

STATE OF SOUTH CAROLINA  
IN THE SUPREME COURT

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**Jun 16 2026**

S.C. SUPREME COURT

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Certiorari to Lexington County

Honorable David P Caraker, Jr, Circuit Court Judge  
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JOSHUA THOMAS BROWN,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2025-002338  
\_\_\_\_\_

APPENDIX  
\_\_\_\_\_

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1 blood in the space where the lung usually occupies.

2 So the blood was pushing the lung aside.

3 Q. And as a trauma surgeon, what -- in giving this  
4 patient's history, what is the most likely cause to  
5 a reasonable degree of medical certainty of that  
6 hemothorax?

7 A. It would be laceration to some structure,  
8 including the chest, the muscle. The arteries that  
9 supply that are near the ribs or to the lung itself.

10 Q. All right. Doctor, I'm going to ask you to  
11 take your time and look through these photographs.  
12 And they are 29, 30, 39, 40, 38, 37, 35, 31, 33, 32,  
13 and 42. Have you had an opportunity to review those  
14 photographs previously?

15 A. I did.

16 Q. And, Doctor, in addition to having the medical  
17 chart for Ann Brown, do you actually have a personal  
18 recollection of this patient?

19 A. I do.

20 Q. And why is that?

21 A. The injuries overlying the tattoo on her  
22 shoulder just kind of stuck with me.

23 Q. And how many patients do you see,  
24 approximately, a year there in that trauma unit?

25 A. We admit, total, between 2,500 and 3,000

1 patients a year to the trauma services.

2 Q. And you recall this patient specifically  
3 because of the type of injury there to --

4 A. Right. The injury --

5 Q. To the tattoo?

6 A. Right. The injury off the tattoo stuck in my  
7 mind; also, the injury to one of her fingers. I  
8 remember that one fairly well, too, her left middle  
9 finger.

10 Q. All right. And I'm going to ask you more about  
11 that momentarily. I want to ask you about the  
12 injury there in the chest area. First, looking at  
13 State's Exhibit 32, the injury there, closer-up view  
14 here. What do you call that area of the body in  
15 medical terms there at the trauma unit?

16 A. We refer to a certain area as the box. It's an  
17 area that has a higher likelihood of injury to the  
18 heart and great vessels. That would be the front of  
19 the chest to the collar bones, down to the xyphoid  
20 process, the little bony protection in your chest  
21 right above your belly.

22 Q. All right. And then I want to take you to this  
23 photograph, State's 39, and ask you if any injuries  
24 in this photograph also would include that area that  
25 you mentioned being the box.

1           A.    It would be -- those lower, which is more  
2           medial wounds, would be, probably, within that box.

3           Q.    All right.

4           MS. MAYES:  And, Your Honor, if the witness can  
5           have permission to step down?

6           THE COURT:  Yes, Doctor, you may step down.  
7           Keep your voice up when you're away from the  
8           microphone, please.

9           BY MS. MAYES:

10          Q.    I'll take you right here.  Doctor, are you  
11          familiar, as a physician, with the general anatomy  
12          of the human body?

13          A.    Yeah.

14          Q.    Is this a fair and accurate representation of  
15          the organs within the human body?

16          A.    Yes.

17          MS. MAYES:  Your Honor, this would be for  
18          evidence State's 58.

19          (State's Exhibit No. 58 admitted into  
20          evidence.)

21          BY MS. MAYES:

22          Q.    So the court reporter is going to ask that you  
23          stand on this side of me.  And I will hold that up.  
24          If you could, take us through what organs are  
25          located within this area of the box.

1           A.    The box is basically this area here.  So it  
2           contains heart, aorta, inferior vena cava, all the  
3           great vessels, pulmonary arteries and veins, all the  
4           airways.  This is an airway.  The esophagus runs  
5           back here.  So all these vitals structures here.

6           Q.    All right.  And then where are the lungs  
7           located?

8           A.    These triangular gray structures.

9           Q.    All right.  And, Doctor, can a lung be injured  
10          from a chest wound?

11          A.    Yes.

12          Q.    Can a lung also be injured from a back wound?

13          A.    It can.

14          Q.    So, in addition to this, let me ask you, what,  
15          if anything, is specific about the tissues and  
16          surrounding tissues of the back area in comparison  
17          with the rest of the body?

18          A.    The back area, the skin is thicker; the muscles  
19          tend to be thicker, compared to the front of the  
20          body.  Like any animal, the back part is typically  
21          more thicker, more protective, so there's going to  
22          be a lot more tissue back there.

23          Q.    All right.  Thank you.  You may return to your  
24          seat.

25          A.    (Witness complies.)

1 Q. Is it possible or even -- or likely to  
2 determine the source of the hemothorax, the lung  
3 injury, having examined 33 and 39 or could there be  
4 multiple potential causes?

5 A. The likelihood is going to be one of these  
6 right back stab wounds, most likely the lower two or  
7 three.

8 Q. And why is that?

9 A. That's an area that's closer to the lung. It's  
10 the thinner of the areas there for sure. There's a  
11 lot more muscle up on the shoulder near the tattoo.  
12 So you can almost see rib spaces on the lower part.

13 Q. And this would be also the area where the lung  
14 is located within the box?

15 A. Right.

16 Q. Now, you mentioned that the area around the  
17 back generally has stronger or thicker tissue.  
18 Doctor, what degree of force is required to produce  
19 penetrating trauma such as this?

20 A. To penetrate all the way through to the lung,  
21 it would require a large amount of force. There's  
22 so much tissue there and so many different layers  
23 there that it would take a lot to get through there.  
24 You'd have to go between the ribs, which can also  
25 take a good bit of force.

1 Q. And, Doctor, you mentioned that you also had  
2 recollection of a finger injury. I'm going to ask  
3 you to take a look at State's 37, as well as State's  
4 38 and State's 30.

5 Doctor, what is -- based upon your experience  
6 and training, are you familiar with defensive  
7 wounds?

8 A. I am.

9 Q. And what is meant by that term defensive  
10 wounds?

11 A. It's when someone is being assaulted, they  
12 sustain wounds while trying to defend themselves.  
13 They shield their bodies from whatever they're being  
14 assaulted with.

15 Q. Is this something you see frequently among  
16 trauma patients who have been stabbed?

17 A. Yes.

18 Q. What areas of the body do you normally see  
19 defensive wounds?

20 A. Most commonly are the fingers, hands, forearm.

21 Q. Did you note any injuries to Ann Brown which  
22 appear to be defensive wounds?

23 A. The left middle finger and the left wrist  
24 appear to be defensive wounds. The right shoulder  
25 ones could be defensive wounds.

1 Q. Looking here at State's 37 and then State's 38.

2 What body part are we looking at here?

3 A. That's the left wrist; left dorsal wrist or  
4 upper wrist.

5 Q. So someone shielding themselves from a knife  
6 attack could produce such an injury?

7 A. Correct.

8 Q. And then you also mentioned State's 30.

9 A. Yes.

10 Q. What, if anything, indicates defensive wounds  
11 in this regard?

12 A. The penetrating injuries to that arm look like  
13 defensive wounds to me. They probably tried to  
14 escape, is what I would assume.

15 Q. So someone shielding themselves or turning away  
16 from an attacker could produce such injuries?

17 A. Right. People always try to turn their front  
18 away from the injury.

19 Q. Now, Doctor, I want to take you back to the  
20 back injuries here, State's 40 and then State's 39.  
21 If a patient is lying facedown, unable to get away  
22 from an attacker, why may that produce such  
23 injuries?

24 A. This is another way people shield themselves,  
25 is to shield the front part of their body and expose

1 the back part and, also, put their arms up over  
2 their neck and head, usually to defend themselves.

3 Q. And, Doctor, if a patient is laying supine and  
4 cannot move away, how, if at all, may that allow for  
5 more forceful injuries?

6 A. There's no counterforce away from the injury  
7 itself, so if the direction of force is towards the  
8 body, if the patient is running away, they would  
9 mitigate some of that force. But if they're up  
10 against immobile object, like the earth, then all  
11 the force from that weapon would be directed into  
12 the body.

13 Q. Dr. Watson, if Ann Brown had not received  
14 medical intervention for the blood loss, what would  
15 have been the result or ultimate result for this  
16 patient?

17 A. If her blood pressure had remained the way it  
18 was when she was found by EMS, she would have likely  
19 endured organ failure, which most likely would have  
20 ended in death.

21 MS. MAYES: Nothing further, Your Honor.

22 THE COURT: Thank you, Solicitor.

23 All right. Ms. Gilreath?

24 CROSS-EXAMINATION

25 BY MS. GILREATH:

1 Q. Good afternoon, Doctor. Dr. Watson, you were  
2 the attending physician, correct?

3 A. Yes.

4 Q. And you were also the admitting physician?

5 A. Yes.

6 Q. So you were the one primarily responsible for  
7 now Ms. James, then Ms. Brown's, care, correct?

8 A. Yes.

9 Q. So whenever you are considering the care of a  
10 patient and what steps to take, you take into  
11 consideration a lot of different kinds of  
12 consideration, correct?

13 A. Yes.

14 Q. And that's going to include things that were  
15 told to you or relayed to medical personnel by the  
16 patient, correct?

17 A. Yes; mechanism of injury.

18 Q. Correct. Then you're also going to take into  
19 consideration independent observations that you and  
20 your medical staff have on your own, correct?

21 A. Yes.

22 Q. So the information provided by the patient, you  
23 said that includes, like, the mechanism of injury,  
24 how it happened, right?

25 A. Most of the time, if they can.

1 Q. And if you can, that would mean you would be  
2 trying to get an account of what happened from the  
3 patient?

4 A. In the trauma bay, we don't tend to do that.  
5 That happens, usually, afterwards.

6 Q. So if she's been admitted, though, she has  
7 ongoing care under your supervision, correct?

8 A. Me or my partners. Yes.

9 Q. So at some point in talking to the patient, she  
10 gives an account -- or patients tend to give  
11 accounts of here's what happened, here's how this  
12 happened?

13 A. Usually.

14 Q. In this case, Ms. James did actually give an  
15 account of what happened, correct?

16 A. Not to me directly, but through some of our  
17 other staff, yes.

18 Q. It was provided in her medical chart that you  
19 reviewed when considering the care and what steps to  
20 take, correct?

21 A. Yes.

22 Q. And one of the times that she gave an account  
23 the following day, she had indicated this happened  
24 outside of her work when her ex-husband found her,  
25 right?

- 1           A.    I don't remember that.
- 2           Q.    Do you have the chart with you?
- 3           A.    I do.
- 4           Q.    I believe we would be looking at Page 126. Do  
5           you see where she gave an account there?
- 6           A.    I do.
- 7           Q.    And that indicates, doesn't it, that she said  
8           that her ex-husband found her outside of work. I  
9           believe it says around 11:00 a.m.; is that right?
- 10          A.    Right.
- 11          Q.    And if you look further down that page, it  
12          mentions something about -- kind of her vitals and  
13          her status and things like that, right?
- 14          A.    Yes.
- 15          Q.    And it indicates that the day she gave that  
16          account, she was noted as being alert, right?
- 17          A.    Right.
- 18          Q.    And also oriented?
- 19          A.    Right.
- 20          Q.    And the date that was given, that was August  
21          the 12th, right?
- 22          A.    Yes.
- 23          Q.    So that would be the day after she was brought  
24          into the hospital?
- 25          A.    Right.

1 Q. Then there's an additional consult that's done  
2 with her on August the 14th. And I believe that's  
3 Page 128, if you need to look there.

4 A. Yes.

5 Q. So in that additional discussion with the  
6 patient, she indicated at that time that Mr. Brown  
7 asked her to meet him at the Riverwalk?

8 A. Right.

9 Q. And she indicated that she didn't think there  
10 was anything abnormal about that?

11 A. Right.

12 Q. And she said that the intent was to discuss the  
13 terms of their separation?

14 A. Yes.

15 Q. And she also said that during the course of it,  
16 how this came about was that he accused her of  
17 seeing other men and asked for their names because  
18 he wanted to kill them; isn't that what she said?

19 A. Yes.

20 Q. Now, she also talked about what happened during  
21 the incident, how it took place. And she talks  
22 about the different things that she says were done  
23 to her in that same account, right?

24 A. Yes.

25 Q. And one of the things that she says is that she

1 was dragged up the hill by her hair?

2 A. Correct.

3 Q. And she also mentions in there that something  
4 was shoved into her head?

5 A. Yes.

6 Q. Now, were you able to -- I guess when any  
7 patient comes in -- and maybe I should have gone  
8 over this in the beginning: When a patient comes in  
9 during the course of care and evaluation, at some  
10 point, things like height, weight, basic information  
11 are obtained, correct?

12 A. Correct.

13 Q. Were those obtained for Ms. James?

14 A. At some point. Probably not in the trauma bay,  
15 but at some point I'm sure those things were  
16 obtained.

17 Q. Do you know whether those -- that information  
18 was obtained?

19 A. I could see her weight on one of the documents.  
20 Height, I'd have to look for. It's standard to  
21 obtain those things.

22 Q. You said you had the weight there. What was  
23 the weight?

24 A. The weight 106.82 kilograms.

25 Q. What would that roughly be in pounds?

1 A. Probably 230, 240.

2 Q. And we talked about dragging her up the hill by  
3 her hair. Did you notice what kind of hair  
4 Ms. James had?

5 A. No.

6 Q. You've seen the photographs, correct?

7 A. Yes.

8 Q. And you said that those fairly and accurately  
9 represent her as you saw her?

10 A. Yes.

11 Q. And so this is what she looked like the day  
12 that she came in, correct?

13 A. Right.

14 Q. And so you were able to see there that she's  
15 got braids in her hair?

16 A. Yes.

17 Q. And that's pretty much all of her hair,  
18 correct? It's all braids?

19 A. Right.

20 Q. And she mentioned something being shoved into  
21 her head. Was anything ever found in her head, any  
22 debris or foreign objects or anything like that?

23 A. We didn't see anything.

24 Q. And there was no trauma to her head that you  
25 were able to see as far as stab wounds or anything

1 along those lines?

2 A. We didn't see anything through the braids.

3 Q. Now, you also talked about the wounds that she  
4 had and where they were on her body. About how many  
5 wounds were there total?

6 A. Around 20.

7 Q. And of those 20 wounds, you talked about the  
8 ones that were up in the, I think you said, torso  
9 kind of an area, correct?

10 A. Right.

11 Q. Now, you mentioned having done -- having done  
12 an X-ray -- or an X-ray was done, correct?

13 A. A CT.

14 Q. A CT scan. There was also an X-ray done,  
15 correct?

16 A. Probably. Yes.

17 Q. And there wasn't found to be a puncture of her  
18 lungs, right?

19 A. Right.

20 Q. And there wasn't any tear into her lungs or  
21 anything along those lines, right?

22 A. Nothing on chest X-ray, no.

23 Q. Was there anything showing that her heart had  
24 been punctured or any of the other organs there?

25 A. No.

1 Q. Now, you also mentioned that in the back area  
2 that we were talking about -- and I believe we were  
3 looking at one of the pictures here. In this area  
4 here, what -- this is the shoulder area, correct?

5 A. Correct.

6 Q. Right shoulder?

7 A. Yes.

8 Q. Towards the top. So these here would be just  
9 right below that in that shoulder area?

10 A. Yes.

11 Q. So the shoulder area here, I've heard you  
12 mention that there's kind of additional thicker  
13 muscle, thicker fat, and things like that --

14 A. Right.

15 Q. -- that are in that area.

16 A. Yes.

17 Q. And that's where all of these wounds here are  
18 found, correct?

19 A. Yes.

20 Q. Now, you had an opportunity to examine the  
21 wounds themselves, of course, correct?

22 A. Yes.

23 Q. And these wounds here, do you have a photo  
24 similar to this up there?

25 A. No. I think you've got them all.

1 MS. GILREATH: Your Honor, may I approach the  
2 witness?

3 THE COURT: Yes.

4 BY MS. GILREATH:

5 Q. I'm going to bring you this so you can look at  
6 it a little bit closer. Now, looking at the photo  
7 there, what would you say is the shape of those  
8 wounds?

9 A. They're linear, slightly oval.

10 Q. And are they -- are they relatively symmetrical  
11 in shape?

12 A. Yes.

13 Q. Saying symmetrical, to make sure we're all on  
14 the same page as to what we mean here, we,  
15 basically, mean that the two sides -- each side of  
16 the wound is sort of a mirror image of the other?

17 A. Yes; for the most part.

18 Q. For the most part, correct. And I'll take that  
19 back from you. And that was, I believe, State's 40  
20 we were looking at. And so these were the -- this  
21 was the photograph you were just looking at,  
22 correct?

23 A. Yes.

24 Q. The ones you said all of these wounds were  
25 mostly symmetrical in shape?

1 A. Yes.

2 Q. Such that both sides are, basically, mirrored  
3 of the other?

4 A. Yes.

5 Q. Now, with those stab wounds, you guys had an  
6 opportunity to sort of determine the depth of those  
7 wounds, correct? I think you mentioned that  
8 earlier, as well.

9 A. We would probably have probed some of those.

10 Q. And all of those were actually determined to be  
11 just into the subcutaneous layer, correct?

12 A. Probably. I don't remember doing that myself,  
13 so --

14 Q. Well, you have the record there, right?

15 A. I do.

16 Q. And I'm looking at page 108 here.

17 A. Okay.

18 Q. And do you see where it says musculoskeletal?

19 A. Yes.

20 Q. And it indicates there that there were  
21 roughly -- there were about 12 upper thoracic region  
22 and that's going to be posteriorly. So we're  
23 talking about those wounds on the back you were  
24 talking about, right?

25 A. Right.

1 Q. And it indicates there were some on her upper  
2 left extremity.

3 A. Yes.

4 Q. And those were shown to be into the  
5 subcutaneous layer, correct?

6 A. They appear to be in subcutaneous tissue.

7 Q. And the subcutaneous, that's kind of a layer of  
8 the skin, right, or a layer going down from the  
9 skin?

10 A. Yeah. It's all the tissue below the skin.

11 Q. So with the skin, you have the top layer.  
12 That's the epidermis, right?

13 A. Right.

14 Q. And that's a relatively thin layer, correct?

15 A. Yes.

16 Q. Down from that, you're going to have the  
17 dermis, correct?

18 A. Correct.

19 Q. Also sort of a relatively thin layer?

20 A. Depends on the part. It's deeper on parts of  
21 the body than it is for the other.

22 Q. Then after that, that's when you get into the  
23 subcutaneous layer, right?

24 A. Right.

25 Q. And that's largely where fat is stored and

1 things like that?

2 A. Right.

3 Q. So that layer is going to largely be -- that's  
4 going to be above internal organs, correct?

5 A. Yes.

6 Q. So a wound that goes into the subcutaneous  
7 layer, that's generally primarily -- depending on  
8 the location, it's primarily going into that fatty  
9 layer, correct?

10 A. Will you ask that again? Sorry.

11 Q. I guess what I mean is, if the wound, the  
12 deepest that it goes is into that subcutaneous  
13 layer. It's primarily striking into sort of the  
14 fatty tissue and things like that that everyone has?

15 A. Right. If it's only in the subcutaneous layer,  
16 that's true.

17 Q. And it doesn't indicate here that any internal  
18 organs were punctured, correct?

19 A. Correct.

20 Q. And it doesn't indicate that there were any  
21 wounds to her heart or her lungs or anything along  
22 those lines?

23 A. Correct.

24 Q. And there's nothing mentioned here either about  
25 any wounds or lacerations to her head, correct?

1 A. Correct.

2 Q. Now, you talked about the -- I think you were  
3 calling them defensive types of wounds. And that's  
4 just sort of a label that you give to wounds that  
5 would appear to be -- that you would suspect to be  
6 from somebody defending themselves, correct?

7 A. Right. There's typical locations of defensive  
8 wounds.

9 Q. And you can't necessarily say exactly how it  
10 got there just from looking at it; it's just a  
11 typical location that it would be for a defensive  
12 wound?

13 A. Correct.

14 Q. And that's generally one we sort of -- you  
15 talked about the one on the wrist, correct?

16 A. Yes.

17 Q. And on the finger?

18 A. Yes.

19 Q. And you mentioned, if I understood right -- but  
20 that has to do, basically, with the assumption that  
21 someone is going to kind of raise their arms to  
22 cover to try to protect themselves?

23 A. Right.

24 Q. You mentioned that the ones you noted as being  
25 likely defensive wounds was the one on the left

1 wrist and the left finger, correct?

2 A. Yes.

3 Q. And I think you mentioned the right shoulder  
4 could be. It sounded like you were a little less  
5 certain about that one, right?

6 A. Right.

7 Q. Now, those were the ones that you mentioned  
8 being the defensive wounds there. Were there any --  
9 did you find any cuts, lacerations, or anything like  
10 that along this area here on the forearm?

11 A. No. The only ones I recall is the dorsal or  
12 top of the foreman.

13 Q. And that was the one, you said, on the left  
14 wrist?

15 A. Yes.

16 Q. So the left wrist, left finger. On that same  
17 left arm, were there any along the forearm below the  
18 wrist?

19 A. I don't recall any.

20 Q. Do you recall any that were along this area  
21 here, from the elbow up towards the shoulder on the  
22 bottom side?

23 A. No.

24 Q. Were there any wounds like that on the right  
25 arm, on the wrist?

- 1           A.    I don't think there were any on the wrist or  
2           the forearm.  There was one close to the forearm,  
3           but not on -- at the elbow.
- 4           Q.    The one at the elbow?
- 5           A.    Right.
- 6           Q.    And that's on the front side, correct?
- 7           A.    Yeah.  It's sort of -- it's lateral.
- 8           Q.    Lateral.  So the outside there?
- 9           A.    Yeah.
- 10          Q.    And there weren't any on the underside, either  
11          side there on either arm?
- 12          A.    I don't remember any.
- 13          Q.    And you don't see any in the photographs there,  
14          correct?
- 15          A.    No.
- 16          Q.    Now, we also talked about the force that would  
17          be used to -- when someone, I think they said, lying  
18          on the ground or lying cross straight or something  
19          like that.  And you talked about that force being  
20          necessary to get into organs or get, basically,  
21          sounds like, below that subcutaneous layer, correct?
- 22          A.    Yeah.  It would take a lot of force to get in  
23          there.
- 24          Q.    And with that, you talked about it in terms of  
25          if someone is laying and not moving and just sort of

1           absorbing the blow. Right?

2           A.     Right.

3           Q.     Now, if someone was laying and absorbing those  
4           blows, not moving, as you have described it, that  
5           would sort of open up that entire -- any visible  
6           open region to being attacked, correct?

7           A.     Yes -- well, it depends on their position.

8           Q.     Well, I think the position you had described  
9           was them laying flat, facedown, correct?

10          A.     Correct.

11          Q.     So that would, essentially, expose any part of  
12          the body that's laying there flat to being injured,  
13          being wounded?

14          A.     Right. It would expose the back.

15          Q.     Could it also -- if the person's not moving,  
16          could it also expose them to having body parts  
17          moved, a head pulled back, or something like that  
18          for the attacker to get to another part of the body?

19          A.     It could.

20          Q.     I mean, if they're laying and not moving,  
21          right? That's what you were talking about the  
22          hypothetical here. And you didn't find any wounds  
23          to her neck or throat area, right?

24          A.     No.

25          Q.     You didn't find any to her face?

1 A. No.

2 Q. And the ones we talked about, I believe you  
3 described them as being in the box there. How many  
4 of those were there that you said were in the box  
5 area on the front side?

6 A. There were, I believe, two on the front side,  
7 both left and right breasts or close to the right  
8 breast on the front.

9 Q. And that was two of those wounds?

10 A. Right.

11 Q. Out of the 20?

12 A. Correct.

13 Q. And there weren't any wounds on the lower half  
14 of the body, correct, as far as lacerations, stab  
15 wounds, anything like that?

16 A. Nothing below the chest level that I could  
17 remember.

18 Q. And you also talked about there was a chest  
19 X-ray done, right?

20 A. Yes.

21 Q. And a CT scan?

22 A. Yes.

23 Q. And, I believe you already said, nothing  
24 penetrated the lung, right?

25 A. Well, nothing that we could see. There was no

1           hemothorax, which is air outside the lung.

2           Q.    And then you also mentioned, I think, in one of  
3           the photographs, that where the area -- I think  
4           below the shoulder, you talked about where the ribs  
5           are and you mentioned the ribs being able to absorb  
6           a lot of the blow if someone was laying there just  
7           taking the shots?

8           A.    If they hit the rib itself, it would absorb all  
9           of the blow.

10          Q.    And during the chest X-ray or the CT scan, you  
11          didn't find evidence of a broken rib or a rib that  
12          was cut or damaged or anything like that, right?

13          A.    No.

14          Q.    And you were talking about where the heart and  
15          vessels and arteries and things like that were.  
16          None of her primary arteries around her heart were  
17          punctured or anything like that, correct?

18          A.    Not of the great vessels, no.

19          Q.    So, really, the majority of these wounds that  
20          were found were superficial, right?

21          A.    Superficial into the subcutaneous tissues,  
22          right.

23          Q.    Right. They're listed as being superficial,  
24          correct?

25          A.    From the initial exam, yeah.

1 Q. And she did have a surgery, I believe, that was  
2 noted, right?

3 A. Correct.

4 Q. And the primary purpose of that surgery was  
5 actually to sort of clean out these wounds, remove  
6 any of the dirt or tissue that would be a concern  
7 for infection, and that kind of thing, correct?

8 A. Yes.

9 Q. I believe there was a repair that was done to  
10 the wrist. But, primarily, most of the wounds, it  
11 was just cleaning them out?

12 A. Right. She had tendon repair and then the rest  
13 of it was just washing out the tissue.

14 Q. And that was the wrist, right, the tendon  
15 repair?

16 A. Yes.

17 Q. And that was sort of a partial tear that was in  
18 there, correct?

19 A. I'd have it to look at the orthopedic's note to  
20 see if it was partial or complete. Let's see. Yes.  
21 She had disruption of her radial lateral band of the  
22 index finger and 80 percent of the extensive carpi  
23 radialis brevis tendon.

24 Q. So surgery was done on that because that would  
25 affect the use of that hand, correct?

1 A. Yes.

2 Q. And so once it was repaired, were there any --  
3 it was said to be a successful surgery, correct, the  
4 repair of those?

5 A. From the orthopedic surgeons, yes.

6 Q. And she didn't require any surgeries to  
7 intervene in anything regarding her heart or lungs  
8 or internal organs?

9 A. No.

10 Q. Now, you also obtain a medical history of the  
11 patient, correct, during the course of -- maybe not  
12 necessarily at the beginning. But, at some point, a  
13 medical history is obtained?

14 A. Yes.

15 Q. And she was actually noted as having something  
16 called thalassemia, correct?

17 A. Right.

18 Q. And that's sort of similar to anemia? It's  
19 along those lines, similar kind of blood disorder?

20 A. Right.

21 Q. And those disorders are ones that can affect  
22 what your blood pressure is at any given time,  
23 right?

24 A. It can affect your level of hemoglobin. But it  
25 won't affect -- shouldn't affect your blood

1 pressure.

2 Q. So having something like that would not affect  
3 what someone's blood pressure would be at all?

4 A. Should not. Not a chronic thalassemia should  
5 affect it.

6 Q. What about anemia?

7 A. Acute anemia, if you lose a significant amount  
8 of blood acutely or rapidly, it will affect your  
9 blood pressure. But, chronically, the body would  
10 compensate it, so it would not. She should have a  
11 normal blood pressure outside of this.

12 Q. And did her blood pressure return to normal  
13 over the course of her being in the hospital?

14 A. It seemed to. It actually was a little bit  
15 above normal on the post-trauma day one, I believe.  
16 Yes.

17 Q. And at the time when she was discharged, are  
18 you aware of what her blood pressure was then?

19 A. I don't know.

20 Q. I'm looking at page 157 here.

21 A. Okay.

22 Q. In the discharge information on this page,  
23 looking at the vital signs, the blood pressure  
24 there.

25 A. Right.

1 Q. And that's 99 over 56, correct?

2 A. Correct.

3 Q. So you said she's not losing blood anymore at  
4 this point, right?

5 A. Right.

6 Q. The trauma has ended in terms of blood loss and  
7 things like that, correct?

8 A. Yes.

9 Q. And that blood pressure there at 99 over 56,  
10 that's -- you had mentioned that anything below 90  
11 is considered low, correct?

12 A. Correct.

13 Q. So on the scale of a normal blood pressure,  
14 that would be towards the lower end?

15 A. Lower end of the normal. Yes.

16 Q. And you said all of the bleeding had stopped at  
17 that point?

18 A. Yes.

19 MS. GILREATH: I beg the Court's indulgence.

20 THE COURT: Yes, ma'am.

21 BY MS. GILREATH:

22 Q. And I wanted to clarify something you had said  
23 earlier. You said anything -- a blood pressure  
24 below 90 is not just low. It's considered critical,  
25 correct?

1 A. It would alert us to a level-one alert. Yes.

2 Q. And that's critical, correct?

3 A. Can be. Yes.

4 Q. So 99 here would typically be considered low,  
5 much lower would be in the critical range?

6 A. We wouldn't have grades of critical. But below  
7 90 is our level-one alert, and that's considered  
8 severe hypotension.

9 Q. And, at this point, she was actually  
10 discharged, correct?

11 A. Yes.

12 Q. So she wasn't considered to be in a critical  
13 state at that point?

14 A. Correct.

15 Q. And you never had a chance to see or observe  
16 what caused the injuries or caused the wounds,  
17 correct, what object, what --

18 A. Not before today.

19 Q. -- instrument?

20 Not before today?

21 A. No.

22 Q. So you saw today the object that caused the  
23 wounds?

24 A. I don't know if it was the object that caused  
25 the wounds, but I saw a knife today.

1 Q. You saw a knife today?

2 A. Back there.

3 Q. Back there?

4 A. When I was sitting at the table.

5 Q. With the Solicitor's Office?

6 A. No. Right here on the bench.

7 MS. GILREATH: Your Honor, may we approach?

8 THE COURT: No, ma'am. I said, no, ma'am.

9 MS. GILREATH: No further questions, Your  
10 Honor.

11 Redirect, Solicitor?

12 MS. MAYES: Yes, sir, Your Honor.

13 REDIRECT EXAMINATION

14 BY MS. MAYES:

15 Q. Now I want to follow up on some of the  
16 questions you were just asked, specifically about  
17 that history that was provided when the patient  
18 first arrived for treatment. Did the history  
19 determine -- or did the history note who the  
20 assailant was?

21 A. I don't know.

22 Q. Take your time.

23 A. I can't remember what page it was on.

24 THE COURT: Can you direct him to the proper  
25 page?

1 BY MS. MAYES:

2 Q. It would be the page Ms. Gilreath was asking  
3 you about.

4 A. So there were two different histories that I  
5 was directed to. One was the history and physical  
6 from the orthopedic surgery service.

7 Q. Yes. Does that note who the assailant is?

8 A. Says -- looks to be her ex-husband.

9 Q. Now I also want to ask you whether there were  
10 notations throughout the record of the patient  
11 having leaves in her hair, if you recall.

12 A. I don't recall. I'd have to look through this  
13 and see.

14 Q. Okay. I can move along, Doctor.

15 Ms. Gilreath was asking you specifically about  
16 the process that you went through to clean the  
17 wounds. Why was that necessary in this case?

18 A. The patient had spent some time in the river,  
19 so fresh water exposure to open wounds exposes to a  
20 lot of potential bacteria -- aeromonas is one -- and  
21 then other environmental contaminants. So we have  
22 to wash it out fairly quickly. If those pathogens  
23 are left in there, they can spread pretty rapidly.  
24 We've actually had patients die within less than 24  
25 hours from those exposures.

1 Q. What type of specific treatment did y'all take  
2 there at the trauma unit to prevent any infection  
3 from those pathogens from the river?

4 A. We irrigate all the wounds as quickly as we  
5 can. We give them a broad spectrum of antibiotics.  
6 Clindamycin and Superflux is typically what we use.

7 Q. Can that prevent sepsis or blood infection?

8 A. It can.

9 Q. And then if a patient does sustain that type of  
10 infection to the blood without the aggressive  
11 antibiotic treatment, what may the result be?

12 A. If they sustain one of these pathogens I talked  
13 about, sepsis and death or at least loss of limbs.

14 Q. All right. Now, Ms. Gilreath was asking you as  
15 well about the lung and, specifically, was the lung  
16 penetrated. But, Doctor, describe to us what a  
17 hemothorax is and how that differs from a  
18 pneumothorax.

19 A. So a hemothorax is a collection of blood in the  
20 space where the lung occupies called the pleural  
21 space. So something has allowed blood into that  
22 area that displaces the lung --

23 Q. All right.

24 A. -- as opposed to pneumothorax, which is the  
25 same process with air from the lung, bleeds out into

1           that same space and displaces the lung.

2           Q.    And being familiar with this patient's course  
3           of treatment, what type of trauma produces a  
4           hemothorax such as Ms. Brown had?

5           A.    It would be some sort of injury to the tissues  
6           surrounding the lung or the lung itself.  So if it  
7           were injury to the tissue surrounding the lungs,  
8           such as intercostal vessels or the parietal pleura,  
9           which is the layer that lines the chest cavity,  
10          those things would bleed into the pleura place, the  
11          lung space.  And the difference between that is if  
12          it goes further and hits the lung, then you get  
13          blood and air, leading to a pneumothorax and  
14          hemothorax.

15          Q.    And can a hemothorax interfere with normal  
16          breathings?

17          A.    Yes, it can.  Depending on the amount, it will  
18          displace the lung, decreasing the volume for the  
19          lungs to expand.  If it's a lot of blood, it can  
20          displace the heart or kink off the great vessels and  
21          kill the patient.

22          Q.    Now, one of the questions you were asked on  
23          cross-examination is about the actual blood pressure  
24          level.  I believe your testimony on direct was that  
25          it was 70s over 40s.  Would that ever be the result

1 of anemia?

2 A. No.

3 Q. What --

4 A. Not chronic anemia. An acute anemia, meaning  
5 hemorrhage, it would be; but not a chronic anemia.  
6 You'd have compensation for that.

7 Q. So when we're talking about that 70s over 40s  
8 in relation to an acute anemia, such as someone  
9 suffering a stab wound, how may that result in that  
10 type of blood pressure at the emergency level?

11 A. How might that loss of blood lead to that --  
12 well, yeah, in order to maintain blood pressure, it  
13 requires a good pump of your heart and good volume  
14 in the tubes to maintain blood pressure.

15 So if either one of those is not functioning  
16 correct, then you're going to drop your blood  
17 pressure. So it requires your heart pumps real well  
18 and there's enough blood in there. If you lose the  
19 blood out of the tube, your heart can pump all it  
20 wants, but it's just nothing there to pump it out --  
21 or not enough to pump it out.

22 Q. So, Doctor, regardless of the depth of the stab  
23 wounds, do stab wounds of this nature result in  
24 blood loss?

25 A. Yes.

1 Q. And is untreated blood loss from multiple stab  
2 wounds potentially fatal?

3 A. Potentially fatal, yes.

4 MS. MAYES: Nothing further.

5 THE COURT: Thank you.

6 Recross, Ms. Gilreath?

7 MS. GILREATH: Just briefly, Your Honor.

8 RE-CROSS-EXAMINATION

9 BY MS. GILREATH:

10 Q. Dr. Watson, when Ms. James was brought in on  
11 August the 11th, she was assessed kind of throughout  
12 that day, correct?

13 A. Yes.

14 Q. And I'm just -- for efficiency's sake, I'm  
15 looking at page 180 of her chart here. There was an  
16 assessment that was done of her on August 11th,  
17 appears to be a little bit later on in the day.

18 A. Okay.

19 Q. And do you see where it indicates the  
20 respiratory condition?

21 A. Yes.

22 Q. And what was the respiratory condition there?

23 A. The respiratory exam was lungs were clear to  
24 oscillation, respirations are nonlabored, breath  
25 sounds are equal.

1 Q. And when you're talking about the hemothorax,  
2 that was something in Ms. James that was fairly  
3 minimal, correct?

4 A. It was on the small side of hemothoraces. Yes.

5 Q. And it actually went away on its own. There  
6 was no intervention, no chest tube done to --

7 A. No.

8 Q. -- remove that or take care of that or --

9 A. It went away on its own. There were no  
10 interventions.

11 Q. And you were talking about cleaning the wounds.  
12 And the bacteria and things you were talking about,  
13 you said that any time someone has a wound like that  
14 and it has been exposed to river water or fresh  
15 water, there's the potential for that kind of  
16 bacteria?

17 A. Yes.

18 Q. And so that would be procedure that would  
19 always be done in that situation when there's a  
20 wound exposed to that?

21 A. Yes. We irrigate any wound that comes in and  
22 clean it up.

23 MS. GILREATH: No further questions, Your  
24 Honor.

25 THE COURT: Thank you.

1           Doctor, you may step down. I'm not going to  
2           quite release you from your subpoena at this time.  
3           You may step outside the courtroom.

4           Ladies and gentlemen, please step to your jury  
5           room momentarily. Do not discuss the case during  
6           this brief recess.

7           (The jury exits the courtroom at 11:51 a.m.)

8           THE COURT: Ms. Gilreath, I think you had a  
9           matter you wanted to address?

10          MS. GILREATH: Your Honor, we had some concerns  
11          that the doctor had indicated when I asked him  
12          whether he had an opportunity to observe the weapon  
13          and he said not until today. And that, I think,  
14          gave us the impression that, perhaps, he had been  
15          shown a knife or something that was indicated to be  
16          the weapon. That's the first we would have heard of  
17          anything like that being recovered. And it would  
18          give the jury the impression that that knife had  
19          actually been recovered, as he indicated he saw it  
20          and pointed over to where the Solicitor's Office  
21          was.

22          THE COURT: So what are you asking me to do?

23          MS. GILREATH: Well, Your Honor, I would move  
24          for a mistrial at this point. As far as we're  
25          aware, there's not been any knife recovered. There

1           hasn't been anything like that.

2                   As far as we know, there wasn't anything  
3           presented in evidence as to the knife. Nothing was  
4           disclosed in the Rule 5 about finding the knife or  
5           anything along those lines. So we don't know what  
6           knife he saw or anything like that.

7                   But him saying that he saw a knife over there  
8           and saying "until today" suggests that that weapon  
9           has been recovered, he's seen it, and he knows that  
10          that's what it is. Of course, I don't see how he  
11          would have knowledge of that to begin with, much  
12          less have we been made aware that anything like that  
13          was recovered or was intended to be presented as the  
14          actual weapon.

15                   THE COURT: I didn't hear all that from the  
16          doctor by way of testimony. I heard he saw a knife  
17          over here. That's why I hadn't released the doctor  
18          from his subpoena. I just wanted to get finished  
19          with the testimony, which has always seemed to be  
20          direct, cross, redirect, recross. So you're just  
21          asking, based on what I've heard from this doctor,  
22          to declare a mistrial? That's what you're asking me  
23          to do?

24                   MS. GILREATH: Well, Your Honor, when I asked  
25          him -- as we were talking about the wounds and I

1           said, and you didn't have an opportunity to examine  
2           the object or --

3           THE COURT: I can remember -- you know, I'm not  
4           as dumb as I look. I can remember the testimony  
5           that just occurred in front of me -- before me that  
6           I saw and heard, the testimony.

7           I'm saying your motion is for me to declare a  
8           mistrial based on your questioning of the doctor on  
9           redirect about the knife? That's all I'm asking  
10          you. He's still here. I didn't release the doctor.

11          MS. GILREATH: Essentially, Your Honor, again,  
12          my concern is he said "until today," which suggests  
13          that he examined it today. So that would be the  
14          basis of my motion. Yes, Your Honor.

15          THE COURT: Thank you.

16          Anything, Solicitor?

17          MS. MAYES: Yes, sir, Your Honor. He's a  
18          sequestered witness. So he --

19          THE COURT: I never ordered the expert  
20          witnesses to be sequestered. So if he's  
21          sequestered, it's only by the decision of the  
22          parties. But go right ahead, Solicitor.

23          MS. MAYES: Yes, sir, Your Honor. And that was  
24          our decision to not discuss anything beyond what he  
25          knows about the case. So he wouldn't have knowledge

1           in this situation or in this case about, ultimately,  
2           where the murder weapon is or whether or not it was  
3           recovered.

4           But I had a prop knife with our investigator,  
5           and will probably be using a prop knife at some  
6           point during the course of the trial, if the  
7           defendant testifies. But in discussion about  
8           defensive wounds and how wounds occur, I was holding  
9           the knife. I certainly didn't discuss with the  
10          doctor any of the facts in the case. I thought it  
11          would be apparent that it was not related to the  
12          case because the investigator pulled it from his  
13          jacket.

14          That is the extent, Your Honor, of what he  
15          would have responded to in reference to the defense  
16          question. And, again, he wouldn't have any outside  
17          knowledge of the facts of the case beyond treating  
18          the patient.

19          THE COURT: Thank you, Solicitor.

20          Do you want, Ms. Gilreath, to examine the  
21          doctor any further in that regard in-camera, outside  
22          the presence of the jury?

23          MS. GILREATH: Yes, Your Honor.

24          THE COURT: Bring the doctor back in.

25          Doctor, will you come back around for us,

1           please. You're still under oath. I'm going to  
2           allow the attorney, outside the presence of the  
3           jury, to follow up.

4           THE WITNESS: Okay.

5           THE COURT: Ms. Gilreath.

6           MS. GILREATH: Thank you, Your Honor.

7   IN-CAMERA EXAMINATION

8           BY MS. GILREATH:

9           Q.    Dr. Watson, I think when we were talking  
10           earlier I had asked you about the wounds and --

11           THE COURT: Get to the point, Ms. Gilreath.

12           BY MS. GILREATH:

13           Q.    I asked you if you had an opportunity to  
14           observe the object or implement that caused those  
15           wounds. Do you remember that?

16           A.    Yes. I remember the question.

17           Q.    And your response was "not until today,"  
18           correct?

19           A.    Yeah. I haven't seen it. I saw a knife. I  
20           don't know if it was the knife.

21           Q.    Where was it that you saw the knife?

22           A.    I was sitting on that bench right there.

23           Q.    Where was the knife when you saw it?

24           A.    Over here --

25           Q.    I mean, was it sitting on a table? A chair?

1 Was it in someone's hand? Where was it?

2 A. It was in two people's hands. It was passed  
3 from one person to another.

4 Q. So you just -- did anyone discuss the knife  
5 with you?

6 A. Not the details. They were using it for  
7 something -- demonstration or something. One person  
8 passed it to another and held it in their hand as a  
9 demonstration.

10 Q. And when was that?

11 A. It was when we were waiting on the absent juror  
12 to come.

13 Q. And you said they were doing a demonstration  
14 with it. So were you under the impression that that  
15 was or may have been the knife that was used?

16 A. I just -- I assumed it may have been. I wasn't  
17 told specifically it was the knife that was used. I  
18 just assumed it could have been. Yeah.

19 Q. So that was the reason you said "not until  
20 today," correct?

21 A. Right.

22 Q. Because, at that point, you assumed that that  
23 may have been the knife because it was here during a  
24 trial where a knife was said to have been involved?

25 A. Correct.

1 MS. GILREATH: That would be all of my  
2 questions, Your Honor. And I would renew my motion.

3 IN-CAMERA EXAMINATION

4 BY MS. MAYES:

5 Q. Dr. Watson, you were sitting here waiting for  
6 court to begin this morning because there was an  
7 absent juror.

8 A. Yes.

9 Q. And was one of the people you observed myself?

10 A. Yes.

11 Q. And was the other Investigator Sullivan?

12 A. Yes.

13 Q. Did you see me cut myself with that knife?

14 A. I did.

15 Q. Do you have any knowledge of the facts of the  
16 investigation in this case regarding what type of  
17 weapon was used and whether it was ever recovered by  
18 law enforcement?

19 A. No.

20 MS. MAYES: Nothing further, Your Honor.

21 THE COURT: Recross, Ms. Gilreath?

22 IN-CAMERA EXAMINATION

23 BY MS. GILREATH:

24 Q. Dr. Watson, what kind of knife was it?

25 A. It was a folding knife.

1 Q. Just a folding knife?

2 A. Like a pocketknife or folding knife.

3 Q. Was the blade out or was it closed?

4 A. It started out -- it was closed and then it was  
5 opened. Yeah.

6 Q. And did you examine the knife or was it just  
7 you seeing it?

8 A. No. I didn't touch it.

9 MS. GILREATH: That's all my questions, Your  
10 Honor. I would like to be heard again as to the  
11 motion.

12 THE COURT: Doctor, explain to me the term  
13 demonstration in regards to the knife. Can you  
14 explain that to me, please.

15 THE WITNESS: Yeah. Just holding the knife in  
16 their hand and making a downward motion with it.

17 THE COURT: Did anyone represent to you that  
18 was the knife or a knife that was used in the attack  
19 on Ms. James?

20 THE WITNESS: Nobody told me that it was the  
21 knife used. I just made an assumption.

22 THE COURT: Okay. Was that assumption based on  
23 your expertise in the field of trauma surgery and  
24 trauma treatment, if that's a fair question?

25 THE WITNESS: I didn't assume any particular

1           quality of the knife made any specific wound or  
2           pattern or anything like that. I just assumed  
3           because the knife was in the courtroom during a  
4           trial that had a knife in it.

5           THE COURT: Did you happen to observe where the  
6           knife came from before you saw it? Did you see --

7           THE WITNESS: No, I didn't see it.

8           THE COURT: You didn't see anybody put their  
9           hands in their pocket and reach down in a bag or --

10          THE WITNESS: No. I didn't see it come out of  
11          a bag or anything.

12          THE COURT: Did you see where it ended up?

13          THE WITNESS: Yes. It ended up in her hand.

14          THE COURT: Who? The detective?

15          THE WITNESS: The solicitor.

16          Is that your title?

17          THE COURT: Ended up in her hand?

18          THE WITNESS: Yes.

19          THE COURT: And that's the last place you saw  
20          the knife?

21          THE WITNESS: Yes.

22          THE COURT: Thank you, Doctor. Thank you very  
23          much for being with us today. I appreciate your  
24          time and patience. You may step down and you may be  
25          excused.

1 All right. Any other witnesses for this  
2 in-camera hearing, Ms. Gilreath, from the Defense?

3 MS. GILREATH: No additional witnesses, Your  
4 Honor. I would have additional arguments to make to  
5 the Court.

6 THE COURT: Solicitor, any witnesses on behalf  
7 of the State?

8 MS. MAYES: Yes, sir, Your Honor. The State  
9 calls Investigator Sullivan.

10 THE COURT: Come around, please.

11 JAMES PATRICK SULLIVAN

12 being first duly sworn, testified as follows:

13 THE WITNESS: Yes, ma'am.

14 THE CLERK: Once you're seated, state your full  
15 name, spelling your last.

16 THE WITNESS: James Patrick Sullivan,  
17 S-U-L-L-I-V-A-N.

18 IN-CAMERA EXAMINATION

19 BY MS. MAYES:

20 Q. Investigator Sullivan, do you have a knife on  
21 you?

22 A. Yes, ma'am, I do.

23 Q. And at any point today, did you pull that out?

24 A. Yes, ma'am; at your direction.

25 Q. Did you let me examine it?

- 1           A.    Yes, ma'am, I did.
- 2           Q.    Did you let me open it?
- 3           A.    Yes, ma'am, I did.
- 4           Q.    Did I injure myself?
- 5           A.    Yes, ma'am, you did.
- 6           Q.    Was the doctor present when this occurred?
- 7           A.    Yes, he was.
- 8           Q.    Where was he seated?
- 9           A.    To my left, ma'am, on that bench.
- 10          Q.    Who did I return the knife to?
- 11          A.    To myself.
- 12          Q.    Do you have it on your person at this time?
- 13          A.    I do, ma'am.
- 14          Q.    Was it ever represented to the doctor or anyone  
15               else in the courtroom that that was the assault  
16               weapon in this case?
- 17          A.    No, ma'am.
- 18               MS. MAYES:  Nothing further.
- 19               THE COURT:  Thank you, Solicitor.
- 20               MS. GILREATH:  No questions, Your Honor.
- 21               THE COURT:  Thank you, Detective Sullivan.  You  
22               may step down.
- 23               Anything further from the State?
- 24               MS. MAYES:  No, sir, Your Honor.
- 25               THE COURT:  Okay.  Thank you.

1 Ms. Gilreath?

2 MS. GILREATH: Your Honor, I would renew my  
3 motion for a mistrial. At this time, I would argue  
4 that, based on the circumstances, him being  
5 qualified as an expert, testifying as to the wounds  
6 and the nature of the wounds, the injuries, and then  
7 saying in front of the jury that he has seen that  
8 knife today, I think it would be an improper  
9 suggestion to the jury that the knife is here, was  
10 here; that it was a knife in particular, a  
11 particular kind of knife.

12 Particularly, should the solicitor attempt to  
13 use it at any point during the remainder of the  
14 trial, whether during closing or otherwise, I would  
15 argue it would violate Mr. Brown's due process  
16 rights and sort of improperly suggest to the jury  
17 that there is an item of evidence that, in fact, my  
18 understanding is, the State does not have, and could  
19 improperly suggest that the kind of knife that they  
20 have that they would try to use would be the kind of  
21 knife that was used, based on his being an expert  
22 and saying that he hadn't examined it until today.  
23 And so we would first move for a mistrial on those  
24 grounds, Your Honor.

25 THE COURT: Thank you.

1           Solicitor?

2           MS. MAYES: Your Honor, I'm not aware of  
3 anything that would prevent the use of a prop or  
4 demonstrative item at some point, depending on what  
5 the potential testimony may be in this case. We  
6 would certainly take that up with the Court prior to  
7 its use, however.

8           We would oppose a mistrial, Your Honor. That  
9 was an inquiry posed by Defense counsel. And I  
10 believe that the witness' responses in front of the  
11 jury made it clear that he was not sure about those  
12 facts of the case.

13           MS. GILREATH: Your Honor, may I add one thing?

14           THE COURT: Yes, ma'am.

15           MS. GILREATH: There's also, I think, the  
16 concern and the risk that the jury would believe  
17 that the doctor's testimony -- the entire testimony  
18 at that point was also based on him having seen the  
19 knife that caused the injury, believing that he saw  
20 that today, based on his testimony.

21           THE COURT: The decision to grant or deny a  
22 mistrial is within sound discretion of the trial  
23 judge. Citing State v. Cooper, 514 S.E.2d 584,  
24 (1999); State v. Crosby, 559 S.E.2d 352: The  
25 general rule of this state is that the ordering of

1 or refusal of a motion for a mistrial is within the  
2 discretion of the trial judge, and such discretion  
3 will not be overturned in the absence of abuse  
4 thereof amounting to an error of law. The power of  
5 the Court to declare a mistrial ought to be used  
6 with the greatest caution under urgent circumstances  
7 and for very plain and obvious causes stated into  
8 the record by the trial judge.

9 Citing *State v. Beckham*, 513 S.E.2d 606,  
10 (1999): Granting of a motion for mistrial is  
11 extreme measure which should be taken only where the  
12 incident is so grievous that prejudicial effect can  
13 be removed in no other way. Mistrial should only be  
14 granted in cases that manifest necessity and with  
15 the greatest caution for very plain and obvious  
16 reasons.

17 A mistrial should only be granted when, quote,  
18 absolutely necessary, unquote. The defendant must  
19 show both error and resulting prejudice in order to  
20 be entitled to a mistrial. Should not be granted  
21 unless absolutely necessary. And to receive a  
22 mistrial, a defendant must show error and prejudice.  
23 The less and lucid test is therefore declared to be  
24 whether the mistrial was dictated by a manifest  
25 necessity or the ends of public justice.

1           First off, I think there is no error. It was a  
2 question asked by the defense counsel. The doctor  
3 answered the question. There is no resulting  
4 prejudice. Further, if there is any error, it's a  
5 self-inflicted wound. It's a question by the  
6 defense counsel on cross-examination of the witness  
7 at the time.

8           It is clear that trial lawyers can, in  
9 preparation for trial, talk with witnesses; not only  
10 experts, but all of their witnesses. And with  
11 experts, they could prepare by way of using  
12 demonstrative evidence at all.

13           I listened closely to that examination of the  
14 doctor concerning the knife. The knife was over  
15 there and such. I never got the impression that  
16 that was the knife; that it was the knife that  
17 inflicted the wounds on Ms. James.

18           So I think there's no error nor is there any  
19 prejudice. Therefore, I will deny the motion for a  
20 mistrial. However, in an abundance of caution, if  
21 the Defense would like for me to give any curative  
22 instruction in that regard or that testimony, I will  
23 do so. And I use the term curative instruction only  
24 as a term of legal art, not as a -- not evaluation  
25 that there is something that needs to be cured.

1           But I will consider whatever curative  
2 instruction the Defense may like for me to give the  
3 jury, Ms. Gilreath.

4           MS. GILREATH: Your Honor, we would then ask  
5 that the testimony be stricken and a curative  
6 instruction given based on the circumstances that,  
7 again, it would improperly suggest that he had seen  
8 the actual weapon; that that's going to be something  
9 that we believe is at issue in this trial, which we  
10 would have argued was a prejudice to Mr. Brown.

11           And given that, of course, we could not have  
12 known prior to today because today is the day that  
13 he saw this object that we've never seen, having not  
14 been able to -- because prior to today, he had not  
15 reviewed anything. There was no reason to believe  
16 he had reviewed it.

17           So, given all of those circumstances, we  
18 believe that there was prejudice. And we would ask  
19 for, if not the mistrial, then the testimony be  
20 stricken from the record and a curative instruction  
21 given, as this could not have been anticipated.

22           THE COURT: All right. Anything before I bring  
23 the jury back in?

24           MS. MAYES: Nothing from the State, Your Honor.

25           THE COURT: Ms. Gilreath?

1 MS. GILREATH: Just for preserving the record,  
2 I would also argue that the curative instruction --  
3 this is what I was trying to get at: That the  
4 curative instruction would not cure the prejudice to  
5 Mr. Brown, but we would ask for it in spite of that.

6 THE COURT: You're protected for the record.  
7 Again, it's this Court's opinion there is no error  
8 and there is no prejudice. There is no manifest  
9 necessity. It's not necessary.

10 (The jury enters the courtroom at 12:12 p.m.)

11 THE COURT: Welcome back, ladies and gentlemen.  
12 There was some testimony during Dr. Watson's  
13 testimony, towards the end, concerning the doctor  
14 seeing a knife. And I believe he pointed where he  
15 saw it, over there, and that he saw it today. There  
16 may be some -- your memory may be better than mine.  
17 There may have been some more questions in that  
18 regard to that subject matter.

19 I have determined that that testimony will be  
20 stricken from the record. And when I say stricken  
21 from the record, it will still be in the record, but  
22 what that means for the jury panel is that I will  
23 charge you or instruct you on this again prior to  
24 submitting the case to you for your deliberations  
25 that any testimony I order stricken from the record

1           may not be considered in this case, would not even  
2           be discussed in the jury room.

3                     It was as if there was no testimony in that  
4           regard as to that specific part of the record. And  
5           I know this jury will follow my instructions and  
6           follow their oath. With that being said, ladies and  
7           gentlemen, we will continue the trial of the case.

8                     Solicitor, call your next witness.

9                     MR. STORY: Your Honor, the State calls April  
10          Carter.

11                    MS. GILREATH: Your Honor, just for purposes of  
12          the record, I'd like to renew the motion that we had  
13          made prior to the curative instruction.

14                    THE COURT: Thank you. And I will renew my  
15          previous rulings in that regard.

16                    Yes, ma'am. Come right around and be sworn for  
17          us.

18                                    APRIL CARTER,  
19          being first duly sworn, testified as follows:

20                    THE WITNESS: So help me God.

21                    THE CLERK: Have a seat up there, ma'am. Once  
22          you're seated, speak up loud and clear and state  
23          your full name, spelling your last on the record,  
24          please.

25                    THE WITNESS: My name is April Carter,

## DIRECT EXAMINATION OF APRIL CARTER BY MS. USRY

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1 C-A-R-T-E-R.

2

3

DIRECT EXAMINATION

4

BY MS. USRY:

5

Q. Thank you, Ms. Carter. What area of the state

6

do you currently live in?

7

A. Fairfield Road, Columbia, South Carolina.

8

THE COURT: Ma'am, you're going to have to

9

speak up for me. I know I'm the closest one sitting

10

to you, but I'm probably the only one that can't

11

hear you.

12

MS. USRY: Try to speak into the microphone.

13

THE WITNESS: Fairfield Road, South Carolina.

14

BY MS. USRY:

15

Q. Thank you. And what area were you living in,

16

in August of 2015?

17

A. Fairfield Road, Alcott Drive.

18

Q. So in the Columbia area?

19

A. Yes, ma'am.

20

Q. And during that time, did you know a Joshua

21

Brown?

22

A. Yes, ma'am.

23

Q. And how did you know him?

24

A. We was dating.

25

Q. Y'all were dating. How long had you been

1 dating?

2 A. Since -- after February 14th, 2015.

3 Q. And as part of that relationship, were you  
4 intimate?

5 A. Yes, ma'am.

6 Q. And on August 11th of 2015, did you have any  
7 contact with Joshua Brown?

8 A. I was working that day.

9 Q. Where did you work at that time?

10 A. Amazon.

11 Q. How many years did you work at Amazon, total?

12 A. Four years.

13 Q. Up until -- when did you work at Amazon?

14 A. 2014 to 2017.

15 Q. So during August 11th of 2015, you were working  
16 at Amazon. Did you have any contact with Joshua  
17 Brown that day?

18 A. No. At Amazon, you cannot take your phone to  
19 work, so my phone was turned off.

20 Q. When did you get off work that day?

21 A. About 6:00 or 6:15.

22 Q. When you got off work, did you retrieve your  
23 phone?

24 A. That's when I turned my phone on and I had got  
25 a message from him.

## DIRECT EXAMINATION OF APRIL CARTER BY MS. USRY

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1 Q. What did that text message say?

2 A. We needed to talk.

3 Q. At that point, when you received that text  
4 message, what did you believe he needed to talk  
5 about?

6 A. About our relationship.

7 Q. About your relationship together?

8 A. Yes, ma'am.

9 Q. What did you do in response to receiving that  
10 text message?

11 A. I was like, okay, well, come by, I'd be willing  
12 to talk.

13 Q. So during that day, starting around 6:00, did  
14 you attempt to get in touch with him?

15 A. Yes, ma'am.

16 Q. Were you able to easily get in touch with him?

17 A. No, ma'am.

18 Q. Around what time were you able to get in touch  
19 with him?

20 A. He got in contact with me about 3:00,  
21 3:30 a.m., and I was already in bed asleep.

22 Q. You were asleep? How did he get in touch with  
23 you?

24 A. He had called saying he was coming by, being  
25 dropped off.

1 Q. And was he dropped off at your house?

2 A. Yes, ma'am.

3 Q. And when he came to your house, did you discuss  
4 your relationship at that time?

5 A. No.

6 Q. At that time, what story did he tell you upon  
7 arriving at your residence?

8 A. When he got there, I was already tired. And he  
9 was saying that he just stabbed, like, two people,  
10 his wife and a dude.

11 Q. And did he tell you anything else regarding  
12 stabbing two people? Did you ask any followup  
13 questions when you received that information?

14 A. I was like, why did you do it? And he was  
15 like, just snapped. And I was like, is everybody  
16 okay? And he was like, he didn't know.

17 Q. So you inquired about the condition of the  
18 people that he told you he stabbed?

19 A. Yes, ma'am.

20 Q. And he said he didn't know?

21 A. He didn't know.

22 Q. Did he say why he didn't know?

23 A. Because he fled the scene.

24 Q. Did you ask him any questions about the  
25 clothing and the weapon he would have used during

## DIRECT EXAMINATION OF APRIL CARTER BY MS. USRY

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1           this stabbing?

2           A.    He got rid of it.

3           Q.    That's what he told you?

4           A.    Yes, ma'am.

5           Q.    And that night at 3:00 a.m., did you call the  
6           police when you received this information?

7           A.    No.  I told him before I go to work, I was  
8           going to turn him in.

9           Q.    You told him before you went to work, you were  
10          going to turn him in.  And what time did you go to  
11          work?

12          A.    I woke up late.  So when I went to work, it was  
13          about, like, 7:40.  And I got off about 9:00 --  
14          9:00, around that time.

15          Q.    So you went to work at 7:40.  Did you turn him  
16          in before going to work at 7:40?

17          A.    No.

18          Q.    During the time between 3:00 a.m. and going to  
19          work, did you become aware that Joshua Brown was  
20          wanted?

21          A.    Yes.

22          Q.    And why, on your way to work at 7:00, did you  
23          not turn him in?

24          A.    Because I woke up late.

25          Q.    And you went to Amazon to work at 7:00?

- 1 A. Yes, ma'am.
- 2 Q. What are your normal hours at Amazon?
- 3 A. 7:40 to 6:15.
- 4 Q. But you said you left at 9:00.
- 5 A. No. I got off at 9:00.
- 6 Q. And why did you get off at 9:00 --
- 7 A. To turn him in.
- 8 Q. And that was 9:00 in the morning?
- 9 A. Yes, ma'am.
- 10 Q. Tell me what happened when you arrived back at
- 11 your residence.
- 12 A. About five or ten minutes after I arrived, the
- 13 police or the squad was already coming to my door
- 14 about five minutes later.
- 15 Q. Was Joshua Brown still at your residence at
- 16 that time?
- 17 A. Yes, ma'am.
- 18 Q. You said he got dropped off at your house about
- 19 3:00 in the morning until when officers arrived. He
- 20 remained at your residence?
- 21 A. Yes, ma'am.
- 22 Q. And just for clarification, I think I asked
- 23 you, at this same time, what did -- did he give you
- 24 any information about what he did with the clothes
- 25 he was wearing that night?

## CROSS-EXAMINATION OF APRIL CARTER BY MR. STORY

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1 A. He said he got rid of them.

2 Q. Did you ask him specifically about the weapon  
3 he used that night?

4 A. He got rid of everything.

5 Q. You asked specifically about the weapon?

6 A. I asked, what you did with everything? And he  
7 said, I got are rid of everything.

8 MS. USRY: Nothing further. Thank you.

9 THE COURT: Thank you, Solicitor.

10 Mr. Story?

11 MR. STORY: May it please the Court?

12 CROSS-EXAMINATION

13 BY MR. STORY:

14 Q. Good afternoon, Ms. Carter.

15 A. Good afternoon.

16 Q. So it's your testimony that you got off work,  
17 Joshua showed up; he told you he had stabbed a  
18 couple people, correct?

19 A. Yes, sir.

20 Q. That he had just snapped?

21 A. Yes, sir.

22 Q. And you discussed with him -- first, you  
23 discussed with him turning himself in, right?

24 A. No. I said I was going to drop him off to turn  
25 him in.

1 Q. Do you remember speaking with -- do you  
2 remember writing a statement in this case?

3 A. Yes, sir.

4 Q. Would you recognize it if you saw it?

5 A. Yes, sir.

6 MR. STORY: May I approach the witness?

7 THE COURT: Yes, sir.

8 BY MR. STORY:

9 Q. I'm just going to direct your attention about  
10 the fifth line down where it begins "we both."

11 A. He had agreed to -- I said I was going to turn  
12 him in. And he had agreed with me that we both  
13 should do the -- the right idea to turn himself in.

14 Q. What exactly did you write beginning with "we  
15 both"?

16 A. We both said you need to turn yourself in.

17 Q. Okay. And that's a fair and accurate  
18 representation of what you recall writing?

19 A. Yes.

20 Q. So you both agreed that he needed to turn  
21 himself in?

22 A. Yes, sir.

23 Q. But it was your intention to turn him in  
24 whether he turned himself in or not?

25 A. Regardless. Yes.

## DIRECT EXAMINATION OF CATHERINE LEISY BY MS. MAYES

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1 Q. And you spent the rest of the evening with him  
2 before going to work the next day?

3 A. Yes, sir.

4 MR. STORY: Thank you. No further questions.

5 MS. USRY: No further questions, Your Honor.

6 THE COURT: Thank you, Solicitor. Thank you,  
7 Mr. Story.

8 Thank you for being with us today.

9 THE WITNESS: Thank you.

10 THE COURT: You may step down and you may be  
11 excused.

12 Solicitor, you may call your next witness.

13 MS. MAYES: The State calls John Vanhouten.

14 Your Honor, may we approach?

15 THE COURT: Yes, ma'am.

16 (Sidebar conference.)

17 MS. MAYES: The State calls Catherine Leisy.

18 CATHERINE LEISY,

19 being first duly sworn, testified as follows:

20 THE CLERK: Once you're seated, state your full  
21 name, spelling your last on the record, please.

22 THE WITNESS: Catherine Leisy, L-E-I-S-Y.

23 DIRECT EXAMINATION

24 BY MS. MAYES:

25 Q. And tell us a little bit about yourself, Agent

1 Leisy. Where are you employed and in what capacity?

2 A. I work for the South Carolina State Law  
3 Enforcement Division, more commonly referred to as  
4 SLED. I'm a forensic scientist assigned to the DNA  
5 casework department.

6 Q. And how long have you been an agent with the  
7 State Law Enforcement Division?

8 A. For 12 years.

9 Q. And, specifically, what type of work is DNA and  
10 what do you do there at the state crime lab?

11 A. My responsibilities include processing forensic  
12 cases, generating reports based on the results and  
13 conclusions drawn in those cases, and testifying to  
14 those reports as necessary.

15 I also assist in the training of  
16 less-experienced analysts. And I have several  
17 quality-control duties throughout the laboratory.  
18 And, essentially, with DNA testing, what we're  
19 trying to do is identify the contributor of unknown  
20 biological materials that may be left at a crime  
21 scene or on an item of evidence.

22 Q. Now, have you testified previously as an expert  
23 in a court of this state in the field of DNA  
24 identification and statistical analysis?

25 A. I have.

## DIRECT EXAMINATION OF CATHERINE LEISY BY MS. MAYES

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1 Q. How many such times would you estimate you've  
2 testified?

3 A. I'd say more than 50 occasions.

4 Q. And tell us a little about your educational  
5 background and training.

6 A. I have a Bachelor of Science degree in genetic  
7 engineering from Cedar Crest College in Allentown,  
8 Pennsylvania. At SLED, I received in-house training  
9 from other court-qualified analysts in all the  
10 different types of testing analyses that I'm  
11 required to perform.

12 I also spent approximately four years working  
13 as a forensic DNA analyst at the private testing  
14 facility that, at the time, was known as Orchid  
15 Cellmark in Germantown, Maryland. I'm also required  
16 to participate in continuing education which  
17 consists of seminars or conferences related to the  
18 specific types of tests I'm required to perform in  
19 my job.

20 MS. MAYES: Your Honor, at this time, we would  
21 offer Agent Catherine Leisy as an expert in the  
22 field of forensic DNA analysis.

23 THE COURT: All right.

24 Ms. Gilreath?

25 MS. GILREATH: Your Honor, no objection.

1 THE COURT: Thank you.

2 Again, ladies and gentlemen, y'all have heard  
3 my instruction as to expert witnesses. Ms. Leisy  
4 will be qualified as an expert in the field of  
5 forensic DNA analysis to give opinion testimony and  
6 the bases for holding those opinions in that field  
7 of expertise.

8 Again, whatever weight and value you want to  
9 give the testimony will be up to you, the jury, to  
10 determine.

11 Thank you, Ms. Gilreath.

12 Thank you, Solicitor. You may continue.

13 BY MS. MAYES:

14 Q. What is meant by the term DNA?

15 A. DNA stands for deoxyribonucleic acid. It's the  
16 genetic material found in all of our body cells with  
17 the exception of our red blood cells. DNA is  
18 packaged into structures called chromosomes, which  
19 contain our genes.

20 And genes are simply strands of DNA that code  
21 for our physical characteristics, such as our height  
22 or our eye color. We inherit one copy of DNA from  
23 our mother and one from our father and, therefore,  
24 have two copies of every gene.

25 Approximately 99.9 percent of an individual's

## DIRECT EXAMINATION OF CATHERINE LEISY BY MS. MAYES

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1 DNA is identical to that of everyone else's. And  
2 it's the variation in that remaining .1 percent that  
3 we test to be able to tell people apart.

4 Q. And, generally, what are you trying to  
5 determine there at the state crime lab when you  
6 conduct DNA analysis?

7 A. Essentially, what we're trying to do is  
8 determine whether or not a known individual whose  
9 standard has been submitted for comparison could or  
10 could not have been the contributor of an  
11 unidentified biological material that may have been  
12 left at a crime scene or on an item of evidence.  
13 And, simply, what we're looking for is blood, semen,  
14 saliva, or skin cells.

15 Q. And how are samples received by the State Law  
16 Enforcement Division for analysis?

17 A. When samples are submitted, they are placed by  
18 the submitting agent into a plastic pouch. That  
19 pouch is then heat-sealed and the seal is then dated  
20 and initialed by that agent to ensure that the  
21 evidence within the pouch maintains its integrity  
22 and has not been tampered with.

23 Each case that comes in is assigned a unique  
24 case number so that we can keep track of that  
25 particular case as it is tested in different

1 departments throughout the building. And each item  
2 belonging to that case is given a unique item  
3 number, again to keep track of that item as it is  
4 passed, potentially, through different departments  
5 for testing.

6 Each pouch is affixed with a barcode so that we  
7 can scan that barcode any time that pouch is  
8 transferred between individuals or to a known  
9 location. That information allows us to keep track  
10 of exactly where an item of evidence is at all times  
11 within the laboratory and the history of who has  
12 been in contact and custody of that evidence.

13 Q. And, specifically, what type of evidence did  
14 you receive in this case which is identified as Sled  
15 Lab No. L-1512968?

16 A. I received several sets of swabs that were  
17 identified as evidentiary samples, as well as buccal  
18 swabs or a known standard from Ann Brown and a set  
19 of buccal swabs to be used as a known standard from  
20 Joshua Brown.

21 Q. In this particular case, were you able to  
22 identify, in your report, who the known victim was?

23 A. Yes, I was.

24 Q. And also who the known suspect was?

25 A. Yes.

## DIRECT EXAMINATION OF CATHERINE LEISY BY MS. MAYES

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1 Q. And what were those names, in accordance with  
2 your report?

3 A. Based on the information that was submitted to  
4 us, the victim's name was Ann Brown and the  
5 subject's name was Joshua Brown.

6 Q. And you had samples from both of them?

7 A. I did.

8 Q. Again, those would be buccal swabs from the  
9 mouth?

10 A. Correct. When we use the term buccal swab, it  
11 refers to the most sterile cotton swab. It looks,  
12 essentially, like a Q-tip that is rubbed against the  
13 inside of the cheek to collect cells that we can use  
14 to develop a DNA profile. That profile is used as  
15 that individual's known standard to be compared to  
16 evidence profiles.

17 Q. So just by swabbing the cheek, you can develop  
18 a DNA profile on someone?

19 A. That's correct.

20 Q. And you developed DNA profiles on both of these  
21 individuals for the purpose of comparison analysis?

22 A. I did.

23 Q. I want to ask you whether or not you received  
24 swabs from a vehicle.

25 A. I did.

1 Q. And the swabs from the vehicle, during the  
2 course of your analysis, before you even begin DNA,  
3 what type of testing can do you do?

4 A. The sets of evidentiary samples that were  
5 submitted in this case, I performed a preliminary or  
6 presumptive test for the possible presence of blood.  
7 For the swabs that were sent and identified as being  
8 from inside of a vehicle, that particular test was  
9 negative. And as the request on those items from  
10 the submitting agency was only for blood, I stopped  
11 testing at that time.

12 Q. So all swabs submitted in reference to a  
13 vehicle were negative for blood?

14 A. That's correct.

15 Q. Now, I want to move on and ask you specifically  
16 about swabs that were labeled from the ground.

17 A. I received two sets of swabs labeled as from  
18 the ground. Sled Item 1, swabs from ground and  
19 identified as CPS Item P-1. The second set of swabs  
20 from the ground is Sled Item 2, identified as CPS  
21 Item F-1.

22 Q. When you say CPS, are you familiar with what  
23 agency -- what submitting agency that is?

24 A. These items were submitted by the Cayce  
25 Department of Public Safety.

## DIRECT EXAMINATION OF CATHERINE LEISY BY MS. MAYES

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1 Q. All right. I'm going to have you take a look  
2 at the items that you just mentioned one more time.  
3 We're going to have to break the seal on this item.

4 Let me ask you this way: The package that you  
5 have, is it sealed?

6 A. Yes, it is.

7 Q. And is it sealed in accordance with SLED  
8 policy?

9 A. This pouch is. This is not the actual evidence  
10 pouch. It would have been placed inside a SLED  
11 pouch prior to being transferred into my custody.  
12 But the pouch itself is sealed, and there are dates  
13 and initials on each of the seals on the pouch.

14 Q. And, specifically, what are the labels on those  
15 containers?

16 A. The swab boxes in this particular pouch, I can  
17 tell by the SLED case and item number one contains  
18 our item SLED .1, which were the swabs from the  
19 ground identified as P-1. And, again, based on the  
20 SLED case and item numbers, as well as my initials,  
21 the other box contains the swabs identified as from  
22 the ground Item F-1.

23 Q. F-1 and P-1?

24 A. Correct.

25 Q. And the F-1 and the P-1, is that a SLED agency

1 identification number or the submitting agency?

2 A. That's the identification that was provided by  
3 the submitting agency; that was not affixed by SLED.

4 Q. All right. So the first item that you're  
5 analyzing is a swab from the ground, and that's  
6 labeled P-1?

7 A. Correct.

8 Q. Next is a swab from the ground, and that's  
9 labeled F-1?

10 A. That's correct.

11 Q. P and the F on those ground swabs were labeled  
12 that way by the Cayce Department of Public Safety?

13 A. Yes, they were.

14 Q. Were you able to determine or create a DNA  
15 profile from these swabs?

16 A. I was. Each of those sets of swabs -- from  
17 each of those sets of swabs, I developed the same  
18 DNA profile.

19 Q. All right. And were you able to determine  
20 whether those swabs were positive for blood?

21 A. Based on the initial preliminary screening, the  
22 presumptive testing was positive, indicating the  
23 possible presence of blood on both of those sets of  
24 swabs.

25 Q. Now, do you have with you any bench notes or

## DIRECT EXAMINATION OF CATHERINE LEISY BY MS. MAYES

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1 anything giving further information about where from  
2 the ground these were obtained?

3 A. We don't have any further specific information.

4 Q. Do you have specific knowledge as to whether  
5 this was crime scene evidence?

6 A. That was my understanding just, again, based on  
7 the description as swabs from grounds. I don't know  
8 specifically where from the scene it may have been  
9 collected.

10 Q. So P-1 is positive for blood?

11 A. Positive for the possible presence of blood.

12 Yes.

13 Q. And F-1?

14 A. Also positive for the possible presence of  
15 blood.

16 Q. And when you say possible presence of blood,  
17 tell us how you go about doing a positive or  
18 presumptive positive test for blood.

19 A. It's a very simple chemical reaction that's  
20 performed. We add two different chemicals to a  
21 small cutting of a portion of the sample that we're  
22 doing the testing. If we see a bright pink color  
23 emerge in those liquids, it's an indication that we  
24 possibly have the presence of blood. If the liquids  
25 do not change color, that's a negative result, which

1 fails to indicate the possible presence of blood.

2 Q. And both of these swabs indicated the possible  
3 presence of blood?

4 A. That's correct.

5 Q. And then from that, you were able to create a  
6 DNA profile?

7 A. I was.

8 Q. Whose DNA profile did you determine was present  
9 on the swab from the ground labeled P-1?

10 A. The DNA profile developed from P-1 matches the  
11 DNA profile of Ann Brown.

12 Q. Was there any other DNA profile present with  
13 that?

14 A. There was no indication of a second contributor  
15 on that sample. No.

16 Q. So she's the only contributor?

17 A. Based on the profile developed, she is the only  
18 contributor indicated. Yes.

19 Q. And were you able to develop a DNA profile on  
20 the swab from the ground labeled F-1 also  
21 presumptively positive for blood?

22 A. I was.

23 Q. And whose DNA profile is that?

24 A. The DNA profile developed from F-1 also matches  
25 the DNA profile of Ann Brown.

## DIRECT EXAMINATION OF CATHERINE LEISY BY MS. MAYES

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1 Q. Were there any other contributors or indication  
2 of a mixture?

3 A. There was no indication of a second  
4 contributor. No.

5 Q. So the only DNA profile on that swab is hers?

6 A. It matches her DNA profile. Yes.

7 Q. When you say that it matches, are you also  
8 trained in developing statistical calculations  
9 associated with DNA analysis?

10 A. I am.

11 Q. And to what degree of scientific certainty can  
12 you tell us that this is Ann Brown's DNA on those  
13 swabs on the ground that you determined were  
14 presumptively positive for blood?

15 A. The probability of randomly selecting an  
16 unrelated individual having the DNA profile matching  
17 the profile developed from these items is  
18 approximately 1 in 110 octillion.

19 Q. One in...

20 A. 110 octillion.

21 Q. Are there even one octillion number of persons  
22 alive on the planet at this time?

23 A. There are not.

24 MS. MAYES: Nothing further of the witness at  
25 this time.

1 THE COURT: Thank you, Solicitor.

2 Ms. Gilreath?

3 CROSS-EXAMINATION

4 BY MS. GILREATH:

5 Q. Ms. Leisy, right? Am I pronouncing that  
6 correct?

7 A. That's correct.

8 Q. When you -- we've been talking about the DNA.  
9 And you've talked about testing from swabs, right?

10 A. Correct.

11 Q. What do you mean when you say swab?

12 A. Again, during collection, most agencies use a  
13 sterile cotton swab, again, very similar to a Q-tip.  
14 It can be wetted down with sterile buffer or water  
15 and then rubbed against the material to collect any  
16 DNA that may be present on that item.

17 Q. So it's, essentially, like a Q-tip, correct?

18 A. Correct.

19 Q. So, I guess, the surface area of the swab is  
20 pretty small, right?

21 A. I would say it is fairly small. Again, not at  
22 all unlike a Q-tip; about the same size.

23 Q. So what you're testing when you're testing for  
24 DNA is just exclusively what's on the tip of that  
25 swab, correct?

## CROSS-EXAMINATION OF CATHERINE LEISY BY MS. GILREATH

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1           A.    We're testing some portion of it. Depending on  
2           how much staining is present or exactly what we're  
3           testing for, we may test just the very tip of the  
4           swab; we may test three-quarters of the swab;  
5           depends on what we believe might be present, how  
6           much we believe is necessary to test.

7           Q.    So from that small swab, you may not even test  
8           the entirety of what's on that swab; you may just be  
9           testing a portion of the swab that you're testing,  
10          correct?

11          A.    That's correct. It's very unusual for us to  
12          consume an entire sample. That's not typical  
13          practice in forensic laboratories. We're usually  
14          going to just try and test a portion.

15          Q.    You said that you don't necessarily know the  
16          specific location that this was taken from. You  
17          know what you were given as the description, but you  
18          haven't -- you didn't go collect the swab yourself?

19          A.    I did not.

20          Q.    So you can't say how big of an area this swab  
21          was used to take a sample from, correct?

22          A.    That's correct. Again, all I received was  
23          swabs with the identification by the submitting  
24          agency.

25          Q.    So all you can test is what's on the tip of

1 this, essentially a Q-tip? Whether it's a portion  
2 of it or all of it, that's all you have to test,  
3 correct?

4 A. Correct. That was all that was available to  
5 me.

6 Q. So you wouldn't be able to say then, whether at  
7 a crime scene or at a scene or wherever it was taken  
8 from, whether that was the only DNA present at the  
9 scene; all you can say is what's on that swab,  
10 correct?

11 A. That's correct. The testing just enables me to  
12 identify what was available on the item that was  
13 submitted. Again, I didn't go to the scene. I  
14 don't know what else may have been there.

15 Q. And, you said, as to the one that indicated was  
16 from a number two vehicle and two that you said were  
17 labeled as being from, I guess, a crime scene,  
18 correct?

19 A. They were identified as being swabs from the  
20 ground.

21 Q. From the ground. So the two that were from the  
22 ground, there were only two of those, right?

23 A. That's correct.

24 Q. You didn't get any additional swabs that were  
25 said to be from the ground from that same location?

## CROSS-EXAMINATION OF CATHERINE LEISY BY MS. GILREATH

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1 A. I received only the SLED items identified as  
2 P-1 and F-1.

3 Q. So the items labeled P-1 and F-1. You didn't  
4 receive A-1, B-1, C-1, D-1, E-1, any of those other  
5 letters in the alphabet, correct?

6 A. That's correct.

7 Q. Or any double letters or with other numbers  
8 besides 1, just P-1 and F-1, right?

9 A. That's correct.

10 Q. So all that you were able to test when you made  
11 these determinations was P-1 and F-1, the tiny swabs  
12 that were taken from the ground?

13 A. That's correct.

14 Q. So if -- since we're going with the alphabet,  
15 P-1 and F-1, if there were other swabs that had been  
16 taken from other locations on the ground, A, B, C,  
17 D, E, and so on, you would have been able to  
18 determine whether the same DNA profiles were present  
19 or if there might have been something different  
20 there, correct?

21 A. That's correct, depending on, again, how much  
22 material may have been present, the condition of the  
23 sample. But other swabs containing potential blood  
24 sources could have been tested.

25 Q. So if they had been presented, you could have

1 tested them?

2 A. Yes, that's correct.

3 Q. And you would have been able to match them  
4 against the same samples you had for Ms. Brown and  
5 Mr. Brown?

6 A. I could have made the same comparisons. Yes.

7 Q. And determined whether or not either or both of  
8 their DNA was present in these other samples, had  
9 they been submitted?

10 A. That's correct.

11 Q. As to the samples that you received from -- I  
12 think it was from a vehicle, right?

13 A. Yes.

14 Q. Again, it's the same thing. It's the same  
15 small swab on, essentially, a Q-tip that is taken.  
16 You can't necessarily say where exactly it's taken  
17 from, correct?

18 A. The only description I received as far as the  
19 swabs from the vehicle, there were three swabs  
20 identified as swab from driver door and one swab  
21 that was identified as swab from driver's side  
22 center console.

23 Q. And those that were taken, those were the only  
24 ones you received for whatever vehicle this was  
25 from?

1 A. That's correct.

2 Q. And so, again, it would be the same situation  
3 where whatever is on there, you could test all or a  
4 portion of what's on that swab?

5 A. Correct. Again, for those swabs, I only  
6 performed preliminary screening for the possible  
7 presence of blood. And that would have required  
8 just a very small portion of sample from that swab.

9 Q. So you could only determine whether there was  
10 blood on the swab that was taken from whatever  
11 location it was taken from on the vehicle?

12 A. Correct.

13 Q. So you wouldn't be able to say then -- because  
14 there was no presence of blood, you wouldn't be able  
15 to say then whose DNA was or wasn't on there,  
16 correct?

17 A. Correct. Again, the initial request was for  
18 the testing of blood. And, as the preliminary test  
19 for blood was negative, I did not take those samples  
20 forward for DNA testing.

21 Q. So you couldn't say whether there might have  
22 been blood in some other part of the vehicle; you  
23 can only say whether there was blood present on the  
24 swab that you received?

25 A. Correct. I'm limited to answering just to the

1 specific areas that were tested on the samples  
2 submitted to me.

3 MS. GILREATH: I beg the Court's indulgence.

4 THE COURT: Yes, ma'am.

5 MS. GILREATH: No further questions, Your  
6 Honor.

7 THE COURT: Thank you.

8 Redirect?

9 MS. MAYES: Yes, sir, Your Honor, briefly.

10 REDIRECT EXAMINATION

11 BY MS. MAYES:

12 Q. Again, the only blood found on those swabs from  
13 the ground belonged to Ann Brown, correct?

14 A. Correct. The only indication of DNA from that  
15 profile matched the profile of Ann Brown.

16 THE COURT: Recross, Ms. Gilreath?

17 MS. GILREATH: Just one question.

18 RE-CROSS-EXAMINATION

19 BY MS. GILREATH:

20 Q. And what we're talking about there are just  
21 those two swabs that we mentioned, P and F, correct?

22 A. That's correct.

23 MS. GILREATH: No further questions, Your  
24 Honor.

25 THE COURT: Thank you very much, Agent. Thank

1           you for being with us today. You may step down.

2           You may be excused.

3           THE WITNESS: Thank you, Your Honor.

4           THE COURT: Solicitor, you got about a  
5           ten-minute witness?

6           MS. MAYES: Unfortunately, Your Honor, the next  
7           witness would be lengthy.

8           THE COURT: All right. We'll take our luncheon  
9           recess.

10          Lunch here, Madam Clerk?

11          THE CLERK: I'm going to look right now, Judge.

12          THE COURT: Well, I'll say 1:45. It's close  
13          enough to an hour. If y'all would be ready. You  
14          may certainly take a walkabout. Do not discuss the  
15          case during this brief recess. Thank you.

16          (The jury exits the courtroom at 12:48 PM.)

17          THE COURT: Anything from the State before we  
18          take our recess, Solicitor?

19          MS. MAYES: Your Honor, I believe we are still  
20          on track to rest at a reasonable time. We had the  
21          delay this morning. But, other than that, we should  
22          only have two more witnesses.

23          THE COURT: Thank you, Solicitor.

24          Anything from the Defense, Mr. Story?

25          MR. STORY: Nothing from the Defense.

1 THE COURT: All right. Thank you.

2 (Luncheon recess 12:48 PM - 1:49 PM.)

3 THE COURT: Anything before we bring in our  
4 jury from the State?

5 MS. USRY: Nothing from the State, Your Honor.

6 THE COURT: Anything from the Defense before we  
7 bring in our jury?

8 MR. STORY: Nothing from the Defense, Your  
9 Honor.

10 (The jury enters the courtroom at 1:50 PM.)

11 THE COURT: All right. Welcome back, ladies  
12 and gentlemen. I hope y'all had a pleasant lunch.

13 Solicitor, you may call your next witness.

14 MS. MAYES: The State calls John Vanhouten.

15 THE COURT: All right. Sir, come around and be  
16 sworn for us, please.

17 JOHN VANHOUTEN,

18 being first duly sworn, testified as follows:

19 THE WITNESS: I do.

20 THE CLERK: Have a seat, please, sir. Once  
21 you're seated, state your full name, spelling your  
22 last, please.

23 THE WITNESS: Jonathan Vanhouten,

24 V-A-N-H-O-U-T-E-N.

25 DIRECT EXAMINATION

1 BY MS. MAYES:

2 Q. All right. Good afternoon.

3 A. Good afternoon.

4 Q. Tell us a little bit about yourself. Where are  
5 you currently employed?

6 A. I'm employed by the Columbia Police Department.  
7 They pay my salary. Since 2010, I've been assigned  
8 full time as a task force agent with U.S. Secret  
9 Service in the Columbia office.

10 Q. Now I'm going to ask you a little bit more  
11 about that. When you say Secret Service, what type  
12 of work does the U.S. Secret Service do?

13 A. There's three primary roles the Secret Service  
14 is involved in: Protection, of course, is one.  
15 Protecting the national financial infrastructure,  
16 counterfeiting, fraudulent credit cards, money  
17 laundering, things of that nature. And there's a  
18 huge footprint for digital forensics by the Secret  
19 Service. And that's my primary responsibility, the  
20 digital forensics.

21 Q. Now, you used the term digital forensics. Can  
22 you tell us, in layperson's terms, what is meant by  
23 digital forensics? What type of science is that?

24 A. Basically, in a nutshell, I'm able to retrieve  
25 data from digital devices. That data has to be

1 replicated for each exam. So if I conduct an  
2 extraction or examination, it -- the next person who  
3 does that or if I replicate the same extraction, the  
4 results should be the same.

5 Q. And when we talk about digital evidence, does  
6 that include mobile phones, such as cell phones?

7 A. Anything that stores digital data: Cell  
8 phones, computers, laptops, car entertainment  
9 centers, TVs, smart TVs, anything that stores  
10 digital information.

11 Q. What type of education and training do you  
12 have, specifically in the field of digital --  
13 forensic examination of digital devices?

14 A. Mississippi State University Computer Research  
15 Center, the National Computer Forensic Institute,  
16 Federal Law Enforcement Training Center, and various  
17 vendors of the tools that we use.

18 Q. And what about your general educational  
19 background?

20 A. Florence Darlington Technical College, criminal  
21 justice.

22 Q. Do you also conduct or assist in conducting  
23 training of other law enforcement personnel in this  
24 field of digital forensics?

25 A. Yes. I'm occasionally called upon to be an

1           assistant instructor with the National Computer  
2           Forensic Institute. We train law enforcement  
3           agencies from across the country that attend the  
4           session.

5           Q. All right. And is it possible for you to  
6           estimate how many forensic examinations --  
7           extractions and examinations you have conducted on  
8           mobile phones?

9           A. I believe the last count for 2017 -- beginning  
10          from 2010 to 2017 -- was close to over 900.

11          Q. All right. Now, does your training and  
12          experience also include the analysis of that data  
13          once it's extracted?

14          A. Yes.

15          Q. Is that something that you have continued to  
16          receive training in up until today's date?

17          A. Yes. This is -- as most people know, this  
18          is -- digital electronics change constantly. So it  
19          is imperative continuing training is required.

20          Q. So that includes the use of the software and  
21          the analysis of the raw data that is generated?

22          A. That's correct.

23          Q. And specifically as to mobile phones, they're  
24          included in that digital analysis as well?

25          A. Yes.

1 Q. And you are currently processing evidence for  
2 both the Columbia Police Department and the United  
3 States Secret Service?

4 A. Yes. I do process evidence that any agency  
5 that requests assistance in processing of digital  
6 evidence.

7 Q. And can that include an outside agency such as  
8 Cayce Department of Public Safety?

9 A. Yes. It includes state and local agencies,  
10 other federal agencies, and some military.

11 MS. MAYES: Your Honor, at this time, the State  
12 would offer Agent Vanhouten as an expert in the  
13 field of forensic examination of the digital device,  
14 forensic examination of digital evidence.

15 THE COURT: Ms. Gilreath?

16 MS. GILREATH: No objection.

17 THE COURT: Thank you.

18 Again, ladies and gentlemen, y'all have heard  
19 my charge twice on expert witnesses. This witness,  
20 Agent Vanhouten, will be qualified as an expert in  
21 forensic examination of digital devices and  
22 evidence. He may give opinion testimony in that  
23 field and the bases for holding those opinions.  
24 Whatever weight and value to be given to that will  
25 be as the jury deems fit and appropriate.

1           Thank you very much, Solicitor. You may  
2           continue.

3           MS. MAYES: Yes, sir, Your Honor.

4           BY MS. MAYES:

5           Q. Now I want to begin by asking you specifically,  
6           in this case, did you receive an item of evidence  
7           from the Cayce Department of Public Safety for  
8           extraction?

9           A. On this particular case, I received two pieces  
10          of evidence. Yes.

11          Q. I'm going to show you what is State's Exhibit  
12          57 and ask you to take your time and take a look at  
13          that item and ask you whether or not you can  
14          identify it.

15          A. Yes. This is a Samsung cell phone that I  
16          processed for Cayce PD.

17          Q. All right. Also have you take a look at  
18          State's Exhibit 56.

19          A. Okay. It's a consent to search.

20          Q. And can you tell us whether or not you received  
21          a consent to search from the defendant in this case,  
22          Joshua Brown, to conduct analysis on a Samsung  
23          Galaxy phone?

24          A. Yes.

25          Q. And can you tell us whether that phone is the

1 same as the item that I just showed you previously?

2 A. Yes. This phone was for this consent form.

3 Q. And how were you able to match up and confirm  
4 that that is the same phone?

5 A. Before I start the examination, I first  
6 photograph any damages, serial numbers, accessories  
7 such as SD cards or SIM cards. And the notes that I  
8 have for the summary report match that of the phone  
9 that you just handed me.

10 Q. Okay. And then are you eventually able to  
11 generate an extraction report?

12 A. The majority of the time, yes.

13 Q. And that's once you have completed the analysis  
14 of the phone, which includes downloading the data on  
15 the phone?

16 A. Correct.

17 Q. So when you use the term extraction, you're  
18 referring to what?

19 A. In layman's terms, it's a dump. We're  
20 recovering the data that is residing on the device.

21 Q. Now, does that include text messages?

22 A. Yes; it can.

23 Q. Does that also include incoming and outgoing  
24 calls?

25 A. Yes; it can.

- 1 Q. Can that also include internet activity, if the  
2 phone is a smart phone and has that capability?
- 3 A. Yes.
- 4 Q. Can you tell us whether or not any of those  
5 items were recovered from the extraction of this  
6 phone, being the phone of the defendant, Joshua  
7 Brown?
- 8 A. Yes.
- 9 Q. Did it have ingoing and outgoing calls?
- 10 A. From this phone, yes.
- 11 Q. Did it have ingoing and outgoing text messages?
- 12 A. Yes.
- 13 Q. And did it have the capability to search via  
14 the internet?
- 15 A. Yes.
- 16 Q. And was that search history able to be  
17 recovered as well?
- 18 A. Yes.
- 19 Q. Does your report contain a phone number  
20 associated with that phone?
- 21 A. Yes.
- 22 Q. Is that part of the general analysis to  
23 determine the phone number?
- 24 A. Yes. The phone number is not -- if the phone  
25 or NSIND number is not stored in the device, we

1 recover that from the SIM card.

2 Q. And as to Joshua Brown, what phone number is  
3 the phone number that goes with the phone that you  
4 extracted?

5 A. The number that we recovered from the phone is  
6 area code (803) 210-5208.

7 Q. 210-52- --

8 A. 08.

9 Q. All right. And, again, this is a Samsung  
10 Galaxy?

11 A. Yes.

12 Q. I want to ask you whether or not you were able  
13 to retrieve information from the phone on or around  
14 the incident date of August 11th, 2015.

15 A. Yes.

16 Q. Were you able to retrieve information via text  
17 messages between he and an individual by the name of  
18 Ann Brown?

19 A. I retrieved the information from a contact that  
20 was listed in his phone as Ann.

21 Q. What is the phone number that you show for the  
22 contact in his phone with the name Ann?

23 A. It's area code (803) 319-2087.

24 Q. All right. I'm going to show you a document  
25 and ask you whether or not it depicts that activity

1           that we just mentioned, the communications with this  
2           individual by the name of Ann, on the incident date  
3           of August 11th, 2015.

4           A.    Okay.

5           Q.    And that information, originally as part of  
6           your extraction report, can it be summarized or  
7           reduced down into a summary format?

8           A.    Yes.  We can use numerous filters to narrow it  
9           down such as time, calls to and from, things of that  
10          nature.

11          Q.    Have you had an opportunity to review the  
12          document that I just handed you to determine if it  
13          is a summary of the communications between Ann and  
14          the defendant, Joshua Brown, or the phone belonging  
15          to Joshua Brown on the incident date of August 11th,  
16          2015?

17          A.    Yes, I have.

18          Q.    Is that a fair and accurate representation of  
19          the information that resulted from your extraction?

20          A.    Yes, it is a fair summary.

21                MS. MAYES:  This would be State's Exhibit for  
22          evidence, Your Honor, 59.

23                MS. GILREATH:  No objection, Your Honor.

24                THE COURT:  Thank you.  State's Exhibit 59 is  
25          in evidence without objection.

- 1                   (State's Exhibit No. 59 admitted into  
2                   evidence.)
- 3                   BY MS. MAYES:
- 4                   Q.    Now, in addition to any communications on  
5                   August 11th, 2015, with an individual by the name of  
6                   Ann, can you tell us whether or not you were also  
7                   able to extract from the phone any additional  
8                   outgoing calls, incoming calls, and outgoing texts  
9                   from that phone for the time period of 12:00 p.m. on  
10                  August 11th, 2015?
- 11                  A.    Starting from 12:00 p.m.?
- 12                  Q.    2015 through August 12th, 2015.
- 13                  A.    From August 11th, 2015 from 12:00 a.m. to --
- 14                  Q.    Did your --
- 15                  A.    -- 10:34 a.m.
- 16                  Q.    Okay. Did your extraction include information  
17                  up until the time that that phone was seized by law  
18                  enforcement?
- 19                  A.    Yes. There was other activity. Yes.
- 20                  Q.    Okay. I'm going to show you a document and ask  
21                  you whether or not -- you can take your time to  
22                  review that -- whether or not that also reflects the  
23                  activity.
- 24                  A.    Yes.
- 25                  Q.    That would follow the approximate time of the

1 incident being 11:00 a.m. on August 11th, 2015, up  
2 until the time the phone would have been seized?  
3 User-generated activity.

4 A. Yes. From 8:18 a.m. on August 12th all the way  
5 back to 8/11 at 12:14 p.m. So, yes.

6 Q. Okay. Again, this is all information that came  
7 from your original extraction of the phone?

8 A. Yes.

9 Q. Finally, I'm going to hand you a document and  
10 ask you whether or not the search history for the  
11 phone included extraction data for August 11th, 2015  
12 up until the time that the phone was seized.

13 A. Yes. There's web history that was recovered.

14 Q. Okay. And have you had a chance to review the  
15 summary of that web history in comparison with your  
16 extraction data?

17 A. I have.

18 Q. Is that also a summary of that evidence?

19 A. Yes.

20 Q. So in addition to the communications with Ann,  
21 the individual identified as Ann in State's Exhibit  
22 59, the extraction also contains ingoing and  
23 outgoing calls after the time of the alleged  
24 incident?

25 A. Yes.

1 Q. And outgoing text messages after the time of  
2 the alleged incident?

3 A. Yes.

4 Q. And search history for August 11th, 2015, and  
5 August 12th, 2015?

6 A. Yes.

7 (State's Exhibit Nos. 60 and 61 marked for  
8 identification.)

9 MS. MAYES: Your Honor, this would be State's  
10 Exhibit 60 and 61 for evidence.

11 MS. GILREATH: Your Honor, we have no objection  
12 as to what I believe is 61. We would have an  
13 objection as to State's Exhibit 60 under 401 and 403  
14 grounds.

15 THE COURT: May I see it, please, 60?

16 MS. MAYES: Yes, sir.

17 THE COURT: Step out, please, ladies and  
18 gentlemen. Do not discuss the case during this  
19 brief recess.

20 (The jury exits the courtroom at 2:10 PM.)

21 THE COURT: All right. Ms. Gilreath?

22 MS. GILREATH: Your Honor, our position would  
23 be that -- I believe this is said to represent the  
24 search history from August 11th, looks like,  
25 3:56 a.m., up until August the 12th at 10:03 a.m.

1           Your Honor, we would just argue that there are  
2 things in here that we believe are not relevant,  
3 that would be, perhaps, misleading to the jury.  
4 There are things that -- of course, you can see sort  
5 of what -- I think he will likely testify would be  
6 sort the name of the page.

7           But, of course, without knowing what is on that  
8 page, how that page was accessed, how it came up on  
9 the phone, which I don't believe that he's able to  
10 testify to, not knowing exactly how this information  
11 was accessed, whether intentionally or  
12 unintentionally, as well as the fact that the -- I'm  
13 trying to see which page would be the first one.

14           Well, on page 2 of 38, as you can see,  
15 everything with the name Javon Jones, everything  
16 related to his name here, is highlighted; as well as  
17 on the first page, there's, at the top, a heading  
18 that says name search with Javon Anthony Jones.  
19 And, Your Honor, we would argue that that is sort of  
20 misleading and invading the province of the jury to  
21 determine what information out of this is important  
22 or unimportant and how credible it would be. We  
23 would argue that there are a lot of things on here  
24 that would be irrelevant and misleading on 401 and  
25 403 grounds.

1 THE COURT: Thank you, Ms. Gilreath.

2 Solicitor?

3 MS. MAYES: Yes, sir, Your Honor. Yesterday in  
4 court we discussed what is State's Exhibit 8, which  
5 is the combined document that has all calls and  
6 search history. And I thought we had agreed that if  
7 there was going to be an objection, we would be able  
8 to resolve it by yesterday so that Ms. Grigsby could  
9 make any necessary changes.

10 The color blue for that name Javon Jones is  
11 simply to aid us as we're publishing that exhibit.  
12 If that needs to be redacted, we can substitute that  
13 out; that is something we're capable of doing. But  
14 we did not receive an objection on that until now.

15 As to relevance, Your Honor, it certainly goes  
16 to motive and state of mind. The testimony from the  
17 victim, Ann Brown, was that she was confronted by  
18 the assailant about this individual Javon Tony Jones  
19 just prior to stabbing her. And the search history  
20 shows that leading right up until the time of the  
21 assault -- I think the last search is around  
22 10:30 a.m. on the 11th, whether it's a search or a  
23 visit to the page or the page he has pulled up, he  
24 has accessed information on Javon Tony Jones.

25 And that continues, Your Honor, even after the

1 assault into the late hours of August 11th, 2015.  
2 And then there's also -- that individual's name also  
3 appears on the 12th, specific to a Facebook search  
4 and other search mechanisms that can be used to  
5 locate individuals, such as LinkedIn, Google and  
6 Spokeo.

7 THE COURT: The initial relevancy then of this  
8 document is the search for Javon Anthony Jones?

9 MS. MAYES: Yes, sir.

10 THE COURT: And there are, kind of littered  
11 throughout the document, searches or what have you  
12 on other individuals and other types of activities  
13 that are not relevant.

14 MS. MAYES: Your Honor, yes, sir. It's  
15 intended to be a document that contains everything  
16 for the point of being inclusive. Again, if there  
17 is a specific objection, that is something that can  
18 be resolved. We can narrow it down to just  
19 Mr. Jones, but we didn't want to be misleading by  
20 only doing that because we wanted to show the  
21 history in its entirety.

22 The original document that we've been using  
23 since Tuesday, State's Exhibit 8, also contains the  
24 same information with the searches for all  
25 individuals, all searches conducted with that phone

1 August 11th and 12th.

2 THE COURT: For example, on 8/11 -- there may  
3 be some other searches that the State would argue  
4 are irrelevant; for example, 2:26:43 p.m., search  
5 for Casey, C-A-S-E-Y, Police Department.

6 MS. MAYES: Yes, sir, Your Honor, as well as  
7 the numerous searches for news stations and news  
8 articles associated with this crime as well. Those  
9 continue on through the 12th.

10 THE COURT: And there are searches for Morrisa  
11 James.

12 MS. MAYES: Yes, sir, Your Honor, which is our  
13 victim.

14 THE COURT: Where it indicates description,  
15 like just Facebook, you would not know if that was a  
16 search or if that was just checking Facebook, if he  
17 has a Facebook account?

18 MS. MAYES: Correct, Your Honor.

19 THE COURT: You wouldn't know one way or the  
20 other?

21 MS. MAYES: Correct, Your Honor. It would mean  
22 it was in use -- somehow in use.

23 THE COURT: Well, as it goes to Mr. Jones  
24 and/or to Ms. James and/or to the Cayce Police  
25 Department and/or to new organizations, for example,

1 15001 on 8/1 and several others, I think that is  
2 relevant. It would then go to the weight of  
3 admissibility.

4 It certainly shows some level of interest in  
5 Mr. Jones; some might even call an obsessive level  
6 of interest, so I think that would be relevant. I  
7 do not think that is prejudicial or misleading.

8 Now, if you're asking me to extract what may  
9 not be relevant and the solicitor agrees that there  
10 are items in there that are not relevant, I will  
11 certainly order that. But, in my mind, when you end  
12 up with just certain number of pages just sort of  
13 focused on Mr. Jones or Ms. James or the Cayce  
14 Police Department or the local news, in my mind, it  
15 kind of increases the degree of, perhaps, obsession  
16 with those topics and kind of appears the mind is  
17 such that it never deviates to another thought  
18 whatsoever.

19 But if y'all want to determine or look at what  
20 you contend, Ms. Gilreath, as not relevant, and they  
21 are not irrelevant things in the document, y'all can  
22 certainly redact those. As far as it being  
23 highlighted, it can be un-highlighted. I wouldn't  
24 know how to do it, but I would think it's some kind  
25 of setting on some kind of device.

1           MS. GILREATH: And, Judge, we would be 100  
2 percent in agreement with you as to we wouldn't want  
3 it reduced down to make it appear as though this is  
4 the only thing in his web search history. I think  
5 our objection would be as to the document overall.  
6 Basically, again, not being able to say is this  
7 something that was already on the phone that's been  
8 accessed and popped up from something prior or came  
9 up just when he went on Facebook, I mean, they  
10 wouldn't be able to say whether these things were  
11 intentionally or unintentionally accessed as to any  
12 of them.

13           So that would be our objection to it, is that  
14 it would tend to be misleading, suggesting that all  
15 of these things are definitely web searches and him  
16 looking for it over and over, whereas with the  
17 majority of it, you can't really say that as to how  
18 it was accessed by Mr. Brown, whether intentionally,  
19 unintentionally, or even by Mr. Brown versus by  
20 someone else in possession of his phone. So that  
21 would be our argument.

22           We would request the highlighting -- at the  
23 very least, that the highlighting be taken out.  
24 Just we would -- that's unduly suggested and kind of  
25 invading the province of the jury to determine

1           what's important and what's not. So our objection  
2           would be as to the document as a whole. Certainly,  
3           if Your Honor intends to let in, one way or the  
4           other, certain ones of these having to do with  
5           Mr. Jones or Ms. Brown or whichever ones, we'd  
6           prefer to just have the entire document as a whole  
7           versus just a portion of it. So the objection is as  
8           to the document as a whole and then as to the  
9           highlighting.

10           THE COURT: All right. And, of course, those  
11           points you bring up would go to the weight and not  
12           the admissibility. Whether or not Mr. Brown was the  
13           one accessing it, whether or not they just pop up,  
14           however the search is conducted, that would go to  
15           good cross-examination, perhaps.

16           So, at this stage, you're asking me to delete  
17           the highlighting?

18           MS. GILREATH: That's correct. Again, the  
19           initial motion would be as to the whole document.  
20           If not, then our secondary motion would be to remove  
21           the highlighting.

22           THE COURT: Well, I would order that the  
23           highlighting is not admissible unless the  
24           highlighting is removed from it. And the other, I  
25           would say, goes to the weight and not the

1           admissibility and is subject to cross-examination.

2                   Did you want to -- can you continue with this  
3           item, Solicitor, until the other gets back without  
4           publishing it to the jury?

5                   MS. MAYES: Yes, Your Honor. We can hold off  
6           on publishing this document until Ms. Grigsby  
7           returns.

8                   THE COURT: Anything further, Ms. Gilreath?

9                   MS. GILREATH: Not as to these items of  
10          evidence, Your Honor.

11                   THE COURT: All right. Thank you.

12                   (The jury enters the courtroom at 2:23 PM.)

13                   THE COURT: Thank you, Ms. Gilreath.

14                   Thank you, Solicitor. You may continue.

15                   MS. MAYES: Yes, sir, Your Honor.

16          BY MS. MAYES:

17          Q.     Now, we were discussing the use of the phone of  
18          Joshua Brown. And you had indicated that on State's  
19          59, it includes communications with the individual  
20          identified as Ann in the contacts for that phone of  
21          Joshua Brown.

22          A.     Yes.

23          Q.     I'm going to ask if you can --

24                   MS. MAYES: Your Honor, if the witness may step  
25          down?

1 THE COURT: Yes, sir, you may step down, of  
2 course.

3 Q. We'll take a look here at 59. In addition to  
4 the communication with Ann, was there also a single  
5 text regarding, "so you walk out and you quit,  
6 right" from another individual?

7 A. I believe so. Yes.

8 Q. So you walk out and you quit, right?

9 A. Yes.

10 Q. And that's at 8:52 a.m.?

11 A. Correct.

12 Q. Now, all other communications other than that  
13 one are with Ann; is that correct?

14 A. Yes, correct.

15 Q. Ingoing and outgoing calls to and from Ann and  
16 then ingoing and outgoing texts to and from Ann?

17 A. Correct. For these text messages, yes.

18 Q. And, just to clarify, is this all of the  
19 information in total from the phone or just narrowed  
20 down to his communications with Ann?

21 A. No. This is just a narrowed-down summary  
22 version between the contact Ann and this device.

23 Q. With the addition of the text message stating,  
24 You walk out and you quit, right, at 8:52 a.m.?

25 A. Correct.

1 Q. Now, can you tell us whether or not there were  
2 communications about meeting at the Riverwalk.

3 A. Yes.

4 Q. So here, at 10:16 a.m., how do we determine if  
5 it's a call or a text message?

6 A. On the left-hand column will be the  
7 communication type. In this case, SMS, which is  
8 short messaging service, which will be a text  
9 message.

10 Q. So all of these items we're looking at here are  
11 text messages?

12 A. Correct.

13 Q. All right. Now, to Ann: Just getting off.  
14 And that's at 10:16 a.m.?

15 A. Correct.

16 Q. All right. And then from Ann -- if you could,  
17 for the record, publish that response from Ann at  
18 10:18 a.m.

19 A. On the incoming text message on August 11th,  
20 2015, 10:18 a.m., from Ann stating: Okay. About to  
21 leave in 13 minutes.

22 Q. About to leave in 13 minutes?

23 A. Correct.

24 Q. And then from Ann also at 10:18 a.m.?

25 A. That response is: So what's up?

- 1 Q. From Ann?
- 2 A. H-E, I assume, L, and underscore.
- 3 Q. From Ann?
- 4 A. That response is: Hello.
- 5 Q. To Ann at 10:22 a.m.?
- 6 A. That response is: Okay.
- 7 Q. From Ann at 10:22 a.m. on August 11th?
- 8 A. That response is: Where are we going to meet?
- 9 Q. To Ann at 10:24 a.m.?
- 10 A. That response is: You okay with the Riverwalk?
- 11 Q. Then at 10:24 a.m. at August 11th?
- 12 A. By your job.
- 13 Q. And who is sending that message?
- 14 A. That is an outgoing message from that device.
- 15 Q. From the device of Joshua Brown to Ann: By
- 16 your job?
- 17 A. Yes.
- 18 Q. And at 10:24 a.m. on August 11th?
- 19 A. That is incoming response from the device
- 20 belonging to Ann: Okay.
- 21 Q. Were there any other communications from these
- 22 parties following that response from Ann of okay at
- 23 10:24 a.m. on August 11th?
- 24 A. I don't believe there were.
- 25 Q. Do you want to check your records of the

1 extraction for that?

2 A. Yes.

3 Q. Let me show you State's Exhibit 8. And you can  
4 check your own records as well. This is for  
5 identification only.

6 A. That is correct. Last incoming message from  
7 the number ending in 2087 is -- on 10:24 a.m. is:  
8 Okay.

9 Q. Now, you also mentioned search history.

10 A. There is web history. Yes.

11 Q. I'm going to ask you to take a look at State's  
12 Exhibit 60 and ask you whether or not that  
13 summarizes the search web history for August 11th  
14 and 12th for that device of Joshua Brown.

15 A. This would be a fair summary of the web  
16 history. Yes.

17 Q. All of the materials contained therein, can you  
18 tell us whether or not they came directly from that  
19 phone of Joshua Brown?

20 A. Yes. They came from my extraction and initial  
21 report.

22 Q. All right. And if you could bring with you  
23 that State's Exhibit 60 containing the search  
24 history. Can you tell us whether or not the name  
25 Javon Jones appeared in the search history for this

1 phone belonging to Joshua Brown?

2 A. It did appear.

3 MS. GILREATH: Your Honor, we'd renew our prior  
4 objection since it appears she's going to publish  
5 this to the jury. We'd renew our prior  
6 objections --

7 THE COURT: I'm not tracking, Ms. Gilreath.  
8 I'm sorry. Step up here for me, please.

9 (Sidebar conference.)

10 THE COURT: Thank you, Ms. Gilreath.

11 And I would renew my previous ruling.

12 BY MS. MAYES:

13 Q. We're going to move to page 11 of this  
14 document. And when we talk about digital analysis,  
15 if you could, tell us how you go about extracting  
16 search history from a mobile device.

17 A. We use forensic tools, numerous forensic tools,  
18 to extract the data. The tools used are what's  
19 called scripts. And it looks for a pattern of words  
20 or specific patterns, per se, such as social  
21 security numbers, date of births, credit card  
22 numbers, internet history, able to extract it from a  
23 particular database.

24 In this particular situation, with the web  
25 history, it is stored in a database. This device,

1 the Android device, stores all of its internet  
2 history.

3 Q. So beginning on page 11 at 38 -- actually, go  
4 back earlier than that. If someone uses a device  
5 such as Facebook, can you tell us whether or not the  
6 search history and internet activity history also  
7 contains that information?

8 A. It will contain some information. The issue on  
9 some websites, when you connect -- and this  
10 situation with Facebook, we can show that Facebook  
11 was accessed. But once you connect to Facebook, it  
12 makes what's called a tunnel connection, which is a  
13 secure encrypted connection. So we can show that,  
14 yes, it was accessed, but whatever you searched for  
15 in that Facebook while it was under that connection,  
16 encrypted connection, we can't see what's  
17 happening -- what's happening on that side because  
18 it's happening on Facebook servers.

19 Q. So looking here at August 11, 2015,  
20 specifically at the time period of 10:06 a.m., can  
21 you tell us whether or not Javon Jones is indicated?

22 A. Javon Jones is indicated.

23 Q. Now moving forward to 10:35 a.m., 10:35 on the  
24 incident date of August 11th, 2015 --

25 A. Okay.

1 Q. -- what, if any, type of search regarding Javon  
2 Jones is done at 10:35 a.m.?

3 A. That's a general Google search.

4 Q. What does that mean?

5 A. Google is a search engine, the most popular  
6 search engine. The name Javon Jones was searched  
7 using the search engine Google.

8 Q. Here at 10:35?

9 A. Correct.

10 Q. Prior to that, were there indications regarding  
11 Javon Jones?

12 A. There are some indications, yes.

13 Q. When we talk about a search engine such as  
14 Javon Jones, are you able to tell whether or not  
15 that's user-generated?

16 A. Yes. The issue is, when you're opening -- and  
17 I'll use Google. If you're searching for a name or  
18 anything on that search engine, such as Google, if  
19 you do not close the browser out or do not close the  
20 application out, it will continue to update. So  
21 even though it may show three, four, five searches,  
22 it may not be that the user is continuing to search;  
23 it may just be that it's updating in the background  
24 because the application or the browser was never  
25 closed out.

1 Q. When you talk about user-generated, can you  
2 clarify whether that means it's manually entered by  
3 the user?

4 A. Yes. The name would have to be manually  
5 entered by the user of the device.

6 Q. So when we talk about a search engine, such as  
7 Google or Spokeo, does it automatically generate  
8 names?

9 A. No, it does not.

10 Q. What does one have to do to conduct a search on  
11 an individual?

12 A. You get so many hits back or positive hits that  
13 the search engine believes what you're looking for  
14 and the user would have to manually go in and  
15 navigate to narrow down specifically what they're  
16 looking for.

17 Q. And that information must be entered, in turn,  
18 by a keyboard?

19 A. Some type of keyboard can be entered using  
20 voice to text.

21 Q. All right. Move forward to 10:36 a.m. on  
22 August 11th of 2015. 10:36 a.m., in addition to  
23 Google, were there any other formats or engines used  
24 regarding Javon Jones?

25 A. LinkedIn, which is a social site generally for

1 professionals. Been Verified is another one that  
2 was used.

3 Q. Been Verified is what?

4 A. I believe Been Verified is a tool to verify the  
5 identity of certain people.

6 Q. Now, can you tell us whether or not there's a  
7 break in search engine activity or any search  
8 history activity between 10:37 a.m. on the incident  
9 date until a later point in time?

10 A. Can I determine if --

11 Q. If there was a break in activity.

12 A. Based on this, I cannot. Again, it goes back  
13 to if the application was running in the background.  
14 I can't determine if there's a break or not.

15 Q. When is the next activity that is shown from  
16 your phone extraction after 10:37 a.m. on the  
17 incident date?

18 A. Another web history, Been Verified, Facebook,  
19 Javon Jones.

20 Q. At what time?

21 A. I'm sorry. 12:55 p.m.

22 Q. You mentioned that Facebook is another app  
23 that's being used.

24 A. It is another social app being used, yes.

25 Q. I want to move forward to page 10. At

1 1:23 p.m. on the incident date, there is a specific  
2 reference to Google. And now, instead of Javon  
3 Jones, we see Javon Tony Jones. What, if anything,  
4 does that indicate?

5 A. The user of the device was searching Javon Tony  
6 Jones.

7 Q. And what search engine is being used?

8 A. In this instance, Google.

9 Q. What is the website or app known as Spy Fly?

10 A. Spy Fly is, basically, again, identification  
11 verification site; if you want to search for people  
12 using -- via name, date of birth, or address.

13 Q. Now, I want to move forward to page 13 of the  
14 document. What, if anything, is indicated on the  
15 incident date of August 11th, 2015, at 2:26 p.m.?

16 A. There was a Google search for the Cayce Police  
17 Department.

18 Q. Again, does that have to be manually entered?

19 A. Correct.

20 Q. By the user?

21 A. Yes.

22 Q. So we would call that user-generated activity?

23 A. Yes.

24 Q. Now, on the incident date of August 11th, 2015,  
25 on page 14, I'm going to refer you to the time

1 period of approximately 2:50 p.m. What, if any,  
2 indications do you have regarding Facebook activity?

3 A. There is Facebook activity. And it could be  
4 running in the background, but there appears to be  
5 searches for Melissa James and Javon Jones.

6 Q. Could that be accessing those pages as well?

7 A. Yes, it is possible. Again, if the connection  
8 is with Facebook, Google can tell. But that is a  
9 search for those two names.

10 Q. I'm going to move forward to page 19. On page  
11 19, what, if anything, is indicated around 6:23 p.m.  
12 on the incident date of August 11th?

13 A. It appears to be a search for Javon Jones using  
14 White Pages.

15 Q. What is White Pages?

16 A. It's the digital version of the old phone book,  
17 Yellow Book.

18 Q. And by using this search engine under White  
19 Pages, can one determine information such as name  
20 and specific facts such as, potentially, a phone  
21 number?

22 A. Yes, phone number or address and so forth.

23 Q. Addresses may be included in White Pages  
24 information as well?

25 A. Yes.

1 Q. And then at 6:25 p.m. on the incident date of  
2 August 11th, what, if any, information is accessed  
3 from White Pages regarding an individual by the name  
4 of Javon Jones?

5 A. Javon Jones' contact information by White  
6 Pages.

7 Q. Moving forward to page 23, still on the  
8 incident date of August 11th, 2015, into the early  
9 morning hours of the following date, which would be  
10 August 12th of 2015, is there any indication that  
11 there was some type of activity going on in the  
12 early morning hours of August 12th?

13 A. Yes. Facebook search for Javon Jones and  
14 continuing in the early hours of Melissa James as  
15 well.

16 Q. Now we're going to move forward to page 25 of  
17 the document. Also in the morning hours of August  
18 12th of 2015 at 2:46 a.m., is there any indication  
19 of a Facebook search for an individual?

20 A. Yes. It appears to be a Facebook search for a  
21 Tony Jones.

22 Q. Now, does this also determine whether or not  
23 websites are accessed that may contain media  
24 information, news information, everyday type of  
25 websites?

1 A. Yes.

2 Q. Move forward to page 30. At 7:41 a.m. in the  
3 morning hours of August 12th, 2015, what, if any,  
4 Facebook search activity is indicated?

5 A. Facebook search for Tony Jones.

6 Q. Now, when we talk about Google searches,  
7 particularly as to 7:42 a.m., do you see anything  
8 that would be user-generated, meaning, the user had  
9 to manually enter that information?

10 A. News 25.

11 Q. And that's at what time?

12 A. At 7:42 a.m.

13 Q. Now we're going to the last page of the  
14 document, page 38. Are you able to determine any  
15 specific articles that may have been accessed  
16 through the news media on or about 10:03 a.m. after  
17 the date of the incident, being, August 12th, 2015?

18 A. It appears the user was on the WIS-TV website.  
19 And that is a heading of the news story. It states:  
20 Man wanted for attempted murder at incident at Cayce  
21 boat ramp.

22 Q. And then the last activity of this phone in  
23 terms of search history occurred at what time?

24 A. 10:03 a.m.

25 Q. Okay. That would be actually all internet

1 activity, is that correct, at 10:03 p.m., according  
2 to your extraction?

3 A. Correct.

4 Q. The last document that I wanted to ask you  
5 about is what was identified as State's Exhibit 61.  
6 Following this incident on August 11th, 2015, we saw  
7 some activity before up until the time period of  
8 around 10:35 or 10:36 a.m. When was the next  
9 activity user-generated from this phone?

10 A. An outgoing call at 12:14 p.m.

11 Q. All right. What does it mean over here on the  
12 right side if it indicates deleted?

13 A. It means it was deleted from the logical  
14 section of the device.

15 Q. Is that something that is done manually by the  
16 user, if we're talking about it being in a time  
17 frame such as the day before the phone being seized  
18 to be extracted?

19 A. Yes. More than likely, based on the time  
20 frame, it will be user-generated.

21 Q. What do you mean by that?

22 A. Most phone devices store a limited amount of  
23 data regarding communication, and it's to save up  
24 space. So, prime example, 500 call logs. After  
25 500, the phone will automatically write over the

1           oldest call log to save space. But in a short  
2           amount of time, even within 24 hours, more than  
3           likely, this is going to be user-generated deletion.

4           Q.    And what does one have to do to delete a call  
5           that they made or a call that they received or a  
6           text they made or received?

7           A.    They can actually delete it through the device  
8           itself, through the application, the call  
9           application or the text application.

10          Q.    So the activity begins again on the incident  
11          date at 12:14 p.m.?

12          A.    Correct.

13          Q.    And can you tell us whether or not  
14          user-generated activity continues on up through the  
15          time period of August 12th, 2015, which is the date  
16          the phone was seized?

17          A.    User-generated activity would have been at --  
18          an outgoing call August 12th, 2015, at 8:18 a.m.

19          Q.    And who was that call to?

20          A.    That was to a contact identified as Chris  
21          (803) 509-0201.

22          Q.    And there's a text here to a Kenya on August  
23          12th at 8:04 a.m., and that indicates that it's  
24          deleted. What is the content of that text?

25          A.    I need for you to pick for real.

1 Q. On the incident date of August 11th of 2015,  
2 are there any other text messages where the content  
3 was retrieved even after being deleted?

4 A. Yes.

5 Q. And at what time was this outgoing text sent  
6 from the phone?

7 A. At 3:48 p.m., the contents of the text was:  
8 Can you grab me a Black and Apple Red?

9 Q. Does it indicate in the contacts who that  
10 person is?

11 A. No. That particular number is not associated  
12 within the contact of this user base.

13 Q. And, again, when we talk about contacts, must  
14 they be manually entered to show up on a phone?

15 A. Yes. They can either be transferred from an  
16 older device or another device or they have to be  
17 manually entered.

18 Q. Now, on the incident date of August 11th, 2015  
19 at 1:40 p.m., is there an outgoing text message from  
20 the phone?

21 A. There is.

22 Q. Does it indicate whether that was deleted?

23 A. Yes.

24 Q. Your extraction software, does it have the  
25 capability to sometimes capture deleted text

1 messages?

2 A. Yes. It will recover deleted items.

3 Q. Is that how you were able to recover this item?

4 A. Yes.

5 Q. And this person is identified in the contacts  
6 as what?

7 A. Edge, E-D-G-E.

8 Q. And the text to Edge at 1:40 p.m. on August  
9 11th is what?

10 A. We need to talk.

11 Q. Now, briefly, I'm going to go back to State's  
12 Exhibit 59, which is the first document that we  
13 looked at. And this would be the text messages  
14 between this phone, identified as the phone of  
15 Joshua Brown, and the person in the contacts known  
16 as Ann. Can you tell us whether or not some of  
17 these text messages were deleted?

18 A. Yes, they were deleted.

19 Q. Now, we look at the last page of communications  
20 between those parties, can you tell us whether or  
21 not those text messages both from Ann and to Ann  
22 include deleted messages?

23 A. They do.

24 Q. And some of those messages you were able to  
25 recover?

1 A. Yes.

2 Q. And what does it mean if it says unknown?

3 A. That is just the termination of the tool itself  
4 where it recovered the file from the log. Even  
5 though it's an Android system, most Androids are  
6 pretty much the same. Every phone manufacturer or  
7 make carrier tweaks their version to work with that  
8 phone. The database where it says unknown, where it  
9 was recovered from, that's the best estimate that --  
10 it cannot determine generally where it came from,  
11 but it did recover from the phone.

12 Q. So some messages were deleted and then some  
13 were unknown if they were deleted or not?

14 A. Right.

15 Q. You may return to your seat. I'm going to  
16 return State's, 60, 61, and 59 to you.

17 MS. MAYES: I beg the Court's indulgence.

18 THE COURT: Yes, ma'am.

19 BY MS. MAYES:

20 Q. The information that you've addressed to us  
21 today, to what extent is it known within the field  
22 of digital analysis and digital science, which of  
23 those activities that we viewed are user-generated,  
24 meaning, the user of the phone takes action for  
25 those activities to show up on the phone?

1           A.     Generally, we go by outgoing information and  
2           outgoing texts, outgoing calls, answered calls,  
3           answered texts, web searches, things that a user of  
4           the device would manually have to navigate through  
5           the phone to initiate.

6           Q.     Such as accessing a search engine for a  
7           particular person?

8           A.     Yes.

9           Q.     Or deleting text messages from a phone?

10          A.     Correct.

11                 MS. MAYES:  Nothing further of the witness at  
12           this time, Your Honor.

13                 THE COURT:  Thank you, Solicitor.

14                 Ms. Gilreath?

15                                 CROSS-EXAMINATION

16           BY MS. GILREATH:

17           Q.     Good afternoon.  I want to go back to something  
18           you were talking about a little bit ago.  Do you  
19           have the exhibits up there with you?

20           A.     I do.

21                 MS. MAYES:  Your Honor, may I approach the  
22           witness?

23                 THE COURT:  Yes, ma'am.

24           Q.     Thank you.  Now, we were talking about State's  
25           Exhibit 60.  And that was the web history, correct?

1 A. Correct.

2 Q. And with the web history, you said that,  
3 basically, from what you're looking at here and what  
4 your report generates, you can see a page that was  
5 accessed at that time, but you can't necessarily  
6 tell how it was accessed; whether it was running in  
7 the background or someone did a new search, from  
8 what you're able to get?

9 A. Right. If a page was opened up prior and, say,  
10 the page has been running for several days, it will  
11 continuously update in the background.

12 Q. So, for example, in some of the places where  
13 there are -- and just as an example here, not  
14 necessarily based on anything other than to show --  
15 what you're saying is, for example, one of these  
16 places where you have multiple things in a row or  
17 even where you would have a search here or something  
18 like this here, if you saw the same thing further  
19 down, you don't necessarily have a way to be able to  
20 know whether this was from the page still running in  
21 the background or whether it was a new search?

22 A. Right. It could be the page was updating or  
23 downloading. And it's continuously updating. The  
24 best way to tell is the time frame. It's usually  
25 within a second or two.

1 Q. But it's also possible for web browsers and  
2 applications to be running in the background at the  
3 same time as other web browsers and applications,  
4 correct?

5 A. Absolutely.

6 Q. You can also have multiple web pages pulled up  
7 and running in the background at the same time,  
8 correct?

9 A. Correct.

10 Q. So there's no way, from this, to be able to  
11 tell whether the pages that appear or the names here  
12 and the description that appear more than once, at  
13 any given place, whether those are news searches or  
14 the same thing running in the background?

15 A. Well, it would have had to have been activated  
16 at some point. Yes. I mean, if it was activated  
17 earlier and continuing to run in the background,  
18 it's still going to show on the web history because  
19 it's reaching out to pull new information up.

20 Q. Sure. It tells us -- we know for certain that  
21 someone accessed it at some point. But there's no  
22 way to tell after that first time whether or not  
23 it's being reaccessed or it's just that it's  
24 updating again from it running in the background?

25 A. Yes, unless the person is actually navigating

1 through the web page itself.

2 Q. And when we're talking about background, to  
3 make sure we're talking about the same thing, what  
4 we mean by that is that a page can be opened and the  
5 user is using it, and then they can stop using it  
6 and sort of hide it while they're doing other things  
7 on the phone?

8 A. That's correct.

9 Q. So it's, essentially, idling in the background  
10 where you don't have to be using it, but the phone  
11 still has it sort of active, running behind the  
12 scenes?

13 A. Yes. It will continue to run -- as long as  
14 they haven't closed it, it will continue to run  
15 behind the scenes. But, again, it can be navigated  
16 and you'd have to go by on the date and time and the  
17 new updated version of the page.

18 Q. So there would be no way to tell, for example,  
19 at what point this -- just for an example, the  
20 Facebook here on 8/11 at 6:27, there would be no way  
21 to know for certain when exactly that particular  
22 page was closed out?

23 A. Closed or --

24 Q. Yeah.

25 A. If you're referring to Facebook, if it was

1 closed out and you go to sign on again, you would  
2 receive another entry that would say welcome to  
3 Facebook.

4 Q. Right.

5 A. Yes. That's really the only way to tell.

6 Q. Now, when you pull something back up, bring it  
7 back up to be actively used again, generally, that  
8 page is going to update and reload at that point,  
9 correct?

10 A. Yes.

11 Q. It doesn't necessarily mean you have to  
12 actively use it; it's just if you pull that page  
13 back up on your phone, whether intentionally or  
14 unintentionally, you're going to have that reloading  
15 of the page, right?

16 A. That is correct.

17 Q. Now, whenever you're looking at these with the  
18 web browser -- and I'll bring this back up to you.  
19 Whenever you're looking at the web browser there,  
20 you're not able to tell who it is that's actually  
21 doing the accessing of anything, correct, like what  
22 person, what human being?

23 A. No. I can only say the user of the device. I  
24 can't specifically say a name.

25 Q. You can just identify what is happening on the

1 phone; you can't say, necessarily, whether it's the  
2 owner of the phone or someone else who has gotten  
3 access to the phone to see what's on there?

4 A. That is correct.

5 Q. Now, the date range that we've got here -- and,  
6 I apologize, let me come get one of these back from  
7 you. You have your report, correct?

8 A. Yes.

9 Q. Now, we talked about the date range here. What  
10 was the date range that appears in these summaries?

11 A. For which -- just the web history or the call  
12 logs or --

13 Q. Each one.

14 A. The web history is August 11th, 2015 at  
15 3:56 a.m. to August 12th, 2015 at 10:03 a.m.

16 Q. And for the messages, the SMS messages here?

17 A. August 11th, 2015 at 12:03 a.m. to August 11th,  
18 2015 to 10:24 a.m.

19 Q. And the call logs?

20 A. I don't have the call logs; you have them.

21 Q. Oh, I'm sorry.

22 A. This is August 11th, 2015, 12:14 p.m., and it  
23 goes to August 12th, 2015 at 10:15 p.m.

24 Q. So the information that's contained in each of  
25 these summaries, this all came from the extraction

1           you performed on the phone, correct?

2           A.     Correct.

3           Q.     So the way we have this here, this is just a  
4           summary, correct? This isn't how the data appears  
5           when you perform the extraction?

6           A.     That is correct. I believe the actual report  
7           was 5,000 pages.

8           Q.     So of the 5,000 pages, there were other web  
9           history, messages, phone calls, things like that,  
10          correct?

11          A.     Correct.

12          Q.     And that goes prior to the date range we've got  
13          here?

14          A.     It does.

15          Q.     So all that we know from this is what we can  
16          say about the messages, the phone calls, and the web  
17          history for this brief time period?

18          A.     Correct.

19          Q.     And there's actually information having to do  
20          with other applications and other things about the  
21          phone, correct?

22          A.     Yes.

23          Q.     Now, with the date range here, you were able to  
24          view web history, messages, and phone calls from  
25          dates and times prior to August 11th, correct?

1 A. Yes.

2 Q. You have your report with you there?

3 A. No. Like I said, the report is 5,000 pages.

4 Q. Do you have the --

5 A. It's on the CD that's been submitted for  
6 evidence.

7 Q. So do you have anything with you prior to  
8 August 11th?

9 A. With me? No.

10 Q. So you're not able to talk about the messages  
11 and phone calls and web history that were in your  
12 report prior to August 11th, 2015?

13 A. Without reviewing the actual report on the  
14 disc, no.

15 Q. So you wouldn't be able to recall whether on  
16 May 16th of 2015, Tony Jones was searched on the  
17 phone?

18 A. I'd have to look at the report.

19 Q. And you wouldn't be able to recall that as to  
20 June 12th or July 21st or any other dates whether  
21 Tony Jones was searched on the phone?

22 A. Pretty much anything prior to August 11th.

23 Q. So with all of the date ranges that you had,  
24 there were other communications -- you would recall  
25 whether there were other communications between

- 1 Mr. Brown and Mrs. Brown?
- 2 A. Yes. With third and fourth parties, yes.
- 3 Q. And other people, obviously? This isn't just  
4 exclusively with them; this is just what's in the  
5 summary?
- 6 A. Correct.
- 7 Q. But there were also additional communications  
8 between the phone that says Ann and the phone that  
9 is being attributed to Mr. Brown, correct?
- 10 A. Absolutely.
- 11 Q. And there were a lot of them; do you recall  
12 that?
- 13 A. Yes.
- 14 Q. Do you recall about the day before there being  
15 28 phone calls being from the phone that says Ann to  
16 this phone?
- 17 A. Again, I'd have to look at the report.  
18 Anything prior to August 11th, I would have to  
19 actually view the actual summary.
- 20 Q. But you recall there were a lot?
- 21 A. Yes. There was definitely numerous activity  
22 prior to August 11th.
- 23 Q. And would you recall that -- I think we said  
24 that these things start sort of in the early morning  
25 hours on August the 11th. Do you recall that there

1           were a number of communications, phone calls and  
2           text messages, between those two on August 10th,  
3           leading up to August 11th, during that same night?

4           A.     Just between the two -- yes.  Best  
5           recollection, there was a lot of communication  
6           between both of them.  Yes.

7           Q.     But you weren't asked to do a summary or report  
8           for this trial as to those additional  
9           communications?

10          A.     Not a summary, but I did the report.  And,  
11          again, it's 5,000 pages --

12          Q.     The report of the full extraction?

13          A.     It's on disc.

14          Q.     I guess what I mean is, you weren't asked to  
15          bring that or prepare anything for this trial as to  
16          anything other than that particular date range?

17          A.     Correct.

18          Q.     Now, with the extraction that you did as to  
19          this phone, you got the phone back in 2015 to do the  
20          extraction, correct?

21          A.     Yes.  The original submission date is August  
22          12th, 2015.

23          Q.     And there was a consent form with that,  
24          correct, that was signed?

25          A.     Correct.

1 Q. And when you performed the original extraction,  
2 was it actually two extractions that were performed?

3 A. Yes. It was what we call a logical and a file  
4 system extraction.

5 Q. And those different kinds of extractions,  
6 essentially, are different in that they are able to  
7 access kind of different areas of the memory of the  
8 phone. Is that kind of a layman's way of summing  
9 that up?

10 A. Yes.

11 Q. And what type of software were you using back  
12 then?

13 A. Our primary software is called Cellebrite. It  
14 is originally developed by Israeli Intelligence.

15 Q. Is that the same type you're using now?

16 A. Yes.

17 Q. And that software gets -- just like most  
18 software, gets updated, correct?

19 A. Correct.

20 Q. So as that software gets updated, it has  
21 additional capabilities, correct?

22 A. Yes.

23 Q. And as that gets updated, it has additional  
24 capabilities, correct?

25 A. Yes.

1 Q. So the Cellebrite software you have has  
2 additional capabilities now that it didn't have with  
3 respect to this phone back when you first got it?

4 A. That is correct.

5 Q. So, at some point, you learned that you were  
6 actually now able to do a third type of extraction  
7 called a physical extraction, correct?

8 A. Correct.

9 Q. And that type of extraction actually accesses  
10 all of the phone memory, not just those parts of it  
11 that are accessible to the logical and file system  
12 extractions, correct?

13 A. Yes. Basically, the difference between logical  
14 and physical, logical is when you look at your  
15 phone, it's the stuff that you see; the icons, the  
16 call logs, that is considered logical. Physical  
17 encompasses the logical in what's called  
18 unallocated, the stuff that you can't see or deleted  
19 items.

20 So we try to get a physical -- our first try is  
21 to always get a physical. It may not always be  
22 supported. In this case, the physical was not  
23 supported back in 2015; however, it was supported  
24 back in 2018.

25 Q. When did you learn that you would be able to do

1 a physical extraction on this type of phone?

2 A. When I responded to the subpoena, I checked the  
3 updated on the device, the Cellebrite, and it  
4 verified it could do a physical extraction.

5 Q. So you realized, at that point, if you did  
6 perform this physical extraction on this phone, you  
7 would potentially be able to gather more data than  
8 what you had back in 2015?

9 A. Yes, ma'am. Primarily, deleted information.

10 Q. Back when you discovered this, did you do the  
11 extraction back at that point?

12 A. No. I only do extractions if I have a court  
13 order or either a search warrant or a consent. And  
14 the original consent was so far behind, I didn't  
15 feel it proper to reprocess the phone without  
16 confirmation from the defendant.

17 Q. So did you, at any point, check with the  
18 Solicitor's Office to see if a new extraction was  
19 going to be requested or performed?

20 A. I mean, I advised the Solicitor's Office that  
21 it's possible to do a physical extraction.

22 Q. And what did they say?

23 MS. MAYES: Objection to hearsay.

24 THE COURT: I will sustain that.

25 BY MS. GILREATH:

- 1 Q. Did they have you perform that extraction?
- 2 A. They did.
- 3 Q. When did you do that?
- 4 A. Just a few days ago, on June 18th, 2018.
- 5 Q. Now, is that at the same time when you notified
- 6 them that you were able to do it?
- 7 A. No.
- 8 Q. And, initially, you were actually not requested
- 9 to do it?
- 10 A. Correct.
- 11 Q. So you did perform that one and you did that
- 12 this week; is that correct?
- 13 A. That is correct.
- 14 Q. And when you performed that extraction, were
- 15 you able to collect more data than what you
- 16 originally had?
- 17 A. Yes.
- 18 Q. It was a lot more data, wasn't it?
- 19 A. Yes.
- 20 Q. And it's data that was not recovered in the
- 21 first extraction, right?
- 22 A. That is correct. That type of extraction, the
- 23 physical extraction, was not originally supported.
- 24 Q. And so with the new data that you have, have
- 25 you had an opportunity to review all of the new data

1           that was obtained in the new extraction?

2           A.    Not all of the new data, but I was able to  
3           narrow down a time frame around the incident at the  
4           request.

5           Q.    Were you able to tell whether, with this  
6           extraction, there were audio and video files that  
7           were not recovered in the first set of extractions?

8           A.    Yes.  There were some audio and video files  
9           that were not recovered from the first extraction  
10          that were recovered from the second extraction.

11          Q.    And have you had enough time to fully examine  
12          the data to determine whether you could, at some  
13          point, review what is on those videos or audio  
14          files?

15          A.    Well, the videos, yes.  User-generated videos,  
16          such as taken by the phone, selfies, or things of  
17          that nature, I did review those.  The audio files  
18          generally consist of music, some voice notes.  But I  
19          think the majority of the audio that was recovered  
20          from the physical was music.

21          Q.    And as to the videos, are there any that you  
22          were able to determine were created by an app that  
23          would label those videos a secret or sort of make  
24          them not easily noticeable when looking at the  
25          phone?

1           A.    Yes.  I believe there were a couple on there  
2           that were in a path titled secret.  Generally, we  
3           can recover those.  It's just basically hidden from  
4           logical view.  But the database that the video would  
5           be in can be recovered and identified.

6           Q.    So you say you were able to recover and  
7           identify those?

8           A.    I can't remember which videos we're talking  
9           about, but whatever is in the office report on the  
10          Blu-Ray disk, you would be able to pull them up, if  
11          they were recoverable.  Now, if they had been  
12          deleted or overwritten -- I take that back.  If they  
13          were overwritten or partially corrupt, then you  
14          wouldn't be able to view it.

15          Q.    So you can't say right now exactly what videos  
16          were visible and --

17          A.    That's correct.

18          Q.    Okay.  But you indicated you haven't had the  
19          time, having done it this week, to review all of the  
20          data on the phone, correct?

21          A.    That is correct.

22          Q.    Now, as to your general involvement in this  
23          case, this is not the only phone that you performed  
24          an extraction of, correct?

25          A.    That's correct.

1 Q. You performed an extraction of another phone  
2 that was also requested around the same time as this  
3 one?

4 A. Yes.

5 Q. And you also performed the logical and file  
6 system extractions as to that phone?

7 A. I was able to perform a logical on this device.  
8 The second device was also a Samsung Galaxy.

9 Q. And were you given information or were you able  
10 to determine what the phone number was as to that  
11 phone?

12 A. Yes. The phone number identified to this is  
13 (803) 319-2087.

14 Q. Were you able to determine whose phone that was  
15 or did you have information as to whose phone that  
16 was?

17 A. I believe this phone was submitted with a  
18 search warrant identifying it as the victim's phone.

19 Q. So we're talking about the Ann, Ms. Brown,  
20 slash, Ms. James that we've been talking about in  
21 the messages and phone calls on the other phone?

22 A. Okay. Yes.

23 Q. So that report -- do you have a copy of that  
24 report with you?

25 A. No. It's on the disc that's been submitted for

1 evidence.

2 Q. But you didn't bring a copy of the report  
3 or prepare a summary --

4 A. I just have my summary report.

5 Q. Do you remember how long the report was for  
6 that phone?

7 A. I do not.

8 Q. Would something over 3,800 pages make sense?

9 A. It's possible.

10 Q. And that would contain the same kinds of data,  
11 that report, that extraction, as you found in this  
12 phone, correct?

13 A. It would be similar. Yes.

14 Q. So as to phone calls, messages, web history,  
15 those kinds of things?

16 A. Yes.

17 Q. So you were able to recover that, correct? You  
18 were able to review it?

19 A. Yes.

20 Q. And you prepared a report?

21 A. Correct. Yes.

22 Q. But you were not asked to prepare a summary or  
23 anything relating to that phone to bring today?

24 A. No. I had my summary report and it's basically  
25 stating what I did to gather the data, but it

1 doesn't have the content as to what I recovered.

2 MS. GILREATH: I beg the Court's indulgence.

3 THE COURT: Yes, ma'am.

4 MS. GILREATH: No further questions.

5 THE COURT: Redirect?

6 MS. MAYES: Yes, sir, Your Honor.

7 REDIRECT EXAMINATION

8 BY MS. MAYES:

9 Q. Now, the original extraction that was conducted  
10 in this case was conducted when?

11 A. August 12th, 2015.

12 Q. And how was that documented?

13 A. It's documented on my notes and it was also  
14 documented in the chain of custody.

15 Q. And in terms of the information gathered, how  
16 is that preserved for terms of evidence or discovery  
17 and things of that nature?

18 A. How did we preserve it?

19 Q. Yes.

20 A. I create a folder for that agency and that  
21 agency's case number, and it is uploaded to our  
22 forensic server. And once I'm completed with the  
23 examination, it is moved over to another server for  
24 long-term storage, and you can pretty much keep it  
25 indefinitely.

1 Q. All right. The information gathered from that  
2 extraction, as well as the most recent extraction  
3 that you mentioned, were those provided to counsel  
4 for the defendant?

5 A. Yes.

6 Q. Do you also make your phone available for any  
7 staff that they wish to review the phone?

8 A. I'm sorry. Do I make the phone available?

9 Q. Yes.

10 A. If it's requested by Prosecution or the agency,  
11 submitting agency, I will offer it, yes.

12 Q. And did you make this phone available, in this  
13 case, to a Christopher Watkins?

14 A. I did not make the phone available. I did make  
15 available to him the newest extraction that I did.  
16 But this phone was in the custody of Cayce PD during  
17 that time, so I did not make the phone available.

18 Q. All right. And do you know whether or not  
19 Cayce PD did?

20 A. Yes, they did.

21 Q. Now I'm going to show you a document that is  
22 for identification State's Exhibit 8. But one of  
23 the questions Ms. Gilreath was asking you is whether  
24 you also have a summary that dates back prior to the  
25 incident date of August 11th.

- 1 A. For the web history?
- 2 Q. Yes.
- 3 A. Yes.
- 4 Q. And also ingoing, outgoing calls, ingoing,  
5 outgoing texts?
- 6 A. Yes, that's correct.
- 7 Q. So you do have with you today some information  
8 that goes back even prior to August 11th?
- 9 A. Yes; August 9th, 2015.
- 10 Q. I want to move forward and ask you specifically  
11 about the user-generated activity when there's  
12 navigation. I think that's the term you used, was  
13 navigation. What do you mean by that term?
- 14 A. Basically, the user of the device would  
15 physically have to push a button or use the  
16 touchscreen to navigate through phone calls, text  
17 messages, web pages.
- 18 Q. Means they're actively using it?
- 19 A. That is correct.
- 20 Q. In this particular case, what, if any,  
21 indications are there regarding the web history that  
22 the phone is being navigated or actively used by the  
23 user? I'll hand you State's Exhibit 60.
- 24 A. If you'll bear with me one moment.
- 25 Q. We'll refer you specifically to page 103.

1 A. Okay.

2 Q. When you see a Google search where a different  
3 search is entered -- so, first, it may be Javon  
4 Jones; next, it may be Javon Tony Jones, and then,  
5 ultimately, the Cayce Police Department. What, if  
6 anything, does that indicate as to whether the phone  
7 is being navigated?

8 A. Well, generally, the search would be navigating  
9 through -- when I say navigating, manually inputting  
10 the characters requested for that Google search,  
11 such as, in this case, Cayce Police Department.

12 Q. All right. And that's at 2:26 p.m.?

13 A. Yes.

14 Q. And just prior to that, on page 11, at  
15 1:28 p.m., was there any indication of navigation  
16 there?

17 A. Yes.

18 Q. How so?

19 A. It was a return hit -- false hit for Javon Tony  
20 Jones Google search.

21 Q. What do you mean by false hit?

22 A. It's a response from the internet provider,  
23 something is not available.

24 Q. And then do you see Google again being used  
25 with a different search term?

1 A. Yes.

2 Q. And what is that search term?

3 A. Javon Tony Jones.

4 Q. And then following that Google search, what, if  
5 anything else, on that same page is indicated at  
6 1:48 p.m. regarding a Google search?

7 A. News 19.

8 Q. A News 19 Google search?

9 A. News 19.

10 Q. Now I want to refer you to page 7.

11 A. Okay.

12 Q. On this incident date of August 11th, 2015, at  
13 10:35 a.m., what, if any, indications are there  
14 regarding a Google search navigation?

15 A. Again, it's a Google search for Javon Jones.

16 Q. Based upon the totality of information here  
17 regarding these various Google searches, can you  
18 tell us whether or not that indicates that, as to  
19 those Google searches, the phone is being actively  
20 navigated?

21 A. Yes.

22 MS. MAYES: Thank you. Nothing further.

23 THE COURT: Thank you.

24 Ms. Gilreath?

25

1

2

## REXCROSS-EXAMINATION

3

BY MS. GILREATH:

4

Q. Mr. Vanhouten, what we've been looking here has

5

been text messages and phone calls and web history,

6

correct?

7

A. Yes.

8

Q. And so at the point where there are breaks in

9

time or however long or short between one text and

10

another or one web history entry and another, that

11

doesn't tell you whether or not another application

12

might be in use during that time, correct?

13

A. Correct.

14

Q. It can only tell you whether a text message is

15

being sent or a phone call is being made or the web

16

browser is being used?

17

A. I'm sorry?

18

Q. I'll rephrase my question. I'm sorry.

19

If we're looking at the text messages here, and

20

again, just as an example, if there is one that is

21

at 3:27 a.m. and then the next one is at 3:30 a.m.,

22

just looking at that doesn't tell you whether or not

23

another application on the phone is being used; it

24

only tells you whether or not a text message is

25

being sent in between those two times?

1       A.    Right.  And based on this -- again, this is  
2       only between the two, the defendant and the victim,  
3       so this is only that.  But, yes, there would be  
4       other information showing activity going on.

5       Q.    Right.  So this doesn't show any other activity  
6       aside from between these two parties, as far as the  
7       text messages go?

8       A.    That is correct.

9       Q.    And as to the web history, thinking about the  
10      same thing.  When you're looking at one entry at,  
11      we'll say, 10:30 a.m. and then another one at  
12      10:45 a.m., all you can tell from looking at that  
13      web history is whether -- at the point where there  
14      are web history searches, you can't tell whether or  
15      not there's other activity going on in the phone in  
16      between those two times?

17     A.    Just on the web history, no.

18     Q.    Right.  So you couldn't say, just from looking  
19     at the web history, whether someone might have --  
20     well, the text messages, for example, you couldn't  
21     say whether -- just from looking at the web history,  
22     whether a text message might be sent in between  
23     those two web history times?

24     A.    No.  We'd have to refer back to the timeline,  
25     actually generate a timeline to determine that.

1 Q. And the overall timeline of the phone is going  
2 to contain more activity than just text messages and  
3 phone calls and web history, correct?

4 A. Yes.

5 Q. So there are other kinds of applications that  
6 could be running in between those times and being  
7 used by a user in between those times and it would  
8 not be reflected in any of these reports?

9 A. That's correct.

10 MS. GILREATH: No further questions, Your  
11 Honor.

12 THE COURT: Thank you. Thank you very much.  
13 Thank you, Agent.

14 THE WITNESS: Yes, sir.

15 THE COURT: All right. Madam Forelady, ladies  
16 and gentlemen, we'll take about a 15-minute recess.  
17 Do not discuss the case during this brief recess.  
18 You may take a walkabout.

19 (The jury exits the courtroom at 3:30 PM.)

20 THE COURT: All right. We'll be in recess  
21 about 15 minutes.

22 (Brief recess.)

23 THE COURT: Anything before we bring in our  
24 jury from the State, Solicitor?

25 MS. MAYES: No, sir, Your Honor.

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1 THE COURT: Mr. Story?

2 MR. STORY: Nothing from the Defense. May we  
3 approach?

4 THE COURT: Yes, sir.

5 (Sidebar conference.)

6 (The jury enters the courtroom at 3:54 PM.)

7 THE COURT: Welcome back, ladies and gentlemen.  
8 We will continue with the trial of the case. Please  
9 continue to give the parties your complete and  
10 undivided attention.

11 Solicitor, you may call your next witness.

12 MS. USRY: Thank you, Your Honor. The State  
13 calls Detective Cal Thomas to the stand.

14 THE COURT: All right. Detective Thomas, if  
15 you'd come around and join us, please.

16 CAL THOMAS

17 being first duly sworn, testified as follows:

18 THE WITNESS: I do.

19 THE CLERK: Have a seat, please, sir. Once  
20 you're seated, state your full name, spelling your  
21 last, please.

22 THE WITNESS: Investigator Cal Thomas. Last  
23 name is T-H-O-M-A-S.

24 DIRECT EXAMINATION

25 BY MS. USRY:

1 Q. Thank you, Investigator Thomas. Where are you  
2 employed?

3 A. I'm employed at the Cayce Department of Public  
4 Safety. Been there --

5 Q. How long have you been --

6 A. I've been there -- next month will be ten  
7 years.

8 Q. What have your positions been while at the  
9 Cayce Department of Public Safety?

10 A. I've been an investigator my entire time there.

11 Q. Do you have previous law enforcement experience  
12 predating Cayce Department of Public Safety?

13 A. Yes. I've been in law enforcement for almost  
14 29 years.

15 Q. And during August 11th of 2015, what was your  
16 role at that time?

17 A. I was an investigator at the Cayce Police  
18 Department.

19 Q. And were you working that day?

20 A. Yes.

21 Q. Did you have an opportunity to become involved  
22 with a victim, Ann Brown, and a suspect, Joshua  
23 Brown?

24 A. I did.

25 Q. And, tell me, generally, what was your role in

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1           that case?

2           A.    The initial call went out and I received  
3           information that there was a victim at the boat  
4           landing.  The initial officers that responded  
5           indicated that there was an address for the victim  
6           and that the suspect may be going to that address  
7           and that there were three minor children at that  
8           address, 3041 Princeton Road.  So I responded to  
9           that address to check on the safety of the children  
10          and also for the suspect.

11          Q.    And were you able to locate the children at  
12          that address?

13          A.    I did.  Myself and other officers made contact  
14          with the three children that were at the address.

15          Q.    Did you locate the suspect at that address?

16          A.    We did not.

17          Q.    What else did you do while at that location?

18          A.    The daughter of the victim was identified.  She  
19          also stated that the suspect was not there.  She  
20          allowed us to check the residence and make sure he  
21          was not there.  We also located a family member, the  
22          victim's sister, that lived nearby.

23                 The Lexington County Sheriff's Department had  
24          also responded at our request.  And when they  
25          arrived there, we left the custody of the children

1 with the family member as well as Lexington County  
2 Sheriff's deputies. They -- at our request, they  
3 remained on the scene for a short period to make  
4 sure the suspect did not return.

5 Q. So, upon leaving that location, what did you  
6 do?

7 A. I stayed in the area briefly. But then I  
8 responded -- I was initially going to go back to the  
9 crime scene that had been located. After contacting  
10 other investigators, the decision was made for me to  
11 go to our headquarters, Cayce Police headquarters,  
12 and start working on locating the suspect.

13 Q. Were you ultimately the lead investigator in  
14 this case?

15 A. Yes. The decision was made later that day that  
16 I would be the lead investigator.

17 Q. And when you went back to Cayce Public Safety,  
18 what did you do at that location?

19 A. As soon as I got back, I began gathering  
20 information on the suspect Joshua Brown. I had  
21 received information from our dispatch that  
22 Mr. Brown, the suspect, was calling in to our  
23 headquarters, and they transferred the call back to  
24 me at my desk.

25 Q. So you received information that a caller

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1 identifying himself as Joshua Brown was calling you  
2 at Cayce Department of Public Safety?

3 A. Yes, ma'am.

4 Q. About what time was that?

5 A. That was about 2:30.

6 Q. And were you able to determine what number that  
7 call was originating from?

8 A. Yes. That call came from (803) 210-5208 in to  
9 our dispatch.

10 Q. How were you able to determine that call  
11 number?

12 A. After I spoke with Mr. Brown on the telephone,  
13 I went up to our dispatch, which is located in the  
14 same building, and asked what number had called in.  
15 It didn't actually show up on my phone that was  
16 transferred, so I went up to dispatch and asked  
17 them, and they verified that that was the number  
18 that called in.

19 Q. Were you sitting at your desk when you received  
20 that call?

21 A. Yes. I believe so.

22 Q. And does your desk have the ability to record  
23 calls?

24 A. Yes. Well, my desk at the time did.

25 Q. And how does that happen? How do you activate

1 the recording system at your desk?

2 A. Some of our phones in investigations and other  
3 phones in the departments are set up where if you  
4 want to record a call, you can push a button and it  
5 will automatically start recording.

6 Q. Did you do that in this case?

7 A. I did.

8 Q. I'm going to show you what's been marked as  
9 State's Exhibit 62. Can you tell me if you  
10 recognize that item?

11 A. Yes. That's the disc that contains the  
12 recording of that phone call.

13 Q. How are you able to identify this disc?

14 A. My initials appear on the top right of that  
15 disc.

16 Q. Have you had an opportunity to review this  
17 disc?

18 A. Yes, ma'am.

19 Q. Does it fairly and accurately represent the  
20 conversation that you had with Joshua Brown on  
21 August 11th of 2015 at around 2:30?

22 A. Yes, ma'am.

23 MS. USRY: Your Honor, the State moves State's  
24 62 into evidence at this time.

25 MR. STORY: No objection.

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1 THE COURT: 62 in evidence without objection.

2 (State's Exhibit No. 62 admitted into

3 evidence.)

4 MS. USRY: Permission to publish, Your Honor?

5 THE COURT: Yes, ma'am.

6

7 BY MS. USRY:

8 Q. Investigator Thomas, is this your first contact  
9 with the suspect, Joshua Brown, after the beginning  
10 of this investigation?

11 A. Yes, ma'am.

12 Q. Prior to this conversation, had you been  
13 attempting to get in touch with him?

14 A. I'm sorry?

15 Q. Prior to this call, had you attempted to locate  
16 the suspect?

17 A. We did at the residence. And we had also began  
18 receiving information on other locations that he  
19 might possibly be in.

20 Q. Okay.

21 (State's Exhibit 62 published to the jury.)

22 BY MS. USRY:

23 Q. Detective Thomas, was that your voice on this  
24 recording?

25 A. Yes, ma'am.

1 Q. And you indicated this call happened around  
2 2:30 on the 11th?

3 A. Yes, ma'am.

4 Q. And during the course of your investigation,  
5 were you able, later, to determine where the  
6 defendant was located around 2:30 on the 11th?

7 A. Yes, ma'am. Through the investigation, we  
8 learned Joshua Brown was at Providence Hospital at  
9 that time.

10 Q. Did Mr. Brown come see you within 30 minutes?

11 A. No, ma'am, he did not.

12 Q. What's the next thing you did in your  
13 investigation after this call occurred?

14 A. After the call, I began to, again, gather more  
15 information on the suspect. I actually started  
16 preparing an arrest warrant. We decided we had  
17 probable cause to make an arrest in this case. I  
18 started preparing an arrest warrant and went to see  
19 a magistrate to get it issued.

20 Q. And do you know what time an arrest warrant was  
21 obtained?

22 A. Approximately 3:15.

23 Q. And, thereafter, did you ever attempt to  
24 contact Mr. Brown again?

25 A. Yes. I returned to our headquarters. I gave

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1 him about an hour to contact us. He did not. At  
2 about approximately 3:30, I used that same telephone  
3 number to contact Mr. Brown via telephone.

4 Q. Were you successful in reaching him?

5 A. Yes. He did pick up.

6 Q. Did you record that phone call as well?

7 A. I did.

8 Q. I'll show you what's marked as State's 63. Do  
9 you recognize this item?

10 A. Yes. This would be the disc that contains the  
11 recording of my second phone conversation with  
12 Joshua.

13 Q. How do you recognize that disc?

14 A. Again, my initials are at the top of that disc.

15 Q. Have you had the opportunity to review this  
16 recording?

17 A. Yes, I have.

18 Q. Does it fairly and accurately represent the  
19 conversation that occurred between you and Defendant  
20 Brown at 3:30 on August 11th, 2015?

21 A. Yes, ma'am.

22 MS. USRY: Your Honor, State moves State's 63  
23 into evidence at this time.

24 MR. STORY: No objection, Your Honor.

25 THE COURT: State's 63 is in evidence without

1 objection.

2 (State's Exhibit No. 63 admitted into  
3 evidence.)

4 MS. USRY: Thank you, Your Honor. Permission  
5 to publish?

6 THE COURT: Yes, ma'am.

7 (State's Exhibit No. 63 published to the jury.)

8 BY MS. USRY:

9 Q. Is that the conclusion of that call, Detective  
10 Thomas?

11 A. Yes, ma'am.

12 Q. And that represents the entirety of that call?

13 A. Yes, ma'am.

14 Q. And on August 11, 2015, did you hear back from  
15 Defendant Brown?

16 A. I did not.

17 Q. When you did not hear back from him, what  
18 action did you take?

19 A. We started contacting the Fugitive Task Force  
20 for Lexington County and asked for their assistance  
21 in locating Mr. Brown.

22 Q. Do they have other investigative means that  
23 will assist in locating suspects of crimes?

24 A. Yes, ma'am.

25 Q. Can they track cell phone numbers as part of

## DIRECT EXAMINATION OF CAL THOMAS BY MS. USRY

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1 their investigative means?

2 A. They can.

3 Q. Did you provide the defendant's cell phone  
4 number to them at that time?

5 A. I did.

6 Q. And in gathering all of the suspect's  
7 information, what did you ultimately do with all of  
8 that information?

9 A. We made the decision to make it publicly known  
10 that we were looking for Mr. Brown after the warrant  
11 was issued. I prepared a bulletin that would have  
12 went out to other law enforcement agencies in the  
13 surrounding Midlands, and we also made that  
14 information available to the media.

15 Q. I'm going to show you what's been marked as  
16 State's 64. Can you tell me what that item  
17 represents?

18 A. Yes, ma'am. That's one of the bulletins that  
19 we prepared for Mr. Brown to issue to surrounding  
20 agencies.

21 Q. And do you do this after Mr. Brown does not  
22 come to the police department per your conversations  
23 with him?

24 A. That's correct.

25 Q. And does this document represent what you

1 created that day?

2 A. Yes, ma'am.

3 Q. And, ultimately, distributed to all law  
4 enforcement agencies?

5 A. Yes, ma'am.

6 MS. USRY: Your Honor, State submits State's 64  
7 into evidence.

8 MR. STORY: Your Honor, I would object under  
9 403.

10 THE COURT: May I see it, please?

11 What's the basis of your objection by rule  
12 number?

13 MR. STORY: 403, Your Honor.

14 THE COURT: I'll overrule the objection.  
15 State's 64 in evidence subject to previous  
16 objection.

17 (State's Exhibit No. 64 admitted into  
18 evidence.)

19 BY MS. USRY:

20 Q. What type information do you include in a BOLO  
21 that you send out to other law enforcement agencies?

22 A. We would include why the subject is wanted, the  
23 description of the subject, a photograph, any  
24 vehicles associated with the suspect, a contact  
25 number for the investigator working the case, and

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1 any additional information that might be relevant,  
2 such as whether he's armed or if there's any other  
3 concerns.

4 Q. And would you have gathered all this  
5 information as part of your investigation up until  
6 that point in time?

7 A. Yes, ma'am.

8 Q. Did you do anything further on August 11th of  
9 2015 as far as your investigation?

10 A. Later that afternoon, I met with the victim's  
11 son who came by headquarters. I spoke with him  
12 briefly. That was about it at that time.

13 Q. You mentioned earlier that the suspect did not  
14 call you back that date. But did you ultimately  
15 locate him on the 11th?

16 A. On the 11th, no, ma'am.

17 Q. Did you locate him on the 12th?

18 A. I was contacted in the early morning hours of  
19 the 12th by agents from the Fugitive Task Force who  
20 indicated that they had a possible location on  
21 Mr. Brown.

22 Q. Did you respond to that location?

23 A. I did.

24 Q. Can you tell me what that address was?

25 A. 525 Alcott Drive in Columbia.

1 Q. Do you recall about the time that you responded  
2 to Alcott Drive?

3 A. It was around 9:00 a.m. I would have met with  
4 some of the agents before actually going to the  
5 address so they could brief me on the information  
6 that they had.

7 Q. When you responded to Alcott Drive, were you  
8 able to locate Suspect Brown?

9 A. Yes. The agents from the Fugitive Task Force  
10 actually responded to Apartment 2F, which was the  
11 residence of April Carter. And they located  
12 Ms. Carter and Mr. Brown inside the residence.

13 Q. And did you determine the relationship of April  
14 Carter to Suspect Brown?

15 A. Yes. She identified herself as girlfriend of  
16 Mr. Brown.

17 Q. And were other officers present at that  
18 location as well?

19 A. There were several.

20 Q. Did you ultimately take the defendant into  
21 custody at that time?

22 A. I did.

23 Q. Did you inform him he was under arrest at that  
24 time?

25 A. I did.

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1 Q. What did you inform him he was under arrest  
2 for?

3 A. I advised him of the charge of attempted  
4 murder.

5 (State's Exhibit Nos. 65 and 66 marked for  
6 identification.)

7 Q. I'm showing you State's 65 and 66. Tell me  
8 what that represents.

9 A. 65 represents a photograph I took of the  
10 outside of building 2 at 525 Alcott Drive; 66  
11 represents a photograph I took of the front door of  
12 apartment F in building 2.

13 Q. And that's the address that you responded to?

14 A. Yes, ma'am.

15 Q. I'm going to show you what's been marked  
16 State's 67, 68, 69.

17 A. Yes, ma'am. These are photographs I took on  
18 the scene as well.

19 Q. Who is depicted in those photographs?

20 A. 67 is a photograph of the defendant's hands.  
21 You can see he's been placed in handcuffs by agents  
22 from the Fugitive Task Force. But the right hand  
23 has a cut on it.

24 Q. And just tell me, in general, who's there.

25 A. That's the defendant, Joshua Brown, and a

1 picture of his hands.

2 Q. And does that fairly and accurately represent  
3 him at the time you responded to that location?

4 A. Yes, ma'am.

5 Q. 68 is also a full picture of Joshua Brown?

6 MS. USRY: Your Honor, State at this time moves  
7 those three pictures into evidence.

8 THE COURT: What's the numbers?

9 MS. USRY: 67, 68, and 69.

10 THE COURT: Mr. Story?

11 MR. STORY: Your Honor, no objection to 67.  
12 68, 69, I would object, under 403, they have no  
13 probative value. The agent has already testified to  
14 the identity. It would just confuse the jury.

15 THE COURT: The two you object to, Mr. Story?

16 MR. STORY: 68 and 69.

17 THE COURT: Do you need both, Solicitor?

18 MS. USRY: Your Honor, we're happy to choose  
19 one.

20 THE COURT: You'll withdraw one?

21 MR. USRY: Yes, sir. We'll withdraw 69.

22 THE COURT: So 67 in evidence without evidence.  
23 68 is in evidence subject to 403 objection.

24 (State's Exhibit Nos. 67 and 68 admitted into  
25 evidence.)

## DIRECT EXAMINATION OF CAL THOMAS BY MS. USRY

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1 BY MS. USRY:

2 Q. So 67, you indicated, was a picture of the  
3 defendant's hand at the time of arrest?

4 A. Yes, ma'am.

5 Q. And the date and timestamp on this picture, is  
6 that accurate? It says August 12th, 2015, 9:40.

7 Would that be accurate on your camera at that time?

8 A. Yes, ma'am.

9 Q. Then 68, is that a picture that you took of  
10 Defendant Brown that morning?

11 A. Yes, ma'am.

12 Q. And did you speak with April Carter while on  
13 scene?

14 A. Yes; briefly.

15 Q. Was a statement obtained from her by law  
16 enforcement?

17 A. Yes, ma'am.

18 Q. And, can you tell me, was her phone number  
19 obtained by law enforcement?

20 A. The phone number listed at the bottom of her  
21 statement is (803) 361-1028.

22 Q. Could you read that to me one more time,  
23 please. 803- --

24 A. 361-1028.

25 Q. And as part of your investigation, have you had

1 an opportunity to review the phone extraction of  
2 Defendant's phone?

3 A. Yes, ma'am.

4 Q. And is that number listed in Defendant's phone  
5 anywhere on State's 61, which is an excerpt from  
6 that extraction?

7 A. Yes, ma'am, it is.

8 Q. And is there a name associated with that number  
9 within the phone?

10 A. The contact listed for that number is Edge.

11 Q. Edge? While on scene, did you search the  
12 location of the residence or apartment where the  
13 defendant was located?

14 A. The agents from the Fugitive Task Force did  
15 obtain consent to search Ms. Carter's apartment.  
16 And they did so and advised me of the results.

17 Q. Was anything of value located in that  
18 apartment?

19 A. No, there was not.

20 Q. And then upon arrest of Defendant Brown, was  
21 any property obtained during that arrest?

22 A. He still had his cell phone on.

23 Q. Did you obtain that cell phone?

24 A. I did.

25 Q. Can you identify that -- whether State's 57 is

## DIRECT EXAMINATION OF CAL THOMAS BY MS. USRY

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1 the cell phone that you obtained from Defendant  
2 Brown?

3 A. Yes. That's the phone that was obtained from  
4 Mr. Brown.

5 Q. And at the arrest of Defendant Brown, were you  
6 able to observe his build -- his physical build?

7 A. Yes. Fairly athletic build, fit.

8 Q. As part of the BOLO, did you obtain information  
9 of his height and weight?

10 A. Yes, I did.

11 Q. Is that information contained in State's 64?

12 A. Yes. He's -- height and weight, 5 foot 7, 180  
13 pounds.

14 Q. As part of your investigation, did you obtain  
15 the victim's height in this case?

16 A. I'm sorry?

17 Q. The victim's height. As part of your  
18 investigation, did you obtain --

19 A. The victim's height, yes, ma'am.

20 Q. What was that information?

21 A. Victim's height is 5 foot 2.

22 Q. Did you -- upon leaving that scene, were you  
23 ever able -- or while at that scene, did you locate  
24 the suspect's vehicle that was described as used in  
25 this incident?

1 A. Not at that scene, no, ma'am.

2 Q. Did you, as part of the investigation, later  
3 learn the location of Defendant Brown's vehicle?

4 A. Yes. We identified the residence of his  
5 mother, Debra Brown, and the vehicle was located  
6 there.

7 Q. Did you respond to that location?

8 A. I did, later on August 12th.

9 Q. Of the same date of the arrest of the  
10 defendant?

11 A. Yes, ma'am.

12 Q. I'm showing you State's 70. Without stating  
13 what that is, do you recognize that item?

14 A. Yes. This is a consent to search form that I  
15 filled out for the defendant's car, Mr. Brown's car.

16 Q. Were you able to obtain consent from Defendant  
17 Brown to search his vehicle?

18 A. Yes. He signed this form indicating his  
19 consent to search that vehicle.

20 Q. And then did you take that form with you when  
21 you responded to the location where you found the  
22 vehicle?

23 A. I did.

24 Q. Did you process that vehicle?

25 A. I did, along with Investigator Goff of the

## DIRECT EXAMINATION OF CAL THOMAS BY MS. USRY

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1 Richland County Sheriff's Department.

2 Q. Was the vehicle ultimately in Richland County  
3 Sheriff's Department jurisdiction?

4 A. It was.

5 Q. Is that common practice to have an officer from  
6 that jurisdiction assist you when you're searching a  
7 property located in that jurisdiction?

8 A. Yes, ma'am.

9 Q. And who was present when you responded to that  
10 vehicle?

11 A. I responded to the address, which is [REDACTED]  
12 Fontain Place, Columbia, and met with Ms. Brown and  
13 a Chris Griffon, which he identified himself as Josh  
14 Brown's stepfather.

15 Q. Were you able to access the vehicle?

16 A. Yes. Mr. Griffon provided the keys that were  
17 inside the apartment and the vehicle was parked in  
18 the parking lot outside.

19 Q. I'm showing you what's been marked as State's  
20 71 through 77. Is that the vehicle you processed at  
21 that location?

22 A. Yes, ma'am.

23 Q. Do those pictures fairly and accurately  
24 represent the vehicle at that time?

25 A. Yes, ma'am.

1 Q. Can you describe for me what you did as far as  
2 your processing of the vehicle?

3 A. Yes, ma'am. I took these photographs and  
4 searched the interior of the vehicle. I took  
5 pictures of some of the items inside the vehicle.

6 As I was doing that, we noticed stains on the  
7 door and I asked Investigator Goff if he could  
8 assist in taking DNA swabs of that driver's side  
9 door and also on the inside carpet area where there  
10 were also some signs, just for evidence purposes.

11 Q. Did he collect those swabs in your presence?

12 A. He did.

13 Q. What was ultimately done with those swabs?

14 A. They were submitted to the evidence room at  
15 Cayce Police Department and they were ultimately  
16 submitted to State Law Enforcement Division for  
17 analysis.

18 Q. What else did you do while processing this  
19 vehicle?

20 A. The section of the door frame that had been  
21 stained, I also removed that from the vehicle and  
22 placed that into evidence.

23 Q. That's the location where you found stains that  
24 you suspected to be --

25 A. Yes, ma'am.

## DIRECT EXAMINATION OF CAL THOMAS BY MS. USRY

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1 Q. Can you describe for me what's in State's 76?

2 A. That's some family court paperwork that was  
3 located in the floorboard of that vehicle.

4 Q. Did you later determine what family court  
5 action that paperwork was related to?

6 A. That was involving the defendant, Josh Brown,  
7 and the victim, Ann Brown.

8 Q. Can you describe for me what you see in State's  
9 77?

10 A. A McDonald's hat that was also located inside  
11 the vehicle.

12 Q. What, if any, significance did that have to  
13 you?

14 A. We had information that the defendant, Josh  
15 Brown, worked at McDonald's.

16 Q. Did you locate any other clothes related to  
17 employment at McDonald's in that vehicle?

18 A. No, ma'am.

19 Q. What other activities, in general, would you  
20 take as part of your investigation in this case as  
21 time progressed?

22 A. I later assisted with getting medical records  
23 from the hospitals, once we identified the hospitals  
24 that were used by the victim and the suspect. I  
25 also interviewed a number of people, five or six

1 additional people, that had some association with  
2 the victim and/or the suspect.

3 Q. Did you interview an individual named Jarvis  
4 Jones?

5 A. I did.

6 Q. Excuse me. Javon Jones. I apologize. Javon.

7 A. Javon Jones.

8 Q. And did you determine his relationship to this  
9 case?

10 A. He was identified as a friend of the victim,  
11 Ann Brown.

12 Q. Were you able to determine whether or not he  
13 was injured as part of this case and during your  
14 investigation?

15 A. He was not.

16 Q. Investigator Thomas, were you ever able to  
17 locate the defendant's clothes that he was described  
18 to be wearing during this incident on August 11th,  
19 2015?

20 A. No, ma'am, we did not.

21 Q. And were you ever able to locate a weapon that  
22 was described to be used on August 15th of 2011  
23 [sic] at the Riverwalk on Ann Brown?

24 A. No.

25 MS. USRY: No further questions for this

## CROSS-EXAMINATION OF CAL THOMAS BY MR. STORY

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1 witness, Your Honor.

2 THE COURT: Thank you, Solicitor.

3 Mr. Story?

4 MR. STORY: Thank you.

5 CROSS-EXAMINATION

6 BY MR. STORY:

7 Q. Good afternoon, Detective Thomas.

8 A. Good afternoon.

9 Q. You testified that the first call at 2:30,  
10 Joshua Brown actually called in to Cayce Department  
11 of Public Safety?

12 A. That's correct.

13 Q. And that was at 2:30. You also testified that  
14 you called him at 3:30 in the afternoon -- or,  
15 excuse me, 3:15.

16 A. 3:30.

17 Q. You called him at 3:30, which -- he was at  
18 Providence Hospital at the time, right?

19 A. I did not know at the time he was at Providence  
20 Hospital. But we later learned that, yes.

21 Q. You just testified that, through your  
22 investigation, you learned he was at Providence  
23 Hospital?

24 A. That's correct.

25 Q. And you've been present in the courtroom this

1 entire trial, correct?

2 A. Yes, sir.

3 Q. And you heard the testimony from the medical  
4 doctor that he was discharged after 4:00 that  
5 afternoon, right?

6 A. That's correct.

7 Q. You also -- you testified that his height was  
8 about five-seven and he weighs about 180 pounds?

9 A. Yes.

10 Q. And Ms. Brown is about five-two. Did you get  
11 her weight?

12 A. Weight is listed at 210.

13 Q. 210. So when you responded to the home where  
14 Mr. Brown's vehicle was, his family consented to a  
15 search of their home and the vehicle, right?

16 A. It did. We didn't search the home, but they  
17 assisted in the consent to search the vehicle, yes,  
18 sir.

19 Q. And Joshua also consented to a search of his  
20 cell phone?

21 A. Yes.

22 Q. And he consented -- okay. Thank you.

23 MR. STORY: I beg the Court's indulgence.

24 THE COURT: Yes, sir.

25 BY MR. STORY:

## REDIRECT EXAMINATION OF CAL THOMAS BY MS. USRY

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1 Q. You also said you obtained a search warrant  
2 after the first call with Mr. Brown, correct?

3 A. An arrest warrant.

4 Q. Excuse me. Arrest warrant.

5 A. Yes, sir.

6 Q. So that was on August 12th in the afternoon?

7 A. That was on August 11th.

8 Q. August 11th. Thank you again.

9 You -- now, Cayce Department of Public Safety,  
10 their phone number is listed on the website,  
11 correct?

12 A. I believe so. Yes, sir.

13 MR. STORY: No further questions.

14 THE COURT: Thank you.

15 Redirect, Solicitor?

16 MS. USRY: One question, Your Honor.

17 REDIRECT EXAMINATION

18 BY MS. USRY:

19 Q. Investigator Thomas, just for clarification,  
20 did Defendant Brown ever tell you he was at the  
21 hospital or give you any location where he was on  
22 August 11th of 2015?

23 A. No, he didn't. I asked him several times if he  
24 would tell us where we could pick him up at.

25 MS. USRY: No further questions, Your Honor.

1 THE COURT: Recross, Mr. Story?

2 MR. STORY: No recross, Your Honor.

3 THE COURT: Thank you, Mr. Story.

4 Thank you, Detective. You may step down.

5 Solicitor, you may call your next witness.

6 MS. MAYES: Your Honor, at this time, the State  
7 will rest.

8 THE COURT: Thank you, Solicitor.

9 Madam Forelady, ladies and gentlemen, step into  
10 your jury room momentarily and let me see where  
11 we're at administratively. Do not discuss the case  
12 during this brief recess.

13 (The jury exits the courtroom at 4:40 PM.)

14 THE COURT: Motions, Mr. Story?

15 MR. STORY: Yes, Your Honor. At this time, the  
16 Defense moves for a directed verdict of not guilty.  
17 There's been no evidence presented, taking all the  
18 evidence in the light most favorable to the State,  
19 that Joshua Brown committed the offense of attempted  
20 murder. And we'd move for a directed verdict, Your  
21 Honor.

22 THE COURT: Thank you, Mr. Story.

23 Solicitor?

24 MS. MAYES: Yes, sir, Your Honor. There is  
25 more than sufficient evidence in the record to

1 support the charge of attempted murder. He has been  
2 identified as the assailant by the victim in the  
3 case. We have heard from both a physician and EMS  
4 personnel about the extent of her injuries, which  
5 certainly would amount to attempted murder. We have  
6 stab wounds in the vicinity of 20 resulting in  
7 massive blood loss.

8 THE COURT: Thank you, Solicitor.

9 I would respectfully deny the motion for  
10 directed verdict as to the charge in the indictment  
11 of attempted murder. I think there is ample direct  
12 and circumstantial evidence as to each and every  
13 element of the offense charged, that being attempted  
14 murder, and specifically find there was -- there's  
15 ample evidence of a specific intent to kill.

16 All right. With that being said, Mr. Brown,  
17 would you come around, please?

18 Madam Clerk, would you place him under oath,  
19 please?

20 JOSHUA BROWN  
21 being first duly sworn, testified as follows:

22 THE DEFENDANT: Yes, ma'am.

23 THE COURT: Mr. Brown, as you recall, yesterday  
24 I discussed with you on the record your right to  
25 testify or not testify. Do you recall that?

1 THE DEFENDANT: Yes, sir.

2 THE COURT: Do you have any questions about  
3 your right to testify or not testify that you would  
4 like to ask this Court?

5 THE DEFENDANT: No, sir.

6 THE COURT: Have you had the opportunity to  
7 discuss your right to testify or not testify with  
8 your attorney?

9 THE DEFENDANT: Yes, sir.

10 THE COURT: Do you understand your right to  
11 testify or not testify?

12 THE DEFENDANT: Yes, sir.

13 THE COURT: Have you made your decision as to  
14 whether or not you're going to testify or not  
15 testify?

16 THE DEFENDANT: Yes, sir.

17 THE COURT: And what is your decision?

18 THE DEFENDANT: I will testify.

19 THE COURT: Thank you very much, Mr. Brown.  
20 You may return to your seat.

21 I find that Mr. Brown understands his right to  
22 testify or not testify; that he's had ample  
23 opportunity to additionally discuss it with his  
24 attorney over the evening hours; that he has made  
25 his decision voluntarily, knowingly, and

1 intelligently, made of his own free will and accord.

2 All right. Does the Defense -- I take it the  
3 Defense intends to present evidence and testimony.  
4 Are you ready to proceed, Mr. Story?

5 MR. STORY: We are, Your Honor.

6 THE COURT: Thank you very much.

7 MR. STORY: Your Honor, the projector the  
8 solicitor put on is creating a glare and a  
9 distraction. Do you mind if we turn that off?

10 THE COURT: No, not at all.

11 (The jury enters the courtroom at 4:45 PM.)

12 THE COURT: Welcome back, ladies and gentlemen.  
13 You heard the State has rested. You've heard all  
14 the evidence, all the testimony you're going to hear  
15 from the State in its case in chief.

16 As you recall, the State has the burden of  
17 proving its case beyond a reasonable doubt. A  
18 defendant in South Carolina, regardless of the  
19 seriousness of whatever the charges may be, is  
20 always presumed to be innocent and at no time has  
21 the burden to prove himself or herself innocent.

22 A criminal defendant may present evidence and  
23 testimony in his defense, if he chooses to do so. I  
24 am informed that the Defense intends to present  
25 evidence and testimony in this case. I would like

1 to go forward with that evidence and testimony  
2 beyond the 5:00 hour. I didn't ask you to discuss  
3 that in the jury room now because I don't -- I don't  
4 ask that question in your presence.

5 Would y'all be willing to work a little later  
6 tonight? Do you want to return to the jury room and  
7 discuss it briefly, Madam Forelady, or can you get a  
8 show of hands?

9 THE FOREWOMAN: I think we're good staying as  
10 long as needed.

11 THE COURT: If anyone has any commitment, I can  
12 certainly attempt to --

13 Okay. Hearing no descent, we will continue  
14 forward then. Please give the parties your complete  
15 and undivided attention.

16 Mr. Story, you may call your first witness.

17 MR. STORY: Your Honor, may we approach about  
18 scheduling?

19 THE COURT: Yes, sir, of course.

20 (Sidebar conference.)

21 MR. STORY: Your Honor, at this time, the  
22 Defense calls Mr. Clarence Smith.

23 CLARENCE SMITH,  
24 being first duly sworn, testified as follows:

25 THE WITNESS: I will.

## DIRECT EXAMINATION OF CLARENCE SMITH BY MR. STORY

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1           THE CLERK: Have a seat, please, sir. Once  
2           you're seated, state your name, spelling your last,  
3           please.

4           THE WITNESS: Clarence Smith.

5                           DIRECT EXAMINATION

6           BY MR. STORY:

7           Q.    Mr. Smith, could you spell your last name for  
8           the court reporter?

9           A.    S-M-I-T-H.

10          Q.    Good afternoon. If you don't mind, tell the  
11          jury about how old you are and where you're from.

12          A.    I'm from Columbia, South Carolina. I'm 30  
13          years old.

14          Q.    Do you recognize that man sitting beside  
15          Ms. Gilreath in the tie?

16          A.    Yes, sir.

17          Q.    Who's that?

18          A.    Joshua Brown.

19          Q.    What's his relation to you?

20          A.    Second cousin.

21          Q.    And how long have you known him?

22          A.    All my life.

23          Q.    And you're 30 years old, right?

24          A.    Yeah. I been knowing him since about six years  
25          old, seven.

1 Q. Let me ask you this: Do you know an individual  
2 by the name of -- that was known as Ms. Ann Brown?

3 A. Yes.

4 Q. And who do you know that as?

5 A. That's his wife.

6 Q. And did you know them -- did you know those two  
7 individuals when they were married?

8 A. Can you repeat the question?

9 Q. Well, do you have knowledge about their  
10 relationship and their marriage?

11 A. Yes.

12 Q. Were y'all friends?

13 A. Me and his wife?

14 Q. You and both of them. Yes.

15 A. No, not me and his wife.

16 Q. Let me ask you this: During the years of 2013  
17 till about 2015, did you ever witness any instances  
18 of violence that Ms. Ann may have committed against  
19 Mr. --

20 MS. USRY: Objection, Your Honor. We'd like to  
21 approach on this.

22 THE COURT: Step out, please, ladies and  
23 gentlemen.

24 (The jury exits the courtroom at 4:51 PM.)

25 THE COURT: Solicitor, would you state your

1 objection for the record and -- please.

2 MS. USRY: Thank you, Your Honor. The  
3 defendant appeared -- Defense counsel appeared to be  
4 going into specific incidents of past violence. And  
5 it's our understanding, from an interview between  
6 Mr. Smith and Investigator Thomas that was recorded,  
7 that he denied having any specific knowledge of  
8 incidents between the parties to Investigator Thomas  
9 at the time of the --

10 THE COURT: Is there a statement to that  
11 effect?

12 MS. USRY: Yes, sir, Your Honor. There's a  
13 recorded audio statement. He says the defendant had  
14 told him about incidents, but he didn't have any  
15 personal knowledge of those incidents.

16 THE COURT: All right. Mr. Story?

17 MR. STORY: Your Honor, what I believe  
18 Mr. Smith is going to testify to is injuries that  
19 appeared on Mr. Brown as well as a video that --

20 THE COURT: As well as what?

21 MR. STORY: A video on a cell phone that was  
22 Ms. Ann threatening Josh with violence.

23 THE COURT: So someone showed him a video; not  
24 a video that he took, but a video that someone else  
25 took that later on showed it to him?

1 MR. STORY: That's correct, Your Honor.

2 THE COURT: Why isn't that hearsay?

3 MR. STORY: Because he saw the video and  
4 recognized the parties in it.

5 THE COURT: He didn't personally observe the  
6 incident that occurred?

7 MR. STORY: No, Your Honor. But it's not a --  
8 he didn't hear a statement out of court made for the  
9 truth of the matter asserted. He saw a video.

10 THE COURT: Well, let's go and look at that.

11 A statement, oral or written, or nonverbal  
12 conduct of a person, if it's intended by the person  
13 as an assertion.

14 And, first off, how do we get into prior  
15 specific instances of conduct that were not asked --  
16 Solicitor?

17 MS. USRY: We argue, under State v.  
18 Clinkscales, prior difficulties is not allowed for  
19 the specific details to come in. In this case, we  
20 definitely argue a prior video taken by somebody  
21 else is hearsay.

22 THE COURT: I think there's a case out there  
23 that says just because somebody watches a video,  
24 they can't come in here and talk about it if they  
25 didn't observe the video. I'm going to find it.

1           Go right ahead, Solicitor.

2           MS. USRY: We don't believe he has any specific  
3           knowledge of these incidents that he actually -- he  
4           says has happened with his own eyes. We believe  
5           he's had conversations with the defendant, but that  
6           was hearsay and would not come in, in this case.  
7           He's just testified that he didn't really know her.  
8           On the stand, just prior to this question being  
9           asked, he just testified he really didn't know  
10          Ms. Ann Brown.

11          MR. STORY: And, Your Honor, I believe his  
12          testimony was that they were not friends. I think  
13          he testified --

14          THE COURT: He did say they were not friends.  
15          I don't know if he said he didn't know her. I don't  
16          recall that. I remember him saying he didn't know  
17          her.

18          MS. USRY: That's correct, Your Honor; they  
19          were not friends. Thank you.

20          THE COURT: Well, people don't always testify  
21          against their friends.

22          Let me make sure I'm tracking. I haven't heard  
23          the gentleman's testimony. But he never personally  
24          observed any incidents of violent conduct or threats  
25          or anything of that nature?

1 MR. STORY: Not in person, Your Honor.

2 THE COURT: He has no personal knowledge -- no  
3 personal knowledge, no observations of any acts of  
4 violence?

5 MR. STORY: He did from the video he saw --

6 THE COURT: I'm not talking about the video.  
7 I'm talking about personal knowledge. He has no  
8 personal knowledge of any acts of violence? I'm  
9 going to get to the video. I'm not throwing it  
10 aside. I'm just asking that question.

11 MR. STORY: Your Honor, he did observe injuries  
12 on the defendant.

13 THE COURT: Was that by an act of violence that  
14 he observed by Ms. James?

15 MR. STORY: No, Your Honor.

16 THE COURT: So besides what somebody told him  
17 or observing an injury and somebody telling him that  
18 this came from thus and so, he has no personal  
19 observation that Ms. James placed that injury on  
20 Mr. Brown? That's all I'm asking.

21 MR. STORY: For the injuries, yes, Your Honor,  
22 that's correct.

23 THE COURT: So then he saw her inflict the  
24 injuries on Mr. Brown?

25 MR. STORY: No, Your Honor.

1           THE COURT: Well, why you making me  
2 cross-examine you? Don't do me like that. Do me  
3 like Alicia Keys said: Tell me like it is; don't  
4 make me read between the lines. What? I don't like  
5 your body language either. It's disrespectful. And  
6 you're hiding the ball from me.

7           Did this witness observe acts of violence  
8 committed by Ms. James on Mr. Brown? Yes or no?

9           MR. STORY: No, Your Honor.

10          THE COURT: Well, why don't you tell me that to  
11 start with instead of me having to have this type of  
12 dance and this type of gamesmanship? Why?

13          MR. STORY: Your Honor, I answered your  
14 questions.

15          THE COURT: No, you did not. You were not  
16 truthful with me. You said he saw the injuries. I  
17 said inflicted? No. I had even prefaced my remarks  
18 by saying he saw the injuries, somebody else told  
19 him that they came from her.

20          Sheriff --

21          I'm not taking you into custody, but just have  
22 him sit in the courtroom. Because you cannot talk  
23 to anybody during this brief recess. Don't think  
24 I'm talking you into custody. Okay?

25          Bring me the jury in.

1           I want briefs from both parties by 8:00 in the  
2 morning on this issue. And if I find one thing  
3 untowards in it, bring a lawyer, because there's  
4 going to be a contempt hearing.

5           (The jury enters the courtroom at 5:01 PM.)

6           THE COURT: Ladies and gentlemen, I have a  
7 matter to take up outside of your presence that may  
8 take a lengthy period of time. I apologize. I  
9 appreciate y'all's willingness to work later  
10 tonight; however, it would not be prudent to do so.  
11 I'm going to release you and I'm going to ask you to  
12 be here at 9:00 in the morning. If you would please  
13 be here at 9:00 a.m. in the morning and we'll  
14 continue the trial of the case.

15           Do not discuss the case with anyone. Do not  
16 read, watch, listen to any news reports about the  
17 case. Do not do any independent research or any  
18 research on the internet. Thank you very much for  
19 your patience with the Court. You're now excused.  
20 I hope you have a pleasant evening.

21           (The jury exits the courtroom at 5:02 PM.)

22           THE COURT: Madam Court Reporter, would you do  
23 me a rough draft of the transcript of the colloquy  
24 with Mr. Story, please.

25           Court will be in recess until 9:00 in the

1 morning.

2 (The following proceedings were held June 22,  
3 2018.)

4 THE COURT: All right. Solicitor, Mr. Story,  
5 tell me where we're at as to the objection as to the  
6 last gentleman that testified, your first witness.

7 I'll be glad to hear from you, Mr. Story.

8 MR. STORY: Yes, Your Honor. I submitted a  
9 brief by e-mail, Your Honor, last night -- and I  
10 believe the Solicitor did, too -- on the issue. We  
11 believe there's essentially two issues: The  
12 statement about the injury and what he witnessed on  
13 that, as well as the video on the defendant's phone.

14 Essentially, Your Honor, we argue that the  
15 incident with the hammer was an excited utterance  
16 for the purposes of Rule 803(2) and would be a  
17 hearsay exception. It was -- Your Honor, the  
18 defendant made statements that were -- we believe  
19 the testimony will show, that were soon in time  
20 after the occurrence. He was able to perceive the  
21 defendant at that time.

22 And as far as the video, Your Honor, we would  
23 argue that what was shown on the video to the  
24 witness is nonassertive conduct and would not be  
25 hearsay.

1           THE COURT: Now, let me see if I'm tracking.  
2           There's two instances. One of them has to do with a  
3           hammer; is that correct?

4           MR. STORY: That's correct.

5           THE COURT: And what about the other one?

6           MR. STORY: The other one, basically, the  
7           witness in the interview recorded phone call with  
8           the detective said that he saw -- he said that he  
9           saw the alleged victim in this case running toward  
10          the alleged defendant who was taking a video while  
11          he was backing up. And that conduct, we would  
12          argue, would be a violent act that he saw on the  
13          cell phone and would be nonassertive conduct, so it  
14          wouldn't be hearsay, Your Honor.

15          THE COURT: So there's two instances. The  
16          hammer incident and then, if I call it, the running  
17          incident; is that correct?

18          MR. STORY: That would be accurate, Your Honor.

19          THE COURT: What are the time frames of those  
20          as to 11 August '15?

21          MR. STORY: As far as the time frames, Your  
22          Honor, that is not clear to me from the interviews  
23          that the witness made. We believe it was during the  
24          marriage of the defendant and the accused victim in  
25          this case. So it would be sometime between when

1           they were married in 2013 and up to this incident in  
2           2015.

3           THE COURT: And let me ask you this: Did the  
4           witness observe the hammer incident?

5           MR. STORY: He did not observe the incident  
6           itself, no, Your Honor.

7           THE COURT: Did he observe the running  
8           incident?

9           MR. STORY: Not directly.

10          THE COURT: What does that mean?

11          MR. STORY: Well, he -- what we believe his  
12          testimony will show is that he saw it on a cell  
13          phone video that the defendant showed him.

14          THE COURT: Whose cell phone?

15          MR. STORY: The defendant's.

16          THE COURT: All right. Anything further,  
17          Mr. Story?

18          MR. STORY: Not on that issue, Your Honor.

19          THE COURT: Thank you.

20          Solicitor?

21          MS. USRY: Thank you, Your Honor. We believe  
22          that neither of these incidents would come in. We  
23          don't know when they happened, how close they are to  
24          this particular case that we're trying today of  
25          August 11th, 2015. There's no indication of when

1       they occurred, if they would have any bearing on the  
2       defendant's state of mind at the time of this  
3       incident.

4               Additionally, both of these incidents that  
5       they're trying to get in through this witness are  
6       hearsay. With regard to the hammer incident, when  
7       the witness, Clarence Smith, was interviewed by  
8       Investigator Thomas on February 24th of 2016, he was  
9       directly asked: Did you witness any of this stuff?  
10      And he replies: No. I mean, I've heard about it.  
11      He would have come straight to me after it happened.

12              So this hammer incident was not witnessed by  
13      Mr. Smith. He would only have knowledge that was  
14      told to him by the defendant.

15              Furthermore, regarding the video, we have no  
16      idea when this video would have been taken. So it  
17      could have been shown to Mr. Smith at some time and  
18      taken months prior to when it was even shown to  
19      Mr. Smith. Additionally, the action shown within  
20      the video does not even appear to be an act of  
21      violence to even be considered.

22              It indicates -- and I'm looking -- again,  
23      referencing the interview, the telephonic interview  
24      by the investigator with Mr. Smith, Mr. Smith  
25      describes it as a recording of them arguing; that

1 she's in the background, like, trying to charge at  
2 him or something like that. So he doesn't even  
3 appear to clearly recollect the video that he's  
4 seen. He uses the words, like, she appears to be.  
5 So he's not 100 percent sure what he even saw in  
6 this supposed video.

7 The State has never seen this video, so we have  
8 no idea exactly what we're arguing about and whether  
9 this evidence even exists absolute speculation at  
10 this -- that this even exists at this point.  
11 Obviously, the witness is saying he did see it. But  
12 we just have not seen any actual evidence of this  
13 video.

14 THE COURT: Thank you.

15 MS. USRY: Yes, sir.

16 THE COURT: Well, I guess, as an initial  
17 matter, Mr. Story, a witness can testify, provided,  
18 under 602, he has personal knowledge. Obviously, in  
19 a case such as this, the prior difficult -- prior  
20 difficulties between the parties are admissible, but  
21 not specific details. I have not seen the video  
22 either.

23 And you're familiar with the cases, Mr. Story,  
24 both those that involve marital difficulties. For  
25 example, State vs. Williams, and those involving

1           just individuals that have had blood between the  
2           two. Given that fact, I rely on State vs. Taylor as  
3           far as specific details. So if your witness has  
4           personal knowledge, he may testify. Of course, he  
5           may not testify to details; he may not testify to  
6           that to which he does not have personal knowledge.

7                        So if his whole knowledge comes from  
8           information he is shown, whether video or what have  
9           you, after the fact, and he lacks personal  
10          knowledge, he would not be competent as a witness in  
11          that regard. It's very, very difficult for me to  
12          rule when I don't know and have not heard the  
13          testimony.

14                       So, with that being said, do you want to call a  
15          witness in-camera or do you want to proceed?

16                       MR. STORY: Your Honor, our preference would be  
17          to call the witness in-camera, Your Honor. And he  
18          was told -- I'll just say we had our investigator  
19          have him and our other witness who was going to give  
20          very similar testimony, they were told to be here at  
21          9:00.

22                       THE COURT: Well, you can call whatever  
23          witnesses you choose to call.

24                       MR. STORY: And, Your Honor, I would also like  
25          to make the Memorandum of Law a Court's exhibit.

1 THE COURT: Yes, sir. Please do.

2 Would you mark it as a Court's exhibit and then  
3 hand it up to me, please? I didn't print out a  
4 copy.

5 (Court's Exhibit Nos. 6 and 7 marked for  
6 identification.)

7 THE COURT: You may call your witness.

8 MR. STORY: Your Honor, it does not appear that  
9 the witness is present in the courthouse.

10 THE COURT: Was he directed to be back at 9:00?

11 MR. STORY: Yes, Your Honor.

12 THE COURT: Well, see if you can get some  
13 contact. Call him and find out what's up with him.  
14 Do you have other witnesses in this matter?

15 MR. STORY: We do, Your Honor. I believe we  
16 have three other witnesses.

17 THE COURT: I mean, other witnesses as to  
18 Mr. Thomas -- what was his name?

19 MR. STORY: Mr. Smith. Yes, sir.

20 THE COURT: Other witnesses as to him?

21 MR. STORY: Yes, Your Honor. I'm sorry. I  
22 apologize. I'm not sure what you're asking.

23 THE COURT: I'm not sure what I'm asking  
24 either. I guess in the in-camera, you're going to  
25 put up that witness from yesterday and you're going

1 to put up others in regards to his testimony, is  
2 what I'm trying to ask? Or just other witnesses in  
3 regards to other testimony?

4 MR. STORY: Just other witnesses in regard to  
5 other testimony.

6 THE COURT: Okay.

7 MR. STORY: And, Your Honor, I believe we have  
8 six witnesses. One would give very similar  
9 testimony to Mr. Smith.

10 THE COURT: Is he or she present?

11 MR. STORY: No, Your Honor.

12 THE COURT: Are any of them present?

13 MR. STORY: Yes, Your Honor. We do have one  
14 witness.

15 THE COURT: Do you want to call him or her or  
16 did you want an in-camera hearing on him or her?

17 MR. STORY: It's not about the same issue, Your  
18 Honor.

19 THE COURT: Is it about prior difficulties?

20 MR. STORY: No, Your Honor. It's an  
21 impeachment witness.

22 THE COURT: I'm sorry?

23 MR. STORY: No, Your Honor. It is an  
24 impeachment witness.

25 THE COURT: Okay.



1 I no longer feel like I can get a fair trial at this  
2 point. My rights are not being protected.

3 Yesterday, you yelled so loud, I really truly  
4 believed --

5 THE COURT: Yesterday what?

6 THE DEFENDANT: Yesterday, you yelled so loud,  
7 I really truly believe --

8 THE COURT: I didn't quite track. You said  
9 yesterday when what?

10 THE DEFENDANT: You yelled so loud --

11 THE COURT: Yes, sir.

12 THE DEFENDANT: -- during the confrontation, I  
13 really do believe the jury heard that. And I have  
14 consulted with another attorney at this point. And,  
15 like I said, I'd like to have my three attorneys, my  
16 trial attorneys, relieved from my case. I really do  
17 feel uncomfortable between the Court and the  
18 animosity between my lawyers.

19 THE COURT: I have no animosity whatsoever  
20 towards you or your attorneys. The jury was not in  
21 the courtroom. Many things can be said outside of  
22 the presence of the jury. And I'm really not sure  
23 that you're clairvoyant and you can be in this  
24 courtroom and decide what a jury did or did not  
25 hear. I have scrupulously protected your rights so

1 that you will get a fair and impartial trial by a  
2 fair and impartial jury.

3 I like to be told directly what motions or  
4 objections are on the table. The initial objection  
5 by the solicitor was personal knowledge. Then that  
6 followed into an issue on the videotape. I was not  
7 pleased with the solicitor or the attorneys when a  
8 case is tried and these issues aren't directed or  
9 discussed between the attorneys before the  
10 continuation of the trial. They deserve to be  
11 fleshed out fully and completely so I can make an  
12 adequate and appropriate ruling.

13 The State objected. Your defense attorneys  
14 have offered -- in fact, pretrial, going back to the  
15 expungement order, even with its existence, I  
16 allowed them to go into the incident with the  
17 telephone. I ruled that that was admissible, which  
18 I think it was or I would not have ruled that way.  
19 I believe they questioned Ms. James about it and it  
20 is in evidence because it's prior difficulties  
21 between the parties. If I can hear this testimony,  
22 I will then rule on it.

23 Your attorneys have represented you, or the  
24 public defender, I think, since the time in which  
25 you were incarcerated. And I believe Mr. Story has

1 indicated to the Court that the case was transferred  
2 from Ms. Henry to Mr. Story, I want to say, around  
3 January of this year. I could be wrong on that  
4 date.

5 Is that about correct, Mr. Story?

6 MR. STORY: Pretty close, Your Honor. But it  
7 was February.

8 THE COURT: January, February, sometime early  
9 part of this calendar year.

10 MR. STORY: I believe it was last calendar  
11 year.

12 THE COURT: Okay. Last. So they've  
13 represented you for a period of time. The case is  
14 prepared. They have professionally and competently  
15 cross-examined the witnesses. They have a witness  
16 list that they have presented to the Court.

17 I have no animosity towards any particular  
18 individual or group of attorneys, nor do I from  
19 you -- to you. And that may be somewhat  
20 additionally evidenced on my ruling on prior  
21 conviction of crime under 609 where I did not allow  
22 your prior armed robbery conviction into evidence  
23 because I thought it's -- whatever probative value  
24 it had was outweighed by the substantial prejudice  
25 to you.

1           At the end of the day, in a case such as this,  
2           considering all of the circumstantial evidence that  
3           the jury would have to determine, A, if it was  
4           circumstantial evidence, and, B, if it were  
5           believable, credible, truthful, and give it the  
6           weight and value. Really, at the end of the day, it  
7           comes down to the believability of the parties that  
8           were involved in the difficulty, at the end of the  
9           day, in my estimation, Ms. James and the alleged  
10          perpetrator. That's what it comes down to.

11          Ms. Gilreath fully and completely examined  
12          most, if not all, of the expert witnesses in the  
13          case and the crime scene officer and officers, both  
14          Officer Weaver, I believe it was, and Detective  
15          Merrill. And I disagree with you that the jury has  
16          heard anything that occurred in this courtroom when  
17          they were not present in the courtroom.

18          THE DEFENDANT: Permission to speak, Your  
19          Honor?

20          THE COURT: Of course.

21          THE DEFENDANT: I truly believe that they did.  
22          Yesterday, it was louder than what you expected. It  
23          was very loud.

24          THE COURT: Yes, sir.

25          THE DEFENDANT: And, like I said, I'm very

1           uncomfortable. And I really don't feel comfortable  
2           with these attorneys at this point now and would  
3           really like them relieved from this case.

4           THE COURT: Well, you have an option, you have  
5           one opinion. I deny your motion to relieve your  
6           attorneys; however, you may proceed -- after I  
7           advise you of the dangers of self-representation,  
8           you may proceed and represent yourself.

9           THE DEFENDANT: I already consulted with new  
10          counsel already.

11          THE COURT: I deny your motion to relieve your  
12          attorneys.

13          THE DEFENDANT: Thank you.

14          THE COURT: Thank you, Mr. Brown.

15          All right. We're waiting for the witnesses,  
16          Mr. Story?

17          MR. STORY: Yes, Your Honor. I believe we have  
18          one witness we can call.

19          THE COURT: All right. You may call your  
20          witness.

21          MR. TURNBLAD: Your Honor, we have one more  
22          motion before we --

23          THE COURT: Yes, Mr. Turnblad?

24          MR. TURNBLAD: Yes, Your Honor. We wanted to  
25          make a motion to poll the jury to see if they heard

## IN-CAMERA EXAMINATION OF LISA WILLIAMS BY MR. TURNBLAD

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1 anything yesterday. Stephen's paralegal, Lisa  
2 Williams, was out in the back room, and she said  
3 that she could hear everything that went on clearly,  
4 word for word out there. And so we wanted to do a  
5 motion to poll the jury just to ensure that they  
6 didn't hear anything that went on in the courtroom  
7 yesterday.

8 THE COURT: Call your witness. You may call  
9 your witness, Mr. Turnblad.

10 MR. TURNBLAD: Your Honor, the Defense would  
11 call Lisa Williams.

12 LISA WILLIAMS  
13 being first duly sworn, testified as follows:

14 THE WITNESS: I will.

15 THE CLERK: Have a seat, please, ma'am. Please  
16 state your full name, spelling your last.

17 THE WITNESS: My name is Lisa Williams.

18 IN-CAMERA EXAMINATION

19 BY MR. TURNBLAD:

20 Q. Spell your last name.

21 A. I'm sorry. My last name is spelled,  
22 W-I-L-L-I-A-M-S.

23 Q. Thank you. And, Ms. Williams, what is your  
24 present employment?

25 A. My employment is at the Lexington County Public

1 Defender's Office.

2 Q. What position do you hold there?

3 A. My position is now case manager/investigator.

4 Q. And have you been -- you've been -- who do you  
5 assist in the office?

6 A. I assist four attorneys in the office; two of  
7 them which are Stephen Story and Jael Gilreath.

8 Q. And have you been here for the trial this week?

9 A. Yes. I've been here for the entire trial.

10 Q. And yesterday afternoon, I'm guessing right  
11 around 5:00, were you in the courtroom or did you  
12 leave for a while?

13 A. I was in the courtroom when the witness,  
14 Clarence Smith, took the stand and Stephen asked the  
15 first question and then there was a matter of law.  
16 And, at that point, I had to excuse myself to go to  
17 the restroom and I walked to the restroom.

18 Q. And while you were outside, did you hear  
19 anything from the courtroom at all?

20 A. While I was in the restroom, I didn't hear  
21 anything. But as soon as I came out of the  
22 restroom, I heard Judge McMahon's voice very loudly.  
23 And, kind of startled, I'm like, oh, my God, what's  
24 going on? And I can't remember which deputy it was,  
25 I can't remember his name, but I know him when I see

## IN-CAMERA EXAMINATION OF LISA WILLIAMS BY MS. USRY

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1 him, he was standing at the door eavesdropping and  
2 looking back at me saying, oh, my God, oh, my God.  
3 And then the both of us were at the door.

4 And I still wasn't sure what was going on, but  
5 it increased and got louder, and then I sprinted  
6 around the corner because I wasn't sure what was  
7 going on.

8 Q. But you could hear, I guess, the back-and-forth  
9 from outside the courtroom?

10 A. Yes; very loudly.

11 MR. TURNBLAD: No further questions.

12 THE COURT: Solicitor?

13 IN-CAMERA EXAMINATION

14 BY MS. USRY:

15 Q. Where was the jury when that occurred?

16 A. The jury was in the jury room.

17 MS. USRY: Nothing further.

18 THE COURT: Thank you very much, Ms. Williams.

19 Any other witnesses, Mr. Turnblad?

20 MR. TURNBLAD: No, Your Honor.

21 THE COURT: Bring me the jury foreperson,  
22 please.

23 (Madam Forewoman enters the courtroom.)

24 THE FOREWOMAN: Good morning, sir.

25 THE COURT: I have a couple questions I'd like

1 to ask you.

2 Madam Clerk, would you place our foreperson  
3 under oath.

4 THE CLERK: Raise your right hand, please.

5 JESSICA HUNT

6 being first duly sworn, testified as follows:

7 THE FOREWOMAN: I do.

8 THE COURT: Yesterday afternoon, approximately  
9 5:00, we had started some testimony with a witness.  
10 And then right at the beginning of his testimony,  
11 there was an objection and I sent the jury out. Do  
12 you recall that?

13 THE FOREWOMAN: I do, yes, Your Honor.

14 THE COURT: Ma'am?

15 THE FOREWOMAN: Yes, Your Honor.

16 THE COURT: You do recall that?

17 THE FOREWOMAN: Yes, Your Honor.

18 THE COURT: And speak up a little bit for me,  
19 please, so the attorneys can hear.

20 And the jury was sent out and sent to their  
21 jury room. Do you recall that?

22 THE FOREWOMAN: Yes, Your Honor.

23 THE COURT: And just to set the time frame,  
24 some period of time passed, the jury came back in,  
25 and they were excused for the day. Do you recall

1           that?

2           THE FOREWOMAN:  Yes, Your Honor.

3           THE COURT:  When y'all exited the jury room --  
4           excuse me, the courtroom, where did y'all go?

5           THE FOREWOMAN:  When we exited, we went --

6           THE COURT:  When you exited before you were  
7           released for the day.

8           THE FOREWOMAN:  Oh, before we were released for  
9           the day?

10          THE COURT:  Yes, ma'am.

11          THE FOREWOMAN:  We went straight to our room.

12          THE COURT:  All right.  During that period of  
13          time, did you hear any activity or any voices coming  
14          from the courtroom?

15          THE FOREWOMAN:  No, Your Honor.

16          THE COURT:  None whatsoever?

17          THE FOREWOMAN:  None.

18          THE COURT:  So you exited the courtroom, went  
19          to your jury room, heard nothing from the courtroom;  
20          no voices, no conversations, even if you couldn't  
21          make them out, anything of that nature?

22          THE FOREWOMAN:  No, Your Honor.  I think we go  
23          back there so fast anyways.  No, we did not hear  
24          anything.

25          THE COURT:  Thank you very much, Madam

1 Forelady. You may return to your jury room.

2 THE FOREWOMAN: Thank you.

3 (Madam Forewoman exits the courtroom.)

4 THE COURT: Any other motions, Mr. Turnblad?

5 MR. TURNBLAD: No, Your Honor. Thank you.

6 THE COURT: Mr. Story, do you have any motions?

7 MR. STORY: No, Your Honor.

8 THE COURT: Solicitor, any motions?

9 MS. MAYES: No, sir, Your Honor.

10 THE COURT: Yes, sir?

11 MR. STORY: No, Your Honor. I was just  
12 shifting.

13 THE COURT: All right. Mr. Turnblad, what are  
14 you asking me to do?

15 MR. TURNBLAD: Your Honor, I believe on the  
16 testimony of the foreperson, we don't need to poll  
17 the jury at this time.

18 THE COURT: You made the motion. What are you  
19 asking me to do?

20 MR. TURNBLAD: I made the motion to poll the  
21 jury. But after the testimony, I think we now know  
22 they didn't hear anything. So...

23 THE COURT: So I don't need to rule on your  
24 motion; is that what you're telling me? I want to  
25 make sure I'm tracking you.

1           MR. TURNBLAD: I mean, if you'd like to rule on  
2           the motion, that's fine; if you want to deny it,  
3           that's fine.

4           THE COURT: And I'm asking you, what would you  
5           like me to do?

6           MR. TURNBLAD: I'd like you to rule on the  
7           motion, Your Honor.

8           THE COURT: I'm not sure what you're asking me  
9           to do. Usually, when somebody makes a motion, they  
10          want me to suppress evidence or not allow certain  
11          testimony. I'm going to deny the motion to poll the  
12          jury, yes, if that's all that was a motion for.

13          You also put up a witness, Ms. Williams. And,  
14          of course, her testimony and the foreperson's  
15          testimony is not inconsistent with each other. They  
16          were at different locations at the time. She's --  
17          as she's testified, out in the lobby, I guess you'd  
18          call it, and the forelady has testified they were in  
19          the jury room. So I'm not sure what's on the table  
20          right now as to whatever ruling I have to make. I  
21          would deny the motion to poll the jury.

22          MR. TURNBLAD: Thank you, Your Honor.

23          THE COURT: I think that would highlight, plant  
24          in their mind, there was something additional.

25          Anything further at this time?

1 MS. USRY: Your Honor, the State, based on the  
2 discussions this morning, request a five-minute  
3 recess to discuss any evidentiary matters with  
4 defense counsel that we can iron out prior to  
5 continuation of testimony, if there's anything else  
6 we can talk about.

7 MR. STORY: Yes, Your Honor. I would join in  
8 that motion.

9 THE COURT: What is it you want, Solicitor?

10 MS. USRY: Just a quick recess to confer with  
11 defense counsel regarding any upcoming evidentiary  
12 matters; that we can, perhaps, address them now.

13 THE COURT: Thank you. We'll take about a  
14 15-minute recess. Thank you.

15 (Brief recess.)

16 THE CLERK: Indictment 2016-GS-32-00873, The  
17 State vs. Joshua Thomas Brown, indicted for  
18 attempted murder, pleading as charged. It's signed  
19 and properly attested to, true-billed, and  
20 represented by Mr. Story, Mr. Turnblad, and  
21 Ms. Gilreath.

22 Raise your right hand, please, sir.

23 JOSHUA BROWN  
24 being first duly sworn, testified as follows:

25 THE DEFENDANT: Yes, ma'am.

1 THE COURT: Is it appropriate if I just direct  
2 my questioning of the attorneys to Mr. Story? Is  
3 that appropriate?

4 MS. GILREATH: Yes, Your Honor.

5 THE COURT: Thank you. And I'll allow all of  
6 you to speak at the appropriate time.

7 Mr. Story, you, along with Ms. Gilreath and  
8 Mr. Turnblad, represent Joshua Thomas Brown?

9 MR. STORY: We do, Your Honor.

10 THE COURT: Have you explained to him the  
11 charge of attempted murder, the elements, the  
12 possible punishments, and his rights, including his  
13 right to a jury trial?

14 MR. STORY: We have.

15 THE COURT: In your opinion, does he understand  
16 these things?

17 MR. STORY: Yes, he does.

18 THE COURT: How does he indicate he now wishes  
19 to plead to attempted murder?

20 MR. STORY: Guilty.

21 THE COURT: Thank you, Mr. Story.

22 You are Joshua Thomas Brown?

23 THE DEFENDANT: Yes, sir.

24 THE COURT: Mr. Brown, before I can accept a  
25 plea of guilty, it's necessary for me to determine

1 if it's being given freely and voluntarily;  
2 therefore, I need to ask you some questions. If you  
3 do not understand my questions, please let me know.  
4 I'll try to explain --

5 THE DEFENDANT: Yes, sir.

6 THE COURT: I'll try to explain them to you.  
7 If at any time you wish to talk with your attorney  
8 or attorneys, please let me know and I'll allow to  
9 do so. You understand?

10 THE DEFENDANT: Yes, sir.

11 THE COURT: How old are you, Mr. Brown?

12 THE DEFENDANT: Thirty-two years old.

13 THE COURT: How much education do you have?

14 THE DEFENDANT: I made it to the 10th grade and  
15 also obtained my GED.

16 THE COURT: And I understand the answer to the  
17 next question as far as the type of work you do  
18 prior to incarceration. You were employed with  
19 McDonald's?

20 THE DEFENDANT: Yes, sir.

21 THE COURT: How long did you work there?

22 THE DEFENDANT: I worked there exactly 20  
23 months.

24 THE COURT: Today, are you under the influence  
25 of any medication, drugs, or alcohol?

1 THE DEFENDANT: No, sir.

2 THE COURT: Do you understand what you're doing  
3 today?

4 THE DEFENDANT: Yes, sir.

5 THE COURT: Are you aware of any physical,  
6 emotional, or nervous problem that might keep you  
7 from understanding what you're doing today?

8 THE DEFENDANT: No, sir.

9 THE COURT: You've heard your attorney tell me  
10 that he's explained to you the charge, the possible  
11 punishment, and your rights, including your right to  
12 a jury trial, and that you understand these things.  
13 Is that correct?

14 THE DEFENDANT: Yes, sir.

15 THE COURT: I've been handed up Indictment  
16 2016-GS-32-00873. It basically reads that you did,  
17 in Lexington County, on or about 11 August 2015,  
18 with the intent to kill, attempt to kill another  
19 person with malice aforethought, either expressed or  
20 implied; to wit: You did stab or cut the victim  
21 multiple times about the body with a knife or a  
22 knifelike object in violation of 16-3-29 of the  
23 South Carolina Code of Laws. That is an indictment  
24 of attempted murder, for which the maximum sentence  
25 is up to 30 years. Do you understand?

1 THE DEFENDANT: Yes, sir.

2 THE COURT: When you plead guilty, you give up  
3 very important constitutional rights. You give up  
4 your right to remain silent; that is your right  
5 against self-incrimination, your right to say  
6 nothing at all. You cannot be compelled to testify  
7 or provide evidence against yourself.

8 Second, you give up your right to have a jury  
9 trial. That is your right to have a jury decide  
10 whether or not you are guilty beyond a reasonable  
11 doubt. They would base their decision upon evidence  
12 which the State presents and on any evidence you  
13 might wish to introduce.

14 In a trial, you would be presumed to be  
15 innocent and the State would have to produce  
16 evidence that would convince all 12 members of the  
17 jury that you were guilty beyond a reasonable doubt.

18 Third, you give up your right to confront and  
19 be confronted by the witnesses against you. That is  
20 the right to see, hear, and cross-examine any  
21 witnesses that may be called against you during the  
22 trial and the right to subpoena and call witnesses  
23 on your own behalf. Do you understand all these  
24 constitutional rights?

25 THE DEFENDANT: Yes, sir.

1           THE COURT: Do you have any questions you'd  
2           like to ask me about any of these or any of your  
3           other constitutional rights?

4           THE DEFENDANT: No, sir.

5           THE COURT: Do you understand that when you  
6           plead guilty, you give up your right to have a jury  
7           trial?

8           THE DEFENDANT: Yes, sir.

9           THE COURT: And, as you well know, you've been  
10          in a jury trial since Monday, I believe. It is now  
11          Friday and the jury is present, available to  
12          continue with your jury trial. You understand that  
13          will end? You will not continue with your jury  
14          trial. Do you understand that?

15          THE DEFENDANT: Yes, sir.

16          THE COURT: Is that what you want to do?

17          THE DEFENDANT: I'd like to accept the plea. I  
18          don't want to go forward with the trial.

19          THE COURT: You'd like to what?

20          THE DEFENDANT: I'd like to take the plea. I  
21          no longer want to go through with the trial.

22          THE COURT: You'd like to no longer go forward  
23          with the jury trial?

24          THE DEFENDANT: Yes, sir.

25          THE COURT: Okay. Understanding, then, the

1 nature of the charge against you and the  
2 consequences of the guilty plea, how do you wish to  
3 plead to this charge of attempted murder, guilty or  
4 not guilty?

5 THE DEFENDANT: I plead guilty, sir.

6 THE COURT: You understand that when you plead  
7 guilty, you admit the truth of the charge that is  
8 made against you?

9 THE DEFENDANT: Yes, sir.

10 THE COURT: Did you commit this offense?

11 THE DEFENDANT: Yes, sir.

12 THE COURT: Plea negotiations, Solicitor?

13 MS. MAYES: Yes, sir, Your Honor. In  
14 negotiations that have taken -- that have gone  
15 forward today, the State is withdrawing -- or has  
16 withdrawn notice of life without parole. The  
17 recommendation or negotiated sentencing range, Your  
18 Honor, would be 20 to 30 years on this charge.

19 THE COURT: Is that the full and complete plea  
20 negotiations, Mr. Story?

21 MR. STORY: Yes, Your Honor.

22 THE COURT: Is that your understanding,  
23 Mr. Brown?

24 THE DEFENDANT: Yes, sir.

25 THE COURT: Is there anything more to that

1 understanding, the plea negotiations, in your mind,  
2 Mr. Brown?

3 THE DEFENDANT: No, sir.

4 THE COURT: Do you still wish to plead guilty?

5 THE DEFENDANT: Yes, sir.

6 THE COURT: Has anyone promised you anything or  
7 held out any hope of reward to get you to plead  
8 guilty?

9 THE DEFENDANT: No, sir.

10 THE COURT: Has anyone threatened you or used  
11 force to get you to plead guilty?

12 THE DEFENDANT: No, sir.

13 THE COURT: Has anyone used any pressure or  
14 intimidation to cause you to plead guilty?

15 THE DEFENDANT: No, sir.

16 THE COURT: Have you had enough time to make up  
17 your mind as to whether or not you want to plead  
18 guilty?

19 THE DEFENDANT: Yes, sir.

20 THE COURT: Are you pleading guilty of your own  
21 free will and accord?

22 THE DEFENDANT: Yes, sir.

23 THE COURT: I want to ask you about your  
24 attorneys now. Are you satisfied with the manner in  
25 which your attorneys have advised you and

1 represented you?

2 THE DEFENDANT: Yes, sir.

3 THE COURT: Have you talked with your lawyers  
4 as often and for as long as you feel necessary for  
5 them to represent you properly?

6 THE DEFENDANT: Yes, sir.

7 THE COURT: Do you need any more time to talk  
8 with your lawyers?

9 THE DEFENDANT: No, sir.

10 THE COURT: Have you understood your talks with  
11 your lawyers?

12 THE DEFENDANT: Yes, sir.

13 THE COURT: Have your lawyers done everything  
14 for you that you feel like they could have done or  
15 should have done?

16 THE DEFENDANT: Yes, sir.

17 THE COURT: Have your lawyers done anything in  
18 this case that you feel like they should not have  
19 done?

20 THE DEFENDANT: No, sir.

21 THE COURT: Are you totally and completely  
22 satisfied with your lawyers' services?

23 THE DEFENDANT: Yes, sir.

24 THE COURT: Do you have any complaints you want  
25 to make about any of your lawyers, the solicitors,

1 or any police officers involved in your case?

2 THE DEFENDANT: No, sir.

3 THE COURT: Have you understood my questions?

4 THE DEFENDANT: Yes, sir.

5 THE COURT: Is there anything you'd like to ask  
6 me about what we've just been over?

7 THE DEFENDANT: No, sir.

8 THE COURT: You understand you have a right to  
9 appeal your guilty plea and the sentence of the  
10 Court and that you or your lawyer must do this  
11 within ten days?

12 THE DEFENDANT: Yes, sir.

13 THE COURT: Solicitor, I have heard the State's  
14 case, which lays a factual foundation for me in  
15 regards to the taking of the plea. However, if  
16 there's anything you'd like to add to the facts of  
17 the case, I'll be glad to hear it.

18 MS. MAYES: Yes, sir, Your Honor. The prior  
19 record is armed robbery of 2002. That conviction  
20 was out of Richland County. Also, the victim, Ann  
21 James, Your Honor, has testified in court; however,  
22 she has not addressed the Court regarding victim  
23 impact testimony and does wish to do so at this  
24 time.

25 THE COURT: And next I was going to ask does

1 Ms. James wish to address the Court at this time.

2 MS. MAYES: Yes, sir, Your Honor.

3 THE COURT: All right. I'll be glad to hear  
4 from Ms. James. If you'd come around to the podium,  
5 please.

6 Yes, ma'am?

7 THE WITNESS: Your Honor --

8 THE COURT: And speak -- as I tell everybody,  
9 speak up for me so I can hear you, please.

10 MS. JAMES: Yes, sir. Your Honor, I just want  
11 to thank you for the time, thank everybody that's  
12 been here. It's been a long process. It's been a  
13 process that's been overdue. It's almost been three  
14 years.

15 The amount of pain and agony and emotional  
16 distress that I encountered and endured through this  
17 is undescrivable. Having an eight-week baby --  
18 nine-week-old baby when this happened, I could never  
19 imagine that. It changed my life in so many  
20 different ways. My kids wouldn't have never had a  
21 mother. I would have never had an opportunity to go  
22 on and pursue my life and career as I have done. I  
23 have my daughter sitting here now that is now --  
24 that will be 20 next month --

25 THE COURT: This is your daughter to my front

1 right?

2 MS. JAMES: Yes, sir. And it has impacted my  
3 children. You know, every day, I see these scars.  
4 My three-year-old asks, Mom, what happened? Are you  
5 hurt? What's that? I'm always going to be reminded  
6 of this. I feel like there's no amount of time that  
7 you could give Mr. Brown that could ever take back  
8 the pain and the suffering that I went through.

9 And I'm just asking Your Honor, if you could  
10 please just give him the maximum of this sentence.  
11 And that would -- it would not satisfy me, but it  
12 would be satisfaction for what he's done.

13 THE COURT: Thank you, Ms. Brown.

14 Anything further, Solicitor?

15 MS. MAYES: No, sir Your Honor.

16 THE COURT: Thank you. I find that there's a  
17 factual basis for this guilty plea to attempted  
18 murder. I find that the defendant's decision to  
19 enter this plea of guilty is freely, voluntarily,  
20 knowingly, and intelligently made; that he has had  
21 the advice and counsel of very competent attorneys,  
22 experienced, with whom he says he's well and totally  
23 satisfied. His plea of guilty is, therefore,  
24 accepted.

25 Mr. Story?

1           MR. STORY: Your Honor, Ms. Gilreath is going  
2 to begin with mitigation.

3           THE COURT: Yes, Ms. Gilreath. I'd be  
4 delighted to hear from you.

5           MS. GILREATH: Thank you, Your Honor. I  
6 believe Mr. Brown indicated to the Court that he's  
7 32 years old, went to the 10th grade, and did obtain  
8 his GED. He told you about his job at McDonald's  
9 where he was a truck stocker. Your Honor, that was  
10 the only job he's had.

11           Your Honor heard about his prior conviction  
12 that happened at such a very young age when he was,  
13 I believe, about 16 years old. He spent a  
14 substantial amount of time, and is presently at this  
15 point. The majority of the time since his childhood  
16 has actually been spent in prison. And I know Your  
17 Honor is aware of the profound impact that that has  
18 on a person, kind of their emotional wellbeing, how  
19 they perceive the world around them.

20           When he got out of prison, Your Honor, he was  
21 attempting to do the right thing. They got married,  
22 he began working at McDonald's, trying to support  
23 his family. And, Your Honor, I think this comes  
24 down to -- this was a relationship that had been  
25 volatile for a long time. I think that with them

1           having separated and trying to work it out and back  
2           and forth.

3                   And the history of text messages between them  
4           shows, Your Honor, even after the divorce, they're  
5           telling each other I love you and want to work it  
6           out. And I think it just came down to there should  
7           have been a cleaner break and should have been a  
8           separation much sooner, and that possibly could have  
9           prevented this, Your Honor.

10                   I know that family had recommended to him on a  
11           number of occasions that he go get counseling. But  
12           I think having just gotten out of prison and trying  
13           to prove he's a normal, productive citizen, he's  
14           strong, he's a man, can take care of himself and his  
15           family, I think he was a little bit embarrassed by  
16           it. My understanding is that they did approach one  
17           place and he was turned down for that counseling.  
18           So he made an attempt.

19                   But I think after that, that sort of  
20           embarrassment and the desire to not be perceived as  
21           begging for help, sort of set in with his having  
22           just gotten out of prison. So I think he was really  
23           trying to do the right thing. And the problem was  
24           there was not this cutoff with this relationship  
25           that had just turned toxic at this point.

1           Your Honor, at some point, he was hoping to get  
2 his CDL and become a truck driver. He also likes to  
3 write and wanted to write books. And he also was  
4 thinking about starting a restaurant of his own,  
5 basically having his own businesses.

6           Your Honor, since I've known him, he's been  
7 nothing but polite and courteous and respectful in  
8 all of his interactions with me and the other  
9 attorneys since I've been around. He has two  
10 children, Your Honor, two three-year-old girls. And  
11 I can tell you that I have not had a conversation  
12 with him in which he has not brought up how much he  
13 loves them, misses them, and wants so desperately to  
14 be part of their lives.

15           Your Honor, I think he desperately -- he had  
16 just become a father for the first time when all of  
17 this happened, so he didn't really get to spend much  
18 time with his children since they've been born. And  
19 I know that that has been really weighing heavily on  
20 him and came into his decision today, Your Honor,  
21 the guilt that he feels for not being part of their  
22 lives.

23           Your Honor, I know that he's told us he  
24 certainly did not go to this location with any of  
25 the intentions of something like this happening. He

1            basically says that he just snapped. He's not  
2            really sure at what point that that happened, but he  
3            certainly wasn't going there planing for this. But,  
4            at some point, Your Honor, he says that he just  
5            snapped. And, like I said, I think that's sort of  
6            the result of this volatile relationship that really  
7            just should have ended a long time ago.

8                       Your Honor, he does have family support. I  
9            believe his cousin is here and would like to speak  
10          on his behalf. He has support of other family, but,  
11          of course, we hadn't initially anticipated the plea  
12          today. But he would have had other family that  
13          would have been here in support of him, we do know  
14          that, if we had been aware to get them here today.

15                     Your Honor, we're just asking for the mercy of  
16          the Court. He has very sincere regret about what  
17          happened, the effect that this has had on Ms. James,  
18          as well as on his children. And I know that if he  
19          could go back and change anything about that day or  
20          the days leading up to that and having prevented it,  
21          I know that he would have, Your Honor. So we're  
22          asking for Your Honor for as much mercy as you can  
23          give and to lean towards the lower end of the range  
24          that was negotiated.

25                     I'm not sure which of my co-counsel also wishes

1 to speak. But I know that his cousin wishes to  
2 speak on his behalf.

3 THE COURT: Mr. Story, do you have anything to  
4 say?

5 MR. STORY: Your Honor, I just wanted to add  
6 that I did -- I've known Joshua Brown since I began  
7 my tenure at the Public Defender's Office in  
8 February 2017. I can echo he's been respectful.  
9 Your Honor, he's articulate, intelligent. And while  
10 he'll do a significant amount of time in the  
11 department of corrections, I believe he has a  
12 positive impact that he makes on society. And, I  
13 agree, a number of our conversations, he did bring  
14 up his children and how much he loves them, Your  
15 Honor. And, at the appropriate time, Ms. Smith  
16 would like to briefly address the Court.

17 THE COURT: Mr. Turnblad, anything you'd like  
18 to say?

19 MR. TURNBLAD: Just briefly, Your Honor. I was  
20 going to reiterate the same thing everybody else has  
21 said. I've only been involved in this case about  
22 two weeks. But he has been nothing but polite,  
23 thankful for our services. The first day we were  
24 here, he wanted to shake our hands and thank us for  
25 what we were getting ready to undertake for him.

1           And so he's been nothing but polite, a gentleman to  
2           me, for as long as I've known him.

3           THE COURT: Thank you, Mr. Turnblad. And I  
4           will be delighted to hear from Ms. Smith. I'll be  
5           delighted to hear from anyone you want to me hear  
6           from, Mr. Story.

7           Speak into the microphone, please. Tell me  
8           your name, please.

9           MS. SMITH: Good morning, Your Honor. My name  
10          is Raynisha Smith [phonetic].

11          THE COURT: Good morning.

12          MS. SMITH: I'm Joshua Brown's cousin. He's  
13          more like a brother to me. He doesn't have any  
14          siblings. We grew up together. I've been here his  
15          whole life, been his support. He's a loving man,  
16          caring man. He owns up to his actions. He's never  
17          been a man to put blame on anyone else or make  
18          excuses for anything he's done wrong. He's an  
19          honest man and he loves hard. I'm just asking for  
20          mercy with your sentence.

21          THE COURT: Thank you, Ms. Smith. Thank you  
22          for being here.

23          Anyone else, Mr. Story, as far as -- not  
24          Mr. Brown. But anyone else?

25          MR. STORY: I don't believe so, Your Honor.

1           THE COURT: His other cousin, does he want to  
2 speak?

3           MR. SMITH: Yes, I do, Your Honor.

4           THE COURT: If you'll just step up here for me.  
5 Give me your name again, please.

6           MS. JAMES: Clarence Smith again.

7           THE COURT: Yes, sir?

8           MR. SMITH: And I wanted to say, like, I knew  
9 my cousin all my life. He's not no violent person.  
10 I can say that from my heart. Like, they just had a  
11 toxic relationship. I wish it didn't go this far,  
12 but things do happen from violence and it can only  
13 go but so far. Like, he probably had a snapping  
14 moment in mind from being abused, but I can't really  
15 speak upon that. Only God would know that. That's  
16 all I can really actually say.

17           But I don't think that he should deserve the  
18 max penalty because he been through so much abuse.  
19 If I could show the pictures and videos and all  
20 this, I would be able to do that, but I can't. But  
21 anything -- I don't feel like he should deserve the  
22 max of attempted murder. That's my opinion.

23           But I know he's a good guy. Like, out of 18  
24 months, like y'all said, y'all know his background,  
25 but he was young, he was 15. You can't judge a man

1 on his character of 15 to almost 34. I'm 30. He  
2 raised me and I haven't been to prison yet. And  
3 that's what I'm saying, like, I look up to him.

4 THE COURT: And you're not going, right?

5 MR. SMITH: And I'm not going. I promise you  
6 that. And he's probably like, cuz, if you ever  
7 go -- he'll be like, cuz, if you ever go to jail,  
8 I'll kick your butt. You know what I'm saying? And  
9 I'm like, nah, ain't happening to me. I'm like, I  
10 watched what happened when he was young. But he was  
11 just the driver. I can't even talk about that.

12 But, see, a lot of people don't know his  
13 situation. He was just the driver. He still got  
14 blamed for hand of one, hand of all, plain and  
15 simple, South Carolina. He was just the driver.  
16 But simple fact, like, I don't feel like he should  
17 get the max penalty for what he's pleading guilty  
18 to. That's just my opinion. He's a great guy and I  
19 always looked up to him. And that's all I can  
20 really say, Your Honor. Thank you for your time.

21 THE COURT: Thank you very much for being here.

22 MR. SMITH: All right.

23 THE COURT: Anyone else besides Mr. Brown you'd  
24 like me to hear from, Mr. Story?

25 MR. STORY: No, Your Honor.

1           THE COURT: All right. Mr. Brown, I'd be glad  
2 to hear from you, if there's anything you'd like to  
3 say.

4           THE DEFENDANT: Your Honor, I'd like to say I'm  
5 sorry for my actions. I allowed my emotions to take  
6 over me mentally. I can't remember every detail of  
7 that day, but I know it hurt me truly and immensely  
8 into my heart to hurt somebody that I truly love. I  
9 love this woman with all my heart. And I'm here to  
10 take responsibility for what I've done that day.

11           Like I said, I allowed my emotions to take over  
12 me mentally that day. And to this point, you'll  
13 never know how hard and deepfully hurt I am for that  
14 action. This is a person that I will always love.  
15 And I will always miss that little girl. And I'm  
16 here to take responsibility for my actions. And,  
17 like I said, I love hard. I love hard.

18           And I'm a young man who came off a straight  
19 path and went sideways for that couple hours. I  
20 just want you to know that I'm not that person that  
21 was portrayed in those pictures. That was just a  
22 bad hour, bad moment in my life. I would just like  
23 to take responsibility and say that I'm truly sorry  
24 for that day. And, if I can, I would like to  
25 apologize to the victim.

1 THE COURT: You may.

2 THE DEFENDANT: Ms. Ann James, I would like to  
3 apologize for what I've done. I hope some day you  
4 can forgive me for what I done. I would ask the  
5 kids -- I hope the kids can forgive me also, maybe  
6 one day. I know you don't understand, but I truly  
7 would like to apologize to you.

8 THE COURT: Anything else?

9 THE DEFENDANT: No, sir.

10 THE COURT: Thank you, Mr. Brown.

11 As an initial matter, I would like to commend  
12 the attorneys for the resolution of this case. My  
13 comments in this regard have no reflection on either  
14 Ms. James or Mr. Brown.

15 If the foundation of life without parole is  
16 based on, A, the current offense and a 2002 armed  
17 robbery -- and, as you all know, I have tried many  
18 cases where individuals were sentenced to life  
19 without parole that were recidivous and were not  
20 recidivous. And I have heard pleas on many cases  
21 where life without parole was the only option.

22 I understand the reasoning of the recidivous  
23 statue; however, I -- and, as I say, with all due  
24 respect to Ms. James, based on every case being  
25 different, but justice, feeding similarly situated

1 people with the same size spoon, so to speak, I did  
2 not think it was an appropriate case for life  
3 without parole, as a Judge, in listening to it.  
4 That is not to minimize the tremendous impact it's  
5 had on Ms. James. It's just kind of comparison,  
6 connecting things in the general sessions setting.

7           Additionally, I would say I was very impressed  
8 with Ms. James, her testimony, her demeanor  
9 throughout the trial of this case. And I've been  
10 impressed with Mr. Brown. He has always been  
11 respectful to the Court. I've heard each and every  
12 attorney talk about his respect and his demeanor.  
13 Unfortunately, in the toxic relationship, that was  
14 not exhibited.

15           Mr. Brown, I want you to understand that I  
16 don't -- when I judge people, I don't judge them as  
17 a good or bad person. That's not what I'm up here  
18 for. I judge behavior. That's all. Every sinner  
19 has a future and every saint has a past. That's  
20 humanity. So I strictly look at behavior. I may  
21 take in many factors, but I don't label a person as  
22 a criminal or not a criminal; I judge them based on  
23 their behavior, which may be criminal, but not as a  
24 good or bad person, but engaging in bad behavior.

25           Two of your attorneys, perhaps three, have

1           addressed or used the word that I had previously  
2           written down. That was toxic. I think y'all were  
3           in a toxic relationship for whatever reason. And I  
4           wish y'all weren't. I wish y'all hadn't been. But  
5           the facts, of course, do speak for themselves.

6           I'm impressed with you having family members  
7           here and them speaking on your behalf. That is not  
8           always the case. Many times, there are no  
9           individuals here, family-wise, to speak for or on  
10          behalf of defendants.

11          You used another term: You own up to your  
12          actions. I respect that. I can deal with the  
13          truth, no matter how bad it is. I can't deal with  
14          untruths. I don't know that. I don't know that any  
15          of us can deal with untruths.

16          As to Ms. James, I will tell you this, for  
17          whatever weight and value it has: I'm certainly not  
18          Dr. Phil. Some wounds never heal. The body may.  
19          The body may. But there are some things that happen  
20          to each and -- many of us in life. Those wounds  
21          never heal. I have learned you kind of Band-Aid  
22          them. You can Band-Aid them and cover it all, but  
23          now and then, that Band-Aid will rip off. No matter  
24          how far in the future it may be, it will rip off.  
25          And I found that the word closure, that's what it

1 is, a word. It's been my experience and I've  
2 observed that for many individuals. I hate it for  
3 you for the trauma and for your family.

4 Many people have told me over the years I don't  
5 have a heart. I do have a heart; I keep it in a jar  
6 back there in my office. But every now and then, I  
7 bring it to court. I have not enjoyed, in my tenure  
8 as a judge, taking away people's freedom, not a  
9 time. I've done it because I have to fulfill my  
10 responsibilities. And if I can't do that, I  
11 shouldn't be up here, should have never been up  
12 here. I don't enjoy putting young men or young  
13 women or old men or old women in prison. I don't  
14 enjoy it. Freedom is important. It's important to  
15 me. So don't think I enjoy sentencing people to  
16 prison, because I don't.

17 It is with a heavy heart that I sentence you to  
18 prison. Your attorneys have done an excellent job  
19 for you, in my estimation, my observations.

20 2016-GS-32-00873, Joshua Thomas Brown,  
21 attempted murder, the defendant is committed to the  
22 State department of corrections for a determinate  
23 term of 23 years, credit for all time served. Good  
24 luck to you. Good luck to you, Mr. Brown.

25 Good luck to you. I'll keep you on my prayer

1 list. And good luck to you, Ms. James. Keep me on  
2 your prayer list, Ms. James. Yours too. Good luck  
3 to you. Thank you very much, Ms. Gilreath,  
4 Mr. Turnblad, Mr. Story.

5 Thank you. Thank you, Solicitor.

6 MS. GILREATH: Thank you, Your Honor.

7 THE COURT: Bring me the jury, please.

8 (The jury enters the courtroom at 10:31 AM.)

9 THE COURT: You enjoy that sunshine this  
10 morning? Just not at the place you wanted to be? I  
11 did say 10:30, right? I wasn't sitting back there  
12 eating sausage biscuits and drinking coffee.

13 Ladies and gentlemen, momentarily, I'm going to  
14 release you from your jury service for the remainder  
15 of the day and the remainder of the week. You will  
16 not have to call back; you will not have to come  
17 back. As cases unfold, the terrain changes. As  
18 they say, no man or no woman can step in the same  
19 river day after day because the man or woman changes  
20 every day and so the does the river. And the  
21 terrain of a trial changes every day.

22 Mr. Brown has now entered a plea of guilty to  
23 attempted murder and has been sentenced by the  
24 Court. So I would need -- would not need a jury any  
25 further to determine the facts of the case. He has

1 admitted his guilt and accepted his responsibility.

2 Initially, he was facing, by notice from the  
3 State, life without parole. However, that was  
4 withdrawn by the State as a plea negotiation for me  
5 to sentence him to a sentence between 20 and 30  
6 years, which I have done. I have sentenced him to  
7 23 years. So I do not need y'all any further.

8 I would like to let you know that that's not  
9 always common. But, many times, cases are not, so  
10 to speak, ripe for resolution until you go through  
11 the process to a certain location. As we all know,  
12 in life, we'll start thinking -- or at least I've  
13 learned I start thinking about maybe a decision I  
14 want to make in the future and not make it then  
15 because I want to make it at the right time. I've  
16 found in my life, timing is everything; sometimes  
17 it's good and sometimes it's bad.

18 We would not have been able to accomplish this  
19 without your assistance and your support. I  
20 realize, painfully, how it has negatively affected  
21 your personal and professional lives; those that  
22 have had particular issues if you had gone through  
23 the trial of the case and maybe others of you who  
24 have had particular issues that have not been  
25 brought to my attention. I tried to address them as

1 best I could, but fulfill my duty and my  
2 responsibility to the criminal justice system as I  
3 interpret it.

4 Mr. Brown may be -- will be the last individual  
5 I will ever have to sentence to prison because this  
6 is my last week on the bench for general sessions  
7 court. I have a civil term next week and,  
8 thereafter, I can go back to being Knox instead of  
9 being Judge. I told the bailiffs and the deputies  
10 this morning that my mother named me Knox, not  
11 Judge. I'll try that moniker out as I press on into  
12 the future of whatever chapter I write or scribble.  
13 It might not be that long of a chapter, but I'm  
14 going to live it.

15 I've enjoyed meeting all of you. I found  
16 out -- Mr. Turnblad, matter of fact, pointed it out  
17 to me. Mr. Owens, Mr. Turnblad initially pointed  
18 out to me that his brother played for Coastal  
19 Carolina while -- no, there he is. Mr. Thigpen  
20 played for Costal and he was All-American. Is that  
21 right, your brother?

22 MR. THIGPEN: Yes, sir.

23 THE COURT: And you got another brother that  
24 now plays for the Diamondbacks. Is that right?

25 MR. THIGPEN: Yes, sir.

1           THE COURT: Well, what a great week.

2           And all you others too, if I ever get married  
3 again, I know where to get a director for my next  
4 funeral -- I mean, my next engagement -- my next --  
5 I always got that confused. That's why I'm  
6 divorced. And I know where the Target clerk is at  
7 and Southeastern. And if I ever think I got any  
8 ability to maybe be a guitar-picker one day, I know  
9 where to go for that. But it's been delightful.

10           And I apologize for the fits and starts. It  
11 had nothing to do with these lawyers. These lawyers  
12 are good lawyers. And the system works every --  
13 hopefully there's always a measure of justice in the  
14 system. Thank y'all very much. I hope you have a  
15 good rest of the day. Please give my regards to the  
16 bride and groom. And I was delighted to be with  
17 y'all. You're now excused. Thank you-all.

18           Anything further from the State, Solicitor?

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

20           THE COURT: Anything further from the Defense?

21           MR. STORY: No, Your Honor.

22           THE COURT: Thank y'all. Thank y'all very  
23 much. It was my pleasure and privilege to be with  
24 y'all this week.

25           -- END OF TRANSCRIPT OF RECORD --

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C E R T I F I C A T E

STATE OF SOUTH CAROLINA

COUNTY OF LEXINGTON

I, the undersigned, Bethanie K. Creppon, Circuit Court Reporter for the Eleventh 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 trial of the captioned cause, relative to appeal in the Criminal Court for Lexington County, South Carolina, on the 18th - 22nd of June, 2018.

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

November 12, 2020

s/Bethanie K. Creppon

Bethanie K. Creppon  
Circuit Court Reporter

State of South Carolina  
County of Lexington

Court of General Sessions

State )  
 )  
 v. )  
 )  
 Joshua Thomas Brown )  
 )  
 Defendant. )

Transcript of Record  
2016-GS-32-00873

June 22, 2018  
Lexington, South Carolina

B E F O R E:

The Honorable R. Knox McMahon, Judge.

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

Suzanne Mayes, Deputy Solicitor  
Attorney for the State

Stephen Story, Assist. Public Defender  
Jason Turnblad, Assist. Public Defender  
Jael Gilreath, Assist. Public Defender  
Attorneys for the Defendant

Bethanie K. Creppon  
Circuit Court Reporter

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WITNESS

I N D E X

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(No Witnesses.)

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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 PROCEEDINGS

2 \* \* \*

3 THE CLERK: Indictment 2016-GS-32-00873, The  
4 State vs. Joshua Thomas Brown, indicted for  
5 attempted murder, pleading as charged. It's signed  
6 and properly attested to, true-billed, and  
7 represented by Mr. Story, Mr. Turnblad, and  
8 Ms. Gilreath.

9 Raise your right hand, please, sir.

10 JOSHUA BROWN

11 being first duly sworn, testified as follows:

12 THE DEFENDANT: Yes, ma'am.

13 THE COURT: Is it appropriate if I just direct  
14 my questioning of the attorneys to Mr. Story? Is  
15 that appropriate?

16 MS. GILREATH: Yes, Your Honor.

17 THE COURT: Thank you. And I'll allow all of  
18 you to speak at the appropriate time.

19 Mr. Story, you, along with Ms. Gilreath and  
20 Mr. Turnblad, represent Joshua Thomas Brown?

21 MR. STORY: We do, Your Honor.

22 THE COURT: Have you explained to him the  
23 charge of attempted murder, the elements, the  
24 possible punishments, and his rights, including his  
25 right to a jury trial?

1 MR. STORY: We have.

2 THE COURT: In your opinion, does he understand  
3 these things?

4 MR. STORY: Yes, he does.

5 THE COURT: How does he indicate he now wishes  
6 to plead to attempted murder?

7 MR. STORY: Guilty.

8 THE COURT: Thank you, Mr. Story.

9 You are Joshua Thomas Brown?

10 THE DEFENDANT: Yes, sir.

11 THE COURT: Mr. Brown, before I can accept a  
12 plea of guilty, it's necessary for me to determine  
13 if it's being given freely and voluntarily;  
14 therefore, I need to ask you some questions. If you  
15 do not understand my questions, please let me know.  
16 I'll try to explain --

17 THE DEFENDANT: Yes, sir.

18 THE COURT: I'll try to explain them to you.  
19 If at any time you wish to talk with your attorney  
20 or attorneys, please let me know and I'll allow to  
21 do so. You understand?

22 THE DEFENDANT: Yes, sir.

23 THE COURT: How old are you, Mr. Brown?

24 THE DEFENDANT: Thirty-two years old.

25 THE COURT: How much education do you have?

1           THE DEFENDANT: I made it to the 10th grade and  
2 also obtained my GED.

3           THE COURT: And I understand the answer to the  
4 next question as far as the type of work you do  
5 prior to incarceration. You were employed with  
6 McDonald's?

7           THE DEFENDANT: Yes, sir.

8           THE COURT: How long did you work there?

9           THE DEFENDANT: I worked there exactly 20  
10 months.

11          THE COURT: Today, are you under the influence  
12 of any medication, drugs, or alcohol?

13          THE DEFENDANT: No, sir.

14          THE COURT: Do you understand what you're doing  
15 today?

16          THE DEFENDANT: Yes, sir.

17          THE COURT: Are you aware of any physical,  
18 emotional, or nervous problem that might keep you  
19 from understanding what you're doing today?

20          THE DEFENDANT: No, sir.

21          THE COURT: You've heard your attorney tell me  
22 that he's explained to you the charge, the possible  
23 punishment, and your rights, including your right to  
24 a jury trial, and that you understand these things.  
25 Is that correct?

1           THE DEFENDANT: Yes, sir.

2           THE COURT: I've been handed up Indictment  
3           2016-GS-32-00873. It basically reads that you did,  
4           in Lexington County, on or about 11 August 2015,  
5           with the intent to kill, attempt to kill another  
6           person with malice aforethought, either expressed or  
7           implied; to wit: You did stab or cut the victim  
8           multiple times about the body with a knife or a  
9           knifelike object in violation of 16-3-29 of the  
10          South Carolina Code of Laws. That is an indictment  
11          of attempted murder, for which the maximum sentence  
12          is up to 30 years. Do you understand?

13          THE DEFENDANT: Yes, sir.

14          THE COURT: When you plead guilty, you give up  
15          very important constitutional rights. You give up  
16          your right to remain silent; that is your right  
17          against self-incrimination, your right to say  
18          nothing at all. You cannot be compelled to testify  
19          or provide evidence against yourself.

20          Second, you give up your right to have a jury  
21          trial. That is your right to have a jury decide  
22          whether or not you are guilty beyond a reasonable  
23          doubt. They would base their decision upon evidence  
24          which the State presents and on any evidence you  
25          might wish to introduce.

1           In a trial, you would be presumed to be  
2           innocent and the State would have to produce  
3           evidence that would convince all 12 members of the  
4           jury that you were guilty beyond a reasonable doubt.

5           Third, you give up your right to confront and  
6           be confronted by the witnesses against you. That is  
7           the right to see, hear, and cross-examine any  
8           witnesses that may be called against you during the  
9           trial and the right to subpoena and call witnesses  
10          on your own behalf. Do you understand all these  
11          constitutional rights?

12          THE DEFENDANT: Yes, sir.

13          THE COURT: Do you have any questions you'd  
14          like to ask me about any of these or any of your  
15          other constitutional rights?

16          THE DEFENDANT: No, sir.

17          THE COURT: Do you understand that when you  
18          plead guilty, you give up your right to have a jury  
19          trial?

20          THE DEFENDANT: Yes, sir.

21          THE COURT: And, as you well know, you've been  
22          in a jury trial since Monday, I believe. It is now  
23          Friday and the jury is present, available to  
24          continue with your jury trial. You understand that  
25          will end? You will not continue with your jury

1 trial. Do you understand that?

2 THE DEFENDANT: Yes, sir.

3 THE COURT: Is that what you want to do?

4 THE DEFENDANT: I'd like to accept the plea. I  
5 don't want to go forward with the trial.

6 THE COURT: You'd like to what?

7 THE DEFENDANT: I'd like to take the plea. I  
8 no longer want to go through with the trial.

9 THE COURT: You'd like to no longer go forward  
10 with the jury trial?

11 THE DEFENDANT: Yes, sir.

12 THE COURT: Okay. Understanding, then, the  
13 nature of the charge against you and the  
14 consequences of the guilty plea, how do you wish to  
15 plead to this charge of attempted murder, guilty or  
16 not guilty?

17 THE DEFENDANT: I plead guilty, sir.

18 THE COURT: You understand that when you plead  
19 guilty, you admit the truth of the charge that is  
20 made against you?

21 THE DEFENDANT: Yes, sir.

22 THE COURT: Did you commit this offense?

23 THE DEFENDANT: Yes, sir.

24 THE COURT: Plea negotiations, Solicitor?

25 MS. MAYES: Yes, sir, Your Honor. In

1 negotiations that have taken -- that have gone  
2 forward today, the State is withdrawing -- or has  
3 withdrawn notice of life without parole. The  
4 recommendation or negotiated sentencing range, Your  
5 Honor, would be 20 to 30 years on this charge.

6 THE COURT: Is that the full and complete plea  
7 negotiations, Mr. Story?

8 MR. STORY: Yes, Your Honor.

9 THE COURT: Is that your understanding,  
10 Mr. Brown?

11 THE DEFENDANT: Yes, sir.

12 THE COURT: Is there anything more to that  
13 understanding, the plea negotiations, in your mind,  
14 Mr. Brown?

15 THE DEFENDANT: No, sir.

16 THE COURT: Do you still wish to plead guilty?

17 THE DEFENDANT: Yes, sir.

18 THE COURT: Has anyone promised you anything or  
19 held out any hope of reward to get you to plead  
20 guilty?

21 THE DEFENDANT: No, sir.

22 THE COURT: Has anyone threatened you or used  
23 force to get you to plead guilty?

24 THE DEFENDANT: No, sir.

25 THE COURT: Has anyone used any pressure or

1 intimidation to cause you to plead guilty?

2 THE DEFENDANT: No, sir.

3 THE COURT: Have you had enough time to make up  
4 your mind as to whether or not you want to plead  
5 guilty?

6 THE DEFENDANT: Yes, sir.

7 THE COURT: Are you pleading guilty of your own  
8 free will and accord?

9 THE DEFENDANT: Yes, sir.

10 THE COURT: I want to ask you about your  
11 attorneys now. Are you satisfied with the manner in  
12 which your attorneys have advised you and  
13 represented you?

14 THE DEFENDANT: Yes, sir.

15 THE COURT: Have you talked with your lawyers  
16 as often and for as long as you feel necessary for  
17 them to represent you properly?

18 THE DEFENDANT: Yes, sir.

19 THE COURT: Do you need any more time to talk  
20 with your lawyers?

21 THE DEFENDANT: No, sir.

22 THE COURT: Have you understood your talks with  
23 your lawyers?

24 THE DEFENDANT: Yes, sir.

25 THE COURT: Have your lawyers done everything

1           for you that you feel like they could have done or  
2           should have done?

3           THE DEFENDANT: Yes, sir.

4           THE COURT: Have your lawyers done anything in  
5           this case that you feel like they should not have  
6           done?

7           THE DEFENDANT: No, sir.

8           THE COURT: Are you totally and completely  
9           satisfied with your lawyers' services?

10          THE DEFENDANT: Yes, sir.

11          THE COURT: Do you have any complaints you want  
12          to make about any of your lawyers, the solicitors,  
13          or any police officers involved in your case?

14          THE DEFENDANT: No, sir.

15          THE COURT: Have you understood my questions?

16          THE DEFENDANT: Yes, sir.

17          THE COURT: Is there anything you'd like to ask  
18          me about what we've just been over?

19          THE DEFENDANT: No, sir.

20          THE COURT: You understand you have a right to  
21          appeal your guilty plea and the sentence of the  
22          Court and that you or your lawyer must do this  
23          within ten days?

24          THE DEFENDANT: Yes, sir.

25          THE COURT: Solicitor, I have heard the State's

1 case, which lays a factual foundation for me in  
2 regards to the taking of the plea. However, if  
3 there's anything you'd like to add to the facts of  
4 the case, I'll be glad to hear it.

5 MS. MAYES: Yes, sir, Your Honor. The prior  
6 record is armed robbery of 2002. That conviction  
7 was out of Richland County. Also, the victim, Anne  
8 James, Your Honor, has testified in court; however,  
9 she has not addressed the Court regarding victim  
10 impact testimony and does wish to do so at this  
11 time.

12 THE COURT: And next I was going to ask does  
13 Ms. James wish to address the Court at this time.

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

15 THE COURT: All right. I'll be glad to hear  
16 from Ms. James. If you'd come around to the podium,  
17 please.

18 Yes, ma'am?

19 THE WITNESS: Your Honor --

20 THE COURT: And speak -- as I tell everybody,  
21 speak up for me so I can hear you, please.

22 MS. JAMES: Yes, sir. Your Honor, I just want  
23 to thank you for the time, thank everybody that's  
24 been here. It's been a long process. It's been a  
25 process that's been overdue. It's almost been three

1           years.

2           The amount of pain and agony and emotional  
3           distress that I encountered and endured through this  
4           is undescrivable. Having an eight-week baby --  
5           nine-week-old baby when this happened, I could never  
6           imagine that. It changed my life in so many  
7           different ways. My kids wouldn't have never had a  
8           mother. I would have never had an opportunity to go  
9           on and pursue my life and career as I have done. I  
10          have my daughter sitting here now that is now --  
11          that will be 20 next month --

12          THE COURT: This is your daughter to my front  
13          right?

14          MS. JAMES: Yes, sir. And it has impacted my  
15          children. You know, every day, I see these scars.  
16          My three-year-old asks, Mom, what happened? Are you  
17          hurt? What's that? I'm always going to be reminded  
18          of this. I feel like there's no amount of time that  
19          you could give Mr. Brown that could ever take back  
20          the pain and the suffering that I went through.

21          And I'm just asking Your Honor, if you could  
22          please just give him the maximum of this sentence.  
23          And that would -- it would not satisfy me, but it  
24          would be satisfaction for what he's done.

25          THE COURT: Thank you, Ms. Brown.

1 Anything further, Solicitor?

2 MS. MAYES: No, sir Your Honor.

3 THE COURT: Thank you. I find that there's a  
4 factual basis for this guilty plea to attempted  
5 murder. I find that the defendant's decision to  
6 enter this plea of guilty is freely, voluntarily,  
7 knowingly, and intelligently made; that he has had  
8 the advice and counsel of very competent attorneys,  
9 experienced, with whom he says he's well and totally  
10 satisfied. His plea of guilty is, therefore,  
11 accepted.

12 Mr. Story?

13 MR. STORY: Your Honor, Ms. Gilreath is going  
14 to begin with mitigation.

15 THE COURT: Yes, Ms. Gilreath. I'd be  
16 delighted to hear from you.

17 MS. GILREATH: Thank you, Your Honor. I  
18 believe Mr. Brown indicated to the Court that he's  
19 32 years old, went to the 10th grade, and did obtain  
20 his GED. He told you about his job at McDonald's  
21 where he was a truck stocker. Your Honor, that was  
22 the only job he's had.

23 Your Honor heard about his prior conviction  
24 that happened at such a very young age when he was,  
25 I believe, about 16 years old. He spent a

1           substantial amount of time, and is presently at this  
2           point. The majority of the time since his childhood  
3           has actually been spent in prison. And I know Your  
4           Honor is aware of the profound impact that that has  
5           on a person, kind of their emotional wellbeing, how  
6           they perceive the world around them.

7           When he got out of prison, Your Honor, he was  
8           attempting to do the right thing. They got married,  
9           he began working at McDonald's, trying to support  
10          his family. And, Your Honor, I think this comes  
11          down to -- this was a relationship that had been  
12          volatile for a long time. I think that with them  
13          having separated and trying to work it out and back  
14          and forth.

15          And the history of text messages between them  
16          shows, Your Honor, even after the divorce, they're  
17          telling each other I love you and want to work it  
18          out. And I think it just came down to there should  
19          have been a cleaner break and should have been a  
20          separation much sooner, and that possibly could have  
21          prevented this, Your Honor.

22          I know that family had recommended to him on a  
23          number of occasions that he go get counseling. But  
24          I think having just gotten out of prison and trying  
25          to prove he's a normal, productive citizen, he's

1 strong, he's a man, can take care of himself and his  
2 family, I think he was a little bit embarrassed by  
3 it. My understanding is that they did approach one  
4 place and he was turned down for that counseling.  
5 So he made an attempt.

6 But I think after that, that sort of  
7 embarrassment and the desire to not be perceived as  
8 begging for help, sort of set in with his having  
9 just gotten out of prison. So I think he was really  
10 trying to do the right thing. And the problem was  
11 there was not this cutoff with this relationship  
12 that had just turned toxic at this point.

13 Your Honor, at some point, he was hoping to get  
14 his CDL and become a truck driver. He also likes to  
15 write and wanted to write books. And he also was  
16 thinking about starting a restaurant of his own,  
17 basically having his own businesses.

18 Your Honor, since I've known him, he's been  
19 nothing but polite and courteous and respectful in  
20 all of his interactions with me and the other  
21 attorneys since I've been around. He has two  
22 children, Your Honor, two three-year-old girls. And  
23 I can tell you that I have not had a conversation  
24 with him in which he has not brought up how much he  
25 loves them, misses them, and wants so desperately to

1           be part of their lives.

2           Your Honor, I think he desperately -- he had  
3           just become a father for the first time when all of  
4           this happened, so he didn't really get to spend much  
5           time with his children since they've been born. And  
6           I know that that has been really weighing heavily on  
7           him and came into his decision today, Your Honor,  
8           the guilt that he feels for not being part of their  
9           lives.

10          Your Honor, I know that he's told us he  
11          certainly did not go to this location with any of  
12          the intentions of something like this happening. He  
13          basically says that he just snapped. He's not  
14          really sure at what point that that happened, but he  
15          certainly wasn't going there planing for this. But,  
16          at some point, Your Honor, he says that he just  
17          snapped. And, like I said, I think that's sort of  
18          the result of this volatile relationship that really  
19          just should have ended a long time ago.

20          Your Honor, he does have family support. I  
21          believe his cousin is here and would like to speak  
22          on his behalf. He has support of other family, but,  
23          of course, we hadn't initially anticipated the plea  
24          today. But he would have had other family that  
25          would have been here in support of him, we do know

1           that, if we had been aware to get them here today.

2           Your Honor, we're just asking for the mercy of  
3           the Court. He has very sincere regret about what  
4           happened, the effect that this has had on Ms. James,  
5           as well as on his children. And I know that if he  
6           could go back and change anything about that day or  
7           the days leading up to that and having prevented it,  
8           I know that he would have, Your Honor. So we're  
9           asking for Your Honor for as much mercy as you can  
10          give and to lean towards the lower end of the range  
11          that was negotiated.

12          I'm not sure which of my co-counsel also wishes  
13          to speak. But I know that his cousin wishes to  
14          speak on his behalf.

15          THE COURT: Mr. Story, do you have anything to  
16          say?

17          MR. STORY: Your Honor, I just wanted to add  
18          that I did -- I've known Joshua Brown since I began  
19          my tenure at the public defender's office in  
20          February 2017. I can echo he's been respectful.  
21          Your Honor, he's articulate, intelligent. And while  
22          he'll do a significant amount of time in the  
23          department of corrections, I believe he has a  
24          positive impact that he makes on society. And, I  
25          agree, a number of our conversations, he did bring

1 up his children and how much he loves them, Your  
2 Honor. And, at the appropriate time, Ms. Smith  
3 would like to briefly address the Court.

4 THE COURT: Mr. Turnblad, anything you'd like  
5 to say?

6 MR. TURNBLAD: Just briefly, Your Honor. I was  
7 going to reiterate the same thing everybody else has  
8 said. I've only been involved in this case about  
9 two weeks. But he has been nothing but polite,  
10 thankful for our services. The first day we were  
11 here, he wanted to shake our hands and thank us for  
12 what we were getting ready to undertake for him.  
13 And so he's been nothing but polite, a gentleman to  
14 me, for as long as I've known him.

15 THE COURT: Thank you, Mr. Turnblad. And I  
16 will be delighted to hear from Ms. Smith. I'll be  
17 delighted to hear from anyone you want to me hear  
18 from, Mr. Story.

19 Speak into the microphone, please. Tell me  
20 your name, please.

21 MS. SMITH: Good morning, Your Honor. My name  
22 is Raynisha Smith [phonetic].

23 THE COURT: Good morning.

24 MS. SMITH: I'm Joshua Brown's cousin. He's  
25 more like a brother to me. He doesn't have any

1 siblings. We grew up together. I've been here his  
2 whole life, been his support. He's a loving man,  
3 caring man. He owns up to his actions. He's never  
4 been a man to put blame on anyone else or make  
5 excuses for anything he's done wrong. He's an  
6 honest man and he loves hard. I'm just asking for  
7 mercy with your sentence.

8 THE COURT: Thank you, Ms. Smith. Thank you  
9 for being here.

10 Anyone else, Mr. Story, as far as -- not  
11 Mr. Brown. But anyone else?

12 MR. STORY: I don't believe so, Your Honor.

13 THE COURT: His other cousin, does he want to  
14 speak?

15 MR. SMITH: Yes, I do, Your Honor.

16 THE COURT: If you'll just step up here for me.  
17 Give me your name again, please.

18 MS. JAMES: Clarence Smith again.

19 THE COURT: Yes, sir?

20 MR. SMITH: And I wanted to say, like, I knew  
21 my cousin all my life. He's not no violent person.  
22 I can say that from my heart. Like, they just had a  
23 toxic relationship. I wish it didn't go this far,  
24 but things do happen from violence and it can only  
25 go but so far. Like, he probably had a snapping

1 moment in mind from being abused, but I can't really  
2 speak upon that. Only God would know that. That's  
3 all I can really actually say.

4 But I don't think that he should deserve the  
5 max penalty because he been through so much abuse.  
6 If I could show the pictures and videos and all  
7 this, I would be able to do that, but I can't. But  
8 anything -- I don't feel like he should deserve the  
9 max of attempted murder. That's my opinion.

10 But I know he's a good guy. Like, out of 18  
11 months, like y'all said, y'all know his background,  
12 but he was young, he was 15. You can't judge a man  
13 on his character of 15 to almost 34. I'm 30. He  
14 raised me and I haven't been to prison yet. And  
15 that's what I'm saying, like, I look up to him.

16 THE COURT: And you're not going, right?

17 MR. SMITH: And I'm not going. I promise you  
18 that. And he's probably like, cuz, if you ever  
19 go -- he'll be like, cuz, if you ever go to jail,  
20 I'll kick your butt. You know what I'm saying? And  
21 I'm like, nah, ain't happening to me. I'm like, I  
22 watched what happened when he was young. But he was  
23 just the driver. I can't even talk about that.

24 But, see, a lot of people don't know his  
25 situation. He was just the driver. He still got

1           blamed for hand of one, hand of all, plain and  
2           simple, South Carolina. He was just the driver.  
3           But simple fact, like, I don't feel like he should  
4           get the max penalty for what he's pleading guilty  
5           to. That's just my opinion. He's a great guy and I  
6           always looked up to him. And that's all I can  
7           really say, Your Honor. Thank you for your time.

8           THE COURT: Thank you very much for being here.

9           MR. SMITH: All right.

10          THE COURT: Anyone else besides Mr. Brown you'd  
11          like me to hear from, Mr. Story?

12          MR. STORY: No, Your Honor.

13          THE COURT: All right. Mr. Brown, I'd be glad  
14          to hear from you, if there's anything you'd like to  
15          say.

16          THE DEFENDANT: Your Honor, I'd like to say I'm  
17          sorry for my actions. I allowed my emotions to take  
18          over me mentally. I can't remember every detail of  
19          that day, but I know it hurt me truly and immensely  
20          into my heart to hurt somebody that I truly love. I  
21          love this woman with all my heart. And I'm here to  
22          take responsibility for what I've done that day.

23          Like I said, I allowed my emotions to take over  
24          me mentally that day. And to this point, you'll  
25          never know how hard and deepfully hurt I am for that

1           action. This is a person that I will always love.  
2           And I will always miss that little girl. And I'm  
3           here to take responsibility for my actions. And,  
4           like I said, I love hard. I love hard.

5                     And I'm a young man who came off a straight  
6           path and went sideways for that couple hours. I  
7           just want you to know that I'm not that person that  
8           was portrayed in those pictures. That was just a  
9           bad hour, bad moment in my life. I would just like  
10          to take responsibility and say that I'm truly sorry  
11          for that day. And, if I can, I would like to  
12          apologize to the victim.

13                    THE COURT: You may.

14                    THE DEFENDANT: Ms. Anne James, I would like to  
15          apologize for what I've done. I hope some day you  
16          can forgive me for what I done. I would ask the  
17          kids -- I hope the kids can forgive me also, maybe  
18          one day. I know you don't understand, but I truly  
19          would like to apologize to you.

20                    THE COURT: Anything else?

21                    THE DEFENDANT: No, sir.

22                    THE COURT: Thank you, Mr. Brown.

23                    As an initial matter, I would like to commend  
24          the attorneys for the resolution of this case. My  
25          comments in this regard have no reflection on either

1 Ms. James or Mr. Brown. If the foundation of life  
2 without parole is based on, A, the current offense  
3 and a 2002 armed robbery -- and, as you all know, I  
4 have tried many cases where individuals were  
5 sentenced to life without parole that were  
6 recidivous and were not recidivous. And I have  
7 heard pleas on many cases where life without parole  
8 was the only option.

9 I understand the reasoning of the recidivous  
10 statue; however, I -- and, as I say, with all due  
11 respect to Ms. James based on every case being  
12 different, but justice, feeding similarly situated  
13 people with the same size spoon, so to speak, I did  
14 not think it was an appropriate case for life  
15 without parole, as a Judge, in listening to it.  
16 That is not to minimize the tremendous impact it's  
17 had on Ms. James. It's just kind of comparison,  
18 connecting things in the general sessions setting.

19 Additionally, I would say I was very impressed  
20 with Ms. James, her testimony, her demeanor  
21 throughout the trial of this case. And I've been  
22 impressed with Mr. Brown. He has always been  
23 respectful to the Court. I've heard each and every  
24 attorney talk about his respect and his demeanor.  
25 Unfortunately, in the toxic relationship, that was

1 not exhibited.

2 Mr. Brown, I want you to understand that I  
3 don't -- when I judge people, I don't judge them as  
4 a good or bad person. That's not what I'm up here  
5 for. I judge behavior. That's all. Every sinner  
6 has a future and every saint has a past. That's  
7 humanity. So I strictly look at behavior. I may  
8 take in many factors, but I don't label a person as  
9 a criminal or not a criminal; I judge them based on  
10 their behavior, which may be criminal, but not as a  
11 good or bad person, but engaging in bad behavior.

12 Two of your attorneys, perhaps three, have  
13 addressed or used the word that I had previously  
14 written down. That was toxic. I think y'all were  
15 in a toxic relationship for whatever reason. And I  
16 wish y'all weren't. I wish y'all hadn't been. But  
17 the facts, of course, do speak for themselves.

18 I'm impressed with you having family members  
19 here and them speaking on your behalf. That is not  
20 always the case. Many times, there are no  
21 individuals here, family-wise, to speak for or on  
22 behalf of defendants.

23 You used another term: You own up to your  
24 actions. I respect that. I can deal with the  
25 truth, no matter how bad it is. I can't deal with

1 untruths. I don't know that. I don't know that any  
2 of us can deal with untruths.

3 As to Ms. James, I will tell you this, for  
4 whatever weight and value it has: I'm certainly not  
5 Dr. Phil. Some wounds never heal. The body may,  
6 the body may. But there are some things that happen  
7 to each and -- many of us in life. Those wounds  
8 never heal. I have learned you kind of Band-Aid  
9 them. You can Band-Aid them and cover it all, but  
10 now and then, that Band-Aid will rip off. No matter  
11 how far in the future it may be, it will rip off.  
12 And I found that the word closure, that's what it  
13 is, a word. It's been my experience and I've  
14 observed that for many individuals. I hate it for  
15 you for the trauma and for your family.

16 Many people have told me over the years I don't  
17 have a heart. I do have a heart; I keep it in a jar  
18 back there in my office. But every now and then, I  
19 bring it to court. I have not enjoyed, in my tenure  
20 as a judge, taking away people's freedom, not a  
21 time. I've done it because I have to fulfill my  
22 responsibilities. And if I can't do that, I  
23 shouldn't be up here, should have never been up  
24 here. I don't enjoy putting young men or young  
25 women or old men or old women in prison. I don't

1           enjoy it. Freedom is important. It's important to  
2           me. So don't think I enjoy sentencing people to  
3           prison, because I don't.

4                     It is with a heavy heart that I sentence you to  
5           prison. Your attorneys have done an excellent job  
6           for you, in my estimation, my observations.

7                     2016-GS-32-00873, Joshua Thomas Brown,  
8           attempted murder, the defendant is committed to the  
9           State department of corrections for a determinate  
10          term of 23 years, credit for all time served. Good  
11          luck to you. Good luck to you, Mr. Brown.

12                    Good luck to you. I'll keep you on my prayer  
13          list. And good luck to you, Ms. James. Keep me on  
14          your prayer list, Ms. James. Yours too. Good luck  
15          to you. Thank you very much, Ms. Gilreath,  
16          Mr. Turnblad, Mr. Story.

17                    Thank you, Solicitor.

18                    MS. GILREATH: Thank you, Your Honor.

19                             -- END OF TRANSCRIPT OF RECORD --

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25

## C E R T I F I C A T E

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STATE OF SOUTH CAROLINA

4

COUNTY OF LEXINGTON

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I, the undersigned, Bethanie K. Creppon, Circuit Court Reporter for the Eleventh 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 Criminal Court for Lexington County, South Carolina, on the 22nd of June, 2018.

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15

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

16

17

18

August 26, 2019

19

20

s/Bethanie K. Creppon

21

22

Bethanie K. Creppon  
Circuit Court Reporter

23

24

25

771

**WITNESSES**

Cayce Department of Public Safety

C. E. Thomas

Law Enforcement Case #: 1506274

CNR

ARREST WARRANT NUMBER

2015A3220300241

ACTION OF GRAND JURY

**TRUE BILL**

Foreperson of Grand Jury

Date: 3-21-16

VERDICT

Foreperson of Petit Jury

Date:

**A TRUE COPY**

Lex. Co. C.C.C.P. G.S. & E.O.

DOCKET NO. 2016GS3200873

**The State of South Carolina**

County of Lexington

COURT OF GENERAL SESSIONS

MARCH TERM 2016

THE STATE

vs.

Joshua Thomas Brown

CDR #: 3410

Indictment for

Attempted Murder

§ 16-03-0029

**DONALD V. MYERS, SOLICITOR**



Negotiated range of 20-30 yrs

773

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF Lexington
STATE VS.

INDICTMENT/CASE#: 2016GS3200873

Joshua Thomas Brown

A/W#: 2015A3220300241

AKA:

Date of Offense: 8/12/2015

Race: Black Sex: M Age: 32

S.C. Code § : 16-03-0029

DOB: SS#

CDR Code #: 3410

Address: Fontaine Pl

City, State, Zip: Columbia, SC 29223-4525

DL#: SID#

SENTENCE SHEET

\*CDL Yes No CMV Yes No Hazmat Yes No

CONVICTED OF or PLEADS

In disposition of the said indictment comes now the Defendant who was TO: Murder / Attempted Murder

in violation of § 16-03-0029 of the S.C. Code of Laws, bearing CDR Code # 3410

NON-VIOLENT VIOLENT SERIOUS MOST SERIOUS Mandatory GPS §17-25-45

The charge is: As indicted, Lesser included Offense, Defendant Waives Presentment to Grand Jury.

The plea is: Without Negotiations or Recommendation, Negotiated Sentence, Recommendation by the State.

ATTEST: [Signatures] Sheriff SC Bar# Defendant Attorney for Defendant SC Bar#

WHEREFORE, the Defendant is committed to the State Department of Corrections, County Detention Center,

for a determinate term of 23 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 Services standard conditions of probation; which are incorporated by reference.

CONCURRENT or CONSECUTIVE to sentence on:

The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by the SCDoc.

The Defendant is to be placed on the 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%) \$

§ 14-1-211(A)(1) (Conv. Surcharge) \$100 \$100

§ 14-1-211(A)(2) (DUI Surcharge) \$100 \$

§ 56-5-2995 (DUI Assessment) \$12 \$

§ 56-1-286 (DUI Breath Test) \$25 \$

Proviso (Public Def/Probation) \$500 \$

§ 14-1-212 (Law Enforce. Funding) \$25 \$25

§ 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) \$

TOTAL \$125

Clerk of Court/Deputy Clerk

Court Reporter

SCCA/217 (04/2018)

Appointed PD or appointed other counsel, Proviso requires \$500 be paid to Clerk during probation and shall be collected before any other fees.

Presiding Judge

Judge Code:

Sentence Date: 20 JUNE 8

STATE OF SOUTH CAROLINA )

~~IN THE COURT OF COMMON PLEAS~~ )

County of LEXINGTON )

IN THE COURT OF COMMON PLEAS

Joshua Thomas Brown # 086520 )

Full name and prison number (if any) of Applicant )

2019-CP-32-Q2210

v. )

~~APPLICANT VS~~ )

~~State of South Carolina~~ )

APPLICATION FOR

POST-CONVICTION RELIEF

2019 JUN -4 AM 9:12  
LISA M. GIBBS  
CLERK OF COURT

FILED

INSTRUCTIONS B 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 Broad River Correctional Institution
2. Name and location of Court which imposed sentence General Sessions Court; Lexington County
3. Name(s) of co-defendant(s) (if any) NONE
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
  - (a) 2016 GS 3200873, ATtemped Murder

5. 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 \_\_\_\_\_
6. Did you appeal from the judgment of conviction or the imposition of sentence?  
NO
7. If you answered "yes" to (6), list
- (a) the name of each Court to which you appealed:
- i. None
- ii. \_\_\_\_\_
- iii. \_\_\_\_\_
- (b) the result in each such Court to which you appealed:
- i. None
- ii. \_\_\_\_\_
- iii. \_\_\_\_\_
- (c) the date of each such result:
- i. \_\_\_\_\_
- ii. \_\_\_\_\_
- iii. \_\_\_\_\_
- (d) If known, citations of any written opinion or orders entered pursuant to such results:
- i. \_\_\_\_\_
- ii. \_\_\_\_\_
- iii. \_\_\_\_\_
8. If you answered "no" to (6), state your reasons for not so appealing:
- (a) \_\_\_\_\_
- (b) \_\_\_\_\_
- (c) \_\_\_\_\_
9. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:
- (a) Ineffective Assistance of Counsel
- (b) \_\_\_\_\_
- (c) \_\_\_\_\_
10. State concisely and in the same order the facts which support each of the grounds set out in (9):
- (a) Counsel failed to seek up of any expert
- (b) \_\_\_\_\_
- (c) \_\_\_\_\_

- 11. Prior to this application have you filed with respect to this conviction
  - (a) any petition in a State Court under South Carolina Law? NO
  - (b) any petitions in State or Federal Courts for habeas corpus or post-convictions relief? NO
  - (c) any petitions in the United States Supreme Court for certiorari other than petitions, if any, already specified in (7)? NO
  - (d) any other petitions, motions or applications in this or any other Court?  
NO

12. If you answered "yes" to any part of (11), list with respect to each petition, motion or application:

- (a) the specific nature thereof:
  - i. NONE
  - ii. \_\_\_\_\_
  - iii. \_\_\_\_\_
  - iv. \_\_\_\_\_

- (b) the name and location of the Court in which each was filed:
  - i. NONE
  - ii. \_\_\_\_\_
  - iii. \_\_\_\_\_
  - iv. \_\_\_\_\_

- (c) the disposition thereof:
  - i. NONE
  - ii. \_\_\_\_\_
  - iii. \_\_\_\_\_
  - iv. \_\_\_\_\_

- (d) the date of each such disposition:
  - i. NONE
  - ii. \_\_\_\_\_
  - iii. \_\_\_\_\_
  - iv. \_\_\_\_\_

- (e) if known, citations of any written opinions or orders entered pursuant to each such disposition:
  - i. NONE
  - ii. \_\_\_\_\_
  - iii. \_\_\_\_\_
  - iv. \_\_\_\_\_

13. Has any ground set forth in (9) been previously presented to this or any other Court, State or Federal, in any petition, motion or application which you have filed?  
NO

14. If you answered "yes" to (13), identify:

777

(a) which grounds have been presented:

i. None

ii. \_\_\_\_\_

iii. \_\_\_\_\_

(b) the proceedings in which each ground was raised:

i. None

ii. \_\_\_\_\_

iii. \_\_\_\_\_

15. If any ground set forth in (9) has not previously been presented to any Court, State or Federal, set forth the ground, and state concisely the reasons why such ground has not previously been presented:

(a) Guilty Plea

(b) \_\_\_\_\_

(c) \_\_\_\_\_

16. Were you represented by an attorney at any time during the course of:

(a) your arraignment and plea? Yes

(b) your trial, if any? \_\_\_\_\_

(c) your sentencing? Yes

(d) your appeal, if any, from the judgment of conviction or the imposition of sentence? \_\_\_\_\_

(e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed? \_\_\_\_\_

17. If you answered "yes" to one or more parts of (16), list:

(a) the name and address of each attorney who represented you

i. Stephen Story, Public Defender  
407 1/2 W. Main St. Lexington SC 29072

ii. \_\_\_\_\_

iii. \_\_\_\_\_

(b) the proceedings at which each such attorney represented you:

i. Plea and sentencing

ii. \_\_\_\_\_

iii. \_\_\_\_\_

18. State clearly the relief you seek in filing this application.

Sentence vacated, Case remanded for further proceedings.

19. Are you now under sentence from any other court that you have not challenged?

NO

2025 RELEASE UNDER E.O. 14176

STATE OF SOUTH CAROLINA

VERIFICATION

County of Lexington

I, Joshua Thomas Brown #286520, 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.

s/ Joshua T. Brown

SWORN to and subscribed before me this 22nd

day of May, 2019  
Jennifer Wash (L.S.)  
Notary Public

FILED  
JUN - 14 AM 9:12  
CLERK OF COURT  
LEXINGTON COUNTY  
SOUTH CAROLINA

My Commission Expires: March 8, 2028

APPLICATION TO PROCEED WITHOUT PREPAYMENT OF COSTS AND AFFIDAVIT IN SUPPORT THEREOF

I, Joshua Thomas Brown #286520, 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 therefor.

s/ Joshua T. Brown  
Applicant

SWORN or affirmed to and subscribed before me this

22nd day of May, 2019  
Jennifer Washington  
Notary Public

My Commission Expires March 8, 2028

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF LEXINGTON	)	IN THE ELEVENTH JUDICIAL CIRCUIT
	)	
	)	
Joshua Thomas Brown, SCDC #286520,	)	Case No. 2019-CP-32-02210
	)	
Applicant,	)	
	)	<b>RETURN AND MOTION FOR A</b>
v.	)	<b>MORE DEFINITIVE STATEMENT</b>
	)	<b>(COUNSEL APPOINTED)</b>
	)	
State of South Carolina,	)	
	)	
Respondent.	)	

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This matter comes before this Court by way of an application for post-conviction relief filed by Joshua Thomas Brown (Applicant) on June 4, 2019,

**I. PROCEDURAL HISTORY**

Applicant is confined in the South Carolina Department of Corrections pursuant to the orders of commitment of the Lexington County Clerk of Court. Applicant was arrested on August 11, 2015, following a stabbing incident involving Applicant’s wife. During its March 2016 term, the Lexington County Grand Jury indicted applicant for attempted murder (2016-GS-32-00873).

On June 18, 2018, Applicant proceeded to a jury trial before the Honorable R. Knox McMahan. Assistant Public Defenders Stephen Story, Jason Turnblad, and Jael Gilreath represented Applicant. Deputy Solicitor Suzanne Mayes, of the Eleventh Circuit Solicitors Office, prosecuted the case. On June 22, 2018, before the trial concluded, Applicant pleaded guilty as indicted.

At the outset of the plea hearing, Mr. Story advised the Court that Applicant understood the elements of the charge against him, the possible punishment he could receive, and his constitutional rights as they have been explained to him. (Plea Tr. 4–5). Judge McMahan thereafter

explained the offense to Applicant in greater detail, and advised Applicant that he could receive the maximum of thirty years' imprisonment. (Plea Tr. 7). Judge McMahon reiterated to Applicant that by pleading guilty he would waive important constitutional rights, including his right to proceed forward with his trial by jury, his right to confront the witnesses against him, and his right to remain silent. (Plea Tr. 7–8). Judge McMahon further informed Applicant that if he did proceed with his trial, the burden of proof would not be upon him, but rather would be upon the State to prove every element of every charge against him, and that they would have to convince every member of the jury of his guilt. (Plea Tr. 8). Applicant indicated he understood, and wished to waive these rights in order to plead guilty. (Plea Tr. 7–8).

The solicitor then advised the Court of the terms of the negotiated plea agreement; that Applicant would receive a sentence of twenty to thirty years' imprisonment and the State would withdraw its notice of intent to seek life without parole.<sup>1</sup> (Plea Tr. 10). Upon inquiry by the Court, Applicant indicated he was completely satisfied with his lawyers, that they had done everything they reasonably could have to properly represent him, and that he had no complaints about his lawyers, the solicitors, or any of the police officers involved in his case. (Plea Tr. 12). Judge McMahon accepted Applicant's plea as being freely knowingly, and voluntarily made. (Plea Tr. 15). Pursuant to the negotiated plea agreement, Judge McMahon sentenced Applicant to twenty-three years' imprisonment (Plea Tr. 28). Applicant did not appeal his guilty plea or sentence.

## II. STATEMENT OF FACTS

On August 11, 2015, Applicant was arrested after he stabbed his wife numerous times in the neck and back, causing serious bodily injury that required emergency medical surgery. The

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<sup>1</sup> The State previously served Applicant with its notice of intent to seek life without parole pursuant to S.C. Code § 17-25-45(A)(1)(a) based on a 2002 conviction for armed robbery in Richland County (2002-GS-40-1258).

victim reported to law enforcement that her husband stabbed her after making statements about killing her just prior to the attack.

### **III. CURRENT APPLICATION**

In his application for post-conviction relief, Applicant alleges he is being held in custody unlawfully for the following reasons:

1. Ineffective assistance of counsel
  - a. Counsel failed to seek the opinion of any expert

Applicant requests his sentence be vacated and the case remanded for further proceedings.

Attached herewith and incorporated by reference are the Lexington County Clerk of Court records regarding the subject convictions, Applicant's records from the South Carolina Department of Corrections, the records of the current PCR action, and the plea transcript. The State reserves the right to amend this return upon receipt of any relevant materials.

### **IV. RESPONSE TO ALLEGATION OF INEFFECTIVE ASSISTANCE OF COUNSEL**

The State submits Applicant can satisfy neither requirement of the *Hill* test. However, it is impossible for the State to adequately respond to Applicant's allegation because Applicant has completely failed to provide any specific facts to support such claim. The State requests Applicant, through counsel, provide specific claims and facts to support this vague allegation. *See* S.C. Code Ann. § 17-27-50 (2014) (requiring an applicant to "specifically set forth the grounds upon which the application is based"); *see also Welch v. MacDougall*, 246 S.C. 258, 260, 143 S.E.2d 455, 456 (1965) (stating it is incumbent upon an applicant to make at least a *prima facie* showing entitling him to relief before an evidentiary hearing will be scheduled and held); Rule 8(a)(2), SCRCF (requiring all civil pleadings to include "a short and plain statement of the facts showing that the pleader is entitled to relief"); Rule 71.1(d), SCRCF ("Counsel shall insure that all available

grounds for relief are included in the application and shall amend the application if necessary.”). Thus, the State moves to require Applicant to provide a more definite statement of his allegation of ineffective assistance of counsel pursuant to Rule 12(e), SCRCF.

#### A. Ineffective Assistance of Counsel, Generally

The Sixth and Fourteenth Amendments to the United States Constitution guarantees 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. *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—a mere allegation of ineffective assistance is not sufficient to warrant granting relief. Rule 71.1(e), SCRCF; *Butler v. State*, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985); *State v. Pendergrass*, 270 S.C. 1, 4, 239 S.E.2d 750, 751 (1977). 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 or sentence. 466 U.S. at 687. First, the applicant must show that counsel’s performance was deficient; and second, that the deficient performance prejudiced the applicant. *Id.* 668; *Butler*, 286 S.C. at 442, 334 S.E.2d at 814.

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, 130 S. Ct. 1473,

1482, 176 L. Ed. 2d 284 (2010). In order to prove deficient performance, the applicant must show counsel's representation fell below an objective standard of "reasonableness under prevailing professional norms." *Cherry v. State*, 300 S.C. 115, 117–18, 386 S.E.2d 624, 625 (1989). The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. *Butler*, 286 S.C. at 442, 334 S.E.2d at 814.

*Strickland*, however, "does not guarantee perfect representation[—]only a 'reasonably competent attorney.'" *Harrington v. Richter*, 562 U.S. 86, 110 (2011) (quoting *Strickland*, 466 U.S. at 687). The "benchmark for judging any claim of ineffectiveness must be whether counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied on as having produced a just result." 466 U.S. at 686. Just as there is "no expectation that competent counsel will be a flawless strategist or tactician, an attorney may not be faulted for a reasonable miscalculation or lack of foresight or for failing to prepare for what appear to be remote possibilities." *Harrington*, 562 U.S. at 110.

Accordingly, "[j]udicial scrutiny of counsel's performance must be highly deferential, 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; see also *Yarborough v. Gentry*, 540 U.S. 1, 6 (2003) ("The Sixth Amendment guarantees reasonable competence, not perfect advocacy judged with the benefit of hindsight."). 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. *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 reasonable professional assistance.” *Butler*, 286 S.C. at 445, 334 S.E.2d at 816.

The applicant must overcome this presumption to receive relief. *Cherry*, 300 S.C. at 118, 386 S.E.2d at 625. Such a presumption stems from the notion that, after an adverse verdict at trial, even the most experienced attorney may find it difficult to resist asking whether a different strategy might have been better, and, in the course of that reflection, to magnify their own responsibility for an unfavorable outcome. Thus, a reviewing court must presume counsel’s attention to certain issues to the exclusion of others reflects trial tactics rather than “sheer neglect.” *Yarborough*, 540 U.S. at 8 (2003). 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). Additionally, there are “countless ways to provide effective assistance” in any given case, and “even the best criminal defense attorneys would not defend a particular client in the same way.” *Strickland*, 466 U.S. at 689. *Strickland*, however, calls for an inquiry into the *objective* reasonableness of counsel’s performance, not counsel’s *subjective* state of mind. *Id.* at 688 (emphasis added).

A reviewing court “must judge the reasonableness of counsel’s challenged conduct on the facts of the particular case, viewed at the time of counsel’s conduct.” *Strickland*, 466 U.S. at 690. 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.” *Id.*

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; *see also Harrington*, 562 U.S. at 105 (cautioning that an ineffective assistance of counsel claim could potentially function as a way to escape rules of waiver and forfeiture and raise issues not presented at trial). Even under *de novo* review, the standard for judging counsel’s representation is a most deferential one. *Harrington*, 562 U.S. at 105. Unlike a later reviewing court, the attorney observed the relevant proceedings; knew of materials outside the record; and interacted with the client, opposing counsel, and the judge. Thus, the question is whether an attorney’s representation amounted to incompetence under “prevailing professional norms,” *not* whether it deviated from best practices or most common custom. *Id.* (quoting *Strickland*, 466 U.S. at 690) (emphasis added).

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. Thus, it is not enough “to show the 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). 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).

In assessing prejudice under *Strickland*, the question is not whether a court can be certain counsel's performance had no effect on the outcome or whether it is possible a reasonable doubt might have been established if counsel acted differently. *Wong v. Belmontes*, 558 U.S. 15 (2009); *Strickland*, 466 U.S. at 693. Instead, *Strickland* asks whether it is "reasonably likely" the result would have been different. *Id.* at 696. This does not require a showing that counsel's actions "more likely than not altered the outcome," but the difference between *Strickland*'s prejudice standard and a more-probable-than-not standard is slight and matters "only in the rarest case." *Id.* at 693, 697. The likelihood of a different result must be substantial, not just conceivable. *Id.* at 693.

#### **B. Ineffective Assistance of Plea Counsel**

Because the Sixth Amendment right to counsel also applies to a defendant entering a guilty plea, *Hill v. Lockhart* extended the two-part *Strickland* test to challenge guilty pleas based on ineffective assistance of counsel." *Hill*, 474 U.S. 52; *cf. Padilla*, 559 U.S. at 373 (recognizing that the guilty plea process is a "critical phase of litigation" for purposes of the Sixth Amendment right to effective assistance of counsel). A claim of ineffective assistance of guilty plea counsel requires the applicant present evidence satisfying two prongs: first, evidence that counsel's performance was deficient; and second, evidence that counsel's deficient performance prejudiced the defendant by causing him to plead guilty rather than go to trial. *Hill*, 474 U.S. 52.

Thus, the analysis of counsel's performance under the first prong of *Strickland* remains unchanged—the applicant must show that counsel's representation fell below an objective standard of reasonableness demanded of attorneys in criminal cases. *Hill*, 474 U.S. at 58–59;

accord *Thompson v. State*, 340 S.C. 112, 115, 531 S.E.2d 294, 296 (2000). An applicant alleging his guilty plea was induced by ineffective assistance of counsel must prove counsel's advice to plead guilty was not "within the competence demanded of attorneys in criminal cases." *Hill*, 474 U.S. at 56.

The second, or "prejudice" prong, however, "focuses on whether counsel's constitutionally ineffective performance affected the outcome of the plea process." *Id.* at 58–59. Specifically, when an applicant claims counsel's deficient performance caused him to accept a plea, the applicant "must show that there is a reasonable probability that, but for [plea] counsel's [alleged] errors, he would not have pleaded guilty and would have insisted on going to trial." *Id.* at 59.

This inquiry "focuses on a defendant's decisionmaking" and does not turn on the outcome of a defendant's actual criminal proceeding or potential outcome had a defendant chosen to proceed to trial. *Lee v. United States*, 582 U.S. \_\_\_, 137 S. Ct. 1958, 1966 (2017). However, an applicant must convince the court that a decision to reject the plea bargain would have been rational under the circumstances. *Padilla*, 559 U.S. at 372. The question here is whether the applicant, if correctly informed of circumstances surrounding the plea, would have pleaded guilty—not whether counsel would have still advised him or her to plead guilty. *Turner v. State*, 335 S.C. 382, 385, 517 S.E.2d 442, 444 (1999).

Surmounting *Strickland's* high bar is never an easy task, and the strong societal interest in finality has "special force with respect to convictions based on guilty pleas." *Lee*, 582 U.S. \_\_\_, 137 S. Ct. at 1967 (internal citations and quotation marks omitted); *cf. Hill*, 474 U.S. at 58 ("[R]equiring a 'prejudice' showing from defendants who seek to challenge the validity of their guilty pleas on the ground of ineffective assistance of counsel 'will serve the fundamental interest in the finality of guilty pleas.'"). Reviewing "[c]ourts should not upset a plea solely because

of *post hoc* assertions from a defendant about how he would have pleaded but for his attorney's deficiencies. *Lee*, 582 U.S. \_\_\_, 137 S. Ct. at 1967. Rather, judges should "look to contemporaneous evidence to substantiate a defendant's expressed preferences. *Id.* Thus, in determining whether a guilty plea was taken in accordance with constitutional standards, the reviewing judge must analyze and consider the entire record, including the transcript of the guilty plea and the evidence presented at the PCR hearing. *Harres*, 282 S.C. at 134, 318 S.E.2d at 361.

The performance and prejudice standards, however, "do not establish mechanical rules; [t]he ultimate focus of inquiry must be on the fundamental fairness of the proceeding whose result is being challenged." *Id.* at 696. Moreover, "there is no reason for a court deciding an ineffective assistance claim to approach the inquiry in the same order or even to address both components of the inquiry if the defendant makes an insufficient showing on one." *Id.* at 697. The court "need not determine whether counsel's performance was deficient before examining the prejudice suffered by the defendant as a result of the alleged deficiencies. *Id.* If it is easier to dispose of an ineffectiveness claim on the ground of lack of sufficient prejudice, the court may evaluate the prejudice prong only. *Id.*

Additionally, because a guilty plea is a solemn, judicial admission of the truth of the charges against an individual, admissions made during a guilty plea should be considered conclusive unless an applicant presents valid reasons why he should be allowed to depart from the truth of his statements." *Dalton v. State*, 376 S.C. 130, 137–38, 654 S.E.2d 870, 874 (Ct. App. 2007) (internal citations and quotation marks omitted); *Cf. Blackledge v. Allison*, 431 U.S. 63, 73–74 (1977) (pointing out that representations made by a defendant, his lawyer, and the prosecutor at a guilty plea hearing, as well as any findings made by the judge accepting the plea, constitute a "formidable barrier in any subsequent collateral proceedings").

Applicant contends his attorneys were ineffective for failing to consult an expert witness. However, as discussed above Applicant has completely failed to set forth facts and circumstances on which this claim is based. Applicant failed to identify the type of expert witness he believes counsel ineffectively failed to consult. Applicant further failed to show what the expert witness would have testified to or how testimony from the expert would have resulted in a different outcome.

### **C. Conclusion and Action Requested**

The State submits Applicant can satisfy neither requirement of the *Hill* test. However, as discussed above, it is impossible for the State to adequately respond to Applicant's allegation of ineffective assistance of counsel because Applicant has failed to provide any specific facts to support his allegation. *See Sharper v. State*, 279 S.C. 264, 265, 305 S.E.2d 247, 248 (1983) (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 [PCR] court"). Thus, the State moves to require Applicant to provide a more definite statement of his allegations pursuant to Rule 12(e), SCRPC.

### **V. ANY FUTURE AMENDMENTS AND INVOCATION OF THE DISCOVERY PROCESS**

The State respectfully submits that it is incumbent upon Applicant, through counsel, to amend his application to set forth specific facts upon which his allegations are based so that the State may adequately prepare for an evidentiary hearing. Any claims not specifically laid out in this PCR application or in amendments *will be opposed by the State at an evidentiary hearing*. S.C. Code Ann. §§ 17-27-10 to -160; Rule 71.1, SCRPC. *See also* Rules 15(a)-(b), SCRPC; *Mangal v. State*, 421 S.C. 85, 805 S.E.2d 568 (2017). 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.

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), SCRPC.

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.

#### **VI. GENERAL DENIAL**

Each and every allegation contained within the application not expressly admitted, qualified, or explained in this Return is hereby denied.

#### **VII. CONCLUSION**

WHEREFORE, having made its return, the State respectfully requests this Court grant its motion for a more definite statement as set forth in section IV. The State requests Applicant, through counsel, amend the application to provide the required specificity for his allegation of ineffective assistance of counsel. Until Applicant files an amended application, Applicant has not

shown sufficient cause to warrant an evidentiary hearing on this application. The State respectfully requests this Court to only schedule a hearing after an amended application is so filed.

Respectfully submitted,

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Attorney General

W. JEFFREY YOUNG  
Chief Deputy Attorney General

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LILLIAN L. MEADOWS  
Assistant Attorney General

By: 

ATTORNEYS FOR THE STATE  
Office of the Attorney General  
Post Office Box 11549  
Columbia, South Carolina 29211

October 4, 2019

STATE OF SOUTH CAROLINA )  
 )  
 COUNTY OF LEXINGTON )  
 )  
 JOSHUA THOMAS BROWN, #286520 )  
 )  
 Applicant, )  
 )  
 vs )  
 )  
 STATE OF SOUTH CAROLINA, )  
 )  
 Respondent, )  
 \_\_\_\_\_ )

IN THE COURT OF COMMON PLEAS  
 2019-CP-32-02210

CERTIFICATE OF SERVICE BY MAIL

1. I am an employee of the Respondent in the above-captioned action.
2. Regular communication by mail exists throughout the State of South Carolina and that this is a proper circumstance of service by mail.
3. I have this day served a copy of the **Return, and Motion for More Definite Statement** in the above-captioned matter on the following person by depositing same in the United States mail, postage prepaid:

Overture E. Walker, Esquire  
 Stoney & Walker, LLC  
 1527 Blanding Street  
 Columbia, South Carolina 29201

DATED this the 4<sup>th</sup> day of October, 2019.

Camille Henry  
 Camille Henry, Legal Assistant  
 For Respondent

STATE OF SOUTH CAROLINA	)	COURT OF COMMON PLEAS
	)	FOR THE 11 <sup>th</sup> JUDICIAL CIRCUIT
COUNTY OF LEXINGTON	)	Case No.: 2019-CP-32-02210
Joshua T. Brown, #286520	)	
	)	
Applicant,	)	<b>AMENDED POST-CONVICTION</b>
	)	<b>RELIEF APPLICATION</b>
v.	)	
	)	
State of South Carolina.	)	
_____	)	

The Applicant, by and through his undersigned attorney, hereby amends his PCR application filed on June 4, 2019, to add the following allegations:

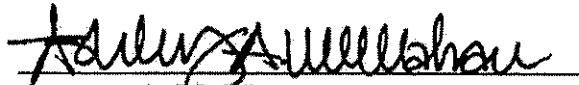
1. Ineffective Assistance of Counsel of Stephen R. Story, Jr. –
  - a. During Applicant’s trial, Mr. Story enraged the judge to the point the judge threatened contempt. It was at this point the Applicant felt he had no choice but to plead guilty. See Transcript at page 684, line 20 – page 690, line 24. And in fact, move to have his attorneys relieved because he no longer felt comfortable with them. See Transcript, page 699, line 15 – page
  - b. The guilty plea offer was actually relayed to Mr. Story a day before he actually told the Applicant about it.
  - c. There were videos and photos retrieved off the Applicant’s phone that would have shown that the Applicant was essentially a “battered spouse” however, by the time the trial started, Applicant’s attorneys could no longer locate the digital evidence needed to defend the Applicant.
  - d. Because Mr. Story made the judge angry, Applicant did not have the chance to testify in his own defense (after the judge ruled his prior record would not be able to come in) and had he been able to, the outcome of the trial may have gone in his favor.

Also attached and incorporated herein are Applicant’s additional hand written amendments to his application. See Exhibit 1.

Furthermore, the Applicant requests that he be permitted to amend his PCR application to conform to the evidence presented at the PCR hearing should any new or unaddressed issues arise during the course of the hearing that have not been

specifically addressed in the Application. See Simpson v. Moore, 367 S.C. 587, 627 S.E.2d 701 (2006).

Respectfully submitted,



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SC Bar No. 71676

ATTORNEY FOR APPLICANT

August 24, 2024  
Columbia, South Carolina

### CERTIFICATE OF SERVICE

I certify that I have served this document via email to:

Donald J. Zelenka  
Deputy Attorney General  
dzelenka@scag.gov

This 24<sup>th</sup> day of August, 2024.



ASHLEY A. McMAHAN

Attorney for Applicant

Joshua T. Brown #286537D }  
vs. }  
State of South Carolina }

To the Court of  
Common Pleas  
2019-CP-32-02210

Proposed Amendment "A"  
Question #9 + #10

Question #9:

State concisely the grounds on which you base your  
Allegation that you are being held in custody unlawfully.

A: Ineffective Assistance of Trial/Plea Counsel.

To wit: Violation of Defendants Fifth Amendment  
Right against self-incrimination.

Question #10:

State concisely and in the same order the Facts which  
support each of the grounds set out in Question #9.

A: "Solitude. For a civil rights plaintiff must be  
heightened when a civil rights plaintiff appears pro se.  
In the great run of pro se cases, the issues are  
faintly articulated and often only dimly perceived. There  
is, therefore, a greater burden and a correlative greater  
responsibility upon the district court to insure that  
constitutional deprivations are redressed and that  
justice is done." Gordon vs. Leeke, 574 F. 2d 1147 (4<sup>th</sup> Cir. 1978).

This Applicant, Joshua Thomas Brown, was arrested  
and charged with the crime of attempted Murder. At no

time did the solicitor nor my court Appointed attorney, Stephen Story, advise me that I was charged with an offense that wasn't considered a crime in South Carolina. I have never denied an altercation with the victim, Ann Morrisa James, but have always said it was in self-defense, and made it known I wanted a jury trial for the purpose of being able to call witnesses and to confront my accuser. "A large part of an attorneys' duty is to take whatever lawful and ethical measures are required to vindicate a clients cause or endeavor."

My attorney never told me that the so called crime I was charged with was not a crime in South Carolina, and when the solicitor informed me the state would seek a sentence of life without Parole upon conviction, that put even more pressure upon me to vindicate myself of the charge by being allowed to call witnesses favorable for my path of self-defense.

As even the greenest of attorneys know that the charge of Attempted Murder is not a crime in South Carolina, and that even if convicted I would win and have the conviction overturned on appeal, mid-way through my trial the solicitor approached my attorney with an offer to accept a plea to the charge in exchange for a sentence

OF 20 to 30 years and to also drop the threat OF seeking a sentence OF Life without Parole.

Note the Following:

Attempted Murder is not a recognized crime in South Carolina (State vs. Sutton), Supreme Court, 532 S.E. 2d 283 and State vs. Smith 2018 WL 6660031 SC Ct. App. 2018) and not only did my attorney not tell me this in violation of my due process right, he colluded with the solicitor to violate my 5<sup>th</sup> Amendment right against self-incrimination to induce me to plead guilty to a charge that is not a crime.

For the above reason I request the court vacate my current conviction for Attempted Murder and remand my case back to Lexington County for re-trial.

Joshua T. Brown, #28653D  
 vs.  
 State of South Carolina

In the Court of  
 Common Pleas  
 2019-CP-32-02210

Proposed Amendment "B"  
Questions #9 + 10

Question #9:

State concisely the grounds on which you base your allegation that you are being held in custody unlawfully.

B: Ineffective Assistance of trial/Plea Counsel.

To wit: Violation of Defendants' Fourteenth Amendment  
 Right to Legal Due Process.

Question #10:

State concisely and in the same order the facts which support each of the grounds set out in Question #9.

B: Although the district courts are not expected to assume the role of advocate for pro se plaintiff,

"the district court must examine the pro se complaint to see whether the facts alleged, or the set of facts which the plaintiff might be able to prove, could very well provide a basis for recovery under any of the civil rights acts or heads of jurisdiction in the federal arsenal for redress of constitutional deprivations." *Borris vs. State Department of Public Welfare*, 491 F. 2d 762 (4<sup>th</sup> Cir. 1974)

One would be hard pressed to find a more blatant concerted attempt to disregard and abuse a criminal defendant's constitutional rights than in the arrest, prosecution and ultimate conviction of Joshua Thomas Brown for Attempted Murder.

"Whenever we are asked to consider a charge that counsel has failed to discharge his professional responsibilities, we start with a presumption that he was conscious of his duties to his clients and that he sought conscientiously to discharge those duties"

"Matthews v. United States 518 F.2d 1245, 1246 (CAZ 1975) Right to effective assistance of counsel is recognized, not for its own sake, but because of the effect it has on the ability of the accused to receive a fair trial (U.S. vs. Cronin, 104 S.Ct. 2039)

When solicitor and Trial Attorney approached the defendant in mid-trial with their offer to accept a plea in exchange for a sentence of 20 to 30 years and would drop the state's efforts to seek a sentence of life without Parole, this was nothing short of collaboration between solicitor and defendant's Attorney to obtain a conviction for something the solicitor knew would be overturned on appeal.

In Powell vs. Alabama, Failure of trial court to make effective appointment of counsel to assist defendant in preparation for and conduct of trial held denial of "due process of law" where

defendants were young ignorant, illiterate and surrounded by hostile sentiment. (Powell vs state of Alabama, 53 S. Ct. 55)

Under pressure of being found guilty and receiving a life without Parole sentence compared with a sentence of 20 to 30 years, the defendant made the decision to take the plea. This is where defendant's Constitutionally protected and guaranteed legal rights began to be knowingly and deliberately disregarded and horrendously abused.

When questioned by the Plea Judge, defendant admitted he only had a 10<sup>th</sup> grade education and therefore was in no way capable of making a legal and knowing decision in any of the questions the Court proceeded to ask the defendant.

"An accused's right to be represented by counsel is a fundamental component of our criminal justice system. Lawyers in criminal cases are necessities, not luxuries. Their presence is essential because they are the means through which the other rights of the person on trial are secured. Without counsel, the right to trial itself would be of little avail as this Court has recognized repeatedly. Of all the rights that an accused person has, the right to be represented by counsel is by

For the most pervasive. For it affects his ability to assert any other rights he may have.

US vs. Cronin, 466 US 648 104 S. Ct 2039, 80 L. Ed. 2d, 657

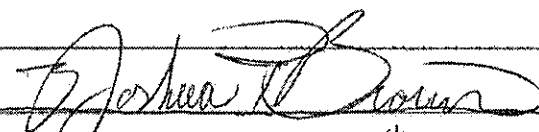
When defendant was asked by the plea Judge if he had been threatened or coerced in any way and the defendant said no, he had no idea at all that he already had been coerced by the plea offer itself. When defendant was asked if he understood his rights and everything about the process, defendant with only a 10<sup>th</sup> grade education could in no way have truthfully understood any of the complexities of legal jurisprudence, and when defendant's attorney not only failed to tell the defendant he was pleading to a charge that wasn't even a crime in South Carolina, but continued to remain silent and let his client be taken grave advantage of by allowing his client's legal rights to be so grievously abused, defendant's attorney became complicit in a scheme by the state to deliberately take advantage of his client's 10<sup>th</sup> grade education and total lack of knowledge of legal procedure and horrendously abused his client's constitutionally guaranteed and protected legal rights to due process under the U.S. Fourteenth Amendment.

"What might be a meritorious claim on the part of a pro se litigant unversed in the law should not be defeated without affording pleader a reasonable opportunity to articulate his cause of action"

Also: "If it is apparent to district court that pro se litigant has colorable claim but lacks capacity to present it, district court should appoint counsel to assist him." *Gordon vs. Leekie*, 574 F.2d 1147 (4<sup>th</sup> Cir. 1978)

For the above reason I request the court vacate my current conviction for Attempted Murder and remand my case back to Lexington County for retrial.

Dated this 28<sup>th</sup> day of February, 2022

x  #286520  
Joshua T. Baum #286520  
(Applicant)

Joshua T. Braun #286520 }  
Applicant }  
vs. }  
State of South Carolina }  
Respondent. }

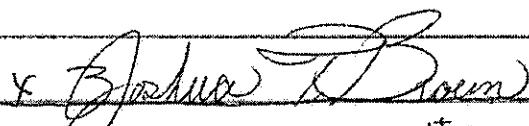
In the Court of  
Common Pleas  
2019-CP-38-02210

Certificate of Service  
By Mail

1. I am the Applicant in the above-captioned matter.
2. Regular communication by mail exists throughout the state of South Carolina and that this is a proper circumstance of service by mail.
3. I have this day served a copy of the Proposed Amendments in the above-captioned matter on the following person by depositing same in the United States mail, postage prepaid:

Ms. Ashley A. McMahn  
McMahn + Taylor Attorney, LLC  
P.O. Box 50536  
Columbia, SC  
29250-0536

Dated this 28<sup>th</sup> day of February, 2022

x  #286520  
Joshua T. Braun #286520  
(Applicant)

STATE OF SOUTH CAROLINA \* COMMON PLEAS COURT  
\*  
COUNTY OF LEXINGTON \* TRANSCRIPT OF RECORD

-----X  
JOSHUA THOMAS BROWN \*  
\*  
Plaintiff,\*  
\*  
vs. \*  
\*  
STATE OF SOUTH CAROLINA \*  
\*  
Defendant.\*  
-----X

Case No. 2019-CP-32-02210

AUGUST 26, 2024

B E F O R E:

The Honorable DAVID P. CARAKER JR., Presiding Judge

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

ASHLEY MCMAHAN, ESQ.  
ATTORNEY FOR THE PLAINTIFF

DONALD ZELENKA, ESQ.  
ATTORNEY FOR THE DEFENDANT

Recorded by: Melinda D. Jones, DCRP

Transcribed by: Loraine Victoria Edwards, CER, CET  
SC Official Digital Court Reporter II

I N D E X

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(None.)

COURT REPORTER LEGEND

Dash (--)	Indicates an interruption in speech
Ellipses (...)	Indicates trailing off in speech
(ph)	Indicates phonetic word
[Verbatim]	Indicates the word is said as written
(Indiscernible)	Indicates word(s) is not known due to audio recording quality

## P R O C E E D I N G S

(The following proceedings started at 3:08 p.m.):

MR. ZELENKA: Thank you, Your Honor.

THE COURT: Yes, sir.

MR. ZELENKA: This is Joshua Thomas Brown vs. State of South Carolina, Civil Action 2019-CP-32-2210. Mr. Brown filed an application for post-conviction relief July 4th, 2019. In that matter, he is challenging his conviction in Lexington County.

He was indicted during the March 2016 term by the Lexington County Grand Jury for attempted murder. On June 18th, 2018, he proceeded to a jury trial before Judge McMahon. And I've noticed that one of his -- his lawyer team isn't in the Courtroom at this point in time, but I'll continue.

The -- he was represented at that time by Stephen Story, Jason Turnblad, Jael Gilreath and it was prosecuted by Deputy Solicitor Suzanne Mayes and Kate Usry. On June 22, 2018, before the trial concluded, the applicant pled guilty as indicted.

At the outset of the plea, Mr. Story advised the Court that the applicant understood the elements of the charges against him, the punishment he could receive, and his constitutional rights had been explained to him. The offense was explained in greater detail, and he advised the applicant

1 that he could receive a maximum of 30 years imprisonment.

2 That's the plea through six through seven of the plea,  
3 Judge McMahon reiterated to the applicant by pleading guilty  
4 would waive constitutional rights including his right to  
5 proceed forward with his jury trial, his right to confront  
6 the witnesses against him and remain silent.

7 He was further advised that the State would have the  
8 burden of proof against him to prove every element of the  
9 crime charged, and they would have to convince every member  
10 of his guilt. He stated he understood at that time and  
11 wished to waive those rights to plead guilty.

12 The solicitor then advised the Court at that time it was  
13 a negotiated plea agreement that he would receive a sentence  
14 of 20 to 30 years imprisonment and the State would withdraw  
15 its notice of intent to seek life without parole.

16 He indicated that he was satisfied with his lawyers that  
17 they had done everything they reasonably could have to  
18 properly represent him and had no complaints about his  
19 lawyers, the solicitor, any of the police officers involved  
20 in the case. That's at plea transcript twelve. Judge  
21 McMahon then accepted the plea as freely and voluntarily made  
22 and sentenced the applicant to 23 years imprisonment.

23 In the application, it initially alleged only that he  
24 failed to seek the opinion of any expert in the case. On  
25 Saturday, August 24th, I received a copy of an amended

1 application for post-conviction relief and in that amended  
2 application he alleged the following: ineffective assistance  
3 of counsel of Stephen Story.

4 During applicant's trial, Mr. Story enraged the Judge to  
5 the point the Judge threatened contempt. It was at this  
6 point the applicant felt he had no choice but to plead  
7 guilty. Citing the transcript, page 684 through 690. And,  
8 in fact, moved to have his attorneys relieved because he no  
9 longer felt comfortable with them. Citing transcript page  
10 699.

11 Second assertion, the guilty plea offer was actually  
12 relayed to Mr. Story a day before he actually told the  
13 applicant about it. The third specification, there were  
14 videos and photos retrieved off the applicant's phone that  
15 would have shown that the applicant was essentially a  
16 battered spouse.

17 However, by the time the trial started, applicant's  
18 attorneys could no longer locate the digital evidence needed  
19 to defend the applicant. And the final allegation, because  
20 Mr. Story made the Judge angry, applicant did not have a  
21 chance to testify in his own defense. After the Judge ruled  
22 his prior record would not be able to come in.

23 And had he been able to, the outcome of the trial may  
24 have gone in his favor. He also attached -- or Counsel also  
25 attached a series of pro se matters which were, essentially,

Brown - Direct

6

1 the -- summarizing it -- the crime of attempted murder is not  
2 a crime in South Carolina.

3 And therefore, his counsel was ineffective in failing  
4 to, essentially, take a position to have that conviction  
5 vacated or quashed because he was being charged with a crime  
6 that doesn't exist in South Carolina. I would note for the  
7 Court this trial and circumstances of the crime occurred  
8 after 2010 when the General Assembly passed the attempted  
9 murder statute.

10 That's the State's presentation at this time. We made  
11 an early return in the matter. And the specification with  
12 the amended application is sufficient to go forward. .

13 THE COURT: Yes, ma'am.

14 MS. MCMAHAN: Your Honor, at this time, we call Mr.  
15 Brown.

16 JOSHUA BROWN,

17 after having been duly sworn, was examined and testified to  
18 as follows:

19 DIRECT EXAMINATION

20 BY MS. MCMAHAN:

21 Q Would you please state your name for the record?

22 A Joshua Brown.

23 Q Did you file this PCR application?

24 A Yes, ma'am.

25 Q And you still want to go forward on your PCR

1 application?

2 A Yes, ma'am.

3 Q And who were your attorneys that represented you?

4 A Steven Story.

5 Q Was he the main attorney that represented you? Did Mr.  
6 Turnblad, Ms. Gilreath, they helped out with the trial?

7 A Yes, ma'am.

8 Q And did you start a trial first and then decide to plead  
9 guilty?

10 A Yes, ma'am.

11 Q And were -- were you in the detention center the whole  
12 time? Were you out on bond? What was going on with that?

13 A Detention center -- about close to three years.

14 Q And -- but until you had a trial?

15 A Yes, ma'am.

16 Q And how many times do you think you spoke to Mr. Story  
17 in that time?

18 A Maybe a good six or seven times.

19 Q That was in person?

20 A Oh, yes, ma'am.

21 Q Did you speak to anybody on the phone or anything from  
22 the Public Defender's office?

23 A As phone wise, maybe a good four to seven times.

24 Q And did you have an opportunity to go over the evidence  
25 and all that with Mr. Story?

1       **A**     Not all the evidence, but some of that.

2       **Q**     That -- what evidence did you not know about until the  
3       time of the trial?

4       **A**     Text messages, videos that could be possibly from my  
5       phone that was saved to a CD.

6       **Q**     So the text messages and some photos?

7       **A**     And a couple of charges that was expunged, that was part  
8       of the original-- but didn't find out that it was expunged --  
9       till at trial.

10      **Q**     Okay, well, let's go through -- let's explain that to  
11      the Judge.  So what were the -- what was the issue related to  
12      the charges that were expunged?

13      **A**     The victim was out on bond for CDV third.

14      **Q**     And were you the victim of that?

15      **A**     Yes, ma'am.  And there was photos taken by the cop of  
16      that incident.  Due to the fact that the charges got expunged  
17      during the course of me being in the county, the pictures was  
18      no longer available.  But as being a victim of that charge, I  
19      still -- felt like I had the right to have those pictures.

20      **Q**     So the photos that showed injuries on yourself?

21      **A**     Right.

22      **Q**     Did you have a discussion with Mr. Story about that?

23      **A**     Yes, ma'am.  Yes, I did.

24      **Q**     And do you recall what you guys talked about?

25      **A**     He couldn't locate it.  He didn't know why he couldn't

1 locate it until trial.

2 Q And was that because the expungement order was --

3 A Right. We didn't know exactly how that was handled  
4 until we got to trial.

5 Q So it wasn't until the expungement order was shown at  
6 trial that you had any idea that that happened?

7 A Right. And it had happened before. And like I said, I  
8 didn't know until I went to trial. So if I would have never  
9 went to trial, I would have never known that would have  
10 happened.

11 Q Okay, and then what was the issue with Mr. -- so you --  
12 let me back up. So you started a trial. How many days of a  
13 trial did you have?

14 A We had a good five days of trial.

15 Q So what day of the week did you end up pleading guilty?

16 A That was on a Friday.

17 Q Friday morning?

18 A Yes, ma'am.

19 Q Had Mr. Story already started presenting a case on your  
20 behalf?

21 A Yes, ma'am. Yes, he did.

22 Q And at what point during Mr. Story's presentation of his  
23 case did the Judge get really angry?

24 A He got really angry at Mr. Story because he asked a  
25 question that the Judge asked him not to do. He asked him

1 not to bring up certain issues of hearsay, and he's made it  
2 very clear that he wouldn't allow that during this trial.

3 Q Was there a threat of contempt at some point during this  
4 time?

5 A Yes, ma'am, it was, by the Judge.

6 Q Was that at the end of Thursday? Sort of?

7 A Yes, ma'am, at the end of Thursday.

8 Q And, and so at some point did the Judge order a briefing  
9 on all that issue?

10 A Yes, he did.

11 Q And so what happened the next morning when you came in?

12 A The next morning, I informed the Court in the form of a  
13 motion that I would like a new lawyer.

14 Q How did you --

15 A I didn't feel comfortable with Mr. Story at the time  
16 anymore to present the defense that I wanted.

17 Q What was that defense?

18 A The battered spouse syndrome and self-defense.

19 Q Okay. And was there some issues with what you were  
20 charged with too?

21 A Yes, ma'am. There was some issues.

22 Q And what -- explain to the Court what those issues were?

23 A I feel -- I felt that there was evidence to -- for this  
24 charge to be a lesser charge.

25 Q Okay.

1       **A**     And I feel like if the jury would have been instructed  
2       of that option or -- or been ordered by the Court on somebody  
3       behalf, that that could have been an option.

4       **Q**     Did you ever have a discussion with Mr. Story about any  
5       lesser-included offenses that could be asked of the jury?

6       **A**     Yes, and he gave me all or nothing to the situation.

7       **Q**     That was his strategy. He said all or --

8       **A**     -- or nothing.

9       **Q**     Okay. And -- but you guys never got to the point of any  
10      jury instructions, right?

11      **A**     Right. We never made it to that point.

12      **Q**     And you never got to the point where you got to testify?

13      **A**     Yes, ma'am.

14      **Q**     What would you have testified to had you had that  
15      opportunity?

16      **A**     I would have testified to why we was meeting down there.

17      **Q**     What was that reason?

18      **A**     We was having problems as far as infidelity in our  
19      marriage. And my wife wanted to work on that marriage again.

20      **Q**     Okay.

21      **A**     She was acting weird the night before, calling me  
22      multiple times. And I knew that she only act that way if her  
23      boyfriend was in town. And so I agreed to meet up with her  
24      so we can talk things over. In my mind and eyes, I was done  
25      with it. I was done with the marriage. I've done with the

1 whole situation. And her story was a little different than  
2 my story. So I feel if I could have took a stand, it would  
3 have been more enlightening to the jury to why we was meeting  
4 down there.

5 Q Well, now's your time. So what -- what was your story  
6 then? Let the Court know what your story would have been had  
7 you been able to testify?

8 A Had I testified, I would have told -- been able to  
9 explain to the jury that the reason why we was meeting in  
10 such an isolated situation is because she was out on bond and  
11 she didn't feel comfortable because she was out on bond  
12 meeting me in a public place.

13 Q Was there a bond condition that you guys weren't  
14 supposed to see each other?

15 A Yes, ma'am. We weren't supposed to have no contact.

16 Q Okay, so you were -- you chose an isolated place because  
17 of that?

18 A Right.

19 Q Who suggested that place?

20 A I did.

21 Q Okay.

22 A But she's picked that day a couple days earlier to meet  
23 up there. And we met a couple days earlier. That was our  
24 meeting spot.

25 Q Okay.

1       **A**     She was out on bond.

2       **Q**     So then what were you guys meeting up to talk about?

3       **A**     Just working on the marriage, custody of our child,  
4       infidelity on both our parts.

5       **Q**     Did you end up having a conversation about that?

6       **A**     Yes, we did.

7       **Q**     And then -- so how would it have turned into  
8       self-defense?

9       **A**     We got into an argument.  It's -- it's -- is to be  
10      contemplated who brought the knife.

11      **Q**     Okay.

12      **A**     And so as we got to talking about infidelity, she said I  
13      brought the knife.  I said she brought the knife.  It was an  
14      argument.  And so that is the issue that I feel like if I  
15      could have testified, and we could have got to the bread and  
16      butter of this.

17      **Q**     Well, what -- continue -- what would you have said  
18      about that issue?

19      **A**     I would have explained to the jury that it wasn't about  
20      her cheating and who she was cheating with, but more about  
21      who I was cheating with and who I had pregnant.

22      **Q**     Okay.

23      **A**     Right.

24      **Q**     So did you go down there with the intent to commit a  
25      crime or just --

1       **A**    No, ma'am.  No, ma'am.  I went down with intent of us to  
2       discuss everything that was going on because we had plans of  
3       working on the marriage.

4       **Q**    Okay.  And you guys were still married at the time?

5       **A**    Yes, ma'am.  Yes, ma'am.

6       **Q**    And did you have a discussion with Mr. Story about all  
7       that?

8       **A**    Yes, ma'am.

9       **Q**    And what -- what did you guys decide on?

10      **A**    I gave my side of the story about self-defense, and he  
11      said that was the only charge I could be charged with.  No  
12      CDV, no First Degree, no Aggravated, no ABHAN.  That's the  
13      only charge I can be charged with due to the evidence.  Well,  
14      I didn't have all the evidence and so I wanted to get the  
15      jury to see my half of the story as I was telling Mr. Story.

16      **Q**    And you were planning on testifying?

17      **A**    Yes, ma'am.  Yes, I was.

18      **Q**    And then -- so is there anything else in regards to what  
19      you would have testified to that Court needs to know about  
20      today?

21      **A**    I would have testified, like I said, once again, I would  
22      have testified about why I was meeting down there and the  
23      whole story of how we met down there.  How we met down there  
24      was very important because how we met down there due to her  
25      statements made it seem like it was a plot.

1 Q Well, how did you all decide to meet there?

2 A Through text. It wasn't through calls; it was through  
3 text messages. I didn't call her and ask her to meet her  
4 down there. She texted me and asked me could we meet up and  
5 I text her "yes." I never called her and told her I needed  
6 her to come down there and get her belongings. I never made  
7 any phone calls of that nature. We never talked that  
8 morning.

9 Q About what time of day do you remember meeting her?

10 A About 10 o'clock -- 10:30 -- 10:35.

11 Q Morning or night?

12 A Morning.

13 Q And did you have a discussion with Mr. Story about  
14 battered spouse syndrome?

15 A Yes, ma'am. Yes, I did.

16 Q And what became of that conversation?

17 A I needed a therapist. I needed a counselor,  
18 psychiatrist, doctor, or whatever form you may choose to say  
19 to present that defense.

20 Q Okay.

21 A I was never able to have that person present or to  
22 interview me before the trial or in the course while I was at  
23 the county jail for three years.

24 Q And when Mr. Story and them were representing you, was  
25 there conversations with him about the videos and the

1 pictures and stuff?

2 **A** Yes, there was.

3 **Q** And tell the Court about that?

4 **A** Well, off my phone there was multiple videos and  
5 pictures that was retrieved from SLED that was saved on the  
6 disc. But by the time we went to trial, there was no longer  
7 videos, which I know there are videos, because what my wife  
8 didn't know was that I had spyware on my phone. So as she  
9 was going through my phone, it was recording some of the  
10 incident that happened from the CDV. And the Judge wouldn't  
11 allow hearsay, but he would allow video, which I had -- which  
12 they did recover. But by the time we got to trial, nobody  
13 could find the video or the pictures.

14 **Q** And when did you find that out?

15 **A** When I went to trial.

16 **Q** The day of trial?

17 **A** During the course of that week.

18 **Q** Okay. So like earlier on that week, later on?

19 **A** About Monday or Tuesday, we found out that they couldn't  
20 locate the videos or the pictures from my phone.

21 **Q** Okay. And was that a separate conversation you had with  
22 your attorney at some point, or was it like you were sitting  
23 at the table having a discussion about it?

24 **A** Just by the course of the Judge and the prosecutor that  
25 was going through with my lawyer about where it's at. How

1 could it be located, how could they receive it, how could  
2 they find it. So I'd say that was on the Tuesday or  
3 Wednesday.

4 Q Okay. And then did you ever have a discussion during  
5 the trial with Mr. Story about all that?

6 A Yes, I did.

7 Q At a time when there was a pause?

8 A Yes. I did ask him about it. Like, where is that? And  
9 like I said, the prosecutor did hand it over to him. She did  
10 handle the CD over with the videos and the pictures, but I  
11 never was able to observe to see if they're there or wasn't  
12 there.

13 Q Okay. And did Mr. Story tell you if there was anything  
14 on that -- that DVD or CD?

15 A Kind of, we had so much co -- had so many things we had  
16 to handle. He never really got back to me about it. I asked  
17 multiple times because we did have a private investigator,  
18 but I never got an answer to that.

19 Q And then tell me about how it came about that you  
20 learned of the plea offer?

21 A I've learned -- I learned of the plea offer that Friday.  
22 It was a negotiated plea from 20 -- 25 to 30 or 20 to 30 on  
23 the Friday of trial.

24 Q And when did you guys talk about that?

25 A That morning after the situation with the Judge, which

1 was a Friday. So that's when we talked about the plea.

2 Q So you were supposed to go back on the record regarding  
3 the issue -- the hearsay issue -- but instead you ended up  
4 pleading guilty?

5 A Yes.

6 Q And how did you find out that Mr. Story knew about that  
7 plea offer before Friday?

8 A I had a family member that was outside of the Courtroom  
9 and she was able to -- and he was able -- to tell me that the  
10 plea was offered that Thursday before he asked the question  
11 that -- that the Judge threatened with contempt on the  
12 Thursday.

13 Q Now -- and you found out about it from Mr. Story on  
14 Friday?

15 A Yes, ma'am.

16 Q Did you have a conversation with him, like in one of the  
17 rooms off the Courtroom that morning?

18 A Yes, ma'am.

19 Q And what was that conversation about?

20 A Basically about me telling my side of the story. He  
21 told me my side of the story didn't matter. You know, and --  
22 cause I wanted to present a certain defense. I wanted to  
23 bring certain things up and I needed certain things. He  
24 basically told me my side of the story don't matter. And at  
25 that point, that's when I say, you know what, it's getting

1 too out of hand. It's time to, you know, go a different  
2 route, different direction with this.

3 Q And did you tell him you were upset with him about the  
4 way things went down in front of the Judge?

5 A Yes. I was very upset. Very, very disturbed by that.

6 Q Did you feel like you could have continue forward with  
7 that trial?

8 A Not with Mr. Story after what happened in the Courtroom  
9 on that day. The Judge was very upset, yelling at him, lock  
10 him up. And just -- I don't feel like he could have brought  
11 a defense that I wanted under those circumstances. I didn't  
12 want him to be afraid of getting locked up for asking certain  
13 questions.

14 Q And so in your -- your amendments to your application,  
15 your handwritten ones, let's go through those. So your first  
16 one, violation of your right to self-incrimination. Tell the  
17 Court about that.

18 A Which question is that again, ma'am?

19 Q That's the very first one on the first page. Question  
20 -- it says right here.

21 A (Indiscernible) Okay. Okay. Okay.

22 Q Tell the Court about that. What do you want the Judge  
23 to know about that -- that issue?

24 A Just, basically, when I made my statement and to the  
25 investigators and to the Courts, it's basically me trying to

1 explain myself or what happened, not agreeing to -- to  
2 attempt a murder. Just gave my side of the story.

3 Q So did you have any discussions about suppressing that  
4 statement or anything?

5 A Like I said, there's a lot of CDs that I wasn't  
6 conscious of. I feel like that should have been brought up  
7 in Court because of -- it made it seem like I tried to get  
8 away with or I wasn't there, but I gave a statement saying  
9 that I was there.

10 Q Okay. And then moving on to the next one which is  
11 question number 10. Is that your facts in support of that --  
12 that issue. On pages 1, 2 and 3?

13 A And what is this? So what question are you --

14 Q So the -- where it says question 10.

15 A Right.

16 Q On the first page, these are all the facts supporting  
17 your issue?

18 A Yes, ma'am. Yes, ma'am.

19 Q Now let's go to page 4.

20 A Okay. All right.

21 Q So you have violation of 14th Amendment (Indiscernible)  
22 what do you want the Judge to know about that issue? Is  
23 there anything outside of what you've written in support of  
24 it you want the Judge to know?

25 A No, ma'am, everything that I wanted the Judge to look

1 over is already in there.

2 Q Okay. Is there anything else you want the Court to know  
3 today about your PCR.

4 A No, ma'am.

5 Q Answer any questions the Attorney General may have.

6 CROSS-EXAMINATION

7 BY MR. ZELENKA:

8 Q Mr. Brown, why did you plead guilty?

9 A Initially, I was facing a life sentence.

10 Q All right.

11 A And not out of guilt, but I felt like I wasn't going to  
12 get the best representation at trial. Things that --

13 Q But you know, you had the option to proceed at that  
14 time?

15 A Yes, sir. Yes, sir.

16 Q And in your discussions with the lawyer, you were  
17 intending to testify, right?

18 A Yes, sir.

19 Q You knew you were giving up your right to testify in  
20 that particular (Indiscernible), correct?

21 A So I was giving up my right to testify if I pleaded  
22 right. Or if I would have went on with the trial.

23 Q By pleading guilty, you'd given up your right to  
24 testify?

25 A Yes, sir.

1 Q And you were giving up your right to put on additional  
2 witnesses?

3 A Yes, sir.

4 Q Who were the additional witnesses who would have  
5 testified?

6 A Family members. And if I would have -- and if he would  
7 have done what I asked him to as far as the psychiatrist  
8 would have testified, he would have been able to -- to  
9 testify.

10 Q Who are the family members who would have testified?

11 A My stepfather, Chris Griffin. My cousin, Anisha (ph)  
12 Smith.

13 Q Stop right there. And what would he have testified?

14 A He would have testified to past incidents within the  
15 marriage. He would have testified to past incidents in the  
16 marriage, that which was --

17 Q Okay. Incidents other than on the day you stabbed her?

18 A Right.

19 Q How long before those incidents did those occur?

20 A One was two months before the stabbing and one was over  
21 a year before the stabbing.

22 Q Okay. Was he present during those incidents?

23 A No, sir.

24 Q He was not?

25 A No, sir.

1 Q Okay. Who else would have testified?

2 A I would have testified. That would have been about it.

3 Q Okay, so just -- is that your father?

4 A Stepfather. Stepfather.

5 Q Stepfather and yourself. So those are the only two  
6 additional witnesses?

7 A And my cousin, Clarence Smith.

8 Q All right. Clarence Smith was the one who was  
9 testifying about a video that he said he saw on your phone?

10 A Yes, sir.

11 Q And the Judge stopped it?

12 A Yes, sir.

13 Q Because he thought it violated the rules of evidence.  
14 Is that correct?

15 A Yes, sir.

16 Q And he didn't see violence when it was actually  
17 occurring, did he?

18 A Not of the stabbing but of the CDV incident he saw.

19 Q He saw it on the video?

20 A Yes, sir.

21 Q But he wasn't there in person --

22 A To see the incident.

23 Q Right.

24 A He saw -- he saw the incident on video that was recorded  
25 on my phone, but he wasn't there in person.

1 Q Okay. And you would have testified?

2 A Yes, sir.

3 Q Okay. And you indicated in your direct examination you  
4 would have testified about the infidelity relationship you  
5 had with the victim.

6 A Yes, sir.

7 Q It sounded like you were to testify that that infidelity  
8 discussion that occurred on that day caused you to become  
9 violent or lose it. Is that correct?

10 A Yes, sir.

11 Q Okay. And is that pretty much what you told the Judge  
12 at the time of your guilty plea?

13 A Yes, that's pretty much. But it was more to it. I  
14 didn't want to -- I didn't want to waste his time speaking  
15 one or two hours about the whole situation as we just went to  
16 trial. My testimony would have been a little different than  
17 the victim's. As you know, with attempted murder, you have  
18 to have motive, you have to have why you're doing this, why  
19 you're trying to do that. And like I said, the reason for me  
20 stabbing her was brought that I was trying to figure out the  
21 person name and she didn't give me his name. That's why I  
22 stabbed her. But evidence would show I already knew who he  
23 was. I knew how to look him up, where to look him at -- look  
24 him up. And my testimony would have justified it with the  
25 evidence that I had.

1 Q So I understand your testimony, you're saying you  
2 stabbed her because she wouldn't tell you the name of the  
3 person that she was having an affair with?

4 A That's not my testimony. That was her testimony.

5 Q Okay. And what's your testimony?

6 A My testimony is that she wanted to know who I had  
7 pregnant and I wouldn't tell her.

8 Q She wanted to know who you got pregnant?

9 A Right.

10 Q But you weren't going to tell her?

11 A No, I wasn't.

12 Q And the reason for that was what?

13 A Because of her violent nature.

14 Q Her violent nature?

15 A Yes.

16 Q Okay. But she didn't stab you. You stabbed her.

17 A Right. Yes, I did.

18 Q And why did you stab her?

19 A Because she tried to stab me.

20 Q Pardon me?

21 A She tried to stab me first.

22 Q Okay.

23 A But I was able to get the knife.

24 Q And when was that?

25 A In the course of us speaking on that behalf.

1 Q Okay. At that occasion?

2 A Yes, sir.

3 Q Is that what you're saying?

4 A Yes, sir.

5 Q I just couldn't understand.

6 A Okay.

7 Q And you have told all that information to Mr. Story?

8 A Yes.

9 Q You told him what your stepfather was going to testify  
10 about. Is that correct?

11 A I didn't know everything that he was going to testify --  
12 testify about. But he was going to testify, if allowed to,  
13 about past incidents.

14 Q Okay.

15 A Not specific of that incident that day.

16 Q Clarence Smith had already started to testify?

17 A Yes, sir.

18 Q And then the Judge broke overnight. Is that correct?

19 A He broke -- I won't say he broke overnight. I'd say he  
20 broke over seconds. Whatever he asked Mr. Story not to do,  
21 he did. And that made him very upset. And I'm sure Mr.  
22 Story knew what he was supposed to do and not to do.

23 Q He was trying to put in the video that you wanted to  
24 have put in the information about that video?

25 A No, he asked Clarence about the video, and the Judge

1 said he would go off no hearsay of what he saw. So if a  
2 victim saw the video, that wasn't -- he wasn't going to -- he  
3 wasn't going to allow that to happen.

4 Q Okay.

5 A He wasn't going to go off of anything far as what he  
6 heard about the video, it's two different questions that the  
7 Judge was going to allow or not to allow.

8 Q Okay.

9 A Now, how he word it, the Judge felt like he worded it  
10 wrong as far as the question. Wasn't going to go off for any  
11 hearsay that he heard that there was a video or Clarence  
12 heard that it was a video of the incident. He wanted to know  
13 if Clarence Smith's actually seen the video.

14 Q Okay. Now, you knew Mr. Story was there and prepared to  
15 continue the case.

16 A Right. Right. And I didn't trust him to continue with  
17 that case after that happened.

18 Q So you decided, as you said, when I asked you in the  
19 beginning, "Why did you plead guilty?" You said, "I pled  
20 guilty to get out life without parole."

21 A And also because I didn't trust Mr. Story to represent  
22 me at that point.

23 Q So you still wanted the life without parole potential if  
24 this case continued, is that what you're saying?

25 A No, you have to understand, I put in a motion for a new

1 lawyer. I put in a motion for a new lawyer to represent me  
2 as far as the defense part of that trial. That motion was  
3 turned down.

4 Q Yes, it was.

5 A It was turned down. So that was my main focus. I  
6 wasn't going to take a chance with Mr. Story. Between his  
7 attitude, between me and the Judge, his attitude towards us  
8 was off that day. Matter of fact, all that week his attitude  
9 was very off towards us. Luckily, I had two other lawyers to  
10 balance everything out.

11 Q Well, that's right. You did have other lawyers other  
12 than Mr. Story.

13 A Right.

14 Q Now why didn't you rely upon them? Who were your other  
15 lawyers?

16 A I can't remember their names off hand.

17 Q Mr. Turnblad.

18 A He was one of them.

19 Q Who was the other one?

20 A I can't remember her name right off the bat.

21 Q Okay. Showing you the record on the transcript.

22 A Okay.

23 Q Pointing out who the transcript says counsel was. Does  
24 that refresh your recollection? Ms. Gilreath.

25 A I remember her. I remember her. She was there.

1 Q Okay. What did Mr. Turnblad do in your opinion?

2 A He helped, as far as you know, making sure the paperwork  
3 was straight, going through -- doing a little research on the  
4 behalf. And Mr. Story on certain things.

5 Q Okay. Was he part of the conversation with you on  
6 whether to plead guilty or continue with the trial?

7 A Not originally. Just me and Mr. Story.

8 Q Well, how about when the decision was actually made?

9 A He wasn't part of that part.

10 Q Okay. How about Ms. Gilreath?

11 A No, she wasn't.

12 Q It was only between you and Mr. Story?

13 A Yes, sir.

14 Q okay. And you took Mr. Story's advice?

15 A As far as taking the plea?

16 Q Yes, sir.

17 A I'm going say I took it -- took his advice. Like I  
18 said, after the situation, I didn't feel comfortable with  
19 him. So I felt like I had no other option because I have --  
20 I asked for a specific defense. And I could not present that  
21 defense without psychiatrist. There's no way possible I  
22 could have -- like I said, the psychiatrist had to come  
23 interview me before trial even started. Before the trial  
24 even started, I needed that report of that psychiatrist.

25 Q Okay. They were never able to find video on your phone

1 that you had deleted personally. Isn't that correct?

2 **A** Right. But there was other means of it. That how it  
3 was recovered by SLED.

4 **Q** Okay.

5 **A** And --

6 **Q** Then your lawyer moved for a continuance before to get  
7 that done. Isn't that correct?

8 **A** Correct. And it was -- and it was put into paperwork by  
9 the detective that they received certain videos. It could  
10 have been a video -- a thousand videos of dogs fighting. But  
11 if I haven't been able to observe it with my lawyer, how we  
12 would know what was on there? We never -- by the time we got  
13 it, it was no longer there. So they say.

14 **Q** Well, they may have never been there. When you say no  
15 longer there, that information --

16 **A** At the beginning of the case, it was there. By the time  
17 we went to trial, it was no longer there.

18 **Q** Are you saying this video was recovered?

19 **A** Yes.

20 **Q** And where did you get that information?

21 **A** From the motion of discovery. If you go to my motion of  
22 discovery, you will see that a certain amount of videos was  
23 recovered along with text messages. Please be in mind, not  
24 only videos was deleted, but text messages was deleted off my  
25 phone also. And that was also recovered. And that also was

1 put into my motion to see these text messages out the phone  
2 that was deleted along with the videos.

3 Q I got you.

4 A So you mean to tell me the text messages are that -- are  
5 there, not the videos that was there at the beginning. And  
6 they both were saved to a CD rom.

7 Q And you had those discussions with your lawyer?

8 A Yes, I did. I wanted to know where those videos was.  
9 That was part of my case so I can show -- because from what I  
10 was hearing from the Judge, he was not going to allow hearsay  
11 about any past CDV incidents. But I have video of the  
12 incident. I have video of the incident happening. I know --

13 Q When was that incident?

14 A That was 2015. July.

15 Q Okay. When was your crime? What was your crime -- when  
16 did that occur?

17 A The crime happened in 2015 -- August 11th, if I'm not  
18 mistaken.

19 Q Okay. A couple months before --

20 A A couple months after that incident. After the CDV  
21 incident with my wife -- or ex-wife.

22 Q So her CDV --

23 A Right.

24 Q -- was in 2014?

25 A 2015. She had one in 2014 also.

1 Q There was some discussion about the information from the  
2 2014 one during the trial. Isn't that correct?

3 A Yes, sir.

4 Q But you're -- when you talk to Judge McMahon, he  
5 inquired of you about going forward in the case, and your  
6 understanding that you're waiving your rights in return for  
7 the State dropping life without parole and recommending the  
8 sentence being 20 to 30 years. Is that correct?

9 A Yes, sir.

10 Q And you apologized to the victim?

11 A Yes, sir.

12 Q And you weren't required to apologize to the victim,  
13 were you?

14 A No, I wasn't. No, I was -- I wasn't required.

15 Q Wasn't part of the plea deal?

16 A Wasn't part of the plea deal. It wasn't.

17 Q So when you did that apology to the victim, were you  
18 being honest?

19 A I was being honest. Regardless of why it happened, it  
20 happened.

21 Q Okay.

22 A You know, I felt like I hurt the woman I loved. She  
23 hurt me, but I went overboard. Apology was due -- a little  
24 more, if you asked me. Like I said, I don't feel like I was  
25 guilty of attempted murder, aggravated assault, ABHAN. But

1 that didn't go down with the attempt to kill anybody. That's  
2 the only option that was given to me.

3 Q Okay. Well, that was the charge that was made.

4 A But I feel like there was evidence that it could have  
5 shown less -- a lesser charge. I feel like there was  
6 evidence on the table that would have shown lesser.

7 Q What was that evidence?

8 A Like I said, the videos, past history. And at what  
9 point does the attempted murder is different from ABHAN?  
10 What -- what's the deciding factor? My word or her word?

11 Q Then you decided not to give the jury the chance to make  
12 that determination. Is that correct?

13 A Not after what happened between Mr. Story and the Judge.  
14 No, I wasn't.

15 Q Okay.

16 MR. ZELENKA: Court's indulgence. One moment.

17 THE COURT: Yes, sir.

18 MR. ZELENKA: No further questions, Your Honor.

19 THE COURT: Redirect?

20 MS. MCMAHAN: Just briefly.

21 REDIRECT EXAMINATION

22 BY MS. MCMAHAN:

23 Q Did you feel like at the time you pled guilty, you had  
24 no other choice, based on Mr. Story's behavior.

25 A Yes, ma'am.

Story - Direct

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1 MS. MCMAHAN: Nothing further, Your Honor.

2 THE COURT: You may step down, sir.

3 MS. MCMAHAN: Applicant rests.

4 THE COURT: Mr. Zelenka.

5 MR. ZELENKA: I think she rested.

6 MS. MCMAHAN: I rested.

7 MR. ZELENKA: State would call Stephen Story.

8 STEPHEN STORY,

9 after having been duly sworn, was examined and testified to

10 as follows:

11 THE WITNESS: Steven Story, S-T-O-R-Y.

12 DIRECT EXAMINATION

13 BY MR. ZELENKA:

14 Q Mr. Story, how are you currently employed?

15 A I'm employed with the Lexington County -- excuse me, the  
16 11th Circuit Public Defender's Office.

17 Q And when did you begin the practice of law?

18 A 2013.

19 Q And what's been your primary focus in your practice of  
20 law?

21 A I've been a Public Defender since 2013.

22 Q Since when?

23 A 2013, when I started practicing law.

24 Q And how many major felony cases, roughly or percentage  
25 wise, has been part of your practice with the Public

1 Defender's Office?

2 **A** You said major felonies?

3 **Q** Yes, sir.

4 **A** I've -- I've handled -- handled serious and most serious  
5 offenses since I started with the 3rd Circuit Public  
6 Defender's Office in 2013. It's been a large percentage, I'd  
7 say.

8 **Q** Okay.

9 **A** I haven't worked out the numbers, but it's a -- most of  
10 them.

11 **Q** And in that practice, have you -- approximately how many  
12 murder cases have you handled?

13 **A** Murders? As of today, it would be at least 10 to 15,  
14 maybe more.

15 **Q** And how about other violent crime cases? Assault and  
16 battery with intent to kill, assault and battery, high and  
17 aggravated nature, criminal sexual conduct in second or third  
18 degree, or attempted murder like this?

19 **A** It would be in the hundreds, certainly.

20 **Q** And as part of that practice, in 2015, 2016, did you  
21 become involved in Joshua Brown's case?

22 **A** So I believe I was appointed in the summer of 2017. I  
23 began with the Lexington -- the 11th Circuit Public  
24 Defender's Office, late January 2017. Originally, Sally  
25 Henry had this case. She was the public defender originally

1 assigned to Mr. Brown's case --

2 Q Okay.

3 A -- and she gave it to me. It was re-assigned to me. I  
4 could give you a precise date, but it was the summer of 2017.

5 Q And as part of that practice, did you receive the  
6 discovery from the State independently, or did you receive  
7 the discovery that Sally Henry had received?

8 A I received the discovery from Sally Henry, and her  
9 paralegal, I believe, was Gail Etheridge. Because I know  
10 Gail had a lot of the files, but that was transferred to me  
11 and my paralegal, Lisa Williams.

12 Q And did you have the opportunity to review that  
13 discovery?

14 A Yes.

15 Q And there's been some mention about videos which may or  
16 may not have been a part of that discovery that the  
17 applicant's testified about from the witness stand. Do you  
18 have an understanding based on -- let me back up one step.  
19 Did you meet with your client during your period of  
20 representation --

21 A Yes.

22 Q -- of that the trial in June 2018?

23 A Yes.

24 Q Approximately how many meetings did you have with him?

25 A I could give you an exact number. I think six or seven

1 in person. I know we had at least six or seven in person  
2 meetings. I think we talked on the phone a number more  
3 times. I feel like we talked on the phone a good bit, but we  
4 had a number of phone conversations as well.

5 Q And in those meetings or conversations, did you go over  
6 the discovery with your client?

7 A I went -- I certainly went over all -- I believe before  
8 I was appointed, he had a copy of all the written discovery.  
9 So the answer is yes, we discussed it. We went over it.

10 Q Did you discuss the video information that you may have  
11 received?

12 A Yes.

13 Q And what was that discussion?

14 A So are you specifically talking about the cell phone  
15 video or --

16 Q That would be a great place to start.

17 A Okay. So, Cayce Department of Public Safety seized Mr.  
18 Brown's phone as part of their investigation. They did a  
19 phone extraction. Well, excuse me, they did not -- well,  
20 they -- they used a -- The Secret Service to do a phone  
21 extraction, and they gave us a copy of that phone extraction.  
22 My conversations with Mr. Brown indicated that there was --  
23 there were videos that were deleted off of his phone.  
24 Specifically, there was one of -- he tells me the alleged  
25 victim -- the victim in that case, assaulting him with a pair

1 of scissors was what I remember. But that was deleted.

2 Q That it was deleted?

3 A Yes, Your Honor -- yes.

4 Q Did he indicate to you that before the phone was  
5 recovered that he had already deleted those videos  
6 previously?

7 A I believe so.

8 Q Okay. So the information was that you had -- correct me  
9 if I'm wrong -- that he's indicating to you there should be a  
10 video on that -- but it's a video of something that he had  
11 previously deleted?

12 A I think so. I believe the conversation was when -- that  
13 she had been arrested for a CDV that he did not want to  
14 prosecute it. And I can't recall if it was deleted during  
15 that time or at some other time, but my understanding it was  
16 deleted in his possession -- or when -- before Cayce Public  
17 Safety seized the phone -- was my understanding.

18 Q And did he go over his theory in the case with you?

19 A Yes.

20 Q And what was his theory of defense in the case?

21 A It was self-defense. That they had met at the river  
22 walk and that she had assaulted him with a knife and he had  
23 taken it and then stabbed her multiple times.

24 Q And how many stabs did he admit doing, you recall?

25 A I think at least 17, if I recall. I believe 17. Beg

1 you -- beg -- beg your indulgence. But it -- I mean, if you  
2 -- if you're asking me how many he admitted it was -- our  
3 theory was not that anybody else had stabbed her or she had  
4 stabbed herself or anything like that. And it was -- it was  
5 many stab wounds. I think it was less than 20. I believe 17  
6 is the number I'm thinking of. I can't recall it exactly.  
7 But it was --

8 Q How many stab wounds did he have on him?

9 A I don't believe he had any.

10 Q Pardon me?

11 A I don't believe he had any.

12 Q Okay. And was his theory that it began in an argument  
13 over each of them claiming infidelity or seeking confirmation  
14 of the infidelity --

15 A Yes.

16 Q -- that they were having? So his testimony today was  
17 somewhat consistent with what he was telling you prior to the  
18 trial?

19 A That's consistent with what I recall him telling me  
20 prior to trial.

21 Q And did he indicate to you that he had witnesses to the  
22 other circumstances to suggest that there was a pattern in  
23 the violence or that there was a pattern in the infidelity?  
24 What kind of witnesses did he suggest to you?

25 A The witnesses he suggested, as well as the law

1 enforcement interviewed -- a number of potential witnesses --  
2 Clarence Smith, Jennifer Smith, his stepfather. The main one  
3 that we had planned on calling was, I believe, Clarence  
4 Smith, who actually did testify or began testifying at the  
5 trial. But there were -- I believe Jennifer Smith may have  
6 witnessed the video as well. But there were -- there were  
7 multiple people that, you know, we talked to that law  
8 enforcement talked to that could have seen some instances of  
9 violence between the two at prior times.

10 Q And were you prepared at the time of the trial, with  
11 your defendant's understanding, to call those witnesses?

12 A Yes.

13 Q Okay. And by the time the case broke to a plea,  
14 Clarence Smith was the only one that had testified so far  
15 from that group?

16 A Is -- yes, that's correct.

17 Q It was during his testimony that there was the  
18 disagreement between Judge McMahon and you over the  
19 admissibility of Mr. Smith's statement concerning his viewing  
20 a video on the phone. Correct?

21 A I -- I think that's pretty accurate. It -- I -- I'm not  
22 sure if Judge McMahon had ever actually ruled on that. I'd  
23 have to defer to the record on that. But we had submitted  
24 those briefs. We had argued about it on Thursday and then  
25 submitted the briefs Friday morning. And I think that's

1 where we left it. Yeah.

2 Q And when you said submitting the briefs, what exactly  
3 was the legal issue that you thought that Judge McMahon was  
4 asking you to brief at that particular time related to the  
5 admissibility of the video of what might have been a violent  
6 confrontation that they saw?

7 A So Clarence Smith specifically saw two instances of  
8 violence on -- from the victim against Mr. Brown. One was a  
9 video that my understanding was Mr. Brown had recorded of her  
10 trying to stab him with scissors. And that Mr. Brown showed  
11 him this video on his cell phone.

12 The other instance was Mr. Brown -- and Mr. Smith told  
13 us that she had hit his hand with a hammer. And he went to  
14 Mr. Smith right after that and showed him -- you know, told  
15 him what happened and showed him the injury on his hand. So  
16 there were two issues that Mr. Smith was going to testify to.  
17 The scissor video and then the hammer incident.

18 So the first, Mr. Smith told us that he had seen the  
19 video. He did not witness it in person happening, but he saw  
20 a video that Mr. Brown had shown him. The second, and the  
21 State objected to that -- and then the second was him coming  
22 to him right after the hammer incident.

23 So they objected to hearsay as to the hammer incident,  
24 which was hearsay. But my argument was it was excited  
25 utterance. He came to him right after it, after he was

1 still, you know, under the, I guess, excitement of the  
2 incident. He could also testify that he saw the injuries.

3 Q I'm sorry, what?

4 A He saw the injuries to Mr. Brown's hand. The scissor  
5 video -- I think Judge McMahon was leaning that it was not  
6 personal knowledge because it was a video. He didn't see it.  
7 I had got the case, *State v. Fripp*, which I was already  
8 familiar with, and was going to argue that, yes, if somebody  
9 sees the video of something, they can come into Court and  
10 testify to it.

11 That was the incident Thursday. That's -- that's the  
12 evidence I was trying to introduce. And I was just trying to  
13 argue my position. Judge McMahon ordered that we have briefs  
14 on the -- on the issue. So I wrote a brief, submitted it  
15 Friday morning, and gave a copy to the Court and the  
16 solicitor.

17 Q So as far as you know, the Judge never ruled on that as  
18 to whether those matters would be admissible, as the case --  
19 if the case would have proceeded?

20 A I don't -- I don't believe he ever made a final ruling  
21 on that. No.

22 Q But without that, at some point of time, did you receive  
23 a plea offer?

24 A Yes.

25 Q And when did you receive the plea offer?

1       **A**     We -- I believe Assistant Solicitor Suzanne Mayes asked  
2       to take a short recess. And during that recess, she conveyed  
3       the plea offer to me and I conveyed it to Mr. Brown.

4       **Q**     Was that on the day the plea was taken?

5       **A**     Yes.

6       **Q**     And what was your recommendation on the offer?

7       **A**     It was a -- it was to take life without parole off the  
8       table. He pleads to attempted murder 20 to 30 -- negotiated  
9       20 to 30.

10      **Q**     And what was your client's reaction to the plea offer at  
11      that time?

12      **A**     He wanted to accept it.

13      **Q**     Was anybody else involved with you in the discussions  
14      about the plea offer?

15      **A**     Yes. Ms. Gilreath, Jael Gilreath; my co-counsel, Jason  
16      Turnblad. Those are the ones I know were -- had a  
17      conversation with the four of us together.

18      **Q**     They had the conversations with you and the applicant's  
19      present?

20      **A**     They did. I can't recall if I went and told him myself  
21      alone first and they came after. But at some point, we all  
22      three had a discussion about the plea offer and whether or  
23      not he wanted to accept it.

24      **Q**     All right. And did you have a recommendation whether he  
25      should take the plea or not?

1     **A**     I -- I think -- I think I leaned toward him accepting  
2     it. I think I recommended he accept it. Mainly with the  
3     evidence that had already been presented and the way the  
4     Judge was leaning on ruling and the way the trial had gone in  
5     general.

6     **Q**     What do you think leaned that way? What was it about  
7     the nature of the State's case that have been presented at  
8     that time?

9     **A**     Well, the State's case was pretty strong, is the number  
10    of stab wounds, the relative lack of injury to Mr. Brown, and  
11    then Mr. Brown's behavior right after the incident. You  
12    know, obviously not going to law enforcement. The victim was  
13    found by two kayakers in the river.

14            She had been in the water by the river walk on the river  
15    for some time. The State had introduced some cell phone  
16    evidence, like Mr. Brown had been searching for information  
17    about the victim. So overall, we -- I thought the State's  
18    case was pretty strong.

19    **Q**     And was that also because he had a high risk -- based  
20    upon that information -- for life without parole?

21    **A**     Yes.

22    **Q**     Okay. Now, at the time of the trial, at the outset, you  
23    made a motion for continuance, but the trial -- or motions  
24    for continuance to some extent -- one of them was related to  
25    expert witnesses that you were seeking to communicate with on

1 the issue of battered spouse syndrome.

2 Or other reactions that he might have had based upon  
3 that incident, based upon his mental demeanor and emotional  
4 situation. Why did you do that? What was it about the case  
5 that caused you rolling up right at the time of trial to seek  
6 that expert witness information out?

7 **A** So when I got the case some months ago, reviewed the  
8 discovery, talked to Mr. Brown, Mr. Brown had mentioned the  
9 past instances of violence. He did mention possible battered  
10 spouse syndrome. I did not think, based on the  
11 circumstances, that he met -- just based on my understanding,  
12 the criteria for battered spouse syndrome.

13 I mean, he and the victim were separated at the time of  
14 the incident. Yes, there were past instances of violence,  
15 but -- or, you know, we had information that there had been  
16 past instances of violence, but, you know, he had been living  
17 with someone else or seeing other people -- someone else.

18 I just thought overall, I did not think I needed to  
19 consult with an expert for battered spouse syndrome. When I  
20 got Jael and Jason on the case -- and we also had two very  
21 good law clerks from USC that were clerking at our offices --  
22 they thought I should consult with an expert.

23 So -- and this was right before trial. This was  
24 probably the week prior to trial. I started calling several  
25 experts. Dr. Lois Veronin (ph), Donna Maddox (ph) I actually

1 spoke to. She could not do it because of scheduling. Dr.  
2 Amanda Salas (ph) had the same issue. She just -- she  
3 couldn't come do it on short notice.

4 So I'd made a pretrial motion for a continuance for us  
5 to have time to -- for him to actually see a battered --  
6 psychiatrist to assess whether or not he fit the criteria for  
7 battered spouse syndrome or not.

8 Q Okay. And were you ever successful in getting that  
9 communication before that trial ended.

10 A With an expert?

11 Q Yeah.

12 A I spoke with Donna Maddox, and I believe I spoke with  
13 Dr. Salas, and they both could not do it that quickly before  
14 trial just because of scheduling. And I think I called two  
15 other experts, but I didn't get a hold of them at all.

16 Q Okay. And the other expert information you were seeking  
17 was basically related to the cell phone. Do You recall that?

18 A Yes. So as to the cell phone, Chris Watkins was playing  
19 double duty. He was a -- just doing -- interview witnesses,  
20 private investigator, looking for evidence, that kind of  
21 thing. But he is also -- I've used him as a cell phone  
22 expert in the past.

23 So he was also examining the cell phone. He went to  
24 actually do an examination of the cell phone shortly before  
25 trial, and he spoke with the Secret Service officer who was

1 doing the cell phone extractions for Cayce Public Safety.

2 And he told him that they had had new software that they  
3 could run, basically that could potentially extract more  
4 information that had been deleted off a phone than the  
5 software that he had used during the original extraction.

6 This case went to trial in 2018, and the incident  
7 happened prior to 2016. So it had been years since they had  
8 done the cell phone extraction. I can't recall when this  
9 first cell phone extraction was done, but it had been some  
10 time since they had done it. It had updated software.

11 So my other motion for continuance was to continue the  
12 case until they could do an extraction with the new software  
13 that they had.

14 **Q** And was anything done while the trial was going on, if  
15 you recall?

16 **A** Not that I'm aware of.

17 **Q** Was materials given over to your expert about  
18 extractions?

19 **A** He had -- he had gotten a cell phone extraction that was  
20 turned over to me, and he had gone to Cayce to do an  
21 examination of the phone himself. And that's when he had the  
22 conversation with the Secret Service officer.

23 **Q** Do you recall questions about the wife's phone and his  
24 phone, wanting to have analysis done on both of those?

25 **A** I believe so. I don't recall if the wife's phone was in

1 -- had been seized or not. I think so.

2 Q Okay. Did you also request a continuance to have both  
3 of those phones?

4 A Yes. Yes, I did.

5 Q And do you know if anything was done at all by any  
6 experts while that trial proceeded?

7 A Not while the trial proceeded, no.

8 Q You know if anything was done after the trial?

9 A No.

10 Q Okay. In your discussions with your client on whether  
11 he should plead guilty, that occurred after there was  
12 communications between you and Judge McMahon that caused some  
13 concern about whether you might be held in contempt by Judge  
14 McMahon. Do you recall that?

15 A My recollection was yes. Judge McMahon, when he ordered  
16 us to write the briefs, he said, there better not be anything  
17 untoward in it or there'll be a contempt hearing in the  
18 morning. I don't recall the exact phrase. I think that was  
19 substantially what it was though.

20 Q Okay. And as a result of that, what, if anything, did  
21 you do?

22 A I consulted with an attorney; I consulted with several  
23 attorneys just about how to proceed in the case in general.

24 Q Okay. And your client, as a result of that, moved to  
25 have you relieved on the record. Is that correct?

1       **A**     That's correct.

2       **Q**     And what was the result of that?

3       **A**     The Judge denied that motion.

4       **Q**     And then the matter proceeded to eventually turn into a  
5 guilty plea. Is that correct?

6       **A**     That's right.

7       **Q**     And was the fact that the Judge had made some statements  
8 to suggest that he might be considering contempt, is that  
9 what led to the guilty plea by your client?

10      **A**     I'm not sure. Do you mean -- is the fact that the Judge  
11 had made statements he was considering hold me in contempt,  
12 what led to the guilty plea for the State to offer it or my  
13 client to take it?

14      **Q**     For you to recommend it?

15      **A**     For me to recommend it? No. No. No. That is not  
16 why.

17      **Q**     All right. And was your recommendation based upon the  
18 nature of the offer itself to remove LWOP, put them in a  
19 20-to-30-year range in front of the Judge, and was that  
20 agreed with by your co-counsel in the case, that  
21 recommendation?

22      **A**     Yes.

23      **Q**     Okay.

24             MR. ZELENKA: Court's indulgence. I have no further  
25 questions. Thank you, Your Honor.

1 THE COURT: Thank you.

2 Cross?

3 MS. MCMAHAN: I like to get closer because I can't see  
4 all the time.

5 CROSS-EXAMINATION

6 BY MS. MCMAHAN:

7 Q I think you alluded to this earlier, but what was the  
8 issue that set the Judge off? Do you remember?

9 A Yeah. I think the State objected to Chris -- or, excuse  
10 me -- Clarence Smith's testimony. And we were arguing it and  
11 I don't remember specifically what kept -- set the Judge off.  
12 I think -- I kind of have to defer to the transcript on that.  
13 I don't remember specifically. It was --

14 Q At some point you had made a motion about him yelling or  
15 something.

16 A That was Friday.

17 Q Yeah.

18 A Friday I made a motion.

19 Q To see if the jurors had heard it.

20 A To poll the jury -- it was ostensibly a mistrial motion  
21 because I was prepared to argue that the jurors had heard him  
22 yelling because my paralegal, who was in the bathroom or  
23 across the hall, could hear him yelling. So we thought that  
24 the jury, who was in the jury deliberation room, could have  
25 also heard him yelling.

1 Different location. But yes, I made a motion because he  
2 had been yelling so loud Thursday, we thought maybe the  
3 jurors would hear it. And if there was any indication that  
4 they had, I was going to make a motion for a mistrial.

5 Q And Mr. Turnblad, Ms. Gilreath, how long -- how far into  
6 your representation were they assisting you? Was it for the  
7 purposes of trial, or had they met with him earlier?

8 A They had met with Mr. Brown prior to trial. So before  
9 this case, this was a backup case. The first case was State  
10 v. Harebrained Foster(ph), which was a murder trial that was  
11 supposed to be tried by one of my colleagues. And there was  
12 a conflict and a continuance granted less than two weeks  
13 before the trial.

14 I believe we had notice 12 days before trial that this  
15 was the one that was going to be called. So I know Ms.  
16 Gilreath, Ms. Jael Gilreath, I think, assisted me with most  
17 of the trials that I had in Lexington before she went to the  
18 -- before she, I guess, took another position within the  
19 office, basically.

20 So -- and then I think Jason Turnblad, it was probably  
21 when I got notice of trial, I asked them if they would help  
22 me with the case.

23 Q And that's pretty normal in large cases to have people  
24 assist you?

25 A Yes.

1 Q And then what was the issue with the expungement order  
2 at the beginning of trial? Do you remember that?

3 A So we had information that she had been arrested for  
4 domestic violence twice. There was an expungement order from  
5 one of the arrests. And I'd have to look at my file to  
6 transfer -- or a transcript to figure out to recall exactly  
7 which one. But there was an expungement order, I believe,  
8 for a misdemeanor DV that she may have been arrested for.

9 Are you talking about my motion for continuance for  
10 that?

11 Q Yes.

12 A So it was a motion for continuance, but also, I guess,  
13 sort of a motion to compel -- or a motion to compel to try to  
14 get information that may have been in law enforcement  
15 possession for that expunged arrest for either of the -- the  
16 arrests that were expunged.

17 Q And did you review the actual DVD CD with the phone  
18 extraction, or was that Mr. Watkins?

19 A I know I had it. I believe I reviewed it at some point,  
20 But I let Mr. Watkins handle most of that. If I have any  
21 questions about or anything like that.

22 Q Do you recall if Mr. Watkins indicated that there was no  
23 videos or photos on there?

24 A Not the kind we were looking for, no.

25 Q But the texts were recovered? Do you remember.

1       **A**     Not -- I don't believe the texts we were looking for  
2       were recovered from Mr. Brown's phone.

3       **Q**     There were some text messages referenced in the trial.  
4       Do you remember where those came from?

5       **A**     Referenced in the -- oh, in the trial.

6       **Q**     They come from --

7       **A**     I think they came -- maybe they came from Mr. Brown's  
8       phone. I won't recall exactly.

9       **Q**     Did you have a conversation with him about whether or  
10      not he should testify?

11      **A**     Yes.

12      **Q**     And what ultimately did you guys decide based on that?

13      **A**     We decided that he should to get a self-defense  
14      instruction or to, you know, to create reasonable doubt that  
15      this wasn't self-defense, essentially.

16      **Q**     And at some point, he'd been served with LWOP notice.  
17      Do you recall what his priors were to make him LWOP eligible?

18      **A**     He had a previous armed robbery conviction.

19      **Q**     Was that going to be able to come out if he testified?

20      **A**     The Judge ruled that it would not.

21      **Q**     Why was that? Is it too far back in time?

22      **A**     I think in the interest of justice, it was not too far  
23      back in time. I had anticipated it coming in, but I think we  
24      argued 403 and the Judge kept it out. Just that it was more  
25      prejudicial than probative or in the interest of justice.

1 I'd have to defer to the transcript on that. But he kept it  
2 out.

3 Q And I just want to clarify. So the witnesses that  
4 watched the video, you initially said that Clarence Smith had  
5 told you that he had seen the video?

6 A Yes.

7 Q And was it that it came out at trial that he didn't or  
8 he just knew about it or --

9 A No, I expected him to testify as to what he saw on the  
10 video, even if it was just in camera.

11 Q The issue was whether or not he could actually testify  
12 about that and that's what --

13 A Yes.

14 Q -- the briefing and stuff was about?

15 A Yes. That was one of the issues, I believe. Yeah.

16 Q And do you recall if you ever had a conversation with  
17 Mr. Brown in the back rooms about how he felt about your  
18 representation after that whole situation?

19 A I don't.

20 Q Did you expect him to make a motion to relieve you?

21 A Yes.

22 Q And did Mr. Brown ever tell you that he'd actually also  
23 hired Mr. Watkins to find out who his wife's adulterer was?

24 A I don't know. I don't recall that.

25 MR. ZELENKA: Oh, I'm sorry, I didn't hear that. The

1 question --

2 MS. MCMAHAN: Did Mr. Brown ever tell you he had hired  
3 Mr. Watkins to find out who his wife's adulterer was?

4 MR. ZELENKA: Thank you.

5 MS. MCMAHAN: Court's Indulgence.

6 THE COURT: Sure.

7 MS. MCMAHAN: Nothing further.

8 THE COURT: Redirect, Mr. Zelenka?

9 MR. ZELENKA: Nothing on redirect.

10 THE COURT: You can step down. Thank you.

11 Call your next witness.

12 MR. ZELENKA: Jael Gilreath.

13 Jael Gilreath,

14 after having been duly sworn, was examined and testified to

15 as follows:

16 THE WITNESS: My name is Jael Gilreath.

17 DIRECT EXAMINATION

18 BY MR. ZELENKA:

19 Q And Ms. Gilreath, how are you currently employed?

20 A Currently I work at the 5th Circuit Solicitor's Office.

21 Q And how were you employed in June 2018 when this matter  
22 was tried before Judge McMahon?

23 A I worked at the 11th Circuit Public Defender's Office.

24 Q Okay. Briefly, how long have you practiced law?

25 A As of now?

1 Q Pardon me?

2 A As of now?

3 Q Yes.

4 A About 13 years. I was sworn in November of 2011.

5 Q And how long were you with Public Defender's Office?

6 A I started working there in September of 2013 and then I  
7 left in October of 2021. So a little over 8 years.

8 Q And as part of that work, how did you become involved in  
9 the defense of Joshua Brown, if you recall?

10 A So I -- as I believe Mr. Story testified earlier -- he  
11 and I, we shared a paralegal and we had a tendency to work on  
12 cases together. I think we tried other cases together as  
13 well while I was working there.

14 And I don't remember how long it was prior to the trial,  
15 but he, at some point in the month or two leading up to the  
16 actual trial asked me to assist with the trial.

17 Q And did you have a role concerning cell phone  
18 extractions?

19 A I did. I did a lot of work with our expert, Chris  
20 Watkins, and then I questioned -- when the actual trial  
21 happened, I believe I handled the questioning and the  
22 arguments regarding the phones in the pre trial motions and  
23 then however far we got into that part of it in the -- in the  
24 actual trial as well.

25 Q And were you aware of your client's interest in locating

1 certain videos showing what he was asserting would be violent  
2 confrontations or threats between himself and Anne Brown?

3 A Yes, he had told us about a video -- maybe more than one  
4 video -- but the one that in particular that I remember  
5 involved her attacking him with a pair of scissors. And that  
6 was something that we were hoping to use as part of his  
7 defense.

8 Q Okay. And what, if anything, did you do to investigate  
9 his assertions?

10 A So I consulted with Chris Watkins. He indicated that in  
11 terms of the evidence that had been provided to us that it  
12 wasn't there. However, our understanding was that it had  
13 been, whether intentionally or unintentionally, at some point  
14 it had been deleted.

15 And so, you know, we were trying to find out whether  
16 there was a possibility -- whether it's that it still existed  
17 on the phone. And so I had conversations with Chris Watkins  
18 about that, and he personally was not able to locate it, but  
19 there were discussions as to whether the Secret Service Agent  
20 who had done the original extraction might have -- might now  
21 have the ability, at the time of trial, have the ability to  
22 locate it.

23 Q Okay. And what steps did you take to try to get that  
24 done?

25 A So when I spoke with Chris Watkins, what he said was

1 that -- so Cellebrite was the software that was used to  
2 extract the data off of the phones. And there are different  
3 types of extractions that can be done and depending on which  
4 type of phone you're extracting from, you know, this kind of  
5 what update you're out of Cellebrite. There were different  
6 capabilities at different times.

7 And so at the time the original extraction had been  
8 performed, Cellebrite was not able to perform what's called a  
9 physical extraction. And it had performed a logical  
10 extraction. And I'm blanking on the name, but there's  
11 another type of extraction that I believe it had also been  
12 able to perform.

13 But Chris Watkins told us that the physical extraction  
14 had the ability to pull more data. In particular, with  
15 respect to deleted data. It was able to access sort of more  
16 like the far reaches of a phone. And so with the more recent  
17 update, he told me that he had spoken with Mr. Van -- Van  
18 something Van, the Secret Service agent, who had performed  
19 the extraction. And he told him that with the most recent  
20 update to Cellebrite, they were now able to perform a  
21 physical extraction.

22 He said that when he discovered this, that he had  
23 called, I believe it would have been Ms. Mayes, that he spoke  
24 with who -- and asked, "Do you want me to perform this  
25 additional extraction now that we have the ability to do

1 this?" Once he realized the case was up for trial and that  
2 he had been told no, not to do that.

3 And so we didn't find that out until, you know, right  
4 before trial because it had just happened. And so when we  
5 discovered that, I believe that was when -- or what led to us  
6 making an argument for a continuance so that we could,  
7 hopefully, have that new type of extraction performed in  
8 order to see if that video -- and I could be recovered -- I  
9 believe there were maybe some other conversation, you know,  
10 deleted messages and other videos and things like that.

11 But in particular that video involving the scissors we  
12 were hoping to find.

13 Q Okay, and the time of the break overnight, the team was  
14 asked -- both sides were asked, to brief the admissibility of  
15 that information. Is that correct?

16 A Of the -- the video itself or the cell phone?

17 Q The testimony of Clarence Smith, over what he saw on the  
18 video.

19 A Correct. That -- yes, we were ordered to brief that  
20 issue and have it turned in by 8 o'clock the next morning.

21 Q And as I understand, at least from the defense side, you  
22 were presenting an argument based upon some decisions out of  
23 the State Courts that that information would be admissible  
24 and come in -- what Mr. Clarence Smith saw. Is that correct?

25 A Correct.

1 Q Okay. Now, shortly after that period of time on that  
2 day, they made a plea offer of to take LWOP off the table and  
3 to accept a plea of attempted murder of a range of 20 to 30  
4 years. Do you recall that?

5 A Yes.

6 Q And did you have the opportunity to meet with Mr. Brown  
7 at that time and discuss the viability of doing the plea?

8 A I did -- not by myself. I was with Mr. Story and Mr.  
9 Turnblad, as I recall.

10 Q And what was the result of that meeting?

11 A That Mr. Brown decided to accept the plea offer.

12 Q Did he indicate to you his reasons for accepting the  
13 plea offer at that time?

14 A A big factor was the fact that the LWOP, the life  
15 without parole, was being taken off the table. That was a  
16 big factor. Another was the -- I guess maybe rapport between  
17 us and Judge McMahon. And I remember him saying something  
18 along the lines of about how he, you know, the Judge clearly  
19 didn't like us and didn't -- and wasn't going to agree with  
20 us, wasn't going to, you know, none of his decisions were  
21 going to go our way, essentially, and that he didn't, you  
22 know, he didn't foresee things going well based on that.

23 So that was part of it. I don't remember -- I'm sure  
24 there were other things, but those were the two major things  
25 I remember us talking about.

1 Q And when he accepted the plea, he agreed with State's  
2 version of the case during the acceptance of the plea, is  
3 that correct? If you recall.

4 A Do you mean, like, he -- certainly we disagree. I mean,  
5 he's -- he did plead guilty, but certainly we made it clear  
6 there were aspects that we disagreed with. But --

7 Q And he apologized to the victim?

8 A Yes, that's correct.

9 Q And the Judge, with a range of 20 to 30, sentenced him  
10 on the lower end of the range -- 23 years, isn't that true?

11 A That's correct.

12 MR. ZELENKA: I have no further questions. Thank you.

13 THE COURT: Any cross?

14 MS. MCMAHAN: Also, I just want to state, even though my  
15 last name is McMahan, I am not related to Judge McMahan.

16 CROSS-EXAMINATION

17 BY MS. MCMAHAN:

18 Q So you said earlier that there were videos, but they  
19 weren't what you wanted. Do you recall what kind of videos  
20 you did have?

21 A What kind that we wanted?

22 Q Earlier you said there were videos, but not what you  
23 wanted on the extraction. Were there any videos that you  
24 actually got from the extraction?

25 A I'm sure there were. I mean, I don't remember exactly,

1 but they weren't -- they -- they weren't the video involving  
2 the scissor attack.

3 Q To the -- the videos that may have been on there weren't  
4 helpful to the defense -- to your defense. I guess,  
5 essentially.

6 A Right, there -- there were no videos that we had from  
7 the extractions that we felt were either admissible or useful  
8 for the defense.

9 Q Okay.

10 MS. MCMAHAN: Nothing further, Your Honor.

11 MR. ZELENKA: No further questions. Your Honor, Mr.  
12 Turnblad's here, and I know I had him listed on the witness  
13 list -- and Ms. Usry. And I'm not going to call either one,  
14 but if they want to on reply, I can probably --

15 MS. MCMAHAN: I'm not calling them on reply.

16 THE COURT: Okay.

17 MR. ZELENKA: No further questions.

18 THE COURT: I'm happy to hear any closing arguments you  
19 have.

20 MS. MCMAHAN: Judge, I just asked that you --  
21 obviously, the record's fairly voluminous in this situation.  
22 I just ask that you review it as a whole before making a  
23 decision. And taking into account what Mr. Brown said today  
24 about how he felt his representation was going for him and  
25 why he felt he was forced into pleading guilty.

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

2 Mr. Zelenka.

3 MR. ZELENKA: I don't have any objection with that. I  
4 would point out, just very briefly, that he had done an  
5 argument that attempted murders no longer belong in South  
6 Carolina. I assume that's being abandoned. Am I correct?

7 MS. MCMAHAN: No, I believe Mr. Brown still wants to go  
8 forward with that.

9 THE COURT: Okay. I understand.

10 MR. ZELENKA: Otherwise, we would rest upon the -- the  
11 transcript. And I provided the Judge a hard copy of the  
12 two-volume transcript while we were in the hearing. And he  
13 was already provided that, as well as the application and the  
14 other records from the Clerk of Court.

15 THE COURT: Thank you, sir.

16 All right, I'll take this under advisement, and I'll  
17 have an answer for you guys.

18 Thank you.

19 MR. ZELENKA: Thank you, Judge.

20

21 (Proceedings adjourned at 4:45 p.m.)

22

23 **CERTIFICATE OF TRANSCRIBER**

24 CASE NAME/NUMBER: Joshua Brown vs State of South Carolina

25 2019-CP-32-2210

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DATE OF HEARING: AUGUST 26, 2024

COURT REPORTER/MONITOR: Melinda D. Jones, DCRP

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I, LORAIN VICTORIA EDWARDS, do hereby certify that the foregoing transcript is a true and correct record of the recorded proceedings; that said proceedings were transcribed to the best of my ability from the audio recording and supporting information, and that I am neither counsel for, related to, nor employed by any of the parties to this case, and I have no interest, financial or otherwise, in its outcome.

Loraine Victoria Edwards

LORAIN VICTORIA EDWARDS, CER, CET Certified Transcriber

Date Submitted: FEBRUARY 3, 2026

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STATE OF SOUTH CAROLINA )  
COUNTY OF LEXINGTON )

2025 NOV 10 AM 11:20

) IN THE COURT OF COMMON PLEAS  
) IN THE ELEVENTH JUDICIAL CIRCUIT

Joshua Thomas Brown, SCDC #286520, )

) Case No. 2019-CP-32-02210

) Applicant, )

) **ORDER OF DISMISSAL**

) v. )

) State of South Carolina, )

) Respondent. )

This matter comes before this Court by way of a *pro se* application for post-conviction relief filed by Joshua Thomas Brown (Applicant) on June 4, 2019. The Applicant was initially appointed Overture Walker to represent him in this matter on July 10, 2019. On October 4, 2019, the Respondent made a Return and Motion for a More Definite Statement. On November 18, 2020, appointed counsel Walker was replaced by Ashley A. McMahan to represent him. On August 24, 2024, counsel McMahan served the Respondent with an Amended Post-conviction Relief Application.

This matter was convened for an evidentiary hearing on August 26, 2024. The Applicant was present and represented by appointed counsel McMahan. The Respondent was represented by Deputy Attorney General Donald J. Zelenka of the Attorney General’s Office. Testimony was received from the Applicant, Stephen Story and Jael Gilreath. Subsequent to the hearing this Court made an initial indication of an intent to dismiss that application. This Order of Dismissal follows.

**I. PROCEDURAL HISTORY**

Applicant is confined in the South Carolina Department of Corrections pursuant to the orders of commitment of the Lexington County Clerk of Court. Applicant was arrested on August

11, 2015, following a stabbing incident involving Applicant's wife. During its March 2016 term, the Lexington County Grand Jury indicted the Applicant for attempted murder (2016-GS-32-00873).

On June 18, 2018, Applicant proceeded to a jury trial before the Honorable R. Knox McMahon. Assistant Public Defenders Stephen Story, Jason Turnblad, and Jael Gilreath represented Applicant. Deputy Solicitor Suzanne Mayes and Assistant Solicitor Kate Usry of the Eleventh Circuit Solicitors Office prosecuted the case. On June 22, 2018, before the trial concluded, Applicant pleaded guilty as indicted.

At the outset of the plea hearing, Mr. Story advised the Court that Applicant understood the elements of the charge against him, the possible punishment he could receive, and his constitutional rights as they have been explained to him. (Tr.p. 713-714; Plea Tr. 4-5). Judge McMahon thereafter explained the offense to Applicant in greater detail, and advised Applicant that he could receive the maximum of thirty years' imprisonment. (Tr.p. 715; Plea Tr. 7). Judge McMahon reiterated to Applicant that by pleading guilty he would waive important constitutional rights, including his right to proceed forward with his trial by jury, his right to confront the witnesses against him, and his right to remain silent. (Tr.p. 715-716; Plea Tr. 7-8). Judge McMahon further informed Applicant that if he did proceed with his trial, the burden of proof would not be upon him, but rather would be upon the State to prove every element of every charge against him, and that they would have to convince every member of the jury of his guilt. (Tr.p. 716-717; Plea Tr. 8). Applicant indicated he understood, and wished to waive these rights in order to plead guilty. (Tr.p. 717; Plea Tr. 7-8).

The solicitor then advised the Court of the terms of the negotiated plea agreement; that Applicant would receive a sentence of twenty to thirty years' imprisonment and the State would

withdraw its notice of intent to seek life without parole.<sup>1</sup> Tr.p. 718; (Plea Tr. 10). Upon inquiry by the Court, Applicant indicated he was completely satisfied with his lawyers, that they had done everything they reasonably could have to properly represent him, and that he had no complaints about his lawyers, the solicitors, or any of the police officers involved in his case. (Tr.p. 719-720; Plea Tr. 12). Judge McMahon accepted Applicant's plea as being freely knowingly, and voluntarily made. (Tr.p. 721; Plea Tr. 15). Pursuant to the negotiated plea agreement, Judge McMahon sentenced Applicant to twenty-three years' imprisonment (Tr.p. 736-737; Plea Tr. 28). Applicant did not appeal his guilty plea or sentence.

## II. BRIEF STATEMENT OF FACTS

On August 11, 2015, Applicant was arrested after he stabbed his wife numerous times in the neck and back, causing serious bodily injury that required emergency medical surgery. The victim reported to law enforcement that her husband stabbed her after making statements about killing her just prior to the attack.

## III. ALLEGATIONS BEFORE THE COURT

In his initial application for post-conviction relief, Applicant alleged he was being held in custody unlawfully for the following reasons:

1. Ineffective assistance of counsel
  - a. Counsel failed to seek the opinion of any expert

The Applicant, with the assistance of counsel, filed an amended application in the matter on August 26, 2024, which alleged the following:

1. Ineffective Assistance of Counsel of Stephen R. Story, Jr. –

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<sup>1</sup> The State previously served Applicant with its notice of intent to seek life without parole pursuant to S.C. Code § 17-25-45(A)(1)(a) based on a 2002 conviction for armed robbery in Richland County (2002-GS-40-1258).

a. During Applicant's trial, Mr. Story enraged the judge to the point the judge threatened contempt. It was at this point the Applicant felt he had no choice but to plead guilty. See Transcript at page 684, line 20 - page 690, line 24. And in fact, move to have his attorneys relieved because he no longer felt comfortable with them. See Transcript, page 699, line 15 – page \_\_\_.

b. The guilty plea offer was actually relayed to Mr. Story a day before he actually told the Applicant about it.

c. There were videos and photos retrieved off the Applicant's phone that would have shown that the Applicant was essentially a "battered spouse" however, by the time the trial started, Applicant's attorneys could no longer locate the digital evidence needed to defend the Applicant.

d. Because Mr. Story made the judge angry, Applicant did not have the chance to testify in his own defense (after the judge ruled his prior record would not be able to come in) and had he been able to, the outcome of the trial may have gone in his favor.

In the amended application, PCR counsel also included handwritten pleadings from the Applicant which essentially included the following assertions:

e. I was charged with the crime of attempted murder. However, my attorney never advised me that attempted murder is not a crime in South Carolina. The Applicant contended that he never denied the altercation with the victim, but I always claimed it was self-defense. The Applicant contends that if he knew it was not a crime in South Carolina he would have wanted a jury trial.. When the Solicitor informed the Applicant that he was seeking life without parole that put more pressure on me.

f. When the solicitor and defense counsel approached the Applicant mid-trial with the offer to accept the plea in exchange for a sentence if 20 to 30 years and drop the state's request for life without parole, it was a collaboration to obtain a conviction for something the solicitor knew would be overturned on appeal. Under this pressure , the Applicant take the plea. When questioned by the trial judge, the Applicant admitted he only had a 10<sup>th</sup> grade education and was therefore not capable of making the decision to any of the court's questions. When asked if he had been threatened or coerced he said no, but he had no idea that he had already been coerced by the plea offer. , Similarly when asked about if he understood his rights, with only a 10<sup>th</sup> grade education he could not have understood the complexities , particularly when his counsel failed to tell him that he was pleading guilty to a crime that did not exist.

### FINDINGS AND CONCLUSIONS OF LAW

This Court has before it the records of the Lexington County Clerk of Court records regarding the subject convictions, the transcript of the trial and guilty plea from June 18-22, 2018, the Applicant's records from the South Carolina Department of Corrections, the records of the current PCR action, and the plea transcript. This Court has also reviewed the records submitted to it by the parties, the legal arguments made by the attorneys, and the pleadings. Pursuant to S.C. Code Ann. § 17-27-80, this Court makes the following findings based upon all of the probative evidence presented during the trial, the guilty plea and this evidentiary hearing.

Following a thorough review of the record in its entirety, along with the testimony and evidence presented at the evidentiary hearing, this Court finds Applicant failed to meet the high burden required for a grant of post-conviction relief pursuant to Rule 71.1, SCRCP, and the Uniform Post-Conviction Procedure Act (the Act). For the reasons discussed below, this Court denies relief and dismisses this action with prejudice.

#### A. INEFFECTIVE ASSISTANCE OF PLEA COUNSEL, GENERALLY

This Court finds that Applicant's claims of ineffective assistance of counsel are without merit. 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—a mere allegation of ineffective assistance is not sufficient to warrant granting relief. *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 PCR applicant has the burden of establishing both deficiency and prejudice in order to be entitled to relief. *Hughes v. State*, 346 S.C. 554, 558, 552 S.E.2d 315, 317 (2001); Rule 71.1(e), SCRPC. To prove deficient performance, the applicant must establish that, in light of all the circumstances, the acts or omissions complained of “were outside the wide range of competence” demanded of attorneys in criminal cases. *Strickland*, 466 U.S. at 688. To prove prejudice, the

applicant must establish that “there is a reasonable probability that, but for counsel’s unprofessional errors, the result of the proceeding would have been different.” *Id.* at 694. A reasonable probability is a probability “sufficient to undermine confidence in the outcome.” *Id.* However, “the ultimate focus of inquiry must be on the fundamental fairness of the proceeding whose result is being challenged.” *Id.* at 696.

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 defendant,’ and ‘[i]t should go without saying that the absence of evidence cannot overcome [i]t.’ *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 ‘[t]he record does not reveal’ that counsel took an approach that *no competent lawyer would have chosen.*” *Id.* (alteration in original) (emphasis added) (quoting *Titlow*, 571 U.S. at 23–24). 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. *Strickland*, 466 U.S. 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”);

Because the Sixth Amendment right to counsel also applies to a defendant entering a guilty plea, *Hill v. Lockhart*, 474 U.S. 52 (1985), extended the two-part *Strickland* test to challenge guilty pleas based on ineffective assistance of counsel. See *Padilla v. Kentucky*, 559 U.S. 356, 373 (2010) (recognizing that the guilty plea process is a “critical phase of litigation” for purposes of the Sixth Amendment right to effective assistance of counsel). When reviewing a guilty plea, the analysis

of counsel's performance under the first prong of *Strickland* remains unchanged—the applicant must show that counsel's representation fell below an objective standard of reasonableness demanded of attorneys in criminal cases. *Hill*, 474 U.S. at 58–59; accord *Thompson v. State*, 340 S.C. 112, 115, 531 S.E.2d 294, 296 (2000). An applicant alleging his guilty plea was induced by ineffective assistance of counsel must prove counsel's advice to plead guilty was not “within the competence demanded of attorneys in criminal cases.” *Hill*, 474 U.S. at 56. The second, or “prejudice” prong, however, “focuses on whether counsel's constitutionally ineffective performance affected the outcome of the plea process.” *Id.* at 58–59. Specifically, when an applicant claims counsel's deficient performance caused him to accept a plea, the applicant “must show that there is a reasonable probability that, but for [plea] counsel's [alleged] errors, he would not have pleaded guilty and would have insisted on going to trial.” *Id.* at 59.

This inquiry “focuses on a defendant's decisionmaking” and does not turn on the outcome of a defendant's actual criminal proceeding or potential outcome had a defendant chosen to proceed to trial. *Lee v. United States*, 137 S. Ct. 1958, 1966 (2017). However, reviewing “[c]ourts should not upset a plea solely because of *post hoc* assertions from a defendant about how he would have pleaded but for his attorney's deficiencies.” *Id.* 137 S. Ct. at 1967. Rather, judges should “look to contemporaneous evidence to substantiate a defendant's expressed preferences.” *Id.*; *Padilla*, 559 U.S. at 372 (explaining that the applicant must convince the court that a decision to reject the plea bargain would have been rational under the circumstances. The question here is whether the applicant, if correctly informed of circumstances surrounding the plea, would have pleaded guilty—*not* whether counsel would have still advised him or her to plead guilty. *Turner v. State*, 335 S.C. 382, 385, 517 S.E.2d 442, 444 (1999).

#### **B. INVOLUNTARY GUILTY PLEA**

“[I]t is the prerogative of any person to waive his rights, confess, and plead guilty, under judicially defined safeguards, which are adequately enforced.” *Reed v. Becka*, 333 S.C. 676, 685, 511 S.E.2d 396, 401 (Ct. App. 1999). Because a criminal defendant waives several constitutional rights by pleading guilty, the Due Process Clause requires that guilty pleas are entered into voluntarily, knowingly, and intelligently. *Boykin v. Alabama*, 395 U.S. 238 (1969); *Pittman v. State*, 337 S.C. 597, 524 S.E.2d 623 (1999). To be intelligent, a plea must be made by a mentally competent defendant who understands both the charges against him and the consequences of his plea. *Brady v. United States*, 397 U.S. 742, 748 (1970). To be voluntary, a plea must be free of threats or other coercion that would impermissibly distort the defendant’s choice. *Id.* at 755; *see also United States v. Smith*, 440 F.2d 521, 528–529 (7th Cir. 1971) (Stevens, J., dissenting) (explaining that voluntariness relates to the trustworthiness of the admission of guilt and binding character of the waiver of the constitutional protections which would be available to the accused if he elected to stand trial).

Before a court can accept a guilty plea, the defendant must be advised of the constitutional rights he or she is waiving; the right to a jury trial, the right to confront one’s accusers, and the privilege against self-incrimination. *Boykin*, 395 U.S. at 243. Additionally, the defendant “must be aware of the nature and crucial elements of the offense, the maximum and any mandatory minimum penalty, and the nature of the constitutional rights being waived.” *Pittman*, 337 S.C. at 599, 524 S.E.2d at 624.

The defendant’s knowing and voluntary waiver of statutory or constitutional rights must be established by a complete record, and “may be accomplished by colloquy between court and defendant, between court and defendant’s counsel, or both.” *State v. Ray*, 310 S.C. 431, 437, 427 S.E.2d 171, 174 (1993); *see generally Wolfe v. State*, 326 S.C. 158, 485 S.E.2d 367 (1997) (guilty

plea not involuntary where the colloquy demonstrated the trial judge asked defendant twice whether he understood there were no promises and that no sentencing recommendations were binding on the judge). To ensure the defendant understands the consequences of his guilty plea, the plea judge “usually questions the defendant about the facts surrounding the crime and punishment that could be imposed.” *Dover v. State*, 304 S.C. 433, 434–35, 405 S.E.2d 391, 392 (1991). However, the plea judge “does not have to direct the defendant’s attention to every consequence of his plea provided the record reveals affirmative awareness of the consequences of a guilty plea.” *Carter v. State*, 329 S.C. 355, 362, 495 S.E.2d 773, 776 (1998).

An applicant who enters a plea on the advice of counsel may “only attack voluntary, knowing and intelligent character of the plea by showing that plea counsel’s representation fell below an objective standard of reasonableness and that there is a reasonable probability that, but for counsel’s errors, the [applicant] would not have pled guilty, but would have insisted on going to trial.” *Roscoe*, 345 S.C. at 20, 546 S.E.2d at 419. In evaluating an allegation on PCR that a guilty plea was based on inaccurate advice of counsel, the transcript of the guilty plea hearing will be considered to determine whether any possible error by counsel was cured by the information conveyed at the plea hearing. *Wolfe*, 326 S.C. at 165, 458 S.E.2d at 370; *cf. Rayford v. State*, 314 S.C. 46, 443 S.E.2d 805 (1994) (finding that, where the transcript of the guilty plea proceeding refuted applicant’s claim that he did not understand the terms of a plea bargain, granting PCR was inappropriate notwithstanding applicant’s claim his lawyer misadvised him). The voluntariness of a guilty plea “is not determined by an examination of the specific inquiry made by the sentencing judge alone, but is determined from both the record made at the time of the entry of the guilty plea and the record of the post-conviction hearing.” *Harres v. Leeke*, 282 S.C. 131, 133, 318 S.E.2d 360, 361 (1984).

The test for determining the validity of a guilty plea is “whether the plea represents a voluntary and intelligent choice among the alternative courses of action open to the defendant.” *North Carolina v. Alford*, 400 U.S. 25, 31 (1970). It is “well established that a guilty plea is not rendered invalid because it represents a compromise by defendant, thrusts a difficult judgment upon him, or is motivated by fear of greater punishment.” *United States v. Cox*, 464 F.2d 937, 942 (6th Cir. 1972) (citing *Brady*, 397 U.S. 742). The State may properly encourage guilty pleas either by being more lenient to those who enter such pleas, *Brady*, 397 U.S. at 750–53, or by increasing the risks of punishment on those who do not. *Alford*, 400 U.S. at 37.

Surmounting *Strickland*’s high bar is never an easy task, and the strong societal interest in finality has “special force with respect to convictions based on guilty pleas.” *Lee*, 137 S. Ct. at 1967 (internal citations and quotation marks omitted); *cf. Hill*, 474 U.S. at 58 (“[R]equiring a ‘prejudice’ showing from defendants who seek to challenge the validity of their guilty pleas on the ground of ineffective assistance of counsel ‘will serve the fundamental interest in the finality of guilty pleas.’”). Because a guilty plea is a solemn, judicial admission of the truth of the charges against an individual . . . , a criminal inmate’s right to contest the validity of such a plea is usually, but not invariably, foreclosed.” *Dalton v. State*, 376 S.C. 130, 137, 654 S.E.2d 870, 874 (Ct. App. 2007) (citing *Blackledge v. Allison*, 431 U.S. 63, 74 (1977); *see also Jamison v. State*, 410 S.C. 456, 469–71, 765 S.E.2d 123, 129–30 (2014) (observing that “guilty plea[s] must be treated as final in the vast majority of cases” and instructing that caution must be exercised so as not to “undermine the solemn nature of a guilty plea and the finality that generally attaches to a guilty plea”); *cf. United States v. Broce*, 488 U.S. 563, 569 (1989) (“A plea of guilty and the ensuing conviction comprehend all of the factual and legal elements necessary to sustain a binding, final judgment of guilty and a lawful sentence. Accordingly, when the judgment of conviction upon a

guilty plea has become final and the offender seeks to reopen the proceeding, the inquiry is ordinarily confined to whether the underlying plea was both counseled and voluntary. If the answer is in the affirmative then the conviction and the plea, as a general rule, foreclose the collateral attack.”).

Indeed, admissions made during a guilty plea should be considered conclusive unless an applicant presents valid reasons why he should be allowed to depart from the truth of his statements.” *Dalton*, 376 S.C. at 137–38, 654 S.E.2d at 874 (internal citations and quotation marks omitted); *cf. Blackledge*, 431 U.S. at 73–74 (pointing out that representations made by a defendant, his lawyer, and the prosecutor at a guilty plea hearing, as well as any findings made by the judge accepting the plea, constitute a “formidable barrier in any subsequent collateral proceedings”). “What is at stake in this phase of the case is not the integrity of the state convictions obtained on guilty pleas, but whether, years later, defendants must be permitted to withdraw their pleas, which were perfectly valid when made, and be given another choice between admitting their guilt and putting the State to its proof.” *McMann v. Richardson*, 397 U.S. 759, 773 (1970) (noting the compelling interests in maintaining the finality of guilty-plea convictions validly obtained). “Furthermore, there must be some consequence attached to the decision to plead guilty.” *People v. Schneider*, 25 P.3d 755, 761 (Colo. 2001) (*cited with approval in Jamison*, 410 S.C. at 469, 765 S.E.2d at 129) (“A defendant who voluntarily and knowingly enters a plea accepting responsibility for the charges is properly held to a higher burden in demonstrating to the court that newly discovered evidence should allow him to withdraw that plea.”).

#### TESTIMONY FROM THE PCR PROCEEDING

*JOSHUA BROWN*

The Applicant testified that Stephen Story was his main attorney, but he was also represented by Jason Turnblad and Jael Gilreath. The Applicant stated that he pled guilty after about five days of trial.

The Applicant testified that he was incarcerated for three years prior to the trial. He claimed he saw Story six or seven times in person and about seven times additional times over the telephone. He claimed that they went over some evidence, but not all the evidence.

Brown testified that the victim was out on bond for Domestic Violence at the time of the incident. However, he learned that the charges were expunged prior to this trial. He claimed that there were photographs of the Applicant's injuries related to the earlier incident that he wanted to use.

The Applicant complained that during the trial, the trial judge got upset with counsel Story and threatened him with contempt. As a result, the Applicant testified that the next morning he filed a motion asking for a new lawyer.

The Applicant also complained that he did not get to testify at his trial. He stated that he planned on testifying. He felt that he could have enlightened the jury with his side of the story. He stated that he would have testified that his wife had a bond condition on her pending charges to have no contact with the Applicant. However, he stated that they discussed in text messages where to have a meeting. Brown claimed that they met at a private spot to discuss their joint infidelity and custody issues in their marriage. He stated that her story in court was different. He stated that he was working on the marriage, but they talked about the infidelity and got into an argument. He stated that he would have advised the jury about her cheating. He claimed that she wanted to meet there.

Brown testified that he spoke to Story about this incident. He stated that they discussed Battered Spouse Syndrome with Story. He stated that they had a conversation about videos that he claimed he had on his phone. He asked his lawyer to locate the videos.

He stated that there was a plea offer before Friday but that he was not aware of it then. He claimed that Story was aware of the plea offer earlier because Brown claimed his sister heard about it on Thursday. Brown claimed he was very upset with the judge's treatment of Story.

Brown claimed his statements to the investigator and to the Court were always that he acted in self-defense.

On cross-examination, Brown stated that he pled guilty because of ineffective assistance of counsel and that he did not want to continue with him. Brown asserted that he wanted to call witnesses, including his step-father, his cousin Clarence Smith and himself. He admitted that none of the witnesses saw the stabbing incident, except him.

Brown stated that he gotten another woman pregnant and did not want to tell his wife because "she is violent." He claimed that he stabbed his wife in self-defense because she had stabbed him first. Brown stated that Story tried to get the missing video information into court to explain information that Brown wanted to address related to her violence toward him.

Brown acknowledged that he had two other lawyers. He stated that one primarily did writing and research and had no involvement in the plea. The other had no plea involvement. He stated that only Story spoke with him about the plea. Brown claimed that the video was recovered, but that it was not shown to Brown. He stated the text messages were not admitted into court.

Brown stated that his wife had domestic violence charges in 2014 and 2015. Brown stated he told the victim he was sorry, but did not attempt to murder her.

On re-direct, he claimed that he had no option except to plead guilty due to counsel Story's behavior with the judge.

*STEVEN STORY*

Counsel Steven Stoney testified that he was an Assistant Public Defender and had practiced since 2013. He indicated that he had handled major felonies since he started and the majority are serious or most serious crimes. He stated he had handled ten to fifteen murder cases. He was assigned this case in 2017 from Sally Henry.

He met with his client six to seven times and had spoken with him many times by telephone. Story recalled that Brown got written discovery before the case was re-assigned to Story. Story said he went over all written discovery with Brown.

Story stated that there was a cellphone extraction done by Cayce that showed that some videos were deleted off the phone. Brown claimed the missing video he sought allegedly showed an earlier incident when his wife attacked Brown with a pair of scissors.

Story stated that this attempted murder incident involved Brown allegedly stabbing his wife around seventeen (17) times. Story did not recall Brown having any stab wounds.<sup>2</sup> He claimed it was in self-defense.

Story indicated that he was prepared to call the witnesses that Brown wanted including his step-father. Story noted that Clarence Smith had testified by the time the plea was entered. He indicated that he saw two instances of violence by the wife towards Brown, including the stabbing with scissors and smacking the hand with a hammer. Smith claimed he had seen the video Brown recorded and saw Brown right after the hammer incident. [Story noted that there was a hearsay

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<sup>2</sup> Evidence at trial revealed that the Applicant had a superficial laceration of 4 centimeters on his right hand. Tr.p. 435-438.

and excited utterance argument]. Story noted that the judge indicated that seeing a video is not personal knowledge.

Story indicated the offer was made during a recess during the trial on Friday. Story stated the state made a plea offer of 20 to 30 years for attempted murder, as compared to life without parole. He stated he discussed the offer with his client who agreed to go forward with it. Story indicated that he encouraged his client to accept the offer. He indicated that the state had a strong case, including the number of stab wounds, the fact the victim was found in the river and Brown's own conduct after the crime.

As to assertions related to battered spouse syndrome and expert witness, Story did not think that Brown met the criteria for battered spouse syndrome. He noted that Brown was separated at the time of this incident and was living with someone else. Story indicated he initially did not see a need to consult an expert.

Story indicated that he revised his plan and attempted to consult with potential experts on battered spouse syndrome (or flight or fight response) the week before the trial after discussions with other lawyers. He attempted to contact Dr. Lois Veronen, Dr. Donna Maddox, and Dr. Amanda Salas. He did contact Dr. Maddox, but she was not available to do it under the time of the request. Counsel filed a motion for a continuance related to this. (Trial Tr. 39-41, 54-56, 69-72).

Concerning a cellphone expert witness, Story stated he learned that there was new software that could get deleted information of the Applicant's phone. He retained cellphone expert Chris Watkins in an attempt to determine the existence of the videos and in seeking a new extraction. Counsel asserted he raised this issue in a continuance request. (Trial Tr. 55-68).

As to the incident at trial with Judge McMahon, Story testified that the judge was upset with him related to the arguments he made relating to whether Clarence Smith had observed acts of violence by reviewing the video (Tr. 687-690).

Story stated that after the threat by the court, his client moved to have him relieved as counsel, which was denied. Story denied that the threat to hold himself in contempt lead to the recommendation of the guilty plea by Story.

During cross-examination, Story indicated that Judge McMahon was increasingly upset during the trial. He indicated he made a motion to poll the jury on whether they had heard the yelling.

Story said an issue raised at trial related to the expungement of the victim's prior arrest for domestic violence. The defense made a motion for continuance and motion to compel for evidence of the expungement records at the outset of the trial.

The defense decided that the judge should get a self-defense instruction in the case(if the case had gone to a jury). The trial judge also ruled in the Applicant's that the prior armed robbery conviction would not be admitted if the Applicant testified, upon the defense request.

*JAEI GILREATH*

Prior counsel Jael Gilreath testified about her role. She stated she was sworn in as a lawyer in 2011 and worked as a Public Defender from 2013 to 2021. She shared a paralegal with Steven Story. She discussed her role in dealing with the cellphone extradition. She stated she met with Chris Watkins, the cellphone expert, a number of times and handled the issue at the trial. Upon Watkins's review of the Applicant's phone extraction, he indicated that the requested video showing an assault with a pair of scissors was not there. They had conversations about newly available software and the potential for extracting the now deleted video. She indicated the original

extraction by the Secret Service agent was not a physical extraction, but only a logical extraction. She stated that she learned a newer physical extraction could pull more deleted data off the phone.

Gilreath stated that she also spoke with Suzanne Mayes about the new software because the defense team was initially not aware of its possibility. This information led to the continuance request. She testified that videos were recovered, but not the video Brown was seeking.

Concerning the plea offer, Gilreath testified that she also spoke to Brown with Story. She stated Brown's reason were to take life without parole off the table and that he was not confident in the outcome with issues with Story and the judge.

#### **FAILURE TO ADEQUATELY INVESTIGATE OR RETAIN EXPERTS**

In his first amended allegation, he claims his counsel was ineffective in failing to retain experts. Although he does not specify what kind of expert, if the court reads the Brown's initial application to mean any expert, it certainly seems, according to the PCR testimony, that defense sought experts in the areas of cell phone extraction and battered spouse syndrome. There was no continuance given by the court to pursue these avenues, but Mr. Brown obviated the need for them when he decided to plead guilty. Technology seemed to be the limiting factor for the cell phone information, while defense counsel did not think he met the criteria for battered spouse syndrome. It should not be forgotten that Brown himself is the one who erased that information from his phone. Story listed reasons for that as the number of stab wounds inflicted on victim, Brown did not report to law enforcement, the fact that he left victim there and she was found quite some time later by kayakers, and the fact that Brown had searched on his phone for information about her, after the incident. This Court finds that he failed in his burden of proving deficient performance or prejudice under *Strickland*.

“A criminal defense attorney has a duty to perform a reasonable investigation.” *Lounds v. State*, 380 S.C. 454, 460, 670 S.E.2d 646, 649 (2008). “[S]trategic choices made by counsel after an incomplete investigation are reasonable ‘only to the extent that reasonable professional judgment supports the limitations on the investigation.’” *McKnight v. State*, 378 S.C. 33, 45, 661 S.E.2d 354, 360 (2008) (quoting *Van Dohlen v. State*, 360 S.C. 598, 607, 602 S.E.2d 738, 743 (2004)).

“[C]riminal defense attorneys have a duty to conduct a reasonable investigation, which at a minimum includes interviewing potential witnesses and making an independent investigation of the facts and circumstances of the case.” *Walker v. State*, 397 S.C. 226,235, 723 S.E.2d 610,615 (Ct. App. 2012), overruled on other grounds, *Walker v. State*, 407 S.C. 400, 756 S.E.2d 144 (2014). “Failure to conduct an independent investigation does not constitute ineffective assistance of counsel when the allegation is supported only by mere speculation as to result.” *Porter v. State*, 368 S.C. 378, 385-86, 629 S.E.2d 353, 357 (2006) (citing *Moorehead v. State*, 329 S.C. 329, 334, 496 S.E.2d 415, 417 (1998) ). “In any ineffectiveness case, a particular decision not to investigate must be directly assessed for reasonableness in all the circumstances, applying a heavy measure of deference to counsel's judgments.” *Wiggins v. Smith*, 539 U.S. 510, 521-22, 123 S. Ct. 2527, 2535 (2003).

Our Courts have 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 from the witness' failure to testify at trial. *Bannister v. State*, 333 S.C. 298, 303, 509 S.E.2d 807, 809 (1998) (citing *Pauling v. State*, 31 S.C. 606, 503 S.E.2d 468 (1998); *Glover v. State*, 318 S.C. 496,458 S.E.2d 538 (1995); *Underwood v. State*, 309 S.C. 560, 495 S.E.2d 20 (1992) ). The Applicant's mere speculation as to what a witness' testimony

would have been by itself cannot satisfy the Applicant's burden of showing prejudice. *Id.* (citing *Glover*, 318 S.C. at 498-99, 458 S.E.2d at 540). *See Edwards*, 392 S.C. at 457, 710 S.E.2d at 65 (“So long as a defendant's attorney conducts a reasonable investigation, including interviewing potential witnesses when it is reasonable to do so, his performance will not be deficient.”); *Simpson v. Moore*, 367 S.C. 587, 597, 627 S.E.2d 701, 706 (2006) (citing *Strickland*, 466 U.S. at 691, 104 S. Ct. at 2066) (“Counsel has a duty to make reasonable investigations or to make a reasonable decision that makes particular investigations unnecessary.”).

*Battered Spouse Syndrome Matter*

This Court finds that the Applicant failed to satisfy his burden of proof in showing that counsel was deficient in failing to investigate or present a witness on the battered spouse syndrome and how it relates to the Applicant's actions related to the stabbing of his wife on August 11, 2015. This Court must find that in this PCR proceeding the Applicant failed to present any expert witness before this Court to show the possible relevant testimony that plea counsel failed to present or develop in their investigation. Further, the Applicant failed to show that counsel's assessment was below the standard of competence demanded of lawyers practicing criminal law as it relates to the investigation of this syndrome.

Our supreme court “first recognized the battered woman's syndrome as relevant to a claim of self defense in *State v. Hill*, 287 S.C. 398, 339 S.E.2d 121 (1986).” *Robinson v. State*, 308 S.C. 74, 78, 417 S.E.2d 88, 90 (1992). In *Robinson*, our supreme court gave an overview of battered woman's syndrome and determined “the unique perceptions of a defendant suffering from battered woman's syndrome are generally compatible with ... self-defense.” *Id.* at 76-78, 417 S.E.2d at 90-91. “Self-defense is a complete defense; if established, a jury must find that the defendant is not guilty.” *Id.* at 79, 417 S.E.2d at 91.

In 1995, the General Assembly enacted legislation providing “[e]vidence that the actor was suffering from the battered spouse syndrome is admissible in a criminal action on the issue of whether the actor lawfully acted in self defense ....” S.C. Code Ann. § 17-23-170 (2014).

In *Robinson*, the Court set forth an understanding of the syndrome as it relates to the elements of self-defense to aid the bench and the bar.

Self-defense is comprised of four elements:

First, the defendant must be without fault in bringing on the difficulty. Second, the defendant must have actually believed he was in imminent danger of losing his life or sustaining serious bodily injury, or he actually was in such imminent danger. Third, if his defense is based upon his belief of imminent danger, a reasonably prudent [person] of ordinary firmness and courage would have entertained the same belief. If the defendant actually was in imminent danger, the circumstances were such as would warrant a [person] of ordinary prudence, firmness and courage to strike the fatal blow in order to save himself from serious bodily harm or losing his own life. Fourth, the defendant had no other probable means of avoiding the danger of losing his own life or sustaining serious bodily injury than to act as he did in this particular instance. If, however, the defendant was on his own premises he had no duty to retreat before acting in self-defense.

*State v. Davis*, 282 S.C. 45, 317 S.E.2d 452 (1984). Self-defense is a complete defense; if established, a jury must find that the defendant is not guilty. *Id.*

The first element of self-defense requires evidence that a defendant not be at fault in bringing about the difficulty. **Often a battered woman will kill an abuser during a confrontation when the man clearly is the aggressor, so that this element is satisfied. However, it may be possible to characterize a battered woman as the victim of a continuing assault at the hands of her batterer. When this is the case, the first element of self-defense may be satisfied even though the battered woman acts at a time when the batterer is not physically abusing her.**

The second element of self-defense requires a defendant to actually have been in imminent danger, or to have believed that, at the time she acted, she was in imminent danger of death or serious bodily harm. At times, a battered woman actually is in imminent danger of violence when she acts. Depending upon the facts of each case, **the second element of self-defense also may be satisfied when a battered woman believes she is in imminent danger of death or serious bodily**

**harm even though her batterer is not physically abusing her when she acts. This is because battered women can experience a heightened sense of imminent danger arising from the perpetual terror of physical and mental abuse.** Often the terror does not wane, even when the batterer is absent or asleep. *State v. Norman*, 324 N.C. 253, 378 S.E.2d 8 (1989) (Martin, J., dissenting) (citing Comment, *The Admissibility of Expert Testimony on the Battered Woman Syndrome in Support of a Claim of Self-Defense*, 15 Conn.L.Rev. 121 (1982)).

The third element of self-defense requires a defendant to show that a reasonable, prudent person in the same or similar circumstances would have acted as the defendant did in order to save herself. **Where torture appears interminable and escape impossible, the belief that only the death of the batterer can provide relief may be reasonable in the mind of a person of ordinary firmness.** See *Norman*, 324 N.C. at 270, 378 S.E.2d at 18. (Martin, Jr., dissenting).

Under the fourth element of self-defense, a defendant must show that she had no other means of avoiding the danger than to act as she did. **A battered woman who is held hostage by her batterer may have no other means of avoiding a battering than to kill her batterer in self-defense. Moreover, a battered woman often may be able to claim the inapplicability of this element of self-defense because she acts while on her own premises, and has no duty to retreat.**

Our interpretation of the relationship between the battered woman's syndrome and self-defense is cursory, at best, and should not be construed as this Court's last word on the subject. Our law will continue to evolve as the scientific community's understanding of the battered woman's syndrome develops and society's comprehension of the condition becomes more sophisticated.

*Robinson v. State*, 308 S.C. 74, 78–80, 417 S.E.2d 88, 91–92 (1992)(emphasis added).

The Applicant complains that his counsel did not adequately investigate or secure an expert witness concerning battered spouse syndrome. The trial record shows that counsel made a motion for a continuance prior to trial based upon a request to retain an expert in battered spouse syndrome to evaluate the Applicant. The Applicant had claimed that he had two incidents of violence by the accuser, Anne Brown, when law enforcement had been called. Trial Tr.p. 13.-15. Counsel advised the trial court that a basis for the continuance was that they were pursuing a mental health expert on battered spouse syndrome or fight-or-flight response based upon information related to the prior

incidents when the Applicant was a victim. At the time counsel had not had the Applicant examined. Counsel explained that he had tried to have contact with four different psychologists but without success. Trial Tr.p. 39, l. 5-10.<sup>3</sup> The Solicitor took no position in the matter, leaving it to the court's discretion. Trial Tr.p. 40. Judge McMahon deferred ruling on the motion until there was a follow up report. Trial Tr.p. 40-41. Later, counsel advised the Court that Dr. Maddox indicated that she would be available to examine the Applicant the next week, but would not be available to testify at the second term in July. Trial Tr.p. 54-55, p. 68.. Counsel Story indicated to the Court that he began contacting the potential expert witnesses on June 7 after they received notice for the trial. Trial Tr.p. 69-70. Upon review of the matter, Judge McMahon denied the motion for continuance concluding the request as a part of gamesmanship, concluding under the facts of the assault with parties in a relationship that counsel would not have considered self defense or battered spouse syndrome earlier. Trial Tr.p. 71-72.

Counsel Story testified in this PCR action that he did not believe that the Applicant suffered under battered spouse syndrome. As initially found by this Court, Story listed reasons for that as the number of stab wounds inflicted on victim, Brown did not report to law enforcement, the fact that he left victim there and she was found quite some time later by kayakers, and the fact that Brown had searched on his phone for information about her, after the incident. Evidence in the trial record supported these reasons.

*Trial Testimony of the Victim*

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<sup>3</sup> Counsel Story indicated that that Dr. Amanda Salas had not gotten back to him, Dr. Vicki Bolus no longer does this type of work, Dr. Lois Veronen was on vacation in Alaska and would not return until this date, Dr. Donna Maddox was unavailable due to a trial in Winnsboro. Trial Tr.p. 39-40. Counsel also indicated the possibility of another expert, Dr. Catherine Ross from Sistercare, but thought there may be a conflict if the victim had attended classes there. Trial Tr.p. 40.

The victim's testimony described the joint decision to meet that day on the Riverwalk, which was supported by her text messages. Tr.p. 234-236. When she arrived, the Applicant was already there. Tr.p. 237. She described that during their conversation while walking along the path he told her that he intended to kill her and then kill himself. Tr.p. 239. At that point, he began to stab her in various parts of her body leading to her falling on the ground. He continued to stab her while she was on the ground as she attempted to feign death. She described that he then started to drag her by her hair up a hill. She said he then put branches over her while he continued to stab her. Tr.p. 240-242. At that point, he left her. She then tried to move down the embankment to get into the water to avoid him if he came back because he could not swim. Tr.p. 242. She began to float down the river and was seen by people on a dock who rescued her. Tr.p. 244.

On cross-examination, the defense stressed that it was a mutual agreement that they met that day. Tr.p. 302. She did not deny texting the Applicant asking to meet that day in a face to face meeting and calling him numerous times that day. Tr.p. 302-308.

*Evidence of Injuries on Brown and the Victim*

After the incident, when Joshua Brown checked into Providence Hospital on August 11 at 12:53 for a superficial laceration on his right hand, he indicated that he was washing dishes and he cut his hand. Tr.p. 436, 439.

The trauma doctor from Palmetto Health described the injuries to the victim as a level one trauma unit response which was the highest level. He described that she had multiple stab wounds throughout her body and blood loss that could have led to her death. Tr.p. 508. He also found the existence of defensive wounds. Tr.p. 497- 507. Of significance, he described the back injuries. Tr.p. 508. He described them to suggest that more forceful injuries would have occurred if a body was lying on the ground. This was because all the force from the weapon would be directed at the

body if it was up against an immobile object, as opposed to running away which would mitigate the force. Tr.p. 508.<sup>4</sup>

*Evidence of Texts and Search History by Brown*

Evidence about the texts between the victim and the Applicant was presented in the trial in a summary fashion, concerning the day of the incident. Tr.p. 607. The information also revealed a search history from the Applicant's phone subsequent to the incident of a 2:26 search of the Cayce Police Department, searches on Facebook for the victim and Javon Jones, address searches, , WIS, among others. It also showed a number of matters being deleted. Tr.p. 620-625. This suggests to this Court that the Applicant was searching for any information about the victim's status and whether her body had been located or whether he had been charged.

On cross-examination, the defense developed that the date of the extraction of the phone was on August 15 2015. Tr.p. 634. The officer assigned to the Secret Service indicated that they used Cellebrite software in the original extraction. Tr.p. 635. He stated since then the software was updated in 2018 and allowed a deeper extraction ability to do a physical extraction as compared with the original logical type and file system extraction in 2015. He stated that when preparing for the trial after receipt of a subpoena, he indicated to the solicitor's office that he could do a physical extraction. Tr.p. 637. He stated that he performed the extraction 3 days before on June 18, 2018. He noted that there were additional audio and video files found that were not located in the 2015 extraction. Tr.p. 639. He determined that some of the videos were labeled secret. Tr.p. 640. The witness indicated that he made the 2018 extraction available to the defense expert, Chris Watkins. Tr.p. 644.

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<sup>4</sup> On cross-examination, defense counsel Gilreath pointed out that there was no evidence of debris or foreign objects in her hair, no trauma to her head. Dr. Watson testified that there were 20 wounds on her body. Tr.p. 515.

*Evidence of Brown's Behavior after the Incident*

The State also presented evidence of his lack of cooperation with police after the incident. Cayce lead investigator Cal Thomas indicated on August 11 2015 at around 2:30 was contacted by the Applicant and agreed to come to the police department in one-half hour, but he did not show. Tr.p. 657-659, 675. Investigator Thomas contacted him again by phone at 3:30, however he did not hear back from him after that call. Tr.p. 660. In order to locate him, the police made a bulletin for law enforcement in the area. He was arrested the next day at April Carter's residence. Tr.p. 663-664.

*Directed Verdict Denied*

The Applicant made a motion for a directed verdict. The State responded that the Applicant had been identified as the assailant by the victim. A physician and EMS personnel testified about the extent of her injuries, which supports attempted murder. There were in the vicinity of 20 stab wounds resulting in massive blood loss. Tr.p., 679. The trial Judge denied a motion for directed verdict, finding a specific intent to kill. Tr.p. 679.

*Defense Case Begins*

The defense case began with testimony from the Applicant's second cousin Clarence Smith. Tr.p. 683. As noted below, it was during the testimony about Smith's alleged viewing of a lost video of an alleged scissors attack by the victim upon the Applicant that developed Judge McMahon's comments about counsel Story. *This will be more fully addressed by the Court in a later section.*

After argument related to the evidentiary motion about Smith's evidence about the videoed confrontation, the Applicant then sought to have his public defenders removed from his case because he no longer felt comfortable with them. Tr.p. 699. He asserted it was based upon the

animosity that had been presented between the Court and his counsel the previous day. Tr.p. 699. Judge McMahon declared that he had no animosity toward the Applicant or his attorneys and the jury was not in the courtroom. Tr.p. 700. After hearing from the Applicant, the court denied the motion. Tr.p. 704.

Counsel Story made a motion to poll the jury to see if they had heard anything yesterday related to Judge McMahon's discussion with counsel Story. The counsel called Lisa Williams, the public defender's paralegal, who counsel claimed was in the "back room" and contended that she had heard everything clearly that was said. Tr.p. 705-712. However, Williams testified *in camera* that she was initially in the courtroom when witness Smith began testifying. After the first question and a matter of law was made, she left to go to the restroom. She indicated that she did not hear anything in the restroom, but when she entered the hallway she heard the judge speaking very loudly and was startled by the loudness of his voice which increased while she was outside. On cross-examination, she indicated that the jury was in the jury room throughout this period. Tr.p. 707.

Judge McMahon called the foreperson of the jury under oath as a court witness. He inquired if she recalled when the jury was sent out the evening before they were excused for the night. Tr.p. 708. She indicated that they were straight to the jury room. Importantly, the foreperson indicated that during that period they did not hear any activity or voices coming from the courtroom. Tr.p. 709. In light of the questioning, counsel Turnblad indicated that they did not need to poll the jury. Tr.p. 710. The judge ultimately denied the motion. Tr.p. 711-12.

*Guilty Plea to Attempted Murder is Entered with a Negotiated Range.*

After a brief recess, the Applicant entered a guilty plea to attempted murder. Tr.p. 712-740. Judge McMahon initially questioned counsel Story that he, Turnblad and Gilreath represented the

Applicant. Judge McMahon confirmed that counsel had explained to the Applicant the charge of attempted murder, the elements, the possible punishments, and his rights, including his right to a jury trial. Counsel Story indicated that the Applicant understood his rights and indicated to them his desire to plead to attempted murder. Tr.p. 713.

The trial court next addressed the Applicant. The Applicant indicated he was 32 years old at the time with a 10<sup>th</sup> grade education. He indicated prior to his incarceration that he was employed at McDonalds for 20 months. Tr.p. 714. The applicant denied he was under the influence of any drugs or alcohol and understood what he was doing that day. He indicated he was not aware of any physical, emotional or nervous problem that could impact his understanding. The Applicant confirmed to Judge McMahon that his counsel had explained to him the charge, the possible punishments, , and his rights, including his right to a jury trial, and that he understood those rights. Tr.p. 715.

Judge McMahon next went over the indictment for attempted murder with him, including stabbing the victim multiple times with a knifelike object. Tr.p. 715. Judge McMahon next went over the constitutional rights that the Applicant was waiving, including his right to remain silent, his right against self-incrimination, and his right to say nothing at all. He also advised him that he was giving up his right to have a jury prove him guilty beyond a reasonable doubt as their decision based upon the evidence. He stated that the Applicant was presumed innocent and the State would have to present evidence to convince 12 members of the jury that he was guilty beyond a reasonable doubt. In addition, the Court advised him that he was waiving his right to confront the witnesses against him, with the right to see, hear, and cross-examine that may be called against him at trial and the right to subpoena and call witnesses. The Applicant asserted that he

understood. Tr.p. 716. The Applicant denied that he had any questions to ask the Court about these rights. Importantly the following inquiry occurred between the Court and the Applicant:

THE COURT: And, as you well know, you've been in a jury trial since Monday, I believe. It is now Friday and the jury is present, available to continue with your jury trial. You understand that will end? You will not continue with your jury trial. Do you understand that?

THE DEFENDANT: Yes, sir.

THE COURT: Is that what you want to do?

THE DEFENDANT: I'd like to accept the plea. I don't want to go forward with the trial.

THE COURT: You'd like to what?

THE DEFENDANT: I'd like to take the plea. I no longer want to go through with the trial.

THE COURT: You'd like to no longer go forward with the jury trial?

THE DEFENDANT: Yes, sir.

THE COURT: Okay. Understanding, then, the nature of the charge against you and the consequences of the guilty plea, how do you wish to plead to this charge of attempted murder, guilty or not guilty?

THE DEFENDANT: I plead guilty, sir.

THE COURT: You understand that when you plead guilty, you admit the truth of the charge that is made against you?

THE DEFENDANT: Yes, sir.

THE COURT: Did you commit this offense?

THE DEFENDANT: Yes, sir.

THE COURT: Plea negotiations, Solicitor?

MS. MAYES: Yes, sir, Your Honor. In negotiations that have taken -- that have gone forward today, the State is withdrawing -- or has withdrawn notice of life without parole. The recommendation or negotiated sentencing range, Your Honor, would be 20 to 30 years on this charge.

THE COURT: Is that the full and complete plea negotiations, Mr. Story?

MR. STORY: Yes, Your Honor.

THE COURT: Is that your understanding, Mr. Brown?

THE DEFENDANT: Yes, sir.

THE COURT: Is there anything more to that understanding, the plea negotiations, in your mind, Mr. Brown?

THE DEFENDANT: No, sir.

THE COURT: Do you still wish to plead guilty?

THE DEFENDANT: Yes, sir.

THE COURT: Has anyone promised you anything or held out any hope of reward to get you to plead guilty?

THE DEFENDANT: No, sir.

THE COURT: Has anyone threatened you or used force to get you to plead guilty?

THE DEFENDANT: No, sir.

THE COURT: Has anyone used any pressure or intimidation to cause you to plead guilty?

THE DEFENDANT: No, sir.

THE COURT: Have you had enough time to make up your mind as to whether or not you want to plead guilty?

THE DEFENDANT: Yes, sir.

THE COURT: Are you pleading guilty of your own free will and accord?

THE DEFENDANT: Yes, sir.

THE COURT: I want to ask you about your attorneys now. Are you satisfied with the manner in which your attorneys have advised you and represented you?

THE DEFENDANT: Yes, sir.

THE COURT: Have you talked with your lawyers as often and for as long as you feel necessary for them to represent you properly?

THE DEFENDANT: Yes, sir.

THE COURT: Do you need any more time to talk with your lawyers?

THE DEFENDANT: No, sir.

THE COURT: Have you understood your talks with your lawyers?

THE DEFENDANT: Yes, sir.

THE COURT: Have your lawyers done everything for you that you feel like they could have done or should have done?

THE DEFENDANT: Yes, sir.

THE COURT: Have your lawyers done anything in this case that you feel like they should not have done?

THE DEFENDANT: No, sir.

THE COURT: Are you totally and completely satisfied with your lawyers' services?

THE DEFENDANT: Yes, sir.

THE COURT: Do you have any complaints you want to make about any of your lawyers, the solicitors, or any police officers involved in your case?

THE DEFENDANT: No, sir.

THE COURT: Have you understood my questions?

THE DEFENDANT: Yes, sir.

THE COURT: Is there anything you'd like to ask me about what we've just been over?

THE DEFENDANT: No, sir.

THE COURT: You understand you have a right to appeal your guilty plea and the sentence of the Court and that you or your lawyer must do this within ten days?

THE DEFENDANT: Yes, sir.

THE COURT: Solicitor, I have heard the State's case, which lays a factual foundation for me in regard to the taking of the plea. However, if there's anything you'd like to add to the facts of the case, I'll be glad to hear it.

MS. MAYES: Yes, sir, Your Honor. The prior record is armed robbery of 2002. That conviction was out of Richland County. Also, the victim, Ann James, Your Honor, has testified in court; however, she has not addressed the Court regarding victim impact testimony and does wish to do so at this time.

THE COURT: And next I was going to ask does Ms. James wish to address the Court at this time.

MS. MAYES: Yes, sir, Your Honor.

THE COURT: All right. I'll be glad to hear from Ms. James. If you'd come around to the podium, please. Yes, ma'am?

THE WITNESS: Your Honor -- THE COURT: And speak -- as I tell everybody, speak up for me so I can hear you, please.

MS. JAMES: Yes, sir. Your Honor, I just want to thank you for the time, thank everybody that's been here. It's been a long process. It's been a process that's been overdue. It's almost been three years. The amount of pain and agony and emotional distress that I encountered and endured through this is undescrivable. Having an eight-week baby -- nine-week-old baby when this happened, I could never imagine that. It changed my life in so many different ways. My kids wouldn't have never had a mother. I would have never had an opportunity to go on and pursue my life and career as I have done. I have my daughter sitting here now that is now -- that will be 20 next month --

THE COURT: This is your daughter to my front right?

MS. JAMES: Yes, sir. And it has impacted my children. You know, every day, I see these scars. My three-year-old asks, Mom, what happened? Are you hurt? What's that? I'm always going to be reminded of this. I feel like there's no amount of time that you could give Mr. Brown that could ever take back the pain and the suffering that I went through. And I'm just asking Your Honor, if you could please just give him the maximum of this sentence. And that would -- it would not satisfy me, but it would be satisfaction for what he's done.

THE COURT: Thank you, Ms. Brown. Anything further, Solicitor?

MS. MAYES: No, sir Your Honor.

THE COURT: Thank you. I find that there's a factual basis for this guilty plea to attempted murder. I find that the defendant's decision to enter this plea of guilty is freely, voluntarily, knowingly, and intelligently made; that he has had the advice and counsel of very competent attorneys, experienced, with whom he says he's well and totally satisfied. His plea of guilty is, therefore, accepted. . . .

Tr. 717, l. 9 – p. 723, l. 24.

*Defense Case in Mitigation*

At that point, counsel for the defense was called upon to make it plea in mitigation after the trial court's acceptance of the guilty plea. Defense counsel Gilreath presented the case in mitigation. She emphasized that the Applicant had a 10<sup>th</sup> grade education and was 32 years old. She stated that he was a truck stocker at McDonalds which was his only job. Counsel pointed out that his prior record was presented to the court earlier and happened when he was very young 16 years before.<sup>5</sup> She noted that the majority of his time since childhood was spent in prison, which the court was aware can have a profound impact on how one perceives the world around him. She asserted that after his release from prison, he attempted to do the right thing. He got married, began working at McDonalds and tried to support his family. However, his relationship was volatile for a long time which led to the separation and trying to work things out. Tr.p. 724-725.

Gilreath pointed out that that the text messages indicate that after the divorce they were still telling each other that they loved them. Gilreath speculated that if the divorce had happened sooner this event would likely not have occurred. Although his family had recommended to him to get counseling, but he was to prove upon release from prison that he could be a normal person and take care of himself and his family. She asserted that he approached the facility but had been turned down. After that, Gilreath contended that he was embarrassed and did not want to be

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<sup>5</sup> During the decision on whether to testify, the trial judge concluded that the Applicant's prior armed robbery conviction from 16 years before could not be used to impeach the Applicant if he testified. Tr.p. 483-488.

perceived as begging for help, but there was not a cutoff with his relationship which turned toxic. The Applicant at some point tried to get a CDL license, thought about writing books and wanted to start a restaurant. Tr.p. 725-726.

Gilreath indicated that her relationship with the Applicant was nothing but polite and respectful with the other attorneys. She indicated that the Applicant had two 3 year old girls and he has consistently indicated that he loves them, misses them and wants to be part of their lives. She noted that they had just been born when all this happened so he really was unable to spend much time with them, which weighed heavily on him for the decision he made today (which removed the LWOP possibility). Tr.p. 727-727.

Gilreath further indicated that the Applicant indicated that he did not go to this location with any intention to commit something like this. And claimed "he just snapped." He claims to not be sure when this happened, but it is the result of this volatile relationship. Tr.p. 727.

Gilreath stated that the Applicant had family support and a cousin is present to make a statement and she indicated that they did not anticipate a plea today so other family members would have wanted to appear. Tr.p. 727. She stated that they were asking for mercy. She claimed he had sincere regret and would have wanted to go back and change everything. She sought a sentence at the lower end of the range. Tr.p. 727.

Counsel Story added that he had known the Applicant since he began working in the Public Defender's Office in February 2017. He recognized that he would do a significant portion of time but he always brought up how much he loved his children. Counsel Turnblad echoed the same, although he had only been involved about two weeks. Tr.p. 728.

The defense presented in mitigation cousin Rayneisha Smith. She advised that court that he is the Applicant's cousin who grew up with him. She stated that he did not have any siblings.

She found him to be a loving man who owns up for his actions and does not put the blame on anyone else. Tr.p. 729. She also found him to be an honest man and he "loves hard." Tr.p. 729.

Cousin Clarence Smith also spoke on the Applicant's behalf. Tr.p. 730. He contended that the Applicant was not a violent person, but found that he had a toxic relationship with his former wife. He felt that the Applicant "probably had a snapping moment in kind from being abused, but I can't really speak about that. Only God would know that." Tr.p. 730, l. 13-16. He stated that the Applicant did not deserve the maximum penalty because he had been through so much abuse. "If I could show the pictures and videos and all this, I would be able to do that, but I can't." He stated that he felt that the Applicant was a good guy who had been out for only 18 months. He was 15 when he began his prior sentence. Smith indicated that the Applicant raised him and he has not been in prison yet and that he looks up to the Applicant. Tr.p. 731. Smith pointed out that the Applicant in his earlier armed robbery sentence was just the driver who got blamed under hand of one, hand of all. He ended with stating he did not deserve the maximum.

The Applicant then made his own plea in mitigation:

THE DEFENDANT: Your Honor, I'd like to say I'm sorry for my actions. I allowed my emotions to take over me mentally. I can't remember every detail of that day, but I know it hurt me truly and immensely into my heart to hurt somebody that I truly love. I love this woman with all my heart. And I'm here to take responsibility for what I've done that day.

Like I said, I allowed my emotions to take over me mentally that day. And to this point, you'll never know how hard and deepfully hurt I am for that action. This is a person that I will always love. And I will always miss that little girl. And I'm here to take responsibility for my actions. And, like I said, I love hard. I love hard.

And I'm a young man who came off a straight path and went sideways for that couple hours. I just want you to know that I'm not that person that was portrayed in those pictures. That was just a bad hour, bad moment in my life. I would just like to take responsibility and say that I'm truly sorry for that day. And, if I can, I would like to apologize to the victim.

THE COURT: You may.

THE DEFENDANT: Ms. Ann James, I would like to apologize for what I've done. I hope some day you can forgive me for what I done. I would ask the kids -- I hope the kids can forgive me also, maybe one day. I know you don't understand, but I truly would like to apologize to you.

Tr.p. 732-733.

Judge McMahon began his sentencing of the Applicant by commending the attorneys for their resolution of the case. Tr.p. 733. Judge McMahon initially indicated that he did not think this case was a life without parole case based upon his experience. Tr.p. 734. He noted that he was impressed with the victim, her testimony and her demeanor throughout the trial. He determined that he was also impressed with the Applicant who had been very respectful to the court, supported by the comments of his lawyers. Tr.p. 734.

Judge McMahon then advised the Applicant that he does not judge defendants as good or bad people, but judges behavior. He pointed out that the lawyers had used the word "toxic" as describing the relation with the victim. Their relationship and the facts speak for themselves. Judge McMahon indicated that he was impressed that family members spoke on the Applicant's behalf. Judge McMahon noted that he can deal with the truth, but he cannot deal with untruths. Judge McMahon also spoke to the victim about how these types of wounds never heal.

Judge McMahon questioned why some people asserted that he did not have a heart, because he takes no joy in taking away a person's freedom, which he has to do because it is his responsibility. He indicated that it was with a heavy heart that he sentences the Applicant to prison. He opined that his attorneys had done an excellent job for him in his observations. He then sentenced the Applicant to 23 years in prison. Tr.p. 736.

In speaking to the jury after the sentence, Judge McMahon indicated that it was the last person he will sentence to prison because of his retirement. Tr.p. 739.

*Findings Related to the Allegation*

This Court concludes that the Applicant has failed to meet his burden of proof. The initial issue is whether counsel was ineffective in failing to seek the opinion of an expert on battered spouse syndrome. The Court finds that the Applicant has failed to present an expert in battered spouse syndrome to support the claim that counsel was ineffective. This Court cannot speculate that there was evidence to show that his investigation related to the claim was ineffective. The Court is aware that the Applicant claims he was in a volatile relationship with the victim. However, they had separated at the time and the Applicant was living elsewhere. The record further reflects that counsel Story did not think it met the strict definition of battered spouse syndrome, but was still seeking an expert opinion once the trial date was set, however without success due to the unavailability and the Court's refusal to grant the continuance. This Court is aware from the trial record that the Applicant claimed in his statement to law enforcement that it was self-defense. At the PCR he claimed that his wife had stabbed him first and he responded. The record contained evidence that the Applicant went to the hospital later that day with a superficial wound which he claimed to the doctor was from a wound washing dishes, not claiming that it occurred from a violent assault when he was acting in self-defense. Tr.p. 436, 439. The record also includes information that he was an alleged victim in incidents in 2014 and 2015 when the victim was charged, but that they were resolved in *nol prossed* charges and expunged records. Tr.p. 15-54. In those discussions, Judge McMahon noted that the Applicant could testify about those incidents if he testified. Tr.p. 47.<sup>6</sup> In addition, during her testimony the victim was asked about the incident

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<sup>6</sup> The State made a *motion in limine* prior to the victim's testimony to limit the type of testimony under *State v Clinkscates*, 231S.C. 650, 99 99 S.E.2d 663 (1957). Tr.p. 98. The State also made a motion under that if there is testimony that gets into primary aggressor under Rule 404(a), that the State has witnesses in terms of showing that the Applicant was the primary aggressor. Tr.p. 165. The State asserted that it had no information about the 2014 incident. However as to the

in 2015 when the Applicant was hit with a cellphone that she claimed occurred when they struggled over the cellphone. However, the victim also denied ever trying to stab the Applicant with scissors. Tr.p. 295.

Since the Applicant failed to present an expert on battered spouse syndrome in these proceedings, it is too speculative to assume that the opinion would be favorable or unfavorable to the defense. What the Court has before it is one added incident that was noll prossed that the evidence was a struggle over a cellphone , an unknown *noll prossed* incident and a denied incident where the Applicant claimed apparently that he was stabbed with scissors at some unidentified time. This Court must concluded that counsel was not deficient in failing to pursue these matter more fully with an expert when the Applicant has failed to present in these proceedings an expert opinion that the Applicant's assault was the product of battered spousal syndrome.

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2015 incident report where the Applicant alleged he was struck by a phone. The State was also aware of an incident prior to the stabbing incident where the Applicant pushed Ms. James to the ground while she was pregnant with his child as an example of what would potentially come into play if he claimed that she was the primary aggressor. Tr.p. 164. Prior to the cross-examination of the victim, counsel Story brought up the State's prior objection to potential examination about prior incidents. Tr.p. 269. Counsel Story intended to ask the victim about the cellphone incident when the Applicant was allegedly struck in the eye. The trial court noted that in homicide cases prior difficulties between parties is admissible, but general details are inadmissible. Tr.p. The court opined that the defense could ask if the victim had struck the Applicant with a cellphone and if Brown had injuries from it, but nothing further. Tr.p. 274-276.

During the cross-examination of the victim, the defense asked the victim if during the marriage whether there was an incident when the victim tried to stab the Applicant with scissors that she denied. Tr.p. 295, l. 1-4. The defense claimed that this was a different incident and that the factual basis would be developed in the defense case. Judge McMahon noted that if he failed to present it the evidence would be stricken from the record. Tr.p. 295. (The defense sought to present this information during the testimony of Clarence Smith prior to the entry of the plea. Tr.p. 684-695).

When asked about the incident with the cell phone, the victim stated that she and the Applicant were struggling over the cellphone and he ended up getting hit. Tr.p. 296. She stated that she filed for divorce in March 2016 which was pending at the time of the charged incident. Tr.p.297.

More significantly, the Applicant has failed to prove, assuming deficiency, in failing to more timely seek and acquire an expert, that the Applicant would not have pled guilty and continued with the trial. As noted above, there is no indication how the expert witness would have testified. Further, as it relates to the introduction of evidence, at the time of the plea, counsel had already put in evidence through cross-examination of the victim about the cellphone incident and the denied scissors incident. In addition, the defense had prepared an argument to allow further information to be presented by Clarence Smith and ultimately the Applicant if he had not plead guilty. This information did not *per se* create a conclusion of battered spouse syndrome as noted above because the isolated incidents do not present that he was the victim of a continuing assault at the hands of the victim nor from perpetual terror of physical or mental abuse of the victim when he arranged the meeting and its location.

As noted above, at the time of the plea, the Applicant was aware of this information and chose to avoid the possibility of life without parole and submit himself to the negotiated range of punishment. The Applicant made statements to the plea judge that carry a presumption of verity that he wanted to plead guilty and particularly that his lawyers had done everything they could have done and he was satisfied with counsel. The Court finds that the Applicant has failed to show a reasonable probability that had the counsel secured an expert on battered spouse syndrome the Applicant would have continue with the trial, rejected the plea offer and risk life without parole. This portion of his allegation must be denied.

*Failed to Retain or Use Cellphone Expert*

In his second specification, the Applicant contends that counsel was ineffective in failing to utilize a cellphone or digital forensic expert. The focus of this argument surrounds the Applicant's attempt to locate what he contended was a video of an earlier incident when the victim

attempted to stab him with scissors resulting in an injury. The records support that the defense retained digital forensic expert Chris Watkins. Tr.p. 644. Counsel appeared diligent in addressing matter on his client's behalf. The Applicant indicated to him that there was a video of the incident and possibly photographs related to incidents he had with the victim. When the first extraction was done in 2015 from his cellphone, those suggested matters were not located in the extraction. In preparation for the trial his expert reviewed the extraction and learned that it was done using Cellebrite with the available software at that time which only did a logical type extraction. He learned that Cellebrite had been updated since 2015 and in 2018 allowed for a physical extraction which created an enhanced study of the phone's data and include information about deletions. This was an initial basis of the continuance motion at the outset of the trial to allow for the newer software to be used. Tr.p. 28-30. Counsel complained that only the original extraction from 2015 had been turned over. Counsel acknowledged that that had been turned over to his expert (Watkins) but the defense wanted a greater extraction done using the 2018 available software from the Applicant's and victim's phones. Tr.p. 31-35. The Applicant's counsel confirmed that a larger time frame extraction was done by his expert on the Applicant's phone, but not the victim's phone. Tr.p. 32. The State asserted that the raw data from the phone was still in law enforcement custody, but the original results from the 2015 extraction had been turned over and allow the defense to do a second extraction. The State indicated that the defense can do a second extraction. Tr.p. 37. Judge McMahon deferred ruling on the enhanced extractions and request for continuance until it was done. Tr.p. 41-43.

Subsequently counsel Gilreath advised the Court that she had learned from their expert that they had learned that the new software should be able to recover the greater information. According to Gilreath, the state's expert told the defense expert this had been reported to the solicitor's office

and that they would be able to do a new extraction with the new software and obtain additional information. Tr.p. 55-56.

The Solicitor's Office responded that it did not seek a new extraction when it learned of the new software. She noted that since the victim did not have the phone with her during the incident, but left it in the car, it would not have that much value. Further, the Applicant's phone was still active from date of the incident until the time of his arrest. Tr.p. 63.

The record also showed that a second extraction was done by the State during the week of court using the updated Cellebrite software. Tr.p. 636. This physical extraction revealed more information. This extraction developed the presence of a number of audio and video files that were not located in the first extraction. Tr.p. 639. The state digital witness indicated that he reviewed the videos they recovered. He noted that the app used to create some of the videos identified them as secret. Tr.p. 639-640. The evidence at trial did not specifically indicate that the video the Applicant was seeking that allegedly showed the scissors incident was ever recovered in the second extraction.

This Court finds that the Applicant failed to prove deficient performance related to the investigation and retention of expert Watkins. The Applicant has failed to show that either Story or Gilreath erred in their preparation or presentation during the trial related to the investigation of the Applicant's and victim's cellphone. Further the Applicant has not presented any new or relevant data that was not presented to the Applicant prior to his decision to plead guilty or subsequent to the plea that reasonable counsel should have presented. He failed in his burden of showing deficient performance.

This Court further must find that Sixth Amendment prejudice has not be proven. As stated above, the information that the Applicant had prior to the entry of the plea is the same information

that is presently before this Court. The continued representation about the possible existence of a video or other digital material has not been proven to this Court. The Court has concluded that the guilty plea was freely, voluntarily and intelligently entered at the time of its entry. The Applicant has not presented any reasonable probability that would have caused him to have continued with the trial rather than have pled guilty. Under *Strickland* and *Hill v. Lockhart*, he had failed to show 6<sup>th</sup> Amendment prejudice.

*Comments by Trial Judge*

This Court finds that the allegations related to the interaction between the trial judge and counsel Story do not require post-conviction relief. The claim is raised as a claim of ineffective assistance of counsel. In light of the entry of the voluntary guilty plea, this ground is without merit.

The record shows that during the examination of defense witness Clarence Smith, Smith was asked whether he had ever witnessed any violence that the victim had committed against the Applicant. The State immediately objected claiming that the witness had given a statement that he denied having any specific knowledge of incidents between the parties. Tr.p. 685. Counsel Story then indicated that the witness was going to assert to seeing injuries from a confrontation on the Applicant in a video on a cellphone that was shown to him. Tr.p. 685. Counsel claimed it was not hearsay because he saw the video and recognized the parties.. Counsel confirmed to Judge McMahon that the witness did not observe the incident, but contended it was not hearsay. The State urged, relying on Clinkscales,<sup>7</sup> that it did not allow evidence of prior difficulties to come in

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<sup>7</sup> *State v. Clinkscales*, 231 S.C. 650, 99 S.E.2d 663 (1957) (finding testimony about prior difficulties between a husband and wife was admissible against husband in a murder case as long as specific details were not revealed; stating it is well settled that in assault and battery and homicide cases, evidence that the accused and prosecuting witness or the deceased had a previous difficulty is admissible, but the details of such difficulty are inadmissible; evidence of a previous difficulty being competent only to show the animus of the parties, and thus aid the jury

and argued that a prior video taken by somebody is hearsay. Tr.p. 686. Judge McMahan question whether somebody just watches a video can come in and talk about what they saw. Tr.p. 687. The State asserted that the witnesses information comes from conversations with the Applicant so it is hearsay.

Judge McMahan sought to clarify the source of the witness's knowledge. Counsel Story claimed it was from the video he alleged that he watched. Counsel Story claimed that the witness saw the injuries on the Applicant, but did not see the victim inflict those on the Applicant. Tr.p. 688. The judge then complained to the counsel about why he was being made to cross-examine counsel and claimed it was disrespectful. Tr.p. 689, l. 1-6. Counsel confirmed that the witness had not observed any acts of violence. Tr.p. 689.

The following then occurred:

THE COURT: Well, why don't you tell me that to start with instead of me having to have this type of dance and this type of gamesmanship? Why?

MR. STORY: Your Honor, I answered your questions.

THE COURT: No, you did not. You were not truthful with me. You said he saw the injuries. I said inflicted? No. I had even prefaced my remarks by saying he saw the injuries, somebody else told him that they came from her.

Sheriff -- I'm not taking you into custody, but just have him sit in the courtroom. Because you cannot talk to anybody during this brief recess. Don't think I'm talking you into custody. Okay? . . .

. . . I want briefs from both parties by 8:00 in the morning on this issue. And if I find one thing untowards in it, bring a lawyer, because there's going to be a contempt hearing.

Tr.p. 689, l. 10-p. 690, l. 4. The Court then released the jury. The Court asked the Court Reporter to prepare a transcript of the colloquy.

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in reaching the conclusion as to who probably was the aggressor, and what demeanor each party had reason to expect from the other when they met and the fatal difficulty occurred)

The next morning, the trial judge took up the issue as to the objection raised against Clarence Smith's testimony. Counsel Story indicated they submitted a brief the night before by email, as well as the State. He asserted the incident with a hammer under Rule 803(2) was an excited utterance and an exception to hearsay. He asserted that the defendant made statements shortly after the occurrence. Concerning the video, the defense contended it was nonassertive conduct and would not be hearsay. Tr.p. 691, l. 8-25. Counsel contended in a second incident, the witness said he saw the alleged victim running toward the Applicant who was recording a video while backing up. Counsel Story contended that conduct would be a violent act that he saw on the cellphone and is nonassertive conduct. Counsel asserted these were two separate acts. Tr.p. 692. Counsel Story indicated the time frame of these acts is not clear, but it is during the marriage. Counsel confirmed that the witness did not observe the hammer incident. As far as the running incident, counsel stated that he did not observe it directly, but saw it on the cellphone video that the Applicant showed him.

Assistant Solicitor Usry asserted that neither incident should be admitted. She contended that they did not know when they occurred but the particular case being tried happened on August 11, 2015. She claimed that those incidents would have no bearing on the Applicant's state of mind that day. She further asserted that these incidents were hearsay. Concerning the hammer incident, when Clarence Smith, the alleged witness, was interviewed by an investigator on February 24, 2016, he indicated he learned about it after it happened, so Solicitor Usry claimed he had not witnessed the incident. Solicitor Usry stated that they had no idea when the video was taken. She claimed it would have been shown and the act described within the video does not appear to be an act of violence to even be considered. In the interview Smith described it as a recording of them arguing and that she is in the background trying to charge. Usry asserted that the witness's

recollection is not consistent and he is not 100% sure what he saw. Tr.p. 694-695. Solicitor Usry claimed that the State has never seen this video so that we have no idea what we are arguing about or whether it exists. Tr.p. 695.

Judge McMahon then indicated that a witness can testify under Rule 602 if he has personal knowledge. Although prior difficulties are admissible, the specific details are not. The Court pointed out to counsel Story that he was familiar with the cases. He referred to *State v. Williams*,<sup>8</sup> and *State v. Taylor*.<sup>9</sup> The Court indicated that if his whole knowledge comes from information that he has been shown then he cannot testify about it because he lacks personal knowledge. However, the court indicated that he could not rule until he understands what the testimony would be. He then asked counsel Story if he wanted to call the witness.

Counsel Story indicated he wanted to call the witness *in camera*. Tr.p. 696. He stated that he had his investigator have him and other witnesses who would testify similarly to be at court at 9:00. Tr.p. 696. However, they were not present yet.

At that point, the Applicant wanted to address the Court. Joshua Brown indicated that he no longer felt comfortable with his counsel and wanted them to be relieved. Tr.p. 699. He based it upon the animosity that had been presented between the Court and his lawyers. The Applicant questioned whether he could receive a fair trial. He claimed the yesterday the Court yelled at his counsel and he believed the jury heard it. Tr.p. 700.

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<sup>8</sup> *State v. Williams*, 321 S.C. 327, 468 S.E.2d 626 (1996) (evidence of controversial telephone calls and loud altercations between victim and defendant were admissible to establish strained nature of parties' relationship).

<sup>9</sup> *State v. Taylor*, 333 S.C. 159, 168, 508 S.E.2d 870, 874 (1998) ("In homicide cases, evidence that the accused and the decedent had previous difficulty is admissible. The evidence is admissible to show the animus of the parties and to aid the jury in deciding who was the probable aggressor.")

Judge McMahon responded that he had no animosity toward the Applicant or his lawyers. Tr.p. 700. He noted that the jury was not present during the discussion. He also indicated he like to be told directly the motions and indicated that he was not pleased with the solicitor or the attorneys when these issues were not discussed before the trial. The judge further noted that he had allowed the defense to go into the incident with the telephone and she was questioned about it. , noting that if he hears the testimony he can rule on it. Tr.p. 701 Judge McMahon noted that he had been represented by the public defender's office since he was incarcerated and Mr. Story had represented him since Ms. Henry was transferred in February the prior year. Judge McMahon opined that the defense had professionally and competently cross-examined the witnesses. He denied any animosity toward him or his counsel which Judge McMahon asserted was supported by his ruling on precluding the armed robbery conviction was being used if he testified. Tr.p. 702. He noted this case comes down to who the jury will believe from the parties involved in the difficulty. Judge McMahon further indicated how he thought counsel Gilreath had also handled a significant part of the case with the expert witnesses and some officers. Tr.p. 703.

Although the trial judge indicated his belief that the jury had not heard the discussion between counsel and the court the day before, the Applicant disagreed. Tr.p. 703. As noted previously in this Order the court held an *in camera* hearing with the defense calling their paralegal and the trial court calling the foreperson. Tr.p. 705-712. The earlier portion of this Order on that issue is incorporated by reference.

#### *Findings*

This Court finds that counsel was not constitutionally deficient in the manner that he presented the testimony of Clarence Smith. Although the admissibility of the evidence related to the video review was never resolved by the trial court due to the guilty plea, this Court finds

counsel Story's actions were not a violation of the Sixth Amendment and this Court cannot state that no reasonable counsel would have handled the matter similarly.

Rule 602 provides, in relevant part, "A witness may not testify to a matter unless evidence is introduced sufficient to support a finding that the witness has personal knowledge of the matter." The personal knowledge requirement in Rule 602 has similarly been described as requiring "firsthand knowledge -- that which comes to the witness through his own senses, mostly sight and hearing." Christopher B. Mueller & Laird C. Kirkpatrick, *Federal Evidence*, § 6.5 (4th ed., July 2022 update); see also id. § 6.6 ("[P]ersonal knowledge means seeing directly the acts, events, or conditions in question"; "hearing them"; or getting sensory input from "the other senses of touch, smell, or taste."). The threshold showing "is low, requiring only enough 'to support a finding' by some rational juror of personal knowledge." Paul F. Rothstein, *Federal Rules of Evidence*, Rule 602 (2023). Several courts have concluded that a lay witness's careful review of a video recording before trial satisfies the "perception" or "personal knowledge" requirements embodied in Rules 701 and 602. Other courts have similarly held that watching a recording of an event can satisfy the "perception" or "personal knowledge" requirements of Rules 701 and 602. See, e.g., *McRae v. Commonwealth*, 635 S.W.3d 60, 68, 70-71 (Ky. 2021) (citing Kentucky's version of Rules 701 and 602 and upholding a detective's narration of videos, including "events he was not personally familiar with"); *State v. Small*, 351 Wis.2d 46, 839 N.W.2d 160, 165 (Ct. App. 2013) (finding an officer could provide a lay opinion about the contents of a video he had watched 50 to 100 times "because it was 'rationally based' on his 'perception' "); *People v. Fomby*, 300 Mich.App. 46, 831 N.W.2d 887, 890-91 (2013) (finding that an officer's identification of individuals depicted in still photos taken from a surveillance video was "rationally based on his ... perception of the video" under the equivalent of Rule 701, even though he "did not observe firsthand the events depicted

on the video”); *State v. Walker*, 135 N.E.3d 444, 460 (Ohio Ct. App. 2019) (finding that the lead investigator who reviewed surveillance footage he had seized from a home “had personal knowledge of the contents of the video” under the equivalent of Rule 602, even though he “did not personally make or appear in the ... video”), rev'd on other grounds sub nom., *State v. Dent*, 163 Ohio St.3d 390, 170 N.E.3d 816 (2020); see also *Guay v. Sig Sauer, Inc.*, 615 F. Supp. 3d 66, 72 (D.N.H. 2022) (finding that an employee's deposition testimony about the contents of a video, based on “personal knowledge” from having watched the video, could be introduced under Fed. R. Evid. 602, without reference to Fed. R. Evid. 701); *State v. Holley*, 327 Conn. 576, 175 A.3d 514, 538-39 (2018) (noting in dicta that, although courts are divided, “there is significant authority under [R]ule 701 of the Federal Rules of Evidence to support the proposition that a lay witness narrating a video to a jury may state his or her impressions of what is depicted in the video, even if he or she did not observe those events firsthand,” and concluding, without deciding whether there was error, that “any error” in the case was harmless).

Some courts, however, have barred lay witnesses from narrating a recording unless they were present at the event depicted. *See Callaham v. United States*, 268 A.3d 833, 848 (D.C. 2022) (rejecting the argument that detectives “obtained personal knowledge” of events “solely by watching recorded surveillance footage”); *Boyd v. Commonwealth*, 439 S.W.3d 126, 131-32 (Ky. 2014) (finding that lay witnesses could narrate segments of a recording depicting events they “perceived in real time,” but not parts of the video “they did not perceive in real time”); *Wells v. State*, 604 So. 2d 271, 279 (Miss. 1992) (finding that a lay witness's narration testimony was improper because he did not have “first-hand knowledge of the events depicted on the tape”); *Nadeau v. Hunter Lawn Care, LLC*, 585 F. Supp. 3d 158, 161 (D. Mass. 2022) (barring a witness

from testifying “as to what he saw on [a] surveillance video because he did not perceive those events as they happened”).

Plainly there appears to be a split in authority in the country over this similar matter that was not resolved in the Applicant’s trial Story credibly stated that he had researched the law surrounding testimony from watching a video, and was prepared to argue that Brown’s witness could has testified as to what he claimed to see on the video. The parties also presented a brief on the issue to the trial court before the Friday session. Importantly, this speaks to the favorably diligence of counsel in his attempt to introduce this issue into the case. Again, that need was obviated due to the guilty plea. This Court notes that there is evidence that Brown himself erased matters the phone. He can hardly complain of the inability to locate the videos on it. This Court the obvious – the purpose of erasing the data or placing items in “secret” is so they will not be found.

Nevertheless, the Applicant’s concerns about the relationship between Judge McMahon and his defense counsel were resolved during the entry of the free and voluntary guilty plea with the negotiation that removed the possibility of life without parole after the discussion between the Court and the counsel Story. At the time before the plea was offered , the trial judge had indicated that there was no animosity toward the defendant or counsel, that he had ruled favorably to the Applicant related to whether his prior armed robbery conviction could be used to impeach him if he testified, and that he had considered the defense counsel to have acted professionally and competently when they had cross-examined the witnesses.

This Court rejects the assertion that counsel’s actions during the discussion with Judge McMahon forced him to enter his guilty plea. As stated above, the Applicant’s statements at the guilty plea carry a presumption of verity. A guilty plea is a solemn, judicial admission of the truth

of the charges against an individual; thus, a criminal inmate's right to contest the validity of such a plea is usually, but not invariably, foreclosed. *Blackledge v. Allison*, 431 U.S. 63, 97 S.Ct. 1621, 52 L.Ed.2d 136 (1977). Therefore, statements made during a guilty plea should be considered conclusive unless a criminal inmate presents valid reasons why he should be allowed to depart from the truth of his statements. *Crawford v. United States*, 519 F.2d 347 (4th Cir.1975); *Edmonds v. Lewis*, 546 F.2d 566 (4th Cir.1976). An applicant may attack the voluntary, knowing, and intelligent character of a guilty plea entered on the advice of counsel by demonstrating that counsel's representation was below an objective standard of reasonableness.

This Court finds that the Applicant abandoned his request to have counsel relieved at the time he entered his guilty plea freely and intelligently. Contrary to the Applicant's assertions before this Court, during his guilty plea, while under oath, the Applicant stated that he wanted to plead guilty rather than proceed with the jury trial, that he had not been threatened, intimidated, or coerced to cause him to plead guilty. Tr.p. 717-720. Further, he indicated that he was satisfied with his lawyers and that they had spoken with him enough and had done everything that they needed to do. Tr.p. 720-721. Importantly, the Applicant cogently responded as follows:

THE COURT: Do you have any complaints you want to make about any of your lawyers, the solicitors, or any police officers involved in your case?

THE DEFENDANT: No, sir.

THE COURT: Have you understood my questions?

THE DEFENDANT: Yes, sir.

THE COURT: Is there anything you'd like to ask me about what we've just been over?

THE DEFENDANT: No, sir.

Tr.p. 720, l. 23 – p. 721, l. 7.

This Court finds that Brown has failed to present a credible reason to not be held to the truth of the statements. Prior to the entry of the plea, this Court finds that counsel Story, Gilreath and Turnblad met with the Applicant to discuss the plea offer according to the credible testimony of Story and Gilreath before this Court. This Court further rejects the Applicant's assertion that the plea offer was made to his counsel the previous day. According to Mr. Story's testimony, which the Court finds to be very credible, the guilty plea offer was given to him on the day that Brown decided to plead guilty. Both Story and Ms. Gilreath, who the Court also finds to be very credible, testified that all three of Brown's lawyers met with him to discuss the guilty plea after it was offered during the recess that day.

The Applicant also complains that he was not able to testify which he blames on the interaction of his counsel with the trial judge. This Court finds that the Applicant made a knowing choice in waiving the right to testify to the jury when he knowing decided to enter his guilty and remove the risk of a life sentence. He knew he was giving up his trial rights to a jury, as well as his right to testify and present a defense. His lawyers had indicated the effect of the plea with him prior to its entry. Further, in this proceeding, Brown testified that he knew that he could continue with the trial, but chose not to. He also knew that he was facing a possible life without parole sentence, and that was another factor in his decision to plead, once taken off the table. Story testified that it was Brown's decision to plead once LWOP was taken away.

This Court finds that as related to his guilty plea, the Applicant has failed to show the existence of deficient performance. To the contrary, this Court finds that the defense team was performing within the standards of competence demanded of lawyers practicing criminal law in their advice leading up to the guilty plea. The Applicant's statements at the time of the entry of the plea and counsel's credible testimony in this proceeding support that conclusion that the first prong

of *Strickland* and *Hill v. Lockhart* have not been met by the Applicant. Further, he told the court, under oath, that he was happy with his lawyer, and they had done all they could to help him. He also said he had no complaints. He has failed to meet his burden as to any of his allegations.

This Court also must conclude that the Applicant has failed to meet his burden of proof in showing sixth Amendment prejudice under *Strickland* and *Hill v. Lockhart*. The Applicant has failed to show any omission on the part of the defense team that was deficient. It follows that the Applicant has failed to show that there is a reasonable probability that, but for [plea] counsel's [alleged] errors, he would not have pleaded guilty and would have insisted on going to trial." This Court finds that the Applicant has failed his burden and finds that confidence in the outcome of the guilty plea has not been undermined. The claims must be dismissed.

#### **GUILTY PLEA NOT INVOLUNTARY DUE TO FEAR OF LIFE WITHOUT PAROLE**

The Applicant has also asserted the threat of a life without parole sentence coerced his guilty plea. The sentence of life without parole was an authorized sentence for attempted murder since the Applicant had a prior conviction for armed robbery, a most serious offense under S.C. Code § 17-25-45. The Applicant's fear of a more severe punishment did not render his guilty plea involuntary. *Brady v. United States*, 397 U.S. 742, 90 S.Ct. 1463, 25 L.Ed.2d 747 (1970) (fear of a potential death sentence does not make a plea involuntary). This Court finds that the Applicant's guilty plea was freely and voluntarily entered. The Applicant was aware of the potential sentence of life without parole that was taken off the table with the entry of the guilty plea and the range of punishment he was facing. The sentence he received was also in the range of the negotiation. His allegations must be dismissed.

#### **ATTEMPTED MURDER AND HIS *PRO SE* AMENDED APPLICATION**

The Applicant attached to appointed counsel's amended application on August 21, 2024, a handwritten amendment alleging that his counsel was ineffective as a matter of law because they allowed him to plead guilty to a crime that did not exist allegedly "attempted murder." The Applicant in his *pro se* pleading cites to *State v. Sutton*, 340 S.C. 393, 532 S.E.2d 283 (2000), which held that the offense of attempted murder is not recognized in South Carolina. However, the General Assembly, subsequent to *Sutton*, passed a statute creating anew the substantive statutory crime of attempted murder in 2010. The Applicant's crime occurred on August 11, 2015. Since S.C. Code Section 16-3-29 existed at the time of the crime, counsel was not deficient in failing to make a frivolous motion that had no basis in the current law. Deficient performance and prejudice has not been shown. This additional allegation must be denied.

### 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 and vacate his conviction. 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), 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 if Applicant wishes to seek appellate review, PCR counsel must serve and file a notice of appeal on Applicant's behalf. Applicant's attention is directed to Rule 243, SCACR, for appropriate procedures for appeal.

**IT IS THEREFORE ORDERED:**

1. That the Application for Post-Conviction Relief be denied and dismissed with prejudice; and
2. The Applicant is returned to the South Carolina Department of Corrections.

AND IT IS SO ORDERED this 6<sup>th</sup> day of November, 2025.



DAVID P. CARAKER, JR.  
Presiding Judge  
Eleventh Judicial Circuit

Lexington, South Carolina