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S.C. SUPREME COURT

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Certiorari to Charleston County

Honorable George M. McFaddin, Circuit Court Judge

ADRIAN V. SIMMONS,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2025-002248

APPENDIX

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1 STATE OF SOUTH CAROLINA)
) Court of General Sessions
2 COUNTY OF CHARLESTON) Case No. 2015-GS-10-4889
)
3 _____
)
4 STATE OF SOUTH CAROLINA)
)
 vs.) Transcript of Record
5)
6 ADRIAN VASHARD SIMMONS,)
)
 Defendant.)
7 _____
) DATE: August 8 - 10, 2016

8

9 B E F O R E:

10 THE HONORABLE BRIAN M. GIBBONS

11

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1 THE COURT: The State handed up a witness list. No
2 specific voir dire. Anything further from the defense,
3 Mr. Whipper?

4 MR. WHIPPER: Yes, sir, Your Honor. My client
5 suffered pink eye.

6 THE COURT: You haven't touched him?

7 MR. WHIPPER: No, I haven't.

8 THE COURT: I need to know if I have -- I had it
9 back in March and it wasn't a pretty sight.

10 MR. WHIPPER: No, I didn't touch him. His eyes was
11 looking pretty bad there.

12 THE COURT: Well, one or two days of drops, he will
13 be good to go.

14 All right. Any objection from the State as to any
15 of the voir dire from the defense?

16 MR. CONDON: I think I'm fine with that. Obviously,
17 we just ask that corresponding stuff, if anyone is related to
18 the defendant.

19 THE COURT: Sure. As soon as the jury panel gets in
20 here, I'm going to have you turn around and introduce
21 yourselves to them and we will go from there. And when y'all
22 pick a jury here. Do you all make them come up and turn
23 around and face you? Y'all do that? Y'all like doing that?
24 Would you rather me do that?

25 MR. WHIPPER: No, you do that, Your Honor.

1 THE COURT: That's fine with me. What I'm getting
2 at, normally, to kind of -- I call it prevent the walk of
3 shame back if they get struck. Okay? Because sometimes, I
4 don't know, I just have them stand. And y'all -- if y'all
5 pick them, then they come up and go over there, rather than
6 make them come up there and stand in front of them and y'all
7 look at them.

8 MR. CONDON: That's fine with me.

9 MR. WHIPPER: That's fine, Judge.

10 THE COURT: Mr. Whipper, is your client ready to
11 come in? I think we are going to go ahead and strike the
12 jury. And we will take -- after we get a jury struck, we
13 will take a lunch recess and then we will do -- we will come
14 back and do the pretrial. And I will have the jury come in
15 later on.

16 THE COURT: Everybody is present. We will go ahead
17 and bring the jury panel in for selection. Thank you.

18 (Venire enters.)

19 THE COURT: All right. I think we are looking good.
20 I think we got our entire jury panel here.

21 Welcome, ladies and gentlemen, to Courtroom 3B. My
22 name is Brian Gibbons. And I am a circuit judge from the
23 upstate of South Carolina. I'm actually from Orangeburg,
24 born and raised, but I've lived in -- after graduation from
25 law school, I practiced law and became a judge in Chester,

1 South Carolina, right below Rock Hill. Those of you that
2 travel up 77, you know where the Chester exit is, right below
3 Rock Hill.

4 It's always a pleasure and privilege for me to come
5 to Charleston County to hold court. I have a son over at The
6 Citadel, so it's fun to get to come down here and see him as
7 well while I'm working down here.

8 I know all of you are excited to be here on a
9 beautiful Monday afternoon now. And I promise you, like
10 Judge Nicholson may have told you earlier, we are going to do
11 our best this week to make this as enjoyable a week as it can
12 be for you doing your civic duty of jury duty, which is very
13 important, as I'm sure you've been told. Okay?

14 But let me tell you what we are here for right now
15 in this beautiful courtroom. We are about to start the case.
16 Another reason why I love coming to Charleston, we have some
17 of the best bailiffs in the world right here in Charleston,
18 making everything very efficient. So thank you all for doing
19 this.

20 As you know and as you've been told, this is jury
21 duty in Charleston. Sometimes you are called for civil
22 cases, sometimes criminal cases. This a criminal case from
23 the State of South Carolina, represented by solicitor, who I
24 will introduce here in a moment, who is prosecuting an
25 individual who is alleged to have committed a criminal

1 offense in the state of South Carolina.

2 In South Carolina, we don't have district attorneys
3 or state attorneys. We call them solicitors. Okay? And I
4 will introduce them to you in a moment. Okay? And, of
5 course, the defense, the defendant is someone who is charged
6 with committing a crime. He or she has a lawyer as well.
7 And we will introduce them again shortly. Okay?

8 So at this time, I'm going to ask the Solicitor's
9 Office to please call the case for trial. And we will
10 proceed after that. Solicitor, if you will call the case for
11 trial.

12 MR. CONDON: May it please the Court, Your Honor.

13 THE COURT: Yes, sir.

14 MR. CONDON: The State calls Indictment No.
15 2015-GS-10-04889, ABHAN.

16 Would you like me to read the indictment out loud?

17 THE COURT: Just read the caption and I will
18 describe for the jury what is alleged to have occurred.

19 MR. CONDON: That in Charleston County, South
20 Carolina, on or about September 24th, 2014, the defendant,
21 Adrian Simmons, did commit an unlawful act of injury upon the
22 victim, Lamont Washington. And as a result, the victim
23 suffered great bodily injury, where the act was accomplished
24 by means likely to produce death or bodily injury, in
25 violation of Section 16-3-600(B)(1) of the South Carolina

1 Code of Laws. And the charge is assault and battery of a
2 high and aggravated nature.

3 THE COURT: All right. Thank you. So, ladies and
4 gentlemen of the jury panel, we are before to begin the trial
5 of the case in the State of South Carolina against Adrian
6 Vashard Simmons. And before we select a jury, I do want each
7 side to introduce themselves to you. And then I'm going to
8 have several questions for the jury panel. And similar to
9 what you've just went through, if a question applies to you,
10 please stand, if you are able to. And then I will ask some
11 more questions based upon your response to that question.

12 Now, before we proceed any further, I need to go
13 ahead and swear the panel in. I know you've been sworn in
14 over there when you were organized, but I'm going to have the
15 clerk swear you in right now before we ask you any additional
16 questions. Okay?

17 Mr. Clerk.

18 THE CLERK: Ladies and gentlemen of the jury panel,
19 please stand and raise your right hand.

20 (Whereupon, the venire is sworn.)

21 THE CLERK: If you have accepted this oath, please
22 have a seat.

23 Please let the record reflect all jurors took their
24 seat.

25 THE COURT: At this point in time, I'm going to have

1 both the State introduce themselves, as well as the Defense.
2 And if you all have any witnesses or anybody with your office
3 sitting at your table, you can introduce them as well as.

4 First for the State.

5 MR. CONDON: Good afternoon. My name is Charles
6 Condon. I'm an assistant solicitor for Charleston County.
7 Sitting with me is Marian Askins, also an assistant
8 solicitor. Detective Matthew Downing of the Sheriff's
9 Office, he's the detective over the case. Also I will have
10 assisting me Investigator Josh Cheney. He's not in the
11 courtroom right now, but will be shortly.

12 THE COURT: Thank you, Mr. Whipper.

13 MR. WHIPPER: May it please the Court. I'm Jackson
14 S. Whipper. I'm known as Seth. I practice with the Whipper
15 Law Firm. With me is my assistant Cheryl Whipper Hamilton.
16 My client today is Mr. Adrian Simmons. My able assistant is
17 Tory Scott. Thank you very much.

18 I might add, Your Honor, my witnesses are, if I may,
19 Your Honor: Lillian Welcome, Sheldon Welcome, Malcolm
20 Welcom, Herbert Ladson, Courtney McDaniel, Nola Welcome,
21 Andre Simmons and Lanard Deas.

22 Thank you, Your Honor.

23 THE COURT: All right. Thank you. And I will go
24 through all those names again. There's going to be some
25 questions I'm going to ask you about the people who may be

1 testifying in the case, in case you know any of them.

2 Now that the lawyers have introduced themselves to
3 you, my question to you, ladies and gentlemen of the panel,
4 does any member of the jury panel have a close personal or
5 social relationship or is any member of the jury panel
6 related by blood or marriage to any of the attorneys involved
7 in this case? If so, please stand.

8 (No response from the jury.)

9 THE COURT: No response. Has any member of the jury
10 panel ever been represented by any of the attorneys involved
11 in this case? If so, please stand.

12 (No response from the jury.)

13 THE COURT: All right. No response. I'm going to
14 read out some names to you of potential witnesses. Just
15 because I read these names to you doesn't mean these people
16 are going to testify; means they very well may testify.
17 Okay? So if you recognize a name and, of course, the
18 question is going to be, if you are related by blood or
19 marriage to any of these people or if you have a close
20 personal or social relationship with any of these people.
21 And I'm going to give about four names so you don't have to
22 process, like, 20 at a time. Okay?

23 So in no particular order, here's the witnesses:
24 Lamont Michael Washington, Joslin Ranard Washington, Patricia
25 Washington, Courtney Shanel McDaniel.

1 So any prospective juror related by blood or
2 marriage or have a close personal or social relationship with
3 any of those people? If so, please stand.

4 (No response from the jury.)

5 THE COURT: No response. Next question, or next
6 group of people, Deputy John Wiedemann with the Charleston
7 County Sheriff's Office; Detective Gerald Finkel with the
8 Charleston County Sheriff's Office; Detective Matthew Downing
9 with the Charleston County Sheriff's Office; Aisha Shabazz.

10 Any prospective juror have a close social
11 relationship or related by blood or marriage to any of those
12 people? If so, please stand.

13 (No response from the jury.)

14 THE COURT: Thank you. When you stand, first I'm
15 going to ask you, what's your juror number?

16 JUROR 221: 221.

17 THE COURT: 221, yes, ma'am. How does that question
18 apply to you?

19 JUROR 221: One of the people has watched my
20 children.

21 THE COURT: Who is that?

22 JUROR 221: Aisha Shabazz.

23 THE COURT: She is a caretaker for your children?

24 JUROR 221: Has been in the past.

25 THE COURT: How long ago in the past?

1 JUROR 221: It's been probably two years.

2 THE COURT: Would that affect your ability to be
3 fair and impartial in the trial of the case?

4 JUROR 221: I don't believe so.

5 THE COURT: Thank you very much. You may be seated.
6 Anybody else?

7 (No response from the jury.)

8 THE COURT: So those are the questions I will ask
9 any time you reply. And make sure you know your juror
10 number. Okay?

11 Next four potential witnesses: Lillian Welcome,
12 Sheldon Welcome, Malcolm Welcome, Herbert Ladson. Same
13 question.

14 MR. WHIPPER: Malcolm's last name is Alston.

15 THE COURT: Malcolm Alston, sorry. Anybody
16 recognize those names as being related or close personal or
17 social relationship?

18 (No response from the jury.)

19 THE COURT: Courtney McDaniel, Nola Welcome, Andre
20 Simmons or Lanard Deas, any of those names ring a bell to any
21 prospective juror?

22 (No response from the jury.)

23 THE COURT: Any member of the jury panel related by
24 blood or marriage or have a close personal or social
25 relationship with the defendant, Adrian Simmons? If so,

1 please stand.

2 (No response from the jury.)

3 THE COURT: No response. Alejandro Spiotta, doctor
4 at M.U.S.C.; George Hildebidle, Adam Willis, Kevin Sherbine,
5 and Tonia Mallette, any member of the jury panel have any
6 close, personal or social relationship or related by blood or
7 marriage with any of those potential witnesses? If so,
8 please stand.

9 (No response from the jury.)

10 THE COURT: No response. Here's some other
11 questions. Is there any member of the jury panel who is
12 related by blood, marriage or have a close personal or social
13 relationship with anybody employed as a law enforcement
14 officer, firefighter, EMT, which stands for emergency medical
15 technician, detention officer, SLED agent, state law
16 enforcement agent, federal law enforcement agent or any other
17 kind of first responder, whether salary or volunteer? If so,
18 please stand.

19 (No response from the jury.)

20 THE COURT: So if you have a close personal friend
21 or related by blood or marriage to anybody in law
22 enforcement, firefighting, emergency technician or -- excuse
23 me, medical emergency technician, detention officer, SLED
24 agent, federal agent, any first responder, please stand.

25 THE COURT: Juror number?

1 JUROR 85: 85.

2 THE COURT: What's your response to this question?

3 JUROR 85: My sister is a sheriff's agent and my
4 brother-in-law is a police officer.

5 THE COURT: Policeman for what agency?

6 JUROR 85: Charleston.

7 THE COURT: City police? Would that affect your
8 ability to be fair and impartial?

9 JUROR 85: No, I don't believe so.

10 JUROR 156: I'm a friend of a Charleston County
11 magistrate judge, James Gosnell.

12 THE COURT: What's your juror number?

13 JUROR 156: 156.

14 THE COURT: All right.

15 JUROR 156: I don't believe it would impair my
16 ability to make a decision.

17 JUROR 70: Juror 70, my daughter is an attorney and
18 I'm a close friend to a judge.

19 THE COURT: Would that affect your ability to be a
20 fair and impartial juror?

21 JUROR 70: No, it wouldn't.

22 THE COURT: All right. Anybody else on that
23 question?

24 (No response for the jury.)

25 THE COURT: Next question, has any member of the

1 jury panel ever been employed as a first responder or served
2 as a volunteer first responder? If so, please stand.

3 (No response from the jury.)

4 THE COURT: No response, next question. Has any
5 member of the jury panel ever sought employment as a first
6 responder? If so, please stand.

7 (No response from the jury.)

8 THE COURT: No response. Next question, has any
9 member of the jury panel ever been employed or served in any
10 capacity with any law enforcement agency, fire department,
11 emergency medical service, in either salary or volunteer
12 capacity? If so, please stand.

13 (No response from the jury.)

14 THE COURT: No response. Has any member of the jury
15 panel ever served or currently serving in the armed services,
16 including Coast Guard? If so, please stand.

17 (No response from the jury.)

18 THE COURT: No response. Next question. Does any
19 member of the jury panel have a close personal or social
20 relationship or related by blood or marriage to anybody
21 employed with the South Carolina Budget and Control Board or
22 the South Carolina State Accident Fund, or any other
23 insurance company or agency? If so, please stand.

24 (No response from the jury.)

25 THE COURT: No response. Next question. Is any

1 member of the jury panel self-employed or operate a business
2 from home? If so, please stand. Okay.

3 JUROR 59: Juror No. 59. I own a company in
4 Summerville, building material company, Palmetto Home
5 Center.

6 THE COURT: Would that affect your ability to be
7 fair and impartial? You don't know anything about the case.

8 JUROR 59: I don't know anything about the case.

9 THE COURT: You can be seated.

10 JUROR 303: 303, and I own -- my husband and I own a
11 restaurant.

12 THE COURT: Would that affect your ability to be a
13 fair and impartial juror, the fact that you own a restaurant?

14 JUROR 303: Not that I know of.

15 JUROR 206: 206. I own a consulting firm. And it
16 shouldn't.

17 THE COURT: Affect your ability to be fair and
18 impartial? Thank you.

19 JUROR 205: 205. I own a publishing company and
20 Coastal Lifestyle Apparel Company. And I don't think it
21 would affect my ability to be impartial.

22 JUROR 332: Juror 332. Development. It won't
23 affect my ability.

24 THE COURT: All right. Anybody else?

25 Next question -- we are almost done -- are there any

1 members of the jury panel who did not participate in state or
2 federal income tax procedures? If so, please stand.

3 (No response from the jury.)

4 THE COURT: No response. Let me ask just a few more
5 questions and I will see if there's any more the lawyers wish
6 for me to ask. Again, the allegation from the indictment,
7 again, this is an allegation, anybody charged with a crime is
8 always presumed innocent until proven guilty. And I will
9 explain that in more detail if you are selected to be on the
10 jury. But the allegation, because this applies, this next
11 question, is that September 2014, the defendant committed an
12 unlawful act of injury upon the victim, Lamont Washington.
13 And the allegation is that Mr. Washington, as a result of
14 that unlawful act, suffered great bodily injury. That's, at
15 this point, what the definition of the allegation is against
16 the defendant.

17 So my question is, has any member of the jury panel
18 form or expressed an opinion about any issue or matter
19 involve in this case? If so, please stand. No response.

20 (No response from the jury.)

21 THE COURT: Is there any member of the jury panel
22 who's a member of or contributor to any group which has as
23 its primary concern the promotion of law enforcement or
24 victims' rights? Such groups are like Mothers Against Drunk
25 Driving or Students Against Drunk Driving or CAVE, Citizens

1 Against Violent Crime, police association, paternal order of
2 police, troopers association, stuff like that. So if you are
3 a member of or contributor to groups like that, please stand.

4 (No response from the jury.)

5 THE COURT: No response. Is there any member of the
6 jury panel that was a member of the Grand Jury which issued
7 the indictment in this case, which I will explain in further
8 detail if you are selected? If so, please stand.

9 (No response from the jury.)

10 THE COURT: No response. Lastly, is there any
11 member of the jury panel who has a religious, moral or
12 philosophical reason why he or she cannot be a fair and
13 impartial juror in this case? If so, please stand.

14 (No response from the jury.)

15 THE COURT: No response. Any further voir dire from
16 the State?

17 MR. CONDON: No, Your Honor.

18 THE COURT: Any further from the Defense?

19 MR. WHIPPER: No. I do have a question on a juror
20 number. There's a juror in the far right corner --

21 THE COURT: What's your juror number, ma'am? Far
22 right corner, what's your juror number number?

23 JUROR 70: 70.

24 THE COURT: Yes, ma'am. I believe in a response to
25 a voir dire question, you indicated your daughter is a

1 lawyer?

2 JUROR 70: Uh-huh.

3 THE COURT: What's your daughter's name?

4 JUROR 70: Samantha Luck. She doesn't practice law
5 in Charleston. She's in Columbia.

6 THE COURT: Any further questions of that juror?

7 MR. WHIPPER: No, Your Honor.

8 THE COURT: Thank you, ma'am. All right. Ladies
9 and gentlemen, we are now going to commence with what's
10 called striking a jury. That's what lawyers call the nice
11 way to say selecting a jury. Okay? So what's going to
12 happen is, your names have already been just sporadically put
13 on this piece of paper which brings you into my courtroom.
14 Okay? So what now is going to happen is that these names are
15 going to be sporadically printed out again by way of a
16 computer program. Okay? And then the lawyers have already
17 gotten your information and know a little bit about you. And
18 they are going to select you to be on the jury for the case.
19 Okay?

20 And, again, don't be personally offended if you are
21 not selected to be on the jury. Some people you will see
22 when they get asked to sit back down or be excused, it's like
23 they shake their head, their feelings are hurt. Don't do
24 that. Lawyers in every jurisdiction, in every county, in
25 every state in the United States go through this process.

1 And so there's many reasons why you may not be selected. So,
2 again, don't be offended if you are not. Okay? You are
3 participating in a time-tested system that's been going on
4 for a long time.

5 We are going to do five and five, as far as strikes.
6 And we are ready to proceed. What I'm going to ask you to
7 do, the clerk is going to kind of run the show for me, rather
8 than making you walk up here and face everybody and then
9 decide you are going to be on the jury or not, I'm going to
10 make it easy for you. If your name is called and your number
11 is call, stand where you are. Okay? If you are selected,
12 you will be given instructions. And you will come over here
13 and you will sit where the trial jury sits. Okay?

14 Mr. Clerk.

15 THE CLERK: Ladies and gentlemen, like the judge
16 says, if I call your name, if you will please stand. I will
17 then ask the parties questions. And then I will either ask
18 you to have a seat in the jury box or I will ask you to have
19 a seat.

20 Juror No. 103, Belinda Duncan.

21 What say for the State?

22 MR. CONDON: Please seat the jury.

23 THE CLERK: What say you for the defendant?

24 MR. WHIPPER: Dismiss.

25 THE CLERK: Ms. Duncan, please have a seat. You've

1 been excused from the trial of the case.

2 Juror No. 257, Imad Mohtassen.

3 What say you for the State?

4 MR. CONDON: Please seat the juror.

5 THE CLERK: What say you for the defendant?

6 MR. WHIPPER: Please release the juror.

7 THE CLERK: Mr. Mohtassen, please have a seat.

8 You've been excused from the trial of the case.

9 Juror No. 332, Christopher Smith, 332.

10 What say you for the State?

11 MR. CONDON: Please seat the juror.

12 THE CLERK: What says the defense?

13 MR. WHIPPER: Release the juror.

14 THE COURT: Mr. Smith, please have a seat. You've

15 been excused from the trial of the case.

16 That's three strikes for the defendant.

17 Juror No. 256, Troy Mixon, 256.

18 What say you for the State?

19 MR. CONDON: Please seat the juror.

20 THE CLERK: What say you for the defendant?

21 MR. WHIPPER: Release the juror.

22 THE CLERK: What was that?

23 MR. WHIPPER: Release the juror.

24 THE CLERK: Please have a seat. You've been excused
25 from the trial of this case.

1 Juror No. 112, Jordan Fagan, 112.

2 What say you for the State?

3 MR. CONDON: Please seat the juror.

4 THE CLERK: What says the defense?

5 MR. WHIPPER: Seat the juror.

6 THE CLERK: Ms. Fagan, please come up and have a
7 seat in the jury box. You've been selected as a juror in
8 this case.

9 Juror No. 303, Stacey Runey, 303.

10 What say you for the State?

11 MR. CONDON: Please seat the juror.

12 THE CLERK: What say you for the defendant?

13 MR. WHIPPER: Release the juror.

14 THE CLERK: Ms. Runey, please have a seat. You've
15 been excused from the trial conviction.

16 That's five strikes for the defendant.

17 Juror No. 318, Christian Senf.

18 What say you for the State?

19 MR. CONDON: Please seat the juror.

20 THE CLERK: Any challenge from the defendant?

21 MR. WHIPPER: No challenge from the defendant.

22 THE CLERK: Please have a seat in the jury box.
23 You've been selected as a juror in this case.

24 Juror No. 267, Jasmine Moultrie, 267.

25 What says the State?

1 MR. CONDON: Please seat the juror.

2 THE CLERK: Any challenge from the defendant?

3 MR. WHIPPER: No challenge.

4 THE CLERK: Ms. Moultrie, please come up and have a
5 seat in the jury box. You've been selected as a juror in
6 this case.

7 Juror No. 164, Peter Harbert, 164.

8 What say you for the State?

9 MR. CONDON: Please seat the juror.

10 THE CLERK: Any challenge from the defendant?

11 MR. WHIPPER: Please seat the juror.

12 THE CLERK: Mr. Harbert, please come up and have a
13 seat in the jury box. You've been selected as a juror in
14 this case.

15 Juror No. 130, Ryan Funke, 130.

16 What says the State?

17 MR. CONDON: Please seat the juror.

18 THE CLERK: Any challenge from the defendant?

19 MR. WHIPPER: No challenge for Mr. Funke.

20 THE CLERK: Please have a seat in the jury box.
21 You've been selected as a juror in this case.

22 Juror No. 205, Juror No. 205, Mary Kerr.

23 What say you for the State?

24 MR. CONDON: Please seat the juror.

25 THE CLERK: Any challenge from the defendant?

1 MR. WHIPPER: Please seat the juror.

2 THE CLERK: Ms. Kerr, please come up and have a seat
3 in the jury box. You've been selected as a juror in this
4 case.

5 Juror No. 81, John Copeland, 81.

6 What says the State?

7 MR. CONDON: Please seat the juror.

8 THE CLERK: Any challenge from the defendant?

9 MR. WHIPPER: Please seat the juror.

10 THE CLERK: Please have a seat in the jury box.
11 You've been selected as a juror in this case.

12 Juror No. 265, George Morrison, 265.

13 What say you for the State?

14 MR. CONDON: Please excuse the juror.

15 THE CLERK: Please have a seat in the audience.
16 You've been excused as a juror in this case.

17 Juror No. 165, Jonathan Harpe, 165.

18 What say you for the State?

19 MR. CONDON: Please seat the juror.

20 THE CLERK: Any challenge from the defendant?

21 MR. WHIPPER: Please seat the juror.

22 THE CLERK: Mr. Harpe, please have a seat in the
23 jury box. You've been selected as a juror in this case.

24 Juror No. 386, Craig West, 386.

25 What say you for the State?

1 MR. CONDON: Please seat the juror.

2 THE CLERK: Any challenge from the defendant?

3 MR. WHIPPER: One second. Please seat the juror.

4 THE CLERK: Mr. West, please come up and have a seat
5 in the jury box. You've been selected as a juror in this
6 case.

7 Juror No. 40, Cassandra Bosswell, 40.

8 What say you for the State?

9 MR. CONDON: Please excuse the juror.

10 THE CLERK: Please have a seat in the audience.
11 You've been excused as a juror in this case.

12 Juror No. 286, Michelle Pope, 286.

13 What say you for the State?

14 MR. CONDON: Please seat the juror.

15 THE CLERK: Any challenge from the defendant?

16 MR. WHIPPER: Please seat the juror.

17 THE CLERK: Ms. Pope, please come up and have a seat
18 in the jury box. You've been selected as juror in this case.

19 Juror No. 8, Gloria Avent, No. 8.

20 What say you for the State?

21 MR. CONDON: Please seat the juror.

22 THE CLERK: Any challenge from the defendant?

23 MR. WHIPPER: None from the defendant.

24 THE CLERK: Please have a seat in the jury box.
25 You've been selected as a juror in this case.

1 Juror No. 199, Matthew Joyner, 199.

2 What say you for the State?

3 MR. CONDON: Please seat the juror.

4 THE CLERK: Any challenge from the defendant?

5 MR. WHIPPER: Please seat the juror.

6 THE CLERK: Mr. Joyner, please come up and have a
7 seat in the jury box. You've been selected as a juror in
8 this case.

9 Judge, alternates?

10 THE COURT: One alternate.

11 THE CLERK: Now picking for the alternate. Strikes
12 are 1 and 2.

13 Juror No. 49, Daniel Bull, 49.

14 What say you for the State?

15 MR. CONDON: Please excuse the juror.

16 THE CLERK: Mr. Bull, please have a seat. You've
17 been excused from the trial of this case.

18 Juror No. 184, Craig Humes, 184.

19 Any challenge from the State?

20 MR. CONDON: Please seat the juror.

21 THE CLERK: What say you for the defendant?

22 MR. WHIPPER: Please seat the juror.

23 THE CLERK: Mr. Humes, please come up and have a
24 seat in the jury box. You've been selected as a juror in
25 this case.

1 Your Honor, the jury has been selected and are
2 seated.

3 THE COURT: Thank you. Any matters of law regarding
4 the jury selection from either the State or the defense?

5 MR. CONDON: No, Your Honor.

6 MR. WHIPPER: None from the defense, Your Honor.

7 THE COURT: All right. Thank you. Ladies and
8 gentlemen of the panel, you are now -- I guess I release them
9 downstairs.

10 THE CLERK: To go to lunch and come back at 2:30.

11 THE COURT: That's the way y'all do it that way in
12 Charleston. So you are released to go to lunch. Be back at
13 2:30 where you have been all morning. Okay?

14 (Whereupon, the venire leaves.)

15 THE COURT: All right. Ladies and gentlemen of the
16 trial jury, before I have you sworn in as trial jury of the
17 case, I'm going to give you a lunch recess. Before we go on
18 recess, I wanted a brief moment to speak to you. You've been
19 selected to be the trial jury in this case. That means the
20 only evidence you can consider in determining your verdict in
21 this case is the evidence presented in this courtroom. Okay?
22 So you are going to be free to go to lunch.

23 And, of course, when you go to lunch, you may run
24 into people if you choose to stick around here, which I guess
25 with the time you are probably going to have to do that, you

1 may run into people involved in the trial of the case. Don't
2 talk to them. Okay? Even innocent, simple conversations can
3 easily be misconstrued. Okay? You don't want to gum up the
4 whole process and mess up everything by doing that. Okay?

5 So if you see us somewhere and we don't speak to
6 you, we are not being rude. We are just being efficient.
7 Okay? And that's the way we need to handle it.

8 Also, when you leave the courthouse, you are going
9 to have access to your mobile devices again, you had your
10 laptops and cell phones. Don't do any independent research
11 on the case. Don't Google the names of the people involved
12 in this case or try to look up news reports or anything like
13 that. Because, remember, if you do that, you are violating
14 your oath as a juror to go only by the evidence presented in
15 this courtroom. And again, you will gum up the whole
16 process.

17 And if anybody tries to talk to you in violation of
18 these instructions, let me know. I assure you, I will take
19 care of it. Okay?

20 Having said that, the bailiff right now is going to
21 show you -- you can't even talk amongst yourselves about this
22 case. Certainly, you can introduce yourselves to each other,
23 but don't talk about this case until I tell you to do that.
24 And I will give you more instructions about that after you
25 get back from lunch.

1 What y'all are going to do, you are going to go to
2 lunch, and do what you are going to do. Y'all don't need to
3 be back until 3 p.m. Okay? I have some legal matters I have
4 to deal with with the lawyers. And it's now about 10 after
5 one, and plus I've got to eat. And I'm a big guy and may
6 take me a little while to eat, a lot more than y'all.

7 So when you all leave, y'all come back to your jury
8 room and your bailiff will show you. You are free to leave
9 at this point. Find out where your jury room is and then go
10 to lunch and be back at 3. Okay? Thank you.

11 (Whereupon, the jury leaves open court at 01:07 PM.)

12 THE COURT: All right. Jury left. From a timing
13 perspective, why don't we reconvene in an hour and do
14 whatever pretrial we need to do. And that will give us time
15 to do pretrial and put whatever we need on the record. And
16 we will be able to start right at 3 and see where we need to
17 go. Yeah, let's do that. Let's go ahead and take a break.
18 Okay. So we will in recess until 2:15. All right.

19 (Whereupon, a recess transpired.)

20 MR. WHIPPER: Your Honor, we may have had a little
21 miscommunication with my client. I did have contact, there
22 was a group that needed to be back by -- it's all on me. I
23 may have not been distinctive enough that he be back with me.

24 THE COURT: But he's en route?

25 MR. WHIPPER: He's en route, sir.

1 THE COURT: All right. We are back on the record.
2 All the attorneys are present. Mr. Whipper, you indicated
3 your client was en route right here. Is there anything we
4 can do in the interim until he gets back as far as any
5 pretrial issues?

6 MR. WHIPPER: I think we can, Your Honor. We can
7 certainly begin. My concern is that all the parties have
8 some blemish on their records, witnesses, victim, everybody.
9 And I think to the extent that these really are old charges
10 and to the extent that they have no influences on credibility
11 of the witnesses, I think they ought not to be inquired
12 into.

13 THE COURT: This is a grand larceny charge you are
14 talking about?

15 MR. WHIPPER: Yes, sir.

16 THE COURT: That the State seeks to -- is the State
17 seeking to impeach anybody else that the defense may call
18 other than the defendant?

19 (Whereupon, the defendant is present.)

20 MR. CONDON: Potentially, I'm still not aware
21 exactly who he intends to call. He has his witness list and
22 I haven't run the raps on them yet, Your Honor.

23 THE COURT: We will deal with the other witnesses
24 then as they come up individually. But as far as the
25 defendant is concerned, the State, we are dealing -- for the

1 purpose of the record, we are dealing with the impeachability
2 of the defendant's prior record. And the State intends to
3 try to impeach his testimony on what?

4 MR. CONDON: We would ask to introduce the juvenile
5 adjudication.

6 THE COURT: If he testifies?

7 MR. CONDON: If he testifies, that's correct. Grand
8 larceny greater than 1K but less than 5K and happened within
9 the ten-year scope of 609(B).

10 THE COURT: When he was a juvenile?

11 MR. CONDON: That's correct, Your Honor.

12 THE COURT: I'm listening to you, Mr. Whipper.

13 MR. WHIPPER: Your Honor, I don't think I received
14 the exact paperwork on the juvenile. But at any rate, that's
15 my point, Your Honor. Juvenile convictions can be admitted,
16 again, to the extent that these have any bearing on the facts
17 of this case. In light of what is going on with this case,
18 the State is saying potahto and we are saying potato. What
19 happened that evening on the 24th of September, that day, and
20 certainly the facts that evening carry their own weight. I'm
21 saying that's what happen.

22 There's nothing in the background that shows that
23 there is pattern of behavior that essentially matches up with
24 what happened that evening. I know there are some
25 convictions, like for instance, Your Honor --

1 THE COURT: Well, it's a crime of dishonesty. You
2 would agree with that? But I still have to do a balancing
3 test to determine the prejudicial effect versus the probative
4 value. And that's kind of what the Court is focusing on.
5 It's clearly a crime of dishonesty or false statement, grand
6 larceny. It's clearly within the nine years, just barely.
7 Y'all gave him written notice that you all intended to do
8 it.

9 MR. CONDON: Your Honor, I did let him know that was
10 my plan. I will point out that the probation lasted until
11 2008. So it comes within the 10 years. I've got the Form 5
12 record which I did send to Mr. Whipper. And I can hand up to
13 Your Honor.

14 THE COURT: How old was the defendant at the time of
15 the conviction -- of the adjudication? It's really not a
16 conviction, it's an adjudication.

17 MR. CONDON: Occurred in 2006.

18 MR. WHIPPER: He's 25.

19 THE COURT: 2006?

20 MR. CONDON: That's correct, Your Honor.

21 THE COURT: So we have a juvenile, so he was born in
22 '91, so he would have been 15?

23 MR. WHIPPER: 15.

24 THE COURT: So we have an adjudication in family
25 court. That presents an interesting issue. It's not really

1 a conviction for the purposes of a criminal record.

2 MR. CONDON: Yes, sir.

3 THE COURT: I'm listening. Go ahead.

4 MR. CONDON: I will point out Rule 609(d) addresses
5 juvenile adjudications. And it State's evidence of juvenile
6 adjudication is admissible under this rule if the conviction
7 of the crime would be admissible to attack the credibility of
8 an adult.

9 So then I'm looking to the 609 Subpart A and B. My
10 argument is that it's relevant to show his character of
11 dishonesty. And it occurred within 10 years.

12 THE COURT: Still has to do with *Colf* analysis,
13 going through the *Colf* factors. Do you want to go through
14 those with me and tell me why I should let it in, in other
15 words, whether the probative value substantially outweighs
16 the prejudicial effect? What is the State's argument that
17 allowing y'all to try to impeach his testimony, whether or
18 not that substantially outweighs the probative -- prejudicial
19 effects?

20 MR. CONDON: Well, Your Honor, in this case, this is
21 eyewitness testimony case. We believe it's whether or not
22 they believe his testimony is crucial to the outcome of the
23 case. And that evidence, I think, should be presented so
24 they could have proper understanding of his character for
25 truthfulness or not.

1 THE COURT: All right. Thank you. Mr. Whipper, I
2 will give you last word on this before I look at everything
3 and make a ruling.

4 MR. WHIPPER: Again, Your Honor, I think it's sort
5 of trial by scarlet letter, is what it amounts to. I just
6 don't think that's what needs to happen here. There's enough
7 in this case in these facts the jury can make that decision
8 based on what happens on the stand today. This is just a
9 matter of poisoning the water and something that happened
10 when he was 15. Your Honor, you can't go into -- you might
11 find out that whoever he's represented by, was wrongfully
12 represented. It's just not the kind of scenario that would
13 help resolve this situation in a fair and balanced manner.
14 You had an adjudication when you were 15 about some childhood
15 prank maybe. And so now, given the standing, that's how you
16 don't always act.

17 And he has to understand, of course, he has to know
18 that he can question on the stand, of course, if he decides
19 to testify.

20 THE COURT: Is the State seeking to impeach the
21 defendant on any other matter involving his record?

22 MR. CONDON: No, Your Honor. And I think that all
23 leads to our argument trying to get any of the other
24 convictions he's had, even though he's had felonies more
25 recent. We do think that mark on truthfulness is highly

1 probative. I can hand up the Form 5 record of it, juvenile
2 record of his adjudication, if you would like to look at
3 that.

4 THE COURT: I don't need to see that. Give me a
5 second to look at the rule.

6 Based upon the argument of counsel, my review of
7 Rule 609, specifically 609(A)(2), states: Evidence of any
8 witness that has been convicted of a crime shall be admitted
9 if it involved dishonesty or false statement regardless of
10 the punishment.

11 What we have here is, we do have a juvenile
12 adjudication which took place in 2006, which would be right
13 at the ten-year mark. When was the actual time? I mean, it
14 would be right over 10 years? Of course, he didn't get off
15 probation until 2008.

16 MR. CONDON: I'm sorry, Your Honor. Let me correct
17 that. Adjudication was on 3/28 of 2005.

18 THE COURT: 3/28/2005, which would put 609(A)(2)
19 into play as well as 609(B), which is the time limit. The
20 time limit is normally just the probative value outweighs
21 prejudicial effect. Under 609(B) it has to substantially
22 outweigh the prejudicial effect.

23 And based upon my analysis of the case in front of
24 me and arguments of counsel, I do not find that the
25 prejudicial -- excuse me. I do not find -- I find that the

1 prejudicial effect does -- it's not substantially outweighed
2 by the probative value. Therefore, I'm not going to allow
3 the State to impeach the defendant based upon a juvenile
4 adjudication made 11 and almost a half years ago for a grand
5 larceny charge. Okay? So not going to let you cross-examine
6 him about that.

7 What other pretrial issues do we have?

8 MR. CONDON: Just the *Neil v. Biggers* hearing.

9 THE COURT: Ready to proceed on that?

10 MR. CONDON: Yes, Your Honor.

11 THE COURT: Mr. Whipper, okay, call your witness.

12 MR. CONDON: The State calls Detective Gerald
13 Finkel.

14 GERALD FINKEL,

15 having been duly sworn, testifies as follows:

16 THE CLERK: Please state your full name and spell
17 your last name for the record.

18 THE WITNESS: My full name is Gerald Michael Finkel,
19 F-i-n-k-e-l.

20 DIRECT EXAMINATION

21 BY MR. CONDON:

22 Q. Good afternoon, Detective Finkel.

23 A. Good afternoon, sir.

24 Q. Were you involved in the investigation of the
25 assault involving Adrian Simmons?

1 A. Very tangentially. On the morning of September 29th
2 of last year, Detective Downing was in the process of leaving
3 the law enforcement center and I was working at one of the
4 bays nearby. And he asked me if I would accompany him to
5 M.U.S.C. to administer a photographic lineup.

6 The Sheriff's Office has a protocol that in order to
7 administer a lineup, there has to be disinterested officer
8 who does not know who the prospective defendant is.

9 I was presented with what we call the six-pack.
10 It's six photographs on one sheet and a photographic lineup
11 sheet. We proceeded to the Medical University where we saw a
12 gentleman named Lamont Washington. Mr. Washington was the
13 victim of an assault. He was in a great deal of pain at the
14 time and could not lay on his back. He was on his hands and
15 knees in the bed, almost in a fetal position.

16 I asked him if he felt like he could assist us in
17 identifying the photographs. And then I read him all the
18 material that's contained in the photographic lineup sheet.
19 There are a number of different things that we explain to the
20 witness, including the fact that the party -- he may not be
21 able to identify anyone and that the person who may have
22 committed the crime may not be in those photographs.

23 I read him each one of them. Normally we have them
24 initial next to each statement. He was unable to do that
25 just because he was on his hands and knees. But when I

1 showed him the photographs, he made an identification. I
2 still do not know who that person is. I know he identified
3 number three in the photographic lineup. He then was able to
4 sign his name and print it and eyewitness it.

5 Q. Okay. I'm going to show you what's been marked as
6 State's Exhibit 14. Do you recognize that document?

7 A. Yes, sir. This is the report of
8 photographic/physical lineup. That's Mr. Washington's
9 signature in his printed name and my signature in printed
10 name.

11 Q. Is that a true and accurate depiction of the line-up
12 that was shown to him?

13 A. Yes, sir.

14 Q. Who did he select?

15 A. Number 3 and he initialed it.

16 Q. That's actually Adrian Simmons, but you didn't know
17 that at the time; is that correct?

18 A. I didn't know that. I don't know that now.

19 Q. And at any time, did you suggest to him who he
20 should select or give any kind of --

21 A. No, sir. I didn't know who the defendant was or
22 what number he was on that.

23 Q. How certain did he appear to select the individual?

24 A. He was very certain. He said he had seen that
25 gentleman in the neighborhood before and was able to identify

1 him. I think he called him Red. He didn't give a name to
2 him, just a street name.

3 MR. CONDON: No further questions.

4 THE COURT: Mr. Whipper.

5 MR. WHIPPER: May it please the Court.

6 CROSS-EXAMINATION

7 BY MR. WHIPPER:

8 Q. You have the documents there, Detective. Thank you.
9 I understand this is your signature at the bottom, it would
10 be the bottom left-hand corner?

11 A. Bottom left-hand corner is my signature in my
12 printed name. And bottom right-hand corner is
13 Mr. Washington's in his printed name.

14 Q. Is this attached document, is that -- there are six
15 photographs on that sheet?

16 A. That is correct.

17 Q. And color printed; is that correct?

18 A. Yes, sir.

19 Q. Is that something you put together for this hearing
20 or is that what --

21 A. This is what I was handed and this is what we use.
22 You can see an original signature.

23 Q. When you presented this to the alleged victim, did
24 you put it on the floor, lay it on a bed?

25 A. I laid it on the bed in front of him. He was --

1 Q. To your recollection, how long did it take to get
2 this done?

3 A. Once we -- once I read him this, it took probably
4 five to seven minutes to read each of those things and
5 explain it to him. And then he identified it immediately as
6 soon as he saw the photograph. He circled number three.

7 Q. Was it your practice to ask any questions at all
8 about the incident?

9 A. No. I was not the case agent. I was not an
10 investigator in this case. My only function there was to
11 show him the photographs and see if he could make an
12 identification.

13 MR. WHIPPER: All right. Thank you, Detective. No
14 further questions.

15 THE COURT: Redirect?

16 MR. CONDON: Briefly, Your Honor.

17 REDIRECT EXAMINATION

18 By MR. CONDON:

19 Q. Could you tell the judge your qualifications. Are
20 you a lawyer? What kind of training have you had and law
21 enforcement experience?

22 A. I started law enforcement almost 51 years ago, in
23 1966. I was working in the military out of the FBI office in
24 St. Louis for the director of Security Intelligence Planning
25 and Training for the Force Field Network. I started law

1 school in 1967. And I worked for SLED the entire time I was
2 there. When I left, I was the police advisor to the family
3 court system up there for a while in a part-time job. I had
4 a practice as well. I kept my commission throughout the
5 years. And for the last eight years, I've been working for
6 Charleston County Sheriff's Office.

7 MR. CONDON: Thank you.

8 MR. WHIPPER: Your Honor, permission to approach the
9 witness.

10 THE COURT: Yes, sir.

11 RECROSS-EXAMINATION

12 BY MR. WHIPPER:

13 Q. This form is dated September 29th?

14 A. That's correct.

15 Q. Do you recall what time of the day it was? Is that
16 on there anywhere?

17 A. I recall it was in the morning. I couldn't tell you
18 the exact time, but I recall we went in the morning, because
19 I was just reporting to work. I usually leave my law office
20 about ten o'clock. So it was probably about 10:30 when we
21 went over there.

22 MR. WHIPPER: All right, sir. Thank you so much.

23 THE COURT: Thank you, sir. You may step down. Any
24 other witnesses?

25 MR. CONDON: Briefly call the victim, Your Honor.

1 THE COURT: Okay.

2 MR. CONDON: The State calls Lamont Washington.

3 THE COURT: Mr. Washington.

4 LAMONT WASHINGTON,

5 having been duly sworn, testifies as follows:

6 THE CLERK: I need you to speak into this microphone
7 and state your name and spell your last name for the record.

8 THE WITNESS: Lamont Washington,

9 W-a-s-h-i-n-g-t-o-n.

10 DIRECT EXAMINATION

11 BY MR. CONDON:

12 Q. Good afternoon, Mr. Washington. I want to go
13 directly to the incident. Can you explain to the judge what
14 happened when you arrived on scene?

15 A. When I pulled up, he walked around my car. I got
16 out of the car and I shook his hand. And I said, hold on,
17 the phone is in the car. And I turned around, touched my
18 door. I woke up in the hospital.

19 Q. And was there anyone else on the scene with you when
20 this occurred?

21 A. I had my cousin in the vehicle with me. Behind him,
22 a guy walked out the door holding a baby. He was on the
23 other side of the car.

24 Q. How far away was the guy holding the baby?

25 A. To that door where the clock is, on the other side

1 of the car. But we was on this side, I'm just using the
2 distance because that side is too short.

3 Q. And just briefly on the background, did you have --
4 can you explain to the judge what the deal is you had with
5 the defendant that day?

6 A. That day, his girlfriend called me and said he wants
7 us to get the phone, he's ready. And I told him I got my
8 kids, don't be too late. About 5:30 I called. She told me
9 to call him. I called him. He said he would get it that
10 day. He called me around six o'clock, 6:30 and said, I'm in
11 Irmo. In my head, I said to myself, that's close to my
12 parents'. I took my daughters with me. They actually was
13 going to come with me. But it just so happened, I let them
14 stay at my mama's house, since I was just going down the
15 street.

16 I got to the spot. I told him to meet me at one of
17 my cousin's place, has a place there. Told him to meet me
18 there. So I was sitting there waiting. I call her. She
19 told me to call him. So I called him. And he told me to
20 come on to Deleston. At that point in time, I said I don't
21 know where Deleston at. And he said, right down the street.
22 I heard dogs barking in my phone and also out. So I figured
23 we were pretty close.

24 Q. And just for a little background information, were
25 you a cell phone repairman back in --

1 A. I repair laptops, desk tops, iPhones, Samsung
2 Galaxies, LGs, screens, digitizers, battery ports for cell
3 phones. Help people find whatever they need. If they need a
4 battery, I can get it a little cheaper than they would go to
5 Batteries Plus.

6 Q. Did you have a deal with the defendant in this case
7 to fix a cell phone?

8 A. Yes.

9 Q. How much did you agree to fix it for?

10 A. \$200.

11 Q. What kind of look did you have at the person that
12 hit you that day? Did you have a good chance to view?

13 A. What do you mean? Repeat that. What did I have?

14 Q. In other words, did you have -- how much time did
15 you have to take a look at the person who attacked you?

16 A. When he hit me that day, how many times I met him in
17 my life?

18 Q. No, just that day.

19 A. From the time I pulled up, got out of the house and
20 walked around the car, shook his hand, say, oh, I forgot, my
21 phone was in my left hand. And when I went to open the door,
22 I turned around to open the door. I remember touching that
23 door. That was the last thing, was touching the door to open
24 the door to get his phone out of the armrest.

25 Q. So needless to say, you got a really good look at

1 him?

2 A. Oh, yes.

3 Q. Was the still daylight outside?

4 A. It was getting dark, like between 7:30 and 8 around
5 September. You know, the time changed. But the car that I
6 had, it lit up the area. It just lit it up.

7 Q. Had you seen the person that attacked you before?

8 A. Twice in my life.

9 Q. Before this incident?

10 A. Yes.

11 Q. And who does he date?

12 A. Courtney McDaniel.

13 Q. How do you know Courtney McDaniel?

14 A. She grew up on the same street I grew up on, but I'm
15 older than her. Used to play with her brothers.

16 Q. Do her parents live across the street from you?

17 A. Sure do.

18 Q. I'm going to show you State's Exhibit 14 and ask you
19 if you recognize that document, if you can flip through it.

20 A. Yep. Sure do. Yes, sir.

21 Q. On September 29th, when you came to in the hospital,
22 did a detective come by and visit you?

23 A. Yes.

24 Q. And did he show you a lineup?

25 A. He showed me. And I actually really didn't know why

1 I was in the hospital until he told me.

2 Q. And were you able to identify --

3 A. As soon as he pulled this out, this right here in my
4 face, I said, that's the guy. That was the last person I
5 saw. Then I don't remember nothing. That's him.

6 Q. And how certain are you that's him?

7 A. Everything, 100 percent. That's him.

8 Q. And that's the person that assaulted you that day?

9 A. Yep, yes, sir.

10 MR. CONDON: No further questions.

11 THE COURT: Mr. Whipper, your witness.

12 MR. WHIPPER: No questions.

13 THE COURT: Thank you, sir. You may step down.

14 Anything further from the State?

15 MR. CONDON: Nothing, Your Honor.

16 THE COURT: All right. Anything from the defense as
17 far as any testimony, or we are just going to deal with
18 argument?

19 MR. WHIPPER: We will just deal with argument.

20 THE COURT: All right. First from the State are, as
21 to the identification, Mr. Condon.

22 MR. CONDON: Your Honor, our position is that this
23 wasn't an unduly suggestive lineup. As the testimony you
24 heard, the detective actually didn't even know who the
25 suspect was; still doesn't today. Didn't suggest anybody.

1 Went through the proper protocol. And the defendant's likely
2 was certain of his attacker. There's no doubt. He had a
3 good chance to view him, having seen him before. The
4 lighting was adequate that night. That wasn't unduly
5 suggestive. It was reliable identification.

6 THE COURT: Thank you.

7 Mr. Whipper.

8 MR. WHIPPER: If it please the Court, Your Honor.
9 If you look at position of the pictures, you will see that
10 Mr. -- I don't know if you have it.

11 THE COURT: I don't. I will be glad to look at it.
12 Yes, sir.

13 MR. WHIPPER: Position of the pictures, you will see
14 that Mr. Simmons has a, essentially, prominent position in
15 that lineup. We think that position itself is highly
16 suggestive.

17 THE COURT: Okay.

18 MR. WHIPPER: And we think that in that regard, that
19 evening, that's what was being identified.

20 THE COURT: All right. So if I were to agree with
21 you and find that the photograph itself was unduly
22 suggestive, what would your argument then be as to the
23 reliability of the identification?

24 MR. WHIPPER: Your Honor, obviously, that would make
25 it totally unreliable, our position. And, of course, I think

1 no one has said anything at all about -- they identified this
2 gentleman as being somebody who may have been at the scene.
3 That's all I have. That would be our position.

4 THE COURT: And that's a good jury issue. But as
5 far as a Biggers issue is concerned, you know, you have to go
6 with the Court's findings on that. And based upon my review
7 of this evidence and considering the testimony of the
8 detective as well as the victim, considering arguments of
9 counsel, I find that the out-of-court identification process
10 was not unduly suggestive. Therefore, I'm going to allow the
11 identification evidence to come in. Even if I were to reach
12 reliability factors, which I don't have to, since there was
13 no unduly suggestive procedure, I also find that
14 the out-of-court identification was reliable as well based
15 upon the totality of the circumstances. So I will allow the
16 State to introduce this into evidence.

17 MR. WHIPPER: We object, Your Honor.

18 THE COURT: And you are certainly protected in the
19 record in that regard, Mr. Whipper.

20 What's the next issue for pretrial?

21 MR. WHIPPER: Thank you, Your Honor. I think you
22 preserved the other motion.

23 THE COURT: Talk to me about that, Mr. Whipper,
24 because I'm not sure what you want me to do on that. You had
25 filed a motion to dismiss alleging the stand your ground law,

1 immunity from prosecution. And in the procedure that I'm
2 aware of, per the statute, isn't that something that is dealt
3 with pretrial? I don't know if you can preserve that. And
4 once the trial starts, you know, that is prosecution. You
5 know, if I hear the immunity arguments and the testimony and
6 the defense, I then make a ruling, if I find he's not immune,
7 we go forward. If I find he is immune, well, it's over with.

8 So I don't know about preserving it. Certainly you
9 are going to be entitled to present self-defense. Y'all have
10 pled self-defense. And, certainly, you are going to be able
11 to do all that. But I don't know if you can preserve
12 something without actually fully participating in it when it
13 comes to the stand your ground. But make your record and we
14 will go from there.

15 MR. WHIPPER: Your Honor, again, if I'm
16 understanding the Court correctly, then we would withdraw it.
17 I'm thinking, Your Honor, we can raise it in the area of
18 directed verdict.

19 THE COURT: Absolutely. Is that what you mean by
20 that?

21 MR. WHIPPER: Yes, Your Honor.

22 THE COURT: You want to argue then -- okay. I see
23 what you are saying. Based upon when the State has rested,
24 whether or not the State has disproven, essentially,
25 self-defense, whether or not -- okay. I understand what you

1 are saying. I got you. All right. Yes, sir.

2 MR. WHIPPER: Also, Your Honor, once we presented
3 our case, that we still can move for directed verdict based
4 on those grounds.

5 THE COURT: What's the -- let me hear from the
6 State. What's the State's position on that, moving for
7 directed verdict after y'all present your evidence on the
8 stand your ground issue?

9 MR. WHIPPER: After we present -- if he testifies,
10 on our --

11 THE COURT: You mean after everything?

12 MR. WHIPPER: Yes, sir.

13 THE COURT: At the end of the trial, he wants -- in
14 other words, you are asking me to do it simultaneously?

15 MR. WHIPPER: Yes, Your Honor.

16 THE COURT: What's the State's position on that?

17 MR. CONDON: I think the case law is pretty clear
18 it's got to be done pretrial. But, I mean, I don't have a
19 strong objection to it.

20 THE COURT: Let me --

21 MR. WHIPPER: I think it's available pretrial.

22 MR. CONDON: I think *State v. Curry* is pretty clear
23 on that, because in that case, that was before the Supreme
24 Court guided us on how to handle this matter. And they
25 actually heard it on the direction verdict motion. And the

1 Court opined that that was not the appropriate time to hear
2 it. However, since there was no guidance at that point,
3 didn't hold up on appeal.

4 THE COURT: Let me get the attachment. Hold on.
5 Well, I mean, a person who's not engaged in an unlawful
6 activity and who was attacked in another place where he has a
7 right to be, including but not limited to his place of
8 business, has no duty to retreat and has the right to stand
9 his ground and meet force with force, including deadly force,
10 if he reasonably believes that it is necessary to prevent
11 death or bodily injury.

12 In other words, that's you just the statutory
13 codification of self-defense. That's another way of
14 describing self-defense. I mean, don't you think that the
15 defense would be entitled to a charge on that?

16 MR. CONDON: Your Honor, I've got another case, not
17 at my fingertips, but I do know that they are not entitled to
18 the charge on the Protections of Persons and Property Act.
19 They are only entitled to the self-defense charge. So
20 pretrial, if the judge determines it doesn't apply, it's then
21 errant to charge Protection of Person and Property Act.

22 THE COURT: It's State position is, I shouldn't
23 charge that; I should only charge self-defense straight up?

24 MR. CONDON: That's correct.

25 THE COURT: Mr. Whipper, anything else for the

1 record?

2 MR. WHIPPER: Well, Your Honor, I think the question
3 becomes -- only *State v. Duncan* talks about how to manage.
4 Some people want to see it done pretrial. It can be done
5 like any other directed verdict motion, in my opinion. And I
6 think that has not been exclusively limited to pretrial. And
7 so my position would be that at the end of proceedings, if
8 it's established, then it has to be --

9 The court: Then I will make a determination then
10 short of the jury getting involved. Isn't that what you
11 eluded to in the e-mail to me, Mr. Condon? Does the State
12 have a problem with me doing that?

13 MR. CONDON: I don't have a problem with that.

14 THE COURT: Why don't we do that then? I will tell
15 you, and I've never done it that way. Okay? If y'all have
16 done it before, as you indicated Judge Dennis has done it
17 that way, I'm fine with going along with the flow. As long
18 as -- I'm still the one making a decision as to immunity or
19 not. Okay? So it's either we do it before, Mr. Whipper, or
20 we do it at the end by way -- so, in other words, I'm
21 considering simultaneously whether to kick the case or
22 whether he's immune from prosecution. But he's going through
23 a prosecution while we are doing that. You see what I mean?

24 The statute says immune from prosecution. I mean,
25 what is more prosecution than an actual trial with a seated

1 jury? That's my concern. Do you understand what I'm saying?

2 MR. WHIPPER: I understand what you are saying,
3 Judge.

4 THE COURT: You are waiving -- I want to make sure
5 the record is clear. You are waiving your right to a
6 pretrial determination of immunity from prosecution?

7 MR. WHIPPER: I am.

8 THE COURT: Okay. The defense then is waiving a
9 determination of immunity prior to prosecution and is
10 electing to proceed to trial with the issue of immunity to be
11 decided by the Court at the end of all the closing evidence.

12 MR. WHIPPER: That's correct.

13 THE COURT: Does the State concede?

14 MR. CONDON: We would consent to that.

15 THE COURT: Very good. We are all on the same page.
16 Any other pretrial issues?

17 MR. CONDON: No, Your Honor.

18 MR. WHIPPER: That's it, Your Honor.

19 THE COURT: We are ready to bring the jury in.

20 MR. CONDON: Can I have ten minutes real quick?

21 THE COURT: I was going to say, we are going to take
22 a restroom break. And everybody get on the same page and
23 then we will bring the jury in. Okay? See y'all in ten
24 minutes.

25 (Whereupon, a recess transpired.)

1 MR. CONDON: We are going to keep the victim in
2 here, obviously.

3 THE COURT: He has the right to be here, and the
4 case agent.

5 MR. WHIPPER: There is some other thing we probably
6 need to talk about.

7 THE COURT: Do you want to do it on the record?

8 MR. WHIPPER: Let's do it off the record.

9 (Whereupon, there is an off-the-record discussion.)

10 THE COURT: Let's bring the jury in.

11 (Whereupon, the jury returns to open court at 03:24
12 p.m.)

13 THE COURT: Ladies and gentlemen, I know you just
14 sat down, but I need you to stand up right now to be sworn in
15 as the trial jury by the clerk.

16 (Whereupon, the jury is sworn.)

17 THE CLERK: If you have accepted this oath, please
18 have a seat.

19 Please let the record reflect all jurors took their
20 seat.

21 THE COURT: Thank you, sir. Ladies and gentlemen,
22 before I begin the trial, let me talk to you briefly and tell
23 you that this trial is probably going to be very different
24 than what you might expect. Many people don't have the
25 chance to attend actual court sessions as you're doing now,

1 much less participate in them as you are doing now, and think
2 from watching television or HBO or movies or reading books,
3 that trials are always full of high drama, intense action and
4 riveting circumstance. While all of these things may be true
5 the times, this is trial is not for entertainment, ladies and
6 gentlemen. It is a fundamental part of our democracy to make
7 sure that it's a search for the truth in an effort to make
8 sure that justice is done between the parties before the
9 Court. You know, searching for truth and making sure that
10 justice is done can oftentimes be a slow and deliberate and
11 repetitive process, the opposite of what you may have seen on
12 TV and the movies or read in books.

13 Ladies and gentlemen, this courtroom, as you can
14 tell, is a place of honor dedicated to the preservation of
15 citizens' rights, who many have called the greatest justice
16 system every created. The attorneys appearing before you are
17 advocates for the sides, for the parties they represent. But
18 first and foremost, they are officers of this court, sworn to
19 uphold the integrity and fairness of our judicial system.
20 And so, therefore, you should expect them to be professional,
21 competent and ethical in their representation of their
22 clients.

23 Remember, you just took that oath to do the same
24 thing. So you are also expected to act that way. Thank you
25 again for accepting this important responsibility.

1 And, yes, I do have notes. And from time to time, I
2 will be referring to them. I promise you, I won't sit here
3 and read stuff to you, because I know there's nothing more
4 boring than a talking head. But what I tell you is very
5 important, give you an idea of what to expect. Let me give
6 you an outline how a trial proceeds.

7 First, the State will make an opening statement to
8 you. An opening statement is not evidence. It's simply an
9 outline to help you, as a jury, understand what the part --
10 that party or the State expects the evidence will show.
11 Answered Defense can also make an opening statement if they
12 want to, but they don't have to. And I will talk about that
13 later on.

14 But following the opening statements, you will then
15 hear testimony and evidence in the case. Okay? This will
16 consist of testimony from the State's witnesses, as well as
17 any physical exhibits which will be introduced into evidence.

18 Now, following the completion of the testimony and
19 evidence phase of the trial, that's when the lawyers again
20 will be able to talk to you directly by way of what's called
21 closing statements or summations or closing arguments to you.
22 This is an opportunity for the attorneys to summarize the
23 case from their points of view. And, again, these arguments
24 are not evidence.

25 Following these closing statements, that's when I,

1 as the judge of the law, will instruct you on the law of
2 South Carolina as it pertains to the issues which have arisen
3 in this case.

4 When I've completed my instructions to you, that's
5 the first time you will be able to discuss this case amongst
6 your fellow jurors. And you will do that in what's called
7 distributing your verdict.

8 As you know, this is a criminal case which has been
9 brought by the State of South Carolina. The State has
10 charged the defendant with what we call ABHAN, A-B-H-A-N,
11 assault and battery of a high and aggravated nature. The
12 charge against the defendant is contained in this indictment.
13 Ladies and gentlemen, this indictment is not evidence of
14 anything. It's simply the description of the charge which
15 has been made by the State against the defendant.

16 Now, the defendant has pled not guilty to this
17 charge and is presumed innocent unless and until proven
18 guilty beyond a reasonable doubt. I will greatly define
19 beyond a reasonable doubt to you in more detail at the end of
20 the trial during my instructions, but I will give you an idea
21 just so you can work that through as you are hearing
22 testimony.

23 A reasonable doubt is the kind of doubt that would
24 cause a reasonable person to hesitate to act. Now, a
25 defendant has a right to not testify. And a defendant never

1 has to prove innocence or present any evidence. The burden
2 of proof is always upon the State of South Carolina.

3 Now, it's going to be your duty, ladies and
4 gentlemen, to decide from the evidence what the facts are.
5 You and you alone are the judges of the facts. Okay? I'm
6 the judge of the law. You are the judge of the facts. You
7 will hear the evidence, decide what the facts are, and then
8 apply those facts to the law which I give you. That's how
9 you reach a verdict. In doing so, you must follow the law,
10 whether you agree with it or not.

11 Don't take anything that I may say or do during the
12 trial as indicating what you think I think of the evidence.
13 That's solely your job. Okay?

14 Just like the rules which govern sports and other
15 activities, we have certain rules of evidence which control
16 what can come into evidence in a trial. So when a lawyer
17 asks a question or offers something into evidence and a
18 lawyer on the other side thinks that it's not permitted by
19 the rules of evidence, that lawyer will object. Okay?
20 That's what objection is. Okay? And I will then rule on the
21 objection.

22 If I overrule the objection, that means the question
23 can be answered or the thing can come into evidence, whatever
24 it is.

25 If I sustain an objection, that means the question

1 cannot be answered or the thing cannot come into evidence.
2 Whenever I sustain an objection, you are not to speculate
3 about what you think the answer would have been or speculate
4 about what you think the thing may have shown. Again, you
5 only go by the evidence you received.

6 And the reason we have these rules is because the
7 goal of everyone in this courtroom is to get you the best
8 evidence possible. That's why we have these rules. Okay?
9 And sometimes it may be necessary to -- I request that you
10 leave the courtroom while I deal with legal issues with the
11 lawyers. If this occurs, don't speculate about what we are
12 talking about or why you were asked to leave. This is simply
13 procedure, again, when the law requires when certain legal
14 issues arise. I will try to keep you from going back and
15 forth. I will try to have the lawyers approach the bench so
16 we can have private discussions about certain legal issues.
17 And, again, we are not trying to hide anything from you. We
18 just want to make sure you get the best evidence possible.
19 That's just procedure used by all courts nationwide and all
20 lawyers to deal with issues like that. Okay?

21 And in deciding the facts of this case, ladies and
22 gentlemen, you may have to decide which witnesses to believe
23 and which witnesses not to believe. That's called
24 credibility. You are the sole judges of credibility or the
25 believability of witnesses. You can believe everything a

1 witness says, some of it, or none of it. Okay?

2 Now, you are not going to be allowed to take notes
3 during the trial about what the witnesses testified to. For
4 this reason, please pay close attention to everything that's
5 going on. Okay? You are also not going to have a transcript
6 available to you at the end of the trial. It's very costly
7 and time consuming for my court reporter over here to have to
8 print out sections for you to think about and consider while
9 you are back there in the jury room. That's why I'm telling
10 you, pay close attention. Okay? We will take frequent
11 breaks as needed to keep you alert and everything. Okay? If
12 you need a break, raise your hand.

13 When we get to the point where I appoint a
14 foreperson, your foreperson will be the spokesperson here in
15 court. And he or she will let me know when you need a break.
16 We are very cognizant about that. So make sure you pay close
17 attention.

18 Now, this very important, until I advise to you
19 begin your deliberations, you cannot and must not discuss
20 this case with anyone, including your fellow jurors, friends,
21 family members and anyone else involved in the case. What I
22 always tell juries, I know when you go home, if you have a
23 significant other, hey, what did you do today, did you get
24 picked for a trial? Yes. What kind of case is it? It's a
25 criminal case. Okay? What's it about? The judge told me I

1 can't talk about it. That's your answer. Okay?

2 And also, don't go looking in the newspapers or
3 reading media reports on the case. Don't go on social media
4 and talk about being a jury on the case or start searching
5 people on Facebook and Instagram and Snapchat. That's
6 inappropriate and you are violating your oath that you just
7 took and you are going to mess up the whole process. So
8 remember, your job here as juror stays here, stays in the
9 deliberation room and stays in the courtroom, and doesn't go
10 anywhere else.

11 And if anybody tries to talk to you about violation
12 of these rules, you let me know and I will take care of it.
13 Okay?

14 Lastly, ladies and gentlemen, before we start
15 opening statements, please keep an open mind and not decide
16 anything, any issue until all the evidence has been
17 presented, until the parties have made their closing
18 arguments, and until I have told you what the law is. It is
19 your solemn responsibility to determine the guilt or
20 innocence of the defendant. And your verdict must be based
21 solely on the evidence as its presented to you during this
22 trial. And on the law as I instruct you during and at the
23 close of the trial.

24 Thank you again. We will now proceed with opening
25 statements.

1 Solicitor.

2 MR. CONDON: May it please the Court, Your Honor.

3 THE COURT: Yes.

4 MR. CONDON: Evidence in this case will show that on
5 Wednesday, September 24th, 2014, the victim, Lamont
6 Washington, who is a mobile cell phone/computer repairman,
7 was in en route to make a delivery to one of his customers.
8 Little did he know that the customer, the defendant, Adrian
9 Simmons, had bad intentions. The meeting spot was at the
10 Juice Joint in Charleston County, which is close by his mom's
11 house. So he decided to drop his twin girls off so while he
12 went and did the deal for the cell phone.

13 Fortunately, after he dropped his twins off, his
14 cousins' J.R. Washington was hanging out in the yard and
15 said, hey, can I ride with you and check out a new car while
16 we make this delivery? He said, sure, hop in. En route,
17 defendant, Adrian Simmons, called him up and changed the
18 meeting spot to the corner of Deleston and Grimboll Road,
19 which unknown to the victim at the time was actually the
20 defendant's residence.

21 When the victim arrived on scene, everything seemed
22 normal. He got out of his car. He shook hands with the
23 defendant. And when he turned around to go get the phone out
24 of the car, that is when the defendant launched his attack,
25 striking the victim in the back of the head with an unknown

1 object, fracturing his skull, causing a life-threatening
2 bleeding on the brain, traumatic brain injury. He then
3 leaned over the victim's lifeless body with blood out of his
4 ear and said, that's what you get for F'ing disrespecting me.

5 At that point, his cousins' J.R. jumped out of the
6 car and dragged his body back in the vehicle and put him in
7 the back seat. And he rushed back to safety to the victim's
8 parents' house. At which point, his mom, Ms. Washington,
9 called 911 for help.

10 The ambulance then came and rushed him to the
11 hospital. He underwent a life saving craniotomy.

12 For these acts, the defendant Adrian Simmons is
13 charged with assault and battery of a high and aggravated
14 nature.

15 I want to briefly touch on the law regarding ABHAN.
16 The judge will also instructed you on it at the end of the
17 case.

18 First, you have to have an unlawful injury, which is
19 pretty straightforward. And, secondly, you have to have
20 great bodily injury or the assault was accomplished in a
21 manner likely to produce great bodily injury or death. So an
22 unlawful injury which causes great bodily injury, or if you
23 don't have great bodily injury, you say could it have caused
24 greatly bodily injury or death, the manner of the assault.
25 This is a great bodily injury case.

1 Statute defines great bodily injury, they have to
2 make it a little complicated as some of these laws tend to
3 be, great bodily injury is anything which causes a
4 substantial risk of death; anything that causes serious
5 permanent disfigurement. In other words, does it make a
6 change to the way you look? A protracted loss, a likely loss
7 and, lastly, impairment of the function of a bodily member or
8 organ. Does it effective part of your body, like your brain?

9 The State has the burden of proof in this case.
10 It's proof beyond a reasonable doubt. It's not proof beyond
11 all doubt, because few things in life have no doubt. The
12 case law defines it as proof which leaves you firmly
13 convinced of the defendant's guilt.

14 In this case, you are going to hear from a number of
15 witnesses. You are going to hear from the victim Lamont
16 Washington. You are going to hear from the cousins' J.R.
17 Washington, his mother, Ms. Patricia Washington, Deputy John
18 Wiedemann of the Charleston County Sheriff's Office who
19 responded on scene to begin the investigation. And you are
20 going to hear from Detective Matthew Downing, whose further
21 investigation followed up on what had been done.

22 Lastly, you are go to hear from Dr. Alejandro
23 Spiotta, who is a very skilled neurosurgeon at M.U.S.C.

24 At the end of this case, you are going to be firmly
25 convinced that that defendant is guilty of ABHAN.

1 Thank you very much.

2 THE COURT: Thank you, Solicitor.

3 Mr. Whipper.

4 MR. WHIPPER: May it please the Court, Your Honor.

5 THE COURT: Yes, sir.

6 MR. WHIPPER: Ladies and gentlemen of the jury, good
7 afternoon. It's been a long day. This is definitely a
8 serious situation, classic jury trial situation. You've
9 heard the presentation by Mr. Condon. Our position is just
10 the opposite.

11 Something happened on September 24th, the location
12 of Deleston Road on James Island. But what happened was not
13 an assault. What happened was not an assault that caused
14 injury to the victim.

15 Now, I represent Mr. Simmons. And that's what I'm
16 supposed to do. And the reason we have to do this is because
17 we don't want to rush to judgment. Everybody has a right to
18 be treated fairly. There's a story to be told. People who
19 are going to tell you what was going on a day like that,
20 there was more people on the scene than just our alleged
21 victim, and Mr. Simmons. And they will have something to
22 tell you about what was going on that day.

23 All I can ask is that you give us a fair trial. Pay
24 attention the best you can. And understand that you have a
25 hard job. We are going to be telling you a story that's

1 different from what Mr. Condon has told you.

2 It will always be a hard job deciding these facts.
3 There are things you will be asked to look at, things you
4 will be asked to consider. And we just that you will do
5 that, give us a fair trial. And we will see if the system
6 works. Thank you.

7 THE COURT: Thank you, Mr. Whipper.

8 The State ready to call its first witness?

9 MR. CONDON: The State calls Lamont Washington.

10 THE COURT: All right. Mr. Washington.

11 LAMONT WASHINGTON,

12 having been duly sworn, testifies as follows:

13 THE CLERK: Please speak into the microphone and
14 state your full name and spell your last name for the record.

15 THE WITNESS: Lamont Washington,
16 W-a-s-h-i-n-g-t-o-n.

17 DIRECT EXAMINATION

18 BY MR. CONDON:

19 Q. Good afternoon, Mr. Washington. Can you tell the
20 jury how old you are?

21 A. 38.

22 Q. And where did you grow up?

23 A. James Island, South Carolina.

24 Q. And where did you go to high school?

25 A. James Island High School.

1 Q. And college?

2 A. Yes.

3 Q. Did you receive a degree?

4 A. Computer networking, associates in science, applied
5 science.

6 Q. And where do you currently live right now?

7 A. With my parents.

8 Q. And before this assault, did you live somewhere
9 else?

10 A. I had my own home.

11 Q. And because of this assault, did you have to move in
12 with your parents?

13 A. Yes.

14 Q. Do you have any children?

15 A. I have three.

16 Q. And what are their names and ages?

17 A. Desiree, Destiny, Lamont Jr.

18 Q. Okay. And do you have a girlfriend right now?

19 A. Yes.

20 Q. And who is that?

21 A. Jessica Young (ph).

22 Q. What are some of the hobbies you like to do?

23 A. Swimming, fishing, four-wheeling, outdoors, hiking.

24 Q. Are you currently employed right now?

25 A. Yes.

1 Q. Where do you work?

2 A. Toshiba.

3 Q. How long were you out of employment because of this
4 assault?

5 A. Started eight months ago.

6 Q. So about a year?

7 A. Year and a half.

8 Q. Back before this assault occurred, did you ever own
9 a business?

10 A. Yes.

11 Q. And what was the name of your business?

12 A. DDPCs, after my daughters.

13 Q. And at some point before this assault on September
14 24th, did your business shut down?

15 A. Yes.

16 Q. And why did it shut down?

17 A. They went up on the rent.

18 Q. After your business shut down, did you then start a
19 mobile --

20 A. Yes, I did working out of my home and going
21 different places, businesses, homes.

22 Q. Can you explain to the jury the type of work you
23 would do in your mobile business?

24 A. I would repair phones like this, touch screen, hard
25 drives, replace mother boards, iPhones Started from the first

1 iPhone, the reason I started, Samsung Galaxies. I started
2 with the two, desktops, game starter, flat screen, TV because
3 it's almost the same as a laptop.

4 Q. Did you try to beat out the local stores?

5 A. Always.

6 Q. I'm going to show you what's been marked as State's
7 Exhibit 1. Do you recognize that?

8 A. Yes.

9 Q. What is that?

10 A. My first business card for the company.

11 MR. CONDON: We would ask that State's Exhibit 1 be
12 entered into evidence.

13 THE COURT: Any objection?

14 MR. WHIPPER: No objection.

15 THE COURT: Without objection, entered as State's 1.

16 (State's Exhibit 1, Business card, is moved into
17 evidence.)

18 BY MR. CONDON:

19 Q. Is that your card there?

20 A. Yes, sir.

21 Q. Do you know Courtney McDaniel?

22 A. Yes.

23 Q. How do you know her?

24 A. We grew up on the same road. I'm a little older, a
25 lot older than her, but I grew up with her brothers, Gary

1 McDaniel, his older brother Lamont McDaniel. And they have a
2 brother that passed way, Tyron McDaniel.

3 Q. Who is her boyfriend?

4 A. Red.

5 Q. The defendant?

6 A. Yes.

7 Q. At any point, can you explain to the jury, did you
8 work out any kind of agreement to fix their phones? Can you
9 explain to the jury the agreement?

10 A. Yes. I actually got two phones from them, two of
11 the same phones, Samsung Galaxy 4. And like I tell everyone,
12 when it comes to screens, if a screen's involved, there's a
13 digitizer involved. So there's a chance you have to replace
14 the screen. There's a chance you have to replace the
15 digitizer and the screen. In order for me to determine, I
16 need the phone. Courtney brought the phone to me with him in
17 the vehicle. First time I ever seen him.

18 He was driving her car, white, 2014 Apollo, because
19 she's a twin. Her sister had a black one. They came in my
20 neighborhood. They didn't come to my house. I asked them to
21 wait in front of my house, but I walked across the street to
22 my neighbor's. And that's where she came. And I got the
23 phone. I said, I'll call you guys, let you know what it's
24 going to be before I do anything, I need your approval. I
25 say that to everyone.

1 About a week went by, I called Courtney. Never knew
2 his number. She said she will call back. Got to a point
3 where she said, don't fix her phone, she got a lot going on,
4 just fix his phone. I said, you sure? She said, sure. Told
5 her how much it was going to cost. Before I even gave a
6 price, pretty sure they went to another company. So I called
7 around just to see the prices they was getting. So I said
8 200, I heard 235, 245, and at the end of the deal, I was
9 like, part only costs 145, 65. And I look at that, if I work
10 on 10 phones, that's still enough for me in a week. I told
11 them 200. Go ahead and fix it.

12 I took it apart. Repaired the phone. Called them.
13 Let them know it's ready, only her. Just so happened, I seen
14 him and the child at -- I'm not going to say our barber shop,
15 a barber shop on the road I grew up on. And guy cuts hair,
16 we grew up together, still to this day. And he was on the
17 porch. And I said, I shook his hand, I'm going to get that
18 for you, we will get with you. Okay. No problem. Still
19 never was a problem.

20 A couple weeks went by. I called Courtney. Still
21 never had his number. And at that time, F' him, this and
22 that, I don't deal with him. You call him.

23 Q. Let me stop you for a second. Who said that to you?

24 A. Courtney McDaniel.

25 Q. Go ahead.

1 A. I was, like, Courtney, I don't even know him. So
2 she gave me the phone.

3 MR. WHIPPER: Your Honor, may we have some objection
4 on some of this? This conversation, I think we need to have
5 some instructions about that relative to --

6 THE COURT: About hearsay?

7 MR. WHIPPER: Yes, sir.

8 THE COURT: Okay. All right.

9 MR. CONDON: We will move on, Your Honor.

10 THE WITNESS: Where do you want me to start?

11 THE COURT: Just answer his questions. Go ahead.

12 THE WITNESS: Yes. So she was very angry. So I
13 called her brother, Lamont McDaniel.

14 MR. WHIPPER: Again, Your Honor --

15 THE COURT: Sustained. Don't say what Lamont
16 McDaniel said.

17 THE WITNESS: I'm sorry. I called -- at that point,
18 I got his number. And, actually, I called him. And he said
19 he's in Atlanta. I think he was in Atlanta. That was a
20 Friday. And I let it go.

21 Come that Monday, I called. He said he will meet me
22 six o'clock that day. Monday went by. I mean, Tuesday went
23 by and I called her later on that day, that morning,
24 Wednesday. And at that point she said --

25 MR. WHIPPER: Your Honor, again --

1 THE COURT: Sustained. Don't say what she said.

2 THE WITNESS: Well, I'm sorry. They would get the
3 phone. He would get the phone. I said okay.

4 So that Wednesday, he called around 4 -- no, I
5 called him around 4 and said, are you going to get the phone,
6 because it's going to get late. I've got my daughters, got
7 to get them ready for school. So he called telling me, I'm
8 coming. So I got my daughters with me, since it's not too
9 far from my mom's house. My daughter spent the whole week
10 with me, which they never got a chance to see their
11 grandmother, because I had them the whole time working and
12 stuff. So I dropped them off to my parents' house.

13 And I had the phone in the car. And my cousins'
14 said he will ride with me to drop his phone off. Well, we
15 went to go -- I told him I would meet him at Juice Joint. So
16 he got there and we waiting. I called Courtney. And then
17 Courtney said --

18 MR. WHIPPER: Again, your Honor.

19 THE WITNESS: Okay. I'm sorry. I called someone.
20 And long story short -- I will get to it. He send me to
21 Weston. I hear dogs barking. I can hear in my phone. And I
22 can hear it in the air. So I felt it was very close. So he
23 guided me there. I pulled into his driveway, walk around my
24 car. I got out and shook his hand. Like I said, oh, let me
25 get your phone, phone is in the car in the armrest. Which I

1 had in front of me. I was supposed to meet him prior to
2 that, that's why I still had it, in that case I run into him
3 again at the barber shop again that week.

4 I turned around to open the door. I woke up in the
5 hospital, not knowing I was in the hospital or why I was in
6 the hospital or why people was around me, family members,
7 until the detective came and told me, sorry, you was a victim
8 of a crime. I was sitting there like, what, are you serious?
9 That's how I was.

10 Q. And can you describe to the jury who else was in
11 front of the defendant's house that day?

12 A. It was a guy in front of door holding a baby. He
13 came out after him. But he was -- the distance -- you have
14 your vehicle, which he was on the other side, and you have a
15 little, probably 10 yards from the vehicle and the door. And
16 there was a guy that had a baby at the door ready to walk
17 around to my car. Shook his hand, y'all.

18 Q. How far was the defendant from you when you turned
19 your back to him?

20 A. If she gets a little closer.

21 Q. Right there?

22 A. Yes.

23 Q. And how far was the male holding the little baby?

24 A. Like by the clock.

25 Q. How quickly was the lights out?

1 A. Can I stand up?

2 THE COURT: Yes, sir.

3 THE WITNESS: What's up, man? Oh, man, your phone
4 in the car.

5 Q. Then you wake up in the hospital?

6 A. Yes.

7 Q. How many days later?

8 A. It's kind of funny. I said it was Wednesday because
9 I've got to take my daughters to school and people laughed,
10 told me it was Saturday. I said, I have a party to go to.
11 It was my uncle's birthday. I still didn't know until a few
12 days later what happened to me.

13 Q. And did you learn what your injuries were at that
14 point?

15 A. I learned, but I taught myself what it was when they
16 release me, because they told me I had the mind of a
17 12-year-old, had to learn to walk, had to learn to talk.

18 Q. This was about two years ago. What were your
19 injuries at the time? Did they tell you?

20 A. I just know I can't taste and I can't smell.

21 Q. Do you have a skull fracture?

22 A. When he hit me in the head or whatever, he hit me
23 very hard. He struck a vein that is in the head. And the
24 skull cut that vein. And the head was expanded by the blood.
25 That's what they told me. They had to drill a hole to get

1 the blood out.

2 Q. Did they take part of your skull off?

3 A. My parents waited for me to live.

4 Q. Did he appear angry when you got there?

5 A. No, not at all. He changed my life from everybody
6 when it comes to trust. He smiled with that face like I
7 trust you.

8 Q. Did you threaten him at all?

9 A. I didn't threaten him. I had no reason to threaten
10 him.

11 Q. There was no argument, even mild words?

12 A. When he said -- when I call his girlfriend -- well,
13 I can't say that. I don't know what she told him, but
14 whatever she told him, sparked him.

15 MR. CONDON: Your Honor, I believe we've got an
16 objection on my photos here.

17 THE COURT: All right. Just whatever you've got to
18 offer and we will deal with them and we got them.

19 MR. CONDON: State's Exhibit 6 through 12?

20 THE WITNESS: Pictures.

21 Q. Do you recognize these pictures? Can you flip
22 through them?

23 A. Yeah. Wow. That is me.

24 Q. Is that a true and accurate depiction of how you
25 appeared at the hospital after surgery and during rehab?

1 A. Can I show you the one that I do know?

2 THE COURT: Answer the question.

3 THE WITNESS: These are me. That's me. That's me.

4 All of them are me.

5 MR. CONDON: We would ask that State's Exhibit 6

6 through 12 be admitted into evidence.

7 THE COURT: Any objection?

8 MR. WHIPPER: Objection, Your Honor. More

9 inflammatory than probative.

10 THE COURT: Let me look at them. Objection

11 overruled. Admitted into evidence as the State's next in

12 order.

13 MR. CONDON: Permission to publish, Your Honor.

14 THE COURT: Permission granted.

15 (State's Exhs. 6 through 12, Photographs, were

16 received in evidence.)

17 BY MR. CONDON:

18 Q. State's Exhibit 6, is that you?

19 A. Yes, yes, that's me.

20 Q. And that was you the night after the assault?

21 A. Yes.

22 Q. You were pretty much unconscious at that point?

23 A. Yes.

24 Q. Was that blood coming out of your ear?

25 A. Yes.

1 Q. That's another picture of you. And what's that
2 right there?

3 A. A gash, a gap, blood.

4 Q. Who caused that?

5 A. Adrian, Red.

6 Q. Is he in the courtroom today?

7 A. Yes, right there.

8 Q. Can you identify him?

9 A. Him. That guy right there. (Indicating)

10 MR. CONDON: Please let the record reflect that the
11 victim identified the defendant.

12 THE COURT: Noted.

13 BY MR. CONDON:

14 Q. Is that you in the hospital?

15 A. Yes, and my dad holding my hand. They were waiting
16 for me to live.

17 Q. What's that a picture of?

18 A. I believe that was 19 staples in my head, of my
19 head.

20 Q. That was after the assault --

21 A. Yes.

22 Q. -- and surgery? You still have that scar on your
23 he?

24 A. Yes.

25 Q. Is your hair covering it up mostly?

1 A. Haven't had a haircut since that.

2 Q. Because of the scar?

3 A. The scar and still hurts. I got screws in my head
4 now.

5 Q. How many screws do you have in your head?

6 A. I think he said two. I can feel them in the back
7 right here and when it's cold.

8 Q. What's that a picture of?

9 A. First time trying to walk.

10 Q. What was that like?

11 A. Exciting. I was out of that bed and I could walk,
12 even though they told me it wasn't going to be awhile before
13 I could walk.

14 Q. Did you use crutches?

15 A. I started out with that walker, then the cane. And
16 along with the walker of the cane, my daughters pushing me.
17 We walk up and down the rows as much as I can.

18 Q. What was the recovery like from this?

19 A. Shocking. It was hard. When they said I had to
20 change my whole career, do different things, I tried to do
21 different things. That's when I pushed myself that I came
22 too far to let something like this stop me from pursuing what
23 wanted to do. So I just focused, right, and read and read.
24 Then I started looking at my old computers and just was
25 trying again. And I started putting things together. And

1 the best example that I can say is this paper right here, if
2 I go over here on that desk and throw everything on the
3 ground, I kind of know where it is, because I did it. But if
4 I throw it down on the ground and tell you to come and put it
5 back, you wouldn't know. And that's how it was for me,
6 trying to put everything back together.

7 Q. What was your physical therapy like?

8 A. Physical therapy was -- because I watch sports a
9 lot, and I see athletes get hurt and they show the
10 transition. That was motivating me. From my progression
11 where I was to where I'm at today, it was hard.

12 Q. Did you have a speech pathologist help you?

13 A. Yes.

14 Q. Did you have someone help you with walking?

15 A. Walking, talking, balancing, getting out of bed,
16 taking care of my own self.

17 Q. How often did these people by your mom's house?

18 A. Five days out of the week, only time I really didn't
19 see was Friday.

20 Q. How many months did this go on for?

21 A. For probably until about March of 2015, March 2015,
22 and that's when I had to take care of bills. And then I go
23 to therapy, so I just did it myself.

24 Q. About four months or so?

25 A. Yes.

1 Q. And speaking of bills, what was the doctor bill from
2 this?

3 A. I know the surgery one was \$115,000. And I said
4 that saved my life. But outside of J.R., but that's what it
5 was.

6 Q. You still owe that money?

7 A. I still owe, yes, sir.

8 Q. And you've obviously done a pretty good recovery,
9 the fact you are walking and talking today. Can you tell the
10 jury some of the effects that you have we may not be able to
11 see by looking at you?

12 A. You notice I'm turning to hear you. I lost a little
13 hearing over here. So you put your fingers in your ear,
14 that's what I can hear in this ear. I can't taste. When I
15 got out of the hospital, I ate a lot of candy because I could
16 taste sweet things. So I put on a lot of weight. And I can
17 taste spicy things. And I can't spell. So with my newborn,
18 it's funny how they say, you can't spell that? Oh, I forgot
19 you can't spell. I used to be playing with his diaper when
20 it's full of poop. I can't smell. Some foods I don't even
21 eat anymore. If I ride past a fried whatever, fried food,
22 the smell now, I see why you really can't eat. Probably
23 would taste good to you, doesn't taste good to me like I used
24 to.

25 Q. I'm going to show you what's been marked as State's

1 Exhibit 2 through 5. If you could briefly flip through those
2 and tell me if you recognize those pictures.

3 A. I do.

4 Q. Are they a true and accurate depiction of the crime
5 scene?

6 A. Yes, it is.

7 Q. I'm going to throw one of these up on the overhead
8 over here. And I want to you kind of demonstrate to the jury
9 where you pulled up in his driveway and where all these --
10 where the defendant was and everybody else.

11 A. Coming from Folly Road, you are coming from that
12 way, but I didn't come from Folly Road. I take Riverland
13 Drive, which comes around to a Y and it takes you to that
14 direction. So when I pull in here, he came out this door.
15 He walked around. My car is like right here. He walked
16 around that car. I got out, shook his hand. And I turned
17 around and I said, oh, your phone is in the car. Shook his
18 hand and that was that. There was a guy standing here with a
19 white hoodie, holding a baby. And those are the people that
20 I saw come out, but --

21 Q. That person was quite a way?

22 A. Way away. And on this side over here, that's
23 nothing but land, grass. So I guess I watched a lot of
24 sports, and I play. No one threw nothing, ran that fast,
25 just like that.

1 Q. And where was J.R.?

2 A. In the passenger's seat.

3 Q. And where was your car approximately?

4 A. Right here, about right here. (Witness indicates.)

5 Q. I show you State's Exhibit 14.

6 A. This is what was described to me.

7 MR. CONDON: Your Honor, I would ask we move any of
8 those photos into evidence if I didn't already do that.

9 THE COURT: Which ones?

10 MR. CONDON: I believe it was 2 through 6.

11 MR. WHIPPER: No objection.

12 THE COURT: Without objection, the admitted into
13 evidence without objection.

14 (State's Exh. 2 through 5, Photographs, were
15 received in evidence.)

16 BY MR. CONDON:

17 Q. Do you recognize that lineup?

18 A. Yes.

19 Q. Is it a true and accurate copy of the lineup that
20 was given to you that day?

21 A. Correct.

22 Q. What day was that lineup administered to you?

23 A. That's while I was in the hospital.

24 Q. And did you pick out your attacker in that lineup?

25 A. Yes.

1 Q. Who did you select?

2 A. Red.

3 Q. What number is he?

4 A. Three.

5 MR. CONDON: We would ask this exhibit be moved into
6 evidence, Your Honor.

7 MR. WHIPPER: No objection.

8 THE COURT: No objection, introduced into
9 evidence.

10 THE COURT: Permission to publish.

11 (State's Exh. 14, Photographic lineup, was received
12 in evidence.)

13 BY MR. CONDON:

14 Q. You went through that paperwork in the front?

15 A. Yes.

16 Q. And you selected number 3?

17 A. Correct.

18 Q. And that is the same guy you picked out in the
19 courtroom today?

20 A. Yes, sir.

21 Q. I show you what's been marked as State's Exhibit 15.
22 What is that?

23 A. Phone records.

24 Q. Is that a true and accurate depiction of your phone
25 records running up a couple of days before the incident and

1 the day of the incident?

2 A. Correct.

3 MR. CONDON: Your Honor, we would ask that this
4 exhibit be moved into evidence.

5 MR. WHIPPER: No objection.

6 THE COURT: Without objection, introduced.

7 (State's Exh. 15, Phone records, is moved into
8 evidence.)

9 BY MR. CONDON:

10 Q. What is your phone number?

11 A. (843) 817- [REDACTED]

12 Q. And what was Courtney's phone number?

13 A. 442- [REDACTED].

14 Q. And do you remember Adrian Simmons's phone number?

15 A. 509- [REDACTED].

16 Q. And who was the last person to call you on
17 Wednesday, September 24th?

18 A. Him.

19 MR. CONDON: Permission to publish, Your Honor.

20 THE COURT: Granted.

21 THE WITNESS: That's the last time that phone
22 worked.

23 BY MR. CONDON:

24 Q. That last call at 7:34, that's incoming call, what
25 number was that from?

1 A. Red. And about four minutes, got there.

2 Q. What kind of impact has this assault had on your
3 life?

4 A. Well, my living changed, my home. I hear a lot that
5 my attitude has changed, particularly the people that I love.
6 Because, good example -- you don't know me. You wouldn't
7 know what happened to me. So you can't tell my attitude
8 changed. But I think I've learned a lot from it when it
9 comes to people and especially people you call friends. It
10 just changed me. I can't -- I could explain, but I could
11 keep going on and on. But I'm glad to be alive. Glad I can
12 take care of my daughters. Glad I can still do what I'm able
13 to do. Not only that, I can do it even better than I did
14 before. I work for a global company. And I have dreams to
15 do my own still, you know. Going to do it.

16 So it opened my eyes. You know, it hindered me. I
17 didn't believe something like this, anything could happen to
18 someone that helped people. Because, you know, he called me
19 for a reason, I was cheaper than everybody else. You know?
20 My dad -- just keeps going back and back. We are not the
21 same.

22 Q. And you are grateful to be alive today, obviously?

23 A. Oh, man, the pictures, my daughters, so most of the
24 stuff you don't want to hear that I heard that he has -- all
25 I got to say, when you guys wake up, even go to bed, just be

1 grateful, wherever you are. Because I came back home. I
2 have not been in that house since.

3 MR. CONDON: No further questions, Your Honor.

4 THE COURT: All right.

5 MR. WHIPPER: May it please the Court, Your Honor.

6 THE COURT: Yes, sir, Mr. Whipper. Your witness.

7 CROSS-EXAMINATION

8 BY MR. WHIPPER:

9 Q. So what type of work are you doing now,
10 Mr. Washington?

11 A. Charleston is my territory.

12 Q. You said you are with Toshiba?

13 A. Toshiba. Charleston is my territory, so when it
14 comes to what I do, I take pride in what I do. This is my
15 area. There's three of us in South Carolina. We had the
16 retail stores on the POSes, which is taking a computer. So
17 places like Gap, Old Navy, Best Buy, Walmart, Kohl's, most of
18 the retail stores, the post office, the base, I fix their
19 computers, their machines, their POSes, their back office,
20 their Lexmarks, their Xerox. And I still do DNDPCs. I don't
21 fix phones as much anymore. I typically only fix iPhones now
22 because you can tell. You just know who.

23 Q. All right. Mr. Washington, my understanding is that
24 you at the time -- how much do you weigh now?

25 A. How much what?

1 Q. How much do you weigh now?

2 A. Weigh now? My weight?

3 Q. Yeah.

4 A. Probably about 206, 207.

5 Q. You were about 195, 200 even when this thing
6 happened?

7 A. Yeah, I worked a lot, didn't eat much.

8 Q. You were a good-size fellow?

9 A. Yes, sir.

10 Q. And these phone calls, there are a lot of phone
11 calls here, a lot that you made, a lot that the other folks
12 made in response to you. You had said that Ms. Courtney
13 found you -- you also grew up in the same area, almost the
14 same street; is that correct?

15 A. Correct. I moved when I was 19.

16 Q. So you really wouldn't have a hard time finding her,
17 would you? You wouldn't have a hard time finding her?

18 A. No, we grew up together.

19 Q. Yeah, yeah.

20 A. As kids, we could find each other, but as adults,
21 pretty sure she would have moved on.

22 Q. You could find her if you wanted? You knew where
23 her parents were, knew all her brothers, grew up together?
24 You were a big boy to her; is that correct?

25 A. Yes, sir.

1 Q. You were a bit -- you were flustered about this
2 thing, weren't you?

3 A. Flustered?

4 Q. Yes, sir. You couldn't understand why you didn't
5 get your money, isn't that true?

6 A. I can't deal with either of them.

7 Q. You can't?

8 A. No, because I said it was ready.

9 Q. You see all these yellow lines on this thing?

10 A. Yes. She told me to call him. He wouldn't pick up
11 the phone.

12 Q. The yellow lines are for a reason?

13 A. Yes.

14 Q. And some of them are even texts notes, aren't
15 they?

16 A. Yeah.

17 Q. It's not like you couldn't find her, because
18 y'all -- I mean, you were hounding them. You were doing your
19 collection agency thing?

20 A. It's a business, yes.

21 Q. You were going to have your way; is that correct?

22 A. No. Why? No.

23 Q. So let me ask you this. Let me ask you this. You
24 knew where to find her. You knew all her family folks. Two,
25 three, four times a day, it's is somebody you knew --

1 A. Is this Friday you are looking at? Is this the
2 Friday? That's my --

3 Q. Friday, Saturday --

4 A. Monday, not Tuesday.

5 Q. -- Monday, Wednesday.

6 A. And that was the last --

7 Q. And there was the back-and-forth, but, I mean, come
8 on. This is for someone who you knew. And it's not like you
9 were looking for \$500. It was \$200. You and Jessica --
10 Jessica, are you all engaged or married yet?

11 A. Not married.

12 Q. Not married yet?

13 A. No, sir.

14 Q. So all of your children are with Jessica?

15 A. No, sir.

16 Q. How many do you and Jessica have together?

17 A. The newborn, the one.

18 Q. When did you -- when were you released from the
19 hospital? Was it in December, wasn't it? No. January, of
20 2015? Hold on a second. So what do you recall about when
21 you were released from the hospital?

22 A. The month?

23 Q. Yes.

24 A. September.

25 Q. September?

1 A. September.

2 Q. Of?

3 A. 2014. Released from the hospital to my parents'
4 house.

5 Q. Okay. So you were release before the end of the
6 month. You would think the allegations are that something
7 had happened on the 24th. Let me tell you what I know. You
8 tell me if I'm wrong. You were upset with this fellow in
9 court, weren't you?

10 A. Why wouldn't I be? I got his phone. He didn't want
11 it. I could easily sell it.

12 Q. Why were you hunting --

13 A. You don't know me. I wanted to get her phone.
14 Don't argue, wanted to get her a phone. It's her phone. I
15 have two phones.

16 Q. But you wanted it right then; isn't that correct?

17 A. At the moment, when they told me I was supposed to
18 meet him Friday at the Goodwill on Rivers and they told me in
19 North Charleston, and I sat there for about an hour and I'm
20 calling and calling, hey, I'm here, texting, I'm here, I'm
21 here. And they don't show up. And Saturday I call and text.
22 Hey, you still want your phone? Are you going to go to the
23 barber shop? Find out he's in Atlanta. And Monday, he did
24 speak and he said he would be there about six o'clock. When
25 he didn't come and call -- I didn't call him Tuesday. You

1 see that I didn't call. Didn't call him Tuesday at all.

2 Q. You definitely were going to have it out with this
3 fellow?

4 A. No, sir.

5 Q. No?

6 A. I've done this for too long already. I shouldn't
7 even --

8 Q. Let me ask you this. Go ahead.

9 A. I'm sorry?

10 Q. You wanted to describe -- you were describing your
11 location. You were saying that your car was parked behind
12 where that car is; isn't that correct?

13 A. Yeah. The front car was like the edge of that
14 concrete, like if it was a line, little further up. There
15 was no car there, just was my car.

16 Q. And that's where you met with Mr. Simmons; is that
17 correct?

18 A. Correct, in that driveway right there.

19 Q. It's your recollection that your car was parked
20 right there and you didn't even have to leave your car, is
21 that your recollection?

22 A. Correct, I didn't have to leave my car, but I got
23 out of the car.

24 Q. The phones that you repaired, obviously, were more
25 than \$200 once you repaired them?

1 A. The phones that I repaired is obviously more than
2 \$200?

3 Q. Yes, sir, once you repaired them?

4 A. Once I repair it?

5 Q. Yes, sir.

6 A. As far as what you mean selling it, the value?

7 Q. The value, uh-huh.

8 A. Yeah.

9 Q. And so what point were you trying to make by
10 hustling them down for money? If you had the phone, you had
11 two phones, repaired them, a value beyond what they first
12 were, what was your point? You already stated policy, you
13 could keep the phones. Why were you still going after them?

14 A. Here's a word you just said, you said hustling --

15 Q. Yeah, hustling.

16 A. I have a business. I wasn't hustling anyone. They
17 knew what it cost before I repaired the phone. That's what I
18 do with anybody. I don't just, hey, surprise you with a
19 price. You don't do that. You don't shock somebody with a
20 price. She said fix the phone. So you said hustling.

21 Q. Yeah.

22 A. Yeah. If they didn't want the phone, he wouldn't
23 say, come in his house and you pay me. He could have said
24 forget the phone, you can keep it. That's easy. I run a
25 business. This is nothing new to me.

1 Q. You don't think your attitude had anything to do
2 with the reception that you created?

3 A. No, sir. I made everything possible, easy for them.

4 Q. You don't recall at all arguing at all? You don't
5 recall arguing at all with Mr. Simmons?

6 A. I didn't argue with him. He argued with me. I told
7 him, I don't even know you. Like I said, whatever she said
8 to him, his ego, whatever in his head, I don't know.

9 Q. How much arguing did you all do when you got out of
10 your car?

11 A. Nothing, I shook his hand, he shook my hand.

12 Q. And so now he didn't try to take the phone from you?

13 A. All I said --

14 Q. You were on his property. Did he try to take the
15 phone from you?

16 A. No.

17 Q. No one tried to take phones from you? Why isn't
18 this more than just what it was, a fight?

19 A. Sir, I only can say what I know happened. He know
20 what happened. I didn't go there to fight him. If you look
21 at that picture, can you tell a fight? I turned around and
22 he hit me in the back of the head with something. It wasn't
23 a fight. I didn't fight him. Like I told you, when I find
24 out I was in the hospital, I couldn't even believe I was in
25 the hospital, over a phone? And I almost lost my life, over

1 a phone?

2 Q. Did you expect that someone the size of Mr. Simmons
3 would be able to handle you?

4 A. Sir, I don't expect anything. I don't expect being
5 here talking to you.

6 Q. And you --

7 A. What I do is routine, but I've changed my routine.
8 I make sure daylight and I'm going to meet you where plenty
9 of people are.

10 Q. As a matter of fact, when you met him, it was more
11 than just dark?

12 A. It wasn't dark. Like I said, I know the girlfriend.
13 It wasn't that serious. I still say, when I was going there
14 to bring him his phone, like he sent me to do, I didn't think
15 it was that serious.

16 Q. It was about eight o'clock, little after 8, huh?

17 A. No, it was not. I told him, when he called me
18 around 6, I said, hey, don't be late, because if it was late,
19 I'm not going to come because I've got my daughters.

20 Q. I don't know what the travel time was, but the phone
21 call here says it was 7:34 p.m., one of the last calls you
22 made to him, 7:34. And then you drove around because you got
23 lost?

24 A. No, I never drove around. I never got lost.

25 Q. You went -- there's a turn. Right there where it

1 is, back of that car. Like you said, you go across the
2 field, there's a street that goes. You went down that street
3 and drove all back in there?

4 A. No, I didn't.

5 Q. That's what your cousins' said.

6 A. I'm telling you what I said.

7 Q. Okay. cousins' wasn't in the car with you?

8 A. Yes, he was. And, yeah, he was in the car with
9 me.

10 MR. WHIPPER: Okay. Thank you, sir.

11 THE COURT: Any redirect?

12 MR. CONDON: Just briefly, Your Honor.

13 REDIRECT EXAMINATION

14 BY MR. CONDON:

15 Q. I will show you what's been marked as State's
16 Exhibit 16. I would like to take it out and have you
17 recognize it, but do you recognize that disk?

18 A. Yeah.

19 Q. And did you listen to a recording from that disk on
20 10/2/2014 at the--

21 MR. WHIPPER: Objection, Your Honor.

22 THE COURT: What is that?

23 MR. CONDON: It's the jail call.

24 THE COURT: Come here.

25 (Whereupon, a bench conference takes place off the

1 record.)

2 THE COURT: Objection is sustained at this point in
3 time. All right.

4 MR. CONDON: No further questions, Your Honor.

5 THE COURT: Thank you. Any other questions for this
6 witness based upon the one cross-question?

7 MR. WHIPPER: No, Your Honor.

8 THE COURT: Redirect? All right. Thank you, sir.
9 You can step down. All right. Let me see y'all up here.

10 (Whereupon, a bench conference takes place off the
11 record.)

12 THE COURT: We are talking about schedule stuff.
13 Here's what we are going to do. In an effort to beat the
14 Charleston traffic, which I ain't used to, okay, but I've got
15 to get used to it while I'm here this week, we are going to
16 break for the day. It's been a long day for everybody. I
17 think you got here early for jury qualification. We are
18 going to call it a day today. I want you in the jury room
19 tomorrow 9:30 in the morning. Okay? I have a matter I need
20 to deal with, not this case at 9:30. So my intention is to
21 get y'all out here ready to roll about 9:45 tomorrow morning.
22 But I need you in your jury room at 9:30 tomorrow morning.

23 Don't talk about the case. Don't do any independent
24 research. Don't Google. Don't talk to anybody about
25 anything involved in this case. Okay?

1 Thank you very much. Y'all are free to leave for
2 the evening. We will see you tomorrow morning.

3 (Whereupon, the jury leaves open court at 04:35 PM.)

4 THE COURT: All right. Jury is gone. For the
5 purpose of the record, let's go ahead and put on the record
6 what the bench conference was about. Mr. Whipper, you had an
7 objection to the State offering a CD which apparently is a
8 recording of a jailhouse phone call.

9 MR. WHIPPER: That's correct, Your Honor.

10 THE COURT: And your objection was what?

11 MR. WHIPPER: That there was no foundation for
12 admitting that into evidence.

13 THE COURT: Through that witness.

14 MR. WHIPPER: Certainly through that one.

15 THE COURT: And the State's position was?

16 MR. CONDON: I wasn't intending to offer it at that
17 point. I was just going to get him to identify that he
18 listened to the call and that the caller was the defendant
19 and he was calling a girlfriend Courtney, who knows both of
20 them, talked to both on the phone, as Your Honor has seen on
21 the phone record, to establish who it is in addition to the
22 jailhouse personal custodian establishing who it is as
23 well.

24 THE COURT: I got it. And the ruling of the Court
25 was, for the record, was that, number one, you were doing

1 that during redirect, which was not the appropriate time to
2 do it. So that was one reason why I didn't allow you to do
3 it then.

4 Number two, was that I agree with Mr. Whipper that
5 there needs to be a proper foundation laid. And then he can
6 testify about that. So to allow the State to recall the
7 victim at the appropriate time once you've laid a proper
8 foundation, subject, of course, to Mr. Whipper's objection at
9 that time. You know, you can always recall a witness.
10 That's not a problem. So that was the ruling of the Court.
11 So you will get another chance to do it. Today was just not
12 the chance. That's what we are going to do.

13 Y'all be ready to roll at 9:45 tomorrow morning.
14 I've got that matter at 9:30. I can't remember what it is.
15 All right. We will see y'all in the morning then. He's
16 still out on bond.

17 (Whereupon, the proceedings adjourn for the day.)

18 (Whereupon, the proceedings continue on August 9,
19 2016.)

20 THE COURT: Everybody is present. Solicitor,
21 anything we need to put on the record before we bring the
22 jury?

23 MR. CONDON: Your Honor, I think we are good to go.
24 The victim is stuck in traffic and another witness, but we
25 can work around that.

1 THE COURT: That will be good.

2 Mr. Whipper, are you ready?

3 MR. WHIPPER: Ready, Your Honor.

4 THE COURT: All right. Let's bring the jury in.

5 (Whereupon, the jury returns to open court at 09:55
6 a.m.)

7 THE COURT: Good morning, ladies and gentlemen.

8 Hope you had a nice evening.

9 Solicitor, you may call your next witness.

10 MR. CONDON: The State calls Deputy John Wiedemann.

11 JOHN WIEDEMANN,

12 having been duly sworn, testifies as follows:

13 THE CLERK: Please state your full name and spell
14 your last name for the record.

15 THE WITNESS: John Edwards Wiedemann,
16 W-i-e-d-e-m-a-n-n.

17 DIRECT EXAMINATION

18 BY MR. CONDON:

19 Q. Good morning. Who do you work for?

20 A. Charleston County Sheriff's Office.

21 Q. Can you explain to the jury your training and
22 experience as a deputy?

23 A. Yes. I've been a law enforcement officer for a
24 total of 7 1/2 years. I've been with the Sheriff's Office
25 for five years. I've been on the patrol division for the

1 duration.

2 Q. Are you on night shift this week?

3 A. I am.

4 Q. Did you work last night?

5 A. I did. I got off a little early to get here.

6 Q. Back when this assault occurred September 24th,
7 2014, were you working with Charleston County at that time?

8 A. Yes, I was.

9 Q. And were you a deputy?

10 A. Yes.

11 Q. And what district did you work?

12 A. James Island/Johns Island area.

13 Q. And did you receive a call regarding an assault in
14 this case?

15 A. Yes.

16 Q. And where did you respond to?

17 A. I responded to Oates Lane, which is off of Riley
18 Road in James Island.

19 Q. Is that in Charleston County?

20 A. Yes, sir, it's in Charleston County.

21 Q. When you arrived on scene, can you describe to the
22 jury what you witnessed?

23 A. I witnessed EMS personnel and Charleston City
24 officer that was already on the scene before me. They had
25 the victim on a stretcher and were attending to his wounds

1 and trying to get him on the back of the truck. He was -- I
2 don't want to say unconscious. I think he had just regained
3 some consciousness, but he wasn't alert. He wasn't talking
4 to anyone. He wasn't responding to any questions.

5 He did have a large contusion in the back of his
6 head that I took pictures of. He had blood coming from his
7 ears. And the family and people around there were kind of
8 frantic, you know, panicking and that kind of thing.

9 Q. Did you observe any blood?

10 A. Yes, coming from his ears, back of his head and
11 maybe from his nose. I can't remember exactly.

12 Q. And were you able to interview any witnesses on
13 scene?

14 A. Yes. I interviewed Joslin Washington. He was there
15 with him during the assault. He was in the vehicle when he
16 was assaulted.

17 Q. Did you take a statement from him?

18 A. Yes, I did.

19 Q. Were you able to determine the location of the
20 incident?

21 A. I was told at the time from Joslin that it occurred
22 somewhere on Grimball Road near Deleston, somewhere in that
23 area. I think it was on Deleston somewhere, but he didn't
24 tell me exact address or anything.

25 Q. Is that Charleston County?

1 A. It is.

2 Q. And were you able to develop a suspect at that time?

3 A. At that time, I didn't have a name for a suspect. I
4 hadn't identified anyone. All I had from Joslin was that he
5 went by the name Red and he had seen him before, but he
6 didn't know his real name, just that he goes by Red.

7 Q. I'm going to show you what's been marked as State's
8 Exhibit 6 through 8. Can you take a second and look through
9 those pictures. Do you recognize those pictures?

10 A. Yes, sir, I did take these pictures.

11 Q. Those are the pictures you took?

12 A. Yes, sir.

13 Q. At that point, did you turn over the case to the
14 criminal investigation division?

15 A. Yes, sir. I followed the victim to the hospital, to
16 M.U.S.C., and advised my sergeant. And he had a detective
17 come out and assume the investigation.

18 MR. CONDON: No further questions.

19 THE COURT: All right. Mr. Whipper.

20 MR. WHIPPER: May it please the Court.

21 THE COURT: Yes, sir.

22 CROSS-EXAMINATION

23 BY MR. WHIPPER:

24 Q. Detective, you said you took a statement from
25 somebody?

1 A. Yes, sir.

2 Q. And who do you recall taking the statement from?

3 A. Joslin Washington.

4 Q. So in taking your statement, all of the interview
5 with Joslin was done at the scene only, or did you do it back
6 at headquarters at any time?

7 A. It was at the residence that I responded to.

8 MR. WHIPPER: May I approach, Your Honor?

9 THE COURT: Yes, sir.

10 BY MR. WHIPPER:

11 Q. There's a document. Take a look at that. Is that
12 something you recollect? Please tell us, is there a date on
13 that anywhere?

14 A. Yes, sir, in the upper right corner, says 9/24/14.

15 Q. Is your name or initials on there?

16 A. No, it's not. That's my handwriting on the case
17 number at the top and the case number is my handwriting.

18 Q. Again, your handwriting is on the top?

19 A. Yes, sir.

20 Q. So this would be your handwriting, would be --

21 A. Right here.

22 Q. -- that OCA number?

23 A. Yes, sir.

24 Q. Okay. But this writing here --

25 A. This is Joslin's handwriting.

1 Q. That's Joslin's handwriting? So in his statement,
2 he wrote this statement, but not with you? Is that what --

3 A. I was there, yes, sir.

4 Q. You were there?

5 A. Uh-huh.

6 Q. So in his statement, if you would look, midway down
7 there, if you take a look at it, midway middle of the
8 statement there, you might see at the left-hand side, line
9 starts off of Grimball Road.

10 A. Uh-huh.

11 Q. Then he says he took us to a dead-end road.

12 MR. CONDON: I'm going to object. All of this is
13 going to be hearsay. J.R. is going to testify.

14 THE COURT: All right. Sustained.

15 MR. WHIPPER: I'm sorry.

16 BY MR. WHIPPER:

17 Q. Take a look at that. I would like you to read from
18 where I just mentioned.

19 A. Okay.

20 MR. CONDON: Your Honor, again, I object.

21 THE COURT: It's not improper for him to read. If
22 he asks a question about what it says, I've already sustained
23 that objection. Being that the witness who wrote the
24 statement is available and going to testify, then they can
25 testify.

1 BY MR. WHIPPER:

2 Q. You read it?

3 A. Yes. You wanted me to read it out loud?

4 Q. No, no, not the right time. But you read it. And
5 then at the bottom on the left, there's a witness there. Do
6 you recognize that signature?

7 A. I don't, actually.

8 Q. Now, in your investigation, did you at any time go
9 to the alleged actual scene of where it was alleged the
10 injury took place? Were you able to do that?

11 A. No, sir.

12 Q. You were not an investigator at the time, so you
13 passed it to a detective. Did you have any discussions with
14 any of the detectives about somebody having gone to the scene
15 at any time near to the alleged incident date?

16 A. I don't recall.

17 Q. After reading this statement, did you read anything
18 in the statement that talked about weapons?

19 MR. CONDON: Again, Your Honor, I'm going to object.

20 THE WITNESS: I don't see anything.

21 MR. WHIPPER: Your Honor, it's just asking what is
22 in the --

23 THE COURT: I will allow it. He already answered it
24 anyway.

25 BY MR. WHIPPER:

1 Q. You didn't see anything. All right. Now, once you
2 did what you did that day, that evening, I guess early
3 morning on the 25th, you did something; is that correct?

4 A. Early on the 25th? You mean the following day?

5 Q. You completed a report? My records show that you
6 completed some kind of report on the 25th.

7 A. I believe the incident report, this incident
8 occurred late at night, and I -- the completion date of the
9 report, it was completed early the next morning.

10 Q. And usually when you do that, that's to help pull it
11 together and get it done and begin the rest of whatever needs
12 to happen; is that correct?

13 A. Yes, sir. I take the initial report, document
14 everything that I observed, and pass it to the detective
15 that's going to do the case.

16 MR. WHIPPER: Approach the witness, Your Honor?

17 THE COURT: Yes, sir.

18 BY MR. WHIPPER:

19 Q. I want you to take a look at that document, sir.
20 Detective, I want to draw your attention to what I call the
21 second paragraph. It starts with the name Joslin Washington.

22 A. Yes, sir.

23 Q. And then when you come down from that line, we are
24 talking about second line, you see his name, Joslin, right?

25 A. Yes.

1 Q. And says Joslin stated something?

2 A. Uh-huh.

3 Q. And you report that Joslin could not identify
4 anybody as an attacker of any kind.

5 A. That's not true. I said he identified him as Red,
6 knew him as Red, and that's all he knew.

7 Q. In your statement here, you have while Lamont was
8 talking to the men, one of them struck him in the back of the
9 head with an unknown object. If you go back again to that
10 paragraph, says Joslin, I think, over here. Right there.

11 A. Uh-huh.

12 Q. And so if you read the next two lines, two
13 sentences, that's where it is?

14 A. Uh-huh. Would you like me to clarify my statement?

15 Q. You are welcome to, yeah.

16 A. Basically, after reading over this and from my
17 recollection, basically, what I got from his statement was
18 that he was indicating to me that Red was the attacker, the
19 person that he knew as Red, and that there were other subject
20 present that was not involved in the attacking, but that was
21 present with Red when they arrived. That's what I was
22 getting from his statement.

23 Q. Let me ask you this now. Once you -- so then for
24 sure you had nothing to do with drawing up the warrant, the
25 warrant for the arrest?

1 A. I had nothing to do with that.

2 Q. Certainly, what your report said and what you
3 reported would be a part of putting that warrant together,
4 wouldn't it?

5 A. Possibly. I don't know.

6 MR. WHIPPER: Your Honor, I would like to mark this
7 as Defendant's 1.

8 THE COURT: You want to enter it or mark it?

9 MR. WHIPPER: I want to enter it.

10 THE COURT: Any objection?

11 MR. CONDON: Your Honor, it's, again, hearsay.

12 MR. WHIPPER: It's just the declarant's statement.

13 THE COURT: Go ahead and lay a foundation for it and
14 we will -- then I will rule on it.

15 BY MR. WHIPPER:

16 Q. Do you recognize this as being your report and your
17 summary; is that correct?

18 A. Yes, sir.

19 Q. And what you prepared the morning of 9/25?

20 A. Yes, sir.

21 MR. WHIPPER: Your Honor.

22 THE COURT: All right.

23 MR. CONDON: Actually, Your Honor, it's hearsay, but
24 I will let it in. That's fine.

25 THE COURT: Without objection.

1 (Defendant's Exhibit 1, Police Report, is moved into
2 evidence.)

3 MR. WHIPPER: No other questions at this time.

4 THE COURT: Any redirect?

5 REDIRECT EXAMINATION

6 BY MR. CONDON:

7 Q. What time was the call-out?

8 A. It was, I would say, if I'm just remembering, like
9 9, 10-ish o'clock at night.

10 Q. If I showed you your report, would that refresh your
11 recollection?

12 A. It would. It says I responded at 7:30 p.m.

13 Q. Okay. And what time would you say you finished up
14 there?

15 A. This says I departed at 11 p.m.

16 MR. CONDON: Thank you. No further questions.

17 THE COURT: Anything?

18 MR. WHIPPER: No recross.

19 THE COURT: Thank you, sir. You may step down.

20 Any objection to him leaving, Mr. Whipper?

21 MR. WHIPPER: None from the defense.

22 THE COURT: You are free to leave. Thank you, sir.
23 Call your next witness.

24 MR. CONDON: The State calls Patricia Washington.

25 PATRICIA WASHINGTON,

1 having been duly sworn, testifies as follows:

2 THE CLERK: Get pretty close to this microphone.
3 Speak into it and say your full name and then spell your last
4 name, please.

5 THE WITNESS: Patricia Elaine Ellis Washington,
6 W-a-s-h-i-n-g-t-o-n.

7 DIRECT EXAMINATION

8 BY MR. CONDON:

9 Q. Good morning, Ms. Washington.

10 A. Good morning.

11 Q. Doing okay today?

12 A. Yes, as well as expected. Thank God.

13 Q. Can you tell the jury where you are from?

14 A. I'm actually from Mount Pleasant. I live on James
15 Island.

16 Q. Okay. And where do you currently live?

17 A. [REDACTED] Sea Isle Road, Charleston, 29412.

18 Q. Is that where you raised your family?

19 A. Yes, sir.

20 Q. How many children do you have?

21 A. Two.

22 Q. What are their names?

23 A. James Arthur Washington Jr. and Lamont Michael
24 Washington.

25 Q. And do you have any grandkids?

1 A. Yes, I do.

2 Q. And how many do you have?

3 A. With the twins, four.

4 Q. And Courtney McDaniel, did she live across the
5 street growing up?

6 A. Yes.

7 Q. I want to go right to the incident here. This is on
8 Wednesday, September 24th, 2014. Can you tell the jury what
9 happened that evening when Lamont came over?

10 A. Lamont came over that evening to leave the twins
11 with me, and said he would be back in 45 minutes. And that
12 was kind of unusual, because it was a school day. And I
13 said, okay, and he left.

14 Q. And do you recall about what time he dropped the
15 kids off?

16 A. Around -- I believe it was around seven o'clock that
17 afternoon.

18 Q. And were you excited to see them?

19 A. Of course.

20 Q. And at the time, did everything appear normal --

21 A. Yes.

22 Q. -- with Lamont?

23 A. Yes.

24 Q. And what kind of work did Lamont do back then?

25 A. He was under contract with the Charleston County

1 School District working computers.

2 Q. Did he also have a little side business as well?

3 A. Yes, he did, had his own business at one time.

4 Q. Tell the jury what happened next when he arrived.

5 A. At my house that night?

6 Q. Yes, ma'am.

7 A. Forgive me. I was sitting in the recliner in the
8 back den. And the twins were sitting on the sofa. And his
9 dad brought him in the house. Lamont, he had just looked
10 totally different. His face had looked swollen. He wasn't
11 really walking on his own. Please forgive me. He had his
12 neck around his -- his arms was around his daddy's neck. He
13 wasn't fully dressed. He didn't come back the way he left.
14 And I said, James, what's wrong with Lamont? And the twins
15 wanted to know what was wrong with Daddy also. He said, he
16 just had the same thing I have. But I knew there was
17 something different and he wasn't clothed.

18 He had on a little jersey -- still had on his
19 working clothes when he left home. He came back with no
20 pants on, but he had a little jersey underneath it. He was
21 bare footed and his socks. And he wasn't really walking on
22 his own. He was like James, the daddy, was bringing him in.
23 And they went to the bathroom. So I got up suddenly. I went
24 in the bathroom. I don't remember where James disappeared.
25 And Lamont was on the floor. And there was blood coming from

1 his head and his ears. And blood was all over the bath towel
2 when he was leaning against it.

3 So I put my arms around Lamont. Excuse me. I said,
4 Lamont, tell Mama what's wrong. Tell Mama what's wrong. I
5 have to call 911.

6 All he would say is, head hurt, head hurt, head
7 hurt. That was his only response. And the twins -- I said,
8 Lord, please let me keep control, because I can't get upset
9 because of them. And they kept saying, what's wrong with
10 Daddy? And I said, oh, Daddy just doesn't feel good.

11 So I went on and called 911. And I kept asking God
12 to keep control because of the twins. I told them what
13 happened, that he was attacked and he's bleeding from his
14 head and his ears, and told them where I lived. And I
15 believe they told me to stay on the phone. And the first
16 thing I knew, a policeman arrived. I was looking for EMS.
17 So I questioned him, where is EMS? Should I call them again?
18 And he said, just hold, they will come, no, you don't have to
19 call again, they will come.

20 And this time I'm telling the twins. They kept
21 asking, what is wrong with Daddy? I wanted them to stay in
22 the back den, but they didn't do it. And I would
23 continuously say, Daddy doesn't feel good. I didn't tell
24 them he was hurt. But they saw the blood, you know, and
25 everything else. And then eventually, stayed on the porch.

1 And I don't know, I think the firemen came before
2 the EMT did. I saw one of my nieces. And I asked her to
3 please take the twins in the back den for me. And they
4 were -- I believe J.R. came. And I asked him to, please -- I
5 think Melanie, I think -- I was so upset for watching the
6 girls for me. And I asked J.R., please take them in the back
7 den for me, because they were very upset.

8 But I still talked to God for me not to lose control
9 because of them. But inside I was -- it was awful.

10 Eventually EMT came. And I called one of my
11 sisters. And she didn't answer her phone. And I called my
12 other sister and she answered the phone. And I said, come to
13 me, Lamont was attacked. He's alive. I didn't know what
14 happened. I still didn't know what happened, you know, until
15 awhile later, sometime later what happened to him. I didn't
16 know. I didn't know what happened. All I could see, that
17 blood and smell that blood. And he just said, head hurt,
18 head hurt, head hurt.

19 Q. You can take a moment if you would like. There's
20 some tissues there. Ms. Washington, I'm going to show you
21 what's been marked as State's Exhibit 16. Do you recognize
22 that CD?

23 A. You played it for me. I do. I initialed it. The
24 911 call that I made.

25 Q. Was that a true and accurate copy of the call you

1 made?

2 A. Yes.

3 Q. Was it made at the time he arrived back home or
4 shortly thereafter?

5 A. After Lamont arrived home, yes. He was still on the
6 bathroom floor, but this time I think I was in the dining
7 room, on the front porch, EMS on the front porch.

8 Q. Were emotions very high at that time you made that
9 call?

10 A. I talked to God and asked him to keep me calm
11 because of the twins, but inside it was awful. Within me, I
12 had to ask -- because of the twins' sake, I didn't want to
13 show my emotions. It was hard, but I was able to do it
14 because of them.

15 MR. CONDON: Your Honor, we ask that State's Exhibit
16 be admitted into evidence.

17 THE COURT: Any objection?

18 MR. WHIPPER: Yes, Your Honor.

19 THE COURT: All right.

20 MR. WHIPPER: Your Honor, it's not irrelevant.
21 Certainly not probative of anything.

22 THE COURT: All right. Objection overruled.

23 (State's Exh. 16B, 911 call, was received in
24 evidence.)

25 MR. CONDON: Permission to publish.

1 THE COURT: Permission to publish granted.

2 BY MR. CONDON:

3 Q. While we are waiting here, I'm going to ask a few
4 more questions. Did you then go to the hospital after this?

5 A. I couldn't go right away because I had the twins. I
6 knew it was serious, but I didn't know it was that serious.
7 And my sisters came and the twins asked for Jessica, which
8 was Lamont's girlfriend at the time; still is. I couldn't
9 remember the number, but I knew I had it written down, so I
10 called her. And I said, I've got to find out what happened
11 to Lamont through J.R. At this time, I still didn't know
12 exactly what happened.

13 And the doorbell rang after the EMT and all that
14 left. My husband went and the detective talked to J.R.
15 first. I'm quite sure I remember that. And we went in the
16 bottom den. And he wanted to speak with me. And he said I
17 asked the doctor about handling a murder case. And I said,
18 what? He said, no, it won't be a murder case. He would be
19 able to save Lamont. So after he left, my sister left,
20 Teresa--

21 MR. WHIPPER: Your Honor --

22 THE WITNESS: -- you have to call.

23 THE COURT: Hang on a minute.

24 MR. WHIPPER: This is hearsay.

25 THE COURT: Sustained.

1 THE WITNESS: Hearsay?

2 THE COURT: Yes, ma'am. Just answer the questions.

3 BY MR. CONDON:

4 Q. Let's move on a little bit. Was he facing a
5 life-threatening injury?

6 A. Lamont, yes.

7 Q. And can you explain to the jury his recovery that he
8 went through after surgery and everything?

9 A. The physical therapist, the occupational therapist,
10 the speech therapist, the nurse, they all came to my house
11 for many, many months. And afterwards, he started going to
12 M.U.S.C., the physical therapy in Rutledge Tower. This went
13 on for months and months, maybe four or five, I can't
14 remember the exact amount. He had to learn to practically do
15 everything again. And I would cancel my doctors appointments
16 just to be with him. And if I left, I would get someone to
17 stay there with him until I returned home because he just
18 could not have been home by his self. I stopped going to
19 church and everything just to be there with him.

20 Q. And how long before you felt comfortable leaving him
21 by himself?

22 A. Couldn't have been about four or five months, but I
23 still didn't go to my church. I went to my husband's church.
24 I go to church in Mount Pleasant. My husband goes on James
25 Island. So I started going to church with him to be closer

1 to Lamont. But I still -- I had some fear of leaving him by
2 his self.

3 Q. And what kind of differences have you noticed in
4 Lamont before the assault and after the assault?

5 A. Before it happened?

6 Q. I'm sorry, in terms of after it happened.

7 A. Oh, after it happened? Lamont has not been the
8 same. He has a lot of fear in him.

9 Q. What about mentally?

10 A. Mentally, he's changed a whole lot. But he
11 recovered so miraculously. And the doctors said because of
12 his determination for those twin girls, he recovered more
13 than they expected, that they said he might never -- the
14 doctors didn't say -- one of the -- said he might never been
15 able to work on computers again because of the nature of his
16 injury. But God pulled him through. And they said it was
17 because of his determination, because of his daughters. Even
18 the physical therapist didn't expect.

19 The way he was coming home was still was a long road
20 to recovery. He believed -- they said it was because of
21 those twin girls.

22 Q. Was he out of work for a long time?

23 A. Yes, a very long time.

24 (Whereupon, audio is played.)

25 MR. CONDON: No further questions.

1 THE COURT: Mr. Whipper.

2 MR. WHIPPER: No questions.

3 THE COURT: Thank you, ma'am. You may step down.

4 THE WITNESS: Thank you.

5 MR. CONDON: Your Honor, could we take a brief
6 recess?

7 THE COURT: Yeah, all right. Let's go ahead and
8 take about a ten-minute comfort recess. Ladies and
9 gentlemen, don't talk about the case. Okay? Go back and go
10 to your jury room.

11 (Whereupon, the jury leaves open court at 10:35
12 a.m.)

13 THE COURT: Anything before we take a break?

14 MS. ASKINS: No, Your Honor.

15 THE COURT: All right. We will be in recess.

16 (Whereupon, a recess transpired.)

17 (Whereupon, the defendant is present.)

18 THE COURT: Okay. Anything else before we bring the
19 jury in?

20 MR. CONDON: Nothing from the State.

21 MR. WHIPPER: Nothing from the Defense.

22 THE COURT: All right. Bring them in.

23 (Whereupon, the jury returns to open court at 10:57
24 a.m.)

25 THE COURT: All right. Thank you very much. Where

1 is Ms. Pogue? Ms. Pogue, I'm appointing you as the forelady
2 of the jury. Okay? Thank you for volunteering.

3 As the forelady, Ms. Pogue, it's going to be your
4 duty to -- you will be the presiding juror over the
5 deliberations in the jury room at the end. You will also be
6 the official spokesperson for the jury here in court. And
7 I'm sure you will do a fine job. It will also be your duty
8 to write the verdict on the verdict form when I give you the
9 verdict form, when you actually get the case to deliberate.
10 You are the only one authorized to write on the verdict form.
11 And I will explain that to you at the end. Okay? So, again,
12 thank you very much for volunteering.

13 All right. Ready to call your next witness?

14 MR. CONDON: Yes, Your Honor. The State calls J.R.
15 Washington, or Joslin Washington.

16 JOSLIN WASHINGTON,
17 having been duly sworn, testifies as follows:

18 THE CLERK: Mr. Washington, I need you to speak into
19 this microphone. Get close to it. And state your full name
20 and spell your last name for the record.

21 THE WITNESS: Joslin Washington,
22 W-a-s-h-i-n-g-t-o-n.

23 DIRECT EXAMINATION

24 BY MR. CONDON:

25 Q. Good morning, Mr. Washington.

1 A. Good morning.

2 Q. Can you tell the jury where you are from?

3 A. James Island.

4 Q. And where did you go to high school?

5 A. James Island High.

6 Q. And how do you know Lamont Washington?

7 A. First cousins.

8 Q. Are you employed right now?

9 A. Yes, sir.

10 Q. And where are you employed?

11 A. James Island off of Folly Road, Old Max and

12 Henry's.

13 Q. Is that -- that's a Mexican restaurant you said?

14 A. Old Max and Henry's. It's like a bar and grill.

15 Q. Do you work full-time there?

16 A. Yes, sir.

17 Q. And back when this assault occurred on September

18 24th, 2014, what kind of work were you doing then?

19 A. I was doing landscaping and a little bit of

20 plumbing.

21 Q. And did you work with JR's dad -- I'm sorry,

22 Lamont's dad?

23 A. Yes, sir.

24 Q. What kind of work did you do?

25 A. Plumbing.

1 Q. And can you explain to the jury what happened that
2 day, Wednesday afternoon? Would you start at the beginning
3 from when Lamont came over and just run through the whole
4 event, please.

5 A. Well, I went to talking to one of my cousins that we
6 did work at the time at the shop. He's a mechanic. And we
7 was over there. And Lamont came over. And they go do some
8 work. And he had to go give the guy his phone, whatever,
9 whatnot. So he got a new car. And I was out with my cousin
10 working on the truck. So he came over. And I'm like, old
11 man about to go give this guy phone, whatnot. And I'm like,
12 hey, man, you got a new car, I ain't going to get a ride yet?
13 And he's like, as a matter of fact, you want to ride with me?
14 So I went to go with him.

15 Q. Let me stop you real quick. You were over at
16 Lamont's parents' house when this happened?

17 A. Pretty much, yeah.

18 Q. Right next-door?

19 A. Next-door.

20 Q. Family place?

21 A. Yeah.

22 Q. And sorry, keep going.

23 A. We get in the truck. And I was like, I didn't get
24 to ride in the car yet. You had the car a couple of weeks,
25 what's up with that? So he's like, as a matter of fact, you

1 come ride with me now. So I left and went to go ride with
2 him. And he was talking on the phone with the guy to meet
3 him at this Little Juice Joint, or whatever. So we went to
4 go -- went to go meet him. And we was just sitting there for
5 20, 30 minutes. You know what I mean? And he started
6 describing where the fellow was and this and that. And then
7 he keep on calling him and keep going pretty much giving him,
8 like, mixed signal, mixed directions, like he was coming, but
9 he wasn't coming.

10 So then Lamont was like, I have other things to do,
11 man, where are you at? You anticipate coming. We be here
12 20, 30 minutes. So he was like, come on over to Deleston,
13 which was, I guess, the next street over from the street we
14 was at.

15 Q. I'm sorry. Who told you to come over to Deleston?

16 A. Him.

17 Q. Red?

18 A. I heard him on the phone. I was right there because
19 he had the phone out. So we was going to going to Deleston.
20 Like I said, he was describing this, that and the third. So
21 we driving down the road to Deleston. And I was like, we
22 need to go back because this is a dead-end. My old man does
23 plumbing to and he got family, I guess a friend, friend lived
24 back there and we do plumbing back there before. So I'm
25 like, this is a dead end. I don't think he live here. I

1 said, the house right there where he be at, I pointed to the
2 house, was next-door on Deleston.

3 So then he was calling back on the phone like, man,
4 where you at? Where you at? And then I heard a dog barking,
5 which was in the yard he was at. And I said, I hear your dog
6 barking over here. And I heard the dog barking outside the
7 car. So I be like, man, we need to go down there. He might
8 be trying to do some slick or something. You know what I
9 mean? And he's saying, why you sending me down a dead-end?
10 Where you at? He's like, oh, yeah, over here, over here,
11 come over here.

12 And Lamont like, in the yard or something? And he's
13 like, yeah, yeah, come on, come on. So we backed up, drove
14 off Deleston, and then we went in the next drive, which was
15 their driveway. So we pulled up. And then Lamont got out of
16 the car, started talking and shake hands and all that.

17 So after that, you know, I was on Facebook, was on
18 Facebook looking at my nephew. He was graduating from boot
19 camp. I didn't go with them, because I tell my mama I had
20 something to do that day, which I really didn't, but at the
21 same time, kind of, you know, I was going to get in the truck
22 to work on. But I can still wait. I had something to do.
23 So I was the only one that didn't go.

24 So after that, I was showing him. He was talking to
25 me about that while we was driving finding the driveway. We

1 was talking about, I said, yeah, on Facebook, you have
2 pictures everybody, oh, yeah, that's good, that is nice. And
3 I go talk to him. So they shook hands and everything. And
4 they start talking. So that was kind of throwing me off.

5 Q. So everything appeared normal, like it was a
6 friendly conversation?

7 A. Yeah, yeah.

8 Q. You didn't suspect anything?

9 A. Didn't suspect anything. And then there was another
10 guy standing at the doorway with a baby in his hands. You
11 know? And I knew him too, so I just be like, what's up,
12 whatever. But he ain't never saw me in the car.

13 Q. What do you mean, they never saw you in the car?

14 A. They never saw me. He never saw me in the car.
15 When I got out, I told the guy, what's up, and he looked at
16 the door.

17 Q. Let me stop you here. Let's start -- it's getting a
18 little disjointed. After they shook hands, what happened
19 next?

20 A. He was talking. He was talking, I guess, about the
21 phone or whatever and whatnot. And then last thing I know,
22 before I got out of the car, Lamont turned around and come in
23 the car, because Red asked him if he had the phone. And
24 Lamont said, yeah, I got the phone; you got the money?

25 So after that, Lamont turn around and come to the

1 car. And all I hear is "bam". And I look up. And Red
2 jumped back from hitting Lamont. And Lamont just turned
3 around, just turned around to look at him. Threw his hands
4 up and he was already knocked out. Just turned around and
5 fall straight back.

6 Then when he fall back, I was like, what the hell?
7 So, you know, I opened the car door. I said, what the hell
8 you got going on, Dog? Like that right there. And he was
9 patting Lamont, like patting his pants and this and that, "I
10 told him not to disrespect me". So when I ran over there,
11 when I said -- I said, what the hell you got going on, Dog?
12 So that's what made him look up and look at me coming. So
13 when he look up and saw me coming, he kind of, like, ran off
14 back like going towards the house.

15 So, again, I was walking behind him kind of fast.
16 He was moving fast, you know. And he goes, act like he was
17 going to grab something on the table that's behind the house.
18 So when he was going to grab it, I go ran at him. So then he
19 started backing up even more. So he back up all the way by
20 the truck. And when he back up by the truck, I was going at
21 him. Then somebody came out of the house. And then he was
22 like, go get the gun, go get the guns. Red was telling him,
23 the dude that came out of the house to go get the guns.

24 So I be like, first of all, you hit my cousin. I
25 said, then you sneak up on him when he come to sell you a

1 phone. Now you got a gun and you want to shoot us? Okay.

2 You will get your day.

3 I pick my cousin off the ground while bleeding out
4 of his head and ears and all that. And I pick him up off the
5 ground and dragged him all the way back to the car to the
6 door. Put him in his car and I back up the car and I just
7 took off.

8 Q. Okay. And then did you take him back to his
9 parents' house?

10 A. I took him back to his parents' house.

11 Q. And 911 was called, and you went to the hospital?

12 A. Went to the hospital.

13 Q. And you said the term "sneak", what does "sneak"
14 mean?

15 A. "Sneak" mean like he wasn't paying attention. The
16 man was going back to the car. He didn't even see it
17 coming.

18 Q. And can you identify his attacker in court today?

19 A. Yeah, right there.

20 Q. What's his name?

21 A. Red.

22 Q. And what's he wearing?

23 A. He wearing right now?

24 Q. Yes.

25 A. Gray shirt with a tie on.

1 Q. Please let the record reflect that the witness has
2 identified the defendant.

3 Q. At any time, was Lamont acting hostile towards --

4 A. Sure wasn't. Sure wasn't.

5 Q. Did he ever threaten him?

6 A. No, surely didn't. If it was that type of
7 environment or whatever, I would have been in the car on the
8 jump, from the get-go.

9 Q. So, in other words, if you thought something was up,
10 you wouldn't have gotten out of the car with him?

11 A. Yes, would have never happened.

12 Q. Didn't it appear that he didn't realize you were in
13 the car when this happened?

14 A. Yes, he didn't. He didn't even know I was in the
15 car until I got out and say something.

16 Q. When Lamont was knocked out on the ground, what did
17 the defendant say to him?

18 A. I told you about disrespecting me. I told you about
19 disrespecting me.

20 Q. You can say the full language of what he said, not
21 to edit?

22 A. All right. Well, he was -- after he hit him, he got
23 amped. He got amped like: Yeah, nigger. Yeah,
24 motherfucker. I told me about disrespecting me, this, that
25 and the third. I told you about that. And he patting his

1 pockets, checking him to see what he had on him.

2 Q. He was pumped up after?

3 A. Yes, he was pumped up after he hit him. I believe
4 he hit him with something, because whatever he had, when he
5 jumped up, I was going to around there, he jumped up. He had
6 on two pants and put whatever he had -- kept reaching
7 whatever it was inside his pants. And he was back up
8 running.

9 Q. What kind of noise did the hit make?

10 A. Like a funny sound, like "bah".

11 Q. Did it sound like a fist?

12 A. No, didn't sound like a fist. Don't sound like a
13 fist, though.

14 Q. Sound like a pipe?

15 A. Sounded like a little brass knuckles or something.
16 He had something.

17 Q. And at any time did Lamont -- was Lamont throwing up
18 in the car at all on the way back?

19 A. When we was coming back to the house, that's when he
20 started coming back, you know. He was -- when we got in the
21 car, he started throwing up. He was sweating. He just was
22 saying, where do you -- he started, what happened? What
23 happened? What happened? What happened? What happened? My
24 head hurts. My head hurts. And I was trying -- I was keep
25 telling him, what happened? And I said, he's sneaky. He hit

1 you. And I kept telling him the same. He kept saying, what
2 happened? What happened? What happened.

3 At the time I was just trying to get out of there,
4 because I didn't know if he went to get the guns or not. I
5 don't know if they were going to shoot up the car even
6 driving home.

7 Q. And did his pants come off during the incident?

8 A. No. His pants came down. Well, I saw he got -- I
9 guess when I was taking him, dragging him to the car, his
10 pants was already loose. I guess when he hit, his whole body
11 just went limp, like you could see him just -- as I was
12 dragging him to the car, I guess it was coming down. When
13 he -- when he got in the car, like I said, when he started
14 coming back around, he was sweating and all that. He starts
15 to take all the clothes almost halfway done. He started
16 taking off all his clothes. So when we got to the house, my
17 cousin and them, they were there, they thought he was drunk
18 or something. You know what I'm saying? He was staggering.

19 And kids saying, what happened? What you be
20 drinking? And everybody else be laughing. And I said, no,
21 man, he ain't be drinking, dude hit him. Dude hit him in the
22 head. And got him out of the car and come to the house and
23 he went home. And that's all my cousin said, what
24 happened.

25 Q. I'm going to show you State's Exhibit No. 2. It's

1 already been entered into evidence previously. Do you
2 recognize that picture?

3 A. Uh-huh.

4 Q. What I'm going to do now, I'm going to put it up
5 over this overhead. And I'm going to ask you to demonstrate
6 where it was at the time of this vicious assault?

7 A. What it was at?

8 Q. Like, where was the car? Where did you all park
9 when you first pulled in?

10 A. We pulled in like right here. (Witness indicates.)

11 Q. And where was the man with the baby?

12 A. Huh?

13 Q. Where was the man with the baby?

14 A. Over here by the back door.

15 Q. And do you know who that guy is, to this day?

16 A. I mean, I don't know him like that, but I know him
17 from being around. I played basketball in the court. He
18 always used to be out in the court. And he knew it was me.

19 Q. You've seen him before?

20 A. Yes.

21 Q. But we don't know his name?

22 A. No.

23 Q. And can you explain where the assault occurred?

24 A. Right here. (Witness indicates.)

25 Q. And that is where Lamont was hit and he fell?

1 A. Yes, because he was walking. He was right here.
2 And another car, this might be the same car, but it was
3 green, one was parked, like, in the front. And then another
4 car was, like, parked in the back, but it was backed up. And
5 we was right there, right in the driveway. I was sitting on
6 this side. That's probably why he didn't even see me in the
7 car, because another car was, like, pull up right in front.
8 And another dude, dude was right there. So when they got out
9 the car, like I said, that car ain't been there. So it was
10 like in this area where they was talking. Then Lamont turned
11 around, and I look up. He hit the van. I got out of the car
12 and ran up here. And like I said, he ran off which was like
13 going towards behind the house.

14 Q. And Lamont was walking back towards the car?

15 A. Yes, walking back towards the car.

16 Q. And he spun around?

17 A. He turned around to look at him, like -- that's the
18 reason why I figured he jumped back, because he turned around
19 when Lamont turned around, you know. Lamont did like this
20 right here (indicating), like to say, why you did that, or,
21 why you hit me? But like I said, he was already knocked out,
22 just fall back. Threw his hands up like this.

23 Q. Did he fall on that pavement out there or where
24 exactly?

25 A. Right between here, right on the back. Like I said,

1 he was walking back to the car. So when he hit him, when he
2 turned around, he was, like, standing right here. You know
3 what I'm saying? So he fall straight back.

4 Q. And did Red at any time try to help him, assist him
5 at all?

6 A. No, no.

7 Q. At no time did the victim, Lamont, did he act
8 aggressive at all?

9 A. Not at all.

10 Q. Raise his voice?

11 A. Not at all.

12 Q. Have you noticed a difference in Lamont before and
13 an after the assault, mentally?

14 A. I mean, Lamont really, like, with all of the things
15 going on, but he coming back. He coming back, you know, to
16 being himself. But, otherwise tasting and smelling and
17 things like that, and then he would get agitated and angry
18 and stuff like that now, he do that. He ain't never been
19 like that.

20 Q. Kind of changed him since?

21 A. Oh, yeah, so he might be more aggressive, like to
22 certain things. I guess pretty much weird of things now,
23 things that could happen or from anybody. So you would be
24 more cautious. so I guess that's what it is, like more
25 watching, more jumpy and stuff like that.

1 Q. What was his recovery like after the assault?

2 A. Long, long.

3 Q. What was the guy with the baby -- what was his
4 reaction after the assault?

5 A. Oh, he even told Red that he stupid for doing that.

6 MR. WHIPPER: Objection.

7 THE COURT: Sustained. Sir, just be quiet and let
8 him ask the question.

9 BY MR. CONDON:

10 Q. And the guy with the baby was far away at the time?

11 A. No, he was still by the door. He was by the door
12 the whole time.

13 Q. He wasn't right next to Lamont?

14 A. No, he wasn't by nobody.

15 MR. CONDON: No further questions.

16 THE COURT: Mr. Whipper, your witness.

17 MR. WHIPPER: I would like to approach the witness,
18 Your Honor.

19 THE COURT: Yes, sir.

20 CROSS-EXAMINATION

21 BY MR. WHIPPER:

22 Q. Mr. Washington, if you would look at this document.
23 Okay? I want you to take a little second and read it.

24 A. Yes, sir.

25 Q. In the bottom right-hand corner is CR5 and 28, do

1 you see those numbers down at the bottom right-hand corner?

2 A. Uh-huh.

3 Q. That is your signature; is that correct?

4 A. Yes, sir.

5 Q. Do you recognize your handwriting; is that right?

6 A. That's not my handwriting.

7 Q. Not your handwriting?

8 A. No.

9 Q. You might not know, but an officer just testified
10 this morning that you wrote this thing.

11 A. Uh-huh.

12 Q. Officer testified that you wrote this statement?

13 A. Uh-huh.

14 Q. He said you wrote this, that was your handwriting.

15 And you are saying that's not your handwriting?

16 A. That's my handwriting at the bottom.

17 Q. Okay. Does that sound like something you recall?

18 A. Yes, sir, same thing I just talked about.

19 Q. All them MF'ers and all that in there?

20 A. Yeah.

21 Q. That's not in there?

22 A. No.

23 Q. There's nothing in there about taking something and
24 putting it up under the clothing or anything like that, is
25 there? That's not in there?

1 A. No.

2 Q. Nothing in there about not even -- not anything in
3 there about a sound. Do you see anything in there about any
4 kind of sound in there?

5 A. No, sir.

6 Q. That's your statement?

7 A. Yes, sir.

8 Q. So how many times have you told your story?

9 A. 100, 200, will be the same thing every time, sir.

10 Q. Been the same thing every time?

11 Approaching the witness.

12 Here's another version and your name right there.

13 Can you start from there and read, if you want. Just read
14 that. If you want, you can read it out loud. There's two
15 sentences in this one.

16 A. Which one, sir?

17 Q. See next to your name, Joslin?

18 A. Yes, sir.

19 Q. Start there.

20 A. "Joslin stated Red told Lamont to meet him on
21 Deleston. When Lamont made contact with Red, another black
22 male he couldn't identify."

23 Q. And then go on.

24 A. "While Lamont was talking to the man, one struck him
25 in the back of the head with an unknown object. He stated he

1 heard Red tell him, don't ever disrespect me like that. And
2 the other suspect get the heat." What?

3 Q. This is what he says you told him?

4 A. Uh-huh.

5 Q. Okay. So that was in there at that time?

6 A. Uh-huh? Same thing.

7 Q. I'm not doubting that. And then you've talked with
8 Detective Downing. Can you see his face?

9 A. Yes, sir.

10 Q. Do you remember talking to him?

11 A. Yes, sir.

12 Q. That's when you've talked about -- look at that,
13 this right here. That's the third paragraph on 529. Do you
14 see where it talks about you were watching with that phone?

15 A. Uh-huh.

16 Q. You were looking at the phone?

17 A. Yes, sir.

18 Q. And I understand you testified now, testified today,
19 that you were catching up on the graduation?

20 A. Uh-huh.

21 Q. And so from what you recall, you were watching your
22 phone and the fellow had walked away from the car; is that
23 correct?

24 A. Walk away from the car? They were in front of the
25 car.

1 Q. They were right in front of the car?

2 A. Yes, sir.

3 Q. Is that what you are saying now?

4 A. In my view.

5 Q. But you didn't see anything else until you say you
6 heard something; is that correct?

7 A. I didn't see anything else.

8 Q. Take your time now. All right. This is State's
9 Exhibit 2, which was just up on the -- you are saying you
10 were parked somewhere back here where it was dark?

11 A. Yes, sir.

12 Q. And then you said he fell some in this area up
13 here?

14 A. Yes, sir.

15 Q. Is that what you've just said?

16 A. That's the view.

17 Q. Put that back on. You are parked somewhere in this
18 area right here on the side?

19 A. Right there (indicating) in this area.

20 Q. The action happened over here?

21 A. Yes, sir, on my side, which was the passenger side,
22 which is right in front of my view.

23 Q. But your view was at the cell phone?

24 A. No.

25 Q. In other words, you were looking at the cell

1 phone?

2 A. I glanced.

3 Q. You glanced at the cell phone?

4 A. Yes.

5 Q. Because you already mentioned three things. You've
6 talked about brass knuckles?

7 A. Uh-huh.

8 Q. Pipe, talked about all kinds of things. So you
9 weren't looking at him. Couldn't have been looking and
10 seeing and not seeing and looking. I don't know. Then in
11 all your statements, you talk about hearing something, not
12 seeing anything.

13 A. Uh-huh.

14 Q. Except for today, you said you kind of saw
15 something?

16 A. Right.

17 Q. As a matter of fact, you are saying you saw
18 something, didn't put in, but in your testimony earlier, you
19 said he was leaving you because he wanted to get something?

20 A. Who?

21 Q. You testified, you said that Red was walking away
22 from you because he was trying to go get something?

23 A. Yep.

24 Q. Why is he trying to going to get something if he
25 already got something?

1 A. He didn't want to show me what it was.

2 Q. Thought he was going to get something new to use on
3 you?

4 A. Yes. Like I said, he never knew I was there.

5 Q. I believe you if you will want me to,
6 Mr. Washington.

7 Now, you claim -- you claim in your earlier
8 statements that you were watching that cell phone because --
9 and you testified you said you were looking at the cell phone
10 and the gentlemen were having whatever conversation they were
11 having. Now, it's my understanding from the conversation
12 that you were concerned about all of that back-and-forth
13 about the directions. You knew that you were going to
14 accompany your cousin --

15 A. Yes, sir.

16 Q. -- to do something?

17 A. Yes, sir.

18 Q. And you knew there were some issues involved, what
19 he was trying to get, you knew that? That's why you left.
20 And yet still, you want to believe you didn't see anything,
21 but yet you did see everything?

22 A. Yes, sir.

23 Q. Let me ask you a question. When you talked with
24 Mr. Downing, he didn't show you the statement, did he, this
25 one right here that you wrote? Did he bring that to you? He

1 didn't show you that, did he?

2 A. I believe so.

3 Q. You believe so? All right. Did you talk with him
4 at your house or at his place?

5 A. I talked with him at Lamont's house.

6 Q. And when did you have that conversation, to the best
7 of your recollection?

8 A. Like, the day after the incident happened.

9 Q. So let me say right after the incident happened, are
10 you talking about the night, the next day?

11 A. Night.

12 Q. Was it after 12?

13 A. About hours after.

14 Q. Some hours after, yeah. In other words --

15 A. When the police got there.

16 Q. It was after 12 maybe, you think, before 12,
17 midnight? Do you remember? But you talked with him at
18 Lamont's house?

19 A. Uh-huh.

20 Q. And when you talked with him, you told him to the
21 best of your recollection what you thought you had been
22 through; is that correct?

23 A. Yes, sir.

24 Q. And it was fresh on your mind at that time?

25 A. Yes, sir.

1 Q. Lamont fell back right on that pad right there,
2 didn't he?

3 A. Yes, sir.

4 Q. When he was falling, as far as what -- you said you
5 saw him falling. So his back was to you when he fell; is
6 that right?

7 A. Sideways.

8 Q. Sideways?

9 A. He was sideways when he fell.

10 MR. WHIPPER: Your Honor, moving for Defendant's 2,
11 what has been identified as a statement of a witness.

12 THE COURT: Any objection?

13 MR. CONDON: It's hearsay, but we are not going to
14 object to it.

15 THE COURT: Without objection, entered as
16 defendant's next in order.

17 (Dft. Exh. 2, Statement of witness, is moved into
18 evidence.)

19 BY MR. WHIPPER:

20 Q. So what type of phone did you have? Did you have
21 one of the large ones, sort of like --

22 A. Cricket, it was a little smaller, Cricket.

23 Q. It had a screen you could scroll? You were watching
24 Facebook?

25 A. Yes.

1 Q. So you could scroll?

2 A. Yeah, you could scroll it.

3 Q. Did you know how much money was involved in this
4 deal?

5 A. Sure don't.

6 Q. Did you know what the phone looked like that was
7 involved in this?

8 A. Sure don't.

9 Q. But you listened to the phone conversation with the
10 directions. Is that when you first heard this talk about
11 money and disrespecting people about money?

12 A. I ain't hear them on the phone.

13 Q. Never heard that on the phone?

14 A. Not on the phone.

15 Q. Only time you think you heard that was after Lamont
16 was on the ground?

17 A. That's the only time he said it, what I heard.

18 MR. WHIPPER: No further questions at this time.

19 MR. CONDON: Briefly, Your Honor.

20 THE COURT: Yep.

21 REDIRECT EXAMINATION

22 BY MR. CONDON:

23 Q. Did you go with Lamont to go check out his new car?

24 A. I went out that day to go with him while he took the
25 phone.

1 Q. And that statement that's been introduced now, I
2 think -- was that Defendant's Exhibit 2? You said you didn't
3 actually write that statement out?

4 A. No, I was standing there, but my cousin was there.
5 She did the writing for me. Even though I was still kind of
6 jittery, because it just happened, and I was so mad about the
7 situation, so I told her -- I just told her, you know,
8 whatever I said, she just wrote it, jot it down. Just was a
9 quick little, you know, statement.

10 Q. And you signed at the bottom?

11 A. Yes, sir.

12 Q. And that's an accurate statement of what happened?

13 A. Uh-huh.

14 Q. And, again, this term "sneak" or "snuck" you put in
15 here, can you explain again what that means?

16 A. That means somebody was not paying attention. He
17 wasn't paying attention when the guy hit him. I guess he was
18 walking to the car. And from him walking to the car, that's
19 when he hit him. Like I said, when he turned around and
20 walked to the car, I watched him walk to the car. When he
21 took -- only took like two, three steps away.

22 MR. CONDON: No further questions. Thank you.

23 THE COURT: Any recross-examination based upon
24 redirect?

25 MR. WHIPPER: No recross.

1 THE COURT: Thank you, sir. You may step down.
2 Call your next witness.

3 MR. CONDON: The State calls Detective Matthew
4 Downing.

5 MATTHEW DOWNING
6 having been duly sworn, testifies as follows:

7 THE CLERK: Please state your full name and spell
8 your last name for the record.

9 THE WITNESS: Detective Matthew Downing,
10 D-o-w-n-i-n-g.

11 DIRECT EXAMINATION

12 BY MR. CONDON:

13 Q. Can you explain to the jury who you work for and
14 your job title?

15 A. I'm a detective with the Charleston County Sheriff's
16 Office, currently assigned to the major violent crime units
17 in the criminal investigations division.

18 Q. And can you go through some of your job training and
19 experience as a detective in major violent crimes unit?

20 A. I've been with the Sheriff's Office 14 years now.
21 I've been with the detective bureau almost six. I've
22 attended various investigations class, interview
23 interrogation class, blood splatter-type classes, various
24 other kinds of in-service training as far as how to
25 investigate these types of crimes.

1 Q. And on Wednesday, September 24th, 2014, where did
2 you respond to in regards to this case?

3 A. I received a phone call at my residence. It was
4 after hours. I responded to the Medical University of South
5 Carolina emergency room.

6 Q. What did you learn upon your arrival?

7 A. When I got -- when I arrived to M.U.S.C., I spoke
8 with Detective Wiedemann, who you've already talked to this
9 morning. When I got there, I talked to Detective Wiedemann.
10 And he explained to me there was an assault that took place
11 somewhere in the neighborhood of River Road, Deleston and
12 Grimball.

13 Q. Is that in Charleston?

14 A. That's in Charleston County where my office does
15 have jurisdiction. After speaking with Detective Wiedemann,
16 I learned there was an assault that took place there. And
17 the victim, Mr. Lamont Washington, had been transported home
18 by a cousin, J.R. Washington. EMS had been called,
19 responded, determined he needed advanced medical treatment.
20 And then transported him to M.U.S.C. And that he was
21 actually in the process of being relocated from the ER into a
22 surgical room because he needed emergency surgery.

23 Q. And what did you learn from the doctors?

24 A. I was able to catch one of the doctors between, I
25 think, the scrub room and the emergency room -- excuse me,

1 the operating room. And they explained to me that
2 Mr. Washington had a skull fracture and a blood clot in his
3 skull that required surgery, that he was in -- they called it
4 at the time stable. But at the time he was still in critical
5 condition. They did not anticipate him passing away from his
6 injury; however, it required immediate surgery at that point
7 to save his life. And at that point, I let the doctor go
8 because he had bigger, more important tasks at hand than
9 talking to me.

10 Q. So it was a very serious injury?

11 A. Incredibly serious.

12 Q. And were you able to interview any witnesses at the
13 hospital?

14 A. Yes. I located Jessica Young, who was the
15 girlfriend of the victim, Lamont Washington. She was in
16 the -- I'm sorry, the waiting room for the surgical area. I
17 spoke with her briefly. And she explained to me that Lamont
18 was a cell phone repair and computer repair technician. And
19 that he had attempt to finalize a deal with an individual, a
20 boyfriend for a girl she only knew as Courtney, and that she
21 received a phone call that evening from J.R. Washington that
22 Lamont turned sideways, and during the transaction, he was
23 assaulted. And that's when he reported to M.U.S.C.

24 Q. And were you able to develop a suspect?

25 A. When I spoke -- after I spoke with Ms. Young at the

1 hospital, I left to go over to speak to the family members
2 and J.R. Washington, who had gone to the residence on Oaks
3 Lane that belonged to Mr. and Mrs. Washington. While I spoke
4 with J.R., he explain to me that the name Red, possible
5 suspect's name was Red. I also received an anonymous tips
6 that comes through Crime Stoppers --

7 MR. WHIPPER: Objection.

8 THE COURT: Sustained.

9 BY MR. CONDON:

10 Q. And can you explain to the jury the process of
11 showing a photo lineup and how that's done?

12 A. When a suspect is identified, what I will do is, I
13 will request a photographic lineup either from SLED or from
14 my county jail. I will fill out the form, send it over to
15 them. A technician, either at SLED or the detention center,
16 creates the other five photos from either DMV photos or jail
17 booking photos. And they will fill in the rest of the photos
18 along with the target photo. That then six-pack is delivered
19 to me. Because I know who my suspect is, I can't show it
20 because I'm biased. I know who the suspect is.

21 Then what I do is I get a detective who is not
22 familiar with this case, not involved with this case, has no
23 knowledge of the case, and I will grab that detective, in
24 this case it was Detective Jerry Finkel. And we use him to
25 show the photographic lineup. There's a form that he fills

1 out. He goes over it with the victim, witness, whoever the
2 photographic lineup is going to be shown to. He goes through
3 the form, fills it out. Then he shows the photographic
4 lineup.

5 If the witness or victim is able to identify the
6 suspect or a party in it, we ask them to make that
7 identification and explain how do they know who this person
8 is? Is it the person who committed the crime? Is it another
9 witness that's potentially in the case? Is it an innocent
10 party? And then they fill that information out. And the
11 six-pack photographic lineup form will come back to me and I
12 end up with that identification.

13 Q. And just briefly, can you tell the jury about
14 Detective Jerry Finkel and his background?

15 A. Jerry Finkel is a reserve deputy with us. He's
16 currently assigned to our full case squad. Jerry has been in
17 law enforcement for 51, 52 years. He has tremendous amount
18 of advanced training.

19 Q. Also an attorney?

20 A. Yeah, he's an attorney as well.

21 Q. I'm going to put up Exhibit 14 up on this overhead
22 here for you.

23 A. Okay.

24 Q. Is that the lineup right there, front page of it?

25 A. That would be the -- can you bring it back down just

1 a hair? Yes, sir, that's the report of the physical lineup
2 form we use in the sheriff's office.

3 Q. That's Detective Finkel's signature there?

4 A. Yes, sir. On the left it says independent
5 administrative deputy's signature. That's Gerry's signature,
6 along with his printed name directly below it.

7 Q. And what were the results of the lineup?

8 A. Mr. Washington was -- excuse me, able to identify
9 number 3 as his attacker. In this case, it is the defendant.
10 He knew him as Red. We identified him as Adrian Simmons.

11 Q. Is that the man that is in court today?

12 A. That's the man that is in court.

13 Q. At any time, did you drive by the scene to look for
14 anything?

15 A. After I left M.U.S.C., after I left Washington's
16 residence, I did go over to the area of Deleston and
17 Grimball. I looked around, but not knowing what object was
18 used to strike the victim, I didn't know what it was I was
19 looking for. It was dark. And there was not any kind of
20 sign of a tussle. There was not any kind of indication of
21 any mass fight, melee, or anything like that, which would
22 be -- which would match the statement of both Mr. Washington
23 and Mr. Washington's cousin. There was no big confrontation.
24 There was no big fight. Just, as J.R. says, Mr. Lamont was
25 snuck from behind.

1 Q. Based on this information, did you then issue a
2 warrant for Mr. Simmons's arrest?

3 A. Yes, sir, I did.

4 Q. What was the warrant for?

5 A. Warrant was for assault and battery of a high and
6 aggravated nature.

7 Q. And did you observe any injuries upon the
8 defendant's face or body?

9 A. When he was arrested, no, I did not see any injuries
10 to his person.

11 Q. Did he ever report the crime to the police?

12 A. No, sir.

13 Q. Did he ever call 911 about the incident?

14 A. No, sir.

15 Q. Have you found any evidence whatsoever of
16 self-defense?

17 A. No, sir.

18 MR. CONDON: No further questions.

19 THE COURT: Mr. Whipper, your witness.

20 MR. WHIPPER: May it please the Court, Your Honor.

21 THE COURT: Yes, sir.

22 CROSS-EXAMINATION

23 BY MR. WHIPPER:

24 Q. Detective Downing, no one recalls seeing you at this
25 house that night; did you know that?

1 A. Okay.

2 Q. So you didn't -- if you are not there, you can't
3 serve the scene? You've got to be there?

4 A. Yes, sir.

5 Q. So you weren't there?

6 A. Yes, sir, I was.

7 Q. Okay. What time do you think it was that you were
8 there?

9 A. Sir, by the time I got over there, it was incredibly
10 early morning hours, probably two o'clock, three o'clock.

11 Q. You didn't bother to announce yourself at all? You
12 just kind of crept around?

13 A. I was able to be stand on the street and look.

14 Q. Stand on the street, so on the street, took a
15 flashlight and shined it? Is that what you did?

16 A. Yes, sir.

17 Q. Okay. Now, let's do this. Certainly, you did not
18 interview anybody who lives at this residence here?

19 A. No, sir, I did not.

20 Q. You were saying that you -- you started out in law
21 enforcement. You were how many years in patrol?

22 A. Seven years in patrol. There was a couple at the
23 detention center, which is where I started. Five on SWAT and
24 six in the detective's.

25 Q. I have no problem with that. I have no problem with

1 that at all. So, six years as a detective?

2 A. Yes, sir.

3 Q. You've talked with -- talked with Wiedemann,
4 Mr. Wiedemann. Were there any other officers that we haven't
5 talked about who were involved in any of this investigation?

6 A. Not that I'm aware of, sir.

7 Q. You will agree with me, Detective Downing, that you
8 are a police officer and you do your job. You are looking to
9 see if there's anybody -- you are catching law breakers? Do
10 you agree with that? You are out to catch law breakers?

11 A. I'm not sure what you are asking me, sir.

12 Q. Well, I'm asking you if when you were involved with
13 this investigation or any investigation, are you trying to
14 help the defendant?

15 A. No, sir, I'm not.

16 Q. That's all I'm asking. I'm done.

17 A. My job as a detective is to gather the facts, talk
18 to everybody that I can and come to a conclusion at the end
19 of it.

20 Q. And is it shared a jurisdiction over there with the
21 City of Charleston or is it all county shared?

22 A. It's all within Charleston County where I have
23 jurisdiction. I believe there may be some residences over
24 there that belong to the City. It's kind of a mixed bag
25 thing. West Ashley is very -- you have one house that is

1 County, one house that is City. But it's all Charleston
2 County. I have jurisdiction throughout the entire county.

3 Q. I have in my possession documents, at least one page
4 of something that says case notes.

5 A. Yes, sir.

6 Q. Are you familiar with that particular item?

7 A. Yes, sir.

8 Q. This particular one is dated Thursday, October 9,
9 2014.

10 A. At the bottom, yes, sir.

11 Q. Now, in your summary there, you talk about -- and if
12 you go down to that third paragraph, you talk about this
13 sound and talk about a statement.

14 A. Counsel, my case notes are just that, they are my
15 case notes. They are facts and things that I learn
16 throughout. It is not a formalized report. And it is not
17 necessarily the complete total summary of the entire
18 investigation. They are notes.

19 Q. Do you have anything that's better than what this is
20 that you might feel more comfortable with us seeing that's
21 better than this, because this is all I got from you guys?
22 Do you got something better?

23 A. Sir, my notes are transcribed off a pad and paper
24 into the form you are looking at. Those are my notes, but it
25 is not a report.

1 Q. Yeah, it is not a report?

2 A. No, sir, it is not a report.

3 Q. Do you have the report? Because I don't have the
4 report. Do you have a copy of the report?

5 A. You did not receive my incident report?

6 MR. CONDON: I think you have.

7 MS. ASKINS: Yeah.

8 THE WITNESS: Should be a six-page document that
9 says incident supplement on the top left-hand side.

10 BY MR. WHIPPER:

11 Q. What is the date on that one?

12 A. The date that I submitted or my revised? When I
13 finalized my report was on October 15th of 2014. The date of
14 the incident is identified as September 24th, 2014.

15 Q. When I looked at this one, again, I hear about the
16 striking sound. He looked up and saw that Lamont was falling
17 to the ground and that there was a statement -- and I know
18 you are a big boy. You've been doing this a lot. You write
19 down there: Will teach you for disrespecting/playing with
20 me?

21 A. Yes, sir.

22 Q. You can write in. There's no F thing or MF, none of
23 that is in there. So that's your final report?

24 A. Sir, I'm quoting a victim or a witness in a report,
25 I'm not going to quote entire statement he gives. I will

1 pull out the part that is specific. And in this case --

2 Q. But do you agree with me that if you are going to
3 come to court and we are going to charge people and claim
4 they did all kinds of heinous crimes, we need to know that
5 they are charged with what they are charged with? I mean, we
6 need to know that. It's not in here. And it's done less
7 than 20 days from when this thing allegedly happened, and
8 nothing like that is in here. And then you arrest somebody
9 and you bring him in here and drag him through the coals --

10 A. Counsel --

11 THE COURT: Hold on. Let him finish the question.

12 BY MR. WHIPPER:

13 Q. Drag him through the coals. And I know it's a
14 serious injury, nobody is disputing that, but shouldn't we
15 know and shouldn't he know what people are saying about
16 him?

17 A. Yes, sir.

18 Q. If it's true?

19 A. Yes, sir. I charged him with the appropriate crime.
20 I did not charge him for using profanity. And in the
21 statement that was collected, I believe Mr. Washington talked
22 to you about, I did take a statement from him. And that
23 statement was provided to the Solicitor's Office and to the
24 defense counsel.

25 MR. WHIPPER: May I approaching the witness?

1 THE COURT: Yes, sir.

2 BY MR. WHIPPER:

3 Q. Take a look at this document.

4 A. Yes, sir.

5 Q. Is that your signature on it?

6 A. That is my signature on the bottom right-hand
7 corner, yes, sir.

8 Q. Do you want to read the pertain part I have
9 highlighted.

10 A. Assault and battery of a high and aggravated nature,
11 that he did willfully, unlawfully and feloniously participate
12 in the assault of the victim, leaving the victim with a
13 fractured skull, subdural hematoma, and a potentially
14 traumatic brain injury.

15 Q. So he participated? Was he the guy holding the
16 baby?

17 A. No, sir.

18 Q. Was he one of those guys back behind the house that
19 was standing around burning the wood in the can back there?

20 A. Sir, when we interviewed the witness, J.R.
21 Washington, and the victim, Lamont Washington, the only three
22 people that were identified besides the two Washingtons was
23 the defendant, Adrian Simmons, and an unknown black male
24 holding the baby in the door frame of the residence.

25 Q. In your warrant, you didn't even say that

1 Mr. Simmons allegedly struck anybody. He participated. I
2 don't know what to say about that warrant, but that's got us
3 here. He participated. That means after all of the
4 investigation and everybody, no offense to anybody, but no
5 one had really any idea except they knew that he was -- he
6 had a phone that he was supposed to pay for?

7 A. Yes, sir.

8 MR. WHIPPER: Okay. No other questions.

9 THE COURT: Any redirect?

10 MR. CONDON: Sure.

11 REDIRECT EXAMINATION

12 BY MR. CONDON:

13 Q. Did you also collect the phone from this case?

14 A. Yes, sir. I did collect the phone from Ms. Courtney
15 Young, who is the girlfriend of Mr. Washington. And it was
16 in the vehicle that she drove to M.U.S.C., which was the
17 vehicle he drove from his parents' house to drop off the cell
18 phone and back. I believe it was the phone in question that
19 this transaction was over.

20 Q. So that was the phone that was fixed?

21 A. Yes, sir.

22 Q. And did you attempt to -- did you submit a search
23 warrant for the phone?

24 A. We did submit a search warrant for the phone to get
25 into the phone to look for the -- any kind of call log, who

1 the phone belonged to, trying to identify and officially
2 bring it back. However, it's locked with a PIN code and we
3 were unable to get into it.

4 Q. We talked about -- I believe defense counsel
5 mentioned that you are not really here for the defendant.
6 What's your job in this case? Is your job to find the truth?

7 A. My job is to find the truth. I'm not here for the
8 the victim and I'm not here for the defendant. My
9 responsibility is to come in and act as an investigator. I
10 do my best to stay as impartial and bipartisan as I can. And
11 in this case, that is what I did.

12 Q. Do you have cases where the defendant's factually
13 innocent and you don't charge?

14 A. That is correct.

15 Q. Do you have cases where the victim is actually the
16 defendant who charged the complainant?

17 A. That's correct.

18 Q. So you don't really have a dog in this fight?

19 A. No, sir, I do not.

20 MR. CONDON: No further questions.

21 THE COURT: Anything else, Mr. Whipper?

22 MR. WHIPPER: No recross.

23 THE COURT: Thank you, sir. You may step down.

24 On behalf of the lawyers, approach, please.

25 (Whereupon, a bench conference takes place.)

1 THE COURT: Ladies and gentlemen, now is a good time
2 to break for lunch. So it's now a little bit before noon,
3 right at noon. So I want to give you enough time, if you are
4 able to live nearby, to get some lunch and save a little bit
5 of money, because you don't get paid that much to be a juror.
6 Two o'clock. Okay?

7 Well, y'all be here at 10 'til 2, because I want to
8 start right at 2. So everybody be back. We will do anything
9 else we need to do before we bring the jury out at 2. So be
10 in the jury room 10 to 2. Don't talk about the case, do any
11 independent research. See you then.

12 (Whereupon, the jury leaves open court at 11:59
13 a.m.)

14 THE COURT: Anything else before we leave?

15 MR. CONDON: Nothing, Your Honor.

16 MR. WHIPPER: Nothing further, Your Honor.

17 THE COURT: Thank you. We are down for lunch.

18 (Luncheon recess was taken.)

19 MR. WHIPPER: We've got a point we can talk about.
20 There's a proposal to submit recording evidence. And thing
21 is that there has to be a foundation for it. I don't know if
22 that can be done or not.

23 THE COURT: Are we talking about the --

24 MS. ASKINS: Jail calls.

25 THE COURT: Okay. I was not following you.

1 MR. WHIPPER: So we were trying to see just where we
2 were with that. If it should be admitted, if the Court
3 thinks it should be admitted, then what can be accomplished?
4 Because there's a lot of extraneous things on it too. I
5 think we are at a point we can do that if we get to that.

6 THE COURT: Have you all gone through and listened
7 to it and decided what should be redacted or what should not
8 be redacted? Y'all agreed upon that?

9 MR. CONDON: I believe so. We are going to play the
10 first 3.17 minutes of it and then cut it off.

11 THE COURT: Yeah. You are going to be protected in
12 the record provided that he lays a proper foundation. And
13 you still object, obviously.

14 MR. WHIPPER: I obviously object.

15 THE COURT: Exactly. And I will make a ruling. I
16 don't know whether it's going to come in yet either, because
17 I haven't heard the foundation, and I don't know. But I will
18 rule on it. And if a proper foundation is laid, I probably
19 will let it in, because I've let it in before in other
20 trials, but I will give you an opportunity to state your
21 objection to protect yourself.

22 MR. WHIPPER: I think they have to do that, and
23 there's some issues with that.

24 THE COURT: All right. So what do you have left?
25 You have that.

1 MR. CONDON: I'm going to start out with the doctor
2 and then the custodian of records for the jail calls and then
3 the victim again to identify the speakers.

4 THE COURT: After -- assuming the jail call comes
5 in?

6 MR. CONDON: Yes, Your Honor.

7 THE COURT: So your last witness is going to be the
8 victim?

9 MR. CONDON: Correct, just on that one question.

10 THE COURT: On that one issue. Okay? So you
11 anticipate resting today?

12 MR. CONDON: Absolutely.

13 THE COURT: Okay. Sounds good.

14 MR. WHIPPER: And may I approach, Your Honor?

15 THE COURT: Yes, sir.

16 (Whereupon, the defendant is present.)

17 MR. WHIPPER: Defense is ready, Your Honor.

18 THE COURT: Bring the jury in. Thank you.

19 (Whereupon, the jury returns to open court at 02:16
20 p.m.)

21 THE COURT: Ladies and gentlemen of the jury, I
22 neglected to introduce my law clerk to you. Again, I know
23 y'all see I picked up one during lunch, but I have two
24 interns with me during the week. Normally, it's just the
25 judge sitting up here. To my right is Steven Griffith. He's

1 a law student at University of South Carolina entering second
2 year. To my far left is Carson Masters. He's a third-year
3 law student at University of Georgia Law School. And, of
4 course, my law clerk is Will Alexander. And he's to my
5 immediate left. So he works for me and been will be working
6 for me for the next year. That's why there's so many people
7 sitting up on the bench. I wanted to make sure you know what
8 was going on.

9 Ready to proceed with your next witness?

10 MR. CONDON: Yes, Your Honor. The State calls
11 Dr. Alejandro Spiotta.

12 ALEJANDRO SPIOTTA,
13 having been duly sworn, testifies as follows:

14 THE CLERK: Doctor, if you will please speak into
15 the mic and spell your first name.

16 THE WITNESS: Alexander S-p-i-o-t-t-a.

17 DIRECT EXAMINATION

18 BY MR. CONDON:

19 Q. Good afternoon, Doctor. Can you tell the jury where
20 you currently work?

21 A. I'm a neurosurgeon at the Medical University of
22 South Carolina.

23 Q. And are you also the department chair over there?

24 A. I'm the surgical director of the neurosciences
25 intensive care unit and the associate program director for

1 neurosurgery.

2 Q. And can you please explain to the jury your
3 education and background.

4 A. So I received my bachelor's degree from the
5 University of Pennsylvania in 2001. Got my medical doctorate
6 degree from the University of Pennsylvania also 2005. I did
7 my neurosurgery residency training at the Cleveland Clinic
8 ending 2012.

9 Q. Did you also do a fellowship?

10 A. I did. I did a two-year fellowship. First year was
11 at the Cleveland Clinic. Second year at the Medical
12 University of South Carolina.

13 Q. And how long have you been a neurosurgeon?

14 A. This is my fifth year.

15 Q. Approximately how many surgeries or operations have
16 you performed?

17 A. I do approximately 3- to 500 surgeries a year.

18 Q. Did you do a couple this morning?

19 A. I did, two.

20 Q. And do you also teach at the Medical University?

21 A. I do. I teach the medical students as well as the
22 residents and fellows at the College of Medicine.

23 Q. What do you teach?

24 A. I teach neuromedical neuroscience as well as
25 neurosurgery and neuroendovascular surgery.

1 Q. Have you written any kind of scholarly articles or
2 journals?

3 A. I have. So I authored about 90 peer-reviewed
4 journals, manuscripts, and authored chapters in over a dozen
5 textbooks.

6 Q. Have you given any lectures or presentations on
7 neurosurgery?

8 A. I have, probably over 80 or so.

9 MR. CONDON: At this time, Your Honor, the State
10 would ask Dr. Spiotto be admitted as an expert in the field
11 of neurosurgery. This is based on his extensive education,
12 training and experience.

13 THE COURT: Any further voir dire of this witness by
14 the defense?

15 MR. WHIPPER: Yes, Your Honor. Do you want me to do
16 it now?

17 THE COURT: Yes, sir. Go ahead.

18 VOIR DIRE EXAMINATION

19 BY MR. WHIPPER:

20 Q. Doctor, looking over your background, in your
21 clinical studies, I see nothing that's in the news since
22 2014. I think the last thing that I see is NINDS Genetic
23 Inc. Project. That started in 2014. Is there anything after
24 that?

25 A. There's several studies. We probably -- by we, I

1 mean, our core group of neurosurgery --

2 Q. Can you repeat that?

3 A. We are involved in well over 20 clinical trials. We
4 are involved in all the latest trials. Some of those may
5 have began in 2014. They are ongoing.

6 Q. And if I'm not mistaken, you have -- the surgeries
7 all involves and your training all involves what would be, I
8 guess, vascular issues and repair of vascular problems and
9 resolution of issues concerning brain modalities and those
10 kinds of functions; is that correct?

11 A. Among many other things, yes.

12 Q. I'm sorry, Doctor. I don't know if it's me. I'm
13 not hearing you very well.

14 A. Among other things, yes.

15 Q. What would be some of the other things?

16 A. So as a neurosurgeon, I do surgery on the brain for
17 wiring conditions, blood vessel problems, brain tumors,
18 trauma, as well as surgery on the spine. And in addition to
19 that, I think you are referring to additional training, that
20 was a fellowship with an expertise in endovascular
21 techniques, which are angiographs percutaneous techniques for
22 dealing with things like strokes, aneurysms, malformations to
23 the coronary arteries.

24 Q. I see nothing here, Doctor, that shows any
25 particular special forensic training of any kind. Am I

1 misreading this document?

2 A. I have no training in forensics, no; just treat the
3 person.

4 Q. You do treatments. Thank you.

5 MR. WHIPPER: Again, Your Honor, I think there's a
6 limitation on what his expertise goes to.

7 THE COURT: Is there any objection to the doctor's
8 qualification as an expert witness in the field of
9 neurosurgery? Is that what you are offering him as?

10 MR. CONDON: Yes, Your Honor.

11 MR. WHIPPER: No, Your Honor.

12 THE COURT: Without objection then, the doctor, this
13 witness, qualifies as an expert. Ladies and gentlemen, I
14 will define this in more detail for you when I give you a
15 charge at the end of all of the evidence. I will tell you
16 right now, normally, when somebody testifies, they can only
17 testify about what they saw, heard or smelled or something
18 like that. There is an exception for witnesses who are
19 called expert witnesses. If by a particular training or
20 methodology or expertise or education, someone has been
21 qualified as an expert, they may offer an opinion, okay, as
22 to what any matter the Court deems relevant or any matter
23 that may be relevant.

24 Now, just because an expert witness is allowed to
25 offer an opinion, doesn't mean you have to accept the

1 opinion. Okay? That's something for you to consider with
2 all of the evidence, giving the credibility and weight you
3 believe it deserves, because you are the judges of the facts.
4 Okay?

5 All right. Solicitor.

6 BY MR. CONDON:

7 Q. Thank you, Your Honor. On September 24th, 2014, did
8 you treat the victim, Lamont Washington?

9 A. I did.

10 Q. And were you on call that night? Can you describe
11 how that went down.

12 A. Sure. So I was on call for neurosurgery that
13 evening. And it was late in the evening, I believe. I don't
14 remember the exact time, but the way our work flow is, we
15 have resident physicians who are in training, like the
16 training the interns use with the judge. So we have a
17 similar parallel in the hospital. So they are in the house,
18 in the hospital. And I take call at home, available
19 immediately by phone call.

20 So we had heard about this patient coming into the
21 EMS. The story we got was a head trauma of some sort. And
22 the story we got from EMS before he got to the hospital was
23 that he was in pretty bad shape, meaning he was altered. He
24 was confused, disoriented, mumbling, moving things roughly
25 symmetrical, some obvious paralysis, but really not with it,

1 you can say.

2 When he arrived in the trauma bay, we got the
3 immediate alert, meaning my team, the resident physicians in
4 the hospital. The trauma team evaluated him initially. They
5 deemed that he was not protecting his airway, what we refer
6 to it, meaning he wasn't wake enough to really breathe on his
7 own. So they decided to intubate him, which is something
8 they did for his own safety. By the time my team evaluated
9 the patient --

10 MR. WHIPPER: I'm sorry. Your Honor, I am having a
11 real problem hearing him. Perhaps we can reposition. Maybe,
12 Doctor, if you turned and faced the jury, but you can pull
13 that thing closer to your mouth.

14 THE COURT: Appreciate it. Thank you, Mr. Whipper.

15 THE WITNESS: Sure. I'm a fast speaker. Should I
16 started from the beginning?

17 THE COURT: Yes, sir, that would be fine.

18 THE WITNESS: So on that evening, he arrived late in
19 the evening. I was the physician on call from home. So the
20 way it works, we have a resident physician who is a student
21 of neurosurgery, like the students with the judges we have
22 here today. They are in the hospital. They are the ones who
23 respond first. We are available at home, on call.

24 Patient, we got the story, had had some sort of head
25 trauma, was the short end of it we heard coming in. And we

1 had heard that prior to arrival to the hospital, he was
2 mumbling incomprehensibly. He was disoriented. He was
3 opening his eye, slumber and drowsy, moving things
4 symmetrically. That to us alerts us to something on the
5 order of a severe brain injury. So we are looking out for
6 that.

7 When we arrived at the trauma bay, the general
8 surgery trauma team evaluated him first. That's how it
9 always works. And they deemed that he required a breathing
10 tube. So they intubated him to protect his airways so that
11 he wouldn't swallow secretions and have pneumonia. So to do
12 that, they required give him medications. You can't just do
13 that to somebody awake. By the time we went, me and my team,
14 the resident physician that was in the hospital evaluated the
15 patient. He was already drugged, meaning we could not
16 examine him. But from the last story, we knew that he was
17 pretty altered.

18 Right after putting the breathing tube in, they did
19 the right thing, which is getting a CAT scan on the brain
20 immediately. That's when we came in with the CAT scan,
21 having the patient in the trauma bay with the breathing tube
22 in. Can't examine medication, but knowing he was altered,
23 disoriented, altered mental state coming in, we did a CAT
24 scan.

25 Q. And what were the injuries that you diagnosed that

1 night?

2 A. So he had a fracture or break in the skull, which is
3 behind on the right side just behind the ear, on the
4 parietal-occipital junction, a break in the skull. And then
5 more life-threatening was the bleed that ensued from that.
6 So there's a series of veins that drain the brain, small ones
7 along the surface of the brain. They come together towards
8 the middle. There's a very large vein called superior
9 sagittal sinus. And it splits off to transverse sinus on
10 both sides, sigmoid and then drains to your jugular veins.

11 Most of the flow the way -- this is the way we are
12 all designed -- happens to be on the right side. So he had a
13 fracture just overlying these large veins that drain the
14 brain. These veins are positioned between the skull and the
15 brain. So they are outside the brain in that small potential
16 space between the skull and the brain.

17 The fracture was right overlying the brain. You can
18 imagine the fracture from the energy and the jarring had
19 lacerated or coated that brain. So he had bleeding into that
20 space between the skull and the brain that was pushing the
21 brain. If you can imagine bleeding happening in the skull
22 and the brain was accumulating the pressure. And the brain
23 is pushed away from the skull. So he had what's called an
24 epidural hematoma. "Epidural" means on top of the dura, and
25 "hematoma" meaning blood clot. So he had a bleeding in the

1 brain from laceration or cutting of the vein from the
2 overlying skull fracture.

3 Q. If that was left untreated, what would be the
4 result?

5 A. He would have died.

6 Q. What level of emergency was this?

7 A. So as I said, we had gotten a headsup that he was
8 coming in. Based on the story and physical exam findings in
9 the prehospital setting, by the time he got there, CAT scan,
10 our team was on it and within minutes, I was notified and I
11 was jumping out, getting in the car. So it was a Level I
12 trauma.

13 A craniotomy was a brain surgery. That alerts
14 everybody to get things moving, anesthesia, surgery, nursing.
15 And it's the highest level that we have. The patient is in
16 the surgery room from the time he does need that alert and 15
17 minutes is the fastest we have. So gives us just enough time
18 to get in. While I'm driving in, the patient is going to ER
19 with my resident physician that was in the hospital at that
20 time.

21 Q. So he went straight to the operating table. And can
22 you describe to the jury what a craniotomy is?

23 A. So a craniotomy is just a general term for opening
24 the skull. So "cranio" meaning cranium of the skull and
25 "otomy" meaning an opening. So it's an opening of the skull.

1 Depending on the reason for doing the craniotomy, could be
2 one of many different locations, but it's essentially
3 making -- using a drill, usually making a hole in the skull.
4 And then we use another drill to connect, making single --
5 multiple singular holes or one single hole and connecting,
6 essentially opening up an island of bone for the skull to
7 work inside the head. And later on, we can put the bone
8 flap, as we call it, back on.

9 Q. And can you describe to the jury how you performed
10 the surgery on the victim in this case?

11 A. So we opened up an incision just overlying the skull
12 fracture. Based on the CAT scan findings, we could
13 immediately see that the bone was fractured and there was a
14 sharp edges protruding. So we drilled around it,
15 incorporating a craniotomy or brain skull opening around that
16 area that was fracture. And we can then raise it. And then
17 we are immediately looking at the blood clot from the
18 fracture. So we evacuated or removed that blood clot. Once
19 that blood clot was removed, the brain was able to rebound
20 back.

21 And then we went to repair that tear in that vein
22 that I mentioned. That vein is wrapped by what's called a
23 dura. And there was a pretty short tear. So I sutured it
24 closed with a suture and took a piece of muscle that was next
25 to it and we sutured that in as a patch, basically stopped

1 the bleeding. Then we put that bone back on and plated it,
2 because we have screws and plates to put it back together.

3 Q. And what is the transverse sinus injury?

4 A. So the transverse sinus, like I mentioned, is one of
5 the large veins that drain the brain. So as many veins in
6 the brain, receives a lot of blood flow. And a lot of
7 different veins that essentially collects, like a little
8 river becomes a big river. They collect toward the middle,
9 running down the middle, sigmoid sinus, and then it splits.
10 One goes to the left and one goes to the right. And the
11 transverse sinus refers to that large conglomerate of veins.
12 So that venous channel is just the transverse sinus, is
13 collecting the venous blood return from a large portion of
14 the brain. And that's ultimately going to drain down to the
15 neck. It's going to go back to the heart and go to the
16 lungs.

17 Q. And how strong is this bone in your skull there that
18 was fractured? Can you talk about that?

19 A. As far as the strength, I can't give you numeric
20 number for that, but this is a skull, so requires some degree
21 of energy to fracture that.

22 Q. And can you opine on the level of energy required to
23 fracture that part of the skull?

24 MR. WHIPPER: Objection, Your Honor.

25 THE COURT: Sorry?

1 MR. WHIPPER: Objection. He's not qualified.

2 THE COURT: Overruled.

3 MR. WHIPPER: Thank you, Your Honor.

4 THE WITNESS: So a fracture and energy pattern of
5 that kind would be something consistent with high energy,
6 like a motor vehicle collision, a car accident, maybe a
7 person being ejected from a car or falling from two or three
8 stories, something that's pretty high energy.

9 Q. Would it be something if you tripped and fell on the
10 pavement you would get it?

11 A. It would be unlikely that that would be sufficient
12 to cause that.

13 MR. WHIPPER: Objection, Your Honor.

14 THE COURT: Objection noted. Overruled.

15 BY MR. CONDON:

16 Q. Would you describe it as severe blunt force trauma?

17 A. Yes.

18 Q. Did you also diagnose the victim with a traumatic
19 brain injury?

20 A. That's correct.

21 Q. And can you describe what that is?

22 A. Sure. So traumatic brain injury is a general term
23 used for any kind of injury, can be immediate, permanent.
24 Short-term or more permanent, long-lasting effects depends on
25 the severity, patient factors. Depends on a lot of different

1 factors. That's a general term used for a head injury. And
2 it could be mild or severe.

3 In this case, it was a severe, life-threatening
4 injury, that had gone untreated, would have resulted in
5 death.

6 Q. What is bleeding out of the ear indicative of?

7 A. So any time you have any patient that's had a trauma
8 of any kind, motor vehicle collision, fall, assault, whatever
9 it may be, bleeding out of the orifice of the ear is one of
10 the signs of trauma that doctors, ER doctors, look for, as
11 well as can indicate a severe skull injury, communication
12 between bleeding inside the brain and out of the ear.

13 Q. I'm going to show you what's been marked as State's
14 Exhibit 19 and 20. Will you take a minute and look at that.
15 Let me know if you recognize them.

16 A. Yes, I had.

17 Q. And what are those?

18 A. Did you want me to show it or --

19 Q. We'll put it up on the board in a second.

20 A. So it's the noncontrasted brain CT of the patient we
21 are talking about. One is in the brain cuts. And one is in
22 the skull or bone cuts.

23 Q. That's is a true and accurate depiction of the
24 victim's scans there?

25 A. Yes, it is.

1 MR. CONDON: Your Honor, I would ask these two
2 exhibits be moved into evidence.

3 MR. WHIPPER: Without objection.

4 THE COURT: Without objection, admitted into
5 evidence. Permission to publish.

6 (State's Exh. 19, CAT scan, was received in
7 evidence.)

8 (State's Exh. 20, CAT scan, was received in
9 evidence.)

10 BY MR. CONDON:

11 Q. Can you explain to the jury what's going on?

12 A. Sure. So this is a CT scan. It's an X-ray-based
13 imaging that we use very frequently, very readily available.
14 So we use it, for example, in the trauma, critical care,
15 acute emergency setting. This is the bone CT, the bone cuts,
16 which is just the way that those images are acquired and
17 proposed. It's optimized to looking at the skull, it's
18 looking for fractures. You can see the brain in the middle.
19 You can't really see well. There's another window in a
20 minute we will see. This is the best one to look up for
21 skull fractures.

22 So in this instance, the way that it -- imagine the
23 patient is laying flat and you are looking from the feet up.
24 So from this fracture, I'm going to show you on your left
25 hand is actually his right hand. So he's laying like this

1 (indicating) with the right side here. Do you want me to get
2 up and point?

3 Q. If you don't mind.

4 A. This is the back of the head.

5 THE COURT: Just talk loud so everybody can hear
6 you.

7 THE WITNESS: Sure. Back of the head, if you see
8 the round orbits. The eyeballs are at the top of the screen
9 and the nose in the middle. Ears would be along the sides.
10 This is just behind the ear. You can see over here these
11 little breaks in the skull. So that's the skull fracture.

12 You can compare it to the other side. There are
13 some areas here where the skull comes together. That's what
14 you are seeing on the other side. That's normal. This is
15 diffusion of skulls between childhood to adulthood. But
16 these breaks here, that's the fracture.

17 Q. Is that a pretty serious fracture?

18 A. That is. So now, this is another brain CT. It's
19 the same -- very similar view. So, again, the back of the
20 patient is here. We're looking at feet up. So the right
21 side is on your left side, which is here. The break would
22 have been right here. Can't see well, because it's 10 or
23 more, looking at the brain itself, not the skull surrounding
24 it.

25 But you can see lens-shaped white area here? That's

1 the blood clot. So that transverse sinus, superior sinus
2 drains all those confluence of veins here and then it splits
3 off to the right and the left. And it comes back behind your
4 ear, eventually to the jugular in your neck.

5 So right where the skull was, it had lacerated or
6 broke the outer layer of the vein here. And you are seeing
7 an accumulation of blood. It's about a centimeter in
8 thickness, about 4 or 5 centimeters in length. That's a
9 pretty severe injury for somebody who's young, as opposed to
10 an old person. Old people brain shrinks over times. So have
11 a little more room. Skull is an enclosed compartment. So
12 it's a finite volume there.

13 Anytime you add volume, like swelling, tumor, blood
14 clot, the pressure goes up very dramatically, because it's an
15 enclosed compartment. It's just physics.

16 So the small amount of blood clot in someone his
17 age -- I think he was in his 30s, yeah -- that's a severe,
18 life-threatening brain injury. That coupled with the examine
19 that he came in with, which is he was disoriented, mumbling
20 incomprehensibly, needing a breathing tube to protect his
21 airway and breathe sufficiently, this is why we called it
22 level one alert. This is why I came out of bed and did
23 surgery right away.

24 Q. He was pretty much on his death bed potentially?

25 A. This is in the process of dying. You can't say with

1 100 percent certainty that he would have died, but it's
2 certainly very, very probably that he would have died.

3 Q. And can you explain what happens as more and more
4 blood keeps pumping here, what's the potential?

5 A. So what happens is, initially when you get that
6 break in the vein, that's an immediate pouring out of the
7 venous blood, some pressure. The brain -- like I mentioned,
8 he's a young patient, so he's going to have a full brain, not
9 really much room there. So there's a little bit of a tug of
10 war that happens. The brain is pushing back. Vein is
11 bleeding. So there would be a little bit at some point the
12 pressure will exceed the ability for that vein to pour more
13 blood out. And that's the brain pushing back. That really
14 means that the brain is under a lot of pressure. So that
15 causes direct injury by itself, pressure on the brain.

16 Also, indirectly, if the pressure increases,
17 globally in the skull, which, again, is closed compartment,
18 increases the resistance to blood flow traveling up from the
19 heart, which that can decrease the blood flow to the brain.
20 That can cause an indirect global injury. So direct injury
21 from the pressure exerted right there where that injury
22 occurs in the surrounding -- immediately surrounding the
23 brain, and then also an indirect injury from an elevated
24 pressure that decreases the blood flow to the entire brain
25 compartment. And this is why he was altered. And he was

1 disoriented and muttering incomprehensibly. And this is
2 something that would have progressed as it was to coma and
3 eventually death, most likely.

4 Q. Can you explain to the jury, how did you put the
5 skull back together? Did you have to use plates, screws?
6 How did that --

7 A. We did. I don't know exact details on that
8 particular case, but I know we drilled that craniotomy around
9 the fracture, took out the bleeding that occurred. And then
10 we put that bone back on. I think we plated it with breaks,
11 because that part, honestly, is not that critical. So I
12 don't remember the details of it. But we do -- we have a
13 series of plates, which are like little brackets that span
14 breaks and put screws in alongside together. And we can span
15 that break. That's pretty standard. We do that with all our
16 surgeries.

17 Q. If I handed up your report, would that refresh your
18 memory?

19 A. Sure.

20 MR. CONDON: Your Honor, may I approach the witness?

21 THE COURT: Yes.

22 THE WITNESS: So he handed me a lot of things. I'm
23 looking at my operative note. So I looked things over. And
24 we describe it not in great detail, but essentially put the
25 bone back on and then plated it. Once the pressure was

1 removed, we put the bone back on.

2 BY MR. CONDON:

3 Q. Okay. Thank you. I know you saw him for a
4 follow-up several times, some diagnosis for traumatic brain
5 injury, some hearing issues. Do you recall all that?

6 A. Yes.

7 Q. Also issues with smell?

8 A. Uh-huh.

9 Q. And did you refer him out to specialists to follow
10 up on those issues?

11 A. Yes. I don't have the record in front of me, but I
12 think we had him referred to neuropsychologist for cognitive
13 evaluation, memory, attention, executive function, that sort
14 of thing.

15 Q. What kind of medication was he prescribed after
16 surgery?

17 A. After the surgery, he was on -- again, not having
18 the records, just from my recollection, he was on anti-blood
19 thickening, seizure-preventing medication, very routine after
20 a head injury and also after invasive surgery we do. I think
21 that was the only one I can recall that I started, from my
22 perspective.

23 Q. Would he be on some pain medication too?

24 A. Yes, certainly pain medication.

25 MR. CONDONE: No further questions, Your Honor.

1 THE COURT: All right. Mr. Whipper, your witness.

2 MR. WHIPPER: May it please the Court, Your Honor.

3 THE COURT: Yes, sir.

4 MR. WHIPPER: May I approach the witness, Your
5 Honor?

6 THE COURT: Yes, sir.

7 CROSS-EXAMINATION

8 BY MR. WHIPPER:

9 Q. State's Exhibit 11, I'm showing you, Doctor, if you
10 will look at that. Now, I don't know who took the
11 photographs. May have been taken by someone from the
12 sheriff's department but at any rate, what does that
13 particular photograph show you as you look at it? I think
14 you mentioned that closing up was not something that you were
15 a part of in the operation?

16 A. No, I was.

17 Q. All right.

18 A. I --

19 Q. The jury will -- so this will tell you -- that's
20 what I want you to do. Looking at that, that tells you what
21 happened in closing. Can you tell us? And would it be good
22 for you, if I put that under the microscope?

23 A. Sure.

24 Q. I mean, so that we can do it at one time so that the
25 jury can see.

1 A. Sure. I don't know what you are getting at, but --

2 Q. Hold on a sec.

3 A. So we are looking at back parietal occipital region
4 in the back of the head. You can see the right here. And
5 you can see a semi-linear X-type incision enclosed with
6 staples. And you can see some hair that's been clipped
7 around it.

8 Q. So then these staples are all the way up here?

9 A. Right.

10 Q. And it's this far up?

11 A. Correct.

12 Q. And some incision is there and that incision
13 indicates surgery?

14 A. That's where we cut the scalp to be able to get
15 sufficient exposure to be able to open the bone broadly
16 enough to get the --

17 Q. Where was the fracture under that S? Run the whole
18 way?

19 A. It's approximately there. (Witness indicates.)

20 Q. Wait a second. You've got something you can use.

21 A. Do you want me to show where the fracture was?

22 Q. Yes, sir.

23 A. Fracture was roughly in this area here.

24 (Indicating).

25 Q. So then the fracture ran in some kind of way? Can

1 you tell us about how it ran? Fracture, did it run from here
2 to here or did it run from, say, somewhere in here down to
3 here?

4 A. So there were several fracture lines. This is two
5 years ago, so I don't have exact recollection. Frankly,
6 that's just not relevant from my standpoint.

7 Q. It's not relevant from your standpoint? That's part
8 of the forensics part of it. And that's the way you are not
9 trained, correct?

10 A. It's not sufficiently relevant to the care of the
11 patient that I would recall two years ago.

12 Q. One of the things that happened, Doctor, I tried to
13 talk to you before this trial. Do you remember that?

14 A. I do not.

15 Q. Do you remember that you weren't sure if you could
16 talk to me? Do you remember that?

17 A. I have no recollection of that.

18 Q. No recollection? But you weren't sure because you
19 didn't know if you should talk with the person who was
20 representing the defendant? Isn't that one of the reasons
21 why you didn't -- weren't sure about that?

22 A. We get calls from a lot of people, patients,
23 families. I do not recall any phone calls you may have or
24 may not have placed to my office.

25 Q. At any rate, you talk about the occipital region.

1 And can you show us where that is again on this photograph?

2 A. I mentioned the parietal occipital region. The
3 parietal occipital, so at the junction, that's the parietal
4 occipital region.

5 Q. Parietal region actually runs on both sides of the
6 skull, doesn't it? Runs from here across here to there,
7 doesn't it? Doesn't it?

8 A. Uh-huh.

9 Q. And so part of what happens is that the head is
10 joined in certain areas; isn't that correct?

11 A. Right.

12 Q. So you've got the parietal area and you have the
13 occipital area, correct?

14 A. Correct.

15 Q. And this fracture was where the occipital joined the
16 parietal; is that correct?

17 A. It is, correct.

18 Q. And, Doctor, are you familiar in any way with the
19 Resident Manual of Trauma to Face, Head and Neck? Are you
20 familiar with that book?

21 A. That particular book, no.

22 Q. It was put out by the American Academy of
23 Otolaryngology. I guess that deals with eye, ear and nose
24 kind of thing, about head and neck surgery, first edition,
25 came out 2012. Not familiar with it?

1 A. No.

2 Q. It talks about -- because I think -- now, there are
3 several impressions in your records. If you look at page 29
4 in your records --

5 A. Okay, 29.

6 Q. -- there's an impression there. Is that yours or is
7 that one of the other physician's impression?

8 A. That is by a radiologist. That's not my impression,
9 no.

10 Q. But it's something you would look at, though, in
11 terms of dealing with the issue, the problems this young man
12 was experiencing; isn't that correct? At least you would
13 want to know that; isn't that correct?

14 A. In real-time, when he come in, we do not rely on the
15 radiologist's interpretation.

16 Q. So this report then, how does this help in any way?

17 A. For more -- so the radiologist is required to
18 interpret any imaging. And that could happen either in acute
19 setting we requested or later that day on the following day.

20 Q. Would you, please, look at that interpretation and
21 tell us if it's far off from what you dealt with?

22 A. Right subdural hematoma, mainly on the right
23 occipital parietal temporal lobes causing --

24 Q. I will tell you what. Let's do this. Let's do some
25 more show and tell. Take a look at this, please, sir. See

1 if that's something you are familiar with.

2 A. Yes.

3 Q. I bet you are. Why are you familiar with that?

4 A. It's standard skull diagram.

5 Q. And who is it done by?

6 A. This one is by Frank Ned (ph).

7 Q. Nobody gets to ask Mr. Ned, does he?

8 A. Right.

9 Q. All right. This particular view, the skull is on
10 the left side?

11 A. Correct.

12 Q. What's going on the right side as well; is that
13 correct?

14 A. Yes, that's correct.

15 Q. So let's look at what your impression says. And you
16 can use the pointer and tell us what the impression is based
17 on what we have here. You can point to it.

18 A. What the impression is?

19 Q. Yeah, from the radiologist, so you can tell us
20 what's going on there.

21 A. Oh. So with regards to the fracture, which is image
22 you are looking at, right parietal skull fracture extending
23 inferiorly along the lambdoid suture, which connects
24 occipital and parietal, anteriorly through the mastoid air
25 cells to the middle here to the temporal mandibular joint.

1 I think he wants me to show what that impression --
2 so he's describing a fracture that will run through this
3 suture. "Suture" is just the word for the junction of these
4 two bones that come together when you are a kid, become an
5 adult. Through this junction of the lambdoid suture and
6 extending towards the mastoid air cells, which are right
7 behind the ear.

8 Q. That's where you were talking about this fluid
9 issue; is that correct?

10 A. The --

11 Q. So then you go down to the fourth paragraph there.
12 Right parietal skull fracture extending inferiorly, which
13 means it ran under the skull; is that correct?

14 A. Right. Correct.

15 Q. And then it sort of runs -- sort of went forward,
16 just as you described, into where these air cells are. And
17 dealt with the mandible (sic) joint, which is that area where
18 the jaw bone comes up, isn't it?

19 A. That's right.

20 Q. And that's on the right side of the head?

21 A. Correct.

22 Q. Now, part of what the problem is, Doctor, is that
23 you are not aware of the accident scene or exactly how this
24 thing may have happened? You've done no calculations based
25 on physics, his height, his weight. Is there anything in

1 your records that tells you how much his head weighs?

2 A. No. That's not --

3 Q. That's not what you do. The surface that he fell
4 on, was it rough? Was it smooth? Did he hit his head on the
5 corner of something? None of this you know anything about;
6 isn't that correct?

7 A. That's not something that I'm involved with, no.

8 Q. You are familiar with whiplash, aren't you, Doctor?

9 A. As a layman's term, yes, I am.

10 Q. And you probably are familiar too with what whiplash
11 is. It's when you are dealing with necks and heads and that
12 kind of thing.

13 A. Right.

14 Q. Right? And whiplash usually is something that
15 happens when the head goes back and forth like that?

16 A. Right.

17 Q. Which is something that can happen when someone
18 falls, common sense; isn't that correct?

19 A. Correct.

20 Q. Now, according to this Resident Manual of Trauma,
21 these longitudinal injuries, thin runs, classically result
22 from a blow to a temporal parietal region. And, of course,
23 they are accompanied by some hearing loss. You wouldn't
24 disagree with that either, would you?

25 A. I think, generally speaking, that's a safe statement

1 to make.

2 Q. Because of how we are put together, there's a lot of
3 close tolerances in the body; you would agree? In other
4 words, the space between moving parts and even joint parts
5 can be very small. Do you disagree with that?

6 A. I think, sure.

7 Q. These are wonderful machines. And that's why
8 sometimes in the morning, when we are 28 years old, we get up
9 and we zoom. And we turn 50, we get up and we don't zoom so
10 much. You agree? Because there are things that happen. For
11 instance, if I develop a calcium deposit in one of my joints,
12 and over years it grows from, oh, my goodness, something less
13 than the length of my fingernail to the point where it's
14 twice the length of my fingernail, then I start to feel pain.
15 You agree? That's possible. I mean, that happens,
16 arthritis.

17 But my point to you doctor is this. This injury,
18 which is serious, no one contends that this injury is not
19 serious, and so part of what happens here is that if you have
20 microintrusions into the veins from the bone, you are going
21 to have microtears, which causes release of fluids in places
22 where it shouldn't be; is that correct?

23 A. Honestly, I don't know what you are talking about.

24 Q. Let me ask you this. I don't have a problem with
25 that. I'm not a surgeon, but I can tell you this, I can tell

1 you this, if something is sharp cuts something that's not so
2 resistant, it's going to break it. I can bet your bottom
3 dollar on that. And these bones cut blood vessels and some
4 of those tissues, like the transverse sinus, and they got
5 torn. And that's bone that did some of that. That's why you
6 have to lift it up and put it back; isn't that correct?

7 A. Correct, the bone tore --

8 Q. So I'm just saying to you that I understand it's a
9 serious injury, but I'm telling you, because of these close
10 tolerances that we have in our body, a lot of times it
11 doesn't take a lot of displacement. I don't need it to move
12 two inches or six inches. It could just move a centimeter or
13 two and cause a tear. You might not want to admit that, but
14 that's a fact. So, this injury, in my opinion, could have
15 happened in a lot of ways.

16 Let me ask you this, Doc. When he came to the
17 hospital, this blood from his mouth represented drainage from
18 the normal sinus cavity. No?

19 A. I think you are referring to there was some blood in
20 the ear orifice.

21 Q. We heard there was blood. We can see it right here.

22 A. There may be. I just don't recall that.

23 Q. And that's one of the reasons why when Mr. Condon
24 had the CT scan here, he had to have them turn around so we
25 could see the back of the head, him laying on the table

1 looking up to the front, because we want to see those sinuses
2 and have everything in the right perspective, correct? All
3 right.

4 Doctor, you will need to speak a little bit. You
5 are nodding. She's good, but for a nod, we have to have yes
6 or no. Okay?

7 A. Sure.

8 Q. Now, you know, one of the things that I have to ask
9 about, you've talked about the kinds of high-energy force
10 involved here?

11 A. Correct.

12 Q. And, like I said, you didn't do any calculations and
13 have anything -- as a matter of fact, you don't do that kind
14 of stuff. But when you talk about falling from a two-story
15 building, dealing with the kinds of force generated by an
16 automobile accident, is that because of your emergency room
17 background? Is that where that's from?

18 A. That is my training in neurosurgery.

19 Q. Let me ask you this. All right. So when the actual
20 injury occurred to, what we have is that that area where the
21 occipital area hooks up with the parietal area?

22 A. Yes.

23 Q. You get the break along that suture line? That's
24 right?

25 A. So as it was described, the fracture extended above

1 it and below it, went through that as well, correct.

2 MR. WHIPPER: Thank you very much. I think that's
3 all.

4 THE COURT: All right. Any redirect?

5 MR. CONDON: No, Your Honor.

6 THE COURT: Thank you, sir. You can step down.

7 Objection to the doctor heading back?

8 MR. CONDON: No, Your Honor.

9 THE COURT: You are free to leave.

10 The State will call its next witness.

11 MR. CONDON: The State calls Kevan Sherbine.

12 KEVAN SHERBINE,

13 having been duly sworn, testifies as follows:

14 THE CLERK: Sir, will you please state your full
15 name and then spell your first name and your last name.

16 THE WITNESS: Kevan Sherbine, K-e-v-a-n,
17 S-h-e-r-b-i-n-e.

18 DIRECT EXAMINATION

19 BY MR. CONDON:

20 Q. Good afternoon. Can you explain to the jury where
21 you work?

22 A. I work at the Sheriff Al Cannon Detention Center.

23 Q. How long have you been there?

24 A. 5 1/2 years.

25 Q. What are some of your duties at the detention

1 center?

2 A. I'm a professional visitation officer. I'm the main
3 point of contact between the inmates and their attorneys,
4 police department, law enforcement agencies and nonlaw
5 enforcement agencies. I answer about 90 percent of the
6 subpoenas that are served on the jail, phone records. And I
7 assist the regular officers with their day-to-day duties.

8 Q. And can you explain to the jury what you do when you
9 get a subpoena for jail calls?

10 A. When I get a subpoena for jail calls, I look and see
11 what exact records they are looking for and date parameters.
12 I enter that into the computer, the inmate's name, their
13 number, the date the call -- date range for the calls they
14 are looking for. I run a query. When the results are
15 returned to me, I print out the hard logs and burn the audio
16 to a disk. I label the disk and put the disk and the hard
17 paper logs in an envelope and seal it, and call the agency
18 that requested it.

19 Q. And can you explain how you maintain the calls with
20 an inmate PIN numbers?

21 A. Those calls are maintained on a database that very
22 few have access to. And that's how we pull -- that's how we
23 maintain and pull the records when requested.

24 Q. And is each person who is at the detention center,
25 do they have a special PIN code?

1 A. They do, yes.

2 Q. So the defendant in this case would have his own PIN
3 code?

4 A. Yes.

5 Q. And are inmates advised that their phone calls are
6 being recorded?

7 A. They are, yes.

8 Q. Are they advised on the actual phone call?

9 A. They are.

10 Q. Is there also a placard by the phones?

11 A. There is.

12 Q. Can you describe that?

13 A. Placard?

14 Q. Yes.

15 A. It basically says all calls are monitored and may be
16 recorded. I think there's 15-minute time limit, something to
17 that effect on the sign.

18 Q. And do the defendants have to identify themselves
19 beginning of the call?

20 A. They do.

21 Q. I'm going to show you two exhibits. First is
22 Exhibit 21 and the second is Exhibit 16. Could you review
23 those and see if you recognize those items?

24 A. I do, yes.

25 Q. And can you explain what those are?

1 A. This is a subpoena for phone records that I would
2 have received in the normal course of business. These are
3 the paper logs that I would print out after running the
4 search of the records. This is the PIN number sheet that
5 every inmate gets when they are coming in the facility with
6 their PIN number written down so they don't forget it. And
7 this is the audio disk that I burned with the calls on it
8 with the inmates' name, the date range, and my name is at the
9 bottom.

10 Q. What's the inmate's name on there?

11 A. Adrian Simmons.

12 Q. So those are the calls pulled from his PIN code?

13 A. Yes.

14 MR. CONDON: Your Honor, we would ask both these
15 Exhibits 16 and 21 be admitted into evidence.

16 THE COURT: Mr. Whipper.

17 MR. WHIPPER: There's a couple of questions I'm
18 going to have to object. I didn't hear certain -- I didn't
19 hear certain things. Maybe I missed it, but his relation
20 to --

21 THE COURT: Hang on. What's your objection? I'm
22 sorry.

23 MR. WHIPPER: Well, I don't think that he
24 established proper chain of custody.

25 THE COURT: Okay. Solicitor, what's your argument

1 as to that?

2 MR. CONDON: I don't believe there's a chain of
3 custody. He says that's the disk burned. He's in court. He
4 wants to cross-examine and argue to the jury it's not that?

5 THE COURT: I agree with the State's position. That
6 objection is overruled. Okay. All right.

7 MR. CONDON: Your Honor, at this time we would like
8 to publish a jail call from October 2nd, 2014 at 20:14, the
9 first three minutes and 17 seconds of that call.

10 THE COURT: Objection noted and objection overruled.
11 You are protected on the record. Permission to publish
12 granted.

13 (State's Exh. 16, Jail call, was received in
14 evidence.)

15 (State's Exh. 21, Phone call log, was received in
16 evidence.)

17 (Whereupon, audio is played.)

18 MR. CONDON: Nothing further, Your Honor.

19 THE COURT: All right. Mr. Whipper, your witness.

20 CROSS-EXAMINATION

21 BY MR. WHIPPER:

22 Q. Mr. Sherbine, your position is -- your staff
23 position, where you function from, is in the lobby; is that
24 what I heard you say?

25 A. It is, yes.

1 Q. So then do you have -- if I asked what your position
2 is, what your title is, what would be your title?

3 A. Professional visitation officer is my title.

4 Q. So your first thing is handling visitation?

5 A. The professional visits with all the lawyers,
6 inmates, as I mentioned earlier.

7 Q. Yeah. And I want to make sure I hadn't missed that.
8 So then you receive requests. You are saying you received
9 these requests for jail calls?

10 A. Yes.

11 Q. Now, you're authorized through your command to
12 handle these jail calls?

13 A. I am, yes.

14 Q. So -- but you are not in charge of all of the actual
15 storage? You are not involved with the computer or servers
16 or any of that stuff?

17 A. No, sir.

18 Q. Are those -- do you know whether or not those are on
19 site or not?

20 A. They are.

21 Q. If I'm not mistaken then, you get a name. I guess,
22 you search a PIN number.

23 A. I search a name and a date of birth, usually is how
24 it goes.

25 Q. Yeah, to get to the inmate?

1 A. Yes.

2 Q. And that gives the PIN number. And what else? Does
3 it give you period of incarceration?

4 A. It gives me every phone call made by that inmate in
5 the specific amount of time.

6 MR. WHIPPER: Thank you very much.

7 THE WITNESS: Thank you.

8 THE COURT: Anything else from this witness?

9 MR. CONDON: Nothing, Your Honor.

10 THE COURT: Thank you, sir. You may step down.

11 MR. CONDON: We are done with him.

12 THE COURT: Any objection to him leaving?

13 MR. WHIPPER: No, Your Honor.

14 THE COURT: Thank you, sir. You are free to leave.

15 (Whereupon the witness is excused.)

16 THE COURT: Call your next witness.

17 MR. CONDON: Briefly call Lamont Washington.

18 THE COURT: The State is recalling Mr. Washington.

19 Sir, come on up.

20 LAMONT WASHINGTON,

21 having been previously sworn, testifies as follows:

22 REDIRECT EXAMINATION

23 BY MR. CONDON:

24 Q. Good afternoon.

25 A. How are you doing, Mr. Condon?

1 Q. Are you okay?

2 A. I'm good.

3 Q. That phone call we just listened to, who is the male
4 on that phone call?

5 A. Red.

6 Q. What's his --

7 A. Him (indicating).

8 Q. What's his real name?

9 A. Now that I know his real name, Adrian Simmons.

10 Q. Do you recognize any of the female voices on that
11 phone call?

12 A. Only Courtney.

13 Q. And Courtney is his girlfriend?

14 A. Yes. She's in the background.

15 Q. I'm sorry, Your Honor. One second, please. This is
16 very small. I'm going to try to show it to you. Right there
17 on 10/2/2014, at -- I'm sorry. I just lost the place.

18 Do you recognize that phone number that he had
19 called, that 442 number?

20 A. Courtney's number.

21 MR. CONDON: Thank you. Just for the record, Your
22 Honor, I was showing him State's Exhibit 21.

23 THE COURT: It's already in evidence?

24 MR. CONDON: Phone call log, that's correct.

25 This is State's Exhibit 16 and is that the phone

1 call?

2 THE WITNESS: Yeah, you heard it, initialed it.

3 MR. CONDON: No further questions, Your Honor.

4 THE COURT: All right.

5 RECROSS-EXAMINATION

6 BY MR. WHIPPER:

7 Q. You listened to the phone call. You heard the
8 voices. You said you identified Courtney and you remembered
9 Mr. Simmons; is that correct?

10 A. There was another person on there too. Her name is
11 Angelique or something. It was three people, if you heard
12 it.

13 Q. Yeah. And you think it's Angelique?

14 A. I tried to find my own research. And the way it's
15 spelled, Angelique, I might be pronouncing it wrong, that was
16 the person that was saying that's you.

17 Q. Supposed -- do you think it might have been
18 something named Angelica?

19 A. Could be, yes, sir, if I pronounced it
20 incorrectly.

21 Q. Now, do you disagree with anything that was said in
22 that recording?

23 A. I don't disagree, but what I would say, he did say
24 400, which it was two phones. At that point, she only wanted
25 me to fix his phone and he said 200. So I knew that was two.

1 We didn't fight. I didn't come here to fight, had no
2 anticipation. Had no anticipation of getting hit in my head
3 with my back turned. I had no anticipation of getting
4 whatever happened to me being happened to me.

5 Q. That is our position too.

6 A. Excuse me?

7 Q. That's something we agree on. But we disagree on
8 the fact that you were going to have your way and you were
9 going to have the last word in that discussion. That's what
10 we may not disagree on. You recognize that, don't you? You
11 recognize that?

12 A. Are you talking about that phone call that we just
13 heard?

14 Q. Yes, sir.

15 A. I wasn't on that phone call.

16 Q. Let me ask you this. You don't deny that there were
17 tons of phone calls on your part regarding this situation?

18 MR. CONDON: I would like to object. Outside the
19 scope.

20 THE COURT: Sustained.

21 MR. WHIPPER: I will rephrase it. No other
22 questions, Your Honor.

23 THE COURT: All right. Thank you, sir. You can
24 step down.

25 THE WITNESS: Thank you.

1 THE COURT: The State can call its next witness.

2 MR. CONDON: Your Honor, the State rests its case at
3 this point.

4 THE COURT: The State rests. Ladies and gentlemen
5 of the jury, now is a good time to take an afternoon recess.
6 Please go back to your jury room. Do not discuss the case.
7 Okay?

8 (Whereupon, the jury leaves open court at 03:22
9 p.m.)

10 THE COURT: All right. Jury is gone.
11 Mr. Whipper.

12 MR. WHIPPER: May it please the Court, Your Honor.

13 THE COURT: Yes, sir.

14 MR. WHIPPER: Your Honor, our motion involves the
15 fact that there's been no evidence offered of anything that
16 connects Mr. Simmons to the injury as its purported to have
17 happened, nothing. The calls that we heard, the question
18 was, why were you using your hands? So that's the best the
19 State's got.

20 So, Your Honor, with that being the case, we think
21 there should be a directed verdict. Within the case, there's
22 no assault that occurred in the way they would like the Court
23 to draw a conclusion.

24 Second, the warrant itself, after all of the
25 investigations, after all of the questioning and talking,

1 even says that somehow he participated in an act. Your
2 Honor, that's not what should go to the jury. There should
3 be a little more than that. And I understand there's been a
4 lot of emotions here today. And it's a serious injury. But
5 there's nothing here in the State's case that makes this man
6 that committed the act that they allege in the way that they
7 allege.

8 So we think that this case has to be dismissed
9 relative to the charge of assault and battery of a high and
10 aggravated nature. That would be our position.

11 THE COURT: All right. Thank you, Mr. Whipper.
12 Replies from the State?

13 MR. CONDON: Briefly, Your Honor. It's kind of an
14 unusual case, because, really, we had everybody agreeing to
15 what happened. First, we had the victim who went through
16 detail about how he was assaulted by the defendant. He
17 identified him in court, how he struck him in the back of the
18 head, had no idea that this was going to happen. We then
19 have his cousin who was in the car and also observed the
20 defendant strike him in the back of the head, testified to
21 that. So we've got two witnesses that are corroborating each
22 other.

23 The injuries then corroborate that, because there's
24 the fracture to the back of the skull. There's the
25 photographs corroborating that. And on top of all of this,

1 we've got him making a phone call in the jail talking to his
2 girlfriend and other people. And, you know, the call starts
3 out of asking him if you are you going to try to keep your
4 hands off people. And he says, I'm going to try. And she
5 says, you are going to F'ing be in prison. And he says, I
6 know, I know. And then they go on to ask, why are you
7 fighting a man like that? And he said, I just hit the man
8 one time. And then they talk about how he goes into a coma.

9 So he's admitting that he hit the man one time,
10 exactly how everyone else said it occurred. We only alleged
11 it was one hit.

12 Then he goes into how the victim is a repairman,
13 which is what he said and everyone else has said. And then
14 talked about his motive, said he felt disrespected, because
15 he kept calling him and calling him. And sure enough, the
16 phone records we introduced shows a pattern of phone calls
17 back and forth, which is the motive in this case why he
18 assaulted the victim.

19 And then it finishes up, and the third-party still
20 is like, okay, why did you hit him? Still not able to
21 understand why. And he said, I just hit him. He came to my
22 house, so I just hit him.

23 So I think in the light most favorable to the State,
24 there's clearly sufficient evidence in this case that it
25 should be submitted to the jury. I don't think it's a

1 close-call in the level of proof in this case.

2 THE COURT: Motion for directed verdict is denied.

3 MR. WHIPPER: Thank you, Your Honor.

4 THE COURT: Yes, sir.

5 MR. WHIPPER: We are ready to proceed.

6 THE COURT: I need to talk to your client real
7 quick. You need time to discuss with him about his right to
8 testify before I question him?

9 MR. WHIPPER: Yes, sir.

10 THE COURT: Let's take about a -- I want to go as
11 far as we can today. How many witnesses do you anticipate?

12 MR. WHIPPER: Well, Your Honor, we've got at least
13 an hour's testimony. We've got three witnesses --

14 THE COURT: Okay.

15 MR. WHIPPER: -- here today.

16 THE COURT: So it's possible --

17 MR. CONDON: If I may inquire, the names and date of
18 birth, so we can run their records.

19 THE COURT: On the witness list that the defense
20 handed up to me, they are which three?

21 MR. WHIPPER: Just one second, Your Honor.

22 MR. CONDON: Sheldon Welcome, Herbert Ladson, Nola
23 Welcome, Andre Simmons.

24 MR. CONDON: Do you have a date of birth for any of
25 those?

1 MR. WHIPPER: I do not.

2 (Off-the-record conference.)

3 THE COURT: So here's what's going to happen. Okay?
4 Y'all are going to do what you need to do with that. Okay?
5 We are going to take about a ten-minute recess. And, of
6 course, Mr. Whipper, you can go over your client's right to
7 testify or not testify, because I'm going to question him
8 about that on the record.

9 As far as scheduling, what you are telling me then
10 is, if the defense intends on calling three witnesses, it's
11 just now 3:30, that's quite a good possibility we could
12 finish testimony today and we can just argue and charge first
13 thing in the morning.

14 MR. WHIPPER: Your Honor, with all due respect, we
15 do have two more witness.

16 THE COURT: So we have five witnesses?

17 MR. WHIPPER: Five witnesses total.

18 THE COURT: You are prepared to do three today?

19 MR. WHIPPER: Yes, sir.

20 THE COURT: But we can argue and charge tomorrow.

21 MR. WHIPPER: Oh, yeah, should be able to do that.

22 MR. CONDON: Who are the other two?

23 MR. WHIPPER: Courtney McDaniel and possible
24 Mr. Simmons.

25 THE COURT: That's kind of how I want to tailor the

1 schedule then. My clerk is working on the charge. Any
2 specific request to charge, we will have a charge conference,
3 obviously, at the end of the testimony and evidence tomorrow.
4 So be prepared to request specifically anything. But we will
5 have something ready to show both of you tomorrow morning.
6 All right? We will be down for about ten minutes and then we
7 reconvene.

8 (Whereupon, a recess transpired.)

9 (Whereupon, the defendant is present.)

10 THE COURT: We are back on the record. Mr. Simmons,
11 if you will please stand for me, sir, and raise your right
12 hand.

13 (Whereupon, the defendant is sworn.)

14 THE COURT: Mr. Simmons, at this time, I'm going to
15 explain to you certain of your rights, certain rights that
16 you have. If you don't understand anything I say, please let
17 me know. And if you want to explain anything in more detail,
18 please let me know. Do you understand?

19 THE DEFENDANT: Yes, sir.

20 THE COURT: Thank you. Make sure you speak up.
21 We've now have reached the stage of the trial where you get
22 to present your defense. Okay? Now, you have the right to
23 claim the protections given to you by the Fifth Amendment of
24 the United States Constitution, which says that no person
25 shall be compelled in any criminal case to be a witness

1 against himself. This means that you cannot be required to
2 testify in this case. Nobody can make you testify if you
3 don't want to.

4 Now, you have the right to testify on your own
5 behalf if you want to, but nobody can make you do that. This
6 is a personal right you have. And nobody can take away this
7 right except for you. Do you understand that?

8 THE DEFENDANT: Yes, sir.

9 THE COURT: All right. Now, if you do decide to
10 testify, you are going to be subject to the same rules that
11 have govern other witnesses. And you can be examined and
12 cross-examined on any relevant issue in this case. Now, I
13 believe before we had discussed that the State does not have
14 any impeachable or Court has made a decision on one case --
15 on one matter that the State is going to try to impeach your
16 testimony. But it's my understanding, Solicitor, the State
17 doesn't have any other information upon which to impeach his
18 credibility as far as prior convictions?

19 MR. CONDON: At this point, Your Honor, we don't.

20 THE COURT: Here's why I'm telling you this. If you
21 decide to testify, you are going to be cross-examined, just
22 like your lawyer has tried to do. He's going to try to
23 make -- the Solicitor's Office will try to make you look not
24 credible or not believable to the injury. Okay?

25 They will also attempt, if they do believe they have

1 a prior conviction within the law of a crime of dishonesty or
2 false statement or punishable by imprisonment for more than
3 one year and I make a determination, they can ask you
4 questions. They can ask you about that and that could make
5 you not look good in front of a jury. Do you understand
6 that?

7 THE DEFENDANT: Yes, sir.

8 THE COURT: If you do decide to testify, this
9 decision on your part must be made freely and voluntarily and
10 intelligently, understanding what your rights are under your
11 Fifth Amendment protections. So if you decide not to
12 testify, let's say you decide, I'm not going to testify, I
13 will instruct the jury that they can't even bring that up in
14 a jury room. They can't discuss it. They can't give that
15 any consideration whatsoever, because you don't have to prove
16 anything. The State has to prove you guilty beyond a
17 reasonable doubt.

18 Now, you could talk to your attorney again. You can
19 talk to your family or friends or anybody else. But the
20 final decision about whether or not you are going to testify
21 is left entirely up to you. Do you understand?

22 THE DEFENDANT: Yes, sir.

23 THE COURT: Now, do you understand what I've
24 explained to you?

25 THE DEFENDANT: Yes, sir.

1 THE COURT: Do you have any questions about what
2 I've explained to you?

3 THE DEFENDANT: No, sir.

4 THE COURT: Have you discussed with your lawyer
5 about whether or not you should testify?

6 THE DEFENDANT: Yes, sir.

7 THE COURT: Do you wish to talk to your lawyer any
8 more about this at this time?

9 THE DEFENDANT: No, sir.

10 THE COURT: Do you wish to testify?

11 THE DEFENDANT: Yes, sir.

12 THE COURT: All right. Thank you.

13 All right. Anything further before we bring the
14 jury back in?

15 MR. WHIPPER: There's one thing, I think. Your
16 Honor, again, we are not aware of what might be in the
17 background of the witnesses, but my motion in limine asks
18 some things I will be using as their -- of some note. I
19 don't know what they may have found. I had a motion on
20 that.

21 THE COURT: All right. This is a good time to deal
22 with this.

23 So, Solicitor, I've already ruled on the grand
24 larceny issue. Are there any other crimes of dishonesty or
25 false statement that the State contends is impeachable as to

1 the defendant?

2 MR. CONDON: Not at this moment, Your Honor, but I'm
3 going to do some digging tonight to see if I find anything
4 else.

5 THE COURT: I mean, I don't know what that means.

6 MR. CONDON: I'm going to see if he's got any false
7 info convictions, which is possible in magistrate court.

8 THE COURT: Do you have his rap sheet as of today?

9 MR. CONDON: I do.

10 THE COURT: Does it show anything on it?

11 MR. CONDON: It doesn't, but I've found it before on
12 other cases. So I probably won't, but we want to check.

13 THE COURT: Okay. Is he going to be your first
14 witness?

15 MR. WHIPPER: No, Your Honor, he's not.

16 THE COURT: We've got time to deal with that then.

17 MR. WHIPPER: I'm talking about my other witnesses
18 as well.

19 THE COURT: Let's talk about the other witness.

20 MR. WHIPPER: Who is going to be next?

21 MR. WHIPPER: Next is going to be Nola Welcome.

22 MR. CONDON: She's got an accessory after the fact
23 to felony charge, 2005. I don't have a disposition for
24 that.

25 THE COURT: Accessory after the fact to felony

1 carries up to five years in prison.

2 MR. WHIPPER: It's our position, as far as we know,
3 we've had no convictions in the past.

4 THE COURT: That's what Nola Welcome has?

5 MR. CONDON: That's correct.

6 THE COURT: That's a crime that falls under 609A.
7 That is punishable more than one year in prison. And it's
8 happened within the past 10 years. So --

9 MR. WHIPPER: But she was not convicted.

10 THE COURT: The question becomes -- she was not
11 convicted?

12 MR. WHIPPER: No, sir.

13 MR. CONDON: I'm not sure, Your Honor. We are
14 checking real quick. Maybe we can address the next person
15 too.

16 MR. WHIPPER: Adrian -- Andre Simmons.

17 MR. CONDON: Your Honor, he's got a 2009 PWID
18 cocaine; 2009 false info to police.

19 MR. WHIPPER: Got a conviction?

20 THE COURT: 2000 what? What was the first one?

21 MR. CONDON: 2008, PWID cocaine.

22 THE COURT: Okay. That carries up to five years?

23 MR. CONDON: I think it's 15.

24 THE COURT: 10 to 15 years. Sorry. All right.
25 Then what's the other one?

1 MR. CONDON: He's got a 2009 false info.

2 THE COURT: That's a crime of dishonesty or false
3 statement?

4 MR. CONDON: That's correct. And I also see a
5 habitual traffic offender, which carries up to five years
6 conviction, and a 2014--

7 MR. WHIPPER: That's a conviction in 2014?

8 MR. CONDON: I would like to impeach him on all
9 those, Your Honor.

10 THE COURT: All right. And the argument from the
11 Defense as to this particular witness? And what's his
12 witness's name.

13 MR. WHIPPER: That's Andre Simmons, Your Honor.

14 THE COURT: Andre Simmons, any argument as to why he
15 should not be allowed to be impeached -- his testimony to be
16 impeached by the State cross-examining him about those
17 convictions?

18 MR. WHIPPER: Those again, Your Honor -- these
19 convictions are dated. Habitual traffic offender is a
20 nonstarter, just an embellished DUS, really, is all it is.

21 The next -- are you sure you've got convictions for
22 PWID? I just don't think it's relevant to this particular
23 situation at all.

24 THE COURT: All right. I disagree. I'm going to
25 allow the State to attempt to impeach the testimony of

1 Mr. Simmons by introducing those three convictions under a
2 609A analysis, taking into consideration Rule 403.

3 Let's go back to Nola welcome. Have we figured out
4 if that's --

5 MS. ASKINS: That charge was dismissed, Your Honor.

6 THE COURT: That charge was dismissed?

7 MS. ASKINS: That's correct.

8 THE COURT: So there is no charge against
9 Ms. Welcome.

10 MR. CONDON: Correct.

11 THE COURT: So that's resolved. Mr. Simmons, we
12 have that. Who else is next?

13 MR. WHIPPER: Herbert Ladson.

14 MR. CONDON: His record is -- got 2006 simple
15 assault.

16 MR. WHIPPER: Do you have a conviction?

17 MR. CONDON: October 11th, 2006. We've got a
18 failure to stop for blue lights, trafficking cocaine, 2008.
19 We've got--

20 MR. WHIPPER: Conviction on the trafficking?

21 MR. CONDON: Correct. Possession of stolen pistol,
22 2012; another assault and battery third degree, 2014.

23 So, Your Honor, we just ask that those felonies be
24 used. We are not going to ask that the simple assaults be
25 used for impeachment. That would be our position. It's

1 relevant.

2 THE COURT: All right. And, Mr. Whipper?

3 MR. WHIPPER: Again, Your Honor, this is just a
4 scarlet letter kind of approach practicing law. I don't
5 think that any of these convictions of what these people did
6 in younger days applies to what they are doing now. And it
7 would have nothing to do with them telling the truth.

8 THE COURT: All right. I'm going to allow the State
9 to use those convictions to attempt to impeach that witness's
10 testimony under 609A and 403 analysis.

11 What else?

12 MR. CONDON: I think that's all for today.

13 THE COURT: For those witnesses?

14 MR. CONDON: That's correct, Your Honor.

15 THE COURT: Anything else for the purpose of the
16 record?

17 MR. WHIPPER: None from the Defense at this time,
18 Judge. One second.

19 THE COURT: Are you ready for the jury? Anything
20 else?

21 MR. WHIPPER: Nothing further, Your Honor. We are
22 ready to proceed.

23 THE COURT: Bring the jury in.

24 MR. WHIPPER: Thank you, Judge.

25 THE COURT: Yes, sir.

1 (Whereupon, the jury returns to open court at 04:09
2 p.m.)

3 THE COURT: The State has rested.

4 Mr. Whipper, you may call your first witness.

5 MR. WHIPPER: I call to the stand Ms. Nola Welcome.

6 NOLA WELCOME,

7 having been duly sworn, testifies as follows:

8 THE CLERK: State your full name and then spell your
9 first name and your last name.

10 THE WITNESS: Nola R. Welcome, N-o-l-a, Reanitia,
11 R-e-a-n-i-t-i-a, Welcome, W-e-l-c-o-m-e.

12 DIRECT EXAMINATION

13 BY MR. WHIPPER:

14 Q. Ms. Welcome, what is your relationship to Mr. Adrian
15 Simmons?

16 A. He's my son.

17 Q. And Andre Simmons?

18 A. My son.

19 Q. How well do you know the Washington family?

20 A. I don't know them that well. I know of them.

21 Q. Did you know of them before this day of September
22 24th?

23 A. Yes.

24 Q. Now, what type of work do you do?

25 A. I work at a bakery.

1 Q. Which one?

2 A. Grey Ghost Bakery on James Island.

3 Q. How long have you been there?

4 A. I just started.

5 Q. And before that?

6 A. I used to do, like, home healthcare, taking care of
7 family.

8 Q. Now, what do you recall about the incident date that
9 we are here about?

10 A. Well, that particular day, I was in the house with
11 my mother and I heard an altercation outside.

12 Q. One second, please, ma'am. I'm going to ask you to
13 sort of slide to your left. And you were saying you were at
14 the house?

15 A. Yes, in the house with my mother.

16 Q. Now, who all live at the home with you?

17 A. Well, at that time, it was me, my mother, my
18 granddaughter and Adrian and Shelly.

19 Q. Now, on this particular date, who was at the house
20 with you?

21 A. Me, my mother.

22 Q. In the house, inside and outside, tell me.

23 A. Me and my mother and my granddaughter, granddaughter was in
24 the house. Sheldon was outside. Andre was inside. He was
25 outside, but he came in the house, and then he went back

1 outside. Then there was their friend, or I guess they call
2 him H.M. I can't remember his real name. And some other
3 boys, I don't know exactly who all were outside by the
4 barrel, because I was at the house.

5 Q. You say by the barrel?

6 A. The barrel in the backyard where they were burning
7 firewood, sitting by the fire.

8 Q. So now tell me what brought your attention to what
9 was going on outside?

10 A. I just heard an altercation outside. I didn't pay
11 any attention at the time. My mother asked me, came and
12 asked me what was going. I was in my room. Did you hear the
13 noise? And I came out and she walked outside at the time. I
14 saw Adrian and the young man standing on the side of the
15 house, like on the corner of the house talking and whatnot.
16 But my mother and I, we went back in. And my mother said she
17 wanted the man to leave the yard. And I went back outside.
18 When I came back out there, I saw a young man on the
19 pavement.

20 Q. Let me show you a photograph.

21 MR. WHIPPER: May I approach the witness, Your
22 Honor?

23 THE COURT: Yes.

24 BY MR. WHIPPER:

25 Q. Do you recognize that?

1 A. That's my mother's house.

2 Q. And that particular area that's in that
3 photograph --

4 A. Yes, sir.

5 Q. -- what can you tell me about that area?

6 A. Right here, up in this area, is where I saw the two,
7 right up in here in the corner.

8 Q. And when you came out, you said someone was on the
9 ground?

10 A. Uh-huh.

11 Q. And tell us about that with regards to that
12 photograph.

13 A. Well, he was on the ground, laying, like, on his
14 back, like, his head hit the concrete. That's concrete. And
15 I was like, what's going on? Who's the young man? And they
16 didn't said anything, just told me to go back in the house,
17 they go it, whatnot. And y'all see the man on the side, you
18 know. What's going on?

19 Q. Now, let me ask you. You said that you came in,
20 there was some kind of discussion going on, a talk. You
21 thought it was an allegation?

22 A. Uh-huh.

23 Q. Why did you thought (sic) it was an altercation?

24 A. Because the loud talking, mouthing each other,
25 something about money or phone or whatnot.

1 Q. And then you said you went back in?

2 A. Uh-huh.

3 Q. So when you went back in, do you have a sense of how
4 long you were in before you came back out?

5 A. Not even five minutes, because I went in my room.
6 And my mom came to the door, because she was, I guess, all
7 the way upstairs. And she came to the kitchen door. And
8 that's when she asked me what was going on. And I told her I
9 didn't know. I went outside to see what was going on. And I
10 saw the young man on the ground.

11 MR. WHIPPER: This would be Defendant's Exhibit 3, I
12 think.

13 THE COURT: Any objection?

14 MR. CONDON: No objection.

15 THE COURT: Without objection, introduced as
16 defendant's next in order.

17 (Defendant's Exh 3, Photograph, is moved into
18 evidence.)

19 Q. When did you know that the gentleman that was on the
20 ground was not on the ground?

21 A. When did I do what?

22 Q. The fellow that was on the ground was no longer on
23 the ground, when did you know that?

24 A. When he wasn't on the ground?

25 Q. Yes, ma'am.

1 A. When I came back outside later on and the young man
2 wasn't there. The car or whatever that was in the driveway,
3 in the yard, was gone.

4 Q. Now, what do you recall about that car before it
5 left? Can you tell us a little bit about where it was
6 located in location to the area that you showed us?

7 A. Okay. When you drive up in the driveway --

8 Q. Let me do this for you. Let me do this with the
9 photograph.

10 A. Okay. Like right up in here, there's my bedroom,
11 right here. So I can hear, you know, what's going on and
12 what not.

13 Q. Let me do this, let me hold that picture. Are. I
14 want you to stand up and do your best to point?

15 A. Right up in this area, like, in here, front end of
16 the house, right up in here.

17 THE COURT: Can you all hear? Okay.

18 THE WITNESS: Right up in here, the corner of the
19 house, when you come up, up in here.

20 Q. So that's in the sort of the front end of the
21 driveway? Is that where you saw a car?

22 A. In the middle. When I came out the door, I saw the
23 car.

24 Q. Now, which door did you come out of?

25 A. This door right here.

1 Q. That back door?

2 A. My room is right there. And I came right up in my
3 room.

4 Q. And you could see that car?

5 A. Uh-huh, when I come out the door.

6 Q. Do you have an idea of how far it was from where you
7 were standing?

8 A. From where I was standing? I was standing -- I come
9 out the door, I was in the doorway, standing in the doorway.
10 And the car was right up in here, like where I could see the
11 car.

12 Q. Two car lengths from where you were? Three car
13 lengths from where you were? I don't know. How far is it
14 from that door do you think to where you were pointing at in
15 the driveway?

16 A. I would say about 20, 30 feet.

17 Q. Came out, that car was gone; young man was gone?

18 A. Uh-huh.

19 Q. At that time when you came back out, who was at the
20 house with you?

21 A. My two sons, Adrian and Andre, and their friend
22 H.R., the other young man I don't know. They were in the
23 back.

24 Q. Did you all talk about what happened?

25 A. Not at that moment, because I was in the house with

1 my mother. When I came back out, I asked Adrian who's the
2 young man. He didn't get into detail. He just told me to
3 get back --

4 MR. CONDON: I'm going to object to hearsay.

5 THE COURT: Sustained.

6 Q. I'm sorry. You have to talk only about what you
7 saw.

8 A. Well, we didn't talk. We didn't have a conversation
9 at that time.

10 Q. So then at the nighttime, time for bedtime, who all
11 was at the house at that time?

12 A. Everybody else, my mother, my granddaughter, Shelly.

13 Q. Do you have any recollection about the time you went
14 to bed?

15 A. That night? Not exactly that particular day I
16 remember. I usually go to bed kind of early with the kids.

17 Q. At any time, did you talk with anybody from the
18 police department about anything that happened that evening?

19 A. No, nobody.

20 Q. In any of the days following this particular
21 incident, did you talk with law enforcement or anybody about
22 what happened that evening?

23 A. No police officer or anything. Only person I talked
24 to was you, Mr. Whipper. Yes, sir.

25 Q. So now, your mom, does she work outside of the home?

1 A. No, she's retired.

2 MR. WHIPPER: I have no other questions at this
3 time.

4 Your witness.

5 THE COURT: All right. Solicitor.

6 CROSS-EXAMINATION

7 BY MR. CONDON:

8 Q. You just stated in your testimony that you heard an
9 altercation outside, but didn't think much of it. Is that
10 normal to hear altercations outside of your house?

11 A. No, because my sons be outside by the barrel
12 fighting or whatnot, but they don't --

13 Q. So they fight outside there often?

14 A. No.

15 Q. You hear an altercation and just don't think
16 anything of it?

17 A. I came outside, not at that point when it happened,
18 when everything happened. I did come out when I heard the
19 noise. I came out, but they outside in the yard. You know,
20 they out there. I look out the window or something or I
21 might come out the door if they get loud or boisterous. Me
22 and my mother might check to see what's all the noise.

23 Q. I'm going to show you State's Exhibit 6. Was that
24 the man that you saw lying on that concrete pad up there?

25 A. I didn't really look at the face. I just saw a

1 young man. I didn't look at the face.

2 Q. Did you see any blood on him?

3 A. I just saw the young man on the porch, back on the
4 porch. I never saw a face or anything.

5 Q. Was he knocked out?

6 A. He was not moving or anything. I didn't see him
7 move at that time.

8 Q. Were you worried about him?

9 A. Yeah. It was someone's child.

10 Q. Did you call the police?

11 A. No.

12 Q. Did you call EMS?

13 A. No, because when I came out, they were gone.

14 Q. You went back inside?

15 A. Uh-huh.

16 Q. When you went inside, did you tell anybody?

17 A. No.

18 Q. So you left that man on that concrete pad without
19 helping him?

20 A. I went back in the house. I didn't know. I saw a
21 man on the ground, on the porch, and I went back in with my
22 mother. And I went in my room. I never called. She never
23 called them. When I came back out, young man was gone and
24 the car was gone. So I assumed he was all right. I never
25 heard anything more or anything about it until later on.

1 Q. And you have no problem leaving some guy on your
2 pavement like that?

3 A. Yeah, I have a problem. But at that moment, at that
4 time, I didn't know he was hurt that bad. I saw him. I
5 assumed he was okay, because when I came outside, he was
6 gone. So I figured nothing was -- you know, he was injured
7 or anything. When I asked a question, they said young man
8 left. They didn't say who took him or anything. So I didn't
9 know.

10 Q. They told you to go back inside?

11 A. No, I went back inside myself. Earlier, prior, when
12 I came out, my son told me to go back in the house or what
13 not, when I standing there and I went back in the house. But
14 when I came back out later on, I asked.

15 Q. You don't like the Sheriff's Office, do you?

16 A. I don't what?

17 MR. WHIPPER: Objection, Your Honor.

18 THE WITNESS: Why do you say that?

19 THE COURT: Hold on. Don't answer that. Y'all
20 approach.

21 (Whereupon, a bench conference takes place off the
22 record.)

23 BY MR. CONDON:

24 Q. Do you love your son?

25 A. Yes, I love my son. I gave birth to him.

1 Q. Would you do anything for him?

2 A. Not anything. That's my son. I love him, but I'm
3 not going to do anything.

4 Q. What would you do?

5 A. I would do -- if he's in trouble, I would be there
6 for him to certain extent, but I'm not going to lie or
7 anything. Because if he's wrong, he's wrong. That's
8 something I'm not going to do, to defend somebody that's
9 wrong. Regardless if it's my son, I'm not going to lie.
10 That's not the right thing to do, because I wouldn't want
11 nobody else to do it for me.

12 Q. So in this case, you never contacted the police
13 department?

14 A. No.

15 Q. Never called EMS? Never called 911?

16 A. No.

17 Q. And you have never spoken to the Solicitor's Office
18 regarding this case?

19 A. No, because I didn't even know anything about
20 contacting the Solicitor's Office about anything.

21 MR. CONDON: No further questions.

22 THE COURT: All right. Any redirect?

23 MR. CONDON: No redirect, Your Honor.

24 THE COURT: All right. Thank you, ma'am. You can
25 step down.

1 All right. Ladies and gentlemen, there's a matter
2 of law I need to take up with the lawyers just briefly. I
3 would ask that you step back into your jury room. I promise
4 you will get you out of here in about seven minutes. Don't
5 talk about the case.

6 (Whereupon, the jury leaves open court at 04:28
7 p.m.)

8 THE COURT: Mr. Whipper, yes, sir.

9 MR. WHIPPER: Regretfully, I have to make a motion
10 for a mistrial.

11 THE COURT: Let me hear you.

12 MR. WHIPPER: The questioning by the State, which is
13 very irrelevant, injected some thoughts about some feud
14 between this family and the sheriff's department. Now, why
15 would there be a feud between this family and the sheriff's
16 department? Why? Jury's going to long speculate about why?

17 Now, where do they factor that in their
18 deliberations? Perhaps only The Shadow knows. My concern
19 with that is that an old legal, old law school term, the bell
20 has been rung. And I can't unring it, neither can you.
21 Because an attempt to unring the bell means you've got to
22 ring it again. Your Honor, this is unfortunately a mistrial.
23 And we need to start all over again. This jury is tainted.
24 And I know it.

25 And the activity about asking Mr. Downing, God bless

1 him, hard-working investigator, he's up on his feet, pushing,
2 this is not going to be a fair trial from this point on for
3 certain. And I just think it has to be ruled a mistrial. It
4 has to start all over again. I think the jury is tainted now
5 by this.

6 THE COURT: Solicitor, what's your response to that?

7 MR. CONDON: Your Honor, I don't believe there's a
8 basis for a mistrial. I was just trying to question whether
9 or not there's bias or not. She responded no. We moved on.
10 Didn't get into any details, but there was a background for
11 the questioning. I don't think it was inflammatory. She
12 never did call the police or 911 or anything when there's a
13 man lying on her porch. So I'm trying to figure out why she
14 didn't. And I think that was a fair question. Understand
15 your ruling. We moved on.

16 THE COURT: I sustained -- I thought I sustained
17 your objection, Mr. Whipper, and instructed the State to move
18 on.

19 MR. WHIPPER: On the relevance, Your Honor. But,
20 again, I don't think that can cure what happened.

21 THE COURT: The jury didn't hear that her son had --
22 has been convicted of shooting somebody in the face.

23 MR. WHIPPER: The jury only heard that there's
24 supposed to be some feud between this family and the
25 sheriff's department.

1 THE COURT: And I believe she's testified there was
2 none.

3 MR. WHIPPER: Won't help. Won't help, Your Honor.

4 THE COURT: I understand what you are saying.

5 MR. WHIPPER: I think the bell has been rung. And
6 understand what I'm saying by asking this, I think
7 it's unfair.

8 THE COURT: Anything further from the State?

9 MR. CONDON: No, Your Honor.

10 THE COURT: Motion for mistrial is denied.

11 All right. You are protected in the record,
12 Mr. Whipper. Let's get the jury.

13 (Whereupon, the jury returns to open court at 04:32
14 p.m.)

15 THE COURT: Thank you, ladies and gentlemen.
16 Mr. Whipper, you may call your next witness.

17 MR. WHIPPER: I call Andre Simmons.

18 ANDRE SIMMONS,
19 having been duly sworn, testifies as follows:

20 THE CLERK: Speak into this mic and state your full
21 name and spell your first and last names.

22 THE WITNESS: Andre Simmons, A-n-d-r-e,
23 S-i-m-m-o-n-s.

24 DIRECT EXAMINATION

25 BY MR. WHIPPER:

1 Q. Mr. Simmons, how are you related to Adrian Simmons?

2 A. I'm his brother.

3 Q. How close are you all in age?

4 A. Huh?

5 Q. How close are you all in age?

6 A. Me and him are twins.

7 Q. Now, where are you living right now, Mr. Simmons?

8 A. I'm in Goose Creek.

9 Q. And what type of work do you do?

10 A. Landscaping.

11 Q. How long have you been living in Goose Creek?

12 A. About four years. I was on James Island first.

13 Q. Were you at your grandmother's house when this
14 incident happened?

15 A. Yes, sir.

16 Q. Tell me a little bit about where you were and what
17 you were doing.

18 A. I was in the house in the kitchen and just in the
19 kitchen.

20 Q. And who were you with in the kitchen?

21 A. My mom and my granny. They were back and forth in
22 the kitchen to their rooms.

23 Q. Now, at this time then, you were living in Goose
24 Creek?

25 A. Yeah, but I'm at my granny's house.

1 Q. Now, to your best recollection, who all was at the
2 house?

3 A. My granny, my mom, me, couple of my brothers and my
4 friends.

5 Q. You say a couple of your brothers?

6 A. Uh-huh.

7 Q. Tell us who these are.

8 A. Sheldon and Adrian.

9 Q. And who all was outside? You had some people
10 outside?

11 A. It was Malcolm, Adrian, and it was Herbert Ladson
12 and --

13 Q. What do you recall about this incident?

14 A. I was shocked about the situation when I came
15 outside and saw what was going on.

16 Q. Tell me what you saw going on.

17 A. Well, from the start, I was in the kitchen and I saw
18 a car pulled up in the driveway, like coming in the yard.
19 And I saw the lights flashing in the kitchen. So I walked to
20 the back door and see what was going on. I heard the noise
21 going on from, I guess, from the two people talking. I came
22 outside. And they had their little altercation going on back
23 and forth. And that's when everything happened.

24 Q. When you say "their little altercation", what do you
25 recall?

1 A. Like a little argument and a quick scuffle.

2 Q. What do you remember about the scuffle?

3 A. Like, them two going at each other. So quick, like
4 them two, like, throwing hands at each other, and it was just
5 that.

6 Q. When you say "threw hands", what do you mean "threw
7 hands"?

8 A. Blows.

9 Q. Anybody have a pipe or iron or big wrench or
10 anything like that?

11 A. No, sir, not to my recollection.

12 Q. How did the thing end?

13 A. From his friend leaving with him.

14 Q. What do you recall about where Mr. Washington was
15 during the time this thing was going on, that's Lamont
16 Washington?

17 A. They were on my pavement, on the back porch pavement
18 of the house.

19 Q. And were you there the whole time he was on the
20 pavement?

21 A. I came out as soon as them two were, like, close to
22 each other. I was in the doorway.

23 Q. Did you see Mr. Washington leave?

24 A. I saw -- I didn't really saw him leave. I saw his
25 friend came out of the car and got him. I went back in the

1 house once his friend got him.

2 Q. Did you see any -- at the time they were leaving,
3 did you see any blood?

4 A. No. It was dark.

5 Q. Did you know anything about him being injured?

6 A. All I saw was him laying down.

7 Q. Now, did you spend the night there that night?

8 A. Yes, sir.

9 Q. Did you interview with any law enforcement officer
10 that evening?

11 A. No, sir.

12 Q. Do you recall any law enforcement officers knocking
13 on your door?

14 A. No, sir, no one ever came to the house about
15 anything.

16 Q. To your recollection, do you recall whether anybody
17 called the house about this incident?

18 A. No, sir.

19 Q. At the time days following that, how often did you
20 go by the house; do you recall?

21 A. At least two times a week.

22 Q. Anybody from law enforcement at any time there?

23 A. No. We never heard anything about law enforcement
24 coming to the house during the situation or after.

25 Q. Let me show you some photographs, Andre. Is that

1 granny's house?

2 A. Yes, sir.

3 Q. Is that the concrete pad you were talking about?

4 A. Yes, sir.

5 Q. Now, is there concrete anyplace else at the house on
6 the ground like that?

7 A. No, just in the front driveway.

8 Q. What is in the back of the house?

9 A. Dirt.

10 Q. And what else is the back of the house used for?

11 A. Trash cans and shed. We have a shed in the back and
12 we store stuff in our shed. And we have a barrel we burn
13 stuff in.

14 Q. How often do you go out and sit back there and talk?

15 A. We are back there mostly all the time.

16 Q. What do you recall about people being back there
17 that evening?

18 A. We were back there that evening, because it was a
19 little chilly that night. We burn in the barrel that night.

20 MR. WHIPPER: No other questions at this time, Your
21 Honor.

22 THE COURT: All right. Solicitor.

23 CROSS-EXAMINATION

24 BY MR. CONDON:

25 Q. You have a 2009 conviction for attempt to distribute

1 cocaine?

2 A. Yes, sir.

3 Q. And you've got a 2009 conviction for giving false
4 information to police?

5 A. Yes, sir.

6 Q. And you've got a 2014 conviction as a habitual
7 traffic offender?

8 A. Yes, sir.

9 Q. Did you see who hit the victim Lamont Washington
10 that night?

11 A. Huh?

12 Q. Did you see who hit him that night?

13 A. Uh-huh.

14 Q. Who hit him?

15 A. Red.

16 Q. Where did he hit him?

17 A. In his face.

18 Q. Were you out on the pad holding the baby?

19 A. Hum-um? No, sir.

20 Q. Who was that?

21 A. Maybe my brother.

22 Q. You don't know? But you were out there?

23 A. I said, maybe my brother. I came out after the
24 altercation was going on.

25 Q. Do you know, is it the brother or not?

1 A. I guess so. I wasn't paying about no baby. I was
2 paying attention to the situation because I was shocked about
3 the situation.

4 Q. You were shocked that your brother hit him in the
5 face?

6 A. I was shocked about whatever they had going on, the
7 altercation. I didn't know what was going on. Just came out
8 of the house and saw what was going on. I was shocked. I
9 wasn't paying attention to nobody else but him and that other
10 guy.

11 Q. How hard did he hit him in the face?

12 A. I don't know how hard. I'm not him. I can't tell
13 you.

14 Q. Do you mind standing up and demonstrating how he
15 punched the victim?

16 A. I can't demonstrate how he punched. It was just
17 them too shuffling, throwing blows at each other. It was
18 nighttime.

19 Q. You can't demonstrate how he punched?

20 A. No.

21 Q. Because you don't know?

22 A. I know -- I know them throwing blows at each other,
23 but I can't demonstrate how he did it.

24 Q. Now the victim was throwing blows?

25 A. Both of them was throwing blows at each other. I

1 said it was a scuffle.

2 Q. What, did you just watch? What did you do?

3 A. Just watched.

4 Q. Did you call the police?

5 A. No.

6 Q. Why not?

7 A. Because I was shocked. I didn't know what was going
8 on. I was trying to figure out what was going on before I
9 call the police, or anyone call the police.

10 Q. After the fact, did you call the police?

11 A. No, because his friend took him.

12 Q. Was he knocked out cold?

13 A. I think so. He was laying on the ground and his
14 friend picked him up and them two walked off.

15 Q. So after this, what you term the alleged scuffle,
16 what did you all do after that?

17 A. We just sat there. And after those two left, after
18 the accident?

19 Q. Uh-huh.

20 A. We did nothing, just talked about the situation,
21 about what was going on.

22 Q. Were you all hanging out by the fire pit?

23 A. Uh-huh.

24 Q. Were you all drinking?

25 A. No.

1 Q. Just hanging around by the fire?

2 A. Chilling, just sitting around the fire, talked.

3 Q. I show you State's Exhibit 7. Where on the front of
4 his face was he punched?

5 A. He was punched on the -- right here, left side. I
6 guess it was his left side.

7 Q. I don't see any marks, do you?

8 A. Huh?

9 Q. I don't see any marks on his face, do you?

10 A. Nope, but it looked like that with his eyes closed,
11 the punch.

12 Q. If he punched him so hard to knock him out, wouldn't
13 you see more injury on his face?

14 A. Huh?

15 THE COURT: Repeat your question, Solicitor.

16 BY MR. CONDON:

17 Q. Isn't it reasonable that if he punched him with such
18 force to knock him out, that there would be some kind of mark
19 on his face --

20 MR. WHIPPER: Objection, Your Honor.

21 Q. -- trading blows?

22 A. I don't --

23 THE COURT: We have an objection. What's your
24 objection.

25 MR. WHIPPER: Calls for conjecture. It's what he

1 thinks. He's not --

2 THE COURT: Sustained. Sustained. Move on.

3 BY MR. CONDON:

4 Q. At any time, did you contact the police after this?

5 A. No, sir.

6 Q. You never called EMS for help?

7 A. No, sir.

8 Q. Never contacted the Solicitor's Office?

9 A. No, sir.

10 Q. You are obviously well aware of the Solicitor's
11 Office, correct?

12 A. I guess so.

13 MR. CONDON: No further questions. Any redirect,
14 Mr. Whipper?

15 MR. WHIPPER: No redirect, Your Honor.

16 THE COURT: Thank you, sir. You may step down.
17 Defense may call its next witness.

18 MR. WHIPPER: Call to the stand Mr. Lamont
19 Washington under 611, Your Honor.

20 THE COURT: Okay. Mr. Washington.

21 LAMONT WASHINGTON,

22 having been previously sworn, testifies as follows:

23 THE COURT: Mr. Washington, you are still under
24 oath. Okay? Just make sure you speak to the microphone.

25 THE COURT: Yes, sir, Mr. Whipper.

1 MR. WHIPPER: May it please the Court, Your Honor.

2 THE COURT: Yes, sir.

3 DIRECT EXAMINATION

4 BY MR. WHIPPER:

5 Q. Mr. Washington, I hand you what's been marked as
6 State's Exhibit 15. I want you to look at it. Let's do
7 this. I'm going to direct your attention to September 19th,
8 September 19th. Now, it says there, I think on that log,
9 says the number that was called. That's your phone log;
10 isn't that correct? It's from your phone; is that correct?

11 A. One more time. I was just reading it.

12 Q. Sure, sure. This is the log of calls made from your
13 phone?

14 A. That Friday.

15 Q. 9/19?

16 A. Friday.

17 Q. If you want, look at the ones that are marked as
18 communicating with somebody who was knowledgeable or you were
19 dealing with regarding this phone repair?

20 A. You want to point to it?

21 Q. They are in yellow. They are in yellow.

22 A. Now repeat the question, please.

23 Q. Take a look at the yellow lines on the phone log.

24 A. Uh-huh.

25 Q. And tell me whose numbers are called.

1 A. Adrian Simmons, Friday, waiting for him.

2 Q. Show me how many times in there.

3 A. 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15,
4 16, 17, 18.

5 Q. Are those the calls that you made to that number?

6 A. Sure did.

7 Q. Look at the 20th of September.

8 A. Yes.

9 Q. How many calls did you make to that number then?

10 A. 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13.

11 Q. And then September 22nd.

12 A. 1, 2, 3.

13 Q. Just 3?

14 A. I talked to him earlier. He said he would call me
15 later on that day, Monday. That Friday phone call, that's
16 supposed to be at the Goodwill on Rivers, like I met a few
17 other people around before 12. I was waiting for my
18 girlfriend Jessica to get out of work and to meet me. I
19 waited in the parking lot because he told me he lived in
20 North Charleston. And I said, I will make it easy for you
21 guys, I will meet you at the Goodwill. I waited. Call,
22 call, call, call.

23 Q. So on the 22nd --

24 A. If you can give me the dates, with the dates I can
25 give it to you better.

1 Q. I'm talking about the 20th.

2 A. That Friday -- I mean, that Saturday?

3 Q. Saturday, the 20th.

4 A. Yeah, Saturday, sir.

5 Q. You only mentioned three on the 20th. I will tell
6 you what, the 22nd, talking about the 22nd.

7 A. 22nd, is that Monday?

8 Q. Yes.

9 A. Yes. I spoke with him. He said he's coming, he
10 would meet me on that day.

11 Q. So I see here from the 22nd, I see five calls to his
12 number. And then I see some calls to Courtney's line. Do
13 you know how many that is?

14 A. You did say the green one.

15 Q. The one in yellow. And I know there are some to
16 Courtney's. So the ones on the 22nd, there's at least five
17 of those. Including Courtney's line, there are a couple
18 there on that, on the 22nd. I mean, call on 5:56, call at
19 8:37, call at 9:42, call at 4:46, call at 6:31, call at 6:57.
20 I'm concerned about those calls, Mr. Washington. And you
21 know why, don't you?

22 A. No, I don't know why.

23 Q. I'm concerned about your attitude, Mr. Washington.
24 Don't get me wrong. I understand you have a bad injury.
25 Sometimes attitude keeps you from getting injured.

1 A. And getting killed too, huh?

2 Q. Yep. And you had a policy. You had a policy that
3 involved your selling the phone if it was delayed from being
4 taken care of. So I'm concerned about the attitude.

5 I asked Deputy Downing about his warrant and your
6 earlier statements. All you know is that something happened
7 and you got hit. That's from your side. Now, we know that
8 there was a fight. There was a tussle. That's what happens
9 when people have a bad attitude. Folks not going to take
10 that. Can't take advantage of people just because you've got
11 a good size on them.

12 MR. CONDON: Your Honor, I would like him to have a
13 chance to answer -- I don't know if it's a question or not.

14 THE COURT: I don't know. Is that a question?

15 MR. WHIPPER: That's a question.

16 THE COURT: The question that was asked is, is that
17 the way it happened? And your answer?

18 THE WITNESS: No, sir.

19 BY MR. WHIPPER:

20 Q. Now, you own a dirt bike, don't you?

21 A. ATV, not anymore, because I think if I fall, I might
22 die. I'm really good at it.

23 Q. You own an ATV?

24 A. Not anymore.

25 Q. When did you get rid of it?

1 A. 2015, around. Oh, for my birthday, I needed a
2 little money, so I pawned it.

3 Q. So what month are we talking about?

4 A. May, April. My birthday is in May. So it was
5 April.

6 Q. And you used to ride it around your parents' home;
7 is that right?

8 A. In the backyard. I kind of made my own trail, but I
9 lived in Oregon where I didn't -- it was more abundant, more
10 snow. I didn't want dunes, woods.

11 Q. And you did that on 2015 --

12 A. No. I did not ride my four-wheeler at all on 2015.
13 I did not ride my four-wheeler since 2014, before I -- what
14 happened.

15 Q. Didn't you think that -- at some point, you thought
16 that Mr. -- at some point after this thing happened, you were
17 thinking that Mr. Simmons was trying to get to you; isn't
18 that true?

19 A. Get to me how, on the phone or -- be more specific.

20 Q. After this thing happened, you reported that
21 Mr. Simmons was somewhere in your vicinity carrying a gun?

22 A. You said after this happened? After I got hit in my
23 head?

24 Q. Yeah, yeah.

25 A. Give me a date, because I don't remember -- the

1 24th, I remember being at his house. Didn't know I was in
2 the hospital. Everything from here today, yesterday, I'm
3 learning. So be a little more specific, please, so I can
4 answer your question.

5 Q. Sure. At some point, you reported to law
6 enforcement that Mr. Simmons was in your neighborhood with a
7 weapon?

8 A. Everything that I reported, I called Mr. Charles
9 Condon.

10 Q. You never called the police department?

11 A. No, sir.

12 MR. WHIPPER: That is all the questions at this
13 point.

14 MR. CONDON: Just a couple of questions.

15 CROSS EXAMINATION

16 BY MR. CONDON:

17 Q. Do you agree or disagree with his brother's
18 testimony, Andre Simmons?

19 A. I disagree so much I can't even believe he sat up
20 here and said I was fighting and he hit me in my face.

21 Q. You disagree?

22 A. I disagree, totally.

23 Q. Was there any kind of fight at all?

24 A. No fight, no hustle, no tussle, no fist, no
25 throwing. There was nothing.

1 Q. Did you ever see that man outside?

2 A. I never seen him. He never -- I don't know nothing
3 until now.

4 Q. Have you ever seen his mom outside?

5 A. Never seen his mom before.

6 Q. I mean, I do want to point out some of these --
7 counting times that you called him. I would like to note, do
8 some of these say incoming calls on there, for example, the
9 second call right there?

10 A. Yes.

11 Q. So there is back-and-forth? It wasn't just you
12 calling him. He would call you back sometimes too?

13 A. Yeah.

14 Q. When you counted out --

15 A. He told me, he would be here at the Goodwill. I
16 waited. I got a call. I called, I'm still here.

17 Q. And he would call you back some, sometimes not?

18 A. Sometimes he did. Sometimes he didn't call.

19 Q. Did you ever throw any kind of punch or blow at the
20 defendant?

21 A. No, sir. I mean, I've had a business. No, I didn't
22 fight him, didn't attempt to.

23 Q. Do you agree with his statement on the jail call
24 about how he described the incident?

25 A. Just like he said, that's what he did, with my back

1 to him like that.

2 Q. His statement on the jail call is obviously
3 different from what his brother said?

4 A. Yes, sir, that is correct.

5 MR. CONDON: No further questions.

6 MR. WHIPPER: No redirect.

7 THE COURT: Thank you, sir. You can step down.

8 MR. WHIPPER: We have a motion.

9 THE COURT: All right. Let me see y'all up here
10 real quick for scheduling.

11 (Whereupon, a bench conference takes place off the
12 record.)

13 THE COURT: Ladies and gentlemen, now is a good time
14 to stop for the day. We will reconvene tomorrow morning.
15 9:30 be in the jury room and we will get you in here and get
16 you started. And, again, I hope I don't need to reiterate to
17 you, you know, don't do any independent research. Don't
18 Google names or go on social media. Don't talk about the
19 case. I haven't told you to start talking about the case
20 yet. You heard everything.

21 Y'all are free to leave for the day. Be back
22 tomorrow morning at 9:30. Have a good evening.

23 (Whereupon, the jury leaves open court at 05:03
24 p.m.)

25 MR. CONDON: If he can have one minute to speak to

1 the victim, something came up, and I need to talk to him and
2 see if I need to bring it up or not.

3 THE COURT: We are recessed for today. See y'all at
4 9:30 in the morning.

5 (Whereupon, the proceedings are adjourned.)

6 (Whereupon, the trial continues on August 10, 2016.)

7 THE COURT: Okay. Is your man here?

8 MR. WHIPPER: Judge, he's on the way. He had an
9 emergency with the pink eye thing, so he had to stop at the
10 hospital.

11 THE COURT: Let's use some of the downtime then. We
12 have him to testify as well as maybe another witness?

13 MR. WHIPPER: That's correct.

14 THE COURT: Let's go ahead and have a charge
15 conference while we are on the record and talk about,
16 assuming your guy testifies the way you indicated he's going
17 to testify, obviously--

18 MR. WHIPPER: I'm going to talk to him again.

19 THE COURT: Let me hear from you first. First, let
20 me tell y'all what I intend on charging. Then y'all may
21 agree with everything. Okay? Of course, I will do all the
22 standard stuff about charge, arrest, indictment not evidence,
23 credibility, telling what an expert witness is, talk about
24 the direct and circumstantial evidence, talk about a prior
25 inconsistent statement, the statement that was introduced

1 into the record, presumption of innocence, reasonable doubt.
2 I do the long one, the one that defense lawyers like, but
3 also talk about firmly convinced.

4 All right. Talk about -- I've got ABHAN. Here's my
5 ABHAN charge: A person commits the offense of assault and
6 battery of a high and aggravated nature if the person
7 unlawfully injures another person and great bodily injury to
8 another person results, or the act is accompanied by means
9 likely to produce death or great bodily injury.

10 "Great bodily injury" means bodily injury which
11 causes substantial resisting of death or causes serious
12 permanent disfigurement or protracted loss or impairment of a
13 function of the bodily member or organ, straight off the
14 statute.

15 Any problem with that from the State?

16 MR. CONDON: Nothing from the State, Your Honor.

17 THE COURT: From the Defense?

18 MR. WHIPPER: Nothing.

19 THE COURT: Talk to me about A and B first. You
20 mentioned back in chambers, Mr. Whipper, you are going to be
21 seeking a charge on assault and battery first. And, of
22 course, the State indicated they would oppose that. So let
23 me hear from y'all on whether or not I should charge a
24 lesser-included offense.

25 MR. WHIPPER: Your Honor, I think it's definitely

1 based on the fact we heard that you have an injury that's
2 substantial, may have resulted from those facts. And I'm not
3 reading from the code, but seems to me that that level of
4 charge is available based on the testimony that we've already
5 demonstrated, we already made, which is -- did you say
6 self-defense?

7 THE COURT: Oh, yes, I'm doing self. I'm talking
8 about A and B first now, because I'm looking at A and B first
9 statute, Mr. Condon, I'm going to ask you, because you
10 prosecute for a living, what's the difference between A and B
11 first and ABHAN?

12 MR. CONDON: If you give me a moment, I will pull up
13 the statute.

14 THE COURT: That's what we've been researching up
15 here the entire time.

16 MR. CONDON: Do you have the code section available
17 to you.

18 THE COURT: 16-3-600(B). I think it's 2, B(1) and
19 B(2). Then (C) is A and B first. Here's what the statute --
20 cutting through all the other stuff applicable in this case.

21 This is how the statute defines A and B first: A person
22 commits the offense of assault and battery in the first
23 degree if the person unlawfully injures another person and/or
24 offers or attempts to injure another person with the present
25 ability to do so, and the act is accompanied by means likely

1 to produce death or great bodily injury, period.

2 MR. CONDON: Your Honor, I think the problem with
3 this statute is this is like a threat of harm, in other
4 words, ABHAN there as to be an injury and great bodily
5 injury, or accomplished by means likely to produce great
6 bodily injury. A and B first is a threat of injury, but not
7 actually injury, is how I read Subsection (B), because it
8 says offer or attempts to injure another person. So it's
9 offering to injure another person or attempting to injure
10 another person, where in this case, there is an actual
11 injury.

12 THE COURT: Okay. I follow you.

13 MR. CONDON: I don't really know --

14 THE COURT: Of course, the defense's theory is that
15 the injury was occurred by the victim falling down.

16 MR. WHIPPER: That's our position.

17 THE COURT: That's what I'm saying, the defense's
18 position. So if, let's say, arguendo, you know, yes, the
19 defendant had the present ability. And let's say the jury
20 believes he did hit him, but then the jury believes the
21 defendant's story that he fell background and hit his head on
22 the concrete. Would that, if they believe that, would that
23 sustain an A and B first?

24 MR. CONDON: You are saying tried to hit him but
25 didn't hit him?

1 THE COURT: No, hit him, hit him with the fist, I
2 guess, or hit him however he hit him, whatever the jury --
3 what I'm trying to do is -- let's assume -- of course, I know
4 the defendant hadn't testified yet. But we are doing this
5 buying some time until he gets here so we can start. I'm
6 just wondering whether or not I should charge a lesser
7 offense.

8 MR. CONDON: I don't think it's appropriate in this
9 case. It doesn't seem to me it was really controverted that
10 he sustained great bodily injury.

11 THE COURT: But A and B first says he injures
12 another person or --

13 MR. CONDON: I believe it says or offers or
14 attempts.

15 THE COURT: Or offers or attempts to injure another
16 person. So you have the injury.

17 MR. CONDON: Your Honor, my understanding is
18 subsection (a) only applies to Subsection I and II, which
19 involves --

20 THE COURT: Robbery, burglary, kidnapping,
21 nonconsensual touching, sexual stuff.

22 MR. CONDON: Yes. And then you move down to Section
23 B, and the way I read it, Your Honor, respectfully, is that
24 it's separate section. Therefore, you look at that language
25 alone, and it's offers or attempts to injure, so the threat

1 of harm and ability to carry it out.

2 THE COURT: I agree with you. I see that.

3 MR. WHIPPER: Your Honor, I don't have --

4 THE COURT: You want to see the statute?

5 MR. WHIPPER: I think the statute kind of speaks for
6 itself, says assault and battery first. Doesn't say --
7 "battery" means there's been a touching.

8 THE COURT: Of course, Mr. Whipper, being in the
9 legislature, you know that the role of the Court is to
10 ascertain and effectuate the intent of the legislature. I
11 have to give the statute its plain and unambiguous meaning.
12 And I'm going to do it. And this is what it says: A person
13 commits the offense of assault and battery first degree if:
14 A, injures another person, and the act involves a
15 nonconsensual touching of the private parts of a person with
16 lewd and lascivious intent, or occurs during the commission
17 of a robbery, burglary, kidnapping or theft.

18 And then it says, or, and that's why I circled it:
19 Or, B, offers or attempts to injure another person with the
20 present ability to do so and that act is accompanied by means
21 likely to produce great bodily injury or death.

22 MR. WHIPPER: That's it.

23 THE COURT: So the "or" is what separates the two.

24 MR. WHIPPER: In other words, you are saying that
25 the attempt cannot be -- it has to be an attempt without any

1 injury?

2 THE COURT: That's correct. I think that's what the
3 statute says.

4 MR. WHIPPER: Can I look at that?

5 THE COURT: Yep.

6 MR. WHIPPER: I don't know. I think it's still
7 there because of the attempts.

8 THE COURT: Yes, sir. If the jury believes --

9 MR. WHIPPER: Because the attempts proves the fact
10 that --

11 THE COURT: Well, I'm going to hold it until your
12 client testifies. I know -- you know, we will hold that off
13 and I will think about it. But at this point, I tend to
14 agree with the State at this point. I haven't closed my mind
15 to it yet, but I still agree with the State's contention that
16 A and B are different. It's either one of the two. It's not
17 a combination of the two. It's one of the two for A and B
18 first. Either they injured another person by lewd and
19 lascivious intent of a sexual nature, or this occurs during a
20 robbery, burglary, kidnapping or theft, which that's clearly
21 not applicable here.

22 So the second part is applicable, which there has to
23 be proof or evidence that the defendant offered or attempted
24 to injure another person with the present ability to do so,
25 accompanied by means likely to produce death or bodily

1 injury, or as the solicitor states, the threat of harm of it,
2 the threat of it. So I will hold that out just to consider
3 it.

4 MR. WHIPPER: I think attempts is -- it's sort of
5 the key word, operative word to be assault and battery. It
6 has to have an action, an intentional act.

7 THE COURT: Yes, sir. I see where you are going. I
8 will make a final ruling on that after all of the evidence is
9 in.

10 Self-defense, I mean, I think, you know, that's what
11 the theory is. And, obviously, I'm going to give the
12 self-defense charge. It's a self-defense charge right out of
13 the charge book. Do you all have a separate self-defense
14 charge you want me to give, Mr. Whipper?

15 MR. WHIPPER: Well, I'm going to offer mine.

16 THE COURT: Okay. You can hand it up.

17 MR. WHIPPER: I have the cites separate from the
18 charge so you can see them.

19 THE COURT: Thank you. Yeah, this is basically the
20 same one I have, without fault, actual belief of imminent
21 danger or actually was in imminent danger, right act on
22 appearances, degree of force, there we go.

23 All right. And then lastly --

24 MR. WHIPPER: Do we have a charge on the burden of
25 self-defense?

1 THE COURT: I'm sorry?

2 MR. WHIPPER: Burden on the State on self-defense?

3 THE COURT: Yes, sir. The way mine starts out is
4 that the defendant has raised the defense of self-defense.
5 Self-defense is a complete defense. And if it is
6 established, you must find the defendant not guilty. The
7 State has the burden of disproving self-defense by proof
8 beyond a reasonable doubt, which I would have previously
9 defined. If you have a reasonable doubt of the defendant's
10 guilt after considering all of the evidence, including the
11 evidence of self-defense, then you must find the defendant
12 not guilty.

13 On the other hand, if you have no reasonable doubt
14 of the defendant's guilt after considering all of the
15 evidence, including the evidence of self-defense, then you
16 must find the defendant guilty.

17 And then I go through the elements of self-defense.
18 And then I talk about deliberation. And, of course, I do at
19 the conclusion the unanimous verdict.

20 Anything else y'all wish for me to charge?

21 MR. CONDON: Your Honor, we would ask for the mutual
22 combat charge, which essentially says that you can't prove
23 that without fault two people are agreeing to fight and
24 engage each other.

25 THE COURT: All right. Any objection to that

1 charge, Mr. Whipper?

2 MR. WHIPPER: No. Of course, it would be one that I
3 wouldn't want, but I guess, Your Honor if the facts are there
4 for that consideration, I guess I can't stop it.

5 THE COURT: All right. Anything else?

6 MR. WHIPPER: And did we talk about retreating on
7 the premises? Did we mention that?

8 THE COURT: You haven't made your motion on that. I
9 was going to wait until the close of all of the evidence.

10 Solicitor, I believe you indicated that you have a
11 case which says the Court -- that's a judicial finding.
12 That's a finding of law, not a fact, the stand your ground.
13 Is that what you indicated, that I shouldn't charge -- the
14 Court should not charge the jury on the Castle Doctrine?

15 MR. CONDON: That's correct, Your Honor. I have the
16 case that states that. If you give me a minute, I can find
17 it.

18 THE COURT: Do that and share it with Mr. Whipper.
19 At the close of the evidence, between that and then, Mr.
20 Whipper, you can looking at case and if you still wish to
21 argue further on that, I will hear you. And, of course, I
22 will make a ruling on your motion at that time.

23 MR. WHIPPER: Did you talk about the charge on
24 appearances too?

25 THE COURT: Yes, sir, I charge on appearances. My

1 charge is: The defendant does not have to show that he
2 was -- that he was actually in danger. It is enough that the
3 defendant believed he was in imminent danger and a reasonable
4 prudent person of ordinary firmness would have had the same
5 belief. The defendant has a right to act on appearances even
6 though the defendant's beliefs may have been mistaken.

7 MR. WHIPPER: Your Honor, with all due respect, I'm
8 going to hand these up, these charges. Your Honor, I think
9 my charge effort -- the general population, I kind of would
10 like for you to see them.

11 THE COURT: Okay, sure.

12 MR. WHIPPER: And if you agree with my syntax, words
13 I might use --

14 THE COURT: I will try to make it as simple as
15 possible.

16 MR. WHIPPER: I think that is the charge 1 through
17 7.

18 MR. CONDON: Your Honor, may I approach?

19 THE COURT: Yes, sir.

20 MR. CONDON: Here's State v. Curry, 406 S.E. 364,
21 subsection right there.

22 MR. WHIPPER: In other words, it's a matter of law
23 if the Court makes a ruling on it.

24 THE COURT: I will let you look at it. I'm not
25 going to make a ruling right now.

1 What did you say, Mr. Condon, subsection what?

2 MR. CONDON: I think it was B, Your Honor. Says
3 it's titled jury instruction.

4 THE COURT: Oh, I see. I know Mr. Curry. I know
5 Mr. Curry very well. It wasn't my case. It was Judge
6 Goldsmith's case, but I did Mr. Curry's subsequent PCRs, et
7 cetera.

8 Yeah, this is what the Court says here. My good
9 friend, Judge Goldsmith, the person with -- the guy was
10 convicted. Mr. Curry was convicted. And one of his grounds
11 for appeal is that he claimed that the judge's charge where
12 he talks about the stand your ground law, the Castle
13 Doctrine, Judge Goldsmith actually charged the statute, the
14 operative statute here. And he claimed that the charge was
15 confusing with his self-defense argument.

16 And the court said, and it was unanimous court,
17 Supreme Court said the charge under the act was indeed an
18 error, but one that inured to the appellate's benefit.
19 Specifically, the trial court had denied the appellate
20 immunity. And this section should not have been charged to
21 the jury.

22 That seems to me to be a clear instruction to the
23 circuit courts that we should not charge the statute to the
24 jury.

25 You are not asking me to charge the entire statute,

1 Mr. Whipper? You are asking me to charge one sentence, it
2 looks like, the self-defense, retreat and their own premises;
3 is that right?

4 MR. WHIPPER: Yes, sir. And I think that comes out
5 of old common law, really.

6 THE COURT: Have you looked at that, Mr. Condon?

7 MR. CONDON: Your Honor, is that not part of the
8 self-defense instruction, the duty to retreat?

9 THE COURT: Let me look at it.

10 MR. CONDON: Frankly, I'm not arguing that he had a
11 duty to retreat in this case.

12 THE COURT: Right. Mr. Whipper's proposed charge is
13 where a person is in his own home, yard or property, he is
14 not required to retreat, even if the aggressor is also an
15 owner, occupant of the home, yard or property, or some other
16 person who has a right to be there.

17 MR. CONDON: I don't have a problem as long as that
18 follows the case laws.

19 THE COURT: Yeah, and in conjunction with the
20 self-defense charge I'm going to give, this will kind of
21 resolve this. I am going to charge that, Mr. Whipper. Okay?

22 MR. WHIPPER: All right, sir.

23 THE COURT: And I think that takes care of that
24 whole argument there.

25 All right. Anything else while we are waiting on

1 the defendant?

2 MR. CONDON: Your Honor --

3 THE COURT: You've got a charge on mutual combat?

4 MR. WHIPPER: I don't have one.

5 THE COURT: Do you want to all come look at the
6 verdict form?

7 MR. CONDON: Your Honor, also for the record, I made
8 an error. I apparently entitled two exhibits Exhibit 16,
9 which is obviously not good. So I just ask that the jail
10 call be admitted as Exhibit 16B.

11 MR. WHIPPER: You said 16 twice? Is that what you
12 said?

13 MR. CONDON: Apparently, I did.

14 THE COURT: Okay.

15 MR. CONDON: So the 911 call is Exhibit 16 and jail
16 call is Exhibit 16B.

17 THE COURT: When y'all put that on and y'all redact
18 it the way it was published, even though your objection is
19 preserved -- is there anything else on that CD?

20 MR. WHIPPER: Relative to the 16B jail call?

21 THE COURT: Yeah, the jail call.

22 MR. CONDON: All those calls from the jail.

23 THE COURT: Well, I'm glad my clerk told me that.
24 See, in Charleston County, back in the jury room, they are
25 equipped with a laptop that obviously doesn't have the

1 Internet. It's cleaned off. It's only used for playing
2 exhibits. But they can hear everything on that CD unless
3 it's been redacted. So if the jury asks to hear that again,
4 they are going to have to do it in here. Okay? So that will
5 not go back. Everything will go back except for that
6 recording.

7 All right. Anything else?

8 MR. CONDON: Nothing from the State, Your Honor.

9 THE COURT: Thank you. You got something on mutual
10 combat?

11 (Whereupon, a bench conference takes place off the
12 record.)

13 (Whereupon, the defendant is present.)

14 THE COURT: Okay. Let's bring the jury in.

15 (Whereupon, the jury returns to open court at 10:26
16 a.m.)

17 THE COURT: Thank you very much. Ladies and
18 gentlemen, sorry about the late start this morning. Don't
19 get mad at the lawyers. It's my fault. I apologize. Okay?
20 I had some other things going on, and I apologize. I promise
21 you, I wasn't sitting here twiddling my thumbs. Thank you
22 for understanding. We will jump right into it this morning.

23 Mr. Whipper, are you ready to proceed with your next
24 witness?

25 MR. WHIPPER: Yes, Your Honor, we will call Adrian

1 Simmons.

2 ADRIAN SIMMONS,

3 having been duly sworn, testifies as follows:

4 THE CLERK: Speak into this mic kind of close, and
5 state your name and spell your first name and last name.

6 THE WITNESS: Adrian Simmons, A-d-r-i-a-n,
7 S-i-m-m-o-n-s.

8 DIRECT EXAMINATION

9 BY MR. WHIPPER:

10 Q. Thank you, Mr. Simmons. Mr. Simmons, where are you
11 living at this time?

12 A. At [REDACTED] North River Road, James Island, South
13 Carolina.

14 Q. Does that address have anything to do with why we
15 are here today?

16 A. Yes, sir.

17 Q. Who else lives there with you?

18 A. My grandmother, my mother, my niece, my -- and my
19 brother and sometimes my other brother, my twin brother.

20 Q. All right. Now, you were having some problems this
21 week with your health, aren't you?

22 A. Yes, sir.

23 Q. Can you tell us a little bit about those problems?

24 A. I have -- it's called conjunctivitis, also known as
25 pink eye in both of my eyes.

1 Q. And has it had any effect on anybody else in your
2 family?

3 A. Yes, sir. It got to my little -- my baby girl.
4 She's six months. She's currently in the hospital right now.
5 She has to do surgery on her eye because it got kind of
6 bad.

7 Q. So they are concerned about progression of how this
8 thing is developing?

9 A. Yes, sir, because it's so close to her brain.

10 Q. Now, you are taking medication for your malady; is
11 that correct?

12 A. Yes, sir.

13 Q. Now, where are you currently employed,
14 Mr. Simmons?

15 A. At a landscaping company called Super Clean.

16 Q. And how long have you been with them?

17 A. For about two years now. I was currently working
18 for Northeast construction until this happened and I lost my
19 job.

20 Q. I understand. And how far have you gone in school?

21 A. I went to the 10th grade.

22 Q. Did you complete the 10th grade?

23 A. No, I went back and got my GED.

24 Q. Now, you have some other children?

25 A. Yes, sir. I have a four-year-old named **child** I

1 have a two-year-old named **child 2**. And I have a two-year-old
2 son named **child 3**.

3 Q. And you work to take care of those children, don't
4 you?

5 A. Every day.

6 Q. And are the other children okay?

7 A. Yes, sir.

8 Q. Now, you have had a couple of incidents -- well,
9 you've had one incident really with the law; isn't that
10 correct?

11 A. Yes, sir.

12 MR. CONDON: Your Honor, can I approach on this?
13 Yes.

14 (Whereupon, a bench conference takes place off the
15 record.)

16 THE COURT: All right.

17 BY MR. WHIPPER:

18 Q. Let me rephrase that question. You were arrested
19 for threatening the life of a public official?

20 A. Yes, sir, back in 2012.

21 Q. And that's the question I'm making reference to.
22 Now, were you convicted in any way of that?

23 A. Yes, sir. I got a five-year sentence suspended to
24 three to five years probation.

25 Q. And you completed your probation?

1 A. Yes, sir.

2 Q. And, of course, during this whole time, you managed
3 to keep your employment up; is that correct?

4 A. Yes, sir.

5 Q. Now, how do you know Lamont Washington?

6 A. I got introduced to him from my child's mother,
7 Courtney McDaniel.

8 Q. And what was that -- how was that related to what we
9 are dealing with today?

10 A. She got -- we both needed two phones fixed. We both
11 had broken Galaxy phones. And she said she knew a guy that
12 fixed phones that was in her neighborhood. And she
13 introduced me to a guy named Lamont. And he went and fixed
14 our phones for us. He charged us \$400 for it. And we told
15 him that we didn't want it -- wanted it at the time or
16 whatever. And he told us -- sorry about that. He told us
17 that he would have dropped the price. So he dropped the
18 price to \$300. And Courtney told him that she didn't wanted
19 (sic) her phone fixed again. So I told him to just to fix my
20 phone. So he said that he was going to fix the phone.

21 We called him, asked him if he fixed the phone. It
22 was back in July of 2014, yeah, July of 2014. He called us
23 back and told us he had someone else that he knew that was
24 going to fix the phone because, like, it's called like a
25 diagram or something like that inside the phone that he

1 didn't know how to fix. So he requested his friend to fix
2 the phone for us.

3 So once he called back and told us that the guy
4 fixed the phone, Courtney, my child's mother, she got in an
5 incident where her kids had got taken away from her. So we
6 couldn't get the phone at the time. So we called him and
7 toll him -- well, actually, we didn't call him because he's
8 in contact with the family. So he had knew the situation at
9 the time. So he called -- she called me -- well, actually,
10 he called Courtney. I was right there. And Courtney told
11 him that she didn't want the phone at the time, that we had
12 some other bigger issues to deal with.

13 Q. Do you remember what time of year that was?

14 A. That was back in -- well, we gave him the phone in
15 July. So that was, like, the end of July, going into August,
16 once he said the phone was going to be fixed.

17 Q. So you heard this testimony about you taking a
18 weekend trip to Atlanta. What time period is that?

19 A. That -- I think that was like in September, because
20 it was, like -- I was at a BET awards ceremony. And he saw
21 pictures on Facebook. So he got in contact with Courtney
22 saying, why do he see me at parties and he still don't have
23 his money yet.

24 Q. So in September, you were there?

25 A. Yes.

1 Q. So that's what that's all about. So now you got
2 back in town and you started receiving phone calls?

3 A. Yes, sir.

4 Q. Now, how many phone calls did you yourself, that you
5 can recall, how many phone calls did you have conversations
6 with Lamont directly?

7 A. I only had one direct conversation with him.

8 Q. And do you recall when that was?

9 A. That was -- it was before the incident happened. So
10 had to have been, like, in the early second week of August.

11 Q. Now, what do you make of this talk about a phone
12 call that evening between you and he?

13 A. He was calling me asking me if I had his money to
14 pay him for the phone. I told him I didn't have the money at
15 the time, that I was going to get back with him. So he was
16 asking me if I live on Grimboll Road. I was like, I will get
17 back at you, I don't have the money right now.

18 So we hang up. He keep on calling the phone. I
19 never answered the phone from him. And next thing I know, I
20 see him pulling up on Deleston. It's a road right next to my
21 house. And it goes all the way to a dead-end. And I saw him
22 once he was coming back up. And he pulled in the driveway
23 and he jumped out of the car and was like -- only word that I
24 caught was: Why we got to keep on going through this?

25 And my brother, who was outside, he had caught what

1 he was saying. And he was like, Red, who is this guy talking
2 to you like this? But I never asked him what the guy was
3 saying. And then I walk up to him. We was on the side of my
4 house, because I was --

5 Q. Let me do this. You've been here. Let's help the
6 jury, because we've been using certain pictures and things to
7 show people where things are. So let's do that again.

8 Mr. Simmons, do you see this picture?

9 A. Yes, sir.

10 Q. You are going to need to stand up and use the screen
11 here, show people what you are talking about.

12 A. He pulled in the driveway.

13 Q. Let's speak a little louder, please.

14 A. He pulled in the driveway right here, right here by
15 this tree. I was standing on the side of the my house, like
16 where everyone was at. Me and my friends, we chill like in
17 the back of my house. We got like this barrel that we burn
18 trash and play games and stuff on. And I was sitting right
19 there. And you can see, this is an open field. You could
20 see the road that he turned on and pulled up in the driveway.

21 He parked right here. He jumped out of the car. He
22 walked out of the car. I walk like right here. My brother
23 was standing right here by the door, by the front of this
24 window. And that's when my brother -- that's when my brother
25 made the comment about what he said. But I didn't caught on.

1 So I just stand right there, wait for him to walk up to me.
2 We shake hands. He asked me if I had his money. I was like,
3 I thought I told you I didn't have the money right now. So
4 he was sitting there talking. He was just asking me why I
5 don't have his money, why it take me so long to pay him.

6 So I don't know if the first hand was a punch or was
7 a grab, but he tried to grab or punch me with this hand. He
8 threw this hand. I ducked down. I hit him. And he dropped
9 down. And he hit his head on the concrete right here. Like,
10 you could still, like, see the bloodstain from like where he
11 had landed.

12 It happened so fast, like, he just dropped down.
13 And he just start like -- I did see the blood that was coming
14 out of his ears. It kind of scared me, because, like, I
15 didn't know like that punch would have even made that happen.

16 So his cousin jump out of the car and he was like,
17 what do you all got going on? And I was like, you didn't see
18 what he just did? And he went to his cousin on the ground
19 and was shaking him, asking him if he was all right.

20 And Lamont, he kind of stand up, but he didn't
21 really stand up. His cousin helped him up and take him to
22 the car and he put him in the passenger seat and they drove
23 off.

24 Q. Was there any reason why you didn't help him get him
25 in the car?

1 A. No. Like, I was shocked. I was scared like, that
2 even happened. Like, I was 21 at the time -- no, 22, but I'm
3 25 now. And like, for him, his size, like, it kind of
4 shocked me. I didn't know, like, I had that strength to hit
5 him. But in back of my mind, he must be like was on some
6 type of medication or something, but he just dropped down and
7 hit his head.

8 Q. All right. Have a seat. Now, you heard some
9 testimony about the effects of the injury and what it did for
10 him and all of this.

11 A. Yes, sir.

12 Q. Do you know anything about his condition the next
13 year or any time after that?

14 A. Yeah. Yeah, I saw him riding -- like, we know the
15 same kind of people. I used to go there and get my hair cut
16 until this incident happened. So laws forbid us to be around
17 each other, so I stopped going there.

18 So, like, I had pulled up there the first time. And
19 he was out there, like, he was just chilling on his motor --
20 no, I think it was a dirt bike or whatever. And I left the
21 area.

22 And, like, I never -- I don't even know him. Like,
23 we never come in contact in the streets or anywhere. I
24 barely even seen this man. That was, like, the only time
25 that I actually saw Lamont.

1 Q. All right. What do you know about his activities
2 through social media?

3 A. My friend, like, my friend, she got a Facebook page
4 and she's friends with him. And, like, she be telling me --

5 MR. CONDON: I'm going to object to hearsay.

6 THE COURT: I'm sorry. Don't talk. Don't talk.
7 Sustained. Hearsay.

8 THE WITNESS: Sorry. She shows me the photos of him
9 interacting on his dirt bikes and, like, going out to
10 different places. And I remember his testimony when he said
11 that he didn't even rode a dirt bike, a four-wheeler since
12 2014. But he's as posting photos on Facebook saying how he
13 going -- how he's doing wheelies on Folly Road and Riley
14 Road.

15 And his statements about him not being able to
16 taste -- don't get me wrong. I really feel sorry for what
17 happened to him. I didn't mean it by any way that happened
18 to him. But, like, for him to get on the stand and, like,
19 make it seem like he can't taste or smell, but you posting
20 pictures and stuff on social media like saying this food
21 taste so good. And, like, you contradicting yourself because
22 you are saying you can't taste and you can't smell, but you
23 eating all these delicious food and tasting it.

24 Q. Do you have any examples of that?

25 A. Yes, sir.

1 Q. I want you to read his posts for me.

2 MR. CONDON: I'm going to object to hearsay.

3 THE COURT: Objection what now?

4 MR. CONDON: Hearsay. He's reading an out-of-court
5 statement.

6 THE COURT: Hang on, Mr. Whipper.

7 MR. WHIPPER: Your Honor, obviously, it would be a
8 statement against interest, number one; present sense
9 impression, number 2. These things are not -- they are
10 admissions by the victim himself.

11 THE COURT: All right. I'm going to allow it. The
12 State can re-call the witness if you need to, if you need to
13 explain it. I don't even know what it is.

14 MR. WHIPPER: I will have him pull it up.

15 THE WITNESS: This is, like, photos of him. Like,
16 I'm going to show you all the comments. Like, he's saying he
17 can only -- what's his word? He can only taste spicy and
18 sweet food. But collard greens and ribs is not sweet,
19 undoubtedly spicy.

20 MR. WHIPPER: What I want you to do is read --

21 MR. CONDON: I'm also going to object for
22 foundation. We are just going through Facebook. It's kind
23 of crazy.

24 THE COURT: Overruled.

25 THE WITNESS: This is a post about with him on the

1 dirt, on the four-wheeler. You can't really see it good.

2 BY MR. WHIPPER:

3 Q. Do you need some help, Mr. Simmons?

4 A. Yes.

5 MR. WHIPPER: Your Honor, we would like to ask for
6 assistance operating --

7 MR. CONDON: Your Honor, can we please approach?

8 THE COURT: Yeah.

9 (Whereupon, a bench conference takes place off the
10 record.)

11 BY MR. WHIPPER:

12 Q. Mr. Simmons, what we need to do is show the
13 language. Do you got the text?

14 A. This is a post with him with the four-wheeler.

15 Q. I want you to read this. It says -- who is that
16 name there?

17 A. Mr. Lamont Washington, Sr., August 30th, 2015: I'm
18 doing this -- I'm doing this wheelie down Foley -- I'm doing
19 this down Folly Road, Ashley Phosphate, negro, then finish it
20 off on Central Park to Riley, no joke.

21 MR. WHIPPER: Your Honor, we would like to publish
22 this for the jury?

23 THE COURT: What's the State's position on this?

24 MR. CONDON: You're Honor, it isn't even in
25 evidence.

1 THE COURT: I agree. It's not in evidence.

2 MR. WHIPPER: I'm sorry. We would like to offer
3 this as the evidence of post by the victim Lamont Washington.

4 THE COURT: Will you be able to print it out
5 somehow?

6 MR. WHIPPER: Your Honor, we can certainly show it,
7 publish it to the jury.

8 THE COURT: I can't put a digital screen into
9 evidence. The whole thing -- the whole device will have to
10 come into evidence.

11 MR. WHIPPER: We don't have a problem with that.

12 THE COURT: Once it comes into evidence, he ain't
13 going to be able to get it back.

14 MR. WHIPPER: Not right away.

15 THE COURT: I understand that, but my evidence
16 custodian is my court reporter. All right. So there's been
17 a -- just that page with that post?

18 MR. WHIPPER: We have two other posts that are part
19 of this presentation.

20 THE COURT: Let's do this. All right. The State
21 has an objection. If he prints out that page, which can be
22 done at the break, and offers the printed-out page with the
23 photos and the posts, does the State have any objection to
24 that?

25 MR. CONDON: Your Honor, just the same objections,

1 but --

2 THE COURT: Objection is noted. Those are
3 overruled. I think that's the best thing to do. So what I
4 will do is i will allow it into evidence, a printed-out
5 version, but I'm not going to put that device into evidence.
6 Okay? So if you wish to -- I don't know if that will show up
7 or not, but if you wish to try to show it now, that's fine,
8 or we can just publish it later once that's printed.

9 MR. WHIPPER: No, we would like to publish it later,
10 I think.

11 Your Honor, here's what -- this is a picture of him
12 on Folly Beach, on the beach with the four-wheeler.

13 BY MR. WHIPPER:

14 Q. He has goggles on?

15 A. Yes, sir.

16 Q. There's a person behind with the goggles?

17 A. Yes, sir.

18 THE COURT: I granted you permission to publish. I
19 thought we were going to publish the picture, I mean, the
20 printed page.

21 MR. WHIPPER: We will get it printed out.

22 MR. CONDON: Do you mind if I see the picture?

23 MR. WHIPPER: So we will print those out.

24 THE COURT: Okay. We will print those out at the
25 break and then we will see where we are.

1 BY MR. WHIPPER:

2 Q. Mr. Simmons, so the phone, what happened to the
3 phone?

4 A. I never got the phone.

5 Q. You just dealing with the situation of this
6 charge?

7 A. Yeah. It was since like I got -- I got off
8 probation for my other charges. I ended up catching this
9 charge. I was working at Northeast Construction getting paid
10 \$15 an hour. I lose my job behind this.

11 Q. Now, how were you notified about your warrant in
12 this case?

13 A. That's what really kind of -- really made me most
14 scared, because I didn't know he was in the hospital at the
15 time. I didn't even know I had a warrant for this situation,
16 because no one ever came to my house. And I never -- no one
17 got in contact with me about the situation.

18 My PO called me in. This was right before I got off
19 probation. My PO called me in for the -- to sign some
20 papers. I went in, not thinking nothing of it. And U.S.
21 Marshals came and said they had a warrant for assault and
22 battery of a high and aggravated nature. And I was like, for
23 what? And they were saying Lamont Washington, but the name
24 never trigger in my head until I got inside the county jail
25 and I read the affidavit that they gave me stating what

1 happened.

2 Q. All right. So now all of this talk about hitting
3 him from behind and all of this kind of talk and having brass
4 knuckles and all of this kind of talk, what is that all
5 about?

6 A. That's -- that is kind of foolishness. I never had
7 no weapon in the area or nothing. It surprised me when he
8 popped up to the area. And I was like -- I was scared when I
9 seen him grab me. And me being smaller than him, well, me
10 having fast reflexes, I end up catching the punch and hit
11 him. And it was just a lucky punch. And he fall back and
12 hit his head on the ground. Like, my whole backyard area was
13 surrounded by concrete, from the door all the way to
14 around -- from around the back of the house.

15 MR. WHIPPER: I have no further questions for the
16 witness.

17 THE COURT: All right. Solicitor.

18 CROSS-EXAMINATION

19 BY MR. CONDON:

20 Q. Mr. Simmons, you testified on direct that you were
21 only on probation for threatening the life of a public
22 official?

23 A. Actually, I was on probation for threatening a
24 public official and failure to stop for blue lights.

25 Q. What else?

1 A. Those is my convictions back in 2012.

2 Q. If I showed you a portion of your record, would that
3 refresh your memory a little more?

4 A. Yeah. Threatening life of a public official,
5 convicted YOA, five years suspended to three years probation;
6 resisting arrest, convicted YOA five years probation; failure
7 to stop for blue lights, one year upon one year probation;
8 failure to stop for blue lights, littering. You are talking
9 about those?

10 Q. I'm not going into all your other stuff. Just
11 talking about that portion. So you said two counts of
12 failure to stop for blue lights?

13 A. Two counts.

14 Q. And one count of resisting arrest and one count of
15 threatening the life of a public official. And that's what
16 you are on probation for. And you stated you successfully
17 completed it, even though --

18 A. Yes, sir.

19 Q. -- even though you were charged with this while you
20 were on probation?

21 A. No. Like, yeah, I got -- see, I already was on the
22 verge of getting off probation when I caught this charge.
23 So, like, this probably was like a week before I got off
24 probation. So that's like -- that's another thing. Like,
25 the situation happened once I already got through all my past

1 situations, got it done over with, and, like, this is the
2 only thing that's holding me back from moving on. And so for
3 this young man to say that I hit him with something is just
4 insane. Like, I don't know if he afraid to say because I'm
5 smaller than him that he got hit with one punch. Like, it
6 was an altercation that me and him had.

7 Q. All right. I want to start with your jail
8 Wednesday, September 24th. Can you tell the jury, what time
9 did you wake up that morning?

10 A. I wake up early. Sometimes I be up 5, 6 o'clock.

11 Q. Do you recall what time you woke up on that day?

12 A. Not to my knowledge. That was years ago. I don't
13 know.

14 Q. Do you recall anything you did that day?

15 A. Sit in my backyard with my friends, like I always
16 do.

17 Q. Did you go to work?

18 A. No, I was off that day.

19 Q. Wednesday?

20 A. Yeah.

21 Q. So pretty much hanging out in the backyard all day
22 by the barrel?

23 A. Yeah, playing -- I got this big 60-inch smart screen
24 TV, like my friends like to let me bring outside and we play
25 like Madden and 2K and stuff like that.

1 Q. And you testified on direct that you never really
2 had a conversation with Mr. Washington; is that correct?

3 A. No. I had one conversation before this -- before
4 this event when he called me after the photo on Facebook with
5 him with me, and he asked me about the money. And I told
6 him I had some situation going on with the child's mother
7 that I couldn't give him the money at the time.

8 But if you look through the call, like me and him
9 never actually had no conversation. It was mostly him and
10 Courtney until the day of this incident.

11 Q. So, on the day of the incident, did you call him
12 yourself at all?

13 A. He called me. And I called him back when I missed
14 his call. And he asked me if I had the money. And I told
15 him I don't have the money right now, I will get back to you.
16 And I already had told him in the text message that I -- I
17 wouldn't tell you to fix this phone for me if I didn't have
18 the money for you, but some situations came up in the family
19 that you knew about that I couldn't give you the money at the
20 time. So, like, I don't know why he even kept calling about
21 the money if he already knows what's going on in the
22 family.

23 Q. So you texted him back and forth that day too?

24 A. No. I only text him one time. He only got one text
25 in my phone. It's in the records, one text from my phone.

1 The other texts and calls was between him and Courtney. Me
2 and him never really talked about the phone. It was mostly
3 him and Courtney.

4 Q. Was it pretty aggravating getting called that much?

5 A. People call me all the time. Like, so it's not
6 really annoying to me. Like, I seen people calling, but
7 nothing for me to ignore the calls. So I was like, I already
8 told him that I didn't have the money, so if he kept calling,
9 that's on him.

10 Q. So it would be pretty stupid to get mad at something
11 that minor, is what you are saying?

12 A. Pretty stupid, especially behind \$200. And at the
13 time, like I said, I was getting paid \$15 an hour, so it
14 wasn't like I didn't have the money to pay him for it.

15 Q. So you had the money to pay for it at the time?

16 A. No, not at the time, but -- no, but, like, I had a
17 job, but my requirements that I have to do for my child's
18 mother at the time kind of shortened my pockets. So I
19 couldn't -- the phone was not a big issue to me. Like, he
20 already had put on Facebook that he was going to sell the
21 phone. So, to my knowledge, why would you keep on calling
22 me?

23 And his policy is if you don't -- if he don't
24 receive payment in a certain amount of times, he's got a
25 right to sell the phone or dispose the phone, whatever the

1 case may be. So if he was a businessman, you should go by
2 your policy. Why do you got to call my phone or my
3 girlfriend's phone 57 times after being acknowledged that we
4 don't have the money for you.

5 Q. When that phone was fixed, what kind of value do you
6 think it had?

7 A. Well, it was a Galaxy 4. It was a very popular
8 phone. So I'm pretty sure he could have got way more than
9 \$200 that I was going to give to him.

10 Q. So wouldn't it have made sense just for him to sell
11 it on the market?

12 A. Yeah. Like, he said he was going to do on Facebook.
13 So to my knowledge, why didn't you sell the phone if you
14 could have get twice as much money that you was going to get
15 from me?

16 Q. Do you think it's possible that he cared about one
17 of his customers and wanted to follow through with the
18 repair?

19 MR. WHIPPER: Objection, Your Honor, calls for
20 conjecture.

21 THE COURT: Sustained.

22 THE WITNESS: He --

23 THE COURT: Don't answer the question. I sustained
24 the objection.

25 MR. CONDON: I'm going to put Exhibit 15 on the

1 overhead, Your Honor. And I want to zoom in on some of these
2 text messages.

3 BY MR. CONDON:

4 Q. I believe you testified you only text him once.

5 A. Yeah, I only texted him once. Those -- if you could
6 pull up the text messages, the actual words, those are not
7 from me. Courtney, like me and Courtney stays in the same
8 house, so sometimes she uses my phone and calls him -- well,
9 not call him, text him. If you can pull up the text
10 messages, you will not see no words in those text messages
11 concerning me and him talking.

12 Q. Well, I want to go through this for a second. So is
13 this your number here 509 --

14 A. 509-██████ that's my old number.

15 Q. Would you agree that says sent at 3:55?

16 A. I agree with you.

17 Q. And you would agree another sent one, another sent
18 one, another sent one, another sent one, received, received,
19 sent, sent, received, sent, sent, received, sent, sent. Does
20 that not appear that you are texting back and forth?

21 A. Yeah. But if you can pull up the actual words, you
22 will not see a conversation with me and him. It would be a
23 conversation with him and Courtney from Courtney using my
24 phone. I never -- I never had no text messages sent to him
25 except for the one text message that I sent to him about me

1 going to pay him for the money, I mean, for the phone, that I
2 wouldn't have let him fix my phone if I didn't have the money
3 for him. Can you pull the actual words out?

4 Q. I wish I could.

5 A. I wish you could too.

6 Q. Do you have it on your phone?

7 A. No, I don't even have that number anymore. I wish I
8 did to prove the -- to prove that those wasn't me in those
9 actual -- in those text messages. But if you pull up his
10 phone right there, you can see how much calls that he gotten
11 denied from. And I counted out two incoming calls, one from
12 my phone to him after a missed call and one incoming call was
13 from Courtney's phone. The rest of the calls was from him
14 being -- from calling my phone and Courtney's phone. It's 57
15 calls altogether. Like, why would you call somebody 57 times
16 in a full-day period behind \$200 that you could have made
17 \$400 off? Like, he just was determined to get his money.

18 And I guess that would make him upset to come
19 looking for me and cause this to happen. But I didn't mean
20 for it to happen, but from -- if he had punched me, me being
21 that small, I probably would have died.

22 Q. So the day of the incident when he allegedly was
23 looking for you, where were you at at your house?

24 A. I was home. I was home all day that day.

25 Q. When he found you, where were you?

1 A. I was on the -- well, the side. Like, the back of
2 my house, I've got a shed like right there on the corner.
3 There's a shed with a barrel on the side of it. I was right
4 there where you could see the open field. You could see
5 every car that coming down the road.

6 Q. So it's your testimony that he drove by and spotted
7 you and then came up?

8 A. Yeah. In J.R.'s testimony, J.R. Stated that he knew
9 a spot that I hang out at. He didn't know that that was my
10 actual address, but he knew there was a spot, because what he
11 quoted, he do plumbing work, and they did a job on Deleston
12 street, the same street that's on the side of my house.
13 Like, you could see my house if you on that road. You could
14 see every movement in my yard if you are on that row. Like,
15 if you drive past my house, like, the field is so big, like,
16 you can see everything that's moving in the yard.

17 Q. So how many kids do you have with Courtney?

18 A. I have one baby girl from her, six months, the one
19 that's in the hospital.

20 Q. And you have -- you testified two two-year-olds?

21 A. Yes.

22 Q. Are they twins?

23 A. No. I have a two-year-old named **child 2** and
24 4-year-old named **child** from my child's mother Tierra
25 Hamilton sitting in the back. And I have a two-year-old boy

1 from another female in North Charleston. His name is
2 **child 3** .

3 Q. So after this incident happened, what did you do
4 next?

5 A. Huh?

6 Q. What did you do after you knocked out, there's this
7 big pool of blood on the ground, this guy is laying there?
8 Did you help him at all?

9 A. No. Like I said, I stand right there. I was in
10 shock. My brother, he was kind of scared, because it shocked
11 him that he dropped on the ground like that. While I was
12 standing there in shock, that's when his cousin came out of
13 the car, like, he dropped on the ground and, like, his hands
14 was up like that stiff. And it scared me because I see like
15 the blood coming out of his ears. And my brother is like,
16 oh, shit. And that's when his cousin came and grabbed him
17 and like, what the hell -- what did he say? What the hell do
18 you all got going on, or, why did you all did that? And he
19 grabbed him and dragged him to the car. And they left
20 quick.

21 Q. Did you call the police?

22 A. No, I didn't call the police. I really wish I did.
23 I really wish I did. I would tell the police that I had
24 no -- like, I had the defend myself the day in court. I
25 didn't thought the situation was even that serious, because,

1 like I say, no police never came to my house. Like, I got
2 served with a warrant from my probation officer.

3 Q. You testified that you had no weapon in the area?

4 A. No weapon.

5 Q. Where was your weapon then, if it wasn't in the
6 area?

7 A. I don't own no weapon. No weapon was in the area,
8 so I don't know why he's stating that there was.

9 Q. Did you ever shake hands with the victim?

10 A. Yes, sir.

11 Q. Did you not leave that out of your testimony?

12 A. I didn't stated (sic) that?

13 Q. No.

14 A. I said I was on the side of the house with -- side
15 of the house. He parked right here. He jumped out of the
16 car, walked on the porch right here. We shook hands. And he
17 asked me what -- if I have his money. Didn't I stated (sic)
18 that?

19 Q. Let me get it straight. He was livid? Was he
20 really mad at you?

21 A. Yeah, because when he got out of the car, the only
22 thing I heard is, why we got to keep on going through this?
23 And he said some other stuff, but I didn't catch it. I just
24 caught my brother when he was like, Red, who the hell is this
25 man talking to you like that? And I didn't even ask him what

1 he was saying, because after that, that's when me and him
2 shook hands. Like, I didn't even ask my brother what he been
3 saying, because I shook hands when he asked me if I had the
4 money. I told him the same thing, I don't have the money
5 right now.

6 Q. So you shook hands, somewhat unfriendly, sounds
7 like, all of a sudden he swung at you and grabbed you?

8 A. Yes, because I told him I didn't have his money.
9 And he was mad because he was calling me so many times and he
10 wanted his payment.

11 Q. And you were able to duck and miss it?

12 A. Thank God, I did. What can I say? I got fast
13 reflexes.

14 Q. And you hit him left hook, right hook? How did you
15 hit him?

16 A. I hit him with my right hand. Like I grabbed that
17 one, and then he tried to throw this one, so I grabbed that
18 hand and I box him.

19 Q. Where did you hit him?

20 A. I hit him right here in his face. And he just
21 dropped back. And I say he fall back like that and his hands
22 was like stuck in the air. And it shocked me.

23 Q. Did you hit him pretty hard?

24 A. I guess so if he fall like that.

25 Q. Did you use all your power? What kind of hit was

1 this?

2 A. I don't know. I can't -- it was just like a fast,
3 like a -- he grabbed, and I did like that, and it was that
4 quick, like three seconds maybe. Like, it just happened so
5 quick.

6 Q. So would it be inaccurate to say that y'all were
7 trading blows back and forth?

8 A. You could say that because he threw two punches.

9 Q. Oh, so he threw two punches now?

10 A. I don't know if the first was a punch or grab, but
11 he reached this one out, and I saw him throw the other one.
12 And I hurry up and --

13 Q. So he tried to hit you with his left hand, grabbed
14 you with the right?

15 A. He grabbed -- he tried -- it would be this way, so
16 right -- left, like that (indicating).

17 Q. Now, tried to hit you with the right, grabbed the
18 left?

19 A. That's all I know is he throw two punches at me.
20 Luckily, I weaved it and I hit him.

21 Q. All right. So now he's knocked out. He's got blood
22 oozing out of his ears. What do you do after that?

23 A. I told you, I was in shock. I couldn't have do
24 nothing. His friend jumped out of the car as soon as he hit
25 the ground.

1 Q. So they leave. What do you do next?

2 MR. WHIPPER: Your Honor, with all due respect, this
3 is asked and answered, third round, third or fourth round.

4 THE COURT: All right.

5 MR. CONDON: Your Honor, I want to see what he does
6 throughout the night.

7 THE COURT: Let's just advance forward from that
8 question.

9 BY MR. CONDON:

10 Q. Fast-forward next couple of hours, what are you
11 doing?

12 A. Like, me and my brothers and my friends who was in
13 the yard, we were just sitting there talking about the
14 situation. Probably didn't leave until probably about 3:30,
15 yeah, probably about 3:30. Because my friend, yeah, he had
16 went in first. So after he went in, that's when we got kind
17 of tired, put the TV inside the house and went inside.

18 Q. Who was the male holding the baby out there?

19 A. That was my oldest brother. And my twin brother, my
20 twin brother and my mother, they walked out of the house.
21 But then my oldest brother had to tell my mother to go back
22 inside.

23 Q. Did he tell her after the fact to go back inside or
24 was this before?

25 A. No. It was like when -- because I guess she had hit

1 with emotion or whatever. And I was on the side of the
2 house. So I just heard him when he was telling her to go
3 back inside, because she was trying to tell them to leave out
4 of the yard. I wasn't even paying attention to him. So I
5 wasn't really -- I just know I heard him tell her to go back
6 inside the house. That was my oldest brother holding my
7 little girl, **child** I think she was two years old at the
8 time. They just had walked out of the house when then Lamont
9 was pulling in.

10 Q. Are you familiar with this jail call that we played
11 earlier?

12 A. Yes, sir. It was a jail call between me and my
13 bondsman. Actually, that was the first day I got arrested.
14 I was bonding out. And if you know my bondsman, in jail,
15 because she likes to joke around, so when I called her, she
16 was like, you need to keep your hand off people. And I was
17 like, yeah, I'm going to try, because, like, people will
18 like -- like him, like, they, like, come and think they can,
19 like, trying to do whatever, like. And I got in a situation
20 before where I had to defend myself. And you can see in my
21 records, that charge got dismissed or whatever.

22 Q. What charge was that?

23 A. It was a charge back in 2010, 2000 -- no, I think it
24 was earlier than that.

25 Q. What was it for?

1 MR. WHIPPER: Objection, Your Honor. Irrelevant as
2 well as --

3 MR. CONDON: He brought it up, Your Honor.

4 THE COURT: Overruled.

5 THE WITNESS: Just was an old charge. Like, it was
6 an assault charge between me -- no, it was a family
7 dispute.

8 BY MR. CONDON:

9 Q. Was it ABWIK, assault with intent to kill?

10 A. No. It was a family dispute between me and my
11 brother. I don't even remember the charge. That was, like,
12 my first actual charge, like.

13 MR. CONDON: Your Honor, may I approach?

14 THE COURT: Yes, sir. Approach the witness or me?

15 MR. CONDON: Your Honor.

16 THE COURT: Yes.

17 (Whereupon, a bench conference takes place off the
18 record.)

19 THE COURT: Let's take a break. I see some of you
20 all squirming around in seats and everything. Let's take
21 about a 15-minute comfort break.

22 I'm ordering in lunch for you. Okay? So you don't
23 have to travel out and worry about this weather and stuff.
24 And I'm hoping to have it here by 1 so we can work until
25 then. But let's take a 10, 15 minutes recess right now.

1 Don't talk about the case.

2 (Whereupon, the jury leaves open court at 11:22
3 a.m.)

4 THE COURT: His testimony was, "that's my first real
5 charge."

6 MR. CONDON: And I would like to get --

7 THE COURT: His testimony was just then, he
8 volunteered, that was my first real charge. So you believe
9 he opened the door to anything before 2010?

10 MR. CONDON: I would like to ask him specifically
11 about this burglary second degree and his grand larceny 1K
12 less than 5K as a juvenile where he went to the Department of
13 Juvenile Justice.

14 THE COURT: And that was before the 2010 incident
15 which he voluntarily talked about?

16 MR. CONDON: Correct, 2005.

17 THE COURT: Mr. Whipper.

18 MR. WHIPPER: Well, Your Honor, there's an order and
19 ruling by I believe the judge sitting here that said we don't
20 get into that stuff.

21 THE COURT: I agree with you, but I'm revisiting
22 that ruling.

23 MR. WHIPPER: Judge, I'm going to tell you this --

24 THE COURT: I think your client opened the door
25 voluntarily. He testified under oath that's his first real

1 charge. But that's not his first real charge. He has a
2 burglary and a grand larceny.

3 MR. WHIPPER: Your Honor, that's because he opened
4 the door.

5 THE COURT: How did he --

6 MR. WHIPPER: Because the question that he asked, he
7 asked him about -- he started talking about the question
8 issue about whether, you know, this lady likes to joke with
9 me about so forth and so on. And, of course, I had something
10 that happened before. But, Your Honor, you already said he
11 would not go any further with that. That was your ruling.

12 The other thing is, last night before you left, you
13 asked him, was there anything else, counsel, that you might
14 want to bring up in terms of arrest record? He said, no,
15 nothing I know, but I might be see if there's anything else.
16 He didn't bring up anything else.

17 All I'm saying to the Court, that the Court told me,
18 recognized there are certain evidentiary issues in
19 Mr. Washington's background. I didn't go into that. The
20 rule says I couldn't go there. And the rule says he can't go
21 where he's about to go in too. So I don't see how we are
22 opening a door there. Along with the fact the Court has
23 ruled that would not be a part of this case. So I think
24 then, Your Honor, I just think he can't go there.

25 THE COURT: All right. Now, I do know that you

1 brought up on your direct questioning the charge of
2 threatening the life of a public official and the fact that
3 he was on probation. So that clearly -- and you didn't
4 object when the solicitor was questioning about why he was on
5 probation. So that's in the record. That's done. Y'all
6 brought that up. You agree with me on that?

7 MR. WHIPPER: Your Honor, but that is one of the
8 things that was not prevented by the rules. That particular
9 arrest was two years ago, two or three years ago. So it
10 wasn't, you know -- it was part of the one he was going to
11 bring up. So I said, I will just go ahead and bring that
12 out. I didn't -- I just wanted to get to it. But I
13 rephrased my question and I asked him, I think specifically,
14 did you have a problem with this particular charge. And then
15 I did that. And, of course, there are more charges that were
16 a part of that fact pattern. He went into that. That's what
17 I probably should have done too, bringing all the charges
18 that happened. Because after that, that's a clean plate.
19 Right now, what I'm concerned about when I made my motion,
20 now he's going to use the scarlet letter approach. And I've
21 been told he has enough information to know that's not where
22 we are going today in this case.

23 THE COURT: All right. Mr. Condon.

24 MR. CONDON: Your Honor, clearly, he's opened the
25 door for it. He said -- I can't remember exact language --

1 THE COURT: He said, that's my first drug charge.
2 All right. And so you want to get into the burglary second
3 and grand larceny, which happened, which he was convicted of
4 in juvenile adjudication back in March of 2005?

5 MR. CONDON: That's correct.

6 THE COURT: For which he went to DJJ and was placed
7 on probation until 2008?

8 MR. CONDON: Correct.

9 THE COURT: Right. Okay. I'm not going to allow
10 you to question about that. Okay? However, I will allow,
11 since I do believe he did open the door, I will allow you to
12 ask the question this way. Okay? And this is how you are
13 going to ask it: Mr. Simmons, you did have some charges as a
14 juvenile, correct? And that's it.

15 MR. CONDON: Okay.

16 THE COURT: I think that's a fundamentally fair way
17 to handle it for both the State and the defense. And,
18 Mr. Whipper, your objection is preserved. Without getting
19 into the specifics, because people hear burglary, grand
20 larceny, they freak out.

21 MR. WHIPPER: And this would be my second motion for
22 a mistrial.

23 THE COURT: Your motion for a mistrial is denied.

24 MR. CONDON: Also, I would like to bring up his
25 other convictions. He did say when he first started out that

1 he's not been in any real trouble. And then he clarified, I
2 said, oh, you mean recent trouble? Yeah, no recent trouble.
3 But in 2014, he had a CDV conviction and cruelty to children
4 conviction. And I think that's recent trouble.

5 MR. WHIPPER: Your Honor, again, this is the kind of
6 thing --

7 THE COURT: Yeah, I'm not going to let you get into
8 that.

9 MR. WHIPPER: They are clearly outside of the
10 statute. Let me tell about the cruelty charge.

11 THE COURT: Mr. Whipper, I agree with you. I don't
12 need to hear anything else. I'm not going to let it in.
13 Okay? Motion for mistrial, second motion, is denied. We are
14 in recess. All right.

15 (Whereupon, a recess takes place.)

16 THE COURT: Mr. Simmons, if you will please go on
17 back up to the stand. Thank you, sir. All right.
18 Solicitor, you understand how you are going to ask the
19 question?

20 MR. CONDON: Yes, Your Honor.

21 THE COURT: Any questions about that?

22 MR. CONDON: No.

23 THE COURT: Quit dancing around all the stuff I
24 previously ruled on. Let's get moving. Bring the jury in.

25 (Whereupon, the jury returns to open court at 11:42

1 a.m.)

2 THE COURT: Solicitor.

3 BY MR. CONDON:

4 Q. Mr. Simmons, you would agree that you did have some
5 charges as a juvenile, correct?

6 A. Yes, sir.

7 Q. I want to get back to this jail call and going to
8 wrap it up quickly here. Just want to ask you some more
9 questions about it. I'm going to put up -- mark it as
10 State's Exhibit 24.

11 THE COURT: Has it been introduced or just marking
12 it?

13 MR. CONDON: Just marking it, Your Honor.

14 (State's Exh. 24, Jail call transcript, was marked
15 for identification.)

16 BY MR. CONDON:

17 Q. Mr. Simmons, do you recall, I believe her name is
18 Angelica, asked you on that phone call: Why you be fighting
19 a man like that? Y'all were fighting?

20 A. Yeah, because I was -- I said like a scuffle.

21 Q. Do you recall saying: No, I just hit the man one
22 time?

23 A. That's how it happened. I just hit him one time.

24 Q. Did she not asked you, were you all fighting, and
25 you said, no, I just hit the man one time?

1 A. Yes, she quoted, why do I keep putting my hands on
2 people.

3 Q. And her question was, why you be fighting that man
4 like that, y'all were fighting, and you stated, no, I just
5 hit the man one time?

6 A. Yeah, I just hit him one time. That's exactly how
7 my testimony said.

8 Q. Then kind of talk about how he goes in a coma--

9 MR. WHIPPER: I'm not understanding.

10 THE COURT: Okay.

11 MR. CONDON: I will move on, Your Honor.

12 THE COURT: Thank you.

13 BY MR. CONDON:

14 Q. Do you recall discussing where she then asked why
15 you been fighting him? Do you recall your response?

16 A. Yeah. I say he was -- I didn't really get into
17 details with her. I just was like kind of briefing her, that
18 he wanted me for the phone and about the low disrespectful,
19 text messages and stuff that he was saying over there. I
20 didn't really get into the situation, because like I said, I
21 was bonding out at the time.

22 Q. And then would you agree you later stated: Yeah, he
23 came to my house, so I just hit him?

24 A. Yeah, he came to my house, like. And I didn't get
25 into details with her. I just told her that I hit him, that

1 was the reason that I got the charge, for hitting him.

2 MR. CONDON: That's all I have.

3 THE COURT: Thank you.

4 Any redirect?

5 MR. WHIPPER: Yes, Your Honor.

6 REDIRECT EXAMINATION

7 BY MR. WHIPPER:

8 MR. WHIPPER:

9 (Defendant's Exh. 4, Photograph, was marked for
10 identification.)

11 (Defendant's Exh. 5, Photograph, was marked for
12 identification.)

13 (Defendant's Exh. 6, Photograph, was marked for
14 identification.)

15 MR. WHIPPER: Approaching the witness, Your Honor.

16 THE COURT: Yes.

17 BY MR. WHIPPER:

18 Q. Mr. Simmons, take a look at these, sir. What are
19 they?

20 A. This is photo of Deleston Street.

21 THE COURT: Hang on, sir. Just sit down. Identify
22 the photographs first before I can tell you whether you can
23 show them. They are not in evidence yet.

24 THE WITNESS: Sorry. They are a photos of Deleston
25 Street and a photo of my yard.

1 BY MR. WHIPPER:

2 Q. And were those areas that you were trying to
3 describe to Mr. Condon?

4 A. Yes, sir.

5 Q. The area right there where there's a photograph of
6 that back door, house?

7 A. Yes, sir.

8 Q. What is important about that area for the record?

9 A. Just this is the actual spot where it all happened
10 at.

11 Q. Uh-huh. And what all is showing in that photograph
12 that's important?

13 A. The concrete patio that's surrounding the porch.

14 Q. And then the other photograph, what's important
15 about it?

16 A. The open field and just how clear you can see that
17 everything in the area.

18 MR. WHIPPER: Your Honor, we would like to admit
19 these into evidence. It's Defendant's Exhibit 4, 5 and 6.

20 MR. CONDON: No objection, Your Honor.

21 THE COURT: Without objection, introduced as stated.

22 (Defendant's Exh. 4 is moved into evidence.)

23 (Defendant's Exh. 5 is moved in evidence.)

24 (Defendant's Exh. 6 is moved into evidence.)

25 MR. WHIPPER: I think that's it for us, Your Honor.

1 THE COURT: Okay. All right. Thank you, sir. You
2 may step down.

3 You may call your next witness, Mr. Whipper.

4 MR. WHIPPER: We call to the stand Ms. Courtney
5 McDaniel, but she had an emergency with the child.

6 THE COURT: All right. Is she here?

7 MR. WHIPPER: She is in the city, yes, sir.

8 THE COURT: But she's not here in the courtroom?

9 MR. WHIPPER: No, sir, she's not.

10 THE COURT: That's your next witness?

11 MR. WHIPPER: That's our next witness.

12 THE COURT: Do we have any idea when she's going to
13 be here?

14 MR. WHIPPER: We need to make that clear.

15 THE COURT: Okay. Well, you know, I've got lunch
16 going to be here at one o'clock for the jury. So I now have
17 a hour and five minutes.

18 MR. WHIPPER: Let me make sure with my client.

19 THE COURT: So let's take a ten-minute recess. And
20 we will hopefully have some information for you about the
21 next one. Okay? Don't talk about the case.

22 (Whereupon, the jury leaves open court at 11:50
23 a.m.)

24 MR. WHIPPER: Your Honor, I'm just begging the
25 Court's indulgence. I stopped to make sure we can keep

1 things moving, but if I show any discourtesy to the jury, I'm
2 sorry about that. My sense was that you wanted me to get on
3 it.

4 THE COURT: Yeah. I want your next witness here. I
5 know we've got medical things going on, but, you know --

6 MR. WHIPPER: This is something I found out about
7 this morning. What I did to try to remedy that was to have
8 the mother-in-law switch places with the mother. And I don't
9 know why that didn't remedy the situation. I don't know if
10 it was a situation where once they got to the hospital, that
11 something arose and mother said you can't leave now.

12 THE COURT: Let me ask you this.

13 MR. WHIPPER: And, Judge --

14 THE COURT: What's the possibility of having the
15 State stipulate to what Courtney's testimony would be? That
16 would save us a bunch of time if the State would be willing
17 to stipulate to it.

18 MR. WHIPPER: I'm not entirely sure what all her
19 testimony would be.

20 MR. CONDON: She refused to talk to me, so I have no
21 idea what she was going to say.

22 THE COURT: Okay. If she's going to testify, yeah,
23 he call me a bunch of times, you know --

24 MR. WHIPPER: That's exactly --

25 THE COURT: So we don't know? How many other

1 witnesses other than Courtney do we have?

2 MR. WHIPPER: I think that's it for ours.

3 THE COURT: That would be it?

4 MR. WHIPPER: Yes.

5 THE COURT: You would have, what, one or two in
6 reply?

7 MR. WHIPPER: I don't know if I'm going to bother at
8 this time, Your Honor. I will think about it and talk with
9 co-counsel.

10 THE COURT: Obviously, y'all understand the
11 schedule. We are trying to move forward and argue and
12 charge. Don't want to delay this until the evening. And
13 don't want to have to come back tomorrow. I think everybody
14 agrees, both from victim and defendant, they want this over
15 with. Okay?

16 All right. Well, how long do you anticipate? Are
17 they calling Courtney now?

18 MR. WHIPPER: Yes, sir, they are.

19 THE COURT: Will you give me a report back?

20 MR. WHIPPER: I will give you a report within three
21 minutes.

22 THE COURT: Appreciate it. Thank you, Mr. Whipper.
23 (Whereupon, a recess transpired.)

24 THE COURT: What's the status of the witness?

25 MR. WHIPPER: Your Honor, we think 40 minutes.

1 THE COURT: What's the problem, Mr. Whipper? I
2 mean, I'm sorry to be kind of short, but, I mean, this is
3 really throwing everything way off. And you should have
4 talked to the witness yesterday and be prepared for this.
5 What's going on?

6 MR. WHIPPER: My understanding, this is an
7 emergency. What happened with the baby happened late
8 yesterday evening, after I talked with him. I couldn't reach
9 them. I guess that's why, they were involved with that. I
10 called about 8:30 just to see if I could reach everybody. At
11 that point, we were set with what we were going to do. And
12 so then this morning, I called him right around 7:30 and told
13 him that's where we were. And he was on the way. As a
14 matter of fact, he wanted to stop at the hospital.

15 THE COURT: She couldn't come straight from the
16 hospital to --

17 MR. WHIPPER: That was my understanding, that
18 mother-in-law was going to take her place and she will come
19 here. Part of when the mother-in-law got there, she couldn't
20 leave right away because they had to ask some more questions.
21 And then when she did get released from that conversation,
22 she had to go get changed.

23 THE COURT: I just want to make sure the defense
24 believes this is a material witness.

25 MR. WHIPPER: We do, Your Honor.

1 THE COURT: Well, it is what it is. All right.
2 Here's what we are going to do. Obviously, you know, I
3 anticipated us having already done closing arguments and
4 charge the jury. That's why I planned for one o'clock. But,
5 of course, plans change. So, you know, what we will do is, I
6 guess, we will start back up with testimony at 1:30, when she
7 gets here. We will allow the jury to eat 30 minutes, short
8 lunch break. They are having a break right now anyway. And
9 then we will allow the jury to finish their lunch. Y'all go,
10 that gives you time to go grab something real quick. And
11 then we will resume back at 1:30 with your witness ready to
12 roll. Y'all good with that?

13 MR. CONDON: Can we close after that?

14 THE COURT: Oh, yeah. I mean, do you all anticipate
15 any reply?

16 MR. CONDON: Only to call the victim and ask him one
17 question about the photo.

18 THE COURT: And that gives you time to get that page
19 printed out if you wish to introduce that.

20 MR. WHIPPER: Yes, sir, working on it as we speak.

21 THE COURT: Okay. All right. So we are on the same
22 page then, 1:30 we are starting back, witness or not, either
23 side.

24 MR. WHIPPER: Yes, sir.

25 THE COURT: And then we will move directly from that

1 witness then to reply of the State. After that, I will send
2 the jury out. And we will hear Mr. Whipper's motion as to
3 the stand your ground law and hear whatever other arguments.
4 We will do motions. We will do all that. And then we will
5 start with closing arguments. Okay? And then we will do
6 charge and the jury should get the case. My hope is the jury
7 should get the case no later than -- my goal is 3. So y'all
8 kind of figure it out.

9 Typically, I don't limit y'all time on in closing,
10 but that's, you know, the art of being a lawyer. Okay? I
11 typically don't do that, but I want y'all to know what my
12 schedule is ahead of time, because the jury is getting antsy.
13 And that doesn't help either side.

14 All right. Thank you, all. We are down then
15 until -- before you all leave, let me explain to the jury
16 what's going on. I will take the heat. I don't want them to
17 be mad at any one of y'all. I will do like I did this
18 morning. Bring the jury in and I will explain to them what's
19 going on.

20 (Whereupon, the jury returns to open court at 12:36
21 p.m.)

22 THE COURT: Ladies and gentlemen of the jury, thank
23 you so much for your patience. Okay. I've got some good
24 news and some bad news for you. Madam Forelady, what do you
25 want to hear first?

1 THE FOREPERSON: Bad news first.

2 THE COURT: Could be also construed as good news, is
3 that we are going to go ahead and start your lunch break now,
4 but you've already been at break for a while now anyway. And
5 then the food, I've been assured, will be here at 1. I hope
6 so. Well, we hope so. You know, scheduling changes, it's
7 just difficult. Okay? And I apologize. Y'all, don't get
8 mad at the lawyers. It's not their fault. Don't get mad at
9 the clients. It's not the client's. It's the Court's fault
10 for doing the schedule the way it does. So get mad at me. I
11 am sorry. I apologize. We are trying to make it best we can
12 for you.

13 So that's the bad news. Bad news is that we won't
14 be able to start like right now and then hear stuff and go
15 from there. But the good news is, we are going to finish
16 today. Okay? The good news is, I've been indicated that we
17 only have, I think, maybe two, possibly three more witnesses,
18 but we will do closing arguments after lunch. After we hear
19 another witness or two, we will have closing arguments. And
20 I will charge the law. And you will begin to be able to
21 deliberate in this case this afternoon. Okay? So that's the
22 good news.

23 So thank you again for your patience. I know y'all
24 are getting to know each other well. That's good. But don't
25 talk about the case. Okay?

1 So what's going to happen is, the lawyers, they are
2 going to run to get a little bite to eat or whatever. We are
3 going to start back -- I told them 1:30. So we are going to
4 have a working -- y'all chuck down that sandwich real quick
5 or whatever it is, and we will get you back in as soon as
6 possible.

7 So if you need to run down to your car or, you know,
8 do a quick errand or whatever, that's fine. But I need you
9 back in your jury room by 5 after one, so you can eat lunch
10 and be ready to start at 1:30. I know that only gives you 20
11 minutes. If you want to step outside, get some fresh air,
12 whatever you want to do, that's fine, but be back in your
13 jury room at 1:05. All right? Bye.

14 (Whereupon, the jury leaves open court at 12:39
15 p.m.)

16 THE COURT: Y'all okay with that? Okay.

17 MR. WHIPPER: Thank you.

18 THE COURT: No problem. Okay. See y'all at 1:30.

19 Thanks.

20 (Luncheon recess was taken.)

21 THE COURT: All right. Ready for the jury?

22 MR. WHIPPER: Yes, sir, Your Honor.

23 MR. CONDON: Yes, Your Honor.

24 THE COURT: All right. Let's bring them in.

25 (Whereupon, the jury returns to open court at 01:40

1 p.m.)

2 THE COURT: All right. Hope you had a good lunch,
3 ladies and gentlemen. We have everything ready to roll. And
4 at this time, we will start.

5 Mr. Whipper, you may call your next witness.

6 MR. WHIPPER: May it please the Court, Your Honor.
7 We call Courtney McDaniel to the stand.

8 COURTNEY MCDANIEL,
9 having been duly sworn, testifies as follows:

10 THE CLERK: State your name full name and then spell
11 your first name and your last name.

12 THE WITNESS: Courtney Chanel McDaniel,
13 C-o-u-r-t-n-e-y, M-c-D-a-n-i-e-l.

14 DIRECT EXAMINATION

15 BY MR. WHIPPER:

16 Q. Ms. McDaniel, you presently live in what city?

17 A. Charleston.

18 Q. And you are formerly a resident of what other city?

19 A. Charleston.

20 Q. So your residence on James Island was in the City of
21 Charleston?

22 A. Yes, sir. I think James Island is the City of
23 Charleston.

24 Q. The part where you live?

25 A. Yes, it is.

1 Q. How are you related to Adrian?

2 A. He's my child's father.

3 Q. And how old is your child?

4 A. She is six months.

5 Q. What was your relationship with Mr. Washington?

6 A. He --

7 Q. I'm going to have sort of -- what was that
8 relationship when this whole affair started? What do you
9 know about that? What is your relationship to
10 Mr. Washington?

11 A. He is childhood friends with my brother, one of my
12 brothers. But over the years, I would just see him in
13 passing.

14 Q. How near neighbors or residence was that? How close
15 were you?

16 A. We grew up on the same street. It was about -- it
17 was in the same area. It's very close.

18 Q. What can you tell us about this arrangement you had
19 with these phones?

20 A. Can you repeat yourself?

21 Q. Sure. What can you tell me about the arrangement to
22 repair the phones?

23 A. He was supposed to repair both of our phones. This
24 was mid-July. We dropped our phones off to him in West
25 Ashley. He told us that day that he would get back to us to

1 give us price. He did call us back that day and he told us
2 it would be \$200.

3 Q. When you made arrangements for phones to be
4 repaired, were you meeting with Mr. Washington alone?

5 A. The very first time?

6 Q. Yes, ma'am.

7 A. When we took the phones to him?

8 Q. Yes, ma'am.

9 A. No, it was me and Adrian.

10 Q. What kind of relationship -- what kind of
11 relationship did Adrian and Mr. Washington have before that
12 meeting?

13 A. They don't know each other. They never knew each
14 other. I just knew that he repaired phones. So we needed
15 our phone fixed and, like I said, he's a friend of my
16 brothers, so I just wanted to give him the business.

17 Q. So what is the story on the communication between
18 you and Mr. Washington?

19 A. From the beginning, okay, July, we dropped off the
20 phones. A couple -- he said it would take two weeks to fix
21 the phones. Two weeks that went by and he told me that he
22 gave the phone to his friend to get fixed and it would be
23 \$400. So the price went up. So I just told him, you know,
24 that I didn't want my phone, he could still fix Adrian's
25 phone.

1 Q. At that time, how were you employed?

2 A. How was I employed?

3 Q. Uh-huh.

4 A. As a pharmacy technician.

5 Q. Are you employed that way now?

6 A. Yes.

7 Q. How long have you been doing that?

8 A. About six years.

9 Q. Who do you do it for?

10 A. I was at the VA pharmacy, but now I'm at Rite-Aid
11 Pharmacy.

12 Q. And that is in Charleston County?

13 A. Yes.

14 Q. When did this payment issue come up as far as --
15 when did it become an issue? I'm asking time. When did it
16 become an issue about delivering a payment and delivery of
17 phone, to your best recollection?

18 A. Can you reiterate that for me?

19 Q. Uh-huh. When did you start having conversations
20 with Mr. Washington about when he would get his money?

21 A. Like, August, September; August, September. He was
22 kind of adamant about getting paid. I don't know why or why
23 he was under the impression that he wasn't going to get paid.

24 Q. How did you all talk? How did you all communicate
25 about that, you and Mr. Washington?

1 A. Sometimes he would call. Sometimes he would text
2 me.

3 Q. How would you describe how much contact was made
4 between you and he from this point?

5 A. A lot.

6 Q. I want to show you something.

7 MR. WHIPPER: Approaching the witness, Your Honor.

8 THE COURT: Yes.

9 BY MR. WHIPPER:

10 Q. This is a document that's been marked as State's
11 Exhibit 15. It's in evidence. I want you to take a look at
12 it, look at from the four corners, all pages. Make sure you
13 understand what that is.

14 A. This is his phone records?

15 Q. Yes. Is there not a name on there?

16 A. Yeah, now I see it.

17 Q. Take your time and look at it. What can you tell me
18 about having seen that document?

19 A. Exactly, like I said, he called a lot. I may have
20 called him once off Adrian's phone. That's it. He did most
21 of the calling.

22 Q. Now take a look at the items that are highlighted in
23 yellow. Do you recognize the phone numbers involved there?

24 A. Yeah.

25 Q. On those days, do you see the yellow highlights,

1 what other numbers are familiar to you on those days?

2 A. Just the highlighted numbers?

3 Q. No, the other numbers.

4 A. The ones that aren't highlighted?

5 Q. Yes, ma'am.

6 A. What numbers do I recognize?

7 Q. Yes, ma'am.

8 A. My sister's, my sister's number is on here twice --
9 well, three times, four.

10 Q. Look for your number.

11 A. I see it. And my brother's number is on here. Both
12 of my brothers' number.

13 Q. Okay. So how many times, to your recollection, did
14 Adrian talk with Lamont during these series of phone calls?

15 A. The only time I remember Adrian talking to him on
16 his -- maybe once, and then when we dropped the phone off.
17 But other than that, he would call me or I would pick up
18 Adrian's home and answer it.

19 Q. Now, were you, based on that -- look at -- I think
20 September 24th is on that series of calls.

21 A. I see it.

22 Q. What number is on that series of call that you can
23 see there, September 24th?

24 A. My number and Adrian's number.

25 Q. When was your number contacted?

1 A. Two months that he had my phone, he would always
2 call me or Adrian. But I would always talk to him on
3 Adrian's phone and my phone.

4 Q. On the 24th, how many times did you talk to him?

5 A. I see, like, over 50 calls. But I do not remember
6 talking to him that much times. But I did talk to him, but
7 not that much times. Some of them were answered.

8 Q. I asked about the date of the 24th. I wasn't clear.
9 50 calls to you on the 24th?

10 A. That's what it looks like. It's highlighted a lot,
11 about 40, 40, 50.

12 Q. What number is that you are looking at?

13 A. He's calling me and Adrian.

14 Q. So your number is what?

15 A. 442.

16 Q. So those numbers are highlighted in yellow?

17 A. Yeah.

18 Q. So 442 and 519 are both highlighted?

19 A. Uh-huh.

20 Q. Thank you, ma'am. Okay. Now, you had a shouting
21 match or something with Mr. Washington; is that correct?

22 A. Yes, sir.

23 Q. And how did that come about? It was on the phone?

24 A. Yes.

25 Q. How did that come about?

1 A. One time he just called me --

2 MR. CONDON: Your Honor, I'm going to object to
3 hearsay.

4 THE COURT: Overruled.

5 BY MR. WHIPPER:

6 Q. How did that come about?

7 A. He called me demanding money for his phone and --
8 for the phone. And somehow he brought up the situation with
9 my children. And I was very sensitive to the subject. So I
10 reacted. And I kind of just went off on him. We were
11 arguing back and forth and I just hung up. But it had
12 nothing to do with the phone.

13 Q. Okay. And did he call -- how many times did he call
14 you after that?

15 A. A lot.

16 Q. After that?

17 A. Uh-huh.

18 Q. And how did you handle those phone calls?

19 A. At one point, I just stopped answering and I just
20 stopped texting. Like, at that time, I had a lot going on.
21 Like, that phone situation was kind of the least of my
22 worries at that point.

23 MR. WHIPPER: Thank you, ma'am. No other questions
24 at this time.

25 THE COURT: Solicitor.

1 MR. CONDON: Your Honor, Court's indulgence, please.

2 THE COURT: All right.

3 MR. CONDON: Nothing from the State, Your Honor.

4 THE COURT: Thank you, ma'am. You may step down.

5 You are also free to leave if you need to get back to your
6 child.

7 THE COURT: All right. Mr. Whipper, you may call
8 your next witness.

9 MR. WHIPPER: Your Honor, that concludes our case,
10 except for the submission of these photographs.

11 THE COURT: Okay, from the Facebook? All right.
12 Have you had a chance to show them to the solicitor?

13 MR. WHIPPER: Yes.

14 THE COURT: And, Solicitor, I guess same objection?
15 I haven't seen them. Where are they?

16 MR. CONDON: They are right here, Your Honor. It's
17 fine.

18 THE COURT: All right. So the State withdraws its
19 objection or the State just wants me to note the objection
20 for the record?

21 MR. CONDON: Just note it, Your Honor.

22 THE COURT: All right. Objection noted. Let me
23 look at them real quick.

24 All right. You wish to publish those photos?

25 MR. WHIPPER: I do, Your Honor.

1 THE COURT: That would be fine.

2 MR. WHIPPER: What is marked is going to be marked
3 as Defendant's Exhibit 7.

4 THE COURT: All right. You are just going to put
5 them all up? Did you need to ask your client anything about
6 the photos? He's already identified what they were.

7 They are going to be in evidence. How many photos?

8 MR. WHIPPER: One, two, three, four, five, six.

9 THE COURT: Six photos. They will all be marked as
10 entered as defendant's next in order.

11 (Defendant's Exh. 7, Photograph, was received in
12 evidence.)

13 (Defendant's Exhibit 8, Photograph, was moved into
14 evidence.)

15 (Defendant's Exh. 9, Photograph, was received in
16 evidence.)

17 (Defendant's Exhibit 10, Photograph, was moved
18 into evidence.)

19 (Defendant's Exh. 11, Photograph, was received in
20 evidence.)

21 (Defendant's Exhibit 12, Photograph, was moved
22 into evidence.)

23 THE COURT: Just show the photo and read the
24 caption.

25 MR. WHIPPER: Red Lobster, highly recommended, named

1 a certain dish.

2 Here this is a photo on the ATV, the head gear here.
3 This is photo from 11. See the same head gear. August 15th,
4 I think, 2015, Mr. Washington with his nephew. And that's in
5 the description here, happy birthday nephew with Andre
6 Washington. That's him.

7 And then after that, Lamont: I'm going down -- I'm
8 doing this down Folly Road, Rivers Avenue, Ashley Phosphate,
9 and finish it off on Central Park to Riley. No joke. That's
10 Lamont Washington, August 30th, 2015.

11 MR. CONDON: Your Honor, I would object to that. I
12 would object to him editorializing that's Lamont, because
13 it's a white individual in the video.

14 MR. WHIPPER: The description is Lamont
15 Washington.

16 MR. CONDON: It's just a video to share.

17 MR. WHIPPER: Description, yeah. That's --

18 THE COURT: Okay. Lamont shared France Stunt
19 Organization's video. That comes from Lamont Washington,
20 Sr.'s Facebook page.

21 MR. WHIPPER: On August 20th.

22 THE COURT: All right. Objection overruled. I
23 mean, jury can -- it's a credibility issue, not an
24 admissibility issue.

25 All right. Anything further?

1 MR. WHIPPER: That's it, Your Honor.

2 THE COURT: All right. The defense rests. Anything
3 in reply from the State?

4 MR. CONDON: Just one quick witness, Your Honor.
5 The State calling Lamont Washington.

6 LAMONT WASHINGTON,
7 having been duly sworn, testifies as follows:

8 REDIRECT EXAMINATION

9 BY MR. CONDON:

10 Q. If you don't mind explaining to the jury what each
11 of these are.

12 A. Ready?

13 Q. Yeah.

14 A. That's not me. That's not my photo. I don't know
15 this France organization. I never rode down Folly and
16 Rivers, Ashley and finished it off on Central Park to Riley.
17 I know Central Park and Riley.

18 Q. Was this a video that was shared?

19 A. That's not my video. I don't know who that is.

20 Q. But is that a video that you could have shared?

21 A. No.

22 Q. And when was this picture taken?

23 A. About 2000 -- I moved back to Charleston in 2008.
24 So my parents came about 2006, '07 from Portland, Oregon, off
25 the coast. We were pretty high. And right behind me is kind

1 of a drop. It's a circle. If you go fast enough, you can
2 just roll. That's Oregon.

3 Q. So this is a picture out of Oregon from --

4 A. Yes, sir. That's my nephew. He's 23 now. My
5 daughter is up to the top.

6 This is what my mom would cook, collard greens.
7 What I did, since I like spicy stuff and tart stuff, I made a
8 lemon pepper pork chop to go with her greens. Greens taste
9 like white grass. So I throw the lemon pepper on it to get
10 the taste. And I get the texture of the barbecue, the taste
11 and the texture.

12 Q. Obviously, you still eat food?

13 A. I've got to eat, so I eat it. This here is
14 Pappadeaux, Atlanta. That's a \$72 plate. That is a lobster,
15 red mashed potato, filet mignon and asparagus. My job paid
16 for it, \$72 at Pappadeaux Seafood. I always wanted to go
17 there. I know I can't taste it, but I get the opportunity to
18 eat there. On the side, you don't see it was gator bites.

19 Q. Is that a good meal?

20 A. Oh, yeah. This picture here was 2011, '10 or '12,
21 one of those. This was Thanksgiving morning. Friend of
22 mine, we went riding around on the island, on our side of the
23 island. And when I say our side, not too far from Riley
24 Road, we live by -- actually, we live off the creek. So if
25 you see how muddy that was, that's the most muddiest I got

1 since I moved back to Charleston. So I posted that picture a
2 long time ago.

3 That is what we call drunken chicken. My brother
4 bought some barrels -- bought two barrels. And one of my
5 cousins, he made it, poked holes and we got hangers and we
6 hung the chicken from that. And the seasoning we used was
7 lemon pepper and beer can chicken, which gives it a taste for
8 me. And it's juicy. If you do it right, as soon as you poke
9 that chicken, juices just pop up.

10 MR. CONDON: Nothing further.

11 THE COURT: Any questions from the defense based on
12 just this limited testimony?

13 MR. WHIPPER: Yes, sir.

14 RECROSS-EXAMINATION

15 BY MR. WHIPPER:

16 Q. You were in the courtroom when I just introduced
17 these photographs, right, Mr. Washington?

18 A. Yes, sir.

19 Q. And didn't I say that this photograph of you was an
20 early photograph on 2011 when I testified? This one right
21 here with you in the four-wheeler, I said that was early.

22 A. I agree that is me. I said that's me.

23 Q. And it was early, 2011. I said that in my
24 testimony.

25 A. Yes.

1 Q. And when I introduced it, I said that's early?

2 A. Yes.

3 Q. Significance of that, of course, is you were
4 recognizing the fact that you used the same goggles as you
5 used in this?

6 A. Yes.

7 Q. Which has a later date. Do you agree with that?

8 A. I do. I take care of my stuff.

9 Q. As a part of that, this particular post, though, has
10 August 13th, 2015, on it.

11 A. Okay.

12 Q. Now, you were saying that you could not share a
13 video with other people. How is that possible? People share
14 videos all the time.

15 A. I did not say I cannot share the video.

16 Q. What did you just tell me?

17 A. I was asked if I shared that video. And I said I
18 did not share that video.

19 Q. The video can be shared?

20 A. A video, yes, can be shared.

21 Q. Okay.

22 A. I agree.

23 Q. Fine. And then now, this particular video, your
24 name is up there. And that's a part of an attachment to it
25 on your Facebook page? Is that not correct?

1 A. That's my name, but that's not me and that's not my
2 photo on there.

3 Q. That wasn't the point.

4 A. So if they know how to photo edit and attach that,
5 because that is a screen shot that's attached to that.

6 Q. Here's what we are talking about. Says: I'm doing
7 that down Folly Road. Now, you know where Folly Road?

8 A. Says: I'm doing this down Folly Road.

9 Q. I'm doing this down Folly Road. You know where that
10 is, right?

11 A. Sure do.

12 Q. Born and raised on it and you know Rivers Avenue?

13 A. I know Rivers Avenue.

14 Q. I thought you said you did not ride on Rivers
15 Avenue?

16 A. North Charleston.

17 Q. And Ashley Phosphate Road?

18 A. I would not ride a four-wheeler.

19 Q. Are you suggesting this post with all of the
20 information on it is not yours?

21 A. It is not my post. May be my name, but not my
22 post.

23 Q. If it's on your site, which is the same site where
24 we got all of this other stuff that you recognize, that's a
25 question; isn't it?

1 A. Sure is.

2 Q. Sure is. Sure is. All right, sir. Thank you so
3 much. No other questions.

4 THE COURT: Thank you, sir. You can step down.
5 Anything further in reply from the State?

6 MR. CONDON: Nothing, Your Honor.

7 THE COURT: Thank you, sir. You can step down.

8 THE WITNESS: Thank you.

9 THE COURT: All right. Ladies and gentlemen, we
10 have now finished the testimony and evidence phase of the
11 trial. Okay? Before we move into closing arguments and
12 before I charge you the law so you can finally begin
13 deliberating the case, I do have some matters of law I have
14 to take up with the lawyers. I don't anticipate it being
15 more than 15 minutes, tops. Y'all go back there and get
16 ready for closing arguments and charge. Okay? Thank you so
17 much.

18 (Whereupon, the jury leaves open court at 02:09
19 p.m.)

20 THE COURT: All right. Jury has left. I believe we
21 have several issues we need to deal with outside the
22 presence. And why don't we go ahead, Mr. Whipper. I believe
23 the first issue would be the issue of the stand your ground
24 defense. Now that all of the evidence is in the record from
25 everything, I've heard everything, let me hear from you

1 argument then on your theory under the Castle Doctrine, 16, I
2 think 11-440(C).

3 MR. WHIPPER: That's correct, Your Honor.

4 THE COURT: Yes, sir.

5 MR. WHIPPER: For the record, the standard here is
6 preponderance of the evidence as to how you decide what
7 should happened. There's been a lot of material put forth.
8 Your Honor, I don't even think we have -- I don't think we
9 have circumstantial evidence of anything beyond the use of
10 the hands of Mr. Simmons. How that's characterized, I
11 understand that's a question.

12 His testimony, any evidence doesn't have a spin on
13 it indicates that he did what he did in defense of himself.
14 And he's already testified that's where he lives. That's his
15 residence. The gentleman came to his residence with an
16 attitude. One thing led to the next. Quick struggle. He
17 didn't know what -- he did what anybody would do if you are
18 surprised in that way. He defended himself.

19 As a result of his actions, unfortunate accident
20 occurred. Everybody agreed, even -- everybody agrees that he
21 fell. He fell on that concrete pad. So here we are. The
22 only information that's reliable, you can weigh without a
23 spin, is what I just told you. To me, that would be
24 preponderance of the evidence. That means that under
25 16-11-420C, I can't remember the exact number, that means

1 that Mr. Simmons -- 410C -- that means that Mr. Simmons then
2 has defended himself in line with the statute as set out.

3 There may be some question about whether or not some
4 instrument was involved. Again, that's just not reliable.
5 It was all from people who have an interest in seeing that
6 this gentleman would be found guilty of this charge. The
7 facts, that phone call, the jail call, indicates that he used
8 his hand. It's all about his hand. His testimony, all about
9 his hand.

10 So issue about who he is, his status, Mr. Washington
11 is an invitee. Certainly, once he was attacked, he had the
12 right to defend himself. So we think that this matter has to
13 be dismissed at this point based on --

14 THE COURT: All right.

15 MR. WHIPPER: -- collection of evidence that has
16 been offered today.

17 THE COURT: Yes, sir. Thank you.

18 Mr. Condon.

19 MR. CONDON: Your Honor, the State's position, as in
20 *State v. Curry*, which we cited in our brief, this is the
21 quintessential jury question where there are two conflicting
22 sides here. We've got the victim's testimony, his cousin's
23 testimony, which corroborates the victim, doctor's testimony,
24 which corroborates the use of force required for the injury,
25 and then the defendant and his jail call admitting they

1 weren't fighting, he just hit him one time. And now he's
2 testifying today to a different set of facts. We believe
3 that creates a conflict of facts at best. And that's a
4 question for a jury to consider.

5 And I think the *State v. Curry* makes it clear when
6 the facts are in contest like this, it should be submitted to
7 the jury. And I would note the defense does have the burden
8 on this act by a preponderance of the evidence. And the
9 Court, which I wrote in my brief, does a balance. They look
10 through the factors of self-defense, and determine whether or
11 not to apply this stand your ground. And they first talk
12 about how the defendant has to be without fault. Obviously,
13 our testimony in this case was that the defendant essentially
14 lured the victim in to his property, acted calm and cool,
15 shook his hands, and when he turned around, essentially,
16 launched a sneak attack. Hitting him in the back of his
17 head, fracturing his skull, leaving him to die on the ground,
18 but for his cousin that was able to drag him away to safety.
19 Under those sets of facts, clearly, he's at fault for
20 bringing on the difficulty. And that's disproved.

21 Secondly, he was there -- there's a subjective
22 belief the defendant needed to use this force. Again, we
23 would submit the facts of the case suggest otherwise. And
24 the defendant's statement on the jail call also suggests
25 otherwise, because when asked if they were fighting, he said,

1 no, and he says, I just hit him one time. So I think that
2 shows that he himself did not have that belief.

3 And, lastly, when a reasonable person in that
4 circumstance of ordinary prudence, courage and firmness would
5 have launched that assault, and I think the evidence
6 indicates they would not. And that's another question for
7 the jury to determine under the facts of the case.

8 THE COURT: All right. Thank you. Any reply
9 argument, Mr. Whipper, based on the State's argument?

10 MR. WHIPPER: Just one thing. Mr. Simmons lives at
11 the residence. That's his home. If he's going to commit a
12 crime like that, why would he do it where he has no place
13 else to go? Why did he plan to do it at his mother's home,
14 his grandmother's home with all these young kids? Who plans
15 something like that? And if you are going to plan it, why
16 you plan it in such a way the person would live?

17 This sounds like something that happened spur of the
18 moment, just the way he described it. Where was he? How did
19 he get arrested? I don't know what was going on. He went to
20 the probation officer and met.

21 THE COURT: Yes, sir.

22 MR. WHIPPER: There's a lot of spin going on, but
23 then there's not spin. And I think that not spin is in his
24 favor.

25 THE COURT: Yes, sir. And, Mr. Whipper, I think you

1 hit the nail on the head. That's an excellent jury argument.
2 And I hope you make that argument to the jury on behalf of
3 your client. Unfortunately, at this stage of the proceeding,
4 based upon the totality of the evidence presented to me, in
5 the light that I have to decide the immunity issue, I decline
6 to grant the defendant immunity under 16-11-440(C) based upon
7 the totality of the circumstances and the evidence I've
8 heard. I believe certainly this is a credible case of
9 self-defense. And, you know, it's going to be up to the jury
10 to determine the credibility of both sides's stories. I
11 think that's their role here.

12 But from what I've heard, I'm not going to grant
13 immunity based upon the immunity law. Okay?

14 Let's move to the second -- you are protected in the
15 record.

16 Let's move to the second issue, as I understand, and
17 that is the charging of the --

18 MR. WHIPPER: Your Honor, one other thing.
19 Protected on the record, but I think I better say this to
20 move to directed verdict on the basis of self-defense.

21 THE COURT: Yes, sir. And you renew all previous
22 motions and objections.

23 MR. WHIPPER: All previous motions and objection.

24 THE COURT: That motion is denied. You are
25 protected on the record on that. My understanding there's

1 two remaining issues, gentlemen, correct me if I am wrong,
2 that of charging A and B first and that of charging mutual
3 combat.

4 So A and B first, either one of you wish to make any
5 further argument on that? I know the defense wants it. I
6 know the State doesn't. I understand what your position is,
7 but I'm giving you all an opportunity for any further
8 argument before I make my ruling.

9 MR. WHIPPER: Your Honor, since I offered it, I just
10 think A and B first is -- the Generally Assembly says assault
11 and battery. The language gets a little fuzzy. I can't
12 think if they are saying assault and battery first, does not
13 involve assault and battery. And I think that this idea of
14 the attempt includes, just like negligence a lot of times
15 includes intentionality. This attempt is, in fact, a battery
16 occurring under the circumstances that are relative to the
17 first subsection. So I think it should be assault and
18 battery first.

19 THE COURT: Solicitor, any further argument?

20 MR. CONDON: Just the same argument, Your Honor.

21 THE COURT: All right. I agree with the State's
22 position on that. The statute, as I read it, just creates
23 too -- again, as I've said, the cardinal rule of statutory
24 interpretation is to ascertain and effectuate the intent of
25 the legislature and give statutes their plain and ordinary

1 meaning.

2 Here's what the statute says for the purpose of the
3 record that may be read later on: A person commits the
4 offense of assault and battery in the first degree if the
5 person unlawfully, A, injures another person and the act
6 involves the nonconsensual touching in a sexual way of a
7 person; or, occurred during the commission of a robbery,
8 burglary, kidnapping or theft. So that's A and B first.

9 And then the legislature, statute says, "or", so
10 subsection (a) doesn't apply here. So it has to go to
11 Subsection (b). Subsection (b) says: Offers or attempts to
12 injury.

13 So you have an offer, offers to injure. That's like
14 fighting words, I'm going to beat your butt, or whatever, or
15 attempts, that's where you actually swing at somebody with
16 brass knuckles, but you don't actually hit them; offers or
17 attempts to injure another person with the present ability to
18 do so, and that act is accompanied by means likely to produce
19 death and great bodily injury.

20 That's what the statute says. I'm giving it its
21 plain and ordinary meaning. I find it is not applicable
22 here; therefore, I'm not going to charge it. Okay?

23 Mutual combat, any further argument on that?

24 MR. CONDON: Your Honor, just the same argument that
25 some of the testimony indicates the brother that it was a

1 mutual fight, and I believe it should be charged. I mean, if
2 they were to split the baby between the victim's testimony
3 and the defendant's, potentially, we could meet in the middle
4 there.

5 THE COURT: You do not wish me to charge that,
6 correct?

7 MR. WHIPPER: No, Your Honor.

8 THE COURT: You win that. I agree with you and your
9 position on that. I'm not going to charge mutual combat. I
10 believe it would unnecessarily confuse the jury, especially
11 when I define self-defense.

12 MR. CONDON: Your Honor --

13 THE COURT: You won one and lost one. He won one
14 and lost one. It's all fundamentally fair.

15 Anything else before we start arguments?

16 MR. WHIPPER: Your Honor, can there be no
17 lesser-included offense to ABHAN in our statute?

18 THE COURT: There can be, yes, sir. But in this
19 case, I don't think there is. Because the only thing -- a
20 and B first does not apply here. A and B second is for
21 moderate bodily injury. And, you know, there's no evidence
22 of moderate bodily injury. I think it's clear in the record
23 what he suffered was a great bodily injury. Then, of course,
24 simple assault and battery, or and A and B third is not
25 relevant. That's why we have self-defense as a defense.

1 Anything else, Solicitor?

2 MR. CONDON: Can we just have a short break, Your
3 Honor?

4 THE COURT: What's that?

5 MR. CONDON: Can we have a short break?

6 THE COURT: Five minutes. We are on a short break.
7 The jury is ready to hear evidence and make a decision. Five
8 minutes we'll start. I assume the State is waiving opening
9 on the law.

10 MR. CONDON: I would like to briefly open on the
11 law.

12 THE COURT: Mr. Whipper, did you hear that? The
13 State is going to open on the law.

14 MR. WHIPPER: Yes.

15 THE COURT: And then you get to do your deal. And
16 then the State gets to come back and argue facts.

17 MR. WHIPPER: Yes.

18 (Whereupon, recess transpired.)

19 THE COURT: Let's bring in the jury.

20 (Whereupon, the jury returns to open court at 02:40
21 p.m.)

22 THE COURT: Ladies and gentlemen, like I said before
23 we took the brief recess, we have finished the testimony and
24 evidence phase of the trial. We are now moving to closing
25 arguments both by the State and the defense. After you hear

1 from them, that's when you will finally hear from me. And I
2 will give you law in South Carolina that you will use to
3 apply to the facts as you find them to be to reach your
4 verdict. Okay?

5 So at this time, I'm going to ask you to listen very
6 carefully and give the lawyers your utmost attention. Okay?

7 Solicitor.

8 MR. CONDON: May it please the Court, Your Honor.

9 Good afternoon, ladies and gentlemen. I want to
10 briefly touch on the law. Then the defense will give a full
11 close and I will get back up here and give a full close.

12 I think y'all understand it. This is ABHAN case,
13 assault and battery of a high and aggravated nature. There's
14 essentially two elements to it. Got these up on the
15 PowerPoint. First, you've got to have an unlawful injury.
16 And, secondly, you have to have ensuing great bodily injury.
17 If you don't have great bodily injury, then you can look and
18 say, well, was assault accomplished in a way that could have
19 caused or likely caused great bodily injury or death? So I
20 think that's a good way to look at it.

21 Next, I think y'all know what the first element is,
22 injury, harm to a person, hit the back of your skull, that
23 type of thing. Great bodily injury is, I think, pretty
24 straightforward. The statute does get a little technical in
25 the definitions. So I want to touch on that just briefly.

1 First, anything that causes a substantial risk of
2 death; secondly, it's anything that causes serious permanent
3 disfigurement. It's how you look. Anything that causes a
4 protracted loss, which means length of loss. Lastly,
5 anything that causes impairment of a function of a bodily
6 member or organ, your brain, hearing, smell, that type of
7 thing.

8 And, lastly, I already talked about, you can look
9 and see, was it accomplished in a way that could have caused
10 it.

11 The defense is alleging self-defense in this case.
12 So to disprove self-defense, I think we have, I want to touch
13 on the elements. First, the defendant has to be without
14 fault on bringing on the difficulty. In other words, he
15 can't be one that initiated it, caused this whole situation.
16 Can't be the one that struck the blow and baited him to come
17 over, that type of thing.

18 Secondly, there has to be a subjective belief that
19 the defendant has to have believed in his mind that he could
20 have suffered great bodily injury or death and that his
21 actions were appropriate. Again, I think the evidence
22 clearly disproves that.

23 Lastly, as we all get to place objective. In other
24 words, what a reasonable person in that situation would have
25 felt the need to use the same force. And that's your call.

1 And I think we also disproved it through the testimony of all
2 of our witnesses, particularly including the defendant's jail
3 call where he's asked if they are fighting and he says no.
4 But I'm going to talk more about that after the defense
5 closes the case.

6 Thank you very much.

7 THE COURT: Thank you, Solicitor.

8 Yes, sir, Mr. Whipper.

9 MR. WHIPPER: May it please the Court.

10 THE COURT: Yes, sir.

11 MR. WHIPPER: Again, this is a serious matter.

12 We've been here together two and a half, almost three days,
13 and dealt with some really major issues. We've been
14 struggling through a lot of issues, because it is serious for
15 everybody involved, particularly for the families here. But
16 nonetheless, we ask that you would give a fair trial to
17 Mr. Simmons. I think he deserves that. And I think if you
18 gave him a fair trial, if you looked at everything, you
19 really would have some issues in this case.

20 Mr. Simmons is a plain-talking man. He's not an
21 articulate scholar. He went to the 10th grade. He works,
22 supports family best he can. And he reacted in a way that he
23 knows to react in the situation that was presented to him.

24 This case has to be proven by the State beyond a
25 reasonable doubt. And that's important because we know that

1 everybody can have a viewpoint on opinion. But what is
2 reasonable doubt? Best I can tell you now is that reasonable
3 doubt, is not fanciful idea. The judge will charge you as to
4 what reasonable doubt is. But reasonable doubt is something
5 that is not a eliminated by what you have heard. And I'm
6 concerned that there's a lot of reasonable doubt here.

7 If there is reasonable doubt, does that mean you
8 would find him not guilty? Yes. That's one of the options
9 that you do have. Is there a reasonable doubt that means
10 that you don't know what to do? I can't decide either way.

11 Now, the Court and the law will tell you that you
12 have to be unanimous in your decision about what's to happen.
13 And so everyone one of you individually must decide that this
14 case has been established to a certain amount of reality.
15 Each individually must decide Mr. Simmons is guilty of this
16 charge.

17 One of the things I think that's really concerning
18 me, and that I think is something that I can point out, I
19 don't think it's spin, I think I can point it out, is that as
20 Mr. Condon just suggested, that somehow there was a
21 conscientious plan to get Mr. Washington to where he was so
22 that he would be attacked. I just -- I can't accept that.
23 We've heard testimony about who lives at this residence along
24 with Mr. Simmons, his grandmother, his mother, siblings, some
25 nephews and nieces. And he also, as you've seen from the

1 photograph, pointed out this is a home that's open to be
2 viewed by the public, right there on the corner. Nothing
3 hidden about it at all. I can't get over the question of why
4 would you plan to do something like this in the driveway of a
5 residence that's open to the public and it's your home. It's
6 where you live. It's where your mother or grandparents, it's
7 where everybody lives.

8 I could accept it more if it was someplace where
9 they didn't live. But my concern is that that fact is
10 something that you have to resolve. But I do believe that
11 reasonable doubt is in that fact.

12 Now, if something happened that was not planned,
13 something spontaneous, then what does that match? It matches
14 what Mr. Simmons described as what happened. And seems to me
15 that there is an issue with it. Yes, we have questions that
16 I think here are not unreasonable. How did this injury
17 actually occur?

18 Well, the investigations really never made it clear.
19 I read to you from the warrant. The warrant, Investigator
20 Downing says that somehow Mr. Simmons participated. There's
21 nothing there about him putting his hand on anything, even
22 swatting, striking, anything like that. Then -- and I'm
23 trying my best to point out to you all things that I don't
24 have to touch. That's in the facts in this case.

25 In the 9/11 phone call, listen to the 9/11 call.

1 Question was asked: Are weapons involved? Are there any
2 weapons? The question comes back answered. And I think it
3 was answered by Mr. J.R. Washington, no weapons, there were
4 no weapons involved. There were no weapons involve. That's,
5 again, on the night that this thing happened. Nothing that I
6 Touched, nothing that Mr. Simmons touched. It's all involved
7 on the side.

8 I have to think too that you all have to accept the
9 limitation that the doctor expressed in his testimony.
10 Doctor was a witness called by the State, not my witness. As
11 a matter of fact, he was reticent. He was reluctant to talk
12 to me. But he in his testimony admitted that I'm not a
13 forensic expert. I am not a forensic expert. I have not
14 been trained in forensics. And we found him an expert in
15 surgery, neurosurgery. So then he says, well, I'm trained as
16 an neurosurgeon. This looks like a high-energy impact. And
17 then he described car wreck and a fall from two stories. I
18 agree, that's a lot of energy. Mr. Simmons, as you can see,
19 slightly built fellow. Where would that energy come from?

20 Again, testimony was from the doctor that there's a
21 point where the bones come together. Come together in the
22 back of the skull, parietal bone, goes across, occipital
23 bone, and that joint that these meet. The injury ran along
24 where they meet. And they came down through here. And I
25 asked him, are you familiar with a certain -- I don't know if

1 y'all remember that. I asked him, are you familiar with this
2 book? The book was the Resident Manual of Trauma of the
3 Face, Head and Neck, 12th edition, first edition, that talked
4 about these injuries that run as a result from a blow to the
5 parietal region. Remember I asked the doctor, runs all
6 across here to the parietal region. And he said, yes,
7 generally, I have to agree with that. Not me, the doctor.
8 This disinterested manual point out these kinds of facts.

9 Well, now let's look at the other facts that are
10 close to that. Even Mr. Washington's first cousin, he had a
11 lot of different kinds of description on what happened, but,
12 fundamentally, he did not see anything. He just heard --
13 thought he heard something. Now, remember, he said he
14 thought he heard something. And he described it as a certain
15 kind of noise. But the one thing he did say, that he SAW
16 Mr. Washington falling back, falling back, with no dispute
17 that that happened, and that he fell on a concrete platform
18 that you've seen so many times. Probably don't need to see
19 it again, but it's there.

20 Then I asked everybody, did anybody go out and look
21 at that part of the investigation, Doctor, anybody? Did
22 anybody do any physics studies, any measurements, any of that
23 kind of stuff? No, we didn't do that. Didn't do any compare
24 injuries to anything out there.

25 And when you look at these pictures of this locale,

1 you are going to see a very substantial concrete foundation
2 with edges, with edges. And the edge, you will see, is like
3 this, an edge compared to, like, an item that has the ability
4 to crush. You can see it right there. And I talked about
5 whiplash. The weight of his head and what happens in
6 whiplash. So when a person falls back, there's a couple of
7 things that can happen. He can hit and hit and there's a
8 speed up. No one checking those kinds of things.

9 And so, if there's going to be energy that's
10 created, you have 195- to 200-pound man falling flat back,
11 totally from everybody's description unconscious. He is not
12 in a position to drop his hands back. He's falling back.

13 We have not -- we have to deal with this thing in a
14 certain kind of way. There is a bad injury. It's a sad
15 situation all around. These families are in here because of
16 a \$200 cell phone. This is amazing.

17 And I've kept y'all here for a day, two days, two
18 and a half days or more, because I'm expecting you, because
19 you are the judges of the facts, to work hard at trying to
20 decide what should be the verdict.

21 I don't know exactly what the judge would tell you.
22 I know some of what he will tell you, but out of abundance of
23 caution, to make sure that everybody is on the same page
24 about what that will y'all hear from him. We talk about what
25 he's going to tell you and how he's going to do it. I can

1 tell you this, that the word verdict comes from the word,
2 Latin word "verdictum". It means to speak the truth, speak
3 the truth. And that's your job, speak the truth.

4 And I've told Mr. Simmons that that's your job. You
5 are going to make that call. And there's some rare occasions
6 that Your Honor will invade that. Certainly, we won't invade
7 it. We can't.

8 And so reasonable doubt doesn't always add up to not
9 guilty. Sometimes reasonable doubt adds up to "I don't know
10 what to do with this". And if you don't know what to do with
11 this, you tell me or Mr. Condon, we will try it again.
12 Because we are not saying just because you don't know what to
13 do with it, that he's not guilty. Not saying that, not what
14 the law is all about. I hope you don't think that. And I'm
15 not going to tell you that and the judge is not going to tell
16 you that. But if you don't know what to do with this, then
17 that's on us to do it the right way. But if you do think you
18 know what to do, then I'm hoping that you will reconcile some
19 of these issues.

20 Now, I've mentioned these items that I think are
21 beyond our extent, but, again, how do you convict somebody
22 with no evidence about doing something with a weapon and no
23 evidence at all of a weapon? I don't think you can do that.
24 I don't think you can do that, nothing, no pictures,
25 something that was on the ground that somebody grabbed and I

1 tried to get it back from them, nothing.

2 Mr. Condon is going to talk about J.R. Washington,
3 what he thinks he saw. But I can tell you from what we asked
4 Mr. Washington, in his first statement, which is in evidence,
5 said nothing about weapon, 911 call, nothing about a weapon.
6 Everything about some sound, seeing him, his cousin fall. No
7 weapons at all; no objects at all.

8 Now here's a little suggestion that's coming from
9 me. How do you generate the kind of force, a car or a fall,
10 in a situation like this? Seems to me you have to have a
11 pretty heavy instrument, sledge hammer, a barbell, something
12 really substantial, then something that substantial.

13 And even though you mix some of what you heard,
14 Mr. Washington wasn't sure where he was in terms of being in
15 the car, but if you even accept that, you have to question
16 these things. Question what Mr. Lamont Washington -- I'm
17 talking about J.R. Washington in the car, but what Mr. Lamont
18 Washington said that this thing happened right at the car.
19 And something that big and that heavy right at the car,
20 somebody was seeing something. Just couldn't hide something
21 that would be that big and that heavy.

22 But at any rate, I'm concerned about these kinds of
23 things. So have we eliminated all of the possible causes for
24 this injury? I don't think we have. I don't think we've
25 begun to. I think you are going to have a problem resolving

1 this issue without doing that. This has been a long day.
2 And it's hard to deal with this stuff, but it's serious work.

3 We've had some moments of levity. And that's to be
4 expected sometimes when you deal with these things in a
5 courtroom. But this is a serious matter, assault and battery
6 of a high and aggravated nature. I think maximum is 20
7 years --

8 MR. CONDON: Your Honor.

9 THE COURT: Sustained.

10 MR. WHIPPER: I'm sorry.

11 MR. CONDON: I would like to move to have the full
12 penalty range to be instructed since he said that.

13 THE COURT: No, I'm not going to instruct that.
14 That's a matter for the Court.

15 Ladies and gentlemen of the jury, I will charge you
16 that you should not concern yourself with whatever the
17 penalty is for any particular crime. Your job is to be the
18 judge of the facts. I'm the judge of the law.

19 MR. WHIPPER: I apologize, Your Honor.

20 THE COURT: That's fine.

21 MR. CONDON: Your Honor, I think it would be
22 important to let them know what the bottom is because you can
23 get anywhere in that range. It's unfair that he said the
24 maximum. And I feel like minimum should be said as well.

25 THE COURT: I will consider that when I charge the

1 jury. We will talk about that.

2 MR. WHIPPER: I apologize, Judge. And I apologize
3 to you all. I'm trying to stress this is a serious matter.
4 That's all. And a lot is at stake. I apologize to
5 Mr. Condon and the panel.

6 Our system is made the way it is, because of us
7 being serious about it. We are committed to law and order.
8 And the way we do that and protect that is if you bring folks
9 like y'all here and ask you to uphold the law. And we do
10 that because we believe in the system.

11 And so as part of that, we are committed to making
12 sure that no one doesn't get a fair trial. You've got a
13 right to call witnesses, question people, offer evidence.
14 And then we say we are going to get your peers to that,
15 people who are not professional jurors. You could have
16 professional jurors, but we don't believe in that, because we
17 want everybody to come in this courtroom and use their common
18 sense. You don't have to be a lawyer. You can talk about
19 your backgrounds. You can use those things to help resolve
20 the problem. The judge will tell you that. And, and, you
21 are told that the world as you know it determines your
22 background and experience, beginning with what we see in
23 evidence on the stand, what you've got as exhibits. But we
24 are not expecting -- as a matter of fact, we want you here
25 because of your background. That was why we were going

1 through this thing about who gets what and who was going to
2 pick all of this. Be comfortable with a fine range of peers
3 and others to do this job. But it's serious business. And
4 I'm taking it seriously and I hope that y'all are also.

5 Now, the jailhouse call. Mr. Simmons is not Jackson
6 Whipper. He's not Charlie Condon. A fight means jumping
7 down somebody and beating them and beating them and beating
8 them. This happened real quickly. He said he was surprised.
9 Testified to that. Tape says that. It wasn't the
10 back-and-forth, this is one punch, one punch. Lawyer wasn't
11 involved in that conversation. Mr. Condon wasn't involved in
12 that conversation. It was Mr. Simmons and Mr. McDaniel in
13 the call, never said anything except respond to the question
14 about the hands, about hands.

15 All I ask is that y'all see and hear this evidence.
16 Do your best to remember it. I've done my best to try to
17 remind you of what I think came out in this testimony.

18 The investigation, no one questioned anybody from
19 Mr. Simmons's family. Nobody been out to take any
20 measurements. Just so little was done to put this thing
21 together beyond what we have right now. And, in my opinion,
22 that's just not good enough, not for a conviction, just not
23 good enough.

24 Thank you all for everything.

25 THE COURT: Thank you, Mr. Whipper.

1 Solicitor.

2 MR. CONDON: All right. I want to start out here by
3 nipping at self-defense, nipping in the bud real quick.
4 Let's look at the first element, bringing on difficulty.
5 This defendant brought on the difficulty. He set up this
6 deal with the phone. The victim in this case is a
7 businessman. He carried his end of the bargain. He fixed
8 the phone, had it ready, gave it back to him. He was just
9 trying to collect what was owed to him. Anybody that runs
10 their own business, that's pretty easy to understand. Part
11 of your job is collecting. And, sure, he could have gone and
12 sold the phone and made more money, but I don't think that's
13 the most honest way to go about it. I think what he did was
14 the best way.

15 So he goes out of his way. I think he originally
16 goes to North Charleston, waits for him for a while. And,
17 sure, I mean, he's going to call him a bunch. He's sitting
18 there waiting. What do you expect? Never shows up. He's a
19 no-show. So, again, the same pattern happens, calling back
20 and forth. And you can look at the phone records and see,
21 yeah, it's mostly Lamont calling, but also they are calling
22 him back, leading him on, acting like they are still
23 interested and fulfill their end of the bargain.

24 Then he goes over, drops his kids off at his
25 parents' house to go meet, go out of his way to meet the

1 defendant, and they are supposed to meet at the Juice Joint.
2 He goes with his cousin J.R., which thank God he picked up
3 his cousin, because this would be a murder case if he hadn't.
4 And they are waiting over there. And that's when the
5 defendant called him and said, oh, hey, come over to the
6 corner of Deleston and Grimbball. In my book, that's inviting
7 someone to come over to your house. He's been given
8 permission to come over. So any business about being
9 attacked at his home is ridiculous. And you can look at the
10 call records and see the last call was at 7:34 from the
11 defendant.

12 So let's get this. He pulls up in the driveway,
13 never expecting anything. You heard J.R. J.R. is sitting
14 there texting on his phone -- I'm sorry, looking at phone,
15 Facebook post briefly. Lamont gets out of the car. Walks
16 over to the defendant, shakes his hand. He has no idea the
17 defendant is mad at this point, because everything seems
18 pleasant. Turns around to walk back to his car, lights out.
19 Wakes up. What is it, four days later in the hospital.
20 Imagine that. Still thinking he's got to take his kids --
21 his twins back to school. That was a Saturday.

22 J.R. then gets out and drags him to safety. After
23 he's knocked out, do you remember what that defendant does?
24 He leans over -- I'm not going to say exactly what he said,
25 y'all heard it, that's what you did for F'ing disrespecting

1 me. He was jacked up, pumped up. Knocked this man out. He
2 had blood rushing from his ears. He was pumped up. Doesn't
3 make any sense that Lamont would go over there to fight him.
4 He's a grown man. He's 36. He has twins. Drops his twins
5 off at his mom's house to visit for a minute. Small business
6 owner, had an associate degree in college. Serious? No way.

7 The defendant even said in his own words in the jail
8 call -- y'all can listen to it again -- his bondsman, I don't
9 know who it is now, but Angelica, his bondsman, asked them if
10 they were fighting. He said, no. We all know what that
11 means. If he had been fighting, that would be the time that
12 any person in his situation, yeah, he swung at me first. You
13 know? And then she mentions to him going to prison. And he
14 says, yeah, I know. That would be the time to say, no, that
15 was self-defense, he came at me, I was protecting myself. He
16 never said that. He said he hit him one time, hit him one
17 time in the back of the head with such force with some kind
18 of object, I don't know what, that cracked his skull open.

19 And even if he didn't have an object, he is still
20 guilty. You don't have to have an object to be guilty of
21 ABHAN. You are responsible for every bit of injury you cause
22 when you hit somebody. You can't just swing at someone hard
23 as you can and knock them out. And let's say that his head
24 was cut on the cement. I don't know if that's cracked, but
25 if it was, you can't say, no, that doesn't count, he fell on

1 the cement. I mean, come on. Are you serious?

2 Defendant in this case is the aggressor. There's no
3 question about it. There's no question about it. Did he
4 believe he was in danger? No. He's told you on that jail
5 call there's no fight. They are not fighting. And then if
6 you can listen to it again, there's kind of an exchange where
7 she wants to ask then why. And he said, well, because he was
8 disrespecting me, he was calling me a bunch. And, yeah, he
9 was. Look at the phone records.

10 Asking him about money. You heard the testimony
11 from J.R. and Lamont. There was no threats, no fighting.
12 What does he have to gain by coming here and sitting through
13 this three-day nightmare? What does he gain from it?
14 Absolutely nothing. There's no money involved. He owes all
15 that money. He's never getting that back. Well, what would
16 he gain by making up the story? Just does not make sense.

17 Again, sneak attack, you heard the term "snuck".
18 That's not self-defense. Self-defense is not offensive. You
19 can't use for offensive purposes. It's for defensive. And
20 this is not a self-defense case. There's absolutely no
21 question about it.

22 This is where you come into play. If we disprove
23 any of these, it's not self-defense, and I'm going to submit
24 that we've disproved all of them. I don't think there's any
25 question about it. Again, what would a reasonable person in

1 this situation have done what he did? No way. No way. This
2 is not self-defense. This is what you call a cowardly
3 assault. He wasn't even man enough to fight him straight
4 face-to-face if that's what he wanted to do. He had to wait
5 until he turned his back.

6 And why would Lamont go there to fight him with all
7 his brother, brothers hanging around there and all his boys?
8 I mean, that's -- you know, all the guys standing around the
9 barrel, he would have to be insane to do that, insane. And
10 why would J.R. be sitting in his car messing around with his
11 phone if this was some kind of planned attack? Why would he
12 have shaken his hand? That does not make sense.

13 Yeah, great bodily injury, that skull fracture right
14 there, that's what great bodily injury is. That hematoma
15 there pushing down on the brain, that blood pumping from that
16 ripped transverse sinus on to his brain, that's great bodily
17 injury. Thank God for Dr. Spiotta having a skill surgeon to
18 get to the hospital that quick.

19 Look at him, blood coming out of his ear, all over
20 his body. Imagine that scene, J.R. dragging him back to the
21 car. The defendant didn't call for help. He didn't call
22 911. Why? Because he's at fault. This is where you get to
23 use your common sense to determine these things. Would
24 someone who committed a crime call 911, call for help?
25 Absolutely not. Absolutely not.

1 You can look at some of these pictures. There's no
2 injuries on his face. If he was hit with such force to knock
3 him out, like defendant testified, from his face, there's
4 going to be some kind of bruise, mark, something. That blood
5 is coming from his ear.

6 Additionally, the defendant and his brother switched
7 up sides of it too. I don't know if y'all picked up on that,
8 another interesting point. That's what he has to live with
9 for the rest of his life. That's permanent disfigurement.
10 He's got a big old scar on his head. He's got plates on his
11 skull, screws in his skull. Never the same. Never the same.

12 And I want to touch on each of these elements. And,
13 remember, we only have to prove one of these for great bodily
14 injury. I think we've proven all of them. But I want to
15 touch on all these to make sure we are on the same page here.

16 Substantial risk of death, that's a no-brainer.
17 Subdural hematoma, that's a serious life-threatening
18 condition. And Dr. Spiotta told you about that. This wasn't
19 some kind of injury where, oh, they need -- you know, they
20 don't believe -- they put him in another room and question
21 him about stuff. This is such a serious injury, he goes to
22 the operating room right away, level one, level one, highest
23 level of emergency.

24 I believe the evidence shows that, but for
25 Dr. Spiotta's skilled operation, I think he would either be

1 brain dead or dead. Serious permanent disfigurement, scar,
2 he now wears his hair long to cover it up. Used to wear
3 short hair. Might sound stupid, but it's something that's
4 important to him. He has the screws and plates in his head.
5 Just never going to be the same. A length of loss, just
6 being unconscious Wednesday through Saturday, that's enough.
7 He had to go live with his mom at 36, couldn't care for
8 himself for months and months. That's a length of loss.

9 Mom testified that she didn't feel comfortable
10 leaving him at home by himself for months and months. Had to
11 learn to walk again. Speech was off. He had months of
12 therapy. What a nightmare. Out of work for over a year.

13 Impairment to the function of bodily member or
14 organ, he was diagnosed with a traumatic brain injury.
15 That's an impairment. That's the most important organ in
16 your body, is your brain, no doubt about it. Can't hear as
17 well. Can't smell as well. Might not be able to see that
18 looking at him, but that's something he has to live with
19 everyday of his life. All for no reason.

20 Again, prove any of these elements, he's guilty of
21 ABHAN. If you are still not satisfied, I think the manner in
22 which the attack was accomplished could have caused great
23 bodily injury. I think it's a great bodily injury, no doubt
24 about it. But if somehow one of y'all are hung up on it,
25 surely, striking someone in the back of the head could cause

1 great bodily injury with a fist, with an object. I don't
2 care what. Everybody knows, you swing for the back of the
3 head or someone's head, that's the consequence.

4 I want to talk about some of the witnesses and go
5 through that. First they called the mom. I don't think she
6 really added anything. She didn't witness the assault. She
7 was told to go back inside, which really doesn't makes sense
8 to me. But then what really bothered me is that she goes out
9 on the pavement -- she goes outside and sees him lying on the
10 pavement and doesn't do anything. Does that make sense?
11 He's just lying there. I can't imagine my mom doing that.
12 Her story doesn't make sense. I don't think she's a credible
13 witness, but that's up for y'all to determine.

14 Andre Simmons, the brother, you heard about his
15 record. He's been convicted for false information to police.
16 His testimony was inconsistent with all the evidence, J.R.,
17 even his own brother, defendant on the jail call. There's no
18 evidence of blood to his face. Detective testified there was
19 no evidence of injuries to the defendant on his face. So if
20 they really were trading blows like he said, there was going
21 to be some damage. Two grown men that were swinging, there
22 was going to be some damage. And he said the wrong side too.
23 So I don't think it's credible. And I think it's just more
24 false information, but that's for y'all to determine.

25 Adrian Simmons, he came and testified. Obviously,

1 his testimony today is conflicting with the jail call. I
2 think the jail call would be a situation where he's just
3 freely telling the story. He's got his girlfriend asking
4 about it and his friend, the bondsman. That would be the
5 time for him to say, he came over there and was acting at me,
6 I had to defend myself. He didn't say that. This is when he
7 tells the truth. He didn't have a couple of years to think
8 about what he was going to say.

9 Again, his testimony does not make sense. And I
10 want to talk about the jail call a little bit. I know y'all
11 probably heard about it quite a bit by now. First question
12 from his girlfriend is: You need to keep your hands off
13 people.

14 He says, I'm going to try. And it sure beats what
15 he said.

16 And third-party says: Hey, you are going to be in
17 prison.

18 And he's like: Hey, I know. I know.

19 Why you be fighting that man like that? Y'all were
20 fighting? She's trying to figure out what was going on.

21 And he said: No, I just hit the man one time.

22 And he go in a coma?

23 That's what they say.

24 And then they go on to say: That's her family?

25 Meaning because Courtney grew up around Lamont. They thought

1 they were family. And she explains: So why did you fight
2 him? This doesn't make sense.

3 So his explanation of why he fought him is not
4 self-defense, not that he was attacked. Does he say that
5 anywhere? No, he says: The man called my phone
6 disrespectful and all, talked like he needed money, all type
7 of stuff.

8 And then the person next asked: Well, you owe
9 money?

10 And then he goes through and talks about the deal.
11 Funny enough, this call is exactly what the victim testified
12 to. What are the odds? Because that's the truth.

13 And then so she's still not convinced. Why did you
14 hit him? She still doesn't know. Okay. He's being
15 disrespectful and all, this doesn't make sense, why did you
16 hit him?

17 And he's like: Huh, I just told you why I did.
18 What do you not understand?

19 And then she says: He came to your house?

20 Yeah, he came to my house, so I just hit him.

21 Doesn't say anything about self-defense again.

22 Doesn't say anything about being attacked like he stated.

23 Why would you not say that if that's what happened? I mean,
24 doesn't make any sense. Because that's the truth up there.

25 What the victim testifies is the truth. What J.R. testified

1 to is the truth.

2 Again, this is a case where the defendant struck the
3 victim in the back of the head. I believe the evidence
4 indicates an unknown object from the sounds that were heard
5 from J.R. and from the amount of damage that was caused to
6 the back of the skull. As the doctor opined, it's severe
7 blunt force trauma caused by car wreck or falling off a two-
8 or three-story building. This isn't a trip and fall kind of
9 case.

10 Lamont never had a chance that night. Never had a
11 chance to defend himself. He almost didn't have a chance to
12 live either. J.R. saved his life. His mom called 911.
13 Y'all heard the call. That was real raw emotion. And, yeah,
14 J.R. mentioned on there he didn't think a weapon was
15 involved. I submit that just meant he didn't see a gun or
16 any kind of weapon. I think he clarified that on the stand
17 about how he thought some kind of object was used.

18 Again, this was caused by severe blunt force trauma.
19 Craniotomy is probably one of the most serious surgeries.
20 You are opening the skull up to expose the brain to operate.

21 Again, the defendant never called the police. His
22 family never called the police. None of the alleged brothers
23 who witnessed it didn't call the police. Why? Because he
24 was at fault, that's why.

25 The defendant is guilty of ABHAN in this case.

1 Doesn't matter if it was caused by him punching him or Lamont
2 hitting him with an object. You are responsible for any
3 damage you caused when you assault somebody. This isn't
4 Burger King. You can't have it this way. You can't say, I
5 want to discount that injury there. That's not how it works.

6 Also, I do want to mention he brought up punishment,
7 which is not something for y'all to decide. You are strictly
8 to decide the law. I'm hoping the judge will tell you the
9 full range. And, again, it's up to the judge. Doesn't mean
10 he's going to get the max. Could get the very bottom.
11 That's up to the judge. That's not y'all's job today to
12 decide punishment. You're to decide whether or not he's
13 guilty of the assault.

14 Everything in this case has been corroborated, the
15 victim's testimony, by J.R., the pictures of the injury, the
16 phone records, even the defendant, his own words in the jail
17 call, Dr. Spiota's testimony, investigation of the sheriff's
18 office, the 911 call.

19 Ladies and gentlemen, I believe we have proven to
20 you that you should be firmly convinced that that defendant
21 is guilty of assault and battery of a high and aggravated
22 nature. Thank you very much.

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

24 Ladies and gentlemen of the jury, if you will please
25 stand and stretch out real good. I'm not going to send you

1 to your room. I'm going to charge you on the law so you can
2 go back and talk about it. I want y'all to pay attention and
3 listen to me as I talk to you. I don't think I'm going to --
4 I'm going to do it up here. Maybe y'all can hear me better.

5 All right. Are you all ready to sit down? Y'all
6 pay attention to me.

7 To the lawyers, I'm not going to get into the
8 penalty area. That's something that, ladies and gentlemen,
9 you cannot consider that. And I'm instructing you to not
10 even consider whatever the penalty is. That's a matter for
11 me to determine. You have nothing to do with that. Okay?
12 Your sole job is to determine the guilt or innocence of the
13 defendant. That's your job. Okay? My job is everything
14 else. Okay?

15 So having said that, y'all listen to what I tell
16 you. And I'm going to have it all typed up, big old letters.
17 All right. And I'm going to read it to you, but I'm not
18 going to sit here and read it to you like that. I'm going to
19 try to make eye contact with you, because I know there's
20 nothing more boring than listening to somebody reading
21 something.

22 Madam forelady, members of the jury, you have heard
23 the testimony and the evidence and the arguments of both the
24 State and the defense. I will now explain to you the law
25 that applies in this case. Now, under the constitutional

1 laws of South Carolina, you are the finders of facts in this
2 case. I do not have the right to pass upon the facts or even
3 express any opinion that I may have, because that's a matter
4 solely for you to determine. It's your duty to determine,
5 through what you've heard and seen, the effect, the value,
6 the weight and the truth of the evidence which has been
7 presented to you during this trial.

8 Now, as the judge, it has been my responsibility to
9 preside over the trial on the case, to rule upon the
10 admissibility of whatever evidence has been offered. And so
11 you are to only consider the testimony which has been
12 presented from that witness stand, together with any exhibits
13 which have been made part of the record. And you will have
14 all that back there with you. Okay?

15 My duty, additionally, is to charge you the law,
16 which I'm now doing. And as the presiding judge, ladies and
17 gentlemen, I am the sole judge of the law in this case. It
18 is your duty as jurors to accept as correct and to apply the
19 law as I now state it to you and use that to reach a verdict.

20 Now, the fact that I may instruct you on various
21 subjects in this case must not be taken by you as indicating
22 what you think my opinion is of what the facts are or what
23 your verdict should be.

24 Finally, ladies and gentlemen, I charge you, you
25 should not be concerned with what you think the law ought to

1 be, but rather, what I charge you the law is.

2 Now, the fact that the defendant was arrested,
3 charged and indicted is not evidence in this case and cannot
4 be considered as evidence by you, nor does it create any
5 presumption or inference of guilt. The indictment, as I told
6 you at the very get-go of the trial, is simply the formal
7 written instrument which contains the charge made against the
8 defendant. An indictment is merely the formal written
9 document by which a case comes to court.

10 You are the judges, as you know, of the credibility,
11 also known as the believability of the witnesses who have
12 testified and of the evidence which has been presented during
13 this trial. You know, in passing upon credibility, you could
14 take into consideration many things, such as the demeanor or
15 the manner in which the witness testified, whether or not a
16 witness had reason to believe biased or prejudiced, or
17 whether or not a witness's testimony was contradicted on the
18 one hand or supported and corroborated on the other hand.
19 All these things you will consider, bearing in mind that you
20 should give the defendant the benefit of any reasonable
21 doubt.

22 It becomes your duties as jurors to analyze and
23 evaluate the evidence and determine that evidence which
24 convinces you of its truth.

25 As I told you about an expert witness or expert

1 witnesses in general, the rules of evidence normally do not
2 permit witnesses to testify as to what their opinions or
3 conclusions are. Normally, when a person testifies, they
4 only testify about what they saw or heard or smelled or
5 something like that. However, when someone is qualified
6 because of education or experience, they are permitted to
7 give their opinion in certain areas that the Court qualifies
8 them as an expert. This is what we call an expert witness.

9 Now, there was an expert witness in this case, the
10 doctor who testify. And so just because someone gives or is
11 allowed to give, is qualified to give opinion testimony, does
12 not mean that you have to accept the opinion. But it's
13 evidence for you to use in any way you see fit. Give it the
14 weight and credibility you believe it deserves. Further, you
15 are not required to accept an expert's opinion, even though
16 it may not be contradicted.

17 Let's talk about the different types of evidence.
18 Generally, there's two different types of evidence presented
19 during a trial, direct evidence and circumstantial evidence.
20 I'm going to give you some law school definitions that I'm
21 going to describe it to you in a way you can understand it.
22 Okay?

23 Direct evidence directly proves the existence of the
24 fact and does not require deduction, i.e., eyewitness
25 testimony or something like that.

1 Circumstantial evidence, this is the law school
2 definition -- I don't want to lose you, so bear with me --
3 circumstantial evidence is proof of a chain of facts and
4 circumstances which indicate the existence of a fact. Okay?
5 For example, if on a winter night we are hopefully getting
6 out of this hot weather and into the fall and winter. You go
7 to bed and look outside and see your brown grass on your
8 lawn, your dormant grass. You go to bed, wake up in the
9 morning -- y'all out here don't see this too much. Up in the
10 upstate we see it -- you see snow on the front of your lawn
11 and see footprints going through it.

12 Well, first of all, you could infer that it snowed.
13 Secondly, you could infer someone was walking on your lawn.
14 See, these are things you can infer even though you didn't
15 see it snow and even though you didn't see someone walking on
16 your lawn. That's what circumstantial evidence is. Okay?

17 Now, crimes can be proven by circumstantial
18 evidence. The law makes no distinction between the weight or
19 value to be given either direct or circumstantial evidence.
20 However, to the extent that the State relies on
21 circumstantial evidence, all of the circumstances must be
22 consistent with each other, and when taken together, point
23 conclusively to the guilt of the accused beyond a reasonable
24 doubt.

25 If these circumstances merely portray the

1 defendant's behavior as suspicious, the proof fails. The
2 State has the burden to prove the defendant guilt beyond a
3 reasonable doubt. This burden rests with the State
4 regardless whether the State relies on direct evidence,
5 circumstantial evidence, or some combination of the two.

6 There's been evidence presented that a witness or
7 witnesses may have made prior statements which aren't
8 consistent with their current or present testimony. And you
9 can use that evidence to decide whether or not to believe the
10 witness. You can also use the evidence of the earlier
11 contradictory statement to determine the truth of that
12 statement. It's up to you, ladies and gentlemen, to decide
13 whether to believe the earlier statement or the testimony
14 given at trial.

15 Now, the defendant has pled not guilty to the charge
16 of this indictment. And that plea places the burden on the
17 State to prove the defendant guilty. A person charged with
18 committing a criminal offense in South Carolina is never
19 required to prove himself innocent. I charge you, ladies and
20 gentlemen, that it is an important rule of law that a
21 defendant in a criminal trial, no matter what the seriousness
22 of the charge may be, will always be presumed to be not
23 guilty of the crime for which the indictment was issued
24 unless guilt has been proven by evidence satisfying you of
25 that guilt beyond a reasonable doubt.

1 Now, this presumption of innocence does not end when
2 you begin your deliberations, but it accompanies the
3 defendant throughout the trial until you've reached a verdict
4 of guilt based on evidence satisfying you of that guilt
5 beyond a reasonable doubt.

6 You can imagine in your head a robe of righteousness
7 placed about -- just similar to what I'm wearing -- placed
8 about the shoulders of the defendant, which remains with him
9 until it has been stripped from him by evidence satisfying
10 you of his guilt proven beyond a reasonable doubt. Now, this
11 is not just mere legal theory. It's not just a legal phrase.
12 It's a substantial right to which every defendant is
13 entitled, unless you the jury are satisfied from the evidence
14 presented as to the defendant's guilt beyond a reasonable
15 doubt.

16 I've said beyond a reasonable doubt about 27 times.
17 So I'm finally going to describe it to you. What is a
18 reasonable doubt in the law? A reasonable doubt is a doubt
19 which makes an honest, sincere, conscience juror in search of
20 the truth to hesitate to act. Proof beyond a reasonable
21 doubt must, therefore, be proof of such a convincing
22 character that a reasonable person would not hesitate to rely
23 and act upon it in the most important of his or her own
24 affairs. That proof beyond a reasonable doubt can also be
25 described as proof that leaves you firmly convinced of the

1 defendant's guilt.

2 Ladies and gentlemen, there's very few things we
3 know in this world with absolute certainty. And in criminal
4 cases, the law does require proof that overcomes every
5 possible doubt. If, based upon your consideration of the
6 evidence, you are firmly convinced that the defendant is
7 guilty, then you must find him guilty. If, on the other
8 hand, you think there's a real possibility that the defendant
9 is not guilty, you must give him the benefit of that doubt
10 and find him not guilty.

11 Let's talk about the crime alleged to have been
12 committed, assault and battery of a high and aggravated
13 nature. This is the definition of that: A person commits
14 the offense of assault and battery of a high and aggravated
15 nature if the person unlawfully injures another person and
16 great bodily injury to another person results or the act is
17 accomplished by means likely to produce death or great bodily
18 injury.

19 And great bodily injury means bodily injury which
20 causes a substantial risk of death or which causes serious
21 permanent disfigurement or protracted loss or impairment of
22 the function of a bodily member or organ.

23 Now, the defendant has raised the defense of
24 self-defense. Self-defense is a complete defense. And if it
25 is established, you must find the defendant not guilty. The

1 State has the burden of disproving self-defense by proof
2 beyond a reasonable doubt. If you have a reasonable doubt of
3 the defendant's guilt after considering all of the evidence,
4 including the evidence of self-defense, then you must find
5 the defendant not guilty.

6 On the other hand, if you have no reasonable doubt
7 of the defendant's guilt after considering all of the
8 evidence, including evidence of self-defense, then you must
9 find the defendant guilty.

10 Now, the following elements are required to
11 establish self-defense: Without fault, first, the defendant
12 must be without fault in bringing on the difficulty. If the
13 defendant's conduct was the type which was reasonably
14 calculated to and did provoke a deadly assault, the defendant
15 would be at fault on bringing on the difficulty and would not
16 be entitled to an acquittal based on self-defense.

17 Imminent danger, the second element of self-defense
18 is that the defendant was actually in imminent danger of
19 death or serious bodily injury, or that the defendant
20 actually believed that he was in imminent danger of death or
21 serious bodily injury. If the defendant was actually in
22 imminent danger, it must be shown that the circumstances
23 would have warranted a person of ordinary firmness and
24 courage to strike the fatal blow to prevent death or serious
25 bodily injury. It must be shown that a reasonably prudent

1 person of ordinary firmness and courage would have had the
2 same belief.

3 In deciding whether the defendant actually was or
4 believed he was in imminent danger of death or serious bodily
5 injury, you should consider all of the facts and
6 circumstances surrounding the crime, including the physical
7 condition and characteristics of the defendant and the
8 victim.

9 The defendant does not have to show that he was
10 actually in danger. It is enough that the defendant believed
11 he was in imminent danger and a reasonably prudent person of
12 ordinary firmness and courage would have had the same belief.

13 The defendant has the right to act on appearances,
14 even though the defendant's belief may have been mistaken.
15 It is for you to decide whether the defendant's fear of
16 immediate danger of death or serious bodily injury was
17 reasonable and would have been felt by a person -- an
18 ordinary person in the same situation.

19 The final element of self-defense is that the
20 defendant had no other probable way to avoid the danger of
21 death or serious bodily injury than to act as the defendant
22 did in this particular instance. There is no duty to retreat
23 or run away where a person is in or on his own home, yard or
24 property.

25 A person cannot be required to make an exact

1 calculation as to the degree or amount of force which may be
2 needed to avoid death or serious bodily harm. Therefore, in
3 self-defense, the defendant has the right to use the force
4 needed to avoid death or serious bodily harm. The force used
5 in self-defense does not have to be limited to the degree or
6 amount of force used by the victim. The defendant has the
7 right to use so much force as appeared to be necessary for
8 complete self-protection and which a person of ordinary
9 reason and firmness would have believed to have been needed
10 to prevent death or serious bodily harm.

11 Duty to deliberate. Let's talk about that, and then
12 I will wrap it up. Okay? Let me say something about your
13 deliberations. The word deliberation is defined as a careful
14 consideration, weighing up with a view to a decision. You
15 know, the genius of our jury system is that it allows 12 good
16 people, both men and women, from different backgrounds, life
17 experiences and perspectives, to consider the evidence, talk
18 about it, and ultimately reach a verdict. The task of a juror
19 is called deliberations for a reason. You the jury are to
20 consider the evidence in this case carefully and
21 deliberately, discuss it in a calm, thorough and courteous
22 manner. Remember, you are not partisans or advocates for one
23 side or the other. You are judges of the facts. Your sole
24 duty is to sort through the information, the evidence, the
25 testimony that you received in this trial, and find the truth

1 presented from the evidence presented in this courtroom.

2 The supreme law of our land, the United States
3 Constitution, affords everyone a day in court and a fair
4 trial. So this case is very important to both sides because
5 it is their day.

6 I charge you to listen to the views of your fellow
7 jurors. Carefully consider their viewpoints. And
8 courteously discuss the evidence. Remember, you are doing
9 something deliberately. You are not in a big hurry. And
10 your tasked with the duty of utmost importance. Further,
11 your verdict cannot be based on sympathy, passion, prejudice,
12 emotion, or any other consideration that's not in evidence in
13 this case. Okay?

14 In conclusion, ladies and gentlemen, you have been
15 selected by both the State and the defense to be fair and
16 impartial jurors. It's your duty in your deliberations to
17 determine the truth of the case, giving the defendant the
18 benefit of every reasonable doubt. And from the facts which
19 you determine to be true, you take and apply the law which
20 I've just now given you, and arrive at a verdict which speaks
21 the truth in this case. I have told you the standards that
22 you have to apply to the charge in the indictment. You've
23 heard the evidence and now you've heard the law.

24 Whatever your verdict is as to the indictment,
25 guilty or not guilty, Madam Forelady, you will indicate it by

1 marking the jury's decision in the blank on the verdict form.
2 You can just check or X, whichever one you want to do. Okay?
3 After you do that, you will sign it down here your name and
4 you will date it. Okay?

5 Although the forelady is the only one authorized to
6 write on the verdict form, the verdict is not hers alone. It
7 has to be a unanimous verdict, which means all twelve of you
8 must agree before you can write on this verdict form.

9 Ladies and gentlemen, I'm going to send you to your
10 jury room. But do not begin to discuss the case until two
11 things happen. First of all, you are going to get all of the
12 evidence here on this table. And you are going to receive
13 this verdict form. And you are going to get a visit from the
14 bailiff who will tell you to start deliberating. When those
15 things happen, that's your signal to start deliberating the
16 case. Once you start deliberating, you will deliberate until
17 you reach a verdict, at which time we will knock on the door,
18 advise the bailiff, and we will bring you back out and
19 receive your verdict.

20 So at this time, I need everyone to go except my
21 alternate. My alternate, if you will stay with me.

22 Everybody else, go back to the jury room.

23 (Whereupon, the jury leaves open court at 03:46
24 p.m.)

25 THE COURT: Any exceptions to the charge from the

1 State?

2 MR. CONDON: Your Honor, again, I've got a real
3 issue with them not hearing 0 to 20, because he said he would
4 get 20 years on it. I just think it's fundamentally unfair
5 for them to go back with a thinking this is had a 20-year
6 offense, when in reality, he could walk out of the courtroom
7 with probation. And I think that could really impact their
8 deliberations. I know if I had gotten up there and said
9 something like that, I think that would be appropriate for a
10 mistrial for the defense. And I really think fundamental
11 fairness dictates in this case that they be told the range,
12 because they were told top end. I think it's absolutely
13 necessary that they be told the bottom end as well.

14 THE COURT: All right. Other than that, any other
15 exceptions to the charge?

16 MR. CONDON: No, Your Honor.

17 THE COURT: Any exception to the charge from the
18 Defense?

19 MR. WHIPPER: Your Honor, my jury charge, one on
20 self-defense, and my second stance talked about imminent
21 danger of losing his life or sustaining serious bodily
22 injury.

23 THE COURT: All right. Anything else?

24 MR. WHIPPER: I don't think -- did you use that
25 same --

1 THE COURT: Yes, sir, almost had the identical
2 language in mine: Second element of self-defense is that the
3 defendant was actually in imminent danger of death or serious
4 bodily injury or that the defendant actually believed he was
5 in imminent danger of death or serious bodily injury.

6 MR. WHIPPER: All right, sir.

7 THE COURT: Anything other than that?

8 MR. WHIPPER: Just what I've said earlier, Your
9 Honor.

10 THE COURT: You are protected on that.

11 Defense have any opposition to me coming back out
12 here and telling them that the sentencing range is anywhere
13 from 0 to 20 years?

14 MR. WHIPPER: No, Your Honor.

15 THE COURT: All right. Bring the jury back out so I
16 can tell them. I will tell them that real quick. All right.

17 MR. WHIPPER: I apologize to everybody. I apologize
18 to everybody.

19 THE COURT: That's fine. No problem. It happens.
20 Heat of the battle, heat of the battle.

21 MR. CONDON: Thank you.

22 MR. WHIPPER: I think it was my civil background.

23 THE COURT: You know, my charge is 15 minutes, no
24 longer. I want you to note that.

25 MS. ASKINS: We appreciate that.

1 THE COURT: You noted that, right, 15 minutes?

2 (Whereupon, the jury returns to open court at 03:50
3 p.m.)

4 THE COURT: Thank you, ladies and gentlemen.
5 Everybody is here. One more thing I've got to tell you
6 before we start deliberating. Both sides have agreed for me
7 to tell you this. Previously, I indicated to you that you
8 are not to consider what the penalty is for any crime. You
9 are only supposed -- you are charged and your duty is to
10 determine the facts of the case, have a verdict guilty or not
11 guilty. Both sides have indicated that it's okay for me to
12 tell you that the sentencing range for this crime is anywhere
13 from 0 to 20 years. So that's my discretion, okay, zero to
14 20. All right.

15 You now may retire to the jury room. You will have
16 the information here shortly.

17 (Whereupon, the jury leaves open court at 03:51
18 p.m.)

19 THE COURT: Any further exceptions to the charge
20 from the State?

21 MR. CONDON: I'm okay, but I just want to make sure
22 they are clear they are not to consider -- I think it's okay,
23 though.

24 THE COURT: Yeah. Anything else from the Defense?

25 MR. WHIPPER: Not other than previously.

1 THE COURT: Mr. Alternate, thank you so much for
2 your service to South Carolina and for Charleston County.
3 You are now released from jury service. Okay? You are more
4 than welcome to stick around and see what happens. Okay? If
5 you do, you just need to have a seat out there. But if you
6 want to go home or do whatever you want to do, you are free
7 to leave. You can't go back in the room. They are going to
8 start talking about the case, but the bailiff will get
9 whatever you need out of there. Thank you so much.

10 All right. Y'all come look at everything. There's
11 the verdict form.

12 (Whereupon, a recess transpired.)

13 (Whereupon, the jury begins to deliberate at 3:53
14 p.m.)

15 (Whereupon, the jury returns to open court at 5:31
16 p.m.)

17 THE COURT: Madam Forelady, it's my understanding
18 that the jury has reached a verdict. And is the verdict
19 unanimous?

20 THE FOREPERSON: Yes.

21 THE COURT: And did you sign and date the verdict
22 form?

23 THE FOREPERSON: Yes.

24 THE COURT: If you will, please, hand it to my clerk
25 at this time or the bailiff, please.

1 Mr. Clerk, you may publish the verdict.

2 THE CLERK: Please have the defendant stand. The
3 verdict form in the matter of State of South Carolina vs.
4 Adrian Vashard Simmons, defendant, as to the charge of
5 assault and battery of a high and aggravated nature,
6 Indictment 2015-GS-10-4889, we the jury unanimously find the
7 defendant Adrian Vashard Simmons guilty, certified as
8 unanimous decision by the foreperson of the jury on August
9 10th, 2016.

10 Ladies and gentlemen of the jury, if this is your
11 verdict, please raise your right hand.

12 Thank you. Please let the record reflect that all
13 12 jurors raised their right hand.

14 THE COURT: Thank you very much. Ladies and
15 gentlemen of the jury, again, thank you so much for your
16 service to the State of South Carolina and Charleston County.
17 Your service as jurors on the case has now ended, as well
18 your service as jurors from this week.

19 So at this time, I'm going to have you go back to
20 your jury panel. Do not leave until I come down and release
21 you. Okay? I will be there shortly.

22 MR. WHIPPER: Your Honor, we would like to poll the
23 jury.

24 THE COURT: Hang on one second. Have a seat.
25 Mr. Clerk, it's been requested that you poll the jury.

1 THE CLERK: Ladies and gentlemen of the jury, what
2 we are going to do now is called polling the jury. When I
3 call your jury number, if you will please raise your right
4 hand. And I will then ask you two questions: Was that your
5 verdict; and is that still your verdict. Please respond back
6 to me verbally.

7 Jury 286, was that your verdict?

8 JUROR NO. 286: Yes.

9 THE COURT: Is that still your verdict?

10 JUROR NO. 286: Yes.

11 THE COURT: Thank you.

12 Juror No. 8, is that your -- was that your verdict?

13 JUROR NO. 8: Yes.

14 THE CLERK: Is that still your verdict?

15 JUROR NO. 8: Yes.

16 THE COURT: Juror No. 81, was that your verdict?

17 JUROR NO. 81: Yes.

18 THE CLERK: Is that still your verdict?

19 JUROR NO. 81: Yes.

20 THE CLERK: Juror No. 112, was that your verdict?

21 JUROR NO. 112: Yes.

22 THE CLERK: Is that still your verdict?

23 JUROR NO. 112: Yes.

24 THE CLERK: Juror No. 130, was that your verdict?

25 JUROR NO. 130: Yes.

1 THE CLERK: Is that still your verdict?

2 JUROR NO. 130: Yes.

3 THE CLERK: Juror No. 164, was that your verdict?

4 JUROR NO. 164: Yes, sir.

5 THE CLERK: Is that still your verdict?

6 JUROR NO. 164: Yes, sir.

7 THE CLERK: Juror No. 165, was that your verdict?

8 JUROR NO. 165: Yes, sir.

9 THE CLERK: Is that still your verdict?

10 JUROR NO. 165: Yes.

11 THE CLERK: Thank you. Juror No. 199, was that your
12 verdict?

13 JUROR NO. 199: Yes, sir.

14 THE CLERK: Is that still your verdict?

15 JUROR NO. 199: Yes, sir.

16 THE CLERK: Thank you. Juror No. 205, was that your
17 verdict?

18 JUROR NO. 205: Yes.

19 THE CLERK: Is that still your verdict?

20 JUROR NO. 205: Yes.

21 THE CLERK: Thank you. Juror No. 267, was that your
22 verdict?

23 JUROR NO. 267: Yes.

24 THE CLERK: Is that still your verdict?

25 JUROR NO. 267: Yes.

1 THE CLERK: Juror No. 318, was that your verdict?

2 JUROR NO. 318: Yes.

3 THE CLERK: Is that still your verdict?

4 JUROR NO. 318: Yes.

5 THE CLERK: Juror No. 386, was that your verdict?

6 JUROR NO. 386: Yes, sir.

7 THE CLERK: Is that still your verdict?

8 JUROR NO. 386: Yes.

9 THE CLERK: If there is any juror whose number I did
10 not call, please raise your hand.

11 (No response from the jury.)

12 THE CLERK: Your Honor, the jury has been polled and
13 the verdict stands.

14 THE COURT: All right. Thank you very much. Ladies
15 and gentlemen, please retire to your jury room. Thank you
16 very much again for your service.

17 (Whereupon, the jury leaves open court at 05:35
18 p.m.)

19 THE COURT: We will be in recess momentarily while
20 we get ready for sentencing. Okay? Thank you very much.

21 (Whereupon, recess transpired.)

22 MR. CONDON: Can I have one minute to gather some
23 items?

24 THE COURT: I'm ready to hear from the State as to
25 sentencing.

1 MR. CONDON: Your Honor, you are obviously well
2 aware of the facts in this case. It was a very violent and
3 senseless act, almost killed Mr. Washington in this case. I
4 think it's kind of almost a life sentence for him with the
5 disabilities he's got to live with. And so with all due
6 respect, we are going to ask for the maximum sentence in this
7 case. We believe 20 years is appropriate.

8 I would note that he does have a lengthy record.
9 He's got 2014 cruelty to children, domestic violence
10 conviction as well. 2012, threatening the life of a public
11 official, resisting arrest, failure to stop blue light, two
12 counts of those. And then as a juvenile, he's got the grand
13 larceny and the burglary second, in addition some other
14 charges as well.

15 I believe the victim would like to speak at the
16 appropriate time.

17 THE COURT: Now is the appropriate time.

18 MR. WASHINGTON: It's unfortunate for both families.
19 The only thing I would like to say is we didn't do anything
20 to you. I didn't provoke you to do what you did. And all I
21 ask of you is, I know you've got a lot of friends off of
22 James Island, please don't bother my family. That's all I
23 ask, because we didn't do anything to you.

24 THE COURT: Thank you, sir. Anything further in
25 regard to sentencing?

1 MR. CONDON: No, Your Honor.

2 THE COURT: All right. Mr. Whipper.

3 MR. WHIPPER: May it please the Court, Your Honor.

4 THE COURT: Absolutely.

5 MR. WHIPPER: This is a tough time. The jury has
6 spoken and we must abide by what they have said. The case of
7 *State v. Curry*, they are sort of instructive, I think. You
8 have it, don't you? I don't know if you have a copy.

9 THE COURT: I did, but it's back in my office.

10 MR. WHIPPER: And the summary, I think, is what I'm
11 pointing to, summary. Maybe I need to point to it, this
12 particular synopsis here.

13 Certainly, the injury was profound. And we have our
14 differences of opinion about some parts of it. And
15 Mr. Simmons has already expressed his regret from the stand.
16 And he will probably be asked to be heard again. Hopefully,
17 what can be accomplished by the sentence will leave something
18 for these people to make something out of learning from this.
19 And so we know the courts got to protect our communities.
20 And we've got a lot of families involved. Both of these men
21 are fathers of young children.

22 There's nothing I know -- it's a call, but it's a
23 tough one the Court has to make, but I know that conflict to
24 be a judge, it's not your first role here. So to that
25 extent, we come to the Court again asking to be treated

1 fairly, and take it from there.

2 Mr. Simmons, I think, did want to make one certain
3 statement.

4 THE COURT: Yes, thank you. Yes, sir, Mr. Simmons.

5 THE DEFENDANT: I just wanted to say that I never
6 meant for none of this to happen. Like, I seriously never
7 hit him with anything. I didn't think it would go this far.
8 He got kids. I got kids. I never meant for this to go this
9 far. I'm really sorry for what happened to him, but it was
10 just like a fist fight. Like, I didn't mean for this to
11 happen to him, for us to be in this situation today.

12 THE COURT: How old are your kids, Mr. Simmons?

13 THE DEFENDANT: I have a three-year-old and two
14 two-year-olds and a six-month-old.

15 THE COURT: All right. Thank you. Anybody else on
16 behalf of the defendant?

17 Yes, ma'am. I will be glad to hear from you. State
18 your name, please.

19 MS. HAMILTON: Tierra Hamilton.

20 THE COURT: Yes, ma'am. How are you related to
21 Ms. Simmons?

22 MS. HAMILTON: I'm the mother of his kids, **child**
23 and **child 2**. They are two and four. I think didn't mean for
24 this to happen. The day that it happened, my daughter was
25 there too. And she was the one her brother was holding, the

1 baby, our child. And he would never do nothing in front of
2 his kids. They remember everything. She remembers
3 everything. He would never do nothing, you know, in front of
4 them to harm them or anything. And he is actually the sole
5 provider for my children, because I currently don't work
6 because I have to take care of my sick grandmother. So, you
7 know, school coming up. He works. I don't work. School
8 coming up. And, you know, my baby go to school. And if he
9 gone, I just don't want to go home and tell my children Daddy
10 ain't coming back.

11 If he get to work, they don't see him every day, if
12 I got anything to do with my grandpa, he will take off and
13 take care of my kids and all like that. And he all -- I
14 don't want you to take him from me.

15 THE COURT: Thank you, ma'am. Thank you.

16 Yes, ma'am.

17 MS. McDANIEL: Courtney McDaniel.

18 THE COURT: Make sure you talk loud enough so she
19 can hear you. Okay?

20 MS. McDANIEL: It is very emotional. I'm Courtney
21 McDaniel, Adrian's current girlfriend. And we have the
22 six-month-old daughter. She's currently in the hospital.
23 They don't know how long she has to stay there, but she's
24 been there one day already. So he hasn't even been able to
25 be there for that. I apologize to Lamont before for what

1 happened. Just like a chance that it was not supposed to go
2 this far; it wasn't. Your Honor, all I'm asking you, to
3 please have mercy on him for his children. That's it.

4 THE COURT: Yes, ma'am. Thank you.

5 You know, I've been doing this a long time. Not
6 just circuit court, but also in family court. I was a family
7 court judge for eight years. And I talked to the families.
8 Okay? I've been looking after children and their best
9 interests for, you know, eight years on the family court.
10 And I'm keenly aware of what can happen to children from
11 fatherless homes. I know that. I've seen it and I've
12 experienced it.

13 It's very commendable, Mr. Simmons, that you are an
14 active father and that you have both of your children's
15 mothers here speaking on your behalf. That's admirable,
16 because normally it's not that way. Okay? Honestly, it's
17 not that way.

18 You know, I could feel the tension in the courtroom,
19 you know. I can see it on your faces on both sides. It's a
20 tragedy. I can't remember whether it was Mr. Whipper or the
21 solicitor who stated, all of this over a \$200 phone. I think
22 that sums it up completely accurately. You know, this is a
23 tough case.

24 You know, I'm sitting here as a judge, man's law.
25 We are all ultimately judged by God's laws. And, of course,

1 that's what we all are facing. But I've got to do, and my
2 job is to make sure that justice is done. And justice,
3 justice, it's not vengeance. Okay? Justice has
4 compassionate as well. You have to look at vengeance and
5 trying to put the victim back as best as he can be back in
6 this horrible situation, but you've got to temper that with
7 mercy and compassion. And that's a tough job.

8 You know, the easy thing, Solicitor, and I'm just
9 saying this, not belittling your argument, but the easy thing
10 is to give everybody the maximum sentence. That's the easy
11 thing to do. Give everybody the maximum. Everybody knows
12 you are the judge who throws down the gauntlet and gives the
13 maximum. Guess what, you are going to be trying cases rather
14 than doing guilty pleas and stuff like that. I'm not that
15 type of judge.

16 This is a case which has the horrible consequence of
17 horrible injury. And I'm taking that injury into
18 consideration in the sentence that I give. I have to. Okay?
19 But how the injury arose, I also have to take into
20 consideration.

21 I don't think it's a maximum sentence case. I'm not
22 going to sentence him to the maximum, but I am going to come
23 up with a sentence which I believe is appropriate. All
24 right?

25 Having being convicted indictment 2015-10-4889 of

1 the crime of assault and battery of a high and aggravated
2 nature, having heard the facts, considering all of the
3 testimony and evidence presented and the arguments from both
4 the State and the defense, I find that you, Mr. Simmons,
5 shall be confined to the South Carolina Department of
6 Corrections for a period of 12 years. Good luck to you, sir.
7 All right.

8 Court is adjourned for the day. I will be here
9 tomorrow at 2.

10 (Whereupon, proceedings are adjourned.)
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CERTIFICATE OF REPORTER

I, Karen V. Andersen, Registered Merit Reporter,
Certified Realtime Reporter for the State of South Carolina
at Large, do hereby certify that the foregoing transcript is
a true, accurate and complete Transcript of Record of the
proceedings.

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


Karen V. Andersen
Registered Merit Reporter
Certified Realtime Reporter

FORM 5

STATE OF SOUTH CAROLINA)

County of Charleston, SC.)Adrian Kashard Simmons 369292)

Full name and prison number (if any) of Applicant)

v.)

State of South Carolina)

2019-CP-10-5086
IN THE COURT OF COMMON PLEASAPPLICATION FOR
POST-CONVICTION RELIEFFILED
2019 OCT -3 PM 3:22
CLERK OF COURTINSTRUCTIONS - READ CAREFULLY

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

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

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

1. Place of detention South Carolina Dept. of Corr.; Lieber CI, P.O. 205, Ridgerville, SC 29472
2. Name and location of Court which imposed sentence Charleston Co. Ct. of Gen. Sessions; Judge Brian M. Gibbons, and a jury
3. Name(s) of co-defendant(s) (if any) None
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) 2015-GS-10-4889; AHBAN
 - (b) _____

- (c) _____
5. The date upon which sentence was imposed and the terms of the sentence:
- (a) August 10, 2016; twelve (12) years
- (b) _____
- (c) _____
6. Check whether a finding of guilty was made:
- (a) after a plea of guilty N/A
- (b) after a plea of not guilty ✓
- (c) after a plea of nolo contendere N/A
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. Conviction and Sentence Affirmed
- ii. /
- iii. /
- (c) the date of each such result:
- i. March 20, 2019
- ii. _____
- iii. _____
- (d) if known, citations of any written opinion or orders entered pursuant to such results:
- i. State v. Simmons, Opinion No. 2019-UP-109
- ii. /
- iii. /
9. If you answered "no" to (7), state your reasons for not so appealing:
- (a) N/A
- (b) N/A

- (c) N/A
10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:
- (a) Ineffective Assistance of Counsel
- (b) " " " " "
- (c) Ineffective Assistance of Appellate Counsel
11. State concisely and in the same order the facts which support each of the grounds set out in (10):
- (a) See attached pages 8-15
- (b) _____
- (c) _____
12. Prior to this application have you filed with respect to this conviction:
- (a) any petition in a State Court under South Carolina Law? yes
- (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? No
- (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? No
- (d) any other petitions, motions or applications in this or any other Court? no
13. If you answered "yes" to any part of (12), list with respect to each petition, motion or application:
- (a) the specific nature thereof:
- i. Motion for a New Trial
- ii. N/A
- iii. N/A
- iv. N/A
- (b) the name and location of the Court in which each was filed:
- i. Charleston Co. Court of General Sessions
- ii. N/A
- iii. N/A
- iv. N/A

(c) the disposition thereof:

- i. Denied/Denied
- ii. N/A
- iii. N/A
- iv. N/A

(d) the date of each such disposition:

- i. August 22, 2016 Trial counsel did not re-
- ii. N/A ceive written notice of
- iii. N/A denial until March 17, 2017.
- iv. N/A

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

- i. N/A
- ii. N/A
- iii. N/A
- iv. N/A

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

No

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

(a) which grounds have been presented:

- i. N/A
- ii. N/A
- iii. N/A

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

- i. N/A
- ii. N/A
- iii. N/A

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

(a) Ineffective Assistance of trial counsel must
 (b) be raised on APCR
 (c) _____

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

(a) your arraignment and plea? no
 (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. J. Seth Whipper, Esq., 4592 Durant Ave., North
Charleston, SC 29405 (P.O. Box 70070, N. Char. 29415)
 ii. Kathrine H. Hudgins, Appellate Defender, SCCID, Div. of
Indigent Defense, P.O. Box 11589, Col. SC 29211-1589
 iii. J. Seth Whipper, Esq. - Motion for New Trial
 (b) the proceedings at which each such attorney represented you:
 i. trial;
 ii. Motion for New Trial
 iii. Appeal

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

Conviction and sentence vacated, on reversed and re-
manded for new trial

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

No

STATE OF SOUTH CAROLINA)

County of Charleston)

VERIFICATION

I, Adrian Vashard Simmons, # 369292, 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.

* Adrian Simmons

SWORN to and subscribed before me this 26th
 day of September, 2019.

Joye Campbell (L.S.)
 Notary Public

My Commission Expires: 3-13-29



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

I, Adrian Vashard Simmons #369292, 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:

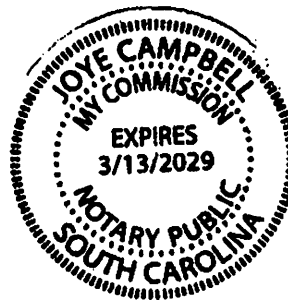
- (1) I am the applicant in this action and I believe I am entitled to redress.
- (2) Because of my poverty I am unable to pay the costs of said proceeding or give security thereof.

x Adrian Simmons
Applicant

SWORN or affirmed to and subscribed before me this
26th day of September, 2019.

Joye Campbell
Notary Public

My Commission Expires: 3-13-29



10.(a) Ineffective Assistance of Trial Counsel

Applicant was denied the effective assistance of counsel, in violation of the Sixth and Fourteenth Amendments to the United States Constitution, Article I, §§3&14 of the South Carolina Constitution, and South Carolina law, as a result of trial counsel failing to request that the trial judge to voir dire the potential jurors regarding "whether they themselves, immediate family members and close personal friends had been a victim of a violent assault in the past" denied the Applicant a fair and impartial jury of his peers guaranteed by the Due Process and Equal Protection Clauses of the United States Constitution. Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052

11.(a) Facts In Support of 10.(a):

During jury voir dire, the trial judge neglected to ask the following questions:

1) Is there any member of the jury panel or a member of your immediate family been the victim of a violent assault? and A close personal friend?

2) Is there any member of the jury panel or member of your immediate family or a close personal friend been the the defendant or had any criminal charges adjudicated by the Charleston County Solicitor's Office? [Adjudicated, meaning if they handled any cases against you or members of your immediate family].

see voir dire examination, App. 12-21

11. (a) continued:

Parties in a case, through the trial court, "have a right to question jurors on their voir dire examination not only for the purpose of showing grounds for a challenge for cause, but also, within reasonable limits, to elicit such facts as well as will enable them intelligently to exercise their right of peremptory challenge." State v. Gullette, 277 S.C. 368, 370, 287 S.E.2d 22488, 490 (1982).

In South Carolina, the disqualification for cause of potential jurors is governed by §14-7-1020, S.C. Code Ann. (1997), which provides:

The court shall, on motion of either party in the suit, examine on oath any person who is called as a juror to know whether he is related to either party, has any interest in the cause, has expressed or formed an opinion, or is sensible of any bias or prejudice therein, and the party objecting to the juror may introduce any other competent evidence in support of the objection. If it appears to the court that the juror is not indifferent in the cause, he must be placed aside as to the trial of that cause and another must be called.

S.C. Code Ann. §14-7-1020 (1997).

The trial court completed voir dire, then court asked:

"Any further voir from the Defense?"

App. 20, L. 18.

11. (a) Facts - continued:

Trial counsel did not request move voir dire, although he did have a question of a juror - who indicated that her daughter was a practicing attorney in Columbia, SC. App. 20, L. 19 - App. 21, L. 7.

The Applicant was prejudiced by trial counsel's failure to request the trial court ask the aforementioned questions during voir dire, and, was denied the right to a fair trial by an impartial jury in violation of the Sixth and Fourteenth Amendments to the United States Constitution and Article 1, §14 of the South Carolina Constitution. See Irvin v. Dowd, 366 U.S. 717, 722, 81 S.Ct. 1639 (1961) (The Sixth Amendment guarantees a criminal defendant the right to an impartial jury. "In essence, the right to a jury trial guarantees to the criminally accused a fair trial by a panel of impartial, indifferent jurors. The failure to accord an accused a fair hearing violates even the minimal standards of due process."). see also Turner v. Louisiana, 379 U.S. 466, 471-473, 85 S.Ct. 546 (1965).

10.(b) Applicant was denied the effective assistance of counsel, in violation of the Sixth Amendment to the United States Constitution and Article 1, §14 of the South Carolina Constitution, as a result of trial counsel failing to consult with a medical expert concerning "being punched in the head with 'brass knuckles'," denied the Applicant a fair trial and the effective assistance of counsel. Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052 (1984).

11.(b) During the State's opening statement, the assistant solicitor told the jury "... that is when the defendant launched his attack, striking the victim in the back of the head with with an unknown object..." App. 64, L. 24-App. 65, L. 1.

Then during direct by the State, State's witness, Joslin Washington [victim's first cousin] App. 124, L. 6-7, testified that "it did not sound like a fist" but a funny sound, like 'bah' [when victim was hit]. Sounded like a little brass knuckles or something. He had something." App. 132, L. 9-16. But prior to this testimony, Mr. Washington [Joslin] testified that "I believe he [Applicant] hit him with something." App. 132, L. 3-4.

And during closing, the State [assistant solicitor] told the jury "He said he [Applicant] hit him one time, hit

him one time in the back of the head with such force with some kind of object, I don't know what that cracked his skull open. App. 358, App. 358, L.L. 16-18 and that he [Assistant solicitor] tells the jury "I believe the evidence indicates an unknown object from the sounds that were heard from J.R. [Joslin Washington] and from the amount of damage that was caused to the back of the skull, App. 366, L.L. 3-6.

First, there's absolutely no medical evidence of the victim being hit with brass knuckles. Had trial counsel consulted with an expert in fighting and crime scene reconstruction it could have been shown that victim's size and the way he fell is what caused the damage to the skull.

Second, trial counsel was ineffective for failing to consult with an expert where there was no medical evidence supported Mr. Joslin Washington's statement that Applicant hit victim with brass knuckles or any other weapon. Trial counsel's failure to investigate and consult with expert resulted in his failure to impeach Mr. Washington's pre-trial statements and testimony. App. 132, L.L. 15-16; App. 142, L.L. 5-6

10. (c) Applicant was denied the effective assistance of counsel, in violation of the Sixth Amendment to the United States Constitution, and Article 1, §14 of the South Carolina Constitution, as a result of trial counsel's failure to object to the State pitting witnesses against each other, denied the Applicant a fair trial and the effective assistance of counsel. Strickland v. Washington, 466 U.S. 668 (1984).

11. (c) State's witness, Mr. Lamont Washington was recalled for direct examination by defense counsel. After direct, the State cross examined Mr. Washington. During this cross examination, the State pitted Mr. Washington against the Applicant's brother, Mr. Andre Simmons. The State asked Mr. Washington the following:

"Do you agree or disagree with his brother's testimony, Andre Simmons?"

Here, trial counsel was ineffective for failing to object and obtain a ruling for appellate review, or request that a curative instruction be given.

"No matter how a question is [asked] worded, anytime a solicitor asks a defendant to comment on the truthfulness or [comment] explain the testimony of an adverse witness, the defendant is in effect being pitted against the adverse witness." State v. Bryant,

11. (c) continued:

316 S.C. 216, 221, 447 S.E.2d 852 (S.C. 1994).

Applicant was prejudiced by the improper cross-examination.

It is improper for the solicitor to cross examine a witness in such a manner as to force him to attack the veracity of another witness, State v. Sapp, supra, (295 S.C. 484, 369 S.E.2d 145 (1988)).

10. (d) Ineffective Assistance of Appellate Counsel

Applicant was denied the effective assistance of appellate counsel, in violation of the Sixth Amendment of the United States Constitution, and Article 1, §14 of the South Carolina Constitution, as a result of her failure to raise the issue of the expert's qualification to render an opinion concerning the degree of energy required to fracture the skull, denied the Applicant a fair and effective direct appeal and effective assistance of appellate counsel. Strickland v. Washington, 466 U.S. 668 (1984); Evitts v. Lucey, 469 U.S. 387 (1985).

Doctor Alejandro Spiotta was qualified as an expert witness in the field of neurosurgery without

11.(d) continued:

objection. App. 170, L.L. 7-11. Defense counsel raised an issue with "the limitation on what his [Dr. Spiotta] expertise went to. App. 170, L.L. 5-6. Dr. Spiotta had no training in forensics, just treatment] of the person. App. 170, App. 2-3.

During direct examination, the state asked the following:

"And how strong is this bone in your skull there that ~~there~~ was fractured. Can you talk about that?

As far as the strength, I can't give you numeric number for that, but this is a skull, so requires some degree of energy to fracture that.

"And can you opine on the level of energy required to fracture that part of the skull?

App. 177, L.L. 17-24

Trial counsel objected on the ground that Dr. Spiotta was not qualified twice and was overruled.

App. 177, L. 24 - App. 178, L. 14.

Appellate counsel was ineffective.

Adrian V. Simmons #369292
Lieben Comm. Inst. Cooper B-
P.O. Box 205
Ridgeville, S.C. 29472

August , 2019

Hon. Julie J. Ammstrong,
Clerk of Court / Charleston Co.
100 Broad Street, Suite 106
Charleston, SC 29401-2258

Dear Clerk,

Enclosed please find the original and one(1) copy
of my Application for Post-Conviction Relief.

Please date-stamp the copy and return to me.

I thank you for your assistance.

Sincerely,

x

Adrian V. Simmons

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT

Adrian Simmons, #369292

Case No.: 2019-CP-10-5086

Applicant,

v.

**RETURN AND MOTION
FOR MORE DEFINITE STATEMENT**

State of South Carolina,

Respondent.

FILED
2020 FEB 10 PM 2:15
JAMES J. ARMSTRONG
CLERK OF COURT
BY _____

The State (Respondent), making its Return to the application for Post-Conviction Relief ("PCR") filed on October 3, 2019, would respectfully show this Court:

I. Procedural History

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Charleston County Clerk of Court. In August 2015, the Charleston County Grand Jury indicted Applicant for Assault and Battery of a High and Aggravated Nature (2015-GS-10-04889). J. Seth Whipper, Esquire represented Applicant at trial. Assistant Solicitors Charles M. Condon Jr. and Marian Askins prosecuted the case. On August 8, 2016, Applicant proceeded to trial before the Honorable Brian M. Gibbons and a jury. The jury convicted Applicant. Judge Gibbons sentenced Applicant to imprisonment for twelve years for Assault and Battery of a High and Aggravated Nature.

Applicant filed a timely notice of appeal. Katherine Hudgins, Esquire, of the Office of Appellate Defense perfected the appeal. The South Carolina Court of Appeals dismissed his appeal on March 20, 2019. The remittitur was returned to the circuit court on April 5, 2019.

Attached to this Return and incorporated by reference are the records of the Charleston County Clerk of Court regarding the subject convictions, Applicant's records from the South

Carolina Department of Corrections, the trial transcript, appellate records, and the application. Respondent reserves the right to amend this Return upon receipt of any relevant materials.

II. Factual History

The State's Case

In 2014, Lamont Washington (Victim) owned his own electronics repair business, specializing in smart phones, computers, video game consoles, and televisions. Courtney McDaniel, Applicant's girlfriend at the time, knew Victim through her older brothers and contacted him about repairing a pair of phones for her and Applicant. Victim met with McDaniel and Applicant, took the phones, and told them he would contact them later and give them an estimate for what it would cost to repair the devices. (R.p.34, line 19–R.p.38, line 25).

Approximately one week after obtaining the phones, Victim called McDaniel and informed her the repairs would cost two-hundred dollars per device. McDaniel, who was dealing with numerous expenses at the time, told Victim to fix only Applicant's phone. Victim performed the necessary repairs and informed McDaniel the phone was ready for pick-up. (R.p.39, lines 1–19).

After McDaniel failed to contact him for several weeks, Victim contacted her in an effort to complete the transaction. McDaniel gave Victim Applicant's phone number and told him she would no longer be involved in the situation. Victim contacted Applicant about the phone and, after a few attempts, set a date and time for the exchange of the device and payment. However, Applicant failed to show up the meeting. (R.p.39, line 20–R.p.41, line 3).

Finally, on September 24, 2014, Victim and Applicant agreed to meet at a local juice joint. After arriving at the designated location and waiting a period of time, Victim called Applicant to check on his status. Applicant requested they change the location for the meeting to

a nearby home. Victim went to the house, pulled in the driveway, and exited his vehicle.

Applicant and another man holding a baby were in front of the house. He shook Applicant's hand and told him he would retrieve the phone from the backseat of his vehicle. After he turned around to open the door, Applicant hit him in the back of the head. (R.p.41, line 4–R.p.43, line 6).

Joslin Washington, Victim's cousin, was in the vehicle at the time of the assault. He saw Victim and Applicant shake hands and then looked down at his phone. Suddenly, he heard something metallic, possibly brass knuckles, make a "bam" noise and looked up to see Victim's unconscious body fall to the ground as Applicant "jumped backwards." Washington quickly exited and found Applicant patting Victim's pants and stating, "I told him not to disrespect me." Applicant, who had not seen Washington in the car, was surprised when the latter asked him what he was doing. Applicant fled towards the house. Washington pursued him around the back and heard Applicant yell for someone to "go get the guns." Washington picked up Victim, put him in the car, and drove to Victim's parents' home. There, they called 911 for medical aid. (R.p.89, line 25–R.p.113, line 21).

Dr. Alejandro Spiotta, a neurosurgeon with the Medical University of South Carolina, treated Victim that night. Before Victim arrived at the hospital, EMS warned the hospital's staff he was in bad shape, showing signs of severe head trauma such as disorientation, confusion, and paralysis. By the time Victim arrived, he was unable to breathe on his own. A CAT scan revealed Victim had a skull fracture behind his right ear which lacerated a vein and caused bleeding on his brain which, untreated, would have killed him. (R.p.137, line 7–R.p.141, line 5).

Due to the severity of Victim's traumatic brain injury, Dr. Spiotta and other staff performed an emergency craniotomy to remove the fractured bone and a blood clot.

Additionally, Dr. Spiotta used a piece of Victim's muscle to suture the laceration and stop the bleeding. After the pressure in Victim's brain sufficiently decreased, Dr. Spiotta replaced the removed bone using a series of metal plates and brackets. (R.p.141, line 3–R.p.143, line 2; R.p.150, line 4–R.p.151, line 1).

Dr. Spiotta opined Victim's injury was caused by a "high energy" impact, such as a motor vehicle collision or falling from several stories. In his opinion, a mere fall on pavement could not have caused Victim's skull fracture. Dr. Spiotta confirmed Victim's wound was "a severe, life-threatening injury" which, untreated, "would have resulted in death" and caused neurological damage, impacting Victim's brain functions including his abilities to taste and smell. (R.p.143, line 22–R.p.145, line 5; R.p.151, lines 3–24).

Recordings of Applicant's phone calls from jail were also admitted into evidence. During one of Applicant's calls, he denied he and Victim were in a fight and explained that he hit Victim because he felt the latter disrespected him. (R.p.163, line 20–R.p.167, line 17; State's Exhibit 16).

Applicant's Defense

Applicant and his family members testified to a different version of events. Nola Welcome, Applicant's mother, claimed she was inside her home when Victim arrived. She heard an "altercation" outside and saw Applicant and "a young man" arguing. When she went outside a brief time later, she saw the "young man" on the pavement. Applicant's twin brother, Andre Simmons, exited the house when he heard two people talking. He saw Applicant and Victim involved in engage in an argument before the two men "throw hands" at each other, at which point Applicant hit Victim and the latter fell, unconscious, to the ground. (R.p.187, line 14–R.p.191, line 10; R.p.201, line 25–R.p.209, line 14).

Applicant testified Victim was the aggressor in the situation. He claimed Victim was upset because he had previously told him he was unable to pay for the cell phone at that time. On September 24, 2014, Victim showed up at his house, uninvited, seeking payment for the phone. After Applicant reiterated he was unable to pay for the phone at that time, Victim “tried to grab or punch [Applicant] with his hand.” Applicant claimed he ducked and punched Victim in the head. As a result, Victim fell and hit his head on the concrete driveway. (R.p.235, line 10–R.p.243, line 7).

III. Current Application

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

1. “Failure to Request Additional Voir Dire”
2. “Failure to Consult Medical Expert”
3. “Failure to Object to Pitting Witnesses”
4. “Failure to Object to Expert Qualifications”

IV. Response to Allegations of Ineffective Assistance of Counsel

Respondent submits Applicant’s allegations of ineffective assistance of counsel are without merit. In a PCR action, Applicant bears the burden of proving the allegations in his application. Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where the application alleges ineffective assistance of counsel as a ground for relief, Applicant must prove that “counsel's conduct so undermined the proper functioning of the adversarial process that [it] cannot be relied upon as having produced a just result.” Strickland v. Washington, 466 U.S. 668 (1984); Butler, 286 S.C. at 442, 334 S.E.2d at 814.

In evaluating allegations of ineffective assistance of counsel, the reviewing court applies the two-pronged test outlined in Strickland v. Washington, 466 U.S. 668. First, Applicant must prove that counsel’s performance was deficient. Id.; Cherry v. State, 300 S.C. 115, 117, 386 S.E.2d

624, 625 (1989). Under this prong, the court measures an attorney's performance by its "reasonableness under prevailing professional norms." Cherry, 300 S.C. at 117, 386 S.E.2d at 625 (quoting Strickland, 466 U.S. at 690). The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. Butler, 286 S.C. at 442, 334 S.E.2d at 814. "Counsel is strongly presumed to have rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment." Id. (citing Strickland, 466 U.S. at 690). The Applicant must overcome this presumption to receive relief. Cherry, 300 S.C. at 118, 386 S.E.2d at 625. 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.

Respondent submits Applicant can satisfy neither requirement of the Strickland test. However, the allegation of ineffective assistance of counsel probably raises questions of fact that the record does not conclusively refute. Accordingly, 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. Failure to Call Expert Witness

Criminal cases will arise where the only reasonable and available defense strategy requires consultation with experts or introduction of expert evidence, whether pretrial, at trial, or both. There are, however, "countless ways to provide effective assistance in any given case. Even the best criminal defense attorneys would not defend a particular client in the same way." *Id.*, at 689, 104 S.Ct. 2052. Rare are the situations in which the "wide latitude counsel must have in making tactical decisions" will be limited to any one technique or approach. *Ibid.* It can be assumed that in some cases counsel would be deemed ineffective for failing to consult or rely on experts, but

even that formulation is sufficiently general that state courts would have wide latitude in applying it. Here it would be well within the bounds of a reasonable judicial determination for the state court to conclude that defense counsel could follow a strategy that did not require the use of experts. Harrington v. Richter, 131 S. Ct. 770, 788-89, 178 L. Ed. 2d 624 (2011).

Strickland does not enact Newton's third law for the presentation of evidence, requiring for every prosecution expert an equal and opposite expert from the defense. *Id.* Respondent submits Applicant cannot meet his burden in regards to this allegation, however, the allegation raises question of fact that the record does not directly refute. Accordingly, Respondent requests an evidentiary hearing on the issue.

VI. Failure to Request Additional Voir Dire

In general, the scope of voir dire and the manner in which it is conducted are within the trial judge's sound discretion. *State v. Wise*, 359 S.C. 14, 23, 596 S.E.2d 475, 479 (2004) (citations omitted). To constitute reversible error, a limitation on questioning must render the trial "fundamentally unfair." *Morgan v. Illinois*, 504 U.S. 719, 730, 112 S.Ct. 2222, 2230, 119 L.Ed.2d 492 (1992); *309 *State v. Hill*, 331 S.C. 94, 104, 501 S.E.2d 122, 127 (1998). On review, a jurors responses must be examined in light of the entire voir dire, with the primary consideration being that the juror is unbiased, impartial, and capable of following instructions on the law. *State v. Green*, 301 S.C. 347, 354, 392 S.E.2d 157, 161, cert. denied, 498 U.S. 881, 111 S.Ct. 229, 112 L.Ed.2d 183 (1990). *State v. Hill*, 361 S.C. 297, 308-09, 604 S.E.2d 696, 702 (2004). Respondent submits Applicant cannot meet his burden in regards to this allegation, however, the allegation raises question of fact that the record does not directly refute. Accordingly, Respondent requests an evidentiary hearing on the issue.

VII. Motion for More Definite Statement

Respondent also hereby moves for a more definite statement. Applicant has failed to set forth any facts to "support each ground" or to explain with any specificity whatsoever the facts upon which his claims are based. The Uniform Post-Conviction Procedure Act requires the Applicant to "*specifically set forth the grounds upon which the application is based.*" S.C. Code Ann. § 17-27-50 (1985) (emphasis added). Respondent respectfully submits that it is incumbent upon Applicant, through counsel, to amend his application to set forth specific facts upon which his allegations are based so that Respondent may adequately prepare for an evidentiary hearing. Therefore, Respondent requests that Applicant be required to amend his application to set forth specifically the grounds on which his claims are based.

VIII. Any Future Amendments

Applicant must specify any claims he intends to raise at the PCR evidentiary hearing. Any claims not specifically laid out in this PCR application or in amendments will be opposed by the State at an evidentiary hearing pursuant to §§ 17-27-10 to -160 of the South Carolina Code of Laws and Rule 71.1 of the South Carolina Rules of Civil Procedure. See also Rules 15(a)-(b), SCRPC. All claims should be made well in advance of the evidentiary hearing. Because Applicant has been appointed an attorney, the attorney, and not Applicant, is the only individual authorized to file amendments to this application. See Rule 11, SCRPC. Pro se filings will not be considered at the PCR hearing. Respondent reserves the right to request that any amendments withheld until the last minute be stricken because of undue prejudice to Respondent. See Rule 15(a), SCRPC.

IX. Response to Any and All Other Allegations

Each and every allegation contained within the application not expressly admitted, qualified, or explained in this Return is hereby denied.

X. Request for an Evidentiary Hearing

WHEREFORE, Respondent requests that an evidentiary hearing be held on the claims of ineffective assistance of trial counsel.

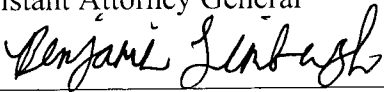
Respectfully submitted,

ALAN WILSON
Attorney General

W. JEFFREY YOUNG
Chief Deputy Attorney General

MEGAN HARRIGAN JAMESON
Senior Assistant Deputy Attorney General

BENJAMIN LIMBAUGH
Assistant Attorney General

By: 
ATTORNEYS FOR RESPONDENT

Office of the Attorney General
Post Office Box 11549
Columbia, SC 29211
Telephone: (803) 734-3737

February 7, 2019

STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT

Adrian Simmons, #369292)

Case No.: 2019-CP-10-5086

Applicant,)

v.)

Certificate of Service by Mail

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 **Return and Motion for More Definite Statement** in the above-captioned matter on the following person by depositing same in the United States mail, postage prepaid:

James K. Falk, Esquire
Falk Law Firm, LLC
Post Office Box 1058
Charleston, SC 29402

DATED this 7th day of February, 2020.

Jennifer Jennison

Jennifer Jennison, Administrative Coordinator
For Respondent

FILED
2020 FEB 10 PM 2:15
JULIE J. ARMSTRONG
CLERK OF COURT
BY _____

STATE OF SOUTH CAROLINA	*	COURT OF COMMON PLEAS
	*	
COUNTY OF CHARLESTON	*	TRANSCRIPT OF RECORD
-----X		
ADRIAN VASHARD SIMMONS,	*	
	*	
Applicant,	*	
	*	
vs.	*	Case No. 2019-CP-10-05086
	*	
STATE OF SOUTH CAROLINA,	*	
	*	
Respondent.	*	
-----X		

February 6, 2023

B E F O R E:

The Honorable George M. McFaddin, Jr., Presiding Judge

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

James Falk, Esq.

Attorney for the Applicant

Russ Barlow, Esq.

Assistant Attorney General for the State

Recorded by: DCRP Court Monitor Caressa Johnson

Court Reporter: Bobbi Fisher, RPR
SC Official Court Reporter III

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E X H I B I T S

None.

COURT REPORTER/TRANSCRIBER LEGEND

Dash (--)	Indicates an interruption in speech
Ellipses (...)	Indicates trailing off in speech
(ph)	Indicates phonetic word
[sic]	Indicates the word is written as said
(Indiscernible)	Indicates word(s) is not known due to poor audio recording quality

P R O C E E D I N G S

(The following proceedings started at 1:41 PM:)

THE COURT: All right, gentlemen, what do we have?

MR. BARLOW: Thank you, Your Honor. May it please the Court. Russ Barlow on behalf of the State of South Carolina.

This is the post-conviction relief matter of Adrian V. Simmons versus the State, Case No. 2019-CP-10-5086 out of Charleston County.

In August of 2015, the Charleston County Grand Jury indicted Applicant for assault and battery of a high and aggravated nature. Jackson Seth Whipper, Esquire, represented Applicant at trial, and Assistant Solicitors Charles M. Condon, Jr., and Marian Askins prosecuted the case.

On August 8th, 2016, Applicant proceeded to trial before the Honorable Brian M. Gibbons and a jury. The jury convicted Applicant as indicted, and Judge Gibbons sentenced Applicant to imprisonment for 12 years for assault and battery of a high and aggravated nature.

Applicant filed a timely Notice of Appeal, and Katherine Hudgins, Esquire, of the Office of Appellate Defense, perfected that appeal.

The South Carolina Court of Appeals dismissed his appeal on March 20th, 2019, and the Remittitur was returned to the Circuit Court on April 5th, 2019.

In his application for post-conviction relief, Applicant

1 alleges he is being held in custody unlawfully based on the
2 following:

3 (1) Failure to request additional voir dire;

4 And attached to his application, he listed two questions
5 that should have been asked.

6 (2) Failure to consult a medical expert;

7 (3) Failure to object to pitting witnesses;

8 and (4) is an ineffective assistance of appellate counsel
9 for failure to object to expert qualifications.

10 Applicant is requesting relief in the form of his
11 convictions and sentence being vacated or reversed and
12 remanded for a new trial.

13 Respondent made its Return and motion for a more definite
14 statement filed on February 10th, 2020.

15 And, at this time, Your Honor, we would ask that PCR
16 counsel indicate the allegation in which he intends to move
17 forward on and to have the Court engage in colloquy of what
18 Mr. Simmons is potentially exposing himself to.

19 THE COURT: All right.

20 MR. FALK: Your Honor, we're going forward on the issues
21 raised in his application.

22 THE COURT: Mr. Simmons, how are you?

23 THE DEFENDANT: Fine, sir.

24 THE COURT: Mr. Simmons, you are here before the Court
25 today on your application for post-conviction relief; correct?

1 THE DEFENDANT: Yes, sir.

2 THE COURT: Mr. Simmons, have you talked to your lawyer
3 about the ramifications or consequences of being granted a new
4 trial?

5 THE DEFENDANT: Yes, sir.

6 THE COURT: Do you understand that, if this Court grants
7 you a new trial and vacates the prior sentence, you would go
8 back before the Court for the same charge and could
9 potentially be sentenced to 20 years in prison? Do you
10 understand that?

11 THE DEFENDANT: Yes, sir.

12 THE COURT: And you're willing to take that risk?

13 THE DEFENDANT: Yes, sir.

14 THE COURT: Have you discussed this with your attorney?

15 THE DEFENDANT: Yes, sir.

16 THE COURT: Is this what you wish to do?

17 THE DEFENDANT: Yes, sir.

18 THE COURT: Mr. Falk, anything else, sir?

19 MR. FALK: No, Your Honor. Thank you.

20 THE COURT: All right. I'm ready.

21 Mr. Falk, can you give this to --

22 UNIDENTIFIED SPEAKER: Mr. Whitaker?

23 MR. WHITAKER: Here.

24 MR. FALK: Your Honor, I'll call Mr. Simmons to the
25 stand.

1 THE COURT: Yes, sir.

2 THE CLERK: Do you swear from the testimony that you will
3 give is the truth, the whole truth, and nothing but the truth,
4 so help you God?

5 THE DEFENDANT: Yes, ma'am.

6 THE CLERK: You may have a seat.

7 THE COURT: Mr. Falk...

8 ADRIAN V. SIMMONS,

9 after having been duly sworn, was examined and testified
10 to as follows:

11 THE CLERK: Please state your name for the record and
12 spell your last name.

13 THE DEFENDANT: Adrian Simmons. S-i-m-m-o-n-s.

14 DIRECT EXAMINATION

15 BY MR. FALK:

16 Q Mr. Simmons, can you hear me?

17 A Yes, sir.

18 MR. FALK: Court reporter hear me?

19 THE COURT: Yes, sir.

20 MR. BARLOW: Excuse me, Your Honor, I apologize. May I
21 approach?

22 THE COURT: Yes, sir. Thank you.

23 MR. BARLOW: I apologize.

24 BY MR. FALK:

25 Q Let's -- what I kind of want to do is walk through sort

1 of in general what we're talking about on your -- the grounds
2 that you want to raise and then come back to them in more
3 depth.

4 A Yes.

5 Q All right. So the first ground that you had talked about
6 is the failure to request voir dire or additional voir dire
7 questions.

8 A Sir?

9 Q The first ground that you raised -- the first issue that
10 you raised was that your trial counsel didn't ask certain
11 questions on voir dire; is that correct?

12 A Yes, sir.

13 Q And one of them, he did not ask whether or not anybody
14 had been a victim of a violent crime; is that correct?

15 A Yes, sir.

16 Q Now, why did you think that that would have been an
17 important question to ask?

18 A Because most of the jurors that was on -- that was on the
19 stand, they had businesses, and I felt that my victim -- being
20 that my victim had a business, I figured that they had some
21 type of bias but -- considering the case.

22 Q Okay. And then you're saying that your lawyer did not
23 consult a medical expert?

24 A Did not. Yeah, the medical expert.

25 Q Where do you think medical testimony would have been

1 helpful in your case?

2 A Because the victim stated that they -- they got hit with
3 a weapon. And my lawyer had me under the impression that they
4 had to prove that a weapon was involved, but a weapon wasn't
5 involved, and he didn't have the medical examiner to verify
6 that the injury was caused by a non -- by not -- by a
7 non-weapon.

8 Q Okay. And it was your understanding that, in order to
9 get convicted of assault and battery of a high and aggravated
10 nature, that a weapon had to be used?

11 A Yes, sir.

12 Q And the pitting of the witnesses, why don't you go
13 through that.

14 A Repeat that.

15 Q You complained about pitting witnesses when they -- I
16 think it's when they recalled Mr. Washington back to the
17 stand.

18 A Yeah. Because Mr. Washington and -- I forget the -- the
19 witness last name is Washington, too. They stated that a
20 weapon was involved, but in the 911 call, they said it wasn't
21 a non -- a weapon involved. And when they got on the stand,
22 they stated that a weapon was involved.

23 Q But you'd also said that -- I'll ask this to your trial
24 lawyer.

25 And then, what was your concern about the expert

1 qualifications?

2 A About the State's expert?

3 Q Yeah.

4 A They didn't really been specific that -- that a weapon
5 was involved inside the -- inside the case. They couldn't
6 really determine if it wasn't or not. So that was my concern,
7 whether they coulda proved -- proven on my behalf that a
8 weapon wasn't -- wasn't involved.

9 Q So are you saying that had -- so are you saying that, if
10 you had a different expert witness or somebody, they could
11 have testified that a weapon was not used?

12 A Yes, sir.

13 Q Okay. All right. Now, let's just back up. How did
14 Mr. Whipper get involved in this case?

15 A I hired Mr. Whipper through an associate that I knew.

16 Q And were you in custody at the time or were you out on
17 bond?

18 A I was out on bond.

19 Q How many times did you meet with Mr. Whipper?

20 A I would say at least three times.

21 Q Okay. Was there ever any kind of plea negotiation going
22 on?

23 A No, sir.

24 Q Okay. So this case was always set to go to trial?

25 A Yes, sir. When I approached Mr. Whipper about trying to

1 get a plea deal, there was none being considered.

2 Q How -- so after you got arrested, how long was it before
3 you hired Mr. Whipper? Was it a year? Was it a couple of
4 months?

5 A The case was, like, three years old, so I'd say two years
6 after I was released.

7 Q And then Mr. Whipper, he filed an entry of appearance.
8 And after he entered the case, how long was it until the case
9 went to trial? What would be your recollection?

10 A Another year after.

11 Q Okay. So, in that year, how many times did you meet with
12 him?

13 A I'd say three times. Probably four to the most.

14 Q Okay. And when you met with him, what was sort of the
15 trial strategy that y'all were going to follow?

16 A Really, the first time when I met him, I was trying to --
17 I didn't know about the Castle Doctrine thing until later on.
18 So I was under the impression from the Stand Your Ground, so I
19 was trying to see if we coulda get a case pertaining to the
20 Stand Your Ground law and trying to see about a plea
21 agreement. But there was always negative from Mr. Whipper.

22 Q All right. So tell me -- so just sort of give me some of
23 those rough facts. Why did you think that you were entitled
24 to a Stand Your Ground defense?

25 A Because the case happened at my -- at my premises, at my

1 granny's house, and Mr. Washington was the aggressor. So I
2 was really in -- I was telling Mr. Whipper it was me in
3 self-defense, defending myself. So that's why I approached
4 him about the Stand Your Ground law.

5 Q Okay. And you had the Stand Your Ground hearing; is that
6 right?

7 A No, I don't believe so. They -- we had -- he filed the
8 motion for Stand Your Ground, but it was shot down.

9 Q Okay. So there was no hearing--

10 A No.

11 Q --on a Stand Your Ground.

12 A No, no.

13 Q And so -- all right. So then let's walk back through
14 that. So he came up to your back door of your house?

15 A Yes, sir.

16 Q And who answered the door: your grandmother or you?

17 A No. I was already outside when he approached. He pulled
18 up inside his car, him and his cousin.

19 Q And you were where?

20 A I was by my back door.

21 Q Okay. And so what happened next?

22 A He came out of his car in an aggressive manner, asking me
23 about -- about his money. And I was telling him that I didn't
24 have the money. He -- he swung a blow at me. I swung a blow
25 at him. He hit -- he fall down on the ground and hit his head

1 on the patio by my back door.

2 Q So he came to you. You were outside your house. How
3 close were you to your front or your back patio?

4 A From here to -- probably about 2 or 3 feet.

5 Q And there was a prior financial obligation that you owed
6 him money?

7 A For a cell phone that he repaired for my kids' -- my
8 child's mother.

9 Q Okay. And he asked for that. He asked for the money.
10 You said you didn't have it. And the next thing that happened
11 was he swung?

12 A Yeah, he -- he was asking me for the money, probably like
13 two or three weeks prior to that up until then, and I was keep
14 on telling him that I didn't have it. So that's why he came
15 to the house to receive the money from me.

16 Q Did you tell him that, if you come by my house, you could
17 pick up the money?

18 A No. I never had the money.

19 Q You weren't expecting him that day?

20 A No, I -- he told me that he was coming, but I wasn't at
21 my house at the time, so I stopped answering the phone. And
22 then when he kept calling, that's when I answered the phone
23 and told him that I was at home but I didn't have the money.

24 Q Okay. All right. So now -- in fact, you said you met
25 with them -- you met with Mr. Whipper several times.

- 1 A Yes, sir.
- 2 Q And there was never a plea offer?
- 3 A No, sir.
- 4 Q And so y'all went to trial?
- 5 A Yes, sir.
- 6 Q And what did he tell you the trial strategy was going to
- 7 be?
- 8 A Their trial strategy?
- 9 Q Yours. You were going to testify; right?
- 10 A Yes, sir. Yeah, I testified, and my mother and my twin
- 11 brother testified, too.
- 12 Q Okay. Now, during -- so going fast-forward. So now when
- 13 we get to picking the jury -- okay. So did y'all have any
- 14 discussions about hiring an expert witness?
- 15 A No, sir. It never -- when he -- it was -- the guy that
- 16 came and took the pictures of the property. I forgot his
- 17 name. He worked with Mr. Whipper. He was basically telling
- 18 me, like -- well, he wasn't -- to tell you the truth, he
- 19 wasn't even -- he just really came and took pictures of the
- 20 house, and I can't even recall Mr. Whipper even really having
- 21 a strategy besides me telling him the -- to do the Stand Your
- 22 Ground law.
- 23 Q Well, in your PCR -- in the PCR application, you're
- 24 saying that he should have hired a medical expert?
- 25 A Yes, sir.

1 Q Okay. So was there any conversation that you --

2 A No. No. There was no conversation about no medical
3 experts or none of nothing.

4 Q So you knew, when you went to trial, you were not going
5 to have a medical expert; is that right?

6 A Yeah. When we get the trial and I was hearing the
7 State's medical experts, that's when I approached Mr. Whipper
8 about the medical experts.

9 Q All right. But then, when you start doing voir dire,
10 what questions did you -- I mean, there was the question about
11 whether or not anybody had been victim of a violent crime.

12 A Right.

13 Q Remember -- I can show you where, on your thing, where
14 you --

15 A Right --

16 MR. FALK: (Indiscernible).

17 THE COURT: Yes, sir.

18 BY MR. FALK:

19 Q I think those were the two questions that you were
20 addressing.

21 A You want me to read it out?

22 Q No. Just -- so one of the questions was, was anybody a
23 victim of a violent crime.

24 A Right.

25 Q And the other one was, did anyone have any relationship

1 with somebody in the county?

2 A Yes, sir.

3 Q Okay. Did you -- were you in the courtroom when they
4 were asking voir dire?

5 A Yes, sir.

6 Q And did you ask Mr. Whipper -- Mr. Whipper to add that
7 question?

8 A Yes, sir. And I asked Mr. Whipper's assistant to
9 approach Mr. Whipper about the questions, too. And I gave him
10 a list of questions to ask the -- to ask the witness and the
11 victim, but he never did.

12 MR. FALK: If I could approach again, Your Honor.

13 THE COURT: Yes, sir.

14 BY MR. FALK:

15 Q Why don't you read over that section to yourself, maybe
16 refresh your memory what your concern was about the witness
17 pitting.

18 A (Reviews document.) Right.

19 Q So what was your concern?

20 A He didn't -- he didn't -- talking about Mr. -- pertaining
21 to Mr. Whipper?

22 Q Yeah. All right. So just tell me who -- where did the
23 pitting happen?

24 A When he crossed the -- asked my brother do he agree or
25 disagree.

1 Q Mr. Whipper or Mr. Connor?

2 A Hmm?

3 Q Who asked the question: Mr. Whipper or Mr. Connor? Did
4 the State ask the questions?

5 A The State's witness.

6 Q And he asked what question?

7 A Do you agree or disagree with his brother's testimony?

8 Q Okay. And did you say anything at that time to
9 Mr. Whipper?

10 A Yeah. I asked Mr. -- talking about the
11 cross-examination? Yeah, I asked him about the
12 cross-examination dealing with my brother and the witness.

13 Q And, again, why did you think a medical expert was needed
14 in this case?

15 A Because I strongly believed that an expert opinion could
16 have -- could have verified that a weapon was not involved and
17 that the -- the actual injury occurred by him hitting his head
18 on the concrete patio.

19 Q Right. Did he --

20 MR. BARLOW: Your Honor, I'm going to object to that
21 question, because he's speculating as to what an expert
22 witness would have testified to and he's not an expert
23 witness.

24 MR. FALK: No -- and I apologize for that.

25 THE COURT: Sustained on that.

1 MR. BARLOW: Thank you.

2 BY MR. FALK:

3 Q Did the State's expert testify to anything about how --
4 the cause of the injury?

5 A Yes, sir.

6 Q Okay. And what did the State's expert say?

7 A They basically stated that it was a -- the injury came
8 from a force -- from a -- I can't remember the exact words,
9 but a force blow.

10 Q And you wanted an expert to maybe provide testimony that
11 would--

12 A That agree --

13 Q --to question that.

14 A Right.

15 Q All right. So now I think we talked about the voir dire,
16 and we talked about the witness pitting and the expert issue.
17 Is there anything else that you think Mr. Whipper should have
18 done here?

19 A Yeah. Really my -- the biggest -- the biggest thing that
20 could have helped my case is that the medical examiner and the
21 cross-examination from the witness and the victim. And he
22 didn't cross-examine them with the questions that I asked of
23 him or the medical examiner.

24 Q Okay. I have no further questions. Please answer any
25 questions of the Attorney General.

1 THE COURT: All right, sir.

2 Mr. Barlow?

3 MR. BARLOW: Thank you, Your Honor.

4 CROSS-EXAMINATION

5 BY MR. BARLOW:

6 Q Good afternoon, Mr. Simmons.

7 A Good afternoon.

8 Q I know that the judge went over what you're facing in
9 this PCR if granted relief, but I want to just -- I want to
10 confirm that you completely understand that what the relief
11 that you can get from this Court is they can vacate your
12 sentence, you'd go back to the sheriff's department to jail,
13 you'd face a new trial on the original indictments, which were
14 the ABHAN.

15 A Right.

16 Q The maximum exposure on that, which they can seek at
17 trial, is 20 years. And if they give you 20 years -- when is
18 your max-out date?

19 A '26.

20 Q Okay. And if they give you 20 years, that adds eight
21 years to your sentence; correct?

22 A Yes, sir.

23 Q Okay. So that would increase your sentence by eight
24 years. And you're still willing to proceed?

25 A Yes, sir, because I -- I really know that I can prove my

1 case because there wasn't a weapon involved.

2 Q That's -- okay. All I'm asking you is, you understand
3 that you are--

4 A Yes, sir.

5 Q --facing eight years added to your current sentence?

6 A Yes.

7 Q Do you agree with that?

8 A Yes, sir.

9 Q Okay. So, on the failure to request additional voir
10 dire, do you recall trial counsel submitting a voir dire sheet
11 to the judge?

12 A Repeat the question.

13 Q Do you recall Mr. Whipper submitting a voir dire
14 questionnaire to the judge, that he wanted the judge to ask
15 the jurors potentially?

16 A No, sir.

17 Q You do not recall that?

18 A No, sir.

19 Q Okay. So you never saw that?

20 A The -- the questions that he asked the jurors?

21 Q That he submitted to the Court.

22 A No, sir.

23 Q Okay. But it was your testimony that you asked him to
24 ask certain questions of that?

25 A Yes, sir. I had -- I had a list of questions to ask the

1 jurors and the victim and the witness.

2 Q One of your -- was it your testimony that you wanted him
3 to ask the question of whether or not someone owned a
4 business?

5 A Not -- not own a business. The -- most of the jurors
6 that he was selecting, they -- they owned businesses. So
7 being that my victim owned a business, I felt that selecting a
8 juror who owned a business would have had biased intentions
9 towards -- towards the case.

10 MR. BARLOW: Beg the Court's indulgence, Your Honor.

11 THE COURT: Yes, sir.

12 BY MR. BARLOW:

13 Q All right. To your second allegation, failure to consult
14 a medical expert, do you recall discussing the medical expert
15 with trial counsel?

16 A Sir?

17 Q Do you recall discussing hiring a medical expert with
18 trial counsel?

19 A Yes, sir. But he -- he was -- he stated that it costs
20 money to hire a -- a medical examiner.

21 Q Do you recall that he did, in fact, consult a medical
22 expert?

23 A I remember him cross-examining the State's medical
24 examiner.

25 Q But do you actually know he sought an expert witness in

1 this case?

2 A Not to my recollection.

3 Q But you -- but you're aware that he discussed with you
4 that it would cost money?

5 A Yes, sir.

6 Q Okay. Did you have the money to pay for that expert
7 witness?

8 A If he -- if he had told me the cost about it. He
9 didn't -- he didn't never give me a specific cost.

10 Q Do you recall trial counsel objecting to the doctor's
11 testimony when it -- in regards to whether or not the blunt
12 force trauma could be caused by hitting their head on the
13 ground or by being hit by a weapon?

14 A Repeat that question.

15 Q Do you recall trial counsel objecting to the doctor's
16 testimony about whether or not a weapon was used or he hit the
17 ground?

18 A That he object that a weapon wasn't --

19 Q That he objected to the doctor's testimony. Do you
20 recall that?

21 A Mm-mmm.

22 MR. BARLOW: Your Honor, that's page 177 of the trial
23 record.

24 BY MR. BARLOW:

25 Q He -- do you recall trial counsel actually objecting

1 multiple times to it?

2 A Right, right.

3 Q So you do recall that?

4 A You said the trial -- the trial judge?

5 Q I'll refer to him as Mr. Whipper.

6 A Right.

7 Q That may be confusing.

8 Mr. Whipper objected to the medical expert testifying to
9 whether or not a weapon was used.

10 A Right, right, right, right, right, right, right, right.

11 Q Do you recall him objecting to that testimony?

12 A He -- I think he object to --

13 Q That he was not a qualified--

14 A A qualified expert.

15 Q In forensics?

16 A Right, right, right.

17 Q And he objected multiple times; do you recall that?

18 A Right, right.

19 Q Okay. And the pitting of the witnesses. Let's look at
20 that. I believe you said it is a single statement that, when
21 the victim was recalled, they asked him, does he agree with
22 his brother's testimony or with your brother's testimony; is
23 that correct?

24 A Right.

25 Q And that was the pitting question?

1 A Right.

2 Q And that was the one question that, but for that
3 question, the jury would have found you not guilty?

4 A See, from my -- like how he answered the question, see my
5 -- my brother really -- he just explained the -- the incident,
6 what happened, and he just was really verifying that --
7 because I -- I never --

8 Q Correct. Because this case came down to it was your
9 testimony, your brother's testimony against the victim and the
10 witness's testimony; correct?

11 A Right.

12 Q It came down to a credibility issue; correct?

13 A Right.

14 Q And that was up to the jurors to decide who was credible
15 and who was not?

16 A Right.

17 Q Right? And they found that you were not credible and the
18 victim was; correct?

19 A No. They tried to use --

20 Q Because you were found guilty; correct?

21 A Yes, sir.

22 Q By this charge.

23 A Right.

24 Q Okay.

25 MR. BARLOW: Beg the Court's indulgence.

1 THE COURT: Yes, sir.

2 BY MR. BARLOW:

3 Q Real quick. I believe in your direct testimony, you
4 stated that there was no plea negotiations done on your
5 behalf?

6 A No. The only -- no, Mr. Whipper never gave me a plea.

7 Q You were never presented with a plea deal from the
8 solicitor's office--

9 A No, I never spoke --

10 Q --for seven years cap maximum?

11 A I think that was right before the sentencing.

12 Q And you rejected that; correct?

13 A Yes, sir.

14 Q Okay.

15 A Because I -- I was under the -- I was under the
16 impression from Mr. Whipper that they had to prove that a
17 weapon was involved. So I -- I stated to Mr. Whipper if -- if
18 it was -- if it would be -- if it would be good for me to --
19 to take the plea deal -- plea agreement or not.

20 But under Mr. Whipper's testimony, he stated that they
21 had to prove that a weapon was involved, so I was under the
22 impression that they had to prove. So that's why I denied the
23 -- I think it was eight years that Mr. Whipper told me.

24 MR. BARLOW: Actually, I think one more question, Your
25 Honor, since that came up.

1 BY MR. BARLOW:

2 Q I want to ask you one more question about whether or not
3 there was ever a trial strategy. I believe, on your direct
4 testimony, that there was no trial strategy?

5 A No.

6 Q So self-defense was not part of it?

7 A Right, right, right, right. My -- my bad. You're right.
8 It was -- self-defense came up later on in the trial but not
9 before we went to trial. When we was strategizing the
10 upcoming trial, there wasn't.

11 Q So Mr. Whipper just came up with that on his own?

12 A No, we -- we -- after -- I think that was, like, the
13 second day when he made -- the second or third day when he
14 made the motion for the Stand Your Ground law.

15 MR. BARLOW: No further questions, Your Honor.

16 THE COURT: Mr. Falk?

17 MR. FALK: Just to clean up something here.

18 May I approach the witness?

19 THE COURT: Yes, sir.

20 REDIRECT EXAMINATION

21 BY MR. FALK:

22 Q I'm showing you page 251 of the transcript, and I've
23 highlighted -- what lines did I highlight there?

24 A Q&A on 16 --

25 Q Line 16 and 18?

1 Is that the question that you had -- that you thought was
2 the pitting on line -- on page 251, line 16 and 18?

3 A Yes, sir.

4 Q Okay. And had you known that you could get convicted of
5 assault and battery of a high and aggravated nature -- I'm
6 just going to take that back.

7 If you thought that you could get convicted of assault
8 and battery of a high and aggravated nature, that if the
9 injury was not the result of using a weapon, would you have
10 taken the eight-year offer?

11 A You said if I was --

12 Q I'm just trying to say -- you got convicted--

13 A Right.

14 Q --of assault and battery of a high and aggravated nature?

15 A Right.

16 Q It's your belief that you can't get convicted of that
17 based on representation from Mr. Whipper that they have to
18 prove that weapon was used?

19 A The weapon was -- yes, sir.

20 Q So, after proving that a weapon was not used, that the
21 use of a weapon is not an element of assault and battery of a
22 high and aggravated nature--

23 A Mm-hmm.

24 Q --would you have taken the eight-year deal?

25 A Yes, sir.

1 MR. FALK: No further questions.

2 MR. BARLOW: Nothing from the State.

3 THE COURT: Okay. Thank you, sir. Thank you.

4 Anyone else?

5 MR. FALK: I'd rather the -- I'd rather the State call

6 Mr. Whipper.

7 Are y'all going to call him if I don't?

8 MR. BARLOW: Well, he's our witness.

9 MR. FALK: Yeah. Okay. Then we rest.

10 THE COURT: Okay. Mr. Barlow?

11 MR. BARLOW: Your Honor, the State would call Mr. Jackson
12 Whipper.

13 THE COURT: Yes, sir.

14 THE CLERK: Do you swear or affirm the testimony that you
15 will give is the truth, the whole truth, and nothing but the
16 truth, so help you God?

17 THE WITNESS: I do.

18 JACKSON WHIPPER

19 after having been duly sworn, was examined and testified
20 to as follows:

21 THE CLERK: Please state your name for the record and
22 spell your last name.

23 THE WITNESS: Jackson Seth Whipper. W-h-i-p-p-e-r.

24 Good to see you, Your Honor.

25 P-p as in Peter Paul.

1 THE COURT: All right, sir.

2 DIRECT EXAMINATION

3 BY MR. BARLOW:

4 Q Good afternoon, Mr. Whipper.

5 A Good afternoon, sir.

6 Q How long have you been practicing law?

7 A Since 19 -- September 1985.

8 Q And how much of that time has been criminal law?

9 A Two years -- all that time except for two years.

10 Q And you were retained in this case?

11 A I was.

12 Q And about how long before the trial where you retained?

13 A I am not certain, but -- Jesus, let's see. When was the
14 trial date?

15 Q The trial date, sir, was August 8th through the 10th of
16 2016.

17 A So perhaps just about a year before.

18 Q And during that time, you received discovery; correct?

19 A Yes, sir, I did.

20 Q Did you review that discovery with Mr. Simmons?

21 A Yes. Yes, I did, but more in a conversational way, of
22 course. I did not -- I don't think I printed out the
23 (indiscernible).

24 Q And how many times do you recall that you met with
25 Mr. Simmons?

1 A No less than ten times. It might have been more than
2 that, because I met with him in jail, when he was in jail as
3 well.

4 Q So you met him while he was in jail. So you were
5 retained while he was in jail and while he was on bond?

6 A Yes, sir. Because I think he was in jail and somehow --
7 I don't know if it was on a bond -- bench warrant recision or
8 what, but that's how we got started.

9 Q Can you give us a brief overview of the State's case?

10 A Well, the State's position, of course, was that
11 Mr. Simmons ambushed the alleged victim and that that ambush
12 occurred somewhere near his home. As a matter of fact, I
13 think it was supposed to be in the driveway.

14 And their position was that, at some point in time, they
15 were arguing or there was some discussions and then they
16 claimed that Mr. Simmons struck the victim with some object.

17 I think they alleged it was something metal. That was
18 their theory. And that his injuries resulted from that
19 particular blow.

20 Q Well, based on the State's evidence, were you able to
21 craft a defense strategy?

22 A Well, the best strategy that we -- we had was, again,
23 everybody's version of the story. The State had a version and
24 we had a version.

25 Q So this trial came down to a credibility issue.

1 A From day one.

2 Q Okay. And you discussed that with Applicant, did you?

3 A Oh, yes. Oh, yes.

4 Q Okay.

5 A We prepared witnesses. We had a number of witnesses.
6 Some were not needed and some were not available, but we went
7 through the whole thing.

8 Q And it was a two-day trial; correct?

9 A It was a two-day trial, from what I can recall.

10 Q Let me ask you: Let's move on to the allegations.

11 Allegation No. 1 was failure to request additional voir
12 dire? Do you recall submitting voir dire questions to the
13 Court?

14 A I do.

15 Q And do you recall reviewing those questions with
16 Mr. Simmons?

17 A I can't tell you that I recall reviewing them with him.
18 I may have, but I don't think I sat down and went through it.
19 I just can't recall we went through it in real depth.

20 Q Do you recall Mr. Simmons asking you to ask certain
21 questions during voir dire?

22 A No, he did not do that. I handled the voir dire
23 entirely. He did not get involved in that at all.

24 Q Let me ask you: Do you recall the voir dire questions
25 that were asked during the trial?

1 A I recall a good deal of them. I think all of mine were
2 asked, 1 through 8.

3 Q In your opinion, do you think that the jury voir dire was
4 sufficient?

5 A I do. I do.

6 Q And Applicant's charges were -- were explained to the
7 jury and the jurors were -- as you recall, rather -- the
8 Applicant -- the judge informing the jurors of what his
9 charges were and asking the jurors if they had formed any
10 opinion or expressed any opinion about any issue in the case?

11 A I do recall that.

12 Q And there was no response?

13 A There was no response.

14 Q And this was after they were informed of what his charges
15 were?

16 A Yes, sir. Yes, sir.

17 Q Moving on to No. 2, failure to consult a medical expert.
18 Did you consult a medical expert in this case?

19 A I did.

20 Q Okay. And do you recall if that medical expert's
21 testimony would have been beneficial to your case or not?

22 A Having another voice is probably something you would want
23 to do. The issue that was raised by the testimony, of course,
24 was the lack of experience of the State's witness in forensics
25 -- in forensics studying and forensics investigation.

1 The -- based on what I got from our -- my consultation
2 was that the forensic side of it needed to be examined.
3 Anything could have happened. And that was how I was sort of
4 advised to proceed in that regard.

5 Q Well, do you recall objecting to the doctor's testimony
6 when it came to the specific field of forensics, that you
7 objected to that?

8 A Oh, yes, sir. All day long.

9 Q Multiple times?

10 A All day long. You read my cross- --

11 Q Application No. 3, failure to object to the pitting of
12 witnesses. This is on page 251 as has been previously stated,
13 lines 17 through 18.

14 Are you -- are you familiar with that -- that line?

15 A I'm -- no, not that line. It was -- you know, it was a
16 hotly contested case. I felt like, at that time, credibility
17 was the most important thing. I did not object to it because
18 I didn't think it was in any way damaging so much as it was
19 just more of a -- sort of a cat fight.

20 Q Right. So it was one witness saying one thing, another
21 witness saying one thing, and that witness saying they
22 disagreed with those events and here's why.

23 A That's exactly right.

24 Q Okay. I know -- I think you just testified to this, but
25 do you think that that testimony was harmful to your case?

1 A No, I don't think it was.

2 Q Do you think but for your objection or your non-objection
3 to this one line, that his trial would have been different,
4 they would have found him not guilty?

5 A No, sir.

6 Q There's been some talk about the explanation of ABHAN and
7 whether or not a weapon was necessary to be convicted of
8 ABHAN. Was it your position throughout trial that a weapon
9 was not used?

10 A That's -- that's what I understand.

11 Q And --

12 A Yeah, that's what I understand happened based on what my
13 client said.

14 Q But that was your position? The defense's position is
15 there is no weapon being used.

16 A It was just somehow a fight. He was hit. Maybe it was a
17 lucky blow, he got knocked out, and then he somehow hit his
18 head because it happened on a -- sort of a concrete pad. And
19 that's what we understand to be the facts.

20 Q Did you -- did the solicitor's office approach you with a
21 plea deal?

22 A Yes.

23 Q Did you present that plea to Mr. Simmons?

24 A I did and the judge did.

25 Q And what was his -- what was his response?

1 A He did not want it.

2 Q I'm sorry?

3 A He didn't want that deal.

4 Q And how many -- how long was that?

5 A The first offer, I have to tell you, came -- as I recall,
6 it did come -- it came at the day of trial, is what I recall.
7 I don't recall it coming before that.

8 Q Okay. And how long was the plea deal for? What was the--

9 A My recollection is it was seven years.

10 Q Was that a cap deal?

11 A I'm sorry? Is that --

12 Q Was it capped?

13 A Oh, that's a -- yes, cap. Seven years.

14 Q And, again, what was his response to that?

15 A He didn't want it.

16 Q Let me ask you: If you are charged with ABHAN and you're
17 before a jury, then you can be convicted of ABHAN, whether or
18 not you believe a weapon must or must not be used; correct?

19 MR. FALK: Your Honor, I'm objecting. I mean, this is
20 his own witness. I think it's pretty much -- I think he's
21 leading his own witness.

22 THE COURT: Sustained.

23 BY MR. BARLOW:

24 Q Could the Appli -- or excuse me. Could Mr. Simmons be
25 convicted of ABHAN, whether or not he had a weapon?

1 A Yes.

2 Q Did you explain that to Mr. Simmons?

3 A Not in those terms, but I explained it to him that, you
4 know, if -- if his -- if he wasn't -- if he wasn't the victor
5 in terms of what story these people believed, he's going to --
6 he's going to be exposed to a lot of time in jail.

7 Q One last question: Did you explain the elements of
8 ABHAN?

9 A I can't recall. I would think that we talked about the
10 charges, but I don't -- I don't recall doing a checklist with
11 him.

12 Q Is it your standard practice to explain the elements of
13 the crimes?

14 A Oh, yes. Oh, yeah. What I'm saying is that what was
15 being put before us as the State's version, you know, was
16 ABHAN and could have been attempted murder, the whole nine
17 yards. I mean, these are very serious charges, and so that's
18 what it took.

19 Our position was that, at worst, he could have been --
20 our position was, at worst, he might have been convicted of
21 simple assault because it was just a punch from his fist. And
22 that's -- that was our position.

23 Q Do you recall if the jury was given any lesser included?

24 A Yes. As a matter of fact, we -- that was one of our
25 motions for the new trial, based on the fact that the judge

1 didn't explain self-defense and -- but did include the lesser
2 included offenses, I think, of either simple assault or some
3 kind of battery. I can't remember.

4 MR. BARLOW: Nothing further, Your Honor.

5 THE COURT: Mr. Falk?

6 CROSS-EXAMINATION

7 BY MR. FALK:

8 Q Mr. Whipper, I'm going to ask you if you could read a few
9 pages to yourself to the -- of the transcript.

10 MR. FALK: I'm going to show him pages 12 through 20.

11 BY MR. FALK:

12 Q And this is what it looks to me is the voir dire that was
13 conducted. If you would just read over those eight or nine
14 pages to yourself, because I'm going to ask you a couple of
15 questions.

16 A (Reviewing document.) All right, sir. I'll respond to
17 your questions.

18 Q Okay. I'm going to grab that back from you.

19 A Okay.

20 Q So when you read through those pages, did the judge ever
21 ask the question whether or not anybody in the jury had been
22 the victim of a violent crime?

23 A I can tell you he didn't do that.

24 Q Yeah, he did not ask that question.

25 A He did not do that.

1 Q Okay. And how long did you say you had been practicing
2 criminal law?

3 A Oh, at that time -- like I said, all my practice, except
4 for two years, I've been around criminal law at certain times
5 as a magistrate and I've been around criminal defense, yes.

6 Q If you were picking a jury, would you want to have -- if
7 you were picking a jury and the -- for a crime that was a
8 violent offense, would you want jurors on that panel who had
9 been victims of a violent crime?

10 A I might be nervous about some of it, but, like, I
11 wouldn't let that be the determining factor.

12 Q Well, if you knew that some of the jurors were victims of
13 violent crime, would you use one of your strikes for that?

14 A Perhaps.

15 Q And, now, there was some testimony that you had submitted
16 some voir dire questions?

17 A I did.

18 Q And was one of those voir dire questions the violent
19 crime?

20 A It was not.

21 Q And you did not object to the judge not asking your voir
22 dire questions; is that correct?

23 A He asked most of my questions--

24 Q Okay.

25 A --to my recollection.

1 Q So that was never sort of on the table, asking that
2 particular question?

3 A No, it was not.

4 Q Okay. Did you tell him that the State would need to
5 prove that a weapon was used in order to convict him of ABHAN?

6 A No, I did not.

7 Q What part -- was any part of your trial strategy to show
8 that no weapon was used?

9 A All of it was.

10 Q Okay. That was the basis of your trial strategy?

11 A All of it. That along with dealing with, you know, the
12 extent of the injury.

13 Q Sure.

14 And what kind of -- did you contemplate retaining a
15 medical expert?

16 A I did.

17 Q You did --

18 A We did. I did.

19 Q You did talk to a medical expert?

20 A I did.

21 Q Okay.

22 A Yeah, I consulted a very highly reputable emergency room
23 doctor, trauma specialist about, you know, these issues that
24 were being raised.

25 Q And what was --

1 A Well, his -- his --

2 Q What did you learn?

3 A I learned that the nature of forensics had to be
4 approached in order to appreciate what was going on with the
5 injury and that the injury possibly could happen in different
6 ways.

7 Q Did you -- did you have an expert look at the discovery
8 in this case?

9 A Yes, the medical physician's --

10 Q The medical reports?

11 A The medical report and medical positions of --

12 Q Did he tell you whether or not there was evidence that a
13 weapon was used?

14 A No, he did not. I can't recall that -- well, it seems to
15 me that -- from what I recall -- that his position was that it
16 -- it could have happened either way. The extent of injury
17 could have happened either way.

18 Q Why did you not call a medical expert to testify?

19 A I was a retained attorney. We have a limited budget, and
20 so we dealt with it the best way we could.

21 Q Did you discuss with Mr. Simmons how much it would cost
22 to retain an expert?

23 A I probably gave him some figures.

24 Q Did he ever say, I --

25 A I probably mentioned some figures in a loose kind of way,

1 but I didn't sit down and say, "You gotta come up with this
2 much money." I did not do that.

3 Q Am I correct in saying that, based on your discussion
4 with the medical expert, you believed that he would testify
5 that that injury could have happened either way? Was that --

6 A Well, yeah, my position was to be able to show it to him
7 that he did not do any of the studies that were required in
8 order to come to the conclusion that he had come to.

9 Q But did your medical expert, when you talked with him,
10 did you get any -- did you believe that he could testify that
11 the injury was caused by the blow?

12 A No, I did not (indiscernible).

13 Q We can guess--

14 A I don't --

15 Q --how it happened. There was --

16 A Well, I know -- I know what our position was, yeah.

17 Q He's swinging and then he fell. And he fell on something
18 -- hard piece of concrete; is that right?

19 A That's right.

20 Q I believe those are all the questions I have.

21 THE COURT: Mr. Barlow?

22 MR. BARLOW: I believe that's it, Your Honor.

23 THE COURT: Thank you, Mr. Whipper.

24 MR. BARLOW: And that's it for the State, Your Honor. No
25 more witnesses.

1 MR. FALK: I'd call the rebuttal witness.

2 THE COURT: Yes, sir.

3 MR. FALK: I'll call my client.

4 ADRIAN SIMMONS,

5 after having been previously duly sworn, was further
6 examined and testified to as follows:

7 REBUTTAL DIRECT EXAMINATION

8 BY MR. FALK:

9 Q Do you remember your lawyer ever telling you what the
10 specific elements of ABHAN were?

11 A Yeah. There was -- it really was strat- -- strategizing
12 between the two -- the two different -- the two different
13 charges between ABHAN and assault and -- assault and battery
14 because I was -- I stated to him if they were -- if it would
15 have been possible to get a lesser charge because of the
16 extent of the -- the extent of the charge, and he was just
17 basically telling me both of them -- you can be charged with
18 -- with either one by bodily -- by severe bodily harm.

19 Q But I thought you testified earlier when you said that he
20 -- that your lawyer told you that they had to prove that a
21 weapon was used.

22 A Yeah -- yes. That -- that was the main reason why I took
23 it to trial, because he stated that the State had to prove
24 that a weapon was involved. So, by my knowledge knowing that
25 a weapon wasn't involved, I said let's take it to trial.

1 Q And so your testimony earlier was that, when this plea
2 negotiation came up, your lawyer told you they still had to
3 prove that a weapon was used?

4 A He had to prove that a weapon was used. I asked him
5 again if he coulda get it dropped to a lesser charge, and he
6 was like, no. He told me that they're offering eight, and I
7 asked him if it was non-violent or violent. He told me that
8 it was violent.

9 So, under my knowledge, I still was under the impression
10 that they have to prove that a weapon was involved. So I told
11 him that I wasn't going to take the eight years because he --
12 I was under the impression that they have to prove that a
13 weapon was involved from Mr. Whipper.

14 Q And where did you get that impression? Did you do your
15 own studying?

16 A No, that came from out his mouth. I asked -- I
17 specifically asked Mr. Whipper about the charges in the case,
18 and that's what he stated.

19 MR. FALK: No further questions.

20 THE COURT: Mr. Barlow?

21 MR. BARLOW: Nothing from the State, Your Honor.

22 THE COURT: Thank you, sir.

23 Anything else, gentlemen?

24 MR. FALK: No, Your Honor. We rest.

25 MR. BARLOW: Beg the Court's indulgence.

1 Thank you, Your Honor. Nothing from the State.

2 THE COURT: All right.

3 Mr. Simmons, gentlemen, I often have this urge, more than
4 you think, to rule from the bench, but unless really pressed
5 for time, I like to think about these things and review my
6 notes, for the sake of all, to include you, Mr. Simmons.

7 So bear with me. I will give you my ubiquitous email
8 ruling soon.

9 Thank you for your patience.

10 MR. BARLOW: Thank you, Your Honor.

11 (The proceedings concluded at 2:39 PM.)

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Certificate of Transcriber

CASE NAME: Adrian Simmons v. State

DATE OF HEARING: 2/6/23

RECORDING METHOD: DCRP Court Monitor Caressa Johnson

I, Bobbi Fisher, do hereby certify that the foregoing transcript is a true and correct record of the recorded proceedings; that I was not present for the live proceeding; and that said proceedings were transcribed to the best of my ability from the audio and/or video recording and supporting information; and that I am neither counsel for, related to, nor employed by any of the parties to this case; and I have no interest, financial or otherwise, in its outcome.



/s/ Bobbi Fisher

Bobbi Fisher, SC Official Court Reporter III, RPR

Transcript Prepared: 11/30/25

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STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF CHARLESTON	)	NINTH JUDICIAL CIRCUIT
	)	
ADRIAN V. SIMMONS, #369292,	)	
	)	Case No.: 2019-CP-10-5086
Applicant,	)	
	)	
vs.	)	ORDER GRANTING
	)	POST-CONVICTION RELIEF
STATE OF SOUTH CAROLINA,	)	
	)	
Respondent.	)	
	)	

FILED
2023 SEP 12 AM 11:15
JULIE L. ANDERSON
CLERK OF COURT

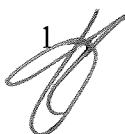
This matter comes before the Court by way of an application for post-conviction relief (PR) filed on October 3, 2019. Respondent filed a return on February 10, 2020. This Court convened an evidentiary hearing in this matter on February 6, 2023. Applicant, Adrian V. Simmons (Simmons), was present at the hearing with his attorney of record, James K. Falk, Esquire, and the State of South Carolina was represented by Russell Barlow, Esquire, of the South Carolina Attorney General's Office.

J. Seth Whipper, Esquire, (hereinafter referred to as "trial counsel") was present and testified. Simmons also testified on his own behalf. This Court considered the testimony and evidence presented at the evidentiary hearing, the trial transcript, the records of the Charleston County Clerk of Court regarding the conviction, the direct appeal records, Simmons' SC Department of Corrections records, and the pleadings herein.

I. PROCEDURAL HISTORY

In August 2015, the Charleston County Grand Jury indicted Simmons for Assault and Battery of a High and Aggravated Nature (2015-GS-10-04889). On August 8, 2016, Simmons proceeded to trial before the Honorable Brian M. Gibbons and a jury. He retained the services of trial counsel to represent him on the underlying charge. The State was represented by Assistant

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Solicitors Charles M. Condon Jr. and Marian Askins. The jury found Simmons guilty as indicted. Judge Gibbons sentenced him to twelve years of imprisonment. Simmons is currently incarcerated in the South Carolina Department of Corrections.

Mr. Simmons filed a timely notice of appeal and was represented by Kathrine Hudgins, Esquire, of the Office of Appellate Defense. The South Carolina Court of Appeals affirmed Simmons' conviction on March 20, 2019. State v. Simmons, Op. No. 2019-UP-109 (S. C. Ct. App. Filed March 20, 2019). The remittitur was returned to the circuit court on April 5, 2019.

On October 3, 2019, Simmons filed his Application for Post Conviction Relief. On February 7, 2020, the State filed its Return and Motion for More Definite Statement.

This Court makes the following findings of fact and conclusions of law:

II. ALLEGATIONS

Simmons alleged that he is being held in custody unlawfully for the following reasons:

1. "Ineffective assistance of counsel"
 - a. "as a result of trial counsel failing to request that the trial judge to voir dire the potential jurors regarding 'whether they themselves, immediate family members and close personal friends had been a victim of a violent assault in the past'"
 - b. "as a result of trial counsel failing to consult with a medical expert concerning 'being punched in the head with brass knuckles'"
 - c. "as a result of trial counsel's failure to object to the State pitting witnesses against each other"
 - d. "as a result of her failure to raise the issue of the expert's qualification to render an opinion concerning the degree of energy required to fracture the skull"
2. "Ineffective assistance of Appellate Counsel"



The requested relief was “conviction and sentence vacated or reversed and remanded for new trial.”

At the evidentiary hearing, Simmons proceeded with the allegations on trial counsel being ineffective. No evidence was presented on the allegation that appellate counsel was ineffective.

III. RELEVANT TESTIMONY

Simmons’ Testimony on Merits of Application

Simmons testified that he hired trial counsel about a year prior to the case going to jury trial. He and trial counsel had about three to four attorney/client meetings. Simmons explained that during one of the meetings he expressed to trial counsel the desire to build a stand your ground case and to inquire about a plea agreement. However, trial counsel did not want to seek a plea agreement. Based on his discussions with trial counsel, Simmons decided to proceed with a jury trial because it was his understanding that the State was required to prove a weapon was used in order for him to be convicted of assault and battery high and aggravated. Simmons testified that during the jury selection process, he provided trial counsel with a list of questions to ask potential jurors, including whether any of the jurors were the victim of a violent crime. However, trial counsel did not ask the questions, nor did he ask the court to ask the questions. He also testified that his attorney did not object when the prosecutor asked a witness if he agreed or disagreed with the testimony of one of Simmons’ trial witnesses. He stated this was unlawful pitting of the witness that should have been objected to. Simmons testified that he believed an expert could have verified that a weapon was not involved, and that the actual injury occurred by the victim hitting his head on the concrete patio. Therefore, trial counsel should have consulted with a medical expert to offer this testimony. Simmons did acknowledge that trial counsel objected to the qualifications of the

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State's expert who gave opinion testimony about the force used to commit the offense. Simmons testified that at some point trial counsel presented a plea offer that he rejected because trial counsel gave him the impression that the State had to prove a weapon was involved.

Mr. Whipper's Testimony

Simmons' trial counsel, Mr. Whipper, testified that he had been practicing since 1985 and that all but two years was in criminal law. He explained that he did not print out the discovery materials to go over with Simmons but reviewed the materials more in a conversational way with him. Trial counsel testified that the defense strategy was "in everybody's version of the story" (TR Pg 30, Line 5-6) and the case came down to a credibility issue. Counsel testified that he submitted a list of voir dire questions to the court but denied that Mr. Simmons made any specific requests for questions. He testified that he believed the jury voir dire was sufficient.

Counsel also testified that he did consult with a medical expert in this case. On cross-examination, he testified that he consulted "a very highly reputable emergency room doctor, trauma specialist." He explained that the physician would have testified that the injury to the victim could have happened with or without a weapon or by means other than what the State was presenting. He stated he did not call a medical expert to testify because there was a limited budget; however, he denied sitting down with Simmons and telling him how much was needed to hire the expert for testimony.

Counsel testified that he did not object to what Simmons referred to as pitting of witnesses because credibility was an important factor in the case, and he did not think it was in any way damaging to Simmons or the defense.

Counsel also described his discussion with Simmons about ABHAN and whether or not a weapon was necessary to be convicted of the offense. He explained that part of the defense was

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shaped around the idea that a weapon was not used in the altercation. However, counsel admitted that he did not explain to Simmons that the jury could find him guilty of ABHAN regardless of whether Simmons used a weapon. When asked if he had explained the elements of ABHAN, counsel responded, "I can't recall. I would think that we talked about the charges. But I don't - - I don't recall doing the checklist with him."

IV. FINDINGS OF FACT AND CONCLUSIONS OF LAW

The Court has reviewed the testimony presented at the evidentiary hearing, observed the witnesses, passed upon their credibility, and weighed the testimony accordingly. This Court has reviewed the records submitted by the parties and the legal arguments made by the attorneys. Pursuant to § 17-27-80 of the South Carolina Code, this Court makes the following findings of fact and conclusions of law based upon all of the probative evidence presented.

In a PCR action, the applicant bears the burden of proving the allegations in his application. *Butler v. State*, 286 S.C. 441, 334 S.E.2d 813 (1985). Where the application alleges ineffective assistance of counsel as a ground for relief, the applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that [it] cannot be relied upon as having produced a just result." *Strickland v. Washington*, 466 U.S. 668, 686 (1984); *Butler*, 286 S.C. at 442, 334 S.E.2d at 814.

In evaluating allegations of ineffective assistance of counsel, the reviewing court applies the two-pronged test outlined in *Strickland*. First, Applicant must prove that counsel's performance was deficient. *Strickland*, 466 U.S. at 686; *Cherry v. State*, 300 S.C. 115, 117, 386 S.E.2d 624, 625 (1989). Under this prong, the court measures an attorney's performance by its "reasonableness under prevailing professional norms." *Cherry*, 300 S.C. at 117, 386 S.E.2d at 625 (quoting *Strickland*, 466 U.S. at 690). The proper measure of performance is whether the attorney provided



representation within the range of competence required in criminal cases. *Butler*, 286 S.C. at 442, 334 S.E.2d at 814. "Counsel is strongly presumed to have rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment." *Id.* (citing *Strickland*, 466 U.S. at 690). "When counsel focuses on some issues to the exclusion of others, there is a strong presumption that he [or she] did so for tactical reasons rather than through sheer neglect." *Yarborough v. Gentry*, 540 U.S. 1, 5 (2003) (citing *Strickland*, 466 U.S. at 690). The Court, in determining deficiency, must affirmatively entertain the range of possible reasons counsel may have had for proceeding as they did. *Cullen v. Pinholster*, 563 U.S. 170, 196 (2011); *Harrington v. Richter*, 562 U.S. 86, 109-10 (2011). "[E]ven if an omission is inadvertent, relief is not automatic. The Sixth Amendment guarantees reasonable competence, not perfect advocacy judged with the benefit of hindsight." *Yarborough*, 540 U.S. at 6; *see also* *Murphy v. Davis*, 901 F.3d 578, 592 (5th Cir. 2018) ("[C]ounsel's performance need not be optimal to be reasonable."). Applicant must overcome this presumption to receive relief. *Cherry*, 300 S.C. at 118, 386 S.E.2d at 625.

Second, counsel's deficient performance must have prejudiced Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." *Cherry*, 300 S.C. at 117-18, 386 S.E.2d at 625. "This does not require a showing that counsel's actions 'more likely than not altered the outcome,' but the difference between *Strickland's* prejudice standard and a more-probable-than-not standard is slight and matters 'only in the rarest case.'" *Harrington*, 562 U.S. at 111-12 (quoting *Strickland*, 466 U.S. at 697). "The likelihood of a different result must be substantial, not just conceivable." *Id.* at 112. "The prejudice analysis requires the court deciding the ineffectiveness claim to consider the totality of the evidence before the judge or jury." *United States v. Basham*, 789 F.3d 358, 371-72 (4th Cir. 2015) (quoting *Elmore v. Ozmint*, 661 F.3d 783, 858 (4th Cir. 2011)).

Ineffective Assistance of Trial Counsel

Voir Dire

Simmons claims that Counsel was ineffective for failure to ask certain questions of the jury panel. Counsel submitted eight written questions which he requested the trial court to ask the potential jurors during voir dire. The trial court asked the questions as requested. The purpose of voir dire is to determine if a potential juror possesses any bias that would prevent him or her from impartially hearing the evidence of a case. Simmons failed to show any evidence that any of the potential jurors or any of the jurors seated to hear his case had any interest in the cause, expressed or formed any opinion, or was sensible of any bias or prejudice towards him or the State. Simmons has failed to satisfy his burden to prove ineffective assistance of counsel with regards to this allegation and relief is denied.

Consulting with Medical Expert

Simmons claims that Counsel was ineffective for failing to consult with a medical expert. Counsel credibly testified that he consulted with an expert, allowed the expert to review records and discussed findings with the expert. Accordingly, Simmons has failed to satisfy his burden to prove ineffective assistance of counsel with regard to this allegation and relief is denied.

Pitting of Witnesses

Simmons contends that Counsel was ineffective because he did not object to the State's alleged pitting of witnesses. Counsel credibly testified that the case hinged on the credibility of the witnesses and whose version of the story the jury accepted. Counsel acknowledged that the "pitting" described by Simmons was not harmful to the defense. Simmons has failed to prove that this "pitting" prejudiced him. Accordingly, Simmons has failed to satisfy his burden to prove ineffective assistance of counsel with regard to this allegation and relief is denied.



Objection to Qualification of State Expert

Simmons claims that Counsel was ineffective for failing to challenge the State's expert's qualification to render an opinion concerning the degree of energy required to fracture the skull. Simmons' testimony contradicts this allegation as he testified that trial counsel objected several times during the testimony of the expert regarding the expert's qualification to give opinion testimony. The Court finds that Simmons has failed to satisfy his burden to prove ineffective assistance of counsel with regard to this allegation and relief is denied.

Elements of ABHAN and Rejection of Plea Offer¹

Simmons credibly testified that he rejected a plea offer and went to trial because counsel advised him that the State had to prove a weapon was used in order for him to be convicted of assault and battery of a high and aggravated nature. Simmons testified:

Q: But I thought you testified earlier when you said that he - - that your lawyer told you that they had to prove a weapon was used.

A: Yeah. Yes, *that was the main reason why I took it to trial because he stated that the State had to prove that a weapon was involved.* So, by my knowledge knowing that a weapon wasn't involved I said let's take it to trial.

Counsel must fully and correctly inform a client of the nature of the charges against him, including the elements of the crime and the possible defenses. *Henderson v. Morgan*, 426 U.S. 637 (1976). It is the norm for attorneys representing persons charges with criminal offenses to fully explain the elements of the charged offense to the client in order for the client to make a voluntary and

¹ While this allegation was not specifically raised in Simmons' PCR application, this Court finds it proper to permit Simmons to amend his application to conform to the evidence presented at the evidentiary hearing. *See Simpson v. Moore*, 367 S.C. 587, 599, 627 S.E.2d 701, 708 (2006) (holding Simpson should have been permitted to amend his PCR application to conform to the evidence presented where the state was not prejudiced by the amendment); *see also* Rule 15(b), SCRCP (pleadings may be amended, even after judgement, to conform to issues tried by express or implied consent but not raised in the original pleadings). Additionally, this Court finds the state was not prejudiced by the amendment given that the state cross-examined Simmons on the issue and questioned trial counsel on the allegation. *See Harvey v. Strickland*, 350 S.C. 303, 313, 566 S.E.2d 529, 535 (2002) (amendments should be liberally allowed when no prejudice to the opposing party will result).

knowing decision on how to proceed with the case – jury trial or guilty plea. Counsel testified that the solicitor approached him with a plea deal for Simmons. Counsel implied that the use a weapon was an important factor in Simmons’ decision to proceed to trial. Counsel admitted that he did not explain to Simmons that he could be convicted of ABHAN regardless of whether he had a weapon and did not recall explaining the elements of ABHAN to Simmons.

Q: Could the applicant - - or excuse me, could Mr. Simmons be convicted of ABHAN whether or not he had a weapon?

A: Yes

Q: Did you explain that to Mr. Simmons?

A: Not in those terms, but I stated to him that, you know, if his - - if he wasn’t - - if he wasn’t the victor in terms of what story these people believe, that he’s going to - - he’s going to be exposed to a lot of time in jail.

Q: One last question. Did you explain the elements of ABHAN?

A: I can’t recall. I would think that we talked about the charges. But I don’t - - I don’t recall doing the checklist with him.

Simmons and Counsel testified that the plea offer was for Simmons to plead guilty to ABHAN in exchange for a negotiated sentence of seven or eight years. ABHAN carries a maximum sentence of twenty years in prison. S.C. Code of Laws § 16-3-600(B)(2). Relying upon Counsel’s representation that the State had to prove a weapon was used, Simmons rejected the favorable offer and proceeded to trial with the understanding that the State had to prove a weapon was used in order to be convicted. Simmons was prejudiced because of Counsel’s failure to fully advise Simmons of the elements of the offense, Simmons was sentenced to a prison term of twelve years - an additional four or five years on top of the plea offer. *See Lafler v. Cooper*, 566 U.S. 156 (2012); *Kolle v. State*, 386 S.C. 578, 690 S.E.2d 73 (2010).



9

Simmons has shown by a preponderance of the evidence that Counsel rendered ineffective assistance of counsel when he failed to explain the elements of the offense of assault and battery high & aggravated nature adequately and fully, and erroneously advised that the State had to prove a weapon was used. Simmons' conviction and sentence should be reversed and the case remanded for a new trial.

V. CONCLUSION

Based on all the foregoing, this Court finds that Simmons has not established any constitutional violations or deprivations requiring this Court to grant his application for post-conviction relief on the grounds that counsel was ineffective for (1) "failing to request the trial judge voir dire the potential jurors regarding "whether they themselves, immediate family members and close personal friends had been a victim of a violent assault in the past", (2) failing to consult with a medical expert concerning 'being punched in the head with brass knuckles", (3) "failing to object to the State pitting witnesses against each other", or (4) "failing to raise the issue of the expert's qualification to render an opinion concerning the degree of energy required to fracture the skull". However, this Court finds that Counsel rendered ineffective assistance of counsel by failing to explain the elements of assault and battery high & aggravated nature adequately and fully, and erroneously advising that the State had to prove Simmons used a weapon in order to obtain a conviction.

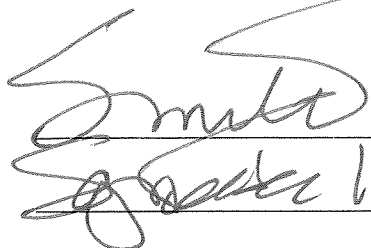
IT IS THEREFORE ORDERED, that:

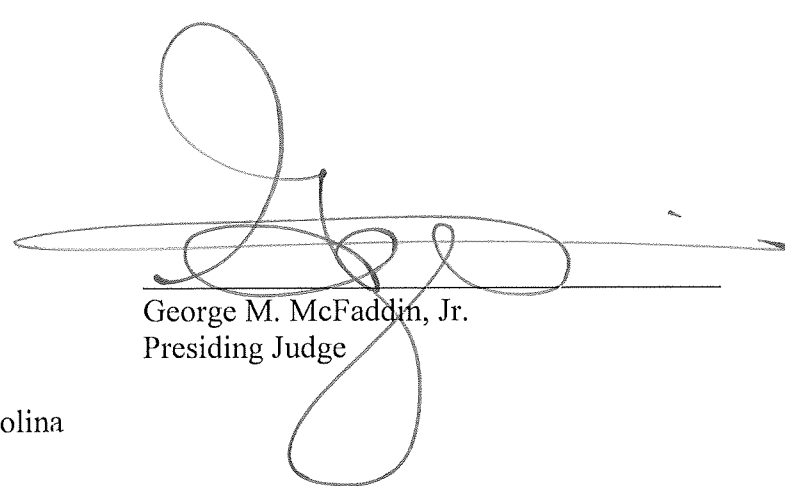
1. The application for post-conviction relief is granted on the basis of ineffective assistance of counsel; and



2. Applicant, Adrian V. Simmons' conviction and sentence are reversed and this matter remanded for a new trial.

AND IT IS SO ORDERED.


_____, South Carolina
_____, 2023



George M. McFaddin, Jr.
Presiding Judge

) IN THE COURT OF COMMON PLEAS
) NINTH JUDICIAL CIRCUIT

) CASE NO. 2019-CP-10-05086

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**RESPONDENT'S MOTION TO
RECONSIDER, ALTER, OR AMEND
PURSUANT TO RULE 59(e), SCRPC**

Respondent, by and through undersigned counsel, making its Motion to Reconsider, Alter, or Amend, pursuant to Rule 59(e), SCRCP, would respectfully show the Court:

PROCEDURAL HISTORY

Applicant is presently confined in the South Carolina Department of Corrections pursuant to the Charleston County Clerk of Court orders of commitment. In August 2015, the Charleston County Grand Jury indicted Applicant for Assault and Battery of a High and Aggravated Nature (ABHAN) (2015-GS- 10-04889). J. Seth Whipper, Esquire, represented Applicant at trial. Ninth Circuit Assistant Solicitors Charles M. Condon Jr. and Marian Askins prosecuted the case. On August 8, 2016, Applicant proceeded to trial before the Honorable Brian M. Gibbons and a jury. The jury convicted Applicant as indicted. Judge Gibbons sentenced Applicant to imprisonment for twelve years for Assault and Battery of a High and Aggravated Nature.

Applicant filed a timely notice of appeal. Katherine H. Hudgins, Esquire, of the Office of Appellate Defense, perfected the appeal. The South Carolina Court of Appeals affirmed Applicant's conviction and dismissed his appeal on March 20, 2019. See State v. Simmons, Unpub. Op. No. 2019-UP-109 (Ct. App. Filed March 20, 2019). The Remittitur was returned to the circuit court on April 5, 2019.

ARGUMENTS IN SUPPORT OF RECONSIDERATION

Respondent moves this Court to reverse its earlier decision and deny post-conviction relief where Applicant failed to meet his burden of establishing Trial Counsel was constitutionally ineffective.

To establish ineffective assistance of counsel, the PCR applicant must prove (1) counsel's performance fell below an objective standard of reasonableness and (2) the applicant sustained prejudice as a result of counsel's deficient performance. Strickland v. Washington, 466 U.S. 668, 687–88 (1984); Cherry v. State, 300 S.C. 115, 117–18, 386 S.E.2d 624, 625 (1989). "The test for effective assistance of counsel is whether the representation was within the range of competence demanded of attorneys in criminal cases." Watson v. State, 287 S.C. 356, 357, 338 S.E.2d 636,

637 (1985). To establish prejudice, the applicant must prove "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.

In its order granting relief, this Court found Trial Counsel ineffective for "failing to explain the elements of assault and battery high & aggravated nature adequately and fully, and erroneously advising that the State had to prove [Applicant] used a weapon in order to obtain a conviction." (Order Granting PCR Relief p. 10). This Court further found that "[Applicant] *credibly* testified that he rejected a plea offer and went to trial because counsel advised him that the State had to prove a weapon was used in order for him to be convicted of assault and battery of a high and aggravated nature." (Order Granting PCR Relief p. 8) (emphasis added). In support of these findings, this Court explained that "[Trial] Counsel *implied* that the use a weapon was an important factor in Applicant's decision to proceed to trial" and "[Trial] Counsel *admitted* that he did not explain to [Applicant] that he could be convicted of ABHAN regardless of whether he had a weapon and did not recall explaining the elements of ABHAN to [Applicant]." (Order Granting PCR Relief p. 9) (emphasis added).

Respondent respectfully asserts this Court's order is based on numerous factual errors based on the record and that this Court's grant of post-conviction relief should be reconsidered and relief should be denied.

***RECONSIDERATION BASED ON ERRORS IN TRIAL COUNSEL'S TESTIMONY SUMMARIZATION AND
EXCLUSION OF RELEVANT TESTIMONY OF TRIAL COUNSEL***

In support of its findings, this Court found Trial Counsel "*implied* that the use [of] a weapon was an important factor in [Applicant's] decision to proceed to trial"¹ and that Trial Counsel

¹ No citation to the PCR transcript was included to support this finding.

"*admitted* that he did not explain to [Applicant] that he could be convicted of ABHAN regardless of whether he had a weapon and did not recall explaining the elements of ABHAN to [Applicant]." (Order Granting PCR Relief p. 9) (emphasis added).

Respondent respectfully asserts that the record before this Court does not reflect in Trial Counsel's testimony that he implied he knew the use of a weapon was an important factor in Applicant's decision to proceed to trial. Applicant testified his belief the State had to prove he used a weapon to convict him was the main reason he decided to proceed to trial, but Applicant did not testify he communicated his reliance on this factor to Trial Counsel. Regarding "the use of a weapon," Trial Counsel testified this factor was important to Applicant's defense, but only in as much as it provided him the possibility of receiving a lesser included charge. (PCR Tr. p. 36). Applicant echoed Trial Counsel's testimony in rebuttal. (PCR Tr. p. 41, ll. 23-25 – p. 42, ll. 1-9) (addressed in detail *infra* in section: *RELEVANT TESTIMONY OF APPLICANT*).

Also, Respondent respectfully asserts this Court erred in concluding Trial Counsel admitted that he did not explain to Applicant that he could be convicted of ABHAN regardless of whether a weapon was used or not to support its findings. The Court based its conclusion on the following testimony:

- Q. Could the applicant -- or excuse, me could Mr. Simmons be convicted of ABHAN whether or not he had a weapon?
- A. Yes.
- Q. Did you explain that to Mr. Simmons?
- A. Not in those terms, but I stated to him that, you know, if his -- if he wasn't -- if he wasn't the victor in terms of what story these people believe, that he's going to -- he's going to be exposed to a lot of time in jail.
- Q. One last question. Did you explain the elements of ABHAN?
- A. I can't recall. I would think that we talked about the charges. But I don't -- I don't recall doing the checklist with him.

(Order Granting PCR p. 9; PCR Tr. p. 35, ll. 12-25). Respondent submits that Trial Counsel's testimony is not so conclusory as to characterize it as an admission, especially when viewing it holistically.

Directly following this testimony, Trial Counsel testified to the following:

- Q. Is it your standard practice to explain the elements of the crimes?
- A. **Oh, yes. Oh, yeah.** What I'm saying is that what was being put before us as the State's version, you know, was ABHAN, it could have been attempted murder, the whole nine yards, these are very serious charges. And so that's what it took. Our position was that, at worst, he could have been -- our position was that at worst he might have been convicted of simple assault because it was just a punch from his fist and that was our position.

(PCR Tr. p. 36, ll. 1-10) (emphasis added). Then, on cross-examination, Trial Counsel testified to the following:

- Q. Okay. And did you tell him that the State that a weapon was used in order to get convict him of ABHAN?
- A. **No, I did not.**

(PCR Tr. p. 38, ll. 18-20) (emphasis added).

Respondent respectfully requests this Court to consider Trial Counsel's testimony wholly, which Respondent asserts does not support this Court's findings that Trial Counsel "implied" that the use of a weapon was a factor Applicant relied on in choosing to go to trial and that Trial Counsel "admitted" to not explaining the elements of ABHAN to Applicant. Notably, Trial Counsel testified whether or not Applicant used a weapon was important to his defense in order to get him a reduced charge because the charges against Applicant were very serious. However, Trial Counsel never implied in his testimony he had knowledge Applicant rejected his plea offer based on the erroneous belief the State had to prove Applicant used a weapon. Respondent submits that since the testimony from Applicant and Trial Counsel does not indicate Trial Counsel had actual

knowledge of Applicant's reliance on this factor, Trial Counsel cannot be deemed deficient. This is especially true considering Applicant elicited testimony he was advised of the specific elements of ABHAN. (discussed *infra*).

Respondent respectfully requests that this Court review the record and reverse its decision to grant PCR relief based on Trial Counsel's erroneous testimony summarization and the exclusion of relevant testimony that contradicts the Court's findings. If this Court is not inclined to reverse its order and deny PCR relief, then Respondent respectfully requests this Court amend its order to include the relevant testimony that was excluded.

RELEVANT TESTIMONY OF APPLICANT

In its order, this Court included the following testimony from Applicant:

- Q. But I thought you testified earlier when you said that he -- that your lawyer told you that they had to prove that a weapon was used.
- A. Yeah. Yes, that was the main reason why I took it to trial because he stated that the State had to prove that a weapon was involved. So by my knowledge knowing that a weapon wasn't involved I said let's take it to trial.

(PCR Tr. p. 42, ll. 9-15). Also, prior to this testimony but not included in this Court's order, Applicant testified Trial Counsel informed him of the specific elements of ABHAN in the following colloquy:

- Q. Do you remember your lawyer ever telling you what the specific elements of ABHAN were?
- A. Yeah, there was -- it really was strategized as between the two -- the two different -- the two different charges between ABHAN and assault and -- assault and battery, because I was -- I stated to him if they were -- if it would have been possible to get a lesser charge because of the extent of the -- the extent of the charge. And he was just basically telling me both of them -- you can be charged with -- with either one by -- by bodily -- by severe bodily harm.

(PCR Tr. p. 41, ll. 23-25 – p. 42, ll. 1-8).

Respondent respectfully asserts that this testimony supports Trial Counsel's testimony that his standard practice is to explain the elements of the charges to his clients and diminishes Applicant's credibility. Here, Applicant admits, not *once* but *twice*, that Trial Counsel informed him of the specific elements of ABHAN, and this corroborates Trial Counsel's testimony concerning his usual practice.

"A person commits the offense of assault and battery of a high and aggravated nature if the person unlawfully injures another person, and (a) a great bodily injury to another person results; or (b) the act is accomplished by means likely to produce death or great bodily injury." S.C. Code. Ann. § 16-3-600(B)(1). It may be true that Applicant understood the use of a weapon was important based on Trial Counsel's trial strategy, but there is no testimony, other than Applicant's assertions, that indicates Applicant informed Trial Counsel of his erroneous understanding or that Trial Counsel told Applicant a weapon was required to convict of ABHAN. In fact, the opposite is present in the record before this Court, as Trial Counsel testified that he **did not** tell Applicant a weapon was required to sustain an ABHAN conviction. Respondent respectfully asserts that this testimony directly diminishes Applicant's testimony concerning the sole issue this Court granted relief on.

Furthermore, Respondent respectfully asserts that Applicant's testimony concerning his other allegations further diminishes Applicant's credibility. For example, on direct examination, Applicant testified Trial Counsel did not engage in any plea negotiations, and there was no plea offer. (PCR Tr. p. 9; 12-13). However, on cross-examination, Applicant testified Trial Counsel did present him with a plea offer. (PCR Tr. pp. 24-25). Another example, on direct examination, Applicant testified Trial Counsel did not have a trial strategy besides Applicant instructing Trial Counsel to pursue stand your ground. (PCR Tr. p. 13). However, on cross-examination, Applicant testified Trial Counsel had a trial strategy, and it was self-defense. (PCR Tr. p. 25). Also, on

rebuttal, Applicant further testified to his knowledge about Trial Counsel's specific trial strategy and his discussions with Trial Counsel about trial strategy. (PCR Tr. p. 41). Another example, on direct examination, Applicant testified, "There was no conversations about medical experts or nothing." (PCR Tr. p. 14, ll. 4-5). However, on cross-examination, Applicant testified he recalled discussions with Trial Counsel about hiring a medical expert and Trial Counsel informing him hiring an expert would cost money. (PCR Tr. p. 21).

Respondent respectfully submits that Applicant's inconsistent testimony throughout the evidentiary hearing substantially diminishes Applicant's credibility. While this Court did not make any credibility findings on Trial Counsel (discussed further *infra*), Respondent respectfully requests this Court reexamine the record and its credibility findings as to Applicant because the apparent inconsistencies in Applicant's testimony are significant to consider when making findings concerning the credibility of Trial Counsel's testimony that directly refutes Applicant's testimony. Also, Respondent respectfully requests that this Court reverse its grant of PCR relief and deny relief based on the record before this Court because the testimony, when considered holistically, does not support this Court's findings within its order.

CREDIBILITY FINDINGS CONCERNING TRIAL COUNSEL'S TESTIMONY

In its order granting PCR relief, this Court made credibility findings concerning Applicant's testimony that Trial Counsel specifically advised him the State had to prove Applicant used a weapon to sustain a conviction of ABHAN. (Order Granting PCR Relief p. 8). However, this Court did not make any credibility findings concerning Trial Counsel's testimony directly refuting Applicant's allegation. On cross-examination, Trial Counsel testified as follows:

- Q. Okay. And did you tell him that the State that a weapon was used in order to get convict him of ABHAN?
- A. **No, I did not.**

(PCR Tr. p. 38, ll. 18-20) (emphasis added).

Trial Counsel testified on direct examination he has been practicing since 1985, over ninety percent in criminal law. (PCR Tr. p. 28). Trial Counsel recalled the facts of Applicant's case, and the State's position and testified to his defense strategy. (PCR Tr. pp. 29-30; 33; 36). Trial Counsel definitively testified Applicant could have been convicted of ABHAN whether or not he had a weapon. (PCR Tr. p. 35). Trial Counsel's testimony was consistent throughout, whereas Applicant's testimony contained several inconsistencies, and he merely presented self-serving testimony to this Court in support of his allegations. Respondent submits Trial Counsel's extensive experience, knowledge of the law, and as an officer of the Court, should impart some semblance of credibility to Trial Counsel. Particularly in light of Applicant's inconsistencies in his testimony.

This Court's finding Applicant's testimony was credible that Trial Counsel misadvised Applicant, and this advice prejudiced Applicant is based on selective portions of the record. Respondent respectfully asserts that considering the record in its entirety does not support this Court's findings. Moreover, to properly find Applicant's testimony is credible, Respondent requests that this Court amend its order and make credibility findings as to Trial Counsel's testimony. Significantly and specifically, Respondent requests this Court make a credibility finding as to Trial Counsel's testimony that he never advised Applicant the State had to prove he had a weapon to convict him of ABHAN.

Respondent submits Trial Counsel's testimony was credible, and Applicant has failed to overcome the strong presumption Trial Counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Abney v. State, 408 S.C. 41, 757 S.E.2d 544 (Ct. App. 2014) quoting Strickland v. Washington, 466 U.S. 668, 690 104 S. Ct. 2052, 80 L. Ed. 2d 674 (1984). Accordingly, Respondent requests this Court to reconsider the findings made in the order and deny Applicant's application entirely. In the alternative, if this Court is not inclined to reverse the grant of PCR relief, then Respondent requests this Court amend

its order to add the testimony as provided *supra* and to make credibility findings as to Trial Counsel's testimony.

CONCLUSION

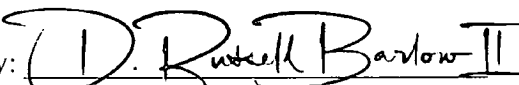
For all the foregoing reasons, the State asks this Court to reconsider its prior ruling, alter or amend its judgment pursuant to Rule 59(e), SCRPC, and find Applicant failed to meet his burden of proving he was entitled to a grant of relief and deny and dismiss his application.

Respectfully submitted,

ALAN WILSON
Attorney General

W. JEFFREY YOUNG
Chief Deputy Attorney General

D. RUSSELL BARLOW, II
Assistant Attorney General

By: 
ATTORNEYS FOR RESPONDENT

Office of the Attorney General
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Telephone: (803) 734-0386

September 22, 2023

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

Adrian V. Simmons, #369292

Applicant,

v.

State of South Carolina

Respondent,

IN THE COURT OF COMMON PLEAS
FOR THE FOURTEENTH JUDICIAL CIRCUIT

Case No.: 2019-CP-10-05086

CERTIFICATE OF SERVICE BY MAIL

2023 SEP 28 AM 11:23
CLERK OF COURT

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 Respondent's Motion to Reconsider, Alter or Amend Pursuant to Rule 59(e), SCRCP, in the above captioned matter on the following person, by depositing same in the United States mail, postage prepaid:

Hervy B.O. Young, Esquire
Deputy Director and General Counsel
S.C. Commission on Indigent Defense
Post Office Box 11433
Columbia, SC 29211-1433

DATED this 25th day of September, 2023.

Vickie Hall

Vickie Hall, Legal Assistant
For Respondent

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

Adrian V. Simmons, #369292,

Applicant,

v.

State of South Carolina,

Respondent.

) IN THE COURT OF COMMON PLEAS
) NINTH JUDICIAL CIRCUIT

) CASE NO. 2019-CP-10-05086

) **AMENDED**
) **ORDER GRANTING RESPONDENT'S**
) **MOTION TO RECONSIDER PURSUANT**
) **TO RULE 59(e), SCRPC, AND DENYING**
) **POST-CONVICTION RELIEF**

The matter before this Court is an action for post-conviction relief (PCR) application filed on October 3, 2019, by Adrian V. Simmons (Applicant). Respondent, the State of South Carolina, made its Return, dated January 2, 2020, requesting an evidentiary hearing. An evidentiary hearing was convened at the Charleston County Courthouse on February 6, 2023, before the Honorable George M. McFaddin, Jr. Applicant was present and represented by James K. Falk, Esquire (PCR Counsel). Assistant Attorney General D. Russell Barlow, II, represented Respondent. Applicant presented testimony on his own behalf, and Respondent presented the testimony of J. Seth Whipper, Esquire (Trial Counsel).

Following the hearing, the Court took the matter under advisement. Thereafter, on September 1, 2023, the Court issued an order granting PCR relief on one ground and denying relief on all others. This order was filed and received by Respondent on September 12, 2023. Thereafter, on September 22, 2023, Respondent served its Motion to Reconsider, Alter, or Amend pursuant to Rule 59(e), SCRPC, asking the Court to reconsider its prior ruling granting PCR relief.

After a thorough review of the file, the motion, the relevant portions of the trial transcript, and the PCR evidentiary hearing transcript, this Court grants Respondent's motion to reconsider its prior order granting PCR relief, rescinds and vacates the order granting post-conviction relief, and

finds Applicant has failed to establish any constitutional deprivations entitling him to relief on any of the grounds raised, and accordingly, denies the application in full.

PROCEDURAL HISTORY

Applicant is presently confined in the South Carolina Department of Corrections. In August 2015, the Charleston County Grand Jury indicted Applicant for Assault and Battery of a High and Aggravated Nature (ABHAN) (2015-GS-10-04889). J. Seth Whipper, Esquire, represented Applicant at trial. Ninth Circuit Assistant Solicitors Charles M. Condon Jr. and Marian Askins prosecuted the case. On August 8, 2016, Applicant proceeded to trial before the Honorable Brian M. Gibbons and a jury. The jury convicted Applicant as indicted. Judge Gibbons sentenced Applicant to imprisonment for twelve years for Assault and Battery of a High and Aggravated Nature.

Applicant filed a timely notice of appeal. Katherine H. Hudgins, Esquire, of the Office of Appellate Defense, perfected the appeal by raising the following issue:

Did the trial judge err in refusing to instruct the jury on the lesser included offense of first-degree assault and battery?

The South Carolina Court of Appeals affirmed Applicant's conviction and sentence by unpublished opinion on March 20, 2019. State v. Simmons, Op. No. 2019-UP-109 (Ct. App. filed March 20, 2019). The Remittitur was returned to the circuit court on April 5, 2019.

FACTS ADDUCED AT TRIAL

The State's Case

In 2014, Lamont Washington (Victim) owned his own electronics repair business, specializing in smart phones, computers, video game consoles, and televisions. Courtney McDaniel, Applicant's girlfriend at the time, knew Victim through her older brothers and contacted him about repairing a pair of phones for her and Applicant. Victim met with McDaniel and

Applicant, took the phones, and told them he would contact them later and give them an estimate for what it would cost to repair the devices. (R. pp. 34, l. 19 – 38, l. 25).

Approximately one week after obtaining the phones, Victim called McDaniel and informed her the repairs would cost two hundred dollars per device. McDaniel, who was dealing with numerous expenses at the time, told Victim to fix only Applicant's phone. Victim performed the necessary repairs and informed McDaniel the phone was ready for pick-up. (R. p. 39, ll. 1 – 19).

After McDaniel failed to contact him for several weeks, Victim contacted her in an effort to complete the transaction. McDaniel gave Victim Applicant's phone number and told him she would no longer be involved in the situation. Victim contacted Applicant about the phone and, after a few attempts, set a date and time for the exchange of the device and payment. However, Applicant failed to show up to the meeting. (R. pp. 39, l. 20 – 41, l. 3).

Finally, on September 24, 2014, Victim and Applicant agreed to meet at a local juice joint. After arriving at the designated location and waiting for a period of time, Victim called Applicant to check on his status. Applicant requested that they change the location of the meeting to a nearby home. Victim went to the house, pulled in the driveway, and exited his vehicle. Applicant and another man holding a baby were in front of the house. He shook Applicant's hand and told him he would retrieve the phone from the backseat of his vehicle. After he turned around to open the door, Applicant hit him in the back of the head. (R. pp. 41, l. 4 – 43, l. 6).

Joslin Washington, Victim's cousin, was in the vehicle at the time of the assault. He saw Victim and Applicant shake hands and then looked down at his phone. Suddenly, he heard something metallic, possibly brass knuckles, make a "bam" noise and looked up to see Victim's unconscious body fall to the ground as Applicant "jumped backwards." Washington quickly exited and found Applicant patting Victim's pants and stating, "I told him not to disrespect me." Applicant, who had not seen Washington in the car, was surprised when the latter asked him what

he was doing. Applicant fled towards the house. Washington pursued him around the back and heard Applicant yell for someone to "go get the guns." Washington picked up Victim, put him in the car, and drove to Victim's parents' home. There, they called 911 for medical aid. (R. pp. 89, l. 25 – 113, l. 21).

Dr. Alejandro Spiotta, a neurosurgeon with the Medical University of South Carolina, treated Victim that night. Before Victim arrived at the hospital, EMS warned the hospital's staff he was in bad shape, showing signs of severe head trauma such as disorientation, confusion, and paralysis. By the time Victim arrived, he was unable to breathe on his own. A CAT scan revealed Victim had a skull fracture behind his right ear, which lacerated a vein and caused bleeding on his brain, which, untreated, would have killed him. (R. pp. 137, l. 7 – 141, l. 5).

Due to the severity of Victim's traumatic brain injury, Dr. Spiotta and other staff performed an emergency craniotomy to remove the fractured bone and a blood clot. Additionally, Dr. Spiotta used a piece of Victim's muscle to suture the laceration and stop the bleeding. After the pressure in Victim's brain had sufficiently decreased, Dr. Spiotta replaced the removed bone using a series of metal plates and brackets. (R. pp. 141, l. 3 – 143, l. 2; pp. 150, l. 4 – 151, l. 1).

Dr. Spiotta opined Victim's injury was caused by a "high energy" impact, such as a motor vehicle collision or falling from several stories. In his opinion, a mere fall on the pavement could not have caused Victim's skull fracture. Dr. Spiotta confirmed Victim's wound was "a severe, life-threatening injury" which, untreated, "would have resulted in death" and caused neurological damage, impacting Victim's brain functions, including his abilities to taste and smell. (R. pp. 143, l. 22 – 145, l. 5; p. 151, ll. 3 – 24).

Recordings of Applicant's phone calls from jail were also admitted into evidence. During one of Applicant's calls, he denied that he and Victim were in a fight and explained that he had hit Victim because he felt the latter had disrespected him. (R. pp. 163, l. 20 – 167, l. 17; State's Exhibit



16).

Applicant's Defense

Applicant and his family members testified to a different version of events. Nola Welcome, Applicant's mother, claimed she was inside her home when Victim arrived. She heard an "altercation" outside and saw Applicant and "a young man" arguing. When she went outside a brief time later, she saw the "young man" on the pavement. Applicant's twin brother, Andre Simmons, exited the house when he heard two people talking. He saw Applicant and Victim engaged in an argument before the two men "throw hands" at each other, at which point Applicant hit Victim, and the latter fell, unconscious, to the ground. (R. pp. 187, l. 14 – 191, l. 10; R. pp. 201, l. 25 – 209, l. 14).

Applicant testified Victim was the aggressor in the situation. He claimed Victim was upset because he had previously told him he was unable to pay for the cell phone at that time. On September 24, 2014, Victim showed up at his house, uninvited, seeking payment for the phone. After Applicant reiterated he was unable to pay for the phone at that time, Victim "tried to grab or punch [Applicant] with his hand." Applicant claimed he ducked and punched Victim in the head. As a result, Victim fell and hit his head on the concrete driveway. (R. pp. 235, l. 10 – 243, l. 7).

CURRENT ACTION BEFORE THIS COURT

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

1. "Failure to Request Additional Voir Dire"
2. "Failure to Consult Medical Expert"
3. "Failure to Object to Pitting Witnesses"
4. "Failure to Object to Expert Qualifications"
5. Failure to explain the elements of ABHAN which led to his rejection of the plea offer.¹

¹ This allegation was raised at the PCR evidentiary hearing for the first time and Applicant was permitted to amend the allegations pursuant to Rule 15(b), SCRCP, without objection.

At the evidentiary hearing on February 6, 2023, Applicant proceeded forward on the allegations as set forth in his original application for PCR relief and the amended allegations raised during the evidentiary hearing.

**GRANT OF RECONSIDERATION AND AMENDED FINDINGS OF FACTS AND
CONCLUSIONS OF LAW**

After a thorough review of the record and consideration of the arguments presented by both parties, this Court grants Respondent's motion to reconsider its prior order granting post-conviction relief pursuant to Rule 59(e), SCRPC. Additionally, this Court finds Applicant has failed to establish any constitutional deprivations entitling him to relief on any of the grounds raised and, accordingly, denies the application in full.

Respondent moved this Court to reverse its earlier decision and deny post-conviction relief where Applicant failed to meet his burden as set forth in Strickland v. Washington, 466 U.S. 668 (1984). After careful consideration, this Court agrees and finds Applicant has not and cannot meet his requisite burden of relief as to any of the four grounds of ineffective assistance of counsel.

The Sixth Amendment to the United States Constitution guarantees a defendant the right to effective assistance of counsel. U.S. Const. amend. VI; Strickland, 466 U.S. 668; Lomax v. State, 379 S.C. 93, 665 S.E.2d 164 (2008).

In a post-conviction relief action, an applicant bears the burden of proving the allegations in his or her application. Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where the application alleges ineffective assistance of counsel as a ground for relief, the applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that [it] cannot be relied upon as having produced a just result." Strickland, 466 U.S. 668; Butler, 286 S.C. at 442, 334 S.E.2d at 814.



Strickland does not guarantee perfect representation, only a "reasonably competent attorney." 466 U. S. at 687 (quoting McMann v. Richardson, 397 U. S. 759, 770 (1970)); Representation is constitutionally ineffective only if it "so undermined the proper functioning of the adversarial process" that the defendant was denied a fair trial. Strickland, 466 U.S. at 686. Just as there is no expectation that competent counsel will be a flawless strategist or tactician, an attorney may not be faulted for a reasonable miscalculation or lack of foresight or for failing to prepare for what appear to be remote possibilities. See generally Id.

In evaluating allegations of ineffective assistance of counsel, the reviewing court applies the two-pronged test outlined in Strickland, 466 U.S. 668. First, an applicant must prove that counsel's performance was deficient. Id.; Cherry v. State, 300 S.C. 115, 117, 386 S.E.2d 624, 625 (1989). Under this prong, the court measures an attorney's performance by its "reasonableness under prevailing professional norms." Cherry, 300 S.C. at 117, 386 S.E.2d at 625 (quoting Strickland, 466 U.S. at 690). The proper measure of performance is whether an attorney provided representation within the range of competence required in criminal cases. Butler, 286 S.C. at 442, 334 S.E.2d at 814. "Counsel is strongly presumed to have rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment." Id. (citing Strickland, 466 U.S. at 690). The applicant must overcome this presumption to receive relief. Cherry, 300 S.C. at 118, 386 S.E.2d at 625. Second, 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.

Although courts may not indulge "post hoc rationalization" for counsel's decision making that contradicts the available evidence of counsel's actions, Wiggins v. Smith, 539 U. S. 510, 526–527 (2003), neither may they insist counsel confirm every aspect of the strategic basis for his or

her actions. There is a "strong presumption" that counsel's attention to certain issues to the exclusion of others reflects trial tactics rather than "sheer neglect." Yarborough v. Gentry, 540 U. S. 1, 8 (2003). After an adverse verdict at trial, even the most experienced counsel may find it difficult to resist asking whether a different strategy might have been better and, in the course of that reflection, to magnify their own responsibility for an unfavorable outcome. Strickland, however, calls for an inquiry into the objective reasonableness of counsel's performance, not counsel's subjective state of mind. Id. at 688; Harrington v. Richter, 562 U.S. 86 (2011).

With respect to prejudice, an applicant must demonstrate "a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different. A reasonable probability is a probability sufficient to undermine confidence in the outcome." Strickland, 466 U.S. at 694. It is not enough "to show that the errors had some conceivable effect on the outcome of the proceeding." Id. at 693. Counsel's errors must be "so serious as to deprive the defendant of a fair trial, a trial whose result is reliable." Id. at 687; Harrington, 562 U.S. at 86.

"Surmounting Strickland's high bar is never an easy task." Padilla v. Kentucky, 559 U.S. 356, 371 (2010). An ineffective assistance of counsel claim can function as a way to escape rules of waiver and forfeiture and raise issues not presented at trial, and so the Strickland standard must be applied with scrupulous care, lest "intrusive post-trial inquiry" threaten the integrity of the very adversary process the right to counsel is meant to serve. Strickland, 466 U.S. at 689–690. Even under *de novo* review, the standard for judging counsel's representation is a most deferential one.

Unlike a later reviewing court, the attorney observed the relevant proceedings, knew of materials outside the record, and interacted with the client, with opposing counsel, and with the judge. It is "all too tempting" to "second-guess counsel's assistance after conviction or adverse sentence." Id. at 689; see also Bell v. Cone, 535 U. S. 685, 702 (2002); Lockhart v. Fretwell, 506 U. S. 364, 372 (1993). The question is whether an attorney's representation amounted to

incompetence under "prevailing professional norms," not whether it deviated from best practices or most common custom. Strickland, 466 U.S. at 690.

In assessing prejudice under Strickland, the question is not whether a court can be certain counsel's performance had no effect on the outcome or whether it is possible a reasonable doubt might have been established if counsel acted differently. Wong v. Belmontes, 558 U. S. 15 (2009); Strickland, 466 U.S. at 693. Instead, Strickland asks whether it is "reasonably likely" the result would have been different. Id. at 696. This does not require a showing that counsel's actions "more likely than not altered the outcome," but the difference between Strickland's prejudice standard and a more-probable-than-not standard is slight and matters "only in the rarest case." Id. at 693, 697. The likelihood of a different result must be substantial, not just conceivable. Id. at 693; Harrington, 562 U.S. 86.

Based on this standard set forth above, this Court finds Applicant has failed to meet his requisite burden of establishing any constitutional ineffectiveness of counsel as to any of his various allegations. Each allegation is addressed fully below:

INEFFECTIVE ASSISTANCE OF TRIAL COUNSEL

Allegation: Failure To Request Additional *Voir Dire*

Applicant alleged Trial Counsel's representation was constitutionally ineffective for failing to request additional *voir dire*. Specifically, Applicant asserted that Trial Counsel should have requested the following questions:

1. Is there any member of the jury panel or a member of your immediate family [or close personal friend that has] been the victim of a violent assault?
2. Is there any member of the jury panel or a member of your immediate family or close personal friend been the defendant or had any criminal charges adjudicated by the Charleston County Solicitor's Office?

(PCR Application p. 8). This Court finds this allegation to be without merit.

There are numerous methods an attorney can use to either strike or select a juror. Similarly, an attorney can ask a wide range of questions to identify any potential biases among jurors. However, South Carolina courts have not permitted extensive examination of jurors during the *voir dire* process. "The unbridled examination of jurors by counsel serves to not only unnecessarily add to the length and expense of the trial, but also serves to antagonize jurors and lessen public respect for jury duty. The extent to which *voir dire* examination is being permitted by trial judges causes this Court concern and, therefore, this admonition." State v. Smart, 278 S.C. 515, 523, 299 S.E.2d 686, 691 (1982) (overruled on other grounds by State v. Torrence, 305 S.C. 45, 406 S.E.2d 315 (1991)).

In South Carolina, parties are not granted extensive *voir dire* rights. "The responsibility of the trial court is to focus the scope of *voir dire* examination as described in S.C. Code Ann. §14-7-1020." Wilson v. Childs, 315 S.C. 431, 438, 434 S.E.2d 286, 291 (Ct. App. 1993). "The manner in which these questions are pursued and the scope of any additional *voir dire* is within the sound discretion of the trial court." Id. "The trial court is not required to ask every question submitted by counsel." State v. Middleton, 266 S.C. 251, 257, 222 S.E.2d 763, 765 (1976).

Findings

The Court finds that the Trial Counsel submitted eight written questions for the trial court to ask potential jurors during the *voir dire* process. The trial court asked these questions as requested. The purpose of *voir dire* is to determine whether potential jurors have any biases that would prevent them from impartially considering the evidence in a case. Applicant failed to provide any evidence showing that any potential jurors, or any of the jurors seated for his case, had any vested interest in the matter, expressed or formed any opinion, or exhibited any bias or prejudice against him or the State.



Based on the foregoing, this Court finds the Applicant has failed to present sufficient evidence to prove the first prong of the Strickland test—that Trial Counsel failed to render reasonably effective assistance under prevailing professional norms. Furthermore, Applicant has failed to present specific and compelling evidence that Trial Counsel committed either errors or omissions to prove the second prong of Strickland—that he was prejudiced by Trial Counsel's performance.

Accordingly, this Court finds Applicant has failed to establish any deficiency by Trial Counsel, or any prejudice flowing therefrom. Thus, this allegation must be **DENIED** and **DISMISSED**.

Allegation: Failure to Consult a Medical Expert

Applicant alleges Trial Counsel's representation was constitutionally ineffective for failing to consult a medical expert. This Court finds this allegation to be without merit.

An applicant must produce the testimony of a favorable witness or otherwise offer the testimony in accordance with the rules of evidence at the PCR hearing in order to establish prejudice from the witness's failure to testify at trial. Bannister v. State, 333 S.C. 298, 509 S.E.2d 807 (1998). Prejudice from trial counsel's failure to interview or call witnesses cannot be shown where the witnesses do not testify at the post-conviction relief hearing. Underwood v. State, 309 S.C. 560, 425 S.E.2d 20 (1992); Bassette v. Thompson, 915 F.2d 932 (4th Cir. 1990), cert. denied, 499 U.S. 982 (1991). In order to show prejudice from the failure to contact an allegedly favorable witness, a PCR applicant must present the testimony of that witness at the PCR hearing. Glover v. State, 318 S.C. 496, 458 S.E.2d 538 (1995).

Findings

This Court finds Applicant failed to meet his burden of proof as to this allegation because he did not present the testimony of these witnesses at the evidentiary hearing, and therefore, he has

not established he was prejudiced by Trial Counsel's alleged deficient representation. See, e.g., Dempsey v. State, 363 S.C. 365, 370, 610 S.E.2d 812, 815 (2005) (holding a PCR applicant failed to show prejudice from his Trial Counsel's failure to hire an expert because he failed to have an expert testify at his PCR hearing), abrogated on other grounds by Smalls v. State, 422 S.C. 174, 810 S.E.2d 836 (2018). The South Carolina Supreme Court has repeatedly held that a PCR applicant must produce the testimony of a favorable witness or otherwise offer the testimony per the rules of evidence at the PCR hearing to establish prejudice from the witness's failure to testify at trial. See Glover, supra.

Based on the foregoing, this Court finds the Applicant has failed to present sufficient evidence to prove the first prong of the Strickland test—that Trial Counsel failed to render reasonably effective assistance under prevailing professional norms. Furthermore, Applicant has failed to present specific and compelling evidence that Trial Counsel committed either errors or omissions to prove the second prong of Strickland—that he was prejudiced by Trial Counsel's performance.

Accordingly, this Court finds Applicant has failed to establish any deficiency by Trial Counsel or any prejudice flowing therefrom. Thus, this allegation must be **DENIED** and **DISMISSED**.

Allegation: Failure to Object to Pitting Witnesses

Applicant alleges Trial Counsel was constitutionally ineffective for failing to object to pitting witnesses. This Court finds this allegation to be without merit.

An ineffective assistance claim based on a failure to object is tied to the admissibility of the underlying evidence." Hough v. Anderson, 272 F.3d 878, 898 (7th Cir. 2001). "If evidence admitted without objection was admissible, then the complained of action fails both prongs of the Strickland test: failing to object to admissible evidence cannot be a professionally 'unreasonable'

action, nor can it prejudice the defendant against whom the evidence was admitted." Id.; see Miller v. Keeney, 882 F.2d 1428, 1434 (9th Cir. 1989) (noting that if a petitioner challenges a futile objection, he fails both Strickland prongs); U.S. ex rel. Link v. Lane, 811 F.2d 1166, 1170 (7th Cir. 1987) (finding there is no prejudice from the failure to object unless there is a legally supportable argument for exclusion of the evidence). Also, "[a]n error by counsel, even if professionally unreasonable, does not warrant setting aside the judgment of a criminal proceeding if the error had no effect on the judgment." Strickland, 466 U.S. at 691.

The "use and timing of objections at trial is a quintessential matter of strategy and discretion on the part of the trial attorney, and will very seldom constitute objectively deficient representation." United States v. Nguyen, 379 F. App'x 177, 181 (3d Cir. 2010); see Humphries v. Ozmint, 397 F.3d 206, 234 (4th Cir. 2005) (Luttig, J., concurring) ("[I]t is well established that failure to object to inadmissible or objectionable material for tactical reasons can constitute objectively reasonable trial strategy under Strickland."); cf. Bergmann v. McCaughtry, 65 F.3d 1372, 1380 (7th Cir. 1995) (noting that deciding when to object is a matter of trial strategy that a lawyer has to make on the spot.).

When analyzing counsel's performance, the reviewing court will "strong[ly] presume[c] that counsel's attention to certain issues to the exclusion of others reflects trial tactics rather than sheer neglect. Yarborough, 540 U.S. at 8 (internal quotation marks omitted); cf. Higgs v. United States, 711 F. Supp. 2d 479, 515 (D. Md. 2010) ("Defense counsel constantly must decide what questions to ask and how much time to spend on a particular witness. These are precisely the types of tactical decisions a court is not supposed to second guess.") (citing Byram v. Ozmint, 339 F.3d 203, 209 (4th Cir. 2003)); Sallie v. North Carolina, 587 F.2d 636, 640 (4th Cir. 1978) (Strickland standard was not developed "to promote judicial second-guessing on questions of strategy as basic as the handling of a witness.").

Trial

During cross-examination of the Victim, the following colloquy occurred:

Q. Do you agree or disagree with his brother's testimony, Andre Simmons?

A. I disagree so much I can't even believe he sat up here and said I was fighting and he hit me in my face.

(Trial Tr. p. 251, ll. 17–20).

Findings

Trial Counsel testified at the PCR evidentiary hearing that the question and the response were not harmful to Applicant's case. Applicant's brother's version of events was in direct contradiction to the Victim's version of events. This Court agrees with Trial Counsel. The Solicitor's question, while potentially objectionable, had negligible prejudicial value. Applicant's brother's version of events was obviously in direct contradiction with the Victim's account. The Solicitor's question merely permitted the Victim to directly contradict Applicant's brother's testimony. Therefore, this Court finds Trial Counsel's decision not to object was not deficient nor was it prejudicial to Applicant's case.

Based on the foregoing, this Court finds the Applicant has failed to present sufficient evidence to prove the first prong of the Strickland test—that Trial Counsel failed to render reasonably effective assistance under prevailing professional norms. Furthermore, Applicant has failed to present specific and compelling evidence that Trial Counsel committed either errors or omissions to prove the second prong of Strickland—that he was prejudiced by Trial Counsel's performance.

Accordingly, this Court finds Applicant has failed to establish any deficiency by Trial Counsel or any prejudice flowing therefrom. Thus, this allegation must be **DENIED** and **DISMISSED**.



Allegation: Failure to Object to Expert Qualifications

Applicant alleges Trial Counsel was constitutionally ineffective for failing to object to expert qualifications. This Court finds this allegation to be without merit.

"The qualification of a witness as an expert and the subsequent admission of that witness's opinion testimony are matters within the sound discretion of the trial court." State v. Anderson, 407 S.C. 278, 285, 754 S.E.2d 905, 908 (Ct. App. 2014) (citing State v. Price, 368 S.C. 494, 498, 629 S.E.2d 363, 365 (2006)). "There is no abuse of discretion as long as the witness has acquired by study or practical experience such knowledge of the subject matter of his testimony as would enable him to give guidance and assistance to the jury in resolving a factual issue which is beyond the scope of the jury's good judgment and common knowledge." Id. (quoting State v. Goode, 305 S.C. 176, 178, 406 S.E.2d 391, 393 (Ct. App. 1991)).

In South Carolina, under the rules of evidence, it provides:

If scientific, technical, or other specialized knowledge will assist the trier of fact to understand the evidence or to determine a fact in issue, a witness qualified as an expert by knowledge, skill, experience, training, or education, may testify thereto in the form of an opinion or otherwise.

Rule 702, SCRE.

Findings

As an initial matter, this Court finds Dr. Spiotta testified to his extensive teaching and experience within the field of neurosurgery. See Daves v. Cleary, 355 S.C. 216, 584 S.E.2d 423 (Ct. App. 2003) (quoting Gooding v. St. Francis Xavier Hosp., 326 S.C. 248, 252–53, 487 S.E.2d 596, 598 (1997) ("A medical practitioner's experience teaching and interacting with persons in the applicable specialty are sufficient to support his qualification as an expert.")). Furthermore, this Court finds any objection to the qualification of Dr. Spiotta would have been non-meritorious. See Oken v. Corcoran, 220 F.3d 259, 269 (4th Cir. 2000) ("[T]rial Counsel [i]s not constitutionally



ineffective in failing to object ... [when] it would have been futile for counsel to have done so"); U.S. ex rel. Link v. Lane, 811 F.2d 1166, 1170 (7th Cir. 1987) (finding there is no prejudice from the failure to object unless there is a legally supportable argument for exclusion of the evidence).

Based on the foregoing, this Court finds the Applicant has failed to present sufficient evidence to prove the first prong of the Strickland test—that Trial Counsel failed to render reasonably effective assistance under prevailing professional norms. Furthermore, Applicant has failed to present specific and compelling evidence that Trial Counsel committed either errors or omissions to prove the second prong of Strickland—that he was prejudiced by Trial Counsel's performance.

Accordingly, this Court finds Applicant has failed to establish any deficiency by Trial Counsel or any prejudice flowing therefrom. Thus, this allegation must be **DENIED** and **DISMISSED**.

AMENDED ALLEGATION RAISED AT THE EVIDENTIARY HEARING

Allegation: Failure to Explain the Elements of ABHAN and Rejection of Plea Offer

Applicant alleges Trial Counsel's representation was constitutionally ineffective for failing to explain the elements of ABHAN, which led to his rejecting the plea offer. For the reasons set out below, this Court vacates its former ruling on this issue and now finds that Applicant failed to satisfy his burden of proving any deficiency by Trial Counsel and any resulting prejudice from the alleged deficiency with regard to these allegations.

A defendant has the right to effective assistance of counsel during the plea bargaining process. Davie v. State, 381 S.C. 601, 607, 675 S.E.2d 416, 419 (2009) (citing Judge v. State, 321 S.C. 554, 471 S.E.2d 146 (1996)); Lafler v. Cooper, 566 U.S. 156, 162 (2012) (quoting McMann v. Richardson, 397 U.S. 759, 771 (1970)). Misadvising a defendant such that he rejects a plea

offer and instead proceeds to trial may constitute deficient performance. See, e.g., Lafler, 566 U.S. at 161 (counsel misadvised defendant "that the prosecution would be unable to establish his intent to murder [the victim] because she had been shot below the waist."); Lee v. United States, 582 U.S. 357 (2017) (counsel misadvised a noncitizen defendant that he would not be deported as a consequence of his guilty plea). To show prejudice from the improvident rejection of a plea offer based upon the misadvice of counsel, an applicant must show (1) that but for the ineffective advice there is a reasonable probability the plea offer would have been presented to the court, (2) that the court would have accepted its terms, and (3) that the conviction, sentence, or both would have been less severe under the terms of the plea than was in fact imposed. Lafler, 566 U.S. at 164.

In the order granting PCR, this Court found Trial Counsel "*implied* that the use [of] a weapon was an important factor in [Applicant's] decision to proceed to trial" and that Trial Counsel "*admitted* that he did not explain to [Applicant] that he could be convicted of ABHAN regardless of whether he had a weapon and did not recall explaining the elements of ABHAN to [Applicant]." (Order Granting PCR Relief p. 9) (emphasis added).

After careful reconsideration and a thorough review of the record before this Court, this Court rescinds and reverses its ruling on this issue and denies PCR relief on this matter. Applicant testified that his belief that the State had to prove he used a weapon to convict him was the main reason he decided to proceed to trial, but Applicant did not testify that he communicated his reliance on this factor to Trial Counsel. Regarding "the use of a weapon," Trial Counsel testified this factor was essential to Applicant's defense, but only inasmuch as it provided him the possibility of receiving a lesser included charge. (PCR Tr. p. 36). Applicant echoed Trial Counsel's testimony in rebuttal. (PCR Tr. p. 41, l. 23 – p. 42, l. 9) (addressed further *infra*).

Additionally, this Court finds error in its conclusion that Trial Counsel admitted that he did not explain to Applicant that he could be convicted of ABHAN regardless of whether a weapon

was used or not to support its findings. The following relevant testimony occurred during the PCR evidentiary hearing on direct examination of Trial Counsel:

- Q. Could the applicant -- or excuse me could Mr. Simmons be convicted of ABHAN whether or not he had a weapon?
- A. Yes.
- Q. Did you explain that to Mr. Simmons?
- A. Not in those terms, but I stated to him that, you know, if his -- if he wasn't -- if he wasn't the victor in terms of what story these people believe, that he's going to -- he's going to be exposed to a lot of time in jail.
- Q. One last question. Did you explain the elements of ABHAN?
- A. I can't recall. I would think that we talked about the charges. But I don't -- I don't recall doing the checklist with him.

(PCR Tr. p. 35, ll. 12-25). Then Trial Counsel testified to the following:

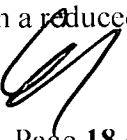
- Q. Is it your standard practice to explain the elements of the crimes?
- A. **Oh, yes. Oh, yeah.** What I'm saying is that what was being put before us as the State's version, you know, was ABHAN, it could have been attempted murder, the whole nine yards, these are very serious charges. And so that's what it took. Our position was that, at worst, he could have been -- our position was that at worst he might have been convicted of simple assault because it was just a punch from his fist and that was our position.

(PCR Tr. p. 36, ll. 1-10) (emphasis added). Then, on cross-examination, Trial Counsel testified to the following:

- Q. Okay. And did you tell him that the State that a weapon was used in order to get convict him of ABHAN?
- A. **No, I did not.**

(PCR Tr. p. 38, ll. 18-20) (emphasis added).

After a review of the relevant testimony in the PCR evidentiary transcript, this Court finds that when Trial Counsel's testimony is viewed holistically, it does not support this Court's previous findings that Trial Counsel "implied" that the use of a weapon was a factor Applicant relied on in choosing to go to trial and that Trial Counsel "admitted" to not explaining the elements of ABHAN to Applicant. Notably, Trial Counsel testified that whether or not Applicant used a weapon was important to his defense in order to obtain a reduced charge, as the charges against Applicant were



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very serious. However, Trial Counsel never implied in his testimony that he had knowledge Applicant rejected his plea offer based on the erroneous belief that the State had to prove Applicant used a weapon. Thus, Trial Counsel cannot be deficient where the testimony from Applicant and Trial Counsel does not indicate Trial Counsel had actual knowledge of Applicant's reliance on his belief of the law. This is especially true considering Applicant elicited testimony that he was advised of the specific elements of ABHAN.

In its order granting PCR, this Court included the following testimony from Applicant:

- Q. But I thought you testified earlier when you said that he -- that your lawyer told you that they had to prove that a weapon was used.
- A. Yeah. Yes, that was the main reason why I took it to trial because he stated that the State had to prove that a weapon was involved. So by my knowledge knowing that a weapon wasn't involved I said let's take it to trial.

(PCR Tr. p. 42, ll. 9-15). However, after reviewing the PCR evidentiary hearing transcript, the following testimony from Applicant just prior to the testimony above is relevant and valuable in this Court's decision to rescind and reverse its previous ruling:

- Q. Do you remember your lawyer ever telling you what the specific elements of ABHAN were?
- A. Yeah, there was -- it really was strategized as between the two -- the two different -- the two different charges between ABHAN and assault and -- assault and battery, because I was -- I stated to him if they were -- if it would have been possible to get a lesser charge because of the extent of the -- the extent of the charge. And he was just basically telling me both of them -- you can be charged with -- with either one by -- by bodily -- by severe bodily harm.

(PCR Tr. p. 41, l. 23 – p. 42, l. 8).

On cross-examination, Trial Counsel testified as follows:

- Q. Okay. And did you tell him that the State had used a weapon in order to convict him of ABHAN?
- A. **No, I did not.**

(PCR Tr. p. 38, ll. 18-20) (emphasis added).

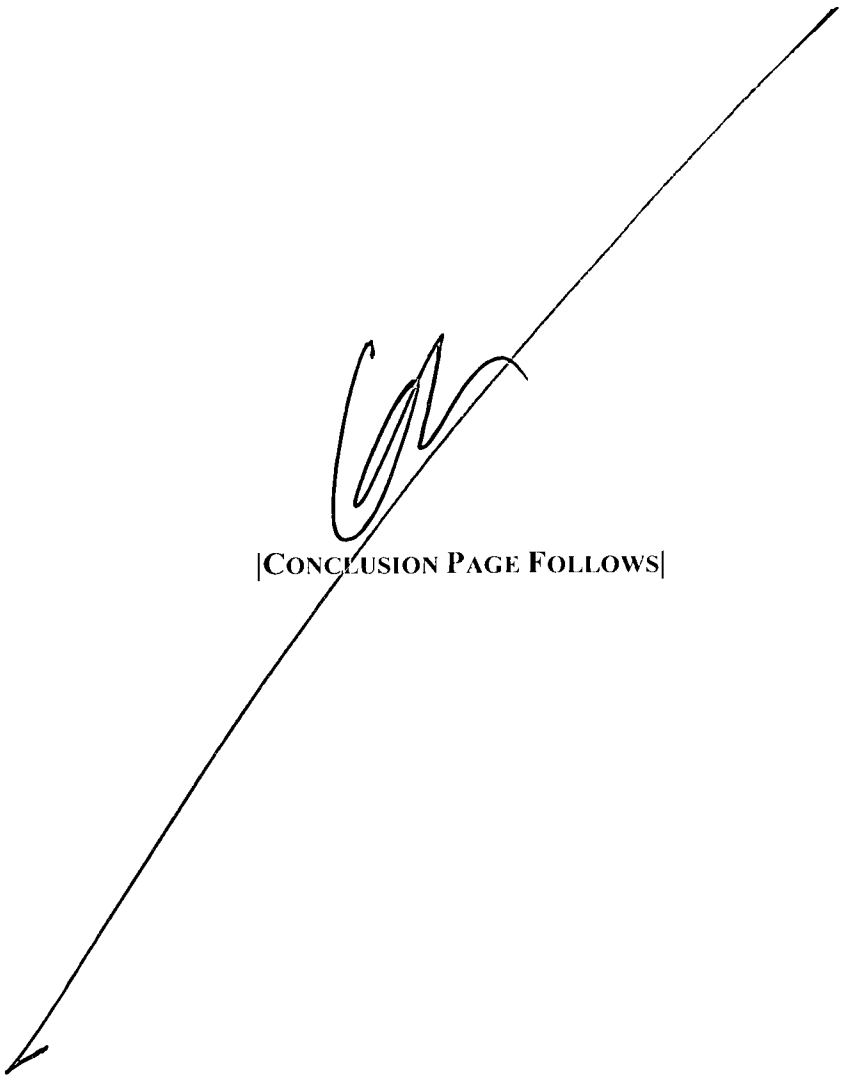


This Court finds the testimony of Applicant supports Trial Counsel's testimony that his standard practice is to explain the elements of the charges to his clients and diminishes Applicant's credibility. Here, Applicant admits, not *once* but *twice*, that Trial Counsel informed him of the specific elements of ABHAN, and this corroborates Trial Counsel's testimony concerning his usual practice.

While it may be true that Applicant understood the use of a weapon was important based on Trial Counsel's trial strategy, the only evidence before this Court that Trial Counsel told Applicant a weapon was necessary to convict of ABHAN is Applicant's testimony, which this Court does not find credible.² This Court further finds Trial Counsel's testimony credible that he **did not** tell Applicant a weapon was required to sustain an ABHAN conviction. Based on the foregoing, this Court finds the Applicant has failed to present sufficient evidence to prove the first prong of the Strickland test—that Trial Counsel failed to render reasonably effective assistance under prevailing professional norms. Furthermore, Applicant has failed to present specific and compelling evidence that Trial Counsel committed either errors or omissions to prove the second prong of Strickland—that he was prejudiced by Trial Counsel's performance.

² After a review of the PCR transcript, Applicant's credibility is further diminished by the multiple inconsistencies within his testimony. For example, on direct examination, Applicant testified Trial Counsel did not engage in any plea negotiations, and there was no plea offer. (PCR Tr. p. 9; ll. 12-13). However, on cross-examination, Applicant testified Trial Counsel did present him with a plea offer. (PCR Tr. pp. 24-25). Another example, on direct examination, Applicant testified Trial Counsel did not have a trial strategy besides Applicant instructing Trial Counsel to pursue a stand your ground defense. (PCR Tr. p. 13). However, on cross-examination, Applicant testified Trial Counsel had a trial strategy, and it was self-defense. (PCR Tr. p. 25). Also, on rebuttal, Applicant further testified to his knowledge about Trial Counsel's specific trial strategy and his discussions with Trial Counsel about trial strategy. (PCR Tr. p. 41). Another example, on direct examination, Applicant testified, "There was no conversations about medical experts or nothing." (PCR Tr. p. 14, ll. 4-5). However, on cross-examination, Applicant testified he recalled discussions with Trial Counsel about hiring a medical expert and Trial Counsel informing him hiring an expert would cost money. (PCR Tr. p. 21).

Accordingly, for the reasons set forth *supra*, this Court vacates and reverses its prior ruling on this issue and finds Applicant has failed to establish any deficiency by Trial Counsel or any prejudice flowing therefrom. Thus, this allegation must be **DENIED** and **DISMISSED**.



[CONCLUSION PAGE FOLLOWS]

CONCLUSION

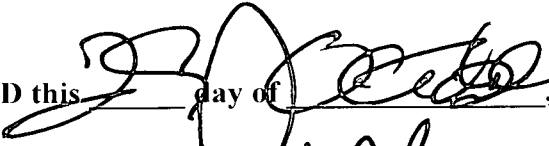
Based on all the foregoing, this Court finds and concludes that Applicant has not established any constitutional violations or deprivations that would require this Court to grant his application. Therefore, this application for post-conviction relief must be **DENIED and DISMISSED WITH PREJUDICE**.

This Court notifies the Applicant that he must file and serve a notice of appeal within thirty (30) days from the receipt by counsel of written notice of entry of judgment to secure the appropriate appellate review. See Rule 203, SCACR. Pursuant to Austin v. State, 305 S.C. 453, 409 S.E.2d 395 (1991), an Applicant has a right to an appellate counsel's assistance in seeking review of the denial of PCR. Rule 71.1(g), SCRCP, provides that PCR counsel must serve and file a Notice of Appeal on the Applicant's behalf if the Applicant wishes to seek appellate review. Your attention is directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.

IT IS THEREFORE ORDERED:

1. That the Application for Post-Conviction Relief must be **DENIED and DISMISSED WITH PREJUDICE**; and
2. The Order granting relief filed September 12, 2023, is hereby **RESCINDED AND VACATED**.
3. The Applicant must be remanded to the custody of the South Carolina Department of Corrections.

AND IT IS SO ORDERED this 13 day of October, 2025.



 GEORGE M. MCFADDIN, JR.
 Presiding Judge
 Ninth Judicial Circuit


 _____, South Carolina

CMC/0241372/20141010507
WITNESSES

Charleston County Sheriff Office

AGENCY CASE NUMBER
2014015832B

ARREST WARRANT NUMBER
2014A1010900631

DATE OF ARREST
10/01/2014

ACTION OF GRAND JURY

TRUE BILL

[Signature]
Foreperson of Grand Jury

Date: AUG 03 2015

VERDICT

Foreperson of Petit Jury

Date:

DOCKET NO. 2015-GS-10-04889

The State of South Carolina
County of Charleston

COURT OF GENERAL SESSIONS
AUGUST TERM 2015

THE STATE

VS.

ADRIAN VASHARD SIMMONS
B/M DOB: 06-12-1991

Indictment for

ASSAULT & BATTERY OF A HIGH AND
AGGRAVATED NATURE

SC Code: § 16-03-0600(B)(1)
CDR Code: 3411

FILED

8/18/2015 12:19:23 PM
JULIE J. ARMSTRONG
CLERK OF COURT

ATTEST: A TRUE COPY
JULIE J. ARMSTRONG (SEAL)
CLERK, C.P., G.S. & F.C.
By *[Signature]*
DEPUTY CLERK

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

INDICTMENT

At a Court of General Sessions, convened on August 3, 2015, the Grand Jurors of Charleston County present upon their oath:

ASSAULT & BATTERY OF A HIGH AND AGGRAVATED NATURE

That in Charleston County, South Carolina on or about September 24, 2014, the Defendant, Adrian Vashard Simmons, did commit an unlawful act of injury upon the victim, Lamont Washington, and as a result, the victim suffered great bodily injury or the act was accomplished by means likely to produce death or great bodily injury, in violation of Section 16-3-600(B)(1) of the South Carolina Code of Laws (1976) as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.

Charles M. Condon Jr.
CHARLES M. CONDON, JR.
ASSISTANT SOLICITOR

ATTEST: A TRUE COPY
JULIE J. ARMSTRONG (SEAL)
CLERK, C.P., G.S. & F.C.
By Adrian Vashard Simmons
DEPUTY CLERK

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

STATE VS.

ADRIAN VASHARD SIMMONS

AKA: Adrian Simmons, Adrian V. SimmonsRace: Black/African AmericanSex: M

DO

SS#: 2

Address:

City, State, Zip

SID#:

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

In disposition of the said indictment comes now the Defendant who was

☒ CONVICTED OF or☐ PLEADSTO: Assault & Battery Of A High And Aggravated NatureIn violation of § 16-03-0600(B)(1) of the S.C. Code of Laws, bearing CDR Code # 3411☐ NON-VIOLENT☒ VIOLENT☒ SERIOUS☐ MOST SERIOUS☐ Mandatory GPS☐ §17-25-45(CSC w/minor 1st or Lewd Act)The charge is: ☒ As indicted, ☐ Lesser Included Offense,☐ Defendant Waives Presentment to Grand Jury.

(def.'s initials)

The plea is: ☐ Without Negotiations or Recommendation,☐ Negotiated Sentence,☐ Recommendation by the State.

ATTEST:

Charles M. Condon, Jr. 100579
Charles M. Condon, Jr., Assistant Solicitor SC Bar #

Defendant

Attorney for Defendant

6061
SC Bar #

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections ☐ County Detention Center, for a determinate term of 12 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and or payment of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for _____ months/years and subject to South Carolina Department of Probation, Parole and Pardon Service standard conditions of probation, which are incorporated by reference.

☐ CONCURRENT or ☐ CONSECUTIVE to sentence on:☒ The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by the State Department of Corrections.☐ The Defendant is to be placed on Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

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

SPECIAL CONDITIONS:

☐ RESTITUTION:☐ Deferred☐ Def. Waives Hearing☐ Ordered PTUP

Total: \$ _____ plus 20% fee: \$ _____

_____ days/hours Public Service Employment

Payment Terms: _____

Obtain GED ☐☐ Set by SCDPPPS

Attend Voc. Rehab. Or Job Corp. _____

May serve W/E beginning _____

Substance Abuse Counseling ☐Random Drug/Alcohol Testing ☐

Fine may be pd. in equal consecutive weekly/monthly

pmts. of \$ _____ Beginning _____

\$ _____ Paid to Public Defender Fund

Other:

ATTEST A TRUE COPY

JULIE J. ARMSTRONG (SEAL)

CLERK, S.C. G.S. & F.C.

By _____

DEPUTY CLERK

☐ Appointed PD or appointed other counsel,

\$47.12 requires \$500 be paid to Clerk during probation.

Presiding Judge: _____

Judge Code: _____

Sentence Date: _____

Clerk of Court/Deputy Clerk: _____

Court Reporter: _____