

THE STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

APPEAL FROM OCONEE COUNTY
Court of Common Pleas

Perry T. Gravely, Circuit Court Judge

Appellate Case No. 2026-000355

RECEIVED
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S.C. SUPREME COURT

The State of South Carolina Respondents,

vs.

Laquavius T. Cleveland.....Petitioner.

APPENDIX VOL, II

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1 A Yes, I was.

2 Q Did you hear about the stabbing on Mill Hill and
3 what did you do?

4 A Once I heard about the stabbing there on the Hill,
5 Mandy or Sergeant Tinsley was already en route. I
6 proceeded that direction. I also talked with Sergeant
7 McMahan and Freestate, told them to go to where the
8 victim was, Mr. Kirkland, down Shiloh Road. I went to
9 the actual crime scene on Brown's Creek on Utica Mill
10 Hill.

11 Q And what did you do there? What was your
12 involvement there until you got back to the sheriff's
13 office later that evening?

14 A Actually, just looking and observing the scene,
15 seeing if we can find anything with any evidentiary
16 value, which we did find some blood droplets there on
17 the ground.

18 Q Was there a lot of blood in the car?

19 A There was a lot of blood in the car, and there was
20 just a few droplets on the ground.

21 Q Was that consistent with this stabbing taking
22 place with the victim being in the car?

23 A Yes. That's very consistent, yes.

24 Q At some point in time later that evening did you
25 end up heading back to the sheriff's department?

1 A Yes, I did. Later in the evening I had spoken
2 with McMahan and Freestate down at Greenville, and I
3 actually went back to the sheriff's office, was going
4 to go ahead and let the uniformed officer, Robertson,
5 go ahead and go to the house.

6 Q Did you talk with Sergeant Tinsley from your
7 vehicle?

8 A Yes, I did.

9 Q What did you ask her in regards to food?

10 A I asked Sergeant Tinsley if she or any of the
11 others up there wanted anything to eat. I knew it had
12 been a while, and I had been on the crime scene down
13 there, at which time she asked everyone. Philip didn't
14 want anything, Philip Robertson. The defendant,
15 Cleveland, didn't want anything but a glass of tea.
16 Sergeant Tinsley asked for a glass of tea, which I
17 brought two teas.

18 Q Approximately what time do you think you arrived
19 back at the sheriff's office?

20 A I don't know. Probably between 7:30 and 8:00,
21 somewhere in there.

22 Q Okay. And where was Sergeant Tinsley and where
23 was the defendant during that time frame?

24 A While I was at the crime scene?

25 Q When you got back.

1 A When I got back, if I remember correctly, they was
2 sitting, watching TV.

3 Q That went on, like they watched TV for a while?

4 A Actually, it wasn't much longer than that. I
5 actually think at that time I had spoken with the
6 defendant's mother about getting the ADT surveillance,
7 which I learned there was no surveillance. It had been
8 discontinued approximately two months before. And I
9 heard back from Greenville Hospital or from my
10 investigators at the hospital and found out that after
11 reading the statement that he had already written out
12 to Sergeant Tinsley, that the stuff in the statement
13 didn't match the crime scene or what we had learned at
14 the hospital at all. So at that time we decided to go
15 back in and go ahead and interview him again.

16 Q By that time was it after midnight?

17 A Oh, I'm sure it was, yes.

18 Q Let me show you what has been marked State's
19 Exhibit 3. Do you recognize that?

20 A Yes, I do.

21 Q Okay. What is that?

22 A Of course this is the handwritten note from
23 Sergeant Tinsley during the interview, and on back is
24 signed by the Defendant Cleveland and myself, witness.

25 Q Was Sergeant Tinsley taking those notes as the

1 defendant was talking to y'all the second time?

2 A That's correct.

3 Q Was she writing down what he said?

4 A That is correct.

5 Q Was all that done in your presence?

6 A Yes, it was.

7 Q Did she read his notes back to him in your
8 presence?

9 A Yes, she did.

10 Q Her notes, excuse me.

11 Did he say that's what his statement was?

12 A Yes, he agreed with the notes, and that's when he
13 signed it.

14 Q Were ya'll able to -- did anybody mention about
15 him putting those notes, putting that in a second
16 statement form as far as a written statement?

17 A Yes. He was asked if he would go ahead and write
18 this out in a statement, and he declined, saying he was
19 just tired, needing to get some rest, something to that
20 effect.

21 Q So at that point in time he signed the notes and
22 adopted them as his statement?

23 A That's correct.

24 Q Did y'all at any time ever promise him anything or
25 threaten him in any manner?

1 A No, we did not.

2 Q Did you try to coerce him into giving a statement?

3 A No, we did not.

4 Q Did he ever ask for an attorney?

5 A No, he did not.

6 Q Did he ever ask to stop talking to you?

7 A No, he did not.

8 Q If he had, what would y'all have done?

9 A The interview would have ceased right then.

10 Q With what he told you in that second statement,
11 are you convinced that he gave you that statement out
12 of his own free will?

13 A Oh, most certainly.

14 Q And voluntarily?

15 A Yes.

16 Q Thanks, Captain. That's all the questions I have.

17 THE COURT: Cross-examine.

18 CROSS-EXAMINATION

19 BY MR. GRIFFIN:

20 Q This line of questioning lasted approximately
21 eight hours; is that correct?

22 A Well, to my recollection, I think the first
23 interview lasted for approximately an hour, hour and a
24 half, and then the second interview started at 1:15 and
25 was over at 1:58.

1 Q He was at the sheriff's office eight hours?

2 A Yes, sir, that's correct.

3 Q Okay. Do y'all normally hold suspects that long
4 for questioning?

5 A It determines on the circumstances.

6 Q Was this an unusual circumstance?

7 A No, sir. We actually was waiting on some type of
8 information to get in to where we actually could do the
9 questioning. We didn't know what to ask once we got
10 into the interview. The more you know, the better off
11 you are in the interview.

12 Q Okay. Was he free to leave at any point?

13 A Yes, sir. He could have left any time he wanted.

14 Q Did y'all tell him that?

15 A I don't know that he was ever told that. He was
16 never behind a -- we never kept him behind a locked
17 door. I mean, he actually sat for several hours
18 watching TV with Sergeant Tinsley and Mr. Robertson.

19 Q Okay. And did you ever have any discussions with
20 his mother about whether or not Mr. Kirkland was going
21 to be charged?

22 A I actually talked to her two times. The first
23 time that I spoke with her, she was at work. I had a
24 patrol officer go down, Officer McKee, to get her to
25 call this ADT so we can get them online to find out

1 about the footage from the security cameras. That took
2 quite a while because we ended up having to wait on her
3 to take a break. Once she did, she got ADT on the
4 phone, and that service had not been active for
5 approximately two months or better.

6 The second time I talked to her was later in the
7 evening. I did allow the Defendant Cleveland to call
8 his mother from the sheriff's office, and I got her on
9 the phone.

10 Q What time did you get him to call his mother?

11 A I don't recall. It was after -- it was after --
12 after and yet before he was transported to DJJ.

13 Q It was after the statements were allegedly taken
14 but before he was transported?

15 A That is correct.

16 Q Okay. But did you ever tell her you were going to
17 arrest Mr. Kirkland on any of these charges -- any of
18 these occurrences?

19 A The second time that I spoke with her, I told her
20 that he had been charged and he was going to be allowed
21 to speak with her.

22 Q I mean Mr. Kirkland, not Mr. Cleveland.

23 A Do what now?

24 Q Mr. Hakeem Kirkland, did you ever tell his mother
25 that you were going to arrest him for his involvement

1 in this situation?

2 A That I was going to arrest Mr. Kirkland?

3 Q Yes.

4 A Did I tell who? I told no one that I would be,
5 no.

6 Q You didn't tell his mother that?

7 A No. Absolutely not.

8 Q All right.

9 MR. GRIFFIN: That's all I have, your Honor.

10 THE COURT: Redirect?

11 MR. WAGNER: Nothing further, your Honor.

12 THE COURT: All right. You may step down.

13 MR. WAGNER: I need a second to look at these
14 exhibits and confirm.

15 THE COURT: Certainly.

16 MR. WAGNER: Your Honor, at this time the State
17 rests.

18 THE COURT: All right. Mr. Foreman, ladies and
19 gentlemen of the jury, the State has rested its case.
20 In other words, they have completed their
21 case-in-chief. I still need to take up some things
22 with the attorneys. I'm going to suggest that you go
23 back to the jury room and wait for a few minutes until
24 I find out exactly how we're going to proceed. And
25 then I'll either ask you to come back or excuse you for

1 the day.

2 If you would, please, just retire to the jury
3 room. Again, you haven't heard the whole case, so do
4 not undertake the discussion of the case among
5 yourselves in any way.

6 Everyone else remain seated while the jury retires
7 from the courtroom.

8 (Whereupon, the jury exited the courtroom
9 at 3:46 p.m.)

10 THE COURT: All right. How does the defendant
11 intend to proceed? Are you going to be calling
12 witnesses or -- the reason I ask, either we can use the
13 balance of the afternoon on motions or things of that
14 nature and come back in the morning and proceed at that
15 time, or we can take up a witness. I mean after the
16 motions are heard and not granted.

17 MR. GRIFFIN: I may call his mother, but that
18 would be about the extent of it.

19 THE COURT: Because that's the other thing. Of
20 course, he's entitled to testify, but he does not have
21 to testify, and I'd want to caution him on that.

22 MR. GRIFFIN: Yes, sir.

23 THE COURT: Well, let's do this. And this is in
24 no way intended to suggest what the defendant needs to
25 do. But I think rather than -- it's ten of 4:00 now,

1 that we might let the jury go at this time, take up
2 motions, and then if the motions do not prevail in the
3 defense's favor, then we can decide how we'll proceed
4 at that time between the attorneys and the parties.

5 And I think I mentioned to you that I have a
6 doctor's appointment at 9:00, so we'll probably start
7 about 10:00 in the morning.

8 Is there any problem with that from the State?

9 MR. WAGNER: No, sir.

10 THE COURT: From the defense?

11 MR. GRIFFIN: No, your Honor.

12 THE COURT: All right. Very good. So I'm going
13 to bring the jury back and excuse them for the day and
14 ask them to return in the morning at 10:00.

15 Actually, I might do this. 10:15 because
16 Mr. Griffin has to come from Anderson. All right.
17 Very good.

18 If you would please ask the jury to join us.

19 (Whereupon, the jury came into open court at
20 approximately 3:49 p.m.)

21 THE COURT: Mr. Foreman, ladies and gentlemen of
22 the jury, as I say, the State has rested, but that does
23 not complete the case in any fashion. But I do need to
24 take up some matters with the attorneys, some matters
25 of law that do not involve you.

1 As I mentioned earlier, I usually break by
2 5 o'clock, so we're a little bit ahead of time here.
3 But hopefully we'll be able to take care of things this
4 afternoon so that we can proceed in the morning to
5 complete the case.

6 Now, I do have a doctor's appointment at
7 9 o'clock, so I'm going to suggest that you not come in
8 until 10:15 because I'll use this afternoon to take
9 care of all the preliminary matters, but I don't want
10 you to have to sit back in the jury room any longer
11 than absolutely necessary.

12 But, with that, I'm going to excuse you for the
13 balance of the day. By the way, I was here at 8:30
14 this morning, and apparently you were able to get
15 through last night without any difficulty. Again,
16 though, please understand, you see this case is awfully
17 important to all parties involved, and it needs to be
18 resolved in the proper fashion.

19 If anybody does attempt to discuss the case or
20 suggest that you ought to be able to talk it over with
21 them, I will be here in the morning at least by
22 10 o'clock hopefully, and then I'll be glad to explain
23 it to them then.

24 With that, I'll excuse you for the evening. Have
25 a very good evening. I'll see you in the morning at

1 10:15.

2 Everyone else remain seated until the jury retires
3 from the courtroom.

4 (Whereupon, the jury exited the courtroom
5 at 3:51 p.m.)

6 THE COURT: We are very fortunate in having Judge
7 Sprouse with us this afternoon. I am glad to see him
8 come in. I know he's busy with other things, trying to
9 wind up a practice, but he's always welcome in the
10 courtroom. In fact, I can still use all the advice and
11 help I can get, so I look forward to working with him,
12 but let's do.

13 Are you ready to proceed with your -- first of
14 all, let me ask you. The State has rested. You have
15 done everything that you need as far as exhibits and
16 all that?

17 MR. WAGNER: Yes, sir.

18 THE COURT: All right. So you're ready to rest
19 your case?

20 MR. WAGNER: Yes, sir.

21 THE COURT: All right.

22 Any motions from the State?

23 MR. WAGNER: No, sir.

24 THE COURT: From the defense?

25 MR. GRIFFIN: Your Honor, I move for directed

1 verdict of acquittal on attempted murder in that the
2 State hasn't proven its case beyond a reasonable doubt
3 at this point. Basically the attempted murder is an
4 attempt to kill, attempt to kill another person with
5 malice aforethought, either express or implied, commits
6 the offense of attempted murder.

7 Here it's uncontroverted the alleged victim here
8 was armed with a deadly weapon, was engaged in dubious
9 behavior, and that would negate any malice within the
10 statute, your Honor, and we would move for a directed
11 verdict on that ground. And the fact that the
12 possession of a firearm by -- I mean possession of a
13 deadly weapon during a violent crime would fall if the
14 underlying offense falls as well.

15 THE COURT: All right. What does the State say?

16 MS. SIMMONS: Your Honor, as you're well aware,
17 the burden here is under South Carolina Rule of
18 Criminal Procedure 19 and *State vs. Williams*, 303 S.C.
19 274, 400 S.E.2d --

20 THE COURT: State versus who?

21 MS. SIMMONS: *Williams*, 400 S.E.2d 131. When
22 ruling on a motion for directed verdict, the Court is
23 concerned with the existence or nonexistence of
24 evidence, not its weight. The State --

25 THE COURT: But he's saying there is no evidence

1 of malice aforethought, express or implied.

2 MS. SIMMONS: Judge --

3 THE COURT: Excuse me. I'm sorry. Go ahead.

4 MS. SIMMONS: There's certainly implied malice in
5 this matter. Having to -- you heard testimony that the
6 defendant actually had to affirmatively go back in the
7 house, I believe, for a second or third time to get the
8 weapon that he described as a Michael Myers-type
9 Halloween knife and stabbing someone 11 times.

10 THE COURT: I haven't seen the movie. Was that a
11 violent movie?

12 MS. SIMMONS: Yes, your Honor. Stabbing someone
13 11 times certainly would indicate that there is express
14 or implied malice.

15 THE COURT: Mr. Griffin?

16 MR. GRIFFIN: Like I said, your Honor, my argument
17 will be that any alleged malice was negated by the acts
18 of the alleged victim herein.

19 THE COURT: Are you suggesting self-defense?

20 MR. GRIFFIN: I believe one of the statements made
21 bring up that or allude to that.

22 THE COURT: Well, whatever allusion might have
23 been made, as our rule very specifically provides, Rule
24 19 in the Rules of Criminal Procedure, in ruling on the
25 motion for directed verdict, the trial judge shall

1 consider only the existence or nonexistence of the
2 evidence and not its weight.

3 I do find that there is sufficient evidence to go
4 forward to the jury on the question of malice as
5 necessary for the charges in the indictments. So I
6 will submit the case to the jury.

7 All right. Now, Mr. Cleveland, if you would,
8 would you please stand up and raise your right hand.

9 (WHEREUPON, the defendant was sworn.)

10 THE COURT: At this time I'm going to explain to
11 you certain of your rights. If you do not understand
12 anything I say, please let me know. If you want me to
13 explain anything in more detail, please let me know.

14 Do you understand this, Mr. Laquavius Tyshawn
15 Cleveland?

16 THE DEFENDANT: Yes, sir.

17 THE COURT: Now, we have now reached the stage of
18 the trial where you may present your defense. You have
19 the right to claim the protections given to you by the
20 Fifth Amendment to the Constitution of the United
21 States. This amendment states in part, "No person
22 shall be compelled in any criminal case to be a witness
23 against himself." This means that you cannot be
24 required to testify in the case. You have the right to
25 testify on your own behalf. However, no one can make

1 you testify. This is a personal right, and no one can
2 waive this right except you. If you decide to testify,
3 you will be subject to the same rules that govern other
4 witnesses, and you may be examined and cross-examined
5 on any relevant issue in the case.

6 In addition, if you have any convictions involving
7 dishonesty or false statement or for crimes punishable
8 by imprisonment for more than one year and this Court
9 determines that the probative value of admitting this
10 evidence outweighs the prejudicial effect to you, the
11 Solicitor will be able to introduce your record to
12 attack your credibility. Do you understand this?

13 THE DEFENDANT: Yes, sir.

14 THE COURT: If you decide to testify, this
15 decision on your part must be freely, voluntarily and
16 intelligently made with the knowledge of the
17 protections given to you by the Fifth Amendment and the
18 consequences of your decision to testify. If you
19 decide not to testify, I will instruct the jurors that
20 they cannot give the fact that you did not testify any
21 consideration whatsoever, that there is to be
22 absolutely no prejudice to you because you did not
23 testify. You may talk with your attorney, your family,
24 and your friends or anyone else, but the final decision
25 will be left entirely up to you.

1 Do you understand what I just explained to you?

2 THE DEFENDANT: Yes, sir.

3 THE COURT: Do you have any questions about what I
4 have explained to you?

5 THE DEFENDANT: No, sir.

6 THE COURT: All right. I'm going to ask you to
7 discuss this matter with your attorney as well as your
8 family or anyone else and tomorrow morning I will ask
9 your decision. Do you understand?

10 THE DEFENDANT: Yes, sir.

11 THE COURT: Very good. Thank you very much. You
12 may be seated.

13 THE DEFENDANT: Yes, sir.

14 THE COURT: All right. Anything else before we
15 adjourn for the day from the State?

16 MR. WAGNER: No, sir.

17 THE COURT: From the defense?

18 MR. GRIFFIN: No, sir.

19 THE COURT: Very good. I will see you in the
20 morning at 10:15.

21 (WHEREUPON, proceedings adjourned at 3:58 p.m.)
22
23
24
25

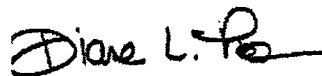
Certificate of Reporter

I, Diane L. Thommes, Official Court Reporter for the Tenth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete transcript of record of a portion of the proceedings had and evidence introduced in the trial of the captioned case, relative to appeal, in the Circuit Court for Oconee County, South Carolina, on the 23rd day of July 2014.

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

December 1, 2014



Diane L. Thommes, RPR, CRR
Circuit Court Reporter

STATE OF SOUTH CAROLINA
COUNTY OF OCONEE

IN THE COURT OF GENERAL SESSIONS

STATE OF SOUTH CAROLINA,)
)
 PLAINTIFF,)
)
)
 -VS-)
)
 LAQUAVIUS T. CLEVELAND,)
)
)
 DEFENDANT.)
 _____)

2013-GS-37-01043 - 01044

TRANSCRIPT OF RECORD

JULY 24, 2014
WALHALLA, SOUTH CAROLINA

BEFORE:

THE HONORABLE ALEXANDER S. MACAULAY

APPEARANCES:

ATTORNEYS FOR PLAINTIFF:

LINDSEY SIMMONS, ASSISTANT SOLICITOR
DAVID WAGNER, ASSISTANT SOLICITOR

ATTORNEY FOR DEFENDANT:

CHARLES GRIFFIN, ESQUIRE

SUSAN W. HUDGINS
CIRCUIT COURT REPORTER

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EXHIBITS

<u>NO</u>	<u>DESCRIPTION</u>	<u>ID</u>	<u>EVIDENCE</u>
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(No exhibits were marked during this portion of the trial)

1 Thursday, July 24, 2014:

2 THE COURT: Take your seats, please. We're back on the
3 case of State of South Carolina versus Laquavius Tyshawn
4 Cleveland. Is the State ready to proceed?

5 MR. WAGNER: Yes, sir.

6 THE COURT: Defense ready to proceed?

7 MR. GRIFFIN: Yes, Your Honor.

8 THE COURT: All right. First of all, Mr. Cleveland, if
9 you would, please stand. You understand that you're still
10 under oath from yesterday when I inquired about whether or
11 not you wished to testify or not?

12 MR. CLEVELAND: Yes, sir.

13 THE COURT: Have you had an opportunity to discuss this
14 matter with your attorney?

15 MR. CLEVELAND: Yes, sir. And I would not like to
16 testify.

17 THE COURT: But you've decided not to testify?

18 MR. CLEVELAND: Yes, sir.

19 THE COURT: Now were you satisfied with the advice that
20 your attorney gave you?

21 MR. CLEVELAND: Yes, sir.

22 THE COURT: All right. Do you wish to talk to your
23 lawyer anymore at this time about this -- that matter?

24 MR. CLEVELAND: Oh, no, sir.

25 THE COURT: All right. And you do not wish to testify

1 in this case?

2 MR. CLEVELAND: Yes, sir.

3 THE COURT: All right. I'll find -- thank you. You
4 may be seated. I'll find that the Defendant's decision to
5 not testify is made freely and voluntarily, knowingly,
6 intelligently with the advice of counsel and he says he is
7 satisfied -- with whom he says he is satisfied.

8 Now I will instruct -- at the close of your case, I
9 will instruct the jury that they cannot consider the fact
10 that you exercised your right not to testify against you.

11 MR. CLEVELAND: Yes, sir.

12 THE COURT: All right. Very good. All right. I have
13 denied the Defense motion of a directed verdict as to the
14 two indictments. Is there anything further from the State?

15 MR. WAGNER: No, sir.

16 MS. SIMMONS: Judge, you did ask us to research the
17 issue of ABHAN being violent.

18 THE COURT: We did. It is.

19 MS. SIMMONS: It is. Okay. Thank you, Judge.

20 THE COURT: All right. Anything else from the
21 Defendant before we ---

22 MR. GRIFFIN: Not at this time.

23 THE COURT: All right. Does the Defense wish to
24 present a case?

25 MR. GRIFFIN: Judge, I have one witness, ---

YASHICA CLEVELAND - DIRECT EXAMINATION BY MR. GRIFFIN

6

1 THE COURT: All right.

2 MR. GRIFFIN: --- the Defendant's mother.

3 THE COURT: Very good. All right. Ask the jury to
4 join us, please.

5 (Whereupon the jury entered the courtroom at 10:55 am)

6 THE COURT: All right. Let the record reflect that the
7 jury and alternates are in the jury box. Mr. Foreman,
8 ladies and gentlemen of the jury, as you know, the State
9 closed its case yesterday. And we will go forward now with
10 the Defense case. I recognize Mr. Griffin for his witness.

11 MR. GRIFFIN: I'd call Yashica Cleveland.

12 Yashica Cleveland, being
13 duly sworn testified as follows;

14 THE COURT: If you would, please, ma'am, give us your
15 full name for the record, spelling your last name.

16 MS. CLEVELAND: Yashica Nicole Cleveland, C-l-e-v-e-l-
17 a-n-d.

18 THE COURT: Very good. Thank you, ma'am.

19 Direct Examination by Mr. Griffin:

20 Q. All right. Ms. Cleveland, I believe you're the
21 Defendant here, Laquavius' mother?

22 A. Yes, sir.

23 Q. And you recall the afternoon/evening of July 8th, 2013,
24 last year?

25 A. Like what time? Any time?

YASHICA CLEVELAND - DIRECT EXAMINATION BY MR. GRIFFIN

7

1 Q. Any time in the afternoon ---

2 A. I just got a call from my sister.

3 Q. Okay. And where were you during this period?

4 A. I was at work.

5 Q. All right. And did you learn that Laquavius had been
6 taken to the law enforcement center here in Oconee?

7 A. No, sir.

8 Q. Did you ever know that?

9 A. No, ---

10 Q. Did you ever find that out?

11 A. No, sir.

12 Q. Did you ever call -- did you ever call down there to
13 find out if he was down there?

14 A. I called the sheriff's department. Personal assistant
15 told me he was at the Oconee Law Enforcement. They said
16 that's where they was going to take him. Called down there
17 and nobody said he was down there, call the sheriff's
18 department. Called the sheriff's department dispatch ---

19 Q. Slow down, please.

20 THE COURT: I would suggest that maybe you stand
21 somewhere -- and it'll also help you to speak up a little
22 bit so that the court reporter can get your testimony, but
23 so that the jury can see the witness. Very good. Thank
24 you, Mr. Griffin.

25 Q. Did you learn that -- you had heard that Laquavius had

1 been taken down there by some third party, correct?

2 A. Yes, sir.

3 Q. Okay. And did you call down there to find out?

4 A. Yes, sir. I called the Oconee Police Department and I

5 called the sheriff's department. And nobody said they had

6 seen Laquavius there.

7 Q. Okay. And did you call all through the evening?

8 A. Yes, sir, I did.

9 Q. All right. And I don't think you were able to speak

10 with him until the wee hours of the morning?

11 A. Yes, sir, between the hours of two and three in the

12 morning.

13 Q. Okay. That's when you finally heard from him?

14 A. Yes, sir.

15 Q. Okay. And at that point you realized he'd been

16 arrested?

17 A. No, I -- yeah, ---

18 Q. You found out ---

19 A. Yes, sir, between two and three in the morning I found

20 out he was -- had been arrested.

21 Q. Okay. That was on the -- that's all I have.

22 THE COURT: Cross exam.

23 Cross Examination by Mr. Wagner:

24 Q. Ms. Cleveland, you were convicted back in 2005 with

25 possession of crack cocaine, is that correct?

YASHICA CLEVELAND - CROSS EXAMINATION BY MR. WAGNER

9

- 1 A. Um-hum (affirmative).
- 2 Q. Okay. And again in 2005 of possession of crack
- 3 cocaine?
- 4 A. Um-hum (affirmative).
- 5 Q. Another drug charge in 2007?
- 6 A. Um-hum (affirmative).
- 7 Q. Unlawful neglect of a child in 2009?
- 8 A. Um-hum (affirmative).
- 9 Q. Second count of unlawful neglect of a child in 2009?
- 10 A. Um-hum (affirmative).
- 11 Q. And again the same charge in 2010?
- 12 A. Um-hum (affirmative).
- 13 Q. And on this day you were at work the whole time,
- 14 correct?
- 15 A. Yes, sir.
- 16 Q. Okay. So you -- so you weren't there when the victim
- 17 came over to the house where Quay was?
- 18 A. No, sir. I have been there when he came over there.
- 19 Some days I was ---
- 20 Q. I know. But you had left, I mean, he -- on the day in
- 21 particular when he was texting back and forth with his
- 22 cousin, ---
- 23 A. Um-hum (affirmative).
- 24 Q. --- the victim, -- I'm trying to get the thing up here
- 25 where we can see it. If you'll remember yesterday, this was

1 the victim up here talking:

2 A. Um-hum (affirmative).

3 Q. And then Quay said, ma's here, and okay, that's cool,
4 and you can't meet me nowhere. Because he was wanting -- he
5 didn't want you there when this stuff was going on, right?

6 I mean, if he was saying you were there, that was sometime
7 right around three something before you left for work.

8 A. I leave every day for work at 3:30.

9 Q. Okay. So you had left. And they were texting each
10 other back and forth. And he was saying, ma's here, can you
11 meet me somewhere else? But then you left at 3:30.

12 A. I guess. I don't know, I mean, just by doing that, I
13 guess, I wasn't, I mean, I don't go through his phone.

14 Q. Okay. But you weren't there when the victim came over
15 to the house ---

16 A. Uh-uh (negative).

17 Q. --- and all this transpired?

18 A. Uh-uh (negative).

19 Q. Okay. And you'd gone to work. And you work til when?

20 A. I work from four to twelve every day, but you've got to
21 be on your machine fifteen minutes early.

22 Q. Okay. Do you remember talking to Phillip Robertson?

23 A. No, I don't remember ---

24 Q. From the sheriff's office?

25 A. No, sir, I don't remember.

YASHICA CLEVELAND - CROSS EXAMINATION BY MR. WAGNER

11

1 Q. Okay. Do you remember talking to Ms. ---

2 A. Yes.

3 Q. --- Tinsley?

4 A. She came on my break to do the polygraph test, sign for
5 the polygraph test.

6 Q. Do you remember talking to Anita McKee?

7 A. I know it was her and another guy come on for the -- to
8 sign for the paper for the polygraph test.

9 Q. All right. I guess my question is the sheriff's office
10 did call you? I mean, you did know that Quay was up at the
11 sheriff's office?

12 A. No, nobody told me Quay was at the sheriff's office.
13 They said Quay was still at my house. Nobody told me Quay
14 went to no sheriff's office and nobody -- the sheriff took
15 him to the sheriff's office.

16 Q. Okay. Do you remember talking to Greg Reed ---

17 A. As to -- between the hours two and three.

18 Q. Okay. But were you aware too that even though he's
19 sixteen, under the law they don't have to call you, and they
20 don't have to tell you that he could talk to them on his
21 own?

22 A. No, I didn't know that. I prefer that they call me and
23 let me know what's going on with my son.

24 Q. Okay. And but you do remember talking to people from
25 the sheriff's office that day?

1 A. Like I said, with the signing paper to give them
2 permission to do the polygraph test, to take the lie
3 detector test. And it's between two and three because I was
4 looking -- I was calling everywhere looking for Quay up til
5 I found out where he was at.

6 Q. Okay.

7 A. 'Cause at the same time he was under house arrest
8 bracelet, and I'm in charge -- was in charge of Quay.

9 Q. Okay. No further questions, ma'am.

10 MR. GRIFFIN: That's all I have of this witness, Your
11 Honor.

12 THE COURT: Very well. You may step down. Thank you,
13 ma'am.

14 A. Um-hum (affirmative).

15 THE COURT: All right. You may call your next witness.

16 MR. GRIFFIN: That's all I have, Your Honor. The
17 Defense rests.

18 THE COURT: All right. Any reply?

19 MR. WAGNER: No, sir.

20 THE COURT: All right. Mr. Foreman, ladies and
21 gentlemen of the jury, a defendant has a Constitutional
22 right to remain silent and require the State to meet its
23 burden of proof beyond a reasonable doubt. The assertion of
24 the Constitutional right not to testify or present evidence
25 must not be considered by you in your deliberations.

1 Under your oath you are to draw no conclusion or
2 inference whatsoever from the fact that the Defendant in
3 this case did not testify or put up evidence. As I stated,
4 the Defendant is not required to prove his innocence and the
5 burden of proof remains upon the State to prove guilt beyond
6 a reasonable doubt. All right.

7 The testimony and evidence in this case has been
8 completed. In other words, all of the facts that you're
9 going to be required to find have been presented. Now I do
10 need to take up some matters with the attorneys. It will
11 take a few minutes.

12 I'm going to suggest that you take a break at this time
13 so I can do that. And when we come back we'll conclude the
14 trial of the case, which will be the arguing by counsel, the
15 charge on the law and then the case will be given to you for
16 your decision.

17 With that, if you would, please -- and again, do not
18 undertake the discussion of the case among yourselves
19 because you have not had a complete case until you've had
20 not only the argument, but also the charge on the law. Very
21 good.

22 If you would, please, retire to the jury room. And you
23 can use this as the morning break and have refreshments or
24 anything of that nature. And if you have any smokers, they
25 can do that, too.

1 (Whereupon the jury exited the courtroom at 11:04 am)

2 **THE COURT:** All right. Anything from the State?

3 **MR. WAGNER:** No, sir.

4 **THE COURT:** Anything from the Defense?

5 **MR. GRIFFIN:** Not at this time, Your Honor.

6 **THE COURT:** All right. Well, now, let's go through the
7 charges. I did the -- reviewed the charges as far as the
8 Court was concerned, the basic charges for the case in
9 chambers with the attorneys. However, the parties have
10 requested part of the charges.

11 First of all, we have the charge of self-defense
12 requested by the Defendant. What does the State say?

13 **MS. SIMMONS:** Your Honor, the State asserts that self-
14 defense is not appropriate in this situation. As you are
15 aware, self-defense has a four prong test. And I believe
16 the first prong is the defendant is without fault in
17 bringing on the difficulty.

18 The Defendant in this case arranged the transaction at
19 his home for a gun -- guns and drugs. He was involved in
20 illegal activity, Judge. And I believe that the State
21 versus Jackson, 87 S.E. 2d 681, and the act of the accused
22 in violation of the law had reasonably calculated to produce
23 the accounts of bringing on the difficulty and bars a self-
24 defense claim, that the fact that he arranged this
25 transaction and was involved in illegal activity involving

1 ---

2 THE COURT: What was Jackson -- what was the cite on
3 it?

4 MS. SIMMONS: The cite, Judge? It is 87 S.E. 2d 681.

5 THE COURT: What year?

6 MS. SIMMONS: 1955, Your Honor. And then State versus
7 Jackson, 681 S.E. 2d 17 from 2009.

8 THE COURT: 681, 2000?

9 MS. SIMMONS: 681 S.E. 2d 17 from 2009.

10 THE COURT: Okay. All right.

11 MS. SIMMONS: And, Judge, I also believe that the
12 second prong is the imminent danger and you actually believe
13 you're in imminent danger of losing your life. I don't
14 believe that there's any testimony that the victim -- that
15 the Defendant actually believed that.

16 In fact, he was in and out of the car multiple times
17 and then chose to go back to the car with a knife. He's
18 certainly not in any imminent danger when he was back in the
19 home and he made the decision to go back outside.

20 And the fourth prong is the Defendant had no probable
21 means of avoiding the danger ---

22 THE COURT: What was the third?

23 MS. SIMMONS: The third prong is the reasonable person
24 standard would entertain the same belief and would -- in
25 order to save himself from serious bodily harm. Judge,

1 there was no indication that the Defendant was at risk of
2 serious bodily harm. The only indication was in his first
3 statement, which he recanted and replaced with his second
4 statement, indicating that while the victim was looking away
5 he attacked him with a knife.

6 And he certainly had other -- if he believed he was in
7 danger, which I submit to the Court he was not, he had other
8 probable means of avoiding the danger. He was in and out of
9 the car. He could have gone back in the house, but he chose
10 to go in the house, bring a knife out to the car and
11 escalate this situation, thus bringing on the danger and
12 making self-defense inapplicable in this case.

13 **THE COURT:** All right. Mr. Griffin.

14 **MR. GRIFFIN:** Your Honor, it's uncontroverted that the
15 alleged victim here went to the residence with a pistol and
16 marijuana. According to the ---

17 **THE COURT:** What it's saying is that that was requested
18 by the or at least understood that that's what he would be
19 doing if he -- and again, all I can do is consider the
20 evidence that has been admitted to include the testimony of
21 the victim. And it seems from the exchanges or whatever
22 with the texts and all that, there was no question, there
23 was no surprise that he was going to bring a pistol and
24 marijuana.

25 So it wasn't as if -- must be first without fault in

1 bringing on the difficulty. The difficulty was him having a
2 pistol and marijuana apparently at his house, I mean, at the
3 Defendant's house. That would suggest that he sort of, by
4 invitation, brought it on.

5 **MR. GRIFFIN:** Yes, but apparently there was something
6 in one of the statements that was admitted by the --
7 subpoenaed by the State that there was some altercation
8 ensued at that time. The Defendant was -- he had a pistol
9 on him and thereafter that he was armed with a deadly
10 weapon, there was some altercation ensued. And apparently,
11 from what I understand, that ---

12 **THE COURT:** Was that before or after he went into the
13 house and got the butcher knife like in the movie?

14 **MR. GRIFFIN:** I think in the -- I think that occurred
15 -- that was based on the second statement from what I
16 understand. The first statement was more pulled out his
17 pocketknife or something along those lines and used that as
18 a defensive measure based on the fact that the ---

19 **THE COURT:** In other words, butcher knife is not a
20 defensive weapon or measure as a pocketknife would be?

21 **MR. GRIFFIN:** Your Honor, that would -- depending on
22 which statement ---

23 **THE COURT:** Well, I'm just asking. You say there's a
24 difference between the statements, one being a pocketknife
25 or a pen knife and the other being a butcher knife, that

1 apparently as far as the weapon which the Defendant chose to
2 use.

3 **MR. GRIFFIN:** Judge, I believe that will be a factual
4 issue to be left for the jury to decide those issues.

5 **THE COURT:** In other words, you say if he'd only used a
6 pocketknife, then it would be self-defense?

7 **MR. GRIFFIN:** Well, she was going into the second
8 statement, Your Honor. Based on the first statement he --
9 along the line there was some altercation that ensued ---

10 **THE COURT:** The point is that the butcher knife would
11 be a deadly weapon. You don't think it can cause severe or
12 moderate injury?

13 **MR. GRIFFIN:** I'm sure any knife, or hand, foot,
14 anything can cause injury if used in a certain way, Your
15 Honor.

16 **THE COURT:** Well, that's why -- our fists and all that.
17 All right. Is there anything else?

18 **MR. GRIFFIN:** No, sir.

19 **THE COURT:** Again, -- all right.

20 (Pause)

21 **THE COURT:** Of course, any charge that is made either
22 on behalf of the State or the Defendant must have a basis in
23 the testimony in evidence. In this particular -- and if
24 there is none, of course, then we don't confuse the jury
25 with an irrelevant or inapplicable statement.

1 And in this case, considering what is required of self-
2 defense, to establish self-defense, the Defendant must be
3 without fault. Now, again, this seems to be a situation
4 that was done by invitation. And if there was any fault in
5 bringing a pistol or the contraband, marijuana, then, of
6 course, both parties were involved in that.

7 The Defendant must have been in actual imminent danger.
8 I remember -- didn't the Defendant -- the testimony is the
9 Defendant had possession of the pistol at one time and took
10 it out and maybe fired it?

11 **MS. SIMMONS:** Yes, Your Honor.

12 **THE COURT:** So apparently he didn't feel so much fear
13 of it that he had possession of the pistol, the thing that
14 he thought was going to put him in imminently bodily harm
15 when he returned the pistol to the victim, which I
16 understand also was in the victim's lap along with the
17 marijuana at the time that the -- returned to the car.

18 And again, it's the return to the car after going --
19 after leaving the dangerous -- if we're supposed to accept
20 that situation and going into the house and acquiring the
21 butcher knife. Of course, one is if he got back into the
22 car, could we not -- considered himself in actual imminent
23 danger unless you -- no reasonable person would bring a
24 butcher knife to a pistol fight if they thought the pistol
25 was going to actually be used against them.

1 And fourth, had no other probable means of avoiding the
2 dangers, sustaining unlawful bodily harm. Of course when he
3 exited the car, went back in the house and got the butcher
4 knife, that was an opportunity for him to avoid any further
5 danger.

6 The Court finds there is no evidence in the record to
7 support self-defense and, therefore, shall not -- the issue
8 will not be submitted to the jury. All right.

9 As far as the request to charge the Defendant, of
10 course, one is the attempted murder and the -- will be
11 submitted to the jury.

12 The question on the lesser included, assault and
13 battery of a high and aggravated nature, under section 16-3-
14 600(b) will be submitted to the jury because it is a
15 statutory definition, a violent crime on the -- if they
16 should find either one of those, attempted murder or assault
17 and battery of a high and aggravated nature, then the issue
18 of possession of a weapon during the commission of a violent
19 crime will be submitted to the jury.

20 However, if they do not find guilt as to either one of
21 those charges, the attempted murder or the lesser included,
22 assault and battery of a high and aggravated nature, then
23 they would not consider the other lesser included.

24 However, for the purposes of this trial, not only will
25 they consider -- the jury be asked to consider attempted

1 murder, but also assault and battery of a high and
2 aggravated nature, but also ...

3 (Pause)

4 **THE COURT:** Assault and battery, first degree, is that
5 a violent crime?

6 **MS. SIMMONS:** No, Your Honor.

7 **THE COURT:** However, it does provide if it's
8 accomplished by means likely to produce death, a great
9 bodily injury. So it would not be subject to the possession
10 of a weapon indictment, but, therefore, I do think it'd be a
11 lesser included.

12 Great bodily injury means bodily injury which causes a
13 substantial risk of death or which causes serious permanent
14 disfigurement or protracted loss of impairment of a function
15 of a bodily member or organ. So I will charge assault and
16 battery, first degree, as a lesser included of the first
17 indictment.

18 What do you say about assault and battery in the second
19 degree, Madame Solicitor?

20 **MS. SIMMONS:** The State objects to that because the
21 evidence is such that there were eleven stab wounds, which
22 would establish great bodily injury. The extent of injuries
23 in this case I do not believe fall within the definition of
24 a moderate bodily injury. I don't believe it would be
25 appropriate to send that to the jury.

1 **THE COURT:** What do you say, Mr. Griffin?

2 **MR. GRIFFIN:** That would be a question of fact for the
3 jury to decide if there was great bodily injury or moderate
4 bodily injury.

5 **MS. SIMMONS:** Judge, if I may add one more thing ---

6 **THE COURT:** Yes, ma'am.

7 **MS. SIMMONS:** In the definition of moderate bodily
8 injury it specifically -- it excludes, except when there is
9 a penetration of the skin, muscles or connective tissues.

10 **THE COURT:** What do you say, Mr. Griffin? Looking at
11 the exception, you see the definition there?

12 **MR. GRIFFIN:** Yes, sir. I don't think we had any
13 medical testimony as to ...

14 **THE COURT:** Well, I think -- are you reading the
15 exception the way I'm reading it?

16 **MR. GRIFFIN:** Except when there is penetration of the
17 skin, muscles or connective tissues ---

18 **THE COURT:** No, the exception is from the first part of
19 that statute. Moderate bodily injury means physical injury
20 requiring the treatment to an organ system or the body other
21 than the skin, muscles and connective tissues of the body.
22 In other words, if it's only to the skin, muscles or
23 connective tissues of the body, then it would not be an
24 injury subject to definition of moderate bodily injury.

25 In other words, you could bruise somebody. They're

1 saying that's not bodily -- moderate bodily injury, except
2 when there's penetration of the skin, muscles or connective
3 tissue that required certain treatment. I think the
4 exception brings it into the definition of moderate bodily
5 injury.

6 MR. GRIFFIN: Yes, sir.

7 THE COURT: All right. As I understand the injuries
8 were to -- penetration to the skin, muscles and connective
9 tissues. Do you read it the same way now, Ms. Simmons?

10 MS. SIMMONS: Judge, there was penetration of the skin
11 and muscles, the skin, muscles and connective tissues and
12 there was repair that was done with staples to the injuries.

13 THE COURT: Well, that's what I'm saying. In other
14 words, it brings it within the definition of moderate bodily
15 injury when there is penetration that has to be repaired.
16 Otherwise, if it's just a bruise, then it's not no moderate
17 bodily injury if there's a bruise to the skin, muscles or
18 connective tissue. So I think that in this particular case
19 assault and battery, second degree, would also be charged.

20 Now, I don't find assault and battery in the third
21 degree. I think that you've got the first three. And
22 that's the ones that would be applicable. All right.

23 So I will charge, obviously, murder -- attempted
24 murder, assault and battery of a high and aggravated nature
25 as a lesser included, and then assault and battery in the

1 first degree as a second lesser included, and then assault
2 and battery in the second degree as a third lesser included.
3 I will not charge assault and battery in the third degree.

4 MR. GRIFFIN: Yes, sir.

5 THE COURT: And as far as the second indictment,
6 possession of a weapon during a violent -- commission of a
7 violent crime, it will be limited to -- consideration only
8 if the jury finds guilt beyond a reasonable doubt as to
9 attempted murder and assault and battery of a high and
10 aggravated nature. All right.

11 I'll note the State's exceptions to the charge that I
12 do give and the Defense exception to the charge I don't
13 give. All right. Anything else?

14 (No response)

15 THE COURT: All right. So 11:30, y'all want a little
16 time. Let me also get the verdict form for you, too. All
17 right. So let's take -- let's take about fifteen minutes.

18 MR. GRIFFIN: Your Honor, we discussed in chambers
19 whether we wanted to re-question him again ---

20 THE COURT: Yes, sir. I'm going to give us about
21 fifteen minutes. And then when we come out before we bring
22 the jury back I'm going to be asking the Defendant if he
23 wishes to testify. All right?

24 MR. GRIFFIN: Yes, sir.

25 THE COURT: Because I want him to have full opportunity

1 to consider his exercise of his rights. All right. So
2 we'll stand at ease until a quarter til.

3 (Whereupon court was in recess at 11:28 am)

4 (Whereupon court reconvened at 11:52 am)

5 **THE COURT:** All right. We're back on the record in
6 State versus Cleveland. All right. Is there anything from
7 the Defendant, or excuse me, from the -- excuse me, anything
8 from the State before we bring the jury back and we have
9 closing arguments?

10 **MS. SIMMONS:** No, Your Honor.

11 **THE COURT:** Before I ask the Defense whether they're
12 ready to have the jury brought in, I do want to again ask
13 Mr. Cleveland whether or not he still has decided not to
14 testify. So, Mr. Cleveland, if you would, please, stand.

15 And you're still under oath. So you don't have to be
16 re-sworn. But you do understand that you do need to
17 determine whether or not you want to exercise your right not
18 to testify or your right to testify. Have you had an
19 opportunity to reconsider?

20 **MR. CLEVELAND:** Yes, sir.

21 **THE COURT:** All right. And what is your decision?

22 **MR. CLEVELAND:** I'm still sticking to the same one, I
23 don't want to testify.

24 **THE COURT:** You do not want to testify?

25 **MR. CLEVELAND:** Yes, sir.

1 **THE COURT:** All right. Again, I find that the decision
2 -- you may be seated. Again, I find the decision is made
3 freely, voluntarily, knowingly and intelligently with the
4 advice of counsel. All right.

5 Is there anything further as far as the charges? As I
6 say, I've noted any charges that I didn't charge that's been
7 requested by the State or the Defendant, it's objected to by
8 the other side, and any charge I do make requested by the
9 State or the Defendant is also objected to by the other side
10 for the record.

11 We'll now proceed. The State will open, the Defendant
12 will argue, the State will close. Any questions about that
13 from the State?

14 **MS. SIMMONS:** No, Your Honor.

15 **THE COURT:** By the Defense?

16 **MR. GRIFFIN:** I missed that, Your Honor.

17 **THE COURT:** I was just saying that the State will open,
18 then the Defendant will argue and then the State will close.

19 **MR. GRIFFIN:** Yes, sir.

20 **THE COURT:** All right. Very good. Ask the jury to
21 join us, please.

22 (Whereupon the jury entered the courtroom at 11:55 am)

23 **THE COURT:** All right. Very well. Let the record
24 reflect the jury and the alternates are in the jury box.
25 Now, Mr. Foreman, ladies and gentlemen of the jury, as I

CLOSING ARGUMENTS - MS. SIMMONS

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1 mentioned earlier, both the State and the Defense has now
2 rested and that the -- we'll have final argument by the
3 State, and the Defense will argue and then the State will
4 close. And after that, of course, I'll give the charge on
5 the law in the case -- on these cases. All right.

6 I'll recognize now the Solicitor's Office for their
7 closing arguments.

8 MS. SIMMONS: Thank you, Your Honor. May it please the
9 Court.

10 THE COURT: Ms. Simmons.

11 MS. SIMMONS: Mr. Griffin. It's almost good afternoon,
12 ladies and gentlemen. We've reached now the point in the
13 trial where I'm going to have two opportunities to talk to
14 you. But the first time I will speak to you, we're just
15 going to discuss the law and how it applies in this case.
16 I'm going to discuss what you will be deliberating as far as
17 the charge the Judge will give you.

18 And Mr. Griffin's going to speak to you again on his
19 closing argument. And then I'll have an opportunity to come
20 back and speak to you as to the specific evidence you heard
21 in this case and why I believe the Defendant's guilty. But
22 for now we're just going to have a quick overview of the
23 law.

24 The Defendant in this case is charged with attempted
25 murder. And the Judge is going to explain this to you

CLOSING ARGUMENTS - MS. SIMMONS

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1 further, but I want you to understand that attempted murder
2 is a person who with the intent to kill attempts to kill
3 another person with malice aforethought either express or
4 implied.

5 You brought your common sense with you. I think you
6 know what attempting to kill someone is and some of these
7 definitions. But intent and malice have specific legal
8 definitions.

9 Intent can be proved by four things in this case. Any
10 of these four would suffice. It's purpose, knowledge,
11 recklessness or criminal negligence. Knowledge being you
12 know what you're doing and you choose to do it. Purpose
13 being you -- an example, you took a knife and went to the
14 car with the purpose of hurting someone. Recklessness, you
15 understand the definition of this. And criminal negligence
16 can be acting with a deadly weapon in a negligent way that
17 harms someone. So there's four ways intent can be proven in
18 this case.

19 Malice can be either express or implied. You can
20 overtly say I want to kill you. That is -- that is express
21 malice. Implied malice can be -- you can imply malice from
22 the intent to kill, the infliction of serious bodily harm or
23 acting with a depraved heart. A depraved heart is basically
24 a simple indifference to human life and carelessness as to
25 what you were doing.

CLOSING ARGUMENTS - MS. SIMMONS

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1 You can infer malice from the use of a deadly weapon.
2 The deadly weapon in this case would be the large knife that
3 was used. It can also be a wrongful act intentionally
4 without just cause or excuse. That would be that you acted
5 in a wrongful manner and you were not justified in doing so.

6 And then wrongful intent to injure another with a
7 wicked heart or a depraved spirit intent on doing wrong
8 meaning that you had ill-will in your heart and you intended
9 to cause great bodily harm to this person. There's a lot of
10 different ways intent and malice can be proven in this case.

11 We believe, the State believes that we have proved
12 intent and malice to you because the Defendant had to take
13 the affirmative steps of going into the house -- leaving the
14 car, going into the house, picking out a knife, coming back
15 to the car and then choosing to stab the victim not once,
16 but eleven times. Each time the knife was used and each
17 injury the knife caused, each of those were done with malice
18 and intent.

19 The Judge is going to charge you on some lesser
20 included offenses. While it's the State's position that
21 lesser included offenses do not apply in this case, I want
22 to briefly go over those with you.

23 The first lesser included you're going to hear is
24 assault and battery of a high and aggravated nature. That
25 is a great bodily injury to someone without the elements of

CLOSING ARGUMENTS - MS. SIMMONS

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1 malice or intent, that you injured someone in a way that
2 could have -- was likely to cause death or great bodily
3 injury, but you didn't necessarily intend to kill them. So
4 it takes out one element from attempted murder when you drop
5 down to assault and battery of a high and aggravated nature.

6 Assault and battery, first degree, is the next lesser
7 included you're going to hear. And that is an offer or
8 attempt to injure someone that could have resulted in great
9 bodily injury.

10 In this case the State submits that that would not be
11 appropriate because this was not an offer or attempt to
12 injure someone with great bodily -- that would have produced
13 great bodily injury. This is an actual completed act that
14 the great bodily injury did occur. So there was no offer or
15 attempt, there was a completion:

16 The last lesser included you'll hear from the Judge
17 about is assault and battery in the second degree. And that
18 requires moderate bodily injury to have resulted. Moderate
19 bodily injury does not involve the risk of death or serious
20 injury to your body.

21 And it's the State's position that eleven stab wounds,
22 inflicted in the way they were, these were not nicks, these
23 were serious wounds that actually hit organs, that there is
24 no way that those wounds can be considered moderate bodily
25 injury. The only reasonable conclusion is that they're

CLOSING ARGUMENTS - MS. SIMMONS

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1 great bodily injuries. .

2 If you chose to convict the Defendant of attempted
3 murder or assault and battery of a high and aggravated
4 nature, those first two charges I just discussed with you,
5 you will move on to the charge of possession of a weapon
6 during the commission of a violent crime.

7 Attempted murder and assault and battery of a high and
8 aggravated nature are determined by your Legislature under
9 the South Carolina law to be violent crimes. If you are
10 convicted of a violent crime, you can consider was the
11 violent crime committed while in the possession of a weapon.
12 Possession of a weapon in this case would be the knife that
13 was in -- that was used to inflict the great bodily injury.

14 The Judge is also going to charge you on lots of things
15 regarding the law. It's a lengthy charge. And I submit to
16 you, pay careful attention because it is complicated.

17 But one of the things he is going to also charge you on
18 is reasonable doubt. And reasonable doubt is the kind of
19 doubt that would cause a reasonable person to hesitate to
20 act. It is not beyond all doubt.

21 And I submit to you, the most important tool you
22 brought with you as jurors is your common sense. And if you
23 use your common sense while applying a reasonable doubt
24 standard, that is -- that is the standard that you should
25 use. Reasonable doubt is not beyond all doubt.

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1 The Judge is also going to tell you -- discuss with you
2 because there are some statements that were given in this
3 case, he's going to discuss with you voluntariness and the
4 elements you will have to go over while determining if the
5 statements that were given in the case were voluntary and
6 given as a result of a non-coercive environment.

7 I do want to remind you that there are no special
8 questioning requirements for juveniles in South Carolina.
9 Miranda warnings are the same whether you're sixteen or
10 sixty.

11 And the law in South Carolina is written that if you
12 are charged with attempted murder, the law presumes you were
13 an adult at the age of sixteen and treats you as an adult.
14 You should look at this case no differently based on the
15 Defendant's age.

16 There's no requirement that a parent has to be present
17 under the law when a sixteen year old is questioned by law
18 enforcement. There's not even a requirement that the parent
19 has to be present if the Defendant is fourteen.

20 So you have a lot to think about. And I'm going to get
21 a chance to talk to you -- come back and discuss the
22 evidence in this case. Keep in mind the elements of the
23 crime in this case as you hear both closing arguments. And
24 again, the Judge will charge you on the law at the end of
25 the case as well. I'll be back to talk to you in a few

CLOSING ARGUMENTS - MR. GRIFFIN

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1 minutes. Thank you.

2 THE COURT: Mr. Griffin.

3 MR. GRIFFIN: May it please the Court. Again, my name
4 is Charles Griffin. I'm representing Mr. Cleveland here.

5 In the opening I told you there were a number of
6 discrepancies involved in this case. I think you heard them
7 on the -- when the 911 tape was played. It was about four
8 different versions by the victim of what occurred here.

9 It's unfortunate that Mr. Cleveland [sic] got injured
10 in this case. He went to the residence to sell marijuana
11 and a gun to a sixteen year old juvenile and apparently some
12 altercation occurred.

13 We're not quite clear what occurred. Based on the
14 statements of Mr. Kirkland, initially he didn't know who did
15 it, or what went on, or how it happened or things of that
16 nature. And later on it was I went over there to smoke some
17 weed and he jumped on me. A number of different
18 discrepancies in his version of events here.

19 But also Mr. Cleveland [sic], he never had been charged
20 with any crimes here. And he went to the house armed with a
21 deadly weapon, with marijuana apparently to engage in
22 whatever activity he was engaging in. And thereafter
23 something happened and he was injured.

24 And I believe Mr. Cleveland, I mean, Mr. Kirkland
25 basically was engaging in some behavior they had no business

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1 engaging in. And it's unfortunate that he was injured, but
2 one could say that they assumed the risk by engaging in
3 something going wrong, arguments occurring or whatnot
4 happened there, pretty unclear.

5 Mr. Cleveland, I believe he was held for about eight
6 hours, apparently gave -- the State has proffered some
7 statements that he gave. At the time he was a juvenile,
8 sixteen years old.

9 I believe Mr. Kirkland was somewhat older, an adult.
10 He had the presence of mind to put the pistol back in the
11 glove compartment, but never could come -- never could
12 figure out what happened to the marijuana he was riding
13 around with.

14 But, thereafter, Mr. -- the Defendant was subject to
15 eight hours of being held without counsel or his mother
16 present during questioning. I believe the Judge is going to
17 charge you that on juveniles that basically they're subject
18 -- to confessions --subject to the totality of the
19 circumstances to determine whether they're voluntary or not.

20 And the law is that special caution should be used when
21 assessing the voluntariness of juvenile confessions,
22 particularly when they're prolonged or repeated questioning
23 or when the interrogation occurs in the absence of a parent,
24 lawyer or other family adult and that the waiver must be
25 voluntary, product of free and deliberate choice rather than

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1 intimidation, coercion or exception. Lengthy interrogation
2 or incommunicado incarceration could be strong evidence of
3 coercion.

4 I believe there was some testimony by an officer that
5 Mr. Cleveland was tired, that the second statement wasn't
6 drafted, there's no statement -- signature that was
7 voluntary, he just signed some notes that were prepared by
8 the officer. And under the law you must find beyond a
9 reasonable doubt that the statement was given voluntarily.

10 The bottom line is he was held for eight hours and
11 until -- his mother wasn't called until he was already
12 arrested about 2:00 in the morning.

13 I believe also there's going to be some additional
14 lesser included offenses as the solicitor stated, assault
15 and battery high and aggravated nature, assault and battery,
16 first degree, assault and battery, second degree.

17 A while back the Legislature kind of changed the format
18 of assault and battery in this State. The lesser included
19 offenses are what can be additionally -- what can be found
20 by the jury instead of finding the more severe -- more
21 enhanced offense of attempted murder.

22 There's really no intent to kill here anybody as in the
23 statute and that Mr. Kirkland went over there with a pistol.
24 He said he bought pistols for protection. Selling pistols
25 -- apparently buying them to resell. I don't know if he was

1 buying them for his protection or what was going on with it.

2 But what we have here is that this never would have
3 occurred if he hadn't gone over there with criminal
4 intentions in mind. And he has never been charged with
5 anything.

6 So also getting back to the lesser included offenses
7 that include -- one includes great bodily injury, meaning
8 bodily injury which causes substantial risk of death or
9 which causes serious permanent disfigurement or protracted
10 loss or impairment of the function of a bodily member or
11 organ.

12 We don't have any kind of permanent disfigurement or
13 protracted loss of any -- there's been no doctor to testify
14 as to whether or not he suffered any significant loss or
15 impairment of any functions of any bodily member or organ.

16 Moderate bodily injury means physical injury requiring
17 treatment to the organ system of the body other than skin,
18 muscles and connective tissues except where there is
19 penetration of the skin, muscles and connective tissues that
20 requires surgical repair of a complex nature when the
21 treatment of the injury requires the use of regional or
22 general anesthesia. Basically here Mr. Kirkland basically
23 had some wounds sewn up, basically just from what I could
24 tell that required some type of general regional anesthesia.

25 But those are the choices you will have when you get

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1 back to the jury room on these issues of the lesser included
2 offenses. And we would ask in mind that you carefully
3 consider and weigh what occurred here and especially who
4 instigated or how this -- how this whole situation arised.

5 It never would have occurred if this adult gentleman
6 had -- didn't go over there with a pistol and marijuana to
7 sell to a juvenile. It's unfortunate he got injured. Like
8 I said, there was some altercation occurred at some point
9 and that we would ask that you genuinely carefully consider
10 all of the elements of each offense.

11 And it's our contention that Mr. Cleveland -- Mr.
12 Cleveland is not guilty of the offense of attempted murder.
13 There was no intent to kill anybody here. And basically
14 given the circumstances surrounding this whole matter, he
15 should be found not guilty. Thank you.

16 **THE COURT:** Ms. Simmons.

17 **MS. SIMMONS:** Thank you, Your Honor. Ladies and
18 gentlemen, this is my final opportunity to speak with you.
19 Before I talk to you about the State's case I want to
20 address some issues that were brought forth by the Defense.

21 The Defense has made a lot of issue with this
22 juvenile's confession and Miranda. The Defendant didn't
23 need his mom to commit this crime. He actually made sure
24 she wasn't there on his text messages before he had the
25 victim come over.

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1 If you're grown up enough to stab another person eleven
2 times, you are grown up enough to talk with law enforcement
3 without your mother being present. You're grown up enough
4 to want to buy a gun and drugs, you are grown up enough to
5 meet with the police.

6 I would remind you under South Carolina law sixteen
7 years of age is an adult, and he's charged criminally as an
8 adult. Just because his biological age may be sixteen does
9 not mean that is how smart he is or how street smart he is
10 and that he understands the criminal justice system.

11 The biggest thing the Defense has done in this case is
12 what I call villainization of the victim. The victim in
13 this case told you he's only got a criminal history for
14 drinking under age.

15 He was only twenty-one years old when this crime was
16 committed against him. He could legally possess a gun then.
17 He was twenty-one. He was not thirty as the Defense
18 asserted to you in their opening statements.

19 And most importantly, the victim was not at the Wal-
20 Mart in Seneca trying to sell guns and marijuana to little
21 school children. He was going to the Defendant's house, who
22 was his relative, who had arranged for him to bring this gun
23 and this marijuana.

24 And Sergeant Tinsley, herself, told you charging the
25 victim in this case was not appropriate and wasn't the right

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1 thing to do. He is the victim in this case. He is not a
2 defendant and you should not treat him as such.

3 What kind of message would the sheriff's department
4 send if they said, oh, I'm sorry, you had a gun and drugs,
5 you deserved to be stabbed? That makes no sense at all. It
6 would discourage people from reporting illegal activity.
7 Just because the victim had a gun and drugs does not mean it
8 was okay for the Defendant to stab him not once, not twice,
9 but eleven times.

10 The Defense has also made some allusion to self-defense
11 in this case. There is not one smidgen of self-defense in
12 this matter. And the Judge is not going to charge you on
13 the issue of self-defense. And you should not even consider
14 self-defense.

15 The victim told you he never acted in an aggressive
16 manner towards the Defendant. The Defendant, Sergeant
17 Tinsley told you, had absolutely no defensive wounds. All
18 the victim's wounds were concentrated on the right side of
19 his body, which is consistent with being attacked from the
20 passenger's side of the car, coming from that side and
21 ending up in a defensive posture.

22 If you look at the wounds when you see the pictures,
23 you can see they start here and they kind of begin to move
24 up like if I was upright when I saw someone coming at me and
25 he gets me in the chest and the shoulder, but as I realize

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1 what's happening, I start to move in a defensive posture to
2 try to protect myself and get away.

3 You're going to notice the next wounds are a wound that
4 comes all the way through the arm like I'm trying to block
5 the knife. The knife went all the way through. Then they
6 start to move down my back and end up with the wounds in the
7 top of my head because I'm bent over trying to protect
8 myself. There is no evidence other than the fact that these
9 are defensive wounds by a man who was trying to protect
10 himself from what the Defendant, himself, described as a
11 knife like the one Michael Myers used in Halloween.

12 The Defense has also made an issue of this lengthy
13 interrogation that the Defendant had. The Defendant stayed
14 up all night playing video games with his buddy and then
15 slept til noon on the day this happened. So the point his
16 interrogation started, he had only been awake for six hours.
17 And arguably, he's used to being up all night because he
18 plays video games all night.

19 The long interrogation was based on the fact that law
20 enforcement was gathering their evidence, gathering their
21 information and trying to find out exactly what happened.
22 And the fact -- the Defendant went to the restroom, he had a
23 drink, they offered him food and he sat with Sergeant
24 Tinsley watching TV for a significant period of time while
25 they were waiting on additional evidence to be brought back

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1 to the sheriff's department.

2 This was not some oppressive police environment like
3 you see on TV where he was unmercifully questioned for eight
4 hours. He was not questioned for nearly the amount of time
5 he was actually in police custody. And you heard no
6 indication that threats or coercion were used to elicit this
7 confession from him.

8 Now I want to move on and talk about exactly what you
9 heard from the prosecution in this case. You heard the
10 victim's testimony in this case. And you heard what he said
11 from the witness stand. It's your job to determine if he
12 was credible and consistent.

13 I submit to you what he told you in the statement he
14 gave to law enforcement has been consistent this entire
15 time. And it's consistent with the evidence in this case
16 and his injuries. His testimony is clear and to the point
17 and honest.

18 The delay and the hesitation of reporting who did this
19 to him may not seem reasonable to a lot of people, but to
20 him it was reasonable. Number one, he had a gun and drugs.
21 And number two, this was his cousin. He couldn't fathom why
22 he would do it to him and he didn't really want to get him
23 in trouble. But he also tried to kill him. So he did come
24 -- he did give -- was forthcoming with who committed this
25 crime.

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1 You're going to have the text messages in the jury room
2 also. I want to remind you that the victim was not some
3 criminal mastermind in all of this. He was the one who was
4 solicited to bring the gun and the marijuana to the
5 Defendant's house. He did not start this.

6 This man is covered in wounds. They are clearly
7 defensive wounds. You also heard from Sergeant McMahan who
8 went to the hospital and talked to the victim and assessed
9 the wounds in this case. He took a lot of pictures. And
10 you're going to have those in the jury room with you.

11 And I want to show you exactly what I was talking about
12 when -- these are defensive wounds. You can see right here,
13 the wound is through the arm. And you can also see right
14 here, there is a chest wound. It's consistent with your
15 moving and you're -- and the injuries wrap around your body.

16 This is the arm where the knife goes all the way
17 through and comes out the other side. Then you flip over to
18 the victim's back and you're looking under the arm where it
19 would be exposed if you were trying to protect yourself.

20 Your back, your shoulder. And these wounds finish up
21 underneath your ear and in the top of your head. All these
22 things were documented by Sergeant McMahan.

23 You also heard from Sergeant Tinsley in this case. She
24 took two statements from the victim -- from the Defendant.
25 The first statement he told her there was some sort of

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1 altercation, I acted in self-defense, but then the evidence
2 didn't point to that. She went back and talked to him
3 again.

4 The second statement matches what evidence she had and
5 the victim's account. She told you she didn't threaten him,
6 she didn't intimidate him, she didn't raise her voice at
7 him. You observed her demeanor and credibility during the
8 course of this trial. And be the judge of it yourself.
9 Does she appear to be someone who would threaten and coerce
10 a confession from someone? I submit to you not.

11 When you look at the Defendant's second statement --
12 let's talk about what he said. I intended on claiming and
13 getting the gun and weed and money without paying him.
14 Hakeem caught Quay trying to steel the gun and weed and gave
15 him the what the fuck look. Quay decided to stab Hakeem. I
16 didn't mean to hurt him bad. Didn't mean to hurt him bad?
17 He stabbed him eleven times.

18 Then he gives a little more detail. He went to the
19 car. When he initially got there he got the gun and took it
20 to the back of the house and test fired it. Then he went
21 later and goes into the house, got a knife from the kitchen
22 and then went back to the car and stabbed the victim. While
23 he was looking away he began to stab him.

24 Everything was an adrenaline rush. And he thought he
25 stabbed him only twice. But then he ran away and hid in the

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1 woods. Ladies and gentlemen, the second statement is the
2 truth of what happened here with the exception of the fact
3 that he doesn't want to admit that he stabbed his cousin
4 eleven times.

5 You also heard from Captain Reed in this case. There
6 were no threats or intimidation from him to get the second
7 statement. He got the Defendant a drink. And he says he
8 would have immediately stopped questioning if he had wanted
9 an attorney.

10 You also heard the 911 call in this case. The 911 call
11 corroborates the evidence you've seen and the victim's
12 account. The victim does not sound like an aggressor in the
13 911 call. After some prompting he does tell what happened
14 and his cousin was involved. And he expresses concern
15 seeing this trial again.

16 This is not someone who went out that day intent on
17 engaging in reckless behavior that would have resulted in
18 the attempted murder. He is not a hardened criminal. You
19 had a chance to observe him throughout the course of this
20 trial and the 911 call.

21 You also heard from Cindy Blackwell. She doesn't have
22 a dog in this fight. She told you she was at her produce
23 stand, she'd got some nursing training and blood spurting
24 out of his head when he gets to her. There's blood
25 everywhere.

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1 I believe she also told you, thought he would die
2 before somebody got help. And then she told you it was a
3 life threatening event. Ladies and gentlemen, there's
4 nothing in this evidence that suggests anything other than
5 this is a great bodily injury and attempt to take someone's
6 life.

7 That was corroborated by Joe Anderson, who testified as
8 an expert in this case. He works for Oconee Medical Center.
9 He told you about the stab wounds, the blood, even tried to
10 get a life flight for this victim because the injuries were
11 so severe, needed to be in the trauma center within the
12 golden hour to save his life. It's clear that the Defendant
13 intended to kill Hakeem that day. There's no question that
14 there's great bodily injury here.

15 You were sworn by the Judge at the beginning of this
16 case to uphold the law. You can't judge the victim by his
17 lifestyle. Just because you may not understand the life in
18 which they live does not mean you can judge it. You only
19 apply the law as it is given to you. You were sworn to
20 apply the law.

21 No one deserves to be stabbed eleven times and left in
22 a bloody heap with an injured liver and a punctured lung.
23 Hakeem never threatens the victim -- the Defendant in this
24 case in any way, shape or form. He even told you, if he'd
25 needed money, I would have given it to him.

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1 I submit to you that selling a gun and a little bit of
2 marijuana is in a totally different league than trying to
3 kill someone. Selling a gun and having a little bit of
4 marijuana is like playing on a little league baseball team.

5 When you try to kill someone and commit attempted
6 murder, you're playing with the major league baseball team.
7 You cannot judge these people by those standards. This
8 Defendant chose to play on the major league baseball team.

9 Think about how much time and how much thought goes
10 into stabbing someone eleven times. The Defendant had to
11 walk to the house, look for a knife, get that knife, bring
12 it back out to the car and choose to stab Hakeem eleven
13 times. With every single swipe of the knife, each blow
14 could be fatal to Hakeem.

15 Eleven times. Let's think about it, one, two, three,
16 four, five, six, seven, eight, nine, ten, eleven. Malice
17 and intent with every single swipe of that knife and every
18 time that knife penetrated Hakeem's skin. Eleven stab
19 wounds, ladies and gentlemen.

20 There is only one verdict in this case. And it is
21 guilty of attempted murder and possession of a weapon during
22 the commission of a violent crime. Thank you.

23 **THE COURT:** Mr. Foreman, ladies and gentlemen of the
24 jury, as jurors in this case you have certain functions and
25 responsibilities to perform which are entirely separate and

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1 distinct from mine as the trial judge. I am prohibited by
2 the Constitution of our State from charging you on the facts
3 of this case. I am also prohibited from discussing the
4 facts of the case with you or in any way intimating what my
5 feelings, if any, are about the facts of this case.

6 It is your responsibility and yours alone to pass upon
7 all issues of fact presented in the case. I would therefore
8 charge you that if during the course of the trial or during
9 my charge you have been given or left with an impression or
10 feeling that I do have a personal feeling about the facts of
11 the case, I would specifically instruct you to disregard
12 that feeling or impression.

13 Moreover, you are the sole judges of what the testimony
14 -- and not the arguing of counsel. It is also your duty and
15 yours alone to weigh the testimony and evidence in the case
16 and to pass upon the credibility or believability of the
17 witnesses.

18 In this connection you have the right to believe all
19 that a witness tells you or disbelieve all that a witness
20 tells you. You have the right to believe a part of what a
21 witness tells you and disbelieve a part of what a witness
22 tells you. You have the right to take into consideration
23 any bias, prejudice or interest you feel a witness might
24 have in the case. I say this merely to emphasize that the
25 weight you see fit to give all the testimony, to the

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1 credibility of the witnesses as well as all the issues of
2 fact are for your sole determination.

3 As judges of the facts you are the sole judges of the
4 credibility, that is the believability of the witnesses who
5 have testified in this case. In passing upon their
6 credibility you may take into consideration many things,
7 such as the appearance and manner of the witness on the
8 stand, sometimes referred to as the demeanor of the witness.

9 What was the witness' -- was the witness forthright or
10 hesitant? Was the witness' testimony consistent or did it
11 contain discrepancies? What was the ability of the witness
12 to know the facts about which he or she testified? Did the
13 witness have a cause or a reason to be bias and prejudiced
14 in favor of the testimony he or she gave? Was the testimony
15 of the witness corroborated or made stronger by other
16 testimony in evidence? Or was it made weaker or impeached
17 by such other testimony in evidence?

18 As jurors you have the right to believe a small portion
19 of a witness' testimony and discard the larger or vice
20 versa. You may believe all of a witness' testimony or not.
21 Most certainly you do not determine the matter of
22 credibility or believability by counting up the number of
23 witnesses who may have testified on behalf of the parties.

24 Now, the rules of evidence ordinarily do not permit
25 witnesses to testify to opinions or conclusions. An

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1 exception to this rule exists for witnesses we call expert
2 witnesses. A witness, who by education and experience has
3 become expert in some art, science, profession or calling
4 may state an opinion as to a relevant or material matter in
5 which the witness claims to be an expert. They may also
6 state the reasons for the opinion.

7 You should consider any expert opinion received in
8 evidence in this case. And like any other evidence, give it
9 the weight you think it deserves. If you decide that the
10 opinion of an expert is not based on sufficient evidence, or
11 experience, or education or if you conclude that the reasons
12 given in support of the opinion are not sound or the opinion
13 is outweighed by other evidence, you may disregard the
14 opinion entirely.

15 An expert witness' testimony is to be given no greater
16 weight than any other witness simply because the witness is
17 an expert. Further, you're not required to accept an
18 expert's opinion even though it is not contradicted.
19 Throughout this entire process you have but one single
20 objective, and that is to seek the truth regardless of from
21 what witness the testimony may have come.

22 Now, by the same Constitution and law which makes you
23 the finders of the facts and evidence as I've discussed with
24 you, I am, as the Judge, made the sole and only instructor
25 in the law. You must accept as correct the law which I

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1 charge and apply to it the evidence as you find it and reach
2 your verdict.

3 If I should make an error in the law as I instruct it
4 to you, there's another time and place that error can be
5 considered, and if necessary, corrected. But for the
6 purpose of this case today, you must accept the law as I
7 charge it to you to be the correct law.

8 And finally I charge you in this regard, that you, nor
9 for that matter, I might -- should we be concerned with the
10 law -- what we think -- with what we think the law ought to
11 be, but rather what I charge you -- charge you the law is.

12 The Defendant has pled not guilty to this indictment.
13 And that plea puts the burden upon the State to prove the
14 Defendant guilty. A person charged with a criminal offense
15 in South Carolina is never required to prove himself
16 innocent.

17 I charge you that it is an important rule of law that
18 the Defendant in a criminal trial, no matter what the
19 seriousness of the charge may be, will always be presumed to
20 be innocent of the crime for which the indictment or
21 indictments were issued unless guilt has been proven by the
22 evidence satisfying you of the guilt beyond a reasonable
23 doubt. This presumption of innocence does not end when you
24 begin your deliberations, but it accompanies the Defendant
25 throughout the trial and until you reach a verdict of guilt

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1 based upon the evidence satisfying you of that guilt beyond
2 a reasonable doubt.

3 The presumption of innocence is like a robe of
4 righteousness placed about the shoulders of the Defendant
5 which remains with the Defendant until it has been stripped
6 from the Defendant by evidence satisfying you of the
7 Defendant's guilt beyond a reasonable doubt.

8 The presumption of innocence is not a mere legal
9 theory. It's not just a legal phrase. It is a substantial
10 right, which every defendant is entitled to unless you, the
11 jury, are satisfied from the evidence of the Defendant's
12 guilt beyond a reasonable doubt.

13 What is a reasonable doubt? A reasonable doubt is the
14 kind of doubt that would cause a reasonable person to
15 hesitate to act. I instruct you then and emphasize the fact
16 that the Defendant did not testify or put up evidence is not
17 a fact to be considered by you in any way in your
18 deliberation and in your consideration of the question of
19 whether the State has proven the Defendant is guilty or not
20 guilty of the charges in the indictments. It must not be
21 considered by you in any manner whatsoever.

22 A defendant has the Constitutional right to remain
23 silent. And that exercise -- and the exercise of this right
24 must not be considered by you in your deliberations. I
25 repeat, under your oath, you are to draw no conclusion

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1 whatsoever from the fact that the Defendant in this case did
2 not testify.

3 The fact that the Defendant did not testify should not
4 even be discussed in the jury room. The burden of proof as
5 I have stated to you is on the State. The Defendant is not
6 required to prove his innocence. The burden of proof
7 remains on the State to prove guilt beyond a reasonable
8 doubt.

9 There are two types of evidence which are to be --
10 which are generally presented during a trial, direct
11 evidence and circumstantial evidence. Direct evidence is
12 the testimony of a person who claims to have actual
13 knowledge of a fact such as an eyewitness. It is evidence
14 that immediately establishes the main fact to be proved and
15 does not require a deduction.

16 Circumstantial evidence is proof of a chain of
17 circumstances and circumstances indicating the existence of
18 a fact. It is evidence which immediately establishes
19 collateral facts from which the main fact may be inferred.
20 Circumstantial evidence is based on inference and not on
21 personal knowledge or observation.

22 Crimes may be -- crimes may be proven by circumstantial
23 evidence. The law makes no distinction between the weight
24 or value to be given to either direct or circumstantial
25 evidence. However, to the extent the State relies on

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1 circumstantial evidence, all of the circumstances must be
2 consistent with each other and when taken together point
3 conclusively to the guilt of the accused beyond a reasonable
4 doubt. Circumstances merely portray the Defendant's
5 behavior as suspicious, the proof has failed.

6 The State has a burden of proving the Defendant guilty
7 beyond a reasonable doubt. This burden rests with the State
8 regardless of whether the State relies on direct evidence,
9 circumstantial evidence or some combination of the two.

10 You should weigh all the evidence in the case. After
11 weighing all of the evidence if you are not convinced of the
12 guilt of the Defendant beyond a reasonable doubt, you must
13 find the Defendant not guilty.

14 A statement allegedly to have been made by the
15 Defendant has been admitted into evidence in this case.
16 While the Court has determined that the statement is
17 admissible, I instruct you that you make the ultimate
18 decision on whether or not the Defendant even made the
19 statement.

20 If the statement -- if the Defendant did not make the
21 statement, you must determine, or excuse me, if the
22 Defendant did make the statement, you must determine whether
23 the statement was made by the Defendant voluntarily and of
24 his own free will. This means that the statement was not
25 caused by pressure, force, fear, threat, coercion or

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1 intimidation or by hope, or promises, leniency or a reward
2 of any kind.

3 In determining whether the statement was voluntary you
4 should consider both the characteristics of the Defendant
5 and the details of the questioning. Some of the factors
6 that you must consider are, one, the age of the Defendant,
7 the Defendant's education or lack of education, the
8 Defendant's mental ability or capacity, the Defendant's IQ
9 or intelligence, the Defendant's background and environment,
10 the place and length of detention, the nature of the
11 questioning and the advice or lack thereof to the Defendant
12 of his Constitutional rights including, but not limited to,
13 the right to remain silent, that any statement could be used
14 against him in a court of law, the right to have a lawyer
15 present, that if he could not afford a lawyer, a lawyer
16 would be appointed to represent him without cost, and that
17 he could stop making a statement at any time.

18 You must carefully consider all of the surrounding
19 circumstances before you can give any weight to an alleged
20 statement. The State has the burden of proving beyond a
21 reasonable doubt that the alleged statement was voluntary.
22 If you determine it was, you may give the statement any
23 further consideration that you deem proper. You must decide
24 that the weight, if any, should be -- that should be given
25 to the alleged statement.

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1 If you determine that the alleged statement was not the
2 free and voluntary statement of the Defendant, you should
3 not consider the statement at all.

4 The State has proffered, as I say, a -- the State has
5 proffered statements claimed to have been made by the
6 Defendant. You must find that these statements were
7 voluntarily made by the Defendant. And this voluntariness
8 must be established by the State beyond a reasonable doubt.

9 Statements of juveniles are reviewed under the totality
10 of the circumstances. In a juvenile case the totality
11 approach requires an evaluation of the juvenile's age,
12 experience, education, background and intelligence as well
13 as the circumstances regarding the confession.

14 Special caution should be used in insuring the -- or
15 assessing, excuse me, special caution should be used when
16 assessing the voluntariness of a juvenile confession
17 particularly when there is prolonged repeated questioning or
18 when the interrogation occurs in the absence of a parent,
19 lawyer or other friendly adult.

20 A waiver must be voluntarily in the sense that it was
21 the product of a free -- the waiver must be voluntary in the
22 sense that it was the product of a free and deliberate
23 choice rather than the intimidation, deception or coercion.
24 Lengthy interrogations or incommunicado incarceration could
25 be strong evidence of coercion. Now, a confession of a

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1 juvenile is not per say involuntarily simply because it is
2 obtained without the presence of counsel, of a parent or
3 other interested adult.

4 Now, in order to establish criminal liability, intent
5 is required. For example, the mental state required to be
6 proven by the State for a particular crime must be purpose,
7 intent, knowledge or recklessness. Criminal intent must be
8 proven by the State beyond a reasonable doubt. Criminal
9 intent is always a matter that must be determined by the
10 jury from the circumstances surrounding the situation.

11 There is no way to prove intent to a mathematical
12 certainty. There is no way to -- medical science can't
13 dissect a person's brain and determine what the person had
14 in mind. So the law says that criminal intent may be
15 inferred from the circumstances shown to have existed. This
16 is how to make a determination of whether or not the element
17 requiring intent was present.

18 It's not necessary to establish intent by direct or
19 positive evidence. But attempt may be established by
20 inference in the same way as any other fact by taking into
21 considerations the acts of the parties and all the facts and
22 circumstances of the case.

23 Criminal intent is a mental state, a conscious
24 wrongdoing. It is up to you to determine what the Defendant
25 intended to do based on the circumstances shown to have

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1 existed.

2 Criminal intent is a state of mind that operates
3 jointly with an act or commission of a crime. Criminal
4 intent is a mental state. Criminal liability is normally
5 based upon the concurrence of two factors, an evil meaning
6 mind and an evil doing hand.

7 Suspicion, however, is not -- however strong is not
8 enough to sustain a conviction. The evidence presented by
9 the State must be substantial evidence that tends to prove
10 the guilt of the Defendant beyond a reasonable doubt.

11 Now, there are two indictments in this case. The
12 Defendant, Laquavius Tyshawn Cleveland, is charged with
13 attempted murder and possession of a weapon during the
14 commission of a violent crime pursuant to sections 16-3-29
15 and 16-23-49 -- 490 of the South Carolina code of law,
16 respectively.

17 I'll remind you that the fact the Defendant was
18 arrested, charged and indicted in this case is not evidence
19 in this case and cannot be considered by you as evidence of
20 guilt in this case. Nor does it create any presumption or
21 inference of guilt.

22 This document of indictments are simply formal written
23 instruments which contain the charges made against the
24 Defendant. It is the formal documents or they are the
25 formal documents by which the

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1 court.

2 An indictment number, or excuse me, the Defendant is
3 charged in one of these indictments with attempted murder.
4 And in order to prove this crime the State must prove that
5 the Defendant attempted to kill another person with malice
6 aforethought, either express or implied.

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

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

17 Malice aforethought may be express or inferred. These
18 terms, express or inferred do not mean different kinds of
19 malice, but merely the manner in which malice may be shown
20 to exist, that is, either by direct evidence or by inference
21 from the facts and circumstances which are proved.

22 Express malice is shown when a person speaks or words
23 which express hatred or ill-will for another or when the
24 person prepared beforehand to do the act which was later
25 accomplished. For example, lying in wait for a person or

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1 any of the other acts of preparation going to show that the
2 deed was within the Defendant's mind would be express
3 malice. Malice may be inferred from conduct showing a total
4 disregard for human life or conduct which is likely to cause
5 death or great bodily harm depending on the facts and
6 circumstances of each case.

7 If facts are proved beyond a reasonable doubt raise
8 sufficient, excuse me, if facts are proved beyond a
9 reasonable doubt sufficient to raise an inference of malice
10 to your satisfaction, this inference must -- would be simply
11 an evidentiary fact to be considered by you, the jury, along
12 with the other evidence in the case. And you may give it
13 the weight you decide it should receive.

14 A specific intent to kill is not an element of
15 attempted murder, but there must be a general intent to
16 commit serious bodily injury. Intent means attending result
17 would actually occurs, not accidentally or involuntarily.
18 Intent may be shown by acts and conduct of the Defendant and
19 other circumstances which you may naturally and reasonably
20 infer intent.

21 Evidence of the character of the act -- the character
22 of the instrument used, the manner in which it was used, the
23 purpose to be accomplished and the resulting wounds or
24 injuries may be considered in determining the intent which
25 the act was committed. Intent may also be inferred from

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1 what -- when it is demonstrated that the Defendant
2 voluntarily and wilfully commits an act, the natural
3 tendency which is to destroy another's life.

4 Now, possession of a weapon during the commission of a
5 violent crime under section 16-23-490, which the Defendant
6 is charged with is the, excuse me, the Defendant is charged
7 with possession of a weapon during the commission of or
8 attempt to commit a violent crime.

9 Now this State, excuse me, the State must prove beyond
10 a reasonable doubt the Defendant visibly displayed a knife
11 during the commission of a violent crime. A knife means an
12 instrument, a tool with a sharp cutting blade whether or not
13 fastened to a handle, which can be used to inflict a cut,
14 slash or wound.

15 In order to find the Defendant guilty of possession of
16 a weapon during the commission of a violent crime you must
17 first determine the Defendant guilty of either committing a
18 violent crime or attempting to commit a violent crime. Now,
19 attempted murder or the lesser included offense of assault
20 and battery of a high and aggravated nature are by statute
21 violent crimes in South Carolina. Now, the State must prove
22 beyond a reasonable doubt that the weapon further advanced
23 or held in the commission of the crime.

24 If you as jurors have a reasonable doubt as to whether
25 the State has met the burden of proof in showing all the

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1 elements of the crime of attempted murder, you should then
2 consider the lesser included offenses of assault and battery
3 of a high and aggravated nature, assault and battery in the
4 first degree and assault and battery in the second degree.
5 If you have a reasonable doubt as to whether the State has
6 met its burden of proof in showing all the elements of the
7 crime of any of the lesser included offenses, you should
8 find the Defendant not guilty.

9 As I say, under South Carolina law we have a principal
10 known as lesser included offenses. If you find that the
11 State has failed to prove the Defendant committed the
12 offense of attempted murder, you may then consider whether
13 or not the State has proved beyond a reasonable doubt that
14 the Defendant committed assault and battery of a high and
15 aggravated nature.

16 A person commits the offense of assault and battery of
17 a high and aggravated nature if the person unlawfully
18 injures another person and great bodily injury to another
19 person results or the act is accomplished by means likely to
20 produce death or great bodily injury. Great bodily injury
21 means bodily injury which causes a substantial risk of death
22 or which causes serious permanent disfigurement or
23 protracted loss or impairment of the function of a bodily
24 member or organ.

25 Now, assault and battery in the first degree, if you

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1 find that the Defendant [sic] has failed to prove the
2 Defendant committed the offense of assault and battery of a
3 high and aggravated nature, you may then consider the State
4 has proved beyond a reasonable doubt that the Defendant
5 committed assault and battery in the first degree.

6 A person commits the offense of assault and battery in
7 the first degree if the person unlawfully offers or attempts
8 to injure another person with the present ability to do so
9 -- do so and the act is accomplished by means likely to
10 produce death or great bodily injury. Now, great bodily
11 injury means injury which causes a substantial risk of death
12 or which causes serious permanent disfigurement or
13 protracted loss of impairment of the function of a bodily
14 member or organ.

15 If you find the State has proved -- has failed to prove
16 that the Defendant committed the offense of assault and
17 battery in the first degree, you then may consider whether
18 the State has proved beyond a reasonable doubt the Defendant
19 committed assault and battery in the second degree. A
20 person commits the offense of assault and battery in the
21 second degree if the person unlawfully injures another
22 person or offers or attempts to injure another person with
23 the present ability to do so and moderate bodily injury to
24 another person results or moderate bodily injury to another
25 person could have resulted.

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1 Moderate bodily injury unlike great bodily injury means
2 physical injury requiring treatment to an organ system of
3 the body other than the skin, muscles and connective tissues
4 of the body except when there is penetration of the skin,
5 muscles and connective tissues that require surgical repair
6 of a complex nature or when the treatment of the injuries
7 requires the use of regional or general anesthesia.

8 If you have a reasonable doubt of the Defendant's guilt
9 after considering all the evidence, then you must find the
10 Defendant not guilty on that indictment. On the other hand,
11 if you have no reasonable doubt of the Defendant's guilt
12 after considering all of the evidence, then you must find
13 the Defendant guilty on that particular indictment.

14 Mr. Foreman, ladies and gentlemen of the jury, you have
15 been selected as fair and impartial jurors sworn to
16 impartially try and determine the facts of the case. And
17 when you comply with your oath to do so, then you will have
18 -- then no one will have a right to criticize your verdict
19 and you will have fully discharged your duty as jurors.

20 You should not be influenced by opinions or expressions
21 of opinions, if any, which you have heard on the outside.
22 But you are to decide this case according to the testimony
23 that you have heard from the lips of the sworn witnesses
24 along with the other evidence that may have been introduced.

25 You must not consider as evidence any statement of

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1 counsel made during the trial. However, if the counsel of
2 the parties have stipulated to any fact or fact has been
3 admitted by the counsel, you will regard that fact as being
4 conclusively proved as to the party or parties making the
5 stipulation or admission.

6 As I said earlier, you are the judges of the facts in
7 this case. And you are to determine only if the Defendant
8 is guilty or not guilty upon the testimony and evidence
9 presented in the trial after applying the law as I've given
10 it to you.

11 If from the evidence you have a reasonable doubt as to
12 whether or not the Defendant is guilty, it is your duty to
13 acquit and write the words -- two words not guilty. Under
14 the oath you took you swore to try this case based only and
15 solely on the testimony, and evidence and law presented and
16 heard in the courtroom. It is your duty to lay aside all
17 bias, or prejudice or sympathy you may have in reaching your
18 verdict. You have no friends to reward or enemies to punish
19 in this case.

20 I might note the word verdict comes from the Latin term
21 *veredicto*, which means to speak the truth. Abide by your
22 oath and return a verdict which does, in fact, speak the
23 truth.

24 Mr. Foreman, I have prepared a verdict form for you to
25 use in your deliberations for the jury. As you note, there

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1 are two indictments. Now, the first indictment is
2 indictment number 2013-GS-37-1043. Now that is the
3 indictment for -- charges attempted murder.

4 Now, do remember, attempted murder has lesser included
5 offenses. In other words, you will start with the charge in
6 the indictment, attempted murder. And if it does not have
7 all the elements of attempted murder, then you would go to
8 the lesser included offense of assault and battery of a high
9 and aggravated nature.

10 And if you find that it does not include all the
11 elements of assault and battery of a high and aggravated
12 nature, then you would go to the lesser included offense of
13 assault and battery, first degree, or then to assault and
14 battery in the second degree if it does not have all of the
15 elements of first degree. But if you find that the
16 Defendant is not guilty of any -- the principal charge of
17 attempted murder or any of the lesser included offenses or
18 if the State has not proven guilt beyond a reasonable doubt
19 as to any of those offenses, then you must find the
20 Defendant not guilty.

21 So, therefore, as you will notice it says, we, the
22 jury, unanimously find on indictment number 2013-GS-37-1043
23 that the Defendant, Laquavius Tyshawn Cleveland, is guilty
24 of attempted murder. If you do not find that he was guilty
25 of attempted murder, then you could consider the lesser

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1 included offense of assault and battery of a high and
2 aggravated nature.

3 If you do not find that they have proved beyond a
4 reasonable doubt all the elements of assault and battery of
5 a high and aggravated nature, then you can include -- you
6 can consider lesser -- the lesser included offense of
7 assault and battery in the first degree.

8 If you find that they have not established all of the
9 elements of the assault and battery in the first degree
10 beyond a reasonable doubt, then you may consider assault and
11 battery in the second degree.

12 However, if they have not -- when I say they, that
13 means the State, has not proven beyond a reasonable doubt
14 all of the elements of any of those, either the principal or
15 the lesser included offenses, then your verdict would be not
16 guilty.

17 Whatever your verdict is it must be unanimous. And
18 although that you will be the one who will check the jury's
19 verdict on the verdict form, all members of the jury will
20 have to agree to that verdict before you do that. But once
21 you have reached a verdict, then, Mr. Foreman, if you would,
22 check the appropriate verdict on the verdict form.

23 Now, there's a second indictment. If you find the
24 Defendant guilty for attempted murder or guilty of assault
25 and battery of a high and aggravated nature, as to

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1 indictment 2013-GS-37-1043, that's the first verdict --
2 that's the first indictment in this case, and those would be
3 the first two verdict charges or offenses charged, which are
4 violent offenses, then you would proceed to indictment
5 number 2013-GS-37-1044, which is the second indictment.

6 If you find the Defendant guilty of assault and battery
7 in the first degree, guilty of assault and battery in the
8 second degree or not guilty as to the indictment number
9 2013-GS-37-1043 then you would stop your deliberation and go
10 no further. You would sign the verdict form. In other
11 words, if you find that any of the bottom three lesser
12 included offenses to include not guilty, then you would stop
13 and just sign the verdict form.

14 However, as I say, if you find the Defendant is guilty
15 of the first two or one of the first two, attempted murder
16 or guilty of assault and battery of a high and aggravated
17 nature, then you would go to page 2. On page 2 you have
18 indictment number 2013-GS-34 [sic]-1044, which charges
19 possession of a weapon during the commission of a violent
20 crime.

21 Now, the violent crimes are only attempted murder and
22 assault and battery of a high and aggravated nature. But if
23 you find guilty of either one of those crimes, then your
24 verdict would be either we, the jury, unanimously find on
25 indictment number 2013-GS-37-1044 that the Defendant,

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1 Laquavius Tyshawn Cleveland, is guilty of possession of a
2 weapon during the commission of a violent crime or not
3 guilty.

4 Whatever your verdict is, you're to be unanimous as to
5 both indictments. Once you've completed the verdict form in
6 accordance with the instructions, if you would, please, sign
7 your name above the line provided, knock on the door and we
8 will return and receive your verdict.

9 Now, I'm going to one more time ask you to retire to
10 the jury room and do not begin your deliberations until you
11 receive the verdict form and all the exhibits that have been
12 introduced into evidence. Once you receive that from the
13 bailiff, then, of course, you can proceed with your
14 deliberations. And once you have reached a verdict as to
15 both indictments or the indictments that you are supposed to
16 under the instructions, then you will knock on the door and
17 we will return and receive your verdict.

18 Now, as I say, do not begin your deliberations until I
19 -- I have to take up some matters with the attorneys first.
20 But once the bailiff brings you the verdict form and the
21 exhibits, then you may start.

22 I'm going to have to ask the alternates to stay with us
23 though, if you would, please. The other twelve members of
24 the jury, if you would retire to the jury room at this time.
25 Do not begin your deliberations until I send in the verdict

1 form and the exhibits.

2 (Whereupon the jury exited the courtroom at 12:59 pm)

3 **THE COURT:** All right. Are there any exceptions to the
4 charge or any requests for additional charges from the
5 State?

6 **MR. WAGNER:** No, sir.

7 **THE COURT:** From the Defense?

8 **MR. GRIFFIN:** No, sir.

9 **THE COURT:** All right. Of course, this is subject to
10 the previous rulings on the request for charges. All right.
11 If you would, please, look over the exhibits and be sure
12 that everything goes back that's supposed to, but what's not
13 supposed to go back doesn't.

14 Also, as I understand, Ms. Simmons, the verdict form is
15 sufficient?

16 **MS. SIMMONS:** Yes, Your Honor.

17 **THE COURT:** Is that correct, Mr. Griffin?

18 **MR. GRIFFIN:** Yes, sir.

19 **THE COURT:** All right. Very good.

20 Ladies, I think you understand why you were chosen
21 because this case has gone over -- well, really three days
22 because we started on Monday. And if one or two of the
23 members of the jury were unable to continue to serve, then,
24 of course, it would have been necessary for one of you to
25 fill in or both of you, if necessary.

1 But fortunately, this will conclude your services, as I
2 understand it will be the service for this week. And you
3 will not have to sit in judgment on this case.

4 I do appreciate that service. I might note that it
5 looks like I'm doing everything in the world except paying
6 attention up here, but I did -- I do pay attention. After
7 so many years I guess I pick up certain abilities or a knack
8 for keeping up with what's going on.

9 And I noticed throughout the trial of this case both of
10 you paid very close and careful attention to all of the
11 evidence, the testimony, the argument by counsel. And I am
12 satisfied that if you did have to serve, if you had to fill
13 in on the jury that you would have made excellent jurors.
14 So I thank you, as I said earlier, for your service.

15 Now, I wish there was something I could do for you
16 other than if you will remember on Monday when I qualified
17 the entire jury panel I asked whether or not any had served
18 in the last three years, at least you won't have to serve
19 for another three years. But I do thank you for your
20 service.

21 Let's see, if you need any statements for your
22 employers or something like that, if you'd go to the first
23 floor to the Clerk's Office, they'll have those for you
24 there. Otherwise, your -- forgive me, your check will be in
25 the mail. But this does complete your service.

1 And as I say, I do thank you on behalf -- did you leave
2 anything in the jury room? Also, you might -- if you want
3 to, the lunches have been ordered. Does anybody know? The
4 lunches have been ordered. So if you want to wait until
5 they come, then you can, of course, do that as well. You
6 can come back into the courtroom if you want to do that.
7 Very good.

8 If you left something back there in the courtroom the
9 bailiff will take you or the deputy will take you back to
10 the jury room to collect your things. All right. Both
11 bailiffs are back there. Just tell them that you have
12 something that you want to collect.

13 Again, thank you so much. And do enjoy the rest of the
14 summer and this weekend when it comes.

15 (Whereupon the alternates exited the courtroom)

16 (Whereupon the jury began deliberations at 1:05 pm)

17 **THE COURT:** All right. ladies and gentlemen, it's now
18 in the jury's hands. I will say this, though, I do
19 appreciate the professional way both parties, State and
20 Defense, represented their positions, very professionally
21 done. And that's one of the things I'm going to miss when I
22 step down is good attorneys. All right. With that we'll
23 stand at ease awaiting a verdict.

24 (Whereupon court was in recess at 1:06 pm)

25 (Whereupon court reconvened at 2:02 pm)

VERDICT OF THE JURY

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1 **THE COURT:** You may take your seats, please. Thank you
2 very much. All right. I understand the jury's reached a
3 verdict. Is there anything from the State before we return
4 the jury?

5 **MR. WAGNER:** No, Your Honor.

6 **THE COURT:** From the Defense?

7 **MR. GRIFFIN:** No, sir, Your Honor.

8 **THE COURT:** All right. Ask the jury to join us,
9 please.

10 (Whereupon the jury entered the courtroom at 2:02 pm)

11 **THE COURT:** All right. Let the record reflect the
12 jury's in the jury box. Mr. Foreman, I understand the jury
13 has reached a verdict.

14 **MR. FOREMAN:** Yes, Your Honor.

15 **THE COURT:** If you would, please, hand it up to the
16 bailiff.

17 (Pause)

18 **THE COURT:** Madame Clerk, if you would, publish the
19 verdict, please.

20 **MADAME CLERK:** Yes, sir. In the matter of the State of
21 South Carolina versus Laquavius Tyshawn Cleveland, on
22 indictment number 2013-GS-37-1043, attempted murder, we, the
23 jury, unanimously find on indictment number 2013-GS-37-1043
24 that the Defendant, Laquavius Tyshawn Cleveland, is guilty
25 of attempted murder.

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1 On indictment number 2013-GS-37-1044, possession of a
2 weapon during the commission of a violent crime, we, the
3 jury, unanimously find on indictment number 2013-GS-37-1044
4 that the Defendant, Laquavius Tyshawn Cleveland, is guilty
5 of possession of a weapon during the commission of a violent
6 crime.

7 Ladies and gentlemen of the jury, if this was your
8 verdict and remains your verdict, please indicate so by
9 raising your right hand.

10 (Whereupon all jurors raised their right hand)

11 **MADAME CLERK:** Let the record reflect that all members
12 of the jury have raised their right hand.

13 **THE COURT:** Is there anything from the State before I
14 discharge the jury?

15 **MR. WAGNER:** No, sir.

16 **THE COURT:** From the Defense?

17 **MR. GRIFFIN:** No, sir.

18 **THE COURT:** Mr. Foreman, ladies and gentlemen of the
19 jury, I am never interested in a verdict, only how that
20 verdict is reached.

21 And although it looks like I'm doing everything in the
22 world up here except paying attention, as I've mentioned to
23 the alternates, I've sort of developed a knack of keeping up
24 with what's going on in a courtroom. And I noticed that all
25 of you paid very careful and close attention to all of the

VERDICT OF THE JURY

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1 testimony, the evidence and exhibits as well as the argument
2 by counsel and the charges on the law as best I could do.
3 And I am satisfied that you have given both the State and
4 the Defendant a fair and impartial trial.

5 And having done so you have not only earned the
6 gratitude of the people of Oconee County, but also as far as
7 our judicial system is concerned, our appreciation as well.
8 I know none of you asked to be here, and I'm sure there's
9 someplace else you would have rather been in the last three
10 days, because this did last from Monday when you were
11 selected to today, and now -- well, four days, yesterday and
12 today.

13 But the only thing is if we didn't have citizen
14 participation, our judicial or our justice system would not
15 be what it is. In fact, it is recognized as perhaps the
16 finest, maybe not perfect, in the history of the world. And
17 I thank you for making it so.

18 I might note not to be -- point on it that Winston
19 Churchill, the Prime Minister during the second World War of
20 Great Britain, made the observation one time that no duty
21 can a citizen perform that is greater in peace time, jury
22 duty as a member of a jury. And I do thank you for your
23 service.

24 Now, Madame Clerk, is there anything that you have for
25 the ...

1 **MADAME CLERK:** The check's in the mail.

2 **THE COURT:** I know y'all have heard that before.

3 **MADAME CLERK:** It'll be about two weeks.

4 **THE COURT:** But, no, the checks will be in the mail.

5 **MADAME CLERK:** The work statements will be attached to
6 the checks.

7 **THE COURT:** To the checks. But if you need one today,
8 they can get them on the first floor?

9 **MADAME CLERK:** Yes.

10 **THE COURT:** All right. Again, I do thank you. And as
11 I say, I wish there was something more I could do for you.
12 But if you do remember on Monday when I qualified the jury
13 panel I asked if any members of the jury panel were -- had
14 served on a jury in the last three years. Well, at least
15 you won't have to serve for the next three years.

16 But I do hope your service has not been without benefit
17 because we do owe you a debt of gratitude. Thank you very
18 much. So you are excused.

19 This does complete your service for this term of court
20 as well for three years, at least three years. Thank you
21 very much. Everyone else remain seated while the jury
22 retires from the courtroom.

23 (Whereupon the jury exited the courtroom at 2:08 pm)

24 **MADAME CLERK:** We need the foreman.

25 (Pause)

SENTENCE OF THE COURT

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1 THE COURT: All right. Is the State ready?

2 MR. WAGNER: Yes, sir.

3 THE COURT: Defense?

4 MR. GRIFFIN: Yes, sir.

5 THE COURT: All right. If you'll come around, please.

6 Yes, ma'am.

7 MS. SIMMONS: Your Honor, here are the sentencing

8 sheets. They've been signed by Mr. Griffin, but the

9 Defendant has not signed them.

10 (Pause)

11 THE COURT: All right. You are Laquavius Tyshawn

12 Cleveland, is that correct?

13 MR. CLEVELAND: Yes, sir.

14 THE COURT: All right. Madame Solicitor, what's the

15 prior record of the Defendant?

16 MR. WAGNER: Your Honor, juvenile ---

17 THE COURT: Or Mr. Solicitor.

18 MR. WAGNER: --- back on February 28 of 2011 he was

19 convicted in front of Judge Edwards or sentenced by Judge

20 Edwards on 8/2 of 2011 for discharging a firearm into a

21 dwelling and malicious injury to real property valued at two

22 thousand dollars or less.

23 Currently -- he also, not long after that in 2013 or

24 2012, excuse me, he was arrested on another shooting into a

25 dwelling and four counts of attempted murder that are still

SENTENCE OF THE COURT

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1 pending. Those were waived up from juvenile court around
2 the time that these charges occurred. So they are still
3 pending. And that's the extent of his prior record due to
4 his age of sixteen.

5 **THE COURT:** All right. So he's had one conviction and
6 what is it, two pending -- and a pending charge?

7 **MR. WAGNER:** Yes, sir.

8 **THE COURT:** Four charges?

9 **MR. WAGNER:** Yes, sir. Three counts -- four counts of
10 attempted murder that are still pending and discharging a
11 firearm into a dwelling. Those are still pending in our
12 office. The other two were convictions in 2011. Judge
13 Edwards sentenced him on those.

14 Judge Ballenger, we did -- our office did a waiver here
15 in Family Court. And Judge Ballenger waived him up to
16 General Sessions on these other charges that are pending.

17 **THE COURT:** I see. All right. Mr. Griffin, what do
18 you say on behalf of Mr. Cleveland? I also would like to
19 hear from anybody else. Does law enforcement have anything
20 it would like to add on this case?

21 **SERGEANT TINSLEY:** What I'd like to add is that for the
22 Court, the Judge to consider that the victim was the
23 Defendant's cousin who he knew well. They talked every
24 other day. For you to consider if he's capable of stabbing
25 him unprovoked and what he may be capable of doing to

SENTENCE OF THE COURT

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1 someone else that he did not know.

2 THE COURT: Yes, ma'am. Anybody else on behalf of the
3 State?

4 MS. SIMMONS: Judge, I would just like to add that the
5 Defendant was out on an ankle monitor for his other ---

6 THE COURT: Yeah, ---

7 MS. SIMMONS: --- charges.

8 THE COURT: --- I heard his mother testify to that.

9 MS. SIMMONS: Judge, we believe a substantial jail time
10 sentence is appropriate based on the facts of this case. I
11 understand that he is -- he's a young person, but he has
12 shown already at this young age that he's very dangerous.

13 THE COURT: The maximum sentence on the attempted
14 murder is thirty years?

15 MS. SIMMONS: Yes, Your Honor.

16 THE COURT: And on the possession of a weapon during
17 the commission of a violent crime is up to five years, ---

18 MS. SIMMONS: Yes, Your Honor.

19 THE COURT: --- can be either consecutive or
20 concurrent?

21 MS. SIMMONS: Yes, Your Honor.

22 THE COURT: All right. Mr. Griffin.

23 MR. GRIFFIN: Your Honor, I've only known Mr. Cleveland
24 briefly. He's been sitting over in the County jail, I
25 believe, for about a year.

SENTENCE OF THE COURT

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1 And he -- in my dealing with him, he seems like he's a
2 decent young man at this point given the fact that he's
3 grown up in a broken home. And given his youth and sixteen
4 years old, we would ask that the Court sentence -- give
5 minimum sentence given the fact he's -- of his youth.

6 And I believe he's been sitting over there for a year.
7 And I think he's learned to realize that whatever things
8 happen have consequences at this point. And I'd like to ask
9 that his mother address the Court, if she will.

10 **THE COURT:** Ms. Cleveland. Yes, ma'am.

11 **MS. CLEVELAND:** I just ask that, I mean, 'cause he been
12 through a lot and I blame myself for it. But like this has
13 really affected my kids because they have to come up here
14 and see him like at the jail. So I just ask that you give
15 probation or something, you know. I just can't stand my son
16 going down the road like this. And I'll do any and
17 everything to help him.

18 **THE COURT:** Thank you, ma'am.

19 **MR. GRIFFIN:** I believe we have some other relatives in
20 the courtroom as well.

21 **THE COURT:** Anyone else?

22 (No response)

23 **THE COURT:** Mr. Cleveland, anything you have to say?

24 **MR. CLEVELAND:** I apologize, you know. This time right
25 here and I've had time to think in the cell. Didn't go out

SENTENCE OF THE COURT

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1 as much as I wanted to. Had a lot to think about.

2 I understand made me a man, made me a young man. Made
3 me realize like what I want to think about my future
4 decisions and how I want to be.

5 Like my mama said, I got little brothers I got to be a
6 role model to. So it's time for me to step up and be a man.
7 And I'm willing to take forward on those steps and do
8 whatever I can to make, you know, teach them not to go down
9 the same road I did.

10 (Pause)

11 **THE COURT:** All right. Anything else from the State?

12 **MS. SIMMONS:** No, Your Honor.

13 **THE COURT:** From the Defense?

14 **MR. GRIFFIN:** Not at this time, Judge.

15 **THE COURT:** Indictment number 2013-GS-37-1044, it's the
16 sentence of the Court that the Defendant, Laquavius Tyshawn
17 Cleveland, be committed to the State Department of
18 Corrections for a term of twenty-two years, plus pay the
19 costs and assessments as applicable.

20 Indictment number 2013-GS-37-1043, it's the sentence of
21 the Court that the Defendant, Laquavius Tyshawn Cleveland,
22 be committed to the State Department of Corrections for a
23 term of five years. The second sentence to run consecutive
24 to the first sentence.

25 Special conditions on both sentences that the Defendant

SENTENCE OF THE COURT

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1 to undergo drug and alcohol testing and treatment, substance
2 abuse counseling as directed and to obtain his GED. Good
3 luck to you, sir.

4 (Hearing ended at 2:23 pm)

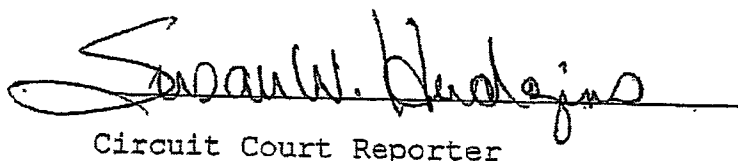
5 (End of requested transcript of record)

Certificate of Reporter

I, the undersigned, Susan W. Hudgins, Official Court Reporter for the Tenth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete transcript of record of all the proceedings had and evidence introduced in the trial/hearing of the captioned case, relative to appeal, in the Circuit Court for Oconee County, South Carolina, on the 24th day of July 2014.

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

November 26, 2014

A handwritten signature in cursive script, reading "Susan W. Hudgins", written over a horizontal line.

Circuit Court Reporter

1 State of South Carolina
2 County of Oconee In the Court of General Sessions

3
4 State of South Carolina,)
5 Plaintiff,) 2013-GS-37-1043, 1044
6 -vs-) August 15, 2014
7 Laquavius T. Cleveland,)
8 Defendant,)
9 Transcript of Record

10

11

12 B E F O R E:

13

14 The Honorable Alexander S. Macaulay, Judge;
15 and a jury.

16

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

18 Lindsey Satterfield Simmons, Esquire
19 Assistant Solicitor for the Tenth Judicial Circuit

20

21 Charles R. Griffin, Jr., Esquire
22 Attorney for Defendant

23

24

25

Diane L. Thommes, RPR, CRR
Circuit Court Reporter

I N D E XPAGE

Motion to vacate conviction and/or sentence

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1 (WHEREUPON, court convened with all parties
2 present and the following proceedings were had
3 commencing at approximately 12:40 p.m.)

4 THE COURT: All right. We're here today on the
5 matter of the State of South Carolina versus Laquavious
6 Tyshawn Cleveland who was convicted on indictments
7 number 2013-GS-37-1043, attempted murder, and
8 2013-GS-37-1044 at the recent term of court, July 24,
9 2014.

10 We're here on a motion to vacate conviction and/or
11 sentence. The defendant is represented by his
12 attorney, Mr. Griffin, who is present with his client.

13 Mr. Griffin.

14 MR. GRIFFIN: Yes, sir, your Honor.

15 THE COURT: Excuse me. And Ms. Simmons is here on
16 behalf of the State.

17 MR. GRIFFIN: Yes, your Honor. Mr. Cleveland here
18 was 16 years of age at the time the offenses occurred
19 and was charged as an adult, and on about July 24th of
20 this year he was convicted of attempted murder and
21 sentenced to 22 years.

22 Under the attempted murder statute, it provides
23 that the sentence imposed pursuant to this section may
24 not be suspended, nor may probation be granted. Also
25 the attempted murder under the section is a no parole

1 offense within the meaning of Section 24-13-100, and
2 murder is a most serious offense -- attempted murder is
3 a most serious offense within the meaning of South
4 Carolina Code Section 1725-45. And, basically, that
5 sets out the two strike law, if I'm not mistaken.

6 And also on July 24, 2014, Mr. Cleveland was
7 convicted of 16-23-490 which provides for additional
8 punishment for possession of a firearm or knife during
9 the commission of or attempt to commit a violent crime
10 and sentenced to an additional consecutive five-year
11 term. And that code section also provides that the
12 person sentenced under this section is not eligible
13 during this five-year period for parole, work release,
14 or extended work release. And also there was no
15 presentence investigation ordered by the Court.

16 Defendant was sentenced to a total of 27 years
17 which are basically no parole offenses. And it's the
18 defendant's position that the Eighth Amendment's
19 prohibition on cruel and unusual punishment, the
20 sentence violates that, given the statutory framework
21 under which he was sentenced.

22 And basically the U.S. Supreme Court in *Miller vs.*
23 *Alabama* basically outlawed life without parole for
24 juveniles. It's the defendant's contention that the
25 sentencing framework under which he was sentenced

1 violates the Eighth Amendment based on *Miller vs.*
2 *Alabama*. The policy considerations behind the ruling
3 in *Miller vs. Alabama* basically set out that life
4 without parole for a juvenile precluded consideration
5 of his chronological age, his hallmark features, among
6 them immaturity, impetuosity, and failure to appreciate
7 the risks and consequences. Also it prevented taken
8 into account the family and home environment from which
9 he could not usually extricate himself no matter how
10 brutal or dysfunctional.

11 And also in that *Miller vs. Alabama*, the U.S.
12 Supreme Court basically forbade a sentencing scheme
13 that did not take into account these factors, among
14 others, set forth in the opinion in *Miller vs. Alabama*.
15 It's the defendant's contention that being sentenced
16 pursuant to no parole offenses is in violation of and
17 prohibited by the Eighth Amendment of the United States
18 Constitution.

19 It's also his contention that 24-13-100 is a
20 violation of the Constitution basically as part of this
21 whole statutory framework to which we are objecting to,
22 and that also the statute that sets forth provisions
23 for presentence investigation, the Court -- if the
24 Court believes on 24-23-120, if the Court has reason to
25 believe that the defendant suffered from mental

1 disorder, retardation or substantial handicap, the
2 Court shall order a presentence investigation to be
3 completed and submitted to the Court.

4 It's our contention that that statute basically
5 would violate the spirit and intent of *Miller vs.*
6 *Alabama* since it does not provide for presentencing
7 investigation for juveniles. I believe the Court in
8 *Miller vs. Alabama* basically established a cutoff age
9 of 18 where they declare that persons who commit
10 offenses are basically juvenile offenders until they
11 reach the age of 18 years.

12 It's our contention that the no parole framework
13 under which he was convicted basically forbade any
14 potential for rehabilitation during the 27 years that
15 he will be incarcerated, and that we would ask the
16 Court that the Court revisit the sentence, vacate it,
17 and order that he be -- sentence be vacated and that he
18 be further consideration (sic). Thank you.

19 THE COURT: Very good.

20 All right, Ms. Simmons.

21 MS. SIMMONS: Thank you, your Honor. May it
22 please the Court.

23 It's the State's position in this case that the
24 sentence that was handed down by this Court is not
25 cruel and unusual under the Constitution. This is not

1 a life sentence that was imposed by the Court. It's
2 not a death sentence that was imposed by the Court. By
3 my calculation, the defendant will be somewhere in his
4 40s when he's released from jail. He will have plenty
5 of time to rehabilitate himself and live a full,
6 law-abiding life if he chooses to do so. He will have
7 a chance to rehabilitate himself in prison so he can
8 transition himself back to society.

9 In fact, Judge, the State had another set of
10 charges on Mr. Cleveland involving firing into a
11 dwelling and multiple counts of attempted murder. If
12 we had chosen to pursue those charges, it would have
13 triggered the life without parole statute and two
14 strikes. We chose not to pursue that after he was
15 convicted on these charges. He has no further
16 outstanding charges within our office, and as it stands
17 now, he will be serving the sentence he is serving with
18 nothing else added from us.

19 THE COURT: Those charges that you're talking
20 about preceded the events here giving rise to these
21 charges?

22 MS. SIMMONS: Yes, your Honor. He was charged in
23 juvenile court on the older charges. They were waived
24 up to general sessions and were --

25 THE COURT: The older ones as well?

1 MS. SIMMONS: Yes, sir. The State believes that,
2 based on the history of this defendant, that your
3 sentence was appropriate. He has a juvenile criminal
4 history, as you heard at trial. He had been on
5 juvenile probation for discharging into a dwelling and
6 malicious injury to property.

7 At the time he committed this offense, he was
8 wearing an ankle monitor that was issued by the
9 Department of Juvenile Justice on the multiple
10 attempted murder and firing into a dwelling cases.

11 And, Judge, you heard the facts of this case at
12 trial. They were particularly egregious -- 11 stab
13 wounds to a relative while out on bond for a violent
14 crime. We believe the sentence handed down by the
15 Court is not a life sentence and it is appropriate
16 under the circumstances.

17 THE COURT: All right. You say *Miller* sets an
18 18-year-old rule there?

19 MR. GRIFFIN: I believe it references 18 years of
20 age. I believe the case law predating *Miller* sets
21 forth basically a cutoff of 18.

22 THE COURT: That was a mandatory life without
23 parole under the age of 18?

24 MR. GRIFFIN: Yes, sir.

25 THE COURT: This was not a life without parole.

1 MR. GRIFFIN: No, sir, this is not a life without
2 parole, but it's our contention that the statutory
3 framework under the no parole offenses basically
4 violate the policy considerations behind -- which are
5 stated in *Miller vs. California* (sic).

6 THE COURT: So how far down does it go? The
7 maximum sentence for attempted murder is 30 years.

8 MR. GRIFFIN: Yes, sir.

9 THE COURT: So, I mean, anything below what,
10 30 years, is violative of the Eighth Amendment?

11 MR. GRIFFIN: Well, your Honor, we would contend
12 that the length of 27 years total in the matter, given
13 the policy considerations set forth in *Miller vs.*
14 *Alabama* is a violation of the Eighth Amendment to the
15 United States Constitution.

16 THE COURT: All right. So you say that the
17 20-year sentence or 22-year sentence for a 17-year-old
18 is a life sentence?

19 MR. GRIFFIN: Not necessarily a life sentence,
20 your Honor, but a lengthy sentence. And given the
21 policy considerations set forth in the U.S. Supreme
22 Court case --

23 THE COURT: It says life without parole. I mean,
24 that's the only way it would apply is if it was a life
25 sentence.

1 MR. GRIFFIN: Yes, sir. It's our contention that
2 it be taken a step further given the policy
3 considerations about the youth, a juvenile, and that
4 they're being charged as adults, and that basically
5 they really don't understand the consequences of
6 what -- of actually going to trial and not working out
7 plea agreements, things of that nature. They don't
8 have a full understanding based on the statements in
9 *Miller* -- the policy considerations in *Miller vs.*
10 *California* that the juvenile should be given other
11 considerations other than simply no parole offenses --
12 sentences, rather.

13 THE COURT: If I'm not mistaken, I sentenced a
14 72-year-old under a statute that provided a maximum of
15 15 years. And I suspended, of course, to a lesser
16 amount. But it would seem like a 15-year sentence on a
17 72-year-old would be closer to a life sentence than a
18 20-year sentence on a 17-year-old.

19 MR. GRIFFIN: That would be correct, your Honor.

20 THE COURT: I mean, should we adjust that, too? I
21 mean, in other words, I'm 72. So might we put a cap on
22 anything I might do for the rest of my life? I can't
23 get any more than that?

24 MR. GRIFFIN: I guess until the supreme court
25 addresses that issue, your Honor.

1 THE COURT: Well, the supreme court hasn't
2 addressed an issue of -- I think the courts in *Miller*,
3 they were actually 14 years old, weren't they?

4 All right. Anything else from the defendant?

5 MR. GRIFFIN: Other than there were some pending
6 charges, and at that point we didn't really feel we had
7 any other choice but to go to trial based on the
8 framework of what was going on.

9 THE COURT: All right. Well, the only thing is
10 the Solicitor advises the Court that there were --
11 those charges preceded these. They could have been
12 taken up at any time prior to that. And they weren't.
13 And, in fact, the Court's been advised that they would
14 be, I guess, what is it, nonpros, is that the term?

15 MS. SIMMONS: Yes, your Honor. The additional
16 charges were nonpros after the completion of this
17 trial. He has nothing pending with our office.

18 THE COURT: In fact, if they had been successfully
19 prosecuted to an attempted murder, then, of course, the
20 argument that you make now would probably end this
21 second or this trial that we had in July had resulted
22 in another conviction for attempted murder then you
23 would have an argument. But apparently that hadn't
24 happened.

25 I have confidence that Mr. Cleveland will do as

1 the supreme court says, to mature and be better
2 equipped to manage himself in society when he does
3 serve his time, so we're not going to see a situation
4 where there would be another event.

5 I'm going to deny your motion, all your motions.
6 In fact, you filed your memorandum, did you not?

7 MR. GRIFFIN: Yes.

8 THE COURT: All matters addressed in your written
9 motion and memorandum will be considered heard and the
10 basis for the appeal.

11 All right. Madam Solicitor, if you would prepare
12 a short order denying the motions.

13 MS. SIMMONS: Yes, your Honor.

14 THE COURT: Thank you.

15 All right. Mr. Cleveland, good luck to you, sir.

16 (WHEREUPON, the hearing ended at 12:56 p.m.)

17 ***END OF REQUESTED TRANSCRIPT OF RECORD***
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SC Court of Appeals

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Oconee County

Alexander S. Macaulay, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

LAQUAVIUS T. CLEVELAND,

APPELLANT

- APPELLATE CASE NO. 2014-001842 -

FINAL BRIEF OF APPELLANT

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ATTORNEY FOR APPELLANT

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STATEMENT OF ISSUE ON APPEAL

Whether the court erred by refusing to suppress Appellant's statements to law enforcement where Appellant was only sixteen years old, had been interviewed multiple times over the course of eight hours without his mother or friendly adult present, and was subjected to a polygraph exam and told the results showed he was being deceptive since under the totality of the circumstances the statements were not given freely and voluntarily?

STATEMENT OF THE CASE

An Oconee County Grand Jury indicted Appellant at the October 28, 2013 term of General Sessions for attempted murder and possession of a weapon during the commission of a violent crime. R. 251. His case was called to trial on July 21, 2014 before the Honorable Alexander S. Macaulay, and a jury. R. 1. Assistant Solicitors Lindsey Simmons and David Wagner appeared on behalf of the state, and Charles Griffin represented Appellant. R. 1.

On July 24, 2014, the jury found Appellant guilty. R. 236, l. 20 – 237, l. 10. Judge Macaulay sentenced him to twenty-two years imprisonment for attempted murder and five years consecutive for the weapons offense. R. 242, l. 15 – 243, l. 3.

This appeal follows.

ARGUMENT

The court erred by refusing to suppress Appellant's statements to law enforcement where Appellant was only sixteen years old, had been interviewed multiple times over the course of eight hours without his mother or friendly adult present, and was subjected to a polygraph exam and told the results showed he was being deceptive since under the totality of the circumstances the statements were not given freely and voluntarily.

Relevant Facts

Appellant moved pretrial to suppress the inculpatory statements he gave to law enforcement shortly before his arrest. The court held a Jackson v. Denno, 378 U.S. 368 (1964) hearing on the matter. R. 4, l. 15 - 5, l. 7.

Sergeant Margaret Tinsley with the Oconee County Sheriff's Office testified that Appellant's Aunt Patrice drove sixteen-year-old Appellant to meet with Corporal Phillip Robertson, who was a family friend, shortly after the altercation occurred. Corporal Robertson transported Appellant to the sheriff's office in his patrol car. Once at the sheriff's office, Appellant was escorted to an interview room in the criminal investigations division. R. 6, l. 7 - 7, l. 8.

Tinsley said she advised Appellant of his Miranda¹ rights at 5:50 pm and Appellant signed the waiver of rights form at 5:52 pm and agreed to speak with her and Corporal Robertson. R. 13, ll. 10-16. She claimed the three talked until 6:14 pm when Appellant began writing a written statement. R. 13, l. 10 - 14, l. 1. In this first written statement, Appellant allegedly said Hakeem Kirkland, who was his second cousin, came over to his house and confronted him about two hundred dollars Appellant had borrowed a year before

¹ Miranda v. Arizona, 384 U.S. 436 (1966).

and never repaid. Appellant said Hakeem had a gun and he got scared so he stabbed Hakeem a couple of times in the shoulder with his pocketknife and ran. R. 15, ll. 4-12.

Tinsley claimed that after this first interview, she and Appellant went to the conference room and watched television while they waited on the investigators to gather more information. She said a couple of officers had been sent to Greenville Memorial Hospital to interview Hakeem who had been admitted due to his injuries. Other investigators were gathering evidence from the scene in front of Appellant's house where the altercation took place and the location where Hakeem was later found a short ways away and treated by EMS. R. 16, ll. 2-14.

Tinsley testified that after the first interview, she arranged for Appellant to take a polygraph exam. It took about an hour for the examiner to arrive. In the meantime, Appellant allegedly signed a consent form and an officer drove to his mother's work and his mother also signed a consent form. R. 24, l. 19 - 25, l. 25. It was unclear what time the polygraph exam took place. However, the exam allegedly showed "signs of deception." Tinsley said the examiner would have told Appellant the results. R. 26, ll. 2-17.

Eventually Sergeant David McMahan, who had travelled to the hospital to speak with Hakeem, returned to the sheriff's office. According to Tinsley, McMahan said Hakeem had been stabbed eleven times and that Hakeem had shown McMahan text messages he had exchanged with Appellant where the two arranged for Hakeem to sell Appellant a firearm and some marijuana. Tinsley said this information did not match what Appellant had told them during his first interview so they decided to question him further. R. 17, ll. 6-18.

The second interview began at 1:15 am, which was almost eight hours after Appellant had first arrived at the sheriff's office. Tinsley testified that this interview also occurred in the interview room and that this time she and Captain Greg Reed were present. They did not advise Appellant of his Miranda rights a second time. Tinsley and Reed confronted Appellant with the evidence the officers had discovered and told him the evidence did not match up what he had stated in his written statement. R. 18, l. 14 - 19, l. 9. They also stressed the results of the polygraph exam which allegedly indicated Appellant was being deceptive. R. 41, ll. 1-10.

Reed and Tinsley talked to Appellant for forty-five minutes until 1:58 am. Appellant refused to write a second written statement because he was too tired. When Appellant refused to write a statement, the officers had him sign the bottom of the handwritten notes Tinsley had taken during the interview and adopt it as his statement. R. 21, ll. 7-24; R. 37, l. 5 - 38, l. 2.

During this early morning interview, Appellant allegedly said he had contacted Hakeem by text message about purchasing a gun for a friend and buying some marijuana. Appellant supposedly said he did not have any money to pay for the items so he planned on robbing Hakeem. When Hakeem arrived outside Appellant's house, Appellant spoke with Hakeem in his car for a while and then went back into his house and grabbed a "butcher knife." Appellant allegedly returned to the car and, when Hakeem was distracted, started stabbing him. The two scuffled and then Appellant took off running. R. 20, ll. 1-23.

After Appellant gave the second statement, he was arrested sometime around 2:30 am. R. 22, ll. 12-18. Despite being only sixteen-years-old, Appellant was charged as an adult.

Appellant testified that his aunt was contacted by Corporal Robertson and agreed to drive Appellant to meet Robertson. He said they met Robertson at Appellant's house and then Robertson drove him to the sheriff's office. Before leaving his aunt, she told Appellant "to write a statement and [he] would be going home." R. 44, l. 2 - 45, l. 11. Appellant testified that once he arrived at the sheriff's office, he did not feel free to leave. R. 45, ll. 15-17.

Appellant explained that after he gave his first statement, he was given a polygraph exam. The examiner told Appellant he "was lying." R. 45, l. 18 - 46, l. 5. Appellant thought the officers could use the results of the polygraph exam against him in court. R. 46, ll. 19-21. He was eventually interviewed a second time. Appellant said he refused to write out a second statement because he was too tired and "didn't really feel like it." R. 46, l. 6 - 47, l. 4. Appellant testified that the only reason why he went down to the sheriff's office and spoke with law enforcement was because his aunt told him that if he gave a statement, he would be able to go home. R. 50, ll. 8-11; R. 51, ll. 14-16.

Yashica Cleveland, Appellant's mother, testified that she received a call from her sister around 4:30 pm while she was at work. Her sister told her Appellant had been in a fight and stabbed his cousin and that the police had surrounded her house. Her sister also said Corporal Phillip Robertson was one of the officers at her house. R. 56, ll. 4-15.

Cleveland maintained that no one from the Oconee County Sheriff's Office ever contacted her or notified her that Appellant had been brought in for questioning. The first contact she had from the sheriff's office was when a female investigator came to her work sometime between 7:00 pm and 8:00 pm and sought permission to have Appellant take a

polygraph exam. She did not know Appellant had already given a written statement at that point. All she knew was what her sister had told her. R. 56, l. 16 – 57, l. 6.

Cleveland testified that she continuously called the sheriff's office throughout that evening and night, but no one ever knew where Appellant was located or would provide her with any information related to her son and the investigation. She was not able to speak with Appellant until the early morning hours, sometime between 2:00 am and 3:00 am. R. 57, ll. 2-20; R. 58, ll. 14-25.

Arguments and Ruling

Defense counsel argued the state failed to show by a preponderance of the evidence that Appellant gave the statements to law enforcement freely and voluntarily. Counsel stressed Appellant's young age and immaturity, the length of the detention and questioning, the absence of Appellant's mother during the interviews, the late hour, and the polygraph exam. R. 62, l. 17 – 67, l. 12.

The assistant solicitor argued the officers did not promise Appellant anything nor threaten him in order to obtain a statement. He also stressed that Appellant was read his Miranda rights and voluntarily waived those rights before giving a statement. The solicitor maintained that under the totality of the circumstances, Appellant's statements were freely and voluntarily given. R. 67, l. 15 – 69, l. 7.

The court found by a preponderance of the evidence that Appellant was advised of his Miranda rights and knowingly and intelligently waived those rights. The court also found that Appellant's statements were given freely and voluntarily without duress, without coercion, without undue influence, without promise of hope for reward or leniency, without threat of injury, and without inducement of any kind.

At the end of the court's ruling, the judge stated, "So the statements marked for identification [as] . . . State's Exhibit 2 and 3 being the two statements allegedly made by the defendant will be admitted." R. 76, l. 22 - 78, l. 4. The court reporter then noted in the transcript: (WHEREUPON, State's Exhibit Numbers 2 and 3 were admitted into evidence.) R. 78, ll. 5-6. Because the court had already admitted the statements into evidence during the pretrial Jackson v. Denno hearing, trial counsel did not renew his objection when the statements were later discussed before the jury nor did the assistant solicitor later seek to admit the two exhibits into evidence. See R. 150, l. 4 - 153, l. 2; see also R. 155, l. 23 - 156, l. 19.

Discussion

The court erred by refusing to suppress Appellant's statements to law enforcement where Appellant was only sixteen years old, had been interviewed multiple times over the course of eight hours without his mother or friendly adult present, and was subjected to a polygraph exam and told the results showed he was being deceptive since under the totality of the circumstances the statements were not given freely and voluntarily.

A criminal defendant is deprived of due process if his conviction is founded, in whole or in part, upon an involuntary confession. Jackson v. Denno, 378 U.S. 368 (1964).

"This principle is best justified when viewed as part and parcel of 'fundamental notions of fairness and justice in the determination of guilt or innocence which lie embedded in the feelings of the American people and are enshrined in the Due Process Clause of the Fourteenth Amendment.'" State v. Pittman, 373 S.C. 527, 565, 647 S.E.2d 144, 164 (2007) (citing Haley v. Ohio, 332 U.S. 596, 607 (1948) (Frankfurter, J., concurring)). "The United States Supreme Court has emphasized that admissions and confessions of juveniles

require special caution.” State v. Parker, 381 S.C. 68, 88, 671 S.E.2d 619, 629 (Ct. App. 2008) (citing In re Gault, 387 U.S. 1, 45 (1967)).

“In determining whether a defendant's will was overborne in a particular case, the Court has assessed the totality of all the surrounding circumstances—both the characteristics of the accused and the details of the interrogation.” Schneckloth v. Bustamonte, 412 U.S. 218, 226 (1973).

“The totality of the circumstances includes “*the youth of the accused, his lack of education or his low intelligence*, the lack of any advice to the accused of his constitutional rights, the *length of detention, the repeated and prolonged nature* of the questioning, and the use of physical punishment such as the deprivation of food or sleep.” Id. (internal citations omitted). Furthermore, no one factor is determinative, but each case requires careful scrutiny of all the surrounding circumstances. Pittman, 373 S.C. at 566, 647 S.E.2d at 164.

As our Supreme Court explained in Pittman, 373 S.C. at 566, 647 S.E.2d at 164-165:

In Haley v. Ohio, 332 U.S. 596 [(1948)] and again in Gallegos v. Colorado, 370 U.S. 49 (1962) [internal citations omitted] the United States Supreme Court reversed juveniles' convictions on the grounds that the confessions were involuntarily gathered. Though the court addressed the scrutiny applied to juveniles' confessions with quite broad language in each opinion it is firmly established that “a minor has the capacity to make a voluntary confession . . . without the presence or consent of counsel or other responsible adult, and the admissibility of such a confession depends not on his age alone but on a combination of that factor with such other circumstances as his intelligence, education, experience, and ability to comprehend the meaning and effect of his statement.

(internal citations omitted)

For example, in Haley, the United States Supreme Court stated:

That which would leave a man cold and unimpressed can overawe a lad in his early teens ... we cannot believe that a lad of tender years is a match for the police in such a contest. He needs counsel and support if he is not to become the

victim first of fear, then of panic. He needs someone on whom to lean lest the overpowering presence of the law, as he knows it, may not crush him.

Haley, 332 U.S. at 599-600.

Similarly, in Gallegos, the Court said:

[A juvenile] cannot be compared with an adult in full possession of his senses and knowledgeable of the consequences of his admissions. He would have no way of knowing what the consequences of his confession were without advice as to his rights—from someone concerned with securing him those rights—and without the aid of more mature judgment as to the steps he should take in the predicament in which he found himself. A lawyer or an adult relative or friend could have given the petitioner the protection which his own immaturity could not. Adult advice would have put him on a less unequal footing with his interrogators. Without some adult protection against this inequality, a 14-year-old boy would not be able to know, let alone assert, such constitutional rights as he had. To allow this conviction to stand would, in effect, be to treat him as if he had no constitutional rights.

Gallegos, 370 U.S. at 54-55.

Here, sixteen-year-old Appellant was separated from his mother or other friendly adult for over eight hours and questioned on multiple occasions during that period. With only a tenth grade education and no friendly adult present, it was unlikely Appellant fully understood his constitutional rights or the consequences and effects of giving a confession. It was clear Appellant wrongly believed that if he gave a statement to law enforcement, he would be permitted to return home to his mother. Appellant testified that his aunt instructed him "to write a statement and [he] would be going home." See R. 44, l. 2-45, l. 11. Thus, it is obvious Appellant did not understand the severe consequences of giving a confession to the police.

In addition to holding Appellant for over eight hours, law enforcement questioned him into the early morning hours of the next day. Appellant's second interview, which occurred after he had already given a written statement and taken a polygraph exam, did not start until 1:15 am. After Sergeant Tinsley and Captain Reed questioned him for forty-five minutes, Appellant told them he was exhausted and too tired to give another written statement. These circumstances further show Appellant's will was overborne by the experienced officers and that his statements were not given freely and voluntarily.

Moreover, law enforcement administered a polygraph exam on Appellant sometime after his first interview but before his second interview. Sergeant Tinsley testified that the polygraph examiner would have told Appellant the results of the exam which allegedly showed Appellant was being deceptive. Captain Reed admitted that he and Tinsley confronted Appellant about these results during the second interview immediately before Appellant gave a full confession. Appellant also testified that the officers told him he was "lying." This is additional factor that proves Appellant was coerced into given a confession.

Because under the totality of the circumstances, Appellant's statements to law enforcement were not freely and voluntarily given, the trial court erred by admitting them into evidence. As a result, this Court should reverse Appellant's convictions and sentence and remand for a new trial.

CONCLUSION

Based on the foregoing argument, Appellant respectfully requests this Court reverse his convictions and sentence and remand for a new trial.

Respectfully submitted,


Lara M. Caudy
Appellate Defender

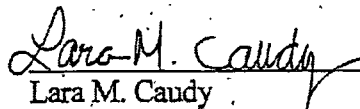
ATTORNEY FOR APPELLANT

This 6th day of Novmeber, 2015.

CERTIFICATE OF COUNSEL FOR APPELLANT

The undersigned certifies that to the best of my ability the Final Brief complies with Rule 211(b), SCACR, and the April 15, 2014 order from the South Carolina Supreme Court entitled "Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings."

November 6, 2015


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STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

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SC Court of Appeals

Appeal from Oconee County
Alexander S. Macaulay, Circuit Court Judge

THE STATE,

Respondent,

vs.

LAQUAVIUS T. CLEVELAND,

Appellant.

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STATEMENT OF ISSUE ON APPEAL

The trial court did not err in admitting Appellant's two statements to law enforcement under the totality of circumstances. The issue is not preserved for review because the objection was not renewed before the jury and the in limine ruling was not final. Appellant admitted he was not coerced or promised anything in exchange for his statements.

STATEMENT OF THE CASE

Appellant Cleveland was indicted for attempted murder and possession of a weapon during the commission of a violent crime. Cleveland proceeded to jury trial on July 21, 2014, before the Honorable Alexander S. Macaulay. The jury found Cleveland guilty as charged on July 24, 2014. Judge Macaulay sentenced Cleveland to twenty-two years imprisonment for attempted murder and five years consecutive imprisonment for the weapons conviction.

STATEMENT OF FACTS

Cleveland stabbed his second cousin, Hakeem Kirkland, eleven times while Cleveland was under house arrest. Prior to the jury trial, the trial court held a hearing pursuant to Jackson v. Denno, 378 U.S. 368 (1964).

The Jackson v. Denno hearing

The first witness in the Jackson v. Denno hearing was Sergeant Margaret Tinsley. She testified that Cleveland's Aunt Patrice brought Cleveland to Corporal Robertson, who in turn brought Cleveland to the Sheriff's Office in his patrol car. Sergeant Tinsley testified that Cleveland was not under arrest. Sergeant Tinsley spoke to Cleveland at 5:48 p.m. Sergeant Tinsley testified that Cleveland was not in handcuffs, he was not denied anything,

he appeared to be in the right frame of mind and was not under the influence of anything. He was very polite. ROA. pp. 9-11. Sergeant Tinsley testified Cleveland was read his rights and signed and initialed the Miranda¹ rights form. ROA. p. 11. Sergeant Tinsley testified he was not threatened or promised anything. Cleveland agreed to talk. ROA. p. 15. Sergeant Tinsley explained it was early in the investigation; she knew little about the crime. She knew there was a stabbing but did not know how many times the victim was stabbed or the extent of the injuries. ROA. p. 12.

The essence of Cleveland's first statement was that Kirkland was trying to collect a debt and presented a gun. Cleveland was scared and stabbed Kirkland a couple of times. Cleveland signed this statement. ROA. p. 15. Cleveland also told Sergeant Tinsley the house had a security camera and probably the whole incident was recorded. Sergeant Tinsley called Cleveland's mother to ask her to get a copy of the video. ROA. p. 24.

Sergeant Tinsley testified that at this point, they watched television while they waited for several hours for more information. Other officers were out at Greenville Memorial where Kirkland was being treated. Sergeant Tinsley testified Cleveland was offered both food and drink. Cleveland declined food but took up the offer for iced tea, so Cleveland and Sergeant Tinsley both drank tea while watching television and waiting for more information. ROA. p. 16. Sergeant Tinsley testified on redirect that Cleveland never complained about being tired or asked to leave during this time. Instead, he appeared to be patiently waiting to find out about the video he told Sergeant Tinsley about. It took a while because his mother needed to wait for a break at work to call her ex-boyfriend who had the software application

¹ Miranda v. Arizona, 384 U.S. 436 (1966).

on his phone to retrieve the video. ROA. p. 33.

Sergeant Tinsley found out Kirkland was stabbed eleven times, not two times. She also found out that Kirkland provided text messages arranging a transaction between Kirkland and Cleveland. She started interviewing Cleveland again at 1:15 a.m. Accompanying her in the interview room was Captain Reed. ROA. pp. 16-18. Sergeant Tinsley testified she did not threaten or coerce Cleveland. She did, however, confront Cleveland on the point "that it just wasn't adding up." Cleveland agreed to talk some more. ROA. p. 19.

Cleveland admitted in his second statement that he arranged by text messages to buy a gun and some marijuana from Kirkland. Cleveland did not actually have the money for the purchase, and he intended to rob Kirkland and take the gun and marijuana. He admitted stabbing Kirkland with a butcher knife. ROA. p. 20.

Sergeant Tinsley testified they asked him if he would provide a written statement and Cleveland said he was tired. They asked Cleveland to instead sign Sergeant Tinsley's notes, and Cleveland agreed. So Sergeant Tinsley read her notes back to him, and he signed the notes. ROA. p. 21. Sergeant Tinsley explained to him, "You let me know if I left anything out. You let me know if there's something in here that I have incorrect, that I need to change. If you need to change anything, just point it out, let me know." ROA. p. 21, lines 20-24.

On cross-examination, Sergeant Tinsley explained that Corporal Robertson initially asked Cleveland's mother if she minded if they spoke with Cleveland and she said she did not. ROA. p. 24. Cleveland agreed to a polygraph test. When he took the polygraph test, he showed signs of deception. ROA. pp. 24-26.

Sergeant Tinsley testified Cleveland was willfully staying and was cooperative. Sergeant Tinsley explained, "I thought that there may be video. He was telling us the truth." ROA. p. 31, lines 7-14.

Captain Reed testified he was present for the second interview. He confirmed that Cleveland was not promised anything or threatened when he gave his second statement. He testified Cleveland was told he did not do well on his polygraph test. Captain Reed testified Cleveland appeared to understand what was going on and was in his right frame of mind. ROA. pp. 38-39.

Cleveland testified on his own behalf during the hearing. He claimed his aunt told him to write a statement and he would then go home. Cleveland testified he did not feel free to leave. Cleveland claimed he thought they could use the polygraph examination in court and the examiner told him he was lying. ROA. pp. 44-46.

On cross-examination, Cleveland testified he remembered Sergeant Tinsley going over his rights with him. He agreed he initialed the form after she went through it line by line with him. ROA. pp. 48-49. Cleveland testified he can read and write. He confirmed he knew what Sergeant Tinsley was asking him and he understood his rights. He admitted he signed the waiver form. ROA. p. 49, lines 10-18.

Cleveland agreed Sergeant Tinsley did not threaten him or promise him anything. ROA. p. 49. Cleveland agreed he came to the station of his own free will. ROA. p. 50. Cleveland agreed he gave his first statement freely and voluntarily and he was not promised anything or threatened when he gave the first statement. ROA. pp. 50-51.

Cleveland testified he agreed to take the polygraph examination. He admitted the

examiner was nice to him. ROA. p. 52. Cleveland testified he agreed to talk with law enforcement the second time. He claimed he was tired, but previously agreed he woke up around lunchtime that day. ROA. p. 49, line 24 – p. 50, line 5; pp. 52-53.

Cleveland testified as follows about the second statement:

Q: Do you remember telling her and her taking down notes?

A: I remember her taking down notes, yes, sir.

Q: Now, you changed your story quite a bit the second go-round. You kind of told what really happened didn't you?

A: Yes, sir.

Q: And then at the end, did she ever promise you anything, did she ever threaten you in any manner to make you talk to her the second time?

A: No, sir.

Q: Did Captain Reed? They were nice to you, weren't they?

A: Yes, sir.

ROA. p. 53, lines 11-24.

The prosecution asked Cleveland, "Do you remember Sergeant Tinsely reading that back to you and saying, 'Was that what happened?' and you signed it?" Cleveland answered, "I can honestly say yes, sir."

Cleveland's mother, Yashica Cleveland, was at work when her sister called her and said the house was surrounded by police and she needed to get off work. Yashica asked why she needed to get off work, and the sister told her that the police were looking for her son. This caused Yashica a lot of consternation, because Cleveland was supposed to be on house

arrest. Yashica signed a consent sheet agreeing to let Cleveland take a polygraph examination. Yashica testified that Cleveland was sixteen years old at the time of the stabbing. She explained Cleveland had average grades, ranging from A's to C's. ROA. pp. 55-59. Although the testimony is not completely clear, Yashica seems to have agreed she spoke to an investigator and agreed they could talk to Cleveland. ROA. p. 61, lines 4-18.

Defense counsel argued the statement should be suppressed. ROA. pp. 64-75. He agreed law enforcement did not tell Cleveland that the results of the polygraph examination could be used against him in court. ROA. p. 75.

Jury trial

Cindy Blackwell runs a produce stand next to a tire shop and is also a certified nurse's assistant. On July 8, 2013, she was in the back of the produce shop when the mechanic told her to call 911 because someone was stabbed. She found Kirkland, whose white shirt was soaked with blood. Blood was squirting out of his head. The flesh in the back of his ears was hanging off. She provided assistance while someone called 911. She testified she needed five gallons of Clorox and a hose to clean the front of the store afterwards. ROA. pp. 85-90. Although he was initially able to talk, Kirkland was no longer able to do so by the time the ambulance arrived. ROA. p. 92.

Hakeem Kirkland testified he is twenty-two years old. Cleveland is his second cousin. Cleveland's street name is Quay. The State admitted exhibits 35-42 into evidence, which were text messages between Cleveland and Kirkland arranging for Kirkland to sell Cleveland a gun and some marijuana. ROA. p. 99-100. The exchange started with Cleveland asking, "You got sum [sic] 380 shells you wanna sell." ROA. p. 102, lines 7-9.

The agreement was to sell the gun, shells, and marijuana for \$150. ROA. pp. 103-105.

Kirkland met Cleveland at Cleveland's house. He let Cleveland take the gun and test it out behind the house. Cleveland returned with the gun. Kirkland took it back when Cleveland was playing with it. Cleveland went back in the house, came outside, and said "All right Cuzzo" before he started stabbing Kirkland. ROA. p. 107. Kirkland was stabbed eleven times. Cleveland ran away. ROA. pp. 107-108.

Kirkland testified he was stabbed with a long knife. Kirkland did not know why Cleveland stabbed him. Cleveland did not take the gun or the marijuana. Kirkland explained that he rolled out of the car to get away and that is when Cleveland ran away. ROA. p. 109. Kirkland jumped back in his car and drove away; he called 911, although he was hesitant to do so because Cleveland was family. He ended up driving to Seneca Tires, which is where he received help. ROA. pp. 109-110. Kirkland needed to stay in the hospital for four days. ROA. p. 114.

Kirkland verified on cross-examination he had sold guns and marijuana to Cleveland before. Kirkland agreed he wanted to cover up for the gun and the marijuana, but testified that he also initially did not want to get his cousin in trouble. ROA. pp. 115-116. Kirkland testified Cleveland never owed him \$200. ROA. p. 120.

Joseph Anderson, a paramedic, responded to the scene and found Kirkland, who had stab wounds. Anderson explained Kirkland needed to go to the trauma center in Greenville. Oconee was not equipped to provide sufficient medical attention. ROA. pp. 123-126. Anderson explained Kirkland's injuries were life-threatening. ROA. p. 127.

Investigator McMahan responded to the shop where Kirkland was found. Victim was

no longer there, he was already transported for medical attention. There was a lot of blood on the front steps. Investigator McMahan went to Greenville Memorial and interviewed Kirkland. Kirkland identified the perpetrator but was reluctant to say what happened because of the gun and marijuana. Investigator McMahan identified the photographs for the jury that showed the stab wounds on the arms, chest, and back. One of the injuries was a knife wound where the knife went completely through the arm. ROA. pp. 130-137.

Sergeant Margaret Tinsley testified that when Cleveland was brought to the law center, she went through the Miranda warnings with Cleveland; he initialed and signed the waiver form. Cleveland was not under the influence of alcohol, he was not denied any comforts, he was not promised anything or threatened. Cleveland agreed to waive his rights and speak with Tinsley. ROA. pp. 146-150.

In his first statement, Cleveland claimed Kirkland demanded \$200 that Cleveland owed him and pulled out a gun. Cleveland claimed he stabbed Kirkland with a pocket knife two times and ran - Kirkland fired a shot as Cleveland ran. After Cleveland provided Sergeant Tinsley with this statement, they watched television while they waited around several hours for more information. Cleveland was offered food, but declined. Sergeant Tinsley and Cleveland drank ice tea together. ROA. pp. 151-154.

Sergeant Tinsley testified she did not know the extent of Kirkland's injuries at the time. However, Sergeant Tinsley found out there were eleven stab wounds, not two. Further, she was shown pictures of Kirkland's injuries, and the stab wounds were too large to be made by a pocket knife. She was also advised about the texts arranging a transaction for a gun and marijuana. So Sergeant Tinsley interviewed Cleveland again. ROA. pp. 155-156.

Sergeant Tinsley and Captain Reed interviewed Cleveland this second time from 1:15 a.m. until 1:58 a.m.. Although that was a late hour, Sergeant Tinsley testified that Cleveland indicated he had slept until noon that day. After Cleveland confessed, she asked him to prepare a written statement, but Cleveland said he did not want to because he was tired. Cleveland agreed to sign her notes from the conversation instead. Cleveland gave the second statement after he was confronted with the new information law enforcement learned since he gave his initial statement. ROA. pp. 156-160.

Sergeant Tinsley published the notes for the jury. Cleveland told the investigators that he bought guns from Kirkland before. Cleveland contacted Kirkland about purchasing a gun and marijuana. Cleveland intended to take the gun and marijuana and run without paying Kirkland. Kirkland gave Cleveland the gun so Cleveland could go behind the house and fire it. Cleveland brought the gun back to Kirkland and told him he was going back inside the house to get the money. Cleveland fetched the knife from the kitchen "because a gun can do all kinds of damage." Cleveland returned and while Kirkland was looking away, began to lean in the car for the gun and marijuana when Kirkland looked at him with a "what the fuck" look. Cleveland stabbed Kirkland twice because he thought he was caught, but Cleveland maintained he did not intend to hurt Kirkland bad, just enough to run away. Cleveland told the investigators that at this point he was in an adrenaline rush: he thought he only stabbed Kirkland twice. Cleveland ran into the woods. Cleveland claimed he did not use the full force of his strength because he did not mean for the blade to penetrate too deeply. Cleveland indicated he was regretful. ROA. pp. 160-162 (direct quote p. 161, line 12).

Sergeant Tinsley asked Cleveland to write out a statement, but he said he was tired and did not feel like it. ROA. p. 168. Sergeant Tinsley noted Cleveland did not have any injuries. ROA. p. 171.

Captain Greg Reed testified they did not use threats or coercion during the second interview. Tr. pp. 257-258. He testified the first interview lasted an hour and the second interview lasted forty-five minutes. In between, everyone was simply waiting on information. Captain Reed testified Cleveland was free to leave between interviews. ROA. pp. 176-177.

The only defense witness was Cleveland's mother, Yashica Cleveland. She claimed she was never told that Cleveland was taken to the law enforcement center in Oconee. She found out that Cleveland was under arrest around two to three a.m. She admitted that law enforcement brought her papers to sign to consent to the polygraph examination. She said until that time she was calling around to find Cleveland because at the time he was under house arrest and she was in charge of him. ROA. pp. 186-191.

ARGUMENT

I.

The trial court did not err in admitting Appellant's two statements to law enforcement under the totality of circumstances. The issue is not preserved for review because the objection was not renewed before the jury and the in limine ruling was not final. Appellant admitted he was not coerced or promised anything in exchange for his statements.

Cleveland argues that his statements should have been suppressed by the trial court based on his age and that he was advised that his polygraph test showed signs of deception. However, Cleveland admitted he was not coerced or promised anything. He admitted everyone was nice to him. Under the totality of circumstances, the trial court's ruling is amply supported by evidence. Further, Cleveland did not renew his motion to suppress when the statements were presented to the jury, and the trial court's initial in limine ruling was not final.

First, the issue is not remotely preserved for review. Counsel argued for suppression of the statements at the conclusion of the Jackson v. Denno hearing, but never renewed the motion before the jury. A ruling in limine is not a final ruling on the admissibility of evidence. State v. Griffin, 339 S.C. 74, 528 S.E.2d 668 (2000); State v. Hughes, 336 S.C. 585, 521 S.E.2d 500 (1999). Generally, a motion in limine seeks a pre-trial evidentiary ruling to prevent the disclosure of potentially prejudicial matter to the jury. See State v. Floyd, 295 S.C. 518, 369 S.E.2d 842 (1988). A pre-trial ruling on the admissibility of evidence is preliminary and subject to change based on developments at trial. Id. Unless an objection is made at the time the evidence is offered and a final ruling made, the issue is not

preserved for review. State v. Schumpert, 312 S.C. 502, 435 S.E.2d 859 (1993).

Cleveland argues the trial court's comments that the statements "will be admitted" coupled with the court reporter's notation in the transcript that the two exhibits were admitted into evidence is proof the ruling was actually final. Cleveland does not cite any authority for this proposition. Instead, Cleveland claims: "Because the court had already admitted the statements into evidence during the pretrial Jackson v. Denno hearing, trial counsel did not renew his objection when the statements were later discussed before the jury nor did the assistant solicitor later seek to admit the two exhibits into evidence." Br. of App. p. 10. However, the record fails to indicate any discussion between defense counsel and the court relinquishing the requirement for an objection before the jury -- there is no evidence that defense counsel did not renew the objection because he thought the ruling was final. The substantive issue is extremely weak, and the likely reason defense counsel did not object was because defense counsel felt it lacked sufficient merit to make an objection before the jury. Moreover, the assistant solicitor sought to admit the exhibits into evidence before the jury, without objection, and the court reporter noted in the index that the exhibits were admitted into evidence afterwards. The trial court then provided the jury with instructions regarding the statement. ROA. pp. 164-166. Accordingly, the record fails to support Cleveland's claim that the pre-trial ruling was a final ruling.

Further, Cleveland's statements were voluntarily made as the record demonstrates Cleveland understood his rights, agreed to cooperate with law enforcement, and was not coerced or promised anything by law enforcement. Cleveland's will was not overborne.

Due process requires the suppression of an involuntary confession, regardless of the

truth or falsity of the confession. Jackson v. Denno, 378 U.S. 368, 376 (1964). Further, "the prosecution may not use statements, whether exculpatory or inculpatory, stemming from custodial interrogation of the defendant unless it demonstrates the use of procedural safeguards. . . ." Miranda v. Arizona, 384 U.S. 436, 444 (1966). Accordingly, before the accused is subjected to custodial interrogation, he or she must be informed of the right to remain silent; any statement made may be used as evidence against him or her; the right to the presence of an attorney; and if he or she cannot afford an attorney one will be appointed prior to questioning. State v. Kennedy, 325 S.C. 295, 303, 479 S.E.2d 838, 842 (Ct. App. 1996) *aff'd as modified* 333 S.C. 426, 510 S.E.2d 714 (1998).

"In order to introduce into evidence a confession arising from custodial interrogation, the State must prove by a preponderance of the evidence that the statement was made freely and voluntarily, and taken in compliance with Miranda . . ." State v. Moses, 390 S.C. 502, 512, 702 S.E.2d 395, 400 (Ct. App. 2010). "In order to determine whether a statement is voluntary, the trial court must inquire whether under the totality of the circumstances the suspect's will was overborne." State v. Carmack, 388 S.C. 190, 199, 694 S.E.2d 224, 228 (Ct. App. 2010). "Our courts have recognized that the appropriate factors to consider in the totality of circumstances analysis include: background, experience, conduct of the accused, age, length of custody, police misrepresentations, isolation of a minor from his or her parent, threats of violence, and promises of leniency." State v. Dye, 384 S.C. 42, 47, 681 S.E.2d 23, 26 (Ct. App. 2009) (citations omitted).

While age is a valid factor in the determination of voluntariness, both minors and juveniles have the capacity to make voluntary confessions without the presence or consent of

counsel or other responsible adult. In re Williams, 265 S.C. 295, 300, 217 S.E.2d 719, 722 (1979). "[T]he admissibility of such a confession depends not on [the minor's] age alone but on a combination of that factor with such other circumstances as his intelligence, education, experience, and ability to comprehend the meaning and effect of his statement." Id. The heart of the inquiry is "the ability or capacity to comprehend the meaning and effect of the waiver or statement." Id. "Courts generally do not find a juvenile's confession involuntary where there is no evidence of extended intimidating questioning or some other form of coercion." State v. Parker, 381 S.C. 68, 88, 671 S.E.2d 619, 629 (Ct. App. 2008).

In Moses, the defendant was a high school student who was only seventeen years old and enrolled in special education classes. This Court noted Moses could only read at a third grade level although he was able to earn an occupational diploma. Moses made a custodial statement to police at the police station without his mother present. In finding the statement was admissible, this Court noted the record did not indicate the officer threatened Moses, the officer carefully went through Miranda rights with Moses, and Moses testified that he understood his rights. Moses was not detained for an extended period of time. Although Moses' mother allegedly tried to be present during questioning, this Court noted that alone was not a dispositive factor in determining the voluntariness of the statement. Id. at 401-02, 702 S.E.2d at 514-15. This Court concluded "the record supports the trial court's conclusion that Moses' statement was freely, knowingly, and voluntarily made, regardless of his age, learning disability, and separation from his mother." Id. at 402, 702 S.E.2d at 515.

In State v. Pittman, 373 S.C. 527, 647 S.E.2d 144 (2007), the twelve year-old defendant was tried and convicted for the murder of his grandparents. Pittman shot his

The record contains no evidence that [Pittman] was not advised of his constitutional rights. Furthermore, the record contains no indication that [Pittman] was subjected to prolonged detention as a suspect, required to withstand repeated and lengthy questioning sessions, or deprived in any way of sleep or food. In fact, [Pittman] has presented no evidence whatsoever of coercive or improper police conduct in this investigation. The record on appeal is simply void of the type of coercive action under which courts have previously found a juvenile's statement involuntary.

Id. at 570, 647 S.E.2d at 166.

In the instant case, as in Pittman and Moses, the record establishes that Cleveland was read his rights and understood them. As in Pittman, Cleveland provided an initial statement and remained in a relaxed atmosphere while law enforcement gathered additional information. Tinsley even explained she initially thought Cleveland might be telling the truth and expected there would be a video to support his claim. Tinsley's role in between interviews was similar to McKellar's babysitting role. Tinsley and Cleveland watched television and drank iced tea, which hardly suggests coercion.

Like Pittman, the record is completely devoid of coercive action by law enforcement. Instead, the record shows Cleveland was read his rights and understood them, was not promised anything or threatened, was treated nicely by law enforcement, and willingly provided them a statement. The trial court's ruling regarding the voluntariness of the statement will be upheld when it is supported by any evidence. Parker, 381 S.C. at 75, 671 S.E.2d at 622. In the instant case, the trial court's findings are amply supported by evidence.

grandparents, ran in the woods, and was found wandering in the woods by hunters. He told the hunters that someone shot his grandparents and kidnapped him. He told them he escaped when the kidnapper's vehicle became stuck in mud in the woods. Id. at 543-44, 647 S.E.2d at 152-53. Pittman was interviewed later by the responding Sheriff's investigator, McKellar, at the fire department where the hunters brought him. That interview was not custodial since McKellar was led to believe Pittman was a victim, rather than perpetrator of the crime when he gave the same version of events he had provided to the hunters. McKellar remained with Pittman, "essentially acting as a babysitter. They had lunch together and played 'go fish.'" Pittman also took several naps during the day. Id. at 568, 647 S.E.2d at 165.

Later in the afternoon, McKellar was instructed by her superior to bring Pittman to the sheriff's department because during the course of the investigation, Pittman became the suspect and not a victim. McKellar brought Pittman to the conference room and told him they needed to have an adult conversation. She read him his rights while Detective Williams was present. The opinion described the interrogation as follows:

Williams then told Appellant that things were not adding up. McKellar asked Appellant about the Bible verse he mentioned earlier, however, Appellant did not respond. Williams next asked Appellant what his grandparents would think about him not being truthful. At that point Appellant gave the officers a third statement in which he confessed to the murders and detailed the events of the night. McKellar wrote the statement and appellant read and signed it.

Id. at 568, 647 S.E.2d at 165. The Supreme Court found Pittman failed to offer any evidence other than his age to support his claim that his confession was involuntary. The Supreme Court concluded the following:

CONCLUSION

For all of the foregoing reasons, the judgment and conviction of the lower court should be affirmed.

Respectfully submitted,

ALAN WILSON
Attorney General

DAVID SPENCER
Senior Assistant Attorney General

CHRISTY ADAMS
Solicitor, Tenth Judicial Circuit

BY: 

DAVID SPENCER

Office of the Attorney General
Post Office Box 11549
Columbia, SC 29211
(803) 734-3727

ATTORNEYS FOR RESPONDENT

November 6, 2015

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal From Oconee County
Alexander S. Macaulay, Circuit Court Judge

RECEIVED

NOV 06 2015

SC Court of Appeals

THE STATE,

Respondent,

v.

LAQUAVIUS T. CLEVELAND,

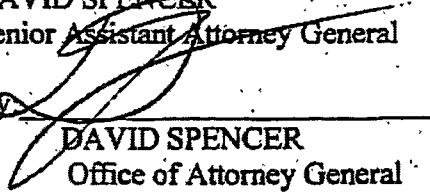
Appellant.

CERTIFICATE OF COUNSEL

The undersigned hereby certifies that this Final Brief of Respondent complies with Rule 211(b), SCACR.

ALAN WILSON
Attorney General

DAVID SPENCER
Senior Assistant Attorney General

By 

DAVID SPENCER
Office of Attorney General
Post Office Box 11549
Columbia, SC 29211
(803) 734-3727

ATTORNEYS FOR RESPONDENT

November 6, 2015

**THIS OPINION HAS NO PRECEDENTIAL VALUE. IT SHOULD NOT BE
CITED OR RELIED ON AS PRECEDENT IN ANY PROCEEDING
EXCEPT AS PROVIDED BY RULE 268(d)(2), SCACR.**

**THE STATE OF SOUTH CAROLINA
In The Court of Appeals**

The State, Respondent,

v.

Laquavius T. Cleveland, Appellant.

Appellate Case No. 2014-001842

Appeal From Oconee County
Alexander S. Macaulay, Circuit Court Judge

Unpublished Opinion No. 2016-UP-324
Submitted April 1, 2016 – Filed June 22, 2016

AFFIRMED

Appellate Defender Lara Mary Caudy, of Columbia, for
Appellant.

Attorney General Alan McCrory Wilson and Senior
Assistant Attorney General David A. Spencer, both of
Columbia; and Solicitor Christina Theos Adams, of
Anderson, for Respondent.

PER CURIAM: Affirmed pursuant to Rule 220(b), SCACR, and the following
authorities: *State v. Griffin*, 339 S.C. 74, 77, 528 S.E.2d 668, 669 (2000) ("[A]n in

limine ruling is not final and does not preserve the issue for appeal."); *State v. Schumpert*, 312 S.C. 502, 507, 435 S.E.2d 859, 862 (1993) ("Unless an objection is made at the time the evidence is offered and a final ruling made, the issue is not preserved for review.").

AFFIRMED.¹

HUFF, KONDUROS, and GEATHERS, JJ., concur.

¹ We decide this case without oral argument pursuant to Rule 215, SCACR.



The South Carolina Court of Appeals

JENNY ABBOTT KITCHINGS
CLERK

V. CLAIRE ALLEN
DEPUTY CLERK

POST OFFICE BOX 11629
COLUMBIA, SOUTH CAROLINA 29211
1220 SENATE STREET
COLUMBIA, SOUTH CAROLINA 29201
TELEPHONE: (803) 734-1890
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July 13, 2016

The Honorable Beverly H. Whitfield
PO Box 678
Walhalla SC 29691-0678

REMITTITUR

Re: The State v. Laquavius T. Cleveland
Lower Court Case No. 2013GS3701043, 2013GS3701044
Appellate Case No. 2014-001842

Dear Clerk of Court:

The above referenced matter is hereby remitted to the lower court or tribunal. A copy of the judgment of this Court is enclosed.

Very truly yours,

V. Claire Allen, Deputy

CLERK

Enclosure

cc: Alan McCrory Wilson, Esquire
Lara Mary Caudy, Esquire
David A. Spencer, Esquire
Christina Theos Adams, Esquire

STATE OF SOUTH CAROLINA

In The Court of Appeals

ORIGINAL

APPEAL FROM OCONEE COUNTY

Alexander S. Macaulay, Circuit Court Judge

RECEIVED

OCT 22 2015

SC Court of Appeals

THE STATE,

RESPONDENT,

V.

LAQUAVIUS T. CLEVELAND,

APPELLANT

APPELLATE CASE NO. 2014-001842

RECORD ON APPEAL

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Attorneys for Respondent

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ARREST WARRANT

2013A3710400559

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of

Oconee

THE STATE

1323302

against

Laquavius Tyshawn Cleveland

Address 2403 Brown St

Seneca, SC 29672

Phone: SSA

Sex M Race B Height 5 9 Weight 170

DL State SC DL #

DOB Agency ORI # SC0370000

Prosecuting Agency Oconee County Sheriff

Prosecuting Officer M Tinsley - 1143

Offense Murder / Attempted Murder

Offense Code 3410

Code/Ordinance Sec 16-03-0029

This warrant is CERTIFIED FOR SERVICE in the

☐ County/ ☐ Municipality of

The accused

is to be arrested and brought before me to be dealt with according to the law

(L.S.)

Signature of Judge

Date

RETURN

A copy of this arrest warrant was delivered to

defendant Laquavius Tyshawn Cleveland

on 7/9/13

Signature of Constable Law Enforcement Officer

Signature of Constable Law Enforcement Officer

Signature of Constable Law Enforcement Officer

RETURN WARRANT TO:

Walhalla Magistrate
208 Booker Drive
Walhalla, SC 29691

ORIGINAL

ORIGINAL

ORIGINAL

ORIGINAL

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of

Oconee

AFFIDAVIT

ORIGINAL

Form approved by
S.C. Attorney General
April 27, 2003
SCCA 318

Personally appeared before me the affiant M Tinsley who

being duly sworn deposes and says that defendant Laquavius Tyshawn Cleveland

do within this county and state on or about 7/8/2013 violate the criminal laws of the

State of South Carolina (or ordinance of ☒ County/ ☐ Municipality of Oconee)

in the following particulars

DESCRIPTION OF OFFENSE: Murder / Attempted Murder

I further state that there is probable cause to believe that the defendant named above did commit the crime set forth and that probable cause is based on the following facts

THE DEFENDANT DID, ON 07-08-13, WITH MALICE AFORETHOUGHT, ATTEMPT TO KILL THE VICTIM, HYKHEM SHAMOOM KIRKLAND, BY STABBING HIM WITH A KNIFE NUMEROUS TIMES ABOUT THE CHEST, SIDE, BACK AND NECK. THIS INCIDENT OCCURRED 2403 BROWN ST., SENECA, SC IN OCONEE COUNTY AND WAS INVESTIGATED BY OCSO. A WRITTEN REPORT IS ON FILE. CASE #1323302.

Signature of Affiant

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of

Oconee

Affiant's Address 300 S Church Street

Walhalla, SC 29691-

Affiant's Telephone (864)638-4111

ARREST WARRANT

TO ANY LAW ENFORCEMENT OFFICER OF THIS STATE OR MUNICIPALITY OR ANY CONSTABLE OF THIS COUNTY:

It appearing from the above affidavit that there are reasonable grounds to believe that

on or about 7/8/2013

defendant Laquavius Tyshawn Cleveland

did violate the criminal laws of the State of South Carolina (or ordinance of

☒ County/ ☐ Municipality of Oconee

) as set forth below

DESCRIPTION OF OFFENSE: Murder / Attempted Murder

Having found probable cause and the above affiant having sworn before me, you are empowered and directed to arrest the said defendant and bring him or her before me forthwith to be dealt with according to law. A copy of this Arrest Warrant shall be delivered to the defendant at the time of its execution, or as soon thereafter as is practicable.

Sworn to and subscribed before me

on 7/9/2013

Signature of Issuing Judge (L.S.)

Blake A. Norriss

Judge Code 5033

Judge's Address 208 Booker Drive

Walhalla, SC 29691-2278

Judge's Telephone (864)638-4125

Issuing Court ☒ Magistrate ☐ Municipal

ORIGINAL

ORIGINAL

ORIGINAL

FILED OCONEE SC
BEVERLY H. WHITEFIELD
CLERK OF COURT
2013 JUL 11 AM 9:20ENTERED
DB
CLERK OF COURT
ORIGINAL

STATE OF SOUTH CAROLINA

COUNTY OF OCONEE

FILED IN THE COURT OF COMMON PLEAS

CLERK OF COURT

LAQUAVIUS CLEVELAND # 360829

FILED 5 PM 4:07

CIVIL ACTION COVERSHEET

2017-CP-37-327

vs.

State of South Carolina

Defendant(s)

Submitted By: LAQUAVIUS CLEVELAND

Address: LEE CORRECTIONAL INSTITUTION

F-7-80-B990 WISACKY HWY.

BISHOPVILLE, S.C. 29010

SC Bar #:

Telephone #:

Fax #:

Other:

E-mail:

NOTE: The coversheet and information contained herein neither replaces nor supplements the filing and service of pleadings or other papers as required by law. This form is required for the use of the Clerk of Court for the purpose of docketing. It must be filled out completely, signed, and dated. A copy of this coversheet must be served on the defendant(s) along with the Summons and Complaint.

DOCKETING INFORMATION (Check all that apply)

**If Action is Judgment/Settlement do not complete*

- ☐ JURY TRIAL demanded in complaint. ☐ NON-JURY TRIAL demanded in complaint.
☐ This case is subject to ARBITRATION pursuant to the Court Annexed Alternative Dispute Resolution Rules.
☐ This case is subject to MEDIATION pursuant to the Court Annexed Alternative Dispute Resolution Rules.
☐ This case is exempt from ADR. (Proof of ADR/Exemption Attached)

NATURE OF ACTION (Check One Box Below)

- | | | | |
|---|--|---|--|
| Contracts
☐ Constructions (100)
☐ Debt Collection (110)
☐ General (130)
☐ Breach of Contract (140)
☐ Fraud/Bad Faith (150)
☐ Failure to Deliver/
Warranty (160)
☐ Employment Discrim (170)
☐ Employment (180)
☐ Other (199) _____ | Torts - Professional Malpractice
☐ Dental Malpractice (200)
☐ Legal Malpractice (210)
☐ Medical Malpractice (220)
Previous Notice of Intent Case #
20 ____ -NI- ____
☐ Notice/ File Med Mal (230)
☐ Other (299) _____ | Torts - Personal Injury
☐ Conversion (310)
☐ Motor Vehicle Accident (320)
☐ Premises Liability (330)
☐ Products Liability (340)
☐ Personal Injury (350)
☐ Wrongful Death (360)
☐ Assault/Battery (370)
☐ Slander/Libel (380)
☐ Other (399) _____ | Real Property
☐ Claim & Delivery (400)
☐ Condemnation (410)
☐ Foreclosure (420)
☐ Mechanic's Lien (430)
☐ Partition (440)
☐ Possession (450)
☐ Building Code Violation (460)
☐ Other (499) _____ |
| Inmate Petitions
☒ PCR (500)
☐ Mandamus (520)
☐ Habeas Corpus (530)
☐ Other (599) _____ | Administrative Law/Relief
☐ Reinstate Drv. License (800)
☐ Judicial Review (810)
☐ Relief (820)
☐ Permanent Injunction (830)
☐ Forfeiture-Petition (840)
☐ Forfeiture-Consent Order (850)
☐ Other (899) _____ | Judgments/Settlements
☐ Death Settlement (700)
☐ Foreign Judgment (710)
☐ Magistrate's Judgment (720)
☐ Minor Settlement (730)
☐ Transcript Judgment (740)
☐ Lis Pendens (750)
☐ Transfer of Structured
Settlement Payment Rights
Application (760)
☐ Confession of Judgment (770)
☐ Petition for Workers
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☐ Other (799) _____ | Appeals
☐ Arbitration (900)
☐ Magistrate-Civil (910)
☐ Magistrate-Criminal (920)
☐ Municipal (930)
☐ Probate Court (940)
☐ SCDOT (950)
☐ Worker's Comp (960)
☐ Zoning Board (970)
☐ Public Service Comm. (990)
☐ Employment Security Comm (991)
☐ Other (999) _____ |
| Special/Complex /Other
☐ Environmental (600)
☐ Automobile Arb (610)
☐ Medical (620)
☐ Other (699) _____
☐ Sexual Predator (510) | ☐ Pharmaceuticals (630)
☐ Unfair Trade Practices (640)
☐ Out-of State Depositions (650)
☐ Motion to Quash Subpoena in an
Out-of-County Action (660)
☐ Pre-Suit Discovery (670) | | |

Submitting Party Signature: _____

Date: _____

Note: Frivolous civil proceedings may be subject to sanctions pursuant to SCRCF, Rule 11, and the South Carolina Frivolous Civil Proceedings Sanctions Act, S.C. Code Ann. §15-36-10 et. seq.

ENTERED
SW
CLERK

- (c) _____
5. The date upon which sentence was imposed and the terms of the sentence:
- (a) July 24, 2014 - FIVE YEARS
- (b) July 24, 2014 - TWENTY-TWO YEARS
- (c) _____
6. Check whether a finding of guilty was made:
- (a) after a plea of guilty _____
- (b) after a plea of not guilty ☒ _____
- (c) after a plea of nolo contendere _____
7. Did you appeal from the judgment of conviction or the imposition of sentence?
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. AFFIRMED
- ii. _____
- iii. _____
- (c) the date of each such result:
- i. APRIL 1, 2016
- ii. _____
- iii. _____
- (d) if known, citations of any written opinion or orders entered pursuant to such results:
- i. NO. 2016 - UP - 324
- ii. _____
- iii. _____
9. If you answered "no" to (7), state your reasons for not so appealing:
- (a) _____
- (b) _____

- (c) _____
10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:
- (a) INEFFECTIVE ASSISTANCE OF TRIAL COUNSEL
- (b) INEFFECTIVE ASSISTANCE OF APPELLATE COUNSEL
- (c) _____
11. State concisely and in the same order the facts which support each of the grounds set out in (10):
- (a) LEAVE OPEN TO AMEND ALLEGATIONS/MEMORANDUM OF LAW
- (b) LEAVE OPEN TO AMEND ALLEGATIONS/MEMORANDUM OF LAW
- (c) _____
12. Prior to this application have you filed with respect to this conviction:
- (a) any petition in a State Court under South Carolina Law? NO
- (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? NO
- (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? NO
- (d) any other petitions, motions or applications in this or any other Court? NO
13. If you answered "yes" to any part of (12), list with respect to each petition, motion or application:
- (a) the specific nature thereof:
- i. _____
- ii. _____
- iii. _____
- iv. _____
- (b) the name and location of the Court in which each was filed:
- i. _____
- ii. _____
- iii. _____
- iv. _____

(c) the disposition thereof:

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

(d) the date of each such disposition:

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

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

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

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

NO

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

(a) which grounds have been presented:

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

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

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

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

- (a) SEE Amendment
- (b) SEE Amendment
- (c) _____

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

- (a) your arraignment and plea? _____
- (b) your trial, if any? YES
- (c) your sentencing? YES
- (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? YES
- (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed?
No

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

(a) the name and address of each attorney who represented you:

- i. CHARLES R. GRIFFIN, JR., ESQUIRE
- ii. LARA M. CAUDY, APPELLATE DEFENDER
- iii. _____

(b) the proceedings at which each such attorney represented you:

- i. TRIAL COUNSEL
- ii. DIRECT APPEAL COUNSEL
- iii. _____

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

SENTENCE MODIFIED ON INDICTMENT NUMBER 2013-GS-37-1044
AND SENTENCE AFFIRMED ON INDICTMENT NUMBER 2013-GS-37-1043
AS SENTENCED JULY 24, 2014

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

No

2017-CP-37-327

STATE OF SOUTH CAROLINA)

County of LEE)

VERIFICATION

2017 JUN -5 PM 4: 08

CLERK OF COURT

I, Lorenus Cleveland, 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.

Lorenus Cleveland

SWORN to and subscribed before me this 30
day of May, 2017.

Delma Eastbury (L.S.)
Notary Public

My Commission Expires: 3/3/2020