

ORIGINAL

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

RECEIVED

AUG 04 2014

Appeal From Beaufort County
The Honorable Diane S. Goodstein, Circuit Court Judge

SC Court of Appeals

Appellate Case No: 2012-213026

THE STATE,

Respondent,

v.

JABARI LINNEN,

Appellant.

SUPPLEMENTAL RECORD ON APPEAL

JAMES A. BYARS
P.O. Drawer 2426
Columbia, South Carolina 29202
(803) 771-8900

ALAN WILSON
Attorney General

J. BENJAMIN APLIN
Assistant Attorney General

ROBERT M. DUDEK
S.C. Commission on Indigent Defense
Office of Appellate Defense
P.O. Box 11589
Columbia, South Carolina 29201
(803) 734-1334

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

I. MCDUFFIE STONE
Solicitor, Fourteenth Judicial Circuit

ATTORNEYS FOR APPELLANT

P.O. Box 1880
Bluffton, South Carolina 29910
(843) 470-3725

ATTORNEYS FOR RESPONDENT

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal From Beaufort County
The Honorable Diane S. Goodstein, Circuit Court Judge

Appellate Case No: 2012-213026

THE STATE,

Respondent,

v.

JABARI LINNEN,

Appellant.

SUPPLEMENTAL RECORD ON APPEAL

JAMES A. BYARS
P.O. Drawer 2426
Columbia, South Carolina 29202
(803) 771-8900

ALAN WILSON
Attorney General

J. BENJAMIN APLIN
Assistant Attorney General

ROBERT M. DUDEK
S.C. Commission on Indigent Defense
Office of Appellate Defense
P.O. Box 11589
Columbia, South Carolina 29201
(803) 734-1334

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

I. MCDUFFIE STONE
Solicitor, Fourteenth Judicial Circuit

ATTORNEYS FOR APPELLANT

P.O. Box 1880
Bluffton, South Carolina 29910
(843) 470-3725

ATTORNEYS FOR RESPONDENT

INDEX

TRANSCRIPT PAGE 64.....	1
TRANSCRIPT PAGES 105-106.....	2
TRANSCRIPT PAGE 246.....	4
TRANSCRIPT PAGE 249.....	5
TRANSCRIPT PAGE 270.....	6
TRANSCRIPT PAGE 300.....	7
TRANSCRIPT PAGE 367.....	8
TRANSCRIPT PAGES 417-424.....	9
TRANSCRIPT PAGES 428-430.....	17
TRANSCRIPT PAGE 529.....	20
TRANSCRIPT PAGE 555.....	21

1 working very diligently and the reason is, is to try to
2 isolate, to get our issues precise, so that your time in the
3 courtroom with us is as short as we can make it.

4 So that's what we've been doing, actually out here
5 working, so I thank you so much for your patience. I want
6 you to know that every single, solitary tick of the clock
7 that you are here, I know that you are giving your great
8 gift of time and so I want you to know I'm mindful of it and
9 we're going to take just as little of it as it is absolutely
10 necessary.

11 Now, ladies and gentlemen, let me tell you a little bit
12 about how we are going to be proceeding this morning. In
13 just a moment, you are going to be sworn in as the jury in
14 this case. I then have just have a few preliminary remarks
15 that I would like to make to you and then we'll get right
16 into the trial of this case.

17 Ladies and gentlemen, at this time, I am going to call
18 on our esteemed Clerk of Court, and she is going to swear
19 you in as the jury of this case.

20 WHEREUPON, THE JURY IS DULY SWORN.

21 THE COURT: Now, do we have any members of our jury
22 panel who failed to take the oath? No. Wonderful.

23 Now, ladies and gentlemen, I want to talk a minute with
24 you about two things, then we're going to get right into my
25 preliminary remarks. First of all, our gentleman on our

- 1 Q All right. Do you see him in the courtroom?
- 2 A Correct.
- 3 Q Where is he?
- 4 A In the back.
- 5 Q All right. Is that his mother sitting next to him?
- 6 A Yes, sir.
- 7 Q What happened when you saw him? What condition was he
- 8 in?
- 9 A He was laying supine, shot multiple times ---
- 10 Q Forgive me for interrupting. What does supine mean?
- 11 A He was laying on his back.
- 12 Q Okay. And go ahead, you said shot multiple times?
- 13 A Yes. I remember the lower extremities, upper
- 14 extremities and chest.
- 15 Q Okay. So by lower extremities, for us who are not in
- 16 the medical field, that means arms, legs and chest?
- 17 A Correct.
- 18 Q Not that it's all that important, do you remember
- 19 specifically how many wounds you saw?
- 20 A No, I don't remember how many.
- 21 Q Clearly, though, there were multiple?
- 22 A Correct.
- 23 Q When you got there, what type of, for lack of a better
- 24 word, life-saving things did you do?
- 25 A His Aunt Janice was there at the time. She was on the

1 phone with, I guess, 9-1-1, and I had her run and grab me
2 some towels so that I could help stop the bleeding. So
3 while she was doing that, I was taking off his shirt, you
4 know, because I saw blood on his chest area. So I took off
5 his shirt to see how serious it was and I paid more
6 attention to that than his arms and his legs.

7 Q Why is that?

8 A That's life threatening, the chest.

9 Q Okay. So chest wounds were the ones you were most
10 concerned about?

11 A Correct.

12 Q What did you do with the towels?

13 A I applied direct pressure.

14 Q Were you there doing that at the time EMS got there and
15 law enforcement?

16 A Correct.

17 Q Is it typical that law enforcement comes and secures
18 the scene and then fire and EMS come in after that?

19 A Correct.

20 Q Okay. While you were with him, were you very close to
21 Mr. Nichols?

22 A What do you mean close?

23 Q You were touching him, correct?

24 A Correct.

25 Q So you were right next to him?

- 1 battery?
- 2 A The only evidence of a battery is a statement made by
3 the victim.
- 4 Q Is there anything that contradicts that?
- 5 A No, there's actually nothing else in this report.
6 There's no evidence of any kind.
- 7 Q Okay. So she didn't actually suffer visible injury
8 from impact?
- 9 A That's correct.
- 10 Q Okay. But she's still 62 years old; isn't that right?
- 11 A That's correct.
- 12 Q Let me ask you this. Have you ever heard of assault
13 and battery of a high and aggravated nature?
- 14 A I have.
- 15 Q Isn't it one of the things that makes it aggravated is
16 that there's circumstances of aggravation?
- 17 A Yes, sir.
- 18 Q Isn't one of the circumstances of aggravation a great
19 disparity in size?
- 20 A Yes, sir.
- 21 Q How about a disparity in sex?
- 22 A Yes, sir.
- 23 Q How about a disparity in age?
- 24 A Yes, sir.
- 25 Q In this case, we have an able bodied young man, the one

- 1 grandmother.
- 2 Q He pushed her, right?
- 3 A Well, that push could have been bumping into her.
- 4 Q Okay. So if she said "push," she meant "bump," didn't
- 5 she?
- 6 A Again sir, I wasn't there I can't tell you for sure.
- 7 Q Okay. So you really don't know?
- 8 A I don't. What I do know is that this says that she
- 9 wanted him over at the house, so he was there. She asked
- 10 him to leave later on, and ultimately, he left.
- 11 Q Let me ask you, if Kenneth is the aggressor, that
- 12 doesn't help your case here, does it, today?
- 13 A Sure. It doesn't matter to me. There's only one way
- 14 to tell the truth.
- 15 Q Let me ask you. At the end, doesn't Ms. Nichols
- 16 indicate that Kenneth picked up a weapon and made a threat
- 17 to Joe Daise?
- 18 A What it says is that Joe Daise was not even there.
- 19 Q I understand, but you can still threaten somebody even
- 20 if they're not present.
- 21 A I'm sorry. How do you threaten somebody if they're not
- 22 there?
- 23 Q You communicate a statement as a threatening statement
- 24 and they're not there.
- 25 A So how is that ---

1 Q Thank you.

2 DEP. SOL. THORNTON: I have no further questions,
3 Judge.

4 THE COURT: Very well. Recross?

5 MR. BROWN: Yes, ma'am.

6 RECCROSS-EXAMINATION

7 BY MR. BROWN:

8 Q Investigator Fraser?

9 A Sir?

10 Q What do they have to do with the reputation of Mr.
11 Nichols as a violent person?

12 A I don't know if they have anything to do with
13 reputation, sir.

14 Q Okay. They don't serve as a basis to form an opinion
15 regarding his lack of peacefulness?

16 A I don't believe so.

17 Q And have you formed an opinion about Mr. Nichols'
18 reputation for violence or lack of peacefulness?

19 A I have not.

20 MR. BROWN: Your Honor, at this point, I have a matter
21 of law.

22 THE COURT: Okay.

23 (WHEREUPON, A BENCH CONFERENCE IS HELD OFF THE RECORD
24 AND OUT OF THE HEARING OF THE JURY.)

25 THE COURT: Ladies and gentlemen, I have got to ask you

- 1 Q All right. So you see King David Williams driving.
2 You see Jabari; where is Jabari sitting in the car?
3 A In the passenger seat.
4 Q And you see who else in the car?
5 A King in the driver seat.
6 Q And Desiree, where is she at?
7 A The backseat.
8 Q Now, do they stop where the tree is at the intersection
9 and drive by? Does anything happen at that time?
10 A They turn at the intersection and drive by.
11 Q Did you have words with Jabari when they came by?
12 A No.
13 Q Did you say anything to Jabari when they came by?
14 A No.
15 Q I'm going to show you what's been -- actually, leave
16 that for a second. Did you see them once they came by, did
17 you see them again that day? And when I say them, did you
18 see Jabari again that day?
19 A Yes.
20 Q All right. Did they come back through the
21 intersection?
22 A Yes.
23 Q Who was in the car when they came back through the
24 intersection?
25 A Jabari and King.

- 1 A I think it was me, Jabari, and Desiree; I can't
2 remember, but I knew we was taking her home or picking her
3 up, one of the two.
- 4 Q And how close does Desiree live to that tree?
- 5 A Not even three-fourths of a mile. She lives right up
6 the road.
- 7 Q Right up the road. How many houses would you say?
- 8 A There's only one house, because yards, like they got
9 big yards and stuff.
- 10 Q All right. Only one house. And do you recall at the
11 time that he exposed himself, was Ms. Desiree Blanding
12 pregnant?
- 13 A I can't say if she was or if she wasn't.
- 14 Q Was she pregnant at the time of the shooting?
- 15 A They had thoughts about it and she was not.
- 16 Q She thought she might be pregnant?
- 17 A Yes.
- 18 Q And she was not in the car at the time that it appeared
19 that Mr. Nichols was going to fight Mr. Lennin?
- 20 A Yes.
- 21 Q Do you know anything, any specific incidences regarding
22 Mr. Nichols or anything that you've seen with his
23 interaction with the Blanding's?
- 24 A I've never seen him fighting or anything, but I've
25 heard of altercations.

1 A We are neighbors passing each other from time to time,
2 you know, same neighborhood and stuff like that.

3 Q Would you say that y'all moved in the same circles?

4 A You could say that.

5 Q Okay. Would you say that y'all are acquainted through
6 those years on that street?

7 A Yes.

8 Q Okay. And Mr. Lennin, has he spent time at y'all's
9 house?

10 A Yes.

11 Q Let me ask you this, was most of that during the year
12 2011?

13 A Yes.

14 Q And do you remember April 21st, 2011?

15 A Yes, vaguely; but I remember it.

16 Q Okay. And for lack of a better word, that's the day
17 that Mr. Nichols was shot?

18 A Yes.

19 Q All right. And do you recall within the months before
20 that any specific instances involving Mr. Nichols and your
21 family?

22 A Well, like Regina said, it was a while ago, but I
23 remember Robert getting off the school bus ---

24 Q And who is Robert?

25 A Her son.

1 Q Robert Blanding?

2 A Yes. And he was chasing him, you know, and he had
3 mused him in the back of his head, you know, and it upset
4 him, and he came home and told me and his mother about it.

5 Q Did you ever have a chance to speak to the police?

6 A No, I haven't.

7 Q Did you ever see the police out there?

8 A Yes, I seen the police down there from time to time. I
9 would see the cops down there at the end of street.

10 Q Okay. That would be you're referring to -- down at the
11 end of the street, that would be at Mr. Nichols' house?

12 A Yes, at the end of the street down there.

13 Q Okay. Because the jury hasn't been there. I'm trying
14 to find out, is that towards where his mother lives and his
15 grandparents?

16 A Yes.

17 Q Okay. Do you recall speaking with law enforcement on
18 April 21st, 2011?

19 A Yes, I did.

20 Q Did they ask you to provide a written statement?

21 A Yes, the officer there did.

22 Q Do you recall what you told him at that time?

23 A Vaguely; it wasn't much that I could tell him, you
24 know, because when he came down to our house, I think it was
25 that morning -- part of that morning, and he was kind of

1 explaining to us what happened and we were just getting up.

2 MR. BROWN: And if I may, Your Honor, approach and ask
3 him if this refreshes his recollection?

4 THE COURT: Very well.

5 Q Mr. Mitchell, I ask that you read that and see if it
6 refreshes your recollection. And let me ask you this, did
7 you provide the officer any information about law
8 enforcement being there before you spoke with him?

9 A No.

10 Q If you look at that statement, does it reference law
11 enforcement?

12 DEP. SOL. THORNTON: Your Honor, I would have an
13 objection. I believe that would be, that the reference in
14 the statement, would be double hearsay.

15 THE COURT: As I understand it, he's just refreshing
16 his recollection.

17 DEP. SOL. THORNTON: Yes, ma'am.

18 Q Now, let me ask you, what you put in your statement,
19 that's not referring to the conversation you had with this
20 investigator, is it?

21 A No.

22 Q That's something else, isn't it?

23 A Yes.

24 Q Okay. And the reason why I asked that is that -- who
25 did you have this discussion that's referenced in here, who

1 was that with? There's a reference in here, this line ---

2 THE COURT: Now, don't publish anything.

3 MR. BROWN: I'm not going to publish it.

4 Q If you look at this part, who was the discussion --

5 there's a discussion that you've referenced in that

6 statement; who was that with?

7 THE COURT: Now, don't publish that document. You
8 can't publish that document. You understand that's not in
9 evidence?

10 MR. BROWN: I understand that, yes, ma'am.

11 THE COURT: All right.

12 Q I don't want to make it too confusing, Mr. Mitchell.
13 When you get a chance, I'll ask when you're finished with
14 that.

15 THE COURT: What is relevant is whether or not the
16 document refreshes his recollection and that is a yes or a
17 no.

18 Q Did that help refresh your recollection of what
19 happened on April 21st?

20 A Yes.

21 Q Now, to make sure I understand, that statement was
22 written when you spoke with Investigator Fraser?

23 A Yes.

24 Q Did you have some conversations earlier that day?

25 A Not that I can recall.

1 Q And when you wrote down what you put in that statement,
2 I don't mean with Officer Fraser, did you speak with anybody
3 else that morning?

4 A Not that I recall.

5 Q I'll ask you one more time if you'll take a look at
6 that statement.

7 A I'm trying to see.

8 THE COURT: Mr. Mitchell, you said you needed your
9 glasses, have you got them with you?

10 MR. MITCHELL: No, I left them at home. I can see
11 pretty good, though.

12 MR. BROWN: Your Honor, may I approach?

13 THE COURT: Of course

14 (WHEREUPON, A BENCH CONFERENCE IS HELD OFF THE RECORD
15 AND OUT OF THE HEARING OF THE JURY.)

16 Q This might make it much easier. (HANDS MR. MITCHELL A
17 PAIR OF READING GLASSES.) Mr. Mitchell, did you tell the
18 police that you had a discussion with a neighbor that
19 morning?

20 A I'm trying to remember.

21 THE COURT: That would be a "yes" or "no."

22 Q And again, if you'll look at that and see if it
23 refreshes your recollection on whether you had a
24 conversation with "our neighbor."

25 A I think I did. It's just been---

1 Q I think that's the same, and I don't know how else to
2 get to it, but I think we're still back to that same issue.

3 DEP. SOL. THORNTON: Your Honor, if it'll save time I
4 will stipulate that he told the detective that he talked to
5 a neighbor that day.

6 THE COURT: How about that?

7 MR. BROWN: And it was in that written statement?

8 DEP. SOL. THORNTON: And it is in the written
9 statement.

10 A I'm sure I did, but I just can't remember.

11 DEP. SOL. THORNTON: We'll stipulate. The words "our
12 neighbor" is clearly in the statement, Judge. We'll
13 stipulate it.

14 THE COURT: Very good.

15 Q And to follow up with that, so you were out in the
16 street or out in the road and had a conversation with the
17 neighbor that day; does that sound right?

18 A I did.

19 Q All right. Did you generally get out and speak to the
20 other folks in the neighborhood?

21 A Yes, from time to time I do.

22 Q Okay. And did you ever have conversations with Mr.
23 Nichols' family?

24 A That day, I don't ---

25 Q No, anytime. Over the how many years you've been

- 1 there?
- 2 A Yes.
- 3 Q All right. How many years have you been discussing
- 4 just neighborhood matters with the neighbors?
- 5 A Six or seven years, something like that.
- 6 Q And who would those people include?
- 7 A Well his family, you know ---
- 8 Q Some names, I'm sorry.
- 9 A Theresa Nichols.
- 10 Q Joe Daise?
- 11 A Uh-huh (affirmative).
- 12 Q All right. How about Sharine?
- 13 A Yeah, I spoke to his mother before.
- 14 Q How about Ms. Flynn?
- 15 A Oh, yes.
- 16 Q All right. How about the Suttons?
- 17 A Yes.
- 18 Q How about Trey's siblings?
- 19 A I spoke to his little sister, you know, just how are
- 20 you doing and stuff like that.
- 21 Q And how many years have you been talking with them?
- 22 A Five or six years.
- 23 Q And for most of that time you lived there, and also Mr.
- 24 Nichols lived there?
- 25 A Yeah.

- 1 Q Would you say y'all moved in the same circles?
- 2 A Yeah.
- 3 Q Did you live in the same community?
- 4 A Yeah.
- 5 Q Would you say that time and experience there provided
- 6 you with the sufficient basis to form an opinion regarding
- 7 Mr. Nichols' character for violence or his reputation for
- 8 violence?
- 9 A Yeah.
- 10 Q What is that opinion?
- 11 A At times, he can be kind of a bully, you know,
- 12 disrespectful at times, you know, things that I've seen him
- 13 do, unnecessary things, throwing bottles in the middle of
- 14 the streets and stuff like that.
- 15 Q Within just a few months of this shooting, before this
- 16 shooting, have you seen Mr. Nichols do anything that was
- 17 violent, such as what you said?
- 18 A Yeah.
- 19 Q Tell me what those were.
- 20 A Throwing bottles, and then my son, you know what he did
- 21 to him, you know, when he put his hands on him, and the way
- 22 he spoke with my daughter.
- 23 Q Which daughter?
- 24 A Desiree.
- 25 Q Now, let me ask you this, when you say throwing

- 1 Q And what were those acts?
- 2 A Like throwing bottles in the street and saying comments
3 to me when I walked from school.
- 4 Q Did he ever act violently towards you physically?
- 5 A No.
- 6 Q Did he ever lay his hands on you?
- 7 A Yeah, one time when I was going to the bus in the
8 morning.
- 9 Q Would you tell the jury about that?
- 10 A I was walking to school one morning and he just came up
11 to me and asked me if I had been to his house, and then he
12 just mush me in the back of my head and he said, "Answer my
13 question," and then he walked off.
- 14 Q And let me ask you this, where is the bus stop where
15 that happened?
- 16 A At the end of Luther Warren.
- 17 Q And where is that in relation to the tree?
- 18 A Like not too far from, it's like forty yards away.
- 19 Q Forty yards. So almost right at the tree?
- 20 A Yes.
- 21 Q Okay. Was he riding the bus to school with y'all?
- 22 A No.
- 23 Q Because he wasn't going to school, was he?
- 24 A No.
- 25 Q But you were going to high school on that bus?

- 1 A Yes.
- 2 Q All right. Was he there other times that you got on
3 and off the bus?
- 4 A No, it was just one time.
- 5 Q Was he ever there other times, though, at the tree?
- 6 A Yeah, he would sit there.
- 7 Q How many other times?
- 8 A Probably like four or five times.
- 9 Q And he would sit there; does he appear to be doing
10 anything?
- 11 A No, he was just sitting there, but he would say
12 something to me; but he wouldn't do anything.
- 13 Q So there were other times that he would say something
14 to you but he only actually laid his hands on you one time?
- 15 A Yes.
- 16 Q And was he saying nice things?
- 17 A No.
- 18 Q Now, the time that he laid his hands on you, what did
19 you do to provoke that response?
- 20 A I really didn't say nothing; I just left him alone.
- 21 Q What did you do before he touched you?
- 22 A Before he touched me, I didn't do nothing.
- 23 Q You didn't do nothing?
- 24 A No.
- 25 Q And then he said some ugly things to you?

- 1 A Yes.
- 2 Q And laid his hands on you?
- 3 A Yes.
- 4 Q Did you eventually speak to the police?
- 5 A No.
- 6 Q Did you know whether the police responded?
- 7 A No.
- 8 Q Do you know whether or not the police had ever been to
9 your house at other times?
- 10 A Yes.
- 11 Q And was that concerning Mr. Nichols?
- 12 A No.
- 13 Q Has the police been in the neighborhood concerning Mr.
14 Nichols?
- 15 A Yes.
- 16 Q All right. Did you know about those other times?
- 17 A Like sometimes, but not all the time.
- 18 Q All right. Having lived there for that amount of time,
19 would you consider yourself acquainted with Mr. Nichols?
- 20 A Yes.
- 21 Q Would you consider that y'all live in the same
22 community?
- 23 A Yes.
- 24 Q And would you say that you moved in the same social
25 circle?

1 make sure he didn't do anything to her, but that never
2 stopped him, you know, and Trey, he just started calling
3 them names, you know what I'm saying? Teasing about the
4 police, and stuff like that, making smart remarks about the
5 police officers, and stuff like that, because she was
6 calling the police, because, you know.

7 Q Tell me -- if you don't mind, I want to slow down and
8 please tell me what exactly you observed; and I know it's
9 going to take a little bit of detail.

10 A I remember the remarks.

11 Q Not what she said, but what exactly you observed; the
12 events of that day.

13 A Well, I observed him walking towards her, like he was
14 going to hit her, and immediately I thought, you know,
15 that's my baby mother, and she was pregnant at the time, but
16 she wasn't two months pregnant. She was just like
17 conceived. So I was scared. I mean, I didn't know what to
18 do, and I don't have a cell phone, she was the only person
19 with a cell phone. So she immediately called the police,
20 but when she started calling the police, I noticed that he
21 was making little remarks or whatever.

22 Q What concern did Mr. Nichols have about what Ms.
23 Blanding was doing? What concern did he show?

24 A He didn't show any. I mean, that was him. He don't
25 care.

1 can do about it, but I guess that's why, I guess, he was
2 doing what he was doing.

3 Q And let me ask you, Jabari, before you answer the
4 questions of Mr. Thornton, when you thought about what might
5 happen to you, what events over the preceding four months
6 went through your mind?

7 DEP. SOL. THORNTON: Objection. Leading.

8 THE COURT: Sustained.

9 Q What events were you thinking about on April 21st,
10 within the preceding four months?

11 A Before everything went down -- I was thinking about
12 everything, I was thinking about the prior stuff, everything
13 he was doing, things that I seen him do to people with my
14 own eyes. I thought about all of that, but still that
15 doesn't give anybody the right to mess with you or anything.

16 MR. BROWN: If I may, Your Honor, get some tissues for
17 Mr. Lennin's tears.

18 THE COURT: Here you go. I got some.

19 MR. LENNIN: I don't need no tissues.

20 THE COURT: All right. You may proceed.

21 MR. BROWN: I'm sorry, do you need more time, Jabari?

22 MR. LENNIN: No, I'm good, sir.

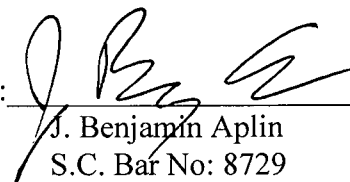
23 Q All right. What else would you like to tell your jury
24 related to April 21st?

25 A (No response.)

CERTIFICATE OF COUNSEL

The undersigned hereby certifies that this Supplemental Record on Appeal contains all material proposed to be included in the Supplemental Record on Appeal.

BY:



J. Benjamin Aplin
S.C. Bar No: 8729

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

August 4, 2014