

STATE OF SOUTH CAROLINA

In The Court of Appeals

APPEAL FROM CHARLESTON COUNTY

Deadra L. Jefferson, Circuit Court Judge

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SC Court of Appeals

THE STATE,

RESPONDENT,

V.

DOMONEIK ANTWAN WASHINGTON,

APPELLANT

APPELLATE CASE NO. 2013-001616

RECORD ON APPEAL

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1 Now if I stand over here (motioning) -- and I think
2 what I was talking about -- and to everybody it will look
3 different to every person.

4 But if I stand here and I am aiming (motioning), some
5 people are going to think I am aiming right at Domoneik.
6 But I'm not. I'm aiming to John in over in the corner.

7 So when you see something and somebody is standing you
8 can't tell where they are aiming. It is an impossibility.
9 And that is what we see on the video.

10 He is shooting at the car that is shooting at him. And
11 there is evidence that that car was shooting.

12 Now Equett Robinson she says she's the only -- she is
13 the only person that sees Domoneik shoot. Well, when you go
14 back to the jury room, look -- look at the video. You will
15 see -- you will have the video of her from the inside of the
16 store.

17 You're going to see people -- it is very quiet and then
18 people are coming in and out. There are a lot of cars. You
19 have got Little Wayne singing in the background. You have
20 got some beeping sound that I think we have all heard ad
21 nauseam that beeping sound and the music. You have people
22 yelling. You have got cars revving. And you have people
23 talking in the store.

24 Now she hears shots. And if you watch that video, when
25 those shots are going off she is at the door still shoving

1 people out. She's not looking.

2 And all of a sudden when she looks up we are probably
3 at about shot 10 or 11 at that point and that is when she
4 sees Domoneik.

5 But from where her position is there is no way what she
6 can see. She perceives. And that is what she is assuming
7 that is who he is shooting. She can't see the blue car
8 behind him.

9 She says when she gave a statement, two statements I
10 think the next week to the police, she said he had a small
11 gun.

12 Well, now all of a sudden today at the jury she says
13 semiautomatic, two years later. But at the time, she told
14 the police I looked up and he had a small gun.

15 So she says -- you hear her on tape say -- she is
16 standing right next to somebody and she says oh I think
17 somebody is shot.

18 Well, the person next to her didn't see anybody shot.
19 Again, people perceive different things from where they
20 are.

21 And then she says well I think somebody's shot. Well,
22 does she call 911? No. You hear them laughing in the
23 store. They are still letting people out.

24 She thinks somebody just got shot and you hear laughter
25 in the store. She lets people out. She then rings up some

1 people out. She's not looking.

2 And all of a sudden when she looks up we are probably
3 at about shot 10 or 11 at that point and that is when she
4 sees Domoneik.

5 But from where her position is there is no way what she
6 can see. She perceives. And that is what she is assuming
7 that is who he is shooting. She can't see the blue car
8 behind him.

9 She says when she gave a statement, two statements I
10 think the next week to the police, she said he had a small
11 gun.

12 Well, now all of a sudden today at the jury she says
13 semiautomatic, two years later. But at the time, she told
14 the police I looked up and he had a small gun.

15 So she says -- you hear her on tape say -- she is
16 standing right next to somebody and she says oh I think
17 somebody is shot.

18 Well, the person next to her didn't see anybody shot.
19 Again, people perceive different things from where they
20 are.

21 And then she says well I think somebody's shot. Well,
22 does she call 911? No. You hear them laughing in the
23 store. They are still letting people out.

24 She thinks somebody just got shot and you hear laughter
25 in the store. She lets people out. She then rings up some

1 food. And finally she gets to calling 911.

2 And what does she tell the police? What does she say?

3 The person had on a white shirt and black pants. Because

4 that is who started the fight. It was James Washington.

5 That is who she saw.

6 And the State wants you to think oh they just -- that

7 was just a little mistake. A little mistake she identified

8 somebody?

9 It is not a mistake, because that is who she saw. She

10 saw someone in a white shirt with black pants. And that was

11 James Washington.

12 You also hear James Washington. He is standing in

13 front of the store. And you hear it on the camera. He is

14 like shoot, shoot. You hear him say it. It is very clear

15 on the video.

16 Now the most important people I think in this case are

17 the victims. And unfortunately one has passed away.

18 Ronald Bryant didn't seem to care to come and he didn't

19 seem to care much about it. He is not here. Where is he?

20 He didn't want to be here. He doesn't care.

21 And then you have Mr. Wittrell. He doesn't even know

22 he is being shot at. Watch that video. Watch how slow he

23 is walking to that car. He just slowly walks up to get to

24 the car.

25 Why? Because there is nobody standing in front of him

1 shooting at him. Nobody is shooting at him. Because the
2 shooting is aimed that way (motioning). It is not going to
3 him. So watch it. Watch how carefully he is slowly getting
4 into that car.

5 Ervette Robinson, she says she knows Domoneik, and she
6 is speaking to him. She never ever -- she speaks to him
7 probably a good -- ever says he had a gun. And she said
8 people were calling his name. They are going Chip, Chip.

9 So people -- he is not taunting people. People are
10 taunting him. All those people that were in the back.
11 You've got the people that went to the club that are all
12 standing in the back. And they are the ones that are
13 taunting him.

14 And he's -- he is not acting mean. He is out in the
15 parking lot, hey, dancing. There is music. He is not
16 saying anything mean. He is just walking.

17 And you also hear -- see when he is talking to Ervette
18 that he tries to go back into the store. But he can't get
19 in the store. Because you will hear. You will hear the
20 door click.

21 So he is not trying to fight. He doesn't have a
22 weapon. He is trying to get into the store. And that is
23 when the door is locked.

24 The State wants you to believe within two minutes this
25 malice came over him and he thought I think I am just going

1 to go kill three people.

2 Now Zadie, she says she was at the club. Nobody, not
3 one person from that witness stand said that Domoneik was at
4 that club.

5 Who was fighting? Ronald Bryant. Zadie tries to get
6 Ronald to leave. He is agitated. She said the bouncer had
7 to take him by a choke hold to get him out. Those are the
8 agitated people that are on there, not Domoneik.

9 She says: I don't see him at the club. People they
10 are fighting. I try to get him out. I try to get him to
11 come home with me.

12 But he doesn't -- we won't go with her. So Zadie said
13 she goes to the gas station, there is Ronald. She says she
14 sees James Washington walk up.

15 Nobody said he came in a car with four other people.
16 The State again is assuming all, all four of them drove up
17 in a car.

18 Nobody saw a car. Nobody saw them come together. Yes,
19 they are walking into the store. But that doesn't mean they
20 came together. There is no evidence of that. Again, that
21 is assumptions. We are just assuming they were all
22 together.

23 And Zadie is also on the phone the whole time. She
24 is trying to talk to Ronald's mother. She is saying call
25 911.

1 Well, I think she could have called 911. But still,
2 she is saying call 911, I think something is going to
3 happen. But she is on the phone.

4 She says she sees Domoneik with a gun. Well, her
5 friend had just seen him. He didn't have a gun. You are
6 going to see him in the video. He is waving his hands. He
7 is trying to get into the store. There is no gun in his
8 hand. He does not have a gun.

9 She then sees James Washington shoot. And she takes
10 off. And she says -- she has taken off. And she never sees
11 the shooting, never sees anything but James Washington
12 shoot.

13 She runs to the police and what does she say? She was
14 running to the police and the police are running away from
15 the shooting. And is it just like the police have been
16 running away from this the whole time.

17 We have been saying you know who is shooting on that
18 video. You know you have got a Laval Hazel shooting. His
19 own witnesses have said he has got a gun. James Washington
20 has a gun.

21 We know from all these shell casings there are a lot of
22 guns out there. There is even a fourth gun. Where -- where
23 is that other person?

24 We don't see them on the video. So other people
25 are out there shooting. Why is he the only one sitting

1 there?

2 He may be guilty of unlawful possession of a gun and
3 discharging a firearm. But he is not guilty of attempted
4 murder.

5 He is on the video, that is only one we can see, so
6 cased closed we are just going to charge him.

7 Now Detective Kjellman, she testified that there were
8 three shots in the door and one in the window. Now if she
9 is saying all these (motioning) came from the same gun --
10 you are going to see something separate over here

11 (motioning). You have got other guns over here (motioning).

12 So if three went in the door and one went in the window
13 and they made holes that showed they go -- went inside then
14 how come something is over there (motioning)?

15 There can't be three holes in that door. Not at that
16 time. Because there is a bullet right there -- or shell
17 casing.

18 She also said well there were three other holes in the
19 canopy. She never said where they were. Mr. DuRant said oh
20 they had to be up here (motioning).

21 There was no testimony of where those other -- she just
22 said we had holes. We had no pictures, nowhere on that
23 diagram of where those other holes are. And there's bullets
24 in them. And they said we can't get a ladder?

25 He is charged with attempted murder. Get a ladder.

1 Those -- they are still there. See what gun. That could
2 have been a fifth shooter shooting from that direction or
3 shooting from this direction. We don't know what direction.
4 But there are three holes. Well, where are those three
5 holes?

6 We know there have to be at least four people, at least
7 four people shooting because of the shell casings.

8 There are also if you noticed and if you watched the
9 video to the end, the crime scene didn't get there until
10 over an hour, over an hour after the shooting.

11 You have got cars coming in and out. You are going to
12 see people walking up there, walking where all of the shells
13 are.

14 There are about four or five cars drive -- about
15 four of five cars are still driving all in this area
16 (motioning).

17 And it is an unsecured scene for over an hour.
18 So we don't know how many other shell casings are out
19 there.

20 Attempted murder is a charge that is very, very
21 serious. Did he have malice? There is nowhere in that
22 video at all that you saw that he had any malice.

23 They also the State wants you to think of because he
24 ran and left and was arrested in Virginia that that makes
25 him guilty.

1 Well, you even heard Zadio say well when the shots
2 fired I hauled ass. He did -- he's got people shooting at
3 him he is not going to stay around here.

4 He also they said was arrested in May. What was
5 interesting that the gun that they want to say he used,
6 somebody else happen to use in a shooting about six months
7 later when he was in jail. Because that wasn't his gun. He
8 did not have that gun that night.

9 Please when you are watching that video look at where
10 he is aiming. Think about it. Think of the perspective of
11 it. And he is not shooting at that gold car. That gold car
12 never shot at him. So why would he shoot at him? There is
13 no reason.

14 This whole incident took place in a total of probably
15 four minutes. He did not have a beef with them at the club.
16 Nobody put him in the club.

17 You have the people in the blue Buick are the ones that
18 are at the club with the people in the gold Impala. The
19 people in the blue Buick have been at the club. The people
20 with the Impala have been at the club.

21 The people in the blue Buick are friends. They are all
22 friends. So when they know that something is going on the
23 people in the blue -- as you -- as we know, as we said,
24 Laval Hazel is shooting. He is shooting. And that -- the
25 State has said that. We have got bullet casings and his own

CLOSING BY MS. PROCTOR

1 friend said he was shooting out of the car.

2 Don't assume anything.

3 (WHEREUPON, played video.)

4 (WHEREUPON, stopped video.)

5 There are 12 shots fired before he comes into the

6 picture. That is because people are shooting at him.

7 There are twenty-seven shots, four different guns. Don't
8 assume.

9 THE COURT: Madam Forelady, ladies and gentlemen, is
10 everyone comfortable or does anyone need to go to the
11 restroom?

12 (No reply.)

13 THE COURT: Okay. I guess everybody is comfortable.
14 Go ahead and stand for me and stretch a little bit. Y'all
15 have been sitting about an hour.

16 Somebody can move that podium for me, please.

17 (Mr. DuRant complied.)

18 THE COURT: Thank you, Mr. DuRant.

19 **JURY CHARGE:**

20 THE COURT: During this trial, ladies and gentlemen,
21 you and I have certain duties to perform. As the trial
22 judge it is my responsibility to preside over the trial of
23 this case.

24 And I also have the duty to rule upon or pass upon the
25 admissibility of evidence which has been offered during this

1 trial.

2 You are to consider only the competent evidence that is
3 before you which was presented during the progress of this
4 trial.

5 You are to consider only the testimony which has been
6 presented from the witness stand together with any exhibits
7 which have been made a part of the record of this case and
8 any stipulations of counsel made into the record.

9 I instruct you, ladies and gentlemen, that a
10 stipulation between the attorneys is an agreement between
11 them and it requires no further proof.

12 I have the additional duty to charge or instruct you on
13 the law applicable to this case. As the presiding judge I
14 am the sole judge of the law of this case. And it is your
15 duty as jurors to accept and apply the law as I now state it
16 to you.

17 If you have a preconceived idea as to what the law is
18 or what the law ought to be in a case or in this case and it
19 should not agree with what I tell you the law is you are
20 obligated under the oath which you have taken to abandon
21 this preconception on your part because you are sworn to
22 apply the law and accept the law precisely as I now state it
23 to you.

24 In every case tried in this court before a jury the
25 jury becomes the sole and exclusive judges of the facts.

1 You the jury are the judges of the facts in this case.
2 The court is the judge of the law. The Constitution of our
3 state has declared that a trial judge shall not intimate,
4 state, comment upon, or make any statement to a trial jury
5 about the facts in a case.

6 Since you the jury are the sole judges of the facts in
7 this case you are not to infer anything from what I have
8 said during the progress of -- excuse me -- upon -- during
9 the progress of this trial in ruling upon the admissibility
10 of evidence or otherwise or anything that I now say to you
11 during the course of this instruction that I have any
12 opinion about the facts. The law does not permit me to have
13 an opinion about the facts.

14 This is a matter solely for you, the jury, to
15 determine. As jurors then it is your duty as I have
16 instructed to determine the effect, the value, the weight
17 and the truth of the evidence presented during this trial.

18 Necessarily you must assess the credibility of
19 witnesses who have testified in this case. Credibility is
20 simply a legalistic terms meaning believability.

21 It becomes your duty as jurors to analyze and to
22 evaluate the evidence and determine that evidence which
23 convinces you of its truth.

24 As you decide whether or not to believe a witness's
25 testimony about a particular matter you may consider the

1 following:

2 What was the manner and appearance of the witness who
3 testified. Was he or she straightforward or hesitant in
4 answering. Was the testimony of the witness consistent or
5 inconsistent. How did the witness come to know the facts
6 that he or she testified to or what was his or her ability
7 to know these facts. If there some reason a witness would
8 want to give testimony which would help or hurt one side or
9 the other. In other words, was the witness biased or
10 prejudiced. And was the testimony of a witness strengthened
11 or weakened by other testimony or evidence.

12 You can believe as much or as little of each witness's
13 testimony as you think proper. You may believe the
14 testimony of a witness in its entirety. And if you have a
15 good and sound reason, you may reject the testimony of a
16 witness in its entirety.

17 You may believe a part of the testimony of a witness
18 and reject the remaining part of the testimony of that same
19 witness.

20 You may believe one witness as against several
21 witnesses or several witnesses as against one witness.

22 You may consider the demeanor of a witness. That is
23 the manner and appearance of the witness from the witness
24 stand.

25 You can believe as much or as little of each witness's

1 testimony as you think appropriate.

2 Throughout this process, ladies and gentlemen, you have
3 but one objective, to seek the truth regardless of its
4 source.

5 I further instruct you that the rules of evidence
6 ordinarily do not permit witnesses to testify to opinions or
7 conclusion. An exception to this rule exists for witnesses
8 we call expert witnesses. A witness who by their education,
9 training and experience has become an expert in some art,
10 science, profession or calling may state an opinion as to
11 relevant and material matters in which the witness claims to
12 be an expert. And they may also state the reasons for that
13 opinion.

14 You should consider any expert opinion received in
15 evidence in this case like any other evidence. Give it the
16 weight you think it deserves.

17 If you decide that the opinion of an expert witness is
18 not based on sufficient education and experience or if you
19 conclude that the reasons given in support of the opinion
20 are not sound or that the opinion is outweighed by other
21 evidence you may disregard the opinion entirely.

22 An expert witness's testimony is to be given no greater
23 weight than that of other witnesses simply because the
24 witness is an expert. Further you are not required to
25 accept an expert's opinion even though it is not

1 contradicted.

2 I further instruct you that a person who has a past
3 criminal record is competent to testify during a trial. A
4 past record does not affect the ability of that witness to
5 testify. The past record may only be considered by you if
6 at all in determining the witness's believability.

7 Remember, ladies and gentlemen, you are the sole judges
8 of the facts of this case and of the believability of any
9 and all of the witnesses.

10 I further instruct you that you have heard evidence
11 that the defendant committed a bad act not the subject of a
12 conviction other than the one for which he is now on trial.

13 It is for you, ladies and gentlemen, to determine if
14 this is true. You must not consider this alleged bad act as
15 any evidence of the defendant's guilt of the charges we are
16 trying today.

17 Ladies and gentlemen, there are two types of evidence
18 which are generally presented during a trial, direct
19 evidence and circumstantial evidence.

20 Direct evidence is the testimony of a person who
21 asserts or claims to have actual knowledge of a fact, such
22 as an eyewitness.

23 Circumstantial evidence is proof of a chain of facts
24 and circumstances indicating the existence of a fact.

25 The law makes absolutely no distinction between the

1 weight or value to be given to either direct or
2 circumstantial evidence nor is a greater degree of certainty
3 required of circumstantial evidence than of direct evidence.

4 You should weigh all of the evidence in this case.
5 After weighing all of the evidence if you are not convinced
6 of the guilt of the defendant beyond a reasonable doubt you
7 must find the defendant not guilty.

8 Conversely, if you are convinced of the guilt of the
9 defendant beyond a reasonable doubt then you must find him
10 guilty.

11 I instruct you, ladies and gentlemen, the fact that the
12 defendant was arrested, charged, and indicted is not
13 evidence in this case and cannot be considered by you as
14 evidence of guilt in this case nor does it create any
15 presumption or inference of guilt.

16 This documentation, ladies and gentlemen, are simply
17 the formal written instruments which contain the charge or
18 charges made against a defendant. They serve as the formal
19 documents by which the case is processed or brought into
20 this court.

21 The defendant has pled not guilty to the indictments.
22 And that plea cast the burden on the State to prove the
23 defendant guilty.

24 Because a person charged with committing a criminal
25 offense in South Carolina is never required to prove himself

1 innocent.

2 I instruct you, Madam Forelady, ladies and gentlemen,
3 that it is a cardinal and important rule of the law of
4 evidence that the defendant in a criminal trial no matter
5 what the seriousness of the charge or charges made against
6 him may be will also be presumed to be innocent of the crime
7 for which he has been indicted unless his guilt has been
8 proven by evidence satisfying you of that guilt beyond a
9 reasonable doubt.

10 This presumption of innocence does not cease when you
11 retire to deliberate but it accompanies the defendant from
12 the time of his appearance throughout the trial until you
13 reach a verdict in this case.

14 Our Supreme Court has said that the presumption of
15 innocence is like a robe of righteousness placed about the
16 shoulders of the defendant and it remains with him and
17 assigns him to that class, the innocent, until that
18 presumptive robe of righteousness has been stripped from his
19 person by evidence satisfying you of that guilt beyond a
20 reasonable doubt.

21 Madam Forelady, ladies and gentlemen, the presumption
22 of innocence is not mere legal theory. It is not just a
23 legal phrase. It is a substantial right to which every
24 defendant is entitled until you the jury are satisfied from
25 the evidence of his guilt beyond a reasonable doubt.

1 The State has the burden of proving the defendant
2 guilty beyond a reasonable doubt. Some of you may have
3 served as jurors in civil cases where you were told that it
4 is only necessary to prove that a fact is more likely true
5 than not true such as by the greater weight or the
6 preponderance of the evidence.

7 In criminal cases the State's proof must be more
8 powerful than that. It must be beyond a reasonable doubt.
9 Proof beyond a reasonable doubt is proof that leaves you
10 firmly convinced of the defendant's guilt.

11 There are very few things in this world that we know
12 with absolute certainty. And in criminal cases the law does
13 not require proof that overcomes every possible doubt.

14 If based on your consideration of the evidence you are
15 firmly convinced that the defendant is guilty of the crime
16 charged, you must find the defendant guilty.

17 If on the other hand you think there is a real
18 possibility that the defendant is not guilty, you must give
19 the defendant the benefit of that doubt and find him not
20 guilty.

21 The defendant is charged with attempted murder. In
22 order to prove this crime the State must prove the defendant
23 attempted to kill another person with malice of forethought
24 either express or implied.

25 Malice is hatred, ill will, or hostility towards

1 another person. It is the intentional doing of a wrongful
2 act without just cause or excuse and with an intent to
3 inflict an injury or under circumstances that the law will
4 infer an evil intent.

5 Malice of forethought does not require that malice
6 exists for any particular time before the act is committed.
7 But malice must exist in the mind of the defendant just
8 before and at the time the act is committed.

9 Therefore, there must be a combination of the previous
10 evil intent and the act. Malice of forethought may be
11 expressed or inferred.

12 These terms expressed and inferred do not mean
13 different kinds of malice but merely the manner in which
14 malice may be shown to exist. That is either by direct
15 evidence or by inference from the facts and circumstances
16 which are proven.

17 Express malice is shown when a person speaks words
18 which express hatred of ill will for another or when the
19 person prepared beforehand to do the act which was later
20 accomplished.

21 For example, lying in wait for a person or any other
22 act of preparation going to show that the deed was within
23 the defendant's mind would be expressed malice.

24 Malice may be inferred from conduct showing a total
25 disregard for human life. Inferred malice may also arise

1 when the deed is done with a deadly weapon. A deadly weapon
2 is any article, instrument or substance which is likely to
3 cause death or great bodily harm.

4 Whether an instrument has been used as a deadly weapon
5 depends on the facts and circumstances of each case. The
6 following are examples of instruments which may be deadly
7 weapons: a pistol, a shotgun, a rifle, a dirk, a dagger, a
8 knife, a slingshot, metal knuckles, a razor, gasoline, a
9 firebomb or molotov cocktail and lighter fluid. A gun may
10 be a deadly weapon even if it is not operating.

11 If facts are proven beyond a reasonable doubt
12 sufficient to raise an inference of malice to your
13 satisfaction this inference, ladies and gentlemen, would be
14 simply an evidentiary fact to be considered by you, the
15 jury, along with the other evidence in the case. And you
16 may give it the weight you decide it should receive.

17 A specific intent to kill is not an element of
18 attempted murder. But there must be a general intent to
19 commit serious bodily injury.

20 Intent means intending the result which actually
21 occurs. Not accidentally or involuntarily. Intent may be
22 shown by act and conduct of the defendant and other
23 circumstances from which you may naturally and reasonably
24 infer intent.

25 Evidence of the character of the act, the character of

1 the instrument used, the manner in which it was used, the
2 purpose to be accomplished, and the resulting wounds or
3 injuries may be considered in determining the intent with
4 which the act was committed.

5 Intent may also be inferred when it is demonstrated
6 that the defendant voluntarily and willfully commits an act
7 the natural tendency of which is to destroy another's life.

8 Ladies and gentlemen, included within the offense of
9 attempted murder is the lesser offense of assault and
10 battery of a high and aggravated nature.

11 Assault and battery of a high and aggravated nature
12 includes all of the elements of attempted murder except
13 malice of forethought.

14 I instruct you that a person commits the offense of
15 assault and battery of a high and aggravated nature if the
16 person unlawfully injures another person and great bodily
17 injury to another person results or the act is accomplished
18 by means likely to produce death or great bodily injury.

19 Great bodily injury means bodily injury which causes a
20 substantial risk of death or which causes serious permanent
21 disfigurement or protracted loss or impairment of the
22 function of a bodily member or organ.

23 I further instruct you that included within the offense
24 of attempted murder is the lesser offense of assault and
25 battery first degree.

1 I instruct you that a person commits the offense of
2 assault and battery in the first degree if the person
3 unlawfully injures another person -- let me restate that.

4 A person commits the offense of assault and battery in
5 the first degree if the person unlawfully commits the
6 offense of assault and battery in the first degree if the
7 person unlawfully offers or attempts to injure another
8 person with the present ability to do so and the act is
9 accomplished by means likely to produce death or great
10 bodily injury.

11 Great bodily injury means bodily injury which causes a
12 substantial risk of death or which causes serious permanent
13 disfigurement or protracted loss or impairment of the
14 function of a bodily member or organ.

15 I further instruct you, ladies and gentlemen, an issue
16 in this case is the identification of the defendant as the
17 person who committed the crime charged.

18 The State has the burden of proving identity beyond a
19 reasonable doubt. You must be satisfied beyond a reasonable
20 doubt of the accuracy of the identification of the defendant
21 before you may convict the defendant.

22 Identification testimony is an expression or belief or
23 impression by a witness. You must determine the accuracy of
24 the identification of the defendant. You must consider the
25 believability of each identification witness in the same way

1 as any other witness.

2 You may consider whether the witness had an adequate
3 opportunity to observe the offender at the time of the
4 offense. This will be affected by things like how long or
5 short a time was available, how far or close the witness
6 was, the lighting conditions and whether the witness had the
7 chance to see or know the person in the past.

8 Once again, I instruct you, the burden of proof on the
9 State extends to every element of that crime charged. And
10 this specifically includes the burden of proving beyond a
11 reasonable doubt the identity of the defendant as the person
12 who committed the crime.

13 If after examining the testimony you have a reasonable
14 doubt as to the accuracy of the identification, you must
15 find the defendant not guilty.

16 I instruct you and emphasize that the fact that the
17 defendant did not testify is not a factor to be considered
18 by you in any manner whatsoever in your deliberations
19 regarding this case and in your -- and in your consideration
20 on the question of the guilt or innocence of the defendant.
21 It must not be considered by you in any manner whatsoever.

22 A defendant has the constitutional right to remain
23 silent and the assertion of this right must not be
24 considered by you in your deliberations.

25 I repeat, under your oath you are to draw no conclusion

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

3 The fact that the defendant did not testify should not
4 even be discussed in the jury room during your deliberations
5 in any matter whatsoever.

6 The burden of proof as I have stated to you is on the
7 State. The defendant is not required to prove his
8 innocence. The burden of proof remains on the State to
9 prove guilt beyond a reasonable doubt.

10 Ladies and gentlemen, there are three indictments in
11 this case. And those charges are as follows. And you don't
12 have to try to write this down because it goes into the jury
13 room with you. Indictments 2011-GS-10-6881, 6882, and 6883
14 each of which alleges attempted murder.

15 Each indictment, ladies and gentlemen, charges a
16 separate and distinct offense. You must decide each
17 indictment separately on the evidence and the law applicable
18 to it uninfluenced by your decision as to any other
19 indictment.

20 The defendant may be convicted or acquitted on any or
21 all of the offenses charged. And you will be writing a
22 separate verdict for each indictment of guilty or not
23 guilty.

24 Ladies and gentlemen, there are several potential
25 verdicts for each indictment. And I am only going to go

1 over one of them because they all say the same thing as to
2 each indictment.

3 And again, you don't have to try to write this down
4 because these verdict forms go into the jury room with you.

5 There is no significance whatsoever to the order in
6 which I state these potential verdicts. It is simply that
7 one must be stated first.

8 And again, they will each say the same thing. It just
9 will be as to each separate indictment. As to Indictment
10 Number 2011-GS-10-6881 - and there will also be one for 6882
11 and 6881 - we the jury by unanimous consent find the
12 defendant guilty of attempted murder or as to the lesser
13 included offense guilty of assault and battery of a high and
14 aggravated nature or as to the lesser included offense
15 guilty of assault and battery first degree or not guilty.

16 And again, each of these indictments has the very same
17 form and options for the verdict. And there is no
18 significance whatsoever to the order in which I have stated
19 these potential verdicts. It is simply that one must be
20 stated first.

21 Ladies and gentlemen, your verdicts must be a unanimous
22 one, which means all 12 of you must agree in order to reach
23 a verdict.

24 Madam Forelady, when the jury has reached a verdict it
25 is your responsibility to fill out each verdict form, to

1 sign and date those forms, and then knock on the door and
2 advise the bailiff that the jury has reached a verdict.

3 It is also your responsibility to write out any
4 questions the jury may have during deliberations and follow
5 that same process by knocking on the door and advising the
6 bailiff that the jury has a question. And all questions
7 must be written out in the form of a note and signed and
8 dated by you.

9 Ladies and gentlemen, if you have any questions during
10 deliberations, please know that there will be a delay in our
11 response. And that is because we have to follow a procedure
12 in answering your questions.

13 So know if you have a question there -- expect a delay,
14 because we have to follow that procedure before we can
15 answer your questions.

16 Please know that we are not ignoring you. Again, if
17 you have a few questions we are just following that
18 procedure.

19 I am going to ask that you return to your jury room.
20 But do not yet begin your deliberation. I have some matters
21 of law I need to take up with the attorneys that may require
22 further instruction or clarification of an instruction.

23 However, if there is no further instruction we will
24 excuse the alternate, send in the evidence and your notepads
25 and at that time you will be allowed to begin your

1 deliberations.

2 If you would go with the bailiffs for me, please, and
3 leave your notepads in your seats.

4 (WHEREUPON, the jury exited the courtroom July 17,
5 2013, at 11:49 a.m.)

6 THE COURT: Any exceptions from the State?

7 MR. DURANT: No, ma'am.

8 THE COURT: From the defendant?

9 MS. PROCTOR: No, Your Honor.

10 THE COURT: Could you all check the evidence for me one
11 more time before they take it in.

12 (WHEREUPON, break to review exhibits.)

13 MR. DURANT: Okay. We are good, Your Honor.

14 THE COURT: Everything is good? Okay. We will -- she
15 is getting their notebooks now. She will take in the
16 evidence.

17 (WHEREUPON, break 11:56 to 11:59 a.m.)

18 (WHEREUPON, alternates entered courtroom.)

19 THE COURT: Ladies, we thank you for your time and
20 attention to this case. Being an alternate is really
21 thankless because we need you of course when we need you,
22 which is if somebody gets sick or is otherwise unavailable
23 so that you step in for the panel.

24 You both have been timely and attentive, and I hope
25 that this process has been educational for you. Your lunch

1 Mr. Brown is downstairs getting it down. So he should -- it
2 is here? It is upstairs?

3 THE CLERK: Uh-huh.

4 THE COURT: Okay. So what we will do is you are
5 welcome to leave if you would like. You are welcome to
6 stay. We can set you up in one of the multipurpose rooms so
7 you can take your time and eat if you would like. Or you
8 are welcome to take your lunch with you.

9 You are also welcome to see -- to stay if you want to
10 remain until the jury has completed deliberating. And
11 again, the bailiffs will put you in a separate room for that
12 purpose so that you can be comfortable.

13 You are welcome to discuss this case if you would like.
14 But I would ask that you not do that until after Friday when
15 the entire panel is dismissed.

16 Often lawyers will contact you to get feedback on their
17 performance because everybody always it is human nature
18 people always want to do better at what they do.

19 Again, you are welcome to talk with them if you would
20 like; but if you don't, you don't have to as well.

21 Your checks and my -- your checks and excuses will be
22 mailed to you on Friday. I anticipate that we are going to
23 select another jury in the morning. That is I think one and
24 a half day case. I am not certain. I will have to go over
25 it with the lawyers and see.

1 But I anticipate that we are going to pick another jury
2 in the morning. So again, it very important that you still
3 not speak to anyone in or about the courthouse when you are
4 leaving today.

5 If you need a work excuse today you can get one of
6 those on the first floor of the courthouse on the circuit
7 court side. Any of the deputy clerks at those windows can
8 give you a work excuse if you need one for today.

9 But again, you are welcome to remain with us if you
10 would like. Just let the bailiffs know. But if not, they
11 will get you situated with your lunch and you are welcome to
12 leave if you would like.

13 And if you want to keep your notes and destroy them,
14 you are welcome to. But the bailiffs will destroy them for
15 you if you would like them to.

16 I hope y'all have a great day. And thank you again for
17 your service. If you would go with the bailiffs please.

18 (WHEREUPON, the alternates exited the courtroom.)

19 THE COURT: The record should reflect that the jury
20 began its deliberations at 11:58. Y'all might want to --
21 see where Mr. Brown is. We have given them their lunch.
22 And let me -- give me a moment where I can see how --
23 whether the jury has been situated with their lunch first
24 and then I can tell you all how long I think you have to go
25 get something to eat.

1 MR. DURANT: Okay.

2 (WHEREUPON, break was had on July 17, 2013, at 11:59
3 a.m. for lunch.)

4 (WHEREUPON, proceeding resumed July 17, 2013, at 2:23
5 p.m.)

6 THE COURT: Okay, we have several questions from the
7 jury. And I am going to take them one at a time. And I am
8 probably going to bring them back in here to deal with all
9 of them. Because I have to reinstruct them anyway. So it
10 doesn't make any -- it doesn't make any sense to answer one
11 in writing or two in writing and then not answer the rest
12 without bringing them in.

13 It is my understanding that there are no pictures of
14 the car in evidence, correct?

15 MS. PROCTOR: Correct.

16 MR. DURANT: No.

17 THE COURT: Okay. The first question was: Need
18 explanation on three separate charges.

19 So I assume that means they want me to reinstruct them
20 on attempted murder, ABHAN, and assault and battery first.

21 Is there any exception, from the State?

22 MR. DURANT: No, ma'am.

23 THE COURT: From the defense?

24 MS. PROCTOR: No, ma'am. May I ask -- and I cannot
25 remember.

1 THE COURT: Sure.

2 MS. PROCTOR: When you charged them the first
3 time - and I don't remember what we talked about yesterday
4 during jury charge - did you charge specific intent for the
5 attempted ---

6 THE COURT: It's not a specific intent crime. Specific
7 intent is not required for attempted murder. You have to
8 have a generalized intent, but it is not done -- not done
9 involuntarily. It has to be done intentionally. But a
10 specific intent to kill is not required.

11 MS. PROCTOR: Because I saw it in the new statute they
12 didn't put it in there.

13 THE COURT: It is the same. I mean my -- my --
14 instruction for attempted murder comes straight from the
15 statute. And we just had our charge books updated about a
16 week ago.

17 So if there was something new that came out -- and
18 I read the advance sheets every Monday. So if something
19 had -- although I am not perfect or infallible. I miss
20 stuff. Because sometimes I read quickly. I read for what I
21 need. You know, I just kind of flip through them every
22 Monday. But I don't recall anything that would have changed
23 the instruction.

24 But a specific intent to kill is not required, just as
25 murder a specific intent to kill is not required.

1 MR. DURANT: I mean isn't ----

2 THE COURT: It is not an element.

3 MR. DURANT: Isn't that standard?

4 THE COURT: But there has to be a general intent to
5 commit serious bodily injury.

6 MR. DURANT: Isn't that statute like three years old
7 now? I mean ---

8 THE COURT: Yeah, 2011, 2010.

9 MR. DURANT: I think it was two thousand ---

10 THE COURT: I think it was June 11, 2010, when it was
11 passed.

12 MR. DURANT: Yeah, I think so. So I mean I would think
13 that charges would ---

14 THE COURT: Wasn't it June 10th, 2011 -- yeah,
15 something -- but what is very interesting, and is just
16 totally anecdotal with the revamp of the statute and it is
17 so voluminous that I have read it all once but now I only
18 read it for what I need because it is just too much to try
19 to retain it.

20 MR. DURANT: Right.

21 THE COURT: But what is very interesting to me is
22 assault and battery of a high and aggravated nature is now
23 most serious and violent. It is a strike when it wasn't
24 before.

25 MS. PROCTOR: I know.

1 THE COURT: And, you know, of course there is no
2 savings clause and of course an enhancement which that would
3 be -- can't be retroactive. But I just thought that was
4 very interesting.

5 MR. DURANT: Yeah.

6 THE COURT: Because you used to get cut a break on
7 ABHAN. Even though it carried that much time it was still a
8 common law misdemeanor. But now it is most serious and
9 violent. It is a strike which is like a little
10 disconcerting at least to me I thought when I read it.

11 MS. PROCTOR: We thought that ---

12 THE COURT: I thought wow, most serious and violent,
13 ABHAN went from being -- so I thought that was an
14 interesting change in the statute.

15 So I am going to reinstruct them on those and then I
16 will have that note marked as a court's exhibit. And then
17 immediately after that before I can get down the hall I had
18 another note.

19 It says: What happens if a unanimous decision cannot
20 be reached on two charges?

21 And I will instruct them that their verdict must be
22 unanimous, that which means all 12 of them must agree. That
23 if they cannot reach a verdict that they should let us know.
24 But however do not give us any numerical breakdown. That
25 would be inappropriate.

1 And then if they come back and they still -- if they
2 tell me they are deadlocked on any of them I would give them
3 an Allen charge. I wouldn't give them a second charge Allen
4 charge unless they told me they want one. But initially I
5 think I would be required to give them an Allen charge.

6 And then the third question -- well, the second
7 question on that note is: Can we obtain pictures of the
8 car?

9 And what I was going to instruct them is: Ladies and
10 gentlemen, you may only consider the testimony in evidence
11 which has been submitted into the record for purposes of
12 your deliberations. All of the evidence that you are
13 entitled to review is with you in the jury room. You are
14 not to speculate or draw any inferences or conclusions as to
15 why the document or documents have not been sent in with you
16 for purposes of your deliberations.

17 I can't talk today.

18 If you desire to have any of the testimony replayed,
19 please advise the bailiff and we will accommodate your
20 request immediately.

21 Any exception from the State?

22 MR. DURANT: No, ma'am.

23 THE COURT: From the defense?

24 MS. PROCTOR: No, Your Honor.

25 THE COURT: If you will have that marked as a

1 court's -- we will have that note marked as a court's
2 exhibit as well. And then once she has marked them you can
3 give them back to me.

4 (WHEREUPON, Court's Exhibit Number 5, note from jury,
5 was marked for identification.)

6 (WHEREUPON, Court's Exhibit Number 6, note from jury,
7 was marked for identification.)

8 THE COURT: And then you can go ahead and get the jury
9 for me. And what I may do is do them in reverse order
10 because the instructions on the three separate charges is
11 longer than my response to these first two.

12 And I'm also going to let them know in response,
13 because it says to two charges, I am going to let them know
14 and likewise you need to make us aware of any charge where
15 you have reached a unanimous verdict so that that verdict
16 can be received and then we will go from there.

17 (WHEREUPON, jury returned to courtroom July 17, 2013,
18 2:50 p.m.)

19 THE COURT: Thank you, Mr. Juliett.

20 Ladies and gentlemen, we received each of your
21 questions. And I'm going to take them a little in reverse
22 order because one of my answers is longer than the other.

23 And I'm going to start with your second questions which
24 are -- the second note which has two questions which is:

25 What happens if a unanimous decision cannot be reached

1 on two charges?

2 I instruct you and answer the question in this way:

3 Your verdict must be a unanimous one which means all 12 of
4 you must agree. However, if you cannot reach a verdict you
5 should advise the court of that. We have a procedure that
6 we follow regarding that.

7 However, you should not give us any numerical breakdown
8 of that inability to reach a verdict. However, if there is
9 a charge or charges where you have reached a verdict
10 likewise you need to make us aware of that at the same time.

11 As regards second question: Can we obtain pictures of
12 the car?

13 I instruct you as follows: You may only consider the
14 testimony in evidence that has been submitted into the
15 record for purposes of your deliberations.

16 All of the evidence that you are entitled to review is
17 with you in the jury room. You are not to speculate or draw
18 any inferences or conclusions as to why the document or
19 documents have not been sent in with you for purposes of
20 your deliberations.

21 If you desire to have any of the testimony replayed,
22 please advise the bailiffs and we will accommodate your
23 request immediately.

24 As regards your first question which was: Need
25 explanation on three charges.

1 I reinstruct you as follows: The defendant is charged
2 with attempted murder. In order to prove this crime the
3 State must prove the defendant attempted to kill another
4 person with malice of forethought either express or implied.

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

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

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

21 Express malice is shown when a person speaks words
22 which express hatred or ill will for another or when the
23 person prepared beforehand to do the act which was later
24 accomplished.

25 For example, lying in wait for a person or any other

1 act of preparation going to show that the deed was within
2 the defendant's mind would be expressed malice.

3 Malice may be inferred from conduct showing a total
4 disregard for human life. Inferred malice may also arise
5 when the deed is done with a deadly weapon. A deadly weapon
6 is any article, instrument or substance which is likely to
7 cause death or great bodily harm.

8 Whether an instrument has been used as a deadly weapon
9 depends on the facts and circumstances of each case. The
10 following are examples of instruments which may be deadly
11 weapons: a pistol, a shotgun, a rifle, a dirk, a dagger, a
12 knife, a slingshot, metal knuckles, a razor, gasoline, a
13 firebomb or molotov cocktail and lighter fluid. A gun may
14 be a deadly weapon even if it is not operating.

15 If facts are proven beyond a reasonable doubt
16 sufficient to raise an inference of malice to your
17 satisfaction this inference, ladies and gentlemen, would be
18 simply an evidentiary fact to be considered by you the jury
19 along with the other evidence in the case and for you to
20 give it the weight, value, and effect you decide it should
21 receive.

22 A specific intent to kill is not an element of
23 attempted murder. But there must be a general intent to
24 commit serious bodily injury.

25 Intent means intending the result which actually

1 occurs. Not accidentally or involuntarily. Intent may be
2 shown by acts and conduct of the defendant and other
3 circumstances from which you may naturally and reasonably
4 infer intent.

5 Evidence of the character of the act, the character of
6 the instrument used, the manner in which it was used, the
7 purpose to be accomplished, and the resulting wounds or
8 injuries may be considered in determining the intent with
9 which the act was committed.

10 Intent may also be inferred when it is demonstrated
11 that the defendant voluntarily and willfully commits an act,
12 the natural tendency of which is to destroy another's life.

13 Included within the offense of attempted murder is the
14 lesser offense of assault and battery of a high and
15 aggravated nature.

16 Assault and battery of a high and aggravated nature
17 includes all of the elements of attempted murder except
18 malice of forethought.

19 A person commits the offense of assault and battery of
20 a high and aggravated nature if the person unlawfully
21 injures another person and great bodily injury to another
22 person results or the act is accomplished by means likely to
23 produce death or great bodily injury.

24 Great bodily injury means bodily injury which causes a
25 substantial risk of death or which causes serious permanent

1 disfigurement or protracted loss or impairment of the
2 function of a bodily member or organ.

3 Also included within the offense of attempted murder is
4 the lesser offense of assault and battery first degree. A
5 person commits the offense of assault and battery in the
6 first degree if the person unlawfully offers or attempts to
7 injure another person with the present ability to do so and
8 the act is accomplished by means likely to produce death or
9 great bodily injury.

10 Great bodily injury means bodily injury which causes a
11 substantial risk of death or which causes serious permanent
12 disfigurement or protracted loss or impairment of the
13 function of a bodily member or organ.

14 Ladies and gentlemen, that concludes the court's
15 response to your questions. If you need anything further,
16 please do not hesitate to let us know and we will
17 accommodate your request immediately.

18 (WHEREUPON, jury exited courtroom July 17, 2013, at
19 2:37 p.m.)

20 THE COURT: Any exceptions from the State?

21 MR. DURANT: No, ma'am.

22 THE COURT: From the defense?

23 MS. PROCTOR: No, Your Honor.

24 THE COURT: All right. We will await further
25 instructions from the jury.

1 (WHEREUPON, break July 17, 013, 2:38 p.m.)

2 (WHEREUPON, resumed July 17, 2013, at 3:23 p.m.)

3 THE COURT: Okay. We have two questions from the jury.
4 One deals with asking for a written copy of the
5 instructions. And I am going to instruct them by written
6 response that our procedure does not allow for that.

7 If they would like anything reinstructed I will be glad
8 to accommodate them. Is there any exception from the State?

9 MR. DURANT: No, ma'am.

10 THE COURT: From the defense?

11 MS. PROCTOR: No, Your Honor.

12 THE COURT: The second instruc- -- actually I took them
13 in reverse order. The first question is: Is the weapon
14 list provided for attempted murder the same as assault and
15 battery of a high and aggravated nature?

16 And I guess the simple answer is no. Because really
17 there is no weapon list for assault -- for attempted murder.
18 It is simply that deals with implied malice, not a list of
19 weapons.

20 And I don't -- and I am debating whether I need to
21 clarify that for them again in the event that they have
22 misapprehended what I have told them.

23 Because there is not a weapon list. The purpose of
24 even articulating that is to show how implied malice can be
25 shown. And it is emphasized to them that that is an

1 inference they can draw if they want. But they don't have
2 to, based on the totality of the evidence that has been
3 provided.

4 And I guess -- that's why I pulled up the statute again
5 looking at assault and battery of a high and aggravated
6 nature. It says the act is accomplished by means likely to
7 produce death or great bodily injury. And I don't know that
8 that needs anymore clarity. Because I don't think it is
9 vague or ambiguous.

10 Do you all want me to simple answer no; or how do you
11 all want me to handle that, from the State?

12 MS. PROCTOR: Read ---

13 THE COURT: Is the weapon list provided for attempted
14 murder the same as assault and battery of a high and
15 aggravated nature?

16 MS. PROCTOR: That is so strange.

17 MR. DURANT: I think ---

18 THE COURT: What they did was they really didn't pay
19 attention to the inference language and they -- I really --
20 I am almost temp -- no, not really. Not if you are
21 listening.

22 And maybe I have just being doing it so long it doesn't
23 seem vague to me. But I almost feel the need to clarify and
24 tell them that that -- the list is provide- -- it almost
25 requires me to go into -- because you don't have to --

1 anything can become a deadly weapon.

2 MR. DURANT: Right.

3 THE COURT: A fist can be a deadly weapon, a bb-gun. A
4 lots of things. It depends on its use. But I almost don't
5 feel like going into that Pandora's Box.

6 But in a way I feel like I need to explain to them that
7 the list that was given is not some exhaustive list nor are
8 they bound by it.

9 MR. DURANT: Right.

10 THE COURT: It is simply the way malice can be shown
11 and an inference can be drawn from that. But you are not
12 bound by that. You need to look at the totality of the
13 facts. And I don't know how to do that except to instruct
14 them again. But they have heard it now twice and they seem
15 to still

16 But the simple answer is no. Because the ABHAN you
17 don't have to have -- that is why it is a lesser included.

18 MS. PROCTOR: Right.

19 THE COURT: And it includes everything except having to
20 show malice which deals with a gun. So I think after now
21 that I have talked it out I think the simply answer is no.

22 MS. PROCTOR: No. Okay.

23 THE COURT: Is there any exception from the State?

24 MS. PROCTOR: No -- oh ---

25 MR. DURANT: I am so confused.

1 THE COURT: Well, actually ABHAN is a lesser included
2 of attempted murder.

3 MR. DURANT: Right, I understand ---

4 THE COURT: The only difference is the showing of
5 malice. Malice is showed express or inferred. The only
6 reason you mention a list of weapons is to show inferred
7 malice.

8 MR. DURANT: Yeah ---

9 THE COURT: So you don't have to show malice on ABHAN.

10 MR. DURANT: I have no problem with either. I don't
11 have any problem with you saying no. I don't have any
12 problem with you saying that use of a deadly weapon raises
13 an inference of malice and these are just examples of deadly
14 weapons.

15 THE COURT: Yeah, I have kind of said that.

16 MS. PROCTOR: I like no better.

17 THE COURT: I said that -- well, no, I have said it
18 twice. And I don't -- I -- the simple answer I think ---

19 MS. PROCTOR: No.

20 THE COURT: --- is no. Yeah. Because you don't have
21 to show malice which doesn't include a list of how you show
22 inferred malice..

23 But I -- but I just feel like unambiguous --
24 unambiguous language for ABHAN says the act is accomplished
25 by means likely to produce death or great bodily injury.

1 That could be so many things. I mean you don't need ---

2 MR. DURANT: Yeah.

3 THE COURT: --- a list. I mean you would have to look
4 at the facts of the case. They are bound by them. So I
5 think the answer is no.

6 MR. DURANT: I mean -- I mean the actually answer is
7 that you could be guilty of murder or ABHAN and not use a
8 deadly weapon at all.

9 THE COURT: I know. And the problem though is case law
10 says you can't mention anything other than a gun or a deadly
11 implement unless those objects were used.

12 MR. DURANT: Okay.

13 THE COURT: You can only instruct if there is evidence
14 of a hand, a foot, a hammer, a brick, you know, all those
15 ordinary objects that can be used to kill someone. A car,
16 you know, that is a deadly implement.

17 MR. DURANT: Yeah.

18 THE COURT: It is a whole different statutory framework
19 which deals with reckless homicide. But so are we in
20 agreement that the answer is no from the State?

21 MR. DURANT: I'm -- I'm okay with that, Your Honor.

22 THE COURT: From the defense?

23 MS. PROCTOR: Yes, Your Honor.

24 THE COURT: And then I am going to attach my written
25 response which is that our procedures do not allow for the

1 copy -- a copy of the instructions.

2 And to tell you the truth I kind of -- I think they
3 would be parsing through it and getting themselves confused
4 frankly.

5 I don't think that's -- I never think that is a good
6 idea because I think people tend to -- as lay people tend to
7 pick and choose and give significance towards that they
8 don't have legally at least in our legal analysis of it. So
9 and the rules don't provide for it.

10 So I will give this instruction and tell them they are
11 not allowed to have one, our rules don't provide for it, but
12 if they need a specific instruction to let me know and I
13 will reinstruct them. These are to be marked as a court's
14 exhibit.

15 And I will have the question and the response marked as
16 a court's exhibit and instruct them to make sure they don't
17 throw it away so it can be placed back into the record once
18 they are done deliberating. Are there any exceptions from
19 the State?

20 MR. DURANT: No, ma'am.

21 THE COURT: From the defense?

22 MS. PROCTOR: No, Your Honor.

23 (WHEREUPON, Court's Exhibit Number 7, question from
24 jury, was marked for identification.)

25 THE COURT: All right. We will wait further

1 instructions.

2 (WHEREUPON, recess July 17, 2013, 3:32 p.m.)

3 (WHEREUON, proceeding resumed 4:10 p.m.)

4 THE COURT: The jury has reached a verdict. Is there
5 anything before we bring in the jury, from the State?

6 MR. DURANT: No, ma'am,

7 THE COURT: From the defense?

8 MS. PROCTOR: No, Your Honor.

9 THE COURT: Please bring in the jury. Ladies and
10 gentlemen of the gallery, I understand that this has been an
11 emotionally charged case. However, I do not expect there to
12 be any vocal, audible reactions upon the reading of the
13 verdict. If there are, I am instructing the deputies to
14 remove you from the courtroom.

15 (WHEREUPON, jury entered the courtroom July 17, 2013,
16 at 4:10 p.m.)

17 THE COURT: Madam Forelady, is it correct that the jury
18 has reached a verdict?

19 MADAM FORELADY: We have.

20 THE COURT: If you would give the verdict forms to the
21 bailiff for me, please.

22 (Complied.)

23 THE COURT: Thank you, sir. Madam Clerk, if you would
24 publish the verdicts. Sir, if you would stand for
25 publication of the verdicts.

1 **VERDICT:**

2 THE CLERK: County of Charleston, State of South
3 Carolina versus Domoneik Antwan Washington in the Court of
4 General Sessions of the Ninth Judicial Circuit, Indictment
5 2011-GS-10-6881 we the jury by unanimous consent find the
6 defendant guilty of attempted murder. Signed by Madam
7 Forelady Michelle Collins on Wednesday, July 17th, 2013.

8 As to Indictment 2011-GS-10-6882 we the jury by
9 unanimous consent find the defendant guilty of assault and
10 battery of a high and aggravated nature.

11 As to Indictment 2011-GS-10-6883 we the jury by
12 unanimous consent find the defendant guilty of attempted
13 murder. Also signed by Madam Forelady Michelle Collins on
14 Wednesday, July 17th, 2013.

15 Ladies and gentlemen of the jury, if these are your
16 verdicts please raise your right hands.

17 (All jurors complied.)

18 THE CLERK: Thank you.

19 THE COURT: Please take your seats. Is there any
20 request to poll the jury, from the State?

21 MR. DURANT: No, ma'am.

22 MS. PROCTOR: From the defense?

23 MS. PROCTOR: Yes, Your Honor.

24 THE COURT: Ladies and gentlemen, please give the clerk
25 your attention. She is going to ask you two questions. And

1 again, please follow her instructions.

2 THE CLERK: Starting with the forelady I am now going
3 to ask you two questions:

4 Juror Number 55, is this your verdict?

5 JUROR: It is.

6 THE CLERK: Is this still your verdict?

7 JUROR: It is.

8 THE CLERK: Juror Number 8, is this your verdict?

9 JUROR: It is.

10 THE CLERK: Is this still your verdict?

11 JUROR: It is.

12 THE CLERK: Juror Number 253, is this your verdict?

13 JUROR: Yes.

14 THE CLERK: Is this still your verdict?

15 JUROR: Yes.

16 THE CLERK: Juror Number 248, is this your verdict?

17 JUROR: It is.

18 THE CLERK: Is this still your verdict?

19 JUROR: It is.

20 THE CLERK: Juror Number 271, is this your verdict?

21 JUROR: It is.

22 THE CLERK: Is this still your verdict?

23 JUROR: It is.

24 THE CLERK: Juror Number 181, is this your verdict?

25 JUROR: It is.

1 THE CLERK: Is this still your verdict?
2 JUROR: It is.
3 THE CLERK: Juror Number 71, is this your verdict?
4 JUROR: It is.
5 THE CLERK: Is this still your verdict?
6 JUROR: Yes, it is.
7 THE CLERK: Juror Number 7, is this your verdict?
8 JUROR: Yes.
9 THE CLERK: Is it still your verdict?
10 JUROR: Yes.
11 THE CLERK: Juror Number 291, is this your verdict?
12 JUROR: Yes.
13 THE CLERK: Is this still your verdict?
14 JUROR: Yes.
15 THE CLERK: Juror Number 167, is this your verdict?
16 JUROR: Yes.
17 THE CLERK: Is this still your verdict?
18 JUROR: Yes.
19 THE CLERK: Juror Number 90, is this your verdict?
20 JUROR: Yes.
21 THE CLERK: Is this still your verdict?
22 JUROR: Yes.
23 THE CLERK: And Juror Number 190, is this your verdict?
24 JUROR: Yes.
25 THE CLERK: Is this still your verdict?

1 JUROR: Yes.

2 THE CLERK: Your Honor, the jury has been polled and
3 the verdict stands.

4 THE COURT: Any further requests regarding polling the
5 jury from the defense?

6 MS. PROCTOR: No, Your Honor.

7 THE COURT: Madam Forelady, ladies and gentlemen, I
8 wish I could excuse you -- actually I may have enough jurors
9 to excuse y'all for the rest of the week. Do I have enough
10 jurors to pick a jury tomorrow?

11 THE CLERK: Yes.

12 THE COURT: Perfect. Ladies and gentlemen, you have
13 diligently provided us with your service this week.

14 I have another jury that I'm selecting in the morning.
15 But I'm going to excuse you for the remainder of the week
16 because you have been with us for three days and I think you
17 have more than satisfied your civic duty to us.

18 I hope that jury service has been educational for you.
19 I hope that you have learned as I said in jury qualification
20 that real court is nothing like Judge Judy, Judge Joe Brown,
21 the People -- the People's Court, Judge Mathis, all those
22 court shows.

23 That while they are incredibly entertaining they are
24 nothing like the real process where 12 individual citizens
25 sit and determine what the facts are of a case and then

1 apply a very complicated set of laws to those facts and
2 render verdicts.

3 Charleston County is -- makes up part of the Ninth
4 Circuit. The Ninth Circuit is also made up of Berkeley
5 County. The state is divided into judicial circuits.

6 Charleston is one of the busiest circuits in the state
7 ranking only probably neck and neck with Greenville County
8 which is in the upstate and Richland County which of course
9 is Columbia, the capital.

10 We hold jury trials with the exception of Christmas,
11 New Year and Thanksgiving and the Fourth of July we hold
12 court probably - Don, what would you say, 46 out of 52
13 weeks - we hold jury trials 46 out of 52 weeks.

14 And we have four trial courts operating, two civil and
15 two criminal, in addition to four family courts that operate
16 on the second floor, the probate court and the master in
17 equity which also operate in this building as well as the
18 magistrates that sometimes use this court for -- what is the
19 court -- I forget the name of it - for transfer court.

20 So as you can well imagine there is a lot of court that
21 we hold. And we would not be able to do that without you
22 all being willing really to donate your time to us.

23 You are welcome to discuss this case if you would like.
24 But I ask that you not do that until everyone has been
25 excused on Friday which means the earliest that you could

1 discuss this case with anyone would be on Monday.

2 Sometimes attorneys will call you and because they want
3 feedback on how they did during the process or how they can
4 improve their performance. And that is normal.

5 So if someone should call you or try to contact you
6 regarding this case you are welcome to discuss it. But by
7 the same token if you don't want to you are welcome to as
8 well. And if someone should persist in trying to speak with
9 you and it exceeds your comfort level please contact the
10 clerk's office so that we can take the appropriate action
11 necessary to protect your privacy.

12 If you need a work excuse you can get one on the first
13 floor as you leave, on the circuit side of the courthouse,
14 which is when you come off the elevators it would be to your
15 left.

16 Any of the deputy clerks at any of those windows can
17 give you a work excuse. Otherwise, those will be mailed on
18 Friday along with your checks.

19 You are excused with the court's profound thanks. I
20 will hear post-trial motions and sentencing as soon as I am
21 done greeting the jury. And I need sentence sheet.

22 MR. DURANT: Yes, ma'am.

23 THE COURT: Thank you.

24 (WHEREUPON, the jury was dismissed July 17, 2013, at
25 4:19 p.m.)

1 (WHEREUPON, break for court to speak with jury outside
2 of courtroom.)

3 THE COURT: All righty. Is there anything further from
4 the State and any victims wish to be heard or any further
5 presentation -- well, actually I need to start with are
6 there any post-trial motions, from the State? Are there any
7 post-trial motions, from the State?

8 MR. DURANT: I'm sorry, I didn't know you were talking
9 to me, Your Honor.

10 MR. DURANT: No. No, Your Honor.

11 THE COURT: From the defense?

12 MS. PROCTOR: Your Honor, since I have been in here I
13 don't have my file. But I would just renew all the motions
14 we made during the trial. I think the majority of them were
15 granted maybe but one. And I can't remember what it -- or
16 that. And so -- and then we would just make a motion for a
17 new trial based on -- on motions.

18 THE COURT: The court will -- and does the State want
19 to respond to any of the motions?

20 MR. DURANT: No, Your Honor.

21 THE COURT: The State -- I mean the court will mark all
22 of the motions renewed. And I will stand by the previous
23 rulings that were made for the record with the appropriate
24 findings of fact and conclusions of law that accompanied
25 those rulings.

1 As regards to the motion for new trial, where there is
2 any evidence to support the verdict the court must uphold
3 the verdict.

4 It is clear that the jury gave substantial
5 consideration to the facts and the circumstances of this
6 case. And there is evidence to support its verdicts on 6881
7 which is attempted murder, 6882 which is ABHAN, and 6883
8 which is attempted murder in the nature of the testimony
9 that was presented as well as the video of the actual
10 incident site.

11 And the motion is denied.

12 Does the State wish to proceed on sentencing?

13 MR. DURANT: Your Honor, I do have one of the victim's
14 family that just happened to go to the restroom. She is not
15 here right now.

16 THE COURT: That's okay. But does the State have
17 anything it wishes to state regarding sentencing?

18 MR. DURANT: Your Honor, it is our position that --
19 that he should receive the maximum sentence. In my opinion
20 this was nothing more than -- this was very lucky it wasn't
21 a triple murder. It could have very easily been a triple
22 murder. And basically for no reason whatsoever.

23 I've watched that video ad nauseum. I didn't see those
24 guys in that car doing anything to this defendant to warrant
25 him to come over there and unload on that car like he did.

1 That shows -- I think it show depravity of spirit, and
2 I would ask that he receive the maximum sentence.

3 THE COURT: I'm curious. You made an offer to him of
4 18 years previously. Is there a reason for the shift in
5 position ---

6 MR. DURANT: Yes.

7 THE COURT: --- as the court cannot enhance the penalty
8 based on him exercising his right to a jury trial.

9 MR. DURANT: Has nothing to do with him exercising his
10 right to a jury trial, Your Honor. It has everything to do
11 with what my assessment of the case. And particularly when
12 I had a couple of very difficult victims involved.

13 THE COURT: When you say very difficult, explain.
14 Elaborate.

15 THE COURT: I mean one of them -- one of them, Mr.
16 Bryant, refused to meet with me on -- or to discuss with me
17 the facts of the case on four separate occasions.

18 Mr. Wittrell would come in and talk to me but
19 repeatedly said that he didn't want to testify, was scared
20 to testify.

21 He showed up to court and then didn't show up to court,
22 and then he showed up to court again. And finally we were
23 able to get him in.

24 And I was of course and in the position logistically
25 that I have to herd these cats. And -- and it was primarily

1 based upon that, based upon some problems I saw with my case
2 particularly with regard to the self-defense issue not with
3 regard -- with regarding what was at the Kangaroo so to
4 speak.

5 But I did have a .38 caliber revolver with five spent
6 shell casings in my -- in my gold Impala that I had to
7 explain too.

8 So all of that went into my assessment of the case.
9 And all that went into my plea offer of 18 years.

10 It certainly was not based upon me not thinking that
11 what he did ---

12 THE COURT: Oh, no, I -- I was just curious regarding
13 what would have justified that at the time and then what the
14 change in posture.

15 MR. DURANT: My plea -- my plea offers are always based
16 upon my assessment of the case, Your Honor.

17 THE COURT: Well, yeah, I -- well, that goes without
18 saying. If I didn't articulate that well, I apologize.

19 MR. DURANT: Yeah.

20 THE COURT: I assumed -- there are many reasons people
21 make plea offers.

22 MR. DURANT: Right.

23 THE COURT: Sometimes people make plea offers because
24 they don't want to put victims through testifying ---

25 MR. DURANT: Sure.

1 THE COURT: --- especially when there are small
2 children. Sometimes plea offers are made -- plea offers are
3 made because of the uncertainties of evidence.

4 Sometimes plea offers are made simply in mitigation
5 because people are young and the State just wants to cut
6 them a break and give them another chance.

7 And sometimes plea offers are made -- made just because
8 it saves the State money and it saves them the time to get
9 prepared for a trial.

10 MR. DURANT: I agree.

11 THE COURT: And that is why I was just curious to know
12 what ---

13 MR. DURANT: And I agree ---

14 THE COURT: --- why.

15 MR. DURANT: And I agree with -- I agree with all of
16 those reasons, Your Honor. And like I said, mine was based
17 primarily -- primarily upon my assessment of the strength of
18 my case. And -- and but never based upon the fact that I
19 didn't think what he did was fault.

20 THE COURT: You said you had a victim that was present
21 that wished to be heard?

22 MR. DURANT: If you would, please state your name for
23 the record.

24 MS. WILSON: My name is Evette Wilson. I am Antwan
25 Wilson's mother. I am Antwan's -- Wilson -- mother,

1 deceased. And I just wanted to say(crying).

2 MR. DURANT: There will be nothing else, Your Honor.

3 MS. PROCTOR: Thank you, Your Honor. May it please the
4 court.

5 THE COURT: Yes, ma'am.

6 MS. PROCTOR: As far as to address what Mr. DuRant
7 said, there were as you heard through the tape quite a few
8 guns that night out there with other people. There also
9 were guns -- there was a gun in the victim's car. Mr.
10 Wittrell who testified had gun powder residue on his hands.

11 THE COURT: But you all stipulated ---

12 MS. PROCTOR: No.

13 THE COURT: --- that they never shot at your client so,
14 correct?

15 MS. PROCTOR: Well, we stipulated to that for other
16 reasons I think because ---

17 THE COURT: Well, the video certainly doesn't show them
18 shooting.

19 MS. PROCTOR: No, no, I agree with that. I am just
20 saying that this -- whenever it happened there was gunpowder
21 residue on his hands that night. Mr. Bryant had gunpowder
22 residue.

23 And so I think that this was a case which was
24 unfortunate. There were a lot of people out there that had
25 weapons.

1 As far as again Mr. Bryant he -- the verdict came back
2 ABHAN. And I am sort of surprised at that. Mr. Bryant
3 never wanted to testify in this case. And it is not because
4 he is afraid. As a matter of fact he ---

5 THE COURT: Actually Mr. Bryant's was attempted murder.
6 Mr. Wittrell's was ABHAN.

7 MS. PROCTOR: The person in the -- it is Mr. Bryant's
8 that is attempted murder?

9 THE COURT: Uh-huh.

10 MS. PROCTOR: That surprises me.

11 THE COURT: No, that would be consistent with the
12 testimony. Because Mr. Wittrell said he wasn't hit with a
13 bullet at the event.

14 MS. PROCTOR: Neither was Mr. Bryant. He was in the
15 back seat ---

16 THE COURT: But there is testimony from Ms. Trusdale
17 regarding Mr. Bryant and so I don't ---

18 MS. PROCTOR: No, he wasn't hit. He was not hit.

19 THE COURT: I didn't say he was hit. But there is more
20 testimony regarding the facts and circumstances and
21 potential acrimony between your client and Mr. Bryant, the
22 beefing and other things that certainly could support that
23 verdict.

24 MS. PROCTOR: Well, Mr. Bryant has gotten his justice
25 out of Mr. Washington. He has knocked out his bottom teeth

1 and beat him quite badly while he was in the county jail
2 waiting charges on his own home invasion.

3 THE COURT: I assume you all have taken some
4 administrative action with the jail regarding that?

5 MS. PROCTOR: He has been charged with lynching by mob.

6 THE COURT: And I assume that your client is going to
7 pursue that when he comes to trial.

8 MS. PROCTOR: I hope he does.

9 THE COURT: Yeah, so I assume based on what you are
10 telling me that any -- that he get any appropriate remedy
11 that is as a result of that conviction, wouldn't he?

12 MS. PROCTOR: I don't ---

13 THE COURT: Do they tape what goes on in cells? I
14 don't know.

15 MS. PROCTOR: I have no idea, Your Honor.

16 THE COURT: I have no idea either. I don't know with
17 modern technology what they tape or don't tape in jail cells
18 anymore.

19 You may continue.

20 MS. PROCTOR: Your Honor, he is 27 years old. He has
21 been working. He has always had a good job. He has worked
22 since he was about 16. He has done catering. He has done
23 construction. And I think Your Honor has seen throughout
24 this week what family support he has. His whole family has
25 been here every day.

1 And out of all the people in this case Mr. Washington I
2 think has the least amount of record of anybody. He had the
3 resisting arrest and I think it was maybe ---

4 THE COURT: Two simple possessions of marijuana.

5 MS. PROCTER: Two simple possessions of marijuana which
6 is much less than all the other people, the other victims --
7 all three victims.

8 Your Honor, I think maybe some of his family might like
9 to speak.

10 THE COURT: Sure. If they would stand and state their
11 names for the court reporter and if necessary spell any last
12 names they think she would not be able to spell. Yes,
13 ma'am?

14 MS. DOWNIE: My name is Con-Sandra Downie. C-O-N,
15 apostrophe, capital S, A-N-D-R-A D-O-W-N-I-E.

16 THE COURT: I'm sorry, tell me your last name again.

17 MS. DOWNIE: Downie, D-O-W-N-I-E.

18 THE COURT: Thank you, ma'am.

19 MS. DOWNIE: I am Domoneik's older sister. And I just
20 want to say that I have sympathy and sympathy for the other
21 families. But Domoneik is a young man that has been a good
22 child up until this incident.

23 He has two kids that needs a father for him to take
24 care of. We have been holding the burden for him all this
25 time.

1 I am not saying they he should be set off free. I
2 don't want nobody to think that, because I am truly sorry
3 for what happened. But with him so young he do not deserve
4 no maximum sentence.

5 I just ask the court please consider the fact that he
6 has not had no trouble before this, that he do has kids and
7 he does have a family and he has always uphold a job. He
8 has not been found on the street selling drugs and he hasn't
9 been no hit man, none of that nature. Like he has been a
10 good child up until this incident.

11 MS. PROCTOR: Your Honor, I would just want to say also
12 I think from the video you saw and through the number of
13 shots fired, he was not the instigator of this shooting. He
14 did not start shooting first. And there had already been at
15 least 12 to 13 shots before he fired his gun.

16 MS. PAMELA WASHINGTON: My name is Pamela Washington.
17 And I am Domoneik's sister. You know, this is sad. This is
18 very sad. And I took off from work to stop and I'm trying
19 to help him with his children. And I got four kids and a
20 grand, and it is just hard on the family trying to ...
21 (crying).

22 MS. PROCTOR: Your Honor, he has been in jail a little
23 over two years.

24 THE COURT: How many days?

25 MS. PROCTOR: Since his arrest ---

1 THE COURT: About 400 and how many days?

2 MS. PROCTOR: May -- I think May 14th or 15th.

3 MR. DURANT: May 16th I think is when ---

4 MS. PROCTOR: May 16th, ---

5 MR. DURANT: --- he was taken into custody.

6 MS. PROCTOR: --- 2011.

7 THE COURT: So it is just a little over two years?

8 MS. PROCTOR: Yes, Your Honor. And one other person
9 would like to talk -- two people.

10 THE COURT: Yes, ma'am, be glad to hear from you.

11 MS. SMALLS: I am -- my name is Betty Smalls. I am
12 Domoneik's grandmother. I raised him from six months old.
13 But he knows his family because, you know, that's how --
14 raised by -- you know, so he never -- he always know his
15 sisters and his brother. And I am a Christian, and I am
16 very sorry for all of this mix up. I -- my heart goes out
17 to the other family.

18 But Domoneik I have seen through pain and emotion that
19 night like you -- you gave me some insight on why men when
20 you said what you said the other day.

21 THE COURT: I didn't realize you heard ---

22 MS. SMALLS: And I was saying ---

23 THE COURT: I was just talking to the lawyers.

24 MS. SMALLS: Yeah, I said ----

25 THE COURT: About not maturing until they are 35.

1 MS. SMALLS: That's -- you know, having -- I've got two
2 sons. Domoneik is my oldest son's son. And Domoneik has
3 two children. They are three and they are two. I get them
4 as much -- every weekend they are in church. I get them so
5 they can be in church. The same way I raised Domoneik up in
6 the church. Domoneik was a drummer in the church. Domoneik
7 is highly -- our organist was here Monday but she couldn't
8 get back because she is very busy. And my pastor sent all
9 his support. And Domoneik know that. I mean he was raised
10 up in the church.

11 And I believe and truly believe that this is a wake-up
12 call, you know. Because we train our children up the way we
13 would want them to go. I didn't train him to be in the
14 street. But, you know, they go out. But like you say, he
15 would work. He love his children.

16 And you know, that -- I'm sorry -- like I say, I am
17 sorry for the other young people and all. But when I pray I
18 pray for all the young people of this world. Because they
19 need prayer. They need to find their place.

20 And I thank you for your information on that. Now I
21 get a better understanding of why they -- you know, men, you
22 know.

23 But I just thank God and for all that, you know, the
24 court that I know that your heart you would do what needs to
25 be done. But I pray that you will take something I said

1 into consideration.

2 THE COURT: Thank you, ma'am.

3 MS. PROCTOR: Your Honor, we figured out 794 days.

4 THE COURT: So he has never made bond basically?

5 MS. PROCTOR: No, Your Honor.

6 THE COURT: Because he absconded from the jurisdiction?

7 MS. PROCTOR: Yes, sir -- yes, ma'am.

8 THE COURT: Anything further, Ms. Proctor?

9 MS. PROCTOR: No, Your Honor.

10 THE COURT: Sir, is there anything you would like to
11 state for the record on your own behalf?

12 MR. WASHINGTON: No, ma'am.

13 THE COURT: Thank you, sir. You may take your seat.
14 How far did he go in school, Ms. Proctor? You told me he
15 gradu- -- you told me he was 27. You didn't tell me ---

16 MS. PROCTER: Eleventh grade.

17 THE COURT: Did he ever get his GED or anything?

18 MS. PROCTOR: No, ma'am.

19 THE COURT: Did he ever have any substance abuse
20 issues?

21 MS. PROCTOR: No, ma'am.

22 THE COURT: The court would be at ease for a few
23 moments.

24 (WHEREUPON, recess 4:36 p.m.)

25 (WHEREUPON, resumed proceedings 5:10 p.m.)

1 THE COURT: You may be seated.

2 SENTENCING:

3 Sir, if you would stand for imposition of sentence. On
4 both charges of attempted murder you are sentenced to the
5 State Department of Corrections for a period of 20 years.

6 On the assault and battery of a high and aggravated
7 nature which is Indictment 6882 you are sentenced to the
8 State Department of Corrections for a period of 20 years.
9 These sentences are concurrent with one another. You will
10 get credit for any time that you serve to be calculated and
11 applied by the Department of Corrections.

12 Since you have indicated you don't have a substance
13 abuse issue I am not going to order the ATU, although it is
14 my understanding that everyone gets screened for that
15 program and gets some treatment as they go through reception
16 and evaluation.

17 I have taken into consideration as mitigating factors
18 your youth, your lack of criminal record, as well as the
19 fact that you have two minor children -- well, that you have
20 minor children that your sister has advised the court about
21 who need your assistance in their rearing. I also took into
22 consideration, however, danger to the community and the
23 severity of the acts which took place.

24 While I have given consideration to what can best be
25 cast as the participation or lack of participation actually

1 by the putative victims in this case the issue really is not
2 these actual victims. The issue is a larger issue, that
3 being the protection of the community.

4 Just a large amount of people were at that gas station
5 and all of the things that really could have happened as a
6 result of what really was just an egregious act.

7 And as such the court finds that -- that the sentence
8 imposed is appropriate taking into account all of those
9 factors. Thank you, very much.

10 MR. DURANT: Thank you, Your Honor.

11 THE COURT: You are welcome.

12 (WHEREUPON, adjourned 5:12 p.m.)

(NOTE: A transcript which has been certified by the court reporter will bear an original signature on the below certification sheet. Please contact the court reporter for additional certified transcripts.)

CERTIFICATE

I, the undersigned Phyllis Norton, Official Court Reporter for the Ninth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete transcript of record of all the proceedings had and evidence introduced in the captioned case, relative to appeal, in the Family Court for Charleston County, South Carolina, on .

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


PHYLLIS NORTON, CVR
(Signature in blue ink.)

Date: Sept 9, 2013

Certified Transcript Provided For: SCC1D

Certification Reference # 0909113 OR16

DBD20110402158

DOCKET NO. 2011GS1006883

571

WITNESSES

Derek J. Boyd
Charleston County Sheriff's Office

AGENCY CASE NUMBER

2011005237B

ARREST WARRANT NUMBER
M605014

DATE OF ARREST
May 20, 2011

ACTION OF GRAND JURY

TRUE BILL

J. F.
Foreperson of Grand Jury
Date:

NOV 14 2011

VERDICT

[Signature]
Foreperson of Petit Jury
Date: 7/17/2013

INDICT.DOT

The State of South Carolina

County of Charleston

COURT OF GENERAL SESSIONS

November 2011 Term

THE STATE

vs.

DOMONEIK ANTWAN WASHINGTON
DOB:
B/M

Indictment for
ATTEMPTED MURDER

STATE OF SOUTH CAROLINA)
)
 COUNTY OF CHARLESTON)

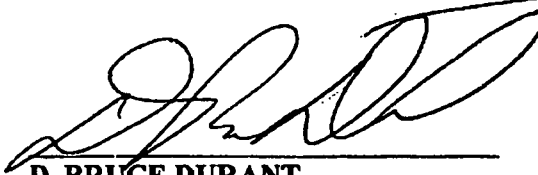
INDICTMENT

At a Court of General Sessions, convened on November 14, 2011, the Grand Jurors of Charleston County present upon their oath:

ATTEMPTED MURDER

That in Charleston County, South Carolina, on or about March 30, 2011, the Defendant, **DOMONEIK ANTWAN WASHINGTON**, did, with intent to kill and malice aforethought, attempt to kill Ronald Cornell Bryant III. This is in violation of Section 16-3-29 of the South Carolina Code of Laws (1976) as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.



D. BRUCE DURANT
 CHIEF DEPUTY SOLICITOR

WITNESSES

Derek J. Boyd
Charleston County Sheriff's Office

AGENCY CASE NUMBER

2011005237B

ARREST WARRANT NUMBER
M605012

DATE OF ARREST
May 20, 2011

ACTION OF GRAND JURY

TRUE BILL

J. O.
Foreperson of Grand Jury
Date:

NOV 14 2011

VERDICT

M. H. Helle
Foreperson of Petit Jury

Date: 7/17/2013

INDICT.DOT

The State of South Carolina

County of Charleston

COURT OF GENERAL SESSIONS

November 2011 Term

THE STATE

vs.

DOMONEIK ANTWAN WASHINGTON
DOB: 1
B/M

Indictment for
ATTEMPTED MURDER

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)

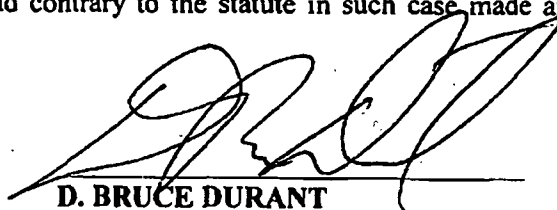
INDICTMENT

At a Court of General Sessions, convened on November 14, 2011, the Grand Jurors of Charleston County present upon their oath:

ATTEMPTED MURDER

That in Charleston County on or about March 30, 2011, the defendant, **DOMONEIK ANTWAN WASHINGTON**, with intent to kill and malice aforethought, attempt to kill Antwan Devon Wilson, also known as Brian Revon Wilson. This is in violation of Section 16-3-29 of the South Carolina Code of Laws (1976) as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.


D. BRUCE DURANT
CHIEF DEPUTY SOLICITOR

WITNESSES

Derek J. Boyd
Charleston County Sheriff's Office

AGENCY CASE NUMBER

2011005237B

ARREST WARRANT NUMBER
M605013

DATE OF ARREST

May 20, 2011

ACTION OF GRAND JURY

TRUE BILL

Foreperson of Grand Jury
Date:

NOV 14 2011

VERDICT

Foreperson of Petit Jury

Date:

INDICT.DOT

The State of South Carolina

County of Charleston

COURT OF GENERAL SESSIONS

November 2011 Term

THE STATE

vs.

DOMONEIK ANTWAN WASHINGTON

DOB: 1

B/M

Indictment for
ATTEMPTED MURDER

STATE OF SOUTH CAROLINA)
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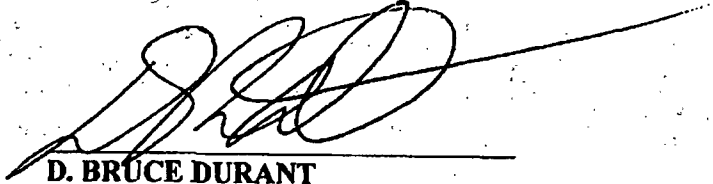
INDICTMENT

At a Court of General Sessions, convened on November 14, 2011, the Grand Jurors of Charleston County present upon their oath:

ATTEMPTED MURDER

That in Charleston County, South Carolina, on or about March 30, 2011, the Defendant, **DOMONEIK ANTWAN WASHINGTON**, did, with intent to kill and malice aforethought, attempt to kill Edward Jerome Wittrell Jr. This is in violation of Section 16-3-29 of the South Carolina Code of Laws (1976) as amended.

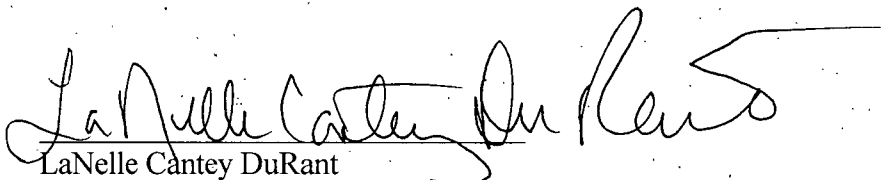
Against the peace and dignity of the State, and contrary to the statute in such case made and provided.


D. BRUCE DURANT
CHIEF DEPUTY SOLICITOR

CERTIFICATE OF COUNSEL FOR APPELLANT

Counsel for appellant certifies that this Record on Appeal contains all material proposed to be included by any of the parties and not any other material and that this Record on Appeal complies to the best of my ability, with the August 13, 2007, order from the South Carolina Supreme Court entitled "Interim Guidance Regarding Personal Data Identifiers and Other Sensitive Information in Appellate Court Filings."

March 14th, 2014



LaNelle Cantey DuRant
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, S. C. 29211-1589
(803) 734-1330

ATTORNEY FOR APPELLANT

ORIGINAL

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Charleston County

Deadra L. Jefferson, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

DOMONEIK ANTWAN WASHINGTON,

APPELLANT

CERTIFICATE OF SERVICE

I certify that a true copy of the Record on Appeal in the above referenced case has been served upon Salley W. Elliott, Esquire, at 14th day of March, 2014, and Mr. Domoneik Washington

Brandon Hall

Brandon Hall
Administrative Specialist

SUBSCRIBED AND SWORN TO before me
this 14th day of March, 2014.

Heather Jones

(L.S.)

Notary Public for South Carolina

My Commission Expires: July 3, 2023

RECEIVED

MAR 14 2014

SC Court of Appeals