

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Appeal from Greenville County

G. Edward Welmaker, Circuit Court Judge

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S.C. Supreme Court

ERIC TODD BURGESS,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2014-00351

A P P E N D I X

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4 STATE OF SOUTH CAROLINA)

versus) TRANSCRIPT OF RECORD

7 ERIC TODD BURGESS)

8 Defendant)

Greenville, South Carolina
January 18, 2012

10

11

12 B E F O R E :

13 HONORABLE ROBIN B. STILWELL, Judge, and a Jury

14

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1 COURT'S EXHIBITS:

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3 No. 1 - Jury question

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1 (The within matter came before the Court for trial on
2 January 18, 2012)

3 THE COURT: Good morning, everyone. I hope everybody
4 is doing well.

5 Looking on my docket, it appears that this is the
6 State versus Eric Burgess, Case 2010 8937.

7 Is that correct?

8 SOLICITOR: That's correct.

9 THE COURT: All right. Anything that we need to take
10 up on the record before we bring the jury in?

11 MR. COOKE: Yes, Your Honor. I just have one motion.
12 My client has sought a speedy trial and for them to pro-
13 duce certain evidence that we could use, such as the car
14 that was involved in the case; to have them inspect it and
15 for our experts to examine it.

16 The car was sold by his wife and, therefore, it is a
17 problem to us, simply because the car is what they claim
18 was used to run down the victim in this case.

19 So we specifically wanted to be looking for evidence
20 of DNA or anything of that sort because my client denies
21 he ever ran over this man with his car.

22 My client tells me his wife forged his name to the
23 title to get rid of the car.

24 THE COURT: All right, sir. Any response to that
25 statement?

1 SOLICITOR: Yes, Your Honor. I have been looking for
2 that speedy trial motion. Do you know what the date of
3 that was, Mr. Cooke?

4 MR. COOKE: I'll look through my file here. That was
5 the same year as we got this transcript.

6 SOLICITOR: Your Honor, there was a hearing on July
7 14 of 2011 before the Honorable Ed Miller, and the motion
8 was a motion to dismiss by the Defense, and it was based
9 on -- well, their allegation was that the Indictment had
10 not been acted upon in the appropriate amount of time.
11 That motion was denied.

12 I don't recall there being any speedy trial motion at
13 that -- in that, but I can review this transcript.

14 In any event, the State originally set this case for
15 trial back on December the 7th, and it was not reached on
16 that day so we set it again as quickly as we could.

17 I did not set it last week because I was in a trial
18 with a criminal sexual conduct with a minor charge that
19 was older than this case, but we did set it as quickly as
20 we could set it.

21 His date of arrest was October of 2011 so it has been
22 just a little over a year. He was . . .

23 THE COURT: Of 2010?

24 SOLICITOR: I'm sorry -- of 2010.

25 He has just been charged for a little over a year.

1 For a period of time he didn't make bond, and then he
2 has since been picked up on a probation violation, and
3 that is where we are right now.

4 But there has been no undue delay or bad faith in
5 trying to get this case into Court, Your Honor.

6 THE COURT: All right. I'm going to respectfully
7 deny the motion, Mr. Cooke. I don't think that that space
8 in time is inordinate.

9 That squares with Supreme Court decisions that have
10 been handed down with respect to requests for a speedy
11 trial.

12 Really, the dispositive issue that I look at is whe-
13 ther there is prejudice by virtue of a delay in coming to
14 trial, and in this instance I don't see that.

15 I don't see how the absence of the vehicle presents
16 a significant or a practical prejudice to the Defendant in
17 trying his case.

18 Now, at the conclusion of the trial if it becomes
19 evident that the lack of that evidence is significant,
20 then you can make a motion for exfoliation and I will con-
21 sider that if under the circumstances it is appropriate,
22 or I can consider your motion at return of the jury ver-
23 dict.

24 But at this time or at this point I have a difficult
25 time seeing any prejudice to the Defendant as a consequence

1 of the absence of the vehicle. I really haven't heard
2 any argument as to why there could not have been an examin-
3 ation for discovery with respect to the car before it was
4 sold.

5 MR. COOKE: He was in jail.

6 THE COURT: Yes, I know that, but . . .

7 MR. COOKE: Let me just add this. My client is hav-
8 ing really a hard time wrapping his mind around this hun-
9 dred and eighty day rule that Judge Laney signed an Order
10 on some years ago. He really doesn't understand it.

11 I have tried to tell him that that rule is not effec-
12 tive in the State Courts; that they have to move the cases
13 as best they can move them because we are in the state
14 where we don't have enough courts and we've got too many
15 defendants.

16 He doesn't understand that. He thinks if there is
17 such a rule then it must be adhered to, and I have really
18 explained that to him.

19 He just handed me . . .

20 (Brief pause in the proceeding)

21 THE COURT: You have a right to file that, Mr.
22 Burgess. It is one thing to read the law and another
23 thing to interpret it.

24 The reason why attorneys are required to have a cer-
25 tain degree of education and experience is because the art

1 and in fact the science of the interpretation -- not just
2 interpretation monolithically but the interpretation in
3 every jurisdiction that an attorney practices law in.

4 If I were to go through all of the laws, all of the
5 rules, which are applicable or could arguably be applica-
6 ble to each and every issue that comes before the Court,
7 there is probably a reason out there why I couldn't pro-
8 ceed in each and every instance.

9 Understand that the application of those laws by the
10 Supreme Court causes us to function in a certain manner.
11 Okay? So this is what I would encourage you to do. Mr.
12 Cooke knows the way things happen, the way things work, and
13 I would tell you this. If there is anything the State
14 does wrong or that I do wrong, or that Mr. Cooke does
15 wrong, then the Supreme Court has the ultimate determina-
16 tion as to whether your rights have been protected and
17 whether the law has been followed. Okay?

18 So there is a mechanism for correcting any wrong we
19 do during this proceeding. So I tell you honestly and
20 sincerely that my job in this case is to make sure you're
21 treated fairly. That is what I am honorably bound to do,
22 and I promise you that I will.

23 All right, is there anything further?

24 MR. COOKE: If I could have one moment to speak
25 to Mr. Burgess?

1 (Brief pause in the proceeding)

2 MR. COOKE: I would make a motion to sequester the
3 witnesses, Your Honor.

4 THE COURT: Okay. What says the State?

5 SOLICITOR: I don't have any objection to that,
6 Your Honor.

7 THE COURT: Okay, I will grant the request to se-
8 quester the witnesses. Please advise any witnesses who
9 may be present to testify that they must absent themselves
10 from the Courtroom.

11 SOLICITOR: I will go ahead and let mine leave now
12 before the jury selection begins.

13 THE COURT: Okay.

14 (Brief pause)

15 THE COURT: Are you ready to bring in the jurors?

16 SOLICITOR: Yes, Your Honor.

17 MR. COOKE: Yes, sir.

18 (Jury panel brought into Courtroom)

19 THE COURT: Good morning, ladies and gentlemen. Wel-
20 come to our Courtroom. I'm
21 Robin Stilwell, and I'm a Circuit Court Judge here in the
22 State of South Carolina and a resident Judge in Greenville
23 County.

24 You may not have had an opportunity to meet me yet.
25 I see some familiar faces from yesterday's jury pool as

1 well.

2 We are about to begin the trial of the State of South
3 Carolina versus Eric Todd Burgess, who is charged with
4 attempted murder.

5 Now, just as yesterday, you will be asked questions
6 bearing on your qualifications to serve as juror in the
7 County of Greenville and State of South Carolina as you
8 were yesterday. I will ask you additional questions which
9 bear upon your suitability and/or your qualifications to
10 serve as a juror in this particular case.

11 I am aware that you took an oath yesterday to tell
12 the truth, and you continue under that oath to answer truth-
13 fully to any questions that may be posed to you.

14 Now, at inception what I will do is I'm going to read
15 to you the allegations on the Indictment. Before I read
16 the allegations on the Indictment, I want to tell you some-
17 thing very important, which I will reiterate throughout the
18 course of this trial.

19 That is, in each and every criminal proceeding in the
20 State of South Carolina and the County of Greenville, and
21 in the United States of American, a criminal defendant is
22 presumed innocent until proven guilty beyond a reasonable
23 doubt by the State.

24 Now, the reason I tell you that is because I'm going
25 to read the allegations of the State, but I want you to

1 recognize that this is the charging paper; these are the
2 allegations. These are not facts, and simply because I as
3 the Court read these allegations to you, please do not
4 make any presumption that those are the facts or that I am
5 relating them to you as facts.

6 They are merely the allegations, and it is necessary
7 that I read them to you so that you will be able to answer
8 the questions that I pose to you from an informed vantage
9 point.

10 The allegations are as follows: That Eric Todd
11 Burgess did in Greenville County on or about October 20th,
12 2010, unlawfully, with malice aforethought, and with in-
13 tent to kill, intent to kill, attempt to kill Christopher
14 Dale.

15 Now, ladies and gentlemen, is there anyone among you
16 who has any prior knowledge, any prior opinion, or any
17 predisposition with regard to the allegations in this case?

18 (No response)

19 All right, let the record reflect there was no re-
20 sponse.

21 Ladies and gentlemen, as I've already stated to you,
22 the Defendant in this case is Mr. Eric Todd Burgess, and
23 I would ask if there is anyone among you that has a per-
24 sonal, professional or family relationship with Mr. Eric
25 Todd Burgess?

1 (No response)

2 Ladies and gentlemen, Mr. Burgess is represented
3 by Mr. Larry Cooke of the Greenville County Bar.

4 Is there anyone among you who has a personal, profes-
5 sional or family relationship with Mr. Cooke?

6 Mr. Cooke, Ms. Seay, I think you both know Mr. Varner.
7 Do I need to get him to put anything on the record?

8 MR. COOKE: No, sir.

9 THE COURT: Mr. Varner, I recognize the relation-
10 ship, sir. Given that relationship, and your relationship
11 with the Solicitor's Office as well, do you think you could
12 be fair and impartial and render a verdict in accordance
13 with the law?

14 MR. COOKE: I would.

15 THE COURT: Thank you very much. Ladies and gentle-
16 men, Ms. Bryna Seay of the Greenville County Solicitor's
17 Office in the Thirteenth Judicial Circuit, on behalf of
18 the State, is prosecuting this case.

19 I will ask you if any of you has a personal, profes-
20 sional or family relationship with Ms. Seay or with any
21 employee of the Thirteenth Circuit Solicitor's Office?

22 Mr. Varner, I recognize your response.

23 (No further response)

24 Okay, no further response.

25 I don't have a witness list -- oh, we did have a

1 witness list. Okay.

2 Ladies and gentlemen, I'm going to read to you a list
3 of potential witnesses in this case, and I will ask you the
4 same question I've asked about the parties and attorneys
5 in this case.

6 Those potential witnesses are Rene Beauford, Sean
7 Holland, Christopher Cox, Patrick Whitworth, Jonathan
8 Horne, James Miller, Jonathan Hamilton, Christopher Dale,
9 Sarah Burgess.

10 Ladies and gentlemen, is there anyone among you who
11 has a personal, professional or family relationship with
12 any of those potential witnesses?

13 (No response)

14 Let the record reflect there was no response.

15 Ladies and gentlemen, is there anyone among you who
16 has an immediate family member who is employed by law
17 enforcement?

18 (No response)

19 Ladies and gentlemen, is there anyone among you who
20 was on the Grand Jury during the term in which this In-
21 dictment was handed down?

22 (No response)

23 Ladies and gentlemen, is there anyone among you who
24 is a member of MADD, Mothers Against Drunk Driving;
25 SADD, Students Against Drunk Driving; or any other like

1 organization that advocates for victims' rights or the
2 prosecution of crimes?

3 (No response)

4 Let the record reflect no response.

5 Ladies and gentlemen, is there anyone among you who
6 for any reason feels that you cannot be a fair and impar-
7 tial juror in the trial of this case?

8 (No response)

9 All right, let the record reflect no affirmative
10 response.

11 Counsel, any additional questions you would request?

12 MR. COOKE: No, sir.

13 SOLICITOR: Nothing from the State, Your Honor.

14 THE COURT: All right. Ladies and gentlemen, we are
15 going to move to jury selection. I know some of you went
16 through it yesterday, and the rest of you, if you have
17 not been through it before or yesterday morning -- what
18 is going to happen is the Clerk of Court is going to call
19 your name, and when she calls your name if you would
20 bring everything that you have with you, books, backpacks,
21 pocketbooks, and come forward.

22 Then if you would just stand right in front of the
23 lectern, facing the back of the Courtroom, the attorneys
24 will then have an opportunity to make strikes and/or pre-
25 emptory challenges.

1 The State gets five strikes and the Defense gets
2 ten strikes. Understand that the attorneys have wide
3 latitude and discretion on how they may exercise those
4 strikes. Don't be offended if you are either stricken
5 or placed in the jury box.

6 It is very difficult for you to ascertain why you
7 may have either been accepted as a juror or why you have
8 been stricken as a juror. I see this all the time, and
9 I never know exactly why someone may have been stricken
10 or why they may not have been stricken, and I would sug-
11 gest to you that you really do yourself a disservice by
12 trying to adduce exactly why you may or may not have been
13 stricken.

14 So having said that, Madam Clerk, will you begin to
15 call the names.

16 CLERK: Juror Number 1, Brenda Bogle Koontz.

17 (Presented by State; struck by Defense)

18 Juror Number 118, Mihir Lal.

19 (Juror seated)

20 Juror Number 31, Anna Canpe-Raddatz.

21 (Presented by the State; struck by Defense)

22 Juror Number 213, Pam Syphrit.

23 (Juror seated)

24 Juror Number 85, Christopher A. Herman.

25 (Juror seated)

1 Juror Number 138, Elizabeth T. Mardre.
2 (Juror seated)
3 Juror Number 2, Thomas Aguilar.
4 (Struck by the State)
5 Juror Number 27, James Caldwell.
6 (Juror seated)
7 Juror Number 84, John Herbold.
8 (Juror seated)
9 Juror Number 165, William T. Patterson, Junior.
10 (Juror seated)
11 Juror Number 40, Stacy J. Collins.
12 (Juror seated)
13 Juror Number 153, John Middlebrook, Junior.
14 (Struck by State)
15 Juror Number 249, Sarah Long.
16 (Struck by State)
17 Juror Number 248, Forrest Fugitt.
18 (Juror seated)
19 Juror Number 82, Rayfield Harrison.
20 (Struck by State)
21 Juror Number 214, Hannah Tate.
22 (Presented by State; struck by Defense)
23 Juror Number 126, Kristie Lee Lewis.
24 (Presented by State; struck by Defense)
25 Juror Number 38, George Clayton.

1 (Presented by State; struck by Defense)
2 Juror 113, Denita Kozeny.
3 (Presented by State; struck by Defense)
4 Juror 69, Blaine C. Godwin.
5 (Juror seated)
6 Juror 52, Anthony Damon Durham.
7 (Juror seated)
8 Juror 79, Boyd Harrison.
9 (Juror seated)
10 THE COURT: All right, we'll pick two alternates.
11 The strikes are one and two for each of you.
12 CLERK: Juror Number 45, Charles Davis.
13 (First alternate seated)
14 Juror Number 91, Walter G. Horne.
15 (Presented by State; struck by Defense)
16 Juror Number 133, Julia Lunsford.
17 (Presented by State; struck by Defense)
18 Juror Number 200, Dustin Smith.
19 (Struck by State)
20 Juror 223, Kim R. Varner.
21 THE COURT: Strikes by both the State and the De-
22 fense have been exhausted.
23 Unless there is a strike for cause, Mr. Varner is
24 the second alternate.
25 CLERK: Yes, sir.

1 MR. COOKE: I would move to strike him for cause.
2 I know he's a solo practitioner.

3 THE COURT: Yeah, I recognize that too but I won't
4 excuse him, unless there is some other exigent circum-
5 stance since there are other business and professional who
6 are on the jury panel who would also miss time from their
7 work.

8 (Second alternate seated)

9 THE COURT: Okay, are there any motions to be made
10 with respect to the selection of this jury?

11 SOLICITOR: Nothing from the State.

12 THE COURT: Mr. Cooke?

13 MR. COOKE: Nothing from the Defense.

14 THE COURT: All right, good enough. Ladies and gen-
15 tlemen who were not selected, you may get another chance
16 to serve. I would say based on the number of witnesses
17 in this case that I won't select another jury this week in
18 this Courtroom.

19 The reason for that is that all the judges have to
20 be in Columbia on Friday for a mandatory meeting of all
21 judges in the State, which means there will not be any
22 Court on Friday unless one of the cases bleeds over into
23 Friday morning.

24 I probably won't be selecting another jury this week
25 but one of the other judges may be selecting a jury.

1 (Jurors not selected for the trial of this case were
2 excused from the Courtroom)

3 THE COURT: All right, ladies and gentlemen, we are
4 about to begin the trial of this case, and it is always
5 important for me before we get started with the trial of
6 the case to let you know how we're going to proceed and
7 also to give you an idea of what your role is so that you
8 can distinguish that from my role as the Judge.

9 So let me just state before we get started what I
10 have already told you once, and that is that in each and
11 every criminal proceeding and in this proceeding that the
12 Defendant is presumed to be innocent until proven guilty
13 beyond a reasonable doubt by the State.

14 The State has the burden of proving every element of
15 the indictment beyond a reasonable doubt.

16 So just to conceptualize that and give you an exam-
17 ple of what I mean, imagine that Mr. Burgess, who is sitting
18 here right now, was wearing clothing or a robe such as I am,
19 and that is a robe of innocence. He is enshrouded in and
20 protected by that robe of innocence.

21 That robe or that cloak could not be taken away until
22 and unless you determine that the State has met its burden
23 of proving Mr. Burgess guilty beyond a reasonable doubt.

24 Now, the way you are going to determine whether the
25 State has met its burden of proof is by determining, first

1 of all, what the facts are, and then by applying the law to
2 the facts.

3 Now, you are the finders of the facts in the case. You
4 are the judges of the law in this case, and that is your
5 role in this proceeding. You have the sole and exclusive
6 authority and responsibility in determining what the facts
7 are.

8 You will determine what the facts of the case are from
9 the evidence that is presented during the trial. During
10 the course of this case you will see evidence presented by
11 way of witnesses who take the stand and testify. You may
12 have objects that are presented into evidence. You may have
13 written documents, you may have audio tapes, you may have
14 video tapes.

15 The evidence will take many forms and you will see it
16 in many forms during the course of this trial.

17 I cannot tell you what the evidence is going to be be-
18 cause truly and honestly I don't know any more about the
19 case right now than you all. I will be seeing it for the
20 first time as well. I haven't pre-tried the case or talked
21 with the attorneys about the facts of the case.

22 So right now we have an even footing with respect to
23 the facts and evidence in this case. I know nothing about
24 it either.

25 You will receive that evidence from the stand, and from

1 all of the evidence you will analyze the evidence as pre-
2 sented in the case, and you will make the determination
3 of what the facts are.

4 What I will do is I will tell you what the law is,
5 the law as it relates to and as it pertains to the evi-
6 dence that is presented in this case. You all are the
7 judges of the facts, and I am the judge of the law.

8 You will have to accept the law as I give it to you.
9 I will give you a charge on the law at the end of the case,
10 but you determine what the facts are.

11 The reason I say that is because I want you to under-
12 stand that if at any time during the course of this trial
13 I should make any suggestion or give you an impression I
14 have any opinion about the facts of this case then please
15 disregard that because honestly I am an objective umpire.
16 I call balls and strikes. My only concern is that this
17 trial be conducted fairly and that the State and the De-
18 fendant get a fair trial, and that by extension you all
19 get a fair trial because you all are going to invest some
20 of your time, your important time, to this case.

21 So it is important that I conduct a fair and appro-
22 priate trial, to be considerate not only of the rights of
23 each of the parties but of your time and of your service
24 here this morning, today.

25 Now, the first thing that will happen in this case

1 is that the attorneys will have the opportunity to give
2 you opening statements. The opening statements by counsel
3 are not evidence and not to be considered evidence. Coun-
4 sel for the parties are advocating their respective posi-
5 tions, and those should be very brief.

6 The attorneys will introduce themselves and then in-
7 troduce their theory of the case. After you have heard
8 opening statements, then you will hear -- then the State
9 will present their case in chief. That means they will
10 begin to call witnesses and offer exhibits into the record
11 of the case.

12 The State goes first because, as I told you earlier,
13 the State has the burden of proof.

14 Now, after the State has presented its evidence --
15 understand as the State puts witnesses on the stand that
16 the Defendant has an opportunity to cross examine each
17 and every witness who takes the stand.

18 After the State has rested, the Defense will have
19 the opportunity at that point to put evidence into the
20 record and call witnesses to the stand as well, and if the
21 Defense elects to call witnesses to the stand then the
22 State will have an opportunity to cross examine those wit-
23 nesses.

24 After the Defense has rested, under certain circum-
25 stances the State has a right to present reply witnesses

1 if they choose, and that happens every once in a while.

2 They have the right to do that.

3 If they elect not to do that, then what will happen
4 is we will go straight to closing arguments.

5 The closing arguments, just as in the opening statements,
6 are not evidence but are simply arguments from the attor-
7 neys. It is not evidence to be considered by you. It is
8 a comment on the evidence that has already been presented,
9 and, again, it is important to remember they are advocat-
10 ing their respective positions.

11 After you have heard closing arguments, then I will
12 give you a charge on the law. The reason I wait until
13 the end to give you a charge on the law is because I have
14 not seen the evidence so I don't know really right now
15 as I sit here what law is applicable with specifisity.

16 So it is important that I weigh the evidence before
17 giving to you a charge on the law. After I give you the
18 charge on the law, then I will ask you to retire to your
19 jury room and after discussion with the attorneys I will
20 send notice to you when to begin your deliberations.

21 At that point, you will begin your deliberations,
22 considering all of the evidence that has been presented
23 or exhibits that have been introduced into the record,
24 and apply the law as I give it to you, and you will make a
25 determination of whether the State has met its burden of

1 proof.

2 Now, it is important that you don't begin your delib-
3 erations until you are instructed to do so at the very end
4 of the trial. You know from your own personal experience
5 and your common sense why that is, but I will state it for
6 you anyway in case someone wonders what the answer is, and
7 that is that it is simply not fair to make a decision based
8 on only a portion of the evidence.

9 You know from your personal experience that after
10 having heard half of a story you just can't make an in-
11 formed and intelligent decision. So it is only fair that
12 you wait until you hear all the evidence.

13 That means you shouldn't discuss it among yourselves
14 or start calculating and deliberating the evidence be-
15 fore you've heard everything.

16 Now, also, we're going to take breaks during this
17 trial from time to time and take a lunch breach. It may
18 go into tomorrow morning. It could. I don't know because
19 I don't know how many of the witnesses will be called and
20 I don't know how long the testimony will be.

21 If it continues into tomorrow when you are excused
22 or when I release you either to go to lunch or for the
23 evening, please don't conduct any self-help. Don't go on
24 the Clerk of Court's website or any other source and try
25 to find out information about this case.

1 The only information that is appropriate for you to
2 consider is the evidence that's presented on the stand in
3 this case. If you consider any evidence outside of this
4 Courtroom, it will taint your deliberations. What happens
5 in that event is that we try the entire case again. We
6 have to try it again because somebody tainted the jury's
7 deliberations.

8 I know you won't do that, but I just wanted to let you
9 all know that that is something you shouldn't even consider
10 doing.

11 Also, when you take a break, please don't talk to
12 anyone else about the case. You're going to be tempted
13 to perhaps talk to your spouse, your significant other,
14 your brother or sister or some loved one because they're
15 going to ask you what happened; what are you listening to,
16 and it's going to invite a response that, well, it is not
17 appropriate for me to tell you yet. You can just tell
18 them I'm hearing this kind of case.

19 If you begin to answer those questions then you must
20 necessarily begin making judgments about what you heard
21 and what the facts are related to the case, and then what
22 happens is that invites a response from your spouse and
23 you'll begin discussing the facts of the case or the evi-
24 dence that's been presented in the case,
25 and that is not appropriate.

1 So just tell that person who is asking you to discuss
2 it that you can't discuss it yet, and tell them after the
3 case is over you can discuss it as much as you want to.
4 You can take as much time as you want to to discuss it,
5 but not yet.

6 During the course of the trial we're going to be tak-
7 ing regular breaks just to refresh from time to time. I
8 ordinarily take a break about every hour to hour and a
9 half, but at some point during the trial if any of you
10 need to take a break get my attention or get the bailiff's
11 attention and just let us know.

12 You all are the most important people in this Court-
13 room which means that if you all have something else on
14 your mind or you need to go do something else, and you
15 are thinking I just wish these people would stop talking
16 so that I can take a break rather than listening to what
17 they're actually saying, let me know that and we'll take a
18 break. Okay?

19 So having said that, I think we are ready to proceed.
20 I'm going to ask you now if any of you need
21 to take a break before we begin our opening arguments?
22 Okay, thank you. You are bailing me out because I need it
23 too.

24 Lets take a break and please don't discuss the case..
25 When you come back I will ask the Clerk of Court to swear

1 you in.

2 (Jury excused from Courtroom)

3 (The Court took a brief recess, after which the case
4 was continued)

5 THE COURT: Are you all ready for the jury?

6 MR. COOKE: If I could bring up something at this time
7 that probably will occur -- that nine one one tape. Of
8 course, I object to the introduction, but I just want to say
9 that, first of all, it contains a lot of opinions that would
10 appear and this and that.

11 All of the people who are on that nine one one tape
12 are going to be here to testify, so I would object to the
13 nine one one tape.

14 A lot of it is prejudicial in that one of the witnesses
15 who is the -- the lady in this case who is the wife is very
16 emotional on the tape. From the discovery, she is abrasive,
17 so, I mean, I know I can bring all of that out on the cross-
18 examination.

19 But, still, the tape by itself with all of that going
20 on and the crying and -- he tried to run him down -- this
21 whole thing would not be admissible, I don't think.

22 SOLICITOR: Your Honor, the State's position would be
23 that we were planning to call the neighbor who is employed
24 as a nine one one employee and lay a foundation for the nine
25 one one tape under the South Carolina Rule 803, subsection

1 six, that it is regularly conducted activity.

2 I feel that it would be a compilation that would be an
3 exception to the hearsay rule.

4 In the alternative, I think that what is contained on
5 the tape are also excited utterances under Rule 803 and
6 subsection two.

7 You can tell that all of the witnesses -- that what
8 they are saying and their emotional state are still under
9 the influence of the event that had taken place, and that
10 regardless of whether they are testifying or not I would
11 just think the tape is admissible under either one of those
12 theories, Your Honor.

13 THE COURT: All right, I believe the nine one one tape
14 is admissible, and I think case law allows introduction of
15 nine one one tapes.

16 So I'm going to respectfully overrule your objection.

17 Are you ready for the jury?

18 MR. COOKE: Yes, sir.

19 SOLICITOR: Yes, sir.

20 THE COURT: Bring them in.

21 (Jury returned to Courtroom)

22 CLERK: Shall I swear the jury at this time?

23 THE COURT: Yes, please swear the jury.

24 (Jury sworn by the Clerk)

25 THE COURT: Solicitor.

1 SOLICITOR: Good morning, ladies and gentlemen.

2 As Judge Stilwell told you before, my name is Bryna
3 Seay, and I'm one of the Assistant Solicitors here in
4 Greenville County.

5 It is my privilege to represent the people of Green-
6 ville County in criminal trials held here in General Ses-
7 sions Court.

8 Today, as you've been told, you're going to hear the
9 case of the State of South Carolina versus Eric Todd
10 Burgess, who is indicted for attempted murder.

11 Under our law, that offense involves that someone
12 unlawfully, with malice aforethought, and with the in-
13 tent to kill, attempts to kill somebody.

14 I want to first of all, before I get into a little
15 bit of what that's about, thank you once again for
16 being here and for taking the time out of your schedule.
17 I know it is an inconvenience for each and every one
18 of you in your business and personal life and being
19 here.

20 This is an important case, and we appreciate your
21 being here. We appreciate your attention and your
22 service.

23 I mentioned that this offense must be committed
24 with malice aforethought, and at the conclusion of the
25 case when the Judge gives you the law he's going to

1 give you a definition of what that is, but I just want
2 to tell you a little bit about what malice aforethought
3 is.

4 That has been linked with evilness, a depraved
5 heart, someone bent on mischief, something that evi-
6 dences meanness, ladies and gentlemen. That's how I
7 like to define it, and I'll tell you a little bit
8 about what I think the evidence in this case shows.

9 You will hear from several witnesses on the wit-
10 ness stand who will testify about the events of Oc-
11 tober 20th of 2010. On that day, the Defendant went
12 to the residence of his estranged wife, Sarah Burgess.
13 They were living separate and apart at the time.

14 He waited there in the parking lot until she ar-
15 rived. He approached her car, and then another car
16 pulled in.

17 The victim, Christopher Dale, who is seated here
18 on the front row, will be testifying also.

19 The victim and Ms. Burgess were having a rela-
20 tionship, but remember that I said to you the Defen-
21 dant and his wife were estranged. They were not liv-
22 ing together at the time.

23 Now, I'm not here to pass judgment on the moral-
24 ity of that situation. The Family Court is the Court
25 in which matters of that nature are handled, and that

1 is where they should be handled.

2 But on that day, Mr. Burgess took the law into
3 his own hands. He was angry that his wife was in a
4 relationship, and he proceeded to ram Mr. Dale's car
5 several times with his Ford Expedition, to chase him
6 down the street.

7 Mr. Dale was finally able to pull over at a Bi-
8 Lo to try to obtain help. The store was closed, so
9 he proceeded to run across the parking lot to try to
10 get to the BP station to get help.

11 Mr. Burgess was chasing him this entire time,
12 and Mr. Burgess in his vehicle was chasing him. Mr.
13 Burgess then made a U-turn and with his vehicle he
14 intentionally struck Mr. Dale, who was on foot at the
15 time -- struck him from behind, propelling him through
16 the air.

17 Mr. Burgess then got out of his car and assaulted
18 Mr. Dale by punching him and kicking him.

19 Witnesses are going to testify that they saw this
20 from different angles. We have a Bi-Lo employee, one
21 who was a former employee, and they will testify about
22 what they observed on that day.

23 There is also a gentleman who was at the Goodwill
24 bin which is located in that same parking area, who
25 saw this from a different angle, and he is going to

1 tell you what he observed.

2 You are also going to hear from Mr. Dale and
3 from Ms. Burgess about what occurred in the parking
4 lot at the apartment complex.

5 Mr. Dale had to be transported to the hospital
6 where he spent almost two days being treated for his
7 injuries, and he will tell you a lot more about what
8 his injuries were.

9 But it really doesn't matter whether he had se-
10 vere injuries or not. What matters is whether the De-
11 fendant had malice aforethought, whether there was evil
12 in the Defendant's heart at the time, whether he in-
13 tended to kill Mr. Dale.

14 I would say to you that if you use your common
15 sense and you think about what someone is trying to
16 do when they try to run over another individual with
17 their vehicle is that they were trying to kill them,
18 and I have said the evidence will show that.

19 At the conclusion of the case, I'm going to have
20 the opportunity to speak to you again, and I will ask
21 you to carefully consider what all of the witnesses
22 say and to use your common sense and apply your reason
23 that you use in your everyday lives, to reach a just
24 verdict in this case.

25 At the conclusion of the case, when we have the

1 closing statements, I will ask you all to hold Mr.
2 Burgess responsible for his actions on October 20th,
3 2010.

4 Thank you.

5 THE COURT: Mr. Cooke.

6 MR. COOKE: May it please the Court?

7 THE COURT: Yes, sir.

8 MR. COOKE: Ladies and gentlemen of the jury, my
9 name is Larry Cooke. I am here to represent Eric in
10 this case.

11 Of course, our side of the story is different
12 from that of the Solicitor. That fellow sitting right
13 there is his wife's boss.

14 They were having an affair which is what broke
15 up the marriage. My client found out she was messing
16 around with her boss -- this man and my client's wife.

17 My client was trying to find where she was, and
18 she had promised to come back that day but she didn't
19 show up.

20 He kept texting her, where are you; are you com-
21 ing home. He knew something was going on, and she
22 had texted him back, I'm working late. He drives to
23 her place of employment but her car is not there, so
24 he knew something was happening.

25 He drives back to the apartment -- by the way,

1 she had only been living there a short while and
2 they had continued to have a relationship. My client
3 had just gone to a marriage counselor a couple of
4 days before that.

5 My client parked, and this gentleman pulled up in
6 his car. He sees my client there and he pulled up next
7 to him. When they met eye to eye, he took off. He
8 took off, and when he did that he scratched the front
9 of my client's car.

10 My client didn't intentionally hit him at all.
11 My client did give chase. His intentions were, to be
12 quite frank with you, to beat his ass. He caught him
13 messing around with his wife. These parties were not
14 legally separated. They had only been living apart
15 for about a week, and this affair had been going on
16 for some time.

17 He finally caught up with him down at the BiLo
18 parking lot and a fight ensued. That is what the tes-
19 timony is going to show.

20 There was never, never any intention by my client
21 to try and kill anybody.

22 I think if you consider all of that and the evi-
23 dence and pictures you're going to see that you will
24 determine the only thing that happened here is that two
25 guys got in a fight. Two guys got in a fight.

1 There was no intention to murder anybody, and
2 that is all I ask you to consider.

3 You know, down South -- times have changed but
4 it used to be if you catch a man messing around with
5 your wife, he was lucky if he walked away alive. If
6 my client had wanted to kill him, to murder him for
7 that, he would have never walked away alive. My client
8 had no intention of killing him.

9 I ask you -- the Judge will tell you that all
10 twelve of you must agree on your verdict -- my client
11 doesn't have to take the stand. He doesn't have to
12 prove anything.

13 It is up to the State of South Carolina to prove
14 its case beyond a reasonable doubt, so I ask you to
15 pay close attention. When you do that, you will go
16 back and reach your verdict. You will do exactly the
17 right thing.

18 This is the only day my client will have in
19 Court. No matter how long it takes -- I know every-
20 body likes to be home, but however long it takes please
21 take that time.

22 Please take that time together to look at all of
23 it, turn it over or do whatever you want to, but please
24 render a verdict that speaks the truth. That's all
25 we ask.

1 THE COURT: Solicitor.

2 SOLICITOR: Your Honor, the State calls Rene
3 Beauford. Please step out and get her.

4 RENE BEAUFORD, being duly
5 sworn, testified as follows:

6 DIRECT EXAMINATION

7 BY SOLICITOR SEAY:

8 Q. Ms. Beauford, would you please state your name,
9 and we need to make sure the jury can hear you?

10 A. Rene Beauford.

11 Q. I'm sorry. I mis-pronounced your name.

12 Ms. Beauford, what is your current position?

13 A. I work for the Greenville County Sheriff's Of-
14 fice as a nine one one researcher in quality assur-
15 ance.

16 Q. As an employee with Beauford County nine one one,
17 what are your responsibilities?

18 A. I receive information that might come in through
19 our dispatcher, whether it be by telephone or radio,
20 or by whatever means.

21 All of our information is documented and I research
22 it for Court purposes or investigation or a complaint.
23 Whenever there is a reason that I might need to go
24 back and retrieve the information, I go back and find
25 that information.

R. BEAUFORD ON DIRECT

1 Q. All right, and you say all of that information
2 is documented?

3 A. Yes.

4 Q. Can you tell us how it is documented?

5 A. When something comes in, it is -- as it is going
6 out to dispatch it is put into a computer system. All
7 of that is typed in.

8 Any phone calls or any information that comes in
9 out dispatch center is recorded on a recorder, and
10 then it is retained in a server there at the LEC.

11 Q. All right, and how long have you been in your
12 current position?

13 A. I have actually been in this current position
14 for about fifteen months.

15 Q. All right, and what is your previous employment
16 experience?

17 A. Well, at first I was a deputy for (inaudible)
18 County and then I went into dispatch. I worked with
19 the Greenville County Sheriff's Office in that posi-
20 tion for seventeen years.

21 Q. Okay. Were you in your current position on the
22 20th of October, 2010?

23 A. Yes, ma'am, I was.

24 Q. Okay, I want to show you . .

25 SOLICITOR: First, I'm going to ask the Court

R. BEAUFORD ON DIRECT

1 Reporter to mark this as State's Exhibit 1 for iden-
2 tification purposes.

3 (Nine one one tape marked State's Exhibit 1 for
4 ID only)

5 BY SOLICITOR:

6 Q. I show you State's Exhibit 1 for identification
7 purposes. Do you recognize this, Ms. Beauford?

8 A. Yes, maam.

9 Q. How do you recognize it?

10 A. First of all, those are my initials on it, and
11 this is from the Greenville County Sheriff's Office,
12 as well as on the report of the incident.

13 Q. Okay, and is this State's Exhibit 1 a true and
14 accurate copy of the nine one one call that was re-
15 ceived for case 011-2010-161455?

16 A. Yes, maam.

17 Q. Okay, and to the best of your knowledge was the
18 equipment in proper working order when these calls
19 were received and recorded?

20 A. Yes, maam.

21 Q. And are these records kept in the normal course
22 of business as you have previously testified?

23 A. Yes, it is.

24 Q. Okay.

25 SOLICITOR: Your Honor, I would offer State's

R. BEAUFORD ON DIRECT

1 Exhibit 1 into evidence at this time.

2 THE COURT: Any objection?

3 MR. COOKE: The objection that we made earlier. I
4 would renew that at this time.

5 THE COURT: Yes, sir. Subject to the objection,
6 it is introduced into evidence as State's Exhibit 1.

7 (Nine one one tape admitted in evidence as State's
8 Exhibit 1 over objection of Defense)

9 SOLICITOR: Thank you, Your Honor. At this time
10 I would request permission to publish this tape for the
11 jury.

12 THE COURT: Yes, maam.

13 (Whereupon, nine one one tape played)

14 SOLICITOR: Thank you, Ms. Beauford. Please
15 answer any questions Mr. Cooke has for you.

16 THE COURT: Mr. Cooke.

17 MR. COOKE: No questions.

18 SOLICITOR: May she be excused, Your Honor?

19 THE COURT: Yes, maam.

20 (Witness excused)

21 SOLICITOR: The State calls Sean Holland.

22 SEAN HOLLAND, being duly
23 sworn, testified as follows:

24 DIRECT EXAMINATION

25 BY SOLICITOR:

MR. HOLLAND ON DIRECT

1 Q. Would you please state your full name for the
2 record?

3 A. Sean Holland.

4 Q. Good morning. Where are you employed?

5 A. Bi-Lo Grocery Store Number 92.

6 Q. And how long have you been employed at that lo-
7 cation?

8 A. Over five years now.

9 Q. What is your occupation there?

10 A. I'm the bookkeeper there.

11 Q. Okay, and were you employed there on October 20
12 of 2010?

13 A. Yes.

14 Q. Okay. Did you have occasion to be working there
15 on that evening?

16 A. Yes.

17 Q. Okay. What time did the store close that night?

18 A. We locked the doors at eleven o'clock. We close
19 when the last customer is out of the store after that,
20 and so we generally leave at almost eleven forty-five.
21 We might have clean-up duties and that kind of stuff
22 to do.

23 Q. And on that day did you have occasion to see some-
24 thing unusual out in the parking lot?

25 A. Yes.

MR. HOLLAND ON DIRECT

1 Q. Will you describe for us what you saw?

2 A. Yes. I was up in the front and I heard something
3 -- it was about eleven o'clock-ish -- I can't remem-
4 ber exactly what time, but I heard some noise outside
5 like the squealing of tires, and I at first didn't see
6 what it was.

7 Then I looked outside and the first thing I saw
8 was a guy get off the ground and run toward this --
9 there's a little restaurant up there, and I saw a ve-
10 hicle toward the left of him which was driving erati-
11 cally and coming back toward him.

12 And then I saw the guy after he got up from the
13 ground and got on the grassy hill over there, and then
14 the guy in the vehicle jumped out and just started to
15 punching him, and he just kept punching.

16 And by that time I had told my manager, Chris,
17 that we had something going on outside, and he said
18 to go ahead and call nine one one. Then I had nine
19 one one on the phone, and I was on the phone for maybe
20 a minute or two, and he went outside.

21 And when I ended the phone call the nine one one
22 operator had had another call by someone else for the
23 same situation.

24 I went outside to where Chris was -- my manager,
25 Chris, was out there with the man and he had blood on

MR. HOLLAND ON DIRECT

1 his shirt.. They were waiting for the EMS to get there,
2 and I noticed a vehicle that was in front of my store.
3 It was a Honda and the door was wide open.

4 So I went over to the car and all I did was turn
5 the ignition off and close the door to a crack.

6 Q. Okay. Was that all in front of the Bi-Lo Store?

7 A. Yes.

8 Q. Okay. Now, the other car that you saw that you
9 said was driving eratically, can you describe that
10 vehicle?

11 A. Yes. It was a green Ford -- I think it was an
12 Expedition, an SUV type of vehicle.

13 Q. Okay. Could you see if the driver was a white
14 male, black male . .

15 A. Yes, a white male, and the victim was a white
16 male.

17 Q. Okay. Did you ever see the green Expedition
18 strike the victim?

19 A. No, I did not.

20 Q. Okay, but you saw the person who was driving the
21 Expedition get out and . .

22 A. He went over there and started to punch him.

23 Q. You saw him punch the victim?

24 A. Yes.

25 Q. Okay. Did you ever see the victim throw punches

MR. HOLLAND ON DIRECT

1 at the guy who was punching him?

2 A. No.

3 Q. Okay. Did it appear to be one-sided?

4 A. Yes, it seemed like after the first hit the man
5 kept punching him.

6 Q. All right. What did the guy who was doing the
7 punching do when you all came outside?

8 A. I wasn't -- I mean, my manager was outside first
9 and he would have seen when he left.

10 Q. Okay, so he left the scene?

11 A. He left the scene.

12 Q. Okay.

13 A. The vehicle was gone too.

14 Q. And the victim remained there?

15 A. Right, with an ambulance.

16 Q. Okay. Thank you, Mr. Holland. Please answer
17 any questions Mr. Burgess' attorney may have for you.

18 THE COURT: Cross examination.

19 CROSS EXAMINATION

20 BY MR. COOKE:

21 Q. Just a couple of questions for you, Mr. Holland.
22 You say that you heard the tires and you looked out
23 the window. What did you see?

24 A. I saw -- first I saw a white male get off the
25 ground and then I also saw a vehicle driving erratically

MR. HOLLAND ON CROSS

1 and coming back toward him. Then the man ran toward
2 the hill and the vehicle came toward him until I guess
3 the vehicle couldn't go any further, so he jumped
4 out, the man in that vehicle, and ran up and began
5 striking him.

6 Q. So then you are saying that the victim, the gen-
7 tleman here, was over on the ground away from the asphalt?

8 A. When I first looked he was getting off the ground.

9 Q. And then he was running up the hill there?

10 A. Right.

11 Q. The grassy noll -- there was a grassy noll there?

12 A. And he was coming up to it.

13 Q. Coming up from the Bi-Lo?

14 A. Right.

15 Q. Do you mind putting your signature on that map?

16 A. Yes, I will.

17 Q. And this is the grassy area?

18 A. Yeah, that's it.

19 Q. Thank you, sir. You saw -- when you got outside,
20 you saw my client punch him?

21 A. I saw a white male go up the hill and punch the
22 other white male.

23 Q. Okay, but you don't know if it was him or not?

24 A. No, I do not.

25 Q. And did you see the victim in this case fall down

MR. HOLLAND ON CROSS

1 at any time? Did you see any of that, or by the time
2 you got there they were fighting in the parking area?

3 A. By the time I got there my manager was already
4 out there and he was leaving.

5 Q. So the person who assaulted the gentleman had al-
6 ready left?

7 A. Right.

8 Q. Okay. No further questions.

9 THE COURT: Redirect?

10 SOLICITOR: Thank you, nothing further. May Mr.
11 Holland be excused, Your Honor?

12 THE COURT: Yes, maam.

13 (Witness excused)

14 SOLICITOR: State calls Christopher Cox.

15 CHRISTOPHER COX, being duly
16 sworn, testified as follows:

17 DIRECT EXAMINATION

18 BY SOLICITOR:

19 Q. Would you please state your name for the record?

20 A. My name is Christopher L. Cox.

21 Q. Good morning, Mr. Cox.

22 A. Good morning.

23 Q. Would you state your name one more time to be
24 sure the jurors back there can hear you?

25 A. Christopher L. Cox.

MR. COX ON DIRECT

1 Q. Mr. Cox, where are you currently employed?

2 A. Currently I am employed with Allied Force Secur-
3 ity Service.

4 Q. I'm sorry. I didn't hear you.

5 A. Allied Security Services.

6 Q. Allied Security Services?

7 A. Yes, maam.

8 Q. How long have you been employed there?

9 A. I start there part-time in March, and I work there
10 full time now.

11 Q. Okay, and prior to that, were you employed at the
12 Bi-Lo at 3715 North Street?

13 A. Yes, maam, I was one of the co-managers there.

14 Q. Okay. How long were you employed at that Bi-Lo
15 Store?

16 A. I worked at that Bi-Lo for almost two years.

17 Q. Okay, and were you employed there on October 20th
18 of 2010?

19 A. Yes, maam.

20 Q. Okay. Were you working on that evening?

21 A. Yes, maam.

22 Q. All right, and did you have occasion to witness
23 an incident in your parking area on that night?

24 A. Yes, maam, I did.

25 Q. Would you please state what you observed?

MR. COX ON DIRECT

1 A. Yes, maam, I was -- it was during the closing, a
2 little bit after eleven o'clock, I think, and we were
3 locking up when one of the employees said, hey, Chris,
4 there's a situation in the parking lot out there, and
5 somebody may need help.

6 So I went to the door and I witnessed a gentleman
7 who was up on the hill on the asphalt area, someone
8 down on the ground, and it looked like this guy was
9 rearing back to maybe hit him, and I think he maybe
10 saw me and Sean and one other gentleman, and he ran
11 down to his vehicle which I think was a Ford Explorer
12 or SUV, if I remember correctly.

13 Q. And what color was it?

14 A. I think -- it was light, either tan or light
15 green in color.

16 Q. Okay.

17 A. But he jumped in the vehicle and it was up on the
18 hill -- there's some grass on the side there as you
19 go up the hill. There's the parking lot and then
20 some grass going up on the slope and then asphalt, and
21 I think the victim was trying to get to that at the
22 time, but the gentleman went down the hill, jumped in
23 his SUV.

24 He started to drive off and Sean said, I'm going
25 to try to get this guy, and we ran and yelled, stop,

MR. COX ON DIRECT

1 stop. The driver stopped and turned back to look and
2 then he took off on North Street.

3 Q. Were you able to get his tag number?

4 A. I was not able to get the tag number before he
5 got away. I couldn't read the tag number.

6 Q. All right, and you called nine one one, is that
7 correct?

8 A. After that, I went over to the asphalt area to
9 where the person was, and when I got to him he was
10 semi-conscious. He was somewhat out of it when I got
11 there but I saw blood coming out of his nose or com-
12 ing out of his mouth, and I did dial nine one one at
13 that time to let them know what was going on.

14 Q. Okay, and did the victim appear to be hurt?

15 A. He was, yes. I had told Sean to call nine one
16 one, and I told them to send EMS.

17 Q. All right, and did you know the victim prior to
18 that time?

19 A. No, I did not.

20 Q. Okay. So you called nine one one, and did you
21 wait there until EMS came?

22 A. Yes, maam, I stayed with him. I was a little
23 bit concerned. He tried to get up and I said, look,
24 just stay still. He kept trying to get up and there
25 was blood.

MR. COX ON DIRECT

1 Then he asked me, where did he go, where did he go,
2 that Mr. Burgess was going to come back. I told him
3 the way he had gone, and I stayed with him.

4 Then Mr. Burgess came back from the direction he
5 was going on East North Street. He stopped and looked
6 over at us. I yelled at him. Then he took on off
7 again and went back on East North Street.

8 Q. Okay, and did you see him either further, or was
9 that it?

10 A. No, that was it. After he went off, the man kept
11 trying to get up, and I said, no, stay there, and then
12 he kind of got up somehow, and I said, okay, we'll go
13 inside the store; I'll let you inside the store to
14 wait for EMS.

15 You know, he couldn't walk on his own so I helped
16 him down the hill and to the store, but at the same
17 time, simultaneously, EMS arrived on the scene.

18 Q. Okay. Thank you, Mr. Cox. Please answer any
19 questions Mr. Cooke might have for you.

20 A. Yes, maam.

21 CROSS EXAMINATION

22 BY MR. COOKE:

23 Q. When you first observed the SUV, and I'll show
24 you this picture -- was it in this area?

25 A. Yes, sir.

MR. COX ON CROSS

1 Q. And this is the Goodwill store here?

2 A. Yes, sir, right.

3 Q. Okay. So would you -- I've got some other pic-
4 tures here. I just want to make sure we're on the
5 right page.

6 Let's see here. Okay, how about this? Is that
7 the store?

8 A. Yes, sir.

9 Q. If I was coming out of the store, . . .

10 A. The SUV was right up against the grass there.

11 Q. At the foot of the hill?

12 A. Yes, sir.

13 Q. Where were the two men at that time?

14 A. They were up on the asphalt, and Mr. Burgess was
15 over the top of him.

16 Q. But you never saw them down below the bottom of
17 the hill?

18 A. No, I only saw the vehicle there.

19 Q. So were they up there fighting at that time?

20 A. Yes, sir.

21 Q. Okay, . . .

22 A. When I saw them, he was on his back at the time.
23 Chris -- well, the victim.

24 Q. You know him? You called him Chris.

25 A. That's all I know of his name. I didn't know

MR. COX ON CROSS

1 him before that.

2 Q. You never met him before?

3 A. No.

4 Q. So when you told him, let's go down the hill to
5 the store, what happened?

6 A. That's when EMS arrived. I was concerned about
7 his injuries and I didn't want him to move. He kept
8 trying to get up and then he finally got up, and I
9 thought I'd help him down the hill. So I said, okay,
10 we'll go to the store.

11 Q. So you went down the hill?

12 A. Right. I was trying to get him into the store.

13 Q. Well, this is the rest of the hill, what I'm
14 showing you?

15 A. Okay.

16 Q. And that's the trash can there behind the restaur-
17 ant there?

18 A. Yes. That's the restaurant, but we were coming
19 down this hill.

20 Q. All right. Okay. If you would, please write
21 your name on the back of that so we can identify that
22 hill. Okay.

23 Now, you said that my client -- that the victim
24 was afraid he was going to come back?

25 A. He did say that, yes, sir, while he was laying

MR. COX ON CROSS

1 on the ground.

2 Q. Did he tell you he was afraid he was going to
3 come back because he was out with his wife?

4 A. Oh, no. He didn't indicate anything like that.

5 Q. No further questions. Thank you.

6 SOLICITOR: Nothing further. May Mr. Cox be ex-
7 cused?

8 THE COURT: Yes, sir.

9 (Witness excused)

10 SOLICITOR: State calls Patrick Whitworth.

11 PATRICK WHITWORTH, being
12 duly sworn, testified as follows:

13 DIRECT EXAMINATION

14 BY SOLICITOR:

15 Q. Would you please state your full name for the re-
16 cord?

17 A. Patrick Whitworth.

18 Q. Mr. Whitworth, good morning.

19 Would you please state your full name one more
20 time so I can make sure the jury can hear you.

21 A. Patrick Whitworth.

22 Q. Okay. What name do you go by, sir?

23 A. Rick.

24 Q. Okay. Mr. Whitworth, where are you currently
25 employed?

MR. WHITWORTH ON DIRECT

1 A. At Publix. Q. Doing what?

2 A. Deli work. I work in the deli.

3 Q. How long have you been employed there?

4 A. About fifteen months.

5 Q. All right, and on October 20th of 2010 -- I
6 want to direct your attention to that date. On Octo-
7 ber 20th of 2010, were you in the parking lot area of
8 the Bi-Lo on East North Street?

9 A. Yes.

10 Q. What were you doing there?

11 A. (answer not audible)

12 Q. And basically what time was that?

13 A. It was pretty late at night and I can't recall
14 exactly. It was a long time ago. In the eleven time
15 frame.

16 Q. All right, and where is that Goodwill located in
17 the parking lot? If you could just sort of describe
18 that.

19 A. It's on the East North Street side of the park-
20 ing lot, adjacent to the old -- I believe it was some
21 kind of Korean restaurant or something like that.

22 Q. All right, and while you were there did you have
23 occasion to observe something happen in the parking
24 lot?

25 A. Yes, I did.

MR. WHITWORTH ON DIRECT

1 Q. Can you please state what you observed?

2 A. Sure. I was putting the bags into the Goodwill
3 depository and I had actually started to get back in
4 my car when I heard tires squealing on the East North
5 Street side of the Bi-Lo, and I looked up and that
6 was when I saw the truck pulling into the parking lot,
7 and . . .

8 Q. What kind of truck?

9 A. It was a large SUV, probably an Expedition or some-
10 thing like that.

11 The truck pulled in and the tires squealing is
12 what called my attention. When I looked up, I saw that
13 the guy had a very intense look on his face. I fol-
14 lowed his eye-line, and that's when I saw the -- I
15 saw someone there kind of run across to the parking lot.

16 Shall I keep going on what happened? after I saw
17 the other guy run across and keep going?

18 Q. The persons you saw, were they white males, black
19 males or otherwise?

20 A. White males.

21 Q. Okay, and the person you saw running was he also
22 . . .

23 A. He was also a white male.

24 Q. Did the person running appear to be trying to
25 get away from the Expedition?

MR. WHITWORTH ON DIRECT

1 A. That's what I recall, yes.

2 Q. Okay, and what did the Expedition do?

3 A. The Expedition -- the driver of the Expedition
4 never took his eye off the victim, and the victim was
5 running at an angle where he actually managed to get
6 behind the truck.

7 So the driver had to make a U-turn and then come
8 back in order to make contact with the victim.

9 Q. And when you say make contact with the victim,
10 what did you see the Expedition do?

11 A. I saw the Expedition hit the victim in the back,
12 and the victim kind of -- I saw his head hit the hood
13 and fly off the truck.

14 Q. And did you hear it when his head hit the ve-
15 hicle? Did you hear him hit the vehicle?

16 A. Yes.

17 Q. And about how far was he propelled when his head
18 hit the Expedition?

19 A. Well, they were on my side and he flew all the
20 way across the lane and into the grass hill. I'd say
21 ten or fifteen feet.

22 Q. What did the Expedition do then?

23 A. Well, he stopped the car after he hit the vic-
24 tim, and then he got unscrambled and at that point he
25 jumped out of the truck and chased him.

MR. WHITWORTH ON DIRECT

1 Q. So the driver got out of his car?

2 A. Once he saw the victim was moving, yes.

3 Q. And he chased him?

4 A. Yes.

5 Q. All right, and did you see him do anything to
6 the victim?

7 A. Yes, he chased him on into the parking lot on top
8 of the hill, and I saw him standing over him and I be-
9 lieve I saw him hit him again, but I'm not sure about
10 that.

11 Q. All right. Did you ever see the victim hit the
12 driver?

13 A. The only thing I saw the victim do was try to get
14 away from him.

15 Q. And did you know either one of these people prior
16 to this?

17 A. No.

18 Q. And you called nine one one, I believe?

19 A. Yes, I did.

20 Q. And you have in your past a 1994 and 1997 fraud-
21 ulent check conviction. Is that correct?

22 A. Yes, maam.

23 Q. And that's all the questions I have. Please an-
24 swer any questions Mr. Cooke, Mr. Burgess' lawyer,
25 has for you.

MR. WHITWORTH ON CROSS

1 A. Yes, maam.

2 CROSS EXAMINATION

3 BY MR. COOKE:

4 Q. And where on Mr. Burgess' vehicle did it appear
5 to you the victim was hit? Left side, right side,

6 . . .

7 A. I'm not quite sure about that. He hit the front.
8 I know the back of his head hit the front, but I can't
9 say if it was the right side of the front or the left
10 side of the front.

11 Q. And he ended up where?

12 A. He ended up on the hill. I'm not exactly sure
13 where he hit.

14 Q. You are saying he landed on the hill?

15 A. Looking from where I was.

16 Q. So he was never lying on the parking lot?

17 A. No.

18 Q. You never saw him get up from the parking lot and
19 continue up the hill?

20 A. No, sir. I saw him get up from the middle of
21 the hill. He was thrown out of the parking lot.

22 Q. You had gone to deposit some clothing at Good-
23 will?

24 A. Yes.

25 Q. And it's sort of late at night to be doing that

MR. WHITWORTH ON CROSS

1 sort of thing?

2 A. I was doing it for my daughter.

3 Q. What were you doing for a living at the time?

4 Where were you working?

5 A. I was still at Publix.

6 Q. Okay, and what had you done in the past besides
7 working at Publix?

8 A. I had been at Publix for -- I started in August
9 of 2010, and before that I worked in restaurants around
10 town.

11 Q. As a bartender?

12 A. Bartender and chef, yes, sir.

13 Q. And had you been drinking at all that night?

14 A. I've not had a drink in five years.

15 Q. Sir?

16 A. I've not had a drink in five years.

17 Q. That's good, and you are absolutely sure that
18 you saw the victim laying on the bank?

19 A. Yes.

20 Q. How far away were you when you saw that?

21 A. Probably -- I was on one side of the road and
22 that was on the other side of the road.

23 Q. Could you see see everything?

24 A. I saw it clearly.

25 Q. Okay. Now, did you see anything other than fists

MR. WHITWORTH ON CROSS

1 being used in this altercation?

2 A. The Expedition.

3 Q. I'm sorry.

4 A. The truck.

5 Q. I'm talking about in the fight?

6 A. No.

7 Q. You didn't see the other person throw any punches
8 at all?

9 A. I don't see how that would have been possible,

10 no. I did not see that.

11 Q. And you don't know him?

12 A. No, sir.

13 Q. Never seen him around?

14 A. No, sir.

15 Q. Okay. You didn't know what the fight was about,
16 did you?

17 A. I didn't.

18 Q. Do you know now what it was about?

19 A. I heard a little bit when I went back that even-
20 ing to get my things from the officers. I heard some-
21 thing but I didn't really know. I didn't follow up
22 on it or anything.

23 Q. Those are all the questions I have.

24 SOLICITOR: May he be excused?

25 THE COURT: Yes.

1 (Witness excused)

2 THE COURT: All right, let's take a short break.
3 Ladies and gentlemen, I generally take a break of ten
4 or fifteen minutes, and then we'll come back and con-
5 tinue until we break for lunch, depending on where we
6 stand.

7 So we'll take a short break.

8 (Jury excused from Courtroom)

9 THE COURT: All right, we'll be in recess.

10 (Whereupon, the Court took a brief recess, after
11 which the matter was resumed)

12 THE COURT: Court is now in session. Please be
13 seated.

14 Are you ready for the jury?

15 SOLICITOR: Yes, sir.

16 MR. COOKE: Yes, sir.

17 THE COURT: Please bring in our jury.

18 (Jury returned to the Courtroom)

19 THE COURT: All right, ladies and gentlemen of
20 the jury, I understand the State has three more wit-
21 nesses. We will listen to probably two of them if
22 they are relatively brief, and then we'll go to lunch, and then
23 come back and continue.

24 All right, Solicitor.

25 SOLICITOR: The State calls Jonathan Horne.

1 JONATHAN HORNE, being duly
2 sworn, testified as follows:

3 DIRECT EXAMINATION

4 BY SOLICITOR:

5 Q. Would you please state your name for the record?

6 A. Jonathan Horne.

7 Q. Mr. Horne, where are you currently employed?

8 A. The Greenville County Sheriff's Office.

9 Q. How long have you been employed there?

10 A. Three years.

11 Q. Okay, and tell us about the training and educa-
12 tion you have to perform your duties?

13 A. (Portion not audible) and I received on the job
14 training with the Sheriff's Office.

15 Q. Okay, and were you in your current position on
16 October 20, 2010?

17 A. Yes, maam.

18 Q. All right, and what were you doing on that date?

19 A. On that evening I was on late shift, and I
20 was responding to a nine one one call involving this
21 case.

22 Q. All right, and was that call to go to [REDACTED]
23 [REDACTED] Street?

24 A. Yes, maam.

25 Q. The Bi-Lo, here in Greenville?

MR. HORNE ON DIRECT

1 A. Yes, maam.

2 Q. And is that location in Greenville County?

3 A. Yes, maam, it is.

4 Q. Okay, and what did you do when you got to that
5 location?

6 A. When I arrived at the scene there were several
7 individuals on the scene and the victim was at the
8 ambulance.

9 Q. You had occasion to interview the victim?

10 A. I interviewed the victim at the hospital where
11 he was transported.

12 Q. And while you were at the scene, did you have
13 occasion to speak to Sean Holland, the Bi-Lo employee?

14 A. Yes, maam.

15 Q. Okay, and did you take a statement from him?

16 A. I did.

17 Q. And did you speak with Mr. Patrick Whitworth, who
18 was putting some items in the Goodwill bin?

19 A. Yes, maam.

20 Q. Did you take a statement from him?

21 A. Yes, maam.

22 Q. All right, and you also spoke with Sarah Burgess,
23 is that correct?

24 A. Yes, maam.

25 Q. And did you take a statement from her?

MR. HORNE ON DIRECT

1 A. Yes, maam.

2 Q. Okay, and did you have an occasion to observe
3 Mr. Christopher Dale's vehicle there in the parking
4 lot?

5 A. I did. It was parked in front of Bi-Lo.

6 Q. Okay, and if you'll bear with me just a moment, I
7 want to show you a couple of photographs.

8 (Brief pause in the proceeding)

9 BY SOLICITOR:

10 Q. All right. This is State's Exhibit 2. Do you
11 recognize this?

12 A. That's a photograph of the victim's vehicle.

13 Q. All right, and I show you State's Exhibit 3. Do
14 you recognize that?

15 A. Yes, I do.

16 Q. And what is it a picture of?

17 A. A photograph of the vehicle that was damaged.

18 Q. And State's Exhibit 4. Do you recognize that?

19 A. Yes, maam.

20 Q. You recognize the victim's vehicle?

21 A. Yes, maam.

22 Q. And are these photographs true and accurate
23 representations of what you observed that night?

24 A. Yes, maam, they are.

25 SOLICITOR: Your Honor, I would offer State's

MR. HORNE ON DIRECT

1 Exhibits 2, 3 and 4 into evidence at the time.

2 THE COURT: Any objection to these?

3 MR. COOKE: If I may look at them a moment? No
4 objection.

5 THE COURT: They're admitted. State's Exhibits.

6 (Photographs of Dale vehicle admitted in evidence
7 without objection as State's Exhibits 2, 3, 4)

8 BY SOLICITOR:

9 Q. Okay. You said you later went to the hospital
10 and met with the victim?

11 A. Yes, maam.

12 Q. Were you able to observe his injuries at that
13 time?

14 A. Yes, maam.

15 Q. Did you document the injuries in your report?

16 A. I did. I also photographed them.

17 Q. And what were the injuries?

18 A. These are injuries I took photographs of. There
19 were scrapes and cuts on the right knee, left elbow,
20 right and left hand, and also his arms.

21 He had a cut on the right side of his head and
22 smaller scratches.

23 Q. And again I want to show you a couple of photo-
24 graphs.

25 A. Yes, maam.

MR. HORNE ON DIRECT

1 Q. All right. I show you State's Exhibits 5, 6, 7,
2 8, 9 and 10. Would you look through those and see if
3 you recognize those?

4 A. Yes, maam. Number 5 is the abrasions and cuts
5 on his face on the right side. Number 10 shows cuts
6 on his arm and left hand. The next one is the top of
7 the victim's right hand -- several cuts and abrasions
8 there, on his fingers, the top of his wrists.

9 The next one shows the victim's right arm and
10 hand, and it looks like some scrapes there and on the
11 fingers. His upper right arm, right elbow.

12 The last one shows his leg. It shows scrapes on
13 his right leg and knee. Scrapes and cuts on his left hand.

14 SOLICITOR: Your Honor, I'm going to offer these
15 Exhibits into evidence after I show them to Mr. Cooke.

16 THE COURT: All right.

17 (Brief pause)

18 MR. COOKE: No objection.

19 THE COURT: They're admitted as State's Exhibits
20 5 through 10 in evidence.

21 (Photographs of injuries to victim admitted in
22 evidence without objection as State's Exhibits 5, 6,
23 7, 8, 9 and 10)

24 BY SOLICITOR:

25 Q. When you arrived at the scene at the Bi-Lo, was

MR. HORNE ON DIRECT

1 Eric Todd Burgess on the scene?

2 A. No, maam.

3 Q. Did he return to the scene while you were there?

4 A. Not that I'm aware of, no, maam.

5 Q. I don't have anything further. Please answer

6 any questions Mr. Cooke has for you.

7 A. Yes, maam.

8 CROSS EXAMINATION

9 BY MR. COOKE:

10 Q. Thank you. Let me show you a picture here. Can

11 you tell me where the vehicle was when you took the

12 picture?

13 A. In the parking lot at Bi-Lo.

14 Q. And where then did the physical event occur?

15 A. Can I show you?

16 Q. Yes.

17 A. On the opposite side of where this picture was

18 taken from.

19 Q. Let me show you this. Do you recognize that?

20 A. Yes, sir.

21 Q. Is this a picture of the disposal bin after the

22 Goodwill closed at night?

23 A. Yes, sir.

24 Q. And did you -- about where was the victim when

25 he was taken by EMS?

MR. HORNE ON CROSS

1 A. I believe right in this area.

2 Q. Okay. I'm going to put an X mark here, and is
3 this where you have indicated the victim was?

4 A. Yes, sir.

5 Q. Would you put your initials on the back of that?

6 A. Yes, sir.

7 Q. Thank you, sir. I believe you said you spoke to
8 the victim at the hospital?

9 A. Yes, sir.

10 Q. And did he tell you that Mr. Burgess was chasing
11 him because he was messing with his wife?

12 A. . .

13 SOLICITOR: Objection. That calls for hearsay.

14 THE COURT: I would sustain the objection.

15 BY MR. COOKE:

16 Q. I have no further questions. Well, I do have
17 one more question. Did you smell any alcohol at all
18 on this victim?

19 A. I did not.

20 Q. Beg your pardon?

21 A. I did not smell any odor of alcohol.

22 Q. Is there anything in your report about that?

23 A. He said he had had some drinks but I did not smell
24 the odor of alcohol when I spoke with him.

25 Q. Thank you.

1 SOLICITOR: Nothing further.

2 THE COURT: You may step down.

3 (Witness excused from stand)

4 SOLICITOR: The State calls Christopher Dale.

5 CHRISTOPHER DALE, being duly
6 sworn, testified as follows:

7 DIRECT EXAMINATION

8 BY SOLICITOR:

9 Q. Please state your name for the record.

10 A. Christopher Dale.

11 Q. Mr. Dale, will you speak up just a little bit so
12 all the jurors are able to hear you.

13 A. Yes, maam.

14 Q. State your name one more time, please.

15 A. Christopher Michael Dale.

16 Q. Okay. Mr. Dale, how old are you?

17 A. I'm thirty-eight.

18 Q. And did you finish high school?

19 A. Yes, maam.

20 Q. Are you a little bit nervous?

21 A. Yes.

22 Q. Okay. Where are you currently employed?

23 A. Costco.

24 Q. What do you do at Costco?

25 A. (Inaudible)

MR. DALE ON DIRECT

1 Q. I'm sorry.

2 A. Survey tech.

3 Q. How long have you been employed as a survey tech
4 at Costco?

5 A. A couple of years.

6 Q. And what is your educational background?

7 A. High school and . .

8 MR. COOKE: I'm having a hard time hearing him.
9 I don't know if that mike is on, but I would ask that
10 he speak into it if it is on.

11 THE COURT: Yes, sir. Please speak up a little bit.

12 WITNESS: Yes, sir.

13 THE COURT: Thank you.

14 BY SOLICITOR:

15 Q. Do you know Sarah Burgess?

16 A. Yes.

17 Q. Did you meet Sarah Burgess at Costco?

18 A. Yes, I did.

19 Q. And was she an employee there?

20 A. Yes.

21 Q. And what was her position there?

22 A. She was a part-time employee.

23 Q. And were you ever in a supervisory role over Sarah
24 Burgess?

25 A. No, I was never her supervisor, nor am I a supervisor

MR. DALE ON DIRECT

1 at Costco.

2 Q. All right. I want to draw your attention to
3 October 20th of 2010. On that date were you involved
4 in a relationship with Sarah Burgess?

5 A. Yes.

6 Q. Okay, and how long had you been in a relation-
7 ship with Sarah Burgess?

8 A. A month.

9 Q. Okay, and at that time to your knowledge was she
10 separated from her husband?

11 A. Yes.

12 Q. So she was living in a separate location from
13 her husband?

14 A. Yes.

15 Q. And where was that apartment?

16 A. McKenna Circle Apartments.

17 Q. Okay, and on the date of October 20th of 2010,
18 did you see Ms. Burgess?

19 A. Yes. She was at work and we met for dinner af-
20 ter work. She had to be back at work early the next
21 day, so we met for dinner at Ruby Tuesday.

22 Q. Where did you meet?

23 A. At Ruby Tuesday, down the street from Costco.

24 Q. And did you have something to drink while you
25 were there?.

MR. DALE ON DIRECT

1 A. I believe we had some wine.

2 Q. Okay.

3 A. I had a bottle to take home with me, so there
4 was part of a bottle in the car. She had a glass of
5 it.

6 Q. So you had gotten a bottle to take home with you?

7 A. Yes, maam.

8 Q. Do you feel that you were impaired in any way to
9 operate your vehicle?

10 A. No, maam. We had half the bottle left.

11 Q. You had wine as well?

12 A. Yes, with dinner.

13 Q. Okay. Where did you go once you left Ruby Tues-
14 day's?

15 A. We left to go back to her apartment.

16 Q. Okay, and how were you traveling? Were you in
17 your car?

18 A. Yes, and she was in her car. We were concerned
19 about Eric because he had called her at Ruby Tuesday.

20 Q. So you both left in your cars to go to her apart-
21 ment complex. Is that correct?

22 A. Correct, and I ended up getting there first.

23 Q. Okay, and once you arrived at her apartment com-
24 plex, what did you see?

25 A. I was actually looking for his truck.

MR. DALE ON DIRECT

1 Q. Okay. Why is that?

2 A. From the comments he had made to her on the phone.

3 Q. And what did you see when you arrived at the

4 apartment complex?

5 A. I saw the vehicle and he started to back up and

6 . .

7 Q. What did you decide to do then?

8 A. Once I saw the vehicle start to back up, I saw

9 the logo on the side of the vehicle.

10 Q. What did the logo on the side of the vehicle say?

11 A. Burgess Custom, I believe, and . .

12 Q. What color was the SUV?

13 A. Green.

14 Q. All right. Did you see Mr. Burgess in the ve-

15 hicle?

16 A. I did. The windows were tinted but there was

17 light in the parking lot. I pulled on around the build-

18 ing and at the same time Sarah had pulled up.

19 Q. And what happened then?

20 A. He got out and got in her face.

21 Q. Tell us what you saw.

22 A. I just saw him having words with her or yelling

23 at her, and then she pulled off from him.

24 Q. What did you do?

25 A. I pulled on out and I saw him get in his truck .

MR. DALE ON DIRECT

1 and he pulled out and stopped at the intersection.

2 I could tell he was going to turn and follow me,
3 and, you know, chase me down.

4 Q. Okay.

5 A. So I pulled out from where I was and started to
6 go and then I saw his truck behind me. He was getting
7 closer and closer to me.

8 The whole time he was behind my car but I was able
9 to pull out but he came at me at an angle and hit the
10 corner of my car.

11 He hit me and he was trying to hit me again, and
12 I had my phone in my hand and I was driving for my
13 life but I couldn't really do anything.

14 So I headed toward where I knew there was a Bi-Lo
15 store so I could get out of his path, but he came on
16 up there after me.

17 Q. Stop right there. I'm going to show you a map of
18 the area and ask you if you recognize this area. This
19 is State's Exhibit 11 for identification purposes.

20 Do you recognize this area?

21 A. Yes.

22 Q. Okay, and up there is the apartment complex
23 where this incident began?

24 A. Correct.

25 Q. Okay, and you said you drove down East North

MR. DALE ON DIRECT

1 Street to the Bi-Lo?

2 A. Right.

3 Q. Okay, and what did you do when you got to the
4 Bi-Lo?

5 A. I slowed down to make the turn into the driveway
6 and it was in the process of the turn that he prob-
7 ably hit me again with the truck.

8 So I made probably a ninety degree turn. I turned
9 at an angle and sped right over the curb of the parking
10 lot. He had hit me as I was turning, and I screeched
11 to a halt which is probably what they heard, and it
12 was closed -- it was clearly closed and there wasn't
13 anybody in there.

14 I thought about trying the door but I didn't have
15 time to do it. I was thinking, do I stay in the car
16 and get rammed again at this point -- if I had stayed
17 there he probably would have rammed me again.

18 So I looked around and saw the green hill between
19 the Bi-Lo and the BP station. It was deep enough to
20 where if I could get over that hill I thought I'd be
21 okay, or if I could make it to the Bi-Lo I could run
22 in there, but I went toward the hill.

23 Q. And when you went toward the hill, what happened?

24 A. I went toward the hill but I didn't quite make
25 it. I heard him -- you know, I heard the sound that

MR. DALE ON DIRECT

1 told me he was coming. You have to understand that
2 I heard the truck engine and just the -- you know,
3 the feeling of your body being thrown back across the
4 hood.

5 Q. Okay, and where did you land?

6 A. Up on top of the hill where I was trying to get
7 to. I was trying to get to the top of that hill by
8 the BP.

9 At that point, I was conscious but I kept falling
10 over.

11 Q. You were still trying to get away?

12 A. Yeah, I was, but I kept falling over, and about
13 the third time I got up I looked behind me and saw his
14 truck and him chasing me down.

15 And the last thing I remember is that just about
16 where you are pointing I lost consciousness, and then
17 I knew he was on top of me.

18 When I could look up I saw the manager from Bi-Lo
19 over me then and I believe someone else.

20 Q. And did Mr. Cox assist you in getting up?

21 A. He was there and he was telling me to stay there,
22 and I, you know, looked up and he said, are you okay,
23 and are you okay again, and I said not if he's going
24 to come back.

25 He said he saw him come back but I didn't see

MR. DALE ON DIRECT

1 that.

2 Q. And did he help you to get up?

3 A. He helped me up and helped me back down that hill
4 toward the entrance to the ambulance.

5 Q. Okay. So at that time you were put in the ambu-
6 lance, is that right?

7 A. Yes.

8 Q. Okay, and did they get you to the hospital?

9 A. Right.

10 Q. Okay, did you ever hit or assault Mr. Burgess in
11 any way?

12 A. I did not. I was in fear for my life. I was
13 trying to get away.

14 Q. Did you ever intentionally hit his car with your
15 car?

16 A. No. He was driving the Expedition and I was in
17 my smaller car, and I was trying to get away from him.

18 Q. Okay, when you got to the hospital, what did you
19 learn that your injuries were?

20 A. I had all the cuts and scrapes from landing on
21 the asphalt. I did have a bruised lung, a laceration
22 to my liver, and other bruises, and I had to stay in
23 the hospital because they wanted to make sure the
24 lacerations didn't open up to my liver.

25 So I stayed a couple of nights and then I was

MR. DALE ON DIRECT

1 allowed to leave after that.

2 Q. Is the person who did these things you have de-
3 scribed today -- is he in the Courtroom?

4 A. Yes.

5 Q. Would you point him out for us, please?

6 A. Right there.

7 SOLICITOR: Let the record reflect that he has
8 pointed to the Defendant, Eric Todd Burgess.

9 BY SOLICITOR:

10 Q. Did he make any statements to you that night?

11 A. At the time, . .

12 MR. COOKE: Objection. That is something that
13 would call for hearsay.

14 THE COURT: He can testify to what he may have
15 heard.

16 Q. Did you have any idea that the child was with Mr.
17 Burgess that night?

18 A. No, I didn't.

19 Q. So you didn't see him?

20 A. That night I did not see him, no.

21 Q. Okay.

22 A. But I did later find out that he had been in the
23 vehicle.

24 Q. Is this the child of Mr. Burgess and Ms.
25 Burgess?

MR. DALE ON DIRECT

1 A. Yes, he is.

2 Q. And at the time was the child living with Ms.

3 Burgess?

4 A. Yes.

5 Q. But he was with Mr. Burgess that night?

6 A. Correct.

7 Q. Was there a visitation schedule in effect?

8 A. I believe they had an impromptu, you know, sche-
9 dule with him going back and forth.

10 Q. That was something they had worked out?

11 A. That they had worked out, I believe.

12 Q. Okay. Thank you, Mr. Dale. Please answer any
13 questions Mr. Cooke has for you.

14 CROSS EXAMINATION

15 BY MR. COOKE:

16 Q. Mr. Dale, you had known Sarah how long?

17 A. How long prior to the incident?

18 Q. Yes.

19 A. Probably three or four . .

20 Q. Three or four what?

21 A. Months.

22 Q. Months. Okay, and the first time you ever went
23 out with her was after she separated from my client?

24 A. Correct.

25 Q. Okay, and where are you from originally?

MR. DALE ON CROSS

1 A. Washington, D. C.

2 Q. Washington, D.C. Okay, and where did you go to
3 high school?

4 A. I got my GED.

5 Q. Did you drop out of high school?

6 A. I left high school to get a job, and I got my
7 GED.

8 Q. And you knew where Sarah lived?

9 A. Yes, I did.

10 Q. You had been to her apartment?

11 A. Yes.

12 Q. And had you ever spent the night there?

13 A. No.

14 Q. Now, I want you to remember that everybody has
15 been sequestered, the other witnesses. You are deny-
16 ing you had spent the night there?

17 A. Correct.

18 Q. Okay, and had you and her ever had sexual rela-
19 tions?

20 A. Yes, we had.

21 Q. And where was that?

22 A. At the apartment.

23 Q. Whose apartment?

24 A. At her apartment.

25 Q. Okay, so you had been there and spent the night?

MR. DALE ON CROSS

1 A. I hadn't spent the night, no.

2 Q. But you had had sex with her there?

3 A. Sure.

4 Q. Where was the child at that time?

5 A. In another bedroom, asleep.

6 Q. But he was sometimes at the house?

7 A. Yes.

8 Q. He was there asleep in the house. Okay, and
9 how many times would you say you had had sexual rela-
10 tions?

11 You know, you had only been dating her a month, so
12 how many times would you say you all had sex?

13 A. I don't know.

14 Q. Now, have you ever been married?

15 A. Yes, sir.

16 Q. Okay, and are you married now?

17 A. No.

18 Q. Are you divorced?

19 A. Yes.

20 Q. And when did you get divorced?

21 A. I got divorced after the incident. Sometime af-
22 ter the incident.

23 Q. So you were married when this happened?

24 A. I was, yes.

25 Q. So you were married and she was married, so you

MR. DALE ON CROSS

1 all were having an adulterous relationship?

2 A. We were having a relationship, yes. She was
3 separated . .

4 Q. Now, the night this happened you knew that my
5 client previously was with Sarah, didn't you?

6 A. Yes.

7 Q. Okay. While you all were out having dinner,
8 having wine, her husband was taking care of the
9 child. Correct?

10 A. Yes.

11 Q. Okay, and did you have to go back to work that
12 night?

13 A. We both had to go to work the next morning. She
14 had to be at work early the next morning so that was
15 why she had arranged for Eric to keep the child that
16 night for the night. She was going to pick him up
17 after work the next day.

18 Q. So at that time you all were going to head back
19 to her apartment, right?

20 A. Yes.

21 Q. So you were going to stay overnight?

22 A. No, I wasn't. .

23 Q. So what did you do?

24 A. We got as far as the parking lot and we found
25 Eric there in his truck.

MR. DALE ON CROSS

1 Q. And you said you saw him there?

2 A. I saw the truck.

3 Q. And why did you take off after seeing him?

4 A. I didn't then.

5 Q. Didn't you feel like you were doing something
6 wrong?

7 A. I could see his truck there.

8 Q. I mean, if you hadn't done anything wrong, there
9 was no reason for you to take off like you did?

10 A. I thought there was going to be a problem.

11 Q. So you took off and you saw he was following you,
12 is that right?

13 A. After they had a brief argument, I could see he
14 was coming after me to follow me. He was trying to
15 strike my car with his SUV.

16 Then he rammed my vehicle.

17 Q. From the back?

18 A. Yes.

19 Q. Okay, so this photograph shows damage to the side
20 there, but you say he was ramming you from behind?

21 A. He did ram my vehicle from behind.

22 Q. Well, why was this put into evidence? I mean, did
23 you have . . .

24 A. Did I what?

25 Q. The damage you claim that he did was to this

MR. DALE ON CROSS

1 area here?

2 A. The Expedition was much bigger than my car.

3 Q. That's what I'm asking. I'm kind of surprised
4 he didn't get your taillight?

5 A. . . .

6 Q. I mean, I guarantee you an SUV would go over
7 the bumper of a Honda Civic, so it didn't happen the
8 way you said it did. Is that correct?

9 A. No, it happened like I said.

10 Q. What you told us is the way it happened?

11 A. Yes, that's the way it happened.

12 Q. Do you remember giving a statement about what
13 happened that night?

14 A. Yes.

15 (Brief pause in the proceeding)

16 BY MR. COOKE:

17 Q. All right, . .

18 A. Okay.

19 Q. . . this is the statement you gave?

20 A. That night after it all happened, yes.

21 Q. You mentioned in here that you and Sarah had come
22 back to the apartment, and do you see anything in this
23 statement -- you say this is what happened, and I was
24 looking through there.

25 You say you were hit a couple of times and that

MR. DALE ON CROSS

1 -- well, you say at the apartment he got out and went
2 up to Sarah. Do you see anything in there about him
3 going up to hit you?

4 A. It is not in here. I did not write that.

5 Q. You just forgot that part of it?

6 A. I did.

7 Q. So for some reason, whether he tried to hit her
8 or you or not, and we don't know because you don't re-
9 member -- you didn't remember but all of a sudden you
10 do remember.

11 So we don't know if you were in danger or not,
12 but you just took off?

13 A. . .

14 Q. You had been caught? You knew you had been
15 caught after having sex with another man's wife, while
16 her child slept in another bedroom?

17 You all were having sex with him there and you
18 were having sex with her husband had been babysitting.
19 Is that right?

20 A. I had been but there is a difference in that and
21 in what you're saying.

22 Q. That's right.

23 A. I didn't say I left because I was caught.

24 Q. Well, the surest thing to do or the chilverous
25 thing for you to do there in the parking lot was to

MR. DALE ON CROSS

1 stay there and put up a fight. Isn't that right?

2 A. I didn't want to cause her any more problems with
3 him than she already had.

4 Q. Did you know my client before this incident?

5 A. I did not.

6 Q. I have no further questions. Thank you very much.

7 SOLICITOR: Nothing further.

8 THE COURT: You may step down.

9 (Witness excused from the stand)

10 THE COURT: All right, ladies and gentlemen,
11 let's take our lunch break. We will resume at two
12 o'clock this afternoon.

13 Please do not discuss the case with anyone and
14 do not do any self-help.

15 I look forward to seeing you at two. Thank you.

16 (Jury excused from Courtroom)

17 THE COURT: All right. We will break now and come
18 back at two o'clock.

19 MR. COOKE: We would ask that the witness who was
20 just on the stand to not discuss his testimony with
21 Sarah Burgess, please, because I'm sure they will go
22 to lunch together.

23 THE COURT: Yes, sir. Mr. Dale, all witnesses
24 are under an Order of Sequestration as I'm sure you've
25 been told.

1 The reason for that is to ensure there is no dis-
2 cussion about anything a prior witness has said.

3 You have completed your testimony, and you are
4 not to discuss with any other witness what has happened
5 or what has been said.

6 You cannot say to Sarah Burgess, this is what has
7 happened, or what was said, and this is what I said,
8 or these are the questions I was asked.

9 So if you go out to eat lunch with any other wit-
10 nesses you are restricted and prohibited from discuss-
11 ing the case in any manner.

12 This is not a threat, but this is a matter of
13 advising anyone that if they violate the Order of Se-
14 questration they will be subject to the contempt
15 powers of the Court, which includes, among other
16 things, incarceration. Okay?

17 Have a good lunch.

18 (Whereupon, the Court stood in recess for the
19 lunch period, after which the matte resumed)

20 THE COURT: Anything before we call in the jury?

21 SOLICITOR: Not from the State.

22 MR. COOKE: No, sir.

23 THE COURT: All right, thank you. Please bring
24 in our jury.

25 (Jury returned to the Courtroom)

1 THE COURT: All right, Solicitor. You may pro-
2 ceed.

3 SOLICITOR: Your Honor, the State calls Sarah
4 Burgess.

5 SARAH BURGESS, being
6 duly sworn, testified as follows:

7 DIRECT EXAMINATION

8 BY SOLICITOR:

9 Q. Would you please state your full name for the
10 record?

11 A. Sarah Burgess.

12 Q. Ms. Burgess, please state that one more time
13 so I can make sure all the jurors can hear you.

14 A. Sarah Burgess. My name is Sarah Burgess.

15 Q. How old are you, Ms. Burgess?

16 A. I'm twenty-six.

17 Q. And without saying where you're employed, are
18 you currently employed?

19 A. Yes, ma'am.

20 Q. Okay, and were you previously employed at Costco?

21 A. I was, yes, ma'am.

22 Q. When were you employed there?

23 A. I started there on June 4th of 2010, and I
24 stopped working at Costco in March of 2011.

25 Q. All right, and what was your position at Costco?

S. BURGESS ON DIRECT

1 A. I worked in major sales. That was the job title,
2 so I was a sales person for electronics, appliances.

3 Q. Okay, and did you know Chris Dale?

4 A. Yes, maam.

5 Q. Did you meet him at Costco?

6 A. Yes, maam.

7 Q. Do you remember approximately when you met him?

8 A. I met him the first day I was working there.

9 Q. Okay, and was he ever in a supervisory capacity
10 over you at Costco?

11 A. No, maam.

12 Q. Okay. What is your relationship to Eric Todd
13 Burgess?

14 A. We are separated.

15 Q. Okay, and when did you become married to Mr.
16 Burgess?

17 A. We were married on January 11th of 2011 -- I'm
18 sorry -- of 2007.

19 Q. January 11th of 2007?

20 A. Yes, maam.

21 Q. Okay, and you said you were separated. When did
22 you separate?

23 A. We separated on -- it was on -- it was in Septem-
24 ber of 2010. It was around the middle of September
25 when I moved out.

S. BURGESS ON DIRECT

1 Q. Okay, and did you have any children together?

2 A. Yes, one child.

3 Q. A boy or girl?

4 A. Boy.

5 Q. What was his date of birth?

6 A. [REDACTED].

7 Q. Okay. Did you and Mr. Burgess have a custody
8 arrangement as far as your son is concerned?

9 A. No, maam.

10 Q. Did you have an agreement worked out with him?

11 A. We did, but it was before the incident.

12 Q. Let's talk a little bit about that time. You
13 separated, you said, in September of 2010, and where
14 did you move?

15 A. I moved in with an acquaintance where her apart-
16 ment was. I was renting from her.

17 Q. And where did you live before you left the
18 Defendant?

19 A. In Simpsonville.

20 Q. And so were you living in the same apartment
21 on October 20th of 2010?

22 A. Yes, maam.

23 Q. Were you still working at Costco then? Is that
24 correct?

25 A. Yes, maam.

S. BURGESS ON DIRECT

1 Q. Were you in a relationship at that time with
2 Christopher Dale?

3 A. We had been seeing each other.

4 Q. Okay.

5 A. So, yes, we were in a relationship.

6 Q. Okay, and on that day did you work?

7 A. Yes, maam.

8 Q. What hours did you work that day?

9 A. I was closing. I don't know what time I had
10 started my shift, but I got off around ten thirty.

11 Q. What did you do when you got off work?

12 A. When I left work, I went and met Chris at the
13 Ruby Tuesday which was nearby.

14 Q. All right, and where was your son?

15 A. He was with Eric.

16 Q. All right, and was that something that you had
17 previously arranged because of your work schedule?

18 A. Yes, maam.

19 Q. Okay, and what shift were you scheduled to work
20 next?

21 A. The next shift I was scheduled to work was that
22 morning. After I closed that night I was going to
23 open the next day.

24 Q. And what time would opening be?

25 A. I don't recall. It might have been nine -- eight

S. BURGESS ON DIRECT

1 or nine.

2 Q. Okay.

3 A. Sometime they would open at five. It was --
4 every shift was different. Every shift was a differ-
5 ent time..

6 Q. And did Mr. Burgess know where you were living
7 when you moved out from Simpsonville?

8 A. He did. He had found out where I was living two
9 days prior.

10 Q. But did you ever let him know where you were
11 living?

12 A. No, I was very careful not to let him find out
13 where I lived.

14 Q. Okay, and after you got off work that night and
15 you went to meet Christopher at Ruby Tuesday, did you
16 have dinner there?

17 A. We had intended to have something to eat. I
18 did not eat dinner. I had one glass of wine, because
19 the entire time we were there I was receiving text
20 messages and phone calls from Eric.

21 Q. Okay, and what did the text message and phone
22 calls say?

23 A. He was trying to upset me. He was saying that
24 I should be ashamed of myself for not coming to pick
25 Austin up, and that he couldn't believe that I was

S. BURGESS ON DIRECT

1 doing this kind of thing.

2 He even put Austin on the phone at one point and
3 was just berating me for not picking him up and going
4 home.

5 Q. Were you supposed to pick him up?

6 A. We had an arrangement where if I was working he
7 would have Austin, depending our shifts. A few days
8 before we had talked about me coming to pick him up,
9 but earlier in the day I told him that since I was to
10 open the next day it would probably be better for him
11 to keep him until after my shift the next day.

12 Q. Okay.

13 A. I would get off around four and I could pick him
14 up then.

15 Q. Okay. All right, so you got the calls and the
16 text messages. Did he ever say he was coming to your
17 residence?

18 A. He didn't, but Austin did when he put him on
19 the phone.

20 Q. Okay. So how did you feel about that?

21 A. I felt really uneasy. Austin, when I spoke with
22 him, he was a little teary. I asked him what he was
23 doing, and he said we're at your house, mommy, and I
24 wasn't sure since he was so little. I thought maybe
25 he was talking about the house where I used to live.

S. BURGESS ON DIRECT

1 Eric said, no, he was talking about the Mickey Mouse
2 Clubhouse from the cartoon we used to watch. We
3 would watch it and he would get real involved with the
4 house.

5 I wasn't sure if that's what he said, but after I
6 think about it I wasn't sure if I should take it ser-
7 iously or not.

8 Q. All right, so what did you do?

9 A. I hung up and phone and I went back to where we
10 were sitting because I had been standing in the hall near
11 the bathroom to take the phone call.

12 I went back and told Chris what was said, and I
13 said, surely he's not sitting in the truck waiting
14 for me.

15 But knowing that Austin was in the truck with him
16 I wasn't able to do anything but think about what he
17 had said, so I decided to leave, to go home.

18 Q. And were you in separate cars?

19 A. Yes.

20 Q. All right. So who arrived at the apartments
21 first?

22 A. Chris did.

23 Q. All right, and did he call you and tell you that
24 Eric was there?

25 A. Yes.

S. BURGESS ON CROSS

1 Q. Okay, and did you proceed on to the apartments?

2 A. I did.

3 Q. All right, and did you see Mr. Burgess when you
4 got there?

5 A. I did. Yes, maam.

6 Q. What was he driving?

7 A. He was driving a green Ford Expedition.

8 Q. Okay, and did it have any kind of logo or sign
9 on it?

10 A. Yes, maam. It had a B and the symbol for Burgess
11 Customs.

12 Q. For what?

13 A. Burgess Customs.

14 Q. What is that?

15 A. The symbol for his business, if you want to call
16 it that. He was customizing motorcycles.

17 Q. Okay. All right, and you saw his vehicle when
18 you pulled in?

19 A. Yes.

20 Q. Did you see him?

21 A. Yes, maam.

22 Q. Did you have a conversation with him?

23 A. Yes, maam.

24 Q. Would you tell us about that?

25 A. Yes, maam. When I arrived his truck was backed

S. BURGESS ON DIRECT

1 up into a parking space, and so I pulled up in front
2 of him in my vehicle. He was facing like this, and
3 so what I did was I pulled up in front of him. I had
4 pulled up side-ways. My driver's side window was fac-
5 ing his truck.

6 Then he hopped out of the truck and was yelling
7 and screaming -- is that your boyfriend back there, is
8 that your boyfriend, yelling and cursing at me.

9 So I told him in a very calm way that I don't
10 want you here, you need to leave or you will get ar-
11 rested; I don't want you here, so I was going to call
12 the police because of what a deputy had told me before
13 he showed up, that . .

14 MR. COOKE: I would object to anything she was
15 told by a deputy. That would be hearsay.

16 THE COURT: I'm certain it is not -- it is hear-
17 say but I'm certain it is not offered for the truth
18 of it. However, I will caution you not to say what
19 anyone else said.

20 WITNESS: Oh, I'm sorry.

21 THE COURT: Yes, maam, with respect to that par-
22 ticular event. I am ruling with a cautionary ruling.

23 Yes, maam.

24 BY SOLICITOR:

25 Q. Okay, so without saying what anyone else told

S. BURGESS ON DIRECT

1 you, after you told Mr. Burgess you were going to call
2 the police, how did he react to that?

3 A. He reared back like he was going to hit me, and
4 when I saw that I pulled forward and turned out of
5 the parking lot to leave, and I was dialing nine one
6 one.

7 Q. So you called nine one one and told them what the
8 situation was, and we've heard the nine one one call.

9 Did you see him strike Mr. Dale's vehicle?

10 A. I did. While I was on the phone with dispatch
11 for nine one one from my car, there is a parking lot
12 off to the side of the main parking lot, and I pulled
13 in. I didn't pull into a parking spot because I wanted
14 to be able to get out, so I was perpendicular to the
15 parking spaces.

16 From where I was situated, I could see the road.
17 I could see where the street kind of goes into a cir-
18 cle, and the first time the car struck I wasn't sure
19 if that's what I had seen, because it was in the pe-
20 ripheral vision.

21 At that point, I said I think he just hit a car;
22 he hit a car, and the next thing I know he hit again,
23 and he hit twice more. You know, I could see the
24 Expedition bumping the corner of the vehicle, and he
25 then took off.

S. BURGESS ON DIRECT

1 Q. Did Mr. Dale ever get out of his car and approach
2 Mr. Burgess?

3 A. Not that I saw.

4 Q. And so Mr. Burgess got in his car and they took
5 off down North Street. Is that right?

6 A. Yes.

7 Q. And what did you proceed to do?

8 A. I was still on the phone with dispatch, and I
9 decided that I would go and try to find them so I could
10 try to defuse the situation.

11 I didn't want anyone hurt any more than had hap-
12 pened already with the car.

13 Q. Where did you go?

14 A. I drove out into the street and I kept going
15 straight because I didn't know where they had gone.
16 I went straight on North Street to where it -- almost
17 to where it hits another road, and I turned around
18 and came back because I didn't see them.

19 And I had turned right on the street and I said,
20 well, maybe they turned left, so I went down that way
21 for a little ways and then came back, and when I had
22 turned north I could see the fire truck and ambulance
23 and things to the left -- down to my left, so I went
24 down there.

25 Q. And who all was there when you got there?

S. BURGESS ON DIRECT

1 A. There were paramedics, employees from the Bi-Lo
2 as well who were standing nearby.

3 Q. Did you see anyone injured?

4 A. Not from where I was at the time.

5 Q. And was Mr. Burgess on the scene?

6 A. No.

7 Q. Did you attempt to call Mr. Dale before you got
8 to the Bi-Lo?

9 A. Yes.

10 Q. To warn him?

11 A. I did.

12 Q. Tell me about that.

13 A. There were multiple calls actually, and there
14 was the call as well with dispatch. When I was call-
15 ing his number he didn't answer the phone. Eric did.

16 Q. Eric answered Mr. Dale's telephone?

17 A. That's correct.

18 Q. What did he say?

19 A. He kept saying, I can't believe you, I can't be-
20 lieve you. I can't believe you're with this guy.

21 He said -- this is obviously not word for word,
22 but he would say something like that, and then he would
23 say -- because I kept asking where are you, where did
24 you go, where did you go. That's all I could say,
25 and he wouldn't tell me.

S. BURGESS ON DIRECT

1 I kept saying, where are you, where are you, and

2 . . .

3 Q. Could you see any sign of the vehicle with Mr.
4 Burgess?

5 A. I could not.

6 Q. Okay. So the only indication you had that he
7 had been in that vehicle was the conversation from
8 earlier?

9 A. Right.

10 Q. What did you do then?

11 A. I was very scared because on the phone the last
12 thing he said before hanging up from our conversation
13 was that your little boyfriend has been taken care
14 of.

15 Q. Was that when he answered Mr. Dale's telephone
16 that he told you that?

17 A. When he told me, that he had been taken care of,
18 I was scared. I thought that meant he had done some-
19 thing really awful, you know, and I said, God,
20 what did you do; what did you do.

21 Q. Have you filed a divorce action at this time?

22 A. I have.

23 Q. Thank you, Ms. Burgess.

24 Please answer any questions Mr. Cooke has for
25 you.

S. BURGESS ON CROSS

1 CROSS EXAMINATION

2 BY MR. COOKE:

3 Q. Ms. Burgess, my name is Larry Cooke. I don't
4 know if we've ever spoken. Nice to meet you.

5 A. Thank you.

6 Q. I want to talk to you a little bit -- are you
7 from Greenville?

8 A. Not originally.

9 Q. Where are you from?

10 A. My father was in the Air Force, and we moved all
11 around the country.

12 Q. You've been in Greenville how long?

13 A. Since 1986.

14 Q. Okay. All right, and you and Eric met and married
15 in 2007?

16 A. That's correct.

17 Q. And you had one child?

18 A. Yes, sir. .

19 Q. A boy, and you had no custody agreement, I be-
20 lieve you said?

21 A. Yes, sir. At one time we did.

22 Q. Now, let's talk about the night that you said this
23 all happened. You were supposed to be at work, is
24 that correct?

25 A. I was at work.

S. BURGESS ON CROSS

1 Q. Okay, and you had told Eric that you were not going
2 to pick your son up; that he could stay overnight with
3 him?

4 A. I was at work until ten thirty and I had spoken
5 to him either before I went to work or the night be-
6 fore. I can't recall.

7 Q. Okay. You have talked to the police officers and
8 everybody involved in this case, in the investigation
9 of the case?

10 A. Have I spoken with them?

11 Q. Yes.

12 A. The night of, yes, sir.

13 Q. And you mentioned the text messages. Did anybody
14 get a copy of them?

15 A. No.

16 Q. Did you mention that to them?

17 A. That he had been texting me?

18 Q. Yes.

19 A. Yes.

20 Q. And they didn't ask for them?

21 A. No.

22 Q. Okay. Now, let's talk about the SUV a little bit.

23 That's one of those that sits high off the ground, is
24 that correct?

25 A. It is higher than a car.

S. BURGESS ON CROSS

1 Q. Okay. What happened to that Expedition after
2 this incident?

3 A. After this incident?

4 Q. Yes.

5 A. Eric drove it to his father's house and dropped
6 it off, but I was told when he went to turn himself
7 in that his father drove him to turn himself in and
8 the Expedition was left in his father's care.

9 Q. So you never got your hands on it?

10 A. Come again?

11 Q. On the Expedition.

12 A. On the Expedition.

13 Q. Okay, and you said that Chris' car -- he bumped
14 it?

15 A. Yes, sir.

16 Q. And you saw him bump it?

17 A. Two or three times.

18 Q. Two or three -- okay. And you ended up event-
19 ually at the Bi-Lo parking lot?

20 A. I did.

21 Q. Okay, and where did you -- kind of show me where
22 you pulled in, if you will. If you would come up here
23 -- let's do it this way. Come around here if you
24 don't mind. This right here is Bi-Lo and this is the
25 station, the Goodwill dumpster.

S. BURGESS ON CROSS

1 Where did you come in?

2 A. My apartment is in this building right here, and
3 he was parked on this road. I came in this way and
4 I turned right in front of him so that I was turned
5 this way.

6 When I left . .

7 Q. I don't mean to rush you, but I'm just asking
8 you where you came into the Bi-Lo parking lot.

9 A. I pulled into the Bi-Lo parking lot? Q. Yes.

10 A. I came into the Bi-Lo parking lot at the entrance
11 here.

12 Q. Okay, and are you familiar with that Goodwill
13 across that?

14 A. No, I've never dropped anything off there.

15 Q. All right, so when you arrived where was every-
16 body?

17 A. In the parking lot, the same parking area.

18 Q. Okay, and Chris was where?

19 A. He was standing in the parking lot.

20 Q. Standing in the parking lot?

21 A. Next to the ambulance.

22 Q. Okay, and was he bleeding from the nose or the
23 lip? Is that correct?

24 A. He was bleeding from multiple wounds.

25 Q. Okay. Now, do you remember that afternoon before

S. BURGESS ON CROSS

1 this incident having lunch with Eric and your son at
2 McDonald's, and you were rather -- do you remember
3 him buying your lunch that day?

4 A. I do.

5 Q. Okay, and that afternoon you, Eric, your son went
6 to McDonald's for lunch. You had a pedicure, you had
7 a manicure, bought your groceries. Right?

8 A. That's right.

9 Q. Okay. So you weren't afraid of him at that time?

10 A. At the time, he was not acting in the same man-
11 ner. I came over to visit with Austin that day because
12 I did have to go to work that late afternoon, and my
13 intention was to hang out with Austin. It was Eric's
14 turn, so I was there with them.

15 Q. You went over to Eric's place?

16 A. Right.

17 Q. You weren't afraid to go over there, and so you
18 played with Austin, you all had lunch, had a pedicure,
19 manicure, the whole nine yards -- okay.

20 No problem?

21 A. He knew I was in a position where I couldn't af-
22 ford it, so he offered to buy some groceries for me
23 and he also offered to pay for a manicure and pedicure.

24 I was reluctant to accept them but I told him I
25 didn't want him to get the wrong idea, and that that

S. BURGESS ON CROSS

1 didn't mean we were getting back together. I had
2 told him I didn't want to take the manicure and pedi-
3 cure he offered because I was afraid he would hold it
4 over my head later. He said that he wouldn't, and he
5 was nice and amicable.

6 We had spoken about a divorce earlier, and talked
7 about an amicable divorce.

8 Q. That obviously didn't work out?

9 A. Obviously not.

10 Q. Okay. So you accepted these gifts and you think
11 he had the impression that maybe you all were going
12 to get back together? Is that what you think?

13 A. I said I didn't want him to think that.

14 Q. I know you mentioned that, but you thought that?

15 A. It's possible.

16 Q. Yeah, and you know a few days prior to that he
17 had gone over to see a marriage counselor, Dr. Condon?
18 Do you know him?

19 A. I do not know Dr. Condon.

20 Q. Okay. Now, let's talk a little bit about your
21 co-worker. You met him when?

22 A. I met him -- he's the first person I met outside
23 of managers and clerical staff.

24 Q. Okay, and you had broken up with Eric about a
25 month before this incident?

S. BURGESS ON CROSS

1 A. I moved out in September. This was in October,
2 later October. So, yes, about a month.

3 Q. Okay, and you said earlier on direct examination
4 that you all had a relationship?

5 A. I did.

6 Q. What do you mean by relationship?

7 A. We were seeing each other.

8 Q. Anything more than that?

9 A. After I moved out, yes.

10 Q. After you moved out?

11 A. Yes.

12 Q. You were having sex with him after you moved out?

13 A. Correct.

14 Q. And basically where did you all have these . .

15 A. In my apartment.

16 Q. Where was your son at that time?

17 A. Usually he was with Eric. There was one or two
18 occasions when he was in the home but not in the same
19 room in the house.

20 Q. So sometime Eric would baby sit while you were
21 home in bed over at your apartment?

22 A. He was not babysitting. It was a custody agree-
23 ment.

24 Q. So the night you were having dinner at Ruby Tues-
25 day you all were there, and what were your intentions

S. BURGESS ON CROSS

1 after you left?

2 A. . .

3 Q. I mean, where were you going?

4 A. We were going home.

5 Q. You were going back to the apartment to have a
6 nice evening since Eric had the child?

7 A. Just to hang out for a little while. We used to
8 smoke and we would sit outside and smoke and have a
9 glass of wine and talk.

10 Q. Oh, okay. Now, did you -- where did you go to
11 school? Did you complete high school?

12 A. I did complete high school.

13 Q. And where are you working now?

14 A. Pardon me?

15 Q. Where do you work now?

16 A. Where do I work now? I would prefer not to
17 answer that question for security and safety reasons.

18 Q. For security and safety?

19 A. Yes.

20 Q. Okay.

21 A. I don't want to talk to him where I work.

22 Q. Oh, I got you, I got you. Okay.

23 A. I am employed full time.

24 Q. You know he's in jail?

25 A. Yes.

S. BURGESS ON CROSS

1 Q. Okay.

2 A. But I still feel like it would be better for him
3 not to have that information because he does have
4 friends who are not in jail.

5 Q. Yes, maam. Have you allowed him to see his son?
6 I mean, he is entitled to see his son.

7 A. I have not taken Austin to see him except for one
8 time.

9 Q. Have you made an attempt to help him with his bond
10 at all or help him get out of jail?

11 A. No.

12 Q. So as far as you know, he doesn't have a lot of
13 money at the time when all of this happened?

14 A. Sir?

15 Q. Did you'all have a lot of money?

16 A. I didn't. At the time this all happened, when I
17 moved out, Eric had taken all the money from the bank
18 account and he had cash.

19 Q. Okay.

20 A. He had thousands of dollars.

21 Q. Where did that come from?

22 A. . .

23 Q. Where did those thousands of dollars come from?
24 Do you know?

25 A. Part of it was from the bank account and part

S. BURGESS ON CROSS

1 of it had been direct deposited into the account.

2 Q. Where did the initial investment come from?

3 A. Where did it . .

4 Q. The money to give him the motorcycle business,
5 where did it initially come from?

6 A. I helped with it.

7 Q. Did you have a business?

8 A. I had my art business, yes.

9 Q. Okay, and you all had some seed money to get him
10 in the business? Didn't he have some money that came
11 from somewhere?

12 A. Yes.

13 Q. Where did it come from?

14 A. He had his lawsuit settlement.

15 Q. What was that all about?

16 A. He had an attorney . .

17 Q. I don't think -- without mentioning the attorney's
18 name, just tell me -- just tell me how that all came
19 about?

20 A. He had charges for criminal sexual conduct with
21 a minor, and an attorney was defending him in that
22 case. In 2008 we had an affair and Eric was suing him
23 for the affair so there was a settlement in 2009. From
24 that he received an award.

25 I don't know the actual amount that he received

S. BURGESS ON CROSS

1 though because it was . . .

2 Q. So you were having sex with his lawyer?

3 A. Yes. In 2008.

4 Q. Okay, and did you all continue to live together
5 after that?

6 A. We did.

7 Q. Okay, and he didn't have any problem with that?

8 A. It was his idea rather than mine.

9 Q. All right.

10 A. It was.

11 Q. And so you all lived together for how long?

12 A. Up until September when I moved out, of 2010, so
13 two more years.

14 Q. Okay, and where were you working at that time?

15 A. Where were you working at that . . .

16 Q. Prior to you going into business.

17 A. Prior to going into business?

18 Q. Yes.

19 A. I worked for -- how far back do you want me to
20 go?

21 Q. Well, back to when you all got married. Let's
22 take it back to then.

23 A. When we met I worked for (inaudible).

24 Q. Okay.

25 A. Before I worked there, I was selling advertising.

S. BURGESS ON CROSS

1 After that I began working for Hooter's.

2 Q. Hooter's, okay.

3 A. After I left Hooter's the first time I worked for
4 a clothing store, Halter. When I left Halter I went
5 back to Hooter's; left Hooter's to work at Horizon
6 Wireless.

7 And from there I went to work for Platinum Plus.

8 I was a bartender.

9 Q. So you were a bartender at Platinum Plus. Okay.

10 Now, I saw -- weren't you like sponsored by some-
11 body at Hooter's as Hooter's girl of the month or
12 something like it?

13 A. I used to model when I was working at Hooter's,
14 and there were sponsors for the calendar.

15 Q. Right. Okay, and so you and Chris continued to
16 date and that sort of thing?

17 A. Yes.

18 Q. And you knew when you started dating that he was
19 married as well?

20 A. He was.

21 Q. Okay. Just a second.

22 (Brief pause in the proceeding)

23 Are you sure you didn't go get that SUV in the
24 weeks later and sold it?

25 A. I did not sell the SUV.

S. BURGESS ON CROSS

1 Q. You didn't go get it?

2 A. We went and got it but I did not sell it. There
3 was a title loan on the truck before this happened. I
4 could not make the payments on the title loan, and so
5 I called the finance company and I told them I could
6 not afford to make the payments.

7 Then I offered to bring them the SUV so that they
8 would stop calling me, and what they told me was that
9 even if I returned it and they sold it if it was not
10 sold for the amount of the loan that I would have to
11 pay the difference.

12 So Bruce needed a truck and he offered to take
13 up the payments if I gave him the truck. So he paid
14 off the truck and I signed my portion over of the title
15 to him. The title said Eric Burgess and Sarah Burgess.
16 So right now the truck is still titled to us,
17 and I am still carrying insurance on the truck. It
18 has not been sold or transferred.

19 Q. Who has the -- do you have the truck now?

20 A. No.

21 Q. Where is it?

22 A. Bruce still has it.

23 Q. Okay, so somebody knows where it is, but at first
24 you said you didn't get the truck? Isn't that what
25 you told us?

S. BURGESS ON CROSS

1 A. I believe I was asked if the next day I got my
2 hands on it, and I did not.

3 Q. Oh, I see.

4 A. I did not go get it until much later.

5 Q. Well, did anybody ever come and look at that truck
6 to see if there was anything from Chris, any DNA or
7 any other -- what I'm saying is, did the police come
8 and try to match up anything?

9 A. I don't know if anyone . .

10 Q. I'm saying did the police . .

11 A. I don't know.

12 Q. And did you take some pictures of it?

13 A. No, the pictures were taken by the police offi-
14 cers at some point.

15 Q. Okay, and so you didn't take them?

16 A. I did not.

17 Q. You didn't have anything to do with that then?

18 A. No, sir.

19 Q. Okay. Do you have any of Eric's assets in your
20 possession now?

21 A. Sorry?

22 Q. Do you have any of Eric's assets in your posses-
23 sion now?

24 A. Like what?

25 Q. Any money, any personal property, anything of his?

S. BURGESS ON CROSS

1 Do you have any of Eric's assets in your possession?

2 A. I do not have any -- I don't have any of his --

3 I have a television. I do not have any of his per-

4 sonal effects. I have none of his paperwork, none

5 of his clothing, none of his jewelry.

6 I have nothing as I just told you and the letter

7 that he had mailed to his father's home.

8 Q. Not to belabor this, but I believe you and Chris

9 live together now?

10 A. Yes.

11 Q. Okay, and you still aren't divorced?

12 A. That's correct.

13 Q. And you have custody of the child?

14 A. That's correct, although, with all due respect,

15 sir, I believe that is a matter for Family Court.

16 Q. Just a moment, please.

17 (Brief pause in the proceeding)

18 BY MR. COOKE:

19 Q. I believe those are all of my questions. Thank

20 you very much, maam.

21 THE COURT: Solicitor, any Redirect?

22 SOLICITOR: Just briefly.

23 REDIRECT EXAMINATION

24 BY SOLICITOR:

25 Q. Ms. Burgess, you stated in response to Mr. Cooke's

S. BURGESS ON REDIRECT

1 questions that you were going to see this lawyer that
2 you ended up having an affair with because your hus-
3 band had charges. Is that correct?

4 A. I don't understand the question.

5 Q. You said that the attorney you ended up having
6 the affair with was because your husband had outstand-
7 ing charges. Is that correct?

8 A. The charges of criminal sexual conduct -- the
9 attorney I had the affair with?

10 Q. Yes.

11 A. I went to an attorney in late August or in Sep-
12 tember. Is that the one you are referring to as . .

13 Q. I'm referring to the one that you answered him
14 about that you went to with your husband when he had
15 this charge, and you said you ended up having an affair
16 with him. Is that right?

17 A. With that attorney, yes.

18 Q. Okay, and what was the charge, if you can recall?

19 A. The charge?

20 Q. Yes.

21 A. It was criminal sexual conduct with a minor.

22 Q. Did this occur during your marriage?

23 A. The incident was actually before the marriage. He
24 had been arrested for something in the way of a viola-
25 tion of probation in 2006, and . .

S. BURGESS ON REDIRECT

1 MR. COOKE: Your Honor, I would object to allow-
2 ing the Solicitor to go further into . .

3 SOLICITOR: Your Honor, he opened the door for
4 it.

5 THE COURT: I recognize that he did, but proceed
6 on.

7 (Pause in the proceeding)

8 BY SOLICITOR:

9 Q. Ms. Burgess, to continue, when you had the affair
10 with this attorney that you ultimately met, your hus-
11 band handled that matter in a non-violent manner, is
12 that correct?

13 A. That is correct.

14 Q. Thank you. Those are all the questions I have.

15 RECROSS EXAMINATION

16 BY MR. COOKE:

17 Q. The fact of the matter is that Mr. Burgess had a
18 wreck or was in a wreck, and was in a coma. Correct?

19 A. When Eric had the wreck it was because of a DUI
20 when he was seeing the girl, Amanda. They found the
21 condoms in his pocket.

22 He was in a coma less than overnight although he
23 . .

24 Q. He had just come out of a coma, is that correct?

25 A. As far as just coming out of the coma, that is

S. BURGESS ON RECROSS

1 not true. That was actually in 2007.

2 Q. No further questions. Thank you.

3 SOLICITOR: You may step down.

4 (Witness excused from stand)

5 SOLICITOR: Your Honor, we have nothing further
6 from the State. The State will rest at this time.

7 THE COURT: All right, ladies and gentlemen,
8 at this point I need to take up certain matters of
9 law.

10 The State has rested and will not present any
11 more evidence on the record in its case in chief.

12 Procedurally, I need to hear some legal matters,
13 so I will ask you to take a brief recess, and please
14 do not discuss the case in the interim.

15 (Jury excused from Courtroom)

16 THE COURT: All right, Mr. Cooke. Do you have
17 any motions?

18 MR. COOKE: Yes, sir. We'd move for directed
19 verdict on behalf of the Defendant in that the State
20 has failed to meet their burden of proof that is re-
21 quired for attempted murder.

22 The evidence would show that there -- taking all
23 of the evidence that was presented that the car hit
24 him, the victim in this case is a man who said that
25 he was in front of the Goodwill store, and by the

1 State's own exhibit here if he was in front of the
2 Goodwill store he couldn't possibly see back in the
3 parking lot.

4 The other evidence is that the injury -- Your
5 Honor, I guess you saw the pictures. The trauma that
6 is shown, Judge, they are just scratches that could be
7 like from a scuffle on the pavement.

8 There was testimony they were on the pavement,
9 and one witness said he actually saw the car knocked
10 him off to the bank.

11 All the witnesses who saw the fight said the guy
12 was down on the pavement. So by the State's own evi-
13 dence, it is apparent that what is involved in this
14 case is a simple assault and battery.

15 THE COURT: Okay.

16 MR. COOKE: I don't see any intention to murder
17 here. There is no evidence of that. There is no
18 forensics whatsoever, no car, Your Honor.

19 Somebody had skinned knuckles more like from a
20 fight than anything else.

21 THE COURT: Does the State care to respond to
22 that?

23 SOLICITOR: Your Honor, you heard the testimony
24 of the victim in this case who recounted how he was
25 struck by the vehicle, how he was chased down by the

1 Defendant and was assaulted by him.

2 You also heard from several witnesses, one of
3 whom did see the vehicle actually strike the victim
4 from behind and propel him through the air; saw him
5 get out of his car and rushed over to assault the
6 victim while he was down.

7 All of the other witnesses -- I think obviously
8 they were all viewing it from different angles. The peo-
9 ple at the Bi-Lo store saw a different angle than what
10 was seen by the Goodwill man, but I think that is the
11 nature of eye-witnesses testimony.

12 All of the witnesses are unbiased witnesses, and
13 they didn't put themselves in this situation, but they
14 happened to observe it and called nine one one to
15 report what they saw.

16 I think that the stories are credible, and I do
17 think there is certainly sufficient evidence in this
18 case to send this case to the jury.

19 There is no specific injury that is required by
20 the offense, but simply malice aforethought and an in-
21 tent to kill. The intent to kill can be inferred by
22 the use of the car as a deadly weapon.

23 THE COURT: All right, thank you. I must look at
24 what was presented to determine if there is any evi-
25 dence in the record for the charge, not at the weight

1 of the evidence.

2 Therefore, based on that threshold and that very,
3 very low standard that is established by the law, I
4 am, of course, compelled to respectfully deny the
5 motion for directed verdict.

6 Okay. Pursuant to our discussion about the charge,
7 I intend to charge attempted murder, ABHAN, A and B
8 first, A and B second and A and B third.

9 Are there any objections to those charges?

10 MR. COOKE: No, sir.

11 THE COURT: Now, are there any other issues with
12 respect to the charge that we need to discuss?

13 MR. COOKE: Except in my motion for directed
14 verdict the things that I have discussed . .

15 THE COURT: Okay. Mr. Cooke, do you intend to put
16 up any evidence?

17 MR. COOKE: I do not.

18 THE COURT: All right. We will go to argument
19 and charge. Are there any specific requests to charge
20 that you have? Otherwise, it is going to be standard
21 as far as my charge is concerned.

22 MR. COOKE: No, sir.

23 SOLICITOR: Nothing from the State, Your Honor.

24 THE COURT: Okay. I believe if I'm not mistaken,
25 and you all correct me if I'm wrong, that you didn't

1 offer any evidence so the State will open and the
2 Defense will close. Is that correct?

3 MR. COOKE: Yes, sir.

4 SOLICITOR: That's correct.

5 (Discussion between counsel and the Court at
6 the bench concerning amount of time for arguments.)

7 THE COURT: Then let's take a brief break and
8 come back on the record in five or ten minutes.

9 (Whereupon, the Court took a brief recess, after
10 which the matter was resumed)

11 THE COURT: Please remain seated. Are we ready
12 for the jury?

13 SOLICITOR: Yes, sir.

14 MR. COOKE: Yes, sir.

15 THE COURT: Just for your information, the reason-
16 able doubt charge that I will give is firmly convinced
17 and not the doubt that would cause a reasonable person
18 to hesitate to act.

19 I just tell you that so that you can tailor your
20 closing arguments to that reasonable doubt charge.

21 MR. COOKE: I didn't understand that, Judge.

22 THE COURT: The reasonable doubt charge that I
23 give -- I will not use the one, the type of doubt
24 which would cause a reasonable person to hesitate to
25 act. It will be if you are firmly convinced of the

1 Defendant's guilt -- okay?

2 I know that sometimes in closing arguments the
3 attorneys like to make their argument based on that
4 definition that the Court gives. I just want to make
5 sure that you all knew what I was going to say in that
6 regard.

7 I would also tell you that the Foreman is Mr.
8 Harrison is the Foreman.

9 CLERK: Number 79.

10 THE COURT: Yes, maam. Counsel, here's the ver-
11 dict form. You all take a look at it.

12 (Brief pause in the proceeding)

13 THE COURT: I will explain it to them in detail
14 but it is pretty clear.

15 Let's have the jury.

16 (Jury returned to the Courtroom)

17 THE COURT: Okay. Mr. Harrison, I would make
18 you the Foreman of the jury. Now, what the means is
19 that when you begin your deliberations everybody will
20 have an opportunity to have a voice.

21 I can't really tell you what your duties are
22 beyond that. The reason is that I can't follow your
23 progress in the jury room. I can't tell you how to
24 deliberate, and I can't tell you what to consider.

25 All I can tell you is that you are in charge of

1 the jury from this moment on until you reach your
2 verdict.

3 Also, if during your deliberations the jury has a
4 question, you would write it down on a piece of paper
5 and give it to the bailiff who will give it to me.
6 I am very hopeful that you won't have any questions,
7 but in the unlikely event that you do that's how you
8 would handle that.

9 Also, you will actually sign the verdict sheet
10 once all twelve of you agree upon your verdict.

11 All right. Now, the Defendant has elected to
12 rest; that is, the Defense will not offer any evidence
13 to you, which is certainly the right of the Defense
14 to do.

15 That means we are going to go straight to clos-
16 ing arguments from counsel. The closing arguments
17 are not evidence. You have heard all the evidence or
18 received all the evidence in the case, so the argu-
19 ments are not evidence.

20 The State will have the opportunity to make the
21 first argument and the Defense will have the opportu-
22 nity to close.

23 Solicitor, you may proceed.

24 SOLICITOR: Thank you, Your Honor. May it please
25 the Court?

1 Mr. Foreman, ladies and gentlemen of the jury,
2 thank you for the attention you have paid. I think
3 we have moved the case along as quickly as we could
4 to get the facts and the information out there to
5 you so that you can make your decision in this case.

6 I just want to briefly tell you what I think the
7 evidence in the case has shown.

8 First of all, the Defense in their argument when
9 Mr. Cooke has the opportunity to address you will tell
10 you that the Defendant only intended to -- pardon my
11 expression -- to use the expression that was used --
12 intended to kick his ass; that he didn't intend to
13 kill him.

14 Ladies and gentlemen, I think the evidence has
15 shown something quite different. You heard from sev-
16 eral witnesses -- you heard from two Bi-Lo employees,
17 one who is employed there still and one who is no
18 longer employed there but is employed as a security
19 officer now.

20 You heard their testimony about what they saw on
21 that night at a little bit after eleven o'clock, a
22 little bit after closing of the Bi-Lo store, when
23 they saw the victim trying to escape from the Defendant
24 who was chasing him down, both in his vehicle and on
25 foot.

1 There was never a fight that occurred. The vic-
2 tim never got a punch in because the victim was at-
3 tacked by the Defendant. Clearly that is what the
4 testimony was.

5 You heard from Mr. Whitworth, Patrick Whitworth,
6 who was putting some items in the Goodwill bin, and
7 you heard him describe how he saw the Defendant's ve-
8 hicle strike the victim who was trying to run away;
9 strike him from behind.

10 He said he heard the victim's head hit the hood
11 of the vehicle, and this was a big vehicle. A Ford
12 Expedition is known as a big car, and he said this pro-
13 pelled the victim, according to the witness, onto the
14 grassy area where he was trying to run in the first
15 place.

16 This was a full blown attack by the Defendant.
17 It was not a fight, so don't be misled by that ter-
18 minology.

19 The Defendant went to his estranged wife's resi-
20 dence, which she has said she did not tell him where
21 she was living, out of her own concern and fear for
22 her own safety.

23 But he found out where she was living on the
24 night of October 20, 2010, and she also told you about
25 the telephone conversation that she had with her young

1 son, who was only two at the time, while she was at
2 the restaurant with Mr. Dale.

3 Her estranged husband, Mr. Burgess, put that
4 child on the telephone, and he said, mommy, we're at
5 your house.

6 Now, ladies and gentlemen, that leads me to con-
7 clude that Mr. Burgess not only had gone over there
8 and waited on Mr. Dale to come and chased him with
9 his vehicle and on foot, but he did all that with a
10 child in the car. That is in the evidence, ladies
11 and gentlemen.

12 Now, Mr. Cooke in his cross examination of the
13 witnesses indicated and he probably is going to say
14 that, well, these witnesses couldn't have seen what
15 they saw because of where they were positioned on --
16 over here or over there.

17 Ladies and gentlemen, you are the sole judges of
18 the believability of the witnesses in this case. You
19 can decide why a witness might testify as they do,
20 and I submit that the witnesses that you heard from,
21 the Bi-Lo employees, former Bi-Lo manager, Mr.
22 Whitworth, the gentleman putting a donation in the
23 Goodwill bin, and the victim himself and Ms. Burgess
24 -- you will be the judge of why they testified as they
25 did.

1 I ask you to keep in mind that Mr. Holland, Mr.
2 Cox and Mr. Whitworth didn't know any of these parties.
3 They didn't know the Defendant. They didn't know the
4 victim.

5 They didn't have a dog in the fight, so to speak,
6 and they were consistent in that they tried to help
7 somebody that was in trouble and they called nine one
8 one.

9 You can listen to the nine one one tape again if
10 you need to. It is in evidence now, and you can tell
11 that they are still under the startling effects of
12 having seen what they saw.

13 I think Mr. Whitworth said that he saw the Defen-
14 dant make a U-turn to chase the victim down -- made a
15 U-turn so he could chase the victim down and hit him
16 with his car.

17 Ladies and gentlemen, a car is very much a deadly
18 weapon. It can very much cause serious injury, and I
19 would say that the victim in this case is very lucky he
20 did not end up more severely injured than he was.

21 You will have pictures of his external injuries,
22 the photographs that were taken that show those kinds
23 of injuries, but he also testified about having to
24 stay in the hospital for two nights, and that he had
25 -- I believe he said he had a bruised arm and also a

1 laceration to the liver that was under observation.

2 So he was extremely lucky, because I think the
3 damage could have been a lot worse.

4 But in any event, I urge you to think about what
5 the witnesses said, who are fair and impartial in my
6 opinion. They don't have any bias or any reason to
7 testify in any way other than what they did.

8 Now, you also heard from Sarah Burgess on the
9 nine one one call, and you heard her describing the
10 events as she's seeing them.

11 Again, I would point out to you that you are the
12 judges of her credibility as well, and what you observed
13 from the stand appears to be her affirming the Defen-
14 dant striking the victim's vehicle just as was de-
15 scribed by witnesses.

16 Mr. Burgess was laying in wait over there at the
17 apartment complex, McKenna Circle, where he found out
18 his estranged wife was living, and they arrived there
19 in separate cars.

20 He didn't catch his wife with another man as Mr.
21 Cooke said in his opening statement. He was lying in
22 wait. He knew where Sarah was, and he was upset about
23 it, and rather than taking the appropriate route, the
24 non-violent approach -- his wife testified he had
25 sued someone for having an affair with her -- he knew

1 how to handle this appropriately, but in the case he
2 decided that he would take the law into his own hands,
3 and, ladies and gentlemen, that is why we have laws.
4 We have laws so that we can have an orderly and civil-
5 ized society.

6 Without laws, there would be nothing but mayhem.
7 Everybody would just do what they wanted to do. If
8 you get mad at someone, you just go and kill them.

9 That's now the way we want to live, so that is
10 why we have these laws.

11 What he is charged with is attempted murder, as
12 I told you at the beginning, and that is a person who
13 has the intent to kill and attempts to kill another
14 person with malice aforethought, either express or
15 implied.

16 I told you that aforethought, which the Judge will
17 define for you, is nothing more than plain meanness,
18 and I submit to you that that is what Mr. Burgess had
19 in his heart that night.

20 He wanted to do harm to Mr. Dale, and he showed
21 that by his actions.

22 Mr. Whitworth testified he saw Mr. Burgess' eyes,
23 and they never left that victim as he went after him
24 and hunted him down.

25 The Judge will also charge you on some other

1 offenses, what we call lesser included offenses of at-
2 tempted murder. He is going to charge you as to the
3 offense of assault and battery of a high and aggra-
4 vated nature, and he will give you the law. You must
5 take the law as the Judge gives it to you, but that
6 offense, just briefly, involves unlawfully injuring
7 another person and that is accomplished by death or
8 great bodily injury.

9 So you have to determine what you believe is ap-
10 propriate in this case. The Judge will charge you on
11 other lesser included offenses, assault and battery in
12 the first, second and third degrees.

13 I'm sure that Mr. Cooke is going to urge you to
14 find the Defendant not guilty or to find him guilty
15 of one of these lesser included offenses because he
16 feels that Mr. Burgess was somehow justified in his
17 actions because his wife was involved in a relation-
18 ship.

19 I submit to you, ladies and gentlemen, that the
20 parties were living separate and apart, and that Mr.
21 Burgess does not have any justification for his actions
22 on that night in hunting the victim down and trying
23 to kill him like he did.

24 Again, I point out to you that we have the Family
25 Court to handle domestic matters. When people want to

1 get a divorce, when people want to handle child cus-
2 tody matters, things of that nature, we have that
3 Court available for that.

4 You do not have to resort to the kind of behav-
5 ior that Mr. Burgess exhibited on October 20, 2010,
6 and one thing I want to point out to you is that Mr.
7 Burgess fled the scene. Everybody else that you heard
8 from remained there at the scene, talked to law en-
9 forcement, told what they had seen. None of them knew
10 who he was, but Mr. Burgess left.

11 So when Mr. Cooke talks to you I want you to
12 remember he took the car from the scene. He left. He
13 didn't stay there for law enforcement to talk to him
14 and find out why he might have acted as he did. He
15 left because he knew he had done wrong.

16 Now, I also think he left because he had the young
17 child in the car and he didn't want to be caught doing
18 that.

19 You also are going to be able to look at the pho-
20 tographs of damage to the car, to the rear part of the
21 car that Mr. Dale was driving, and I will ask you in
22 regard to State's Exhibit 2, there is some previous
23 damage that was not a part of the damage that was done
24 that night. So I ask you not to consider Number 2.

25 Number 3 and 4 show damage to the rear of the

1 vehicle where Mr. Burgess rammed his car with the SUV,
2 and you will have these in the jury room to look at.

3 Ladies and gentlemen, we all have choices to make
4 in life. We have choices of all kinds in our personal
5 lives, in our business life, in our family life. We
6 have a choice of whether to act in a legal manner or
7 we can act in an illegal manner.

8 When Mr. Burgess chose to act in an illegal man-
9 ner, he harmed someone in the process, and I urge you
10 to hold him responsible for that.

11 Thank you very much.

12 MR. COOKE: May it please the Court?

13 Ladies and gentlemen, I am absolutely astounded
14 by all of this stuff. My client is home baby-sitting,
15 and all of a sudden he's a murder or someone who is an
16 attempted murderer.

17 I think you can figure this all out. He was doing
18 what he was supposed to do, and now he is pulled into
19 this crazy situation.

20 But let's talk about who you believe. I'm not
21 calling the State's witnesses liars, but only one per-
22 son said that Eric hit his car and then hit him. The
23 other gentleman who worked at Publix said that --
24 this is the State's evidence -- this is not mine --
25 he said that he was -- he worked at Bi-Lo then -- he

1 described the area of the store and the Goodwill store.

2 The police officer said that store was closed but
3 out here is the box. Now, there is no way that that
4 fellow in such a short period of time could have been
5 standing here, putting that stuff in the bin, could
6 have looked and seen my client hit that fellow right
7 there with the car.

8 I'm not saying he doesn't think he saw that. I
9 think he heard a noise and assumed that after he saw
10 the victim's injuries. I don't think he actually saw
11 anybody getting hit with that car.

12 There is no evidence of that. There is no evi-
13 dence on the car. Look at the pictures. There is no
14 blunt force trauma there.

15 He was only skinned, and that's it. Somebody
16 didn't hit him with a car going thirty or what --
17 thirty or forty -- I forget what he said -- and knock
18 somebody fifteen to twenty feet in the air.

19 It didn't break anything. There was no life
20 threatening injuries. There has been no doctor here
21 to testify about those injuries and the extent of the
22 injuries.

23 All we have is the testimony that you have heard,
24 the testimony of a liar. A liar. When I first started
25 talking to him, he denied that he was having a sexual

1 affair with this lady.

2 When I walked over to the desk and jiggled some
3 papers I came back and I said, well, you know that
4 the witnesses were sequestered so you better be sure.
5 He then changed his story. He then said, yes, we
6 had a sexual relationship. Not in front of the child,
7 but the child was in the house.

8 So we already know he didn't want to talk about
9 it. He didn't want to talk about the child being in the
10 house while they were having sex more than once. He
11 couldn't even remember how many times they had sexual
12 relations, and it was always at her apartment.

13 He said the child was asleep in a bedroom or my
14 client was baby-sitting.

15 She talked about being afraid of my client. Well,
16 now, how could she be afraid of him?

17 Get me a pedicure, get my fingernails done, buy
18 my groceries -- but don't think we're getting back to-
19 gether. She certainly wasn't afraid of him.

20 There was not one bit of evidence introduced in
21 this Courtroom that he had done anything to her. No-
22 thing. He's just a dad doing the right thing, and
23 she is screwing around on him. Not only with this fel-
24 low right here, but with my client's own lawyer.

25 As was said, my client won the case.

1 Now, all this stuff about criminal sexual conduct
2 -- nobody said he got convicted of that. The lawyer
3 representing him -- when my client found out about
4 it, he sued the lawyer and got a money award.

5 Well, he's not going to get an award from this
6 fellow here, but that was talking about the lawyer. A
7 lawyer takes an oath that you don't mess around with
8 a client's wife.

9 So here we've got a woman who has been with
10 other men once, twice, and God only knows how many
11 other times. God only knows.

12 Not one thing has been said about my client, try-
13 ing to be a good daddy, trying to put his marriage back
14 together, and he was willing to overlook all of that.

15 There was testimony about him chasing the victim
16 into the parking lot. The victim hits the cement --
17 the people from Bi-Lo said they saw him hit the asphalt
18 and run to the bank.

19 Well, how in the hell could he get hit by a car
20 -- the guy who said he saw him hit by the car said he
21 got knocked over on the bank; he wasn't on the asphalt.

22 All you have to do is look at the skid marks. Did
23 he fall on the asphalt and skin himself up?

24 He wasn't fighting? They don't know what he did,
25 the Bi-Lo people, because they were late getting out

1 there. They just heard squealing tires.

2 If my client had wanted to murder this fellow
3 right here, all he had to do was run over him. It's
4 hard to believe someone hit him going that fast and
5 it only skinned him up.

6 My client chased him down for being with his
7 wife, but he didn't try to murder him or he could
8 have continued to run over him.

9 I think the guy who works at Public simply over-
10 heard the conversation when he came back about him
11 getting hit by the car. There is no forensics, no
12 nothing.

13 I asked this lady about that car, and when I
14 first asked her about getting the car she denied it.
15 Then she said, I did get the car. She might have
16 said, I got the car and if you want to come over to
17 check it out -- we didn't hear that evidence.

18 We are not here for speculation. We want to
19 see the beef. You remember the old ad about hamburgers
20 -- well, we want to see the beef. Where's the beef?
21 Where have they shown you the beef? Where have they
22 shown you the beef?

23 There is no motive there. The only motive in
24 this whole case is that my client caught his wife
25 messing with another man when he thought they were

1 getting back together.

2 Folks, if you have a civil case, the burden of
3 proof is on the plaintiff. All
4 the plaintiff has to do is tip the scales of justice
5 a little bit.

6 In a criminal case, it is different. In the crim-
7 inal case, the burden is on the State of South
8 Carolina to prove its case beyond a reasonable doubt,
9 that my client attempted to murder this man.

10 In order to do that, they have to -- the scales
11 in the beginning are evenly balanced, and they have
12 to tip them -- I say they but I mean the Solicitor --
13 they have to tip them down here.

14 If in your opinion they have not done it, then
15 you have to find my client not guilty. Don't let them
16 get away with that, folks. Don't let them get away
17 with it.

18 You folks have my client in your hands, the respon-
19 sibility is yours as a juror. You have the power of
20 life and death -- a jury literally has the power of
21 life and death.

22 SOLICITOR: Objection, Your Honor. This is cer-
23 tainly not a death penalty offense.

24 THE COURT: I sustain the objection.

25 MR. COOKE: You have a lot of power, so I ask you

1 to make a decision -- I ask you to go back there,
2 and if you don't believe the State of South Carolina
3 has proven its case beyond a reasonable doubt, please
4 find my client not guilty. I ask you to do that.

5 When I try a case in front of a jury, I might
6 miss something, and I stick my foot in my mouth some-
7 times. Sometimes I can't remember everything that
8 was said, but one thing I do know -- one thing I do
9 know is that the greatest law of the land -- this
10 gentleman here said he knew the law; he grew up in a
11 house of God. Yeah, I bet he does know the law, but
12 he apparently doesn't remember the Ten Commandments
13 in the Bible, one of which says thou shall not commit
14 adultery. Thou shall not covet their neighbor's wife.

15 Two of them in the greatest law that was ever
16 handed down to the human race. He forgot them. The
17 relationship between those two people continues on.

18 Those are the two sinners, those are the two peo-
19 ple who caused this whole thing; yet they walk away.
20 At the end of the day they walk out of this Courtroom.
21 They walk away. Don't let that happen. They can go
22 back home and resume their love affair, live in the
23 same house with that young child, sleeping in the same
24 bed -- walk out of this Courtroom.

25 My client stands over here charged with a serious

1 crime, and they end up free. I just ask you to find
2 my client not guilty.

3 Thank you, ladies and gentlemen.

4 THE COURT: All right, ladies and gentlemen. It
5 is now time for me to give you a charge on the law,
6 and I tell you again that you must take the law as I
7 define it for you.

8 So if you came into Court with any previous posi-
9 tion about what you think the law is or what you may
10 think the law should be, I charge now that you disabuse
11 yourself of that. You must accept the law as I give
12 it to you.

13 Now, as I've suggested to you before, you are
14 the judges of the facts, and you have to make that de-
15 termination. It is your sole and exclusive responsi-
16 bility to make a decision as to what the facts are.

17 I have absolutely no responsibility nor can I
18 tell you what the facts are. I tell you again, as I
19 told you to begin with, that if I have said or done
20 anything in this entire trial that makes you think I
21 have an opinion about what the facts of this case are,
22 please disregard that, because I truly, truly do not
23 have any opinion one way or the other.

24 Again, my only role is to make sure that the
25 Defendant and the State get a fair trial.

1 Now, ladies and gentlemen, again I'm going to re-
2 state to you that the Defendant in this case is presumed
3 innocent. That presumption of innocence is not over-
4 come until the State proves every element of the of-
5 fense beyond a reasonable doubt.

6 Now, the reason I've told you that several times
7 is that I want to make it clear to you that that is
8 not just a legal theory. It's not just something that
9 appears in books or that we talk about. It is the
10 core of our criminal justice system.

11 In your deliberations, you must consider the facts
12 and the law, the evidence, in that context.

13 Now, you have heard us mention reasonable doubt,
14 so it is important that I define for you what reason-
15 able doubt is.

16 A reasonable doubt is proof which firmly convinces
17 you of the Defendant's guilt. Now, understand that if
18 in your evaluation of the evidence and after hearing
19 all the evidence you are firmly convinced of the De-
20 fendant's guilt, then you must find a verdict of guilty.

21 However, understand that if you think there is a
22 real possibility that the Defendant is not guilty,
23 then, again, under your oath, you must return a ver-
24 dict of not guilty.

25 There is something else I must tell you and that

1 is something you know. That is, the Defendant did not
2 take the stand and testify in this case, and the De-
3 fendant did not enter or offer any evidence into the
4 record.

5 Know that that is his right. Under the Constitu-
6 tion, you have a right to remain silent, which means
7 you cannot be compelled to take the stand and testify.
8 That is his constitutional right, and you cannot hold
9 it against him that he elected to exercise his consti-
10 tutional right.

11 That is a sacred right that we have in our society,
12 so you cannot hold it against him. It is inappropriate
13 that you even discuss it in your jury room.

14 Ladies and gentlemen, you have to decide what evi-
15 dence is important and what evidence is not important.
16 You pass and weigh all of the evidence and decide what
17 the facts are.

18 Know that you can take a bit of evidence and de-
19 termine it is very important, and you can take another
20 bit of evidence and, on the contrary, determine that
21 it is not very important.

22 Obviously, you cannot physically weigh it. You
23 don't have a set of scales in the jury room, and it
24 doesn't matter who or from whom evidence comes into
25 the record, nor who puts the most evidence in the record.

1 What matters is that on balance what does that
2 evidencetend to show.

3 You will determine that. You determine it by
4 looking at all of the evidence and deciding what is
5 important.

6 You also have to determine what testimony was
7 credible. You have the opportunity to look and to
8 hear all the witnesses who took the stand, and you
9 have to decide who is believable and who is not believ-
10 able.

11 You do that based on your experience, your common
12 sense, and based on what you saw. You can see the
13 mannerisms of the witnesses who took the stand. You
14 see their facial expressions. You see the body lang-
15 uage, and you hear what they have to say.

16 You decide what is plausible and what is not
17 plausible, and you can determine who has something to
18 gain from his or her respective testimony. You take
19 that and you determine what is credible.

20 You can take a portion of a person's testimony and
21 say I'm going to believe that, and you can completely
22 discount another portion of the witness' testimony, if
23 you decide to. That is all in your discretion to do
24 that.

25 Now, when you analyze the evidence, understand

1 that evidence takes one of two forms, direct and cir-
2 cumstantial evidence.

3 Direct evidence is that evidence which immediately
4 establishes the fact to be proven, such as an eye-
5 witness account.

6 Now, circumstantial evidence is proving a chain
7 of facts, collateral facts, which prove the fact that
8 is demonstrated.

9 Okay, and that's a pretty nice little definition,
10 but I'll give you an example of it real quick, and
11 it will make it a little bit clearer. Okay?

12 Let's say that on February 1 it's cold and rainy
13 outside and you've been asleep; that you walk past a
14 window and when you look out there is no precipitation,
15 your front lawn is clear.

16 The next morning when you wake up and you go past
17 that same window, and what you see is a blanket of
18 snow covering the grass or the parking lot. You also
19 observe in that blanket of snow some footsteps that lead
20 up to your door.

21 Now, you've got direct evidence that it snowed
22 last night. That's because it is immediately estab-
23 lished by virtue of the snow being there. You can see
24 the snow and you could even touch it or throw it if
25 you wanted to.

1 But you also have circumstantial evidence that
2 at some time that early morning of that night somebody
3 came to your front door. You don't see that person,
4 you can't touch them, can't feel them, but you know
5 there are footsteps in the snow, the recently fallen
6 snow.

7 So that is circumstantial evidence. Know that the
8 law does not prefer direct or circumstantial evidence
9 over one another. It has the same value under the law,
10 which means that it's just like all the other evidence
11 you look at.

12 You will place whatever value or whatever weight
13 you deem appropriate to all of the evidence, regardless
14 of whether it is direct or circumstantial.

15 Now, ladies and gentlemen, you will see that I
16 read to you my charges, which suggests I'm not smart
17 enough to or that I'm too lazy to memorize it, and
18 some would argue that probably one or both of those are
19 true. Actually, what I do is out of respect for you
20 and out of respect for the parties in this case to make
21 sure that I give you some very precise definitions.

22 So instead of me just waxing poetic off the top
23 of my head, I am reading a little bit, and it's not
24 going to take long, but it is important that I get this
25 right.

1 Now, as you know, the Defendant is charged with
2 attempted murder by the indictment. I am also going
3 to charge you as to lesser included offenses, and I
4 will tell you all of those and show you that on the
5 verdict form as well.

6 I am going to go into a definition of all of the
7 charges for you so that you will have them.

8 First of all, attempted murder -- now, an attempt
9 -- it is important that I define that for you or estab-
10 lish what that means. Then I will define for you mur-
11 der.

12 An attempt is an effort to accomplish a crime
13 which does not succeed. An attempt includes a specific
14 intent to do a particular criminal act and falling
15 short of the intended act.

16 The State must show more than mere preparation in
17 the attempt. There must be some overt act in the ef-
18 fort -- some overt act committed in the effort to commit
19 the crime.

20 Intent means intending the result which actually
21 occurs, not accidentally or involuntarily. An intent
22 may be shown by acts and conduct of the Defendant and
23 other circumstances from which you may reasonably in-
24 fer intent.

25 Now, I'm going to move on to murder. The State

1 must prove beyond a reasonable doubt that the Defendant
2 attempted to kill another person with malice aforethought.

3 Malice is hatred, ill will or hostility towards
4 another person.

5 It is the intentional doing of a wrongful act and
6 without just cause or excuse. It is an intent to in-
7 flict an injury under circumstances that the law would
8 infer an evil intent.

9 Malice aforethought does not imply that malice
10 exists for a particular time before the act was commit-
11 ted, but that malice must exist in the mind of the De-
12 fendant just before and at the time the act was commit-
13 ted. Therefore, there must be a combination of the
14 evil intent and the malice.

15 Malice aforethought may be express or inferred.
16 The terms express or inferred do not mean different
17 kinds of malice but merely the manner in which malice
18 can be shown to exist, either by direct evidence or by
19 inference from the facts and circumstances proven.

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

24 Now, malice may be inferred from conduct showing
25 a complete disregard for human life. Inferred malice

1 may also arise from the use of a deadly weapon, and a
2 deadly weapon is an instrument or substance which is
3 likely to cause death or great bodily harm.

4 Whether an instrument has been used as a deadly
5 weapon depends on the facts and circumstances proven in
6 the case.

7 Examples of a deadly weapon would be guns, swords,
8 knives, brass knuckles and so on and so forth, but un-
9 derstand that an ordinary object can also be used as a
10 deadly weapon, if it has been shown to have been used
11 to inflict serious bodily harm.

12 Now, ladies and gentlemen, that is attempted mur-
13 der, the indicted offense, but within the indicted of-
14 fense are several lesser included offenses.

15 If you determine that the State has not met its
16 burden of proof with respect to attempted murder, then
17 you may consider lesser included offenses. You may
18 consider them in order.

19 Now, I am going to give to you the law as promul-
20 gated by the Legislature of the State of South
21 Carolina with respect to the lesser included offenses,
22 and I'm going to begin with assault and battery of a
23 high and aggravated nature, and then assault and bat-
24 tery in the first degree, assault and battery in the
25 second degree, and assault and battery in the third

1 degree.

2 Before I do that, I'm going to read to you two im-
3 portant definitions. One is as to great bodily injury,
4 and one is as to moderate bodily injury, and the rea-
5 son I'm doing that is because those are used within the
6 definition of the different degrees of assault and bat-
7 tery. So it is important for me to tell you what it
8 means beforehand so you will have that.

9 Great bodily injury means bodily injury which
10 causes a substantial risk of death, which carries ser-
11 ious permanent disfigurement or protracted loss of the
12 impairment of the function of a bodily member.

13 Moderate bodily injury means physical injury re-
14 quiring treatment of an organic system of the body other
15 than the skin, muscles and connecting tissues of the body,
16 except when there is a penetration of the skin, muscles
17 or connecting tissues which requires surgical repair of
18 a complex nature or where treatment of the injury re-
19 quires the use of regional or general anesthesia. Okay?

20 Now, the first lesser included offense is assault
21 and battery of a high and aggravated nature. A person
22 commits the offense of assault and battery of a high
23 and aggravated nature when the person unlawfully in-
24 jures another person or great bodily injury to another
25 person results or the act is accomplished by means

1 likely to produce death or great bodily harm.

2 All right, if you find that the State has not met
3 its burden of proving the Defendant guilty beyond a
4 reasonable doubt of assault and battery of a high and
5 aggravated nature, you would then consider whether the
6 State has met its burden of proof on the charge of as-
7 sault and battery in the first degree.

8 That is defined as follows: A person who commits
9 the offense of assault and battery in the first degree
10 if the person unlawfully offers or attempts to injure
11 another person with a present ability to do so, and the
12 act is accomplished by means likely to produce death
13 or great bodily injury.

14 If you find the State has not met its burden with
15 regard to assault and battery, first degree, you may
16 consider assault and battery, second degree.

17 That is defined as follows: A person who commits
18 the offense of assault and battery in the second degree
19 if the person unlawfully injures another person or offers
20 or attempts to injure another person with the present
21 ability to do so and moderate bodily injury to another
22 person results or moderate bodily injury to another
23 person could have resulted.

24 If you find the State has not met its burden
25 of proof with respect to assault and battery, second

1 degree, you can consider assault and battery in the
2 third degree.

3 Ladies and gentlemen, a person commits the offense
4 of assault and battery, third degree, if the person
5 unlawfully injures another person or offers or attempts
6 to injure another person with the present ability to
7 do so. Okay?

8 Those are the definitions you need to hear, and I
9 am going to show you now the verdict form which you will
10 consider and take it back in your jury room with you.
11 It is a very, very simple verdict form.

12 We have here the caption of the case, South Carolina
13 versus Eric Todd Burgess, and we, the jury, unanimously
14 find the Defendant, Eric Todd Burgess, and we have six
15 options.

16 Those options are, first of all, not guilty. If
17 you find the State did not meet its burden of proof
18 with respect to the indicted offense or to any lesser
19 included offense, you may elect to find the Defendant
20 not guilty.

21 After that, there is attempted murder. If you
22 find that the burden of proof as to that offense has
23 not been met, then you may go on to consider assault
24 and battery of a high and aggravated nature.

25 If you find that has not been met beyond a

1 reasonable doubt, then you can consider assault and
2 battery in the first and then the second and then the
3 third.

4 You would only find one of these options, one
5 of the six. Okay?

6 Now, it is important to know that your decision
7 must be unanimous; that is, all twelve of you must
8 agree. It can't be eleven to one or ten to two, or
9 any other combination of numbers that add up to twelve.
10 It must be a unanimous verdict.

11 Understand that your verdict must be based on the
12 evidence that has been submitted in the trial. It
13 cannot be based on or connected to anything outside.
14 It cannot be based on sympathy or passion. It cannot
15 be based on emotion.

16 It has to be your unanimous determination based
17 on the evidence that you have been given in this trial.
18 Okay?

19 Now, at this point I will ask you to go back to
20 your jury room. Do not start your deliberations yet.
21 I'm going to give these attorneys the opportunity to
22 tell me if I left something out of the charge or if I
23 missed anything, any proposition of law.

24 If I've done any of that, we'll bring you back
25 in the Courtroom to correct what I've said. I hope

1 that didn't happen, but from time to time it does.

2 So if I did not make any mistakes then what I'll
3 do is I will go ahead and instruct the Bailiff to tell
4 you to begin your deliberations. You will know when
5 that happens because I will send back the verdict sheet
6 and ask the alternates to come out.

7 So do not begin your deliberations yet until you
8 are told to do so. Thank you.

9 (Jury excused from Courtroom)

10 THE COURT: All right. Counsel, any exceptions
11 to the charge?

12 SOLICITOR: Nothing from the State, Your Honor.

13 MR. COOKE: Nothing from the Defense.

14 THE COURT: Okay, good enough. I will instruct
15 the Bailiff to take the exhibits back and the verdict
16 form in. I'm also going to take the two alternates
17 and dismiss them from Chambers.

18 I want to compliment the attorneys on the job you
19 have done. On behalf of the parties and everyone who
20 has testified in this case, I appreciate your being
21 civil and professional.

22 It is certainly easier to conduct a trial when
23 everyone is acting like an adult and, believe me, that
24 does not always happen. I appreciate your conduct in
25 the course of this trial. Thank you.

1 (Jury instructed to commence their deliberations.
2 Alternate jurors brought out of jury room and excused
3 by the Court.)

4 (Jury returned to Courtroom after the finding of
5 a verdict was announced)

6 CLERK: Your Honor, this is Case Number 2010 GS 23
7 8937.

8 We, the jury, unanimously find the Defendant Eric
9 Todd Burgess guilty of assault and battery of a high
10 and aggravated nature. Signed by the Foreperson, Boyd
11 Harrison.

12 If this is your verdict, please raise your right
13 hand. (Jurors all raising their right hands) Thank
14 you.

15 THE COURT: All right, counsel, anything before
16 we excuse this jury?

17 MR. COOKE: Not from the Defense.

18 SOLICITOR: Not from the State.

19 THE COURT: All right, ladies and gentlemen, thank
20 you very much. We appreciate your attention to this
21 case. We appreciate your conscientiousness in the
22 matter.

23 (Jury excused with regard to this case)

24 THE COURT: I will ask, Mr. Cooke, that you have
25 the Defendant approach for sentencing.

1 Thank you.

2 (Defendant and counsel coming before the Court)

3 THE COURT: All right, Solicitor. Can you tell
4 me first and foremost the Defendant's prior record, and
5 then any other information you wish me to know?

6 SOLICITOR: Yes, Your Honor. His prior record is
7 as follows: March 17, 2005, receiving stolen goods
8 of less than One Thousand Dollars.

9 March 17, 2005, a vehicle with a missing or in-
10 correctly displayed tag.

11 February 27th of 2006, grand larceny more than
12 One Thousand Dollars but less than Five Thousand Dol-
13 lars.

14 March 15, 2006, molesting or harrassing a minor.

15 April first, 2009, petty larceny.

16 September 24, 2008, assault and battery of a high
17 and aggravated nature, for which he was required to
18 register as a sex offender.

19 I believe that is the complete prior record, Your
20 Honor. He did spend some days in jail. I'm not sure
21 exactly how many -- three hundred and sixty-three.

22 THE COURT: Three hundred and sixty-three?

23 SOLICITOR: That's correct.

24 THE COURT: Okay. Is he on probation?

25 PROBATION OFFICER: Yes, sir.

1 THE COURT: Has he been before the Court on a
2 probation revocation matter?

3 PROBATION OFFICER: Yes, sir, as a result of
4 this case. He was on a probable cause violation.

5 THE COURT: What was the sentence on the underly-
6 ing matter? Do you know?

7 PROBATION OFFICER: I don't have that, Your
8 Honor. I'm sorry.

9 SOLICITOR: I will pass up the record sheet, Your
10 Honor.

11 (Brief pause in the proceeding)

12 MR. COOKE: I have ten years, suspended on one
13 year, five years probation. I'll hand this up to you,
14 which is the probation report I have, Judge.

15 (Brief pause)

16 MR. COOKE: I would say this is just a probable
17 cause violation.

18 THE COURT: I recognize that. Oh, this is the
19 original sheet. Okay. I thought it was the sheet
20 for this offense.

21 SOLICITOR: I'm going to hand it up in a moment,
22 Your Honor.

23 THE COURT: All right, Mr. Cooke. Happy to hear
24 from you.

25 MR. COOKE: Well, Judge, you've heard pretty much

1 everything about Eric here. They live up at Blackford,
2 South Carolina.

3 Really, my client had been doing good except for
4 this thing with his wife. He knew better than to take
5 the law into his own hands, but a lot of people have be-
6 cause of messing around with somebody else's wife.

7 Probably, quite honestly, he got emotional about
8 that. He thought that they were -- after spending the
9 time at McDonald's, he thought there was a chance to
10 get back together, and this just hit him right square
11 between the eyes when he realized she was out with
12 another guy.

13 There is a matter pending down in the Family
14 Court. I don't think my client has a lawyer at this
15 point in time but part of the allegations -- the allega-
16 tions in that case -- I know it falls in Family Court,
17 but she has a lawyer -- an assault and battery case.
18 I don't know what all has gone on over there.

19 Anyhow, according to his daddy he's had some prob-
20 lems. I got his records from the lawyer who was trying
21 to get him disability but the Social Security people
22 denied it. I'm not sure he understood what was going
23 on over there, but they pretty much just turned it
24 down. His lawyer told me they would not have done
25 that if they felt like he was -- didn't understand between

1 right and wrong. That went that far along and they
2 just turned it down flat.

3 So that's where we stand, and, you know, I'd
4 just ask Your Honor to understand the circumstances.
5 I don't know what I'd do. It's probably a good thing
6 my client didn't have a gun or who knows what would
7 have happened.

8 But everybody is okay now, and I would just ask
9 Your Honor to go as easy as possible.

10 THE COURT: All right. Mr. Burgess, I'll be
11 happy to hear from you, sir.

12 DEFENDANT: Yes, sir. I've been in jail for a
13 little over a year. I just want to be a part of my
14 son's life. I haven't seen him in over a year, sir,
15 and before that I spent every day with him. I raised
16 my son every day of his life.

17 I was the one that was there with him giving him
18 care, changing his diapers, and being with him, and
19 today is my son's birthday and here I am in Court af-
20 ter listening to the verdict.

21 She has kept my son from me. She has kept my son
22 from my family. She has tried to sue my dad for mari-
23 tal property, and all I want to do is be a part of my
24 son's life. I want to be able to be there for him, to
25 watch him grow up.

1 Everything I had is gone. I've had to borrow my
2 father's clothes. I don't have anything. She has it
3 all.

4 When I get out of jail I have to start completely
5 over. Like I'm homeless. I just want a chance to get
6 out of jail and be there so my son can say, hey, that
7 is my dad. I've been through a lot and one a lot of
8 wrongs. I want to make things right that I have done
9 wrong.

10 I want to get out and find out like in construc-
11 tion or picking up trash on the side of the road. At
12 least my son can see I'm helping to clean things up.

13 I just want to be able to help make his life
14 better.

15 THE COURT: Thank you, Mr. Burgess. I appreciate
16 that, sir.

17 Your lawyer indicated that the circumstances of
18 this crime involved some mitigation; that is, you were
19 mad as fire because your wife may have done something
20 to you that you felt inappropriate; that it made you
21 as mad as a person can be, and you reacted.

22 I understand that. I do understand that, but
23 you have to understand that in a civilized society
24 we simply can't tolerate people taking the law into
25 their own hands.

1 I wish that I could go back and tell you to take
2 another course, to handle it through another means.

3 DEFENDANT: My father has told me that and ..

4 THE COURT: You are not the first one that has
5 happened to, and a lot of people find themselves in
6 this type situation.

7 But I want to tell you something. You can con-
8 sider yourself fortunate that you did not kill him,
9 because had you killed him you would probably be spend-
10 ing the rest of your life in jail.

11 So you should thank the Lord every day that you
12 did not hurt him any worse than he was injured. It is
13 obvious to me that the jury recognized that as well.
14 They found you didn't actually intend to kill him; that
15 it was something less than that. So they compromised on
16 the verdict which could have been much, much worse.

17 All right, Mr. Burgess, the sentence of the
18 Court is you be committed to the Department of Correc-
19 tions for a period of seven years. That is concurrent
20 with your probation violation.

21 You will get credit for time served, three hun-
22 dred and sixty-three days.

23 -----END OF REQUESTED TRANSCRIPT OF RECORD-----

24

25

1 CERTIFICATE

2 I, HARRIET P. BENNETT, Official Court Reporter
3 for South Carolina Court Administration, do hereby
4 certify that the foregoing Transcript was prepared
5 from the records of Mary DiGirolamo to the best of my
6 ability, having been heard in the Court of General
7 Sessions for Greenville County on January 18, 2012.

8 FURTHER, I certify that I am neither of kin nor
9 counsel to any of the within parties, nor do I have
10 any interest in the outcome of the same.

11 August 1, 2012

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WITNESSES

J A Home

JA

Greenville County Sheriff's Office

10/21/2010

DOCKET NO. 2010-GS-23-
BSD

008937

The State of South Carolina

Rep

County of Greenville

COURT OF GENERAL SESSIONS

May

TERM 2010-2011

THE STATE

vs.

ERIC TODD BURGESS

ARREST WARRANT NUMBER

1483636

ACTION OF GRAND JURY

Eric Todd Burgess

Foreperson of Grand Jury

VERDICT

Guilty

David W. Hansen

Foreperson of Petit Jury

1-18-2012

Date:

Indictment for

*3411
3440*

ATTEMPTED MURDER

VIOLATION § 16-03-0029

RECEIVED

NOV 17 2010

Clerk of Court
Greenville County

STATE OF SOUTH CAROLINA)
)
COUNTY OF GREENVILLE)

INDICTMENT FOR
ATTEMPTED MURDER

At a Court of General Sessions, convened on

MAY 10 2011

the Grand Jurors of Greenville

County present upon their oath:

That ERIC TODD BURGESS did in Greenville County on or about the 20th day of October 2010, unlawfully, with malice aforethought, and with the intent to kill, attempt to kill Christopher Dale. This is in violation of § 16-03-0029 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.

Byron S. Seay
SOLICITOR

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF Greenville
STATE VS.
Eric Todd Burgess

INDICTMENT/CASE#: 2010GS2308937

AKA: _____

A/W#: 1483636Race: Ser Age: _____Date of Offense: 10/20/2010DOB: _____ SS#: 111111S.C. Code § : 16-03-0029

Address: _____

CDR Code #: 3410

City, State, Zip: _____

DL#: _____ SID#: _____

SENTENCE SHEET

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

In disposition of the said indictment comes now the Defendant who was

☒ CONVICTED OF or ☐ PLEADSTO: Assault and Battery of a High and Aggravated Naturein violation of § 16-3-600(B)(1) of the S.C. Code of Laws, bearing CDR Code # 3411☒ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS(CSC w/minor 1st or Lewd Act) ☐ §17-25-45The charge is: ☐ As Indicted, ☒ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.TEST: Bryna J. Seay 65348
Seay, Bryna SC Bar# _____

Defendant

Attorney for Defendant

SC Bar# _____

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,
for a determinate term of 7 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years
and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment
of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for _____

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of
probation, which are incorporated by reference.

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on: W/ and OTHER CHARGES
☒ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied
by the State Department of Corrections. 303

☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal
Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered PTUP _____
Total: \$ _____ plus 20% fee: \$ _____
Payment Terms: _____
☐ Set by SCDPPPS _____

Recipient: _____

*Fine: _____ \$
§ 14-1-206 (Assessments 107.5%) _____ \$
§ 14-1-211(A)(1) (Conv. Surcharge) \$100 \$ 100.00
§ 14-1-211(A)(2) (DUI Surcharge) \$100 \$
§ 56-5-2995 (DUI Assessment) \$12 \$
§ 56-1-286 (DUI Breath Test) \$25 \$ 25.00
Proviso 47.9 (Public Def/Prob) \$500 \$
§ 14-1-212 (Law Enforce. Funding) \$25 \$ 25.00
§ 14-1-213 (Drug Court Surcharge) \$150 \$
§ 50-21-114(BUI Breath Test Fee) \$50 \$
§ 56-5-2942(J) (Vehicle Assessment) \$40/ea \$
Proviso 90.5 (SCCA Surcharge) \$5 \$ 5.00
3% to County (if paid in installments) \$
TOTAL \$

_____ days/hours Public Service Employment

Obtain GED ☐

Attend Voc. Rehab. or Job Corp. _____

May serve W/E beginning _____

Substance Abuse Counseling ☐Random Drug/Alcohol testing ☐Fine may be pd. in equal, consecutive weekly/monthly
pmts. of \$ _____ beginning _____

\$ _____ paid to Public Defender Fund

Other: _____

☐ Appointed PD or appointed other counsel,
§ 47.12 requires \$500 be paid to Clerk
during probation.

Clerk of Court/ Deputy Clerk

Court Reporter: Paul B. Winkler

SCCA/217 (03/2011)

Presiding Judge

Judge Code: 2158Sentence Date: 11/14/2012

FORM 5

STATE OF SOUTH CAROLINA)

IN THE COURT OF COMMON PLEAS

County of Greenville)Burgess, Eric Todd 349367)

Full name and prison number (if any) of Applicant)

v.)

State of South Carolina)

2012-CP-23-

03901

JUN 14 PM 4:07

APPLICATION FOR

POST-CONVICTION RELIEF

INSTRUCTIONS B READ CAREFULLY

In order for this application to receive consideration by the Court, it shall be in writing (legibly handwritten or typewritten), signed by the applicant and verified (notarized), and it shall set forth in concise form the answers to each applicable question. If necessary, applicant may furnish his answer to a particular question on the reverse side of the page or on an additional page. Applicant shall make clear to which question any such continued answer refers.

Since every application must be sworn under oath, any false statement of a material fact therein may serve as the basis of prosecution and conviction for perjury. Applicants should, therefore, exercise care to assure that all answers are true and correct.

If the application is taken in forma pauperis, it shall include an affidavit (attached at the back of the form) setting forth information which establishes that applicant will be unable to pay the fees and costs of the proceedings. When the application is completed, the original shall be mailed to the Clerk of Court for the County in which the applicant was convicted.

1. Place of detention Greenville County Detention Center
2. Name and location of Court which imposed sentence Greenville County
Magistrate Court
3. Name(s) of co-defendant(s) (if any) _____
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
(a) _____

- (b) _____
- (c) _____
5. The date upon which sentence was imposed and the terms of the sentence:
- (a) January 17, 2012
- (b) 7 years non-violent to SCDC (old law).
- (c) _____
6. Check whether a finding of guilty was made:
- (a) after a plea of guilty _____
- (b) after a plea of not guilty found guilty with ABHAN when charged Att. Murde →
- (c) after a plea of nolo contendere _____
7. Did you appeal from the judgment of conviction or the imposition of sentence?
no
8. If you answered Ayes@ to (7), list:
- (a) the name of each Court to which you appealed:
- i. _____
- ii. _____
- iii. _____
- (b) the result in each such Court to which you appealed:
- i. _____
- ii. _____
- iii. _____
- (c) the date of each such result:
- i. _____
- ii. _____
- iii. _____
- (d) if known, citations of any written opinion or orders entered pursuant to such results:
- i. _____
- ii. _____
- iii. _____
9. If you answered Ano@ to (7), state your reasons for not so appealing:
- (a) Didn't know I could.

- (b) _____
- (c) _____
10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:
- (a) I filed a motion for fast and speedy as well to dismiss myself,
- (b) because of dualection of duty of my Public Defender one, Larry Cook
- (c) Told that b/c Mr. Cooke was my (PD) I could not file these motions myself.
11. State concisely and in the same order the facts which support each of the grounds set out in (10):
- (a) Mr. Cooke refused 3 times to file the motions requested,
- (b) told me to file them myself. Judge Finley (Article 5 § IV) Supreme
- (c) court states the State has 180 days from time of arrest to prosecute →
12. Prior to this application have you filed with respect to this conviction:
- (a) any petition in a State Court under South Carolina Law? No
- (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? No
- (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? No
- (d) any other petitions, motions or applications in this or any other Court? Yes
13. If you answered Ayes@ to any part of (12), list with respect to each petition, motion or application:
- (a) the specific nature thereof:
- i. Fast and Speedy Trial
- ii. Motion to Dismiss
- iii. _____
- iv. _____
- (b) the name and location of the Court in which each was filed:
- i. Greenville County Clerk of Court
- ii. In Court with Judge Miller as well Stillwell dated
- iii. Jan. 18, 2012

- iv. _____
- (c) the disposition thereof:
 - i. told I could not file for myself being represented by Mr. Cooke (PE)
 - ii. Judge Miller Dismissed
 - iii. Judge Stillwell Dismissed my motion before my trial violating
 - iv. my 4th, 5th, 11th amendment rights
- (d) the date of each such disposition:
 - i. N/A by letter from Mr. Paul Wickensimer
 - ii. ?
 - iii. Jan. 18, 2012
 - iv. _____
- (e) if known, citations of any written opinions or orders entered pursuant to each such disposition:
 - i. Yes
 - ii. Yes
 - iii. Yes
 - iv. _____

14. Has any ground set forth in (10) been previously presented to this or any other Court, State or Federal, in any petition, motion or application which you have filed?

Yes,

15. If you answered "yes" to (14) identify:

- (a) which grounds have been presented:
 - i. both, county + state yet the state informed me the
 - ii. matter could / would not be heard by them until found
 - iii. guilty.
- (b) the proceedings in which each ground was raised:
 - i. Motion to dismiss, hand written to Mr. Wickensimer
 - ii. Court Jan. 18, 2012
 - iii. _____

16. If any ground set forth in (10) has not previously been presented to any Court, State or Federal, set forth the ground and state concisely the reasons why such ground has not previously been presented:

(a) Insufficient Counsel
 (b) _____
 (c) _____

17. Were you represented by an attorney at any time during the course of:

(a) your arraignment and plea? _____
 (b) your trial, if any? Yes, Public Defender Larry Cooke
 (c) your sentencing? Yes, Public Defender Larry Cooke
 (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? _____
 (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed? _____

18. If you answered Ayes to one or more parts of (17), list:

(a) the name and address of each attorney who represented you:
 i. Larry Cooke, 305 University Ridge (Public Defender)
Greenville SC, 29605
 ii. _____
 iii. _____
 (b) the proceedings at which each such attorney represented you:
 i. Attempted Murder trial Jan. 18, 2012
 ii. _____
 iii. _____

19. State clearly the relief you seek in filing this application:

I feel that I wasn't represented to the best of Mr. Cookes ability, that
he faulted in Attorney Client Privilage information which will result in a
lawsuit That I was unfairly sentenced when both my wife one, Sarah Burgess and

20. Are you now under sentence from any other court that you have not challenged?

N/A

Revised 3/2003

STATE OF SOUTH CAROLINA)

VERIFICATION

County of Greenville)

I, Eric Todd Burgess, being duly sworn upon my oath, depose and say that I have subscribed to the foregoing application; that I know the contents thereof; that it includes every ground known to me for vacating, setting aside or correcting the conviction and sentence attacked in this application; and that the matters and allegations therein set forth are true.



SWORN to and subscribed before me this 31
 day of May, 2012.

Catharine A. Amara (L.S.)
 Notary Public

My Commission Expires: My Commission Expires December 22, 2013

**APPLICATION TO PROCEED WITHOUT PAYMENT
OF COSTS AND AFFIDAVIT
IN SUPPORT THEREOF**

I, Eric Todd Burgess, hereby apply for leave to proceed in this action without prepayment of fees or costs or security therefor. In support of my application I declare under penalty of perjury that the following facts are true:

- (1) I am the applicant in this action and I believe I am entitled to redress.
- (2) Because of my poverty I am unable to pay the costs of said proceeding or give security thereof.


Applicant

SWORN or affirmed to and subscribed before me this
31 day of May, 2012.


Notary Public

My Commission Expires: My Commission Expires December 22, 2018

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	C.A. No. 2012-CP-23-3901
COUNTY OF GREENVILLE	)	
	)	
Eric Todd Burgess,	)	
S.C.D.C. No. 349367,	)	
	)	
Applicant,	)	
	)	RETURN
v.	)	
	)	
State of South Carolina,	)	
	)	
Respondent.	)	
_____	)	

In response to the post-conviction relief application filed June 14, 2012, the Respondent would show this Court:

I.

The Applicant is incarcerated with the South Carolina Department of Corrections pursuant to the Greenville County Clerk of Court's orders of commitment. The Greenville County Grand Jury indicted the Applicant at the May 2011 term of General Sessions for attempted murder (2010-GS-23-8937). Larry Cooke, Esquire, represented the Applicant.

After the State took the case to trial, the Applicant was convicted of the lesser-included offense of assault and battery of a high and aggravated nature. On January 18, 2012, the Honorable Robin B. Stilwell sentenced the Applicant to seven (7) years imprisonment. The Applicant did not appeal.

Attached herewith and incorporated herein by reference are the records of the Greenville County Clerk of Court regarding the subject conviction, the Applicant's records from the South Carolina Department of Corrections, and the trial transcript.

II.

In his application for post-conviction relief the Applicant alleges he is being held in custody unlawfully for the following reason:

1. "I filed a motion for fast and speedy as well to dismiss myself, because of a duralection of duty of my Public Defender one, Larry Cooke. Told that b/c Mr. Cooke was my (PD) I could not file those motions myself."

III.

Respondent interprets Applicant's claim as an allegation of ineffective assistance of counsel. The Respondent asserts this allegation is without merit. The Respondent asserts the Applicant's attorney rendered effective assistance well within the standard of "reasonableness within professional norms" for a defense attorney.

Where ineffective assistance of counsel is alleged as a ground for relief, the Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied on as having produced a just result." Strickland v. Washington, 466 U.S. 668, 686, 104 S. Ct. 2052, 2064 (1984); Butler v. State, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985).

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume counsel "rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment." Strickland, 466 U.S. at 690, 104 S. Ct. at 2066. The Applicant must overcome this presumption in order to receive relief. See Cherry v. State, 300 S.C. 115, 118, 386 S.E.2d 624, 625 (1989).

A two-pronged test is used in evaluating allegations of ineffective assistance of counsel. First, the applicant must prove counsel's performance was deficient. Under this prong, attorney

performance is measured by its "reasonableness under prevailing professional norms." Cherry v. State, 300 S.C. at 117, 386 S.E.2d at 625 (quoting Strickland, 466 U.S. at 688, 104 S. Ct. at 2065). Second, counsel's deficient performance must have prejudiced the Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625. "A reasonable probability is a probability sufficient to undermine confidence in the outcome of trial." Johnson v. State, 325 S.C. 182, 186, 480 S.E.2d 733, 735 (1997) (citing Strickland v. Washington, 466 U.S. 668, 104 S. Ct. 2052 (1984)).

The Respondent submits the Applicant cannot satisfy either requirement of the Strickland v. Washington test. However, the allegation of ineffective assistance of counsel probably raises questions of fact that cannot be conclusively refuted by the record. The Respondent requests an evidentiary hearing to fully resolve this issue. See Sharper v. State, 279 S.C. 264, 265, 305 S.E.2d 247, 248 (1983) (citing Norman v. State, 276 S.C. 278, 277 S.E.2d 707 (1981)).

IV.

The Respondent denies each allegation not expressly admitted, qualified or explained.

V.

WHEREFORE, having made its Return, the Respondent requests that a hearing be held and counsel appointed to represent the Applicant.

Respectfully submitted,

ALAN WILSON
Attorney General

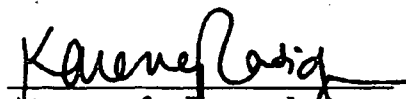
JOHN W. McINTOSH
Chief Deputy Attorney General

SALLEY W. ELLIOTT
Assistant Chief Deputy Attorney General

KAREN C. RATIGAN
Assistant Deputy Attorney General

P.O. Box 11549
Columbia, S.C. 29211

By:


Attorneys for Respondent

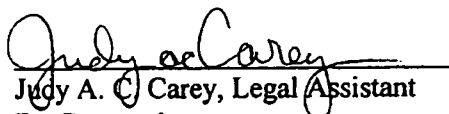
Nov. 30, 2012

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF GREENVILLE	)	
	)	
	)	2012-CP-23-3901
	)	
ERIC TODD BURGESS, 349367	)	
	)	
Applicant,	)	
	)	
vs	)	AFFIDAVIT OF SERVICE BY MAIL
	)	
STATE OF SOUTH CAROLINA,	)	
	)	
Respondent.	)	

1. I am an employee of the Respondent in the above-captioned action.
2. Regular communication by mail exists throughout the State of South Carolina and that this is a proper circumstance of service by mail.
3. I have this day served a copy of the **Return** in the above-captioned matter on the following person by depositing same in the United States mail, postage prepaid:

**Eric Todd Burgess, 349367
Kershaw Correctional Institution
4848 Goldmine Highway
Kershaw SC 29067**

DATED this 30th day of November, 2012.


Judy A. Carey, Legal Assistant
For Respondent

STATE OF SOUTH CAROLINA

COUNTY OF GREENVILLE

Eric Todd Burgess, SCDC # 349367,
Applicant,

vs.

THE STATE OF SOUTH CAROLINA,
Respondent.IN THE COURT OF COMMONS PLEAS
CASE NO: 2012-CP-23-3901AMENDMENTS TO
POST CONVICTION
RELIEF APPLICATIONSFILED
CLERK OF COURT
GREENVILLE, SC
JAN 29 AM 8:56

The applicant hereby amends answers to number 9 and number 10 of his Application for Post-Conviction Relief to state the following:

9. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:

(A) The Applicant was denied effective assistance of counsel in violation of the Sixth Amendment to the United States Constitution and Article I, Section 14 of The South Carolina Constitution.

10. State concisely and in the same order the facts which support each of the grounds set out in (9):

(a) The applicant was provided with deficient representation by his attorney, in that the conduct of his attorney was objectively unreasonable under the circumstances. Strickland v. Washington, 466 U.S. 668 (1984). The outcome of the applicant's proceeding was prejudiced, and it is reasonable probable that the outcome would have been different had counsel's performance not been deficient. Strickland, 466 U.S. at 694. Defense counsel was ineffective based on one or more of the following:

1. My defense attorney failed to conscientiously discharge his professional responsibilities while he was handling my case.
2. My defense attorney failed to effectively challenge the arrest and seizure of Applicant.
3. My defense attorney failed to act as my diligent, conscientious advocate.
4. My defense attorney failed to give me his complete loyalty.
5. My defense attorney did not have my best interest in mind while he was supposed to be investigating and preparing my case.
6. My defense attorney failed to serve my cause in good faith.
7. My defense attorney neglected the necessary investigations and the preparation of my case.
8. My defense attorney did not do the necessary factual investigations on my behalf.
9. My defense attorney did not do the necessary legal research.
10. My defense attorney did not conscientiously gather any information to protect my rights.
11. My defense attorney did not try to have my case settled in a matter that would have been to my best advantage.
12. My defense attorney did not advise me of all my rights or take any of the actions that were necessary to protect preserve them; knowing that I was not versed in the law.
13. My defense attorney, knowing I was illiterate in the law, never properly ascertained whether or not I actually understood or comprehended all of the issues that were involved in my case.
14. My defense attorney never properly consulted with me or kept me informed with what was going on as far as my case was concerned.
15. My defense attorney never explained to me or discussed with me any of the elements of the crime charged.
16. My defense attorney never made any attempt to ascertain whether or not I actually knew what the elements fo the crime charged were

or whether or not I understood exactly what the term "criminal" element" actually meant.

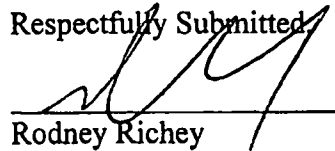
17. My defense attorney never explained to me or discussed with me how the elements of the crime charge and the evidence that the prosecution planned to introduce into evidence against me related to one another and did not discuss how the sentencing would be done especially as it related to the elements of the crime as in State V. Boyd.
18. My defense attorney never informed me of any of the defenses that were available to me.
19. My defense attorney never intended to offer any defense to the court on my behalf.
20. My defense attorney never explained to me or discussed with me any kind of defense strategy.
21. My defense attorney never explained to me or discussed with me any of the tactical choices that they either made or were planning to make.
22. My defense attorney dictated to me exactly how my case was going to be handled and offered no alternative options.
23. My defense attorney failed to properly acquaint themselves with the law and the facts surrounding my case and as a direct result of their intentional negligence, there was a very serious error in their assessment of both the law and the facts.
24. Because of my defense attorney's gross neglect and his many legal errors no defense at all was put in issue for me during the Court proceedings.
25. My defense attorney did not subject the prosecution's case to any adversarial testing.
26. My defense attorney failed to oppose the prosecution's case with any adversarial litigation.
27. My defense attorney failed to function as the government's adversary in any sense of the word.
28. My defense attorney failed to pursue any of the legal recourse that were available to him.

29. The attorney that represented me on this charge in Court failed to function as the counsel that the Constitution's Sixth Amendment Guarantees.
30. My defense attorney failed to call alibi witnesses on my behalf which would have proven my innocence.
31. My defense attorney failed to appeal my case after I was convicted when I wanted to appeal.

His counsel's representation was not within the range and scope of competence demanded by Strickland and its progeny.

A convicted defendant's claim that counsel's assistance was so defective as to require reversal of a conviction requires that the defendant show first, that the deficient performance prejudiced the defense so as to deprive the defendant of a fair trial. Sosebee v. Leeke, S.C. 362, F. 2nd 221 (1987), citing Strickland v. Washington 46 S.E.2D. 813 (1984), See also Butler v. State 286 S.C. 441, 334 S.E. 2d 813 (1985), also, Hill v. Lockhart 474 U.S. 88 (1985).

Respectfully Submitted,



Rodney Richey
Richey and Richey, P.A.
Post Office Box 10916
Greenville, South Carolina 29603
Attorney for the Applicant

January 11, 2013

STATE OF SOUTH CAROLINA)

COUNTY OF GREENVILLE)

Eric Todd Burgess, SCDC # 349367,)

vs.)

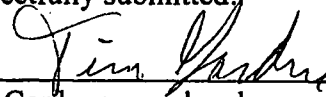
THE STATE OF SOUTH CAROLINA)

IN THE COURT OF COMMONS PLEAS
CASE NO: 2012-CP-23-3901**AFFIDAVIT OF SERVICE**

JAN 11 2013 AM 8:56

I certify that I have served the Amendments to PCR Application on the State of South Carolina by depositing copy of it in the United States Mail, postage prepaid, on January 11, 2013, addressed to their attorney of record, Office of Attorney General State of South Carolina, Post Office Box 11549, Columbia, SC 29211-1549.

Respectfully submitted:



Tina Garduno, paralegal
Richey and Richey, P.A.
Post Office Box 10916
Greenville, South Carolina 29603

Sworn to before me on
January 11, 2013



Notary Public of South Carolina

My Commission Expires: 7/15/2013

STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE

IN THE COURT OF COMMON PLEAS

ERIC TODD BURGESS,

PLAINTIFF,

-VS-

STATE OF SOUTH CAROLINA,

DEFENDANT.

2012-CP-23-3901

DECEMBER 17, 2013

TRANSCRIPT OF RECORD

BEFORE:

THE HONORABLE G. EDWARD WELMAKER, JUDGE

APPEARANCES:

RODNEY RICHEY, ESQUIRE
ATTORNEY FOR THE PLAINTIFF

KAREN RATIGAN, ESQUIRE
ATTORNEY FOR THE DEFENDANT

DANETTE P. HANKS
CIRCUIT COURT REPORTER

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Eric Todd Burgess -vs- State of South Carolina (2012-CP-23-3901)
Exhibits

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PLAINTIFF'S EXHIBITS

NO	DESCRIPTION	ID	EV
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DEFENDANT'S EXHIBITS

	(NONE)		

COURT'S EXHIBITS

	(NONE)		

1 **DECEMBER 17, 2013**

2 (WHEREUPON, Court convened with all parties present
3 and the following proceedings were had.)

4 THE COURT: Ms. Ratigan.

5 MS. RATIGAN: Thank you, Your Honor. May it
6 please the court. This is the case of Eric Todd Burgess
7 versus the State of South Carolina. Docket Number is
8 2012-CP-23-3901. Mr. Burgess was indicted for attempted
9 murder. He was represented on that charge by Mr. Cooke.
10 The case was brought to trial in January of 2012. Mr.
11 Burgess was convicted of assault and battery of a high
12 and aggravated nature on January 18th of 2012. Judge
13 Stilwell sentenced him to seven years imprisonment. He
14 did not file an appeal. And the state is ready to
15 proceed.

16 THE COURT: Mr. Richey.

17 MR. RICHEY: We call Mr. Burgess.

18 THE COURT: If you'll come around, please, to
19 be sworn.

20 THE CLERK: Mr. Burgess, please place your
21 left hand on the bible and raise your right hand as best
22 you can.

23 You do solemnly swear or affirm that the testimony
24 you're about to give in this case will be the truth, the
25 whole truth and nothing but the truth, so help you God?

Eric Todd Burgess -vs- State of South Carolina (2012-CP-23-3901)
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1 THE WITNESS: Yes, ma'am, I do.

2 THE CLERK: Thank you. Please state your full
3 name for the record.

4 THE WITNESS: Eric Todd Burgess.

5 THE CLERK: Thank you. You may be seated.

6 **ERIC TODD BURGESS,**

7 **HAVING BEEN DULY SWORN, TESTIFIED AS FOLLOWS:**

8 **DIRECT EXAMINATION**

9 **BY MR. RICHEY:**

10 Q. Mr. Burgess, are you currently in the department
11 of corrections?

12 A. Yes, sir, I am.

13 Q. And what are you there for?

14 A. I was found guilty of assault and battery high and
15 aggravated nature in 2012 by Judge Robin Stilwell and
16 sentenced to seven years non-violent.

17 Q. Okay. And who represented you on those charges?

18 A. Mr. Larry Cooke.

19 Q. And you have filed an application, and it's your
20 position that Mr. Cooke did not effectively represent
21 you; is that correct?

22 A. That's correct, sir.

23 Q. And one of the issues -- I'm going to start with
24 the first issue here. During the jury selection
25 process, was there a problem with the jury that was

1 selected that you had?

2 A. Yes, sir. A public defender, Kim R. Varner, was
3 selected as a jury member, which was a conflict of
4 interest because he had a personal relationship with
5 each individual within the court.

6 Q. And did you talk to Mr. Cooke about striking Mr.
7 Varner?

8 A. Sir, I had no idea that he was even a public
9 defense then. I wouldn't have known if it wasn't for
10 Ms. Ratigan sending me the transcript.

11 Q. Okay. So you think it was improper for him not to
12 strike Mr. Varner?

13 A. I'm sorry. I didn't ---

14 Q. You thought it was improper for him not to have
15 Mr. Varner ---

16 A. Correct.

17 Q. Okay. You also have an issue about a fast and
18 speedy trial; is that correct?

19 A. Yes, sir.

20 Q. And can you talk to me about that?

21 A. Yes, sir. While I was in the county, in
22 Greenville County, I requested Mr. Cooke to file a fast
23 and speedy, as well as for the preliminary hearing. All
24 that. None of it was ever filed. He told me over the
25 phone at the institution that if I wanted it filed to do

Eric Todd Burgess -vs- State of South Carolina (2012-CP-23-3901)
PCR Hearing

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1 it myself. And I have documentation of where I filed
2 with Paul Wickensimer as proof that I was acting on my
3 own behalf. Paul Wickensimer-sends me correspondence
4 back to tell me that because Mr. Cooke has been assigned
5 to me I may not act on my own behalf.

6 Q. Okay. And so you believe that you were prejudiced
7 by that?

8 A. Correct, sir.

9 Q. And how were you prejudiced by that?

10 A. Prejudiced?

11 Q. Yeah. Meaning, how did that hurt your case?

12 A. Mr. Cooke was not acting on my best interest. He
13 had not my best interest at heart.

14 Q. And you felt like that there was a due process
15 violation in your case, as well; is that correct?

16 A. Yes, sir, I do.

17 Q. And what was that?

18 A. I'm sorry.

19 Q. What was that? What was the violation?

20 A. With him not following -- or requesting for any of
21 what has been mentioned, I had no, you know, no
22 documents or anything.

23 Q. The trial itself, do you believe that Mr. Cooke
24 zealously and properly represented you during the trial
25 of the case?

1 A. I do not, sir.

2 Q. And why is that?

3 A. Because as he caught multiple witnesses committing
4 perjury in court, he never impeached them, sir.

5 Q. You had a plea offer ---

6 A. May I stand?

7 Q. Sit right there; that's fine.

8 MR. RICHEY: Your Honor, can I approach the
9 witness?

10 THE COURT: Yes, sir.

11 Q. Were you -- were there any plea offers made in
12 your case?

13 A. No, sir, not that I was aware until I was
14 incarcerated with SCDC, and I received correspondence
15 from Karen Ratigan giving me a copy of everything.

16 Q. Okay. Let's go back. When you -- prior to going
17 to trial, did you ever receive any contact or letters
18 from Mr. Cooke about any plea offer?

19 A. No, sir. I was never made aware of any plea
20 offer. I was continually informed that Ms. Bryna Seay
21 was continuing to seek attempted murder.

22 Q. Okay. So it was never -- you never had a
23 discussion that they were going to offer you something
24 less than that?

25 A. No, sir.

Eric Todd Burgess -vs- State of South Carolina (2012-CP-23-3901)
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9

1 Q. Okay. Is this document that I'm holding that was
2 sent to Mr. Cooke on May 11th, which we have a copy, is
3 this a plea offer in your case?

4 A. Yes, sir, it is.

5 Q. And what is the offer?

6 A. It's a plea to the lesser included offense of
7 assault and battery in the first degree.

8 Q. Okay. And your testimony is the first day you saw
9 that was the date that -- the first time you saw it is
10 after Ms. Ratigan sent it to you?

11 A. Correct.

12 Q. And that you never had any discussions with Mr.
13 Cooke about this offer?

14 A. No, sir.

15 Q. What date were you tried on? Was it January ---

16 A. January [REDACTED], 2012, my son's birthday, sir.

17 Q. Okay. And this plea offer is dated May the 11th,
18 2011; is that correct?

19 A. Correct, sir.

20 Q. So this offer was made some seven -- six months,
21 seven months, before you went to trial?

22 A. Yes, sir.

23 Q. And during all that time, Mr. Cooke never
24 discussed this with you at any point?

25 A. No, sir.

1 Q. Okay.

2 MR. RICHEY: We'd like to offer this as
3 Applicant's Number 1.

4 MS. RATIGAN: I have no objection, Your Honor.

5 THE COURT: Without objection, Exhibit 1 is
6 admitted.

7 (WHEREUPON, Plaintiff Exhibit Number 1 was marked
8 and admitted into evidence.)

9 Q. If Mr. Cooke had discussed this offer with you,
10 would you have accepted it?

11 A. Yes, sir, I would have.

12 Q. Okay. And do you believe it would have been in
13 your best interest to accept this offer?

14 A. Yes, sir, I do.

15 Q. In terms of the trial itself, is it your position
16 that some of the evidence was destroyed in your case?

17 A. Yes, sir, it was.

18 Q. And can you tell me what evidence that was and who
19 destroyed it?

20 A. Yes, sir. I would actually like to bring forth --
21 Mr. Cooke actually brought it up at the beginning of the
22 trial. He informed Mr. Stilwell that my wife and the
23 victim, the alleged victim, had gotten rid of evidence
24 that would have proved my innocence. In doing so, me
25 not being able to bring forth the evidence has violated

Eric Todd Burgess -vs- State of South Carolina (2012-CP-23-3901)
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1 my constitutional rights.

2 Q. What evidence are you referring to?

3 A. The vehicle that they claim that I ran the man
4 down with.

5 Q. And what did they do with it?

6 A. They forged my name to the title and signed -- and
7 sold it, a month after I was incarcerated at the
8 Greenville County Detention Center.

9 Q. And during the time that this purchase was done or
10 sold, were you out of jail?

11 A. No, sir. I've been incarcerated since October
12 20th, 2010.

13 Q. So you did not have the ability to stop it?

14 A. No, sir. I had no knowledge of it.

15 Q. Did you discuss with Mr. Cooke the strengths or
16 weaknesses in your case?

17 A. Well, in the time that I had with Mr. Cooke, Mr.
18 Cooke visited me maybe three times while I was at the
19 detention center. But every time that he visited me or
20 he actually seen me on the video visit was to tell me,
21 oh, Ms. Seay is proceeding on with the attempted murder.
22 She's not backing down. They believe that you tried to
23 kill this man. I mean, the warrant itself, you know, is
24 stacked with murder/attempted murder. I mean, I've done
25 everything I can since I've been incarcerated with SCDC

1 and had the privilege to actually access a law library,
2 because in Greenville County we were not allowed to
3 access a law library.

4 Q. The question is, did he sit down and y'all discuss
5 ---

6 A. He never discussed or went through anything
7 detailed, no, sir.

8 Q. Let me finish my question.

9 A. Okay. I'm sorry.

10 Q. Did he ever sit down and say, hey, the state's got
11 this, this, this and they've got to prove this, this,
12 this, therefore the case could be this?

13 A. No, sir. Actually Mr. Cooke and his office
14 submitted that was -- what he informed me was a motion
15 of discovery. The motion actually did not include
16 affidavits or written statements of what happened that
17 night from two individuals that the state used as
18 witnesses.

19 Q. So you say the motion itself did not -- let me ---

20 A. At the time they did not -- it was, it was
21 presented at a later date after, after -- right before I
22 went to court.

23 Q. The statements were presented later?

24 A. Yes, sir.

25 Q. Okay. And so did you have any time to review

Eric Todd Burgess -vs- State of South Carolina (2012-CP-23-3901)
PCR Hearing

13

1 those statements?

2 A. No, sir.

3 Q. Okay.

4 A. He never discussed them with me, went over them
5 with me, anything.

6 Q. So when he talked to you those three times, I
7 mean, was the conversation, hey, they've got this, and
8 that was the end of it? He never said, hey, look at
9 this, look at that?

10 A. No. It was basically him telling me that she had
11 me, she was going to do -- you know, she was going to
12 pursue this to the full extent. He was very -- and if I
13 may say so -- disrespectful toward me. I understand
14 that, you know, I had gotten upset and the man and I got
15 into a physical altercation. But nowhere and no how did
16 I ever attempt to kill the man. Nowhere and no how did
17 I run the man down with my vehicle.

18 Q. Okay. You had talked about a non-violent
19 sentence. How much time did you serve in your original
20 sentence?

21 A. I've already served three years, sir.

22 Q. And how much time do you have to serve on that
23 sentence?

24 A. Three more.

25 Q. And were you under the belief that you were not

1 going to have to serve that much time?

2 A. I was correct -- that's correct.

3 Q. Okay. And tell me why you're under the belief
4 that you would not serve that much time?

5 A. Because when I was sentenced that day in court, I
6 was sentenced to seven years non-violent. Seven years
7 non-violent with the department of corrections is three
8 and a half years, sir. I wasn't aware I was sentenced
9 to violent until SCDC made me aware.

10 Q. Okay. And so did you have an opportunity to talk
11 to Mr. Cooke about that?

12 A. Actually, after I brought, you know, brought
13 attention to it, I was brought back to court by Mr.
14 Bryna Seay, I believe, in front of Judge Verdin. And
15 Judge Verdin told me basically in court that because
16 Judge Robin B. Stilwell was on his leave of National
17 Guard, that she didn't know his true intentions. That
18 as of that date that I was sentenced, that it should
19 have been, it should have been violent. She didn't
20 understand why he had written non-violent in on my
21 sentencing sheet.

22 Q. Was Mr. Cooke with you that day?

23 A. Yes, sir.

24 Q. And do you believe he could have done anything to
25 change that in front of Judge Verdin?

Eric Todd Burgess -vs- State of South Carolina (2012-CP-23-3901)
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1 A. I could have at least -- I mean, the man made the
2 statement to me as soon as I walked through the door is,
3 I thought I got rid of you months ago.

4 Q. Okay. So you do not believe that he acted in your
5 best interest?

6 A. No, sir. Never.

7 Q. Are those the issues that you are raising against
8 Mr. Cooke?

9 A. Yes, sir, at the time.

10 Q. And -- thank you. Answer any questions Ms.
11 Ratigan has for you.

12 A. Okay.

13 **CROSS EXAMINATION**

14 **BY MS. RATIGAN:**

15 Q. You say you had three visits with Mr. Cooke?

16 A. As far as I recall, yes, ma'am.

17 Q. Okay. And were those visits where he came to the
18 jail or video conference or a combination?

19 A. He did -- a combination, yes, ma'am.

20 Q. And did you review any of the evidence with Mr.
21 Cooke?

22 A. No, ma'am.

23 Q. Okay. So what did you talk about during these
24 three visits?

25 A. Basically he just continued, you know, trying to

1 tell me, you know, hey, you know, she's going forward
2 with the attempted murder. You know, are you sure you
3 want to do this? And, you know, I wasn't, I wasn't
4 going to say that I attempted to murder anyone. I never
5 attempted to murder anybody.

6 Q. So on these visits all he did was try and tell you
7 how strong the state's case was?

8 A. Correct.

9 Q. And y'all didn't actually talk about the case?

10 A. No. All he continued to tell me is that by the
11 looks of things, you know, you tried to kill this man.
12 I can't help that when the man evaded trying to run away
13 from me and after he was let up that he fell down a
14 hill.

15 Q. Okay. And did you tell Mr. Cooke your version of
16 what had happened that day with the victim and your
17 wife?

18 A. Correct. And I even submitted multiple statements
19 to him, his office, as well as Ms. Seay.

20 Q. Okay. And your testimony today is that you never
21 heard about this plea offer from the state?

22 A. No.

23 Q. Okay. Did Mr. Cooke tell you what your strategy
24 was going to be at trial, like how he was going to
25 present your case?

Eric Todd Burgess -vs- State of South Carolina (2012-CP-23-3901)
PCR Hearing

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1 A. No, ma'am.

2 Q. And the issue about the car being sold, didn't Mr.
3 Cooke ask your wife about this on cross-examination? Do
4 you remember?

5 A. He did ask her about it and she evaded his
6 questions until he finally got her to admit that she had
7 gotten rid of the vehicle.

8 MS. RATIGAN: That's all I have, Your Honor.

9 THE COURT: Any redirect?

10 MR. RICHEY: No other questions.

11 THE COURT: Thank you, sir. You may step
12 down.

13 MR. RICHEY: That's all my witnesses.

14 MS. RATIGAN: Since the applicant has rested,
15 the state would call Mr. Cooke.

16 THE COURT: Okay.

17 THE WITNESS: Your Honor, if I may, may I
18 present the original sentencing sheet?

19 MR. RICHEY: I think that's in the record.

20 THE COURT: It's in the record.

21 MR. RICHEY: It's in the record.

22 THE WITNESS: Okay. Thank you, sir.

23 THE COURT: I've got a copy.

24 THE WITNESS: I just wanted to make sure for
25 the record.

1 THE COURT: Okay.

2 THE CLERK: You do solemnly swear or affirm
3 that the testimony you're about to give in this case
4 will be the truth, the whole truth and nothing but the
5 truth, so help you God?

6 THE WITNESS: I do.

7 THE CLERK: Thank you. Please state your full
8 name for the record.

9 THE WITNESS: Larry Holmes Cooke.

10 THE CLERK: Thank you.

11 LARRY HOLMES COOKE,

12 HAVING BEEN DULY SWORN, TESTIFIED AS FOLLOWS:

13 DIRECT EXAMINATION

14 BY MR. RICHEY:

15 Q. And Mr. Cooke, do you recall representing Mr.
16 Burgess on this charge?

17 A. I do.

18 Q. And were you appointed or were you retained?

19 A. I was appointed.

20 Q. Did you file the usual Brady and Rule 5 discovery
21 motions?

22 A. We did.

23 Q. Did you receive those materials from the state?

24 A. Yes.

25 Q. Mr. Burgess stated that you did not receive a

1 couple of statements until right before the trial. Does
2 that sound accurate?

3 A. Honestly, I don't remember that at all.

4 Q. Did you review the documents you received from the
5 state with Mr. Burgess?

6 A. I did.

7 Q. Did you review with him his version of what had
8 happened that day?

9 A. A number of times.

10 Q. And did he basically tell you that he didn't try
11 and kill the victim?

12 A. Yes. That's true.

13 Q. Do you recall Mr. Burgess asking you about a
14 speedy trial motion?

15 A. Yeah. Yes, ma'am, I do.

16 Q. And did you ever make that motion on his behalf?

17 A. I think we did, yeah. Not only that, I think we
18 made another motion to dismiss the charges based on a
19 lack of evidence, which is an unusual motion to make.

20 But I did it because he insisted that I do it. We were
21 turned down on both motions. I think he wanted to fire
22 me at one time and they turned him down on that.

23 Q. Did you perceive there being any issue with Kim
24 Varner being seated on the jury?

25 A. I really don't -- never. I thought -- as a matter

1 of fact, I think he ended up being an alternate.

2 Q. Okay.

3 A. I mean, he's a defense attorney. I felt like -- a
4 criminal defense attorney. I felt like he would be a
5 good person to sit on the jury.

6 Q. Did you ever receive a plea offer from the state?

7 A. Yes. I did.

8 MS. RATIGAN: May I approach, Your Honor?

9 THE COURT: You may.

10 Q. Mr. Cooke, I'm handing you what was marked as
11 Exhibit 1. Is this the offer that you received from the
12 state?

13 A. Let's see. May 17th I got an email. Yeah, that's
14 probably it.

15 Q. And did you review that plea offer with Mr.
16 Burgess?

17 A. I'm sure I did. What we usually do is the
18 secretary or investigator sends him a copy of the plea
19 order -- of the plea offer. And in this case, let's
20 see, on 5/19 of '11, Piper said the client called three
21 times. I tried to let him know of his plea offer.
22 However, he wanted to argue that his attorney was a
23 liar, and so am I. He wanted to ask the attorney. I
24 told him I was going to hang up. And then that same day
25 he called again and asked to speak to the supervisor.

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PCR Hearing

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1 And she let him talk to Debra, who is her supervisor.
2 And then on 5/24, I did a video conference with him to
3 discuss that plea offer. And he said no deal on the
4 assault and battery first. And I advised him at that
5 time to please not call all the time because he was
6 tying up the phone; that other people wanted to call my
7 office and he was continually calling my office
8 harassing people there in my office. So I asked him to
9 please cut down on the amount of the phone calls,
10 because they were not accomplishing anything.

11 Q. Okay. Now, the issue about the evidence being
12 destroyed. Did Mr. Burgess ever relay his concern that
13 the car he was driving had been sold by his wife?

14 A. Probably so. That would be natural, I think, in
15 any case. Nothing I could do about it. It was gone.

16 Q. And do you recall being able to cross-examine his
17 wife about that at trial?

18 A. I did, yes. And she admitted it.

19 Q. Okay. Did you discuss -- well, let me back that
20 up. What was your trial strategy when you went to
21 trial?

22 A. I went out to the scene a number of times with my
23 investigator, and we tried to reconstruct and thought we
24 did -- I thought we did a pretty good job in presenting
25 the case. The pictures -- we made a number of pictures.

1 Of course, the state had pictures of the young fellow
2 that he hit; pretty banged up. And it was not -- it was
3 pretty obvious from looking at the pictures it was not
4 from a fist fight. This guy looked like he had been
5 skinned up pretty good. But anyhow, yeah, I thought we
6 did a pretty good job presenting the case. Of course,
7 the verdict came back not guilty of the charge, so I
8 thought we did pretty good. But let me mention
9 something here that I think is really important. There
10 were some allegations earlier about me not discussing
11 this case with Eric. I talked to Eric so many times,
12 you know, and in all this, there are notations on all my
13 conversations here in my file. I mean, we've got two or
14 three sheets of notations, plus other notations where I
15 talked to Eric on the phone and he called me at my
16 office, my private office, a number of times. But I had
17 a heck of a time -- and I just want to read you an email
18 that I sent -- my secretary Piper Davidson -- this was
19 sent on December the 4th where I said I called him twice
20 about coming in to prepare for trial and he says no way
21 to get here. No way to come down here. Still being
22 very combative and hard to talk with. I finally hung up
23 because he continued to be argumentative and not
24 interested in coming to prepare for trial. Please note
25 this for the file. In other words, I emailed Piper to

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1 copy that and put it in the file. And that was back on
2 December the 4th. I tried every way I could to get him
3 down here for us to talk about it.

4 Q. Would that be a pretty fair assessment of your
5 relationship with him, which was combative?

6 A. Very. I thought he was the most combative guy
7 I've ever dealt with in my life.

8 Q. So would it be fair to say your basic trial
9 strategy was just to argue he didn't hit him with the
10 car and there was no intent to kill?

11 A. His -- all along, all along he says the guy jumped
12 in front of him; that he didn't try to run him down.

13 Q. In your opinion, obviously this is kind of one of
14 those Monday morning quarterback type questions, but is
15 there anything else you believe you could have done to
16 prepare the case for trial?

17 A. No. As a matter of fact, I will say this, that I
18 probably spent -- of course, Mr. Burgess didn't know
19 because I couldn't get him down here to help me -- but I
20 spent hours. I went out to the scene of that crime so
21 many times. I measured, I took pictures. I've got
22 pictures here in the file. My assistant and I did
23 everything we could to try to win this case. The state,
24 I thought, put up an overwhelming case, to be quite
25 honest with you. They ever had a witness who claims

1 that they saw -- the witness claims that he saw Mr.
2 Burgess intentionally -- what appeared to him -- to
3 intentionally try to run over this man. Thank goodness,
4 the jury didn't believe him, because I questioned him
5 closely about where he was standing and how he possibly
6 could have seen it. So anyhow, I think they kind of
7 felt like he might, you know, he might not have really
8 seen everything he said he could see.

9 MS. RATIGAN: That's all I have, Your Honor.

10 MR. RICHEY: One moment, Your Honor, please.

11 THE COURT: Yes, sir.

12 MR. RICHEY: Your Honor, we don't have any
13 questions. We're going to call Mr. Burgess in reply.

14 THE COURT: All right. Any other witnesses
15 from the state?

16 MS. RATIGAN: No, Your Honor, the state would
17 rest.

18 THE COURT: All right. All right, sir, you
19 can come back around. Let me remind you, you're still
20 under oath, Mr. Burgess.

21 ERIC TODD BURGESS,

22 HAVING BEEN PREVIOUSLY SWORN, TESTIFIED AS FOLLOWS:

23 REPLY DIRECT EXAMINATION

24 BY MR. RICHEY:

25 Q. Mr. Burgess, you heard Mr. Cooke's testimony about

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25

1 the number of times that he talked to you on the phone
2 and all this?

3 A. Correct.

4 Q. You know, were those statements correct? Did you
5 talk to him a lot on the phone?

6 A. No, sir. I spoke mostly with his secretary Piper,
7 and the other one, I don't remember her name. Basically
8 what I was doing while I was incarcerated with
9 Greenville County is I was playing most his private
10 office and the public defender's office to gain
11 information. Piper actually informed me that when I
12 requested him to file the motion to dismiss, he went to
13 Ms. Bryna Seay and told her what I was informing him to
14 do. And then all of a sudden, I end up in court.

15 Q. So you did end up in court on the motion to
16 dismiss; is that what you're saying?

17 A. Yes.

18 Q. Okay. So you had to take different maneuvers, but
19 ---

20 A. Yeah. I was playing the system because I wanted
21 the truth to come out. I mean, I wanted to prove that I
22 was being lied to.

23 Q. Okay. You got out on bond. Did -- Mr. Cooke
24 testified about trying to get a hold of you and all that
25 while you were out on bond. Did you ever make contact

1 with him when he tried to contact you as he testified?

2 Were you ---

3 A. He contacted my father; yes, he did, sir.

4 Q. Okay. Did he ever contact you?

5 A. No, sir.

6 Q. Okay. When he contacted your father, did -- how
7 do you know he contacted your father?

8 A. My father told me that he had contacted him. But
9 my question was, is why did he wait until I was out on
10 bond thirteen months later to all of a sudden
11 investigate?

12 Q. Okay. Were you aware of him investigating your
13 case?

14 A. Sir, he didn't even, he didn't even request
15 witnesses to come in until the day before trial.

16 Q. Okay. So ---

17 A. Because I was there.

18 Q. Okay. But were you aware in December that he was
19 trying to investigate this case? Were you aware of any
20 of that?

21 A. No, sir.

22 Q. About the conversations about the plea offer, I
23 believe Mr. Cooke testified that Piper, his secretary,
24 told you about the offer and he had a video conference
25 with you about the offer. Do you recall any of that?

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1 A. No, sir. Even if Piper did discuss anything with
2 me, who is she? She's not a licensed attorney to
3 discuss anything like that.

4 Q. So the video conference Mr. Cooke referred to
5 about where he discussed the offer with you, do you
6 recall that?

7 A. No, sir. All Mr. Cooke continued to tell me is
8 that she was seeking justice on the attempted murder.

9 Q. And in terms of the witnesses and all that, did
10 you ever talk to him about the witnesses in your case at
11 all?

12 A. No, sir. I did not know of the witnesses'
13 testimony until we were in court that day. Never did
14 Mr. Cooke go over any of it. And why did Mr. Cooke sit
15 here and blatantly say that he thought that I hit the
16 alleged victim with my truck when he defended that the
17 witnesses couldn't even see from where they were.

18 Q. Okay. So he had an opinion, but he argued a
19 different ---

20 A. Correct. So which one is he lying on?

21 Q. Okay. Depending on what did he argue at trial,
22 was that in your best interest, opposed to the other
23 one?

24 A. Neither of them are in my best interest, sir.

25 Q. So you heard all the testimony about all the times

1 that he talked to you and discussed this with you,
2 numerous phone calls and all that. What is your
3 position on that?

4 A. Every time that I called his private office or the
5 public defender's office, I spoke with Piper or the
6 other one, and Debra. When Debra, when Debra took over
7 and I told her about him going to Ms. Bryna Seay about
8 me asking him to file the motion to dismiss based on
9 violation of due process, etcetera, so on, and them not
10 having evidence, they didn't even make contact -- I have
11 documentation right here that says that they didn't even
12 make contact with the alleged victim until May 11th of
13 2012. I meant 2011. I'm sorry.

14 Q. Okay.

15 A. So if they didn't have a victim, they don't have a
16 case. The Rule 3 says that I'm to be indicted ninety
17 days after, after I've been incarcerated. It wasn't
18 submitted until May of 2011.

19 Q. So you believe that if Mr. Cooke had effectively
20 represented you the outcome would have been different at
21 trial?

22 A. Correct, sir.

23 Q. Okay. Thank you. Answer any questions Ms.

24 Ratigan has for you.

25

REPLY CROSS EXAMINATION

1 **BY MS. RATIGAN:**

2 Q. Did you ever call Mr. Cooke while you were out on
3 bond?

4 A. I called his office, yes, I did.

5 Q. Okay. And did you ever go by to visit the office
6 while you were out on bond?

7 A. No, sir -- no, ma'am.

8 Q. Why is that?

9 A. I had no transportation, ma'am. I was, I was
10 released from Greenville County and sent to Cherokee
11 County under Cherokee County's probation supervision. I
12 had -- and my father is a disabled veteran. And I had
13 no transportation.

14 Q. Okay. Now, you called his office while you were
15 on bond. Did you ever actually speak to him?

16 A. No, ma'am. Not that I recall, I did not.

17 Q. Why is that?

18 A. Because I was continually told that he was in
19 deposition or he had some type of court. That he's a
20 busy man.

21 Q. So you only spoke to Piper and Brenda?

22 A. Correct.

23 Q. Okay.

24 MS. RATIGAN: That's all I have, Your Honor.

25 THE COURT: All right. Thank you, sir. You

1 can step down.

2 THE WITNESS: Thank you, sir.

3 THE COURT: All right. I'll review the
4 transcript and see what happened in the trial and review
5 the paperwork and hopefully issue an order in the next
6 week or so.

7 MS. RATIGAN: Thank you, Your Honor.

8

9 [END OF REQUESTED TRANSCRIPT OF RECORD]

1

CERTIFICATE OF REPORTER

2

3 I, the undersigned Danette P. Hanks, Official Court
4 Reporter for the Thirteenth Judicial Circuit of the
5 State of South Carolina, do hereby certify that the
6 foregoing is a true, accurate, and complete transcript
7 of record of all the proceedings had and evidence
8 introduced in the trial/hearing of the captioned case,
9 relative to appeal, in the Common Pleas Court,
10 Greenville County, South Carolina, on the 17th day of
11 December, 2013.

12 This transcript may contain quoted material. Such
13 material is reproduced as read by the speaker.

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

16

May 14, 2014

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19

A handwritten signature in cursive script, reading "Susan Danette Hanks", is written over a horizontal line.

20

Circuit Court Reporter

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STATE OF SOUTH CAROLINA)
)
 COUNTY OF GREENVILLE)
)
 Eric Todd Burgess,)
 S.C.D.C. No. 349367,)
)
 Applicant,)
)
 v.)
)
 State of South Carolina,)
)
 Respondent.)

IN THE COURT OF COMMON PLEAS
 C.A. No. 2012-CP-23-3901

ORDER OF DISMISSAL

FILED-CLERK OF COURT
 GREENVILLE CO. S.C.
 PAUL B. WICKENSIMER
 2014 FEB 17 AM 11 35

This matter comes before the Court by way of an application for post-conviction relief (PCR) filed June 14, 2012. The Respondent made its return on November 30, 2012. An evidentiary hearing into the matter was convened on December 17, 2013 at the Greenville County Courthouse. The Applicant was present at the hearing and represented by Rodney W. Richey, Esquire. Karen C. Ratigan, Esquire of the South Carolina Office of the Attorney General represented the Respondent.

The Applicant testified on his own behalf at the PCR hearing. Also testifying was the Applicant's trial counsel, Larry Cooke, Esquire. The Court had before it the trial transcript, the Greenville County Clerk of Court records, the Applicant's South Carolina Department of Corrections records, the PCR application, the return, and Applicant's Exhibit 1.

PROCEDURAL HISTORY

The Applicant is confined in the South Carolina Department of Corrections pursuant to orders of commitment from the Greenville County Clerk of Court. The Applicant was indicted at the May 2011 term of the Greenville County Grand Jury for attempted murder (2010-GS-23-8937). He was represented by Larry Cooke, Esquire.

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S.C. SUPREME COURT

After the State took the case to trial, the Applicant was convicted of the lesser-included offense of assault and battery of a high and aggravated nature (ABHAN). On January 18, 2012, the Honorable Robin B. Stilwell sentenced the Applicant to seven years imprisonment. The Applicant did not appeal.

ALLEGATIONS

In his application, the Applicant alleges he is being held in custody unlawfully for the following reason:

1. "I filed a motion for fast and speedy as well to dismiss myself, because of a dereliction of duty of my Public Defender one, Larry Cooke. Told that b/c Mr. Cooke was my (PD) I could not file those motions myself."

The Applicant, through counsel, submitted an amendment to his application dated January 11, 2013, in which he alleged the following:

1. Ineffective assistance of counsel:
 - a. Failed to conscientiously discharge professional responsibilities.
 - b. Failed to effectively challenge search and seizure.
 - c. Failed to act as a diligent and conscientious advocate.
 - d. Failed to give complete loyalty.
 - e. Did not have Applicant's best interest in mind.
 - f. Failed to serve the cause in good faith.
 - g. Neglected necessary investigations and preparation.
 - h. Did not do necessary factual investigations.
 - i. Did not do necessary legal research.
 - j. Did not conscientiously gather information to protect rights.
 - k. Did not try to have the case settled in a manner that would have been to my best advantage.
 - l. Did not advise me of all my rights or take any of the actions that were necessary to protect and preserve them.
 - m. Never properly ascertained whether or not I actually understood or comprehended all of the issues involved in the case.
 - n. Never properly consulted with me or kept me informed.
 - o. Never explained to me or discussed with me any of the elements.
 - p. Never made any attempt to ascertain whether or not I actually knew the elements of the crime charged or whether or not I understood exactly what "criminal element" meant.
 - q. Never explained or discussed with me how the elements of the

crime charged and the evidence that the prosecution planned to introduce into evidence against me related to one another and did not discuss how the sentencing would be done especially as it related to the elements of the crime as in State v. Boyd.

- r. Never informed me of any of the defenses that were available to me.
- s. Never intended to offer any defense to the court on my behalf.
- t. Never explained to me or discussed with me any kind of defense strategy.
- u. Never explained to me or discussed with me any of the tactical choices that were made or planned to be made.
- v. Dictated to me exactly how my case was going to be handled and offered no alternative options.
- w. Failed to properly acquaint herself with the law and facts surrounding my case and, as a result, there was a very serious error in the assessment of both the law and the facts.
- x. No defense at all was put in issue for me during the Court proceedings.
- y. Did not subject the prosecution's case to any adversarial testing.
- z. Failed to oppose the prosecution's case with any adversarial litigation.
- aa. Failed to function as the government's adversary in any sense of the word.
- bb. Failed to pursue any of the legal recourse that was available.
- cc. Failed to function as the counsel that the Constitution's Sixth Amendment guarantees.
- dd. Failed to call alibi witnesses on my behalf.
- ee. Failed to appeal my case.

At the PCR hearing, however, the Applicant proceeded solely upon the following allegations:

- 1. Ineffective assistance of counsel:
 - a. Failed to move to strike an attorney from the jury.
 - b. Failed to move for a speedy trial.
 - c. Failed to impeach witnesses committing perjury.
 - d. Failed to inform of a plea offer.
 - e. Failed to challenge the destruction of evidence.
 - f. Failed to notice the sentencing sheet was marked non-violent.
 - g. Failed to argue violation of Rule 3(c), SCRCrimP.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

IN ALL OF APPLICANT'S SUBMISSIONS,

This Court has had the opportunity to review the record in its entirety and has heard the

testimony and arguments presented at the PCR hearing. This Court has further had the opportunity to observe each witness who testified at the hearing, and to closely pass upon their credibility. This Court has weighed the testimony accordingly. Set forth below are the findings of fact and conclusions of law as required by S.C. Code Ann. § 17-27-80 (2003).

Ineffective Assistance of Counsel

The Applicant alleges he received ineffective assistance of counsel. In a PCR action, "[t]he burden of proof is on the applicant to prove his allegations by a preponderance of the evidence." Frasier v. State, 351 S.C. 385, 389, 570 S.E.2d 172, 174 (2002).

For an applicant to be granted PCR as a result of ineffective assistance of counsel, he must show both: (1) that his counsel failed to render reasonably effective assistance under prevailing professional norms, and (2) that he was prejudiced by his counsel's ineffective performance. See Strickland v. Washington, 466 U.S. 668, 104 S. Ct. 2052 (1984); Porter v. State, 368 S.C. 378, 383, 629 S.E.2d 353, 356 (2006). In order to prove prejudice, an applicant must show "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry v. State, 300 S.C. 115, 117-18, 386 S.E.2d 624, 625 (1989). "A reasonable probability is a probability sufficient to undermine confidence in the outcome of trial." Johnson v. State, 325 S.C. 182, 186, 480 S.E.2d 733, 735 (1997) (citing Strickland v. Washington, 466 U.S. 668, 104 S. Ct. 2052).

The Applicant stated he had three meetings with trial counsel and that, while they discussed his version of events, they never reviewed the evidence. The Applicant stated trial counsel should have argued there was a Rule 3(c), SCRCrimP violation. The Applicant stated he asked trial counsel to file a motion for a speedy trial but he did not do so. The Applicant stated trial counsel did not argue that his wife and the victim had destroyed evidence (by selling his



vehicle) that would have proved his innocence. The Applicant stated trial counsel never conveyed a plea offer to reduce the attempted murder charge to first-degree assault and battery. The Applicant stated he would have accepted this offer if trial counsel had discussed it. The Applicant stated trial counsel should have moved to strike a criminal defense attorney from the jury. The Applicant stated trial counsel failed to impeach State witnesses for committing perjury. The Applicant stated trial counsel did not act in his best interest because the sentencing sheet was marked non-violent when it should have been marked violent.

Trial counsel testified he filed discovery motions, received those materials, and reviewed them with the Applicant. Trial counsel testified they also reviewed the Applicant's version of events several times (that he did not try to kill the victim). Trial counsel testified the Applicant asked about a motion for speedy trial and that he made this motion (along with a motion to dismiss based on lack of evidence). Trial counsel testified both motions were denied. Trial counsel testified there was nothing he could do about the Applicant's vehicle having been sold, except to cross-examine the Applicant's wife about it (which he did). Trial counsel testified he received the plea offer in this case and that his office usually sends a copy of any plea offer to the client. Trial counsel testified his notes reflected that the Applicant called three times on May 19, 2011 and that his assistant tried to tell him about the offer but he simply wanted to argue with her. Trial counsel testified his notes reflected he and the Applicant discussed the plea offer on May 24, 2011 and the Applicant rejected it. Trial counsel testified having a criminal defense attorney as an alternate juror was a good thing.

This Court finds the Applicant's testimony is not credible, while also finding trial counsel's testimony is credible. This Court further finds trial counsel adequately conferred with the Applicant, conducted a proper investigation, and was thoroughly competent in his

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representation.

This Court finds the Applicant failed to meet his burden of proving trial counsel failed to investigate his case. This Court notes trial counsel testified he had pages of notations in his file and that the Applicant had been a combative client. This Court notes trial counsel testified he spent hours on this case and even visited the crime scene with an investigator to reconstruct the sequence of events. This Court notes trial counsel's testimony that the State had overwhelming evidence against the Applicant, which included an eyewitness. This Court agrees. This Court finds the Applicant has failed to articulate what else trial counsel could have done to investigate the case and achieve a different outcome at trial. See Skeen v. State, 325 S.C. 210, 481 S.E.2d 129 (1997) (holding applicant not entitled to relief where no evidence presented at PCR hearing to show how additional preparation would have had any possible effect on the result at trial).

This Court finds the Applicant failed to meet his burden of proving trial counsel should have made motions for a speedy trial and a violation of Rule 3(c), SCRCrimP. Trial counsel testified he did, in fact, make these motions and that they were denied. This Court finds the Applicant has failed to meet his burden of proof because these were the first matters taken up in pre-trial. (Trial transcript, pp.6-8).

This Court finds the Applicant failed to meet his burden of proving trial counsel should have challenged that his wife destroyed evidence in his case. The Applicant contended his wife and the victim sold his vehicle, which was evidence that would have proven his innocence. Trial counsel testified he was aware of this, but that there was nothing he could do. This Court notes trial counsel cross-examined the Applicant's wife at trial about whether or not she sold the vehicle in question. (Trial transcript, pp.113-15). This Court finds there was nothing else trial counsel could have done to argue this point at trial.

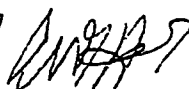
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This Court finds the Applicant failed to meet his burden of proving trial counsel did not relay a plea offer. This Court specifically finds trial counsel is more credible than the Applicant on this issue. This Court notes trial counsel's file contained notes that his assistant attempted to convey the plea offer and that he did convey it a week later. This Court also notes trial counsel testified the Applicant opting to refuse the offer. This Court finds trial counsel fulfilled his responsibilities in this regard. See Davie v. State, 381 S.C. 601, 675 S.E.2d 416 (2009) (holding counsel's failure to convey the State's plea offer to defendant constituted deficient performance)

This Court finds the Applicant failed to meet his burden of proving trial counsel should have stricken a criminal defense attorney from the jury panel. Trial counsel confirmed a criminal defense attorney was seated as an alternate juror. Trial counsel testified he believed this was beneficial. This Court finds trial counsel articulated a valid strategic decision in this matter. See Roseboro v. State, 317 S.C. 292, 294, 454 S.E.2d 312, 313 (1995) (finding where trial counsel articulates a valid reason for employing a certain strategy, such conduct should not be deemed ineffective assistance of counsel). Regardless, the Applicant cannot prove any resulting prejudice, as the alternate jurors took no part in jury deliberations. (Trial transcript, p.19; p.155).

This Court finds the Applicant failed to meet his burden of proving trial counsel should have shown the State's witnesses perjured themselves at trial. The Applicant, however, failed to point to specific examples of this alleged perjury and failed to articulate what trial counsel should have done to better question these witnesses at trial. The Applicant has failed to meet his burden of proof. See Butler v. State, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985) (finding a PCR applicant bears the burden of proving the allegations in their application).

This Court finds the Applicant failed to meet his burden of proving trial counsel should have noted the sentencing sheet was marked non-violent instead of violent. The Applicant

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testified he was returned to court and appeared before Judge Verdin, who agreed this was in error. In any event, this Court finds the Applicant has failed to show how he was prejudiced by trial counsel's failure to catch this error.

Accordingly, this Court finds the Applicant has failed to prove the first prong of the Strickland test – that trial counsel failed to render reasonably effective assistance under prevailing professional norms. The Applicant failed to present specific and compelling evidence that trial counsel committed either errors or omissions in his representation of the Applicant. This Court also finds the Applicant has failed to prove the second prong of Strickland – that he was prejudiced by trial counsel's performance. This Court concludes the Applicant has not met his burden of proving counsel failed to render reasonably effective assistance. See Frasier v. State, 351 S.C. at 389, 570 S.E.2d at 174.

All Other Allegations

As to any and all allegations that were raised in the application or at the hearing in this matter and not specifically addressed in this Order, this Court finds the Applicant failed to present any testimony, argument, or evidence at the hearing regarding such allegations. Accordingly, this Court finds the Applicant has abandoned any such allegations.

CONCLUSION

Based on all the foregoing, this Court finds and concludes the Applicant has not established any constitutional violations or deprivations before or during his trial and sentencing proceedings. Counsel was not deficient and the Applicant was not prejudiced by counsel's representation. Therefore, this PCR application must be denied and dismissed with prejudice.

This Court advises the Applicant that he must file a notice of intent to appeal within thirty (30) days from the receipt of this Order if he wants to secure appropriate appellate review. His

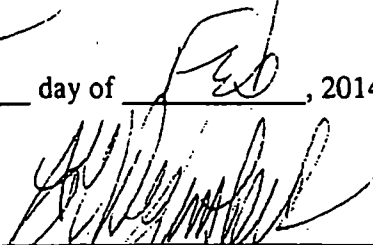


attention is also directed to Rules 203, 206, and 243 of the South Carolina Appellate Court Rules for the appropriate procedures to follow after notice of intent to appeal has been timely filed.

IT IS THEREFORE ORDERED:

1. That the application for post-conviction relief be denied and dismissed with prejudice; and
2. That the Applicant be remanded to the custody of the Respondent.

AND IT IS SO ORDERED this 5 day of Feb, 2014.


G. Edward Welmaker
Presiding Judge
Thirteenth Judicial Circuit

Pickens, South Carolina.

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COMMON PLEAS
EXHIBIT RECORD AND RECEIPT FORM
Eric Todd Burgess - State (2012-CP-23-3901)

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PLAINTIFF'S EXHIBITS

NO	DESCRIPTION	ID	EV
P-1	Letter from Bryna Seay to Larry Cooker dated 5/11/2011	x	x

DEFENDANT'S EXHIBITS

	(NONE)		

COURT'S EXHIBITS

	(NONE)		

Monette Barker 12-17-13
COURT REPORTER DATE

Jan C. White 12-17-13
CLERK OF COURT DATE

ENTERED COMPUTER

225 2012CP2303901

State of South Carolina
Solicitor, Thirteenth Judicial Circuit

Telephone: 864-467-8647
Telefax: 864-467-8610



Solicitor
W. Walter Wilkins

5/11/2011

Greenville County Courthouse
305 E. North Street, Suite 325
Greenville, SC 29601-2185

13th Circuit Public Defender

MAY 11 2011
Initials: *[Signature]*

LARRY COOKE
GREENVILLE COUNTY COURTHOUSE
GREENVILLE, SC 29601

RE: Plea Offer for State v. Eric Todd Burgess

Dear Larry Cooke:

I am willing to make the following proposal to your above-referenced client in order to dispose of these charges by way of a guilty plea:

The State will reduce the following:

Warrant Number: Charge:

I483636 Murder / Attempted Murder

Plead to Charge:

to Assault and Battery 1st Degree

The State will make the following sentence recommendations/negotiation:

No recommendation. No contact with victim.

Please contact me as soon as possible with your client's response as plea negotiations must be concluded and the guilty plea entered before 8/24/2011 or this and any other offers are automatically withdrawn. If your client does not plead guilty by this date, the case(s) will be placed on the trial calendar for disposition without further negotiation.

Yours very truly,



Bryna Seay
Bryna Seay
Assistant Solicitor