

ORIGINAL

STATE OF SOUTH CAROLINA

In The Court of Appeals

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APPEAL FROM CHEROKEE COUNTY

R. Keith Kelly, Circuit Court Judge

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**SC Court of Appeals**

THE STATE,

RESPONDENT,

V.

KENNETH GERALD BUTLER,

APPELLANT

APPELLATE CASE NO. 2013-002455

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RECORD ON APPEAL

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STATE OF SOUTH CAROLINA  
COURT OF GENERAL SESSIONS  
COUNTY OF CHEROKEE  
2012-GS-11-00173

State of South Carolina  
vs.  
Kenneth Gerald Butler

Gaffney, South Carolina  
November 13-14, 2013  
Before the Honorable Keith Kelly

APPEARANCES

For the State: Kim Leskanic  
For the Defendant: Don Thompson

Reported by: Michael C. Watkins (Edited)  
Official Court Reporter

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## OPENING STATEMENTS

1 here today is the defendant, Kenneth Butler, has been  
2 charged with assault and battery in the first degree, and  
3 I'll go over in a little while exactly what that means. But  
4 first I want to kind of give you a layout of what happened  
5 back on January 12th of 2012. This cases involves road  
6 rage, I know we're all familiar with that, you've probably  
7 seen it on TV and you may have experienced it yourself, but  
8 that's what really brings you here today. Brandon Holcomb,  
9 who is seated there in the black shirt, was 17 years old  
10 when this happened. He was coming down, Ellis Fairy Road  
11 which is right off of Floyd Baker Boulevard -- pull this map  
12 up and show you. He was -- this is Floyd Baker Boulevard,  
13 everyone is familiar with. You've got Applebee's and the  
14 restaurants here on Floyd Baker, and this is Ellis Ferry  
15 Road, the skating rink, Skate Land, is located here. And  
16 down the road you get to Cresthaven which is where I'm  
17 showing you, and that's where the victim in this case,  
18 Brandon Holcomb, lived, he lived in a house here on  
19 Cresthaven Avenue. As he was traveling down Ellis Fairy his  
20 girlfriend was behind him in her vehicle and she was with  
21 her brother and Brandon had his brother in the car, so there  
22 were two people in Brandon's car and two people in the car  
23 behind him. The defendant was coming out of a side road and  
24 pulled out in front of Brandon. Brandon was in the  
25 left-hand lane and the defendant pulled out in front of him.

## OPENING STATEMENTS

1 Brandon had to swerve over to avoid hitting him, blew the  
2 horn, may have flipped him off, I know the guy that was in  
3 the back car, the car behind him, did flip him off, he  
4 admits that he was mad and had to go around him and they  
5 gave him the finger. That enraged Mr. Butler so he decided  
6 to follow the car, these two cars. Now, Brandon is in the  
7 first car and his girlfriend, Kelly, is driving the car  
8 behind him. They continue down Ellis Fairy and the  
9 defendant starts following them, and he stays right up on  
10 the bumper of Brandon's girlfriend, Kelly's car, he's right  
11 up on her bumper swerving in and out and they're wondering,  
12 "Why is he doing this?" Now, Cresthaven Avenue comes to a  
13 dead end, there is like a little cul de sac here on this end  
14 so there's no business going down that road unless you live  
15 down that road. Mr. Butler didn't live down that road. The  
16 only reason he was following that car is, in his own words,  
17 he wanted to give them a piece of his mind. He told  
18 officers that after this happened he was following the  
19 vehicle to give them a piece of his mind. Brandon sees that  
20 the defendant keeps following his girlfriend and he knows,  
21 "If I pull into my driveway whoever this guy is is gonna  
22 know where I live so I don't wanna pull up to my house." So  
23 he stops his car, a little bit after he makes the curve here  
24 he's going to stop his car, let his girlfriend go by him and  
25 Brandon gets out of the driver's seat of his car, this is

## OPENING STATEMENTS

1 the car, gets out of the driver's seat, comes to the back of  
2 his car waiting for Mr. Butler to come around the curve, and  
3 as he is standing there at the back of his car Mr. Butler  
4 comes around the curve, he is in the wrong lane of travel  
5 and at the last minute he drives his vehicle toward Brandon.  
6 He slams on the brakes but he didn't stop in time. Brandon  
7 tries to move out of the way, he's stepping out of the way  
8 but unfortunately his right leg gets crushed by the truck, a  
9 Ford F150 that the defendant was driving. Brandon's leg is  
10 trapped between his car, the back end of his car and the  
11 front end of Mr. Butler's truck and it's mangled. Brandon  
12 finally gets the defendant to back up off of him and asks  
13 him to call 911 and he says, "No, you flipped me off." He  
14 didn't get out of the vehicle to check on Brandon, he didn't  
15 call 911, he sat in his truck. And Brandon's brother was  
16 there, he got out of the vehicle, he ran home to get his dad  
17 so they could help because Brandon was losing a lot of  
18 blood. His girlfriend had gone by but saw what happened in  
19 the rear view mirror along with Kelly's brothers. Kelly's  
20 brother actually pulled the emergency brake on their car  
21 when he saw Brandon's body jerk when he was hit. Triston,  
22 who is Kelly's brother, is the first responder, he ran back  
23 to the scene, tried to give as much aide as he could but he  
24 was the one that called 911 to get help for Brandon.  
25 Brandon had to be flown to the hospital, he had multiple

## OPENING STATEMENTS

1 surgeries on his leg. I have photographs of the injuries to  
2 show you. Mr. Butler was mad, he wanted to give him a piece  
3 of his mind and he intentionally ran his truck over Brandon.  
4 It was about half a mile down Ellis Fairy Road, it occurred  
5 at Cresthaven, and in that amount of time he changed the  
6 life of a 17 year old boy with the decision that he made.  
7 Assault and battery in the first degree is an unlawful act  
8 where you offer or attempt to harm someone and it ends with  
9 great bodily injury or permanent disfigurement. I'm going  
10 to let Brandon show you his leg when he has a chance to  
11 testify later today, and there's permanent scarring and  
12 there's permanent disfigurement. Not only did the defendant  
13 offer an attempt to cause great bodily harm but he did it,  
14 and he's guilty of assault and battery in the first degree,  
15 and the evidence that we will present to you will show you  
16 that. And I greatly appreciate your time and attention.  
17 Thank you.

18 MR. THOMPSON: If it please the Court, Your Honor?

19 THE COURT: Mr. Thompson.

20 MR. THOMPSON: Good afternoon, ladies and gentlemen, I  
21 guess it's afternoon. Pardon my voice, I just can't get rid  
22 of allergies this year and I talk like a frog all year long.  
23 There's not gonna be a great deal of difference in the facts  
24 of this case, it's pretty much as the solicitor said.  
25 Mr. Butler pulled out into the roadway, the people in the

## OPENING STATEMENTS

1 other cars passed him, flipped him off, he followed them to  
2 give him a piece of his mind. Okay. Nobody is gonna  
3 contest that. Here's our problem, that road curves right  
4 there and it's a sharp curve and if you'll see there's  
5 trees, you can't see it but there is trees right there on  
6 that curve that blocks the view. When Mr. Butler got around  
7 that curve, and the State will deny this, Mr. Holcomb's car  
8 was sitting in the lane of traffic, he stopped his car right  
9 in the middle of the road right around a curve and he got  
10 out, his girlfriend in her car went by, she went by in the  
11 opposite lane of traffic. You're going to hear testimony  
12 from Mr. Butler that he was gonna follow the girlfriend in  
13 that opposite lane of traffic, but just as her car went by  
14 Mr. Holcomb stepped back out into traffic, he slammed his  
15 brakes, cut his wheel to the right, Mr. Holcomb stepped back  
16 in behind his car, unfortunately he skidded, his front  
17 brakes had locked, he had no control of the vehicle anymore  
18 and it hits Mr. Holcomb. The facts -- there will be minor  
19 differences in the facts of the case. Okay. And here's  
20 what you've got to do and here's what we've got y'all for,  
21 did Mr. Butler intend to hit Mr. Holcomb with his car, or  
22 was it an accident? That's what you've got to take, all  
23 these facts and all, they're basically the same, might be a  
24 few differences, but from those facts you've got to decide  
25 whether or not the State has proven to you beyond a

## OPENING STATEMENTS

1 reasonable doubt that Mr. Butler intended to hit Mr. Holcomb  
2 with his car. We don't have to prove it's an accident. In  
3 fact, the State has to prove it wasn't an accident, they've  
4 got to prove that it was intentional. And I submit to you  
5 ladies and gentlemen that after you've listened to the facts  
6 the State is going to fail in its burden of proof to prove  
7 to you that he intentionally hit Mr. Holcomb with his car,  
8 that's what y'all have got to make a decision about. Thank  
9 you.

10 THE COURT: Thank you, Mr. Thompson. Solicitor?

11 MS. LESKANIC: Thank you, Your Honor. May it please  
12 the Court?

13 THE COURT: Yes, ma'am.

14 MS. LESKANIC: State calls Officer Billy Hyatt.  
15 The witness, BILLY HYATT, was first duly sworn  
16 and testified as follows:

17 MS. LESKANIC: May it please the Court?

18 THE COURT: Yes, ma'am.

19 DIRECT EXAMINATION

20 BY MS. LESKANIC:

21 Q. Will you please state your name for the record?

22 A. Billy Hyatt.

23 Q. And where are you employed?

24 A. City of Gaffney Police Department.

25 Q. How long view been an officer with the Gaffney City

## TESTIMONY OF BILLY HYATT

1 Police Department?

2 A. A little over 3 years.

3 Q. And what is your current position there?

4 A. Patrol officer.

5 Q. Have you been on patrol during your three years with  
6 the city?

7 A. Yes, ma'am.

8 Q. Were you on patrol back in January of 2012?

9 A. Yes, ma'am.

10 Q. And were you called out to an incident that happened on  
11 Cresthaven Drive here in Cherokee County?

12 A. I was.

13 Q. All right. What was the nature of that call?

14 A. It was a traffic collision with injuries I think is how  
15 they gave it out.

16 Q. Okay. And is that -- that area is here in Cherokee  
17 County?

18 A. Yes, ma'am.

19 Q. Let me show you State's Exhibits 1, 2, 3, and 4 and  
20 just have you take a look at these and tell me if you  
21 recognize those.

22 A. Yes, ma'am.

23 Q. And what are those?

24 A. That's just the area where the incident occurred, it's  
25 Ellis Fairy as it comes around the curve into Cresthaven.

## TESTIMONY OF BILLY HYATT

1 MS. LESKANIC: Okay. Your Honor, at this time we would  
2 offer State's 1, 2, and 3 and 4 for admission.

3 MR. THOMPSON: No objection.

4 THE COURT: Without objection.

5 (The photos were received as State's 1-4.)

6 Q. What did you find when you arrived on scene, Officer  
7 Hyatt?

8 A. When I arrived I seen the defendant sitting in his  
9 vehicle, he had parked the vehicle. The victim was actually  
10 sitting in the driver's seat of the car and there was a lot  
11 of blood, a lot of blood, you know, on his pants and the  
12 area in the road.

13 Q. Let me show you Exhibits 5 through 15. If you would  
14 please take a look at those.

15 A. Okay.

16 Q. Okay. Did you recognize those?

17 A. Yes, ma'am.

18 Q. And what do they show?

19 A. That was the scene of the crime that day.

20 Q. Okay. And do those fairly and accurately show what you  
21 saw when you arrived on scene that day?

22 A. Yes, ma'am.

23 Q. All right.

24 MS. LESKANIC: Your Honor, at this time we would offer  
25 State's 5 through 15 for admission.

## TESTIMONY OF BILLY HYATT

1 MR. THOMPSON: Is that the ones I saw earlier?

2 MS. LESKANIC: Yes, sir, if you'd like to look again.

3 MR. THOMPSON: No objection.

4 THE COURT: Without objection.

5 MS. LESKANIC: Thank you.

6 (The photos were received as State's 5-15.)

7 Q. Let's start with State's Exhibit 5. If you would,  
8 could you tell the ladies and gentlemen what we're looking  
9 at here? If you need to step down to see better --

10 MS. LESKANIC: Your Honor, may he step down?

11 THE COURT: Certainly.

12 MS. LESKANIC: Thank you.

13 Q. And if you need this, this is a pointer.

14 A. This is pretty much the way everything looked when I  
15 arrived. That's actually the car the victim was sitting in,  
16 he was sitting in the driver's seat there and that's where  
17 the defendant's truck was parked and he was sitting in the  
18 driver's seat there.

19 Q. And is that where the vehicles were when you arrived on  
20 scene?

21 A. Yes, ma'am.

22 Q. Okay. Show you State's Exhibit 6. What do we see in  
23 State's Exhibit 6?

24 A. It looks like they're just getting measurements of tire  
25 tracks and different things, just gathering evidence.

## TESTIMONY OF BILLY HYATT

1 Q. Okay. State's Exhibit 7?

2 A. See, that's the victim's shoe on the ground there  
3 behind his car and you can see some damage to his vehicle  
4 there.

5 Q. State's Exhibit 8?

6 A. On that again, pretty much the same thing, just the  
7 back of the victim's vehicle, the shoe there. There is  
8 actually some tire marks leading up to it.

9 Q. If you know, is that the front passenger tire or  
10 passenger side tire of the defendant's vehicle?

11 A. Yes. This one right here is gonna be the front  
12 passenger side.

13 Q. Okay. And where is the driver's side skid marks?

14 A. I believe that's it right there.

15 Q. State's Exhibit 9. If you would just -- I know some of  
16 this is --

17 A. Yes. That right there is just the victim's shoe, again  
18 damage to the rear of his vehicle, and some of the blood  
19 that was lost there on the ground.

20 Q. Show you State's Exhibit 11.

21 A. Again, just damage to the rear of the victim's vehicle.

22 Q. Okay. And finally State's Exhibit 15.

23 A. That's the defendant's vehicle, there is some damage  
24 right there, that corner if you can see it.

25 Q. All right. And is that where his vehicle struck

## TESTIMONY OF BILLY HYATT

1 Brandon?

2 A. Yes.

3 Q. Okay. If you'd like you can have a seat back on the  
4 witness stand. Now, during the course of your investigation  
5 did you speak with the defendant?

6 A. Yes, ma'am.

7 Q. Did he tell you why he was following these vehicles?

8 A. All he told me was that he was -- that there had been  
9 an incident as far as I guess like the road rage or  
10 whatever, but he told me that he was following them to give  
11 them a piece of his mind.

12 Q. Okay. Was Brandon still there when you arrived?

13 A. That's the victim, correct?

14 Q. The victim in this case.

15 A. Yes, ma'am.

16 Q. And was he transported while you were there?

17 A. Yes, ma'am, he left in the ambulance.

18 MS. LESKANIC: I think that's all of the questions I  
19 have for you. If you would answer any questions  
20 Mr. Thompson may have.

21 CROSS EXAMINATION

22 BY MR. THOMPSON:

23 Q. You weren't present when this incident happened, were  
24 you?

25 A. No, sir.

## TESTIMONY OF BILLY HYATT

1 Q. You didn't see it, you have no firsthand knowledge of  
2 what happened.

3 A. No, sir.

4 Q. All right. I'm gonna show you State's Exhibit 7 and 8.  
5 Can you identify those?

6 A. Yes, sir.

7 Q. I think you already have.

8 A. That's pictures of the crime scene.

9 Q. Did you take those photographs?

10 A. No, sir.

11 Q. Okay. When you arrived on the scene, were you the  
12 first officer there?

13 A. I'm not sure if I was the first officer, if not I was  
14 right there --

15 Q. Okay.

16 A. -- at about the same time.

17 Q. When you arrived on the scene, was the car in the  
18 position that's shown in these photographs?

19 A. Yes, sir.

20 Q. Okay. So it was actually sitting in the middle of the  
21 lane of traffic; is that correct?

22 A. Yes, sir.

23 Q. All right. Unfortunately my computer doesn't make  
24 color pictures. Can you identify this?

25 A. It's a Chevrolet truck, but no, sir, I don't --

## TESTIMONY OF BILLY HYATT

1 Q. Let me ask you a question. Where the curve is at at  
2 Cresthaven --

3 A. Yes, sir.

4 Q. -- could this be a photograph taken back from the  
5 scene, back to the curve?

6 A. It's possible that that was taken from the side of the  
7 road, yes, sir.

8 Q. Okay. Are you familiar with that curve?

9 A. Yes, sir.

10 Q. Is it a sharp curve?

11 A. Yes, sir.

12 Q. And is there trees or bushes or something planted right  
13 there in the curve?

14 A. I can't say for sure.

15 Q. Okay. And you don't know who took these pictures?

16 A. No.

17 Q. Okay.

18 MR. THOMPSON: Thank you. I have nothing further.

19 MS. LESKANIC: Just briefly.

20 REDIRECT EXAMINATION

21 BY MS. LESKANIC:

22 Q. After you go around the curve, does the road continue  
23 to curve or is it a clear straight away?

24 A. No. Once you get around the curve it's pretty much a  
25 straight shot.

## TESTIMONY OF BRANDON HOLCOMB

1 Q. Okay. And it is a sharp curve to the left?

2 A. Yes, ma'am.

3 Q. So would you have to slow down to go through that  
4 curve?

5 A. Yes, ma'am.

6 Q. And that's before you get to the straight away.

7 A. Yes, ma'am.

8 Q. Thank you.

9 THE COURT: Anything?

10 MR. THOMPSON: Nothing.

11 THE COURT: You may step down.

12 MS. LESKANIC: State calls Brandon Holcomb.

13 THE COURT: All right.

14 The witness, BRANDON HOLCOMB, was first duly  
15 sworn and testified as follows, on:

16 THE COURT: Give us your full name and spell the last  
17 name, please.

18 THE WITNESS: My name is Matthew Brandon,  
19 H-o-l-c-o-m-b.

20 THE COURT: All right. Solicitor?

21 DIRECT EXAMINATION

22 BY MS. LESKANIC:

23 Q. Brandon, how old are you?

24 A. I'm 19 now.

25 Q. And how old were you when this incident happened?

## TESTIMONY OF BRANDON HOLCOMB

- 1 A. 17.
- 2 Q. Were you attending school at that time?
- 3 A. Yes, ma'am, I was.
- 4 Q. And where were you going to school?
- 5 A. Gaffney High.
- 6 Q. Did you graduate from Gaffney High School?
- 7 A. No, ma'am, I didn't get a chance to.
- 8 Q. Why not?
- 9 A. Because I missed too many days of school prior to that
- 10 because of the accident.
- 11 Q. So were you on track for graduation before this
- 12 happened?
- 13 A. Yes, ma'am.
- 14 Q. Are you doing anything now to continue with your
- 15 education?
- 16 A. I'm in an adult program right now, I'm still making
- 17 credits for high school trying to get my -- trying to
- 18 graduate.
- 19 Q. I want to go back to January 12, 2012, and I need you
- 20 to -- where were you going that day --
- 21 A. I was --
- 22 Q. -- when you were on Ellis Fairy Road?
- 23 A. I was on my way home from high school.
- 24 Q. So coming home from school. Who was the in the car
- 25 with you?

## TESTIMONY OF BRANDON HOLCOMB

- 1 A. My little brother.
- 2 Q. Who is your brother?
- 3 A. Austin Bratton.
- 4 Q. How old is Austin?
- 5 A. He is 16.
- 6 Q. So he would have been 14 at the time, 14 or 15?
- 7 A. 15.
- 8 Q. Was anybody in the car behind you?
- 9 A. My girlfriend, Kelly Stanford.
- 10 Q. Who was in the car with Kelly?
- 11 A. Her younger brother.
- 12 Q. And all four of you were headed to your house?
- 13 A. Yes, ma'am.
- 14 Q. And why were you going to your house?
- 15 A. We was -- I was bringing my mother something, I had
- 16 something of hers and they was gonna follow me to my house.
- 17 Q. Okay. And what happened on your way to your house?
- 18 How did this all start?
- 19 A. I was coming down Ellis Fairy going towards Cresthavens
- 20 (sic).
- 21 Q. Okay. Make sure you speak up, I'm having a little bit
- 22 of trouble hearing you and I want to make sure that everyone
- 23 else can.
- 24 A. Mr. Butler pulled out in front of me onto Ellis Fairy,
- 25 I was in the left-hand lane. When he pulls out I swerve

## TESTIMONY OF BRANDON HOLCOMB

1 into the right lane to avoid hitting him, I blow the horn to  
2 assure he knows not to come over if he did not see me swerve  
3 over to not hit me in the right-hand lane. I get around and  
4 I get back into the left-hand lane, my girlfriend does the  
5 same.

6 Q. Okay. And then you are continuing on home.

7 A. Yes, ma'am.

8 Q. What does Mr. Butler do?

9 A. He starts following my girlfriend behind her car.

10 Q. Okay. Are you -- are you able to see him? Are you  
11 watching him through your rear view mirror?

12 A. From what I could see. I was focused on driving but  
13 I'd glance up when I could.

14 Q. And you could see that this vehicle was still behind --

15 A. Yes, ma'am.

16 Q. What kind of vehicle did Kelly drive?

17 A. A Honda Civic.

18 Q. All right. And the defendant was in a pickup truck?

19 A. Yes, ma'am.

20 Q. So that would have been taller than her car.

21 A. Yes, ma'am.

22 Q. So you could tell he was behind her.

23 A. Yes, ma'am.

24 Q. And tell me about -- I show you State's Exhibit 1. If  
25 you can, Brandon, I'm going to ask you to step down for just

## TESTIMONY OF BRANDON HOLCOMB

1 a second.

2 A. Okay.

3 Q. Just push that button right there and a green light  
4 will come on. If you will, explain to the jury where you  
5 were coming down Ellis Fairy and where Mr. Butler pulled out  
6 in front of you. Walk them through it.

7 A. We had veered off of Floyd Baker going up Ellis Fairy  
8 and we was about right here. Butler come out this side road  
9 onto Ellis Fairy, pulls out in front of me, this is where I  
10 swerved over and go on up. And then he comes out and starts  
11 following us on -- continuing down Ellis Fairy.

12 Q. Okay. And there's several roads along Ellis Fairy that  
13 Mr. Butler could have turned off; is that correct?

14 A. Yes, ma'am.

15 Q. But he continued to follow you. Where were you headed?  
16 Take the jury down the route that you took.

17 A. I was headed down Ellis Fairy to turn on the -- right  
18 there on Cresthaven and come on up to my house which is  
19 about in this area.

20 Q. Okay. And what's at the end of that road, Cresthaven  
21 Road?

22 A. It's a dead end, it's a dead end, there's nothing else  
23 down there but houses.

24 Q. Okay. Where do you stop your vehicle?

25 A. Right about here.

## TESTIMONY OF BRANDON HOLCOMB

1 Q. All right. Let me get a little closer in the photo,  
2 State's Exhibit 4. All right. I know these were not taken  
3 at the time, but using this can you point out to the jury  
4 where you stopped approximately?

5 A. Right in this here.

6 Q. Okay. Now, when you stopped where was your girlfriend,  
7 Kelly?

8 A. She came on around about right here and then goes  
9 around.

10 Q. Was she right on your bumper or were you a distance  
11 ahead of her?

12 A. I was a distance ahead of her and I had time to get out  
13 of my vehicle and --

14 MR. THOMPSON: I'm sorry, I can't hear.

15 THE COURT: My court reporter can't hear either.

16 MS. LESKANIC: I'm sorry.

17 THE WITNESS: I'm sorry.

18 A. I was a good distance ahead of her, I had time to step  
19 out my vehicle and get around to the back of my car.

20 Q. And then once you got to the back of your car what  
21 happened at that point? Why did you get out of your car?

22 A. So he didn't follow me on to my house because I knew he  
23 ain't really have no business being there unless he lived  
24 there, because not many people travel that road unless they  
25 live there and I knew he was following us, so I just didn't

## TESTIMONY OF BRANDON HOLCOMB

1 want him knowing where I lived so I stopped ahead of them to  
2 see why he was following us.

3 Q. And then when you're at the back of your car what  
4 happens next?

5 A. I was standing at the back of my vehicle, and when I  
6 motioned for my girlfriend to go on to my house because I  
7 didn't want her being in all of that if anything was gonna  
8 happen, and whenever I seen her I was standing behind my  
9 vehicle. Butler comes around the curve, swerves over here  
10 and then swerves toward me and pins me in between his truck  
11 and my car.

12 Q. At any time did you cross that yellow line onto  
13 oncoming traffic or did you stay on your side of the road?

14 A. Well, whenever I got out of the vehicle I never crossed  
15 the yellow line. I stayed against my car and I walked along  
16 side of my car and went to the back of my car.

17 Q. And when Mr. Butler came around the curve, were you  
18 already standing at the back of your car?

19 A. Yes, ma'am.

20 Q. Okay. All right. You can have a seat. I'm gonna show  
21 you State's Exhibit 7. See if you take a look at that, if  
22 you recognize that.

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

24 Q. And what is that?

25 A. It's the scene of the accident.

## TESTIMONY OF BRANDON HOLCOMB

1 Q. Okay. And I am going to have you stand back up and I  
2 apologize, but if you would, show the ladies and gentlemen  
3 of they jury where you were with your car. If you need to  
4 step down. And when Mr. Butler came around the curve where  
5 were you standing right before you were hit?

6 A. Right before I was hit I stepped out of my driver's  
7 side, walked along side of my car, stepped to about right  
8 here at my license plate at the middle, he comes around the  
9 corner. And whenever he swerves in the other lane I  
10 believed, or what I was thinking in my head that he was  
11 gonna pull over, instead he comes toward me, I go this way  
12 to move away from being hit and it catches my leg right here  
13 at the back of the car.

14 Q. And your shoe was left --

15 A. Yeah. My shoe come off my foot on impact.

16 Q. Okay. So you were standing behind your car and then  
17 you tried to move across the double yellow line in order to  
18 get out of the way and you couldn't make it.

19 A. Yes, ma'am.

20 Q. While I have you up, this is State's Exhibit 11. What  
21 is that showing?

22 A. The damage to my vehicle from the impact of my body  
23 hitting it.

24 Q. All right. What part of your body hit this part of  
25 your car and was pinned against this?

## TESTIMONY OF BRANDON HOLCOMB

1 A. The picture don't -- it cuts off right here, but my  
2 bumper was cracked right here and the steel part of the  
3 bumper that's behind the plastic that goes around come  
4 through the crack and that's what cut my leg open. My  
5 kneecap hit right here and pushed this in, and then my  
6 hip -- there's a dent right here from my hip.

7 Q. If this table were your car and the truck is coming  
8 from the direction of the jury, where were you standing?

9 A. Right in the middle of the car. When he comes toward  
10 me I try to step out of the way, and when I get to about  
11 right here my leg is up in the air to take the next step and  
12 that's when it's pinned against the car.

13 Q. So it is the outside portion of your right leg that is  
14 hitting against your car.

15 A. Yes, ma'am.

16 Q. Would you please show the jury the outside portion of  
17 your right leg right now? Show them what it looks like  
18 today.

19 A. (Witness complies.)

20 Q. Now, looking at State's Exhibit 15, can you tell me  
21 what that shows?

22 A. It's the front of Mr. Butler's truck. There is a dent  
23 in this whole area right here which is where the inside of  
24 my leg hit.

25 Q. Okay. And what type of damage did you have to the

## TESTIMONY OF BRANDON HOLCOMB

1 inside of your leg?

2 A. It swelled up real bad and they had to cut it open to  
3 relieve pressure or else I would have lost it.

4 Q. Okay. Was it mangled?

5 A. Yes, ma'am.

6 Q. Like the other side of your leg where it was crushed  
7 into the plastic of your car.

8 A. Yes, ma'am.

9 Q. Can you show the jury the inside of your leg, please,  
10 what it looks like today?

11 A. (Witness complies.)

12 Q. Now, Brandon, was that part cut open from the accident  
13 or is this something that a doctor had to do?

14 A. The doctors had to do it to relieve pressure.

15 Q. Okay. But this side, the outside of your right leg,  
16 was done from the impact?

17 A. Yes, ma'am.

18 Q. And the plastic and the bar from your car; is that  
19 correct?

20 A. Yes, ma'am.

21 Q. Okay. You can have a seat. Thank you. Just have a  
22 seat back in the witness stand. Now, as you're pinned  
23 between Mr. Butler's truck and your vehicle, what happens  
24 next?

25 A. Whenever I'm pinned in between the two vehicles my body

## TESTIMONY OF BRANDON HOLCOMB

1 goes into shock. I turn around to look at him to get him to  
2 get off me, when I turned around his truck was in park. My  
3 brother jumps out from the passenger seat and goes over to  
4 the driver's seat to get him to back off me, and by the time  
5 my brother gets there he does back off. He backs off and  
6 pulls his truck onto the curve, he steps out and that -- and  
7 by this time my girlfriend's brother, Triston, has done got  
8 out of her car and came down there to check on me. And he  
9 steps out -- Mr. Butler steps out and I ask him if he can  
10 call me an ambulance at least and he says, "No, you flipped  
11 me off," and gets back in his truck.

12 Q. Did he offer you any sort of aid?

13 A. No, ma'am.

14 Q. Triston called 911, an ambulance arrived, and where did  
15 you go from there?

16 A. They loaded me into the ambulance because there was  
17 nowhere to land a helicopter. When they get me in the  
18 ambulance that's when they put the IV in and everything I  
19 need prepped. They get me behind Aldi's, Aldi's is located  
20 behind McDonald's off of Floyd Baker, it's a big empty  
21 parking lot, that's where they landed the helicopter. They  
22 get me out of the ambulance to load me into the helicopter  
23 and send me to Regional, Spartanburg Regional.

24 Q. And did you have to have surgery on your leg?

25 A. Yes, ma'am. I had four surgeries in 16 days.

## TESTIMONY OF BRANDON HOLCOMB

1 Q. Okay. I'm going to show you State's Exhibits 16, 17,  
2 18, 19, 20 and 21. If you will, please take a look at these  
3 and tell me if you recognize them.

4 A. Yes, ma'am.

5 Q. Thank you. Can you tell me what these photographs  
6 show?

7 A. The damage it did to my leg.

8 Q. And do all of these photographs fairly and accurately  
9 represent injuries that you sustained from this incident?

10 A. Yes, ma'am.

11 Q. All right.

12 MS. LESKANIC: Your Honor, at this time we would offer  
13 these for admission.

14 MR. THOMPSON: No objection.

15 THE COURT: Without objection.

16 (The photos were received as State's 16-21.)

17 MS. LESKANIC: Thank you.

18 Q. Brandon, I'm going to start with State's Exhibit 16.  
19 Again, if you're having trouble seeing and you need to step  
20 down you're welcome to step down. If you would, can you  
21 please tell the jury what we're looking at here?

22 A. What you're looking at here is I had to keep this part  
23 of my leg wrapped up at all times, and I took the wrapping  
24 off to put medicine on it on this right here, this is after  
25 the skin graft surgery.

## TESTIMONY OF BRANDON HOLCOMB

1 Q. Speak up just a little bit louder, sorry I have got to  
2 hear.

3 A. This top part of my leg is the donor site for the skin  
4 graft; it's where they took all the skin off to put down  
5 here because it was impossible for skin to grow back over  
6 this area.

7 Q. Okay. I'm going to show you State's Exhibit 17. What  
8 do we see here?

9 A. This is the lower part of my leg, this is one week  
10 after the skin graft.

11 Q. And what did they have to do?

12 A. They had to take skin off the top part of my leg, put  
13 it down here and staple it and monitor it to make sure the  
14 skin would grow back over it.

15 Q. And that -- that side of your leg is the outside  
16 portion that was against your vehicle; is that correct?

17 A. Yes, ma'am.

18 Q. State's Exhibit 18, tell us about that.

19 A. This one right here is my kneecap here. And this is  
20 the side of my knee. Right here they had to cut this open  
21 to put the steel rod down into my leg to make sure the bones  
22 heal. And this scar here is from where they had to screw it  
23 into place.

24 Q. Do you still have the steel rod in your leg?

25 A. Yes, ma'am.

## TESTIMONY OF BRANDON HOLCOMB.

1 Q. Do you know how long you'll have to keep it there?

2 A. I'll always have it in there.

3 Q. Okay. State's Exhibit 19?

4 A. This here is the inside of my leg. This is the bottom  
5 half of the inside of my leg that swelled up really bad to  
6 where they had to cut it open on the side to relieve  
7 pressure.

8 Q. So the portion of the truck, the flat bumper that hit  
9 your leg did not split your leg open, the doctors had to cut  
10 that open to relieve pressure; is that correct?

11 A. Yes, ma'am.

12 Q. State's Exhibit 20?

13 A. This here is -- the leg is still broke at that time,  
14 this is before the -- this is right after the rod surgery  
15 and this is the bottom half of my leg, the shin and this is  
16 the kneecap here.

17 Q. So at that point have they cut into the inside of your  
18 leg to relieve the pressure?

19 A. Yes, ma'am. They had sponges over it here and the  
20 other.

21 Q. Okay. And then the top part of your knee is where they  
22 cut to place the rod in.

23 A. Yes, ma'am, right here.

24 Q. Okay. And State's Exhibit 21. Tell me what we see  
25 here.

## TESTIMONY OF BRANDON HOLCOMB

1 A. Now, after having my leg broke so long it was bad to  
2 the point where I could not have a cast on my leg. And  
3 whenever people do have casts their foot stays 90 degree  
4 angle, mine couldn't so it stayed bent which caused a drop  
5 foot and I had to work that up. And whenever I did be able  
6 to bend my ankle my toes would stay pointing down and I  
7 could not bend them back up.

8 Q. How much blood loss did you suffer from this, Brandon?

9 A. I had seven blood transfusions.

10 Q. Okay. Have a seat back over there. Thank you. Do you  
11 still have problems with your leg and foot today?

12 A. Yes, ma'am.

13 Q. What type of problems are you still experiencing?

14 A. Pain from standing on it for a long period of time. I  
15 have to sit down a lot. It swells like all the time. By  
16 the end of the day I have -- when I take my shoes and socks  
17 off I have an imprint of them from wearing them all day.

18 Q. In the photographs that we have seen of your vehicle,  
19 was any of that damage on your vehicle prior to this  
20 accident?

21 A. No, ma'am.

22 Q. So all of this damage -- I'm showing you now State's  
23 Exhibit 10 -- all of the damage that we see to your vehicle  
24 was due to the impact of Mr. Butler's truck slamming against  
25 your leg and slamming into your vehicle.

## TESTIMONY OF BRANDON HOLCOMB

- 1 A. Yes, ma'am.
- 2 Q. Anytime when you got out of your car did you step  
3 across this double yellow line?
- 4 A. No, ma'am.
- 5 Q. So when you got out of your vehicle you just walked  
6 here, stayed in your lane of travel.
- 7 A. Yes, ma'am.
- 8 Q. Your girlfriend, Kelly, was she able to go around you?
- 9 A. Yes, ma'am.
- 10 Q. And Mr. Butler was following her; is that correct?
- 11 A. Yes, ma'am.
- 12 Q. And before Mr. Butler came to the straight-away, you  
13 were already standing at the back of your vehicle?
- 14 A. Yes, ma'am.
- 15 Q. And did you attempt to move this way when you saw his  
16 truck coming toward you?
- 17 A. Yes, ma'am.
- 18 Q. And State's Exhibit 8, that is your shoe in the  
19 roadway?
- 20 A. Yes, ma'am.
- 21 Q. And that's from your right foot, your right shoe?
- 22 A. Yes, ma'am.
- 23 Q. What was Mr. Butler's demeanor after he hit you?
- 24 A. After he hit me the only time I spoke to him was to ask  
25 him to at least call me an ambulance and he replied with,

## TESTIMONY OF BRANDON HOLCOMB

1 "No, you flipped me off," got back in his truck and shut the  
2 door and I didn't speak to him after that.

3 MS. LESKANIC: Thank you. Please answer any questions  
4 Mr. Thompson has.

5 THE COURT: Mr. Thompson?

6 MR. THOMPSON: Thank you, Your Honor.

7 (Break proceedings.)

8 CROSS EXAMINATION

9 BY MR. THOMPSON:

10 Q. Mr. Holcomb, can you see or do you need to step down?

11 A. I can see.

12 Q. You can see? This is the curve right here, right?

13 A. Yes, sir.

14 Q. Okay. What's this right here?

15 A. A couple of small bushes.

16 Q. There's some bushes right there in the curve, right?

17 A. Yes, sir.

18 Q. And this is a tree; is that correct?

19 A. Yes, sir.

20 Q. Okay. This is a house?

21 A. Yes, sir.

22 Q. All right. And did you say you stopped your car where  
23 at? Tell me about where your car was stopped when I get  
24 there.

25 A. Right there.

## TESTIMONY OF BRANDON HOLCOMB

- 1 Q. Right in here?
- 2 A. Yes.
- 3 Q. So a little bit over the length of that house outside
- 4 that curve you stopped your car.
- 5 A. Yes.
- 6 Q. How many feet would you say that is?
- 7 A. I'm not sure, sir.
- 8 Q. Okay. Now, how fast were you driving?
- 9 A. The speed limit, I was doing 35, 40.
- 10 Q. Now, when Mr. Butler pulled out in front of you and you
- 11 blew your horn and went around him, did you flip him off?
- 12 A. No, sir.
- 13 Q. You didn't?
- 14 A. No, sir.
- 15 Q. Somebody in your car flip him off?
- 16 A. No, sir.
- 17 Q. Okay. Where was your girlfriend at then?
- 18 A. At what point?
- 19 Q. At the point that you blew your horn and went around
- 20 Mr. Butler.
- 21 A. Whenever I went around he got in front of her so she --
- 22 Q. He got in front of her?
- 23 A. Yes, sir.
- 24 Q. All right. But when we got up here to the curve she
- 25 was in front of him, right?

## TESTIMONY OF BRANDON HOLCOMB

- 1 A. Yes, sir. She passed him coming down Ellis Fairy.
- 2 Q. She passed him. How far was she behind you?
- 3 A. I'm not sure.
- 4 Q. Well, you had time to get around the curve, stop your
- 5 car and get out before she got there, right?
- 6 A. Yes, sir.
- 7 Q. And she was the next car to come around.
- 8 A. Yes, sir.
- 9 Q. And he was behind her.
- 10 A. Yes, sir.
- 11 Q. How far behind her was he?
- 12 A. He was on her bumper.
- 13 Q. On her bumper? Okay. How fast was she driving?
- 14 A. I'm not sure, I wasn't in the vehicle.
- 15 Q. But you were driving the speed limit.
- 16 A. Yes.
- 17 Q. And what is the speed limit through there?
- 18 A. I don't know.
- 19 Q. And how do you know you were driving it?
- 20 A. I believe it's 35, sir.
- 21 Q. Okay. But you were far enough for him and your
- 22 girlfriend to stop your car and get out of your car.
- 23 A. Yes.
- 24 Q. Before she got there.
- 25 A. Yes.

## TESTIMONY OF BRANDON HOLCOMB

1 Q. All right. Why did you stop in the middle of the lane  
2 of traffic?

3 A. Because it's a dead end and I got out to see what the  
4 problem was. I pulled close as I could to the curve.

5 Q. Well, I mean, we've seen the pictures where the car was  
6 sitting. Is that where it was sitting?

7 A. Yes.

8 Q. Okay. And you got out and you had a couple of feet  
9 between your car and the yellow line, right?

10 A. I don't know how far in distance they were.

11 Q. You were already out of your car when your girlfriend  
12 came around?

13 A. I was at the back corner walking to the back of my car  
14 by the time she got there and by the time he come around the  
15 corner I was already at the back.

16 Q. All right. Now, let's back up. You were -- when your  
17 girlfriend came around to pass you, you were walking to the  
18 back corner of your car?

19 A. I was pretty much there. I mean --

20 Q. So you were beside your car though, right? You would  
21 have still been beside it.

22 A. When she came around, yes.

23 Q. And then when he came around you were already at the  
24 back?

25 A. Yes, sir.

## TESTIMONY OF BRANDON HOLCOMB

- 1 Q. I thought you said he was right on her bumper.
- 2 A. Until they got to the corner and then she went on
- 3 around him, yeah.
- 4 Q. Did you waive her on around you?
- 5 A. Yes, sir.
- 6 Q. You did? You waived her on around?
- 7 A. Yeah, I told her go ahead.
- 8 Q. And she had to go over into the other lane of traffic,
- 9 the oncoming lane of traffic to go around you.
- 10 A. Yes, sir. She had room to get around if she needed to
- 11 and she seemed to clear it.
- 12 Q. And he was right on her bumper.
- 13 A. Not at that time.
- 14 Q. He didn't go into the other lane of traffic either?
- 15 A. Yes, sir, then he swerved back toward me.
- 16 Q. Okay. After she went by did you make a motion or
- 17 something like this like you were gonna jump back out there?
- 18 A. No, sir, I did not.
- 19 Q. Okay. Is that not what caused Mr. Butler to lock his
- 20 brakes and cut his wheel?
- 21 A. When he cut his wheel he cut his wheel toward me. He
- 22 could have cut to the left if he wanted to go off the road
- 23 but he cut toward me.
- 24 Q. He cut to the right, right?
- 25 A. Correct, and I'm on the right side.

## TESTIMONY OF BRANDON HOLCOMB

1 Q. Was he irate? Was he screaming? Was he -- I'm talking  
2 about Mr. Butler. Was he screaming? Was he hollering? Was  
3 he in your face, anything like that when this -- after this  
4 happened?

5 A. No, sir. He stayed -- after I asked him -- he stepped  
6 out after he backed up to see the damages. I asked him  
7 clearly, "Can you at least please call me an ambulance?"  
8 And he seen my leg. He replied with, "No, you flipped me  
9 off," got in his truck and shut the door and did not speak  
10 to none of us until the police got care.

11 Q. Didn't try to driveway?

12 A. No.

13 Q. And who the called the ambulance?

14 A. My girlfriend's brother, Triston.

15 Q. And he was in the car with you?

16 A. No, sir. When they -- whenever my girlfriend was going  
17 up the road they was looking back, they seen it happen so he  
18 gets out of the car.

19 Q. And he calls an ambulance.

20 A. Yes.

21 Q. Okay.

22 MR. THOMPSON: Okay. Thank you.

23 THE COURT: Anything, Solicitor?

24 MS. LESKANIC: Yes, Your Honor, briefly.

25 THE COURT: Okay.

## TESTIMONY OF BRANDON HOLCOMB

1 REDIRECT EXAMINATION

2 BY MS. LESKANIC:

3 Q. Brandon, will you step down a moment, please? We're  
4 gonna be using State's Exhibit 3. I just want it to be  
5 clear, what road is this here?

6 A. Ellis Fairy..

7 Q. And what road is this?

8 A. Cresthaven.

9 Q. Okay. Will you explain to the jury what lane you were  
10 in, again where Mr. Butler pulled out and where your  
11 girlfriend had to go just so it's clear where everyone was  
12 in there vehicle.

13 A. I was in the right-hand lane, it goes from a two lane  
14 to a one lane, I was on the right side of the road but I was  
15 in the left-hand lane. I come around the corner and stop  
16 about right in this area. My girlfriend comes around, she  
17 comes around on this side of the road in the right-hand lane  
18 and goes into the left lane to pass me and goes on up  
19 continuing on Cresthaven.

20 Q. Okay. When she passed you where was Mr. Butler's truck  
21 if you remember?

22 A. I don't remember.

23 Q. Okay. That's fine. Was he behind Kelly?

24 A. Yes.

25 Q. His truck was behind her. Where were you in relation

## TESTIMONY OF BRANDON HOLCOMB

1 to your vehicle, State's Exhibit 8? Where were you when  
2 Kelly went by?

3 A. When Kelly went by I was stepping out of my car and I  
4 was already started headed towards the back when she passed  
5 around.

6 Q. Okay. Now, when you got out of your car did you just  
7 casually walk back there? How did you get to the back of  
8 your car?

9 A. I got out and -- I didn't casually but I stepped back,  
10 you know.

11 Q. Quickly or slowly to the back of your car?

12 A. It was -- I don't remember.

13 Q. Okay. All right. Were you at the back of the car by  
14 the time you saw Mr. Butler's vehicle?

15 A. Yes, ma'am.

16 Q. Okay. And this shows the position of your vehicle; is  
17 that correct?

18 A. Yes, ma'am.

19 Q. After the impact?

20 A. Yes, ma'am.

21 Q. When you got out of your car you had all this room not  
22 to cross the double yellow line; is that correct?

23 A. Yes, ma'am.

24 Q. All right. And your testimony is that you did not  
25 cross the double yellow line, that you walked straight back

## TESTIMONY OF AUSTIN BRATTON

1 here, waived Kelly on, she moved over and went by and then  
2 you continued to move to the back of your vehicle which is  
3 where Mr. Butler's vehicle then, see his skid marks, comes  
4 into you and you can't move out of the way.

5 A. Yes.

6 Q. Okay. Thank you.

7 MS. LESKANIC: That's all I have for this witness.

8 THE COURT: Anything?

9 MR. THOMPSON: Nothing further.

10 THE COURT: All right. You may step down.

11 MS. LESKANIC: State calls Austin Bratton.

12 The witness, AUSTIN BRATTON, was first duly  
13 sworn and testified as follows, on:

14 DIRECT EXAMINATION

15 BY MS. LESKANIC:

16 THE COURT: Sir, we're going to ask you to speak up so  
17 that everybody can hear you. If you would, tell us your  
18 full name and spell your last name, please.

19 THE WITNESS: My name is David Bratton, B-r-a-t-t-o-n.

20 Q. Do you go by Austin?

21 A. Yes, ma'am.

22 Q. I'm going to call you Austin if that's okay. How old  
23 are you, Austin?

24 A. I am 16 years old.

25 Q. And is your brother Brannon Holcomb?

## TESTIMONY OF AUSTIN BRATTON

1 A. Yes, ma'am.

2 Q. Were you in the vehicle with him the day that he was  
3 hit by Mr. Butler?

4 A. I was.

5 Q. Where were y'all coming from?

6 A. We were -- he picks me up at school before I got my  
7 restricted license and he was taking me back to my house.

8 Q. Okay. And y'all live on Cresthaven Road; is that  
9 correct?

10 A. Yes.

11 Q. Yes. What was your first encounter with Mr. Butler?  
12 What happened to start all of this with Mr. Butler?

13 A. When I first saw Butler's truck was on Ellis Fairy  
14 Drive, we was heading toward my house and his truck came out  
15 to the left lane closest to the line, like right behind  
16 Founders Credit Union now.

17 Q. Yes, sir.

18 A. And we served over to the right lane, went around him  
19 and got in the left and that's when I first saw Butler's  
20 truck.

21 Q. Okay. And what happened after that?

22 A. After that I didn't think much about it so I kept, you  
23 know, looking out the window just focused on getting home.

24 Q. At some point did you realize that Mr. Butler was  
25 following your car or Kelly's car?

## TESTIMONY OF AUSTIN BRATTON

1 A. I did not, I wasn't like paying attention.

2 Q. Okay.

3 A. I was just focused on getting home.

4 Q. All right. And when did you find out that there was a  
5 problem, that your brother was stopped?

6 A. I found out there was a problem whenever he took his  
7 seatbelt off, got out of the car and went behind his vehicle  
8 and I started looking back out of the rear window at him.

9 Q. And what did you see when you looked out the rear view  
10 mirror -- or rear window? Excuse me.

11 A. The seats were like down close to the floor so I wasn't  
12 raised up looking out the rear window, all I could see was  
13 him behind his left tail light and like not seconds after I  
14 felt like a -- shook the vehicle and that's when I knew  
15 something happened.

16 Q. Okay. Did you see what hit your brother?

17 A. I could see the white truck, and I could see him like  
18 over his bumper.

19 Q. Okay. And where was your brother when he was struck  
20 with the truck?

21 A. He was behind his left tail light from the driver's  
22 side back left.

23 Q. I show you what's been marked State's Exhibit 8. Were  
24 you paying attention to your brother when he got out of the  
25 car?

## TESTIMONY OF AUSTIN BRATTON

1 A. Yeah. When he got out of the car that's when I started  
2 looking out of the rear window. I was in the passenger's  
3 side looking back so I was over the center console looking  
4 back from the passenger's side.

5 Q. When your brother got out of the car, where did he go?

6 A. He went right there where his show is, the left tail  
7 light, he was standing behind that.

8 Q. Did he ever go over on this side of the road?

9 A. He didn't cross the yellow line.

10 Q. So he went from here back to the back of the car.

11 A. Yeah, he stayed behind his car.

12 Q. All right. And then while he was back there did you  
13 see the white truck approaching?

14 A. I could see a little bit of it getting closer and then  
15 like not seconds after I felt a hit.

16 Q. Okay. And after it hit what did you do?

17 A. I took -- I took my seat belt off, I jumped out the  
18 driver's side and went over to see what happened and then I  
19 saw him pinned in between his car and the white truck.

20 Q. And what did Mr. Butler do?

21 A. I tried to get him to -- like I motioned for him to  
22 back the truck up to see what -- if anything had happened to  
23 him.

24 Q. So at that point he hasn't even backed his car up. You  
25 have gotten out of your car and his truck --

## TESTIMONY OF AUSTIN BRATTON

1 A. When I got out he's still in between the two vehicles  
2 and I motioned for him to back up, and whenever he backed up  
3 his ankle went down, I saw that he'd broke his ankle.

4 Q. Okay. So when Mr. Butler strikes your brother you get  
5 out of the car. Is Mr. Butler still in his truck at that  
6 point?

7 A. He's still in his truck.

8 Q. And is your brother still pinned between the two  
9 vehicles?

10 A. Yes, ma'am.

11 Q. And then you had to ask Mr. Butler to back up.

12 A. I didn't physically ask, I just motioned to move him  
13 out to get him to back up.

14 Q. And then he did back up?

15 A. Yes, ma'am.

16 Q. And what did he do after that?

17 A. I was more focused on my brother than paying attention  
18 to Butler.

19 Q. Did he get out of the vehicle to check on your brother?

20 A. Not that I recall.

21 Q. All right.

22 MS. LESKANIC: Thank you. Please answer any questions  
23 Mr. Thompson might have.

24 THE COURT: Mr. Thompson?

25 MR. THOMPSON: Thank you.

## TESTIMONY OF AUSTIN BRATTON

1 CROSS EXAMINATION

2 BY MR. THOMPSON:

3 Q. Mr. Bratton, when it first started on Ellis Fairy, do  
4 you remember seeing a white truck there?

5 A. When I first saw it it was that road right behind the  
6 federal credit union, now Founders Credit Union, that's when  
7 I first saw when. He pulled out and merged into the lane in  
8 front of us and that's why we had to go to the right lane to  
9 avoid hitting him.

10 Q. Okay. And did your brother blow the horn or anything?

11 A. No, sir.

12 Q. He didn't blow the horn?

13 A. No, not that I remember.

14 Q. Okay. Did he flip Mr. Butler off?

15 A. I didn't see it if he did.

16 Q. Did you flip Mr. Butler off?

17 A. No, sir.

18 Q. Okay. Now, where was your brother's girlfriend when  
19 this happened? I'm talking about down Ellis Fairy when he  
20 first pulled out in front of you.

21 A. I'm pretty sure she was following him to my house.

22 Q. Did you pay attention to where she was at after  
23 Mr. Butler pulled out in front of you?

24 A. No, sir, I didn't.

25 Q. Was your brother speeding while he was driving?

## TESTIMONY OF AUSTIN BRATTON

1 A. No, sir.

2 Q. Okay. Went around of the curve, he stopped and got out  
3 of the car. Did you see his girlfriend come around the  
4 curve?

5 A. As soon as he got out of the car I was paying attention  
6 on him, I wasn't thinking about Kelly and them.

7 Q. So you didn't see her car at all.

8 A. Um -- I saw it like after, you know, it happened but  
9 not that I was --

10 Q. You didn't see it pass him while he stopped there on  
11 the road.

12 A. No. Like when he got out I was looking at him in the  
13 rear view window to see what happened, because I was just  
14 worried about getting home. And after he got out I was  
15 trying to figure out what was going on.

16 Q. Okay.

17 MR. THOMPSON: Thank you.

18 THE COURT: Anything further?

19 MS. LESKANIC: Nothing further.

20 THE COURT: You may step down, sir, thank you.

21 MS. LESKANIC: State calls Kelly Stanford.

22 THE COURT: All right.

23 The witness, KELLY STANFORD, was first duly  
24 sworn and testified as follows:

25 THE COURT: Ma'am, I'm going to ask you to pull up,

## TESTIMONY OF KELLY STANFORD

1 please, into that the microphone when you answer the  
2 questions so everybody can you hear you. Would you tell us  
3 your full name and spell your last name, please?

4 THE WITNESS: Kelly Marie Stanford, S-t-a-n-f-o-r-d.

5 THE COURT: Thank you. Yes, ma'am?

6 MS. LESKANIC: Thank you, Your Honor. May it please  
7 the Court?

8 THE COURT: Yes.

9 DIRECT EXAMINATION

10 BY MS. LESKANIC:

11 Q. Kelly, you are Brandon's girlfriend; is that correct?

12 A. I am.

13 Q. And were you his girlfriend back on January 12th of  
14 2012 when this happened?

15 A. I was.

16 Q. Were you following Brandon down Ellis Fairy Road?

17 A. I was.

18 Q. Where were y'all going?

19 A. We were going to Brandon's house after school.

20 Q. Okay. What happened as you were traveling down Ellis  
21 Fairy Road?

22 A. We stopped at the stop light, and then when the stop  
23 light turned green we proceeded on to Brandon's house. And  
24 then at the little road at Applebee's, I don't know what  
25 road -- it is Banking Way, I guess, and that's when we

## TESTIMONY OF KELLY STANFORD

1 approached a white truck that pulled out in front of  
2 Brandon.

3 Q. So the white truck that was driven by Mr. Butler pulled  
4 out in front of you on Ellis Fairy Road -- pulled out in  
5 front of Brandon.

6 A. Yes, ma'am.

7 Q. What did Brandon do?

8 A. Brandon switched into the other lane and threw his turn  
9 signal on and I went behind him.

10 Q. All right. So Brandon moved over, he was in the  
11 left-hand lane, Mr. Butler pulls out and then Brandon moves  
12 over to the right-hand, is that correct, to go around  
13 Mr. Butler?

14 A. Yes, ma'am.

15 Q. And what do you do?

16 A. I follow Brandon, I switch over to the right lane.

17 Q. Okay. And do you then get in front of Mr. Butler  
18 again? You're behind Brandon?

19 A. Yes.

20 Q. And what does the white truck do at that point?

21 A. When I looked back in my rear view mirror he was  
22 following way too close.

23 Q. Okay. How was he driving?

24 A. I'm sorry?

25 Q. How was he driving?

## TESTIMONY OF KELLY STANFORD

1 A. I mean, he was really close to my bumper, I really -- I  
2 don't know.

3 Q. Too close for comfort?

4 A. Yeah.

5 Q. Okay. You knew that he was too close to you?

6 A. Yes.

7 Q. And what did you do?

8 A. I looked in my rear view mirror, I explained to my  
9 brother that he was following us and then he kept going.

10 Q. Okay. And how far is Brandon ahead of you going down  
11 Ellis Fairy Road?

12 A. Maybe a car length.

13 Q. Okay.

14 A. We wasn't really behind -- I wasn't behind his bumper,  
15 so --

16 Q. Okay. Brandon is in front of you, you're following him  
17 and Mr. Butler is on your bumper.

18 A. Yes.

19 Q. Okay. You continue down Ellis Fairy that turns into  
20 Cresthaven, it goes from a two lane into a one lane turn  
21 into Cresthaven.

22 A. Yes, ma'am.

23 Q. What happens as y'all are getting to Cresthaven?

24 A. I went -- Mr. Butler was going behind me following too  
25 close and I ran off the road just a little bit, and then I

## TESTIMONY OF KELLY STANFORD

- 1 got back onto the road and I made the turn.
- 2 Q. Where did you go off the road?
- 3 A. Whenever you come into the curve right there.
- 4 Q. Okay. Let me show you State's Exhibit 3. Will this
- 5 picture show you where you went off the road?
- 6 A. Yes, ma'am.
- 7 Q. Can I have you step down for a second? Let me give you
- 8 this pointer. And if you would just point to the jury where
- 9 you were coming down Ellis Fairy on Cresthaven.
- 10 A. I was coming down this way and then I ran off the road
- 11 right about here, and then I got back --
- 12 Q. What made you run off the road?
- 13 A. Mr. Butler --
- 14 Q. Okay.
- 15 A. -- like following too close, and then I made the turn.
- 16 Q. Okay. And when you made the turn, had Brandon already
- 17 made the turn?
- 18 A. Yes, ma'am.
- 19 Q. When you make the turn onto Cresthaven, where is
- 20 Brandon? When you finally come around the corner where is
- 21 his vehicle? Tell me when to stop.
- 22 A. Right there.
- 23 Q. Okay. And has he stopped his car when you come around
- 24 the curve?
- 25 A. Yes, ma'am.

## TESTIMONY OF KELLY STANFORD

1 Q. And where is he? Is he still in his vehicle or is he  
2 getting out of his vehicle when you come around this curve?

3 A. He is getting out of the vehicle and motioning me to go  
4 around.

5 Q. Okay. And Mr. Butler is still behind you. So you come  
6 around the curve and you see Brandon getting out of the car  
7 motioning you to go by.

8 A. Yes, ma'am.

9 Q. All right. So what do you do?

10 A. I merged into the other lane and go around.

11 Q. Okay. And at that point Mr. Butler is behind you. Is  
12 he still on your bumper?

13 A. Not that -- not like he was.

14 Q. Okay. So in the curve you get a little bit of distance  
15 between and you Mr. Butter.

16 A. Yes, ma'am.

17 Q. You go by Brandon's vehicle --

18 A. Yes, ma'am?

19 Q. -- and where is Brandon? Is he in the opposite lane  
20 standing or is he still in his lane standing?

21 A. He's still in his lane.

22 Q. Did you ever see him cross the yellow line into the  
23 oncoming traffic?

24 A. I did not.

25 Q. Okay. What did you see at that point? What happened?

## TESTIMONY OF KELLY STANFORD

- 1 And you can have a seat again. Thank you.
- 2 A. I looked in my rear view mirror and I saw the white  
3 truck move to the left lane, back to the right lane and then  
4 that's when I seen him hit Brandon.
- 5 Q. So when you first saw -- after you passed Brandon then  
6 which lane is the white truck in, this lane or this lane?
- 7 A. That lane.
- 8 Q. This one?
- 9 A. No, the other.
- 10 Q. Okay. Come down here and you show me.
- 11 A. He was in this lane.
- 12 Q. Okay.
- 13 A. And when he come around the curve he was still in this  
14 lane. And then a little bit he comes over to this lane, and  
15 then I see him jerk back over and that's when I see  
16 Brandon's body move.
- 17 Q. Okay. When he moved over into the oncoming traffic,  
18 although there's -- it's a dead end road, right?
- 19 A. Yes.
- 20 Q. Is there much traffic on this road?
- 21 A. No.
- 22 Q. Okay. But he moves into what would be oncoming  
23 traffic. Do you ever see Brandon cross these double yellow  
24 lines?
- 25 A. No, ma'am.

## TESTIMONY OF KELLY STANFORD

1 Q. All right. And he just goes to the back of his  
2 vehicle.

3 A. Uh-huh.

4 Q. Did you see him make any motion or do anything as  
5 Mr. Butler was in the opposite lane of travel?

6 A. He kind of threw his hands up but that's all I saw.

7 Q. Okay. In what way? Show me what he did.

8 A. Like that.

9 Q. And then at that point what happened?

10 A. He hits Brandon -- you want me to go back up here?

11 Q. Yes, ma'am. Thank you.

12 A. He hits Brandon and then I see his body move. So  
13 I'm -- my brother stops my car with my emergency brake and  
14 gets out of the car, and then I turn around in the  
15 neighbor's driveway and head back down that way and then  
16 that's when they told me to go get David.

17 Q. Who is David?

18 A. Brandon's daddy.

19 Q. Okay. Did you see Mr. Butler?

20 A. Well, I seen him parked on the side but that's it.

21 Q. Okay. Did you ever see him out of his vehicle?

22 A. I did not.

23 Q. And then you went to get David?

24 A. I did.

25 Q. Who called 911?

## TESTIMONY OF KELLY STANFORD

1 A. My brother.

2 Q. Okay.

3 MS. LESKANIC: Thank you. Please answer any questions

4 Mr. Thompson may have.

5 THE COURT: Mr. Thompson?

6 MR. THOMPSON: Thank you, Your Honor.

7 CROSS EXAMINATION

8 BY MR. THOMPSON:

9 Q. Ms. Stanford, when the white truck first pulled out in  
10 front of your brother on Ellis Fairy, did your brother blow  
11 the horn at him or anything?

12 A. You talking Brandon or my brother?

13 Q. I'm sorry, your boyfriend, your boyfriend, Brandon,  
14 yeah.

15 A. Yes. He blew the horn just so that he wouldn't come on  
16 over to him.

17 Q. Okay. And you weren't in the car with Brandon, though.

18 A. No, sir.

19 Q. Do you know whether or not anybody in the car with  
20 Brandon flipped Mr. Butler off?

21 A. No, sir.

22 Q. Anybody in your car flip him off?

23 A. Yes, sir.

24 Q. They did? Who?

25 A. My brother.

## TESTIMONY OF KELLY STANFORD

1 Q. Okay. Now, you're going up -- Brandon is the lead car,  
2 right?

3 A. Yes, sir.

4 Q. And you're behind him.

5 A. Yes, sir.

6 Q. And after you went by Mr. Butler, were you still behind  
7 Brandon?

8 A. Yes, sir.

9 Q. Okay. Did Mr. Butler ever get between and you Brandon?

10 A. No, sir.

11 Q. All right. How fast were y'all driving?

12 A. I was doing the speed limit.

13 Q. You were driving the speed limit. How fast was Brandon  
14 driving?

15 A. I mean, I was directly behind him after we merged into  
16 the right lane so he wasn't going much faster than I was.

17 Q. Okay. How did he get ahead of you after you made the  
18 turn?

19 A. I don't know.

20 Q. But he had time to stop his car in the middle of the  
21 lane and get out, right?

22 A. Yes, sir.

23 Q. Before you got to him.

24 A. Yes, sir.

25 Q. And if you would have been right behind him wouldn't

## TESTIMONY OF KELLY STANFORD

1 you have got there at the same time he got there.

2 A. Well, I slowed down when I figured out that he was  
3 following us, and then that's when I went off the road and I  
4 had to merge back onto the road and then that's when I made  
5 the turn and Brandon was stopped.

6 Q. Okay. Did you see Brandon stop before you made the  
7 turn?

8 A. I don't remember.

9 Q. Okay. There is some bushes and all there on the  
10 corner, isn't there?

11 A. Yes, sir.

12 Q. Okay. And they block your view somewhat, don't they?

13 A. Yeah, they block some view.

14 Q. Okay. Now, when you went by, or when you first saw  
15 Brandon, was he beside the car? Or let me just ask the  
16 question. Was the door open on the car when you first saw  
17 it?

18 A. No, sir.

19 Q. Okay. Was Brandon standing beside the car walking  
20 towards the back or was he at the back?

21 A. He was almost at the back.

22 Q. So he was beside it walking to the back.

23 A. Yes.

24 Q. How did he motion for you to go around him?

25 A. He just waived me.

## TESTIMONY OF KELLY STANFORD

1 Q. Did he -- well, let's say this is the car.

2 A. Okay.

3 Q. And I'm here, and you say he was almost at the back  
4 when you saw him. All right. Did he turn and do this for  
5 you to come or did he just go (motioning)?

6 A. He kept on walking but he was --

7 Q. Okay. And at what point in time did you start looking  
8 in the rear view mirror?

9 A. When he told me to go on I went into the left lane back  
10 into the right lane and then that's when I started looking  
11 like in my rear view mirror.

12 Q. And where was -- after you come around the curve, you  
13 were in the right lane.

14 A. When I come around -- yes.

15 Q. Where was Mr. Butler at that time?

16 A. I don't remember, I wasn't looking at him then.

17 Q. Okay. And you didn't go into the left lane until --

18 A. Brandon motioned me to.

19 Q. And then you said you looked in your rear view mirror.

20 A. Yes.

21 Q. Where was Mr. Butler when you first looked in your rear  
22 view mirror?

23 A. He was coming around the corner.

24 Q. He was coming around the corner. So he was a good bit  
25 behind you?

## TESTIMONY OF KELLY STANFORD

1 A. Yeah. I mean, I went around him and then that's when I  
2 seen him and then he just went to the other lane and back to  
3 our lane and hit Brandon.

4 Q. Okay. Did he go all the way into the other lane or did  
5 he just start crossing over into the other lane?

6 A. He went all the way to the other side of the lane.

7 Q. So his vehicle was totally in the other lane.

8 A. Yes.

9 Q. Okay. And where was Brandon?

10 A. By that time he was at the back of the car.

11 Q. Do you see him at the back of the car?

12 A. I saw him at the back of the car.

13 Q. Did he make any movements while he was at the back of  
14 the car?

15 A. No.

16 Q. Okay.

17 A. Not that I saw.

18 Q. Not that you saw. Okay.

19 MR. THOMPSON: Thank you.

20 THE COURT: Anything, Solicitor?

21 MS. LESKANIC: Briefly, Your Honor.

22 THE COURT: All right.

23 REDIRECT EXAMINATION

24 BY MS. LESKANIC:

25 Q. Did you have any trouble seeing Brandon once you came

## TESTIMONY OF KELLY STANFORD

1 around the curve?

2 A. No.

3 Q. Was there plenty of time for you to see him and move  
4 over?

5 A. Yes, ma'am.

6 Q. And the trees that Mr. Thompson is talking about, did  
7 that block your view once you came around the curve?

8 A. No, ma'am.

9 Q. Can you describe for the jury what that curve is like?

10 A. You have to slow down to get around the curve.

11 Q. I show you State's Exhibit 4. Is this the curve that  
12 we're talking about?

13 A. Yes, ma'am.

14 Q. Okay. And is this a -- how would you describe this  
15 curve? Is it a sharp turn or is it just --

16 A. It's a very sharp turn.

17 Q. Okay. So what do you have to do when you're coming  
18 down the road? When you drive it can you maintain your  
19 speed or do you have to slow down considerably before you  
20 make this turn?

21 A. I have to slow down to go around.

22 Q. Okay. And what is this right here? What road is this?

23 A. That's Interstate 85.

24 Q. Okay. And there's a fence here; is that correct?

25 A. Yes, ma'am.

## TESTIMONY OF KELLY STANFORD

- 1 Q. All right. So if you don't slow down you're going to  
2 go onto I-85?
- 3 A. Yes, ma'am.
- 4 Q. So when you came around this curve you had slowed down.  
5 Did you slow down to go through the curve?
- 6 A. I did.
- 7 Q. And you had already had to veer off the road because of  
8 Mr. Butter; is that correct?
- 9 A. Yes, ma'am.
- 10 Q. Okay. And then Brandon waived you on, correct?
- 11 A. Yes, ma'am.
- 12 Q. And again, when Brandon parked his vehicle up here, did  
13 you have any trouble -- did you have to slam on brakes to  
14 avoid hitting him?
- 15 A. No, ma'am.
- 16 Q. What time of day was this?
- 17 A. It was -- it was right after school and we went through  
18 the school traffic, so it was about 3:50 to 4:00.
- 19 Q. Okay. In the afternoon in January, so the sun is still  
20 out.
- 21 A. Yes.
- 22 Q. It's not nighttime.
- 23 A. Yes, ma'am.
- 24 Q. All right.
- 25 MS. LESKANIC: Thank you.

## TESTIMONY OF KELLY STANFORD

1 THE COURT: Anything, Mr. Thompson?

2 MR. THOMPSON: No, sir.

3 THE COURT: Ma'am, you may step down, watch your step.  
4 Solicitor, we've been running almost an hour and a half now  
5 and I had promised the jury breaks about every hour 15 to 20  
6 minutes, something like that. So at this time, Mr. Foreman,  
7 in just a moment I'm going to let you take your jury to the  
8 jury room, we're going to take about a 15 minute break. I  
9 would ask you not to begin deliberations in this matter in  
10 any manner whatsoever, you've not heard all of the evidence  
11 at this point in time, don't even deliberate within your own  
12 mind, don't discuss it with each other. But again, at this  
13 point in time, Mr. Foreman, you take the jury out and give  
14 everybody a chance to use the facilities, whatever you might  
15 need to do and we'll see you back in about 15 minutes.

16 (The jury left the courtroom.)

17 THE COURT: Anything from anybody at this point?

18 MR. THOMPSON: No, sir.

19 MS. LESKANIC: No, sir.

20 THE COURT: All right. Let's be back in 15 minutes.

21 (A break was taken.)

22 THE COURT: Before we bring the jury back out, just as  
23 housekeeping matter, Kim, you have two, five, seven?

24 MS. LESKANIC: I have three.

25 THE COURT: Three more witnesses?

## TESTIMONY OF KELLY STANFORD

1 MS. LESKANIC: Yes, sir.

2 THE COURT: Okay. That takes us to what, 4:30, 4:15?

3 MS. LESKANIC: Excuse me, four.

4 THE COURT: You got four?

5 MS. LESKANIC: But I don't think they're going to be  
6 very lengthy.

7 THE COURT: That takes us to 4:00. I'm just trying to  
8 get a ballpark what we're doing here.

9 MS. LESKANIC: I think Mr. Thompson may have one  
10 because I think your other witnesses are people that I'm  
11 calling.

12 MR. THOMPSON: I was going to say it depends on whether  
13 you call everybody or not, if you do I might have but one,  
14 if she doesn't I may have two.

15 THE COURT: Okay. I was just trying to figure out  
16 where we will be. We may get all the testimony in today and  
17 charge -- I'll do whatever you guys want to, do you want  
18 charge in the morning or something?

19 MR. THOMPSON: Why don't we see where we're at when the  
20 State rests.

21 THE COURT: We're ready for the jury.

22 (The jury returned to the courtroom.)

23 THE COURT: All right. Mr. Foreman, any matters for  
24 the jury? No?

25 THE JUROR: No, sir.

## TESTIMONY OF TRISTON AUSTIN

1 THE COURT: Everything good. All right. Solicitor?

2 MS. LESKANIC: Thank you, Your Honor. May it please  
3 the Court? State calls Triston Austin.

4 The witness, TRISTON AUSTIN, was first duly  
5 sworn and testified as follows:

6 THE COURT: All right, sir. I'm going to ask you to  
7 speak loudly in the microphone so everybody can hear you.  
8 Will you tell us your name and spell your last name?

9 THE WITNESS: Name is Triston Austin, A-u-s-t-i-n.

10 THE COURT: Thank you. Solicitor?

11 MS. LESKANIC: Thank you, Your Honor.

12 DIRECT EXAMINATION

13 BY MS. LESKANIC:

14 Q. Mr. Austin, were you riding in a car with your sister,  
15 Kelly, on the day that Brandon was hit by Mr. Butler?

16 A. Yes, ma'am.

17 Q. All right. Will you please tell the jury when y'all  
18 first came in contact with Mr. Butler?

19 A. We turned on Ellis Fairy Road right there at the  
20 skating rink, and we was behind Brandon Holcomb and his  
21 brother, we was in the trail car, and Kenneth pulled out in  
22 front of Brandon. Well, Brandon swerved around and missed  
23 him and he tapped the roof of his car and that said he  
24 wanted us to come around, so we went around, and about that  
25 time Kenneth got on our back bumper. So at the time I was

## TESTIMONY OF TRISTON AUSTIN

1 mad, I flipped him off and he continued to ride the back  
2 bumper until we got to the turn, that turn on Cresthaven.  
3 Well, we turned on Cresthaven and Brandon is on up the road  
4 a little piece, good little piece, pulled over on the side,  
5 he got out of his car and he walked to the back, threw his  
6 hands up like, "What's the problem," and he was behind his  
7 car. By the time we passed him I looked back to see what  
8 was gonna happen, and then by that time Kenneth was in the  
9 oncoming traffic and then I see him just swerve over and hit  
10 Brandon. Well, I jump out of the car to go help Brandon, I  
11 help him to get in his seat in the driver's seat, you know.  
12 I said, "Brandon, you need to calm down," and stuff like  
13 that. I ask Kenneth if he would call 911 because I was busy  
14 tending to Brandon, and, you know, nothing was said. So I  
15 called 911 myself while I was helping Brandon. And then  
16 Austin went and got towels, you know, for all the blood that  
17 was, you know, coming out of his leg. And then by that time  
18 I think it was the police that showed up first, and he went  
19 up to Kenneth's truck and I told him, you know, come over  
20 here and take a look at Brandon. And then, you know, the  
21 fire department and the ambulance showed up and they told me  
22 to step back and let them do their job.

23 Q. Okay. Now, you tried to help Brandon. Do you have any  
24 special training to be able to assist him?

25 A. Yes, ma'am.

## TESTIMONY OF TRISTON AUSTIN

1 Q. And what type of training is that?

2 A. First responder training with Macedonia Fire

3 Department.

4 Q. All right. Are you with the fire department now?

5 A. Yes, ma'am.

6 Q. All right. And do you have any other employment?

7 A. I'm with the Army National Guard right now, I've been

8 in since April 17, 2012.

9 Q. Okay. Now I want to back you up, you kind of went  
10 through everything quickly and I appreciate that but now I  
11 want to go through it a little bit more slowly. I have up  
12 on the screen what we have marked previously as State's  
13 Exhibit 1 showing Floyd Baker Boulevard and then Ellis  
14 Fairy. Do you mind stepping down for a moment? And if you  
15 use the button there and explain to the jury where you were,  
16 where Brannon was and exactly what happened and just go  
17 through it slowly with them again.

18 A. Okay. So we turned off on Ellis Fairy right here and  
19 we're going right here and then Kenneth pulls out from right  
20 here right in front of Brandon, Brandon swerves over in the  
21 other lane to miss him, and then that's about the time that,  
22 you know, he patted the roof of his car for us to pass. So  
23 we're going down through here --

24 Q. Who patted the roof of the car?

25 A. Brandon did.

1 Q. Okay.

2 A. And then we're going down through here and Kenneth  
3 speeds up and gets on her back pumper, and I flipped him off  
4 like right in this area. So he gets closer and closer, and  
5 then Brandon, you know, we went around the turn and Brandon  
6 was hitting about right here. And then we go to pass him,  
7 and Brandon is already at the back of the car when we passed  
8 him. And I looked back and Kenneth is coming around the  
9 turn, he's in the other lane because Brandon was like right  
10 at the side, and then I seen him like swerve over and hit  
11 Brandon right here. So me and Kelly were right here and I  
12 jump out and I come back to help Brandon and then that's  
13 when I called 911 and administered aid.

14 Q. Let me -- while you're still standing let me show you  
15 what's been marked as State's Exhibit 8. Does this look  
16 like where Brandon's car was sitting after it had been  
17 struck by the defendant?

18 A. Yes, ma'am.

19 Q. All right. How far up the road do you think you and  
20 your sister were at the time Brandon was struck?

21 A. We was approximately right here, and that's about where  
22 I jumped out at.

23 Q. Okay. And did you see Brandon get struck? Were you  
24 watching what was going on?

25 A. Yes, ma'am.

## TESTIMONY OF TRISTON AUSTIN

1 Q. And how were you watching that?

2 A. I was -- I was looking in the back glass. I turned my  
3 body to look out.

4 Q. Did you ever see Brandon cross over the double yellow  
5 line into what would be oncoming traffic?

6 A. No, ma'am. He stayed right at his car right here.

7 Q. Okay. And then what did you see what he out of the  
8 car?

9 A. When he got out of the car he walked about right here,  
10 then he got to the back of his car and that's when he threw  
11 his hands up just like this, you know, like what's going on.  
12 And then Kenneth was over here in this lane and then he  
13 swerved over and then hit Brandon and pinned him right here.

14 Q. So you saw the truck swerve over after Brandon did the  
15 hand gesture, like what's going on?

16 A. Yes, ma'am.

17 Q. Okay. Did you get to Brandon before Mr. Butler had  
18 backed his truck up, or was the truck already backed up?

19 A. He was backing up as I was arriving.

20 Q. Okay. And what type of injury did you see to Brandon?

21 A. He had his pants leg pulled up, and I was like,  
22 "Brandon, what's wrong?" And he said, "My leg." So I look  
23 down and I see the back of his leg was cut open, it was  
24 probably about this big, just a hole in his leg. And I  
25 helped him limp to the driver's side of his car, set him

## TESTIMONY OF TRISTON AUSTIN

1 down in there. And then I could tell his leg was broke, the  
2 tibia and fibula, both of them. And I just tried to, you  
3 know, help stop the bleeding and help calm him down.

4 Q. Did Mr. Butler get out of his truck to help y'all in  
5 any way?

6 A. No, ma'am.

7 Q. And did he call 911 for you or offer to?

8 A. No, ma'am.

9 Q. All right.

10 MS. LESKANIC: I think that's all, you can have a seat,  
11 and please answer any questions for Mr. Thompson.

12 THE COURT: Mr. Thompson?

13 CROSS EXAMINATION

14 BY MR. THOMPSON:

15 Q. Can you see from up there or do you need to step down  
16 again?

17 A. I can see it from up here.

18 Q. Now, you say that when Brandon got out of the car y'all  
19 went by.

20 A. Yes, sir.

21 Q. And you say he went to right along here?

22 A. He was right at the back of his car.

23 Q. Okay. And then went to the back of his car.

24 A. Right.

25 Q. Okay. So he didn't move just right down the side of

## TESTIMONY OF TRISTON AUSTIN

1 his car.

2 A. Yeah. He stayed right along the side.

3 Q. Well, but you said he was right along here.

4 A. That was where his car was parked originally.

5 Q. Okay. Now, what you mean by where his car was parked  
6 originally? You mean his car was parked more out in the  
7 road?

8 A. No. It was -- it wasn't slanted when he was parked,  
9 sir.

10 Q. It was straight?

11 A. Yes, sir.

12 Q. So you're saying that the impact moved it?

13 A. Yes, sir.

14 Q. So then he wouldn't have been standing right in here.

15 A. That's where he was standing once I helped him to his  
16 car.

17 Q. All right. But he wouldn't have been standing right in  
18 there when y'all passed him?

19 A. No, sir. He was at the back of the car when we passed  
20 him?

21 Q. He would have been more over here.

22 A. No, sir.

23 Q. I don't follow what you're asking me -- I mean, what  
24 you're telling me. You're saying that the car was not  
25 slanted in the road.

## TESTIMONY OF TRISTON AUSTIN

- 1 A. No, sir.
- 2 Q. Right? So it was straight like the police car is.
- 3 A. Yes.
- 4 Q. How far over towards this yellow line was it?
- 5 A. It wasn't -- it was probably a foot over on the back
- 6 side.
- 7 Q. Okay. So the back end was knocked around?
- 8 A. Yes, sir.
- 9 Q. Okay. So the back end would have been further this
- 10 way.
- 11 A. Yes, sir.
- 12 Q. All right. So when he got out of the car he would have
- 13 been more in this area instead of this area?
- 14 A. He was --
- 15 Q. If the back -- I'm sorry, go ahead.
- 16 A. When he was -- when he got out of the car he was right
- 17 where the blood spot is, right by that shoe, he was right
- 18 there.
- 19 Q. Here?
- 20 A. Yes, sir.
- 21 Q. Well, he had to get out of the door of the car.
- 22 A. Right.
- 23 Q. And you say this back end was more over here in line?
- 24 A. Uh-huh.
- 25 Q. So that means for him to get out of the door he would

## TESTIMONY OF TRISTON AUSTIN

1 have to get out over here, right?

2 A. Right.

3 Q. Then he would have had to move this way to get to the  
4 back of the car, right?

5 A. Right.

6 Q. Okay. So he was closer to that yellow line than over  
7 here when he got out of the car?

8 A. Right.

9 Q. Okay. Now, how fast -- or let's go back. When you get  
10 on Ellis Fairy and you saw Mr. Butler pull out on the  
11 roadway, Brandon's car was first?

12 A. Right.

13 Q. And y'all were behind him?

14 A. Yes, sir.

15 Q. And how far behind him were you?

16 A. We was probably two car lengths behind him.

17 Q. Okay. What speed were y'all traveling?

18 A. I don't remember, I was in the passenger seat.

19 Q. Okay. Would it have been the speed limit, near the  
20 speed limit, speeding?

21 A. It would have been the speed limit.

22 Q. Okay. Was Brandon also traveling at that speed?

23 A. Yes, sir.

24 Q. Okay. Did Brandon blow the horn at Mr. Butler?

25 A. No, sir.

## TESTIMONY OF TRISTON AUSTIN

- 1 Q. He didn't blow the horn?
- 2 A. No, sir.
- 3 Q. Okay. Did he flip him off?
- 4 A. I did.
- 5 Q. You did?
- 6 A. Yes, sir.
- 7 Q. Do you know whether or not Brandon flipped him off?
- 8 A. I know Brandon didn't flip him off.
- 9 Q. You weren't in the car with him.
- 10 A. I was watching Brandon's car the whole time, sir.
- 11 Q. Okay. So you could see everything that went on inside
- 12 that from two car lengths behind?
- 13 A. Yes, sir.
- 14 Q. Okay. Y'all went on up the road. Did Mr. Butler ever
- 15 get between you and your car and Brandon's car?
- 16 A. No, sir.
- 17 Q. So Brandon got on up and got around the curve.
- 18 A. Uh-huh.
- 19 Q. And when y'all came around the curve he was already out
- 20 of his car.
- 21 A. He had parked it and he was getting out, sir.
- 22 Q. Okay. How did he get so far ahead of you?
- 23 A. Because we had to slow down to make the turn, because
- 24 Brandon's car sits lower than ours -- Kelly's car and it
- 25 won't take turns that fast.

## TESTIMONY OF TRISTON AUSTIN

1 Q. Okay. So he sped right on around that curve and y'all  
2 stopped, or y'all slowed down. And I believe you testified  
3 that when y'all went past his car -- where was Mr. Butler's  
4 truck when y'all passed Brandon's car?

5 A. He was just now coming around the corner, so --

6 Q. Just now coming around the corner.

7 A. Yes, sir.

8 Q. Okay. So it was still at a distance. Do you see skid  
9 marks in that photograph?

10 A. Yes, sir.

11 Q. Is that skid mark caused by Mr. Butler's truck?

12 A. Yes, sir.

13 Q. Okay. Did you see the truck skidding?

14 A. Yes, sir.

15 Q. All right. How far from that curve in your estimate  
16 was Brandon's car sitting in the roadway?

17 A. The front end was where it was at and the back end was  
18 just a little bit over to the left.

19 Q. Okay. But how far is that from the curve?

20 A. Approximately like two feet.

21 Q. The big curve you come around.

22 A. It's probably like a hundred, a hundred and 50 feet.

23 Q. 150 feet. So y'all were 150 feet ahead of Mr. Butler.

24 A. No. Mr. Butler was on our back bumper until we got  
25 into the turn, and we was having to go a little bit faster

## TESTIMONY OF TRISTON AUSTIN

1 than Mr. Butler and that's the reason he kind of slowed down  
2 and was behind us.

3 Q. Okay. But you said as y'all passed Brandon's car that  
4 you looked back and you saw Mr. Butler coming out of the  
5 curve, right?

6 A. Right.

7 Q. Okay. So he was a hundred, a hundred and 50 feet  
8 behind you then, right?

9 A. (Nods head yes.)

10 Q. Did he ever cross into that left lane?

11 A. As soon as he got around the corner he went to the left  
12 lane.

13 Q. That's what y'all did too, right?

14 A. Right.

15 Q. And then when he locked down the car that's when it --  
16 the brakes that's when it slid into the car.

17 A. Yes, sir.

18 Q. Okay.

19 MR. THOMPSON: Thank you.

20 THE COURT: Solicitor, anything?

21 MS. LESKANIC: Yes, sir.

22 REDIRECT EXAMINATION

23 BY MS. LESKANIC:

24 Q. What did you see after Mr. Butler's truck went in the  
25 left lane?

## TESTIMONY OF TRISTON AUSTIN

- 1 A. I saw him riding in the left lane just like he was  
2 going to pass him and I'm sitting there, I'm looking, I'm  
3 looking and then all of the sudden I just see the truck, it  
4 just takes a nose dive and then it just swerves over and it  
5 hits Brandon.
- 6 Q. Was there anything in front of him?
- 7 A. No, sir.
- 8 Q. All right. Do you know what kind of vehicle David  
9 Bratton drives?
- 10 A. He drives a Red Chevy.
- 11 Q. All right. Let me show you what's been marked State's  
12 Exhibit 5. Do you see his vehicle in this photograph?
- 13 A. It's right there, ma'am.
- 14 Q. Okay. So in State's Exhibit 5 this truck here, who  
15 does that belong to?
- 16 A. That's David's truck, ma'am.
- 17 Q. All right. Which is Brandon's stepdad.
- 18 A. Right.
- 19 Q. All right. And was that truck there when you were  
20 coming down the road?
- 21 A. No, ma'am, he was at his house.
- 22 Q. All right. Were there any vehicles on the left side of  
23 the road that would have prevented somebody from moving over  
24 to the left?
- 25 A. No, ma'am.

## TESTIMONY OF TRISTON AUSTIN

1 MS. LESKANIC: Okay. Thank you, that's all I have.

2 THE COURT: Anything?

3 MR. THOMPSON: May I, Your Honor?

4 THE COURT: Yes, sir.

5 MR. THOMPSON: Can we approach, Judge?

6 THE COURT: Sure.

7 (Bench conference was held.)

8 THE COURT: Anything from defense?

9 RECROSS EXAMINATION

10 BY MR. THOMPSON:

11 Q. Mr. Austin, I just want to ask one question. Okay.

12 A. Okay.

13 Q. Actually probably gonna be a two-part question. But  
14 you gave a statement to the police, did you not, a written  
15 statement?

16 A. Yes, sir.

17 Q. I'm going to show you a copy. Is that a copy of the  
18 statement you gave?

19 A. Yes, sir.

20 Q. Let's see if I can read it upside down. Can you read  
21 that part of your statement right there, just that one  
22 sentence?

23 A. It says, "At that point Brandon flipped the man off."

24 Q. Brandon flipped the man off. This is a statement you  
25 gave the police.

## TESTIMONY OF DAVID BRATTON

1 A. Yes, sir.

2 Q. Okay.

3 MR. THOMPSON: Thank you.

4 THE COURT: Anything, Solicitor?

5 MS. LESKANIC: No, Your Honor. Thank you.

6 THE COURT: Okay, sir, you may step down, please be  
7 careful.

8 MS. LESKANIC: State calls David Bratton.

9 THE COURT: Okay. Mr. Bratton.

10 The witness, DAVID BRATTON, was first duly  
11 sworn and testified as follows:

12 THE COURT: Mr. Bratton, we will ask you also to speak  
13 clearly into that microphone when you're answering questions  
14 and please tell us your full name and spell your last name,  
15 please.

16 THE WITNESS: David Lynn Bratton, B-r-a-t-t-o-n.

17 THE COURT: Thank you, sir. Solicitor?

18 MS. LESKANIC: Thank you, Your Honor.

19 DIRECT EXAMINATION

20 BY MS. LESKANIC:

21 Q. You're Brandon's stepdad; is that correct?

22 A. Yes, ma'am.

23 Q. All right. And do y'all live on Cresthaven Avenue here  
24 in Cherokee County?

25 A. Yes, we do.

## TESTIMONY OF DAVID BRATTON

- 1 Q. Were you living there back in January of 2012?
- 2 A. Yes, ma'am.
- 3 Q. How did you find out about the incident that happened
- 4 with Brandon?
- 5 A. Kelly had come to my house and told me.
- 6 Q. All right. What did you do?
- 7 A. I immediately went and got in my truck and drove down
- 8 to the scene.
- 9 Q. Okay. Now, on State's Exhibit 5, is this your red
- 10 truck here?
- 11 A. Yes, ma'am, that is correct.
- 12 Q. And is that where you parked it when you came down?
- 13 A. Yes, ma'am, that is correct.
- 14 Q. Okay. Did you talk with the defendant when you arrived
- 15 at the scene?
- 16 A. Not when I first arrived at the scene, but initially I
- 17 was helping Brandon and seeing how he was. I did -- after a
- 18 few minutes I walked over to Mr. Butler and just asked what
- 19 happened.
- 20 Q. And what was his response?
- 21 A. His response was, "He flipped me off," and that was all
- 22 that was said and I turned and walked away.
- 23 Q. All right. And your son has gone through a great deal
- 24 of medical treatment since this happened?
- 25 A. Yes, ma'am.

## TESTIMONY OF DAVID BRATTON

1 Q. All right. Approximately how many surgeries has he  
2 had?

3 A. I don't know for sure exactly, I think there may be a  
4 total of like seven.

5 Q. And --

6 A. You know, he has had several surgeries, quite a few  
7 surgeries and doctors visits. You know, he was laid up in  
8 the bed at home for, you know, a long time with home health  
9 coming out regularly.

10 Q. Okay. And is that the only conversation you ever had  
11 with Mr. Butler?

12 A. Yes.

13 Q. Okay. Well, let me ask you one more thing. Did you  
14 ever see Mr. Butler with a phone?

15 A. I think he had a phone in his pocket but I'm not 100  
16 percent sure that's what it was, can't be sure.

17 MS. LESKANIC: Thank you very much. Please answer any  
18 questions Mr. Thompson may have.

19 MR. THOMPSON: No questions.

20 THE COURT: Sir, you may step down, thank you. Be  
21 careful.

22 MS. LESKANIC: State calls Brian Dawkins.

23 The witness, BRIAN DAWKINS, was first duly  
24 sworn and testified as follows:

25 THE COURT: Sir, I'm going to ask you to speak clearly

## TESTIMONY OF BRIAN DAWKINS

1 into that microphone if you will, and tell us your name, and  
2 spell your last name for me.

3 THE WITNESS: Brian Dawkins, D-a-w-k-i-n-s.

4 THE COURT: Thank you, sir. Yes, ma'am?

5 MS. LESKANIC: Thank you, Your Honor.

6 DIRECT EXAMINATION

7 BY MS. LESKANIC:

8 Q. Mr. Dawkins, where were you living in January of 2012?

9 A. Cresthaven.

10 Q. All right. And were you outside on the date that  
11 Brandon was hit by the white pickup truck driven by  
12 Mr. Butler?

13 A. Yes, ma'am.

14 Q. All right. And what were you doing that day?

15 A. I was cutting grass.

16 Q. All right. Can you please tell the jury what you saw?

17 A. What I saw -- while I was cutting grass, I was weeding  
18 eating at the time so I saw the little car that Brandon was  
19 driving and the white truck pulled up behind him. So I  
20 thought they was talking, just having a conversation so  
21 Brandon got out of the car, did a hand gesture. So the  
22 car -- the truck pulled up and I just saw Brandon was on  
23 like hitting the hood, so I didn't think -- I thought they  
24 was just playing so I thought, you know, just kids playing.  
25 But I didn't know that he was pinned between the truck and

## TESTIMONY OF BRIAN DAWKINS

1 the car until his brother ran down the street with the --  
2 that's when I found out, you know, that he was hit by the  
3 truck.

4 Q. Okay. Did you ever see Brandon -- show you State's  
5 Exhibit 10. Did you ever see Brandon step across the double  
6 yellow line onto the what would be oncoming traffic?

7 A. No, ma'am.

8 Q. All right. Where did you see Brandon when he got out  
9 of his vehicle?

10 A. He walked beside his car.

11 Q. Okay. And where did he walk to?

12 A. The back of his car.

13 Q. What did the white pick up truck do?

14 A. Just went forward.

15 Q. Okay. Straight toward Brandon?

16 A. Yes.

17 Q. All right. Was there anything in the way of the pickup  
18 truck that you saw that would cause it to swerve?

19 A. No, ma'am.

20 Q. Okay. All right.

21 MS. LESKANIC: Thank you. Please answer any question  
22 Mr. Thompson has.

23 THE COURT: Mr. Thompson?

24 CROSS EXAMINATION

25 BY MR. THOMPSON:

## TESTIMONY OF BRIAN DAWKINS

- 1 Q. Could you hear what was going on?
- 2 A. Did I hear what was going on?
- 3 Q. Yeah. You say you were weed eating, right?
- 4 A. Sir?
- 5 Q. You say you were weed eating?
- 6 A. Yes, sir, I was.
- 7 Q. Okay. Could you hear brakes squealing or anything like
- 8 that?
- 9 A. No, sir. But I was looking at -- at the time they were
- 10 both stopped at the time.
- 11 Q. They were both already stopped?
- 12 A. Both of them stopped, yes.
- 13 Q. Okay. So you didn't see the incident happen.
- 14 A. I saw the incident happen when the truck came forward
- 15 to the car.
- 16 Q. Okay.
- 17 A. When Brandon got in the car and did the hand motion I
- 18 thought they was just playing at the time so my eye was
- 19 already on the car and the truck.
- 20 Q. Okay. And where was he at when he did the hand motion?
- 21 A. Getting out of his car.
- 22 Q. Getting out of his car?
- 23 A. Yes.
- 24 Q. So he hadn't got to the back of the car when he did
- 25 that.

## TESTIMONY OF BRIAN DAWKINS

1 A. About the middle between in the car -- about the  
2 middle, like he had just got out and walked toward the back  
3 of the car.

4 Q. Okay. Did you see another car pass that car?

5 A. No, sir.

6 Q. Okay. So you didn't hear brakes or anything like that,  
7 you didn't -- or skid marks out there.

8 A. No, sir, I didn't hear nothing. I just saw both of  
9 them parked at the time.

10 MR. THOMPSON: All right. Thank you.

11 THE COURT: Solicitor, anything?

12 MS. LESKANIC: Northing further from this witness, Your  
13 Honor.

14 THE COURT: Thank you, sir, you may step down. Please  
15 be careful and watch your step.

16 MS. LESKANIC: Your Honor, the State rests.

17 THE COURT: Okay. Mr. Foreman, ladies and gentlemen of  
18 the jury, this is one of those times when I've told you we  
19 have matters of law that do not require your attention. So  
20 at this time I'm going to instruct you once again to not  
21 discuss this case in any matter, not even within your own  
22 mind, you don't know what's -- the case is not over so you  
23 don't know what's happened yet. So Mr. Foreman, if you  
24 would take your jury back to the jury room and we'll be  
25 calling for you momentarily.

## TESTIMONY OF BRIAN DAWKINS

1 (The jury left the courtroom.)

2 THE COURT: Anything?

3 MS. LESKANIC: Nothing from the State.

4 MR. THOMPSON: Your Honor, at this time we would move  
5 for a directed verdict. While there's no question that an  
6 incident occurred, there is no question there's great bodily  
7 injury, the only way you could get to that it was  
8 intentional on the part of my client is by speculation,  
9 taking what's been presented and speculating and then you  
10 can come to the conclusion that it was intentional, and I  
11 just don't think it gets past the speculative process.

12 THE COURT: Solicitor?

13 MS. LESKANIC: Your Honor, we have more here than we  
14 have in a lot of cases in that we have statements made by  
15 the defendant after the fact where you get into his mind,  
16 what his intent was, that it was not an accident, that he  
17 intended what happened because he said, "They flipped me  
18 off," that's the reason he was following them, he said that  
19 that was because he wanted to give him a piece of his mind.  
20 And so we have the -- in the light most favorable to the  
21 State we have shown not only the great bodily injury but his  
22 offer or attempt to cause that great bodily injury which is  
23 what's required for assault and battery first degree.

24 MR. THOMPSON: I don't think there's any admission on  
25 his part about, "He flipped me off," that's not saying, "so

## TESTIMONY OF BRIAN DAWKINS

1 I intentionally ran over him."

2 THE COURT: I understand. There is testimony before  
3 the Court though, and the Court -- as you well know the  
4 Court is not weighing the evidence, we're only dealing with  
5 a scintilla of evidence in the light most favorable to the  
6 non-moving party which is the State. But there is testimony  
7 the car -- I'm sorry, the truck, the white truck was in the  
8 left lane and moved to the right lane by more than one  
9 witness, I think two if not three witnesses testified to  
10 that. So there is some evidence there and that's all the  
11 Court is concerned about at this point, so the motion is  
12 denied. Other motions?

13 MR. THOMPSON: No, sir.

14 THE COURT: All right. Mr. Thompson, that's the  
15 State's case.

16 MR. THOMPSON: He's going to testify.

17 THE COURT: Okay. All right. You've had that  
18 conversation with him?

19 MR. THOMPSON: Yes.

20 THE COURT: You don't need me to do anything?

21 MR. THOMPSON: No, sir.

22 THE COURT: All right. We're ready to proceed then?

23 MS. LESKANIC: State's ready, Your Honor.

24 THE COURT: All right. We're ready to have our jury  
25 back.

## TESTIMONY OF KENNETH BUTLER

1 (The jury returned to the courtroom.)

2 THE COURT: Mr. Foreman, any matters for the jury?

3 THE WITNESS: No.

4 THE COURT: All right. Everything is good. All right.

5 Yes, sir. The State has now rested so we'll hear from Mr.

6 Thompson.

7 MR. THOMPSON: We'd call Mr. Kenneth Butler to the

8 stand.

9 THE COURT: Mr. Butler, come around and be sworn,  
10 please. Watch your step.

11 The witness, KENNETH BUTLER, was first duly

12 sworn and testified as follows:

13 THE COURT: Mr. Butler, I'm going to ask you to speak  
14 clearly into that microphone, please, and tell us your full  
15 name and spell your last name, please.

16 THE WITNESS: Kenneth Gerald Butler, Sr. B-u-t-l-e-r.

17 THE COURT: All right, sir. Mr. Thompson?

18 MR. THOMPSON: Thank you, Your Honor.

19 DIRECT EXAMINATION

20 BY MR. THOMPSON:

21 Q. Mr. Butler, where do you live?

22 A. Road.

23 Q. Is that in Blacksburg?

24 A. Right.

25 Q. Okay. How old are you?

## TESTIMONY OF KENNETH BUTLER

1 A. 76

2 Q. Do you remember January 12th of last  
3 year?

4 A. Never forget it.

5 Q. Do you remember something happening here in the City of  
6 Gaffney?

7 A. Yes.

8 Q. What were you doing in Gaffney that day?

9 A. Doing my exercise in Wal-Mart.

10 Q. And what do you mean doing my exercise in Wal-Mart?

11 A. Walking with a cart for my heart.

12 Q. Okay. You have heart problems?

13 A. Yes.

14 Q. All right. Now, this didn't happen inside Wal-Mart  
15 though, did it?

16 A. No, sir.

17 Q. All right. Tell me what happened.

18 A. Came out of Wal-Mart coming to the red light, stopped,  
19 come across Floyd Baker Boulevard and ended up at the end of  
20 McIlwaine, to the end of McIlwaine, stopped at the first  
21 stop sign to enter Ellis Fairy Road, looked to my right,  
22 looked to my left, started out in the road and just as my  
23 right bumper crosses the double yellow line I heard them  
24 coming. I didn't see them, I heard them, he's got a very  
25 loud muffler. I looked at the car my rear view -- the rear

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1 windows back there and saw the two cars side by side so I  
2 continued on and got in the left land. He shut down on his  
3 horn --

4 Q. Who did?

5 A. Mr. Holcomb. And by the muffler you could tell he  
6 never had lifted the accelerator. I said, "Well, he ain't  
7 lifted, he gonna hit me." And I got a broken spine from  
8 whiplash, I got an excuse from my doctor so I don't have to  
9 wear a seatbelt so if my head won't have sudden movement,  
10 but anyway I got me a good horn. About that time the lady  
11 in the right lane must have slowed down because he swerved  
12 over in the Left lane by me back into the left lane and shot  
13 me a bird all the way out of sight just like this.

14 Q. Who did?

15 A. Mr. Holcomb.

16 Q. And he was the driver of that vehicle?

17 A. Yes, I found out later. I didn't know who it was at  
18 the time.

19 Q. Okay. Then what happened?

20 A. I think -- it kind of scared me, but I said, "I'll be  
21 telling his parents how he's driving or I'll tell him if he  
22 stopped." I followed the lady yonder. She said I was up on  
23 her bumper which is not so, I done like that and got behind  
24 him and I said, "I better get out of here before she slams  
25 on her brakes and caused me to enter he rear," so I got in

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1 the left lane. I followed all the way down toward the turn  
2 and when they turned there was Mr. Holcomb standing in the  
3 middle of the road holding the door with his hand standing  
4 in the other lane with his arm out like this. So he jumps  
5 out of his girlfriend's way, she almost hit him.

6 Q. So hold on one second there. Did you see this?

7 A. I can't turn my head too good. Yes, sir, I can see it.

8 Q. Okay. If I knew how to use this thing it might work.

9 Is this Ellis Fairy y'all were coming up?

10 A. Yes, sir.

11 Q. And this is the curve you went around?

12 A. Yes, sir.

13 Q. Now, how far around this curve was it before

14 Mr. Holcomb had stopped his car?

15 A. Maybe a hundred and 50 feet.

16 Q. Okay. So right in here?

17 A. No. It was up a little bit this way right where that  
18 car is at on 85.

19 Q. So you came around. Now, who came around first?

20 A. Whoever was driving the second car, I didn't know it at  
21 the time, it must have been his girlfriend.

22 Q. Okay. She was ahead of you?

23 A. Yes.

24 Q. Did you ever get your truck between her car and Mr.  
25 Holcomb's car?

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1 A. No. He went on out of sight and was getting up, I  
2 didn't have a chance to catch him.

3 Q. Okay. The young lady in the car that you say he waived  
4 by -- now, do you recognize this picture?

5 A. Sure.

6 Q. Is that Mr. Holcomb's car right there?

7 A. Yeah.

8 Q. Was it sitting in the roadway like that?

9 A. Uh-huh.

10 Q. All right. Now, when he came around can you show us --  
11 I hate to ask you to step down because I know it's hard for  
12 you to get around. I'm going to move it around.

13 A. Just picture the door, the driver's door open and him  
14 standing there holding the window frame and you got it.

15 Q. So he was right in here when you first saw him?

16 A. No. He was over in the left land holding the door.

17 Q. The door was open.

18 A. The passenger door open with his hand on the window  
19 frame and standing over in the other lane with his hand  
20 stuck out.

21 Q. And she went around.

22 A. No. He jumped out of the way, she liked to hit him.

23 Q. He didn't go up this lane, did he?

24 A. No.

25 Q. So she had to go around.

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- 1 A. Uh-huh.
- 2 Q. All right. Then what happened after that?
- 3 A. He jumped out of the away. He couldn't jump straight  
4 in on account of the door so he jumped to about the rear  
5 wheel and I said, "Well, I'll follow the lady on through" or  
6 whoever is driving the car and turn around in that driveway  
7 up yonder. I started to go through and get about two wheels  
8 across the center line and he jumps back out in front of me,  
9 had his hands out like this. I said, "My God," so I jerked  
10 the steering wheel to the right and locked the brakes, and  
11 you know what happens when you lock the brakes, so it just  
12 went straight on.
- 13 Q. Did your truck ever go fully into this lane over here?
- 14 A. No. You can tell by the tire marks there.
- 15 Q. But the left-hand of your truck was over the yellow  
16 line?
- 17 A. The two wheels of the left side, yeah.
- 18 Q. Okay. And then what caused you to come back over here?
- 19 A. I was trying to dodge him.
- 20 Q. You say he jumped back out?
- 21 A. He jumped back behind the car after I jerked over and  
22 locked the brakes. There wasn't nothing else I could do.
- 23 Q. All right. Did you intend to hit him?
- 24 A. No.
- 25 Q. Now, you were following him to give him a piece of your

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1 mind, right?

2 A. I did. I got out of the truck and said, "You see what  
3 your horn blowing and flipping people off leads to?" And  
4 the girl commenced to hollering, "Back up." I didn't know  
5 he was pinned. She said, "Back up, back up." So I got in  
6 my truck and cranked it up and backed. And they say I  
7 didn't call 911, they had phones all over. But I watched  
8 him go around the car to be sure he didn't have a torn  
9 artery. And they said that I didn't come and offer to help  
10 when they had five people up there, what could I have done  
11 other than to cause trouble?

12 Q. So now, let me ask you this question. You say he came  
13 to the back of the car and then you started to go around and  
14 he jumped back out; is that correct?

15 A. Yes, sir.

16 Q. And at that point in time you cut the wheel to the  
17 right?

18 A. I jerked it to the right and locked the brakes, but  
19 when you do that it goes straight.

20 Q. Okay. And is that -- I'm sorry. Is that the skid  
21 marks from the right-hand side of your vehicle?

22 A. Yeah, that's right.

23 Q. And they're coming back in from this way?

24 A. Right.

25 Q. Okay. And that's because you cut your wheel to the

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1 right.

2 A. I was trying to dodge, yeah.

3 Q. I'm going to ask you again, did you intend to hurt him?

4 A. No. No. I didn't intend to do that, I wouldn't do  
5 that to nobody.

6 Q. Are you sorry that this happened?

7 A. I regret it, yes. Especially if he had to wear a wound  
8 vac. I wore one for two months, they're not pleasant.

9 Q. His car was sitting in the roadway; is that correct?

10 A. Yes, just like it's sitting there now.

11 Q. And where were you when you first saw his car in the  
12 roadway?

13 A. It's me and the young lady yonder that come around the  
14 corner, I was watching her, I said, "I don't want her to  
15 slam on brakes," I was about from me to you, and it cause me  
16 to hit her, but when I looked up there he stood in the road.  
17 She went to the left to go by him and he jumped out of her  
18 way.

19 Q. And you were about this distance behind her?

20 A. Yes. But when he humped to the rear the car he's  
21 closing the distance between me and him, then he jumped out  
22 again.

23 MR. THOMPSON: Answer any questions the State would  
24 have, please.

25 THE COURT: Yes, ma'am.

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1 MS. LESKANIC: Thank you, your Honor.

2 CROSS EXAMINATION

3 BY MS. LESKANIC:

4 Q. Mr. Butler, why didn't you go to the left?

5 A. My attorney asked me that. I guess it's the urge to  
6 stay on my side of the road.

7 Q. But you weren't on your side of the road, were you?

8 A. Not completely, no.

9 Q. Okay. You had a cell phone with you.

10 A. Yes, in my pocket.

11 Q. And when you say Brandon was driving in a way that made  
12 you want to go talk to his parents and give them a piece of  
13 your mind, you could -- you could have -- let me -- let me  
14 ask the question with all due respect, sir.

15 THE COURT: Sir, let her ask the questions.

16 Q. And I'll give you a chance to answer the questions.

17 A. Go ahead.

18 Q. You could have called 911 at that point and reported a  
19 reckless driver if that was the case.

20 A. Yes, I could have --

21 Q. But you didn't, did you?

22 A. -- or call 911 when he come around me.

23 Q. When you first say that he came around and you decided  
24 you need to go find his parents and give him a piece of your  
25 mind, you had a phone that you could have used to call the

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1 police and report a reckless driver; is that correct?

2 A. It takes the police 30 minutes, you would be wasting --

3 Q. Is that correct?

4 A. That's correct.

5 Q. All right. And you did not do that. You did not  
6 report a reckless driver.

7 A. No.

8 Q. You wanted to take it into your own hands.

9 A. No, I didn't want to. But a boy driving like that  
10 needs somebody to talk to him.

11 Q. And you took it upon yourself to be that person, not to  
12 get a police officer to handle that. Is that correct?

13 A. Correct. I got a young son back there and if he was  
14 driving in such a manner I would hope somebody would come  
15 and tell me.

16 Q. And you were angry at the way he was driving.

17 A. No, I wasn't angry. He scared me because he was liable  
18 to paralyze or kill me if he hit me in the rear.

19 Q. But instead he's the one today with a permanent  
20 disability.

21 A. I got a permanent disability.

22 Q. So does he at 19; is that correct?

23 A. I don't know, I ain't seen the medical records.

24 Q. All right. I don't want to argue with you, Mr. Butler,  
25 let me just get to you answer my questions, please.

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1 A. All right, if I can.

2 Q. The victim Brandon is in his car here, he stops in the  
3 road, correct?

4 A. That's right.

5 Q. All right. And you have followed them down Ellis Fairy  
6 Road.

7 A. No. I followed the young lady down Ellis Fairy Road,  
8 he was way ahead of us.

9 Q. And were you going to give her a piece of your mind?

10 A. No. She is the only one driving with any sense.

11 Q. All right.

12 A. Why would I give her a piece of my mind?

13 Q. But you're following her on her bumper.

14 A. No. I swerved over behind her and I said, "You better  
15 get out from behind that lady, she's liable to slam her  
16 brakes on."

17 Q. I thought she was the only one driving with any sense  
18 so why is she liable to slam on her brakes?

19 A. I can't read minds.

20 Q. I'm just trying to figure it out. You said she's  
21 driving sensibly but then you have to move over because she  
22 might drive erratically.

23 A. Might slam on her brakes, but I got back in the left  
24 lane.

25 Q. But you have to move over because you're so close to

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1 her that if she applies her brakes you're going to run into  
2 the back of her.

3 A. No, I'm not that close. I'm about from here to where  
4 they're sitting.

5 Q. But you had to move over because you thought to  
6 yourself, "I need to get --"

7 A. No, I didn't.

8 Q. Your testimony was you moved over because you thought  
9 to yourself, "If she applies her brakes I'm gonna hit her."

10 A. I might hit her I said.

11 Q. Because of the distance between your car and her car;  
12 is that correct?

13 A. That's correct.

14 Q. All right. Now, when you come around the curve at  
15 Cresthaven, where are you going?

16 A. Where is Cresthaven? That's the road up through there?

17 Q. Yes, sir, around the curve.

18 A. Well, I knew they was teenagers, I was going to go on  
19 and tell their parents or if he stopped I was going to tell  
20 him.

21 Q. So you didn't live down Cresthaven.

22 A. No. You just heard the lawyer said I lived in  
23 Blacksburg.

24 Q. So the only reason you were going there was to give  
25 them a piece of your mind.

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- 1 A. That's correct.
- 2 Q. Because they had flipped you off.
- 3 A. No, because he had scared me half to death. If he'd
- 4 hit me in the back -- he never did lift off the accelerator,
- 5 he's got a loud muffler and he never did lift.
- 6 Q. But he didn't hit you.
- 7 A. Thank God.
- 8 Q. Thank God. But you followed them because for you it
- 9 wasn't over.
- 10 A. I done what to him?
- 11 Q. You followed the two cars because for you it was not
- 12 over.
- 13 A. I followed the young lady, yes.
- 14 Q. I'm sorry?
- 15 A. I followed the young lady.
- 16 Q. Okay. Why were you following the young lady if she was
- 17 the one who was driving sensibly?
- 18 A. There ain't no way in the world you can catch up with
- 19 him as fast as he was driving.
- 20 Q. So he was way ahead of you.
- 21 A. He had done went out of sight.
- 22 Q. Okay. So you go down Cresthaven and follow the young
- 23 lady.
- 24 A. At the time I didn't know who it was.
- 25 Q. Okay. You didn't know the two cars were together.

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- 1 A. Yeah, you could tell they were together.
- 2 Q. How could you tell that?
- 3 A. Because when I looked back they was side by side.
- 4 Q. So two cars going down the road side by side are
- 5 together?
- 6 A. I could tell those two were.
- 7 Q. Okay. So you follow her down Cresthaven and when you
- 8 get to the sharp curve, the left in the road, you don't even
- 9 see Brandon anymore, right, the guy that's driving this car?
- 10 You don't see him anymore because he's gone faster than
- 11 everybody else; is that correct?
- 12 A. That's correct.
- 13 Q. So by the time you get to the corner he's already
- 14 stopped.
- 15 A. He's out of the car, like I told you, holding the door
- 16 standing in the other lane.
- 17 Q. All right. He's holding his door --
- 18 A. First time I saw him.
- 19 Q. -- and he's standing -- where is he standing? Is he
- 20 over here? Where are his feet?
- 21 A. He's got his door, passenger door open, there's a hole
- 22 in the window frame.
- 23 Q. Is the driver's side door open?
- 24 A. Yeah.
- 25 Q. The driver's side door open and he's holding the door.

1 And then what?

2 A. He jumped out of the girlfriend I reckons way, she went  
3 by and he jumped back out in front of me.

4 Q. Okay. Let's slow down here, I wanna make sure I  
5 understand. Your testimony is he's holding the driver's  
6 door; is that correct?

7 A. That's correct.

8 Q. And he's holding his other arm out here?

9 A. That's right.

10 Q. While his girlfriend goes by.

11 A. No. He had to jump out of her way, she liked to hit  
12 him.

13 Q. Where was he?

14 A. He jumped to the back wheel. He couldn't jump straight  
15 in on account of the door being open so he had to jump to  
16 the back wheel.

17 Q. Where was he standing when his girlfriend came by?

18 A. He had to jump out of her way to let her get by.

19 Q. Where was he that he had to jump out of her way?

20 A. Well, I told you, he was holding the door frame over in  
21 the other lane.

22 Q. Well, that's what I was asking. I said he's got the  
23 door frame and he has his arm out but then you told me no so  
24 I'm trying to understand this. This is the first time --

25 A. I don't remember telling you no. He was standing.

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1 holding the door with his arm out like this, his girlfriend  
2 comes around and she almost hit him, he jumped out the way  
3 but you couldn't jump straight on because of the door, he  
4 jumped to the back wheel.

5 Q. So his girlfriend almost hits him because he's standing  
6 over across the double yellow line; is that right?

7 A. That's right.

8 Q. And then from there he jumps where?

9 A. To the rear wheel of the car back there.

10 Q. So he jumps over here. All right. And then where are  
11 you when all of this is going on?

12 A. I got about probably two wheels on over the yellow  
13 line.

14 Q. Okay.

15 A. I'm going to follow the young lady through and then  
16 turn around in a driveway.

17 Q. Okay. And what happens?

18 A. He jumped back out in front of me again.

19 Q. So he's here at the back wheel?

20 A. That's right.

21 Q. And he jumps where?

22 A. Out there about six or eight inches past the double  
23 line.

24 Q. So he jumps way out here; is that right?

25 A. Yeah. Yeah.

1 Q. Okay. And then you do what?

2 A. I jerk the steering wheel to the right and lock the  
3 brakes.

4 Q. Okay. And when you turn your wheel then he's going to  
5 jump back into your oncoming truck?

6 A. He did jump over there and I couldn't do nothing then.

7 Q. So he jumps back this way; is that right?

8 A. Yes, ma'am.

9 Q. How far was your vehicle behind Ms. Stanford's, the  
10 young lady's?

11 A. I don't know exactly, something like the first row of  
12 benches or some more like that.

13 Q. Okay. But your testimony is that Brandon is standing  
14 out -- holding his door and standing out across the double  
15 yellow line to the point that his girlfriend almost hits  
16 him. Then he jumps back to his car and this is while you're  
17 coming down the road, he jumps back across the double yellow  
18 line, you slam on the brakes.

19 A. And I turn the wheel to the right.

20 Q. And turn the wheel into his vehicle, and he jumps back,  
21 gets all the way again to the back of his vehicle where he  
22 gets hit; is that --

23 A. That's the way it happened.

24 Q. That's the way it happened. And did you get out to  
25 help Brandon after you struck him?

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1 A. No. I got out and told him what I had on my mind and  
2 they started hollering, "Back up." I didn't know I had him  
3 pinned.

4 Q. And what did you tell him? What was on your mind?

5 A. I told him, "See what your horn blowing and bird  
6 shooting people leads to?" And then they commenced to  
7 hollering, "Back up, back up." So I got in the truck and  
8 backed it up.

9 Q. So when you got out of the vehicle to give him a piece  
10 of your mind about the horn blowing and bird flipping he was  
11 still pinned between your truck and his car?

12 A. Well, it didn't look like he was but he evidently was.  
13 I didn't think he was pinned.

14 Q. You knew you hit him.

15 A. No. I didn't think I'd hit him. I thought I'd come  
16 close to it. You got to keep in mind this is happening, it  
17 ain't like you got a slow motion.

18 Q. It happened very fast.

19 A. Yes.

20 Q. When Brandon's father, David, came up to you, you told  
21 him what happened was Brandon flipped you off.

22 A. I can't remember exactly. I might have, I don't know.  
23 By then I was kind of shook up.

24 MS. LESKANIC: Thank you. I have nothing further.

25 MR. THOMPSON: No redirect.

1 THE COURT: Okay, sir. You may step down, please watch  
2 your step, be careful there. Need some help?

3 THE WITNESS: I got the gout in my left knee, it don't  
4 fold up.

5 MR. THOMPSON: Defense rests, Your Honor.

6 THE COURT: Okay. Any reply?

7 MS. LESKANIC: No, Your Honor.

8 THE COURT: Okay. Ladies and gentlemen of the jury,  
9 the State rested earlier in the presence of us and the  
10 defense has now rested its case which means that the case at  
11 this point is over as far as the testimony goes. It's a  
12 little bit late in the day to go into the next step which  
13 would be into closing arguments and require a little meeting  
14 of the lawyers for a few minutes in what's called a charge  
15 conference and then we will be going into closing arguments  
16 and that would put us well past 5:00, maybe even closer to  
17 5:30. There is no reason for us to do that. I promised you  
18 earlier that we would not waste your time and would not keep  
19 you any later or bring you here any earlier than is  
20 necessary. So what we're going to do, and one of the things  
21 that we've done in these administrative matters while I'm  
22 not in your presence, but what we're going to do is we're  
23 now going to recess for the day, Mr. Foreman and ladies and  
24 gentlemen. I'm going to ask you to be back in the morning  
25 at 9:45. There is a matter that I have to take care of at

1 9:00 a.m that has absolutely zero to do with this trial. I  
2 did not know before I became a judge that judges had  
3 administrative matters to take care of as well as sit in  
4 this courtroom so when I get here about five or six minutes  
5 until eight in the morning as do the lawyers, there are lots  
6 of other things we have to attend to and there is one that  
7 requires my attention in the morning. It doesn't require  
8 any of these folks but it does require my attention  
9 beginning at 9:00 and that's anticipated to last a good 40  
10 minutes or thereabout. So again, I'm not going to waste any  
11 of your time so we're going to ask you to be ready to go in  
12 your jury room by 9:45 in the morning and hopefully I will  
13 have been finished by five or six minutes by that time so  
14 not to keep you waiting. So with that we're going to let  
15 you go for the evening with the instructions and admonition  
16 that even though the case is over you are not to begin  
17 deliberating even within your own mind anything about this  
18 case. You can only do that, it's only proper for you to do  
19 that when all 12 of you are together in one room. And it's  
20 so important that even if someone of the 12 has to go to a  
21 restroom facility or has to go for a smoke break or whatever  
22 it might be, the deliberations -- and I'll talk about that  
23 more tomorrow -- must cease. So deliberations are only  
24 proper when all 12 of you will be together at that point in  
25 time, we're not there yet although we will be in the

1 morning. So with that I'm going to again caution you, don't  
2 do any independent research, I don't know that you would but  
3 don't even attempt to do that, please, all the testimony,  
4 all the evidence must come from within this courtroom. So  
5 with that we're going to let you go to the jury room with  
6 the bailiff and be excused from there, and again be ready to  
7 go, please, at 9:45. If there's any problem, if somebody  
8 needs anything, of course just let one of the bailiffs know  
9 or the clerk of court or somebody know. But again, we'll  
10 see you in the morning at 9:45. Thank you.

11 (The jury left the courtroom.)

12 THE COURT: Anything from the State?

13 MS. LESKANIC: No, Your Honor.

14 THE COURT: From the defense?

15 MR. THOMPSON: I think I'm required to renew my motion  
16 for a directed verdict, Judge.

17 THE COURT: Okay. And for the same reason as stated  
18 heretofore the ruling remains the same and you're overruled,  
19 or denied. Anything else from anybody?

20 MR. THOMPSON: May Mr. Butler remain at liberty this  
21 evening?

22 THE COURT: Absolutely. Now Mr. Butler, as I told you  
23 at the lunch break we're in the trial of this case and we're  
24 going to proceed in the morning at 9:45. I have another  
25 administrative matter to handle at 9:00 a.m. that does not

1 require your lawyer or anybody else involved in this matter,  
2 but we're going to start at 9:45 with you or without you.

3 THE DEFENDANT: I'll be here.

4 THE COURT: Okay. All right, sir. I know you will be  
5 but I just have to give you that admonition. Okay. All  
6 right. With that anything from anybody else before we  
7 adjourn? Well put a charge together as usual, I think we'll  
8 just send it to you on email. Is that good with everybody?

9 MS. LESKANIC: Yes, sir.

10 (Court recessed for the evening and resumed on  
11 November 14, 2013 at 10:30 a.m.)

12 MR. THOMPSON: Yes, sir. We're on the record now.  
13 We've now had a charge conference. And any objection by the  
14 State?

15 MS. LESKANIC: No objection, Your Honor.

16 THE COURT: And anything from the defense?

17 MR. THOMPSON: None.

18 THE COURT: Okay. Everybody knows what the Court's  
19 going to charge and has a copy it. The jury is here and  
20 we're ready to bring them in. And at this point it will be  
21 closing, and the defense goes last today; is that right?

22 MR. THOMPSON: No, I think I go first. I'll be happy  
23 to go last but actually Mr. Butler testified.

24 THE COURT: That's right, you're right, sorry. Okay.  
25 So we're ready to go? Everybody is ready?

1 MS. LESKANIC: Yes, sir. Defense will open and the  
2 State will close, we're ready.

3 THE COURT: Okay. We're ready.

4 (The jury returned to the courtroom.)

5 THE COURT: Good morning, ladies and gentlemen. As I  
6 told you we've been here since about 8:30 this morning  
7 taking care of some other matters, which have nothing at all  
8 to do with this trial, but we are now ready to conclude and  
9 resume this matter. It's my understanding that the State  
10 and defense have rested so we're ready now to hear closing  
11 arguments from counsel. Any issues, Mr. Foreman?

12 THE JUROR: No, sir.

13 THE COURT: No issues. Okay. Ready?

14 MR. THOMPSON: Yes.

15 THE COURT: All right.

16 MR. THOMPSON: Please the Court?

17 THE COURT: Yes.

18 MR. THOMPSON: Good morning, ladies and gentlemen. My  
19 voice is a little bit better today than it was yesterday but  
20 we'll see how it lasts for a couple minutes. I got home  
21 last night and I said, "How am I going to argue this case to  
22 the jury?" I mean, there is no question I've got a client,  
23 Mr. Turner (sic), who presented himself on the stand as a  
24 crotchety old man. Okay. We just can't get around that.  
25 But I think what I'm going to do is start at the back and

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1 work forward instead of starting first and work backwards.  
2 Mr. Butler, not Turner, Mr. Butler, when the kids flipped  
3 him off his intent was to follow them and either talk to  
4 their parents or say something to him, and I think that  
5 intent has clearly been shown. Okay. Even Mr. Butler says,  
6 "I intended to say something to him." Unfortunately  
7 something happened, and even after it happened Mr. Butler  
8 still didn't come across as the best person in the world.  
9 Okay. He sill said something to him. His intent was to say  
10 something to him and by golly he said it. That don't make  
11 him a criminal, though, that doesn't make him a criminal.  
12 What the State has got to prove to you is that he intended  
13 to hit him with the car. Okay. Not that he intended to  
14 follow him and say something to him and be a crotchety old  
15 man, and basically after the incident occurred not show the  
16 care that most people would show, they've got to show that  
17 he intended to hit him with that car. Now, the State is  
18 going to argue, "Well, you can take what he said and what he  
19 did and you can infer from that that that's what he intended  
20 to do." I guess you could if you wanna speculate. Okay.  
21 But we don't speculate in this. The State has the burden of  
22 proof. They've got the burden of proving beyond a  
23 reasonable doubt that Mr. Butler intended what happened.  
24 Okay. Mr. Butler, we've got no burden of proof, we don't  
25 have to prove anything, we're innocent until the State

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1 proves us guilty. Okay. But the State's got to prove to  
2 you that he intended to hit him with that car beyond a  
3 reasonable doubt, you've got to be firmly convinced. The  
4 Judge is going to give you the law, but you've gotta be  
5 firmly convinced that's what Mr. Butler intended to do, and  
6 I submit to you, ladies and gentlemen, from the evidence  
7 you've heard there's not enough evidence there to firmly  
8 convince anybody. You can speculate, you can say, "Oh well,  
9 he was ticked off." And the State's used the term road rage  
10 in their opening, you haven't heard any evidence whatsoever  
11 of any rage on anybody's part. Nobody has raised their  
12 voice, nobody screamed, there has been no evidence of rage.  
13 Okay. What happened -- and I thought to be honest with you  
14 that the State's witnesses story should be probably a little  
15 closer than they were, but it appears what happened is  
16 Mr. Holcomb and his brother were in a car, his girlfriend  
17 and another fellow were in another car, they go up Ellis  
18 Fairy, Mr. Butler pulls out in front of them. Okay. Now,  
19 Mr. Holcomb says he blew his horn and another witness says  
20 he blew his horn. One witness, the fella that was in the  
21 car with Mr. Holcomb, says he didn't blow his horn. Doesn't  
22 matter if he blew his horn or not. Okay. They were going  
23 up Ellis Fairy, they say that Mr. Butler followed them,  
24 Mr. Butler says he followed them, all right, he followed  
25 them because he intended to give them a piece of his mind.

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1 There was testimony that everybody is driving the speed  
2 limit. There's testimony that Mr. Butler's car was between  
3 Ms. Holcomb's car and -- I'm sorry, I forgot, between  
4 Mr. Holcomb's car and Ms. Stanford's car. There's testimony  
5 that Mr. Butler's vehicle was behind Ms. Stanford's car.  
6 Everybody seems to have a little different memory of what  
7 went on. Okay. Now, if they have a little bit different  
8 memory of what went on as to where the cars were going up  
9 the road, maybe their memories aren't accurate as to what  
10 happened when that happened at the actual scene. Okay.  
11 Now, remember, Mr. Holcomb's car -- and you'll have the  
12 pictures back there because they've been put into  
13 evidence -- Mr. Holcomb's car was sitting around that curve  
14 in the lane of travel. Okay. Didn't pull it off the road,  
15 didn't pull it on the shoulder of the road, it is sitting in  
16 the middle of the lane of travel. Mr. Holcomb gets out of  
17 the car. Now, there's been testimony that Ms. Stanford's  
18 vehicle was right behind Mr. Holcomb's, and Mr. Butler's was  
19 right behind hers. If that's the case, how did he have time  
20 to stop the car and get out without those cars already  
21 having to be on the scene? There's been testimony that when  
22 Ms. Stanford came around the curve Mr. Holcomb was already  
23 stopped in the road and outside his car and he motioned her  
24 on by. There was testimony from -- let me get the name --  
25 Mr. Triston Austin that when they went by Mr. Holcomb was

1 outside his car moving towards the back, but that the impact  
2 of the cars is what moved Mr. Holcomb's car over a little  
3 bit in the lane, that when they first went by his car was  
4 closer to the yellow lines and that he was standing on the  
5 side between the car and the yellow lines. And there's a  
6 whole lot of issue made over these yellow lines. Okay.  
7 Yellow lines don't mean a thing, they don't matter. If  
8 there had been no yellow lines on that road we'd still be  
9 dealing with the same thing. Okay. The yellow lines mean  
10 nothing. There's testimony that when the girlfriend's car  
11 went by Mr. Butler's went by right behind her right on her  
12 bumper. There's been testimony that from the girlfriend's  
13 car, the fella that was in the car that he was looking out  
14 the back window and when the girlfriend's car went by he  
15 looked back out the back window and Mr. Butler's truck was  
16 coming around the curve then. I guess here's what I'm  
17 trying say, they've got a real problem placing where the  
18 vehicles were, real problems placing where the vehicles  
19 were. They may also have a problem placing where  
20 Mr. Holcomb was and exactly what happened there. Because  
21 while they all say he was heading towards the back of the  
22 vehicle, some say he was at the back, some say he was at the  
23 side, they all acknowledge that he waived the girlfriend  
24 around. Mr. Butler says that as he waived -- they waived  
25 the girlfriend around he was gonna follow her around and

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1 after she got by he kind of jumped back out towards the  
2 center and that's what caused him to lock his brakes and cut  
3 his wheel to the right. Okay. What other evidence do we  
4 have that might lend credibility and some truth to that  
5 statement? We've got Mr. Holcomb's testimony. Remember how  
6 he talked about when he talked about the damage that was  
7 done to his leg, how was it done? He turned -- he said he  
8 was at the back of the car and he turned to go towards --  
9 back towards the center and that's how it caught his leg the  
10 way it did. Mr. Holcomb says he turned back towards the  
11 center of the road. If he turns towards the center and  
12 looks like he's going to the center of the road, doesn't it  
13 make sense for the person in the vehicle would cut to the  
14 right to avoid hitting him? Okay. Once you lock those  
15 brakes down you've got no control anymore where that vehicle  
16 goes, it skids, it slides, it goes where it wants to in  
17 whatever direction it happens to be pointed. Look at the  
18 pictures of the damage on the vehicles. The damage on the  
19 vehicle is to the left rear corner bumper of Mr. Holcomb's  
20 car, that's the corner bumper that's sitting closest to the  
21 middle of the road. The damage to Mr. Butler's truck is to  
22 the right front bumper. Okay. That gives some credibility  
23 to the fact that he was going -- he was over it, he was more  
24 towards the center and when they hit they hit that way, his  
25 right front clipped their left rear. Now, had Mr. Holcomb

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1 gone the other way instead of this way he might not have got  
2 hit at all, he might not have got hit at all. I'm not  
3 trying to blame Mr. Holcomb for what happened. Okay. What  
4 I'm just trying to tell you is he stopped in the middle of  
5 the road, he got out of his car, he didn't need to do that.  
6 Mr. Butler was going to give him a piece of his mind. You  
7 know, if his skin was a little thicker maybe he didn't need  
8 to do that. It's not criminal. No intent on the part of  
9 Mr. Butler to physically injure Mr. Holcomb with his  
10 vehicle. Now, if you notice we didn't say anything about  
11 the injuries involved. We didn't -- the State has the  
12 burden of proving to you each and every element of the crime  
13 that he's alleged to have committed. One of the elements is  
14 great bodily injury. Okay. There's no question there was  
15 great bodily injury, I mean, his leg was tore up, we don't  
16 need to contest that, it happened. But you know what?  
17 There's wrecks throughout the Upstate everyday where people  
18 are killed or seriously injured and that don't make them  
19 criminals. They're not a criminal unless they intend to  
20 commit a crime and do so. Okay. The fact that you have a  
21 vehicle accident does not make you a criminal. Intent.  
22 Intent. Intent. That's key here. You need to look at all  
23 the evidence you've heard, all the testimony you've heard,  
24 look at the pictures. What can you make a reasonable  
25 inference? Can you reasonably infer that he intended to run

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1 over Mr. Holcomb? If you can then you find him guilty,  
2 that's what the law says. If you have to speculate to get  
3 there you have to find him not guilty because the State has  
4 to firmly convince you that there was intent on Mr. Butler's  
5 part. I'm about to sit down but I'm going to leave you with  
6 one last -- first thing that Mr. Holcomb said on the stand  
7 and throughout his testimony, he called it an accident. And  
8 if you don't remember that or you don't believe me listen to  
9 it, get it replayed for you. Mr. Holcomb called it an  
10 accident, he never said it was intentional. Ladies and  
11 gentlemen, this is -- it's not a criminal case. It's a  
12 tragedy and, you know, there's a tragedy that Mr. Holcomb's  
13 going to have to live with the rest of his life. Don't let  
14 those pictures of the injuries and the testimony of the  
15 injuries sway your thinking as to whether or not there was  
16 intent. If he had been bumped and no injury whatsoever, if  
17 there was intent then he's guilty of a crime, of assault and  
18 battery. The only difference is great bodily injury would  
19 make it assault and battery in the first degree. Okay.  
20 Don't let those injuries -- we're telling you that existed.  
21 Don't let those injuries sway your thinking as to whether or  
22 not there was intent of the assault and battery, because the  
23 intent to commit an assault and battery doesn't require any  
24 injury whatsoever other than just assault and battery.  
25 Okay. I thank you. I ask you to listen to Ms. Leskanic

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1 then I ask you to listen attentively to the Judge's charge  
2 on the law, and I ask you to return a verdict of not guilty.  
3 Thank you.

4 MS. LESKANIC: May it please the Court?

5 THE COURT: Yes, ma'am.

6 MS. LESKANIC: Thank you, Your Honor. I almost said  
7 accident one time, too, and realized as a lawyer I'd better  
8 say incident or Mr. Thompson would say that about me too. A  
9 17 year old kid who used the word accident, two cars hit and  
10 that's the way lay people talk. Only troopers and lawyers  
11 say collision or incident because we know what that word in  
12 legal terms means. The defendant got mad at a group of  
13 kids, children, because they blew the horn at him and they  
14 flipped him off, and because of that he chased them down the  
15 road and was gonna give them a piece of his mind. After he  
16 caught up with them he ran into Brandon Holcomb and he did  
17 it intently, and I'll show why in a minute because I don't  
18 want you to speculate, I'm going to prove to you that he did  
19 it intentionally. But after he had him pinned between his  
20 Ford F-150 pickup truck and Brandon's little car that wasn't  
21 enough, he's going to get out of his vehicle based on his  
22 own testimony and say, "That's what your horn blowing and  
23 bird flipping gets you." You want to know what was going on  
24 in his mind? That's what was going on in his mind. He  
25 wasn't there to say, "Young man, let me tell you about how

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1 you should drive down the road. The way that you were  
2 driving was erratic and dangerous." He didn't do that. He  
3 was gonna give him a piece of his mind when Brandon was  
4 still stuck between the two cars based on his own testimony  
5 and he wants you to believe that he didn't know that child  
6 was still pinned? There is no way he didn't know that child  
7 was pinned between the vehicles that he had just caused  
8 that. Kelly's car was 30, 50 yards ahead of that. Triston  
9 and Kelly said they saw Brandon's body jerk, they knew he  
10 had been hit, but the defendant wants you to think, "I  
11 didn't know I hit him." And yesterday for the first time,  
12 "Well, I wanted to find the parents and talk to the  
13 parents." He didn't know where these cars were going, he  
14 didn't even know if they even lived in Cherokee County,  
15 certainly didn't know they were going home. And when he did  
16 get that opportunity to speak to David Bratton, the parent,  
17 and Mr. Bratton said, "What happened?" His response? "He  
18 flipped me off. That's what happened, he flipped me off."  
19 From that you get his intent, what he was trying to trying  
20 to do. Now, the defendant, his story is that Brandon -- I  
21 don't mean any disrespect -- but he moves like a squirrel.  
22 I've seen squirrels move back and forth in the road and you  
23 have to slow down and you don't know which way they're  
24 going. But he is saying that Brandon is holding the car  
25 door and standing out across the double yellow line to the

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1 point that Kelly almost hits him, and nobody else says this,  
2 five witnesses you heard from, four of them in the vehicles  
3 and then Brian Dawkins who was out weed eating. But now the  
4 defendant, his testimony is that Brandon is stretched out  
5 across there and then when his girlfriend goes by she almost  
6 hits him, so he has to leap over to the back of his car and  
7 then as the defendant is coming down the road he jumps back  
8 out over here, and then he has to turn to avoid it, and  
9 while he's turning into the car Brandon is going to choose  
10 to jump back over here and get pinned. You see which way my  
11 foot is pointing as I jump back this way? You see which way  
12 Brandon's foot is facing? Said his shoe fell off when his  
13 leg was pinned between the vehicles, Brandon said he was  
14 standing behind his car and as the defendant comes at him he  
15 tries to get out of the way, he turns his foot towards the  
16 yellow line and he tries to move, thankfully gets the left  
17 foot out of the way but his right foot gets hung and his  
18 shoe falls off and that's where it stays. Brandon wasn't  
19 jumping back towards I-85, he wasn't jumping back to the  
20 back of his vehicle, he was trying to get out of the way and  
21 his shoe shows it. Do you know what else shows it? The  
22 injuries. It injured Brandon's leg on the outside, the  
23 outside is what got mangled and cut by the metal rod in his  
24 car. This is the back of his car, if he were jumping back  
25 this way the inside of his leg would have been mangled by

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1 his car. He wasn't jumping that way, ladies and gentlemen.  
2 And you don't have to speculate, the proof is right there.  
3 He did exactly what he told you he was doing. He was here,  
4 the vehicle was coming and he's saying, "I've got to get out  
5 of the way," he turns, he's trying to move and the defendant  
6 pins him and the outside of his leg is mangled by his car.  
7 The inside of his leg hit the bumper of Mr. Butler's truck.  
8 And this injury that you see as Brandon testified to, that  
9 wasn't cut open from the incident, the doctors had to cut  
10 that open to relieve pressure, wasn't ripped open because it  
11 was a smooth bumper. It mashed it, it crushed it but it  
12 didn't rip it open. That's how you know. You don't have to  
13 speculate. I never want a jury to speculate, I want you to  
14 find the truth of what happened. It's the whole job of the  
15 State is to help you find the truth, and you don't have to  
16 just guess, this proves what Brandon told you was true. Did  
17 they flip him off? Yeah. I told you that in my opening.  
18 Did they blow the horn? Yes. They're children, they do  
19 that. I wish they didn't but they do. But grownups  
20 shouldn't. Grownups have a different responsibility. You  
21 don't get to chase kids down the road to give them a piece  
22 of your mind. And then when Brandon is standing at the back  
23 of the car and probably does, "What's up? Why are you  
24 following us?" That was one too many for him, that was just  
25 too much for Mr. Butler. And he was not only going to give

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1 him a piece of his mind, he was going to show him and he  
2 did. The skid marks show -- the skid marks show where he  
3 was headed when he hit his brakes. Mr. Thompson said he  
4 locked his brakes and then turned his wheel, you can't do  
5 that. Once you look your brakes that's the direction you're  
6 heading, so when he finally did hit his brakes he was  
7 already heading straight to Brandon, we know that's where  
8 Brandon was standing because the physical evidence proves  
9 that. Why did he hit his brakes? He realized he was going  
10 too fast and was going to hurt himself, he testified he  
11 couldn't wear a seatbelt. Maybe after he gunned it towards  
12 Brandon he said, "This isn't such a good idea." I don't  
13 know. But you know what? After you pull the trigger on the  
14 gun you can't change the direction of a bullet, and that  
15 vehicle was like a gun and once he gunned it toward Brandon  
16 whether he hit the brakes or not he couldn't change the  
17 direction of the bullet and he can't escape the  
18 responsibility for it now. The defense wants to talk about  
19 Brandon's driving that day. And again, he's a child, I've  
20 got kids, some of y'all probably have kids and they're kids.  
21 But I don't think Brandon was the one with the bad driving  
22 that day. The defendant pulled out in front of him. By his  
23 own testimony he was following Kelly so closely that he said  
24 if she hit her brakes that he was going to run into the back  
25 of her, which is consistent with her testimony that he was

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1 following her very closely. Then he runs her off the road  
2 with that turn on Cresthaven and then he hits a child in  
3 another vehicle. But they want to talk about Brandon's  
4 driving? Why did he get out of the car? This man is  
5 following closely to his girlfriend, he is going to his  
6 house on a dead end road and he doesn't want this man, who  
7 he doesn't know, knowing where they live so he's going to  
8 stop and find out, "Why are you following me?" That's what  
9 17 year old boys do. But grownups shouldn't get so angry  
10 that they then run into them with a vehicle and crush their  
11 leg. And I saw all of you yesterday paying very close  
12 attention, and I know that some of the testimony was  
13 probably boring because it was repetitive, but the reason it  
14 was repetitive is because that's what happened. Everybody  
15 said Brandon didn't cross the yellow line, and I know you  
16 had to hear that five times but that's because Brandon  
17 didn't cross the yellow line. I bring you what the facts  
18 are. The defendant's story, and I don't think it makes  
19 sense, I don't think it matches up with it, none of the  
20 evidence matches up with it. He was going so fast at the  
21 time he hit Brandon that Brandon's leg damaged the bumper on  
22 the truck, crushed his leg, caused damage to his vehicle and  
23 moved the vehicle. I don't know how fast that is but I  
24 think it's pretty fast, especially if when you're coming  
25 down the road as he testified you see this kid in the middle

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1 of the road almost getting hit by somebody, what would you  
2 do? You'd probably slow down if not stop because you don't  
3 know what's going on in front of you. You wouldn't keep  
4 going at that speed if honestly all of that's going on in  
5 the road, it just doesn't make sense. And you all brought  
6 your common sense with you, thank goodness, and it doesn't  
7 make sense to -- you think about what's going on. These  
8 people are in the middle of the road, a boy almost just got  
9 hit and you're going to keep going at that speed? Only if  
10 you want to hit him and you're driving carelessly and you're  
11 driving negligently, and when you're doing that nothing that  
12 follows is an accident. There's skid marks in the road,  
13 that's how fast he was going. When he hit his brakes he  
14 left skid marks. The Judge is going to go over the law with  
15 you, I'll give you that briefly. The defendant is charged  
16 with assault and battery in the first degree. A person is  
17 guilty or commits the offense of assault and battery in the  
18 first degree if they unlawfully offer or attempt to injure  
19 another person with the present ability to do so. Did  
20 Mr. Butler offer or attempt to injure Brandon with the  
21 present ability to do so? Absolutely. He drove his truck  
22 towards him. He drove his truck right towards him when he  
23 was standing at the back of the vehicle and all of the  
24 evidence shows that. None of the evidence shows what he  
25 wants you to believe, that Brandon was heading back this

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1 way. Nothing. Not his injuries, not his shoe, not the  
2 testimony of five witnesses, nothing. Did he have the  
3 ability to do so? Absolutely. He's driving a F150 pickup  
4 truck, that gives you the ability to injure another person.  
5 Did he accomplish that act by means likely to produce death  
6 or great bodily injury? If you hit somebody with a truck  
7 you can kill them. Great bodily injury is defined as bodily  
8 injury which causes a substantial risk of death or which  
9 causes serious permanent disfigurement or protracted loss or  
10 impairment of the function of the body member or organ.  
11 Permanent disfigurement. This young man had to lift up his  
12 pants leg and show you what's left of his right leg, and  
13 that's permanent disfigurement and the defense isn't even  
14 arguing that this isn't great bodily injury. But that's  
15 what we have to prove. We also have to prove it wasn't an  
16 accident. The Judge is going to give you an instruction but  
17 let's look at that and show why it's not an accident. The  
18 burden is on the State to prove beyond a reasonable doubt  
19 that the act was not an accident, but that it was caused by  
20 the negligence or carelessness on the part of the defendant  
21 or by an unlawful activity by the defendant. The Judge is  
22 going to give you that instruction. Number one, I don't  
23 think it's anything close to an accident. He intentionally  
24 drove his truck at him because he was mad because a group of  
25 kids had blown their horn, flipped him off and he wanted to

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1 give them a piece of his mind. "That's what your horn  
2 blowing and your finger flipping will get you." Number one,  
3 I don't think it's an accident at all. However, was he  
4 negligent or careless in the way that he drove? Even based  
5 on his story, all this jumping around, people almost getting  
6 hit in the road and he's still continuing at such a speed  
7 that he causes that amount of damage to Brandon's leg and to  
8 these vehicles. Number one, I don't think accident even  
9 applies. However, even if you get to that part he's  
10 negligent and he's careless so he doesn't get accident.  
11 It's intentional, he's responsible and he is guilty, and I  
12 thank you all very much for your time.

13 THE COURT: Thank you. Mr. Foreman and ladies and  
14 gentlemen of the jury, you have seen and heard all of the  
15 evidence presented as well as the arguments of counsel. It  
16 is now my duty and obligation to instruct you on the law  
17 that is applicable to this case. It will then be your solum  
18 duty and obligation to begin your deliberations through  
19 which process you will decide the facts, apply the law as I  
20 have instructed and render a fair and impartial decision.  
21 It is your exclusive duty to determine what the facts are in  
22 this case. You will do that based on your common sense  
23 examination and evaluation of the testimony and other  
24 evidence received during the trial of this case. You 12  
25 jurors alone will decide what effect, value and weight is to

## JURY CHARGE

1 be given to any particular testimony or other evidence  
2 received. Quite simply your ultimate goal is to find the  
3 truth in this case, and by doing so you will have fulfilled  
4 your obligation as jurors in giving both the State and the  
5 defendant a fair and impartial trial based on the evidence  
6 presented and the law applicable to this case. The  
7 indictment charges the defendant with the offense of assault  
8 and battery in the first degree, specifically that the  
9 defendant, Kenneth Gerald Butler, did in the county of  
10 Cherokee, State of South Carolina, on or about January 12,  
11 2012 commit an assault and battery in the first degree on  
12 the victim, Matthew Brandon Holcomb, by unlawfully offering  
13 or attempting to injure the victim with the present ability  
14 to do so and the act is accomplished by means likely to  
15 produce death or great bodily injury, to wit, or that being  
16 by striking the victim with his vehicle in violation of the  
17 code of laws for the State of South Carolina. I remind you  
18 that the fact the defendant was arrested, charged and  
19 indicted in this case is not evidence in this case and  
20 cannot be considered by you as evidence of guilt in this  
21 case, nor does it create any presumption or inference of  
22 guilt. This document is simply the formal written  
23 instrument which contains the charge made against the  
24 defendant. It is the formal document by which the case is  
25 brought into court. I remind you that during this trial you

## JURY CHARGE

1 and I have certain duties to perform. As the trial judge it  
2 is my responsibility to preside over the trial of this case,  
3 and I also have the duty to rule on the admissibility of the  
4 evidence offered during the trial. You are to consider only  
5 the competent evidence before you. You are to consider  
6 openly evidence which has been presented from the witness  
7 stand, any exhibits which have been made a part of the  
8 record in this case and any stipulations of counsel. I have  
9 the additional duty to charge you the law applicable to this  
10 case, and as the Presiding Judge I am the sole judge of the  
11 law in this case. It is your duty as jurors to accept and  
12 apply the law as I now state it to you. If you already have  
13 any idea as to what the law is or what the law ought to be  
14 and it does not agree with what I now tell you, you must  
15 abandon that idea because you are sworn to accept the law  
16 and apply the law exactly as I state it to you. In every  
17 case tried in this court before a jury the jury becomes the  
18 sole and exclusive judge of the facts of the case. A trial  
19 judge cannot intimate, state, comment on or make any  
20 statement to a trial jury about the facts of a case. Since  
21 you, the jury, are the sole judge of the facts in this case  
22 you are not to infer from what I have said during the  
23 progress of this trial in ruling upon the admissibility of  
24 the evidence or otherwise, or anything that I say now during  
25 the course of these instructions to you that I have an

## JURY CHARGE

1 opinion about the facts in this case. The law does not  
2 allow me to have an opinion about the facts in this case.  
3 This is a matter solely for you, the jury, to determine. As  
4 jurors it is your duty to determine the effect, value,  
5 weight and truth of the evidence presented during this  
6 trial. The defendant has pled not guilty to this indictment  
7 and that plea puts the burden on the State to prove the  
8 defendant's guilt beyond a reasonable doubt. A person  
9 charged with committing a criminal offense in South Carolina  
10 is never required to prove himself innocent. I charge you  
11 that it is a cardinal, important and vital rule of law that  
12 in a criminal trial no matter what the seriousness of the  
13 charge may be for which he stands charged the defendant will  
14 always be presumed to be innocent of the crime for which the  
15 indictment was issued unless guilt has proven by evidence  
16 satisfying you of that guilt beyond a reasonable doubt.  
17 This presumption of innocence does not end when you begin  
18 your deliberations. It accompanies the defendant throughout  
19 the trial until you reach a verdict of guilt based on  
20 evidence satisfying you of that guilt beyond a reasonable  
21 doubt. The presumption of innocence is like a robe of  
22 innocence placed about the shoulders of the defendant which  
23 remains with him from the moment of his arrest and continues  
24 until it has been stripped from the defendant's shoulders by  
25 evidence satisfying you of the defendant's guilt beyond a

## JURY CHARGE

1 reasonable doubt. The presumption of innocence is not a  
2 mere legal theory, it is not just a legal phrase, it is a  
3 substantial right to which every defendant is entitled  
4 unless you 12 jurors are satisfied from the evidence of the  
5 defendant's guilt beyond a reasonable doubt. The State has  
6 the burden of proving the defendant guilty beyond a  
7 reasonable doubt. Some of you may have served as jurors in  
8 civil cases where you were told that it is only necessary to  
9 prove that a fact is more likely true than not such as by  
10 the greater weight or a preponderance of the evidence.  
11 However, in criminal cases the State's proof must be more  
12 powerful than that, it must be beyond a reasonable doubt.  
13 Ladies and gentlemen, proof beyond a reasonable doubt is  
14 proof that leaves you firmly convinced of the defendant's  
15 guilt. There are very few things in this world that we know  
16 with absolute certainty, and in criminal cases the law does  
17 not require proof that overcomes every possible doubt. A  
18 reasonable doubt may also be described as the kind of doubt  
19 that would cause a reasonable person to hesitate to act. If  
20 you have such a doubt as to the guilt of the defendant, then  
21 the defendant will be entitled to a verdict of not guilty.  
22 Reasonable doubt may arise from evidence which is in the  
23 case or from the absence or lack of evidence in the case.  
24 If based on your consideration of the evidence you are  
25 firmly convinced that the defendant is guilty of the crime

## JURY CHARGE

1 charged, you must find the defendant guilty. If, on the  
2 other hand, you think there is a real possibility that the  
3 defendant is not guilty, you must give the defendant the  
4 benefit of the doubt and find him not guilty. You alone  
5 make the determination of whether or not reasonable doubt  
6 exists as to the guilt of the defendant. There are two  
7 types of evidence which are generally presented during a  
8 trial, direct evidence and circumstantial evidence. Direct  
9 evidence is the testimony of a person who claims to have  
10 actual knowledge of a fact such as an eye witness. It is  
11 evidence which immediately establishes the main fact to be  
12 proved. Circumstantial evidence is proof of a chain of  
13 facts and circumstances indicating the existence of a fact.  
14 It is evidence which immediately establishes collateral  
15 facts from which the main fact may be inferred.  
16 Circumstantial evidence is based on inference and not on  
17 personal knowledge or observation. The law makes absolutely  
18 no distinction between the weight or value to be given to  
19 either direct or circumstantial evidence, nor is a greater  
20 degree of certainty required of circumstantial evidence than  
21 of direct evidence. You should weigh all of the evidence in  
22 the case, and after weighing all of the evidence if you are  
23 not convinced of the guilt of a defendant beyond a  
24 reasonable doubt you must find the defendant not guilty.  
25 Under the Constitution of South Carolina you are the finder

## JURY CHARGE

1 of facts in this case. Necessarily you must determine the  
2 credibility of witnesses who have testified in this case.  
3 Credibility simply means believability. It becomes your  
4 duty as jurors to analyze and to evaluate the evidence and  
5 determine which evidence convinces you of its truth. In  
6 determining the believability of witnesses who have  
7 testified in this case you may believe one witness over  
8 several witnesses or several witnesses over one witness.  
9 You may believe a part of the testimony of a witness and  
10 reject the remaining part of the testimony of that same  
11 witness. You may believe the testimony of a witness in its  
12 entirety or reject the testimony of a witness in its  
13 entirety. You may consider whether any witness has  
14 exhibited to you any interest, bias, prejudice, or other  
15 motive in this case. You may also consider the appearance  
16 and manner of a witness while on the witness stand such as  
17 whether a witness was straight forward in answering  
18 questions or hesitant in responding to questions. Simply  
19 put, do you believe the witness was telling the truth. You  
20 may consider how the witness came to know the facts to which  
21 he or she testified, and whether or not the witness had an  
22 opportunity to hear, observe or perceive a fact by means of  
23 their senses. Whatever your good judgment and common sense  
24 tells you is the most believable testimony is the testimony  
25 that you should accept and reject that testimony which you

## JURY CHARGE

1 find not to be credible or believable. Now, by the same  
2 constitution that makes you the finders of the facts, I am  
3 the sole and only instructor in the law. You must accept as  
4 correct the law that I charge and apply the law to the  
5 evidence as you find it and reach your verdict. Put aside  
6 any conceptions you may have had as to how the law was  
7 before coming here today and accept the law as I instruct it  
8 to be. You for purposes of duty as jurors today should not  
9 be concerned about what the law ought to be but what I  
10 charge you the law is now in South Carolina. Criminal  
11 intent is a necessary element of each crime that must be  
12 proved by the State beyond a reasonable doubt. Criminal  
13 intent is always a matter that must be determined by the  
14 jury from the circumstances surrounding the situation.  
15 There is no way to prove intent to a mathematical certainty.  
16 There is no way medical science can dissect a person's brain  
17 and determine what he had on his mind, so the law says that  
18 criminal intent may be inferred from the circumstances shown  
19 to have existed. This is how a jury makes a determination  
20 of whether or not the element requiring intent was present.  
21 Criminal intent is a state of mind which when operated  
22 jointly with an act is the commission of a crime. Criminal  
23 intent is a mental state, a conscious wrongdoing, so it is  
24 up to you, the jury, to determine what the defendant  
25 intended to do based on the circumstances shown to have

1 existed. I tell you that the State must prove criminal  
2 intent beyond a reasonable doubt just as the State must  
3 prove every element beyond a reasonable doubt as I  
4 previously explained to you. It is not necessary for them  
5 to establish intent by direct and positive evidence, but  
6 intent may be established by inference in the same way as  
7 any other fact by taking into consideration the acts of the  
8 parties and all the facts and circumstances on the case.  
9 While the State may prove motive it is unnecessary that the  
10 State must do so, however, the State must prove intent. The  
11 defendant has raised the defense accident. An act may be  
12 excused on the ground of accident if it is shown that the  
13 act was unintentionally that the defendant was acting  
14 lawfully and that reasonable care was used by the defendant.  
15 For example, if a person is lawfully armed in self-defense  
16 and a gun accidentally discharges, the defense of accident  
17 would apply. The burden is on the State to prove beyond a  
18 reasonable doubt that the act was not an accident, but was  
19 caused by the negligence or carelessness on the part of the  
20 defendant, or by unlawful activity by the defendant. Now, I  
21 have instructed you that the defendant is charged with the  
22 offense known as assault and battery in the first degree,  
23 and I will now read to you in part section 16-3-600 of the  
24 South Carolina Code of Laws which says, "A person commits  
25 the offense of assault and battery in the first degree if a

## JURY CHARGE

1 person unlawfully injures another person or offers or  
2 attempts to injure another person with the present ability  
3 to do so, and the act is accomplished by means likely to  
4 produce death or great bodily injury." To prove assault and  
5 battery in the first degree the State must prove beyond a  
6 reasonable doubt that the defendant unlawfully injured  
7 another person or offered or attempted to injure another  
8 person with the present ability to do so. Next, the State  
9 must prove beyond a reasonable doubt that death or great  
10 bodily injury to another person resulted, or death or great  
11 bodily injury to another person could have resulted. Great  
12 bodily injury means bodily injury which causes a substantial  
13 risk of death or which causes serious permanent  
14 disfigurement or protracted loss or impairment of the  
15 function of a body member or organ. I will give you a copy  
16 of these instructions in written form. During your  
17 deliberations you may refer to the instructions to guide  
18 your decision making process. You must consider the  
19 instructions as a whole and not follow some and ignore  
20 others, and I ask that you please return these instructions  
21 to the Court at the time your verdict is rendered. Now, you  
22 have been selected as fair and impartial jurors sworn to  
23 impartially try and determine the facts of this case, and  
24 when you comply with your oath to do so no one will have a  
25 right to criticize your verdict and you will have fully

## JURY CHARGE

1 discharged your duty as jurors. You are to decide this case  
2 according to the testimony that you have heard from the lips  
3 of the sworn witnesses along with other evidence introduced.  
4 During your deliberations you may only discuss the case in  
5 the jury room with your fellow jurors because they have seen  
6 and heard the same evidence you have seen and heard. You  
7 must not discuss the case with anyone else until you have  
8 returned a verdict and the case is at an end. After your  
9 service in this trial has ended you have the right to either  
10 refuse to discuss the verdict or to discuss the verdict as  
11 much as you desire. If you choose to discuss the verdict  
12 you are free to stop any discussion at any point. If the  
13 person with whom you are speaking tries to continue a  
14 discussion of the verdict after you have stated that you do  
15 not wish to discuss it further or continues to harass you  
16 after you have refused to discuss the verdict, you should  
17 report that person to the Clerk of Court. Now, ladies and  
18 gentlemen, your verdict must be a unanimous one. Mr.  
19 Foreman, when the jury agrees on the verdict you will  
20 indicate your verdict in the space provided on the verdict  
21 form and sign your name, and then knock on the jury room  
22 door and inform the bailiff that you have reached a verdict,  
23 at that time we will return you to the courtroom and receive  
24 your verdict. During your deliberations you may only  
25 discuss the case in the jury room with your fellow jurors,

## JURY CHARGE

1 again, because they have seen and heard the same evidence  
2 you have seen and heard. However, you must not discuss the  
3 case with anyone else until you have returned the verdict in  
4 the case. Now, at this time I'm gonna ask you, Mr. Foreman,  
5 to take your jury and return to the jury room but do not  
6 begin your deliberations until you're told to do so by the  
7 bailiff, there are a couple of matters I need to discuss  
8 with the lawyers. For instance, there are several exhibits  
9 that have been put into evidence which belonged to you,  
10 those are your exhibits and we need to make sure we have  
11 everything correct before you begin your deliberations. So  
12 Mr. Foreman, if you'd take your jury.

13 (The jury left the courtroom

14 THE COURT: Any exceptions?

15 MS. LESKANIC: None from the State, Your Honor.

16 MR. THOMPSON: I don't have any exceptions. Judge,  
17 I -- it just hit me as you were finishing that you didn't  
18 instruct them on form of verdict. Now, it's a simple case  
19 and I don't know if that's really necessary but they weren't  
20 told that either guilty or not guilty, so I'm not sure --

21 THE COURT: I can bring them back and do that. I just  
22 asked for my verdict form and it didn't save to his  
23 computer, he's got to do one right quick. I can bring them  
24 back and do that.

25 MR. THOMPSON: And I'm sorry, I know we had looked at

## JURY CHARGE

1 these and it just hit me as you were instructing them.

2 THE COURT: Well that's why -- that's why we have this  
3 time.

4 (Break in proceedings.)

5 THE COURT: All right. Take that over there for the  
6 attorneys' review.

7 MR. THOMPSON: I think that's self-explanatory, Judge,  
8 I don't know that you really need to charge them on that.

9 THE COURT: I'll tell you what I will do real quick,  
10 I've got to bring them back because all 13 are back there  
11 and I'll bring them back just two seconds on this and the  
12 Court's Exhibit and all exhibits and when they go back I  
13 will tell them to begin, does that suit you?

14 MR. THOMPSON: And keep the alternate out.

15 THE COURT: Keep the alternate out.

16 MS. LESKANIC: And just for the record the State has  
17 reviewed the verdict form and the State has no objection.

18 MR. THOMPSON: No objection.

19 THE COURT: No objection. Okay.

20 (The jury charge was marked as Court's 1.)

21 (The jury returned to the courtroom.)

22 THE COURT: Okay. Mr. Foreman, ladies and gentlemen,  
23 we have now verified that all of the exhibits are present  
24 they're in this stack right here for you. I have marked as  
25 Court's Exhibit 1 the instructions that I read to you, those

## JURY CHARGE

1 go back with you. And then finally the last piece of paper  
2 that you're going to take back with you is the caption of  
3 the case here, we, the jury unanimously find the defendant,  
4 Kenneth Gerald Butler concerning the offense of assault and  
5 battery first degree, not guilty or guilty, and a place, Mr.  
6 Foreman, for you to sign and you alone would sign at the  
7 bottom and date it, please, and today is the 14th day of  
8 November. There is no significance whatsoever as to whether  
9 or not guilty comes before guilty or guilty comes before not  
10 guilty, it's just necessary on a piece of paper, one has to  
11 go one place and one has to go the other. But Mr. Foreman,  
12 it's your responsibility to check the one that reflects the  
13 entire verdict of the unanimous jury, and you can check it,  
14 initial it, X it, it doesn't matter to me but be sure you  
15 sign your name. Any objections?

16 MS. LESKANIC: None from the State, Your Honor.

17 MR. THOMPSON: No objection.

18 THE COURT: With that my alternate juror, sir, if  
19 you'll remain in the courtroom with us just for a moment,  
20 Mr. Foreman is going to take the other 12 and all of the  
21 exhibits, and as soon as the door is closed, Mr. Foreman,  
22 you're free to begin your deliberations. If the alternate  
23 will stay with me momentarily, we have a place for you.

24 (The jury left the courtroom.)

25 THE COURT: Anything from the State?

## JURY CHARGE

1 MS. LESKANIC: No, Your Honor, thank you.

2 THE COURT: Anything from the defense?

3 MR. THOMPSON: No, sir.

4 (The jury began deliberations and returned with  
5 a verdict.)

6 THE COURT: I understand we have a verdict; is that  
7 right?

8 MS. LESKANIC: That's my understanding, Your Honor.

9 THE COURT: Okay. We'll have our jury. I know it goes  
10 without saying we won't have any outbursts one way or the  
11 other.

12 (The jury returned to the courtroom.)

13 THE COURT: Mr. Foreman, ladies and gentlemen, have you  
14 reached a verdict in this case?

15 THE JUROR: Yes, sir.

16 THE COURT: If you will hand that to the bailiff,  
17 please.

18 THE CLERK: 2012-GS-11-173, State of South Carolina vs.  
19 Kenneth Gerald Butler, we, the jury, unanimously find the  
20 defendant concerning the offense of assault and battery in  
21 the first degree, guilty. Signed by foreperson E. Wayne  
22 Parker. Ladies and gentlemen of the jury, if this is the  
23 verdict of you all please indicate by raising your right  
24 hand. Thank you.

25 THE COURT: Thank you. Anything else? Thank you.

## JURY VERDICT

1 (The jury was excused.)

2 THE COURT: Anything from the State? Motions?

3 Defense?

4 MS. LESKANIC: No motions, Your Honor.

5 MR. THOMPSON: We move for a new trial, Your Honor,  
6 based on basically the same reasons we made for our directed  
7 verdict.

8 THE COURT: Yes, sir. And your motion is denied at  
9 this time. Anything else?

10 MR. THOMPSON: No, sir.

11 THE COURT: Okay.

12 MS. LESKANIC: May I have just one moment, Your Honor?

13 (Break in proceedings.)

14 MS. LESKANIC: May it please the Court?

15 THE COURT: Yes.

16 MS. LESKANIC: Your Honor, as far as criminal history  
17 the defendant has a 1979 conviction for operating a gambling  
18 house, that is his only conviction. I have Brandon's  
19 stepdad and mom standing beside me and they would like to  
20 address Your Honor regarding sentencing.

21 THE COURT: All right. Let's just do that now, be  
22 fine. Yes, sir?

23 MS. LESKANIC: Start by giving your name.

24 THE WITNESS: My name is David Bratton, I'm Matthew's  
25 stepdad. When you're considering your sentencing on Mr.

1 Butler I would like for you to consider how it's affected  
2 Brandon's life for the rest of his life, the physical pain  
3 he'll go through for the rest of his life, the things that  
4 he won't be able to do, careers. You know, he has to be  
5 selective of what he can do for the rest of his life. He's  
6 not going to be able to get out and play with his kids like  
7 you and I would. There's lots of things that he won't be  
8 able to do because of this incident. You know -- and not  
9 only just for Brandon, it's for us as well. We spent, you  
10 know, two months in the hospital listening to him cry and,  
11 you know, in pain. And as parents, I mean, all we could do  
12 was walk out of the room and hug each other and it was  
13 rough. And I hope you take that into consideration when you  
14 give your sentencing.

15 THE COURT: Yes, sir. Yes, ma'am?

16 THE WITNESS: The same goes for me. It was -- people  
17 can't imagine getting that phone call saying your child has  
18 been airlifted, and then sitting there and listening to him,  
19 my child who never cried as a child scream out in pain and  
20 there wasn't enough pain medicine. And for them to come out  
21 there and tell me we're going to try something we ain't  
22 tried before, but in the past he would have lost his leg, he  
23 could have lost his life. And we still think he's going be  
24 on disability they're telling me. He has ADHD real bad so  
25 he's still in school. He may not be -- he's having a hard

## JURY VERDICT

1 time graduating high school so he's not going to college.  
2 His future was gonna be standing on his feet working with  
3 his hands which they're telling me now that he may not be  
4 able to do because his leg swells after standing for a few  
5 hours. I don't know what his future holds, probably  
6 disability, and you know that's not much if you never had a  
7 job because he was still in school. So his life is changed  
8 forever, and ours too.

9 THE COURT: Anybody else? Mr. Thompson?

10 MR. THOMPSON: Thank you, Judge. You've heard the  
11 case, I'm not going back through that. I'll tell you a  
12 little bit about Mr. Butler. He was 74 years old yesterday  
13 as you're aware, I'm sorry what? 76 he tells me, I'm sorry,  
14 I thought he was 74, 76 years old yesterday. His past --  
15 he's been disabled for 15 years. When he worked he was  
16 self-employed in the grading business. He has the fusions  
17 in his neck and spine as I think he testified to on the  
18 stand. He's also had heart related problems. He's had  
19 cardiac failure, he's -- cardiac arrest, recently went into  
20 cardiac arrest in Wal-Mart and they had to take him to the  
21 hospital, he had flatlined. And he's had -- I guess he's  
22 getting like me, he's had a pacemaker put in recently. He  
23 and I -- he's not been a bad client, whenever I've asked him  
24 to come in he's come in, there is not been a problem there.  
25 He has got nitroglycerine in his pocket to take for the

## JURY VERDICT

1 heart in case it kicks up. I guess I realize that  
2 incarceration is a possibility and he does, too. What I'm  
3 going to ask you though if you'll consider -- he has a son  
4 back here that can take care of his needs as far as getting  
5 food to him and stuff like that, I'm going to ask if you  
6 would -- given his age and his health condition if you would  
7 consider house arrest and just take away his driver's  
8 license so he can't drive, something along those lines.

9 THE COURT: Sir, I'd be happy to hear from you.

10 THE DEFENDANT: I got nothing to say, Judge. I told it  
11 like it was, that's all I can do.

12 THE COURT: All right, sir. All right. Give me a  
13 minute. Let me see the lawyers and probation, please.  
14 Okay.

15 (Break in proceedings.)

16 THE COURT: Mr. Butler, the jury has spoken and they've  
17 convicted you of this. And nobody wins here today, I assure  
18 you that, not you, not that young man, not his parents  
19 standing over here, nobody.

20 THE WITNESS: No winners.

21 THE COURT: 2012-GS-11-0173, you're confined to the  
22 state department of corrections for a period of seven years,  
23 provided upon the service of two years, that balance is  
24 suspended with probation for five years. Condition of your  
25 probation is that you not drive a motor vehicle while on

## SENTENCING

1 probation, and \$500 to the public defense fund. Now, sir,  
2 let your lawyer explain to you in great detail that when you  
3 are -- when you finally make it to probation after your two  
4 years, that if you drive a motor vehicle at all, at all,  
5 that that is a violation of your probation, you'll be back  
6 here and you will see the next five years in the department  
7 of corrections. Thank you.

8 (End of trial proceedings.)

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WITNESSES

Gaffney Police Dept.

*[Signature]*

WARRANT NUMBER

M526115

ACTION OF GRAND JURY

**TRUE BILL**

*Thos. Bridges*  
Foreperson of Grand Jury  
Date: 3/22/12

VERDICT

*Guilty*

44

*Earl Gibson*  
Foreperson of Petit Jury  
Date: 11/14/2013

12-GS-11-0173

The State of South Carolina

County of Cherokee

Barry Barnette, Solicitor

COURT OF GENERAL SESSIONS

MAR 22 2012

TERM

THE STATE

vs.

Kenneth Gerald Butler

Indictment for

ASSAULT AND BATTERY 1<sup>st</sup> Degree

SC Code: 16-3-600(C)(1)

CDR Code: 3412

Class FEL/E

BRANDY A. MOORE

2012 MAR 22 AM 9 56

CLERK OF COURT  
CHEROKEE COUNTY, S.C.

STATE OF SOUTH CAROLINA )  
 )  
 COUNTY OF CHEROKEE )

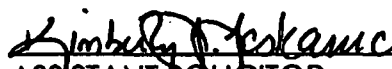
## INDICTMENT

At a Court of General Sessions, convened on MAR 22 2012, the  
 Grand Jurors of Cherokee County present upon their oath:

**ASSAULT AND BATTERY 1<sup>st</sup> DEGREE**

That the Defendant, Kenneth Gerald Butler, did in Cherokee County on or about January 12, 2012, commit an assault and battery on the victim, Matthew Brandon Holcomb, by unlawfully, offering or attempting to injure the victim with the present ability to do so, and the act was accomplished by means likely to produce death or great bodily injury; to wit: by striking the victim with his vehicle, in violation of §16-3-600(C)(1), THE CODE OF LAWS OF SOUTH CAROLINA, (1976), as amended.

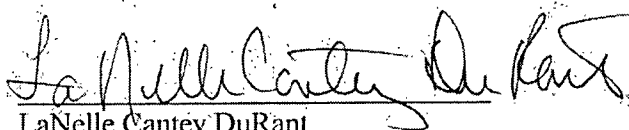
Against the peace and dignity of the State, and contrary to the statute in  
 such case made and provided.

  
 ASSISTANT SOLICITOR

## CERTIFICATE OF COUNSEL FOR APPELLANT

Counsel for appellant certifies that this Record on Appeal contains all material proposed to be included by any of the parties and not any other material and that this Record on Appeal complies to the best of my ability with the April 15, 2014 order from the South Carolina Supreme Court entitled "Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings."

December 4th, 2014



LaNelle Cantey DuRant  
Appellate Defender

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

ATTORNEY FOR APPELLANT

**RECEIVED**

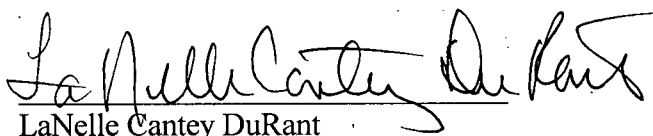
DEC 04 2014

**SC Court of Appeals**

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December 4th, 2014

  
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ATTORNEY FOR APPELLANT

**RECEIVED**

DEC 04 2014

**SC Court of Appeals**

STATE OF SOUTH CAROLINA  
IN THE COURT OF APPEALS

ORIGINAL

Appeal from Cherokee County  
R. Keith Kelly, Circuit Court Judge

**RECEIVED**

DEC 04 2014

**SC Court of Appeals**

THE STATE,

RESPONDENT,

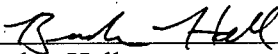
V.

KENNETH GERALD BUTLER,

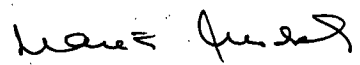
APPELLANT

CERTIFICATE OF SERVICE

I certify that a true copy of the Record on Appeal in the above referenced case has been served upon Salley W. Elliott, Esquire, at Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201, this 4th day of December, 2014.

  
Brandon Hall  
Administrative Specialist

SUBSCRIBED AND SWORN TO before me  
this 4th day of December, 2014.

 (L.S.)  
Notary Public for South Carolina  
My Commission Expires: July 3, 2023.