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S.C. SUPREME COURT

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to Oconee County

Honorable Jane H Merrill, Circuit Court Judge

CLIFTON E. SMITH,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2026-000029

APPENDIX

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

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5)	2018-GS-37-00667
6	-vs-)	November 18, 2019
7	Clifton Eugene Smith,)	Volume I of II
8	Defendant.)	Pages 1 - 204
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B E F O R E :

The Honorable R. Lawton McIntosh, Judge

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

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Reported by:
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For the State:

Marked	Description	I.D.	Admitted
2	Photo-stitches on chest		184
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For the Defendant:

Marked	Description	I.D.	Admitted
	None offered.		

1 (WHEREUPON, court convened with all parties
2 present and the following proceedings were had
3 commencing at 9:32 a.m.)

4 THE COURT: Good morning, ladies and gentlemen.
5 My name is Lawton McIntosh. I'm the resident circuit
6 court judge from Anderson County. It is my pleasure to
7 be with you this week during a term of general sessions
8 or criminal court.

9 I have met with several of the attorneys this
10 morning, and we have a few things on the docket, and
11 we'll tell you more about that as the day progresses.

12 Before we get started, Madam Clerk, would you call
13 the roll, please, ma'am.

14 THE CLERK: We're trying. April is going to do it
15 for me.

16 THE COURT: Okay.

17 THE CLERK: Before we begin, I need to administer
18 an oath, so if you will stand and raise your right
19 hand.

20 (WHEREUPON, prospective jury panel sworn in.)

21 THE CLERK: Let the record reflect that all
22 members of the jury panel have accepted the oath.

23 As I call your name, please stand, state your
24 place of employment and your position held. I will
25 also need the same information for your spouse, if you

1 are married. If you're retired, please state your last
2 job held.

3 3, Nancy Allgood.

4 PROSPECTIVE JUROR: I'm retired, but I was last
5 employed with Clemson University.

6 THE CLERK: Thank you. Are you married?

7 PROSPECTIVE JUROR: I'm widowed.

8 THE CLERK: Thank you.

9 7, Abigail Arblaster.

10 PROSPECTIVE JUROR: I'm a student. My last job
11 was at Dollar General.

12 THE CLERK: Thank you.

13 9, Edith Bacher.

14 PROSPECTIVE JUROR: All In Coffee Shop, baker. My
15 husband is a pastor, and we both volunteer with prison
16 chapel.

17 THE CLERK: 10, Holly Bailey.

18 PROSPECTIVE JUROR: Prizma Health Oconee, and my
19 husband is self-employed.

20 THE CLERK: What does he do?

21 PROSPECTIVE JUROR: He's a builder, residential.

22 THE CLERK: 12, Luke Bear.

23 PROSPECTIVE JUROR: I work at M.H. Construction of
24 the Upstate. I'm a carpenter.

25 THE CLERK: 14, Elizabeth Becker.

1 PROSPECTIVE JUROR: Hi. I'm a nurse at Prizma in
2 Greenville, and my husband is a physician at Ocone.

3 THE CLERK: 16, Rebecca Bennett.

4 PROSPECTIVE JUROR: I work for Lowe's. I'm a
5 nursery specialist, and I'm single.

6 THE CLERK: 18, Stephen Beverly.

7 PROSPECTIVE JUROR: I'm a retired attorney. I'm
8 not married.

9 THE CLERK: Thank you.

10 19, Carolyn Black.

11 PROSPECTIVE JUROR: I'm a retired --

12 THE CLERK: Can you speak up?

13 PROSPECTIVE JUROR: I'm a retired neonatal ICU
14 nurse, and my husband is a veterinarian employed by
15 Seneca Animal Hospital.

16 THE CLERK: 20, Jodi Blackwell.

17 PROSPECTIVE JUROR: I work at Ulbrich Machine in
18 flat wire. I'm a medical spooler. My husband --

19 THE REPORTER: I can't hear a thing.

20 THE CLERK: Can you speak up? Do you mind
21 repeating what you said?

22 PROSPECTIVE JUROR: I work at Ulbrich Precision
23 flat wire, medical spooler. My husband works at animal
24 control for the city of Seneca.

25 THE CLERK: 22, Judith Bliss.

1 PROSPECTIVE JUROR: I'm a private practice
2 psychotherapist, mental health counselor. My husband
3 is employed in his own business, which is leadership
4 development.

5 THE CLERK: 25, Amanda Broome.

6 PROSPECTIVE JUROR: I work at Koyo in Walhalla.
7 My husband's a waste water treatment operator.

8 THE CLERK: 30, James Bynum.

9 PROSPECTIVE JUROR: I work at Foothills Assisted
10 Living, maintenance man. My wife also works at
11 Foothills Assisted Living as a medical tech.

12 THE CLERK: 34, Sherry Chapman.

13 PROSPECTIVE JUROR: I work at West Point Home
14 Development in the hospital division, and my husband is
15 retired.

16 THE CLERK: 37, Laurie Churchill.

17 PROSPECTIVE JUROR: I'm a domestic goddess, and my
18 husband works for Mediakind as a salesman.

19 THE CLERK: 44, Donna Combs.

20 PROSPECTIVE JUROR: I'm retired. My last
21 employment was Seneca Chiropractic. My husband,
22 Dr. Combs, is also retired.

23 THE CLERK: 47, Wilma Cromer.

24 PROSPECTIVE JUROR: I'm retired, Covidien, and I'm
25 not married.

1 THE CLERK: 48, James Dalton.

2 PROSPECTIVE JUROR: Self-employed, Tree Works Tree
3 Service. My wife is unemployed.

4 THE CLERK: 53, Tammy Dolfis.

5 PROSPECTIVE JUROR: My husband -- I'm a
6 stay-at-home mom. My husband works for Techav out of
7 Boston.

8 THE CLERK: Thank you.

9 55, Catherine Epley.

10 PROSPECTIVE JUROR: My husband and I both retired
11 from IT and Met Life and United Healthcare.

12 THE CLERK: 63, Gloria Freeman.

13 PROSPECTIVE JUROR: Executive assistant, Clemson
14 University, not married.

15 THE CLERK: 65, Robin Fuss.

16 PROSPECTIVE JUROR: Retired, Procter & Gamble, and
17 my husband is also retired from P&G.

18 THE CLERK: 68, Michael Glick.

19 PROSPECTIVE JUROR: Currently working at UPS. My
20 wife is self-employed, housecleaning.

21 THE CLERK: 70, Robby Goss, Jr.

22 PROSPECTIVE JUROR: Beckwith Plumbing is my
23 employer, licensed plumber. My wife works with Pickens
24 County Schools, cafeteria lady at Daniel High School.

25 THE CLERK: 73, Linda Hamilton.

1 PROSPECTIVE JUROR: Retired, Dow Chemical, human
2 resources. My husband retired from Dow Chemical.

3 THE CLERK: 77, Ashton Harris.

4 PROSPECTIVE JUROR: I work for the Country Club at
5 Sapphire Valley in Sapphire, North Carolina. I'm the
6 general manager and chief operating officer. My wife
7 is a registered nurse for Oconee County schools.

8 THE CLERK: 79, Roger Head.

9 PROSPECTIVE JUROR: I work on the Landing Farm.
10 My wife works for --

11 THE CLERK: 81, James Henderson.

12 PROSPECTIVE JUROR: I work at Duke Energy. I'm a
13 reactor operator. My wife is at Borg Warner,
14 accountant.

15 THE CLERK: 82, Kathleen Henderson.

16 PROSPECTIVE JUROR: Retired interior designer,
17 married. My husband is a retired accountant with Ernst
18 and Young.

19 THE CLERK: 83, James Hill.

20 PROSPECTIVE JUROR: Disabled. My wife is retired.

21 THE CLERK: 87, Luke Hollinger.

22 PROSPECTIVE JUROR: I'm a self-employed mini barn
23 builder, and I'm single.

24 THE CLERK: 91, Donald James.

25 PROSPECTIVE JUROR: Yes, I'm assistant manager at

1 Domino's, and my wife works at Borg Warner.

2 THE CLERK: 101, Lisa Lasky.

3 PROSPECTIVE JUROR: I'm self-employed, developer.
4 My husband --

5 THE CLERK: Can you repeat that, please?

6 PROSPECTIVE JUROR: Web developer, self-employed.
7 My husband does IT for CARE International Relief
8 Organization.

9 THE CLERK: Thank you.

10 106, Jon Martin.

11 PROSPECTIVE JUROR: Sales director for Stridetool
12 in Ohio. My wife works for Clemson University work
13 center.

14 THE CLERK: 110, Jack McKenna.

15 PROSPECTIVE JUROR: I'm a retired university
16 professor, state of Minnesota. My wife is a retired
17 university professor at College of Saint Benedict.

18 THE CLERK: Thank you.

19 111, Robert McLellen.

20 PROSPECTIVE JUROR: I'm an insurance agent for
21 Byrd-McLellan. My wife is life enrichment director at
22 Presbyterian Foothills in Easley.

23 THE CLERK: 113, Michael Merck.

24 PROSPECTIVE JUROR: Retired from Duke Energy. My
25 wife is retired from Duke Energy.

1 THE CLERK: 116, Alexander Morgan.

2 PROSPECTIVE JUROR: Maintenance technician at
3 Sandvik Coromant. My wife is a stay-at-home mom.

4 THE CLERK: 117, Kristopher Morrison.

5 PROSPECTIVE JUROR: Quality technician at
6 Greenfield. My wife is the first-time experience
7 director at Foothills Church.

8 THE CLERK: 118, Jennifer Moss.

9 PROSPECTIVE JUROR: Assistant curator, Oconee
10 History Museum. My husband is a merchandiser at
11 Mondelez-Nabisco.

12 THE CLERK: 119, Jessica Kelley.

13 PROSPECTIVE JUROR: Assistant manager of a
14 cafeteria, and my husband is a department manager at
15 Walmart.

16 THE CLERK: 120, David Nix.

17 PROSPECTIVE JUROR: I work at Duke Energy, Oconee
18 Nuclear Station, procedure writer for operations. My
19 wife stays at home.

20 THE CLERK: 125, Dana Owens.

21 PROSPECTIVE JUROR: I'm a shipping clerk at
22 Crystal Geysers. My husband works at Ulbrich as a
23 machine operator.

24 THE CLERK: 126, James Patterson.

25 PROSPECTIVE JUROR: Prizma Health. My wife is a

1 housekeeper.

2 THE CLERK: 129, James Pearson.

3 PROSPECTIVE JUROR: I'm self-employed as a
4 carpenter. My wife is a stay-at-home mom.

5 THE CLERK: 132, Ladale Price.

6 PROSPECTIVE JUROR: Oconee County. I'm the
7 finance director. And my husband works for the City of
8 Walhalla.

9 THE CLERK: 138, Wayne Rholetter.

10 PROSPECTIVE JUROR: Retired plant engineer. My
11 wife works at Ingles, pharmacy tech.

12 THE CLERK: 142, Lucas Sandidge.

13 PROSPECTIVE JUROR: I work at Sandvik Coromant.
14 I'm a CNC programmer, and my wife works at Koyo in
15 Walhalla.

16 THE CLERK: 143, Lacey Sandifer.

17 PROSPECTIVE JUROR: I'm an insurance agent for
18 Humana. My husband is the owner operator of Heritage
19 Memorial Gardens.

20 THE CLERK: 144, Lewis Santilli.

21 PROSPECTIVE JUROR: Good morning. Itron sales and
22 services. My wife retired from the American Cancer
23 Society.

24 THE CLERK: 147, Teresa Sheriff.

25 PROSPECTIVE JUROR: I am a retired administrative

1 assistant from Itron. My husband is a major general in
2 the Army.

3 THE CLERK: Thank you.

4 149, George Simmons.

5 PROSPECTIVE JUROR: Yes. I am disabled, and my
6 wife works at Dollar General.

7 THE CLERK: Thank you.

8 150, Susan Simpson.

9 PROSPECTIVE JUROR: I'm disabled. My last job was
10 at Oconee Memorial Hospital. My husband drives a truck
11 for Coke Consolidated.

12 THE CLERK: Thank you.

13 152, Frank Smith.

14 PROSPECTIVE JUROR: I'm a self-employed real
15 estate broker. My wife is a human resources manager at
16 Investinet in Greenville.

17 THE CLERK: 157, Jonathan Talley.

18 PROSPECTIVE JUROR: I work for Lowe Electrical
19 Supply, sales. My wife works at Ingles.

20 THE CLERK: 163, Judy Watkins.

21 PROSPECTIVE JUROR: I work at Plastic Products
22 plant as an operator. My husband works at Borg Warner
23 as an assembler.

24 THE CLERK: 166, Don Watts.

25 PROSPECTIVE JUROR: Prizma Health, engineering.

1 THE CLERK: 167, Heath Webb.

2 PROSPECTIVE JUROR: Wastewater operator, Schneider
3 Electric. My wife is a stay-at-home mom.

4 THE CLERK: 174, Melanie Williams.

5 PROSPECTIVE JUROR: Clemson Elementary, third
6 grade teacher, not married.

7 THE CLERK: Is there anyone's name I did not call?

8 THE COURT: Ladies and gentlemen, can you hear me?
9 If you cannot, raise your hand and let me know. It's
10 important that you hear and understand what I'm going
11 to go over with you.

12 Let me tell you this before we get started. Every
13 Monday -- I travel all over the state, and on Monday
14 mornings I look out across the courtrooms, typically,
15 and see faces like yours who really don't want to be
16 here, and I understand that. Everybody here in the
17 system understands that.

18 We want to thank you for your willingness to
19 serve. Without you, the rule of law does not exist
20 because we need juries to make determinations for us in
21 courts of law.

22 With that being said, I think it was Winston
23 Churchill who said that during peacetime, there's no
24 higher service that a citizen can do for his country
25 than to sit on a jury. So let me say that to you

1 before you try to get out of service, I'm going to
2 shame you into staying with us today.

3 Ladies and gentlemen, first, I have several
4 questions to ask you. The first have to do with your
5 qualification to serve. These questions are designed
6 by statute. I didn't create them. Some of them are
7 very personal. You may not want to stand up in front
8 of your peers and give the information in open court.
9 And that's quite all right.

10 If a question pertains to you and you do not want
11 to respond in open court, make a mental note of it, and
12 we'll talk to you later in a more private setting at
13 the end of this process.

14 On the other hand, if you do not mind standing up,
15 if you would give us your jury number -- you should
16 have it on your tag -- and give us your name. It helps
17 us get through the process a little bit quicker.

18 After I go through the qualification questions,
19 I'll go through questions about exemptions. The
20 exemptions are simply if it applies to you, you have a
21 right to say "I choose not to serve this week in
22 criminal court."

23 Going to the qualification questions, the first
24 question is: Is there any member of the jury panel who
25 is not a citizen of the United States? If so, would

1 you please stand.

2 Next question: Is there any member of the jury
3 panel who is not a resident and citizen of Oconee
4 County, South Carolina? If so, would you please stand.

5 Ladies and gentlemen, is there any member of the
6 jury panel who is unable to read, write, speak or
7 understand the English language? If so, would you
8 please stand.

9 If you can't understand the English language, I'm
10 not sure how you can respond to that question, but
11 again, I didn't design these.

12 All right. Ladies and gentlemen, is any member of
13 the jury panel or does any member of the jury panel
14 have less than a sixth grade education or its
15 equivalent? If so, would you please stand.

16 Ladies and gentlemen, is there any member of the
17 jury panel who is unable, because of an intellectual or
18 physical infirmity, to render efficient jury service if
19 you are selected to serve this week?

20 Now, by efficient jury service, I'll tell you that
21 I typically run court in segments of an hour to two
22 hours at a time. You will need to be able to sit,
23 stand, or with some other reasonable accomodation
24 listen to the opening statements by the attorneys, the
25 presentation of the evidence, the closing statements by

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1 the attorneys, and the charge on the law by myself and
2 then engage in meaningful deliberations.

3 However, if there's any member of the jury panel
4 who, because of an intellectual or physical infirmity,
5 who's unable to render efficient jury service, if you
6 don't mind standing, would you please do so.

7 Ladies and gentlemen, has any member of the jury
8 panel been convicted by guilty plea or trial in a state
9 or federal court of record of a crime punishable by
10 imprisonment for more than -- for more than one year
11 and your civil rights have not been restored by pardon
12 or amnesty?

13 Now, by more than one year, I mean that you could
14 have received a sentence in excess of a year regardless
15 of the sentence you may have actually received. If
16 that applies to you and you don't mind standing, would
17 you please do so.

18 Ladies and gentlemen, is there any member of the
19 jury panel who is a clerk or deputy clerk of court, a
20 constable, sheriff, or other commissioned law
21 enforcement officer, probate judge, county
22 commissioner, magistrate, or other county officer or
23 employed within the walls of any courthouse? If so,
24 would you please stand.

25 Ladies and gentlemen, is there any member of the

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1 jury panel who has served here in circuit court as
2 opposed to city court, magistrate court, or federal
3 court during this calendar year, during 2019? If so,
4 would you please stand.

5 All right. Ladies and gentlemen, the last
6 question on qualifications is: Has any member of the
7 jury panel served as a member of the Oconee County
8 Grand Jury during the past several years? If so, would
9 you please stand.

10 All right. Ladies and gentlemen, that concludes
11 the questions on qualifications. Remember, if you did
12 not respond but you needed to, come forward at the end
13 of this process when I ask you to do so.

14 That leads us to exemptions. Again, exemptions
15 means that if it applies to you, you have a right to
16 say, "I do not want to serve this week in criminal
17 court."

18 The first of those are for those of you who may
19 have reached the age of 65 years or older. If you are
20 65 years or older, you have a right to say, "I do not
21 want to serve in circuit court during this calendar
22 week."

23 Before any of you who may fit that description
24 exercise your exemption, let me urge you to stay with
25 us. If you have made it 65 years or more in this

1 world, you may be of benefit to any jury you serve on.

2 With that being said, if you are 65 years or
3 older, you have the absolute right to say, "I do not
4 want to serve this week." If that applies to you and
5 you wish to be excused, please stand.

6 Excellent.

7 Another exemption has to do with prior jury
8 service. In the qualifications section, if you served
9 in 2019, you're not qualified to serve again in 2019.
10 In South Carolina you can only be called to circuit
11 court as opposed to city court, magistrate's court, or
12 federal court once every three calendar years. So,
13 therefore, this question wants to know whether or not
14 you served in circuit court in 2017 or 2018.

15 If you served in circuit court in one of those
16 years, you have a right to say, "I do not want to serve
17 again in 2019." If that applies to you and you wish to
18 be excused, would you please stand.

19 Ladies and gentlemen, anyone who served as a grand
20 juror during the last five calendar years anywhere in
21 this state has a right to say, "I choose not to serve
22 again in circuit court in 2019." If that applies to
23 you and you wish to be excused, would you please stand.

24 Madam Clerk, I don't know that we've made it this
25 far without having anybody stand in a long time.

1 THE CLERK: That's true.

2 THE COURT: All right. Ladies and gentlemen, the
3 next exemption has to do with those of you who may have
4 young children. There are four subparts, all of which
5 must apply before you can exercise your exemption, but
6 you may be exempted from jury service, number one, if
7 you have a small child or children under -- under the
8 age of seven; number two, you have legal custody of
9 your child or children; number three, you are the
10 principal caretaker of your child or children; and
11 number four, you would be unable to make suitable
12 arrangements for their care if you're required to serve
13 this week.

14 If this exemption and all the subparts apply to
15 you and you wish to be excused, would you please stand.

16 Very good.

17 Ladies and gentlemen, the next exemption has to do
18 with those of you who may be attending school on a
19 full-time basis or who may be working at an educational
20 institution. It applies whether it's a public school,
21 private school, or technical school. The only
22 difference with this exemption is you will not be
23 excused from jury service. You will be simply
24 transferred to another term of court that may not
25 interfere with your studies or your work at an

1 educational institution.

2 Therefore, if we have any full-time students,
3 teachers, bus drivers, crossing guards or who work at a
4 public, private, or technical school in some other
5 capacity who wishes to be transferred to another term
6 of court, would you please stand.

7 Ladies and gentlemen, is there any member of the
8 jury panel who is employed with the Department of
9 Corrections at a penitentiary who wishes to be
10 transferred to another term of court or excused from
11 service? If so, would you please stand.

12 Ladies and gentlemen, is there any member of the
13 jury panel who performs services for a business,
14 commercial, or agricultural enterprise whose services
15 are so essential to the operation of that business that
16 if you were selected to serve this week, that business
17 would have to shutter its doors and not operate while
18 you're performing your duties as a juror. If that
19 applies to you and you wish to be excused, would you
20 please stand.

21 Ladies and gentlemen, is there any juror who is
22 the primary caretaker of a severely disabled person
23 who's unable to care for himself or herself and cannot
24 be left unattended or is the primary caretaker of a
25 person aged 65 years or older? If that applies to you

1 and you wish to be excused, would you please stand.

2 All right. Ladies and gentlemen, that concludes
3 the exemption questions. It may be that you did not
4 answer and you needed to. If that applies to you, I'm
5 going to ask you to stand up here at the bar and we'll
6 speak to you on a more individualized basis.

7 Also, it may be that you're qualified to serve and
8 no exemption applies to you, but having to serve this
9 particular week may present you with an undue hardship.
10 If anyone would like me to entertain a request to be
11 transferred to another term of court, would you please
12 stand.

13 All right, sir.

14 What is your jury number?

15 POTENTIAL JUROR: 144.

16 THE COURT: 144?

17 POTENTIAL JUROR: Yes.

18 THE COURT: You're Mr. Santilli?

19 POTENTIAL JUROR: Yes, sir.

20 THE COURT: Okay. Mr. Santilli, do you mind
21 telling me why?

22 POTENTIAL JUROR: I have a prepaid flight and
23 hotel reservations for Akron for business. I'm
24 retiring after the first of the year.

25 THE COURT: We'll get you back for sure. How

1 about January?

2 POTENTIAL JUROR: That's fine.

3 THE CLERK: We've already transferred him once.

4 THE COURT: He's already been transferred once.

5 POTENTIAL JUROR: July 17th is when I was
6 transferred once.

7 THE COURT: You were transferred once.

8 POTENTIAL JUROR: Well, I was transferred for the
9 bias of the case.

10 THE COURT: Let me tell you this.

11 When am I going to be back here? Do we have our
12 terms of court set up for January? I'll make sure I
13 have a note of it, and you won't get out of it again.

14 POTENTIAL JUROR: Give me a couple weeks' notice.

15 THE CLERK: We send them out a month ahead of
16 time.

17 POTENTIAL JUROR: The first one didn't get here.
18 I got the second one.

19 THE COURT: I'm going to let you go today.
20 January, she will send you a notice, give you the date.
21 You will come back and be here.

22 Jury number?

23 POTENTIAL JUROR: 81, James Henderson. My son is
24 signing his letter of intent at West-Oak High School
25 tomorrow to play college baseball.

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1 THE COURT: Who's he going to play with?

2 POTENTIAL JUROR: Concord College.

3 THE COURT: I'm sorry.

4 POTENTIAL JUROR: You can put me any other time.

5 Tomorrow is --

6 THE COURT: What time is he supposed to sign?

7 POTENTIAL JUROR: At lunchtime, so 11:30, if I
8 could be there.

9 THE COURT: What time is it?

10 POTENTIAL JUROR: 11:30 is when the signing is.

11 THE COURT: Is it?

12 POTENTIAL JUROR: Yes, sir.

13 THE COURT: Well, I certainly wouldn't want you to
14 miss that. Stay with us. And I'll tell you what, I
15 promise you, you will make that.

16 POTENTIAL JUROR: Yes, sir.

17 THE COURT: Yes, ma'am. What's your jury number?

18 POTENTIAL JUROR: 19.

19 THE COURT: You're Ms. Black?

20 POTENTIAL JUROR: Yes.

21 THE COURT: Okay.

22 POTENTIAL JUROR: I have a procedure on both knees
23 tomorrow at 1:30 in Greenville for --

24 THE COURT: You don't have to tell us what it is
25 about.

1 POTENTIAL JUROR: Bummer.

2 THE COURT: That's none of our business.

3 POTENTIAL JUROR: But I could be here all day
4 today and tomorrow until, like, 11:00.

5 THE COURT: I'm going to transfer you to another
6 term of court. I have a feeling that we may go beyond
7 that if we start today, so is there a time that's
8 better for you than others?

9 POTENTIAL JUROR: Pretty much the whole month of
10 January.

11 THE COURT: The whole month of January, okay.
12 We'll put you in January. Okay?

13 POTENTIAL JUROR: Thank you.

14 THE COURT: All right. Ms. Black, you are free to
15 go.

16 For those of you being excused, your clerk is
17 going to send you a big check in the mail. Don't spend
18 it all in once place.

19 All right. Ladies and gentlemen, those of you who
20 did not stand up during the process but you needed to,
21 or if you have a question as to whether or not you're
22 qualified, whether or not you are exempt, or whether
23 you want me to entertain a transfer request, if you
24 will stand up here at the bar, we'll get you on a more
25 individualized basis.

1 Excellent.

2 Madam Clerk, I'm telling you, I think that's the
3 least I've ever seen.

4 THE CLERK: It's a first.

5 THE COURT: Let me see the attorneys up here.

6 (WHEREUPON, a bench conference was held off the
7 record.)

8 THE COURT: May I see juror number 30 up here,
9 please, Mr. Bynum.

10 (Beginning of sidebar.)

11 THE COURT: They gave me a thing that says that
12 you had, back in 1975, a charge for receiving stolen
13 goods. Is that you? That's you?

14 POTENTIAL JUROR: Uh-huh.

15 THE COURT: Okay. That hadn't been pardoned or
16 paroled, so I'm going to go ahead and let you go today.

17 POTENTIAL JUROR: Okay.

18 THE COURT: All right, sir. I appreciate you
19 coming.

20 POTENTIAL JUROR: Yes, sir. I apologize.

21 THE COURT: That's not a problem. It's okay.

22 POTENTIAL JUROR: Thank you.

23 (End of sidebar.)

24 THE COURT: Mr. Solicitor, would you call out your
25 case, please.

1 MR. ALDERMAN: This is the case of the State vs.
2 Clifton Eugene Smith.

3 THE COURT: And I have the indictment here.

4 All right. Ladies and gentlemen, we're about to
5 begin the case of the State of South Carolina vs.
6 Clifton Eugene Smith, who's been charged with assault
7 and battery of a high and aggravated nature.

8 What I have in my hand, ladies and gentlemen, is
9 called an indictment. This is simply the mechanism by
10 which the State will bring defendants forward.

11 Thank you. Can you hear me now? All right. Let
12 me start again.

13 This is the case of the State of South Carolina
14 vs. Clifton Eugene Smith, who's been indicted for
15 assault and battery of a high and aggravated nature. I
16 was telling you what I have in my hands is simply
17 called an indictment. It is not evidence of this
18 gentleman's guilt. It doesn't raise an inference or
19 presumption of his guilt. This is simply the method by
20 which people are brought before the court for a trial
21 and determination by the jury of guilt or innocence.

22 With that being said, ladies and gentlemen, has
23 any member of the jury panel ever been related by blood
24 or marriage to either Clifton Eugene Smith or Michael
25 Todd Reid? If so, would you please stand.

1 Has any member of the jury panel ever had a close
2 personal or social relationship with Clifton Eugene
3 Smith or Michael Todd Reid? If so, would you please
4 stand.

5 All right. Ladies and gentlemen, the following
6 are a list of potential witnesses who may appear in
7 these proceedings. I'm going to go through the entire
8 list and ask follow-up questions.

9 Potential witnesses are: Deputy Rashad Crooks,
10 Oconee County Sheriff's Office; Deputy Nicole Lecroy,
11 Oconee County Sheriff's Office; Nicolas Santangelo,
12 state transport police; Vera Galbreath; Sergeant
13 William Sheriff, Oconee County Sheriff's Office;
14 Sergeant David Smith, Oconee County Sheriff's Office;
15 Sergeant David Philpott, Oconee County Sheriff's
16 Office.

17 All right. Ladies and gentlemen, is there any
18 member of the panel who did not get all of those names?
19 If so, raise your hand.

20 Ladies and gentlemen, has any member of the jury
21 panel ever been related by blood or marriage to any of
22 the potential witnesses I just read to you? If so,
23 would you please stand.

24 Has any member of the jury panel ever had a close
25 personal or social relationship with any of the people

1 I just read to you? If so, would you please stand.

2 Very good. All right.

3 Mr. Cole, would you stand up and introduce
4 yourself, please, sir, and your firm.

5 MR. COLE: Thank you. My name is Lee Cole. I'm
6 from Williamston, South Carolina. My firm is Cox and
7 Cole, which is also in Williamston, and my partner is
8 Wes Cox, and I have a retired partner, Jimmy Cox.

9 Thank you.

10 THE COURT: All right, sir.

11 MR. ALDERMAN: Ladies and gentlemen, my name is
12 Jason Alderman. I'm an assistant solicitor here in
13 Oconee County, and I work for your elected solicitor,
14 Mr. David Wagner. And this is Clay Sheriff of the
15 Oconee County Sheriff's Office.

16 THE COURT: All right. Ladies and gentlemen, has
17 any member of the jury panel ever been or are you
18 currently represented by either Mr. Cole or any member
19 of his firm or Mr. Alderman or any attorney employed by
20 the Tenth Judicial Solicitor's Office? If so, would
21 you please stand.

22 Has any member of the jury panel ever been related
23 by blood or marriage or have you ever had a close
24 personal or social relationship with either Mr. Cole or
25 any member of his firm or Mr. Alderman or any attorney

1 employed by the solicitor's office? If so, would you
2 please stand.

3 Ladies and gentlemen, as I told you, this is the
4 case of the State of South Carolina vs. Clifton Eugene
5 Smith, who's been charged and indicted for assault and
6 battery of a high and aggravated nature.

7 Has any member of the jury panel read, heard, or
8 seen anything about this case prior to coming to court
9 today? If so, would you please stand.

10 As a follow-up to that, has any member of the jury
11 panel formed or expressed an opinion about any issue or
12 matter involved in the case of the State of South
13 Carolina vs. Clifton Eugene Smith? If so, would you
14 please stand.

15 Is any member of the jury panel aware of any bias
16 or prejudice they may harbor for or against the State
17 of South Carolina or its attorney or the defendant or
18 his attorney? If so, would you please stand.

19 Yes, ma'am.

20 POTENTIAL JUROR: Sorry.

21 THE COURT: What's your jury number, please?

22 POTENTIAL JUROR: 143.

23 THE COURT: You're Ms. Sandifer?

24 POTENTIAL JUROR: Yes, sir.

25 THE COURT: Okay.

1 POTENTIAL JUROR: Lindsey Simmons is one of my
2 best friends. We talk almost daily. I also know Jason
3 socially and personally as well. I'm not sure how
4 biased or unbiased that would make me.

5 THE COURT: We have to know. If you don't feel
6 you can set that aside and be fair and impartial, make
7 your decision according to the facts of the case and
8 the law as I give it to you, I will excuse you from
9 this case and transfer you to a civil term of court.

10 POTENTIAL JUROR: That would be great, just
11 because Lindsey and I are friends.

12 THE COURT: Do you have a particular term to come
13 back, Ms. Sandifer?

14 POTENTIAL JUROR: Doesn't matter.

15 THE COURT: Everybody else has been choosing
16 January. Do you want to come back in January?

17 POTENTIAL JUROR: January sounds great.

18 THE COURT: Thank you for standing up and letting
19 us know that.

20 That's number 143.

21 All right. Anyone else?

22 Is there any member of the jury panel that was a
23 member of the Oconee County Grand Jury that issued the
24 indictment in this case? If so, would you please
25 stand.

1 Ladies and gentlemen, is there any member of the
2 jury panel who is a member of or a contributor to any
3 group that has as its primary goal the promotion of law
4 enforcement or victims' rights? Examples but certainly
5 not an exhaustive list of such groups would be MADD,
6 SADD, or CAV, but if you are a member of or contributor
7 to any group which has as its primary concern the
8 promotion of law enforcement or victims' rights, would
9 you please stand.

10 Ladies and gentlemen, is there any member of the
11 jury panel who knows of any reason whatsoever why he or
12 she should not be selected to serve in the trial of
13 this matter with particular emphasis being placed upon
14 your ability to be fair and impartial to both the State
15 of South Carolina and the defendant, Clifton Eugene
16 Smith? If you know of any reason why you should not
17 serve, would you please stand.

18 Yes, sir. What's your jury number?

19 POTENTIAL JUROR: 87, Luke Hollinger.

20 THE COURT: 87. Okay, sir.

21 Mr. Hollinger, why should you not serve?

22 POTENTIAL JUROR: I'm a Mennonite. I'm not sure
23 if you're familiar with us.

24 THE COURT: I'm familiar with Mennonites. I get
25 them in Abbeville County a lot. There is a big

1 population there.

2 POTENTIAL JUROR: Yeah.

3 THE COURT: I'm going to ask that you come forward
4 and sit on the front row, and we'll let you sit here
5 and watch the proceedings. You don't have to
6 participate.

7 Mr. Hollinger, if you would, remind me, just wave
8 at me sometime. I'm going to talk to you in just a
9 minute.

10 Anyone else?

11 Yes, sir. What's your jury number?

12 POTENTIAL JUROR: Number 68, Michael Glick.

13 THE COURT: Mr. Glick, okay. I'll be glad to hear
14 your reason.

15 POTENTIAL JUROR: It's based on my Christian
16 beliefs and convictions. I would just -- I've always
17 been where I feel like church and state are different.

18 THE COURT: Well, they are different.

19 POTENTIAL JUROR: Right. And I've always been
20 under the conviction, as a Christian, I don't have the
21 liberty to just be able to give conviction on something
22 like this.

23 THE COURT: Well, okay. I would disagree with
24 you, but I'm going to ask you as well to sit on the
25 front row as well, Mr. Glick.

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1 POTENTIAL JUROR: No problem.

2 THE COURT: Anyone else?

3 And, Mr. Glick, if you would, remind me, too.

4 Just y'all make sure you get my attention.

5 Yes, ma'am. What's your jury number?

6 POTENTIAL JUROR: 9.

7 THE COURT: 90?

8 POTENTIAL JUROR: 9.

9 THE COURT: 9? You're Ms. Bacher?

10 POTENTIAL JUROR: Yes.

11 THE COURT: Okay, Ms. Bacher.

12 POTENTIAL JUROR: I would be the same reasoning as
13 being a --

14 THE COURT: Okay. If you would, just have a seat
15 on the front row for us, if you don't mind.

16 Is there anyone else?

17 Ladies and gentlemen, has any member of the jury
18 panel, any member of their immediate family or close
19 personal friends ever been prosecuted by the Tenth
20 Judicial Circuit Solicitor's Office for anything? If
21 so, would you please stand.

22 Has any member of the jury panel, any close
23 members of their -- close personal friends or immediate
24 family members ever been accused of and/or prosecuted
25 for assault and battery? If so, would you please

1 stand.

2 All right. Mr. Alderman, any additional voir dire
3 from the State?

4 MR. ALDERMAN: None from the State, your Honor.

5 THE COURT: Mr. Cole?

6 MR. COLE: Your Honor, I had previously
7 submitted --

8 THE COURT: I don't have those. Would you send
9 those forward.

10 All right.

11 Ladies and gentlemen, has any member of the jury
12 panel, your immediate family or close personal friends
13 ever been employed by or a contractor for any federal,
14 state, or local law enforcement agency? If so, would
15 you please stand.

16 Has any member of the jury panel or any member of
17 your immediate family or close personal friends ever
18 been the victim of a violent crime? If so, would you
19 please stand.

20 All right, Mr. Cole. Other than as read, any
21 further voir dire?

22 MR. COLE: No, your Honor.

23 THE COURT: Thank you, sir.

24 All right. Ladies and gentlemen, in just a minute
25 the State is going to -- or the clerk, excuse me, is

1 going to run through the computer your names.

2 Used to be, back in the days before I had gray
3 hair, when we did jury selection, we would spin a
4 spindle that had somebody that couldn't read and write
5 and pull out names from a cylinder to make sure the
6 selection process was fair and unbiased. Now the
7 computer is reportedly fair and unbiased and will do
8 that.

9 They will call out your name in just a minute. If
10 you will come through the turnstile, stand right here
11 in front of me, face the State, face the defendant,
12 they will make a selection as to whether or not you
13 will be selected to serve in the trial of this matter.

14 If your name is called, would you please bring
15 your personal belongings with you.

16 Let's do one alternate.

17 And does everybody agree that there's five and
18 five strikes on the regular and two and one on the
19 alternate?

20 MR. ALDERMAN: Yes, your Honor.

21 MR. COLE: Yes, your Honor.

22 THE COURT: Very good.

23 THE CLERK: Again, ladies and gentlemen, as I call
24 your name, if you would please come forward, bringing
25 your personal belongings. You will step through the

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1 gate up to the bar, turn and face the gallery.

2 Number 34, Sherry Chapman.

3 What says the State?

4 MR. ALDERMAN: Please present the juror.

5 THE CLERK: What says the defense?

6 MR. COLE: Please excuse the juror.

7 THE CLERK: Ma'am, you have been excused from this
8 case. You may be seated.

9 Number 79, Roger Head.

10 What says the State?

11 MR. ALDERMAN: Please excuse the juror.

12 THE CLERK: Sir, you have been excused from this
13 case. You may be seated.

14 Number 152, Frank Smith.

15 What says the State?

16 MR. ALDERMAN: Please present the juror.

17 THE CLERK: What says the defense?

18 MR. COLE: Please seat the juror.

19 THE CLERK: Sir, if you would, please take a seat
20 in the jury box.

21 Number 48, James Dalton.

22 What says the State?

23 MR. ALDERMAN: Please present the juror.

24 THE CLERK: What says the defense?

25 MR. COLE: Please seat the juror.

1 THE CLERK: Sir, if you would, please take a seat
2 in the jury box.

3 Number 166, Don Watts.

4 What says the State?

5 MR. ALDERMAN: Please present the juror.

6 THE CLERK: What says the defense?

7 MR. COLE: Please seat the juror.

8 THE CLERK: Sir, if you would, please take a seat
9 in the jury box.

10 Number 142, Lucas Standidge.

11 What says the State?

12 MR. ALDERMAN: Please present the juror.

13 THE CLERK: What says the defense?

14 MR. COLE: Please seat the juror.

15 THE CLERK: Sir, if you would, please take a seat
16 in the jury box.

17 Number 10, Holly Bailey.

18 What says the State?

19 MR. ALDERMAN: Please present the juror.

20 THE CLERK: What says the defense?

21 MR. COLE: Please excuse the juror.

22 THE CLERK: Ma'am, you have been excused from this
23 case. You may be seated.

24 Number 167, Heath Webb.

25 What says the State?

1 MR. ALDERMAN: Please excuse the juror.

2 THE CLERK: Sir, you have been excused from this
3 case. You may be seated.

4 Number 20, Jodi Blackwell.

5 What says the State?

6 MR. ALDERMAN: Please present the juror.

7 THE CLERK: What says the defense?

8 MR. COLE: Please seat the juror.

9 THE CLERK: Ma'am, if you would, please take a
10 seat in the jury box.

11 Number 47, Wilma Cromer.

12 What says the State?

13 MR. ALDERMAN: Please present the juror.

14 THE CLERK: What says the defense?

15 MR. COLE: Please excuse the juror.

16 THE CLERK: Ma'am, you have been excused from this
17 case. You may be seated.

18 Number 110, Jack McKenna.

19 What says the State?

20 MR. ALDERMAN: Please present the juror.

21 THE CLERK: What says the defense?

22 MR. COLE: Please seat the juror.

23 THE CLERK: Sir, if you would, please take a seat
24 in the jury box.

25 Number 138, Wayne Rholetter.

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1 What says the State?

2 MR. ALDERMAN: Please present the juror.

3 THE CLERK: What says the defense?

4 MR. COLE: Please seat the juror.

5 THE CLERK: Sir, if you would, please take a seat
6 in the jury box.

7 Number 37, Laurie Churchill.

8 What says the State?

9 MR. ALDERMAN: Please present the juror.

10 THE CLERK: What says the defense?

11 MR. COLE: Please seat the juror.

12 THE CLERK: Ma'am, if you would, please take a
13 seat in the jury box.

14 Number 22, Judith Bliss.

15 What says the State?

16 MR. ALDERMAN: Please present the juror.

17 THE CLERK: What says the defense?

18 MR. COLE: Please excuse the juror.

19 THE CLERK: Ma'am, you have been excused from this
20 case. You may be seated.

21 Number 101, Lisa Lasky.

22 What says the State?

23 MR. ALDERMAN: Please present the juror.

24 THE CLERK: What says the defense?

25 MR. COLE: Please seat the juror.

1 THE CLERK: Ma'am, if you would, please take a
2 seat in the jury box.

3 Number 118, Jennifer Moss.

4 What says the State?

5 MR. ALDERMAN: Please excuse the juror.

6 THE CLERK: Ma'am, you have been excused from this
7 case. You may be seated.

8 Number 116, Alexander Morgan.

9 What says the State?

10 MR. ALDERMAN: Please present the juror.

11 THE CLERK: What says the defense?

12 MR. COLE: Please seat the juror.

13 THE CLERK: Sir, if you would, please take a seat
14 in the jury box.

15 Number 150, Susan Simpson.

16 What says the State?

17 MR. ALDERMAN: Please excuse the juror.

18 THE CLERK: Ma'am, you have been excused from this
19 case. You may be seated.

20 Number 53, Tammy Dolfis.

21 What says the State?

22 MR. ALDERMAN: Please present the juror.

23 THE CLERK: What says the defense?

24 MR. COLE: Please seat the juror.

25 THE CLERK: Ma'am, if you would, please take a

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1 seat in the jury box.

2 Number 129, James Pearson.

3 What says the State?

4 MR. ALDERMAN: Please present the juror.

5 THE CLERK: What says the defense?

6 MR. COLE: Please seat the juror.

7 THE CLERK: Sir, if you would, please take a seat
8 in the jury box.

9 This will be for our alternate.

10 Number 18, Stephen Beverly.

11 What says the State?

12 MR. ALDERMAN: Please present the juror.

13 THE CLERK: What says the defense?

14 MR. COLE: Please seat the juror.

15 THE CLERK: Sir, if you would, please take a seat
16 in the jury box.

17 THE COURT: All right. Any motions directed at
18 the jury selection process from the State?

19 MR. ALDERMAN: Beg the Court's indulgence, your
20 Honor.

21 THE COURT: Yes, sir.

22 (Discussion between the attorneys.)

23 MR. ALDERMAN: Judge, could we approach?

24 THE COURT: Certainly.

25 (WHEREUPON, a bench conference was held off the

1 record in the presence of the jury, but out of the
2 hearing of the jury.)

3 THE COURT: Juror number 48, raise your hand.

4 Sir, I'm going to go ahead and excuse you from
5 this trial and let you go back to the jury panel,
6 please, sir.

7 Madam Clerk, I'm going to move juror number 18 to
8 the regular jury panel, and I'm going to ask that you
9 go one down and below that to pick our alternate,
10 please.

11 THE CLERK: Number 77, Ashton Harris.

12 What says the State?

13 MR. ALDERMAN: Please present the juror.

14 THE CLERK: What says the defense?

15 MR. COLE: Please seat the juror.

16 THE CLERK: Sir, if you would, please take a seat
17 in the jury box.

18 THE COURT: All right.

19 With that being said, any motions directed at the
20 jury selection process from the State?

21 MR. ALDERMAN: None from the State.

22 THE COURT: From the defense?

23 MR. COLE: Your Honor, no motions, but I believe
24 the alternate may be sitting in the wrong spot.

25 THE COURT: I'll take care of that. All right.

1 Ladies and gentlemen, those of you who were
2 selected, I'm going to ask that you go back with your
3 bailiff in just one second. I want you to pick a
4 foreperson. The foreperson will preside over the jury
5 during deliberations and will also communicate with the
6 Court if ever there is a need for communications. It
7 doesn't have to be unanimous but by a simple majority.
8 Our alternate may not sit as the foreperson, but
9 certainly you have a right to vote on them.

10 Once the person is selected, I'm going to ask that
11 person to write their name down and then query your
12 fellow jurors to determine if anyone would like to have
13 pad and pen to take notes with during the course of the
14 trial.

15 If there are any jurors who do, give me that
16 figure, if there's eight or ten or twelve or whatever.
17 Write that down on a piece of paper, knock on the door,
18 and my bailiff will bring it to me and we'll go further
19 with the trial. But if you will go with the bailiff
20 now, please.

21 (WHEREUPON, the jury exited the courtroom at
22 11:14 a.m.)

23 THE COURT: All right. Ladies and gentlemen,
24 now -- is it on their piece of paper, they have the
25 telephone number?

1 THE CLERK: It's at the top of the letter in big
2 numbers. That's the answering machine.

3 THE COURT: Does anyone not have that call-in
4 number? All right.

5 Ladies and gentlemen, what I'm going to do,
6 instead of having you call in tonight or tomorrow, I'm
7 going to ask that all of you be back Wednesday morning
8 at 9:30 and we'll begin the second trial of the week.

9 I am informed that this trial should take about
10 two days or a day and a half. But keep that number
11 with you because after that, we might have you calling
12 in in the evening after 6:00 o'clock to determine if I
13 need you again later on this week.

14 I know that we have at least three trials that
15 we're going to try to get in this week if possible, but
16 if you would be back here Wednesday morning at 9:30.

17 With that being said, you are excused for the day.

18 (WHEREUPON, the remainder of the jury panel exited
19 the courtroom at 11:17 a.m.)

20 THE COURT: What's your jury number?

21 POTENTIAL JUROR: 149.

22 THE COURT: 149?

23 POTENTIAL JUROR: Yes, sir.

24 THE COURT: You're Mr. Simmons?

25 POTENTIAL JUROR: Yes, sir.

1 THE COURT: The deputy tells me that you have
2 transportation issues.

3 POTENTIAL JUROR: Yes, sir. I'm the only way for
4 my wife to get out and back to work while she's
5 working.

6 THE COURT: When we were going through the
7 process, why didn't you bring it up while you had an
8 opportunity?

9 POTENTIAL JUROR: I forget. That's part of my
10 disability, my memory is off the wall. See, I got -- I
11 forgot what my doctor called it, but my memory goes
12 very quickly and I forget and --

13 THE COURT: What time do you need to pick your
14 wife up?

15 POTENTIAL JUROR: She's off today, but Wednesday
16 she goes in, and I think she goes in at 8:00 o'clock in
17 the morning and she gets off at 3:00.

18 THE COURT: All right, sir. I'm going to have you
19 sit on the front row.

20 POTENTIAL JUROR: Okay.

21 THE COURT: Make sure you remind me at the end of
22 the day. I'm going to let you stay here all day.

23 That's number 149, guys, is off.

24 Juror number 18, Mr. Alderman and Mr. Cole, number
25 18 is the foreperson.

1 MR. ALDERMAN: Thank you, Judge.

2 MR. COLE: Thank you, your Honor.

3 (Court's Number 1 was marked for identification.)

4 THE COURT: Gentlemen, we have a *Jackson/ Denno*
5 that we need to do. We have a stand your ground motion
6 that we need to do. I know Mr. Cole has a motion that
7 he needs to make for the record or several motions.

8 MR. COLE: Yes, your Honor.

9 THE COURT: And I'm going to let you make those
10 now, then we are going to do some planning about when
11 we are going to start opening statements, if we go
12 forward.

13 MR. COLE: Thank you, your Honor.

14 Your Honor, may I beg the Court's indulgence to
15 speak to my client's agent?

16 THE COURT: Absolutely.

17 (Discussion between Mr. Cole and Agent Newton.)

18 THE COURT: Mr. Cole, you about ready for your
19 motions?

20 MR. COLE: Yes, your Honor.

21 You r Honor, at this time I would move for a
22 continuance in this case and based on several different
23 grounds. I'll go through those.

24 First, your Honor, I filed a motion to dismiss
25 under the stand your ground, the South Carolina

1 Protection of Persons and Properties Act. I filed the
2 motion on October 29, 2018. During that time my client
3 was incarcerated on bond. He -- so he was available,
4 he was here.

5 And as the Court knows, the solicitor, despite the
6 supreme court decision from a couple years ago,
7 effectively the solicitor still maintains control of
8 the docket in some regards. And it is the common
9 practice that these hearings would take place
10 immediately prior to trial.

11 However, in my motion I asked for the hearing to
12 be set as soon as -- as soon as the matter may be
13 heard. So I would, for one reason, your Honor, that
14 that hearing was not set at that time. Now we're at
15 this juncture, over a year later, my client cannot be
16 found, and it's going to make it to where it would be
17 very difficult for me to make that motion because he's
18 not here to present testimony. I would have to try to
19 call the victim and see what testimony we can get out
20 of that person.

21 So that, I believe, your Honor -- I believe under
22 the statute he has the right to that -- as interpreted
23 by the supreme court, has a right to that pretrial
24 hearing, and that he would not be able to exercise that
25 if it goes forward today.

1 Secondly, your Honor, he was -- I do not believe
2 that he has been given proper notice in that he has
3 voluntarily waived that notice. So I would ask for a
4 continuance on that ground.

5 He was sent -- we sent notice to the last known
6 address that we had for him, which was the same last
7 known address that the solicitor's office had, ■■■
8 Sunrise Drive in Salem. His probation agent gave a
9 different address this morning, and it's my
10 understanding that an investigator from the solicitor's
11 office went to the different address this morning and
12 could not find -- and the persons there said they
13 didn't know him, they didn't know who he was, could not
14 find him.

15 We have several phone numbers. We have attempted
16 to contact him. He got out. He came here for a
17 probation violation in December of 2018, and the judge
18 sentenced him on that probation violation. Then he was
19 released and went to Spartanburg County and was
20 sentenced on a possession charge, and he was released
21 in February 2018. I have had no contact with him since
22 that time. He hasn't contacted my office. I haven't
23 been able to discuss the case with him, haven't been
24 able to go over anything with him.

25 The only contact I have had is the couple of times

1 that I met with him in the jail prior to the probation
2 violation hearing in December 2018. Then this case was
3 called to trial approximately 30 days ago. I have been
4 trying to contact him since then with the phone numbers
5 and addresses that we had, have not been able to
6 contact him.

7 So I would argue for that point he got out of
8 jail, he did not have proper notice, and we have
9 different addresses for him, and so there's no -- I
10 don't believe the evidence is sufficient enough that he
11 has been given notice in order to voluntarily say that
12 he's giving up his right to be here.

13 THE COURT: I want to hear your other aspects.
14 Let me address this first, if I may, Mr. Cole.

15 Mr. Alderman, the burden is on the State to show
16 that he received notice of this hearing, also received
17 notice that if he did not appear, that the trial would
18 go forward in his absence.

19 Do you have a record of that that we can make part
20 of the court's record?

21 MR. ALDERMAN: I do, your Honor. I have a last
22 court card and the trial letter I will hand up now, a
23 letter that alerts him that the trial is this week, and
24 that if he does not appear, we will proceed in his
25 absence.

1 THE COURT: And that address was 471 Sunrise
2 Drive, Salem 29676. Is that the address you have,
3 Mr. Cole?

4 MR. COLE: Yes, your Honor.

5 THE COURT: And you were given that address by
6 your client?

7 MR. COLE: Yes, your Honor. To the best of my
8 recollection and my notes, that was the address that we
9 had in December of 2018.

10 THE COURT: And in the notice -- it was sent
11 November 4th, says, "Dear Mr. Smith, your criminal case
12 is on the general sessions docket for the week of
13 November 18th, 2019. That means that the solicitor
14 could call your case for trial at any time during this
15 week. You must report to the fourth floor courtroom on
16 the first day of court on November 18th, 2019, at
17 8:30 a.m. Failure to appear and remain until
18 discharged will result in a bench warrant being issued
19 for your arrest. Also bond estreatment proceedings
20 will begin and you could be tried in your absence."
21 Signed, Mr. Alderman.

22 I'm going to make this a copy of the courts -- to
23 go with the court's exhibits.

24 (Court's Exhibit 2 was marked for identification.)

25 THE COURT: Also, Mr. Alderman, in your bonding

1 papers, was he also notified that he would be tried in
2 his absence for his failure to appear? Normally that
3 is the case.

4 MR. ALDERMAN: Yes, Judge. I'm looking through
5 the bonding paperwork now. He's notified of his
6 obligation to keep us up to date with his contact
7 information.

8 THE COURT: I was given the bond in this matter
9 that was signed, looks like by Judge Sprouse on
10 January 22, 2019, and above his signature it says that,
11 "It has been explained to me that if I fail to appear
12 before court as required, a warrant for my arrest will
13 be issued."

14 And also it says, "I understand and have been
15 informed that I have a right and obligation to be
16 present at trial, and should I fail to attend court,
17 trial will proceed in my absence." So he was given due
18 notification under the bond as well as the notification
19 from Mr. Alderman.

20 Mr. Cole, based on what you have argued to me this
21 morning, also what it appears, and we have the
22 probation officer here.

23 Ginger, it appears from what I was told this
24 morning that the address that was given to probation is
25 not the address where he resides, apparently based on

1 the investigator going to his residence this morning.

2 PROBATION OFFICER: I am not familiar with the
3 Salem address that he provided, but there's no telling.
4 He could be living there and not giving that address to
5 us.

6 THE COURT: Right. But what is the address that
7 he gave to probation? Do you have that with you?

8 PROBATION OFFICER: I have it in my mind. To my
9 recollection it's [REDACTED] Ashton Street in Seneca. And
10 it's on Mill Hill. And to my knowledge, that's where
11 he's always lived, unless he's moved, and that would
12 not be an unusual thing.

13 THE COURT: But my understanding, Mr. Alderman, is
14 when we met in chambers, Ms. Simmons called the
15 solicitor's investigator. He went to the address that
16 probation had and was told that he did not live there;
17 is that correct?

18 MR. ALDERMAN: That's the information I have
19 received, your Honor.

20 THE COURT: And any dispute to that, Mr. Cole? I
21 know you weren't there.

22 MR. COLE: That's the information I received, your
23 Honor.

24 THE COURT: I'm going to deny your motions on
25 those grounds. Okay, sir?

1 Now, other grounds. I know that you had a motion
2 directed to the indictment that he was originally
3 charged with assault and battery first but was
4 subsequently indicted for the higher charge of assault
5 and battery of a high and aggravated nature, and you
6 feel like there was some notice issues with that; is
7 that correct?

8 MR. COLE: Yes, your Honor. I do have an issue
9 with that, your Honor. And looking back at the bond
10 paperwork, your Honor, the paperwork I have is stamped
11 January 2018 when he originally was out -- was given
12 the bond for assault and battery first degree.

13 Now, Judge, we have, subsequent to that -- and I
14 apologize, your Honor, since we have everything
15 electronically now, I'm pulling the case up that I had.

16 But subsequent to that, he was -- there was a true
17 bill indictment that he was served with or that his
18 attorney at the time, Mr. Danny Day, at least was
19 served with for assault and battery of a high and
20 aggravated nature.

21 THE COURT: And that day was May 7th, 2018.

22 MR. COLE: Yes, your Honor.

23 THE COURT: Okay, sir.

24 MR. COLE: That -- and when he was served with
25 that, that was after the time that he had received the

1 bond paperwork that said that he signed, so he knew he
2 got that that said if I don't appear, then I'm going --
3 may be tried in my absence.

4 That indictment he got later did not have
5 corresponding paperwork with it that said if I don't
6 appear for this, I may be tried in my absence. And
7 there's two cases on point, your Honor, that I believe.

8 First, *State v. Goode*, which is 299 S.C. 479. And
9 then also distinguished by *State v. Fairey*,
10 F-a-i-r-e-y. That's 374 S.C. 92. Those cases taken
11 together, your Honor, I would argue state that a
12 person -- in one of the cases, a person was charged
13 with -- he was -- the indictment was originally
14 dismissed, then he was reindicted with the same charge
15 or direct indicted with the same charge, and the court
16 said that he did have sufficient notice.

17 However, in another matter, the other case -- and
18 the courts, they discussed both cases in both of these.
19 That's why I'm citing both -- that the person was
20 charged with one crime and then indicted for another
21 crime.

22 THE COURT: What were the crimes, do you remember?

23 MR. COLE: The crime in that case, your Honor, he
24 was charged with grand larceny and then indicted
25 under -- I beg the Court's indulgence.

1 He was arrested for breaking into a motor vehicle
2 and then later indicted for grand larceny, which the
3 two were related but it's a separate crime. And so I
4 believe this case follows that fact pattern.

5 And in that case the court ruled that he did not
6 have sufficient notice because he signed his paperwork
7 on the breaking into motor vehicles and said, I'm going
8 to come to trial for this term for that date, then
9 later was indicted, didn't get the paperwork to sign,
10 didn't get the notice, and it's because it was for a
11 different charge, then the court said he didn't have
12 sufficient notice.

13 THE COURT: Were there different factual
14 allegations that would constitute the basis of the
15 grand larceny distinct from the breaking and entering
16 motor vehicles?

17 In other words, was it something like we'd see
18 often, you see commit a crime in one place and go
19 commit a crime in another place, but it's basically a
20 spree?

21 MR. COLE: Your Honor, my understanding and my
22 reading of the case was that the two charges were
23 related. I don't know that the cases discusses how
24 they were related, but what I read into it was that it
25 was breaking into motor vehicles and that that led

1 to -- it was breaking into a motor vehicle and
2 apparently stole something in that motor vehicle and
3 then later indicted --

4 THE COURT: Constituted grand larceny.

5 MR. COLE: -- indicted for grand larceny.

6 THE COURT: All right.

7 Mr. Alderman, what's your response?

8 MR. ALDERMAN: Well, Judge, first of all, I have
9 not had time to review these two particular cases, but
10 I would say that factually we're dealing with the exact
11 same fact pattern. It's simply a different
12 interpretation of what the charge should have been. He
13 was direct indicted. He was served by and through his
14 attorney.

15 I would also point out, Judge, that he was
16 subsequently on a trial docket for this charge, the
17 charge we're here for today. So that, taken together
18 along with the letters we have sent to the last known
19 address, we believe that he's had more than sufficient
20 notice.

21 THE COURT: Mr. Cole, did you meet with your
22 client after May 7th, 2018?

23 MR. COLE: Yes, your Honor.

24 THE COURT: So at that point I would assume that
25 you were aware of the higher charge; is that correct?

1 MR. COLE: Yes, your Honor.

2 THE COURT: And I would assume that you discussed
3 the fact that was a higher charge with your client?

4 MR. COLE: Yes, your Honor.

5 THE COURT: I'm going to deny your motion.

6 With that being said, any other additional
7 grounds, Mr. Cole?

8 MR. COLE: Your Honor, just on the same grounds
9 that I've previously stated in my motion for a
10 continuance, I would also make an objection to a trial
11 in the absence as a separate objection.

12 THE COURT: Okay, sir. And same basis for that
13 objection or any new grounds?

14 MR. COLE: The exact same basis, your Honor.

15 THE COURT: All right. Thank you, sir. That is
16 denied as well.

17 All right. From a scheduling standpoint, you've
18 got a *Jackson/Denno* and a castle doctrine hearing or
19 stand your ground hearing.

20 MR. ALDERMAN: Yes, Judge.

21 THE COURT: It is now roughly 20 'till 12:00. If
22 we have the jury come back at 2:00 o'clock, do you
23 think we can get it in before 1:00 and take a lunch
24 break?

25 MR. ALDERMAN: I would expect so.

1 THE COURT: Let me bring the jury in. I'll excuse
2 them and bring them back at 2:00.

3 (WHEREUPON, the jury entered open court at
4 11:39 a.m.)

5 THE COURT: You are our foreman; is that correct?

6 JURY FOREPERSON: Yes, sir.

7 THE COURT: And you are our alternate; is that
8 correct, sir?

9 ALTERNATE JUROR: Yes, sir.

10 THE COURT: If each of you would use those seats
11 when you come in and out of the courtroom, it helps me
12 keep up with some administrative matters.

13 The rest of you can sit, other than those seats,
14 wherever you like each time when you come in.

15 Ladies and gentlemen, a couple things. First, we
16 were going to have some preliminary hearings outside of
17 your presence, so we're going to begin trial at 2:00
18 o'clock. So in just a minute I'm going to excuse you
19 and ask you to be back in your jury room at 2:00
20 o'clock today.

21 Each time that we excuse or break here during the
22 process, and I'll try to remind you, leave your pads in
23 the courtroom. However, during lunch breaks and
24 overnight, leave your pads in the jury room. Okay?

25 Now, ladies and gentlemen, let me tell you, from

1 this point forward, you may not speak with anyone about
2 this case. I know that probably all of you have had
3 significant others or close friends who are very
4 interested in what you're doing. I know if I went
5 home, my daughter would want to ask me what the case is
6 about and that kind of thing.

7 You are not allowed to speak with anyone about
8 this case until you have been discharged from the trial
9 of this matter. The reason being we don't want you to
10 be infected with information that may be outside of the
11 scope of this trial.

12 Also, you're not allowed to look up anything about
13 this case. I doubt there's going to be any media about
14 it, but if there is, you are not to read, hear, or see
15 anything about this case. You may not look up any
16 issue or matter involved in this case or any issue you
17 think would be helpful. The reason being, again, we
18 don't want you to be infected with any information
19 that's not part of these proceedings.

20 And, additionally, you may not look up anything
21 about the parties, the court personnel until after you
22 are discharged. Once you are discharged, you can do
23 whatever you like about this case.

24 With that being said, I'm about to excuse you for
25 lunch.

1 Any additions or exceptions from the State?

2 MR. ALDERMAN: None from the State, your Honor.

3 THE COURT: From the defense?

4 MR. COLE: No, your Honor.

5 THE COURT: Mr. Foreman, I'm going to ask that you
6 and your jury members leave your pads in the jury room
7 and be back in the jury room at 2:00 o'clock. If you
8 would follow your bailiff, please, sir.

9 (WHEREUPON, the jury exited open court at
10 11:42 a.m.)

11 THE COURT: Call your first witness.

12 MR. ALDERMAN: Judge, as I understand it, it is
13 Mr. Cole's burden.

14 THE COURT: That's true.

15 MR. ALDERMAN: I would yield to him.

16 THE COURT: I haven't done one for a while, so
17 that's true. It's preponderance of the evidence,
18 that's right.

19 Mr. Cole, with your client not being here, are you
20 able to proceed under the castle doctrine
21 stand-your-ground aspect of this case?

22 MR. COLE: Your Honor, I would like to attempt to.

23 THE COURT: Would you -- okay. Do you have a
24 witness you want to call?

25 MR. COLE: Yes, your Honor.

1 THE COURT: Okay, sir.

2 MR. COLE: I would like to call Varia Galbreath.

3 MR. ALDERMAN: Judge, we would object as --

4 THE COURT: You can object, but I'm going to let
5 him do it.

6 MR. ALDERMAN: Just for the --

7 THE COURT: State your reason for your objection,
8 please.

9 MR. ALDERMAN: Yes, your Honor, that Mr. Cole has
10 not produced a witness list.

11 THE COURT: Sir?

12 MR. ALDERMAN: Mr. Cole has not produced a witness
13 list. This witness is not on his list.

14 THE COURT: All right, sir. That's noted.

15 MR. ALDERMAN: Thank you, Judge.

16 THE COURT: All right.

17 Will Varia Galbreath come around, please.

18 **VARIA GALBREATH,**

19 **BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:**

20 **DIRECT EXAMINATION**

21 **BY MR. COLE:**

22 Q Ms. Galbreath, am I saying your name correctly?

23 A Yes.

24 Q Could you state your full name.

25 A Varia Katherine Galbreath.

1 THE REPORTER: Could you spell it, please?

2 THE WITNESS: V-a-r-i-a, K-a-t-h-e-r-i-n-e,
3 G-a-l-b-r-e-a-t-h.

4 BY MR. COLE:

5 Q Ms. Galbreath, how do you know my client, Clifton
6 Smith?

7 A I met him through a friend of mine.

8 Q And did you previously have a romantic
9 relationship with him?

10 A I did prior.

11 Q And were you having one with him in 2017?

12 A No.

13 Q When did you have one with him?

14 A In August of '16.

15 THE COURT: Did you say August of '16?

16 THE WITNESS: Yes.

17 THE COURT: Would you pull that microphone closer
18 and speak into it a little more, please, ma'am.

19 THE WITNESS: Yes.

20 BY MR. COLE:

21 Q What was your relationship with my client in
22 December 2017?

23 A I got stuck in the middle of he needed somewhere
24 to stay for -- he was going to court or had probation,
25 and he lived in Spartanburg, and he didn't have

1 adequate transportation, so he had asked if he could
2 come to my place so that he would be there that Monday
3 morning for court.

4 Q And so you were allowing him to live at your home?

5 A He came -- he came and I took him back to
6 Spartanburg, like, on Wednesday, and he showed back up
7 the following, like, two weeks later on a Saturday and
8 asked to stay until that Monday.

9 Q And did you allow him to do that?

10 A I did.

11 Q And when during this time was the Christmas dinner
12 at your daughter's house?

13 A It was the day after Christmas.

14 Q That would have been December 26, 2017?

15 A Yes.

16 Q And who all went to the Christmas dinner at your
17 daughter's house?

18 A My son, Todd, Michael Todd Reid, Clifton, and
19 myself.

20 Q And how did you get there?

21 A I drove us there.

22 Q And so Mr. Reid and Mr. Smith, my client, rode in
23 the car with you?

24 A Yes.

25 Q And where was this party located?

1 A In Central, South Carolina.

2 Q And what happened at the party?

3 A We had presents, pizza, and my daughter had gave
4 out her presents, and she gave Clifton mini bottles of
5 alcohol. And my son she gave a beanie to, a toboggan,
6 and she gave me a candle holder. And after the pizza,
7 he drank his alcohol.

8 Q And your son is Michael Todd Reid; is that
9 correct?

10 A Yes, he is.

11 Q When did you leave the party?

12 A When Clifton started showing out and upset me,
13 upset Todd and I -- I cussed, and my daughter said,
14 "Mama, you know I've got a baby here. You know you
15 can't do that." And I was like, "We'll just leave." I
16 mean, it was -- we were there maybe an hour and a half.

17 Q And by showing out, you mean my client was just --
18 was loud; is that correct?

19 A He was being obnoxious, yes.

20 Q When you left, how did y'all -- who drove?

21 A I drove.

22 Q And who was in the car?

23 A My son, Michael Reid, Clifton, and myself.

24 Q And whose car was it?

25 A It was my car.

1 Q And where were you headed?

2 A We were headed home.

3 Q How was the seating arrangement in the car?

4 A I was driving. Clifton was the passenger in the
5 front. Todd was passenger in the backseat on the
6 right-hand side.

7 Q And what happened --

8 A And we had two dogs with us also.

9 Q Where were the dogs at?

10 A They were on the left-hand side in the passenger
11 seat in the back.

12 Q So the dogs and Mr. Reid were in the back?

13 A Yes.

14 Q And Mr. Clifton Smith was in the passenger seat?

15 A Clifton Smith was in the passenger seat in the
16 front, yes.

17 Q What happened on the ride home?

18 A I was upset that our little Christmas dinner had
19 gotten interrupted with how Clifton was acting, and
20 Todd knew that. And I'm not real sure how the argument
21 got started, but instead of Todd going home with me, he
22 decided to go to a friend's house. And Clifton and
23 Todd was arguing and -- I lost myself. What was the
24 question?

25 Q Well, Clifton and Todd were arguing. Were y'all

1 still in the car when they were arguing?

2 A Yes. Yes.

3 Q Where were you headed at that point?

4 A We were heading home. We were heading back to my
5 camper.

6 Q Well, you said that Todd wanted to go to a
7 friend's house?

8 A Yes. And when they started arguing, Todd said,
9 "Just take me to my friend's house."

10 Q So did you start to take him toward his friend's
11 house?

12 A I did.

13 Q And when they were arguing, it was just a verbal
14 argument; is that correct?

15 A At first, yes, it was.

16 Q And then what happened?

17 A Cliff made comments about Todd using meth, and I
18 remember Todd saying, "How can you say that when you're
19 sitting up there with my clothes on? I gave you stuff
20 to wear. How can you say that?" And Todd hit him in
21 the head.

22 Q So Todd hit my client in the head?

23 A Yes, he did.

24 Q And where was Todd when he hit my client in the
25 head?

1 A He was in the backseat.

2 Q And my client was where?

3 A In the front seat.

4 Q And then what happened?

5 A I hollered at them just to stop, and it stopped.

6 And I continued to drive.

7 THE COURT: Say that again, please.

8 THE WITNESS: I hollered at them and screaming at
9 them to stop, to stop arguing and stop -- just to stop.

10 THE COURT: Did they stop?

11 THE WITNESS: Yes, they did.

12 THE COURT: Okay.

13 BY MR. COLE:

14 Q What happened after that?

15 A I continued to drive, and it was dark. Nobody was
16 saying anything, and then just all of a sudden, Clifton
17 turned around in the seat, and I thought he was hitting
18 Todd. And I was like, "Stop, stop," and I stopped in
19 the middle of the road. And Todd went to get out
20 because Cliff was still turned around backwards in the
21 seat facing Todd, and Todd was trying to get out of the
22 car.

23 And then Todd said, "You cut me," and Todd got
24 out. And I held on to -- I had ahold of Cliff's shirt,
25 and I told him, I said, "What did you cut him for?"

1 And he turned around in the seat and sit down. And
2 Todd hollered. You know, he got out of the car and
3 came to the front of the vehicle, and he said, "Call
4 somebody. I've been cut."

5 And I -- I mean, it's dark. I didn't even know
6 where I was on that road. I didn't even know the name
7 of the road. And I called my daughter. And when Todd
8 got out, the dogs got out. They're running everywhere.
9 And I said, "Come down here. You've got to help me.
10 Cliff's cut Todd and the dogs are running loose and I
11 need some help." And she says, "Where are you?" I
12 says, "I don't know where I am, Hanna." And Todd said,
13 "Right there is Ravenel school." And she heard what
14 Todd said. And she said, "I'm on my way." And I hung
15 up and I called 911.

16 Q Now, isn't it true that Mr. Reid hit Mr. Smith
17 right before Mr. Smith turned around in the seat?

18 A No.

19 Q On the date of the incident, do you remember
20 giving a statement to Deputy Crooks?

21 A I did. I mean, it's a while back, but I'm pretty
22 sure I did.

23 MR. COLE: Your Honor, may I approach the witness?

24 THE COURT: Yes, sir.

25 BY MR. COLE:

1 Q Ma'am, do you recognize this document?

2 A Yeah.

3 Q Is that the statement you gave to Deputy Crooks on
4 the date of the incident?

5 A Yes.

6 Q Could you read that statement?

7 A All this?

8 Q Yes.

9 A "Christmas dinner at daughter's. Clifton drank
10 some mini bottles, started getting loud. Todd went to
11 sit in the car because he couldn't handle Clifton being
12 loud. Clifton, Todd, myself left my daughter's about
13 ten minutes later. Driving down the road, Clifton and
14 Todd started arguing about how Clifton couldn't handle
15 his alcohol. Clifton said Todd shouldn't do drugs, and
16 Todd said, 'Clifton, you shouldn't say anything. After
17 all, you,' Clifton, 'are wearing my clothes.'

18 "Not sure where -- not sure what Clifton said
19 after that, but Todd slapped Cliff and Cliff started
20 punching at Todd. Then Clifton turned around in the
21 seat and got on his knees, and that's when Todd said,
22 'You just cut me, motherfucker.' I stopped the car and
23 Todd got out."

24 Q So in that statement that you gave at the time,
25 you agree that you said that he -- that my client --

1 that Mr. Reid hit my client, and then my client
2 immediately turned around and the scuffle continued?

3 A That doesn't say "immediately." It says "then."
4 It doesn't say "immediately." It wasn't immediately.

5 Q But you didn't -- today you mention there is a
6 period of time where they stopped?

7 A There was -- there was. That "then" means it was
8 this, then it went to this. There was a time in
9 between there.

10 Q But you didn't mention that in your statement?

11 A I didn't say that in the statement.

12 Q Did you notice my client's injuries after you
13 stopped the car?

14 A No. I turned around to the -- I was sitting with
15 my back to him. I was -- had my feet out on the
16 ground, so no.

17 Q Did you see my client after you stopped the car at
18 any time before he went to the hospital?

19 A I -- I was back there at the back of the car when
20 the police asked for the knife.

21 Q Did you see my client?

22 A I didn't look him in the face, no, I didn't.

23 Q Did you see any injuries at that point?

24 A No, not on him, no.

25 Q My client had -- you gave permission for my client

1 to be in your car that day; is that correct?

2 A Yes. Yes.

3 MR. COLE: No further questions for this witness,
4 your Honor.

5 THE COURT: Any questions, Mr. Alderman?

6 MR. ALDERMAN: Yes, your Honor.

7 CROSS-EXAMINATION

8 BY MR. ALDERMAN:

9 Q Ms. Galbreath, Cliff was drunk that night, wasn't
10 he?

11 A Yes.

12 Q Belligerent?

13 A He was irritating.

14 Q Combative?

15 A He was -- yeah. He was --

16 Q Okay.

17 A -- more than I want to be around, yeah. I mean,
18 it was time to go.

19 Q Okay. And when your son struck him, what did he
20 do?

21 A He -- he -- he -- he hit Todd. When Todd slapped
22 him, he turned around, like, to hit Todd, and that's
23 when I, you know, said, "Stop."

24 Q So he was hit, and he fought back, and then they
25 stopped; is that correct?

1 A Yeah, they did.

2 Q Okay. Was he hit again before he turned around in
3 the seat and stabbed your son with a knife?

4 A No.

5 Q Okay.

6 MR. ALDERMAN: No further questions, your Honor.

7 THE COURT: Would you pass up that witness
8 statement?

9 MR. ALDERMAN: And, Judge, I've been informed that
10 the defendant has been located, that the investigators
11 have him en route; however, they are in Salem at the
12 moment. May be a minute.

13 THE COURT: He's coming?

14 MR. ALDERMAN: Yes, sir.

15 THE COURT: All right. Very good.

16 Do you know how much time it's going to take to
17 get him here?

18 MR. ALDERMAN: I do not.

19 THE COURT: Ma'am, you may step down.

20 I'm going to give you a couple minutes, Mr. Cole.
21 I know you need to get your client here so he can
22 testify.

23 MR. COLE: Yes, your Honor.

24 THE COURT: Okay. Would you -- does he have a
25 number that you're aware of? Do you know how he was --

1 MR. ALDERMAN: I do not.

2 THE COURT: Ms. Simmons, do you know?

3 MS. SIMMONS: Your Honor, they found him in Salem,
4 and our investigators are transporting him. I will
5 call them and see where they are.

6 THE COURT: Would you do that for me?

7 (WHEREUPON, a recess was taken from 12:18 p.m. to
8 12:27 p.m.)

9 THE COURT: Mr. Cole, you ready with your next
10 witness?

11 MR. COLE: Yes, sir.

12 THE COURT: Would you call him, please.

13 MR. COLE: Yes, your Honor. I'd like to call
14 Clifton Smith.

15 **CLIFTON EUGENE SMITH,**

16 **BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:**

17 **DIRECT EXAMINATION**

18 **BY MR. COLE:**

19 Q Mr. Smith, could you state your full name.

20 A Clifton Eugene Smith.

21 Q Could you speak up for me, Mr. Smith, into that
22 microphone?

23 A Clifton Eugene Smith.

24 Q Mr. Smith, what's your relationship with Varia
25 Galbreath?

1 A We were boyfriend-girlfriend.

2 Q When were y'all in a relationship?

3 A It's been, let's see, 2016, '17.

4 Q At the time of the incident in this case,
5 December 2017, were y'all in a relationship?

6 A Yes, sir.

7 Q And where were you living at that time?

8 A Dear Park. Keowee.

9 Q In whose home?

10 A Hers.

11 Q And that's Ms. Galbreath's home?

12 A Yes.

13 Q Who else lived there with y'all?

14 A Todd somewhat, on and off. He lived there
15 sometime, stayed there sometime.

16 Q And that's Todd Reid?

17 A Yes, sir.

18 Q On December 26, 2017, did you go to a Christmas
19 party?

20 A A little get-together. I wouldn't call it a
21 party, just family.

22 Q And who did you go with?

23 A With Ms. Galbreath. With Varia, yes.

24 Q And who did you -- who rode in the car with you?

25 A Todd Reid, Michael Todd Reid.

1 Q Whose car was it?

2 A Varia's.

3 Q And what happened at the party?

4 A We ate some pizza and chicken wings, and we were
5 leaving. We were taking Todd to Twin Lakes -- not Twin
6 Lakes, something like, though, drop him off at another
7 friend of his house.

8 Q Who was in the car at that point?

9 A The three of us, Michael, Varia and me.

10 Q Where were you sitting?

11 A Passenger seat.

12 Q Where was Varia?

13 A Driving.

14 Q And where was Mr. Reid?

15 A Behind me, rear seat.

16 Q What happened during the car ride?

17 A Well, something got out of hand and words are
18 being exchanged between the two family members and it
19 just -- for some reason, he decides to jump on me.

20 Q Who jumped on you?

21 A Mr. Reid, for no apparent reason.

22 Q What did he do to you?

23 A He attacked me from behind. I was in the
24 seatbelt. He beat me pretty good. I couldn't get out
25 the seatbelt. I mean, it got out of hand.

1 Q Where --

2 A He got out of hand. I didn't until I had to. I
3 had to defend myself at some point in time or die,
4 whichever one, you know, a man chooses to do.

5 Q In what way did he attack you?

6 A Very aggressively, from the rear.

7 Q And how? Was he hitting you? What was he doing?

8 A He was hitting me with fists. All he had. As
9 many times as he could.

10 Q At what point did you defend yourself?

11 A Well, I think I was knocked out one time and came
12 back to and he resumed the assault.

13 THE COURT: Say that again, please, sir.

14 THE WITNESS: I said I believe I was knocked out
15 at one point and I came back to, and he was aggressive
16 again, attacked me again.

17 BY MR. COLE:

18 Q Were you still sitting in the front seat at that
19 time?

20 A I was still in the seatbelt, still locked in.

21 Q And was he still in the backseat?

22 A Well, he's over the seat, towering over me
23 somewhat.

24 Q And how old were you at that time?

25 A 56. Let's see, 56.

1 Q How tall are you?

2 A 5-4.

3 Q How much do you weigh?

4 A About 138.

5 Q How old was Mr. Reid at that time, do you know?

6 A About 28. 20-something. Not in his 30s.

7 Q So he was younger than 30?

8 A I'd say yes.

9 Q Did he weigh more or less than you?

10 A About probably 40 pounds, maybe 50 more.

11 Q Was he taller or shorter than you?

12 A By a foot. Almost a foot. Nine inches, I'd say.

13 Q Who do you think was stronger between you and him?

14 A I don't think that would be a question hardly. He
15 was -- yeah, very much so. In better shape, too,
16 better physical shape.

17 Q What kind of health problems did you have at that
18 time?

19 A Blood pressure, I got a ruptured disc in my neck,
20 one in my lower back, lower lumbar. Carpal tunnel in
21 my right hand. A few more. That's the major ones, you
22 know, physical damage, physical.

23 Q Were you drunk that day?

24 A I drank a couple mini bottles. Not that many.

25 Q How many mini bottles?

1 A Three or four.

2 Q Is that all you had to drink?

3 A Earlier in the day, maybe ten hours earlier, I
4 maybe drank some.

5 Q So what did you do as far as after you said a
6 minute ago that he was continuing to attack you? What
7 happened after that?

8 A I was going to -- I took a pocketknife out. I'm
9 sure it's in evidence. It's not a big knife. It's a
10 fingernail clipper, whatever you want to call it. It's
11 got a little, bitty blade like this. I was going to
12 cut the seatbelt off. Well, as he was attacking me, he
13 cut himself and things escalated from there, so.

14 Q Were you able to get the seatbelt off of you?

15 A I don't think I ever got the seatbelt off until
16 the car was stopped. No, I didn't cut it off. I
17 couldn't. Somehow I got it off or it came off. I
18 don't know. I don't know how it came off. I don't
19 know how I got it off. The attack was so intense that
20 I was out. I mean, I can't tell you that, how I got
21 out of the seatbelt or if I got out of it.

22 Q What happened when the car stopped?

23 A The attack was still going on. We was still
24 fighting. By then I think that the seatbelt came off
25 exactly when the car stopped. I'm pretty sure that's

1 how it happened, but I can't -- I can't tell -- I can't
2 tell you the honest-to-God's truth because I don't
3 know. I was in the state of mind from the attack that
4 I can't tell you what happened exactly.

5 Q What happened after the seatbelt came off?

6 A He's still attacking me.

7 Q What did you do?

8 A Well, I defended myself at that point finally when
9 I finally came to somewhat of sense. I'm sure I had a
10 concussion, you know.

11 Q By defending yourself, what do you mean?

12 A I cut the man several times. And it was in
13 self-defense. I wasn't trying to kill the man. I was
14 just trying to get him to stop.

15 Q And why did you defend yourself?

16 A Defend or die. It's a do-or-die situation.

17 Q And why did you believe it was a do-or-die
18 situation?

19 A When I've already been knocked out one time, it's,
20 you know, about the second time -- any head injury is
21 not good and I already had a broken neck. One of the
22 doctors told me that one wrong move with my neck, you
23 know, I could die. My neck could break again, be
24 rebroken, or one of the chips from the break could go
25 into my spine and sever it.

1 MR. COLE: Your Honor, may I approach the witness?

2 THE COURT: Yes, sir.

3 BY MR. COLE:

4 Q Mr. Smith, I have a photograph that's previously
5 been marked for identification purposes as State's
6 Exhibit 6. Do you recognize this photograph?

7 A Yes, sir.

8 Q And what is that?

9 A That's the little knife that I used, that I had.
10 I think. Is it not?

11 Q You tell me.

12 A I'm not positive that's it. I'm not sure that's
13 it. I don't believe that's it.

14 Q Did you use a pocketknife?

15 A Yes, sir.

16 Q About how long was the blade?

17 A It was a Gerber 200, so inch and -- just over an
18 inch.

19 Q This is a photograph that's been marked as State's
20 Exhibit 10 for identification purposes. Do you
21 recognize this photograph?

22 A Yes, sir. That's me in the emergency room.

23 Q And what does that photograph show?

24 A It shows somebody been beat pretty good, doesn't
25 it? I mean, blood all over me. Mouth, nose, eyes,

1 ears bleeding. It's pretty much.

2 Q This is a photograph that's previously been marked
3 as State's Exhibit 9 for identification purposes. Do
4 you recognize this photograph?

5 A Yes, sir.

6 Q And what is that?

7 A It's my hands.

8 Q And when was that taken?

9 A 27th.

10 Q Where was that taken at?

11 A Emergency room.

12 Q And is that a fair and accurate -- is that how
13 your hands looked at the emergency room?

14 A Yes, sir.

15 Q This is a photograph marked as State's Exhibit 8
16 for identification purposes. Do you recognize that
17 photograph?

18 A Yes, sir.

19 Q What's that photograph of?

20 A Emergency room.

21 Q Who is that in the photograph?

22 A Me, Clifton Smith. Me.

23 Q And what does that photograph show?

24 A More lacerations, more bruises on head, neck,
25 face.

1 Q Is that accurate as to how you looked when you
2 went into the emergency room?

3 A Yes, sir.

4 Q This is a photograph that's previously been marked
5 as State's Exhibit 7 for identification purposes. Do
6 you recognize that photograph?

7 A Yes, sir.

8 Q And who is that?

9 A Me, Clifton Smith.

10 Q And what does that photograph show?

11 A More lacerations, more bruises, cuts.

12 Q Is that how you looked? Is that accurate as to
13 how you looked when you went into the hospital?

14 A Yes, sir.

15 MR. COLE: Your Honor, for the purposes of this
16 hearing, I would move these photographs that have
17 previously been marked as State's Exhibit 7, 8, 9 and
18 10 for identification purposes as an exhibit for this
19 hearing.

20 THE COURT: Any objection for this hearing?

21 MR. ALDERMAN: No, your Honor.

22 THE COURT: Would you pass those so I can look at
23 them?

24 All right, sir.

25 BY MR. COLE:

1 Q Mr. Smith, so you're admitting that you cut
2 Mr. Reid with a knife?

3 A Yes, sir.

4 Q Why did you do it?

5 A To defend myself.

6 Q Do you believe -- you believed that your life was
7 in danger?

8 A When he threatened it verbally, yes, sir.

9 Q When did he threaten it verbally?

10 A While he was being aggressive.

11 Q Was that while he was hitting you?

12 A Yes, sir.

13 Q And as shown in the photographs, did you have a
14 knot?

15 A A knot?

16 Q Knot on your head?

17 A Several. Multiple.

18 Q Why didn't you just get out of the car, get away?

19 A The door would not open on the car. You can't get
20 out of the seatbelt or open the door when it's moving.
21 When the car is in motion, it won't open.

22 Q After y'all stopped, how did this confrontation
23 finally stop?

24 A I was over the seat and I just -- he finally quit
25 beating on me. He finally quit, and I just turned

1 around, sit back down. And I immediately told Varia, I
2 said, "You probably need to get us to the emergency
3 room, get EMTs out here for both of us."

4 Q And what did Mr. Reid do?

5 A He did, he sat there a minute. I thought he was
6 going to attack me again, but he opened the door and
7 got out and came around in front of the car and was
8 screaming some -- I don't know what he was saying
9 exactly, but then I told Varia that she needed EMTs to
10 get there.

11 Q Before the EMTs got there, where were you at?

12 A I never left the vehicle, sir.

13 Q When did you --

14 A I never exited the vehicle.

15 Q When did you get out of the car?

16 A When law enforcement ordered me out.

17 Q Where was the knife that you had during this time?

18 A I had it in my pocket.

19 Q Did anybody ask you for it?

20 A Yes.

21 Q Who?

22 A I can't remember the officer's name, but a
23 sheriff's officer asked for it.

24 Q And what did you do?

25 A I had already laid it on the trunk of the car when

1 he told me to get out.

2 Q During the time that you were waiting for the
3 sheriff and the EMS to get there, did you try to attack
4 Mr. Reid or do anything to Mr. Reid?

5 A I never left the seat. Never spoke a word to
6 anybody but Varia.

7 MR. COLE: No further questions, your Honor.

8 THE COURT: Mr. Alderman.

9 CROSS-EXAMINATION

10 BY MR. ALDERMAN:

11 Q Mr. Smith, I just want to clear up some of these
12 facts. How long was Mr. Reid beating on you? The way
13 you described it, it seemed like it went on from
14 Clemson to Ravenel?

15 A I'd say at least three, five, seven minutes,
16 something like that. Maybe ten, how much --

17 Q So ten minutes of him continuously beating on you?

18 A Like I say, I was knocked out that one moment. I
19 really couldn't -- when the time lapses like that, you
20 really don't know how long it is.

21 Q So ten minutes or not?

22 A I wouldn't say the entire ten minutes.

23 Q Entire nine?

24 A Six, seven.

25 Q Six or seven. Just not letting up on you?

1 A He didn't let up.

2 Q Okay. And you couldn't get out of the seatbelt;
3 is that right?

4 A Yes.

5 Q So he's attacking you from behind and you're
6 defenseless for six to seven minutes, just getting
7 beat?

8 A Yes, sir.

9 Q Until such time that you pulled out a pocketknife
10 to defend yourself; is that right?

11 A Yes, sir.

12 Q Okay. So you had the pocketknife. You pulled it
13 out to defend yourself. Is that your testimony?

14 A I pulled it out to cut the seatbelt originally. I
15 was going to get out of the seatbelt so I could --

16 Q So you pull it out to get out of the seatbelt and
17 then do what?

18 A Defend myself, I mean, at some point in time,
19 so --

20 Q So it was your intention at that point in time to
21 cut the seatbelt, turn around and defend yourself?

22 A Yes, sir.

23 Q But you couldn't do that because the seatbelt
24 wouldn't let you out; is that right?

25 A I couldn't get out of the seatbelt.

1 Q Okay. And you testified just a minute ago that he
2 cut himself while he was beating on you because you're
3 facing forward in the seat and the seatbelt won't let
4 you out; is that right?

5 A Yes, sir.

6 Q Do you know what Mr. Reid looks like?

7 A Yes, sir.

8 Q I'm going to show you what's been previously
9 marked as State's 2 and 5.

10 A I have the same photographs, just in black and
11 white.

12 Q I'm sorry?

13 A I have the same photographs. They're just black
14 and white.

15 Q So you have seen these before?

16 A Yes, sir.

17 Q And they're pictures of Mr. Reid?

18 A Yes, sir.

19 Q Since you have already seen them, had a chance to
20 review them?

21 A They're not that good anyway, the black-and-whites
22 aren't.

23 Q State's 4. These are a little clearer than
24 black-and-whites, aren't they?

25 A Yes.

1 Q What's in that picture?

2 A Reid. Mr. Reid.

3 Q Did you see these injuries?

4 A Yes, sir.

5 Q You're telling me he did that while he was
6 attacking you with a seat between you; is that right?

7 A No, sir.

8 Q Please enlighten us.

9 A I said he cut himself.

10 Q He cut himself?

11 A Not all of it. I did some of that, after.

12 Q Okay. Because a minute ago you said you couldn't
13 get out and he cut himself while he was attacking you.

14 A He did cut himself.

15 Q Okay.

16 A I didn't say all of that. I didn't say he did it
17 all himself.

18 MR. ALDERMAN: Judge, for purposes of this
19 hearing, I'd like to move State's 2, 4 and 5 into
20 evidence.

21 MR. COLE: No objection, your Honor.

22 THE COURT: All right. Those are admitted for
23 this hearing.

24 MR. ALDERMAN: And, Judge, if you care to review
25 them.

1 THE COURT: Would you pass them forward.

2 BY MR. ALDERMAN:

3 Q All right. So he's cutting himself while you sit
4 in the front seat. And you said that you got out of
5 the seatbelt when the car stopped; is that right? That
6 was your testimony a minute ago.

7 A At some point -- yes, that's when the seatbelt
8 released, but I never exited the vehicle. I never got
9 out of the vehicle.

10 Q Law enforcement ordered you out of the vehicle; is
11 that your testimony?

12 A Yes.

13 Q So you're just sitting in the vehicle; the Oconee
14 County Sheriff's Office comes up and orders you out of
15 the vehicle?

16 A Yes, sir.

17 Q Did they do it at gunpoint?

18 A I'm pretty sure, yes.

19 Q Pretty sure they did it at gunpoint?

20 A Yes.

21 Q So they have got guns drawn on you, and you said
22 you pulled the knife out and put it on the trunk of the
23 car?

24 A Yes. He asked me to.

25 Q All right. Now, you were pointing out some

1 lacerations to your head, State's 7 and 8. I'm going
2 to have you take a look at that again. Where are you
3 cut in this picture or either one of these pictures?

4 A Ear. Mouth. Eyebrow. Forehead.

5 Q Okay. So they must have had to do some stitches
6 or something then at the hospital, right?

7 A They used lancets. Tape.

8 Q So, like, butterfly bandages?

9 A Yes.

10 Q And they used those on your what? Your ear, your
11 head?

12 A Hands.

13 Q Hands?

14 A And eyebrow.

15 Q And eyebrow.

16 A I think. I'm not --

17 Q Ear, head, hands, eyebrow; is that right?

18 A I think so. I was bandaged pretty good before I
19 went to Oconee County.

20 Q I've got a question for you, Mr. Smith. If you
21 pulled the pocketknife out of your pocket to cut the
22 seatbelt and then defend yourself -- that's your
23 testimony, right?

24 A Yes, sir.

25 Q Then why did you tell the Oconee County Sheriff's

1 Office that night that you never had a knife and that
2 you took the knife away from him and then cut him with
3 his own knife?

4 A There was several knives in the vehicle.

5 Q That's not what you said. You said you took your
6 knife out of your pocket to cut your seatbelt and
7 defend yourself, but that night you said, "He came over
8 the seat with a knife. What was I supposed to do? I
9 took it way from him. He messed up when he let it go
10 and then I did what I had to do."

11 Isn't that what you told the sheriff's office that
12 night?

13 A I really can't remember, sir. That's been a
14 sensitive time and I was under, well --

15 Q It seems like your memory is pretty clear right
16 now. Are you saying you remember it better now than
17 you did right then after it happened?

18 A No.

19 Q No, what?

20 A I don't remember anything better than I did then,
21 I mean.

22 Q Okay. Well, then the --

23 A It's still not clear.

24 Q And you remembered it better then, then that must
25 be true and nothing of what you just told us is true;

1 is that right? Because the two can't exist at the same
2 time. One happened, one didn't. Which is it?

3 A Well, I was under the stress at the moment. I
4 don't --

5 Q That's not an answer to the question. Which one
6 is true?

7 A Could be mixed. I'm not sure that's the
8 pocketknife I used. I can't tell that's it. I
9 couldn't tell you honestly that's it.

10 Q You agree you had one, correct?

11 A I had one.

12 Q And that you used it to try to cut the seatbelt
13 but you couldn't and then you defended yourself?

14 A Yes, sir.

15 Q You're sure of that?

16 A I'm sure of that.

17 Q Okay. Because just a second ago you told me that
18 you remembered it better at the time than what you
19 remember now. Because back then it's fresh and now
20 it's not, and then you just told the same story again
21 and you're sure of it. And I'm having a hard time
22 making sense of it.

23 A I had a knife. He had several.

24 Q He had several knives. So he's coming at you with
25 knives in both hands then like so, or how did it go?

1 A There was a few other things about the case that
2 doesn't add up.

3 Q I noticed.

4 MR. ALDERMAN: Nothing further, your Honor.

5 MR. COLE: No redirect, your Honor.

6 THE COURT: Thank you, sir. You may stand down.
7 Anything further, Mr. Cole?

8 MR. COLE: Nothing further, your Honor.

9 THE COURT: All right.

10 Mr. Cole, what's the rule when you have facts in
11 controversy in one of these hearings? Isn't there case
12 law that recently came out on that?

13 MR. COLE: Your Honor, my understanding is that
14 there -- my understanding is that it's a preponderance
15 of the evidence, so if there's facts in controversy,
16 then the Court would weigh the evidence and see --
17 weight the facts and see which side -- or if the moving
18 party had proved by a preponderance of the evidence
19 that my client was entitled to that protection.

20 And our theory under this is that he was in a
21 place, according to the Act, where he had a right to be
22 and that he was attacked and he used -- met force with
23 force and had no duty to retreat pursuant to the Act in
24 that section.

25 We understand that there are facts in controversy;

1 however, with the testimony that's been given, we
2 believe we have, by a preponderance of the evidence,
3 shown that he is entitled to immunity under the
4 statute.

5 THE COURT: All right.

6 MR. ALDERMAN: Judge, the facts presented are --
7 the facts presented by the defendant are just
8 absolutely incredible, just don't make sense as a
9 matter of fact when you imagine how they could have
10 happened, and he contradicted himself repeatedly. And
11 if we were to go forward beyond this with additional
12 witnesses, Judge, we could present facts contrary to
13 what he said, directly contrary, through a number of
14 witnesses.

15 THE COURT: All right.

16 MR. ALDERMAN: If preponderance is the standard, I
17 would say there's more evidence in weight of the State
18 than the moving party.

19 THE COURT: I'm going to find that Mr. Smith has
20 failed to meet his burden. Quite frankly, his story is
21 inconsistent. It's not -- he has one thing he told to
22 law enforcement the night in question, he has another
23 thing he said here in court, and he admitted just a
24 minute ago, said, "I don't really know." Goes back and
25 forth. So there's some real credibility issues, to me,

1 with regard to the version of events that occurred.

2 Quite frankly, too, the State's witness' statement
3 can be read one way, it can be read another way. It's
4 not totally consistent either, but the burden is on the
5 defendant, so I'm going to find that he failed to meet
6 it.

7 With that being said, Mr. Cole, any real issue
8 about his statement to law enforcement? Do we need to
9 have a *Jackson/Denno*?

10 MR. COLE: Your Honor, it depends on -- I want to
11 make sure as to what statements.

12 THE COURT: Which statement -- are you going to
13 try to introduce a statement when he was intoxicated?
14 I have a problem with that.

15 (Discussion between the attorneys.)

16 THE COURT: If he was, in fact, intoxicated.

17 MR. ALDERMAN: Judge, I believe that would be a
18 question of fact. I think he very clearly at the time
19 said he wasn't.

20 THE COURT: Do you have audio and video of it?

21 MR. ALDERMAN: Judge, we have had a lot of
22 discussions, Mr. Cole and I, about the video evidence.
23 There is about seven or eight hours of it, and we do
24 not intend to show all of that, obviously.

25 THE COURT: Good. Thank you.

1 MR. ALDERMAN: So what we would like to do is
2 show, essentially, enough portions of the video to set
3 the scene when law enforcement arrives to see where
4 everybody is at and then offer, for the most part, the
5 statements by way of testimony, rather than showing all
6 of the video. We could show portions of video.

7 THE COURT: Sir?

8 MR. ALDERMAN: We could show portions, clips of
9 video, but there would be a lot of them and --

10 THE COURT: Well, I mean, you know, one thing that
11 I have some concern with, quite frankly, is that the
12 State's version, or at least the witness' version that
13 I've heard thus far is that Mr. Smith became
14 intoxicated to the point where he is obnoxious, he was
15 being loud and belligerent, and then on the way home
16 got in this altercation with the girlfriend's son with
17 law enforcement being summoned to the scene.

18 If there are statements given when he's under the
19 influence of alcohol, then that gives me some concern
20 about this.

21 MR. ALDERMAN: Well, Judge, I would say, first of
22 all, the statements, he -- he's read his rights. He
23 indicates that he understands his rights. He invokes
24 his right to remain silent. And then he never stops
25 talking. He is not asked another question by law

1 enforcement about what happened --

2 THE COURT: Couldn't that be indicative of him
3 being intoxicated?

4 MR. ALDERMAN: It may very well be, or it may be,
5 Judge, that he simply had a lot to say. One of the
6 things that he said was that he was not intoxicated.

7 THE COURT: Well, I don't need to see the scene,
8 quite frankly. I do want to see enough of this
9 gentleman so I can make a determination, if I can, as
10 to whether or not this is a free and voluntary
11 statement. No question he was in custody, no question
12 Miranda was given?

13 MR. ALDERMAN: That's correct.

14 THE COURT: You don't have any question with that.
15 What is your concern about the voluntariness of
16 this statement?

17 MR. COLE: Your Honor, if all we're doing is
18 statement after Miranda was given, then the only
19 concern I have is the intoxication that's being alleged
20 by the State. And as to the video, we have no
21 objections to the Court seeing how much of the video
22 the Court wants to see. We do, and maybe a separate
23 issue, have an objection to the jury seeing any of the
24 video because we believe everything that's in the video
25 could come out by testimony.

1 THE COURT: So it's cumulative, then?

2 MR. COLE: Yes, your Honor.

3 MR. ALDERMAN: Judge, we would argue the best
4 evidence is the video itself.

5 THE COURT: I'm not going to let it in. I'm not
6 going to let it in if it's violative of *Jackson/Denno*,
7 but I don't know that.

8 Let's do this. It's 1:00 o'clock. How long is it
9 going to take for me to view that?

10 MR. ALDERMAN: Judge, there are three different
11 discs, and there are at different points on the discs,
12 so it will take some time -- probably more time to go
13 through and queue all of them up than it will to
14 actually watch them.

15 THE COURT: You need to know where it is on those
16 tapes.

17 MR. ALDERMAN: Yes, sir.

18 THE COURT: Let's come back at 2:00 and we'll play
19 that. The jury is going to have to sit.

20 Mr. Smith, let me tell you, if you don't return,
21 I'm going to proceed with this trial in your absence.
22 I'm not trying to pick on you. I just need to make
23 sure that's on the record.

24 THE DEFENDANT: Yes, sir.

25 THE COURT: Anything further from the State?

1 MR. ALDERMAN: No, sir.

2 THE COURT: Mr. Cole?

3 MR. COLE: No, sir.

4 THE COURT: See y'all at 2:00 o'clock.

5 (Lunch recess taken from 12:58 p.m. to 2:14 p.m.)

6 THE COURT: My understanding is there's some plea
7 negotiations, but those have fallen through.

8 MR. ALDERMAN: At this point, your Honor, I
9 believe we are at an impasse.

10 THE COURT: Are you ready to show me what you need
11 me to see for the *Jackson/Denno*?

12 MR. ALDERMAN: Yes, Judge.

13 Judge, if it pleases the Court, I'm going to start
14 with the Miranda warning just so the Court could see
15 that.

16 I've got volume showing on mine.

17 (Video played.)

18 MR. ALDERMAN: Judge, that was just the Miranda
19 warning. Other things we may want to bring in -- let's
20 see.

21 And, Judge, there are others on another officer's
22 body camera.

23 THE COURT: There's what, please?

24 MR. ALDERMAN: There are other clips that would
25 come through another officer and their body camera, and

1 we have that information to play as well.

2 THE COURT: Is it just duplicative of what I'm
3 looking at here?

4 MR. ALDERMAN: No, your Honor. It's an extension
5 of what's going on, but the statements are very
6 different.

7 THE COURT: All right, sir.

8 (Video played.)

9 MR. ALDERMAN: Judge, that's about the extent of
10 it.

11 THE COURT: Mr. Cole, as a matter of completeness,
12 do you have any other aspects of the videos that you
13 want me to look at?

14 MR. COLE: Your Honor, I want to make sure I have
15 the State's position. Is the State's position that
16 that's all of the videos they want to show at trial, or
17 is that all the videos that are statements?

18 MR. ALDERMAN: Both, your Honor.

19 THE COURT: Sir?

20 MR. ALDERMAN: Both.

21 THE COURT: No. I think he's asking you of the
22 parts that you showed from both, is that all you intend
23 to try to show to the jury, or do you have other
24 aspects that you want to show?

25 MR. ALDERMAN: That would be the extent of it,

1 Judge. And because they are such small clips, I don't
2 think it presents well to the jury to just play that
3 clip, so I may not play any of it, but we would like to
4 admit the statements, that it could come through the
5 testimony of the officers who were there.

6 MR. COLE: Your Honor, I'm certainly in agreement
7 with him as to the video. However, the statements, I
8 would object to those coming in. We admit it was after
9 he was properly Mirandized, it appears. However, the
10 law enforcement officer placed him under arrest for
11 disorderly conduct and stated that it was because he
12 was drunk and causing a scene, so I think there's at
13 least probable cause at that point, and the evidence on
14 the video seems to back that up that my client was not
15 in a right state of mind in the things he was saying.

16 It does seem that he was under the influence or
17 something for him to make -- and he made the same
18 comment, made the same comment basically three times in
19 the first video, but I think also that's cumulative
20 unless they want to use it for impeachment purposes.
21 And then also in the second video, where he says,
22 "Homicidal tendencies, I need to go to Patrick B.
23 Harris," I think that's prejudicial for the jury to
24 hear.

25 THE COURT: I missed that part. What did he say?

1 MR. ALDERMAN: He said that, "Patrick B. Harris
2 says I have homicidal tendencies," and then he looks at
3 the officer and says, "What do you think?" And then,
4 after laughing, he says, "Look, it only happens when
5 people are aggressive toward me. It happens like a
6 flash. I get angry. I can't remember what happened
7 next. I remember him hitting me, grabbing my shirt.
8 After that, I really couldn't tell you. I just know
9 something happened."

10 THE COURT: Well, when you look at one of the
11 factors -- I mean, the factors are coercion from the
12 standpoint of the defendant, police coercion, length of
13 interrogation, location. But it doesn't appear from
14 what I saw, those brief clips, that there's really any
15 interrogation at all going on.

16 MR. ALDERMAN: That would be our position. Very
17 early on he invoked his right to remain silent. But he
18 continued to make statements, continued to talk under
19 his breath --

20 THE COURT: Let me say this. The other factors
21 would be maturity of the defendant. He's certainly old
22 enough and mature enough. I don't know anything about
23 his education. His physical condition is potentially
24 problematic from the alcohol standpoint and from the
25 fact that he had been in an altercation. There's

1 nothing about mental health that I could say, except
2 for that statement, I guess, homicidal tendencies.

3 I have a tendency to agree with Mr. Cole on that
4 one. I don't know about his experience. There
5 certainly wasn't any misrepresentations or threats of
6 violence, promises of leniency, and certainly not a
7 minor that we have to consider being isolated from his
8 parents.

9 My big concern, though, is that he was under the
10 influence of alcohol making those statements.

11 MR. ALDERMAN: Judge, if I may to that point --

12 THE COURT: Yeah. Do you have a case on point?

13 MR. ALDERMAN: I do, your Honor. State v. Saxon
14 261 S.C. 523.

15 THE COURT: May I see that, please?

16 MR. ALDERMAN: If I may read from it first. It's
17 my one copy, Judge.

18 "That one is intoxicated at the time confession is
19 made does not necessarily render him incapable of
20 comprehending meaning and effect of his words; thus,
21 proof that the accused was intoxicated at the time he
22 confessed does not render the statement inadmissible as
23 a matter of law unless his intoxication was such that
24 he did not realize what he was saying.

25 "Proof of intoxication short of rendering the

1 accused unconscious of what he's saying goes to the
2 weight and credibility to be accorded to the confession
3 but does not require the confession be excluded from
4 evidence."

5 THE COURT: Okay.

6 Mr. Cole.

7 MR. COLE: Your Honor, I was trying to pull that
8 case up and couldn't. But I do believe, even with that
9 line of reasoning in that -- in the case at issue, that
10 in this situation, the combination of the apparent
11 intoxication and the scuffle they had been in where he
12 was hit in the head, then I think the combination of
13 that would render it to where he was unaware of what he
14 was saying.

15 THE COURT: I'm going to find the State, based on
16 the case of State vs. Saxon, 261 S.C. 523, that
17 intoxication does not render his confession
18 inadmissible as a matter of law. Nothing in what I
19 viewed showed him to be -- the State has pointed out in
20 that case that he would be unconscious of knowing what
21 he was saying.

22 In fact, it looked like he was very conscious. It
23 looked like he was upset and maybe being under the
24 influence of some alcohol because he said, "I'm going
25 to exercise my rights," and then started talking right

1 away, but there's nothing that indicates to me that he
2 was unconscious of what he's saying.

3 The fact he's been in a fight is just one of the
4 elements, but the totality from all the other factors,
5 there wasn't any interrogation, coercion or promises
6 back and forth, so I'm going to find the State has met
7 its burden at least being able to have it admitted.

8 Now, I am a little bit more concerned from the
9 mental health standpoint -- I mean about the mental
10 health comment.

11 MR. ALDERMAN: Judge, if we were to parse it so we
12 didn't hear the words "Patrick B. Harris" that I think
13 are really the inflammatory words there, that's
14 commonly known as a mental health facility in the area,
15 if we can parse that, and since we're eliciting it
16 through testimony instead of video itself, it won't be
17 difficult to do, simply instruct him that the officer
18 cannot make that comment, but that he did say that he
19 has homicidal tendencies, that he was referencing that
20 in light of what happened that night, that he said
21 someone --

22 THE COURT: What context -- was he being -- I
23 couldn't tell. Was he being asked questions by law
24 enforcement at the time?

25 MR. ALDERMAN: He was not. There was a nurse that

1 had asked some questions, and then he sort of went on a
2 tangent talking to the officer, who had not asked him
3 any question, about his mental state, about homicidal
4 tendencies or otherwise after being properly
5 Mirandized.

6 THE COURT: What's your comment?

7 MR. COLE: Your Honor, from my understanding, what
8 he said was that, "Patrick B. Harris said I have
9 homicidal tendencies," or something to that effect. So
10 the Patrick B. Harris and the homicidal tendencies are
11 connected where I believe that they would be highly
12 prejudicial for the jury to hear those.

13 THE COURT: I am going to agree with Mr. Cole.
14 I'm going to exclude that part of it, okay, sir, in its
15 entirety, but the rest of it is admissible.

16 Are you ready to proceed? Do you need a moment?

17 MR. ALDERMAN: Just a moment to make sure my
18 witnesses are ready.

19 THE COURT: That ruling is based on 403 of the
20 rules of evidence.

21 MR. COLE: Thank you, your Honor.

22 THE COURT: Would you bring the jury in, please.

23 (WHEREUPON, the jury entered open court at
24 2:34 p.m.)

25 (WHEREUPON, the jury was impaneled.)

1 THE COURT: All right. Good afternoon, ladies and
2 gentlemen. Thank you for your patience. I know
3 sometimes juries sit back in the jury room and wonder
4 what we do here in the courtroom, but I promise you, we
5 have been working. It's just sometimes things take a
6 little bit longer than you anticipate.

7 Now, Mr. Foreman, trials are not exercises in
8 duration, so if you need a break at any time, if anyone
9 needs a break, let me know and I'll stop and let y'all
10 have a break. If I ask you to come back to the
11 courtroom before you're ready, let me know. We want
12 you to be able to pay close attention throughout the
13 course of these proceedings.

14 Does everybody who requested pad and pen have
15 them?

16 Ladies and gentlemen, I don't know if any of you
17 have ever been involved in a trial before or a criminal
18 trial such as this one, but I would suspect that all of
19 you have watched on TV something that purports to be a
20 trial.

21 Let me quickly dispel any notions that you may
22 have about criminal proceedings. They're not like TV.
23 They're certainly not entertainment. Trials are often
24 very slow and deliberate and methodical. However, a
25 jury trial is a fundamental right that every citizen

1 has or is entitled to in this country.

2 Now, these attorneys, like all attorneys, when
3 they're sworn in, they take an oath that they will
4 zealously represent their clients' interests. They're
5 also officers of the court. What that means to you is
6 you can expect them to be professional and ethical in
7 their dealings with one another and their dealings with
8 any witnesses who may appear before you in the
9 proceedings.

10 Now, ladies and gentlemen, you just took an oath
11 where you swore or affirmed that you would be impartial
12 and try to reach a unanimous verdict in this case if
13 you are able to do so. What that means is the
14 attorneys, the parties, myself, the other court
15 officers have the right to expect of you that you will
16 be fair, you will be impartial, and you will follow the
17 instructions that I give throughout the course of this
18 trial.

19 What I'm telling you now is not the law that you
20 will apply. I will give that to you at the end of all
21 the testimony and the closing statements by the
22 attorneys so it will be fresh in your mind before you
23 go back and deliberate.

24 Let me warn you a little bit about taking notes.
25 Part of what you will do, in the vernacular of

1 attorneys, is you are the sole judges of what the facts
2 are, in other words, what your verdict is going to be.
3 You will determine what those facts are in part by
4 determining the credibility of the witnesses. In other
5 words, there will be some that come before you that you
6 want to believe or you may not want to believe.

7 You, as a jury, have a collective right to believe
8 all or part or none of any witness that appears before
9 you in these proceedings. But if you get so engaged in
10 taking your notes that you miss somebody's reaction to
11 a question or their demeanor on the witness stand, you
12 may miss something that may be important to you to
13 indicate whether or not their testimony should be
14 believed or not believed.

15 Now, also, Mr. Foreman, when your jury is told to
16 begin your deliberations, again, that will be later on,
17 and I'll make it explicit and you will know when you're
18 supposed to begin, just because something appears in
19 one of the juror's notes doesn't mean that it trumps
20 another juror's memory of that issue. Some people are
21 better note-takers; some people are better listeners.
22 That's why they're called deliberations. You will just
23 have to hash that out.

24 As I told you, in this case the defendant has been
25 indicted and charged with the charge of assault and

1 battery of a high and aggravated nature. This
2 indictment is not evidence of his guilt. It doesn't
3 raise an inference nor a presumption of his guilt.
4 It's simply the mechanism by which the State has
5 brought this gentleman before the Court for a
6 determination by you, the jury, of a determination of
7 guilt or innocence for the charge which he has been
8 indicted.

9 In fact, the defendant has said, "I am not
10 guilty." Therefore, the burden of proof is placed on
11 the State to prove each and every element of this
12 charge by proof beyond a reasonable doubt. Now, proof
13 beyond a reasonable doubt is the highest standard of
14 proof that we recognize in our jurisprudence.

15 Proof beyond a reasonable doubt is the kind of
16 doubt that would cause a reasonable, sincere, and
17 conscientious person to hesitate to act in an important
18 matter in their own affairs. It is proof that leaves
19 you firmly convinced of the defendant's guilt.

20 At the end of this process, if you are firmly
21 convinced that the defendant is guilty of the charge
22 for which he's been indicted, it is your duty to find
23 him guilty. On the other hand, if you think there is a
24 real and reasonable possibility that he is not guilty,
25 you must give him the benefit of the doubt and find him

1 not guilty.

2 Now, if you have ever been involved in a civil
3 case, the burden of proof is by the preponderance or
4 the greater weight of the evidence. As I heard a very
5 intelligent attorney describe the other day, proof -- I
6 mean reasonable doubt -- excuse me, preponderance of
7 the evidence is if you imagine a football field. If
8 the plaintiff or the State in this case is able to get
9 an inch over the 50-yard line, then they would have met
10 that burden and, therefore, they have the greater
11 weight of evidence.

12 If you imagine a set of scales, they're equal
13 right now. When you begin your deliberation, if they
14 tilt ever so slightly in the favor of the State, in a
15 preponderance case, a civil case, then the plaintiff
16 would have won. In this case the standard is much
17 higher. It's proof beyond a reasonable doubt.

18 Now, with that being said, the law does not
19 require the State to overcome every possibility that
20 may exist in this case. It will be up to you at the
21 end of this case to determine whether or not he has
22 met -- the State has met his burden of proof.

23 As I told you, you are the sole judges of what the
24 facts are. No one, including myself, has the right to
25 invade your sole function or your sole province of

1 being the sole fact-finders or what your verdict is
2 going to be.

3 Therefore, if I say or do anything throughout
4 these proceedings which seems to indicate to you how
5 you are to find facts, in other words, the verdict you
6 are to render, I'm going to ask you but also instruct
7 you to disregard that. Our state constitution does not
8 allow any trial judge to have an opinion or make a
9 comment about the facts. You and you alone will
10 determine what the facts are, and you will determine
11 what the facts are from the testimony that you hear
12 from this witness stand and any exhibits that I allow
13 into evidence.

14 Now, in just a minute the State is going to give
15 you an opening statement. Defense may but is not
16 required to give an opening statement because the
17 burden remains on the State.

18 What these attorneys tell you in opening
19 statements and closing statements is not evidence.
20 They're not sworn in. They're not subjected to
21 cross-examination. They will not take the witness
22 stand. It's helpful. It's not to minimize their
23 importance, but it's not evidence.

24 Also the questions that they ask themselves is not
25 evidence. The responses to the questions being asked

1 is evidence. I know that's kind of a technical
2 distinction, but that's the only things that you may
3 consider in this case truly as evidence is the witness
4 responses to the questions being asked, whether it be
5 on direct examination or cross-examination, and any
6 exhibits I allow into evidence in this matter.

7 Now, ladies and gentlemen, the law that makes you
8 the sole judges of the facts makes me the sole judge of
9 what the law is in this matter. You must accept the
10 law as I give it to you. You shall not concern
11 yourself with what you think it is or what you think it
12 should be but only as I give it to you.

13 I'll tell you that if I make an error at law,
14 there is a court of appeals and a supreme court that
15 will correct my errors. On the other hand, normally an
16 incorrect finding of fact by a jury is not correctible
17 on appeal, so it's important that you pay close
18 attention. Don't let your mind wander throughout the
19 proceedings. Again, don't begin your deliberation
20 until the end of this case and don't talk to anybody
21 about it including amongst yourselves.

22 Now, in every case there are five phases. In just
23 a minute the State is going to give you an opening
24 statement. The defense may but is not required to.

25 After opening statements, we go to the second

1 phase, which is the presentation of the evidence.
2 Third, you will have closing statements by the
3 attorneys. Fourth, I will charge you on the law. And
4 the last phase is when you begin your deliberations
5 when I have told you to do so.

6 Now, ladies and gentlemen, as part of a lawyer's
7 ethical duty, they are required to object any time he
8 or she feels like there is improper evidence being
9 proffered or improper procedure being followed in the
10 courtroom. To the extent that an objection is raised
11 in this case and if I let you stay in the courtroom and
12 see my ruling on that objection, Mr. Foreman, it may
13 not and shall not be the subject of the jury's
14 deliberations. Suffice it to say, that's simply the
15 process that's followed in every case.

16 With that being said, is the State ready to
17 proceed?

18 MR. ALDERMAN: Yes, your Honor.

19 THE COURT: Is the defense ready?

20 MR. COLE: Yes, your Honor.

21 THE COURT: Any additions or exceptions to my
22 opening instructions to the jury from the State?

23 MR. ALDERMAN: No, your Honor.

24 THE COURT: From the defense?

25 MR. COLE: No, sir.

1 THE COURT: Very good.

2 All right. Mr. Alderman.

3 MR. ALDERMAN: Mr. Cole.

4 And may it please the Court?

5 THE COURT: Yes, sir.

6 MR. ALDERMAN: Ladies and gentlemen, the charge
7 against the defendant in this case is assault and
8 battery of a high and aggravated nature. The facts of
9 the case are these.

10 On December 26, 2017, Varia Galbreath and her
11 adult son, Michael Todd Reid, along with the defendant,
12 went to a family gathering in the Clemson/Central area.
13 It was essentially a Christmas dinner.

14 At the time Ms. Galbreath and the defendant were
15 in and out of a relationship. He was staying at the
16 house with her and her son at that particular moment in
17 time.

18 So they go to this family gathering. They eat.
19 They exchange gifts, and they just generally enjoy each
20 other's company with family, as you might do around
21 Christmas. One of the gifts you'll hear that was given
22 to the defendant at that gathering was liquor. You
23 will also hear that the defendant began enjoying his
24 gift right there on the spot.

25 You'll hear that, in the estimation of

1 Ms. Galbreath and Mr. Reid, he drank a little too much,
2 that they became embarrassed and they felt it was time
3 to leave because it just wasn't that kind of gathering.

4 So, ultimately, they leave. They get back in the
5 car that they were just in. Ms. Galbreath is driving.
6 The defendant is sitting in the front passenger seat.
7 Her adult son, Mr. Reid, sitting in the backseat.

8 And, as you might imagine, after leaving a party
9 in that fashion, this wasn't the happiest car ride
10 going home, heading back into Oconee County through
11 Seneca.

12 An argument began, words are exchanged. Mr. Reid
13 would take issue with, as he saw it, the way the
14 defendant was treating his mother. The defendant had
15 his own opinions about Mr. Reid, and, ultimately, it
16 escalated from an argument of words into a physical
17 argument.

18 At one point Mr. Reid, sitting in the backseat,
19 reaches up, grabs the shirt of the defendant and slaps
20 him and tells him to shut up. Now, folks, I'll be the
21 first to tell you he was wrong to do it. He was out of
22 line. He let his emotions get the best of him and he
23 put hands on the man when he shouldn't have.

24 But what happens next is really what this case is
25 all about, at least why it's here in front of you

1 today. The defendant in that situation could have done
2 any of a number of things. Right? He could have
3 called the sheriff's office and said, "Hey, this guy
4 just slapped me." And he probably would have been
5 charged, maybe made to pay a fine, that kind of an
6 altercation, a slap.

7 He could have said, "Pull the car over and let me
8 out." He could have said, "Pull the car over and let's
9 both get out and let's have a good, old-fashioned fist
10 fight if that's the way it's going to be," and we
11 probably wouldn't be here today. I'm not saying that's
12 the best way it could have been settled, but that's one
13 way it could have been settled. We're here today
14 because the defendant made a very different decision.

15 When Mr. Reid reached up, grabbed the defendant by
16 the shirt, came across and slapped him and told him to
17 shut up, that's exactly what he did. He got quiet.
18 And he sat up there, and he sat up there quiet. And
19 the car kept driving along in Seneca.

20 They turn off of 123 onto Davis Creek Road heading
21 towards Shiloh Road, Ravenel Elementary, down that
22 road, if you know the area. If you do know the area,
23 you know at nighttime, which this was, it's a pretty
24 dark road until you get to the school. Pine trees, no
25 businesses, no streetlights. It's just a dark country

1 road at nighttime.

2 So they're riding down the road, and the defendant
3 is still sitting in the front seat, quiet.
4 Ms. Galbreath is driving, upset at what had been going
5 on. Mr. Reid is sitting in the backseat, by this time,
6 he would tell you, looking at his phone and not paying
7 any attention to the defendant in the front seat and
8 looking forward to getting dropped off at a friend's
9 house because he asked to be dropped off there instead
10 of home because he had had enough of the evening,
11 didn't think it was a good idea for him to be around
12 the defendant going forward.

13 And it's at this point that the defendant, still
14 quiet, in the dark, quietly, so quietly that
15 Ms. Galbreath will tell you she didn't even notice,
16 took off his seatbelt that she remembers him wearing,
17 reaches into his pocket, pulls out a folding knife
18 quietly so that no one noticed, opened that knife, all
19 the while having time to make a decision to do or not
20 do a thing, and then all at once turned around in the
21 seat on his knees, braced against the back of the
22 headrest, and came across the top with that knife
23 slashing at Mr. Reid over and over and over and over
24 and over again.

25 Now, at this point, initially Mr. Reid just thinks

1 that he's coming at him with fists. Doesn't even
2 realize in the dark he's being cut at first.
3 Ms. Galbreath doesn't realize that a knife has been
4 pulled. Thinks they're just back at it again. Stops
5 the car in front of Ravenel school.

6 Now, at this point Mr. Reid starts to realize to
7 some extent what's going on. He reaches over to get
8 out of the car that has just stopped to get out of the
9 situation because the guy is still turned around in the
10 front seat with a knife. And he reaches over with his
11 right hand and he can't get the door to open. His hand
12 doesn't work.

13 He reaches over with his left hand, opens the
14 door, gets out, and then in the light around the
15 Ravenel school, realizes just how bad it is. He has
16 one gash here deep on his chest. He has another that
17 runs all the way from his collarbone to his belly,
18 split open. He has an intersecting wound on his left
19 shoulder where the right-handed man came around the
20 seat at him and he turtled up to get away from the
21 knife.

22 He has a three-inch-deep gash in his thigh, and
23 his hand is so cut from grabbing at the knife trying to
24 stop the attack that all the tendons and nerves are
25 severed and just doesn't work. So he's standing here

1 in the dark in the middle of the road bleeding from
2 more places than he could control.

3 He will tell you that he paced back and forth
4 trying to get calm, trying to figure out what was going
5 on, telling his mom to call somebody. Then he got
6 nauseous, then he got dizzy and felt like he couldn't
7 stand up anymore and laid down in the middle of Davis
8 Creek Road, again bleeding from more places than he
9 could control at one time.

10 Remember it started with a slap.

11 Now, as he lays there, fortunately for him, there
12 was another Christmas gathering going on that same
13 night in a different location. A group of firefighters
14 had gotten together and were just having some
15 after-Christmas fellowship, group gathering.

16 Two of them leave going about the same time down
17 the same road in the same direction and just happen to
18 pull up as Mr. Reid is stumbling around and falling in
19 the road in a pool of blood. Now, these firefighters
20 were trained, trained as emergency medical technicians
21 as firefighters, first responders, and immediately were
22 able to start to assess and treat the wounds, pack the
23 wounds to stop the bleeding.

24 Folks, they got there faster than any ambulance
25 could ever hope to be and were able to get control of

1 the bleeding, get control of the situation. They will
2 also tell you that at that point the defendant was
3 standing outside the car still armed with a knife
4 yelling over and over again, "He got what he deserved.
5 He got what he deserved. He got what he deserved."

6 Now, law enforcement arrived a short time later to
7 take control of the scene, the ambulance to take
8 Mr. Reid to the trauma unit in Greenville directly
9 there based on the extent of his injuries. And law
10 enforcement, investigating the scene, decided to take
11 the defendant into custody. And while in custody, he
12 continued to make statements that I think will be
13 important to you. Statements like, "He ought to die."
14 "I meant to." "I wouldn't take one stitch back." "I
15 didn't even have a knife. He attacked me with a knife.
16 I took it away from him and I stabbed him with it."

17 Ladies and gentlemen, those are the facts of the
18 case. That's the evidence that you will be presented,
19 what you will hear from the witness stand, and based on
20 those facts, that at the end of this trial I'll ask you
21 to find the defendant guilty of assault and battery of
22 a high and aggravated nature.

23 Now, high and aggravated nature, what exactly does
24 that mean? At the end of the trial the judge will give
25 you extensive instructions on the law, so I won't

1 belabor the point. But I do think it's helpful for you
2 to hear the words of the statute and kind of understand
3 the elements so that, as you hear the evidence, you can
4 see how the facts and the law fit together in the
5 crime.

6 Assault and battery of a high and aggravated
7 nature occurs when a person unlawfully injures another
8 resulting in great bodily injury or when a person
9 unlawfully injures another by a means likely to produce
10 great bodily injury. I mean, either he was greatly
11 injured, or that attacking somebody with a knife is
12 likely to cause a great bodily injury.

13 And, folks, I will submit to you that either prong
14 of that statute could apply based on those facts.

15 Folks, if after your deliberations you are firmly
16 convinced, as the judge described to you earlier, that
17 the defendant inflicted great bodily injury on Mr. Reid
18 or attacked him with a means likely to produce that
19 great bodily injury, then he will be guilty of assault
20 and battery of a high and aggravated nature.

21 Ladies and gentlemen, I thank you very much for
22 your attention. I would ask that you please give the
23 same attention to Mr. Cole as he comes and speaks on
24 behalf of his client.

25 THE COURT: Mr. Cole, do you intend to have an

1 opening statement?

2 MR. COLE: Yes, your Honor.

3 THE COURT: Okay, sir.

4 MR. COLE: Thank you, your Honor. May it please
5 the Court?

6 THE COURT: Yes, sir.

7 MR. COLE: Ladies and gentlemen of the jury, my
8 name is Lee Cole. This is my client, Clifton Smith.

9 Stand up, Clifton.

10 Have a seat.

11 Mr. Smith is from here in Oconee County. I'm from
12 down the road in Anderson County in the big city of
13 Williamston. I love living in South Carolina, and I
14 love living in the United States. It's not popular for
15 some people to say anymore, but I do think that we live
16 in the greatest country in the world. And part of the
17 reason is that we are a government by the people for
18 the people.

19 Even in our criminal justice system, the people
20 are the ones who control, and with all due respect to
21 everyone else in this courtroom including the Court,
22 the solicitor, I believe that the people, the jury, are
23 the most important actors in a trial because it is
24 through you that justice is done. It is the jury's job
25 to give justice. It's the jury's job to make findings

1 of fact.

2 In this case my client is charged with assault and
3 battery of a high and aggravated nature. In order for
4 him to be guilty, the State must prove beyond a
5 reasonable doubt that my client committed this crime
6 and that it was not in self-defense.

7 I would ask you to listen to the witnesses, listen
8 to the evidence that the State presents, listen
9 carefully, deliberate, as I know you will, and I know
10 how serious you will take this, and at the end of the
11 day, look and see, what is justice? Has the State
12 proved beyond a reasonable doubt that my client
13 committed this offense and that it's not in
14 self-defense?

15 I submit to you the evidence will show that they
16 cannot prove that, they have not proved that, and I
17 would ask that you find my client not guilty.

18 Thank you.

19 THE COURT: Call your first witness.

20 MR. ALDERMAN: Yes, your Honor. The State
21 calls --

22 THE COURT: Let me ask you this right quick. Do
23 we have any sequestration issues or are we okay?

24 MR. ALDERMAN: None from the State.

25 MR. COLE: No, your Honor.

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1 THE COURT: All right. Very good. Thank you.

2 MR. ALDERMAN: The State would call Nicolas
3 Santangelo.

4 **NICOLAS GIACINTO SANTANGELO,**
5 BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

6 DIRECT EXAMINATION

7 BY MR. ALDERMAN:

8 Q Mr. Santangelo, will you please state your full
9 name and spell your last name for the record.

10 A Nicolas Giacinto, G-i-a-c-i-n-t-o, Santangelo
11 S-a-n-t-a-n-g-e-l-o.

12 Q All right. And what do you do for a living?

13 A I'm a full-time police officer.

14 Q In what capacity or what agency?

15 A I work for the South Carolina Department of Public
16 Safety in the state transport police division.

17 Q How long have you been with them?

18 A I've been with them for two years and one month
19 this month.

20 Q So what about before that?

21 A Before that I was a full-time firefighter for
22 Clemson University Fire and EMS and a part-time
23 firefighter for Oconee County Emergency Services.

24 Q Did you say you were an EMT?

25 A I am, yes, sir.

1 Q And how long did you do that?

2 A I've been an EMT since 2014.

3 Q Now, do you remember the night of December 26,
4 2017?

5 A I do.

6 Q Do you remember what you were doing later that day
7 in the afternoon?

8 A Not pointedly to the afternoon. I do remember
9 going to dinner with some friends, and we were on the
10 way home from that dinner.

11 Q Where was that dinner at?

12 A That dinner was at Cookout in Clemson, Cookout
13 restaurant.

14 Q Where was home?

15 A Home is on Friendship Road.

16 Q And were you riding with someone?

17 A Yes. Yes, I was.

18 Q And who was that person?

19 A That person was Evan Cherry.

20 Q So you're heading towards Friendship Road. Did
21 you end up on Davis Creek Road?

22 A We did.

23 Q Is that normally the way you would go home?

24 A Not normally. Sometimes, yes.

25 Q Okay. Do you recall seeing anything that made you

1 stop?

2 A Yeah. So we were coming down Davis Creek Road and
3 recalled seeing a vehicle with hazard lights on parked
4 to the side of the road, and looked to be two subjects
5 and a dark figure laying in the middle of the road.

6 At the time that we pulled up, we could not tell
7 what the dark figure in the middle of the road was. As
8 you said earlier, it was dark on Davis Creek Road.

9 Q What did you do next?

10 A We exited our vehicle, got our fire radio out, and
11 Evan grabbed his medical bag out of the back of his
12 truck and approached the scene, trying to figure out
13 what was going on.

14 Q And what was going on, as far as you could tell,
15 at that point?

16 A As we were walking up to the scene, we actually
17 thought that an animal had been struck. That was our
18 first indication. Again, we couldn't tell what the
19 dark figure in the middle of the road was.

20 As we got out of our vehicle, his pickup truck, we
21 started to hear some screaming and some shouting.
22 Appeared to us to be some sort of altercation that had
23 gone on and was still in the process of going on.

24 At that point we radioed our dispatcher to advise
25 them to get both police and EMS en route.

1 Q All right. And when you say screaming and
2 shouting back and forth, are we talking about two
3 people, three people? Who's yelling in this story, as
4 best you can tell?

5 A So there -- what appeared to us, there was a lady
6 standing at the front of the vehicle. There was a man
7 standing at the back of the vehicle. Again, as we
8 approach, we figured out the dark figure laying in the
9 middle of the road was indeed a person. It was indeed
10 a human.

11 Was not saying much, that figure that was -- he
12 was not saying much. The lady at the front and the man
13 at the back of the vehicle were shouting.

14 Q The man at the back of the vehicle, did you have
15 any interaction with him?

16 A I did. As I said, they were shouting with each
17 other. Evan immediately started heading towards the
18 figure in the middle of the road, once we figured out
19 it was a person and, again, our initial kind of thought
20 process was that somebody had been struck, wasn't
21 anything of an altercation.

22 As he started to head towards the person in the
23 middle of the road, I went to the back of the vehicle
24 trying to calm down the agitated subject at the back of
25 the vehicle, trying to figure out what was going on,

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1 trying to figure out what had happened, whether they
2 had come upon this person, whether they were involved,
3 whether they knew this person or whatever.

4 Q All right. And what were you able to ascertain?

5 A Was able to ascertain that the subject at the back
6 of the vehicle and the subject in the middle of the
7 road and the subject driving the vehicle, the lady
8 driving the vehicle, had all known each other. They
9 were all saying things that indicated that they knew
10 who each other was.

11 Again, the subject at the back of the vehicle was
12 very agitated, shouting, "He got what he deserved,"
13 time and time again. Again, at this point I did not
14 know what that entailed. I had not been with the
15 subject in the middle of the road. Was shouting, "He
16 got what he deserved," time and time again.

17 I talked to him, "Hey, sir, I'm Nick Santangelo
18 with the fire department." Again, at the same time I
19 was in training to be a police officer. I was not
20 certified yet. So I started trying to talk to him to
21 figure out what was going on and could not really get
22 too much out of him. He was very clearly intoxicated,
23 slurring his words, smelled.

24 Q Was he armed?

25 A I'm sorry?

1 Q Was he armed?

2 A He was. He had a knife in his hand. I'm sorry,
3 correction. He had a knife in his pocket. And I asked
4 him, "Do you have any weapons on you or anything like
5 that?" He said, "Yeah, I got a knife in my pocket."
6 I'm like, "Okay. Let's put that on the back of this
7 vehicle so we know where it is," and then let's have
8 the subject step away from that knife to secure mine
9 and Evan's safety as well as everybody involved.

10 Q Having done that, did you then begin treating the
11 victim?

12 A I did.

13 Q All right. Tell me about his injuries. What did
14 you see?

15 A Saw multiple cuts on him. Could not distinguish
16 what was deeper, what was shallow. Saw very deep
17 lacerations across his chest and across his leg, and
18 those seemed to be the most vital to us. The couple
19 lacerations that he had on his arm and on his hands at
20 the time appeared to be nonlife-threatening to us, so
21 we focused on the lacerations to the core of the body
22 and the laceration, which appeared to us at the time,
23 to go right across his femoral artery.

24 Q So when you say the injuries to the shoulder and
25 the hands are nonlife-threatening, is that to say the

1 others were?

2 MR. COLE: Objection, your Honor. This witness
3 has not been qualified as an expert.

4 MR. ALDERMAN: Judge, he is an EMT, a firefighter,
5 and a police officer.

6 THE COURT: I'm going to sustain it now, but I'm
7 going to let you lay some foundation for it.

8 MR. ALDERMAN: All right.

9 Q If you would, tell us what training as an EMT
10 you've had to help you identify what would or would not
11 be a life-threatening injury.

12 A Okay. You go through -- initially, to become an
13 EMT, you go through about a six-month schooling. It
14 can be done at any local technical college, can be done
15 in-house through a fire department, EMS agency of any
16 sort. After that, you go through continuous --
17 continuous classes every year. We call it continuing
18 education. That's to keep your certification up to
19 date to stay up to date with legitimate issues going on
20 in the world and legitimate patient care factors that
21 are turning up.

22 You also any time -- any time you want any kind of
23 advanced training, the agencies that I work for have
24 happily provided that, so you can go through any kind
25 of advanced trauma training, any kind of advanced life

1 support, cardiac life support, any of those trainings
2 that you wished to.

3 Q Have you had training in dealing with treatment of
4 lacerations?

5 A I have.

6 Q All right. Was a part of that training triage of
7 importance of multiple injuries?

8 A That's correct. That's correct. So in your
9 initial EMS class, you go through training of triage
10 and what triage is and how you qualify what injuries
11 could be life-threatening, what injuries could wait
12 until definitive medical care, what injuries have to be
13 solved in the here and the now or you're not going to
14 get the definitive medical care, that kind of thing.

15 Q Fair to say that you have more emergency medical
16 training than your average layperson?

17 A I believe so.

18 MR. ALDERMAN: Judge, I believe we've laid a
19 sufficient foundation for him to testify specifically
20 as to these injuries and what he did.

21 THE COURT: Any continuing objection?

22 MR. COLE: Your Honor, I would object, and I would
23 ask -- I'm not sure exactly what the State is
24 qualifying him as an expert as.

25 MR. ALDERMAN: In emergency medical care, your

1 Honor.

2 THE COURT: Emergency medical care. Is he an EMT?

3 MR. ALDERMAN: Yes, Judge.

4 THE COURT: It's emergency medical technician.

5 MR. COLE: Then no objection to that, your Honor.

6 THE COURT: Very good.

7 Ladies and gentlemen, normally witnesses are not
8 allowed to give their opinion in the courtroom. They
9 have to testify to what they saw, they heard, they
10 smelled, or they felt. However, a person, because of
11 their education or their experience, develops an
12 expertise in an area, upon qualification, is allowed to
13 give that opinion.

14 In this case it has been agreed that this witness
15 is an expert in the field of emergency medical -- as an
16 emergency medical technician. He will be allowed to
17 give his opinion in that area.

18 Expert opinion, ladies and gentlemen, is like any
19 other testimony you will hear in this case. You may
20 accept it, you may reject it, or give it as much weight
21 as you think it deserves.

22 BY MR. ALDERMAN:

23 Q I'm going to circle back around. When you talked
24 about focusing on the injuries to the chest and the leg
25 as opposed to the injuries to the arm and the hand, why

1 was that?

2 A In the EMS field, we have a common saying, "life
3 over limb." It's the idea that the more important
4 injuries take precedence over less important ones, such
5 that the injuries that would cause a loss of life are
6 more important than the injuries that would cause a
7 loss of limb.

8 Q And what else did you observe about the victim in
9 that moment, other than just the specific lacerations,
10 his general condition?

11 A His general condition seemed to be poor. He
12 seemed to not really know a whole lot about what was
13 going on, seemed to be tussling and turning in the
14 middle of the road, as you could expect from somebody
15 that had severe lacerations to his trunk, to his legs,
16 and especially in the body organ parts that are
17 contained within those. Was just generally, I guess,
18 having a bad night. I don't know how to say it.

19 Q Was he cold?

20 A Not to my recollection.

21 Q Was he pale?

22 A Had was pale.

23 Q Was he breathing rapidly?

24 A He was.

25 Q You mentioned that he seemed disoriented?

1 A He was.

2 Q As an EMT, do those symptoms suggest anything to
3 you, give you any concern?

4 A So the major concern that we have is shock. Those
5 are classic textbook symptoms of somebody that is
6 either in one of the couple of stages of shock or will
7 be shortly. And that could be due to any number of
8 factors, be it trauma, be it loss of blood, loss of
9 fluids, loss of temperature. Any of those can add to
10 that equation and result in a patient entering shock.

11 Q How long did you treat the victim before the
12 ambulance arrived, if you had to estimate?

13 A I can't recall.

14 Q Did the sheriff's office arrive first or the
15 ambulance?

16 A I believe the sheriff's office.

17 Q So if that's the case, then you would have treated
18 him for a while, the sheriff's office arrived, and then
19 the ambulance, correct?

20 A That's correct. So the first sheriff deputies
21 arrived. They actually had tourniquets, which we did
22 not have. They actually had what we call blast
23 bandage, which is just a very thick, absorbent gauze
24 bandage that is used for any kind of severely bleeding
25 wound, any kind of blast damage, anything of that

1 nature.

2 I don't remember who it was. The first sheriff's
3 deputy actually said to me, "I have a blast bag. Do
4 you want it?" And I said, "Yes, that would be great.
5 That's exactly what we need." At the time we had run
6 out of gauze in Evan's first aid kit. We didn't have
7 any more, so.

8 Q Once EMS arrived, what did you do?

9 A Once they arrived, the first EMS personnel off the
10 ambulance, generally they kind of talk to bystanders,
11 figure out what's going on, take a quick snapshot of
12 the scene in their minds as to figure out, you know,
13 what's happening, how the injuries came about. We call
14 it mechanism of injury, whether there is a pile of car
15 rubble laying over here that would suggest a car
16 accident, something like that. Then they usually talk
17 to the patient care providers who are actually dealing
18 with the patient. Common phrasing is, "Hey, what do
19 you got? What's going on? What have you treated so
20 far? What do you see that I have not seen yet?" That
21 kind of thing.

22 Q And did you debrief the responders?

23 A I did. I gave what is referred to sometimes as a
24 basic patient care report. Again, it's just -- it's
25 nothing more than telling the arriving agency that's

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1 going to have patient care of that patient until he
2 gets to the definitive medical care, be it a trauma
3 center or hospital of some sort. It's nothing more
4 than telling them, "Hey, this is what I did. This is
5 what happened. This is the injuries that I see. This
6 is how far down the continuum of patient care we've
7 made it until you arrived."

8 Q And at this point would he have been transported?

9 A He was. He was put on what we commonly call a
10 scoop stretcher, which is just a stretcher to get him
11 up off the ground out of a tight space, that kind of
12 thing. Put him onto the rolling bed that the ambulance
13 brings, load it into the back of the ambulance.
14 Patient care was continued in the back of the
15 ambulance, and then he was transported to Greenville.

16 Q Why Greenville?

17 A Greenville is what we call a Level I trauma
18 center. They are the best at dealing with traumatic
19 injuries, be it motor vehicle collisions with severe
20 injuries, severe gunshots, severe slashing and stabbing
21 wounds, wounds of that nature.

22 Q So based on the injuries you saw, in your expert
23 opinion as an EMT, do you think it's possible the
24 defendant could have died that night if you and Evan
25 hadn't happened to drive up and started patient care

1 immediately?

2 A Absolutely.

3 MR. ALDERMAN: Please answer any questions
4 Mr. Cole may have for you.

5 THE COURT: Cross-examination.

6 MR. COLE: Thank you, your Honor.

7 CROSS-EXAMINATION

8 BY MR. COLE:

9 Q Mr. Santangelo, am I saying your name right?

10 A Santangelo. It happens all the time.

11 Q Mr. Santangelo, it's true that, as an EMT, you
12 don't diagnose a condition; isn't that correct?

13 A That's correct. We perform triage of the
14 immediate conditions.

15 Q So you take care of somebody until a doctor can
16 give them medical care?

17 A That's correct.

18 Q And my client, when you saw my client that
19 evening, did he attempt to -- my client, Mr. Smith, who
20 was at the back of the car?

21 A That's correct.

22 Q Did he attempt to go towards the person who was
23 lying on the ground at all?

24 A I don't recall.

25 Q When you saw him, he was standing at the back of

1 the car, right?

2 A That's correct.

3 Q And you asked him to give you his knife, and he
4 gave it to you, right?

5 A That's correct.

6 Q And then you asked him to stand there; is that
7 right?

8 A That's correct.

9 Q And that's where he stood; isn't that correct?

10 A From what I recall, yes, sir.

11 Q So he didn't try to approach the person standing
12 on the ground?

13 A I don't recall.

14 Q But you do recall that he stayed where you asked
15 him to stand?

16 A Once I got there, yes, sir. And once we had
17 talked about what had happened and I asked him to place
18 the knife on the trunk of the car, he was very
19 compliant with me.

20 Q So he was compliant and cooperated with you?

21 A That's correct.

22 MR. COLE: No further questions.

23 THE COURT: Redirect?

24 MR. ALDERMAN: None, your Honor.

25 THE COURT: May this witness be excused?

1 MR. ALDERMAN: Yes, your Honor.

2 MR. COLE: No objection.

3 THE COURT: Thank you, sir. You are excused.

4 Call your next witness.

5 MR. ALDERMAN: Your Honor, at this time the State
6 would call Deputy Rashad Crooks to the stand.

7 **RASHAD CROOKS,**

8 BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

9 DIRECT EXAMINATION

10 BY MR. ALDERMAN:

11 Q Deputy Crooks, if you would, state your full name
12 and spell your last name for the record, please.

13 A Rashad Crooks. Last name spelling C-r-o-o-k-s.

14 Q Where are you employed?

15 A Ocone County Sheriff's Office.

16 Q How long have you been there?

17 A Almost -- it will be five years next month.

18 Q And your current rank?

19 A Master deputy.

20 Q And as a master deputy, what are your duties from
21 day to day with the sheriff's office?

22 A I'm one of the supervisors on my shift. I also
23 answer calls, deal with complaints, give advice on how
24 to handle calls.

25 Q And in that capacity, did you have occasion to

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1 come into contact with the defendant on or about
2 December 26th of 2017?

3 A Yes.

4 Q If you recall, what information did you receive
5 from dispatch that sent you in that direction?

6 A If I can remember correctly, they advised us there
7 was a suspect laying in the middle of the road on Davis
8 Creek Road and Ravenel School Road, in that area, which
9 is inside the jurisdiction of Oconee County, that had
10 been stabbed. I was the first deputy that arrived on
11 scene.

12 Q And as the first deputy that arrived on scene, if
13 you would, just tell the jury what you saw.

14 A When I arrived on scene, I got out of my patrol
15 vehicle and I walked to where the victim in this case
16 was. I observed him laying on the ground. I seen the
17 two first responders rendering aid to the victim. I
18 observed what looked like lacerations to the chest and
19 blood coming from his chest.

20 When I walked up, one of the first responders
21 advised me that the person that done this was standing
22 behind the car, which is the defendant in this case. I
23 went and made contact with him. As I approached him,
24 he was being loud and boisterous and using obscene
25 language.

1 I advised him to keep his hands up for safety
2 reasons. I was going to place him in investigative
3 detention but he had blood on him, so I put on my
4 gloves for safety reasons. At that time Deputy Lecroy
5 and Deputy Sheriff arrived on scene, and they placed
6 him in investigative detention.

7 Q What does that mean?

8 A Basically we detain him for the time being until
9 we can investigate more on what happened.

10 Q Did you recover a knife at the scene that night?

11 A Yes. There was a knife that was laying on the
12 trunk that had blood on it, and that was seized.

13 MR. ALDERMAN: Permission to approach the witness,
14 your Honor?

15 THE COURT: Yes, sir.

16 BY MR. ALDERMAN:

17 Q Deputy Crooks, I'm approaching you with what has
18 previously been marked as State's Exhibit 6. If you
19 could just take a look at that for me.

20 A Yes.

21 Q Do you recognize that?

22 A Yes. That was the knife that I seized that night.

23 Q Does it appear that this picture has been changed,
24 altered, manipulated in any way that you can tell?

25 A No.

1 Q Is this a fair and accurate representation of the
2 knife that you seized from the trunk of that car that
3 night?

4 A Yes.

5 MR. ALDERMAN: Your Honor, at this time we'd move
6 State's 6 into evidence and publish for the jury.

7 THE COURT: What number is that?

8 MR. ALDERMAN: 6.

9 THE COURT: Any objection?

10 MR. COLE: No objection, your Honor.

11 THE COURT: Admitted.

12 (WHEREUPON, State's Exhibit Number 6 was admitted
13 into evidence.)

14 BY MR. ALDERMAN:

15 Q Just to be clear, Deputy, where did you seize this
16 knife?

17 A It was on the trunk of the vehicle where the
18 altercation took place.

19 Q Were you wearing your body camera that evening?

20 A Yes, I was.

21 Q Was it working?

22 A Yes.

23 MR. ALDERMAN: Permission to approach the witness
24 again, your Honor?

25 THE COURT: Yes, sir.

1 BY MR. ALDERMAN:

2 Q Showing you what's been previously marked as
3 State's Exhibit 11. If you would just take a look at
4 that for me.

5 A Yes.

6 Q Do you recognize this?

7 A Yes.

8 Q What is it?

9 A It is a DVD of the incident I downloaded and
10 turned over for evidence -- I mean for prosecution.

11 Q And how is it that you recognize it?

12 A I initialed it, and that's the DVDs that we use to
13 download it.

14 Q So you would have had a chance to review this?

15 A Yes.

16 Q Was anything changed or altered or manipulated in
17 any way that you could discern on this video?

18 A No.

19 Q So would this be a fair and accurate
20 representation of the events that evening?

21 A Yes.

22 MR. ALDERMAN: Your Honor, at this point we would
23 move to admit State's 11.

24 THE COURT: Any objection?

25 MR. COLE: Yes, your Honor. I would object.

1 May we approach, your Honor?

2 THE COURT: Yes, sir. Just one second.

3 Mr. Foreman, would you take your jury back to the
4 jury room, please. Would you leave your pads in the
5 courtroom.

6 (WHEREUPON, the jury exited open court at
7 3:21 p.m.)

8 MR. COLE: Your Honor, I misunderstood. Opposing
9 counsel, earlier when he said about the video when we
10 had the hearing about the videos, this is a video in
11 addition to what he showed earlier, and I was under the
12 impression that he wasn't going to show anything else;
13 however, he explained it to me that I misunderstood.

14 It's my understanding that this portion of the
15 video is setting the scene. It's showing what the
16 scene was. Your Honor, I believe we have the witness
17 here to testify and that the witness' testimony can
18 show what that scene was sufficient to where the video
19 would just be cumulative and with it showing -- you
20 know, with the video showing my client in a detention
21 type of situation would be prejudicial to him. So I
22 would move on the grounds it would be cumulative and
23 also on Rule 403 grounds to exclude this.

24 THE COURT: Mr. Alderman.

25 MR. ALDERMAN: Judge, I would say the video itself

1 is the best evidence. It is a small portion of the
2 video that lets the jury see exactly what was going on
3 that night, where it happened, how dark it was, how
4 much bleeding there was, where the parties were
5 relative to each other, where the victim was relative
6 to the vehicle, all of these things that could be
7 described but are better described by the video itself.
8 I think it's the best evidence and the best way --

9 THE COURT: Is the defendant making any comments?

10 MR. ALDERMAN: Judge, we have specific redactions
11 for that. They are minor, but, again, we have it
12 redacted so that there should be no comments from the
13 defendant. It's seven minutes and 50 seconds from this
14 witness, Judge, so not a lengthy section of video.
15 Truly just to set the scene. Of course --

16 THE COURT: I'm going to allow it.

17 MR. ALDERMAN: -- if Mr. Cole would like to review
18 it first, I wouldn't object.

19 THE COURT: I overrule the objection.

20 MR. COLE: May I ask one other thing?

21 THE COURT: Yes, sir.

22 MR. COLE: Is it redacted on your disc or are you
23 just going to stop and start?

24 MR. ALDERMAN: I was going to mute the specific
25 sections where any statements would have been made but

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1 allow the video to continue to run.

2 MR. COLE: Your Honor, if that's the case and the
3 jury wants to view this as part of their
4 deliberations --

5 THE COURT: They will not be allowed to hear it.

6 MR. COLE: Yes, your Honor. That's what I would
7 ask. Thank you.

8 THE COURT: Yes, sir.

9 Ready?

10 MR. ALDERMAN: Yes, your Honor.

11 (WHEREUPON, the jury entered open court at
12 3:25 p.m.)

13 THE COURT: Mr. Alderman.

14 MR. ALDERMAN: Judge, again, at this time we would
15 seek to admit State's Exhibit 11 into evidence.

16 THE COURT: It's admitted subject to objection.

17 (WHEREUPON, State's Exhibit Number 11 was admitted
18 into evidence.)

19 MR. ALDERMAN: Your Honor, if it please the Court,
20 we'd like to publish the specific portion we have
21 agreed upon to the jury at this time.

22 THE COURT: Okay, sir.

23 (Video playing.)

24 MR. ALDERMAN: Thank you, Deputy Crooks. If you
25 would, please answer any questions Mr. Cole may have

1 for you.

2 CROSS-EXAMINATION

3 BY MR. COLE:

4 Q Deputy Crooks, when you arrived on the scene, you
5 did not see any fight or any altercation or anything
6 like that, did you?

7 A No. I only observed the defendant being loud and
8 boisterous.

9 Q You found the knife on the back of the vehicle; is
10 that correct?

11 A Yes, on the trunk.

12 Q And that knife that was shown as an exhibit is a
13 pocketknife; would you agree?

14 A Yes.

15 Q And so the blade on that knife wouldn't be any
16 more than two inches long; is that correct?

17 A I'd say about two to four inches, maybe.

18 Q And when you approached my client, he did
19 everything you told him to do; is that correct?

20 A Yes.

21 Q And my client never attempted to reach for the
22 knife or get the knife or anything like that, did he?

23 A No, he didn't.

24 Q And my client never attempted to approach
25 Mr. Reid, who was on the ground; is that correct?

1 A No, he didn't.

2 MR. COLE: No further questions, your Honor.

3 THE COURT: Redirect?

4 MR. ALDERMAN: None, your Honor.

5 THE COURT: May this witness be excused?

6 MR. ALDERMAN: Yes, your Honor.

7 MR. COLE: No objection, your Honor.

8 THE COURT: Thank you, Officer. You are excused.

9 Call your next witness, please, sir.

10 MR. ALDERMAN: Yes, your Honor. At this time the
11 State would call Varia Galbreath.

12 **VARIA GALBREATH,**

13 **BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:**

14 **THE CLERK: Please be seated.**

15 **DIRECT EXAMINATION**

16 **BY MR. ALDERMAN:**

17 Q Ma'am, would you please state your full name and
18 then spell your last name for the record.

19 A Varia Galbreath, G-a-l-b-r-e-a-t-h.

20 Q And where are you employed?

21 A Johnson Controls. I've been there 19 and a half
22 years, and I work for the School District of Oconee
23 County as a substitute teacher.

24 Q Do you know the victim in this case, Mr. Michael
25 Todd Reid?

1 A Yes. It's my son.

2 Q And do you know the defendant in this case,
3 Clifton Smith?

4 A Yes.

5 Q What was your relationship with him?

6 A I wouldn't call it a boyfriend-girlfriend. He
7 just -- he pushed himself from Spartanburg up here to
8 Oconee because he had to go to probation on a Monday
9 and asked if he could come stay with me that Sunday so
10 he wouldn't be late getting to probation because he
11 didn't have his own vehicle, so I agreed.

12 Q Would you say that he lived with you for a while
13 from time to time?

14 A I took him back to Spartanburg, and two weeks
15 later he came back, so -- and it started end of October
16 until -- yeah.

17 Q Until this event?

18 A Until this happened, yes.

19 Q And do you remember December 26, 2017?

20 A Yes, I do.

21 Q Take us through your day. How did that day start?
22 What were you doing this afternoon? Tell us about it.

23 A My daughter always had Christmas, just for our
24 family, me and Todd, the day after Christmas out of the
25 hustle of everybody else. And we had exchanged gifts

1 at my -- my family in Westminster that morning, and I
2 had gave Cliff that knife for Christmas.

3 Q Not to interrupt, but that pocketknife that we saw
4 earlier?

5 A Yes.

6 Q You gave that to him?

7 A I gave it to him. He picked it out at Academy
8 probably a week before Christmas, and I wrapped it for
9 him. And it was a package. It was two knives. And
10 the night that we got ready to leave, he decided, "Oh,
11 hold on," and he got that knife and put it in his
12 pocket. He opened the pack and put that one in his
13 pocket before we went to the party -- to my daughter's
14 for Christmas.

15 Q And who all went to that party?

16 A Todd, my son, Cliff, myself, and my two dogs.

17 Q And who was there when you got there?

18 A My daughter, Hanna, her boyfriend, Jesse, and her
19 baby, Addie.

20 Q And did you guys exchange gifts there as well?

21 A We did.

22 Q Do you remember what those gifts happened to be?

23 A Todd got a toboggan. I got a candle, and she gave
24 Cliff some mini bottles of alcohol.

25 Q Who was "she"?

1 A My daughter.

2 Q And then what happened?

3 A We ate pizza. He drank his alcohol, and it wasn't
4 probably 30 minutes, we was -- it was already -- he had
5 started acting up, talking loud. Todd decided to go
6 outside. He said, "I can't handle it." He went on
7 outside with the dogs, and I was upset, and I -- at
8 Cliff, and I, you know, said -- I'm not sure what word
9 I said, if it was "shit" or what, but Hanna says,
10 "Don't talk like that in front of my baby." And I
11 says, "We're just going to go." So we left.

12 Q Fair to say that you were upset at this point?

13 A Yes.

14 Q And so the three of you leave. Are you driving?

15 A Yes.

16 Q And where is everyone seated in the vehicle?

17 A I'm driving, Cliff is in the passenger seat in the
18 front, Todd is in the backseat.

19 Q And where are you coming from?

20 A From Central.

21 Q And going where?

22 A To Walhalla.

23 Q And did you take 123?

24 A I did.

25 Q So what was going on in the car at this point?

1 You're heading up 123 from this party. What's going on
2 in the car?

3 A I'm irritated. I know I'm irritated because, you
4 know, the little Christmas party that's once a year got
5 ruined. I know Todd's irritated. I know Cliff's just
6 over there in his own little world, and Todd knew I was
7 upset, and Todd said something about, you know --

8 MR. COLE: Objection as to anything he said.

9 THE WITNESS: -- "You ruined the Christmas party."

10 THE COURT: Do not answer, please.

11 Sustain that objection.

12 BY MR. ALDERMAN:

13 Q Without telling us specifically what Todd said --

14 A Right.

15 Q -- if you could, just kind of give us a sense of
16 what you saw and about what you sensed about what was
17 going on in the car.

18 A Okay. Words were exchanged, and then Todd, like,
19 Todd slapped him.

20 Q Fair to say that those words that were exchanged
21 were heated?

22 A Yes.

23 Q And then you say what did Todd do?

24 A Todd slapped him.

25 Q Okay. And did --

1 A And I was, like, "Stop, just stop."

2 Q Did the defendant hit back, or was there any bit
3 of struggle in that moment?

4 A He -- no, not -- I mean, no. He probably -- I
5 mean, he was, you know, sitting up front. You know, he
6 just got slapped, and he didn't really -- I don't think
7 he did. I mean...

8 Q So that altercation, did it end at that point?

9 A It stopped. It stopped. And, you know, I was --
10 I had stopped the car and then I started again. And I
11 was -- I went down that hill, and there were some
12 curves.

13 Q Tell me about that hill. What road were you on?

14 A I'm not sure of the name of the road, but it's
15 dark.

16 Q Was it off of 123 that you were initially on?

17 A Yes. Yes.

18 Q Okay. And do you remember any landmarks on that
19 road?

20 A I just know it was dark. I just remember it being
21 dark.

22 Q So as you're driving down the road, this dark
23 road, what happens next?

24 A And then Cliff whirls around in the seat, and I
25 thought he was hitting Todd, and I stopped the car

1 again, and I said, "Just stop. Just stop." And I
2 grabbed his shirt, Cliff's shirt, and Todd got -- Todd
3 got out of the car. And when he started to get out, he
4 says, "You cut me." And I said, "What did you cut him
5 for?" And he just -- he turned around and sit back
6 down in the seat. And --

7 Q The defendant did?

8 A Uh-huh. And Todd got out and come to the front of
9 the car and was kind of pacing, and he says, "Call
10 somebody" --

11 MR. COLE: Objection. Hearsay.

12 THE COURT: Sustained.

13 MR. ALDERMAN: Your Honor, with respect, I would
14 just say that it's an excited utterance at that point,
15 would be our position.

16 THE COURT: What's your response?

17 MR. COLE: Your Honor, this was after they're
18 already out of the car. I believe the excitement is
19 over with.

20 MR. ALDERMAN: Judge --

21 THE WITNESS: That's when the excitement began.

22 THE COURT: Do not speak.

23 I'm going to overrule the objection. I will allow
24 it.

25 MR. ALDERMAN: Okay.

1 Q Ma'am, if you will continue. What did he say at
2 that point?

3 A Todd said, "Call somebody. I've been cut." And I
4 called Hanna. And I said, "Your brother's been cut and
5 I need some help." And she said, "Where you at?" I
6 didn't know. And Todd hollered out, "Right there is
7 Ravenel school." And she heard him say that, and I
8 hung up and I called 911.

9 Q And what happened next?

10 A When Todd got out, the dogs got out. They're
11 running in the road. And Todd laid down in the road,
12 and he said, "Just give me something to drink. I need
13 something to drink. I'm cold. Give me something to
14 drink." I didn't have anything. I didn't have
15 anything.

16 And then the police showed up. And I didn't know
17 who that was that -- Cliff got -- Cliff got out of the
18 car and went to the back of the car, and they -- he
19 took a knife out of his pocket and laid it on the back
20 of the car.

21 Q The same knife that you had given him?

22 A Yes.

23 Q The same knife he cut your son with?

24 A Yes.

25 Q Once the EMS took Todd, got him stabilized, where

1 did they take him?

2 A They took him to Greenville, and they put caution
3 tape around the car so I had to stay with the car
4 because it was a crime scene, and I couldn't go with
5 him.

6 Q Did you eventually go and see him at the hospital?

7 A I did. I did.

8 Q How long was he there?

9 A Until the next morning. Around 2:00 he got out.

10 Q And, to your knowledge, did he have to go back
11 after that for treatment to his hand or any other part
12 of his body?

13 A He did. His hand was -- all his fingers was cut.
14 There was two cuts down his chest. On his arm. On his
15 leg. I had to help him get a bath. It was like he was
16 an infant. He couldn't -- you know, had to use his
17 left hand to do everything. He couldn't use his right
18 one for nothing. It was bandaged all up. And made
19 several trips to Greenville to get stitches out. There
20 was surgery on his hand.

21 Q I just want to be clear on one more point. At the
22 time the defendant unbuckled his seatbelt, took that
23 knife out of his pocket, opened that knife, turned
24 around in the seat, started cutting your son, was your
25 son hitting him, yelling at him, being aggressive with

1 him in any way?

2 A No.

3 MR. ALDERMAN: Thank you, ma'am. Please answer
4 any questions Mr. Cole may have for you.

5 THE COURT: Cross-examination.

6 CROSS-EXAMINATION

7 BY MR. COLE:

8 Q Ms. Galbreath, you were in a romantic relationship
9 with my client; is that true?

10 A I wouldn't say that was romance.

11 Q I'm sorry?

12 A I wouldn't call that romance.

13 Q But were you in a relationship with him?

14 A He was pushed on -- he pushed himself.

15 Q At the time of this incident, he lived with you?

16 A He stayed with me.

17 Q And you allowed him to ride in your car to and
18 from the party with you?

19 A Yeah.

20 Q And isn't it true, Ms. Galbreath, that during that
21 car ride back from the party, that Mr. Reid hit my
22 client before my client ever touched him?

23 A Yeah, he hit him.

24 Q And he, Mr. Reid, was in the backseat, and my
25 client was in the front seat?

1 A Yes.

2 Q And Mr. Reid hit him hard from the backseat in the
3 head?

4 A I remember a slap. I'm driving, so I'm not
5 looking at how he hit him, but I remember a slap.

6 Q And as soon as Mr. Reid hit my client, the
7 struggle continued from there, and there was no stop;
8 isn't that correct?

9 A No, that's not correct.

10 Q Did you give a statement to law enforcement on the
11 night of this incident?

12 A I did.

13 Q And in that statement did you tell the truth?

14 A I did.

15 MR. COLE: Your Honor, may I approach the witness?

16 THE COURT: Yes, sir.

17 BY MR. COLE:

18 Q Ma'am, do you recognize this document?

19 A I do.

20 Q Is that the statement that you gave law
21 enforcement on the night of the incident?

22 A Yes.

23 Q Could you read that statement?

24 A "Christmas dinner at my daughter's. Clifton drank
25 some mini bottles, started getting loud. Todd went to

1 sit in the car because he couldn't handle Clifton being
2 loud. Clifton, Todd, and myself left my daughter's
3 about ten minutes later, driving down the road, and
4 Todd started arguing about how Clifton couldn't handle
5 his alcohol. Cliff said, 'Todd shouldn't do drugs.'
6 And Todd said, 'You shouldn't say anything. After all,
7 Clifton, you are wearing my clothes.' Not sure what
8 Clifton said of that, but Todd slapped Cliff, and Cliff
9 started punching at Todd. Then Clifton turned around
10 in the seat and got on his knees, and that's when Todd
11 said, 'You just cut me, you motherfucker,' and I
12 stopped the car and Todd got out."

13 Q So that, that you just read, you said that
14 Mr. Reid hit my client, and then the altercation
15 continued, my client turned around, and the altercation
16 continued; isn't that a fair summary?

17 A I said that Todd slapped him and they were
18 arguing, and it stopped. "Then" he turned around.
19 "Then" was after I went down the hill and in the curves
20 in the dark. Everybody had stopped. "Then" he turned
21 around in that seat.

22 Q But in that statement you didn't say anything
23 about that it stopped?

24 A It doesn't say that it continued either. It says
25 "then" that's what happened.

1 Q But it doesn't say there was a period of time
2 where nothing happened and you just kept driving?

3 A It doesn't say it continued either.

4 Q And this statement -- that statement you gave was
5 the night of?

6 A The statement I gave was the night of.

7 Q And you remembered it better the night of than you
8 would now, years later?

9 A No. "Then" means "then that happened." It's like
10 the argument, and then silence, and then that happened.

11 Q But that's not what the statement says, right?

12 A Yeah, that's what that says. "Then" --

13 Q It doesn't say "then" and then silence, then that
14 happened in your statement?

15 MR. ALDERMAN: Objection, your Honor. We're
16 getting argumentative and asked and answered.

17 THE COURT: Overruled.

18 Go ahead.

19 BY MR. COLE:

20 Q The statement you just read doesn't say "then" and
21 then silence and then something else happened; isn't
22 that correct?

23 A "Then" doesn't put a time in there. That
24 doesn't -- you're not -- you're not seeing what
25 happened. My son's laying on the ground up there split

1 all to pieces. And, yeah, I said "then," but there was
2 a place in there or I would have never started that car
3 again driving down the road.

4 MR. COLE: Your Honor, I would ask the witness be
5 directed to answer the question.

6 THE COURT: Rephrase your question and ask it
7 again.

8 BY MR. COLE:

9 Q In the statement that you gave, you never said
10 that there was a silence or a gap and then something
11 else happened?

12 A I never said that, no.

13 Q And the statement that you gave, you remembered it
14 better -- you gave that statement on the night of the
15 incident, right?

16 A I did.

17 Q And you remembered what happened better the night
18 of the incident than you do now, years later?

19 A No. I mean, I was -- my nerves was tore all to
20 pieces then.

21 MR. COLE: No further questions, your Honor.

22 THE COURT: Redirect?

23 MR. ALDERMAN: Briefly, your Honor.

24 REDIRECT EXAMINATION

25 BY MR. ALDERMAN:

1 Q Is there any way you could forget what happened
2 that night?

3 A No.

4 Q Was there a break in time between the first
5 altercation and when the defendant cut your son?

6 A Yes.

7 MR. ALDERMAN: Thank you.

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

9 All right. Mr. Foreman, ladies and gentlemen,
10 let's take a quick afternoon break, around 15 minutes,
11 and we'll bring you back. If you need anything, make
12 sure our bailiff knows and she'll try to get it for
13 you. If you will leave your pads in the courtroom.

14 (WHEREUPON, the jury exited open court at
15 3:57 p.m.)

16 THE COURT: All right. Let's take about a
17 15-minute recess.

18 (WHEREUPON, a recess was taken from 3:58 p.m. to
19 4:18 p.m.)

20 THE COURT: Guys, just for the record, the jury
21 sent back a request to get the witnesses to speak in
22 the microphone, speak louder. They're having a hard
23 time hearing.

24 MR. COLE: Your Honor, if I may, we have one issue
25 as far as the next witness. He's got some criminal

1 charges that I plan to impeach him with. There's one
2 that's not showing up with the rap sheet that I was
3 provided by the State, but it is on the CMS.

4 I checked to see. It's the one that's showing up
5 on CMS was from April of this year where he was
6 convicted of possession of meth second offense, and
7 he -- it's got the same name, the same year of birth.
8 We don't get -- the public index doesn't give the full
9 date of birth, so I believe it's the same person and
10 would ask to be able to use that as well to ask him if
11 he had been convicted of that.

12 THE COURT: Well, let me do this. Have y'all
13 looked at the case of the State vs. Robinson? Have you
14 seen that? It was issued in May of this year, and it
15 goes back and it breaks down 609(a)(1), (a)(2), and
16 then 609(b). And if you're looking at methamphetamine
17 second offense -- this is assuming the State doesn't
18 disagree that that's the charge -- obviously, it's
19 punishable by more than a year.

20 And the way they break it down, if it's a witness
21 as opposed to being the accused, and it's for a crime
22 punishable by more than a year, then it may be excluded
23 if the probative value is substantially outweighed by
24 the danger of unfair prejudice, confusion of the
25 issues, misleading of the jury, undue delay, waste of

1 time, and cumulative evidence.

2 The State has the burden to establish its
3 inadmissibility, and then the Colf, C-o-l-f, factors
4 have to be considered as well, and that is the
5 impeachment value of the prior crime, the point in time
6 of the conviction, and the witness' subsequent history,
7 similarity between the past crime and the crime
8 charged -- that's more for the defendant -- import of
9 the defendant's testimony -- again that's for the
10 defendant -- or the accused and centrality of
11 credibility is an issue.

12 I assume you're speaking of the victim in this
13 case?

14 MR. ALDERMAN: We are, your Honor.

15 THE COURT: So with those factors and those
16 elements being said, Mr. Alderman, I'll be glad to hear
17 from you.

18 MR. ALDERMAN: Yes, your Honor. Two points. One,
19 I believe what Mr. Cole is speaking about specifically
20 is a charge that shows up on the public index but does
21 not appear on the NCIC report that we generally use to
22 run a rap sheet and to know what a person has on their
23 criminal history.

24 Judge, I ran this rap sheet today, and the charge
25 that Mr. Cole is bringing up is simply not on there,

1 and I would ask that it be excluded because we just
2 don't know if it's the same person as a matter of fact.
3 We haven't had time to investigate it.

4 And, in addition, Judge, pointing to those other
5 factors that you pointed out, we think that it would be
6 inadmissible because it tends to confuse the issue.
7 There's been no factual allegation that, specifically
8 in this case, methamphetamine on his prior record was
9 any factor or had anything to do with the events of
10 that night, and at the same time, just saying
11 methamphetamine tends to prejudice that individual.
12 It's kind of a hot button issue, particularly in this
13 county, Judge, and I think that it's more prejudicial
14 than it could possibly be probative.

15 THE COURT: I would tend to agree with you,
16 Mr. Cole, but I'll be glad to hear from you.

17 MR. COLE: Your Honor, I'm going to ask the
18 witness about his methamphetamine use and drug use
19 because that's -- my client is prepared to testify,
20 when we get to that point, that that's what this
21 argument was about that the parties had, so I do
22 believe it had some relevance. And then, also, it adds
23 probative value as to his criminal record as to the
24 truthfulness of his statements. So we have --

25 THE COURT: Well, there was a case -- it may be

1 White, I'm not sure. I can't remember who authored the
2 opinion, but it says that crimes involving dishonesty,
3 et cetera, et cetera -- they gave an example of
4 somebody being a drug dealer, and that has nothing to
5 do about honesty.

6 So with regard to what you're saying, if he's a
7 drug user may not necessarily indicate trustworthiness
8 or veracity. Isn't that what you were saying, it
9 indicates veracity?

10 MR. COLE: Your Honor, I believe it could towards
11 that, and that's why I believe the rules, they have the
12 separate section for, as the Court knows, the crimes of
13 honesty, but also any crime that carries more than one
14 year. So I think that's why the rules have the two
15 different ones, because if you are convicted of any
16 crime that carries more than one year, that could
17 lend --

18 THE COURT: Well, you know, and they make the
19 distinction, too, looking back at my notes, under
20 609(a)(1), those are the elements and the factors that
21 you look at under the Robinson case. 609(a)(2) had to
22 do with dishonesty, and they say in that, that if the
23 crime involves dishonesty or false statement, it shall
24 be admitted regardless of the maximum penalty. It's
25 admissible regardless of probative value or prejudicial

1 effect, and the burden on establishing that it does
2 involve dishonesty or false statement is on the
3 proponent, which would be on you.

4 But I don't find that methamphetamine
5 possession -- I mean, it could very well, you know
6 indicate the person -- it doesn't in and of itself
7 involve dishonesty or misstatement of facts. It just
8 means that somebody has got a drug problem, which could
9 mean that they may not be honest or dishonest, but the
10 charge itself does not indicate any of those or
11 implicate 601(a)(2). It has to be 609(a)(1), which
12 would be unfair prejudice, which, to me -- is there any
13 evidence or testimony that will be proffered in this
14 case that the victim in this case was doing drugs on
15 the night in question?

16 MR. ALDERMAN: Not to my knowledge, your Honor. I
17 have seen no evidence to that effect.

18 MR. COLE: Your Honor, no, your Honor.

19 THE COURT: I'm not going to allow you to do that,
20 Mr. Cole, in all due candor. I think it's just unduly
21 prejudicial to the State in this matter. Doesn't have
22 any probative value to the case or the issues in this
23 case. Credibility is a big issue in this case;
24 however, because a swearing contest between the victim
25 and his mom and defendant about what actually occurred

1 in that car, nobody knows but them. It's close to the
2 point in time, it's April. Impeachment value, you
3 know, doesn't -- I don't think it has a whole lot of
4 value except for what we all know is that it will --
5 from a jury standpoint, they are going to think,
6 whoever has this charge, is a bad person.

7 MR. ALDERMAN: That would be our position, your
8 Honor, and that there is no nexus between the charge
9 and dishonesty.

10 THE COURT: I'm not going to say that you can't
11 get into the issue of drug use, but the prior
12 conviction, I think, goes beyond that. And you are
13 just going to have to object if you hear something you
14 think is not appropriate.

15 Any other charges?

16 MR. COLE: Yes, your Honor, if I may ask the
17 Court. He also was convicted in 2018 of failure to
18 stop for a blue light. That was one that we wanted to
19 impeach him with under 601 because it carries more than
20 a year, but also I believe there could be some
21 dishonesty involved in that because if you don't stop,
22 to me, that's --

23 THE COURT: You know, the examples they give in --
24 I say the White case, whatever it is, or the Black
25 case, whatever it is, they give examples of writing bad

1 checks, you know, fraudulent tax returns, examples like
2 that that actively involve lying. I don't know that
3 failure to stop for a blue light would involve
4 dishonesty.

5 Are you aware of any cases that say one way or the
6 other?

7 MR. ALDERMAN: No, your Honor. I would say
8 generally the cases tend to deal with issues like theft
9 or providing false information.

10 THE COURT: Well, they had a case, I think Judge
11 Few, when he was on the bench, might have been
12 burglary, some kind of theft, if you're a thief, you
13 can imply that you're dishonest because what you're
14 doing is dishonest and they said huh-uh, that's not
15 what that means.

16 MR. ALDERMAN: If I recall, Judge, I think there
17 was one situation where one case said that shoplifting
18 was or wasn't and one said that larceny was or wasn't,
19 and they were opposed to each other.

20 THE COURT: I'm not aware of that.

21 Are you aware of any cases, Mr. Cole?

22 MR. COLE: No, your Honor, not as to failure to
23 stop for a blue light.

24 THE COURT: I'm not going to allow that either.

25 Any other charges?

1 MR. COLE: Yes, your Honor. Conviction in 2017
2 for -- this is in Georgia -- the use of communication
3 facility in commission of a felony involving controlled
4 substance.

5 MR. ALDERMAN: Judge, there is an adjoining
6 methamphetamine charge that I think is the head charge
7 in this series of possession of methamphetamine, use of
8 the communication facility, and the possession of the
9 weapon. All three charges are tied to the
10 methamphetamine as the root charge, and I think that's
11 really the issue. If you parse those, then the charge
12 doesn't make sense.

13 THE COURT: I'm not familiar with that statute,
14 but does that mean he used a phone to order drugs or
15 facilitate a drug deal?

16 MR. COLE: That's my understanding, but I'm not a
17 hundred percent familiar with the statute. But it is a
18 felony in Georgia.

19 THE COURT: Right. Carries more than a year.
20 They don't make a distinction between felony,
21 misdemeanor to make a difference. More than a year
22 under (a)(1).

23 MR. COLE: Yes, your Honor.

24 THE COURT: The ruling is going to be the same. I
25 think they're all interrelated.

1 Now, the weapon only carries up to a year -- no,
2 that's five.

3 MR. ALDERMAN: In Georgia, your Honor, I truly
4 have no idea.

5 MR. COLE: He wasn't convicted of the weapons
6 charge, your Honor. The only other one -- and, again,
7 this may be along the same lines of failure to stop for
8 a blue light, but the charge in Georgia he was
9 convicted of in 2017 is fleeing or attempting to elude
10 a police officer, and I would argue with that charge,
11 if he's fleeing or attempting to elude, that does carry
12 dishonesty with it.

13 MR. ALDERMAN: Again, Judge, I don't have any idea
14 what that carries.

15 THE COURT: Hang on. Hang on.

16 This is under State vs. Broadnax. "So we take
17 this opportunity to overrule Al-Amin, and reaffirm the
18 rule as formulated in Bryant that armed robbery is not
19 a crime of dishonesty or false statement for purposes
20 of impeachment. Thus, we hold for impeachment purposes
21 crimes of dishonesty or false statement are crimes in
22 the nature of *crimen falsi* that bear upon a witness'
23 propensity to testify truthfully."

24 Again, you know, that could go under 609(a)(2)
25 would be it doesn't matter if it comes in, but it

1 doesn't come in under (a)(1), and I don't think it does
2 involve falsity or misstatement.

3 You think about the issue of armed robbery. I
4 just don't see how you can -- if that's not a crime of
5 dishonesty for purposes of impeachment, I don't see how
6 failure to stop for a blue light or its equivalent in
7 Georgia would be the same. I hate to knock you out,
8 but I'm going to find that it's not admissible.

9 Any other charges out there?

10 MR. COLE: No, your Honor.

11 THE COURT: Any bad check charges, anything like
12 that?

13 MR. COLE: No, your Honor.

14 THE COURT: Okay. Then all three of those, I
15 would sustain any objection to them at this juncture.
16 I know you want to proffer on the record that you would
17 have cross-examined the defendant on the issue of
18 possession of methamphetamine second offense, eluding
19 law enforcement or failure to stop for a blue light,
20 and what other charge?

21 MR. COLE: Possession first offense.

22 THE COURT: Possession first offense of
23 methamphetamine.

24 MR. COLE: And then unlawful use of communication
25 facility involving a felony in Georgia.

1 THE COURT: All right. I note your objection to
2 my ruling.

3 MR. COLE: Thank you, your Honor.

4 THE COURT: Yes, sir.

5 MR. ALDERMAN: Judge, one other issue we'd like to
6 take up. Mr. Cole has indicated that he wants to
7 question the witness with regard to drug use or how
8 drugs were involved in the case but at the same time
9 said that he has no evidence to offer to that effect.
10 And I think that bringing up the issue when there's
11 nothing to back it up, to use an extreme example, it
12 would be, without any evidence to that effect, putting
13 the witness on the stand and saying, "Isn't it true
14 you're a pedophile?" Of course he says no, but it's
15 out there. And if we have already acknowledged what a
16 hot button issue the methamphetamine is and we're
17 acknowledging there's no evidence to back it up, then
18 why would we smear him with that question that we know
19 is going to get a negative response and we have nothing
20 to counter it with.

21 THE COURT: What would be your good-faith basis
22 for asking the question besides him having a record for
23 possession of methamphetamine, which would indicate
24 use?

25 MR. COLE: In the testimony that Ms. Galbreath

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1 read when she read her statement, there was -- she read
2 in there something to the effect of that the argument
3 was over drugs. My client plans to testify that the
4 argument was over Mr. Reid's use of drugs.

5 THE COURT: And he certainly can. He can testify
6 to that. I think you can cross-examine him that the
7 argument was his allegation -- he got mad because he
8 told you that you were using drugs or something along
9 those lines.

10 Let me just say this. You need to object if you
11 hear something that you feel is inappropriate. It's
12 hard for me, without hearing what the question is, to
13 make a ruling at this juncture. Okay?

14 MR. ALDERMAN: Yes, your Honor.

15 THE COURT: But you have to have a good-faith
16 basis to ask a question. That's always the case.

17 MR. COLE: Yes, your Honor.

18 THE COURT: Okay. All right.

19 You ready?

20 MR. ALDERMAN: Yes, your Honor.

21 THE COURT: You ready, Mr. Cole?

22 MR. COLE: Yes, your Honor.

23 THE COURT: While he's doing it, of course, the
24 door can be opened. And you're well aware, right?

25 MR. ALDERMAN: Yes, your Honor.

1 (WHEREUPON, the jury entered open court at
2 4:35 p.m.)

3 THE COURT: Call your next witness, please, sir.

4 MR. ALDERMAN: Yes, your Honor. Judge, at this
5 time the State would call Michael Todd Reid.

6 MICHAEL TODD REID,
7 BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

8 DIRECT EXAMINATION

9 BY MR. ALDERMAN:

10 Q Would you state your name, sir, for the record.

11 A Michael Todd Reid.

12 Q Spell your last name.

13 A R-e-i-d.

14 Q And where do you live? Not address but just
15 city-wise where?

16 A Oconee County.

17 Q Okay. What do you do for a living?

18 A I'm a maintenance tech at Baxter.

19 Q Okay. Do you know the defendant, Clifton Smith?

20 A Yes.

21 Q How is it that you know him?

22 A Acquaintance of my mother.

23 THE COURT: Let me stop. Can the jury hear this
24 witness? If at any time any of you cannot, would y'all
25 raise your hand?

1 And make sure, sir, to pull that microphone closer
2 to you.

3 But if you can't hear or see, let me know. I'll
4 make them repeat it.

5 I'm sorry, Mr. Alderman.

6 BY MR. ALDERMAN:

7 Q So how do you know him?

8 A Him and my mother -- my mother met him and we
9 lived together at the time, and he came and stayed with
10 my mother and I. He left for a little while, we moved,
11 and then he came back into her life. Under a different
12 relationship basis, but still in our lives.

13 Q So were the three of you staying under the same
14 roof in December of 2017?

15 A My mother's home is always open to me. I came and
16 went as I pleased.

17 Q So you had other places to stay from time to time?

18 A Yes.

19 Q Would you come back occasionally and stay there
20 for a period of time?

21 A Yes.

22 Q On that particular night or time around
23 December 26, 2017, where were you staying?

24 A I was staying there.

25 Q So touching on December 26, 2017, do you remember

1 what you were doing that day?

2 A No.

3 Q Do you remember going to a gathering of any kind
4 or what you were doing that evening?

5 A That evening, woke up, then just lazy all day.

6 Woke up, got ready, went to my sister's.

7 Q How did you get there?

8 A We all rode together in Mom's Cadillac, car.

9 Q Who's we?

10 A My mother Varia, Mr. Smith, Toby, Jengo, and me.

11 Q Who are Toby and Jengo?

12 A The two dogs.

13 Q When you got there, what did you do?

14 A We went up. We ate. Addie, that's a niece, you
15 know. That's the big Christmas, the children. And as
16 the evening commenced, I just -- I was kind of done
17 with the situation with the use of alcohol and the
18 only-one-person kind of drinking thing, it just got
19 fouled.

20 Q Who was that one person?

21 A Mr. Smith.

22 Q When you say got fouled, I mean, tell me what was
23 going on.

24 A I was already -- I mean, I -- it just wasn't the
25 time and place. I mean, yeah, the alcohol was given as

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1 a gift, but, I guess, considered in moderation. My
2 sister probably had those bottles for years. It was
3 like, "Oh, I'll give him this." She does clean houses
4 and they, like, leave stuff in condos or whatever.
5 She's like shampoo, and liquor, you know, whatever.

6 Q So what did you do next? The party gets fouled.
7 What happens next?

8 A Yeah. You know, the comments of trying to --
9 trying to be funny. Everybody -- my sister's kind of
10 just not being herself, and, you know, I'm just -- I
11 just kind of had to, like, leave the situation so I
12 didn't say something, I guess.

13 Q When you say leave the situation, did you go
14 outside? Did you go for a walk? What did you do?

15 A Yeah. I went outside, smoked a cigarette. I hung
16 out with the dogs, let them walk, use the restroom and
17 stuff.

18 Q Eventually did the three of you leave?

19 A Yes, we did.

20 Q Were you together?

21 A They come down surprisingly shortly after. Like,
22 I figured, like, they could do their own, you know,
23 maybe mom can handle the liquor of Clifton around them.
24 I just kind of removed myself because I didn't want to
25 be, like, saying what I felt about him acting that way

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1 in that setting in my sister's home, so I just, you
2 know, sat in the car. But like I said, they came on
3 down and we left a lot sooner than I thought.

4 Q And so the three of you get in the car. Where is
5 everyone sitting?

6 A Mother drives, Clifton is in the passenger, I'm
7 sitting directly behind in the passenger rear, and Toby
8 and Jengo.

9 Q Okay. And where are you guys heading?

10 A We was heading on towards Oconee out of Clemson
11 area on 123. Sort of planned on going -- I was going
12 home, back home with Mother towards 183. My mom was
13 starting to get -- was upset about the situation
14 because, you know, Christmas is kind of, you know,
15 fouled, and so I -- that's when I started saying what I
16 needed to say about, you know, the mooching, the not
17 working, the overbearing on my mother of his presence.
18 And the fact that he can't handle the alcohol in that
19 aspect.

20 Q Did he have anything to say back?

21 A He did. And he said, "Well, you do drugs," and
22 that's when I struck him because we wasn't -- I struck
23 him like, "Shut your mouth," pretty much.

24 Q What happened next?

25 A Mom stops the car. She has his shirt, like,

1 "Y'all, don't. Stop. What are you doing? Stop." And
2 I'm like, "You know what, take me to my friend's.
3 Enough of this." So I sit back. We continue on. I
4 look at my phone, trying to get ahold of somebody. I
5 just wanted to get dropped off somewhere, and they
6 wasn't answering. But, I mean, me and Jengo can just
7 hang outside until somebody come home, whatever. It
8 didn't matter. I just wanted out of the situation.

9 Q All right. So is it your testimony, then, that
10 there was altercation number one and then you continued
11 down the road?

12 A Yeah.

13 Q Okay. And then what happens?

14 A I get sliced one down through here. I'm thinking
15 I'm being slapped at. I mean, my head wasn't being
16 spun, like I wasn't being hit, you know. So it was
17 just like, what are you doing, kind of thing. Get
18 something in my hand, make it stop.

19 By that time the car -- Mom's really stopped now,
20 and she has his shirt, pulling him back towards the
21 front. He's turned around completely in his seat on
22 his knees facing the rear, and we're just -- at this
23 point we're just trying to -- she's pulling him back to
24 the front, and I'm, like, letting go, like, of his
25 hand, and obviously it had something sharp in it.

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1 Q When you said she was pulling on his shirt, was
2 she pulling hard pulling him back to the front?

3 A Yeah. Yeah, because, I mean, we already had the
4 altercation one time, and that's when I struck him.
5 And he was kind of in a shock of, "Oh, yeah, he did
6 just hit me," like, I mean --

7 Q You saying it stunned him?

8 A Yeah. And that was my point was, you know, he was
9 speaking, and I was saying that, you know, you need to
10 respect my mother a little more, and I can't believe
11 you're doing this, like just disrespectful. And when
12 he disrespectfully said something about me, I just
13 wasn't -- so I struck him. And then I stopped because
14 that was -- I didn't mean to strike him. I just needed
15 to say what I needed to say because, I mean, I seen my
16 mama's burden, and I seen -- I mean, it was just
17 enough. Enough was enough.

18 Q Fair to say you were wrong to hit him?

19 A Yeah.

20 Q Okay. Tell me about these injuries, these cuts.
21 Specifically where were you cut?

22 A Cut from here to here, from here to here, about
23 11 inches across this leg, about three inches here. My
24 arm from here to here, to here to here. My hand, all
25 the way across there. You can see where they -- like

1 this one, so it goes. And then this one, they go all
2 the way.

3 Q You mean to say that when you pull that up, that
4 was just one long cut?

5 A Yeah. They pair up. Like, you could see the line
6 if I crunched just right, you know.

7 Q Was that because you were turning away while he
8 was hitting you?

9 A Yeah. Yeah. I mean, it was -- this was just -- I
10 mean, I could feel my shirt (indicating) like, and I
11 pulled down like this. This time he's got another
12 swipe, so that's when I guess I turned like this and I
13 tried to get -- you know, there's not six-foot.

14 There's not much room in a backseat to go anywhere, so.

15 MR. ALDERMAN: Permission to approach the witness,
16 your Honor?

17 THE COURT: Yes, sir.

18 BY MR. ALDERMAN:

19 Q Mr. Reid, I'm approaching you with what's been
20 previously marked as State's 2, 3, and 5. Take a look
21 at these and tell me if you recognize what you see.

22 A Yes. That's the injuries, yes.

23 Q So have you seen these pictures before?

24 A Uh-huh.

25 Q Does it look like these pictures have been

1 changed, altered, manipulated in any way?

2 A No.

3 Q So are these a fair and accurate representation of
4 your injuries that day?

5 A Yeah. I mean, it's just some of it.

6 Q Okay.

7 A There's some bandages or I guess my leg was
8 still -- it was still bandaged up and stitched.

9 Q So you have more injuries than what appear in
10 these pictures?

11 A Yeah.

12 MR. ALDERMAN: Judge, at this time we'd seek to
13 admit State's 2, 3 and 5.

14 THE COURT: Any objection?

15 MR. COLE: No objection, your Honor.

16 THE COURT: Admitted.

17 (WHEREUPON, State's Exhibit Numbers 2, 3 and 5
18 were admitted into evidence.)

19 MR. ALDERMAN: Judge, we would seek to publish to
20 the jury at this time.

21 THE COURT: Yes, sir.

22 BY MR. ALDERMAN:

23 Q Starting with State's 3. Mr. Reid, tell us what
24 we're looking at here.

25 A That's on my upper arm.

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1 Q Are those staples or stitches?

2 A Yeah, that's stapled together.

3 Q And what are we looking at here?

4 A That's down the chest. That's staples and, I'm
5 guessing, some sort of glue.

6 Q This being State's 2.

7 Do you know how many staples you ended up with?

8 A Um, no, not really. They said it was over 80,
9 something like that. I mean, you can count the dots
10 now still.

11 Q And State's 5. This bandage on your hand, what's
12 that all about?

13 A Yeah. My hand was pretty much out of commission
14 for a while. It's still -- it's not a hundred percent.
15 Never will be. But I do have use in it. I do have
16 strength in it, so that is -- I guess initially they
17 just sewed it up, a month later they opened it, and
18 then I had some surgeries. And then, like, three,
19 four months or about four months I couldn't use it, and
20 then physical therapy, trying to get it back in motion
21 again.

22 Q So did you have to have follow-up surgeries after
23 your initial visit?

24 A I mean, let's see. They took the stitches out.
25 They -- yeah, I had to wait another week or so, and

1 then they cut it back open, so then I had to go -- they
2 stitched it up again, so then I had to go back to get
3 that undone.

4 Q When you say they cut it back open, you mean they
5 opened it for surgery to fix something, or what were
6 they doing?

7 A They did nerve repair and then tendon repair.

8 Q So coming back to the fight, he comes over the
9 seat with a knife, is that right, and swung at you
10 several times?

11 A Yes.

12 Q You said the car was stopped at this point?

13 A It's in the process, I'm sure. I mean --

14 Q Once it was stopped, what did you do?

15 A I get -- well, yeah, once -- I didn't really care
16 if it was stopped or not. I was getting -- I was
17 heading that way. I felt it. I knew it was stopping.
18 Now how long when it stopped, I got out, or was I
19 getting out as it stopped.

20 Q Sure. Once you're out, what do you do?

21 A I just kind of pace back. I just kind of walk. I
22 realize -- I didn't realize how bad it was, but I
23 realized something was bad. I didn't want to look at
24 it. I was trying -- I guess adrenaline. I'm kind of
25 pacing back in front of the car and kind of just the

1 fact that like, "Really?" Like, "Really? Really,
2 guy?" Like, "You can't handle a little badgering?"
3 And, "Do right by my mother. Do right by" -- and, you
4 know, "You get popped in the mouth. You can't handle
5 that, so you're going to cut somebody? Like, really?"

6 So that's kind of my mentality about it. And I'm
7 talking to my mom, and she's kind of like, "What are
8 you doing?" I'm like, "I'm cut. I'm cut." She's
9 like, "Oh, my God," you know. She's all, "Hanna, he's
10 cut." I'm like, "Get off the phone with Hanna and get
11 the ambulance." But luckily, thank God, those
12 responders was behind us, I mean.

13 Q So after the first responders get there, what did
14 they do for you?

15 A Just, I mean, I remember them packing whole wads
16 of gauze in my leg, and it coming out. I mean, they're
17 just trying to stop it.

18 Q Once they had you stabilized, where were you
19 transported?

20 A To Greenville.

21 Q Why was that?

22 A They, you know, it's a situation. Got me stitched
23 up, got me --

24 Q Why Greenville instead of right around the corner?

25 A I think they're a good trauma unit, I guess.

1 That's where most people, the life flight, and that's
2 where that goes.

3 Q What kind of medical bills did you have after all
4 that?

5 A There's about 160-something, 180,000. I mean,
6 everything is a little bit expensive, so, like, \$42,000
7 worth of surgery on my hands. The initial, I mean, you
8 know, OR and ER time is, you know, expensive. The ride
9 is expensive. I mean, those -- they do great work so,
10 I mean.

11 Q Now, was it your right or left hand?

12 A Right.

13 Q Are you right or left-handed?

14 A Right.

15 Q Is your hand ever going to be the same?

16 A Huh-uh.

17 Q At the time that the defendant came over the seat
18 and cut you with a knife, were you talking to him?
19 Were you yelling at him? Were you hitting him?

20 A None of it.

21 Q Were you antagonizing him in any way?

22 A No.

23 MR. ALDERMAN: No further questions. Please
24 answer any questions Mr. Cole may have for you.

25 THE COURT: Cross-examination.

1 MR. COLE: Thank you, your Honor.

2 CROSS-EXAMINATION

3 BY MR. COLE:

4 Q Mr. Reid, in December 2017, how old were you?

5 A I'm 32 now. I was born in 1987.

6 Q So you would have been 30 then?

7 A Yes, I believe so. I mean, I'm not great at math.

8 I can start counting. Yeah, I believe so.

9 Q If you need some water, Mr. Reid, go ahead.

10 Around that time, or now, how tall are you?

11 A A little over six-foot.

12 Q And how much do you weigh?

13 A A little over 200.

14 Q And you're in pretty good shape, right?

15 A I'm getting older.

16 Q In December 2017 you were in pretty good shape

17 then?

18 A Yeah. I'm -- yeah, I was actually -- I was

19 physically perfect, no broken bones, no scars, no -- I

20 mean, always been pretty fit, healthy.

21 Q So you would say you were healthy and strong,

22 right?

23 A Uh-huh.

24 Q Sorry. You have to answer with words.

25 A Yeah. I mean, strength meaning could I pick

1 something up, yeah.

2 Q You said that you were going to -- you asked your
3 mother to take you to somebody else's house; is that
4 right?

5 A Yes.

6 Q Who were you going to see?

7 A I didn't -- just towards an area because I didn't
8 have nobody at a residence that I was trying to get on
9 the phone, didn't have any specific place, but, I mean,
10 I have somewhere to stay. I guess somewhere to get out
11 of the situation, at least a night just to whatever.

12 Q Was the person a friend of yours?

13 A Yeah.

14 Q And with the injuries, you just stayed in the
15 hospital one night and got out the next day, right?

16 A I got there at -- yeah, I mean, it was -- yeah,
17 basically a night, yeah.

18 Q Going back to the Christmas party, you removed
19 yourself from the situation because you were angry at
20 my client; isn't that correct?

21 A No. I was annoyed and fed up and just like in
22 disbelief of the disrespect that a grown man on
23 somebody that I've spoke upon respect and etiquette to
24 him before, you know, throughout the whole duration of
25 the time I've known him. He knew how I felt about

1 things.

2 Q So you were annoyed and fed up?

3 A I -- yeah.

4 Q I'm sorry?

5 A Yeah, I guess.

6 Q And you were angry with him; is that fair to say?

7 A Angry? Not at that point. At the Christmas
8 party, no.

9 Q You said that you took yourself out of the
10 situation so that you wouldn't say what you needed to
11 say or what you wanted to say; is that correct?

12 A Yeah.

13 Q What did you want to say to him?

14 A I guess it wasn't to him. I mean, what I wanted
15 to say was -- I guess my mother can handle this he-he
16 bullshit, but I can't. Him being obnoxious and think
17 he's funny when he's "wheh, wheh" picking at somebody
18 drunk and out of hand at a Christmas party that
19 nobody -- that's not how you act towards people.

20 So I would have said, you know, I can't believe --
21 you really want this around us? Like, really? Why are
22 we here? Like, why --

23 Q He had been living with you and your mother for a
24 while at that point?

25 A No. Well, no. It was on and off because he -- he

1 crossed the line before, like I said, and he got moved,
2 he moved back, and then he had, I guess, some issues
3 with law enforcement so he moved back, and then he was,
4 you know, needed a ride, needed some help, and just
5 like good-hearted people, we provided that.

6 Q But it sounds like you didn't really like the idea
7 of him living there?

8 A I didn't, not with his behavior, no.

9 Q And you didn't like the way he treated your mama,
10 right?

11 A Didn't like the way he was. At one point he had
12 agreed to, you know, as long as she's happy,
13 everybody's happy. So that was why I was wanting
14 everybody happy was my thing.

15 Q But you were angry because he was mooching and he
16 was not working and he was overbearing, right?

17 A Not off of me. Others, but I'm not angry about
18 it. I was just fed up with it.

19 Q So you were fed up with it?

20 A It's just, come on.

21 Q And in the car you got so fed up with it that you
22 finally had to say something to him?

23 A I mean, I said that -- I've spoke the same
24 reasoning multiple times throughout the time I've known
25 him, so nothing that he hasn't heard from me before. I

1 mean, I guess in his mind he didn't care what I had to
2 say because he was there for my mother and he wanted me
3 to go somewhere else, which, fine, if everybody was
4 happy, I guess.

5 Q So you started the verbal argument in the car?

6 A I mean, me and my -- I was speaking to my mother,
7 and then, you know, because she was upset, so we was
8 all just kind of speaking upon the subject, I guess.

9 Q Your testimony a minute ago was that you went
10 outside to cool off so you wouldn't say what you wanted
11 to say, but then when you got in the car, you finally
12 said what you wanted to say.

13 A I mean, it wasn't directly. It was just, like I
14 said, my mom started crying and stuff, and it just --
15 it escalated, I guess.

16 Q And you said what you wanted to say about my
17 client?

18 A Not everything, I guess. He interrupted me, so
19 that's when I struck him. I mean --

20 Q You said some of the stuff you wanted to say about
21 him?

22 A I guess. I mean, yeah. What's words, right?

23 Q So you started the argument in the car, then?

24 A No, the drinking started the argument.

25 Q Then he said something about you using drugs, and

1 that made you really mad?

2 A He could have just said anything, I guess. He
3 didn't have to say anything about drugs.

4 Q But that's what made you really mad, when he said
5 something about you using drugs?

6 A No. I -- just the fact that he had something to
7 say, period. Because that was the whole thing, like he
8 kept "ba ba ba ba ba ba ba," opening his mouth, and it
9 was like, golly.

10 Q So he kept running that mouth?

11 A He was just being drunk. I guess everybody should
12 have got a shot and just had a rowdy, little good time,
13 I guess. I don't know.

14 Q Everybody had a shot --

15 A I said I guess everybody should have and then we
16 could have all been that way, or feeling well or
17 however.

18 Q With everything going on, he continued to run the
19 mouth and you got fed up with it; is that right?

20 A Yeah. Yes.

21 Q And he was in the front seat, and you were in the
22 backseat; is that right?

23 A Yes.

24 Q Right behind him?

25 A Yes.

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1 Q Where he couldn't see you?

2 A He could see me.

3 Q How could he see you behind him?

4 A (Indicating) like that.

5 Q But if he was facing front, he couldn't see?

6 A I mean, we don't have blinders on. We could see
7 each other. I mean, you're riding in the car.

8 Q But y'all were just having a verbal argument, and
9 you took it and hit him, made it a physical thing?

10 A Uh-huh.

11 Q Because you were angry?

12 A Yes. I don't -- I'm not a very angry person, so
13 it's very out of my character to even go physical, but
14 I did make it physical, yes.

15 Q So it was just words, and you laid hands on my
16 client?

17 A Yes. No, if I laid -- yes.

18 MR. COLE: No further questions, your Honor.

19 THE COURT: Redirect.

20 REDIRECT EXAMINATION

21 BY MR. ALDERMAN:

22 Q After you slapped him, did he pull out a knife
23 then and cut you to pieces, or was there a break in
24 time?

25 A There was a definite break in time.

1 Q And during that break in time, did you slap him
2 again?

3 A Negative. No.

4 Q Okay. Did you yell at him?

5 A No. I'm --

6 Q Did you antagonize him or try to get him to fight
7 you?

8 A No.

9 Q And was it then at that point that he did all of
10 this (indicating)?

11 A Yes.

12 Q Now, they have gone out of the way to make the
13 point that it was just words and then it was a slap,
14 right?

15 A Yes.

16 Q So it was just a slap, and then it turned into
17 almost killing you; is that right?

18 MR. COLE: Objection, your Honor. Counsel is
19 testifying.

20 MR. ALDERMAN: Withdraw the question.

21 No further questions.

22 THE COURT: Sustained.

23 MR. COLE: No further questions, your Honor.

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

25 All right. Mr. Foreman, ladies and gentlemen of

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1 the jury, it's a little bit after 5:00. I'm going to
2 go ahead and recess for the afternoon.

3 I'm going to ask that you take your jury pads back
4 with you or your notepads back with you and leave them
5 in the jury room. They will be under lock and key.

6 Is there any reason why we can't start at 9:30 in
7 the morning? If you would, be back in your jury room
8 at 9:30 in the morning, we'll start then. Okay? Hope
9 you have a good evening.

10 (WHEREUPON, the jury exited open court at
11 5:06 p.m.)

12 THE COURT: To my folks on the front row, I'm
13 going to ask that you come back in the morning. I want
14 you to see a trial from start to finish. I think it's
15 important for you to see the process work. I
16 understand you have your beliefs, and that's certainly
17 up to you, but I do want you to see how the trial will
18 work. I'm not going to make you stay here all week,
19 but see you through one trial. So if you will be back
20 at 9:30, I'd appreciate it.

21 Anything from the State before we break?

22 MR. ALDERMAN: No, your Honor.

23 THE COURT: From the defense?

24 MR. COLE: No, your Honor.

25 THE COURT: Is your client -- I assume he was out

1 on bond.

2 MR. COLE: Yes, your Honor.

3 THE COURT: I'm going to let him remain out.

4 I'm going to remind you, Mr. Smith, as I do with
5 everyone, that if you don't return, we're going to keep
6 going and try you in your absence. Okay?

7 THE DEFENDANT: Yes, sir.

8 THE COURT: At this juncture, I'm going to ask you
9 to stand up. I'm going to get you to raise your right
10 hand.

11 (WHEREUPON, the defendant was sworn.)

12 THE COURT: You can sit back down.

13 Mr. Smith, tomorrow we're going to reach the
14 juncture in trial where you have a right to present a
15 defense in this matter.

16 THE DEFENDANT: Yes, sir.

17 THE COURT: You also have the right to claim the
18 protections that are afforded to you by the Fifth
19 Amendment to the United States Constitution which in
20 part reads that no person shall be compelled in a
21 criminal case to testify against themselves.

22 Now, has your attorney explained to you your
23 rights under the Fifth Amendment?

24 THE DEFENDANT: No, sir, not.

25 THE COURT: Well, I'm going to explain them to you

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1 now, and I'm sure he will. But you have a right to
2 say, "I do not want to testify." Your attorney can't
3 make you get on the stand. The State's attorney can't
4 make you get on the stand. I cannot make you get on
5 the stand. Okay, sir?

6 If you choose not to testify, I will charge the
7 jury that they may not and shall not consider your
8 failure to testify because that's your right under the
9 Fifth Amendment to the United States Constitution and
10 because the State always has the burden of proving your
11 guilt by proof beyond a reasonable doubt. Okay, sir?

12 THE DEFENDANT: Yes, sir.

13 THE COURT: Now, if you do want to take the stand,
14 you have a right to. You have a right to present
15 evidence in your defense.

16 If you get on the witness stand and testify, your
17 attorney will examine you. It's called direct
18 examination. Also the State's attorney, Mr. Alderman,
19 will have a right to cross-examine you like you have
20 seen with other witnesses in this trial.

21 Does he have any prior criminal record,
22 Mr. Alderman, that you will seek to impeach him with?

23 MR. ALDERMAN: Yes, your Honor.

24 THE COURT: What would that be?

25 MR. ALDERMAN: Assault and battery second degree,

1 criminal domestic violence, looks like distribution or
2 manufacture of methamphetamine. And, Judge, it's come
3 to my attention that he's on probation with Oconee
4 County. I don't see that in the NCIC.

5 THE COURT: I think that came up during testimony
6 in this case.

7 MR. ALDERMAN: I would like to, overnight, sort of
8 answer that question and, perhaps, have something else
9 to present to your Honor.

10 THE COURT: Well, let me just say this. Under the
11 Robinson case -- I'm not going to make a ruling today,
12 but the standard is different than it is for a witness.

13 A witness, you being the opponent of the evidence
14 against your victim, had to establish that the
15 probative value substantially was outweighed by the
16 danger of unfair prejudice and other factors.

17 In this case, since it's the accused, you will
18 have to establish that the probative value outweighs
19 the prejudicial effect. It's not a substantial. So
20 it's a lesser standard that you have to meet, but you
21 also have to go through the same factors under the Colf
22 that I went through earlier, and that is impeachment
23 value at the point in time the conviction and
24 subsequent history, the similarity between the past and
25 present crime, the importance of defendant's testimony,

1 the centrality of the credibility as an issue in this
2 case. And then the similarity between the past and
3 present crimes. You have to look at the elements test.
4 Okay?

5 And same thing with Mr. Cole, but the State will
6 have the burden of showing that it's admissible. I'm
7 going to let you look at that. And then before we make
8 the determination of whether or not this gentleman is
9 going to testify, I'm going to issue a ruling as to
10 admissibility of those factors.

11 MR. ALDERMAN: We will be prepared to argue at
12 that time, your Honor.

13 THE COURT: Anything further before we break?

14 MR. ALDERMAN: None from the State, Judge.

15 MR. COLE: No, your Honor.

16 THE COURT: All right. Now, Mr. -- let me finish
17 up with you, Mr. Smith.

18 If I determine that any charges that are
19 appropriate to question you about them, and I'll make
20 that determination before you get on the stand, the
21 State will be allowed to cross-examine you about those
22 charges, and the idea being to impeach your credibility
23 in front of this jury.

24 THE DEFENDANT: Yes, sir.

25 THE COURT: They're also going to cross-examine

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1 you -- regardless, any cross-examination is designed to
2 make this jury think that you're not a credible
3 witness, that you're not being honest and truthful.
4 Okay, sir? You understand that?

5 THE DEFENDANT: Yes, sir.

6 THE COURT: So you will be subjected to questions
7 from the State's attorney, and they might present other
8 documents or evidence. I don't know what they may be.

9 THE DEFENDANT: Yes, sir.

10 THE COURT: But, ultimately, the decision of
11 whether or not you want to testify or claim the
12 protections afforded to you by the Fifth Amendment of
13 the United States Constitution will be yours and yours
14 alone to make. Most people make it in conjunction with
15 counsel with their attorneys. However, the decision
16 has to be made by you, knowing your rights under the
17 Fifth Amendment and to testify and make it voluntary
18 and freely.

19 Do you understand that?

20 THE DEFENDANT: Yes, sir.

21 THE COURT: Do you have any questions about
22 anything I've gone over with you?

23 THE DEFENDANT: No, sir.

24 THE COURT: Okay, sir. Just remember, at some
25 point tomorrow you've got to make that call. All

1 right?

2 THE DEFENDANT: Yes, sir.

3 THE COURT: Anything further from the State before
4 we break?

5 MR. ALDERMAN: No, your Honor.

6 THE COURT: From the defense?

7 MR. COLE: No, your Honor.

8 THE COURT: Be back at 9:30 in the morning.

9 (WHEREUPON, proceedings adjourned at 5:13 p.m.)

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Certificate of Reporter

I, Diane L. Marcengill, 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 18th day of November 2019.

This transcript may contain quoted material. Such material is reproduced as read by the speaker.

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

January 24, 2020



Diane L. Marcengill, RPR, CRR, CRC
Circuit Court Reporter

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

3
4 State of South Carolina,)
5) 2018-GS-37-00667
6 -vs-) November 19, 2019
7 Clifton Eugene Smith,) Volume II of II
8 Defendant.) Pages 205 - 280
9) Transcript of Record

10
11 B E F O R E:

12 The Honorable R. Lawton McIntosh, Judge
13

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

15 Jason C. Alderman, Esquire
16 Attorney for the State
17 Lee Cole, Esquire
18 Attorney for Defendant
19

20
21 Reported by:
22 Diane L. Marcengill, RPR, CRR, CRC
23 Circuit Court Reporter
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E x h i b i t s

For the State:

Marked	Description	I.D.	Admitted
7	Photo-Defendant close-up		215
8	Photo-Defendant		215
9	Photo-Defendant's hands		215
10	Photo-Defendant's shoulder		215

For the Defendant:

Marked	Description	I.D.	Admitted
	None offered.		

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1 (WHEREUPON, court convened with all parties
2 present and the following proceedings were had
3 commencing at 9:44 a.m.)

4 THE COURT: Mr. Cole, glad you're here. Are you
5 ready?

6 MR. COLE: Yes, your Honor.

7 THE COURT: Mr. Alderman, you ready?

8 MR. ALDERMAN: Yes, sir.

9 THE COURT: All right. Would you bring the jury
10 in, please, ma'am.

11 (WHEREUPON, the jury entered open court at
12 9:44 a.m.)

13 THE COURT: All right.

14 Mr. Foreman, ladies and gentlemen of the jury, I
15 hope you had a good evening. Does everybody have their
16 pad and pen with them?

17 Very good.

18 Mr. Alderman, are you ready to proceed with your
19 next witness?

20 MR. ALDERMAN: Yes, your Honor.

21 THE COURT: Call them, please.

22 MR. ALDERMAN: Your Honor, at this time the State
23 would call Sergeant Clay Sheriff of the Oconee County
24 Sheriff's Office.

25 CLAY SHERIFF,

1 BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

2 DIRECT EXAMINATION

3 BY MR. ALDERMAN:

4 Q Could you please state your full name and spell
5 your last name for the record.

6 A Clay Sheriff, S-h-e-r-i-f-f.

7 Q And where are you employed?

8 A The Oconee County Sheriff's Office.

9 Q How long have you been there?

10 A Almost eight years.

11 Q And what's your current position, your duties,
12 from day to day?

13 A My current position, I'm an investigator at the
14 sheriff's office. I investigate property crimes in the
15 lower part of the county and violent crimes as well.

16 Q And was that your position back in December of
17 2017?

18 A No, sir. 2017 I was a master patrol deputy on the
19 Charlie shift, night shift, and also a field training
20 officer that night.

21 Q In that capacity, did you respond to a call on
22 December 26, 2017, involving the defendant?

23 A Yes, sir, I did.

24 Q Okay. And were you the first to arrive on scene?

25 A No, sir. I was, I think, the second car to arrive

1 that night on scene behind Deputy Crooks.

2 Q If you recall, what information did you receive
3 from dispatch? What was the nature of the call?

4 A Dispatch advised there is a car on the side of the
5 road and that the -- there was some kind of stabbing or
6 cutting incident, and one victim was laying on the side
7 of the road.

8 Q As the master patrol deputy, would you have been
9 the ranking officer on scene?

10 A Yes, sir.

11 Q And when you arrived, what did you see first?

12 A When I arrived on scene, first I saw Deputy Crooks
13 had the suspect, Mr. Smith, with his hands up. Went in
14 to detain him. After we got that -- after the suspect
15 was secure, I turned my attention to the victim in the
16 case. I was overwhelmed by the amount of blood that I
17 saw on the ground and also the severity of the wounds
18 of the victim.

19 Q Was someone attending to the victim at that point?

20 A Yes. There were two first responders on the scene
21 that were actively attending to the victim.

22 Q Did you have a chance to speak with the defendant
23 on scene?

24 A Yes, very briefly.

25 Q Tell me, just what was his general demeanor?

1 A He was very agitated, seemed like he was
2 intoxicated and boisterous and like he was angry.

3 Q In what ways did he seem intoxicated?

4 A He seemed like he -- I could smell the odor of
5 alcohol on his breath was the main thing.

6 Q Did he make any voluntary statements about what
7 happened that night?

8 MR. COLE: Objection, your Honor.

9 THE COURT: Based on prior pre-court rulings?

10 MR. COLE: Yes, your Honor.

11 THE COURT: Okay. I note the objection for the
12 record.

13 BY MR. ALDERMAN:

14 Q If you would continue. Did he make any
15 statements?

16 A He did. He actually said that, while I was
17 escorting him back to the car, he said, "I did it, and
18 I'd do it again."

19 Q So he admitted, then, that he was the one that cut
20 the victim; is that right?

21 A Yes.

22 Q Did he say why he did it?

23 A One of the things he did say, he said, I think, it
24 was an argument and that the victim had a knife and
25 that he took the knife from the victim and stabbed him

Clay Sheriff - Direct
State v. Clifton Eugene Smith 2018-GS-37-00667 November 19, 2019 Volume 2 of 2

1 with it.

2 Q Okay. So just to make that clear, your testimony
3 today is that he said -- he, being the defendant?

4 A Yes, sir.

5 Q -- that the victim had a knife and attacked him
6 with it?

7 A That's what he told me.

8 Q And that he disarmed the victim and then stabbed
9 him with his own knife?

10 A Yes.

11 Q Did he make any other statements --

12 A He did.

13 Q -- about the knife?

14 A He did. After I told him he was under arrest, he
15 made the statement that, "He ought to die." He also
16 made the statements to -- while we were at the hospital
17 that night, he said, "Did I get him good?" He was
18 asking me and Deputy Lecroy, while sitting in the
19 hospital, that. And he said, "I wouldn't take one
20 stitch back." He seemed very unremorseful with the
21 actions that happened that night.

22 Q So you were there at the hospital, then, initially
23 when the defendant was transported?

24 A Yes, sir.

25 Q Why was the defendant transported to the hospital?

1 A He had lacerations to his fingers. It was the
2 main reason he was taken to the hospital.

3 Q Did you notice any lacerations to any other part
4 of his body?

5 A Not that I could tell.

6 Q None to his head, his ears, his eyebrows --

7 A No, sir.

8 Q -- nothing around his face? Okay.

9 Did he have blood on his face?

10 A He did.

11 Q And if not from him, where would the blood have
12 come from?

13 A I would assume --

14 MR. COLE: Objection, your Honor. Speculation.

15 THE COURT: I sustain that unless you can lay a
16 foundation for it.

17 MR. ALDERMAN: Okay.

18 Q Did you notice any cuts to his head?

19 A No, sir.

20 Q Did you notice blood on his head?

21 A I did notice blood on his head, yes, sir.

22 Q Did you notice cuts to his hand?

23 A Yes.

24 Q Did you notice a great deal of the victim's blood
25 all over the scene?

1 A Yes.

2 MR. ALDERMAN: Nothing further.

3 If you would, please answer any questions Mr. Cole
4 may have for you.

5 CROSS-EXAMINATION

6 BY MR. COLE:

7 Q Investigator Sheriff, my client stated then that
8 he -- his statements to you were that he acted in
9 self-defense; is that correct?

10 A Yes, sir. He did state that he took the knife
11 from the victim and stabbed him with it.

12 MR. COLE: Your Honor, may I approach the
13 victim -- I mean the witness?

14 THE COURT: Yes, sir.

15 MR. COLE: Your Honor, I'm showing the witness a
16 photograph that's previously been marked State's
17 Exhibit 7 for identification purposes.

18 Q Sir, do you recognize this photograph?

19 A Yes, sir. It is the photo I took at the hospital.

20 Q And you took that photo?

21 A Yes, I did.

22 Q And is that a photograph of my client, Clifton
23 Smith?

24 A Yes, it is.

25 Q Is that a fair and accurate depiction of what he

1 looked like at the hospital?

2 A Yes, sir, it is.

3 MR. COLE: Your Honor, I'm presenting the witness
4 with a photograph marked as State's Exhibit 8 for
5 identification purposes.

6 Q Do you recognize this photograph?

7 A Yes, I do.

8 Q Did you take that photograph?

9 A I did.

10 Q Is that a photograph of my client?

11 A It is.

12 Q And it's him in the hospital?

13 A It is.

14 Q Is that a fair and accurate depiction of what he
15 looked like in the hospital?

16 A Yes, sir, that night.

17 MR. COLE: Your Honor, I'm presenting the witness
18 with a photograph marked as State's Exhibit 9 for
19 identification purposes.

20 Q Do you recognize this photograph?

21 A Yes, sir.

22 Q And that's a photograph of my client's hands the
23 night of the incident?

24 A Yes, it is.

25 Q And is that a fair and accurate description or

Clay Sheriff - Cross
State v. Clifton Eugene Smith 2018-GS-37-00667 November 19, 2019 Volume 2 of 2

1 fair and accurate depiction of my client's hands at the
2 hospital?

3 A Yes.

4 MR. COLE: And, your Honor, I'm showing the
5 witness a photograph marked as State's Exhibit 10 for
6 identification purposes.

7 Q Do you recognize this photograph?

8 A Yes, I do.

9 Q And did you take that photograph?

10 A Yes, sir, I did.

11 Q And is that a fair and accurate depiction of what
12 my client looked like on the night of the incident?

13 A Yes.

14 MR. COLE: Your Honor, I would move into evidence
15 these exhibits marked as State's Exhibit 7, 8, 9 and
16 10.

17 MR. ALDERMAN: Without objection, your Honor.

18 THE COURT: Admitted.

19 (WHEREUPON, State's Exhibit Numbers 7, 8, 9 and 10
20 were admitted into evidence.)

21 MR. COLE: Your Honor, permission to publish these
22 to the jury?

23 THE COURT: Yes, sir.

24 Could you refer to the exhibit number as you show
25 them, please, sir.

1 BY MR. COLE:

2 Q This is State's Exhibit 10.

3 And, Officer, this shows -- it's a little blurry,
4 but this shows some cuts around my client's mustache
5 area; isn't that correct?

6 A I did not notice it that night, no, sir.

7 Q But do you see that now?

8 A I do see blood around his lip, yes.

9 Q This is State's Exhibit 9.

10 And this shows my client's hands that are cut and
11 wrapped in gauze; isn't that correct?

12 A Yes.

13 Q And this is State's Exhibit 8.

14 This shows my client with, looks like a laceration
15 on his head and a knot on his head. Do you agree with
16 that?

17 A I do agree there's blood on his head. I don't
18 recall seeing a laceration that night.

19 Q Do you remember seeing a knot on his head?

20 A I do see a knot now, but I don't recall that
21 night, no, sir.

22 Q But you see that now?

23 A Yes, I do see a knot on top of his head.

24 Q And you see blood on the side of his face?

25 A Yes.

Nicole Lecroy - Direct
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1 Q And blood above his eyebrow?

2 A Yes.

3 Q Then this is State's Exhibit 7.

4 And here do you see my client again with blood on
5 his face?

6 A Yes.

7 Q And blood above his eyebrow?

8 A Yes, sir.

9 Q And also around -- blood around the lip area?

10 A Yes.

11 MR. COLE: Your Honor, due to the screen, I would
12 ask to be able to pass these exhibits to the jury.

13 THE COURT: Yes, sir.

14 BY MR. COLE:

15 Q So from these exhibits, you agree that my client
16 had injuries on the night in question?

17 A Yes.

18 MR. COLE: No further questions, your Honor.

19 THE COURT: Redirect?

20 MR. ALDERMAN: None, your Honor.

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

22 Call your next witness.

23 MR. ALDERMAN: Yes, your Honor. The State calls
24 Deputy Lecroy to the stand.

25 NICOLE LECROY,

1 BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

2 DIRECT EXAMINATION

3 BY MR. ALDERMAN:

4 Q Deputy, if you would, state your full name and
5 spell your last name for the record.

6 A Deputy Nicole Lecroy. Last name is L-e-c-r-o-y.

7 Q And where are you currently employed?

8 A Oconee County Sheriff's Office.

9 Q And what are your duties there from day to day?

10 A I'm on active patrol, so any calls that come in
11 through dispatch we get sent out to, variety of
12 different calls.

13 Q And in that capacity did you respond to a call on
14 December 26, 2017?

15 A Yes, sir.

16 Q And that call involved this defendant?

17 A Yes, sir.

18 Q And did you see the defendant at the scene?

19 A Yes, sir.

20 Q And was he in your custody for some period of time
21 that night?

22 A He was.

23 Q Did you transport him to the hospital?

24 A Yes, sir.

25 Q Were you there the entire time he was at the

1 hospital?

2 A Yes, sir.

3 Q Did you transfer him from the hospital to the
4 jail?

5 A Yes, sir, I did.

6 Q Before you became a deputy, what did you do?

7 A I worked for, right at eight years, at Oconee
8 Medical Center or Memorial Hospital -- it's had a few
9 name changes -- in the surgical department. And I was
10 also a volunteer first responder for eight years as
11 well.

12 Q All right. And in that capacity, is it fair to
13 say that you have some medical training?

14 A Yes, sir.

15 Q Enough to, say, recognize a laceration?

16 A Yes, sir.

17 Q Okay. Were you there the entire time the
18 defendant was treated and witness nurses, doctors, or
19 whomever treating the defendant?

20 A Yes, sir.

21 Q Did you see what they did for him?

22 A Yes, sir, I did.

23 Q What did they do for him?

24 A At first, when we got him there, they asked him
25 standard questions, his medical history and such. Then

1 they examined his fingers that the paramedics, the
2 EMTs, had actually -- when we were still on scene, they
3 had come and bandaged his fingers. And then we had
4 actually agreed to transport him to the hospital since
5 they were non-life-threatening injuries so, that way, we
6 would be with him the entire time.

7 So they ended up taking the bandages off,
8 evaluating the fingers, seeing they were very minor
9 lacerations to the two -- the two fingers on the right
10 hand, if I can recall correctly. They ended up putting
11 butterfly stitches on and putting, like, some tape
12 around.

13 Q So butterfly stitches. Are we talking stitches
14 that go through the skin or fancy Band-Aids?

15 A Fancy Band-Aids, basically.

16 Q Did they treat any cuts on his head?

17 A No, sir. They did note that there was a bump, I
18 believe that's actually how the doctor referred to it,
19 as, "I see the bump on your forehead." He looked at
20 that, but there was nothing further with that.

21 Q So if his face is covered in blood, was it coming
22 from his head and his face or somewhere else?

23 A The doctor and nurses, neither one, noted blood
24 coming from anywhere else other than his fingers.

25 Q So no fancy Band-Aids needed for his head?

1 A No, sir.

2 Q Did they wipe off some of the blood while they
3 were looking around to see if there were any cuts?

4 A I don't recall exactly, but I do not believe they
5 really touched his head. It was more of an examination
6 just to make sure there wasn't significant injuries
7 anywhere else that, you know, as they were looking
8 over, but there was nothing.

9 Q His hands were covered in blood from the cut, were
10 they not?

11 A Yes, sir.

12 Q And there was blood all over the scene that night;
13 is that right?

14 A Yes, sir.

15 MR. ALDERMAN: Nothing further.

16 Please answer any questions Mr. Cole may have for
17 you.

18 THE COURT: Cross-examination.

19 MR. COLE: Thank you, your Honor.

20 CROSS-EXAMINATION

21 BY MR. COLE:

22 Q Deputy Lecroy, you agree that my client had a knot
23 on his head that night?

24 A Yes, sir.

25 Q And in your training, if a -- every cut does not

1 have to be stitched up; isn't that correct?

2 A That is correct, yes, sir.

3 Q So just because he didn't have any stitches on his
4 head didn't mean he doesn't have any cuts on his head;
5 would you say that's correct?

6 A Yes, sir.

7 MR. COLE: No further questions, your Honor.

8 REDIRECT EXAMINATION

9 BY MR. ALDERMAN:

10 Q Whether they were stitched, bandaged, wiped off or
11 otherwise, did you notice or see any cuts on his head?

12 A No, sir, I did not.

13 Q Did you see any doctor treat any cut in any
14 fashion on his head?

15 A No, sir.

16 Q Did you see a nurse treat a cut, laceration, or
17 anything that was bleeding on that man's head?

18 A No, sir, I did not.

19 Q Thank you.

20 THE COURT: Thank you, ma'am. You may step down.
21 May this witness be excused?

22 MR. ALDERMAN: Yes, your Honor.

23 MR. COLE: No objection, your Honor.

24 THE COURT: Thank you, ma'am.

25 Next witness?

1 MR. ALDERMAN: State rests.

2 THE COURT: Very good.

3 All right. Mr. Foreman, the State indicates that
4 it rests, which means that it's presented its
5 case-in-chief. I have some administrative matters to
6 keep up with, go over now with the attorneys outside of
7 your presence. Once I get that completed, I'll bring
8 you back into the courtroom to continue with the trial.
9 Probably be about 15 minutes. Okay, sir?

10 (WHEREUPON, the jury exited open court at
11 10:02 a.m.)

12 THE COURT: All right. Motions.

13 MR. COLE: Your Honor, may it please the Court?

14 THE COURT: Yes, sir.

15 MR. COLE: Your Honor, I would move at this time
16 for a directed verdict in my client's favor. I do not
17 believe that the State has presented sufficient
18 evidence for this case to go to the jury. Even taking
19 facts looking most favorable to the State, the State
20 has not presented sufficient evidence that my client
21 did not act in self-defense.

22 In this situation, the elements of self-defense
23 that he -- there's no evidence that he was with fault
24 in bringing on this action. Instead, the evidence
25 shows that the alleged victim was the one who struck

1 the first blow.

2 Second, the imminent danger or actually in
3 imminent danger, your Honor, from the description that
4 has been told by the witnesses here, my client was in
5 the front seat with his seatbelt on when he was struck
6 from the back. I think that would put any person, a
7 reasonable person, that they were in imminent danger.

8 And then also, your Honor, that he would have --
9 that there was no other way that he could get out of
10 the situation. In this situation, your Honor, the car
11 is riding down the road, from the evidence. And even
12 the victim couldn't say, when this was going on,
13 whether it had completely stopped or not. The argument
14 from the State could be, well, it could have stopped.
15 He could have got out. But from the testimony from the
16 State is that it was riding down the road and it was
17 maybe preparing to stop, but still, how else would my
18 client get out of it? Jump out of a moving car, which
19 would cause more injury?

20 So I believe, looking at the testimony from the
21 State, looking at it in the interest most favorable to
22 the State, they have not presented sufficient evidence
23 that my client did not act in self-defense.

24 THE COURT: Thank you, sir.

25 All right. Anything you have to say in response,

1 Mr. Alderman?

2 MR. ALDERMAN: Judge, the evidence presented is
3 that there were two separate events. There was the
4 initial instigation, the slap. There was a cooling-off
5 period, and then the defendant acted aggressively and
6 attacked the victim with a knife. That may be a
7 question of fact, but a question of fact should be
8 handed to the jury and not decided at this point.
9 There is certainly evidence presented to support our
10 position.

11 THE COURT: Very good. Thank you.

12 It is a question of fact. I'm going to find that
13 there is substantial circumstantial or direct evidence
14 that would warrant a jury making the determination in
15 this matter instead of myself.

16 With that being said, Mr. Cole, have you had an
17 opportunity to speak with your client about whether or
18 not he intends to invoke his rights under the Fifth
19 Amendment or wish to testify?

20 MR. COLE: Your Honor, I have, but my client
21 indicated to me just a minute ago that he would like to
22 speak with me further about that.

23 THE COURT: Okay. Let's take about a ten-minute
24 break.

25 Would you send word back to me specifically when

1 you are done and ready?

2 MR. COLE: Yes, your Honor, I will.

3 THE COURT: Thank you, sir.

4 (WHEREUPON, a recess was taken from 10:06 a.m. to
5 10:23 a.m.)

6 THE COURT: Mr. Cole, have you spoken with
7 Mr. Smith as to whether or not he wishes to testify?

8 MR. COLE: Yes, your Honor, and he has indicated
9 to me that he does not wish to testify.

10 THE COURT: He does not, okay.

11 Is that true, Mr. Smith?

12 THE DEFENDANT: Yes, sir.

13 THE COURT: Has anybody forced, threatened, or
14 promised you anything to get you not to testify in this
15 matter?

16 THE DEFENDANT: No, sir.

17 THE COURT: Did you make this decision of your own
18 free will?

19 THE DEFENDANT: Yes, sir.

20 THE COURT: Are you under the influence of any
21 medications, drugs, or alcohol today?

22 THE DEFENDANT: No, sir.

23 THE COURT: Very good. All right.

24 Do you have any witnesses you intend to call?

25 MR. COLE: No, your Honor.

1 THE COURT: Very good. So what we need to do is
2 let you bring the jury in, ask you to call your first
3 witness, say "we rest," and then we'll send them back
4 out.

5 Would you bring the jury in, please.

6 (WHEREUPON, the jury entered open court at
7 10:25 a.m.)

8 THE COURT: All right.

9 Mr. Cole, would you call your first witness,
10 please, sir.

11 MR. COLE: The defense rests, your Honor.

12 THE COURT: Okay. Very good.

13 All right. Mr. Foreman, sometimes I know the jury
14 feels like you're cattle coming in and out of the
15 courtroom, but the defense has advised that it rests.
16 That means that we have concluded the second phase of
17 this trial, which is the presentation of the evidence
18 phase.

19 I still have some administrative matters to take
20 up with after which we'll have closing arguments, I
21 will then charge you on the law, and then you will be
22 advised to begin your deliberations, so you will know
23 where you are.

24 But if you go back to your jury room, we'll have a
25 few more minutes, and we'll bring you back here for

1 closing arguments. Okay, sir?

2 (WHEREUPON, the jury exited open court at
3 10:26 a.m.)

4 THE COURT: While she's making copies, motions,
5 Mr. Cole?

6 MR. COLE: Thank you, your Honor. May it please
7 the Court?

8 THE COURT: Yes, sir.

9 MR. COLE: I would move, at this time, to renew my
10 motion for a directed verdict, the same grounds as I
11 stated previously. I believe that the evidence
12 presented looked at in the light most favorable to the
13 State, the State has not proved that my client did not
14 do this act in self-defense, so that I would -- I do
15 not believe a reasonable jury could convict him, so I
16 would ask for a directed verdict on those grounds.

17 THE COURT: Any different grounds to resist the
18 motion?

19 MR. ALDERMAN: No, your Honor.

20 THE COURT: All right. That is again denied.

21 Now, gentlemen, she's making copies of the
22 substantive charge in this matter. So while we're
23 doing that, I'm going to just go over my skeleton
24 charge. You have been with me before, so you know what
25 it is.

1 (WHEREUPON, pause in proceedings from 10:28 a.m.
2 to 10:37 a.m.)

3 THE COURT: All right. Have you had a chance to
4 look at the charge on assault and battery of a high and
5 aggravated nature?

6 MR. ALDERMAN: Yes, your Honor.

7 THE COURT: And do you have any additions or
8 exceptions to the charge on that offense?

9 MR. ALDERMAN: I do, Judge.

10 THE COURT: Okay.

11 MR. ALDERMAN: As I read the current statute, and
12 it is a two-prong statute, that the person unlawfully
13 injures another person and either, A, great bodily
14 injury results, or B, the act was accomplished by means
15 to produce death or --

16 THE COURT: Say that again. I cannot hear you.

17 MR. ALDERMAN: I apologize, Judge.

18 I said great bodily injury to another person
19 results, or the second prong, that the act is
20 accomplished by means likely to produce death or great
21 bodily injury. I just don't think that's the case
22 here. I question whether this may be the common law
23 statute rather than --

24 THE COURT: It probably is the common law statute.
25 Those were pulled by my infamous clerk yesterday.

1 Do you have any proposed charges that you would
2 like me to look at?

3 MR. ALDERMAN: Judge, I could put one together
4 pretty quickly. It would simply be the language of the
5 statute itself, including the definition section on
6 what great bodily injury means.

7 THE COURT: Do you mind doing that for me?

8 MR. ALDERMAN: I'll take care of it.

9 THE COURT: That would be great.

10 While we're here, let's go ahead and finish this.
11 Are you going to seek any lesser included charges?

12 MR. COLE: No, your Honor.

13 THE COURT: Okay. Then how about the charge on
14 self-defense? Any problems with that? Certain aspects
15 I don't think is relevant and I was not going to
16 include, but on the self-defense charge, page 1 in its
17 entirety; page 2 excluding mutual combat, which is not
18 relevant in this case; page 3 beginning with imminent
19 danger but excluding everything above that; all of
20 page 4; page 5, right to act on appearances, excluding
21 battered person's syndrome; page 6, words accompanied
22 by hostile acts excluding the prior difficulties;
23 page 7, size and age and then excluding the rest;
24 page 8, threats by the victim excluding intoxication,
25 including no other way to avoid the danger, excluding

1 premises charge; then on page 9, excluding business
2 charge but including risk of harm.

3 Does anybody have any different opinion as to that
4 aspect of the charge?

5 MR. ALDERMAN: None from the State, your Honor.

6 MR. COLE: Your Honor, I would respectfully ask
7 for an addition to the charge. I have a proposed
8 charge on no duty to retreat from the stated Protection
9 of Persons and Property Act. I believe that this --
10 and I could not find -- I have not found an appellate
11 case on point, your Honor, so maybe I'm arguing a novel
12 question of law.

13 THE COURT: I thought the statute said under the
14 castle doctrine, if you're lawfully in your home,
15 business, or car, you don't have a duty to retreat if
16 these other factors occur.

17 MR. COLE: Your Honor, it does, and then the
18 addition I want is a person who was not engaged in any
19 unlawful activity who is attacked in another place
20 would have no duty to retreat. And this would be -- I
21 just have the language from the statute, your Honor.

22 THE COURT: Did you look at that request?

23 MR. ALDERMAN: I did, your Honor.

24 THE COURT: Do you have an objection to it?

25 MR. ALDERMAN: Judge, I think in light of the

1 charges that you have proposed as your standard
2 charges, I don't think it's necessary. I think we're
3 pretty well covered and would object on that ground.
4 It's a bit duplicative.

5 THE COURT: Well, pass that forward to me. Let me
6 see it.

7 I don't have a real problem with charging that.
8 I'll charge that instead of what I have on page 9.

9 MR. COLE: Yes, your Honor. I would be in
10 agreement with that.

11 THE COURT: So you were going to put me
12 together -- Mr. Stolarski -- right quick.

13 MR. ALDERMAN: Yes, sir.

14 THE COURT: All right.

15 So going back over just a basic aspect of my
16 charge, I have the general rules that apply to the
17 jury's verdict, tell them what is evidence and what is
18 not evidence. I'd give them the charge of direct and
19 circumstantial evidence under State vs. Logan,
20 credibility of the witnesses.

21 We had expert testimony because somebody got
22 qualified, so we have expert testimony, the indictment
23 is not evidence of guilt, the presumption of innocence,
24 reasonable doubt, intent, failure of the defendant to
25 testify. And it seems to me, in this case, at least in

1 part, they have a *Jackson/Denno* charge, a statement by
2 the defendant.

3 Anybody think that's really necessary in this
4 case? I guess so since you said he made those
5 statements.

6 What's your thought?

7 MR. ALDERMAN: Judge, I think it's appropriate. I
8 mean, we do plan to address it in closing.

9 THE COURT: All right. I assume you want that
10 charge?

11 MR. COLE: Yes, your Honor.

12 THE COURT: All right. So that's in.

13 Then the final part of my charge would just be
14 some considerations for their deliberations. Verdict
15 form would simply be as to the charge of assault and
16 battery of a high and aggravated nature, obviously not
17 guilty, guilty, like I always do.

18 You're more than welcome to look at the verdict
19 form, but it's sitting right here. If you have any
20 other proposed forms or verdict forms, let me know.
21 I'll be glad to look at them.

22 I think that covers it.

23 MR. ALDERMAN: Judge, I'd ask for a charge on
24 voluntary intoxication.

25 THE COURT: Do what?

1 MR. ALDERMAN: I'd ask for a charge on voluntary
2 intoxication. There's been evidence that the defendant
3 was intoxicated, and we'd like the jury to understand
4 that that's not a mitigating factor or defense.

5 MR. COLE: Your Honor, we have not raised that as
6 an affirmative defense, so --

7 THE COURT: It doesn't matter whether or not you
8 raised it as an affirmative defense, I have to charge
9 on the evidence that's presented during a case. And it
10 clearly has been presented through the case that this
11 gentleman allegedly drank mini bottles, became
12 obnoxious and boisterous and various sundry other
13 descriptive terms, so I think it would be appropriate
14 to charge it.

15 MR. COLE: Thank you, your Honor.

16 THE COURT: Let me go get that charge. Would you
17 let me know when the other part is ready?

18 MR. ALDERMAN: Yes, Judge.

19 THE COURT: Thank you so much.

20 (WHEREUPON, a recess was taken from 10:46 a.m. to
21 11:11 a.m.)

22 THE COURT: All right. Mr. Alderman, my
23 understanding is that the charge consisting of one page
24 that was sent back to me on assault and battery of a
25 high and aggravated nature is acceptable to the State?

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1 MR. ALDERMAN: That's correct, your Honor.

2 THE COURT: And also to the defense?

3 MR. COLE: Yes, your Honor.

4 THE COURT: All right. Anything further before we
5 argue and charge? Do you need a minute to get your
6 heads together?

7 MR. COLE: I'm ready to go, your Honor.

8 THE COURT: Did you present any evidence in this
9 case?

10 MR. COLE: Your Honor --

11 THE COURT: Yeah, you did because you did 4, 5, 6,
12 7, 8, whatever those numbers were, so you will open up
13 first on the law and the facts.

14 MR. ALDERMAN: Yes, your Honor.

15 THE COURT: You will close in full, and then you
16 will reply to him. Okay?

17 MR. ALDERMAN: Yes, your Honor.

18 THE COURT: Any questions about that or disputes
19 about that?

20 MR. ALDERMAN: Not from the State, your Honor.

21 MR. COLE: No, your Honor.

22 THE COURT: Ready to go, Mr. Alderman?

23 MR. ALDERMAN: Yes, your Honor.

24 THE COURT: Very good. Bring the jury in, please,
25 ma'am.

1 (WHEREUPON, the jury entered open court at
2 11:12 a.m.)

3 THE COURT: All right. Mr. Foreman, ladies and
4 gentlemen of the jury, we now move to the closing
5 arguments phase of the case. The State has the burden
6 of proof, as I'll tell you more about it in just a few
7 minutes. They will go first. The defense will then
8 close, and the State will have a right to reply to what
9 the defendant argues.

10 State ready to proceed?

11 MR. ALDERMAN: Yes, your Honor.

12 THE COURT: Defense ready?

13 MR. COLE: Yes, your Honor.

14 THE COURT: Very good.

15 Mr. Alderman.

16 MR. ALDERMAN: Thank you, your Honor. May it
17 please the Court?

18 THE COURT: Yes, sir.

19 MR. ALDERMAN: Ladies and gentlemen, first of all,
20 I just want to take a minute to thank you, each and
21 every one of you, for your hard work and attention in
22 this case. We can't do this without you. It's said a
23 lot, but we mean it. We don't take it for granted, so
24 thank you.

25 At the beginning of this trial I told you about

1 the facts of the case. I told you that Ms. Galbreath
2 and her son were driving down the road after leaving a
3 party, that the defendant was in the car with those two
4 people, that the victim, Mr. Reid, riding in the
5 backseat, lost his cool after an argument had ensued,
6 he reached up and he struck the defendant first. There
7 was a period of time that passed after that. A
8 cooling-off period, if you will. And then there was a
9 knife attack that almost left the victim dead.

10 I think we can safely say, at the end of the
11 trial, most of those facts are undisputed. The one
12 issue that has been brought to question is whether
13 there was that break in time. Was there one fight or
14 were there two.

15 The evidence in the case, as you've seen and heard
16 from the victim, was clear and unequivocal that he
17 struck the defendant, there was a break in time, the
18 defendant became angry, apparently pulled a knife out
19 of his pocket and turned around and attacked him. You
20 heard the same thing from the driver of the vehicle,
21 Ms. Galbreath, that they were riding down the road,
22 that her son struck the defendant first, there was a
23 break in time, and then the defendant turned around and
24 attacked her son with a knife.

25 Let's look at the physical evidence. When you

1 look at the defendant himself, you see the first two
2 cuts, as he described them, straight down his chest as
3 if he is sitting in the backseat, square in his seat,
4 not anticipating an attack. The rest of the cuts, as
5 he described them, as you saw, defensive. He's turned
6 away to stop the attack that started with those two
7 cuts to the chest.

8 He takes two across the arm where he tries to turn
9 and turtle up away from cuts. He pulls his leg up,
10 again kind of in a ball, turned away, takes a cut
11 across the leg. And then he reaches across with his
12 right hand, as he is right-handed, trying to grab at
13 whatever is coming at him and ultimately gets ahold of
14 that knife and destroys his hand. So, ladies and
15 gentlemen, the physical evidence is consistent with
16 what he told you happened.

17 You heard from Ms. Galbreath again what happened,
18 and that during the second attack she turned and
19 grabbed at the defendant and tried to pull him back
20 over the seat yelling, "Stop, stop," as she described
21 it, grabbed his shirt and pulled. You can consider the
22 physical evidence, the pictures that you have seen of
23 his torn shirt and ask if that's consistent with what
24 she told you.

25 Ultimately, it's up to you to decide what makes

1 sense in this case, what you're going to believe and
2 what you won't. Is this some grand conspiracy against
3 the defendant to frame him for some unknown reason? Or
4 does it make more sense that he was a little drunk, a
5 little angry, and that he decided to get even with
6 somebody he decided wronged him that day? Which one of
7 those makes sense, as law enforcement pulls up and he's
8 covered in blood, still in possession of the knife,
9 yelling, "He got what he deserved. He got what he
10 deserved," while the man almost bleeds to death in the
11 street.

12 Now, that night the defendant made some incredible
13 statements to law enforcement that you heard from the
14 investigator. The defendant said he never had a knife,
15 that the victim had a knife, attacked him with it, he
16 took it away from him and then stabbed him. Just think
17 about that for a second, folks. Apply your common
18 sense and life experiences and ask if that makes any
19 sense.

20 The defense has made a big deal with Mr. Reid
21 being bigger, stronger, faster, younger. All of that's
22 true. That he struck first. That's true. But, folks,
23 if he's bigger, stronger, faster, younger, if the
24 defendant was unable to defend against that first slap
25 that came across the seat, then how did he defend

1 against a knife attack from behind while he was sitting
2 in a car with his seatbelt on and somehow in the dark,
3 without being able to see what was coming, managed to
4 disarm this younger, faster, stronger. Does that make
5 sense?

6 Or does that sound more like a story that a drunk,
7 angry person who had just made a dumb decision would
8 tell law enforcement when they pulled up and trying to
9 sort out the mess? Is it plausible or does it sound
10 like something someone made up to get out of trouble?
11 And that's up for you to decide.

12 They tried to suggest that there was no break in
13 time, that this was one continuous attack that started
14 with slaps or fists or whatever and continued. And if
15 that's true, if this younger, faster, stronger man was
16 attacking the poor defendant from behind, why would he
17 have to stop and take out a knife at all? If it
18 started with hands, at what point do we break this
19 continuous attack and pull out a knife that the
20 defendant miraculously takes away from the younger,
21 stronger, faster man. It just doesn't make sense.

22 "He ought to die." "I meant to." "I wouldn't
23 take it back." "I wouldn't take one stitch back."
24 These are the other statements of the defendant that
25 night. And, ladies and gentlemen, those are the

1 statements of a drunk, angry man who had just done a
2 very dumb thing and not a poor victim who had
3 miraculously disarmed his attacker and done what he had
4 to do.

5 I'd ask you to consider that statement again. "I
6 didn't have a knife. He attacked me with a knife. I
7 took it away and I stabbed him with it." Then consider
8 what Ms. Galbreath has told you. She said, "I gave him
9 that knife," him being the defendant, "I gave him that
10 knife for Christmas." It came in a two-pack. We had
11 wrapped it, and before we went to the party that day,
12 he said, "Hang on a second," went back, opened the
13 pack, took out the knife, put it in his pocket, and
14 then they went to that family gathering.

15 Remember her sitting there on the stand telling
16 you that with a tear in her eye describing giving that
17 gift to the defendant. A look of guilt on her face for
18 having given that man the very thing he turned and used
19 against her son and almost killed him.

20 Now, one of those things is true. Either she gave
21 him that knife and he had the knife that night or she
22 made up that entire story down to every detail,
23 two-pack of knives, gave it to him for Christmas, he
24 took one of them out before we left, and then worked up
25 some fake tears for you and baldly lied to all of your

1 faces.

2 Now, was that what happened? Or is the defendant
3 lying to police that night when he said he didn't have
4 a knife at all? And I think the answer to that is
5 obvious, again, when you apply the same common sense
6 that you do in your everyday lives.

7 Defense tried to make a big deal out of the blood
8 that was on the defendant's face in that picture at the
9 hospital. And I'll admit, it's a pretty compelling
10 picture. Blood all over him. And they want you to
11 believe that if there's blood on his face, it came from
12 his face, and if it came from his face, then he must
13 have just been beaten to a pulp.

14 Ladies and gentlemen, there's ink my hand. Did it
15 come from out of my hand? Consider the scene, the
16 bloodbath that he had just created. Consider the
17 victim telling you that, while they were trying to pack
18 the wound in his leg, they were packing gauze as fast
19 as they could and the blood was pushing it back out,
20 that the two EMTs that just happened to be there
21 miraculously had exhausted their two bags of gauze and
22 medical equipment and had to get a tourniquet and what
23 he described as a blast bag from the officers when they
24 arrived just to keep control of the blood. Imagine
25 that kind of blood and then ask yourself if the man

1 coming over the seat slashing one, two, three, four,
2 five, six, seven times might have gotten a little blood
3 on his face.

4 There was an officer there with him the whole time
5 he was at the hospital, saw all the treatment, who
6 happened to have medical training and sat there and
7 told you there was not a single cut on his head. That
8 is a compelling picture, folks, him covered in blood
9 because it is the victim's blood. That's how much
10 blood was being flung around. And if it's not all the
11 victim's blood, then it's some of the defendant's blood
12 from his two fingers that were cut on his right hand,
13 his dominant hand, that he came around the seat with
14 swinging as hard as he could. Is it so hard to believe
15 that he got some cuts on his finger while he was
16 swinging a knife and the victim was trying to fight him
17 for it?

18 Ladies and gentlemen, one of these two sides is
19 wrong. Either the victim and his mother are here lying
20 to you or he lied to police that night. Those really
21 are the only two options here. If you believe them,
22 then he's guilty. If you believe him, then he's not
23 guilty. But I would urge you to look at the things he
24 said and the things he did and ask you if he's remotely
25 credible.

1 The charge itself is assault and battery of a high
2 and aggravated nature, as we talked about before. The
3 elements are an unlawful injury that causes great
4 bodily harm or an unlawful injury that is applied by a
5 means likely to produce death or great bodily injury,
6 one of those two things.

7 Great bodily injury means the injury causes a
8 substantial risk of death or causes significant
9 permanent disfigurement or a protracted loss of use of
10 a bodily member, a part of your body.

11 Substantial risk of death. Consider what the
12 first responders told you. Absolutely, he nearly bled
13 to death on the side of the road. If they hadn't just
14 happened to show up, leaving some other gathering that
15 they were at that night, that EMT told you he would
16 probably die. The response time of EMS, law
17 enforcement having to come check the scene before they
18 clear it for the ambulance to come in the first place,
19 that man bleeding from more holes than he could
20 control, substantial risk of death, absolutely.

21 Permanent disfigurement. The man has zippers of
22 scars all over his body. He told you 80-some staples.
23 He doesn't even know the number, but he can count the
24 holes, the holes being the scars and the disfigurement
25 itself.

1 Protracted loss of a bodily member. You remember
2 he said when he tried to get out of the car, his right
3 hand wouldn't work. It just (indicating), wouldn't
4 open the door. And then he had to have surgeries for
5 tendon damage and nerve damage, where three months went
6 by where he wasn't allowed to move his hand at all, and
7 two years later, even today, it doesn't work like it
8 used to, loss of range of motion and strength, and it
9 will probably never be the same again. So protracted
10 loss of bodily member or function in bodily member,
11 absolutely.

12 Was the means used likely to cause bodily injury
13 or death? Of course. I mean, each of you knows that
14 if you pick up a fresh-out-of-the-pack factory sharp
15 pocketknife and started wailing on somebody as hard as
16 you can, you might hurt them pretty bad. That's really
17 all there is to that.

18 Ladies and gentlemen, there was one altercation
19 followed by a break in time and then a knife attack.
20 That's what happened that day. And even if, for the
21 sake of argument, just for the sake of argument there
22 was no break in time, consider this, folks:
23 Self-defense has to be proportional. Right? If
24 someone comes up to you and kicks you in the shins,
25 they have no lawful right to do that. You can stop

1 them. If you pull out a gun and shoot them to stop
2 them, is that right?

3 Todd Reid was cut to pieces and nearly died on the
4 side of the road and nothing that happened before that
5 justified that attack. Nothing. And that's why the
6 defendant is guilty of assault and battery of a high
7 and aggravated nature.

8 THE COURT: Mr. Cole.

9 MR. COLE: Thank you, your Honor.

10 THE COURT: Yes, sir.

11 MR. COLE: Ladies and gentlemen of the jury, I
12 want to thank you again for your service today. Thank
13 you. And yesterday. Thank you for the time that you
14 have taken to listen to this evidence. As I said
15 yesterday, I do believe the United States is the best
16 country in the world, and I'm glad that we live here.

17 And in this situation especially, the solicitor
18 has argued that this is a case of who you believe.
19 However, I'd submit to you that in this state and in
20 the United States, the question here today is not who
21 do you believe, but the question is what has the State
22 proved beyond a reasonable doubt.

23 Specifically, has the State proved with the
24 evidence that's been presented in this courtroom beyond
25 a reasonable doubt that my client did not act in

1 self-defense. And I will submit to you that they have
2 not. And if they have not, you must find my client not
3 guilty.

4 If you look at the evidence that has been
5 presented in this case, look at the narrative of the
6 State's witnesses. Obviously, there was some
7 dysfunction in this group of people. There were some
8 tensions in this group of people. My client was in a
9 relationship with Ms. Galbreath.

10 The son of Ms. Galbreath, who did not -- who had
11 some issues with my client, as he testified, they go to
12 this party together. They go to this Christmas party.
13 The issues were such that Mr. Reid had to take himself
14 out of the party. He said he had to take himself out
15 so he wouldn't say what he thought he needed to say.

16 Finally they get in the car. They get in this
17 car, ride back. My client is sitting in the front seat
18 with Ms. Galbreath; Mr. Reid is sitting behind him.

19 And Mr. Reid, they go back and forth a little bit,
20 and my client says something about Mr. Reid using
21 drugs, and that was the thing that really struck a
22 nerve. That was the thing that sent him over the edge,
23 and then he attacked my client from the backseat to the
24 front seat.

25 My client, who you see here in the courtroom

1 today. Mr. Reid, who you saw in the courtroom today.
2 My client, who is significantly older than Mr. Reid.
3 My client, who's significantly shorter than Mr. Reid.
4 My client, who's significantly -- weighs significantly
5 less than Mr. Reid. Everything you look at, he
6 attacked my client over the seat, and my client turned
7 and defended himself.

8 Now, there's been some testimony of this gap in
9 time. I believe it's convenient that this gap in time
10 was testified to today, but Ms. Galbreath's own
11 statement that she made the night of the offense
12 doesn't mention anything about that. And she stated
13 that there on the jury stand. She read that statement,
14 and there's nothing about a gap in time. We get here
15 two years later and this gap in time has suddenly
16 appeared.

17 My client defended himself. He was hit from
18 behind in the dark by the person sitting behind him in
19 the car. You saw the injuries that he got. Big knot
20 on the head, a lot more than just a slap, whatever that
21 they had described it as, downplayed it as, hit. You
22 saw the blood on him. You saw obvious -- I ask you to
23 look at the pictures. Look at the cuts. Look at the
24 blood. Look at the knot. My client was attacked and
25 defended himself. That, I believe, is the -- is what

1 was shown by the evidence that was presented.

2 However, the issue is my client doesn't have to
3 prove that he defended himself. The State has to prove
4 that he did not. So even if you see some things that
5 you might like from the State or some things that seem
6 a little inconsistent, look at it. Did the State prove
7 that my client did not defend himself? Did the State
8 prove that my client did not act in self-defense?

9 I believe, when you look at the evidence in this
10 case, look at the pictures, listen to the testimony,
11 you see the -- the weapon, the pocketknife, that my
12 client had. You see the pocketknife that was
13 available. Not some sword or deadly weapon. Look at
14 everything and ask the question: Did the State prove
15 beyond a reasonable doubt that my client did not act in
16 self-defense? And I would ask you, after you
17 deliberate and look at the evidence, to say that he did
18 not, that the State did not prove that, that my client
19 is not guilty. Thank you again for your service.

20 MR. ALDERMAN: Thank God he didn't have a sword.
21 Look at what he did with just a pocketknife.

22 Ladies and gentlemen, there is not one thing -- I
23 will say it again -- there was not one thing that
24 happened in that car that justified what this man did
25 to that victim. Not one thing. Not one theory that's

1 been presented to you, not one possibility that you
2 could come up with.

3 The fact of the matter is this man got mad because
4 he got hit. Like anyone else would. And it was wrong
5 for him to get hit. We've said it from the beginning.
6 But it's what happened next. It's the decision he made
7 next after sitting and thinking about it, contemplating
8 what his next move was going to be, taking off his
9 seatbelt as they rode down the road in the dark,
10 reaching into his pocket, quietly taking out a
11 pocketknife, opening that pocketknife and then whipping
12 around in a surprise attack to get even.

13 Folks, that's what happened. That's what the
14 physical evidence shows you. That's what the
15 testimonial evidence shows you.

16 And what do you have to counter that? The
17 statement he made that night that he never had a knife
18 at all, despite the woman who bought him that knife
19 telling you exactly where he got it. He never had a
20 knife at all. He was attacked from behind and somehow
21 disarmed his attacker and then did all that.

22 Folks, ask yourself what makes sense here. What
23 makes sense.

24 THE COURT: All right.

25 Mr. Foreman, ladies and gentlemen of the jury, I

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1 anticipate my charge will be in the neighborhood of
2 about 25 minutes, more or less.

3 Mr. Foreman, would you like a break? Would you
4 like to continue on with my jury charge at this
5 juncture?

6 JURY FOREPERSON: We'd like to continue.

7 THE COURT: Very good. Thank you, sir.

8 All right. Ladies and gentlemen, let me point out
9 a couple things. Frequently, across the state, at the
10 end of trials, juries will send out a request once they
11 begin their deliberations for more evidence. At this
12 juncture, all the evidence that's going to be admitted
13 has been admitted. There will be no more evidence
14 presented in this case. Okay? So understand that.

15 By our state constitution, I'm not allowed to
16 interpret that evidence for you or to comment on that
17 evidence. So it's up to you to draw what facts from
18 the evidence you think would be appropriate and any
19 inferences from those facts that you think would be
20 appropriate. Okay?

21 With that being said, my charge to you is in three
22 parts. The first part will be the general rules that
23 define and control your duties as jurors. The next
24 part will be the law of assault and battery of a high
25 and aggravated nature, of self-defense, and also of

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1 voluntary intoxication. The last part will be some
2 ideas about your deliberations, Mr. Foreman, and then
3 I'll go over the verdict form and advise you how to
4 fill it out.

5 Now, ladies and gentlemen, if you recall from the
6 beginning of this case, I told you that you were the
7 sole judges of the facts. You will determine what the
8 facts are from the testimony and evidence that you
9 heard here in the courtroom and now according to the
10 law as I will give it to you.

11 I remind you that you may not and shall not
12 concern yourself with what you think the law should be
13 but only what it is. If I make a mistake in the law, I
14 will be corrected by an appellate court. However, it
15 is your duty to apply the law as I give it to you now.
16 To do anything but follow the law as I give it to you
17 would be a dereliction of your oath as jurors in is
18 this matter.

19 Now, if I have said or done or made any gestures
20 throughout this case that seems to indicate to you how
21 you are to reach a verdict or the verdict you are to
22 reach, I'm going to ask you and instruct you to
23 disregard it. I can tell you that I have no feelings
24 one way or the other. I view my role somewhat like a
25 referee, to make sure that both sides have a fair and

1 impartial trial and then instruct you on the law at the
2 end of this process so you know what to apply to the
3 facts of this case.

4 Again, you and you alone are the judges of what
5 the facts are, and you will determine them by
6 evaluating and weighing the evidence presented in this
7 trial. Obviously, you can't weigh evidence in a
8 literal sense. It is a mental exercise. You are to
9 use your good judgment and common sense and to walk
10 through and talk about the evidence amongst yourselves
11 collectively and to ultimately reach a verdict in this
12 case.

13 Now, the evidence that you may consider as
14 evidence is the following: It is the sworn testimony
15 of witnesses who appeared before you, whether it be by
16 direct-examination or cross-examination. It is also
17 any exhibits that I have allowed into evidence, and
18 that's it. That is the only evidence that you can
19 consider as evidence.

20 So that leads me to what is not evidence. I
21 remind you that the arguments by these attorneys is not
22 evidence. What they said in their opening and closing
23 arguments to you is not evidence. They have not been
24 sworn. They have not been subjected to
25 cross-examination. It's not to minimize their

1 importance because their role is vital, but it's
2 technically not evidence.

3 Also, ladies and gentlemen, any questions asked by
4 the lawyers or objections made by the lawyers is not
5 evidence.

6 Mr. Foreman, if one of your jurors tries to insert
7 an objection into the deliberations or my ruling on
8 that objection, it will be your duty to make sure that
9 that is not part of the jury's deliberations. Okay,
10 sir?

11 JURY FOREPERSON: Okay, sir.

12 THE COURT: Also, I remind you as well that just
13 because something may appear in one of your juror's
14 notes doesn't mean it trumps somebody's memory of that
15 particular fact or issue. You will just have to hash
16 those out. That's why they are called deliberations.

17 Now, also, ladies and gentlemen, anything that you
18 may have seen when court is not in session is not
19 evidence. So what you may consider as evidence is the
20 testimony, the responses to the questions, and the
21 exhibits that will go back with you.

22 Now, in South Carolina we recognize two types of
23 evidence. First, we recognize direct evidence, and we
24 also recognize what is called circumstantial evidence.

25 Direct evidence is evidence that directly proves

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1 the existence of a fact, and it does not require
2 deduction or inference. For example, if an issue in
3 the case was whether or not I ran a stop sign and my
4 law clerk testified that he saw me run that stop sign,
5 that would immediately establish that fact. You don't
6 have to infer or deduce anything from it. That would
7 be direct evidence. Like an eyewitness.

8 Circumstantial evidence is a little trickier. It
9 is proof of a chain of facts and circumstances that
10 indicate the existence of another fact. In other
11 words, it does require inference. It does require
12 deduction.

13 An example of circumstantial evidence. If each of
14 you were to go to bed at night and have a fresh sheet
15 of snow in your front yard, if you were to wake in the
16 morning and see tracks in the snow, you could
17 reasonably infer that someone or some thing walked
18 through your yard in the night, although you did not
19 see it. That is an inference being made or a deduction
20 being made. The deduction being drawn by you, the
21 jury, can't be speculative, conjectural, or surmise.

22 Now, crimes, ladies and gentlemen, may be proven
23 by circumstantial evidence just like they may be proven
24 by direct evidence. The law makes no distinction
25 between the weight or value to be given to either

1 direct evidence or circumstantial evidence. However,
2 to the extent that the State relies on circumstantial
3 evidence, all of the circumstances must be consistent
4 with each other and, when taken together, point
5 conclusively to the guilty of the accused beyond a
6 reasonable doubt. If these circumstances merely
7 portray the defendant's behavior as suspicious, then
8 the State's case would have failed. The State has the
9 burden of proving the defendant's guilt by proof beyond
10 a reasonable doubt, whether or not it uses direct
11 evidence, circumstantial evidence, or a combination of
12 the two.

13 Now, ladies and gentlemen, in deciding what the
14 facts are in this case, you have to go through and
15 decide which testimony you wish to believe and whether
16 or not there's any testimony you wish not to believe.
17 You, as a jury, have a right to believe all or part or
18 none of any witness that came before you.

19 In deciding this issue of what we refer to as the
20 credibility of the witnesses, I'm going to name some
21 considerations that you may use in making this
22 determination.

23 Mr. Foreman, this certainly is not an exhaustive
24 list. But in deciding the believability of the
25 testimony, you can ask yourself, was the witness able

1 to see or hear or know about the subject of their
2 testimony, how able were they to recall the subject of
3 their testimony, what was their manner or their
4 demeanor while they're on the witness stand.

5 You can ask yourself whether the witness would
6 want to give testimony that would help or hurt one side
7 of the case or the other, whether or not they had any
8 bias or prejudice in the outcome or any issue involved
9 in the case. You can ask yourself how reasonable that
10 witness' testimony was in light of all the other
11 evidence in the case and whether or not that witness'
12 testimony had been contradicted by what that witness
13 had said at another time or by any other witness in the
14 case or any other evidence in the case.

15 Now, Mr. Foreman, those are just some of the
16 considerations you may use in deciding the credibility
17 or the believability of the evidence in this matter.
18 Of course, when you're sworn in, you don't check your
19 common sense at the door and you shouldn't in this
20 case. You should use those things in your day-to-day
21 lives that you find indicative of truthfulness or
22 indicative of lack of truthfulness in making this
23 determination of the credibility or believability of
24 the witnesses. One thing you may not do, however, is
25 add up the number of witnesses that appear on one side

1 or the other in making this determination.

2 In this case, ladies and gentlemen, you have heard
3 testimony from people -- a person who has been
4 qualified as an expert. Normally witnesses are not
5 allowed to give their opinion in the courtroom unless
6 they have been qualified as an expert. If they have
7 been qualified as an expert and it may be helpful to
8 you, the jury, then a person is allowed to give their
9 opinion and the reasons for their opinion.

10 I will tell you that expert testimony is like any
11 other testimony you have heard in this case. You may
12 accept it, you may reject it, you may give it as much
13 weight as you think it deserves based on the reasons
14 for their opinions as well as all the other evidence
15 and testimony in this matter.

16 Mr. Foreman, I want to remind you and the rest of
17 the jury that the fact that the defendant was arrested,
18 charged, and indicted is not evidence of his guilt. It
19 does not raise an inference of his guilt, nor does it
20 raise a presumption of his guilt. The indictment is
21 simply the mechanism by which the defendant has been
22 brought before this court for a determination by you,
23 the jury, of guilt or innocence in this matter.

24 In fact, in this case the defendant has pled not
25 guilty to the indictment. Once he pleads not guilty,

1 the presumption of innocence immediately attaches to
2 his person and remains with him throughout the trial
3 into your deliberations unless and until you, the jury,
4 are convinced by proof beyond a reasonable doubt of his
5 guilt.

6 I will tell you, ladies and gentlemen of the jury,
7 that a person charged with committing a crime in South
8 Carolina is never required to prove himself or herself
9 innocent. And it is an important rule of law,
10 regardless of the seriousness of the crime or the
11 charge involved in the case, that a person will always
12 be presumed innocent of the charge unless and until
13 guilt has been proven by proof beyond a reasonable
14 doubt. This presumption of innocence does not end when
15 you begin your deliberations, but it accompanies the
16 defendant throughout this trial unless you, the jury,
17 are convinced of guilt beyond a reasonable doubt.

18 In the vernacular of lawyers, the presumption of
19 innocence is like a robe of righteousness that's been
20 placed around the shoulders of the defendant where it
21 remains unless and until it has been stripped by
22 evidence satisfying you of guilt beyond a reasonable
23 doubt.

24 Now, ladies and gentlemen, the presumption of
25 innocence is not a mere legal theory. It's not a nice,

1 little legal phrase. It is a fundamental right to
2 which every citizen is entitled unless you, the jury,
3 are convinced of guilt beyond a reasonable doubt.

4 So that leads me to what is the definition of
5 reasonable doubt. A reasonable doubt, ladies and
6 gentlemen, is the kind of doubt that would cause a
7 reasonable, sincere, honest, and conscientious person
8 to hesitate to act in an important matter in their own
9 affairs. Proof beyond a reasonable doubt is proof that
10 leaves you firmly convinced of the defendant's guilt.

11 Now, with that being said, there are very few
12 things in this world that we know with absolute
13 certainty, and the law does not require the State to
14 overcome every possible doubt that may exist in this
15 case.

16 At the end of this case, when you're told to begin
17 your deliberations, if you are collectively firmly
18 convinced of the defendant's guilt, then it is your
19 duty to find him guilty.

20 On the other hand, if you think there is a real
21 possibility that the defendant is not guilty, then it
22 is your responsibility to give him every possible doubt
23 and find him not guilty.

24 I will tell you that reasonable doubt may occur
25 from the evidence or from the lack of the evidence, and

1 a defendant, ladies and gentlemen, is entitled to every
2 reasonable doubt that may occur in a case. And what
3 that simply means, that if, upon any fact essential to
4 a conviction, if you have any reasonable doubt as to
5 how that issue is to be resolved, you are to resolve it
6 in favor of the defendant.

7 Now, ladies and gentlemen, in order to establish
8 criminal liability, criminal intent is required to be
9 established. For example, the mental state required to
10 be proven by the State for a particular crime might be
11 purpose, intent, knowledge, recklessness, or criminal
12 negligence. Criminal intent must be proven by the
13 State beyond a reasonable doubt. Criminal intent,
14 ladies and gentlemen, is always a matter that must be
15 determined by you, the jury, from the situation shown
16 to have existed surrounding the incident.

17 There is no way to prove intent to a mathematical
18 certainty. There's no way that science can dissect a
19 person's brain to determine what they had in mind, so
20 the law says that criminal intent may be inferred from
21 the circumstances shown during the course of the case.

22 And that is how, ladies and gentlemen, you make
23 the determination of whether or not the element
24 requiring intent is present. It is not necessary to
25 establish intent by direct and positive evidence, but

1 intent may be established by inference in the same way
2 as any other fact, by taking into consideration the
3 acts of the parties and all the facts and circumstances
4 of the case. Criminal intent is a mental state; it is
5 a conscious wrongdoing.

6 Now, ladies and gentlemen, it is up to you to
7 determine what the defendant intended to do based on
8 the circumstances shown to have existed during this
9 incident. Criminal intent can arise from action or a
10 failure to act. It may arise from negligence,
11 recklessness, or indifference to duty or to the
12 consequences that is considered by the law to be
13 equivalent to criminal intent.

14 Now, ladies and gentlemen, I would emphasize to
15 you, and, Mr. Foreman, I will point out to you that the
16 fact that the defendant did not testify shall not be
17 and is not to be considered by you in any form or
18 fashion. That is every citizen's right under the Fifth
19 Amendment to the United States Constitution and because
20 the State always has the burden of proof to establish
21 the defendant's guilt by proof beyond a reasonable
22 doubt.

23 If any of your jurors seeks to insert that into
24 the deliberations, it is your job to make sure that it
25 is not so insinuated, Mr. Foreman. Do you understand?

1 JURY FOREPERSON: Yes, sir.

2 THE COURT: Ladies and gentlemen, a statement is
3 alleged or statements alleged to have been made by the
4 defendant has been admitted into evidence in this case.
5 While I have determined that the statement was
6 admissible, I will instruct you that you make the
7 ultimate decision of whether or not the defendant made
8 this statement.

9 If the defendant did make the statement, you must
10 determine whether or not the statement in fact was made
11 by him voluntarily and of his own free will. This
12 means that the statement cannot be caused by pressure,
13 force, fear, threats, coercion, or intimidation or by
14 hope or a promise of leniency or a reward of any kind.

15 In determining whether the statement was
16 voluntary, you should consider both the characteristics
17 of the defendant and the details of any questioning.
18 Some of the factors that you must consider are the age
19 of the defendant, the defendant's education or lack of
20 education, the defendant's mental ability or capacity,
21 the defendant's I.Q. or intelligence, the defendant's
22 background and environment, the place and length of
23 detention, the nature of the questioning, and the
24 advice or lack thereof to the defendant of his
25 constitutional rights including but not limited to the

1 right to remain silent, that any statement could be
2 used against him in a court of law, the right to have a
3 lawyer present, that if he could not afford a lawyer, a
4 lawyer would be appointed for him at no cost, and that
5 he could stop making a statement at any time.

6 Ladies and gentlemen, you, the jury, must consider
7 all the surrounding circumstances before you give any
8 weight to any alleged statement or statements. The
9 State has the burden of proving beyond a reasonable
10 doubt that the alleged statement or statements were
11 voluntary. If you determine that they were, you may
12 give the statements any further consideration that you
13 deem proper. You must decide what weight, if any,
14 should be given to the alleged statement or statements.

15 If you determine that the alleged statement or
16 statements was not the free and voluntary statement of
17 this defendant, you should not consider the statement
18 at all.

19 Now, Mr. Foreman, ladies and gentlemen, that
20 concludes the first aspect of my charge. And I'll tell
21 you that's the longest aspect of it.

22 If you would like to take a quick break or stand
23 up, you may do so. If anybody needs a personal break,
24 I'll be glad to give you a minute for that. If you
25 want to proceed, I'll be glad to proceed.

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1 JURY FOREPERSON: We'd like to proceed, your
2 Honor.

3 THE COURT: All right, sir.

4 This is the law of assault and battery of a high
5 and aggravated nature.

6 Ladies and gentlemen, a person commits the offense
7 of assault and battery of a high and aggravated nature
8 if the person unlawfully injures another person and
9 great bodily injury to a person results or the act is
10 accomplished by means likely to produce death or great
11 bodily injury.

12 To prove assault and battery of a high and
13 aggravated nature, the State must first prove beyond a
14 reasonable doubt that the defendant unlawfully injured
15 another person. Next, the State must prove beyond a
16 reasonable doubt that either great bodily injury
17 resulted or that the act was accomplished by means
18 likely to produce death or great bodily injury.

19 Great bodily injury is defined as bodily injury
20 which causes a substantial risk of death or which
21 causes serious permanent disfigurement or protracted
22 loss or impairment of the function of a bodily member
23 or organ.

24 And I know I went through there, Mr. Foreman. I
25 don't send my charge back to the jury because I want

1 you focused on the facts, but I will go over any aspect
2 of my charge as many and as often as you want me to
3 throughout this case.

4 The next part of this charge is on self-defense.

5 Ladies and gentlemen, the defendant has raised the
6 defense of self-defense. Self-defense is a complete
7 defense, and if it is established, you must find the
8 defendant not guilty. The State has the burden of
9 disproving self-defense by proof beyond a reasonable
10 doubt.

11 If you have a reasonable doubt of the defendant's
12 guilt after considering all of the evidence including
13 the evidence of self-defense, then you must find the
14 defendant not guilty.

15 On the other hand, if you have no reasonable doubt
16 of the defendant's guilt after considering all the
17 evidence, including the evidence of self-defense, then
18 you must find the defendant guilty.

19 The following elements are required to establish
20 self-defense. First, the defendant must be without
21 fault in bringing on the difficulty. If the
22 defendant's conduct was the type which was reasonably
23 calculated to and did provoke a deadly assault, the
24 defendant would be at fault in bringing on the
25 difficulty and would not be entitled to an acquittal

1 based on self-defense.

2 Self-defense is not available to a person who uses
3 language which is so contemptuous that a reasonable
4 person would expect it to bring on a physical encounter
5 and which did actually contribute to the physical
6 encounter.

7 The second element of self-defense is that the
8 defendant was actually in imminent danger of death or
9 serious bodily injury or that the defendant actually
10 believed he was in imminent danger of death or serious
11 bodily injury.

12 If the defendant was actually in imminent danger,
13 it must be shown that the circumstances would have
14 warranted a person of ordinary firmness and courage to
15 strike the fatal blow to prevent death or serious
16 bodily injury. If the defendant believed he was in
17 imminent danger of death or serious bodily injury, it
18 must be shown that a reasonably prudent person of
19 ordinary firmness and courage would have had the same
20 belief.

21 In deciding whether the defendant actually was or
22 actually believed he was in imminent danger of death or
23 serious bodily injury, you should consider all of the
24 facts and circumstances surrounding the crime,
25 including the physical condition and characteristics of

1 the defendant and the victim.

2 The defendant does not have to show that he was
3 actually in danger. It is enough if the defendant
4 believed he was in imminent danger and a reasonably
5 prudent person of ordinary firmness and courage would
6 have had the same belief. The defendant has a right to
7 act on appearances even though the defendant's beliefs
8 may have been mistaken.

9 It is for you, the jury, to decide whether the
10 defendant's fear of imminent danger of death or serious
11 bodily injury was reasonable and would have been felt
12 by an ordinary person in the same situation.

13 Ladies and gentlemen, words accompanied by hostile
14 acts may, depending on the circumstances, establish
15 self-defense. The relative size, ages, and weights of
16 the defendant and the victim may be considered in
17 deciding the apparent or actual need for force in
18 self-defense and the amount of force needed. Threats
19 made by the victim may be considered in determining
20 whether defendant actually was or believed he was in
21 imminent danger.

22 And, ladies and gentlemen, the final element of
23 self-defense is that the defendant had no other
24 probable way to avoid the danger of death or serious
25 bodily injury than to act as the defendant did in this

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1 particular circumstance. A person who is not engaged
2 in unlawful activity and who was attacked in another
3 place where he has a right to be, including but not
4 limited to his place of business, has no duty to
5 retreat and has the right to stand his ground and meet
6 force with force, including deadly force if he
7 reasonably believes it is necessary to prevent death or
8 great bodily injury to himself or another person or to
9 prevent the commission of a crime as defined in Code
10 Section 16-1-60.

11 Finally, ladies and gentlemen, the law of
12 voluntary intoxication.

13 Insanity caused by the use of drugs or alcohol may
14 be a defense if the insanity is permanent and destroys
15 the defendant's ability to know right from wrong.
16 However, when voluntary intoxication has not produced
17 permanent insanity, it is not a defense to a crime. A
18 person who voluntarily becomes intoxicated is just as
19 responsible for the acts committed while intoxicated as
20 when the person is not intoxicated.

21 Mr. Foreman, that leads me to a few considerations
22 about your deliberations. First, throughout the voir
23 dire process you either expressly or impliedly
24 represented that you would be fair and impartial to the
25 State and to the defendant in this matter. Each side

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1 has the right to expect no less of you in your
2 deliberations. You are not partisans. You are not
3 advocates for one side of this case or the other.

4 You are the judges of the facts. I'm going to ask
5 you but I'm going to charge you to go back and consider
6 all the evidence in a thorough, calm, and courteous
7 manner.

8 I want to give you an idea about what deliberation
9 means. This is its definition. Deliberation is a
10 careful consideration weighing up with a view to a
11 decision.

12 Now, regardless of what any of you may think about
13 our judicial system, I would submit to you that it
14 allows 12 men and women such as yourselves who come
15 from different life experiences, who have different
16 educations, who have different perspectives to listen
17 to the evidence, to listen to the law, to go back and
18 talk about the evidence and the law and to ultimately
19 reach a unanimous conclusion in this manner or
20 judgment.

21 You are not partisans or advocates. You are the
22 judges of the facts. I'm going to ask you, and I'm
23 also going to charge you that when you begin your
24 deliberations, you let each one of the jurors speak and
25 give you their perspectives and points of view. Let

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1 each person tell you why they believe the way they do.
2 They will do the same to you.

3 Do not be afraid to change your weight (sic) as to
4 the weight -- your belief as to the weight of the
5 evidence if your deliberations with your fellow jurors
6 convinces you that you should change your belief.

7 In order for your verdict to stand, it will have
8 to be unanimous. With that being said, each of you
9 have to decide this case for yourself. Do not change a
10 firmly held belief as to the weight of the evidence in
11 this case solely to appease your fellow jurors.

12 Mr. Foreman, once your jury reaches a verdict, it
13 will be your duty to fill out the verdict form. The
14 options that you have have to be in some order, so the
15 order in which they appear is of no consequence.

16 But your first option would be, under section A,
17 as to the charge of assault and battery of a high and
18 aggravated nature, we, the jury, unanimously find the
19 defendant not guilty. If that is the jury's decision,
20 you will simply check that option under A, you will
21 sign the verdict form, you will fold it over and you
22 will crease it, you will keep it in your possession,
23 but you will let the bailiff know you have a verdict,
24 and you will bring it in the courtroom and we'll get it
25 from you in here.

1 The second option would be as to the charge of
2 assault and battery of a high and aggravated nature,
3 we, the jury, unanimously find the defendant guilty,
4 again under section B. If that is the jury's unanimous
5 decision, you will check that option and go through the
6 same procedure by signing your name.

7 If at any time the jury needs anything or has a
8 question, if you would write it down and knock on the
9 door, the bailiff will bring it to us and we'll respond
10 accordingly. I know that -- was there any audio played
11 during the course of this trial?

12 MR. ALDERMAN: Yes, your Honor.

13 THE COURT: If you need to see the audio or video
14 that was played, we play it here in the courtroom
15 because there's not a clean computer in the back and it
16 has other things to it. We will play it as many times
17 as you want.

18 One thing I'm going to ask you never to do is to
19 tell me or anyone where the jury stands numerically,
20 whether it's 6-6, 8-4, 11-1, whatever. That's solely
21 the jury's information, and nobody needs to know that.
22 Okay?

23 Before I send you back, are there any additions or
24 exceptions to my charge from the State?

25 MR. ALDERMAN: None from the State, your Honor.

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1 THE COURT: From the defense?

2 MR. COLE: No, your Honor.

3 THE COURT: Very good.

4 All right. Mr. Foreman, I'm going to ask that the
5 jury go back. Our alternate, I'm going to ask you to
6 get your personal belongings, come back to the
7 courtroom.

8 In just a minute the verdict form and the exhibits
9 will be brought back to you, and the bailiff will give
10 you signal to begin your deliberations. Please don't
11 start until that juncture -- until that time, please.

12 Y'all may go back.

13 (WHEREUPON, the jury exited open court at
14 12:07 p.m.).

15 (WHEREUPON, court takes up other matters, pending
16 verdict, from 12:07 p.m. until 1:30 p.m.)

17 THE COURT: Would you bring the jury in. We have
18 a verdict.

19 (WHEREUPON, the jury entered the courtroom at
20 1:31 p.m.)

21 THE COURT: Mr. Foreman, my understanding is the
22 jury has reached a verdict. Is that correct?

23 JURY FOREPERSON: That's correct.

24 THE COURT: Is it unanimous?

25 JURY FOREPERSON: Yes, your Honor.

1 THE COURT: Would you pass your verdict form to
2 our bailiff, please, and I'll ask her to bring it to
3 me.

4 Publish the verdict, please.

5 THE CLERK: Yes, sir.

6 In the matter of the State of South Carolina
7 versus Clifton Eugene Smith, as to the charge of
8 assault and battery of a high and aggravated nature, on
9 indictment number 2018-GS-37-667, we, the jury,
10 unanimously find the defendant guilty.

11 Ladies and gentlemen of the jury, if this was your
12 verdict and remains your verdict, please indicate so by
13 raising your right hand.

14 Let the record reflect that all members of the
15 jury have affirmed their verdict.

16 THE COURT: All right. Do you have that
17 indictment, Mr. Foreman? Before you leave, I need to
18 get your signature on this indictment for me.

19 Ladies and gentlemen, the Court is never concerned
20 with what the verdict is but that you paid attention
21 and you followed the instructions. I watched you
22 variously, all of you, throughout this trial. You did
23 exactly as I asked you to. You followed the law in
24 this matter or you listened to the law as you thought
25 it should be. For that we thank you for your service.

1 I would like to say you're done for the week, but
2 you are not. We have a trial starting tomorrow at
3 9:30, so I'm going to ask that all of you be back in
4 the gallery at 9:30 in the morning so we can go through
5 the voir dire selection process and potentially select
6 you on another case.

7 With that being said, you are excused for the
8 afternoon. If you want to take your notes with you,
9 you may do so. If you don't, the bailiffs will take
10 care of those notes and dispose of them in the jury
11 room.

12 Y'all are excused.

13 (WHEREUPON, the jury exited open court at
14 1:33 p.m.)

15 THE COURT: Do you have your sentencing sheet
16 prepared?

17 MR. ALDERMAN: In progress, Judge.

18 MR. COLE: Your Honor, prior to sentencing, I
19 would like to make a brief motion.

20 THE COURT: Yes, sir.

21 MR. COLE: Your Honor, I would like to move at
22 this time for a new trial based on the arguments I
23 presented earlier in my motion for directed verdict,
24 that with the evidence as presented to the jury, that a
25 reasonable jury could not have found that the State

1 proved beyond a reasonable doubt that my client did not
2 act in self-defense, so I would make that motion at
3 this time.

4 THE COURT: All right. That motion is denied.

5 MR. COLE: Thank you.

6 THE COURT: Any other motions?

7 MR. COLE: No, your Honor.

8 THE COURT: All right. Come around, please.

9 All right. If you would, Mr. Alderman, tell me
10 about Mr. Smith's prior criminal record.

11 MR. ALDERMAN: Yes, your Honor.

12 Judge, I would say from the outset that his prior
13 criminal history is violent in nature beginning with
14 possession of cocaine 1987, assault and battery with
15 intent to kill 1988, criminal domestic violence 1990,
16 assault and battery on a police officer 1990, driving
17 under the influence and driving under suspension 1992,
18 criminal domestic violence 1996, driving under the
19 influence third offense, driving under suspension and
20 public disorderly conduct 1999, unlawful carrying of a
21 weapon, also 1999, possession of a pistol by a person
22 convicted of a violent crime 1999, public disorderly
23 conduct, two counts, 2003, criminal domestic violence
24 2004, public disorderly conduct 2009, assault and
25 battery second degree. Looks like that is 2011.

1 Distribution/trafficking methamphetamine 2013,
2 possession of meth or cocaine base 2016.

3 Judge, that is the end of the South Carolina
4 record; however, there is an out-of-state record.

5 Possession of a firearm by a felon 2004.

6 Judge, that was actually a federal charge, and
7 that is the extent of the record.

8 THE COURT: All right. Mr. Cole, be glad to hear
9 from you.

10 MR. COLE: Your Honor, one slight modification. I
11 believe from my review that the trafficking was
12 dismissed and he pled to a possession, but I could be
13 incorrect.

14 MR. ALDERMAN: Manufacture or distribution of
15 methamphetamine, Judge, convicted.

16 MR. COLE: Thank you, your Honor.

17 THE COURT: Okay, sir.

18 MR. COLE: Your Honor, I would ask that the
19 Court -- I want to offer a few things in mitigation to
20 the Court.

21 My client, he, up until about eight years ago, he
22 worked for over 12 years as an electrical engineer for
23 Century Three Electrical.

24 He became disabled about eight years ago, and he
25 has some issues with his back, legs, ruptured disc,

1 things like that. He says he was on social security
2 disability, but that was cut off when he was arrested
3 for this charge.

4 He says since he's been out on bond, he has been
5 attempting to get that restarted, and he actually says
6 he has an attorney, Don Pelzer, who is attempting to
7 get his social security disability back started.

8 Also during this time, just to kind of survive, he
9 has been doing some odd jobs. He is trained as an
10 electrical engineer. He did three years at a technical
11 college, he says night school, for electrical
12 engineering, and he's also, just by trade, doing some
13 plumbing and some other odd jobs trying to get by until
14 the disability would come back.

15 He doesn't have any family in this area, but he
16 does live in Oconee County. He -- your Honor, in this
17 case, I would ask the Court to consider a probationary
18 sentence because -- so that my client can attempt to
19 make restitution to the victim.

20 It's my understanding from the testimony the
21 victim does have substantial medical bills. My client,
22 either by way of if he can get his disability back or
23 by way of, you know, going back to work, one way or
24 another, to pay towards this restitution, so I would
25 ask the Court to consider that and allow a probationary

1 sentence.

2 THE COURT: All right.

3 Mr. Smith, anything you want to add?

4 THE DEFENDANT: That pretty much covers it, your
5 Honor.

6 THE COURT: Restitution is so extensive in this
7 case. I think I heard anywhere from 150- to 190,000,
8 somewhere in that range. This gentleman is never going
9 to pay it, and I'm not convinced he would anyway.

10 Sentence is 15 years. You have ten days to
11 appeal. Good luck to you.

12 Oh, and I did not give the victim a chance to
13 speak.

14 MR. ALDERMAN: Your Honor, the victim indicated
15 they did not wish to speak.

16 THE COURT: Very good. Ten days to appeal.

17 MR. ALDERMAN: Thank you, your Honor.

18 MR. COLE: Thank you, your Honor.

19 (WHEREUPON, proceedings concluded at 1:41 p.m.)

20 ***END OF REQUESTED TRANSCRIPT OF RECORD***

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Certificate of Reporter

I, Diane L. Marcengill, 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 19th day of November 2019.

This transcript may contain quoted material. Such material is reproduced as read by the speaker.

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

January 24, 2020

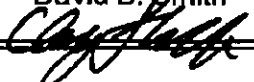


Diane L. Marcengill, RPR, CRR, CRC
Circuit Court Reporter

WITNESSES

Oconee Co Sheriff's Dept.

David B. Smith

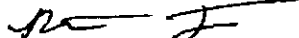


ARREST WARRANT NUMBER

Direct

ACTION OF GRAND JURY

TRUE BILL


Foreperson of Grand Jury

Date: **MAY 07 2018**

VERDICT

Foreperson of Grand Jury
Date:

DOCKET NO. 2018-GS-37-00667

The State of South Carolina

County of Oconee

COURT OF GENERAL SESSIONS

MAY 07 2018, TERM

THE STATE

VS.

CLIFTON EUGENE SMITH

INDICTMENT FOR

**ASSAULT & BATTERY OF A HIGH AND
AGGRAVATED NATURE**

SC Code: § 16-03-0600(B)(1)
CDR Code: 3411

JCA

FILED OCONEE, SC
BEVERLY H. WHITFIELD
CLERK OF COURT

2018 MAY -7 P 4:40

ENTERED

COMPUTER 281

STATE OF SOUTH CAROLINA
COUNTY OF OCONEE


INDICTMENT

At a Court of General Sessions, convened on MAY 07 2018, the
Grand Jurors of Oconee County present upon their oath:

ASSAULT & BATTERY OF A HIGH AND AGGRAVATED NATURE

The defendant, Clifton Eugene Smith, did on or about December 26, 2017 in Oconee County, unlawfully injure Michael Todd Reid, by cutting and stabbing him about the chest, hand, and leg with a knife, resulting in great bodily injury and disfigurement or the means used was likely to produce death, great bodily injury and disfigurement. All in violation of 16-03-0600(B)(1), Code of Laws of South Carolina, (1976), as amended).

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.



JASON ALDERMAN
ASSISTANT SOLICITOR

0-20

COUNTY OF OCONEE
STATE VS.

CLIFTON EUGENE SMITH

AKA: _____
Race: White Sex: M Age: 56
DOB: _____ SS#: _____
Address: _____
City, State, Zip: _____
DL# _____ SID# _____

INDICTMENT/CASE#: 2018GS3700667
AW#: 2018GS3700667
Date of Offense: 12/26/2017
S.C. Code §: 16-03-0600(B)(1)
CDR Code #: 3411

SENTENCE SHEET

*CDL Yes No CMV Yes No Hazmat Yes No

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


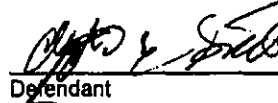
TO: **Assault & Battery Of A High And Aggravated Nature**

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

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

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

ATTEST:

 100529 Jason Alderman, Assistant Solicitor SC Bar # _____ Defendant
 100352 Attorney for Defendant SC Bar # _____

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

CONCURRENT or CONSECUTIVE to sentence on: _____
 The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by SC
Department of Corrections _____
 The Defendant is to be placed on Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

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

SPECIAL CONDITIONS:

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

Payment Terms: _____ Obtain GED

Set by SCDPPPS _____ Attend Voc. Rehab. Or Job Corp. _____

Recipient: _____ May serve W/E beginning _____

*Fine: _____ \$ _____ Substance Abuse Counseling

§14-1-206 (Assessments 107.5%) \$ _____ Random Drug/Alcohol Testing

§14-1-211 (A)(1)(Conv. Surcharge) \$100 \$ 100.00 Fine may be pd. in equal consecutive weekly/monthly

§14-1-211 (A)(2)(DUI Surcharge) \$100 \$ _____ pmts. of \$ _____ Beginning _____

§56-5-2995 (DUI Assessment) \$12 \$ _____ \$ _____ Paid to Public Defender Fund

§56-1-288 (DUI Breath Test) \$25 \$ _____ Other: _____

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

§14-1-212 (Law Enforce. Funding) \$25 \$ 25.00

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

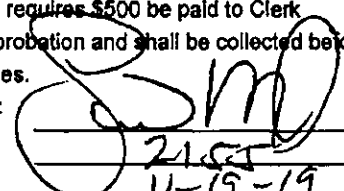
§50-21-114 (BUI Breath Test Fee) \$50 \$ _____

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

3% to County (if paid in installments) \$ \$ 3.75

TOTAL \$ 128.75

Clerk of Court/Deputy Clerk: Beverly H. Y. Mitchell
Court Reporter: Dime W. Conner
SCCA/217 (04/2018)

Presiding Judge: 
Judge Code: 2105
Sentence Date: 11-19-19

STATE OF SOUTH CAROLINA)
County of Oconee)

IN THE COURT OF COMMON PLEAS

Clifton Eugene Smith #25960
Full name and prison number (if any) of Applicant)

2022CP3700329

v.)

APPLICATION FOR

State of South Carolina)

POST-CONVICTION RELIEF

FILED OCONEE COUNTY
MELISSA C. BURTON
CLERK OF COURT
2022 MAY -5 P 2:21

INSTRUCTIONS - READ CAREFULLY

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

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

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

1. Place of detention Oconee County Jail

2. Name and location of Court which imposed sentence Oconee County
205 Booker St. Walhalla

3. Name(s) of co-defendant(s) (if any) _____

4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:

(a) (AB Han) 2018-GS-37-0667

(b) _____

Copies to:
Atty (P) Smith (D) _____
DSS _____ other _____
Mailed Boxed _____ handed _____

ENTERED
AW
COMPUTER

- (c) _____
- 5. The date upon which sentence was imposed and the terms of the sentence:
 - (a) NOV 19 2019
 - (b) _____
 - (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. Oconee county
 - ii. State of South Carolina in the court of appeals
 - iii. Submitted March 1 2022 filed April 6 2022
- (b) the result in each such Court to which you appealed:
 - i. denied April 6th 2022 SC court of
 - ii. appeals
 - iii. _____
- (c) the date of each such result:
 - i. denied April 6th 2022
 - ii. _____
 - iii. _____
- (d) if known, citations of any written opinion or orders entered pursuant to such results:
 - i. N/A
 - ii. _____
 - iii. _____

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

- (a) see attachment
- (b) _____

(c) _____

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

(a) SEE ATTACHMENT

(b) SEE ATTACHMENT

(c) _____

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

(a) SEE ATTACHMENT

(b) SEE ATTACHMENT

(c) _____

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

(a) any petition in a State Court under South Carolina Law? Yes

(b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? Yes

(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. S.C. COURT OF Appeals

ii. _____

iii. _____

iv. _____

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

i. S.C. COURT OF Appeals

ii. _____

iii. _____

iv. _____

(c) the disposition thereof:

- i. Denied April 6, 22
- ii. _____
- iii. _____
- iv. _____

(d) the date of each such disposition:

- i. N/A
- ii. _____
- iii. _____
- iv. _____

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

- i. N/A
- 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?

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

(a) which grounds have been presented:

- i. N/A
- ii. _____
- iii. _____

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

- i. N/A
- 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) _____
- (b) _____
- (c) _____

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

- (a) your arraignment and plea? _____
- (b) your trial, if any? Yes
- (c) your sentencing? Yes
- (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? Yes
- (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed?

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. N/A
 - ii. _____
 - iii. _____
- (b) the proceedings at which each such attorney represented you:
 - i. N/A
 - ii. _____
 - iii. _____

ATTACHMENT

A) INEFFECTIVE ASSISTANCE OF COUNCIL

1) COUNCIL WAS INEFFECTIVE BECAUSE HE DID NOT IMPEACH VICTUM.

A) PAGE 180 OF THE COURT TRANSCRIPT
Q. LINED 20 DID HE HAVE ANYTHING TO SAY BACK?

A: HE DID AND HE SAID "WELL, YOU DO DRUGS."

EVEN THOUGH THE JUDGE RULED AGAINST THE IMPEACH OF THE VICTUM, SAID VICTUM OPENED THE DOOR FOR IMPEACH WHEN HE SAID "YOU DO DRUGS" REPEATING BACK WHAT THE DEFENDENT SAID TO HIM.

ON CROSS EXAMINATION THE VICTUM REPEATED THE EXACT SAME STATEMENT. COUNSEL FOR THE DEFENCE SHOULD HAVE ASKED THE VICTUM "IF HE USED DRUGS" THERE WAS NOTHING IN THE RULING BY THE JUDGE ABOUT ASKING THE VICTUM ABOUT HIS DRUG USE. ONCE THE VICTUM ADMITTED HE USED DRUGS COUNSEL COULD HAVE IMPEACHED THE VICTUM. COUNSEL FAILED IN HIS DUTY TO DO SO.

ATTACHMENT CONTINUED.....

B. TRIAL JUDGE ABUSED HIS DISCRETION IN NOT ALLOWING DEFENDANT TO IMPEACH THE VICTIM.

A) JUST AS THE STATE CAN IMPEACH THE DEFENDANT, THE DEFENDANT HAS THE RIGHT TO IMPEACH THE VICTIM IF IT PROVES THE VICTIM HAS A HISTORY OF CRIMINAL ACTIVITIES.

B) THE TRIAL JUDGE ABUSED HIS DISCRETION BY REFUSING TO ALLOW PETITIONER TO IMPEACH THE COMPLAINANT WITH HIS PRIOR CONVICTIONS FOR POSSESSION OF METH FIRST AND SECOND OFFENCES, FAILURE TO STOP FOR A BLUE LIGHT, THE USE OF COMMUNICATION FACILITY IN COMMISSION OF A FELONY INVOLVING CONTROLLED SUBSTANCE, AND FLEEING OR ATTEMPTING TO ELUDE A POLICE OFFICER, AND GIVING A FALSE STATEMENT TO POLICE OFFICER.

STATE V ROBINSON 426 S.C. 579, 828, 3E.

2d 203 (2019) STATE V BACCUS 367 S.C. 41,

625 S.E. 2d 216 2006 STATE V COLF 337

S.C. 622, 525 S.E. 2d 246 (2000) STATE V.

DOUGLAS 369 S.C. 424, 632 S.E. 2d 845 (2006)

ATTACHMENT CONTINUED....

B) STATE V DUNCAP 346 S.C. 312 550
S.E. 2d 889 (S App 2001)

CONCLUSION

THEREFORE IN CONCLUSION THE
PETITIONER ASK THIS COURT
FOR SAID REASONS SHOWN THAT
THE COURT REVERSES THE SAID
SENTENCE FOR A NEW TRIAL, FOR
JUST CAUSE SHOWN.

s/ Clifton Eugene Smith
CLIFTON EUGENE SMITH

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

I WANT A NEW TRIAL

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

NO

STATE OF SOUTH CAROLINA)

County of Oconee)

VERIFICATION

I, Clifton Eugene Smith, 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.

Clifton Eugene Smith

SWORN to and subscribed before me this 2 day of May, 2022

Bridget Suzanne-Durant (L.S.)
Notary Public

My Commission Expires: March 15, 2031

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

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

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

#259061 Chilton Eugene Smith
Applicant

SWORN or affirmed to and subscribed before me this

15 day of April, 2022.

Bridget Joineau Duvent
Notary Public

My Commission Expires: March 15, 2031

FILED OCONEE COUNTY, SC
MELISSA C. BURTON
CLERK OF COURT
2022 MAY -5 P 2:22



Melissa C Burton
Clerk of Court

April 22, 2022

Clifton Eugene Smith #259061
Turbeville Correctional Institution
1578 Clarence Coker Hwy.
Turbeville, SC 29162

RE: Clifton Eugene Smith vs. State of South Carolina

Dear Mr. Smith:

Your Application for Post-Conviction Relief is being returned to you for the following reason(s):

X Missing signature – Please have the Verification Page of your Application signed and notarized, and return for filing.

Respectfully,

A handwritten signature in cursive script that reads "Amanda Watkins".

Amanda Watkins
Chief Deputy Clerk of Common Pleas
Oconee County Clerk of Court
205 W Main St.
PO Box 678
Walhalla, SC 29691
(864)916-7303 fax (864)638-4282
awatkins@oconeesc.com

STATE OF SOUTH CAROLINA)
 COUNTY OF OCONEE)
)
 Clifton E. Smith, #259061,)
)
 Applicant,)
)
 v.)
)
 State of South Carolina,)
)
 Respondent.)

IN THE COURT OF COMMON PLEAS FOR
 THE TENTH JUDICIAL CIRCUIT

CASE NO. 2022-CP-37-329

RETURN AND PARTIAL
 MOTION TO DISMISS
 (Counsel Appointed)¹

FILED OCONEE COUNTY
 MELISSA C. BURTON
 CLERK OF COURT
 2024 FEB 15 A 11:49

In response to the post-conviction relief (PCR) action commenced by Clifton E. Smith (Applicant) on May 5, 2022², Respondent, the State of South Carolina, makes this return:

FACTS AND PROCEDURAL HISTORY

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment from the Oconee County Clerk of Court. Applicant was arrested on May 7, 2018, following an investigation into an incident involving bodily injury sustained by Michael Todd Reid (Reid) in Oconee County on or about December 26, 2017. During the May 2018 term,

¹ On May 16, 2022, Susannah C. Ross was appointed to represent Applicant in this action.
² Respondent's return was due to be filed within sixty days of receipt of the post-conviction relief application. See Rule 12(a), SCRCP ("[T]he State of South Carolina shall answer or otherwise respond to an application for post-conviction relief within 60 days after service of the application, if it arises out of a guilty plea, and 90 days if it arises out of a trial."). However, based on an exceptionally high workload of Respondent and significant staffing issues, Respondent was unable to complete the return within this time. Now, having completed the return required in this matter, and in light of no demonstrable prejudice to Applicant as a consequence of the delay, Respondent respectfully asks this Court to accept this return as timely filed. See S.C. Code Ann. § 17-27-70(a) (establishing that the Court may fix the time in which the State must respond and that "respondent shall file with its answer the record or portions thereof that are material to the questions raised in the application."); Guinyard v. State, 260 S.C. 220, 195 S.E.2d 392 (1973) (holding the trial court may extend the time for filing and that the time limit prescribed by the statute is not mandatory, but discretionary with the trial court.).

ENTERED
 [Signature]
 COMPUTER
 no copies

the Oconee County Grand Jury indicted Applicant for Assault and Battery of a High and Aggravated Nature (2018-GS-37-00667).

On November 18-19, 2019, Applicant proceeded to a jury trial before the Honorable R. Lawton McIntosh. Gregory Cole Jr. (Trial Counsel) and Daniel Day Jr., Esquires, represented Applicant. Assistant Solicitor Jason Christopher Alderman prosecuted the case. On November 19, 2019, the jury convicted Applicant as indicted. Judge McIntosh sentenced Applicant to fifteen (15) years' imprisonment for Assault and Battery of a High and Aggravated Nature.

DIRECT APPEAL

Applicant filed a timely notice of appeal. Appellate Defender Lara Mary Caudy perfected Applicant's appeal by filing a brief with the Court of Appeals on the following issue:

- I. Whether the trial court abused its discretion in not allowing him to impeach the testimony of the victim by introducing evidence of the victim's prior convictions

Following briefing, the Court of Appeals affirmed Applicant's conviction and sentence. State v. Clifton Eugene Smith, 2022-UP-167 (Ct. App. filed April 6, 2022). The Remittitur was returned on April 29, 2022.

FIRST PCR ACTION: 2020-CP-37-00247

On April 8, 2020, Applicant filed his first PCR application alleging various allegations of ineffective assistance of counsel. On June 23, 2021, Respondent made its Return and Motion to Dismiss without Prejudice based on Applicant's pending direct appeal. On July 12, 2021, the Honorable J. Cordell Maddox, Jr., signed an Order dismissing Applicant's application without prejudice.

SUMMARY OF FACTS ADDUCED AT TRIAL

Varia Galbreath (Galbreath) let Applicant stay at her house over the weekend during Christmas so he could go to his probation meeting on Monday. Galbreath and Applicant had dated on and off, and Applicant had stayed at her house on other occasions. Her thirty-year-old son, Reid, was also staying at home then. Galbreath gave Applicant a couple of pocketknives as a Christmas present. The three went to Galbreath's daughter's house the day after Christmas where the family exchanged gifts and ate pizza. Galbreath testified Applicant grabbed one of the two pocketknives when they were leaving for her daughter's. (Trial Tr. pp. 150-52).

At the Christmas party, the daughter gave her guests presents, including a gift to Applicant of some mini-bottles of liquor. The family enjoyed the pizza, Applicant also enjoyed the mini-bottles of liquor, and soon Applicant started acting up, becoming loud and boisterous. Reid became upset by Applicant's behavior and went outside to wait in the car. Galbreath herself cursed out loud in the presence of the children and decided the three should leave after her daughter's remonstrations. (Trial Tr. pp. 151-52).

On the drive home, Reid sat in the back seat and Applicant in the passenger seat while Galbreath drove. Reid and Applicant argued, and Reid slapped Applicant. Galbreath stopped the vehicle and told them to "stop, just stop." Galbreath testified the altercation stopped, and she continued driving. She drove down a hill and around some curves. Then Applicant suddenly "whirl[ed]" around in his seat. She thought he was hitting Reid, and she stopped the car again. As Reid exited the car, he said, "You cut me." Reid paced and then said to call somebody. She called her daughter, then she called 911. Reid said he needed something to drink, and he felt cold. He laid down on the road. (Trial Tr. pp. 152-55).

EMS and law enforcement came and assisted Reid while Galbreath stayed behind with her car, which now was a crime scene. (Trial Tr. pp. 156-57). Applicant put the knife on the trunk of the car when law enforcement came. Galbreath testified it was the same knife she gave him as a Christmas present. (Trial Tr. p. 156). This testimony would contradict Applicant's claim with the police that Reid had the knife and Applicant took it from him. (Trial Tr. pp. 210-11).

Reid testified he became irritated at the party because of Applicant's behavior and the strain it caused for his mother. Reid testified Applicant was the only one drinking at the family dinner. Reid decided to wait in the car. Eventually, all three left the party. During the car ride home, Reid complained to Applicant about Applicant mooching, not working, and not handling his liquor. Applicant retorted, "Well, you do drugs." In response, Reid struck him and told him to shut his mouth. (Trial Tr. pp. 178-80). Galbreath stopped the car until they stopped arguing, and she then continued driving while Reid focused on his phone because he was trying to find somewhere he could be dropped off.

The peace was broken when Applicant turned around, and Reid thought Applicant was slapping him. Meanwhile, Galbreath was pulling on Applicant's shirt to try and get him to turn around. Reid exited the car and realized he was bleeding and had been cut. Reid described the numerous cuts about his body and limbs. Reid lost use of his hand for about four months. Reid had to have surgery to repair nerves and tendons. (Trial Tr. pp. 180-86). Reid explained he was not fighting or antagonizing Applicant when Applicant turned around and cut him. He explained there was a definite break in time between the time he slapped Applicant and when Applicant turned around and cut him. (Trial Tr. p. 188; p. 196).

Nicholas Santangelo (Santangelo) was previously a firefighter, but now was training to be a police officer. Santangelo was at a Christmas party with other firefighters and on the way home

from the party with a friend when they observed a car with hazards on and something large in the road – as it turns out, Reid. Santangelo's friend, a trained medic, attended to Reid, while Santangelo tried to calm Applicant down, who was standing by the back of the car and was clearly agitated. Applicant declared, "He got what he deserved" over and over. Santangelo asked Applicant if he had a knife and then asked Applicant to put the knife on the trunk of the car. Applicant complied. Santangelo observed Reid suffered from multiple lacerations. (Trial Tr. pp. 125-30). Based on his emergency training, Santangelo opined that, but for the attention he and his friend provided Reid that night, Reid could have died from his injuries. (Trial Tr. pp. 137-38). Deputy Rashad Crooks seized the knife that Applicant left on the car and noted it had blood on it. (Trial Tr. p. 142).

Sergeant Clay Sheriff of the Oconee County Sheriff's Office responded to the scene. Applicant was already in custody and Reid was attended to by emergency personnel. Applicant was agitated, intoxicated, and boisterous. He smelled of alcohol. Applicant admitted he "did it" and exclaimed he would do it again. He later claimed Reid had the knife and he took it from Reid and stabbed him. Applicant said Reid ought to die. He later asked Sergeant Sheriff, "Did I get him good?" Applicant had lacerations on his fingers, but Sergeant Sheriff did not see lacerations anywhere else. (Trial Tr. pp. 208-12).

Deputy Nicole Lecroy had prior medical training as a volunteer first-responder and previous employment in the surgical department at the hospital in Oconee. She testified she transported Applicant to the hospital since he did not have any life-threatening injuries, and then later to jail. The EMTs bandaged Applicant's fingers at the scene. The bandages were later replaced with butterfly stitches – what Deputy Lecroy agreed were essentially fancy Band-Aids. (Trial Tr. pp. 217-20).

CURRENT APPLICATION

In his application for post-conviction relief, Applicant alleges he is being held in custody unlawfully based on the following (excerpted verbatim):³

1. Ineffective Assistance of Counsel
 - a. Counsel was ineffective because he did not impeach the victim regarding past drug use. On cross examination, Counsel did not question the victim about past drug use.
2. Abuse of Discretion on the part of the Trial Judge
 - a. The trial judge abused his discretion by not allowing the defendant to impeach the victim concerning prior convictions.

Applicant requests relief in the form of a reversal of his sentence and a new trial.

Attached to this return and incorporated by reference are the Oconee County Clerk of Court records regarding the subject convictions; Applicant's records from the South Carolina Department of Corrections; a full and complete record of Applicant's direct appeal, including the trial transcript; and the records of the current PCR action. Respondent reserves the right to amend this return upon receipt of any relevant materials.

PARTIAL MOTION TO DISMISS

Applicant's allegation the trial court abused its discretion, thereby violating his due process rights, should be summarily dismissed for failure to state a cognizable claim under the Uniform Post-Conviction Procedure Act⁴ (the Act). See, e.g., Drayton v. Evatt, 312 S.C. 4, 8, 430 S.E.2d 517, 520 (1993) ("[PCR] is not a substitute for appeal or a place for asserting errors for the first time which could have been reviewed on direct appeal.")). An applicant may commence a post-conviction relief action on the following grounds:

1. That the conviction or the sentence was in violation of the Constitution of the United States or the Constitution or laws of

³ Unless quoted, Applicant's allegations have been summarized for brevity and clarity.

⁴ S.C. Code Ann. § 17-27-10 to -160.

- this State;
2. That the court was without jurisdiction to impose sentence;
 3. That the sentence exceeds the maximum authorized by law;
 4. That there exists evidence of material facts, not previously presented and heard, that requires vacation of the conviction or sentence in the interest of justice;
 5. That his sentence has expired, his probation, parole or conditional release [was] unlawfully revoked, or he is otherwise unlawfully held in custody or other restraint; or
 6. That the conviction or sentence is otherwise subject to collateral attack upon any ground of alleged error heretofore available under any common law, statutory or other writ, motion, petition, proceeding or remedy....

S.C. Code Ann. § 17-27-20.

Even if the facts alleged by Applicant are true, these facts do not support a cognizable claim for post-conviction relief under any of the statutory grounds. BCR relief is only proper when the application collaterally attacks the validity of the conviction or sentence. Al-Shabazz v. State, 338 S.C. 354, 527 S.E.2d 742 (2000). These issues are improper for post-conviction relief because they could have been raised on direct appeal and are procedurally barred by S.C. Code Ann. §17-27-20(b) (2003). Post-conviction relief is not a substitute for a direct appeal. Simmons v. State, 264 S.C. 417, 215 S.E.2d 883 (1974). A post-conviction relief application cannot assert any issues that could have been raised at trial or on direct appeal. Ashley v. State, 260 S.C. 436, 196 S.E.2d 501 (1973). Applicant could have raised this issue at trial or on appeal. Importantly, Applicant raised the issue of whether the trial court abused its discretion in not allowing him to impeach the victim, and after briefing, the Court of Appeals affirmed his sentence and conviction. State v. Clifton Eugene Smith, 2022-UP-167 (S.C. Ct. App. filed April 6, 2022).

For these reasons and pursuant to Rule 12(b)(6), SCRCP, Respondent requests the Court dismiss these allegations for failing to state a cognizable claim for which relief can be granted under the Post-Conviction Relief Act.

RESPONSE TO ALLEGATIONS OF INEFFECTIVE ASSISTANCE OF COUNSEL

Applicant alleged Trial Counsel was deficient for failing to impeach the victim regarding past drug use on cross-examination. Respondent submits Applicant's claims of ineffective assistance of counsel are without merit.

INEFFECTIVE ASSISTANCE OF TRIAL COUNSEL, GENERALLY

The Sixth and Fourteenth Amendments to the United States Constitution guarantee Applicant—like all other defendants—the right to "assistance by an attorney, whether retained or appointed, who plays the role necessary to ensure that the trial is fair." Strickland v. Washington, 466 U.S. 668, 685 (1984). Ordinarily, PCR allegations are centered upon an allegation that the applicant did not receive *effective* assistance of counsel guaranteed by the Sixth Amendment. See generally S.C. Code Ann. § 17-27-20(A) (enumerating allegations cognizable in PCR actions). The allegation of denial of such representation sets forth a *prima facie* violation of this constitutional right and raises a question of fact that can only be determined by an evidentiary hearing. Rogers v. State, 261 S.C. 288, 291, 199 S.E.2d 761, 762 (1973).

In a post-conviction relief action, the applicant bears the burden of proving the allegations by a preponderance of the evidence. Butler v. State, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985); Rule 71.1(e), SCRPC. The reviewing court applies the two-part test outlined in Strickland to determine whether counsel's conduct "was so ineffective as to require reversal" of the applicant's conviction. 466 U.S. at 687. To obtain relief, a PCR applicant must prove (1) counsel's performance fell below an objective standard of reasonableness, and (2) the applicant sustained prejudice as a result of counsel's deficient performance. Id. at 687–88; Cherry v. State, 300 S.C. 115, 117–18, 386 S.E.2d 624, 625 (1989). Failure to make the required showing of either deficient performance or sufficient prejudice defeats the ineffectiveness claim. Strickland, 466 U.S. at 700;

see also Bell v. Cone, 535 U.S. 685, 695 (2002) (explaining that "[w]ithout proof of both deficient performance and prejudice to the defense, . . . it could not be said that the sentence or conviction resulted from a breakdown in the adversary process that rendered the result of the proceeding unreliable") (citation and internal quotation marks omitted)).

The first prong—constitutional deficiency—is "necessarily linked to the practice and expectations of the legal community." Padilla v. Kentucky, 559 U.S. 356, 366 (2010). An applicant making a claim of ineffective assistance "must identify the acts or omissions of counsel that are alleged *not* to have been the result of reasonable professional judgment." Strickland, 466 U.S. at 690 (emphasis added). The reviewing court must then "determine whether, in light of all the circumstances, the identified acts or omissions were outside the wide range of professionally competent assistance" demanded of attorneys in criminal cases. Id.

Because of the difficulties inherent in making such an evaluation, the reviewing court must indulge in a "strong presumption that counsel's conduct falls within the wide range of reasonably professional assistance." Butler, 286 S.C. at 445, 334 S.E.2d at 816. "The burden of rebutting this presumption 'rests squarely on the [applicant],' and 'it should go without saying that the absence of evidence cannot overcome it.'" Dunn v. Reeves, No. 20-1084, 2021 WL 2742771, slip op. at *4 (U.S. July 2, 2021) (internal brackets omitted) (quoting Burt v. Titlow, 571 U.S. 12, 22–23 (2013)). In fact, "even if there is reason to think that counsel's conduct 'was far from exemplary,' a court still may not grant relief if 'the record does not reveal' that counsel took an approach that *no competent lawyer would have chosen*." Id. (emphasis added) (internal brackets omitted) (quoting Titlow, 571 U.S. at 23–24).

"When counsel focuses on some issues to the exclusion of others, there is a strong presumption that he [or she] did so for tactical reasons rather than through sheer neglect."

Yarborough v. Gentry, 540 U.S. 1, 5 (2003) (citing Strickland, 466 U.S. at 690). The Court, in determining deficiency, must affirmatively entertain the range of possible reasons counsel may have had for proceeding as they did. Cullen v. Pinholster, 563 U.S. 170, 196 (2011); Harrington v. Richter, 562 U.S. 86, 109–10 (2011). "[E]ven if an omission is inadvertent, relief is not automatic. The Sixth Amendment guarantees reasonable competence, not perfect advocacy judged with the benefit of hindsight." Yarborough, 540 U.S. at 6; see also Murphy v. Davis, 901 F.3d 578, 592 (5th Cir. 2018) ("[C]ounsel's performance need not be optimal to be reasonable.").

Review of counsel's trial strategy is hallmarked by deference, as "it is all too tempting for a defendant to second-guess counsel's assistance after conviction or an adverse sentence, and it is all too easy for a court, examining counsel's defense after it has proved unsuccessful, to conclude that a particular act or omission of counsel was unreasonable," Strickland, 466 U.S. at 689. No particular set of detailed rules for counsel's conduct can satisfactorily take account of the variety of circumstances faced by defense counsel or the range of legitimate decisions regarding how best to represent a criminal defendant. Strickland, 466 U.S. at 688–89; see Id. at 691 ("Representation is an art, and an act or omission that is unprofessional in one case may be sound or even brilliant in another."). "Defense lawyers have 'limited' time and resources, and so must choose from among 'countless' strategic options." Reeves, slip op. at *4 (quoting Harrington, 562 U.S. at 106–107). "Such decisions are particularly difficult because certain tactics carry the risk of 'harm[ing] the defense' by undermining credibility with the jury or distracting from more important issues." Id. (quoting Harrington, 562 U.S. at 108). Thus, a fair assessment of attorney performance requires every effort be made to eliminate the distorting effects of hindsight, to reconstruct the circumstances of counsel's challenged conduct, and to evaluate the conduct from counsel's perspective at the time. Strickland, 466 U.S. at 689. The ultimate question is not whether counsel's

actions were reasonable, but whether there is any reasonable argument counsel satisfied Strickland's deferential standard.

The second, or "prejudice" prong of Strickland is rooted in the very purpose of the Sixth Amendment guarantee of counsel—to ensure a defendant has the assistance necessary to justify reliance on the outcome of the proceeding. Id. at 691–92. In order to prove prejudice, an applicant must demonstrate counsel's deficient performance prejudiced the applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117–18, 386 S.E.2d at 625. A reasonable probability is a probability "sufficient to undermine confidence in the outcome." Strickland, 466 U.S. at 694; see Id. at 695 (explaining that, where a defendant challenges his conviction, he must show that there exists "a reasonable probability that, absent the errors, the factfinder would have had a reasonable doubt respecting guilt").

In determining prejudice, the reviewing court must consider the totality of the evidence before the jury. Id. at 695. It is not sufficient "to show [counsel's] errors had some conceivable effect" on the outcome of the proceeding—counsel's errors must be "so serious as to *deprive the defendant of a fair trial.*" Id. at 687 (emphasis added). "An error by counsel, even if professionally unreasonable, does not warrant setting aside the judgment of a criminal proceeding if the error had no effect on the judgment." Id. at 691. Moreover, the South Carolina Supreme Court has repeatedly held a PCR applicant must produce the testimony of a favorable witness or otherwise offer the testimony in accordance with the rules of evidence at the PCR hearing in order to establish prejudice. Bannister v. State, 333 S.C. 298, 303, 509 S.E.2d 807, 809 (1998).

The Strickland standard must be applied with scrupulous care, lest "intrusive post-trial inquiry" threaten the integrity of the very adversary process the right to counsel is meant to serve.

466 U.S. at 689-690. Courts must be wary of second-guessing counsel's trial tactics; and where counsel articulates a valid reason for employing such strategy, such conduct is not ineffective assistance of counsel. Whitehead v. State, 308 S.C. 119, 417 S.E.2d 529 (1992). The applicant's burden of proving both Strickland components is heavy considering the strong presumption that counsel's conduct fell within the range of reasonable professional legal assistance. 466 U.S. at 690. Representation is constitutionally ineffective only if counsel's conduct "so undermined the proper functioning of the adversarial process" that the defendant was denied a fair proceeding. Id. at 686; see Nix v. Whiteside, 475 U.S. 157, 175 (1986) (noting that under Strickland, the "benchmark" of the right to counsel is the "fairness of the adversary proceeding"); cf. United States v. Morrow, 977 F.2d 222, 229 (6th Cir. 1992) ("[T]he threshold issue is not whether [the applicant's] attorney was inadequate; rather, it is whether he was so manifestly ineffective that defeat was snatched from the hands of probable victory.")).

Failure to Impeach Victim

Applicant contends Trial Counsel was ineffective for failing to impeach the victim regarding the victim's past drug use. Specifically, Applicant alleged that Trial Counsel should have impeached the victim regarding past drug use on cross-examination after the victim "opened the door" for impeachment during his testimony.

Review of defense counsel's actions is given great deference because "it is all too tempting for a defendant to second guess counsel's assistance after conviction or an adverse sentence, and it is all too easy for a court, examining counsel's defense after it has proved unsuccessful, to conclude that a particular act or omission of counsel was unreasonable." Strickland, 466 U.S. at 689. Furthermore, the court in Strickland makes clear that "representation is an art, and an act or omission that is unprofessional in one case may be sound or even brilliant in another." Id. at 691.

In addition to this attitude against second-guessing the tactics of counsel, where there exists an articulable reason for employing their strategy, "such conduct is not ineffective assistance of counsel." Whitehead v. State, 308 S.C. 119, 122, 417 S.E.2d 529, 531 (1992) citing Goodson v. United States, 564 F.2d 1071 (4th Cir. 1977). "Impeachment tactics are generally held to be matters of trial strategy which are to be afforded deference." Gustave v. United States, 627 F.2d 901, 906 (9th Cir. 1980).

Before the examination of the victim, Trial Counsel informed the trial court of his intention to impeach the victim with several of his criminal charges and with the victim's past methamphetamine use. Trial Counsel argued the victim's past drug use was relevant because Applicant's was prepared to testify about the argument between himself and the victim concerned the victim's drug use. (Trial Tr. pp. 163-164, 166). The trial judge held the victim's prior convictions were inadmissible but allowed Trial Counsel to question the victim concerning past drug use, granted Trial Counsel had a good faith basis. (Trial Tr. pp. 173-175). On direct examination of the victim, the victim testified that on the night of the incident, he struck Applicant because Applicant said, "Well, you do drugs" to the victim. (Trial Tr. p. 180, ll. 20-23).

On cross-examination of the victim, Trial Counsel questioned the victim as follows:

- Q: So you started the argument in the car, then?
 A: No, the drinking started the argument.
 Q: Then he said something about you using drugs, and that made you really mad?
 A: He could have just said anything, I guess. He didn't have to say anything about drugs.
 Q: But that's what made you really mad, when he said something about you using drugs?
 A: No. I - - just the fact that he had something to say, period. Because that was the whole thing, like he kept "ba ba ba ba ba ba ba" opening his mouth, and it was like, golly.

(Trial Tr. pp. 193, ll. 23-25 – 194, ll. 1-9). Trial Counsel did not impeach the victim's credibility concerning his past drug use.

The general rule in South Carolina is that a witness' general reputation for truth and veracity is placed in issue when taking the witness stand. See State v. Major, 301 S.C. 181, 391 S.E.2d 235 (1990); State v. Robertson, 26 S.C. 117, 1 S.E. 443 (1887). A witness's credibility may be attacked or supported, subject to the discretion of the court, on cross-examination concerning specific instances of conduct if they are probative of truthfulness or untruthfulness. Rule 608(b), SCRE; See State v. Hale, 284 S.C. 348, 326 S.E.2d 418 (Ct. App. 1985) (witness can be impeached by collateral evidence "by showing he has been guilty of bad conduct that was not the subject of a conviction. This inquiry into matters collateral to the case in chief is limited to cross-examination of the witness sought to be impeached; if the witness denies the act, the inquiry ends."); See also State v. Gunn, 313 S.C. 124, 437 S.E.2d 75 (1993) (A witness may be impeached by past conduct which fairly tends to affect his or her credibility if the questioner has a good faith basis for asking the question)).

Additionally, "inquiry under Rule 608(b) is limited to those specific instances of misconduct which are clearly probative of truthfulness or untruthfulness such as forgery, bribery, false pretenses, and embezzlement." State v. Quattlebaum, 338 S.C. 441, 527 S.E.2d 105 (2000); State v. Kelsey, 331 S.C. 50, 75, 502 S.E.2d 63, 75 (1998) (citing Weinstein's Federal Evidence, Character and Conduct of Witness § 608.12(4)(a-b) (1998)).

Respondent submits Applicant cannot satisfy the requirements of Strickland. First, Trial Counsel attempted to impeach the victim about his past drug use, but the victim's response to his questioning did not give Trial Counsel a good faith basis for asking the question. Importantly, the issue of the victim's past drug use would have been improper, as it was not probative of the victim's

truthfulness or untruthfulness. Second, Trial Counsel's decision not to further question the victim on his past drug use is likely not "sufficient to undermine confidence in the outcome" of Applicant's jury trial. Strickland, 466 U.S. at 694. However, the record likely does not refute or disprove Applicant's allegations of ineffective assistance of Trial Counsel. Therefore, the State requests an evidentiary hearing to resolve the issues fully. See Sharper, 279 S.C. at 265, 305 S.E.2d at 248 (providing an evidentiary hearing shall be held when a PCR application "alleges specific instances of ineffective assistance of counsel which are not conclusively refuted by the record before the lower court").

ANY FUTURE AMENDMENTS AND INVOCATION OF DISCOVERY PROCESS

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

If Applicant fails to file a timely and responsive amended application setting forth specific allegations for relief, the State reserves the right to move to dismiss this allegation or claim. S.C. Code Ann. §§ 17-27-10 to -160; Rule 71.1, SCRPC; see also Rules 15(a)-(b), SCRPC. The State

reserves the right to request that any amendments withheld until the last minute be stricken because of undue prejudice to the State. See Rule 15(a), SCRCP.

Pursuant to S.C. Code Ann. § 17-27-150, Applicant may not invoke formal discovery processes to issue subpoenas or otherwise obtain discovery materials unless granted leave from the Court upon a showing of good cause. Furthermore, the State requests that all potential exhibits and materials used to produce potential expert witness testimony be sent to the State well in advance of the evidentiary hearing. The State reserves the right to request a continuance and oppose witness testimony and exhibits that are withheld until the last minute resulting in undue prejudice to the State.

[CONCLUSION PAGE FOLLOWS]

CONCLUSION

WHEREFORE, the State respectfully requests this Court grant its motion for a partial dismissal as set forth *supra* and thereafter convene an evidentiary hearing on the allegation of ineffective assistance of counsel.


Respectfully submitted,

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Attorney General

W. JEFFREY YOUNG
Chief Deputy Attorney General

DONALD J. ZELENKA
Deputy Attorney General

TALIDA BALAJ
Assistant Attorney General

By: 

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Columbia, S.C. 29211

February 12, 2024

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STATE OF SOUTH CAROLINA)
 COUNTY OF ANDERSON)
)
 CLIFTON E. SMITH,)
 APPLICANT.)
 v.)
 THE STATE OF SOUTH CAROLINA,)
 RESPONDENT.)

IN THE COURT OF COMMON PLEAS
 TENTH JUDICIAL CIRCUIT

AMENDED APPLICATION

CASE # 2022-CP-37-0329

FILED OCOBEE COUNTY SC
 MELISSA G. BURTON
 CLERK OF COURT
 2025 SEP - 3 A 9:53

This matter comes before the Court by way of application of post-conviction relief filed May 15, 2022, alleging ineffective assistance of counsel and judicial abuse of discretion. A Return and Motion for a More Definite Statement and Partial Motion to Dismiss was made on February 2, 2024. The Applicant hereby adds the following allegations of Fifth, Sixth, Eighth and Fourteenth Amendment violations of the Constitution of the United States & Art. I Sec. 3, 10, & 14 of the South Carolina Constitution.

I. Ineffective assistance of trial counsel for:

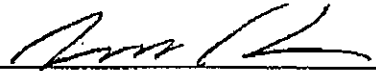
1. Failure to object to reference to Applicant being on probation, especially when the judge ruled that witness M. Reid could not be impeached on his prior drug conviction for possession of methamphetamine, first and second offense, failure to stop for a blue light, use of communication facility in commission of a felony involving controlled substance, and fleeing or attempting to elude a police officer. p. 150, pp. 163-73
2. Failure to preserve the record as to whether Reid's conviction for fleeing or attempting to elude a police officer was admissible pursuant to Rule 609(a)(1), SCRE, and the *Colf* factors. See *State v. Colf*, 337 S.C. 622, 627, 525 S.E.2d 246, 248 (2003).

ENTERED
Jan
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3. Failing to cite Rule 9 SCCrimP in the motion for a continuance and argue the continuance was for good cause as counsel could not be effective because he was unable to adequately prepare for trial without speaking to his client and advising him to reconsider his plea offer because the A & B 1st charge was now ABHAN.¹ Applicant was released on bond for the charge of A & B 1st Degree in February 2018. Applicant appeared for a probation violation hearing in December 2018 and was sentenced to thirteen (13) months during which time he did not meet with his lawyer. Upon Applicant's release he did not receive notification of November 18, 2019, court date or that his charge was proceeding as ABHAN, p. 49, p. 53
4. Failing meet with Applicant to advise, instruct and prepare for trial
5. Failure to inform Applicant of plea offer as counsel's duties include the duty to fully communicate with the client and correctly advise them so that the client can make an informed decision regarding any plea proposals by the State. See Davie v. State, 675 S.E.2d 416, 381 S.C. 601 (S.C. 2009).
6. Failing to request credit for time served pursuant to Sec.24-13-40.

III. Due Process violations in the indictment procedure.

Respectfully submitted,



Susannah Ross
 Attorney for the Applicant
 330 E. Coffee St,
 Greenville, SC 29601
 (864) 242-0029

This 1 day of Sept, 2025

¹ Though counsel admitted he told Applicant the charge was enhanced, I did not see mention of discussing a plea offer in light of the enhancement.

State of South Carolina
County of Anderson

Court of Common Pleas

Clifton E. Smith)
)
 Plaintiff,)
 v.)
 State of South Carolina)
)
 Defendant.)

Transcript of Record
2022-CP-37-00329

September 9, 2025
Anderson, South Carolina

B E F O R E:

The Honorable Jane H. Merrill, Judge.

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

Susannah C. Ross, Esquire
Attorney for the Plaintiff

Ryan T. Kowalski, Esquire
Attorney for the Defendant

Lisa Scott
Circuit Court Reporter

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E X H I B I T S

<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID.</u>	<u>EVD.</u>
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(No exhibits.)

1 Assistant Solicitor Jason Alderman prosecuted the
2 case.

3 On November 19th, the jury convicted applicant
4 as indicted. Judge McIntosh sentenced applicant to
5 15 years imprisonment for assault and battery of a
6 high and aggravated nature.

7 Applicant filed timely notice of appeal.
8 Defendant -- appellate defender Lara Caudy perfected
9 applicant's appeal by filing a brief of the
10 following issue: Whether the trial court abused its
11 discretion in not allowing him to impeach the
12 testimony of the victim by introducing evidence of
13 the victim's prior convictions.

14 Following briefing, the Court of Appeals
15 affirmed applicant's conviction and sentence as
16 *State v. Clifton Eugene Smith*, 2022-UP-167. That
17 was filed on April 6th of 2022. The remittor was
18 returned on April 29th.

19 Just briefly, applicant filed an initial PCR
20 application on April 8, 2020, alleging various
21 allegations of ineffective assistance of counsel.
22 We made a return, a motion to dismiss without
23 prejudice because of his pending direct appeal at
24 the time. And Judge Maddox signed an order
25 dismissing that application without prejudice, which

1 brings us to the present application where the
2 applicant is alleging he's being held in custody
3 based on allegations of ineffective assistance of
4 counsel, abusive discretion.

5 Ms. Ross has provided us with an amended
6 application last week reflecting -- beg the Court's
7 indulgence -- alleging allegations of failure to
8 object, failure to preserve the record, and failing
9 to request credit for time served, as well as due
10 process violations in the indictment procedure.
11 Applicant requests relief in the form of the
12 reversal of the sentence and a new trial.

13 Before this Court are the Oconee County Clerk
14 of Court records who bear the subject convictions,
15 applicant's records from SCDC, a full and complete
16 record of applicant's direct appeal, including the
17 trial transcript, and the records of the current PCR
18 action.

19 So we -- we have made a partial motion to
20 dismiss the allegations of abusive discretion on the
21 part of the judge. Before I do that, I would just
22 like Ms. Ross to state on the record which
23 allegations they're proceeding on.

24 MS. ROSS: Judge, again, I outlined the
25 allegations that I saw in the amended application.

1 So I'll reserve the right pursuant to *State v. Love*
2 if other allegations become clear during the
3 testimony of the witnesses to add those. I do
4 understand the limits of PCR, so I would just ask to
5 reserve the dismissal and the allegations till the
6 end of the hearing.

7 MR. KOWALSKI: All right. And just to be
8 clear, you're -- so you are proceeding with all of
9 the allegations of ineffective assistance of counsel
10 in the amended application filed September 3, 2025;
11 is that correct?

12 MS. ROSS: Yes, Your Honor.

13 THE COURT: Okay. And, Mr. Kowalski, if the
14 State wishes to renew that motion to dismiss at the
15 conclusion of the hearing once all evidence is in,
16 I'll certainly hear it then.

17 MR. KOWALSKI: Thank you, Your Honor. At this
18 time, I'll turn things over to Ms. Ross.

19 THE COURT: All right. Ms. Ross, you may call
20 your first -- first witness, unless there may be
21 anything you need to put on the record before that.

22 MS. ROSS: No, Your Honor. I'll just go ahead
23 and call Mr. Smith to the stand.

24 (Witness approached.)

25 THE CLERK: If you'll raise your right hand.

1 THE APPLICANT: (Complying.)

2 THE CLERK: Do you swear or affirm to tell the
3 truth, the whole truth, and nothing but the truth?

4 THE APPLICANT: Yes, ma'am.

5 THE CLERK: Okay. You can have a seat.

6 THE APPLICANT: (Complying.)

7 Clifton E. Smith,

8 having been produced and first duly sworn as a
9 witness on behalf of the Applicant, then testified
10 as follows:

11 DIRECT EXAMINATION

12 BY MS. ROSS:

13 Q. Hi there, Mr. Smith. You understand with the
14 PCR, the remedy you can get is to have the case
15 remanded back to Oconee County and it just starts
16 over?

17 A. Yes, ma'am.

18 Q. And knowing that, how do you want to proceed?

19 A. Forward.

20 Q. All right. And -- and we've discussed that
21 before now, the ramifications of each one?

22 A. Yes, ma'am.

23 Q. Okay. Now, you have alleged ineffective
24 assistance of counsel. And with that standard, I
25 have a number of allegations that I outlined, but

1 just give me some background about the charges
2 against you and how things happened, sort of a time
3 line.

4 A. Well, when I was arrested, from the time I was
5 arrested, not all the evidence was entered into
6 court -- I mean, entered into evidence. It was just
7 destroyed all the way through the trial. I mean,
8 that was before the trial.

9 Q. Well, what was your charge? You were arrested
10 and what were you charged with?

11 A. Simple assault at first.

12 Q. Okay. Assault and battery, first degree?

13 A. Assault and battery, first degree.

14 Q. All right. And -- and that was your only
15 charge for eight months, a year, something like
16 that?

17 A. Yes, ma'am. A thirty-day charge. The other
18 one was a public drunk charge, but I never got out
19 of the vehicle for -- for -- to be charged with
20 public drunk. I was still sitting in the vehicle
21 when the officer arrived.

22 Q. Well, let's talk about the charge of assault
23 and battery, first degree. The warrant you had when
24 you were arrested after that incident, after they
25 analyzed -- I guess, who was the victim in this

1 case?

2 A. I was the victim. I said -- I said I was, but
3 they say he was. He will -- he was hit -- he
4 assaulted me from behind, so I don't see how they
5 figured that Mr. Reid was the victim.

6 Q. And his name was Michael Reid?

7 A. Yes, ma'am.

8 Q. And how did you know him?

9 A. I was dating his mother.

10 Q. Okay. And -- and he admitted and you said too
11 that he hit you first?

12 A. He admitted in court that he assaulted me from
13 behind. I was in the front seat. He was in the
14 back seat and he assaulted me from behind. Beat me
15 until I -- until he knocked me out.

16 And when I came to, I fought -- I fought back.
17 I finally got out of the seatbelt and fought back.
18 Because in those cars -- the new cars, you can't get
19 out of the seatbelt until it's stopped and in park.

20 Q. Okay.

21 A. And I couldn't get out of the seatbelt. He was
22 just beating me. He said he only hit me one time,
23 but he -- in my opinion, it was a hundred times. It
24 was plenty. He beat me until he was tired.

25 Q. And you said you were knocked out briefly and

1 came to and took off your seatbelt and then ---

2 A. Yes. Yes, ma'am.

3 Q. --- pulled out a knife?

4 A. And cut him. And he had a gun. He had a -- he

5 had put it back in a backpack. When he -- every

6 time he would go for the gun, I would cut him, you

7 know, until -- until he stopped. I said, "Man, you

8 keep going, you're going to die." I said, "You're

9 going to kill yourself."

10 Q. Okay.

11 A. And that's what happened right there.

12 Q. And how big was this knife?

13 A. It was a 200 Gerber. It goes on a key chain.

14 Q. All right.

15 A. It's a nail knife.

16 Q. And would you describe it? Were you intending

17 to kill him or cause his death?

18 A. I was just wanting him to stop trying to get

19 the gun so he could shoot -- shoot me.

20 Q. Okay. So you were just ---

21 A. And he was ---

22 Q. --- were you turning around in the seat and

23 just slashing? Is that ---

24 A. Yes.

25 Q. --- true?

1 A. I wasn't stabbing. I was just slashing at him.

2 Q. Okay. Now, let's go back to this time line.

3 So you're charged with assault and battery, first

4 degree, and it looks in like in February of 2018.

5 Does that sound about right?

6 A. Yes. The incident happened in December,

7 December 26th of '17. And they came ---

8 Q. Okay.

9 A. --- three months later with the -- with this
10 ABHAN.

11 Q. Okay. According to what I saw from the
12 records, it looked like before you were charged with
13 the ABHAN -- well, you tell me. You were charged
14 with the ABHAN. At some point, you went down the
15 road for a probation violation?

16 A. No, ma'am.

17 Q. Okay.

18 A. I never went -- I never was. They -- she took
19 me to court on the violation of probation. And the
20 judge wouldn't give her the violation because I
21 hadn't been convicted of this crime yet.

22 Q. Okay.

23 A. So the whole time I was held in Oconee County,
24 I was being held on this charge. Never was I --
25 they didn't revoke my probation until the day, the

1 19th, November 19th of 2019.

2 Q. Okay. And that wasn't my understanding about
3 what was put on the record at page 49 and 53 during
4 your trial.

5 A. Yes, ma'am. I know that was wrong.

6 Q. Okay.

7 A. That's the reason they never gave me all my
8 jail time credits. I never got out. I still --
9 they still owe me for, like, three months, a little
10 over three months.

11 THE COURT: And, Ms. Ross, excuse me. Can you
12 tell me where you were looking when you said that
13 wasn't your ---

14 MS. ROSS: Well ---

15 THE COURT: --- are you looking at a
16 transcript?

17 MS. ROSS: --- now I'm confused a little bit.

18 THE COURT: I was going to try to follow along.
19 I'm sorry.

20 MS. ROSS: Yeah, I agree. Okay. On page 49.

21 MR. KOWALSKI: I'm seeing page 48 ---

22 MS. ROSS: Is it 48?

23 MR. KOWALSKI: --- the probation violation.

24 BY MS. ROSS:

25 Q. On page 48 and 49, there's a discussion about

1 why you weren't appearing at your trial. Initially,
2 the case was called to trial and you weren't there;
3 is that correct?

4 A. I never knew anything about it.

5 Q. Okay. And -- and it's saying, "He came here
6 for a probation violation in December of 2018. The
7 judge sentenced him on that probation, and then he
8 was released and sentenced -- and sent to
9 Spartanburg County."

10 A. No, ma'am. I was not released from Oconee
11 County. They picked -- the Spartanburg County came
12 and picked me up, transferred -- and transferred me
13 to Spartanburg County where I had a meth violation.
14 Possession with no -- not with intent. Possession
15 of meth, simple possession. And that's what I was
16 sent on.

17 When I finished that, I wasn't being -- I
18 didn't get any time for all that. They just
19 released me from Spartanburg County on -- I don't
20 know what the date was. That's been five years ago.

21 Q. Okay. Well, you've alleged ineffective
22 assistance of counsel. Let's get back to that. Did
23 you meet with your lawyer enough to prepare for
24 trial?

25 A. Never.

- 1 Q. And why not?
- 2 A. I never could get in touch with him.
- 3 Q. Okay.
- 4 A. I tried to call Mr. Cole, and I never could get
5 in touch with him.
- 6 Q. Did y'all discuss potential defenses?
- 7 A. No.
- 8 Q. Did y'all discuss a plea offer?
- 9 A. No.
- 10 Q. Did you understand any kind of context of why
11 your charge had turned in from assault and battery,
12 first degree, which carries up to 10 years, to
13 assault and battery, high and aggravated, which
14 carries up to 20?
- 15 A. No, ma'am. I never understood why. Nobody
16 explained it to me.
- 17 Q. Did he ever talk to you about it?
- 18 A. At trial. We discussed it at trial, yes, but
19 it was already -- we was already in trial by then.
20 They done picked the jury and everything.
- 21 Q. So when did you realize the charge was ABHAN
22 and not assault and battery, first degree?
- 23 A. The 18th of November I think it was, the 17th
24 or 18th. The day we started the trial.
- 25 Q. Okay. And that was November 2019, correct?

1 A. I think it was the day before that. I think it
2 was on the 18th if I'm correct ---

3 Q. Okay.

4 A. --- because we had a trial.

5 Q. But, I mean, the year was 2019?

6 A. Right. Yes, ma'am.

7 Q. How did you eventually come to court for your
8 trial if you didn't get notification? How did you
9 end up there at the trial?

10 A. Somebody from the solicitor's office came and
11 picked me up. I was fixing to go work, and they
12 picked me up and took me straight to court --
13 straight to trial.

14 Q. Okay. Now, briefly, going back to Michael
15 Reid, were you aware of his prior criminal record?

16 A. Yes, ma'am.

17 Q. And do you know what that record was or what
18 did you think it was?

19 A. Possession of a weapon during -- a drug -- it
20 was crossing state lines with drugs and driving
21 under suspension, fleeing blue light. I think that
22 covers it right there.

23 Q. Did you know him to regularly carry a weapon?

24 A. All the time. It was a 9-millimeter Ruger
25 Model 98.

1 Q. And did you talk to your lawyer about that?

2 A. He had two guns at the time. He had a sawed
3 off 20-gauge shotgun, which Danny Day -- I told him
4 what it was. It was an Ithica Model 66. It was the
5 only lever-action bolt breech loading shotgun made.
6 And somebody had modified it with a ventilated
7 barrel.

8 So I told him, I said, "It can only be for one
9 thing, and that's to trap and skeet shoot." And
10 Danny Day found out that the gun had come from a
11 judge's house. It was stolen from a judge's house.

12 Q. Okay.

13 A. Some -- I guess he's the only judge that was in
14 Oconee County. I mean, I remember him telling me
15 that. Mawry or something like that.

16 Q. And -- and Michael Reid was not questioned
17 about his prior record in front of the jury, was he?

18 A. They never brought anything up about Mr. Reid.
19 He had outstanding charges at the time, more
20 outstanding charges -- fleeing a blue light,
21 possession of meth.

22 Q. All right. And just going back. Do you think
23 you got -- do you think that the fact -- do you
24 think you got a fair shake at a trial?

25 A. No, ma'am. No. Because they never even seen

1 any evidence against him or his prior criminal
2 history against him.

3 Q. Had you seen him put the guns in the car? Did
4 you know him to have guns?

5 A. I watched him put the guns in a bookbag, a
6 backpack, and put them in the car. Put them on his
7 back and carry them to the car and put them in the
8 back seat with a dog.

9 Q. Okay. And you were -- so the reason you pulled
10 the knife on him was what?

11 A. When I saw he didn't have a gun anymore, he was
12 threatening me. He says, "Smith, what you going to
13 do about me beating your ass like that? What you
14 going to do about that? You feel -- you feel like
15 you need to -- you know, you need to retaliate?"

16 Well, I didn't say anything. I just come
17 across the seat ---

18 Q. All right.

19 A. --- and saw that he didn't have the gun and
20 that it was in a backpack. I knew where it was. I
21 heard him zip it up, and that's when I saw it. If
22 you want -- I was defending myself because he was
23 going to assault me again.

24 Q. And the woman in the car who was driving the
25 car, who was she?

1 A. His mother.

2 Q. Now -- yeah, how did -- what was her -- her
3 testimony was different. She sort of said there was
4 an initial attack. What did you think of her
5 testimony?

6 A. Well, they proved that she was -- that she
7 perjured herself in court.

8 Q. And it changed from the prior testimony?

9 A. Yes, ma'am. It changed two times, two
10 different. And she wrote a statement at the
11 beginning of the initial day of the -- that I got
12 arrested of the incident. And then 12 days later,
13 they put another statement into testimony.

14 Q. Do you know the difference in the statements?

15 A. One where Todd slapped Cliff and Todd hit
16 Cliff. That was the only word different.

17 Q. All right. And, initially, she said, "Todd hit
18 Cliff."

19 A. Right.

20 Q. And then it turned to slap?

21 A. Slap.

22 Q. And when did the delay come in?

23 A. When he knocked me out. That's when I --
24 that's -- I was knocked out. I was bleeding
25 profusely.

1 Q. And talk a little bit about that. What did --
2 what were your injuries?

3 A. Busted nose. Ears bleeding. My mouth all the
4 way around was -- I mean, I was bleeding everywhere.
5 Nose, eyes.

6 MR. KOWALSKI: Objection, Your Honor, for
7 relevance.

8 THE COURT: Overruled. I'm going to allow it
9 given the nature of the complaints he's made
10 regarding ineffective assistance of counsel, so I'm
11 going to allow this.

12 MS. ROSS: And, Judge, we'd argue it goes to
13 his argument of self-defense, and then some comments
14 made during closing.

15 THE COURT: Okay.

16 BY MS. ROSS:

17 Q. What were your injuries? As far as the
18 hospital, did you have a hospital bill? Did you --
19 how long did they keep you there?

20 A. Just a couple of hours. They sutured my
21 fingers up. I was cut.

22 Q. All right. And as far as bleeding, there was a
23 picture of you covered in blood that was presented
24 at trial where your face had blood on it.

25 A. I was bleeding from my scalp, my ears, all over

1 my face, my head.

2 Q. And do you recall the solicitor in closing
3 arguing that it was Todd's blood, not yours, that
4 was all over you?

5 A. Yes, ma'am. There wasn't a drop of Todd's
6 blood on me, except maybe on my hand. Maybe on my
7 hand. Everywhere was mine.

8 Q. And did your lawyer object to that comment ---

9 A. No.

10 Q. --- during closing? And -- and was there any
11 DNA or any kind of proof or evidence presented in
12 trial that it was anything other than your blood all
13 over you?

14 A. Not that I know of.

15 Q. Now, I have something about failure to request
16 time served pursuant to 24-13-40, and that was
17 something you mailed to me. What time served are
18 you talking about?

19 A. Well, I should get credit for 23 months, but
20 I -- they only want to give me 13 because I was on
21 bond. They had me on -- I was out on bond when I
22 was out.

23 Q. Okay.

24 A. They had a hold on me.

25 Q. All right. So it doesn't have to do with being

1 sent down the road or anything like that?

2 A. No.

3 Q. Okay. I don't have any further questions for
4 you. Is there anything else you'd like to put on
5 the record as far as allegations of ineffective
6 assistance of counsel or how your trial could've
7 ended differently if your lawyer had done different
8 things?

9 A. I believe we used up all the evidence against
10 -- I mean, his criminal history and the evidence
11 from the hospital that I -- you know, the pictures
12 of me and the sutures that I had in my hands, which
13 I don't know. I didn't cut myself. I don't know
14 how I got cut, but there was a knife in the evidence
15 and the real floorboard at his feet. And it's
16 mentioned on the shoulder cam, "What are we going to
17 do with this?" What happened to the weapons? I
18 don't know. I don't understand that. How can the
19 State lose all that, when I know it was there?

20 Q. And when you turned around and pulled that
21 knife on, I guess you're calling him, Todd Michael
22 Reid?

23 A. Yes.

24 Q. Were you in fear for your life or what was ---

25 A. Yes, ma'am. Yes. I was in fear for my life.

1 Q. And do you think that came across well during
2 your trial?

3 A. No. They never said he threatened me or
4 nothing. They -- they act like I just attacked him
5 for no reason out of the blue.

6 Q. And because the -- Todd's prior record didn't
7 come in at all ---

8 A. No.

9 Q. --- the jury didn't hear anything about him
10 having weapons in the past or drugs on him?

11 A. He was on probation. He should've been locked
12 up, too. He was on probation, too. They didn't
13 even arrest him.

14 MS. ROSS: Okay. I have no further questions.
15 Please answer any questions the attorney general
16 has.

17 THE COURT: Cross-examine?

18 MR. KOWALSKI: Thank you, Your Honor.

19 CROSS-EXAMINATION

20 BY MR. KOWALSKI:

21 Q. Mr. Smith, before your trial, how many times
22 did you meet with Mr. Cole?

23 A. None. Once at the county if you want to call
24 that a meeting.

25 Q. What did you guys talk about?

1 A. "I'm your attorney. "I'll be representing you.
2 I'll get back with you later."

3 Q. That's all he said?

4 A. That's it.

5 Q. And can you tell me, were you out on bond
6 before trial?

7 A. They never gave me a bond. They just told
8 Spartanburg County to release me. I never signed
9 anything from Oconee County. I don't even know how
10 they did it or why they did that.

11 Q. So you were -- your -- your testimony is that
12 you were in Spartanburg?

13 A. Yes, sir.

14 Q. In Spartanburg lockup the entire time?

15 A. No. I was in Oconee. Spartanburg County came
16 and picked me up. They took me to Spartanburg
17 County for 37 days. I got out. And they was -- I
18 was ready for Oconee to come back and get me. They
19 said, "Release him." So on an ABHAN charge, I got
20 released on a PR bond. Is that possible?

21 Q. So before the -- when the trial started, you
22 were out on bond?

23 A. Ten months.

24 MR. KOWALSKI: Beg the Court's indulgence. I
25 have no further questions.

1 THE COURT: All right. Redirect?

2 MS. ROSS: None, Your Honor.

3 THE COURT: All right. Mr. Smith, you can step
4 down. Thank you.

5 THE APPLICANT: Thank you.

6 (Witness excused.)

7 THE COURT: Does the applicant have any other
8 witnesses?

9 MS. ROSS: No, Your Honor.

10 THE COURT: All right. State, you can call
11 your first witness.

12 MR. KOWALSKI: The State calls Mr. Gregory Lee
13 Cole.

14 (Witness approached.)

15 THE CLERK: Will you raise your right hand?

16 THE WITNESS: (Complying.)

17 THE CLERK: Do you swear or affirm to tell the
18 truth, the whole truth, and nothing but the truth?

19 THE WITNESS: Yes.

20 THE CLERK: Thank you.

21 GREGORY LEE COLE,

22 having been produced and first duly sworn as a
23 witness on behalf of the State, then testified as
24 follows:

25 DIRECT EXAMINATION

1 BY MR. KOWALSKI:

2 Q. Mr. Cole, can you tell me about your -- how
3 long you've been practicing law for?

4 A. I've been practicing law since 2012, and been a
5 general practice for most of -- basically, for all
6 of my career.

7 Q. And how much of your experience has been in
8 criminal?

9 A. I would say approximately half of what I do is
10 criminal law.

11 Q. So regarding Mr. Smith, do you recall
12 approximately how many times you met with him?

13 A. To the best of my recollection, we met several
14 times when he was still in jail prior to me being
15 able to get him released on a PR bond.

16 And then after that, he did not contact --
17 contact my office. And we had attempted to contact
18 him several times to speak with him again at the
19 address and phone numbers that we had for him, but I
20 was never able to get in touch with him after that.

21 So then it would've been -- the next time we
22 met would've been immediately prior to his trial.

23 Q. So when you -- when you met with him while he
24 was in jail, where was that if you can remember?

25 A. It was in the jail's -- the best of my memory,

1 by that time the -- they were at what I call the new
2 jail at Oconee County and the meetings were in a
3 private room with just me and him.

4 Q. Did you feel you had met and spoken with him
5 enough before trial to be -- in order to be prepared
6 for the trial?

7 A. Yes. Because I met with him and got the
8 information that was sufficient from him and then
9 from the discovery, I was prepared to go forward.
10 It's not an ideal situation, but -- and I believe I
11 did bring -- you know, move for a continuance based
12 on that period of time. And there was -- we thought
13 it was going to be a trial in absence, so I was
14 certainly moving for a continuance based upon that.
15 But all things considered, I was prepared to go
16 forward. It just was not an ideal situation.

17 Q. So you mentioned the discovery. You -- you
18 requested discovery in this case?

19 A. Yes, I did.

20 Q. Did you receive it in its entirety?

21 A. Yes, I did.

22 Q. Were you able to review any of it with the
23 applicant?

24 A. The best of my memory, yes, we did review
25 discovery when I met with him in jail.

1 Q. Can you tell me about the State's evidence in
2 this case.

3 A. The evidence was basically -- I think I
4 characterized it from the beginning to Mr. Smith as
5 it seemed to me like an imperfect self-defense case,
6 that it was -- he had some arguments to be made, but
7 the problem with going to trial was going to be the
8 severity of the injuries to the alleged victim and
9 whether it was proportionate to what the victim --
10 to the victim's striking my client.

11 Q. Could you give your best recollection of what
12 occurred the night of the incident?

13 A. To the best of my recollection without exact
14 facts of the case, I did not review thoroughly prior
15 to today. It was more of the specific allegations
16 that were made of ineffective assistance of counsel.

17 But to the best of my recollection that he was
18 in a car with his -- my client -- I'm sorry -- was
19 in a car. His girlfriend was driving the car. And
20 the girlfriend's son was in the car, as well. And
21 my client's assertion was that the girlfriend's son
22 attacked him and -- but it was just with his hands.

23 Now, as to the -- and the best of my memory,
24 there was no gun or anything that was recovered from
25 the -- the -- the son. And that the -- that my

1 client responded to this attack by my -- by the
2 son's hands by cutting him very severely multiple
3 times with a knife. And this was corroborated by
4 the testimony of my client's girlfriend who was the
5 mother of the son.

6 Q. So going back a bit, you briefly mentioned that
7 there was concerns that it would be a trial in
8 absentia. Could you go into a little bit of what
9 happened there and what you did as a result?

10 A. So, again, based on the -- my review of the
11 record and best of my memory, we had a -- Mr. Smith,
12 we had a probation violation hearing in -- I believe
13 it was December of 2018. And he was sentenced to
14 six months on his probation violation hearing.

15 At that time, we had an offer of probation,
16 plea to assault and battery, first degree, probation
17 that would have resolved this charge.

18 Mr. Smith rejected that offer at that time.
19 The Court required us to go forward on just the
20 probation violation. He was sentenced to six
21 months. My understanding, because of the time he
22 already served, that basically was a time-served
23 sentence.

24 Then, I negotiated with the assistant solicitor
25 prosecuting the case and got him to consent to a PR

1 bond for Mr. Smith because we knew there was some
2 issue in Spartanburg County and because there was a
3 probationary offer and because he had been sentenced
4 on the -- the probation violation.

5 And so the solicitor consented to that. It was
6 signed by the judge. And I believe that Mr. Smith
7 was released either in January, early February of
8 2019. And I don't know what happened to him after
9 that. At that point in time, I heard his testimony
10 this morning that he went to Spartanburg for some
11 period of time and then he was released.

12 Regardless, he never contacted my office after
13 he was released. We had given him in writing, and I
14 told him that if he was released, to contact me and
15 let me know his current contact information, and I
16 never heard from him again until -- I think it was
17 -- basically, it was either the day of the trial or
18 the day before the trial.

19 Q. So did you keep the applicant updated
20 concerning plea offers in the case?

21 A. Yes. The original plea offer that we had was a
22 probationary offer. Even when we finally -- and I
23 endeavored to contact him through the phone number
24 and addresses that we -- that I had been given when
25 I was appointed to this case. And even -- I think

1 we went through probation and got the most recent
2 information they had and attempted to contact him.

3 The offer, even as late as on the eve of trial,
4 the solicitor, before he -- before the trial week,
5 the solicitor was willing to still allow him to
6 plead to assault and battery, first, and get a
7 probationary sentence, or it would be a
8 recommendation of a probationary sentence.

9 When he finally showed up, after we had -- I
10 think we had had the stand your ground motion with
11 some other pretrial motions, he finally appeared at
12 the courthouse. I spoke to him. Spoke to the
13 solicitor again. The solicitor agreed at that time
14 even that he could plead to assault and battery,
15 first degree, and it wouldn't be a recommendation,
16 but the solicitor and the victim would not oppose a
17 probationary sentence for all of them.

18 My advice to him was to take those offers. And
19 he rejected that and wanted to go to trial, which is
20 what we did.

21 Q. Can you tell me about the change to ABHAN that
22 was mentioned today?

23 A. So my understanding, the change of ABHAN, my
24 client was first arrested assault and battery, first
25 degree.

1 A former public defender in Oconee County,
2 Danny Day who is now deceased, first represented him
3 in this matter.

4 Then, for whatever reason, the -- there was an
5 order of substitution of counsel. I was appointed
6 to represent him pursuant to a 608 contract that I
7 had at that time. The indictment happened while
8 Mr. Day was still representing -- was still
9 representing Mr. Smith.

10 And so by the time I got the case, it was
11 all -- we already had the indictment. And that
12 would -- when we -- when I met with him at the jail,
13 we discussed that, that he was indicted for assault
14 -- for ABHAN and -- and discussed what the
15 indictment process and how all of that goes.

16 Q. So moving on to what occurred during the trial,
17 I believe there was a reference to applicant being
18 on probation. Do you recall that occurring?

19 A. Yes. From my review of the transcript and the
20 best of my memory, it was my -- a witness that was
21 the State's direct examination of my client's
22 girlfriend who was a witness. And she -- the State
23 did not direct her, didn't ask her if she was on
24 probation or whatever. She just came out with it
25 during -- as part of her response to another

1 question. Something to the effect of, "I was
2 driving him to his probation office or probation
3 appointment," or something to that effect.

4 Q. Did you see any reason to object to that?

5 A. At the time, I -- that she -- she blurted it
6 out so fast and then started going on with something
7 else and then there was immediately another
8 question, so I -- I did not. It was already said
9 before I had time to object. And it was not such an
10 egregious thing that the Court would've granted a
11 mistrial or procured -- or even perhaps a curative
12 instruction, but I thought the balance of
13 everything, that wouldn't matter.

14 Q. Was his being on probation ever mentioned in
15 front of a jury at any other point?

16 A. Not to my -- my memory or my knowledge from
17 review of the transcript.

18 Q. Do you think that that -- mention of probation
19 had any effect on the outcome of the trial?

20 A. No.

21 Q. So I also have that the applicant has alleged
22 that you failed to preserve the record as to whether
23 the victim's conviction for fleeing or attempting to
24 allude a police officer was admissible. Can you
25 tell me about how you tried to get the victim's --

1 the alleged victim's prior record into the record,
2 if at all?

3 A. Yes. We had a -- I moved, outside the presence
4 of the jury, to allow for that criminal offense as
5 well as others that that witness had committed for
6 me to be able to bring that up during
7 cross-examination.

8 And the judge denied all of -- the judge denied
9 that request as to all of the criminal offenses that
10 the witness had committed in the past. After a
11 lengthy back and forth with the State and discussion
12 of case law, the judge ultimately made -- made that
13 decision outside the presence of the jury.

14 Then, when we got back into -- when I got into
15 the cross-examination of that witness, I did not
16 feel it would be appropriate to attempt to bring
17 that up in the presence of the jury when the judge
18 had expressly ordered that I could not do so.

19 And the judge -- prior to the jury coming back
20 in, the judge noted my objection on the record. So
21 I think it was sufficient to preserve that for
22 appellate review.

23 Q. And you may have already mentioned this, but at
24 the outset of the trial when Mr. Smith was absent at
25 the very beginning, did you move for a continuance?

1 A. Yes, I did.

2 Q. Can you tell me about that?

3 A. I moved for a continuance based on -- I went
4 through with the Court my history of not being able
5 to -- not having any contact with him due to him
6 getting out and us not having a phone number or
7 address for him, and due to the -- just kind of
8 coming up on a trial docket after it had been so
9 long and that asked for more time to try to find
10 him. And also, specifically, that it would be
11 highly prejudicial to have to go forward at a trial
12 in his absence when self-defense was our defense.

13 And he wanted to testify and was on behalf, and
14 I think it was essential if he was -- if we were
15 going to make an argument of self-defense, he
16 would've had to have testified on his behalf.

17 Q. And I also have the issue of credit for time
18 served. Do you recall any -- anything about him
19 getting or not getting credit for time served?

20 A. So I looked -- at the -- the sentencing after
21 the trial, I -- I do admit that I should have
22 brought up credit for time served. However, I guess
23 just with the emotions of the trial and it being
24 over with and then I was focusing on trying to speak
25 to the judge about mitigating factors as far as his

1 sentence, and so I did not specifically bring it up.
2 However, of course, you know, by law, he was
3 entitled to time served as the Department of
4 Corrections calculated it.

5 I received a letter and I can't remember if it
6 was from Mr. Smith or from -- he had sent -- maybe
7 sent a letter to the Supreme Court or to the clerk
8 of court or somebody that got forwarded to me after
9 the trial, and that's when I realized that -- that I
10 had not specifically asked for time served credit.

11 So I -- I arranged a phone call with Mr. Smith
12 at that time at the facility he was in at the
13 Department of Corrections. I spoke to him. Of
14 course, the -- sometimes it's hard to speak to him
15 because the letter that I got that mentioned time
16 served in it, I had to decipher. There was all of
17 these, you know, derogatory and inflammatory
18 comments over and over. And then you have the issue
19 about time served in the middle, so it's like
20 separating the wheat from the chaff.

21 And then my phone conversation with him was the
22 same way. I came out of that phone conversation
23 with was that he had an attorney he said that was
24 handling his appeal. That he did not want me to --
25 I offered to go back and investigate the time served

1 issue and make sure he got all of his proper credit,
2 and he told me he did not want me to do anything
3 else for him and that his current attorney would
4 handle it.

5 Q. So just to make sure, you're saying that the
6 applicant did get credit -- some credit for time
7 served?

8 A. Yes. According to my looking back at it, he
9 has got -- he's getting credit for time served. And
10 I don't know again due to the nature of the -- the
11 letter and the conversation I had with him, it was
12 unclear and even somewhat unclear today what
13 additional time served he's claiming, but he is
14 getting -- and I don't remember the exact amount,
15 but he is getting time served credit according to
16 the SCDC website.

17 Q. And just lastly. Do you -- did you see any due
18 process violations concerning applicant's
19 indictments?

20 A. No.

21 MR. KOWALSKI: Beg the Court's indulgence. No
22 further questions.

23 THE COURT: All right. Cross-examination?

24 MS. ROSS: Thank you, Your Honor. May it
25 please the Court?

CROSS-EXAMINATION

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BY MS. ROSS:

Q. Hi there. So it looks to me, the charge was indicted for assault and battery, high and aggravated nature, in May of 2018 when the incident was in December of 2017. Does that sound right?

A. That sounds right.

Q. And that was while Danny Day was still representing him?

A. That's to the best of my memory, yes.

Q. Okay. Now, and your understanding was that because of the offer of probation, you were able to arrange for Mr. Smith to be released on a PR bond?

A. Yes.

Q. You arranged that, so that's how that happened?

A. Yes.

Q. I just marked one thing. I'm going to go a little on the transcript, but in closing at page 243, line 8. The solicitor starts suggesting that it wasn't Mr. Smith's blood on him. You submitted a picture of Mr. Smith with blood all over him taken after the event, correct?

A. Yes.

Q. And the solicitor argues, well, that wasn't Mr. Smith's blood. That was Mr. Reid's blood,

1 correct?

2 A. Yes.

3 Q. And -- and you didn't object?

4 A. No. And I'll tell you why. It seemed as if --
5 as if the -- the way he said it and then the way
6 it's written here that he was -- that that was
7 argument and opinion and was not something he was
8 stating as fact, so that's why I didn't object to
9 that at that time.

10 Q. Okay. But there was no DNA evidence or there
11 was no evidence submitted at the trial that showed
12 that it was, in fact, Mr. Reid's blood all over
13 Mr. Smith?

14 A. To the best of my knowledge, there was not.

15 Q. All right. And just looking at Mr. Reid's
16 interview after the fact. Did you view a video with
17 Mr. Reid with law enforcement after the incident?

18 A. Yes. Yes.

19 Q. And did he seem like he was about to die or
20 dying or had permanent disfigurement during that
21 interview?

22 A. No.

23 Q. And do you think that's maybe why they didn't
24 charge ABHAN initially and charged assault and
25 battery, first?

1 MR. KOWALSKI: Objection. That calls for
2 speculation.

3 THE COURT: I'll sustain that.

4 BY MS. ROSS:

5 Q. All right. Now, just going to that. I do
6 understand that, I guess, Mr. Reid is left on the
7 side of the road untreated could have bled to that
8 death.

9 MR. KOWALSKI: Objection. That also calls for
10 speculation. Oh, and -- and it calls for expert
11 testimony.

12 THE COURT: Can you word the question a little
13 differently?

14 MS. ROSS: Yes. I'll ---

15 THE COURT: I'm going to sustain that, but
16 there might be a way you can ask it differently.

17 BY MS. ROSS:

18 Q. Okay. Mr. Smith was later indicted and charged
19 with ABHAN. Are you aware of the definition of
20 assault and battery, high and aggravated nature?

21 A. Yes.

22 Q. And in part of that is injury that could cause
23 imminent death; is that correct?

24 A. Yes. I believe that's a good summary of it.

25 Q. Not exactly. But there was -- how long would

1 you estimate just looking at the evidence that
2 Mr. Reid was on the side of the road before he was
3 given assistance?

4 A. I'm -- at this point, I'm -- I'm not sure. I
5 would have looked at that at the time, but my memory
6 and going back through the -- the file, I'm not sure
7 at this point.

8 Q. But, clearly, he did not die. He did not bleed
9 to death?

10 A. That's correct.

11 Q. Okay. Just going on to the -- the failure to
12 object to the applicant being on probation. That
13 came in around page 150 through the testimony of the
14 girlfriend?

15 A. That's correct.

16 Q. Now, on page 163 to 173 on the transcript.
17 I'll show it to you. That's where there's
18 discussion back and forth about bringing in
19 Mr. Reid's prior record. And you can look at it.
20 It's 163 to 173. And I believe there's reference to
21 Rule 609 and the Colf factors?

22 A. Yes.

23 Q. And then the judge ultimately determines that
24 you're not going to be able to question that witness
25 on those prior charges, correct?

1 A. That's correct.

2 Q. Now, there did you ever argue that that was
3 more unfair because Mr. Smith had been -- the jury
4 had been allowed to hear that Mr. Smith was on
5 probation?

6 A. I did not make that argument.

7 Q. All right. And just looking at Rule 609, and
8 I'm aware there's *State v. Robinson*, which is
9 discussed in the appellate court opinions, but this
10 is a pretty terrible copy. But with Rule 609, the
11 wording itself, it's talking about the different --
12 it -- it makes a distinction between a witness and
13 the defendant, correct?

14 A. Correct.

15 Q. And it states the evidence that a witness under
16 the accused has been convicted of a crime shall be
17 admitted subject to 403 if the crime was punishable
18 by death or imprisonment in excess of one year, and
19 just to summarize, and then goes back to ten years.
20 Again, ten years in time.

21 And the evidence that an accused has been
22 convicted shall be admitted if the Court determines
23 that the probative value outweighs its prejudicial
24 effect to the accused. Is that your understanding?
25 That's that language of 609 that I just read.

1 A. Yes.

2 Q. Now here, Reid was not the accused?

3 A. That's correct.

4 Q. He was a witness. And so the discussion on the
5 transcript seemed to go directly to the Colf factors
6 and weigh -- as to weighing the prejudicial effect
7 against the State, but I would argue and would you
8 agree that that Rule 609 is talking about prejudice
9 against the defendant when it addresses probative
10 value to prejudicial effect, not any other witness?

11 MR. KOWALSKI: Your Honor, I'd like object at
12 this time. This is a direct appeal issue, and I
13 think given the nature of the context of PCR, I
14 think we're getting into an issue that's better
15 suited on appeal than a PCR.

16 MS. ROSS: We'd argue because this wasn't
17 argued at the trial itself and put on the record, it
18 could not be flushed out during the appeal.

19 THE COURT: And I note -- hold on. I know it
20 was addressed in the appeal. Give me one minute to
21 look one thing up.

22 All right. So I'm looking at the applicant's
23 amended application. And the first one is failure
24 to object. It referenced applicant being on
25 probation, especially when the judge ruled that

1 Witness Reid could not be impeached on his prior
2 drug conviction. And I just looked at the
3 unpublished opinion, and it does make a ruling as to
4 the 609 issue, but I'm going to give a little
5 latitude for his testimony to come in based on the
6 argument from the applicant that the probation
7 reference -- the reference to probation was
8 particularly a problem when the jury also didn't
9 hear about this, so I'm going to allow this in for
10 that purpose.

11 Though, I do agree that the Court of Appeals
12 has already ruled on the legality -- the legal issue
13 of the 609 decision by the Court. So for that
14 reason, I'm going to let you continue asking
15 questions about that based on the argument from the
16 applicant that this relates -- that this affects the
17 probation referenced during the trial, so I'll
18 overrule that objection.

19 MS. ROSS: Thank you, Judge. And I also would
20 just note the footnote in the unpublished opinion
21 that states that one of the charges, it wasn't
22 preserved. There's just a footnote of that.

23 THE COURT: I can see that now, yes, as
24 footnote one. Thank you.

25 BY MS. ROSS:

1 Q. Now, just going back to that. On page 165 or
2 in your arguments about bringing up this prior
3 record, did you -- you did not argue that Colf and
4 its progeny involved questioning a defendant, not
5 any witness in that specific case?

6 A. I did not because the Courts right off the bat
7 referenced *State v. Robinson*, which had recently
8 been decided and was adamant that that was going to
9 be the lens by which the Court evaluated this.

10 And the Court even said regardless of whether
11 it's a witness or a -- or the defendant, that it was
12 the Court's interpretation that -- that the -- that
13 Robinson factors applied specifically as to whether
14 the probative value of the testimony outweigh the
15 potential prejudice in this case to the State.

16 And so that was the -- because the Court kind
17 of stated at the outset that that was the -- that
18 was the lens by which he would -- would -- would
19 consider this, then that -- those -- that's the line
20 of argument I went with.

21 Q. And you never argued that the plain reading of
22 Rule 609 makes a distinction between a defendant and
23 a witness?

24 MR. KOWALSKI: Objection. This has been asked
25 and answered.

1 THE COURT: Sorry. Can you ask the question
2 one more time? What was the question?

3 MS. ROSS: And you failed to argue that the
4 plain wording of Rule 609 makes a distinction
5 between a witness and a defendant, and the wording
6 of 609 states that ---

7 THE COURT: I think he has answered that. That
8 was one of the first questions you asked him about
9 that distinction between witness versus the accused,
10 so I'm going to sustain that objection.

11 BY MS. ROSS:

12 Q. All right. Now, just going on about the
13 continuance motion and being unable to locate
14 Mr. Smith. How, in fact, was he -- how did he come
15 to appear in court that day of trial?

16 A. I remember there being some conversation about
17 the -- the solicitor's office investigators
18 attempting to find him in Oconee County. They
19 are -- the -- the staff there, in my experience, are
20 very accommodating, even to defense attorneys and
21 would help. And they didn't want to have a trial in
22 absence either, and so they volunteered to help try
23 to find him.

24 And I think -- and the Court directed them to
25 do that I believe. I don't think any of that was on

1 the record. I think there was a -- a conference in
2 chambers, but that's the best of my memory was that
3 they were -- somebody from the solicitor's office,
4 an investigator, was able to find him, but I'm
5 not -- I don't remember where.

6 Q. All right. But -- but you had not been able to
7 find him beforehand and -- and discuss the case,
8 right, leading up to the trial ---

9 A. That's correct.

10 Q. --- in preparation? Now, as far as the -- the
11 charge, that's discussed around page 230 to 235 of
12 the transcript. And you had no objection to the
13 charge as given on page 273, line 2. Does that
14 sound correct?

15 A. I -- I can't remember. I just got the first
16 half of the transcript it looks like.

17 MS. ROSS: Let me get it for you. Sorry about
18 that.

19 THE COURT: Ms. Ross, what page number did you
20 cite, 270, where the charge was actually given?
21 What page number was that?

22 MS. ROSS: It was on page 267 is where the
23 charge is.

24 THE COURT: Thank you.

25 MR. ROSS: And as noted, page 273, there was no

1 objection to the charges as given afterwards.

2 THE COURT: Thank you.

3 THE WITNESS: And I'm sorry, Your Honor, may I
4 ask counsel to repeat the question?

5 THE COURT: Of course.

6 BY MS. ROSS:

7 Q. You discussed the charge -- charges and had no
8 objection to the charge as given; is that correct?

9 A. Yes. That appears to be correct.

10 MS. ROSS: All right. And I just point out on
11 page 267. I highlighted some language that
12 discusses the fatal blow, the self-defense
13 instruction.

14 THE COURT: Can you give us a line number?

15 MS. ROSS: Well, let's see. Line 7 and --
16 sorry, 269, line 7, and 267 is the self-defense
17 instruction. And the fatal blow line is line 15.

18 THE COURT: Thank you. I'm sorry I interrupted
19 you. You can repeat your question. I was just
20 trying to follow along as you're asking these
21 questions.

22 BY MS. ROSS:

23 Q. You didn't object to the instruction as given
24 by the judge, did you?

25 A. To the best of my memory, I submitted proposed

1 jury instructions, and then this is what the judge
2 decided, but, no, I did not objection on the back
3 end.

4 Q. All right. And it talks about on page 267
5 about -- about how self-defense wasn't available to
6 a person who uses language contemptuous and
7 unreasonable. Did that apply to this case or have
8 anything to do with the trial here?

9 A. To the best of my -- to the best of my memory,
10 I don't remember anything about contemptuous
11 language coming up in the evidence.

12 Q. All right. And -- and it does appear with that
13 self-defense instruction, would you agree that it
14 seems to be addressing a situation where death is
15 involved, self-defense death, talking about striking
16 the fatal blow, this kind of language?

17 A. It appears to me that it was -- it's like a
18 standard self-defense ---

19 Q. Okay.

20 A. --- which would normally be a fatal situation.

21 Q. All right. And part of that was -- part of
22 self-defense, and that's in the instruction, goes to
23 the mindset of the defendant, is that correct, about
24 whether they perceive they're a threat to be enough
25 to justify their actions?

1 A. I believe so. And then whether a reasonable
2 person is also part of it.

3 Q. Would you agree that whether Mr. Smith knew
4 about Mr. Reid's prior convictions with drug charges
5 and whether he carried a gun or knew him to carry a
6 gun would pertain to that self-defense argument?

7 A. I believe. Yes. I believe it did. And the
8 best of my memory, I did release the issue of drugs.
9 I did question the victim about that during
10 cross-examination.

11 MS. ROSS: Okay. Let me take these back from
12 you. Beg the Court's indulgence. I've got nothing
13 further.

14 THE COURT: And, Ms. Ross, I had one quick
15 question.

16 MS. ROSS: Sure.

17 THE COURT: What page number was that that you
18 referenced regarding the contemptuous language?

19 MS. ROSS: 267.

20 THE COURT: All right. Thank you.

21 MS. ROSS: Yeah, 267, line 2 through 6.

22 THE COURT: Thank you. All right. Redirect?

23 MR. KOWALSKI: Just briefly.

24 REDIRECT EXAMINATION

25 BY MR. KOWALSKI:

1 Q. Can you tell me about any DNA evidence in this
2 case?

3 A. To the best of my memory, there was none.

4 Q. There was -- so there was no DNA evidence
5 produced at trial?

6 A. That -- that's not something that -- that I --
7 again, because that wasn't part of the -- there was
8 nothing about DNA evidence that was part of the PCR.
9 That's not something that I thoroughly looked back
10 at the transcript for. So to the best of my memory
11 today, I can't remember any DNA evidence, but I may
12 be wrong.

13 Q. And do you think that the -- the charges as
14 given after your review of them today had any impact
15 on the outcome of the trial?

16 A. No.

17 MR. KOWALSKI: Beg the Court's indulgence.
18 Sorry, Your Honor.

19 THE COURT: Certainly.

20 BY MR. KOWALSKI:

21 Q. So going back to the DNA evidence, just a point
22 of clarification. Was -- was DNA evidence necessary
23 in this case?

24 A. No.

25 Q. And going to the discussion about retaliation

1 at trial between the defendant and the victim.

2 What -- was the issue that -- was the issue
3 proportionality as far as retaliation?

4 A. Yes. And in my opinion, that was the issue is
5 that the proportionality of the defendant's response
6 to that -- the -- the harm that the victim was
7 causing or might cause to him.

8 MR. KOWALSKI: Beg the Court's indulgence.

9 THE COURT: Take your time.

10 BY MR. KOWALSKI:

11 Q. Given the -- given the level of proportionality
12 between the -- the reaction -- and the reaction to
13 the victim, do you think that -- one moment. Do you
14 think that the prior convictions of the victim
15 would've answered for that?

16 A. No. I don't think they would've been relevant
17 to it.

18 MR. KOWALSKI: I have no further questions.

19 THE COURT: All right. Thank you.

20 MS. ROSS: Just a few, Your Honor.

21 RECROSS-EXAMINATION

22 BY MS. ROSS:

23 Q. In dealing with affidavits for search warrants
24 and different things with law enforcement, have you
25 heard numerous references to the nexus between drugs

1 and guns going together, drug use and possession of
2 guns?

3 A. In the ---

4 MR. KOWALSKI: Objection. That's beyond the
5 scope ---

6 THE COURT: I think it ---

7 MR. KOWALSKI: --- of redirect specifically.
8 Very sorry.

9 THE COURT: Well, I'm not sure until he gets to
10 it because you asked about the proportionality. And
11 I think there was testimony earlier that Mr. Smith,
12 that he knew him to carry a gun. So I think with
13 your questions on redirect about proportionality,
14 this is -- this is fair game. So I'm going to
15 overrule the objection and allow the question to be
16 answered. And, Counsel, you may want to ask it
17 again.

18 BY MS. ROSS:

19 Q. Have you ever heard referenced by law
20 enforcement or the solicitor's between -- of a nexus
21 between guns and drugs? When they search for a home
22 for drugs, they'll also write guns and phones
23 because they often go together?

24 A. Yes. In my experience, I've encountered that.
25 Not anything specific to this case, but in my

1 experience, yes.

2 Q. And you heard Mr. Smith's testimony earlier
3 today that he knew Mr. Reid to carry a gun and to
4 have guns?

5 A. Yes.

6 Q. And while there's no gun brought forward that
7 you knew of, I believe was your testimony in the
8 case, do you recall that the -- Mr. Reid's aunt or
9 sister came to the car and was waiting at the car at
10 the scene when -- just after the incident occurred?

11 A. I do have some recollection of that.

12 Q. And did Mr. Smith ever suggest that she
13 would've taken the guns?

14 MR. KOWALSKI: Objection. This is beyond the
15 scope.

16 MS. ROSS: Well, again ---

17 THE COURT: I -- I'm going to give a little
18 leeway and allow it based, again, on those questions
19 related to proportionality.

20 THE WITNESS: I'm -- I can't -- and I'm --
21 while I'm hesitant, I'm trying to remember if -- if
22 there was. It seems like there was at least an
23 allegation by Mr. Smith that something to do with
24 that. But if there would have been, and I thought
25 there was any way that it was credible or could help

1 his defense, I would have brought it up.

2 BY MS. ROSS:

3 Q. All right. And -- but he did not testify at
4 the stand your ground hearing prior to his trial,
5 did he?

6 A. That's correct, because he wasn't there.

7 Q. All right. So he never had an opportunity to
8 testify until now, and he's saying that he suspected
9 that Reid had a gun. Would that affect the
10 proportionality argument at all in your opinion?

11 A. I'm sorry. Can you repeat that question? I
12 apologize.

13 Q. Well, if Mr. Smith had a reasonable belief that
14 Mr. Reid had access to a gun, would his actions in
15 self-defense, would that affect that proportionality
16 argument at all?

17 A. I -- I -- I think it could have. Certainly, I
18 think it would've been better. We'd have a better
19 chance on the stand your ground motion if he
20 would've been there.

21 MS. ROSS: No further questions.

22 THE COURT: All right. Thank you, Mr. Cole.
23 You can step down.

24 (Witness excused.)

25 THE COURT: Does the State have any other

1 witnesses?

2 MR. KOWALSKI: No, Your Honor.

3 THE COURT: All right. At this time I'll give
4 both sides an opportunity to make some final
5 arguments if they wish. And if the State wishes to
6 renew any of its -- renew its motion to dismiss, I'm
7 happy to hear that, as well.

8 Ms. Ross, if you want to begin, and then ---

9 MS. ROSS: Sure.

10 THE COURT: --- I'll also give you -- since
11 your client has the burden of proof, I'll allow you
12 to make your argument first, and then I'll also
13 allow you to respond to the State's, if they bring
14 up anything new when they argue.

15 MS. ROSS: Thank you, Your Honor. Many of the
16 arguments were outlined in the amended application,
17 some of them more than others.

18 As to -- one thing that seemed to happen in
19 this case, you certainly heard that Mr. Smith was
20 not there at the onset of trial. Some judges really
21 want to hear a Rule 9 argument that specifically
22 states that this continuance request is not based on
23 wasting the Court's time. It's earnest that we --
24 we need this defendant here in the case present.
25 His failure to be there and the failure to get a

1 continuance allowed -- or did not allow stand your
2 ground testimony prior to trial and, certainly, took
3 away a lot from that argument.

4 You heard from Mr. Smith today, and he had told
5 his lawyer in the past that he feared Mr. Reid and
6 knew him to carry a gun. And that led to -- to his
7 actions in arguably self-defense.

8 That's where I get to the argument of the no
9 objection to the charge became problematic because
10 the charge, while is a general self-defense charge,
11 and I understand the charges aren't supposed to
12 mention the specific facts of a case. However, it's
13 talking about a fatal blow, a kind of thing. And
14 that did not seem to be suitable to this case where,
15 you know, the turning around with the knife didn't
16 seem to be the same thing as shooting somebody.

17 And I would argue that that was a bit
18 misleading and confusing charge, especially with the
19 language that the part brought in that inciting
20 language, which really had nothing to do with
21 anything here, more than just to suggest that the
22 defendant would do something like that or did incite
23 it in some way.

24 Now, going back to the -- the pre -- the
25 prejudice, I do recognize that the Court of Appeals

1 came -- you know, did suggest Robinson and go to
2 that and did make a resolution in this case. One of
3 the charges wasn't preserved for review, and I'd
4 argue the other charges weren't effectively
5 preserved. And that at some point were for me and
6 this might be just my -- my idea, but Rule 609 to me
7 clearly makes a distention -- distinction between a
8 witness and a defendant testifying.

9 And we would argue that Mr. Smith was fully
10 prejudiced by the fact that Mr. Reid apparently had
11 no record, while Mr. Smith was on probation for
12 something. To ask the question about the nexus
13 between guns and drugs, that's often cited by law
14 enforcement and allowed. And I think the jury
15 should've been able to hear about that to make a
16 fair determination in the trial.

17 So at this point, I think because those
18 arguments weren't preserved effectively, I think it
19 affected the appellate opinion and should be
20 considered. Thank you.

21 THE COURT: Let me ask you to clarify one thing
22 real quick on your argument ---

23 MS. ROSS: Sure.

24 THE COURT: --- about the 609. And I'm looking
25 at the unpublished opinion, the footnote one. So --

1 and I'm just trying to make sure I understand your
2 argument as to that.

3 You're saying it -- it would've -- as to
4 whether the victim's prior conviction for fleeing or
5 attempting -- attempting to allude a police officer
6 is admissible, this issue is not preserved for
7 appellate review. Is it your argument that that
8 specifically would've mattered and is prejudicial,
9 or that the Court of Appeals didn't give a lot of
10 analysis? I'm just trying to follow the 609
11 argument a little bit, so would you clarify that for
12 me?

13 MS. ROSS: Thank you, Judge. With that one,
14 the Court of Appeals did seem to suggest that that
15 charge -- that issue was not preserved.

16 And, certainly, a jury hearing that Mr. Reid
17 had fled police at some time -- at some point could
18 allow the jury to make an assumption that he was a
19 dangerous person who had fled police in the past.
20 And so for that, I would separate that out and argue
21 that that was not preserved for the record and for
22 review.

23 And then my argument in light of the other
24 charges and -- and the law in this opinion in
25 Robinson and some others, I would just argue that we

1 are going off the path of fairness in criminal
2 trials in this situation where the witnesses are
3 treated as if they were the accused. I think the
4 prejudicial effect that's considered in that 609
5 weighing -- weighing and the Colf analysis to some
6 degree is a prejudicial effect against a defendant.
7 The defendant is the right -- the one who has a
8 right to a fair trial. So we'd argue -- I'd argue
9 that that has been become misapplied.

10 THE COURT: So how is that -- if he -- this --
11 this argument you're making about the 609, I
12 understand that that one charge wasn't preserved,
13 but this argument you just made, how is that a PCR
14 issue and not a direct appeal issue?

15 MS. ROSS: Because Mr. Cole, when he was
16 arguing -- when he was making the argument to Judge
17 McIntosh during the trial, did not specifically
18 point that out and to end up 609 and say the wording
19 of 609, Judge, is this. There should be a
20 distinction. The Colf case where the Colf factors
21 are mentioned is one that's talking about a
22 defendant, not a witness.

23 Now, I do understand Robinson's out there, but
24 I think the argument could and needed to be made.

25 THE COURT: Okay. Thank you. Now I

1 understand. Making sure I was following on that.

2 MS. ROSS: Thank you, Judge.

3 THE COURT: Happy to hear from you.

4 MR. KOWALSKI: Thank you, Your Honor. So,
5 briefly, as far as the jury charge, I'd like to
6 direct the Court's attention to *State v. Atkins* that
7 establishes that if one part of a charge is faulty,
8 that doesn't render the entire jury charge
9 erroneous. Ultimately, Your Honor, I just ask that
10 you review the entire record in this case.

11 And you heard Mr. Cole testify today about the
12 strategy behind specifically Mr. Reid's prior
13 convictions, trying to get those in. You can review
14 his -- you can review the record as far as his
15 arguments for the continuance, and he testified
16 about that here today.

17 He also testified that he was able to meet and
18 speak with the applicant multiple times before the
19 trial. To the point that he felt that he was
20 sufficiently prepared for trial and he was able to
21 communicate all plea offers to the applicant here.

22 I would also direct the Court's attention
23 concerning the credit for time served issue to --
24 just to Section 21-13-40 about allocation of credit
25 given. The language is plain in the statute about

1 the proper way to allocate time served.

2 Also, concerning the -- concerning the issue of
3 preservation, I'd like to direct the Court's
4 attention to *Millage v. State*. And the holding
5 there is that an -- an issue that is allegedly not
6 preserved must have -- there must be a showing that
7 it would have been successful on appeal. Oh, in
8 order to prove prejudice, you have to show that it
9 would've been successful on appeal.

10 And so, again, Your Honor, we just -- we -- the
11 State just asks that you review the record in its
12 entirety and review Mr. Cole's testimony here today
13 regarding the strategy behind his objections and
14 arguments he made at trial and about the time he
15 spent in consultation with the applicant.

16 THE COURT: Thank you. Ms. Ross, anything you
17 need to add?

18 MS. ROSS: No, Your Honor.

19 THE COURT: All right. I will take this under
20 advisement and issue an order shortly.

21 MR. KOWALSKI: Thank you, Your Honor.

22 MS. ROSS: Thank you, Judge.

23 THE COURT: Thank you, both.

24 (At 12:10 p.m., the proceedings concluded.)

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C E R T I F I C A T E O F R E P O R T E R

STATE OF SOUTH CAROLINA

COUNTY OF ANDERSON

I, the undersigned, Lisa Scott, Circuit 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 the evidence introduced in the hearing of the captioned cause, relative to appeal in the Circuit Court for Oconee County, South Carolina, on the 9th day of September, 2025.

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

November 4, 2025

/s/Lisa Scott

Lisa Scott
Circuit Court Reporter

State of South Carolina, County of Oconee
In the Court of Common Pleas, Tenth Judicial Circuit

Clifton E. Smith,
Applicant/Petitioner
vs.
State of South Carolina,
Respondent.

Case No. 2022-CP-37-00329

Preliminary Order

Date of Hearing	September 9, 2025
Presiding Judge	Jane H. Merrill
Court Reporter	Lisa Scott
Applicant/Petitioner's Attorney	Susannah C. Ross
Respondent's Attorney	Ryan T. Kowalski

FILED OCONEE COUNTY, SC
 MELISSA C. BURTON
 CLERK OF COURT
 2025 SEP 12 P 3:19

A. The application for post-conviction relief is hereby: X denied granted under advisement; a formal order will be filed.

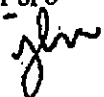
B. The court further orders:

The Attorney General is directed to submit to the court a proposed order and to serve the order on opposing counsel by October 10, 2025. The order shall be submitted in .doc format via email to the Court's administrative assistant (jmerrillsc@sccourts.org) and law clerk (jmerrillc@sccourts.org).

Additional instructions about preparing the proposed order are below. The language in bold font is Applicant's allegations, and the court's preliminary findings follow.

1. Ineffective Assistance of Counsel

- a. **Applicant alleged Trial Counsel's failure to impeach the victim was ineffective assistance of counsel. Applicant alleged that even though the trial judge ruled against the impeachment of the victim, the victim opened the door for impeachment by repeating Applicant's statements. This is addressed below in 1.e.**
- b. **Applicant only had one visit with Trial Counsel before trial.**
 - i. Applicant testified he was unable to get in contact with Trial Counsel, did not review



discovery with Trial Counsel, and was not informed by Trial Counsel of the direct indictment for Assault and Battery of a High and Aggravated Nature, instead of an indictment on his original warrant for Assault and Battery, First Degree. Trial Counsel testified Applicant was charged with Assault and Battery of a High and Aggravated Nature prior to Trial Counsel's appointment. While Applicant was in detention, Trial Counsel reviewed discovery with Applicant. Trial Counsel testified that he was unable to successfully contact Applicant using the contact information in his file after Applicant was released from detention. Applicant did not testify that he contacted Trial Counsel at his office at any time after he was released from pretrial detention. Notwithstanding Trial Counsel's inability to locate Applicant after he was released from detention, testimony establishes Trial Counsel was prepared to move forward with trial based on his review of discovery and his prior discussion with Applicant.

- ii. The court finds it credible that Trial Counsel made attempts to contact Applicant and previously advised Applicant to keep Counsel up to date regarding Applicant's contact information upon his release. Applicant knew who his attorney was and did not contact his attorney after his release from detention. Trial Counsel was not deficient.
- c. **Applicant asserts Trial Counsel did not keep Applicant informed of plea offers.** Applicant testified he only met with and spoke to Trial Counsel once prior to trial and that Trial Counsel did not keep him updated on offers from the Solicitor's Office. Trial Counsel testified he advised Applicant of an offer to plead to Assault and Battery First Degree with a recommendation of probation when he met with Applicant in the jail, and Applicant rejected this offer. Trial Counsel's testimony indicates he obtained the Solicitor's consent to a Personal Recognizance Bond which released Applicant from incarceration in early 2019. Although Trial Counsel was unaware of Applicant's whereabouts following his release, after Applicant was located and before the trial started, the State offered for Applicant to plead straight up to Assault and Battery, First Degree, and neither the State nor victim would oppose probation. Trial Counsel conveyed this offer to Applicant, and he rejected it and chose to proceed to trial. Trial Counsel's testimony about pleas offers is credible, and Trial Counsel was not deficient.
- d. **Applicant asserts Trial Counsel failed to object to statements about Applicant's probation status.**
 - i. Applicant testified at the PCR hearing that Trial Counsel should have objected to a witness's testimony regarding Applicant being on probation at some point. Trial Counsel testified the statement was made quickly during the State's direct examination of a witness in response to a question regarding a different matter. The question posed was, "What was your relationship with [Applicant]?" (Transcript, p. 150, line 5). In response, Ms. Galbreath mentions probation twice when discussing

- providing transportation to Applicant. (Transcript, p. 150, lines 8 and 10). No specific criminal offense was referenced during this testimony. Trial Counsel did not see a reason to object because the questioning of the witness and her responses proceeded quickly. It is Trial Counsel's opinion that the statement did not have any effect on the outcome of the case, and that the statement, even if error, was not significant enough to warrant a mistrial or curative instruction.
- ii. The court finds Trial Counsel was not deficient in failing to object to the witness's mention of probation. Mentioning probation in this context is not enough to warrant a mistrial, and Trial Counsel strategically chose not to bring more attention to it by objecting or asking for a curative instruction. Trial Counsel was not deficient.
- e. **Applicant alleges Trial Counsel failed to object to the court's misapplication of Rule 609, SCRE.**
- i. Applicant alleged Trial Counsel should have argued the language of Rule 609 makes a distinction between a witness and the accused. Applicant contends the trial court considered the weight of admission of the victim's prior convictions as if the victim were the accused. Trial Counsel testified he did not make arguments regarding factors relating to the accused rather than witnesses because the trial court was adamant it was going to apply the factors for convictions of the witness or the accused. Applicant also alleged Trial Counsel was deficient for failing to preserve an issue for appeal, specifically whether a conviction for fleeing police could be used for to impeach a witness.
 - ii. "For the purpose of attacking the credibility of a witness, (1) evidence that a witness other than the accused has been convicted of a crime shall be admitted, subject to Rule 403, if the crime was punishable by death or imprisonment in excess of one year under the law under which the witness was convicted, and evidence that an accused has been convicted of such a crime shall be admitted if the court determines that the probative value of admitting this evidence outweighs its prejudicial effect to the accused; and (2) evidence that any witness has been convicted of a crime shall be admitted if it involved dishonesty or false statement, regardless of the punishment." Rule 609, SCRE.
 - iii. The Court of Appeals affirmed Applicant's conviction and addressed this issue as part of its unpublished opinion. 2022-UP-167. Footnote 1 stated, "As to whether the victim's prior conviction for fleeing or attempting to elude a police officer is admissible pursuant to Rule 609(a)(1), SCRE, and the *Colf* factors, this issue is not preserved for appellate review." The trial court would not allow the same witness to be questioned about a Failure to Stop for Blue Light, which is a similar offense to fleeing or attempting to elude a police officer. Had this issue been preserved, it is likely the Court of Appeals would have affirmed its exclusion as impeachment evidence since it affirmed the same ruling for a Failure to Stop for Blue Light.

Although Trial Counsel failed to preserve the record regarding one conviction, the court finds such error does not rise to the level of deficient performance. If, however, the failure to preserve that one issue is considered deficient, the court finds Applicant was not prejudiced because of the likelihood the court would affirm the trial court as it did for the other convictions the trial court ruled could not be used to impeach a witness.

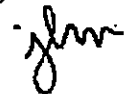
- f. **Trial Counsel failed to object to language within the self-defense jury charge.**
- i. Applicant asserts Trial Counsel should have objected to the language contained in the self-defense jury charge as the general charge provided was best applied when a death is involved because it included language such as “fatal blow” which would imply a death occurred. Applicant contends the circumstances of this case differed from general self-defense cases, as the injuries did not reach the level of severity involving a fatality. Applicant testified that the victim admitted to hitting Applicant first and beating him. Applicant stated he fought back in self-defense as he knew the victim to regularly carry a firearm with him, and his actions were the result of preventing the victim from reaching for a firearm.
 - ii. Trial Counsel submit proposed jury instructions to the court which it declined to charge. Trial Counsel testified he did not object to the charge because he believed the language within the jury charge did not impact the outcome of the trial.
 - iii. The charge, as a whole, must not mislead the jury. *State v. Atkins*, 303 S.C. 214, 221, 399 S.E.2d 760, 764 (1990). “In evaluating whether a PCR applicant has suffered prejudice as a result of a jury charge, the jury charge must be viewed “in its entirety and not in isolation.” *Gibbs v. State*, 403 S.C. 484, 495, 744 S.E.2d 170, 176 (2013) (citing *Battle v. State*, 382 S.C. 197, 203, 675 S.E.2d 736, 739 (2009)). In *Gibbs*, the Defendant alleged an alibi defense and counsel failed to request an alibi charge. *Id.* That is not the case for Applicant, as the court charged self-defense as requested by Applicant.
 - iv. The court finds that limited language in the jury charge, such as describing a “fatal blow” was incorrect; however, when read as a whole, the jury instruction was proper. Reading the charge in its entirety, and not the select language in isolation, demonstrates a proper jury instruction about self-defense. The victim testified before the jury, and they knew there was no fatal blow. (Transcript, pp. 176-196). The court finds Trial Counsel was not deficient by not objecting to the jury instruction.
- g. **Trial Counsel failed to offer DNA evidence as to photographs shown of blood on Applicant’s body.**
- i. No DNA evidence was produced at trial. Applicant testified about his injuries stating he had a busted nose, bleeding ears, bleeding mouth, and that his fingers required sutures at the hospital. However, the Solicitor argued in closing that that the blood shown on Applicant in photographs could have been the victim’s blood rather than

- Applicant's own blood. Trial Counsel testified he did not believe DNA evidence was necessary. He understood the Solicitor's statement to be an argument and/or opinion, not a statement of fact. The transcript shows an officer testified the Applicant did not have a cut on his head and so the solicitor argued that could mean the blood on Applicant's head is the victim's blood. (Transcript, p. 243).
- ii. The court finds Trial Counsel's testimony is credible. The solicitor made this statement as part of the State's argument and it was not evidence for the jury to consider. Having DNA evidence was not required, and Trial Counsel was not deficient.
- h. Trial Counsel failed to request that Applicant receive credit for time served for his pretrial detention to apply towards his 15 year sentence.**
- i. Applicant alleged Trial Counsel failed to request time served at sentencing. Applicant stated he was incarcerated for 23 months and only received credit for 13 months. Applicant did not clearly testify the dates of detention for which he thinks he earned 10 months of credit. Trial Counsel admitted he should have requested credit for time served but was focused on mitigating factors during the sentencing right after trial. Additionally, Trial Counsel testified he contacted Applicant following sentencing informing Applicant he would investigate the time served issue, but Applicant did not want Trial Counsel to do anything further as new counsel was working on the appeal.
 - ii. By operation of law, S.C. Code Ann. Section 24-13-40, the Applicant is entitled to credit for time served. Moreover, Applicant received credit for time served pursuant to the statute. Trials are dynamic and stressful, and any error in Trial Counsel's failure to request time served is remedied by statute. The court finds Trial Counsel was not deficient.
2. Abuse of Discretion
- a. **Trial Judge abused his discretion by refusing to allow Applicant to use evidence of the victim's prior convictions to impeach the victim.**
 - i. This was litigated in the appellate court and is outside the scope of this PCR Application other than the narrow preservation issue addressed above.

Summary and Proposed Order Instructions

The court finds Plea Counsel was not deficient. Therefore, it is unnecessary to analyze the prejudice prong of the *Strickland* standard. If, however, Trial Counsel was deficient because of the preservation issue, Applicant was not prejudiced for the reasons stated above. The relief requested by Applicant is denied.

In its proposed order, the Attorney General shall include the procedural history, a summary of evidence and testimony, and citations to authority. The order may include additional findings of facts and conclusions of law consistent with this preliminary order that are supported by the



pleadings and evidence.

This is not the final order that ends the case. It is so ordered.

September 11, 2025
Greenwood, SC



Jane H. Merrill
Presiding Judge

FILED OCGNEE COUNTY SC
MELISSA C. BURTON
CLERK OF COURT
2025 SEP 12 P 3:19



STATE OF SOUTH CAROLINA
COUNTY OF OCONEE

Clifton E. Smith, #259061,

Applicant,

v.

State of South Carolina,

Respondent.

) IN THE COURT OF COMMON PLEAS FOR
) THE TENTH JUDICIAL CIRCUIT

) CASE NO. 2022-CP-37-329

) **ORDER OF DISMISSAL WITH**
) **PREJUDICE**

FILED OCONEE COUNTY, SC
MELISSA C. BURTON
CLERK OF COURT
2025 NOV 24 P 4: 38

Presiding Judge: Hon. Jane H. Merrill
Applicant's Attorney: Susannah C. Ross, Esq.
Respondent's Attorney: AAG Ryan T. Kowalski
Trial Counsel: Gregory Lee Cole, Esq.
Date of Hearing: September 9, 2025

This matter comes before the Court by way of the post-conviction relief (PCR) action filed by Clifton E. Smith (Applicant) on May 5, 2022. Respondent, the State of South Carolina, made its Return and Partial Motion to Dismiss on February 15, 2024, requesting an evidentiary hearing to resolve the claims as set forth in the application. Applicant filed an amended PCR application on September 3, 2025. An evidentiary hearing was held on September 9, 2025, at the Anderson County Courthouse, before the Honorable Jane H. Merrill. Applicant was present and represented by Susannah C. Ross, Esquire. Assistant Attorney General Ryan T. Kowalski represented Respondent.

At the hearing, Applicant proceeded forward on the claims set forth in his application. In support of these claims, Applicant testified on his own behalf, and Respondent presented testimony from Gregory Lee Cole, Esquire (Trial Counsel). Following a thorough review of the record in its entirety, along with the testimony and evidence presented at the evidentiary hearing, this Court

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finds Applicant has failed to establish any constitutional violations or deprivations entitling him to relief and, accordingly, denies and dismisses all allegations with prejudice.

PROCEDURAL HISTORY

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment from the Oconee County Clerk of Court. During the May 2018 term, the Oconee County Grand Jury indicted Applicant for Assault and Battery of a High and Aggravated Nature (2018-GS-37-00667). On November 18-19, 2019, Applicant proceeded to a jury trial before the Honorable R. Lawton McIntosh. Gregory Cole Jr. and Daniel Day Jr., Esquires, represented Applicant. Assistant Solicitor Jason Christopher Alderman prosecuted the case. On November 19, 2019, the jury convicted Applicant as indicted. Judge McIntosh sentenced Applicant to fifteen (15) years' imprisonment for Assault and Battery of a High and Aggravated Nature.

DIRECT APPEAL

Applicant filed a timely notice of appeal. Appellate Defender Lara Mary Caudy perfected Applicant's appeal by filing a brief with the Court of Appeals on the following issue:

- I. Whether the trial court abused its discretion in not allowing him to impeach the testimony of the victim by introducing evidence of the victim's prior convictions

Following briefing, the Court of Appeals affirmed Applicant's conviction and sentence. *State v. Clifton Eugene Smith*, 2022-UP-167 (Ct. App. filed April 6, 2022). The Remittitur was returned on April 29, 2022.

FIRST PCR ACTION: 2020-CP-37-00247

On April 8, 2020, Applicant filed his first PCR application alleging various allegations of ineffective assistance of counsel. On June 23, 2021, Respondent made its Return and Motion to Dismiss without Prejudice based on Applicant's pending direct appeal. On July 12, 2021, the



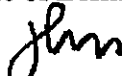
Honorable J. Cordell Maddox, Jr., signed an Order dismissing Applicant's application without prejudice.

SUMMARY OF FACTS ADDUCED AT TRIAL

Varia Galbreath (Galbreath) let Applicant stay at her house over the weekend during Christmas so he could go to his probation meeting on Monday. Her thirty-year-old son, Reid, was also staying at home then. Galbreath gave Applicant a couple of pocketknives as a Christmas present. Galbreath testified Applicant grabbed one of the two pocketknives when they were leaving for her daughter's. (Trial Tr. pp: 150-52).

Soon Applicant started acting up, becoming loud and boisterous. Reid became upset by Applicant's behavior and went outside to wait in the car. Galbreath herself cursed out loud in the presence of the children and decided the three should leave after her daughter's remonstrations. (Trial Tr. pp. 151-52). On the drive home, Reid sat in the back seat and Applicant in the passenger seat while Galbreath drove. Reid complained to Applicant about Applicant mooching, not working, and not handling his liquor. Applicant retorted, "Well, you do drugs." In response, Reid struck him and told him to shut his mouth. (Trial Tr. pp. 178-80). Galbreath stopped the vehicle and told them to "stop, just stop." Galbreath testified the altercation stopped, and she continued driving. Applicant suddenly "whirl[ed]" around in his seat. She thought he was hitting Reid, and she stopped the car again. As Reid exited the car, he said, "You cut me." Reid paced and then said to call somebody. She called her daughter, then she called 911. Reid laid down on the road. (Trial Tr. pp. 152-55).

Applicant put the knife on the trunk of the car when law enforcement came. Galbreath testified it was the same knife she gave him as a Christmas present. (Trial Tr. p. 156). This



testimony would contradict Applicant's claim with the police that Reid had the knife and Applicant took it from him. (Trial Tr. pp. 210-11).

Reid lost use of his hand for about four months. Reid had to have surgery to repair nerves and tendons. (Trial Tr. pp. 180-86). Reid explained he was not fighting or antagonizing Applicant when Applicant turned around and cut him. He explained there was a definite break in time between the time he slapped Applicant and when Applicant turned around and cut him. (Trial Tr. p. 188; p. 196).

Sergeant Clay Sheriff of the Oconee County Sheriff's Office responded to the scene. Applicant was already in custody and Reid was attended to by emergency personnel. Applicant was agitated, intoxicated, boisterous, and smelled of alcohol. Applicant admitted he "did it" and exclaimed he would do it again. He later claimed Reid had the knife and he took it from Reid and stabbed him. Applicant said Reid ought to die. He later asked Sergeant Sheriff, "Did I get him good?" Applicant had lacerations on his fingers, but Sergeant Sheriff did not see lacerations anywhere else. (Trial Tr. pp. 208-12).

CURRENT APPLICATION

In his application for post-conviction relief, Applicant alleges he is being held in custody unlawfully based on the following (excerpted verbatim):¹

1. Ineffective Assistance of Counsel
 - a. Counsel was ineffective because he did not impeach the victim regarding past drug use. On cross examination, Counsel did not question the victim about past drug use.
2. Abuse of Discretion on the part of the Trial Judge
 - a. The trial judge abused his discretion by not allowing the defendant to impeach the victim concerning prior convictions.

¹ Unless quoted, Applicant's allegations have been summarized for brevity and clarity.

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Applicant requests relief in the form of a reversal of his sentence and a new trial. On September 3, 2025, Applicant filed an amended application alleging the following:

1. Ineffective Assistance of Counsel
 - a. Failure to object to reference to Applicant being on probation, especially when the judge ruled that witness M. Reid could not be impeached on his prior drug conviction for possession of methamphetamine, first and second offense, failure to stop for a blue light, use of communication facility in commission of a felony involving controlled substance, and fleeing or attempting to elude a police officer. p. 150. pp. 163-73
 - b. Failure to preserve the record as to whether Reid's conviction for fleeing or attempting to elude a police officer was admissible pursuant to Rule 609(a)(1) SCRE, and the *Colf* factors. See *State v. Colf*, 337 S.C. 622,627,525 S.E.2d 246, 248 (2003). -
 - c. Failing to cite Rule 9 SCCrimP in the motion for a continuance and argue the continuance was for good cause as counsel could not be effective because he was unable to adequately prepare for trial without speaking to his client and advising him to reconsider his plea offer because the A & B 1st charge was now ABHAN.1 Applicant was released on bond for the charge of A & B 1st Degree in February 2018. Applicant appeared for a probation violation hearing in December 2018 and was sentenced to thirteen (13) months during which time he did not meet with his lawyer. Upon Applicant's release he did not receive notification of November 18, 2019, court date or that his charge was proceeding as ABHAN. p. 49, p. 53.
 - d. Failing meet with Applicant to advise, instruct and prepare for trial.
 - e. Failure to inform Applicant of plea offer as counsel's duties include the duty to fully communicate with the client and correctly advise them so that the client can make an informed decision regarding any plea proposals by the State. See *Davie v. State*, 675 S.E.2d 416,381 S.C. 601 (S.C. 2009).
 - f. Failing to request credit for time served pursuant to Sec.24-13-40.
2. Due Process violations in the indictment procedure.



STANDARD OF REVIEW

The Sixth and Fourteenth Amendments to the United States Constitution guarantee Applicant, like all other defendants, the right to effective assistance of counsel. *Strickland v. Washington*, 466 U.S. 668 (1984); *Taylor v. State*, 404 S.C. 350, 359, 745 S.E.2d 97, 101 (2013). Ordinarily, PCR allegations are centered upon an allegation that the applicant did not receive *effective* assistance of counsel guaranteed by the Sixth Amendment. The allegation of denial of such representation sets forth a *prima facie* violation of this constitutional right and raises a question of fact that can only be determined by an evidentiary hearing. *Rogers v. State*, 261 S.C. 288, 291, 199 S.E.2d 761, 762 (1973).

In a post-conviction relief action, the applicant bears the burden of proving the allegations by a preponderance of the evidence—a mere allegation of ineffective assistance is not sufficient to warrant granting relief. Rule 71.1(e), SCRPC; *Butler v. State*, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985). The reviewing court applies the two-part test outlined in *Strickland v. Washington* to determine whether counsel’s conduct “was so [ineffective] as to require reversal” of the applicant’s conviction. 466 U.S. 668, 687 (1984). To obtain relief, a PCR applicant must prove (1) counsel’s performance fell below an objective standard of reasonableness, and (2) the applicant sustained prejudice as a result of counsel’s deficient performance. *Id.* at 687–88; *accord. Cherry v. State*, 300 S.C. 115, 117–18, 386 S.E.2d 624, 625 (1989). Failure to make the required showing of either deficient performance or sufficient prejudice defeats the ineffectiveness claim. *Strickland*, 466 U.S. at 700; *see also Bell v. Cone*, 535 U.S. 685, 695 (2002) (explaining that “[w]ithout proof of both deficient performance and prejudice to the defense, . . . it could not be said that the sentence or conviction resulted from a breakdown in the adversary process that rendered the result of the proceeding unreliable.” (citation and internal quotation marks omitted)).



Regarding the deficiency prong of the *Strickland* analysis, the proper measure of performance is whether counsel provided representation within the reasonable range of competence required in criminal cases. *Butler*, 286 S.C. at 442, 334 S.E.2d at 814. When analyzing counsel's performance, the reviewing court will strongly presume counsel provided adequate assistance, and the applicant is responsible for rebutting that presumption "by proving that his attorney's representation was unreasonable under prevailing professional norms and that the challenged action was not sound strategy." *Kimmelman v. Morrison*, 477 U.S. 365, 384 (1986); cf: *Cullen v. Pinholster*, 563 U.S. 170, 189 (2011) (explaining a defendant must show defense counsel failed to act reasonably considering all the circumstances in order to overcome the presumption of adequate representation).

Furthermore, the reviewing court will scrutinize counsel's performance in a highly deferential manner, make every effort "to eliminate the distorting effects of hindsight," and "evaluate the conduct from counsel's perspective at the time" in light of then-existing circumstances. *Strickland*, 466 U.S. at 689. In order to establish counsel's performance was deficient, the applicant must demonstrate "counsel made errors so serious that counsel was not functioning as the 'counsel' guaranteed the defendant by the Sixth Amendment." *Id.* at 687. Accordingly, counsel's performance will be considered deficient only when it was objectively incompetent under prevailing professional norms and *not* when it simply "deviated from best practices or most common custom." *Harrington v. Richter*, 562 U.S. 86, 105 (2011).

Beyond satisfying the burden required by the deficiency prong, an applicant also bears the burden of establishing prejudice in order to be entitled to relief as "[a]n error by counsel, even if professionally unreasonable, does not warrant setting aside the judgment of a criminal proceeding if the error had no effect on the judgment." *Strickland*, 466 U.S. at 691. To meet this burden,



counsel's deficient performance must have prejudiced the applicant to such an extent, there is a reasonable probability the result of the proceeding would have been different but for counsel's unprofessional errors. *Cherry*, 300 S.C. at 117–18, 386 S.E.2d at 625; see *Johnson v. State*, 325 S.C. 182, 186, 480 S.E.2d 733, 735 (1997) (“To establish a claim of ineffective assistance of trial counsel, a PCR applicant has the burden of proving counsel’s representation fell below an objective standard of reasonableness and, but for counsel’s errors, there is a reasonable probability the result at trial would have been different.”). Importantly, “[t]he likelihood of a different result must be *substantial*, not just conceivable.” *Richter*, 562 U.S. at 112.

FINDINGS OF FACT & CONCLUSIONS OF LAW

Before this Court are the Oconee County Clerk of Court records of the subject conviction, Applicant’s records from the South Carolina Department of Corrections, and the trial transcript. In analyzing these claims, this Court has considered the legal arguments by counsel and thoroughly reviewed the record in its entirety. This Court additionally heard the testimony presented at the evidentiary hearing and was able to observe the witnesses, which allowed this Court to evaluate and scrutinize their credibility. Upon conducting and completing its analysis, this Court finds that Applicant has failed to establish any constitutional violations or deprivations that would require this Court to grant his application for post-conviction relief.

INEFFECTIVE ASSISTANCE OF TRIAL COUNSEL

Allegation: Trial Counsel's failure to impeach the victim was ineffective assistance of counsel. Applicant alleged that even though the trial judge ruled against the impeachment of the victim, the victim opened the door for impeachment by repeating Applicant's statements.

Allegation: Trial Counsel failed to object to the court's misapplication of Rule 609, SCRE.

Applicant alleged Trial Counsel should have argued that the language of Rule 609 makes a distinction between a witness and the accused. Applicant contends the trial court considered the weight of admission of the victim's prior convictions as if the victim were the accused. Trial Counsel testified he did not make arguments regarding factors relating to the accused rather than witnesses because the trial court was adamant it was going to apply the factors for convictions of the witness or the accused. Applicant also alleged Trial Counsel was deficient for failing to preserve an issue for appeal, specifically whether a conviction for fleeing police could be used for to impeach a witness.

“For the purpose of attacking the credibility of a witness, (1) evidence that a witness other than the accused has been convicted of a crime shall be admitted, subject to Rule 403, if the crime was punishable by death or imprisonment in excess of one year under the law under which the witness was convicted, and evidence that an accused has been convicted of such a crime shall be admitted if the court determines that the probative value of admitting this evidence outweighs its prejudicial effect to the accused; and (2) evidence that any witness has been convicted of a crime shall be admitted if it involved dishonesty or false statement, regardless of the punishment.”

Rule 609, SCRE.

The Court of Appeals affirmed Applicant's conviction and addressed this issue as part of its unpublished opinion. 2022-UP-167. Footnote 1 stated, “As to whether the victim's prior conviction for fleeing or attempting to elude a police officer is admissible pursuant to Rule 609(a)(1), SCRE, and the *Colf* factors, this issue is not preserved for appellate review.” The trial court would not allow the same witness to be questioned about a Failure to Stop for Blue Light, which is a similar offense to fleeing or attempting to elude a police officer. Applicant asserts that Trial Counsel failed to argue that Rule 609 and *Colf* make a distinction between a witness and the defendant. However, the trial judge makes that distinction on the record:



The State has the burden to establish its inadmissibility, and then the *Colf*, C-o-1-f, factors have to be considered as well, and that is the impeachment value of the prior crime, the point in time of the conviction, and the witness' subsequent history, similarity between the past crime and the crime charged -- that's more for the defendant -- import of the defendant's testimony -- again that's for the defendant -- or the accused and centrality of credibility is an issue. I assume you're speaking of the victim in this case?

(Trial Transcript, p. 165)

Therefore, Trial Counsel was not deficient for failing to argue that the trial court failed to make a distinction between the witness and the accused when it clearly did in its analysis of *Colf*.

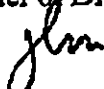
Had this issue been preserved, it is likely the Court of Appeals would have affirmed its exclusion as impeachment evidence since it affirmed the Trial Court's ruling for a Failure to Stop for Blue Light. *See Milledge v. State*, 422 S.C. 366, 380, 811 S.E.2d 796, 804 (2018) (holding a PCR court must view the trial court's ruling on an issue through the same lens applied on appeal, giving appropriate deference to the trial court's findings.). In its opinion, the Court of Appeals found the following:

"The trial court did not abuse its discretion in refusing to allow Smith to impeach the victim's testimony with the introduction of the victim's prior convictions for possession of methamphetamine, first and second offense; the use of a communication facility in commission of a felony involving a controlled substance; and failure to stop for a blue light."

Smith, 2022-UP-167.²

Although Trial Counsel failed to preserve the record regarding one conviction, this Court finds such error does not rise to the level of deficient performance. If, however, the failure to preserve that one issue is considered deficient, this Court finds Applicant was not prejudiced

² Notably, the Court of Appeals cited *State v. Colf* in its analysis of the admissibility of Victim's prior convictions.



because of the reasonable likelihood the Court of Appeals would affirm the trial court as it did for the other convictions that the trial court ruled could not be used as impeachment. Further, Victim's priors convictions offered limited impeachment, and Victim's testimony was corroborated and cumulative to Galbreath's testimony. Trial Counsel was not deficient, nor did Applicant suffer any prejudice resulting therefrom. Thus, this allegation must be **DENIED** and **DISMISSED**.

Allegation: Applicant only had one visit with Trial Counsel before trial.

Allegation: Trial Counsel failed to move for a continuance on the grounds that Trial Counsel was unable to adequately prepare for trial.

Applicant testified he was unable to get in contact with Trial Counsel, did not review discovery with Trial Counsel, and was not informed by Trial Counsel of the direct indictment for Assault and Battery of a High and Aggravated Nature, instead of an indictment on his original warrant for Assault and Battery, First Degree. Trial Counsel testified Applicant was charged with Assault and Battery of a High and Aggravated Nature prior to Trial Counsel's appointment. While Applicant was in detention, Trial Counsel reviewed discovery with Applicant. Trial Counsel testified that he was unable to successfully contact Applicant using the contact information in his file after Applicant was released from detention. Applicant did not testify that he contacted Trial Counsel at his office at any time after he was released from pretrial detention. Further, Trial Counsel moved for a continuance at the outset of the trial based on Applicant's initial absence. Notwithstanding Trial Counsel's inability to locate Applicant after he was released from detention, testimony establishes Trial Counsel was prepared to move forward with trial based on his review of discovery and his prior discussion with Applicant.

This Court finds it credible that Trial Counsel made attempts to contact Applicant and previously advised Applicant to keep Counsel up to date regarding Applicant's contact information

upon his release. Applicant knew who his attorney was and did not contact his attorney after his release from detention. "Brevity of time spent in consultation with a defendant alone is not indicative of inadequate trial preparation." *Smith v. State*, 404 S.C. 493, 500, 745 S.E.2d 378, 382 (2012). Trial Counsel was not deficient, nor did Applicant suffer any prejudice resulting therefrom. Thus, this allegation must be **DENIED** and **DISMISSED**.

Allegation: Trial Counsel did not keep Applicant informed of plea offers.

Applicant testified he only met with and spoke to Trial Counsel once prior to trial and that Trial Counsel did not keep him updated on offers from the Solicitor's Office. Trial Counsel testified he advised Applicant of an offer to plead to Assault and Battery First Degree with a recommendation of probation when he met with Applicant in the jail, and Applicant rejected this offer. Trial Counsel's testimony indicates he obtained the Solicitor's consent to a Personal Recognizance Bond which released Applicant from incarceration in early 2019. Although Trial Counsel was unaware of Applicant's whereabouts following his release, after Applicant was located and before the trial started, the State offered for Applicant to plead straight up to Assault and Battery, First Degree, and neither the State nor victim would oppose probation. Trial Counsel conveyed this offer to Applicant, and he rejected it and chose to proceed to trial. Trial Counsel's testimony about pleas offers is credible, thus Trial Counsel was not deficient, nor did Applicant suffer any prejudice resulting therefrom. Thus, this allegation must be **DENIED** and **DISMISSED**.

Allegation: Trial Counsel failed to object to statements about Applicant's probation status.

Applicant testified at the PCR hearing that Trial Counsel should have objected to witness testimony regarding Applicant being on probation at some point. Trial Counsel testified the statement was made quickly during the State's direct examination of a witness in response to a

question regarding a different matter. The question posed was, "What was your relationship with [Applicant]?" (Trial Tr. p. 150, line 5). In response, Ms. Galbreath mentions probation twice when discussing providing transportation to Applicant. (Trial Tr. p. 150, lines 8 and 10). No specific criminal offense was referenced during this testimony. Trial Counsel did not see a reason to object because the questioning of the witness and her responses proceeded quickly. It is Trial Counsel's opinion that the statement did not have any effect on the outcome of the case, and that the statement, even if error, was not significant enough to warrant a mistrial or curative instruction. This Court finds Trial Counsel was not deficient in failing to object to the witness's mention of probation. Trial Counsel strategically chose not to bring more attention to it by objecting or asking for a curative instruction. Applicant has not shown a reasonable probability that if Trial Counsel had objected, the outcome of the trial would have been different. Trial Counsel was not deficient, nor did Applicant suffer any prejudice resulting therefrom. Thus, this allegation must be **DENIED** and **DISMISSED**.

Allegation: Trial Counsel failed to object to language within the self-defense jury charge.

Applicant asserts Trial Counsel should have objected to the language contained in the self-defense jury charge as the general charge provided was best applied when a death is involved because it included language such as "fatal blow" which would imply a death occurred. Applicant contends the circumstances of this case differed from general self-defense cases, as the injuries did not reach the level of severity involving a fatality. Applicant testified that the victim admitted to hitting Applicant first and beating him. Applicant stated he fought back in self-defense as he knew the victim to regularly carry a firearm with him, and his actions were the result of preventing the victim from reaching for a firearm. Trial Counsel submitted proposed jury instructions to the Trial



Court which it declined to charge. Trial Counsel testified he did not object to the charge because he believed the language within the jury charge did not impact the outcome of the trial.

The charge, as a whole, must not mislead the jury. *State v. Atkins*, 303 S.C. 214,221, 399 S.E.2d 760, 764 (1990). "In evaluating whether a PCR applicant has suffered prejudice as a result of a jury charge, the jury charge must be viewed "in its entirety and not in isolation." *Gibbs v. State*, 403 S.C. 484, 495, 744 S.E.2d 170, 176 (2013) (citing *Battle v. State*, 382 S.C. 197, 203, 675 S.E.2d 736, 739 (2009)). In *Gibbs*, the Defendant alleged an alibi defense and counsel failed to request an alibi charge. *Id.* That is not the case for Applicant, as the Trial Court charged self-defense as requested by Applicant.

This Court finds that limited language in the jury charge, such as describing a "fatal blow" was incorrect; however, when read as a whole, the jury instruction was proper. Reading the charge in its entirety, and not the select language in isolation, demonstrates a proper jury instruction about self-defense. The victim testified before the jury, and they knew there was no fatal blow. (Trial Tr. pp. 176-196). This Court finds Trial Counsel was not deficient by not objecting to the jury instruction, nor did Applicant suffer any prejudice resulting therefrom. Thus, this allegation must be **DENIED** and **DISMISSED**.

Allegation: Trial Counsel failed to offer DNA evidence as to photographs shown of blood on Applicant's body.

No DNA evidence was produced at trial. Applicant testified about his injuries stating he had a busted nose, bleeding ears, bleeding mouth, and that his fingers required sutures at the hospital. However, the Solicitor argued in closing that that the blood shown on Applicant in photographs could have been the victim's blood rather than Applicant's own blood. Trial Counsel testified he did not believe DNA evidence was necessary. He understood the Solicitor's statement to be an argument and/or opinion, not a statement of fact. The transcript shows an officer testified



the Applicant did not have a cut on his head and so the solicitor argued that could mean the blood on Applicant's head is the victim's blood. (Trial Tr. p. 243). The court finds Trial Counsel's testimony is credible. The solicitor made this statement as part of the State's argument, and it was not evidence for the jury to consider. Applicant has not shown a reasonable probability that Trial Counsel introducing DNA evidence would have changed the outcome of the trial. Trial Counsel was not deficient, nor did Applicant suffer any prejudice resulting therefrom. Thus, this allegation must be **DENIED** and **DISMISSED**.

Allegation: Trial Counsel failed to request that Applicant receive credit for time served for his pretrial detention to apply towards his 15-year sentence.

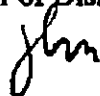
Applicant alleged Trial Counsel failed to request time served at sentencing. Applicant stated he was incarcerated for 23 months and only received credit for 13 months. Applicant did not clearly testify the dates of detention for which he thinks he earned 10 months of credit. Trial Counsel admitted he should have requested credit for time served but was focused on mitigating factors during the sentencing right after trial. Additionally, Trial Counsel testified he contacted Applicant following sentencing informing Applicant he would investigate the time served issue, but Applicant did not want Trial Counsel to do anything further as new counsel was working on the appeal. By operation of law, S.C. Code Ann. Section 24-13-40, the Applicant is entitled to credit for time served. Moreover, Applicant received credit for time served pursuant to the statute. Trials are dynamic and stressful, and any error in Trial Counsel's failure to request time served is remedied by statute. This Court finds Trial Counsel was not deficient.

Abuse of Discretion

Allegation: Trial Judge abused his discretion by refusing to allow Applicant to use evidence of the victim's prior convictions to impeach the victim.

This allegation constitutes a direct appeal issue that is procedurally barred by S.C. Code Ann. § 17-27-20(b) (2003). Post-conviction relief is not a substitute for an appeal. *Simmons v. State*, 264 S.C. 417, 423, 215 S.E.2d 883, 885 (1974). This was litigated in the appellate court and is outside the scope of this PCR Application other than the narrow preservation issue addressed above. This issue is not appropriate for this Court to decide, thus, this allegation must be **DENIED** and **DISMISSED**.

[Conclusion and Signature Page following]



CONCLUSION

Based on all the foregoing, this Court finds and concludes that Applicant has not established any constitutional violations or deprivations that would require this Court to grant his application. Therefore, this application for post-conviction relief must be **DENIED and DISMISSED with PREJUDICE.**

This Court notifies the Applicant that he must file and serve a notice of appeal within thirty (30) days from the receipt by counsel of written notice of entry of judgment to secure the appropriate appellate review. *See* Rule 203, SCACR. Pursuant to *Austin v. State*, 305 S.C. 453, 409 S.E.2d 395 (1991), an Applicant has a right to an appellate counsel's assistance in seeking review of the denial of PCR. Rule 71.1(g), SCRCP, provides that PCR counsel must serve and file a Notice of Appeal on the Applicant's behalf if the Applicant wishes to seek appellate review. Your attention is directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.

IT IS THEREFORE ORDERED:

1. That the Application for Post-Conviction Relief shall be denied and dismissed with prejudice; and
2. The Applicant shall be remanded to the custody of the South Carolina Department of Corrections.

AND IT IS SO ORDERED this 24th day of November, 2025.

Jane H. Merrill
 JANE H. MERRILL
 Presiding Judge
 Tenth Judicial Circuit

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 MELISSA C. BURTON
 CLERK OF COURT
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Praterwood, South Carolina

FILED OCONEE COUNTY, SC
MELISSA C. BURTON
CLERK OF COURT

STATE OF SOUTH CAROLINA
COUNTY OF OCONEE

COURT OF COMMON PLEAS
CASE NO. 2022-CP-37-0329

CLIFTON E. SMITH,
APPLICANT,
VS.
STATE OF SOUTH CAROLINA,
RESPONDENT.

2025 DEC 10 P 12:24

MOTION TO ALTER OR AMEND
THE JUDGMENT

COMES NOW the Applicant, by and through undersigned counsel, moving pursuant to Rule 59(e), SCRPC, to alter or amend the judgment of this Court filed on November 24, 2025. The order was received by counsel on December 8, 2025. The Applicant takes issue with the findings of fact and conclusions of law in the Court's Order of Dismissal with Prejudice regarding allegations of ineffective assistance of counsel in his arguments to impeach the victim. (Order pp. 8-11) The Applicant further argues that while each allegation may not amount to ineffective assistance of counsel standing alone, the cumulative effect of counsel's performance was deficient and prejudiced him to the degree that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." *Cherry v. State*, 386 S.E.2d 624, 625 (1989).

This was a self-defense case where the Applicant was not allowed to impeach the victim about his prior, non-remote, criminal convictions. (Transcript pp. 223 & 266) Citing *State v. Robinson* and SCRE 609, the trial judge went through the COLF factors and found the probative value of the prior convictions were outweighed by their prejudicial effect. (Transcript pp. 164-74). Trial counsel failed to argue that *Robinson* and


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Colf are cases about impeaching a defendant, **not** a victim or other witness. Those factors are designed to prevent a jury from being unduly prejudiced by hearing about a defendant's remote prior criminal convictions and determining the defendant had a propensity to commit the criminal act for which he stands accused. Furthermore, in a self-defense case the reasonableness and the state of mind of a defendant are factors. At the PCR hearing counsel testified he did not make the argument that convictions of the defendant and victim are different because the trial court was adamant that it was going to apply the *Colf* factors for convictions regardless of whether it was for the witness or the accused. (Order p. 9). That is not a valid trial strategy. Counsel's failure to make this argument was ineffective and likely changed the outcome of the trial.

The Order reasons that the Court of Appeals would likely affirm as it did for the other convictions. The defendant's rights to a fair trial must be preserved by the "crucible of cross-examination". *Crawford v. Washington*. The Applicant respectfully argues that had the issue been properly argued and preserved at trial and the victim been impeached with his prior convictions, the trial would not have resulted in a conviction or would have been reversed on appeal.

Respectfully submitted,


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(864) 242-0029

Greenville, South Carolina
This 10 day of December, 2025.

