14 Q Did you discuss potential sentences he might receive  
15 from this trial?

16 A I -- I can't tell you that I remember specifically  
17 talking about that. I will tell you that that is part of  
18 what I would normally talk to anybody about is what  
19 potential sentences might be.

20 Q Did you explain to Mr. Black that whatever sentence he  
21 received would run consecutive to his current SCDC sentence  
22 for kidnapping?

23 A Again, it'd been my normal policy to talk to him about  
24 what the ramifications of that sentence would be. And  
25 obviously, assault on a correctional officer is a

1 consecutive sentence. By requirement of the statute, it's  
2 a consecutive sentence.

3 Q Did he ever indicate he didn't understand that to you?

4 A Not to me as far as I can remember. I mean, Mr. Black  
5 -- very intelligent man and we -- we had conversations that  
6 were entirely relevant. I never had any indication he  
7 didn't understand what we were talking about.

8 Q And I believe you testified that the defense you put  
9 forth at trial -- that that stabbing didn't occur, and Mr.  
10 Black certainly didn't do the stabbing if it had occurred,  
11 correct?

12 A I did. That's what Mr. Black had maintained all  
13 along.

14 Q In regards to the DNA on the shank that Mr. Black  
15 admitted was his and he relinquished to the Department of  
16 Corrections, did you ever -- ever have any reason to doubt  
17 when the solicitor told you no DNA was found on that shank?

18 A No. I had no reason to doubt that. It -- it would  
19 have been -- it would have been more of a -- maybe a  
20 significant piece of evidence if it had had some DNA  
21 evidence from the officer on it, as opposed to having no  
22 evidence.

23 Q So you'd say that the fact the shank didn't have any  
24 DNA evidence worked in Mr. Black's favor.

25 A It certainly did.

1 Q And Mr. Black gave a statement to law enforcement in  
2 this case, didn't he?

3 A Yeah. I was furnished a statement. And if I recall  
4 correctly, we -- we had a hearing prior to the trial as to  
5 whether or not that statement was voluntarily given.

6 Q And the Court ruled that it was voluntary --  
7 voluntarily given, correct?

8 A As -- as best I remember, they did.

9 Q What kind of investigation did you do in this case to  
10 prepare for trial?

11 A Well, obviously discussions with Mr. Black. I was  
12 furnished statements, other evidence as part of the Rule 5  
13 request, and talked to the witnesses that Mr. Black had  
14 requested that I bring to trial.

15 Q And I believe you testified on direct that you did  
16 enter into plea negotiations with the State on Mr. Black's  
17 behalf, correct?

18 A What -- whatever offers would have been made to Mr.  
19 Black, I would have passed along to him.

20 Q And it was his decision to decline these offers and  
21 proceed to trial.

22 A It's always the client's decision as to whether or not  
23 to plead guilty or -- or to have a trial.

24 Q And Mr. Black decided not to testify at trial,  
25 correct?

1 A That is correct.

2 Q And he was advised by Judge King as to his right to  
3 testify at trial.

4 A As best I -- as best I recall, there was fairly  
5 extensive advisement by Judge King to Mr. Black of his  
6 rights. And there was a lunch break, and I don't have any  
7 specific recollection talking with him during the lunch  
8 break, but we would have discussed that, in anticipation of  
9 the morning or afternoon court session, as to whether or  
10 not he wanted to testify.

11 Q And ultimately, was it Mr. Black's decision not to  
12 testify at trial?

13 A It's always the client's decision as to whether or not  
14 to testify at trial or not. My job is to tell him,  
15 obviously, what the ramifications of testifying might mean,  
16 including any criminal record he might have being used to  
17 impeach him. But the ultimate decision's his.

18 Q Do you believe if he had taken the stand, he would  
19 have been impeached with his current SCDC sentence of 18  
20 years in Horry County for kidnapping?

21 A Well, I -- I do believe that would have been some  
22 impeachment evidence that could have been used against him  
23 certainly.

24 MS. HARRIGAN: No further questions, Your Honor.

25 THE COURT: Okay.

1 MR. SCHNEE: Very briefly, Your Honor.

2 RE-DIRECT EXAMINATION BY MR. SCHNEE:

3 Q Just in terms of -- of his prior record, it was very  
4 obvious that Mr. Black was already serving a sentence at  
5 the Department of Corrections to the jury from the opening  
6 statements throughout the entire trial; isn't that right?

7 A I believe so. And I believe that the judge did not  
8 allow him to have street clothes on, that he had a prison  
9 uniform on during the trial as well.

10 Q Okay. At any point, during your discussions with Mr.  
11 Black about his testimony, did -- did anything come up  
12 about how it would look to either other cell -- other  
13 inmates or anything else as Mr. Black testified?

14 A I'm not sure I understand your question.

15 Q Well, Mr. -- Mr. Black was saying, on his direct, that  
16 had he testified, he would appear to be a "snitch," or  
17 anything. Did -- did you discuss any of that with him at  
18 any point?

19 A I don't recall any discussion about that.

20 Q Did you -- did Mr. Black ever ask you to bring in any  
21 of the other officers or guards that were there to testify?

22 A My notes don't reflect there -- a request for any  
23 other officers.

24 Q Okay. So the -- the only request you had was for the  
25 -- the other cell mates and inmates at the facility?

RE-DIRECT EXAMINATION BY MR. SCHNEE - BRYAN DOBY 33

1 A That's correct.

2 Q Okay.

3 MR. SCHNEE: Beg the Court's indulgence for one  
4 minute.

5 (Brief pause.)

6 MR. SCHNEE: If I may approach the witness, Your  
7 Honor.

8 THE COURT: Yes, sir.

9 (Mr. Schnee hands a document to the witness.)

10 Q Have you ever seen this document before?

11 A Let me look to see if I have that in my file.

12 (Brief pause.)

13 (Ms. Harrigan and Mr. Schnee confer.)

14 A I do. I do have that.

15 Q Okay. So -- so you received this, and pretty much  
16 this is a list of the number of witnesses that Mr. Black  
17 would like subpoenaed?

18 A That's correct. Apparently that was what he had asked  
19 me to do, and that's dated July the 8th. And I just got  
20 some notes on there about an order of transport.

21 And apparently the officers -- the first eight  
22 officers were on the -- my notes got on the -- on the take-  
23 down team, and I'm not sure where I got that information  
24 from.

25 Q Okay. Did you subpoena all these witnesses?

1 A No.

2 Q Did you at any point interview any of these witnesses?

3 A I'd have to look to see if the inmates that are listed  
4 on here were the ones that we ultimately did orders of  
5 transports on.

6 MR. SCHNEE: Judge, I'd just like to make this a Court  
7 Exhibit.

8 THE COURT: Okay.

9 MS. HARRIGAN: No objection.

10 THE COURT: Okay.

11 (Marked Court's Exhibit No. 1, one-page letter.)

12 MR. SCHNEE: I have no further questions at this time,  
13 Your Honor.

14 THE COURT: Okay.

15 MS. HARRIGAN: No additional questions.

16 THE COURT: You can step down. Thank you, sir.

17 (The witness complies.)

18 MR. SCHNEE: No further witnesses.

19 THE COURT: All right. State?

20 MS. HARRIGAN: The State has no witnesses or evidence  
21 to present.

22 THE COURT: Okay. Anything else y'all want to present  
23 to me?

24 MR. SCHNEE: I -- I think -- I think the -- the issues  
25 are rather clear and I'll -- I'll let Your Honor decide.

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THE COURT: Okay. I'll review the transcript in the file and let y'all know something the next day or two.

MR. SCHNEE: Thank you, Your Honor.

MS. HARRIGAN: Thank you, Your Honor.

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**CERTIFICATE**

I, the undersigned Bonnie H. Kelly, Official Court Reporter for the Fifth 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 had and evidence introduced in the hearing of the captioned cause, relative to appeal, in the Third Circuit Court for Sumter County, South Carolina, on the 11th day of December, 2012.

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

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Bonnie H. Kelly, CVR  
Official Court Reporter

Columbia, South Carolina

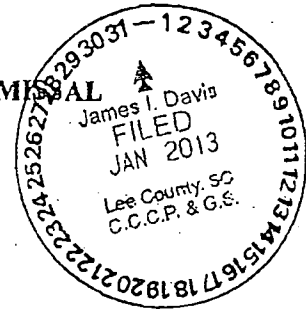
April 19, 2013

STATE OF SOUTH CAROLINA )  
 COUNTY OF LEE )  
 Terrence Black, #265323, )  
 )  
 Applicant, )  
 )  
 v. )  
 )  
 State of South Carolina, )  
 )  
 Respondent. )

IN THE COURT OF COMMON PLEAS  
 FOR THE THIRD JUDICIAL CIRCUIT

Case No. 2010-CP-31-0021

ORDER OF DISMISSAL



**PROCEDURAL HISTORY**

This matter comes before the Court by way of an application for post-conviction relief filed February 4, 2010. The Respondent made its Return on January 28, 2011. An evidentiary hearing into the matter was convened on December 11, 2012, at the Sumter County Courthouse. The Applicant was present at the hearing and was represented by Mark Schnee, Esquire. The Respondent was represented by Assistant Attorney General Megan E. Harrigan of the South Carolina Attorney General's Office.

The records before this Court indicate that the Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Sumter County Clerk of Court<sup>1</sup>. The Applicant was indicted during the June 2008 term of the Lee County Grand Jury for two counts of Assaulting a Correctional Officer (2008-GS-31-0064). Stephen Bryan Doby, Esquire, represented Applicant on both charges. Applicant proceeded to a jury trial before the Honorable Howard P. King, where the State proceeded on one of the two counts of Assaulting a Corrections Officer. On August 11, 2008, Applicant was convicted as indicted and Judge King sentenced Applicant to five years imprisonment. Applicant's sentence

<sup>1</sup> Applicant is also incarcerated for Kidnapping (2003-GS-26-3047) and Assault and Battery with Intent to Kill (2003-GS-26-3046), Horry County charges for which Applicant received concurrent eighteen year sentences.

was to be served consecutively to the unrelated sentences for which Applicant was incarcerated at the time of the assault.

A notice of appeal was filed and an appeal perfected. The appeal was dismissed following submission of an Anders brief. State v. Black, 2010-UP-012 (S.C. Ct. App. filed January 21, 2010). The Remittitur was sent on February 8, 2010.

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

1. "Counsel failed to represent client according to the Constitution."
2. "Prosecutor misled jurors in their duty to uphold the law."
3. "New evidence found that was not presented at trial."

#### SUMMARY OF TESTIMONY PRESENTED

At the evidentiary hearing, Applicant testified on his own behalf and presented testimony from trial counsel Stephen Bryan Doby, Esquire ("Counsel"). This Court also had before it a copy of the Applicant's trial transcript, appellate records, the records of the Lee County Clerk of Court, and records from the South Carolina Department of Corrections.

Applicant testified first on his own behalf. Applicant testified that Counsel met with him once at Lee Correctional Institute and numerous other times in the courthouse. Applicant testified that he provided Counsel with a list of potential witnesses that he wanted to be called to testify at his trial, including Carlos Sumter, Jerry Bynum, LaQuan Thomas, Bernard Brown, and Jeffrey Yougrin. Applicant testified that he wanted these witnesses, as well as several Lee Correctional Institute officers, to testify at his trial. Applicant acknowledged that Bernard Brown, Jeffrey Yougrin, Carlos Sumter, and Jerry Bynum were all subpoenaed by Counsel and were called to the stand by Counsel during his trial. Applicant did not have any of these potential witnesses present to testify at the evidentiary hearing.

Applicant testified that he did possess a weapon while he was an inmate at Lee Correctional Institute; Applicant testified he was aware that it was against the law for him to have this weapon and that he knowingly possessed this weapon in direct violation of this law. Applicant also testified that he intentionally tied his jumpsuit around the feeding flap to his cell, which he knew was a violation of Department of Corrections rules. Applicant testified that despite having this weapon and intentionally breaking Department of Corrections rules, he did not stab the victim in this case. Applicant testified that he wanted to testify at his own trial, but was pressured not to do so by Counsel. Applicant testified that Counsel threatened him, stating that if he testified at his trial, he would likely be retaliated against within the Department of Corrections and would "look like a snitch." Applicant testified that he was advised by the trial court regarding his right to testify and acknowledged that he did not testify after weighing the benefits and drawbacks with Counsel.

Following Applicant's testimony, Counsel testified that he has been a member of the South Carolina Bar since 1989 and is a public defender for Lee County. Counsel testified that he has handled numerous cases involving inmates charged with crimes while housed at Lee Correctional Institute. Counsel testified that he met with Applicant once while he was incarcerated at Lee Correctional Institute and met with him on several occasions at the courthouse. Counsel testified that he discussed potential sentences with Applicant and informed him that he would be required to serve whatever sentence he received for these charges consecutively to his current South Carolina Department of Corrections sentence. Counsel testified that he reviewed all discovery materials with Applicant as well as Applicant's version of the facts giving rise to these charges.

Counsel testified that Applicant provided him with a list of witnesses that Applicant wanted Counsel to investigate and call to testify at trial. Counsel testified that he interviewed these witnesses prior to trial and that "all didn't know anything, didn't want to testify, or just didn't care." Counsel testified that he informed his client of his interviews of these potential witnesses, but that Applicant was adamant that they be called to testify at trial. Counsel testified that he subpoenaed and prepared transport orders for these inmates each time he anticipated that the case going to be called for trial. Counsel testified that when Applicant's case was tried, he called four of these witnesses (Bernard Brown, Jeffrey Youngrin, Carlos Sumter, and Jerry Bynum) to testify on behalf of applicant. Counsel testified that each witness refused to answer questions or stated they did not observe the incident.

Counsel testified that he did not have the weapon in question, a shank made by Applicant, independently tested for DNA evidence, as the State informed him that the victim's blood and DNA were not present on the weapon. Counsel testified that it worked to Applicant's benefit that no DNA was found on the weapon, so he did not want to have it independently evaluated.

Counsel testified that he reviewed Applicant's right to testify with his client prior to trial, and again with him following the trial court's questioning of him regarding this right. Counsel testified that he informed Applicant that it was his right to testify and reviewed the benefits and potential drawbacks to taking the stand in his defense. Counsel testified that he never told Applicant he would "look like a snitch" if he testified and that it was Applicant's free and voluntary decision not to testify.

### FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has had the opportunity to review the record in its entirety and has heard the testimony at the post-conviction relief hearing. This Court has further had the opportunity to observe the witnesses presented at the hearing, closely pass upon their credibility and weigh their testimony accordingly. Set forth below are the relevant findings of facts and conclusions of law as required pursuant to S.C. Code Ann. §17-27-80 (1985).

#### *Ineffective Assistance of Counsel*

Applicant's first allegation is that "Counsel failed to represent client according to the Constitution." In its Return, Respondent interpreted this allegation to be one of ineffective assistance of counsel. Additionally, Applicant presented this allegation as ineffective assistance of counsel at the evidentiary hearing. Therefore, this Court interprets this allegation to be one of ineffective assistance of counsel. In a post-conviction relief action, the Applicant has the burden of proving the allegations in the application. Rule 71.1(e), SCRPC; Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where ineffective assistance of counsel is alleged as a ground for relief, the Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 2064, 80 L.Ed.2d 674, 692 (1984); Butler, 286 S.C. 441, 334 S.E.2d 813 (1985).

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. Courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Butler, 286 S.C. 441, 334 S.E.2d 813 (1985). Applicant must overcome this presumption to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

Courts use a two-pronged test in evaluating allegations of ineffective assistance of counsel. First, the Applicant must prove that counsel's performance was deficient. Under this prong, attorney performance is measured by its "reasonableness under professional norms." Cherry, 300 S.C. at 117, 385 S.E.2d at 625 (citing Strickland). Second, counsel's deficient performance must have 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.

After careful review based on the standard discussed above, this Court finds that the Applicant has failed to carry his burden in this action. Specifically, this Court finds that Counsel's testimony is very credible while Applicant's testimony is not credible. Counsel testified that he met with Applicant numerous times, where he reviewed discovery materials, discussed Applicant's version of the facts giving rise to these charges, and discussed potential sentences Applicant could receive. Counsel testified that Applicant provided him with a list of potential witnesses that he wanted Counsel to investigate and call to testify at trial. Counsel testified that he interviewed these witnesses and informed his client that these witnesses would likely not provide any beneficial testimony. Counsel testified that Applicant insisted that these witnesses be subpoenaed and called to testify despite their unwillingness to provide beneficial testimony. Counsel testified that he subpoenaed these witnesses for trial, as well as drafted transport orders for the various inmates. Counsel testified, and Applicant acknowledged, that four of these witnesses were called to testify at trial and that none provided beneficial testimony. Additionally, Counsel testified that he reviewed Applicant's right to testify with him several times and that his client made a voluntary decision not to take the stand in his defense. Based on

the foregoing, his Court finds that the Applicant has not shown that trial counsel's performance fell below "professional norms." Cherry, 300 S.C. at 117, 385 S.E.2d at 625 (citing Strickland).

Furthermore, the Applicant has shown no actual prejudice from any alleged deficiency of counsel. This Court holds that the Applicant has failed to meet his burden of proof on ineffective assistance of counsel.

#### *Prosecutorial Misconduct*

Applicant's second allegation is that the "[p]rosecutor misled jurors in their duty to uphold the law. Prosecutorial misconduct is not an issue for post-conviction relief. Rather, this allegation is 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). 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). The Applicant could have raised this issue on appeal. The failure to do so has waived this allegation as grounds for relief.

Regardless, it is an applicant's burden to prove actual prosecutorial misconduct. Alabama v. Smith, 490 U.S. 794, 109 S. Ct. 2201 (1989). This Court finds that Applicant abandoned this allegation, as he did not present any evidence or testimony in its regard. Therefore, this Court finds that this allegation must be denied and dismissed with prejudice.

#### *Newly Discovered Evidence*

Applicant's third allegation is that he is being held in custody unlawfully based on "new evidence found that was not presented at trial." A party making a motion for a new trial or for relief from judgment based on newly-discovered evidence must show that the evidence: (1) will probably change the result if a new trial is granted; (2) has been discovered since the trial; (3)

could not have been discovered before the trial; (4) is material to the issue; and (5) is not merely cumulative or impeaching. Lanier v. Lanier, 364 S.C. 211, 612 S.E.2d 456 (S.C. App. 2005). This Court finds that Applicant abandoned this allegation, as he did not present any evidence or testimony in its regard. Therefore, this Court finds that this allegation must be denied and dismissed with prejudice.

### CONCLUSION

Based on all the foregoing, this Court finds and concludes that the Applicant has not established any constitutional violations or deprivations that would require this court to grant his application. Therefore, this application for post-conviction relief must be denied and dismissed with prejudice.

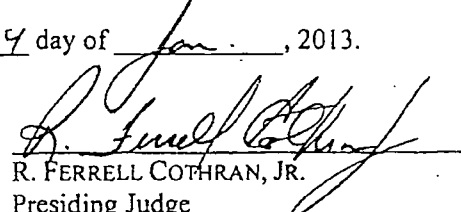
This Court notes that that Applicant must file and serve a notice of appeal within thirty days from the receipt by counsel of written notice of entry of judgment to secure the appropriate appellate review. See Rule 203, SCACR. Pursuant to Austin v. State, 305 S.C. 453 (1991), an Applicant has a right to an appellate counsel's assistance in seeking review of the denial of post-conviction relief. Rule 71.1(g), SCRCP, provides that if the applicant wishes to seek appellate review, post-conviction relief counsel must serve and file a Notice of Appeal on the Applicant's behalf. Applicant is directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.

### IT IS THEREFORE ORDERED:

1. That the Application for Post-Conviction Relief must be denied and dismissed with prejudice; and

2. The Applicant must be remanded to the custody of the Respondent.

AND IT IS SO ORDERED this 24 day of Jan, 2013.

  
R. FERRELL COTHRAN, JR.  
Presiding Judge  
Third Judicial Circuit

Manning, South Carolina

STATE OF SOUTH CAROLINA )  
 ) INDICTMENT FOR  
 ) ASSAULTING CORRECTIONAL OFFICER (TWO  
 COUNTY OF LEE ) COUNTS

At a Court of General Sessions, convened on June 12, 2008, the Grand Jurors of LEE County present upon their oath:

COUNT ONE

That TERRANCE BLACK did in Lee County on or about April ~~10~~<sup>11</sup>, 2008, violate Section 16-3-630 of the Code of Laws of South Carolina (1976), as amended, in that he did assault an employee of a state or local correctional facility, to-wit: DERRICK ANDERSON, of the Lee Correctional Institute, while said officer was performing job-related duties, by striking him on the hand with an edged weapon.

COUNT TWO

That TERRANCE BLACK did in Lee County on or about April 10, 2008 violate Section 16-3-630 of the Code of Laws of South Carolina (1976), as amended, in that he did assault an employee of a state or local correctional facility, to-wit: CARSON TYNER, of the Lee Correctional Institute, while said officer was performing job-related duties, by striking him on the leg with an edged weapon.

*Indictment amended on the record to  
 correct seaman's error.*

*Howard P. King  
 Presiding Judge  
 August 11, 2008*

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.

*C. Kelly Jackson*  
 \_\_\_\_\_  
 SOLICITOR

WITNESSES

SCDC

Investigator Lloyd Greer

DOCKET NO. 2008-GS-31- 624

The State of South Carolina

County of LEE

COURT OF GENERAL SESSIONS

JUNE TERM 2008

THE STATE

vs.

TERRANCE BLACK

ARREST WARRANT NUMBER

K243034 (1); K243035 (2)

D/A: 04/10/08

ACTION OF GRAND JURY

*True Bill*

Foreperson of Grand Jury

*6-12-08*

VERDICT

Indictment for

ASSAULTING CORRECTIONAL OFFICER (TWO COUNTS)

Foreperson of Petit Jury

Date:

C. KELLY JACKSON, SOLICITOR