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S.C. SUPREME COURT

THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM ABBEVILLE COUNTY
Court of General Sessions
Frank R. Addy, Jr., Circuit Court Judge

Appellate Case No. 2026-002059

The State, ...Petitioner-Respondent,

v.

Kendrick Montrez Lee, ...Respondent-Petitioner.

Appendix – Volume II of II

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Record on Appeal Volume II of II

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1 Q. Looks like there's a female running. Who was that again?

2 A. Ms. Kira Devette.

3 Q. And she's looking up the stairs?

4 A. She is.

5 Q. And this is about minute 16 --- 16:10.

6 (Video playing)

7 Q. Somebody's come downstairs from that apartment at 16:23;
8 who is that?

9 A. Mr. Ken Lee.

10 Q. Can you see anything in his hands?

11 A. Yeah, he's got that --- that object in his right
12 hand.

13 Q. And he goes out of frame here about 16:45 or so, correct?

14 A. Yes, sir.

15 (Video playing)

16 Q. And a female just approached that black car again, is
17 that --- who is that?

18 A. That's Ms. Kira Devette.

19 Q. Looks like she put something in the car?

20 A. That would be the white shirt that she picked up.

21 Q. Now who all's in the frame right this minute 18:53?

22 A. Mr. Travis Lee is in the white shirt and gray
23 shorts, and Mr. Ken Lee's in the black shirt and black
24 and red shorts.

25 Q. And where is Mr. Ken Lee going?

1 A. To the [REDACTED] building.

2 Q. Is he going up the stairs at this point?

3 A. He is.

4 Q. At minute 19:10.

5 (Video playing)

6 Q. At 19:42, what did the female throw in the trash can?

7 A. Be a red shirt that she got out from the passenger

8 side --- the front passenger side of her car. It

9 appeared she wiped her arms off and then threw that red

10 shirt on top of the trash can.

11 Q. And at 20:01, can you see Mr. Ken Lee coming down the
12 stairs?

13 A. Yeah, he comes down the steps and he's going to walk
14 past this camera, and then past the thing that as we saw
15 in the previous (unintelligible).

16 (Video playing)

17 Q. He's off the screen here at 20:28; is that right?

18 A. Yes, sir.

19 Q. Next we'll go to State's 15.

20 THE COURT: Which one?

21 MR. BLACK: State's 15. We started at 29:45.

22 (Video playing)

23 BY MR. BLACK:

24 Q. What is this camera of again?

25 A. The back of the [REDACTED] building.

1 Q. Did you receive information from Michael Floyd about some
2 folks coming to his apartment at some point a couple days
3 prior?

4 A. I did.

5 Q. Is that why you looked at this camera angle?

6 A. It is.

7 Q. All right.

8 (Video playing)

9 Q. All right. 30:22, there's two individuals --- there's
10 two individuals right there that came on the screen. Tell ---
11 that's what going on?

12 A. Yes, sir. I can see.

13 Q. And what are they wearing?

14 A. The one on the right has a orange shirt and blue
15 jeans, and the one on the left has a red shirt and red
16 (unintelligible).

17 Q. Can you tell if anybody's holding anything in this
18 photograph or in this still frame?

19 A. The individual in the red has an object, it could
20 appear to be a stick or a bat. Something similar behind
21 his back.

22 (Video playing)

23 Q. What's going on here?

24 A. The one in the orange shirt is going to the door and
25 obviously speaks to Mr. Floyd, which is how we got the

Direct exam Balchin

1 information that this even existed. And they're asking
2 where Mr. Tobias Hughey's at.

3 (Video playing)

4 Q. And there's not an assault on this video, is there?

5 A. No, sir.

6 Q. Now, this person right here in the red, were you able to
7 identify who this person was?

8 A. I was.

9 Q. Who is that?

10 A. Mr. Ken Lee.

11 Q. Do you know about what day this was?

12 A. A couple days prior, because I have a lot there to
13 see without looking at my notes, I don't know the --- the
14 exact date, 3rd or the 4th.

15 Q. And at this point the conversation is over and the
16 gentleman in the orange is walking away?

17 A. That is correct.

18 (Video playing)

19 Q. Do you --- did you ever identify who was in orange or do
20 you know who was in the orange?

21 A. I don't believe so.

22 Q. I think that's all the videos I have.

23 Now, as part of your job as the investigator, in addition
24 to looking at the cameras and going through all that, were you
25 also tasked with following up with Mr. Hughey?

Direct exam Balchin

1 A. Yes, sir.

2 Q. Okay. And what --- what did you do to follow-up with Mr.
3 Hughey?

4 A. He was in Greenville Hospital for quite a while. I
5 made two trips up there to speak to him.

6 Q. Okay. And the first time you went and talked to him, do
7 you know what date was?

8 A. October the 19th, I believe.

9 Q. When you first talked to him where was he located?

10 A. In a hospital bed.

11 Q. Do you know what part of the hospital?

12 A. Critical care unit. I --- I don't know exactly what
13 the name of the --- the unit would be.

14 Q. And you --- I'm going to show you what's been marked as
15 Defendant's Exhibits Number 1 and 2. Do you recognize those?

16 A. I do.

17 Q. And what are those?

18 A. These are handwritten statements by Mr. Tobias.

19 Q. Okay. And so when you got those statements, what was
20 date of that there?

21 A. October the 19th, 2020.

22 Q. Okay. And so you didn't go up there any the 19th, so
23 that would have been what --- almost two weeks after this?

24 A. Yes, sir.

25 Q. That was the first time?

1 A. Yes, sir.

2 Q. Who wrote those statements for Mr. Hughey; did you write
3 them, or did he write them, or do you know?

4 A. No, sir, he --- he wrote his.

5 Q. Okay. Were you able to talk with him at that time?

6 A. On the 19th, no. He had a tube that was in that
7 prohibited him from communicating verbally. I had to
8 communicate through written communication.

9 Q. So the first time you went was --- you couldn't actually
10 talk to him, he was --- he still had a tube in his throat?

11 A. Yes, sir. I mean, I could talk to him, but
12 couldn't --- he couldn't --- he couldn't --- he couldn't
13 communicate with me except through this paper.

14 Q. And you remember that?

15 A. Yes, sir.

16 Q. Now, the first time you talked to him are both of these
17 statements dated --- and I'll show you back one, two. Are
18 they both dated October the 19th?

19 A. The top one is dated October the 19th, 2020 and the
20 bottom one is dated October the 19th, 2020.

21 Q. So did you get two --- two different statements on the
22 same day?

23 A. I did. I believe what there --- there was a
24 video --- there's --- there's a body camera of this, and
25 I believe this was in response to a question that I

1 asked. And this was --- tell me what happened.

2 Q. Okay. And he wrote pretty short statements at that
3 point?

4 A. Yes, sir. He was --- I mean, like I said, he was
5 still hooked up to the --- the tubes and --- and all
6 that --- that stuff at that time.

7 Q. Okay.

8 A. He could write, but, I mean, he could not speak.

9 Q. All right. Did you talk to --- did you talk to any of
10 the doctors that day when you were up there?

11 A. Not the doctor, I talked to his nurse. And I asked
12 her prior to speaking with him, had he been given any
13 kind of medication that would alter his mental status,
14 that would prohibit me from asking him any questions.

15 Q. Okay. But you didn't talk to any of the surgeons or
16 anybody about anything, just kind of a nurse about medications
17 more or less?

18 A. That's right. To see if I was even going to be able
19 to ask him any questions.

20 Q. Were you ---

21 (Simultaneous speaking)

22 Q. --- were you aware of any diagnoses that he had had from
23 any surgeons or anything like that?

24 A. The only thing that --- that we were told is we
25 would ask for update as to what his condition would be.

1 Whether it be critically stable or critically --- or you
2 know how they categorize it. And we were told that he
3 was, you know, critically stable. That was the only
4 thing we were told, they wouldn't elaborate anymore.

5 Q. Okay. And then you went back up there, I guess maybe
6 another ten days later?

7 A. I did. On the 29th of October.

8 Q. 28th of October?

9 A. 29th, I believe. October 27th. I received a call
10 from his mother and at the 28th, the next day, I went up
11 there.

12 Q. Okay. The 28th, you got this third statement?

13 A. Correct.

14 Q. And at that point where was he located in the hospital?

15 A. I believe he was in the same area. I can't --- I
16 can't remember. I mean all of it's bad to me up there
17 where he was up, 'cause there's all kind of people
18 always --- always around. It's not a free-for-all that
19 you can just go visit somebody in the room. That's not
20 where he was at.

21 Q. Okay. You had to get --- are you saying you basically
22 had to get permission to go back there?

23 A. Right. Right.

24 Q. Okay. And again, when you got this last statement, did
25 you talk to any of the surgeons or anybody about his medical

Direct exam Balchin

1 condition or diagnosis?

2 A. Just his --- his nurse to make sure that he had not
3 had any medication that would alter his mental status or
4 hits ability to answer questions.

5 Q. Okay. So basically just concerning medication?

6 A. That was it.

7 Q. And that was a specific question that you asked?

8 A. Yes.

9 Q. Okay. Let's go to the next day while you were still
10 investigating this. Were you present for the arrest when Mr.
11 Travis Lee was arrested?

12 A. I was.

13 Q. Where --- and again, do you know about where he was
14 arrested at?

15 A. Adams Drive.

16 Q. Adams Drive. And you were there?

17 A. I was.

18 Q. When he was arrested, did you read him his Miranda
19 rights?

20 A. I did.

21 Q. And is that standard procedure that you guys do when you
22 arrest somebody?

23 A. It is.

24 Q. Did --- did he speak with you?

25 A. He did.

1 Q. Did you coerce him in any way to talk to you?

2 A. I did not.

3 Q. Did you force him to talk to you?

4 A. I did not.

5 Q. He spoke freely about what was going on?

6 A. He did.

7 Q. Was he under the influence of any kind of anything that
8 you could tell?

9 A. Not that it appeared.

10 Q. Okay. He was --- he was coherent when y'all were
11 talking?

12 A. Yes, sir.

13 Q. He didn't --- he didn't give you a problem either out
14 there did he?

15 A. No, sir.

16 Q. When you --- when you talked to him you --- I guess
17 investigator Cogdill was out there with you, correct?

18 A. Correct.

19 Q. Did he have a body camera that was operable?

20 A. He did.

21 Q. And he had it on at that time?

22 A. He did.

23 Q. And it recorded the conversation?

24 A. It did.

25 Q. And it recorded the Miranda rights being given?

1 A. Yes, sir. It did.

2 Q. And Mr. Travis Lee told you out there on the scene that
3 all he did was hold him?

4 A. That's correct.

5 Q. And that's --- those are the exact words that he used?

6 A. Yes, sir.

7 Q. Did he demonstrate that to you as well?

8 A. He did.

9 Q. How did he do that?

10 A. He just grabbed my arm as if he was showing me
11 exactly what I saw on video.

12 Q. And he was just demonstrating it? He wasn't threatening
13 you or anything like that?

14 A. No. He was --- yeah. He was --- he never give us a
15 problem.

16 Q. Okay. But he said all I did was hold him?

17 A. Right.

18 Q. Now, you went --- after you wrapped up on the scene, you
19 went through the house, correct?

20 A. We did.

21 Q. What --- what were you doing in the house?

22 A. We were looking for the clothes, specifically the
23 white shirt, you know, from the previous night.

24 Q. And y'all took some items from the house and did you take
25 some items from car as well?

1 A. I don't think we took anything from the house. I
2 believe we did take a bag from the --- the rear of the
3 car.

4 Q. And that --- that would have been collected through the
5 normal evidentiary process?

6 A. That's correct.

7 Q. Was any of that stuff sent down to SLED?

8 A. It was not.

9 Q. And why --- why wasn't it?

10 A. Preliminary investigation, we try to collect
11 everything we possibly can. 'Cause we don't know whether
12 we're going to need it or not. But after reviewing the
13 video, we could see what happened. We didn't feel the
14 need to send the shirt down with --- with blood on it,
15 when we can see that there was blood on it. We know ---
16 we know what happened. We have a video. So we ---

17 (Simultaneous speaking)

18 A. --- send anything down.

19 Q. Fair enough. Once you wrapped up at --- at Adams Drive,
20 you took Mr. Travis Lee to the Abbeville Police Department; is
21 that right?

22 A. Correct.

23 Q. Did you talk with Mr. Travis Lee again?

24 A. I did.

25 Q. And did you read him his Miranda rights again?

1 A. I did.

2 Q. Same process? Same procedure?

3 A. Yes, sir.

4 Q. Did you coerce him or force him to say anything to you?

5 A. No, sir, I did not.

6 Q. Did he --- did he talk freely to you?

7 A. He did.

8 Q. Didn't appear to be under the influence of anything?

9 A. No, sir.

10 Q. And did he tell you basically the same thing?

11 A. He did.

12 Q. But this time he --- he said that he held Tobias --- he

13 used Tobias's name?

14 A. Yes.

15 Q. And kind of --- basically kind of did the same thing?

16 All he did when ---

17 A. He didn't --- he didn't grab ahold to my arm at the

18 police department, but he indicated the same thing. All

19 he did was hold him.

20 Q. All he did was hold Tobias?

21 A. Right.

22 Q. And he said --- that's what he said?

23 A. Yes, sir.

24 Q. Did you ever receive any kind of reports about a burglary

25 at apartment [REDACTED]?

1 A. Not prior to this incident, no.

2 Q. Did you ever receive a report about a burglary after this
3 incident?

4 A. An actual report? No. The night that it happened
5 and I spoke with Ms. Cobb, she referred to an incident,
6 but it had not been reported.

7 Q. Okay.

8 MR. BLACK: I think that's all the questions I have.
9 Please answer any questions that Mr. Tinsley and Mr.
10 Grose might have.

11 THE COURT: Mr. Tinsley.

12 MR. TINSLEY: Thank you, Your Honor.

13 CROSS-EXAMINATION

14 BY MR. TINSLEY:

15 Q. All right. Now, you testified about viewing the cameras
16 that night.

17 A. Yes, sir.

18 Q. Were you able to do that through your law enforcement
19 connection or did you have to get somebody from The Village to
20 help you?

21 A. We had access just as we had access to other cameras
22 for apartment complexes within the city. We had access
23 to those cameras where we can view them. You couldn't
24 view them live, none of them. You had to get
25 (unintelligible).

1 Q. Okay. So you could --- you could --- okay. So you were
2 able to see what had happened earlier that night from the law
3 enforcement connection?

4 A. Yes, sir.

5 Q. Okay.

6 A. I mean, on our computer at the police department
7 that's where we would log on and we could see the videos
8 and --- and burn them to a disc from that one.

9 Q. Okay. So you can't view them live, but you can see what
10 happened earlier that night?

11 A. That is correct.

12 Q. Okay. And these videos that we looked at, it was --- it
13 was daylight when all this took place?

14 A. Yes, sir.

15 Q. And when you got called out there that evening it was
16 night, right?

17 A. Yes, sir.

18 Q. And you would agree with me that the video of the parking
19 lot shows Tobias Hughey walk towards Travis Lee?

20 A. They meet up in the middle of the parking lot.

21 Q. Yeah, they're each walking towards each other?

22 A. Yes, sir.

23 Q. Okay. And they're having a conversation, right?

24 A. Yes, sir.

25 Q. And there's no --- no signs of any violence or any

1 struggle early on there?

2 A. Right.

3 Q. Okay. And you went through numbers of swings on the
4 camera angles that you can't tell if any actually make any
5 contact with Mr. Hughey on --- on the screen, can you?

6 A. Not visibly. No, you can't. You can just see it
7 being swung ---

8 Q. Okay.

9 A. --- what it impacts ---

10 Q. Okay.

11 A. --- couldn't tell you.

12 Q. All right.

13 A. Just what it appears.

14 Q. All right. And when --- when there's off camera, there's
15 four people that are off camera --- or five people actually
16 that are off camera, correct?

17 A. I don't understand the question. What do you mean,
18 "off camera?"

19 Q. Because when they --- when Mr. Hughey and the --- and the
20 Lees disappear off camera behind --- behind the building,
21 there's two other people that are --- that disappear as well,
22 correct?

23 A. You talking about when the initial fight starts and
24 they go behind the [REDACTED] building?

25 Q. Yes.

1 A. Yes, sir, but there's another camera angle that
2 captures all of that. That's just one angle that they
3 disappear behind. The other angle actually captures all
4 of it.

5 Q. Well, you're saying there's --- wait a minute. There's a
6 camera that --- that captures the entire thing including Mr.
7 Hughey and --- and the Lees on there?

8 A. Yes, sir. It's the camera that was on the side of
9 the [REDACTED] building.

10 Q. Okay. So nothing happens outside the view of that
11 camera?

12 A. It does, once he is dragged or drugged behind the
13 [REDACTED] building there's not a camera angle that captures
14 that or behind the [REDACTED] building. But when the assault is
15 taking place, it's --- that is captured on that [REDACTED]
16 camera.

17 Q. Okay.

18 A. They initially go out of the --- the [REDACTED] frame in
19 the parking lot.

20 Q. Okay.

21 A. And then the [REDACTED] angle captures all of that, but no
22 camera angle captures when he's pulled behind the [REDACTED]
23 building, there's not a camera.

24 Q. Okay. And there's a fee --- female, Ms. Devette, you're
25 saying she's on camera at all times?

1 A. Nobody's on camera at all times. Because the whole
2 incident disappears behind the [REDACTED] building as --- as we
3 watched.

4 Q. Okay.

5 A. We can't see anything behind there.

6 Q. Okay. So Ms. Devette also disappeared off camera?

7 A. Yes, sir.

8 Q. And there was another gentleman that --- that disappeared
9 off camera, correct?

10 A. Yes, sir.

11 Q. Do you know who that was?

12 A. Yes, sir. That was Mr. James Smith.

13 Q. James Smith. Okay. And Ms. Devette and Mr. Smith hadn't
14 been charged with anything in connection with this incident?

15 A. No, sir. They had not.

16 Q. Okay. And you say "drug," now, it's not like Mr.
17 Hughey's on the ground and Mr. Lee's dragging him like this.
18 He's on his feet at all times, correct?

19 A. He falls a couple times on the video as they're
20 going up that ---

21 (Simultaneous speaking)

22 Q. Okay. But he --- he pops back up, right?

23 A. Yes, sir. He does.

24 Q. Okay. There --- showed the video of Ms. Devette in that
25 red shirt of the trash can?

1 A. Yes, sir.

2 Q. And you recovered that shirt?

3 A. Yes, sir, I did.

4 Q. Just didn't have evidentiary value?

5 A. We didn't --- again, looking at the camera angle, we
6 feel that we saw what we needed to see. We collected it.
7 Obviously preliminary, we don't have a second chance to
8 collect evidence.

9 Q. Uh-huh.

10 A. If you see it, you get it.

11 Q. Gotcha, but you don't even know whose shirt it is?

12 A. We know it come out of the car ---

13 Q. Okay.

14 A. --- and it was put there. At that point in time we
15 didn't --- we didn't know. It's an ongoing
16 investigation.

17 Q. Okay. Okay. There wasn't any blood on it?

18 A. I --- I don't know.

19 Q. Okay. And you would agree with me that that camera
20 doesn't show any blood on my client Travis Lee?

21 A. Yeah, I --- I mean I can't see anything on him.

22 Q. Okay. And you recovered his shirt, but it wasn't covered
23 in blood or anything?

24 A. Correct.

25 Q. We saw the --- the night view going in Mr. Floyd's

1 apartment a couple --- couple nights earlier. Travis Lee is
2 not on that camera, correct?

3 A. You are correct.

4 Q. And when you talked to Mr. Hughey in the hospital on
5 October 19th, you talked to him and he communicated via
6 handwriting you --- you were comfortable taking a handwritten
7 statement from him, right?

8 A. Yes, sir.

9 Q. Okay. There were no concerns that --- that --- that he
10 wasn't able to give, correct?

11 A. Right. I mean we --- I had done what I believe
12 asking the questions of --- about the medicine, him being
13 in an altered mental status ---

14 Q. Yeah.

15 A. --- I believe I had covered it.

16 Q. So you were comfortable with --- with doing there.

17 And --- and after you Mirandized Travis Lee, he talked to
18 you a couple times that day, right?

19 A. Yes, sir.

20 Q. Despite the fact that he didn't have to?

21 A. Right.

22 Q. And he admitted to putting his hands on Mr. Hughey on his
23 arm ---

24 A. Yes, sir.

25 Q. --- and that's accurate what the video shows?

1 A. Yes, sir.

2 Q. There's nothing showing Travis Lee striking him or
3 kicking him?

4 A. Correct.

5 Q. There's nothing showing Travis Lee holding him down while
6 Ken Lee or anybody else hits him, correct?

7 A. Yes, sir.

8 Q. Now, there were a lot of people out there around The
9 Village that evening in the parking lot, correct?

10 A. Yes, sir.

11 Q. And you --- you testified you weren't getting much
12 cooperation from anybody?

13 A. Right.

14 Q. Not a single one of those people called 911?

15 A. Right.

16 Q. Nobody took Mr. Hughey to the hospital or anything?

17 A. No, sir.

18 Q. I mean, to the point to where you told another officer on
19 the scene that you made a phone call about putting cash money
20 on the streets. How much --- how much cash did y'all put out
21 on the streets?

22 A. We didn't put any on the streets.

23 Q. Then why did you say that?

24 A. In the --- in the investigations, when you conduct
25 drug operations or you use informants, all that is

1 documented through a system.

2 Q. Uh-huh.

3 A. And that's just --- that would be referred to as ---
4 as lingo among officers that work drugs is when you put
5 cash money on the street is there's people that are just
6 paid for information, there's people that conduct
7 undercover buys. There's different things that are done
8 in which people are compensated that happens on the state
9 level all the way through the Federal level. So that
10 lingo is where that's from.

11 And people will come forward a lot of times if money
12 is offered. In this instance no money was --- no money
13 was --- was paid to anybody.

14 Q. Was it offered to anybody?

15 A. No, sir. We had video.

16 Q. Okay. So you --- you thought about putting money on the
17 street, but you didn't?

18 A. Yes, sir.

19 Q. Okay. There's no --- you weren't in any kind of drug
20 operation associated with this case or anything right?

21 A. Again it doesn't just apply to drug operations.
22 Funds that --- that are seized that are used for --- for
23 different specific reasons, can within the law be used
24 for those reasons. If they documented an informant
25 through the right process, then you can pay people for

1 information. In this instance, that did not happen.
2 There was not a documented informant, there was not
3 any --- there was not any exchange for any money for
4 information from anybody.

5 Q. But early on you were --- in the investigation you were
6 talking about doing it?

7 A. Yes, sir.

8 Q. Okay. And there's no history that you're aware of any
9 trouble between Mr. Hughey and Travis Lee?

10 A. Not that I'm aware of.

11 Q. And --- and they --- and they were cordial towards each
12 other at the beginning of that interaction?

13 A. Yes, sir.

14 MR. TINSLEY: No further questions. Please answer
15 any questions Mr. Grose has.

16 THE COURT: Mr. Grose.

17 CROSS-EXAMINATION

18 BY MR. GROSE:

19 Q. I believe the Solicitor's showed you several statements?

20 A. Yes, sir.

21 Q. One of these --- one of the statements was what's marked
22 as --- I guess that's Defendant's Exhibits Number 1?

23 A. Yes, sir.

24 Q. And that's your signature on there?

25 A. It is.

1 Q. And it's dated 19 October 2020?

2 A. Yes, sir.

3 Q. All right. Other than the exhibit sticker, and your
4 signature, and the date, Mr. Hughey wrote everything in?

5 A. Yes, sir.

6 Q. Including the part where he said, I went in the house,
7 yes, comma?

8 A. Yes.

9 Q. Okay. And on Defendant's Exhibit Number 3, again, that's
10 your signature down there?

11 A. Yes, sir.

12 Q. And looks like you filled out this part, I have read each
13 page of the statement consisting of one pages. And then it
14 skips down where the statement was completed at 7:14 p.m. on
15 28th day of October 2020?

16 A. Yes, sir.

17 Q. Okay. And then there's a signature below that?

18 A. That is correct.

19 Q. That's Mr. Hughey's signature?

20 A. It is.

21 Q. You watched him sign that?

22 A. Yes, sir.

23 Q. All right. Where it says, I Tobias Hughey --- Tobias
24 Hughey is written out there. Did he write that?

25 A. Yes, sir.

1 Q. Then it says investigator D. Balchin Jr., looks like you
2 wrote that?

3 A. Yes, sir.

4 Q. All right. Says I am 21, Mr. Hughey wrote that?

5 A. Yes, sir.

6 Q. And [REDACTED] is the address, did he write that?

7 A. Yes, sir.

8 Q. Number of years, ten years --- he said he can read?

9 A. Yes, sir.

10 Q. And they had a completed --- put in the 10th grade. He
11 wrote that?

12 A. Yes, sir.

13 Q. And his --- there's a date of birth there, did he write
14 that?

15 A. Yes, sir.

16 Q. All right. And then this part it begins, I went looking
17 for Ken down through --- until there's a --- where it skips a
18 line, did he write that?

19 A. Yes, sir. He did.

20 Q. All right. And then it has a question that's asked, you
21 probably wrote that?

22 A. I did.

23 Q. And then where the answer was did you write that as well,
24 or did he write that as well?

25 A. No, sir. He wrote that.

1 Q. He wrote that?

2 A. Yes, sir.

3 Q. All right. So there's no doubt in your mind that Mr.
4 Hughey signed this statement that's Defendant's Exhibit Number
5 3?

6 A. That was --- this is a recorded body camera
7 statement.

8 Q. I understand, but there's no doubt in your mind that he
9 signed that statement right there?

10 A. Yes, sir. It wouldn't be on that video.

11 Q. And there's no doubt in your mind that he wrote out these
12 parts that you identified that he wrote out?

13 A. Yes, sir.

14 Q. Okay. And on Defendant's Exhibit Number 1, that also was
15 recorded on body camera?

16 A. Yes, sir.

17 Q. And there's no doubt that he wrote everything on that
18 page except your signature and the date?

19 A. Yes, sir.

20 Q. Okay. Now, I understand that when you first got involved
21 in the investigation the first place that you went was the
22 landing zone at the Abbeville High School practice field?

23 A. Yes, sir.

24 Q. All right. And from there you went The Village?

25 A. I did.

1 Q. And after The Village, you went to James Floyd's
2 apartment?

3 A. Yes, sir.

4 Q. All right. And you interviewed --- you went to several
5 places around The Village that night?

6 A. Yes, sir.

7 Q. And your role was identifying and interviewing witnesses?

8 A. Right.

9 Q. Okay.

10 A. That wasn't my only specific role, but ---

11 Q. That --- that's fair, but that was --- that was part of
12 your role?

13 A. Yes, sir.

14 Q. And it was while you were interviewing witnesses that you
15 told another officer that you made a call about putting cash
16 money on the street?

17 A. Yes, sir.

18 Q. Okay.

19 A. I mean if that's on video then yeah.

20 Q. Yeah. And as I understand it, another part of your role
21 was looking at the videos?

22 A. Yes, sir.

23 Q. And you were able to log in without having anybody's ID
24 from the apartment complex to help you?

25 A. Yes, sir. They didn't have a --- an IT department.

1 Q. Okay. All right. And it took some time to review the
2 videos?

3 A. Yes, sir.

4 Q. And then the next day you and one of the (unintelligible)
5 officers went to where Travis was living; is that right?

6 A. No, sir. I ended up there ---

7 Q. Okay.

8 A. --- but there were two other guys. I had been
9 working all night and there were two other guys there.

10 So I was called over there ---

11 (Simultaneous speaking)

12 Q. Okay. You ---

13 A. --- but they had --- they had possibly seen Mr.
14 Travis Lee.

15 Q. All right. You ended up there and then you interviewed
16 Mr. Lee --- Travis Lee at the police department?

17 A. Yes, sir.

18 Q. Okay. And you made a couple of trips to the hospital in
19 Greenville?

20 A. Yes, sir.

21 Q. All right. And of course Ken Lee turned himself in?

22 A. He did.

23 Q. And after, I guess Mr. Hughey was released from the
24 hospital, (unintelligible) May, that kind of wraps up the
25 investigation?

Cross-exam Balchin

1 A. For the most part, yes.

2 MR. GROSE: Okay. Beg the Court's indulgence for a
3 moment.

4 Thank you for that pause, but that's all I have at
5 this time.

6 THE COURT: Any redirect?

7 MR. BLACK: No, sir, Your Honor.

8 THE COURT: All right. Sir, thank you. You can
9 step down.

10 THE WITNESS: Thank you.

11 THE COURT: Good luck in the new career.

12 THE WITNESS: Thank you, sir.

13 THE COURT: All right. You've got one more witness
14 ---

15 MR. BLACK: Yes, sir.

16 THE COURT: --- that we can do tonight?

17 MR. BLACK: Ashlye Giles.

18 THE COURT: Shouldn't be too long, right?

19 MR. BLACK: Very --- should be very quick.

20 THE COURT: Very good.

21 (Witness sworn)

22 ASHLYE GILES, HAVING BEEN DULY SWORN, TESTIFIED AS
23 FOLLOWS.

24 DIRECT EXAMINATION

25 BY MR. BLACK:

Direct exam Giles

1 Q. Please state your name for the record, please.

2 A. Ashlye Giles.

3 Q. And I'm going to hand you what's been marked as State's
4 Exhibit 4 just for identification purposes.

5 A. Yes, sir.

6 Q. And you can refer to that. Ms. Giles where do you work
7 at?

8 A. Abbeville County 911.

9 Q. How long have you worked there?

10 A. 16 years.

11 Q. And what is your current title?

12 A. 911 director.

13 Q. And so you're the director over the whole department?

14 A. I am.

15 Q. And with that role, what is your --- what is your
16 department --- what do you all do?

17 A. In our department, we take and dispatch all
18 emergency and non-emergency calls for the entire county.
19 We dispatch all emergency services for the county
20 including law, fire, and EMS. We document all the calls
21 that come into the center and keep all records.

22 Q. And did you guys receive a call from October the 6th,
23 2020 in reference to --- or regarding a Tobias Hughey needing
24 help at [REDACTED] --- [REDACTED] ?

25 A. Yes, sir.

1 Q. And do y'all keep a --- a CAD report?

2 A. We do.

3 Q. And what --- tell the jury what a CAD report is.

4 A. What a CAD report is --- CAD stands for computer
5 automated dispatch. So whenever a call comes into the
6 911 center, we start a call for service in the CAD
7 system. So a CAD report is generated for each and every
8 call that we input into that system.

9 So that is the report, it contains all the of
10 information and times related to that particular call,
11 from the start of the call, all of the information for
12 the caller, as well as questions and information that we
13 input from the caller. And then all of the times from
14 the responders for that particular call as well.

15 Q. And this CAD report is kept in the ordinary course of
16 business typically?

17 A. Yes.

18 Q. And does it indicate who ends up making this --- these
19 calls?

20 A. It does.

21 Q. Who made this particular call?

22 A. Trays --- I'm not sure if I'm pronouncing it
23 correctly, but Tyfabria I believe it was. Let me make
24 sure in the documentation. I believe it was his sister.

25 Q. Okay. And what was the address that the call came from?

Direct exam Giles

1 A. It was [REDACTED], Abbeville.

2 Q. And what time did the call come in?

3 A. At 19:39, so 7:39 p.m.

4 Q. 7:39. And you guys dispatched law enforcement as well as
5 EMS?

6 A. That's correct.

7 Q. What time did law enforcement arrive on scene?

8 A. They --- first officer arrived on scene at 19:44, so
9 7:44 p.m.

10 Q. So it took about five minutes for the first officer ---

11 A. Yes.

12 Q. --- to get there? And then what time did EMS medical get
13 there?

14 A. Medical arrived at 19:48, so approximately four
15 minutes later.

16 Q. Did you receive any other calls from anybody else in the
17 county about this incident?

18 A. No. I believe this was the only call we had
19 regarding it.

20 Q. Did you --- did you ever receive any calls about this
21 time in reference to any burglaries that may or may not have
22 existed ---

23 A. No, sir.

24 Q. --- at --- at apartment [REDACTED], that's [REDACTED]
25 [REDACTED] apartment complex there?

1 A. No, sir.

2 Q. Did you search your system?

3 A. Yes, sir.

4 Q. And --- and you can narrow it down by apartment
5 number ---

6 A. I can.

7 Q. --- addresses and whatnot?

8 A. Yes.

9 Q. So you never --- you never had any of that?

10 A. No, sir.

11 Q. And you --- you looked, right?

12 A. Yes.

13 MR. BLACK: That's all the questions I have. Please
14 answer any questions from Mr. Tinsley or Mr. Grose may
15 have.

16 THE COURT: Any questions gentleman?

17 CROSS-EXAMINATION

18 BY MR. TINSLEY:

19 Q. Solicitor asked you about a call (unintelligible)
20 apartment on [REDACTED]?

21 A. Uh-huh.

22 Q. You don't have any record of that?

23 A. No, sir.

24 Q. How about Apartment 406 over there?

25 A. I can't say for certain. We searched the

1 initial --- or that exact address, as well as I believe
2 the apartment complex. But I can't say 100 percent for
3 sure on that one.

4 Q. If I hand you ---

5 A. Sure.

6 Q. --- a CAD ---

7 A. Yeah, I can look at it.

8 Q. --- for that apartment.

9 A. Sure. Yes, sir. This is one that we --- we would
10 have input into the system, correct.

11 Q. What's --- what's date on it?

12 A. It is 12/22/2020, December 22, 2020.

13 Q. What the apartment unit again?

14 A. That would be Unit Number 406.

15 Q. Okay. And who was the caller on that one?

16 A. It is Betty Utes (phonetic).

17 Q. Okay. And what was Betty Utes' complaint?

18 A. She was requesting law enforcement in reference to
19 her shoes being stolen out of her granddaughter's
20 apartment.

21 Q. Okay. And what --- who --- who was --- who was she
22 complaining about?

23 A. I'm not sure if maybe that was her --- her
24 apartment, and she was calling about her granddaughter's,
25 apartment or ---

Cross-exam Giles

1 Q. I'm saying who --- who is she complaining about taking
2 the shoes?

3 A. It doesn't state or it may later. I can --- hold
4 on. I'll have to read the whole thing. Okay. I see
5 Tobias Guillebeaux.

6 MR. TINSLEY: Okay. Thank you. No further
7 questions. Please answer any questions Mr. Grose has.

8 CROSS-EXAMINATION

9 BY MR. GROSE:

10 Q. That caller also stated that her granddaughter's cat had
11 been killed didn't she? Very last (unintelligible).

12 A. Yes.

13 Q. And you're just here today to tell us about the records
14 and the time frames of when people were dispatched?

15 A. Correct.

16 MR. GROSE: All right. Thank you. That's all I
17 have.

18 THE COURT: No redirect, Solicitor?

19 MR. BLACK: No redirect.

20 THE COURT: All right. Ma'am, you can step down.
21 Just leave those exhibits, I guess, with the court
22 reporter, please.

23 All right. Let --- let me speak to y'all over here
24 real quick.

25 (Sidebar conference)

1 THE COURT: Ladies and Gentlemen, what I'm going to
2 do, we're done for the evening, thankfully. And I know
3 that a lot has been thrown at you today. But we are
4 perhaps a little bit ahead of schedule now.

5 So I want you to have a very pleasant evening, and
6 I'm going to ask that you report back tomorrow morning at
7 10:00. And just report to the --- to the Grand Jury room
8 out there where y'all were the other day.

9 The lawyers --- I --- I've got some stuff at
10 9:00 --- 9:00 --- 9:30. And the lawyers on this case and
11 the --- the parties are going to be here at 9:30 in the
12 event that we need to address a few housekeeping matters.

13 But you report at 10:00, and I --- I --- I hope to
14 be able to get you back in here right there at 10:00.
15 Okay? So I don't want to keep you waiting while I'm
16 doing other stuff. That's what I'm --- that's what I'm
17 doing here. All right. Enjoy your evening, don't talk
18 about the case. See you tomorrow morning at 10:00. Have
19 a great night. Thank you.

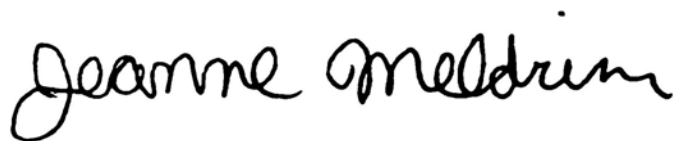
20 (PROCEEDINGS CONCLUDED AT 5:15 P.M.)

CERTIFICATE OF TRANSCRIBER

I, JEANNE MELDRIM, a court-approved transcriber, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the proceedings had and evidence introduced in the trial of the captioned case, relative to appeal, in the Court of CIRCUIT COURT 8 for ABBEVILLE COUNTY, South Carolina, on the 26th day of September, 2023.

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

January 12, 2024

A handwritten signature in black ink that reads "Jeanne Meldrim". The signature is written in a cursive, flowing style with a small dot above the 'i' in Meldrim.

Jeanne Meldrim

Transcriber

STATE OF SOUTH CAROLINA) IN THE CIRCUIT COURT 8
COUNTY OF ABBEVILLE) DOCKET NO. 2021-GS-01-00215
2021-GS-01-00214

STATE OF SOUTH CAROLINA,)
Plaintiff,)
versus)
TRAVIS A. LEE AND)
KENDRICK MONTREZ LEE)
Defendant.)

H E A R I N G

PRESENT: Travis A. Lee and Kendrick Montrez Lee
DATE: September 28, 2023
TIME: 9:44 a.m. - 4:14 p.m.
LOCATION: South Carolina Circuit Court 8
JUDGE: Frank R. Addy, Jr.
TRANSCRIBED BY: Jeanne Meldrim

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EXAMINATIONS

Witness	Direct	Cross	Redirect	Re-cross	further
Moore	26	30			

EXHIBITS

COURT'S EXHIBITS

Number	Description	Marked	Entered
10	E-mail	21	
11	E-mail	21	
12	document	130	130
13	document	130	130
14	document	149	149
15	document	149	149

(THIS TRANSCRIPT MAY CONTAIN QUOTED MATERIAL. SUCH MATERIAL IS REPRODUCED AS READ OR QUOTED BY THE SPEAKER.)

1 (Jury not present in courtroom)

2 THE COURT: And Mr. Grose did forward some items
3 that he wanted to be part of the record in this case.
4 One was an incident report concerning the shoes and the
5 dead cat which was mentioned yesterday. And the others
6 appear to be e-mail-type discovery links to Dropboxes or
7 something to that effect. Any objection to any of this?

8 MR. BROWN: Mr. Black had sent --- I think there was
9 a request obviously during discovery anything in CAD
10 reports that were --- that mentioned Tobias Hughey, or in
11 this case they ran it and it said Tobias Guillebeaux.
12 And that's the CAD from 12/22/2020, that was questioned
13 yesterday by the defense. Came about as Travis
14 Guillebeaux and ---

15 MR. GROSE: Your Honor --- Your Honor, I thought the
16 question was whether or not you had an objection.
17 They're going into responding to my motion. And I think
18 I should be able to make my motion before they try to
19 influence you.

20 THE COURT: I --- I --- you --- you simply asked
21 that they be made a part of the record and ---

22 MR. GROSE: Well, I ---

23 (Simultaneous speaking)

24 MR. GROSE: --- would say be made part of the record
25 in anticipation of making a motion.

1 THE COURT: Huh-uh. What is the motion then?

2 MR. GROSE: The motion is to exclude what ---
3 whatever witnesses they plan on calling this morning with
4 regards to the incident that I've asked to be made a
5 Court's exhibit. You'll see that that was sent ---
6 incident report was sent to us after 9:00 last night
7 after the end of the third day of trial.

8 And as you'll recall, you called the lawyers to a
9 sidebar to discuss scheduling, at which point The State
10 told you that they didn't have anymore witnesses, but
11 they wanted to think overnight on whether or not they
12 wanted to call another witness.

13 I think what they --- what Mr. Black told me this
14 morning --- not Black --- what Mr. Brown told me this
15 morning was is that they didn't know about this incident
16 report. And that's why I sent you those three discovery
17 e-mails that I got in July. Two of those three relate to
18 the CAD report that was done yesterday. There's also the
19 911 call, the recording that they sent us reporting what
20 they believe to be a crime.

21 And you know, we rely on what's sent to us in
22 discovery to be able to formulate a --- a defense. And
23 Mr. Tinsley yesterday asked their witness about a --- a
24 CAD report for an incident occurred at --- at --- the ---
25 The Village Apartments.

1 And then quite frankly, it feels like sandbagging,
2 because they clearly knew that this material was out
3 there, otherwise they wouldn't have sent it to us in
4 July. They tell you we need to have overnight to get
5 another witness. They're coming in, I think they're
6 going to call Laporchia Offley, because they've given
7 her --- given us certified copies of her conviction for
8 use of a vehicle without permission.

9 She's not on any witness list. And you know, quite
10 frankly, I think it's intentional based on how things
11 went out yesterday. This government doesn't have any
12 monopoly on circumstantial evidence. They were caught
13 off guard by --- or --- or not off guard, because they
14 knew it was coming.

15 They didn't like the questions that were asked to
16 some of the witnesses yesterday. They knew that this
17 incident report might exist. They told you we are not
18 going to rest because we're going to go out and think
19 about what we're going to do.

20 Now, it doesn't take a rocket scientist to put that
21 together with what they sent us after 9:00 last night,
22 that that's what they planned on going to look for when
23 they told you that yesterday. And --- and so that quite
24 frankly is sandbagging.

25 And, you know, Mr. Tinsley tells me something

1 similar happened to him in his last trial. You know,
2 this is sort of a --- a common occurrence. And
3 Rule 5 --- first of all, this was Brady. They --- they
4 did turn over the Brady that Mr. Hughey was accused of
5 this --- this burglary. It's also Rule 5 is --- is our
6 state's mechanism of complying with due process. Not
7 just Brady, but due process, because Rule 5 goes to stuff
8 that The State intends to use in their case-in-chief.
9 And it goes to material that's necessary to prepare a
10 defense. That could be Brady, or that could be other
11 material.

12 And --- and sort of in the line of the more things
13 change, the more they stay the same, the only real
14 substantive case enforcing Rule 5 that I'm aware of
15 is --- is State versus Vernon Lawton, which was Greenwood
16 case that was decided in 2009. And that cite is 382 SC
17 122 675 SE 2nd 5 --- I'm sorry 454. And in that case,
18 the Solicitor's office had a --- a statement of Mr.
19 Lawton that was in --- in the form of a letter that he
20 had written to an ex-wife or somebody, a third party.
21 And they produced for the first time during Mr. Lawton's
22 cross-examination during the defense's case-in-chief.

23 And the Court of Appeals in an opinion written by
24 then Chief Judge Hearn reversed. And you know, in --- in
25 that case particular prejudice came with regard to the

1 decision that Mr. Lawton might have made if he had been
2 given that information or it was disclosed that they had
3 that information.

4 I will tell you, I --- I did not handle that case on
5 appeal, but I was at the oral argument and --- and the
6 Court of Appeals was concerned about the aspect of Rule 5
7 is not really decided in this opinion which has turned
8 over the materials that are necessary in order to prepare
9 a defense. And this incident report certainly qualifies
10 as that. And it should be suppressed.

11 And they can't get up here and tell you they didn't
12 know about it because they sent us the allegation that
13 was Mr. Hughey being involved in that break-in as --- as
14 part of the Brady obligations.

15 THE COURT: All right.

16 (Simultaneous speaking)

17 MR. BROWN: Judge in response ---

18 THE COURT: First things first. Do you intend to
19 call that Laporchia ---

20 MR. BROWN: No, sir, Judge. We were planning on
21 calling Chief Nick Moore. Basically that report was
22 made --- and kind of giving you background, so the 911,
23 the CADs 911 went through and did a search for Tobias and
24 so pulls up Tobias Hughey, Tobias Guillebeaux and that's
25 where that CAD from 12/22/2020 comes into play. It

1 mentioned Tobias Guillebeaux.

2 So after yesterday after Tobias Guillebeaux's been
3 charged with --- or been said to have killed a cat, we
4 went back and looked. And the answer for --- that was
5 generated does not indicate Tobias Hughey, does not say
6 Tobias Guillebeaux on it. And in essence, the reason
7 being is the allegation was investigated but was
8 unfounded.

9 Also gave what's public record, Laporchia Offley
10 sentencing sheet and warrant. The warrant --- she was
11 arrested on October 13, 2020, for use of vehicle without
12 permission. So October 13, 2020, she was in jail up
13 until January 7, 2021. And Judge McIntosh the ---
14 actually there was a plea between Mr. Black, and Jane
15 Merrill represented Mr. Laporchia Offley.

16 She pled guilty on January 7th, so it was 85 days
17 she was not in her apartment. Essentially what we're
18 getting at is the cat was not brutally murdered and the
19 cat was dead in the apartment because people forgot about
20 it. But again, his name is not in this incident report,
21 and so when you do a search on it, it's not there.

22 And that's --- that's --- that's in essence, you
23 know, we got --- he's being accused of everything about
24 killing a cat, so, you know, the cat was locked up in an
25 apartment while the owner was in jail.

1 MR. GROSE: And first of all ---

2 (Simultaneous speaking)

3 THE COURT: Well --- let me --- let me --- let
4 me --- Nick Moore is on the witness list. So that takes
5 care of the Laporchia Offley issue. Apparently y'all
6 were aware of this incident report, because it was
7 brought up ---

8 MR. GROSE: No, we ---

9 THE COURT: --- yesterday.

10 MR. GROSE: We --- we were not aware of this
11 incident report. We were aware of the CAD report that
12 was marked as an exhibit yesterday.

13 THE COURT: You --- you mentioned a dead cat,
14 though, yesterday in your cross.

15 MR. GROSE: I --- I asked if --- if it mentioned a
16 dead cat. I didn't accuse anybody of killing the cat.
17 Y'all made that conclusion based on what you learned
18 about Mr. Hughey. I --- I --- I just asked about if the
19 cat was dead.

20 THE COURT: I --- I think Mr. Tinsley, though, did
21 ask if Mr. Hughey stole the sneakers or something to that
22 effect.

23 MR. GROSE: Well, he --- he was the suspect. And it
24 raises an interesting question as to why --- why they
25 were protecting Mr. Hughey, because it was very clear

1 that from that CAD report that --- that Tobias
2 Guillebeaux or Tobias Hughey was the suspect.

3 This was the guy that --- that they were trying to
4 use and use his mother in bond hearings to keep these two
5 gentleman in jail. And it --- it --- it smacks of a
6 coverup. And it wasn't unfounded. There were two pairs
7 of shoes that were missing. So when you read that
8 report, it --- it said that some of the shoes were found
9 but all but two pairs. So it --- it wasn't unfounded.

10 THE COURT: I think that their position is that
11 there was --- it was unfounded in the sense of okay,
12 obviously --- because she was in jail, the cat must have
13 starved to death, and it was unfounded in the sense that
14 there was insufficient evidence to charge anyone with the
15 crime. Am I getting at what you're getting at?

16 MR. BROWN: Yes, sir. That they couldn't charge
17 Tobias Hughey with that. There's nothing there to say
18 that Tobias Hughey ---

19 THE COURT: I mean, y'all brought it up.

20 MR. GROSE: We --- we --- we brought it up based on
21 the information that we were given. And --- and for them
22 to say that they didn't know about this incident report
23 when they put up a witness yesterday and said that we can
24 search our system based on addresses, they had to search
25 for it somehow last night.

1 THE COURT: But --- but you obviously --- the
2 defense obviously knew about allegations of stolen
3 sneakers and knew about the ---

4 MR. GROSE: Yes, sir. And we --- and we prepared
5 our defense based on what they provided and represented
6 to us whenever they called case in trial, they represent
7 they can file with discovery. They've been giving us
8 discovery throughout the week, and we haven't complained
9 until now.

10 MR. BROWN: Judge, they --- one thing is they also
11 know he wasn't charged because his charges and everything
12 he's been charged with after this has been brought to
13 light. So it's --- essentially, the main thing is is
14 there was nothing there to charge Tobias Hughey. And the
15 cat was locked in the building because it's owner was in
16 jail.

17 MR. GROSE: The ---

18 THE COURT: The --- the implication --- the
19 implication is that --- I think your question was that
20 along the lines of dead cat as well with the implication
21 being that Mr. Hughey may have killed the cat.

22 MR. GROSE: But y'all --- y'all reached that
23 conclusion based on the fact that the cat was dead and
24 Mr. Hughey was a suspect.

25 THE COURT: Then why did you bring it up, unless you

1 wanted to suggest that Mr. Hughey killed the cat?

2 MR. GROSE: You --- you draw the conclusions that
3 you draw, Judge. And I understand --- I understand why
4 you would draw that conclusion based on what you've heard
5 about Mr. Hughey's character this week. The issue though
6 is is when I thought they were calling the person who
7 they gave as the convictions board that was somebody who
8 would maybe have some knowledge about whether or not she
9 locked her cat in the house when she went to --- to ---
10 to jail. But I don't think when I look at this report, I
11 don't see Chief Moore's name on here as having
12 investigated that. So he wouldn't be testifying about
13 anything that he personally observed. And we would
14 have --- if we had known that they were going to do this
15 before almost 9:30 last night, we could have gotten Ms.
16 Betty --- last name spelled U-B-A-H, here to explain why
17 she thought that it was Mr. Hughey that had done it.

18 THE COURT: What is --- what is Mr. Moore going to
19 testify to?

20 MR. BROWN: Basically as being the chief of --- that
21 he has reviewed this and that there was no charges
22 brought, Mr. Tobias Hughey's name is not in the report.
23 And give the reason for that is that there's no
24 evidentiary --- evidence --- evidence to support an
25 arrest or charge, or anything like that, they don't even

1 put a suspect's name in there. If it's essentially
2 unfounded.

3 MR. GROSE: And --- and again, that --- that's not
4 anything that --- there's nothing on this report that
5 indicates that he made that decision, or he participated
6 in that investigation. The officer's name is on the
7 report is Carmen Y-E-R-K-E-S.

8 THE COURT: I will allow you to call Nick Moore to
9 explain that Ms. Offley was in jail and that no charges
10 were brought for cruelty to animals, because the cat
11 likely starved to death because it was forgotten about
12 when it was left in the apartment.

13 MR. GROSE: And --- and that would be misleading to
14 say that the cat likely starved to death, because on the
15 911 call it said that the cat wasn't in the apartment and
16 then was in the apartment. Wasn't in the apartment when
17 the --- the lady had last checked.

18 THE COURT: So you're now suggesting that Mr. Hughey
19 did in fact, kill the cat, Mr. Grose?

20 MR. GROSE: I --- I'm suggesting that I don't know
21 that the cat --- it --- it would be misleading to say
22 that the cat starved to death because the lady who
23 went --- went to jail locked the cat in the house. That
24 would be misleading to suggest that.

25 THE COURT: The --- the defense doesn't get to have

1 it both ways.

2 MR. GROSE: I'm --- I'm not trying to have it both
3 ways. I consistently all through my career have wanted
4 to have discovery before trial. And as I've said, the
5 more things change, the more things they stay the same.
6 I mean they --- earlier this week, they --- they
7 presented us with other incident reports of things that
8 happened The Village Apartments. And we're in trial
9 and --- and don't really have an opportunity to go out
10 and investigate what --- what role Mr. Hughey might or
11 might not have had in --- in some of that. I hadn't even
12 had a chance to really look at those incident reports
13 because I've been in here in trial. The time to have
14 done discovery is before trial.

15 THE COURT: Mr. Tinsley brought this incident up ---
16 Mr. Tinsley.

17 MR. TINSLEY: Judge, what --- what he's saying is
18 true. It is certainly misleading because the lady said
19 she was there a month earlier shoes were there, the cat
20 wasn't there, now shoes are gone and the cat's in there
21 dead. I mean, I --- that --- so to say that the cat was
22 just left alone in there while this girl was in jail,
23 there's just --- there's nothing to support that.

24 THE COURT: There's already been unobjected to
25 testimony that Mr. Hughey has a reputation of being a

1 thief. Okay? Mr. Tinsley brought up a specific incident
2 yesterday of bad acts which are not subject to a
3 conviction. And from a review of the incident report,
4 the person who stole the shoes is unknown.

5 I appreciate your position, Mr. Grose, I appreciate
6 your position Mr. Tinsley, but Mr. Moore is listed as a
7 witness, y'all were aware of this incident report. If
8 Mr. Hughey was a suspect or you have discovery to that
9 effect, you can certainly cross-examine Mr. Moore about
10 the fact that maybe he was a suspect, but he was never
11 charged because they felt like there was insufficient
12 evidence.

13 MR. GROSE: Well, he --- he doesn't know that.
14 He --- he --- he only --- he --- he doesn't have any
15 personal knowledge of the investigation. He can --- he
16 can say that Mr. Hughey wasn't charged over objection.
17 He can say Mr. Hughey wasn't charged with burglary, with
18 larceny, or with cruelty to animals, but unless he
19 participated in the investigation, he can't say why that
20 charge wasn't brought.

21 THE COURT: How do you plan to throw that needle,
22 Solicitor?

23 MR. BROWN: Judge I'm just going to --- main thing
24 is was an investigation done? Was an officer sent out
25 there? Were any charges brought about for Tobias Hughey

1 for burglary, larceny, or cruelty to animals?

2 THE COURT: Basically just asking him based upon
3 your review of the records were any charges ever brought.

4 MR. BROWN: Yes, sir. And then also ---

5 THE COURT: Was the report --- was the report made?
6 Was an officer dispatched? Were --- were any charges
7 made?

8 MR. BROWN: Yes, sir. And then also ask him was
9 Laporchia Offley, did she live there, was that her
10 documented residence? Was she arrested on 10/13/2020 and
11 ultimately released from --- from jail on 1/7/2021?

12 THE COURT: Being the chief of police, that would be
13 information within the knowledge of Mr. Moore, and he
14 would be familiar with what their procedures are for
15 making arrests and charging people should there be
16 sufficient evidence. Mr. Tinsley.

17 MR. TINSLEY: Judge, I was just going to say you
18 commented, we knew the incident report existed. We knew
19 it at 9:25 last night. That CAD report says low
20 priority, it didn't produce anything showing they looked
21 into it. So I just figured nothing ever happened. I
22 didn't know that Abbeville police looked into it. And,
23 you know, they ---

24 (Simultaneous speaking)

25 THE COURT: Well, there --- there was a call and

1 someone's dispatched.

2 (Simultaneous speaking)

3 THE COURT: And you knew enough about the shoes. I
4 mean, how did you know about the shoes?

5 MR. TINSLEY: Because it was in the CAD report. And
6 the incident report had --- and the 911 call which we
7 have the --- the audio of and the incident report, the
8 CAD lists her Betty Utes in this incident report
9 apparently her name's Betty Ubah. So we didn't know this
10 thing existed.

11 THE COURT: The CAD report reflects what? That
12 somebody called 911 about stolen shoes?

13 MR. BROWN: The grandmother apparently. That's what
14 was introduced yesterday, or was brought up that the
15 grandmother, Laporchia Offley, called about some stolen
16 shoes and a cat was dead in the apartment is what ---
17 what was brought out yesterday from the defense.

18 And again, the incident report, officers went out
19 there. The incident report does not have Tobias
20 Guillebeaux or Tobias Hughey's name in there. They did
21 look at it and found that the doors were locked, windows
22 were up, and cat was dead on the floor.

23 THE COURT: Okay. And why did that CAD report get
24 provided to the defense?

25 MR. BROWN: Because they asked for anything that had

1 Tobias Hughey's name in it, or I guess Tobias, because it
2 was Guillebeaux and Hughey.

3 MR. BLACK: They asked me for a --- I guess to run a
4 search in the CAD for anything regarding Tobias Hughey,
5 so we requested dispatch and we received --- we sent ---
6 we sent to them.

7 THE COURT: Okay. Then how did Tobias Hughey ---

8 (Simultaneous speaking)

9 THE COURT: Hold --- hold --- let me --- please let
10 me clarify in my mind how all this came about, please.

11 How did --- how --- how did Tobias Hughey
12 Guillebeaux's name get attached to that CAD report then
13 if ---

14 MR. BLACK: The caller said something along the
15 lines of --- and don't quote me on this --- it was
16 probably Tobias Hughey or Guillebeaux.

17 THE COURT: Okay.

18 MR. BLACK: They say Tobias Guillebeaux.

19 THE COURT: Okay.

20 MR. BLACK: At the very end of the call. So when we
21 asked 911 based on their request to get it, they provided
22 us the call in the CAD and we just forwarded it to them.

23 THE COURT: Okay. But clearly this was not --- I
24 guess this was not something that was on your radar then
25 because it just --- it was a whole --- big old dump of

1 anything with Guillebeaux or Hughey?

2 MR. BLACK: Yes, sir. But that was the only one,
3 but we did get it provided at their request.

4 THE COURT: All right.

5 MR. GROSE: I --- I don't recall making that
6 request. I just recall getting the e-mails. Maybe I
7 did, but I --- I don't think Mr. Tinsley recalls that. I
8 think, you know, they should have done their due
9 diligence and --- and looked for this anyway.

10 MR. BLACK: I wouldn't have done it unless they
11 asked. I don't remember if it was Mr. Grose or Mr.
12 Tinsley. I'm not blaming one of them. But I do remember
13 getting and immediately asking for it because that's
14 typically what I do.

15 THE COURT: All right. He can testify.

16 MR. BLACK: And Judge, I did want to put one more
17 thing on the record. I think there was a accusation that
18 we provided incident reports. On Wednesday morning I
19 sent a e-mail to Mr. Grose and Mr. Tinsley that provided
20 other additional CADs. So they were not incident
21 reports, but they were CADs. And they were in reference
22 to reports made by Travis Lee about certain --- if he had
23 made any reports of vandalism around that time or in
24 2020.

25 And one of CADs was from January 27, 2020, and the

1 other one was from June the 30th, 2020. I did send that
2 to them, but it was never brought up. Any kind of
3 questioning when we talked to the --- to the dispatchers.
4 I --- I wanted to make sure that the record was clear as
5 to we didn't see any additional incident reports. There
6 was the two CADs and they were never brought up.

7 THE COURT: Okay. Thank you. All right. I'll make
8 the e-mail chain with the incident report dated
9 December 22, 2020 --- I'll make that e-mail chain, I
10 think we're up to Court's 10.

11 MR. GROSE: Does that include the discovery e-mails?

12 THE COURT: That's going to be Court's 11.

13 MR. GROSE: Okay. Thank you.

14 (Court's Exhibit 10 marked)

15 THE COURT: Court's 10 will be the e-mail with the
16 attached incident report. And then Court's 10 --- or
17 sorry, 11 --- correction, Court's 11, will be series of
18 e-mails with the links to the discovery Dropboxes,
19 whatever it is.

20 (Court's Exhibit 11 marked)

21 THE COURT: All right. I assume that the jury is
22 here. Before we get the jury, has --- has the defense
23 made a decision as to whether they're going to present a
24 defense, Mr. Tinsley? Just curious.

25 MR. TINSLEY: As it sits right now, I'm --- I don't

1 think my client is inclined to testify. So with that
2 being said, we're not going to produce a --- a case in
3 chief unless that changes in the next little while.

4 THE COURT: Gotcha.

5 MR. GROSE: Well, and --- and depending upon what
6 happens with the chief, I'm going to have to consider it
7 at that point. Because we may, you know, we may need to
8 reply to that.

9 THE COURT: Fine. And --- and that's fine. I'm ---
10 I'm just trying to keep the train on the tracks and
11 keeping it running on time. And if it was necessary for
12 me to have a colloquy with your clients about their right
13 to testify, I was going to go ahead and do that if the
14 decision had been made for them not to testify. So I
15 guess we'll just go ahead with the jury and have to do
16 that later.

17 MR. GROSE: Well, I can tell you unless something
18 changes, Ken Lee is not going to testify. That doesn't
19 mean ---

20 THE COURT: Okay.

21 MR. GROSE: --- I've still got --- I've got to see
22 how this ---

23 THE COURT: Okay.

24 MR. GROSE: --- this develops. It may be benign,
25 but --- but we may be asking you for time to --- to ---

1 to go get a witness. We just got to see.

2 THE COURT: I understand that. And we'll address
3 the collateral nature of that potentially at a later
4 point in time.

5 Gentleman, Misters Lee, I --- I need to just to
6 briefly review with you, I'm --- I'm hearing and I'm
7 going to refer to y'all by your first names just so that
8 the record's clear. It doesn't mean any sort of
9 disrespect or anything.

10 But Travis, your --- your attorney is telling me
11 that you don't anticipate testifying. You don't
12 anticipate presenting a defense.

13 And Kendrick, your --- your lawyer's telling me that
14 there might be some defense after The State rests. He's
15 not quite sure. He wants to see what Chief Moore says on
16 direct. But nonetheless, he anticipates that you will
17 not be testifying; is --- is that correct, Travis?

18 MR. T. LEE: Yes, sir.

19 THE COURT: And is that correct, Kendrick?

20 MR. K. LEE: (No audible response).

21 THE COURT: All right. And obviously, gentleman,
22 you understand that you --- you have the right to testify
23 if you wanted to. And at the same time, you have the
24 right to assert your 5th Amendment rights, which means
25 that nobody can compel you to be a witness in any case

1 where you are a criminal defendant.

2 And in this case thus far, obviously, gentleman,
3 your attorneys have not introduced any evidence. And one
4 of the reasons that may have taken place, or one of the
5 reasons they may not have introduced any evidence is they
6 want the last argument, which is generally considered a
7 rather valuable thing in a criminal trial. Okay? A
8 chance to have your last word. So that may be one of
9 reasons that they don't anticipate presenting a defense.

10 If --- if you were to testify, of course you'd have
11 to answer any relevant questions put to you. And you
12 could potentially be impeached with --- with prior
13 crimes. We haven't even discussed that possibility yet.

14 But whether or not you testify, you understand
15 that's --- that's your decision to make, it's not your
16 lawyer's decision. Certainly you should follow their
17 advice, because they're trained in this kind of a thing.
18 But whether or not you testify is totally up to you.

19 So Mr. Travis, are --- I'm hearing that it's your
20 decision not to testify; am I correct in that?

21 MR. T. LEE: Yes, sir.

22 THE COURT: And same to you Mr. Kendrick?

23 MR. K. LEE: (No audible response).

24 THE COURT: All right. Gentleman, thank you very
25 much. Y'all can have a seat.

1 MR. GROSE: Judge, if I may ---

2 THE COURT: Yes, sir.

3 MR. GROSE: --- put --- put on the record just one
4 thing you said about impeachment. I just want the record
5 to be clear. I don't think Travis Lee can be impeached
6 with any of his prior crimes should he take the stand.

7 THE COURT: I understand. I understand your
8 position. And that may very well be the case. But I
9 don't see any reason to go there if they're not going to
10 testify.

11 MR. GROSE: I understand. I just want to make sure
12 that he didn't --- didn't think that that was out there.

13 THE COURT: Okay. You understand that all that, Mr.
14 Travis?

15 MR. T. LEE: Yes, sir.

16 THE COURT: All right. Good enough. Let's have the
17 jury, please.

18 MR. GROSE: Just note our objection to this witness
19 being called since there's been a break ---

20 THE COURT: Sure.

21 MR. GROSE: --- when we made that motion and ---
22 and --- and now.

23 THE COURT: Certainly. Objection is noted.

24 (Jury enters courtroom)

25 THE COURT: And y'all can come on down here. Come

Direct exam Moore

1 on down and have a seat.

2 All right. The record will reflect all jurors are
3 back and seated.

4 Ladies and Gentlemen of the jury, thank you for
5 being here and thank you for being on time.

6 We have an additional witness for The State. So
7 Solicitor, call your witness, please.

8 MR. BROWN: Thank you, Judge. The State calls Chief
9 Nick Moore.

10 THE COURT: Of course this witness is being called
11 subject to all prior objections and rules of the Court.

12 (Witness sworn)

13 CHIEF NICK MOORE, HAVING BEEN DULY SWORN, TESTIFIED AS
14 FOLLOWS.

15 DIRECT EXAMINATION

16 BY MR. BROWN:

17 Q. Good morning. Please state your name.

18 A. Nicholas Moore.

19 Q. And where are you working?

20 A. City of Abbeville Police Department.

21 Q. And is your position?

22 A. Chief of police.

23 Q. How long have you been the chief of police?

24 A. Six months.

25 Q. And before that what was your role?

Direct exam Moore

1 A. Assistant chief of police.

2 Q. And in 2020, were you working in Abbeville City Police
3 Department?

4 A. Yes, sir.

5 Q. And as part of a chief, are you supervising officers?

6 A. Yes, sir.

7 Q. Manage the Abbeville Police Department?

8 A. Yes, sir.

9 Q. Okay. I want to take you back --- there was a CAD report
10 mentioned yesterday, 12/22/2020 about a potential larceny of
11 some shoes, and a cat that had died at an apartment complex.

12 [REDACTED] Apartment [REDACTED]. Have you had a chance to
13 review an incident report on that?

14 A. Yes, sir.

15 Q. Whose apartment did that --- who --- who --- who lived in
16 that apartment?

17 A. The report stated Laporchia Offley.

18 Q. Okay. Now, I want to show you ---

19 MR. BROWN: Your Honor, may we approach?

20 THE COURT: Please proceed Mr. Brown.

21 MR. BLACK: Thank you.

22 BY MR. BROWN:

23 Q. Now Chief Moore, Laporchia Offley, she was arrested for
24 use --- unlawful use of a vehicle, correct? October 13, 2020?

25 A. Correct.

Direct exam Moore

1 Q. And she went to the Abbeville County Detention Center; is
2 that right?

3 A. Yes, sir.

4 Q. She then pled guilty on January 7th of 2021; is that
5 right?

6 A. As far as I know. I --- I can't swear to in that
7 exact date.

8 Q. Let me just refresh your memory. On that sheet, what's
9 that date?

10 A. 1/7/2021.

11 Q. 1/7/2021? And she got credit for 85 days in the
12 detention center?

13 A. Yes.

14 Q. Now, it was brought --- brought out yesterday that there
15 was a --- a 911 call or a CAD report for December 22, 2020,
16 for somebody alleging that Tobias Guillebeaux had stolen some
17 shoes, and a cat was involved; is that correct?

18 A. That's correct.

19 Q. Did officer --- was an officer dispatched that day?

20 A. Yes, there were.

21 Q. And did a follow-up investigation?

22 A. Yes.

23 Q. And was Tobias Hughey --- Tobias Guillebeaux, was he ever
24 charged with anything from that?

25 A. No, he was not.

Direct exam Moore

1 Q. Was he ever charged with cruelty to animals?

2 A. No, he was not.

3 Q. Larceny?

4 A. No, he was not.

5 Q. Burglary? In the incident report is Mr. Hughey's name
6 even listed on that incident report?

7 A. No, it is not.

8 Q. What's the --- why --- is there a protocol in your office
9 why the name's not put on that?

10 A. Yes, sir. If there's ---

11 (Simultaneous speaking)

12 MR. GROSE: This --- this was part of what I think
13 was limited.

14 THE COURT: Okay. Rephrase your question.

15 BY MR. BROWN:

16 Q. When is a name placed in an incident report --- a
17 suspect's name?

18 A. When you have evidence that they are a true suspect.

19 MR. GROSE: Your Honor, I move to strike. You ---
20 you instructed them not to ask that question. That's ---
21 that's outside of his personal knowledge.

22 THE COURT: Overruled. That's general policy of
23 their --- I'm taking that as general policy of their
24 department.

25 BY MR. BROWN:

Cross-exam Moore

1 Q. Tobias Hughey's name is not in the report?

2 A. No, it is not.

3 Q. And also in the report, was the apartment secured, locked
4 up according to the incident report?

5 A. No forced entry to apartment was --- windows and
6 doors were locked.

7 Q. And the cat was back on the carpet?

8 A. Yes, sir.

9 Q. Deceased?

10 A. Deceased.

11 MR. BROWN: No further questions.

12 THE COURT: Mr. Tinsley.

13 CROSS-EXAMINATION

14 BY MR. TINSLEY:

15 Q. December of 2020, your office was treating Mr. Hughey as
16 a victim in the investigation of Travis and Ken Lee, correct?

17 A. Yes.

18 Q. Okay. And are you aware these --- these gentleman were
19 still in the Abbeville County Jail during that time, correct?

20 A. I would assume, but I was not aware of actually
21 their where whereabouts on that date.

22 Q. Oh. Okay. Well, I --- okay. Now were --- did you ---
23 are you aware of the --- the bond hearings to get these
24 gentleman out?

25 A. Yes, I'm aware of them.

Cross-exam Moore

1 Q. Okay. And your office was working with the Solicitor's
2 office and with Mr. Hughey to try to keep them in jail,
3 correct?

4 A. That part, I have --- I can't answer. I don't --- I
5 don't know. I'm aware of them, but I'm not --- I don't
6 participate in them. I wasn't present, so I can't tell
7 you what ---

8 Q. Okay. Well, your office was --- was --- was in contact
9 with Mr. Hughey during this time frame, correct?

10 A. The office would have been through the Solicitor's
11 office.

12 Q. Okay. And didn't interview him about this incident or
13 anything?

14 A. Which incident?

15 Q. The --- the December incident with the shoes.

16 A. To my knowledge, no they didn't know anything.

17 Q. And even though no one was charged, two pairs shoes
18 were --- were certainly missing per the report?

19 A. Per the report.

20 MR. TINSLEY: No further questions.

21 THE COURT: Mr. Grose.

22 CROSS-EXAMINATION

23 BY MR. GROSE:

24 Q. Per the report, I think you just testified that two pairs
25 of shoes were missing; is that right?

1 A. It's what the report says.

2 Q. And per the report, those shoes had been there a month
3 earlier when the caller had been in the apartment?

4 A. It's what report says.

5 Q. And per the report there --- the officer talked to the
6 front office about leaving windows open?

7 A. Ask that again? I'm sorry.

8 Q. Per the report, the officer that was dispatched talked to
9 the front office to notify them about making sure windows and
10 doors were locked after they cleaned?

11 A. Correct.

12 Q. All right. And so the fact that there was no forced
13 entry doesn't mean that a burglary didn't take place? You
14 don't have to have forced entry for a burglary? A burglary is
15 entering without permission with intent to commit a crime?

16 A. Okay.

17 Q. You would agree with that?

18 A. Yes.

19 Q. And if I leave --- or if you leave your door to your
20 house unlocked, and I walk in intending to steal your
21 television, I'd be guilty of burglary ---

22 A. Correct.

23 Q. --- even though I didn't force my way in; is that right?

24 A. Correct.

25 Q. And did you did review the CAD report?

Proceedings

1 A. I did.

2 Q. And --- and Mr. Hughey was the person who was identified
3 by the complaining witness as a suspect?

4 A. That's what they told the dispatch.

5 Q. Okay. And that's what dispatch put in the CAD report?

6 A. Correct.

7 MR. GROSE: Thank you.

8 THE COURT: Thank you, sir. You can step down.

9 Solicitor, any additional witnesses?

10 MR. BROWN: No, sir, Your Honor. The State rests.

11 THE COURT: All right. Very good. Ladies and
12 Gentlemen, there's a couple of matters of law that I need
13 to take up with the attorneys, some motions which need to
14 be made, and prior to us proceeding further.

15 So if you would adjourn to the jury room from a few
16 moments and when we get --- when we get done with that,
17 I'll probably let you guys, whoever wants to have a smoke
18 break, and we will take from there. Okay. Don't discuss
19 the case yet, but do adjourn to the jury room, thank you.

20 (Jury leaves courtroom)

21 THE COURT: The jury is out. Of course all prior
22 motions are renewed. All prior objections are renewed by
23 all parties. And same ruling as before on everything
24 previous.

25 Mr. Tinsley, Mr. Grose, I assume that you gentleman

1 do move for a directed verdict on these cases?

2 MR. GROSE: Yes, Your Honor.

3 MR. TINSLEY: Yes, sir.

4 THE COURT: All right. Anyone want to be heard on
5 that? Or ---

6 MR. TINSLEY: Yes, Your Honor. I --- I --- I don't
7 think The State has met its burden of producing
8 sufficient evidence that anything my client Travis Lee
9 did caused great bodily injury to Tobias Hughey. So on
10 that ground I --- I would move for a directed verdict on
11 the assault and battery of a high and aggravated nature
12 for sure.

13 And I would also move on the --- the lesser
14 inclusions as well. But in particular, their evidence
15 consists of my client grabbing Tobias Hughey's arm, and
16 then kind of --- I don't know if tussling is the right
17 word or jerking around. It's kind of hard from that
18 video to say who's --- who's driving that train.

19 And that's just not enough to get over directed
20 verdict in the light most favorable to the State for
21 assault and battery of a high and aggravated nature. And
22 I would --- I would ask that you direct the verdict at
23 least on that charge, but I'm asking for it on all
24 charges, but particularly on the high and aggravated
25 nature, given that The State has not produced evidence

1 that he did anything to cause great bodily injury to Mr.
2 Hughey. Thank you, Your Honor.

3 THE COURT: Thank you. Mr. Grose, anything?

4 MR. GROSE: Your Honor, I would move for a directed
5 verdict based on the fact The State's failed to present
6 any direct or any substantial circumstance evidence based
7 upon which a reasonable jury could convict.

8 THE COURT: All right. Appreciate your gentleman's
9 position.

10 Did you want to be heard on that, Mr. Black?

11 MR. BLACK: No, sir, Your Honor. I --- Judge, I
12 don't think it's necessary.

13 THE COURT: No, I understand. In --- in --- in this
14 case, I think that the testimony of Mr. Hughey as well as
15 the testimony of others indicate that there is both
16 direct evidence and substantial circumstantial evidence
17 which would warrant submitting this case to the jury. So
18 respectfully, the motions are denied.

19 Mr. Grose, you anticipate calling --- or presenting
20 a case at this point?

21 MR. GROSE: Can I have a moment ---

22 THE COURT: Certainly.

23 MR. GROSE: --- for ---

24 (Mr. Grose conferring)

25 MR. GROSE: Thank you, Judge. I --- I did consider

1 recalling a witness, but we've decided not to do that.

2 THE COURT: All right. Very good. I assume closing
3 will be going in the same order that we've been going
4 with The State. Our closing in full, then Mr. Tinsley,
5 then Mr. Grose; is that what y'all decided? Is that okay
6 with y'all?

7 MR. TINSLEY: I'm fine with that Your Honor.

8 MR. GROSE: It --- it --- it is. And I don't know
9 what Mr. Tinsley might need, but I'm going to need time
10 to hook up my technology before my closing. Should ---

11 THE COURT: Sure. You want to ---

12 MR. GROSE: I did this earlier this year, so it
13 should go pretty quick. But ---

14 THE COURT: That's fine. The jury instructions that
15 were e-mailed to y'all last night, did --- aside from
16 adding the A and B first that Mr. Grose mentioned, and I
17 think --- she's already got that. Did y'all have any
18 other suggestions or ---

19 MR. GROSE: I do.

20 THE COURT: Yes, sir.

21 MR. GROSE: I think --- let me just pull up my
22 Westlaw again, but --- taking --- there we go. While I'm
23 doing that, Your Honor, I --- I think that it would be
24 helpful if you explained that the concept of lesser
25 included and give what has --- has been known as a King

1 charge.

2 THE COURT: I'm sorry?

3 MR. GROSE: A King charge. Resolving that the
4 reasonable doubt --- if --- if they have any doubt
5 between the --- the higher and the lesser that they have
6 to resolve it in favor of the lesser included. I'm aware
7 of --- this is what I was wanting to point out:
8 Brightman versus State of South Carolina, which is a 1999
9 case. 336 S.C. 348, 520 SE 2nd 614. Where they --- the
10 Supreme Court of South Carolina ruled that it's not, you
11 know, automatic reversal for not giving that instruction
12 if the proper reasonable doubt instruction is given. But
13 they did not say that such an instruction would never be
14 appropriate if requested.

15 And in that --- you know, they refer to the King
16 case where that instruction was originally, or --- or one
17 of the --- maybe not originally, but in (unintelligible)
18 cases it stands for that in a footnote too, they say if a
19 jury has a reasonable doubt between the lesser and
20 greater offenses, it must resolve that doubt in the
21 defendant's favor.

22 And so we would ask that that portion of the King
23 charge to explain what lesser includeds are and to
24 include that instruction.

25 THE COURT: Okay. Mr. Tinsley, you join in that

1 motion?

2 MR. TINSLEY: I join in that motion, Your Honor. I
3 also would object to the hand of one is hand the hand of
4 all. The State hasn't produced any --- any evidence that
5 there was any kind of agreement that these two were in
6 any kind of cahoots. All they've showed is that my
7 client was having a conversation with Mr. Hughey, and
8 then Ken Lee came up. My client did grab the arm, but
9 that doesn't prove there was any kind of agreement there.

10 Also, I would ask for an assault and battery third
11 degree charge for my client, Travis Lee. If a jury
12 believes what I said, they have my take on what happened
13 that my client grabbed his arm and they --- you know,
14 they tussled or whatnot to the back. If they think he
15 was one driving the train and that's all he did, they can
16 convict him of simple assault and that's it.

17 So I --- I --- I think he is entitled to an assault
18 and battery third degree charge. So I would ask that
19 that be included in for Travis Lee.

20 MR. GROSE: And I --- actually, I would think that
21 they're both entitled to that because the General
22 Assembly specifically stated that third degree assault
23 and battery is a lesser included of the other three that
24 you're charging.

25 THE COURT: And Mr. Grose, you also join in Mr.

1 Tinsley's objection to hand of one, hand of all?

2 MR. GROSE: I --- I do.

3 THE COURT: All right. Mr. Brown.

4 MR. BROWN: Judge, to start, a hand of one, hand of
5 all, Eric Phillips actually testified to a question I'd
6 asked, did it look like they were working together,
7 or --- essentially working together on this? And he said
8 yes. So that is direct --- he looked at it and saw it
9 basically. And also you can see the circumstances on
10 video. So I believe hand of one, hand of all is
11 appropriate and has been testified to.

12 As regard to the King charge, I believe it's not
13 necessary now, I think that --- that case came about in
14 1930 telling a jury to find one guilty of a lesser
15 included offense if they have any doubt as to guilt of a
16 greater offense. It's --- it's no longer necessary,
17 because of the modern reasonable doubt charge, which
18 tells the jury to resolve any doubts in favor of the
19 defendant. That's Brightman verse State from 1999. It's
20 520 S.E.2d 614. So I don't think the King charges would
21 be necessary in this case.

22 MR. GROSE: And just responding to that, Brightman
23 was the same case that I cited.

24 THE COURT: Right.

25 MR. GROSE: And it did not say to never give that

1 charge. And there's times like in the self-defense
2 instruction where the jurors are reminded that The State
3 has to prove, you know, their case, you know, beyond a
4 reasonable doubt.

5 THE COURT: And disprove self-defense beyond a
6 reasonable doubt.

7 MR. GROSE: Right. And --- and --- and so just
8 because it might be covered by the reasonable doubt
9 charge that you're planning to give, doesn't prohibit it
10 for being in another place to make certain that the jury
11 fully understands. I think --- it --- it may be the
12 Blurton case, there's maybe the Belcher case, but
13 there's --- there's cases that talk about, you know, that
14 the --- the jury instructions should be crafted to --- to
15 help the --- the jurors to understand the law in the
16 particular case that's in front of them. And that ---
17 that's why we request it.

18 THE COURT: All right. I forgot to ask you, Mr.
19 Brown, concerning their request for an A and B third.

20 MR. BLACK: Judge, I don't think anything in the
21 case works in A and B third. I --- we've toiled with A
22 and B first as well, with attempt to injure --- you know,
23 here we --- we have injuries, so I think we're kind of
24 stretching for and A and B first is a lesser, but I think
25 I can get more on what --- I understand why you --- when

1 you charge it based off of if the jury's in favor of Mr.
2 Travis Lee for whatever reason, says he didn't
3 actually --- be that he was attempting to injure in that
4 manner that likely could produce death or bodily injury.

5 But, again, I --- I don't think there's any ---
6 really any evidence of supporting an A and B first, and
7 most definitely and A and B third based on the totality
8 of the evidence and the injuries to Mr. Tobias Hughey.

9 THE COURT: All right. I appreciate everyone's
10 position. The Court's going to decline to instruct the
11 jury on the A and B third. This clearly is not an A and
12 B third case. And I appreciate the way that the
13 legislature wrote the law. And certainly under certain
14 circumstances if it was warranted, for example, if
15 someone were charged with A and B second, and maybe
16 the --- there's disputed testimony about the degree of
17 injury, or the degree of the assault, or things of that
18 nature, then perhaps and A and B third would be
19 warranted.

20 But under the particular facts of this case, I find
21 as a matter of law that A and B third is not a viable
22 lesser included of A and B second. As it relates to the
23 King charge, I'm going to decline to instruct that. I
24 think the reasonable doubt charge is sufficient, Mr.
25 Grose. But you raise an interesting question, because

1 both you and I pretty much cut our teeth with the King
2 charge being part of the standard instruction of the
3 Court. And then obviously in --- I wasn't quite sure
4 when it got --- I won't say disfavored, but when the ---
5 I wasn't quite sure when the case came out until you
6 reminded me that it was in '99.

7 But I --- I do feel that the King charge is
8 unnecessary in this particular case in light of the
9 reasonable doubt charge as well as the way I've kind of
10 created a cascading consideration for the jury between A
11 and B first and then A and B second. But your request is
12 certainly noted. And ---

13 MR. GROSE: Well, I --- I think that that cascading
14 way that you do it is why it's needed. Because you know,
15 they have to --- you know, they have to consider the
16 charge in the totality. And if --- if --- if they
17 strictly following the cascading approach, then they're
18 not considering the charge in those totality. So ---

19 THE COURT: And I understand your point. I do
20 understand your point. And I --- I genuinely gave that
21 consideration. In 13 years of doing this, you're the
22 first one to request a King charge, and so that's
23 what --- that caught me a little bit by surprise and it
24 caused me to have to reflect on that a little bit.

25 All right. We'll be at ease for a few moments.

1 When the jury comes out, I'll simply turn to you, Mr.
2 Tinsley, and you --- and I'll simply say Mr. Tinsley, and
3 you can say the defense rests. Ditto for you, Mr. Grose.
4 And then we'll go straight into closings.

5 And --- Solicitor.

6 MR. BLACK: Judge, I might have missed it, but did
7 you make a final determination on hand of one, hand of
8 all?

9 THE COURT: It's in there.

10 MR. BLACK: Yeah, that's all ---

11 THE COURT: There --- there --- there is --- there
12 is some --- there is some direct evidence especially when
13 they came to that apartment that night that this was in
14 the minds of both individuals. So I --- I will be
15 instructing hand of one, hand of all.

16 MR. TINSLEY: Judge, I would just point out the
17 officer said Travis Lee wasn't on the video that night.

18 THE COURT: I --- I --- I understand. But they both
19 have been asking about him at different times --- or at
20 different times that night, I think was the testimony; am
21 I correct?

22 MR. BLACK: I think Mr. Floyd identified Travis Lee
23 and I think the officer said he didn't know if that was
24 Travis Lee or not.

25 MR. TINSLEY: Oh, no. He testified that Travis Lee

1 was not on that video, there was no I don't know. He ---
2 his testimony was that he was not on the video. Balchin.
3 I --- I asked him on cross that specific question. He
4 said, I don't know, maybe on direct. But I asked him the
5 specific question on cross, and he said, no, he's not on
6 that video.

7 MR. GROSE: What --- and what --- what I understood
8 his testimony was is he couldn't identify who that other
9 person was. But he knew it wasn't Travis Lee.

10 THE COURT: That was Balchin on the video, but I
11 thought that the --- who was the witness at ---

12 MR. BLACK: Michael --- Michael Shane Floyd said it
13 was Travis Lee.

14 THE COURT: Right. That's what I was thinking is
15 that Mr. Floyd and that was the ---

16 MR. BLACK: That's the gentleman ---

17 THE COURT: --- gentleman who was offered a hundred
18 bucks or something supposedly, right?

19 MR. BLACK: I think he said that the person that
20 offered a hundred dollars was Kendrick Lee, but he
21 identified two (unintelligible) coming to his apartment
22 that night.

23 THE COURT: Correct. That's --- that was my
24 recollection. That is --- that's in my mind sufficient
25 to warrant a hand of one, hand of all instruction.

1 Okay. Anything else with the jury instructions?
2 Any other problems? Issues? No? No? No? Going once,
3 going twice.

4 MR. GROSE: We --- can we have a moment?

5 THE COURT: Certainly.

6 MR. GROSE: We're --- we're good.

7 THE COURT: You're good? All right. Why don't we
8 go ahead and take a break. I'll let the jury have a
9 smoke break. We'll be at ease for maybe about
10 15 minutes. And you can make sure that you can get your
11 thing to work fairly quickly, if that's okay. You can do
12 a dry run on the technology.

13 MR. TINSLEY: Are you going to e-mail out another
14 copy of the instructions or ---

15 THE COURT: I don't really think they've changed
16 any.

17 CLERK: I added like one sentence.

18 THE COURT: Options for the jury, guilty or not
19 guilty of A and B first, but I don't think they've
20 changed otherwise.

21 (Off the record 10:44 a.m. - 11:12 a.m.)

22 (Jury not in courtroom)

23 THE COURT: We are back on the record. Were
24 y'all --- my clerk told me y'all were having trouble
25 technologically. Are we --- are we good? You get it

1 sorted out? Everybody? Okay.

2 Mr. Grose, you wanted to look at the verdict forms.
3 I have them here and I just e-mailed them to you and Mr.
4 Tinsley.

5 MR. GROSE: I have it.

6 THE COURT: Okay.

7 MR. GROSE: Thank you.

8 THE COURT: Are we ready for the jury?

9 MR. TINSLEY: Judge, I want to put something on the
10 record ---

11 THE COURT: Yes.

12 MR. GROSE: --- as it related to my client
13 testifying. After we got done with that dialogue in
14 which you stated he was on that video, which he was not,
15 he's --- he wanted to testify to clarify that up since
16 the judge is mistaken on these facts. He was concerned
17 about the jury. But I think he still does not want to
18 testify after going out and having a cigarette. But I
19 just want to make very clear on the record about ---
20 about this.

21 THE COURT: Mr. Travis, I take no position
22 whatsoever as far as what's on the video. I cannot
23 discern if that is you, if that is not you, or anything
24 like that. I was simply going by the testimony of the
25 gentleman who apparently was visited by individuals

1 wanting to speak with Mr. Hughey. Okay? So that --- I
2 am not saying that you were on that video. That's a
3 matter totally for the jury, and I take no position on
4 that whatsoever factually. So does that clarify things,
5 sir?

6 MR. T. LEE: Yes, sir.

7 THE COURT: Okay. If I said that, then I apologize.
8 I misspoke. But obviously, I cannot positively identify
9 you as being on that video just because of the nature of
10 the video. Okay? All right. We good?

11 MR. T. LEE: Yes, sir.

12 THE COURT: All right. Very good. I assume you'll
13 close, or Mr. Grose ---

14 MR. GROSE: May --- may I suggest an alternate
15 verdict form, just listing the three charges and not
16 guilty?

17 THE COURT: What are your thoughts on that?

18 MR. GROSE: That instead of listing them out the way
19 that you've done, list assault, assault and battery of a
20 high and aggravated nature, assault and battery first
21 degree, assault and battery second degree, and not guilty
22 as the options.

23 THE COURT: Where they would simply like circle ---

24 (Simultaneous speaking)

25 MR. GROSE: Yeah. The --- the way we always used to

1 do it. When I say that, I go back to when they wrote it
2 on indictments but ---

3 THE COURT: Do you --- do you have a preference, Mr.
4 Tinsley?

5 MR. TINSLEY: I don't have any opposition to the way
6 Mr. Grose is requesting it.

7 THE COURT: You --- y'all have any position?

8 MR. BLACK: Judge, I think this is pretty
9 self-explanatory of how it also tracks how the jury
10 charge is. But (unintelligible) if not guilty go to
11 question two. If --- or guilty you sign there. And
12 that's it. I mean, I think it's --- it follows along.
13 If they found not guilty on one, then you go to two, find
14 not guilty on that, go to three. So I don't --- I don't
15 see the issue with it.

16 MR. GROSE: This gets --- gets back to my request
17 for the --- the King charge and the concerns I expressed
18 earlier. You may not eliminate my concerns, but you
19 would certainly substantially reduce them if you use the
20 alternate verdict form I'm suggesting.

21 THE COURT: All right. I --- I appreciate your
22 position. I --- I don't want to have them inadvertently
23 circle a whole bunch of different things. And I think
24 this tracks kind of the jury instruction in a similar
25 vein. I --- I appreciate your position though.

1 And you will be closing for The State, Mr. Black?

2 MR. BLACK: Yes, sir.

3 THE COURT: All right. Very good. Let's have the
4 jury, please. And again, I'll turn to you, Mr. Tinsley
5 and then you, Mr. Grose. And y'all can just rest.

6 (Jury enters courtroom)

7 THE COURT: All right. The record will reflect that
8 the jury is back and seated. Ladies and Gentlemen of the
9 jury, we're in a position to proceed with this case at
10 this point. So Mr. Tinsley.

11 MR. TINSLEY: Your Honor Travis Lee rests.

12 THE COURT: Mr. Grose.

13 MR. GROSE: Mr. Ken Lee rests.

14 THE COURT: All right. Very good. Ladies and
15 Gentlemen, we've now reached that portion of the trial
16 where you have received all the evidence that you're
17 going to have in order to judge this case. And the towns
18 will now have an opportunity to give you their closing
19 summation or their closing argument. And the order that
20 we're go in is Mr. Black will close on behalf of The
21 State to be followed by Mr. Tinsley, and then Mr. Grose.

22 And I will let you know that it's normal for the
23 attorneys to reference testimony or evidence that's been
24 introduced during the course of the trial. It's normal
25 for them to talk about what witnesses have said or

Closing Mr. Black

1 testified to. But if at any time, Ladies and Gentlemen,
2 what the lawyers say about the evidence differs from what
3 your recollection of the evidence is, you of course go
4 with your recollection because you are the judges of the
5 facts, not me, not the attorneys. You are the sole
6 judges of the facts in this case. So you would go with
7 your recollection of what the facts are even if the
8 Solicitors or the defense attorneys were to make
9 reference to any of the testimony or the facts. Okay?
10 With that, Mr. Black, you're acknowledged for your
11 closing.

12 MR. BLACK: Thank you, Your Honor. May it please
13 the Court.

14 THE COURT: Yes, sir.

15 MR. BLACK: October the 6th of 2020. Tobias
16 Hughey's life changed forever. It was a normal day. He
17 was where he typically is at one of places that he stays.
18 Here in The Village apartment complex here in the City of
19 Abbeville.

20 He was in the parking lot between some of the
21 buildings over there. And he --- as he was walking in
22 the parking lot, he was met by Mr. Travis Lee. At that
23 time point a conversation ensued. At one point here in
24 this conversation, Travis Lee grabbed Tobias Hughey's
25 arm. You've seen video, and the video's been referenced

Closing Mr. Black

1 throughout this trial. So we're going to watch it again.

2 And during this time, you can see other people in
3 the apartment complex scurry around and go to the [REDACTED]
4 building.

5 And a few moments later, a gentleman exited the [REDACTED]
6 building top of the stairs, down at the bottom of the
7 [REDACTED] building, carrying what appeared to be some sort of
8 wooden stick --- some sort of bat, some --- some kind of
9 maybe a table leg. Something that he was wielding. And
10 you see that gentleman identified the other defendant,
11 Kendrick Lee, walk across the parking lot to where Travis
12 Lee and Tobias Hughey were standing.

13 And what happened next? The video shows swinging
14 over and over again. Track a couple videos, and you can
15 see this is what goes on. And ultimately, you hear
16 testimony as to what happened and who did it to Mr.
17 Tobias Hughey.

18 His life changed for forever. You heard medical
19 testimony, you heard EMS, you heard doctors, you heard
20 the extent of his injuries.

21 And now we're here today. You've been here all
22 week. You came here on Monday for jury selection. For
23 the past two days into this third day, and you've been
24 hearing the evidence that's been coming from this witness
25 stand from witnesses that have come up here and talked

Closing Mr. Black

1 about what they saw, what they heard, what they
2 witnessed.

3 And now we're here at the end. We as The State ---
4 as the prosecutors, we have the burden to prove the case
5 beyond a reasonable doubt. And that burden is a burden
6 that we welcome. And it's a burden that exists in every
7 Criminal Court here in this country. And when you think
8 about that burden, think about being firmly convinced of
9 something. We don't have to prove it beyond all doubt.
10 We don't have to prove our case every doubt, all possible
11 doubt, every doubt that exists out there. We have to
12 prove it beyond a reasonable doubt. And beyond a
13 reasonable doubt is being firmly convinced of something.

14 Are you firmly convinced with the evidence that's
15 been presented? Are you firmly convinced what they're
16 saying happened? And what do we say? Both Kendrick Lee
17 and Travis Lee were both charged with assault and battery
18 of a high and aggravated nature. That's the allegations,
19 assault and battery of a high and aggravated nature.
20 That's what we have to prove, folks. And again, we've
21 done that through witnesses that have testified, through
22 the evidence that's been presented.

23 Mr. Wilke's putting up some definitions. These are
24 some definitions that in a few moments once I get done,
25 once Mr. Tinsley and Mr. Grose gets done, the judge is

Closing Mr. Black

1 going to read to you instructions of the law. And your
2 job is to apply the law to the facts that you've heard,
3 and ultimately as the finder of fact make a determination
4 of what happened.

5 You don't have friends to reward, you don't have any
6 enemies to punish. You're not on our side, you're not on
7 their side. Your job is to determine what happened.

8 So what do we have to prove? Assault and battery of
9 a high and aggravated nature. Person commits the offense
10 of assault and battery of a high and aggravated nature if
11 the person unlawfully injures another person and great
12 bodily injury to another person results. Or --- this
13 "or" right here, the conjunction, the act is accomplished
14 by means likely to produce death or great bodily injury.

15 That's what they're charged with, and this is what
16 we have to prove. So again, great bodily injury to
17 another person results. Did Tobias Hughey have great
18 bodily injury? Or the act is accomplished by means
19 likely to produce death or great bodily injury.

20 Now, you may ask yourself what is great bodily
21 injury? Well, there's a definition. And that
22 definition's right here below the assault and battery of
23 a high and aggravated, the elements we have to prove.
24 Great bodily injury means bodily injury which causes
25 substantial risk of death, or, again, notice this "or,"

Closing Mr. Black

1 another conjunction, not and, or which causes serious
2 permanent disfigurement or protracted loss or impairment
3 of the function of a bodily member or organ.

4 Great bodily injury, again, which causes a
5 substantial risk of death, or which causes serious
6 permanent disfigurement or protracted loss or impairment
7 of the function of a bodily member or organ.

8 What was the testimony that came from this witness
9 stand? Tobias Hughey died four times, had to revived
10 four times. His heart --- heart stopped beating. That
11 the brain is an organ, and once those cells were damaged
12 from his brain injury, it's not like an arm, it's not
13 like skin, it doesn't grow back. Those cells are gone
14 forever. He has to learn to cope with that injury to his
15 brain. That memory loss, that short-term memory loss
16 that he has. Those cells aren't coming back, the brain
17 is an organ.

18 So I submit to you that we have proved our case and
19 we'll get into more specifics. That's the definition of
20 battery which we call assault and battery of a high and
21 aggravated nature.

22 And I submit to you when you're back there
23 deliberating, once you look at the definition of battery,
24 and once you take the facts that have been presented, the
25 evidence that has been presented, you stop there. Don't

Closing Mr. Black

1 look any further. But you're going to get charged with
2 some lesser included crimes. Some lesser included
3 offenses, if you will. And those are assault and battery
4 in the first degree, and assault and battery in the
5 second degree. But again, you don't have to go there
6 because it stops here with what's been --- with what has
7 come out of the witness stand.

8 But let's talk about what assault and battery in the
9 first degree is. And again is the definition that Judge
10 Addy will read in a few moments. You find that The
11 State's failed to prove either or both defendants guilty
12 of (unintelligible) then you may consider whether The
13 State has proven the offense of assault and battery in
14 the first degree.

15 Person commits the offense of assault and battery in
16 the first degree, if the person unlawfully offers or
17 attempts to injure another person with the present
18 ability to do so, and the act is accomplished by means
19 likely to produce death or great bodily injury.

20 Now, at first blush, you may be saying to yourself,
21 well, that sound an awful lot like what we just read just
22 a minute ago with --- with assault and battery of a high
23 and aggravated nature, but this is completely different.
24 Key word here, assault and battery in the first degree if
25 a person unlawfully offers --- this word "offer," right

Closing Mr. Black

1 here or attempts to injure. It's different if you're
2 offering or attempting the injure --- injure someone
3 else. That doesn't mean you actually have an injury.

4 So for example, say I had a --- a --- a bat, or a
5 stick, or, you know, anything. I take this pen over
6 here, and trying to stab Mr. Brown with this pen, and I
7 swing at him and miss, that would be an assault and
8 battery in the first degree because I missed. He doesn't
9 have an injury. Trying to stab him in the neck to either
10 cause death or cause a great bodily injury, I'm
11 attempting to do. I'm offering to do it, but I miss.

12 That's what this assault and battery in the first
13 degree is all about, offers or attempts to injure another
14 person with the present ability to do so. And the act is
15 accomplished by means that will likely produce death or
16 great bodily injury.

17 It's not that folks. It's not assault and battery
18 in the first degree, because we have an actual injury.
19 We have the fact that Mr. Hughey had bleeding on his
20 brain, he had (unintelligible). He died four times.
21 They had to revive him four times. We have an actual
22 here. So it's not assault and battery in the first
23 degree. And again, it --- it talks about what great
24 bodily injury is, but that's the exact same definition
25 that we just read.

Closing Mr. Black

1 So the next one that you'll consider is assault and
2 battery in the second degree. And that's below assault
3 and battery in the first degree. Now, what is assault
4 and battery in the second degree? And again, we submit
5 to you that you're not even going to get this far, but
6 assault and battery in the second degree is a person
7 commits the offense of assault and battery in the second
8 degree if a person unlawfully injures another person or
9 offers or attempts to injure another person with the
10 present ability to do so and moderate bodily injury to
11 another person results or moderate bodily to another
12 person could have resulted.

13 So you've heard a little bit about great bodily
14 injury and you've heard a little bit about moderate
15 bodily injury. And that was Dr. Spoor talked a little
16 bit about that if you remember her testimony the other
17 day. So what is moderate bodily injury? Again, we have
18 another definition here that again, Judge Addy will read
19 to you moderate bodily injury means physical injury that
20 involves prolonged loss of consciousness or that cause us
21 temporary or moderate disfigurement, or temporary loss of
22 the function of a bodily member or organ, or injury that
23 requires medical treatment when the treatment requires
24 the use of regional or general anesthesia, or injury that
25 results in a fracture or dislocation. Moderate bodily

Closing Mr. Black

1 injury does not include one-time treatments, subsequent
2 observations of scratches, cuts abrasions, bruises,
3 burns, splinters or any other minor injuries that do not
4 ordinarily require extensive medical care. Moderate
5 bodily injury.

6 Now, you --- may --- maybe thinking to yourself and
7 what you may hear is that Mr. Hughey was unconscious for
8 a while, yes, that's true. He had a fracture to his
9 elbow, his arm. Yeah, well, that's true. But he also
10 had if you remember the testimony, he had bleeding on his
11 brain. He's got a permanent injury to his organ, the
12 brain. Those cells are gone. They're never coming back.
13 That's not temporary, that's permanent, that's forever.
14 Dr. Donlan testified never going to be the same.

15 He was in the hospital for a month. He had to be
16 revived four times meaning he was dead. His heart was
17 not beating. Folks, that's great bodily injury. That's
18 where you stop at. You stop at (unintelligible) assault
19 and battery of a high and aggravated nature.

20 Now, I also mentioned in my opening, hand of one,
21 hand of all, and we didn't get into any definitions at
22 that point about what it is. But I put it in the back of
23 your mind because that was something that was going to
24 come up. And the judge is going to instruct you on that.

25 Let me pull it up here on the screen for you as

Closing Mr. Black

1 well. And there's some more to the definition, but hand
2 of one is kind of a --- kind of self-explanatory. If a
3 crime is committed by two or more people who are
4 contacting together in committing the crime, the act of
5 one is the act of all. Person who joins with another to
6 commit an unlawful act is criminally responsible for
7 everything done by the other person which happens as a
8 probable or natural consequence of the acts done in
9 carrying out the common plan and purpose.

10 For example, if two people can be guilty of killing
11 another person when there was only one gun, there's only
12 one bullet, and only one of the two fired the shot that
13 caused the death. If two or more people are together,
14 acting together, assisting each other in committing the
15 offense, the act of one is the act of all. Or as it is
16 sometimes referred to or called the hand of one is the
17 hand of all.

18 So the argument may be that, well, Mr. Travis Lee,
19 he didn't --- he --- he didn't strike any blows. He
20 didn't have the stick. All he did was --- was hold
21 somebody.

22 And in fact, you'll remember the testimony he told
23 law enforcement about it. Travis Lee told officer
24 Cogdill out there --- out there on the scene. There was
25 video of that. And you heard testimony that he said the

Closing Mr. Black

1 exact same thing when they got back to the police
2 department. All I did was hold Tobias.

3 Well, it's just not that simple, folks, because he
4 knew what was going on. He held him so Mr. Kendrick Lee
5 could come over and smack him with a stick repeatedly
6 over and over and over again. You're telling me he
7 didn't know what was going on? He had everything to do
8 with it. Everything.

9 When he drug him out there behind the [REDACTED] building,
10 and according to Tobias Hughey's testimony, started
11 hitting with his hand and started kicking him. So he
12 actually participated too, while his buddy had a stick
13 that kept repeatedly striking him in the head.

14 So that's what the hand of one, hand of all is. And
15 again, y'all may have heard that before. That's what the
16 definition is. And there'll be some more to that
17 definition as well, that Judge Addy will read.

18 But Eric Phillips, witness that testified on that
19 first day --- the last witness, he also said the same
20 thing. He came out of his apartment at the [REDACTED] building,
21 and he said they were working together as well.

22 So those are the definitions that --- again, that
23 Judge Addy's going to be reading to you. Now, what's ---
24 what's the evidence? And --- and --- and I've kind of
25 been mentioning the evidence as we've been talking about

Closing Mr. Black

1 a little bit about the --- the definition and --- and
2 what's going on. Let's --- let's talk about the
3 evidence. Let's talk about what happened. You heard ---
4 you --- you heard testimony from the officers that showed
5 up. You heard that they got called to respond to
6 [REDACTED] Road. And you heard Officer Singleton and
7 Officer Crowe get there and immediately assess the
8 situation. And they saw Tobias. You saw the videos, he
9 was unconscious on the couch.

10 They immediately called EMT, cleared the --- cleared
11 the room to make sure it was safe for EMTs to come in.
12 And they did at that point they basically turned over the
13 scene to them to let them deal with Mr. Hughey while they
14 began their investigation, started collecting
15 information, started doing everything that you would
16 expect police officers to do doing their job.

17 Of course they're talking back and forth and
18 eventually they learn that during the course of this
19 initial encounter, when it didn't happen here in [REDACTED]
20 Road, it happened over here at The Village. It happened
21 over here at this apartment complex at [REDACTED] [REDACTED]
22 Street here in Abbeville.

23 So of course they tell all the other officers. They
24 tell investigators who weren't working, had to come in
25 on --- 'cause they were on call --- to investigate this

Closing Mr. Black

1 crime. So they go over to The Village Apartments that
2 day and they begin their investigation.

3 And if you remember one of the questions I asked of
4 the officers was, you know, did y'all get a --- did y'all
5 get a lot of help when y'all got over there? And the
6 answer was, well no, we didn't. Nobody really wanted to
7 help us out.

8 So there was even talk about a --- of cash money.
9 And you'll hear that. Maybe they're trying to bribe
10 people. Folks, they're just offering. Rewards happen
11 all the time folks. They didn't even get to that point
12 because thankfully, they had video, right?

13 They had video. And --- and y'all seen the video.
14 We're going to watch it again here in a --- in a little
15 bit. They had video. Of course it took them some time
16 to pull that video up. They had to figure out --- they
17 didn't know exactly where it was, so I'm sure they were
18 looking at different camera angles, different parts of
19 that apartment complex as --- as you remember State's 53,
20 the apartment complex is rather --- rather large and
21 there's cameras all over this place. They didn't exactly
22 know where it was, so they had to figure out which
23 cameras to use.

24 So they eventually pulled it up and it did take a
25 little bit of time. And what did they see from those

Closing Mr. Black

1 camera angles? What did they see from those camera
2 angles? Investigator Wilke's pulling this up. As he's
3 pulling these camera angles up, I think it started about
4 11:15 is playing now.

5 (Video playing)

6 MR. BLACK: This camera angle will show the
7 apartment building. You heard testimony that this is the
8 [REDACTED] building, this is the [REDACTED] building, this building
9 over here on the right-hand side of the screen is the
10 [REDACTED] building. And this building up here is the [REDACTED]
11 building. And this is camera --- camera angle that's at
12 the very base of the parking lot. But there's a fence
13 that runs along there that if you remember behind it is
14 Adams Drive, a --- a --- a road that kind of loops around
15 the back.

16 And the testimony from Mr. Hughey --- Mr. Tobias
17 Hughey was that it was starting to get dark. It was
18 later in the --- the afternoon --- later in the evening.
19 And he was walking across the parking lot. And at 11:53
20 in this video, can you see Mr. Hughey right here at the
21 top of this parking lot, right here. He's walking down
22 the parking lot.

23 I don't know where he's going, maybe he's going to
24 see Mr. Floyd, right? There's testimony that he and Mr.
25 Floyd hung out a good bit. They played video games, but

Closing Mr. Black

1 before he got there, wherever he was going, he runs into
2 this gentleman right here. And who is that gentleman?
3 Mr. Travis Lee. And as you can see there's --- they're
4 talking. I --- there's no audio for this surveillance
5 video. But Mr. Lee's kind of getting close to him and
6 Mr. Hughey took a couple steps back, looks like he's
7 talking. And if you remember Mr. Hughey's testimony was,
8 well this --- it was kind of an animated conversation.
9 And he kept demanding his stuff back. That's what Mr.
10 Hughey testified to. And then Mr. Hughey at some point
11 says that Mr. Travis Lee grabs his arm, right? And in a
12 minute you'll see this. You see this dog run across the
13 parking lot right here. You got a car coming by.

14 (Video playing)

15 MR. BLACK: Mr. Kendrick Lee is about to come from
16 the right-hand side as these --- as these two cars pass
17 by right here. Mr. Lee's going to kind of walk right
18 past these cars --- Kendrick Lee, that is. There he is
19 right there in the red shorts. So he's got something in
20 his hands, doesn't he? That's what Mr. Hughey testified.
21 He's swinging it.

22 At this point Mr. Hughey's being held and he's
23 trying --- he's being pulled. Now Mr. Hughey is trying
24 to get away. And you see a swing right there where Mr.
25 Hughey jumps. And then another attempt at a swing, and

Closing Mr. Black

1 now they go off camera just about 13:45 when they go off
2 camera.

3 Now, in a few minutes watch this here just a second.
4 Because a lot of times you heard some testimony --- you
5 heard testimony from the witness stand to talk about what
6 happened. Well, you also have communication, right?
7 You've got verbal communication. You've also got
8 nonverbal communication, right? Not everybody that was
9 out there testified, right? Not everybody out there
10 testified. Eric Phillips testified, you heard his
11 testimony.

12 But whoever this gentleman is right here, he didn't
13 testify. This blue hoodie gentleman right here. Watch
14 this gentleman in the blue hoodie. Keep your eyes on
15 him. You want to know how bad this was? Watch this
16 right here. See him do that? Let's rewind that. It's
17 at 14:30. Let's watch that again. See him shrug his
18 shoulders like that?

19 (Video playing)

20 MR. BLACK: In about 30 seconds he's going to walk
21 over here to this white car. He's going to be able to
22 see back this way back behind the [REDACTED] building. Please
23 rewind that, Chris. All right. Here we go. Right here.
24 See this? Do you see that, folks? You want to know how
25 bad it was? You want to know bad they were beating Mr.

Closing Mr. Black

1 Hughey? Watch his reaction. Let's watch that again.

2 (Video playing)

3 MR. BLACK: This is how bad it is right here. Watch
4 his reaction. It was that bad. Maybe that was the blow
5 that got him in the head that got him on the right side
6 or the left side caused that midline shift and bleeding
7 on the brain. Maybe that was it. Or maybe it was a
8 couple of them. I don't know. We can't see it. But he
9 sure did. And you can tell from his reaction how bad it
10 was.

11 Now, as tape continues to roll, you've got other
12 people out here watching. He's still watching over
13 there. You see this lady pick up a shirt to try to clean
14 up the scene, I guess. See Travis Lee come back onto the
15 camera here. Not one of these people called 911. Not
16 one of them.

17 You see Mr. Kendrick Lee start going back to one ---
18 the [REDACTED] building. He walked right past here heading to
19 the [REDACTED] building. There's been a couple --- couple of
20 sports references, right? There was a --- a reference
21 about in a reasonable doubt how, you know, we as a state,
22 we can't just take the opening kick-off and get to the
23 50-yard line. We can't take it to the third-yard line or
24 take it to the 25-yard line and settle for a field goal,
25 we have to take it all the way, right? Well, no sports

Closing Mr. Black

1 reference, and I hate to analyze it or to make an analogy
2 about sports, with something like this, but so the tape
3 don't lie.

4 Talking about football season, and everybody's
5 excited about football season. Talking about coaches
6 going back and looking at the tape to see how well that
7 player's actually playing. Tape don't lie. If we watch
8 this next video that shows more of the assault just from
9 a different angle, you can see the amount of swings that
10 Mr. Kendrick Lee has taken. This video starts about
11 11:30.

12 (Video playing)

13 MR. BLACK: We see from this angle this camera's
14 from the [REDACTED] building at the point back with the [REDACTED]
15 building. Again, you see Mr. Travis Lee walking across
16 the parking lot, and you see Mr. Tobias Hughey come in
17 the frame here at 12:12 and then, again, begin their
18 conversation.

19 You see this lady running off of the screen down
20 here at the top left corner. From the other videos that
21 you've seen, you know she's going to get Mr. Kendrick
22 Lee. And Mr. Kendrick Lee is about to come out from the
23 side over here. Again, carrying the stick. You see him,
24 he's got his arms right here. At 12:50, he's got his
25 arms. Travis Lee's got Tobias in arms. Can't get away.

Closing Mr. Black

1 You see him move his arm trying to get away? At 13:15,
2 here he goes. See him trying to get away.

3 (Video playing)

4 MR. BLACK: They go off screen here at 13:50. And
5 then 13:50 is the --- let's pause it right here at 13:58.
6 See this gentleman right here? See this guy right here?
7 That's Eric Phillips. Now, let me talk about Eric
8 Phillips for just a moment. Eric Phillips, when law
9 enforcement showed up to his --- to his house that night,
10 what did he tell Investigator Balchin? And what did he
11 testify to on the stand? He said, I told him I didn't
12 see anything, I was in my apartment --- I was in my
13 apartment. I heard a loud noise, but I didn't see
14 anything. When did he tell you that? When he testified.
15 That was a lie. He came out and he was standing right
16 there. And you can clearly see it, because he lives at
17 this apartment. And that's the end of a tank top right
18 there, the same clothes he was wearing that night when
19 Investigator Balchin went and talked to him. And he's
20 standing there the whole time watching.

21 Now, Mr. Phillips --- Eric Phillips, didn't have a
22 record. He doesn't have any pending charges. A lot of
23 the witnesses that testified for The State, you heard
24 about pending charges that they have or past criminal
25 record, which is fair. It is what it is. He doesn't

Closing Mr. Black

1 have --- he doesn't have any of that. He also lived up
2 there and he told you that he lied. He lied that day
3 about knowing what was going on. And why did he lie? He
4 lied because he said he didn't want to get involved.

5 What else did he tell you? He told you once this
6 whole thing got done, that Tobias Hughey came up and
7 asked for help and he turned him away. Turned him away,
8 the guy that had just gotten his brain bashed and his
9 head bashed in. The guy that had just gotten beaten
10 with --- within an inch of his life. And he turned him
11 away. And he came up here and he said he turned him
12 away. What reason does he have to make up any kind of
13 story other than what he testified to?

14 Judge Addy said that, you know, what you see in
15 court is not like what you see on TV. You never have
16 that Matlock moment. You know, typically, we know what
17 people are going to say. He never told anybody what he
18 saw.

19 MR. GROSE: Objection. That's not in evidence.

20 THE COURT: All right. Ladies and Gentlemen, you'll
21 recall the testimony based upon how you recall the
22 testimony being presented. Again, none of this --- none
23 of what Mr. Black says as it relates to the facts, if it
24 differs from your recollection, you got to go with your
25 recollection. Okay?

Closing Mr. Black

1 Please continue.

2 MR. BLACK: And Judge Addy's completely correct. If
3 I say something that's incorrect, my --- what I say is
4 not evidence. What these witnesses say is evidence. And
5 the same is true for Mr. Tinsley. What Mr. Tinsley says
6 is not evidence. Same thing with Mr. Grose. What Mr.
7 Grose says is not evidence. The only evidence that you
8 have to consider is what these witnesses testify to.

9 But Mr. Phillips, going back to Eric Phillips, got
10 up here and told you what he saw. And he told you that
11 Travis Lee and Kendrick Lee were involved. He told you
12 that it appeared that they were working together. That
13 Travis was holding him and pulling him behind the
14 building. And that Kendrick had some sort of stick and
15 he kept hitting him in the head on all over his body.

16 And he's standing right there watching this whole
17 thing go down. They went behind the building at 13:50.
18 Let's start the video back.

19 (Video playing)

20 MR. BLACK: See how long it takes for them to come
21 around the corner? All right. Hold it right there.
22 14:55. It's a little bit of a flash, but
23 (unintelligible) top where you see a gentleman right here
24 appears to be red shorts. See another gentleman in white
25 reappear on the screen. About a minute and five seconds.

Closing Mr. Black

1 Minute and five seconds behind the [REDACTED] building with
2 Tobias Hughey getting pummeled over and over again.
3 According to his testimony, and again, he's going in and
4 out of consciousness, he thinks about 20 times or so. A
5 minute. Not including the swings that take place
6 starting here in the parking lot working his way between
7 the [REDACTED] building --- the [REDACTED] building and the [REDACTED]
8 building.

9 But a minute and five seconds, they're completely
10 disappeared from camera. What happens next? The video
11 starts, Mr. Travis Lee comes back around. And look at
12 Mr. Phillips, Eric Phillips. Looks like he's going into
13 his apartment. There's somebody stumbling around right
14 here, that's Mr. Tobias Hughey. Goes up to his door.
15 There he goes. He's turned away. And he starts going
16 behind the [REDACTED] building. Just like Mr. Phillips told you
17 he did. Turned him away. Again you can tell Mr.
18 Phillips didn't want to be up here. He didn't want to
19 get involved. He came up here. Kendrick Lee, Travis Lee
20 working together repeatedly hitting Tobias Hughey all
21 over his body.

22 We go to this next video, starting about the
23 15-minute mark. This captures the back of the [REDACTED]
24 building.

25 (Video playing)

Closing Mr. Black

1 MR. BLACK: I believe that is State's 10. At 15:20
2 you see Mr. Kendrick Lee with nothing in his hands walk
3 past the --- here's the back side of the [REDACTED] building,
4 heading back to the [REDACTED] building. And in a minute,
5 15:39 you see Tobias Hughey stumbling. And you see him
6 right there. He's --- it's kind of hard to tell with
7 this pause, but you can see how his face and his head
8 it's bloody. And he's stumbling around. He's not ---
9 he's not walking like he walked when he came across that
10 parking lot. He's stumbling.

11 He barges into apartment [REDACTED], I believe that
12 belonged to Michael Shane Floyd. And he was screaming
13 and hollering too. Because we saw that video --- I'm not
14 going to play the video when he goes into Mr. Floyd's
15 apartment. But you heard how much in pain he was in.

16 And one of the arguments is well he didn't --- he
17 didn't go to the --- he didn't go hospital. He told them
18 not to call the police. He testified he --- "he," being
19 Tobias Hughey, testified that he wanted to see his son.
20 I guess that's fair.

21 He also had pending warrants. That's a hundred
22 percent true. He had a domestic violence charge that was
23 pending from September of that --- of that year. And
24 then he had a charge that his mother took out on a FTC
25 taking her car or something or other from April of that

Closing Mr. Black

1 year. And that charge was --- was dismissed. He had
2 pending warrants. But he was concerned about seeing his
3 son.

4 Now, the video fast forward came forward it jumps to
5 16:32 and Mr. Wilke's paused. That we're going to start
6 it back up here. 16:22 is when it starts back. And
7 Travis Lee comes back into the frame. Now, when Travis
8 Lee gets past the [REDACTED] building, he turns around, and he
9 comes back, and he goes to the base of the back side of
10 this [REDACTED] building. And this is about 16:45.

11 16:47 he turns around and he leans over and he picks
12 something up and then he's off camera. We don't know
13 what he picks up. Maybe it was a wooden stick. Maybe
14 it's the wooden table leg, or the bat, or whatever it
15 was. Maybe it was the --- somebody's shoes. Didn't
16 appear that Mr. Hughey was wearing his shoes a while ago
17 when he walked to the --- Mr. Floyd's apartment. Got
18 beat so bad it knocked his shoes off. Maybe it was ---
19 maybe it was his shoes. I don't know, but they pick
20 something up.

21 And an 17:14 there's two other individuals ---
22 gentleman in the middle, blue shirt, and then Kendrick
23 Lee, the individual that just got done beating Mr. Tobias
24 Hughey within an inch of his life.

25 While Mr. Wilke is pulling up this last video, I

Closing Mr. Black

1 believe The State's 15. Mr. Hughey is inside Mr. Floyd's
2 apartment at that point. And again, you heard testimony
3 about him being in his apartment and (unintelligible) his
4 mother comes and gets him.

5 This is a video that Mr. Floyd talked about when he
6 testified the other day about a couple nights prior to
7 Mr. Hughey's getting beat. And what is it Mr. Floyd
8 testified to? And again Mr. Floyd has a record, has
9 pending charges, but everything he testified to is
10 basically on video. So again, once again, folks, tape
11 don't lie.

12 So this video starts at about a 1:30:15. What did
13 Mr. Floyd testify to? He said two --- and we'll pause it
14 right there. At 30:25. He said that two gentleman came
15 up to his door a couple different times on about, you
16 know, an hour, an hour and a half or so, on three
17 different occasions. And they were inquiring about Mr.
18 Hughey. They were looking for him. This person is
19 ultimately identified, the person in all red on the
20 left-hand side of this video is identified as once again,
21 Mr. Kendrick Lee.

22 And what does he have in his hands? Got something
23 behind his back attempting to conceal it. This wasn't a
24 spur of the moment kind of thing, folks. Kendrick Lee
25 was looking for him for several days. And he went to Mr.

Closing Mr. Black

1 Floyd's apartment a couple nights prior, looking for him
2 holding either the same object or something very similar
3 to what he had on October the 6th when he beat him within
4 an inch of his life. So we'll play this video too.

5 (Video playing)

6 MR. BLACK: See a gentleman going up to the door?
7 Mr. Floyd's testimony was he came up to the door looking
8 for him. He told him Mr. Hughey wasn't there. They came
9 back a couple times. I think the last time that these
10 individuals came back he identified Kendrick Lee as
11 asking Mr. Hughey --- he pulled out some money and
12 offered him a hundred bucks. And Mr. Floyd's testimony
13 was I opened the door, showed them he wasn't in there,
14 even though Mr. Hughey was in there according to his
15 testimony.

16 They were looking for him several days prior.

17 You heard Renee Guillebeaux testify. She testified
18 that Travis Lee called her that day and Travis Lee told
19 her that he was looking for Tobias to confront him about
20 an alleged burglary Apartment [REDACTED] that belonged to
21 Miesha Cobb.

22 And what did Mr. Guillebeaux tell him? Y'all handle
23 it. What did Ms. Guillebeaux mean by y'all handle it?
24 Well, she didn't mean almost kill him. That's what she
25 didn't mean. She made that very clear when she

Closing Mr. Black

1 testified. She said they're somehow related. And I ---
2 she explained it and I couldn't really follow it, so if
3 y'all were able to follow that kudos to y'all. But
4 there's some kind of relationship. But either way she
5 made it very clear that she did not intend for them to
6 almost kill her son.

7 You heard from law enforcement from Officer Cogdill
8 and Officer Balchin. Again, you heard from Officer
9 Balchin about these videos. But you also heard from that
10 that Travis Lee, when they arrested him, admitting to his
11 (unintelligible) in this. Admitting to holding Tobias.
12 He even demonstrated out there on the scene, by grabbing
13 one of the officer's arms, not maliciously, but
14 demonstrating what he did. All I did was hold him. And
15 he clarified that at the police department. All I did
16 was hold Tobias. Again he's admitted his involvement.
17 He's admitting exactly what he had done.

18 And then you heard from the doctors. The medical
19 portion. You heard from EMS. You heard that they showed
20 up at [REDACTED] and took him to the landing zone because
21 they --- he was in critical care --- he was in critical
22 condition. So they made the decision to fly him to
23 Greenville which is a level one trauma center here in the
24 upstate so they could get him there quickly.

25 They gave him drugs to help with his seizure

Closing Mr. Black

1 activity. They also gave him --- I believe the testimony
2 was a epinephrine drip. And Dr. Spoor said that is a ---
3 it's rarely done by EMS. But why do they do it? They do
4 it to make blood flow from the heart to make the heart
5 beat. They were scared the patient would lose his
6 heartbeat. That's why they --- that's why they gave him
7 that. And in the course of transitioning him from EMS to
8 the helicopter, what happens to Mr. Hughey? Heart stops.
9 They have to start doing CPR, when your heart stops, what
10 did Dr. Spoor testify? You're dead. When your heart
11 stops, you're dead. And they got to do whatever they can
12 to try it revive it. Try to get it going.

13 So of course what (unintelligible) learns is you do
14 CPR. And so began doing CPR on Mr. Hughey. Had to do it
15 twice out there that day. And that's why they gave him
16 that epinephrine drip. You heard once he got to the
17 hospital Dr. Spoor who testified as an expert in trauma
18 surgery, I believe is what her area of expertise was.
19 Met him, evaluated him, and started attempting to save
20 his life.

21 She said that he had a tremendous amount of blood
22 loss. She said that he had to have a breathing tube in
23 order to breathe. If he didn't have it, he was going to
24 die, because he couldn't breathe on his own. Stated that
25 he had a fracture (unintelligible). She said that his

Closing Mr. Black

1 body went into shock because of the amount of blood loss
2 and that ultimately affected several of his organs. His
3 lungs shut down, his kidneys couldn't produce urine.
4 They --- they basically shut down.

5 She said that on October the 10th, four days after
6 he'd been at the hospital, his heart stopped again. They
7 had to do --- they had to revive him again even at --- at
8 the hospital, four days after the fact.

9 Critical care, the ICU till October the 19th when he
10 got transferred out. From October the 6th to October
11 the 19th. Heart stopped again at the hospital on October
12 the 10th. In total he was revived on four different
13 occasions because of his heart stopping. And again she
14 testified that that means you're dead.

15 Dr. Donlan testified that he eventually came to him
16 at Roger C. Peace, which is basically another wing at the
17 hospital, on October the 29th, and released on November
18 the 4th. But Roger C. Peace is a part of the hospital
19 that deals with rehabilitations. The rehabilitation
20 center at the hospital where you're learning how to deal
21 with brain injuries typically, is what he testified to.
22 People getting into car wrecks and having brain injuries,
23 strokes, et cetera. And basically how to teach people
24 how to live your life and cope with the injury that you
25 have.

Closing Mr. Black

1 And again, his testimony that it's your brain is an
2 organ. When you have a brain injury, you lose cells in
3 your --- in your brain. And again, that was due to the
4 beating --- the subdural, epidural hematoma, the bleeding
5 on the brain that Dr. Spoor testified to, that caused a
6 midline shift, so much pressure on the brain that your
7 brain shifts. Cells in his brain dead that don't
8 regenerate, never come back. So you have to learn to
9 live --- he --- Tobias Hughey has to learn to live and
10 cope with that for the rest of his life.

11 The brain is not like other parts of the body. It's
12 not like skin. It's not like bone that'll heal and come
13 back. Once they're gone, they're gone. That's what Dr.
14 Cogdill testified to. Again, what was the definition of
15 great bodily injury? Permanent loss of member or an
16 organ.

17 His injuries were consistent with blunt force trauma
18 to the head, not heavy drug use. As you heard the
19 question being asked over and over again. There's no
20 evidence of that. Again, what I say is not evidence.
21 What Mr. Grose says and what Mr. Tinsley says is not
22 evidence. No evidence that Mr. Hughey had been having
23 heavy drug loss --- or using heavy drugs. And even if he
24 did, that didn't cause the bleeding on the brain. His
25 injury was his --- his scans are consistent with blunt

Closing Mr. Black

1 force trauma.

2 What I've heard from the course of this trial is
3 that Tobias Hughey has a record, Tobias Hughey has
4 pending charges, Tobias Hughey's a thief. He's known as
5 a thief. Tobias Hughey uses heavy drugs, and he admitted
6 to using Adderall and marijuana. Heavy drugs. And so I
7 don't know, I guess the insinuation is is that he
8 deserved this. I guess that's (inaudible).

9 Come on folks are you serious? When those
10 definitions were read, assault and battery of a high and
11 aggravated nature and assault and battery in the first
12 degree, assault and battery in the second degree. I
13 didn't see any exceptions in there about if you've got a
14 record this can happen to you. Or if you're known as a
15 thief, this can happen to you.

16 Tobias Hughey is lucky to be here. His heart
17 stopped four times, even after he was at a level one
18 trauma center. Four days later his heart still stopped
19 because what Dr. Spoor guessed is the tremendous amount
20 of blood that was lost. He was dead and they brought him
21 back four times.

22 Folks, that's great bodily injury. That's what
23 Kendrick Lee and Travis Lee did to him. They were
24 working together, it's obvious from the video. Tape
25 don't lie. It's all on video. And the testimony from

Closing Mr. Black

1 the doctors and EMS speak for themselves.

2 Mr. Tinsley made a comment in his opening, again
3 this is in reference that it's not good enough for the
4 Solicitor's Office in The State to take the ball to the
5 50 or the 30, 25, 500 line. Settle for a field goal.
6 State has to punch it in the end zone. We're going to
7 use that analogy, folks. We got opening kick. We caught
8 it and we ran untouched to the end zone. Nobody can
9 touch us. They were working together and they beat
10 Tobias Hughey, caused him great bodily injury and almost
11 killed him.

12 We're going to ask you to find him guilty of assault
13 and battery, both of them. Assault and battery of a high
14 and aggravated nature, because that's what they did that
15 day. The tape don't lie. Thank you.

16 THE COURT: Thank you, Mr. Black. If it's okay with
17 you, Mr. Tinsley, I want to let the clerk go ahead and
18 put in an order in for lunch for the jury.

19 So Ladies and Gentlemen, if you would, just adjourn
20 to the back for a few moments, your clerk of court's
21 going to join you. We're going to be ordering some
22 pizzas from Theo's. And if anyone wants a salad or
23 something that's maybe a little bit healthier than pizza,
24 let her know and she'll order that too. Okay?

25 You guys probably won't be around, so you may not

Closing Mr. Tinsley

1 want to put in an order, but if you are, you can have
2 some pizza too. Okay?

3 Adjourn for the back for a few moments, don't
4 discuss the case yet, and we'll proceed in about five or
5 ten minutes, as soon as Ms. Boggs (phonetic) has placed
6 that order. Thank you.

7 (Off the record 12:18 p.m. to 12:34)

8 (Jury in courtroom)

9 THE COURT: The jury, your lunch should be here or
10 should be ready about 1:20. And the clerk will go get
11 that, but I wanted to go ahead and get that order in
12 since I figured it would take a while.

13 Mr. Tinsley, I apologize for delaying your closing,
14 sir, but you have the floor, you're recognized.

15 MR. TINSLEY: May it please the Court.

16 THE COURT: Yes, sir.

17 MR. TINSLEY: Tape don't lie. The State's witnesses
18 sure do. Mr. Black just told you that Mr. Hughey's life
19 was changed forever. Said that --- essentially said that
20 my client, Travis Lee, beat him to within an inch of his
21 life and ruined his life. That's not what we heard from
22 this witness stand. That's not what the evidence shows.
23 His criminal enterprise that he had before this incident
24 kept right rolling right along once he got out of the
25 hospital. So to suggest that --- to suggest Travis Lee

Closing Mr. Tinsley

1 has ruined Mr. Hughey's life, which is the argument he
2 made is just not --- it doesn't hold water. You
3 heard --- heard the evidence of what Mr. Hughey's been
4 doing since he got out of the hospital of the sounds like
5 he's been doing everything but getting treatment. Made
6 one follow-up treatment --- one follow-up appointment and
7 that's it.

8 Tape don't lie. You see several people out here on
9 this tape. Several. Not a single one of them called
10 911. Why didn't they do that? Well, strikes me as
11 pretty obvious. Number one, they didn't think Mr. Hughey
12 was in any danger of death or great bodily injury. And
13 number two, they didn't think a crime had occurred.
14 Otherwise, surely someone would have called 911 with all
15 those people out there.

16 And if you look at the tape, look at it
17 play-by-play, you see Mr. Hughey walk to my client,
18 Travis Lee, and they're having a conversation. Mr.
19 Hughey knew --- knew what he'd been doing to this ---
20 this community. Broken into Ms. Cobb's apartment,
21 stole --- stole items out of there. And broke in who
22 knows where else.

23 He couldn't even --- he had to ask which --- which
24 pair of shoes I was talking him stealing. Someone is
25 stealing so much he can't keep one theft --- one burglary

Closing Mr. Tinsley

1 straight from the other.

2 So I ask if Mr. Travis Lee's behavior was
3 reasonable. They're talking. Ken Lee comes up. Travis
4 grabs --- grabs Hughey's arm. There's nothing to suggest
5 that Travis knew anything about what was going to
6 transpire between Ken Lee, Mr. Hughey --- Tobias Hughey
7 there's no evidence of any kind of prior agreement
8 between them. So, hey, I was told by your mama that we
9 need to handle this. Now, don't --- don't run away,
10 we're going to deal with it. That's what Travis Lee's
11 behavior's consistent with. That's what he was doing
12 holding Tobias Hughey's arm, which I think is very
13 reasonable when he was going around stealing and you talk
14 to his mama and say what needs to be done about that?

15 She knows what's going on. She said, y'all handle
16 it. Specifically said that. She probably meant smack
17 him around some. Certainly grabbing his arm is not
18 inconsistent with that. And then Mr. Hughey take ---
19 doesn't --- Mr. Black kept saying that he drag him. That
20 tape doesn't show Travis Lee dragging him. That tape
21 shows you --- them tussling, Travis is kind of hanging
22 on. Hughey's the one jerking away to the back. He's not
23 getting drug. He was never on the ground getting cold
24 which is what dragging somebody means.

25 And I've talked in my opening about holes in their

Closing Mr. Tinsley

1 case. We never see on this tape, which does not lie, I
2 wanna agree. You never see any kind of --- anything
3 hitting Mr. Hughey. You never --- certainly never see
4 Travis Lee strike him or attempt to strike him. Then
5 you've got the behind the --- you know, we don't know
6 what happened that minute.

7 Obviously something --- something rough happened to
8 Mr. Hughey. But The State's got the burden of proving
9 that Travis Lee committed these crimes that they're
10 alleging he did. They don't have it. They --- they ---
11 they call --- The State strong arms Eric Phillips into
12 coming up here under threat of 45 days in jail ---

13 MR. BLACK: Objection, judge.

14 THE COURT: Overruled. This is argument, Ladies and
15 Gentlemen. I'll let Mr. Tinsley make the argument. Of
16 course remember the testimony and the facts based on your
17 recollection. Mr. Tinsley.

18 MR. TINSLEY: Testimony. He got up here admitted he
19 out lied to the police that night. Told the police he
20 didn't see anything. Now, he doesn't tell anybody
21 anything else till the day of trial. Never spoke again.
22 And you heard his testimony. He didn't want to --- I
23 specifically asked him about the 45 days. And he no ---
24 no, I think Mr. Grose questioned him a little more. You
25 heard his testimony about man in a dark suit downstairs.

Closing Mr. Tinsley

1 You heard that. That's not something that's being made
2 up out of thin air.

3 And Solicitor Black made some comment about him
4 wearing the same clothes. I don't know anything about
5 that. The only evidence we've seen is him wearing what
6 he was wearing on this security camera. You could tell
7 he was scared. The man --- the man has serious health
8 issues. And he testified to it. And that's the only
9 person they've got to testify about --- that was out
10 there. Solicitor Black made a big point about the man in
11 the blue sweatshirt, and his reaction. I didn't see the
12 man in the blue sweatshirt get called up here.

13 Likewise, two other people went off camera on there,
14 a male and a female. We're never told who --- who they
15 were. We never hear from them. Holes in The State's
16 case. Just a lot of them. And they tried to clear ---
17 to --- to --- to convict Travis Lee under this hand of
18 one is hand of all theory. Mr. Black read part of it to
19 you. He conveniently left another part out. Guilt is a
20 principle that's shown by actual or constructive presence
21 at the scene as a result of prior arrangement.

22 Therefore a finding of prior arranged plan or common
23 scheme is necessary for finding guilt as a principle. So
24 they have to prove there was an arrangement between
25 Travis and Ken Lee. There's no evidence to support that.

Closing Mr. Tinsley

1 There is evidence that Ms. Guillebeaux and Travis had a
2 conversation where she told Travis Lee to handle the
3 situation. Ken Lee wasn't part of that conversation.

4 And then there's testimony about Ken Lee coming to
5 Mr. Floyd's residence a couple nights earlier. We saw
6 the video. Mr. Floyd, admitted shoplifter, admitted hard
7 drug user, admitted buddy of Tobias Hughey, claimed that
8 Travis Lee came to his door. That's interesting. Travis
9 Lee's not on that video.

10 If you recall yesterday afternoon I asked Officer
11 Balchin if Travis Lee was on that video. The answer was
12 no. Travis was not on that video. Travis didn't go to
13 that man's door. Mr. Floyd testified that he's got a
14 pending discharging a firearm into a dwelling. He had to
15 come to court for roll call appearance last Friday
16 morning. At some point last Friday, he talked to
17 Solicitor Black. And at that point, he's talking about
18 Ken Lee and a bald-headed man coming to his door that
19 night.

20 Travis Lee doesn't have a bald head. There's no
21 evidence in the record that he's ever had a bald head.
22 And you better believe that if they had a --- a mug shot
23 from that time with him having a bald head, they'd be
24 waving it around in front of you. He didn't have a bald
25 head, so you hadn't seen that. Mr. Floyd's testimony

Closing Mr. Tinsley

1 should be entirely discredited, not only as he's an
2 admitted heavy drug user, admitted thief, he's got a
3 pending --- a serious pending charge that he hadn't even
4 bothered to hire a lawyer from. He can get up and
5 say --- him testify and that charges have nothing to do
6 with each other.

7 You don't leave your common sense at the door. You
8 know what's going on with Mr. Floyd trying to help his
9 buddy. And his --- himself get out of his charges at the
10 same time. And let's --- let's look at Mr. Hughey and
11 his testimony. Boy, there was some whoppers there. He
12 couldn't even admit to simple undisputed stuff. Couldn't
13 even admit talking to my investigator Stevie Jones
14 (phonetic) over here, despite a couple of in-person
15 conversations. He had amnesia on those. Showed up a
16 call log where he had called Mr. Jones five or six times
17 and he --- he --- he acknowledged that was his phone
18 number previously before he got rid of that phone. And
19 but claims to not remember making all those calls. He
20 has quite (unintelligible) memory to remember all these
21 specifics of --- of this incident, but he can't remember
22 something that --- that simple. It just didn't --- that
23 doesn't pass the smell test.

24 He also --- he testified about somebody Kiara
25 kicking him or --- in his statement which he --- and you

Closing Mr. Tinsley

1 know, I'm --- I'm a little unclear of whether he's
2 admitting that as his written statement or not. He was
3 waffling pretty bad back and forth on that. The first
4 statement he admits going into that apartment, which he
5 then later denied.

6 He also doesn't mention anything about Travis Lee in
7 the first statement. Second statement doesn't mention
8 anything about Travis Lee. It's only in this third one
9 when he mentioned getting kicked by somebody named Kira
10 who's not been charged with anything, that he's --- that
11 he even mentions Travis Lee.

12 And he's --- he was very unclear as was Mr. Phillips
13 about what Travis Lee's role was. You hear that he's
14 holding him, but you also hear he's hitting him. I mean,
15 it --- it --- it's, unless he's Superman, he can't be
16 hitting, kicking and holding at the same time. It just
17 doesn't make any sense.

18 And Travis Lee, he cooperated with the police, you
19 heard from him. He admitted --- yeah, y'all have me for
20 holding him and demonstrated it. Holding the officer's
21 arms. Tape don't lie, that's what he did. That doesn't
22 make him guilty of assault and battery of a high and
23 aggravated nature or these--- or assault and batteries,
24 that's all The State's proven on Mr. Travis Lee.

25 And back to Mr. Hughey. And once again, he

Closing Mr. Tinsley

1 couldn't --- couldn't tell the truth about the simple
2 stuff. He couldn't, yeah, that's my --- my buddy that
3 I'd go hang out the and smoke dope with and play video
4 games, but said they work together. Come on. Just the
5 simple stuff, he can't --- he can't tell the truth about.
6 That's got nothing to do with memory, telling the truth.

7 He also, on the drug use, he admitted to Adderall
8 and marijuana, but he also admitted to methamphetamines.
9 Then he tried to clean that up by saying that's in
10 Adderall. Come on, everybody knows that --- that's
11 ridiculous. That's just a ridiculous comment, which when
12 you --- when you start lying, you make ridiculous
13 comments 'cause it's a lot easier to stand on the ground
14 and to tell the truth than to climb --- climb up in a
15 tree and tell all these lies and try to keep them
16 straight.

17 And he admitted --- he flat out admitted he was
18 guessing on his testimony. So once again, I would
19 discredit it in its entirety. And The State's just
20 wanting the camera to show what it does not show. It
21 does not give them the evidence that Travis Lee committed
22 these crimes. Doesn't --- does not show him striking Mr.
23 Hughey, does not show him making any aggressive moves
24 with Mr. Hughey, just grabbing his arm. Hey, come down,
25 your mama told --- told us to handle this, so we're going

Closing Mr. Tinsley

1 to squash it and (unintelligible).

2 And when Mr. Travis goes off, there's nothing
3 showing Travis Lee holding him while Ken Lee or anybody
4 else beats him. There's nothing to show Travis Lee
5 beating him period.

6 And also, Mr. Black made the argument that Travis
7 Lee was picking up evidence and hiding it on that last
8 video, where he's walking to the back. Well, you folks
9 know Abbeville. His mama lives over there on Adams
10 Drive, which where the police picked him up the next day.
11 And which is right over there, walking distance right by
12 that tree line. So he's --- evidence supports that he's
13 walking to his mother's house --- Ms. Virginia Lee, who's
14 present in the courtroom --- where he resided.

15 And if he's --- stashing evidence, then why is he so
16 forthright with the police the next day? Says, yeah,
17 search the house, search the car, that's not a problem.
18 They didn't find anything in there incriminating. If
19 he --- you know, if he was responsible for being involved
20 in beating this man to --- with him an inch of his life
21 as the Solicitor said, why --- why isn't there any
22 evidence of his clothing just soaked in blood? It's just
23 not --- it --- it just does not pass the smell test once
24 again. The State's theory just does not pass muster.

25 And in --- in --- in his --- as the Solicitor went

Closing Mr. Tinsley

1 over with you, this --- they've got first charge. You're
2 going have to look at assault and battery of a high and
3 aggravated nature, which means great bodily injury. The
4 State has to prove that Travis Lee is responsible for
5 causing great bodily injury to get him --- to convict him
6 of assault and battery of a high and aggravated nature.
7 They have not done so. They haven't produced any
8 evidence that Travis Lee had anything to do with injuries
9 to Mr. Hughey.

10 And I would --- I would argue to you that great
11 bodily injury, if he had really suffered this great
12 bodily injury at the hands of Travis Lee or Ken Lee,
13 right there on the scene, somebody would have called 911.
14 Not a single person --- that doesn't happen late at
15 night. It's in daylight. You've seen the video.

16 And then Mr. Hughey gets up and walks over to Mr.
17 Floyd's to do God knows what for how --- who knows how
18 long. Mr. Floyd said ten minutes. Somebody's really
19 sitting there dying in your apartment for ten minutes,
20 you don't call 911. That just doesn't --- that makes
21 absolutely no sense.

22 And you heard the medical testimony to get up in his
23 condition can be affected by how long it takes to get
24 medical attention to him. So it is dark by the time
25 paramedics get to his mother's house. Quite a bit of

Closing Mr. Tinsley

1 time I suggest to you quite a bit of time had passed
2 between when they incident occurred and when 911 got
3 called. That doesn't sound like great bodily injury
4 caused by Travis Lee or Ken Lee or anybody else that was
5 at the scene The Village.

6 Then next you have to look at the assault and
7 battery first degree. And that it as the Solicitor
8 talked about requires, you know, the method causes a
9 substantial risk of death or which causes serious
10 permanent disfigurement or protracted loss or impairment
11 of the function of a bodily member or organ.

12 Once again, they have to prove their case beyond a
13 reasonable doubt, which means they have to prove beyond a
14 reasonable doubt that Travis Lee caused --- did something
15 that would be subject Mr. Hughey to that. It's just not
16 there. It's not on that tape. It hasn't come from that
17 witness stand.

18 So then you would look at the lowest level of
19 assault and a battery that the judge is going to charge
20 you with, which would be second degree, which is moderate
21 bodily injury. And that involves a prolonged loss of
22 consciousness or that causes a temporary or moderate
23 disfigurement, or temporary loss of the function of a
24 bodily member or organ, or injury that requires medical
25 treatment when the treatment requires the use of regional

Closing Mr. Tinsley

1 or general anesthesia, or injury that results in a
2 fracture or dislocation.

3 Well, once again, The State has to prove that Travis
4 Lee caused that. When Travis Lee walks back a separate
5 time from everybody, walks back on the scene and around
6 and eventually leaves. Right after that Tobias Hughey
7 walks by. You know, I --- there's certainly --- later
8 on, there was a loss of consciousness, but at that point
9 there was no loss of consciousness, so to pin that on
10 Travis Lee is just not supported by the evidence.

11 And as far as the broken arm, once again, we have no
12 evidence that Travis Lee participated in breaking the
13 man's arm. So I would suggest to you that State's failed
14 its burden even on that lowest level charge. And based
15 off the reasonable doubt charge that the judge is going
16 to instruct you on, if you have any doubt between the
17 charges, you have to resolve it in my client Travis Lee's
18 favor, which would mean going with the low --- lower
19 charge.

20 And so, you know, reasonable doubt, we talked about
21 a lot the blind load of justice like I told you about
22 Tuesday morning. Facts going this way, or that way. The
23 State has to firmly convince you, means it weigh --- its
24 scales weigh in its favor to convict my client on every
25 element --- every element of the crime. Even they have

Closing Mr. Tinsley

1 to prove that he --- he caused this. Any doubt you have,
2 reasonable doubt requires you to give the benefit of the
3 doubt to my client.

4 And presumption of innocence, you should go back to
5 the jury room and write on your tablet, presumed
6 innocent. That's your starting point which all
7 deliberations start. The State has to prove its case
8 beyond all reasonable doubt to convict my client.

9 As --- as Mr. Grose explained to you Tuesday
10 morning, this isn't Tobias Hughey versus Travis and Ken
11 Lee. It's the government, The State of South Carolina
12 bringing this case against Travis Lee. The government's
13 on trial here. The State of South Carolina with its vast
14 resources is what's on trial here, not Travis Lee.
15 They're the ones who have to prove Travis Lee's guilt,
16 convince you beyond a reasonable doubt.

17 You go through those --- those --- those charges,
18 assault and battery of a high and aggravated nature
19 should be easily thrown out. It's just when my client's
20 life's at stake on that charge, and there's just no
21 evidence to support it.

22 So then you look at assault and battery first, once
23 again, as we went over, The State can't prove that Travis
24 Lee did anything to subject Mr. Hughey to the risk ---
25 risk of those --- those great bodily injury.

Closing Mr. Tinsley

1 And then you look at moderate bodily injury, and
2 I --- I --- I don't dispute that Mr. Hughey suffered
3 moderate bodily injury, but the dispute I have is to hold
4 Travis Lee accountable. There's no evidence to do so,
5 they're trying to lump it under this hand of one hand of
6 all. This is not supported by the evidence. There's
7 no --- nothing in the record supporting the notion of any
8 kind of prior arrangement. They don't ambush this man.
9 They don't come jump on him. They arrive at different
10 times to do what Ms. Guillebeaux told them to do, handle
11 the situation.

12 Now, what happened behind that building, I don't
13 know. The State doesn't know, and that's on The State.
14 The State has the burden of proving Travis Lee's guilt.

15 So Mr. Black used my football analogy reasonable
16 doubt quite a bit. And he spoke like somebody watching a
17 game with rose-colored glasses. And he --- that he ---
18 he and The State just took over the kick. They went
19 untouched in the end zone, meaning every fact in the ---
20 in here went in their favor.

21 Thankfully, you folks don't have rose colored
22 glasses on. You get to be the judges, the jurors the
23 referees to determine what really happened over there,
24 and hold The State to its --- to its evidence. And the
25 tape doesn't show what they want you to believe that it

Closing Mr. Grose

1 shows or that they argue that it shows with all that.
2 The State has failed to meet its burden of proving my
3 client guilty.

4 So with that I --- I thank you for delivering my
5 client and bringing a just verdict.

6 THE COURT: Thank you, Mr. Tinsley. Mr. Grose, your
7 closing. I know you need to just get it set up. Give
8 you a moment.

9 (Mr. Grose sets up equipment)

10 MR. GROSE: When we started at the beginning of the
11 week and the judge was giving you some instructions at
12 the beginning of the case, one of the things that he ---
13 he said when he added to the instructions or the opening
14 remarks was is that the trial is not really about, you
15 know, figuring out what happened. The trial, what your
16 role as jurors is --- is determining whether The State of
17 South Carolina met their burden of proof. And if they
18 don't meet their burden of proof, then Ken Lee and Travis
19 Lee are entitled to that benefit of the doubt.

20 One of the things I think that the judge is going to
21 tell you when he charges you on the law is that you have
22 no friends to reward and no enemies to punish, that your
23 verdict is supposed to be based on your view of the
24 evidence and the law that the judge charges you.

25 I'm going to go through in a little bit --- I'm

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1 going to go through some of the other things that I think
2 the judge is going to charge you, but I want to remind
3 you that when we started this on --- I guess, Tuesday,
4 with opening statements and everything State just
5 talked --- prosecutor just talked to you about assault
6 and battery of a high and aggravated nature.

7 I mentioned that you would hear things about
8 (unintelligible) other degrees of assault that you would
9 hear about great bodily injury and moderate bodily
10 injury. And what is this up on the board right now is
11 the --- the verdict form. The judge --- and it's been
12 alluded to by the other lawyers, the judge is going to
13 give you three options as to what the charges should be
14 if you decide that one or both of these people are
15 guilty.

16 It was hard to sit there and not take offense when
17 Mr. Black stood in front of you and said that I or
18 anybody else in this courtroom was implying that Mr.
19 Hughey deserved what he got that day. That's just not
20 true.

21 There's reasons that we talked about his record,
22 there's reasons that we talked about his conduct.
23 There's reasons that we talked about his drug use and I'm
24 going to go through some of those in a minute as it
25 applies to the laws that I think you're going to be

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1 charged in a little bit.

2 In fact, I imagine that there's a good chance that
3 you're going to find that condition is responsible for
4 something in this case, and I'm not up here standing and
5 telling you that Mr. Hughey got what he deserved. I'm up
6 here to tell you what the evidence shows, what the
7 evidence doesn't show and where they failed to meet their
8 burden of proof.

9 Now, I'm going to come back to this later, but we've
10 had some talk already about great bodily injury, and
11 moderate bodily injury. And through this trial for three
12 days they've only given you three things to think about
13 as to why Tobias Hughey has suffered an impairment or
14 loss of use of his organ, loss of use of his brain. The
15 first thing that they gave you was after he got out of
16 the hospital with --- during that first two weeks that
17 his mother had to give him a bath, help him with a bath
18 one time.

19 The second thing that they gave you to think about
20 as to why Mr. Hughey has permanent brain damage, is
21 because on one occasion he forgot to turn the stove off
22 when he was cooking chicken fingers and --- and the
23 grease was still burning. A lot of people made that
24 mistake. I made that mistake. Some of you might have
25 made that mistake. One time is all they've said that

Closing Mr. Grose

1 that ever happened.

2 And the third thing that they said to show that he
3 has permanent brain damage and loss of use of --- of that
4 organ in his body is he has a hard time remembering
5 things. You saw him on the witness stand. I'm going to
6 talk about demeanor in a minute. His memory is
7 convenient to what he wants to remember and what he
8 doesn't want to remember, what he wants to talk about and
9 what he doesn't want to talk about.

10 So the first thing that I want to talk about is the
11 presumption of innocence. Nobody is required to prove
12 themselves innocent. The burden is always on The State.
13 As Mr. Tinsley alluded to earlier that this presumption
14 of innocence continues into the jury room and you begin
15 your deliberations presuming that both of these gentleman
16 who are on trial are not guilty. In fact, he says this
17 is not just a mere legal theory or a legal phrase. It's
18 a substantive right that we're all entitled to.

19 As I talked to you about the other day, this is a
20 dispute between Ken Lee and the government. Yes, there
21 was a dispute involving Mr. Hughey, about the dispute in
22 the courtroom is that The State is trying to make this
23 into something that it's not, trying to make it into more
24 than what it is and more than what happened that day.
25 They tell you that the video shows everything. But then

Closing Mr. Grose

1 at the same time, they try to put ideas, thoughts in your
2 mind about what's not seen on the video. Why are they
3 trying to make that into more than it is?

4 And another question that I think that you need to
5 ask is, is why are they coddling Tobias Hughey? The
6 testimony was is that he --- his reputation is a thief.
7 He was confronted with a statement where he admitted to
8 breaking into Ms. Cobb's apartment. They've not charged
9 him with that. You heard about --- yesterday you heard
10 about him being the suspect and going into this woman's
11 apartment and stealing shoes. And that was on the ---
12 the CAD report. And then they bring in the report today
13 and his name's not on that. Why are they doing that? I
14 would suggest to you that if you think about something
15 that Investigator Balchin said yesterday, this gets back
16 to no friends to reward, no enemies to punish.

17 Investigator Balchin talked about cash money ---
18 cash money to put it on the street that they pay people
19 for information. You got to wonder, are they trying to
20 make this into something more than it is because Tobias
21 Hughey is one of their people that they pay for
22 information on the street? They certainly don't
23 prosecute him when there's evidence there to do. Why is
24 that? Why are they trying to reward him as Mr. Black
25 said, rewards? Happen all the time.

Closing Mr. Grose

1 Now, let's talk little bit about reasonable doubt.
2 One of the things that the judge is going to tell you is
3 is a reasonable doubt is the kind of doubt that would
4 cause a reasonable person to hesitate to act. Sometimes
5 I hear that said that would cause a person --- a
6 reasonable person to hesitate to act in their important
7 daily affairs. And I'm going to come back to that
8 definition when we talk about the doctors a little later
9 on.

10 The judge is going to tell you about the difference
11 in a criminal case, how the burden of proof is so much
12 higher in a criminal case. And as The State pointed out,
13 you are going to hear the term firmly convinced. But
14 what they leave out is if on the other hand you think
15 that there is a real possibility that one or both of the
16 defendants are not guilty, you should give them the
17 benefit of the doubt and find one or both of them not
18 guilty.

19 Now, I don't know, we hear that term benefit of the
20 doubt all the time, and I don't know for sure whether it
21 came from our traditions in the courtroom with the
22 benefit of the doubt. It's not just the benefit of the
23 doubt whether they're guilty or not guilty. As Mr.
24 Tinsley talked about, it's also the benefit of doubt with
25 whether or not The State has proven which degree of the

Closing Mr. Grose

1 assault and battery that they charged these two gentleman
2 with. And we'll come back to that in a minute.

3 Direct and circumstantial evidence. Direct evidence
4 is something that directly proves the existence of a
5 fact. Circumstantial evidence is proof of a chain of
6 fact and circumstances indicating the existence of the
7 fact. And an example that I used minute ago talking
8 about why is the government protecting Mr. Hughey. When
9 you look at his conduct and you look at the fact that
10 he's not prosecuted, and you look at the fact that they
11 pay for information, that gives you some concern as to
12 what that relationship between law enforcement and Mr.
13 Hughey really is.

14 Oh, yes, he certainly has some charges pending, he
15 trusts Mr. Black to tell him what those charges are, and
16 he trusts Mr. Black to take care of them. Now, I don't
17 think that they realize just --- "they," when I say that,
18 the prosecutors and law enforcement --- I don't think
19 that they realize just how much power they wield over
20 people's lives. They talk about this stuff, rewards
21 happen all the time, we put cash money on the street,
22 that's not a bribe, that's just a reward. If I try to
23 pay money to a witness, it would certainly be calling
24 that a bribe. And they say, they get --- they get a
25 little offended when you say strong arming a witness like

Closing Mr. Grose

1 Eric, who came in here who --- who didn't want to come in
2 here. He told you that he believed that he could get,
3 you know, 45 days in jail if he didn't come and assist
4 and cooperate.

5 And that's important because you have to determine
6 the credibility of the witnesses. And I submit that you
7 also have to determine the credibility of the case. And
8 when you look at this, you can consider where any witness
9 has exhibited to you any interest, bias, prejudice or
10 other motive in this case. Nobody really wants to talk
11 about the fact that charges get dismissed because of the
12 way people testify in court. They certainly didn't want
13 to admit to that while they were on the witness stand,
14 neither Mr. Hughey or Shane --- Shane Floyd. Neither one
15 of them wanted to admit to that.

16 They also didn't want to admit to the fact that they
17 have a criminal enterprise together. If you remember, I
18 asked Shane about did Mr. Hughey ever bring things to
19 your house? Shoes? Yeah, he brought shoes sometimes.
20 You've heard about the stolen shoes a couple times in
21 this case. He would bring phones to his house. He
22 wouldn't directly say that they were stolen but come on,
23 he --- he knew that they were stolen. And so we got to
24 look at people's bias, and their interest, and their
25 motive.

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1 And you can also consider their appearance and
2 demeanor on the witness stand. And certainly Mr. Hughey
3 and his mother were combative witnesses, with the defense
4 anyway. And you have to question why is that? Well, why
5 is that? Because they want you to think --- Mr. Hughey
6 wanted you to think that the reason that he delayed ---
7 or didn't want to call --- he didn't delay, he didn't
8 want EMS to be called. He didn't want go to the
9 hospital. And they want you to believe the reason for
10 that is because he wanted to see his son.

11 His mama got on the witness stand and she thought
12 about giving it up, but she eventually gave it up and
13 said that he didn't want to go the hospital because they
14 knew that there was warrants out there, that if law
15 enforcement got involved, those warrants could be served
16 on them. One of them was a warrant that she had on him
17 for financial card fraud. The other one was a warrant
18 for domestic violence.

19 Also submit to you that maybe he didn't want to go
20 to the hospital because they knew that they were going to
21 find hard drugs in his system. They want you to believe
22 it was marijuana or maybe just hemp. But when Mr. Hughey
23 was on the stand and it goes back to his demeanor, and we
24 were asking him about that. We asked him about he first
25 admitted to methamphetamine. And then he said, oh, no,

Closing Mr. Grose

1 that's in Adderall. He was trying --- as Mr. Tinsley
2 said, he was trying to clean that up.

3 And so the undeniable reality in this is is for
4 whatever reason, good, bad or indifferent, Mr. Hughey did
5 not want to seek medical care. And every one of the
6 doctors told you that that was a bad idea. And so to
7 what extent does Mr. Hughey's own conduct play in causing
8 these injuries that he --- he says that he has?

9 Before I go on, the past criminal record, Judge is
10 going to tell you that that can be used for determining
11 credibility. I submit to you that there's also these
12 uncharged --- or --- or these charges that are pending,
13 those can be considered for motive. So when we go into
14 what charges that they have, and when we talk about
15 somebody's criminal history, there's a legitimate reason
16 for doing that based on what the judge is going to charge
17 you in the case.

18 Expert witnesses. They talked little bit about the
19 doctors in the case. What the judge is going to tell you
20 is you should consider any expert opinion given by a
21 witness like any other evidence and give it the weight
22 that you think it deserves. An expert's witness's
23 testimony is to be given no greater weight that than of
24 other witnesses simply because the witness is an expert.
25 And you do not have to accept an expert's opinion even

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1 though it is uncontradicted.

2 I said when we were talking about reasonable doubt
3 and talked about reasonable doubt, one of the definitions
4 is --- is the kind doubt that would make a reasonable
5 person to hesitate to act with their important daily
6 affairs.

7 I said I was going to talk about that again when we
8 got to talking about the law with expert witnesses. Yes,
9 you had two doctors come in here. And yes, they talked
10 about the injuries that Mr. Hughey had. And they ---
11 yes, they acknowledge the role that he played in that by
12 not seeking help for so long.

13 They also told you that they have not seen Mr.
14 Hughey since October in one case, and November in the
15 other case, of 2020. Almost three years. Okay. It's
16 almost three years. I imagine that y'all are a lot like
17 other people when you want to get an opinion from a
18 doctor about somebody that you love, a parent, child, a
19 close friend, that you want that doctor basing that
20 opinion one on an examination that they have done
21 concurrent with the time that you're trying to get that
22 opinion. You don't want a doctor that saw your loved
23 three years ago to say, oh, yeah, I think this is X, Y,
24 and Z. You want that doctor to be basing that opinion on
25 current information.

Closing Mr. Grose

1 All we know is all that they have presented. All
2 that they have shown to try to meet their burden of proof
3 is that Tobias Hughey had one follow-up outpatient
4 rehabilitation trip just once in 2020. And as I talked
5 about earlier, the only things that they point to that
6 are currently not right with him --- well, the ---
7 the --- the bath was three years ago. We don't know
8 exactly when it is that he forgot to turn off the stove.

9 And his memory issues. And like we talked about
10 before, it's very convenient that he remembers what he
11 wants to talk about and he doesn't remember what he
12 doesn't want to talk about. And we all know what meth
13 does to people, because I'm sure we've seen it --- you've
14 seen in your community. I've seen in my community. Meth
15 destroys people.

16 I indicated earlier and those are a little bit small
17 and I'll enlarge them in a minute, but this is what the
18 judge is going to charge with regards to assault and
19 battery of a high and aggravated nature, and assault and
20 battery first degree. And there was an acknowledgement
21 by the prosecution that the great bodily injury language
22 is in both of these jury instructions.

23 I showed you the verdict form in the beginning and
24 what I am going to suggest to you now is that the
25 decision that you have to make is really between assault

Closing Mr. Grose

1 and battery first degree and assault and battery second
2 degree. And we're going to talk about assault and
3 battery the second degree a little bit more in a minute.

4 And I think that it's important that we look at the
5 definition of great bodily injury. Great bodily injury
6 is bodily injury which causes potential risk of death and
7 which causes serious permanent disfigurement or
8 protracted loss or impairment of the function of a body
9 member or organ. And the first degree assault and
10 battery talks about the offer doing that.

11 They talked --- they're relying on how many times
12 Mr. Hughey had to be revived. And I don't say that
13 that's dead. To me, dead is dead. You don't move
14 anymore, you don't breathe anymore, your heart doesn't
15 beat anymore, and they bury you. That's what that word
16 means in ordinary everyday use. When they're talking
17 about assault and battery of a high and aggravated
18 nature, and they're talking about the causation of that
19 and they use the words serious permanent disfigurement or
20 protracted loss and impairment of a body function or
21 bodily member or organ, they're talking about there being
22 that permanent --- that permanent impairment, that
23 permanent disability.

24 Some people --- some of you may know people who have
25 been involved in an automobile accident and were injured,

Closing Mr. Grose

1 and then they got an impairment rating from the doctor.
2 You haven't heard any evidence that Tobias Hughey has any
3 kind of impairment rating from a doctor, because it
4 doesn't exist.

5 So when you kind of look at the assault and battery.
6 If a person commits assault and battery in the first
7 degree, alters or attempts to injure another person, or
8 the act is accompanied by means likely to produce death
9 or great bodily injury, that's where you can take into
10 account Tobias Hughey's own conduct, own failure to seek
11 medical attention. Every doctor, every EMS person came
12 in here told you that that's important.

13 And when you look at assault and battery second
14 degree, and this is where I'm going to ask that you land
15 with regard to end up with regard to Ken Lee. A person
16 commits the offense of assault and battery in the second
17 degree if the person unlawfully injures another person or
18 offers or attempts to injure another person with a
19 present ability to do so and moderate bodily injury to
20 another person results, or moderate bodily injury to
21 another could have resulted.

22 Now, it's important to look at what moderate body
23 injury is and is not. So in the green, moderate bodily
24 injury means physical injury that involves prolonged loss
25 of consciousness or that causes temporary or moderate

Closing Mr. Grose

1 disfigurement or temporary loss of the function of a
2 bodily member or organ, or injury that requires medical
3 treatment with --- when the treatment requires the use of
4 regional or general anesthesia, or the injury results in
5 a fracture or dislocation. That's exactly what you've
6 heard in this courtroom this week. Yes, he had a
7 fracture and that's healed. Yes, he had loss of
8 consciousness. Yes, he had temporary loss of functions
9 while he was in the hospital. He had eight weeks of
10 being treated, he went through some rehabilitation.
11 That's why it's important when they tell you that all
12 they're offering is one bath, left the stove on one time,
13 and has memory issues, that could be caused by illegal
14 drug use.

15 What it's not, and I'm not --- I'm not --- I --- I
16 just showed this to you, what it's not --- it's not
17 one-time treatment or subsequent observations, or
18 scratches, cuts abrasions, bruises, burns, splinters or
19 other minor injuries. Some people would call some of
20 those things to be significant injuries. But the law is
21 telling us that that doesn't raise to the level of
22 moderate bodily injury.

23 So I think it's important to real keep focus on what
24 serious bodily injury means and what moderate bodily
25 injury means.

Closing Mr. Grose

1 We talked about reasonable doubt. And I talked
2 about the verdict forms in the beginning. Given the fact
3 that Mr. Hughey has recovered from these injuries, and
4 they've done very little to tell you. They suggest oh,
5 he's had to learn how to cope. But they've done nothing,
6 they have presented no evidence of any differences and
7 provide any different coping strategies he has. None of
8 that is in front of you.

9 So if there's a real possibility that Mr. Hughey's
10 injuries were only moderate bodily injuries, and the
11 treatment that he had and the temporary nature of that,
12 and his recovery certainly seems to support that. If
13 there is a real possibility that his injuries are just
14 the moderate bodily injuries, then the proper verdict for
15 Ken Lee is assault and battery second degree. And that's
16 what I ask you to do.

17 THE COURT: Thank you, Mr. Grose. All right. Now
18 Ladies and Gentlemen and the clerk has gone to get your
19 lunches, but I'm going to go ahead and proceed with these
20 instructions to you. And Madam Forelady, Ladies and
21 Gentlemen of the jury, I'll --- I'll tell you that when I
22 first started practicing law in '93, the way that most
23 judges handled instructing the jury on the law is that
24 they'd sit up here and basically read to you 19 pages
25 taken from all the law books that are in that cabinet

Jury charge

1 behind the TV and the jury was supposed to get in
2 15 minutes what took me three years to learn. Okay?

3 I always found that a little unreasonable and the
4 think the tradition probably --- the tradition for doing
5 that orally probably stems from when most people or maybe
6 a lot of people were simply not literate. A lot of
7 people didn't read. Now, today, of course, today pretty
8 much everybody can read.

9 So what I'm telling you Ladies and Gentlemen is that
10 I'm giving you a copy of these instructions in written
11 form that you can refer to during your deliberations.

12 Please of course pay attention to the instructions
13 as a whole --- as a whole. And don't simply ignore some
14 portion. Of course pay attention to them as a whole.

15 If you have any questions about these instructions,
16 Madam Forelady, simply write me a note and I can help you
17 if you have a legal question. If you have a factual
18 question, however, odds are I will not be able to help
19 you. Okay? There is no mechanism by which I can reopen
20 the record, or we can take additional testimony.

21 So if you've got a factual question, I can't help
22 you. If you have a legal one, I probably can. All
23 right?

24 Now, Ladies and Gentlemen, I instruct you that the
25 indictments in this case charge the defendants with the

Jury charge

1 offense of assault and battery of a high and aggravated
2 nature. And I'll remind you of what I said to you on
3 Tuesday, that the fact that they were arrested, charged
4 and indicted, is not evidence and cannot be considered by
5 you as evidence of guilt, nor did the indictments create
6 any presumption or inference of guilt.

7 Again, these documents are simply the formal written
8 instruments which contain the charges made against the
9 defendant. They're the formal means by which a case is
10 brought in the Court. I instruct you that the case of
11 each defendant and the evidence and the law concerning
12 that defendant, should be considered separately and
13 individually. Your verdict does not have to be the same
14 for both defendants. The fact that you may find one
15 defendant guilty or not guilty should not control your
16 verdict as to the other defendant.

17 Where more than two --- sorry. Where more than one
18 person is charged with a crime, if the evidence warrants
19 it, you may convict one and acquit the other, or you may
20 acquit both, or you can convict both. It'll depend upon
21 your view of the testimony and the evidence. You must
22 take each defendant and consider the evidence as to that
23 defendant.

24 And my instructions to you on the law. You'll then
25 write a separate verdict of guilty or not guilty for each

Jury charge

1 individual defendant. Now, the defendants in this case
2 have pled not guilty to these charges and that plea puts
3 the burden on The State to prove their guilt. I instruct
4 you that a person charged with committing a criminal
5 offense is never required to prove their innocence. It's
6 an important rule of law that the defendant in a criminal
7 trial, no matter what the seriousness of the charge may
8 be will always be presumed to be innocent of the crime
9 for which the indictment was issued unless guilt has been
10 proven by evidence satisfying you of this guilt beyond a
11 reasonable doubt.

12 This presumption of innocence does not end when you
13 begin your deliberations, rather it accompanies the
14 defendant throughout the trial until you reach a verdict
15 of guilt based on evidence satisfying you of guilt beyond
16 a reasonable doubt.

17 The presumption of innocence is --- innocence is not
18 merely a legal theory, it's not just a legal phrase, it's
19 a substantial right to which everyone is entitled, unless
20 you the jury are satisfied from the evidence of the
21 defendant's guilt beyond a reasonable doubt.

22 Well, what is a reasonable doubt in the law? A
23 reasonable doubt is the kind of doubt that would cause a
24 reasonable person to hesitate to act. Reasonable doubt
25 may arise from the evidence presented in and of itself or

Jury charge

1 from the absence of evidence. The State has the burden
2 of proving the defendant's guilty beyond a reasonable
3 doubt.

4 And some of you may have served as jurors in civil
5 cases where you were told that it's only necessary to
6 prove that a fact is more likely true than not true, such
7 as by the greater weight or the preponderance of the
8 evidence. In criminal cases, The State's proof must be
9 more powerful than that. It must be proof beyond a
10 reasonable doubt.

11 Proof beyond a reasonable doubt is proof that leaves
12 you firmly convinced of the --- of the defendant's guilt.
13 Now, there are very few things in this world that we know
14 with absolute certainty and in criminal cases, the law
15 does not require proof that overcomes every possible
16 doubt. If based on your consideration of the evidence,
17 you're firmly convinced that one or both of the
18 defendants are guilty of the crimes charged, you should
19 find one or both guilty.

20 If on the other hand you think there is a real
21 possibility that the one or both defendants are not
22 guilty, you should give them the benefit of the doubt and
23 find one or both not guilty.

24 Now, I'll remind you that during this trial you and
25 I have certain duties to perform. And as the trial

Jury charge

1 judge, it's been my job to preside over the trial and
2 rule on the admissibility of evidence. You are to
3 consider only the competent evidence before you. So any
4 testimony which was ordered stricken from the record you
5 have to disregard that testimony. You can consider only
6 the testimony which has been presented from the witness
7 stand as well as any exhibits which have been made a part
8 of the record in this case.

9 I have the additional duty to charge you the law,
10 and as the presiding judge, I'm the sole judge of the
11 law. It's your duty as jurors to accept and apply the
12 law as I state it to you now.

13 So if you already have some idea as to what the law
14 is or what the law should be, and this idea does not
15 agree with what I now tell you the law is, you must
16 abandon that idea, because you're sworn to accept and
17 apply the law exactly as I state it to you now.

18 Now, again, Ladies and Gentlemen, in every case
19 tried before a jury, the jury becomes the sole and
20 exclusive judge of the fact in a case. A trial judge
21 cannot intimate, state, comment on, or make any statement
22 to a trial jury about the facts in the case.

23 Since you are the sole judges of the facts, you're
24 not to infer from what I've said during the progress of
25 this trial ruling upon the admissibility of evidence or

Jury charge

1 otherwise, or anything that I say to you now during the
2 course of these instructions that I have any opinion
3 about the facts in this case.

4 Ladies and Gentlemen, the law does not permit me to
5 have any opinion about the facts. This is a matter
6 solely for you to determine. As jurors, it's your duty
7 to determine the effect, value, weight, and truth of the
8 evidence presented during this trial.

9 Now, typically there are two types of evidence which
10 are generally presented during a trial, direct evidence
11 and circumstantial evidence. Direct evidence directly
12 proves the existence of the fact and does not require
13 deduction, such as testimony by an eyewitness. It's
14 evidence which immediately establishes the main fact to
15 be proven.

16 Circumstantial evidence is proof of a chain of facts
17 and circumstances indicating the existence of a fact. I
18 instruct you the crimes may be proven by circumstantial
19 evidence and the law makes no distinction between the
20 weight or value to be given to either direct or
21 circumstantial evidence.

22 However, to the extent The State relies on
23 circumstantial evidence, all of the circumstances must be
24 consistent with each other and when taken together, point
25 conclusively to the guilt of the accused beyond a

Jury charge

1 reasonable doubt.

2 If the circumstances merely portray the defendant's
3 behavior as suspicious, then the proof has failed. The
4 State has the burden of proving the defendant's guilty
5 beyond a reasonable doubt and this burden rests with The
6 State regardless of whether The State relies on direct
7 evidence, circumstantial evidence, or some combination of
8 the two.

9 Now, necessarily, you have to determine the
10 credibility of witnesses who have testified, and you are
11 the sole and only judges of the credibility in this case.

12 Again, credibility simply means believability. It
13 becomes your duty as jurors to analyze and to evaluate
14 the evidence and determine which evidence convinces you
15 of its truth.

16 In determining the believability of witnesses who
17 have testified in this case, you may believe one witness
18 over several, or several witnesses over one. You may
19 believe a part of the testimony of a witness and reject
20 the remaining part of the testimony of that same witness.

21 You may believe the testimony of the witness in its
22 entirety, or reject it in its entirety. You may consider
23 whether any witness has exhibited any interest, bias
24 prejudice or other motive in this case. And you may also
25 consider the appearance and manner of a witness while on

Jury charge

1 the witness stand.

2 I instruct you Ladies and Gentlemen, that a person
3 who has a past criminal record is competent to testify
4 during a trial. A past record does not affect the
5 ability of that witness to testify. The past record may
6 only be considered by you, if at all, in determining the
7 witness's believability.

8 Remember, you are the sole judges of the fact in
9 this case and of the believability of any and all of the
10 witnesses who have testified.

11 Now, as explained briefly yesterday, Ladies and
12 Gentlemen, normally the rules of evidence don't permit
13 witnesses to testify as to opinions or conclusions. But
14 an exception to this rule exists for expert witnesses. A
15 person who by education and experience has become an
16 expert in some art, science, or profession, may give an
17 opinion as to the subject the witness claims to be an
18 expert in and may also give the reasons for their
19 opinion.

20 You should consider any expert opinion given by
21 you --- given by a witness and like any other evidence,
22 give it the weight you think it deserves. If you decide
23 that an expert witness's opinion is not based on
24 sufficient evidence and experience, or if you decide that
25 the reasons given in support of the opinion are not

Jury charge

1 sound, or that the opinion is outweighed by other
2 evidence, you may disregard the opinion entirely.

3 An expert witness's testimony is to be given no
4 greater weight than that of any other witness, simply
5 because the witness is an expert and you do not have to
6 accept their opinion even though it's uncontradicted.

7 Now, Ladies and Gentlemen, I instruct you and
8 emphasize that the fact that the defendants in this case
9 did not testify is not a factor to be considered by you
10 in any way during your deliberations, and in your
11 consideration on the question of the guilt or the
12 innocence of the defendants. It must not be considered
13 by you in any manner whatsoever. A defendant has the
14 constitutional right to remain silent and the assertion
15 of the this right must not be considered by you in your
16 deliberations.

17 I repeat, under your oath, you're to draw no
18 conclusion whatsoever from the fact that the defendants
19 in this case did not testify. The fact that they did not
20 testify should not even be discussed in the jury room.
21 The burden of proof as I've said, is on The State. The
22 defendant is not --- or the defendants are not required
23 to prove their innocence. The burden of proof remains on
24 The State to prove guilt beyond a reasonable doubt.

25 Now, Ladies and Gentlemen, I'll define for you now

Jury charge

1 the offense of assault and battery of a high and
2 aggravated nature. A person commits the offense of
3 assault and battery of a high and aggravated nature if
4 the person unlawfully injures another person and great
5 bodily injury to another person results, or the act is
6 accomplished by means likely to produce death or great
7 bodily injury.

8 Great bodily injury means bodily injury which causes
9 a substantial risk of death, which causes serious
10 permanent disfigurement or protracted loss or impairment
11 of the function of a bodily member or organ.

12 If you find The State has failed to prove either or
13 both defendants guilty of assault and battery of a high
14 and aggravated nature, you may consider whether The State
15 has proven the offense of assault and battery in the
16 first degree.

17 A person commits the offense of assault and battery
18 in the first degree if the person unlawfully offers or
19 attempts to injure another person with the present
20 ability to do so, and the act is accomplished by means
21 likely to produce death or great bodily injury.

22 Again, great bodily injury means bodily injury which
23 causes a substantial risk of death, or which causes
24 serious permanent disfigurement, or protracted loss, or
25 impairment of the function of a bodily member or organ.

Jury charge

1 Finally, Ladies and Gentlemen, if you found that the
2 state has failed to prove the charge of assault and
3 battery first degree, you may consider whether The State
4 has proven the defendants are --- either defendants are
5 guilty of assault and battery second degree.

6 A person commits the offense of assault and battery
7 in the second degree if the person unlawfully injures
8 another or offers or attempts to injure another person
9 with the present ability to do so. And moderate bodily
10 injury to another person results or moderate bodily
11 injury to another person could have resulted.

12 Moderate bodily injury means physical injury that
13 involves prolonged loss of consciousness where the cause
14 is temporary or moderate disfigurement, or temporary loss
15 of the function of a bodily member or organ or injury
16 that requires medical treatment when the treatment
17 requires the use of regional or general anesthesia, or
18 injury that results in a fracture or dislocation.

19 Moderate bodily injury does not include one-time
20 treatment and subsequent observation of scratches, cuts,
21 abrasions, bruises, burns, splinters or any other minor
22 injury that do not ordinarily require extensive medical
23 care.

24 Now, Ladies and Gentlemen I instruct you ---
25 finally, I instruct you that if a crime is committed by

Jury charge

1 one or more people who are acting together in --- in
2 committing a crime, the act of one is the act of all. A
3 person who joins with another to commit an unlawful act
4 is criminally responsible for everything done by the
5 other person which happens as a probable or natural
6 consequence of the act done in carrying out the common
7 plan and purpose.

8 For example, two people can be guilty of killing
9 another when only one of the two has a gun, there was
10 only one bullet and only one of the two fired the shot
11 that caused the death.

12 If two or more people are together acting together
13 assisting each other in committing the offense, the act
14 of one is the act of all, or as it is sometimes said, the
15 hand of one is the hand of all.

16 Prior knowledge that a crime is going to be
17 committed without more is not sufficient to make a person
18 guilty of that crime. Mere knowledge that another person
19 is going to commit a crime even if the defendant is
20 present when the crime is committed is not sufficient to
21 convict the defendant as a principal. Guilt as a
22 principal is shown by actual or constructive presence at
23 the scene as a result of prior arrangement.

24 Therefore for the finding of a prior arranged plan
25 or common scheme is necessary for a finding guilt as

Jury charge

1 principle.

2 The State must prove beyond a reasonable doubt by
3 competent evidence, the theory of the hand of one is the
4 hand of all.

5 A principal in a crime is one who either actually
6 commits the crime or --- or who is present, aiding,
7 abetting, or assisting in the committing of a crime.

8 When a person does an act in the presence of and
9 with the assistance of another, the act is done by both.

10 Where two or more acting with a common plan or
11 intent are present at the commission of a crime, it does
12 not matter who actually commits the crime. All are
13 guilty. The hand of one is the hand of all.

14 Present at the commission of a crime means to be
15 sufficiently near to aid and abet and assist in the
16 commission of the crime.

17 However, mere presence at the scene of a crime is
18 not sufficient to convict one as a principal on the
19 theory of aiding and abetting. Intent is also a
20 necessary element for there must have been a common
21 design or intent to commit the crime and the crime must
22 have been committed pursuant thereto with the person
23 aiding and abetting by some overt act.

24 Intent means in continued the result which actually
25 occurs, not accidentally or involuntarily. Intent may be

Jury charge

1 shown by acts and conduct of the defendants and any other
2 circumstances from which you may naturally and reasonably
3 infer intent. The State must prove these elements of
4 course beyond a reasonable doubt.

5 Now, Madam Forelady, Ladies and Gentlemen of the
6 jury, there are several verdicts in this case, and I
7 prepared a verdict form for each defendant, okay, for ---
8 to help guide your deliberations and for you to help
9 return a verdict in this case. Okay.

10 Basically the first option --- and I'm just going to
11 explain this to you --- but it basically runs through the
12 three possibilities here. Okay, the first option --- or
13 the first statement is: We the jury in the above
14 captioned case on the charge of assault and battery of a
15 high and aggravated nature unanimously find the
16 defendant --- in this case it says Travis Lee, the other
17 one says Kendrick Lee, either two mutually exclusive
18 options not guilty or guilty.

19 If you find that the state has failed to meet its
20 burden of proving Travis Lee's guilt beyond a reasonable
21 doubt, and all 12 of you apply --- agree with that, you
22 would initial right next to not guilty and then proceed
23 down to number two.

24 If however --- if however, on the other hand, you
25 find The State has met its burden of proving Mr. Lee's

Jury charge

1 guilt beyond a reasonable doubt and all of 12 of you
2 agree, initial next to guilty, sign the form, knock on
3 the door, let us know, we'll get you back in here. Okay?

4 The exact same questions are asked concerning the
5 charges of assault and battery first degree and assault
6 battery second degree. Okay. And you'll understand this
7 when you see it, but it basically flows.

8 All right. Exactly as I said. And they're
9 identical with respect to each --- each defendant who is
10 charged in this case.

11 Now, Ladies and Gentlemen, if any --- if --- again,
12 if any of you have any questions about the law or any
13 sort of question or issue that you need to bring to my
14 attention, Madam Forelady, simply write me a note and
15 we'll get you back in here. I'll look at the note, give
16 it to the bailiff, I'll look at it and I'll try to help
17 you with anything that you're struggling with.

18 Understand that the videos, I'm not going to send
19 those back, because I don't think there's a mechanism to
20 play those back in there. So should you want to watch
21 those again, for whatever reason, just let us know which
22 one you want to watch, we'll cue it up and try and get it
23 to that point where you want to see what's going on.
24 Okay? So as it relates to videos, that's what you'll
25 need to do.

Jury charge

1 Now, Madam Forelady, your verdict has to be
2 unanimous. That means all 12 of you have to agree. We
3 do not have majority verdicts in this state. So all 12
4 of you have to agree on whatever the verdict is.

5 I want --- and again, as it relates to notes, I
6 forgot to mention this, but please never tell me what the
7 numerical division is between the jury. All right? If
8 you send me a note, never tell me whether it's 10/2, one
9 way or another. 6/6, 5/7, I don't need that information.
10 So never give --- give me numbers as it relates to any
11 sort of jury division should you need to communicate with
12 the Court.

13 Ladies and Gentlemen, I'll remind you that y'all
14 were chosen on Monday as fair and impartial individuals.
15 In other words, you have no friends to reward, you have
16 no enemies to punish. Your job is to render a verdict
17 based solely on the evidence presented and on the law as
18 I have instructed you.

19 Now, I anticipate that your food is here. In a
20 moment I'm going to let all 14 of you go to the back and
21 let the --- the clerk bring in the --- the stuff that you
22 ordered.

23 Please don't begin your deliberations yet. Okay?
24 Your cue to begin your deliberations, Madam Forelady,
25 will be receipt of these instructions, the verdict forms

1 and all the evidence sans the --- the CDs, the CD-ROMs
2 with the videos. Okay? And then my asking the two
3 alternates to step out.

4 You guys want to grab a slice of pizza let them go
5 first. Okay? That way they can maybe kill whatever
6 hunger pains they're suffering, because as soon as we get
7 all that to you in the back, you can begin your
8 deliberations and I'll bring them out. All right?

9 Should you want to take a smoke break, that's
10 perfectly fine. Try to limit it to maybe once every
11 hour, 15 minutes, or something like that, hour
12 30 minutes. I --- it --- it's really best that you not
13 break every 15 minutes to have cigarette. And the reason
14 for this, Ladies and Gentlemen, is that any time you have
15 a cigarette break deliberations has to stop. Okay?

16 So you can only discuss this case with all 12 of
17 people there. That means if four or five are outside,
18 deliberations have to stop 100 percent. So try to
19 minimize that to the extent --- and maybe limit it to
20 every hour, hour and a half, somewhere in there if you
21 could.

22 All right. With that, if you would adjourn to the
23 jury room. Don't begin your deliberations yet. I'm
24 going to send the clerk in with your food. And you know,
25 you're free to begin your deliberations. All right.

1 Thank you.

2 My instructions to the jury, any additions,
3 objections, Mr. Tinsley?

4 MR. TINSLEY: Nothing beyond what I talked about
5 earlier about the A and B third and the hand of one is
6 the hand of all.

7 THE COURT: All right. It's ditto?

8 MR. GROSE: Ditto.

9 THE COURT: All right. Y'all good?

10 MR. BLACK: Nothing from The State.

11 THE COURT: Very good. We will be at ease.

12 Y'all double-check and make sure that what goes back
13 is what should go back.

14 I will be marking in a moment as Court's 12 my juror
15 strike sheet, and as Court's 13, the Court's detailed
16 lists that I promised would be in evidence. So those
17 will be marked and introduced at Court's exhibits here
18 shortly for Mr. Grose and my earlier comments. All
19 right.

20 (Court's Exhibits 12 and 13 marked and entered)

21 MR. BLACK: And for the record, I believe State's 4
22 is marked but was never entered, so I ---

23 THE COURT: Right, I believe that's correct. But
24 y'all make sure we're good on the evidence. Okay?

25 We'll be off the record.

1 (Off the record 1:52 p.m. to 3:10 p.m.)

2 (Jury deliberating 1:59 p.m.)

3 (Jury not present in courtroom.)

4 THE COURT: We're back on the record. I'm told that
5 the jury has reached a verdict. And anything prior to
6 the jury being received into the courtroom from The
7 State?

8 MR. BLACK: Not from The State.

9 THE COURT: Anything from the defense?

10 MR. TINSLEY: Nothing, Your Honor.

11 THE COURT: All right. I want to compliment
12 everyone on the way that we've conducted ourselves during
13 this trial. The --- the attorneys, the parties, everyone
14 has done a --- a wonderful job of being very respectable
15 and respectful in keeping things above board. And I just
16 want to ask that that please continue when the jury
17 verdict is rendered. I do not know what the verdict is,
18 no one does.

19 Obviously these 12 individuals were forced to come
20 in here and hear this case. And it's very important that
21 whatever the decision is that their decision be respected
22 by --- by all concerned, even though one side or maybe
23 both sides may disagree with the outcome. So please, if
24 you do find yourself unable to contain yourself for
25 whatever reason when the verdict is rendered, just feel

1 free to quietly --- quietly get up and walk out the back
2 of the courtroom ---okay --- if there are any problems
3 maintaining your composure.

4 Let us have the jury, please.

5 (Jury enters courtroom)

6 THE COURT: All right. The record will reflect that
7 the jury is back.

8 Madam Forelady, I'm been told that you've reached a
9 verdict; is that correct?

10 MADAM FORELADY: (No audible response).

11 THE COURT: All right. And all 12 of you agree on
12 the outcome for each?

13 MADAM FORELADY: (No audible response).

14 THE COURT: She nods yes. All right. If you would
15 hand the verdict form, please, to the clerk of court.
16 And if these are the exhibits, you could hand those to
17 her as well. Thank you. All right. All right.

18 Madam Clerk, if you'll publish, please.

19 CLERK: Indictment number 2021-GS-01-215, State of
20 South Carolina versus Travis Lee. We the jury in the
21 above captioned case on the charge of assault and battery
22 of a high and aggravated nature unanimously find Travis
23 A. Lee guilty. Forelady Eleanor A. Weiders.

24 Indictment 2021-GS-01-214, State of South Carolina
25 versus Kendrick Lee, we the jury in the above captioned

1 case on the charge of assault and battery of a high and
2 aggravated nature unanimously find Kendrick Lee guilty.
3 Forewoman Eleanor A. Weiders forelady.

4 Ladies and gentlemen of the jury, if this is your
5 verdict, so say you all, please signify by raising your
6 right hand.

7 THE COURT: All right. The record will reflect all
8 12 hands were raised. Anything prior to discharge of the
9 jury from The State?

10 MR. BLACK: Not from The State, Your Honor.

11 THE COURT: From the defense?

12 MR. TINSLEY: Poll the jury, please, Your Honor.

13 THE COURT: You agree as well, Mr. Grose?

14 MR. GROSE: Yes.

15 THE COURT: All right. Ladies and Gentlemen in a
16 moment the clerk will call your juror names and numbers
17 out individually, and will ask you is this your verdict
18 as it relates to Travis Lee and is it still your verdict?
19 And she'll ask the same question is this your verdict as
20 it relates to Kendrick Lee, and is it still your verdict?

21 Okay? So Madam Clerk if you will poll the jury,
22 please.

23 CLERK: Juror number 28 Benjamin Claire; is this
24 your verdict and is it still your verdict?

25 THE JUROR: Yes.

1 THE COURT: If you --- we need to individualize it
2 for each defendant. So Travis Lee and for Kendrick Lee.
3 So you'll have to ask a few questions.

4 CLERK: Steven A. Stuber, juror number 175, is this
5 your verdict and is it still your verdict?

6 THE JUROR: Yes.

7 THE COURT: Here, I got it. Let me have the list.
8 I think I didn't make myself clear. All right. Let's
9 see here. Okay. Juror --- yes. Okay.

10 Benjamin Claire, 28, who is that? Raise your right
11 hand. All right. Mr. Claire is this your verdict as it
12 relates to Travis Lee and is it still your verdict?

13 THE JUROR: Yes.

14 THE COURT: And is this your verdict as it relates
15 to Kendrick Lee and is it still your verdict?

16 THE JUROR: Yes, sir.

17 THE COURT: And juror Steven Stuber, raise your
18 hand. All right. Mr. Stuber is this your verdict
19 concerning Travis Lee and is it still your verdict?

20 THE JUROR: Yes.

21 THE COURT: And is this your verdict concerning
22 Kendrick Lee and is it still your verdict?

23 THE JUROR: Yes, sir.

24 THE COURT: Juror 196, John Wilson, Mr. Wilson is
25 this your verdict --- is this your verdict as it relates

1 to Travis Lee and is it still your verdict?

2 THE JUROR: Yes.

3 THE COURT: And is this your verdict as it relates
4 to Kendrick Lee and is it still your verdict?

5 THE JUROR: (No audible response).

6 THE COURT: And juror 188, Caroline Webb. All
7 right. Ms. Webb, is this your verdict in regards to
8 Travis Lee and is it still your verdict?

9 THE JUROR: Yes.

10 THE COURT: And is this your verdict as it relates
11 to Kendrick Lee and is it still your verdict?

12 THE JUROR: Yes.

13 THE COURT: Juror 45, Ms. Ellison. Ms. Ellison, is
14 this your verdict concerning Travis Lee, and is it still
15 your verdict?

16 THE JUROR: Yes.

17 THE COURT: And is this your verdict concerning
18 Kendrick Lee and is it still your verdict?

19 THE JUROR: Yes.

20 THE COURT: Juror 120 Sally Mullet. No, wait,
21 sorry. She was not seated. Okay.

22 Juror 156 Jasmine Sanders. Is this your verdict as
23 it relates to Travis Lee and is it still your verdict?

24 THE JUROR: Yes.

25 THE COURT: And is this your verdict as it relates

1 to Kendrick Lee, and is it still your verdict?

2 THE JUROR: Yes.

3 THE COURT: And Juror Heath Parnell. Mr. Parnell is
4 this your verdict concerning Travis Lee and is it still
5 your verdict?

6 THE JUROR: It is.

7 THE COURT: And is this your verdict concerning
8 Kendrick Lee and is it still your verdict?

9 THE JUROR: It is.

10 THE COURT: And juror 1201, William Murphy. Mr.
11 Murphy, is this your verdict concerning Travis Lee and is
12 it still your verdict?

13 THE JUROR: Yes, Your Honor.

14 THE COURT: And is this your verdict concerning
15 Kendrick Lee, and is it still your --- your verdict?

16 THE JUROR: Yes, sir.

17 THE COURT: All right. Juror --- Forelady 193,
18 Eleanor Weiders --- Weiders I'm sorry. Ms. Weiders is
19 this your verdict concerning Travis Lee and is is it
20 still your verdict?

21 THE JUROR: It is.

22 THE COURT: And is this your verdict concerning
23 Kendrick Lee and is it still your verdict?

24 THE JUROR: Yes, sir.

25 THE COURT: Juror 136, James Powell. Mr. Powell, is

1 this your verdict concerning Travis Lee and is it still
2 your verdict?

3 THE JUROR: Yes.

4 THE COURT: Is this your verdict concerning Kendrick
5 Lee, and is it still your verdict.

6 THE JUROR: Yes.

7 THE COURT: Okay, juror 47, Laura Falls. Ms. Falls,
8 is this your verdict concerning Travis Lee and is it
9 still your verdict?

10 THE JUROR: (No audible response).

11 THE COURT: And is this your verdict concerning
12 Kendrick Lee and is it still your verdict?

13 THE JUROR: (No audible response).

14 THE COURT: Juror 137, Tammy Poor. Ms. Poor, is
15 this your verdict concerning Travis Lee, and is it still
16 your verdict?

17 THE JUROR: Yes, sir.

18 THE COURT: And is this your verdict concerning
19 Kendrick Lee, and is it still your verdict?

20 THE JUROR: Yes, sir.

21 THE COURT: Juror 82, Steven Hunter --- or wait, no.
22 Those are the alternates. Okay. It would appear that
23 the jury has been polled.

24 Anything further from the defense prior to
25 discharge?

1 MR. TINSLEY: Nothing for the jury, Your Honor.

2 THE COURT: Mr. Grose?

3 MR. GROSE: No, sir.

4 THE COURT: Ladies and gentlemen of the jury, I want
5 to thank you for your work here this week. I will tell
6 you that in the coming days, you'll get a letter from me
7 thanking you for your jury service. The letter's purpose
8 is two-fold. First, it is a formal thank you, and
9 expression of appreciation for your work here this week.

10 But I also have an ulterior motive. If there was
11 anything that you did not like about jury service, I want
12 to know. Anything you liked, sure, let me know.
13 Anything you didn't like definitely let me know though,
14 okay?

15 You'll have my contact information, e-mail, snail
16 mail, phone number, whatever. And if you have any
17 questions concerning your jury service this week, feel
18 free to reach out to me, I'll be more than happy to
19 answer those questions for you as best I can. All right?

20 At this point in time, you are free to go.
21 Understand, Ladies and Gentlemen, that generally as a
22 rule, what happens in the jury room stays in the jury
23 room. Okay? It's a little bit like Las Vegas in that
24 regard. So whatever happens in there, whatever
25 discussions were, that's usually confidential. But if

1 you were to be contacted by one of the lawyers,
2 understand that lawyers get better at their jobs by ---
3 by sometimes reaching out to jurors and finds out what
4 they liked what they didn't like, how they could do
5 better at what they do.

6 And sometimes somebody might reach out to you just
7 to discuss that, how the trial went and what your
8 impression was. If you want to talk to them, that's
9 fine. If you don't want to talk to them, just politely
10 say, hey, I --- I appreciate you calling me, but yeah,
11 I've got other stuff I need to do, and they want bother
12 you. All right?

13 So with that, understand, Ladies and Gentlemen that
14 you --- you will get a check. It should be in the mail
15 in the coming days. I think 15 bucks a day, so \$60. It
16 may not arrive till next week. If for some reason it
17 doesn't get there in the next couple of weeks, just give
18 the clerk a call and she'll reissue the check. All
19 right. I'm not --- I'm not going to keep you any longer.

20 At this point in time. I'll be addressing some
21 post-trial motions. With the attorneys. And at that
22 point in time, after those motions we'll move on with
23 sentencing. If you desire to stay for sentencing, that's
24 perfectly fine. But just for security purposes, I'll
25 have to ask that you maybe take a seat out here kind of

1 in the rows to the back if you choose to stick around for
2 sentencing. Okay?

3 I'm going to take a break. So if you wish to stay
4 for sentencing, that's perfectly fine. The back rows
5 over on this side here to my --- my left would probably
6 be the best place to sit.

7 And if you don't want to stay here any longer, I
8 will tell you the weather outside is quite lovely. Enjoy
9 your day, and enjoy the rest of your week.

10 And they have juror excuses for their employers?

11 CLERK: Yes.

12 THE COURT: Okay. Very good. We have juror excuses
13 right here. The bailiff will provide those to you if you
14 need one. Again, I thank you very much for your efforts
15 and your work this week. And the 11 of you can go.
16 Madam Forelady, I need you to actually sign the
17 indictment. So you hang around for five seconds.

18 And the rest of you are free to go. If you left
19 anything in the back, feel free to collect it. Okay?

20 Everyone else, please stay. Please stay seated
21 while the jury leaves.

22 (Jury leaves courtroom)

23 THE COURT: While the Solicitor prepares the
24 sentencing sheets, I'm going to ask that the deputies go
25 ahead and take Misterys Lee into custody if you could. At

1 least please secure them. All right. Till we are able
2 to address post-straw motions and sentencing. All right.

3 And Solicitor, obviously I'll be happy to hear from
4 the victim in this case whenever we reconvene. Okay? If
5 he wishes to tell me anything else.

6 MR. BLACK: Yes, sir.

7 THE COURT: We'll be off the record.

8 (Off the record 3:23 p.m. - 3:29 p.m.)

9 THE COURT: Solicitor, you have sentencing sheets?

10 MR. BLACK: Yes, sir, Your Honor.

11 MR. GROSE: Your Honor, we're going to ask that ---
12 well we'll wait till they get back out here.

13 THE COURT: They don't have to sign them because it
14 was a conviction at trial, but show it to them.

15 All right. Mr. Jones, you may need to let Mr.
16 Travis have that seat there, if you could.

17 All right. Mr. Tinsley, I assume that you do renew
18 all previous motions and new --- for a new trial on
19 behalf of Travis Lee, sir.

20 MR. TINSLEY: Yes, Your Honor.

21 THE COURT: Mr. Grose, you do the same?

22 MR. GROSE: I have ten days to do that.

23 THE COURT: Yes, sir. But you do renew all prior
24 motions ---

25 MR. GROSE: I --- I do, but --- but I tend to make a

1 motion within ten days ---

2 THE COURT: All right. Great.

3 MR. GROSE: --- as the rules allow.

4 THE COURT: All right. Very good.

5 MR. GROSE: Also ask that, and I think Mr. Tinsley
6 is in agreement on this, ask that sentencing be deferred.
7 As you might recall, Mr. Tinsley mentioned in chambers
8 that he believed that his client, Travis Lee's, priors
9 should not be considered two strikes.

10 At the time, I commented that that was sentencing
11 issue and I believe the same applies for Kendrick Lee.
12 So we would ask for an opportunity to be able to brief
13 that.

14 THE COURT: Okay. And --- and I was informed in
15 chambers, obviously that the recidivus provisions of the
16 code did apply in this case. Does The State have a
17 position on this?

18 MR. BLACK: Judge, our position is just so the Court
19 is aware with regard to Mr. Travis Lee, we did serve him
20 a NOOP (phonetic) notice for convictions of distribution
21 of crack within a half mile of a school which is
22 classified as serious. That offense date was March 21,
23 2022. And then he has another serious offense from
24 February the 27th, where he was also sentenced on the
25 same day. That offense date was the March the 13th of

1 2002. And again, that's also classified as serious.

2 We --- we sent an update to Mr. Tinsley on LWOT
3 (phonetic) notice because they were originally can be
4 charged with attempted murder. And so we changed it
5 because obviously we went forward with an APHAN charge
6 (phonetic).

7 So we just basically redid the language just so it
8 clear was The State intended on going forward with for
9 Mr. Travis Lee.

10 With regard to Mr. Kendrick Lee, The State served
11 him again, an LWOT notice back on February the 16th of
12 2021. He had a conviction for trafficking crack cocaine,
13 10 to 28 grams. That offense date was May the 13th of
14 2008. That is also classified as a serious offense. He
15 pled on November the 13th of 2009. On the same day, he
16 pled on November the 13th of 2009, he pled to a
17 distribution of marijuana within a half mile of a
18 proximity to a school or playground. That offense date
19 was July the 6th of 2006. Again, that's also classified
20 as a serious offense.

21 And again, that was served on Mr. Lee on February
22 the 16th of 2021. And again, likewise, The State updated
23 that LWOT notice on August the 19th of 2023 when it
24 became clear that we were going forward with an ABHAN
25 (phonetic) charge and not an attempted murder charge. So

1 that reflected that in at that LWOT notice.

2 As far as our position, Your Honor, you know, day
3 I --- I think we should go ahead and sentence, but of
4 course we'll do whatever the Court decides to do.

5 THE COURT: Okay. Mr. Tinsley, you did indicate in
6 chambers that there was some --- in your mind, some ---
7 some question as to whether --- because they were ---
8 because your client was sentenced at the same time,
9 whether that should be treated at one event; is that your
10 position? Or give me your position again, please.

11 MR. TINSLEY: No. No. No, Your Honor. I mean,
12 that's why we're asking for time. But no, it's got
13 nothing to do with the fact that he was sentenced at the
14 same time. We're talking about two distributions with
15 the same narc eight days apart. Section 17-25-50 says in
16 determining the number of offenses for the purpose of
17 imposition of sentence the Court shall treat as one
18 offense any number of offenses which have been committed
19 at times so closely connected in point of time that they
20 may be considered as one offense, notwithstanding under
21 the law if they constitute separate and distinct
22 offenses.

23 I mean I --- I --- I think this should be treated as
24 one --- one strike is what my argument was. But I think
25 to flesh it out more, is why we're making the motion for

1 the deferred sentence, so they can look at the law a
2 little bit more on that.

3 MR. GROSE: And be able to flesh out the facts.

4 THE COURT: Okay. Have y'all been able to do any
5 research on this thus far? I know that the amended LWOT
6 was served, I guess only about a month ago or so? Month
7 and a few weeks six weeks or so.

8 MR. GROSE: Have I looked at some of the cases, the
9 Pete Bright case comes to mind. I've looked at these two
10 sections, but I need to get together --- I mean, this is
11 isn't ripe until this point. And ---

12 THE COURT: I'm sorry, this isn't ---

13 MR. GROSE: This --- this isn't ripe until this
14 point when it's a sentencing issue and we need to be able
15 to have time. You know, quite frankly most places don't
16 do like South Carolina, and goes straight from trial into
17 sentencing. And, you know, I think that there's probably
18 under the circumstances would --- would be a due process
19 violation to rush it.

20 THE COURT: I --- I --- I don't know that it would
21 necessarily constitute a due process violation. I'm ---
22 I'm --- I'm familiar with that code section.

23 I'm --- Solicitor, I'm going to afford them an
24 opportunity to go ahead and research this issue. And I
25 will be granting their motion to defer sentencing.

1 the -- the primary --- the two primary reasons I'm doing
2 that is there is not --- there appears to be --- only be
3 one case that tangentially touches on that code section.
4 There may be other cases from our sister states that
5 could inform this issue.

6 And secondly, obviously the mandatory penalty in
7 this case is what it is. And I would much rather the
8 Appellate Courts have an opportunity to address this
9 issue --- this issue on direct appeal as opposed to
10 perhaps post-conviction relief if for some reason there's
11 something floating around out there either in the
12 Appellate pipeline, through the --- to the South Carolina
13 Court of Appeals or elsewhere, and they don't find it.

14 So I'm going to afford the defense an opportunity
15 and to do exactly that. And also give you an opportunity
16 to --- to research that issue. Because the penalty is
17 what the penalty is.

18 In light of the convictions, if you are accurate ---
19 if you are correct, that --- that the two strikes for
20 each gentleman should count as separate and distinct
21 offenses if you are correct, then the penalty is what it
22 simply is. And I'll allow them a opportunity to develop
23 this issue a little bit more.

24 I will be in Laurens in two weeks, I believe.
25 Perhaps.

1 MR. BLACK: Or you'll be back over here November
2 the 13th week. If we could do that that week, that would
3 be ---

4 THE COURT: All right. Very good.

5 MR. BLACK: It's whatever --- whatever works better
6 for you, Judge.

7 THE COURT: I --- I --- I really don't want that
8 hanging out there unnecessarily long if at all possible.
9 I'd like to handle this --- is it two weeks that we're in
10 Laurens? I'm going to be in Laurens the week of the
11 16th. I --- I'd prefer to do it then if at all possible.
12 I --- I know that'll require some minor traveling for all
13 concerned that ---

14 MR. BLACK: October 16th?

15 THE COURT: October 16th week, yes. I --- I --- I
16 don't if --- Mr. Tinsley.

17 MR. TINSLEY: I was just going to say, I'm --- I'm
18 fine traveling to Laurens, I don't have any objection to
19 that. I'm just letting the Court know that I'm going to
20 be at least, the early part of that week, going to be in
21 a Common Pleas a wreck trial in front of Judge Hocker in
22 Greenwood.

23 THE COURT: It's not a problem. We'll --- we'll ---
24 we'll work around everyone's availability. If --- if ---
25 if y'all could, try to have this issue briefed with me by

1 the 16th of October. And simply coordinate with John
2 Thomas over in Laurens about the trial schedule
3 availability and that kind of a thing.

4 As things stand, I think it's anticipated that Judge
5 Cothran will be handling trials and I'll be doing pleas,
6 so my availability should be pretty open. Okay?

7 MR. BLACK: Yes, sir, Your Honor.

8 THE COURT: All right. Very good.

9 MR. BLACK: And before we --- before we go off the
10 record ---

11 THE COURT: Yes, sir.

12 MR. BLACK: I --- I'm going to put the sentencing
13 sheets --- I'm going to have them marked as Court's
14 exhibits if that would be appropriate.

15 THE COURT: That would be appropriate.

16 MR. BLACK: And then just so the record is clear.
17 And then we'll also forward a copy of these to you as
18 well for you to review when you look at these briefs.

19 THE COURT: That'll be fine. And if you want to
20 attach them to your briefs as well, that's fine too.

21 MR. BLACK: Yes, sir.

22 THE COURT: All right. Very good. Mark those, as I
23 think it'll be Court's 15 and 16. And what we're up to
24 or 14 and --- 14 and 15. No, I've already got 13. 13
25 was my strike sheet. It'll be 14 and 15. Yeah.

Proceedings

1 (Court's Exhibits 14 and 15 marked and entered)

2 THE COURT: All right. I'll see you gentleman in a
3 few weeks.

4 (PROCEEDINGS CONCLUDED AT 4:14 P.M.)

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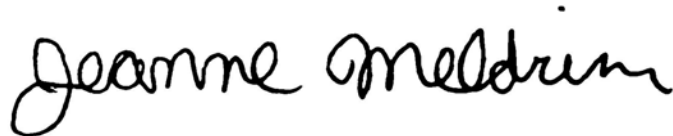
25

CERTIFICATE OF TRANSCRIBER

I, JEANNE MELDRIM, a court-approved transcriber, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the proceedings had and evidence introduced in the trial of the captioned case, relative to appeal, in the Court of CIRCUIT COURT 8 for ABBEVILLE COUNTY, South Carolina, on the 28th day of September, 2023.

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

January 12, 2024

A handwritten signature in black ink that reads "Jeanne Meldrim". The signature is written in a cursive, flowing style with a large initial 'J' and a period at the end.

Jeanne Meldrim

Transcriber

ICHR 003F78C7A9 from SCCH

186

GRWSL401

.ICHR.003F78C7A9.SCCH.20230921 14:24:41

TO: GRWSL401-7535 20230921 14:24:41 003F78C7A9
 FROM: SCCH-7915433 20230921 14:24:41

ICHR REQUEST FOR RAP SHEET

ORI-SC024015A SID- [REDACTED] PUR-C
 ATN-DALLEN

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PAGE-01 DATE-09/21/2023 TIME-14:24:05

REQ ORI-SC024015A GREENWOOD SOLICITOR

SID-[REDACTED] FBI-[REDACTED]

NAME-MABREY, TONYA LOUISE

SEX-F RACE-W

HEIGHT-502 WEIGHT-160 EYES-BLU HAIR-BRO SKIN- BORN-SC

FPC-POPI155505DI10131304

HENRY-15 O 21 W-R- 5

I 17 U

PHOTOGRAPH AVAILABLE

1-FINGERPRINT IMAGES ON THIS SUBJECT ARE STORED ON SCAFIS

DATE RECORD ENTERED--06/19/1995 DATE OF LAST UPDATE--09/27/1995

ADDITIONAL IDENTIFIERS

NAME

BIRTH

DATES MARKS

SOC SEC

MISC NUM

CONTRIBUTOR/SUBJECT

DOA/RCVD CHARGE/DISPOSITION/ETC

MABREY, TONYA LOUISE

05/18/1995

SC0240100 GREENWOOD PD

CASE-4838-B

WARR-E335813

ARREST CHARGE 1-FRAUDULENT
CHECK

PHOTOGRAPH AVAILABLE

WARR-R335849

ARREST CHARGE 2-FRAUDULENT
CHECK

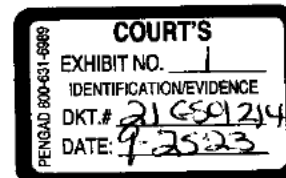
WARR-E335813

COURT CHARGE 01-FRAUDULENT
CHECKCOURT DISP-CONVICTED; FORFEITE
D \$20

WARR-E335849

COURT CHARGE 02-FRAUDULENT
CHECKCOURT DISP-CONVICTED; FORFEITE
D \$125

BASED ON SEARCH OF SCLED CJIS CCH FILE USING SID/SC01010944
 REQUESTED FOR CRIMINAL JUSTICE PURPOSES



SCLED CJIS RECORD INDICATES SUBJECT HAS NO OUT-OF-STATE ARREST INFORMATION
INQUIRY WILL BE FORWARDED TO: N C I C W A N T E D P E R S O N S
** S C CJIS END OF RECORD **

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FROM: SCCH-7915479 20230921 14:27:21

ICHR REQUEST FOR RAP SHEET

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PAGE-01 DATE-09/21/2023 TIME-14:26:45

REQ ORI-SC024015A GREENWOOD SOLICITOR

SID- [REDACTED] FBI- [REDACTED]

NAME-WEBB, CAROLYN GUNTER SEX-F RACE-W

HEIGHT-507 WEIGHT-145 EYES-BLU HAIR-BRO SKIN- BORN-NC

FPC- HENRY-

1-FINGERPRINT IMAGES ON THIS SUBJECT ARE STORED ON SCAFIS

DATE RECORD ENTERED--11/03/2011 DATE OF LAST UPDATE--04/16/2012

ADDITIONAL IDENTIFIERS

NAME

BIRTH

DATES MARKS

SOC SEC

MISC NUM

CONTRIBUTOR/SUBJECT

DOA/RCVD CHARGE/DISPOSITION/ETC

WEBB, CAROLYN GUNTER

10/30/2011

SC0010000 ABBEVILLE CNTY SO

CASE-14464

ATN-01C000004802

WARR-71574FL

CIT-16-17-530-MISDEMEANOR

NCIC CODE-5399

ARREST CHARGE 1-PUBLIC DISORD
 ERLY CONDUCT
 OFFENSE DATE-10/30/2011

CIT--MISDEMEANOR

DOC-01

WARR-71574FL

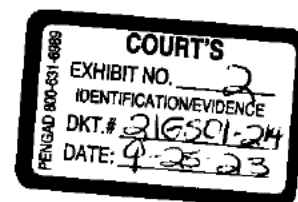
COURT CHARGE 01-PUBLIC DISORD
 ERLY CONDUCT
 COURT DISP-CONVICTED;Fine
 COURT DATE-01/25/2012
 ATN-01C000004802

BASED ON SEARCH OF SCLED CJIS CCH FILE USING SID/SC02024830
 REQUESTED FOR CRIMINAL JUSTICE PURPOSES

SCLED CJIS RECORD INDICATES SUBJECT HAS NO OUT-OF-STATE ARREST INFORMATION

INQUIRY WILL BE FORWARDED TO: NCIC WANTED PERSONS

** S C CJIS END OF RECORD **



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GRWSL401

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FROM: SCCH-7915533 20230921 14:29:43

ICHR REQUEST FOR RAP SHEET

ORI-SC024015A SID- [REDACTED] PUR-C

ATN-DALLEN

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PAGE-01 DATE-09/21/2023 TIME-14:29:07

REQ ORI-SC024015A GREENWOOD SOLICITOR

SID- [REDACTED] FBI- [REDACTED]

NAME-WHARTON, PHILLIP LEON SEX-M RACE-B

HEIGHT-509 WEIGHT-205 EYES-BRO HAIR-BLK SKIN- BORN-XX

FPC-PMPIPIPOPOPIPOPOPIPI HENRY- M 32 W IIO

I 32 W OOI

PHOTOGRAPH AVAILABLE

1-FINGERPRINT IMAGES ON THIS SUBJECT ARE STORED ON SCAFIS

DATE RECORD ENTERED--10/07/1985 DATE OF LAST UPDATE--12/08/2021

ADDITIONAL IDENTIFIERS

NAME

BIRTH

DATES MARKS

SOC SEC

MISC NUM

CONTRIBUTOR/SUBJECT

DOA/RCVD CHARGE/DISPOSITION/ETC

WHARTON, PHILLIP LEON

08/28/1985

SC0010100 ABBEVILLE PD

CASE-4192

ARREST CHARGE 1-SIMPLE ASSAULT
AND BATTERY

OFFENSE DATE-08/28/1985

PHOTOGRAPH AVAILABLE

COURT CHARGE 01-SIMPLE ASSAULT
& BATTERY (NO INFO ON
VICTIM)COURT DISP-CONVICTED;\$216, PD
COURT DATE-09/05/1985

WHARTON, PHILLIP LEON

01/17/1989

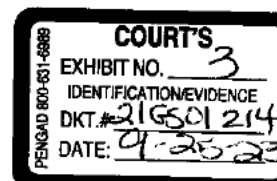
SC0010100 ABBEVILLE PD

CASE-4690

ARREST CHARGE 1-DISORDERLY
CONDUCT

OFFENSE DATE-01/17/1989

PHOTOGRAPH AVAILABLE

COURT CHARGE 01-DISORDERLY
CONDUCT

COURT DISP-CONVICTED;\$55 FINE
COURT DATE-01/20/1989

WHARTON, PHILLIP LEON
SC0010000 ABBEVILLE CNTY SO

09/15/1989

ARREST CHARGE 1-DISORDERLY
CONDUCT
OFFENSE DATE-09/15/1989
PHOTOGRAPH AVAILABLE
COURT CHARGE 01-DISORDERLY
CONDUCT
COURT DISP-CONVICTED;\$50
FINE; PAID
COURT DATE-10/03/1989

WARR-02093GF

WHARTON, PHILLIP LEON
SC0010000 ABBEVILLE CNTY SO
CASE-5424
ATN-980000449025
WARR-88626CH
CIT-16-25-20-MISDEMEANOR
NCIC CODE-3899

07/24/2003

ARREST CHARGE 1-CRIMINAL
DOMESTIC VIOLENCE 1ST
OFFENSE
OFFENSE DATE-07/24/2003

CIT-16-25-20-MISDEMEANOR
NCIC CODE-3899
WARR-88626CH

COURT CHARGE 01-CRIMINAL
DOMESTIC VIOLENCE 3RD OR
SUB
COURT DISP-CONVICTED;GUILTY
BENCH TRIAL;\$153.75/ COUNS
ELING OR 30 DAYS
COURT DATE-07/24/2003
ATN-980000449025

BASED ON SEARCH OF SCLED CJIS CCH FILE USING SID/SC00505246
REQUESTED FOR CRIMINAL JUSTICE PURPOSES

SCLED CJIS RECORD INDICATES SUBJECT HAS NO OUT-OF-STATE ARREST INFORMATION

INQUIRY WILL BE FORWARDED TO: N C I C W A N T E D P E R S O N S

INDIVIDUAL PROHIBITED FROM POSSESSING OR ACQUIRING FIREARM OR AMMUNITION
PURSUANT TO FEDERAL GUN CONTROL ACT OF 1968

INFORMATION SUBMITTED TO SLED CCH INDICATES THIS INDIVIDUAL HAS BEEN
CONVICTED OF A MISDEMEANOR IN WHICH AN OFFENDER COULD RECEIVE IN EXCESS OF
TWO (2) YEARS OF CONFINEMENT, ACCORDING TO THE SOUTH CAROLINA CODE OF LAWS.
THEREFORE, THIS PERSON IS INELIGIBLE TO SHIP, TRANSPORT OR RECEIVE ANY
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** S C CJIS END OF RECORD **

LEMS.Web
ICHS 003F78C7F5 from SCCH

GRWSL401

. ICHS.003F78C7F5.SCCH.20230921 14:29:06

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FROM: SCCH-7915509 20230921 14:29:06

ICHS/QH INQUIRY OF SCLED CCH FILES USING:

ATN-DALLEN

ORI-SC024015A PUR-C

NAM-WHARTON, PHILLIP

SEX-M RAC-B DOB-[REDACTED]

DATE-09/21/2023 TIME-14:28 PAGE-01 OF 01

ORI-SC024015A

SCLED IDENT RESPONSE TO ICHS/QH INQUIRY

THIS RESPONSE CONTAINS POSSIBLE HITS ONLY AND DOES NOT IMPLY A POSITIVE
MATCH WITH THE INDIVIDUAL IN QUESTION

NAME-WHARTON, PHILLIP LEON

SEX-M RACE-B

HEIGHT-509 WEIGHT-205 EYES-BRO HAIR-BLK SKIN- BORN-XX

FPC: HENRY- M 32 W IIO NCIC-PMPPIPIPOPIPOPIPOPIPI

I 32 W OOI

SID-[REDACTED] FBI-[REDACTED]

PHOTOGRAPH AVAILABLE

1-FINGERPRINT IMAGES ON THIS SUBJECT ARE STORED ON SCAFIS

DATE RECORD ENTERED--10/07/1985 DATE OF LAST UPDATE--12/08/2021

BIRTH DATES-[REDACTED]

SOC SEC NUMBERS-[REDACTED]

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INDIVIDUAL PROHIBITED FROM POSSESSING OR ACQUIRING FIREARM OR AMMUNITION
PURSUANT TO FEDERAL GUN CONTROL ACT OF 1968

INFORMATION SUBMITTED TO SLED CCH INDICATES THIS INDIVIDUAL HAS BEEN
CONVICTED OF A MISDEMEANOR IN WHICH AN OFFENDER COULD RECEIVE IN EXCESS OF
TWO (2) YEARS OF CONFINEMENT, ACCORDING TO THE SOUTH CAROLINA CODE OF LAWS.
THEREFORE, THIS PERSON IS INELIGIBLE TO SHIP, TRANSPORT OR RECEIVE ANY
FIREARMS OR AMMUNITION, AFFECTED BY INTERSTATE OR FOREIGN COMMERCE AS
DEFINED BY THE GUN CONTROL ACT OF 1968 (18.U.S.C. 922(G)).

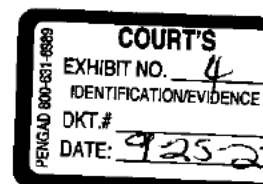
** END OF IDENT **

REQUESTED FOR CRIMINAL JUSTICE PURPOSES MAY OCCUR DAILY, A NEW INQUIRY
SHOULD BE MADE AND NO SUBSEQUENT USE OF THIS RECORD IS ALLOWED.FOR COMPLETE CRIMINAL HISTORY, PERFORM ICHR INQUIRY USING SID NUMBER OR
FBI NUMBER.

REQUEST FORWARDED TO NCIC

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** END OF MESSAGE **



Abbeville County Courthouse

RANDOM STRIKE SHEET

Judge Name: Addy Frank R Jr

Sorted By Random Nbr

Trial Type: Criminal

Panel ID: 2021GS0100214

Description: 2021GS0100214

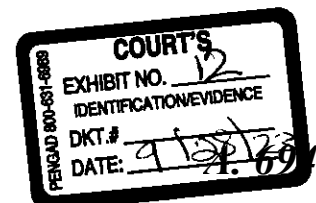
Trial

Courtroom: CTRM

NAME	JUROR NBR	RACE	SEX	ST/PLTFF	DEF	CRT	REMARKS
1 Clare, Benjamin P	28	W	M	(✓)	(✓)	()	✓
2 Suber, Stephen A Sr.	175	W	M	(✓)	(✓)	()	✓
3 Wilson, John T	196	W	M	(✓)	(✓)	()	✓
4 Webb, Carolyn G	188	W	F	(✓)	(✓)	()	✓
5 Ellison, Jennifer M	45	W	F	(✓)	(✓)	()	✓
6 ~~Mullett, Sallie G~~	120	W	F	(✓)	(X)	()	Δ 1
7 ~~Shaw, Angelique M~~	162	W	F	(✓)	(X)	()	Δ 2
8 Sanders, Jasmine L	156	O	F	(✓)	(✓)	()	✓
9 Parnell, Heath D	132	W	M	(✓)	(✓)	()	✓
10 Murphy, William C	121	W	M	(✓)	(✓)	()	✓
11 ~~Rodriguez, Marie L~~	151	W	F	(✓)	(X)	()	Δ 3
12 ~~Howell, Byron E~~	80	W	M	(X)	()	()	S 1
13 ~~Vermillion, Tonya L~~	186	W	F	(X)	()	()	S 2
(F) 14 Wieters, Eleanor A	193	W	F	(✓)	(✓)	()	✓
15 ~~Smith, Beverly J~~	168	W	F	(✓)	(X)	()	Δ 4
16 ~~Allen, Kevin W~~	3	W	M	(✓)	(X)	()	Δ 5
17 ~~Landers, Joshua A~~	89	W	M	(X)	()	()	S 3
18 ~~Garnity, Caitlyn E~~	54	W	F	(X)	()	()	S 4
19 ~~Parker, Gabrielle C~~	129	W	F	(✓)	(X)	()	Δ 6
20 ~~Saucier, Kenneth J~~	157	W	M	(✓)	(X)	()	Δ 7
21 Powell, James D	139	W	M	(✓)	(✓)	()	✓
22 Falls, Laura M	47	W	F	(✓)	(✓)	()	✓
23 ~~Pope, Tammy G~~	137	W	F	(✓)	(✓)	()	✓
24 ~~Phillips, Christian G~~	135	W	F	(✓)	(X)	()	Δ 1 A
25 ~~Hunter, Steven W~~	82	W	M	(✓)	(✓)	()	✓
26 ~~Wharton, Phillip L~~	191	B	M	(X)	()	()	S 5
27 ~~Davis, Kenneth A~~	38	W	M	(✓)	(✓)	()	✓
28 Lawter, Portia D	92	W	F	()	()	()	
29 Ferguson, Barry	48	W	M	()	()	()	
30 Erwin, Gloria Jane E	46	W	F	()	()	()	
31 Bense, Weslyn G	12	W	F	()	()	()	
32 Herndon, James D	71	W	M	()	()	()	

Print Date: 9/25/2023 3:17:12 PM

File: RandomStrike



**Abbeville County Courthouse
RANDOM STRIKE SHEET****Judge Name:** Addy Frank R Jr**Sorted By Random Nbr****Trial Type:** Criminal**Panel ID:** 2021GS0100214**Description:** 2021GS0100214

Trial

Courtroom: CTRM

33	Ramey, Brittany S	144	W	F	()	()	()	_____
34	Peterson, Florence L	134	B	F	()	()	()	_____
35	Hagan, Pamela V	63	W	F	()	()	()	_____
36	Nance, Gregory T	122	W	M	()	()	()	_____
37	Smith, Logan D	171	W	M	()	()	()	_____
38	Rawski, John T Jr.	146	W	M	()	()	()	_____
39	Conklin, Crystal L	31	W	F	()	()	()	_____
40	Wilson, Thomas G	197	W	M	()	()	()	_____
41	Young, Erin R	200	W	F	()	()	()	_____

Total Number of Jurors: 41**** END OF REPORT ****

Abbeville County Courthouse

GS Sept 25 2023

Attorney List

Sorted by Seq Nbr

Juror #	Name	Certificate #	Race	Sex	Age	Birth Date
Status	Address	Education	Home Phone	Bus Phone	Years Employed	
	Juror Occupation	Employer				
	Marital Status/Spouse	Spouse's Occupation	Spouse's Employer			

1
SU

Adams, Stacey Y 4014719
 [REDACTED]
 cnc mACHINIST ZF Transmission
 S

B F 51
 High School [REDACTED] () -
 10

2
SU

Alken, Esther M 4001372
 [REDACTED]

B F 82
 [REDACTED]

3
SU

Allen, Kevin W 4000348
 [REDACTED]
 Parks and Recreation Director City of Abbeville
 D

W M 49
 High School [REDACTED] () -
 6

4
AGE

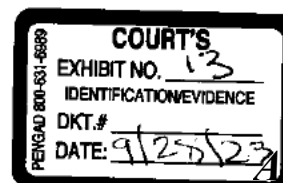
Andrioff, Carl J 0
 [REDACTED]

W M 72
 [REDACTED]

5
NRS

Armstrong, David B 530465
 [REDACTED]
 Retired Prudential Ins Co
 M

W M 62
 Bachelor's degree () - () -
 35



Abbeville County Courthouse

GS Sept 25 2023

Attorney List

Sorted by Seq Nbr

Juror #	Name	Certificate #	Race	Sex	Age	Birth Date
Status	Address		Education	Home Phone	Bus Phone	
	Juror Occupation	Employer		Years Employed		
	Marital Status/Spouse	Spouse's Occupation		Spouse's Employer		
6 AGE	Ashley, Melvin E Sr. [REDACTED]	1409617	W	M	68	[REDACTED]
7 UTL	Ballenger, Candice D [REDACTED]	312681	W	F	30	[REDACTED]
8 NRS	Barmore, Javon D [REDACTED] mover S	0	B	M	27 () - 0	[REDACTED] () -
9 AGE W	Baughman, John W Jr. [REDACTED] Owner Baughman Enterprices M/Pam Baughman	1408502 Self Office Manager	W	M	68 4 year degree 40 Baughman Enterprises	[REDACTED] () -
10 SU	Beauford, Thomas D [REDACTED]	1286542	W	M	21	[REDACTED]
11 AGE	Bell, Dorothy A [REDACTED]	2733393	B	F	68	[REDACTED]
12 SU	Bensel, Weslyn G [REDACTED] worker S	1652388 Smith Farm Supply	W	F	20 High School 0	[REDACTED] () -

Abbeville County Courthouse

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Attorney List

Sorted by Seq Nbr

Juror #	Name	Certificate #	Race	Sex	Age	Birth Date
Status	Address		Education	Home Phone	Bus Phone	
	Juror Occupation	Employer		Years Employed		
	Marital Status/Spouse	Spouse's Occupation		Spouse's Employer		

13
SU
Blanton, Benjamin A
4003830
W M
College
59
() -
Realtor
Myself/1099
2
M/Lynn Blanton
Realtor
Self

14
TO
W
Boyd, Elizabeth G
1278923
W F
College
59
() -
Fundraiser
Erskine college
3
M/A. Shapleigh Boyd IV
Coach
Erskine College

15
AGE
Broadwell, Clyde H Jr.
1073601
W M
73
() -

16
SU
Brock, Cole
1363119
W M
23
() -

17
SU
Brown, Lacey C
1677224
M F
19
() -

18
SU
Brown, Nicole P
4008432
W F
42
() -

19
SU
Brown, Tonya C
1580345
W F
51
High School () -
Homemaker
0
() -

Abbeville County Courthouse

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Attorney List

Sorted by Seq Nbr

Juror #	Name	Certificate #	Race	Sex	Age	Birth Date
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	Marital Status/Spouse	Spouse's Occupation		Spouse's Employer		

M/Virgil Brown

Carpenter

Stephens Contruction

20	Brownlee, Geraldine W	1074081	B	F	70	
AGE						

21	Burton, Pamela J	6396646	W	F	58	
SU						

22	Cagle, Alisa M	0	W	F	48	
SU			12			
	Abbeville County School District	South Carolina Department of Corrections			10	
	S					

23	Campbell, Daniel C	4003857	W	M	55	
UTL						

24	Campbell, Matthew R	4611742	W	M	50	
TO			Doctorate			() -
	Professor	Erskine college			5	
	M/Evelyn Campbell	Secretary				Due West ARP Church

25	Capilos, Linda Q	5991360	W	F	75	
AGE					() -	() -
					0	

26	Carter, Rusty F	1380090	W	F	60	

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	Juror Occupation	Employer	Years Employed			
	Marital Status/Spouse	Spouse's Occupation	Spouse's Employer			

UTL

27 Champagne, Michael A 4007050 W M 75 [REDACTED]
AGE [REDACTED]

28 Clare, Benjamin P 5728287 W M 38 [REDACTED]
SU [REDACTED]
Lonza M Works - Charter

29 Clinkscales, Geneva B 1073185 B F 88 [REDACTED]
AGE [REDACTED]

30 Cohen, Helene E 1217939 W F 64 [REDACTED]
SU [REDACTED]

31 Conklin, Crystal L 4328984 W F 33 [REDACTED]
SU [REDACTED] 10th [REDACTED] () -
Waitress Goldsmith Cake 9
/Jacob Gantt Self Employed

32 Cox, David R 4006638 W M 80 [REDACTED]
AGE [REDACTED]

33 Craft, Nathan E 0 W M 21 [REDACTED]
UTL [REDACTED]

34 Crawford, Carrol G JR 0 W M 51 [REDACTED]

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Attorney List

Sorted by Seq Nbr

Juror #	Name	Certificate #	Race	Sex	Age	Birth Date
Status	Address	Education	Home Phone	Bus Phone		
	Juror Occupation	Employer	Years Employed			
	Marital Status/Spouse	Spouse's Occupation	Spouse's Employer			

PHY

35
AGE

Crawford, Margaret R 1264799

W F 72

36
SU

Davenport, Shawn M 4008314

W F 45

2 years
college

School Accounts Payable

Ware Shoals School District

0

M/R Dale Davenport Jr

Technician

Eaton Electrical

37
NRS

Davis, Katie G 32250

W F 32

() -

0

38
SU

Davis, Kenneth A 4014730

W M 40

High School

() -

Network Field Tech

WCTEL

15

M/Hannah Davis

Teacher

Abbeville Co School Dist

39
CHI

Dedalis, Lyla E 1015319

W F 22

40
SU

Demers, Wanda L 5673475

W F 65

12

Retired

Connie Maxwell Childrens Ministry

17

D

Abbeville County Courthouse

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Attorney List

Sorted by Seq Nbr

Juror #	Name	Certificate #	Race	Sex	Age	Birth Date
Status	Address		Education	Home Phone	Bus Phone	
	Juror Occupation	Employer		Years Employed		
	Marital Status/Spouse	Spouse's Occupation		Spouse's Employer		

41	Douglas, Justin E	13809	W	M	31	
SU						

42	Eder, Bryan J	4005674	W	M	54	
JUR						

43	Ellenburg, Jane C	1074258	W	F	69	
AGE						

44	Elligson, Edward L	4010794	W	M	68	
AGE						

45	Ellison, Jennifer M	214388	W	F	37	
SU			10 years	() -	() -	
	Manager	McDonalds		3		
	D					

46	Erwin, Gloria Jane E	4005296	W	F	58	
SU			12 th Grade	() -	() -	
	Cosmetologist	Self Employed		20		
	M/Wayne Erwin	Maintenance		Abbeville School District		

47	Falls, Laura M	4009040	W	F	53	
SU			2 year college		() -	
	IT Manager	Belton Industries Inc		8		

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Attorney List

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Juror #	Name	Certificate #	Race	Sex	Age	Birth Date
Status	Address	Education	Home Phone	Bus Phone		
	Juror Occupation	Employer	Years Employed			
	Marital Status/Spouse	Spouse's Occupation	Spouse's Employer			
	M/Marley Babb	Truck Driver	South Work Metal			

48
SU
Ferguson, Barry 2452165 W M 56
Associates Degree () - () -
Business Owner Diaman Ridge Communication 1
M/Angela

49
SU
Ferguson, Joseph E 0 W M 45

50
SU
Fleming, Charles M 0 W M 42

51
SU
Flitz, Anna M 1625211 W F 21
() - () -
0

52
SU
Ford, Tashekia 1269798 B F 22

53
SU
Garrison, Aubree 1393415 W F 24

54
SU
Garrity, Caitlyn E 1583768 W F 20

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Attorney List

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Juror #	Name	Certificate #	Race	Sex	Age	Birth Date
Status	Address		Education	Home Phone	Bus Phone	
	Juror Occupation	Employer		Years Employed		
	Marital Status/Spouse	Spouse's Occupation		Spouse's Employer		
55	Gibson, Patricia M	0	W	F	52	
NRS					() -	() -
					0	
56	Gingerich, Emily L	157572	W	F	30	
CHI			High School		() -	
	Stay at home mother	Abbeville Youth Center		0		
	M/Justin Gingerich	Merl's Countertops		Merls		
57	Goodwin, Iquana W	4001767	B	F	50	
SU			Bachelor's degree		() -	
	4-k para pro	Long Cane Primary		18		
	M/Charles Goodwin Jr	Unemployed		Fuji Films		
58	Grant, Angela L	4014122	W	F	64	
SU						
59	Gray, Jacob R	0	W	M	24	
PHY			12		() -	
	unemployed			0		
	S					
60	Groves, Taylor N	508871	W	F	30	
UTL						
61	Gunnells, Rodger W	1407966	W	M	70	

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Status	Address	Education	Home Phone	Bus Phone		
	Juror Occupation	Employer	Years Employed			
	Marital Status/Spouse	Spouse's Occupation	Spouse's Employer			

AGE

62	Haddon, William L	1073708	W	M	72	
AGE						

63	Hagan, Pamela V	401355	W	F	68	
SU				Doctorate		() -
	Retired/Higher Ed Administrator	Spartanburg Community College /Former	25			
	M/Harry Hagan Jr	Retired				

64	Hagen, Kathy A	0	W	F	74	
AGE						

65	Harrison, Karl K Sr.	5699433	B	M	50	
SU						
	Maint Tech					

66	Hawkins, Robert L	4011585	B	M	87	
SU					() -	() -
	Retired				0	
	M/Annette Hawkins	Retired				

67	Hedden, Charles L	4010382	W	M	44	
SU				Associates Degree		() -
	Disabled				0	
	M/Kathy Hedden	Store Associate			Pop Shelf	

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Juror #	Name	Certificate #	Race	Sex	Age	Birth Date
Status	Address		Education	Home Phone	Bus Phone	
	Juror Occupation	Employer		Years Employed		
	Marital Status/Spouse	Spouse's Occupation		Spouse's Employer		
68 PHY	Hedden, Jacob T	0	W	M	25	
69 SU	Henderson, Sylvia S	4015835	W	F	75	
70 SU	Henry, Harriett B	6597344	W	F	53	
71 SU	Herndon, James D	1214365	W	M	26	
			12			() -
	Contractor	Trades Industrial Co		1		
	S					
72 SU	Hester, Nikita N	4016489	B	F	30	
73 AGE	Hicks, Jo A	1408384	B	F	73	
74 PHY	Hill, Brunette	4005785	B	F	58	
				() -	() -	
				0		
75 UTL	Hines, Kristy A	5811183	W	F	67	

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Juror #	Name	Certificate #	Race	Sex	Age	Birth Date
Status	Address		Education	Home Phone	Bus Phone	
	Juror Occupation	Employer		Years Employed		
	Marital Status/Spouse	Spouse's Occupation		Spouse's Employer		

76	Holliday, Judy R	4244175	W	F	45	
SU						

77	Holman, Walter	4011902	B	M	84	
AGE						

78	Hoover, Kyle D	4011915	W	M	61	
UTL						

79	Horton, Dudley M	1073041	W	M	72	
AGE					() -	() -
					0	

80	Howell, Byron E	4006501	W	M	49	
SU			High School			() -
	Electrician	Electrolux			29	
	M/JENNIFER HOWELL	Homemaker			N/A	

81	Hughes, William Lee	4000335	W	M	50	
SU			High School			() -
	Maintenance Planner	Carerpillar			2	
	M/Kristin Hughes	Teacher			Abbeville County School	

82	Hunter, Steven W	6597406	W	M	57	
SU			Bachelor's degree			() -
	PLANT MANAGER	Roylco Inc Anders SC			13	

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	Juror Occupation	Employer	Years Employed			
	Marital Status/Spouse	Spouse's Occupation	Spouse's Employer			

M/Dawn Hunter

Teacher

Greenwood/ Abbeville Schools

83 Jackson, Alexander B 0 M M 23
 NRS unempoyed
 M

84 Jamison, Carlton L Jr. 6757598 B M 39
 SU

85 Johnson, Willie Sue 2451816 B F 76
 SU

86 Jones, Kristine A 0 W F 21
 NRS () - () -
 0

87 Kauffman, Kevin G 0 W M 22
 SU High School () - () -
 Graduate
 Construction Fisher Bams 5
 S

88 Lakes, John W 0 W M 63
 DEC

89 Landers, Joshua A 651238 W M 33

Print Date: 9/22/2023 2:20:51 PM

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Juror #	Name	Certificate #	Race	Sex	Age	Birth Date
Status	Address		Education	Home Phone	Bus Phone	
	Juror Occupation	Employer		Years Employed		
	Marital Status/Spouse	Spouse's Occupation		Spouse's Employer		

SU	[REDACTED]				Associates Degree	[REDACTED] () -
	It	Piedmont Technical College		7		
	S					

90	Landis, Thomas S	1056806			W	M	69	[REDACTED]
AGE	[REDACTED]						[REDACTED]	() -
							0	

91	Laughlin, Sheridan B	4000831			W	F	56	[REDACTED]
CHE	[REDACTED]							

92	Lawter, Portia D	6978849			W	F	37	[REDACTED]
SU	[REDACTED]				College		[REDACTED]	() -
	LPN	Center Well Home Health					15	
	M/Michael Lawter	SCDNR					SCDNR	

93	Lee, Catherine	1074637			B	F	75	[REDACTED]
AGE	[REDACTED]							

94	Lee, Teresa	2452173			W	F	67	[REDACTED]
AGE	[REDACTED]							

95	Limbert, Craig W	308645			W	M	74	[REDACTED]
SU	[REDACTED]							

96	Lomax, Johnny Jr.	4006365			B	M	50	[REDACTED]
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Abbeville County Courthouse

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Attorney List

Sorted by Seq Nbr

Juror #	Name	Certificate #	Race	Sex	Age	Birth Date
Status	Address		Education	Home Phone	Bus Phone	
	Juror Occupation	Employer		Years Employed		
	Marital Status/Spouse	Spouse's Occupation		Spouse's Employer		

SU

97 Machen, Americas M 0 W F 20 [REDACTED]
 SU [REDACTED]

98 Madison, Angelina 1394119 U F 51 [REDACTED]
 SU [REDACTED] () - () -
 0

99 Marshall, Denise M 4015414 W F 66 [REDACTED]
 AGE [REDACTED]

100 Martin, Addie R 0 B M 72 [REDACTED]
 PHY [REDACTED] 12 () - () -
 0

101 Mattison, Marquis L 1435885 B M 32 [REDACTED]
 SU [REDACTED]

102 McCall, Anthony H 4000303 W M 52 [REDACTED]
 EXC [REDACTED] 12 (864) 378-3796 () -
 Owner and Operator S and D Vases 22
 M/Buffy McCall S and D Vases

103 Mccaslan, Peggy D 4007537 W F 76 [REDACTED]

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Attorney List

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Juror #	Name	Certificate #	Race	Sex	Age	Birth Date
Status	Address		Education	Home Phone	Bus Phone	
	Juror Occupation	Employer		Years Employed		
	Marital Status/Spouse	Spouse's Occupation		Spouse's Employer		

AGE

104

Mccaw, Fran C

2452181

W

F

75

AGE

105

Mccier, Mary W

1737649

B

F

75

AGE

106

Mcclain, Joe F

0

W

M

73

AGE

107

Mccoy, Lanis T

0

B

M

38

SU

Diploma

() -

() -

Floor Installer

N/A

0

S

108

McGaha, Brittany L

6760312

W

F

33

SU

Bachelor's
degree

() -

() -

Teacher

Greenwood District 50

3

M/Daniel McGaha

Pastor

Rice Memorial Baptist Church

109

Mcintosh, Taria S

2733461

B

F

49

SU

110

Mcneill, Paul

4483

W

M

83

AGE

Abbeville County Courthouse

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Attorney List

Sorted by Seq Nbr

Juror #	Name	Certificate #	Race	Sex	Age	Birth Date
Status	Address		Education	Home Phone	Bus Phone	
	Juror Occupation	Employer		Years Employed		
	Marital Status/Spouse	Spouse's Occupation		Spouse's Employer		

111 Meany, Eugene R 237368 W M 65
 AGE () -
 4 years
 2
 Walmart
 Pastor Faith Baptist Church
 M/Sherry Homemaker

112 Merritt, Ruth 4010858 B F 74
 SU () - () -
 GED
 0
 Retired
 W

113 Miller, David D 631418 W M 56
 SU () -

114 Busby, Sherry L 2452771 W F 61
 SU () -
 4 years college
 0
 RN AAMC Health Related Home Care
 M/Charles Busby Deputy Coroner Abbeville County

115 Mills, Nathaniel J 880898 W M 25
 SU () -

116 Morris, Candice B 358894 B F 28
 SU () -

117 Morton, John B 3503 B M 91
 () -

Abbeville County Courthouse

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Attorney List

Sorted by Seq Nbr

Juror #	Name	Certificate #	Race	Sex	Age	Birth Date
Status	Address		Education	Home Phone	Bus Phone	
	Juror Occupation	Employer		Years Employed		
	Marital Status/Spouse	Spouse's Occupation		Spouse's Employer		
AGE	[REDACTED]		12	() -	() -	
	Retired			0		
	W					
118	Moss, James B	4004267	W	M	70	[REDACTED]
AGE	[REDACTED]					
119	Moss, Rashunda	1354730	B	F	36	[REDACTED]
SU	[REDACTED]					
120	Mullett, Sallie S	1419971	W	F	62	[REDACTED]
SU	[REDACTED]		4 years college	[REDACTED]	() -	
	Retired	City of Belmont NC		29		
	M/Paul Mullett	Retired		Self		
121	Murphy, William C	0	W	M	25	[REDACTED]
SU	[REDACTED]		High School	[REDACTED]	() -	
	Warehouse Worker	Prevost USA		1		
	S					
122	Nance, Gregory T	57335	W	M	50	[REDACTED]
SU	[REDACTED]		12	[REDACTED]	() -	
	City of Anderson Tech 4	City of Anderson		5		
	M/Ronda Nance			Ashley Medical		
123	Newton, William R Jr.	4016622	W	M	79	1944

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Juror #	Name	Certificate #	Race	Sex	Age	Birth Date
Status	Address		Education	Home Phone	Bus Phone	
	Juror Occupation	Employer		Years Employed		
	Marital Status/Spouse	Spouse's Occupation		Spouse's Employer		

AGE

124
TO
W

Nichols, Austin R	1600661	W	M	27	
		Doctorate		() -	() -
Resident Physician	Self Regional			2	
M/Claire Nichols	Nurse			Self-Regional	

125
SU

Nimmons, Mark A	4215295	W	M	57	
				() -	() -
				0	

126
UTL

Nix, Dakota B	0	W	M	29	

127
SU

Oliver, Andrew J	1583922	W	M	40	

128
NRS
W

Page, Emily C	4014613	W	F	42	
		Associates Degree		() -	() -
				0	
M/Benjamin Page					

129
SU

Parker, Gabrielle C	5265312	W	F	37	
		Tech Diploma		() -	
Insurance INVESTIGATOR	Gainsco			1	
M/Lawrence Parker	Insurance adjuster			Gainsco	

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Attorney List

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	Juror Occupation	Employer	Years Employed			
	Marital Status/Spouse	Spouse's Occupation	Spouse's Employer			

130 Parkerson, Rowena M 4014945 W F 92
 AGE [REDACTED] () -
 W Retired 0

131 Parnell, Darrell W 4003612 W M 64
 SU [REDACTED] Masters [REDACTED] () -
 W Teacher Anderson School District 3 7
 M/Cathy Parnell Teacher Abbeville County School District

132 Parnell, Heath D 4007116 W M 46
 SU [REDACTED] *Michelle M. An Med*

133 Pedro, Klara V 0 B F 24
 SU [REDACTED]

134 Peterson, Florence L 1736026 B F 64
 SU [REDACTED] 14 years () - () -
 Retired Kraft 13
 S

135 Phillips, Christian C 4010876 W F 42
 SU [REDACTED] High School [REDACTED] () -
 Medical Coder Lexicode 2
 M/Scott Phillips Electrician Duke Energy

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Attorney List

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Juror #	Name	Certificate #	Race	Sex	Age	Birth Date
Status	Address		Education	Home Phone	Bus Phone	
	Juror Occupation	Employer		Years Employed		
	Marital Status/Spouse	Spouse's Occupation		Spouse's Employer		
136 SU	Pickell, Samuel D [REDACTED]	738577	W	M	25	[REDACTED]
137 SU	Poore, Tammy G [REDACTED] Food Service Assistant M/Jeff Poore	2386388 [REDACTED] Abbeville County School District Laundry	W	F	55 12 19	[REDACTED] () - SLM Laundry
138 AGE	Postell, Brenda E [REDACTED]	4001914	B	F	70	[REDACTED]
139 SU	Powell, James D [REDACTED] Process Engineer Tech M/Kayla Powell	1177432 [REDACTED] Blue Diamond Dental Assistant	W	M	24 Associates Degree 1	[REDACTED] () - Stoddard Dental Group
140 SU	Power, Toka R [REDACTED]	62133	B	F	30	[REDACTED]
141 AGE	Price, Billy R [REDACTED]	4008148	W	M	73 0	[REDACTED] () -
142 AGE	Prince, Harold L Jr. [REDACTED]	165	W	M	90	[REDACTED]

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Juror #	Name	Certificate #	Race	Sex	Age	Birth Date
Status	Address	Education	Home Phone	Bus Phone		
	Juror Occupation	Employer	Years Employed			
	Marital Status/Spouse	Spouse's Occupation	Spouse's Employer			
143 UTL	Quarles, Mary D	0	B	F	60	
144 SU	Ramey, Brittany S	745434	W	F	38	
		Works Human Res. M. Cooper Elect				
145 AGE	Rapley, Franklin D	1074975	B	M	81	
						() -
	Retired				0	
	W					
146 SU	Rawski, John T Jr.	1183625	W	M	25	
		Supervisor				
147 CTO	Ray, Phillip D	2387715	W	M	65	
			16			() -
	Abbeville Co Magistrate	State of SC			9	
	M/Terri Ray	Music Teacher			Self	
148 AGE	Rayford, Sallie M	4006077	B	F	95	
149 SU	Richardson, Edward K	0	W	M	55	
150 AGE	Roberts, Arnold B	1263512	W	M	79	

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Status	Address		Education	Home Phone	Bus Phone	
	Juror Occupation	Employer		Years Employed		
	Marital Status/Spouse	Spouse's Occupation		Spouse's Employer		

151
SU Rodriguez, Marie L 2190719 W F 55
High School () -
Homemaker N/A 0
M/Mario Rodrigues weaver Construction Technique CF

152
AGE Ross, Lorraine E 0 W F 70
() -

153
AGE Rothery, Johnnie S 4000662 B F 80
() -

154
NRS Rowland, Joshua C 695643 W M 26
() -
0

155
SU Sanders, Dana S 1351784 B F 21
() -

156
SU Sanders, Jasmine L 437977 O F 30
Associates Degree () -
Deli Associate at Ingles Ingles Market 5
S

157
SU Saucier, Kenneth J 353709 W M 58
Some College () - () -

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Juror #	Name	Certificate #	Race	Sex	Age	Birth Date
Status	Address		Education	Home Phone	Bus Phone	
	Juror Occupation	Employer		Years Employed		
	Marital Status/Spouse	Spouse's Occupation		Spouse's Employer		
	retired	US Army		30		
	W					
158	Schulz, Kimberly D	299674	W	F	51	
SU			12			() -
	Rural Carrier Associate	USPS		3		
	D					
159	Schwab, Bonnie J	595873	W	F	66	
SU						
160	Scott, Kolbie P	646913	W	F	34	
TO			Associates			() -
	Part Time Polyromno Grapher	AnMed Health	Degree	9		
	M/J Brandon Scott	Tech Manager				
161	Seawright, Ronald G	1073452	W	M	69	
SU						
162	Shaw, Angelique M	1101100	W	F	45	
SU			Bachelor's			() -
	Assistant Childrens Ministry	New Covenant Church	degree	3		
	Director					
	M/Kyle Shaw	Forensic Pathologist		Anderson County		
163	Shull, Curtis W	1176307	W	M	59	

Abbeville County Courthouse

GS Sept 25 2023

Attorney List

Sorted by Seq Nbr

Juror #	Name	Certificate #	Race	Sex	Age	Birth Date
Status	Address		Education	Home Phone	Bus Phone	
	Juror Occupation	Employer		Years Employed		
	Marital Status/Spouse	Spouse's Occupation		Spouse's Employer		

UTL

164 Simmons, Jennifer S 2387598 W F 53 [REDACTED]
 JUR [REDACTED] () -
 RN Nurse AAMC 29
 M/Stephen Simmons Construction Self Employed

165 Rowley, Tracey R 4016555 W F 48 [REDACTED]
 CHI [REDACTED] () -
 0

166 Sizemore, John R 0 W M 45 [REDACTED]
 SU [REDACTED]

167 Smith, Amy K 6804416 W F 44 [REDACTED]
 TO [REDACTED] Masters [REDACTED] () -
 School Counselor Abbeville County School District 9
 M/Melvin Smith Service Tech Buck Stove and Spa

168 Smith, Beverly J 1736374 W F 58 [REDACTED]
 SU [REDACTED] 12 [REDACTED] () -
 Care Giver Caring Hands 22
 M/Donnie Smith East T Lumber

169 Smith, Heath B 5692929 W M 35 [REDACTED]
 SU [REDACTED] Bachelor's [REDACTED] () -

Abbeville County Courthouse

GS Sept 25 2023

Attorney List

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Juror #	Name	Certificate #	Race	Sex	Age	Birth Date
Status	Address	Education	Home Phone	Bus Phone		
	Juror Occupation	Employer	Years Employed			
	Marital Status/Spouse	Spouse's Occupation	Spouse's Employer			
	Bartender	JR Cash's Grill and Bar	1			
	M/Juliana Smith	Teacher	Wright Middle School			
170 SU	Smith, Leroy Jr.	4015743	B	M	53	
171 SU	Smith, Logan D	338394	W	M	33	
			Associates Degree			() -
	Truck/ Delivery Driver	Farms and Supply	9			
	M/Virgina Smith	Self Employed	WCTEL			
172 SU	Speed, Randall B	4005437	W	M	59	
			12			() -
	Sales/ Lowe's	Lowe's	12			
	M/Wanda Speed	Billing	Self Regional			
173 AGE	Stephens, Roger S	6307000	W	M	73	
174 AGE	Strickland, Mary I	1073284	W	F	78	
175 SU	Suber, Stephen A Sr.	5768878	W	M	64	
			12		() -	() -
	Retired		0			
	D					

Abbeville County Courthouse

GS Sept 25 2023

Attorney List

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Status	Address	Education	Home Phone	Bus Phone		
	Juror Occupation	Employer	Years Employed			
	Marital Status/Spouse	Spouse's Occupation	Spouse's Employer			

176	Swann, Kenneth S	4007574	W	M	59	
NRS					() -	() -
					0	

177	Swartzentruber, Lowell	0	W	M	59	
JUR						

178	Taylor, Katelyn D	0	W	F	30	
SU						

179	Thomas, Fernan K	4014662	B	M	49	
SU						

180	Thweatt, Lisa M	342902	W	F	59	
SU						() -
	Legal Assistant	Stephenson and Murphy LLC			9	
	M/Dorrah Thweatt	Welds Roofing Materials			Flash Co	

181	Tillman, Dorthy M	2452870	B	F	76	
SU						

182	Trotter, Elizabeth	1012062	W	F	32	
CHI						

Abbeville County Courthouse

GS Sept 25 2023

Attorney List

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Status	Address		Education	Home Phone	Bus Phone	
	Juror Occupation	Employer		Years Employed		
	Marital Status/Spouse	Spouse's Occupation		Spouse's Employer		
183 SU	Troyer, Kara D [REDACTED]	0	W	F	31	[REDACTED]
184 PHY	Turman, Lonzavis T [REDACTED]	0	B	M	28	[REDACTED]
185 SU	Vaughn, Ervin E [REDACTED]	4005529	W	M	84	[REDACTED]
186 SU	Vermillion, Tonya L [REDACTED]	4006643	W	F	48	[REDACTED]
	Self Employed		Associates Degree	[REDACTED]	() -	
	M/David Vermillion	Self Employed		0		
187 AGE	Wagler, Jessie [REDACTED]	4011768	W	M	71	[REDACTED]
188 SU	Webb, Carolyn G [REDACTED]	4013397	W	F	57	[REDACTED]
	Glen Rabon	Sep - Self Employ				
189 NRS	Weitzel, Ashley B [REDACTED]	4013680	W	F	35	[REDACTED]
				() -	() -	
				0		
190 SU	Wells, Johnnie M [REDACTED]	4010455	B	F	64	[REDACTED]

Abbeville County Courthouse

GS Sept 25 2023

Attorney List

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Status	Address		Education	Home Phone	Bus Phone	
	Juror Occupation	Employer		Years Employed		
	Marital Status/Spouse	Spouse's Occupation		Spouse's Employer		

191 SU Wharton, Phillip L 1410016 B M 63 () - () -
 Retired SCOT 0
 M/Latasha Wharton ward Secretary Self Regional Health Care

192 AGE White, Minnie S 2386748 W F 82 1941
 () -

193 SU Wieters, Eleanor A 4015232 W F 51 () -
 Some College 3
 Restuarant Manager Jim Petty/ Belmont Inn Former/ Prysman
 M/William Nickles Carpenter

194 AGE Williams, Travis T 4004515 W M 73 () -

195 AGE Wilson, Jimmy W 1263994 W M 79 () -

196 SU Wilson, John T 4011562 W M 35 () - () -
 Associates Degree 12
 ISP WCTEL ACSD 3
 M/Emily Wilson Assistant Principal

197 Wilson, Thomas G 2411455 W M 54 () -

Print Date: 9/22/2023 2:20:51 PM

File: Attorney_Detailed_List

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Abbeville County Courthouse

GS Sept 25 2023

Attorney List

Sorted by Seq Nbr

Juror #	Name	Certificate #	Race	Sex	Age	Birth Date
Status	Address		Education	Home Phone	Bus Phone	
	Juror Occupation	Employer		Years Employed		
	Marital Status/Spouse	Spouse's Occupation				
SU	[REDACTED]				() -	() -
	H/H Brady				0	
	M RN - Jan Med					
198	Yerkes, Carmen I	5683784	H	F	40	[REDACTED]
LAW	[REDACTED]					
199	Yoder, Joseph P	788646	W	M	35	[REDACTED]
SU	[REDACTED]		GED		() -	() -
	Self Employed				0	
	M/Veronica Yoder	Homemaker				
200	Young, Erin R		W	F	23	[REDACTED]
SU	[REDACTED]		High School		[REDACTED]	() -
	Front Office	Greenwood ENT			1	
	M/Evan Keller	Lineman				
					Pike Electric	
Total Number of Jurors: 200						

Print Date: 9/22/2023 2:20:51 PM

1 STATE OF SOUTH CAROLINA) IN THE CIRCUIT COURT 8
2 COUNTY OF ABBEVILLE) DOCKET NO. 2021-GS-01-00215
3 2021-GS-01-00214

4
5 STATE OF SOUTH CAROLINA,)
6 Plaintiff,)
7 versus)
8)
9 TRAVIS A. LEE AND)
10 KENDRICK MONTREZ LEE)
11 Defendant.)

12
13
14
15 H E A R I N G

16
17 PRESENT: Travis A. Lee and Kendrick Montrez Lee
18 DATE: October 19, 2023
19 TIME: 2:35 p.m. - 4:08 p.m.
20 LOCATION: South Carolina Circuit Court 8
21 JUDGE: Frank R. Addy, Jr.
22 TRANSCRIBED BY: Jeanne Meldrim

23 LEGAL EAGLE
24 Post Office Box 5682
25 Greenville, South Carolina 29606
864-467-1373
depos@legaleagleinc.com

1 APPEARANCES

2

3 Micah Black, Esquire
4 Eighth Circuit Solicitor's Office
5 PO Box 516
6 Greenwood, SC 29649

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6 Yates Brown, Esquire
7 Eighth Circuit Solicitor's Office
8 P.O. Box 516
9 Greenwood, SC 29469

8 Attorneys for the Plaintiff

9

10 Charles Grose, Esquire
11 The Grose Law Firm
12 305 Main Street
13 Greenwood, SC 29646

12 Attorney for Defendant Kendrick Montrez Lee

13

14 Robert Jamison Tinsley, Jr., Esquire
15 Tinsley & Tinsley, PC
16 109 Oak Avenue
17 Greenwood, SC 29646

16 Attorney for the Defendant Travis Arnett Lee

17

18 Also attending - Family members and friends of the defendants

19

20

21

22

23

24

25

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EXHIBITS

COURT'S EXHIBITS

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2	Document	7	
3	Document	7	
4	Document	7	
5	Document	7	
6	Document	7	
7	Document	7	
8	Document	7	

(THIS TRANSCRIPT MAY CONTAIN QUOTED MATERIAL. SUCH
MATERIAL IS REPRODUCED AS READ OR QUOTED BY THE SPEAKER.)

Proceedings

1 THE COURT: Okay. If we may, we're going to go back
2 on the record. And this is regarding a Abbeville case
3 that was tried several weeks ago. The case numbers for
4 Travis Lee --- case number for Travis Lee is
5 2021-GS-01-00215, for Kendrick it's 2021-GS-01-00214.

6 The jury convicted both gentleman of the offense of
7 assault and battery of a high and aggravated nature. I
8 can't recall off the top of my head who the court
9 reporter was for that trial, but obviously we --- we do
10 have a different court reporter, I believe, here today
11 for these proceedings.

12 But after the verdicts were returned, procedurally the
13 defendant's requested time to formulate any post-trial
14 motions. I think where we left off was that a motion for
15 a new trial still has yet to be made. But there was of
16 course also the issue of sentencing and life without
17 possibility of parole, and whether the gentleman --- the
18 gentleman's prior convictions are sufficient to warrant
19 the Court opposing that sentence.

20 I did receive The State's brief on that issue last
21 night. And I got Mr. Tinsley's earlier today. Did ---
22 did you prepare one, Mr. Grose? Are we ---

23 MR. GROSE: I did not.

24 THE COURT: Okay. All right. Before I hear from
25 The State, I presume, gentleman, that you do move for new

Proceedings

1 trials and of course you do redo all prior motions made
2 during the court trial that we had --- had in September
3 and renew all prior objections.

4 MR. GROSE: I --- I do all that, however, the rules
5 provide for ten days after sentencing to do written
6 motions ---

7 THE COURT: Okay.

8 MR. GROSE: --- that's --- that's Rule 9 --- I mean,
9 Rule 29.

10 THE COURT: Sure.

11 MR. GROSE: And I do plan to file a written motion
12 raising the --- the grounds, but that's not ---

13 THE COURT: I --- I was thinking that we were going
14 to address that today.

15 MR. GROSE: Mr. Tinsley and I conferred about what
16 the rule was. I'm going to take my ten days after
17 sentencing.

18 THE COURT: All right. Do --- do you anticipate ---
19 do you anticipate anything that necessitates reconvening
20 a hearing in terms of your motion or --- and --- and the
21 reason I'm asking that, gentleman, is I --- if --- if I'm
22 going to move forward with sentencing today, and you
23 intend to file something that might require another
24 hearing, because of the volume of what I do have to
25 address today here in Laurens, and because just for good

Proceedings

1 old judicial economy, perhaps it would be better,
2 especially if your motion is going to address any of the
3 LWOP aspects of this, that we reconvene this at a later
4 point in time.

5 I --- I simply ask because obviously you've had a
6 couple of weeks to think about issues you were going to
7 raise and if it's something that I can address just by
8 written memoranda, then I anticipate being able to move
9 forward today and not have to reconvene. If it's
10 something that's going to require another hearing,
11 whatever, then I have concerns.

12 MR. GROSE: Well, you know, the rule says that it's
13 your discretion as to whether you convene the hearing or
14 not on the new trial motion. And I --- I don't know
15 that --- I've never gotten a hearing from you on a new
16 trial motion a general sessions case.

17 THE COURT: You have and others have, but ---

18 (Simultaneous speaking)

19 MR. GROSE: --- well, am saying I've gotten from
20 other judges --- but I --- I --- I --- I did want newly
21 discovered evidence one time. And --- and now I don't
22 know of any newly discovered evidence, but I don't know
23 what's going to happen in the next ten days.

24 THE COURT: Okay. Well let's just address --- let's
25 just address then the sentencing issue. Solicitor, I did

Proceedings

1 read your memorandum you want to hit the high points of
2 that and go ahead and make a record of the prior
3 convictions. I know that you did have some sentencing
4 for --- I know you had some sentencing paperwork you want
5 to make part of the record as well as some incident
6 reports, with the exception if I remember correctly
7 you --- you were unable to locate one incident report, I
8 believe concerning Travis Lee, but otherwise, you had a
9 whole bunch of stuff you wanted to make part of the
10 record; am I right?

11 MR. BLACK: Yes, sir, that is correct. I'm going to
12 go ahead and put that on the record. I have marked as
13 Court's Exhibits 1 through 8 several items.

14 (Court's Exhibits 1 through 8 marked)

15 MR. BLACK: The first item is a --- is a sentencing
16 sheet for Kendrick Lee and that is a conviction for
17 distribution of marijuana within a half mile of a school
18 or playground. And that is marked as serious and the
19 indictment number is 2006-GS-01-495. And there is a
20 indictment that's stapled to that --- that court's
21 exhibit and they are certified copies from clerk's
22 office.

23 And I believe in this case against Mr. Kendrick Lee,
24 he was represented by Joseph Smithdeal.

25 Court's Number 2 is also for Mr. Kendrick Lee. It's a

Proceedings

1 trafficking crack cocaine conviction where he also pled
2 guilty 10 to 28 grams. It's also marked as serious
3 again. He's also represented by --- he was represented
4 by Joseph Smithfield. And the sentence date on both of
5 those charges were November the 13th of 2009. And again,
6 Court's 2 is the sentencing sheet as well as a certified
7 copy of the indictment.

8 Court's 3 is for Mr. Travis Arnett Lee. On that there
9 are two sentencing sheets that are attached. There's a
10 distribution crack within half mile of a school, which is
11 marked as serious. And he was represented by W. Alex
12 Burney (phonetic), I believe is his name who was a public
13 defender at the time. That is classified as serious.

14 He also pled at the same time to a distribution of
15 crack second, which at the time was not classified as
16 a --- as a serious offense, it was classified as
17 non-violent.

18 And he pled to those two charges --- charges at the
19 same time. And also attached is the indictment for those
20 two offenses. And this would have been back on February
21 the 27th of 2003, so that indictment looks a little bit
22 different than what we have now. There's actually, I
23 guess both indictments, or both the language of both of
24 those charges are in the same body of the indictment.
25 And again, that's Court's Number 3. And there's true

Proceedings

1 copies of that. And that date, Your Honor, for the
2 record, is --- the offense date is 3/21/2022.

3 The next one is Court's Number 4. Same thing for Mr.
4 Travis Lee, distribution within half a mile of the school
5 which is marked as serious. The sentence date is
6 2/27/03, which is the same sentence date. He is also
7 represented by W. Alex Burney, a public defender at the
8 time back in 2003.

9 There's also, again, the sentencing sheet for the prox
10 charge as the distribution crack, second, which again,
11 was not classified as a strike at the time. And then
12 also attached to that is the indictment.

13 Court's Number 5 is a copy of the incident report that
14 we did cover from the Abbeville County Sheriff's Office
15 regarding Travis Lee. And that is from the incident date
16 of March 13th of 2002. Again, we were not able to
17 recover an incident report from Abbeville City or
18 Abbeville County for that March the 21st, 2002 arrest and
19 conviction.

20 Court's Number 6 is a distribution of marijuana
21 incident report regarding Kendrick Lee, and that date is
22 July the 6th of 2006. And that again is marked Court's
23 6.

24 Court's --- I'm sorry and that is the prox charge on
25 the marijuana for Kendrick Lee.

1 And then the other incident report is Court's Number 7
2 for Kendrick Lee and that incident date is May the 13th
3 of 2008. That was an Abbeville City report. And again a
4 couple pages but that is marked as Court's Number 7.

5 And then I also marked as Court's Number 8 a copy of
6 my memorandum that I did provide to you last night via
7 e-mail.

8 As far as kind of the high points of the --- the memo,
9 that I did send, Your Honor. Of course I talked about
10 kind of the factual background. The State did serve
11 notice to Kendrick Lee. Originally, they were both
12 charged with attempted murder, The State, after looking
13 at the case and evaluating the case, decided to move
14 forward on an indictment of ABHAN, which we did. But we
15 did send a notice to seek like on Mr. Kendrick Lee. I
16 believe for Mr. Kendrick Lee, originally we served him, I
17 want to say it was in 2021, maybe --- I want to say it
18 was February of 2021. And then we sent --- we sent an
19 amended notices to his attorney, Mr. Grose, that
20 changed --- really just changed the notice letting him
21 know that we were going forward with ABHAN, just making
22 that official. And that was on August the 19th of 2003.

23 Similar with Mr. Travis Lee, we served him a life
24 notice, I want to say back at the beginning of 2023. And
25 then on August the 9th we did send him an amended notice

Proceedings

1 again, letting him know that we were going forward with
2 the --- the ABHAN charge.

3 Of course both of them were convicted on September
4 the 28th of this year in Abbeville on the charge of ABHAN
5 and I won't rehash the facts, but that is set forth in
6 the memo.

7 And --- and again just to kind of summarize again,
8 Kendrick Lee, he's got two --- two prior strikes on his
9 record. He pled on both of those on November the 13th,
10 2009. He was represented by Joseph Smithdeal at that
11 hearing.

12 The first conviction was a 2006 conviction for a prox
13 charge. Again, he sold a quantity of marijuana at the
14 Hickory Heights Apartment complex and there was a
15 playground that's located within a half mile of the point
16 where he sold the marijuana to a confidential informant.

17 And then about two years later on May the 13th of
18 2008, he was arrested at 1010 Adams Drive. Officers
19 basically approached a group --- a group of men. I
20 believe that they smelled marijuana. When they patted
21 down Mr. Kendrick Lee they did notice a bulge in his
22 pocket, pulled out some marijuana.

23 He was arrested and take back to the Abbeville Police
24 Department. And then once they took him to Abbeville
25 Police Department, they found an additional 26 grams of

Proceedings

1 crack cocaine as well as some money. And I think Mr.
2 Kendrick Lee did admit that the money came from some drug
3 transactions. And again that was on May 13th of 2008.

4 Regarding Travis Lee, his two offense dates, Your
5 Honor, as I've already mentioned, he pled to two prox
6 charges as well as two distribution of crack second
7 offense charges in May of 2002. One offense date was
8 May 13th of 2002, and the second one was May the 21st of
9 2002.

10 He was represented by W. Alex Burney on both of those
11 charges. And again, we have an incident report from the
12 March the 13th, 2002 incident, but we don't have one for
13 the March the 21st incident. And those are, again, about
14 nine days apart when those offenses occurred.

15 As far as the cases that we cited, Your Honor, we
16 cited in our brief, we cited State v Coon. There's not a
17 whole lot of --- I guess, case law, out there on this
18 particular issue, again, regarding 172545 and 172550,
19 which is, you know, you have to kind of look at both of
20 those statutes in conjunction with each other when
21 decided whether or not the Court is going to issue a life
22 sentence.

23 And --- and also in looking at the proximity of these
24 prior offenses when they occur and whether or not they
25 are to count as basically a continuous offense --- one

Proceedings

1 continuous offense or separate offenses.

2 Coon basically said, and was basically a --- Coon and
3 Bryant are both PCR cases, Your Honor. And defendant's
4 filed PCR basically alleging their attorneys were
5 ineffective for not arguing that at the trial court
6 level, that they were one continuous string.

7 In the Coon case, it was basically some burglaries and
8 I believe the burglaries were two weeks apart. I think
9 he had committed another burglary kind of in close
10 proximity to the --- I guess the original one. He
11 committed three and some, two on back-to-back dates and
12 then another one about two weeks later.

13 And the Court basically said, no, those are separate
14 offenses, the ones from the two weeks apart were at
15 different locations. They were different buildings, so
16 you basically have different victims.

17 And the Court basically said we're not going to
18 establish any kind of bright-line rule as to what
19 constitutes two offenses that are so closely in point in
20 time that we should say it's one offense or two separate
21 offenses.

22 Similarly in Bryant you --- you had a situation where
23 you had a guy that basically committed a string of armed
24 robberies over the course of about a week. Two of them
25 were on back-to-back dates. One was on December the 27th

Proceedings

1 in 1996 about 1:00 in the day. And then the next one was
2 December the 28th at 2:00 a.m. One was in --- one was in
3 Orangeburg County, the other one was in Colleton County.
4 And then he committed another armed robbery a couple days
5 later in January of 1997 in Jasper County. And he
6 originally received a ten-year sentence on the Colleton
7 and the Jasper County cases.

8 And then The State tried him in Orangeburg County and
9 ultimately got a --- a life sentence on that.

10 And the argument there on the PCR again, is these
11 are --- it's basically one string of offenses, basically
12 committed these armed robberies over the course of a
13 couple day period, it should all be considered one
14 offense.

15 And the --- I believe originally on the PCR it was
16 granted, but it was ultimately reversed if I'm
17 remembering correctly on that. They basically said ---
18 the Court said it wasn't --- it wasn't one string of
19 offenses. You got, you know, different armed robberies
20 that are occurring in --- in different counties and
21 different locations. And while they're sure they're ---
22 they're close, it's --- it's they're --- they're separate
23 offenses.

24 So that's kind of the argument, Judge, that we have
25 here regarding both Kendrick Lee and Travis Lee. With

Proceedings

1 Mr. Kendrick Lee, and his offenses are basically two
2 years apart. While he did plea on the same day, two
3 strikes, they're basically two years apart. One's a 2006
4 case, a prox charge. The other one's a 2008 trafficking
5 charge. They're at different locations. They're ---
6 they're separate offenses. They shouldn't be considered
7 as one offense. And so this new conviction for ABHAN
8 should count as a --- as a third strike.

9 Same thing with Mr. Travis Lee. His are a little bit
10 closer. We acknowledge that they're about nine days
11 apart. He's got a conviction for a prox charge and a
12 distribution charge from March the 13th of 2002, I
13 believe it was. And then about nine days later, he
14 basically has the same thing, convictions for
15 distribution and a prox charge. And he pled to those in
16 February of 2003.

17 And again, we --- I don't have another incident report
18 for the second offense. I don't know all the --- all the
19 facts in it. And the facts as you are aware pretty bare
20 on those incident reports and I have provided you a copy
21 so there's not a whole lot to kind of determine as to,
22 you know, what went on. But it's --- it's our --- it's
23 our argument and it's our belief that they should be
24 considered two separate offenses for the purposes of this
25 sentencing, and as such, Mr. Travis Lee should also be

Proceedings

1 sentenced to life because he now has three --- three
2 strikes.

3 THE COURT: All right. As it relates to Travis, did
4 the incident reports that --- or not the incident
5 reports, but the sentencing sheets, or any of the court
6 documents, did they reflect separate incident dates?

7 MR. BLACK: They do, Your Honor. At the very top,
8 of course, the caption on the top right side, you've got
9 date of offense, code, CDR code, indictment number y'all
10 put on --- that you put on there, and the --- at this
11 time, they were handwritten in and they both reflect
12 different incident dates. And I meant to pass these up
13 to you.

14 THE COURT: All right.

15 MR. BLACK: And I can do that (inaudible).

16 MR. BROWN: Judge, just for a housekeeping matter, I
17 know he said this a Court's 1 through 8. I think we
18 already used Court's 1 through 8 for the trial. So once
19 all these are combined these will need to be remarked so
20 the Court's not confused with any of the Court's
21 exhibits.

22 THE COURT: How about I just --- instead of
23 remarking these, I'll just have the court reporter
24 indicate today's date on the Court's exhibits and
25 that --- that --- the handwriting will be different.

Proceedings

1 MR. GROSE: (Unintelligible).

2 THE COURT: --- sorry?

3 MR. GROSE: (Unintelligible).

4 THE COURT: Yeah, that way I don't think we have to
5 worry about re-marking them. And it'll be cleaner in
6 terms of the record.

7 And Court's 3 and 4, they reflect incident dates for
8 Travis Lee of 3/21/02, and 3/13/02 respectively.

9 And Mr. Tinsley, I did get your memorandum. And of
10 course you also raise a --- did --- were you done? I'm
11 sorry.

12 MR. BLACK: I --- I had the record. He wanted to
13 have the record. I can give that to you now, or I can
14 give it to you later, both of them. I --- I -- I don't
15 know if it matters.

16 THE COURT: Right. I --- I don't know that I
17 necessarily need that in terms of ---

18 MR. BLACK: Yes, sir.

19 THE COURT: --- any other miscellaneous offenses
20 that they may have been convicted of are probably
21 immaterial ---

22 MR. BLACK: Yes, sir.

23 THE COURT: --- if --- if I were to conclude that
24 you correct, that LWOP applies then any other record
25 would be immaterial if I include after hearing from them

Proceedings

1 that you're incorrect in your position, then I'll hear
2 that record, because sentencing would then be
3 discretionary.

4 MR. BLACK: Yes, sir.

5 THE COURT: Mr. Tinsley, you --- you raise a ex post
6 facto violation in your motion, and also argue that the
7 distributions are so temporarily close to each other that
8 they should count as --- as one strike. You want to
9 expand on that?

10 MR. TINSLEY: Yes, Your Honor. The dates of those
11 offenses for --- according to the sentencing sheet, which
12 is all we had to go on, because they're so old that law
13 enforcement doesn't have any record beyond a
14 three-sentence incident report. And it says nothing
15 about the March 13th. It's March 13, 2002 and March 21,
16 2002, which is eight days apart. And Travis Lee was
17 25 years old.

18 And then he was arrested May of --- May 24th of '02,
19 on both of these charges. Two months later they held
20 back an indictment getting is once, which I think adds to
21 this being one offense for sentencing purposes. Meaning
22 sentence on them both on February the 27th of 2003, when
23 he was 26 years old. He's --- sits before you today at
24 the age of 46.

25 And --- and --- and on these cases, he sold to the

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1 same CI in the same location. A fellow by the name Brett
2 Smith (phonetic) who busted over 60 people in Abbeville.
3 They kept wiring up. So this --- this would be the prime
4 example of when 1725-50 comes in to treat these two
5 priors as one strike under 1725-40. And in Bryant versus
6 State this fellow was committing armed robberies in
7 different counties, so that is clearly distinguishable
8 from this case where the two --- the two things happened
9 at the same spot with the same --- same confidential
10 informant.

11 And there's language in Bryant requires the court to
12 look at 2550 and it precludes a life without parole
13 sentence when --- when these multiple offenses are
14 inextricably connected so that they're in such proximity
15 so where it just wouldn't be fair for a life sentence
16 based on two different convictions that should be treated
17 at one.

18 And as the Solicitor said, there's no bright ---
19 bright-line rule. There's an genuine am --- ambiguity in
20 the language of how you would apply Section 50. This is
21 the time for the Court to treat as one. Particularly
22 when you look at the rule of lenity. And you ---
23 it's --- any --- any --- any ambiguity, any --- any doubt
24 goes to the benefit of my client Travis Lee. And on the
25 ex post facto, 17-25-45F was amended in 2006 so the

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1 version that was in place in 2003 when Mr. Lee was
2 sentenced, stated that a prior conviction shall mean the
3 defendant has been convicted of a most serious offense or
4 serious offense on a separate occasion prior to the
5 incident adjudication.

6 So at that point there --- there's no way that could
7 have treated these --- the --- the March 13th is separate
8 from the March 21st when they were sentencing him then.
9 And now we're --- we're -- trying to treat him
10 differently based off the 2006 amendment. So I would say
11 he should get the benefit of the way the law read in
12 2003.

13 And The State versus Woody case is one where the court
14 did affirm that two separate convictions were to be
15 treated as one where the armed robbery with multiple
16 victims. This is --- this is one close --- this is a
17 chain. This is not I'm going on crime spree, I'm selling
18 drugs here, I'm selling drugs there. That's not what
19 happened. Same guy, same spot just over a week apart.
20 That should be treated as one. Given, you know, the ---
21 the --- the --- the obvious rationale behind three
22 strikes law is recidivism.

23 You know, we want to cut that out. This does nothing
24 to cut that out, treating these two things from over
25 20 years ago as separate offenses in order to give him

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1 life without parole on this case should be treated as one
2 based on the language of Subsection 50 mainly.

3 But I think the ex post facto is certainly relevant
4 here, as well in the fair result under our statutory
5 system is to treat this as strike two on Mr. Lee and
6 sentence him accordingly to 0 to 20. Thank you, Your
7 Honor.

8 THE COURT: Thank you. All right. Before I hear
9 from you, Mr. Grose, Solicitor, I want you to speak to
10 the state of law as it existed in 2003. Because
11 obviously whoever represented Mr. Travis Lee is presumed
12 to have known the law. And at the time Mr. Lee pled to
13 those two offenses, my understanding is that the status
14 of the law was that because the pleas were on the same
15 day, even though there were separate dates or incident
16 dates, the --- the fact that he pled on the same day
17 would mean that it only counted as one strike.

18 And that's likely what he was advised when he tendered
19 that plea. Do you want to --- and I'm --- what I'm
20 trying to work through in my head is whether that's a ---
21 whether that would constitute an ex post facto violation,
22 or whether that --- and I'm struggling with exactly how
23 to put this. But when he entered that plea, and it was
24 in front of Judge Saunders, but it's entirely possible
25 that Judge Saunders advised him at the time that these

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1 two strikes would be treated as one strike.

2 It's a 2003 case. I don't know if a PCR was taken,
3 but I'm sure that whatever record existed 20 years ago is
4 now gone. How should the Court address that fact? Do
5 y'all want to speak to that?

6 MR. BLACK: I can speak to it in the experience that
7 I spoke with Andrew Hodges who was the prosecutor on that
8 case yesterday. And Andrew obviously has prosecuted ---
9 I mean, he's been doing this for 20-plus years now. And
10 for most of my career, he was a defense attorney. And
11 he's recently come back to our office to work as a
12 prosecutor.

13 But what Mr. Hodges told me yesterday was that, you
14 know, for the most part they were --- they were plea ---
15 a lot of times they were offering prox charges to folks
16 and getting the strikes, because the distribution second
17 at the time was not considered a strike.

18 THE COURT: Correct.

19 MR. BLACK: And it's changed now, the distribution
20 second is a strike. So they were kind of ensuring that
21 they had multiple --- they were getting multiple strikes
22 if they had a lot of different buys. Which kind of falls
23 in line with what we see here and see on the sentencing
24 sheets has to what happened.

25 I --- I --- I was in --- I --- I think I was in high

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1 school, so I have no idea what would have --- would have
2 been said at a 2003 plea whether or not that would have
3 been --- a judge would have said, oh this is going to be
4 one for the purposes of this hearing or --- or if it's
5 two. But I would argue that if he pled to two different
6 offenses, two different sentencing sheets, and they both
7 reflect two different serious strikes, that it --- it
8 would be construed as two separate strikes.

9 I know that pretty much all of the defense attorneys
10 that I deal with, all the public defenders that I deal
11 with and private attorneys that I deal with, are telling
12 their clients that when they're pleading to multiple
13 strikes.

14 When I'm handling cases, and I know that that's also
15 coming from the bench. But for me to guess what was
16 being said back in 2003, I --- I --- I don't see how that
17 would be different, but maybe it was. I wasn't
18 practicing at the time.

19 THE COURT: Right. My --- my point is --- all
20 right. My point is a little bit more basic okay? If ---
21 let's assume he --- we know he entered these pleas in
22 2003. In 2004, he is then convicted of another prox
23 charge. Under the law that existed prior to 2006, that
24 second prox charge, The State would not be able to seek
25 life without the possibility of parole, because the two

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1 that we're dealing with today in Court's three and four,
2 those were resolved on the same day. Okay? Because
3 that's what Section 45 basically said. So that would be
4 one strike. 2004 would be a second strike. Then let's
5 assume he goes out and in 2005, of course prior to the
6 2006 amendment, 2005 he commits another prox. He's
7 convicted of that, that would be strike eligible. That
8 would be the third strike.

9 So what I'm kind of asking you is --- and I'm asking
10 you 'cause I don't know, and I'm wanting to hear
11 argument, but the fact that he --- at the time that he
12 pled to these two offenses in 2003, because the law was
13 what it was, and those are treated as a single strike
14 does that cement that for all time? Under what authority
15 can The State then say, well, okay, the 2006 amendment
16 changed the underlying nature of his guilty plea to
17 subject him to a greater penalty should he 20 years down
18 the road be convicted of another strike offense. That
19 does ring of ex post facto to me a little bit. You see
20 what I'm saying?

21 All right. Mr. Brown do you want to ---

22 MR. BROWN: Judge I --- I can also --- I would --- I
23 understand what you're saying, but also look at the other
24 part of the statute when we were talking about a similar
25 or similar charge out of state. That we're bringing

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1 people in if transfer into South Carolina, and are
2 convicted of a charge later on that, I mean, your ---
3 your --- your --- it's almost --- it's very similar to
4 that. But they pled to some other charge outside of the
5 state come in are subjected to as well. So I'd add
6 that --- that caveat to it, or that ---

7 THE COURT: That's the danger of coming to South
8 Carolina then I would say.

9 MR. BROWN: Exactly. Exactly.

10 THE COURT: But that's --- I --- I that's probably
11 an apples and oranges comparison, I think. Maybe to have
12 some bearing in the sense that of course they never would
13 have been advised out of state hey, if you go to South
14 Carolina this will qualify as a strike, and so you want
15 to make sure that if you go to South Carolina you don't
16 commit two more strike offenses.

17 Mr. Tinsley, did you want to kind of follow up on this
18 discussion?

19 MR. TINSLEY: I mean, I think your questions go
20 directly to the matter. I don't --- I think I understood
21 in the Solicitor Black that --- that like the proximities
22 that they plead to that so The State would be sure to get
23 a strike, then almost like they drop (unintelligible).
24 But that's not what happened in this case. So I don't
25 know where that was --- and but it boils down to the law

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1 at that time be counted as one strike so that's where the
2 ex post facto comes in, so it should still be counted as
3 one strike. Thank you.

4 MR. BLACK: And Judge, just --- I mean, just to kind
5 of go back and forth on --- on this. I mean, I'm not
6 entirely sure --- I haven't seen the entire statute
7 pre-2006. I'm not really sure what it says. And if it
8 said that you can't ---

9 THE COURT: I --- I --- I thought it was Blair that
10 kind of explored all of that.

11 MR. BROWN: If --- if it says that if somebody
12 pleads on the day that it was two different strikes, so
13 that's construed as one. I mean, Mr. Tinsley didn't cite
14 that in his brief, and I haven't seen that anywhere.
15 Maybe I --- maybe I'm missing it.

16 (Simultaneous speaking)

17 MR. TINSLEY: I quoted --- just quoted the language
18 and what I --- and it's in the brief. What it says is
19 the prior statutes --- says prior conviction shall mean
20 the defendant has been convicted of a most serious
21 offense or serious offense on a separate occasion prior
22 to the incident of judication. That's the way the
23 language goes. I mean, you're right. That Bryant case
24 goes through that --- through that history.

25 MR. BROWN: And that's what the statute still says

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1 right now. So I don't see how that changes anything.

2 MR. TINSLEY: It --- it has been changed.

3 That's --- that's the prior language.

4 MR. BROWN: It's also the current language. I just
5 think date of conviction versus date of offense is two
6 separate things, Judge.

7 THE COURT: My understanding is that there was ---
8 and --- and perhaps it's case law. I looked at the case
9 yesterday and I thought it was Bryant. It was Justice
10 Kittredge's opinion. I recall Kittredge wrote the
11 opinion. And maybe it was --- maybe it was creation
12 of --- or maybe it was a rule of statutory interpretation
13 that the Supreme Court had created. It relates to the
14 interplay between Subsections 45 and 50. I remember that
15 from the opinion. Darcy --- Darcy (unintelligible).

16 MR. TINSLEY: I can hand up a hard case of the
17 Bryant case if you'd like, Judge.

18 THE COURT: I --- I --- I got it here. 'Cause it
19 was the Gorden case that got overruled and Bryant.

20 MR. TINSLEY: That's when the legislature added
21 language to change the statute.

22 THE COURT: Mr. Tinsley, have you been able to find
23 any research, or do any research, or locate any case law
24 that deals with this kind of thing on an ex post facto
25 violation? I --- I feel like we're throwing around ex

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1 post facto in kind of a loose way. This is not exactly
2 what it is, but it sort of is.

3 MR. TINSLEY: I --- I haven't found a case that ---
4 that would factually meet what we have here as --- to
5 address this legal issue. The --- the old --- the old
6 convictions under the old law versus here down the line,
7 and I've looked through everything I could find in this
8 state dealing with Bryant and with the code section.

9 THE COURT: And --- and Kittredge did allude to the
10 rule of leniency in his opinion, or was that the descent
11 from Justice Beatty?

12 MR. TINSLEY: He --- he --- he did mention it. And
13 I'll --- what he said was a genuine ambiguity exists as a
14 result of the proposed application of section 17-25-50 to
15 a given situation. The rule of lenity requires that the
16 doubt must be resolved in the defendant's favor. And
17 that's why he declined to put a bright-line ruling in.

18 THE COURT: Which is of course ever so helpful. Mr.
19 Grose, did you want to speak to the --- the questions as
20 it relates to Kendrick Lee, the LWOP situation?

21 MR. GROSE: I --- there --- there's a --- a
22 difference. Well, his were all on the same day. There's
23 a difference in the time when they occurred and there's a
24 difference in the --- the amount of time between the
25 convictions. I've got a separate concern, but don't ---

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1 I don't think we have anything with regards to what's
2 being discussed right now.

3 THE COURT: Okay. Do you --- did you want to go
4 ahead and voice your other concern at this point, or save
5 it for later?

6 MR. GROSE: (Unintelligible).

7 THE COURT: Go ahead.

8 MR. GROSE: You know, my --- my concern is that I
9 think it's fundamentally unfair to consider a proximity
10 conviction for marijuana as a strike. You know, this ---
11 this --- this country has had a history of particularly
12 people with color being disproportionately affected by
13 drug offenses. And we saw that a lot with the
14 (unintelligible) sentence and cocaine and crack cocaine
15 in the 90s, that sort of thing.

16 But the problem here is different. I mean, this was
17 a --- a confidential informant situation, which means
18 that they had a lot of a --- the government had a lot of
19 say in the location which this was going to take place.

20 And, you know, as I understand, this happened in an
21 apartment complex and the proximity playground or park
22 was, you know, in --- in --- in somewhat of separate
23 neighborhood.

24 But be that as it may, marijuana is legal in a lot of
25 states. It's been decriminalized to a certain extent in

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1 South Carolina. It's probably going to be legal one day
2 everywhere in country, because that's what the majority
3 of Americans want to see happen.

4 You know, and the --- so for that to be predicative of
5 something that changes the mandatory sentence from a
6 maximum of 20 years to a minimum of life, given the ---
7 The State of the way that our culture, and politics, and
8 public policy evolves, seems to be fundamentally unfair.

9 THE COURT: And basically a due process argument
10 under Federal fairness.

11 MR. GROSE: Yes, sir, and under The State and
12 Federal constitution.

13 THE COURT: Right. All right. Yeah, I'll --- I
14 know the law is what it is, but did y'all want to speak
15 to that argument or put anything on the record,
16 gentleman?

17 MR. BLACK: Not really, Judge. It's just --- it
18 kind of it what it is. It's got the --- the prox charge
19 from '06 and then the trafficking charge from a
20 couple --- couple years later. I guess just generally
21 you've got to look at why were these statutes enacted,
22 when they were enacted, and why they're on the still
23 books.

24 You know, you got, I think the --- the goal is to try
25 to keep drugs out of areas where children are. That

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1 apartment complex is very close to that park. There's a
2 lot of kids in that area, and that's --- I would --- I
3 would surmise that that's probably why the legislature
4 ended up enacting those certain laws, to try to look for
5 basically society's interest, kid's interest.

6 So yeah, regardless of what may be kosher now, or what
7 may not be kosher now, so that would be The State's
8 reply.

9 THE COURT: You would agree though that if the
10 legislature had amended the strikes to eliminate prox
11 with marijuana, that the prior conviction for marijuana
12 would no longer be a strike. The prior proximity charge
13 would no longer be a strike had they done that in the
14 interim or in the time that they've --- in the various
15 times that they've revised the --- the penal code.
16 I'm --- I'm assuming you would agree with that.

17 MR. BROWN: I think that would be any law, if --- if
18 they repeal the law, then would no be --- no longer be in
19 effect, so ---

20 THE COURT: Right.

21 MR. BROWN: But as of this day and the time of
22 conviction back in September, the laws were still the
23 same. And now I've come back to --- I found what ---
24 what I thinking about the statute that is not related to
25 this argument.

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1 THE COURT: Okay. Did you need to put that on the
2 record or ---

3 MR. BROWN: Once we get back to Mr. Tinsley's.

4 THE COURT: Yeah. We're --- we're back.

5 MR. TINSLEY: I think for sentencing, looking at the
6 '07 version of the of the law of the --- for the purposes
7 of convictions, I don't believe anything in F was changed
8 from 0 --- from 7 and 15.

9 MR. BROWN: Judge, this is from 2003, and that's
10 when the law was amended was in 2006. And they added
11 this language that's talking about the Bryant case.

12 THE COURT: Mr. Tinsley, Mr. Grose, are y'all aware
13 of anything that's pending maybe in C track or that's
14 pending for argument between either the Appellate Courts
15 or the Supreme Court. I know Mr. Grose, you and Mr.
16 Tinsley pay a lot ---

17 (Simultaneous speaking)

18 THE COURT: --- more attention to that than I do.

19 MR. GROSE: I have not. Not that specifically ---

20 THE COURT: Put it on list served.

21 MR. GROSE: Yeah, I haven't looked.

22 THE COURT: Yeah. Okay. Same for you I guess, Mr.
23 Tinsley?

24 MR. TINSLEY: Yeah, I'm not aware of anything.

25 And --- and --- and one thing I do --- it's not much of a

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1 legal argument. Mr. Grose talked about some of it,
2 fundamental fairness, I think it goes into this case.

3 From my understanding it seems like the solicitor is
4 the only person who wants this result. I know Ms.
5 Guillebeaux is here, and I --- I --- would be free to
6 address the Court. And I have a video --- two videos of
7 Mr. Hughey saying that he --- this prior trial that he
8 wants these gentleman to get probation or time served.

9 And I would like the Court to review these videos at
10 the appropriate time. Now, I don't know how to
11 proper --- I've got it on my telephone --- direct you to
12 it that way. Those videos have been shared with the
13 Solicitor's Office.

14 THE COURT: Sure. Well, I --- I --- I'm going to be
15 happy to hear from Mr. Hughey in a few moments and ---

16 (Simultaneous speaking)

17 MR. BROWN: Judge, looking at the statute from 2003,
18 and then 2006 and 2015. In 2006, the only language that
19 was added to F, everything remained the same except
20 they've added --- there's no requirement that
21 (unintelligible) the prior --- or previous conviction
22 must have been served or completed before the sentence of
23 life without parole can be imposed or (unintelligible).
24 But the ---

25 MR. TINSLEY: And that's a big change.

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1 MR. BROWN: Well, that first sentence remained the
2 same.

3 THE COURT: Right. But I'm still correct in that
4 the way the Supreme Court was interpreting Gorden, when
5 they decided Bryant, they --- they overruled Gorden.
6 Gorden was how that --- the interplay between 45 and 50
7 was understood at the time of 2003 despite whether there
8 was a change in the statutory law or not. Am I wrong?

9 MR. TINSLEY: No, I think your assessment is correct
10 that Gorden was the law at ---

11 THE COURT: And Gorden required a --- Gorden
12 required a --- a conviction on separate dates.

13 MR. TINSLEY: That's correct, Your Honor.

14 THE COURT: All right. Let --- let me take --- let
15 me take five minutes. I want to talk to my law clerk
16 about this. And we'll be back on the record.

17 MR. GROSE: Before you do that, can I just add one
18 thing?

19 THE COURT: Yeah. Yes. Sure, please.

20 MR. GROSE: On the argument that I made with regards
21 to the proximity statute in addition to the due process
22 clause is I would add the 8th Amendment and the
23 comparable provision of the South Carolina Constitution
24 regarding cruel and unusual punishment.

25 THE COURT: I ---

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1 MR. TINSLEY: And Judge, I --- even though my
2 clients are crack versus marijuana, I join in Mr. Grose's
3 arguments.

4 THE COURT: I was about to ask you if you did. Very
5 good. All right. I'll let the court reporter date these
6 exhibits today's date. We'll be back on the record in
7 about five minutes, if we could.

8 (Off the record 3:22 p.m. to 3:34 p.m.)

9 THE COURT: Okay. We are back on the record.
10 The --- The Court --- based on what has been presented to
11 me as it relates to Travis Lee, and again, I --- I ---
12 I'll say that I --- I would have preferred obviously to
13 have more time to research this a bit more thoroughly to
14 see if there are any other cases in our --- from our
15 sister jurisdictions that might have some bearing on this
16 issue.

17 But what's clear to the Court is at the time that
18 Travis Lee pled in 2003, the status of the law was
19 different. His lawyer is well known. Joe Smithdeal, is
20 of course now a --- a --- a Family Court judge, and
21 no --- I have no doubt that any legal advice that now
22 Judge Smith would have given to him would have been dead
23 on as far as the effect of whether these were two
24 separate strikes or a single strike. And clearly the law
25 as it existed in 2003, the law would have treated these

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1 as a single strike. The Court's also very familiar with
2 Judge Saunders and the detailed colloquy that he would
3 engage with individuals and especially something as
4 serious as a strike offense. The Court's of the opinion
5 that Judge Saunders would have been very thorough in
6 reviewing that with an individual at the time of their
7 plea.

8 This is a little bit different from the collateral
9 consequence kind of a thing where you have an offense
10 which maybe initially did not require, for example, sex
11 offender registry. But then the legislature concludes
12 that okay, well, we want to put kidnapping in, or we want
13 to add some other offense to the sex offender registry,
14 that's certainly within the prerogative of the
15 legislature.

16 But it still stands that at the time that --- that
17 Travis Lee entered this plea, the operative effect of
18 both of those serious convictions was a single serious
19 conviction. Saying that is an ex post facto violation
20 that --- it's not true in the sense that the legislature
21 is criminalizing past conduct, or punishing past conduct
22 with the statute recently passed.

23 But at the same time it has that kind of flavor in the
24 sense that if the Court were to conclude that the ruling
25 in Bryant should apply to Travis Lee's convictions in

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1 2003, if --- if the Court were to do that we would
2 essentially be --- or I would essentially be increasing
3 the penalty substantially for something or for some
4 conduct which took place at the plea in 2003. And even
5 though I don't have a specific legal lexicon for that ---
6 the event, I --- I --- I do find that for lack of a
7 better word, that would be fundamentally unfair to Mr.
8 Lee when at the time he entered his plea, in all
9 likelihood the advice he got and certainly the operative
10 effect of his plea at the time of that plea was that this
11 was a single strike.

12 Accordingly, I --- I conclude that Travis Lee is not
13 subject to the provisions of the LWOP statute and I of
14 course understand, appreciate that The State does take
15 exception to this. At the same time, the same law forces
16 the Court to conclude that Mr. Kendrick Lee is subject to
17 the provisions of the LWOP statute.

18 With that solicitor, if you want to give me --- and I
19 can understand you object to my ruling, you're protected,
20 but if you want to give me Travis Lee's prior criminal
21 history for purposes of sentencing, I'd be happy to hear
22 from you.

23 MR. BLACK: Yes, sir. And Judge, just again, so the
24 record's clear, I am objecting to your ruling regarding
25 Travis Lee. We think the language talking --- when it's

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1 talking about separate occasion, is talking offense date,
2 not actual date of when the plea is taken. I think, of
3 course we've made that on the record. I just want to put
4 that on the record so that whoever reviews this has that.

5 Regarding Travis Lee's record on, again, March the 3rd
6 of 2003, his criminal history says that he has --- he was
7 convicted of three counts of distribution of crack and
8 three counts prox. But again, look, when you actually go
9 back and pull the sheets, it's two counts, and you do
10 have those. He received a seven-year concurrent
11 sentence, to I believe, some other charges that he pled
12 on.

13 But as you know how they do these records or these rap
14 sheets, it's not always in chronological order. He's got
15 a simple assault and battery in 2009, a trespassing in
16 2009, he's got a --- an ABHAN conviction from 2010. And
17 that was under the old ABHAN. So it wasn't a strike.

18 THE COURT: A his demeanor, yeah.

19 MR. BLACK: He was also revoked on parole at the
20 same time when he pled on the APHAN charge, it looks
21 like.

22 1997, he's got a possession of crack, also a
23 lynching --- a lynching --- and a lynching conviction ---

24 THE COURT: That was in '97 or 2007?

25 MR. BLACK: That was in 1997.

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1 THE COURT: Okay. Sorry.

2 MR. BLACK: Burglary third degree in 2000 --- or I'm
3 sorry, 1997, and pointing and presenting in 1997. 2000,
4 it says that he's been convicted at --- it says ABWIK,
5 but it was remanded to magistrate court so I'm assuming
6 that it was an A and B third of some sort.

7 And I believe that's --- again, how they print these
8 things off is with no rhyme or reason.

9 1994, A and B simple assault and battery. Larceny,
10 and burglary third and --- well, I guess the larceny and
11 the burg was 1997, which I've already alluded to that was
12 a YOA so that's --- public disorderly conduct in 1996,
13 failure to return rental objects in 1997, and a gambling
14 conviction in 1997. It looks like there's also a
15 resisting arrest in 1997, if I didn't already say that.

16 THE COURT: All right. Thank you. Did Mr. Hughey
17 wish to address the Court?

18 MR. BLACK: I don't believe Mr. Hughey was able to
19 make it today. I believe ---

20 THE COURT: Oh.

21 MR. BLACK: His mother's here. And some family
22 member, but I don't think that they want to address the
23 Court. At least they did not back at the end of
24 September.

25 THE COURT: Okay.

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1 MR. BLACK: Unless it's changed.

2 THE COURT: Just if you could, ma'am, just approach
3 the microphone and give us your name again, because we
4 have a different court reporter please.

5 MS. GUILLEBEAUX: Yes, my name is Renee Guillebeaux.

6 THE COURT: Guillebeaux.

7 MS. GUILLEBEAUX: Huh-uh. I don't think they
8 deserve a life sentence without parole. I think they do
9 some time it'll teach them, it'll break them. But their
10 life without parole, they have kids. And I'm a parent
11 myself. And that's basically all I have to say.

12 THE COURT: Thank you, Ms. Guillebeaux.

13 All right. Anything further from The State on this.

14 MR. BLACK: Not from State, Your Honor.

15 THE COURT: All right. Mr. Tinsley, I'll start with
16 you, and I'll be happy to hear from you and certainly
17 anything that your client may want to say, or anything
18 that might be said on his behalf. Of course I'm
19 factually familiar with everything that transpired. And
20 obviously your client's role is factually perhaps
21 different, but happy to hear from you on that question.

22 MR. TINSLEY: Yes, Your Honor. I --- I --- I think
23 you hit the nail on the head that it is a different
24 factual role. I would say a lesser --- a lesser role.

25 Travis Lee is 46 years old. You heard his record,

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1 fairly extensive. Couple serious things. A lot of minor
2 stuff. Most of the stuff is very old. All of it's more
3 than ten years old. He's been a very productive member
4 of society, for more than ten years. He's worked since
5 he's been out on bond, he's worked at FLEX over in
6 Abbeville, made it up to lead supervisor on his shift.
7 He's got --- he has two coworkers here, one of home is
8 going to speak on his behalf here --- here in just a
9 minute.

10 He's been nominated multiple times here this year for
11 employee of the month. As Ms. Guillebeaux said, he is a
12 father. He has four children, two of whom are here
13 today. His children have a pretty wide age --- age range
14 between them. The oldest is 28, and the there's a
15 26-year-old, those are the two that are here today. He
16 also has a ten-year-old and a one-month-old.

17 He was living --- prior to being incarcerated a few
18 weeks ago he was living with April Bell, who is the
19 mother of the one-month-old, helping to raise his child,
20 supporting the child.

21 He has great family support here. Relatives sitting
22 on the second row, his 82-year old mother, Virginia Lee,
23 his brother Greg Lee. And Ms. --- Ms. Guillebeaux stated
24 her --- her position which I think was, you know she's
25 obviously not seeking revenge.

Proceedings

1 And Mr. Hughey, as I've told you, I've got these
2 videos (unintelligible) but I've summarized what his
3 position was at that time was probation and time served.
4 And he has got 180 days credit from before he was bonded
5 out, and the three weeks he's been in jail over in
6 Abbeville since the trial.

7 And I believe his coworker, Patty Lewis, would like to
8 address the Court at this time.

9 THE COURT: Sure. Ms. Lewis, could just --- if you
10 come down to this microphone down here, please Ms. Lewis.
11 Yes, ma'am.

12 MS. LEWIS: I'd like to say really good things about
13 Travis. I've worked with him for almost two now --- two
14 years now. I'm new to the community in Abbeville. I'm
15 in recovery for eight years. And he's like an
16 inspiration to me to see everything that he's been
17 through.

18 And he's a very, very hard worker. Nobody --- they
19 put his position up for grabs and it was like kind of
20 upset me, because he's so good at what he does.

21 And I think that life or whatever they're offering
22 him, I think he does not deserve it, because he's really
23 outstanding at work. Everybody loves him. He's a
24 go-getter, gets along with everybody, never complains.
25 He just really never says anything.

Proceedings

1 But I love Travis to death and I really don't want to
2 see anything bad --- and especially his significant other
3 now, April, and the new baby.

4 And that's about it.

5 THE COURT: Thank you very much.

6 MS. LEWIS: Thank you.

7 THE COURT: I appreciate you being here.

8 MR. TINSLEY: And I believe somebody from the family
9 may want to address the Court. I give them that
10 opportunity at this time. And this will be his brother
11 Greg Lee coming up to speak on his behalf.

12 THE COURT: And --- and obviously the record will
13 reflect that he has a lot of relatives here today in
14 support of him. But Mr. Lee, happy to hear anything you
15 may want to say.

16 MR. G. LEE: Yes, my name is Gregory Lee. I'm
17 Travis Lee's brother. And they all heard --- I've heard
18 a lot of bad things about what they have done, but don't
19 nobody know the good things that happened to him. Ken,
20 he cooks at my mom house all the time. He made sure this
21 elderly lady down the road named Ms. Ella (phonetic) make
22 sure she has a plate all the time, make sure the next
23 door neighbor. And Travis, he --- he give a lot things
24 away to needy kids. He have a lot of kids, so if anybody
25 need some clothes, or shoes, he also helps them out.

Proceedings

1 Both of them are --- they've done something that was
2 wrong and I know they do regret it. But at the same
3 time, they have kids, and I know that they want to be
4 with their child still. And they do --- sorry from what
5 they did.

6 THE COURT: Thank you, Mr. Lee.

7 MR. TINSLEY: And --- and --- and Judge, Travis Lee
8 is just his --- his heart's out to everybody that's been
9 involved in this case. I've advised him not to speak
10 given that it's not a guilty plea situation. But it ---
11 it --- he is --- you know, his heart goes out to --- to
12 everyone who been impacted on this --- on this case.

13 In --- in conclusion, Travis' his role was the lesser
14 role as in the case.

15 The record is --- is old. The serious stuff real,
16 real old. And --- and for that, I --- I --- I would ask
17 you to impose a fair sentence. And obviously the Court
18 knows how to calculate these things given it's a zero to
19 20 range carrying 85 percent. And I would ask you to
20 give him --- give him a chance to be in all his family's
21 life, particularly these two young children that --- that
22 he's the father of.

23 I'd like you to consider all that when imposing
24 sentence. Thank you, Your Honor.

25 THE COURT: Thank you, Mr. Tinsley. Mr. Grose, did

Proceedings

1 you want to address the Court or ---

2 MR. GROSE: Before I do that, I think there's a
3 number of people who want to speak for Ken. And whoever
4 wants to speak for Ken, I --- I --- Ken, I ask that you
5 come forward and form a line and ---

6 THE COURT: All right. Ma'am, if you could just
7 give me your name before you speak, please.

8 MS. HUDSON: Tanisha Hudson.

9 THE COURT: Ms. Hudson, yes, ma'am.

10 MS. HUDSON: Just want to say that it's not fair
11 for none of us. I just think that everything is --- was
12 blown out of proportion. I do feel for Tobias and his
13 suffering, but also my family is suffering as well.

14 My brother is not a bad person. He's a good-hearted
15 person. He always tries to do everything that he can for
16 anybody. And my uncle as well. I just think that, you
17 know, they need to get --- have a fair chance at this.
18 This is their life we talking about. And, like, the
19 Court should represent life not death.

20 And I think y'all giving him a life sentence, 'cause
21 that's what we are telling him that they're --- they're
22 getting death and we supposed to be about life, giving a
23 chance correcting their issues and giving them a chance
24 to learn from their mistakes just as well as Tobias. You
25 know, give him a chance to be a better person.

Proceedings

1 Like if this can be a beneficial to each --- each
2 person, Tobias, and my brother, and uncle as well.

3 I just think that we're not handling --- handling the
4 right way. I think that everybody --- we make mistakes
5 based off emotions and actions. And we don't actually
6 think about what we doing until after the fact, and then
7 we are sorry and sympathetic for the things that we have
8 done.

9 And by the time that we come to our senses, you know,
10 like The State gone pick up it and they done blew it out
11 of proportion with us. They want to win of course. But
12 they're not realizing the fate that they're causing on
13 other people lives as well.

14 Like these guys are good men even though they have
15 made decisions in their life that don't dictate who they
16 are. Everybody deserve a second chance. I'm pretty sure
17 everyone in here has made mistakes and people don't hold
18 it against their life. It's like it's different measures
19 for different people.

20 I just think that they just deserve a fair chance and
21 they shouldn't be given a life sentence without parole
22 for this. I mean, they regret what happened, everybody
23 is emotional right now, and we can't change the --- what
24 happened, but we can try to fix it ongoing.

25 You know, like, (unintelligible) came up and said

Proceedings

1 she's a mother. I'm a mother and that's my uncle and my
2 brother. I don't want them to do life together. They
3 have a family, they have kids. They need to be here to
4 take care of children and to teach their children so they
5 won't make the same mistakes. It's breaking generational
6 curses and that's what we have to do.

7 We cannot just allow this happen like this. We going
8 to have to set the tone and do it the right way. Yes,
9 they wrong. He was wrong as well. But the same time,
10 like, we can all work together to overcome this. Like it
11 don't have to be no life sentence without parole, because
12 they don't deserve that.

13 Do they need to be punished? That's up to you, but
14 it --- what degree? I mean, I think that a life sentence
15 without parole is just very unfair.

16 THE COURT: Ms. Hudson. I --- I understand your
17 position 100 percent. And understand I've got very
18 little discretion based upon my understanding of the law
19 in terms of sentence for Kendrick. And if I had
20 discretion, perhaps I would be exercising differently.
21 But the law is what the law is. I'm not allowed to
22 deviate from that.

23 MS. HUDSON: Yes, be --- but we're not above the
24 law either. So ---

25 THE COURT: I agree. Thank you.

Proceedings

1 MS. HUDSON: I mean we should --- we all got to
2 abide by the law, 'cause we not greater than the law.

3 THE COURT: Yes, ma'am.

4 MS. HUDSON: That's why this country supposed to be
5 built on biblical truth and biblical laws. Like we need
6 to up hold these laws and stop being so much traditional.
7 If these laws was set here they been set for a reason.
8 And we shouldn't go and base things on our personal
9 feelings or to get (unintelligible) or something. We
10 have to be fair and just.

11 Thank you, sir.

12 THE COURT: Thank you, ma'am. And yes, ma'am, your
13 name, please.

14 MS. COBB: My name's Miesha Cobb.

15 THE COURT: Ms. Cobb. Yes, ma'am.

16 MS. COBB: I'm Kendrick Lee's girlfriend --- baby
17 mama. I've got three kids for him. One little girl and
18 two boys. My little girl is five, her name's Kensley
19 (phonetic), and my son is two, and I have a son on the
20 way.

21 And Ken is a good father. And since he been gone, my
22 kids been asking every day when they daddy come home,
23 they need their daddy. He don't deserve no life without
24 parole. And to see my kids go through this every day
25 and --- and my unborn son, to be without a father, I

Proceedings

1 don't --- I can't --- we can't do this. I can't stand
2 this.

3 THE COURT: I'm very sorry, Ms. Cobb.

4 MS. CRAWFORD: My name is Myrisha Crawford, I'm
5 Kendrick Lee's sister --- older sister. And I'm Travis
6 Lee's niece. I just feel like in the Court could show
7 mercy upon them. Yes, they made a mistake and I just
8 feel like neither one of them deserves life without
9 parole.

10 I work with people every day in the recovery community
11 as well as with probation and parole. I worked at South
12 Carolina Department of Corrections, so I know people make
13 mistakes. And I do know that people learn from their
14 mistakes and they can change.

15 And I am 100 percent sure, and I am very
16 family-oriented I stand behind them 100 percent. And I
17 know that if given a chance, they will change. They will
18 not be committing any other crimes. They will go the
19 straight and narrow. And I know this.

20 And --- and I just see that just --- I just feel like
21 if --- if the Court could just show mercy and do not
22 sentence them to life without parole. Thank you.

23 THE COURT: Thank you, Ms. Crawford.

24 MR. GROSE: Your Honor, just briefly, this doesn't
25 pertain exactly to sentencing, but it does pertain to

Proceedings

1 some things that were said here earlier today, which is
2 despite what records reflect, and the record's reflected
3 Mr. Smithdeal, now Judge Smithdeal was Ken's lawyer.
4 Kendrick has a recollection of being in front of the
5 Court with Towns Jones that day, even though the records
6 appear to be different than that.

7 Mr. Tinsley's requested twice that for you to view the
8 two videotapes of Mr. Hughey. I don't believe you have
9 yet. Nobody's disputed the fact that in both of those
10 tapes he indicated that he would --- was requesting at
11 that time probation for everybody.

12 But I join in the request for Your Honor to look at
13 those --- those videos.

14 And finally, I would just --- I would just ask ---
15 well, I --- I would note --- you've heard a little bit
16 about, you know, Ken is a family man. He was working in
17 one of car washes in Abbeville at the time. He actually
18 has ten children with one along the way.

19 And based on the --- the totality of the
20 circumstances, Mr. Hughey's requesting those videos, Ms.
21 Guillebeaux's request today, what you heard from the
22 members of community, I would just like to request on the
23 record that The State withdraw the notice of intent to
24 seek life without parole, and allow Your Honor that
25 discretion that you indicated that you would be prepared

Proceedings

1 to exercise if that impediment wasn't in the way.

2 THE COURT: Okay. And I --- I assume that your
3 client does not wish to address the Court for the same
4 reason ---

5 MR. GROSE: On my --- on my advice, he's not going
6 to address the court and I trust you won't hold that
7 against him.

8 THE COURT: Okay. And Solicitor, perhaps I got the
9 representation incorrect. I think I may have said that
10 Mr. Smithdeal was Mr. Lee's lawyer, was it the other ---
11 or Travis Lee's lawyer, was it the other way around?
12 Or ---

13 MR. BLACK: No, sir, what you said, what was I
14 believe incorrect. Judge Smithdeal --- now Judge
15 Smithdeal, represented Kendrick Lee according to the
16 paperwork.

17 THE COURT: Okay.

18 MR. BLACK: And B. Alex Burney represented Mr.
19 Travis Lee back in ---

20 THE COURT: Okay.

21 MR. BLACK: --- in 2002, 2003.

22 THE COURT: All right. I apologize for that. And
23 quite honestly from the sentencing sheet, I can't
24 tell --- the only legible signatures are those of Travis
25 Lee and Kendrick Lee. I could not tell.

Proceedings

1 MR. BLACK: And I believe I looked it up by the bar
2 number in order to ---

3 THE COURT: Oh, okay.

4 MR. BLACK: --- to --- yes, sir.

5 THE COURT: What --- what was the date that we
6 concluded this trial?

7 MR. BLACK: September the 28th, I believe.

8 THE COURT: September 28th. Okay. Mr. Tinsley, I
9 wrote it down, but I --- you said it was around 200 ---
10 201 days credit, something like that?

11 MR. TINSLEY: Something -- yes, sir, Your Honor.

12 MR. BLACK: I thought you said 180.

13 MR. TINSLEY: (Unintelligible).

14 THE COURT: I think was one --- you said 180, and
15 then the last three weeks. So 180, plus 21 is that about
16 right? Two --- I'm going to say 201.

17 MR. TINSLEY: Okay. Thanks, Your Honor.

18 THE COURT: All right. Mr. Travis Lee, we'll ---
19 we'll --- we'll begin with you. I --- I --- your
20 lawyer's representations as far as Mr. Hughey wanting you
21 to --- to get probation, I --- I accept those 100 percent
22 without any hesitation or any equivocation. So the fact
23 that Mr. Hughey has forgiven you and would like to see
24 you receive probation, of course that is something that
25 the Court has taken into account.

1 But at the same time, Mr. Lee, the --- the one big
2 problem with all this case --- well, there are a couple
3 of big problems. First of all, understand that the
4 testimony was that Mr. Hughey, for all intents and
5 purposes was --- was dead at least on two, maybe more
6 prior occasions, maybe four times. He --- he essentially
7 died and was brought back to life. And so it's by the
8 grace of God that --- that you and Kendrick Lee are not
9 facing murder charges where we'd be talking about
10 30 years to life. Okay?

11 I --- I have taken into account Mr. Hughey's desires
12 as reflected by your attorney. I --- I've of course also
13 taken to account the lesser role that you had in all of
14 this, in the sense that you weren't the one wielding the
15 bat and actually striking the blows on Mr. Hughey. So
16 I've taken all that into account.

17 But at the same time, Mr. Lee, this is what happens
18 when people take the law into their own hands. If --- if
19 you gentleman had honestly believed that --- that Mr.
20 Hughey was responsible for the theft of some shoes, then
21 the proper thing to do is call the police. And --- and
22 in a civilized society, we just can't have people taking
23 the law into their own hands. Okay?

24 I've taken that into account as well as your criminal
25 history, and I've simply given you a straight seven

Proceedings

1 years. So you got seven years to do. And of course you
2 get credit for 211 days that you served in jail.

3 Mr. Kendrick Lee, the sentence that I'm imposing
4 arises by operation of statute. If I had any discretion,
5 I may very well have been inclined to exercise it. But
6 obviously, your culpability is substantially more than
7 your codefendants in the sense that you were the one
8 actually inflicting the blows on Mr. Hughey. And so in
9 some respects, perhaps this is an appropriate sentence
10 in --- in light of the severity of his injuries.

11 And for all the same reasons that I explained to
12 Travis Lee, we just can't have people taking the law into
13 their own hands.

14 Again this sentence --- this sentence arises by
15 operation of law and pursuant to Section 72545, I must
16 impose a life sentence.

17 I do, however, wish you luck, gentleman.

18 And of course ten days for any other motions. And if
19 you're going to file of notice of intent to appeal, you
20 need to let your lawyers do that for you. I'm sure
21 they'll do that on your behalf. And of course any action
22 for post-conviction relief has to be filed within one
23 year of any appeal becoming final.

24 Gentleman, good luck. Thank you.

25 (PROCEEDINGS CONCLUDED AT 4:08 P.M.)

CERTIFICATE OF TRANSCRIBER

I, JEANNE MELDRIM, a court-approved transcriber, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the proceedings had and evidence introduced in the trial of the captioned case, relative to appeal, in the Court of CIRCUIT COURT 8 for ABBEVILLE COUNTY, South Carolina, on the 19th Day of October, 2023.

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

January 12, 2024

A handwritten signature in black ink that reads "Jeanne Meldrim". The signature is written in a cursive, flowing style with a prominent initial 'J'.

Jeanne Meldrim

Transcriber

STATE OF SOUTH CAROLINA

COUNTY OF Abbeville
STATEvs
Rendrick M. LeeAKA: _____
Race: B Sex: M Age: 27

DOB: _____ SS#: _____

Address: _____

City, State, Zip: Abbeville SC 29620

DL# _____ SID# _____

In disposition of the said indictment comes now the Defendant who was

TO: Dist. of Marijuana w/ 1/2 mile of school/playground (upto 10 yrs)In violation of § 44-53-445 of the S.C. Code of Laws, bearing CDR Code # 0107☒ NON-VIOLENT ☐ VIOLENT ☒ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS ☐ §17-25-45The charge is: ☒ As indicted, ☒ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials) _____The plea is: ☐ Without Negotiations or Recommendation, ☒ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST: _____

[Signature]
Solicitor71182
SC Bar #Rendrick M. Lee
Defendant[Signature]
Attorney for Defendant65083
SC Bar #WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections ☐ County Detention Center,for a determinate term of 10 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: 09 493, 09 494, 09 498, 06 299, 06 270☒ The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by the State Department of Corrections.☐ The Defendant is to be placed on Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

Pursuant to 18 U.S.C. Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered

Total: \$ _____ plus 20% fee: \$ _____

Payment Terms: _____

☐ Set by SCDPPPS _____

Recipient: _____

*Fine:	\$	_____
\$14-1-206 (Assessments 107.5%)	\$	_____
\$14-1-211 (A)(1)(Conv. Surcharge)	\$100	\$ <u>100.00</u>
\$14-1-211 (A)(2)(DUI Surcharge)	\$100	\$ _____
\$56-5-2995 (DUI Assessment)	\$12	\$ _____
\$56-1-286 (DUI Breath Test)	\$25	\$ _____
\$47.12 (Public Def/Prob)	\$500	\$ _____
\$14-1-212 (Law Enforce. Funding)	\$25	\$ <u>25.00</u>
\$14-1-213 (Drug Court Surcharge)	\$100	\$ <u>100.00</u>
\$50-21-114 (BUI Breath Test Fee)	\$50	\$ _____
\$56-5-2942(J) (Vehicle Assessment)	\$40/ea	\$ _____
\$90.7(SCCJA Surcharge)	\$5	\$ <u>5.00</u>
3% to County (if paid in installments)		\$ _____
TOTAL	\$	\$ <u>230.00</u>

Clerk of Court/Deputy Clerk

[Signature]
Je RheeCOURT
1
10-19-2023
@DCPP

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#:

2006-GS-01-495

A/W#:

J095525

Date of Offense:

7/6/06

S.C. Code §:

44-53-445

CDR Code #:

0107

SENTENCE SHEET

☐ CONVICTED OF or ☒ PLEADS

Date of Offense:

7/6/06

S.C. Code §:

44-53-445

CDR Code #:

0107☐ Mandatory GPS (CSC w/minor 1st or Lewd Act)☐ Defendant Waives Presentment to Grand Jury.☒ Negotiated Sentence,☐ Recommendation by the State.

PTUP _____

_____ days/hours Public Service Employment

Obtain GED ☐

Attend Voc. Rehab. Or Job Corp. _____

May serve W/E beginning _____

Substance Abuse Counseling ☐Random Drug/Alcohol Testing ☐

Fine may be pd. in equal, consecutive weekly/monthly

pmts. of \$ _____ Beginning _____

\$ _____ Paid to Public Defender Fund

Other: **TRUE COPY**BY [Signature]

ABBEVILLE COUNTY CLERK OF COURT

☐ Appointed PD or appointed other counsel,

\$47.12 requires \$500 be paid to Clerk

during probation.

Presiding Judge [Signature]Judge Code: 2154Sentence Date Nov. 13, 2009

THE STATE OF SOUTH CAROLINA**INDICTMENT FOR**

COUNTY OF ABBEVILLE

VIOLATION SECTION 44-53-445 (Proximity)

At a Court of General Sessions, convened on the 15th day of September, 2006, the Grand Jurors of Abbeville County present upon their oath:

COUNT ONE

That KENDRICK MONTREZ LEE, did in Abbeville County, state aforesaid, on or about the 6th day of July, 2006, wilfully, unlawfully and knowingly distribute, sell, purchase, manufacture, or possess with intent to distribute, a quantity of Marijuana, a Schedule I controlled substance, while in, on, or within a one-half mile radius of the grounds of a public or private school; a public playground or park; a public vocational or trade school or technical educational center; or a public or private college or university, in violation of Section 44-53-445 of the South Carolina Code of Laws, 1976, as amended

Against the peace and dignity of the State, and contrary to the statute in such cases made and provided.



Solicitor

R 783

WITNESSES

Raymond Vandiver

WARRANT NUMBERS

095525

[Signature]

Foreman of the Grand Jury

Date: SEP 15 2006

VERDICT

True Bill

Foreman

THE STATE OF SOUTH CAROLINA

COUNTY OF ABBEVILLE

COURT OF GENERAL SESSIONS

September Term, 2006

Indictment # 06GS01- *495*

THE STATE

vs.

KENDRICK MONTREZ LEE

Blw 9-22-06

FTA 11/8/07
[Signature] Asst. Sol.

restored

INDICTMENT FOR

VIOLATION SECTION 44-53-445 (Proximity)

TRUE COPY
BY *Shondal Beaggs*
ABBEVILLE COUNTY CLERK OF COURT
A. 783

STATE OF SOUTH CAROLINA

COUNTY OF Abbeville
STATE VS.Kendrick Montrez Lee

AKA: _____

Race: BLK Sex: M Age: 26DOB: [REDACTED] SS#: [REDACTED]Address: Abbeville, SC 29620DL#: [REDACTED] SID#: _____

IN THE COURT OF GENERAL SESSIONS

R. 784

INDICTMENT/CASE#: 09GS01-0170A/W#: J096309Date of Offense: 5/13/2008S.C. Code § : 44-53-0375(C)CDR Code #: 0450 0452

SENTENCE SHEET

COURT
2
10-19-2023
DOORIn disposition of the said indictment comes now the Defendant who was ☐ CONVICTED OF or ☒ PLEADSTO: Trafficking Crack Cocaine 10-28g 1st off. (3-10 yrs)in violation of § 44-53-375 of the S.C. Code of Laws, bearing CDR Code # 0450 0450☐ NON-VIOLENT ☒ VIOLENT ☒ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS(CSC ☐ §17-25-45
w/minor 1st or Lewd Act)The charge is: ☐ As Indicted, ☒ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (Defendant initial)The plea is: ☐ Without Negotiations or Recommendation, ☒ Negotiated Sentence, ☐ Recommendation by the State.ATTEST: [Signature] 71182 Kendrick Lee [Signature] 63083Andrews, Demetrios G
El. zabeth P. write

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 10 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ yearsand/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: 09 493, 09 494, 09 495, 09 498, 06 299☒ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied
by the State Department of Corrections.☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered PTUP _____

Total: \$ _____ plus 20% fee: \$ _____

Payment Terms: _____

☐ set by SCDPPPS _____

Recipient: _____

*Fine: _____

§ 14-1-206 (Assessments 107.5 %)

§ 14-1-211(A)(1) (Conv. Surcharge)

§ 14-1-211(A)(2) (DUI Surcharge)

§ 56-5-2995 (DUI Assessment)

§ 56-1-286 (DUI Breath Test)

§ 35.13 (Public Def/Prob)

§ 73.3, 1B TP (Law Enforce. Funding)

§ 33.7, 1B TP (Drug Court Surcharge)

§ 50-21-114(BUI Breath Test Fee)

§ 56-5-2942(J) (Vehicle Assessment)

3% to County (if paid in installments)

§ 90.11 TP (SCCJA Surcharge)

TOTAL

Emily McMahon
Clerk of Court Deputy ClerkCourt Reporter: Jo Rice

_____ days/hours Public Service Employment

Obtain GED _____

Attend Voc. Rehab. or Job Corp. _____

May serve W/E beginning _____

Substance Abuse Counseling _____

Random Drug/Alcohol testing _____

Fine may be pd. in equal, consecutive weekly/monthly
pmts. of \$ _____ beginning _____

\$ _____ paid to Public Defender Fund

Other: _____

TRUE COPY

BY Shandal Bragg
ABBEVILLE COUNTY CLERK OF COURT☐ Appointed PD or appointed other counsel, §35.13 TP
Requires \$500 be paid to Clerk during probation.PRESIDING JUDGE [Signature]Judge Code: 2154Sentence Date: Nov. 13, 2009

SCCA/218403(2009)

THE STATE OF SOUTH CAROLINA**INDICTMENT FOR**

COUNTY OF ABBEVILLE

**TRAFFICKING IN CRACK COCAINE
44-53-0375**

At a Court of General Sessions, convened on the 17th day of April, 2009 the Grand Jurors of Abbeville County present upon their oath:

That Kendrick Montrez Lee, did in Abbeville County, state aforesaid, on or about the 13th day of May, 2008 willfully, unlawfully, and knowingly traffic in cocaine base (crack cocaine), to wit: that the said defendant(s) did sell, manufacture, deliver, purchase, or bring into this State, or provide financial assistance or otherwise aid, abet, attempt, or conspire to sell, manufacture, deliver, purchase, or bring into this State, or was in actual or constructive possession or did knowingly attempt to become in actual or constructive possession of 10 grams but less than 28 grams of cocaine base (crack cocaine), in violation of Section 44-53-375 of the South Carolina Code of Laws, 1976, as amended

Against the peace and dignity of the State, and contrary to the statute in such cases made and provided.


Solicitor

R. 786

WITNESSES

John Schrier
Abbeville Police Department

WARRANT NUMBER

J096309

Jim Arlon

Foreman of the Grand Jury

Date: **APR 17 2009**

VERDICT

Foreman

THE STATE OF SOUTH CAROLINA

COUNTY OF ABBEVILLE

COURT OF GENERAL SESSIONS

April Term, 2009

Indictment # 09GS01- *170*

THE STATE

vs.

Kendrick Montrez Lee

INDICTMENT FOR

TRAFFICKING IN CRACK COCAINE
44-53-0375

TRUE COPY
BY *Shandai Boepp*
ABBEVILLE COUNTY CLERK OF COURT

A. 786

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM ABBEVILLE COUNTY
Court of General Sessions
Frank R. Addy, Jr., Circuit Court Judge

Appellate Case No. 2023-001843

The State, ...Respondent,

v.

Kendrick Montrez Lee, ...Appellant.

Rule 210, SCRCP Certification

The Record on Appeal contains all material proposed to be included by any of the parties and not any other material.

Respectfully Submitted,

By s/E. Charles Grose, Jr.

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December 16, 2024
Greenwood, South Carolina

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SC Court of Appeals

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Dec 27 2024

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM ABBEVILLE COUNTY
Court of General Sessions
Frank R. Addy, Jr., Circuit Court Judge

Appellate Case No. 2023-001843

The State, ...Respondent,

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FINAL BRIEF OF APPLANT

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QUESTIONS PRESENTED

Question I

Did the trial court err by requiring Ken Lee, a black man, to face trial by an all-white jury and denying his timely request for a continuance to a term of court when the pool of jurors actually appearing for jury service reflected a cross-section of the community?

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Did the trial court err by denying Ken Lee's Batson motion when the prosecution impermissibly relied on criminal history to strike the sole black juror while seating white jurors with criminal records?

Question III

Did the trial court abuse its discretion when it failed to determine whether the sole black juror's hearing issues could be accommodated?

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Did the trial court err by not granting a mistrial after making improper opening remarks to the jurors that violated *State v. Beaty*, 423 S.C. 26, 813 S.E.2d 502 (2018) and *State v. Daniels*, 401 S.C. 251, 737 S.E.2d 473 (2012)?

Question V

Did the trial court err by not providing an instruction pursuant to *State v. King*, 158 S.C. 251, 155 S.E. 409 (1930), regarding the jurors' obligation to resolve any doubt between the greater and lesser offenses, in favor of the accused, when that jury instruction was not required but permissible?

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Did the trial court err by providing the jurors a "cascading" verdict form, rather than structuring the verdict form in the manner requested by Ken Lee, which would have mitigated the trial court's error in the opening instructions and ensured the jurors gave due consideration the lesser included offenses?

Question VII

Did the trial court err by not quashing the State's notice of intent to seek life without parole when the enhanced sentences was based on a conviction involving marijuana when Ken Lee objected to this charge being used to enhance the sentence when South Carolina

has decriminalized marijuana and marijuana one day likely will be legal throughout the United States?

STATEMENT OF CASE

This appeal arises out of the trial of Kendrick (“Ken”) Lee, a black male, before an all-white jury, in Abbeville, South Carolina, the self-proclaimed “cradle and deathbed of the confederacy.”

For an incident occurring on October 6, 2020, the State charged Ken Lee and his Uncle Travis Lee with attempted murder. R. 9.¹ On February 16, 2021, the State noticed its intent to seek life without the possibility of parole in the event of a conviction of Ken Lee for attempted murder or the lesser included offense of assault and battery of a high and aggravated nature (“ABHAN”). R. 15. On March 3, 2021, the Honorable Frank R. Addy, Jr. granted bond, noting Mr. Lee “turned himself in to the authorities,” “attempted murder is clearly and overcharge,” and “it’s not like the alleged victim’s involvement was wholly innocent.” R. *.

On August 8, 2023, the State noticed its intent to seek life without the possibility of parole in the event of a conviction of Mr. Lee for the offense of ABHAN. R. 16. On September 8, 2023, the State indicted Mr. Lee and his uncle for ABHAN. R. 11-14. From September 25-28, 2023, the State tried Ken Lee and Travis Lee before Judge Addy and an all-white jury. Micah Black and Yates Brown represented the State. Undersigned counsel represented Ken Lee, and Jamison Tinsley represented Travis Lee. On September 28, 2023, the jurors convicted Ken and Travis Lee of ABAHN, and Judge Addy deferred sentencing. R. 5-6, 669-86.

¹ The State initially indicted Mr. Lee and his uncle for attempted murder.

On October 19, 2023, Judge Addy sentenced Ken Lee to life imprisonment without the possibility of parole and Travis Lee to seven years imprisonment. R. 778-79. On October 30, 2023, Ken Lee moved for a new trial and, alternatively, for Judge Addy to reconsider the sentence. R. 17-24. On November 21, 2023, Judge Addy denied the new trial motion and declined to reconsider the sentence. R. 7-8. This appeal follows.

STANDARD OF REVIEW

“In criminal cases, this Court sits to review errors of law only and is bound by factual findings of the trial court unless an abuse of discretion is shown.” *State v. Blackwell*, 420 S.C. 127, 136, 801 S.E.2d 713, 718 (2017) (internal citations and quotations omitted). “An abuse of discretion occurs when the court’s decision is unsupported by the evidence or controlled by an error of law.” *Id.*

Before a federal constitutional error can be held harmless the reviewing court must be able to declare a belief that it was harmless beyond a reasonable doubt. *Chapman v. California*, 386 U.S. 18 (1967). “Whether an error is harmless depends on the circumstances of the particular case. No definite rule of law governs this finding; rather, the materiality and prejudicial character of the error must be determined from its relationship to the entire case. Error is harmless when it could not reasonably have affected the result of the trial.” *State v. Mitchell*, 286 S.C. 572, 573, 336 S.E.2d 150, 151 (1985) (internal quotations omitted) (quoting *State v. Key*, 256 S.C. 90, 93, 180 S.E.2d 888, 890 (1971)). This Court does “not to question whether the State proved its case beyond a reasonable doubt, but whether beyond a reasonable doubt the trial error did not contribute to the guilty verdict.” *State v. Reyes*, 432 S.C. 394, 406, 853 S.E.2d 334, 340 (2020) (citing *State v. Tapp*, 398 S.C. 376, 389-90, 728 S.E.2d 468, 475 (2012)). In cases like this one,

when “credibility” is the “most critical determination” for jurors to make in the case, the error is not harmless. *State v. Jennings*, 394 S.C. 473, 480, 716 S.E.2d 91, 95 (2011).

STATEMENT OF FACTS

The trial court selected an all-white jury. The trial court seated two white men as alternates. R. 43-51. Pursuant to *Batson v. Kentucky*, 476 U.S. 79 (1986), Ken Lee and Travis Lee moved for the prosecution to explain its strike of Juror 191, a black male and the sole black person presented for possible selection on the jury. The Lees noted—just as they had noted in Chambers prior to jury selection—that number of black people appearing for jury services was fraction of number of black people summoned for jury duty. Of the 200 jurors summoned, 41 (20.5% of the number summoned)² were black. Twenty-nine black jurors did not respond to their summons.³ Four jurors returned their juror summons to the Court but did not appear for jury service. Three jurors were excused. Of the 41 black people summoned, only five appeared for service. The Lees argued the problem was not with the original list of jurors summoned, but rather the number of black people lost between the summonses and service in court. Only two black people remained in the jury pool after jury qualification and voir dire. The Lees argued, “Statistically that 20 percent [of the original list summoned] should have stayed constant throughout, but it didn’t.” R. 51-59.

² According to the 2020 census, 25.9% of Abbeville County is black or African American. <https://www.census.gov/quickfacts/fact/table/abbevillecountysouthcarolina,US/PST045222> (last viewed June 10, 2024).

³ Abbeville County did not do anything to follow up on the jurors not returning their summonses other than check to see if the Auditor’s Office had a different address for the non-responding jurors. R. 58.

The Solicitor explained that Juror 191 had disorderly conduct convictions in 1985 and 1989 and a criminal domestic violence conviction in 2003. The prosecution disclosed its knowledge that Jurors 186 and 188 also had criminal convictions. The Lees called the trial court's attention to *State v. Stewart*, 413 SC 308, 775 S.E.2d 416 (Ct. App. 2015) where this Court "reversed because the State used criminal histories to justify striking certain jurors, but also sat jurors that had criminal histories that were deemed to be similarly situated." The prosecution attempted to distinguish the criminal histories of the different jurors. The trial judge announced a preference "for juries to be racially balanced . . . if for no other reason than perception" because "it's always best to have as wide a cross section of the community if at all possible." The trial court urged the prosecution to accept Juror 191 as an alternate. The prosecution eventually relented and allowed Juror 191 to be seated. R. 59-77.

When the jury panel returned to the courtroom, the trial judge learned that Juror 191 could "only hear out of one ear" and changed his mind about seating Juror 191 as an alternate. At a sidebar, prior to excusing the jury panel, the Lees objected to the trial court's change of mind about Juror 191 without determining whether the juror's hearing impediment could be accommodated. R. 77-84. The trial court swore the jurors subject to the Lees' objection. R. 125.

Mr. Lee argued "the best thing to do is – is to try this case in front of a jury when we can have a fair cross section" of the community and moved "to quash this jury" and "for a continuance." The trial court denied the motion. R. 116-19.

During opening comments, the trial court informed the jurors of their obligation to find the "true facts." R. 133034. Mr. Lee objected pursuant to *State v. Beaty*, 423 S.C. 26,

813 S.E.2d 502 (2018) and *State v. Daniels*, 401 S.C. 251, 737 S.E.2d 473 (2012), and moved for a mistrial. R. 135, 159-64. The trial court gave a curative instruction, to which Mr. Lee objected because it is impossible to “unrig the bell.” R. 135-36, 163-64.

Renee Guillebeaux testified about a conversation she had with Travis Lee about her son, Tobias Hughey, burglarizing and stealing from Miesha Cobb, who is Ken Lee’s girlfriend. Travis Lee wanted to confront Mr. Hughey about the crime. Ms. Guillebeaux told Travis Lee to “talk to” Mr. Hughey, “smack him around, handle him a little rough, but not leave him for dead.” R. 307-10, 223-24.

Tobias Hughey testified about the altercation he had with Ken Lee and Travis Lee.⁴ He encountered Travis Lee in the parking lot of the apartment complex. Ken Lee came up to them and hit Mr. Hughey with a stick-like, wooden object. He claimed he was hit “[a]bout 20 times.” He went to the apartment where Michael Shane Floyd lived.⁵ Mr. Hughey asked Mr. Floyd to call Mr. Hughey’s mother, Renee Guillebeaux, rather than EMS. Mr. Hughey testified about his injuries, being airlifted to Greenville, his hospitalization, and his stay in a rehabilitation facility. R. 214-43. On cross-examination, Mr. Hughey acknowledged his extensive criminal record and his pending charges. R. 225-67, 272-76.

⁴ Eric Phillips testified about witnessing a portion of the altercation and then lying to the police. R. 277-94

⁵ Mr. Floyd testified about Mr. Hughey coming to his apartment, his observation of Mr. Hughey’s injuries, calling Mr. Hughey’s mother rather than EMS, his pending charges, and how Mr. Hughey would bring possibly stolen items to him to trade or pawn. R. 340-69.

Ms. Guillebeaux testified about picking up Mr. Hughey at Mr. Floyd's apartment, taking him to her apartment, calling 911,⁶ and her observations of her son's injuries. R. 310-16. Abbeville Police Officers Brian Singleton and Forrest Crowe responded to Ms. Guillebeaux's residence and discovered her son "Tobias Hughey on the couch unresponsive [with] lacerations on his forehead." They administered first aid until EMS arrived and Mr. Hughey was airlifted to the hospital. R. 149-59, 165-74, 185-86, 418-30.

Officer Crowe, Investigator John Martin, Investigator Steven Cogdill, and Investigator Ricky Bulchin testified about the law enforcement investigation, including the videotape evidence admitted during the trial. R. 174-81, 379-417, 477-529.

Dr. Kristen Spoor, an emergency room physician, testified about Mr. Hughey's injuries and medical treatment. R. 431-58. Dr. Andy Donlan, a medical doctor, testified about Mr. Hughey's rehabilitation therapy. R. 459-73.

The trial court convened a charge conference. Mr. Lee requested a jury instruction based on *State v. King*, 158 S.C. 251, 155 S.E. 409 (1930), *overruled by Brightman v. State*, 336 S.C. 348, 520 S.E.2d 614 (1999), regarding the juror's obligation to resolve any doubt between the greater and lesser offenses, in favor of the accused. Mr. Lee noted that although *Brightman* overruled *King*, to the extent *King* mandated the instruction, *Brightman* did not prohibit the instruction. R. 573-82. Mr. Lee also objected to the proposed verdict form and suggested an alternate form. R. 584-86.

The trial court instructed the jurors on ABHAN and the lesser-included offenses of first-degree assault and battery and second-degree assault and battery. R. 658-60. In his

⁶ Ashley Giles authenticated the 911 call. R. 529-35.

closing argument, Mr. Lee asked the jurors to find him guilty of first-degree assault and battery or second-degree assault and battery. R. 645-49.

The jurors convicted Ken Lee and Travis Lee of ABHAN, and the trial judge deferred sentencing. R. 669-70, 679-86.

At the sentencing hearing, Mr. Lee argued it “fundamentally unfair to consider a proximity conviction for marijuana as a strike” and that people of color are disproportionately affected by inequities in drug sentencing. He also argued that marijuana is legal in a lot of states and South Carolina has decriminalized marijuana. R. 753-55. Mr. Lee asked the State to withdraw the notice of intent to seek life without parole and allow the trial court to exercise discretion in sentencing. R. 775-76. The trial judge sentenced Mr. Lee to life without the possibility of parole. R. 779.

ARGUMENTS

Question I

Did the trial court err by requiring Ken Lee, a black man, to face trial by an all-white jury and denying his timely request for a continuance to a term of court when the pool of jurors actually appearing for jury service reflected a cross-section of the community?

Abbeville, South Carolina embraces its dark history of race relations. Even today, the City of Abbeville embraces the Civil War:

Abbeville has experienced many exciting and turbulent events. The city played a key role during the Civil War, and that legacy remains pristinely preserved. Abbeville is known the “Birthplace and Deathbed of the Confederacy.” On what is now known as Secession Hill, the meeting which launched the state's secession from the Union took place on Nov. 22, 1860. Five years later in 1865, Jefferson Davis and his cabinet decided to dissolve

the Confederacy at the Burt-Stark Mansion, a stately home right off from Abbeville’s Historic Court Square.⁷

Of the 191 Racial Terror Lynchings documented by the Equal Justice Initiative as having occurred in South Carolina, five occurred in Abbeville County.⁸ From July 2001 to February 2023, the South Carolina Chapter of the League of the South owned property on the square in Abbeville.⁹ According to the Southern Poverty Law Center, the League of the South is an Alabama based Neo-Confederate hate group.¹⁰

Against this backdrop, the State of South Carolina tried Ken Lee and his Uncle Travis Lee, in front of all-white jurors. During juror qualifications, Mr. Lee expressed his concerns about lack of diversity reflected by the jurors who appeared for jury duty.¹¹ During the selections of jurors, the prosecution struck the only black juror drawn for this case. Concerned about the negative appearance of all-white jurors sitting in judgement of two black men, the trial court “strong-armed” the prosecution into accepting the sole black male drawn for service in this case. After great hesitation—the length of which is unlikely

⁷ <https://www.abbevillecitysc.com/209/Abbevilles-History#:~:text=Abbeville%20is%20known%20the%20%22Birthplace,22%2C%201860.> (last viewed Oct. 27, 2023).

⁸ <https://lynchinginamerica.eji.org/explore/south-carolina> (last viewed October 27, 2023). Of the 191 documented Racial Terror Lynchings, 37 occurred in the Eighth Judicial Circuit—the most of any judicial circuit in South Carolina. *Id.*

⁹ <https://qpublic.schneidercorp.com/Application.aspx?AppID=613&LayerID=10508&PageTypeID=4&PageID=4485&Q=2001389540&KeyValue=109-13-05-019> (last viewed Oct. 27, 2023).

¹⁰ <https://www.splcenter.org/hate-map?state=AL> (last viewed Oct. 27, 2023).

¹¹ Mr. Lee requested this Court have the Clerk of Court print a list of the jurors, identifying the jurors’ races, who appeared for jury duty, the jurors who were qualified, and the jurors who remained after voir dire.

to be reflected in the typed transcript—the prosecutors reluctantly acquiesced to the trial court’s pressure. Ultimately, the trial court deemed the sole black juror selected for this case to be unqualified for service because of hearing issues, even though this Court never inquired with the juror whether his hearing issues could be accommodated.

Because of errors in qualifying and selecting jurors, Mr. Lee moved the trial court to order a new trial for the following three reasons:

1. He timely moved for a continuance to a term of court when the pool of jurors actually appearing for service reflected a cross-section of the community.
2. The prosecution’s violation of *Batson v. Kentucky*, 476 U.S. 79 (1986) and *State v. Stewart*, 413 S.C. 308, 314, 775 S.E.2d 416, 419 (Ct. App. 2015), when the prosecutors impermissibly relied on criminal history to strike the sole black juror while sitting white jurors with criminal records.
3. The trial court failed to determine whether the sole black juror’s hearing issues could be accommodated.

R. 17-24.

The “adjudicative power of the [circuit] court carries with it the inherent power to control the order of its business to safeguard the rights of litigants.” *State v. Langford*, 400 S.C. 421, 429, 735 S.E.2d 471, 475 (2012). Mr. Lee timely moved the trial court to continue the case to a term of court where the potential jurors in attendance reflected a cross-section of the community. R. 40-43. In the post-conviction relief context, the Supreme Court urges trial courts to liberally grant continuances to avoid prejudice to the State. *Love v. State*, 428 S.C. 231, 245, 834 S.E.2d 196, 203 (2019) (Kittredge, J., concurring) (“If, however, the proposed amendment is complicated (factually or legally) and would truly prejudice the

State, the better course of action would be to continue the matter and thus remove any possibility of prejudice resulting from the belated amendments.”).

“[A] motion for a continuance is addressed to the sound discretion of the trial judge, and his ruling will not be disturbed by this court absent a showing of abuse of discretion.” *State v. Beckham*, 273 S.C. 755, 757, 259 S.E.2d 610, 611 (1979). “An abuse of discretion occurs when the trial court's ruling is based on an error of law or, when grounded in factual conclusions, is without evidentiary support.” *State v. Hawes*, 423 S.C. 118, 126, 813 S.E.2d 513, 517 (Ct. App. 2018). “To warrant reversal, an error must result in prejudice to the appealing party.” *Id.*

Here, the denial of the continuance was both an error of law and not supported by the records. The trial judge correctly recognized the perception of trying two black men before an all-white jury. Racial discrimination in the administration of justice “strikes at the core concerns of the Fourteenth Amendment and at the fundamental values of our society and our legal system.” *Rose v. Mitchell*, 443 U.S. 545, 564 (1979). Because “the power of the State weighs most heavily upon the individual” in criminal cases, *McLaughlin v. Florida*, 379 U.S. 184, 192 (1964), “discrimination on the basis of race, odious in all respects, is especially pernicious.” in that context, *Rose*, 443 U.S. at 555; see also *Pena-Rodriguez v. Colorado*, 580 U.S. 206, 223 (2017) (quoting *Rose*, 443 U.S. at 555); *Buck v. Davis*, 580 U.S. 100, 124 (2017) (same). Therefore, in criminal cases, courts “must be especially sensitive to the policies of the Equal Protection Clause.” *McLaughlin*, 379 U.S. at 192. This is nowhere more true than in jury selection. The jury’s indispensable role as “a criminal defendant’s fundamental protection of life and liberty against race or color prejudice,” *Pena-Rodriguez*, 580 U.S. at 223 (quoting *McCleskey v. Kemp*, 481 U.S. 279,

310 (1987)) (internal quotation marks omitted), means that racial discrimination in jury selection threatens the gravest of harms to criminal defendants.

Additionally, despite Mr. Lee's request, the trial judge never determined whether Abbeville County took appropriate action to ensure the summoned jurors received their summons. The trial judge determined the jury panel did not reflect a cross section of the community. R. 116-19. The trial judge should have continued the case. This Court should reverse the trial court and order a new trial.

Question II

Did the trial court err by denying Ken Lee's *Batson* motion when the prosecution impermissibly relied on criminal history to strike the sole black juror while seating white jurors with criminal records?

Both the U.S. Supreme Court and the S.C. Supreme Court have repeatedly and consistently recognized prohibitions against racial discrimination in jury selection under *Batson* and its progeny are designed to serve multiple ends: "to protect the defendant's right to a fair trial by a jury of the defendant's peers, protect each venireperson's right not to be excluded from jury service for discriminatory reasons, and preserve public confidence in the fairness of our system of justice." *State v. Haigler*, 334 S.C. 623, 628–29, 515 S.E.2d 88, 90 (1999); *see also State v. Rayfield*, 369 S.C. 106, 112, 631 S.E.2d 244, 247 (S.C. 2006).

Prospective jurors who are excluded from serving on a jury because of their race are deprived of one of "the most substantial opportunit[ies] that most citizens have to participate in the democratic process." *Flowers*, 139 S. Ct. at 2238 ("Other than voting, serving on a jury is the most substantial opportunity that most citizens have to participate in the democratic process."); *see also Powers v. Ohio*, 499 U.S. 400, 407 (1991). Jury

service provides citizens with an opportunity to participate in the legal system and enhances their regard and understanding of the legal system, the judiciary, and the jury system.¹² Unlawful exclusion of citizens from jury duty, therefore, forsakes significant opportunities to strengthen and deepen our democracy.

Perhaps, most significantly, the harm from discrimination affecting the composition of the jury “destroys the appearance of justice and thereby casts doubt on the integrity of the judicial process.” *Rose*, 443 U.S. at 556; *Buck*, 580 U.S. at 124 (“[Such discrimination] injures not just the defendant, but ‘the law as an institution . . . the community at large, and . . . the democratic ideal reflected in the processes of our courts.’”) (quoting *Rose*, 443 U.S. at 556). Such doubt, in turn, undermines “public confidence” in the criminal justice system and fosters community suspicion that a verdict may not have been “given in accordance with the law by persons who are fair.” *Powers*, 499 U.S. at 413; see also *Foster*, 578 U.S. at 523. In short, “[a]ctive discrimination by a prosecutor” during jury selection “invites cynicism respecting the jury’s neutrality and its obligations to adhere to the law,” and it “cannot be tolerated.” *Powers*, 499 U.S. at 412.

An all-White jury, especially in a trial where the defendant is Black and the victim is White, sustains cynicism about the jury’s neutrality. Justice Thomas, concurring in *Georgia v. McCollum*, 505 U.S. 42 (1992), highlighted how a jury’s racial composition affects perceptions of its fairness:

The public, in general, continues to believe that the makeup of juries can matter in certain instances. Consider, for example, how the press reports criminal trials. Major newspapers regularly note the number of Whites and blacks that sit on juries in important cases. Their editors and readers apparently recognize that conscious and unconscious prejudice persists in

¹² See Shari Seidma Diamond, *What Jurors Think: Expectations and Reactions of Citizens Who Serve as Jurors*, In VERDICT: ASSESSING THE CIVIL JURY SYSTEM 285–86 (Robert E. Litaned.,1993).

our society and that it may influence some juries. Common experience and common sense confirm this understanding.

Id. at 60 (footnote omitted).

Thus, it is imperative that court remain diligent in ferreting out racial discrimination in jury selection procedures. Failure to do so not only risks inflicting grave harm on not only the defendants and the citizens that are unlawfully excluded from jury duty, but also the community at large by undermining the public's confidence in the criminal justice system and, therefore, weakening the foundations of our multiracial democracy.

As seen above, Mr. Lee relied on *State v. Stewart*, which is a case that is factually indistinguishable from the case at bar. The trial judge recognized the problem he urged the prosecution to accept the black juror it struck. The trial judge ultimately erred in denying Mr. Lee's *Batson* motion. This Court should reverse the trial court and order a new trial.

Question III

Did the trial court abuse its discretion when it failed to determine whether the sole black juror's hearing issues could be accommodated?

As seen above, the State struck Juror 191, but the trial judge persuaded the prosecution to seat the juror as an alternate. However, when the trial judge learned Juror 191 had a hearing problem in one year, the trial judge changed his mind and allowed the State's strike to stand. Mr. Lee objected and moved the trial judge accommodate Juror 191's hearing impediment. The trial judge overruled that request. R. 77-84.

"The presiding judge shall determine whether any juror is disqualified or exempted by law and only he shall disqualify or excuse any juror as may be provided by law." *State v. Wise*, 359 S.C. 14, 22, 596 S.E.2d 475, 479 (2004) (citing S.C. Code Ann. § 14-7-1010). The trial judge accordingly had the discretion to qualify or not qualify Juror 191. However,

“[a] failure to exercise discretion amounts to an abuse of that discretion.” *State v. Hawes*, 411 S.C. 188, 191, 767 S.E.2d 707, 708 (2015) (citing *Samples v. Mitchell*, 329 S.C. 105, 112, 495 S.E.2d 213, 216 (Ct.App.1997)). Here, the trial court did not even inquire into whether Juror 191 could be accommodated, even though the juror stated he could hear out of one ear. This Court should reverse the trial court and order a new trial.

Question IV

Did the trial court err by not granting a mistrial after making improper opening remarks to the jurors that violated *State v. Beaty*, 423 S.C. 26, 813 S.E.2d 502 (2018) and *State v. Daniels*, 401 S.C. 251, 737 S.E.2d 473 (2012)?

As seen above, during opening comments, the trial court informed the jurors of their obligation to find the “true facts.” R. 133-34. Mr. Lee objected pursuant to *State v. Beaty* and *State v. Daniels* and moved for a mistrial. R. 135, 159-64. The trial court gave a curative instruction, to which Mr. Lee objected because it is impossible to “unring the bell.” R. 135-36, 163-64. See, e.g., *State-Rec. Co. v. State*, 332 S.C. 346, 356, 504 S.E.2d 592, 597 (1998) (“it is difficult, if not impossible, to ‘unring a bell’”) (quoting *United States v. Davis*, 904 F.Supp. 564, 569 (E.D.La.1995)).

Beaty held “a trial judge should refrain from informing the jury, whether through comments or through a charge on the law, that its role is to search for the truth, or to find the true facts, or to render a just verdict.” 423 S.C. at 34, 813 S.E.2d at 506. The trial judge was correctly recognized the error, but the curative instruction called more attention to the error, rather than cure it. Failure to provide an adequate curative instruction can be a reason to reverse a trial court. See, e.g., *State v. Smith*, 290 S.C. 393, 350 S.E.2d 923 (1986) (“In instructing jury to disregard incompetent evidence, the jury should be specifically instructed to disregard evidence, and not to consider it for any purpose during deliberations;

mere general remark excluding evidence does not cure error.”); *State v. White*, 371 S.C. 439, 446, 639 S.E.2d 160, 164 (Ct. App. 2006) (“While an instruction to disregard incompetent evidence usually is deemed to have cured the error in its admission, a mistrial may still be required if on the facts of the particular case it is probable, notwithstanding such instruction or withdrawal, the accused was prejudiced.”).

Even with the trial court’s curative instruction, the jurors likely viewed their role as finding the “true facts.” As will be discussed below, the prejudice to Mr. Lee was compounded by the trial court’s “cascading” verdict form and failure to provide a *King* charge. The jurors likely viewed their role as determining the “true” charge rather than resolving reasonable doubt in favor of Mr. Lee. This Court should reverse the trial court and order a new trial.

Question V

Did the trial court err by not providing an instruction pursuant to *State v. King*, 158 S.C. 251, 155 S.E. 409 (1930), regarding the jurors’ obligation to resolve any doubt between the greater and lesser offenses, in favor of the accused, when that jury instruction was not required but permissible?

“The law to be charged to the jury is determined by the evidence presented at trial. *State v. Hill*, 315 S.C. 260, 262, 433 S.E.2d 848, 849 (1993). “The purpose of a jury instruction is to enlighten the jury and to aid it in arriving at a correct verdict.” *State v. Blurton*, 352 S.C. 203, 207-08, 573 S.E.2d 802, 804 (2002). “A jury charge is no place for purposeful ambiguity.” *State v. Belcher*, 385 S.C. 597, 611, 685 S.E.2d 802, 809 (2009), holding modified and extended by *State v. Burdette*, 427 S.C. 490, 832 S.E.2d 575 (2019).

As seen above, Mr. Lee requested a jury *State v. King*, regarding the juror’s obligation to resolve any doubt between the greater and lesser offenses, in favor of the accused. Mr. Lee noted that although *Brightman* overruled *King*, to the extent *King*

mandated the instruction, *Brightman* did not prohibit the instruction. R. 573-82. Mr. Lee also objected to the proposed verdict form and suggested an alternate form. R. 584-86. In the verdict form, the trial judge “created a cascading consideration” between ABAHN, first-degree assault and battery, and second-degree assault and battery. Mr. Lee argued the “cascading approach” is the reason why a *King* charge was necessary in this case, noting that strictly following the “cascading approach” prohibits the jurors from considering the charge as a whole. Absent a *King* charge, the verdict form guided the jurors to a verdict of guilty of ABHAN because the jurors were not allowed to consider resolving any doubt between the greater offenses and the lesser included offenses. This error was magnified by the trial judges opening remarks regarding the jurors’ obligation to find the “true facts.” This Court should reverse the trial court and order a new trial.

Question VI

Did the trial court err by providing the jurors a “cascading” verdict form, rather than structuring the verdict form in the manner requested by Ken Lee, which would have mitigated the trial court’s error in the opening instructions and ensured the jurors gave due consideration the lesser included offenses?

As seen above, the verdict form “created a cascading consideration” between ABAHN, first-degree assault and battery, and second-degree assault and battery, and Mr. Lee objected to the “cascading approach.” In the civil context, the Supreme Court observed:

[A] special verdict question may be so defective in its formulation that its submission results in a prejudicial effect which constitutes reversible error. 9A Wright & Miller, *Federal Practice and Procedure*, Civil 2d § 2508, p. 193. In evaluating the prejudicial effect of a defective special verdict question or special interrogatory, the court must consider the question or interrogatory along with the instructions given to the jury. *Fortune v. Gibson*, 304 S.C. 279, 282, 403 S.E.2d 674, 675 (Ct.App.1991) (finding that special interrogatories and instructions must be considered together). The

prejudicial effect of a defective verdict form may be cured where the trial court provides clear and cogent jury instructions. *See State v. Covert*, 368 S.C. 188, 214, 628 S.E.2d 482, 496 (Ct.App.2006); *State v. Myers*, 344 S.C. 532, 536, 544 S.E.2d 851, 853 (Ct.App.2001).

S.C. Dep't of Transp. v. First Carolina Corp. of S.C., 372 S.C. 295, 303, 641 S.E.2d 903, 907-08 (2007).

As argued above, the trial court could have cured the defect by providing a *King* charge, but it did not do that. Another way the trial could have cured the defect was to eliminate the “cascading” format and provide the jurors with a choice between ABAHN, first-degree assault and battery, second-degree assault and battery, and not guilty, as Mr. requested. As seen above, Mr. Lee argued the “cascading approach” is the reason why a *King* charge was necessary in this case, noting that strictly following the “cascading approach” prohibits the jurors from considering the charge as a whole. Absent a *King* charge, the verdict form guided the jurors to a verdict of guilty of ABHAN because the jurors were not allowed to consider resolving any doubt between the greater offenses and the lesser included offenses. This error was magnified by the trial judges opening remarks regarding the jurors’ obligation to find the “true facts.” This Court should reverse the trial court and order a new trial.

Question VII

Did the trial court err by not quashing the State’s notice of intent to seek life without parole when the enhanced sentences was based on a conviction involving marijuana when Ken Lee objected to this charge being used to enhance the sentence when South Carolina has decriminalized marijuana and marijuana one day likely will be legal throughout the United States?

At the sentencing hearing, Mr. Lee argued it “fundamentally unfair¹³ to consider a proximity conviction for marijuana as a strike” and that people of color are disproportionately affected by inequities in drug sentencing. He also argued that marijuana is legal in a lot of states and South Carolina has decriminalized marijuana. R. 753-55. He also argued a life sentence under these circumstances would be cruel and unusual punishment.¹⁴ R. 759. Mr. Lee asked the State to withdraw the notice of intent to seek life without parole and allow the trial court to exercise discretion in sentencing. R. 775-76. The trial judge sentenced Mr. Lee to life without the possibility of parole. R. 779.

“The Eighth Amendment prohibits not only barbaric punishments, but also sentences that are disproportionate to the crime.” *State v. Harrison*, 402 S.C. 288, 293, 741 S.E.2d 727, 729 (2013) (citing *Solem v. Helm*, 463 U.S. 277 (1983)). *Harrison* held:

[I]n analyzing proportionality under the Eight Amendment outside the capital context, South Carolina courts shall first determine whether a comparison between the sentence and the crime committed gives rise to an inference of gross disproportionality. If no such inference is present, the analysis ends. In the rare instance that this threshold comparison gives rise to such an inference, intrajurisdictional and interjurisdictional analysis is appropriate. Courts may then look to whether more serious crimes carry the same penalty, or more serious penalties, and the sentences imposed for commission of the same crime in other jurisdictions. Courts should use this comparative analysis to confirm the gross disproportionality inference, and not to develop an inference when one did not initially exist. *See Harmelin*, 501 U.S. at 1005, 111 S.Ct. 2680 (“The proper role for comparative analysis of sentences, then, is to validate an initial judgment that a sentence is grossly disproportionate to a crime. This conclusion neither ‘eviscerates’ *Solem*, or ‘abandons its second and third factors.’ ”).

402 S.C. at 299–300, 741 S.E.2d at 733.

¹³ U.S. Const. Am XIV; S.C. Const. Art. I, § *.

¹⁴ U.S. Const. Am VIII; S.C. Const. Art. I, § *.

In South Carolina a prior conviction for marijuana offense cannot be used to enhance a subsequent conviction for a non-marijuana offense in most situations. S.C. Code Ann. § 44-53-470. This decriminalization of marijuana raises an inference of disproportionality when a marijuana offense is used to enhance any other non-drug related offense. Marijuana is fully legal in 24 states. Marijuana is partially legal, such as for medical use, in an additional six states. Marijuana is fully illegal in only six states—South Carolina, North Carolina, Kansas, Nebraska, Wyoming, and Idaho.¹⁵ But for his prior marijuana offense, Mr. Lee would not have been eligible for life without parole. This Court should rule that using a marijuana related conviction to enhance a sentence for a subsequent offense to life without parole violates due process and the prohibition against cruel and unusual punishment.

CONCLUSION

For the foregoing reasons, this Court should reverse the trial court and order a new trial. Alternatively, this Court should vacate Ken Lee's sentence and remand for re-sentencing.

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December 27, 2024

¹⁵ <https://www.cbsnews.com/news/legal-weed-map-states/> (last viewed June 10, 2024)

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Dec 27 2024

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM ABBEVILLE COUNTY
Court of General Sessions
Frank R. Addy, Jr., Circuit Court Judge

Appellate Case No. 2023-001843

The State, ...Respondent,

v.

Kendrick Montrez Lee, ...Appellant.

Rule 211, SCACR Certification

This Final Brief of Appellant complies with Rule 211(b), SCACR.

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Jan 29 2025

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
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APPEAL FROM ABBEVILLE COUNTY
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THE STATE,

Respondent,

v.

KENDRICK MONTREZ LEE,

Appellant.

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STATEMENT OF ISSUES ON APPEAL

Appellant's Issue Statements

- I. Did the trial court err by requiring Ken Lee, a black man, to face trial by an all-White jury and denying his timely request for a continuance to a term of court when the pool of jurors actually appearing for jury service reflected a cross-section of the community?
- II. Did the trial court err by denying Ken Lee's *Batson* motion when the prosecution impermissibly relied on criminal history to strike the sole black juror while seating White jurors with criminal records?
- III. Did the trial court abuse its discretion when it failed to determine whether the sole black juror's hearing issues could be accommodated?
- IV. Did the trial court err by not granting a mistrial after making improper opening remarks to the jurors that violated *State v. Beaty*, 423 S.C. 26, 813 S.E.2d 502 (2018) and *State v. Daniels*, 401 S.C. 251, 737 S.E.2d 473 (2012)?
- V. Did the trial court err by not providing an instruction pursuant to *State v. King*, 158 S.C. 251, 155 S.E. 409 (1930), regarding the jurors' obligation to resolve any doubt between the greater and lesser offenses in favor of the accused, when the jury instruction was not required but permissible?
- VI. Did the trial court err by providing the jurors a "cascading" verdict form, rather than structuring the verdict form in the manner requested by Ken Lee, which would have mitigated the trial court's error in the opening instructions and ensured the jurors gave due consideration to the lesser included offenses?
- VII. Did the trial court err by not quashing the State's notice of intent to seek life without parole when the enhanced sentence was based on a conviction involving marijuana when Ken Lee objected to this charge being used to enhance the sentence when South Carolina has decriminalized marijuana and marijuana one day likely will be legal throughout the United States?

Respondent's Counterstatements

- I. Whether the trial court abused its discretion by denying Appellant's motion to continue his case to the next term of court due to his belief that the jury panel did not reflect a cross-section of the community.
- II. Whether the trial court erred in denying Appellant's *Batson*¹ motion when the State properly struck an alternate juror with a prior conviction for assault and battery, which was a charge similar to the charge for which Appellant was standing trial, when the State, after discussion with the trial court, relented and allowed the juror to be seated.

¹ *Batson v. Kentucky*, 476 U.S. 79 (1986).

- III. Whether the trial court abused its discretion in excusing an alternate juror before trial upon learning that the alternate juror had hearing problems and informed the trial court that he had only heard some of the questions posed to the jury panel in voir dire.
- IV. Whether the trial court abused its discretion in denying Appellant's mistrial motion after the trial court mentioned "true facts" in its opening instructions to the jury and gave a curative instruction at Appellant's request.
- V. Whether the trial court abused its discretion in denying Appellant's request for a jury charge pursuant to *State v. King*² despite the trial court giving a sufficient reasonable doubt jury charge.
- VI. Whether the trial court abused its discretion by denying Appellant's motion to restructure the verdict form to give "due consideration to the lesser included offenses."
- VII. Whether the trial court abused its discretion in denying Appellant's motion to quash the State's Amended Notice of Intent to Seek Life without Parole because Appellant believed that his prior conviction for distribution of marijuana within half a mile of a school or playground should not count as a strike due to South Carolina "decriminalizing" marijuana and his belief that marijuana will, at some unspecified and undeterminable point in the future, be nationally legalized.

² *State v. King*, 158 S.C. 251, 155 S.E. 409 (1930).

STATEMENT OF THE CASE

In April 2021, an Abbeville County grand jury indicted both Appellant and his uncle, Travis Arnett Lee (“Travis”),³ for assault and battery of a high and aggravated nature (“ABHAN”). (R. 11-12, 13-14). On February 16, 2021, prior to the grand jury indicting Appellant for ABHAN, the State notified Appellant that he would be charged with attempted murder and that the State intended to seek a sentence of life imprisonment without the possibility of parole (“LWOP”) due to two qualifying prior convictions.⁴ (R. 15). On August 9, 2023, the State provided Appellant with an Amended Notice of Intent to Seek Life without Parole based on his indictment for ABHAN instead of attempted murder. (R. 16). On September 25-28, 2023, Appellant and Travis proceeded to a jury trial before the Honorable Frank R. Addy, Jr. (R. 25, 101, 207, 297, 538).

After a jury and two alternate jurors were selected but before they were sworn, Appellant made a *Batson* motion based on the State striking the sole Black juror—Juror 191—presented from the jury panel.⁵ (R. 52-53). Appellant expressed concern that the jury panel consisted of “a solid 20 percent” Black individuals despite “roughly 25 percent” of Abbeville County consisting of Black individuals. (R. 53). The trial court noted that 41 of the 200 potential jurors summoned were Black.⁶ (R. 53, 696-725). The trial court informed Appellant that of the Black potential jurors, 29 did not respond to their summonses, 4 returned their juror information but did not appear in court, 3 were excused, and 5 appeared in court. (R. 53-55, 696-725).

³ Travis did not appeal his conviction or sentence.

⁴ The State did not indict Appellant for attempted murder and instead pursued and obtained an indictment for ABHAN.

⁵ The trial court moved the jury and the two alternate jurors to the jury room before hearing the motion. (R. 51-52).

⁶ The trial court’s detailed juror listing shows 42 of the 200 potential jurors were Black. (R. 696-725).

Appellant inquired as to what the trial court and the clerk of court did regarding the 29 potential Black jurors who did not respond to their summonses. (R. 55-56). The trial court stated that 96 White and Hispanic potential jurors also either did not respond or did not appear in court. (R. 57). The clerk stated that when potential jurors are summoned and do not respond, someone from the Clerk's Office would go to the Abbeville County administration building and have the Auditor's Office check for the most up-to-date addresses. (R. 58). The clerk said that "if [the Auditor's Office does not] have anything other than what we do, we run it back." (R. 58).

The trial court then directed the conversation back to why the State struck Juror 191. (R. 59). The State informed the Court that it struck Juror 191 due to prior convictions for simple assault and battery, two instances of disorderly conduct, and criminal domestic violence, third or subsequent offense. (R. 59). The State noted that all of Juror 191's prior convictions were at least twenty years old. (R. 59).

Regarding other jurors with criminal records, the State informed the trial court that Juror 188, who was seated, had a public disorderly conduct conviction from 2011. (R. 60, 64). Additionally, Juror 186, who was stricken, had a conviction for fraudulent check from 1995. (R. 60). Both Juror 186 and Juror 188 were White. (R. 688-689, 690, 691-692, 693, 696-725).

Citing *State v. Stewart*,⁷ Appellant argued that the State could not use criminal histories to strike certain jurors while simultaneously seating jurors with criminal histories deemed to be similarly situated. (R. 65). Appellant argued that Juror 191's criminal history (simple assault and battery, disorderly conduct, and criminal domestic violence) was similarly situated to Juror 188 (public disorderly conduct), but the State struck Juror 191, who was Black, and not Juror 188, who was White. (R. 65). The State contended that Juror 191's conviction for simple assault and battery

⁷ 413 S.C. 308, 775 S.E.2d 416 (Ct. App. 2015).

was similar to Appellant's charge of ABHAN whereas Juror 188's conviction for public disorderly conduct was not. (R. 66-67). The trial court noted that the difference between Juror 191 and Juror 188 was that Juror 191 had two convictions for assault and battery on his record, while Juror 188 did not. (R. 68). Appellant argued that Juror 188's disorderly conduct conviction could have involved assault and that the State could not say that Juror 188's convictions did not also involve assault. (R. 72).

The trial court noted that Juror 191 would have been the second alternate juror if the State had not struck him and asked the State to reconsider allowing Juror 191 to sit as the second alternate juror. (R. 74). The State responded that if that was what was needed to move the case forward, then the State would not object. (R. 75). The State reemphasized that striking Juror 191 had nothing to do with race but was rather based on his two prior convictions for assault. (R. 75).

The trial court stated:

As a practical matter, I would prefer for juries to be racially balanced, if for no other reason—and I'm sure that we all agree with this—but if for no other reason than perception. Okay? And obviously, it's always best to have as wide a cross section of the community if at all possible.

In this case[,] I'm not finding that there was anything nefarious with the selection of the jury by the clerk, or the way it was generated.

(R. 75).

When the jury and the remaining jury panel returned to the courtroom, the trial court informed Juror 191 that he would be an alternate juror. (R. 77-78). Juror 191 had trouble hearing the trial court and informed the trial court that he could only hear out of one ear. (R. 78). The trial court asked Juror 191 whether he had been able to hear everything that had been going on in the courtroom, to which he replied "[s]ome of it." (R. 78-79). The trial court instructed Juror 191 to

rejoin the jury panel and then dismissed the jury panel, including Juror 191. (R. 79-80). After the jury panel left, the trial court stated:

The record will reflect that in conversing with [Juror 191], I think it already reflects that [Juror 191] was extremely hard of hearing, that did not come to the attention of the Court, obviously, until the Court was toying with the idea, or looking to put him on [the jury] in order to—to address the—the alleged *Batson* violation. He obviously remarked that he only heard some of what was said during the course of voir dire.

[Appellant's counsel] did indicate that in other cases, judges have made accommodations to people who are hard of hearing. And I'm certainly open to such an accommodation if feasible. But based on [Juror 191's] difficulty hearing me, and based upon the fact that I could not be sure that he had heard all the voir dire, that he had heard all the names of the witnesses called, that he had been able to physically answer correctly, I went back on my initial idea of sitting him as an alternate juror.

And the Court does find that the State's stated reasons for excusing the jurors that they excused were not pretext. There was no *Batson* violation, there was no discrimination. The fact that juror 191 had previously been convicted of several assaults as well as other crimes and because this is an assault case as well, that is a—the Court finds that that is a racially neutral reason to strike him.

And that the seating and—or that the seating of juror 188, that that was because she had that disorderly conduct conviction that the strike against juror 191 was not pretextual. It's an apples and oranges comparison in this Court's mind.

And of course[,] I've had a chance to consider the credibility of the proponents of the strike. And do find that there are reasons for excusing the jurors that they excused. I do find that those were valid and not in violation of *Batson*. Obviously fraudulent checks as we used to describe it is a crime of moral turpitude and in involves dishonesty. That's a different animal from a simple disorderly conduct where maybe somebody's had a little bit too much to drink. But obviously the defendant's objection is noted.

And the Court wishes to note that as a practical matter, juror 191 was—may not be a—may not have been as deaf as a fence post, but he was darn—darn close.

(R. 82-83).

Before the jury came out on the second day of trial, Appellant moved to quash the jury and for a continuance. (R. 116). Appellant argued that the trial court previously ruled that the jury did not represent a cross section of the community, as the trial court preferred, and asserted that “the best thing to do” would be to try the case in front of a new jury that represented a “fair cross section” of the community. (R. 116). Appellant also noted that the trial court previously “expressed some concerns about this being an [a]ppellate issue that’s going to get this case reversed because [the trial court] encouraged [the State] strongly to consent to letting [Juror 191] be put on the jury” (R. 116).

The trial court noted that its comments were made prior to learning that Juror 191 was deaf. (R. 116). The trial court also stated that “if [Juror 191] couldn’t hear the voir dire that I posed to him, that creates a problem if he were to become an alternate.” (R. 117). The trial court determined that a *Batson* issue did not exist because a random strike sheet was used, meaning that the jurors were selected in a random order. (R. 117). The trial court stated that it would have preferred a “better cross section” but “random is random.” (R. 117). Appellant did not agree that Juror 191 was “deaf as a fence post” and took issue that the trial court did not entertain accommodating Juror 191’s hearing issues. (R. 118-119). The trial court responded that even if Juror 191 could have been accommodated, Juror 191 had indicated that he did not hear all of the voir dire, which was a problem. (R. 119). The trial court denied Appellant’s motion to quash the jury and for a continuance. (R. 119).

In its opening remarks to the jury, the trial court stated “your purpose as jurors is [to] find and determine the facts in this case.” (R. 128). Later in the opening instructions when discussing why the trial court might ask the jury to step out of the court room during the trial, the trial court said, “Because you’re the sole judges of the facts, I don’t want any comment that I make about the

testimony or the evidence to have any effect on what you ultimately find the true facts to be.” (R. 133). Subsequently, the trial court stated, “Now, in determining what the true facts are, you’ll have to decide whether or not the testimony of the witnesses is believable or not. Understand that it’s my job to rule whether certain testimony can be admitted. But once the testimony is admitted, whether you believe it is solely up to you.” (R. 134). Immediately after the trial court’s opening instructions to the jury, Appellant objected, and the trial court held a sidebar conference, which was not transcribed. (R. 135).

After the sidebar conference, the court provided the following curative instruction:

Ladies and Gentlemen, I want to correct something—emphasize something to you in my opening instructions. Please understand [t]he State has the burden of proof in this case. The burden of proof in this case is beyond a reasonable doubt. And I’m sure that the attorneys are going to allude to that in a few moments in their opening statements, and probably during their closing arguments.

So please understand that at all points and times, [t]he State has the burden of proving the defendant’s guilt beyond a reasonable doubt.

And to the extent that I indicated to you that you have an obligation to determine the true facts in this in this case, please disregard those comments about the true facts. Because sometimes Ladies and Gentlemen, there simply is not enough evidence to determine what the true facts are. If that were the case in this case, it would be your obligation to return a verdict of not guilty. And so sometimes again, Ladies and Gentlemen, it simply is not possible to determine what the true facts are. If that were to be the case your verdict should be not guilty. We’ll address this in greater detail during closing argument.

But Ladies and Gentlemen, you should not engage in any sort of speculation about the facts. And again, it is not your obligation to determine what the true facts are, but it is your obligation to attend—or attention to the witnesses, listen to the witnesses, and render a verdict under the oath that you have just taken which the clerk has administered.

(R. 135-136). Appellant renewed his objections made during the sidebar conference. (R. 136).

At the next break when the jury was out of the courtroom, the trial court noted that Appellant moved for a mistrial during the sidebar conference based on the trial court's references to "true facts." (R. 159-160). The trial court noted that its reference to "true facts" was contextually different from *State v. Beaty*,⁸ where a trial court had instructed a jury that it must search for the truth. (R. 160). The trial court noted that Appellant suggested the curative instruction that the trial court gave. (R. 160-161). The trial court reiterated that the jury's function was to be the factfinder and that "true" merely modified "facts," which was a distinction the trial court found "superfluous." (R. 162). Appellant stated that the curative instruction was not exactly what he had suggested because the trial court had overlooked portions of *Beaty*. (R. 163). Appellant asserted that the curative instruction called attention to the alleged error and "you can't unring the bell." (R. 163). The trial court stated that a curative instruction may not have been required but believed the instruction to be accurate. (R. 164).

Brian Singleton, a deputy with the Abbeville County Sheriff's Department, testified that on October 6, 2020, he responded to a call from Renee Guillebeaux's residence. (R. 149-150). When he arrived, he found Tobias Hughey ("Victim") unresponsive on a couch with lacerations to his forehead. (R. 150). Deputy Singleton attempted to render aide to Victim, who was ultimately taken to a hospital by helicopter. (R. 151, 153). Deputy Singleton believed that no crimes occurred at Guillebeaux's residence. (R. 157).

Forest Crowe, an officer with the Abbeville Police Department, testified that he also responded to a call about an unconscious male on the date of the incident. (R. 165, 167). When he arrived at Guillebeaux's residence, he observed Victim unconscious on a couch with "very clear trauma to his head." (R. 168). Victim had a cut on his left eye and small cuts on his arms. (R. 168).

⁸ *State v. Beaty*, 423 S.C. 26, 813 S.E.2d 502 (2018).

Victim's shirt and pants were covered in blood. (R. 168). Officer Crowe testified that Victim was still breathing, making resuscitation unnecessary at that point. (R. 169). According to Officer Crowe, Guillebeaux, who was Victim's mother, did not observe what happened to Victim. (R. 182).

Elizabeth Webb, the property manager of Hickory Heights and Oakland Apartments (the "apartment complex") at the time of the incident, testified that the apartment complex had a video surveillance system. (R. 188, 191). She gave recordings from the day of the incident to law enforcement. (R. 194).

Victim testified that at the time of the incident, he lived both at his mother's house and with his girlfriend at the apartment complex. (R. 216-218). On the day of the incident, he was in the parking lot at the apartment complex when Travis approached him. (R. 221-222). He had a conversation with Travis about something that had gone missing in Appellant's apartment. (R. 223). According to Victim, the conversation turned violent. (R. 223). At this point, Appellant approached Victim and Travis with a wooden object, likely a table leg or chair leg, in his hands. (R. 225-226). Victim stated that both Travis and Appellant hit him with the wooden object, but Appellant hit him more than Travis did. (R. 226-228). He believed Travis and Appellant collectively made "[a]bout 20 swings" at him with the wooden object. (R. 226). Travis grabbed and held Victim while Appellant swung at him. (R. 227-228). When Travis and Appellant were done, they "just left." (R. 230). Victim went to a friend's apartment in the apartment complex and asked his friend to call his mother, Guillebeaux. (R. 231-232). Guillebeaux came to the apartment complex and took him back to her house, where he passed out. (R. 232-233). The next thing he remembered after that was hearing helicopter blades. (R. 233).

According to Victim, he suffered brain trauma, a dislocated hip, a broken arm, and gashes on his arm. (R. 235-236). Due to the incident, he suffered kidney and liver problems and underwent abdominal surgery. (R. 235-236). Victim denied stealing anything from Appellant or Travis. (R. 238). He confirmed that video evidence showed Appellant carrying a wooden table leg while approaching him and Travis. (R. 239).

Eric Phillips, a resident of the apartment complex, testified that he observed the incident and saw Travis and Appellant beating Victim with a stick. (R. 277, 280-282). After Travis and Appellant finished beating Victim, they walked away and Victim came to his porch. (R. 282). Phillips stated that Victim was “drenched in blood coming down his face.” (R. 282).

Renee Guillebeaux, Victim’s mother, testified that Victim lived with her at the time of the incident, while the mother of Victim’s child lived in the apartment complex. (R. 304-305). Guillebeaux had gone to school with Appellant. (R. 307). Prior to the incident, she had a conversation with Travis and learned that Travis was looking for Victim due to a burglary at Appellant’s girlfriend’s apartment. (R. 308-309). Guillebeaux told Travis to “do what [you] got to do,” but did not tell him to injure Victim. (R. 309). She testified that because Victim was Travis’s cousin, Travis should have talked to Victim or “smack him around, handle him a little rough, but not leave him dead.” (R. 309-310). When she arrived to pick up Victim, he was sitting up but looked “horrible” and was “leaking” blood from his head. (R. 311-312). According to Guillebeaux, after she took Victim back to her house, his condition deteriorated, which prompted her to call EMS. (R. 310, 315). EMS took Victim to Abbeville High School, from where he was transported to the hospital via helicopter. (R. 316). Guillebeaux testified that Victim stayed in the hospital for about a month. (R. 317).

Michael Shane Floyd, a friend of Victim that lived in the apartment complex, testified that on the day of the incident, he was at home when the door flew open and Victim came in covered in blood and yelling. (R. 341-343). Floyd wanted to call an ambulance, but Victim refused. (R. 344). Before he could call anyone, Guillebeaux and Victim's brother arrived at his apartment. (R. 344-345).

Dr. Kristen Spoor, a trauma and general surgeon at Prisma Health in Greenville and an expert in emergency medicine, critical care medicine, and trauma medicine, testified that she treated Victim after he arrived at Prisma Health following the incident. (R. 432-434). According to Dr. Spoor, Victim's heart stopped twice during the helicopter transport, and upon first seeing Victim, she noticed that "he was bleeding profusely from his head." (R. 435-438). Victim had life threatening injuries, including large injuries to his scalp and forehead that caused significant blood loss, subdural and epidural hematomas, a midline shift in his brain due to a subdural hematoma, and a fractured ulna. (R. 438-441).

According to Dr. Spoor, the midline shift in Victim's brain could have caused difficulty with breathing, issues with continued cardiovascular function, and even death. (R. 441). Victim's head injuries were caused by blunt force trauma. (R. 441). Due to significant blood loss, Victim's liver and kidneys began to shut down. (R. 442-443). Dr. Spoor testified that while he was in the intensive care unit ("ICU"), Victim had trouble breathing and had issues with several internal organs—his lungs, liver, heart, and kidneys—starting to shut down. (R. 444). While in the ICU, Victim developed pneumonia. (R. 445). Dr. Spoor agreed that Victim suffered great bodily injury. (R. 455).

Dr. Martin Andrew Donlan III, a medical doctor and expert in trauma, brain injury, and patient management, testified that Victim suffered from short term memory recovery problems. (R. 460-465).

Ricky Duane Balchin, a former lead investigator with the Abbeville Police Department, testified that after seeing Victim off in the helicopter, he began his investigation by going to the apartment complex. (R. 477-478, 481). He was initially unsure of where the incident occurred but was able to determine that the incident occurred in the parking lot of the apartment complex after viewing surveillance camera footage. (R. 481-484). He testified that Travis and Appellant were involved in the incident. (R. 483-484). Appellant had a wooden object in his possession as he approached Victim and Travis. (R. 490).

After the State rested and both Appellant and Travis informed the court that they did not plan to call any witnesses, Appellant asked the court to explain the concept of lesser included charges to the jury and to give an instruction pursuant to *State v. King*,⁹ which would inform the jury that if they were to have any doubt between the higher charge and the lesser included charge, then they should resolve that doubt in favor of the lesser included charge. (R. 570-574). Appellant acknowledged that in *Brightman v. State*,¹⁰ the Supreme Court ruled that when a proper reasonable doubt instruction is given, failure to give a *King* charge is not subject to automatic reversal. (R. 574). However, Appellant asserted that the Supreme Court did not indicate that a *King* charge “would never be appropriate if requested.” (R. 574).

⁹ 158 S.C. 251, 155 S.E. 409 (1930).

¹⁰ 336 S.C. 348, 520 S.E.2d 614 (1999).

Citing to *Brightman*, the State argued that a *King* charge was not necessary due to the modern reasonable doubt charge, which tells the jury to resolve any doubt in favor of the defendant. (R. 576).

The trial court determined that its reasonable doubt charge would be sufficient and declined to give a *King* charge. (R. 578). The trial court stated:

I do feel that the [*King*] charge is unnecessary in this particular case in light of the reasonable doubt charge as well as the way I've kind of created a cascading consideration for the jury between A and B first and then A and B second.

(R. 579). Appellant stated that the cascading verdict form was why he believed a *King* charge was necessary because the jury was supposed to consider the charge in the totality, which they would not be able to do if they “strictly” followed the cascading approach. (R. 579). Appellant requested a jury form listing ABHAN, first degree assault and battery, second degree assault and battery, and not guilty. (R. 584). The State argued that the usual form that the trial court intended to use followed the jury charge and allowed the jury to work their way through lesser included offenses if they found Appellant not guilty of the greater offenses. (R. 585). The trial court denied Appellant’s request to change the verdict form. (R. 585).

During the jury charge, the trial court gave a detailed and sufficient reasonable doubt charge. (R. 652-653).

The jury found both Appellant and Travis guilty of ABHAN. (R. 669-670).

After the jury delivered its verdict, the trial court noted that counsel had previously discussed Appellant’s prior convictions and believed they should not count as two strikes against him for the purposes of section 17-25-45 of the South Carolina Code (the “Three Strikes Rule”). (R. 679). The State informed the trial court that Appellant had two prior convictions that had been classified as serious offenses: one for trafficking crack cocaine, 10 to 28 grams, and one for

distribution of marijuana within half a mile of a school or playground. (R. 680). The State noted that while Appellant had pleaded guilty to both on the same day, the crimes occurred approximately two years apart. (R. 680). The State indicated that it initially served its Notice of Intent to Seek Life without Parole on February 16, 2021, and served an Amended Notice on August 19, 2023, when it decided to move forward on Appellant's ABHAN indictment instead of seeking an attempted murder indictment. (R. 680). Appellant and Travis moved to defer sentencing, which the trial court granted. (R. 682).

On October 19, 2023, the trial court conducted a sentencing hearing for Appellant and Travis. (R. 726). The trial court marked several exhibits related to Appellant and Travis's previous convictions, including Appellant's indictments and sentencing sheets for distribution of marijuana within half a mile of a school or playground and trafficking crack cocaine, 10 to 28 grams. (R. 732-733, 688-689, 690). The State noted that the proximity charge was from 2006 and the trafficking charge was from 2008, but Appellant pleaded guilty to both on the same day in 2009. (R. 736).

The State argued that Appellant's prior convictions, both of which were serious in nature and occurred at different places almost two years apart, counted as two separate convictions for the purposes of the Three Strikes Rule, which meant his conviction for ABHAN carried a mandatory LWOP sentence. (R. 739-740).

Appellant asserted that it was "fundamentally unfair" to consider his distribution of marijuana conviction as a strike because (1) "this country has had a history of particularly people of color being disproportionately affected by drug offenses"; (2) marijuana is legal in "a lot of states"; and (3) marijuana "[has] been decriminalized to a certain extent in South Carolina." (R. 754-755). Appellant argued that for his distribution of marijuana conviction to be predictive of

something that changes the mandatory sentence from a maximum of 20 years to a minimum of LWOP “seem[ed] to be fundamentally unfair.” (R. 755). He confirmed that his argument was “basically a due process argument under Federal fairness.” (R. 755). Appellant contended that the Three Strikes Rule, with regard to the proximity conviction, violated his Eighth Amendment and comparable South Carolina Constitutional right against cruel and unusual punishment. (R. 759).

The State argued that Appellant had two qualifying prior convictions under the Three Strikes Rule, which was then and is now good law, and that marijuana is not legal in South Carolina. (R. 755-756).

The trial court determined that Appellant’s prior convictions subjected him to the provisions of the Three Strikes Rule, which mandated an LWOP sentence. (R. 762).

Before the trial court sentenced him, Appellant requested that the trial court view and consider video recordings of Victim requesting that Appellant and Travis receive only probation for this incident. (R. 775). Appellant also requested that the State withdraw its Amended Notice of Intent to Seek Life without Parole and allow the trial court to exercise its discretion in sentencing. (R. 775-776). The State did not withdraw the Amended Notice. (R. 776-777). The trial court sentenced Appellant to LWOP pursuant to the Three Strikes Rule. (R. 779).

On October 30, 2023, Appellant filed his Motion for a New Trial or, Alternatively, to Reconsider the Sentence. (R. 17-24). In his motion, Appellant renewed his arguments related to jury qualification and selection from trial, arguing that the trial court should grant a new trial based on (1) his timely motion for a “continuance to a term of court where the pool of jurors actually appearing for service reflected a cross-section of the community”; (2) his *Batson* motion based on the State “impermissibly [relying] on criminal history to strike the sole [B]lack juror while sitting

[W]hite jurors with criminal records”; and (3) the trial court failing to determine whether the sole Black juror’s inability to hear could be accommodated. (R. 17-19). Appellant asserted the trial court should have granted a new trial based on the trial court’s “improper opening remarks to the jurors,” which he viewed as “particularly prejudicial.” (R. 21). Appellant also contended that the trial court should grant a new trial for denying his request to provide an unnecessary *King* jury charge and restructure the verdict form to his liking. (R. 22). Finally, Appellant argued that he should be resentenced because (1) the solicitors were the only people who wanted Appellant to receive an LWOP sentence; (2) the trial court “did not consider” a recorded statement from Victim when sentencing Appellant; and (3) Appellant objected to his conviction for distribution of marijuana within half a mile of a school or playground counting as a strike for the purposes of the Three Strikes Rule because “South Carolina has decriminalized marijuana” and counting that conviction as a strike would be a cruel and unusual punishment under the United States Constitution and the South Carolina Constitution. (R. 22-23).

The trial court denied Appellant’s motion. (R. 7-8). The trial court reiterated its determinations from trial concerning Appellant’s jury qualification and selection arguments. (R. 7). The trial court stood by its opening remarks to the jury, stating that its use of the adjective “true” to modify the noun “facts” “adds little to the noun and does not rise to the level of instructing the jury to ‘seek the truth’ per *State v. Beaty*.” (R. 7-8). Concerning Appellant’s request for a *King* charge, the trial court was satisfied that a *King* charge was not warranted. (R. 8). The trial court found no prejudice in the structure of the verdict form utilized at trial. (R. 8). Regarding Appellant’s sentence, the trial court noted that it had reviewed Victim’s recorded statement prior to imposing Appellant’s sentence and that the Three Strikes Rule left the trial court with no discretion in imposing Appellant’s LWOP sentence. (R. 8).

This appeal followed.

STANDARD OF REVIEW

In criminal cases, appellate courts sit to review errors of law only, and are bound by the trial court's factual findings unless those findings are clearly erroneous. *State v. Edwards*, 384 S.C. 504, 508, 682 S.E.2d 820, 822 (2009). Thus, on review, appellate courts are limited to determining whether the trial court abused its discretion. *Id.* An abuse of discretion occurs when the trial court's decision is unsupported by the evidence or controlled by an error of law. *State v. Black*, 400 S.C. 10, 16, 732 S.E.2d 880, 884 (2012). An appellate court "does not re-evaluate the facts based on its own view of the preponderance of the evidence but simply determines whether the trial court's ruling is supported by any evidence." *Edwards*, 384 S.C. at 508, 682 S.E.2d at 822.

The trial court's denial of a motion for continuance will also not be disturbed absent a clear abuse of discretion. *State v. Patterson*, 324 S.C. 5, 12, 482 S.E.2d 760 (1997).

The decision to grant or deny a mistrial is within the sound discretion of the trial judge and will not be overturned on appeal absent an abuse of discretion amounting to an error of law. *State v. White*, 371 S.C. 439, 443, 639 S.E.2d 160, 162 (Ct. App. 2006).

ARGUMENT

I. The trial court did not abuse its discretion by denying Appellant's motion to continue his case to the next term of court due to Appellant's belief that the jury panel did not reflect a cross section of the community.

“Whether there has been systematic racial discrimination by the jury commissioners in the selection of jurors is a question to be determined from the facts in each particular case.” *State v. Stallings*, 253 S.C. 451, 454, 171 S.E.2d 588, 590 (1969). Further, “[d]iscrimination in the selection of a jury must be proved and it cannot be presumed.” *Id.* A criminal defendant attacking his conviction on the ground that the State systematically excluded members of his race from the jury that convicted him has the burden of proving the existence of purposeful discrimination. *Id.* at 454-55, 171 S.E.2d at 590.

To establish a prima facie violation of the fair cross section requirement of the Sixth Amendment, a defendant must show “1) the group excluded is a ‘distinctive’ group in the community; 2) the representation of this group in venires from which juries are selected is not fair and reasonable in relation to the number of such persons in the community; and 3) this underrepresentation is due to a systematic exclusion of the group in the jury selection process.” *State v. Patterson*, 342 S.C. 5, 21, 482 S.E.2d 760, 767-68 (1997).

First, given that Black individuals are a “distinctive” group in the community, Appellant failed to show the representation of Black individuals in the venire from which the jury in this case was selected was not fair and reasonable in relation to the number of such persons in the community. The record indicates that 42 of the 200 members of the venire¹¹—or 21 percent—were Black. (R. 696-725). Including a passing reference to the 2020 United States Census without any evidentiary support, Appellant conceded during pretrial arguments that “the 200 that were

¹¹ A venire is “[a] panel of persons selected for jury duty and from among whom the jurors are to be chosen.” *Black’s Law Dictionary*, *venire* (12th ed. 2024).

summoned is not very different [or] of any significant difference] from the population of the county.” (R. 53). Appellant’s concern related entirely to the jurors who appeared in court and the number of Black individuals who were “lost” in the “whittling-down process.” (R. 53). Therefore, because Appellant conceded that the venire from which the jury was chosen adequately represented the population of Abbeville County, Appellant failed to show that the representation of Black individuals in the venire was not fair and reasonable in relation to the community.

Second, assuming that Appellant can show both steps 1 and 2, he has failed to show that Black individuals were systematically excluded during the jury selection process. In *Duren*, women were routinely granted exemptions from being included in jury venires upon request both before and after jury summonses were issued and, therefore, were underrepresented in jury venires. *Duren v. Missouri*, 439 U.S. 357 (1979). There, women accounted for 54 percent of the population and only 14.5 percent of the challenged jury pool. The United States Supreme Court held the “resulting disproportionate exclusion of women from the jury wheel and at the venire stage was quite obvious due to the *system* by which juries are selected.” *Id.* at 367 (emphasis in original). Here, Appellant has not shown any system of exclusion from the jury venire specifically or in the jury selection process generally.

Even construing Appellant’s argument that 29 of the 42 Black individuals summoned did not appear in court as an argument of systematic exclusion, the clerk stated that when potential jurors are summoned and do not respond, someone from the Clerk’s Office would go to the Abbeville County administration building and have the Auditor’s Office check for the most up-to-date addresses. (R. 58). The clerk said that “if [the Auditor’s Office does not] have anything other than what we do, we run it back.” (R. 58). Nothing in the record indicates that the process for selecting the venire or attempting to serve jury summonses systematically excluded Black

individuals, as opposed to the case with women in *Duren*. This was explicitly reflected in the trial court's ruling, where the court stated, "And obviously, it's always best to have as wide a cross section of the community if at all possible. In this case[,] I'm not finding that there was anything nefarious with the selection of the jury by the clerk, or in the way it was generated." (R. 75). Therefore, the trial court did not abuse its discretion in denying Appellant's motion for a continuance because Appellant failed to make a prima facie showing that the fair cross section requirement of the Sixth Amendment had been violated.

II. The trial court properly denied Appellant's *Batson* motion after the State appropriately struck a potential alternate juror with a prior conviction similar to the crime charged against Appellant where the State, after discussion with the trial court, relented and agreed to allow the potential alternate juror to be seated.

Initially, this issue is moot because the State agreed to allow the potential alternate juror—Juror 191—to be seated, which thereby achieved the purpose of Appellant's *Batson* motion without need for the trial court to rule on the motion. *See State v. Green*, 337 S.C. 67, 71, 522 S.E.2d 602, 604 (Ct. App. 1999) ("When judgment on an issue can have no practical effect upon an existing case or controversy, the issue is moot."); *id.* ("A criminal case is moot only if there is no possibility that any legal consequence will be imposed." (quoting *Sibron v. New York*, 392 U.S. 40, 57 (1968))). While the trial court did ultimately rule on Appellant's motion, it did so after it excused Juror 191 for his previously undisclosed inability to hear. (R. 82-83).

However, should the Court find this issue is not moot, the trial court properly denied Appellant's *Batson* motion. In *State v. Giles*, the South Carolina Supreme Court explained the proper procedure for a *Batson* hearing:

First, the opponent of the peremptory challenge must make a prima facie showing that the challenge was based on race. If a sufficient showing is made, the trial court will move to the second step in the process, which requires the proponent of the challenge to provide a race neutral explanation for the challenge. If the trial court finds that burden has been met, the process will proceed to the third step, at

which point the trial court must determine whether the opponent of the challenge has proved purposeful discrimination.

407 S.C. 14, 18, 754 S.E.2d 261, 263 (2014) (internal citations omitted). “The burden of persuading the court that a *Batson* violation has occurred remains at all times on the opponent of the strike.” *State v. Evins*, 373 S.C. 404, 415, 645 S.E.2d 904, 909 (2007). The opponent of the strike must show the race neutral explanation was mere pretext, which generally is established by showing the party did not strike a similarly situated member of another race. *State v. Haigler*, 334 S.C. 623, 629, 515 S.E.2d 88, 91 (1999). “Whether a *Batson* violation has occurred must be determined by examining the totality of the facts and circumstances in the record.” *Edwards*, 384 S.C. at 509, 682 S.E.2d at 822.

In *State v. Stewart*, the State charged the defendant with the murder of his affair partner, and during the jury selection process, the defendant made a *Batson* motion due to the State striking four Black potential jurors. 413 S.C. 308, 313-15, 775 S.E.2d 416, 418-19 (Ct. App. 2015). The State explained that it dismissed the four Black potential jurors for, respectfully, (1) prior domestic issues with his spouse; (2) prior arrest for possession of cocaine that was not prosecuted; (3) unemployed and knew the victim; and (4) being late and appearing disinterested. *Id.* at 315, 775 S.E.2d at 419.

The defendant in *Stewart* argued that the State allowed two similarly situated White jurors to be seated—one with a nolle prossed charge for assault and battery with intent to kill and one with either an arrest or conviction for simple assault and bad checks. *Id.* The trial court determined that the State expressed race neutral reasons for striking the two Black potential jurors with criminal histories because case law supported dismissing jurors with previous negative relationships with law enforcement. *Id.* at 317, 775 S.E.2d at 421. However, this Court reversed

the trial court, holding that the State negated the race neutral reason by seating similarly situated White jurors. *Id.*

Here, Appellant asserted that the State struck Juror 191 on the basis of race, as he was the first and only Black potential juror presented. (R. 52). The State offered a racially neutral reason for striking Juror 191, which was that Juror 191 had two convictions for simple assault and battery. (R. 59, 66). The State asserted that simple assault and battery is a crime similar to ABHAN, for which Appellant was standing trial. (R. 66).

In this case, unlike in *Stewart*, the State did not negate the racially neutral reason by allowing White jurors with criminal records to be seated because those jurors had distinctly different convictions that were not similar to ABHAN, instead having convictions for simple disorderly conduct and check fraud. (R. 60, 64, 66-67). In *Stewart*, two of the Black potential witnesses dismissed by the State had assault and battery arrests or charges, as did two of the White jurors seated by the State. This Court determined in *Stewart* that the Black potential jurors and the White seated jurors were similarly situated because the State's reasoning for striking the Black potential jurors applied just as well to otherwise similarly situated non-Black jurors. *Stewart*, 413 S.C. at 317, 775 at 421. This reasoning does not apply in this case because the State's expressed reasoning for striking Juror 191—his simple assault and battery conviction was similar to Appellant's ABHAN charge—does not apply to the two White jurors seated by the State. Disorderly conduct and check fraud are not similar to ABHAN. Therefore, the two White jurors with criminal records were not similarly situated to Juror 191.

Thus, the trial court did not err in denying Appellant's *Batson* motion, despite not needing to rule on it due to Juror 191's undisclosed inability to hear, because the State articulated a race

neutral reason for striking the only Black potential juror presented and Appellant failed to show that the reason was mere pretext.

III. The trial court properly exercised its discretion in excusing an alternate juror before trial upon learning that the alternate juror had hearing problems and that the alternate juror only heard some of the questions posed to potential jurors during voir dire.

Section 14-7-810 of the South Carolina Code sets forth: “[N]o person is qualified to serve as a juror in any court in this State if: . . . (3) He is incapable by reason of . . . physical infirmities to render efficient jury service.” Section 14-7-810 goes on to state, “The trial judge must make the final determination of the qualifications of a juror as set out in this section and his decision must not be disturbed on appeal.”

Here, when the trial court went to inform Juror 191 that he would be seated as the second alternate juror after the State conceded to have him seated, Juror 191 informed the trial court that he had trouble hearing due to a “growth in the ear.” (R. 78-79). The trial court determined that Juror 191 was “extremely hard of hearing” and “darn close” to being “deaf as a fence post.” (R. 82-83). Further, Juror 191 only heard some of the voir dire, and the trial court noted that not hearing all of voir dire was problematic. (R. 78-79, 117). *See Skilling v. United States*, 561 U.S. 358, 386-87 (2010) (“In contrast to the cold transcript received by the appellate court, the in-the-moment voir dire affords the trial court a more intimate and immediate basis for assessing a venire member’s fitness for jury service.”).

The trial court stated that some judges had previously made accommodations for individuals who were hard of hearing but determined that such accommodation was not feasible for Juror 191. (R. 82). When Appellant argued that the trial court had not entertained such accommodation, the trial court responded that even if Juror 191 could be accommodated, the issue of Juror 191 not hearing all of the voir dire remained problematic. (R. 118-119).

Therefore, because the trial court determined that Juror 191 was unable to render efficient jury service due to his inability to hear, which impaired his ability to meaningfully participate in voir dire, the trial court properly exercised its discretion in finding Juror 191 not qualified to sit on the jury in this case.

IV. The trial court properly denied Appellant’s mistrial motion after the trial court mentioned “true facts” in its opening remarks to the jury because a view of the entirety of the trial court’s opening remarks and the entire trial record indicate that Appellant suffered no prejudice sufficient to warrant reversal, especially considering the curative instruction given by the trial court at Appellant’s request.

The trial court made two references to “true facts” in its opening remarks to the jury. (R. 133-134). “Because you’re the sole judges of the facts, I don’t want any comment that I make about the testimony or the evidence to have any effect on what you ultimately find the true facts to be.” (R. 133). “Now, in determining what the true facts are, you’ll have to decide whether or not the testimony of the witnesses is believable or not.” (R. 134).

In *State v. Beaty*, the South Carolina Supreme Court determined that a trial court’s use of phrases such as “search[ing] for the truth,” “true facts,” and “just verdict” in a trial court’s opening remarks “could be understood to place an obligation on the jury, independent of the burden of proof, to determine the circumstances surrounding the alleged crime and from those facts alone render the verdict the jury believes best served its perception of justice.” 423 S.C. 26, 33-34, 813 S.E.2d 502, 505-06 (2018). The trial court in *Beaty* denied the defendant’s request for a curative instruction because his opening comments were not jury instructions. *Id.* at 33, 813 S.E.2d at 506. The Supreme Court determined, based on the trial court’s entire opening remarks and the entire record on appeal, that Appellant failed to show prejudice sufficient to warrant reversal. *Id.* at 34, 813 S.E.2d at 506.

Here, much like in *Beaty*, the trial court’s references to “true facts” were (1) a mere statement to the jury; (2) not linked to a reasonable doubt charge; and (3) not linked to a

circumstantial evidence charge. *Id.* Additionally, much like in *Beaty*, a review of the trial court's full opening remarks and the entire trial record, which is replete with references and instructions regarding the beyond a reasonable doubt standard after the trial court's opening remarks, reveals that Appellant failed to show he suffered prejudice from the trial court's "true facts" references that would warrant a reversal. *Id.* (R. 135-136, 140-148, 589-590, 603, 630-633, 639-649, 652-653). These references and instructions on the reasonable doubt standard entirely negate Appellant's argument that the jury "likely viewed their role as determining the 'true' charge rather than resolving doubt in favor of" Appellant. (Initial App. Br. 16). Instead, the jury heard the trial court instruct them *not* to consider its remarks on "true facts" and then repeatedly heard that the State had to prove Appellant's guilt, as well as Travis's guilt, beyond a reasonable doubt.

Moreover, the trial court gave a curative instruction *at Appellant's request*. (R. 133-134, 160-161). *See State v. White*, 371 S.C. 439, 445, 639 S.E.2d 160, 163 (Ct. App. 2006) ("Generally, a curative instruction is deemed to have cured any alleged error." (quoting *State v. Walker*, 366 S.C. 643, 658, 623 S.E.2d 122, 129 (Ct. App. 2005))). The extensive nature of the curative instruction, in addition to subsequent reiterations of the reasonable doubt standard throughout the record, cured any possible error and eliminated any conceivable prejudice. *See State v. Patterson*, 337 S.C. 215, 227, 552 S.E.2d 845, 851 (Ct. App. 1999) ("The extensive curative instruction given by the trial [court] cured any possible error and eliminated any conceivable prejudice.").

Therefore, because a trial court should exhaust other methods to cure possible prejudice before granting a mistrial and because the curative instruction in this case is deemed to have cured any error from the trial court's references to "true facts," the trial court did not abuse its discretion in denying Appellant's mistrial motion. *See White*, 371 S.C. at 444, 639 S.E.2d at 162 ("The trial [court] should first exhaust all other methods to cure possible prejudice before aborting a trial.");

id. at 445, 639 S.E.2d at 165 (“If the trial [court] sustains a timely objection to evidence and gives the jury a curative instruction that it be disregarded, the error is deemed to have been cured by the instruction.”); *State v. Kelsey*, 331 S.C. 50, 70, 502 S.E.2d 63, 73 (1998) (“The granting of a motion for a mistrial is an extreme measure which should be taken only where an incident is so grievous that prejudicial effect can be removed in no other way.”).

V. The trial court properly denied Appellant’s request for a jury charge pursuant to *State v. King* because the trial court gave an appropriate and sufficient reasonable doubt jury charge.

In *Brightman v. State*, the South Carolina Supreme Court revisited the “continued propriety of the *King* charge.” 336 S.C. 348, 351-52, 520 S.E.2d 614, 615-16 (1999). In doing so, the Supreme Court noted that in *King*, the trial court’s jury charge implied that the defendant was guilty of murder while eliminating any potential for the jury to convict of the lesser included offense that was also charged. *Id.* The Supreme Court’s holding in *King* was:

The charge did not clearly and correctly instruct the jury, that if they had a reasonable doubt as to whether the appellant was guilty of murder or manslaughter, it was their duty to resolve the doubt in his favor, and find him guilty of the lesser offense. It is plain that the rule of reasonable doubt requires that a defendant charged with murder, be extended the benefit of that doubt, when it is questionable that the crime committed by him was murder or manslaughter.

State v. King, 158 S.C. 251, 155 S.E. 409, 426 (1930).

In *Brightman*, after discussing the holding from *King*, the Supreme Court recalled its notation in *Gilmore v. State* that the language of the *King* opinion was based on the 1930 definition of “reasonable doubt,” which had gone through “significant modification and revision” in the decades since 1930. *Brightman*, 336 S.C. at 352, 520 S.E.2d at 616; *see also Victor v. Nebraska*, 511 U.S. 1 (1994); *Gilmore v. State*, 314 S.C. 453, 456 n.1, 445 S.E.2d 454, 456 n.1 (1994) (noting that “an argument could now be made that the *King* charge is unnecessary and archaic”). The

Supreme Court then reiterated that it had adopted the definition of reasonable doubt as set forth by Justice Ginsburg in *Victor v. Nebraska*, and overruled *King*. *Brightman*, 336 S.C. at 352, 520 S.E.2d at 616. The Supreme Court expressly stated:

The *King* charge is unnecessary in light of the modern general reasonable doubt charge which instructs the jury to resolve doubts in favor of the defendant.

Id. Additionally, the Supreme Court, in a footnote, overruled a set of cases “to the extent that they hold it is reversible error to fail to give the *King* charge when there is evidence to support a charge on a lesser included offense.” *Id.* at 325 n.5, 520 S.E.2d at 616 n.5.

Here, Appellant requested a *King* charge when the trial court determined that it would charge the jury on ABHAN as well as the lesser included offenses of first-degree assault and battery and second-degree assault and battery. (R. 574). The trial court denied Appellant’s request, finding that a reasonable doubt jury charge would be sufficient. (R. 578).

Based on *Brightman*, the trial court properly determined that it did not need to give a *King* charge because its reasonable doubt jury charge was sufficient. *See Brightman*, 336 S.C. at 325, 520 S.E.2d at 616 (“The *King* charge is unnecessary in light of the modern general reasonable doubt charge which instructs the jury to resolve doubts in favor of the defendant.”). To the extent that the trial court did err in denying Appellant’s request for a *King* charge, the Supreme Court has confirmed that the failure to give a *King* charge is not reversible error. *Id.* at 325 n.5, 520 S.E.2d at 616 n.5 (overruling a set of cases “to the extent that they hold it is reversible error to fail to give the *King* charge when there is evidence to support a charge on a lesser included offense.”).

VI. The trial court properly denied Appellant's motion to restructure the verdict form because the verdict form that was used allowed the jury to consider the indicted offense as well as lesser included offenses.

Initially, Appellant abandoned this issue on appeal. *See State v. Howard*, 384 S.C. 212, 217, 682 S.E.2d 42, 45 (Ct. App. 2009) ("An issue is deemed abandoned and will not be considered on appeal if the argument is raised in a brief but not supported by authority."). Here, the only legal authority Appellant cited in support of his argument that the verdict form utilized by the trial court in some way prejudiced him is a civil case¹² concerning a special verdict form permitted under Rule 49 of the South Carolina Rules of Civil Procedure. Therefore, because the only authority cited by Appellant is a civil case interpreting rules of civil procedure which are not generally applicable in criminal matters, Appellant's *only* citation does not support his argument regarding a verdict form in a criminal matter.

Should the court find this issue is not abandoned on appeal, the trial court properly determined that the verdict form was appropriate and allowed proper consideration of lesser included offenses. By definition, a greater offense includes all elements of lesser included offenses. *See State v. Dickerson*, 395 S.C. 101, 118, 716 S.E.2d 895, 904 (2011) ("A [lesser included] offense is one whose elements are wholly contained within the crime charged.").

In this case, Appellant agreed that first-degree and second-degree assault and battery are lesser included offenses of ABHAN. (R. 584, 644-646). Therefore, by definition, when the jury considered whether Appellant committed ABHAN, it necessarily also considered whether Appellant committed the lesser included offenses of first- and second-degree assault and battery. Additionally, the trial court charged the jury to resolve all doubts in favor of Appellant. (R.

¹² *S.C. Dep't of Transp. v. First Carolina Corp. of S.C.*, 372 S.C. 295, 300-01, 641 S.E.2d 903, 906-07 (2007) (discussing the use of a special verdict form as provided in Rule 49 of the South Carolina Rules of Civil Procedure).

652-653). Thus, if the jury believed that each and every element of ABHAN was not proven by the State beyond a reasonable doubt, only then could the jury separately consider whether Appellant was guilty of the lesser included offense of first-degree assault and battery.

To the extent that Appellant argues that the jury form did not allow the jury to consider the entirety of the trial court's charge, the State notes that the jury charges relating to the lesser included charges of first- and second-degree assault and battery were conditional on the jury finding that the State failed to prove ABHAN beyond a reasonable doubt. (R. 659-660). Therefore, these two jury charges did not need to be specifically considered separately from ABHAN unless and until the jury specifically found that the State failed to prove ABHAN beyond a reasonable doubt.

VII. The trial court properly denied Appellant's motion to quash the State's Amended Notice of Intent to Seek Life without Parole because Appellant's prior convictions qualified as two serious offenses for the purposes of the Three Strikes Rule despite Appellant's mistaken belief that marijuana has been "decriminalized" in South Carolina.

Initially, South Carolina has not "decriminalized" marijuana. *See* S.C. Code Ann. § 44-53-190(D)(11) (stating that marijuana is a controlled substance). Section 44-53-470 of the South Carolina Code defines "[s]econd or subsequent offense" in the context of offenses involving controlled substances. In this section, the General Assembly set forth that a prior marijuana offense would not count as a first offense for a subsequent controlled substance offense when the subsequent offense related to a controlled substance other than marijuana. *See* S.C. Code Ann. § 44-53-470(A)(3) & (4). However, a prior trafficking in marijuana violation would count as a first offense for all subsequent controlled substances offenses. *See* S.C. Code Ann. § 44-53-470(B). The General Assembly specifically set forth that a prior marijuana offense does enhance a subsequent marijuana offense to a second or subsequent offense. *See* S.C. Code Ann. § 44-53-470(A)(1) & (2). Ultimately, however, section 44-53-470 does not factor into an analysis

of whether prior controlled substance violations are considered strikes under the Three Strikes Rule.

The Three Strikes Rule specifically states which prior offenses are considered serious and most serious offenses, and thus considered strikes for the purpose of the rule. *See generally* S.C. Code Ann. § 17-25-45. Both of Appellant’s prior convictions—one for trafficking crack cocaine and one for distribution of marijuana within half a mile of a school or playground—are listed as serious offenses under the Three Strikes Rule. *See* S.C. Code Ann. § 17-25-45(C)(2)(b) (defining “Trafficking in controlled substances” and “Distribut[ion of] controlled substances within proximity of a school” as serious offenses); S.C. Code Ann. § 44-53-190(D)(11) (defining marijuana as a controlled substance).

Therefore, after the jury found Appellant guilty of ABHAN, which itself is listed as a serious offense under the Three Strikes Rule, the trial court was statutorily required to sentence Appellant to LWOP. *See* S.C. Code Ann. § 17-25-45(B) (“[U]pon a conviction for a serious offense as defined by this section, a person must be sentenced to a term of life imprisonment without the possibility of parole if that person has two or more prior convictions for: (1) a serious offense”); S.C. Code Ann. § 17-25-45(C)(2)(b) (defining ABHAN as a serious offense).

To the extent that Appellant argues that the trial court erred in refusing to find that the penalty portion of the Three Strikes Rule, and his LWOP sentence imposed pursuant to the rule, violates the Eighth Amendment, Appellant has failed to show that the Three Strikes Rule is repugnant to the Constitution beyond a reasonable doubt. *See Joytime Distrib. & Amusement Co. v. State*, 338 S.C. 634, 640, 528 S.E.2d 647, 651 (1999) (stating that appellate courts have a very limited scope of review in cases involving a constitutional challenge to a statute); *Davis v. County of Greenville*, 322 S.C. 73, 77, 470 S.E.2d 94, 96 (1996) (holding that all statutes are presumed

constitutional and will, if possible, be construed so as to render them valid); *Westvaco Corp. v. S.C. Dep't of Revenue*, 321 S.C. 59, 62, 467 S.E.2d 739, 741 (1995) (stating that a legislative act will not be declared unconstitutional unless its repugnance to the constitution is clear beyond a reasonable doubt).

The Eighth Amendment to the United States Constitution, which applies to the states by virtue of the Fourteenth Amendment, provides: “Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.” U.S. Const. amend. VIII. The Eighth Amendment prohibits not only barbaric punishments but also sentences that are not proportionate to the crime. *Solem v. Helm*, 463 U.S. 277, 284 (1983). However, “[t]he Eighth Amendment does not require strict proportionality between crime and sentence. Rather, it forbids only extreme sentences that are ‘grossly disproportionate’ to the crime.” *Harmelin v. Michigan*, 501 U.S. 957, 1001 (1991) (Kennedy, J., concurring).

“[I]n analyzing proportionality under the Eight[h] Amendment outside the capital context, South Carolina courts shall first determine whether a comparison between the sentence and the crime committed gives rise to an inference of gross disproportionality. If no such inference is present, the analysis ends.” *State v. Harrison*, 402 S.C. 288, 299–300, 741 S.E.2d 727, 733 (2013).

Here, Appellant’s only argument that his LWOP sentence under the Three Strike Rule is not proportionate to his ABHAN conviction is that his prior conviction for distribution of marijuana within half a mile of a school should not be counted as a strike because South Carolina had “decriminalized” marijuana. (Initial App. Br. 20). See *State v. Williams*, 380 S.C. 336, 349, 669 S.E.2d 640, 647 (Ct. App. 2008) (“Under recidivist sentencing schemes, the enhanced punishment imposed for a present offense is not to be viewed as an additional penalty for the earlier

crimes, but instead as a stiffened penalty for the latest crime, which is considered to be an aggravated offense because it is a repetitive one.”).

As discussed above, this argument is entirely without merit, and marijuana remains illegal in South Carolina. *See* S.C. Code Ann. § 44-53-190(D)(11) (stating that marijuana is a controlled substance). Moreover, the South Carolina courts have “determined stiff penalties for drug crimes do not violate the constitutional prohibition against cruel and unusual punishment.” *Williams*, 380 S.C. at 347-48, 669 S.E.2d at 646. “[T]he United States Supreme Court has also held a state is justified in punishing a recidivist more severely than it does a first offender.” *Id.* at 348, 669 S.E.2d at 647.

Appellant’s remaining arguments all fall into an interjurisdictional analysis, which is only appropriate when the comparison between a sentence and the crime committed gives rise to an inference of gross disproportionality, which is far from the case here. *See Harrison*, 402 S.C. at 300, 741 S.E.2d at 733 (stating that a comparative interjurisdictional analysis is only appropriate after a court determines that an inference of gross disproportionality exists and courts should not use an interjurisdictional analysis to “develop an inference when one did not initially exist”).

Therefore, the trial court did not abuse its discretion in denying Appellant’s request to quash the State’s Amended Notice because Appellant’s LWOP sentence pursuant to the Three Strikes Rule does not raise an inference of gross disproportionality to his conviction for ABHAN given his prior convictions for distribution of crack cocaine and distribution of marijuana within half a mile of a school.

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CONCLUSION

Based on the foregoing, the State requests that this Court affirm Appellant's conviction for assault and battery of a high and aggravated nature, as well as his associated sentence.

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January 29, 2025
Columbia, South Carolina

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Jan 29 2025

SC Court of Appeals

THE STATE OF SOUTH CAROLINA

In the Court of Appeals

APPEAL FROM ABBEVILLE COUNTY
Court of General Sessions

Frank R. Addy, Jr., Circuit Court Judge

Appellate Case No. 2023-001843

THE STATE,

Respondent,

v.

KENDRICK MONTREZ LEE,

Appellant.

PROOF OF SERVICE

I, Grace Sommer, certify that I have served this Final Brief of Respondent on E. Charles Grose, Jr., Esquire, counsel of record for the Appellant, by electronic mail to the address listed for counsel in AIS.

I further certify that all parties required by Rule to be served have been served.

This 29th day of January, 2025.



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To: charles@groselawfirm.com
Cc: Brian Gibbs
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Good Afternoon Mr. Grose,

Attached please find a Final Brief of Respondent in The State v. Kendrick Montrez Lee (2023-001843). This Brief will be filed today with the South Carolina Court of Appeals via the AIS OneDrive System.

If you will, please confirm receipt of this email.

Thank you!

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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
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APPEAL FROM ABBEVILLE COUNTY
Court of General Sessions
Frank R. Addy, Jr., Circuit Court Judge

Appellate Case No. 2023-001843

The State, ...Respondent,

v.

Kendrick Montrez Lee, ...Appellant.

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ARGUMENTS IN REPLY

Question I

Did the trial court err by requiring Ken Lee, a black man, to face trial by an all-white jury and denying his timely request for a continuance to a term of court when the pool of jurors actually appearing for jury service did not reflect a cross-section of the community?

The State argues the trial court did not abuse its discretion in denying the continuance because Mr. Lee cannot prove systematic and purposeful discrimination. Brief of respondent, pp. 20-22. The State does not deny that an anomaly occurred where most of the black jurors summoned did not appear for juror service. The State overlooks “the inherent power to control the order of its business to safeguard the rights of litigants.” *State v. Langford*, 400 S.C. 421, 429, 735 S.E.2d 471, 475 (2012). Also, the State does not acknowledge that trial courts can abuse their discretion by denying a continuance request. *State v. McMillian*, 349 S.C. 17, 561 S.E.2d 602 (2002) (defendant was entitled to continuance of retrial, so he could obtain transcript of first trial, for use in impeaching victim's neighbor). Under the circumstances of this case, it was an abuse of discretion for the trial judge to deny the continuance request. This Court should reverse the trial court and order a new trial.

Question II

Did the trial court err by denying Ken Lee’s Batson motion when the prosecution impermissibly relied on criminal history to strike the sole black juror while seating white jurors with criminal records?

The State initially argues this issue is moot because the prosecution agreed—albeit reluctantly and the result of coercion by the trial judge—to seat the sole black juror drawn for service on this case. Brief of Respondent, p. 22. This question is not moot because, but for the State striking this juror, this juror would have sat on the jury.

The State next argues “unlike in *Stewart*,^[1] the State did not negate the racially neutral reason by allowing White jurors with criminal records to be seated because those jurors had distinctly different convictions that were not similar to ABHAN, instead having convictions for simple disorderly conduct and check fraud.” Brief of Respondent, p. 24. The State is wrong for two reasons. First, this statement talks in circles. The reality is the seated jurors had similar convictions. Assault and battery of a high and aggravated nature is very different from simple assault and battery. S.C. Code Ann. § 16-3-600(B) and (E). Simple assault and battery is an expungable 30-day misdemeanor, just like disorderly conduct and check fraud. Second, the general public loses confidence in the legal profession when lawyers make transparent arguments to mask reality. This Court should reverse the trial court and order a new trial.

Question III

Did the trial court abuse its discretion when it failed to determine whether the sole black juror’s hearing issues could be accommodated?

The State implies Juror 191 was “deaf as a fence post.” Brief of Respondent, pp. 7. The trial judge actually stated the juror “may not have been as deaf as a fence post, but he was darn – darn close.” R. 83. Neither the State’s implication nor the trial judge’s comment is supported by the record as the trial judge was able to carry on a dialogue with Juror 191 but chose not to complete the dialogue. *State v. Hawes*, 423 S.C. 118, 126, 813 S.E.2d 513, 517 (Ct. App. 2018) (“An abuse of discretion occurs when the trial court’s ruling is based on an error of law or, when grounded in factual conclusions, is without evidentiary support.”). Because the trial court did not even inquire into whether Juror 191 could be

¹ *State v. Stewart*, 413 SC 308, 775 S.E.2nd 416 (Ct. App. 2015).

accommodated—even though the juror stated he could hear out of one ear—this Court should reverse the trial court and order a new trial.

Question IV

Did the trial court err by not granting a mistrial after making improper opening remarks to the jurors that violated *State v. Beatty*, 423 S.C. 26, 813 S.E.2d 502 (2018) and *State v. Daniels*, 401 S.C. 251, 737 S.E.2d 473 (2012)?

The State centers its argument around *State v. Beatty*, 423 S.C. 26, 813 S.E.2d 502 (2018) but never addresses *State v. Daniels*, 401 S.C. 251, 737 S.E.2d 473 (2012).² Brief of Respondent, pp. 26-28. Nor did the State respond to Mr. Lee’s objection that it is impossible to “unring the bell.” R. 135-36, 163-64. *See, e.g., State-Rec. Co. v. State*, 332 S.C. 346, 356, 504 S.E.2d 592, 597 (1998) (“it is difficult, if not impossible, to ‘unring a bell’”) (quoting *United States v. Davis*, 904 F.Supp. 564, 569 (E.D.La.1995)).

The State seemingly argues, Mr. Lee’s case is not as egregious as *Beatty*, so this Court should not find error.; however, *Beatty* held “a trial judge should refrain from informing the jury, whether through comments or through a charge on the law, that its role is to search for the truth, or to find the true facts, or to render a just verdict.” 423 S.C. at 34, 813 S.E.2d at 506. This Court should reverse the trial court. Twelve years after *Daniels* and six years after *Beatty*, trial courts are still giving this instruction. Unless this Court intervenes and reverses cases because of this improper instruction, there is no deterrent to this practice.

² The State’s only reference to *Daniels* occurs in the State’s listing of Mr. Lee’s Questions on Appeal. Brief of Respondent, p. 1.

Question V

Did the trial court err by not providing an instruction pursuant to *State v. King*, 158 S.C. 251, 155 S.E. 409 (1930), regarding the jurors’ obligation to resolve any doubt between the greater and lesser offenses, in favor of the accused, when that jury instruction was not required but permissible?

The State overstates the holding in *Brightman v. State*, 336 S.C. 348, 520 S.E.2d 614 (1999) by implying *Brightman* held the *King* charge was no longer proper. In reality, although *Brightman* overruled *King*, to the extent *King* mandated the instruction, *Brightman* did not prohibit the instruction. In this case, the error in not giving the *King* charge must be considered in conjunction with the verdict form utilized by the trial judge. Strictly following the “cascading approach” of the verdict form prohibited the jurors from considering the charge as a whole. Absent a *King* charge, the verdict form guided the jurors to a verdict of guilty of ABHAN because the jurors were not allowed to consider resolving any doubt between the greater offenses and the lesser included offenses. This Court should reverse the trial court and order a new trial.

Question VI

Did the trial court err by providing the jurors a “cascading” verdict form, rather than structuring the verdict form in the manner requested by Ken Lee, which would have mitigated the trial court’s error in the opening instructions and ensured the jurors gave due consideration the lesser included offenses?

The State initially argues Mr. Lee abandoned this argument because “the only legal authority Appellate cited in support of his argument that the verdict form utilized be the trial court in some way prejudiced him is a civil case.” Brief of Respondent, p. 30. The State is wrong for two reasons. First, civil precedent is still precedent. Second, the case cited by Mr. Lee quoted two criminal cases—*State v. Covert*, 368 S.C. 188, 214, 628 S.E.2d 482, 496 (Ct.App.2006) and *State v. Myers*, 344 S.C. 532, 536, 544 S.E.2d 851, 853

(Ct.App.2001)—for the proposition, “The prejudicial effect of a defective verdict form may be cured where the trial court provides clear and cogent jury instructions.” Brief of Appellant, p. 17.

As argued in Mr. Lee’s opening brief, the trial judge had two options to cure the defective instruction: (1) the trial court could have provided a *King* charge or (2) the trial could have cured the defect was to eliminate the “cascading” format and provide the jurors with a choice between ABAHN, first-degree assault and battery, second-degree assault and battery, and not guilty, as Mr. requested. This error was magnified by the trial judges opening remarks regarding the jurors’ obligation to find the “true facts.” This Court should reverse the trial court and order a new trial.

Question VII

Did the trial court err by not quashing the State’s notice of intent to seek life without parole when the enhanced sentences was based on a conviction involving marijuana when Ken Lee objected to this charge being used to enhance the sentence when South Carolina has decriminalized marijuana and marijuana one day likely will be legal throughout the United States?

The United States government is taking action to reschedule marijuana from a Schedule I drug to a Schedule III drug. <https://www.justice.gov/opa/pr/justice-department-submits-proposed-regulation-reschedule-marijuana> (last viewed Oct. 21, 2024). *Compare* S.C. Code Ann. § 44-53-190 *with* S.C. Code Ann. § 44-53-230. A Schedule I drug has “[a] high potential for abuse, [n]o accepted medical use in treatment in the United States; and [a] lack of accepted safety for use in treatment under medical supervision.” S.C. Code Ann. § 44-53-180. A Schedule III drug has an “accepted medical use in treatment in the United States.” S.C. Code Ann. § 44-53-220. As argued in Mr. Lee’s opening brief, this nation

trend militates in favor of not using a marijuana conviction to enhance a sentence to life imprisonment without the possibility of parole.

CONCLUSION

For the reasons stated in the Brief of Appellant and this Reply, this Court should reverse the trial court and order a new trial. Alternatively, this Court should vacate Ken Lee's sentence and remand for re-sentencing.

Respectfully Submitted,

By s/E. Charles Grose, Jr.

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December 27, 2024
Greenwood, South Carolina

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Dec 27 2024

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM ABBEVILLE COUNTY
Court of General Sessions
Frank R. Addy, Jr., Circuit Court Judge

Appellate Case No. 2023-001843

The State, ...Respondent,

v.

Kendrick Montrez Lee, ...Appellant.

Rule 211, SCACR Certification

This Final Brief of Appellant complies with Rule 211(b), SCACR.

Respectfully Submitted,

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The South Carolina Court of Appeals

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July 1, 2026

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Re: The State v. Kendrick M. Lee
Appellate Case No. 2023-001843

Dear Counsel:

Enclosed is the decision of the Court. The remittitur will be sent as provided by Rule 221(b) of the South Carolina Appellate Court Rules.

Very truly yours,

Jasmine D. Smith, Deputy
CLERK

cc: Alan McCrory Wilson, Esquire
David Matthew Stumbo, Esquire
The Honorable Frank R. Addy, Jr.

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

The State, Respondent,

v.

Kendrick Montrez Lee, Appellant.

Appellate Case No. 2023-001843

Appeal From Abbeville County
Frank R. Addy, Jr., Circuit Court Judge

Opinion No. 6151
Heard November 6, 2025 – Filed July 1, 2026

REVERSED AND REMANDED

E. Charles Grose, Jr., of Grose Law Firm, of Greenwood,
for Appellant.

Attorney General Alan McCrory Wilson and Brian Hollis
Gibbs, both of Columbia, and David Matthew Stumbo, of
Greenwood, all for Respondent.

VINSON, J.: Kendrick Montrez Lee appeals his conviction for assault and battery of a high and aggravated nature (ABHAN) and sentence of life without parole (LWOP), arguing, among other things, that the trial court erred by failing to determine whether a juror's hearing issues could be accommodated.¹ We reverse and remand.

¹ Lee additionally argued the trial court erred by (1) denying his request for a continuance; (2) denying his *Batson v. Kentucky*, 476 U.S. 79 (1986), motion; (3)

FACTS

In 2023, a jury convicted Lee of ABHAN for severely beating his cousin.² Prior to trial, Lee made a *Batson* motion based on the State's striking of the sole Black juror, Juror 191, presented from the jury panel. The State informed the trial court it struck Juror 191 due to his prior convictions for simple assault and battery; two instances of disorderly conduct; and criminal domestic violence, third or subsequent offense. All of these convictions were at least twenty years old. Regarding other jurors with criminal records, the State informed the trial court that Juror 188, who was seated and was white, had a public disorderly conduct conviction from 2011. Juror 186, who was struck and was white, had a conviction for a fraudulent check from 1995. Lee argued Juror 191's criminal history was similar to Juror 188, but the State struck Juror 191, who was Black, and not Juror 188, who was white. The State contended that Juror 191's conviction for simple assault and battery was similar to Lee's charge of ABHAN whereas Juror 188's conviction for public disorderly conduct was not. The trial court asked the State to reconsider allowing Juror 191 to sit as the second alternate juror. The State acquiesced. When the jury returned to the courtroom, the trial court informed Juror 191 that he would be an alternate juror. However, Juror 191 had noticeable difficulty hearing the trial court and informed the court he could only hear out of one ear. When asked if he had been able "to hear everything that [had] been going on in the courtroom," Juror 191 said that he could hear only "[s]ome of it." The trial court held an off-the-record bench conference, after which the trial court instructed Juror 191 to rejoin the jury panel. The trial court dismissed the jury panel from the courtroom and stated:

The record will reflect that in conversing with [Juror 191], I think it already reflects that [Juror 191] was extremely hard of hearing, that did not come to the

failing to grant a mistrial based upon the trial court's allegedly improper opening remarks; (4) failing to charge the jury under *State v. King*, 158 S.C. 251, 155 S.E. 409 (1930); (5) providing jurors with a "cascading" verdict form; and (6) failing to quash the State's notice of intent to seek LWOP.

² The victim, Tobias Hughey, suffered life-threatening head injuries and a fractured ulna. Hughey's heart stopped twice during the helicopter transport after the attack. Due to his injuries, Hughey's lungs, liver, heart, and kidneys all began to shut down. Hughey survived after a month-long hospital stay, but he suffered permanent brain damage from the attack.

attention of the Court, obviously, until the Court was toying with the idea, or looking to put him on [the jury] in order to - to address the - the alleged *Batson* violation. He obviously remarked that he only heard some of what was said during the course of voir dire.

[Lee's counsel] did indicate that in other cases, judges have made accommodations to people who are hard of hearing. And I'm certainly open to such an accommodation if feasible. But based on [Juror 191's] difficulty hearing me, and based upon the fact that I could not be sure that he had heard all the voir dire, that he had heard all the names of the witnesses called, that he had been able to physically answer correctly, I went back on my initial idea of sitting him as an alternate juror.

And the Court does find that the State's stated reasons for excusing the jurors that they excused were not pretext. There was no *Batson* violation, there was no discrimination. The fact that [J]uror 191 had previously been convicted of several assaults as well as other crimes and because this is an assault case as well, that is a - the Court finds that that is a racially neutral reason to strike him.

And that the seating and - or that the seating of [J]uror 188, that that was because she had that disorderly conduct conviction that the strike against [J]uror 191 was not pretextual. It's an apples and oranges comparison in this Court's mind.

And of course[,] I've had a chance to consider the credibility of the proponents of the strike. And do find that there are reasons for excusing the jurors that they excused. I do find that those were valid and not in violation of *Batson*. Obviously fraudulent checks[,] as we used to describe it[,] is a crime of moral turpitude and [it] involves dishonesty. That's a different animal from a simple disorderly conduct where maybe somebody's had

a little bit too much to drink. But obviously the defendant's objection is noted.

And the Court wishes to note that as a practical matter, [J]uror 191 was - may not be a - may not have been as deaf as a fence post, but he was darn - darn close.

Lee moved to quash the jury and for a continuance, arguing the jury did not represent a fair cross section of the community. The trial court acknowledged it was "always best to have as wide a cross section of the community if at all possible" and stated it would have preferred a better cross section but denied the motion.

The jury found Lee guilty of ABHAN. Although the victim asked for leniency and requested a term of probation for Lee, the trial court sentenced Lee to LWOP under section 17-25-45(B) of the South Carolina Code (2014).³ This appeal followed.

STANDARD OF REVIEW

In criminal cases, appellate courts review errors of law only and are bound by the trial court's factual findings unless those findings are clearly erroneous. *State v. Edwards*, 384 S.C. 504, 508, 682 S.E.2d 820, 822 (2009). Thus, on review, appellate courts are "limited to determining whether the trial court abused its discretion." *Id.* "An abuse of discretion occurs when [the] trial court's decision is unsupported by the evidence or controlled by an error of law." *State v. Bryant*, 372 S.C. 305, 312, 642 S.E.2d 582, 586 (2007).

ANALYSIS

³ Section 17-25-45(B), also known as the "Three Strikes Rule" provides that upon conviction for a serious offense, "a person must be sentenced to a term of imprisonment for life without the possibility of parole if that person has two or more prior convictions for . . . a serious offense." Lee had two previous convictions for serious offenses: one for trafficking cocaine and one for distribution of marijuana within a half mile of a school or playground. *See* S.C. Code Ann. § 17-25-45(C)(2)(b) (Supp. 2025) (including trafficking controlled substances and distribution of a controlled substance within proximity of a school as serious offenses).

We hold the trial court erred by excusing Juror 191 without making an inquiry into whether the court could accommodate his hearing impairment. The trial court may disqualify a juror for incompetence resulting from a physical infirmity. *See* S.C. Code Ann. § 14-7-1010 (2017) ("The presiding judge shall determine whether any juror is disqualified or exempted by law and only he shall disqualify or excuse any juror as may be provided by law."); S.C. Code Ann. § 14-7-810 (2017) ("[N]o person is qualified to serve as a juror in any court in this [s]tate if: . . . [h]e is incapable by reason of . . . physical infirmities to render efficient jury service The trial judge must make the final determination of the qualifications of a juror as set out in this section and his decision must not be disturbed on appeal."); *State v. Gaskins*, 284 S.C. 105, 113, 326 S.E.2d 132, 138 (1985) ("A juror's competence is within the trial judge's discretion and not reviewable unless wholly unsupported by the evidence." (quoting *State v. Spann*, 279 S.C. 399, 402, 308 S.E.2d 518, 520 (1983))); *State v. Wise*, 359 S.C. 14, 23-24, 596 S.E.2d 475, 479 (2004) ("An appellate court will not disturb the trial court's disqualification of a prospective juror when there is a reasonable basis from which the trial court could have concluded the juror would not have been able to faithfully discharge his responsibilities as a juror under the law."); *see also State v. Dawkins*, 268 S.C. 110, 111, 232 S.E.2d 228, 228 (1977) (noting the trial court has wide discretion in voir dire examination). However, here, the trial court failed to even inquire about whether Juror 191's hearing impairment could be accommodated. *See Trotman v. State*, 218 A.3d 265, 280 (Md. 2019) ("[T]he Americans with Disabilities Act prohibits a trial court from reaching the blanket conclusion that a certain disability would necessarily preclude jury service at any given trial."); *id.* ("When determining whether it is permissible to excuse for cause a prospective juror on a disability-related ground, a trial court must engage in an individualized, case- and disability-specific inquiry."); *People v. Guay*, 959 N.E.2d 504, 508 (N.Y. 2011) (stating "a court must determine whether the [prospective juror] has the ability to 'understand all of the evidence presented, evaluate that evidence in a rational manner, communicate effectively with the other jurors during deliberations, and comprehend the applicable legal principles, as instructed by the court'" (quoting *People v. Guzman*, 555 N.E.2d 259, 261 (N.Y. 1990))); *id.* ("[A] hearing impairment does not per se preclude an individual from serving as a juror."); *State v. Speer*, 925 N.E.2d 584, 589 (Ohio 2010) ("[A] trial court must determine whether reasonable accommodations will enable an impaired juror to perceive and evaluate all relevant and material evidence, and when no such accommodation exists, the court must excuse the juror for cause."). Further, although the trial court had valid concerns about whether Juror 191 heard all the questions asked during voir dire, it made no effort to voir dire Juror 191 individually. *See* S.C. Code Ann. § 14-7-1020 (2017) (requiring the court conduct a voir dire of any person who is

called as a juror upon request of either party). Because the trial court failed to engage in an inquiry of Juror 191, the record does not indicate whether a reasonable accommodation would have allowed Juror 191 to render efficient service. Thus, the record lacks evidence to support the trial court's disqualification of Juror 191. Therefore, we hold the trial court erred by excusing Juror 191 due to a hearing impairment without inquiring as to whether such impairment could be accommodated.⁴

REVERSED AND REMANDED.

KONDUROS and GEATHERS, JJ., concur.

⁴ Because our disposition of this issue is dispositive, we decline to address Lee's remaining issues on appeal. *See Futch v. McAllister Towing of Georgetown, Inc.*, 335 S.C. 598, 613, 518 S.E.2d 591, 598 (1999) (stating appellate courts need not address remaining issues when disposition of prior issue is dispositive).

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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM ABBEVILLE COUNTY
Court of General Sessions

Frank R. Addy, Jr., Circuit Court Judge

Appellate Case No. 2023-001843

THE STATE,

Respondent,

v.

KENDRICK MONTREZ LEE,

Appellant.

PETITION FOR REHEARING

On July 1, 2026, this Court held that "the trial court erred by excusing Juror 191 without making an inquiry into whether the trial court could accommodate his hearing impediment." *State v. Lee*, Op. No. 6151 at *5 (S.C. Ct. App. filed July 1, 2026).

Pursuant to Rule 221(a) of the South Carolina Appellate Court Rules, the State requests that this Court rehear this matter because the trial court's determination that Juror 191 was disqualified to serve was based not on Juror 191's hearing difficulties, but rather on Juror 191 belatedly informing the trial court that he only heard *some part* of the voir dire questioning due to his hearing difficulties. As a trial court is only required to conduct an individual voir dire at the request of either party, the trial court here had no obligation to conduct additional voir dire

questioning, which Appellant notably never requested. *See* S.C. Code Ann. § 14-7-1020 ("The court shall, on motion of either party in the suit, examine on oath any person who is called as a juror to know whether he is related to either party, has any interest in the cause, has expressed or formed any opinion, or is sensible of any bias or prejudice therein, and the party objecting to the juror may introduce any other competent evidence in support of the objection.").

The Court's initial citations to South Carolina authority make it clear that a trial court has the final determination regarding a juror's qualification to serve which must not be disturbed on appeal. *See* S.C. Code Ann. § 14-7-1010 ("The presiding judge shall determine whether any juror is disqualified or exempted by law and only he shall disqualify or excuse any juror as may be provided by law."); S.C. Code Ann. § 14-7-810 ("[N]o person is qualified to serve as a juror in any court in this State if: . . . [h]e is incapable by reason of . . . physical infirmities to render efficient jury service *The trial judge must make the final determination of the qualifications of a juror as set out in this section and his decision must not be disturbed on appeal.*" (emphasis added)).

Further, the South Carolina authority cited by this Court specifically states that a juror's competence is within the trial court's discretion and is not reviewable—much less reversible—on appeal unless **wholly unsupported** by the record. *See State v. Gaskins*, 284 S.C. 105, 113, 326 S.E.2d 132, 138 (1985) ("A juror's competence is with the trial judge's discretion and not reviewable unless *wholly unsupported* by the evidence." (emphasis added) (quoting *State v. Spann*, 279 S.C. 399, 402, 308 S.E.2d 518, 520 (1983))).

Moreover, the South Carolina authority cited by this Court also specifically states that if a reasonable basis exists from which the trial court could have concluded the potential juror would not have been able to discharge their duties as a juror, then appellate courts will not disturb the disqualification. *See State v. Wise*, 359 S.C. 14, 23-24, 596 S.E.2d 475, 479 (2004) ("An appellate

court will not disturb the trial court's disqualification of a prospective juror when there is a *reasonable basis* from which the trial court could have concluded the juror would not have been able to faithfully discharge his responsibilities as a juror under the law."). Trial courts have wide discretion in conducting voir dire. *See State v. Dawkins*, 268 S.C. 110, 111, 232 S.E.2d 228, 228 (1977) (noting that a trial court has wide discretion in conducting voir dire examination).

Here, as the trial court stated, the issue was not whether Juror 191 could hear. (R. 78-79). Instead, the issue was that Juror 191, by his own **late** admission, did not hear all the voir dire questioning. (R. 78-79, 117). As the trial court indicated, it could not be sure that Juror 191 did not have a disqualification based on potential witnesses or other disqualifying attributes because Juror 191 did not hear all voir dire questions. (R. 117). Moreover, the trial court had a conversation with Juror 191 on the record where the trial court would have been able to assess, in an informal capacity, Juror 191's hearing ability. (R. 78-79). Juror 191 stated, without prompting, that he had a growth in his ear that caused his hearing impairment. (R. 79). Thus, the trial court did inquire and determine that Juror 191 could not discharge the duties of a juror based on Juror 191's own admission that he did not hear everything that was asked of him during voir dire questioning.

The record supports the trial court's determination that Juror 191 was not qualified to sit as the second alternate juror based on Juror 191's *late* admission that he did not hear all of voir dire. The trial court had a reasonable basis to conclude Juror 191 would not have been able to discharge his duties because Juror 191 did not inform the trial court at any time during voir dire that he was unable to hear any part of the questioning. Instead, Juror 191 waited until specifically asked by the trial court at the end of jury selection, which indicated that Juror 191 might not speak up if he did not hear something at trial unless specifically asked. This should have been the end of this Court's analysis as South Carolina law does not permit further invasion of the trial court's discretion

on appeal when the record supports the trial court's decision and where a reasonable basis to conclude the potential juror would not be able to discharge their duties exists. *See State v. Maxey*, 218 S.C. 106, 110, 62 S.E.2d 100, 102 (1950) ("The findings of the trial court on questions of fact relating to the fitness of a juror are conclusive, and will not be disturbed on review unless manifestly erroneous. This principle of law is so well established it hardly becomes necessary to cite authority to sustain it.").

This Court's reliance on foreign authority to impose a requirement on the trial court to further inquire if Juror 191's hearing loss could be accommodated is also without merit. This court need not look farther than established South Carolina law because the record supports the trial court's decision and Juror 191 provided a reasonable basis for that decision by his lack of timely disclosure and admission that he did not hear all of voir dire questioning.

Therefore, the State requests this Court revisit its opinion and hold that the trial court did not abuse its discretion in finding Juror 191 disqualified to serve as the second alternate juror when Juror 191 himself provided the support for the trial court's decision that also served as a reasonable basis to conclude Juror 191 could not faithfully discharge his duties as a juror.

Section 14-7-1020 of the South Carolina Code

The State appreciates this Court's reliance on section 14-7-1020 of the South Carolina Code to support its holding that because either party can request the trial court to conduct further voir dire questioning regarding a potential juror's indifference and biases, the trial court abused its discretion by making no effort to engage in a sua sponte voir dire questioning of Juror 191. *See* S.C. Code Ann. § 14-7-1020 ("The court shall, *on motion of either party in the suit*, examine on oath any person who is called as a juror to know whether he is related to either party, has any interest in the cause, has expressed or formed any opinion, or is sensible of any bias or prejudice

therein, and the party objecting to the juror may introduce any other competent evidence in support of the objection." (emphasis added)).

However, the Court's reliance on this statute is misplaced. Appellant did not request additional voir dire questioning of Juror 191. Instead, his only request was for the trial court to inquire if Juror 191's apparent hearing impairment could be accommodated. These are not the same request. As the trial court noted, an accommodation inquiry would not have cured or addressed the concerns about Juror 191 not hearing the voir dire questioning posed to the pool of potential jurors. (R. 117). Thus, because the statute only requires further voir dire questioning *when requested*, this Court's reliance on section 14-7-1020 is inappropriate because Appellant never made such a request on the record.

Prejudice

As Juror 191 would have served as the *second* alternate juror had he been seated and no alternate jurors replaced any of the twelve jurors in this case, Appellant cannot show that he was denied a fair trial or that he was otherwise prejudiced by Juror 191's absence as the second of two non-utilized alternate jurors. (R. 666). *See State v. Bonneau*, 276 S.C. 122, 125, 276 S.E.2d 300, 301 (1981) ("It is, of course, incumbent on an appellant [on appeal] to prove that he was denied a fair trial."); *see also State v. Grovenstein*, 335 S.C. 347, 352, 517 S.E.2d 216, 218 (1999) (holding the burden was on the defendant to demonstrate prejudice on appeal where an alternate juror participated in jury deliberations). Therefore, as Appellant cannot show he suffered prejudice from Juror 191's disqualification to sit as the second alternate juror, this issue should be affirmed.

[conclusion and signature block on following page]

Conclusion

Based on the arguments set forth above as well as those in the Final Brief of Respondent, the State requests that this Court rehear this case, determine that the trial court did not abuse its discretion by finding Juror 191 disqualified to serve on as the second alternate juror, and consider the remaining six issues on appeal.

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July 15, 2026
Columbia, South Carolina

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Jul 15 2026

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM ABBEVILLE COUNTY
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Frank R. Addy, Jr., Circuit Court Judge

Appellate Case No. 2023-001843

THE STATE,

Respondent,

v.

KENDRICK MONTREZ LEE,

Appellant.

PROOF OF SERVICE

I, Grace Sommer, certify that I have served this Petition for Rehearing on E. Charles Grose, Jr., Esq., counsel of record for the Appellant, by electronic mail to the address listed for counsel in South Carolina Attorney Information System.

I further certify that all parties required by Rule 262(c) of the South Carolina Appellate Court Rules to be served have been served.

This 15th day of July 2026.



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THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM ABBEVILLE COUNTY
Court of General Sessions
Frank R. Addy, Jr., Circuit Court Judge

Appellate Case No. 2023-001843

The State, ...Respondent,

v.

Kendrick Montrez Lee, ...Appellant.

CROSS-PETITION FOR REHEARING

On July 1, 2026, this Court reversed Kendrick Lee’s conviction and sentence and remanded this case for a new trial. *State v. Lee*, No. 2023-001843, 2026 WL 1884535, (S.C. Ct. App. July 1, 2026). On July 15, 2026, the State petitioned for rehearing.¹ This cross-petition for rehearing follows, and Mr. Lee respectfully petitions this Court to decide all the questions presented on appeal.

Mr. Lee presented seven questions for review:

¹ Although a return to a petition for rehearing is not required unless requested by the appellate court, Rule 221(a), SCACR, Mr. Lee cannot help but point out a factual error by the State in its petition for rehearing. The State argues, “As a trial court is only required to conduct an individual voir dire at the request of either party, the trial court here had no obligation to conduct additional voir dire questioning, *which Appellant notably never requested.*” State’s Petition, pp. 1-2 (citing S.C. Code Ann. § 14-7-1020) (emphasis added). The trial judge addressed Juror 191’s service at a sidebar (R. 79) and placed the discussion on the record (R. 82). Later, Mr. Lee elaborated on the sidebar, noted accommodations “include[] asking the juror what circumstances would ensure that they would be able to hear what was going on in the courtroom,” and pointed out the trial court “didn’t even entertain asking the juror about whether or not he could be accommodated.” R. 118-19.

1. Did the trial court err by requiring Ken Lee, a black man, to face trial by an all-white jury and denying his timely request for a continuance to a term of court when the pool of jurors actually appearing for jury service reflected a cross-section of the community?
2. Did the trial court err by denying Ken Lee's Batson motion when the prosecution impermissibly relied on criminal history to strike the sole black juror while seating white jurors with criminal records?
3. Did the trial court abuse its discretion when it failed to determine whether the sole black juror's hearing issues could be accommodated?
4. Did the trial court err by not granting a mistrial after making improper opening remarks to the jurors that violated *State v. Beaty*, 423 S.C. 26, 813 S.E.2d 502 (2018) and *State v. Daniels*, 401 S.C. 251, 737 S.E.2d 473 (2012)?
5. Did the trial court err by not providing an instruction pursuant to *State v. King*, 158 S.C. 251, 155 S.E. 409 (1930), regarding the jurors' obligation to resolve any doubt between the greater and lesser offenses, in favor of the accused, when that jury instruction was not required but permissible?
6. Did the trial court err by providing the jurors a "cascading" verdict form, rather than structuring the verdict form in the manner requested by Ken Lee, which would have mitigated the trial court's error in the opening instructions and ensured the jurors gave due consideration the lesser included offenses?
7. Did the trial court err by not quashing the State's notice of intent to seek life without parole when the enhanced sentences was based on a conviction involving marijuana when Ken Lee objected to this charge being used to enhance the sentence when South Carolina has decriminalized marijuana and marijuana one day likely will be legal throughout the United States?

This Court's opinion resolved only the third issue, and this Court additionally held, "Because our disposition of this issue is dispositive, we decline to address Lee's remaining issues on appeal." *Lee*, at *3, n. 4. Not addressing all questions presented on appeal is contrary to Rule 220(b), SCACR, which provides:

In every decision rendered by an appellate court, every point distinctly stated in the case which is necessary to the decision of the appeal and fairly

arising upon the record of the court must be stated in writing and must, with the reason for the court's decision, be preserved in the record of the case. This rule does not apply to the following:

(1) The Supreme Court may file a memorandum opinion dismissing an appeal, affirming or reversing the judgment appealed from, or granting other appropriate relief when, in unanimous decision, the Supreme Court determines that a published opinion would have no precedential value and any one or more of the following circumstances exists and is dispositive of issues submitted to the Court for decision: (A) that a judgment of the trial court is based on findings of fact which are or are not clearly erroneous; (B) that the evidence to support a jury verdict is or is not insufficient; (C) that the order of an administrative agency is or is not supported by such quantum of evidence as prescribed by the statute or law under which judicial review is permitted; or (D) that no error of law appears.

(2) The Court of Appeals need not address a point which is manifestly without merit.

Rule 220(b), SCACR.

Additionally, not addressing all issues presented in an appeal is contrary to judicial economy and risks unnecessarily extending the appellate review process. *See, e.g., State v. Dent*, 446 S.C. 121, 130, 919 S.E.2d 394, 398 (2025) (“The State and Dent cross-appealed, with the State raising the circumstantial-evidence jury charge ruling and Dent raising his remaining ten issues on appeal as additional sustaining grounds. We granted the State’s petition for a writ of certiorari and reversed the court of appeals’ decision, remanding the matter to the court of appeals to address Dent’s remaining ten issues on appeal.”). In the event the State appeals this Court’s opinion, the Supreme Court should have the benefit of this Court’s consideration and rulings on all questions presented.

The first three questions presented involve structural error in the jury selection, including the judicial system’s failure to ensure that a cross-section of the community responded to juror summons and prosecutors’ pretextual use of minor criminal records to

exclude minority jurors. Both are capable of reptation, and the bench and bar would benefit from the Court's guidance. Indeed, the failure to ensure jurors respond to juror summons is a customary practice in Abbeville County. The fourth issue continues to reoccur despite the Supreme Court's guidance in *Beaty* and *Daniels*. The fifth and sixth issues present important concerns regarding trial courts' obligations to ensure jurors follow instructions regarding the burden of proof and resolving reasonable doubt in favor of an accused. Although, as noted at oral argument, this Court lacks jurisdiction to decide the seventh issue, a statement to this effect in an opinion would ripen this issue for the Supreme Court.

For the foregoing reasons, this Court should decide all issues raised by Mr. Lee in this appeal.

IT IS SO MOVED.

Respectfully Submitted,

By s/E. Charles Grose, Jr.

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Attorney for Kendrick Lee

July 16, 2026
Greenwood, South Carolina

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Jul 16 2026

SC Court of Appeals

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Certificate of Service

I certify that I served this pleading on the State of South Carolina, by email, using counsel's primary email address listed in the Attorney Information System (AIS), as reflected below, on the date reflected below:

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The South Carolina Court of Appeals

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July 17, 2026

Mr. E. Charles Grose, Jr., Esquire
305 Main Street
Greenwood SC 29646

Mr. Brian Hollis Gibbs, Esquire
PO Box 11549
Columbia SC 29211-1549

Re: The State v. Kendrick M. Lee
Appellate Case No. 2023-001843

Dear Counsel:

We received Petitions for Rehearing on July 15, 2026, and July 16, 2026.
The Court requests returns to both Petitions within ten (10) days of the date
of this letter.

Very truly yours,

Jasmine D. Smith, Deputy
CLERK

cc: Alan McCrory Wilson, Esquire
David Matthew Stumbo, Esquire

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The State, ...Respondent,

v.

Kendrick Montrez Lee, ...Appellant.

**KENDRICK LEE'S RETURN TO
STATE'S PETITION FOR REHEARING**

On July 1, 2026, this Court reversed Kendrick Lee's conviction and sentence and remanded this case for a new trial. *State v. Lee*, No. 2023-001843, 2026 WL 1884535, (S.C. Ct. App. July 1, 2026). On July 15, 2026, the State petitioned for rehearing and Mr. Lee cross-petitioned for rehearing. By letter dated July 17, 2026, this Court requested returns. Mr. Lee's return follows.

Mr. Lee presented seven questions for this Court to review. The first three issues pertained to selections of the jurors:

1. Did the trial court err by requiring Ken Lee, a black man, to face trial by an all-white jury and denying his timely request for a continuance to a term of court when the pool of jurors actually appearing for jury service reflected a cross-section of the community?
2. Did the trial court err by denying Ken Lee's Batson motion when the prosecution impermissibly relied on criminal history to strike the sole black juror while seating white jurors with criminal records?

3. Did the trial court abuse its discretion when it failed to determine whether the sole black juror's hearing issues could be accommodated?

In reversing the trial court, this Court's opinion resolved only the third issue and held, "[T]he trial court erred by excusing Juror 191 due to a hearing impairment without inquiring as to whether such impairment could be accommodated." *Lee*, at *3. The State's raises three issues in its' petition: (a) misapplication of S.C. Code Ann. § 14-7-1020, (b) improper reliance on caselaw from other jurisdictions, and (c) lack of prejudice. Mr. Lee will respond to each argument.

A. S.C. Code Ann. §§ 14-7-810, 1010 and 1020.

As pointed out in Mr. Lee's brief, section 14-7-1010 requires, "The presiding judge shall determine whether any juror is disqualified or exempted by law and only he shall disqualify or excuse any juror as may be provided by law." Final Brief of Appellant, p. 14 (citing *State v. Wise*, 359 S.C. 14, 22, 596 S.E.2d 475, 479 (2004)). A juror is disqualified when "[h]e is unable to read, write, speak, or understand the English language." S.C. Code Ann. § 14-7-810(2). This section places an obligation on the trial judge to make this determination. Here, the trial court did not even inquire into whether Juror 191 could be accommodated, even though the juror stated he could hear out of one ear."¹ As Mr. Lee argued, "[a] failure to exercise discretion amounts to an abuse of that discretion." Final Brief of Appellant, p. 15 (quoting *State v. Hawes*, 411 S.C. 188, 191, 767 S.E.2d 707, 708 (2015)). Although the State's rehearing petition acknowledges section 14-7-1010, the State does not address the trial judge's abuse of discretion under sections 14-7-810 and 1010.

¹ To State the obvious, Juror 191 would not have made this statement unless he was able to understand the English language.

The State argues, “As a trial court is only required to conduct an individual voir dire at the request of either party, the trial court here had no obligation to conduct additional voir dire questioning, *which Appellant notably never requested.*” State’s Petition, pp. 1-2 (citing S.C. Code Ann. § 14-7-1020) (emphasis added). This argument misstates the record.² The trial judge addressed Juror 191’s service at a sidebar (R. 79) and placed the discussion on the record (R. 82). Later, Mr. Lee elaborated on the sidebar, noted accommodations “include[] asking the juror what circumstances would ensure that they would be able to hear what was going on in the courtroom,” and pointed out the trial court “didn’t even entertain asking the juror about whether or not he could be accommodated.” R. 118-19.

B. Authority from Other Jurisdictions.

This State argues:

This Court’s reliance on foreign authority to impose a requirement on the trial court to further inquire if Juror 191’s hearing loss could be accommodated is also without merit. This court need not look farther than established South Carolina law because the record supports the trial court’s decision and Juror 191 provided a reasonable basis for that decision by his lack of timely disclosure and admission that he did not hear all of voir dire questioning.

Petition for Rehearing, p. 4.

² The State’s rehearing petition is confusing. At one point, the State seems to argue that Mr. Lee never requested any questioning on Juror 191, which is not true. Later the State argues, “Appellant did not request additional voir dire questioning of Juror 191. Instead, his only request was for the trial court to inquire if Juror 191’s apparent hearing impairment could be accommodated.” State’s Petition for Rehearing, p. 5. This passage acknowledges Mr. Lee requested the trial judge determine whether Juror 191 could be accommodated and seemingly argues for a hyper-technical application of section 14-7-1020. This Court was correct to consider section 14-7-1020 in determining whether the trial court abused its discretion.

This State is wrong. The persuasive authorities this Court cited from other jurisdictions are consistent with our state’s precedent that “[a] failure to exercise discretion amounts to an abuse of that discretion.” *State v. Hawes*, 411 S.C. at 191, 767 S.E.2d at 708.

C. Prejudice.

The first three questions presented in Mr. Lee’s appeal involve structural error in the jury selection, including the judicial system’s failure to ensure that a cross-section of the community responded to juror summons and prosecutors’ pretextual use of minor criminal records to exclude minority jurors. “[A]n error is structural if it is “the type of error which transcends the criminal process.” *State v. Rivera*, 402 S.C. 225, 247, 741 S.E.2d 694, 705 (2013) (quoting *Arizona v. Fulminante*, 499 U.S. 279, 311 (1991)). Structural error is not subject to a harmless error analysis and requires automatic reversal.

CONCLUSION

For the foregoing reasons, this Court should deny the State’s petition for rehearing.

Respectfully Submitted,

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July 27, 2026
Greenwood, South Carolina

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I certify that I served this pleading on the State of South Carolina, by email, using counsel's primary email address listed in the Attorney Information System (AIS), as reflected below, on the date reflected below:

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KENDRICK MONTREZ LEE,

Appellant.

**RETURN TO APPELLANT'S
CROSS-PETITION FOR REHEARING**

On July 1, 2026, this Court held that "the trial court erred by excusing Juror 191 without making an inquiry into whether the trial court could accommodate his hearing impediment." *State v. Lee*, Op. No. 6151 at *5 (S.C. Ct. App. filed July 1, 2026). On July 15, 2026, the State filed its Petition for Rehearing pursuant to Rule 221(a) of the South Carolina Appellate Court Rules. The following day, Appellant filed his Cross-Petition for Rehearing. On July 17, 2026, this Court requested returns to both parties' petitions.

In his petition, Appellant asks this Court to address the six issues he raised on appeal that were not addressed in this Court's opinion. (Cross-PFR 2-4). He contended that this Court not addressing these remaining six issues was contrary to Rule 220(b) of the South Carolina Appellate

Court Rules, contrary to judicial economy, and risked unnecessarily extending the appellate process. (Cross-PFR 2-3). Appellant also asserted that some of his issues were capable of repetition, from which the bench and bar could benefit from this Court's guidance. (Cross-PFR 3-4). Appellant noted that this Court was without jurisdiction to rule on his seventh issue, and requested a statement to that effect to ripen that issue for our supreme court. (Cross-PFR 4).

Pursuant to Rule 220(b) of the South Carolina Appellate Court Rules, this Court must address in writing "every point distinctly stated in the case *which is necessary to the decision of the appeal . . .*" (emphasis added). As this Court noted in its opinion, the current disposition of the third issue on appeal resulted in a reversal and remand of the entire case for a new trial. *See Lee*, Op. No. 6151 at *6 n.4. Therefore, as the opinion currently stands, the disposition of the remaining six issues is not necessary for the outcome this Court reached, which provides Appellant with the relief he sought. *See Futch v. McAllister Towing of Georgetown, Inc.*, 335 S.C. 598, 613, 518 S.E.2d 591, 598 (1999) (holding that appellate courts need not address all issues when the disposition of one issue is dispositive). Further, as this Court's opinion currently stands, discussion of the remaining issues would constitute an advisory opinion on questions for which no meaningful relief can be granted. This Court does not issue advisory opinions. *See Dodge v. Dodge*, 332 S.C. 401, 420, 505 S.E.2d 344, __ (Ct. App. 1998) ("State appellate courts will not issue advisory opinions on questions for which no meaningful relief can be granted."); *see also Gainey v. Gainey*, 279 S.C. 68, 69, 301 S.E.2d 763, 764 (1983) (stating appellate courts "will not issue advisory opinions on questions for which no meaningful relief can be granted").

However, should this Court grant the State's Petition for Rehearing and determine that the trial court did not abuse its discretion by finding Juror 191 disqualified to serve as the second

alternate juror, then the State would join in Appellant's request that this Court consider and rule on the remaining six issues without regard to Appellant's third issue.

Conclusion

Based on the arguments set forth above, the State requests that this Court deny Appellant's Petition for Rehearing. For the reasons included in the State's Final Brief of Respondent and the State's Petition for Rehearing, the State further requests that this Court grant the State's Petition for Rehearing, determine that the trial court did not abuse its discretion by finding Juror 191 disqualified to serve as the second alternate juror, and consider the remaining six issues on appeal.

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July 27, 2026
Columbia, South Carolina

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Respondent,

v.

KENDRICK MONTREZ LEE,

Appellant.

PROOF OF SERVICE

I, Grace Sommer, certify that I have served this Return to Appellant's Cross-Petition for Rehearing on E. Charles Grose, Jr., Esq., counsel of record for the Appellant, by electronic mail to the address listed for counsel in South Carolina Attorney Information System.

I further certify that all parties required by Rule 262(c) of the South Carolina Appellate Court Rules to be served have been served.

This 27th day of July 2026.



Grace Sommer
Legal Assistant

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The South Carolina Court of Appeals

The State, Respondent,

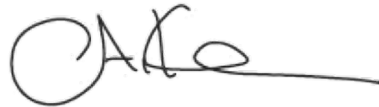
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Appellate Case No. 2023-001843

ORDER

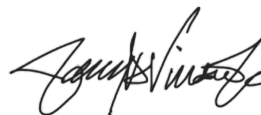
After careful consideration of the petitions for rehearing, the court is unable to discover that any material fact or principle of law has been either overlooked or disregarded, and hence, there is no basis for granting a rehearing. Accordingly, the petitions for rehearing are denied.



J.



J.



J.

Columbia, South Carolina

cc:

E. Charles Grose, Jr., Esquire
Alan McCrory Wilson, Esquire
Brian Hollis Gibbs, Esquire
David Matthew Stumbo, Esquire
The Honorable Frank R. Addy, Jr.

FILED
Aug 18 2026