

Volume I of II

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Appeal from Richland County

G. Thomas Cooper, Circuit Court Judge

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S.C. Supreme Court

LOUIS GAINY,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

Appellate Case No. 2013-000535

APPENDIX

SUSAN B. HACKETT
Appellate Defender

ALAN WILSON
Attorney General

South Carolina Commission on Indigent
Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589

MEGAN HARRIGAN
Assistant Attorney General

P. O. Box 11549
Columbia, SC 29211

ATTORNEY FOR PETITIONER

ATTORNEYS FOR RESPONDENT

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STATE OF SOUTH CAROLINA) IN THE COURT OF GENERAL SESSIONS
COUNTY OF RICHLAND) 2007-GS-40-3131

The State of South Carolina,)
vs.)
Louis Gainey,) TRANSCRIPT OF RECORD
Defendant.)
_____)

September 1, 2, and 3, 2009
Columbia, South Carolina

B E F O R E:

HONORABLE L. CASEY MANNING, JUDGE.

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

HEATHER S. WEISS, ASSISTANT SOLICITOR
JOANNA A. MCDUFFIE, ASSISTANT SOLICITOR
Attorney for The State

JAMES D. COOPER, III, ESQUIRE
EARNEST DEON O'NEIL, ESQUIRE
Attorney for the Defendant

Crystal Holmes

Crystal Holmes

Official Court Reporter

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4 TUESDAY, SEPTEMBER 1, 2009:

5 THE COURT: Anything we need to take up
6 before we bring the jury up?

7 MS. WEISS: Your Honor, we have a couple of
8 objections to voir dire.

9 (Pause.)

10 THE COURT: What you got?

11 MS. WEISS: Defense has handed over their
12 voir dire and we just have objections to.---

13 THE COURT: I haven't seen it so pass me up a
14 copy.

15 (Pause.)

16 MR. COOPER: Your Honor, before we take this
17 up can we bring Mr. Gainey in?

18 THE COURT: That's fine with me. I think
19 it's more important to him than anybody else. Bring
20 him in.

21 MS. MCDUFFIE: Your Honor, they are getting
22 him right now.

23 THE COURT: All right.

24 (Pause.)

25 THE COURT: What do you object to?

1 MS. WEISS: Six and seven just because
2 they're in your traditional voir dire and ---

3 THE COURT: Just hold on. Just tell me the
4 number right now.

5 MS. WEISS: Six and seven and then 11 through
6 14.

7 THE COURT: All right. I am going to ask
8 six. I will change the wording of number seven, would
9 you believe a prosecution witness over a defense
10 witness. I mean, I will change it to that, you
11 understand that?

12 MR. COOPER: Yes, sir.

13 THE COURT: And I am not going to charge
14 (sic) 14, does any jury member believe -- I'm not
15 going to do that. So we all understand ---

16 MS. WEISS: What about 11, 12 and 13?

17 THE COURT: What?

18 MS. WEISS: 11, 12, 13?

19 THE COURT: I'm not going to ask 12 either.
20 and I am not going the ask 13. Come on, that's in my
21 charge.

22 MR. COOPER: Yes, sir.

23 THE COURT: If you want to except, I'll give
24 you a chance to do so. It's nothing personal.

25 MR. COOPER: Yes, sir.

1 THE COURT: But I think it will covered, I
2 believe. If there's something during the voir dire
3 that I miss you think you really need to have, just
4 approach and I'll be happy to hear from you.

5 MR. COOPER: Yes, sir. And make my Request a
6 copy of the Court record?

7 THE COURT: Yeah, sure. And, I mean, you can
8 except now or later on, you can think about it. But
9 basically, see how it goes and if you feel like that
10 you need something additional then.

11 (Whereupon, Court's Exhibit Number 1,
12 Defendant's Requested Voir Dire, was marked
13 for identification.)

14 THE COURT: All right, anything else?

15 MS. WEISS: No, Your Honor.

16 THE COURT: I guess we'll just be on hold
17 until...

18 (Pause.)

19 THE COURT: Anything additional we need to
20 give him under his Rule 5?

21 MS. WEISS: No, Your Honor ---

22 THE COURT: I'm sure that's one request.

23 MR. COOPER: Yes, Your Honor, I'm just trying
24 get Mr. Gainey in here.

25 THE COURT: All right. He doesn't have to be

1 right now.

2 MR. COOPER: All right, sir. And all I have
3 is the little motion that we discussed early.

4 THE COURT: I don't remember what it was.

5 MR. COOPER: Just a Motion to Compel. It's
6 asking them to tell me about anything ---

7 THE COURT: Oh, yeah, you mentioned that
8 yesterday in chambers.

9 MR. COOPER: Yes, sir.

10 THE COURT: Any exculpatory information
11 they've discovered since we got started. Have you
12 read the motion, Ms. Weiss?

13 MS. WEISS: Yes, Your Honor. We've been
14 e-mailing him as we've been interviewing witnesses so
15 I think we've turned over everything as we've come
16 across it. We thought there might be something new
17 last but there wasn't.

18 MR. COOPER: They have, Your Honor.

19 THE COURT: Okay. So everybody's good.

20 MR. COOPER: At this point, yes, sir.

21 MS. WEISS: Yes, Your Honor.

22 THE COURT: If something pops up, you know,
23 I'll deal with it appropriately.

24 MR. COOPER: Yes, sir.

25 THE COURT: All right. Anything else right

1 now?

2 (There was no response.)

3 THE COURT: How long do we anticipate this is
4 going to go?

5 MS. WEISS: Your Honor, we have somewhere
6 between 11 and 14 witnesses, depending, so I think ---

7 THE COURT: Today is what, Tuesday?

8 MS. WEISS: Today is Tuesday.

9 THE COURT: About Thursday at the latest.

10 MS. WEISS: Oh, yes, Your Honor.

11 THE COURT: And one thing I say, and y'all
12 have dealt with me before, I don't rush anybody. I
13 give you a chance to do the best job you can. If we
14 have to go late, we have to go late. I will tell the
15 jury to anticipate going late maybe today and tomorrow
16 and we'll just see how it goes. But if I look out
17 them and tie it to 4:30, we're stopping at 4:30
18 because there's nothing -- you just can't pile those
19 things on people. I think it's unfair to either side
20 to try to do that.

21 So if we have to go late, I'm going to give
22 them a warning, make arrangements for their children,
23 that sort of thing. And if they feel good then -- I
24 don't care how y'all feel, then we'll continue.

25 MR. COOPER: Yes, sir.

1 THE COURT: I don't care how I feel either,
2 so. They're the most important people in this case,
3 you know, to a certain extent.

4 MS. WEISS: And, Your Honor, just for
5 scheduling purposes, just so you know what kind of --
6 what we have available. We have our victim here this
7 morning, so if we could get to her this morning she's
8 here and I don't think we'll get beyond that this
9 morning. And then we have four witnesses coming this
10 afternoon, so we don't anticipate getting beyond -- we
11 hope -- we'd love to get to five total today but we
12 don't anticipate it because I know you have Ms.
13 Shipley (phonetic) -- two things at 2, so we'll ---

14 THE COURT: Yeah, by the way, I'm telling
15 y'all not to schedule anything else in front me during
16 this trial. I'm not going to do that anymore.

17 MS. WEISS: Thank you, Your Honor.

18 THE COURT: I mean, we've already wasted --
19 not wasted but I mean we could -- we might would have
20 had a jury by now. But I don't mind getting rid of
21 plea but once you start a trial, I don't want to be
22 bothered with anything else because this should be the
23 most important thing for y'all, for me and especially
24 for the Defense. Just yell at them a little bit and
25 say, don't bring anything else in front of Judge

1 Manning during this trial.

2 MS. WEISS: Yes, Your Honor ---

3 MR. COOPER: Just one matter about the
4 shackles on Mr. Gainey. I would just request that the
5 Court -- I know that security wants him shackled. I
6 would just ask the Court put him in the plastic
7 shackles rather than metal shackles just to avoid any
8 noise ---

9 THE COURT: Well, I mean, talk to security
10 about it. Joe has been around forever. I'm not going
11 to change anything that makes everybody safer. But I
12 mean, we just don't want the jury to see him shackled.

13 MR. COOPER: Yes, sir.

14 THE COURT: But I mean, I'm not going to ---

15 SECURITY: They've got them now where they
16 can't even hear ---

17 THE COURT: Okay. If it becomes a problem,
18 let me know. I mean, we don't want a mistrial because
19 somebody sees him shackled. You know, we aren't going
20 to have him running around untethered.

21 MR. COOPER: Yes, sir.

22 THE COURT: For everybody's safety including
23 your own. That's just the way it is.

24 All right. I guess we'll just be at ease
25 until we find out -- maybe I can yell and scream a

1 little bit and speed it up. I doubt it.

2 MS. WEISS: I think we can at least pick
3 before ---

4 THE COURT: We'll see. Anyway, let me go
5 check.

6 MR. COOPER: Thank you.

7 THE COURT: I mean, this was originally
8 scheduled way before all the others though?

9 MS. WEISS: Yes, sir.

10 THE COURT: We'll just be at ease and see how
11 it goes.

12 (Whereupon, a short recess was held.)

13 (Whereupon, State's Exhibit Numbers 1
14 through 20 were premarked for
15 identification.)

16 THE COURT: We want to make sure y'all get
17 some exercise.

18 (Laughter.)

19 THE COURT: Ladies and gentlemen, I take this
20 opportunity to welcome y'all here for this particular
21 jury. I know it's not easy being jurors, leaving your
22 home and your work. But it's a patriotic undertaking
23 that's very important in this case to the State as
24 well as to the Defendant in this case, Mr. Gainey.

25 I'll tell you a little bit about this case

1 before we select a jury.

2 This is what we refer to as an assault and
3 battery with intent to kill case. It's on an
4 indictment that hold in my right hand. And the
5 indictment is not evidence of anything, it's simply --
6 it's a way we put the Defendant, Mr. Gainey, on notice
7 as to what he's charged with. And I'm sure y'all are
8 familiar with indictments, y'all have heard that term
9 over the years.

10 But this indictment number 2007-3131, The
11 State versus Louis Gainey, it's an indictment for
12 assault and battery with intent to kill. And these are
13 the allegations, members of the jury panel.

14 That Louis Gainey, the Defendant, did here in
15 Richland County on or about March the 31st of 2007,
16 with malice aforethought, commit an assault and
17 battery upon one Detra Montgomery with the intent to
18 kill the said victim.

19 Now I think the underlying allegations are
20 that Mr. Gainey, the Defendant, he's accused of
21 stabbing her, I do believe, with a screwdriver, is
22 that correct? Those are the allegations, is that fair
23 enough?

24 MR. COOPER: Those are the allegations.

25 THE COURT: Okay. So you know a little bit

1 about what this case is about. There's a series of
2 questions I'm going to put to all of you all. And
3 I'll get to those momentarily but I'm going to tell
4 you at the outset. If I ask you a question that you
5 feel uncomfortable about answering in front of
6 everybody, I'll invite you to come down here and speak
7 to me privately about your situation. There's going
8 to be one or two questions that's going to fall in
9 that category. For example, were you the victim of a
10 crime and things like that that you might need to talk
11 to me privately about. When I say privately, you
12 don't have to say it in front of everybody but I'll
13 bring you down here. I'll have to record it but we'll
14 talk so everybody can't hear. There are some things
15 that are potentially embarrassing. But the only way
16 to get a fair jury in a case like this is to ask these
17 questions. So I hope y'all understand that. I'm sure
18 you do.

19 So that's what this case is about is assault
20 and battery with intent to kill. Mr. Gainey is
21 accused of stabbing Ms. Montgomery with a screwdriver.

22 Now, I need to ask this -- first of all, I
23 ask Mr. Gainey, the Defendant, Mr. Louis Gainey, will
24 you stand up and face the jury panel, please, sir.

25 (Complied.)

1 THE COURT: This is the Defendant, Mr. Louis
2 Gainey, the gentleman with the gray suit on.

3 Thank you, sir, you may have a seat.

4 (Complied.)

5 Now, this is the question I need to ask you.

6 Any member of this jury panel related by blood or
7 connected by marriage or employment, or are you a
8 close personal acquaintance of Mr. Louis Gainey?

9 If so, please stand.

10 (There was no response.)

11 THE COURT: Basically, any member of this
12 jury panel, do you know Mr. Gainey, have you seen him
13 before, do you live in his neighborhood or anything
14 like that? Related by blood or marriage, connected by
15 employment or a close personal acquaintance of the
16 Defendant?

17 If so, please stand.

18 (There was no response.)

19 THE COURT: All right. Now, members of jury
20 panel, I'm going to read you out a list of potential
21 witnesses. It doesn't necessarily mean that every
22 name I read out will actually appear as a witness but
23 these are potential witnesses. And the same question
24 will apply to all these names. Do you know them, do
25 you work with them, go to church with them, you live

1 in the same neighborhood, that sort of thing.

2 And so I ask that you listen carefully to
3 these potential witnesses whose names I will call out.
4 Most of them involve the law enforcement.

5 So the first witness is Ms. Detra Montgomery,
6 the Defendant (sic) -- Dedra (sic) -- Detra, D-e-t-r-
7 a, Detra Montgomery Eargle (phonetic)? Is it not
8 Eargle?

9 MS. MONTGOMERY: No, it's no longer Eargle.

10 THE COURT: It's just Detra Montgomery?

11 MS. MONTGOMERY: No, sir.

12 THE COURT: Okay. What is it?

13 MS. MONTGOMERY: Montgomery.

14 THE COURT: Okay. Ms. Montgomery, will you
15 stand up and face the jury panel, please, ma'am?

16 (Complied.)

17 THE COURT: This is Dedra (sic) -- Detra, D-
18 e-t-r-a Montgomery. She's the victim in this case.

19 And I need to ask y'all the same question,
20 specifically to her. Do you know Ms. Montgomery,
21 related by blood or marriage, connected by employment
22 or a close person friend? She's the victim.

23 If so, please stand. Anybody know Ms.
24 Montgomery?

25 (There was no response.)

1 (Ms. Montgomery is seated.)

2 THE COURT: All right. So we have her, she's
3 the victim. And another potential witness in this
4 case is Deanna Richardson. Is Ms. Richardson here?

5 MS. WEISS: No, Your Honor.

6 THE COURT: All right. Where does she live,
7 what's the story on her?

8 MS. WEISS: Umm ---

9 THE COURT: She's a fact witness, I assume?

10 MS. WEISS: Yes, Your Honor. She lives on
11 [REDACTED] Street. She's a neighbor of Detra
12 Montgomery -- of the incident.

13 THE COURT: Okay. So Deanna Richardson lives
14 on [REDACTED] Street and was a neighbor of Ms.
15 Montgomery?

16 MS. WEISS: Yes, Your Honor.

17 THE COURT: So Deanna Richardson. Officer
18 Richard Catoe of the Columbia Police Department who is
19 not present, all right.

20 Sled Agent Gianna Stinney Williams, Gianna
21 Stinney Williams with SLED, the State Law Enforcement
22 Division.

23 Lieutenant James Evans of the Columbia Police
24 Department and Investigator Robert McCracken of the
25 Columbia Police Department.

1 (Investigator McCracken stands.)

2 This is Investigator McCracken. Thank you,
3 sir.

4 (Investigator McCracken is seated.)

5 Sergeant Kellie Yates of the Columbia Police
6 Department. Mary Montgomery who's the victim's
7 mother, sister or what?

8 MS. WEISS: Yes, Your Honor.

9 THE COURT: Victim's mother?

10 MS. WEISS: Yes, Your Honor.

11 THE COURT: Okay, Vanessa Montgomery. I'm
12 assuming is the victim's sister.

13 MS. WEISS: Yes, Your Honor.

14 THE COURT: Are they present?

15 MS. WEISS: No, Your Honor, not today but
16 Mary Montgomery is the grandmother actually.

17 THE COURT: Grandmother, okay. Dominique
18 Montgomery, a brother?

19 MS. WEISS: Son, Your Honor.

20 THE COURT: Her son, okay. Angelique
21 Montgomery.

22 MS. WEISS: Daughter.

23 THE COURT: A daughter of the victim?

24 MS. WEISS: Yes, Your Honor, of the victim.

25 THE COURT: Mark Montgomery.

1 MS. WEISS: Another son, Your Honor.

2 THE COURT: Another son, okay. Officer
3 Dingle of the Columbia Police Department. Does
4 Officer Dingle have a first name, do you know what it
5 is?

6 OFFICER DINGLE: Troy.

7 THE COURT: Troy?

8 OFFICER DINGLE: Troy Dingle.

9 THE COURT: Jarus (sic), J-a-r-u-s (sic)
10 Borum, B-o-r-u-m of the PH -- what is that, Palmetto
11 Health?

12 MS. WEISS: Palmetto Health Security, yes,
13 Your Honor.

14 THE COURT: All right, at the hospital.
15 Sergeant Michael Sullivan of the Palmetto Health --
16 Palmetto Richland Health -- Palmetto Richland

17 MS. WEISS: Memorial Hospital.

18 THE COURT: Memorial Hospital. Officer
19 Antonio Sowell of Palmetto Richland Memorial Hospital.
20 Brian Smith from the hospital. John Bishop from E M
21 S. Steve Tacket from E M S. Officer Barber ---

22 MS. WEISS: Scott Barber.

23 THE COURT: What?

24 MS. WEISS: Scott Barber.

25 THE COURT: Scott Barber.

1 MS. WEISS: He's now with Lexington County
2 but he was with the City at the time.

3 THE COURT: Okay. Sergeant Jeanne Shull,
4 ASGDC. What does that stand for?

5 MS. WEISS: Alvin S. Glenn Detention Center.

6 THE COURT: Okay. And Dr. Dion Franga,
7 Franga?

8 MS. WEISS: Franga.

9 THE COURT: And he's the doctor where, the
10 hospital?

11 MS. WEISS: Yes, sir, Your Honor.

12 THE COURT: Treating surgeon?

13 MS. WEISS: He was the trauma surgeon.

14 THE COURT: Oh the trauma surgeon, okay. And
15 then Ms. Jennifer Blair from 911 communications that
16 might talk about some phone calls.

17 Now, I'm going to go over those names again,
18 okay. Detra Montgomery whom you just met, the victim.
19 Deanna Richardson, Officer Richard Catoe of the
20 Columbia Police Department. SLED Agent Gianna Stinney
21 Williams, Lieutenant James Evans of the Columbia
22 Police Department. Investigator Robert McCracken whom
23 you met. Sergeant Kellie Yates of the Columbia
24 Police Department. Mary Montgomery is the
25 Grandmother?

1 MS. WEISS: Yes, Your Honor.

2 THE COURT: All right. Vanessa Montgomery is

3 a ---

4 MS. WEISS: Sister.

5 THE COURT: Sister. Dominique Montgomery is

6 a son. Angelique Montgomery is a daughter. And Mark

7 Montgomery is a son.

8 MS. WEISS: Yes, Your Honor.

9 THE COURT: Okay. Officer Troy Dingle of the

10 Columbia Police Department, Jarus (sic) Borum of the

11 hospital security, Sergeant Michael Sullivan from the

12 hospital. Officer Antonio Sowell also from the

13 hospital, he's a security officer. Brian Smith also

14 works with Palmetto Richland Memorial Hospital. John

15 Bishop of E M S, Steve Tacket of E M S. Officer Scott

16 Barber, Columbia P D?

17 MS. WEISS: He was.

18 THE COURT: Okay, now with Lexington County,

19 okay. Sergeant Jeanne Shull, Alvin S. Glenn Detention

20 Center and Dr. Dion Franga, F-r-a-n-g-a, Franga, E R,

21 the trauma physician at the hospital. And Jennifer

22 Blair of 911 Communications who might testify about

23 some telephone calls.

24 Now, the question once again in regards to

25 those things, members of the jury panel, is this. Are

1 you related by blood or connected by marriage or
2 employment or are you a close personal acquaintance of
3 any of those names I called out?

4 If so, please stand. If you think you know
5 somebody on that list I just read, please stand.

6 (Juror stands.)

7 THE COURT: Okay.

8 Yes, ma'am, your name and number.

9 PROSPECTIVE JUROR: Jada Quinn, number 197.
10 I'm a former co-worker of Steve Tacket.

11 THE COURT: A former co-worker of Steve Tacket
12 of E M S?

13 PROSPECTIVE JUROR: Correct.

14 THE COURT: How long ago was it you worked
15 with Steve Tacket?

16 PROSPECTIVE JUROR: Probable about three or
17 four years ---

18 THE COURT: Three or four years.

19 PROSPECTIVE JUROR: --- the hospital setting.

20 THE COURT: Ma'am?

21 PROSPECTIVE JUROR: It was about three or
22 four years ago.

23 THE COURT: Okay. The fact that you worked
24 with Steve Tacket who is a potential witness -- I'm
25 not saying he will testify, who is a potential

1 witness, would that or could that affect your ability
2 to be a fair and impartial if you were selected?

3 PROSPECTIVE JUROR: No, it would not.

4 THE COURT: Are you sure about that?

5 PROSPECTIVE JUROR: Yes.

6 THE COURT: All right. What's your number
7 again?

8 PROSPECTIVE JUROR: 197.

9 THE COURT: All right, thank you, ma'am.

10 Now, so once again I will ask the question,
11 are you related by blood or marriage or connected by
12 employment or a close personal acquaintance of any of
13 those names?

14 If so, please stand.

15 (There was no response.)

16 THE COURT: Now, no member of this panel was
17 a member of the State Grand Jury or the Richland
18 County Grand Jury that indicted in this case, nobody's
19 been on a Grand Jury in the last two years?

20 (There was no response.)

21 THE COURT: Has any member of this jury panel
22 formed or expressed any opinion about this case or as
23 to the guilt or the innocence of Mr. Louis Gainey?

24 If so, please stand. Have you heard anything
25 about this case, have you formed or expressed any

1 opinions about it so far?

2 If so, please stand.

3 (There was no response.)

4 THE COURT: Now, any member of this jury
5 panel aware of any bias or prejudice in connection
6 with this case or any of the parties hereto? Now, you
7 know who the victim is, you know who the Defendant is.

8 My question is this.. Any member of the jury
9 panel aware of any bias or prejudice with respect to
10 either party, the victim or the Defendant, or the
11 subject matter of this case, that is, an assault and
12 battery with intent to kill?

13 (There was no response.)

14 THE COURT: All right, does any member of the
15 jury panel know of any reason why they cannot give
16 both the State and the Defendant in this case a fair
17 and impartial trial based on the law and evidence to
18 be presented?

19 In other words, any reason you feel that you
20 cannot be a fair juror and that you feel uncomfortable
21 to sit as a juror on this case, an assault and battery
22 with intent to kill, stabbing as it was, please stand
23 for me now, any reason you feel you like you could not
24 be a fair juror. All right.

25 (There was no response.)

1 THE COURT: Now, I still have a series of
2 questions to ask you all, members of the jury. It's
3 probably about 15 or 20 of them, so I'm going to ask
4 your patience and attention.

5 First, let me introduce the lawyers involved.
6 Now the State is being represented in this case by Ms.
7 Heather Weiss and Ms. Joanna McDuffie from the Fifth
8 Circuit Solicitor's office.

9 (Ms. Weiss and Ms. McDuffie stand.)

10 THE COURT: Ms. Weiss is on your left, Ms.
11 McDuffie to her left. So they will be prosecuting
12 this case on behalf of the Fifth Circuit Solicitor's
13 office.

14 Thank you, ladies.

15 (Ms. Weiss and Ms. McDuffie were seated.)

16 THE COURT: I need to ask you this question,
17 members of the jury panel. Have you or any members of
18 your immediate family ever been represented by the
19 Fifth Circuit Solicitor's office? That is, have you
20 ever been the victim of a crime where the case was
21 prosecuted by the Solicitor's office here?

22 If so, please stand. That is you or a member
23 of your immediate family ever been a victim and the
24 Solicitor's office prosecuted your case?

25 If so, please stand. Or more globally, have

1 you or any members of your immediate family ever been
2 represented by Ms. Weiss or Ms. McDuffie? Now they've
3 been prosecutors all of their, I think, legal careers
4 so unless you ran into them under those circumstances
5 they probably haven't represented you.

6 So y'all understand that question, right?

7 (There was no response.)

8 THE COURT: Now additionally, Mr. Gainey is
9 being represented in this case by Mr. Jay Cooper to
10 your far left and Mr. Deon O'Neil from the Richland
11 County Public Defender's office.

12 (Mr. Cooper and Mr. O'Neil stand.)

13 THE COURT: Thank you, gentlemen.

14 (Mr. Cooper and Mr. O'Neil are seated.)

15 THE COURT: I need to ask this question once
16 again, sort of a mirror image from what I just asked
17 you about the Solicitors. Have you or any members of
18 your immediate family ever been represented by Mr. Jay
19 Cooper or Mr. Deon O'Neil or any member of the
20 Richland County Public Defender's office?

21 If so, please stand.

22 (There was no response.)

23 THE COURT: Has a relative or a friend ever
24 been represented by the Public Defender's office?

25 If so, please stand.

1 (There was no response.)

2 THE COURT: All right. Now, this is where I
3 get into some of the sensitive questions and there's
4 no way to get a fair jury without asking these
5 questions, so.

6 Has any member of this jury panel or member
7 of their family ever been the victim of a violent
8 crime or the victim of violence? That is a stabbing
9 or a robbery, a housebreaking or something like that.

10 If so, please stand. Have you or any members
11 of your family ever been a victim of a crime?

12 If so, please stand.

13 (Prospective jurors stand.)

14 THE COURT: Now, I can do this several ways.
15 I can bring you down here and talk to you individually
16 or if you feel comfortable, you can tell me from where
17 you are. Would you like to come down and talk to me
18 individually about this?

19 PROSPECTIVE JUROR: I'm fine.

20 THE COURT: You feel -- okay.

21 I need your name and your jury number,
22 please, ma'am.

23 PROSPECTIVE JUROR: My name is Gail'
24 (phonetic) Hickman. My number is 108.

25 THE COURT: Okay, Ms. Hickman, was it you or

1 a family member?

2 PROSPECTIVE JUROR: It was my niece.

3 THE COURT: Your niece. And what sort of
4 incident was it?

5 PROSPECTIVE JUROR: This was about three
6 weeks ago, the attempted sexual assault and actual
7 assault in Riverfront Park.

8 THE COURT: Okay.

9 PROSPECTIVE JUROR: By a convicted sex
10 offender. That was my niece.

11 THE COURT: Okay. Now would that experience,
12 the thing that just happened to your niece, would that
13 or could that affect your ability to be a fair and
14 impartial juror in the trial of this case?

15 PROSPECTIVE JUROR: I don't think so.

16 THE COURT: Are you sure about that?

17 PROSPECTIVE JUROR: (Affirmative response.)

18 THE COURT: All right. And there's no right
19 or wrong answers, just honest ones, ladies and
20 gentlemen. I don't want you to feel uncomfortable
21 with anything you might want to tell me. So you think
22 you could still be a fair juror?

23 PROSPECTIVE JUROR: Yes.

24 THE COURT: Okay. Thank you, ma'am.

25 Yes, sir, your name and number, please.

1 PROSPECTIVE JUROR: Don Miles, 165.

2 THE COURT: Mr. Miles, was it you or a family
3 member?

4 PROSPECTIVE JUROR: Myself.

5 THE COURT: Yourself. How long ago was it?

6 PROSPECTIVE JUROR: Last week, a house break-
7 in.

8 THE COURT: Somebody broke into your house
9 last week?

10 PROSPECTIVE JUROR: (Affirmative response.)

11 THE COURT: The fact that someone broke into
12 your house last week, would that or could that affect
13 your ability to be a fair juror in the trial of this
14 case?

15 PROSPECTIVE JUROR: (Negative response.)

16 THE COURT: Are you sure about that?

17 PROSPECTIVE JUROR: Yes, sir.

18 THE COURT: All right, thank you, sir.

19 I think you're next. Your name and number,
20 please, ma'am.

21 PROSPECTIVE JUROR: Cynthia Cothran, number
22 60.

23 THE COURT: Cothran, Ms. Cothran, was it you
24 or a family member?

25 PROSPECTIVE JUROR: Myself.

1 THE COURT: What sort of incident was it?

2 PROSPECTIVE JUROR: House break-in.

3 THE COURT: Okay. How long ago was it?

4 PROSPECTIVE JUROR: About a year ago.

5 THE COURT: About a year ago?

6 PROSPECTIVE JUROR: Yes, sir.

7 THE COURT: Is that case still pending or has
8 it been resolved?

9 PROSPECTIVE JUROR: No, sir.

10 THE COURT: Still pending

11 PROSPECTIVE JUROR: It never came to a case.

12 THE COURT: Oh. You haven't caught anybody
13 or something? The fact that someone broke into your
14 house about a year ago, would that or could that
15 affect your ability to be a fair juror in the trial of
16 this assault case?

17 PROSPECTIVE JUROR: No, sir.

18 THE COURT: Are you sure about that?

19 PROSPECTIVE JUROR: Yes, sir

20 THE COURT: All right, thank you, ma'am.

21 Yes, ma'am, your name and number, please.

22 PROSPECTIVE JUROR: Rose Marie Moore, 171.

23 THE COURT: Morris?

24 PROSPECTIVE JUROR: Moore.

25 THE COURT: Moore. Ms. Moore, was it you or

1 a family member?

2 PROSPECTIVE JUROR: Me and a family member.

3 THE COURT: And a family member.

4 THE COURT: What sort of incident was it?

5 PROSPECTIVE JUROR: My incident was a house
6 break-in and I had a cousin that was sexually abused.

7 THE COURT: Okay. Now, would those two
8 incidents that you just described affect your ability
9 to be a fair juror in the trial of this case?

10 PROSPECTIVE JUROR: No, sir.

11 THE COURT: Are you sure about that?

12 PROSPECTIVE JUROR: Positive.

13 THE COURT: All right, thank you, Ms. Moore.

14 Now, this is even more sensitive I guess but
15 I need to ask the question. Has any member of the
16 jury panel or a member of their family ever been
17 charged or convicted of a crime of violence?

18 If so, please stand.

19 (Prospective jurors stand.)

20 THE COURT: If you need to come down and talk
21 to me ---

22 PROSPECTIVE JUROR: I do.

23 THE COURT: You need to talk to me about
24 this?

25 PROSPECTIVE JUROR: Yes.

1 THE COURT: Okay. Come down, Ms. Moore.

2 Y'all approach, one of you.

3 (Prospective juror 171 comes forward.)

4 PROSPECTIVE JUROR: I have a nephew he was
5 charged -- he was in the military.

6 THE COURT: Okay.

7 PROSPECTIVE JUROR: Went to Kuwait. Had post

8 ---

9 THE COURT: Traumatic syndrome?

10 PROSPECTIVE JUROR: --- never did get help.

11 THE COURT: Okay.

12 PROSPECTIVE JUROR: And he was arguing with
13 his wife and the police came. And he locked himself
14 in the car, he put his army vest on and flipped and he
15 beat up a policeman ---

16 THE COURT: Okay, so he was charged with
17 assaulting a police officer?

18 PROSPECTIVE JUROR: He ---

19 THE COURT: This was your nephew from Kuwait.
20 Did y'all get that?

21 PROSPECTIVE JUROR: --- eight years ---

22 THE COURT: Okay. He went to jail for it.
23 Would that or could that affect your ability to be a
24 fair juror in this case?

25 PROSPECTIVE JUROR: No, sir.

1 THE COURT: All right. Y'all get that?

2 MR. COOPER: Yes, sir.

3 THE COURT: All right, thank you, ma'am.

4 (Prospective juror returns with panel.)

5 (Pause.)

6 THE COURT: All right, juror 197. Where's
7 juror 197? Would you come up, please, ma'am?

8 (Prospective juror 197 comes forward.)

9 THE COURT: Did your husband play football
10 for Carolina?

11 PROSPECTIVE JUROR: Yes, he did.

12 THE COURT: Okay. Mr. O'Neil thinks he might
13 have gone to school with your husband. Do you
14 recognize him at all?

15 PROSPECTIVE JUROR: Yes, he looks familiar.

16 THE COURT: Looks familiar.

17 PROSPECTIVE JUROR: Uh-huh.

18 THE COURT: Look, the fact that he might have
19 gone to school with your husband, would that or could
20 that affect your ability to be a fair juror in the
21 trial of this case?

22 PROSPECTIVE JUROR: No.

23 THE COURT: You're sure about that?

24 PROSPECTIVE JUROR: Yes.

25 THE COURT: Okay. We good then?

1 MR. O'NEIL: Yes, sir.

2 THE COURT: All right, thank you.

3 (Prospective juror returns with

4 panel.) PROSPECTIVE JUROR: Your Honor, I'm sorry. I
5 had a family member.

6 THE COURT: Okay, come on up, come on up.

7 PROSPECTIVE JUROR: Sorry.

8 (Prospective juror 149 comes forward.)

9 THE COURT: Your name and number.

10 PROSPECTIVE JUROR: 149, Lynn Mack. I had a
11 brother that was charged but it never was taken to
12 court.

13 THE COURT: All right. How long ago was
14 that?

15 PROSPECTIVE JUROR: About six years ago.

16 THE COURT: Do you know what he was charged
17 with?

18 PROSPECTIVE JUROR: It was assault.

19 THE COURT: Assault.

20 PROSPECTIVE JUROR: Uh-huh. He passed away.

21 THE COURT: Okay. Brother charged with
22 assault six years ago, never went to court, he's
23 passed away. Would that or could that affect your
24 ability to be a fair juror?

25 PROSPECTIVE JUROR: No.

1 THE COURT: You're not related to any Grays
2 (phonetic), are you?

3 PROSPECTIVE JUROR: Huh-uh.

4 THE COURT: This guy I know, you look like
5 you could be his sister or something.

6 PROSPECTIVE JUROR: Oh, okay.

7 THE COURT: All right, thank you, ma'am.
8 Take your seat.

9 (Prospective juror returns with panel.)

10 THE COURT: I think I've covered 3. Is that
11 fair enough?

12 MS. MCDUFFIE: Yes, sir.

13 THE COURT: And of course, number 4. So that
14 would cover your requests from the State, is that
15 fair?

16 MS. MCDUFFIE: Yes, sir, Your Honor.

17 THE COURT: All right. All right, is any
18 member of the jury panel employed by, related by blood
19 or marriage to, or a friend or acquaintance of anyone
20 employed by an organization specializing in treatment
21 for victims, a victim's rights organization? I mean
22 it could be -- anything in mind you want to be
23 specifically mentioned, Mr. Cooper?

24 MR. COOPER: No, sir, Your Honor.

25 THE COURT: Nothing in particular?

1 MR. O'NEIL: SADD, MADD, Sistercare ---

2 THE COURT: So y'all didn't -- y'all didn't
3 ask that catchall question?

4 So the better way to do this, any member of
5 the jury panel employed by, related by blood or
6 marriage to a personal acquaintance of anyone employed
7 by SADD, MADD, CADRE and these sort of organizations
8 that specialize in victim's rights?

9 If so, please stand.

10 (There was no response.)

11 THE COURT: Y'all understand that question?

12 JURY PANEL: (Affirmative response.)

13 THE COURT: Just want to make sure?

14 Now, has any member of the jury panel read or
15 heard anything about this case or gained any knowledge
16 about it in any other way except for today when you
17 came in to this courtroom?

18 If so, please stand. Have you heard anything
19 about this particular case, about Mr. Gainey or the
20 victim, Ms. Montgomery?

21 (There was no response.)

22 THE COURT: Okay. Now, has any member of
23 jury panel been a witness to a crime or testified in
24 court regarding a crime?

25 If so, please stand. Have you ever been a

1 witness in a criminal proceeding?

2 If so, please stand.

3 (Prospective jurors stand.)

4 THE COURT: All right. I just want to ask
5 you, would that or could that affect your ability to
6 be a fair and impartial juror in the trial of this
7 case?

8 PROSPECTIVE JUROR: No.

9 THE COURT: You've actually testified in
10 court?

11 PROSPECTIVE JUROR: Yes, I have.

12 THE COURT: Here in the Fifth Circuit?

13 PROSPECTIVE JUROR: Not here, in Cayce.

14 THE COURT: Ma'am?

15 PROSPECTIVE JUROR: No, I was in Cayce ---

16 THE COURT: In Cayce, over in West
17 Columbia. How long ago was that?

18 PROSPECTIVE JUROR: Maybe about two years
19 ago.

20 THE COURT: Okay, okay. What type of case
21 was it?

22 PROSPECTIVE JUROR: Assault and battery.

23 THE COURT: Assault and battery, okay. You
24 were a witness in an assault and battery case two
25 years ago in Cayce.

1 PROSPECTIVE JUROR: I was ---

2 THE COURT: Ma'am?

3 PROSPECTIVE JUROR: I was subpoenaed. I was
4 subpoenaed ---

5 THE COURT: Subpoenaed, okay.

6 THE COURT: Okay.

7 PROSPECTIVE JUROR: --- as a witness.

8 THE COURT: Would that or could that affect
9 your ability to be a fair juror?

10 PROSPECTIVE JUROR: No, sir.

11 THE COURT: All right, thank you, ma'am.

12 Yes, ma'am, your name and number, please.

13 PROSPECTIVE JUROR: Number 2-2-4, Brenda
14 Singleton.

15 THE COURT: Okay. Was it you or a family
16 member?

17 PROSPECTIVE JUROR: It has to be a family
18 member? I thought ---

19 THE COURT: No, no, were you a witness?

20 PROSPECTIVE JUROR: I was a witness, yes.

21 THE COURT: Okay. What type of case was it?

22 PROSPECTIVE JUROR: It was a charge of child
23 molestation.

24 THE COURT: Okay, how long ago was it?

25 PROSPECTIVE JUROR: Two years.

1 THE COURT: Okay. Would that experience or
2 could that affect your ability to be a fair juror?

3 PROSPECTIVE JUROR: No.

4 THE COURT: All right, thank you. Once
5 again, your name, please, ma'am.

6 PROSPECTIVE JUROR: Gail Hickman, 108.

7 THE COURT: Was it you as a witness?

8 PROSPECTIVE JUROR: I had to testify.

9 THE COURT: You testified ---

10 PROSPECTIVE JUROR: (Affirmative response.)

11 THE COURT: --- in the case that you
12 mentioned earlier?

13 PROSPECTIVE JUROR: No, this was a patient of
14 mine back in the 1980's. It was a child who had been
15 repeatedly molested.

16 THE COURT: Okay. This was back in the
17 1980's you said?

18 PROSPECTIVE JUROR: Excuse me?

19 THE COURT: You said it was back in the
20 1980's?

21 PROSPECTIVE JUROR: Yes.

22 THE COURT: And you were a witness. Would
23 that experience affect your ability to be a fair juror
24 in this case?

25 PROSPECTIVE JUROR: No.

1 THE COURT: All right, thank you, ma'am.

2 Have I covered number four, Mr. Cooper, I'm
3 not sure? I might have.

4 MR. COOPER: Your Honor, I think you have,
5 yes.

6 THE COURT: Okay, all right. And number five
7 too, from the State's voir dire, is that fair enough?

8 (No response.)

9 THE COURT: Mr. Cooper, look at your number
10 five.

11 MR. COOPER: Your Honor, I think you have,
12 yes.

13 THE COURT: Okay, all right.

14 MR. COOPER: Thank you.

15 THE COURT: And I said I wasn't going ask
16 number six. Let's see. Okay, would any member of
17 this jury panel readily or more readily believe a
18 prosecution witness over a defense witness or a
19 defense witness over a prosecution witness? Does that
20 make sense?

21 PROSPECTIVE JURORS: (Affirmative response.)

22 THE COURT: All right. If so, please stand.
23 Would y'all tend to believe a State's witness over a
24 defense witness or a defense witness over a State's
25 witness?

1 If so, please stand.

2 (There was no response.)

3 THE COURT: Has any member of this jury panel
4 ever served as a juror before, either in a civil case
5 or a criminal case?

6 If so, please stand. Have you ever been a
7 juror before in a civil or a criminal case?

8 (Prospective jurors stand.)

9 THE COURT: All right. I hope they all
10 haven't.

11 (Laughter.)

12 THE COURT: Yes, sir, your name and number,
13 please. You look so familiar. Do I know you?

14 PROSPECTIVE JUROR: I'm Roger Craig
15 Augenstein.

16 THE COURT: Where are you from?

17 PROSPECTIVE JUROR: Number 15. Forest Acres.

18 THE COURT: Fort Dix?

19 MS. MCDUFFIE: Forest Acres.

20 THE COURT: Oh.

21 PROSPECTIVE JUROR: Forest Acres.

22 THE COURT: I might have seen you in the
23 grocery store.

24 (Laughter.)

25 THE COURT: Were you -- let's see ---

1 PROSPECTIVE JUROR: I've been a juror lots of
2 times.

3 THE COURT: Okay. And several of them
4 criminal?

5 PROSPECTIVE JUROR: Yes, sir.

6 THE COURT: When was the last time you were a
7 juror, do you know?

8 PROSPECTIVE JUROR: I think it was about
9 three years ago.

10 THE COURT: Okay. Would that experience
11 being a juror before in civil and criminal cases
12 affect your ability to be a fair one in this case?

13 THE COURT: No, Your Honor.

14 THE COURT: All right, thank you, sir.

15 Yes, ma'am, your name and number.

16 PROSPECTIVE JUROR: 112, Catherine Highsmith.

17 THE COURT: You were a juror when?

18 PROSPECTIVE JUROR: It's been probably 10
19 years or so, medical malpractice case.

20 THE COURT: Okay. Would that experience
21 affect your ability to be a fair juror in this case?

22 PROSPECTIVE JUROR: No, sir.

23 THE COURT: All right, thank you, ma'am.

24 Yes, sir, your name and number.

25 PROSPECTIVE JUROR: Bruce (phonetic) Guignard

1 ---

2 THE COURT: Guignard?

3 PROSPECTIVE JUROR: Guignard.

4 THE COURT: You're from Charleston.

5 PROSPECTIVE JUROR: Columbia.

6 THE COURT: That's a Charleston name.

7 That's okay, go ahead. Was it a civil or criminal?

8 PROSPECTIVE JUROR: It was criminal. It was
9 about 20 years ago, would not impact my ---

10 THE COURT: Okay, thank you, sir.

11 Yes, sir, you name and number again.

12 PROSPECTIVE JUROR: Donald Miles, 165, civil
13 and criminal.

14 THE COURT: Just over the years, more than
15 once?

16 PROSPECTIVE JUROR: Yes.

17 THE COURT: Would that affect your ability to
18 be a fair juror in this case?

19 PROSPECTIVE JUROR: No.

20 THE COURT: Thank you, sir.

21 Yes, sir, your name and number.

22 PROSPECTIVE JUROR: Steven Iacono, number
23 121. Four years ago a juror in a case for a
24 distribution of a controlled substance. It would ---

25 THE COURT: Criminal case, would it affect

1 your ability?

2 PROSPECTIVE JUROR: No, sir.

3 THE COURT: All right, thank you, sir. Yes,
4 ma'am, your name and number again.

5 PROSPECTIVE JUROR: Lynn Mack, 149. It was
6 assault with intent to kill and it was about 15 years
7 ago.

8 THE COURT: About 15 years. Would that
9 affect your ability to be a fair juror in this case?

10 PROSPECTIVE JUROR: No, sir.

11 THE COURT: All right, thank you, ma'am.
12 Yes, ma'am, your name and number.

13 PROSPECTIVE JUROR: My number is 207, Addie
14 Richmond. I think it was like five years ago.

15 THE COURT: Was it a criminal case or a civil
16 case?

17 PROSPECTIVE JUROR: I think it was civil.

18 THE COURT: Okay. Would that affect --
19 having been a juror in a civil case, would it affect
20 your ability to be a fair juror here?

21 PROSPECTIVE JUROR: No.

22 THE COURT: All right, thank you, ma'am.

23 Yes, ma'am, once again your name and number.

24 PROSPECTIVE JUROR: 60, Cynthia Cothran. A
25 civil case about eight years ago.

1 THE COURT: Would that affect your ability to
2 be a fair juror in this case?

3 PROSPECTIVE JUROR: No.

4 THE COURT: All right, thank you, ma'am.

5 Ms. Moore, I'm getting to know you very well
6 before it's all over with.

7 (Laughter.)

8 THE COURT: You were a juror, civil or
9 criminal?

10 PROSPECTIVE JUROR: Criminal.

11 THE COURT: How long ago was it?

12 PROSPECTIVE JUROR: Probably between three
13 and four years ago.

14 THE COURT: All right. Would that affect
15 your ability to be a fair juror in this case?

16 PROSPECTIVE JUROR: No.

17 THE COURT: Thank you, ma'am.

18 Yes, sir, your name and number.

19 PROSPECTIVE JUROR: 46, Kevin Brumfield. A
20 civil case, it wouldn't affect.

21 THE COURT: How long ago was it?

22 PROSPECTIVE JUROR: Five years.

23 THE COURT: Okay, thank you, sir.

24 Now, I'll ask this question. I don't think I
25 need to find out but anyway -- I will anyway after it

1 was discussed. Just because somebody is charged, do
2 you tend to believe they're guilty just because
3 they're charged, members of the jury (sic)?

4 If so, please stand -- members of the jury
5 panel. Just because somebody has been accused or
6 arrested and charged, do you think that necessarily
7 implies that their guilty?

8 If so, please stand.

9 (There was no response.)

10 THE COURT: That's why we have y'all for, to
11 make the determination.

12 Now, does any member of the jury panel have
13 strong feelings about individuals who use illegal
14 drugs? That is, if you knew that a witness or a
15 defendant or a victim per se -- I'm not saying anybody
16 does. But if anybody uses drugs, would that make it
17 more difficult for you to believe their testimony?

18 If so, please stand.

19 (There was no response.)

20 THE COURT: Is that a fair enough question,
21 the way I phrased it?

22 MR. COOPER: Yes, sir.

23 THE COURT: All right. So would you find it
24 more difficult to believe the testimony of a witness
25 that had admitted to drinking or using illegal drugs?

1 If so, please stand. Like I said, there's no
2 right or wrong answer.

3 (Prospective juror stands.)

4 THE COURT: Yes, sir, you would?

5 PROSPECTIVE JUROR: Well, I certainly would
6 be tainted if I felt there was strong evidence it was
7 used.

8 THE COURT: Now, if you knew that somebody, a
9 witness in the case, had used drugs, smoked pot or
10 something like that or drank alcohol, you would find
11 them more hard to believe? Or would it affect you in
12 such a way that you could not be a fair juror?

13 PROSPECTIVE JUROR: I would like to think
14 that it would not affect me to the point that I would
15 not be a fair juror. I think I would still be a fair
16 juror but I do think ---

17 THE COURT: I mean, that would affect their
18 believability and credibility ---

19 PROSPECTIVE JUROR: That's correct.

20 THE COURT: Okay. All right, just sit down,
21 we'll see.

22 MS. MCDUFFIE: What number?

23 THE COURT: What number were you again, sir?

24 PROSPECTIVE JUROR: I'm sorry, number 95,
25 Bruce Guignard.

1 THE COURT: All right, thank you, sir.

2 I think, Mr. Cooper, I said 11, 12, 13, 14, I
3 wasn't going to ask the way they were phrased because
4 it's part of my charge and everything. You understand
5 that?

6 MR. COOPER: Yes, Your Honor.

7 THE COURT: Okay. Anything further you want
8 me to ask?

9 MR. COOPER: No, Your Honor.

10 THE COURT: Anything further from the State?

11 MS. WEISS: No, Your Honor.

12 THE COURT: All right. Very well,
13 Ms. Pendergrass, you may give us a jury.

14 THE CLERK: Ladies and gentlemen of the jury
15 panel, as I call your name, please come to the
16 microphone located here at the center of the
17 courtroom. At the microphone, please state your --
18 please state your name and your place of occupation.
19 Please bring any personal items that you may have with
20 you.

21 Juror number 144, Donald Lonteen.

22 (Donald L. Lonteen, a white male, now comes
23 forward.)

24 PROSPECTIVE JUROR: Don Lonteen, 144,
25 retired.

1 THE CLERK: What says the State?

2 MS. WEISS: Please present Mr. Lonteen.

3 THE CLERK: What says the Defense?

4 MR. COOPER: Please seat this juror.

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

7 Juror number 60, Cynthia Cothran.

8 (Cynthia H. Cothran, a white female, now
9 comes forward.)

10 PROSPECTIVE JUROR: Number 60, Cynthia
11 Cothran. Law Related Education Director with the South
12 Carolina Bar.

13 THE CLERK: What says the State?

14 MS. WEISS: Please present Ms. Cothran.

15 THE CLERK: What says the Defense?

16 MR. COOPER: Please excuse this juror.

17 THE CLERK: Please ---

18 THE COURT: You work with the South Carolina
19 Bar?

20 PROSPECTIVE JUROR: Yes, sir.

21 THE COURT: That's all right. It's a good
22 job.

23 THE CLERK: Juror number 232, Rita Spence.

24 (Rita M. Spence, a black female, now comes
25 forward.)

1 PROSPECTIVE JUROR: 232, Rita Spence. A
2 Major in the United States Army.

3 THE CLERK: What says the State?

4 MS. WEISS: Please present Major Spence.

5 THE CLERK: What says the Defense?

6 MR. COOPER: Please seat this juror.

7 THE CLERK: Please have a seat in the jury
8 box.

9 Juror number 197, Jada Quinn.

10 (Jada C. Quinn, a black female, now comes
11 forward.)

12 PROSPECTIVE JUROR: Jada Quinn, 197, employed
13 Palmetto Health Richland County.

14 THE CLERK: What says the State?

15 MS. WEISS: Please present Ms. Quinn.

16 THE CLERK: What says the Defense?

17 MR. COOPER: Please excuse this juror.

18 THE CLERK: Please return to the back of the
19 courtroom.

20 Juror number 207, Addie Richmond.

21 (Addie L. Richmond, a black female, now comes
22 forward.)

23 PROSPECTIVE JUROR: Juror number 207, Addie
24 Richmond. I'm employed at the Department of Mental
25 Health.

1 THE CLERK: What says the State?

2 MS. WEISS: Please present Ms. Richmond.

3 THE CLERK: What says the Defense?

4 MR. COOPER: Please excuse this juror.

5 THE CLERK: Please return to the back of the
6 courtroom.

7 Juror number 102, Alison McCaffrey.

8 (Alison McCaffrey, a white female, now comes
9 forward.)

10 PROSPECTIVE JUROR: Alison McCaffrey, number
11 102. I'm an accounting manager.

12 THE CLERK: What says the State?

13 MS. WEISS: Please present Ms. McCaffrey.

14 THE CLERK: What says the Defense?

15 MR. COOPER: Please seat this juror.

16 THE CLERK: Please have a seat in the jury
17 box.

18 Juror number 95, John Guignard.

19 (John B. Guignard, a white male, now comes
20 forward.)

21 PROSPECTIVE JUROR: John Bruce Guignard. I'm
22 juror number 95, financial analyst for a corporate
23 financial institute (phonetic).

24 THE CLERK: What says the State?

25 MS. WEISS: Please present Mr. Guignard.

1 THE CLERK: What says the Defense?

2 MR. COOPER: Please seat this juror.

3 THE CLERK: Please have a seat in the jury
4 box.

5 Juror number 165, Donald Miles.

6 (Donald W. Miles, a white male, now comes
7 forward.)

8 PROSPECTIVE JUROR: Donald Miles, 165. I
9 work for the South Carolina Department of Natural
10 Resources.

11 THE CLERK: What says the State?

12 MS. WEISS: Please present Mr. Miles.

13 THE CLERK: What says the Defense?

14 MR. COOPER: Please seat this juror.

15 THE CLERK: Please have a seat in the jury
16 box.

17 Juror number 251, Erin Vandale.

18 (Erin T. Vandale, a white female, now comes
19 forward.)

20 PROSPECTIVE JUROR: I'm Erin Vandale, number
21 250. I'm a pediatrician.

22 THE CLERK: What says the State?

23 MS. WEISS: Please present Dr. Vandale.

24 THE CLERK: What says the Defense?

25 MR. COOPER: Please excuse this juror.

1 THE CLERK: Please return to the back of the
2 courtroom.

3 Juror number 155, Jason Mcbrayer.

4 (Jason F. Mcbrayer, a white male, now comes
5 forward.)

6 THE COURT: What number, Jackie?

7 THE CLERK: 155.

8 THE COURT: All right.

9 PROSPECTIVE JUROR: Jason Mcbrayer. I'm 155.
10 I'm a software analyst at the Department of Natural
11 Resources.

12 THE CLERK: What says the State?

13 MS. WEISS: Please present Mr. Mcbrayer.

14 THE CLERK: What says the Defense?

15 MR. COOPER: Please seat this juror.

16 THE CLERK: Please have a seat in the jury
17 box.

18 Jury number 46, Kevin Brumfield.

19 (Kevin L. Brumfield, a white male, now comes
20 forward.)

21 PROSPECTIVE JUROR: Kevin Brumfield, juror
22 number 46. I'm a manager.

23 THE CLERK: What says the State?

24 MS. WEISS: Please present Mr. Brumfield.

25 THE CLERK: What says the Defense?

1 MR. COOPER: Please seat this juror.

2 THE CLERK: Please have a seat in the jury
3 box.

4 Juror number 224, Brenda Singleton.

5 (Brenda P. Singleton, a black female, now
6 comes forward.)

7 PROSPECTIVE JUROR: Brenda Singleton, number
8 244?

9 THE CLERK: 224.

10 PROSPECTIVE JUROR: 224. I am a human
11 resource officer at Fort Jackson, South Carolina.

12 THE CLERK: What says the State?

13 MS. WEISS: Please present Ms. Singleton.

14 THE CLERK: What says the Defense?

15 MR. COOPER: Please excuse this juror.

16 THE CLERK: Please return to the back of the
17 courtroom.

18 Jury number 15, Roger Augenstein.

19 (Roger C. Augenstein, a white male, now comes
20 forward.)

21 PROSPECTIVE JUROR: Number 15, Roger
22 Augentstein. I'm in sales.

23 THE CLERK: What says the State?

24 MS. WEISS: Please present Mr. Augenstein.

25 THE CLERK: What says the Defense?

1 MR. COOPER: Please seat this juror.

2 THE CLERK: Please have a seat in the jury
3 box.

4 Juror number 171, Rose Moore.

5 (Rose M. Moore, a black female, now comes
6 forward.)

7 PROSPECTIVE JUROR: Rose Marie Moore. I'm a
8 city bus driver in transportation.

9 THE CLERK: What says the State?

10 MS. WEISS: Please present Ms. Moore.

11 THE CLERK: What says the Defense?

12 MR. COOPER: Please seat this juror.

13 THE CLERK: Please have a seat in the jury
14 box.

15 Jury number 105, Linda Heyward.

16 (Linda R. Heyward, a black female, now comes
17 forward.)

18 PROSPECTIVE JUROR: 105, Linda Heyward,
19 unemployed.

20 THE CLERK: What says the State?

21 MS. WEISS: Please excuse Ms. Heyward.

22 THE CLERK: Please return to the back of the
23 courtroom.

24 Juror number 174, Judy Murphy.

25 (Judy L. Murphy, a white female, now comes

1 forward.)

2 PROSPECTIVE JUROR: Judy Murphy, 174. I'm a
3 Customs and Border Protection Officer with the
4 Department of Homeland Security.

5 THE CLERK: What says the State?

6 MS. WEISS: Please present Ms. Murphy.

7 THE CLERK: What says the Defense?

8 MR. COOPER: Please excuse this juror.

9 THE CLERK: Please return to the back of the
10 courtroom.

11 Jury number 124, Miriam Jerome.

12 (Miriam E. Jerome, a white female, now comes
13 forward.).

14 PROSPECTIVE JUROR: Number 124, Miriam
15 Jerome. I am Director of Operations for Missionary
16 Resource Connection.

17 THE CLERK: What says the State?

18 MR. COOPER: Please present Ms. Jerome.

19 THE CLERK: What says the Defense?

20 MR. COOPER: Please excuse this juror.

21 THE CLERK: Please return to the back of the
22 courtroom.

23 Juror number 279, Frank Manning.

24 (Frank C. Manning, III, a white male, now
25 comes forward.)

1 PROSPECTIVE JUROR: Frank Manning, number
2 279, with insurance.

3 THE CLERK: What says the State?

4 MS. WEISS: Please present Mr. Manning.

5 THE CLERK: What says the Defense?

6 MR. COOPER: Please seat this juror.

7 THE CLERK: Please have a seat in the jury
8 box.

9 Jury number 205, Crystal Rice.

10 (Crystal R. Rice, a black female, now comes
11 forward.)

12 THE CLERK: 205.

13 THE COURT: 205.

14 PROSPECTIVE JUROR: Crystal Rice, valet
15 (phonetic) service employee.

16 THE CLERK: What says the State?

17 MS. WEISS: Please present Ms. Rice.

18 THE CLERK: What says the Defense?

19 MR. COOPER: Please excuse this juror.

20 THE CLERK: Please return to the back of the
21 courtroom.

22 Juror number 145, Kari Lopiano.

23 (Kari E. Lopiano, a white female, now comes
24 forward.)

25 PROSPECTIVE JUROR: Number 145, Kari Lopiano,

1 housewife, stay at home mom.

2 THE CLERK: What says the State?

3 MS. WEISS: Please present Ms. Lopiano.

4 THE CLERK: What says the Defense?

5 MR. COOPER: Please seat this juror.

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

8 Juror number 20, Karen Banks.

9 (Karen S. Banks, a white female, now comes
10 forward.

11 PROSPECTIVE JUROR: Karen Banks, retired.

12 THE CLERK: What says the State?

13 MS. WEISS: Please present Mr. Banks.

14 THE CLERK: What says the Defense?

15 MR. COOPER: Please excuse this juror.

16 THE CLERK: Please return to the back of the
17 courtroom.

18 Juror number 187, Denise Payne.

19 (Denise Payne, a black female, now comes
20 forward.)

21 PROSPECTIVE JUROR: Denise Payne, 187. I
22 work at C.M. Tucker.

23 THE CLERK: What says the State?

24 MS. WEISS: Please present Ms. Payne.

25 THE CLERK: What says the Defense?

1 MR. COOPER: Please excuse this juror.

2 THE CLERK: Please return to the back of the
3 courtroom.

4 Jury number 235, Eric Stapleton.

5 (Eric J. Stapleton, a white male, now comes
6 forward.).

7 PROSPECTIVE JUROR: My name is Eric
8 Stapleton, 235 and I work with Chick-fil-A.

9 THE CLERK: What says the State?

10 MS. WEISS: Please present Mr. Stapleton.

11 THE CLERK: Does the Defense challenge for
12 cause?

13 MR. COOPER: No, we do not.

14 THE CLERK: Please have a seat in the jury
15 box.

16 THE COURT: We'll select one alternate, three
17 and two.

18 THE CLERK: Juror number 83, Gregory Gattman.

19 (Gregory B. Gattman, a white male, now comes
20 forward.)

21 PROSPECTIVE JUROR: Greg Gattman, number 83.
22 I work at Palmetto Health.

23 THE CLERK: What says the State?

24 MS. WEISS: Please present Mr. Gattman.

25 THE CLERK: What says the Defense?

1 MR. COOPER: Please excuse this juror.

2 THE CLERK: Please return to the back of the
3 courtroom.

4 Juror number 112, Catherine Highsmith.

5 (Catherine M. Highsmith, a white female, now
6 comes forward.)

7 PROSPECTIVE JUROR: Catherine Highsmith,
8 number 112, Leesburg Alterations (phonetic).

9 THE CLERK: What says the State?

10 MS. WEISS: Please present Ms. Highsmith.

11 THE CLERK: What says the Defense?

12 MR. COOPER: Please seat this juror.

13 THE CLERK: Please have a seat in the jury
14 box.

15 THE COURT: All right. Any matters that need
16 to be taken up at this time in connection with the
17 selection of this jury?

18 Anything from the State?

19 MS. WEISS: No, sir, Your Honor.

20 THE COURT: From the Defense?

21 MR. COOPER: No, you.

22 THE COURT: All right. To the remaining
23 members of this panel, I take this opportunity to
24 thank each and every one of you on behalf of everybody
25 involved in this case, for being patriotic citizens.

1 You know, there's an old saying, the government of the
2 people, by the people and for the people cannot exist
3 without the people, that means the participation of
4 each and every one of you in the process. I thank you
5 for being patriotic citizens and wish you the very
6 best.

7 You're free to go back downstairs to the jury
8 assembly room. You'll probably be put on another
9 panel and go somewhere else and get selected.

10 Good luck to you and thank you very much.

11 (The remaining members of the jury
12 panel retire from the courtroom.)

13 THE COURT: Now, members of this particular
14 jury, what I'm going to do, I'm pretty sure I'm going
15 to send you into the jury room that you'll use during
16 the course of this trial. The most important thing I
17 can say to you now and you'll hear me repeat it
18 throughout the course of this trial is please don't
19 talk about this case in any way, shape or form until
20 the very end of the case, once you've heard all the
21 evidence. It would be unfair to the State and unfair
22 to the Defendant, Mr. Gainey, if you were to do so.
23 This is our system, these are the rules we've got to
24 go by.

25 So you have to have an open mind, wait until

1 the very end, after you've heard all the evidence,
2 once you've heard the argument -- final arguments on
3 behalf of the State as well as the Defendant's lawyer,
4 Mr. Cooper or Mr. O'Neil, and after I tell you what
5 the law is that applies to this case, that's the time
6 for you to discuss it among yourselves. Like I said,
7 under our system, it isn't fair for you to do so
8 otherwise.

9 Now, what I'm going to do now is send you
10 back into the jury room that you will use during the
11 course of this trial. Once again, remind you not to
12 talk about it and I'm going to let you look among
13 yourselves and see if you can elect a foreperson. If
14 you can't, I'll be happy to appoint one but try to
15 pick out a leader. It ain't very heavy lifting. It's
16 all in the shade and all you do is you represent the
17 jury on behalf of all the other jurors.

18 So, go to your jury room. I will give you a
19 moment to refresh yourselves. And I would like to get
20 you started and go until about 1:00 before we break
21 for lunch, okay.

22 So go to the jury room. Just don't talk
23 about the case. And Mr. Guilyard (phonetic) here will
24 give you a piece of paper to write down the name of
25 the foreperson that y'all elect.

1 Thank you very much.

2 (The jury retires from the courtroom at
3 approximately 11:54 P.M.)

4 THE COURT: Now, I haven't told them, I might
5 need to change my mind. I assume the opening
6 statement is what, going to take 15 minutes or so
7 probably?

8 MR. O'NEIL: Yes, Your Honor.

9 THE COURT: And you bring them out -- I'm --
10 I'm sure you probably don't want to cut up your
11 witness's testimony. So what we might do, let y'all
12 do opening statements, break for lunch and come back.
13 Is that good enough for everybody?

14 MR. COOPER: Yes, sir.

15 THE COURT: I think that will be best because
16 otherwise he'll probably be on the stand for 20
17 minutes and then we'll have to break for lunch anyway.

18 So we'll give them about 10 minutes to go to
19 the bathroom, that sort of thing. We'll come back,
20 we'll do opening statements and then we'll stop.
21 We'll resume at 2:30 because I have something
22 scheduled at 2 and heaven knows how long it's going to
23 take. It might take awhile but I hope it doesn't take
24 too long.

25 So that's where we are. Any exceptions or

1 additions? Anybody need anything right now?

2 MS. WEISS: No, Your Honor

3 MR. COOPER: That's fine.

4 THE COURT: We'll be about 10 minutes or so
5 we'll come back and we'll do opening statements. I'll
6 tell them that when we get back and then we'll break
7 for lunch.

8 (The Court was in recess.)

9 THE COURT: Is everybody ready?

10 MS. MCDUFFIE: Yes, Your Honor.

11 MR. COOPER: Your Honor, I have one thing to
12 bring up. I know there are no more lay witnesses here
13 right now but if some of them pop-up, I just want to
14 put on the record that I have requested to be
15 sequestered.

16 THE COURT: What now?

17 MR. COOPER: I just request any other lay
18 witnesses be sequestered.

19 THE COURT: Any objection?

20 MS. WEISS: No, Your Honor, as long as the
21 ones that are here are permitted to stay.

22 THE COURT: So we have the ---

23 MS. WEISS: The victim.

24 THE COURT: The victim and her?

25 MS. WEISS: And her friend.

1 THE COURT: Okay.

2 MR. COOPER: That's fine.

3 THE COURT: All right.

4 MR. COOPER: That's fine.

5 THE COURT: Bring the jury in.

6 (The jury returned to the courtroom at
7 approximately 12:05 p.m.)

8 THE BAILIFF: Jurors are present, Your Honor.

9 THE COURT: Thank you, Mr. Guilyard. Welcome
10 back, Madam Forelady and members of the jury. Ms.
11 Pendergrass, you may swear them.

12 (The jury was duly sworn.)

13 THE CLERK: You may be seated.

14 (Whereupon, Court's Exhibit Number 2, Juror
15 Question, was marked for identification.)

16 (Whereupon, Court's Exhibit Number 3,
17 Foreperson, was marked for identification.)

18 THE COURT: All right first of all, Madam
19 Forelady, I will answer your question. No, I don't
20 want you to take notes. I think it will be a very
21 simple case, you won't need to take notes. It
22 shouldn't be that long. And individually and
23 collectively if you pay close attention, I think you
24 will be able to resolve this matter fairly and
25 squarely without the need to take notes. If you were

1 to take notes that complicates things to the extent
2 that I would have to look at some of them, maybe share
3 them with the lawyers.

4 So I don't think you'll need to take them in
5 this case. So, I'm going to ask that you not do so,
6 okay.

7 Now, what I'm about to say, members of the
8 jury, is intended to serve as an introduction in the
9 trial of this case. There's not a substitute for the
10 detail instructions of the law which I will give you
11 at the close of this case before you retire to
12 consider your verdict.

13 This is a criminal case commenced by the
14 State, which I sometimes refer to as the prosecution,
15 against Louis Gainey. This case is based on the
16 indictment that I read to you. The Solicitor will
17 explain that to you. The Defense will explain it to
18 you also. You should distinctly understand that the
19 indictment is simply a charge and that it is not in
20 any sense evidence of the allegation it contains.

21 The Defendant has pled not guilty to the
22 indictment. The State therefore has the burden of
23 proving each and every essential element of the
24 indictment beyond a reasonable doubt. The purpose of
25 the trial is to determine whether the State has met

1 its burden as to whether they've convinced you beyond
2 a reasonable doubt Mr. Gainey is in fact guilty.

3 Your purpose as jurors is to find and
4 determine the facts. Under our system of criminal
5 procedure, you are the sole judges of the facts. If
6 at any time I should make any comments regarding the
7 facts, you are at liberty to disregard my comments.

8 It is especially important that you perform
9 your duty of determining the facts diligently and
10 conscientiously. Ordinarily there is no means of
11 correcting an erroneous determination of the facts by
12 a jury. On the other hand and with equal emphasis, I
13 instruct you that the law as I give it to you, as the
14 Court gives it to you, constitutes the only law for
15 your guidance and it is your duty to accept and follow
16 it. It is your duty to follow the law as I give it to
17 you even though you may disagree with the law. And I
18 may disagree with the law but I've got to tell you
19 what the law is, what I believe it is, and we've got
20 to follow it.

21 You are to determine the facts from the
22 testimony you hear and the other evidence introduced
23 in court. It is up to you to determine the inferences
24 which you feel may properly be drawn from the
25 evidence. You must not consider anything you may have

1 read or heard about this case outside of the
2 courtroom, whether before or during the trial.

3 Until this case is submitted to you, you must
4 not discuss it with anyone, even with your fellow
5 jurors. After it is submitted to you, you must
6 discuss it only in the jury room with your fellow
7 jurors. It is important that you keep an open mind
8 and not decide any issue in this case until the entire
9 case has been submitted to you under the instructions
10 of the Court. It is your added duty, Madam Forelady,
11 to preside in the jury room and be the jurors'
12 spokesman -- jury spokesman here in court.

13 Now, we have a procedure, it's called
14 objection. That's when, as you can imagine, in the
15 presentation of evidence, there's certain rules that
16 each side must obey or follow. An objection is the
17 procedure we use where either the State or Mr. Cooper
18 or Mr. O'Neil as Defense lawyers for Mr. Gainey, can
19 bring a possible violation of the presentation of
20 evidence to my attention. So you shouldn't hold an
21 objection against the State, you shouldn't hold it
22 against the Defense. Nor should you conclude how I
23 rule on an objection that I favor one side or the
24 other.

25 Now members of the jury, my interest is that

1 I have no interest in this case except to try to give
2 both sides a fair trial. And your interest is to try
3 to be fair to everybody involved and hear all the
4 evidence and judge it accordingly.

5 From time to time it might be necessary for
6 me to invite the lawyers up here and we might engage
7 in some whispering. The reason for that, is the only
8 way I can hear arguments on the law is either in your
9 absence or outside of your hearing. And it may be
10 necessary for me to send you back into the jury room
11 so that I can hear extended arguments on a point of
12 law from the attorneys involved. It's not an effort
13 to hide anything from you but to ensure that
14 information you receive in this case is what you
15 should receive under the rules.

16 That's the reason for that. So if somebody
17 objects, I'll either say overruled which means the
18 witness can answer the question or sustained which
19 means the objection, I think, is valid. You know,
20 don't draw any inference from that. I mean, they're
21 doing their job, I'm doing my job.

22 So don't think that I favor one side or the
23 other when I rule on an objection, I don't. It's just
24 my job to make the call, so to speak.

25 So with that in mind, I invite your keen and

1 close attention to the opening statements. We will
2 first hear from the State followed by, I do believe,
3 Mr. Cooper?

4 MR. COOPER: No ---

5 THE COURT: Who's going to make the opening
6 statement?

7 MR. COOPER: Mr. O'Neil ---

8 THE COURT: Mr. O'Neil will make the opening
9 statement on behalf of Mr. Gainey and Ms. McDuffie
10 will on behalf of the State or the victim. So, I
11 invite your keen and close attention to the opening
12 statements.

13 Ms. McDuffie, you may proceed.

14 MS. MCDUFFIE: Thank you, Your Honor. May it
15 please the Court.

16 OPENING STATEMENT ON BEHALF OF THE STATE

17 BY MS. MCDUFFIE:

18 In the early morning hours of March the 31st,
19 2007, the Defendant Louis Gainey viciously and
20 brutally attacked Ms. Detra Montgomery, the victim in
21 this case, ladies and gentlemen.

22 He and Ms. Montgomery were living together as
23 boyfriend and girlfriend. And Ms. Montgomery left
24 their residence that night because they were starting
25 to argue. She went over to her neighbor's house. The

1 Defendant followed her over there, started to argue
2 with her and pulled her off the porch and around to
3 the back of one of the buildings in the apartment
4 complex.

5 It got into a verbal altercation. And it was
6 during this altercation that the Defendant pulled out
7 a deadly weapon, he pulled out a screwdriver and began
8 to attack Ms. Montgomery, an unarmed woman, with that
9 screwdriver. He lacerated her face with the
10 screwdriver but he didn't stop there, ladies and
11 gentlemen. He kept attacking her.

12 Her lacerated her breasts with the
13 screwdriver and he didn't stop. He then took that
14 screwdriver and he thrust it into her stomach so hard
15 that it pierced the abdominal wall but he didn't stop
16 there, ladies and gentlemen. He kept attacking her.
17 He kept ripping that screwdriver and tearing through
18 her abdomen.

19 When he finally stopped, when he finally
20 pulled the screwdriver out of her abdomen, he had torn
21 her entire stomach open. He had disemboweled her.
22 Her intestines left her body and were hanging on the
23 outside as a result of the Defendant's action.

24 And he didn't stop there either. Ms.
25 Montgomery was lying on the ground with her intestines

1 exposed fighting for her life, trying to kick the
2 Defendant, do whatever she could to get him off of
3 her, to get him to stop attacking her. It was only
4 for the neighbor who heard Ms. Montgomery's screams
5 came around the building that the Defendant finally
6 stopped attacking her.

7 He left her lying there with her intestines
8 exposed and he ran, ladies and gentlemen.

9 My name is Joanna McDuffie and I, along with
10 Heather Weiss, represent the State of South Carolina
11 for the Fifth Judicial Circuit. It is our job to
12 prosecute all crimes that occur in Richland and
13 Kershaw Counties.

14 As a result of the Defendant Louis Gainey's
15 actions on March the 31st of 2007, he is charged with
16 assault and battery with intent to kill. Ladies and
17 gentlemen, in South Carolina and under South Carolina
18 law, an assault and battery with intent to kill is an
19 unlawful act of a violent nature upon the person of
20 another with malice. Malice is a legal term of art.
21 It -- what we're looking for is the Defendant's
22 intent. And malice is sometimes described as an
23 evilness, a wickedness, a heart devoid of social duty
24 and fatally bent on mischief.

25 Now, ladies and gentlemen, malice can be

1 expressed. And an example of expressed malice will be
2 if someone said, I'm going to kill you. They're
3 expressing their intent. Or malice may be implied.
4 And malice may be implied from the use of a deadly
5 weapon.

6 And it's up to you, ladies and gentlemen, as
7 the finders of fact in this case, to determine what is
8 a deadly weapon. Ladies and gentlemen, I submit to
9 you that when the Defendant took a screwdriver and
10 plunged it through Ms. Montgomery's abdominal wall and
11 disemboweled her, that screwdriver was a deadly weapon
12 and that was malice.

13 Now, even though the statute is called assault
14 and battery with intent to kill, the State is not
15 required to prove that the Defendant actually intended
16 to kill the victim. Rather, we must prove to you,
17 ladies and gentlemen, that the Defendant intended
18 through his acts to commit grievous bodily injury.
19 And I submit to you, that's exactly what he did.

20 Now, we as the State of South Carolina, have
21 the burden of proof in this case just as we do in
22 every criminal prosecution. It is our duty to prove
23 each element of the offense the Defendant is charged
24 with beyond a reasonable doubt.

25 Ladies and gentlemen, proof beyond a

1 reasonable doubt is proof that leaves you firmly
2 convinced of the Defendant's guilt. It's not proof
3 that overcomes every possible doubt and it's not
4 absolute certainty of guilt. If at the conclusion of
5 this case you are firmly convinced of the Defendant's
6 guilt, then you must find him guilty.

7 Judge Manning is the judge of the law in this
8 case. He will instruct you, the jury, on what the law
9 is. If I or opposing counsel says something that
10 contradicts what the Judge says, please take the law
11 as the Judge gives it to you.

12 But just as Judge Manning is judge of the
13 law, you, ladies and gentlemen, are the judges and
14 triers of fact. Individually and collectively, it is
15 up to you to determine if the Defendant committed the
16 crime that we, the State, allege he did.

17 You determine the Defendant's guilt by
18 weighing the evidence presented in this case. And
19 that evidence will come mainly in two forms. The
20 first will be testimony from the witnesses on this
21 witness stand under oath. The second will be physical
22 exhibits introduced as evidence during the trial.

23 Ladies and gentlemen, during this trial you
24 will hear from Detra Montgomery. She will describe
25 the horrific assault inflicted upon her by this

1 Defendant. She will tell you about how she was lying
2 on the ground with her intestines exposed trying to --
3 to save herself from the Defendant using all of her
4 might trying to kick him, trying to do anything she
5 could to get him off of her. And how it was only when
6 her neighbor, Deanna Richardson, came to her aid that
7 the Defendant finally stopped assaulting her.

8 You will hear from Deanna Richardson who is
9 Ms. Montgomery and the Defendant's neighbor. Ms.
10 Richardson will tell you about how Ms. Montgomery was
11 over at her house and how the Defendant pulled Ms.
12 Montgomery off the porch. She will tell you how she
13 heard Ms. Montgomery screaming, stop Louis, stop
14 stabbing me, and how then she went to see what was
15 going on. And when she arrived behind the building,
16 she saw Ms. Montgomery lying there with her intestines
17 exposed and she saw the Defendant take off and run.

18 You will hear from officers of the Columbia
19 Police Department, Officer Catoe who was the first
20 responding officer on the scene. He will tell you
21 that he happened to be in the area and he heard a
22 commotion. He saw the Defendant running or a man who
23 had a bald head and a large build running and he saw
24 the victim lying on the ground. And instead of
25 pursing the man that he saw running, he thought it

1 best that he get the victim medical attention and
2 that's what he did, ladies and gentlemen.

3 You will hear from the E M S technicians who
4 arrived at the scene. They will tell you about the
5 condition that Ms. Montgomery was in. How they had to
6 place her organs, her intestines, in a sterile bag in
7 order to transport her to the hospital. When she got
8 to the hospital, she was treated by a trauma surgeon
9 named Dr. Franga. And you will hear from him, ladies
10 and gentlemen. He will tell you how injuries the
11 Defendant inflicted upon the victim were life
12 threatening. He will tell you about all the
13 lacerations the victim had, the defensive wounds that
14 were on the victim's body. He will tell you how she
15 almost died that night.

16 You will hear from security officers at
17 Palmetto Richland Memorial Hospital. They will tell
18 you how the Defendant came up to the hospital and gave
19 them a name, ladies and gentlemen.

20 And you will hear from her family members,
21 her grandmother and her sister who were also at the
22 hospital, who were there when the Defendant gave the
23 officers at the hospital a fake name and how they told
24 the officers his real name. And those officers tried
25 to detain him until the City of Columbia Police

1 Department could get there and they will tell you.
2 about how he ran and how they ultimately apprehended
3 him and turned him over to the custody of the City of
4 Columbia.

5 And, ladies and gentlemen, you will hear from
6 investigators with the Columbia Police Department who
7 will detail their investigation for you.

8 Ladies and gentlemen, as the jury, it is your
9 job to determine the truth and that is what we're all
10 here for today. That's why I ask of you, after
11 viewing all of the evidence, after listening to the
12 testimony from the witnesses on this witness stand,
13 and applying the law as given by Judge Manning to that
14 testimony and that evidence, to return a verdict of
15 guilty against the Defendant for the crime of assault
16 and battery with intent to kill.

17 Thank you.

18 THE COURT: All right, Ms. O'Neil.

19 MR. O'NEIL: Thank you, Your Honor. May it
20 please the Court.

21 THE COURT: Yes, sir.

22 OPENING STATEMENT ON BEHALF OF THE DEFENDANT

23 BY MR. O'NEIL:

24 There are times when our emotions get the
25 best of us. We all recognize this, we get upset we

1 count backwards to ten. We get angry at something, we
2 take the time to take a deep before we move on. We
3 decide we need to punish our kids, we send them to
4 their room so we can cool down, make a cool, calm and
5 collected decision. We all understand that sometimes
6 we do things when our emotions get the best of us that
7 we wouldn't normally do.

8 Now the law recognizes this concept as well.
9 For instance, in certain states before you can
10 purchase a handgun, there's a certain waiting period
11 because the law recognizes sometimes, when our
12 emotions get the best of us, we do things that we
13 normally wouldn't do. Generally the law recognizes,
14 when things happen in the heat of passion under the
15 right circumstances, they should be treated
16 differently than things that are done under a cool,
17 calm and collective manner.

18 That's what we're talking about here today,
19 ladies and gentlemen. This isn't one of those cases
20 about the who. Ms. McDuffie spent a lot of time
21 telling you about who did this and a lot of time
22 pointing at Mr. Gainey. This case is more about the
23 how and the why. Now don't get me wrong. I'm not
24 saying that emotions, when they get the best of us,
25 they excuse our actions. I'm just saying that the law

1 recognizes under certain circumstances they should be
2 treated differently.

3 Now, the main question you need to answer is
4 how, how this happened. There's a couple of people
5 you need to pay close attention to.

6 Ms. McDuffie told you a lot about this
7 horrific night and the incident of this night and what
8 Ms. Montgomery's medical condition was. We ask you to
9 play close attention to the medical personnel, the
10 doctors and the E M S people, see what they say about
11 Ms. Montgomery's condition backs up what Ms. McDuffie
12 just told you.

13 But probably the most important thing you
14 need to pay attention to is to why. They've charged
15 Louis with assault and battery with intent to kill.
16 You have to determine what Louis's intentions were
17 that night.

18 So in order to determine that you need to
19 know the why in this case. So let's talk a little
20 about the background.

21 Louis and Ms. Montgomery, they met at the
22 Salvation Army here in Columbia. They were kind of in
23 different points of their lives. Louis had been
24 struggling with a drug problem in his life for awhile.
25 He had got to the point where he figured out he had

1 that problem under control and he went to help others
2 out who had similar situations.

3 So he became what's called a soldier in the
4 Salvation Army. Soldiers get to sponsor other people
5 struggling with drug problems themselves or just kind
6 of down on their luck. And that's where he met Ms.
7 Montgomery at, at the Salvation Army. She was there
8 with her kids.

9 And at first they kind of sparked up a
10 friendship and that friendship kind of led to a
11 romantic relationship. And Louis got an apartment for
12 Ms. Montgomery and their kids, and they moved in
13 together. Louis worked two jobs, Ms. Montgomery
14 worked a job. They were a family providing for their
15 family. They were in a romantic relationship.

16 Like any other relationship, they had their
17 ups and they had their downs. But at a certain point,
18 Louis got to feeling that Ms. Montgomery was being
19 unfaithful to him and that kind of came to a head on
20 March 31st of 2007. That night became an example of
21 what can happen when our emotions get the best of us.

22 So your job over these next couple of days is
23 to determine Louis's intentions.

24 Now we all, everybody here has some sort of
25 job, the lawyers, the Judge. What's kind of different

1 about your job -- as lawyers and as judges we get
2 years of schooling to determine how to do our job, on
3 the job training, seminars, that kind of things.
4 People always ask me a lot of times how can I do my
5 job. I say, I love this job. That is what I was
6 called to do. I volunteered for this job. But you
7 13, you were summoned her today. You were summoned
8 here to preside on this jury and decide another man's
9 fate.

10 The first thing you've got to realize when
11 you're doing your job is that your decision has to be
12 based on the facts and the law. One of the things
13 Judge Manning will tell you that your decision can't
14 be based on passion, on sympathy or emotion. What I
15 ask you, before we get started her in any testimony
16 today, is to take all those facts and listen to them
17 closely. I ask you to separate yourself from those
18 emotions, that anger, that frustration that may have
19 welled up while you were hearing some of this story
20 and decide this case squarely on the law and the
21 evidence.

22 Secondly and probably the most important job
23 is to make sure that the State of South Carolina does
24 their job. Your job is to hold them to their burden
25 of proof.

1 Now, I know some of you have served on juries
2 before and some people always wonder what's the burden
3 of proof, what's the level of convincing you have to
4 have here in this criminal case. In civil cases that
5 some of y'all have served on before, the burden is
6 just more, more how -- if you are more convinced than
7 not essentially, 51 to 49. When you're dealing with
8 family court issues, it's a little bit higher burden
9 called clear and convincing evidence, you've got to be
10 more than just the standard they have in civil court.

11 But in criminal court where somebody's
12 liberty is at stake, you have the highest burden of
13 all and that's beyond a reasonable doubt. And that's
14 the way it should be. Because in civil you're talking
15 about money and property. Even in family court we're
16 talking about things like child custody. But when
17 we're talking about somebody's liberty as we are in
18 the criminal setting, you need to be convinced beyond
19 a reasonable doubt.

20 And beyond a reasonable doubt is a legal term
21 we throw around here. Most people don't understand
22 what that means but I try to give this example. .
23 Basically beyond a reasonable doubt, assume a person
24 woke up one morning and looked at the news and saw one
25 of their family members had been accused of a crime.

1 Now how much convincing would it take for that person
2 to believe that their family member, their loved one,
3 actually did that. That's the same type of convincing
4 you have to have today. That's how much they have to
5 convince you that Louis is guilty of assault and
6 battery with intent to kill.

7 Now, lastly, all I ask of you, when you go
8 back there, without that emotion, without that
9 passion, without the sympathy, I'm not asking you to
10 find for Louis, I'm not asking you to find against Ms.
11 Montgomery, what I'm asking you is to decide this case
12 on the law and the evidence. I ask you to return a
13 verdict that describes what happened that night, that
14 describes the how and the why of that night, because
15 we all recognize, even for the best of us, sometimes
16 our emotions get the best of us.

17 Thank you.

18 THE COURT: Now, Madam Forelady, members of
19 the jury, I'm going to send y'all to lunch. And once
20 again, I've got to remind you, don't talk about this
21 case. If I do it, it's not because I don't think you
22 understand but I'm required to do that.

23 Be back at 2:30, I think I told you in the
24 jury room. I have something to do at 2:00 that might
25 take 30 minutes or so, so that's the reason we're

1 going to start a little bit late. But it gives you an ...
2 ample opportunity to go find you some place to dine
3 here near the Courthouse and I'm sure you will.

4 Hope you have a pleasant lunch. Be back in
5 the jury room at 2:30. Don't come back through the
6 courtroom. The bailiffs will show you how to, I
7 guess, maneuver the hallways because they're very long
8 and everything.

9 Hope you have a pleasant lunch and we'll see
10 you back at 2:30. Thank you all.

11 (The jury retires from the courtroom at
12 approximately 12:33 P.M.)

13 THE COURT: All right. Any exceptions or
14 additions? Y'all good?

15 MS. WEISS: Not from the State, Your Honor.

16 THE COURT: All right.

17 MR. COOPER: None from the Defense.

18 THE COURT: All right, 2:30. Hopefully I'll
19 be finished by then. I've got some motion hearing,
20 some sentencing to do and I think somebody tried to
21 drag a plea up in front of me, so. We'll get that
22 over as soon as possible.

23 I told the jurors we probably -- I'm not sure
24 how long we're going to go but usually we run from
25 9:30 to 5:30. Somebody asked to pick up their

1 girlfriend up at 5:15. I said, I don't think y'all
2 will break up if you're a little bit late. So we'll
3 get as much in as we possibly can.

4 I hope y'all have a pleasant lunch. See you
5 back at 2:30.

6 MR. COOPER: Thank you, Your Honor.

7 MS. MCDUFFIE: Thank you.

8 MS. WEISS: Thank you, Your Honor.

9 (The Court was in recess.)

10 MS. WEISS: Your Honor, we need to put
11 something on the record real quick about settling the
12 record.

13 THE COURT: Okay, go ahead.

14 MS. WEISS: I believe Ms. McDuffie and Mr.
15 Cooper have talked and there's nothing in the rap
16 sheets that's impeachable so nobody plans on bringing
17 anything in.

18 MR. COOPER: No, Your Honor, I don't plan on
19 bringing anything in through Ms. Montgomery or ---

20 THE COURT: Okay.

21 (Pause.)

22 THE COURT: Well, Mr. Gainey, the only thing
23 that happened while you were still in the holding cell
24 was there was some discussion about settling the
25 records of witnesses. That is if they have a prior

1 record, whether or not it would be impeachable. And
2 that was the little discussion before you came up. I
3 tell you that for the record, that's the only thing
4 that happened while you were outside the room.

5 THE DEFENDANT: Yes, sir.

6 THE COURT: All right. So we're all ready
7 then?

8 MS. WEISS: The State's ready, Your Honor.

9 MR. COOPER: Yes, sir.

10 THE COURT: All right. Bring the jury in.

11 THE COURT: Who's going to go first? You,
12 Ms. McDuffie, or -- you're going to call ---

13 MS. WEISS: Yes, Your Honor.

14 (The jury returned to the courtroom at
15 approximately 2:38 P.M.)

16 THE BAILIFF: All jurors are present, Your
17 Honor.

18 THE COURT: All right. Thank you,
19 Mr. Desassure (phonetic).

20 Welcome back, Madam Forelady and members of
21 the jury. I hope y'all had a pleasant lunch. Y'all
22 did?

23 JURORS: (Affirmative response.)

24 THE COURT: Ms. Weiss, you may call your
25 first witness.

1 MS. WEISS: Thank you, Your Honor. The State
2 calls Detra Montgomery.

3 THE COURT: Come around, Ms. Montgomery.

4 (DETRA MONTGOMERY, after being duly sworn,
5 testified as follows:)

6 THE CLERK: Thank you. Please have a seat
7 and state your full name for the record.

8 THE WITNESS: (No response.)

9 THE CLERK: Please state your name for the
10 record.

11 THE WITNESS: Detra Montgomery.

12 DIRECT EXAMINATION

13 BY MS. WEISS:

14 Q Good afternoon, Detra, how you are?

15 A I'm fine, thank you.

16 Q You nervous?

17 A Yes.

18 Q Before we get started talking about what we're
19 here for today, I just want you to kind of
20 introduce yourself to the jury. Tell them a
21 little bit about where you're from, where you
22 grew up.

23 A I'm originally from Washington, D.C., born and
24 raised. I moved to South Carolina in 2000.

25 Q How old are you?

- 1 A 39.
- 2 Q Do you have any children?
- 3 A I have three children.
- 4 Q How old are they?
- 5 A 17, 15 and 12?
- 6 Q Boys or girls?
- 7 A The oldest is a girl and the other two are boys.
- 8 Q And they all three live with you?
- 9 A Yes.
- 10 Q And where do you live?
- 11 A [REDACTED] Street in Columbia.
- 12 Q How long have you lived there?
- 13 A About three years now.
- 14 Q What brought you back to South Carolina?
- 15 A My family. I was still the only one in D.C. My
- 16 grandmother and my sister and everybody else had
- 17 moved here, so I left.
- 18 Q What was the tie to South Carolina?
- 19 A That's where my grandmother is originally from.
- 20 Q And she had come home first?
- 21 A Yes.
- 22 Q Okay. And are you -- you still close to your
- 23 grandmother?
- 24 A I am.
- 25 Q How many sisters do you have?

- 1 A I have one sister, Vanessa Montgomery.
- 2 Q And where does she live?
- 3 A In Salters with my grandmother.
- 4 Q Are you currently working anywhere?
- 5 A Yes, I work at Midland's Tech in counseling
6 services.
- 7 Q Are you in School?
- 8 A I'm at school at Midland's Tech.
- 9 Q What you are studying?
- 10 A Human Services.
- 11 Q Going back to 2007, were you working at that
12 time?
- 13 A I was.
- 14 Q And where were you working?
- 15 A At the Starbuck's at the Marriott Hotel.
- 16 Q And what were your -- what was your position
17 there?
- 18 A I basically opened it, closed it, made the
19 drinks, served, I did everything.
- 20 Q Did you have a title?
- 21 A Just basically the barista.
- 22 Q Okay. And you were on your feet a lot when you
23 were there?
- 24 A Yes, the whole time.
- 25 Q How long did you have that job?

1 A I just started that job, I think, in November ---

2 Q Of '06?

3 A Of '06, yes.

4 Q Now, still back in 2007, did you have the
5 opportunity to meet Louis Gainey?

6 A I did.

7 Q And do you see him in the room today?

8 A Yes.

9 Q Can you point him out for the jury?

10 A Sitting over in the gray suit (indicating), with
11 the glasses, dark skin, bald head.

12 MS. WEISS: May the record reflect she's
13 identified the Defendant.

14 THE COURT: All right.

15 Q When -- about what month -- do you remember about
16 when you met Louis Gainey?

17 A Probably in October, I think, of '06.

18 Q And what type of relationship did you develop
19 with Mr. Gainey?

20 A A personal relationship, we dated.

21 Q And did he move in with you?

22 A We moved in together, yes.

23 Q And were both your names on the lease?

24 A Yes.

25 Q And how was your relationship October through

1 January?

2 A It was fine October through January.

3 Q Can you describe a little bit for the jury,
4 remembering to that time?

5 A We did a lot of things together. We went to
6 church together. We did a lot of things with the
7 kids, his family, and that was basically it.

8 Q So he was a part of the family?

9 A Yes.

10 Q After -- starting into January getting into
11 February, did things start to change?

12 A Yes.

13 Q And tell the jury what changed? Did Louis have a
14 job, was he contributing to the household?

15 A He had a job at one time working at Midland's Tec
16 which he didn't keep that long. A lot of times
17 he would run home thinking that I was cheating on
18 him or doing something. So eventually he lost
19 that job. He didn't have it that long. He had
20 another job probably two or three days prior to
21 this incident and that didn't last long, of
22 course, because this happened.

23 Q So for the majority of that time did he have a
24 job?

25 A No, I worked.

- 1 Q And you worked the entire time?
- 2 A Yes.
- 3 Q How did things start to change about, you know,
4 starting around February, mid-February, beginning
5 of February, how did things start the change with
6 the two of you?
- 7 A For the worse. His just steady accusing me. He
8 would come up to my job. A lot of my co-workers
9 would say things to me because he would come up
10 there. I mean, just his behavior, just real
11 erratic.
- 12 Q Did it ever get to a point where -- and did
13 things keep steadily getting worse?
- 14 A Yeah, there were a lot of arguments, just -- just
15 bad arguments, really bad.
- 16 Q And did y'all ever discuss ending the relationship?
- 17 A I did. I eventually told him that I didn't want
18 to be with him no more and I asked him to leave.
19 He refused to leave and it just got worse after
20 that.
- 21 Q Okay. You said that he used to accuse you of
22 things?
- 23 A Accused me with being with other people or having
24 people at the house, things like that.
- 25 Q Just tell the jury, was there anybody other than

1 Louis?

2 A No, all I did was go to work and come home, that
3 was it.

4 Q And the three kids were living with you too?

5 A And the kids were there, yes.

6 Q And taking you now to March 31st of 2007. Now,
7 the incident occurred about 1:00 in the morning,
8 so take you back now to March 30th, that Friday
9 evening. What was going on that Friday evening
10 at your house?

11 A When I got off from work we went to go get his
12 grandkids. You know, even though we were having
13 problems, I told him that his grandkids could
14 come over. So we went to his daughter's house to
15 get his grandkids.

16 Q And did he see grandkids a lot?

17 A From my understanding, no.

18 Q Okay. So what -- what were you thinking in
19 offering to have his grandkids come over?

20 A To have his grandkids get to know him, to start
21 seeing him.

22 Q Okay. And so what did you do? You went to his
23 daughter's house?

24 A Yes, and got his grandkids.

25 Q How many of them were there?

- 1 A Gosh, it was probably about four, plus my three
2 when we came back to the house.
- 3 Q Did they get along well with your three?
- 4 A They did.
- 5 Q And they came to your house for what reason?
- 6 A To spend the night. We were going to cook out,
7 just let them sleep over and have a good time.
- 8 Q And did they -- they came over?
- 9 A They did.
- 10 Q And y'all cooked out?
- 11 A I don't even recall if we cooked out. I know it
12 was pretty late when we got back.
- 13 Q And the kids all played together?
- 14 A They did.
- 15 Q Was Louis there during this time?
- 16 A He was.
- 17 Q And what was going on with him, was he playing
18 with his grandkids?
- 19 A No, he was arguing with me, just going -- I don't
20 know. He was just arguing with me. He just kept
21 arguing, arguing and arguing.
- 22 Q So at some point did the kids go to sleep?
- 23 A Yes, they did.
- 24 Q And what was going on with you and Louis after
25 then?

1 A At that point I stepped outside on the porch to
2 talk to my neighbor.

3 Q Okay. Now, just so we can get an idea.

4 (Pause.)

5 Q I'm going to show you what's marked as State's
6 Exhibit 19 for identification. Do you recognize
7 these two pictures?

8 A I do.

9 MS. WEISS: And can you see?

10 JUROR: No.

11 (Pause.)

12 Q Do you know what these two buildings are?

13 A The apartment buildings where I live.

14 Q Okay. And your apartment is right about here?

15 A Yes.

16 Q And your neighbor's apartment -- when you said
17 you went outside, you went outside on this side?

18 A On my porch, yes.

19 Q Which is right here?

20 A Yes.

21 Q And your neighbor's apartment is right over here?

22 A Correct.

23 Q And she has a porch right here?

24 A Yes.

25 Q Okay. And this is kind of the property.

1 surrounding the sidewalk up the middle?

2 A Yes.

3 Q And then over here, do you recognize this
4 picture?

5 A It's a picture of the neighborhood also.

6 Q Okay.

7 MS. WEISS: Your Honor, at this time I would
8 like the move State's Exhibit 19 into evidence.

9 MR. COOPER: I have no objection, Your Honor.

10 THE COURT: Has it already been pre-marked?

11 COURT REPORTER: Yes, sir.

12 THE COURT: All right. And that's the
13 apartment where she lived, the scene?

14 MS. WEISS: Yes, sir, Your Honor.

15 (Whereupon, State's Exhibit Number 19,
16 Blowup of Area Maps, was moved into
17 evidence.)

18 THE COURT: And, members of the jury, while
19 she's doing that, I'll explain as we go along.
20 Generally one side should show the other side what
21 they intend to introduce into evidence so if there's
22 any arguments, they can make them to me before they
23 get entered. So a lot of that will happen in this
24 case. I just wanted to let y'all know that,
25 parenthetically.

1 Okay, Ms. Weiss.

2 MS. WEISS: Thank you.

3 Q I'm going to show you what's been marked as
4 State's Exhibits 7, 6, 2, 3, 5, 4, 8 and 9, okay.
5 And if you would just look at these and see if
6 you recognize these pictures.

7 (Pause.)

8 A I do.

9 Q Can you tell me what they're generally pictures
10 of?

11 A Pictures of the apartments by my house,
12 apartments at my house and the area outside it
13 and around it.

14 MS. WEISS: Your Honor, at this time I would
15 like the move State's Exhibits 2 through 9 into
16 evidence.

17 THE COURT: Any objection?

18 MR. COOPER: No objection, Your Honor.

19 THE COURT: Without objection, 2, 3, 4, 5, 6,
20 7, 8 and 9.

21 MS. WEISS: Thank you, Your Honor.

22 (Whereupon, State's Exhibit Number 2,
23 Photograph of Porch Direct View, was moved
24 into evidence.)

25 (Whereupon, State's Exhibit Number 3,

1 Photograph of Porch, was moved
2 into evidence.)
3 (Whereupon, State's Exhibit Number 4,
4 Photograph of Two Porches Side View, was
5 moved into evidence.)
6 (Whereupon, State's Exhibit Number 5,
7 Photograph of Trampoline, was moved
8 into evidence.)
9 (Whereupon, State's Exhibit Number 6,
10 Photograph of Dirt Area, was moved
11 into evidence.)
12 (Whereupon, State's Exhibit Number 7,
13 Photograph of Dirt Area, was moved
14 into evidence.)
15 (Whereupon, State's Exhibit Number 8,
16 Photograph of Walkway, was moved
17 into evidence.)
18 (Whereupon, State's Exhibit Number 9,
19 Photograph of Street Sign, was moved
20 into evidence.)

21 Q Okay. I'm going to show you first State's
22 Exhibit 8. Can you tell us what that depicts?
23 A The front of my apartment building, the walkway
24 and this is my apartment here and this is my
25 neighbor's apartment (indicating).

1 Q Okay. So they're fairly close?

2 A Yes.

3 Q State's Exhibit 2, tell me what that depicts?

4 A The front porch of my house.

5 Q Okay. And that's where you're saying you came
6 out?

7 A Yes.

8 Q And then State's Exhibit 3, can you tell us --
9 tell the jury what that depicts?

10 A That's the front porch of my house and also my
11 neighbor's house at the time.

12 Q So it's actually like taken from your neighbor's
13 house to your house?

14 A Right, to my house.

15 Q It shows how close your two porches are?

16 A Yes.

17 Q So that night when you walked out of your home,
18 out of your porch here (indicating), what did --
19 did you leave the door open, did you close the
20 door, do you remember?

21 A I left my door open. I think I left my door
22 open.

23 THE COURT: Okay, for the record, what
24 exhibit is that?

25 MS. WEISS: State's Exhibit Number 3.

1 THE COURT: Okay.

2 MS. WEISS: Sorry. Thank you, Your Honor.

3 Q State's Exhibit Number 3, when you walked out on
4 your porch, your memory is you left the door
5 open?

6 A Yes.

7 Q And why would you have done that?

8 A I was just standing there smoking a cigarette and
9 the kids were in the house.

10 Q Okay, all right. And so you stepped out. And
11 what did find when you stepped outside?

12 A Dee Dee (phonetic) was on her porch, my neighbor.

13 Q And this is Dee Dee's porch here?

14 A Yes.

15 Q So she was sitting basically ---

16 A On her ---

17 Q --- where this was taken from?

18 A Yes.

19 Q Right there (indicating). Okay and what did you
20 do when you came outside?

21 A When I saw her, I walked over to her porch and
22 she was sitting on the step so I stood up and we
23 were talking.

24 Q Okay. I am going to show you State's Exhibit 4.
25 Does that depict -- what does that depict?

1 A That's Dee Dee's porch here and the neighbor
2 across from her.

3 Q Okay. And so you were sitting there next to her
4 -- standing there next to her?

5 A I was standing up, she was sitting down on the
6 step. I was standing like at the bottom step.

7 Q Okay. And you were standing there and you were
8 talking?

9 A Yes.

10 Q About anything in particular?

11 A No, just talking. I had a house full of kids,
12 you know, they had been up and that was basically
13 it.

14 Q Okay. And what was she doing?

15 A She was just sitting out there smoking a
16 cigarette too.

17 Q Okay. Is that something you did pretty
18 regularly?

19 A Yes.

20 Q Was -- would you say she was a pretty close
21 friend?

22 A She was.

23 Q Does she still live in that apartment?

24 A She doesn't anymore.

25 Q When did she move, do you remember?

1 A Probably nine months later, probably.

2 Q So you were standing out there talking to her.

3 And what happened next?

4 A Louis came outside and just started ranting and
5 raving, come in the house again.

6 Q Now where did he come -- when he came out, where
7 did he go?

8 A He stood over here (indicating) by this tree and
9 I was standing on the other side by the rail and
10 Dee Dee was sitting on the step. And I kept
11 telling him, I'll be in there in a minute, I'm
12 talking to Dee Dee. And he just kept saying, you
13 need to come in the house now. And I was like,
14 I'll be in there in a minute.

15 And the next thing I know, that's when he
16 grabbed me off the porch.

17 Q Was there anybody else out there other than the
18 three of you?

19 A No.

20 Q And before he came out, was there anybody else
21 out there other than you and Dee Dee or Deanna
22 Richardson?

23 A No.

24 Q Okay. And were you fighting with Louis about
25 anything in particular?

- 1 A No.
- 2 Q Okay. And he just kept saying, come inside?
- 3 A He just kept telling me to come in the house.
- 4 Q And was there anything wrong in the house, was
- 5 there any reason you needed to go in the house?
- 6 A No, as far as I know the kids were just playing.
- 7 There was nothing wrong. He didn't say anything
- 8 was wrong.
- 9 Q Okay. And he told you to come with him?
- 10 A Yes.
- 11 Q And what did he do?
- 12 A He grabbed me by the back of my neck off the
- 13 porch and dragged me around the side of the
- 14 building.
- 15 Q So he grabbed you. Did he take -- he didn't take
- 16 you back into your house?
- 17 A No.
- 18 Q And your house, as you can see in State's Exhibit
- 19 3, would have been just right across?
- 20 A Right.
- 21 Q He could have taken you right back in if he
- 22 needed to talk to you in the house?
- 23 A Right.
- 24 Q But he didn't do that?
- 25 A No.

- 1 Q I'm showing you State's Exhibit 8. We're looking
2 at that porch and that tree there (indicating).
3 Where did he take you?
- 4 A He took me around past this tree on the side of
5 the building (indicating).
- 6 Q Around that way ---
- 7 A Yes.
- 8 Q --- on the side of -- basically you were right
9 there (indicating) ---
- 10 A Yes.
- 11 Q Took you around that side?
- 12 A Yes.
- 13 Q Okay. And what's back here?
- 14 A It's another door to the apartment that's on that
15 end but just dirt, the ground, pretty much a
16 couple of trees. That's basically it.
- 17 Q Was there anybody out there?
- 18 A No.
- 19 Q Okay. I show you State's Exhibit 6 and 7. Tell
20 the jury what these two pictures depict.
- 21 A That's the back around the house (indicating) on
22 both of them. This is facing (indicating) ---
- 23 Q Okay. So this picture is looking back at the
24 apartments, I guess?
- 25 A Yes.

1 Q There and that way (indicating). Now, this would
2 have been the direction that he dragged you?

3 A Correct.

4 Q Okay. And where did he take you?

5 A When he grabbed me, he dragged me over here
6 (indicating).

7 Q Okay. And how far back there? Did he drag you
8 all the way around the building?

9 A No, it's just like in the middle of it
10 (indicating).

11 Q Okay. And that's State's Exhibit 6. He dragged
12 you around there ---

13 A Yes.

14 Q Through this -- the dirt and the leaves and then
15 ---

16 MS. WEISS: Your Honor, may the witness step
17 down for the minute?

18 THE COURT: Yes, of course. You may step
19 down, Ms. Montgomery.

20 (The witness steps down from the witness
21 stand.)

22 Q Stand right here (indicating). You said he
23 grabbed you behind your head. Show the jury how
24 he grabbed you.

25 A He had me down like this (indicating).

1 Q And then with your head down, look up and talk to
2 the jury so the court reporter can hear you.
3 What was he doing -- with your head down, what
4 was he doing?

5 A When he had my head down, he -- well I thought he
6 was punching me. But until I heard a pop sound,
7 then I realized he was stabbing me.

8 Q Okay. So you thought he was punching you?

9 A Yes.

10 Q So you had your head down and he was punching you
11 around there. What -- what happened when you --
12 so you were looking basically down at him
13 punching you?

14 A Right.

15 Q Then what happened when you heard the pop?

16 A That's when I looked down and I was holding my
17 intestines in my hand. And then I fell on the
18 ground because I realized he was stabbing me, to
19 try to get him off and I figured he's not going
20 to drag me if I'm on the ground.

21 So I just started kicking to try to get him
22 off of me, you know, because he was stabbing --
23 cutting my legs or whatever -- with whatever he
24 had.

25 Q Okay. Will you please show the jury -- you said

1 he stabbed you in the stomach?

2 A Uh-huh.

3 (Witness indicated to jury.)

4 Q And that is from where he stabbed you? He
5 stabbed you there. And do have any other stab --
6 any other ---

7 A I do. My arm (indicating) and my neck and my
8 breast.

9 Q Your neck, show them your neck.

10 (Complied.)

11 Q And then -- and on your chest as well?

12 A Yes.

13 Q And you heard the pop sound. What did you see --
14 I know you said your intestines. But what struck
15 you, 1 in the morning, when you were back there?

16 A All I -- I just remember my intestines popping
17 out. Actually I had no idea what it was at the
18 time. And it was just white and the first thing
19 I could think was, just don't let it hit the
20 ground. And so I was just holding it in my hand.
21 And by that time I started screaming and that's
22 when my neighbor came around.

23 Q And what were you screaming, do you remember?

24 A I can't even remember.

25 Q But you were laying on the ground. What was he

- 1 doing? You laid on the ground holding your
2 intestines ---
- 3 A He was still swinging at me with ---
- 4 Q Did you see what he had?
- 5 A I can't remember -- I thought I remembered a
6 screwdriver but I can't be sure.
- 7 Q Okay. And he was just coming with something?
- 8 A Right.
- 9 Q A weapon?
- 10 A Yes.
- 11 Q And when you were on the ground, he cut your
12 legs?
- 13 A Yes, cut my legs up also. And that's when I was
14 trying to kick him off of me because he was still
15 stabbing me.
- 16 Q And so even with you laying on the ground holding
17 your intestines, he didn't walk away, he didn't
18 run away?
- 19 A No.
- 20 Q At what point did he finally leave you alone?
- 21 A When my neighbor came running around the
22 building.
- 23 Q When you say your neighbor, that was ---
- 24 A Dee Dee.
- 25 Q Okay, Deanna Richardson?

1 A Yes.

2 Q And she's the same one you were sitting on the
3 steps talking to?

4 A Yes.

5 Q And she came running around. Do you remember her
6 saying anything?

7 A I remember her screaming and him taking off
8 around -- all the way back around the building.

9 Q Show -- show the jury where he took off? Where
10 were you, show them where you were?

11 A I was here (indicating).

12 Q Okay.

13 A He took off and was running back around here.

14 Q And y'all were here?

15 A Yeah. As far as I made it to was the trampoline
16 by my house.

17 Q Okay.

18 A That was it.

19 Q Okay. You can sit back down, thank you.

20 (The witness returns to the witness stand.)

21 Q All right. So you -- this is State's Exhibit 6
22 and show the jury where you were laying down.

23 A I was in here.

24 Q Okay. And he ran off which way?

25 A He ran back around that way (indicating).

- 1 Q Okay. And that was after Dee Dee came around?
- 2 A Correct.
- 3 Q And then, if you go round this way (indicating),
4 what do you get to as far as your house?
- 5 A My other door on the other side.
- 6 Q Okay. I'm going show you State's Exhibit 5.
- 7 A And this is my door here (indicating) by the
8 trampoline ---
- 9 Q Okay.
- 10 A In my yard.
- 11 Q And you just said you made it to the trampoline.
12 Where did you make it?
- 13 A I -- I was in the middle of the walkway. But by
14 the time Dee Dee came and helped me, I was just
15 standing holding, you know, leaning up against
16 the trampoline until she took me in the house.
- 17 Q He took off running, you stood up ---
- 18 A Uh-huh.
- 19 Q What were you thinking at that point?
- 20 A Just keep my intestines in. And I had -- like I
21 said, I had no idea what it was but I was just
22 trying to make it in the house.
- 23 Q Okay. And could you make it in the house?
- 24 A No.
- 25 Q So, where were you?

1 A I was standing back over here (indicating).

2 Q And you were leaning on this trampoline?

3 A Yes.

4 Q And then what did Dee Dee do?

5 A She came and -- I remember her holding me and
6 taking me in the house. Telling my oldest
7 daughter to get the kids and take them all to her
8 house and that's basically -- I remember bits and
9 pieces after that.

10 Q Okay. And she took -- and your kids all left and
11 they went across and they stayed at her house?

12 A Yes.

13 Q And you -- did she do anything to you to try to
14 protect you or protect your children from you ---

15 A She covered me up with a blanket and laid me on
16 my chair.

17 Q Okay. And did the kids leave the house
18 willingly?

19 A They did but my oldest daughter didn't want to
20 because she wanted to know what was going on.

21 But Dee Dee had her take the other kids over to
22 her house.

23 Q And that Louis's grandkids and your kids?

24 A Yes.

25 Q They all went to her house?

- 1 A Yes.
- 2 Q Do you remember who showed up next?
- 3 A I just remember an officer.
- 4 Q Okay.
- 5 A Making a call and he said, y'all need to get
6 somebody out her now, her guts are hanging out.
7 And that's all I remember after that.
- 8 Q What was going through your head as you were
9 laying there?
- 10 A I just didn't want to die, that's all I kept
11 thinking, just please let me live.
- 12 Q And do you remember anything prior to going to
13 the hospital? Did anything else stand out at
14 that moment?
- 15 A No.
- 16 Q Did Louis say anything to you after he grabbed
17 you and took you back behind this building?
- 18 A No, I don't remember him saying anything to me.
- 19 Q What was the next thing that you remember after
20 you left in the ambulance?
- 21 A When I got to the hospital and someone saying to
22 me that it's going to be a lot of people talking
23 to me at one time. Just try to answer the
24 questions. And I remember them putting iodine on
25 my stomach and that was it. I don't remember

1 anything else till I woke up.

2 Q Okay. And just going back, I'm going to show you
3 State's Exhibit 1. Do you recognize this
4 picture?

5 A Yes.

6 Q And who's porch is that?

7 A That's, well, where Dee Dee used to live at.

8 Q Okay.

9 MS. WEISS: Your Honor, I would like to enter
10 State's Exhibit 1 into evidence.

11 MR. COOPER: No objection.

12 THE COURT: All right, without objection
13 (Whereupon, State's Exhibit Number 1,
14 Photograph of Close-up from Porch 306, was
15 moved into evidence.)

16 Q Detra, how long were you in hospital?

17 A A week and a half.

18 Q And where did your children go, do you know?

19 A My grandmother and my sister came and got them.

20 Q When you got out of the hospital, were you better
21 at that point?

22 A No. I'm -- I still wasn't able to walk, barely
23 moving. I had to go to physical therapy before I
24 could even leave the hospital.

25 Q You went back to your home on [REDACTED]

1 A Yes.

2 Q Were you -- did you ever attempt to go back to
3 you job at Starbucks?

4 A I did but a lot of the work that I did was
5 lifting heavy coffee pots and stuff like that so
6 I wasn't able to do that work right then. So
7 eventually they gave my job away.

8 (Pause.)

9 MR. COOPER: Your Honor, may we approach on
10 a matter for a moment?

11 THE COURT: Sure.

12 (Whereupon, a bench conference was held off
13 the record, in the presence of the jury, but out of
14 the hearing of the jury.)

15 THE COURT: What's the exhibit numbers?

16 MS. WEISS: Exhibit numbers 10, 13, 16, 17
17 and 18.

18 THE COURT: Specifically, what number was it,
19 do you recall?

20 MR. COOPER: Yes, Your Honor.

21 (Pause.)

22 MR. COOPER: 10 and 18.

23 THE COURT: 10 and 18. Okay. All right.

24 Q Detra, I'm going to show you what's been marked

25 ---

1 THE COURT: For the record, 10 and 18 are
2 objected to, overruled.

3 MR. COOPER: Yes, Your Honor.

4 Q Show you what's been marked as State's Exhibits
5 10, 13, 16, 17 and 18 and ask you if you
6 recognize these pictures?

7 A I do.

8 (Pause.)

9 Q I'm going to show the jury -- or can you tell us
10 what these are pictures of?

11 A Pictures of my clothes and my wounds on my body.

12 MS. WEISS: Your Honor, at this time I would
13 like to enter State's Exhibits 10, 13, 16 through 18
14 into evidence.

15 THE COURT: 10, 13, 16, 17 and 18?

16 MS. WEISS: Yes, sir.

17 THE COURT: The objection went to 10 and 18?

18 MR. COOPER: Yes, Your Honor.

19 THE COURT: You may do so.

20 MS. WEISS: Thank you, Your Honor.

21 (Whereupon, State's Exhibit Number 10,
22 Photograph of Victim's Stitches from Chest
23 Down, was moved into evidence.)

24 (Whereupon, State's Exhibit Number 13,
25 Photograph of Scratch on Victim with Ruler,

1 was moved into evidence.)

2 (Whereupon, State's Exhibit Number 16,
3 Photograph of Scratch and Rule with Wrapping,
4 was moved into evidence.)

5 (Whereupon, State's Exhibit Number 17,
6 Photograph of Victim's Clothes and Hand
7 Towel, was moved into evidence.)

8 (Whereupon, State's Exhibit Number 18,
9 Photograph Victim's Breast Injury, was moved
10 into evidence.)

11 Q If you can tell the jury what these two are
12 pictures of?

13 A (No response.)

14 Q Tell the jury.

15 A These are pictures of my legs, the cuts that were
16 on my legs.

17 Q And you received these when?

18 A When Louis was cutting me when I was on the
19 ground when I was trying to kick him off me.

20 Q State's Exhibit 18, what is that a picture of?

21 A The stab wound to my breast.

22 Q Can you show them where the stab wound is?

23 A It's under here (indicating) but you can't see it
24 that well.

25 Q Exhibit 10?

1 A My stomach, where I was stapled after Louis
2 stabbed me, after he stabbed when I had to get
3 surgery ---

4 THE COURT: I'm sorry, Ms. Montgomery, you
5 need to speak up.

6 THE WITNESS: I'm sorry.

7 THE COURT: That's okay.

8 A The staples on my stomach after I had surgery
9 when I was stabbed.

10 Q And all of these?

11 A Are cuts from him stabbing me.

12 Q And finally, do you recognize this picture?

13 A My clothes that I had on.

14 Q And now, the clothes, do you recall if they were
15 cut off of you?

16 A I don't recall.

17 Q Okay. But these are definitely the clothes that
18 you had on?

19 A Yes.

20 Q Okay. Detra, how long was it before you were able
21 to return to work of any type?

22 A Probably a year later.

23 Q How long have you been working at Midland's Tech?

24 A I've been there since -- I started -- this is my
25 third semester in school and I've been working in

1 counseling service about the same time. So it's
2 been about 11 months, almost a year -- my first
3 year.

4 Q So this happened March of '07 and took until I
5 guess the middle of '08 before you could even get
6 back into your normal routine?

7 A Yes.

8 Q Some sort of normal routine?

9 A Yes.

10 Q Detra, is there any question in your mind who did
11 this to you?

12 A No, not at all.

13 Q And who was it?

14 A Louis Gainey.

15 Q Thank you.

16 MS. WEISS: Beg the Court's indulgence?

17 THE COURT: Yes, ma'am.

18 MS. WEISS: Nothing more from the State at
19 this time. Please answer any questions the Defense
20 may have.

21 CROSS-EXAMINATION

22 BY MR. COOPER:

23 Q Good afternoon, Ms. Montgomery.

24 A Afternoon.

25 Q Ms. Montgomery, you also go by Dee Dee, right?

- 1 A Yes.
- 2 Q Is that correct?
- 3 A Yes.
- 4 Q So just to clear it up for the jury, you go by
5 Dee Dee and so does your next door neighbor?
- 6 A Yes.
- 7 Q Is that right -- okay. And your next door
8 neighbor's name is Deanna?
- 9 A Deanna.
- 10 Q Now, you talked to Ms. Weiss about meeting
11 Mr. Gainey. Y'all met at the Salvation Army,
12 right?
- 13 A Yes.
- 14 Q Okay. And you were there in a treatment program?
- 15 A Yes.
- 16 Q Okay. And at that time that you met Mr. Gainey,
17 you didn't have anywhere else to go, did you?
- 18 A No.
- 19 Q So it was fair to say that you and your kids were
20 -- unfortunately y'all were homeless at that
21 time?
- 22 A No, I was. My kids weren't.
- 23 Q Okay. You didn't have anywhere else to go?
- 24 A No, but my kids did. They weren't there.
- 25 Q All right. So during the course of this program

1 that you were in with Mr. Gainey, y'all got to
2 know each other, correct?

3 A Correct.

4 Q And formed a relationship, right?

5 A Yes.

6 Q And eventually that relationship became romantic,
7 right?

8 A Right.

9 Q All right. How old are you right now, Ms.
10 Montgomery?

11 A 39.

12 Q All right. So you mentioned -- who were your
13 kids staying with when you were at the Salvation
14 Army?

15 A My aunt.

16 Q Okay. So they were staying with your aunt?

17 A (Affirmative response.)

18 Q And you were staying at the Salvation Army?

19 A Yes.

20 Q Okay. Now, didn't eventually after you got to
21 know Louis, didn't he help you out with a place
22 to stay?

23 A No, we helped each other out.

24 Q Well, he didn't -- y'all didn't stay in a hotel
25 for a brief period?

1 A We did.

2 Q All right. And he helped pay for that, right?

3 A He did, for one night?

4 Q You do know that Louis is an experienced
5 carpenter laying tile? Did you know that?

6 A Yes.

7 Q Okay. And he was doing that kind of work around
8 this time when y'all got that place to live?

9 A Yes.

10 Q All right. Ms. Montgomery, you told the jury a
11 few minutes ago that eventually y'all got a place
12 over there on [REDACTED] Street, right?

13 A Yes.

14 Q And you and Ms. Weiss just talked about it and
15 y'all went over the map. That's down there on

16 [REDACTED] Would you say it's a pretty good
17 neighborhood?

18 A Yes.

19 Q All right. So you were pleased when y'all moved
20 in there?

21 A Yes.

22 Q Okay. And it was you and Louis, right?

23 A Yes.

24 Q And it was your children, correct?

25 A Yes.

- 1 Q And it was you and your three children; right?
- 2 A Yes.
- 3 Q Do you have any children anywhere else, Ms.
- 4 Montgomery?
- 5 A I do.
- 6 Q Okay. Where are they?
- 7 A In Washington, D.C.
- 8 Q How many others do you have?
- 9 A I have eight other kids.
- 10 Q Eight other kids?
- 11 A Yes.
- 12 Q All right. But around this time, the only
- 13 children that were living with you were the three
- 14 you just discussed, right?
- 15 A That's right.
- 16 Q Okay. Do y'all have a trampoline out back for
- 17 the kids?
- 18 A We do.
- 19 Q Okay. So would you say that -- would you say the
- 20 kids were fairly happy with the place as well?
- 21 A They were.
- 22 Q All right. And this was while Louis was living
- 23 there?
- 24 A Yes.
- 25 Q All right. Is it fair to say that Louis got to

1 know the children?

2 A Yes.

3 Q Okay. Now, Ms. Montgomery, I want to go to that
4 evening, March 31st. Y'all had been drinking
5 that night, right?

6 A I don't recall drinking.

7 Q You don't ---

8 A I could have been but I don't recall it.

9 Q You don't remember whether you had been drinking
10 or not?

11 A No.

12 Q Okay. Well, Ms. Richardson, she had people over
13 at her home, right?

14 A Ms. Richardson -- not that I know of.

15 Q And ---

16 A I wasn't over --- no.

17 Q So you're saying that you were the only one that
18 went over to Ms. Richardson's house?

19 A Yes.

20 Q Okay. But don't know whether y'all had a few
21 drinks or not?

22 A No, I didn't have any drinks with her. When I
23 went to her house, I was by myself.

24 Q Well, Ms. Richardson (sic), I thought you just
25 told me and jury that you didn't remember whether

1 you had been drinking that night?

2 A I thought you asked me had I been drinking before
3 I went to her house. I don't recall drinking
4 anything ---

5 Q Well, Ms. Richardson (sic), let's talk about -- I
6 mean ---

7 A Ms. Montgomery.

8 Q Let's talk about both, before, after. Had you
9 been drinking that evening?

10 A I don't recall.

11 Q You don't know?

12 A No.

13 Q Okay. Well, Ms. Montgomery, you - a few minutes
14 you got off the stand and showed the jury some
15 scars you've got, right?

16 A Yes.

17 Q All right. You received surgery at Richland
18 Memorial Hospital the next morning right, after
19 this incident, didn't you?

20 A Yes.

21 Q Okay.

22 MR. COOPER: All right. Your Honor, beg the
23 Court's indulgence one moment.

24 THE COURT: Yes, sir.

25 (Pause.)

1 MR. COOPER: Your Honor, at this time I have
2 nothing further.

3 THE COURT: All right. Anything on
4 redirect?

5 REDIRECT EXAMINATION

6 BY MS. WEISS:

7 Q Detra, is there any question in your mind who
8 stabbed you that night?

9 A No.

10 Q And who was that?

11 A Louis Gainey.

12 MS. WEISS: Thank you. No further questions.

13 THE COURT: Anything further?

14 MR. COOPER: Nothing, Your Honor.

15 THE COURT: All right. You may step down

16 Ms. Montgomery.

17 (The witness leaves the witness stand.)

18 THE COURT: Members of the jury, I'm going to
19 give you a short break now. There's another matter I
20 was going to hear around 2:30. Like I said, that
21 didn't quite happen. I need to check on it briefly.

22 So, go to the jury room. Just don't talk
23 about the case. Let me check on something and I'll
24 bring you back out shortly.

25 (The jury retires from the courtroom at

1 approximately 3:20 P.M.)

2 THE COURT: All right. So the other
3 witness's gotta be a lot shorter than that so we
4 should be able to get them in, is that fair enough?

5 MS. WEISS: Yes were, Your Honor.

6 THE COURT: Let's check on this other matter.
7 I would try to squeeze y'all in if the situation was
8 different, let's see. I don't know yet, we'll just
9 see.

10 THE COURT: All right let me give y'all five
11 minutes then we'll be back and resume.

12 (The Court was in recess.)

13 THE COURT: For the record, Mr. Cooper
14 objected to Exhibits Number 10 and 18 going in under
15 Rule 403, as I recall.

16 MR. COOPER: Yes, sir, that's right. I also
17 don't think that the pictures were properly
18 authenticated, the pictures ---

19 THE COURT: Well, you didn't object to that
20 at the time but go ahead, sir.

21 MR. COOPER: Yes, sir. I believe that they
22 were post-operative pictures.

23 THE COURT: She identified them as such, I do
24 believe. But in terms of the 403 motion, I do not
25 believe in this instance that the prejudice outweighs

1 the probative value. This is a case of assault and
2 battery with intent to kill. It shows the extent of
3 the wounds. It wasn't overly gory and bloody, they're
4 closed. It sort of depicts what exactly happened it
5 seems. So for all those reasons, that's why I
6 overruled your objection.

7 MR. COOPER: Thank you, Your Honor.

8 THE COURT: I think we've covered now on the
9 record with that 403 objection.

10 MR. COOPER: Yes, sir.

11 THE COURT: That pretty much sums it up, is
12 that correct?

13 MR. COOPER: Yes, sir, my objection was under
14 403 and that's all ---

15 THE COURT: All right.

16 MR. COOPER: Thank you, Your Honor.

17 MS. MCDUFFIE: Your Honor, we -- we have the
18 responding officer ---

19 THE COURT: I'm not going to stop you.

20 MS. MCDUFFIE: --- so we ---

21 THE COURT: Bring the jury in. This is C P D
22 or Forest Acres.

23 MS. MCDUFFIE: Your Honor, he's was with C P
24 D and now with Lexington County.

25 THE COURT: Okay, Lexington County.

1 (The jury returned to the courtroom at
2 approximately 3:37 P.M.)

3 THE BAILIFF: All jurors accounted for, Your
4 Honor.

5 THE COURT: Thank you, Mr. Desassure. Madam
6 Forelady and members of the jury, I had something set
7 up. Somebody had asked me last week to do something
8 at 2 or around 2 today. It didn't eventuate. It fell
9 through but that's the reason I sent you out to try to
10 take care of that, so. Not so much an apology but an
11 explanation for it. But I think we're ready to resume
12 now.

13 Now, Ms. Weiss, you may call your next
14 witness.

15 MS. WEISS: Thank you Your Honor. The State
16 calls Deanna Richardson.

17 (DEANNA RICHARDSON, after being duly sworn,
18 testified as follows:)

19 THE CLERK: Thank you. Please have a seat
20 and state your full name for the record.

21 THE WITNESS: My name is Deanna Richardson.

22 DIRECT EXAMINATION

23 BY MS. WEISS:

24 Q Good afternoon, Ms. Richardson? How are you?

25 A Fine, how are you?

1 Q You a little bit nervous?

2 A Yes.

3 THE COURT: Ms. Richardson, I don't want to
4 make you more nervous but I'm going to ask you to
5 speak up a little bit.

6 THE WITNESS: Yes, sir.

7 THE COURT: Thank you.

8 Q You can pull the microphone down to you if that
9 that will help you. Deanna, where are you
10 currently employed?

11 A Sonic on Assembly. Sonic on Assembly, I'm sorry.

12 Q That's okay. Where do you live?

13 A I live off of [REDACTED] now.

14 Q Back in March of 2007, where were you living?

15 A On [REDACTED] Street. I think it was [REDACTED]. I'm
16 not sure. [REDACTED], I'm not sure the address but ---

17 Q [REDACTED]

18 A --- [REDACTED] Street.

19 Q And where were you working at the time?

20 A Hardees on Harden.

21 Q Do you have any children?

22 A I have -- at that time I had one. I have two
23 now.

24 Q Boys or girls?

25 A Two girls.

1 Q Two girls. How old are the now?

2 A Two and one.

3 Q So at that time how old was the oldest?

4 A She was six or seven months?

5 Q And when you lived at [REDACTED] Street, who
6 lived diagonally across the way from you?

7 A Ms. Detra and Louis and her three children.

8 THE COURT: Can I help you, members of the
9 jury?

10 JURORS: (Jurors nodded.)

11 THE COURT: Y'all okay? All right.

12 JUROR: A little bit louder.

13 THE COURT: A little bit louder, please,
14 ma'am.

15 THE WITNESS: Yes, sir. I'm sorry.

16 THE COURT: That's all right.

17 Q I'm going to show you what's already been entered
18 as State's Exhibit 1. Do you recognize this
19 picture?

20 A Yes, ma'am.

21 Q And what is this a picture of?

22 A That would be my apartment.

23 Q Okay. Where you lived ---

24 A My old apartment.

25 Q Your old apartment. Okay and those are your

1 front steps?

2 A It wasn't like that. We just had the steps. We
3 didn't have the banisters.

4 Q Okay. And looking at State's Exhibit 3, do you
5 recognize that picture?

6 A Yes, ma'am.

7 Q And what is that?

8 A That's Ms. Detra's apartment.

9 Q And can you tell where the picture is taken from?

10 A From my ---

11 Q Okay.

12 A My porch, my old porch.

13 Q Your porches were pretty close to each other.

14 A Yes, ma'am.

15 Q Was this the typical meeting place for you and
16 Detra?

17 A Either one, either porch.

18 Q And what name do you go -- what nickname do you
19 go by?

20 A Dee and she's Dee Dee.

21 Q And so you're Dee and she's Dee Dee?

22 A Yes, ma'am.

23 Q And so people call you Dee Dee also?

24 A Yeah.

25 Q Okay. And how would you describe your

1 relationship with Dee Dee back in 2007?

2 A We became close. We became friends. Her
3 daughter was my babysitter when I went to work
4 because my daughter's father, he worked also.
5 Well, yeah, probably around this time he lost his
6 job and he was home with her. But Angelique, you
7 know, relieved him sometimes.

8 Q Okay. And that's Dee Dee's daughter?

9 A Yeah. We became like a family.

10 Q Okay.

11 A Just like a family.

12 Q And did you spend time together as a big group?

13 A Sometimes, not all the time.

14 Q Did you get to know Louis Gainey?

15 A Yeah.

16 Q Okay. And do you see him in the courtroom today?

17 A Yes, ma'am.

18 Q Can you identify him? Can you describe what he's
19 wearing?

20 A A suit with glasses and a hat -- a tie.

21 MS. WEISS: Your Honor, let the record
22 reflect she's identified the Defendant.

23 THE COURT: All right.

24 Q Back on March 31st, 2007, what kind of hours were
25 you working back then?

1 A I worked the afternoon shift. I sometimes went
2 in at 2 or 3 or 4. It depends on how they made
3 the schedule.

4 Q And what time did you get off?

5 A About 8 or 9.

6 Q Okay.

7 A Some nights because they close the dining room
8 around 8 and the drive through at 9. And mostly
9 I worked drive through so I'd say I left about 9.

10 Q Okay. And what time would you get home?

11 A 9:15, 9 -- no it didn't take me long.

12 Q Okay. Taking you back to the night of March
13 30th, early morning of March 31st. It was a
14 Friday night, Saturday morning. Would your hours
15 have been any different on a Friday night?

16 A No, ma'am.

17 Q And do you recall that night, if anything was
18 going on at your apartment?

19 A My -- my daughter's dad and his cousin was there
20 playing video games, eating snacks.

21 Q So were you having any sort of party at your
22 house?

23 A No, ma'am.

24 Q Okay. And do you recall -- I mean, were you
25 hanging out doing anything? Was anybody else

1 over there?

2 A No. I went in the house and took a shower when I
3 got home. That's what I did. And nobody was
4 there but my daughter's cousin and my daughter's
5 dad. And the baby was on the floor on a little
6 pallet asleep.

7 Q Okay. And what did do you after your shower?

8 A I told him I was going outside. I asked him if
9 he seen Detra. And he was like, no. I was like,
10 well, I'm going over there. And by the time I
11 got to my porch she was coming out already.

12 Q Okay.

13 A So we just sat down and talked.

14 Q And did you see Louis that night?

15 A Yeah. When I first pulled up, I seen them going
16 in the house.

17 Q Going into his house?

18 A Him and Detra's house.

19 Q Okay. And you went out on the porch. Do you
20 remember if it was dark outside?

21 A Yes, ma'am.

22 Q Okay. So was it getting to be late at that
23 point?

24 A We had the porch light -- I mean, I was sitting
25 on my porch, so my light would be on. And

1 Detra's probably was on too because sometime
2 Angelique and them would be out the door at night
3 on the porch, so.

4 Q Did you go over to Detra's house that night?

5 A I didn't make it. We met each other at the door.
6 She was coming out her door and I was coming out
7 my door and we just like -- she was like, come on
8 Dee Dee -- you know, she called me Dee Dee too.

9 Q Okay.

10 A So we were two Dee Dees and she used to come sit
11 on my porch and we'd just talk about how our day
12 went and what I did at work or just laugh about
13 some other stuff.

14 Q So you could talk -- you could talk for a long
15 period of time ---

16 A Yes, ma'am.

17 Q --- just sitting out there. And ---

18 A Until one of kids come interrupt.

19 Q So this night you were out there with your
20 cigarettes sitting on the ---

21 A I probably had a beer.

22 Q Okay.

23 A You know, because I had just got off and the baby
24 was asleep so I unwind. I was sitting -- we were
25 sitting on the porch and I had a beer and we were

1 smoking our cigarettes, just talking.

2 Q Do you remember if Detra had anything to drink?

3 A No, ma'am. Not with me, no, ma'am.

4 Q And from the time y'all started talking to the
5 time you saw Louis come out the last time -- I
6 mean, you pretty much -- she was out there with
7 you pretty much the whole time?

8 A She was on the porch with me for -- since we came
9 out the door. I -- yeah.

10 Q So ---

11 A We was on the porch for a minute.

12 Q Okay. So, I mean, but she was with you basically
13 the whole time?

14 A Yes, ma'am.

15 Q Okay. Now, over the months that you lived there,
16 when did you first move in to [REDACTED]?

17 A I say the ending of November, the beginning of
18 December.

19 Q And ---

20 A Because I was pregnant. I was at my last -- I
21 was like eight months when I moved there. So it
22 would have been December because I had my baby on
23 January 11th.

24 Q Okay.

25 A They induced labor. So I was there from December

1 -- the ending of -- the beginning of December to
2 January.

3 Q And when did you meet Dee Dee?

4 A It wasn't long.

5 Q Pretty close after you moved in?

6 A It was after -- I stayed in my house for the
7 first six weeks. We had just moved out there. We
8 had just got robbed so we wasn't mingling or
9 anything. And I don't know who I met first,
10 Detra or her kids. I think I met the kids first

11 Q Okay. And when you first met Detra, did you
12 observe her with Louis?

13 A Yeah.

14 Q And how was she and Louis together?

15 A Seemed good. Seemed like they had a ---

16 Q What did you see ---

17 A --- good relationship. Something I wanted when I
18 was old. Laughing, you know, just good.

19 Q And how old are you?

20 A I'm 25.

21 Q Okay. So things seemed good between them?

22 A (Affirmative response.)

23 Q Did you see anything change the last month or so
24 before the -- before March?

25 A I seen bickering like she didn't want to -- she

1 was questioning her -- you know how people just
2 start realizing and looking back and like, this
3 ain't the way it's supposed to be. And she just
4 started -- well, we started -- she started
5 realizing that, you know, some things just wasn't
6 adding up. It just seemed -- they started
7 arguing a lot and stuff like that.

8 Q Did you see anything different with Louis?

9 A A lot of in and out.

10 Q Who do you mean by that?

11 A Like out of our area, like out of the apartment,
12 in and out. He would be gone, he'll come back.

13 Q Okay.

14 A Or something like that.

15 Q And what about his mood or his attitude. Did you
16 notice anything about that?

17 A He had low patience with Dee Dee.

18 Q And you were there a lot in the first six weeks.
19 You had a baby in January, you were there pretty
20 much nonstop through at least the middle of
21 February?

22 A Yeah because her daughter -- like her daughter
23 would come over and, you know, I would be
24 cleaning up and she'll sit with the baby or
25 something. And Mark and them would come play

1 video games.

2 Q And you were able to pretty much watch what went
3 on at Louis and Detra's house, right?

4 A Yeah, a little bit.

5 Q Was there anybody else there? Was there any
6 reason for Louis to be jealous or upset?

7 A No, no.

8 Q Was there anybody for Detra other than Louis that
9 you saw?

10 A No. She loved him.

11 Q And taking you back to March 31st, that early
12 morning after midnight, between midnight and 1.

13 Y'all were out on the porch?

14 A Yes, ma'am.

15 Q And did Louis come out there?

16 A Yeah, he came out, trying to pick a fight with
17 Dee Dee and she wasn't feeling it.

18 Q Was she mean to him?

19 A No, she just was like, I ain't in the -- you
20 know, brushing him off.

21 Q Okay.

22 A I mean, I don't know what he was -- he was mad
23 about something.

24 Q Okay. But she didn't engage him?

25 A No, she just was like, no, I am coming, go on.

1 Okay, you know, stuff like that.

2 Q Was he coming -- was he standing there the whole
3 time or would he come and go?

4 A He would come and go. He came up the first time
5 trying to start with her and she was like, go on,
6 Louis, I'm coming, I'm coming in the house. You
7 know, mostly -- because we had a nosy neighbor
8 who used to come out the door. And, you know, as
9 soon as he hear yelling and fussing, he want to
10 call the police. So she was like, I don't want
11 him -- you know, stuff like that. So it
12 wasn't ...

13 Q And do you know where he went when he went away?

14 A Into the front yard. Well, around the building
15 somewhere.

16 Q Okay. Any idea what he was doing over there?

17 A No, ma'am. I heard a door slam and that's it.
18 He came back around.

19 Q Okay. And he came back around a little bit
20 later?

21 A I'd say about the first time he went around he
22 came back like three or four minutes later.

23 Q Okay.

24 A It couldn't have been no minutes. I'm probably
25 exaggerating over the minutes but, you know, how

1 it seems. It wasn't that long.

2 Q Okay. And he came back and what did he do when
3 he came back?

4 A He was still fussing and he said, come here, Dee
5 Dee. And she was like, I'm coming, Louis. And
6 he just grabbed her up and ---

7 Q All right. Now before we go there, I'm going to
8 stop you for just a minute. Looking at State's
9 Exhibits 1 and 4, if you can show the jury, point
10 on here, where were you?

11 A I was on my top step and Detra would be on this
12 step (indicating).

13 Q Okay. And looking right here, can you show them
14 the same thing?

15 A I was on the top step and Detra was right here
16 (indicating).

17 Q And where was Louis that last time he came back?

18 A Right here (indicating).

19 Q By that tree?

20 A By that tree.

21 Q You're saying the railings weren't there ---

22 A The railing wasn't there.

23 Q So ---

24 A And this was kind of broke up so you couldn't
25 step right here (indicating).

- 1 Q So that tree right there?
- 2 A That tree was always there but the railings
3 wasn't so ---
- 4 Q But he was standing ---
- 5 A Right.
- 6 Q --- next to that tree right there (indicating).
7 So he was pretty close to the two of you?
- 8 A Yeah.
- 9 Q Okay. And what happened next?
- 10 A He grabbed her up and took her around the corner,
11 to like the -- there's an apartment right here
12 (indicating) and it was like right there on the
13 side (indicating). And all I could hear was
14 Detra saying, stop, oh no, help, help. And
15 that's when I got up and I seen Louis run.
- 16 Q Okay. I'm going to show you State's Exhibit 6.
17 Do you recognize that?
- 18 A That's the side of the apartment to the road.
- 19 Q And that's (indicating)?
- 20 A That's the last apartment.
- 21 Q And is that where ---
- 22 A I would say about right there (indicating).
- 23 Q Okay.
- 24 A That's where I -- I found her right -- about
25 right here (indicating) coming -- I guess she was

1 coming to me after she -- you know. But I ran
2 and grabbed her and she showed me and I took her
3 to her apartment.

4 Q Where did you see Louis? Where did her go?

5 A When I got about to Detra, he was running
6 (indicating).

7 Q He was running ---

8 A And I -- I went around to the building and I seen
9 him going to the other end of the building,
10 going around.

11 Q Okay.

12 A At the end of building.

13 Q I'm going to show you on here. I'll give you
14 this marker. Looking at this, that's your
15 apartment there and that's Detra's there
16 (indicating).

17 A And we was right here (indicating).

18 Q Okay.

19 A He took her right here.

20 THE COURT: And that's Exhibit 19, Ms. Weiss?

21 MS. WEISS: Yes, Exhibit 19.

22 A He took her like right here (indicating).

23 Q Uh-huh.

24 A And by the time I got to right here (indicating),
25 he was running already. But I peeped around and

1 he was going that way (indicating).

2 Q Okay, thank you. When you got around there and
3 you got to Detra, what did you see?

4 A She was holding her insides.

5 Q What did it look like?

6 A Something out of her stomach. A long little
7 piece of meat just hanging out of her -- hanging
8 out of her side.

9 Q What did you think when you saw that?

10 A That he tried to kill her, I guess.

11 Q Where did you take her? And you went up to her
12 and grabbed her?

13 A I grabbed her. She was on the side of me and I
14 was holding her because she was holding her side
15 because she was scared she was going to faint and
16 she was telling me, please, don't leave her. And
17 she was scared. And I was scared too so I took
18 her into her apartment and got the kids out.

19 Q You ---

20 A And got the kids out, screamed for all the kids
21 to go because his grandkids was even there. And
22 I screamed for her to stay. I laid her on the
23 floor while I got all the kids out and took them
24 to my apartment and got my daughter's dad to call
25 the police. And me and him -- me and my

1 daughter's father was going back and forth. He
2 wanted to know what was going on. I wanted him
3 to call the police. And I got Angelique and them
4 in the house and told them to stay in the house.
5 And I went back to Dee Dee.

6 Q Okay.

7 A And I went back to her and she was on the floor
8 scared. She told me don't leave her and make
9 sure her kids get taken care of if something
10 happened to her and tell them she loved them.

11 Q And what were you thinking at that point when you
12 were sitting next to her?

13 A I don't even remember. I just didn't want her to
14 die. I just didn't want her to die.

15 (Pause.)

16 A Excuse me (witness crying).

17 Q When you were sitting there with Dee Dee, did you
18 get her something so that the kids wouldn't see
19 what was going on?

20 A She -- when we was to her house, she picked up
21 one of her dishrags. She was holding it in her
22 hand. That's how -- it was out of her stomach
23 like you could just see like her meat just split
24 open. And she was just holding it. And I was
25 like, Dee Dee, what you got? And she just showed

1 me and I was like, oh, my God, he did this. She
2 was like, yeah, Louis stabbed me with a
3 screwdriver. And I ask ---

4 Q Did you ever see the screwdriver?

5 A She said a screwdriver. I don't know how she
6 knew what it was or whatever but -- because he
7 tried to hit her in her face somewhere. I guess
8 that's how she knew what it was. And he just
9 jugged (phonetic) her, I guess. And the way he
10 brought it out brought her intestines out.

11 Q And so did someone show up at the house pretty
12 quickly?

13 A Yeah.

14 Q Who was that?

15 A A cop. I thought he was a USC police officer
16 because he got there so quick. But he just so
17 happened to hear her scream.

18 Q And so he came in the house?

19 A He -- I was over Dee Dee and he came in and he
20 was like, what's going on? And too much after
21 that -- I was just -- I was on the phone with the
22 ambulance. So he went to help her and I was
23 yelling into the phone on 911 and whatever so I
24 don't -- I couldn't tell you. I left out for a
25 minute to go check on the kids and came back and

1 he was helping her. He was -- he came in so
2 quick I can't remember where he came from because
3 he was there so quick.

4 Q And did he kind of take over everything at that
5 point?

6 A Yeah, yeah.

7 Q And then at that point, did the ambulance come
8 eventually?

9 A Yeah.

10 Q Okay. And do you remember what happened next?

11 A I got her mom's number from her, her
12 grandmother's number from her and told her I'd
13 keep the kids and just hold on and they'll take
14 care of her. And they took her off and I went to
15 take care of the kids.

16 Q And you kept your kids and his grandkids at your
17 house?

18 A By that time, his bother and another gentleman
19 showed up and got his grandkids.

20 Q Okay.

21 A I don't even know -- they got them, their
22 grandkids and I kept her three.

23 Q And how long did you keep them?

24 A Until the next morning when her mom got here.

25 Q And when you talked to her grandmother -- her

- 1 sister and her grandmother, did you tell her
2 everything that had happened?
- 3 A No, ma'am.
- 4 Q And why not?
- 5 A It wasn't my place and I didn't want to talk
6 about anything in front of the kids.
- 7 Q Okay. And did you see Louis after that?
- 8 A No, ma'am.
- 9 Q And before today, have you seen him since?
- 10 A No, ma'am.
- 11 Q After that day, you eventually left [REDACTED]
- 12 A Yes, ma'am.
- 13 Q When was that?
- 14 A My daughter was like nine months, so ---
- 15 Q Okay.
- 16 A --- that's before Christmas I moved out.
- 17 Q Was there anybody out there except for you, Detra
18 and Louis Gainey?
- 19 A No.
- 20 Q Did you see anybody else come up at any point?
- 21 A No, ma'am.
- 22 Q Is there any question in your mind who did this?
- 23 A No, ma'am.
- 24 Q To Detra?
- 25 A No, ma'am.

1 Q And who was it?

2 A Louis Gainey.

3 Q Did you hear him say anything?

4 A No, I didn't hear him say anything. He -- before
5 he grabbed her up he was like, come here, Dee
6 Dee. And I didn't hear nothing from him because
7 she was just screaming. She was screaming. And
8 when I heard her scream help, help me -- she
9 said, help me, help me, he stabbed me. And I ran
10 around there to her.

11 Q How long was it from the time he grabbed her to
12 the time you heard that scream?

13 A Not that long.

14 MS. WEISS: Beg the Court's indulgence one
15 moment.

16 I have no further questions of this witness
17 at this time.

18 THE COURT: Okay.

19 MS. WEISS: Please answer any questions the
20 Defense may have.

21 THE COURT: All right, Mr. O'Neil.

22 MR. O'NEIL: Thank you, Your Honor. May it
23 please the Court.

24 THE COURT: Yes, sir.

25 CROSS-EXAMINATION

1 BY MR. O'NEIL:

2 Q Ms. Richardson, you gave a statement to law
3 enforcement that night?

4 A I can't recall.

5 Q Okay, do you remember talking to Investigator
6 McCracken?

7 A I think I spoke with someone.

8 Q Okay. If I was to show you the statement you
9 gave at ---

10 A I did. I'm sorry, I did. Yes, sir.

11 Q I just wanted to know ---

12 A I apologize. Yes, sir.

13 Q Now Ms. Montgomery came over to your apartment?

14 A She was -- I don't know. I think she was coming
15 to my apartment because that's what we usually
16 do. She knew I was home. My car was loud so she
17 knew when I came home. And we usually meet up.

18 Q Y'all met up on the porch?

19 A Yeah, just so happened when I was coming out my
20 door, she was coming out hers.

21 Q And your daughter's father was there?

22 A Yes and ---

23 Q That's Kenneth or that's Mark?

24 A That's Kenneth Campbell.

25 Q Kenneth, okay. And his brother was -- Kenneth's

1 brother was there as well?

2 A No, my daughter's cousin Jamie (phonetic) was
3 there.

4 Q Oh, your daughter's cousin was there?

5 A Yeah, Kenneth's cousin, you know, yeah ---

6 Q Okay.

7 A --- was there.

8 Q So it was Kenneth's cousin?

9 A Yeah.

10 Q Okay. They were there playing video games?

11 A Yeah.

12 Q I thing you said that once you took a shower you
13 asked -- you asked Kenneth whether or not he had
14 seen ---

15 A Dee Dee.

16 Q --- Dee Dee?

17 A Yes.

18 Q And he told you he had seen Dee Dee?

19 A Earlier, he hadn't seen her, no. I mean, since
20 he had been in the house.

21 Q Then Dee Dee came over?

22 A When I came out the door, she was coming out.

23 Q And at some point during that Louis came over?

24 A He came over but he wasn't talking to us at that
25 time when I first seen him for the first time. I

- 1 seen him going in the house.
- 2 Q Okay. Let's talk about the last time he seen
- 3 Louis come over, okay. You seen Louis come over
- 4 the final time?
- 5 A The second time he came ---
- 6 Q Yes.
- 7 A --- he was trying to start with Dee Dee.
- 8 Q Him and Dee Dee were talking? Or arguing I guess
- 9 probably is a better word?
- 10 A Louis was arguing. Dee Dee was ---
- 11 Q They were having words back and forth?
- 12 A No, they wasn't arguing. She was like, Louis,
- 13 I'll, you know -- we'll talk about it later. Go
- 14 ahead. And he was, Dee Dee -- and he ust walked
- 15 off for a minute.
- 16 Q When you seen Louis, I guess it would be fair to
- 17 say he was upset when you seen him?
- 18 A Yes.
- 19 Q And, like I said, you didn't see anything in
- 20 Louis's hand when you saw him, did you?
- 21 A No.
- 22 Q And you didn't see what happened around the
- 23 corner, once Louis and Ms. Montgomery went around
- 24 the corner?
- 25 A No, sir.

1 Q You just heard Ms. Montgomery's voice but you
2 didn't see anything that happened?

3 A I heard her scream.

4 Q But you didn't what happened behind the house?

5 A No, sir.

6 Q Okay.

7 MR. O'NEIL: Beg the Court's indulgence, Your
8 Honor.

9 THE COURT: Yes, sir.

10 (Pause.)

11 MR. O'NEIL: That's all I have, Your Honor.

12 THE COURT: Anything on redirect?

13 MS. WEISS: One question.

14 REDIRECT EXAMINATION

15 BY MS. WEISS:

16 Q Kenneth Campbell is the father of your children?

17 A Of my oldest daughter?

18 Q And where is he now?

19 A In Afghanistan.

20 MS. WEISS: Okay, thank you. No further
21 questions.

22 THE COURT: All right. You may step down,
23 Ms. Richardson.

24 (The witness leaves the witness stand.)

25 THE COURT: Call your next witness.

1 MS. MCDUFFIE: The State would call Officer
2 Catoe.

3 Your Honor, may Ms. Richardson be excused?

4 MR. O'NEIL: No objection.

5 THE COURT: Yes.

6 (RICHARD D. CATOE, after being duly sworn,
7 testified as follows:)

8 THE CLERK: Thank you. Please have a seat
9 and state your full name for the record.

10 THE WITNESS: My name is Richard Dana
11 (phonetic) Catoe.

12 DIRECT EXAMINATION

13 BY MS. MCDUFFIE:

14 Q Good afternoon, Officer Catoe.

15 A Good afternoon.

16 Q Where are you currently employed?

17 A Lexington County Sheriff's Department.

18 Q And what are your duties with the Lexington
19 County Sheriff's Department?

20 A I am a master deputy, corporal over a squad. I
21 oversee patrol work as well as administrative.

22 Q And in March of 2007, where were you employed?

23 A I was with the City of Columbia.

24 Q With the police department?

25 A With the police department.

1 Q And what were your duties with the City of
2 Columbia Police Department in March of 2007?

3 A I was a street patrol officer.

4 Q And was there a specific area you were assigned
5 to patrol?

6 A Yes. When we went out to work we did have
7 specific areas to work.

8 Q And how long have you been in law enforcement,
9 Officer Catoe?

10 A Four years.

11 Q In -- on the evening or the early morning hours
12 of March 31st, 2007, were you working that
13 morning?

14 A I was.

15 Q And what area were you patrolling or where were
16 you working?

17 A I was patrolling the Rosewood, [REDACTED] Street
18 area.

19 Q And shortly after 1 in the morning on March 31st,
20 2007, about what area were you in?

21 A I was on [REDACTED] Street.

22 Q And I'm going to show you what's already in
23 evidence as State's Exhibit 19. Do you recognize
24 this area?

25 A I do.

1 Q And can you please show the jury where you were
2 shortly after 1 in the morning?

3 A I was coming -- I had just turned off of Rosewood
4 onto [REDACTED] Street and I was just in this
5 area (indicating) when I heard screams of some
6 sort.

7 Q And is this area that you just showed the jury,
8 is that in the City of Columbia?

9 A Yes, ma'am.

10 Q [REDACTED] Street?

11 A Yes, ma'am.

12 Q And is that in Richland County?

13 A Yes, ma'am, it is.

14 Q You said you heard screams?

15 A Yes, ma'am.

16 Q How did you hear those screams?

17 A When we patrol an area looking for property
18 crimes at night, it's a good idea, whether it's
19 hot, cold, whatever, to keep your window down
20 because your ears are going to hear more than
21 your eyes are going to see. And we were looking
22 for property crimes like people breaking glass
23 and this type deal.

24 And I just happened to be there and heard the
25 screams. And it wasn't a typical scream like a

1 party. It was a hysterical scream.

2 Q What if anything did you observe after you heard
3 that scream?

4 A Well, I stopped because I wasn't exactly sure
5 where it came from and rolled all four windows
6 down. I looked in my rearview mirror and I saw
7 an African-American male cut across the back of
8 my car running towards Rosewood. I didn't see
9 him from the front, I only saw him from behind,
10 but he was very broad in stature and he was
11 running very quick.

12 Q And did you notice anything about -- anything
13 else about his physical appearance?

14 A No, I just noticed that he was -- he was -- he
15 was a broad man.

16 Q Did you happen to notice his hair style?

17 A He didn't have -- I could -- from what I could
18 see I didn't think that he had any hair at the
19 time. I would have called him bald.

20 Q And referring to State's Exhibit Number 19 again
21 -- let me give you this so you can show the jury.

22 A Yes, ma'am.

23 Q Which -- where were you when you saw this
24 individual?

25 A I was sitting right here (indicating).

1 Q And where did you see that individual?

2 A He came from right here off this corner
3 (indicating) or he came from right here off this
4 corner (indicating). But anyway I saw him catch
5 this sidewalk right here is where I caught him
6 view. I was sitting right there. I saw him come
7 across, hit the sidewalk and start running down.

8 Q And after you saw this individual running, what
9 did you do then?

10 A I then called for backup, stated that I heard a
11 female scream. That I've got a black male
12 running toward Rosewood. I did a three-point
13 turn to turn around. When I did, a younger black
14 male came out from between the two apartments and
15 stopped me and said, she's been stabbed, she's
16 been stabbed, we need help.

17 So immediately at that point my attention
18 turned to the victim. I already had people in
19 route to the area that -- that the subject was
20 running.

21 Q And then you abandoned your search for the
22 suspect?

23 A Absolutely.

24 Q And where did you then go?

25 A This young man took me in between those two

1 apartments and around to the outside on I believe
2 that's [REDACTED] (phonetic) Street and into an
3 apartment where I did run into Ms. Richardson and
4 the victim was -- she was in the floor with a
5 blanket wrapped around her, with her intestines
6 hanging out.

7 Q And that was at [REDACTED] Street?

8 A Yes, ma'am.

9 Q And approximately what time was it?

10 A This was about 01:10, I would think, 01:12, 1:15,
11 somewhere in that area.

12 Q When -- after you saw the victim and you observed
13 her injuries, what did do then?

14 A I then immediately called for E M S, let them
15 know what we had on the scene. Turned to Detra
16 at the time and, you know, her concern was, I'm
17 going to die, what's going to happen to my
18 children. I assured her, I said, you're not
19 going to die, everything's going to be fine. I
20 did tell them to get E M S in here as quick as
21 possible. I did observe her intestines hanging
22 out which I did say, her guts were hanging out
23 over the radio. I had not been back from Iraq
24 very long and unfortunately I wasn't thinking.

25 And I stayed there with her until they got on

1 scene. I also was questioning back and forth,
2 who did this to you, what did they do it with.
3 She told me it was a screwdriver. The subject's
4 name that I came up with that night was Louis
5 Gainer (phonetic), which is what's in my report.
6 I did not have the Gainey name but things were
7 very hectic at the time.

8 Q But the name Louis Gainer was what you wrote
9 down?

10 A Yes, yes.

11 Q And did you get a physical description of Ms.
12 Montgomery's assailant?

13 A I did. The description given to me was 5-7,
14 about 190-200 pounds, black male, bald hair. I
15 can't remember exactly what the clothing
16 description was that night but I'm absolutely
17 certain it's in the call card because I put it
18 out on the radio just as I was getting it.

19 Q And is the description that was given to you that
20 evening consistent with the individual you saw
21 running from the apartments?

22 A It is. It is.

23 Q After E M S arrived, what was your duty or what
24 was your role at the scene?

25 A My role at the scene was basically to try to keep

1 the crime scene secure. I was not aware of
2 however where she had actually been stabbed. I
3 thought it had taken place in the house. So I
4 had run everyone out of the house and wouldn't
5 let anyone back in. I stayed there to make sure
6 no one came in until E M S got on scene.

7 Q And after E M S took Ms. Montgomery from the
8 scene, did you stay in the apartment further?

9 A I did not. I followed -- investigators were on
10 the scene at the time as well as other police
11 officers. I followed her to the hospital in the
12 ambulance and went into the trauma room with her
13 where they were working on her.

14 Q And when you left [REDACTED] Street, was the
15 scene secured by other officers?

16 A Absolutely.

17 Q And what injuries did you observe on the victim?

18 A I observed on the victim, when I first got on
19 scene, was that her intestines were hanging out.
20 That she had been stabbed in the neck and in the
21 chin.

22 Once we got to the trauma room, I went in the
23 trauma room with her where I observed that she
24 had been stabbed also in the right breast and in
25 the bicep, right bicep.

1 Q And after you left the hospital that evening, did
2 you have any further involvement in this case?

3 A No, ma'am, I did not.

4 MS. MCDUFFIE: Beg the Court's indulgence.

5 THE COURT: Yes, ma'am.

6 MS. MCDUFFIE: No further questions of this
7 witness.

8 THE COURT: All right, Mr. Cooper, you can
9 cross-examine.

10 MR. COOPER: Thank you, Your Honor.

11 CROSS-EXAMINATION

12 BY MR. COOPER:

13 Q Good afternoon, Investigator.

14 A How are you doing?

15 Q When you became involved in this situation, were
16 you working with Investigator McCracken?

17 A No, sir.

18 Q You were not?

19 A No, sir.

20 Q Okay. Did you ever -- so you never worked with
21 him on this case?

22 A When I came up on the case, he had not been
23 assigned the case yet. He was on call. If
24 that's what you're asking me.

25 Q Okay. Did you -- you prepared a statement in the

1 case, right?

2 A I did prepare a statement in the case.

3 Q Okay.

4 A So you're asking after the fact, after the crime
5 had been committed?

6 Q Yes, sir. You ---

7 A Yes, I did at that time. Yes, I was involved
8 with Investigator McCracken.

9 Q Did you include everything you knew about the
10 case in the statement?

11 A I did at that point, yes, sir.

12 Q All right. Did you in your statement -- you got
13 a copy of your statement?

14 A I do have a copy of my statement.

15 Q If you would refer to it. Did you put anything
16 in the statement about what you observed when you
17 went in the house?

18 A I did not.

19 Q All right. Do you have -- or have you received
20 any training on crime scene investigation,
21 Officer?

22 A At that time, no, sir, I had not. I had only
23 been taught to secure the scene, that was it.

24 Q At that time you responded to the scene, you had
25 absolutely no training in crime scene ---

1 A I had had basic knowledge of crime scene
2 investigation.

3 Q And when you say basic knowledge, is that what
4 you're referring to by securing the scene?

5 A Secure the scene, don't let anybody in. Wait for
6 investigators and crime scene to show up and do
7 their job.

8 Q All right. So back in March of 2007, nobody had
9 every taught you how to go about collecting any
10 evidence, I guess, right?

11 A That's correct, sir.

12 Q Nobody had ever taught you anything about
13 fingerprints, I guess, right?

14 A That's correct, sir.

15 Q Nobody had ever taught you anything about DNA ---

16 A That's correct, sir.

17 Q All right. Nobody -- nobody had taught you
18 anything about any evidence collecting
19 techniques, right?

20 A Other than basic, very basic.

21 Q And you were out there responding to burglary
22 scenes, right?

23 A Yes, sir.

24 Q And you -- basically you were responding to any
25 kind of call you got?

1 A Yes, sir.

2 Q All right. And that was the extent of your
3 training when you wrote the statement that I
4 referred to ---

5 A Yes, sir.

6 Q --- correct? Okay. All right.

7 MR. COOPER: Beg the Court's indulgence ---

8 Q Oh, you never -- at no time did you come across
9 the screwdriver?

10 A No, sir, I never saw a screwdriver.

11 Q Okay.

12 MR. COOPER: Beg the Court's indulgence one
13 moment.

14 THE COURT: Yes, sir.

15 (Pause.)

16 MR. COOPER: Thank you, Your Honor, I have
17 nothing further.

18 THE COURT: Anything on redirect?

19 MS. MCDUFFIE: No, sir, Your Honor.

20 THE COURT: All right, you may step down,
21 Officer Catoe.

22 MS. MCDUFFIE: Your Honor, we ask that this
23 witness be excused.

24 THE COURT: I'm sure he wants to go back to
25 Lexington County.

1 THE WITNESS: Okay, sir, thank you.

2 (The witness leaves the witness stand.

3 THE COURT: Thank you, sir.

4 Call your next witness.

5 MS. MCDUFFIE: The State calls Steve Tacket.

6 (STEVEN M. TACKET, after being duly sworn,
7 testified as follows:)

8 THE CLERK: Thank you. Please have a seat
9 and state your full name for the record.

10 THE WITNESS: My name is Steven Michael
11 Tacket.

12 THE CLERK: Please state your name for the
13 record.

14 DIRECT EXAMINATION

15 BY MS. MCDUFFIE:

16 Q Good afternoon, Mr. Tacket.

17 A Afternoon.

18 Q Where are you employed?

19 A Richland County E M S.

20 Q And what are your duties with Richland County
21 E M S?

22 A To provide advanced life support to patients.

23 Q And how long have been with E M S?

24 A Eight years.

25 Q And tell the jury a little bit about your

1 education and training in emergency management.

2 A Well, we go through advanced cardiac life
3 support, pre-hospital trauma life support where
4 they teach us how to basically stabilize patients
5 who've been stabbed, shot, entrapped in cars, how
6 to remove them from cars. How to basically
7 stabilize them and keep them alive and try to
8 maintain their blood pressures and respirations
9 until we can get them to the hospital where they
10 can be stabilized further.

11 Q And on March the 31st, 2007, did you respond to
12 [REDACTED] Street?

13 A Yes, ma'am.

14 Q And what was that in reference to?

15 A A stabbing.

16 Q And approximately what time did you arrive at [REDACTED]
17 [REDACTED]

18 A Dispatch has me arriving on the scene at 01:07
19 A.M.

20 Q 1:07 A.M?

21 A Yes.

22 Q And what did you observe when you arrived at [REDACTED]
23 [REDACTED]

24 A When I arrived I was directed into the house into
25 I believe it was one of the back rooms. I found

1 a 36 year old black female who was alert and
2 oriented to who she was, where she was and what
3 was going on.

4 I observed her laying on her left side. She
5 was holding a pink rag of some kind that was
6 blood stained over her abdomen. I removed it and
7 found that she was eviscerated which was her
8 abdominal organs were hanging out. She also had
9 received a stab wound to her right breast
10 underneath her nipple. I noticed a laceration
11 underneath her chin on the left side and also a
12 laceration on her arm.

13 Q What is the first thing you did after assessing
14 Ms. Montgomery's injuries?

15 A Immediately told my partner at that time to go
16 back to the truck and receive a spine board and a
17 c-collar so we could get her packaged up to get
18 her to the hospital.

19 Q And what procedures did you perform or what did
20 you do to Ms. Montgomery?

21 A In the meantime while my partner was getting the
22 stuff, I removed the towel from her abdomen and
23 noticed that she was eviscerated. I took a
24 sterile packaging and placed her abdominal
25 contents in it to try to keep them moist and free

1 from infection and further injury at that point.

2 I placed an occlusive dressing over her left
3 breast just in case she had a punctured lung with
4 the stab wound. It would allow air from entering
5 into her lung causing her lung to collapse. And
6 I bandaged her laceration to her chin and to her
7 right forearm.

8 Q In order to perform your duties, is it necessary
9 to cut off a victim's clothing?

10 A Absolutely.

11 Q I show you what's already in evidence as State's
12 Exhibit 17. Do you recognize that?

13 A Yes, ma'am. That appears to be what she was
14 wearing that night.

15 Q And did you in fact cut her clothing off?

16 A Absolutely, yes, ma'am.

17 Q And why do y'all do that?

18 A We have to expose the patient. We try to get
19 them naked in trauma situations fast so we can
20 examine the extent of the injuries. We want to
21 make sure that we don't miss anything. If you
22 have on a bra -- in her case where she got
23 stabbed, if I wouldn't have removed the bra, I
24 might not have seen that she had been stabbed or
25 something along those lines.

1 Q And the wounds to her abdomen, were those
2 bleeding heavily?

3 A I don't remember them bleeding heavily. But
4 sometimes when we have -- or when you have
5 eviscerations, when the intestines push through
6 the opening, they kind of block the surrounding
7 opening so nothing can leak outside of the body.
8 As far as whether she was bleeding internally, I
9 can't say that she was or wasn't.

10 But with the extent of the injury, with the
11 eviscerations, I would say that she probably was.

12 Q And how would you characterize the severity of
13 the injuries you observed?

14 A Critical.

15 Q And after you performed the procedures and put
16 Ms. Montgomery in the ambulance, where did you
17 then take her?

18 A I took her to Richland Memorial Hospital.

19 Q And you turned her over to a doctor's care at
20 Richland Memorial Hospital?

21 A Yes.

22 Q And after you turned her over to Richland
23 Memorial Hospital, was that the extent of your
24 involvement in this case?

25 A Yes.

1 MS. MCDUFFIE: Beg the Court's indulgence.

2 THE COURT: Yes, ma'am.

3 MS. MCDUFFIE: Nothing further, Your Honor.

4 THE COURT: All right, Mr. O'Neil.

5 CROSS-EXAMINATION

6 BY THE MR. O'NEIL:

7 Q I think you and Mr. Bishop was the first
8 providers on the scene that night?

9 A For first aid, yes, sir.

10 Q And Mr. Bishop, I think, was the driver and you
11 were the attendant?

12 A We were both trained in basic life support and he
13 did drive me to the hospital but he also helped
14 me and assisted me in providing care.

15 Q And I guess as -- I guess, is your formal title E
16 -- is your formal title an E M T?

17 A E M T, paramedic.

18 Q Okay. And as a paramedic, I think you have to
19 also fill out some paperwork that's involved with
20 your job? You have to fill out a report?

21 A Yes, sir. Every time I make contact with a
22 patient, I have to fill out a patient care
23 report.

24 Q Okay. You filled out one of this in this case?

25 A Yes, sir.

- 1 Q You have one of those with you?
- 2 A I do.
- 3 Q And it is your job when you get on the scene -- I
- 4 guess your first job is to try to stabilize the
- 5 situation. Would it be fair to say that?
- 6 A Stabilize the patient, yes, sir.
- 7 Q And you try to evaluate the condition of the
- 8 patient?
- 9 A Absolutely.
- 10 Q And you also had to try to categorize, I guess,
- 11 the patient as well?
- 12 A Uh-huh.
- 13 Q And you have several, I guess, techniques that
- 14 you utilize to try to do that?
- 15 A Yes.
- 16 Q Now, does each patient that you go out to see, do
- 17 they receive what's called a Revised Trauma
- 18 Score?
- 19 A Yes.
- 20 Q And you did a Revised Trauma Score for Ms.
- 21 Montgomery this particular night?
- 22 A Yes.
- 23 Q And that's one of the tools that you try to use
- 24 to try to evaluate the situation?
- 25 A Yes, sir.

1 Q And I think there are three components to that
2 Revised Trauma Score?

3 A Uh-huh.

4 Q One of them is the Coma ---

5 A Glasgow Coma Score, uh-huh.

6 Q The other is systolic ---

7 A The systolic blood pressure.

8 Q And also you utilize respiration rate as well?

9 A Correct.

10 Q And each one of those different components has a
11 different value?

12 A Yes, sir.

13 Q Okay.. And the Revised Trauma Score has -- goes
14 from zero to 12, would that be fair?

15 A Yes, sir.

16 Q And I guess anything from zero to two, what you
17 would refer to, I guess, fatally wounded
18 essentially? Would that be fair to say?

19 A Yes.

20 Q And anywhere from three to 10, is kind of
21 immediate ---

22 A That's not necessarily because depending upon the
23 actual type of wound sustained, if you were shot
24 in the chest per se, you could still have a
25 trauma score of 12 which is the highest but that

1 doesn't mean you're necessarily that less wounded
2 or that you're that less critical. That's just
3 one of the tools that we do take into account.

4 Q One of the tools you use to categorize ---

5 A Right.

6 Q --- the need of the patient. And the next
7 category is from three to 10?

8 A You mean 10 to 12.

9 Q 10 to 12, that's the last category?

10 A Yes, sir.

11 Q And 10 to 12 -- 12 is the absolute highest one
12 you can get?

13 A Right, that's what everybody is here today.

14 Q Okay. So on that particular night, I think Ms.
15 Montgomery's score was 11?

16 A Yes because her blood pros -- blood pressure put
17 her in a state of shock.

18 Q Okay. And you think -- you say she had a
19 laceration on her chin?

20 A Uh-huh.

21 Q And she didn't have a stab wound on her neck, did
22 she?

23 A Not that I observed.

24 Q You didn't ---

25 A But as soon as I saw all the wounds I had seen, I

1 dressed them, placed the cervical collar on her
2 neck just to ensure that she didn't have
3 distracting injury, that she had a c-spine
4 injury, placed her on the spine board and then we
5 went. I -- after I bandaged her chin, I did not
6 notice any further bleeding.

7 Q Okay. I think you dressed the wound that was on
8 her chest as well?

9 A Yes.

10 Q Now you say you were -- you, I guess, feared that
11 she may have had a collapsed lung or something of
12 that nature?

13 A Correct.

14 Q But she didn't have any of the hallmarks of a
15 collapsed lung, did she?

16 A Well, she did have a low blood pressure and a
17 high heart rate. And both of those can go hand
18 in hand with a collapsed lung.

19 Q But she ---

20 A But her lung sounds were clear and she ---

21 Q --- lung sounds ---

22 A Yes.

23 Q No problem breathing?

24 A Not at the time.

25 Q Okay. And I think you -- you said -- and I think

1 MS. McDuffie showed you what's been marked as
2 State's Exhibit -- Exhibit Number 17.

3 A Uh-huh.

4 Q And you actually cut Ms. Montgomery's shirt that
5 ---

6 A I cut her shirt, her bra and her pants.

7 Q Okay. You did those cuts. It wasn't like that
8 when you got there, you actually had to cut those
9 off to remove those?

10 A Right. We are taught during our training that
11 when we remove clothing that we want to ensure
12 that we try to avoid any previous holes that are
13 already there.

14 Q Okay. And you said when you got there, I think,
15 you got the bleeding under control?

16 A For -- all the external bleeding under control.

17 Q Before you left the scene, all the external
18 bleeding was under control?

19 A Yes, sir.

20 Q And I think you said she, at that point, was not
21 bleeding heavily at that point externally?

22 A Correct.

23 Q Okay.

24 MR. O'NEIL: Beg the Court's indulgence.

25 THE COURT: Yes, sir.

1 (Pause.)

2 MR. O'NEIL: Nothing further, Your Honor.

3 THE COURT: Anything on redirect?

4 MS. MCDUFFIE: No, sir, Your Honor.

5 THE COURT: You may step, Mr. Tacket. And I
6 assume he wants to go too. Any objection?

7 MR. O'NEIL: No objection.

8 (The witness leaves the witness stand.)

9 THE COURT: Call your next witness?

10 MS. WEISS: Thank you, Your Honor. The State
11 calls Special Agent Gianna Williams.

12 (GIANNA S. WILLIAMS, after being duly
13 sworn, testified as follows:)

14 THE CLERK: Thank you. Please have a seat
15 and state your full name for the record.

16 THE WITNESS: Gianna William, G-i-a-n-n-a.

17 DIRECT EXAMINATION

18 BY MS. WEISS:

19 Q Agent Williams, where are you currently employed?

20 A I work for the South Carolina Law Enforcement
21 Division.

22 Q How long have you been employed there?

23 A About a year and a half now.

24 Q Prior to going to the State Law Enforcement
25 Division, where were you employed?

1 A I worked for the Columbia Police Department.

2 Q And what was your position at the Columbia Police
3 Department?

4 A I worked there for about eight years, the first
5 years was a patrol officer assigned to the Metro
6 Region. And from 2005 till last year, I worked as
7 a crime scene officer.

8 Q What were your duties as a crime scene officer?

9 A As a crime scene officer, you're supposed to
10 photograph scenes, collect evidence,
11 fingerprints, D N A, things like that.

12 Q Were you called out to everything that happened?

13 A No.

14 Q And how did you determine whether or not to go to
15 the scene or what to do?

16 A We were dispatched or requested by investigations.

17 Q Going to March 31st, 2007.

18 A Yes.

19 Q Do you have a copy of your report?

20 A Yes, I do.

21 Q Were you dispatched to the actual scene the night
22 of the incident?

23 A No, I was not.

24 Q At that point did you become involved at the
25 scene?

1 A Well, the way the Columbia Police Department at
2 the time worked, you had two shifts. One's the
3 morning shift and one's the evening shift. The
4 first shift's from 6:30 in the morning up until
5 3. And the second shift starts at 2:30 in the
6 afternoon and they end at 11. From 11 till 3 in
7 the morning, that's an on-call status.

8 So this happened at 1:10 so that would have
9 been the nightshift person. And to my knowledge,
10 no one was called out. So that means at 6:30 I
11 would come on shift. And sometime during my
12 shift, I was notified to go to the hospital.

13 Q Okay. So did you ever respond to [REDACTED]
14 Street?

15 A No, I did not.

16 Q Okay. And if there was no -- nothing actually to
17 be found as far the crime scene, would it -- is
18 it typical that you may not have been dispatched
19 or sent out to the actual crime scene?

20 A That's correct.

21 Q So who called you and who would have told you to
22 go to hospital?

23 A Depending on what day this is, like if it's on
24 the weekend, it might have been the actual
25 investigator. And if it's during the week, it

1 would have just come from either the dispatcher
2 or the supervisor.

3 Q So you would have come on at 6:30 on Saturday
4 morning ---

5 A Uh-huh.

6 Q --- just like any other day?

7 A Just like any other day. And when you come on
8 the weekends there's usually no one there except
9 for the on-call investigator.

10 Q Okay. And when you got there, got your
11 information you were supposed to go to the
12 hospital, what did you do?

13 A Once you get the information to go, a lot of
14 times when you have like a real serious injury,
15 you'll have to wait a little bit to make sure the
16 hospital will let you come and photograph the
17 victim, if that's available. So usually you
18 don't try to do that until say closer to like
19 11:00, 12:00, somewhere in that time range.

20 And when I go to the hospital -- I know in
21 this case she was at Richland Memorial Hospital
22 in Room 523. And pretty much we'll go, make
23 contact with the nursing staff to say, is it okay
24 that I can take some photographs. If they have
25 any items like clothing or any personal

1 belongings, I'll also collect those.

2 Q Okay. So did you go in to the victim first or
3 did you collect the clothing first?

4 A When I get there, the clothing, if they have any,
5 is already going to be kind of prepackaged like
6 in a little plastic bag by the nursing staff.
7 And so that will just be in the room for me to
8 collect before I leave.

9 And in this case, I believe I took the
10 photographs first with the assistance of one of
11 the nursing staff and then took the clothing.

12 Q Okay, so you went into room 523?

13 A Yes, I did.

14 Q Okay. What did you find when you went in there?

15 A When I got there, the victim was -- she was in
16 the bed. She was not really conscious of me
17 being there. I know she woke up a couple of
18 times and then kind of went back out. And she
19 just had, you know, the little gown -- not a
20 gown, but she had on the sheet and a slight
21 blanket that was covering her up. And I can't
22 remember who the nurse was but, you know, she
23 sort of pulled the sheet back so I could start
24 taking photographs.

25 And you kind of start -- usually you do like

1 an overall photograph and we'll start from the
2 head, to the middle, to the bottom. And then do
3 close-up pictures of things that are injuries.

4 And when I went there, there were no officers
5 there. So I'm just pretty much -- everything
6 that was an injury that I can see, I'm taking a
7 picture of.

8 Q Okay. I show you State's Exhibits 10, 13, 16 and
9 18. Do you recognize these that have already
10 been entered into evidence?

11 A Yes, I do.

12 Q And those are the photographs that you took?

13 A Yes, they are.

14 Q Okay and can you show the jury what you were
15 taking pictures of, kind of what you were saying?

16 A Okay. Well this picture here (indicating), this
17 is going to be the victim's ---

18 THE COURT: I'm sorry ---

19 THE WITNESS: I'm sorry.

20 THE COURT: --- the exhibit number.

21 THE WITNESS: Oh, I'm sorry.

22 MS. WEISS: It's on the back.

23 THE COURT: That's all right.

24 A This will be Exhibit Number -- it's marked 10.

25 And on this would be the victim lying in the bed.

1 This is going to be of her abdomen, starting like
2 from like the top of her chest moving on down
3 (indicating).

4 Q Okay.

5 A This next one is marked Exhibit 13. This was a
6 close-up picture. I have to tell you -- without
7 seeing the actual smaller picture. Because you
8 do a big one, kind of overall, and then you
9 tighten up. This is going to be scratch mark
10 which if my memory serves correct, I remember she
11 had scratch marks like on the lower parts of her
12 legs.

13 And then item 16 is also going to be of a
14 scratch mark and I believe that was on either her
15 left or her right leg. Again, it was a scratch
16 mark.

17 And then item number 18, which is going to be
18 her right breast,
19 (Pause.)

20 Q I'm going to show you what's been marked as
21 State's Exhibits, 15, 11, 14 and 12 for
22 identification.

23 A Okay.

24 Q Do you recognize these pictures? And don't
25 identify them for the jury. Just do you

1 recognize them?

2 A Yes, I do.

3 Q And those are more pictures that you took at the
4 hospital?

5 A Yes, they are.

6 Q Okay. I'm going to show you what's been marked
7 as State's Exhibit 20. Do you recognize this?

8 A Yes, I do.

9 Q And what is it?

10 A This is going to be a brown evidence bag. The
11 information's been filled out by myself. And on
12 the back it has listed what's inside and it has,
13 one jean shorts, one pink shirt, one black bra
14 and pink underwear.

15 Q And did you collect those?

16 A Yes, I did.

17 Q And where did you get them?

18 A I got them from her room 523 at the hospital.

19 Q Okay. Can you show the jury what you collected,
20 please?

21 (Witness puts on gloves.)

22 MS. WEISS: Your Honor, at this time I would
23 like to move State's Exhibit Number 20 into evidence.

24 MR. O'NEIL: No objection, Your Honor.

25 THE COURT: Okay, without any objection.

1 Those are the clothes?

2 MS. WEISS: Yes, Your Honor.

3 (Whereupon, State's Exhibit Number 20, Brown
4 Bag Consisting of Jean Shorts, Pink Shirt,
5 Black Bra and Pink Underwear, was moved into
6 evidence.)

7 THE COURT: Members of the jury, while she
8 opens that. This has been admitted into evidence
9 without objection. But, of course, all things
10 admitted you will have an opportunity to view in the
11 jury room. If you want to do that at the end of this
12 trial, I would suggest that you don't so unless you
13 use gloves, of course, considering what we know about
14 advanced medicine and all that stuff. If at any point
15 in time later on you might want to do so, please get a
16 pair of gloves before you examine it. I don't think
17 you necessarily need to but I just want to say that
18 now, okay.

19 Any exceptions -- any exceptions ---

20 MR. O'NEIL: No, Your Honor

21 MS. WEISS: No, Your Honor.

22 THE COURT: All right, okay.

23 A This first bag is marked one pink shirt. Do you
24 have a pair of scissors?

25 (The witness is handed a pair of scissors.)

1 THE COURT: Ms. Weiss, Mr. Cooper.

2 (Whereupon, a bench conference was held off
3 the record, in the presence of the jury, but out of
4 the hearing of the jury.)

5 Q Now were these packaged -- were these packaged
6 this way when you got them?

7 A No. When you go to a hospital, normally what
8 we're going to do, if the victim has any type of
9 personal belongings, clothing, shoes, socks,
10 whatever, they're just going to take all the
11 clothes, throw them in one big plastic bag and
12 they're going to give them to you.

13 And when you have items like this that were
14 soaking in blood, you cannot turn them in to
15 evidence like this. Because what's going to
16 happen is all of this blood is just going to get
17 moldy. And whatever evidence could be here if
18 you were trying to get D N A, you're going to
19 destroy it.

20 So when we get the clothing, I'm going to
21 take it out -- it just depends sometimes, if it's
22 not too bad, I can go ahead and lay them out,
23 photograph them and we have what we call a drying
24 room. And we'll put them in this room so the
25 clothes can dry out. And once they're dry, I'll

1 collect them and then put them in brown paper
2 bags and then give them to the evidence room.

3 Q Okay.

4 A So once they're dry, they get packaged that way.
5 And this was the little pink shirt.

6 (Pause.)

7 A Okay. In the second bag was a black bra.

8 (Pause.)

9 A Okay -- the black bra. And these were like I
10 found them. And like I said, the E M T already
11 testified that they cut these off.

12 The next bag is listed, just one pair of pink
13 underwear.

14 Q I don't care, you can open it.

15 A Okay. I tell you, when you first put the tape on
16 you don't ever think about having to take it back
17 off.

18 (Pause.)

19 A One pair of pink underwear.

20 (Pause.)

21 A And the last bag was listed as one pair of jean
22 shorts. And again, all these items were packaged
23 by myself.

24 (Pause.)

25 A I'll show you the back of the jean shorts first.

1 And here's the front the best I could get
2 them.

3 (The witness repackages the exhibit items.)

4 Q Thank you. You said you put them in the drying
5 room?

6 A Yes.

7 Q Did you lay them out before taking these pictures
8 or?

9 A That looks like it's going to be before because
10 the blood's not really brown. It looks to me
11 kind of fresh still. But again, I can't say that
12 -- yeah, that looks like they might have been a
13 little wet so I think that might have been
14 actually before. I think I laid them out and
15 then stuck them in there.

16 Q This is your picture as well?

17 A Yes, it is. And the bag next to it's the bag
18 that comes from the hospital?

19 Q Right there (indicating)?

20 A Yeah.

21 Q And after you took these pictures and gathered
22 the clothes, did you do anything else with this
23 case?

24 A Not with this case, that's all I did.

25 MS. WEISS: Your Honor, I have no further

1 questions. Please answer any questions the Defense
2 may have.

3 THE COURT: All right, Mr. O'Neil.

4 CROSS-EXAMINATION

5 BY MR. O'NEIL:

6 Q Your job in this case was basically to take
7 photos and collect some clothing?

8 A Yes, sir, it was.

9 Q And you took pictures that you took at the actual
10 hospital?

11 A Yes, sir, at the hospital.

12 Q Now, the pictures you took, I think specifically
13 State's 18, 16, 13 and 10, those pictures were
14 taken after Ms. Montgomery had surgery?

15 A Yes -- yes, sir.

16 Q Now you were not able to go out there and take
17 pictures of Ms. Montgomery on the scene that
18 night?

19 A No, sir, I was not called out for that.

20 Q And you were not able to take actual pictures of
21 Ms. Montgomery's wounds before the surgery?

22 A No, sir. A lot of times when you have a serious
23 injury, as soon as they go to the hospital,
24 they'll be checked into the emergency room and
25 then immediately taken off. So that's not

- 1 uncommon.
- 2 Q Have no time to take pictures before the surgery?
- 3 A Sometimes they won't let you. I mean, you're at
4 the mercy of the hospital.
- 5 Q Their focus is on the patient?
- 6 A Yeah. And if they say no, then that won't
7 happen.
- 8 Q And especially, I think, State's Exhibit Number
9 10, you took that picture?
- 10 A Yes, sir, I did.
- 11 Q And that picture illustrates what Ms. Montgomery
12 looked like after ---
- 13 A After surgery.
- 14 Q After the doctor had made his incisions for
15 surgery?
- 16 A Whatever they had to do to fix it. Like I said,
17 I wasn't notified. That would have been someone
18 else, if it was called out.
- 19 Q And you said, nobody called you to go out to the
20 scene that night?
- 21 A It wouldn't have been me. I wouldn't have gone
22 on call until 3 in the morning.
- 23 Q Nobody called out the on-call C S I person to go
24 out that night either ---
- 25 A To my knowledge, no.

1 Q And to your knowledge, nobody went out there
2 searching for any kind of weapons or anything
3 like that?

4 A No, sir.

5 MR. O'NEIL: Beg the Court's indulgence, Your
6 Honor.

7 THE COURT: Yes, sir.

8 MR. O'NEIL: Nothing further, Your Honor.

9 THE COURT: Anything further?

10 MS. WEISS: No, Your Honor.

11 THE COURT: You my step down.

12 THE WITNESS: Thank you, Your Honor.

13 (The witness leaves the witness stand.)

14 THE COURT: I assume that concludes your
15 presentation for today. So, Madam Forelady and
16 members of the jury, you have heard all of the
17 evidence you shall receive today, a little bit sooner
18 than I thought. Your girlfriend will be happy.

19 (Laughter.)

20 THE COURT: So once again I remind you,
21 don't talk about this case. The time to do so, once
22 again, will be at the very end.

23 I trust and hope you all have a pleasant and
24 restful evening and I ask that you be back into the
25 jury room tomorrow morning at 9:30.

1 Thank you all so very much.

2 (The jury retires from the courtroom at
3 approximately 4:45 P.M.)

4 THE COURT: Anything further we need to take
5 up this afternoon? Mr. Cooper?

6 MR. COOPER: No, Your Honor.

7 MS. WEISS: No, Your Honor.

8 THE COURT: All right. So your plan is to
9 call the doctor first thing. And he will probably be
10 the longest witness remaining in this case, I'm
11 guessing. Is that a fair ---

12 MR. O'NEIL: Yes, sir.

13 THE COURT: Okay. And you have about three
14 others beside the doctor or maybe four?

15 MS. WEISS: Your Honor, I believe we plan on
16 calling five others beside the doctor.

17 THE COURT: All right. So we'll finish all
18 your testimony tomorrow?

19 MS. WEISS: Absolutely.

20 THE COURT: All right, enjoy your afternoon.
21 We'll take up whatever else we need to take up
22 tomorrow at 9:00.

23 So get a good night's sleep and I'll see
24 y'all tomorrow at 9:30. Thank you.

25 MS. WEISS: Thank you, Your Honor.

1 MR. COOPER: Thank you, Your Honor.

2 WEDNESDAY, SEPTEMBER 2, 2009:

3 THE COURT: Are we all ready to start up
4 again? Anything we need to take up before the jury
5 comes in?

6 MR. COOPER: No, Your Honor.

7 THE COURT: We only had one side bar and I
8 think I gave you the opportunity to put it on the
9 record, your 403 objection.

10 MR. COOPER: Yes, you did.

11 THE COURT: All right. Invite the jury to
12 come in, please.

13 (The jury returned to the courtroom at
14 approximately 10:15 A.M.)

15 THE BAILIFF: The jury's all present, Your
16 Honor.

17 THE COURT: All right. Welcome back, Madam
18 Forelady and members of the jury. I thought it would
19 take 20 minutes but it took 45 minutes but that's the
20 way it goes sometimes. I appreciate your patient and
21 courtesy in this matter.

22 And I think we will finish most of the
23 testimony today, we'll see. But we're ready to go.
24 Like I said, I hope you had a pleasant and restful
25 evening.

1 I invite Ms. Weiss to call your next witness
2 on behalf of the State. Oh, Ms. McDuffie.

3 MS. MCDUFFIE: Thank you, Your Honor. The
4 State calls Dr. Franga.

5 (DR. DION L. FRANGA, after being duly
6 sworn, testified as follows:)

7 THE CLERK: Thank you. Please have a seat
8 and state your full name for the record.

9 THE WITNESS: My name is Dion L. Franga.

10 DIRECT EXAMINATION

11 BY MS. MCDUFFIE:

12 Q Good morning, Dr. Franga.

13 A Good morning.

14 Q Dr. Franga, where are you currently employed?

15 A I am the Chief of Surgery at Moncrief Army
16 Community Hospital. I'm active duty army.

17 Q And what are your duties at Moncrief?

18 A I serve as a Chief of a fairly large department,
19 13 different disciplines, a large budget, number
20 of civilian and active duty employees.

21 Q And you're currently in the military?

22 A That is correct.

23 Q And in 2007, were you working in the same
24 capacity you are now?

25 A I did. I serve as faculty at the University of

1 South Carolina School of Medicine as well and am
2 one of the trauma attendings for trauma and
3 emergency surgery at Richland Memorial Hospital.

4 Q And how often would you work the trauma attending
5 at Richland Memorial?

6 A Usually four to five nights a month.

7 Q And if you could please tell the jury a little
8 bit about your education and your training and
9 your background.

10 A Sure. I went to undergraduate school in
11 Orangeburg, South Carolina at South Carolina
12 State. Then went to the Medical University of
13 South Carolina from 1994 to 1998. I received my
14 doctor's degree from there. Subsequently went to
15 the Medical College of Georgia and did a general
16 surgery residency there at the Medical College of
17 Georgia which is a level one trauma center.

18 Came to Columbia, South Carolina and Fort
19 Jackson in 2005. Since 2005, have done two tours
20 in Afghanistan for a split surgical team in the
21 far forward areas of Afghanistan doing primarily
22 resuscitative and trauma surgery.

23 MS. MCDUFFIE: Your Honor, at this time we
24 would offer Dr. Franga as an expert in trauma surgery.

25 THE COURT: Any voir dire ---

1 MR. O'NEIL: No voir dire or objection, Your
2 Honor.

3 THE COURT: So admitted.

4 Q Dr. Franga, on the evening of March 31st, 2007,
5 were you at Richland Memorial Hospital?

6 A I was the trauma attending on-call that night.

7 Q And as the trauma attending on-call, what are
8 your duties?

9 A To serve as the trauma consultant and chief
10 trauma surgeon for any trauma cases that -- or
11 emergency surgery cases that present themselves
12 to Richland.

13 Q And shortly after 1 in the morning, did you treat
14 Ms. Detra Montgomery?

15 A I did.

16 Q And when Ms. Montgomery came in, what was -- what
17 did she present with and what were her symptoms?

18 A Well, we received notification via our E M S
19 system that there was a penetrating injury that
20 was reported as a 911 and our injury patterns
21 were triaged based on that. So given the
22 severity of the injury, the location of the
23 injury, the hemodynamic (phonetic) stability of
24 the patients, they're categorized as to whether
25 they're really emergent, meaning a 911, or

1 emergent but stable.

2 She was paged as a 911 page with a
3 penetrating injury to her chest and abdomen with
4 bowel evisceration, meaning that her intestinal
5 contents were outside of her body.

6 And upon arrival, she was hypotensive meaning
7 her blood pressure was very low, signifying that
8 there was considerable blood loss and early
9 stages of shock. It was obvious that she had a
10 large penetrating injury to the left side of her
11 abdominal wall with bowel out -- coming out
12 through that hole.

13 Again, her blood pressure was low which
14 initially responded to some fluids. She was
15 anemic and was in the early stage of extremis and
16 was ultimately taken, because of that, after some
17 resuscitation in the trauma bay, taken straight
18 to the operating room for an emergency operation.

19 Q And tell the jury what extremis is.

20 A Extremis means that someone is not doing very
21 well. That the physiologic parameters that our
22 body normally uses to maintain our blood
23 pressure, pulse, etcetera are starting to go awry
24 and the body is not tolerating that very well.
25 And it's typically manifested as a very fast

1 heart rate or low blood pressure which she
2 exhibited.

3 Q And what was the severity of Ms. Montgomery's
4 injuries when she presented at the emergency
5 room?

6 A She had some fairly severe injuries. Again, she
7 had a traumatic defect to her abdominal wall,
8 meaning there was a large hole in her abdominal
9 wall that allowed for her intestinal contents to
10 extrude out through that abdominal wall defect.

11 When we initially explored her insides, she
12 had a significant amount of blood in her belly
13 and that was explaining why she was -- had low
14 blood pressure, fast heart rate and in the early
15 stages of shock.

16 She had a fairly significant injury through
17 the -- what's called the mesentery or where the
18 blood vessels to supply the colon rest. And
19 through that hole also had an injury to the
20 pancreas which is a very sensitive organ and
21 that's important for digestion and some of the
22 other functions of the body.

23 Q And were these injuries life threatening.

24 A They were, they were. She had significant blood
25 loss associated with it which we were able to

1 control in the operating room. And no injury to
2 the bowel that was hanging out so that was tucked
3 back in and we repaired the defect in her
4 abdominal wall caused by the stab.

5 Q When Ms. Montgomery came into the emergency room,
6 how -- how was she listed in terms of records?
7 Was she listed under her name or another name?

8 A She was initially listed under a trauma number.
9 Everyone has a sequential trauma number based on
10 when they come in from starting January 1st of
11 this year and years preceding as well.

12 Once the injury was recognized and the
13 details of the injury were not fully known, we as
14 a part of protocol place many of the patients
15 under an alias name so that we can isolate the
16 visitors to these patients when they are admitted
17 to the intensive care unit or the surgical ward
18 following their injuries.

19 Q And once you got Ms. Montgomery into the
20 operating room, what did you then do?

21 A Well, we placed some fairly large bore IV's in
22 the main veins of her body. Resuscitated her
23 with fluid and blood and approached -- were
24 trying to approach some more hemodynamic
25 stability with her.

1 We opened her belly from just underneath her
2 ribcage well below her belly button to expose her
3 insides. Identified what the sources of bleeding
4 were which were primarily from the hole in the
5 -- near the blood vessels that arise from her
6 colon as well as from the blood vessels on or
7 about the area of her pancreas. And there was a
8 small injury to her stomach as well that I didn't
9 mention. She was also having some bleeding from
10 the abdominal wall defect itself which we
11 controlled.

12 Once we got all the bleeding controlled, we
13 were able to successfully explore other areas of
14 the injury tracks. The pancreas had a fairly
15 significant injury to it but it did not warrant
16 us doing anything terribly aggressive to that
17 other than to spray some topical clotting factors
18 on top of it to help control hemorrhage as well
19 as hopefully control any abnormal drainage that
20 can frequently occur from this type of injury.

21 Q I'm going to show you what's already been
22 admitted as State's Exhibit 10. Is this how Ms.
23 Montgomery's stomach looked -- looked after the
24 surgery?

25 A That is correct. As you can see, the incision,

1 this is the top so her chest and breast are up
2 this way. This is the pubic area. You can
3 actually notice some of the area -- the hair in
4 the genital area at the bottom. In the middle is
5 her umbilicus. And on the left side of this --
6 her left side is the area that she was stabbed
7 which was repaired.

8 Q And in treating these injuries, what if any
9 conclusions did you draw about the nature of the
10 stab wounds?

11 A One that it required a considerable amount of
12 force to stab one from the front of the stomach
13 through the mesentery of the colon and into the
14 pancreas which rests sort of in the right upper
15 area of the abdomen. The injury was around the
16 area of the umbilicus or the belly button and one
17 of the things that I know that we commented on is
18 that it required a considerable amount of force
19 to be able to push a sharp object of that nature
20 to that extent and cause the injuries that she
21 had.

22 Q And in your experience, is this -- or were her
23 injuries consistent with -- I mean, it could have
24 been self-inflicted?

25 A They would not be. I do want to make one mention

1 of some additional injuries that we didn't
2 discuss earlier. We focused primarily on her
3 abdominal injuries. But she also had other
4 scratches and abrasions. She also had a
5 significant injury to her left breast which was
6 also causing a significant source of bleeding.
7 And that was also fixed in the operating room as
8 well. And fixed, I mean, we stopped the bleeding
9 and closed the incision.

10 Q I'm going show you State's ---

11 A The wound.

12 Q --- 11, 12, 14 and 15. Do you recognize these?

13 A I'm sorry, you have to orient this for me. They
14 appear to be scratches and abrasions.

15 Unfortunately I'm not able to quite identify
16 exactly where they are on her.

17 Q But those are the various other scratches and
18 abrasions?

19 A Sure. This looks like a part of her -- her
20 midline incision. This looks like a part of her
21 stab wound itself. Again, it looks like another
22 abrasion to her chest.

23 MS. MCDUFFIE: Your Honor, at this time we
24 would offer 11, 12, 14 and 15.

25 MR. O'NEIL: Your Honor, can I see this?

1 THE COURT: Yeah.

2 (Pause.)

3 THE COURT: They're not already in?

4 MR. O'NEIL: No, Your Honor.

5 THE COURT: These were marked for I D
6 yesterday?

7 MS. MCDUFFIE: Yes, sir, Your Honor.

8 MR. O'NEIL: Your Honor, we would have our
9 same 901 and 403 objection to State's 11 ---

10 THE COURT: As you did to with 10 and 18
11 yesterday?

12 MR. O'NEIL: Yes, sir.

13 THE COURT: Okay. Same decision. I'll give
14 you a chance to put it on the record.

15 MR. O'NEIL: Yes, sir.

16 (Whereupon, State's Exhibit Number 11,
17 Photograph of Close-up of Stitch, was moved
18 into evidence.)

19 (Whereupon, State's Exhibit Number 12,
20 Photograph of Bruise and Scratch with Ruler,
21 was moved into evidence.)

22 (Whereupon, State's Exhibit Number 14,
23 Photograph of Bruise and Scratch with Ruler,
24 was moved into evidence.)

25 (Whereupon, State's Exhibit Number 15,

1 Photograph of Close-up of Stitched Area,
2 was moved into evidence.)

3 Q The other scratches and abrasions on her body,
4 how would you characterize those?

5 A Well, I would characterize them as defensive
6 wounds.

7 Q And did Ms. Montgomery have a blood alcohol level
8 when she presented at the emergency room?

9 A She did.

10 Q And do you recall what that was?

11 A I believe it was 183. I'd have to look back but
12 it was right around the area of a .18 or a 183.

13 Q And did that impact her condition in any way?

14 A It did not.

15 Q Do you recall how long Ms. Montgomery stayed in
16 the emergency -- or stayed in the hospital?

17 A I believe she was in for roughly 10 to 14 days.

18 Q And after the surgery which you performed, did
19 you do any further follow-up care with Ms.
20 Montgomery?

21 A I did not because my other duties at the army
22 hospital here at Fort Jackson, typically I rotate
23 off the trauma call schedule at 6 in the morning
24 and then I return back to my job at Fort Jackson.
25 The agreement and negotiation we have obviously

1 with the trauma service there is that her care
2 will be assumed by the attending trauma surgeon
3 of the day at Richland. And he assumed her care
4 which was Dr. Bynoe.

5 MS. MCDUFFIE: Beg the Court's indulgence.

6 THE COURT: Yes, ma'am.

7 MS. MCDUFFIE: Nothing further.

8 THE COURT: All right, Mr. O'Neil.

9 CROSS-EXAMINATION

10 BY MR. O'NEIL:

11 Q Doctor, Ms. Montgomery, I think she presented
12 with two penetrating wounds that day or just one?

13 A She presented with multiple penetrating wounds,
14 two in particular were the most devastating, to
15 her left breast and to her abdominal wall.

16 Q Two -- those were the two that you addressed
17 mainly with surgery?

18 A Correct.

19 Q And basically you had a laceration to the chest
20 area?

21 A She did.

22 Q And the laceration is kind of different from a
23 penetrating wound?

24 A Well, it's caused by a penetrating object in
25 general.

1 Q Okay. But I guess a laceration wouldn't be as
2 deep, of course, as a penetrating wound?

3 A The depth of the laceration is -- is irrespective
4 of whether it's a laceration or not. It can be
5 superficial or it can be deep.

6 Q Now, were you able to note the size of the
7 penetrating wounds Ms. Montgomery had that day?

8 A I think that -- well it depends on which ones
9 you're talking about. I think that the photos
10 have documentation and measurements associated
11 with that and I would have to look at those
12 photos again to give you exact measurements.

13 Q Okay. I think those measurements would be -- or
14 those photos would be State's 15 and 11. Let me
15 let you look at those.

16 A Sure. So this one looks like it's in inches.
17 And the scale obviously is a little bit limited
18 but it looks like it's greater than a three inch
19 laceration, assuming we're talking about -- this
20 is part of her midline wound, which we saw
21 pictures of her midline ---

22 Q And what's the State's Exhibit, I'm sorry, what
23 number is that?

24 A This is State's Exhibit 11. This is a portion of
25 her abdominal wound from stem to stern meaning

1 that the midline incision that I made in the
2 operating room. So that's probably not
3 representative of what you're talking about.

4 Q Yeah.

5 A State's Exhibit 15 is approximately a two inch or
6 five centimeter wound that was caused by the
7 penetrating object that did the damage.

8 Q So just so we're clear, State's 11 wouldn't be
9 representative of the wound she presented with?

10 A I'm not sure where that -- whether that's a
11 portion of the wound. I don't know whether
12 that's a portion of the wound from her breast.
13 Again, there's no other identifying features on
14 that particular photo for me to define whether
15 that was from the breast or whether that was a
16 part of her midline incision. I can't really
17 tell from that photo.

18 Q You can't tell from State's Exhibit ---

19 A That's correct.

20 Q Okay. Now, you said she had evisceration of the
21 bowels?

22 A Correct.

23 Q And essentially that's the bowels protruding out
24 of the body?

25 A Correct.

1 Q And basically, I guess, to try to explain this,
2 the organs and other bowels are actually inside
3 what's called the abdominal cavity?

4 A Correct.

5 Q And there is essentially -- they're packed in
6 there pretty tight, I guess, for lack of a
7 medical term there.

8 A They are.

9 Q And there is internal pressure in there as well
10 making sure everything stays in place?

11 A There is a common intra-abdominal pressure
12 associated with that.

13 Q Because you don't want things inside the
14 abdominal cavity moving around?

15 A They're allowed to move freely. The viscera,
16 meaning the gut, is allowed to slip and slide if
17 you will ---

18 Q Yeah.

19 A --- around to allow for movement of food through
20 the GI tract. Other organs are relatively
21 stationary such as the liver, spleen, pancreas.

22 Q You don't want some kind of movement in there for
23 the organs essentially?

24 A Correct.

25 Q Okay. And basically what's keeping -- what's on

1 top of that abdominal cavity is skin, fat and
2 muscle?

3 A And another layer called fascia which is sort of
4 the strength layer that sort of contains the
5 muscle in the abdominal cavity into one concise
6 unit.

7 Q And what -- when the bowels essentially protrude
8 from the body, essentially the abdominal cavity
9 has to be penetrated with some force.

10 A Has to be violated, correct.

11 Q And that's sort of kind of like ---

12 A All layers.

13 Q Yeah, all layers.

14 A Have to be violated.

15 Q That's sort of kind of like what's commonly
16 referred to as a hernia but when a hernia -- it
17 doesn't -- the bowels only extrude ---

18 A An evisceration is entirely different from a
19 hernia. And a hernia, typically there are
20 several layers that are non-strength layers of
21 the abdominal cavity.

22 Q Yeah.

23 A And once the strength layers of the abdominal
24 cavity are violated, then a hernia may develop.
25 But typically it is lined -- the cavity or the

1 hernia sac is lined by several components of the
2 abdominal wall, namely the internal lining called
3 the peritoneal lining as well as at least the
4 skin.

5 Okay, go ahead.

6 Q But they both essentially involve the bowels
7 extending out the abdominal cavity?

8 A Correct.

9 Q And the amount of -- you said it takes an amount
10 of force to, I guess, penetrate the abdominal
11 cavity, correct?

12 A It does.

13 Q And that amount of force, I guess, is depending
14 on the layer of skin, fat and muscle on top of
15 the abdominal cavity?

16 A That is correct.

17 Q And that differs from person to person?

18 A It does but generally speaking, an adult person
19 requires a tremendous amount of force to violate
20 those layers.

21 Q Yeah, of course, but a person that had more fat
22 on their abdominal cavity, it would take more
23 pressure, more force to penetrate that person's
24 abdominal cavity ---

25 A Well, fat -- fat's really not a strength layer

1 ---

2 Q Yeah.

3 A --- of the abdominal cavity. The skin certainly
4 provides some structure. But the fascia which
5 envelopes the muscles of the abdominal cavity is
6 the primary component which retains the integrity
7 of the abdominal wall.

8 Q So the more -- the more muscle a person has, the
9 more force would be needed to penetrate that
10 cavity?

11 A Can't really say that. Again, it revolves back
12 to the fascia which is primarily the strength
13 layer. When we close the belly, we sew fascia.
14 We don't really sew muscle. Stitches pull right
15 through muscle. The pull right through fat. So
16 when we close, we typically try and close the
17 fascia which is the strength layer.

18 Q So the more fascia, the more force that would be
19 needed?

20 A Everybody has a relatively the same amount of
21 fascia.

22 Q And when you -- you essentially performed what I
23 guess was called exploratory laparotomy?

24 A Correct.

25 Q And you had to make a incision, I guess, from the

1 lower of the chest all the way down to the pelvic
2 bone?

3 A Correct.

4 Q And I think that is illustrated by State's 10 if
5 I can find it for a second here. I'm going to
6 show you what's been marked as State's Exhibit
7 10.

8 A Correct.

9 Q That's -- that's the incision you made from the
10 chest down to the pelvic?

11 A That is correct.

12 Q Now she didn't present to with a gash from the
13 chest all the way down to the pelvic bone?

14 A The way she presented to me was this defect to
15 the left of her belly button with bowel hanging
16 out of it and hypotension or low blood pressure.

17 Q So this whole portion on the left is the incision
18 you made?

19 A That is correct.

20 Q So she didn't present with this long incision
21 right here?

22 A She did not.

23 Q Okay. That -- that's the incision you made to do
24 this surgery?

25 A To correct the anomalies associated with the

1 injuries.

2 Q This wound over here?

3 A Correct.

4 Q Okay. And basically you make this, I guess,
5 large incision so you can see whether or not
6 there's been any damage to any of the other
7 organs in the cavity?

8 A Absolutely.

9 Q And you checked to make sure -- I think you found
10 some collections of blood in the cavity there,
11 some hematomas?

12 A Approximately a 500 cc collection of blood in the
13 abdominal cavity.

14 Q And I think you made sure -- I think you noted
15 there was no injuries to Ms. Montgomery's spleen?

16 A That was correct.

17 Q No injuries to the gallbladder?

18 A Correct.

19 Q The liver?

20 A Correct.

21 Q I think you said today, I think there was -- you
22 said there was some damage to the stomach but you
23 didn't note that in your original ---

24 A It is documented in the original -- in the
25 original operative report where there was an

1 injury to the stomach wall itself that we
2 partially -- that we repaired but it wasn't a
3 full thickness injury into the inside of the
4 stomach.

5 Q And you said there was injury to the head of the
6 pancreas, I think?

7 A That is correct.

8 Q And that was, I think, only one centimeter
9 laceration to the head of the pancreas?

10 A It was a stellate (phonetic) laceration so it had
11 multiple kinds of projections of it.

12 Q And I think you noted that the -- the -- is there
13 a main artery in the stomach, you were concerned
14 about, I think, the colotic (phonetic) artery
15 there?

16 A Well, the stab went through her abdominal wall,
17 through the mesocolon ---

18 Q Uh-huh.

19 A --- which is where the blood supply to the colon
20 is demonstrated. The stab went through that just
21 adjacent to the main blood vessel that feeds all
22 the blood to the colon and then stabbed the head
23 of the pancreas.

24 Q So that main blood vessel that feeds the colon,
25 that blood vessel itself was not damaged?

1 A Fortunately not.

2 Q It wasn't?

3 A Fortunately not.

4 Q Okay. And I think you said there were -- after
5 you did all of this exploration, there was no
6 other significant bowel injuries that you hadn't
7 already noted?

8 A Correct. It's not uncommon to operate on someone
9 for a significant stab wound to the abdomen --
10 because the bowel is mobile, frequently it sort
11 of slides out of the way, particularly with a
12 knife or some other sharp penetrating object.
13 Frequently you don't see that with a gunshot
14 wound because the velocity of the bullet as well
15 as the damage can be caused by the shockwave of
16 the bullet causes injury to the bowel. But
17 frequently with stab wounds we don't find
18 injuries to the bowel.

19 Q Now, you had addressed, I think you said there
20 was some wounds on the leg and maybe some other
21 wounds you classified as defensive wounds?

22 A Correct.

23 Q Now were those -- did those wounds require
24 staples or were you able to close those wounds
25 ---

1 A I would have to sort of dig back through and see.
2 Some -- some did, some did not, particularly the
3 wound to the breast did require a skin closure
4 with staples. But many of them were just
5 abrasions or scratches.

6 Q And that wound to the breast, there were no other
7 main arteries or anything ---

8 A The breast is a very vascular structure and it --
9 she bled significantly from that, the breast
10 injury as well.

11 Q But you were able to control that bleeding ---

12 A We were.

13 Q Okay.

14 MR. O'NEIL: Beg the Court's indulgence, Your
15 Honor.

16 THE COURT: Yes, sir.

17 (Pause.)

18 MR. O'NEIL: Nothing further, Your Honor.

19 THE COURT: Anything on redirect?

20 MS. MCDUFFIE: Briefly, Your Honor.

21 REDIRECT EXAMINATION

22 BY MS. MCDUFFIE:

23 Q Dr. Franga, could you tell the jury one more time
24 what happened when Ms. Montgomery was stabbed,
25 where did the track wound go or where did the

1 object to in her body?

2 A I think it would be easier if I just sort of
3 stood up and kind of showed you, if that's okay.

4 THE COURT: Yes, sir.

5 A The -- obviously my belly button's here
6 (indicating). The injury was here (indicating).
7 The head of the pancreas is here (indicating),
8 okay. And it's roughly a 12 inch or so track
9 from the skin to the head of the pancreas. The
10 pancreas rests actually all the way to the back.
11 So it's to the right and to the very back of the
12 abdominal cavity (indicating).

13 Q And were these life threatening injuries?

14 A They were.

15 Q And had she received -- had she not received such
16 competent treatment would -- could this have been
17 deadly?

18 A It could have.

19 MS. MCDUFFIE: No further questions, Your
20 Honor?

21 THE COURT: Anything further?

22 MR. O'NEIL: No, sir.

23 THE COURT: All right, you may step down,
24 Doctor.

25 THE COURT: Before you go, can I speak to you

1 for just a minute up here?

2 THE WITNESS: Sure.

3 THE COURT: Has nothing to do with the case.

4 (Laughter.)

5 (Conference with Dr. Franga and Judge in the
6 presence of the jury but out of the hearing of the
7 jury.)

8 MS. MCDUFFIE: Your Honor, may we approach?

9 THE COURT: Yes, yes, ma'am.

10 (Whereupon, a bench conference was held off
11 the record, in the presence of the jury, but out of
12 the hearing of the jury.)

13 THE COURT: Members of the jury, there's a
14 matter I need to take up with the lawyers. The only
15 way I can do that is in your absence. I did get them
16 whispering up here, so. I'm going to send you out.
17 I ask you not to talk about this case. I'll bring you
18 back in shortly.

19 (The jury retires from the courtroom at
20 approximately 10:40 A.M.)

21 THE COURT: I think you were about to say --
22 and I couldn't hear, that's why I sent them out. It
23 seemed a little bit more complicated. The next two
24 witnesses, I think you indicated, the Defendant made
25 some self-serving statements, is that what you said?

1 MS. MCDUFFIE: Yes, sir, Your Honor. The
2 next two witnesses are Mary and Vanessa Montgomery
3 which would be the victim's grandmother and sister.
4 They got a call from Deanna Richardson that morning of
5 this incident. Ms. Richardson said she promptly
6 needed to come up here and needed to get the children.

7 They go up there. The Defendant is at the
8 home that he shared with the victim. The Defendant
9 then said, I'll show you where the hospital is and in
10 the car makes the statement that they were arguing.
11 She got the screwdriver from him and she stabbed
12 herself.

13 Your Honor, we believe that this statement is
14 self-serving and we make a motion to preclude its
15 introduction.

16 MR. COOPER: I do not oppose that, Your
17 Honor.

18 THE COURT: Beg your pardon?

19 MR. COOPER: I'm not in opposition to that. I
20 don't oppose it.

21 THE COURT: Okay, that was easy. What's the
22 next one?

23 MS. MCDUFFIE: That was it, Your Honor.

24 THE COURT: Is that it?

25 MS. MCDUFFIE: That's it.

1 MR. O'NEIL: Yes, on that issue.

2 THE COURT: Okay. What's the next issue?

3 MR. O'NEIL: I would put my objection that we
4 had ---

5 THE COURT: Oh, yeah, the sidebar too, you
6 objected to -- I say sidebar too, you objected to the
7 introduction of Exhibits 11, 12, 13 and 14 under 403
8 and 901, you said?

9 MR. O'NEIL: Well, actually it's State's 11
10 and 15.

11 THE COURT: 11 and 15?

12 MR. O'NEIL: Yes, Your Honor.

13 THE COURT: All right, 11 and 15.

14 MR. O'NEIL: And I guess I'll pass it up to
15 Your Honor so ---

16 THE COURT: Yes, sir.

17 MR. O'NEIL: --- so we can go ahead and talk
18 about it.

19 THE COURT: And the basis of it is?

20 MR. O'NEIL: 901 and 403, Your Honor.

21 THE COURT: Okay. I thought I said that and
22 you said no. Go ahead.

23 MR. O'NEIL: I thought I said my objection
24 was 901 and 403. Basically, I objected to 11 and 15
25 for the same reason we objected to State's 10. 16

1 shows the large -- the large wound, I guess ---

2 THE COURT: The incision.

3 MR. O'NEIL: Yes, sir and that's not how --
4 that's not indicative of the stab wound she received,
5 so ---

6 THE COURT: I think you covered that on
7 cross-examination.

8 MR. O'NEIL: Yes, Your Honor.

9 THE COURT: All right.

10 MR. O'NEIL: That was my same objection.

11 THE COURT: All right that's fine.

12 MR. O'NEIL: That's why we objected because
13 they don't fairly and accurately represent the actual
14 wounds she had.

15 THE COURT: All right. It's rare that you
16 get the actual wounds committed by an assailant, that
17 you have pictures of them.

18 MR. O'NEIL: Yes, sir.

19 THE COURT: I mean, I doubt -- in a hundred
20 cases you might have one of two. But usually the
21 victim is dead when you get pictures of the wounds
22 before they're operated on.

23 So you covered it on cross-examination. You
24 had a chance to cross-examine the doctor and I think
25 you did a good job explaining, these are the staples,

1 these are the incisions he had to make to save her
2 life basically.

3 So your objection is noted but that's the
4 reason I let them in.

5 MR. O'NEIL: Yes, sir.

6 THE COURT: You know, that's all I can. I
7 let you make your objection, unless you want to add
8 something else.

9 MR. O'NEIL: No, sir.

10 THE COURT: Under 403 and 901, that's about
11 all I can do.

12 MR. O'NEIL: Yes, sir.

13 THE COURT: But I think they're appropriate
14 to go in under the circumstances, particular when the
15 issue here and will always be probably whether or not
16 he tried to kill her or whether or not it was
17 aggravated assault and battery.

18 And so far the evidence would indicate
19 assault and battery with intent to kill in my opinion
20 but as I stated here today, I'm not asked to make a
21 decision on that.

22 But I understand your position and I provided
23 you with an opportunity to make your argument on the
24 record.

25 MR. O'NEIL: Yes, sir.

1 THE COURT: Anything further? Anything y'all
2 want to add?

3 MS. WEISS: No, Your Honor.

4 THE COURT: By the way, I would do same the
5 thing if I were you.

6 MR. O'NEIL: Yes, sir.

7 THE COURT: That's part of your job.

8 Let's take a little short break and we'll
9 bring you back. You've got what three or four more --
10 four?

11 MS. MCDUFFIE: Five.

12 MS. WEISS: Five more total.

13 THE COURT: Five. I thought the doctor would
14 be a lot longer. So that's good. And the others?

15 MS. MCDUFFIE: Should be shorter than that.

16 THE COURT: Should be shorter than the
17 doctor?

18 MS. MCDUFFIE: Yes, sir.

19 THE COURT: I don't know but it doesn't
20 matter.

21 MS. WEISS: The only other issue is the
22 scheduling issue. We were going to see if when we do
23 finish the testimony, depending obviously on whether
24 or not they put up a case, if we could try to close in
25 the morning just because Mr. McCracken is actually

1 needed in the other -- in the murder trial.

2 THE COURT: Well, let's run this trial based
3 on Investigator McCracken's schedule. In a case as
4 important as this, I don't care what time we finish,
5 I'll give everybody an opportunity to work on their
6 closing argument overnight. Is that good enough?

7 MS. WEISS: Yes ---

8 THE COURT: So don't worry about that ---

9 MS. WEISS: --- thank you, Your Honor.

10 THE COURT: --- be finished at 2:00. When
11 you consider the, like I said, seriousness of the
12 offense, the seriousness of the penalty, I'm not going
13 to rush anybody, so.

14 MS. WEISS: Thank you, Your Honor.

15 THE COURT: If we finish early, we'll stop
16 and give you a chance, both sides, to prepare as well
17 as they can for the closing.

18 So, that's how it will work. Anything else?

19 MS. WEISS: No, Your Honor.

20 MR. COOPER: No, Your Honor.

21 THE COURT: All right, let's give you about
22 five minutes to run to the restroom. We'll come back
23 and get started.

24 (The Court was in recess.)

25 THE COURT: Are y'all ready?

1 MR. COOPER: Yes, Your Honor.

2 MS. WEISS: Yes, Your Honor.

3 THE COURT: Invite the jury to come in,
4 please.

5 (The jury returned to the courtroom at
6 approximately 10:57 A.M.)

7 THE BAILIFF: Jury's all present, Your Honor.

8 THE COURT: All right. Welcome back, Madam
9 Forelady and members of the jury.

10 Ms. Weiss.

11 MS. WEISS: Thank you, Your Honor. The State
12 calls Mary Montgomery.

13 (MARY MONTGOMERY, after being duly sworn,
14 testified as follows:)

15 THE CLERK: Please have seat state your full
16 name for the record.

17 DIRECT EXAMINATION

18 BY MS. WEISS:

19 Q Will you please state your name for the record
20 --state your name for the record, please?

21 A Mary Montgomery.

22 Q You may want to pull the microphone a little bit
23 closer to you.

24 A Mary Montgomery.

25 Q There you go. Good morning, Ms. Montgomery, how

1 are you?

2 A I'm good.

3 Q Ms. Montgomery, if you will, please tell the jury
4 a little bit about yourself. How old are you?

5 A 78 ---

6 THE COURT: You shouldn't ask that question,
7 Ms. Weiss.

8 (Laughter.)

9 A 78.

10 Q And where are you from?

11 A Salters, South Carolina.

12 Q You lived several years away from Salters. Where
13 did you go?

14 A I lived in Washington for about 30 years then I
15 came back home.

16 Q And how long have you been back in Salters?

17 A About 12 years.

18 Q What is your relationship to Detra Montgomery?

19 A She's my granddaughter.

20 Q And are you pretty close to her?

21 A Beg your pardon?

22 Q Are you pretty close to her, personally, a close
23 relationship?

24 A Yes, very good.

25 Q And actually you -- you pretty much raised Detra?

1 A I did. I did. She lived with me until she was
2 18, I think.

3 Q Ms. Montgomery, I'm going to take you back to
4 March 31st of 2007. Do you remember receiving a
5 phone call that day, early that morning?

6 A Yes, ma'am.

7 Q If you would, tell the jury who called you that
8 morning?

9 A Well, we call -- I call her Dee Dee. She lived
10 next door to my granddaughter, across the hall
11 from her. And she called me that morning.

12 Q And what did she tell you when she called you?

13 A She told me Dee Dee was in the hospital and I
14 needed to come and get the children.

15 Q So the person who called you was Dee Dee?

16 A Yeah.

17 Q Deanna Richardson, the neighbor, and said that
18 Dee Dee, which is your granddaughter, was in the
19 hospital?

20 A Yeah, her name is Dee -- yeah.

21 Q Okay. Just want to make sure. And what did she
22 say -- she said she was in the hospital and then
23 what did she ask you to do?

24 A Well, we didn't go straight to the hospital. We
25 went to get some clothes for the kids and the

- 1 door was locked. So Dee Dee ---
- 2 Q The door to you granddaughter's apartment?
- 3 A Yes.
- 4 Q Okay. And then what did you do?
- 5 A The oldest boy Mark, he went in through the
- 6 window. And when we got in through the -- when
- 7 he got in through the window and opened the door,
- 8 Louis was sitting in the corner.
- 9 Q Sitting in the corner?
- 10 A I don't know whether he was in a chair or on the
- 11 bed or whatever. But he was sitting over there
- 12 in the corner.
- 13 Q And did -- did you know where to go or are you
- 14 familiar with Columbia?
- 15 A No we don't -- I don't.
- 16 Q And are your familiar with the hospitals in
- 17 Columbia?
- 18 A No.
- 19 Q So did you have any idea where to go to find your
- 20 granddaughter?
- 21 A No, I did not.
- 22 Q And how did you end up figuring out where to go?
- 23 A Louis told me that he knew where she was and he
- 24 knew how to get to the hospital.
- 25 Q Okay.

1 A And we took him there.

2 Q And at this point did you know any of the details
3 of what had happened with your granddaughter?

4 A No didn't.

5 Q And who went to hospital, who got in your car and
6 went to the hospital?

7 A Yes, ma'am.

8 Q Who did? Who got in it?

9 A Louis.

10 Q And who else?

11 A And my granddaughter Vanessa.

12 Q And you?

13 A And me, yeah.

14 Q Where did the children stay?

15 A They stayed at Dee Dee place until we came back
16 and got them.

17 Q And did you go straight to your granddaughter's
18 room at the hospital?

19 A No, we didn't. We had some trouble trying to
20 find her and, you know, where she was and
21 everything. And we talked to different people,
22 an officer, I don't know his name but quite a few
23 people before we could get to her.

24 Q And did Louis come back with you to talk to your
25 granddaughter?

1 A Well, they talked but I don't know what they said
2 and I don't remember what they said but they
3 talked.

4 Q She -- he and Vanessa?

5 A Yes, ma'am.

6 Q But he never came back to the room -- to Dee
7 Dee's room?

8 A No, ma'am.

9 Q And do you know where he went, do you have any
10 idea?

11 A I don't know -- well, I left him sitting in a
12 room out there. And whenever I came back, he was
13 gone.

14 Q Thank you.

15 MS. WEISS: Beg the Court's indulgence.

16 THE COURT: Yes, ma'am.

17 MS. WEISS: I have no further questions for
18 the witness, Your Honor. Please answer any questions
19 the Defense may have.

20 MR. COOPER: Your Honor, I have no questions
21 for this witness.

22 THE COURT: All right. You may step down,
23 Ms. Montgomery. Thank you, ma'am.

24 (The witness leaves the witness stand.)

25 MS. WEISS: Your Honor, just beg the Court's

1 indulgence just a moment. We just had -- there's --
2 the sister is sequestered and she has her child with
3 her so we had to go get her and bring her down. So it
4 will be just a moment.

5 THE COURT: We're fine.

6 MS. WEISS: Thank you.

7 THE COURT: It's okay.

8 MS. WEISS: Your Honor, I ask that
9 Ms. Montgomery be excused.

10 THE COURT: Sure.

11 MR. COOPER: No objection.

12 THE COURT: All right.

13 (Pause.)

14 MS. MCDUFFIE: May it please the Court, Your
15 Honor. The State would call Vanessa Montgomery.

16 THE COURT: Come around, Ms. Montgomery.

17 (VANESSA MONTGOMERY, after being duly sworn,
18 testified as follows:)

19 THE CLERK: Please have a seat and state your
20 full name for the record.

21 DIRECT EXAMINATION

22 BY MS. MCDUFFIE:

23 Q Please state your name for the record.

24 A Vanessa Montgomery.

25 Q Good morning, Vanessa. Where do you currently

- 1 live?
- 2 A In Salters, South Carolina.
- 3 Q And how long have you lived in Salters?
- 4 A About nine years.
- 5 Q Since 2000?
- 6 A 2000.
- 7 Q And why did you move to Salters?
- 8 A I wanted to be close to my grandmother.
- 9 Q And your grandmother is whom?
- 10 A Mary Montgomery.
- 11 Q And how are you related to Detra Montgomery?
- 12 A She's my sister.
- 13 Q And what do you do in Salters? Do you work or go
- 14 to school?
- 15 A Work and go to school
- 16 Q And where do you work?
- 17 A I work at Anderson (phonetic) Primary School.
- 18 Q And what do you do at Anderson Primary?
- 19 A I'm a sub teacher.
- 20 Q And you're also going to school?
- 21 A Yes.
- 22 Q For what?
- 23 A Nursing.
- 24 Q And how long you been going to nursing school?
- 25 A Since January.

1 Q Back in March -- on March 31st of 2007, did you
2 have an occasion to come up to Columbia that day?

3 A Yes.

4 Q And why was that?

5 A To see about my sister.

6 Q And what ---

7 MR. COOPER: Your Honor, may we approach?

8 THE COURT: Yes, sir.

9 (Whereupon, a bench conference was held off
10 the record, in the presence of the jury, but out of
11 the hearing of the jury.)

12 MS. MCDUFFIE: Vanessa, we're going to -- can
13 you slide that microphone to you and speak real loudly
14 into it so we can make sure everyone hears.

15 THE COURT: If y'all have trouble hearing,
16 just let me know. Speak a little louder, please, Ms.
17 Montgomery.

18 THE WITNESS: (No response.)

19 THE COURT: Did you hear me?

20 THE WITNESS: Yes.

21 THE COURT: Okay, just a little bit louder.

22 Q And, Vanessa, why did you come to Columbia on
23 March 31st of 2007?

24 A To see my sister.

25 Q And what if anything did you know at that time?

- 1 A She was hurt.
- 2 Q And who did you come up to Columbia with?
- 3 A My grandmother.
- 4 Q And did you drive or did your grandmother drive?
- 5 A I drove.
- 6 Q And do you know your way around Columbia well?
- 7 A No.
- 8 Q Did you know how to get to your sister's
- 9 apartment?
- 10 A Yes.
- 11 Q And did you know Louis Gainey?
- 12 A Yes.
- 13 Q How many times had you seen him before?
- 14 A Probably about five or six.
- 15 Q Talked to him?
- 16 A Yes.
- 17 Q Recognized him by name and sight?
- 18 A Yes.
- 19 Q When you arrived at your sister's apartment, did
- 20 you see her children?
- 21 A Yes.
- 22 Q Where were they?
- 23 A In the yard.
- 24 Q In who's yard?
- 25 A Around the yard, Dee Dee's yard.

- 1 Q Between the apartments kind of?
- 2 A Yeah.
- 3 Q And did you see Deanna Richardson?
- 4 A Yes.
- 5 Q And did you have a chance to speak with her?
- 6 A Yes.
- 7 Q For a while?
- 8 A Uh-huh.
- 9 Q And what did y'all do after that?
- 10 A Go to my sister's house and to my sister's
- 11 apartment.
- 12 Q And why did y'all go there?
- 13 A My grandmother told me to come over there.
- 14 Q And were you going to get clothes and things for
- 15 the children?
- 16 A Yes.
- 17 Q And did you see Louis Gainey ---
- 18 A Yes.
- 19 Q --- there? And did you know which hospital your
- 20 sister was in?
- 21 A No.
- 22 Q And even if you'd known, would you have known how
- 23 to get there?
- 24 A No.
- 25 Q And how did you get to the hospital that day?

- 1 A Louis showed me.
- 2 Q Did he ride in your car?
- 3 A Yes.
- 4 Q And did he come into the hospital with y'all?
- 5 A Yes.
- 6 Q When you got to Richland Memorial Hospital, did
7 you have to check in at a desk or a nurse's
8 station?
- 9 A Yes.
- 10 Q And did the Defendant provide his name to the
11 nurse?
- 12 A No.
- 13 Q Did he provide another name?
- 14 A Yes.
- 15 Q And after you checked in at the nurse's station,
16 what did you then do?
- 17 A Sit and wait to see Dee Dee.
- 18 Q And did someone come out to get you to take you
19 back to your sister's room?
- 20 A Yes.
- 21 Q Do you remember who that was?
- 22 A I don't remember his name.
- 23 Q But an employee of the hospital?
- 24 A Yes.
- 25 Q And did he walk you back to his sister's room?

1 A Yes.

2 Q And what happened when he was walking y'all back
3 there?

4 A He asked me about the person sitting in the
5 waiting room.

6 Q And did you inform him of who he was?

7 A Yes.

8 Q And what did you say?

9 A He -- he said, what's the guy's name sitting in
10 the waiting room. And I said, Louis.

11 Q And then did you get a chance to visit with your
12 sister?

13 A Yes.

14 Q And what if anything happened after that?

15 A I visited with my sister for a little while and
16 then an employee of the hospital took me
17 downstairs to the bottom level floor or whatever,
18 and then he pointed and he said is that the guy,
19 you know, Louis. And I said, yeah. I saw him
20 through the window.

21 Q And the person who rode with you to the hospital
22 and who you knew as Louis Gainey, do you see him
23 in the courtroom today?

24 A Yes.

25 Q And can you please point him out to the jury?

1 A (Indicated.)

2 Q And what is he wearing?

3 A A gray suit.

4 Q And what ---

5 A Yellow-speckled tie.

6 MS. MCDUFFIE: Your Honor, please let the
7 record reflect she's identified the Defendant.

8 THE COURT: All right.

9 Q And after that, did you see the Defendant
10 anymore?

11 A No.

12 Q And did you have a chance to further visit with
13 your sister?

14 A Yes.

15 MS. MCDUFFIE: Beg the Court's indulgence.

16 THE COURT: Yes, ma'am.

17 (Pause.)

18 MS. MCDUFFIE: No further questions at this
19 time.

20 THE COURT: All right..

21 MR. COOPER: Please the Court, Your Honor.

22 THE COURT: Yes, sir, Mr. Cooper.

23 CROSS-EXAMINATION

24 BY MR. COOPER:

25 Q Thank you for coming today, ma'am. Louis is the

1 one that told y'all how to get to the hospital,
2 right?

3 A Yes.

4 Q And he went there willingly with y'all in your
5 car, right?

6 A Yes.

7 MR. COOPER: Thank you, ma'am, nothing
8 further.

9 THE COURT: Anything further of this witness?

10 MS. MCDUFFIE: No, sir, Your Honor.

11 THE COURT: You may step down, Mr.
12 Montgomery.

13 MS. MCDUFFIE: We ask that she be excused.

14 THE COURT: I'm sure without objection.

15 MR. COOPER: Yes, sir.

16 (The witness leaves the witness stand.)

17 MS. WEISS: The State calls Brian Smith.

18 (J. BRIAN SMITH, after being duly sworn,
19 testified as follows:)

20 THE CLERK: Please have a seat and state your
21 full name for the record.

22 THE WITNESS: James Brian Smith.

23 DIRECT EXAMINATION

24 BY MS. WEISS:

25 Q Good morning, Brian?

- 1 A Good morning.
- 2 Q You go by Brian, right?
- 3 A That's correct.
- 4 Q Brian, where are you currently employed?
- 5 A Palmetto Health Richland Memorial Hospital.
- 6 Q And how long have you been there?
- 7 A 18 years.
- 8 Q And where -- what area are you currently employed
- 9 in?
- 10 A I'm in the Department of Guest Services.
- 11 Q And are you assigned to a specific floor?
- 12 A I am the Patient Liaison Coordinator in the
- 13 critical care waiting area on the 5th floor.
- 14 Q Prior to that, in your 18 years, where have you
- 15 been assigned at the hospital?
- 16 A I also worked in the admitting office.
- 17 Q And how long have you been with Guest Services?
- 18 A Almost nine years.
- 19 Q And what are your general duties as Patient
- 20 Liaison with Guest Services?
- 21 A I greet visitors, family members. I take
- 22 requests from patients. We take complaints as
- 23 far as if there are care issues involved. If we
- 24 have family requests to speak to physicians or to
- 25 speak to nurses, we go ahead and pass those along

1 to those particular parties.

2 Q And are you -- how long have you been with the
3 critical care I C U unit, the 5th floor?

4 A Since I started with Guest Services.

5 Q Okay, so eight years?

6 A That's correct.

7 Q And you see all sorts of traumas come into ICU?

8 A That's correct.

9 Q And you actually see stabbings and shootings and
10 things like that on a regular basis?

11 A We have patients that come to our floor, yes, on
12 a regular basis.

13 Q Okay. And do some of these require a higher
14 level of security?

15 A I don't know that I would say a higher level of
16 security but when a patient comes in, they are
17 originally listed as a trauma patient with a
18 trauma number.

19 Q Okay. And are you given precautions as to some
20 of those as far as who can come visit them?

21 A That's correct. If the nurse is asked that
22 certain visitors not visit or if a family -- or
23 immediate family member who is responsible for
24 that patient has asked that we not have a
25 particular visit -- visitor -- or visitor visit,

1 then we follow those requests. Or if the patient
2 themselves has asked that they not have a
3 particular visitor, then we go ahead and follow
4 those requests.

5 Q And you find this occurs in criminal cases?

6 A We do have crime victims that come to our floor,
7 that's correct.

8 Q And you're given warning as far as who can visit
9 some of them, especially in ongoing cases?

10 A From time to time, yes.

11 Q And you were working there in March of 2007?

12 A That's correct.

13 Q And going back, when you were in the admitting
14 office, you found there were -- there were times
15 where when you had to put patients under.-- that
16 would come in under a trauma number?

17 A That's correct.

18 Q And can you tell the jury what happens once they
19 come in, they're given a trauma number and then
20 what usually happens with those numbers?

21 A The -- at a later time the physician will dictate
22 an order or write an order to have that trauma
23 number switched to a patient's name.

24 Q And usually those numbers are changed to an
25 actual -- a person's actual name?

1 A In some cases, yes.

2 Q And in some cases are they given a different
3 name?

4 A Yes, occasionally they are.

5 Q Okay. And do you have those happen for security
6 reasons, would that be one of the reasons you'd
7 be given a different name?

8 A Yes.

9 Q And what is the thinking behind that?

10 A If the physician or the patient themselves ask
11 that the patient be put under a alias, then those
12 requests are forwarded through I believe
13 administration and then through the admitting
14 office.

15 Q And what would be the purpose of that for
16 security reasons?

17 A To protect the patient's identity.

18 Q And when is that -- I guess when somebody comes
19 in, they're asking for a patient, that patient's
20 unable to be found in the system by name?

21 A If the patient has -- under an alias, they would
22 need the alias name, yes, or the patient's room
23 number.

24 Q And that's one way that you can kind of check
25 who's coming in to visit the patient as well?

1 A Normally we ask who the patient they're coming to
2 see. And we ask the room number that their
3 patient's in, or at least the name of the
4 patient, yes.

5 Q And if they don't have that information, they
6 don't have the alias, they don't have the room
7 number, what do you do next on the critical care
8 floor?

9 A Well, normally we refer them to the immediate
10 family to speak to them.

11 Q Okay.

12 A Or if the patient has opted not to be listed in
13 our hospital directory for privacy reasons, then
14 we ---

15 Q If you find that they are immediate family, do
16 you take information as to who they are? Would
17 that be part of your duties sometimes?

18 A Occasionally, if it's an immediate family member
19 who does not have that information then -- and if
20 the patient is able to let us know that they are,
21 then -- and we can release that information to
22 them, then yes.

23 Q Okay. And what type of information do you get
24 from visitors when they come in?

25 A Usually the name and the relationship to the

1 patient.

2 Q Back in March of 2007, you were working in the
3 same capacity?

4 A That's correct.

5 Q And do you recall a situation involving Detra
6 Montgomery?

7 A I don't recall that particular patient's name. I
8 do recall -- I do recall that there was a
9 situation where we had a patient that we were
10 directed to not let the patient's boyfriend
11 visit.

12 Q Okay. And do recall family members and the
13 boyfriend coming up to try to visit the patient?

14 A I do recall that there was a friend that had come
15 up and family members also.

16 Q Okay. And what did you do to try to discern
17 whether or not that friend was the person you
18 were looking for?

19 A We -- I first checked with the nurses and then I
20 checked with the family to determine if this
21 particular person was a friend or a boyfriend.

22 Q And what did you find out?

23 A The family instructed me that it was a boyfriend.

24 Q And what did -- what did you do next, either
25 personally or direct somebody to do once you

1 figured that out?

2 A I went ahead and went back and told the nurses
3 that the boyfriend was here and on our floor.

4 Q And what did -- what was the protocol at that
5 point?

6 A Normally security is alerted at that point.

7 Q Okay. And did you ever have the opportunity to
8 talk to the boyfriend personally?

9 A I believe I asked him his -- his relationship
10 with the patient. And I believe he said friend,
11 to the best of my knowledge.

12 Q After you found out he was the boyfriend, did you
13 go back out to try to direct them directly?

14 A I don't remember.

15 MS. WEISS: Thank you. No further questions
16 for this witness.

17 MS. O'NEIL: (Negative response.)

18 THE COURT: All right. You may step down,
19 sir.

20 (The witness leaves the witness stand.)

21 MS. WEISS: Your Honor, may the witness be
22 excused?

23 THE COURT: Sure. Call your next witness.

24 MS. MCDUFFIE: The State would call Jarvis
25 Borum.

1 (JARVIS A. BORUM, after being duly sworn,
2 testified as follows:)

3 THE CLERK: Please have a seat and state your
4 full name for the record.

5 THE WITNESS: (No response.)

6 DIRECT EXAMINATION

7 BY MS. MCDUFFIE:

8 Q Good morning, Officer Borum, how are?

9 A All right.

10 Q Please answer -- I'm sorry, please state your
11 full name for the record.

12 A Jarvis A. Borum.

13 Q And ---

14 THE COURT: Now, you're going to have to
15 speak up, Mr. Borum, all right?

16 THE WITNESS: All right.

17 THE COURT: Okay.

18 Q Officer Borum, where are you currently employed?

19 A I'm currently employed at the Department of
20 Mental Health, Public Safety.

21 Q And what are your duties at the Department of
22 Mental Health?

23 A Basically policing the area, basically law
24 enforcement. And we assist with patients.

25 Q And how long have you been there?

1 A Two and a half years.

2 Q And in March of 2007, where were you employed?

3 A Palmetto Health Richland Security.

4 Q And what were your duties with Palmetto Health?

5 A Security officer. Primarily we patrolled the
6 area, escort patients to their cars, you know.
7 Assist with, you know, irate patients.

8 Q And before that where -- tell the jury where you
9 attended college?

10 A North Carolina State.

11 Q And after college, what did you do?

12 A Played in Arizona for a year.

13 Q In the NFL?

14 A Yes.

15 Q And then after that where did you go?

16 A Miami for a year but I was -- that's when I got
17 injured.

18 Q And then after you were injured, you came back
19 here?

20 A No. After I -- after I -- after Miami, I moved
21 to North Carolina and then I came back to South
22 Carolina.

23 Q And then you got into security?

24 A Yes.

25 Q And on March the 31st of 2007, were you called to

1 the 5th floor of Palmetto Richland Hospital?

2 A Yes.

3 Q Did you remember why?

4 A We've received the call that there was a stab
5 victim got moved from -- moved to the I C U and
6 the person that -- that did the stabbing was
7 possibly on the 5th floor.

8 Q And did you go up to the 5th floor?

9 A Yes.

10 Q And did you see the person or the -- that you
11 were looking for on the 5th floor?

12 A No, we just missed him. So we had to get
13 redirected to him through our control room
14 officer.

15 Q And did you eventually make contact with this
16 individual?

17 A Right.

18 Q And do you remember that person's name?

19 A Yes.

20 Q And what is it?

21 A Louis Gainey.

22 Q And you made contact with Mr. Gainey?

23 A Yes.

24 Q And what were you trying to do or what was your
25 goal when you made contact with him?

- 1 A Well, just to stall for time to see if, you know,
2 if this in fact, you know, was a positive ID, if
3 we got the person. And, you know, just to stall
4 for time.
- 5 Q Until what?
- 6 A Till one, we got the positive ID and to call the
7 authorities.
- 8 Q So that either the Richland County Sheriff's
9 Department or Columbia Police Department ---
- 10 A Right.
- 11 Q --- whoever's case it was? And where did you
12 encounter Mr. Gainey?
- 13 A We encountered -- we found Mr. Gainey in the
14 valet area of the emergency room, the outside
15 area. And, you know, we found him when we, you
16 know, the -- excuse me, the console operator
17 alerted us to his presence. I mean, we were
18 close and then once we approached him, you know,
19 they said, bingo, that's it.
- 20 Q And so you tried to hold him or stall until the
21 police got there?
- 22 A Right.
- 23 Q And what if anything did Mr. Gainey do?
- 24 A He kept -- I guess he was trying to get moved
25 toward the street. We moved from -- he started

1 moving from the emergency room area to the
2 Medical Park Eight parking lot. He claimed that
3 his -- he left some belongings in his car which
4 was ---

5 Q And so y'all followed him to a vehicle or in that
6 direction?

7 A Yeah, in that direction. He said it was in the
8 Medical Park Four parking lot.

9 Q And then y'all continued to pursue him and he
10 went to his car?

11 A Yeah, we stayed with him. We stayed in -- not
12 far from him and we obviously didn't want him to,
13 you know, leave -- leave the area, so.

14 Q And at some point did he try to elude you or --
15 and try and run?

16 A Yes, he did.

17 Q And did he run from you?

18 A Yes, he ran.

19 Q And were you able to catch him?

20 A Yes.

21 Q And did you then hold him until the City of
22 Columbia Police Department arrived?

23 A Yeah. We -- we caught up to him and placed cuffs
24 on him. And then we brought him back to the --
25 well, we actually brought him back to the outside

1 of the -- I believe it was the Heart Hospital, we
2 brought him to the outside of the Heart Hospital
3 and sat him down. And then I believe we waited
4 for the -- well actually C P D came and met us
5 out in front of the Heart Hospital.

6 Q And you confirmed that it was in fact Louis
7 Gainey?

8 A Right.

9 Q And the individual that you -- tried to elude you
10 and ran from you, do you see him in the courtroom
11 today?

12 A Yes.

13 Q Can you please identify him for the Court?

14 A He's right there (indicating).

15 Q And what is he wearing?

16 A He's wearing glasses.

17 Q What color is his tie?

18 A Tan, I guess.

19 MS. MCDUFFIE: Your Honor, please let the
20 record reflect he's identified the Defendant.

21 THE COURT: All right.

22 MS. MCDUFFIE: No further questions of this
23 witness. Please answer any questions the Defense may
24 have.

25 CROSS-EXAMINATION

1 BY MR. O'NEAL:

2 Q Mr. Borum, you say you played football at North
3 Carolina State?

4 A Yes.

5 Q I'm not going to ask you anything about tomorrow
6 but ---

7 THE COURT: I will.

8 (Laughter.)

9 Q You said you got called up to the 5th floor that
10 day?

11 A Right.

12 Q And by the time you got up to the 5th floor, Mr.
13 Gainey wasn't on the 5th floor at that point?

14 A Right.

15 Q He had already made -- made his way down to the
16 parking lot?

17 A Right.

18 Q And when you first initiated contact with him in
19 the parking lot, he wasn't running from you at
20 that point, he was just walking at that point?

21 A No, he was just standing there.

22 Q Oh, he was just standing there ---

23 A Right.

24 Q --- when you first came in contact with him. And
25 then he attempted to walk over to his -- well, he

1 said his car was over there?

2 A Right.

3 Q Okay.

4 MR. O'NEIL: Beg the Court's indulgence, Your
5 Honor.

6 THE COURT: Yes, sir.

7 (Pause.)

8 MR. O'NEIL: Nothing further, Your Honor.

9 THE COURT: Anything further?

10 MS. MCDUFFIE: No, sir, Your Honor. We ask
11 that ---

12 THE COURT: Who's going to win the game
13 tomorrow night?

14 THE WITNESS: I have no idea.

15 (Laughter.)

16 THE WITNESS: I'll be at work.

17 THE COURT: Thank you, Mr. Borum.

18 (The witness leaves the witness stand.)

19 THE COURT: He wants to be excused so he can
20 go to the game tomorrow night, is that right?

21 MS. MCDUFFIE: Absolutely, Your Honor.

22 MR. COOPER: Without objection.

23 THE COURT: That's fine. He can be excused.

24 MS. WEISS: Your Honor, can we approach?

25 THE COURT: Yes.

1 (Whereupon, a bench conference was held off
2 the record, in the presence of the jury, but out of
3 the hearing of the jury.)

4 THE COURT: All right, Madam Forelady and
5 members of the jury, I've got good news and I've got
6 bad news. Which would you like to hear first?

7 JURORS: The good news -- bad news.

8 THE COURT: Bad news, okay. We're going to
9 break for lunch now. I have some other matters I need
10 to take up that's going to take a little while. And
11 the State might have one more witness.

12 And so, I'm going to break for lunch now.
13 It's 11:30, 12:30, 1:00, is that good enough for
14 y'all?

15 MS. WEISS: Yes, sir.

16 THE COURT: All right. So, I ask that you be
17 back in the jury room at 1:00. And I think there's a
18 good chance we might conclude the testimony today.
19 We'll see.

20 I hope you have a pleasant lunch and just be
21 back at 1:00. Don't talk to anyone and keep your
22 juror badges on during the course of your lunch break
23 so no one will inadvertently come up and say something
24 to you they shouldn't.

25 All right. Good luck to you, thank you.

1 (The jury retires from the courtroom at
2 approximately 11:35 A.M.)

3 THE COURT: All right. Anything else we need
4 to take up? 1:00 is good enough for everybody. Talk
5 to Mr. Gainey and see what your intentions are. I've
6 got to go through it if he doesn't want to take the
7 stand, so.

8 So, I'll see y'all back at 1:00.

9 MS. WEISS: Thank you, Your Honor.

10 (The Court was in recess.)

11 THE COURT: Anything we need to talk about
12 before the jury comes back in?

13 MR. COOPER: No, Your Honor.

14 MS. WEISS: No, Your Honor.

15 THE COURT: All right, you may invite them to
16 come back in.

17 THE BAILIFF: Yes, sir.

18 (The jury returned to the courtroom at
19 approximately 1:17 P.M.)

20 THE BAILIFF: The jury's all present, Your
21 Honor.

22 THE COURT: All right. Welcome back, Madam
23 Forelady and members of the jury. A little bit of
24 delay this afternoon. That's my fault. If the train
25 doesn't run on time, it's the engineer's fault. I'm

1 sort of the engineer of this trial. So don't hold it
2 against anybody but me. It's one of those things.

3 You may call your next witness.

4 MS. WEISS: Thank you, Your Honor. The State
5 calls Investigator Robert McCracken.

6 (ROBERT C. MCCRACKEN, after being duly sworn,
7 testified as follows:)

8 THE CLERK: Please have a seat and state your
9 full name for the record.

10 THE WITNESS: Robert Carol (phonetic)
11 McCracken, Jr.

12 DIRECT EXAMINATION

13 BY MS. WEISS:

14 Q Good afternoon, Investigator McCracken, how are
15 you?

16 A Good.

17 Q Please tell the jury a little bit about yourself.
18 Where are you currently employed?

19 A I am currently employed at the Columbia Police
20 Department. I've been there for 20 years.

21 Q And what did you do before the Columbia Police
22 Department?

23 A I started out as a patrol officer which most
24 people do at the Columbia Police Department. From
25 there I got promoted or actually assigned to

1 Investigations. I worked Regional Investigations.
2 About a year I got promoted to Investigator and
3 continued to work Regional Investigations. They
4 reorganized and later formed a VCAP, what we call
5 VCAP unit. That's Violent Crimes Against Person
6 Unit. I was assigned to that and I've been in
7 there probably three years now.

8 Q And what are your duties as an investigator with
9 the City of Columbia Police Department?

10 A A lot of times I get called out to crime scenes,
11 if we are available and it -- it's necessary for
12 us to come out. And a lot of times we just
13 follow-up on police reports where there's no need
14 for an investigator to respond to a scene. We
15 follow-up on police reports, we gather evidence,
16 gather statements, prepare a case for the
17 Solicitor's office to prosecute.

18 Q So you've been with the City for 20 years?

19 A Yes, ma'am.

20 Q And you began as a patrol officer?

21 A That's correct.

22 Q What are the general duties of a patrol officer
23 when a patrol officer gets called to a scene or
24 responds to a scene?

25 A A patrol officer, when they respond to a scene,

1 especially a violent crime, their first
2 responsibility is safety. The first thing they
3 need to do is make sure obviously their selves
4 are safe so they can do their job. Number two is
5 that the area is safe, that the possible
6 perpetrator is either in custody or away from the
7 scene. And then the third responsibility would
8 be the victim's -- render aid to a victim.

9 After that is done, the next thing is to
10 secure the scene, to make sure that the scene is
11 secured for the proper people to come in and
12 investigate and collect evidence.

13 Q Okay. And if they are responding to a serious
14 crime type of event, an ongoing crime, is it
15 usually just the officer who responds or does
16 somebody else usually respond as well?

17 A No, ma'am. Usually if it's a crime in progress,
18 numerous officers respond to that area and they
19 are -- they are responding to that initial
20 officer. Once the officer calls out that he is
21 okay on the scene, then he can direct those
22 officers to either search for a suspect, call
23 them off, that everything's okay, whatever he
24 determines he needs done.

25 Q Okay. And once -- so he's in charge of the scene

1 when he first arrives ---

2 A Yes, ma'am.

3 Q Then who takes over the scene from that initial
4 officer?

5 A Usually if it's a violent crime or a major crime,
6 a supervisor will arrive on the scene. That may
7 be a sergeant, that maybe a corporal, that may be
8 a lieutenant which is the watch commander. That
9 person would take over the scene from the
10 officer.

11 From that point, an investigator, if an
12 investigator is called. The investigator then
13 takes over that scene until the investigator
14 leaves the scene and he directs what happens
15 regardless of who shows up on the scene.

16 Q Now, whose decision is it to call an
17 investigator, to call out a crime scene, to call
18 out other officers? Who makes that call
19 initially before -- obviously before you're
20 called?

21 A Well if -- if the officer feels he needs
22 assistance then of course he calls for additional
23 officers. Once the supervisor arrives on the
24 scene, he will make a determination whether ID --
25 our ID unit is needed immediately, whether or not

1 to call an investigator or even to notify other
2 people up the chain just for notification
3 purposes.

4 Q I'm going to take your attention now to March
5 31st of 2007.

6 A Yes, ma'am.

7 Q This was very early in on Saturday morning.

8 A Yes, ma'am.

9 Q What were you doing at that time?

10 A I was the evening shift investigator. Back then
11 we had two evening shift investigators. There's
12 always a major crime investigator on duty
13 covering a shift. I was the major crime
14 investigator on duty. We got off at that time I
15 believe it was either 2 or 2:30 in the morning.
16 Our hours have changed since then.

17 Q And the early morning of March 31st, when did you
18 first get notification of the incident that
19 occurred?

20 A I was contacted at about 1:15 in the morning and
21 I would either be contacted by the TR Unit which
22 is our Telephone Response Unit, the front desk,
23 or the supervisor can call me directly because
24 they know who's working as an -- as the
25 investigator on duty.

1 Q And how long did it take you to get to the scene?

2 A I arrived on the scene at 1:22 hours, so it took
3 me seven minutes to get there.

4 Q What did you find when you arrived at [REDACTED]
5 [REDACTED] Street?

6 A Once I arrived on the scene, I am briefed as to
7 what -- what has happened. I learned that the
8 victim in this case was already transported to
9 the hospital with life-threatening injuries. I
10 also learned that there was a witness to this
11 incident that lived -- that was a neighbor to the
12 victim, which turned out to be Ms. Richardson as
13 being the witness.

14 Initially, we looked for a crime scene. I
15 was advised ---

16 Q Okay, let me take you back one second.

17 A Yes, ma'am.

18 Q Who -- you know, when you got there, who was in
19 charge of the scene by the time you got there?

20 A Lieutenant Evans was the one I spoke with.

21 Q Was the initial officer still on the scene?

22 A He had already left to go to the hospital.

23 Q Okay. So who was briefing you on what actually --
24 when you got there?

25 A That -- that would be Lieutenant Evans. He was

1 the watch commander that night.

2 Q Okay, so go ahead. I'm sorry for interrupting
3 you.

4 A Identified the witness. We initially looked for
5 a crime scene. I was advised that they-- they
6 knew the location the incident happened but they
7 could not find any crime scene worth calling an
8 ID tech out because there was nothing there.

9 Q And when you say they, who are you referring to?

10 A Being the lieutenant and the officers that
11 responded to the scene.

12 Q They actually searched for a crime scene?

13 A Yes, ma'am.

14 Q Okay.

15 A And they identified to me where the incident took
16 place which was on the end of the building. I
17 also looked with a flashlight which we have in
18 our cars. I also looked for a crime scene to
19 determine whether there was a need to call our ID
20 Unit out. At that time and even now, our ID Unit
21 does not work that late at night. You have to
22 call them out for a crime. So in order to get
23 him out there, I have to call him out, wake him
24 up, get him dressed, get him in the car to
25 respond. And at that time I didn't find it

1 necessary due to the fact that we could not
2 identify anything that the crime scene tech could
3 do.

4 Q What were you looking for when you were looking
5 for a crime scene?

6 A Blood, weapon, torn clothes, pulled out hair,
7 anything -- anything that we could identify as
8 evidence.

9 Q Did you look by yourself?

10 A I looked as well as other officers had looked.
11 The officers directed me to where -- Lieutenant
12 Evans directed me to where this incident
13 occurred. He stated that they had already
14 looked, could not find anything. That's why they
15 had not initially called ID. Most of the time
16 they will call ID out before they -- at the same
17 time they call me.

18 Q And so then once you're on the scene, whose
19 decision would it be to call ID out?

20 A That would be mine.

21 Q And that night did you ever find any reason to
22 call ID out?

23 A No, ma'am, not to the scene and not to the
24 hospital at that time. And I can explain those
25 reasons later.

1 Q Okay. And as far as a suspect, is it -- one of
2 the officer's initial duties is to make sure the
3 scene is secure, a suspect is not around. What
4 did you do as far as that was concerned?

5 A I'm...

6 Q As far as directing -- I mean, the officer that
7 arrived there testified that a suspect had taken
8 off. What did you do to follow-up on that?

9 A The officers had checked the area for the
10 individual that ran from Officer Catoe. The --
11 they had secured it and stated they could not
12 find the individual. They also -- I also had
13 them walk the street where Officer Catoe observed
14 the Defendant running or the individual running
15 to look for a weapon because we knew obviously
16 that the victim had been cut or stabbed with some
17 means and we knew it had to be a weapon. We had
18 them look where the suspect had run in order to
19 try to find a weapon. And we did not find a
20 weapon.

21 Q Okay. So did you look around the premises for a
22 weapon as well?

23 A I looked around the premise. Now I did not walk
24 up the street with the officers. They did that
25 themselves. I was in the process of getting a

1 statement from the witness.

2 Q And did they track back also other places he had
3 run, where they saw he had run away?

4 A Right. They searched the area rather well. I
5 mean, but you know, for a small item like that,
6 you're in a residential section, it's difficult.

7 Q Was any weapon every located?

8 A No, ma'am.

9 Q What did you do next on the scene?

10 A I took a statement from Ms. Richardson and I
11 talked with her about what happened, just took a
12 basic statement.

13 Q What was Ms. Richardson's demeanor?

14 A She was visibly upset, nervous, concerned about
15 her friend. Also there were several kids that
16 she was having to be responsible for at this
17 point because they were left at the house.

18 Q Okay. And who wrote Ms. Richardson's statement?

19 A I did.

20 Q And Ms. Richardson's statement is actually fairly
21 short considering how much she told us today.

22 A Yes, ma'am.

23 Q Can you explain that?

24 A Yes, ma'am. I mean, obviously if -- if you're
25 talking you -- you are able to articulate a lot

1 more than I can write down on paper. Basically
2 what I did, well, without a lot of time. If you
3 -- if you are -- are transcribing what somebody's
4 saying, it's difficult to say, okay, hold on,
5 I've got to write. Okay, now, go from there, and
6 then you lose your train of thought.

7 What I did with her, and in most statements
8 that I write, is try to get the basic information
9 that I need, the pertinent facts that I need for
10 my case.

11 Q And did she have the opportunity to read over
12 that?

13 A Yes, ma'am. I read it back to her and she read
14 over it.

15 Q And then did she sign that?

16 A Yes, ma'am, she signed it. She -- when I ask
17 them to read over it or when I read back, I
18 always tell them, if there's any point in here
19 that is wrong or incorrect, you stop me, I'll
20 draw a line through it, because I try not to
21 scratch stuff out, I draw a line through it, and
22 I will write down the proper response. And I do
23 that with all my statements.

24 Q And about what time was it that you were able to
25 get her statement?

1 A It had to be probably around 1 -- 1:30 maybe. I
2 mean, 1:30, 1:40 in the morning.

3 Q Okay.

4 A It's -- it's on the statement.

5 Q Okay, that's fine. What did you do next after
6 you got her statement?

7 A Once I got her statement, I did identify the --
8 the -- Mr. Campbell who was in the apartment. I
9 spoke with him also. He was inside the apartment
10 when the -- the incident took place. He did not
11 witness any of the incident. His only
12 involvement was he heard Ms. Richardson screaming
13 for him to call the police. He did stick his
14 head out the door but he wasn't around where --
15 where the incident took place with the suspect
16 and the victim. So he was not really a witness
17 to the incident. So I did not take a written
18 statement from him.

19 From that point I left and went to the
20 hospital to check on my victim.

21 Q Okay. And what did you find when you got to
22 hospital?

23 A I arrived at the hospital, spoke with Officer
24 Catoe. Officer Catoe you've heard from earlier
25 in the trial was the first responding officer.

1 He informed me that Ms. -- the victim had been
2 rushed up to surgery and I knew I wasn't going to
3 be able to speak with her at that time.

4 I spoke with Officer Catoe. He informed me
5 that the victim told him who had committed this
6 act on her. At that point I wanted him to write
7 that down in a statement form and I had him write
8 that in a statement, just that -- who she told
9 him that he did it in case she did not make it
10 through surgery.

11 Q And did you do a long interview with him?

12 A No, ma'am. I mean, he does -- he does the
13 initial report.

14 Q Okay.

15 A And I didn't do a very long interview. I just
16 took down the information I needed.

17 Q Okay. And what did you do next?

18 A From that point I went back to the office. And
19 we have a computer and have access to some
20 websites where we can identify people that live
21 at certain -- at just about any address. The
22 name that I originally came up -- that was told
23 Officer Catoe was Gainer. I pulled that address
24 up, identified the Louis Gainey as living there.
25 He fit the description. I had the information

1 provided to me that that was my -- the suspect I
2 was looking for. And at that time I did an
3 affidavit for a warrant. I have to wait until 6
4 A.M. in the morning for the warrant clerk to come
5 in and get it typed up. Once she came in, I got
6 that typed up and signed.

7 From that point, the warrant is put into our
8 N C I C computer which is the National Crime
9 Information Center or Computer, I'm not sure
10 which. It -- once that information is put in
11 that computer, if he is stopped or the individual
12 is stopped anywhere in the United States and they
13 run his name, date of birth, social security
14 number, a combination thereof, it will come back
15 as a possible wanted person. So I made sure that
16 was done.

17 Q And at the time you got the warrant, what
18 information did you have about the injuries to
19 the victim?

20 A The only thing I knew was that it was life-
21 threatening. And I knew that the officers were
22 concerned -- real concerned because of the fact
23 that her intestines were hanging out.

24 Q Okay. And what did you do next -- well, this was
25 probably about after 2:00 or you said it was ---

1 A This will be 6:00 in the morning.

2 Q Okay.

3 A I had worked the day before, worked all night.

4 So at that point I went home to go to sleep, get

5 some rest because I have to be at work that next

6 afternoon

7 Q Okay. And what did do you once you got home?

8 A I set my alarm clock because the nature of the

9 injuries, it's my responsibility to check on my

10 victim to make sure that, you know, she didn't

11 die or she didn't, you know, take a turn for the

12 worse.

13 So what I did is 11:45, I believe it was

14 11:45 that day I called Richland Memorial

15 Hospital. I spoke with security there trying to

16 locate my victim because I did not get a trauma

17 number at the time. I did talk with security.

18 At that time they said that the boyfriend was up

19 there trying to see her and that -- and I advised

20 him at that point that I had a warrant for his

21 arrest.

22 I told them his name and they said, yes,

23 that's -- that's the one that's up here and we're

24 trying to find him again. I told them if they

25 catch him to detain him and call C P D and have

1 them come out there because he was wanted and had
2 a warrant for him.

3 Q Okay. And going back to the night you went to
4 the hospital -- leaving the scene and went to the
5 hospital, did you talk to security or the nurses
6 or anything about the fact that you were doing
7 this investigation?

8 A I'm sure I did. I don't recall if I specifically
9 told them. But the security -- mostly the nurses
10 when they get a trauma unit, they ask whether or
11 not -- obviously if it's not an accident, they
12 ask whether or not the suspect or the perpetrator
13 is in custody or not and they do that for their
14 security reasons.

15 Q Okay.

16 A But I don't recall specifically telling them.

17 Q Did you attempt to talk to Detra Montgomery when
18 you were up there that night?

19 A I could not because she was in surgery. So I had
20 no -- I mean, I wouldn't be able to talk to her
21 at that time.

22 Q And after you alerted security, what happened
23 next?

24 A I got a phone call back. I can't remember who
25 called me but they said he was in custody.

1 Q Okay. And what did you do next with this case?

2 A The only other thing I did is I followed up with
3 the victim. I did check with her a couple of
4 days later. I believe it was the 2nd, April the
5 2nd, I called out to Richland Memorial Hospital,
6 spoke with her nurse to see how she was --
7 whether she was able to talk and advised the
8 nurse I needed to get a statement from her.

9 The nurse told me that she could. So the
10 next day on April the 3rd I did go to the
11 hospital and I did speak with -- with Detra and
12 got a statement, a written statement from her.
13 And due to her condition, I wrote that statement.

14 Q Okay. And -- but she was also given an
15 opportunity to read over that?

16 A Yes, ma'am, I read it to her.

17 Q And in that statement, did you ask her a lot of
18 questions about anything leading up to that day?

19 A No, ma'am. I asked her what happened as far as
20 her getting stabbed and...

21 Q And were you able to ascertain any more
22 information about her injuries?

23 A Just the injuries that she sustained, yes, ma'am.
24 I mean that's what they told me.

25 Q Okay.

1 A About the several stab wounds.

2 MS. WEISS: Beg the Court's indulgence just
3 one minute.

4 THE COURT: Yes, ma'am.

5 MS. WEISS: Thank you, no further questions
6 at this time, Your Honor. Please answer any questions
7 Defense may have.

8 THE WITNESS: Yes, ma'am.

9 THE COURT: Mr. Cooper.

10 THE COURT: Thank you, Your Honor.

11 CROSS-EXAMINATION

12 BY MR. COOPER:

13 Q Investigator?

14 A Yes, sir.

15 Q You spent a great amount of time in your direct
16 testimony explaining to the jury why -- why you
17 didn't do things. I'd like to talk about that a
18 little bit.

19 A Yes, sir.

20 Q If you had called an ID tech that night ---

21 A Yes, sir.

22 Q --- one would have come out ---

23 A Yes, sir.

24 Q --- right? And that's because you're the lead
25 investigator on this case ---

1 A Yes, sir.

2 Q --- right?

3 A If we call them, they do come.

4 Q And -- well, if you call them specifically they
5 definitely would have come, right?

6 A Yes, sir.

7 Q Because you're the boss of this case?

8 A Yes, sir.

9 Q You're in charge of everybody who works on this
10 case?

11 A Yes, sir.

12 Q You've been doing this for 20 years?

13 A Yes, sir.

14 Q So it's fair to say that in this investigation,
15 you were running the show?

16 A Yes, sir.

17 Q So you pick up the phone and you say, I need an ID
18 tech, he comes out, right?

19 A That's correct.

20 Q Let's tell the jury a little bit about -- you
21 mentioned ID tech but I want to make sure they
22 know what we're talking about.

23 Is an ID tech like a crime scene investigation

24 ---

25 A Yes, sir ---

1 Q Person?

2 A --- he -- he's -- we call them ID techs. I'll
3 refer to them a lot of times as C S I units but
4 that's what they are. They're identification
5 units. They collect evidence.

6 Q All right. So the duty of an ID tech that you
7 could have called that night, the duty of his at
8 the Columbia Police Department is to collect
9 physical evidence, is that right?

10 A That's correct.

11 Q All right. And physical evidence would include
12 any blood at the crime scene, is that right?

13 A That's correct.

14 Q And physical evidence that an ID tech would
15 collect would include any hair at a crime scene,
16 correct?

17 A That's correct.

18 Q Physical evidence that an ID tech could collect
19 were he called would be fingerprint evidence,
20 right?

21 A That's correct.

22 Q And somebody becomes an ID tech at the Columbia
23 Police Department because they've been trained in
24 crime scene investigation, is that right?

25 A They get training in it, yes, sir.

1 Q And that's why y'all have them as a separate
2 department because you don't rely on your regular
3 officers to do all that work, do you?

4 A Well, we have regular officers that do do
5 fingerprinting. But we -- they specialize in
6 that, yes, sir.

7 Q So if you had -- if had a case where you needed to
8 find physical evidence, those would be the people
9 to call because they specialize in that, right?

10 A Well, they collect the evidence.

11 Q Okay. They collect evidence?

12 A They collect it.

13 Q They find evidence, right?

14 A Well, usually the evidence is already found by the
15 time they get there.

16 Q So they're just a redundant part of the C P D ---

17 A No, sir, no, sir, no, sir. They collect the
18 evidence. There are specific ways that you
19 collect evidence and they do the collection of the
20 evidence. But usually the evidence is already
21 found. They -- they don't necessarily search for
22 evidence.

23 Q Well, you testified that you got out there, I
24 guess with a flashlight, and looked for evidence,
25 right?

1 A Yes, sir.

2 Q And you -- at that point you said you couldn't
3 really find any physical evidence, right?

4 A Correct. The officers looked as well as myself.

5 Q All right. And you -- you didn't even really --
6 hadn't called it a crime scene, did you? You
7 said, I couldn't find a crime scene, right?

8 A Well, they couldn't locate -- crime scene being --
9 what I was looking for was blood. Due to her
10 injuries the way it was explained to me, I figured
11 she would have bled a lot. So I'm looking for a
12 area on the ground that had blood on it. Later,
13 of course, as the testimony, she bled internally
14 mostly.

15 So what I'm looking for -- if I would have
16 found a blood -- a drop of blood on a leaf, I
17 would have called crime scene out to take care of
18 that as far as collecting it and as far as taking
19 photographs of it. We did not find it.

20 Q You testified that your ID techs, they specialize
21 in looking for and analyzing evidence, is that
22 correct?

23 A For collecting evidence.

24 Q For collecting evidence?

25 A Yes, sir.

1 Q And you went out there, you couldn't find any
2 blood, you couldn't find any physical evidence and
3 you didn't call your ID techs?

4 A Correct.

5 Q All right.

6 MR. COOPER: Beg the Court's indulgence, Your
7 Honor.

8 THE COURT: All right. Yes, sir.

9 MR. COOPER: Your Honor, I have nothing
10 further, thank you.

11 THE COURT: Anything on redirect?

12 MS. WEISS: No, Your Honor.

13 THE COURT: You may step down Investigator
14 McCracken.

15 (The witness leaves the witness stand.)

16 THE COURT: Anything further from the State?

17 MS. WEISS: No, Your Honor. At this time,
18 the State rests.

19 THE COURT: All right. Members of the jury,
20 that means at this time the State will not present
21 anymore evidence and we're at a point in this trial
22 where I need hear certain legal arguments from the
23 parties. And once again, the only way I can do that
24 is in your absence.

25 I will ask you to go to the jury room. Don't

1 talk about this case. I will bring you back out here
2 shortly to let you know what we'll do for the rest of
3 the day.

4 Thank you all so very much.

5 (The jury retires from the courtroom at
6 approximately 1:40 P.M.)

7 THE COURT: Mr. Copper, motions?

8 MR. COOPER: Yes, Your Honor. At this time I
9 move for a directed verdict, insufficient evidence
10 produced by the State to go to the jury. And also I
11 would renew my previous motions and objections.

12 THE COURT: All right. Well, I'll make it
13 easy for y'all. The testimony is that Mr. Gainey
14 stabbed her. It's a question of fact for the jury to
15 resolve. Your previous motions on the 403 conveyed by
16 Mr. O'Neil, and 901, I don't think the prejudice
17 outweighs the probative value.

18 MR. COOPER: Thank you, Your Honor.

19 THE COURT: Anything further?

20 MR. COOPER: No, Your Honor.

21 MS. WEISS: No ---

22 THE COURT: All right. Do you intend to
23 present any evidence?

24 MR. COOPER: Yes, Your Honor, we do.

25 THE COURT: Okay. All right. You need some

1 time? Who -- are you going to call Mr. Gainey?

2 MR. COOPER: Yes, Your Honor.

3 THE COURT: Okay.

4 THE COURT: Let's see. I don't think I am
5 required to -- what's Mr. Gainey's prior record?
6 Let's settle all that.

7 MR. COOPER: Well, first I'd ask if there's
8 anything on his record y'all plan on going into.

9 MS. WEISS: Your Honor, the Defendant has a
10 prior voluntary manslaughter and arson. I believe
11 that we -- Your Honor, we believe we would be entitled
12 to at least go into the fact that he has two prior
13 serious felonies, probably not the nature ---

14 THE COURT: Well, what's -- what' the time --
15 how long ago were they?

16 MR. COOPER: He was convicted in -- he was
17 convicted in 1992. I believe he got a ---

18 THE COURT: Of the voluntary manslaughter?

19 MR. COOPER: Yes, Your Honor.

20 THE COURT: Okay. And what about the arson?

21 MS. WEISS: It was the same date.

22 MR. COOPER: Same ---

23 THE COURT: Oh, same times.

24 MR. COOPER: Yes, Your Honor.

25 THE COURT: 1992, 2002, all right. Go on,

1 let me hear your arguments on it.

2 MR. COOPER: It would be my position that it
3 would be improper for them to go into those
4 convictions basically under the test laid out in State
5 v. Colf and also State v. Bryant. I think they're --
6 they're not only remote but they're also too close in
7 nature to the alleged offense here to make -- they go
8 into propensity rather than impeachment. So it would
9 be my position it would be improper to go into.

10 THE COURT: All right. Ms. Weiss -- or Ms.
11 McDuffie.

12 MS. MCDUFFIE: Your Honor, I believe the rule
13 says that -- or the 10 year part of the rule says from
14 the date of conviction or the day which he finishes
15 the serving the sentence which was in 2003, so we are
16 within the 10 year period.

17 THE COURT: So he -- he didn't finish his
18 parole or whatever until 2003?

19 MS. MCDUFFIE: He received a 24 year
20 sentence, Your Honor. And he finished that in 2003.

21 THE COURT: How about that, Mr. Cooper?

22 MR. COOPER: Well, Your Honor, I understand
23 that. We still -- it is still my position that this
24 would actually go to propensity rather than
25 impeachment. I've got a copy of State v. Bryant I

1 will hand to opposing counsel and Your Honor.

2 In this case the Supreme Court found that
3 going into a pointing and presenting charge I believe
4 was too close in time, too close in nature in a murder
5 trial. And it would be my position that ---

6 THE COURT: Let me stop you until I read this
7 case.

8 MR. COOPER: Yes, Your Honor.

9 THE COURT: I'll let you finish. Let me just
10 take a look at it.

11 (Pause.)

12 MR. COOPER: I'm sorry, Your Honor. This is
13 unlawful possession of a weapon. I'm sorry.

14 THE COURT: All right. Let me read it first
15 and then we'll look at it.

16 MR. COOPER: Yes, sir.

17 THE COURT: All right. Relax, Mr. Cooper.

18 (Pause.)

19 THE COURT: Okay. I think you were about to
20 say -- and I'm not going to take time to read the
21 case. I vaguely remember when it came out. Ms. Weiss
22 has said you should be allowed to mention that he has
23 two prior convictions. What's your position on that?

24 MR. COOPER: Your Honor, for the record I
25 would oppose that she be able to mention them.

1 THE COURT: Why?

2 MR. COOPER: Because ---

3 THE COURT: I mean for the record, give me a
4 reason why. I mean you just can't say, I don't like
5 it. Give me a specific reason like you handed me up
6 this case.

7 MR. COOPER: Your Honor, I don't think that
8 the mention of the prior convictions is probative of
9 his credibility.

10 THE COURT: I disagree. You'll be allowed to
11 do that. But the voluntary manslaughter, they're not
12 going to --

13 MS. MCDUFFIE: Your Honor, we would also --
14 if through the Defendant's testimony he should open
15 the door ---

16 THE COURT: I beg your pardon?

17 MS. MCDUFFIE: Through the Defendant's
18 testimony, if he should open the door, we would also
19 ---

20 THE COURT: Well, that's always the risk he
21 takes, you know. But if it we comes to that point,
22 we'll stop, send the jury out and make a record of it
23 before I can decide.

24 MR. COOPER: Yes, sir.

25 THE COURT: All Right. But he has been

1 convicted -- well, we're not going to go into detail
2 but I think I'm going to allow -- let the jury know he
3 has two prior convictions. How do you say it,
4 serious?

5 MS. WEISS: Serious felony.

6 THE COURT: All right. Any objection -- of
7 course you should.

8 MR. COOPER: Yes, Your Honor.

9 THE COURT: But that's denied. All right, so
10 no mention of the voluntary manslaughter and what was
11 that -- the arson. But he does have two prior
12 felonies.

13 MS. WEISS: Thank you, Your Honor.

14 THE COURT: Anything further?

15 MR. COOPER: No, Your Honor.

16 THE COURT: Who's your first witness?

17 MR. COOPER: Mr. Gainey, Your Honor.

18 THE COURT: Is he your only witness?

19 MR. COOPER: Yes, Your Honor. The one issue
20 I guess we do have is the shackles on the stand.

21 THE COURT: Well, you know, we'll put him in
22 the witness chair before the jury comes in and we
23 won't take him out until they go out.

24 MR. COOPER: Yes, sir.

25 THE COURT: All right. Is that good enough

1 for -- I mean, that's what I'm going to do.

2 MR. COOPER: Yes, sir.

3 THE COURT: All right.

4 MR. COOPER: Thank you.

5 THE COURT: Let me give y'all a little break,
6 give you chance to get settled. I'll speak to the
7 jury for a moment and say that they're going to offer
8 a defense and Mr. Gainey will take the stand and when
9 he comes in you all will be here. I'll soften it for
10 you.

11 MR. COOPER: Yes, Your Honor.

12 THE COURT: That all right?

13 MR. COOPER: Yes.

14 THE COURT: Okay then.

15 (The Court was in recess.)

16 THE COURT: A moment ago, I had concluded to
17 allow the State to mention at least that Mr. Gainey
18 had two prior convictions or felonies or whatever.
19 And I thought about that being considered and I
20 brought y'all in one of the jury rooms, sort of
21 chambers and said, you know, the best and cleanest way
22 to do it is not to mention anything. I think the
23 facts of this case are very simple.

24 And sort of out of an abundance of caution, I
25 think it would be probably more prejudicial. So the

1 State cannot mention that he has any prior
2 convictions. That's based on the length of the
3 conviction and everything else. And on the facts of
4 this case, quite frankly, I don't think it's going to
5 make any difference one way or the other. Either
6 they're going to believe the State's position or not.

7 So that's what I decided to do. But if he
8 opens the door, like I mentioned to you all in
9 chambers, for Mr. Gainey's criminal record, if y'all
10 open the door and I can't tell y'all what opening the
11 door is but y'all have an idea, they will come in. So
12 you've got to be very careful what you try to solicit
13 from your witness.

14 With that I mind, let's just take a break.
15 They're going to get some snacks or something, they
16 wanted some, so we've probably got 15 or 20 minutes
17 just to lounge around, okay.

18 Any exceptions or additions or anything
19 anybody else we need to talk about or anything?

20 MS. WEISS: No, Your Honor. For the record,
21 we still object ---

22 THE COURT: Y'all object.

23 MS. WEISS: We still maintain that we believe
24 that at least the arson should come in, based on the
25 law, based on the rules, but ---

1 THE COURT: Okay. All right. And you need
2 to do that, so. Let's be at ease. We've probably got
3 15 minutes or so.

4 (The Court was in recess.)

5 (LOUIS GAINNEY, JR., after being duly sworn,
6 testified as follows:)

7 THE CLERK: Thank you.

8 THE COURT: Now, Mr. Gainey, because we don't
9 want them to see you with your shackles down there, so
10 make sure you keep your feet up there, all right?

11 THE WITNESS: Yes, sir.

12 THE COURT: So are we all ready?

13 MR. COOPER: Yes, Your Honor.

14 MS. WEISS: Yes, Your Honor.

15 THE COURT: All right bring the jury in.

16 (The jury returned to the courtroom at
17 approximately 2:38 P. M.)

18 THE BAILIFF: The jury's all present, Your
19 Honor.

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

21 Welcome back, Madam Forelady and members of
22 the jury. The Defense will present some evidence.
23 And, Mr. Cooper, will do the direct examination of Mr.
24 Gainey?

25 MR. COOPER: Yes, at this time the Defense

1 calls Louis Gainey, Jr.

2 DIRECT EXAMINATION

3 BY MR. COOPER:

4 Q Hello, Louis. Will you please state your name
5 and age for the jury?

6 A My name is Louis Gainey and I'm 53 years old.

7 Q Okay, Louis, I would like to start out by telling
8 the jury a little bit about yourself. Louis,
9 where did you grow up, Columbia?

10 A Right here in Columbia, South Carolina.

11 Q Okay. And where did you go to high school?

12 A Columbia High, downtown Columbia.

13 Q Okay. And did you go into the military after
14 that?

15 A Yes, sir, in my 11th year.

16 Q All right. And what did you do in the military?

17 A I was 71B10/B20 clerk typist.

18 Q And is that the U.S. Army?

19 A Yes, sir.

20 Q And did you get your high school equivalency
21 degree in the Army?

22 A Yes, sir, three months after I entered the
23 service.

24 Q So you're an Army veteran?

25 A Right, yes, sir.

1 Q All right. Well now, Louis, I want to talk to
2 you a little bit about your job and work history.
3 Do you possess a certain skill?

4 A Yes, sir. I'm a ceramic tile installer, slate,
5 marble, stone, terrazzo (phonetic).

6 Q All right. And have you worked in a family
7 business using that skill?

8 A Yes, sir. My father and his brother-in-law had
9 their own business, Canzater (phonetic) Tile
10 Company.

11 Q So you've been doing that quite a while?

12 A Over 30 years.

13 Q All right. Now, Louis, I would like to talk to
14 you about your family a little bit. Do you have
15 any children?

16 A Yes, sir.

17 Q Okay. How many children do you have?

18 A I have three girls. My oldest son passed away
19 from a brain surgery.

20 Q All right. And, Louis, do you have any
21 grandchildren?

22 A Yes, sir, I do.

23 Q How many do you have?

24 A I was just informed that I had a little boy just
25 came when I was locked up. That makes a total of

1 11.

2 Q All right. Now, Louis, I would like to talk to
3 you about something that might be kind of
4 difficult. But is it true that you've struggled
5 with a drug problem over your life?

6 A Yes, sir. I've been a recovering cocaine addict
7 for 23 -- 25 years.

8 Q All right. So your testimony is you've been
9 recovered for 25 years?

10 A Yes, sir.

11 Q All right. Now, Louis, I want to talk to you
12 about the Salvation Army. Did you get help for
13 your drug problem at the Salvation Army?

14 A Yes, sir.

15 Q And eventually did you want to help other people
16 with their drug problem?

17 A Yes, sir.

18 Q Now, Louis, did you help -- did you start
19 attending meetings at the Salvation Army to help
20 other people?

21 A Yes, sir, I did.

22 Q And did you in fact go into training to be a
23 Salvation Army soldier?

24 A Yes, sir, I did.

25 Q All right. Now, Louis, while you were going

1 through this training and attending these
2 meetings, did you have an opportunity to meet Ms.
3 Detra Montgomery?

4 A Yes, I did.

5 Q Okay. So did y'all meet at one of those
6 meetings?

7 A Yes, sir.

8 Q All right. And you wanted to help her, correct?

9 A Yes, sir.

10 Q All right. Now, did you like Ms. Montgomery?

11 A You could say it was love at first sight.

12 Q All right. So did you find out -- did you
13 eventually find out that Ms. Montgomery didn't
14 have anywhere to go?

15 A Yes, sir.

16 Q And did you want to help her when you found out
17 about it?

18 A Yes, I did.

19 Q And, Louis, did you get a job and get money to
20 help her?

21 A Yes, sir, I did.

22 Q And that was -- was that a tile job?

23 A Yes, sir. I did a -- I did a job. I put down
24 1100 feets of floor tile for Lieutenant Hayes and
25 Ms. Hayes.

1 Q All right. And, Louis, did you eventually help
2 Ms. Montgomery get an apartment?

3 A Yes, sir, with the money that I got off of that
4 apartment.

5 Q And also -- did you also get her kids a place to
6 stay?

7 A Yes, sir. We stayed in the motel before we got
8 our apartment.

9 Q So you helped her get a place to stay in a motel
10 with her kids?

11 A Yes, sir.

12 Q Okay. Now, Louis, over time did you develop a
13 romantic relationship with Ms. Montgomery?

14 A Yes, I did.

15 Q Okay. And eventually there came a time -- did
16 there come a time when y'all got an apartment
17 together?

18 A Yes, sir.

19 Q Okay. And was that over on [REDACTED]
20 Street?

21 A Yes, sir, that's the apartment.

22 Q And would you say that was -- that's a pretty
23 nice neighborhood, isn't it?

24 A Yes, that's why I chose that neighborhood. It
25 was good for the kids.

- 1 Q Yes, sir. All right. And while y'all were
2 living there, were you working a number of jobs?
- 3 A Yes, sir, I was.
- 4 Q Okay. And tell the jury about the different jobs
5 you were working.
- 6 A I worked with Gainey Roofing and Remodeling
7 Service sometime. My brother has his own
8 business. And when he had ceramic tile jobs, I
9 was the tile man and I was the cement finisher
10 for him for his jobs, along with the part time
11 job at the Dollar Tree off Rosewood and Midland's
12 Tech at night.
- 13 Q All right. So it's fair to say that you were
14 working a number of jobs during this time?
- 15 A At one time, yes, I were.
- 16 Q And it's fair to say you were working a good
17 amount of hours during that time?
- 18 A Yes, sir.
- 19 Q And were you doing this to help support Ms.
20 Montgomery and her children?
- 21 A And myself.
- 22 Q And yourself. Is that why you were doing it?
- 23 A Yes, sir.
- 24 Q Okay. So, Louis, is it fair to say that y'all
25 were -- y'all were living like a family down

1 there at [REDACTED]

2 A Yes, sir, and a couple.

3 Q And that's how you looked at it?

4 A Yes, sir.

5 Q Okay. And would you say that you all were --
6 were -- okay y'all were living as a family and,
7 Louis, I want to ask you -- and of course, Louis,
8 were you in love with Ms. Montgomery at this
9 time?

10 A Yes, I were.

11 Q Okay. Now, Louis, I want to move on to something
12 else. Did there ever come a time after this when
13 you noticed a change in Ms. Montgomery's
14 behavior?

15 A Yes, sir, I lost my night job at Midland's Tech.

16 Q Okay. Well, Louis, did you notice Ms. Montgomery
17 beginning to pull away from you?

18 A Yes, sir.

19 Q And did you notice, for instance, that she didn't
20 want to sleep in the bed with you anymore?

21 A Yes, sir.

22 Q Okay. And, Louis, did you become suspicious that
23 perhaps she was seeing other men?

24 A Yes, sir.

25 Q And was that the because of her behavior towards

1 you?

2 A Yes, sir.

3 Q All right. Now, Louis, I want to -- oh, Louis,
4 at one point did you buy her a diamond ---

5 MS. WEISS: Objection, Your Honor, he's
6 leading.

7 THE COURT: Sustained for leading.

8 MS. WEISS: Thank you, Your Honor.

9 THE COURT: Rephrase your question.

10 MR. COOPER: Yes, Your Honor.

11 Q Louis, did you buy her anything?

12 A Yes, sir, for the month of February I went and
13 did a ceramic tile job for a retired officer from
14 the Department of Corrections. And me and Detra
15 went over there and I installed a kitchen
16 countertop and backsplashes around the sink. And
17 the money that I made up for that job, I bought
18 her a ring and bought the kids a PlayStation 2
19 for their Christmas present.

20 Q Yes, sir. Now, Louis, I would like to move on to
21 the evening of March 31st, 2007. Did you -- were
22 you with Ms. Montgomery that evening?

23 A Yes, sir.

24 Q All right. And what were y'all doing that
25 evening?

1 A I got my check from Midland's Tech and we went to
2 cash my check. And she usually let me drink a
3 half a pint but this particular day when she went
4 in the liquor store she bought a fifth of gin.

5 Q Okay. Louis, at any time did your grandchildren
6 come over to your house?

7 A Yes, sir. Later on that night on our way back
8 home from the liquor store, she said that she
9 wanted my grandson Jacoby (phonetic) and she
10 wanted to go and get him. So she called my
11 daughter and told my daughter that we was coming
12 to get Jacoby.

13 Q All right. And, Louis, did she ever leave? Did
14 Ms. Montgomery ever leave your house after that,
15 that night?

16 A No. We went to -- we went to my daughter house
17 and got the grandkids and we sat -- when we got
18 there my kids mother was there and one of her
19 friends, my daughter was fixing her hair. And
20 when me and Dee Dee got there, Dee Dee hadn't --
21 this the first time ever meeting my wife and my
22 kids. We introduced each other and we sat there
23 and talked for a little while and I went out the
24 door and talked with my grandson -- I mean with
25 my stepson and came back and the kids wanted to

1 go over to the house with us. So I told them to
2 go ask their grandmamma.

3 So they went in the room and they started to
4 laughing and said they got two grandmamas and
5 they didn't know which one to ask could they go
6 spend the night with me. And we got -- had a big
7 fun out of that.

8 Q Okay. But your -- were your grandchildren with
9 you at the house that night?

10 A Yes, I took them home. She said we could bring
11 them, it was her permission.

12 Q All right. Now, Louis, eventually did it get
13 late that night?

14 A Yes, when we got back from my daughter's house it
15 was late.

16 Q All right. And did you -- was Ms. Montgomery
17 with you when you came back home?

18 A When I went in the house and got the kids
19 situated, she wasn't there. She said she went to
20 Dee Dee's house when she came back because I was
21 trying to figure out where she went. The kids
22 didn't know and I didn't know either.

23 Q Okay. Did you want her to come home?

24 A Yes, I wanted her at home. I'm not used to her
25 being out. We don't usually be out after 10:00.

1 Q All right.

2 A And ---

3 Q So, Louis, did you go across the street?

4 A I went to see where she was at, yes, sir.

5 Q All right. Now, Louis, when you got there, what
6 happened between you and Ms. Montgomery?

7 A When I got there she was sitting on the porch
8 with Dee Dee and they was talking. And I asked
9 her -- I sat there and let them talk for a little
10 while. Dee Dee, the girl whose house she was to,
11 her boyfriend was standing on the porch and his
12 cousin was standing on the porch. And Dee Dee
13 and the other Dee Dee was sitting on the steps.

14 And after Dee Dee made the pallet for the
15 kids in the living room, that blocked off the
16 front door where you couldn't get out the front.
17 She locked the -- put the safety latch on the
18 storm door and then she put the double locks on
19 the -- on the regular door and we used the
20 backdoor for entrance and exit.

21 Q Okay. Well, Louis, let me back you up a little
22 bit so the jury will understand. Was it possible
23 for you to get in your front door that night?

24 A No, we couldn't use the front door.

25 Q Okay. Now, after you went over there, you -- did

1 you go over there to get Ms. Montgomery to come
2 home?

3 A Yes, I did.

4 Q Okay. And what happened when you asked her to
5 come home?

6 A She told me she wasn't going no fucking where
7 with me and she was staying where the hell she
8 was at.

9 Q All right. And so what did you do?

10 A I asked her to come on home because I knew she
11 had been drinking. And she looked up to the guy
12 that was supposed a been Dee Dee's boyfriend
13 cousin and said, and he even done accused me of
14 being with you, like they had done been already
15 talking about me before I go there.

16 Q All right. Well, Louis, when you heard them
17 talking at your business, did that humiliate you?

18 A Yeah, I was hurt.

19 Q Did it make you upset?

20 A Yes, I was upset.

21 Q Was it embarrassing for you?

22 A Yes, it was embarrassing.

23 Q Okay. Now, Louis, when you and Ms. Montgomery
24 went outside the house, what happened?

25 A After she made that statement, I grabbed her by

1 her arm and I said, come on, let's go home. And
2 she got up and we was walking but she start to
3 renegeing for a little while. She started to
4 pulling back.

5 And I was holding on to her arm and some how
6 or another, we both fell. And we was struggling
7 on the ground for a little while.

8 Q All right. Well, Louis let me ask you this, did
9 you stab Ms. Montgomery?

10 A I can't remember. I mean...

11 Q Do you remember ---

12 A I thought I was -- I thought I was hitting her.
13 I don't remember stabbing Dee Dee.

14 Q All right, Louis. Well, Louis did you run?

15 A Yes, I ran. I was afraid.

16 Q And why were you afraid?

17 A Because the two gentleman that was at that porch,
18 was one of them was the one that she was over
19 there seeing and the other one was his cousin.
20 And I was afraid for my life and I ran.

21 Q All right, Louis. Did you get home later that
22 evening?

23 A Yes, I ended up getting home.

24 Q All right. And how did you wake up the next
25 morning?

- 1 A I woke up in the house on the couch. I was
2 sitting on the couch facing the door. I thought
3 Dee Dee was still over to that other girl's house
4 until her grandmamma got there.
- 5 Q All right. So eventually her grandmother
6 arrives?
- 7 A Yes, sir.
- 8 Q All right. Now, to your knowledge, is her
9 grandmother from Columbia? Is she from around
10 here?
- 11 A No, sir. She's from down in the country.
- 12 Q All right. So did you -- did you want to go the
13 hospital?
- 14 A Yes.
- 15 Q And did they want to go to the hospital?
- 16 A Yes.
- 17 Q Did you in fact tell them how to get to hospital?
- 18 A I went with them.
- 19 Q So did you ride in their car?
- 20 A (The witness nodded head and was crying.)
- 21 Q Okay, Louis. Now, and when you got to the
22 hospital, did the hospital security detain you?
- 23 A Yes.
- 24 Q All right. And after that, did the Columbia
25 Police Department pick you up?

1 A Yes, sir.

2 Q Louis, you need a Kleenex?

3 A I got it.

4 Q Now, Louis, this next part of your testimony I
5 want you to be real clear about, okay? Do you
6 love Ms. Montgomery?

7 A Yes, I do.

8 Q Did you love her on March 31st, 2007?

9 A Yes, I did.

10 Q Did you have any intent at all to kill Ms.
11 Montgomery?

12 A No, I didn't.

13 Q Did you have any intent at all to seriously harm
14 her?

15 A No, I didn't.

16 Q And do you still love her children?

17 A I'm crazy about them kids. They good kids. They
18 were my kids.

19 Q All right, Louis.

20 MR. COOPER: Beg the Court's indulgence one
21 moment.

22 THE COURT: Yes, sir.

23 (Pause.)

24 Q Louis, thank you for your testimony. I direct
25 you to respectfully answer any questions that the

1 State has, okay?

2 A Yes, sir.

3 MS. WEISS: May it please the Court.

4 THE COURT: Yes, ma'am.

5 MS. WEISS: Thank you.

6 CROSS-EXAMINATION

7 BY MS. WEISS:

8 Q Louis, you said you're 53 years old?

9 A Yes, ma'am.

10 Q You said on direct that you're a recovering
11 cocaine addict. You've been recovered for 25
12 years?

13 A Yes, sir -- yes, ma'am.

14 Q But actually a recovering cocaine addict, you've
15 been off and on cocaine for those 25 years?

16 A No, I never been on cocaine. I tried crack once.

17 Q So you're a recovering crack addict for 25 years?

18 A No, I'm not a crack addict. I experienced crack
19 during my 23 years recovery from powder cocaine.

20 Q Okay. And you were going through a recovery
21 program at the same time Detra was going through
22 a recovery program?

23 A Yes, ma'am.

24 Q Okay. And that was just a few months before you
25 actually moved in together within the year that

1 this incident happened, right?

2 A Well, you could say that but it wasn't a forced
3 thing.

4 Q Okay. And you -- you're trained as a ceramic
5 tile installer but you only worked with your
6 brother or your uncle when they had work for you
7 to do, right?

8 A It was always some tile work for me to do..

9 Q But you didn't work with them all the time?

10 A No, my regular job was at Midland's Tech and the
11 Dollar Tree. And I just got that job.

12 Q So you just worked with them now and then?

13 A Pretty -- pretty regular.

14 Q So you -- so you were not a tile installer for a
15 straight 30 years?

16 A Yes. I mean...

17 Q Not working?

18 A Yes.

19 Q Okay.

20 MS. WEISS: Beg the Court's indulgence.

21 (Pause.)

22 MS. WEISS: Your Honor, may we approach?

23 THE COURT: Sure.

24 (Whereupon, a bench conference was held off
25 the record, in the presence of the jury, but out of

1 the hearing of the jury.)

2 Q Your job at Midland's Tech, you only had that for
3 about a month, right?

4 A No, I had that job -- actually I took a leave of
5 absence off that job and returned back after we
6 left the Salvation Army.

7 Q And when you returned back, you only had it for
8 about a month?

9 A It was a little longer than a month.

10 Q So you got fired?

11 A No, I didn't get fired. I resigned, I left.

12 Q Okay. Dollar Tree, you had that job for about
13 two, three days?

14 A No, it was longer than two or three days.

15 Q A couple of days before you -- before this
16 incident occurred, right?

17 A About a month.

18 Q And -- but the entire time, Detra Montgomery was
19 working, right?

20 A Yeah, she had a nice job too.

21 Q Yeah, she was manager of Starbucks, she worked at
22 Starbucks, right?

23 A Yeah, she worked at the Starbucks at the
24 Marriott.

25 Q She had steady income the whole time? She was

1 bringing in, providing for you, providing for the
2 children?

3 A Not at first. She got that job after we got in
4 our apartment.

5 Q So she got the job while she was still at the
6 Salvation Army, didn't she?

7 A After we got our apartment.

8 Q And she was able to provide -- you two moved in
9 together and you joined as a family. She
10 provided -- she pulled her weight in that
11 relationship, didn't she?

12 A No, sir -- no, ma'am. It wasn't that when we
13 first got that apartment. It was from the money
14 that we made from Ms. Hayes. The \$1500 put us in
15 the apartment, got the lights turned on, got the
16 water bill turned on and got us some furniture
17 from the Salvation Army's thrift store.

18 Q But she was able to provide for you and for the
19 family while you were resigning or getting fired
20 from jobs and while you were looking for jobs in
21 between. She was providing the entire time?

22 A No, ma'am.

23 Q Okay.

24 A That's when I worked with my brother at the
25 Highway Department at night.

- 1 Q All right. And -- so you said you bought a ring
2 and a PlayStation 2, right?
- 3 A Yes, ma'am.
- 4 Q And then you eventually took that and sold it,
5 right?
- 6 A Sold it where?
- 7 Q That's the question.
- 8 A No, ma'am.
- 9 Q But you took it from the kids?
- 10 A No, ma'am, I didn't. They broke it, it was broke
11 when I got arrested.
- 12 Q Broke when you took it?
- 13 A No, when this, when this happened.
- 14 Q When you took it and sold it?
- 15 A No, ma'am.
- 16 Q Okay. And the ring too?
- 17 A No, ma'am.
- 18 Q Okay. And actually you didn't have much of a
19 relationship with your grandkids, did you?
- 20 A Yes, I did.
- 21 Q 10 grandkids, you said you now have 11. 10
22 grandkids and you didn't have much a
23 relationship?
- 24 A Yes, I did.
- 25 Q You hadn't been there while they were growing up,

1 right?

2 A Yes, I were. From the time my -- from the time
3 my kids had kids. No, I wasn't around them the
4 whole time. I mean, I got a life too.

5 Q You weren't around those grand -- you didn't know
6 those grandkids very well. And in fact, it was
7 Detra Montgomery that wanted you to get to know
8 those grandkids better, wasn't it?

9 A No, ma'am.

10 Q And in fact, she suggested that they come over
11 and spend the night and hang out with her kids?

12 A That night she did.

13 Q Yes. So that you could actually spend some good
14 time with them, quality time with them.

15 A No, because we had plans for family day the next
16 day.

17 Q To spend time together?

18 A Right.

19 Q With the kids. But that was actually Detra
20 Montgomery's suggestion, wasn't it?

21 A Yes, because I asked them to ask her could they
22 come spend the night. I didn't make that
23 decision, she did.

24 Q And you even said, things weren't going well
25 between the two of you the month prior to that,

1 things had not been going well?

2 A I can't attest to that. I knew it was something
3 that wasn't right.

4 Q All right.

5 A But as far as my relationship with Dee Dee, it
6 was still a good relationship.

7 Q And she had told you she wanted you to move out?

8 A No, she didn't

9 Q And you refused to move out because your name was
10 on the lease?

11 A No, she didn't. Never have she asked me to move
12 out my apartment.

13 MS. WEISS: Your Honor, may we approach?

14 THE COURT: Yes.

15 (Whereupon, a bench conference was held off
16 the record, in the presence of the jury, but out of
17 the hearing of the jury.)

18 Q In fact, 10 days prior to this incident, she
19 called the police and asked you to move out?

20 A Yes, she did.

21 Q Okay. So she did ask you to move out?

22 A No, she didn't ask me to move out. The officer
23 asked me did I have any place to go and I told
24 him, no, I wasn't leaving my apartment because I
25 didn't do anything wrong.

1 Q Okay. And so she asked you to move out because
2 things weren't going well?

3 A No, sir -- no, ma'am.

4 Q And she told you things were over between the two
5 of you?

6 A No, ma'am.

7 Q Okay. And you were the one that had been
8 disappearing. You didn't have a job. You had
9 resigned from your job and didn't have a job and
10 you were disappearing during the day, right?

11 A No, ma'am. I took care of the house the few days
12 that I wasn't working.

13 Q And in fact, when you came home that night, per
14 your own testimony, she set up pallets for the
15 children?

16 A After she came back in from where she was at,
17 yes.

18 Q You got home late -- you got home late, right?

19 A Right.

20 Q And so she set up pallets for the children to
21 sleep on while they were playing in the house?

22 A After she came back from where she was at, yes.

23 Q Where she was at?

24 A (No response.)

25 Q She walked out that door (indicating) and was

1 sitting right there (indicating).

2 A No, she didn't.

3 Q She went to Dee Dee's?

4 A No, she didn't. She didn't come out that door.

5 Q What door did she come out of?

6 A She used the back door that where you have to
7 walk around the back and the side from another
8 apartment to get to Dee Dee's apartment.

9 Q When you're saying where she went. I'm not going
10 to argue over which door. She went right here
11 (indicating). That's your apartment and that's
12 where she went, was right there?

13 THE COURT: What exhibit number?

14 MS. WEISS: I'm sorry, Exhibit Number 3.

15 THE COURT: Thank you.

16 Q She didn't go anywhere, she's right there
17 (indicating).

18 A Yes, it could be right there if you're coming out
19 that door, it's right there (indicating). But if
20 you're coming out the back door, you've got to
21 walk around the whole side of the building to get
22 to that apartment.

23 Q She didn't go anywhere. She was right there.
24 She could hear what was going on with the
25 children, right?

1 A No, she couldn't.

2 Q And in fact, the children had gone to sleep,
3 right?

4 A No, they wasn't. The boys was watching the
5 wrestling match. That's what they usually do on
6 Friday nights.

7 Q This was midnight, 1 in the morning?

8 A They watching Smackdown on cable.

9 Q The kids had gone to their rooms, gone to sleep?

10 A No, they wasn't asleep.

11 Q And the two of you were arguing, had continued
12 arguing throughout the day just like you had been
13 arguing for a couple of weeks prior, right?

14 A No, we wasn't arguing because if we was arguing,
15 then why would I agree with her to go over to my
16 daughter's house?

17 Q Because she was trying to help you regain a
18 relationship with your grandkids, right?

19 A No, ma'am.

20 Q And you brought all your grandchildren over
21 there. She had them all there with her children?

22 A That was on her permission, it wasn't mine.

23 Q So she goes out there, you came out and you
24 started trying to get her to come back inside?

25 A I asked her.

- 1 Q Now she spends a lot of time -- at that time she
2 was spending a lot of time sitting outside
3 talking to the other Dee Dee, talking to Deanna
4 Richardson, right?
- 5 A Like I said earlier, I never recall Dee Dee being
6 out the house after 10:00 at night.
- 7 Q You didn't want her out of the house ---
- 8 A No, I never recall her being out the house after
9 11 -- 10:00 at night.
- 10 Q Is that because you weren't there?
- 11 A I stay home. I have never left -- we had our
12 rule in that house. If you stay out that house
13 one night, then you out the door.
- 14 Q So she didn't stay out of the house, she stayed
15 right there on porch?
- 16 A And neither did I.
- 17 Q She stayed right there on the porch talking to
18 Dee Dee. Just like Dee Dee said, they sat out
19 there and talked a lot, right?
- 20 A I don't think they was out there that long.
- 21 Q Okay. And you came out and you wanted her to
22 come back inside? In fact, you told her several
23 times to come back inside?
- 24 A No, I asked her a few times, yes.
- 25 Q And she said, no, she was going to stay there and

1 talk. The kids were fine, they were settled.

2 She had built the pallet and she was going to
3 stay there, right?

4 A She told me she was going to stay where the hell
5 she was at. She wasn't coming home with me.

6 Q She wasn't coming home with you? She was sitting
7 basically on the front porch and she said she was
8 going to stay out there and talk to her friend,
9 right?

10 A Right.

11 Q And she wasn't going to get into it with you?

12 A No, she didn't say that.

13 Q So you went back around and fiddled around
14 outside, inside your house, right?

15 A I went back around and went back inside the
16 apartment and I sat down in the room, my room for
17 a little while and thought about leaving her out
18 there while I go to bed. And I wasn't
19 comfortable with that. So I went back and asked
20 her to come home.

21 Q That's when you went and got a screwdriver and
22 then went back out to tell her to come home
23 again, right?

24 A No, ma'am, I did not.

25 Q Because you had a screwdriver in the drawer in

- 1 the kitchen I believe, right?
- 2 A Yes, I keep my tools under the sink and in the
3 drawer when I do my tile work.
- 4 Q Okay. So you had sharp screwdrivers?
- 5 A No, not sharp screwdrivers. I have screwdrivers
6 that does what screwdrivers do.
- 7 Q And you grabbed that screwdriver to come and --
8 come and tell her she was coming back with you
9 one way or the other, right?
- 10 A No, ma'am, I didn't.
- 11 Q And in fact, you went out there and told her one
12 more time to come with you, right?
- 13 A No, ma'am, I didn't.
- 14 Q You stood right there, right there at that tree
15 -- State's Exhibit 4, right there at that tree
16 (indicating). You stood right next to her, right
17 next to where Dee Dee was and told her she was
18 coming back in with you, right?
- 19 A They got some things on the porch now wasn't --
20 they wasn't -- them things wasn't there.
- 21 Q But that tree was there.
- 22 A No, I wasn't around that tree. I was in front of
23 the steps. Because her and Dee Dee was sitting
24 on the steps and the other two guys was standing
25 on the porch.

1 Q There weren't any guys on the porch, it was just
2 she and Dee Dee talking?

3 A No, it was four people there.

4 Q And you were standing right by that tree ---

5 A It was ---

6 Q --- you had your screwdriver and you told her to
7 come back, right?

8 A I never had a screwdriver. They didn't see me
9 with no screwdriver.

10 Q No, I bet they didn't. And then you grabbed --
11 you grabbed Dee Dee, right? You grabbed her by
12 the arm and you ---

13 A No.

14 Q --- dragged her off that porch, didn't you?

15 A I wouldn't disrespect her like that and I'm
16 trying to get her to come home.

17 Q You grabbed her -- well, she wasn't coming home.
18 You got to do -- you grabbed her -- grabbed her
19 by the arm, grabbed her by the neck, pushed her
20 head down, when you got back behind, back away
21 from everybody where nobody could see you.

22 State's Exhibit 8, you took her right around the
23 back, right back there (indicating).

24 A That's how you get to my apartment in the back
25 door.

1 Q State Exhibit 6, right here in the dirt
2 (indicating) away from everybody.

3 A That right there is in front of -- facing Dee
4 Dee's house, the girl where she was at. That's
5 facing her house. You can see from there. You
6 can see -- from where -- from where Dee Dee was
7 at, you could see all that back up in there.
8 That's ---

9 Q (Indicating?)

10 A Right. From Dee Dee's house you can see all
11 that.

12 Q State's Exhibit 7, State's Exhibit 6 -- actually,
13 Dee Dee's house is all the way around that corner
14 (indicating). You couldn't quite see around
15 there?

16 A It's right -- it's right there on the corner.

17 Q Right, you got her just out of sight of that
18 porch, didn't you?

19 A No, ma'am.

20 Q You grabbed her ---

21 A That's on the way to get to my apartment. You
22 have to go that way to get there.

23 Q Right. You took her in the dirt. You dragged
24 her all the way around from that apartment and
25 that's when you pushed her head down and began

1 attacking this woman you say you love, right?

2 A No, ma'am, I didn't.

3 Q You thought if you couldn't have her, you wanted
4 to make sure nobody else could, right?

5 A No, ma'am, it was never like that.

6 Q So you knock her head down. You started stabbing
7 her in the face trying to get her, who knows,
8 maybe in the neck. You got her right there, a
9 gash right there in the face (indicating).
10 Scratched down her face and a stab mark in her --
11 well, that stab mark just like the edge of a
12 screwdriver in her face. And was that when you
13 didn't know you had hurt her, you just thought
14 you were punching her?

15 A I don't know when I did that.

16 Q Was it when you stabbed her in the breast and she
17 started gushing blood, as the doctor testified?
18 The breast is an area -- I'm sorry, State's
19 Exhibits 18 and 14. You stabbed her in the
20 breast and that's when it started gushing blood.
21 Is that when you didn't -- when you still thought
22 you were punching her? Punching her with your
23 fist or with a screwdriver that nobody saw you
24 with?

25 A (No response.)

1 Q Or was it State's Exhibit 10, the gash? The gash
2 that went in her side almost an inch and a half
3 long, in her side, a gash through -- all the way
4 through her stomach as the doctor showed you, all
5 the way up to here, all the way through her,
6 digging in her stomach, cutting through the walls
7 ---

8 MR. COOPER: Objection.

9 THE COURT: Beg your pardon?

10 MR. COOPER: Objection, Your Honor.

11 THE COURT: Basis?

12 MR. COOPER: Is she going to ask a question.

13 THE COURT: It's cross-examination.

14 Overruled, you may continue.

15 MS. WEISS: Thank you, Your Honor.

16 Q Is that when you still thought you were just
17 punching?

18 A I don't recall.

19 Q Is it when her intestines popped out of her
20 stomach, white, bright white intestines popped
21 out of her stomach landing on her chest and she
22 was holding them, begging for her life? Is that
23 when you thought you had just punched her?

24 A I don't recall that either..

25 Q Is that when you were just asking the woman you

1 love to come home?

2 A (No response.)

3 Q Or was it when she laid down trying to protect
4 her life, was kicking you away and you're still
5 scraping her, still scraping her legs as she
6 kicked at you begging for her life, begging you
7 to stop, was it then?

8 THE COURT: What ---

9 Q Sorry, State's Exhibits 13 and 16. Or was it
10 when finally she's screaming for her life, her
11 friend Dee Dee came running around the corner to
12 see what was going on and you took off running
13 and left her there to die? Was that when you
14 thought you were just punching her?

15 A It wasn't Dee Dee that came around the corner.

16 Q And you took off running. Was it when you saw
17 the police officer right in front of your house
18 that you flagged him down and said, please help
19 this woman I love that I just stabbed multiple
20 times? Or did you just take off running and go
21 to the railroad tracks, get as far away as you
22 could right then?

23 A Are you saying the police was there when that
24 happened?

25 Q Yes, I am.

- 1 A No, ma'am, I never saw a police. I never seen
2 one.
- 3 Q The police saw you, didn't they, as you were
4 running off?
- 5 A I don't remember that either.
- 6 Q You don't remember running off?
- 7 A I don't remember seeing no police.
- 8 Q But you ran?
- 9 A Yes, I did.
- 10 Q You ran to call 911 to get help for this woman
11 that you love so much?
- 12 A She unplugged the phone from my house and I
13 couldn't even make a phone call.
- 14 Q So you were running to the railroad tracks to go
15 find help? Is that your testimony?
- 16 A I don't know about no railroad tracks.
- 17 Q All right. Later that night having no idea what
18 happened, you came back to your own home, right?
- 19 A Some -- someway another I did, yes.
- 20 Q Broke the window -- broke the window so you could
21 get in the door, right?
- 22 A I don't know how I got in. I thought I had a
23 key.
- 24 Q And went inside, found an empty house. All your
25 grandkids were gone, the children were gone. You

1 had no idea what had happened, right? That was
2 your testimony, right?

3 A No, I called my brother and told him to come and
4 get me and the kids and I guess he came and got
5 them after that happened.

6 Q When did you call your bother?

7 A After Dee Dee told me she wasn't coming home and
8 I knew she was over there with one of the guys
9 that I had accused her of.

10 Q You called your brother to come get you and the
11 kids?

12 A Yes, ma'am, I did.

13 Q But when you got home and there was nobody there,
14 no -- none of your grandkids, none of Dee Dee's
15 kids, Dee Dee wasn't there. You just sat down,
16 right? After you broke in the window and went
17 inside, you just laid down and went to sleep?

18 A No, I didn't break in my apartment.

19 Q Okay. And believe it was your testimony you just
20 assumed Dee Dee and the kids had gone across to
21 the other Dee Dee's -- Deanna's apartment?

22 A That's where she was trying to be so I assumed
23 that that's where she were.

24 Q She and all those children were across at Dee
25 Dee's apartment?

- 1 A Not my kids.
- 2 Q Not your grandkids but you thought Dee Dee and
3 her kids went across there?
- 4 A Actually, I didn't have no idea where they was
5 at.
- 6 Q That was your testimony. You just assumed that
7 she had gone over there?
- 8 A Yeah, I may have assumed that but I didn't really
9 know that.
- 10 Q But then when Dee Dee's grandmother -- you didn't
11 go and check and ask if Dee Dee was okay or find
12 out what was going on, did you?
- 13 A It wasn't -- they told me I couldn't see her.
- 14 Q No, no, no. Go back. When you're sitting by
15 yourself in your empty apartment, you didn't ever
16 try to check on her, did you?
- 17 A I was hoping someone would come home.
- 18 Q Okay. But you did talk to your brother who told
19 you she had gone to the hospital, right?
- 20 A No, talked with her grandmother. That's how I
21 found out she was in the hospital.
- 22 Q In fact, your brother that you talked to was the
23 one who showed up on the scene, right?
- 24 A I don't know. I wasn't there.
- 25 Q Right but you talked to him. He's the one that

1 told you she had gone to the hospital?

2 A I don't recall that.

3 Q And yet when Dee Dee's grandmother gets there --
4 well, first Mark comes in and sees you there
5 alone, right?

6 A He turned around and went back out the door. He
7 didn't run. He -- he seen me in there and he
8 went -- he turned around. Matter of fact, he
9 came in and got the dog out the bathroom and then
10 he left.

11 Q And then Dee Dee's grandmother comes in and
12 you're the one who told her, she's on the 5th
13 floor at Richland Memorial Hospital, right?

14 A I didn't even know where Dee Dee was. I mean,
15 how am I going to tell her that.

16 Q Dee Dee's grandmother -- Dee Dee's grandmother,
17 not from Columbia, she's from Salters?

18 A Right.

19 Q Her sister lives in Salters. They don't know
20 Columbia. They'd have no idea where Richland
21 Memorial Hospital is, would they?

22 A I showed them.

23 Q You showed them because you knew where she was.
24 Because you had talked to your bother and he told
25 you she was in that hospital, correct?

- 1 A No, ma'am, that's not correct.
- 2 Q And then you rode with Dee Dee's mother -- Dee
- 3 Dee's grandmother and Dee Dee's sister and showed
- 4 them where Richland Memorial was, right?
- 5 A After the grandmother asked me.
- 6 Q Okay. You rode there. You went up to the 5th
- 7 floor and they asked you for your name, right?
- 8 A Yes.
- 9 Q And they asked you your relationship to the
- 10 person you were trying to see, right?
- 11 A Yes.
- 12 Q You told them your name was Greg Gainey, right?
- 13 A I don't remember telling them I was Greg Gainey.
- 14 Q And you told them you were a friend of hers?
- 15 A I did say I was a friend.
- 16 Q This woman who you love and this woman who you
- 17 were living with and you didn't know there were
- 18 any problems with, at that point you were Greg
- 19 Gainey and just a friend, right?
- 20 A I wasn't Greg Gainey.
- 21 Q So you don't remember?
- 22 A I don't recall that.
- 23 Q Right. And when they came out and they took
- 24 Detra's grandmother and her sister into a
- 25 separate room, that's when you got suspicious

1 that people knew what was going on, right?

2 A No, ma'am.

3 Q And in fact, that's when you darted out of the
4 hospital, you left the 5th floor at the point?

5 A No, ma'am.

6 Q No?

7 A No, ma'am.

8 Q You just sat there and waited?

9 A Dee Dee grandmother was walking all around in the
10 hospital because she was kind of like being nosy.
11 She wanted to know where her grandbaby was at.
12 This gentleman asked, can I help you? She said,
13 I'm trying to find Detra Montgomery. And they
14 looked and they said they don't have anyone
15 listed.

16 Q Right.

17 A And they asked her her name and she told them her
18 name and they told her to hold on a minute.

19 Q Right.

20 A He left and he came back and he got her and he
21 was walking toward wherever Dee Dee was at.

22 Q Okay. So you got up and left?

23 A Yes because I felt like they wasn't going to let
24 me see her..

25 Q Why? Why did you feel that?

- 1 A I found out later on that the officer said that I
2 stabbed her.
- 3 Q So you felt like they weren't going to let you
4 see her, you didn't wait to ask anybody, can I go
5 see her too? They pull her sister and her
6 grandmother away and you took off?
- 7 A No, the sister was still out there with me. She
8 wasn't back there, just her grandmother.
- 9 Q But you took off?
- 10 A I didn't take off.
- 11 Q You went down ---
- 12 A I was -- I was still on the hospital grounds.
- 13 Q You were headed out the emergency room entrance?
- 14 A No, ma'am, I was out there smoking a cigarette.
15 That's the smoking area. They got designated
16 smoking areas at Richland Memorial Hospital.
- 17 Q You were walking out the emergency room exit when
18 you were approached by security, right?
- 19 A Yes, ma'am.
- 20 Q When you were approached by security, they asked
21 you -- your -- for an ID. They tried to talk to
22 you, right?
- 23 A I showed my ID and I talked to them.
- 24 Q And then you said you needed to go to your car
25 and get something?

1 A No, ma'am. They asked how I got there and I told
2 them I don't know where the car at I got here in.
3 I was riding with Dee Dee's grandmother.

4 Q In fact you told security that you needed to go
5 to your car and get something. That you were
6 parked over in Richland Medical Park Four?

7 A No, ma'am.

8 Q And they escorted you to where you said your car
9 was?

10 A No, ma'am.

11 Q They did not escort you?

12 A They made me stand where I was at and I got kind
13 of nervous about standing. I asked them what was
14 they making me stand there for. And he said, you
15 did something to a woman last night. I said, I
16 didn't do anything. And they said ---

17 Q You didn't do anything?

18 A That's what I told them, yes.

19 Q Oh, okay. That's what you told them, you didn't
20 do anything?

21 A Because I wasn't aware of all this.

22 Q And then you went to the car and they escorted
23 you to the car and as you were walking, you took
24 off, right?

25 A What car?

- 1 Q I don't know, the car that you said you needed to
2 get things out of. That security said, you
3 needed to get things out of your car?
- 4 A No, ma'am, that never happened.
- 5 Q Okay. And so they escorted you towards the
6 parking lot for whatever reason and you took off
7 running?
- 8 A No, they talked to me in front of the emergency
9 room.
- 10 Q Well you took off running over towards 277,
11 right?
- 12 A No, ma'am, I didn't.
- 13 Q You ran for about 40 yards before you were caught
14 by an N F L. offensive lineman, right?
- 15 A No, ma'am. I never did -- I was never able to
16 get out of his presence.
- 17 Q I believe that. But you tried to run?
- 18 A How can I run if I can't get out of his presence?
- 19 Q You ran for about 40 yards trying to make it to
20 277, didn't you?
- 21 A No, ma'am, that didn't happen.
- 22 Q They got you and they detained you?
- 23 A They did that.
- 24 Q But you love Detra Montgomery?
- 25 A Yes, I do.

1 Q And you love those kids?

2 A Yes, I did -- yes, I do.

3 Q If you couldn't have her because she told you it
4 was over with her, no one else could, could they?

5 A If Dee Dee would have told me it was over, it's a
6 possibility I would have left.

7 MS. WEISS: No further questions, Your Honor.

8 THE COURT: Anything on redirect?

9 MR. COOPER: Yes, Your Honor.

10 REDIRECT EXAMINATION

11 BY MR. COOPER:

12 Q Okay, Louis, I want to go back and talk about
13 your apartment. On the evening of March 31st,
14 2007, was the front door of your apartment
15 locked?

16 A Yes, sir, it was.

17 Q And what was the -- what was the way you had to
18 go in and out of your apartment?

19 A Through the back entrance.

20 Q All right. Louis, why did you go to the hospital
21 the next day?

22 A After Detra's grandmamma told me that she
23 informed that Dee Dee was stabbed and that I had
24 stabbed her and she wanted to know what happened
25 and I told her I can't remember what happened.

- 1 And she said, well, come on, let's go to the
2 hospital and see. And I said, okay.
- 3 Q Okay, Louis. Now, on the evening of March 31st,
4 2007, did you have any intent at all to kill Ms.
5 Montgomery?
- 6 A No way.
- 7 Q Did you have any intent at all to seriously harm
8 her?
- 9 A No, we was making plans for the -- for the
10 weekend.
- 11 Q And, Louis, why can't -- why can't you remember
12 that?
- 13 A I believe I was kind of hurt, kind of offended,
14 kind of -- I really can't put it all there.
- 15 Q Were you hurt?
- 16 A I was very hurt ---
- 17 Q Were you ---
- 18 A --- emotionally.
- 19 Q --- embarrassed?
- 20 A I was humiliated in front of people that I didn't
21 know know anything about our relationship. Dee
22 Dee never talked -- one of our rules, we didn't
23 do was took our affairs outside our house and
24 discuss them with other people.
- 25 Q Louis, let he ask you this. That night no March

1 31st, were you humiliated?

2 A Yes, I were.

3 Q Were you embarrassed?

4 A Yes.

5 Q And were you hurt?

6 A Yes.

7 MR. COOPER: Your Honor, that's all I have.

8 THE COURT: Ms. Weiss?

9 MS. WEISS: Nothing further, Your Honor.

10 THE COURT: You may -- well, just wait a
11 minute. There's a matter I need to take up. I've got
12 to ask y'all to go to the jury room. Don't talk about
13 this case.

14 Okay, thank you.

15 (The jury retires from the courtroom at
16 approximately 3:23 P.M.)

17 (The witness leaves the witness stand.)

18 THE COURT: Anything further from the
19 Defense?

20 MR. COOPER: No, Your Honor. We anticipate
21 resting.

22 THE COURT: All right, make your motions.

23 MR. COOPER: Beg the Court's indulgence.

24 Your Honor, at this time, Defense renews all
25 motions and objections and once again asks for a

1 directed verdict.

2 THE COURT: Denied. Same rulings apply, same
3 reasons.

4 MR. COOPER: Yes, sir.

5 THE COURT: Anything further?

6 MR. COOPER: No, Your Honor.

7 THE COURT: All right. What time do y'all
8 want the start in the morning, 10:00? I think 10:00.
9 It gives you a little bit of extra time to set up and
10 think about what you're going to do. Is that good
11 enough?

12 MS. WEISS: Sorry, Your Honor, 10:00?

13 THE COURT: Okay.

14 MS. WEISS: Yes, are they resting on the
15 record?

16 THE COURT: Yeah, that's why he made his
17 motions, renewed them all. Denied.

18 MS. WEISS: Okay. Are we going to do a
19 charge?

20 THE COURT: Yeah, I'm going to bring the jury
21 back out and send them home and tell them to be back
22 at 10:00 in the morning. We'll go to chambers and go
23 over everything we need to charge.

24 MS. WEISS: Thank you, Your Honor.

25 THE COURT: You'll have plenty time. Bring

1 the jury back in.

2 (The jury returned to the courtroom at
3 approximately 3:25 P.M.)

4 THE BAILIFF: Jury's all present, Your Honor.

5 THE COURT: All right. Welcome back, Madam.
6 Forelady and members of the jury. You have heard all
7 the testimony you shall receive in this case. Now
8 I've got to remind you once and perhaps for the last
9 time, please don't talk about this case. It's unfair
10 to either side for you to do so. You've got to wait
11 until you hear everything.

12 You've heard all the testimony. But now
13 you've got to hear the arguments of the lawyers and my
14 charge to you on the law, what the law is as it
15 applies to this case. Until then, please don't talk
16 about it to anybody.

17 I told you it would be a short and simple
18 case but a very serious one as y'all can imagine. So
19 bear that in mind. So don't talk to anybody else
20 about it, it would be unfair to do so.

21 I hope you have a pleasant and restful
22 evening. I'd ask you to be back tomorrow morning at
23 10 A.M., 10:00.

24 Good luck to you, ladies and gentlemen. See
25 y'all tomorrow morning at 10:00

1 (The jury retires from the courtroom at
2 approximately 3:27 P.M.)

3 THE COURT: Anything further this afternoon,
4 folks?

5 MR. COOPER: I was just going to -- I was
6 just going to say you wanted us to remind you about
7 that unless you wanted to put it in some plastic bags
8 before it went back there.

9 THE COURT: Yeah, I don't know, we should
10 probably still do that just in case. Y'all want to do
11 that?

12 MS. WEISS: We were going to try to -- try to
13 remember to bring some tomorrow, Your Honor.

14 THE COURT: Okay. I mean, if they want to
15 look at it, let's be safe and, you know, get somebody
16 to get gloves. We'll get Joe to get -- get somebody
17 to get gloves and like leave the bag inside a plastic
18 bag so they can look at it without touching it.

19 All right, come on downstairs and we'll take
20 our time to go through the charges.

21 MS. MCDUFFIE: Your Honor, can we just have
22 five minutes just to make some photocopies of some ---

23 THE COURT: Take your time. I mean, you know
24 ---

25 MS. MCDUFFIE: Thank you, Your Honor.

1 THE COURT: You need 10 minutes, Ms.

2 McDuffie?

3 MS. MCDUFFIE: Seven would be plenty, Your
4 Honor.

5 THE COURT: I'll be downstairs waiting on
6 you.

7 (The Court was in recess.)

8 THURSDAY, SEPTEMBER 3, 2009:

9 (Whereupon, Court's Exhibit Number 4,
10 Defendant's Request to Charge Assault and
11 Battery of a High and Aggravated Nature, was
12 marked for identification.)

13 (Whereupon, Court's Exhibit Number 5,
14 Defendant's Request to Charge Absence of
15 Malice, was marked for identification.)

16 Whereupon, Court's Exhibit Number 6,
17 Defendant's Jury Charge Verdict,
18 was marked for identification.)

19 THE COURT: Let me make sure I do this. Now,
20 I think Ms. McDuffie wants to open on the law, is that
21 right?

22 MS. MCDUFFIE: Yes, sir, Your Honor.

23 THE COURT: As far as that goes. Y'all don't
24 care about that, do you?

25 MR. COOPER: No, sir.

1 THE COURT: Y'all going to try to dissect --
2 the two -- or just you -- let Mr. Cooper do it.

3 MR. COOPER: Just one fell swoop.

4 THE COURT: All right. So I think we have
5 everything covered, do we not? If I fail to charge
6 something y'all think I should charge we talked about,
7 just let me know at the end.

8 MR. COOPER: Yes, sir. Just to be clear, you
9 have decided to charge the lesser included of ABHAN?

10 THE COURT: Oh, yeah. I just wanted you to
11 sweat overnight about it. I gave you a big hint
12 yesterday, I was probably going to charge everything.

13 All right. Is there anything further? We're
14 all okay, right?

15 (No response.)

16 THE COURT: All right, Mr. Guilyard, you
17 awake?

18 THE BAILIFF: What was that?

19 THE COURT: Never mind. Bring the jury in.

20 THE BAILIFF: I'm sorry.

21 (The jury returned to the courtroom at
22 approximately 10:08 A.M.)

23 THE BAILIFF: Jurors are present, Your Honor.

24 THE COURT: Okay. Good morning and welcome
25 back once again, Madam Forelady and members of the

1 jury. We're now at the point in this trial when you
2 will hear the final arguments -- that's pretty good
3 Mr. Guilyard.

4 (Pause.)

5 THE COURT: We're now at this point in this
6 trial where you will hear the final arguments on
7 behalf of the State and Mr. Gainey. These arguments
8 are important but they are not evidence and I invite
9 your keen and close attention to everything that the
10 lawyers say. This is their effort to persuade you to
11 agree with their version of the facts.

12 Under our rules and system, the State has the
13 burden of proof so we will first hear from Ms.
14 McDuffie that will open on the law. She will tell you
15 what the law is that applies to this case. They're
16 allowed to do that, the State is, and I will follow-up
17 with my general charge that goes into more details and
18 specifics.

19 And then we'll hear from Mr. Cooper. And
20 since the State has the burden of proof, Ms. Weiss
21 will be allowed to respond or reply to Mr. Cooper's
22 argument, and actually get the last argument because
23 they do have the burden of proof. It's a time honored
24 system.

25 You know, members of the jury, trials boil

1 down to the use of your good commonsense and your
2 judgment. I will tell you that, you all know that. I
3 don't have to say that to you because you understand
4 that. So always have an open mind, listen carefully
5 and be as fair as you possibly can to everybody
6 involved. If you do that, everything will be
7 okay.

8 So with those words, Ms. McDuffie, I will
9 invite you to open on behalf of the State.

10 (Pause.)

11 MR. COOPER: Your Honor, may I have
12 permission to move to the corner?

13 THE COURT: Yeah, yes, sir.

14 CLOSING ARGUMENT ON BEHALF OF THE STATE

15 BY MS. MCDUFFIE:

16 Madam Forelady, ladies and gentlemen of the
17 jury, thank you for your service this week. On behalf
18 of Detra Montgomery, myself, Heather Weiss and the
19 State of South Carolina, thank you. This system could
20 not function without you. And we know that there are
21 a million other places you would rather be than
22 serving on a jury. But we appreciate your
23 attentiveness and we thank you for your service.

24 I also would like to take a second to
25 apologize if I or Ms. Weiss has done anything to

1 offend you over the course of this week, we are sorry.
2 Sometimes things in the courtroom get a little heated
3 and due to the nature of this charge, it requires us
4 to bring up some graphic information.

5 Ladies and gentlemen, we all have a job to
6 do. It is our job as the State of South Carolina to be
7 ministers of justice. And it's Defense counsels' job
8 to represent their client and safeguard his
9 constitutional rights. It's the job of the Judge to
10 be the administer of the law. And it's your job,
11 ladies and gentlemen, to render a verdict.

12 You took an oath on Tuesday morning. You
13 took an oath to render a verdict without bias or
14 prejudice. Without bias or prejudice against the
15 State of South Carolina or against the Defendant.

16 What I'm going to do right now, ladies and
17 gentlemen, if you'll indulge me, and take a few
18 minutes and go over the law that applies in this case.
19 Then I'm going to sit down and Mr. Cooper will get up
20 and give a closing argument for the Defense, followed
21 by Ms. Weiss who will give the closing argument for
22 the State.

23 And as I said on Tuesday morning, if I say
24 anything different from the law as the Judge gives it
25 to you, please take the law as the Judge gives it and

1 not the law according to me.

2 As a result of the Defendant's actions on
3 March 31st of 2007, he is charged with assault and
4 battery with intent to kill. Ladies and gentlemen, in
5 South Carolina, assault and battery with intent to
6 kill is defined as an unlawful act of violent injury
7 to the person or presence of another with malice
8 aforethought.

9 Malice, ladies and gentlemen, is a legal term
10 of art. What malice means is a hatred, an ill-will.
11 It does not necessarily have to mean ill-will towards
12 the individual injured but rather a general malignant
13 recklessness of the lives and safety of others or a
14 condition of the mind which shows a heart devoid of
15 social duty and fatally bent on mischief. It is the
16 wrongful intent to injure another person. It
17 indicates a wicked or depraved spirit intent on doing
18 wrong. It is the doing of a wrongful act
19 intentionally and without just cause or excuse.

20 There are two types of malice, ladies and
21 gentlemen and the law does not distinguish nor give
22 more preferential treatment to one type or the other.

23 The first is expressed malice. And expressed
24 malice is done typically through words. For example,
25 if the Defendant would have said, I'm going to kill

1 you and then stabbed Ms. Montgomery in the stomach.

2 Or malice may be implied. Implied malice is
3 when circumstances demonstrate a wanton or reckless
4 disregard for human life or a reasonably prudent man
5 would have known that according to the common
6 experience, there was a plain and strong likelihood
7 that grievous bodily injury would follow the
8 contemplated act.

9 I submit to you, ladies and gentlemen, that
10 when someone takes a screwdriver and stabs that
11 screwdriver into someone's abdominal cavity at least
12 12 inches, that is malice, ladies and gentlemen.

13 In South Carolina we -- we also have the
14 burden of proving intent. And we can't go and dissect
15 the Defendant's brain, get inside of his head and tell
16 you this is what he was thinking, ladies and
17 gentlemen. The way we prove intent is through the
18 testimony of the witnesses. The way we prove intent
19 is from the acts, acts of the Defendant before, during
20 and after the attack.

21 Ladies and gentlemen, in assault and battery
22 with intent to kill, the specific intent to kill is
23 not an element of assault and battery with intent to
24 kill. Only a general intent to kill is necessary to
25 support the charge. And it can be demonstrated by

1 acts or conduct of the accused and other circumstances
2 in which you may naturally and reasonably infer
3 intent.

4 It can be proved with the evidence, of the
5 character or the means of the instrument used. Intent
6 to kill may be inferred from the character of the
7 assault, the use of a dangerous or deadly weapon and a
8 manner reasonably calculated to cause death or great
9 bodily harm. Likewise, the manner in which the
10 instrument was used, the purpose to be accomplished
11 and the resulting in -- I'm sorry, injuries may also
12 prove intent. Intent may be inferred when it is
13 demonstrated that the accused voluntarily and
14 willfully commits an act, the natural tendency of
15 which is to destroy human life. And I submit to you,
16 ladies and gentlemen, that that is exactly what we
17 have proved.

18 Ladies and gentlemen, the Judge will also
19 charge you that if anything can be a deadly weapon and
20 it's up to you the jury to decide if the instrument
21 that was used is a deadly weapon.

22 Also the Judge will charge you that
23 voluntarily intoxication is not a defense to a crime
24 in South Carolina. If the person renders themselves
25 voluntarily intoxicated, they are just as culpable as

1 if the act was committed by someone who was sober.

2 Ladies and gentlemen, we have the burden of
3 proof in this case just as we should and we welcome
4 that burden. We have to prove each element of the
5 crime the Defendant is charged with beyond a
6 reasonable doubt.

7 Proof beyond a reasonable doubt is proof that
8 leaves you firmly convinced of the Defendant's guilt.
9 There are very few things in this world that we know
10 with absolute certainty. And in criminal cases, the
11 law does not require proof that overcomes every
12 possible doubt. If, based on your consideration of
13 the evidence, you are firmly convinced of the
14 Defendant's guilt of the crime charged, then you must
15 find him guilty. If on the other hand you conclude
16 there is a real possibility that he is not guilty, you
17 must give the Defendant the benefit of the doubt and
18 find him not guilty.

19 Now, ladies and gentlemen, the Judge is also
20 going to charge you on a lesser include offense and
21 that is the offense of assault and battery of a high
22 and aggravated nature.

23 Assault and battery of a high and aggravated
24 nature is an unlawful act of violent injury to another
25 accompanied by a circumstance of aggravation. And

1 some examples of a circumstance of aggravation can be
2 use of a deadly weapon, serious bodily injury or a
3 difference in sexes. Ladies and gentlemen, I submit
4 to you that what this is is a lesser included offense.
5 Had the Defendant simply taken that screwdriver and
6 lacerated Ms. Montgomery's face, then I would be up
7 here talking to you about assault and battery of a
8 high and aggravated nature. But when he went as far
9 as almost taking her life, we are now in assault and
10 battery with intent to kill. And, ladies and
11 gentlemen, this is simply a lesser included offense.

12 One of your most important jobs as jurors is
13 to judge the credibility of the witnesses. And all we
14 ask you to do, ladies and gentlemen, is use your
15 commonsense.

16 Some of the factors that you can use in
17 determining or judging the credibility or
18 believability of a witness is the demeanor of the
19 witness on the witness stand. Was the witness
20 forthright or were they hesitant? Was the testimony
21 of the witness consistent? Was -- was the testimony
22 of the witness corroborated? Did the witness have any
23 reason to be biased or prejudiced?

24 Ladies and gentlemen, ask yourself, what did
25 Deanna Richardson have to gain by getting up here and

1 testifying? What did the doctor have to gain, E M T's,
2 law enforcement? What did they have to gain by
3 testifying? And then ask yourself, what does the
4 Defendant have to gain?

5 Ladies and gentlemen, it is your job to
6 render a verdict based on the evidence in this case.
7 Nothing that I have said to you, the questions that
8 any of us have asked, our opening statements or even
9 our closing arguments are evidence. What is evidence
10 is the testimony given under oath from the witness on
11 the witness stand and the physical exhibits that you
12 can take back into the jury room with you.

13 That is what evidence in this case -- is
14 evidence in this case. What's not evidence in this
15 case is speculation, innuendo, conjecture or just
16 plain old wishful thinking.

17 Ladies and gentlemen, we ask that you go back
18 in the jury room, remember the witnesses' testimony,
19 take back the physical exhibits and apply the law to
20 that evidence and render a verdict based on the
21 evidence and the law, a verdict of guilty to the
22 charge of assault and battery with intent to kill.

23 THE COURT: All right, Mr. Copper.

24 MR. COOPER: Thank you, Your Honor.

25 CLOSING ARGUMENT ON BEHALF OF THE DEFENDANT

1 BY MR. COOPER:

2 Ladies and gentlemen, Louis Gainey is
3 absolutely guilty. He's guilty of an assault and
4 battery of a high and aggravated nature and nothing
5 more.

6 Now, I want to be perfectly clear with you
7 about something right up front. And that is that
8 neither I nor Mr. O'Neil are making excuses for Louis
9 Gainey. This is not about excuses. All that we ask
10 you to do is hold him responsible for what he actually
11 did and what they've actually proven to you. That's
12 what we want. We -- we certainly want you to hold him
13 responsible. We just don't want him (sic) to hold you
14 (sic) responsible for something that he didn't do and
15 they haven't proven.

16 Now, if I'm going to ask you to hold somebody
17 responsible for something, then I want to tell you
18 exactly what it is. I'm asking him -- I'm asking you
19 to hold him responsible for assault and battery of a
20 high and aggravated nature so I want to go over
21 exactly what that is with y'all.

22 Ladies and gentlemen, assault and battery of
23 a high and aggravated nature, these are the elements.
24 An unlawful act of violent physical injury to the
25 person of another with circumstances with aggravation.

1 This is what Louis Gainey is guilty of doing on March
2 31st. And let me go through each and explain to you
3 exactly why.

4 All right, let's take number one, an unlawful
5 act. What he did was certain unlawful, assault and
6 battery of a high and aggravated nature. Of physical
7 injury, that's been demonstrated to you. To the
8 person of another, well Ms. Montgomery is certainly
9 another person. And number four, with circumstances
10 of aggravation. And this is an important part. I
11 want to go over these with you in detail.

12 These are aggravating circumstances to be
13 considered in South Carolina for finding assault and
14 battery of a high and aggravated nature.

15 Number one, use of a deadly weapon. Well, I
16 think the evidence shows and the State has showed
17 y'all, check. Intent to commit a felony, disparity in
18 age and physical condition. Well, disparity in age
19 and physical condition, I definitely think we have
20 that. Difference in gender, we've got that. Indecent
21 liberties, shame and disgrace, got that. Serious
22 bodily injury, we've got that.

23 Ladies and gentlemen, this is what the State
24 has actually proven to you. No conjecture about this.
25 Look, they've got one, two, three, four, five, at

1 least five out of eight of the elements of this
2 offense on Louis Gainey.

3 Now, the reason I go over this is because I'm
4 not asking you to imply anything. I'm not asking you
5 to infer anything. You'll hear those words in their
6 case. You already have. There's no inference about
7 this. There's no guessing about this. There's no
8 implying about this. This is what it is.

9 Look at all these elements with those
10 checkmarks. They've got this. This is the proof they
11 presented to you. You can be firmly convinced that
12 Louis Gainey is guilty of assault and battery of a
13 high and aggravated nature without doing any implying
14 or any inferring. That's what's right in front of
15 you.

16 And again, this is why I and Mr. O'Neil, all
17 that we're asking out of y'all, is to hold him
18 responsible for what they've actually proven against
19 him, without guessing or inferring. Because you don't
20 have to, you already have it front of you.

21 Now, ladies and gentlemen, I have been
22 sitting through this case just like y'all obviously.
23 It's been an emotional case and certainly it is
24 natural that you would have emotions and that you
25 would feel sympathy in this case. I totally

1 understand that and I expect that. That is perfectly
2 natural.

3 But, ladies and gentlemen, the thing you
4 can't do is you can't take those sympathies and those
5 passions, no matter how well-deserved they are, you
6 can't take those emotions, sympathies and passions
7 back there with you to the jury room.

8 And the way that I like to analogize this is
9 that if this is my sympathy and emotion box that I
10 hold right here, y'all have got to take those natural
11 feelings and those sympathies that you have and you've
12 got to put them in this box before you go back there.
13 You've got to leave them behind because back there
14 you're talking about the facts and the law and what
15 the State has actually proven, not what they haven't.

16 So please, leave your sympathies and your
17 emotions behind.

18 Now, ladies and gentlemen, I know that what
19 I'm asking of you and that perhaps what we've all ask
20 of you all week isn't comfortable. But I submit to
21 you that under the facts and the law, what I'm asking
22 of you is correct. And all that I and Mr. O'Neil ask
23 of you is to find Louis Gainey responsible, find him
24 responsible for what he actually did and what they've
25 actually proven to you without inference, without

1 implication, what's really in front of you, what you
2 can be firmly -- firmly convinced of. And that,
3 ladies and gentlemen, is an assault and battery of a
4 high and aggravated nature.

5 I thank you for your attention.

6 CLOSING ARGUMENT ON BEHALF OF THE STATE

7 BY MS. WEISS:

8 On March 31st, 2007, just after 1:00 o'clock
9 in the morning, Louis Gainey attempted to kill Detra
10 Montgomery. And, ladies and gentlemen, that's why
11 we're here today.

12 He had rules. Louis Gainey had rules. He
13 told you about those rules and you listened to them.
14 But to put it more specifically, he had rules for
15 Detra Montgomery. And, ladies and gentlemen, she
16 broke the rules.

17 Good morning. I'm Heather Weiss and I along
18 with Joanna McDuffie, who you've heard from, represent
19 the State, just want to thank you for your service and
20 thank you for your attention in this case. This has
21 not been a very long case but this is a very important
22 case. It's important to the Defense and it's
23 important to the State and it's important to Detra
24 Montgomery. She's been waiting since March 31st, 2007
25 for this day to come.

1 Before I even get started talking about the
2 Defense's argument -- first of all nothing that I say
3 up here or the Defense says up here -- the Defense has
4 told you that this is assault and battery of a high
5 and aggravated nature. Ladies and gentlemen, I
6 completely agree with that.

7 The way our law works, we have what's called
8 a lesser included offense. They have assault and
9 battery with intent to kill and a lesser included of
10 assault and battery of a high and aggravated nature.
11 And what that means and what the Judge will instruct
12 you is that every element of assault and battery with
13 intent to kill is in assault and battery of a high and
14 aggravated nature. But then we go to the next level
15 which is assault and battery with intent to kill.

16 I'm not going to speak for long but during my
17 closing I'm going to show you why everything they said
18 was true. All the elements of assault and battery of a
19 high and aggravated nature are here because they have
20 to be, they have to be present before we can even get
21 to assault and battery with intent to kill. But ladies
22 and gentlemen, I submit to you, this case is assault
23 and battery with intent to kill.

24 Assault and battery with intent to kill comes
25 down to this stab wound right here (indicating). This

1 stab wound, when the doctor was asked by the Defense,
2 well was there any other damage to any organs? And
3 the doctor said, yes, the stomach, the pancreas and
4 through the abdominal wall, through the mesocolon in
5 this stab wound not to mention all the other injuries
6 the doctor went back over.

7 A screwdriver was thrust through here
8 (indicating), through all of those levels being
9 strength bearing levels inside the abdomen -- excuse
10 me because I'm not a doctor, I'm just trying to
11 rephrase it. Through there, all the way through her
12 stomach, pierced her pancreas, goes all the way over
13 here.

14 See that scratch right there (indicating)?
15 One more scratch leading all the way down here
16 (indicating) before he thrusts the screwdriver in here
17 (indicating), kept pushing and kept jabbing until he
18 could get all the way across damaging organs all the
19 way across, damaging the abdominal wall so that her
20 intestines popped out into her hands, her bright white
21 intestines. That's assault and battery with intent to
22 kill.

23 As Ms. McDuffie told you, as the Defense told
24 you, aggravated assault is what the Defense is
25 arguing, scratch on the leg, defensive wound on the

1 leg made by a deadly weapon. Mark to the arm, mark to
2 the face, any one of those individually we'd be
3 standing up her arguing assault and battery of a high
4 and aggravated nature. The use of a deadly weapon,
5 violent injury, injury to a part of the body,
6 difference in the sexes, all of those things the
7 Defense just went through. That's what we would be
8 arguing. But we're not talking about just the mark to
9 the face or just the mark to the arm. We're talking
10 about the totality of this case, the brutality of this
11 case.

12 Intent to kill, this is where we go to the
13 next level. You have to have everything the Defense
14 just gave you and we do. The Defense has already told
15 you, we have all of that. What we need is the -- is
16 we have to prove that this goes to the next level.
17 This is what the law says you take into account to
18 move this to the next level.

19 The conduct of the accused. The fact that
20 Louis Gainey pulled her, grabbed her away, stabbed her
21 multiple times with a screwdriver. And it wasn't
22 until laying on the ground, still kicking, still
23 fighting her with the screwdriver, still swinging at
24 her, and he stabbed her multiple times, cut her
25 multiple times. You can only imagine how many times

1 he swung and missed in addition to that. It wasn't
2 until the neighbor came out that he took off, ran
3 right in front of a police car. You heard the
4 testimony from Catoe, he's right there, ran and took
5 off. Conduct of the accused.

6 Came back had to break into the house because
7 he didn't have a key with him when went out there.
8 Broke through the window and was just sitting there
9 waiting. Not even worried, just assuming life would
10 go on. Even takes her grandmother up and her aunt to
11 the hospital. And it's not until he gathers they're
12 on to him that he then takes off again and tries to
13 run. Fortunately security had experience with chasing
14 people down and he only got about 40 yards before he
15 was tackled. That's the conduct of the accused,
16 ladies and gentlemen.

17 Coming out -- coming out a couple of times,
18 trying to get her back in. That's conduct for you to
19 consider.

20 Evidence of the character of the means or
21 instrument used. Kind of an odd wording but that's in
22 the law. So I'm just getting it straight from the
23 law. The character of the means or instrument used.
24 That would mean using the screwdriver. And then the
25 character of the means that it was used, not just --

1 not just threatening her with it, not just a couple of
2 cuts but actually jabbing in and going through her
3 whole body. The character of the assault, the
4 brutality, the grievous injury. The intestines
5 hanging out and the fact that he ran off. The
6 character of the assault. It wasn't just a threat or
7 a lesson. This was more than that. This was an
8 intent to kill.

9 Use of a deadly weapon. Mind you, they put
10 up there, use of a deadly weapon. Remember they
11 checked that off in their closing. What the law says,
12 and this is what takes it to the next level, use of a
13 deadly weapon with an opportunity to deliberate. It
14 wasn't just they had a heated argument, they were
15 breaking up and he pulled out a weapon and something
16 happened. Use of a deadly weapon with an opportunity
17 to deliberate. Remember when he said he went inside
18 and sat on his bed and thought about it? That's his
19 opportunity to deliberate.

20 Use of a dangerous or deadly weapon in a
21 manner reasonably calculated to cause death or great
22 bodily harm. These are all things you're supposed to
23 consider in raising it to intent to kill. Using a
24 screwdriver, stabbing several times. If you would
25 recall, the doctor testified, she was heading towards

1 that with her elevated -- low blood pressure, elevated
2 heart rate. She was headed towards her body taking a
3 bad turn for the worse and great bodily harm. 500
4 cc's of blood inside because the abdominal wall -- I'm
5 sorry, the intestines were keeping the blood from
6 being able to leave. Great bodily harm.

7 The purpose to be accomplished. You have to
8 use your experience, your commonsense. The purpose to
9 be accomplished when you come back out with the
10 screwdriver, take her not into the home but around to
11 the back where nobody could see, in the dirt and the
12 dark, and start stabbing.

13 The resulting injury. You heard that
14 testimony. I've gone over that. The resulting
15 injuries were very grievous and the accused
16 voluntarily and willfully commits an act the natural
17 tendency of which is to destroy another's life.

18 Now, I just want to go into some of the
19 contradictions because what they're relying on is what
20 the Defendant said from the stand. Everything that
21 the State set forth, it's our burden of proof,
22 everything we put forth, ladies and gentlemen, I
23 submit to you goes directly to assault and battery
24 with intent to kill. The E M T, the investigator, the
25 doctor, the victim herself, the witness, everything

1 you heard from the State, I submit, goes to all of
2 those elements of assault and battery with intent to
3 kill. Anything that they're relying on on assault and
4 battery of a high and aggravated nature, they're
5 relying on the Defendant's testimony and you have to
6 determine the credibility of the witnesses. Was what
7 he was telling you, was it the truth?

8 And I'm just going to point out a few
9 contradictions. You probably got these yourself. I
10 just want to point out.

11 He says he doesn't remember what happened but
12 then when pressed about the screwdriver, he says,
13 well, they didn't see me no screwdriver. What was he
14 thinking? What was his intent?

15 He tried to say -- he tried to put some of
16 this on Detra Montgomery. He tried to say she
17 unplugged the phone. Just before that, I was inside
18 and called my brother to come. He's saying -- he's
19 trying to come up with something to say to try to sway
20 you.

21 She was not in the house helping with the
22 kids. The kids didn't know where she was. But yet
23 before she went outside, she supposedly made these
24 pallets and locked the door. But she was dealing with
25 the kids. It was 1 in the morning. The kids were

1 asleep, maybe couple or so watching T.V. I don't
2 know. But she was in there, she was taking care of
3 them. She got the kids taken care of before she went
4 outside.

5 Those are just some of the contradictions in
6 his testimony when you're determining the credibility
7 of what he said. So when he tried to say, I loved
8 her, take into consideration his -- what he had to
9 gain in what he said.

10 The biggest thing he said, what was making
11 him mad, she left and wouldn't come home. She was
12 breaking the rules. His rule was, you don't stay a
13 night out. You don't go out of the house after 10 and
14 you don't talk about us to other people. Those are
15 the rules we heard about. All the rules for Detra
16 Montgomery. She left and wouldn't come home.

17 Ladies and gentlemen, she walked out of that
18 door (indicating) and walked over here and sat on this
19 step (indicating) and the railing's weren't there.
20 She sat on the step. She sat on the step with her
21 friend Deanna Richardson and just had to be there.
22 She had a house full of kids, things were not going
23 well with Louis Gainey so she was talking to her
24 friend smoking a cigarette, right there on those steps
25 (indicating).

1 She didn't leave home. She barely -- I don't
2 even know if you could consider that going out after
3 10. She was right on her front -- basically on her
4 own front porch. But she was out there talking and
5 that was against his rules, she couldn't go out after
6 10.

7 What's more important, against his rules, she
8 had told him it was over. Not only did she tell him
9 it was over, she had called the police 10 days
10 earlier, called the police because of what was going
11 on. You knew things were spiraling down. And they
12 asked him to leave. They asked if he had anywhere to
13 go and he said, I'm not leaving. But I didn't know
14 things were over. But he admitted the police told him
15 to leave. She called the police and they told him to
16 leave. He knew things were over and that's why things
17 were spiraling.

18 He stated that he bought a PlayStation and a
19 ring for her in February for Christmas. Not only did
20 he buy that for her, he then took that away, took that
21 away from her and those kids. He was disappearing at
22 different times. He was the one that was breaking the
23 rules so the rules don't apply to him.

24 He had a job for a month at Midland's Tech
25 but he either resigned or was fired because he kept

1 running home because he wanted to check and see if she
2 was violating the rules. He had a job at Family
3 Dollar (sic) for three days before this incident.
4 Detra Montgomery was the stable one in this house.
5 Louis Gainey was the one setting the rules.

6 The night of March 31st, 2007, he said he was
7 humiliated, embarrassed and hurt. Ladies and
8 gentlemen, that goes to motive, motive as to what he
9 was doing. That doesn't go to, I love her and I was
10 upset and I just wanted to talk to her so I brought
11 her back inside so we could talk.

12 Humiliated, embarrassed and hurt? I submit
13 to you he was enraged. He was enraged. He sat on the
14 bed and thought, I can't go to bed without her here.
15 Sat down and he deliberated. He had already been
16 outside, told her to come in. She said, I'm not doing
17 that, I'm staying here. A grown woman on her own
18 front -- her neighbor's front porch right outside the
19 front door. I'm staying here. The kids are fine.
20 The door is open, I can hear what's going on. I'm
21 staying here.

22 He went inside, sat on the bed and thought, I
23 can't go to bed without her here. That rage was
24 building. That's when he grabbed his screwdriver out
25 of the drawer, the drawer that he kept it in in the

1 kitchen. Went back outside and wasn't going to take
2 it anymore.

3 That's when he grabbed her, grabbed her in
4 front of her friend, took her around to the back --
5 you're going to have all of this with you. Took her
6 to the dirt area in the back where no one could see, a
7 dark area behind the apartment, and began stabbing her
8 (indicating), swinging at her defensively. She -- you
9 saw the scar on her arm (indicating). You saw --
10 you've seen the -- after the surgery, you've seen --
11 you can only imagine what she was holding on to then.
12 You saw the mark on her face, the scratch mark -- the
13 scratch here leading down (indicating). The defensive
14 wounds on her leg where she was trying to kick him
15 off, trying to get him away from her, screaming so
16 loud that a police officer driving by was able to hear
17 her, stop the car right in front of her house.

18 Intent to kill? Yeah, this is an ABHAN all
19 right. This is an ABHAN plus. This is assault and
20 battery with intent to kill.

21 Conduct of the accused, evidence of the
22 character of the means or instrument used, character
23 of the assault. Use of a deadly weapon with an
24 opportunity to deliberate. Use of a dangerous and
25 deadly weapon in a manner reasonably calculated to

1 cause death or great bodily harm, the purpose to be
2 accomplished, resulting injury and the accused
3 voluntarily and willfully commits an act, the natural
4 tendency of which is to destroy another's life.

5 I'm not asking you to imply or infer. Look
6 at the facts, look at what was presented, look at
7 what's back with you in the jury room. And look at
8 the shirt, look at what she fighting off. The jeans,
9 look at what she had, what she was holding on to. The
10 blood that was coming out, go through this. You're
11 not inferring or implying. These are the facts,
12 ladies and gentlemen. These are the facts as they
13 were presented to you on the stand.

14 I'm just going to go through the injuries
15 very briefly. On her face, you can see the mark right
16 there (indicating), the scratch up, just like the edge
17 of a screwdriver. The mark on her breast the doctor
18 said bleeds very -- very heavily (indicating). Flat
19 end, just like the edge of a screwdriver.

20 Her abdomen, scratched all the way down
21 (indicating), the mark here, then all the way across,
22 all the way across her body (indicating). A closer
23 mark, you can see how large the stab wound was.
24 Clearly had to be maneuvered around. Defensive
25 wounds to her legs.

1 Ladies and gentlemen, he had rules for Detra
2 Montgomery. We have laws in this state. It's against
3 the law to assault somebody, commit a battery with the
4 intent to kill that person. We have laws and he broke
5 the law.

6 I ask you to go back into the jury room, look
7 at the evidence that was submitted and find Louis
8 Gainey guilty of assault and battery with intent to
9 kill Detra Montgomery.

10 Thank you.

11 CHARGE BY THE COURT:

12 Now, Madam Forelady and members of the jury,
13 when I first got this job I didn't need glasses, I
14 didn't have gray hair.

15 Now, the State of South Carolina charges
16 Louis Gainey, Jr., the Defendant, with assault and
17 battery with intent to kill. To this indictment the
18 Defendant has pled not guilty and this places the
19 burden of proof of his guilt beyond a reasonable doubt
20 on the State of South Carolina.

21 Now, a person charged with committing a
22 criminal offense in South Carolina is never required
23 to prove himself innocent. I charge you that is a
24 vital important rule of law of evidence that the
25 Defendant in a criminal case, a trial, no matter how

1 great or serious may be the offense with which he is
2 charged, must always be presumed innocent until his
3 guilt has been proven beyond a reasonable doubt.

4 Now, this presumption of innocence remains
5 with the Defendant at all times, from the moment of
6 his appearance in this court, throughout the trial and
7 until the jury has, upon the testimony and evidence
8 presented, reached a verdict of guilty beyond a
9 reasonable doubt.

10 For it is the solemn duty of the jury if not
11 clearly convinced of his guilt beyond a reasonable
12 doubt to the contrary to acquit the Defendant. So the
13 burden of proof is upon the State to establish
14 evidence to your satisfaction of guilt beyond a
15 reasonable doubt of the Defendant herein or here on
16 trial for the crime of assault and battery with intent
17 to kill.

18 Now, what is a reasonable doubt, members of
19 the jury? A reasonable doubt is the kind of doubt
20 that would cause a reasonable person to hesitate to
21 act. If you have such a doubt as to the guilt of the
22 Defendant, then he would be entitled to a verdict of
23 not guilty.

24 Reasonable doubt may arise from evidence
25 which is in this case or from the absence or lack of

1 evidence in this case.

2 You alone must make the determination of
3 whether or not reasonable doubt exists as to the guilt
4 or innocence of Louis Gainey, Jr.

5 Now, the State has the burden of proving the
6 Defendant guilty beyond a reasonable doubt. Some of
7 you may have served as jurors in civil cases, I think
8 there was one who may have raised your hand, where you
9 were told that it is only necessary to prove that a
10 fact is more likely true than not true. In criminal
11 cases the State's proof must be more powerful than
12 that. It must be beyond a reasonable doubt.

13 Now proof beyond a reasonable doubt is proof
14 that leaves you firmly convinced of the Defendant's
15 guilt... There are very few things in this world that
16 we know with actual certainty and in criminal cases,
17 the law does not require proof that overcomes every
18 possible doubt.

19 If based upon your consideration of the
20 evidence you are firmly convinced that the Defendant
21 is guilty of the crime charged, you must find him
22 guilty.

23 If on the other hand, if you think there's a
24 real possibility that he is not guilty, you must find
25 him not guilty.

1 A criminal Defendant is presumed to be
2 innocent until his guilt is proved beyond a reasonable
3 doubt. A verdict of guilty cannot be based upon -- a
4 verdict of guilty can be based upon circumstantial
5 evidence as safely as upon direct evidence. Finally,
6 provided the circumstantial evidence relied upon to
7 prove guilt measures up to these requirements of the
8 law that I just stated to you.

9 Now there are two types of evidence which are
10 generally presented during trial, direct evidence and
11 circumstantial evidence.

12 Direct evidence is the testimony of the
13 person who asserts or claims to have actual knowledge
14 of a fact such as an eyewitness. Circumstantial
15 evidence is proof of a chain of facts and
16 circumstances indicating the existence of a fact. The
17 law makes absolutely no distinction between the weight
18 or value to be given to either direct or
19 circumstantial evidence. Nor is a greater degree of
20 certainty required of circumstantial evidence than of
21 direct evidence.

22 You should weigh all the evidence in this
23 case. After weighing all the evidence, if you are not
24 convinced of the guilt of the Defendant beyond a
25 reasonable doubt, you must find him not guilty.

1 Now, Madam Forelady and members of the jury,
2 under the constitution and laws of South Carolina, you
3 are the finders of facts in this case. I do not have
4 the right to pass upon the facts or even express any
5 opinion I might have as to them, nor may I intimate in
6 any way what I may think about the guilt or innocence
7 of Louis Gainey, Jr.

8 You are the judges, the sole judges of the
9 credibility, the believability of the witnesses who
10 have testified in this case. And passing upon their
11 credibility, you may take into consideration many
12 things, such as the demeanor or manner of testifying.
13 Whether the witness had a reason to be biased or
14 prejudiced. Whether a witness's testimony was
15 contradicted on the one hand or supported and
16 corroborated on the other hand. You certainly do not
17 determine this credibility or believability by
18 counting the number of witnesses for either side.

19 You may believe a small portion of a
20 witness's testimony and disregard the larger or vice
21 versa. You may believe one witness against many or
22 many against one. You have heard the testimony of a
23 witness who has special knowledge, skill and
24 experience, training or education in a particular
25 profession or occupation who has given his opinion --

1 this is a doctor -- as an expert as to medicine which
2 he is skilled.

3 In determining the weight to be given such
4 opinion, you should consider the qualifications and
5 credibility of the expert and the reasons given for
6 his opinion.. You're not bound by such opinion. Give
7 it the weight, if any, to which you deem it is
8 entitled.

9 All these things you will consider bearing in
10 mind that you should give the Defendant the benefit of
11 a reasonable doubt.

12 Now, by the same constitution and law which
13 designates and makes you the finders of facts and the
14 evidence I have just discussed with you, I am as the
15 Judge made the sole and only instructor in the law.
16 You must accept as correct the law which I charge you
17 and apply it to the evidence as you find it and reach
18 a verdict.

19 And finally I charge you in this regard that
20 you, or for that matter I, should not be concerned
21 about the what the law ought to be but rather what I
22 charge the law to be in this case.

23 Now, the Defendant in this case is charged
24 with assault and battery with intent to kill. What is
25 assault and battery with intent to kill?

1 Members of jury, assault and battery with
2 intent to kill is an unlawful act of violent injury to
3 the person of another with malice aforethought, either
4 expressed or implied.

5 To prove assault and battery with intent to
6 kill, the State must prove beyond a reasonable doubt
7 that the Defendant committed an unlawful act of
8 violent -- of a violent nature to the person of
9 another with malice aforethought.

10 An assault is an unlawful attempt or offer to
11 commit a violent injury upon another person, coupled
12 with the present ability to complete the attempt or
13 offer by a battery. Assault has been defined as
14 placing another in apprehension of harm. While words
15 alone do not constitute an assault, if by words and
16 conduct a person intentionally creates a reasonable
17 apprehension of bodily harm, it is an assault.

18 An assault is an attempt to do violence to
19 the person of another in a rude, angry or resentful
20 manner. An assault is the intentional creation of
21 fear of immediate bodily harm.

22 A battery is the use of force against another
23 resulting in harmful or offensive contact. It is the
24 assault brought to completion. A battery is the
25 unlawful touching or striking of another by the

1 aggressor himself or by any substance put in motion by
2 him, done with the intention of bringing about a
3 harmful or offensive contact which is not legally
4 consented to by the other and not otherwise
5 privileged. It is something -- it is sometimes
6 defined as any injury done to the person of another in
7 a rude, insolent or a vengeful way.

8 The presence of malice is a required element
9 of assault and battery with intent to kill. Malice is
10 defined as being hatred or ill-will. Malice in its
11 legal sense does not necessarily import ill-will
12 toward the individual injured but signifies rather a
13 general malignant recklessness of the lives and the
14 safety of others. Or a condition of the mind which
15 shows a heart regardless of social duty and fatally
16 bent on mischief.

17 Malice is the wrongful intent to injure
18 another person. It indicates a wicked or a depraved
19 spirit intent on doing wrong. Malice is a legal term
20 applying wickedness and excluding a just cause or
21 excuse. It is the doing of a wrongful act
22 intentionally and without just cause or excuse.

23 The term malice indicates a formed purpose
24 and desire to do a wrongful act under the
25 circumstances that exclude any legal right to do it.

1 Malice may be expressed or implied. The
2 words expressed or implied add nothing to the meaning
3 of the word malice. They do not imply any -- or don't
4 imply different kinds of malice but merely the manner
5 in which the only kind known to the law may be shown
6 to exist. That is, either by positive evidence or by
7 inference.

8 Expressed malice is when there is a
9 deliberate intention to unlawfully take the life of
10 another. Implied malice is when circumstances
11 demonstrate a wanton or reckless disregard for human
12 life or a reasonably prudent man would have known that
13 according to common experience there was a plain and
14 strong likelihood that death would follow the
15 contemplated act.

16 The law says that if one intentionally shoots
17 or stabs another with a deadly weapon, the implication
18 of malice may arise. If facts are proven beyond a
19 reasonable doubt sufficient to raise an inference of
20 malice to your satisfaction, this inference would be
21 simply an evidentiary fact to be taken into
22 consideration by you, the jury, along with other
23 evidence in the case and you may give it such weight
24 as you determine it should receive.

25 A deadly weapon is an article or instrument

1 or substance which is likely to cause death or great
2 bodily harm. Whether an instrument or object has been
3 used as a deadly weapon depends upon the facts and the
4 circumstances of each case.

5 An assault -- assault and battery with intent
6 to kill requires the intent to kill. However, this
7 intent need only be a general intent demonstrated by
8 acts and conduct of the accused and other
9 circumstances from which you may naturally and
10 reasonably infer intent.

11 Specific intent to kill is not an element of
12 assault and battery with intent to kill. Only a
13 general intent to kill is necessary to support a
14 charge of assault and battery with intent to kill.
15 Intent may be proved with evidence of the character of
16 the means or instrument used. Intent to kill may be
17 inferred from the character of the assault, the use of
18 a deadly weapon with an opportunity to deliberate or
19 the use of a dangerous or deadly weapon in a manner
20 reasonably calculated to cause death or great bodily
21 harm.

22 Likewise, the manner in which the instrument
23 was used, the purpose to be accomplished and the
24 resulting injuries may also prove intent. An intent
25 may be inferred when it is demonstrated that the

1 accused voluntarily and willfully commits an act the
2 natural tendency of which is to destroy another's
3 life.

4 Now, there's an old expression that the
5 greater offense includes the lesser offense. And
6 you've heard some arguments about assault and battery
7 with intent to kill that I just defined for you. You
8 must have malice.

9 There's a lesser included offense in assault
10 and battery with intent to kill and that's assault and
11 battery of a high and aggravated nature and I must
12 necessarily define that for you. I'll do so right
13 now.

14 The Defendant in this case is also charged
15 with assault and battery of a high and aggravated
16 nature. Now what is assault and battery of a high and
17 aggravated nature?

18 An assault, once again, is an unlawful
19 attempt to offer to commit a violent injury upon
20 another person coupled with the present ability to
21 complete the attempt offered by a battery.

22 Assault has been defined as placing another
23 in apprehension of harm. While words alone do not
24 constitute an assault, if by words and conduct a
25 person intentionally creates a reasonable apprehension

1 of bodily harm, it is an assault.

2 An assault is an attempt to do violence to
3 the person of another in a rude, angry or resentful
4 manner. An assault is the intentional creation of
5 fear of immediate bodily harm.

6 A battery is the use of force against another
7 resulting in harmful offensive conduct. It is an
8 assault brought to completion. A battery is the
9 unlawful touching or striking of another by the
10 aggressor himself or by any substance put in motion by
11 him done with the intention of bringing about a
12 harmful or offensive contact which is not legally
13 consented to by the other and not otherwise
14 privileged.

15 It is sometimes defined as an injury done to
16 the person of another in a rude, insolent or
17 revengeful way. Assault and battery of a high and
18 aggravated nature is an unlawful act of violent injury
19 to another accompanied by circumstances of
20 aggravation. Circumstance of aggravation is an
21 element of assault and battery of a high and
22 aggravated nature. The State must prove a
23 circumstance of aggravation. Examples of circumstance
24 of aggravation include the use of a deadly weapon, the
25 intent to commit a felony, infliction of serious

1 bodily injury, great disparity in ages or physical
2 condition of the parties, a difference in gender,
3 taking indecent liberties or familiarities with a
4 female, purposeful infliction of shame and disgrace
5 and resistance to lawful authority. Any of these
6 circumstances of aggravation may be considered by you,
7 the jury.

8 Serious bodily harm or use of a deadly is an
9 essential element of assault and battery of a high and
10 aggravated nature. Where there are circumstances of
11 aggravation, bodily harm is not a prerequisite to a
12 conviction of assault and battery of a high and
13 aggravated nature.

14 Now, members of the jury, I further charge
15 that the absence of malice is not -- is not a required
16 element of assault and battery of a high and
17 aggravated nature. And the fact that a Defendant acts
18 with malice does not preclude a finding of assault and
19 battery of a high and aggravated nature.

20 Now, members of the jury, I just told you a
21 little bit about the lesser included offense. Now, I
22 must further tell you or charge you, if you should
23 find the Defendant guilty and there is a reasonable
24 doubt as to whether or not he is guilty of assault and
25 battery with intent to kill or guilty of the lesser

1 offense of assault and battery of a high and
2 aggravated nature, you should give him the benefit of
3 the doubt and find him guilty of assault and battery
4 of a high and aggravated nature. But, of course, you
5 cannot convict him of either -- either of assault and
6 battery of a high and aggravated nature or assault and
7 battery with intent to kill unless -- unless his guilt
8 has been established beyond a reasonable doubt.

9 Likewise, if you find the Defendant guilty
10 and there's a reasonable doubt as to whether he is
11 guilty of assault and battery with intent to kill or
12 assault and battery of a high and aggravated nature,
13 you should give him the benefit of the doubt and find
14 him guilty of the lesser crime of assault and battery
15 of a high and aggravated nature. But, of course, you
16 cannot convict him of either assault with intent to
17 kill or assault of a high and aggravated nature unless
18 his guilt has been established to your satisfaction
19 beyond a reasonable doubt.

20 Now, members of the jury, I further charge
21 you in this particular case, that voluntary
22 intoxication is never an excuse or a defense to a
23 crime regardless of whether the crime is one of
24 involving general or specific intent. A person who
25 voluntarily renders himself intoxicated is no less

1 responsible for his acts while in such a condition.
2 If one voluntarily drinks intoxicating liquors, wine
3 or beer, or is under the influence of drugs and
4 becomes intoxicated to whatever degree and if while in
5 that condition the person commits an act that would be
6 a crime if it had been committed by a sober person,
7 the fact of drunkenness will not relieve the
8 intoxicated person from responsibility.

9 I further charge you, Madam Forelady and
10 members of the jury --- and this applies to all
11 witnesses and it applies to the Defendant, it applies
12 to the victim. I charge you that a verdict cannot be
13 based on sympathy, compassion, prejudice, emotion or
14 any other consideration not found in the evidence.

15 Madam Forelady and members of the jury,
16 whatever your verdict it must be unanimous. That means
17 all 12 of you must agree. I have prepared what we
18 commonly refer to as Verdict Form. I hold it in my
19 left hand and it reads: The State of South Carolina,
20 County of Richland. The State of South Carolina,
21 Plaintiff versus Louis Gainey, Jr., Defendant. In the
22 Court of General Sessions for the Fifth Judicial
23 Circuit. It lists the case numbers and Verdict Form.

24 There's three possible verdicts. I had to
25 list one before the other. Obviously I couldn't list

1 them all at the same time. So I make no suggestions
2 one way or another by the one that's obviously first.
3 Y'all understand that.

4 But this is way the Verdict Form reads: We
5 the jury unanimously find the Defendant, Louis Gainey,
6 Jr., guilty of assault and battery with intent to kill
7 or guilty of aggravated assault -- guilty of assault
8 and battery of a high and aggravated nature, or not
9 guilty. It's just three possible verdicts.

10 Remember, assault and battery with intent to
11 kill has the requirement of malice as I defined that
12 for you. Assault and battery of a high and aggravated
13 nature does not require malice. Or he can be found
14 not guilty. Three possible verdicts.

15 Madam Forelady, once the 12 of you agree on a
16 verdict, you will sign your name above the line that
17 says, Foreperson, and you will date this Verdict Form
18 and that should conclude your services on this
19 particular case.

20 In the meantime, what I've got to ask you to
21 do is go to the jury room but don't discuss this case
22 yet. There's a matter of law I need to take up with
23 the attorneys involved and once again the only way I
24 can do that is in your absence.

25 So go to the jury room, relax. The time to

1 begin your deliberations will be when the bailiffs,
2 they will bring this Verdict Form, Madam Forelady,
3 along with all the exhibits that have been introduced
4 in this case and that will be your signal to begin
5 your deliberations. Until that time, don't begin
6 talking about this case.

7 So go to your jury room, relax for a minute,
8 and I'll take up this matter of law. And when they
9 bring you the Verdict Form with all the exhibits, that
10 will be your signal.

11 Thank you all so very much.

12 (The jury retires from the courtroom at
13 approximately 1:07 P.M.)

14 THE COURT: Are there any exceptions or
15 additions to that charge? Anything from the State?

16 MS. WEISS: No, Your Honor.

17 THE COURT: Anything from the Defense?

18 MR. COOPER: No, Your Honor.

19 THE COURT: All right. What I need to invite
20 y'all to do now is to make sure you double check the
21 exhibits.

22 MR. COOPER: Yes, sir.

23 THE COURT: I don't think anything's marked
24 for ID that didn't come in. Everything should be in.

25 MS. WEISS: Yes, Your Honor.

1 THE COURT: Look at the Verdict Form and be
2 absolutely sure. Once y'all agree on all that, we'll
3 send it back to the jury and let them get started.

4 (Pause.)

5 THE COURT: I say this to everybody. There's
6 an old expression that I learned as a little boy
7 growing up down in Dillon County where I was born, you
8 never know what the jury will do or who a widow will
9 marry, and that goes for widowers also, but we don't
10 know what the jury will do. But I take this
11 opportunity to hope that you both feel as if you've
12 received a fair trial. I try to give you both a fair
13 trial ---

14 THE BAILIFF: The alternate ---

15 THE COURT: What?

16 THE BAILIFF: The alternate.

17 THE COURT: Yeah, just interrupt me anytime
18 while I'm talking, Mr. Guilyard.

19 THE COURT: Bring me the alternate.

20 (Pause.)

21 (The alternate juror enters the courtroom.)

22 THE COURT: Let's see Catherine Highsmith.

23 MS. HIGHSMITH: Yes, sir.

24 (Pause.)

25 THE COURT: I take this opportunity to thank

1 you, Ms. Highsmith, on behalf of Ms. Montgomery, the
2 victim, Mr. Gainey, the Defendant, Ms. Weiss and Ms.
3 McDuffie who presented this case to you all and Mr.
4 Cooper and Mr. O'Neil that represented Mr. Gainey. We
5 thank you for being a good citizen. I mean, I guess
6 the alternate's like you get invited to the dance but
7 you don't get a chance to get out on the floor.

8 But, you know, I -- the lunch you ordered
9 should be here in about 30 to 40 minutes and I invite
10 you to stay and wait on it. You don't have to but I
11 invite you to stay.

12 MS. HIGHSMITH: Thank you.

13 THE COURT: And as a result of your service
14 here this week, you're not required to serve again for
15 at least another three years. But at some time along
16 the way in the future you ever get another invitation
17 to serve your country as a juror, I hope you will be
18 happy to accept it.

19 So thank you so very much from all of us
20 here.

21 MS. HIGHSMITH: Thank you.

22 THE COURT: Are we ready with everything?

23 MS. WEISS: Yes, Your Honor.

24 THE COURT: All right.

25 MS. WEISS: Your Honor, we were just going to

1 send the clothes back in the bag instead of trying to
2 put the big brown bag ---

3 THE COURT: That's fine. Leave it ---

4 MS. WEISS: We're just going to send the four
5 plastic bags back and not have to -- should we send
6 the gloves back in case they want to -- Your Honor,
7 you want to send those gloves back in case they want
8 to open it?

9 THE COURT: You can send them back to open it
10 ---

11 MS. WEISS: Okay, thank you.

12 (The Exhibits and Verdict Forms were
13 delivered to the jury to begin deliberations at
14 approximately 11:10 A.M.)

15 (The Court was in recess awaiting a verdict.)

16 THE COURT: There's a question from the jury.
17 They want to look at the definition of malice again.
18 They're just probably being overly cautious, somebody
19 wants to hear it again.

20 Now, you both have a copy of the charge,
21 don't you?

22 MS. MCDUFFIE: (Affirmative response.)

23 MR. COOPER: (Affirmative response.)

24 THE COURT: I would say on page 99 I should
25 start with the second to the last paragraph, maybe

1 read it to the end. Y'all look at it a minute. They
2 want the definition of malice. It's hard to simply
3 define it without going at least, in my opinion, to
4 page 100 down to the one, two, third paragraph.

5 Y'all look at it minute and let me know what
6 you think.

7 THE CLERK: Would you like the Defendant from
8 lockup?

9 THE COURT: Yeah, he needs to be up here.
10 Bring him up.

11 The only thing I can do -- what I would
12 propose to do is bring them back in and read it to
13 them again.

14 MS. WEISS: Your Honor, how far did you say
15 you want to go?

16 THE COURT: Initially I thought from 99, the
17 presence of malice ---

18 MS. WEISS: Okay.

19 THE COURT: --- up unto probably, although
20 malice may be -- there's no requirement -- that
21 paragraph. But I think I might just ready everything
22 from the presence ---

23 MS. WEISS: From there ---

24 THE COURT: --- until the end.

25 MS. WEISS: Okay.

1 THE COURT: I think that will be more
2 beneficial, so.

3 MR. O'NEIL: We just ask that you add the one
4 about ---

5 THE COURT: I'm not adding anything. I'm
6 not, you know, adding ---

7 MR. O'NEIL: The part about absence of malice
8 is not ---

9 THE COURT: No, I'm not going to do that
10 again. They didn't ask for that. They asked for the
11 definition of malice. Now, if you want something
12 else, I ain't going to give it to you. They didn't
13 ask ---

14 MR. O'NEIL: Yes, sir.

15 THE COURT: Okay. I mean, what you want is
16 one thing and what they want is something different.
17 I'm not yelling at you but I'm not going to give you
18 -- because you think of something else, I'm not going
19 to do that. Nothing personal.

20 MR. O'NEIL: Yes, sir.

21 THE COURT: I think -- I'm not mad with you
22 because you made a request but the answer is, no.

23 MR. O'NEIL: Yes, sir.

24 MR. COOPER: Yes, sir.

25 THE COURT: Just, I mean, you know. Why

1 don't I give the whole charge again? I ain't going to
2 do that. They ask for malice, I'm going to give the
3 definition of malice, that's all they want. And
4 usually -- it could be one, could be everybody.

5 They're being extra cautious. They want to be fair.

6 And so, relax. Stop pushing the envelope,
7 will you.

8 (Pause.)

9 THE COURT: Now, once again, y'all want to
10 start with that part and go to the end?

11 MS. WEISS: Yes, Your Honor.

12 MR. COOPER: Yes, Your Honor, that's fine.

13 THE COURT: Okay. And we'll let Mr. Gainey
14 get back up so you can explain it to him before I do
15 anything.

16 MR. COOPER: Yes, sir.

17 (Pause.)

18 THE COURT: And I'll just bring them back out
19 here and ask them is that -- you want me just to
20 define malice -- and this goes to the assault and
21 battery with intent to kill, obviously. And, you
22 know, that's what they're weighing, which is not
23 surprising.

24 (The Court was in recess.)

25 THE COURT: They gave me another one. We

1 want the assault and battery laws also. I said, look,
2 y'all think about and talk about what y'all want and
3 then when you decide, let me know. But I got the
4 impression they want me to do about what we talked
5 about.

6 Obviously, the question they're trying to
7 answer, is it intent to kill or aggravated. And I
8 think they're just trying to be, like any jurors
9 would, fair.

10 (The Court was in recess.)

11 THE COURT: Okay. All right bring them out.

12 And what I might do is start, assault and
13 battery with intent to kill is an unlawful act of
14 violent injury to the person of another with malice
15 aforethought, then explain, I think I should. Do
16 y'all agree or not?

17 MR. COOPER: Yes, sir.

18 THE COURT: Okay, Okay.

19 (The jury returned to the courtroom at
20 11:58 A.M.)

21 THE BAILIFF: The jurors are present, Your
22 Honor.

23 THE COURT: All right. Madam Forelady and
24 members of the jury, I received a note, we want to
25 look at the definition of malice. Again, I chatted

1 with y'all in the jury room and told you I could
2 redefine it -- read it back to you again.

3 So there maybe a little bit more than you
4 need but, like I said, I talked with the lawyers about
5 it and this is what I'm going to tell you. I'm
6 repeating what I've already said to a certain extent.

7 And this is regarding the charge of assault
8 and battery with intent to kill.

9 Now, assault and battery with intent kill is
10 an unlawful act of violent injury to the person of
11 another with malice aforethought, either expressed or
12 implied. All right?

13 The presence of malice is a required element
14 of assault and battery with intent to kill. Malice is
15 defined as being hatred or ill-will. Malice in its
16 legal sense does not necessarily import ill-will
17 toward the individual injured but signifies rather a
18 general malignant wickedness of the lives and the
19 safety of others. Or a condition of the mind which
20 shows a heart regardless of social duty and fatally
21 bent on mischief.

22 Malice is the wrongful intent to injure
23 another person. It indicates a wicked or a depraved
24 spirit intent on doing wrong. Malice is a legal term
25 applying wickedness and excluding a just cause or

1 excuse. It is the doing of a wrongful act
2 intentionally and without just cause or excuse.

3 The term malice indicates a formed purpose
4 and desire to do a wrongful act under the
5 circumstances that exclude any legal right to do it.

6 Malice may be either expressed or implied.
7 The word expressed or implied add nothing to the
8 meaning of the word malice. They do not imply
9 different kinds of malice but merely the manner in
10 which the only kind known to the law may be shown to
11 exist. That is, either by positive evidence or by
12 inference.

13 Expressed malice is when there is a
14 deliberate intention to unlawfully take the life of
15 another. Implied malice is when circumstances
16 demonstrate a wanton or reckless disregard for human
17 life or a reasonably prudent man would have known that
18 according to common experience there was a plain and
19 strong likelihood that death would follow the
20 contemplated act.

21 The law says that if one intentionally shoots
22 or stabs another with a deadly weapon, the implication
23 of malice may arise. If facts are proven beyond a
24 reasonable doubt sufficient to raise an inference of
25 malice to your satisfaction, this inference would be

1 simply an evidentiary fact to be taken into
2 consideration by you, the jury, along with other
3 evidence in the case and you may give it such weight
4 as you determine it should receive.

5 A deadly weapon is an article or instrument
6 or substance which is likely to cause death or great
7 bodily injury. Whether an instrument or object has
8 been used as a deadly weapon depends upon the facts
9 and the circumstances of each case.

10 Although malice must be aforethought, there's
11 no requirement that it must exist for any appreciable
12 length of time before the commission of the act. It
13 may be conceived at the very moment the act occurred.
14 There must be a combination of the evil intent of the
15 act producing the result.

16 Assault and battery with intent to kill
17 requires the intent to kill. However, this intent to
18 kill -- this intent need only be a general intent
19 demonstrated by acts and conduct of the accused and
20 other circumstances from which you may naturally and
21 reasonably infer intent.

22 Specific intent to kill is not an element of
23 assault and battery with intent to kill. Only a
24 general intent to kill is necessary to support a
25 charge of assault and battery with intent to kill.

1 Intent may be proved with evidence of the character,
2 of the means or instrument used. Intent to kill may
3 be inferred from the character of the assault, the use
4 of a deadly weapon with an opportunity to deliberate
5 or the use of a dangerous or deadly weapon in a manner
6 reasonably calculated to cause death or great bodily
7 harm.

8 Likewise, the manner in which the instrument
9 was used, the purpose to be accomplished and the
10 resulting injuries may also prove intent. An intent
11 may be inferred when it is demonstrated that the
12 accused voluntarily -- voluntarily and willfully
13 commits an act the natural tendency of which is to
14 destroy another's life.

15 Now, is that sufficient? Is that what y'all
16 want? Does that cover everything so far?

17 FOREPERSON: Yes.

18 THE COURT: All right. Y'all satisfied?

19 JURORS: (Affirmative response.)

20 THE COURT: Now, what you need to do, go back
21 to the jury room but don't resume your deliberations
22 until I give you the word to do so. I've got to
23 discuss what I just discussed with y'all with the
24 lawyers as I indicated to y'all before.

25 So just take your time and we'll let you know

1 shortly when to resume.

2 (The jury retires from the courtroom at
3 approximately 12:04 P.M.)

4 THE COURT: All right. Any exceptions or
5 additions? From the State?

6 MS. WEISS: No, Your Honor.

7 THE COURT: Mr. Cooper, Mr. O'Neil?

8 MR. COOPER: Nothing.

9 THE COURT: All right. Tell them to resume
10 their deliberations. They can start again. And we'll
11 be at ease. Don't go too far. Y'all got your cell
12 phone?

13 MR. COOPER: Yes, sir.

14 (The jury was instructed to resume
15 deliberations at 12:05 P.M.)

16 (Whereupon, Court's Exhibit Number 7, Juror
17 Note, was marked for identification.)

18 (Whereupon, Court's Exhibit Number 8, Juror
19 Note, was marked for identification.)

20 (The Court was in recess awaiting a verdict.)

21 THE COURT: I understand the jury has a
22 verdict. Are y'all ready to proceed?

23 MS. WEISS: Yes, Your Honor.

24 THE COURT: All right. Bring the jury in.

25 THE BAILIFF: Be glad to, Your Honor.

1 (The jury returned to the courtroom at
2 approximately 12:52 P.M.)

3 THE BAILIFF: The jury's all present, Your
4 Honor.

5 THE COURT: Ms. Pendergrass.

6 THE CLERK: Madam Foreperson, have you
7 reached a verdict?

8 FOREPERSON: Yes we have.

9 CLERK: Will you hand it to me?

10 (Complied.)

11 THE COURT: All right, you may publish it.

12 VERDICT OF THE JURY:

13 THE CLERK: Docket number 2007-GS-40-3131,
14 State of South Carolina versus Louis Gainey.

15 We, the jury unanimously find the Defendant,
16 Louis Gainey, guilty of assault and battery with
17 intent to kill.

18 This is signed Foreperson Rita Spence,
19 September 3rd, 2009.

20 Madam Foreperson, is this your verdict and
21 verdict of the entire jury?

22 FOREPERSON: Yes, it is.

23 THE COURT: Anything further from this jury
24 on behalf of the State?

25 MS. WEISS: Nothing further, Your Honor.

1 THE COURT: From the Defense?

2 MR. COOPER: Request to poll the jury.

3 THE COURT: All right. Requested poll, she's
4 going to read your numbers out and ask you two
5 questions.

6 THE CLERK: Juror number 232, was this your
7 verdict?

8 THE COURT: Response.

9 JUROR: Yes, it was.

10 THE CLERK: Is it still your verdict?

11 JUROR: Yes, it is.

12 THE CLERK: Juror number 144, was this your
13 verdict?

14 JUROR: Yes.

15 THE CLERK: Is it still your verdict?

16 JUROR: Yes, it is.

17 THE CLERK: Juror number 102, was this your
18 verdict?

19 JUROR: Yes, it was.

20 THE CLERK: Is it still your verdict?

21 JUROR: Yes, it is.

22 THE CLERK: Juror number 95, was this your
23 verdict?

24 JUROR: Yes.

25 THE CLERK: Is it still your verdict?

1 JUROR: Yes, it is.

2 THE CLERK: Juror number 165, was this your
3 verdict?

4 JUROR: Yes.

5 THE CLERK: Is it still your verdict?

6 JUROR: Yes, it is.

7 THE CLERK: Juror number 155, was this your
8 verdict?

9 JUROR: Yes.

10 THE CLERK: Is it still your verdict?

11 JUROR: Yes.

12 THE CLERK: Juror number 46, was this your
13 verdict?

14 JUROR: Yes.

15 THE CLERK: Is it still your verdict?

16 JUROR: Yes.

17 THE CLERK: Juror number 15, was this your
18 verdict?

19 JUROR: Yes.

20 THE CLERK: Is it still your verdict?

21 JUROR: Yes.

22 THE CLERK: Juror number 171, was this your
23 verdict?

24 JUROR: Yes.

25 THE CLERK: Is it still your verdict?

1 JUROR: Yes.

2 THE CLERK: Juror number 279, was this your
3 verdict?

4 JUROR: Yes.

5 THE CLERK: Is it still your verdict?

6 JUROR: Yes.

7 THE CLERK: Juror number 145, was this your
8 verdict?

9 JUROR: Yes.

10 THE CLERK: Is it still your verdict?

11 JUROR: Yes.

12 THE CLERK: Juror number 235, was this your
13 verdict?

14 JUROR: Yes.

15 THE CLERK: Is it still your verdict?

16 JUROR: Yes.

17 THE CLERK: The Jury's been polled, Your
18 Honor.

19 THE COURT: Anything further from the jury on
20 behalf of the Defendant?

21 MR. COOPER: No, Your Honor.

22 THE COURT: All right. Now, Madam Forelady
23 and members of the jury, I don't like to talk long but
24 I want to tell y'all that this was not an easy case.
25 This was a simple case, a very quick case but a very

1 important case to everybody involved. And certain
2 things as jurors that you don't know and you shouldn't
3 know while you're on the jury.

4 But so to remove any questions, any
5 lingerings and doubts you might have in any way, shape
6 or form, I will tell you what I couldn't tell you and
7 it was appropriate that we didn't tell you, Mr. Gainey
8 for example was convicted of voluntary manslaughter
9 and arson back in 1993. Now y'all shouldn't have
10 known that but I will tell you that now, okay, for
11 your benefit as jurors and having presided over these
12 proceedings that impacted the life of Ms. Montgomery
13 as well as Mr. Gainey.

14 So, having said that, I especially want to
15 thank you all. You come here as jurors, you hope for
16 a wonderful valuable experience and it was. It's just
17 that it was the type of case that somebody was
18 seriously injured, almost died. And there's a serious
19 penalty that Mr. Gainey will have to pay for his
20 actions.

21 But I don't know whether or not there was any
22 other decision you could have made in this case. So I
23 want you to know my perspective as a judge, you made
24 the right call. It was the right thing to do under
25 the circumstances. And don't have any second thoughts

1 about it one way or the other.

2 It was my pleasure to get to know each and
3 every one of you even if you're from Gulf Port,
4 Mississippi, down on the coast in Pascagoula or
5 whether you're from Hartsville or whatnot. These are
6 things that citizens have to step forward and do
7 sometimes. It's a patriotic service. You know, the
8 government of the people, by the people and for the
9 people cannot exist without you, without the
10 participation of each and every one of you in this
11 patriotic process.

12 So I congratulate you for being good
13 citizens. I especially thank you for your
14 attentiveness and the weight that you gave everything,
15 you considered it, you weighed it, you did the right
16 thing and I appreciate your service.

17 Now, I don't know what they're going to tell
18 you downstairs. I'm telling you up here that y'all
19 can go home. When you go downstairs and anybody has
20 any question about it, you tell them to get in touch
21 with me.

22 I wish you all calm nights and sunshiny days.
23 Okay, good luck to you all and thank you all so very
24 much.

25 (The jury retires from the courtroom at

1 approximately 12:57 P.M.)

2 THE COURT: Are we ready to proceed?

3 MR. COOPER: Yes, Your Honor.

4 THE COURT: Bring the Defendant around.

5 MR. COOPER: Your Honor, at this time I would

6 move for a new trial based in particular on the
7 admission of my objection to State's Exhibits ---

8 THE COURT: 403 and 901, photographs.

9 MR. COOPER: Yes, sir, and in particular ---

10 THE COURT: 10 or 11, 15 and 10 ---

11 MR. COOPER: Yes, sir, in particular I just
12 want to put on the record ---

13 THE COURT: Yes, sir.

14 MR. COOPER: --- that the jury viewed those
15 during closing argument.

16 THE COURT: All right. And once again, I
17 think my response and the reason I denied that was
18 because this was a case of assault and battery with
19 intent to kill and all the pictures showed was to what
20 extent the doctors had to go to save her life. I
21 think it's more than fitting and appropriate in this
22 case than some others I heard. So once again, your
23 motion is respectfully denied, sir.

24 MR. COOPER: The only other thing is that I
25 take this opportunity to renew all my previous motions

1 and objections.

2 THE COURT: All right. They're noted for the
3 record and they are also denied for the same reasons.

4 Bring Mr. Gainey around.

5 (Complied.)

6 MR. COOPER: Sign the paperwork first?

7 THE COURT: Oh yeah, I am sorry, I'm sorry.

8 (Pause.)

9 THE COURT: I think there's probably certain
10 preliminary matters we need to put on the record. I
11 think this is the third strike going against him, is
12 that correct?

13 MS. WEISS: Second strike.

14 THE COURT: Go ahead, Ms. Weiss.

15 MS. WEISS: Thank you, Your Honor. First I'd
16 like to mark as State's -- Court's Exhibit for the
17 record State's Notice of Intent to Seek Life Without
18 Parole in May of 2007. As well as the two prior
19 convictions, the arson as well as the voluntary
20 manslaughter, certified convictions of those prior
21 convictions.

22 THE COURT: All right. Anything you need to
23 say in regards to this, Mr. Cooper, anything you would
24 say ---

25 MR. COOPER: I'll be very brief.

1 THE COURT: No, in regards to this ---

2 MR. COOPER: Oh, no, Your Honor.

3 (Whereupon, Court's Exhibit Number 9, Notice
4 of Intent to Seek Life Without Parole, was
5 marked for identification.)

6 (Whereupon, Court's Exhibit Number 10,
7 Sentencing Sheet of Prior Conviction, was
8 marked for identification.)

9 (Whereupon, Court's Exhibit Number 11,
10 Sentencing Sheet of Prior Conviction 3/9/92,
11 was marked for identification.)

12 MS. WEISS: And, Your Honor, Ms. McDuffie
13 will read the Defendant's prior record.

14 MS. MCDUFFIE: Your Honor ---

15 THE COURT: Listen, I don't think it really
16 matters in this case. If you want me to hear it, then
17 I will be happy to listen to Mr. Cooper. And by the
18 way, Mr. Gainey, I don't know you, have nothing
19 against you. I hope you received a fair trial, I
20 tried to give you one, this is the result, as I told
21 you before the jury reached a verdict. And we all
22 knew this could happen, so. Well, we've now come to
23 end of this trial.

24 Yes, sir, Mr. Cooper.

25 MR. COOPER: Thank you, Your Honor. I'd just

1 like to say a couple of things. First of all, I'd
2 like to thank Louis's family for being here and
3 supporting him.

4 THE COURT: I got to meet them ---

5 MR. COOPER: They're really good people.
6 They supported Louis and they supported us. And I
7 want to thank them for that.

8 As far as Mr. Louis Gainey, the situation is
9 what it is. I just want to put on the record that
10 getting to know Louis, I've seen him down at the jail
11 participating in the Scared Straight program. This is
12 not something that he had to do. But the first time I
13 went down there I heard him yelling and I thought I
14 was going to be a witness to some incident. But the
15 truth is he was talking to a young individual trying
16 to keep him from making some of the decisions he's
17 made.

18 So I just want everybody to be aware that he
19 willingly participated in that. And other than that,
20 Your Honor, I leave this in your discretion.

21 THE COURT: Mr. Gainey, I don't know you. I
22 wish you the best and I wished you the best before the
23 jury came back with a verdict.

24 I find no pleasure in sentencing you but I
25 have to sentence you by the law. And you -- of course

1 you realize that you have the right to appeal and your
2 lawyer should file a Notice of Intent to Appeal. And
3 beyond that -- after one year from the date of
4 sentencing -- but if you file a Notice of Intent to
5 Appeal, you've got to exhaust that and then you'll be
6 allowed to file a Post Conviction Relief Application.
7 There may be something down the road that might impact
8 your life in a different way than what I'm going to
9 have to impose upon you today.

10 So it's nothing personal. It's just one of
11 those sad and tragic things, sad and tragic for you
12 and it's sad and tragic for Ms. Montgomery. It's sad
13 and tragic for me and everybody else who's had to
14 participate. If we could all turn back the clock, I'm
15 sure we would and do things a little bit differently
16 but this is what we're faced with here today.

17 Your lawyers did an outstanding job. The
18 rulings I made I thought -- I think I gave you
19 everything you wanted almost except about the pictures
20 and, you know, I think they should have gone in.

21 So this is one of those things. I wish you
22 the very best. You understand, Mr. Gainey?

23 THE DEFENDANT: Yes, sir.

24 THE COURT: Nothing personal.

25 Could I have the sentencing sheet, please?

1 (Pause.)

2 THE COURT: And based on your prior record,
3 Mr. Gainey, and you realize, they served you notice of
4 life without parole sometime ago.

5 SENTENCE OF THE COURT:

6 So on indictment number 2007-3131, The State
7 versus Louis Gainey, assault and battery with intent
8 to kill. The sentence of the Court that you, Louis
9 Gainey, be sentenced to the South Carolina Department
10 of Corrections for a period of life and this is
11 without the possibility of parole.

12 Good luck to you, Mr. Gainey.

13 MS. WEISS: Thank you, Your Honor.

14 MS. MCDUFFIE: Thank you.

15 ----- END OF TRANSCRIPT OF RECORD -----

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3
4 CERTIFICATE OF REPORTER
5

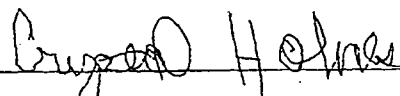
6 STATE OF SOUTH CAROLINA)

7 COUNTY OF RICHLAND)
8

9 I, Crystal Holmes, Official Court Reporter for
10 the Fifth Judicial Circuit of the State of South
11 Carolina, do hereby certify that the foregoing is a
12 true, accurate and Complete Transcript of Record of
13 the proceedings had and evidence introduced in the
14 trial of the captioned case, relative to appeal, in
15 the Court of General Sessions for Richland County,
16 South Carolina, on the 1st, 2nd and 3rd days of
17 September, 2009.

18 I do further certify that I am neither of kin,
19 counsel nor interest to any party hereto.
20

21 January 12, 2010
22

23 
24 Crystal Holmes, Court Reporter
25

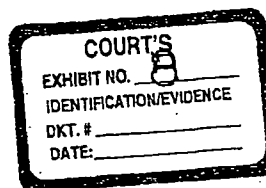
We want to look at
the Definition of
Malice again.

#15



We want the
Assault & Battery
laws also.

#15



STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Richland County
L. Casey Manning, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

LOUIS GAINEY, JR.,

APPELLANT

FINAL ANDERS BRIEF OF APPELLANT

KATHRINE H. HUDGINS
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, S. C. 29211-1589
(803) 734-1343

ATTORNEY FOR APPELLANT

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TABLE OF AUTHORITIES**Cases**

<u>State v. Belcher</u> , 385 S.C. 597, 685 S.E.2d 802 (2009).....	6

STATEMENT OF ISSUE ON APPEAL

Did the trial judge err in charging the jury that malice may be inferred from the use of a deadly weapon where there was evidence presented that would reduce the charge from assault and battery with intent to kill to assault and battery of a high and aggravated nature?

STATEMENT OF THE CASE

In October of 2007, the Richland County Grand Jury indicted Gainey for assault and battery with intent to kill, indictment #07-GS-40-3131. On September 1, 2009, Gainey proceeded to jury trial before the Honorable L. Casey Manning. The jury returned a verdict of guilty and Judge Manning sentenced Gainey to life without parole pursuant to S.C. Code §17-25-45. A timely notice of intent to appeal was filed on September 4, 2009. This appeal follows.

ARGUMENT

The trial judge erred in charging the jury that malice may be inferred from the use of a deadly weapon where there was evidence presented that would reduce the charge from assault and battery with intent to kill to assault and battery of a high and aggravated nature.

The jury found Gainey guilty of stabbing Delra Montgomery with a screwdriver.

The judge granted defense counsel's request to charge the lesser included charge of assault and battery of a high and aggravated nature. (R. p. 339, lines 8-14; p. 376, lines 9 – p. 377, 378 lines 1-19). Gainey testified at trial and admitted hitting Montgomery but did not remember stabbing her. (R. p. 302, lines 1-13). In closing argument defense counsel asked the jury to find Gainey guilty of the lesser included offense of assault and battery of a high and aggravated nature. (R. pp. 349 – 353).

The judge charged the jury, "The law says that if one intentionally shoots or stabs another with a deadly weapon, the implication of malice may arise. If facts are proven beyond a reasonable doubt sufficient to raise an inference of malice to your satisfaction, this inference would be simply an evidentiary fact to be taken into consideration by you, the jury, along with other evidence in the case and you may give it such weight as you determine it should receive." (R. p. 374, lines 16-24). During deliberations the jury asked the judge to re-define malice. (R. p. 385, lines 16-19; Court's Exhibits #7 and #8 – notes from the jury, R. p. 408). The judge re-charged the jury on the definition of malice, including the permissive inference of malice from the use of a deadly weapon language. (R. p. 391, lines 21 – p. 392, lines 1-4). The judge erred.

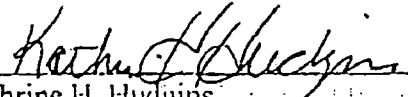
On October 12, 2009, a little over a month after the trial in the present case, the South Carolina Supreme Court decided State v. Belcher, 385 S.C. 597, 612, 685 S.E.2d 802 , 810

(2009), holding, "that where evidence is presented that would reduce, mitigate, excuse or justify a homicide (or assault and battery with intent to kill) caused by the use of a deadly weapon, juries shall not be charged that malice may be inferred from the use of a deadly weapon." Gainey's testimony that he did not remember stabbing Montgomery but admitted hitting her constitutes evidence that could reduce the charge from assault and battery with intent to kill to assault and battery of a high and aggravated nature. The judge erred in instructing the jury that malice could be inferred from the use of a deadly weapon. The error was not harmless.

CONCLUSION

Based on the above argument, Gainey's sentence and conviction should be reversed and the case remanded for new trial.

Respectfully submitted,



Kathrine H. Hudgins
Appellate Defender

ATTORNEY FOR APPELLANT

This 2nd day of November, 2010.

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Richland County

L. Casey Manning, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

LOUIS GAINNEY, JR.,

APPELLANT

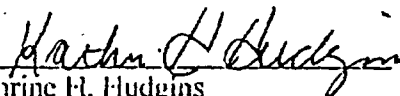
PETITION TO BE RELIEVED AS COUNSEL

Counsel for Louis Gainey Jr. states:

1. She is Appellate Defender for the South Carolina Office of Appellate Defense, and was appointed to represent appellant.
2. She has reviewed the record of appellant's trial before Judge L. Casey Manning, which was held on September 3, 2009, and, in her opinion, the appeal is without legal merit sufficient to warrant a new trial.
3. She has, pursuant to Anders v. California, 386 U.S. 738, 87 S.Ct. 1396 (1967), briefed an arguable legal issue which arose during the course of the trial.

WHEREFORE, she asks the Court to relieve her as counsel for Louis Gainey Jr..

Respectfully submitted,

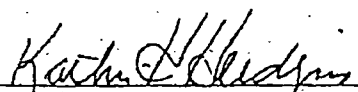

Kathrine H. Hudgins
Appellate Defender

ATTORNEY FOR APPELLANT

CERTIFICATE OF COUNSEL

The undersigned certifies that to the best of my ability this Final Brief of Appellant complies with Rule 211(b), SCACR, and the August 13, 2007, order from the South Carolina Supreme Court entitled "Interim Guidance Regarding Personal Data Identifiers and Other Sensitive Information in Appellate Court Filings."

November 2nd, 2010


Kathrine H. Hudgins
Appellate Defender

S.C. Commission on Indigent Defense
Division of Appellate Defense
1330 Lady Street, Suite 401
Post Office Box 11589
Columbia, South Carolina 29211-1589

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.

Louis Gainey, Jr.,

Appellant.

Appeal From Richland County
L. Casey Manning, Circuit Court Judge

Unpublished Opinion No. 2012-UP-057
Submitted January 3, 2012 – Filed February 1, 2012

APPEAL DISMISSED

Appellate Defender Kathrine H. Hudgins, of
Columbia, and Louis Gainey, pro se, for Appellant.

Attorney General Alan Wilson, Chief Deputy
Attorney General John W. McIntosh, Assistant
Deputy Attorney General Salley W. Elliott, and
Solicitor Daniel E. Johnson, all of Columbia, for
Respondent.

PER CURIAM: Louis Gainey, Jr., appeals his conviction for assault and battery with intent to kill, arguing the circuit court erred in charging the jury that malice may be inferred from the use of a deadly weapon because evidence was presented that would have reduced the charge to assault and battery of a high and aggravated nature. Additionally, Gainey asserts several pro se arguments. After a thorough review of the record and all briefs 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 dismiss¹ the appeal and grant counsel's motion to be relieved.

APPEAL DISMISSED.

SHORT, WILLIAMS, and GEATHERS, JJ., concur.

¹ We decide this case without oral argument pursuant to Rule 215, SCACR.

FORM 5

STATE OF SOUTH CAROLINA

COUNTY OF RichlandLouis Gainey Jr #185519

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

v.

State of South Carolina Attorney
General Office

IN THE COURT OF COMMON PLEAS

2012-CP-400-4670

APPLICATION FOR

POST-CONVICTION RELIEF

INSTRUCTIONS - READ CAREFULLY

In order for this application to receive consideration by the Court, it shall be in writing (legally 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 reference to which question any such continued answer refers.

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

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

1. Place of detention McComick Correctional Inst.
2. Name and location of Court which imposed sentence General Sessions
3. Name(s) of co-defendant(s) (if any) NA
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) 2007-GS-40-3131
 - (b) _____
 - (c) _____
5. The date upon which sentence was imposed and the terms of the sentence:
 - (a) Sept 1, 2009
 - (b) _____

RICHLAND COUNTY
 FILED
 2012 JUL -6 PM 1:14
 JEANNETTE WOODRUFF
 C.C.P. & J.P.

- (c) _____
6. Check whether a finding of guilty was made:
- (a) after a plea of guilty _____
- (b) after a plea of not guilty Yes _____
- (c) after a plea of nolo contendere _____
7. Did you appeal from the judgment of conviction or the imposition of sentence?
Yes _____
8. If you answered "yes" to (7), list:
- (a) the name of each Court to which you appealed:
- i. South Carolina Court of Appeals _____
- ii. _____
- iii. _____
- (b) the result in each such Court to which you appealed:
- i. Dismissed _____
- ii. _____
- iii. _____
- (c) the date of each such result:
- i. Jan 3, 2012 Filed Feb 1, 2012 _____
- ii. _____
- iii. _____
- (d) if known, citations of any written opinion or orders entered pursuant to such results:
- i. No. 2012-up-057 _____
- ii. _____
- iii. _____
9. If you answered "no" to (7), state your reasons for not so appealing:
- (a) _____
- (b) _____
- (c) _____
10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:

- (a) 6th
- (b) 14th
- (c) _____

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

- (a) ineffective assistance of counsel.
- (b) Due process of Law.
- (c) see Memorandum of Law Support Attachment.

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

- (a) any petition in a State Court under South Carolina Law? NA
- (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? NA
- (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? NA
- (d) any other petitions, motions or applications in this or any other Court? NA

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

- (a) the specific nature thereof:
 - i. _____
 - ii. NA
 - iii. _____
 - iv. _____
- (b) the name and location of the Court in which each was filed:
 - i. _____
 - ii. NA
 - iii. _____
 - iv. _____
- (c) the disposition thereof:
 - i. NA
 - ii. _____
 - iii. _____

iv. _____

(d) the date of each such disposition:

i. NA

ii. _____

iii. _____

iv. _____

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

i. _____

ii. NA

iii. _____

iv. _____

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

NA

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

(a) which grounds have been presented:

i. NA

ii. _____

iii. _____

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

i. NA

ii. _____

iii. _____

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

(a) See Memorandum of Law Attachment.

(b) _____

(c) _____

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

- (a) your arraignment and plea? _____
- (b) your trial, if any? YES
- (c) your sentencing? YES
- (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? YES
- (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed? YES

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

- (a) the name and address of each attorney who represented you:

- i. JAMES D COOPER, III 295
- ii. ERNEST DEON O'NEILL 295
- iii. KATHRINE H. HUDGINS

- (b) the proceedings at which each such attorney represented you:

- i. Trial
- ii. Trial
- iii. on Appeal

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

VACATE conviction and sentences

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

NA

STATE OF SOUTH CAROLINA

)

)

VERIFICATION

County of McCORMICK

)

I, L.G., 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.

John Gandy

SWORN to and subscribed before me this 02
day of July, 2012.

J. Cranley (L.S.)
Notary Public

My Commission Expires: 12-16-2019

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

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

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

Gene Gray
Applicant

SWORN or affirmed to and subscribed before me this

02 day of July, 2012.

J. A. [Signature]
Notary Public

My Commission Expires: 12-16-2015

RICHLAND COUNTY
FILED
2012 JUL -6 AM 11:44
JEANNETTE W. MCBRIDE
C.C.P. & G.S.

STATE OF SOUTH CAROLINA
County of Richland

Court of Common Pleas

CASE NO.

Louis Garney Jr #185519

2012CP40046

Applicant

Proof of Service

VS

State of South Carolina

Respondent

RICHLAND COUNTY
FILED
2012 JUL -6 AM 11:44
JEANNETTE W. MCBRIDE
C.C.P. & G.S.

To Respondent:

I certify that Louis Garney Jr #185519 has served a true and original copy of Post-conviction Relief Application to the clerk of court Richland County Ms. Jeanette W. McBride P.O. Box 2766 Columbia SC 29202-2766; By Place a true copy in the United States mail.

[Signature]
386 Redemptionway
McCormick, SC, 29867

Sworn or affirmed to and
subscribed before me this
02 day of July, 2012

[Signature]
Notary Public

My commission expires 12-16-2011

State of South Carolina / The Court of Common
County of Richland / Pleas

Louis Gainey Jr #185519, case _____
Applicant Memorandum of Law

vs) Support Post-convicti
State of South Carolina) Relief Application
Respondent)

TO Respondent:

Now comes the Applicant before
Honorable Court pursuant to S.C. Code
Law § 17-27-10 and 17-27-801.

RICHLAND COUNTY
FILED
2012 JUL -6 PM 11:14
JEANNETTE W. MCBRIDE
C.C.P. & S.

STATEMENT of the Facts

On March 31st of 2007, the Applicant
Louis Gainey Jr; was at his residence of
his home with his girlfriend Ms. Montgomee
and does not remember stab the victim with
a screwdriver.

The Applicant was indicted by A Grand
Jury on October 2007 for assault and

battery with intent to Kill, indictment
No# 07-GS-40-3131, on September 1, 2009,
Garney proceeded to jury trial before the
Honorable L. Casey Manning. The jury returned
a verdict of guilty and Judge Manning
sentenced Garney to life without parole
pursuant to S.C. code § 17-25-45. A timely
notice of intent to appeal was filed on
September 4, 2009. This Pro-se Anders Brief
of Appellant.

ARGUMENT 1

Trial counsel prejudice defendant failure
request for a second mental examination
opinion to deter if the defendant was
incompetency to stand trial. Violation
6th Amendment § 14th Amendment Due
process of Law:

Applicant was mentally incompetent stand trial for ASSAULT and Battery with intent to Kill; And at the time of his 2009 Jury trial; In Violation of South Carolina Constitution United States Constitution's Fourteenth Amendment due process clause. Incorporated into allegations is that Applicant was denied effective assistance of counsel and due process of Law at his 2009, trial by Jury, And he was mentally incompetency at the time of this crime in 2007; and at 2009 Jury trial.

In the applicant's case there are exhibits (A) Genuine material facts to support the applicant mental health issue that counsel was aware of his mental health history. on march 12, 2008 the applicant received legal letter from his counsel Per legal michelle M. Besch, Richland county Public Defender office Notify his counsel that psychiatrist by the Name of Dr. Pamela Crawford, Dr Crawford will come to the detention center to speak with you as soon as her schedule allows.

In the trial transcript the defendant does not remember what took place on the date march 31st 2007.

see trial transcript pg 302, Line (9) you stab ms montgomery?

Trial transcript pg 302 line (10) I can't remember, I mean.

Also applicant informed counsel before hand about his mental health back ground and counsel was ineffective for failing to investigate and to retrieve all his medical records of his

mental Health background in the past.

Applicant Louis GaiNEY was Place in A VA Hospital like ward SUESSIDA in early 1980, in Columbia S.C. and Applicant Louis GaiNEY was Place in the Bryant like Ward SUESSIDA in the mid 1985 Farrow Rd Columbia S.C. Applicant Louis GaiNEY also was Place in the Columbia Area mental Health for hearing voices in the year of 1980;

Applicant Louis GaiNEY was Place in the KIRKLAND C.I. like Dorm A 2 Hearing voices in the year of 1991 and 1993, Applicant Louis GaiNEY was Place in the VA Hospital mental. Evaluation for hearing voices in the year of 2005.

In the year of 2007, Applicant Louis GaiNEY was in the Custody of the Richland county Jail in 2007 and was hearing voices and was seen by medical staff at Richland county Jail; and Applicant suffer with "Post traumatic Stress Disorder."

Due process footnote (4) prohibits the conviction of a person who is mentally incompetent.

Bishop v United 350 U.S. 961, 76 S.Ct 440.

100 L.Ed 835 (1956) "this constitutional right cannot be waived by the incompetent by guilty plea or other wise."

CARROLL v Beto, 421 F2d 1065, 1067, (5th Cir 1970).

While a guilty Plea may only be attacked on the basis that it was not knowing and voluntary. It contradictory to argue that a defendant may be incompetent by guilty plea or other wise - and thus it must be protected by adequate state procedures.

When A prisoner, either state or Federal, seeking Post-conviction relief, asserts with substantial fact to back up his allegation, that at the time of the trial he was not incompetent to stand trial, and that there was no resolution of that precise issue before he was tried, convicted and sentenced, the protection of the fourteenth amendment to the constitution requires that such conviction and sentence

be set aside unless upon adequate hearing it is shown that he was mentally incompetent to stand trial (386 F2d at 105).

3. Constitutional Law 268.2(2)

As a matter of procedural due process procedures, a criminal defendant is entitled to an evidentiary hearing on claim of mental incompetency. If he present clear and convincing evidence to create a real, substantial and legitimate doubt as to his mental capacity to meaningfully participate and cooperate with counsel.

Petitioner's claims of incompetency to stand trial, insanity at time of act, and an unknowing and involuntary guilty plea were not barred by the procedural default rule of Wainwright

V. Sykes At Horace V. Wainwright
781 F2d 1558 (11th Cir 1986).

The petitioner argues his counsel was ineffective for failing to request a mental examination which may have formed the basis of an insanity defense or a determination that he was not competent to stand trial, cite At Jeter v State 417 SE2d 594 S.C. 1992,

under Strickland v Washington, 446 U.S. 104 S.Ct. 2052, 80 LEd 2d 674 (1984).

For an Applicant to be granted PCR as a result of reasonably effective assistance of counsel, he must show both: (1) that his counsel failed to render reasonably effective assistance under prevailing professional norms and (2) that he was prejudiced by his counsel's ineffective perfor-

Mance Strickland v. Washington 466 U.S. 668
104 S.Ct. 2052, 80 LE2d 674 (1984),

Argument 2

Trial counsel prejudice the defendant
by failing to object to the defendant being
seen in front of the Jury member eyes
with shackles on in the witness stand
so prejudice to a fair trial by the
member of Jury.

cite at trial transcript Pg 286 Line(20)
I guess we do have is the shackles on
the stand.

cite at trial transcript pg 289
Line (9) Want them to see you
with you shackles down there, so

cite at pg 289 Trial transcript Line(10)
make sure you keep your feet up
there all right?

In Garney case Jurors Enter into the courtroom witness Garney the defendant in shackles in the witness stand, and Counsel prejudice the applicant by failing to object been seen in shackles before the Jurors during trial unless he was a threat to the office of the court and community safety.

see cite At Faye v. State 518
SE2d 265

Defendant seeking Post-Conviction Relief on ground of ineffective assistance of counsel failed to prove that he was prejudice by counsel's failure to preserve for review issue of whether trial Judge should have questioned Juror about whether they saw defendant in chain seat by his trial counsel when the Jurors

was brought in the courtroom and the jurors saw the defendant in the chains.

In the Applicant Gaihey case there is evidence in the records and trial transcript to support his claim of ineffective counsel prejudice the defendant and failure to object that the jurors member saw the defendant in shackles so prejudice to the defendant to receive a fair trial. see cite At Butler v State supra (the burden of proof is on the Applicant), Drayton v. 21st supra (matters of credibility are within the discretion of the PCR Judge), Further trial Judge did not find petitioner's testimony that one member of his Jury saw him in chains credible.

Petitioner did not offer the testimony or affidavits of any the seated

Jurors that they saw petitioner in chains and petitioner was prejudiced thereby. Without this evidence petitioner's claim is not supported by and Probative evidence see Glaver v State 318 S.C. 496 458 SE2d 538 (1995),

The burden is on the applicant in a Post-conviction proceeding to prove the allegations in his application. Butler v. State 286 S.C. 441 334 SE2d 813 (1985).

Cert. denied 474 U.S. 1094, 106 S.Ct. 869 88 LEd2d 908 (1986). There is a strong presumption that counsel rendered adequate assistance and exercised reasonable professional judgment in making all significant decisions in the case.

Strickland v Washington 466 U.S. 668 104 S.Ct. 2052, 80 LEd2d 674 (1984); Cherry v State 300 S.C. 115 386 SE2d 624 (1989).

As to allegations of ineffective Assistance of Counsel's Performance fell below an objective standard of reasonableness, and but for Counsel's errors; there is a reasonable probability the result at trial would have been different. see cite At Strickland v. Washington 466 U.S. 668 104 S.Ct. 2052 80 LEd2d 674 1984.

"Therefore Applicant must suborn the Jurors member to support his claim been seen by Jurors member in shackles. Strickland v Washington." see Glover v State 318 S.C. 458 SE2d 538 1995 Probative Evidence so prejudice to the Applicant to receive a fair trial.

Argument 3

Trial counsel prejudice defendant
for failing to prepare and to
conduct a proper pre-Trial in-
vestigation.

The applicant submits that he received ineffective assistance of counsel prior to and during his trial. The six Amendment to the United States Constitution guarantees that every criminal defendant is entitled to the effective assistance of counsel in presenting their defense. see also, S.C. Const. Art 1 Section 14. The Supreme Court has stated, "the Right to counsel is a fundamental Right of criminal Defendants; It assures the fairness, and thus the legitimacy, of our Adversary Process." Kimmelman v. Morris

ison, 477 U.S. 365 (1986). Furthermore, The Supreme Court has recognised that "The Right to Counsel is the right to effective Assistance of Counsel." McMann v Richardson, 397 U.S. 759, 771 (1970), to see whether counsel has fallen below the minimum standard needed for effective assistance of counsel under the sixth amendment to the constitution, a two prong test must be met. In Strickland v Washington 466 U.S. 668, 688, -694 (1984), the Supreme Court held that a determination of ineffective assistance of counsel would be conditioned on two factors:

- (1) Counsel's Performance must have fallen below an objective standard and Reasonableness; and
- (2) There must be a Reasonable Probability that But for counsel's errors, The Results of the proc-

eedings would probably have been different.

South Carolina has adopted Strickland standard. See, e.g. Cherry v. State 386 S.E.2d 624 (1989) The Right to Effective Assistance of Counsel may be violated if sufficiently egregious and prejudicial.

Murray v. Carrier 477 U.S. 478 (1986). "It is

the client's right to expect that his lawyer will use every skill, expend every energy, and tap every legitimate resource in the exercise of independent professional judgment on behalf of the client and in undertaking representation of the client's interests". Frazier v. United States, 18 F.3d 778, 785 (9th Cir. 1994). "Defense counsel must do his utmost to bring his legal acumen to bear on behalf of the defendant; keep the defendant fully informed of developments in the case and consult with the defendant on all major decisions to be made; conduct a reasonable pre-trial investigation, which should include

contacting Potential Witnesses; prepare
adequate; and Professionally for trial;
conduct the trial to the best of his
ability; and at the bottom, serve as
a vigorous and devoted advocate of
the Defendant's cause" United States
Ex Rel. Partee v Lane 926 F2d 694, 702
(7th Cir 1991).

(A) counsel was ineffective for failing
to conduct an adequate Pretrial
investigation.

As The Supreme Court also recognized
in Strickland, "counsel bears a duty
to make a reasonable investigation
of the law and facts in his client's
case." Strickland 466 U.S. at 691. Add-
itionally, the A.B.A standards relat-
ing to the administration of criminal
Justice provide;

It is the duty of the lawyer, to conduct a prompt investigation of the circumstances of the case and to explore all avenues leading to facts relevant to the merits of the case, and the penalty in the event of conviction. The investigation should always include efforts to secure information in the possession of the prosecutor and law enforcement authorities. The duty to investigate exists regardless of the accused admissions, or statements to the lawyer of facts constituting guilt or the accused stating desire to trial.

A defendant's Right to effective assistance of counsel confers a duty on counsel to conduct an adequate pre-trial investigation. When a lawyer fails to conduct a substantial investigation into any of his client's plausible lines of defense, the lawyer

has failed to render effective assistance of counsel, Cobb v State 408 SE2d 223 (1991) Pre-Trial preparation, principally because it provides a basis upon which most of the defense case must rest, is perhaps, the most critical stage of a lawyer's preparation *id.* Failure to investigate evidence that would be helpful to the defense is also an indication of ineffective assistance of counsel. id.

(2. There must be a reasonable probability that but for counsel's errors, the result of the proceeding would probably have been different.

South Carolina has adopted the Strickland standard, see, e.g. Cherry v State 386 SE2d 624 (1989). The right to effective assistance of counsel may be

Violated by even an isolated error of counsel if the error is sufficiently egregious and prejudicial. Murray v. Carries, 477 U.S. 478 (1986). "It is the client's right to expect that his lawyer will use every skill, expend every energy, and tap every legitimate resource in the exercise of independent professional judgment on behalf of the client and in undertaking representation of the client interests." Frazer v. United States, his utmost to bring his legal acumen to bear on behalf of the defendant; keep the defendant fully informed of developments in the case and consult with the defendant on all major decisions to be made; conduct a reasonable pre-trial investigation, which should include contacting potential witnesses; prepare adequate, and professionally for trial; conduct the trial to the best of his ability; and

At the bottom serve as a vigorous and devoted advocate of the defendant's cause" united states ex Rel, Partee v Lane 926 F2d 694, 702 7th Cir 1991.

(A) counsel prejudice defendant failing to conduct an adequate Pretrial investigation.

During Gainey trial the defendant Gainey had informed his trial counsel that the state witness ms. Montgomery suffer with a mental health background call "Bi-Pola" and does have a mental health record with Charter Rivers in Columbia S.C; and It was counsel duty to conduct an adequate Pretrial investigation which counsel failed to conduct investigation and prejudice the defendant because state witness was incompetent testify.

AS the Supreme Court also recognized in Strickland "counsel bears a duty to make a reasonable investigation of the law and facts in his client case." Strickland 466 U.S. At 691 Additionally, the A.B.A. standards relating to the administration of criminal justice provide:

Argument (4)

counsel prejudice applicant failure to object to state closing when solicitor stated you see how large the stab wound was.

cite at trial transcript pg 365 line (23) you can see how large the stab wound was.

so prejudice and harmful to the applicant where counsel duty was to object to the solicitor comment on the stab wound cause

Prejudice to the Applicant by the Jurors hearing the prejudice Remark about the stab wound where counsel was ineffective failing to object to the solicitor prejudice Remark.

For an Applicant to be granted PCR as a result of reasonably effective assistance of counsel, he must show (1) that his counsel failed to render reasonably effective assistance under prevailing professional norms and (2) that he was prejudice by his counsel's ineffective performance Strickland v Washington 466 U.S. 668 104 S.Ct. 2052, 80 LEd2d 674 (1984).

Applicant must show both error and prejudice to win relief in a post-conviction Relief (PCR) proceeding Roscoe v State S.C. 2001) 345 S.C. 14, 546 SE2d 417.

Argument (5)

Trial Counsel prejudice the Applicant
failing to object to the malice charge.
Violation 6th amendment.

The Court: There's a question from the jury;

Trial transcript pg 385 Line (17) they want to look at the definition of malice again.

Line (18) They're just probably being overly cautious somebody

Line (19) wants to hear it again.

During the defendant trial state witness testify in regard of the incident and there was testimony given by the victim ms. Montgomery and the records does not show that the defendant planned to assault the victim or do bodily harm to the victim and there was no threat made to the victim which the defendant did

i4
Not Act out with malice Plan to stab
the victim m.s. Montgomery, and counsel
prejudice the defendant failing to object
to the malice charge which the state
could not proof that the defendant stab
the victim.

"malice is the wrongful intent to in-
jure another and indicates a wicked
or depraved spirit intent on doing
wrong. State v Kelsey 331 S.C. 50, 502
SE2d 63 1998) State v Johnson 291
S.C. 127 352 SE2d 480 1987), it is the
doing of a wrongful act intentionally
and without just cause or excuse State
v Bell 305 S.C. 11, 406 SE2d 165 1991) cert
denied 502 U.S. 1038, 112 S.C. 888 116 LE2d
791 1992)

"counsel was deficient in failing to
object to a jury charge which shifted
the burden of proof to the defendant,
cite At Taylor v State 312 S.C. 179, 439
SE2d 820 1993)

The Court:

Trial transcript pg 389).

Line (11) okay. All right bring them out.

Line (12) And what I might do is start,
assault and

Line (13) battery with intent to kill is
an unlawful act of

Line (14) Violent injury to the person of
another with malice

Line (15) Nevertheless, then explain, I think
I should. Do

Line (16) y'all agree or not?

The only context in which the element
of malice relates to applicant individual
acts is the offenses of assault and
battery with intent to kill. This offense

is defined under state law as an unlawful act of a violent nature to the person of another with malice aforethought, express or implied State v. Hinson 253 S.C. 607 127 S.E2d 548 (1970).

For an applicant to be granted PCR as a result of reasonably effective assistance of counsel, he must show (1) that his counsel, failed to render reasonably effective assistance under prevailing professional norms and (2) that he was prejudiced by his counsel ineffective performance Strickland v. Washington 466 U.S. 668, 104 S.Ct. 2052, 80, LE2d 674 (1984).

As to allegation of ineffective assistance of counsel performance fell below an objective standard

of reasonableness, and but for counsel's errors there is a reasonable probability the result at trial would have been different cite Strickland v Washington 466 U.S. 668 104 S.Ct 2052, 80 LEd2d 674 (1984).

Argument (6)

counsel prejudice the applicant failure to object when the first officer at the scene stated that I ran by his car so fast.

IN the applicant case officer Catoe testify and witness that the defendant Mr. Louis Gaineey was running down the street on Rosewood where there is "NO" sidewalk in that AREA.

on trial transcript pg 156 Line(11) In--
on the evening or the early morning hours

Trial transcript Pg 158

Line (6) down. I looked in my rearview mirror and I saw

Line (7) an african-american male cut across the back of

Line (8) my car running towards Rosewood, I didn't see

Line (9) him from the front, I only saw him from behind,

Line (10) but he was very broad in stature and he was

Line (11) running very quick.

Line (12) and did you notice anything

Line (13) else about his physical appearance?

Line (14) NO I just noticed that he was--he

Line (15) was a broad man.

Line 16 Did you happen to notice his

hair style?

Line (17) He did not have -- I could from what I could

Line (18) see I did not think that he had any hair at the

Line (19) time. I would have called him bald.

"Counsel prejudice the defendant by failing to object to officer Catoe testify claim that he saw the defendant running towards Rosewood which officer Catoe testimony does not show good faith and does not add up to the true because officer Catoe first stated At Trial transcript Pg 158 Line (8) my car running towards Rosewood. I didn't see secondly on Pg 158 Line (9) him from the

front, I only saw him from behind.

"Counsel prejudice the defendant by failing to object to the false testimony given by officer catoe misleading the court that he saw the defendant face which officer catoe testimony was given in bad faith and counsel was prejudice and ineffective. see Strickland v Washington 466 U.S. 668 104 S. Ct. 2052, 80 LEd2d 674 (1984).

Conclusion

wherefore this court should granted Relief in his PCR and vacate conviction and sentence.

Date 7-2-12 2012

sl Louis Gainey
Louis Gainey Jr #185519
F3B
mcc
396 Redemption was

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

) IN THE COURT OF COMMON PLEAS
) FOR THE FIFTH JUDICIAL CIRCUIT
)

GAINEY Louis -
00185519,

) 2012CP4004670
)
)

) Applicant,
)
)

) v.
)

) RETURN
)

) State of South Carolina,
)

) Respondent.
)
)

The Respondent, making its Return to the application for post conviction relief (PCR) filed July 6, 2012, would respectfully show this Court:¹

I.

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Richland County Clerk of Court. The Applicant was true bill indicted at the October 2007 term of the Richland Grand Jury for Assault and Battery with Intent to Kill ("ABWIK") (2007-GS-40-3131).² He was represented by Deon O'Neil, Esquire, and Jay Cooper, Esquire, on the charge(s). Applicant proceeded to jury trial before The Honorable L. Casey Manning. On September 3, 2009, the Applicant was found guilty of the charge as indicted and sentenced to life imprisonment without parole under S.C. Code § 17-25-45.

¹<http://www4.rcgov.us/publicindex/PCCaseDetails.aspx?County=40+&Casenum=2012CP4004670&CourtType=G&CaseType=Civil&CourtAgency=40002>

² <https://sword.doc.state.sc.us/scdc-public/inmateDetails.do?id=+00185519>

Direct Appeal

A Notice of Appeal was filed and an Anders brief submitted on Applicant's behalf by Katherine Hudgins, Esquire, of the South Carolina Commission on Indigent Defense. By order filed February 1, 2012, the South Carolina Court of Appeals granted appellate counsel's motion to be relieved and dismissed the appeal. State v. Gainey, 2012-UP-057 (Ct. App. filed February 1, 2012). The Remittitur was issued June 26, 2012.

The application for post conviction relief (PCR) was filed July 6, 2012.

II.

Attached herewith and incorporated herein are the records of the Richland County Clerk of Court regarding the subject conviction(s), the Applicant's records from the South Carolina Department of Corrections, and the trial transcript, and the Applicant's applicable direct appeal files.³ The Respondent reserves the right to amend this Return upon receipt of any relevant materials or submit an amended Return to reflect any amended allegations and/or to provide a more detailed procedural history.

III.

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

³ The Respondent will utilize the Record on Appeal if the direct appeal was an Anders appeal.

Trial counsel prejudice defendant failure
request for a second mental examination
opinion to deter if the defendant was
incompetency to stand trial Violation
6th Amendment & 14th Amendment Due
Process of Law

Trial counsel prejudice the defendant
by failing to object to the defendant been
seen in front of the Jury member eyes
with shackles on in the witness stand
so prejudice to a fair trial by the
member of Jury

Trial counsel prejudice defendant
for failing to prepare and to
conduct A Proper pre-Trial INV-
estigation

counsel prejudice applicant failure to
object to state closing when solicitor
stated you see how large the slash
wound was.

Trial Counsel prejudice the applicant
failing to object to the malice charge.
Violation 6th amendment.

counsel prejudice the applicant failure
to object when the first officer at
the scene stated that I ran by his
car so fast.

IV.

For the purposes of this Return, the Respondent interprets each of the Applicant's allegations to be claims that he received ineffective assistance of counsel. The Respondent contends that the Applicant's trial counsel rendered adequate assistance and provided representation within the range of competence required by attorneys in criminal cases. See Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985).

In a post-conviction relief proceeding, the Applicant bears the burden of proving the allegations in their application. Id. 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, 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, 80 L.Ed.2d 674. The Applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

A two-pronged test is used 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, 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. A reasonable probability is a probability sufficient to undermine confidence in the outcome of the trial. Johnson v. State, 325 S.C. 182, 480 S.E.2d 733 (1997).

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 cannot be conclusively refuted by the record. 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).

V. . .

Each and every allegation contained within the application not hereinbefore either expressly admitted, qualified or explained is hereby denied. The Respondent therefore requests that this Court convene an evidentiary hearing solely on the issue of ineffective assistance of counsel. As to all other allegations, the Respondent moves for summary dismissal pursuant to S.C. Code Ann. § 17-27-70 on the basis that there is no genuine issue of material fact which would necessitate an evidentiary hearing and that those allegations should be dismissed as a matter of law.

VI.

WHEREFORE, having made its Return, the State requests that an evidentiary hearing be held. The Respondent will coordinate with the Applicant's attorney who is, according to the Respondent's file, David E. Belding, Esquire regarding when the hearing should be set.⁴

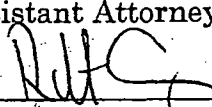
Respectfully submitted,

ALAN WILSON
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

SALLEY W. ELLIOTT
Senior Assistant Deputy Attorney
General

ROBERT D. CORNEY
Assistant Attorney General

By: 

ATTORNEYS FOR RESPONDENT

Office of the Attorney General
P.O. Box 11549
Columbia, SC 29211
Telephone: (803) 734-3737
rcorney@scag.gov

August 28, 2012

⁴ The current PCR Roster for the 5th Circuit is available at <http://www.scag.gov/criminal-litigation/postconvictionrelief>
GAINEY Louis - State's Return - (2012CP4004670)

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

IN THE COURT OF COMMON PLEAS
FOR THE FIFTH JUDICIAL CIRCUIT

GAINEY Louis -
00185519,

2012CP4004670

Applicant,

v.

CERTIFICATE OF SERVICE

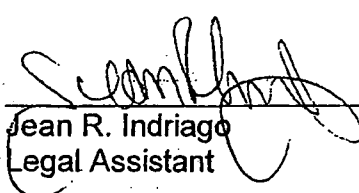
State of South Carolina,

Respondent.

1. I am an employee of the Respondent in the above-captioned action.
2. Regular communication by mail exists throughout the State of South Carolina and that this is a proper circumstance of service by mail.
3. I have this day served a copy of the a letter in the above-captioned matter on the following person(s) by routing the same to the United States mail, postage prepaid:

David E. Belding, Esquire
P.O. Box 11964
Columbia, SC 29211

DATED August 29, 2012.



Jean R. Indriago
Legal Assistant

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND }

COURT OF COMMON PLEAS

LOUIS GAINNEY)
PETITIONER,)

v.)

TRANSCRIPT OF RECORD
12-CP-40-4670

STATE OF SOUTH CAROLINA,)
RESPONDENT.)

January 15, 2013
Columbia, South Carolina

BEFORE :

THE HONORABLE G. THOMAS COOPER, JUDGE

APPEARANCES:

DAVID E. BELDING, ESQ.
Attorney for the Petitioner

ROBERT CORNEY, ESQ.
Attorney for Respondent

FRANCES BAKIS-RAY, RPR
Circuit Court Reporter
Typed for Elizabeth Harris

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(There were no exhibits submitted.)

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Examination by the Court	88

(There were no exhibits submitted.)

1 MR. CORNEY: Your Honor, the next case the
2 State would call is the case of Louis Gainey. May
3 it please the Court, Your Honor.

4 THE COURT: Ready to go forward,
5 Mr. Belding?

6 MR. BELDING: Yes, Your Honor, thank you
7 very much.

8 MR. CORNEY: Your Honor, the State calls
9 the post-conviction relief action of Louis Gainey.
10 It's docket number 2012-CP-40-4670. Mr. Gainey was
11 true billed indicted at the October 2007 term in the
12 Richland County grand jury for assault and battery
13 with intent to kill. He proceeded to jury trial
14 before Judge Manning on September 1st, 2009, and
15 after three days of trial he was convicted as
16 indicted. He received a life imprisonment sentence
17 pursuant to South Carolina code 17-25-45 under the
18 two/three strike law of South Carolina. A notice of
19 appeal was filed and an Anders brief was submitted
20 on Mr. Gainey's behalf by public defender Pat
21 Huggins of the South Carolina Office of Appellate
22 Defense. By order filed February 1st, 2012, the
23 South Carolina Court of Appeals granted the motion
24 to be relieved and dismissed the appeal pursuant to
25 Anders. Thereafter, the Supreme Court denied

1 petition of writ of certiorari on June 1st, 2012 and
2 the remittitur was issued June 26th, 2012. Mr.
3 Gainey thereafter filed a timely PCR application
4 July 6th, 2012. He is represented today by
5 Mr. David Belding. We have Mr. Deon O'Neil and
6 Mr. Jay Cooper who served as trial counsel here
7 present in the courtroom and prepared to testify,
8 Your Honor.

9 THE COURT: All right. Mr. Belding.

10 MR. BELDING: Thank you, Your Honor. May
11 it please the Court, I'd like to call Mr. Louis
12 Gainey, Junior to the stand.

13 THE COURT: Just, while he's approaching
14 just give me a little background.

15 Come on around, Mr. Gainey.

16 THE CLERK OF COURT: Place your left hand
17 on the Bible and raise your right.

18 WHEREUPON,

19 **LOUIS GAINNEY, JR.,**
20 having been duly sworn by the Court, testified as
21 follows:

22 THE COURT: Have a seat in the witness
23 box. State your full name for the record.

24 THE WITNESS: Louis Gainey, Jr.

25 THE COURT: All right.

1 THE COURT: Mr. Belding.

2 MR. BELDING: Thank you, Your Honor. May
3 it please the Court. By way of background,
4 Mr. Gainey was previously convicted in the '90s of
5 voluntary manslaughter and arson. The State, when
6 he was arrested on this charge of assault and
7 battery with intent to kill provided him with the
8 notice of intent to seek sentence of life without
9 parole if he were to be convicted. He had several
10 attorneys from the Richland County Public Defender's
11 Office represent him during the course of time he
12 was in jail, the entire time of trial. Ultimately
13 he went to trial in September of 2009 and about a
14 two-and-a-half day trial. His lead counsel was Mr.
15 James Cooper who is present. The second chair was
16 Mr. Deon O'Neil who is also in the courtroom. At
17 the end of this trial he was convicted of assault
18 and battery with intent to kill and Judge Manning
19 sentenced him to life without parole.

20 THE COURT: All right.

21 MR. BELDING: He has filed a
22 post-conviction relief application which is in the
23 file. He raises a number of points which we'll go
24 over this morning. Obviously he would like to have
25 his sentence vacated and the case remanded back to

FW - L. GAINNEY - DIRECT

1 the court of general sessions.

2 THE COURT: All right, you may proceed.

3 MR. BELDING: Thank you, Your Honor.

4 DIRECT EXAMINATION

5 BY MR. BELDING:

6 Q Mr. Gainney.

7 A Yes, sir.

8 Q Speak up to make sure we can all hear you, all
9 right?

10 A Good morning.

11 Q Good morning, ready?

12 A Yes, sir.

13 Q Mr. Gainney, where are you incarcerated right now?

14 A McCormick Correction Institution, McCormick,
15 South Carolina.

16 Q All right. How long have you been there?

17 A From the time of my sentence up to date.

18 Q Okay. So, and when did you become -- when did
19 you go into custody? Were you arrested the night of
20 this incident?

21 A 2007, I want to say March or February--

22 Q Okay.

23 A --of 2007.

24 Q After you were arrested were you given a bond
25 hearing?

PW - L. GAINES - DIRECT

1 A I think my bond was 250,000.

2 Q Were you able to post bond and get out?

3 A No, sir.

4 Q Did you stay in the Richland County Detention
5 Center Alvin S. Glenn until trial?

6 A From that time up to present.

7 Q Okay. During the time you were in pretrial
8 detention did you get a lawyer appointed for you?

9 A Several.

10 Q Okay. Who was the first lawyer, do you recall?

11 A Ms. Megan Lee.

12 Q And was she with the Public Defender's Office?

13 A Yes, sir.

14 THE COURT: What was the name?

15 BY MR. BELDING:

16 Q Can you state the name again.

17 A Ms. Megan Lee, sir.

18 Q Megan Lee?

19 THE COURT: Megan Lee.

20 BY MR. BELDING:

21 Q Megan Lee, all right. And did Ms. Lee remain
22 your lawyer for the trial?

23 A No, sir.

24 Q Okay. Did another lawyer take over your case?

25 A Yes, sir.

PW - L. GATNEY - DIRECT

1 Q Do you remember her name?

2 A Ms. Carol Gripp.

3 Q Carolyn Gripp. I think it's G-R-I-P-P; is that
4 correct?

5 A Yes, sir.

6 Q And did Ms. Gripp stay with you for the rest of
7 your case?

8 A No, sir.

9 Q Okay. Who were your last two lawyers?

10 A Mr. Jay Cooper and Mr. O'Neil.

11 Q Okay. Are those two lawyers in the courtroom
12 today?

13 A Yes, sir.

14 Q Okay. Approximately how long before your trial
15 in September of 2009 did you meet with Mr. Cooper?

16 A About five, six months.

17 Q Okay. And Mr. O'Neil, how long before your trial
18 did you meet him?

19 A Around four to five months.

20 Q Okay. Did you know whether or not one was
21 considered lead counsel, or did you know whether one
22 was going to be — or were they just going to do it
23 together, did you know?

24 A Together.

25 Q Okay. Now during the time that you were in jail

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1 and you had met Mr. Cooper and Mr. O'Neil
2 approximately how many times do you recall meeting
3 with them at the jail?

4 A Two or three.

5 Q Okay. And can you give us an idea of how long
6 each of those meetings might have lasted?

7 A The last one last the longest because they was
8 preparing me for trial.

9 Q Okay.

10 A The first two only last around 15, 20 minutes.

11 Q Okay. Did you all go over everything you would
12 need to know for your trial at the last meeting?

13 A Pretty much.

14 Q All right. During the course of the trial you
15 were represented by Mr. Cooper and Mr. O'Neil did
16 you ever discuss with them your defense?

17 A Yes, sir.

18 Q Okay. Did you give them any witnesses that you
19 would like to have called —

20 A Yes, sir.

21 Q ---in your defense? Okay. Can you tell us some
22 of the people you told them you would like to have
23 called?

24 A Several family members, my brother Greg Gainey,
25 my brother Jimmy Gainey, my mother Ms. Burnett

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1 Gainney, some people from the place where she was
2 housed at the Salvation Army when I met her.

3 Q Let me -- hold on a second. You said something I
4 want to make sure I understand. There was a lady
5 from the Salvation Army where you had met her. When
6 you said that, were where you referring to the
7 victim Miss --

8 A Yes, sir.

9 Q And what was the victim's name?

10 A Deirdre Montgomery.

11 Q Okay. Did you know her by any other names?

12 A There was another name; I can't remember it.

13 Q Okay. And is that where you came to know
14 Ms. Montgomery?

15 A Yes, sir.

16 Q At the Salvation Army?

17 A Yes, sir.

18 Q All right, sir. Now when you actually went to
19 trial, aside from you were any other witnesses
20 called in your defense?

21 A No, sir.

22 Q Did you know that no other witnesses were going
23 to be called in your defense at trial?

24 A No, sir.

25 Q Now did you discuss your medical history with Mr.

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1 Cooper and Mr. O'Neil prior to trial?

2 A Yes, sir.

3 Q Okay. Briefly for the Court, what is your
4 relevant medical history?

5 A From military it caused PTSD, post-traumatic
6 stress syndrome, but SCDC call it paranoid
7 schizophrenic.

8 Q Do you still have that diagnosis as we are here
9 today?

10 A Yes, sir, I'm under medication now.

11 Q What kind of medication are you on?

12 A It's a psychotic medicine. I can't remember the
13 name of it.

14 Q Now were you — were you on medication at the
15 time of your trial?

16 A No, sir.

17 Q Why not?

18 A Because I hadn't — VA hadn't given me anything;
19 and the State, I went to mental health or by
20 Richland Memorial Hospital and —

21 Q Can you describe for us the mental state you were
22 in at the time of trial?

23 A Scared.

24 Q Did you understand what was going on?

25 A Not really, no.

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1 Q Okay. Prior to your trial did you have a
2 competency evaluation done to determine whether or
3 not you were mentally fit to stand trial?

4 A A lady came by there from a private, a private
5 place, and seen me.

6 Q Okay. Do you know what her conclusion was?

7 A She said that she didn't see anything in my
8 record to indicate that I was a mental patient.

9 Q Okay. Did you talk to your lawyers about whether
10 or not you should get a second opinion?

11 A Yes, sir.

12 Q All right. Which one now, either or both?

13 A All.

14 Q Both of them, Mr. Neil and Mr. Cooper?

15 A Yes, sir.

16 Q Okay. To your knowledge did either of your
17 lawyers request a second opinion?

18 A I don't know.

19 Q Okay. Did you see anyone else?

20 A No, sir.

21 Q All right. Now have you ever been in a
22 psychiatric hospital or psychiatric ward in your
23 life?

24 A Yes, sir.

25 Q When was that and where?

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1 A 1983 at the VA hospital, psychiatric ward.

2 Q How long were you there?

3 A Almost 30 days.

4 Q Okay. And I just want to make sure I understand.

5 You had discussed this entire medical history, the

6 mental health history, with your lawyers --

7 A Yes, sir.

8 Q --prior to trial?

9 A Yeah.

10 Q Okay. Now let's go to the victim again,

11 Ms. Montgomery. How long had you known her prior to

12 March of 2-- of the date of the crime?

13 A It might have been a year. I met her at the

14 Salvation Army after she was put out.

15 Q Okay. Did you get into a relationship with her?

16 A Yes, I did, sir.

17 Q Okay. I mean, were you dating?

18 A Yes.

19 Q Okay. At some point did you develop a close

20 enough relationship to move in together?

21 A Yes, sir.

22 Q Did you consider her your girlfriend?

23 A Well, we was engaged to be married.

24 Q Did you consider her to be your fiance?

25 A Yes.

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1 Q Approximately when did you become engaged to
2 Ms. Montgomery?

3 A Valentine's day of 2006.

4 Q And what was the date of the crime again?

5 A I think it was around February of 2007.

6 Q It was a year later; isn't that correct?

7 A Yes, sir.

8 Q All right. Now during the time -- how long have
9 you lived with Ms. Montgomery?

10 A I got that apartment about a year-and-a-half
11 before this date.

12 Q Okay. And when you got -- this is the apartment
13 on South Bull Street?

14 A Yes, sir.

15 Q All right. And when you were originally renting
16 that apartment were you the only tenant?

17 A No, I took her in with me.

18 Q Okay. Was she on the lease with you?

19 A Yes, sir, I had her add on to the lease.

20 Q Okay.

21 A Her and her kids.

22 Q I'm sorry?

23 A Her and her three kids.

24 Q Oh, I understand, right. So there were five of
25 you living in this apartment?

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1 A Yes, sir.

2 Q Okay. During this period of time when you lived
3 on South Bull with Ms. Montgomery did you have a
4 job?

5 A Yes, sir.

6 Q What did you do?

7 A I had several jobs, but when I first got that job
8 I was employed at the VA Hospital escort services
9 and that job was under a VA grant which expired and
10 they got me a job at night working at Midland Tec
11 Beltline campus.

12 Q Okay.

13 A And I had that job normally with the part-time
14 job at the Dollar Tree off of Rosewood Drive, and
15 occasionally I would help my brother 'cause I'm ---

16 Q Which brother?

17 A Jimmy Gainney.

18 Q And what does Jimmy Gainney do?

19 A He's got his own construction remodeling
20 services, and I would do a lot of ceramics work for
21 him. I'm a ceramic --- certified ceramic tile,
22 slate, marble, stone, and brick, paper layer.

23 Q How long have you worked with your brother?

24 A I've worked with him this whole, since he had his
25 business.

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1 Q How many, I mean years, we're talking years?

2 A From 2003 up until 2007.

3 Q Okay. While you were living -- and okay, so you
4 had -- was the Dollar Tree Store part-time?

5 A Yes, sir.

6 Q How long had you been working at Dollar Tree
7 before the night of this crime?

8 A About seven months.

9 Q Okay. The -- were you also working with your
10 brother Jimmy during that same period of time?

11 A Yes, sir.

12 Q And did you have any other jobs? Were you done
13 with the VA at that point in time?

14 A Midlands Tec.

15 Q And what did you do at Midlands Tec?

16 A I was a janitor.

17 Q How long had you had that job by the time of this
18 incident?

19 A 2003.

20 Q Okay, so for some years?

21 A Yes, sir.

22 Q All right. Do you recall during the trial that
23 -- the testimony of Ms. Montgomery?

24 A Yes, sir.

25 Q All right.

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1 MR. BELDING: And Your Honor and Mr.
2 Corney, I'm referring to page 92 of the trial
3 transcript.

4 THE COURT: All right.

5 BY MR. BELDING:

6 Q Beginning on line 13, Louis, let me just read you
7 this, all right?

8 A Yes, sir.

9 Q I know you don't have one there. Ms. Montgomery
10 was asked the following question: "Did Louis have a
11 a job? Was he contributing to the household?" Do
12 you recall that question being asked?

13 A I remember.

14 Q Okay. And her response was: "He had a job at
15 one time working at Midlands Tech which he didn't
16 keep that long. A lot of times he was running home
17 thinking that I was cheating on him or doing
18 something. He eventually lost that job; he didn't
19 have it that long. He had another job probably two
20 or three days prior to this incident and that didn't
21 last long of course because this happened." And
22 then she was asked: "So for the majority of that
23 time did he have a job." She said, "No, I worked."
24 Now it sounds like she was the one doing all the
25 working and you weren't doing much. Is that the

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1 truth?

2 A No, sir.

3 Q Okay. Did you contribute to the payment of
4 household expenses?

5 A Yes, sir.

6 Q All right. Now do you recall the actual incident
7 that happened with Ms. Montgomery?

8 A From the beginning to the end.

9 Q Okay. How long did it last?

10 A There was a lot of drama before it even happened.

11 Q Okay, then I want you to succ— succinctly, I'm
12 sorry. I want you to tell the Court what actually
13 happened that night.

14 A When I had got off, got off work from Midland Tec
15 and I took my check home because I had to pay the
16 light bill — no, I had to pay the phone bill. So I
17 left that check on the dresser and went to the
18 Dollar Tree to pick up my other check so I can pay
19 the light bill. And she wanted to go over to my
20 daughter's apartment that night and sit with them
21 for a little while and she wanted me to cash one of
22 my checks so I cashed the smaller check at the
23 liquor store off of Rosewood Drive. And after we
24 cashed that check she wanted to get something to
25 drink so we got something to drink, and we took that

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1 over to my daughter's apartment and after we got
2 over to ---

3 Q Was that drink alcoholic, soda, or what?

4 A Gin.

5 Q I'm sorry, go ahead.

6 A And we got over to my daughter's apartment, and
7 we sat there with them for a little while. And
8 after we got there my daughter's mother was there,
9 my ex-wife, and we sat there and we laughed and we
10 talked for a little while. When we got ready to go
11 my kids, my grandkids, wanted to go and spend the
12 night with me and Didi so I ---

13 Q And who is Didi?

14 A Didi was my girlfriend.

15 Q Okay. That's Miss Montgomery?

16 A Miss Montgomery.

17 Q Okay. Was there anyone else around that also had
18 the name Didi?

19 A Not that --- not at that particular time, no, sir.

20 Q Okay. I understand, okay. Go ahead.

21 A And the grandkids had wanted to come and spend
22 the night. They said, granddaddy, can we come and
23 spend the night with you. And I got to thinking, I
24 got a two bedroom apartment and it's five of us but
25 I got six grandkids that wanted to come spend the

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1 night so I told her to go ask their grandma. So
2 they went and asked my ex-wife instead of Didi, so I
3 said, no, ask your other grandma Didi. So Didi
4 said, yeah, they can come because family day was the
5 next day at Finley Park. And I had just bought a
6 gas grill prior to that, about two or three weeks
7 prior to that, and we was gonna cook out on the
8 grill. So when we got -- she, Didi say, yeah, you
9 can come. So my daughter-in-law gave us a ride back
10 home. She took us back home. And when we got to
11 the house I noticed that there was a truck parked on
12 the side of my apartment, and it was one of the --
13 one of the guys that I had an altercation with from
14 shooting his pistol in my yard a week prior to that.
15 And when I got an apartment Didi wasn't with me so
16 --

17 Q She rode back with you though?

18 A Yes, sir.

19 Q Where was she?

20 A She went over to the apartment where this guy was
21 at?

22 Q That was nearby?

23 A Yes, sir.

24 Q Okay.

25 A So I went on in the house and got the kids

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1 settled in, and I noticed that she still
2 wasn't there. I asked her kids, where your momma,
3 and they said they didn't know. So when I got out I
4 looked around and that's when I seen her over there
5 to this apartment, this other girl apartment named
6 Didi. And it was Didi, her boyfriend, and this guy
7 that my Didi was seeing. And I told her, I said,
8 it's almost, it's after 12 and you need to go ahead
9 on and get these kids in bed. And she made the
10 statement in front of them that, those are your
11 little bastards, you go over there and you put them
12 in the bed, you the one that want them to come. And
13 I said, man, just come on, let's go on home then.
14 And she said she wasn't going anywhere, said that
15 she was going to stay over there with Didi. And she
16 went to sit on the porch on that step. She had a
17 long fingernail file, and she went to filing her
18 fingers. And she made some statements to the other
19 Didi that, you know, he got the audacity —

20 MR. CORNEY: Your Honor, I'm gonna object
21 to —

22 THE WITNESS: —that he —

23 MR. CORNEY: I'm gonna object to hearsay,
24 anything that she said at that point in time.

25 THE COURT: Overruled, go ahead.

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1 THE WITNESS: All right.

2 BY MR. BELDING:

3 Q I want to keep — now at this point where is she?

4 Is she in front of that apartment on the step?

5 A She sitting on the step.

6 Q On the step, okay. And she's got a fingernail
7 file?

8 A Filing her fingers.

9 Q Okay. What did she say? You were just saying
10 that — what did, what did she say that is relevant
11 here?

12 A She told the guy that she was over there saying
13 that I accuse her of him.

14 Q Of like cheating with him?

15 A Right.

16 Q Okay, all right. And what then what happened?

17 A I grab her by her arm and told her she was — we
18 was going home. And when we got on the side of the
19 apartment she pull out the — she tried to resist
20 with the fingernail file and I snatched it out her
21 hand and she called his name. And I know he had a
22 pistol because he had done been shooting in my yard
23 prior to that. So when she called the name, when
24 she called his name I got kind of scared because I
25 know they was coming. And we got into a scuffle

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1 because I was trying to get away.

2 Q And when you say "we," you're talking about you
3 and Miss Montgomery ---

4 A Yeah.

5 Q ---got into a scuffle?

6 A Yeah.

7 Q Did you hit her?

8 A Yes, I hit her.

9 Q Okay. Did she ---

10 A With that. ---

11 Q ---hit you back?

12 A Yes, she hit me several times.

13 Q How did she get stabbed?

14 A I took the fingernail file from her, and I
15 believe I hit her with that fingernail file a couple
16 of times, few times.

17 Q Now Louis, you may recall that at several points
18 in the trial in opening and closing and specifically
19 even on page 15, Your Honor, on line 21 in the
20 opening argument the prosecutor refers to the fact
21 that Mr. Gainey had a screwdriver that he used to
22 attack the victim. Now Louis, did you just happen
23 to have a screwdriver with you that night?

24 A No, sir.

25 Q Did you have anything that could be used as a

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1 weapon with you on your person at the time you were
2 having this scuffle with Miss Montgomery?

3 A No, sir.

4 Q Okay. Did you get the nail file away from her?

5 A Yes, sir.

6 Q Okay. Is it your belief that that's what may
7 have caused her cuts or stab wounds?

8 A Yes, sir.

9 Q Okay.

10 A It was because after I — after I — the first
11 time when I went to hit her again I seen where the
12 screwdriver, the fingernail file was bent up.

13 Q Okay.

14 A And when the fingernail file was bent up I heard
15 them running so I dropped it and ran.

16 Q Okay. Did you know whether or not
17 Miss Montgomery was cut at the time you left?

18 A No, sir.

19 Q Okay. Why did you run away?

20 A You got — I got two guys that was coming that
21 she had done called. She called one of them by the
22 name of James.

23 Q Was James the one that you thought might have
24 been armed?

25 A James was the one that she was seeing that was

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1 shooting this pistol in my yard one night.

2 Q All right. So you ran away. Did you run away to
3 protect yourself?

4 A I feel.

5 Q By the way, was there if a screwdriver produced
6 at trial as the weapon?

7 A It wasn't never a screwdriver.

8 Q Was there ever a nail file ---

9 A No, sir.

10 Q ---introduced and shown to the jury?

11 A No, sir.

12 Q When were you arrested---

13 A On the ---

14 Q ---after that?

15 A Well, I went to the hospital that morning because
16 I wanted to see how she was doing after I was told
17 she went to the hospital.

18 Q Okay.

19 A And they arrested me at the hospital.

20 Q All right.

21 A They asked me what was my name, and I told them
22 who I was. And the guy that I told my name to, he
23 had left; and when he had left I knew that Didi was
24 in the hospital and I thought that he was going to
25 get the police so I was attempting to leave when

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1 they arrested me.

2 Q When you were discussing this case prior to trial
3 with your attorneys did you tell them you didn't
4 have a screwdriver?

5 A Yes, sir.

6 Q Did you tell them the only thing around was her
7 nail file?

8 A Yes, sir.

9 Q Okay.

10 A I even asked them to ask the doctor to do the
11 exam so they could see that it wasn't never a
12 screwdriver.

13 Q Well, and that might be a little difficult. What
14 kind of exam could they have done?

15 A I think you can tell whether a person was stabbed
16 with a screwdriver or stabbed with a fingernail
17 file.

18 Q Okay. And but of course, she'd already been
19 sewed up. When she went to hospital they had to
20 patch her up, didn't they, so she wouldn't be
21 bleeding anymore so that evidence of like the depth
22 of the wounds and everything would be gone already;
23 wouldn't it?

24 A I don't know.

25 Q Do you know whether or not they talked to anyone

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1 at the emergency room and asked them to describe the
2 wounds?

3 A No I don't.

4 Q Okay. Did you ask them to do that?

5 A Yes, sir.

6 Q Okay. Now after the prosecution's case did you
7 take the stand?

8 A Yes, sir.

9 Q Okay, and testify. And did you tell the Court
10 the truth about everything that happened that night?

11 A Yes, sir.

12 Q At that point did you think that they were going
13 to be other witnesses called in your defense?

14 A Yes, sir.

15 Q Okay. Had you talked with Mr. O'Neil and
16 Mr. Cooper about whether or not you should take the
17 stand?

18 A Yes, sir.

19 Q What was their advice?

20 A They wanted me — they didn't know whether or not
21 they wanted me to take the stand at first because of
22 my prior convictions. And I told them that I think
23 it would be best if I take the stand so that people
24 would hear the truth about what happened that night
25 because they were saying there was a screwdriver and

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1 there was never a screwdriver. They was thinking
2 that it was, it was, it was like something that I
3 had against Didi when I didn't. I was in love with
4 Didi; I loved Didi. And it was — they didn't, they
5 didn't even want to say nothing about the other guy
6 because they didn't seem to think that that would
7 help me in my defense, that they thought that that
8 could back fire and make my case worsen. And they
9 was the lawyers so I went along with what they
10 suggested.

11 Q I understand. There's something else I want to
12 touch on. You just said that you loved Didi; is
13 that right?

14 A Yes, sir.

15 Q In this March 9th when this altercation occurred
16 and she ended up being injured that you got
17 prosecuted for, how did you feel about
18 Miss Montgomery that night? What was your feeling
19 toward her?

20 A You know, after — I was willing to just go home
21 and just be with her; but after she made several
22 statements that not only just I felt like damaged my
23 plead and hurting and insult my integrity and my ego
24 by the statements that she me made to those people
25 that I didn't even know and to this guy that, yes, I

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1 did have a problem because I had been seeing him
2 around my house several times but I never did accuse
3 her then. But after things had been going on and it
4 begin to look like a pattern, I'm not stupid. So I
5 was willing to at least go home and forgive because
6 I was in love with her.

7 Q Okay.

8 A I didn't want to lose her.

9 Q I understand. I want to make sure I got this
10 clear. On that night when this altercation took
11 place, on that night, was she still your fiance?

12 A Yes.

13 Q Okay. Was she still living with you?

14 A Yes.

15 Q And I think you just said this, did you still
16 love her on the night this took place?

17 A Yes.

18 Q Did you wish her any harm at all?

19 A No.

20 Q Did you hate her in any way?

21 A No.

22 Q All right. Well, you were talking about
23 statements she had made. I mean, did those make you
24 mad?

25 A I was hurt.

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1 Q Okay. Were you hurt enough to try to injure her?

2 A I didn't plan on hurting her.

3 Q Okay.

4 A I mean, it's -- I guess, it was just a spur. It
5 just something that happened. I don't, I can't
6 explain it. It just -- I can't explain it. It just
7 one of those things to where you -- I guess I acted
8 out of hurt, I don't...

9 Q The way -- is this true that the way you acted
10 out I think you testified earlier, the way you did
11 was grab her to take her home?

12 A I wanted to go home, yes, I did. I didn't want
13 to -- I didn't want to leave and go home with her
14 kids and my grandkids and leave her over there with
15 a guy that she done already told that I'd accused
16 her of and she was willing to stay over there with
17 him.

18 Q Okay. So do you know what the word malice means?

19 A Not really.

20 Q Okay. If I told you this as one definition that
21 malice meant hatred, did you think you had any
22 hatred for Miss Montgomery?

23 A No.

24 Q In your PCR application that Judge Cooper has,
25 you make the statement on page 4 of your handwritten

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1 part that you do not remember what took place on the
2 date March 31st, 2007. Was that true at the time?
3 Did you have a recollection, a memory, of what
4 happened that night?

5 A I -- that's why I went to the hospital. I
6 want -- I didn't know. I mean, I -- it was like at
7 that spare moment thing, it just, I just blanked
8 out. I just, I can't recall. I just, that's what I
9 wanted to go to the hospital to see.

10 Q Okay. At some point were you able to reconstruct
11 or remember the things that happened that night?

12 A Well, after I got -- after I went to jail that
13 next day they -- one of the guards suggested that I
14 see a -- they sent a psychiatrist to see me and
15 somehow or another they got records of my mental
16 illness and they gave me some medicine called
17 Vistaril.

18 Q Vistaril?

19 A Not Vistaril but Elavil.

20 Q Elavil?

21 A Elavil. And --

22 Q Do you have any idea what kind of medication that
23 is?

24 A No, but it, it helped a little bit.

25 Q Okay.